IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** *Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al.*, No. 16-2788-JWL-JPO *Trans Coastal Supply Company, Inc. v. Syngenta AG, et al.*, No. 2:14-cv-02637-JWL-JPO *The Delong Co., Inc. v. Syngenta AG, et al.*, No. 2:17-cv-02614-JWL-JPO *Agribase International Inc. v. Syngenta AG, et al.*, No. 2:15-cv-02279-JWL-JPO	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

MEMORANDUM IN SUPPORT OF KANSAS MDL CO-LEAD COUNSEL AND SETTLEMENT CLASS COUNSEL CHRISTOPHER SEEGER'S PETITION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS TO CLASS REPRESENTATIVES/BELLWETHER PLAINTIFFS AND ALLOCATION OF ATTORNEYS' FEE AWARD

TABLE OF CONTENTS

TABLE OF AUTHORITIES v

INTRODUCTION 1

FACTUAL BACKGROUND 4

I. KANSAS COMMON BENEFIT GROUP UNDERTOOK SUBSTANTIAL EFFORT PROSECUTING CLASS MEMBERS' CLAIMS AGAINST SYNGENTA 4

A. The Court Appointed Co-Lead Counsel to Lead the Litigation. 5

B. Co-Lead Counsel Organized and Coordinated a Team of Lawyers to Conduct Discovery in the MDL. 8

1. Co-Lead Counsel Led Offensive Discovery Against Syngenta. 9

2. Co-Lead Counsel Led Third-Party Discovery. 11

3. Co-Lead Counsel Coordinated Non-Producer Bellwether Discovery in the Kansas MDL with Kansas Common Benefit Attorneys. 13

4. Co-Lead Counsel Assembled and Managed a Team to Conduct Defensive Producer Discovery in the Kansas MDL. 13

C. The Kansas Common Benefit Group Prevailed on Syngenta's Third-Party Complaint. 17

D. Co-Lead Counsel Litigated Key Legal Issues in the Case. 18

E. Co-Lead Counsel Led Expert Discovery on the Key Experts. 21

F. Co-Lead Counsel Responded to and Filed Summary Judgment. 23

G. Co-Lead Counsel Led Trial Preparations and Briefing for the Kansas trial. 24

H. Co-Lead Counsel Tried the Kansas Class Action. 26

I. Co-Lead Counsel Prepared for Four More MDL Trials in 2018. 27

II. CO-LEAD COUNSEL COORDINATED WITH OTHER ACTIONS AND HAVE ENTERED INTO A FEE-SHARING AGREEMENT WITH OTHER LEAD COUNSEL. 28

A. The Court Entered a Coordination Order Requiring the Sharing of Discovery with Related Actions. 28

B. Other Actions were filed in Minnesota, Illinois and Elsewhere. 29

1. The Minnesota Leadership Actions. 29

2. The Illinois Leadership Actions. 31

C. Lead Counsel's Fee-Sharing Agreements. 32

III. SETTLEMENT WAS THE PRODUCT OF THE WORK DONE BY LEADERSHIP IN KANSAS, MINNESOTA AND ILLINOIS. 33

IV. PROSECUTION OF THESE CASES REQUIRED AN ENORMOUS AND RISKY INVESTMENT OF LABOR AND RESOURCES..... 35

A. The Litigation Was Risky and Success Was Far From Certain..... 35

B. Kansas Common Benefit Firms Invested Significant Labor and Expenses. 37

V. TWO DISTINGUISHED EXPERTS ON ATTORNEYS' FEES SUPPORT THE REQUESTS. 39

A. Professor Klonoff Opines that Fees, Costs and Service Awards are Reasonable under the Facts of this Case and in Comparison to Awards in Similarly Sized Settlements. 39

B. Retired Magistrate Judge Richard Ralston Opines that the Billing Rates Used to Calculate the Lodestar are Reasonable. 42

ARGUMENT 43

I. THE FEE REQUEST IS FAIR AND REASONABLE UNDER GOVERNING PRINCIPLES AND BASED ON THE FACTS OF THE CASE. 43

A. The Fee Request is Reasonable as a Percentage of the Fund 43

B. The *Johnson* Factors Justify the Fee Request because this was a Hugely Complex Case Involving Significant Time and Labor where Counsel Incurred Great Risk and Obtained a Record-Setting Settlement. 45

1. The difficult factual and legal issues in this case justify the Fee Request. 46

a) The litigation involved a unique and complex structure..... 47

b) The litigation involved a novel fact pattern. 48

c) The legal issues were complex and their outcome uncertain..... 52

2. Plaintiffs were well-represented by a team of attorneys with substantial experience in prosecuting high-stakes, complex litigation. 56

3. Counsel exercised a high-degree of skill in navigating the complex legal and factual issues that permeated the MDL. 57

4. The massive amount of time and labor that counsel expended supports the Fee Request. 63

5. The demands of this litigation necessary imposed time limitations and precluded counsel from other employment..... 63

6. The contingent nature of the fee and the risk undertaken by counsel justifies the Fee Request. 66

7. The relief involved, totaling $1.51 billion, supports the Fee Request. 69

8. The fee request is consistent with a customary fee. 72

9. Awards in similar cases justify the Fee Request. 74

C. A Lodestar Cross-Check Confirms Reasonableness of the Requested Fee. 78

II. THE EXPENSE REQUEST FOR THE KANSAS COMMON BENEFIT GROUP SHOULD BE GRANTED. 85

III. KANSAS COMMON BENEFIT ATTORNEYS SHOULD BE ALLOCATED 50% OF THE ONE-THIRD FEE AWARD. 87

A. The MDL Allocation to the Federal Kansas Common Benefit Group is Easily Fair and Equitable under the *Johnson* Factors. 88

B. The Court Should Award Subclass Counsel Attorneys' Fees and Expenses from the Remaining 20%. 94

IV. SERVICE AWARDS FOR CLASS REPRESENTATIVE AND BELLWETHER PLAINTIFFS ARE WELL DESERVED. 94

A. Category 1 Plaintiffs Should Each Be Awarded $5,000. 97

B. Category 2 Plaintiffs Should Each Be Awarded $15,000. 98

C. The Kansas Trial Representatives Should Each be Awarded $100,000. 102

D. Subclass Representatives Should Each Be Awarded $2,500. 104

CONCLUSION 106

TABLE OF AUTHORITIES

Cases

Accounting Outsourcing, L.L.C. v. Verizon Wireless Pers. Comms., L.P.,
No. CIV.A. 03-CV-161, 2007 WL 7087615 (M.D. La. Aug. 2, 2007) 98, 100

Allapattah Servs., Inc. v. Exxon Corp.,
454 F. Supp. 2d 1185 (S.D. Fla. 2006) ..... *passim*

Anderson v. Merit Energy Co.,
No. CIV.07CV00916LTBBNB, 2009 WL 3378526 (D. Colo. Oct. 20, 2009) 70, 73

Asare v. Change Group of New York, Inc.,
No. 12 Civ. 3371(CM), 2013 WL 6144764 (S.D.N.Y. Nov. 18, 2013) 95

Barbosa v. Nat'l Beef Packing Co., LLC,
No. CIV.A. 12-2311-KHV, 2015 WL 4920292 (D. Kan. Aug. 18, 2015) 74

Barrera v. Nat'l Crane Corp.,
No. SA-10-CV-0196 NN, 2012 WL 242828 (W.D. Tex. Jan. 25, 2012) 68

Been v. O.K. Indus., Inc.,
CIV-02-285-RAW, 2011 WL 4478766 (Aug. 16, 2011)..... *passim*

Bennett v. Sprint Nextel Corp.,
Case No. 2:09-cv-02122-EFM-GEB, ECF No. 301 (D. Kan. Aug. 12, 2015) 101

Blum v. Stenson,
465 U.S. 886 (1984).....43

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980).....43

Bratcher v. Bray–Doyle Ind. Sch. Dist. No. 42,
8 F.3d 722 (10th Cir. 1993) 82

Bredbenner v. Liberty Travel, Inc.,
No. CIV.A. 09-1248 MF, 2011 WL 1344745 (D.N.J. Apr. 8, 2011) 67

Brown v. Phillips Petroleum Co.,
838 F.2d 451 (10th Cir. 1988) 44, 45, 66, 69

Bussie v. Allmerica Financial Corp.,
No. 97-40204-NMG, 1999 WL 342042 (D. Mass. May 19, 1999) 44

Case v. Unified Sch. Dist. No. 233, Johnson County, Kan.,
157 F.3d 1243 (10th Cir. 1998) 80

Castro v. Sanofi Pasteur Inc.,
No. CV117178JMVMAH, 2017 WL 4776626 (D.N.J. Oct. 23, 2017).....73, 103

Chieftan Royalty Co. v. Enervest Energy Instit. Fund XIII-A, L.P.,
888 F.3d 455 (10th Cir. 2017) 103

Chambers v. Whirlpool Corp.,
214 F. Supp. 3d 877 (C.D. Cal. 2016) 82

Columbus Drywall & Insulation, Inc. v. Masco Corp.,
No. 1:04-CV-3066-JEC, 2008 WL 11319972 (N.D. Ga. Mar. 4, 2008) 103

CompSource Oklahoma v. BNY Mellon, N.A.,
No. CIV 08-469-KEW, 2012 WL 6864701 (E.D. Okl. Oct. 25, 2012).....78

Cook v. Niedert,
142 F.3d 1004 (7th Cir. 1998) 95

Cullen v. Whitman Med. Corp.,
197 F.R.D. 136 (E.D. Pa. 2000).....96

Deloach v. Philip Morris Companies,
No. 1:00CV01235, 2003 WL 23094907 (M.D.N.C. Dec. 19, 2003).....85

deMunecas v. Bold Food, LLC,
No. 09 CIV. 00440 DAB, 2010 WL 3322580 (S.D.N.Y. Aug. 23, 2010).....98

Dornberger v. Metropolitan Life Ins. Co.,
203 F.R.D. 118 (S.D.N.Y. 2001) 95

Elliott v. Rolling Frito-Lay Sales, LP,
No. SACV 11-01730 DOC, 2014 WL 2761316 (C.D. Cal. June 12, 2014).....73

Fairway Med. Ctr., L.L.C. v. McGowan Enterprises, Inc.,
No. CV 16-3782, 2018 WL 1479222 (E.D. La. Mar. 27, 2018).....73

Family Med. Pharmacy, LLC v. Trxade Group, Inc.,
No. CV 15-0590-KD-B, 2017 WL 1042079 (S.D. Ala. Mar. 17, 2017) 67

Flournoy v. Honeywell Int'l, Inc.,
No. Civ. A.205-184, 2007 WL 1087279 (S.D. Ga. Apr. 6, 2007).....72

Fox v. Vice,
563 U.S. 826 (2011).....79

Garcia v. Gordon Trucking, Inc.,
No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575 (E.D. Cal. Oct. 31, 2012).....73

George v. Duke Energy Ret. Cash Balance Plan,
No. 8:06-CV-00373-JMC, 2011 WL 13218031 (D.S.C. May 16, 2011) 46

Gevaerts v. TD Bank,
No. 1:14-CV-20744-RLR, 2015 WL 6751061 (S.D. Fla. Nov. 5, 2015) 62, 64, 66, 73

Glover v. Standard Fed. Bank,
283 F.3d 953 (8th Cir. 2002) 67

Godshall v. Franklin Mint Co.,
No. 01-CV-6539, 2004 WL 2745890 (E.D. Pa. Dec. 1, 2004).....95

Gokare v. Fed. Express Corp.,
No. 2:11-CV-2131-JTF-CGC, 2013 WL 12094887 (W.D. Tenn. Nov. 22, 2013).....44, 46, 73

Goldberger v. Integrated Res., Inc.,
209 F.3d 43 (2d Cir. 2000).....67

Gottlieb v. Barry,
43 F.3d 474 (10th Cir. 1994) 43, 44, 45

Gray v. Talking Phone Book,
No. 8:08-CV-01833-GRA, 2012 WL 12978113 (D.S.C. Aug. 13, 2012) 98

Gudenkauf v. Stauffer Communications, Inc.,
158 F.3d 1074 (10th Cir. 1998) 45

Harris v. Marhoefer,
24 F.3d 16 (9th Cir. 1994) 85

Huyer v. Wells Fargo & Co.,
314 F.R.D. 621 (S.D. Iowa 2016) 74

In re Auto. Parts Antitrust Litig.,
No. 2:12-CV-00203, 2017 WL 3525415 (E.D. Mich. July 10, 2017) 77

In re Bank of Am. Wage & Hour Employment Litig.,
No. 10-MD-2138-JWL, 2013 WL 6670602 (D. Kan. Dec. 18, 2013).....83

In re Catfish Antitrust Litig.,
939 F. Supp. 493 (N.D. Miss. 1996) 46

In re Charter Commc'ns, Inc., Sec. Litig.,
No. 4:02-CV-1186 CAS, 2005 WL 4045741 (E.D. Mo. June 30, 2005) 81, 85

In re: Checking Account Overdraft Litig.,
No. 1:09-MD-02036-JLK, 2014 WL 12557836 (S.D. Fla. Apr. 1, 2014).....95, 98

In re: Checking Account Overdraft Litig.,
No. 1:09-MD-02836-JLK, 2014 WL 11370115 (S.D. Fla. Jan. 6, 2014).....59, 66, 68, 78

In re: Checking Account Overdraft Litig.,
No. 1:09-MD-02036-JLK, 2013 WL 11319392 (S.D. Fla. Aug. 5, 2013) 101

In re: Checking Account Overdraft Litig.,
830 F. Supp. 2d 1330 (S.D. Fla. 2011) 73, 77, 78

In re Copley Pharm., Inc., Albuterol Products Liab. Litig.,
50 F. Supp. 2d 1141 (D. Wyo. 1999).....92, 93

In re Credit Default Swaps Antitrust Litig.,
No. 1:13-md-02476-DLC, 2016 WL 2731524 (S.D.N.Y. Apr. 26, 2016) 85

In re Diet Drugs,
582 F.3d 524 (3d Cir. 2009).....79

In re Domestic Air Transp. Antitrust Litig.,
148 F.R.D. 297 (N.D. Ga. 1993).....92, 96

In re Dun & Bradstreet Credit Services Customer Litig.,
130 F.R.D. 366 (S.D. Ohio 1990) 96

In re Enron Corp.,
586 F. Supp. 2d 732 (S.D. Tex. 2008) 85

In re FedEx Ground Package Sys., Inc., Employment Practices Litig.,
251 F. Supp. 3d 1225 (N.D. Ind. 2017) 74, 76, 77

In re Genetically Modified Rice Litig.,
764 F.3d 864 (8th Cir. 2014) 79

In re Genetically Modified Rice Litig.,
No. 4:06MD1811 CDP, 2012 WL 6085141 (E.D. Mo. Dec. 6, 2012) 83

In re High-Tech Employee Antitrust Litig.,
No. 11-CV-02509-LHK, 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015).....103

In re Ikon Office Solutions, Inc. Sec. Litig.,
194 F.R.D. 166 (E.D. Pa. 2000).....75, 77

In re Initial Pub. Offering Sec. Litig.,
No. 21 MC 92 SAS, 2011 WL 2732563 (S.D.N.Y. July 8, 2011).....93

In re Lease Oil Antitrust Litig.,
186 F.R.D. 403 (S.D. Tex. 1999).....96

In re Linerboard Antitrust Litig.,
292 F. Supp. 2d 644 (E.D. Pa. 2003) 58

In re Linerboard Antitrust Litig.,
No. CIV.A. 98-5055, 2004 WL 1221350 (E.D. Pa. June 2, 2004) ..... *passim*

In re Linkedin User Privacy Litig.,
309 F.R.D. 573 (N.D. Cal. 2015).....98

In re Lorazepam & Clorazepate Antitrust Litig.,
205 F.R.D. 369 (D.D.C. 2002).....95

In re: Motor Fuel Temperature Sales Practices Litig.,
07-MD-1840-KHV, 2016 WL 4445438 (D. Kan. Aug. 24, 2016) 46, 53

In re Neurontin Antitrust Litig.,
No. Civ. A. No. 02-1830, ECF No. 114 (D.N.J. Aug. 6, 2014).....103

In re NuvaRing Prods. Liab. Litig.,
No. 4:08 MDL 1964 RWS, 2014 WL 7271959 (E.D. Mo. Dec. 18, 2014).....43, 78, 79

In re Ocean Power Techs., Inc., 3:14-CV-3799,
2016 WL 6778218 (D.N.J. Nov. 15, 2016) 56, 66

In re Online DVD-Rental Antitrust Litig.,
779 F.3d 934 (9th Cir. 2015) 97

In re Packaged Ice Antitrust Litig.,
No. 08-MDL-01952, 2012 WL 5493613 (E.D. Mich. Nov. 13, 2012).....73

In re Phenylpropanolamine (PPA) Products Liab. Litig.,
460 F.3d 1217 (9th Cir. 2006) 58

In re Plastic Tableware Antitrust Litig.,
No. 94-CV-3564, 1995 WL 723175 (E.D. Pa. Dec.4, 1995).....96

In re Polyurethane Foam Antitrust Litig.,
168 F. Supp. 3d 985 (N.D. Ohio 2016).....101

In re Qwest Communications Int'l, Inc. Sec. Litig.,
625 F. Supp. 2d 1143 (D. Colo. 2009).....67

In re Remeron Direct Purchaser Antitrust Litig.,
No. CIV.03-0085 FSH, 2005 WL 3008808 (D.N.J. Nov. 9, 2005).....72

In re Residential Doors Antitrust Litig.,
No. 94–3744, 1998 WL 151804 (E.D. Pa. Apr. 2, 1998) 96

In re Rite Aid Corp. Sec. Litig.,
362 F. Supp. 2d 587 (E.D. Pa. 2005) 85

In re Rite Aid Corp. Securities Litig.,
396 F.3d 294 (3d Cir. 2005).....77, 78

In re Schering-Plough Corp. Enhance Sec. Litig.,
No. CIV.A. 08-2177 DMC, 2013 WL 5505744 (D.N.J. Oct. 1, 2013) 80

In re Southeastern Milk Antitrust Litig.,
No. 07-cv-1000, 2013 WL 2155387 (E.D. Tenn. May 17, 2013) 44

In re Sunbeam Sec. Litig.,
176 F. Supp. 2d 1323 (S.D. Fla. 2001) 68

In re Superior Beverage/Glass Container Consol. Pretrial,
133 F.R.D. 119 (N.D. Ill. 1990).....67

In re Syngenta AG MIR 162 Corn Litig.,
131 F. Supp. 3d 1177 (D. Kan. 2015).....55

In re Syngenta Mass Tort Actions,
272 F. Supp. 3d 1074 (S.D. Ill. 2017).....32, 34, 36

In re Synthroid Marketing Litig.,
264 F.3d 712 (7th Cir. 2001) 72, 76

In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab. Litig., No. 810ML02151JVSFMOX, 2013 WL 12327929
(C.D. Cal. July 24, 2013) 57, 67, 68

In re U.S. Bancorp Litig.,
291 F.3d 1035 (8th Cir. 2002) 74

In re United Telecommc'ns Sec. Litig.,
No. 90-2251-0, 1994 WL 326007 (D. Kan. June 1, 1994) 74

In re Urethane Antitrust Litig.,
No. 04-1616-JWL, 2008 WL 696244 (D. Kan. Mar. 13, 2008) 96

In re: Urethane Antitrust Litig.,
No. 04-1616-JWL, 2016 WL 4060156 (D. Kan. July 29, 2016) ..... *passim*

In re Urethane Antitrust Litig.
No. 04-1616-JWL, ECF No. 3251 (D. Kan. June 1, 2016) 103

In re Vioxx Prod. Liab. Litig.,
No. 11-1546, 2013 WL 5295707 (E.D. La. Sept. 18, 2013).....79

In re Vitamin Cases,
No. 301803, 2004 WL 5137597 (Cal. Super. Ct. Apr. 12, 2004).....93

In re Washington Pub. Power Supply Sys. Sec. Litig.,
19 F.3d 1291 (9th Cir. 1994) 68

In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.,
364 F. Supp. 2d 980 (D. Minn. 2005) 67, 78, 84, 85

In re Zurn Pex Plumbing Products Liab. Litig.,
No. 08-MDL-1958 ADM/AJB, 2013 WL 716460 (D. Minn. Feb. 27, 2013) 83

Ingram v. Coca-Cola Co.,
200 F.R.D. 685 (N.D.Ga. 2001) 95

Ivax Corp. v. Aztec Peroxides, LLC,
No. 1:02CV00593, ECF No. 78 (D.D.C. Aug. 24, 2005) 103

Jackson v. Wells Fargo Bank, N.A.,
136 F. Supp. 3d 687 (W.D. Pa. 2015) 79

Jenkins v. Trustmark Nat'l Bank,
300 F.R.D. 291 (S.D. Miss. 2014) 57, 67

Johnson v. Georgia Highway Express, Inc.,
488 F.2d 714 (5th Cir. 1974) 45, 46

Johnston v. Comerica Mortg. Corp.,
83 F.3d 241 (8th Cir. 1996) 80

Kanawi v. Bechtel Corp.,
No. C 06-05566 CRB, 2011 WL 782244 (N.D. Cal. Mar. 1, 2011) 68

Klein v. O'Neal, Inc.,
705 F. Supp. 2d 632 (N.D. Tex. 2010) 46

Knight v. Red Door Salons, Inc.,
No. 08-01520 SC, 2009 WL 248367 (N.D. Cal. Feb. 2, 2009) 58

Koehler v. Freightquote.com, Inc.,
No. 12-2505-DDC-GLR, 2016 WL 3743098 (D. Kan. July 13, 2016) 70, 74

Kolinek v. Walgreen Co.,
311 F.R.D. 483 (N.D. Ill. 2015) 73

Larey v. Allstate Prop. & Cas. Ins. Co.,
No. 4:14-CV-4008, 2018 WL 811103 (W.D. Ark. Feb. 9, 2018) 98

Law v. Nat'l Collegiate Athletic Ass'n,
4 F. Appx. 749 (10th Cir. 2001) 45

Lewis v. Wal-Mart Stores, Inc.,
No. 02-CV-0944, 2006 WL 3505851 (N.D. Okla. Dec. 4, 2006) 74

Lexmark Int'l, Inc. v. Static Control Components, Inc.,
134 S. Ct. 1377 (2014) 55

Longden v. Sunderman,
979 F.2d 1095 (5th Cir. 1992) 93

Lucas v. Kmart Corp.,
No. CIV.A. 99-01923, 2006 WL 2729260 (D. Colo. July 27, 2006) 67, 81

Lucken Family Ltd. P'ship, LLLP v. Ultra Res., Inc.,
No. 09-CV-01543-REB-KMT, 2010 WL 5387559 (D. Colo. Dec. 22, 2010) 44, 70, 73

Lunsford v. Woodforest Nat'l Bank,
No. 1:12-CV-103-CAP, 2014 WL 12740375 (N.D. Ga. May 19, 2014).....46, 56, 58, 68

Marchbanks Truck Serv. v. Comdata Network, Inc.,
No. 07-CV-1078, ECF No. 713 (E.D. Pa. July 14, 2014).....103

Manuel v. Wells Fargo Bank, Nat'l Ass'n,
No. 3:14CV238(DJN), 2016 WL 1070819 (E.D. Va. Mar. 15, 2016) 101

McDaniels v. Westlake Services, LLC, No. CIV.A. ELH-11-1837,
2014 WL 556288 (D. Md. Feb. 7, 2014) 98

McDonough v. Toys R Us, Inc.,
80 F. Supp. 3d 626 (E.D. Pa. 2015) 83

McNeely v. Nat'l Mobile Health Care, LLC,
No. 07-933, 2008 WL 4816510 (W.D. Okla. Oct. 27, 2008) 69

Meijer, Inc. v. 3M,
CIV.A. 04-5871, 2006 WL 2382718 (E.D. Pa. Aug. 14, 2006) 101

Nichols v. SmithKline Beecham Corp.,
No. CIV.A.00-6222, 2005 WL 950616 (E.D. Pa. Apr. 22, 2005) 73, 77

Omnivision Techs., Inc.,
559 F. Supp. 2d 1036 (N.D. Cal. 2008) 68

Petrovic v. Amoco Oil Co.,
200 F.3d 1140 (8th Cir. 1999) 78

Pinto v. Princess Cruise Lines, Ltd.,
513 F. Supp. 2d 1334 (S.D. Fla. 2007) 67

Ramos v. Lamm,
713 F.2d 546 (10th Cir. 1983) 81

Reazin v. Blue Cross & Blue Shield of Kansas, Inc.,
663 F. Supp. 1360 (D. Kan. 1987).....81

Risch v. Natoli Eng'g Co., LLC,
No. 4:11CV1621 AGF, 2012 WL 4357953 (E.D. Mo. Sept. 24, 2012) 98

Roberts v. Texaco, Inc.,
979 F. Supp. 185 (S.D.N.Y. 1997).....85

Roeser v. Best Buy Co.,
No. CIV. 13-1968 JRT/HB, 2015 WL 4094052 (D. Minn. July 7, 2015) 83

Rosenbaum v. MacAllister,
64 F.3d 1439 (10th Cir. 1995) 44

Ruiz v. XPO Last Mile, Inc.,
5-CV-2125 JLS (KSC), 2017 WL 6513962 (S.D. Cal. Dec. 20, 2017).....73

Sample v. Monsanto Co.,
283 F. Supp. 2d 1088 (E.D. Mo. 2003).....54

Sewell v. Bovis Lend Lease, Inc.,
No. 09 CIV. 6548 RLE, 2012 WL 1320124 (S.D.N.Y. Apr. 16, 2012) 85

Sharyland Water Supply Corp. v. City of Alton,
354 S.W.3d 407 (Tex. 2011).....53

Shaw v. Interthinx, Inc.,
No. 13-CV-01229-REB-NYW, 2015 WL 1867861 (D. Colo. Apr. 22, 2015).....44, 67, 73

Shaw v. Toshiba Am. Info. Sys., Inc.,
91 F. Supp. 2d 942 (E.D. Tex. 2000).....101

Spicer v. Chi. Bd. Options Exchange, Inc.,
844 F. Supp. 1226 (N.D. Ill. 1993).....101, 102, 103

Steiner v. Am. Broad. Co., Inc.,
248 F. Appx. 780 (9th Cir. 2007).....85

Sussman v. Patterson,
108 F.3d 1206 (10th Cir. 1997).....80

Syngenta Mass Tort Actions,
No. 3:16-CV-00255-DRH, 2017 WL 2117728 (S.D. Ill. May 15, 2017).....32

Tenuto v. Transworld Sys.,
No. CIV. A. 99–4228, 2002 WL 188569 (E.D. Pa. Jan.31, 2002).....95

The Erica P. John Fund, Inc. v. Halliburton Company,
No. 3:02-cv-1152-M, ECF No. 844 (N.D. Tex. Apr. 25, 2018).....73, 103

Thompson v. Qwest Corp.,
No. 17-CV-1745-WJM-KMT, 2018 WL 2183988 (D. Colo. May 11, 2018).....98

Titanium Dioxide Antitrust Litig.,
No, 10-CV-00318 RDB, 2013 WL 6577029 (D. Md. Dec. 13, 2013).....103

Turner v. Murphy Oil USA, Inc.,
472 F. Supp. 2d 830 (E.D. La. 2007).....67, 79, 93

Tuten v. United Airlines, Inc.,
41 F. Supp. 3d 1003 (D. Colo. 2014).....95, 101

Tyson Foods, Inc. v Bouaphakeo,
136 S. Ct. 1036 (2016).....54

UFCW Local 880-Retail Food Employers Joint Pension Fund v. Newmont Min. Corp.,
352 F. App'x 232 (10th Cir. 2009).....95

Union Asset Mgmt. Holding A.G. v. Dell, Inc.,
669 F.3d 632 (5th Cir. 2012).....78

Uselton v. Commercial Lovelace Motor Freight, Inc.,
9 F.3d 849 (10th Cir. 1993).....45

Velez v. Novartis Pharm. Corp.,
No. 04 CIV 09194 CM, 2010 WL 4877852 (S.D.N.Y. Nov. 30, 2010).....103

Victor v. Argent Classic Convertible Arbitrage Fund L.P.,
623 F.3d 82 (2d Cir. 2010).....93

Vizcaino v. Microsoft Corp.,
290 F.3d 1043 (9th Cir. 2002).....77, 85

Williams v. Sprint/United Mgmt. Co.,
No. 03-2200-JWL, 2007 WL 2694029 (D. Kan. Sept. 11, 2007).....74

Yarrington v. Solvay Pharmaceuticals, Inc.,
697 F. Supp. 2d 1057 (D. Minn. 2010)..... *passim*

Statutes

7 U.S.C. § 87g(a) 55

28 U.S.C. § 1292(b) 71

28 U.S.C. § 1407.....81

Other Authorities

4 *Newberg on Class Actions* (4th ed. 2010).....43, 84

5 *Newberg on Class Action*s (5th ed. 2015).....46, 74, 94

Dan B. Dobbs, *An Introduction to Non-Statutory Economic Loss Claims*,
48 Ariz. L. Rev. 713 (2006).....53

Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*,
1 J. Empirical Legal Stud. 27 (2004) 72

Jim Wren, *Applying the Economic Loss Rule in Texas*,
64 Baylor L. Rev. 204 (2012) 53

Manual for Complex Litigation 4th 43, 70, 93

Report of Third Circuit Task Force: Selection of Class Counsel,
208 F.R.D. 340 (2002) 43

INTRODUCTION

The Settlement Agreement with Syngenta, if approved, will create a common fund of $1.51 billion to compensate Class Members for the claims asserted in this multi-district litigation ("MDL") and in the related actions filed in Minnesota, Illinois, and other state courts across the country. Pursuant to the Settlement Agreement and this Court's inherent authority under the common-fund doctrine and Rule 23(h), Patrick Stueve, Don Downing, William Chaney, and Scott Powell ("Co-Lead Counsel") for the Kansas MDL and Settlement Class Counsel Christopher Seeger ("Seeger") respectfully submit this Petition for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards to Class Representatives/Bellwether Plaintiffs and Allocation of Attorneys' Fee Award ("Fee Application").

First, they request that the Court award one-third of the $1.51 billion settlement fund to be set aside for attorneys' fees ("Fee Request") and, to reimburse Co-Lead Counsel and other MDL firms ("Kansas Common Benefit Group") $6,695,350.05 in costs and expenses incurred performing common-benefit work ("Expense Request"). The Fee and Expense Requests are eminently justifiable under the facts and circumstances of this unusual case and application of the *Johnson* factors. The result achieved here is a non-reversionary $1.51 billion settlement — record-setting for agricultural litigation – and more than double the settlement reached with Bayer in what was previously the largest agricultural trade-disruption settlement resulting from the release of a new genetically modified ("GM") trait. This result was not obtained easily, but only after the sustained effort of counsel, including certification of a nationwide and nine state-law litigation classes in two jurisdictions, the start of three jury trials, and one completed, class trial resulting in a $217.7 million jury verdict.

As detailed more fully herein, the factual and legal complexity of these claims, and the unique nature of this MDL and the prosecution of claims in Minnesota and Illinois, required extensive investment of labor and advancement of substantial costs by counsel. The work performed advancing the claims of Class Members – on a fully contingent basis – carried significant risk, and many counsel performing that work, including Co-Lead Counsel, forwent other opportunities and dedicated themselves to these cases full-time for much or all of the past four years. Only because of those efforts were they able to: review more than 2.5 million pages of documents; take or defend nearly 200 depositions (many multi-day depositions); subpoena 18 third party witnesses; produce more than eight expert reports; cross-examine 11 defense experts (some more than once); file 36 substantive motions with supporting legal memoranda; and respond to 19 substantive motions dealing with complex and sophisticated legal arguments — many without controlling precedent on the facts presented here — on issues such as state-law duty, economic-loss doctrine, proximate causation, intervening causation, federal preemption, *Noerr-Pennington*, due process, and the application of foreign law under World Trade Organization ("WTO") treaties, among others.

Furthermore, counsel performed their work while racing toward trial so as not to delay the prosecution of Class Members' claims, completing the depositions of Syngenta's 32 witnesses over 57 days in four continents and nearly 106 depositions, of plaintiffs and third parties across the U.S. within 12 months of the start of full fact discovery in the MDL. They faced uncertain recovery, squaring off against Syngenta's top-flight and well-funded defense counsel armed with an extensive factual record and potentially credible arguments that: the trade disruption was the result of Chinese politics; damages were uncertain and speculative; and any tort duty to delay or restrict the sale of Syngenta's seed, legal in the United States, was

unfounded and unprecedented. Given these risks, the result achieved through counsel's perseverance and investment speaks for itself, justifying the Fee and Expense Request made herein.

Second, Co-Lead Counsel and Settlement Class Counsel Seeger and Stueve request that the Court issue an order allocating the Fee Request among the many lawyers who contributed to the settlement in the following manner:

- 50% of the Fee Request should be awarded to the Co-Lead Counsel to allocate among the 44 law firms, including the four Co-Lead law firms and Mr. Seeger's firm, who performed and reported common-benefit work in the Kansas MDL ("Kansas Common Benefit Group") pursuant to the Court's Common Benefit Order, in light of the fact that the Kansas Common Benefit Group, *inter alia*, took the lead in fact and expert discovery, obtained key legal rulings first in the case, obtained class certification of a nationwide and eight state-law litigation classes, invested over $6.6 million of their own money, led the plaintiffs' settlement negotiation committee, and obtained the only jury verdict – for $217.7 million – in the litigation;

- 12.5% of the Fee Request should be awarded to Minnesota Lead Counsel to allocate among all the law firms who performed and reported common-benefit work in the Minnesota litigation pursuant to the Minnesota Court's Common Benefit Order, for the reasons stated in their separate application for allocation of the Fee Request;

- 17.5% of the Fee Request should be awarded to Illinois Lead Counsel to allocate among themselves and their referral, affiliated, and related counsel for the reasons stated in their separate application for allocation of the Fee Request; and

- 20% of the Fee Request, if the one-third aggregate request is awarded, should be reserved by the Court to award $388,005 in attorneys' fees to Subclass Counsel and to any other counsel who makes a timely and valid request for fees that the Court deems appropriate under common-benefit doctrine principles.

This allocation is supported by Co-Lead Counsel and Seeger and in separate requests to be filed by Daniel Gustafson and Bill Sieben ("Minnesota Lead Counsel"), and Clayton A. Clark ("Illinois Lead Counsel"). Co-Lead Counsel and Seeger reserve the right to amend this request as to the allocation of the 20% upon review of any other applications submitted to this Court.

Third, Co-Lead Counsel and Seeger request that the Court approve service awards from the common fund to subclass representatives and to certain class representatives and bellwether plaintiffs who responded to written discovery (beyond the Plaintiff Fact Sheet), were deposed, and/or testified and represented the Kansas litigation class at trial. These requests are made in varying amounts set forth below according to the plaintiffs' relative contribution, and are fully justified by the facts and law.

This Memorandum is supported by the cited and attached evidence, including: declarations from all four Co-Lead Counsel as Exhibits 1 (Patrick J. Stueve), 2 (Scott Powell), 3 (Don M. Downing), 4 (William Chaney), and lawyers at each of the Kansas Common Benefit Firms (Ex. 7, 10-47); the expert declarations of retired Magistrate Judge Richard Ralston (Ex. 5) and Professor Robert Klonoff (Ex. 6) whose opinions support the reasonableness of these requests; and the Kansas Common Benefit Firm time records, which the undersigned are prepared to submit *in camera* at the Court's request.

FACTUAL BACKGROUND

I. KANSAS COMMON BENEFIT GROUP UNDERTOOK SUBSTANTIAL EFFORT PROSECUTING CLASS MEMBERS' CLAIMS AGAINST SYNGENTA

From the development of the factual record – which required nearly two hundred depositions across four continents coordinated with different types of plaintiffs in venues across the country – to the analysis of complex legal issues including duty, causation and the economic-loss doctrine in 22 different states, this was an enormously challenging case to prosecute. Co-Lead Counsel, working in conjunction with an Executive Committee and others in the Kansas Common Benefit Group,[1] took the lead on nearly every aspect of this prosecution, from

[1] As used throughout this brief, "Co-Lead Counsel" includes the work performed by the four appointed Co-Lead Counsel and the attorneys and staff at their law firms. The "Kansas Common Benefit Group" or "Kansas Common Benefit Attorney" refers to those lawyers and staff at other firms who

coordinating discovery to taking the lead in preparing for and examining fact witnesses during depositions, producing and defending the experts relied upon by Plaintiffs at trial, to actually trying the Kansas class case through to the jury's award of $217.7 million. Following the Kansas trial and months of settlement negotiations, the parties agreed on a $1.51 billion settlement.

The enormous work, expense and risk undertaken in achieving this settlement – as the Court has observed – are detailed in declarations submitted herewith. Exs. 1-7, 10-47. A summary is set out below.

A. The Court Appointed Co-Lead Counsel to Lead the Litigation.

Prior to the formation of the MDL, counsel recognized the need to assemble a high-quality and dedicated team of professionals, with a proven track record of taking risky claims the distance. To this end, Don Downing, Scott Powell, and William Chaney investigated, researched and filed two of the early, initial complaints against Syngenta, following their proven success trying multiple bellwether cases in *In re Genetically Modified Rice Litigation*, which they ultimately settled on behalf of producers for $750 million. They filed a complaint, *Five Star Farms*, in the District of Kansas, for which they joined forces with Patrick Stueve, a Kansas City attorney with similar, national experience prosecuting high-stakes litigation. *See Five Star Farms, et al. v. Syngenta AG et al*., No. 2:14-cv-02571 (D. Kan.) (filed 11/11/14). The second complaint, *Wilson Farm*, was filed in the Eastern District of Missouri. *Wilson Farm Inc., et al. v. Syngenta AG et al*., No. 4:14-cv-01908 (E.D. Mo.) (filed 11/11/14). Both complaints were filed on November 11, 2014 and amended on December 18, 2014. Following amendment, the *Wilson Farms* complaint asserted claims on behalf of farmers in 13 states (Alabama, Arkansas, Illinois,

---

performed work at the express direction and approval of Co-Lead Counsel in the performance of discrete tasks that advanced the common benefit of MDL plaintiffs and Class Members, pursuant to the Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Fund ("CBO"). ECF No. 936. The identities of the Kansas Common Benefit Group are in the Declaration of Patrick J. Stueve ("Stueve Decl.") attached as Exhibit 1 in paragraph 644.

Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Tennessee, and Wisconsin) and the *Five Star Farms* complaint asserted claims on behalf of farmers in 6 states (Kansas, Colorado, Nebraska, North Dakota, South Dakota, and Oklahoma). These complaints were the template used in drafting the Master Complaints, filed on March 13, 2015, which included early work with the agricultural economists describing the price impact of lost Chinese demand for corn on U.S. farmers. *See* Ex. 3 (Downing Decl. ¶¶ 4, 8-21); Ex. 4 (Chaney Decl. ¶¶ 168-73); Ex. 2 (Powell Decl. ¶ 84).

Together, in response to the Court's solicitations for leadership, these four lawyers assembled a team of law firms, representing the diverse interests of the current Class Members. Ex. 3 (Downing Decl. ¶¶ 8-21). That team included Downing, Chaney, Powell, and Stueve as "Co-Lead Counsel," along with the resources of their firms, as well as an Executive Committee (the "EC") consisting of Jayne Conroy, Christopher Ellis, David Graham, Richard Paul III, Robert Shelquist, John Ursu, Stephen Weiss, Tom Cartmell, Scott Poynter and Tom Bender.[2] The Court described the EC as "a set of lawyers whose own skills, demographics and client bases complement and add value to the leadership structure." ECF No. 67 at 4. They represented plaintiffs who were corn and milo producers, non-producers, farmers large and small, and sophisticated corporations. *Id.* And the Court agreed with Co-Lead Counsel that this team was the "best way to proceed," and for which the Court predicted would "bode[] well for the expeditious handling of this litigation." *Id.* at 2. The Court charged Co-Lead Counsel to, *inter alia*, "organize and supervise the efforts of plaintiffs' counsel in a manner to ensure that the pretrial and trial preparation for the plaintiffs is conducted effectively, efficiently, expeditiously,

[2] Tom Cartmell subsequently withdrew from leadership on June 29, 2015. ECF No. 891. Mr. Graham also withdrew, but only in 2018 following his client's settlement with Syngenta. ECF No. 3498.

and economically" and "to encourage full cooperation and efficiency among all plaintiffs' counsel." *Id.* at 6-9. That order was issued on January 22, 2015.

On July 27, 2015, the Court entered the CBO, where it defined "Common Benefit Work" as "services performed for the benefit of all producer and/or all non-producer plaintiffs … specifically authorized by [Co-]Lead Counsel." ECF No. 936 at 7. Such work included but was not limited to "investigation, discovery (whether documents, interrogatories, depositions or otherwise), coding or other analytical work relating to documents or evidence, research, motions and responses to motions, exhibits, bellwether trials and transcripts, [and] all other work performed under the direction of [Co-]Lead Counsel for the benefit of all producer and/or all non-producer plaintiffs, and orders on substantive matters involving Common Benefit Work." *Id.* at 7-8. The Court's order provided that client solicitation and other similar tasks were *not* to be considered Common Benefit Work. *Id.* at 8.

In June 2015, efficiency guidelines were circulated to all Kansas Common Benefit firms. During the 29 months of litigation, Co-Lead Counsel engaged the EC and the other lawyers in the Kansas Common Benefit Group to assist them in: conducting discovery, obtaining class certification, and securing the $217.7 million jury verdict. The $1.51 billion settlement followed. Time spent on work covered by the CBO, and a description of that work, was reported to Stueve during the course of the MDL. After the case settled, each firm was asked to re-review their time for compliance with the CBO and resubmit it. Downing, Chaney, and Powell then reviewed all time entries for compliance and reasonableness. Ex. 1 (Stueve Decl. ¶ 621-42); Ex. 2 (Powell Decl. ¶ 217); Ex. 3 (Downing Decl. ¶ 84); Ex. 4 (Chaney Decl. ¶ 315).

Pursuant to the CBO, for everyone who remains in the Class, attorney's fees are to be determined and awarded from the overall recovery made available by the settlement, pursuant to

the Court's approval and orders. *See* ECF No. 936 at 20 ("In the event that there is a class settlement, recovery or judgment in favor of the class, no assessment pursuant to this Section will be made, either for attorneys' fees or for expenses, individually from any class member or his/her/its individual attorney as to the portion of any class recovery distributed to that individual class member if the class member remains in the class (i.e., does not opt-out of the class). Instead, all fees and expenses for that class member will come out of the overall class recovery funds provided by defendants, as approved by the Court, or otherwise Ordered by the Court.").

B. Co-Lead Counsel Organized and Coordinated a Team of Lawyers to Conduct Discovery in the MDL.

Co-Lead Counsel organized and coordinated the MDL efficiently and expeditiously. Ex. 1 (Stueve Decl. ¶ 621-29). The nature of the MDL required extensive organization and effort because it included claims of producers, non-producers, individuals, and putative class members. *Id.* at ¶ 292. Following Rule 12(b)(6) motion practice (discussed *infra*), the Court established a discovery schedule that included five non-producer plaintiffs, 48 individual producer plaintiffs ("bellwether plaintiffs"), six producer plaintiffs who purchased Agrisure Viptera and/or Duracade, and the putative nationwide and eight state-law class actions, which consisted of a further 21 putative class-representative producer plaintiffs. ECF No. 1098 at 6; ECF No. 1495 at 1-2. Syngenta and Co-Lead Counsel each selected half of the bellwether plaintiffs. To ensure that the best plaintiffs were selected, Co-Lead Counsel and others assigned from the Kansas Common Benefit Group analyzed the relevant state laws, interviewed potential plaintiffs, and vetted each and every one. Ex. 1 (Stueve Decl. ¶¶ 233-34); Ex. 2 (Powell Decl. ¶¶ 96-99); Ex. 4 (Chaney Decl. ¶¶ 192-94); Ex. 43 (Bender Decl. ¶ 6); Ex. 30 (Paul Decl. ¶ 6(d)). In total, after some withdrawals, the plaintiffs covered by Scheduling Order No. 2 consisted of 69 producer plaintiffs. Ex. 2 (Powell Decl. ¶ 99). On November 19, 2015, full discovery commenced on the

claims covered by Scheduling Order No. 2 with the first trial, scheduled for June 2017, nineteen months later. ECF No. 1098 at 14; Ex. 1 (Stueve Decl. ¶ 243).

1. Co-Lead Counsel Led Offensive Discovery Against Syngenta.

Co-Lead Counsel and attorneys in their firms led the offensive discovery against Syngenta, engaging others in the Kansas Common Benefit Group in discrete tasks such as legal research, drafting of legal briefs, document review, and, in a few instances, the taking of depositions. They drafted and issued to Syngenta 267 document requests and 71 interrogatories. Ex. 1 (Stueve Decl. ¶¶ 247-48); Ex. 2 (Powell Decl. ¶ 158). They spent significant time identifying custodians from whom documents would be collected, negotiating search protocols with Syngenta, and establishing a joint document depository available to all coordinating plaintiffs' counsel ("MDL Document Database"). More than 1.5 million pages of responsive documents were obtained from Syngenta and stored in the MDL Document Database. Ex. 1 (Stueve Decl. ¶¶ 251-53). Co-Lead Counsel managed an extensive document review, selecting document reviewers from Kansas Common Benefit Group firms and emphasizing attorneys with long-term availability to commit to the project. They prepared a document-review protocol, and trained and conducted initial review sets on site in Kansas City, Missouri, supervised by a team from Co-Lead Counsel's firms. Co-Lead Counsel tracked performance utilizing software in the MDL Document Database, routing review sets to the most efficient and effective reviewers. Ex. 1 (Stueve Decl. ¶¶ 259-74); Ex. 2 (Powell Decl. ¶¶ 160-63); Ex. 4 (Chaney Decl. ¶¶ 199-201).

Review results were housed in the MDL Document Database and made available to coordinating counsel for all plaintiff types across the country. The database contained an issue code for each relevant document, "hot doc" flags, and reviewer comments. Once the production was narrowed to several thousand pages of potential "hot docs," senior members of Co-Lead Counsel's firms responsible for deposition preparation, summary-judgment briefing, and trial

preparation then catalogued and narrowed those documents further. Ex. 1 (Stueve Decl. ¶ 263); Ex. 2 (Powell Decl. ¶¶ 160-63). The project resulted in: a list of "key events"; "factual bases of certain anticipated defenses"; "a factual timeline"; and an identification of "topics for questioning at depositions." Ex. 2 (Powell Decl. ¶ 163). It permitted Co-Lead Counsel to assemble "all of Syngenta's internal discussions about the status and problems with [its Chinese] applications and compare them with Syngenta's public statements regarding when Chinese approval was expected." Ex. 1 (Stueve Decl. ¶ 418). The coded database represented an extensive knowledge base from which deposition and trial documents could be selected. Little was more important to the overall merits of Plaintiffs' claims than obtaining this documentary evidence. Ex. 1 (Stueve Decl. ¶ 262).

Co-Lead Counsel also supervised the inquiry into Syngenta's privilege log. Ex. 1 (Stueve Decl. ¶¶ 256-58). Following meet-and-confer efforts, they filed a motion to compel, which was granted in part. ECF No. 3109; ECF No. 3238.

Co-Lead Counsel prepared a list of 126 Rule 30(b)(6) deposition topics for Syngenta. Ex. 2 (Powell Decl. ¶ 158(a)). These depositions began in January 2016 – just a few months after Plaintiffs were granted leave to serve non-targeted written discovery – and individual depositions followed immediately thereafter. Ex. 1 (Stueve Decl. ¶¶ 239, 266). Co-Lead Counsel and only one other lawyer from the Kansas Common Benefit Group deposed all 32 Syngenta witnesses – 19 of those deposition lasted two or more days. *Id.* at ¶ 405. Plaintiffs played 18 of these depositions in their case-in-chief during the Kansas trial. *Id.* at ¶ 420.

These depositions were critical in establishing, *inter alia*, Syngenta's knowledge regarding the risk to downstream stakeholders of commercializing its GM traits ahead of Chinese approval; its awareness of Chinese actual and expected corn imports from the U.S.; the facts,

timeline and statements made by Syngenta to Chinese regulatory authorities about its applications for import approval of its GM traits; how and whether China's regulatory system was processing other GM traits; and, rebuttal to its other defenses. *Id*. at ¶¶ 407-17; Ex. 2 (Powell Decl. ¶¶ 164-68); Ex. 4 (Chaney Decl. ¶¶ 241-42); Ex. 3 (Downing Decl. ¶¶ 32-35).

Among counsel for Plaintiffs in the various jurisdictions, Co-Lead Counsel took the lead in preparing and questioning Syngenta's witnesses. This required extensive preparation and travel in the United States, Hong Kong, Great Britain, and Australia. Depositions were treated as trial depositions given the inability to ensure that any witness would be within the Court's subpoena power at the time of trial. Many of these depositions were submitted as evidence in both the Kansas and Minnesota trials. Ex. 1 (Stueve Decl. ¶¶ 407-17, 577). Normally, prior to the deposition, Co-Lead Counsel would share their outline and exhibits with Plaintiffs' counsel in other jurisdictions. Ex. 2 (Powell Decl. ¶¶ 164-68); Ex. 4 (Chaney Decl. ¶¶ 164, 226, 241-42, 282); Ex. 3 (Downing Decl. ¶¶ 32-35); Ex. 30 (Paul Decl. ¶ 6(b)).

2. Co-Lead Counsel Led Third-Party Discovery.

Co-Lead Counsel prepared and served five subpoenas on third parties: Louis Dreyfus Commodities LLC; Bunge North America, Inc.; Gavilon Grain, LLC, CHS, Inc.; the American Soybean Association; and, CropLife America. Ex. 1 (Stueve Decl. ¶ 421). Both Co-Lead Counsel and Syngenta separately subpoenaed another five third parties: North American Export Grain Association, Inc.; National Grain and Feed Association; American Seed Trade Association; Biotechnology Innovation Organization; and U.S. Grains Council. *Id*. at ¶ 424; Ex. 2 (Powell Decl. ¶ 159); Ex. 4 (Chaney Decl. ¶ 198). Syngenta additionally subpoenaed another eight third parties, including the National Corn Growers Association. Ex. 1 (Stueve Decl. ¶ 425). Co-Lead Counsel engaged in extensive meet-and-confer efforts regarding these

subpoenas, resulting in the production and ultimate review of more than 170,000 pages of additional documents. *Id.* at ¶¶ 426-27.

Nine of these third parties were deposed. *Id.* at ¶ 428. Counsel for Plaintiffs asked questions at six depositions and, in all but two instances, Kansas Common Benefit Attorneys led the questioning for Plaintiffs. *Id.* at ¶ 429. Several of these third parties included trade groups for the biotechnology industry, and Syngenta played video clips from the depositions of Matthew O'Mara, Nathan Fields, Gary Martin and Thomas Sleight. *Id.* at ¶ 431.

Syngenta also took extensive discovery of non-parties Cargill and ADM in the Louisiana litigation, where it cross noticed over 40 depositions with the MDL and Minnesota. Ex. 1 (Stueve Decl. ¶ 433); Ex. 2 (Powell Decl. ¶ 168). Co-Lead Counsel participated in all 40 depositions, which occurred in numerous U.S. cities, Hong Kong, and London, spanning 72 deposition days. Ex. 1 (Stueve Decl. ¶ 431); Ex. 2 (Powell Decl. ¶ 167) (requiring multiple overseas trips). These depositions required extensive review of Cargill and ADM documents and preparation. Ex. 1 (Stueve Decl. ¶ 436); Ex. 2 (Powell Decl. ¶ 168); Ex. 4 (Chaney Decl. ¶¶ 199, 247-73). They covered both offensive and defensive issues in the litigation – both of which were critically important. As a defensive matter, Syngenta vociferously argued that these non-parties were at fault for the Chinese rejections (ECF No 2947 at 96-111; ECF No. 3344 at 59-64), that their actions constituted a defense to proximate cause (ECF No. 2861 at 86-99), and that their conduct was relevant to foreseeability and the extent to which Syngenta complied with the standard of care (ECF No. 3141 at 1-5; ECF No. 3163 at 65). Syngenta played eight of these 42 depositions at the Kansas trial. Ex. 1 (Stueve Decl. ¶ 438). As an offensive matter, Plaintiffs developed key evidence related to the relevant standard of care and the Chinese regulatory process through these witnesses, including Cargill's Dr. Randy Giroux who testified at the

Kansas and Minnesota trials as an expert for the Plaintiffs. Ex. 1 (Stueve Decl. ¶¶ 434-35, 437). Plaintiffs also played the deposition of Anthony Reed in their case-in-chief during the Kansas trial. *Id.* at ¶ 438.

In total, Kansas Common Benefit Group participated in 49 third-party depositions, requiring an extensive investment of time and resources. Ex. 1 (Stueve Decl. ¶¶ 428-33); Ex. 2 (Powell Decl. ¶ 169); Ex. 3 (Downing Decl. ¶ 33); Ex. 4 (Chaney Decl. ¶¶ 247-73).

3. Co-Lead Counsel Coordinated Non-Producer Bellwether Discovery in the Kansas MDL with Kansas Common Benefit Attorneys.

Two of the 4 non-producer bellwether plaintiffs' claims, Trans Coastal and Rail Transfer, also proceeded through full fact discovery under Scheduling Order No. 2.[3] Ex. 45 (Robinovitch Decl. ¶ 20); Ex. 35 (Conroy Decl. ¶ 9). Unlike producer plaintiffs, these plaintiffs were required to serve complete Rule 26 initial disclosures. Ex. 4 (Chaney Decl. ¶ 221). Over the course of the litigation, they each responded to three sets of requests for production, two sets of interrogatories, and requests for admission. *Id.* at ¶¶ 222-24. Co-Lead Counsel drafted potential objections and worked with each plaintiff's counsel in preparing and serving substantive responses. *Id.* The Kansas Common Benefit Group defended nine depositions over 17 days in multiple cities for the non-producer bellwether plaintiffs. *Id.* at ¶¶ 230-40.

4. Co-Lead Counsel Assembled and Managed a Team to Conduct Defensive Producer Discovery in the Kansas MDL.

There are presently 4,049 plaintiffs in the MDL. Ex. 1 (Stueve Decl. ¶ 144). Only putative class representatives and bellwether plaintiffs were required to participate in written discovery, and all bellwether producer class representatives and producer plaintiffs completed fact discovery. Ex. 2 (Powell Decl. ¶ 106). There were 89 such plaintiffs who fell into these

[3] Two bellwethers completed some discovery before dismissing their claims. Ex. 4 (Chaney Decl. at 57 n.2).

categories. *See id.* Putative class representatives named in one of the master producer complaints, but not covered by Scheduling Order No. 2, responded to 27 document requests. *Id.* The remaining 69 producer plaintiffs completed discovery under Scheduling Order No. 2. *Id.* In total, each of them responded to 97 requests for documents, 56 interrogatories, and 98 requests for admission; these requests sought extensive information about the plaintiff's farming operations over long periods of time. *See id.* at ¶¶ 106, 117-32; Ex. 1 (Stueve Decl. ¶¶ 280-81). This work required to respond to this discovery was necessarily extensive: between 2015-17 the Kansas Common Benefit Group produced approximately 350 *volumes* of written discovery, including: 400,000 pages of documents; approximately two-hundred sets of original and amended interrogatory responses, representing over 10,000 interrogatory responses; and two-hundred sets of original and amended responses to Syngenta's request for admissions. Ex. 2 (Powell Decl. ¶ 102).

This discovery occurred prior to class certification, so these bellwether plaintiffs represented potentially important test cases for Plaintiffs' claims against Syngenta, and this discovery was defensive evidence that Syngenta would rely upon in opposing class certification. Further, if certification had been denied, these cases would be the test ground for summary-judgment, *Daubert* issues, trial, and appeal of Plaintiffs' claims in the MDL. It was appropriate for and necessary for Co-Lead Counsel to manage this discovery. Ex. 1 (Stueve Decl. ¶ 279).

To this end, Co-Lead Counsel worked with several EC firms and individual counsel in the Kansas Common Benefit Group to comply with these discovery obligations. Ex. 2 (Powell Decl. ¶¶ 100, 130-31). Co-Lead Counsel prepared model responses to various requests, reviewed documents for privilege, coordinated production, and handled service. *Id.* at ¶¶ 100, 129, 117-32. Kansas Common Benefit Group firms spend extensive time and effort preparing

substantive answers, collecting documents, and working with Plaintiffs to answer this discovery.[4] Not a single plaintiff covered by Scheduling Order No. 2 was dismissed for non-compliance with their discovery obligations. *Id*. at ¶ 114. The degree of individualized attention and effort given by the Kansas Common Benefit Group to this discovery is reflected in the varying size and length of each plaintiff's responses. Some plaintiffs produced tens of thousands of pages of documents, others less than a hundred; and, interrogatory responses ranged from 20 to 33 pages long. *Id.* at ¶ 157.

Moreover, the 69 producers – of varying farm sizes – utilized different levels of technology and storage systems. Thus, there was no single method used to identify and collect responsive documents. Often, a member of the discovery team had to physically drive to the farm (often in a remote, rural location), conduct a records search, copy responsive information (either electronically or manually), and catalogue the information for production. Ex. 1 (Stueve Decl. ¶¶ 299-300). In other instances, responses required seeking information from third parties, such as where the Kansas Common Benefit Group contacted or went to third-party locations to collect documents (such as a crop insurance agent, grain elevator or seed dealer) with the plaintiff's authorization. Ex. 2 (Powell Decl. ¶¶ 123, 131). In producing the documents, Co-Lead Counsel assembled, labeled, uploaded, and prepared load files for all productions in compliance with the Court's ESI protocol. *Id*. at ¶ 103.

The Kansas Common Benefit Group also engaged in affirmative discovery with the Plaintiffs. Syngenta produced over 100,000 stewardship agreements, showing the names of all

[4] *See* Ex. 10 (Donarski Decl. ¶ 7); Ex. 13 (J. Bell Decl. ¶ 5); Ex. 44 (W. Bell Decl. ¶¶ 4-5); Ex. 43 (Bender Decl. ¶¶ 6-33); Ex. 15 (Ellis Decl. ¶¶ 6-7); Ex. 16 (Preston Decl. ¶ 6); Ex. 18 (Emerson Decl. ¶¶ 7-8); Ex. 21 (Crompton Decl. ¶¶ 4-5); Ex. 40 (Kerlick Decl. ¶¶ 12-13); Ex. 24 (Shelquist Decl. ¶ 8); Ex. 25 (Lundberg Decl. ¶¶ 6-7); Ex. 26 (Flax Decl. ¶¶ 5-6); Ex. 28 (Wedgworth Decl. ¶ 19); Ex. 29 (Lytle Decl. ¶ 5); Ex. 30 (Paul Decl. ¶¶ 6-7); Ex. 31 (Poynter Decl. ¶ 6); Ex. 34 (Schirger Decl. ¶ 7); Ex. 7 (Weiss Decl. ¶¶ 5, 36-48); Ex. 37 (Soper Decl. ¶ 6); Ex. 38 (Bukovac Decl. ¶¶ 7-8); Ex. 39 (Thrash Decl. ¶¶ 5-6).

farmers and/or entities that purchased seeds containing the Agrisure Viptera or Duracade seed traits. Because the farmers' names were typically hand written, these records were manually reviewed and the names had to be typed into a searchable database, a very time-consuming process, in order to confirm that Syngenta would not argue any of the bellwether plaintiffs purchased or planted Viptera or Duracade seed. Ex. 1 (Stueve Decl. ¶¶ 271-73).

All of these plaintiffs were deposed. There were over 70 depositions because, in some instances, more than one person was produced from each plaintiff. A team of only 11 lawyers was assembled to prepare and produce most of the plaintiffs for their deposition. Ex. 2 (Powell Decl. ¶ 133). An EC firm, Walters Bender, coordinated scheduling and deposition preparation. Ex. 43 (Bender Decl. ¶ 6). The client was prepared ahead of time, typically in person, *id.*, using an extensive deposition outline prepared by the EC in consultation with Co-Lead Counsel. *Id.*; Ex. 1 (Stueve Decl. ¶ 294). Ahead of each deposition, this team ensured the producer plaintiffs' document production was complete. Ex. 2 (Powell Decl. ¶ 134). This small team completed all depositions, oftentimes in rural and remote locations, for over 70 witnesses in the six months between December 2015 and May 2016. *Id.* at ¶ 133; Ex. 1 (Stueve Decl. ¶ 295).

Work continued even after the depositions were completed. From May 2016 to December 2016, the Kansas Common Benefit Group conducted numerous meet-and-confer activities with Syngenta. Ex. 2 (Powell Decl. ¶¶ 143-45). These efforts were precipitated by a letter from Syngenta's counsel containing 88-pages (single-spaced) of purported deficiencies in the plaintiffs' discovery answers. *Id*. at ¶ 143. The Kansas Common Benefit Group engaged in substantial effort reviewing these assertions, collecting and supplementing responses, and responding in a set letters totaling 150 (single-spaced) pages. *Id.* This prompted a 94-page (single spaced) reply by Syngenta's counsel. *Id.* at ¶ 144. An attorney from one of Co-Lead

Counsel and the Walters Bender firm then conducted a lengthy meet-and-confer with Syngenta's lawyers on the purported deficiencies, which lead to both further supplementation and another round of lengthy letters. *Id.* As a result of these efforts, the disputes were all resolved without Court intervention. *Id.* at ¶ 145.

C. The Kansas Common Benefit Group Prevailed on Syngenta's Third-Party Complaint.

Throughout the course of the litigation, Syngenta asserted multiple defenses to shift responsibility for Plaintiffs' injuries on other parties. *See* Ex. 1 (Stueve Decl. ¶¶ 222-28). In late 2015, in answering the Non-Producer Plaintiffs' Second Amended Complaint, Syngenta filed not only an answer and affirmative defenses, but counterclaims as well. ECF No. 1224. Its counterclaims sought indemnification and contribution for any recovery by Plaintiffs against Syngenta. ECF No. 1224 at 106-09. On December 3, 2015, Syngenta filed its Third-Party Complaint against Cargill and ADM, with causes of action also seeking contribution and indemnity. ECF No. 1259. Had Syngenta been successful in maintaining these claims, all of the trials would have taken significant additional time and would have been far more complicated, with higher risk that a jury could find someone other than Syngenta responsible. Ex. 1 (Stueve Decl. ¶ 225).

On January 19, 2016, Co-Lead Counsel with Kansas Common Benefit Group counsel filed a motion to dismiss the counterclaims and third-party claims and memorandum in support. ECF Nos. 1434, 1435. Syngenta opposed the motion, ECF No. 1661, and a reply was filed on March 25, 2016. ECF No. 1766. On April 4, 2016, the Court granted the joint motion to dismiss Syngenta's counterclaims and third-party complaints. ECF No. 1803. This victory ensured that there would not be third parties sitting at trial that Syngenta could blame for the harm to Plaintiffs. Ex. 1 (Stueve Decl. ¶ 225). It also resulted in the defeat of Syngenta's similar claims

against non-producer Plaintiffs and Class Members. Syngenta would later seek to permit the jury to assign fault to non-party ADM, Cargill, other exporters of corn, and even China, and also avoid liability based on superseding cause. Again, Plaintiffs' counsel defeated those efforts. *See infra*, Section I.E.

D. Co-Lead Counsel Litigated Key Legal Issues in the Case.

Co-Lead Counsel and the Kansas Common Benefit Group's raised or responded to a number of key and difficult legal and factual issues via briefing and pleadings throughout the case. They prepared and filed precise and carefully pled Producer Plaintiffs' Class Action Master and Non-Producer Plaintiffs' Class Action Master Complaints (ECF Nos. 296, 297), both of which included specific economic allegations supporting the alleged harm. These initial Master Complaints contained over 274 paragraphs of allegations, a nationwide count for relief under the Lanham Act, and over 70 additional causes of action. These Master Complaints were supplemented following review of Syngenta's initial document production in response to Scheduling Order No. 1, adding another 100 paragraphs of factual allegations. ECF Nos. 450, 451. Additional amendments were made over the course of the MDL. ECF Nos. 1064, 1377.

Legal briefs in the case – drafted almost exclusively by Co-Lead Counsel with frequent collaboration from EC firm Seeger Weiss – were also complex and extensive. A watershed brief, presented and briefed first in the Kansas MDL, was Plaintiffs' response to Syngenta's Motion to Dismiss the Master Complaints pursuant to Rule 12(b)(6). ECF No. 927; Ex. 1 (Stueve Decl. ¶¶ 203-16); Ex. 2 (Powell Decl. ¶¶ 93-95); Ex. 4 (Chaney Decl. ¶¶ 188-90); Ex. 3 (Downing Decl. ¶ 27). Syngenta's June 19, 2015 memorandum in support of its motion to dismiss was 128 pages with appendices. ECF No. 857. Plaintiffs' response was 207 pages with appendices. ECF No. 927. This Court's memorandum and order was itself 120 pages. ECF No.

1016. But, that was only one such brief, there were other significant briefs with comprehensive arguments and multiple legal analyses, such as:

- Early in the litigation, Syngenta removed hundreds of cases originally filed in state courts on the basis of the Federal Common Law of Foreign Relations. After full briefing before this Court, these cases were remanded back to state court. ECF No. 395. This ruling – and the briefing filed by Co-Lead Counsel – thus paved the way for the separate lawsuits in Minnesota and Illinois state court. But for the ruling, all Syngenta cases would have been prosecuted in federal court.

- Syngenta's memorandum in support of its motion for summary judgment in the Kansas class case contained 41 pages of facts, 71 pages of argument, and 323 exhibits. ECF No. 2861. Plaintiffs' opposition contained 79 pages responding to Syngenta's statement of facts, ECF No. 2940-1 (Appx. A), a 117-page statement of additional facts (587 separate paragraphs), ECF No. 2940 (¶¶ 1-587), 100 pages of argument, ECF No. 2940 at 2-100, and 415 exhibits.

- Plaintiffs' own motion for partial summary judgment contained 22 pages of facts, 36 pages of argument, and 64 exhibits. ECF Nos. 2859 & 2859-1-64. Plaintiffs' reply was 112 pages, with 30 additional exhibits. ECF Nos. 2994 & 2994-2-31.

- Syngenta's memorandum in support of its post-trial motion under Rules 50(b) and 59 was sixty-nine pages long. ECF No. 3344. Plaintiffs' opposition was 82 pages long. ECF Nos. 3392.

See Ex. 1 (Stueve Decl. ¶¶ 499-509, 570-72); Ex. 2 (Powell Decl. ¶¶ 180-82, 203); Ex. 3 (Downing Decl. ¶¶ 4(b), 49-50); Ex. 4 (Chaney Decl. ¶¶ 178-81, 279-80, 301); Ex. 7 (Weiss Decl. ¶ 15); Ex. 20 (Ursu Decl. ¶ 6).

Co-Lead Counsel and Seeger Weiss also prepared the extensive motion for class certification of the litigation classes in the MDL, including the development of two agricultural economists and their expert reports. Ex. 1 (Stueve Decl. ¶¶ 441-48); Ex. 3 (Downing Decl. ¶ 40). The motion, memorandum and supporting exhibits themselves were voluminous. *See* ECF Nos. 2156-57. In response, Syngenta filed nearly 1,000 pages of argument and exhibits attacking the ascertainability of the class and, similar to the successful arguments in the *Rice* litigation, alleging individualized issues pertaining to claims and damages, both of which were alleged to

defeat commonality and predominance. *See* ECF No. 2335. Plaintiffs' reply brief and exhibits totaled nearly 1,900 pages. ECF No. 2436.

Co-Lead Counsel produced both of their agricultural economists for deposition, and deposed three defense experts designated by Syngenta when it opposed certification. Ex. 1 (Stueve Decl. ¶¶ 449-51); Ex. 3 (Downing Decl. ¶ 40). The Court held a two-day class certification hearing in which Drs. Babcock and Carter testified live and were cross-examined by Syngenta. Ex. 1 (Stueve Decl. ¶ 458). Significant time was devoted to preparing for this hearing, including a dry run with Minnesota Lead Counsel the day before the hearing. Ex. 3 (Downing Decl. ¶ 40). On September 26, 2016, the Court granted the motion and certified the nationwide and eight state classes, which was the first class certification decision in any of the related cases. Ex. 1 (Stueve Decl. ¶¶ 459-61).

On September 26, 2016, the Court granted the motion for certification of the litigation classes. ECF No. 2547. On October 11, 2016, Syngenta filed a Rule 23(f) Petition for Permission to Appeal Class Certification Order. *In re Syngenta AG MIR162 Corn Litigation*, Case No. 16-607 (10th Cir. Oct. 11, 2016). If granted, this Petition likely would have delayed the June 2017 Kansas trial and put at substantial risk the chance of trying Plaintiffs' claims as class actions. Ex. 1 (Stueve Decl. ¶¶ 493-98). Co-Lead Counsel and Seeger Weiss prepared and filed an opposition brief. On December 7, 2016, the Tenth Circuit denied the Rule 23(f) Petition because the "district court's rulings in the order granting class certification are well-researched and reasoned, and, if any rulings are in error, those errors can be addressed on appeal, if necessary." *In re Syngenta AG MIR162 Corn Litigation*, Case No. 16-607, at 3 (10th Cir. Dec. 7, 2016).

In addition to Plaintiffs' initial motion for class certification and the other titanic briefings described above, and excluding the *many* unopposed, procedural, or administrative motions that were filed in the MDL, Co-Lead Counsel filed approximately thirty-six other substantive motions. *See* ECF Nos. 283, 365, 848, 854, 945, 1213, 1214, 1289, 1435, 1580, 1642, 2237, 2364, 2428, 2598, 2617, 2856, 2868, 2871, 2872, 2877, 2880, 2882, 2884, 2886, 2903, 2912, 3081, 3101, 3109, 3128, 3175, 3297, 3341, 3431, and 3506.[5] And they responded to approximately nineteen substantive motions filed by Syngenta or others. *See* ECF Nos. 1091, 1557, 1615, 1810, 1825, 2090, 2239, 2476, 2949, 2952, 2954, 2456, 2957, 2958, 2960, 2961, 2983, 3029, 3267. In addition, the Court held, and Co-Lead Counsel attended, approximately seventeen hearings or status conferences over the course of the MDL. *See* ECF Nos. 77, 286, 333, 340, 1087, 1335, 1526, 1546, 2661, 2768, 3085, 3118, 3289, 3347, 3394, 3399, 3513. The Court itself issued at least 17 Memoranda and Orders, containing substantive analysis of disputed legal issues, during the litigation phase of this case. ECF Nos. 403, 935, 1016, 1679, 1803, 2047, 2426, 2492, 2502, 2547, 2556, 2703, 3051, 3134, 3319, 3426, 3437.

The legal work represented a significant investment of time and resources by the Kansas Common Benefit Group, and it paved the way for settlement.

E. Co-Lead Counsel Led Expert Discovery on the Key Experts.

Before even filing a complaint, Co-Lead Counsel consulted with agricultural economists to understand and investigate the extent of the damages. Ex. 3 (Downing Decl. ¶¶ 8, 11). Pursuant to Rule 26, Co-Lead Counsel disclosed nine experts in the MDL. These included Dr. Bruce Babcock, Dr. Colin Carter, Dr. Randy Giroux, Dr. Joe Keaschall, Kevin Latner, and Dr.

[5] Although citations are not referenced here, all such motions filed by Plaintiffs were typically accompanied by a Memorandum of Law and a Reply brief. In rare instances, a Sur-reply brief and/or Notices of Supplemental Authority were also prepared and filed.

Dirk Maier.[6] These six experts provided opinion testimony on a broad range of topics, including: agricultural economics, the U.S. commodity system, the standard of care, the efficacy of Syngenta's seeds, and the Chinese regulatory system. Co-Lead and EC Counsel retained and prepared all nine of the experts. Ex. 1 (Stueve Decl. ¶¶ 466-69); Ex. 2 (Powell Decl. ¶¶ 169-75); Ex. 30 (Paul Decl. ¶ 6(f)). Many months were spent discussing opinions and facts, reviewing drafts, and preparing for and defending the experts at their depositions. Ex. 3 (Downing Decl. ¶¶ 6, 11, 28, 38, 43, 47, 53, 62, 67); Ex. 1 (Stueve Decl. ¶¶ 469); Ex. 2 (Powell Decl. ¶¶ 173); Ex. 30 (Paul Decl. ¶ 6(f)). Syngenta moved to strike all of the experts under *Daubert*. Ex. 1 (Stueve Decl. ¶ 511). Co-Lead Counsel researched, prepared, and filed responses to each motion. Ex. 2 (Powell Decl. ¶ 174); Ex. 1 (Stueve Decl. ¶ 509); Ex. 3 (Downing Decl. ¶ 51). They defeated nearly all of Syngenta's arguments. *See* ECF Nos. 2863 (Dr. Dirk Maier), 2866 (Dr. Joe Keaschall), 2870 (Kevin Latner), 2876 (Dr. Randal Giroux), 2888 (Dr. Bruce Babcock) and 2892 (Dr. Colin Carter). Ultimately, Drs. Carter, Babcock, Keaschall, and Giroux testified at the Kansas trial, and did testify or were expected to testify in the Minnesota trial. Ex. 1 (Stueve Decl. ¶ 469).

Syngenta disclosed twelve experts, covering subjects including the USDA process for approving new GM products; the U.S. commodity system; routes of transgenic contamination; industry standards for commercialization of new GM crops; China's regulatory system and purported political manipulation of this system; Chinese law on sale, shipping and import/export of foreign agricultural products containing GM traits; and damages. Ex. 1 (Stueve Decl. ¶¶ 475-76). Co-Lead Counsel led defensive expert discovery for ten of these experts, including:

[6] Plaintiffs also originally designated Bernard Black and David Teece, experts retained and prepared by Minnesota counsel, but both experts were later voluntarily withdrawn in the MDL. ECF No. 2988. Co-Lead Counsel additionally designated Eric C. Frye to provide individual economic analyses of specific plaintiffs, but the parties agreed to delay that designation after the classes were certified.

deposing each expert and preparing and filing *Daubert* motions against each expert.[7] Ex. 1 (Stueve Decl. ¶ 508); Ex. 2 (Powell Decl. ¶ 174); Ex. 3 (Downing Decl. ¶ 51); Ex. 4 (Chaney Decl. ¶ 277). Moreover, Co-Lead Counsel employed two pieces of strategy that significantly narrowed the scope of expert testimony Syngenta could present at trial. First, Co-Lead Counsel subpoenaed Syngenta's only standard-of-care expert, J. Thomas Carrato who authored the BIO Policy, seeking documents responsive to his expert analysis, and challenged his previous employer's attempts to shield these documents based on privilege and confidentiality objections. After several rounds of legal briefing and favorable orders issued by the Court, Syngenta ultimately withdrew Mr. Carrato as an expert witness, leaving Syngenta without a standard-of-care expert for at least the Kansas, Minnesota, Arkansas, Missouri, Illinois, Iowa, Nebraska, South Dakota, and Ohio trials. Ex. 1 (Stueve Decl. ¶¶ 476-90). Second, Co-Lead Counsel prepared and filed a successful *Daubert* brief striking Dr. Goodwin's alternative damages model, which left Syngenta without an alternative damages computation for these trials. *Id.* at ¶ 515; ECF No. 3134 at 29.

Finally, work was conducted in preparing expert reports and opinions for non-producer bellwether plaintiffs. Ex. 4 (Chaney Decl. ¶ 278); Ex. 45 (Robinovitch Decl. ¶ 22).

F. Co-Lead Counsel Responded to and Filed Summary Judgment.

On February 6, 2017, Syngenta filed a summary judgment motion seeking dismissal of "all claims asserted by the Nationwide Lanham Act Class and Kansas State Class." ECF No. 2860 at 2. Syngenta's memorandum was 121 pages, including 137 paragraphs of purportedly undisputed materials facts, and attaching 323 exhibits totaling more than 2,900 pages. ECF No. 2861. Opposition to this summary judgment motion was enormously complicated. Co-Lead

[7] As rebuttal experts to Black and Teece, Page and Daines were withdrawn by Syngenta when Plaintiffs withdrew Black and Teece. ECF No. 2971.

Counsel's firms drafted responses to all of Syngenta's 137 fact assertions, and with assistance from Kansas Common Benefit Group, drafted 587 statements of additional facts that canvassed the totality of the discovery in this litigation, including excerpts from depositions taken across the world, as well as documents produced by Syngenta and third parties throughout the course of the litigation. Ex. 1 (Stueve Decl. ¶¶ 499-509); Ex. 2 (Powell Decl. ¶¶ 180-82); Ex. 3 (Downing Decl. ¶¶ 54-55); Ex. 4 (Chaney Decl. ¶¶ 279-80). The brief and supporting exhibits total more than 9,000 pages. ECF Nos. 2940-46.

Co-Lead Counsel also drafted and filed a motion for partial summary judgment, seeking dismissal of significant affirmative defenses, including assumption of risk, comparative fault, mitigation, intervening and superseding cause and purported business and economic justification. *See* ECF Nos. 2858, 2859. The memorandum and supporting exhibits totaled more than 1,900 pages and asserted 123 statements of undisputed facts. ECF No. 2859. In addition to responding to Syngenta's legal arguments, Plaintiffs' reply brief responded to Syngenta's 208 statements of additional material fact. ECF No. 2994; Ex. 1 (Stueve Decl. ¶¶ 499-509); Ex. 2 (Powell Decl. ¶¶ 180-82); Ex. 4 (Chaney Decl. ¶¶ 279-80); Ex. 3 (Downing Decl. ¶¶ 54-55).

These motions were granted in part and denied in part. ECF No. 3051. Among other things, and importantly, the Court narrowed the affirmative defenses Syngenta could raise at trial, refusing Syngenta's bid to assess fault of producers, ADM, Cargill, and China, and from asserting that the supposed "illegal" acts of the exporters were a superseding cause. *Id.*; Ex. 1 (Stueve Decl. ¶ 508); Ex. 3 (Downing Decl. ¶¶ 54-55).

G. Co-Lead Counsel Led Trial Preparations and Briefing for the Kansas trial.

Because Syngenta repeatedly stated that it would not settle this litigation in advance of trial, Co-Lead Counsel prepared for trial from the very beginning of the litigation. Ex. 1 (Stueve Decl. ¶ 522-23). To prepare for trial, they worked with trial consultants in helping to shape the

themes and demonstrative exhibits for trial, including conducting a focus group and a mock trial. *Id.* at ¶¶ 524-35. The fulsome feedback received from these efforts greatly assisted in refining trial arguments and demonstratives and identifying areas of concern that could be proactively addressed before trial. *Id.* at ¶ 532.

Syngenta's employees were outside of the subpoena power of the Court, so a substantial portion of Plaintiffs' evidence was pre-recorded deposition video testimony. Ex. 1 (Stueve Decl. ¶ 554). Pursuant to the Court's Trial Order, the Parties were required to exchange depositions designations on May 5, 2017; to make counter-designations and objections by May 10; and to make objections and counter-counter-designations by May 15. ECF No. 2984. There were nearly 200 depositions; it took enormous work to select the testimony for trial. Ex. 1 (Stueve Decl. ¶¶ 554-55); Ex. 2 (Powell Decl. ¶ 185); Ex. 6 (Klonoff Decl. ¶ 79). After an extensive, multi-stage review of the depositions, Co-Lead Counsel designated testimony from 43 witnesses for the Kansas trial. ECF No. 3345-1; Ex. 4 (Chaney Decl. ¶ 282). Syngenta designated testimony from 51 witnesses. ECF No. 3338-1. Co-Lead Counsel and the Kansas Common Benefit Group prepared and served objections and counter designations to the testimony of all 51 witnesses within five days. Ex. 1 (Stueve Decl. ¶ 554). Five days after that, they served objections and counter to Syngenta's counter designations. *Id*.

In the weeks leading up to the trial, Co-Lead Counsel fully briefed *in limine* motions, negotiated stipulated jury instructions and fully briefed disputed instructions. ECF Nos. 3204, 3205, 3239, 3278, 3280, 3283, 3284, 3285; Ex. 1 (Stueve Decl. ¶¶ 536-45); Ex. 3 (Downing Decl. ¶¶ 4(b), 56-57, 59, 62). In connection with the latter, Syngenta argued for the first time, a little more than a week before the start of trial, that international law applied to issues in this litigation and the Court should instruct on the WTO's Sanitary and Phytosanitary Measures

Agreement (the "SPS Agreement"). *See* ECF No. 3205. Responding to this proposed jury instruction required significant legal analysis of international law and its relationship to this litigation at a time in which Co-Lead Counsel and their firms were otherwise focused on preparing to start trial. The Court ultimately gave Jury Instruction No. 17. Ex. 1 (Stueve Decl. ¶ 543). Co-Lead Counsel presented oral argument at the jury conference during the Kansas trial. ECF No. 3309 at 2227.

H. Co-Lead Counsel Tried the Kansas Class Action.

The Kansas class trial was the first Syngenta corn case to be tried to a verdict in any court. The Kansas class trial began on June 5, 2017, and lasted until June 23, 2017, when the jury returned its verdict awarding the Kansas class $217.7 million, the entire compensatory damages amount requested by Plaintiffs. Ex. 1 (Stueve Decl. ¶¶ 546-67).

Co-Lead Counsel tried all aspects of the Kansas lawsuit. They put on every fact and expert witness for Plaintiffs and cross-examined all of Syngenta's witnesses. Preparation was extensive. *Id.* Syngenta identified 12 persons as potential live witness on its pre-trial witness list and 58 potential depositions to be offered into evidence. ECF No. 3131. Plaintiffs identified 21 potential live witnesses. ECF No. 3076. Co-Lead Counsel prepared for the examination of many, if not all, of these witnesses in anticipation that they might be called at trial. Ex. 1 (Stueve Decl. ¶¶ 547, 558). Ultimately, Co-Lead Counsel put seven live witnesses on the stand and offered 22 video clips into evidence in their case-in-chief and numerous counter-designated video clips in Syngenta's case. *Id.* at ¶ 556; *see* ECF Nos. 3240-3261, 3287-88, 3293-94.

Syngenta brought in nationally recognized counsel from Kirkland & Ellis to try the Kansas case. Ex. 1 (Stueve Decl. ¶¶ 518-21). Syngenta's trial team involved at least eight partners from Kirkland offices across the country, with additional help from Kirkland associates and staff and jury consultants, and at least two partners from Berkowitz Oliver in Kansas City.

Id. Counsel worked late into the evening and early morning each night preparing for the presentation of evidence, negotiating deposition cuts, meeting and conferring, and preparing for and raising legal arguments with the Court. *Id.* at ¶¶ 555; Ex. 4 (Chaney Decl. ¶¶ 289-91); Ex. 2 (Powell Decl. ¶¶ 194-202); Ex. 3 (Downing Decl. ¶¶ 56-57). At the close of Plaintiffs' case-in-chief on June 14, 2017, Syngenta filed a Rule 50(a) Motion for Judgment as a Matter of Law. ECF No. 3265. Four hours later, Co-Lead Counsel filed a 16-page opposition. The next morning, the Court ruled on this motion orally, largely denying the motion. Ex. 1 (Stueve Decl. ¶ 558).

Syngenta ultimately put on five live witnesses at trial, each one cross-examined by Co-Lead Counsel, and played video clips from the depositions of 15 witnesses. *Id.* at ¶ 559-61.

After deliberating from Thursday afternoon, June 22, 2017, until Friday morning, the jury returned a verdict finding that Plaintiffs proved, by a preponderance of the evidence, the requisite elements of negligence and Syngenta failed to prove its defense that China was a superseding cause. ECF No. 3304. The jury's award was the tenth largest jury verdict in the United States in 2017. Ex. 1 (Stueve Decl. ¶¶ 567-68).

On July 21, 2017, Syngenta filed a Rule 50(b) motion for judgment as a matter of law and alternatively Rule 59 motion for a new trial and/or remittitur. ECF No. 3343. Co-Lead Counsel drafted the opposition, filed on August 21, 2017. ECF No. 3392. Before this motion was ruled upon, the parties reached a global class settlement. Ex. 1 (Stueve Decl. ¶¶ 570-72).

I. Co-Lead Counsel Prepared for Four More MDL Trials in 2018.

After the Kansas trial, the Parties disagreed on the order and course of the trials of the remaining seven certified classes. Co-Lead Counsel moved to consolidate the trials of multiple classes together. ECF No. 3082. Syngenta opposed and wanted all of the class claims severed and cases remanded to judges unfamiliar with the litigation. Following a status conference, the

Court ordered supplemental briefing. ECF Nos. 3314, 3317. The Court adopted Plaintiffs' argument that Syngenta waived personal jurisdiction in Kansas for these Plaintiffs, and grouped the class cases for a set of consolidated trials. ECF No. 3319. The next such trial would include the Arkansas and Missouri classes. *Id.* Co-Lead Counsel prepared and participated in the pretrial conference for that trial. Ex. 1 (Stueve Decl. ¶¶ 573-78).

On September 15, 2017, Co-Lead Counsel filed a motion to certify the remaining producer claims pled in the Master Complaint as class actions. ECF No. 3431.

II. CO-LEAD COUNSEL COORDINATED WITH OTHER ACTIONS AND HAVE ENTERED INTO A FEE-SHARING AGREEMENT WITH OTHER LEAD COUNSEL.

A. The Court Entered a Coordination Order Requiring the Sharing of Discovery with Related Actions.

The JPML issued its order consolidating the federal cases on December 22, 2014. ECF No. 1. On May 5, 2015, the Court rejected Syngenta's argument that the doctrine of foreign relations provided federal jurisdiction, ECF No. 395, and on May 22, 2015, the Minnesota Supreme Court consolidated all state-court cases in a single venue. As a result, on October 21, 2015, and in conjunction with Scheduling Order No. 2, the Court entered a Coordination Order that required coordination among counsel between this MDL and Related Actions, which were defined as those "already . . . pending in Minnesota . . . Louisiana . . . and additional actions [that] may be filed in the future." ECF No. 1099 at 1.

One purpose of that order was to "minimize undue duplication of discovery and undue burden on courts, parties, and non-parties in responding to discovery requests, save substantial expense by the parties and non-parties, and produce substantial savings in judicial resources." *Id*. at 2. To that end, the order provided that Co-Lead Counsel: create the MDL Document Database (*id.* at 5) and take the "lead" for discovery scheduling (*id.* at 4). Pursuant to applicable

orders in the MDL, Co-Lead Counsel was then required to share discovery taken in the MDL with plaintiffs in the Related Actions, although plaintiffs could obtain additional discovery if "such discovery had not been obtained in the MDL." *Id.* at 7. To be a Related Action, the order provided that it could be adopted by courts overseeing cases in other jurisdictions. *See* Ex. 1 (Stueve Decl. ¶¶ 177-82).

B. Other Actions were filed in Minnesota, Illinois and Elsewhere.

1. The Minnesota Leadership Actions.

On May 22, 2015, the Minnesota Supreme Court transferred a number of lawsuits filed by producers and non-producers in Minnesota to a single judge in in the Fourth Judicial District of Minnesota ("Minnesota Court"). *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District, Mem. Order (Minn. Tr. Ct. Apr. 7, 2016) ("*In re Syngenta Minn. Litig.*"), previously filed as ECF No. 3392-1 at 8. On August 5, 2015, the Minnesota Court appointed lead counsel ("Minnesota Lead Counsel"). ECF No. 1273-3. Following this order Minnesota Lead Counsel proposed orders similar to many of the administrative orders issued in the MDL, including: the Notice to Conform, Protective Order, ESI Protocol, and Preservation Order.[8] On October 2, 2015, Minnesota Lead Counsel filed master complaints similar to the MDL complaints containing specific and extensive factual allegations and causes of action. Ex. 51 (Minnesota Class Action Master Complaint for Producers and Non-Producers, *In re Syngenta Minn. Litig.* (Oct. 2, 2015)) & Ex. 52 (Master Complaint for Producers and Non-Producers (Non-Class), *In re Syngenta Minn. Litig.* (Oct. 2,

[8] *Compare* ECF No. 287 (MDL Order Relating to Consolidated Pleadings) *with* Ex. 53 (Proposed Notice to Conform, *In re Syngenta Minn. Litig.* (Oct. 23, 2015)); *compare* ECF No. 294 (MDL Protective Order) *with* ECF No. 3392-1 (Stipulated Protective Order *In re Syngenta Minn. Litigation*, (Minn. Tr. Ct. Sept. 25, 2015) (Sipkins, J.)); *compare* ECF No. 369 (April 21, 2015 MDL Preservation Order) *with* Ex. 54 (Preservation Order, *In re Syngenta Minn. Litig.*, (Oct. 30, 2015)); *compare* ECF No. 327 (Mar. 31, 2015 MDL ESI Protocol) *with* Ex. 55 (ESI Protocol, *In re Syngenta Minn. Litig.*, (September 25, 2015)).

2015)). On November 11, 2015 and December 22, 2015, the Minnesota Court adopted its own Scheduling Order No. 2 and a bellwether discovery plan that included 40 bellwether discovery plaintiffs in addition to the putative Minnesota class representatives. Ex. 56 (Scheduling Order No. 2, *In re Syngenta Minn. Litig.* (Nov. 4, 2015)) & Ex. 57 (Order Regarding Bellwether Selection, *In re Syngenta Minn. Litig.* (Dec. 22, 2015)).

On November 9, 2015, Syngenta moved to dismiss the Minnesota complaints based on many of the same grounds raised and rejected by this Court, including duty and the economic-loss doctrine. Ex. 58 (Mem. in Law in Supp. of Mot. Dismiss, *In re Syngenta Minn. Litig.* (Nov. 9, 2015)). On December 1, 2015, Minnesota Lead Counsel filed a 105-page opposition brief. Ex. 59 (MN Pls.' Mem. of Law in Opp. to Mot. to Dismiss, *In re Syngenta Minn. Litig.* (Dec. 1, 2015)). The Minnesota Court largely denied the motion, issuing a 55-page decision that followed, in most material aspects, this Court's September 11, 2015 Memorandum and Order. *In re Syngenta Minn. Litig*., (Apr. 7, 2016), previously filed as ECF No. 3392-1.

On November 4, 2015, the Minnesota Court entered the MDL Coordination Order. ECF No. 1273-1. As such, Minnesota Lead Counsel was provided access to the MDL Document Database, depositions, exhibits, and jury-consultant analysis.[9] *See id.*; Ex. 1 (Stueve Decl. ¶ 183). They also sent lawyers to and participated in the Syngenta and third-party depositions described above, and faced most, if not all, of the same defenses that Co-Lead Counsel faced in the MDL: Syngenta opposed class certification, sought to file third-party complaints against ADM and Cargill, argued preemption, sought summary judgment, and challenged the plaintiffs' expert witnesses. In most regards, following briefing by Minnesota Lead Counsel, the Minnesota Court adopted rulings consistent with those issued by this Court and described above.

[9] Any Minnesota document reviewers would have submitted time under the Minnesota CBO, and their work should be included in the brief seeking attorneys' fees submitted by Minnesota Lead Counsel

See Ex. 60 (Order Regarding Summary Judgment Motions, *In re Syngenta Minn. Litig.* (Apr. 11, 2017)); Ex. 61-38 (Orders Regarding Syngenta's Experts); Ex. 69 (Order Granting Class Certification, *In re Syngenta Minn. Litig.* (Nov. 3, 2016)); Ex. 70 (Order Denying Syngenta's Mot. to File Third-Party Complaint, *In re Syngenta Minn. Litig.* (Sept. 6, 2016)).

Trial of the first Minnesota bellwether plaintiff started on April 26, 2017, but a mistrial was declared because of a jury issue before opening statements. ECF No. 3507-11 at ¶ 16. On September 11, 2017, the Minnesota class jury began and proceeded through Plaintiffs' case-in-chief before it was announced that the parties had executed a settlement term sheet. *Id*.

Minnesota Lead Counsel are filing a separate motion in support of their fee application that includes greater detail about their side of the litigation.

2. The Illinois Leadership Actions.

The Illinois Supreme Court consolidated hundreds of producer claims filed in Illinois state court against Syngenta before the Circuit Court of the First Judicial Circuit, Williamson County ("Illinois State Court"). *Dereadt, et al. v. Syngenta Seeds, Inc., et al.*, No. 120-209 (Ill. S. Ct.); *Browning v. Syngenta Seeds, Inc. et al*., No. 15-L-157 (Ill. Cir. Ct.). The Illinois State Court appointed Clayton Clark and Martin J. Phipps as lead counsel in the Illinois State Court cases ("Illinois Lead Counsel"). Additionally, Illinois Lead Counsel represented producer plaintiffs with cases pending in the United States District Court for the Southern District of Illinois in the action styled *Tweet et al. v. Syngenta AG et al.*, No. 3:16-cv-00255-DRH ("Illinois Federal Court").

Following this Court's Memorandum and Order largely denying Syngenta's motion to dismiss in the MDL and the Minnesota Court's similar order, Syngenta nonetheless filed motions to dismiss in both the Illinois state- and federal-court actions. On May 15, 2017, the Illinois Federal Court issued an extensive order with rulings substantially similar to this Court's orders.

In re Syngenta Mass Tort Actions, No. 3:16-CV-00255-DRH, 2017 WL 2117728, at *1 (S.D. Ill. May 15, 2017).[10] On August 18, 2017, the Illinois State Court issued an order largely denying Syngenta's motion to dismiss "[i]n accord with [the] decisions" of this Court, the Minnesota Court, and the Illinois Federal Court. *Browning*, Order (Aug. 21, 2017), previously filed as ECF No. 3392-2.

Illinois Lead Counsel also filed a series of cases on behalf of ethanol plants in state courts around the country, including in Ohio, Michigan, Nebraska, Indiana, and Iowa. Syngenta moved to dismiss those claims. In all but one case, the motions were denied.

Illinois Lead Counsel are filing a separate motion in support of their fee application that includes greater detail about their side of the litigation.

C. Lead Counsel's Fee-Sharing Agreements.

After extensive negotiations between attorneys from the various litigations, the Court-appointed Special Master made a mediator's proposal on an allocation of attorneys' fees between attorneys in the MDL, Minnesota and Illinois. Ex. 1 (Stueve Decl. ¶ 611). Following that proposal Co-Lead Counsel, Minnesota Lead Counsel, and Illinois Lead Counsel executed a Fee-Sharing Agreement on or about February 23, 2018. Ex. 8 ("Fee-Sharing Agreement"). Pursuant to this Agreement, the parties agreed to request that the Court allocate its Fee Award as follows:

- 50% to Co-Lead Counsel for disbursement to the 44 firms in the Kansas Common Benefit Group, *i.e.*, firms who performed authorized work in the Kansas MDL consistent with the Kansas MDL Court's orders ("MDL Allocation"), to be distributed by Co-Lead Counsel;
- 12.5% to Minnesota Lead Counsel for disbursement to all common-benefit law firms ("Minnesota Common Benefit Group") who performed work in the

[10] In addition to the *Tweet* case, the Illinois Federal Court presided over another set of cases consolidated as *Poletti et al. v. Syngenta AG et al.*, No. 3:15-cv-01221-DHR. The MDL Coordination Order was entered in that case. ECF No. 1514. On April 3, 2017, the Illinois Federal Court denied in large part Syngenta's motion to dismiss in that case. *In re Syngenta Mass Tort Actions*, 272 F. Supp. 3d 1074 (S.D. Ill. 2017).

Minnesota MDL consistent with the Minnesota MDL Court's orders ("MN Allocation"), to be distributed by Minnesota Lead Counsel; and

- 17.5% to Illinois Lead Counsel for disbursement to the law firms of Clayton A. Clark ("Clark"), Peter J. Flowers, and Martin J. Phipps, as well as their referring counsel, co-counsel, and/or joint venture partners ("IL Allocation"), to be distributed by Clark.

In the Fee-Sharing Agreement, the parties also provided that the remaining 20% of the Fee Award be allocated by the Court, in consultation and agreement with the Minnesota Court and the Illinois Federal Court, taking into consideration the recommendation by the Special Masters. Ex. 8 (Fee-Sharing Agreement at 2).

Co-Lead Counsel additionally entered into an agreement with Settlement Class Counsel Christopher Seeger and his law firm Seeger Weiss LLP on or about February 22, 2018 for the allocation of attorneys' fees and expenses to the Seeger Weiss law firm from any sum awarded to counsel in the MDL, providing that: no less than ten percent of the MDL Allocation be allocated to Seeger Weiss for their contributions to the case; and, that Seeger Weiss receive the same multiplier on their lodestar, if any, as Co-Lead Counsel. Ex. 9; Ex. 1 (Stueve Decl. ¶ 615). Thus, Seeger's efforts leading the Plaintiffs' Settlement Negotiation Committee, discussed *infra*, as well as his firm's contributions to the case as an EC member, will be compensated out of the MDL Allocation awarded by the Court.

III. SETTLEMENT WAS THE PRODUCT OF THE WORK DONE BY LEADERSHIP IN KANSAS, MINNESOTA AND ILLINOIS.

From the start of the MDL through the verdict in the Kansas trial, Syngenta was clear that it did not intend to settle this litigation before trial. Ex. 1 (Stueve Decl. ¶ 522). On August 9, 2017, the Court entered an order forming a Plaintiffs' Settlement Negotiation Committee ("Negotiating Committee") to negotiate with Syngenta. ECF No. 3366. The Negotiating Committee included Christopher A. Seeger (representing the Kansas MDL), Mikal Watts

(representing Minnesota individual cases), Clayton A. Clark (representing Illinois state cases), and Daniel E. Gustafson (representing the Minnesota class). *Id.* at 3. It was overseen under the auspices of the previously appointed Special Master Ellen K. Reisman, along with retired Judge Dan Stack, and under the supervision of the Illinois Federal Court. *Id.* at 2. Seeger led the committee on behalf of the Plaintiffs. After months of negotiations, Syngenta agreed to pay $1.51 billion. In the three months following the Kansas verdict, the Special Master convened numerous in-person meetings across the country and multiple telephonic meetings between Syngenta's counsel and the Negotiating Committee. Seeger invested hundreds of hours spearheading these negotiations on behalf of the Plaintiffs. Ex. 7 (Weiss Decl. ¶ 13). Given the "parallel litigations," the negotiations were "complex, spirited [and] multidimensional." *Id*. As the Special Master reported at the December 19, 2017 status conference, the term sheet required "months of hard negotiations" and was only reached after the Minnesota class trial had begun. ECF No. 3485 at 5:1-2. Co-Lead Counsel actively participated in negotiations through communications and strategy decisions with Seeger. Ex. 1 (Stueve Decl. ¶ 594).

On October 9, 2017, the parties filed a Joint Motion to Stay pending the execution of the settlement agreement. ECF No. 3452. After the committee announced that it had executed a term sheet with Syngenta, dated September 25, 2017, negotiations continued and were expanded to include Patrick J. Stueve from the MDL Co-Lead Counsel. As the Special Master told the Court, the process of "taking it from a term sheet to final settlement agreement [was also] a difficult one." ECF No. 3485 at 6:5-8. The Special Master convened numerous additional in-person and telephonic meetings. Ex. 1 (Stueve Decl. ¶¶ 595-97). Co-Lead Counsel[11] and

[11] Moreover, in order to simplify the settlement distribution process, Co-Lead Counsel reached out to the United States Department of Agriculture's Farm Service Agency (the "FSA") after the Kansas verdict to discuss with the FSA the possibility of allowing a settlement administrator to have access to the data reported by farmers to the FSA on 578 forms. *Id.* at ¶ 598. In December 2017, Co-Lead Counsel

Seeger's firm spent substantial time and effort negotiating and finalizing the Settlement Agreement, a process that itself took another five months, culminating in a Settlement Agreement signed by Syngenta, Co-Lead Counsel, Subclass Counsel, and all members of the Negotiating Committee. *Id.* at ¶¶ 596-602; Ex 7 (Weiss Decl. ¶¶ 5, 10, 13).

On March 12, 2018, Settlement Class Counsel filed a motion and supporting memorandum seeking preliminary approval of the $1.51 billion settlement. ECF Nos. 3506-07. Attached as Exhibit A to that memorandum was the fully-executed Settlement Agreement. ECF No. 3507-2. The motion drew objections from the Toups/Coffman Plaintiffs and joinders in those objections by the Hossley-Embry Plaintiffs. ECF Nos. 3519, 3512. On April 5, 2018, the Court conducted a preliminary approval hearing. ECF No. 3529. On April 10, 2018, the Court granted preliminary approval of the settlement. ECF No. 3532. By May 11, 2018, the settlement administrator had mailed notice to potential class members. Ex. 1 (Stueve Decl. ¶ 610).

IV. PROSECUTION OF THESE CASES REQUIRED AN ENORMOUS AND RISKY INVESTMENT OF LABOR AND RESOURCES.

A. The Litigation Was Risky and Success Was Far From Certain.

This was an enormously challenging lawsuit to prosecute, filled with specialized and complicated fact discovery and numerous complex legal issues. Ex. 1 (Stueve Decl. ¶¶ 579-88). From a discovery perspective, there was no way to subpoena documents from China. This made it difficult to combat Syngenta's claims that China's denial of Syngenta's import approval applications and ultimate rejection of U.S. corn were all for political reasons. *Id.* at ¶ 580. Syngenta produced many documents in Chinese and multiple witnesses required translators, which further complicated discovery. *Id.* at ¶ 581.

---

secured the commitment from the FSA to supply this information electronically, which was ultimately a key part of the claims process. Ex. 4 (Chaney Decl. ¶ 304). As a result, very few producers will have to submit any documentary evidence to seek their share of the settlement.

Additionally, there were substantial legal risks, particularly with regard to establishing the duty Syngenta owed to Plaintiffs and overcoming Syngenta's causation and economic-loss doctrine arguments. *Id.* at ¶ 585. The risk that this litigation could be dismissed because of a legal ruling is underscored by the June 28, 2017 Judgement Entry entered by the Court of Common Pleas of Seneca County, Ohio in *Fostoria Ethanol, LLC v. Syngenta Seeds, Inc.*, No. 15 CV 0323. *Id.* at ¶ 586. In that Order, the Ohio Court granted Syngenta's motion to dismiss in its entirety, finding that Syngenta did not owe a duty to plaintiffs for their alleged financial losses. The Court stated in relevant part: "There has been no case from any court in Ohio presented to this Court to show that Syngenta's duty should extend to economic harm caused by the intended use of its products, and this court declines to invent such a duty." *Id.* (quoting Order).

The risk continued to trial, where it was quite possible that either the Kansas jury or subsequent juries would find China was a superseding cause of the injuries to Plaintiffs. This risk increased when the Court gave Jury Instruction No. 17, explaining to the jury that China's actions may be relevant to the superseding cause analysis. ECF No. 3302 at 18-19.

Despite these risks, Co-Lead Counsel and the Kansas Common Benefit Group funded the prosecution of the litigation without any guarantee that the more than $6.6 million in expenses would be repaid or that the nearly 150,000 hours of labor expended would be compensated. Ex. 1 (Stueve Decl. ¶ 592). No money was contributed by a non-party or from non-lawyer funders. *Id.* at ¶ 649.

In total, the Kansas Common Benefit Group advanced $6,695350.05 in common-benefit expenses for such costs critical to the prosecution of this litigation, such as: more than $380,000 in deposition-related expenses; nearly $300,000 in ESI-related expenses for the MDL Document Database; approximately $300,000 in payment of the Kansas MDL share of the invoices from

the Special Masters; over $300,000 in expenses related to subpoenas, including the service of these subpoenas and the reasonable expenses related to the production of documents from these subpoenaed third parties; more than $1.5 million reflecting the Kansas MDL share of expert-related expenses; and more than $460,000 in expenses related to the class certification notice. *Id.* at ¶¶ 645, 647-53.[12] A full summary of expenses by category is contained *infra* at Section II.

B. Kansas Common Benefit Firms Invested Significant Labor and Expenses.

Co-Lead Counsel and the Kansas Common Benefit Group invested over 142,823 hours of labor in this case on a full contingency basis. *Id.* at ¶¶ 643-64. This reflects the work of 44 of the 49 firms in the Kansas Common Benefit Group.[13] *Id*. Approximately sixty-eight percent of all common-benefit time was performed by Co-Lead Counsel. When the next highest-hour firm – Seeger Weiss – is included, that figure increases to 75% of the overall time. *Id.* at ¶ 644.

Since the entry of the CBO, Kansas Common Benefit Group firms have been required to submit their time and expenses to Co-Lead Counsel in an Excel spreadsheet on a monthly basis following protocols designed by Co-Lead Counsel. ECF No. 936. Throughout the litigation, these submissions were reviewed carefully and problems with the submissions were addressed with submitting law firms throughout the litigation. *Id.* at ¶ 630.

After the settlement was announced and beginning in February 2018, all law firms in the Kansas Common Benefit Group that submitted common-benefit time and expenses in the Kansas MDL were emailed a comprehensive Excel spreadsheet containing that time and those expenses

[12] Some costs were shared with Lead Counsel in Minnesota. This Expense Request includes only the share of costs incurred by Kansas Common Benefit Attorneys in the MDL. Minnesota Lead Counsel will seek reimbursement for their portion of any shared costs separately. In addition, counsel in the *Poletti* case (Heninger Garrison Davis, LLC) made contributions to the litigation fund. This Expense Request includes that firm's expenses, but not any common-benefit work because they did not submit any. It is anticipated that they may file their own request.

[13] Five firms in the Kansas Common Benefit Group reported no common-benefit work, but made contributions to the litigation fund that were used to fund common-benefit expenses in the MDL and seek reimbursement of those contributions. *Id.* at ¶ 644.

submitted by that firm. *Id.* at ¶¶ 631-32. Counsel were asked to re-review this Excel spreadsheet to re-confirm that all entries were in compliance with the CBO, including ensuring that these submissions did *not* include time spent on individual clients who were not bellwether or class representative plaintiffs, marketing activities, secretarial work, or time spent on Plaintiff Fact Sheets not related to bellwether plaintiffs or class representatives. Co-Lead Counsel drafted and circulated a memorandum containing these guidelines for the re-review and emailed individualized issues to common-benefit firms based upon their submissions to date. All Kansas Common Benefit Group firms were instructed to exercise billing discretion on the previously-submitted entries. *Id.* at ¶¶ 632-35.

All Kansas Common Benefit Group firms were required to – and did – execute a declaration attesting to the time and expenses submitted. Ex. 1 (Stueve Decl. ¶¶ 666, 672); Ex. 2 (Powell Decl. ¶¶ 214-20); Ex. 3 (Downing Decl. ¶ 77); Ex. 4 (Chaney Decl. ¶ 318); Ex. 10 (Donarski Decl. ¶¶ 12, 15); Ex. 11 (Basser Decl. ¶¶ 11, 15); Ex. 12 (Plant Decl. ¶¶ 22, 25); Ex. 13 (J. Bell Decl. ¶¶ 11, 14); Ex. 44 (W. Bell Decl. ¶ 11); Ex. 43 (Bender Decl. ¶¶ 38, 42); Ex. 14 (Brady Decl. ¶¶ 12, 15); Ex.15 (Ellis Decl. ¶¶ 13, 17); Ex. 16 (Preston Decl. ¶¶ 12, 16); Ex. 22 (Brooks Decl. ¶¶ 10, 13); Ex. 17 (Pinyan Decl. ¶¶ 14, 17); Ex. 48 (Cecchi Decl. ¶¶ 25, 28); Ex. 18 (Emerson Decl. ¶¶ 13, 18); Ex. 19 (Maier Decl. ¶¶ 14, 18); Ex. 20 (Ursu Decl. ¶¶ 13, 17); Ex. 21 (Crompton Decl. ¶¶ 8, 13); Ex. 40 (Kerlick Decl. ¶ 19); Ex. 24 (Shelquist Decl. ¶¶ 14, 18); Ex. 25 (Lundberg Decl. ¶ 13); Ex. 26 (Flax Decl. ¶¶ 12, 15); Ex. 27 (McCluer Decl. ¶ 12); Ex. 28 (Wedgworth Decl. ¶¶ 25, 28); Ex. 33 (Miller Decl. ¶ 12); Ex. 29 (Lytle Decl. ¶¶ 11, 14); Ex. 30 (Paul Decl. ¶¶ 13, 17); Ex. 31 (Poynter Decl. ¶¶ 12, 15); Ex. 32 (Roth Decl. ¶¶ 12, 16); Ex. 34 (Schirger Decl. ¶¶ 15, 17); Ex. 7 (Weiss Decl. ¶¶ 52, 56); Ex. 35 (Conroy Decl. ¶¶ 16, 19); Ex. 37 (Soper Decl. ¶¶ 8, 11); Ex. 38 (Bukovak Decl. ¶¶ 13, 16); Ex. 39 (Thrash Decl.

¶¶ 12, 16); Ex. 41 (Wagner Decl. ¶¶ 31, 34); Ex. 42 (Waller Decl. for WJW ¶ 12); Ex. 36 (Waller Decl. for Sneed Lang ¶¶ 14, 18); Ex. 45 (Robinovitch Decl. ¶¶ 30, 34); Ex. 46 (Toups Decl. ¶¶ 6, 10-11, 13); Ex. 47 (Coffman Decl. ¶¶ 8, 12).

After these multiple rounds of review, Co-Lead Counsel computed the aggregate number of common-benefit hours: in sum, 142,823 hours of labor have been invested by the Kansas Common Benefit Group in this litigation, resulting in an aggregate lodestar of $81,725,060.90. Ex. 1 (Stueve Decl. ¶ 644). This results in a blended rate of $572 across all timekeepers.[14] *Id.* at ¶ 646.

V. TWO DISTINGUISHED EXPERTS ON ATTORNEYS' FEES SUPPORT THE REQUESTS.

A. Professor Klonoff Opines that Fees, Costs and Service Awards are Reasonable under the Facts of this Case and in Comparison to Awards in Similarly Sized Settlements.

Professor Richard Klonoff is the current Jordan D. Shnitzer Professor of Law at Lewis & Clark Law School, an endowed, tenured position. Ex. 6 (Klonoff Decl. ¶ 2). Professor Klonoff graduated from Yale Law School and clerked for the Honorable John R. Brown on the United States Court of Appeals for the Fifth Circuit before serving as an Assistant to the Solicitor General. *Id.* He worked for over 12 years at Jones Day before entering academia. *Id.* He has taught class actions, complex litigation, civil procedure, federal courts, and federal appellate procedure. *Id.* In 2011, the Chief Justice of the United States appointed him to the Judicial Conference Advisory Committee on the Rules of Civil Procedure. He served two, three-year terms, where he worked on proposed amendments to Rule 23. *Id.* at ¶ 4. He served for five

[14] Importantly, Co-Lead Counsel excluded nearly $8 million of their own time and over $500,000 of out-of-pocket expenses because they did not meet the definition of common-benefit work or expenses in the CBO, including substantial hours expended on their many individual clients, representing approximately 22,700 hours. Ex. 1 (Stueve Decl. ¶ 664); Ex. 2 (Powell Decl. ¶ 214); Ex. 3 (Downing Decl. ¶ 78); Ex. 4 (Chaney Decl. ¶ 313).

years as a reporter for the ALI's *Principles of the Law of Aggregate Litigation*, in which he was the principal author of the chapter addressing class-action settlements and attorneys' fees. *Id.* at ¶ 5. Numerous courts have relied and cited his testimony and opinions in approving class settlements and attorneys' fees. *Id*. at ¶ 11 (collecting cases).

Here, Professor Klonoff conducted an extensive review of the record, including Kansas Common Benefit Attorneys' time records, and provides a 67-page report containing numerous opinions and sub-opinions. In summary, he concludes as follows. First, the Fee Request is reasonable under the compelling circumstances of this case and is supported by awards made in other large settlements, finding that even in such cases, "there is nothing unusual about awards in the range requested here," even in cases that – unlike this one – did *not* go to trial. *Id.* at ¶ 95.

Second, a lodestar cross check is unnecessary in awarding a percentage-of-the-recovery and "can lead to the very harmful consequences that the percentage method is designed to avoid." *Id.* at ¶ 102. Even so, if such a crosscheck were conducted here, it "would only confirm the reasonableness of the fees requested by MDL class counsel."[15] *Id*. at ¶ 103. The time records reveal "no red flags suggesting that the work of the MDL plaintiffs' firms was inefficient or that there was needless duplication." *Id*. at ¶ 106. "[T]he MDL leadership took great efforts to minimize duplication of tasks," including *inter alia* circulating "guidelines [that] directed firms to minimize the number of timekeepers," "assign[ing] tasks to the same attorneys and staff members to avoid extra time getting others up to speed," and using "small groups of attorneys [to focus] on discovery in particular subject areas to promote efficiency, while a core group of attorneys consistently worked on legal research and briefing." *Id*. at ¶ 107. Further, the billing rates used by the "various MDL law firms submitting lodestar hours," *id.* at ¶ 109, are:

[15] At the time he prepared his report, Minnesota and Illinois Lead Counsel had not completed the review of their time, so that information was unavailable to Professor Klonoff. *Id*. at ¶ 103.

consistent with "rates for prominent plaintiffs' complex litigation firms," *id.* at ¶ 110; justified by the "even higher rates [approved in other] complicated, multi-jurisdictional" cases, *id.* at ¶¶ 111, 115; comparable to "prominent defense firms," *id.* at ¶ 112; and, "especially instructive," lower than the rates published by and revealed in public filings for Kirkland & Ellis, *id* at ¶ 113. The blended rate of $572 per hour is lower than "blended rates in other major MDL cases," even though "none of those cases went to trial (where hours billed by senior lawyers would be expected to increase)." *Id*. at ¶ 116. The resulting multiplier of 3.079 applied to the $251.67 million sought by Kansas Common Benefit Attorneys is "not uncommon, especially for a complicated, challenging case such as this one" *id*. at ¶ 123, and justified by, among other things, the fact that counsel "took on a challenging, risky case with extremely complex legal and factual issues, prosecuted it skillfully over the course of several years without assistance form any official investigation, obtained class certification despite Syngenta's opposition, conducted a complete trial that resulted in an impressive $217.7 million jury verdict, and obtained a superb $1.51 billion settlement for the class." *id.* at ¶ 126. It is actually lower than multipliers applied in many other so-called "mega-fund" settlements, none of which required a trial or jury verdict. *Id.* at ¶ 124.

Third, the $6,695,350.05 million in "costs sought by class counsel are eminently reasonable," as they "paid those enormous costs without any assurance that the case would ultimately succeed." *Id*. at ¶ 133. Those costs are, based on his experience, well within the "norm for major class actions," and reflect "standard (and expected) expenses for a case like this," representing "only .44 percent of the settlement fund." *Id*. at ¶ 134.

Finally, the proposed service awards are reasonable given: the actions taken by those plaintiffs to protect the interests of the class; the benefits conferred on the class by their efforts;

the time and effort undertaken; and, the "huge risk that" despite their investments in the case, "causing them at times to put their farming operations on hold," that "they (and the class) might end up recovering nothing." *Id*. at ¶¶ 135-143.

B. Retired Magistrate Judge Richard Ralston Opines that the Billing Rates Used to Calculate the Lodestar are Reasonable.

Richard H. Ralston is an attorney, mediator, and arbitrator who has practiced in the Kansas City region "for approximately 50 years," with "substantial experience litigating cases on behalf of both plaintiffs and defendants." Ex. 5 (Ralston Decl. ¶ 2). He served as a United States Magistrate Judge for 12 years in the Western District of Missouri, and since then has been involved "as a settlement judge or mediator in more than 4,000 cases." *Id*. He "regularly serve[s] as an expert witness addressing issues such as the reasonableness of settlements and, in particular, assessing the reasonableness of attorneys' fees for class counsel when those fees are determined through application of the percentage of the common fund methodology." *Id*. at ¶ 16. He sets forth a number of opinions and sub-opinions, analyzing market rates in complex MDL and class litigation and other materials: "[b]ased on [his] approximately 50 years of professional experience working in this area of the law both in Kansas City and around the country, the hourly rates charged by common benefit counsel and utilized to calculate the lodestar in this case are reasonable and fair," and that "these rates do not account for the risk undertaken by counsel in accepting these cases on a contingent-fee basis." *Id*. at ¶ 22.

ARGUMENT

I. THE FEE REQUEST IS FAIR AND REASONABLE UNDER GOVERNING PRINCIPLES AND BASED ON THE FACTS OF THE CASE.

It has long been recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994) (same). The common-fund doctrine "prevent[s]. . .inequity" by proportionately spreading payment among those who benefit from the labor of others. *Boeing*, 444 U.S. at 478. "The common benefit doctrine has been approved and implemented in dozens, if not hundreds, of multidistrict litigations . . . ." *In re NuvaRing Prods. Liab. Litig.*, No. 4:08 MDL 1964 RWS, 2014 WL 7271959, at *2 (E.D. Mo. Dec. 18, 2014).

A. The Fee Request is Reasonable as a Percentage of the Fund

The dominant method of determining attorneys' fees in common-fund cases is awarding a percentage of the fund. *See* 4 Newberg on Class Actions §14:6 (4th ed. 2010) ("in recent years, a majority of the Circuit courts have approved the percentage-of-the-fund method.") (citing cases); Manual for Complex Litigation, Fourth, § 14.121 ("[T]he vast majority of courts . . . use the percentage-fee method in common-fund cases."); *Report of Third Circuit Task Force: Selection of Class Counsel*, 208 F.R.D. 340, 355 (2002) ("A percentage fee, tailored to the realities of the particular case, remains superior to any other means of determining a reasonable fee for class counsel…"). The Supreme Court itself has expressly stated that "under the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).

"The Tenth Circuit has expressed a preference for the percentage-of-the-fund method of awarding attorney fees in common fund cases." *In re: Urethane Antitrust Litig.*, No. 04-1616-

JWL, 2016 WL 4060156, at *4 (D. Kan. July 29, 2016) (citing *Rosenbaum v. MacAllister*, 64 F.3d 1439, 1445 (10th Cir. 1995)); *Gottlieb*, 43 F.3d at 483. This approach is favored because, among other things, it best aligns the interests of the class and its counsel and appropriately approximates the market by basing a fee on what private counsel ordinarily would charge in contingency-fee matters. Ex. 6 (Klonoff Decl. ¶¶ 49-50); *accord Shaw v. Interthinx, Inc.*, No. 13-CV-01229-REB-NYW, 2015 WL 1867861, at *5 (D. Colo. Apr. 22, 2015) ("The Tenth Circuit favors the common fund approach, as opposed to the lodestar method, because a percentage of the common fund 'is less subjective than the lodestar plus multiplier approach,' matches the marketplace most closely, and is the better suited approach when class counsel were retained on a contingent fee basis") (quoting *Lucken Family Ltd. P'ship, LLLP v. Ultra Res., Inc*., No. 09-CV-01543-REB-KMT, 2010 WL 5387559, at *2 (D. Colo. Dec. 22, 2010) (quoting *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 484 (10th Cir. 1988))).[16]

Here, Co-Lead and Settlement Class Counsel request one-third of the settlement fund, equal to approximately $503.3 million, be allocated to numerous counsel for plaintiffs in the manner described *infra*, Section III. This amount, as a percentage of the fund, is consistent with the Tenth Circuit's requirements that any fee be reasonable under analysis of applicable factors.

[16] *See also, e.g., Gokare v. Fed. Express Corp*., No. 2:11-CV-2131-JTF-CGC, 2013 WL 12094887, at *3 (W.D. Tenn. Nov. 22, 2013) ("the percentage method directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation . . . By contrast, the lodestar method . . . is difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation' and 'creates inherent incentive to prolong the litigation." (internal quotations and citations omitted); *In re Southeastern Milk Antitrust Litig*., No. 07-cv-1000, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013) ("percentage-of-the-fund method. . .clearly appears to have become the preferred method in common fund cases" and properly "reflects the results achieved by class counsel"); *Bussie v. Allmerica Financial Corp.*, No. 97-40204-NMG, 1999 WL 342042, at *2 (D. Mass. May 19, 1999) ("the [percentage] method of calculating fees more appropriately aligns the interests of the class with the interests of class counsel – the larger the value of the settlement, the larger the value of the fee award.") (internal quotation and citation omitted).

B. The *Johnson* Factors Justify the Fee Request because this was a Hugely Complex Case Involving Significant Time and Labor where Counsel Incurred Great Risk and Obtained a Record-Setting Settlement.

Under both the percentage and lodestar approach, reasonableness is determined by consideration of the now well-known factors originally articulated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), and approved in the Tenth Circuit:

> (1) the time and labor involved; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) any prearranged fee-this is helpful but not determinative; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases

Brown, 838 F.2d at 454-55 (quoting *Johnson*, 488 F.2d at 717-19); *see also Gottlieb*, 43 F.3d at 482 (*Johnson* factors "for statutory fee cases apply equally to percentage fee awards in common fund cases."). Not every factor will apply in every case; the court has discretion regarding which factors it considers and the relative weight given to each. *See Uselton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 854 (10th Cir. 1993) ("rarely are all of the *Johnson* factors applicable; this is particularly so in a common fund situation"); *Law v. Nat'l Collegiate Athletic Ass'n*, 4 F. Appx. 749, 752 (10th Cir. 2001) ("We have never held that a district court abuses its discretion by failing to specifically address each *Johnson* factor.") (quoting *Gudenkauf v. Stauffer Communications, Inc.*, 158 F.3d 1074, 1083 (10th Cir. 1998)); *see also, e.g., Yarrington v. Solvay Pharmaceuticals, Inc.*, 697 F. Supp. 2d 1057, 1062 (D. Minn. 2010) ("not all of the

individual factors will apply in every case, affording the Court wide discretion in the weight to assign each factor.").[17] The award requested here is well supported by all applicable factors.

1. The difficult factual and legal issues in this case justify the fee request.

"Courts emphasize the risk undertaken by counsel" in awarding fees, concluding that "complex cases justify higher fees, and simple cases lower fees." *Been v. O.K. Indus., Inc.*, CIV-02-285-RAW, 2011 WL 4478766, at *7 (Aug. 16, 2011), *report and recommendation adopted*, CIV-02-285-RAW, 2011 WL 4475291 (Sept. 26, 2011). And cases involving issues of first impression – which "present greater uncertainty and require extra time and effort – can warrant higher fee awards to compensate the attorneys who accept them." *Id*. (citing *Johnson*, 488 F.2d at 718 ("Cases of first impression generally require more time and effort on the attorney's part . . . [Counsel] should be appropriately compensated for accepting the challenge.").[18]

As the Court well knows from steering this MDL from stem to stern, the claims in the MDL, in Minnesota, in Illinois, and in the state ethanol cases were full of complex factual and

[17] For example, one of the factors, relationship with the client, "has little relevance in the class setting given that the 'client' is the class." 5 Newberg on Class Actions § 15:77 n.15 (5th ed. 2015). Consequently, courts rarely consider it in that context. *See e.g.*, *In re: Motor Fuel Temperature Sales Practices Litig.*, 07-MD-1840-KHV, 2016 WL 4445438, at *9 (D. Kan. Aug. 24, 2016) (class action: nature and length of the professional relationship with the client did not apply); *In re Catfish Antitrust Litig.*, 939 F. Supp. 493, 503 (N.D. Miss. 1996) (class action: "This factor has no application in this court's analysis.").

[18] *See also, e.g.*, *Lunsford v. Woodforest Nat'l Bank*, No. 1:12-CV-103-CAP, 2014 WL 12740375, at *13 (N.D. Ga. May 19, 2014) ("The novelty and difficulty of the issues involved created significant risk for Class Counsel. The risks were not merely one, but several."); *Gokare*, 2013 WL 12094887, at *7 ("an award of 30.9% of the common fund is more than justified when comparing the significant results achieved to the difficulty of the case."); *George v. Duke Energy Ret. Cash Balance Plan*, No. 8:06-CV-00373-JMC, 2011 WL 13218031, at *5 (D.S.C. May 16, 2011) ("Clearly, this litigation involved complex issues and, in some instances, issues of first impression"); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 677 (N.D. Tex. 2010) ("complexity of the issues also favors an increase in the benchmark percentage"); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1206 (S.D. Fla. 2006) ("The second *Johnson* factor recognizes that attorneys should be appropriately compensated for accepting novel and difficult cases. . .The legal difficulty of this case was further compounded by the application of state law to numerous issues").

legal issues. More often than not, Syngenta argued that the claims asserted and arguments raised by Plaintiffs were novel and the issues presented lacked direct or controlling precedent (or were defeated by such precedent). In the MDL, it fell to Co-Lead Counsel to extensively research and persuasively argue otherwise to the Court and the jury. Ultimately, the collective work of the leadership attorneys in the various jurisdictions was highly successful, bringing to port both favorable legal rulings, a favorable jury verdict and resulting in a $1.51 billion nationwide settlement.

a) The litigation involved a unique and complex structure.

As a starting point, the unique structure of this litigation, including its multi-jurisdiction spanning nature, created unusual organizational complications. From inception, it involved: hundreds of individual cases as well as putative class actions; discrete, and sometimes disparate, types of plaintiffs, including corn producers and corn buyers; and, multi-jurisdictional litigation that despite the MDL mechanism were impossible to consolidate together because of statutory limitations. Despite these challenges, leadership counsel organized in their respective jurisdictions, and sometimes between themselves, for the mutual benefit of the Class. Moreover, this MDL and the Minnesota cases were highly unusual in that they instituted a dual and simultaneous track for individual-bellwether and class cases, involving all of the initially filed plaintiff types. Early proposed orders and Master Complaints permitted the Court to resolve legal issues in all of the cases efficiently. Ex. 1 (Stueve Decl. ¶¶ 156-202). Further, formal, Court-approved coordination orders were proposed and followed by counsel. And, despite sometimes differences of opinion on strategy among the lawyers for plaintiffs in these cases working toward the common goal, these differences did not impede the substantive prosecution of Plaintiffs' claims on the merits. This is best evidenced by the amount of work that was conducted, in this complex case, in relatively short order: the Court shepherded this case to a

class-wide jury verdict within 29 months from the appointment of MDL leadership. *Compare* Order Concerning Appt. of Leadership, ECF No. 67 *with* Verdict Form, ECF No. 3304. Similarly, the Minnesota Court cases, although initially delayed by Syngenta's removal, were able to proceed swiftly because of this Court's timely order on federal jurisdiction and the groundwork laid in the federal MDL. *See supra* Section I.D. Thus, the first Minnesota trial started in April 2017, less than two years after consolidation, and the second – class – trial started in September 2017.

b) The litigation involved a novel fact pattern.

This was not a case with a simple fact pattern. Indeed, the facts are more complex than even the "ordinary" complex case, like a typical securities-fraud class claim. Rather, the claims in this MDL required an understanding of the development and commercialization of genetically modified ("GM") agricultural seeds, industry standards for that commercialization, the process for USDA deregulation prior to domestic commercialization, China's process for import (and cultivation) approval of GM agricultural products, international policies relating to such processes, and the commingled commodity system in the United States. Leadership counsel were required to become experts in national rules on exportation and international rules on importation of new GM corn. This required expertise beyond just learning these rules – themselves sometimes opaque and subject to interpretation – and required detailed consideration of public policy. A centerpiece of Syngenta's arguments, both legal and factual, was that the United States utilizes a science-based approach to GM seed approvals, and that permitting a recovery here would allow China a "veto over which GM traits can and cannot appear in U.S. corn." ECF 857 at 69. Plaintiffs had to counter that argument both with facts and policy, and did so successfully as evidenced by the many courts' rulings on Syngenta's initial motion to dismiss and the Kansas jury verdict.

Moreover, a central factual attack levied by Syngenta was that the Chinese regulatory process for approval of MIR162 and Event 5307 had been politicized in a trade battle between China and the United States.[19] According to Syngenta, China was the culpable party in the *de facto* trade embargo, and Plaintiffs were required to rebut this defense even though they could not compel discovery from that foreign state. Consequently, Plaintiffs had to build their case on a painstaking review and use of Syngenta's own internal communications with and about the Chinese regulatory authorities.[20] Relatedly, Plaintiffs' damages case was built on the allegation that, but for the *de facto* trade embargo, Chinese importers would have continued to buy and would have increased their purchases of U.S. corn. Owing to the structure of China, however, these importers were either government buyers of corn or private buyers who Plaintiffs – once again – could not compel to provide discovery. Plaintiffs, therefore, depended heavily on expert forecasts of the corn market, which required extensive and complex economic models that had to withstand legal scrutiny and be communicated intelligently and understandably to the jury.

In addition to the complex policy and economic issues relating to GM products and market risk from asynchronous approvals, this was no simple negligence case. There was substantial dispute over the proper standard of care, with difficult policy concepts interwoven therein. Counsel in the leadership groups had to become experts in relevant industry policies and

[19] Syngenta's expert Philip A. Shull provided a 67-page report expounding on the Chinese approval system, stretching back to food shortages in the 1950s, China's food security policy and how that policy purportedly affects its regulatory system. He additionally opined that China's rejection of U.S. corn due to the presence of MIR162 was pretextual, China was not a "key market" for U.S. corn, China's agricultural trade policies are contrary to WTO rules, China misuses its regulatory process to erect trade barriers, and that China should not be given control over advances in U.S. corn seed technology. Ex. 1 (Stueve Decl. ¶ 491).

[20] Plaintiffs' attorneys were required to delve into the complicated realm of China's regulatory process generally, as well as the timing and scientific data required, submitted, and not submitted, by Syngenta. *See* ECF No. 2940 at ¶¶ 36-42, 249-343 & Ex. 27 (Latner Rpt.).

standards adopted by biotech companies in the United States to avoid trade disruptions.[21] These policies were alternatively favorable and unfavorable to Plaintiffs' claims, depending on their interpretation and the facts surrounding how they were actually implemented by Syngenta and other biotech developers. Plaintiffs could not fall back on prior cases to develop their theories about the standard of care. Syngenta repeatedly argued that this was the first instance where a seed manufacturer was being held responsible for a trade disruption caused by a GM trait that had been fully deregulated in the United States. Applying the standard of care to that factual circumstance required painstaking legal analysis, careful consideration and skill. Counsel had to become experts in both industry policies and their implementation by biotech companies, necessitating wide-ranging third-party discovery with trade organizations that were often hostile the Plaintiffs' claims, as well as the policy implications of that standard – issues that were argued and presented to both the Court and jury.

In addition to the standard of care, counsel in the leadership groups had to become experts in the United States commodity system for the domestic and international corn trade. A complicating aspect of the claims – unique from other types of negligence cases – was the

[21] The parties both pointed to policies adopted by the Biotechnology Industry Organization ("BIO"), a trade organization of biotechnology developers, in which the risk of trade disruption stemming from asynchronous approvals is recognized. Plaintiffs alleged that under this policy, a developer should not introduce new GM products without import approval from key export markets. *See* ECF No. 450 at ¶¶ 98-102; ECF No. 1377 at ¶¶ 107-111. From a legal/policy perspective, Syngenta argued that "[e]mbarking on the course Plaintiffs have charted would . . . embroil the judiciary in an ongoing flood of policy choices. Courts would have to decide for each and every significant export crop (1) how to define 'key' export markets that should be given Plaintiffs' proposed veto over new biotechnology in the U.S.; (2) how to determine which governments have 'functioning regulatory systems' such that they are worthy of being granted that veto power by American courts; and (3) whether changes in a country's circumstances have caused it to lose (or gain) status as a 'key' market or a 'functioning regulatory system' . . . Courts simply do not have the experience or expertise to construct and micromanage such a parallel regulatory system governing the introduction of biotechnology products. That is a role for the political branches." ECF No. 857 at 69-70; *see also* ECF No. 3344 at 42-43. From a factual perspective, both sides had their own interpretations of the BIO policy. Ex. 1 (Stueve Decl. ¶¶ 583-84).

process by which the MIR162 and Event 5307 traits reached shipments of U.S. corn to China.[22] This required a full understanding of, and factual development regarding, how GM seeds are planted and grown, harvested, and sold, as well as how corn is commingled and shipped to foreign buyers. Again, these subjects were not just factual, but were intertwined with policies underlying the commodity system (for example, economies of scale and efficiencies of transport). It also required counsel to research and acquire an understanding of foreign laws related to such shipments.[23] And it required an understanding of the feasibility of segregating and channeling GM crops,[24] as well as the highly technical science of genetic modification and the various means of contamination (*e.g.*, cross-pollination). These were not factual issues that had been fully developed in other cases, substantially increasing the complexity and difficulty of addressing them.

Issues of segregation were complicated further by Syngenta's third-party complaint against non-producers including exporters like Cargill and ADM. ECF No. 1225. Although these complaints were resolved on legal grounds, many of Syngenta's allegations that these non-producers knowingly shipped corn containing MIR162 and Event 5307 remained in the case, and were asserted aggressively by Syngenta, which blamed exporters just as it blamed China. *See* ECF No. 3163 at 65.

Not surprisingly, the case required numerous experts. Syngenta designated at least 12 experts who had to be deposed, cross examined, and rebutted (some more than once). *See supra* Sections I.E & II.B.1. Likewise, in the MDL and Minnesota actions, six experts for the Plaintiffs

---

[22] *See, e.g.*, ECF No. 2859 at ¶¶ 26-41; ECF No. 2940 at ¶¶ 97-106.

[23] Syngenta argued that exporters violated Chinese law in various respects when they shipped corn containing, *see* ECF No. 2859 Ex. 11 (Zhang Rpt.), requiring Plaintiffs to delve into that subject. *See* ECF No. 2940 at 59-70.

[24] *See, e.g.*, ECF 2940 ¶¶ 163-233.

were prepared and produced for trial and deposition, sometimes more than once. *Id.* Their opinions involved highly specialized subject matters. *Id.*

Finally, certification of the litigation classes in the MDL and Minnesota turned, in part, on a central question of disputed fact: Syngenta disputed whether class members could prove the fact and amount of damages by showing the price impact on the Chicago Board of Trade ("CBOT") futures price for corn and cited to this dispute as a basis for requiring an evidentiary hearing for the class certification motion. *See* ECF No. 2419 at 3. Prior to this case, no other court had accepted this assertion. The issue was argued in the *Genetically Modified Rice* litigation, where the district court found that CBOT rice price could *not* be used to support class certification in that case. Here, in addition to advancing new legal arguments, counsel developed a different factual record from which this Court, and ultimately the Kansas jury, found that impact and damages could be shown on a class-wide basis. The development of this record necessarily involved application of facts to legal precedent that was hugely important to the prosecution of the Plaintiffs' claims. *See* Ex. 1 (Stueve Decl. ¶¶ 448-61).

c) The legal issues were complex and their outcome uncertain.

The legal issues were at least as extensive, complex and hard-fought as these novel and important factual issues. They often involved issues for which there was no controlling precedent under the facts of this case. Syngenta's able lawyers left no stone unturned in pressing its defenses beginning with extensive arguments for dismissal some five months after appointment of lead counsel in the MDL. *See supra* Section I.D. Even after this Court rejected most of Syngenta's arguments, Syngenta pressed its defenses in multiple venues, including Minnesota, Illinois, and the state courts handling ethanol claims. *See supra* Section II.B.

Work on the initial motion to dismiss was a watershed moment. In that first motion and continuing throughout the litigation, Syngenta urged many defenses, including three

"fundamental doctrines cutting across tort law," which Syngenta argued broadly foreclosed Plaintiffs' claims: duty, causation, and the economic-loss doctrine. ECF No. 857 at 29-31. These issues alone are not only dispositive but daunting, and involved the law of 22 states. ECF No. 927 at 97-118. *See Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1206 ("The legal difficulty of this case was further compounded by the application of state law to numerous issues"); *In re: Motor Fuel Temperature Sales Practices Litig.*, 2016 WL 4445438, at *8 ("Plaintiffs asserted class claims which involved the law of 29 jurisdictions and complex liability and class certification issues. At every juncture, defendants raised procedural, jurisdictional, constitutional and substantive arguments and defenses"). Syngenta's arguments on duty and causation were sophisticated, policy-driven and made even more complex because of numerous contextual sub-issues.[25] The economic-loss doctrine is one of the most complicated topics in modern tort law due to the doctrine's multiple variants and differing rationales, untangling it was a substantial effort and prevailing on it was a significant victory.[26]

Syngenta contended many were issues of first impression, due either to a dearth of precedent or application of existing law to the particular facts of this case. Among other things, Syngenta urged that Plaintiffs' theories of liability were "unprecedented," that prior cases addressing unapproved GM traits (*In re StarLink Corn Prods Liab. Litig.* and *In re Genetically*

[25] For example, duty and causation involved not only already-complicated policy issues, *see* ECF No. 857 at 48-55, but arguments including who should have the burden of implementing safeguards when a new GM product is introduced, application of the BIO policy, and matters of foreign relations. *Id.* at 55-58; ECF No. 3292 at 14-23; ECF No. 3344 at 39-46.

[26] *See* Jim Wren, *Applying the Economic Loss Rule in Texas*, 64 Baylor L. Rev. 204, 205 (2012) ("courts often reference 'the economic loss rule' as if there were one unitary rule applicable to tort actions generally. The over-simplification misleads."); *id*. at 207 ("any reference to a single "economic loss rule" is a "misnomer") (quoting *Sharyland Water Supply Corp. v. City of Alton*, 354 S.W.3d 407, 415 (Tex. 2011)); Dan B. Dobbs, Paul T. Hayden and Ellen M. Bublick, The Law of Torts (2d ed.) ("Dobbs on Torts") at § 607 ("the implication of references to 'the' economic loss rule that there is but a single overarching economic loss rule is misleading. Several discrete rules dominate the decisions, not a single rule."); Dan B. Dobbs, *An Introduction to Non-Statutory Economic Loss Claims*, 48 Ariz. L. Rev. 713, 714 (2006) ("The contractual versions of the [ELD] are different" than the "stranger" version).

Modified Rice Litig.) were distinguishable, and that the only prior analogous cases held that claims were barred by the absence of duty or economic-loss doctrine. *See* ECF No. 857 at 31 (citing *Sample v. Monsanto Co.*, 283 F. Supp. 2d 1088, 1093 (E.D. Mo. 2003); *Hoffman v. Monsanto Canada*, 2005 SKQB 225, 2005 SK.C. LEXIS 330 (Can. Sask. Q.B. May 11, 2005)). Syngenta also argued that it would be unprecedented to hold it accountable for "actions of grain exporters and other market participants that are wholly beyond Syngenta's control," ECF No. 857 at 28, that any duty "to reorganize the entire industry framework for growing and distributing corn. . .would also squarely undermine the policy behind the U.S. regulatory framework" and that "[n]o court has ever purported to create a parallel regulatory regime for determining which GM traits can and cannot be sold freely after federal approval and this Court should not be the first." *Id.* at 30. Counsel were required to respond to these arguments, often in briefs of significant length, which often cited a host of case law and other authority. They prevailed against these arguments, obtaining favorable rulings in multiple jurisdictions.

Class certification also involved cutting-edge legal issues. This Court was one of the first to apply the predominance teachings of *Tyson Foods, Inc. v Bouaphakeo,* 136 S. Ct. 1036 (2016). *See* ECF No. 2436 at 45-49. It also involved an issue that Syngenta alleged was one of first impression in this Circuit: whether to adopt a supposed heightened ascertainability requirement under Rule 23. *See* Syngenta's Rule 23(f) Petition at 20, *In re Syngenta AG MIR162 Corn Litigation*, Case No. 16-607 (10th Cir. Oct. 11, 2016). Plaintiffs' prevailed on these issues as well in both the MDL and Minnesota, and obtained denial of Syngenta's requests for interlocutory appeals in both jurisdictions.

Other complex issues included:

- Whether the high court of each state would apply its version, or adopt the "stranger" version, of the economic-loss doctrine to the circumstances here. *See*

ECF No. 857 at 73-83; ECF No. 927 at 97-134; *In re Syngenta AG MIR 162 Corn Litig.*, 131 F. Supp. 3d 1177, 1195 n.10 (D. Kan. 2015) (noting Court's task as "predicting what particular states' courts would do" in terms of economic-loss doctrine application under the circumstances presented).

- Whether a defendant can be compelled to consent to general jurisdiction by registering to do business in the state, and then subsequently whether such registration is an unconstitutional condition. *See* Mem. & Order, ECF No. 1679; Mem. & Order, ECF No. 2047.

- Standing, causation, and whether statements alleged are actionable under the Lanham Act. *See* ECF No. 857 at 99-106; ECF No. 927 at 160-171; *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377 (2014).

- Express and implied preemption under the Grain Standards Act ("GSA"), 7 U.S.C. § 87g(a), where the preemption clause of the hundred-years-old statute had *never* before been interpreted by a court.[27]

- Syngenta's arguments that China violated international law in violation of World Trade Organization ("WTO") treaties with the United States. *See* ECF No. 2869-2 (Shull Rpt. at 30-32); ECF No. 3188-1; ECF 3205 at 19-22; Order, ECF No. 3239 (requesting supplemental briefing on proposed instruction Nos. 19 and 19A regarding international law); ECF Nos. 3278, 3280.

- Whether fault could be assessed to a foreign state, like China, entailing issues pertaining to various treaties asserted by Syngenta, *see* ECF No. 3344 at 78-81, the act-of-state doctrine, and whether a foreign government has a legal duty to farmers in this country. *See* ECF 3051 at 38-42.

These are just some of the myriad and difficult issues faced by Plaintiffs in this case. All were exceedingly complicated and none had ready answers.[28]

---

[27] Issues relating to GSA preemption, first raised by exporters, carried through to jury instructions as well as summary judgment disputes between Syngenta and producers. *See* ECF No. 1803; ECF No. 3108 at 17-18; ECF No. 2426 at 23-25; ECF No. 2859 at 30-32; ECF No. 3051 at 34-36.

[28] There were many other legal issues in this case made complex by the ability of Syngenta's legal team to craft sophisticated arguments. These included, for example: (1) the standard by which the Court should consider the opinions of plaintiffs' experts at class certification and meaty issues pertaining to class-wide damages, ECF No. 2547 at 14-24; (2) Syngenta's due process arguments against class certification and aggregate damages, ECF No. 2335 at 6, 31, 76, ECF No. 3292 at 29-31, ECF No. 3344 at 82-84; (3) Syngenta's effort to assign fault to Plaintiffs and exporters, *see* ECF Nos. 1270, 2947, 3344 at 75-77; (4) Syngenta's arguments on intervening/superseding case, ECF Nos. 2980 at 78-100, 3344 at 55; (5) the *Noerr-Pennington* doctrine, ECF No. 2862 at 100; and, (6) Syngenta's due process and policy arguments against punitive damages, ECF No. 2862 at 113-120.

All of these factors are relevant to the Fee Request in at least three ways: *first*, the issues presented in this case (procedural, factual, and legal) required counsel with the commensurate skill (administrative, strategic, and legal) to counter the multifaceted defense lodged by Syngenta; *second*, the case justifies the significant number of hours and lawyers of varying skill sets engaged by lead counsel in the MDL, Minnesota, and Illinois cases; and *third*, the outcome of this case was far from certain, requiring counsel to undertake significant risk in investing their time and money into a case that, without herculean effort, could have turned out very differently.

2. Plaintiffs were well-represented by a team of attorneys with substantial experience in prosecuting high-stakes, complex litigation.

This case both demanded – and received – an experienced team of attorneys to meet the challenges from Syngenta's well-funded and well-qualified opposing counsel.[29] Syngenta's legal team was comprised of highly experienced litigators from Kirkland & Ellis with exceptional reputations; tellingly, however, Syngenta engaged even more high-profile lawyers at key, critical points in the case to respond to Plaintiffs' prosecution. For example, although it was already utilizing recognized Supreme Court advocate Patrick Philbin, Syngenta hired and supplemented its team to include Paul Clement when it petitioned the Tenth Circuit for review of the class-certification order. And, to try the Kansas and Minnesota cases, it brought on Leslie Smith and Mike Brock, the latter of whom has been described as "one of the country's most prominent trial lawyers in bet-the-company litigation." Ex. 6 (Klonoff Decl. ¶ 68).

To meet this formidable challenge, Plaintiffs assembled a team of lawyers capable of meeting their opponents head-to-head, including subject-matter experts to assist with the many

[29] *See, e.g.*, *Lunsford*, 2014 WL 12740375, at *13 ("In evaluating the quality of representation by Class Counsel, the Court should also consider the quality of opposing counsel."); *In re Ocean Power Techs., Inc.*, 3:14-CV-3799, 2016 WL 6778218, at *28 (D.N.J. Nov. 15, 2016) (the "quality and vigor of opposing counsel is also important in evaluating the services rendered by Plaintiff's Counsel."); *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1207 ("Further adding to the difficulty of the case was the quality of Plaintiffs' legal adversaries.").

complex factual and legal questions presented in the case. The experience and reputation of Kansas Common Benefit Attorneys alone are extensively documented in the attached declarations. Although not intended to be comprehensive, some highlights include:

- subject-matter experts, such as the lawyers who prosecuted, tried and/or handled critical appeals on all of the *Genetically Modified Rice* bellwether cases and the prior *Starlink* corn contamination case, Ex. 3 (Downing Decl. ¶¶ 5-7); Ex. 2 (Powell Decl. ¶¶ 12, 23); Ex. 4 (Chaney Decl. ¶¶ 19-20, 24); Ex. 7 (Weiss Decl. ¶ 3, 8, 14);[30]

- numerous lawyers with extensive experience in high-stakes litigation, including class actions, backed up by biographies of successful verdicts and settlements, *see e.g,* Ex. 1 (Stueve Decl. ¶¶ 20-21, 32-36, 40-42, 56-63); Ex. 2 (Powell Decl. ¶¶ 13-17, 24, 28, 33); Ex. 3 (Downing Decl. ¶ 4); Ex. 4 (Chaney Decl. ¶¶ 19-20, 23-25, 107); Ex. 7 (Weiss Decl. ¶¶ 7, 9, 12, 17-18); Ex. 24 (Shelquist Decl. ¶ 5(b)); Ex. 30 (Paul Decl. ¶ 5(a)-(c)); Ex. 35 (Conroy Decl. ¶ 6); Ex. 38 (Bukovac Decl. ¶ 3); Ex. 43 (Bender Decl. ¶ 5(a)); and,

- at least thirty-eight former federal circuit- or district-court law clerks or state-court law clerks, Ex. 1 (Stueve Decl. ¶¶ 12, 29, 50, 73, 95, 98, 100, 108, 109); Ex. 2 (Powell Decl. ¶¶ 40, 44, 51); Ex. 3 (Downing Decl. ¶ 4); Ex. 4 (Chaney Decl. ¶¶ 11, 84, 94, 96); Ex. 7 (Weiss Decl. ¶ 18); Ex. 43 (Bender Decl. ¶ 5); Ex. 24 (Shelquist Decl. ¶ 5(a, g, h, i)); Ex. 20 (Ursu Decl. ¶ 5); Ex. 30 (Paul Decl. ¶ 5); Ex. 12 (Plant Decl. ¶ 10); Ex. 13 (Bell Decl.); Ex. 17 (Pinyan Decl. ¶¶ 5, 6); Ex. 18 (Emerson Decl. ¶ 6); Ex. 27 (McCluer Decl. ¶ 4); Ex. 39 (Thrash Decl. ¶ 4).

These attorneys applied their experience in successfully navigating the numerous difficult and complex issues from the inception of this litigation to the $217 million jury verdict to the $1.51 billion settlement.

3. Counsel exercised a high-degree of skill in navigating the complex legal and factual issues that permeated the MDL.

As courts have noted, the successful handling of class and other complex multi-party actions itself requires expertise and a special set of skills.[31] The MDL device adds its own level

[30] *See In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *4 ("Litigation of this case required great skill in a highly specialized field (third factor), against highly skilled opposing counsel. . ."); *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 308 (S.D. Miss. 2014) ("Litigation of this Action required counsel trained in class-action law and procedure as well as the specialized issues presented here. Class Counsel possess these attributes, and their participation added immense value. . .").

[31] *See, e.g., In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab. Litig.*, No. 810ML02151JVSFMOX, 2013 WL 12327929, at *31 (C.D. Cal. July 24, 2013) ("Courts

of complexity, particularly for counsel in leadership positions who serve the court in addition to the interests of many thousands of plaintiffs and are required to navigate the complications that coordination between diverse sets of lawyers entails.[32] And this case involved not just a single MDL, but multiple consolidated cases in several state and federal jurisdictions.

The skills of counsel were on full display in these proceedings. The prosecution of this litigation was not assisted by a government investigation (for example, it was not a product case involving recall or precipitated by a DOJ antitrust investigation). Instead, lead counsel investigated, developed, prosecuted, and succeeded in the litigation entirely by their own considerable efforts, often without a road map and relying on their own experience and best judgment. *See In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *4 ("Counsel achieved this verdict and judgment without the benefit of a government investigation or prosecution of members of the alleged antitrust conspiracy."); Ex. 6 (Klonoff Decl. ¶¶ 70-71) ("class counsel had no assistance of any kind from the government" and "bore the entire burden of investigating and proving Syngenta's alleged improper conduct"). If anything, as the Kansas trial showed, counsel's efforts were impeded by governmental authorities: Syngenta relied on U.S. trade representative reports to point the finger at China's trade policies; cited to U.S. deregulation of Agrisure Viptera and Duracade as a legal defense to the imposition of duty; and even used a former USDA trade representative, Mr. Shull, as a trial expert. Ex. 6 (Klonoff Decl. ¶ 71).

---

have recognized that the 'prosecution and management of a complex national class action requires unique legal skills and abilities.'") (quoting *Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009 WL 248367, at *6 (N.D. Cal. Feb. 2, 2009)); *Lunsford*, 2014 WL 12740375, at *11 ("the dimensions [of successfully and ethically prosecuting large class action suits] are awesome.") (citation omitted).

[32] Multidistrict litigation "is a special breed of complex litigation." *In re Phenylpropanolamine (PPA) Products Liab. Litig.*, 460 F.3d 1217, 1232 (9th Cir. 2006). "For it all to work, multidistrict litigation assumes cooperation by counsel and macro-, rather than micro-, judicial management because otherwise, it would be an impossible task for a single district judge to accomplish." *Id.* Appointment of leadership counsel is a necessary tool "provid[ing] order and structure to multidistrict proceedings." *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 644, 667 (E.D. Pa. 2003).

Independent investigation and development of the facts was a complicated, arduous business given the number and difficulty of subject matters to cover, the number of documents, witnesses and experts involved, the number of representative plaintiffs who provided discovery and depositions, as well as the ever-present zealousness of opposing counsel. From the outset, the level of investigation and legal analysis is reflected in the Master Complaints filed and amended, containing a detailed account of facts and economic injury, as well as multiple claims made nationally and for 22 state classes of producers in the country's highest corn-producing states. *See supra* Section I.D & II.B.

The marshalling of all salient facts as the case progressed is further testament to the skill and dedication of counsel, who: analyzed over 2.5 million pages of documents; deposed over 81 witnesses, domestically and abroad; prepared and defended over 70 witnesses; and deposed or defended 18 experts. *See, supra,* Section I; Ex. 1 (Stueve Decl. ¶¶ 252, 295, 405, 428, 433). The skill of Plaintiffs' counsel also is evidenced by consistent success on major legal issues, which include those affecting plaintiffs globally (including class certification, Syngenta's motion to dismiss, and efforts to obtain interlocutory appeal thereon) and those pertaining to the Kansas and Minnesota trials (including summary judgment,[33] motions *in limine, Daubert* or *Frye-Mack* motions, and pre- and post-verdict motions for judgment in the Kansas case), which not only affected that trials, but stood as precursors to future argument and rulings. These were challenging issues to research, brief and successfully argue to the Court. *See In re: Checking Account Overdraft Litig.*, No. 1:09-M D-02836-JLK, 2014 WL 11370115, at *16 (S.D. Fla. Jan.

[33] Among counsel's significant victories, the Court granted summary judgment for plaintiffs with respect to certain applications of Syngenta's defenses of superseding cause, assumption of risk, mitigation, business and economic justification, antitrust preemption, and comparative fault. Ex. 1 (Stueve Decl. ¶ 508).

6, 2014) ("based on the novel and very complex issues confronted by Class Counsel in this case . . . an extraordinary group of lawyers was required to prosecute this case.").

Moreover, even as Syngenta demonstrated its perseverance by pressing arguments it lost in the MDL, Minnesota and Illinois Lead Counsel successfully demonstrated their skill in maintain those favorable rulings.

In addition to the unusually complicated factual and legal landscape, another aspect of this case that sets it apart from many other class and MDL actions is that the parties went to trial. *See Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1210 ("Few class actions ever reach trial."); *see also id.* at 1193 ("The most apparent feature distinguishing this class action from virtually every other class action in the reported federal decisions is obviously that it did not settle before trial."); Ex. 6 (Klonoff Decl. at ¶ 69) ("Because relatively few class actions go to trial, courts reviewing attorneys' fee requests justifiably give significant weigh to the fact—when present—that a contested trial occurred.") (citing cases).

The Kansas trial (affecting more than 7,000 Kansas producers) began on June 5, 2017 and lasted three weeks. The second Minnesota trial (affecting more than 22,000 Minnesota producers) began in September 2007 and lasted two weeks before it was stopped for settlement. Although Syngenta brought on additional, high-profile lawyers to try the case, Plaintiffs' counsel met that challenge with the skilled trial team assembled by Co-Lead Counsel in the first instance. Their success was made evident by their preparation, presentation, and ultimate success. *See Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1208 ("skill may manifest itself through arduous preparation and efficient organization, particularly if the case goes to trial. . .an attorney who has a sharp command of trial practice and a sound understanding of the substantive law, governing

the case. . .should be compensated at a higher rate of pay than one who has to educate himself just to gain a general working knowledge of trial practice and law.").

Plaintiffs' trial team culled and organized the most significant documents from the millions of pages produced in discovery. Objection and argument over admissibility of documents was extensive, as were evidentiary issues via motions *in limine*. Ex. 1 (Stueve Decl. ¶¶ 536-45, 557); *see also* ECF Nos. 3098, 3101, 3108, 3143. Testimony at trial was presented live and by video deposition. Syngenta's well-prepared witnesses uniformly and assiduously avoided any concession on any topic. Plaintiffs' counsel analyzed thousands of pages of deposition testimony for cogent passages that were useable at trial and presented their story in a way both understandable and persuasive to a jury. *See* Section I.H. Due to the factual context, much of the evidence was topically complex, requiring extra effort and skill to distill, simplify, and present to lay jurors, and the injuries here were financial. *See In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *4 ("The subject matter was complex and not easily digestible by a lay jury, and there were no personal injuries to heighten sympathy."). Damages evidence alone involved high-level economic concepts that needed to be presented in an understandable way. Battle over instructions was intense, involving weeks of meet-and-confer sessions, many rounds of briefing, ECF Nos. 3204, 3205, 3239, 3278, 3280, 3283, 3284, 3285, and oral argument.

Through the efforts of their attorneys, Plaintiffs overcame all obstacles and prevailed, as the $217 million verdict confirms. ECF No. 3304. That verdict had tremendous importance not just to the Kansas class but to the litigation overall. It was the first verdict secured against Syngenta, serving as a bellwether outcome that awarded 100% of the compensatory damages requested, Ex. 1 (Stueve Decl. ¶ 567)**,** a clear message to Syngenta of the risk it faced going forward. *See* Ex. 6 (Klonoff Decl. ¶ 68) ("Realistically, I have no doubt that had plaintiffs lost

the trial, their ability to negotiate a settlement anywhere near the magnitude of $1.51 billion would have vanished."). Such a rare class trial and victory weighs strongly in favor of the requested fee. *See Gevaerts v. TD Bank*, No. 1:14-CV-20744-RLR, 2015 WL 6751061, at *12 (S.D. Fla. Nov. 5, 2015) ("In the private marketplace, counsel of exceptional skill commands a significant premium. So too should it here."). Moreover, Syngenta did not simply capitulate following the verdict. By putting on much of the Plaintiffs' case in chief before the term sheet was signed, Minnesota Lead Counsel demonstrated that they were prepared to go the distance as well. And Co-Lead Counsel demonstrated that they were prepared to try four class trials in 2018, showing Syngenta the risk it faced if it refused settlement.

Again, this was not a typical class action that resolved during pre-trial discovery. This case required counsel capable of: coordinating among multiple jurisdictions, deciding on and implementing a long-term strategy; planning for multiple cross-jurisdictional jury trials; preparing for potential appeals with case-wide impact; developing a versatile discovery record that could be used by different types of plaintiffs (producer and non-producer) in different types of cases (class and individual) in disparate jurisdictions (federal and state); and designing a nationwide settlement to fairly distribute the $1.51 billion non-reversionary fund agreed to by Syngenta. Further, it required not just counsel who could develop a pre-trial record, but counsel who were capable of using that record in trial of a class action against one of the largest law firms in the world with one of the most respected trial teams in the country. Ex. 1 (Stueve Decl. ¶¶ 517-21). The pre-trial record, the jury's verdict in the Kansas class trial, and the record-breaking $1.51 billion agricultural settlement reached during the middle of the Minnesota class trial are the best evidence of the skills employed by counsel in obtaining this settlement. *See generally* Ex. 1 (Stueve Decl.); Ex. 2 (Powell Decl.); Ex. 6 (Klonoff Decl.).

4. The massive amount of time and labor that counsel expended supports the fee request.

The case was litigated vigorously at all stages in multiple fora over nearly four years, requiring sustained and intensive efforts by lead counsel and those engaged to assist their efforts. This is not a case that settled early or easily. It followed hard-won certification of litigation classes both here and in Minnesota along with orders in both jurisdictions denying interlocutory appeal, rulings on a lengthy motion to dismiss, extensive argument from both sides on summary judgment, fights over admissibility of documents, lay and expert testimony, the start of two class trials, one class-wide jury verdict, and pre- and post-verdict briefing. *See supra* Sections I-II. Furthermore, settlement required the extensive involvement of both the Court-appointed Special Master and the Honorable Daniel Stack (retired), a special discovery master in Illinois, as well as repeated hearings with and involvement from the courts. As discussed throughout, sustained pressure across multiple jurisdictions and a full-damages jury verdict were necessary to achieve this result.

The work necessary to achieve this result, discussed extensively in the attached declarations, is summarized in the Statement of Facts. Further recitation of efforts in the Minnesota Court and the Illinois Courts are included in Minnesota and Illinois Lead Counsel's separate filings. The Court should have no trouble, on this record and based on its own first-hand experience, concluding that the fee request is supported by the time and labor involved in achieving this ground-breaking settlement.

5. The demands of this litigation necessary imposed time limitations and precluded counsel from other employment.

From the earliest status conferences, Syngenta was in this case "for the long haul" with the intention that it was going to "take the case to trial" if it was not dismissed on the pleadings. ECF No. 127 at 81:20-24. Leadership counsel showed they were up to the task. The pace of this

case was aggressive and sustained, with few breaks and little down time. The demands of this case necessarily required full-time commitment from the Co-Lead Counsel in the MDL for virtually the entire course of the MDL, and from many of the lawyers at their firms, as well as similar or significant commitments from many of the supporting law firms.

The initial scheduling order provided MDL leadership with a little over one month to file their consolidated amended master complaints for producers and non-producers that would govern the claims in the MDL, which were 170 and 90 pages long (ECF Nos. 296-97). Scheduling Order No. 1, ECF No. 123. On October 21, 2015, after ruling on Syngenta's motion to dismiss, the Court entered Scheduling Order No. 2 (ECF No. 1098), which started full fact discovery and scheduled the first trial for June 2017 – a deadline that Plaintiffs met through the sustained labor and commitment of counsel. *See* Section I.

Within seven months, Plaintiffs completed most of fact discovery, including depositions of all 74 producers and all but one of the 32 Syngenta depositions. *See* Ex. 1 (Stueve Decl. ¶¶ 294, 405). While reviewing the 1.5 million pages of documents produced by Syngenta, these 32 Syngenta witnesses were deposed over 57 days in 4 continents. *Id.* Although some of the 49 third-party depositions extended past the initial deadline, all but two were completed prior to October 2016 – within 12 months from the start of discovery. Ex. 1 (Stueve Decl. ¶¶ 428, 433).

By March 2017 (within 17 months), Plaintiffs had obtained class certification, successfully opposed interlocutory review of that order, conducted their pretrial conference, and completed extensive summary-judgment briefing. Twenty months and two days after the start of fact discovery, Plaintiffs in the MDL had obtained a $217.7 million jury verdict on behalf of a certified Kansas class, ECF No. 3304, completed pre- and post-verdict briefing and immediately began preparing for the next class trial, *see* Pretrial Order (AR and MO classes), ECF No. 3368.

During this period, counsel filed and responded to over 55 substantive motions and countless other administrative, unopposed and procedural requests. *See, supra*, Section IIE. In the end, it took a sustained effort over approximately two years – and one full and two partial trials – before the parties moved to stay the cases pending execution of the Settlement Agreement. ECF No. 3452. It is difficult to point to other MDLs of similar size that accomplished so much in such a relatively short timeframe, evidence of the degree of commitment required by counsel.

As detailed in the accompanying application of Minnesota Lead Counsel, they followed a similar schedule. *See also* Section II.B.1 (citing Scheduling Order No. 2). Their first bellwether trial was set and prepared for April 2017. Although it resulted in a mistrial before the presentation of evidence due to a juror issue, they were required to proceed through the same discovery process and schedule as the federal MDL. Moreover, the second trial, the Minnesota class trial, began shortly after the conclusion of the Kansas trial, and counsel in both the MDL and in Minnesota were prepared to continue trying cases when the litigation settled.

Given these facts, it is unsurprising that this kind of workload precluded many attorneys from accepting other engagements.[34] It would have been impossible to meet the demands of this case if this litigation was not the first and top priority of the lawyers leading it. *See* Ex. 6

[34] For example: according to Patrick Stueve, "I had a full docket of cases that I had to delegate to other partners because of the time commitment of this case. This was necessary to complete the extensive amounts of discovery in the time frame allotted and to prepare the Kansas case for trial. For extensive periods throughout the litigation, Ms. Schwartz and Mr. Wilders also worked almost exclusively on this case during that time frame. Without a doubt, the needs of this case precluded us, and our firm, from accepting other assignments." Ex. 1 (Stueve Decl. ¶ 670) ("During the time I was working on this case, I spent little, if any, time evaluating and developing new cases, which is something I have historically spent substantial amounts of time on. The needs of this case, and the desire to prosecute these claims effectively on behalf of the Plaintiffs, required that I, and my firm, put this case first, above and beyond other business opportunities. It is not an exaggeration to say that this required that level of commitment and sacrifice."). According to Don Downing, "Before and throughout this entire time period, the resources of my firm's entire commercial litigation/class action/mass tort practice were so fully devoted to this litigation that I was required to instruct those responsible for new client screening and intake to advise all new potential clients that our group was not taking new matters. We had to decline several significant matters due to our commitment to this litigation." Ex. 3 (Downing Decl. ¶ 24).

(Klonoff Decl. ¶ 79) ("As a result of this case, the lead firms representing plaintiffs were clearly hampered in their ability to take on significant other work. The demands of this case were enormous by any measure. At least five lawyers have billed more than 5,000 hours on the case; at least 12 lawyers have billed more than 3,000 hours; and at least 20 lawyers and paralegals have billed more than 2,000 hours."). This also weighs in favor of the requested fee. *See, e.g.*, *Brown*, 838 F.2d at 455 (substantial work on the litigation "precluded or reduced their opportunity for other employment"); *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1209 ("Taking on this resource-sapping, risk-based venture also precluded Class Counsel from accepting other contingent matters during the period of representation.").

6. The contingent nature of the fee and the risk undertaken by counsel justifies the fee request.

Relatedly, the more an attorney invests in a single case, the riskier the bet they place on the outcome of that litigation. Here, counsel expended their labor, forwent other employment, and advanced millions of dollars of their own money, on behalf of the Class Members to prosecute highly complex and risky claims over an extended time period – all on a contingency fee basis with no guarantee of any payment whatsoever. In so doing, they "assumed a significant risk of non-payment or underpayment. Numerous cases recognize such a risk as an important factor in determining a fee award." *Gevaerts*, 2015 WL 6751061, at *13; *see In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *4 (recognizing that when liability is less than certain, a case presents "a great deal of risk, as counsel was required to advance all expenses and attorney time to litigate a hard-fought case against highly experienced opposing counsel hired by a defendant with ample resources").[35] The risk of no recovery, and no payment, factors into

[35] *See also, e.g., In re: Checking Account Overdraft Litig.*, 2014 WL 11370115, at *17 (same); *In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *28 ("Courts across the country have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award

undesirability, and is considered in light of, among other things, the risk of obtaining class certification and establishing liability.[36]

"Fees that are contingent on success present definite risks. Payment, if any, is deferred, and there is always a risk, often a substantial risk, that there may be no payment . . . [R]isk demands a premium. And, as a general rule, the greater the uncertainty of payment the greater the premium should be." *Been*, 2011 WL 4478766, at *8 (quoting *In re Superior Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990)).[37] The risk of no recovery only increases with the difficulty of the case. *See In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab. Litig.*, 2013 WL 12327929, at

---

of attorneys' fees."); *Jenkins*, 300 F.R.D. at 309 ("in '[r]ecognizing the contingent risk of nonpayment in [class action] cases, courts have found that class counsel ought to be compensated . . . for risk of loss or nonpayment assumed by carrying through with the case.'") (quoting *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 859–60 (E.D. La. 2007)); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007) ("A determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee, the wholly contingent outlay of out-of-pocket sums by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high. Cases recognize that attorneys' risk is perhaps the foremost factor in determining an appropriate fee award.") (internal quotations omitted) (quoting *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir. 2000) and citing cases); *Yarrington*, 697 F. Supp. 2d at 1062 ("Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees.") (quoting *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005) (quotations omitted); *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1215 (finding that contingency risk factor weighs "heavily in favor of" granting the requested fee).

[36] *Bredbenner v. Liberty Travel, Inc.*, No. CIV.A. 09-1248 MF, 2011 WL 1344745, at *20 (D.N.J. Apr. 8, 2011); *see also, e.g., Family Med. Pharmacy, LLC v. Trxade Group, Inc.*, No. CV 15-0590-KD-B, 2017 WL 1042079, at *12 (S.D. Ala. Mar. 17, 2017) (analyzing the "undesirability" factor and stating that the complexity and risk of class actions "may render this class action litigation as undesirable. Accordingly, this factor weighs in favor of awarding the requested attorney's fee."); *Shaw*, 2015 WL 1867861, at *7 ("in light of the risk of nonpayment of the costs advanced by Class Counsel and the time they invested in this case, this [undesirability] factor supports the requested fee award."); *In re Qwest Communications Int'l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1143, 1152-53 (D. Colo. 2009) (risk of non-recovery of time and advanced costs as relevant to "undesirability" factor "carries significant weight and weighs in favor of a substantial fee award"); *Lucas v. Kmart Corp.*, No. CIV.A. 99-01923, 2006 WL 2729260, at *7 (D. Colo. July 27, 2006) ("Given the risk of no recovery and the unsettled legal issues described above, this was not a desirable case to take.").

[37] There are ample examples of situations in which attorneys in complex litigation "have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d at 994 (citing *Glover v. Standard Fed. Bank*, 283 F.3d 953 (8th Cir. 2002) (reversing class certification)).

*30 ("Another significant factor to be considered in determining attorney fees is the risk that counsel took of 'not recovering at all, particularly [in] a case involving complicated legal issues.'") (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046-47 (N.D. Cal. 2008)).

"It is an established practice to reward attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all." *Kanawi v. Bechtel Corp.*, No. C 06-05566 CRB, 2011 WL 782244, at *2 (N.D. Cal. Mar. 1, 2011) (citing *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994)). "Such a practice encourages the legal profession to assume such a risk and promotes competent representation for plaintiffs who could not otherwise hire an attorney." *Id.*[38]

Here, in just the Kansas MDL, attorneys invested over $81 million of lodestar, unadjusted for risk, representing over 142,823 hours of common-benefit work. By themselves, Co-Lead Counsel's firms invested $59 million in lodestar, betting on their own skill, and the skill of the

[38] *See also Been*, 2011 WL 4478766, at *9 ("Courts agree that a larger fee is appropriate in contingent matters where payment depends on the attorney's success."); *In re: Checking Account Overdraft Litig.*, 2014 WL 11370115, at *17 (risk embodied by "contingency fee arrangement often justifies an increase in the award of attorney's fees.") (quoting *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1335 (S.D. Fla. 2001)); *see also id.* ("Public policy concerns – in particular, ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs holding small individual claims – support the requested fee here."); *Lunsford*, 2014 WL 12740375, at *11 ("Adequate compensation promotes the availability of counsel for aggrieved persons."); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Products Liab. Litig.*, 2013 WL 12327929, at *32 ("It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for contingency cases . . . This ensures competent representation for plaintiffs who may not otherwise be able to afford it." (internal quotations and citation omitted); *Barrera v. Nat'l Crane Corp.*, No. SA-10-CV-0196 NN, 2012 WL 242828, at *4 (W.D. Tex. Jan. 25, 2012) ("The legal profession accepts contingent fees that exceed the market value of the services if rendered on a non-contingent basis as a legitimate way of assuring competent representation for plaintiffs who cannot afford to pay on an hourly basis regardless of whether they win or lose"); *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1217 ("Class Counsel has risked millions of dollars in un-reimbursed attorneys' time and additional millions in out-of-pocket costs. Unless that risk is compensated with a commensurate reward, few firms, no matter how large or well financed, will have any incentive to represent the small stake holders in class actions against corporate America, no matter how worthy the cause or wrongful the defendant's conduct.").

rest of the Kansas Common Benefit Group. Lead Counsel in Minnesota (over $41 million in lodestar reported under the Minnesota Court's CBO) and Illinois are also expected to report large investments in their separate filings. Moreover, it was not just the labor that counsel invested, but the advancement of expenses. The Kansas Common Benefit Group alone advanced over $6.6 million in expenses, the recovery of which was also contingent on a commensurate success. Ex. 1 (Stueve Decl. ¶ 645). Minnesota Lead Counsel doubtless has significant costs under that Court's CBO. As recounted above, these attorneys faced – and overcome – numerous difficult, novel and complex defenses, including the always-uncertain risk of an adverse jury finding. Liability (and consequent payment) was more than uncertain. This risk permeated every substantive aspect of the case: the motion to dismiss, class certification, dispositive motions and trial. Lead Counsel and those working on their behalf necessarily undertook tremendous risk – and succeeded on behalf of the Class – and should be compensated for doing so.

7. The relief involved, totaling $1.51 billion, supports the Fee Request.

The next factor "recognizes that a fee award should reflect the relief obtained." *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1204. This perhaps is the most important factor, particularly when "the recovery was highly contingent and. . .the efforts of counsel were instrumental in realizing recovery. . ." *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *4 (quoting *Brown*, 838 F.2d at 456).[39] "Factors indicating 'exceptional success' include success achieved under unusually difficult or risky circumstances and the size of plaintiffs' recovery." *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1204-05. The difficulty and risk here, as well as counsel's skill and effort, make the settlement amount all the more remarkable.

[39] *See also McNeely v. Nat'l Mobile Health Care, LLC*, No. 07-933, 2008 WL 4816510, at *15-16 n.9 (W.D. Okla. Oct. 27, 2008) (counsel's "willingness to prosecute this matter on a contingent basis. . .ordinarily shifts the analytical focus away from hours spent. . .to the ultimate result. . .obtained").

In common fund cases, the size of the fund itself reflects "the measure of success . . . [and] represents the benchmark from which a reasonable fee will be awarded." Manual For Complex Litigation 4th § 14:121 (2004) (internal quotation marks and citation omitted); *see also Lucken Family Ltd. P'ship, LLLP*, 2010 WL 5387559, at *3 ("Numerous courts have recognized that in evaluating the various *Johnson* factors, the greatest weight should be given to the monetary results achieved for the benefits of the class.") (quoting *Anderson v. Merit Energy Co.*, No. CIV.07CV00916LTBBNB, 2009 WL 3378526, at *4 (D. Colo. Oct. 20, 2009)). The result obtained here amply supports the requested fee. The settlement is from the outset advantageous as it avoids future uncertainties and provides cash recovery. *See Koehler v. Freightquote.com, Inc.*, No. 12-2505-DDC-GLR, 2016 WL 3743098, at *7 (D. Kan. July 13, 2016) (settlement "avoids the uncertainty and rigors of trial and produces a favorable result for plaintiffs. This factor favors approval of the fee award.").

Moreover, the fee is proportionate to the amount of money that Class Members' will recieve. Syngenta will pay $1.51 billion, with no possibility of reversion, under a claims process that, for most, requires submitting no documentary proof. This is the largest GM crop settlement in history. It reflects a significant portion of the damages alleged by the Class, and is "one of the largest class settlements of any kind." Ex. 6 (Klonoff Decl. ¶ 85). It was not achieved easily, but through sustained victories and extensive effort.

Finally, the results are incredible in light of two additional factors. First, Plaintiffs' victories all hung on the edge of potential appellate review. Syngenta had a strong belief in the merits of its arguments, as demonstrated by the fact that, in its own words, "Syngenta has sought appellate review at every available opportunity for almost two years." ECF No. 3391 at 9. And, indeed, it pressed its arguments in every jurisdiction and sought such review at every available

turn. It asked the Court to certify its September 11, 2015 order on the motion to dismiss under 28 U.S.C. § 1292(b). ECF No. 1081. It petitioned both the Tenth Circuit and the Minnesota Court of Appeals for review of the orders granting class certification. *See In re Syngenta AG MIR162 Corn Litigation*, Case No. 16-607 (10th Cir. Oct. 11, 2016). And it argued vigorously that the Kansas judgment was final and would be subject to immediate appeal following resolution of its post-trial motions even though that judgment did not dispose of all the claims in the Producer Plaintiffs' Third Amended Class Action Master Complaint. *See* ECF No. 3391 at 1-2. No doubt – as it argued – Syngenta's post-verdict motion gave a preview of the arguments it would raise on appeal, including key legal issues such as duty, causation, and the economic-loss doctrine as well as challenges to Plaintiffs' damages models, non-party fault and cause, and certification. ECF No. 3344. Syngenta previously argued that an appellate success on any one of these issues should apply in the cases of all Class Members, *see* ECF No. 3391 at 9-11, and would undoubtedly have pressed that argument if it prevailed on appeal, in which case every Class Member could have recovered nothing, further demonstrating tremendous results.

Second, the benefits of the litigation extend beyond the pure monetary value of the settlement to Class Members – whose businesses continue to have an interest in preserving the exportability of corn or other crops. The rulings and outcomes in this litigation have provided the Class Members with precedent – in numerous jurisdictions. This precedent – and the trial outcome – supports the existence of a GM seed manufacturer's legal duty to act with reasonable care in the timing, manner and scope of commercializing new GM seeds. *See* ECF No. 3392 at iii (collecting cases in the several jurisdictions recognizing said duty). This may deter other GM seed manufacturers from commercialization decisions that cause future trade disruptions. *See* ECF No. 3392 at Ex. 5 (presentation of former general counsel for Monsanto recognizing that

the "deterrent effect of potential [tort] liability is also [a] strong motivation for increased stewardship" of new GM traits). In addition, non-producer Class Members can point to the Kansas and Illinois rulings interpreting the Grain Standards Act as not requiring them to disrupt their businesses to segregate and channel commodity grains. *See* Mem. & Order, ECF No. 1803. Finally, this litigation presents a road map for Class Members who may need to seek class certification of similar claims in the future. Thus, beyond the settlement amount of which Class Counsel seek a percentage, the litigation as a whole will doubtlessly provide future benefits to the Class as they continue to operate their farming businesses.

8. The fee request is consistent with a customary fee.

A useful measure of reasonableness is the customary fee that a lawyer and client would agree to in private litigation. *See In re Synthroid Marketing Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time."); *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1211 ("the more appropriate measure of a reasonable percentage is the market rate for a contingent fee in commercial cases."); Ex. 6 (Klonoff Decl. ¶ 81).

In a contingent case, one-third of any recovery is par or lower than a standard fee arrangement.[40] In this litigation, thousands of producers have executed fee agreements with counsel clients providing for 40% or more of the recovery. Ex. 1 (Stueve Decl. ¶ 659); Ex. 3

[40] *See, e.g.*, Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Stud. 27 (2004), at 35 ("Substantial empirical evidence indicates that a one-third fee is a common benchmark in private contingency fee cases."); *Flournoy v. Honeywell Int'l, Inc.*, No. Civ. A. 205-184, 2007 WL 1087279, at *2 (S.D. Ga. Apr. 6, 2007) ("The most common contingent fee is one third of the recovery. Forty percent fee contracts are common for complex and difficult litigation"); *In re Remeron Direct Purchaser Antitrust Litig.*, No. CIV.03-0085 FSH, 2005 WL 3008808, at *16 (D.N.J. Nov. 9, 2005) ("Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation.") (citing cases).

(Downing Decl.) ¶¶ 71-73 (noting that the vast majority of fee contracts in both rice and corn MDL's require payment of 40% to the attorney, while others require payment of one-third); Ex. 6 (Klonoff Decl. ¶ 81). As this Court recognized in the *Urethane* case, "a one-third fee is customary in contingent-fee cases, and indeed that figure is often higher for complex cases or cases that proceed to trial." *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *5. This observation is sound and well supported. "Other courts have similarly recognized that '[t]he percentages awarded in common fund cases typically range from 20 to 50 percent of the common fund created[,]' . . . and that fees within this range are 'presumptively reasonable.'" *Shaw*, 2015 WL 1867861, at *6 (citations omitted).[41] The Court may also consider what the

[41] *See also, e.g.*, *Castro v. Sanofi Pasteur Inc.*, No. CV117178JMVMAH, 2017 WL 4776626, at *9 (D.N.J. Oct. 23, 2017) ("fee awards generally range from 19% to 45% of the settlement fund."); *Elliott v. Rolling Frito-Lay Sales, LP*, No. SACV 11-01730 DOC, 2014 WL 2761316, at *9 (C.D. Cal. June 12, 2014) ("thirty percent is commensurate with traditional contingency recovery in an individual suit."); *In re Packaged Ice Antitrust Litig.*, No. 08-MDL-01952, 2012 WL 5493613, at *8 (E.D. Mich. Nov. 13, 2012) ("the requested award of close to 30% appears to be a fairly well-accepted ratio in cases of this type and generally in complex class actions."); *In re: Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1355-56 n.35 (S.D. Fla. 2011) (30% award "falls at the low end of the average in the private marketplace" in which attorney and client often agree to 33-40% of recovery); *Lucken Family Ltd. P'ship*, 2010 WL 5387559, at *6 ("The customary fee awarded to class counsel in a common fund settlement is approximately one third of the total economic benefit bestowed on the class."); *Anderson*, 2009 WL 3378526, at *3 ("The customary fee to class counsel in a common fund settlement is approximately one-third of the economic benefit bestowed on the class."); *Nichols v. SmithKline Beecham Corp.*, No. CIV.A.00-6222, 2005 WL 950616, at *22 (E.D. Pa. Apr. 22, 2005) ("fee awards of approximately 30% of the common fund [are] not unusual."); *The Erica P. John Fund, Inc. v. Halliburton Company*, No. 3:02-cv-1152-M, ECF No. 844 at 19 & n. 8 (Mem. Op. and Order) (N.D. Tex. Apr. 25, 2018) ("Numerous courts in this Circuit have awarded fees in the 30% to 36% range") (citing cases), attached as Ex. 74; *id.* at 25 (approving one-third of settlement fund); *Fairway Med. Ctr., L.L.C. v. McGowan Enterprises, Inc.*, No. CV 16-3782, 2018 WL 1479222, at *2 (E.D. La. Mar. 27, 2018) (finding that "the appropriate benchmark in this case is one-third") (citing cases); *Ruiz v. XPO Last Mile, Inc.*, 5-CV-2125 JLS (KSC), 2017 WL 6513962, at *7 (S.D. Cal. Dec. 20, 2017) (awarding 35% of settlement fund); *Gevaerts*, 2015 WL 6751061, at *10 ("Numerous recent decisions within this Circuit have awarded attorneys' fees up to and in excess of thirty percent") (citing cases); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 502–03 (N.D. Ill. 2015) (awarding 36% of settlement fund); *Gokare*, 2013 WL 12094887, at *4 ("The requested attorneys' fees award of 30.9% from the common fund is appropriate; the percentage requested is similar to or lower than percentage-of-the-fund awards approved in numerous other common fund cases in this Circuit.") (citing cases); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *8 (E.D. Cal. Oct. 31, 2012) ("The typical range of acceptable attorneys' fees in the Ninth Circuit is 20% to 33 1/3% of the total settlement value"); *Yarrington*, 697 F. Supp. 2d at 1061 (in the Eighth Circuit, courts "have frequently awarded attorney fees between twenty-five and thirty-six percent

named plaintiffs agreed to pay. *See In re FedEx Ground Package Sys., Inc., Employment Practices Litig.*, 251 F. Supp. 3d 1225, 1240 (N.D. Ind. 2017) ("it seems appropriate to consider as well that many of the named plaintiffs agreed at the outset to pay the attorney 33 percent of any recovery, and some agreed to pay as much as 40 percent, without limitation as to how much the recovery might be."). In this unique case, thousands of producers were willing to pay lawyers at least 40% of their total recovery, so one-third is clearly reasonable for the work described herein.

9. Awards in similar cases justify the fee request.

A one-third fee falls within the range of percentage fee awards approved by this Court and others in this Circuit,[42] and by courts across the country, including in large cases with high risks and exceptional recovery. Such an award is fully supported by the *Johnson* factors.

Objections sometimes are made that the percentage should go down in so-called "mega fund" cases in sliding scale inverse to the size of the recovery. That argument, however, has many flaws as recognized by experts, commentators, and courts alike. *See, e.g.*, Ex. 6 (Klonoff Decl. ¶¶ 96-100; Rubenstein, 5 *Newberg on Class Actions* § 15.80 (5th ed. 2015) (criticizing megafund "sliding scale" approach as "lack[ing] rigor," as being inappropriate in "high fund

---

of a common fund in class actions.") (quoting *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002)); *Huyer v. Wells Fargo & Co.*, 314 F.R.D. 621, 629 (S.D. Iowa 2016) (finding fee award of one-third of settlement fund "to be in line with other awards in the Eighth Circuit; it is also reasonable and fair given the circumstances of this case.").

[42] *See In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *8 (awarding one-third fee from $835,000,000 settlement fund)*; see also Koehler*, 2016 WL 3743098, at *7 (one-third award falls within "the customary percentage of the fund approved by this Court") (quoting *Barbosa v. Nat'l Beef Packing Co., LLC*, No. CIV.A. 12-2311-KHV, 2015 WL 4920292, at *11 (D. Kan. Aug. 18, 2015)); *Williams v. Sprint/United Mgmt. Co.*, No. 03-2200-JWL, 2007 WL 2694029, at *6 (D. Kan. Sept. 11, 2007) (awarding 35% of $57 million common fund) (Lungstrum, J.); *Lewis v. Wal-Mart Stores, Inc.*, No. 02-CV-0944, 2006 WL 3505851, at *1 (N.D. Okla. Dec. 4, 2006) (awarding one-third of settlement fund and noting that a "one-third [fee] is relatively standard [even] in lawsuits that settle before trial"); *In re United Telecommc'ns Sec. Litig.*, No. 90-2251-0, 1994 WL 326007, at *3-4 (D. Kan. June 1, 1994) (awarding 33.3% of settlement fund).

cases [that] involve significant risks," and for "creat[ing] perverse incentives" for class counsel); *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at * 5-7 (rejecting sliding-scale approach as unwarranted, creating perverse incentives, and failing to account for risk).

First, every case, whether "mega-fund" or not, is unique and should be treated as such. Whether a fee is reasonable should not be answered by rote application of arbitrary rules or a vague sense that the fee is too high, but by assessment of the complexity, risks, skill, work, and result in the case at hand. *See, e.g.*, *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 196-97 (E.D. Pa. 2000) ("The court will not reduce the requested award simply for the sake of doing so when every other factor ordinarily considered weighs in favor of approving class counsel's request of thirty percent. . .It is difficult to discern any consistent principle in reducing large awards other than an inchoate feeling that it is simply inappropriate to award attorneys' fees above some unspecified dollar amount, even if all of the other factors ordinarily considered relevant in determining the percentage would support a higher percentage."). As this Court recognized, the Tenth Circuit has suggested no "sliding-scale" principle, but rather, that "the fee percentage must be determined on a case-by-case basis, based on a weighing of the applicable *Johnson* factors." *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *5.

Second, the notion of downward adjustment when success is large is "antithetical to the percentage of the recovery method . . . the whole purpose of which is to align the interests of Class Counsel and the Class by rewarding counsel in proportion to the result obtained." *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1213 (awarding 31.33% fee from $1.06 billion settlement).

Third, such a downward adjustment makes no economic sense: "By not rewarding Class Counsel for the additional work necessary to achieve a better outcome for the class, the sliding

scale approach creates the perverse incentive for the Class Counsel to settle too early for too little." *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *6 (quoting *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. at 197); *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1213 (same); Ex. 6 (Klonoff Decl. at ¶ 100). As aptly observed by the Seventh Circuit, "[p]rivate parties would never contract for such an arrangement." *In re Synthroid Mktg. Litig.*, 264 F.3d at 718. To the contrary, sophisticated clients "often take the opposite approach, increasing fees as the size of the award grows to create incentive to pursue even the most difficult dollars." *In re FedEx Ground Package Sys., Inc., Empl. Practs. Litig.*, 251 F. Supp. 3d at 1240. It makes no sense to *dis*incentivize counsel from maximizing the Class's recovery.

Fourth, a justification sometimes expressed for a sliding-scale fee award is that the "mega-fund" victory affords lawyers an undeserved windfall. *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *6. That most certainly *is not* true where the litigation has been complex, the battles difficult and long, and the result achieved through skill, perseverance and an outlay of millions in out-of-pocket costs. The lodestar cross check, *infra*, further confirms that the requested fee here is no "windfall," easily falling within the range of multipliers that Courts have approved in other mega-fund cases. In these circumstances, the fee is not unreasonably large in proportion to the result but, to the contrary, appropriately reflective of the risks undertaken and the success achieved. *See id.* at *5-7; *see also id*. at *4 (counsel's "enormous success in a highly contingent case favors an award of a substantial percentage of the Dow settlement fund to the counsel who achieved that success for the class members. It also makes no sense to penalize counsel for hard-won success."); *In re Linerboard Antitrust Litig.*, No. CIV.A. 98-5055, 2004 WL 1221350, at *16 (E.D. Pa. June 2, 2004) ("One might argue that a fee award of 30 percent of settlements in excess of $200 is excessive given the absolute figure, approximately $60 million,

that such an award produces. The Court rejects that thinking in this case because the highly favorable settlement was attributable to the petitioners' skill and it is inappropriate to penalize them for their success."). Here, it must also be noted that this litigation was not prosecuted as a single class action with a small set of attorneys, nor even in a single jurisdiction MDL, but rather as a multi-jurisdictional action with varying degrees of coordination and disparate lead counsel, requiring the efforts of a large number of law firms, all of whom will share in the fee award. If not unprecedented in its procedural characteristics, this litigation is highly distinctive in its sprawling complexity.

Many courts analyzing the "sliding scale" approach have rejected it outright.[43] And it is in no way unusual to award one-third or more in cases with large recoveries. Rather, "there are numerous mega-fund cases with percentage awards comparable to those sought here."; Ex. 6 (Klonoff Decl. ¶ 93) (collecting cases); *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *6 ("Counsel's expert has identified 34 megafund cases with settlements of at least $100 million in which the court awarded fees of 30 percent or higher."); *In re: Checking Account Overdraft*

[43] *See, e.g.*, *In re Auto. Parts Antitrust Litig.*, No. 2:12-CV-00203, 2017 WL 3525415, at *2 (E.D. Mich. July 10, 2017) ("[T]here is no requirement that the Court necessarily apply a declining fee percentage based on the absolute dollar amount of any of the settlements at issue. The Court notes that other federal courts have also rejected the so-called 'mega fund' adjustment to fee awards based solely on the size of a settlement. Instead, consideration must be given to, among other things, the stage of the litigation when a settlement has been achieved and the labor and expense that were required to be incurred in order to achieve the settlement."); *In re FedEx Ground Package Sys., Inc., Employment Practices Litig.*, 251 F. Supp. 3d at 1239 ("our court of appeals hasn't recognized the megafund as a separate concept when determining the reasonableness of a common fund fee request."); *In re Rite Aid Corp. Securities Litig.*, 396 F.3d 294, 302-03 (3d Cir. 2005) ("[T]here is no rule that a district court must apply a declining percentage reduction in every settlement involving a sizeable fund. Put simply, the declining percentage concept does not trump the fact-intensive *Prudential/Gunter* analysis."); *Nichols*, 2005 WL 950616, at *21 ("The Court finds that reducing the percentage of recovery awarded as a fee in this case to a mean fee percentage derived from other cases without consideration of the *Gunter* factors . . . would require the Court to utilize an impermissibly formulaic approach."); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *16-17 (rejecting "sliding scale" approach); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. at 196-97 (rejecting "declining percentage method"); *Allapattah*, 454 F. Supp. 2d at 1212-13 (rejecting sliding-scale approach as "arbitrary"); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043-50, 1047 (9th Cir. 2002) (rejecting "increase-decrease rule").

Litig., 830 F. Supp. 2d at 1367 (awarding 30% fee from $410 million fund, noting that "courts nationwide have repeatedly awarded fees of 30 percent or higher in so-called 'megafund' settlements") (citing cases awarding one-third or more from recoveries ranging from $356 million to $1.075 billion); *id.* at 1366 n.38 ("National Economic Research Associates, an economic consulting firm that has conducted a survey of fee awards in class actions, found that '[r]egardless of the case size, fees average approximately 32 percent of the settlement.'") (quoting Denise N. Martin, *et al., Recent Trends IV: What Explains Filings and Settlements in Shareholder Class Actions?* at 12-13 (NERA Nov. 1996)).

C. A Lodestar Cross-Check Confirms Reasonableness of the Requested Fee.

Courts may, but are not required to, use the lodestar method to cross-check the fairness of a percentage award. *See Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999) (lodestar approach is "sometimes warranted to double-check the result of the 'percentage of the fund method"); *CompSource Oklahoma v. BNY Mellon, N.A.*, No. CIV 08-469-KEW, 2012 WL 6864701, at *8 (E.D. Okl. Oct. 25, 2012) ("A majority of circuits recognize that trial courts have the discretion to award fees based solely on a percentage of the fund approach and are not required to conduct a lodestar analysis in common fund class actions.") (citing *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012)); *In re: Checking Account Overdraft Litig.*, 2014 WL 11370115, at *15 ("In view of the excellent results obtained here, the Court deems it unnecessary to scrutinize Class Counsel's lodestar.").

Here, the Fee Request is fully supported under the percentage approach and the Court need not engage in a multiplier analysis. *See* Ex. 6 (Klonoff Decl. ¶ 102). If the Court chooses to do so, however, that analysis only confirms reasonableness.

Where performed, a lodestar cross-check "need entail neither mathematical precision nor bean counting." *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d at

999; *In re NuvaRing Prods. Liab. Litig*., 2014 WL 7271959, at *4 (same) (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 306). Even when fees are sought from the defendant under fee-shifting statutes, "trial courts need not, and indeed should not, become green-eyeshade accountants." *Fox v. Vice*, 563 U.S. 826, 838, (2011). The goal is "not to achieve auditing perfection." *Id.* Trial courts "may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time." *Id*. This is especially true when the lodestar is used as a cross-check. *See, e.g., Jackson v. Wells Fargo Bank, N.A.*, 136 F. Supp. 3d 687, 719 (W.D. Pa. 2015) ("the lodestar method is applied quite differently in common fund cases. While the lodestar method generally is the primary analysis in statutory fee-shifting cases, in common fund cases it serves only to cross-check the reasonableness of the results of a percentage-of-recovery method."); *Turner*, 472 F. Supp. 2d at 867 ("In recognition of the noted disadvantages of the lodestar method as the principle means for determining attorneys' fees, such as the taxing of judicial resources by examining every time entry and billing rate for each attorney, a lodestar analysis which is rough and more abbreviated is appropriate for a cross check"). The court may, for example, rely on summaries and declarations of counsel as to hours expended as well as blended rates.[44]

[44] Class Counsel stands ready to provide billing records for this Court's review *in camera* upon the Court's request, but it is acceptable and common for the court to rely on affidavits and summaries in performing a lodestar cross-check, especially in large, prolonged cases like this one. *See, e.g., In re Genetically Modified Rice Litig*., 764 F.3d 864, 871 (8th Cir. 2014) (district court "was permitted to rely on the summaries and affidavits presented to the court by Lead Counsel and other common benefit attorneys," which is within its discretion "especially [in large cases] . . . of prodigious proportions like this"); *In re NuvaRing Products Liab. Litig*., 2014 WL 7271959, at *4 ("a court performing a lodestar cross check need not scrutinize each time entry; reliance on representation by class counsel as to total hours may be sufficient. Furthermore, the lodestar cross-check can be simplified by use of a blended hourly rate.") (quoting *Turner*, 472 F. Supp. 2d at 867); *In re Vioxx Prod. Liab. Litig*., No. 11-1546, 2013 WL 5295707, at *3 (E.D. La. Sept. 18, 2013) ("[T]he lodestar analysis is not undertaken to calculate a specific fee, but only to provide a broad cross check on the reasonableness of the fee arrived at by the percentage method."); *In re Diet Drugs*, 582 F.3d 524, 539 (3d Cir. 2009) (rejecting objection that court should have considered individual billing records, explaining that "we have held that courts need not always engage in that time-consuming process . . . In large cases, especially one of prodigious

The attached declarations provide the factual support for the time undertaken and expenses incurred by the Kansas Common Benefit Group.[45]

The declarations, and time records offered for *in camera* review, provide detailed descriptions of the work performed and the number of hours expended by timekeepers (partners, associates, and paraprofessionals) in rendering service to the settlement classes in this case, and attest to the reasonableness of that expenditure. *See, e.g.*, Ex. 1 (Stueve Decl. ¶¶ 133-610); Ex. 2 (Powell Decl. ¶¶ 82-218); Ex. 3 (Downing Decl. ¶¶ 8-84); Ex. 4 (Chaney Decl. ¶¶ 163-319); Exs. 7, 10-47. Co-Lead Counsel have taken the further step of reviewing time records to, among other things, ensure that time submitted was in compliance with the CBO, ensure consistency of billing practices and remove unnecessary duplicative time. *See supra* Sections III.B, IV.

To calculate this lodestar, the hours expended were multiplied by a reasonable hourly rate "to produce a fee amount which can be adjusted, up or down, to reflect the individualized characteristics of a given action." *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244 (8th Cir. 1996). In assessing reasonableness of rates, it is appropriate to consider market evidence of rates for comparable firms and lawyers in comparable cases within the area in which the court

---

proportions like this, reliance on summaries is certainly within the discretion of the district court."); *Jackson*, 136 F. Supp. 3d at 716 ("Class counsel has produced timekeeping summaries and details demonstrating that a total of 1579.9 hours have been expended"); *In re Schering-Plough Corp. Enhance Sec. Litig.*, No. CIV.A. 08-2177 DMC, 2013 WL 5505744, at *33 (D.N.J. Oct. 1, 2013) (a lodestar cross-check is "not a full-blown lodestar inquiry" . . . Accordingly, the district court may rely on summaries submitted by counsel and need not review billing records.") (internal quotations and citations omitted); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *1, 15 (relying on affidavits containing time and expense summaries; "The Court emphasizes that this is only a cross-check and not a full lodestar analysis.") (citing *DiGiacomo v. Plains All American Pipeline*, Civ. No. H-99-4137, at 23 (S.D. Tex. 2001) (court "will not conduct a detailed analysis of charged hours and hourly rates" because to do so "would undermine the utility of the percentage method").

[45] Upon request by the Court, Counsel are prepared to submit more detailed records accounting for the time and efforts devoted to this litigation. Given that the litigation by certain non-producer plaintiffs continues, that this settlement is not finally approved, and that time entries contain privileged communication and mental impressions of counsel, any such submission should be made *in camera* to avoid providing Syngenta with insight into these plaintiffs' litigation strategy.

sits. *Sussman v. Patterson*, 108 F.3d 1206, 1211 (10th Cir. 1997); *Case v. Unified Sch. Dist. No. 233, Johnson County, Kan.*, 157 F.3d 1243, 1255-56 (10th Cir. 1998) (court should determine what the market commands in analogous litigation, considering evidence of "what lawyers of comparable skill and experience practicing in the area in which the litigation occurs would charge for their time.") (quoting *Ramos v. Lamm*, 713 F.2d 546, 555 (10th Cir. 1983)).[46] The performance, experience and skill of counsel should be taken into account, as well as the contingencies and complexities of the case at hand. Moreover, Plaintiffs' counsel should "be as well paid as their adversaries who did not work on a contingency basis." *In re Charter Commc'ns, Inc., Sec. Litig.*, No. 4:02-CV-1186 CAS, 2005 WL 4045741, at *17 (E.D. Mo. June 30, 2005); *see also In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *7 (finding that the "amounts at issue justified use of the best counsel charging the highest rates (just as Dow used similarly high-priced counsel in the litigation).").[47] In addition, use of current fee rates in

[46] This is not to say that a court cannot or should not consider rates outside the forum, particularly where the litigation is complex and specialized. *See Reazin v. Blue Cross & Blue Shield of Kansas, Inc.*, 663 F. Supp. 1360, 1453–54 (D. Kan. 1987) ("Where local rates are too low for the litigation at issue, the relevant community may be said to be comprised of that group of attorneys specializing in the relevant law and in complex litigation . . . If a high[er] priced, out of town attorney renders services which local attorney could do as well, and there is no other reason to have them performed by the former, then the judge, in his discretion, might allow only an hourly rate which local attorneys would have charged for the same service. On the other hand, there are undoubtedly services which a local attorney may not be willing or able to perform. The complexity and specialized nature of a case may mean that no attorney, with the required skills, is available locally. . ."); *Lucas*, 2006 WL 2729260, at *4 ("Hourly rates must reflect the prevailing market rates in the relevant community. Because of the significant resources and skill required, as well the risks entailed, to litigate large-scale actions on behalf of a class, very few attorneys handle such cases. Thus the relevant community. . .likely consists of attorneys who litigate nationwide, complex class actions."). It may be observed that MDLs do not share the homogenous aspect of class actions filed in a particular state, but rather, are a collection of cases transferred to a single forum under 28 U.S.C. § 1407 and that both plaintiffs and attorneys rendering services are from many areas across the nation, justifying consideration of national rates.

[47] Reported early-2016 hourly rates for partners at Kirkland & Ellis, Syngenta's law firm in this case, are $875-$1,445. Sara Randazzo and Jacqueline Palank, *Legal Fees Cross New Mark: $1,500 an Hour*, WALL STREET JOURNAL (Feb. 9, 2016) (available at https://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708). More recently, Kirkland's website states that in 2017, partners were billing between $930 to $1,745 per hour, Of Counsel at rates ranging from $555 to $1,745

calculating the lodestar is appropriate. *See id.* at *7 n.7 ("Because of the long delay in receiving payment for past work, the Court concludes that use of current billing rates is appropriate in conducting this lodestar cross-check.").[48]

Here, 142,823.5 common-benefit hours were expended by the Kansas Common Benefit Group alone, reflecting $81,725,060.90 in lodestar, resulting in a blended rate of $572. These hours only include time spent on common-benefit work permitted by the CBO, including the time spent prosecuting the claims of the bellwether plaintiffs and litigation classes and other time as described generally above, more specifically in the supporting declarations, and in detail in counsel's time records. Moreover, any lodestar is inherently understated because Co-Lead and Settlement Class Counsel will likely spent at least 500-1,000 hours seeking final approval, defending the Settlement from objections, and supervising claims administration and distribution of the proceeds, Ex. 1 (Stueve Decl. ¶ 668), which could be potentially higher if there are appeals. These hours include the work of 44 law firms, and, even though many or all of those firms incurred such time, it does not include time spent: advertising, soliciting, or retaining clients; communicating status updates to individual, non-bellwether, non-representative plaintiffs; or assisting plaintiffs in completing and responding to their PFS obligations for non-bellwether, non-representative plaintiffs. *Id.* at ¶ 644. As recited above, Co-Lead Counsel alone excluded nearly $8 million of their own lodestar spent on non-common benefit tasks, most

---

per hour, and associates at between $555 and $1,015 per hour. Firm News, Press Mention (Sept. 29, 2017) (available at https://www.kirkland.com/sitecontent.cfm?contentID=230&itemId=13055).

[48] *See also, e.g., Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 900 (C.D. Cal. 2016) ("District courts have the discretion to compensate plaintiff's attorneys for a delay in payment by. . .applying the attorneys' current rates to all hours billed during the course of the litigation[.]") (citation omitted); *Been*, 2011 WL 4478766, at *9 (applying current hourly rates "is properly part of a reasonable attorneys' fee because 'compensation received several years after the services were rendered. . .is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed, as would normally be the case with private billings."); *Bratcher v. Bray–Doyle Ind. Sch. Dist. No. 42*, 8 F.3d 722, 726 (10th Cir. 1993) (delay in payment may be remedied by applying current hourly rates).

prominently providing services to their individual clients. *See supra* n. 14. Furthermore, the lodestar itself has been subject to review: *first*, by the submitting firm who were obligated to confirm that its time complied with the CBO; and *second*, by Co-Lead Counsel who again re-reviewed all submitted time and expenses. *See supra* Section III.C.

The blended rate of $572 an hour, as well as the rates submitted, is par or below counterparts in private litigation,[49] and in line with rates approved within, as well as outside, this forum in other complex cases. *See* Ex. 6 (Klonoff Decl. ¶¶ 13, 109-19); Ex. 5 (Ralston Decl. ¶¶ 23-61).[50] It demonstrates that counsel used both reasonable rates in determining the lodestar and appropriately delegated tasks. The multiplier on the Kansas Common Benefit Attorneys' requested Fee Allocation of $251.67 million is 3.079, which is "not uncommon, especially for a complicated, challenging case such as this one." Ex. 6 (Klonoff Decl. ¶ 123). "Here, a

[49] Attorneys of the caliber of those in this case often have billing rates exceeding $1,000 per hour. *See* Vanessa O'Connell, *Big Law's $1,000-Plus and Hour Club*, WALL STREET JOURNAL, (Feb. 23, 2011) (available at http://www.wsj.com/articles/ SB10001424052748704071304576160362028728234); Sara Randazzo and Jacqueline Palank, *Legal Fees Cross New Mark: $1,500 an Hour*, WALL STREET JOURNAL (Feb. 9, 2016) (available at https://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708). The rates are reasonable even if only the locale of the litigation is considered. Ex. 5 (Ralston Decl. ¶ 61); Ex. 6 (Klonoff Decl. ¶ 110).

[50] In the *Urethane* case, using 2016 rates, the blended rate of the unadjusted lodestar was approximately $518/ hour. *In re: Urethane Antitrust Litig.*, No. 04-1616-JWL, 2016 WL 4060156, at *7 (D. Kan. July 29, 2016) ("According to billing records provided *in camera* to the Court, counsel expended over 193,000 hours in this litigation, which, at current rates, yields a total lodestar amount of approximately $100 million."). As the Court observed, "the amounts at issue justified use of the best counsel charging the highest rates." *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *7. That is no less true here. The rate here is very reasonable as illustrated by decisions approving comparable or higher rates in cases of similar or less complexity even several years ago. *See, e.g., In re Bank of Am. Wage & Hour Employment Litig.*, No. 10-MD-2138-JWL, 2013 WL 6670602, at *3 (D. Kan. Dec. 18, 2013) (Lungstrum, J.) (finding blended hourly rate of $488 in FSLA case reasonable); *Roeser v. Best Buy Co.*, No. CIV. 13-1968 JRT/HB, 2015 WL 4094052, at *12 (D. Minn. July 7, 2015) (finding rates of $775 and $880 reasonable accounting "the high-quality work performed by counsel, and the typically higher compensation rates approved for class counsel, in approving these hourly rates."); *In re Genetically Modified Rice Litig.*, No. 4:06MD1811 CDP, 2012 WL 6085141 (E.D. Mo. Dec. 6, 2012), *aff'd*, 764 F.3d 864 (8th Cir. 2014) (approving hourly rates ranging from $375-$865 for partners and $175-$450 for associates as fair and reasonable); *In re Zurn Pex Plumbing Products Liab. Litig.*, No. 08-MDL-1958 ADM/AJB, 2013 WL 716460, at *5 (D. Minn. Feb. 27, 2013) (collecting cases approving rates of $500-$800 per hour); *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 657 (E.D. Pa. 2015) (finding rates ranging from $315 to $800 reasonable).

multiplier of 3.079 [for Kansas Common Benefit Attorneys] is well justified under the case law because class counsel took on a challenging, risky case with extremely complex legal and factual issues, prosecuted it skillfully over the course of several years without assistance from any official investigation, obtained class certification despite Syngenta's opposition, conducted a complete trial that resulted in an impressive $217.7 million jury verdict, and obtained a superb $1.51 billion settlement for the class." *Id.* at ¶ 125.

In addition, Minnesota Lead Counsel reports that their filing will describe over $41 million in lodestar performing additional work pursuant to the Minnesota Court's CBO. Collectively, then, the combined common-benefit lodestar of these two jurisdictions alone is over $122.7 million. That does not include: any of the time spent by Illinois Lead Counsel in Illinois or the state ethanol cases; nor, any other fee applications that the Court may consider. Thus, while the multiplier for the entire one-third fee is presently only slightly higher than four (4.1), it will undoubtedly be lower than that in the final analysis. In any event, that multiplier itself is reasonable. *See id.* at ¶ 124 (table showing 14 cases where multiplier, in $100 million+ settlements, was greater than 4.16, *none of which went to trial*).

Importantly, a "multiplier need not fall within any pre-defined range, so long as the court's analysis justifies the award, such as when the multiplier is in line with multipliers used in other cases." *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d at 999. Either multiplier here is well within the range of those applied in comparable cases. *See* Newberg on Class Actions § 14:6 (4th ed. & Supp. June 2008) ("Multiples ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied. A large common fund award may warrant an even larger multiple."); *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *7 (noting that even were the Court to reduce the lodestar, increasing the

multiplier to 4 or 5, that multiplier "would fall within the range of multipliers accepted by a number courts in megafund cases").[51] The multiplier here is well within typical range, is supported by applicable factors, and is reasonable. The lodestar cross-check confirms that the amount requested should be approved.

II. THE EXPENSE REQUEST FOR THE KANSAS COMMON BENEFIT GROUP SHOULD BE GRANTED.

"Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit by the settlement." *Yarrington*, 697 F. Supp. 2d at 1067 (quotations omitted). The appropriate analysis is whether the particular costs are the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (allowing recovery of "out-of-pocket expenses that 'would normally be charged to a fee paying client'").

Co-Lead Counsel, on behalf of the Kansas Common Benefit Group, seeks reimbursement of costs and expenses reported under the CBO totaling $6,695,350.05. Each firm has been required to submit a declaration attesting to the accuracy and reasonableness of these expenses.

[51] *See, e.g., In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d at 999 (collecting cases and approving 4.7 multiplier as reasonable); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587 (E.D. Pa. 2005) (approving award representing multiplier of 6.96); *Sewell v. Bovis Lend Lease, Inc*., No. 09 CIV. 6548 RLE, 2012 WL 1320124, at *13 (S.D.N.Y. Apr. 16, 2012); ("Courts commonly award lodestar multipliers between two and six"); *Steiner v. Am. Broad. Co., Inc.*, 248 F. Appx. 780, 783 (9th Cir. 2007) (6.85 multiplier "falls well within the range of multipliers that courts have allowed."); *Roberts v. Texaco, Inc*., 979 F. Supp. 185, 197 (S.D.N.Y. 1997) (multiplier of 5.5). The range of multipliers in "mega-fund" cases is similar. *See, e.g., Vizcaino*, 290 F.3d at 1050-51 & n.6 (approving 3.65 multiplier from $96.9 million settlement fund, and noting standard 1-4 multiplier range); *In re Credit Default Swaps Antitrust Litig.*, No. 1:13-md-02476-DLC, 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) ($253.8 million fee and multiplier "just over 6" multiplier); *In re Enron Corp.*, 586 F. Supp. 2d 732, 799-803 (S.D. Tex. 2008) (5.2 multiplier and $688 million fee award; collecting cases); *In re Charter Commc'ns, Inc., Sec. Litig.*, 2005 WL 4045741, at *18 (settlement fund of $146,250,000; approving multiplier of 5.61, which "falls within the range of multipliers found reasonable for cross-check purposes by courts in other similar actions, and is fully justified here given the effort required, the hurdles faced and overcome, and the results achieved."); *Deloach v. Philip Morris Companies*, No. 1:00CV01235, 2003 WL 23094907, at *1 (M.D.N.C. Dec. 19, 2003) (>$1 billion fund; 4.45 multiplier).

See supra Section III.C. Each expense was categorized pursuant to the categories outlined in the CBO. Here is a summary of the expenses by category:

Expense Category	Total Expenses
Federal Express / Local Courier	$25,713.95
Postage Charges	$1,807.54
Facsimile Charges	$48.00
Long Distance Calls	$31,359.11
In-House Photocopying	$99,144.89
Outside Photocopying	$187,185.79
Hotels	$559,548.83
Meals	$148,438.47
Mileage	$28,793.07
Air Travel	$387,787.08
Deposition Costs	$62,319.31
Lexis/Westlaw/Bloomberg	$555,248.82
Witness and Expert Expenses	$423,794.32
Court Fees	$7,629.22
Service of Process Fees	$9,485.11
Hearing and Trial Transcripts	$180.90
Ground Transportation	$94,272.26
Miscellaneous	$169,395.38
Litigation Fund Assessment	$3,800,000.00[52]
Litigation Class Certification Notice	$103,195.00
TOTAL	**$6,592,152.05**

Ex. 1 (Stueve Decl. ¶ 643). These are the type of expenses routinely charged to hourly clients, are appropriately documented, and were necessary and reasonable to prosecute the litigation. The full requested amount should be reimbursed. *See* Ex. 6 (Klonoff ¶¶ 132-34).

In addition, for the same reasons, Subclass Counsel should be reimbursed their modest expenses in the following amounts as detailed in their supporting declarations. Ex. 48 (Chechi

[52] Litigation fund assessments were levied by Co-Lead Counsel throughout the litigation to firms in the Kansas Common Benefit Group, and these funds were used by Co-Lead Counsel to pay for additional costs not included in the above table: the non-travel related costs of depositions ($382,022.20); ESI expenses, including the costs of the MDL Document Database ($294,591.27); the MDL's share of the Special Master expenses ($299,807.06); court transcripts ($17,382.25); experts ($1,546,672.02); translation services ($46,997.61); subpoena costs pursuant to Rule 45 ($306,391.11); trial consultants ($306,039.11); trial expenses ($188,298.88); additional litigation class notice charges ($363,042.46); FSA information for settlement ($48,412.34); and bank charges for the litigation fund ($342.82). Ex. 1 (Stueve Decl. ¶ 652).

Decl. ¶¶ 27-28) ($15,046.20, which is almost exclusively related to expert costs); Ex. 49 (Wexler Decl. ¶ 20) ($5,621.16); Ex. 50 (Johnson Decl. ¶ 11) ($4,910.16).

III. KANSAS COMMON BENEFIT ATTORNEYS SHOULD BE ALLOCATED 50% OF THE ONE-THIRD FEE AWARD.

Lead Counsel in Kansas, Minnesota,[53] and Illinois[54] have agreed to submit to the Court a proposed allocation among their various groups (50/12.5/17%) that reserves up to 20% of the total fee – approximately $100.7 million – for other potential fee claimants. This Fee-Sharing Agreement, discussed *supra* Section II.C, was reached following extensive mediations with the Court-appointed Special Master. Pursuant to that agreement, Co-Lead Counsel and Seeger requests 50% of the $503.3 million to disburse consistent with the Court's orders to the Kansas Common Benefit Group (approx. $251.67 million)[55] *See infra* at Section III.A. With respect to the 20% unallocated by the Fee-Sharing Agreement, Co-Lead Counsel and Seeger propose that this amount be distributed as follows: *first*, Subclass Counsel for the Viptera/Duracade Purchaser, Grain Elevator, and Ethanol Subclasses be compensated from this percentage based on their lodestar of $256,670, with a 1.5 multiplier for their efforts representing the subclasses during settlement negotiations, for a total fee of $388,055; *second*, the remainder of $100.7

[53] Attorneys in the Minnesota MDL Group include: Daniel E. Gustafson (Gustafson Gluek PLLC); Lewis A. Remele, Jr. (Bassford Remele); William R. Sieben (Schwebel Goetz & Sieben, P.A.); Richard M. Paul, III (Paul Mclnnes LLP and Paul LLP); Will Kemp (Kemp, Jones & Coulthard, LLP); Tyler Hudson (Wagstaff & Cartmell, LLP); Robert K. Shelquist (Lockridge Grindal Nauen); Paul Byrd (Paul Byrd Law firm PLLC); and Referring Counsel.

[54] Attorneys in the Clark Group ("Illinois Group") include: Clayton A. Clark (Clark, Love & Hutson, GP); Peter J. Flowers (Meyers & Flowers) and Martin J. Phipps (Phipps Anderson Deacon LLP), as well as Referring Counsel, co-counsel and / or joint venture partners.

[55] Attorneys in the Federal Kansas Common Benefit Group include the 44 law firms who performed and reported common-benefit work at the direction and with the approval of Co-Lead Counsel in the MDL and are listed in the Declaration of Patrick J. Stueve at ¶ 644. If a law firm performed common-benefit work in both Minnesota and the MDL, it is the intent and agreement of the Fee-Sharing Agreement that work be reported once and that work performed in the MDL at the direction of Co-Lead Counsel be paid from the MDL Allocation and that work performed in Minnesota at the direction of Minnesota Lead Counsel be paid from the MN Allocation.

million amount be used to make any other fee awards that the Court deems appropriate consistent with governing principles upon a timely submission by other counsel under the Settlement Agreement and the Court's scheduling order; and, *third*, that any portion not awarded to other counsel be re-distributed in accordance with the *Johnson* factors.

Furthermore, the undersigned requests that the Court implement the following procedure with respect to allocation of the Fee and Expense Award, consistent with the Fee-Sharing Agreement (Ex. 8 at n.3-4): *first*, that Co-Lead Counsel be assigned and authorized to allocate the MDL Allocation among the Federal Kansas Common Benefit Group with proposed deadlines for any objections; *second*, that Daniel E. Gustafson and Lew Remele be assigned and authorized to allocate the MN Allocation among the Minnesota Common Benefit Group; and, *third* that Clayton A. Clark be assigned and authorized to allocate the IL Allocation among the Illinois Group. Their roles steering the litigation in their respective jurisdictions uniquely qualify them make these determinations in a fair and equitable manner.

A. The MDL Allocation to the Federal Kansas Common Benefit Group is Easily Fair and Equitable under the *Johnson* Factors.

Awarding the 50% MDL Allocation to the 44 firms in the Kansas Common Benefit Group is easily equitable under the facts here. First, as between Minnesota and Illinois Lead Counsel, it reflects an arms-length agreement reached through the efforts of the Special Master and Judge Stack. Thus, the agreement should be afforded and given weight by the Court. Ex. 1 (Stueve Decl. ¶¶ 611-13); Ex. 6 (Klonoff Decl. ¶¶ 129-31). Second, as between the 44 firms in the Kansas Common Benefit Group – including Co-Lead Counsel and Seeger – and *any* other attorneys who file a fee application, the MDL Allocation reflects the fact that the MDL attorneys took the lead, plowed the ground on most aspects of the litigation, led the settlement negotiation

committee, and obtained the $217.7 million jury verdict. This work, and the results achieved because of it, represents at least half the benefits conferred on the Class.

Furthermore, if the Court awards one-third of the $1.51 billion, as requested, the MDL Allocation would be only 16.67% of the settlement fund. That percentage is well below other awards in comparable cases, and is more than supported by all the *Johnson* factors as detailed herein. *Supra* Section II.B.8; *see* Ex. 6 (Klonoff Decl. ¶ 94). From an allocation standpoint, lawyers in the federal MDL performed a substantial share of services, and created the benefits, on behalf of the Class.

Out of the gate, the MDL lawyers went first. They supported remand of state-court cases under the doctrine of foreign relations, paving the way for the state litigation. *See supra* Section I.D. By May and August 2015 – when the first related actions (in Minnesota) were consolidated and leadership appointed, respectively, the Kansas Common Benefit Group had: negotiated a procedure for consolidated pleadings and Notices to Conform (ECF No. 287); obtained and reviewed initial discovery in the form of *Bunge* litigation documents, regulatory filings, and stewardship agreements (ECF No. 123); filed initial and amended Master Complaints (ECF Nos. 296, 297, 450, 451); negotiated with Syngenta and received Court entry of an ESI protocol (ECF No. 327), preservation order (ECF No. 369), and protective order (ECF No. 294); submitted discovery disputes over the scope of Syngenta's discovery to putative class representatives (ECF No. 945); and, perhaps most importantly, prepared and filed their lengthy and largely successful opposition to Syngenta's motion to dismiss (ECF No. 927). Thus, the Kansas Common Benefits Group's work, which took several months to accomplish, was available to everyone in the related jurisdictions, allowing them to catch up, avoid duplication, and accelerate their discovery schedule to match the MDL.

Co-Lead Counsel and the Kansas Common Benefit Group continued to press forward by developing the cases for trial, including *inter alia*: (1) establishing the initial bellwether process; (2) propounding initial sets of written discovery to Syngenta; (3) negotiating search terms with Syngenta for the production of documents; (4) setting up the shared MDL Document Depository; (5) organizing, administering and conducting the 2.5 million-page document review; (6) subpoenaing and negotiating with the third-party witnesses; (7) taking the lead in scheduling and in questioning all 32 Syngenta witnesses, including those critical to the case and those played in the Kansas and Minnesota trials; (8) taking a leading role in the deposition of the Cargill, ADM and other third-party witnesses; (9) locating and developing the experts used to obtain class certification; (10) briefing class certification, which they shared with Minnesota; (11) locating and developing the experts designated and/or used at both the Kansas and Minnesota class trials; (12) deposing and developing cross-examination of Syngenta's experts; (13) preparing and sharing the motions to strike Syngenta's experts and the oppositions to Syngenta's motions to strike Plaintiffs' experts; (14) successfully obtaining an order compelling production of documents that led to the withdrawal of Syngenta's standard-of-care expert; and, (15) trying the first and only case to a verdict, resulting in the $217.7 million Kansas judgment, reflecting full compensatory damages. *See supra* Section I. Co-Lead Counsel also provided assistance to Lead Counsel in Minnesota with the Minnesota class trial, including preparing the damages experts to testify. *See* Ex. 3 (Downing Decl. ¶ 64); Ex. 1 (Stueve Decl. ¶¶ 575-77).

Reflective of the amount of time expended in the MDL, the MDL also involved a larger bellwether pool than other jurisdictions, including 69 producer plaintiffs, and it involved eight certified classes. *See supra* Section II, III.B. Prosecution of these cases placed immense and immediate settlement pressure on Syngenta due to: counsel's successful efforts in obtaining class

certification, the successful result in the Kansas trial, and Syngenta's potential exposure in further 2018 trials, for which Co-Lead Counsel was already preparing for. *See* Ex. 1 (Stueve Decl. ¶ 578); Ex. 2 (Powell Decl. ¶¶ 205-07); Ex. 3 (Downing Decl. ¶ 68); Ex. 4 (Chaney Decl. ¶ 302). Following on the heels of the June 2017 Kansas class trial, the Court originally set four additional class trials, comprised of seven additional state classes, to begin on January 22, 2018, April 4, 2018, May 14, 2018 and October 8, 2018. ECF No. 3319. Thus, Syngenta faced, in the MDL and against counsel with a proven trial result, multiple class trials with substantial exposure in 2018. Moreover, Co-Lead Counsel filed a motion to certify the remaining 13 state-law classes, covering the vast majority of corn produced in the U.S., to ensure that Syngenta, if it continued forward with litigation, would face class trials through 2019 and beyond. *See*, *supra*, Section I.I. In measuring responsibility for "results achieved," *e.g.*, the $1.5 billion settlement, both past results and ongoing pressure in the MDL speak for themselves.

Co-Lead Counsel and the Kansas Common Benefit Group were also the first to brief the key legal issues in the case, identifying the precedent and making the arguments that would prove persuasive throughout the litigation. This included responding to Syngenta's Rule 12(b)(6) motion to dismiss and presenting oral argument on that motion. ECF No. 927. They obtained the initial orders on most or all of the key rulings, including the motion to dismiss, class certification, and summary judgment. *See supra* Section I.D, I.F. This Court's rulings were often cited to approvingly by the other judges. *Id.* at Section II.B.

Pursuant to the Coordination Order and agreements between the Kansas attorneys and Minnesota attorneys, the Kansas Common Benefit Group's work product was made available to attorneys in the Minnesota jurisdiction. This included the MDL Document Database and, often, drafts of briefs and papers, including the motion and reply in support of class certification, the

motion for partial summary judgment, and the *Daubert* motions against Syngenta's experts. And, the work done with the following experts, including their reports, were shared: Dr. Colin Carter; Dr. Bruce Babcock; Dr. Randall Giroux; Dr. Joe Keaschall; Mr. Kevin Latner; and, Dr. Dirk Maier. *See* Ex. 1 (Stueve Decl. ¶¶ 448, 455, 467)

One of the four Co-Leads, or in rare instances a lawyer from their firm or another EC firm, took the lead in questioning Syngenta witnesses at their deposition. *See supra* Section I.B.1. Normally, the Co-Lead taking the deposition would share their deposition outline with the other plaintiffs' attorneys in advance of the deposition, to the extent they wished to question the witness, to avoid non-duplicative questions. Ex. 3 (Downing Decl. ¶ 33). Experts in the MDL were made available to Minnesota plaintiffs pursuant to an expert sharing agreement. *Id*. at ¶ 45.

In addition, it was counsel in the Kansas MDL group who secured the first and only jury verdict against Syngenta. It was by their efforts that Syngenta's risk before a jury was brought home. *See, e.g., In re Copley Pharm., Inc., Albuterol Products Liab. Litig.*, 50 F. Supp. 2d 1141, 1153 (D. Wyo. 1999) ("the Court must remember that this case, unlike other MDL cases, settled only after it went to trial and the Court has accorded great weight to trial counsel for this effort."). A 16.667% aggregate fee to this group, which led the litigation, is well supported by all relevant *Johnson* factors.

Co-Lead Counsel also request that they be assigned the task of allocating the total award to the Kansas Common Benefit Group. "Ideally, allocation is a private matter to be handled among class counsel." *In re Copley Pharm., Inc., Albuterol Products Liab. Litig.*, 50 F. Supp. 2d 1141, 1148 (D. Wyo. 1999) (quoting *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 357 (N.D. Ga. 1993)). It is sensible to adopt such a procedure as, among other things, "[l]ead [c]ounsel, like the Court as the presiding jurist, [is] in a unique position to weigh the

contributions to the litigation." *Id.* at 1149.[56] It is common practice that lead counsel undertake such allocation. *See, e.g.*, Manual for Complex Litigation 4th §14.221 ("Lead counsel can be made responsible for overseeing [multiple fee submissions]"); *In re: Urethane Antitrust Litig.*, No. 04-1616-JWL, 2008 WL 696244, at *2 (D. Kan. Mar. 13, 2008) (Lungstrum, J.) (co-lead counsel to allocate fee award).[57]

Co-Lead Counsel have been directly involved in the litigation since its inception, have personally conducted, assigned, and overseen all work within the group, and have intimate familiarity therewith. Thus, it is the most efficient means to proceed that once the Fee Award is entered, Co-Lead Counsel undertake the allocation. Co-Lead Counsel request leave to do so, and will, as directed in *Urethane*, allocate the award "in a manner that, in Co-Lead Counsel's good-faith judgment, reflects each plaintiffs' counsel's contribution to the institution, prosecution and resolution of the litigation against Defendants." *In re: Urethane Antitrust Litig.*, 2008 WL 696244, at *2. Co-Lead Counsel further propose that any objections to the allocation, along with the reasons therefore, be filed with the Court not later than ten (10) days after the firm receives

[56] *See also Victor v. Argent Classic Convertible Arbitrage Fund L.P.*, 623 F.3d 82 (2d Cir. 2010) ("Since lead counsel is typically well-positioned to weigh the relative merit of other counsel's contributions, it is neither unusual nor inappropriate for courts to consider lead counsel's proposed allocation"); *In re Initial Pub. Offering Sec. Litig.*, No. 21 MC 92 SAS, 2011 WL 2732563, at *7–8 (S.D.N.Y. July 8, 2011) ("Lead counsel is best positioned to gauge the relative contributions of each firm because, by assuming nearly every task litigation could require . . . the EC is intimately aware of the distribution of responsibility and work that ultimately led to final approval of the settlement."); *In re Vitamin Cases*, No. 301803, 2004 WL 5137597, at *8 (Cal. Super. Ct. Apr. 12, 2004) ("Federal courts nationwide have recognized that lead counsel are generally better suited than the trial court to decide the weight and merit of the relative contributions made by those performing common benefit work-particularly in cases such as this litigation where many attorneys performed thousands of hours of widely varying professional services outside the direct observation of the Court and under the overall supervision of lead counsel.") (citing cases).

[57] *Longden v. Sunderman*, 979 F.2d 1095, 1101 (5th Cir. 1992) ("The district court acted well within its discretion in awarding an aggregate sum to the Susman Attorneys that was based on their collective efforts, leaving apportionment of that sum up to the Susman Attorneys themselves"); *Turner*, 472 F. Supp. 2d at 869-70 ("The Court will leave the apportionment of this award up to the PSC attorneys themselves.").

written notice of the allocation, with Co-Lead Counsel's response due no later than fourteen (14) days thereafter, with a hearing should the Court deem it necessary.

B. The Court Should Award Subclass Counsel Attorneys' Fees and Expenses from the Remaining 20%.

If the Court follows this proposal and the Fee-Sharing Agreement, 20% of the Fee Request remains. As an initial matter, Subclass Counsel has performed work representing the interests of the subclass members in negotiating the allocation of amounts in the Settlement Agreement. Their fee request should be paid from this remaining 20%. The amounts requested are: $209,520 to Carella Byrne; $95,835 to Wexler Wallace; and, $82,650 to Shamberg Johnson, which reflects a modest multiplier of 1.5 of their lodestar representing the subclasses. Their efforts are detailed in their declarations, attached hereto as Exhibits 48-50. Moreover, $388,005 reflects a small portion of the $72 million they negotiated for their subclasses. *See* ECF No. 3507-2 at 25-26.

The undersigned understand that the Special Master may make a recommendation as to allocation of the remainder of the 20%, and others have or will request fees pursuant to their own applications. If the Court determines that some or all of a global award is not appropriately awarded to applicants under common-benefit principles, then respectfully, Co-Lead Counsel recommend that such amount be awarded, as appropriate, to lawyers whose services were of demonstrable class benefit (including those in the Kansas MDL Group) based on application of the *Johnson* factors. Co-Lead Counsel reserve the right to modify their recommendations upon review of the other fee applications.

IV. SERVICE AWARDS FOR CLASS REPRESENTATIVE AND BELLWETHER PLAINTIFFS ARE WELL DESERVED.

"At the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class." 5 *Newberg on Class Actions* § 17:1 (5th ed.

2015). Serving in a representative capacity is a burdensome task and, without plaintiffs willing to undertake that task, the entire class would receive nothing. Service awards thus "aim to compensate class representatives for their service to the class and simultaneously serve to incentivize them to perform this function." *Id*. at § 17:3.[58]

When considering the appropriateness of a service award, the Court may consider: (1) the actions the representative took to protect the interests of the class; (2) the degree to which the class benefitted from those actions; and (3) the amount of time and effort the representative expended in pursuing the litigation. *Tuten v. United Airlines, Inc*., 41 F. Supp. 3d 1003, 1010 (D. Colo. 2014). "Incentive awards serve an important function, particularly where the named plaintiffs participated actively in the litigation." *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1218.[59]

---

[58] *See also UFCW Local 880-Retail Food Employers Joint Pension Fund v. Newmont Min. Corp.*, 352 F. App'x 232, 235 (10th Cir. 2009) ("a class representative may be entitled to an award for. . .additional effort and expertise provided for the benefit of the class."); *In re: Checking Account Overdraft Litig*., No. 1:09-MD-02036-JLK, 2014 WL 12557836, at *9–10 (S.D. Fla. Apr. 1, 2014) ("[T]here is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action . . . Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become class representatives.") (internal quotations and citation omitted); *Asare v. Change Group of New York, Inc.*, No. 12 Civ. 3371(CM), 2013 WL 6144764, at *14 (S.D.N.Y. Nov. 18, 2013) ("Courts acknowledge that class representatives play a crucial role in bringing justice to those who would otherwise be hidden from judicial scrutiny."); *Yarrington*, 697 F. Supp. 2d at 1068 (service awards "promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits.").

[59] *See also id.* at 1218 ("[c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." (quoting *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D.Ga. 2001)) (citing *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) ($25,000 to named plaintiff); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002) ("Incentive awards are not uncommon in class action litigation and particularly where . . . a common fund has been created for the benefit of the entire class. . .In fact, [c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation") (internal quotations and citation omitted); *Godshall v. Franklin Mint Co.*, No. 01-CV-6539, 2004 WL 2745890, at *6 (E.D. Pa. Dec. 1, 2004) ($20,000 to each named plaintiff); *In re Linerboard Antitrust Litig.*, CIV.A. 98-5055, 2004 WL 1221350, at *18-19 (E.D. Pa. June 2, 2004) ($25,000 for each of the five class representatives); *Tenuto v. Transworld Sys.*, No. CIV. A. 99–4228, 2002 WL 188569, at *4-5 (E.D. Pa. Jan.31, 2002) (award of $2,000); *Dornberger v. Metropolitan Life*

Here, there are four categories of plaintiffs (all class representatives and/or bellwether plaintiffs) for whom awards are warranted for their time, effort and service: (1) those who participated in written discovery beyond plaintiff fact sheets; (2) those who participated in more extensive written discovery and also were deposed; (3) those who participated in this more extensive written discovery, were deposed, and also testified at trial; and, (4) subclass representatives who assisted in negotiating subclass caps. In recognition of these levels of service, Settlement Class Counsel request $5,000 for each plaintiff or plaintiff group in the first category; $15,000 for each plaintiff or plaintiff group in the second category; and $100,000 for the trial plaintiffs in the third category.[60] *See In re Dun & Bradstreet Credit Services Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) ("a differentiation among class representatives based upon the role each played may be proper in given circumstances."). Subclass counsel additionally requests $2,500 to each subclass representative. Appendix A contains a chart, by category and citation to supporting evidence, for each such plaintiff.

All these plaintiffs were named in complaints filed against Syngenta. Some were among the earliest filed.[61] Some became class representatives named in the master complaint and some

---

Ins. Co., 203 F.R.D. 118, 124-125 (S.D.N.Y. 2001) (award of $10,000 for lead plaintiff and $1,500 for eight sub-class representatives); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) ("courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation."); *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403, 449 (S.D. Tex. 1999) (granting awards of between $1,000 and $10,000); *In re Residential Doors Antitrust Litig.*, No. 94–3744, 1998 WL 151804, at *11 (E.D. Pa. Apr. 2, 1998) ($10,000 to each of the four class representatives); *In re Plastic Tableware Antitrust Litig.*, No. 94-CV-3564, 1995 WL 723175, at *2 (E.D. Pa. Dec.4, 1995) (award of $3,000); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 357 (N.D.Ga. 1993) (award of $2,000 to plaintiffs who produced documents and $5,000 to plaintiffs that were also deposed).

[60] Plaintiffs who farm under common ownership/management and/or whose participation was handled primarily by one representative are treated as a single plaintiff group for purposes of the service award request.

[61] *See Hadden Farms Inc. v. Syngenta Corporation et al.*, No. 3:14-cv-03302 (C.D. Ill.) (filed 10/03/14); *Cronin, Inc., et al. v. Syngenta Corporation et al.*, No. 5:14-cv-04084 (N.D. Iowa) (filed 10/03/14); *Claas, et al. v. Syngenta Corporation et al.*, No. 2:14-cv-04267 (W.D. Mo) (filed 10/03/14);

agreed to be bellwether plaintiffs representing the class of plaintiffs from their home state at trial. All have made themselves available regularly for any necessary communications with counsel, participated substantially in the litigation and contributed to its success.

A. Category 1 Plaintiffs Should Each Be Awarded $5,000.

The first category of plaintiffs went beyond the effort of responding to a plaintiff fact sheet; each was required to work with an attorney to respond to, locate, and produce documents responsive to at least Syngenta's First Request for Production. These plaintiffs were putative class representatives outside of the eight bellwether states subject to Scheduling Order No. 2, and who moved for class certification on September 15, 2017. *See* ECF Nos. 1098, 3432. Syngenta served requests on these plaintiffs on August 17, 2015, ECF No. 955 (Notice of Service), which contained 27 categories of requested documents. *See* Ex. 1 (Stueve Decl. ¶ 281). The requests came during harvest season, when many farmers were already working 15-20 hour days in the field, and sought extensive documents respecting numerous details of each plaintiff's farming operation over a significant time period. *Id.* at ¶¶ 281, 283, citing Req. Nos. 1-8, 10-14. Included were requests for sensitive financial information. *Id.* at ¶ 282, citing Req. No. 24. As to these, as well as other document requests, farmers not only had to search their own records, but often were required to obtain documents held by third parties (for example, sales contracts and settlement sheets reflecting sales of corn and other crops, seed purchase documents, crop

---

Volnek Farms, Inc. v. Syngenta Corporation, et al., No. 8:14-cv-00305 (D. Neb.) (filed 10/03/14); *Graham v. Syngenta AG et al.*, No. 4:14-cv-00428 (S.D. Iowa) (filed 10/27/14); *Hamilton v. Syngenta Corporation et al.*, No. 8:14-cv-00345 (D. Neb.) (filed 11/03/14); *Five Star Farms, et al. v. Syngenta AG et al.*, No. 2:14-cv-02571 (D. Kan) (filed 11/11/14); *Wilson Farm Inc., et al. v. Syngenta AG et al.*, No. 4:14-cv-01908 (E.D. Mo.) (filed 11/11/14); *Gilbert Jones & Sons Farm LLC v. Syngenta Corporation et al.*, No. 14-cv-14384 (E.D. Mich.) (filed 11/14/14).

insurance records, FSA records, and accounting records). Ex. 2 (Powell Decl. ¶¶ 123, 131). The requested award is at or below what courts typically approve.[62]

B. Category 2 Plaintiffs Should Each Be Awarded $15,000.

The second category is comprised of the class representative and bellwether plaintiffs subject to Scheduling Order No. 2. They completed fact discovery by: providing extensive written responses to three sets of interrogatories, answering 98 requests for admission, producing documents to two sets of requests for production, and being deposed. *See* Ex. 2 (Powell Decl. ¶¶ 136-45) (detailing these discovery efforts).

In Syngenta's Second Request for Production directed to these plaintiffs, Syngenta sought 70 categories of documents, many again seeking extensive information over multi-year time periods. *See, e.g.* Ex. 1 (Stueve Decl. ¶ 284), citing Req. No. 8, 9, 10, 11, 29. Again, these requests sought detailed information pertaining to plaintiff's farming operations, as well as information pertaining to categories of argument Syngenta had and/or planned to make. *See, e.g.*, *id.* at ¶ 286, citing Req. Nos. 62, 63, 64. Again, the Requests sought sensitive financial

[62] *See, e.g., In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) ($5,000 award to each class representative "was relatively small, well within the usual norms of "modest compensation" paid to class representatives for services performed in the class action"); *Thompson v. Qwest Corp.*, No. 17-CV-1745-WJM-KMT, 2018 WL 2183988, at *3 (D. Colo. May 11, 2018) (awarding $5,000 and noting it to be "on the lower end of awards deemed reasonable."); *In re Linkedin User Privacy Litig.*, 309 F.R.D. 573, 592 (N.D. Cal. 2015) (awarding $5,000 as "presumptively reasonable" in district although no written discovery was served on class representative, she did not need to respond to any discovery, she was not deposed, and she did not attend any court hearing or settlement conference); *McDaniels v. Westlake Services, LLC*, No. CIV.A. ELH-11-1837, 2014 WL 556288, at *12 (D. Md. Feb. 7, 2014) ($5,000 incentive award approved as "both reasonable and within the range approved by this and other courts"); *Larey v. Allstate Prop. & Cas. Ins. Co.*, No. 4:14-CV-4008, 2018 WL 811103, at *5 (W.D. Ark. Feb. 9, 2018) ($5,000 service award to each class representative); *deMunecas v. Bold Food, LLC*, No. 09 CIV. 00440 DAB, 2010 WL 3322580, at *10 (S.D.N.Y. Aug. 23, 2010) (same); *Gray v. Talking Phone Book*, No. 8:08-CV-01833-GRA, 2012 WL 12978113, at *11 (D.S.C. Aug. 13, 2012) (same); *Risch v. Natoli Eng'g Co., LLC*, No. 4:11CV1621 AGF, 2012 WL 4357953, at *3 (E.D. Mo. Sept. 24, 2012) (same); *In re Checking Acct. Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2014 WL 12557836, at *10 (S.D. Fla. Apr. 1, 2014) (same); *Accounting Outsourcing, L.L.C. v. Verizon Wireless Pers. Comms., L.P.*, No. CIV.A. 03-CV-161, 2007 WL 7087615, at *3 (M.D. La. Aug. 2, 2007) (same).

information. *See* Ex. 1 (Stueve Decl. ¶ 285), citing Req. Nos. 9-10. Again, these plaintiffs expended significant effort collecting documents, many times requiring communications and/or travel to third parties. *See* Ex. 2 (Powell Decl. ¶¶ 121, 123-24, 131); Ex. 1 (Stueve Decl. ¶¶ 300-01, 312-13, 325-26, 337-38, 349-50, 358-59, 367-68, 377-78, 386-87, 395-96). Documents from these plaintiffs were used in combatting Syngenta's arguments against class certification. *See* ECF No. 2436 at 2, 30-41 & Appx. C, D, E.[63]

They also responded to three sets of interrogatories. Ex. 1 (Stueve Decl. ¶¶ 280, 287, 289). The first set from Syngenta Corporation sought 15 categories of information, primarily directed to the factual basis for various allegations in the complaint and arguments Syngenta had and/or planned to make. *Id.* at ¶ 287. The set from Syngenta Crop Protection contained 20 categories, all seeking detailed information (including financial and insurance information) about the plaintiff's farming operations.[64] And the set from Syngenta AG sought 21 categories of

[63] In opposing Syngenta's arguments about ascertainability/feasibility of identifying class members, Producer Plaintiffs were able to point to not only documents produced by particular plaintiffs, but the quantity of discovery from plaintiffs overall. *See id.* at 39-40 ("Syngenta goes into great detail about what certain records do or do not show or what records have or have not been produced, but its silence about what *has* been produced is deafening. . .Syngenta has had the benefit of an extraordinary amount of discovery from putative class members. In all that evidence, Syngenta did not point to even one MDL producer without proof to establish class membership.").

[64] This requested information included: (1) storage capacity and volume of corn stored from 2013 to present; (2) corn sales made from storage (by volume, storage location, corn variety, and price received) from 2013 to present; (3) any revenue protection crop insurance; (4) other risk-based insurance from 2010 to present as to corn crops or farming operations generally (including level of such insurance, claims filed and paid and dates thereof); (5) any government subsidy programs or revenue protection enrollment; (6) all government payments received from 2010-2014; (7) all Commodity Credit Corporation marketing assistance loans and Loan Deficiency Payments received since 2010; (8) acres set aside from 2010 to present and any payments received for those acres; (9) listing of all corn and/or grain sorghum acreage by farm/tract/field number in which the plaintiff either has a landlord interest or was a tenant from 2013 to present (including the names of the tenants or the entities under which they farm, the names of the landlords from which you rent land, and the details of the specific compensation agreement with any tenants and/or landlords); (10) description of ownership structure of plaintiff's business entity; (11) description of ownership interests in any other operation; (12) any financial interest in businesses that manufacture/sell ethanol, sweeteners or other corn by-products; (13) description of any interest in marketing, ethanol, or other cooperative related to plaintiff's corn farming operations (including all income and patronage dividends received from such membership, and all sales of corn made through the

information.[65] Answers to interrogatories were served by April 2016; Syngenta three times demanded additional information, which was provided in supplemental responses over the next several months. In responding to these interrogatories, plaintiffs collectively provided 1,857 pages of objections and responsive information. Ex. 2 (Powell Decl. ¶ 157).

In its First Requests for Admission, Syngenta propounded 98 such requests. Ex. 1 (Stueve Decl. ¶ 290). The Interrogatories from Syngenta Corporation requested that for any request not unqualifiedly admitted, the plaintiff state the factual basis for denial or qualified admission. *See id.* at ¶ 290. As with the document requests and interrogatories, response to these requests for admission entailed considerable effort. Ex. 2 (Powell Decl. ¶¶ 137-38, 157). In addition, these plaintiffs also provided deposition testimony. On average, they spent many hours in responding to discovery, preparing for and providing that testimony. Ex. 1 (Stueve Decl. ¶¶ 315, 328, 340, 352, 361, 370, 380, 389, 399); Ex. 2 (Powell Decl. ¶¶ 148-56); Ex. 3 (Downing Decl. ¶¶ 88-90); Ex. 4 (Chaney Decl. ¶¶ 213-20). Many of the depositions were used in briefing issues relating to class certification and summary judgment.[66]

---

cooperative, from 2010 to present); (14) all loans secured by corn crops from 2010 to present (including terms, lender, and date on which loan was paid off); (15) all GM crops grown by the plaintiff from 2010 to present (by year and variety); (16) any derivatives or other financial instruments, such as options or futures, purchased or sold to hedge the price risk associated with corn (describing if the plaintiff was long or short corn in that time period and if so by how much); (17) specific nature of any livestock operations (including type and cost of feed) from 2013 to present. Ex. 1 (Stueve Decl. ¶ 288 n.7).

[65] These interrogatories sought information pertaining to, for example: (1) information pertaining to damages; (2) accounting/bookkeeping process on all farming operations (including any software utilized and reports generated); (3) cultivation costs and yield per acre from 2011 to present; (4) information pertaining to any planting/sale of Viptera or Duracade; information on the process for pricing plaintiff's corn; (5) annual price per bushel from 2010 to present; (6) each contract for the sale of corn (including contract type, specific pricing, corn variety, buyer, and delivery terms); (7) corn sales to food processing facilities, exporters and/or ethanol plants; (8) segregation and/or channeling efforts; and (9) pricing information. Ex. 1 (Stueve Decl. ¶ 289).

[66] *See* ECF No. 2436 at 77-78 n.67-68, 80; ECF No. 2859 at 51-52. Had the litigation continued, it is certain that Syngenta and Producer Plaintiffs would have made similar use of such evidence in summary judgment or other motions pertaining to other state classes. Moreover, testimony and documents from these Plaintiffs were relied upon to refute several of Syngenta's defenses to class

All these plaintiffs agreed to serve in the important role as bellwether plaintiff for individual trials or as class representatives in the class trials. That willingness to serve, the contribution made to the pool of information used generally for the benefit of all plaintiffs, as well as the significant commitment of time and effort invested in service to their respective classes, warrants an elevated service award. *See, e.g., In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *18-19 (awarding $25,000 for each of five class representatives: "Like the attorneys in this case, the class representatives have conferred benefits on all other class members and they deserve to be compensated accordingly. The five class representatives performed considerable work advancing the litigation . . . provided verified answers to interrogatories and produced documents . . . Each of them also expended time in preparing for depositions and gave testimony at depositions."); *In re Polyurethane Foam Antitrust Litig.*, 168 F. Supp. 3d 985, 999-1000 (N.D. Ohio 2016) (awarding $10,000 to each of thirteen class representatives as "well within an appropriate range"); *Manuel v. Wells Fargo Bank, Nat'l Ass'n*, No. 3:14CV238(DJN), 2016 WL 1070819, at *6 (E.D. Va. Mar. 15, 2016) (awarding $10,000 to class representative who "took an active role by participating in discovery and testifying in a deposition.").[67]

---

certification: including commonality of pricing (ECF No. 2164 at Appendix B); ascertainability (ECF No. 2436 at 35 & Appendix D & E).

[67] *See also Bennett v. Sprint Nextel Corp.*, Case No. 2:09-cv-02122-EFM-GEB (D. Kan. Aug. 12, 2015), ECF No. 301, at 3 (awarding $13,927.69, $14,647.50 and $14,345.25, respectively, to three class representatives); *In re: Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2013 WL 11319392, at *12 (S.D. Fla. Aug. 5, 2013) (awarding $10,000 to each of five class representatives); *Tuten*, 41 F. Supp. 3d at 1010 (awarding $15,000 to class representative); *Meijer, Inc. v. 3M*, CIV.A. 04-5871, 2006 WL 2382718, at *25 (E.D. Pa. Aug. 14, 2006) (awarding $25,000 to class representative, noting that award is "similar to the awards approved in comparable complex class actions") (collecting cases); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 973 (E.D. Tex. 2000) (awarding $25,000 to each of two named plaintiffs); *Spicer v. Chi. Bd. Options Exchange, Inc.*, 844 F. Supp. 1226, 1267-68 (N.D. Ill. 1993) (collecting cases approving awards ranging from $5,000 to $100,000; awarding $10,000 to each named plaintiff).

C. The Kansas Trial Representatives Should Each be Awarded $100,000.

The third category of plaintiffs not only completed the same discovery as the Category 2 Plaintiffs but also traveled to, attended, and testified at trial. *See* Ex. 1 (Stueve Decl. ¶ 305). Their contribution was, therefore, extraordinary.

These four plaintiffs collectively produced 31,186 pages of documents; 111 pages of interrogatory objections and information; and 99 pages of responses to requests for admission. Ex. 2 (Powell Decl. ¶ 157). The contribution of these plaintiffs cannot be overstated. Each became a public face for all plaintiffs injured by Syngenta's conduct. In addition to the discovery obligations of Category 2 plaintiffs, they spent several hours each preparing for their testimony at trial. Ex. 1 (Stueve Decl. ¶¶ 309-45; Ex. 43 (Bender Decl. ¶ 20); *see also* Ex. 2 (Powell Decl. ¶ 199); Ex. 4 (Chaney Decl. ¶ 293). They travelled and stayed more than 300 miles, and in one instance over 800 miles, from their farms to Kansas City, Kansas to represent the Kansas class and give the jury a face to the Plaintiffs' claims. Ex. 1 (Stueve Decl. ¶¶ 305-07); Ex. 43 (Bender Decl. ¶ 20(c)). This work took these farmers away from their family and farms for as much as 120 hours – all in service of the Class Members' claims – and this is in addition to their other discovery-related obligations. *See* Ex. 43 (Bender Decl. ¶ 20(c)); Ex. 1 (Stueve Decl. ¶¶ 318, 330, 342). They provided invaluable testimony – testimony obviously persuasive to the Kansas jury – at trial; and, this testimony took each of them away from the day-to-day running of their farms for several weeks, Ex. 1 (Stueve Decl. ¶¶ 305-07), while they were still planting corn seed and harvesting the wheat crop – duties that had to be fulfilled by other laborers on their farms and without their direct supervision, *id.* at ¶¶ 316, 330. Mr. Kendrick attended every single day of the Kansas trial, *id.* at ¶¶ 316; Ex. 43 (Bender Decl. ¶ 20(c)), while the other three plaintiffs attended nearly all or significant portions of the trial, Ex. 1 (Stueve

Decl. ¶¶ 330, 342). Three of them continue to consult with counsel regarding the settlement, fulfilling their duties as settlement class representatives. *Id.* at ¶¶ 320, 332, 344.

Furthermore, as the Court found in granting class certification, "the amounts at stake per farm are small enough that separate suits may be impracticable for many class members." ECF No. 2547 at 28. In attending and testifying at trial, these Category 3 Plaintiffs selflessly fulfilled their role as class representatives. Each was invaluable in securing the $217 million jury award in the Kansas trial, which was the singular most important benefit toward settlement in the litigation. Collectively, their service awards of $400,000 represent only .026% of the remarkable benefit that their efforts have made available. It is small price for the remaining class members to pay (less than 3/100 of a cent on every dollar) for the service provided by these plaintiffs.[68] The amount requested compensates these individuals not only for their effort but their vast contribution to the outcome in this case, and again, is in line with other awards for similar or lesser service.[69] All these plaintiffs expended substantial time and effort in representing the

[68] The Tenth Circuit has stated that strictly basing incentive awards on a percentage of the recovery is disfavored "if not altogether forbidden." *Chieftan Royalty Co. v. Enervest Energy Instit. Fund XIII-A, L.P.*, 888 F.3d 455, 468-69 (10th Cir. 2017) (interpreting Oklahoma law, but relying on federal cases and quoting *Newberg* 17:16). Nonetheless, use of "a percentage calculation. . . to 'check a flat award for excessiveness" is not prohibited. *Id*. Here, the award requested for the trial plaintiffs is plainly not excessive, and justified by the "work they performed" and benefits conferred. *Id*. at 468

[69] *See, e.g., Erica P. John Fund, Inc. v. Halliburton Company, et al.*, No. 3:02-cv-1152-M, ECF No. 844 at 29 (N.D. Texas Apr. 25, 2018) (awarding $100,000 to class representative); *Castro v. Sanofi Pasteur Inc.*, CV117178JMVMAH, 2017 WL 4776626, at *10 (D.N.J. Oct. 23, 2017) (awarding $100,000 to each of three class representatives); *In re: Urethane Antitrust Litig*., 2016 WL 4060156, at *7 (granting requested incentive payments); *In re: Urethane Antitrust Litig*., ECF No. 3251 at 12 (D. Kan. June 1, 2016) (requesting awards of $150,000 each to two representatives and $200,000 for third representative); *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5158730, at *17-18 (N.D. Cal. Sept. 2, 2015) (awarding $100,000-$140,000 to each of five class representatives); *Marchbanks Truck Serv. v. Comdata Network, Inc.*, No. 07-CV-1078, ECF No. 713 at 2, 8 (E.D. Pa. July 14, 2014) (awarding $150,000 to one class representative and $75,000 to two other class representatives), attached as Ex. 71; *In re Neurontin Antitrust Litig.*, No. Civ. A. No. 02-1830, ECF No. 114 at ¶ 31 (D.N.J. Aug. 6, 2014) (awarding $100,000 to each class representative), attached as Ex. 72; *In re Titanium Dioxide Antitrust Litig*., No, 10-CV-00318 RDB, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding $125,000 to one class representative and $25,000 to each of two class representatives); *Been*, 2011 WL 4478766, at *12 (awarding $100,000 to each of 5 class representatives); *Velez v. Novartis*

Classes, took action that protected and advanced the interests of all class members, and deserve to be compensated for their involvement. The amounts requested are within ranges awarded in this Circuit and around the country for similar efforts.

D. Subclass Representatives Should Each Be Awarded $2,500.

Finally, the undersigned and Subclass Counsel request that the appointed class representatives of the of Subclasses 2-4 – the Viptera/Duracade purchaser, Grain Handling Facility, and Ethanol Production Facility subclasses each be awarded $2,500. As the authorities cited above demonstrate, $2,500 is a modest service award. Although these representatives were not deposed, they importantly assisted Subclass Counsel in evaluating the strengths and weaknesses, and concomitantly, the value of the Subclass members' claims. Their efforts are detailed more extensively in the declarations of Subclass Counsel. *See* Ex. 48 (Cecchi Decl. ¶ 19); Ex. 49 (Wexler Decl. ¶ 13); Ex. 50 (Johnson Decl. ¶ 14). These awards should be approved.

CONCLUSION

For the foregoing reasons, MDL Co-Lead Counsel and Settlement Class Counsel Christopher Seeger request that the Court grant this motion and (1) award one-third of the $1.51 billion settlement fund as attorneys' fees; (2) allocate 50% of that amount to MDL Co-Lead Counsel for distribution to the Kansas Common Benefit Group, 12.5% to the Minnesota Common Benefit Group, and 17.5% to the Illinois Group; (3) approve $388,005 in attorneys' fees to Subclass Counsel from the remaining 20% and set aside the remainder until all other fee applications have been considered; (4) approve $6,695,350.05 in reimbursement of costs and expenses to MDL Co-Lead Counsel for distribution to the Kansas Common Benefit Group; (5)

Pharm. Corp., No. 04 CIV 09194 CM, 2010 WL 4877852, at *4, *8, *28 (S.D.N.Y. Nov. 30, 2010) (awarding $125,000 to named plaintiffs); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-CV-3066-JEC, 2008 WL 11319972, at *3 (N.D. Ga. Mar. 4, 2008) (awarding $100,000 to each class representative); *Ivax Corp. v. Aztec Peroxides, LLC*, No. 1:02CV00593, ECF No. 78 at 2 (D.D.C. Aug. 24, 2005) (awarding $100,000 to each of two class representatives), attached as Ex. 73.

authorize MDL Co-Lead Counsel to distribute the MDL Allocation to the Kansas Common Benefit Group and set a deadline for any objections to that allocation of 10 days after notice of the allocation is made with a 14-day response period thereto; and, (6) approve the service awards requested in Appendix A.

Dated: July 10, 2018

Respectfully Submitted,

/s/ Patrick J. Stueve

STUEVE SIEGEL HANSON LLP
Patrick J. Stueve, KS Bar #13847
460 Nichols Road, Suite 200
Kansas City, Missouri 64112
Telephone: (816) 714-7100
Facsimile: (816) 714-7101
stueve@stuevesiegel.com

CO-LEAD, CLASS, LIAISON AND SETTLEMENT CLASS COUNSEL FOR PLAINTIFFS

Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road
Ridgefield Park, NJ 07660
Telephone: (212) 584-0700
Facsimile: (212) 584-0799
cseeger@seegerweiss.com

MEMBER OF PLAINTIFFS' SETTLEMENT NEGOTIATION COMMITTEE AND SETTLEMENT CLASS COUNSEL

Don M. Downing
GRAY, RITTER & GRAHAM, P.C.
701 Market Street, Suite 800
St. Louis, MO 63101
Telephone: (314) 241-5620
ddowning@grgpc.com

CO-LEAD AND CLASS COUNSEL FOR PLAINTIFFS

William B. Chaney
GRAY REED & MCGRAW, LLP

1601 Elm Street, Suite 4600
Dallas, TX 75201
Telephone: (214) 954-4135
wchaney@grayreed.com

CO-LEAD AND CLASS COUNSEL FOR PLAINTIFFS

Scott Powell
HARE WYNN NEWELL & NEWTON
2025 3rd Ave. North, Suite 800
Birmingham, AL 35203
Telephone: (205) 328-5330
scott@hwnn.com

CO-LEAD AND CLASS COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on July 10, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Patrick J. Stueve
Plaintiffs' Co-Lead, Liaison, Class and Settlement Class Counsel for Plaintiffs

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** *Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al.*, No. 16-2788-JWL-JPO *Trans Coastal Supply Company, Inc. v. Syngenta AG, et al.*, No. 2:14-cv-02637-JWL-JPO *The Delong Co., Inc. v. Syngenta AG, et al.*, No. 2:17-cv-02614-JWL-JPO *Agribase International Inc. v. Syngenta AG, et al.*, No. 2:15-cv-02279-JWL-JPO	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF PATRICK J. STUEVE OF STUEVE SIEGEL HANSON LLP

TABLE OF CONTENTS

I. BACKGROUND 1

A. Stueve Siegel Hanson LLP 1

B. Partners 3

1. Patrick J. Stueve 3

2. Norm Siegel 7

3. Steve Six 8

4. Rachel Schwartz 10

5. Bradley Wilders 12

C. Associates, Of Counsel and Law Clerks 16

6. Stephanie Walters 16

7. Curtis Shank 18

8. Sean Cooper 19

9. James Vaglio 19

10. David Hickey 20

11. Toji Calabro 21

12. Austin Moore 22

13. Jennie Carter 23

14. Larkin Walsh 23

15. Lindsay Todd Perkins 24

16. Daniel Shaw 24

17. Alex Ricke 25

18. Jeff Scurlock 25

19. Ethan Lange 26

20. Matt Cooper, Sam Storrs and John Tompkins 26

21. Ariel Tazkargy 27

22. Ben Stueve 27

D. Paralegals and Additional Staff 27

23. Michelle Campbell 27

24. Sherry Barry 27

25. Mary Rose Marquart 28

26. Additional Paralegals 28

27. Adrian Weiner 28

28. Peter Rupp 29

29. Janet Switzer 29
30. Brendan Marquart 29
II. CREATION OF THE MDL AND LEADERSHIP APPOINTMENT 29
A. Execution of Liaison Responsibilities 31
B. Execution of Leadership Responsibilities 32
III. SYNGENTA'S REMOVAL OF STATE COURT CASES, INCLUDING THOSE FILED BY ADM AND CARGILL 33
IV. NEGOTIATION OF GOVERNING ORDERS 34
A. Protective Order and ESI Protocol 34
B. Preservation Order 35
C. Coordination Order 36
D. JPAs with Various Plaintiff Groups 37
E. Business Records Order 38
V. AMENDED COMPLAINTS 39
VI. SYNGENTA'S MOTIONS TO DISMISS 41
VII. ADDITIONAL AMENDED COMPLAINTS AND MOTIONS TO DISMISS 44
VIII. SYNGENTA'S COUNTERCLAIMS AND THIRD PARTY CLAIMS 45
IX. CREATION OF THE PLAINTIFF BELLWETHER POOL 46
X. FACT DISCOVERY 48
A. Plaintiffs' Written Discovery Requests to Syngenta 49
B. Syngenta's Production of Documents 50
C. Document Review 51
D. Plaintiff Fact Sheets 55
E. Additional Written Discovery to Class Representative and Bellwether Plaintiffs 56
F. Depositions of Producer Plaintiffs 61
G. Stueve Siegel Hanson's Work with Class Representative and Bellwether Plaintiffs 64
1. Kansas Class Representative David Polifka Rev. Living Trust 66
2. Kansas Class Representative Grafel Farms, LLC/Beaver Creek Farms, Inc./D&S Grain & Cattle Co./Demmer Farms, Inc. 68
3. Kansas Class Representative Charles Frickey 69
4. Nebraska Class Representative David Schwaninger 71
5. Bellwether Plaintiff Matt & Robin Bargen/Bar Cattle Limited Partnership 72

6. Bellwether Plaintiff Robert Luck/H and R Operations/R and L Partnership 73
7. Bellwether Plaintiff R&W Farms, Inc. 74
8. Bellwether Plaintiff Orville Williams/Williams and Sons, Inc./ROR General Partnership 75
9. Bellwether Plaintiff Gary Harshberger/Harshberger Enterprises 76
H. Depositions of Non-Producer Plaintiffs 77
I. Depositions of Syngenta-related individuals 78
XI. THIRD PARTY DISCOVERY 82
A. Third Party Subpoenas 82
B. ADM and Cargill 84
XII. CLASS CERTIFICATION 87
XIII. EXPERT DISCOVERY 92
XIV. SYNGENTA'S 23(F) APPEAL 97
XV. SUMMARY JUDGMENT BRIEFING 98
XVI. *DAUBERT* MOTIONS 100
XVII. KANSAS TRIAL, JUNE 2017 101
A. Syngenta's Trial Team 101
B. Pre-Trial Work 102
C. Pretrial Briefing: Motions in Limine and Jury Instructions 104
D. June 2017 Kansas Class Trial 105
XVIII. POST-TRIAL MOTIONS 111
XIX. FURTHER TRIALS AND CLASS CERTIFICATION 111
XX. STRENGTHS AND WEAKNESSES OF THE CASE 112
XXI. SETTLEMENT NEGOTIATIONS 114
XXII. SETTLEMENT TERMS 116
XXIII. FEE-SHARING AGREEMENTS 117
XXIV. COMMON BENEFIT TIME AND EXPENSE SUBMISSIONS 119
A. The Common Benefit Order 119
B. Efforts to Ensure MDL Efficiency 120
C. Review and Revising of Common Benefit Submissions 121
D. Common Benefit Time and Expenses submitted by Common Benefit Firms 123
E. Litigation Fund 126
XXV. STUEVE SIEGEL HANSON'S FEE AGREEMENTS WITH INDIVIDUAL CLIENTS 130

XXVI. STUEVE SIEGEL HANSON'S COMMON BENEFIT TIME AND EXPENSES 131
A. Stueve Siegel Hanson's Lodestar 131
B. Preclusion of Other Work 133
C. Stueve Siegel Hanson's Expenses 133

I, Patrick J. Stueve, declare as follows:

1. I am a founding partner of Stueve Siegel Hanson LLP ("Stueve Siegel Hanson") and appointed MDL Co-Lead Counsel, Liaison Counsel and Settlement Class Counsel for Plaintiffs in this MDL.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' petition for attorneys' fees, expenses and service awards and the allocation of the fee award.

3. I prepared my declaration with the assistance of other lawyers and staff at the firm with knowledge of the matters reflected herein. I have personally reviewed the information supporting the fee and expense requests that are the subject of this declaration, and, based on that review, I believe that the information contained herein is accurate.

I. BACKGROUND

A. STUEVE SIEGEL HANSON LLP

4. I founded Stueve Siegel Hanson in 2001. It is an AV rated law firm and one of the largest law firms in the Midwest specializing solely in complex commercial litigation.

5. Most of the firm's attorneys practiced at large law firms across the country prior to joining Stueve Siegel Hanson. We employ several former government lawyers and seven former, federal law clerks. The firm has a nationwide practice that focuses on complex commercial and class litigation and trials involving a wide range of business torts, antitrust, consumer fraud, environmental contamination, ERISA, and securities violations.

6. The firm has represented hundreds of thousands of individuals in class and collective actions, and has also represented large businesses, like Seaboard Corporation and Associated Wholesale Grocers, and institutional investors, including the Kansas Public

Employees Retirement System. The firm has tried numerous cases to verdict in state and federal courts and in arbitrations, and has tried complex business torts and class action cases to verdict in this District.

7. Since 2011, Stueve Siegel Hanson has successfully tried three class actions to jury verdict in the Kansas City area: the $217.7 million verdict in this litigation on behalf of a class of Kansas producers in June 2017; a $34 million verdict in the United States District Court for the Western District of Missouri on behalf of a class of Missouri insurance policy holders; and a $785,894 verdict in this District on behalf of a class of Tyson Foods employees in a wage-and-hour lawsuit.

8. Stueve Siegel Hanson's lawyers are deeply involved in the legal community, holding leadership roles in local bar organizations. Stueve Siegel Hanson attorneys currently serve on the Board of Directors for the Federal Court Advocates Section of the Kansas City Metropolitan Bar Association, the Lawyers Association of Kansas City and the local chapter of the Federal Bar Association. In 2016, Steve Six served as President of the Kansas Bar Association and, in June 2018, he ended his last term on the Board of Governors of the Kansas Bar Association. Two of our partners previously served on the Bench-Bar Committee for the District of Kansas. With regard to their law schools, our partners currently serve on the Board of Counselors for Drake Law School and the Board of Governors for the University of Kansas School of Law and one of our associates serves on the UMKC School of Law Young Alumni Board. One of our associates serves on the Lawyers Encouraging Academic Performance Board ("LEAP") Board. Our attorneys have previously served on the board of KCMBA's charitable arm, the Metropolitan Bar Foundation.

9. Stueve Siegel Hanson's lawyers are similarly dedicated to helping their

communities. Our attorneys currently serve on the boards of multiple non-legal organizations, including the Alfred and Jean Friendly Foundation Board for the Alfred Friendly Press Partners, Benedictine College's Board of Directors, the Bishop Miege High School Foundation Board and the Historical Society for the United States District Court for the Western District of Missouri. One of our attorneys has been a Big Sister for more than ten years with Big Brothers Big Sisters of Kansas City. Our attorneys have recently served on the Healthcare Foundation of Greater Kansas City and on the board for the Negro Leagues Baseball Museum and the YMCA of the Rockies.

10. A firm resume for Stueve Siegel Hanson was previously-submitted in this litigation (ECF No. 2164 at Ex. JJJ) and substantially more information regarding the firm is available at www.stuevesiegel.com.

B. PARTNERS

1. Patrick J. Stueve

11. I received a J.D. from the University of Kansas Law School in 1987, where I served as an Editor of the Kansas Law Review and the Criminal Justice Review and a member of Order of the Coif. I received a B.A. in Economics with honors from Benedictine College in 1984.

12. After law school, I served as law clerk to Honorable John W. Oliver of the United States District Court for the Western District of Missouri. After completing my clerkship, I began my private practice and, four years later, became partner at what was then the largest firm in Kansas City—Stinson Mag & Fizzell—now Stinson Leonard Street LLP.

13. I have been recognized by my peers as one of the top commercial trial lawyers in the country for my efforts over the past 30 years. I have been named to *The Best Lawyers® in America* for Bet the Company, Antitrust and Commercial Litigation, Top 100 Super Lawyers in

Kansas and Missouri, "Local Litigation Star" by *Benchmark Plaintiffs*, and "Best of the Bar" by the *Kansas City Business Journal*. *Ingram's* magazine included me in its list of "The Most Powerful Business Leaders in Greater Kansas City" in 2016.

14. Since founding Stueve Siegel Hanson in 2001, I have prosecuted claims in in this Court and around the country in the areas of antitrust, intellectual property, securities fraud and other commercial torts against some of the largest businesses in the world including Formula 1 Racing, ITW, Citigroup, United Health Care, and AIG. I have also successfully prosecuted several national and state wide class actions against global giants including Volkswagen, Merck & Co. and Mitsubishi. My nationwide practice includes representing privately-held companies like Associated Wholesale Grocers as well as publicly traded Fortune 500 companies like Seaboard Corporation and Kawasaki. My greatest satisfaction since founding the firm 18 years ago has been the trust I have earned from these clients by delivering hard fought results—including securing more than $2 billion in jury verdicts, arbitration awards and settlements—often in high stakes, bet-the-company cases

15. I have actively practiced before this Court and courts in Kansas City. For example, I represented Radon Sport, Inc. in an antitrust action against several racecars manufacturers and the industry's sanctioning body in this Court. The plaintiff alleged that the defendants engaged in a long-running conspiracy to prevent them from entering the market for Formula Continental racecars. A confidential settlement was with reached with all defendants in March 2014. *See Radon Sport, Inc. v. Sports Car Club of America et al*., Case No. 13-2178 (D. Kan.).

16. In *Chubb Engineering, LLC v. USA Tank Sales and Erection Company and Cameron Holdings Corp.*, Case No. 13-2252-JAR-GLR (D. Kan.), Chubb Engineering alleged

that the defendants misappropriated trade secrets related to its proprietary tank fabrication and tank manufacturing designs in violation of the Kansas Uniform Trade Secret Act. In 2014, I reached a confidential settlement with all defendants.

17. I also have extensive experience litigating antitrust matters locally and nationally In April 2018, I filed a lawsuit in the District of Kansas on behalf of Associated Wholesale Grocers, Inc. against the three largest producers of packaged tuna for conspiring to fix the prices of packaged tuna in violation of state and federal antitrust laws. The lawsuit has since been consolidated in the Southern District of California, but will return to this District for trial. *See In re Packaged Seafood Antitrust Litigation*, Case No. 3:15-md-02670-JLS-MDD, MDL No. 2670 (S.D. Cal.) and *Associated Wholesale Grocers, Inc. v. Bumble Bee Foods, et al.*, Case No. 2:18-cv-02212 (D. Kan.).

18. I also represented Associated Wholesale Grocers, Inc. against the country's largest potato growers and shippers alleging that these defendants fixed the price of fresh and processed potatoes. After three years of litigation, I successfully reached a settlement with defendants in 2016. *See Associated Wholesale Grocers, Inc. v. United Potato Growers of America, Inc., et al.*, Case No. 2:13-cv-02182 (JAR) (D. Kan.), later transferred to the MDL entitled *In re: Fresh and Process Potatoes Antitrust Litigation*, Case No. 4:10-MD-2186-BLW-CWD (D. Idaho).

19. I also represented Associated Wholesale Grocers, Inc., and several local grocery stores in an antitrust lawsuit alleging that twenty egg producers and trade groups engaged in a conspiracy designed to increase the price of eggs. After nearly four years of litigation, I successfully resolved this litigation in 2014. *See Associated Wholesale Grocers Inc., et al., v. United Egg Producers, et al.*, Case No. 10CV2171 (District Court of Wyandotte County,

Kansas).

20. In March 2008, I settled a landmark Sherman Act I antitrust lawsuit brought against 11 defendants, the largest managed care organizations and hospital systems in Kansas City. In *Heartland Surgical v. HCA Midwest Division, et al.*, No. 05-2164 (D. Kan.), my client Heartland Spine & Specialty Hospital, a physician-owned spine and specialty acute care hospital in Overland Park, Kansas, claimed that the dominant hospital systems had conspired among themselves and with the dominant Managed Care Organizations to prevent Heartland from obtaining in-network provider contracts. Heartland also alleged the defendants tortiously interfered with Heartland's ability to obtain provider contracts. The case and settlement was frequently covered by the National Law Journal. I was also featured on the cover of Modern Health Care twice while the case was pending.

21. I successfully represented Seaboard Corporation, one of Kansas's largest businesses, in antitrust litigation in the District Court of Johnson County, Kansas. Seaboard sought millions of dollars in premiums paid and several million dollars in consulting fees from its insurance broker Marsh and insurance giant AIG for illegally conspiring to rig Seaboard's bids. *See Seaboard Corp. v. Marsh Inc.et al.*, Case No. 09 CV 9499 (District Court of Johnson County, Kansas).

22. In addition to my practice, I have served on the Board of Directors of the YMCA of the Rockies in Estes Park, Colorado and Habitat for Humanity Kansas City, including three years as board President. In 2015, Legal Aid of Western Missouri honored me with the Honorable H. Michael Coburn Community Service Award for my pro bono efforts to develop and implement a pro bono legal service program for veterans called the Military Matters program. I am currently the Treasurer and a Foundation Board member of the Alfred Friendly

Press Fellowship Foundation, which grants fellowships each year to international journalists who come to the United States for five months of training and work at the leading news organizations in the country. I also serve on the Board of Directors of Benedictine College, the Bishop Miege High School Foundation, the Historical Society for the United States District Court for the Western District of Missouri, and the Board of Governors for the University of Kansas Law School.

2. Norm Siegel

23. Norm Siegel received a degree in political science from Tufts University and his J.D. from Washington University in St. Louis. At Washington University, he served as Articles Editor of the Washington University Journal of Urban Contemporary Law.

24. After law school, Mr. Siegel served as an Assistant Attorney General and as a partner at the law firm now known as Dentons.

25. Mr. Siegel founded Stueve Siegel Hanson in 2001. Over the last 20 years, he has gained a reputation as a stand-out trial lawyer both locally and nationally. He has successfully tried to verdict a wide range of cases including obtaining several, multi-million dollar jury verdicts. He has also been recognized for obtaining some of the largest settlements in the country, successfully securing hundreds of millions of dollars for his clients over the course of his career.

26. Most recently, in June 2018, Mr. Siegel was the lead attorney in a class action trial in the United States District Court for the Western District of Missouri, which resulted in a jury verdict of more than $34 million.

27. Mr. Siegel has been named to *The Best Lawyers® in America*, has been elected a Missouri Super Lawyer, and has been named "Best of the Bar" and "Kansas City Newsmaker" by the *Kansas City Business Journal*. He was also named to Lawdragon Magazine's 500

Leading Plaintiffs' Lawyers in America, and named a "Local Litigation Star" by *Benchmark Plaintiffs*. He is rated AV – the highest designation a lawyer can achieve from publisher Martindale-Hubbell.

28. Mr. Siegel has served on the boards of the Healthcare Foundation of Greater Kansas City, the Kansas City Bar Foundation, and the Negro Leagues Baseball Museum.

3. Steve Six

29. Steve Six received his J.D. from the University of Kansas School of Law, where he was a Rice Scholar and a member of Order of the Coif. After graduating, he served as a law clerk to the Honorable Deanell R. Tacha on the United States Court of Appeals for the Tenth Circuit. He received his B.A. in Economics from Carleton College.

30. Mr. Six joined Stueve Siegel Hanson following his term as the 43rd Attorney General of Kansas. As Attorney General, Mr. Six represented the State of Kansas in complex cases in various areas including healthcare, antitrust, environmental resources and consumer protection. He successfully prosecuted capital and first-degree murder cases and was the first Attorney General in more than 35 years to personally prosecute these cases before juries. Mr. Six also represented the State of Kansas in a multi-million dollar water dispute with the States of Nebraska and Colorado.

31. Prior to becoming Attorney General, Mr. Six served as district court judge in Douglas County, Kansas and was in private practice. He has also served as an adjunct professor of antitrust law at the University of Kansas School of Law.

32. Mr. Six is an experienced trial attorney and has successfully tried complex cases before juries in state and federal court. In addition to his trial practice, he has maintained an active appellate practice and has successfully argued cases before state appellate courts in Kansas and Missouri, the federal appellate courts and before the United States Supreme Court.

He has tried cases to verdict in a wide variety of areas, including product liability, professional liability, commercial cases and consumer fraud as well as prosecuting criminal cases. Mr. Six has litigated cases before the Judicial Panel on Multidistrict Litigation and has significant experience in multi-district litigation. In addition to his litigation work, Mr. Six serves as a mediator in a variety of matters including complex commercial, antitrust, and tort cases.

33. Mr. Six has actively practices in this District. For example, he represented a real estate developer in a tax increment-financing dispute with the City of Lawrence. *See City of Lawrence, Kansas v. Thomas Fritzel, Oread Inn L.C., et al.,* Case No. 16-2800 (D. Kan.). The matter was resolved at mediation. He represented Radon Sport, Inc. in an antitrust action against several racecar manufacturers and the industry's sanctioning body in this Court. The plaintiff alleged that the defendants engaged in a long-running conspiracy to prevent them from entering the market for Formula Continental race cars. A confidential settlement was with reached with all defendants in March 2014. *See Radon Sport, Inc. v. Sports Car Club of America et al*., Case No. 13-2178 (D. Kan.). He represented Schiller Ground Care, Inc. in a commercial dispute with a national advertising agency. *See BKV, Inc. v. Schiller Ground Care, Inc.*, 12-2495 (D. Kan.). The case was concluded through confidential settlement.

34. Mr. Six represented Associated Wholesale Grocers, Inc. in an antitrust lawsuit filed in the District of Kansas against some of the country's largest chocolate producers alleging that they conspired to artificially inflate the price of chocolate. The claims include violations of the Kansas Restraint of Trade Act, K.S.A. § 50-101, *et seq*. *See In re Chocolate Confectionary Antitrust Litigation*, MDL No. 1935; *Associated Wholesale Grocers, Inc. v. The Hershey Company, Mars, Inc., Nestle USA, Cadbury plc, et al*., 12-CV-2209 (D. Kan.)

35. Mr. Six represented Associated Wholesale Grocers, Inc. against the country's

largest potato growers and shippers alleging that these defendants fixed the price of fresh and processed potatoes. This litigation was successfully settled in 2016 after three years of litigation. *See Associated Wholesale Grocers, Inc. v. United Potato Growers of America, Inc., et al.*, Case No. 2:13-cv-02182 (JAR) (D. Kan.), later transferred to the MDL entitled *In re: Fresh and Process Potatoes Antitrust Litigation*, Case No. 4:10-MD-2186-BLW-CWD (D. Idaho).

36. Mr. Six has been active in professional and bar organizations, recently serving as President of the Kansas Bar Association in 2016. He recently completed four terms on the Board of Governors of the Kansas Bar Association and previously served on the Bench-Bar Committee for the United States District Court for the District of Kansas, the Merit Selection Panel for the Topeka Magistrate Judge vacancy in the District of Kansas, and various other bar committees.

37. Among his many honors, Mr. Six has been recognized as one of Kansas City Business Journal's "Best of the Bar" and has been recognized repeatedly as a Missouri-Kansas "Super Lawyer." Most recently, he was selected for inclusion in *The Best Lawyers® in America* in the field of Appellate Practice and Commercial Litigation.

4. Rachel Schwartz

38. Rachel Schwartz received her B.A. with honors in Political Science, Economics and American Studies from the University of Kansas, where she was a member of Phi Beta Kappa and Mortar Board. She received her J.D. from the University of Michigan Law School, where she was an Associate Editor of the University of Michigan Journal of Law Reform.

39. She began her practice working on the complex litigation team at a large law firm in Dallas, Texas, which is now part of Foley & Lardner LLP. During that time, she defended antitrust and securities class actions on behalf of large corporations. In 2004, she joined Stueve Siegel Hanson as an associate and became an equity partner in 2008.

40. She has significant experience representing plaintiffs in complex litigation and

actively practices before this Court. She previously represented the National Credit Union Administration, as receiver for multiple failed corporate credit unions, in lawsuits pending in this District against RBS, Wachovia, UBS, Credit Suisse, Morgan Stanley, Barclays and other national financial companies related to the sale of mortgage-backed securities. *See National Credit Union Admin. Bd. v. RBS Securities*, No. 11-cv-2340 (D. Kan.); *National Credit Union Admin. Bd. v. J.P. Morgan*, No. 11-cv-2341 (D. Kan.); *National Credit Union Admin. Bd. v. Wachovia Capital Mrkts., LLC*, No. 11-cv-2649 (D. Kan.); *National Credit Union Admin. Bd. v. UBS Securities, LLC*, No. 12-cv-2591(D. Kan.); *National Credit Union Admin. Bd. v. Barclays Capital, Inc.*, No. 12-cv-02631 (D. Kan.); *National Credit Union Admin. Bd. v. Credit Suisse Securities*, No. 12-cv-2648 (D. Kan.); *National Credit Union Admin. Bd. v. Bear Stearns & Co., Inc.*, No. 12-cv-02781 (D. Kan.); *National Credit Union Admin. Bd. v. J.P. Morgan Chase Bank, N.A.*, No. 13-cv-02012 (D. Kan.); and *National Credit Union Admin. Bd. v. Morgan Stanley & Co. Inc.*, 13-cv-2418-JWL-JPO (D. Kan.). The litigation in this District, along with related litigation pending in federal courts in New York and California, resulted in more than $5 billion in recoveries for the federal government. *See* https://www.ncua.gov/newsroom/Pages/news-2017-may-ncua-legal-recoveries-reach-5-billion.aspx.

41. Ms. Schwartz previously represented a local physician-owned hospital in this District in the antitrust litigation *Heartland v. HCA Midwest Division, et al*., pending before the Hon. Judge Monti L. Belot.

42. Her complex litigation experience in the Kansas City area extends to the antitrust litigation on behalf of Kansas City company Associated Wholesale Grocers, Inc. and several local area grocery stores against twenty egg producers and trade groups. After nearly four years of litigation in the District Court of Wyandotte County, this litigation successfully resolved.

43. Ms. Schwartz also previously successfully represented Seaboard Corporation in antitrust litigation in the District Court of Johnson County, Kansas. *See Seaboard Corp. v. Marsh Inc. et al.*, Case No. 09 CV 9499 (District Court of Johnson County, Kansas).

44. She previously served on the Bench-Bar Committee for this District. In August 2013, she was appointed by this District to the Merit Selection Panel for the Kansas City Magistrate Judge vacancy in the District of Kansas.

45. Ms. Schwartz is currently the President-Elect for the Federal Courts Advocates Section of the Kansas City Metropolitan Bar Association and previously served in a variety of leadership roles, including the Section's CLE Committee Co-Chair for the District of Kansas. She is additionally the Kansas City Regional Membership Vice President for the Kansas and Western District of Missouri Chapter of the Federal Bar Association.

46. In 2014, Ms. Schwartz taught the Civil Procedure Skills Lab class at the UMKC School of Law and has guest lectured multiple times for the Complex Litigation class at the UMKC School of Law on topics including class actions and MDLs. She has additionally spoken at CLEs on topics involving multiparty litigation and complex ESI issues.

47. Ms. Schwartz was invited to and attended the June 2018 Duke Law Judicial Studies Center's Conference on Guidelines and Best Practices Addressing Chronic Failure to Diversity Leadership Positions in the Practice of Law.

48. Ms. Schwartz's litigation experience has been recognized in multiple publications. She is rated AV, and has been recognized repeatedly as a Missouri-Kansas "Super Lawyer," as one of the "Local Litigation Stars" by *Benchmark Plaintiffs* and as one of *The Best Lawyers® in America* in the field of Litigation-Securities.

5. Bradley Wilders

49. Bradley Wilders received his J.D. *cum laude* from University of Missouri

Columbia School of Law in 2007 and was inducted into the Order of the Coif. During law school, he was the Lead Articles Editor for the Missouri Law Review. He received a B.S. in computer science from the University of Missouri in 2001.

50. Following law school, Mr. Wilders clerked for the Honorable John R. Gibson of the United States Court of Appeals for the Eighth Circuit. Mr. Wilders had the rare opportunity to work on cases in five of the eleven federal circuit courts of appeals, including the First, Second, Sixth, Eighth, and Ninth.

51. Prior to joining Stueve Siegel, Mr. Wilders practiced patent infringement litigation in Chicago, Illinois for an Am Law 100 international firm.

52. He joined Stueve Siegel Hanson in 2009 and was promoted to equity partner in 2015.

53. He has significant experience prosecuting complex litigation in the Kansas City area and across the country.

54. After his clerkship, he handled patent litigation for a major software company across the country. He was on a trial team in the Eastern District of Texas, where he handled drafting and responding to trial motions and was involved in witness preparation.

55. Upon returning to Kansas City, he joined Stueve Siegel Hanson to focus on complex civil litigation, including class action and appellate work.

56. For several years, Mr. Wilders represented thousands of pizza delivery drivers in the first wave of wage-and-hour lawsuits challenging the industry's methodology for reimbursing drivers for vehicle-related expenses. He identified and developed a vehicle-reimbursement expert to opine on a methodology consistent with governing legal principles. That expert and his methodology are now routinely used by other lawyers across the country in

similar litigation today. The cases he worked on resulted in settlements for the pizza delivery drivers, including the case that Mr. Wilders spearheaded, *Perrin v. Papa Johns, Inc.*, Case No. 09-01335-AGF (E.D. Mo.), where he obtained Rule 23 class certification for five state-law classes, opposed a petition for permission to appeal pursuant to Rule 23(f), and obtained a $12.4 million settlement with the defendant shortly before trial. Other large cases settled on confidential terms. *See Wass v. NPC Int'l, Inc.,* Case No. 09-CV-2254 JWL/KGS (settlement amount confidential); *Smith v. Pizza Hut, Inc.*, 09-CV-01632-CMA-BNB (settlement amount confidential). As a result of the lawsuits, some of these defendants have since changed their reimbursement methodology.

57. Mr. Wilders also represented a certified class of Lincoln National Life Insurance Company policyholders in a contract dispute, and was responsible for drafting an appellate brief that resulted in the reversal of the trial court's denial of class certification and a favorable contractual interpretation. The opinion led to a settlement valued at $2.25 billion in policy relief.

58. In Missouri litigation regarding the prescription drug Vioxx™, Mr. Wilders was jointly responsible for an appeal to the United States Court of Appeals for the Fifth Circuit, challenging a federal injunction preventing Stueve Siegel's certified Missouri state class from pursuing damages for drug costs reimbursed by third-parties payers. The issue on appeal involved novel aspects of the Anti-Injunction Act. Days before oral argument, the defendant agreed to a settlement in which Missouri purchasers could obtain full reimbursement for every Vioxx purchase in the state of Missouri, including reimbursement for amounts paid by third-party payers.

59. In the Missouri Supreme Court, Mr. Wilders handled all aspects of appellate briefing which resulted in a full reversal of an unfavorable intermediate appellate court ruling on

an issue of first impression in Missouri. The Missouri Supreme Court opinion has since been cited 188 times. *See Berry v. Volkswagen Grp. of Am., Inc.*, 397 S.W.3d 425, 428 (Mo. 2013).

60. Mr. Wilders successfully obtained class certification of farmers and others in ancillary litigation related to the Bayer GM rice lawsuit. He represented these classes in multiple federal and state lawsuits to recover common benefit payments. Mr. Wilders was responsible for the legal strategy and briefing that led to a $9.2 million judgment that has since been distributed to the class. In the course of the litigation, he handled two full appeals to the United States Court of Appeals for the Eighth Circuit, both of which resulted in complete victories for his clients. *See Downing v. Riceland Foods, Inc.*, 810 F.3d 580, 583 (8th Cir. 2016); *In re Genetically Modified Rice Litig.*, 835 F.3d 822, 826 (8th Cir. 2016). Because of his work on these cases, he came to this litigation with specific insight into the claims and theories of this case.

61. He also represented Kansas City company Associated Wholesale Grocers, Inc. and several local grocery stores against twenty egg producers and trade groups. He was responsible for jurisdictional strategy and several third-party and defendant depositions conducted in the case. He was responsible for or assisted on numerous motions and/or opposition briefs resulting in favorable rulings, and he handled complex ESI and defense discovery issues during the course of the case. After nearly four years of litigation, all of the Defendants settled the litigation with AWG. *See Associated Wholesale Grocers Inc., et al. v. United Egg Producers et al.*, Case No. 10CV2171.

62. Mr. Wilders also successfully represented Seaboard Corporation in antitrust litigation in the District Court of Johnson County, Kansas. He was jointly responsible for briefing an issue of first impression to the Kansas Supreme Court that resulted in a favorable, published opinion upholding the right of a class-action, opt-out plaintiff to file individual suit in

Kansas state court following denial of class certification in federal court. The opinion has been cited 73 times. *Seaboard Corp. v. Marsh Inc.*, 295 Kan. 384, 385, 284 P.3d 314, 316 (2012).

63. In addition to drafting briefs himself, Mr. Wilders is often asked to provide advice on key trial and appellate court briefs by other lawyers in the firm. He has been involved in at least ten cases where class certification was granted in whole or in part. A substantial portion of Brad's practice has focused on appellate litigation. In addition to arguing in the Court of Appeals for the Eighth Circuit, he has handled briefing on several appeals. He also has substantial experience petitioning and opposing for review of class certification orders. Outside of this case, he has successfully petitioned for review of an order denying class certification in one instance and successfully opposed review of an order granting class certification in numerous cases.

64. In 2016, he was asked by a United States District Judge to serve as a special master, overseeing discovery disputes and settlement matters in a complex, class-action case in the United States District Court for the Western District of Missouri.

65. For several years, Mr. Wilders has been a board member of the Kansas City Metropolitan Bar Association, Federal Advocates Committee, in which he coordinates local CLE opportunities between the bench and bar. He has also presented at the UMKC complex litigation class.

66. Mr. Wilders has been recognized as a Kansas-Missouri "Super Lawyer" for the past five years.

C. ASSOCIATES, OF COUNSEL AND LAW CLERKS

6. Stephanie Walters

67. Stephanie Walters earned her J.D. from the University of Missouri-Kansas City School of Law in 2007. During law school, she served as a Staff Editor of the UMKC

Matrimonial Lawyer Law Journal, Executive Vice President of the Intellectual Property Law Society, and was a member of the UMKC School of Law Faculty Appointment Committee. She received her B.S. in education from Missouri Western State University in 1999 and an MBA from Webster University in 2012.

68. Ms. Walters has been practicing in the area of electronic discovery for nine years. As Stueve Siegel Hanson's e-Discovery Counsel, she oversees and coordinates the firm's document collection, review, and production in all of its large-scale, complex matters. She regularly counsels attorneys on electronic discovery issues including preservation, collection, search term negotiation, document review, ESI production, e-discovery software, and forms of production. She also routinely works with e-discovery vendors on a variety of document review platforms including Summation, iConect Xera, Relativity, Kaleidoscope, Cicayda, and CasePoint.

69. Ms. Walters has substantial experience managing and analyzing documents produced by defendants in antitrust cases, consumer class actions, mass torts cases and personal injury cases. She also has experience managing collection, review and production of documents for corporate and individual plaintiffs.

70. Ms. Walters attends the Sedona Conference annually and is a current member of the Sedona Conference Working Group on Electronic Document Retention and Production. She also regularly attends the New York LegalTech conference, the National eDiscovery Leadership Institute, and she participated in the Georgetown e-Discovery Training Academy.

71. Prior to joining Stueve Siegel Hanson in 2011, Ms. Walters worked to develop a vendor's document review department and led document review teams of 40+ attorneys in various cases from initial intake through review and document production.

7. Curtis Shank

72. Curtis Shank received his J.D. *magna cum laude*, Order of the Coif, from the University of Missouri School of Law in 2013. While in law school, he received eight CALI awards and served as a Note and Comment Editor of the Missouri Law Review. He received his B.A. *summa cum laude* in Economics from the University of Missouri-Kansas City in 2010.

73. After law school, Mr. Shank served as a law clerk to the Hon. Daniel D. Crabtree on the United States District Court for the District of Kansas. He began his practice working on the commercial litigation team at Bryan Cave LLP in Kansas City, Missouri.

74. Mr. Shank joined Stueve Siegel as an associate in 2016. His practice focuses on mass tort, class action, and antitrust cases. He has first-chair trial experience and has handled a number of complex commercial cases in both state and federal courts.

75. In April 2018, Mr. Shank and a team of Stueve Siegel attorneys filed a lawsuit in the District of Kansas on behalf of Associated Wholesale Grocers, Inc. against the three largest producers of packaged tuna for conspiring to fix the prices of packaged tuna in violation of state and federal antitrust laws. The lawsuit has since consolidated in the Southern District of California, but will return to this District for trial. *See In re Packaged Seafood Antitrust Litigation*, Case No. 3:15-md-02670-JLS-MDD, MDL No. 2670 (S.D. Cal.) and *Associated Wholesale Grocers, Inc. v. Bumble Bee Foods, et al.*, Case No. 2:18-cv-02212 (D. Kan.).

76. Apart from antitrust cases, Mr. Shank also has been heavily involved in other types of litigation, including consolidated litigation in Los Angeles, California, on behalf of individuals who took the drug Risperdal and experienced gynecomastia, the development of abnormal breast tissue; subrogation litigation arising out of a multi-million dollar catastrophic explosion at a food manufacturing facility in Grandview, Missouri; and wrongful death litigation in St. Louis, Missouri, where a food delivery truck struck and killed a 30-year old married father

of four.

8. Sean Cooper

77. Sean Cooper received his J.D. from the University of Kansas School of Law in 2013, where he graduated in the top ten percent of his class. While in law school, he served as Associate Editor of the Kansas Law Review and received a CALI award. Mr. Cooper received his B.A. in English *summa cum laude* in 2006, and his M.A. in English in 2008, both from Truman State University.

78. Mr. Cooper joined Stueve Siegel after law school, where he focused his practice on product liability, business torts, consumer fraud, and antitrust cases.

79. Notably, he assisted in representing Associated Wholesale Grocers, Inc. and several local grocery stores against twenty egg producers and trade groups in antitrust litigation in the District Court of Wyandotte County. *See Associated Wholesale Grocers Inc. et al. v. United Egg Producers, et al.*, Case No. 10CV2171 (District Court of Wyandotte County, Kansas).

9. James Vaglio

80. James Vaglio received his J.D. from the University of Iowa College of Law in 2011, where he received two Dean's Award for Academic Excellence. While in law school, Mr. Vaglio served as a legal intern in the University of Iowa Clinical Law Program and assisted California's Habeas Corpus Resource Center in post-conviction capital defense litigation. He received a B.A. in Political Science with highest distinction in 2006 and a MBA with distinction in 2008, both from the University of Kansas. During undergraduate, he was a member of the University's Honors Program and the Phi Beta Kappa academic honor society.

81. Since joining Stueve Siegel Hanson in 2012, Mr. Vaglio has represented businesses and individual clients in a broad range of litigation matters, including business

disputes, antitrust litigation, class actions, and mass torts. Notably, he represented Associated Wholesale Grocers, Inc. against the country's largest potato growers and shippers alleging that these defendants fixed the price of fresh and processed potatoes. This litigation was successfully settled in 2016 after three years of litigation. *See Associated Wholesale Grocers, Inc. v. United Potato Growers of America, Inc., et al.,* Case No. 2:13-cv-02182 (JAR) (D. Kan.), and transferred to the MDL entitled *In re: Fresh and Process Potatoes Antitrust Litigation*, Case No. 4:10-MD-2186-BLW-CWD (D. Idaho).

82. Mr. Vaglio additionally worked on the antitrust litigation *Associated Wholesale Grocers Inc. et al. v. United Egg Producers et al*., Case No. 10CV2171 (District Court of Wyandotte County, Kansas).

10. David Hickey

83. David Hickey received his J.D. from the University of Kansas School of Law in 2009, where he served as a Staff Editor on the Kansas Journal of Law & Public Policy and a member of the Moot Court Council. He received his B.S. in Mechanical Engineering from the University of Kansas in 2006, where he was a member of Tau Beta Pi.

84. Mr. Hickey joined Stueve Siegel in 2010. He has significant complex litigation experience in state and federal courts around the nation. Specifically, he represented Associated Wholesale Grocers, Inc. against the country's largest potato growers and shippers alleging that these defendants fixed the price of fresh and processed potatoes. After three years of litigation, Stueve Siegel Hanson successfully reached a settlement with defendants in 2016. *See Associated Wholesale Grocers, Inc. v. United Potato Growers of America, Inc., et al.,* Case No. 2:13-cv-02182 (JAR) (D. Kan.), and transferred to the MDL entitled *In re: Fresh and Process Potatoes Antitrust Litigation*, Case No. 4:10-MD-2186-BLW-CWD (D. Idaho).

85. Mr. Hickey also represented Associated Wholesale Grocers, Inc., and several

local grocery stores in an antitrust lawsuit alleging that twenty egg producers and trade groups engaged in a conspiracy designed to increase the price of eggs. After nearly four years of litigation, Stueve Siegel Hanson successfully resolved this litigation in 2014. *See Associated Wholesale Grocers Inc., et al. v. United Egg Producers et al.*, Case No. 10CV2171 (District Court of Wyandotte County, Kansas).

86. Mr. Hickey represented a class of 24,000 Missouri policy owners in a lawsuit alleging breach of contract and conversion regarding overcharges in a life insurance contract. In June 2018, Mr. Hickey was part of the trial team in that class action before the Honorable Nanette K. Laughrey of the United States District Court for the Western District of Missouri, which resulted in a jury verdict of more than $34 million. *See Vogt v. State Farm Life Ins. Co.*, Case No. 2:16-cv-04170-NKL (W.D. Mo.).

87. Mr. Hickey also helped prosecute a Missouri statewide class action on behalf of all Missouri purchasers of Vioxx, a pain reliever that Merck pulled off the market after the FDA identified serious risks and misleading sales practices. In October 2012, a settlement was reached providing Missouri purchasers full reimbursement for their Vioxx purchases. Mr. Hickey and Stueve Siegel Hanson were recognized by Missouri Lawyers Weekly in 2013 as securing the largest recorded Plaintiff Win by virtue of this $220 million settlement on behalf of consumers.

11. Toji Calabro

88. Toji Calabro received his J.D. from Stanford Law School in 2005. He received a B.S. in Finance and Banking and a B.A. in Philosophy from the University of Missouri in 2001.

89. Toji began his legal career in the New York and San Francisco offices of the firm now known as Quinn Emanuel Urquhart & Sullivan LLP, where he gained significant experience in a broad range of complex commercial litigation matters including in the areas of commercial disputes and business torts, products liability, structured finance, insurance and reinsurance

disputes, civil RICO, and various other complex commercial and business litigation matters.

90. Since joining Stueve Siegel Hanson in 2015, Mr. Calabro has continued to develop his litigation practice focusing on complex commercial cases, including in the role of primary case manager for several actions such as: a civil RICO, fraud and breach of contract action arising out of a failed real estate development; breach of contract and conversion class actions arising out of the administration of certain universal life insurance policies, and various related wage and hour cases, including one in which Stueve Siegel Hanson won an offensive partial summary judgment ruling.

91. Mr. Calabro has also contributed to various product liability cases and mass tort actions, including actions arising out of a defectively designed auto part, a defective lawn mower part, the pharmaceutical Risperdal, and the testosterone replacement therapy AndroGel.

12. Austin Moore

92. Austin Moore is a 2011 graduate of Washington University School of Law in St. Louis, where he was an associate editor and published member of the Washington University Journal of Law & Public Policy and a recipient of the Mary Collier Hitchcock Price, awarded to one student annually for outstanding legal writing. He received his B.A. in Political Science *summa cum laude* from the University of Mississippi, where he was selected as a member of Phi Beta Kappa.

93. Before joining Stueve Siegel Hanson in 2013, Mr. Moore was in private practice in St. Louis, Missouri, where he handled a number of complex commercial cases and maintained an active state and federal appellate practice. He focuses his practice on complex business litigation. He is a regular participant in multi-district litigation and has been at the forefront of prosecuting consumer class action claims in the emerging area of data breach litigation. Mr. Moore has experience litigating complex claims under the RICO Act, Sherman Act, Lanham

Act, federal securities laws, and state antitrust and consumer protection statutes. He was selected by Super Lawyers as a Missouri & Kansas "Rising Star" in class action litigation in 2015, 2016, and 2017, and Missouri Lawyers Weekly recognized him in 2016 as an "Up and Coming Lawyer."

13. Jennie Carter

94. Jennie Carter received her J.D. from the University of Kansas School of Law in 2004, where she served as an Articles Editor on the Kansas Law Review. She received a B.S. in Accounting and Business Administration with distinction from the University of Kansas in 2001.

95. After law school, Ms. Carter served as a law clerk to the Honorable Carlos Murguia of the United States District Court for the District of Kansas. She began her practice working in the Real Estate Finance department at Polsinelli in Kansas City, Missouri.

96. Ms. Carter joined Stueve Siegel Hanson in 2010. She specializes in providing research, writing and discovery support to antitrust, class action, and wage and hour litigations.

14. Larkin Walsh

97. Larkin Walsh earned her J.D. from the University of Kansas School of Law, where she was a University Merit Scholar and served as an Articles Editor for the Kansas Journal of Law & Public Policy, and Co-Managing Editor of the law school's newspaper, The Brief-Brief. She received undergraduate degrees in English and Studio Art, *cum laude*, from Southern Methodist University.

98. Ms. Walsh has eight years of experience advising the judiciary, in state and federal court, at both the trial and appellate court levels. Before joining Stueve Siegel Hanson as Of Counsel in 2013, she served as law clerk to the Honorable Carlos Murguia of the U.S. District Court for the District of Kansas, and as a research attorney for Justice Carol Beier of the Kansas Supreme Court. She specializes in legal writing and researching, primarily handling appellate

briefing in complex litigation matters.

15. Lindsay Todd Perkins

99. Lindsay Todd Perkins earned her J.D. from the University of Missouri-Kansas City School of Law, graduating first in her class. She was the Editor-in-Chief of the UMKC Law Review, and was a member of the National Moot Court team. She received an MBA from the University of Central Missouri and a bachelor's degree in psychology from Avila University.

100. After law school, Ms. Todd Perkins served as a law clerk for the Honorable Duane Benton of the Eighth Circuit Court of Appeals and the Honorable Ortrie D. Smith, District Court judge for the Western District of Missouri. Following her clerkships, she practiced commercial and employment litigation at the law firm now known as Spencer Fane. She joined Stueve Siegel in 2013 and practices in consumer and commercial litigation, wage and hour, antitrust and personal injury litigation. She was named by Super Lawyers as a "Rising Star" in the area of business litigation from 2012-2017.

101. Ms. Todd Perkins is currently the President-Elect of the Lawyers Association of Kansas City.

102. Ms. Todd Perkins was additionally part of the trial team that tried a class action to verdict in June 2018 before the Honorable Nanette K. Laughrey of the United States District Court for the Western District of Missouri, which resulted in a jury verdict of more than $34 million.

16. Daniel Shaw

103. Daniel Shaw received his J.D. from the University of Kansas School of Law in 2013. Danny received a B.S. in Finance from the University of San Diego in 2009.

104. Prior to joining Stueve Siegel Hanson in 2015, Mr. Shaw worked as an associate for a Kansas City-based firm specializing in consumer protection law. He has worked on multi-

party litigation, focusing on wage and hour litigation.

17. Alex Ricke

105. Alex Ricke received his J.D. from the University of Missouri School of Law in 2012. During law school, Alex placed first in the 2011 MU Law Negotiation Competition and second in the 2011 MU Law Mediation Competition, was a 2010 Moot Court Finalist, and received several scholarships. He received his Bachelor of Journalism in 2009, also from the University of Missouri.

106. Prior to joining Stueve Siegel Hanson in 2016, Mr. Ricke spent over two years practicing law at a boutique complex litigation firm prosecuting business and class action cases around the country. Since joining the firm, he has successfully resolved "bet the company" business cases for his clients as well as nationwide and statewide class actions for hundreds of thousands of class members.

18. Jeff Scurlock

107. Jeff Scurlock received his J.D. from the University of Missouri-Kansas City School of Law, where he graduated first in his class, with distinction. He was a member of the Law Review and earned 16 CALI awards for academic excellence. He is also a member of Phi Beta Kappa.

108. Before joining Stueve Siegel Hanson in 2012, Mr. Scurlock practiced law at The Henning Law Firm and served as a law clerk for the Honorable Thomas H. Newton, Missouri Court of Appeals. Additionally, Mr. Scurlock practiced law for several years with Shook, Hardy & Bacon LLP in Kansas City, where he focused on complex products liability actions in state and federal courts across the United States. He represents businesses and individual clients in a range of litigation matters from antitrust disputes to consumer and employment class actions.

19. Ethan Lange

109. Ethan received his J.D., *magna cum laude*, from Baylor Law School, where he was the Editor-in-Chief of the Baylor Law Review. He was the Number One Speaker in the Dawson & Sodd Moot Court Tournament and was selected for membership in the Order of the Barristers. Mr. Lange served as a law clerk for the Honorable Ed Kinkeade of the United States District Court for the Northern District of Texas, Dallas Division.

110. Before joining Stueve Siegel Hanson in 2015, Mr. Lange practiced in the Dallas office of Locke Lord LLP. Ethan's practice is concentrated in antitrust, business litigation, personal injury, and class actions. He has successful first chair federal jury trial experience and was named by Super Lawyers as a "Rising Star" in 2014-2017.

111. In June 2018, Mr. Lange helped try a class action before the Honorable Nanette K. Laughrey of the United States District Court for the Western District of Missouri, which resulted in a jury verdict of more than $34 million.

20. Matt Cooper, Sam Storrs and John Tompkins

112. Matt Cooper graduated from the University of Kansas School of Law in 2015 with an International Trade and Finance Certificate. He received his B.S. in International Business Management from the University of Arkansas in 2010. Mr. Cooper joined Stueve Siegel after law school.

113. Sam Storrs graduated from the University of Kansas School of Law in 2015. He received his B.A. from the University of Wisconsin-Madison in 2011. Mr. Storrs joined Stueve Siegel after law school.

114. John Tompkins graduated from the University of Kansas School of Law in 2015. He received his B.S. in Business Administration and Finance from Kansas State University in 2010. Mr. Tompkins joined Stueve Siegel after law school.

115. Mr. Cooper, Mr. Storrs and Mr. Tompkins performed document review throughout the MDL litigation and helped with the gathering of responsive documents from class representative and bellwether producer plaintiffs.

21. Ariel Tazkargy

116. Ariel Tazkargy received her J.D. from the University of Minnesota Law School in 2014, where she served as an Executive Editor of the Journal of Law and Inequality. During law school, she won both "Best Oralist" and "Best Brief" in May 2012. Ms. Tazkargy received her B.A. in English with highest distinction from the University of Kansas, where she was a member of the KU Honors Program and the Phi Beta Kappa Honor Society.

22. Ben Stueve

117. Ben Stueve received a B.A. in English Language and Literature from Saint Louis University in 2007, and an M.A. in Secondary Education and Teaching from Avila University in 2012. He taught high school English from 2010 to 2015 before beginning law school at the University of Kansas School of Law. He assisted Stueve Siegel with legal research, analysis, and discovery during the summers before and after his first year of law school.

D. PARALEGALS AND ADDITIONAL STAFF

23. Michelle Campbell

118. Michelle Campbell received her Paralegal Certificate from Johnson County Community College in 1985. She has 32 years of experience as a litigation paralegal and has assisted in more than 10 trials.

24. Sherry Barry

119. Sherry Barry has an Associate Degree from Johnson County Community College in Paralegal Studies. She has 43 years of experience as a paralegal and has assisted in more than 25 trials and arbitrations.

25. Mary Rose Marquart

120. Mary Rose Marquart received a B.S. in Sociology with an emphasis in Criminal Justice from Benedictine College in 1983. Between 1983 and 1985, Ms. Marquart worked as an Investigator for the Jackson County, Missouri Prosecuting Attorney Office. She then received her Paralegal Certificate from Rockhurst University in 1986. Ms. Marquart began working as a Litigation Paralegal in 1985, and now has 34 years of experience. During that time, she has assisted with more than 10 trials.

26. Additional Paralegals

121. Katrina Cervantes is a paralegal with 17 years of experience.

122. Lori DeMoss is a paralegal with 19 years of experience.

123. Julie Olivas is a paralegal with 17 years of experience.

124. Cheri Perez is a paralegal with 34 years of experience.

125. Erika Reyes is a paralegal with 10 years of experience. She received a B.A. in Liberal Arts & Sciences from the University of Missouri-Kansas City in 2005.

126. Margaret Smith is a paralegal with six years of experience. She received a B.A. in Criminology and a B.A. in Women's Studies from Kansas State University in 2008.

127. Melissa Warner is a paralegal with 18 years of experience.

128. Sheri Williams is a paralegal with 18 years of experience.

27. Adrian Weiner

129. Adrian Weiner is Stueve Siegel's Information Technology Manager. He has 24 years of experience in information technology. Adrian received his B.S. in Telecommunications Management from DeVry University in 1998. Prior to receiving his degree, Mr. Weiner was an Electronic Technician, Instructor, and Company Commander in the Navy.

28. Peter Rupp

130. Peter Rupp was Stueve Siegel's Systems Director. He has 19 years of experience in systems and information technology.

29. Janet Switzer

131. Janet Switzer is Stueve Siegel's Finance/HR Director. She has 34 years of relevant experience in these roles.

30. Brendan Marquart

132. Brendan Marquart assisted with linking deposition exhibits with the original discovery database utilized by all co-lead counsel. At the time, he was a senior at the University of Missouri-Columbia.

II. CREATION OF THE MDL AND LEADERSHIP APPOINTMENT

133. On December 11, 2014, the United States Judicial Panel on Multidistrict Litigation ("JPML") entered a Transfer Order consolidating the initial 168 related cases filed against Syngenta before the Honorable John W. Lungstrum in the District of Kansas ("Court").

134. On December 22, 2014, the Court entered a Preliminary Practice and Procedure Order, setting an initial status conference for January 21, 2015 to discuss issues including the appointment of MDL leadership. ECF No. 2.

135. I worked closely with the three attorneys who had previously prosecuted the litigation captioned *In re Genetically Modified Rice Litigation*, previously consolidated in the United States District Court for the Eastern District of Missouri: Don Downing of Gray Ritter & Graham, P.C.; Scott A. Powell of Hare Wynn Newell & Newton L.L.P.; and William Chaney of Gray Reed & McGraw LLP.

136. Don and I were previously partners together at Stinson and I have worked with him on multiple occasions.

137. In creating our proposed leadership slate, we assembled a group of attorneys from across the country who could best represent the interests of the varying groups of plaintiffs in this litigation.

138. After receiving submissions and hearing argument at this status conference, the Court appointed four Co-Lead Counsel (collectively, "Co-Lead Counsel"): myself, and I was also appointed as Liaison Counsel; Don Downing, who was also appointed as interim class counsel; Scott Powell; and William Chaney. ECF No. 67.

139. In making its selection, the Court stated: "They all have done extensive work identifying and investigating potential claims; are experienced in handling complex litigation, including litigation involving genetically modified grain; are knowledgeable in the law; have demonstrated themselves as able and willing to work with diverse interests among plaintiffs as well as with the court and opposing counsel; and they bring the resources necessary to sustain this litigation without untoward involvement by non-party, non-lawyer funders. Moreover, they received excellent references from other judges before whom they have practiced, both for their skills and their collegiality. Much the same could be said about the other candidates, but the DCPS group stood out. The court was especially impressed by the extent to which their lawyers had thought through the matter of advancing the interests of diverse groups of plaintiffs and built a team which takes those interests into account." *Id.* at 2

140. The Court additionally appointed the following attorneys to the Plaintiffs' Executive Committee (the "EC"): Jayne Conroy of Simmons Hanly Conroy LLC; Christopher M. Ellis of Bolen Robinson & Ellis, LLP; David F. Graham of Sidley Austin LLP, who represented Archer Daniels Midland Co. ("ADM"); Richard M. Paul III of Paul LLP (f/k/a Paul McInnes LLP); Robert K. Shelquist of Lockridge Grindal Nauen PLLP; John Ursu of Greene

Espel PLLP, who represented Cargill, Inc. and Cargill International SA (collectively "Cargill"); Stephen A. Weiss of Seeger Weiss LLP; Scott E. Poynter, formerly of Emerson Poynter LLP and now with the Poynter Law Group; Thomas V. Bender, formerly of Walters Bender Strohbehn & Vaughan, P.C. and now with Horn Aylward & Bandy, LLC; and Thomas P. Cartmell of Wagstaff & Cartmell, LP. *See id.*[1]

141. In describing the EC, the Court stated: "This group brings a set of lawyers whose own skills, demographics and client bases complement and add value to the leadership structure." *Id.* at 4.

A. EXECUTION OF LIAISON RESPONSIBILITIES

142. In the Leadership Order, the Court set out the scope of the responsibilities for Liaison Counsel: "Plaintiffs' liaison counsel is designated as the counsel for all plaintiffs in all cases upon whom all notices, orders, pleadings, motions, discovery, and memoranda shall be served. Plaintiffs' liaison counsel is authorized to: (a) receive orders, notices, correspondence, and telephone calls from the court and the clerk of the court on plaintiffs' behalf, (b) prepare and transmit copies of such orders and notices on plaintiffs' behalf, and (c) receive orders and notices from the Judicial Panel on Multidistrict Litigation, and shall: (d) maintain complete files with copies of all documents served upon them and make such files available to all defendants' counsel and (e) maintain and make available to all counsel and the court an up-to-date service list." ECF No. 67 at 5-6.

143. As part of my responsibilities as Liaison Counsel and consistent with the Court's Order Concerning Appointment of Counsel, ECF No. 67, my firm was primarily responsible for

[1] On June 29, 2015, the Court granted Mr. Cartmell's motion to withdraw from the Plaintiffs' Executive Committee. ECF No. 891. After ADM resolved its litigation with Syngenta, Mr. Graham's motion to withdraw from Plaintiffs' Executive Committee was granted on February 27, 2018. ECF No. 3498.

correspondence with the Court and with the Clerk's office throughout the course of the MDL, including: coordinating with the Clerk's office to resolve unique docketing issues for this complex MDL; providing proposed orders to the Court via email; and responding to questions asked by the Court over email.

144. Throughout the entirety of the MDL, Stueve Siegel Hanson tracked all of the transfers from the JPML. Currently, there are 4,409 plaintiffs in the MDL. For each complaint transferred to the MDL, we would obtain the complaint from Bloomberg Law, PACER or Westlaw and we maintained a Summation database in which we tracked plaintiffs by type (i.e., producer, non-producer), by state, by claims asserted and by counsel.

145. Stueve Siegel Hanson maintained complete files of all documents filed and served in the litigation, from under seal filings to written discovery. Throughout the litigation, we worked with co-counsel and coordinated counsel on providing copies of those documents and responding to questions regarding the MDL.

146. We additionally finalized and filed nearly every motion, brief, exhibit and other document on behalf of Plaintiffs in the MDL. For joint filings, we worked directly with national and local counsel for Syngenta for these filings and the proposed orders that were often submitted in conjunction with these joint filings.

B. EXECUTION OF LEADERSHIP RESPONSIBILITIES

147. It was a central goal of the MDL leadership to prosecute the claims of those affected by Syngenta's commercialization of MIR162 and Event 5307 effectively and swiftly.

148. In anticipation of the initial Status Conference scheduled for February 3, 2015, counsel for Plaintiffs and Syngenta discussed a proposed agenda for the Status Conference and proposed Case Management Order No. 1, which created a process and procedure for cases directly filed in the District of Kansas. These were emailed to the Court on January 30, 2015.

149. Included in that same email were Plaintiffs' Proposed Initial Scheduling Order, which proposed dates for the governing orders for the MDL and discovery, and Plaintiffs' Status Report No. 1.

150. On February 3, 2015, the Court held an initial scheduling conference at which these documents were discussed.

151. On the next day, February 4, 2015, the Court entered Scheduling Order No. 1, which established deadlines related to: cases seeking remand to state court, the filing of consolidated amended complaints, and the filing of Rule 12(b)(6) motions to dismiss. ECF No. 123.

152. To advance the prosecution of the cases, at Plaintiffs' request and over Syngenta's objections, Scheduling Order No. 1 also ordered Syngenta to produce certain categories of documents without the need for formal discovery, including prior deposition transcripts in the *Syngenta Seeds, Inc. v. Bunge N. Am., Inc.* litigation; copies of Syngenta's Viptera or Duracade stewardship agreements; and, copies of documents provided to regulatory authorities related to MIR 162 or Event 5307. *See* ECF No. 123. The Court additionally ordered that limited merits discovery could proceeded in tandem with 12(b)(6) and class certification briefing. *Id.*

III. SYNGENTA'S REMOVAL OF STATE COURT CASES, INCLUDING THOSE FILED BY ADM AND CARGILL

153. Early in the litigation, Syngenta began removing hundreds of cases originally filed in state courts across the country on the basis of the Federal Common Law of Foreign Relations. *See, e.g.,* ECF No. 283-1. These removals included lawsuits separately-filed by Cargill and ADM in Louisiana state courts.

154. We assisted counsel for these removed cases, including counsel for Cargill and ADM, in responding and, on March 2, 2015, we filed the motion and memorandum in support

seeking to remand all of the cases that had been removed on this basis. ECF Nos. 283-84.

155. On May 5, 2015, the Court granted this motion to remand, finding that the federal common law of foreign relations does not give rise to federal question jurisdiction under Section 1331. ECF No. 395. As a result of this ruling, Syngenta ultimately faced litigation in multiple state-court jurisdictions, including the Minnesota and Illinois consolidated proceedings.

IV. NEGOTIATION OF GOVERNING ORDERS

156. My partner Rachel Schwartz took the lead on drafting and negotiating the Protective Order, ESI Protocol and Preservation Order with Syngenta. The timely negotiations of these orders were an important step in preserving and procuring documents so that deposition discovery could begin. I had final review and approval responsibilities on behalf of the Co-Leads for these negotiated proposed orders.

A. PROTECTIVE ORDER AND ESI PROTOCOL

157. In January 2015, Ms. Schwartz began drafting a proposed Protective Order and a proposed ESI Protocol.

158. The Protective Order was drafted in compliance with the District's unique Guidelines for Agreed Protective Orders for the District of Kansas.

159. Ms. Schwartz and I coordinated with Co-Lead Counsel and Coordinated Counsel to ensure that the Protective Order addressed the unique challenges in this MDL, wherein competitor non-producers were likely to produce commercially-sensitive information.

160. Similar to the Protective Order, the ESI Order was drafted in compliance with the District's Guidelines for Cases Involving Electronically Stored Information.

161. For the ESI Protocol, Ms. Schwartz worked with Stephanie Walters in my office to ensure that documents received from Syngenta and third parties would work in the Relativity database we intended to use throughout the litigation.

162. The ESI Protocol was uniquely complicated in this litigation because it needed to address emails, computers and other forms of ESI maintained by a wide variety of entities, ranging from: farmers, many of whom had little to no ESI; to sophisticated farming entities with extensive ESI; to non-producers; and Syngenta who maintained ESI on a variety of systems in locations throughout the world.

163. The ESI Protocol specified the types of files to be produced and the required metadata for those files.

164. On February 2, 2015, I emailed first drafts of a proposed Protective Order and a proposed ESI Order to counsel for Syngenta.

165. Over the next month, the parties exchanged multiple drafts of the proposed protective order and conducted multiple conference call discussing these issues.

166. With each new draft, Ms. Schwartz and I coordinated with Co-Lead Counsel on the changes and with coordinated counsel, including counsel for Cargill and ADM, to craft a protective order that would be acceptable to all of these parties.

167. On March 13, 2015, I emailed Judge O'Hara the parties' agreed-upon Protective Order and the Order was entered that same day. ECF No. 294.

168. Because of the technical aspects of the ESI Protocol, the negotiations took longer. On March 30, 2015, I emailed the Court the jointly-proposed ESI Protocol, which was entered on March 31, 2015. *See* ECF No. 327.

B. PRESERVATION ORDER

169. During the course of negotiating the ESI Protocol, the parties discussed whether a separate preservation order was necessary. Initially, Plaintiffs believed a separate protocol was needed, but Syngenta disagreed.

170. On March 11, 2015, after incorporating changes from Co-Lead and Coordinated

Counsel, Ms. Schwartz emailed Syngenta an initial draft of the proposed preservation order.

171. Ms. Schwartz and I engaged in good faith discussions between the parties occurring over multiple weeks, but despite these efforts, the parties were unable to agree on all aspects of the preservation order.

172. On April 17, 2015, the parties filed a Joint Motion for Entry of a Preservation Order. ECF No. 365. Attached to the joint motion were separate memoranda, one on behalf of Plaintiffs and one on behalf of Syngenta, briefing the two areas of dispute.

173. The dispute was resolved by the Court on April 21, 2015, and the Court entered a Preservation Order. ECF No. 369.

174. After entry of the Preservation Order on April 21, 2015, and consistent with Section II(C) of that Order, the parties scheduled a meet and confer for May 1, 2015. Two days in advance of this meeting, each party was required to disclose their ESI systems they would search for potentially responsive ESI information.

175. Ms. Schwartz reached out to counsel for certain the Non-Producers regarding how these plaintiffs intended to search for potentially responsive information. On April 29, 2015, Ms. Schwartz emailed a letter to Syngenta disclosing how these plaintiffs and class representative producers intended to search for potentially responsive ESI.

176. On April 29, 2015, parties including Syngenta, ADM and Cargill sent similar letters regarding their ESI systems and search protocols and the parties began multiple meet-and-confer calls to discuss issues related to the collection and production of potentially responsive ESI.

C. COORDINATION ORDER

177. Given the multitude of jurisdictions in which plaintiffs with similar claims sued Syngenta, the MDL Co-Lead Counsel determined that coordination with other jurisdictions

would promote the efficient and rapid prosecution of these cases.

178. Rachel Schwartz and I took the lead in negotiating the Coordination Order with Syngenta. We additionally sought out and worked with proposed coordinated counsel, including counsel in the Minnesota and Louisiana actions, to ensure that their input was included in these negotiations.

179. After exchanging multiple drafts and participating in multiple telephone conferences, Plaintiffs and Syngenta were unable to agree on all aspects of the proposed coordination order.

180. On October 15, 2015, the parties filed a Joint Motion setting forth their competing approaches to coordination. ECF No. 1083. My office took the lead in drafting Plaintiffs' brief on these disputed issues.

181. Following a status conference on October 19, 2015, the Court entered a Coordination Order, which required coordination on all aspects of discovery. ECF No. 1099.

182. The Coordination Order established that the "MDL Proceeding shall be used as the lead case for discovery scheduling" across all coordinated actions. *Id.* at 4. Lead Counsel were required to create a document depository, which my firm managed, and to take the lead on drafting and serving written discovery. *Id.* at 5, 15. The Order additionally required discovery to comply with the District's Local Rules and for disputes to be raised in the MDL. *Id.* at 17. Minnesota lead counsel were provided access to the MDL Document Database pursuant to the Coordination Order.

D. JPAs WITH VARIOUS PLAINTIFF GROUPS

183. As part of our efforts to ensure and promote the efficient and rapid prosecution of these cases, Don Downing and I spent a considerable amount of time negotiating with some of the plaintiffs' counsel who had filed cases in Minnesota, Illinois and Louisiana regarding

agreements that addressed, among other things: the joint depository of the millions of pages of documents produced in the matter by Syngenta and third parties; confirmed that the Kansas Co-Leads would take the lead on all fact discovery; established cost-sharing agreements, including for any shared experts, common benefit assessments in the event any individual case was settled outside of a class settlement; and the timing of trials.

184. These agreements were important to our successful efforts in meeting the short fact and expert discovery deadlines established by the Court.

E. BUSINESS RECORDS ORDER

185. Early on in the litigation, we proactively addressed how to ensure the admissibility at trial of documents produced by Syngenta, including Syngenta's ESI, by drafting a proposed order establishing a process for establishing the admissibility of certain documents produced in the litigation.

186. On October 5, 2015, I emailed counsel for Syngenta a draft of this proposed order for their review and comment.

187. Despite meeting and conferring over the course of many months, the parties were unable to reach agreement on the proposed order, which resulted in Plaintiffs moving for entry of an order regarding the qualification of documents as authentic and/or records of regularly conducted activity. ECF No. 1580.

188. On March 15, 2016, the Court entered the Order Regarding Qualification of Documents Generated by a Party as Authentic and/or Records of Regularly Conducted Activity, ECF No. 1706, which was later amended, ECF No. 1744.

189. This Order established a process by which the parties would meet and confer regarding the admissibility of documents. From the entry of the Order and continuing through 2017, we regularly received reports from Syngenta regarding whether they would or would not

stipulate to the admissibility of deposition exhibits and would regularly meet and confer regarding these stipulations. As we approached trial, this Order reduced the uncertainty as to what exhibits would be admissible, which helped to streamline our trial preparation efforts.

V. AMENDED COMPLAINTS

190. In Scheduling Order No. 1, the Court set a deadline for the filing of "consolidated amended complaints." ECF No. 123 at 3.

191. In March 2015, Bradley Wilders and I initiated discussions with Syngenta regarding a proposed order drafted by Plaintiffs that would clarify whether the consolidated complaint would be an administrative class complaint only or a master class complaint, which would supersede prior individual complaints. Plaintiffs intended to ask for the amended complaint to be designated as a master complaint.

192. As a part of this process, Plaintiffs additionally prepared a draft Notice to Confirm form to the master class complaint, which would allow plaintiffs to amend their allegations and causes of action to conform to the master class complaint.

193. On March 10, 2015, I emailed the Court the final, jointly-proposed order, which was entered on March 10, 2015. ECF No. 287.

194. The parties additionally discussed how to handle service of process for these new complaints and for parties that would or would not file notices to conform. On April 20, 2015, the Court entered a jointly-proposed order. ECF No. 367. As a result of these orders, individual plaintiffs suing Syngenta did not have to go through the burdensome and costly process of serving foreign Syngenta defendants through the Hague Convention.

195. On May 29, 2015, Plaintiffs filed the Producer Plaintiffs' Amended Class Action Master Complaint, ECF No. 450, Non-Producer Plaintiffs' Amended Master Class Action Complaint, ECF No. 451, and Milo Producer Plaintiffs' Master Complaint, ECF No. 452.

196. The Producer Complaint was 198 pages and included 71 causes of action, including one nationwide class and additional claims on behalf of 22 states. ECF No. 450.

197. The Non-Producer Complaint was 119 pages and included seven causes of action, including class and individual claims. ECF No. 451.

198. The Milo Producer Complaint was 104 pages and included seven causes of action, including nationwide and state class claims. ECF No. 452.

199. These complaints began to incorporate the facts that Plaintiffs were uncovering through continued investigation and review of documents produced by Syngenta. The complaints extensively quoted from Syngenta's employees and cited to Syngenta's internal documents, which had been located and reviewed by the MDL's document reviewers. *See generally* ECF No. 450.

200. Specifically, the Complaints included Syngenta's multiple internal assessments that China was a key country for United States corn exports and discussions regarding Syngenta's decision to commercialize Viptera prior to obtaining Chinese approval of MIR162. The complaint additionally detailed Syngenta's knowledge of the risk that U.S. corn exports could be disrupted by the premature commercialize of Viptera and the problems Syngenta experienced with its Viptera applications. *See id.*

201. To correspond with these amended complaints, Plaintiffs drafted new forms for conforming to the amended complaints, which the Court approved on April 29, 2015. ECF No. 386.

202. On September 19, 2016, we drafted and filed separate Third Amended Complaints on behalf of the Producer Plaintiffs and the Non-Producer Plaintiffs. ECF Nos. 2531 (Producer Plaintiffs' Third Amended Class Action Master Complaint), 2530 (Non-Producer

Plaintiffs' Third Amended Master Complaint).

VI. SYNGENTA'S MOTIONS TO DISMISS

203. On June 19, 2015, Syngenta filed their Federal Rule of Civil Procedure 12(b)(6) Motion to Dismiss Producer and Non-Producer Plaintiffs' Amended Class Action Master Complaints, ECF No. 856, and memorandum in support, ECF No. 857.

204. Syngenta's 96-page memorandum in support of the motion to dismiss the Producer and Non-Producer complaints attacked nearly every aspect of these Complaints. If successful, it would have resulted in a judgment in Syngenta's favor that applied to all plaintiffs in the MDL and all their claims, and it would have been used by Syngenta against all plaintiffs in related jurisdictions. In the motion, Syngenta alleged *inter alia*: it could not be held liable for failing to segregate Viptera from the corn supply or refraining from selling Viptera ("no duty" arguments phrased in terms of duty and proximate cause); the economic loss doctrine ("ELD") barred Plaintiffs' negligence, nuisance and negligent misrepresentation claims; Plaintiffs' could not bring a tortious interference claim; and Plaintiffs' Lanham Act claims should be dismissed entirely because Plaintiffs' lacked statutory and Article III standing and the allegedly false statements were not actionable "commercial advertising or promotion." ECF No. 857. Syngenta also challenged a number of consumer-protection statutes. *Id.*

205. With regard to the duty arguments, Syngenta alleged that no U.S. court had ever imposed liability on a company for selling a GMO seed that been approved in the United States prior to obtaining approval abroad, but that courts in other countries had rejected similar claims. ECF No. 857 at 63; *see also id.* at 68 (citing cases that for many of the "same reasons that courts refuse to impose a duty on manufacturers to control the post-sale use by others of safe, non-defective products, they also refuse to impose a duty on manufacturers to refrain from selling such products altogether."). It further argued that Plaintiffs sought to impose on Syngenta a duty

to control the conduct of others, including the farmers who purchased Viptera and the grain handlers and exporters who shipped it to China. *Id.* at 48. It alternatively phrased its duty arguments in terms of a failure of proximate cause, contending that the chain of events leading to the Chinese rejection was necessarily too remote from Syngenta's conduct. *Id*. at 50.

206. Syngenta's Rule 12(b)(6) motion, Plaintiffs' opposition, and the Court's order were a watershed moment in the litigation. According to Syngenta, in prior GMO litigation, such as LLRICE and StarLink, courts were never asked to directly confront the issue of duty because in those cases, the GMO released did not have full regulatory approval in the United States. In contrast, Syngenta's trait was fully deregulated in the United States, and Syngenta strongly stressed that fact in opposing imposition of state tort duties. It pointed to allegedly analogous authority from Canada, in which the intermediate Canadian appellate court affirmed dismissal of farmer's claims against a seed manufacturer for releasing a GMO trait that caused loss to organic farmers. In responding to Syngenta's motion, we were required to extensively research and oppose its largely policy-based arguments to support the imposition of a legal duty. In addition, Syngenta's related argument that the ELD barred Plaintiff's claims was extensive and complex. In responding to those arguments, we traced the history and application of that doctrine across all 22 jurisdictions, prevailing in each instance. *See generally* ECF No. 927.

207. In total, Plaintiffs filed a 142 page Opposition to Syngenta's motion to dismiss the producer and non-producer complaints. *Id.* Syngenta filed a 91-page reply with four supporting appendices. ECF No. 950.[2]

208. On August 21, 2015, the Court heard oral argument on Syngenta's motion. Mr.

[2] Syngenta additionally filed a separate motion to dismiss the Milo Producer Plaintiffs' Complaint, ECF No. 929, to which Plaintiffs drafted and filed an opposition. ECF No. 946. The Milo Producer Complaint was voluntarily dismissed on July 27, 2016. ECF No. 2350.

Wilders presented argument responding to Syngenta's duty arguments, while Mr. Downing and Ms. Garrison presented argument responding to the ELD, and Mr. Earley presented argument with respect to the motion to dismiss the tortious interference claims. At the hearing, Plaintiffs tendered a 46-page chart responding to the new ELD cases cited by Syngenta in its reply. ECF No. 960.

209. On September 11, 2015, the Court entered its Memorandum and Order largely denying Syngenta's motions to dismiss. ECF No. 1016.

210. The Court held that Plaintiffs had sufficiently alleged a duty. "[P]laintiffs' particular injuries were not only foreseeable, they were actually foreseen by Syngenta, with plaintiffs suffering the very harm expected to occur." ECF No. 1016 at 14. Just as Plaintiffs' argued, the Court found that "the law reasonably imposes a duty on a manufacturer to exercise reasonable care not to commercialize and sell its product in a way that creates a risk of widespread harm resulting from the intended use of the product by all of its customers." *Id.* at 17.

211. The Court additionally rejected Syngenta's arguments that deregulation of Viptera "did not necessarily immunize Syngenta from any liability for wrongful acts connected to the commercialization or sale of those products." *Id.* at 19.

212. With regard to the ELD arguments, the Court followed Plaintiffs' approach and analyzed the application of the ELD in the 22 states at issue. Ultimately, the Court stated that "[i]n in none of these 22 states does the law provide a basis to predict that the state would apply the [stranger version of ELD] in this case in the absence of circumstances in which application of the doctrine would further its rationales. Accordingly, the Court rejects Syngenta's argument that the SELD bars plaintiffs' claims, and it denies Syngenta's motions to dismiss to that extent."

Id. at 50. The Court additionally rejected Syngenta's claims that the ELD barred the non-producer claims. *Id.* at 50-51.

213. While the Court narrowed Plaintiffs' Lanham Act claims, Plaintiffs retained a Lanham Act claim, claims based on Duracade's premature commercialization, tortious interference claims, certain consumer protection actions, and certain claims asserted by the non-producers. *See generally id.*

214. This was the first ruling on a motion to dismiss in any of the Syngenta corn cases. This opinion was cited to and relied upon by other Courts that considered these same issues.

215. Syngenta attempted to refine and expand on its arguments, particularly its duty, ELD, and tortious interference arguments in seeking certification for interlocutory appeal. ECF No. 1081. We prepared a 33-page responsive brief. ECF No. 1091. Bradley Wilders prepared the responsive arguments to the duty issues raised therein.

216. At the October 19, 2015 status conference, the Court denied this motion. ECF No. 1097.

VII. ADDITIONAL AMENDED COMPLAINTS AND MOTIONS TO DISMISS

217. Co-Lead Counsel, with assistance from multiple EC attorneys, worked to draft new master complaints for the Producers and Non-Producers. Gretchen Garrison took the lead on this project, with Rachel Schwartz helping from my office.

218. On October 5, 2015, Non-Producer Plaintiffs filed their Second Amended Master Class Action Complaint, ECF No. 1064.

219. On November 5, 2015, Syngenta filed its Answer and Affirmative Defenses to Plaintiffs' Amended Class Action Master Complaint, ECF No. 1203, and the Milo Producer Plaintiffs' Master Complaint. ECF No. 1204.

220. On November 19, 2015, Syngenta filed: its answer, affirmative defenses and

counterclaims to Non-Producer Plaintiffs' Second Amended Master Class Action Complaint. ECF No. 1224; and its Motion to Dismiss Non-Producer Plaintiffs' Second Amended Master Class Action Complaint, ECF No. 1222, and Memorandum in Support, ECF No. 1223.

221. On January 11, 2016, Producer Plaintiffs filed their Second Amended Class Action Master Complaint, ECF No. 1377.

VIII. SYNGENTA'S COUNTERCLAIMS AND THIRD PARTY CLAIMS

222. The prosecution of this MDL became significantly more complicated in November 2015 when Syngenta filed counterclaims accusing non-producers of negligence.

223. On November 19, 2015, Syngenta filed its Answer and Affirmative Defenses to the Non-Producer Plaintiffs' Second Amended Master Class Action Complaint. ECF No. 1224. As part of this Answer, Syngenta additionally asserted counterclaims against the Non-Producer class representatives. These causes of action sought indemnification and contribution for any recovery by Plaintiffs against Syngenta. *See id.*

224. On December 3, 2015, Syngenta filed its Third-Party Complaint against Cargill and ADM, bringing these entities that had previously been remanded back to state court in Louisiana back into the MDL. ECF No. 1259. The Third-Party Complaint included causes of action for contribution and indemnity in the event Syngenta were to be held liable. *Id.*

225. If Syngenta had been successful in maintaining these claims, not only would it have meant the trials would have taken significant additional time, but they also would have been far more complicated both in terms of proof and in terms of collecting a judgment. This again was a significant victory for Plaintiffs and ensured that there would not be third parties sitting at trial that Syngenta could blame for the harm to plaintiffs.

226. On April 4, 2016, the Court granted the joint motion to dismiss Syngenta's counterclaims and third-party complaints. ECF No. 1803. That ruling applied the Grain

Standards Act, 7 U.S.C. §§ 71-87k, to find that certain claims asserted by Syngenta were preempted by federal law.

227. On April 29, 2016, Syngenta filed a motion for partial judgment on the pleadings against Plaintiffs in the MDL, relying on the Court's ruling applying the Grain Standards Act, 7 U.S.C. §§ 71-87k. ECF No. 1928. We prepared and drafted a response on May 27, 2016 and filed a sur-reply on July 11, 2016. ECF Nos. 2090, 2278. The preemption issue raised by Syngenta was significant because it sought to foreclose all theories of negligence asserted by Plaintiffs as preempted, other than the theory that Syngenta should have waited to commercialize its traits. This would have precluded Plaintiffs from arguing to the jury that Syngenta could have taken steps to sell its seed to avoid the harm that befell the market. Bradley Wilders and Gretchen Garrison, working with me and the other Co-Leads, prepared and filed our briefs on this issue.

228. On August 17, 2016, the Court issued its order only granting Syngenta's motion in part. Critically, it preserved a number of theories of negligence short of waiting to sell, paving the way for Plaintiffs to argue to the jury that Syngenta could have conducted a limited launch of its Viptera and Duracade seeds to prevent Plaintiffs' harm, without running afoul of the Grain Standards Act. ECF No. 2426 at 18-37.

IX. CREATION OF THE PLAINTIFF BELLWETHER POOL

229. In applying for leadership, the MDL Co-Lead Counsel and their proposed EC committed to prosecuting the MDL in a manner that would permit its efficient resolution even if class certification were ultimately denied. This included the commitment that producers seeking individual trials would not be delayed by class discovery and certification proceedings. This required a mixed pool of individual bellwether and class trial plaintiffs.

230. On October 15, 2015, the parties filed a joint motion submitting competing

scheduling orders, including competing proposals for the identification of individual bellwether Plaintiffs and class representative Plaintiffs. ECF No. 1084. My firm took the lead in drafting Plaintiffs' brief on these issues, which proposed a bellwether pool drawn from six representative states. Syngenta's proposal sought bellwether plaintiffs from all 22 states where Plaintiffs had filed actions.

231. The Court ultimately struck a compromise and held that the bellwether pool would consist of: "(1) the 5 non-producer plaintiffs who have filed suit (4 of whom are named class representatives in any event); (2) the 2 milo plaintiffs named in the milo master complaint; (3) a sampling of 6 producer-plaintiffs from 8 of the 22 states at issue, with each side selecting 4 states on an alternating basis, with plaintiffs selecting first, and further with each side selecting 3 plaintiffs per state on a similar alternating basis; and (4) the named class representative(s) in each of the 8 selected states." ECF No. 1098 at 6.

232. The Court additionally ruled that ultimately the "bellwether trial pool will be comprised of 4 producer plaintiffs and 2 non-producer plaintiffs. Subject to review and approval by the court, each side must select 2 producer plaintiffs and 1 non-producer plaintiff for the bellwether trial pool" and that these selections would occur by August 15, 2016. *Id.* at 11.

233. To prepare for the bellwether selection process, Co-Lead Counsel and members of the Executive Committee began a thorough review and analysis of potential candidates for the bellwether pool. Steve Six and I took the lead on this process for our firm, focusing on the Kansas bellwether pool.

234. Co-Lead Counsel and additional counsel at the direction of Co-Lead Counsel undertook a thorough analysis of the 22 different state laws to weight the risks and advantages of each state to determine which states to propose as bellwether states. Bradley Wilders and I

collected the analyses from the various firms and, in consultation with other counsel, provided recommendations to the Co-Lead Counsel.

235. On November 12, 2015, the parties exchanged bellwether state selections. Bradley Wilders and I exchanged the emails with Syngenta regarding these selections.

236. On November 19, 2015, I emailed counsel for Syngenta with the list of Plaintiffs' first eight bellwether plaintiff selections. Bellwether plaintiff selections continued through November 20th, with the parties alternating selections.

X. FACT DISCOVERY

237. At the beginning of the MDL, Syngenta sought to delay the completion of fact discovery, arguing to the Court that discovery should be entirely stayed pending a ruling on the motion to dismiss and the merits-based discovery should be deferred until after a class certification ruling. ECF No. 123 at 5.

238. In contrast, on January 30, 2015, I emailed the Court Plaintiffs' Proposed Initial Scheduling Order, which asked for Syngenta to immediately produce three categories of documents: all documents it previously produced in *Syngenta Seeds, Inc. v. Bunge N. Am., Inc.*, Case No. No. 11-cv-4074-MWB (N.D. Iowa) (Bennett, J.) (the "Bunge litigation"); copies of all iterations of Syngenta's stewardship agreements; and all documents submitted to United States and Chinese regulatory authorities for approval of MIR162 or Event 5307.

239. The Court's Scheduling Order No. 1 rejected Syngenta's phased discovery approach and required Syngenta to immediately produce the three categories of documents requests by Plaintiffs and ordered the parties "to proceed with basic document production," Rule 26 disclosures and "some other highly targeted discovery." ECF No. 123 at 7-10.

240. Although the Court had ordered targeted discovery to begin, Syngenta refused to search for and produce documents from the 15 custodians we requested. Syngenta instead

offered only 5 custodians. ECF No. 844.

241. The Court ultimately held that the "custodian-specific discovery plaintiffs seek is targeted, narrowly drawn, and proportionate" and ordered Syngenta to produce responsive documents from the 15 identified custodians we requested. ECF No. 861.

242. After the ruling on the motion to dismiss, Co-Lead Counsel pushed for an aggressive discovery and trial schedule, with fact and expert discovery ending on August 15, 2016, and the first trial scheduled as early as January 2017. ECF No. 1084-1. In contrast, Syngenta argued for the first trial to occur in June 2017. ECF No. 1084-3.

243. The Court's October 21, 2015 Scheduling Order No. 2 lifted the stay of discovery that had been in place pending a ruling on the motions to dismiss. ECF No. 1098.

244. This Order set a March 15, 2016 deadline for the completion of all written discovery, giving the parties only 5 months for written discovery. *Id.* at 8.

245. This Order additionally established a deadline for the completion of all fact depositions by May 2, 2016, giving the parties less than 7 months from the lifting of the stay of discovery to complete all fact depositions spread across four continents. ECF No. 1098 at 8.

A. PLAINTIFFS' WRITTEN DISCOVERY REQUESTS TO SYNGENTA

246. MDL Counsel, primarily Rachel Schwartz from my firm and Jason Earley from Hare Wynn, took the lead in drafting and serving all written discovery served on Syngenta.

247. Plaintiffs served the following requests for documents:

- Plaintiffs' First Request for Production, containing 75 requests
- Plaintiffs' Second Request for Production, containing 8 requests
- Plaintiffs' Third Request for Production, containing 134 requests
- Plaintiffs' Fourth Request for Production, containing 4 requests
- Plaintiffs' Fifth Request for Production, containing 46 requests

248. Plaintiffs served the following interrogatories on Syngenta:

- Plaintiffs' First Interrogatories to Syngenta AG, containing 19 interrogatories
- Plaintiffs' First Interrogatories to Syngenta Corporation, containing 4 interrogatories
- Plaintiffs' First Interrogatories to Syngenta Crop Protection AG, containing 6 interrogatories
- Plaintiffs' First Interrogatories to Syngenta Crop Protection, LLC, containing 14 interrogatories
- Plaintiffs' First Interrogatories to Syngenta Seeds, Inc., containing 13 interrogatories
- Plaintiffs' Second Interrogatories to Syngenta Crop Protection AG, which included 6 interrogatories
- Plaintiffs' Second Interrogatories to Syngenta Seeds, Inc., which included 9 interrogatories

249. On March 1, 2016, Plaintiffs served their First Set of Class Certification Related Interrogatories and Related Document Request to Syngenta.

250. On March 15, 2016, Plaintiffs served their First Requests for Admission to All Defendants, which included seven requests designed to establish the admissibility of depositions exhibits for trial. Plaintiffs simultaneously served a companion Interrogatory to accompany these Requests for Admission.

B. SYNGENTA'S PRODUCTION OF DOCUMENTS

251. On or about March 27, 2015 and pursuant to Scheduling Order No. 1, Syngenta began its first production of documents. This first production, consisting of SYT and SYNG documents, contained approximately 30,000 documents, totaling more than 390,000 pages. Additional Bunge-related documents were produced on or about April 14, 2015.

252. Rolling productions of documents from Syngenta continued through September 2017. In total and not including substantial numbers of native documents, Syngenta produced more than 354,000 documents, totaling more than 1.5 million pages.

253. Throughout the litigation, Stueve Siegel Hanson, principally Rachel Schwartz with my input when needed, took the lead on all meet and confer discussions with Syngenta

regarding their responses to Plaintiffs' written discovery and compliance with these discovery requests.

254. These meet and confer discussions began as early as April 28, 2015, when we sent Syngenta a letter identifying issues with Syngenta's production of documents pursuant to Scheduling Order No. 1. Syngenta responded on May 2, 2015, and the parties began meet and confer discussions regarding these documents and continued meet and confer discussions throughout the course of discovery in the litigation.

255. These meet and confer conferences additionally involved multiple weeks of discussions regarding the custodians and search terms Syngenta would use to locate potentially responsive documents. Rachel Schwartz and Stephanie Walters, working with coordinated counsel, led these discussions. As new document requests were served on Syngenta, the parties would re-engage on new search terms needed for every additional document request.

256. Throughout the course of the litigation, Syngenta served multiple privilege logs. The meet and confer discussions with Syngenta additionally involved discussions regarding these withheld documents.

257. On April 25, 2017, after meet and confer discussions reached an impasse, Plaintiffs filed a motion to compel certain documents listed on these logs. ECF No. 3109.

258. The Court ultimately granted in part the motion, compelling Syngenta to produce documents, including documents created by a non-party that analyzed the potential economic impact of China's rejection of U.S. corn shipments. ECF No. 3238.

C. DOCUMENT REVIEW

259. Rachel Schwartz and Stephanie Walters coordinated the document review by the common benefit firms.

260. Ms. Walters took the lead on the bidding by and negotiation with outside vendors

to host the Relativity document review database. She was the single point of contact with the vendor throughout the entire litigation, including coordinating the loading and quality control of all produced documents and the appearance and content of the coding screens. Ms. Walters' extensive knowledge of Relativity greatly reduced the costs associated with the Relativity database, including by eliminating project management time from our outside vendor by personally training our reviewers on the Relativity platform.

261. As documents were produced, Ms. Walters would create unique batches of documents for each document reviewer. Depending upon the immediate needs for upcoming depositions, Ms. Walters would create batches of documents by custodian or by search term. She continuously monitored the efficiency of the document review members, answered questions from these reviewers and ensured that reviewers had a constant stream of new documents to review. She also performed searches and located documents used in defendant, non-producer and third party depositions.

262. In March 2015, we began to create the document review protocol, which established how document reviewers would analyze and code every document produced in the litigation. The protocol ensured consistency among the reviewers. Because there were too many documents to have them reviewed by senior attorneys in the amount of time necessary to perform review prior to depositions, we developed a tiered review system. Initial review would be done by dedicated attorneys across the country. The purpose of this review was to weed out irrelevant documents, code documents by subject matter, and flag potentially "hot" documents. A secondary review team, headed by Jason Earley and Drew York, would then review the subset of flagged documents, which were sorted into subject-matter or deposition buckets. Attorneys responsible for depositions would then select from these limited sets, or from the subject-matter

coding, documents to utilize in the depositions. This system allowed for us to efficiently review this large set of the documents and to narrow them to useable number in preparation for trial. In my opinion, few things were more important to the overall merits of Plaintiffs' claims than the documentary evidence.

263. In April 2015, we reached out to Co-Lead and Executive Committee member firms to find one or two individuals from each firm who could dedicate meaningful amounts of time to the document review.

264. From April 21-23, 2015, document reviewers from common benefit firms across the country met in-person in our offices in Kansas City to train on the Relativity document review platform, discuss the document review protocol and begin the actual review of documents produced by Syngenta.

265. We conducted two additional in-person document reviews in Kansas City on November 30-December 4, 2015, and December 7-11, 2015.

266. Syngenta produced more than 550,000 pages of documents after the stay of discovery was lifted in October 21, 2015, ECF No. 1098. With substantive depositions of Syngenta's employees to begin in January 2016, it was critical to have document reviewers review these documents as soon as they were received.

267. Throughout the course of the litigation, it required nearly 50 document reviewers from firms across the country reviewing documents produced by Syngenta, Non-Producers and third parties, which totaled in excess of 2.5 million pages. The training we provided minimized the amount of time that reviewers would need to spend learning the case. Ms. Walters utilized Relativity tool sets to routinely monitor the efficiency and quality of the reviewers, and we used these metrics to steer work to our most efficient and best reviewers. In my opinion, we could not

have completed the review of documents, in the time allotted, and provided a useful database of coded and flagged documents to prepare for trial without engaging the number of reviewers we did because attorneys at the four co-lead firms were actively engaged in various other tasks, including brief writing and deposition preparation.

268. We also conducted regular conference calls with the document reviewers to discuss the on-going factual development in the litigation, which was necessary for the document reviewers to understand the context of the documents they were reviewing, to discuss any hot documents found in the review and to answer any questions reviewers had. This promoted reviewer efficiency.

269. To minimize costs, my firm's document reviewers were primarily Matt Cooper, Sam Storrs and John Tompkins, three attorneys who had our lowest billing rates.

270. They generally reviewed documents produced in the litigation. Once I knew which depositions I would take, they focused on custodial documents from these witnesses and additional documents these witnesses drafted, received or on which they were mentioned.

271. As part of their production of documents, Syngenta produced more than one hundred thousand Stewardship Agreements purportedly signed by certain farmers giving them a limited license to use seeds containing Syngenta's biotechnology.

272. Many of these agreements contained handwriting or were of poor scanned quality, making it difficult to obtain an electronic record of the farmers who had purchased Syngenta's technology. Thus, these documents had to be individually-reviewed to determine which farmer purportedly signed the agreement, the contact information for that farmer and which seeds were referenced in the agreement.

273. We put together a Stewardship Agreement review team primarily composed of

paralegals to reduce the cost of this review. They reviewed all of these agreements to determine which, if any, Producer Plaintiffs involved in the litigation may have signed a Stewardship Agreement. These reviewers then coded this information in our Relativity database.

274. Importantly, even as the document review was ongoing, the shape of the litigation continued to evolve. Many rulings, like the Court's preemption order for example, required adjustments and fine tuning of Plaintiffs' theories and the expected trial plan. Moreover, as depositions unfolded, the scope and nature of the best arguments changed. For this reason, the relative importance of issues continually shifted: subjects that were not deemed critically important when the review started became more important as witnesses started testifying. It became necessary to find documents to contradict bad testimony, even if those documents were not initially flagged. Fortunately, because of the systematic manner in which the documents were loaded and stored, our insistence on obtaining relevant metadata, and the protocol under which the review was conducted, we were able to continually go back to identify and flag new documents without restarting the entire review process. Ms. Walters was critical to this effort, as she routinely responded to requests from the deposition team to search for and find answers to questions in the documents before a deposition occurred, so that the document could be used to obtain the favorable testimony. Her legal experience and technical skills enabled this effort, and ultimately lead to an efficient and real-time leveraging of the document depository for the benefit of all plaintiffs in the litigation.

D. PLAINTIFF FACT SHEETS

275. In Scheduling Order No. 1, the Court ordered each producer plaintiff to serve a plaintiff fact sheet ("PFS"), in lieu of Rule 26 disclosures. ECF No. 123 at 11.

276. The parties met and conferred on a plaintiff fact sheet for producer plaintiffs and ultimately agreed on the format and contents of the plaintiff fact sheet.

277. The plaintiff fact sheet required each producer plaintiff to list all farms on which the plaintiff produced corn from 2011 to 2015, the type of corn planted, pricing on corn, and additional information regarding their farming operations. The PFS additionally included four document requests that required the plaintiff to produce documents regarding the corn seed purchased, sale of their corn, pricing of the corn and crop insurance information.

278. Plaintiff Fact Sheets were required from each Producer Plaintiff with a case in the MDL. ECF No. 123 at 11.

E. ADDITIONAL WRITTEN DISCOVERY TO CLASS REPRESENTATIVE AND BELLWETHER PLAINTIFFS

279. Given the uncertainty at the time that a class would be certified, bellwether plaintiffs represented potentially important test cases for Plaintiffs' claims against Syngenta. The individual discovery Syngenta served on these bellwether plaintiffs represented potentially defensive evidence that Syngenta would rely upon in opposing class certification. Further, if certification were denied, these cases would be the test ground for summary-judgment, *Daubert* issues, trial, and appeal. Thus, it was appropriate for and necessary Co-Lead Counsel to supervise discovery in all of these cases and significant amounts of time were spent on this defensive discovery.

280. In addition to the PFSs, Syngenta served the following written discovery to Producer Plaintiffs:

- Syngenta's First Set of Requests for Production to Producer Plaintiffs, containing 27 requests
- Syngenta's Second Set of Requests for Production to Producer Plaintiffs, containing 70 requests
- Syngenta's First Set of Requests for Production to Viptera and Duracade Producer Plaintiffs, containing 54 requests
- Syngenta's First Set of Requests for Production to Milo Producer Plaintiffs, containing 91 requests
- Syngenta Crop Protection AG's First Set of Interrogatories to Producer Plaintiffs,

containing 20 interrogatories

- Syngenta AG's First Set of Interrogatories to Producer Plaintiffs, containing 21 interrogatories
- Syngenta Corporation's First Set of Interrogatories to Producer Plaintiffs, containing 15 interrogatories
- Syngenta Corporation's First Set of Interrogatories to Milo Producer Plaintiffs, containing 17 interrogatories
- Syngenta AG's First Set of Interrogatories to Milo Producer Plaintiffs, containing 24 interrogatories
- Syngenta Crop Protection AG's First Set of Interrogatories to Milo Producer Plaintiffs, containing 20 interrogatories
- Syngenta's First Set of Requests for Admission to Producer Plaintiffs, containing 98 requests
- Syngenta's First Set of Requests for Admission to Milo Producer Plaintiffs, containing 122 requests

281. Syngenta's First Set of Requests for Production to the Producer Plaintiffs sought extensive documents respecting numerous details of each plaintiff's farming operation over a significant time period.[3]

[3] *See, e.g.*, Req. No. 1 (seeking documents "sufficient to show the selection, purchase, type, price paid, and eventual use (e.g., planted vs. saved for future use) of corn seeds by you and the farming entities in which you have or have had an interest from Marketing Year 2010 to the present"); Req. No. 2 (seeking documents "sufficient to show all corn farming costs incurred by you from Marketing Year 2010 to the present"); Req. No. 3 (seeking documents sufficient to show the sale of grains and oilseeds . . . by you and the farming entities in which you have or have had an interest from Marketing Year 2010 to the present"); Req. No. 4 (seeking documents "sufficient to show efforts by you and any farming entities in which you have or have had an interest to cultivate crops for the purpose of selling all or a portion of those crops into any export market outside of the United States from Marketing Year 2010 to the present"); Req. No. 5 (seeking documents "sufficient to show the amount of storage capacity available to you on your farm, the farms in which you have or have had an interest, and/or any third-party site available to you, from Calendar Year 2010 to the present, as well as the usage of that storage capacity during that period by crop"); Req. No. 6 (seeking "[f]or each farming entity in which you have or have had an interest from Marketing Year 2010 to the present . . . documents sufficient to show the annual yield and amount harvested of each grain and oilseed crop (in bushels, hundredweight, or some other relevant unit of measure), the total cost of each crop grown, and the acreage harvested of each crop"); Req. No. 7 (seeking documents "showing the possession, purchase, use, or sale by you and the farming entities in which you have or have had an interest from Marketing Year 2010 to the present of derivatives, such as options or futures, to hedge price risk associated with your sales of grains and oilseeds (including, but not limited to, corn), as well as any efforts to short sell or otherwise use any decrease in grain or oilseed prices to your financial benefit"); Req. No. 8 (seeking documents "sufficient to show the legal ownership and/or lease parties and terms, the legal description, FSA number, and acreage for land farmed by you or any entity in which you have or have had an interest from Calendar Year 2010 to the present"); Req. No. 10 (seeking documents "sufficient to show your ownership and percentage of ownership of any entity deriving income from corn farming from Calendar Year 2010 to the present, the date or dates you

282. Syngenta's first requests additionally sought sensitive financial information. *See*, *e.g.*, Req. No. 24 (seeking annual financial statements, monthly income statements, and balance sheets, for yourself and all farming entities in which you have or have had a majority or controlling interest from Calendar Year 2010 to the present, as well as documents showing revenue, costs, and income of all activity you and all farming entities in which you have or have had an interest engaged in with the intention of earning money from Calendar Year 2010 to the present.").

283. Responding to these requests was additionally complicated because of the timing of the requests. For example, Syngenta's First Set of Requests for Production was served on or about August 17, 2015, when many of the producer plaintiffs were in the field working 15-20 hour days on their farms.

284. Syngenta's Second Requests for Production directed at the Producer Plaintiffs in the initial bellwether discovery pool contained 70 requests again seeking extensive information over multi-year time periods.[4]

---

acquired that ownership interest, the other owners and the amount of their interests and dates they acquired such, the date of formation of the entity, and the amount of profits or losses attributable to your interest"); Req. No. 11 (seeking "applications, policy documents, and communications with insurers and agents for crop insurance policies purchased from Marketing Year 2010 to the present by you and the farming entities in which you have or have had an interest, including any payments received and/or financial recompense of any kind derived from any policy, statements of insurance coverage, acreage reports, production to count reports, yield reports, and statements/notices of loss or indemnity"); Req. No. 12 (seeking "applications, documents, and communications from Marketing Year 2010 to the present regarding government subsidies received by you relating to corn, including the amount of any subsidies received, as well as any rental payments from the government as part of any voluntary conservation program"); Req. No. 13 (seeking "communications from Marketing Year 2010 to the present with any crop or marketing consultant who assisted you and the farming entities in which you have or have had an interest with the selection, purchase, planting, cultivation, harvesting, storage, and/or sale of corn and corn seed); Req. No. 14 (seeking documents "sufficient to show the types of genetically modified crops grown by you or any farming entity in which you have or have had an interest from Calendar Year 2005 to the present, including, but not limited to, the dates when those crops were planted and harvested.").

[4] *See, e.g.*, Req. No. 8 (seeking documents and communications "regarding your decision, if any, to sell Corn to Chinese buyers in 2011, 2012, 2013 and/or 2014 either directly or through a third party/parties"); Req. No. 9, (seeking documents "relating to the pricing of your Corn during Marketing

285. These requests additionally sought information pertaining to plaintiff's farming operations, as well as information pertaining to categories of argument Syngenta had and/or planned to make.[5]

286. Again, the Requests sought sensitive financial information.[6]

287. Syngenta Corporation's interrogatories sought 15 categories of information, primarily directed to the factual basis for various allegations in the complaint and arguments Syngenta had and/or planned to make.

288. Syngenta Crop Protection's interrogatories sought 20 categories of information, all seeking detailed information (including financial and insurance information) about the plaintiff's farming operations.[7]

Years 2011-2015); Req. No. 10 (seeking "all Documents relating to any financing and/or loans procured for your corn crops during Marketing Years 2011-2015"); Req. No. 11 (seeking FSA forms from 2010 to present); Req. No. 29 (seeking "Documents and Communications sufficient to show all of the factors you considered in deciding where and to whom you should sell your corn in Marketing Years 2011-2015").

[5] *See, e.g.*, Req. No. 62 (seeking documents and communications "concerning any 'contamination' of your corn"); Req. No. 63 (seeking documents "concerning whether grain handlers were accepting or rejecting Syngenta Corn Seed from 2011 through the present, including Documents and Communications related to any efforts taken by grain handlers to segregate Syngenta Corn Seed from other types of corn"); Req. No. 64 (seeking documents and communications "concerning grain exporters testing for Syngenta Corn Seed.").

[6] *See e.g.*, Req. No. 9 (seeking all documents "relating to the pricing of your Corn during Marketing Years 2011-2015"); Req. No. 10, (seeking all documents "relating to any financing and/or loans procured for your corn crops during Marketing Years 2011-2015.").

[7] Interrogatories 1-20 requested information including: (1) storage capacity and volume of corn stored from 2013 to present; (2) corn sales made from storage (by volume, storage location, corn variety, and price received) from 2013 to present; (3) any revenue protection crop insurance; (4) other risk-based insurance from 2010 to present as to corn crops or farming operations generally (including level of such insurance, claims filed and paid and dates thereof); (5) any government subsidy programs or revenue protection enrollment; (6) all government payments received from 2010-2014; (7) all Commodity Credit Corporation marketing assistance loans and Loan Deficiency Payments received since 2010; (8) acres set aside from 2010 to present and any payments received for those acres; (9) listing of all corn and/or grain sorghum acreage by farm/tract/field number in which the plaintiff either has a landlord interest or was a tenant from 2013 to present (including the names of the tenants or the entities under which they farm, the names of the landlords from which you rent land, and the details of the specific compensation agreement with any tenants and/or landlords); (10) description of ownership structure of plaintiff's business entity; (11) description of ownership interests in any other operation; (12) any financial interest in businesses that manufacture/sell ethanol, sweeteners or other corn by-products; (13) description of any interest in marketing, ethanol, or other cooperative related to plaintiff's corn farming

289. Syngenta AG's interrogatories sought 21 categories of information, seeking yet more information pertaining to, for example: (1) information pertaining to damages; (2) accounting/bookkeeping process on all farming operations (including any software utilized and reports generated); (3) cultivation costs and yield per acre from 2011 to present; (4) information pertaining to any planting/sale of Viptera or Duracade; information on the process for pricing plaintiff's corn; (5) annual price per bushel from 2010 to present; (6) each contract for the sale of corn (including contract type, specific pricing, corn variety, buyer, and delivery terms); (7) corn sales to food processing facilities, exporters and/or ethanol plants; (8) segregation and/or channeling efforts; and (9) pricing information.

290. Syngenta additionally served 98 requests for admissions and one of Syngenta's interrogatories requested that for any request not unqualifiedly admitted, the plaintiff state the factual basis for denial or qualified admission.

291. Syngenta also served the following written discovery to Non-Producer Plaintiffs:

- Syngenta's First Set of Requests for Production to Non-Producer Plaintiffs, containing 24 requests
- Syngenta's Second Set of Requests for Production to Non-Producer Plaintiffs, containing 67 requests
- Syngenta Crop Protection AG's Third Set of Requests for Production to Plaintiff Winnsboro Elevator, LLC, containing 1 request
- Syngenta Crop Protection AG's Third Set of Requests for Production to Plaintiff Trans Coastal Supply, Inc., containing 1 request
- Syngenta Crop Protection AG's Third Set of Requests for Production to Plaintiff Rail Transfer Inc., containing 1 request
- Syngenta Crop Protection AG's First Set of Interrogatories to Winnsboro, containing 5 interrogatories
- Syngenta Crop Protection AG's First Set of Interrogatories to Trans Coastal

---

operations (including all income and patronage dividends received from such membership, and all sales of corn made through the cooperative, from 2010 to present); (14) all loans secured by corn crops from 2010 to present (including terms, lender, and date on which loan was paid off); (15) all GM crops grown by the plaintiff from 2010 to present (by year and variety); (16) any derivatives or other financial instruments, such as options or futures, purchased or sold to hedge the price risk associated with corn (describing if the plaintiff was long or short corn in that time period and if so by how much); (17) specific nature of any livestock operations (including type and cost of feed) from 2013 to present.

Supply, Inc., containing 15 interrogatories

- Syngenta Crop Protection AG's First Set of Interrogatories to Rail Transfer, Inc., containing 5 interrogatories
- Syngenta AG's First Set of Interrogatories to Rail Transfer, Inc., containing 19 interrogatories
- Syngenta AG's Amended First Set of Interrogatories to Trans Coastal Supply, Inc., containing 19 interrogatories
- Syngenta AG's First Set of Interrogatories to Winnsboro Elevator, LLC, containing 16 interrogatories
- Syngenta AG's Amended First Set of Interrogatories to Trans Coastal, containing 19 interrogatories
- Syngenta Ag's First Set of Requests for Admission to Plaintiff Winnsboro Elevator, LLC, containing 53 requests
- Syngenta AG's First Set of Requests for Admission to Plaintiff Trans Coastal Supply, Inc., containing 73 requests
- Syngenta AG's First Set of Requests For Admission to Plaintiff Rail Transfer, Inc., containing 55 requests

292. For all of these written requests, Co-Lead Counsel, EC counsel and common benefit counsel worked with the class representative and bellwether plaintiffs to respond to these voluminous requests. Because of the mixed nature of the MDL – class and bellwether – it was important to monitor defensive discovery across the MDL. In part, this was because we recognized that discovery taken of individual bellwether producers could be utilized by Syngenta in opposing class certification. It was also important because, if a class were not certified, we wanted to be ready to begin trying bellwether cases, and given the importance of initial such trials, wanted to ensure these cases were best positioned for victory.

293. Attorneys at Hare Wynn took the lead on coordinating defensive producer discovery, while attorneys at Gray Reed took the lead on coordinating with counsel for non-producers.

F. DEPOSITIONS OF PRODUCER PLAINTIFFS

294. In total, 74 depositions were taken of Producer Plaintiffs in the MDL in ten states. The Co-Lead Counsel tasked EC law firm Walters Bender with preparing extensive outlines that

were used for the preparation of all producers deposed, which were then reviewed by myself and other Co-Lead Counsel. This ensured that all producers were properly prepared for their depositions.

295. The Producer Plaintiff depositions were as follows, many of which were in rural locations in the corn belt:

	Plaintiff	**Date of Deposition**	**Location of Deposition**
1.	Jon Anderson	1/12/2016	Sioux Falls, SD
2.	Matt Bargen	2/19/2016	Superior, NE
3.	Kenneth Bell	1/6/2016	St. Louis, MO
4.	Deborah Bell	2/26/2016	St. Louis, MO
5.	Nathan Bell	2/26/2016	St. Louis, MO
6.	Richard Bieber	3/8/2016	Kansas City, MO
7.	Glenn Bix	3/31/2016	Maryville, MO
8.	John Cap	1/14/2016	Sioux Falls, SD
9.	Steven Cap	1/14/2016	Sioux Falls, SD
10.	Daniel Chism	3/29/2016	Fort Dodge, IA
11.	Luke Claas	3/10/2016	Kansas City, MO
12.	Walter Crandall	2/11/2016	Little Rock, AR
13.	Paul Cronin	4/12/2016	Sioux City, IA
14.	Shane Curry	2/5/2016	Des Moines, IA
15.	Mike DaVault	1/6/2016	St. Louis, MO
16.	William Determan	3/30/2016	Fort Dodge, IA
17.	Lesley Dierking	3/30/2016	Kansas City, MO
18.	Richard Ensor	3/11/2016	Kansas City, MO
19.	Kent Falwell	2/9/2016	Little Rock, AR
20.	Charles Frickey	4/8/2016	Oberlin, KS
21.	Charles Fulkerson	3/30/2016	Columbus, OH
22.	Richard Glanzer	3/4/2016	Sioux Falls, SD
23.	Eugene Goering	3/29/2016	Wichita, KS
24.	Daniel Grafel	4/7/2016	Oberlin, KS
25.	R. Scott Haerr for HGF Irrigated	1/8/2016	Springfield, OH
26.	R. Scott Haerr for Three H Farms	1/8/2016	Springfield, OH
27.	Dale Hadden	4/4/2016	Springfield, IL
28.	Grain Haerr	1/8/2016	Springfield, OH
29.	Charlynn Hamilton	5/5/2016	Denver, CO
30.	Gregory Harris	1/28/2016	Kansas City, MO
31.	Gary Harshberger	3/31/2016	Dodge City, KS
32.	Tyler Henderson	5/12/2016	Little Rock, AR
33.	John Holmbeck	4/15/2016	Lincoln, NE
34.	Frank James	3/9/2016	Sioux Falls, SD

	Plaintiff	Date of Deposition	Location of Deposition
35.	Thomas Justison	2/10/2016	St. Louis, MO
36.	Gregory Kaffenbarger	1/7/2016	Springfield, OH
37.	Linden Kaliff	4/6/2016	Moline, IL
38.	Bret Kendrick	4/1/2016	Dodge City, KS
39.	Kenneth Kennedy	3/17/2016	Decatur, IL
40.	Russell Koeller	2/9/2016	St. Louis, MO
41.	Charles Laubenthal	4/1/2016	Sioux Falls, SD
42.	Charles Lex	5/10/2016	Des Moines, IA
43.	Robert Luck	4/20/2016	Hays, KS
44.	Gary Matthews	3/1/2016	Columbus, OH
45.	David McDonald	1/26/2016	Decatur, IL
46.	David McKee	2/3/2016	Columbus, OH
47.	James McKinney	4/13/2016	Mount Vernon, IL
48.	Joseph Murnane	2/23/2016	Joplin, MO
49.	Chad Murphy	1/13/2016	Sioux Falls, SD
50.	Edward Noonan	1/6/2016	Des Moines, IA
51.	Rodney Olthoff	2/4/2016	Des Moines, IA
52.	Richard Oswald	12/22/2015	Kansas City, MO
53.	Richard Overgard	3/3/2016	Sioux Falls, SD
54.	Alan Pedersen	5/9/2016	Des Moines, IA
55.	Martin Petska	3/18/2016	Ord, NE
56.	David Polifka	4/21/2016	Hays, KS
57.	Donald Prohaska	1/5/2016	Des Moines, IA
58.	Brian Riessland	3/4/2016	Kearney, NE
59.	George Rosborough	2/19/2016	Ft. Myers, FL
60.	Vincent Schroeder	2/2/2016	Columbus, OH
61.	David Schwaninger	1/12/2016	Lincoln, NE
62.	James Shortt	3/25/2016	Manhattan, KS
63.	Pat Skarda	2/26/2016	Little Rock, AR
64.	Ross Ulmer	3/8/2016	Sioux Falls, SD
65.	Yvonne Vogel	2/29/2016	Fremont, OH
66.	Eugene Volnek	3/30/2016	Lincoln, NE
67.	Dustin Wegner	4/14/2016	Lincoln, NE
68.	Steven Wentworth	1/27/2016	Decatur, IL
69.	Roger White	3/18/2016	Decatur, IL
70.	Jane Widener	2/18/2016	North Platte, NE
71.	Orville Williams	3/30/2016	Dodge City, KS
72.	William Wilman	5/11/2016	Little Rock, AR
73.	Ivan Woltemath	3/1/2016	Kansas City, MO
74.	Lee Wright	1/7/2016	St. Louis, MO

G. STUEVE SIEGEL HANSON'S WORK WITH CLASS REPRESENTATIVE AND BELLWETHER PLAINTIFFS

296. Throughout discovery, Stueve Siegel Hanson worked directly with: three Kansas class representatives, David Polifka Rev. Living Trust, Daniel Grafel and Charles Frickey; one Nebraska class representative, David Schwaninger; and five bellwether plaintiff groups, (1) Matt & Robin Bargen/Bar Cattle Limited Partnership, (2) Robert Luck/H and R Operations/R and L Partnership, (3) R&W Farms, Inc., (4) Orville Williams/Williams and Sons, Inc./ROR General Partnership, and (5) Gary Harshberger/Harshberger Enterprises.[8]

297. As described in greater detail below, for each of these plaintiffs, we provided assistance in responding to written discovery requests from Syngenta, in gathering documents responsive to Syngenta's requests for production, for preparing for their depositions and to defend them at their deposition.

298. The document collection process required a considerable amount of time and resources to complete, as well as close collaboration between Stueve Siegel Hanson, plaintiffs, and the plaintiffs' accountants and grain elevators.

299. The bellwether and class representative producer plaintiffs with whom we worked were of varying farm sizes and utilized different technology and storage systems. There was no single method used to identify and collect responsive documents. Often, our attorneys and staff had to physically drive to the farm, conduct a records search, copy responsive information (either electronically or manually), and catalogue the information for production.

300. Stueve Siegel Hanson attorneys and staff made at least four trips to Western Kansas and Southern Nebraska in order to ensure that the bellwether and class representative document searches were thorough and the productions complete. For example, Stueve Siegel

[8] We additionally worked with Plaintiff Kenneth Frerichs prior to his voluntary dismissal on November 5, 2015. ECF No. 1197.

Hanson personnel drove approximately 330 miles from Kansas City, Missouri to Dodge City, Kansas in January of 2016 in order to collect documents from two class representatives and one bellwether plaintiff. Over the course of three days, Stueve Siegel Hanson personnel traveled to farms around Dodge City, Kansas and met with farmers on their farms, in their homes, and at the offices. Stueve Siegel Hanson's attorneys and staff made similar trips to Western Kansas and Southern Nebraska in December 2015, November 2016, and November 2017.

301. As part of the document collection process in this case, Stueve Siegel Hanson attorneys and staff also worked closely with numerous grain elevators in Kansas to collect grain elevator tickets to prove these Plaintiffs' corn sales dating back to 2013, which were invaluable in verifying plaintiffs' sales. Stueve Siegel Hanson also contacted and collected responsive documents from crop insurance agencies, the Farm Services Administration, brokerage firms, and accounting firms. In addition, Stueve Siegel Hanson's e-discovery team worked to search for and collect any responsive emails from each plaintiff.

302. In total and for the plaintiffs discussed below, we helped produced 25,016 documents, totaling 99,389 pages.

303. The class representatives for the Kansas trial took on unique risk to their farming operations in representing the class.

304. Each of these Kansas class representatives testified about the work they did on the day-to-day running of their farms.

305. The three-week Kansas trial occurred during June 2017 during the final weeks of the planting season for corn in Kansas and the harvest season for wheat. Despite this critical time, these Kansas class representatives traveled to and stayed in Kansas City, providing valuable assistance throughout the trial, including in the mornings and evenings, in answering

questions and helping to shape and refine our presentation to the jury.

306. On Day 1 of the trial, Mr. Grafel testified that "[w]e're still planting [corn] right now and it's—we're right up against the late plant deadline so it's getting pretty critical to get it done."

307. But to represent the class, Mr. Grafel, Mr. Polifka, Mr. Frickey and Mr. Kendrick left their farms during this critical planting and harvesting season to testify live in Kansas City, Kansas, which was hundreds of miles away from each of their farms: Mr. Polifka was more than 300 miles away from his farm in Quinter, Kansas; Mr. Grafel and Mr. Frickey were more than 350 miles away from their farms in Oberlin, Kansas; and Mr. Kendrick was more than 430 miles away from his farm in Johnson, Kansas.[9]

308. The magnitude of the risk undertaken by these farmers, during the critical planting and harvesting season, is far greater than when a company sends a designated corporate representative employee to sit at trial.

1. Kansas Class Representative David Polifka Rev. Living Trust

309. David Polifka lives in Quinter, Kansas, where he farms individually and as David Polifka Rev. Living Trust.

310. Steve Six primarily worked with Mr. Polifka throughout discovery in this litigation.

311. Prior to agreeing to be a class representative, Mr. Six worked with Mr. Polifka on his potential claims and what it would mean to represent a class of Kansas farmers. Mr. Polifka additionally investigated his potential claims against Syngenta.

312. Once discovery began, Mr. Polifka was involved in responding to the Plaintiff Fact Sheet, Syngenta's discovery requests, Syngenta's requests for production, Syngenta's

[9] *See generally* www.google.com/maps.

interrogatories and Syngenta's requests for admission. Mr. Polifka additionally produced an Amended Plaintiff Fact Sheet and supplemental responses to Syngenta's discovery written discovery requests. In total, with the investigation and responding to discovery, Mr. Polifka estimates that he spent approximately 24 hours on these tasks.

313. In total, Mr. Polifka produced 2,124 documents totaling 6,390 pages in response to Syngenta's discovery requests.

314. Mr. Polifka was deposed on April 21, 2016 in Hays, Kansas, which is approximately a 50 mile drive from his home. Mr. Six produced Mr. Polifka for his deposition.

315. Between his deposition and his preparation for his deposition with Mr. Six, Mr. Polifka estimates he spent approximately 18 hours on these tasks.

316. In June 2017, Mr. Polifka attended the Kansas MDL trial, which took him away from the day-to-day running of his farm for nearly three full weeks.

317. Mr. Polifka was away from his farm in the time surrounding the busy wheat harvest and corn planting seasons. He spent nearly three weeks in Kansas City when he would have been working long, 15+ hour days on his farm. In addition to the work done on his farm, Mr. Polifka also provides equipment and assistance to his two sons' farms during busy times and he was unable to assist while he was in Kansas City for trial.

318. Mr. Polifka spent time preparing with Scott Powell in the weeks leading up to trial and met with Mr. Powell in Kansas City and Quinter to prepare for his trial testimony.

319. He testified live on June 14, 2017, on day 8 of the Kansas trial.

320. Following trial, Mr. Six has been in contact with Mr. Polifka regarding the proposed settlement.

321. In total, counting all of these actions in support of the Kansas class, Mr. Polifka

estimates that he spent more than 196 hours fulfilling his responsibilities as a Kansas class representative.

2. Kansas Class Representative Grafel Farms, LLC/Beaver Creek Farms, Inc./D&S Grain & Cattle Co./Demmer Farms, Inc.

322. Daniel Grafel lives in Oberlin, Kansas, where he farms as Grafel Farms, LLC, Beaver Creek Farms, Inc., D&S Grain & Cattle Co. and Demmer Farms, Inc.

323. Steve Six and I primarily worked with Mr. Grafel throughout discovery in this litigation.

324. Prior to agreeing to be a class representative, Mr. Six and I worked with Mr. Grafel on his potential claims and what it would mean to represent a class of Kansas farmers. Mr. Grafel additionally investigated his potential claims against Syngenta.

325. Once discovery began, Mr. Grafel was involved in responding to the Plaintiff Fact Sheet, Syngenta's discovery requests, Syngenta's requests for production, Syngenta's interrogatories and Syngenta's requests for admission for each of his four farming entities. Mr. Grafel additionally produced an Amended Plaintiff Fact Sheet and supplemental responses to Syngenta's discovery written discovery requests. In total, with the investigation and responding to discovery, Mr. Grafel estimates that Grafel Farms spent approximately 27 hours on these tasks.

326. In total, Mr. Grafel produced 4,838 documents totaling 22,387 pages in response to Syngenta's discovery requests.

327. Mr. Grafel was deposed on April 7, 2016 in Oberlin, Kansas. Mr. Six produced Mr. Grafel for his deposition.

328. Between his deposition and his preparation for his deposition with Mr. Six, Mr. Grafel estimates he spent approximately 16 hours on these tasks.

329. In anticipation of trial, I met with Mr. Grafel in person in Trier, Kansas, and in Kansas City to prepare for his trial testimony.

330. In June 2017, Mr. Grafel attended nearly every day of the Kansas MDL trial, which took him away from the day-to-day running of his farm for the better part of three weeks. April to June is the busiest part of the farming year for the Grafel entities. In 2017, the area where the Grafel entities farm experienced a late wet snow that pushed corn planting up against deadlines. In the Grafel operation, Mr. Grafel oversees and helps to operate various aspects of the wheat harvesting, the corn planting and the spraying operations. During the time leading up to trial, wheat harvest was coming to an end and activities on the farm were especially hectic. While he was away at trial, others in the Grafel operations had to pick up the slack and work additional hours that put significant stress on the Grafel farming operations.

331. On June 5 and continuing to June 6, 2017, Mr. Grafel was the first live witness to testify at the Kansas trial.

332. Following trial, Mr. Six and I have been in contact with Mr. Grafel about the status of the case and the proposed settlement. I spoke with Mr. Grafel before the agreement on the global settlement dollar amount was reached to discuss and seek his approval.

333. In total, counting all of these actions in support of the Kansas class, Mr. Grafel estimates that he spent more than 209 hours fulfilling his responsibilities as a Kansas class representative.

3. Kansas Class Representative Charles Frickey

334. Charles Frickey lives in Oberlin, Kansas, where he farms.

335. Steve Six primarily worked with Mr. Frickey throughout discovery in this litigation.

336. Prior to agreeing to be a class representative, Mr. Six worked with Mr. Frickey on

his potential claims and what it would mean to represent a class of Kansas farmers. Mr. Frickey additionally investigated his potential claims against Syngenta.

337. Once discovery began, Mr. Frickey was involved in responding to the Plaintiff Fact Sheet, Syngenta's discovery requests, Syngenta's requests for production, Syngenta's interrogatories and Syngenta's requests for admission. Mr. Frickey additionally produced an Amended Plaintiff Fact Sheet and supplemental responses to Syngenta's discovery written discovery requests. In total, with the investigation and responding to discovery, Mr. Frickey estimates that he spent approximately 19 hours on these tasks.

338. In total, Mr. Frickey produced 34 documents totaling 120 pages in response to Syngenta's discovery requests.

339. Mr. Frickey was deposed on April 8, 2016 in Oberlin, Kansas. Mr. Six produced Mr. Frickey for his deposition.

340. Between his deposition and his preparation for his deposition with Mr. Six, Mr. Frickey estimates he spent approximately 11 hours on these tasks.

341. In anticipation of trial, Mr. Frickey spoke on the telephone with Mr. Six and Mr. Chaney and met in person in Kansas City with Mr. Chaney to prepare for his trial testimony.

342. In June 2017, Mr. Frickey attended a significant part of the Kansas MDL trial, which took him away from oversight of his farm.

343. Mr. Frickey testified live on June 7, 2017, on day 3 of the Kansas trial.

344. Following trial, Mr. Six has been in contact with Mr. Frickey regarding the proposed settlement.

345. In total, counting all of these actions in support of the Kansas class, Mr. Frickey estimates that he spent more than 107 hours fulfilling his responsibilities as a Kansas class

representative.

4. Nebraska Class Representative David Schwaninger

346. David Schwaninger lives in Martell, Nebraska, where he farms.

347. Steve Six and I primarily worked with Mr. Schwaninger throughout discovery in this litigation.

348. Prior to agreeing to be a class representative, Mr. Six and I worked with Mr. Schwaninger on his potential claims and what it would mean to represent a class of Nebraska farmers. Mr. Schwaninger additionally investigated his potential claims against Syngenta.

349. Once discovery began, Mr. Schwaninger was involved in responding to the Plaintiff Fact Sheet, Syngenta's discovery requests, Syngenta's requests for production, Syngenta's interrogatories and Syngenta's requests for admission. Mr. Schwaninger additionally produced an Amended Plaintiff Fact Sheet and supplemental responses to Syngenta's discovery written discovery requests. In total, with the investigation and responding to discovery, Mr. Schwaninger estimates that he spent approximately 35 hours on these tasks, with a majority of the time spent on the collection of responsive documents.

350. In total, Mr. Schwaninger produced 2,298 documents totaling 9,342 pages in response to Syngenta's discovery requests.

351. Mr. Schwaninger was deposed on January 12, 2016, in Lincoln, Nebraska, which was approximately 20 miles from his home. Mr. Six produced Mr. Schwaninger for his deposition.

352. Between his deposition and his preparation for his deposition with Mr. Six, Mr. Schwaninger estimates he spent approximately 16 hours on these tasks.

353. Following the Kansas trial, Mr. Six and I have been in contact with Mr. Schwaninger regarding the status of the case and the proposed settlement.

354. In total, counting all of these actions in support of the Nebraska class, Mr. Schwaninger estimates that he spent approximately 51 hours fulfilling his responsibilities as a Nebraska class representative.

5. Bellwether Plaintiff Matt & Robin Bargen/Bar Cattle Limited Partnership

355. Matt and Robin Bargen live in Superior, Nebraska, where they farm individually and through the Bar Cattle Limited Partnership.

356. Steve Six primarily worked with the Bargens throughout discovery in this litigation.

357. Prior to agreeing to be class representatives, Mr. Six worked with the Bargens regarding their potential claims and what it would mean to represent a class of Nebraska farmers. The Bargens additionally investigated their potential claims against Syngenta.

358. Once discovery began, the Bargens were involved in responding to the Plaintiff Fact Sheet, Syngenta's discovery requests, Syngenta's requests for production, Syngenta's interrogatories and Syngenta's requests for admission. The Bargens additionally produced an Amended Plaintiff Fact Sheet and supplemental responses to Syngenta's discovery written discovery requests. In total, with the investigation and responding to discovery, the Bargens estimate that they spent approximately 30 hours on these tasks, with a majority of the time spent on the collection of responsive documents.

359. In total, the Bargens produced 754 documents totaling 3,369 pages in response to Syngenta's discovery requests.

360. Matt Bargen was deposed on February 19, 2016, in Superior, Nebraska. Mr. Six produced Mr. Bargen for his deposition.

361. Between his deposition and his preparation for his deposition with Mr. Six, the

Bargens estimate they spent more than 13 hours on these tasks.

362. Following the Kansas trial, Mr. Six has been in contact with the Bargens regarding the proposed settlement.

363. In total, counting all of these actions in support of the Nebraska class, the Bargens estimate that they spent approximately 43 hours fulfilling their responsibilities as a Nebraska class representative.

6. Bellwether Plaintiff Robert Luck/H and R Operations/R and L Partnership

364. Robert Luck lives in Colby, Kansas, where he farms individually and through R & L Partnership and H & R Operations.

365. Steve Six primarily worked with Mr. Luck throughout discovery in this litigation.

366. Prior to agreeing to be a bellwether plaintiff, Mr. Six worked with Mr. Luck about his potential claims and what it would mean to be a bellwether plaintiff. Mr. Luck additionally investigated his potential claims against Syngenta.

367. Once discovery began, Mr. Luck was involved in responding to the Plaintiff Fact Sheet, Syngenta's discovery requests, Syngenta's requests for production, Syngenta's interrogatories and Syngenta's requests for admission. Mr. Luck additionally produced an Amended Plaintiff Fact Sheet and supplemental responses to Syngenta's discovery written discovery requests. In total, with the investigation and responding to discovery, Mr. Luck estimates that he spent approximately 30 hours on these tasks, with a majority of the time spent on the collection of responsive documents.

368. In total, Mr. Luck produced 480 documents totaling 1,740 pages in response to Syngenta's discovery requests.

369. Mr. Luck was deposed on April 20, 2016, in Hays, Kansas, which is

approximately 100 miles from his home in Colby, Kansas. Mr. Six produced Mr. Luck for his deposition.

370. Between his deposition and his preparation for his deposition with Mr. Six, Mr. Luck estimates he spent more than 16 hours on these tasks.

371. Mr. Luck additionally spent 15 hours traveling to Kansas City to watch the Kansas trial. Upon arrival, Syngenta's attorneys invoked the rule to exclude Mr. Luck from watching the trial.

372. Following the Kansas trial, Mr. Six has been in contact with Mr. Luck regarding the proposed settlement.

373. In total, counting all of these actions as a bellwether plaintiff, Mr. Luck estimates that they spent approximately 61 hours fulfilling his responsibilities as a bellwether plaintiff.

7. Bellwether Plaintiff R&W Farms, Inc.

374. R&W Farms, Inc. is a farming entity in Wellfleet, Nebraska, which is farmed by Jane and Ben Widener.

375. Steve Six primarily worked with R&W Farms, Inc. throughout discovery in this litigation.

376. Prior to agreeing to be a bellwether plaintiff, Mr. Six worked with R&W Farms, Inc. about its potential claims and what it would mean to be a bellwether plaintiff. R&W Farms, Inc. additionally investigated its potential claims against Syngenta.

377. Once discovery began, R&W Farms, Inc. was involved in responding to the Plaintiff Fact Sheet, Syngenta's discovery requests, Syngenta's requests for production, Syngenta's interrogatories and Syngenta's requests for admission. R&W Farms, Inc. additionally produced supplemental responses to Syngenta's discovery written discovery requests. In total, with the investigation and responding to discovery, R&W Farms, Inc.

estimates that it spent approximately 24 hours on these tasks, with a majority of the time spent on the collection of responsive documents.

378. In total, R&W Farms, Inc. produced 2,106 documents totaling 6,915 pages in response to Syngenta's discovery requests.

379. On behalf of R&W Farms, Inc., Jane Widener was deposed on February 18, 2016, in North Platte, Nebraska, which is approximately 30 miles from Wellfleet, Nebraska. Mr. Six produced Ms. Widener for her deposition.

380. Between his deposition and his preparation for his deposition with Mr. Six, R&W Farms, Inc. estimates it spent more than 15.5 hours on these tasks.

381. Following the Kansas trial, Mr. Six has been in contact with R&W Farms, Inc. regarding the proposed settlement.

382. In total, counting all of these actions as a bellwether plaintiff, R&W Farms, Inc. estimates that they spent more than 39 hours fulfilling its responsibilities as a bellwether plaintiff.

8. Bellwether Plaintiff Orville Williams/Williams and Sons, Inc./ROR General Partnership

383. Orville Williams lives in Montezuma, Kansas, where he farms individually and through Williams and Sons, Inc. and ROR General Partnership.

384. Steve Six primarily worked with these Bellwether Plaintiffs throughout discovery in this litigation.

385. Prior to agreeing to be a bellwether plaintiff, Mr. Six worked with Mr. Williams about his potential claims and what it would mean to be a bellwether plaintiff. Mr. Williams additionally investigated his potential claims against Syngenta.

386. Once discovery began, Mr. Williams was involved in responding to the Plaintiff

Fact Sheet, Syngenta's discovery requests, Syngenta's requests for production, Syngenta's interrogatories and Syngenta's requests for admission. Mr. Williams additionally produced an Amended Plaintiff Fact Sheet and supplemental responses to Syngenta's discovery written discovery requests. In total, with the investigation and responding to discovery, Mr. Williams estimates that he spent approximately 48 hours on these tasks, with a majority of the time spent on the collection of responsive documents.

387. In total, Mr. Williams produced 6,892 documents totaling 16,252 pages in response to Syngenta's discovery requests.

388. Mr. Williams was deposed on March 30, 2016, in Dodge City, which is approximately 30 miles from his home in Montezuma, Kansas. Mr. Six produced Mr. Williams for his deposition.

389. Between his deposition and his preparation for his deposition with Mr. Six, Mr. Williams estimates he spent approximately 14.5 hours on these tasks.

390. Following the Kansas trial, Mr. Six has been in contact with Mr. Williams regarding the proposed settlement.

391. In total, counting all of these actions as a bellwether plaintiff, Mr. Williams estimates that he spent approximately 62.5 hours fulfilling his responsibilities as a bellwether plaintiff.

9. Bellwether Plaintiff Gary Harshberger/Harshberger Enterprises

392. Gary Harshberger lives in Dodge City, Kansas, where he farms individually and through Harshberger Enterprises.

393. Steve Six primarily worked with Mr. Harshberger throughout discovery in this litigation.

394. Prior to agreeing to be a bellwether plaintiff, Mr. Six worked with Mr.

Harshberger about his potential claims and what it would mean to be a bellwether plaintiff. Mr. Harshberger additionally investigated his potential claims against Syngenta.

395. Once discovery began, Mr. Harshberger was involved in responding to the Plaintiff Fact Sheet, Syngenta's discovery requests, Syngenta's requests for production, Syngenta's interrogatories and Syngenta's requests for admission. Mr. Harshberger additionally produced an Amended Plaintiff Fact Sheet and supplemental responses to Syngenta's discovery written discovery requests.

396. In total, with the investigation and responding to discovery, Mr. Harshberger estimates that the Harshberger entities spent approximately 72 hours on these tasks, with a majority of the time spent on the collection of responsive documents.

397. In total, Mr. Harshberger produced 5,487 documents totaling 32,874 pages in response to Syngenta's discovery requests.

398. Mr. Harshberger was deposed on March 31, 2016, in Dodge City, Kansas. Mr. Six produced Mr. Harshberger for his deposition.

399. Between his deposition and his preparation for his deposition with Mr. Six, Mr. Harshberger estimates he spent approximately 17 hours on these tasks.

400. Following the Kansas trial, Mr. Six has been in contact with Mr. Harshberger regarding the proposed settlement.

401. In total, counting all of these actions as a bellwether plaintiff, Mr. Harshberger estimates that he spent more than 89 hours fulfilling his responsibilities as a bellwether plaintiff.

H. DEPOSITIONS OF NON-PRODUCER PLAINTIFFS

402. In addition to the depositions of the Producer Plaintiffs, Syngenta took the following depositions related to the Non-Producer Plaintiffs:

Witness	Non-Producer Plaintiff	Dates	Location
Robert Briscoe	Trans Coastal	05/17-18/2016	Chicago, IL
Ryan Ellington	Winnsboro Elevator	05/05-06/2016	Baton Rouge, LA
Minglu Li	Trans Coastal	6/3/2016	Los Angeles, CA
Gregory Molnar	Trans Coastal	6/14/2016	Minneapolis, MN
Pamela Moses	Trans Coastal	04/07-08/2016; 05/26-27/2016; 10/25/2016	St. Louis, MO
Todd Nimmo	Rail Tran	04/20-21/2016; 08/24/2016	Minneapolis, MN
David Stanko	Trans Coastal	6/9/2016	Alton, IL
Eric Woodie	Trans Coastal	6/7/2016	Houston, TX
James Woods	Rail Tran Expert	12/14/2016	Dallas, TX
James Woods	Trans Coastal Expert	12/20/2016	Alton, IL
Pauline Yang	Trans Coastal	6/2/2016	Los Angeles, CA

403. At trial for the Producer Plaintiffs, Syngenta played videotaped testimony from the deposition of Pamela Moses.

I. DEPOSITIONS OF SYNGENTA-RELATED INDIVIDUALS

404. The depositions of Syngenta's current and former employees occurred in countries on four continents: the United States; Great Britain; Hong Kong; and Australia. The four Co-Lead Counsel decided early on that we would not take unnecessary depositions. We took depositions of witnesses where the documents and facts supported that the deposition was likely to yield information necessary to the prosecution of the litigation. We played testimony from more than half of the depositions at trial.

405. In total, Plaintiffs in the MDL prepared for and took the following depositions:

	Witness	Dates	Location
1	Jessica Adelman	04/20-21/2016	Washington, DC
2	Miloud Araba	03/03-04/2016	Washington, DC
3	Jack Bernens	04/04-06/2016	Washington, DC
4	Michael Bierman	6/8/2016	Webster Groves, MO
5	Jingwen Chen	3/18/2016	Washington, DC
6	Scott Huber	01/27-29/2016	Washington, DC
7	Sarah Hull	03/23-24/2016	Washington, DC
8	Charles Lee	03/08-10/2016	Washington, DC

	Witness	Dates	Location
9	Michael Mack	04/28-29/2016	London, England
10	Duane Martin	01/29/2016; 02/09/2016	Washington, DC
11	Rex Martin	05/03-04/2016	Washington, DC
12	Andrew McConville	03/31-04/01/2016	Sydney, Australia
13	Paul Minehart	04/18-19/2016	Washington, DC
14	David Morgan	02/10-12/2016; 04/12-13/2016	Washington, DC
15	David O'Reilly	5/24/2016	Washington, DC
16	Grant Ozipko	3/7/2016	Washington, DC
17	Davor Pisk	04/21-22/2016	London, England
18	Cheryl Quain	1/19/2016	Washington, DC
19	John Ramsay	4/29/2016	London, England
20	Terese Rennie	2/23/2016	Washington, DC
21	David Roberts	3/15/2016	Washington, DC
22	Mark Sather	3/2/2016	Washington, DC
23	Pat Steiner	04/26-27/2016	London, England
24	Ponsi Trivisvavet	04/26-27/2016	Washington, DC
25	Abigail Vulcan	2/10/2016	Washington, DC
26	Dennis Ward	2/17/2016	Washington, DC
27	Jill Wheeler	03/17-18/2016	Washington, DC
28	Claire Xu	4/4/2016	Hong Kong
29	Lisa Zannoni	04/12-13/2016	Washington, DC
30	Lawrence Zeph	01/20-21/2016	Washington, DC
31	Yongsheng Zhang	03/21-24/2016	Washington, DC
32	Eddie Zhu	4/5/2016	Hong Kong

406. I took the lead on deposing Syngenta's witnesses who were involved with the application for Chinese regulatory approval of Viptera and Duracade and the Syngenta corporate representative designated to cover these issues:

- Jessica Adelman
- Miloud Araba
- Scott Huber
- Ponsi Trivisvavet
- Yongsheng Zhang

407. My partner Bradley Wilders took the depositions of two additional Chinese regulatory employees, Claire Xu and Eddie Zhu in Hong Kong, and Syngenta's Andrew McConville, Head of Corporate Affairs for Asia Pacific.

408. Syngenta required the use of translators for the depositions of Ms. Xu, Mr. Zhang

and Mr. Zhu.

409. These depositions were critical for four reasons. First, there was no way to subpoena documents directly from China, which made these depositions indispensable to establishing the timeline of Syngenta's Chinese applications and China's responses to these applications.

410. Second, these depositions were necessary to address Syngenta's claim, included in the jury instructions, that China's compliance with the international SPS Agreement "may be relevant to your consideration of whether China had a functioning regulatory system or whether China's conduct was a superseding cause." ECF No. 3302 at 18.

411. Third, these regulatory depositions provided essential details supporting our claim that China's regulatory system was functioning and that Syngenta's mistakes during the application process were to blame for Syngenta's Chinese application rejections. The record we developed showed not only the mistakes in the Viptera application, but the mistakes made in Syngenta's Duracade application process. We then contrasted these applications with the Chinese approval of Syngenta's GMO corn seed Enogen and how that GMO was approved by the Chinese regulators in a timely fashion due to the absence of the mistakes made in the Viptera and Duracade applications. We also developed the record that China's functioning regulatory process resulted in the approval of Syngenta's competitors GMO seed applications including GMO corn seed applications.

412. Fourth, this deposition testimony directly disputed Syngenta's superseding cause affirmative defense, which was included as a specific question in the Verdict Form given to the jury in the Kansas class trial. This defense was based primarily on the expert testimony of Philip Shull. The above record was critical in my cross-examination of Mr. Shull at trial.

413. Without this testimony and the record of the mistakes made in the Chinese application process, it would have been nearly impossible to impeach Mr. Shull and dispute Syngenta's claim that China rejected U.S. corn shipments for reasons unrelated to and independent of the presence of Viptera and Duracade. If accepted by the jury, Plaintiffs' claims would have been barred.

414. Syngenta's Chinese regulatory review group had a disproportionately large number of custodial documents relative to other witnesses. By way of example only, Yongsheng Zhang and Ponsi Trivisvavet each individually had more than 19,000 custodial documents, which does not include the thousands of additional non-custodial documents on which they were the author, the recipient or mentioned on the face of the document.

415. From these Chinese regulatory documents, we put together a series of comprehensive regulatory timelines for Syngenta's Viptera, Duracade and Enogen, and Syngenta's internal and external discussions of the application processes for these GMO products.

416. For Viptera, we tracked each of Syngenta's applications to China for approval of MIR162. These applications began in March 2010 and continued through December 2014, when MIR162 was finally approved by China.

417. We similarly tracked the application history for Syngenta's Event 5307 for its Duracade GMO seed.

418. From our review and analysis of the documents produced by Syngenta, including documents in Chinese, we assembled all of Syngenta's internal discussions about the status and problems with these applications and compared them with Syngenta's public statements regarding when Chinese approval was expected. As an additional comparison, we created a

timeline of Syngenta's Chinese application for its Enogen GMO product, which was approved within the expected period of time.

419. These documents were critical in the depositions of Syngenta's employees, the cross-examination of Syngenta's Chinese regulatory expert at his deposition and at trial in Kansas.

420. At trial and as reflected in the Trial Transcripts, we ultimately played or read deposition excerpts from 18 of these depositions:

- Jessica Adelman
- Miloud Araba
- Jack Bernens
- Scott Huber
- Sarah Hull
- Charles Lee
- Michael Mack
- Duane Martin
- Andrew McConville
- Paul Minehart
- David Morgan
- Grant Ozipko
- Davor Pisk
- Dennis Ward
- Jill Wheeler
- Lisa Zannoni
- Yongsheng Zhang
- Eddie Zhu

421. In my opinion, these depositions provided essential context to the jurors about Syngenta's actions, including mistakes Syngenta made in their Chinese application process, Syngenta's knowledge of risk of harm to farmers from premature commercialization and its superseding cause affirmative defense.

XI. THIRD PARTY DISCOVERY

A. THIRD PARTY SUBPOENAS

422. Ms. Schwartz and Steve Six worked with attorneys at Co-Lead Counsel law firms

and additional coordinated counsel in drafting and serving subpoenas on third parties likely to have information relevant to this litigation.

423. We served subpoenas on entities including the following: Louis Dreyfus Commodities LLC on or about March 4, 2016; Bunge North America, Inc. on or about March 4, 2016; Gavilon Grain, LLC on or about March 4, 2016; CHS, Inc. on or about March 15, 2016; American Soybean Association on or about April 8, 2016; and CropLife America, Inc. on or about April 8, 2016.

424. Plaintiffs and Defendants both served subpoenas on at least the following entities:

- North American Export Grain Association, Inc. ("NAEGA")
- National Grain and Feed Association ("NGFA")
- American Seed Trade Association ("ASTA")
- Biotechnology Innovation Organization ("BIO")
- U.S. Grains Council ("USGC")

425. Syngenta additionally served subpoenas on the following additional entities:

- National Corn Growers Association ("NCGA")
- Agdia, Inc.
- Envirologix Inc.
- Eurofins Analytical Laboratories Inc.
- Genetic ID NA, Inc.
- Omic USA Inc.
- Romer Labs Diagnostic GmbH
- SGS North America Inc.

426. Extensive meet and confer discussions, primarily handled by Steve Six and Rachel Schwartz, were conducted with many of these non-parties to negotiate the scope of these subpoenas in an attempt to avoid any under burden or expense and to negotiate search terms for responsive ESI. These negotiations took multiple weeks.

427. These subpoenaed parties produced in excess of 170,000 pages of documents.

428. Ultimately, depositions were taken of the following subpoenaed, non-parties:

Witness	Entity	Dates	Location
Paul Bertels	National Corn Growers Association	5/11/2016	St. Louis, MO
Nathan Fields	National Corn Growers Association	05/09-10/2016	St. Louis, MO
Max Fisher	National Grain and Feed Association	05/03-04/2016	Washington, DC
Randall Gordon	National Grain and Feed Association	06/06/2016; 06/08/2016	Washington, DC
Andrew LaVigne	American Seed Trade Association	6/2/2016	Washington, DC
Bryan Lohmar	United States Grains Council	06/23-24/2016	Washington, DC
Gary Martin	North American Export Grain Association	06/02-03/2016	Washington, DC
Matthew O'Mara	Biotechnology Innovation Organization	06/28-29/2016	Washington, DC
Thomas Sleight	United States Grains Council	06/22-23/2016	Washington, DC

429. From my firm, Steve Six attended the deposition of Max Fischer and asked questions of the witness. Co-Lead Counsel assigned the Greene Espel firm with the responsibility to take the lead and question the witness first in the Fisher and Gordon depositions. Mr. Chaney took the lead and questioned the witness first for plaintiffs in the O'Mara deposition, and attended and asked questions at the Sleight deposition. No questions were asked by counsel for any plaintiffs in Bertels, LaVigne, or Lohmar.

430. At trial, we played testimony from only the depositions of Gary Martin and Paul Bertels.

431. Many of the subpoenaed groups that were deposed represent trade groups for the biotechnology industry. Syngenta was able to obtain a significant amount of favorable testimony from these industry groups and ultimately played video clips from the depositions of Matthew O'Mara, Nathan Fields, Gary Martin and Thomas Slight.

B. ADM AND CARGILL

432. The Coordination Order states that "depositions taken in a Coordinated Action

may be used in the MDL Proceeding for any purposes . . . as if they had been taken under the applicable civil discovery rules of the MDL Proceeding, provided, however, that MDL Plaintiffs' Liaison Counsel shall receive written advance notice of a deposition to be taken in the Coordinated Action." ECF No. 1099 at 9.

433. Throughout the litigation, Syngenta cross-noticed in the MDL the following depositions of 40 individuals deposed in the ADM and Cargill lawsuits:

	Witness	**Company**	**Dates**	**Location**
1.	Pablo Altuna	ADM	9/29/2016	Chicago, IL
2.	Robert Aspell	Cargill	07/07-08/2016	Hong Kong
3.	William Barksdale	Cargill	06/16-17/2016	Minneapolis, MN
4.	David Baudler	Cargill	05/16-17/2016; 06/14-15/2016	Minneapolis, MN
5.	Steven Becraft	Cargill	6/27/2016	Minneapolis, MN
6.	Brett Bell	Cargill	6/28/2016	Minneapolis, MN
7.	Timothy Bodin	Cargill	06/16-17/2016	Minneapolis, MN
8.	Christopher Boerm	ADM	06/20-21/2016	Chicago, IL
9.	Elliott Brammer	ADM	6/8/2016	Chicago, IL
10.	David Buchanan	Cargill	8/17/2016	Bend, OR
11.	Jerrity Chen	Cargill	07/05-06/2016	Hong Kong
12.	Henry Cooklin	ADM	5/25/2016	Chicago, IL
13.	Cheryl Eldstrom	Cargill	12/13/2016	Minneapolis, MN
14.	Stefan Fiedler	ADM	7/15/2016	Chicago, IL
15.	Brent Flickinger	ADM	06/30/2016; 07/08/2016	Chicago, IL
16.	Nick Friant	Cargill	6/13/2016	Minneapolis, MN
17.	Matt Giltner	ADM	10/14/2016	Chicago, IL
18.	Randal Giroux	Cargill	05/16-17/2016; 06/09-10/2016	Minneapolis, MN
19.	Richard Grabiel	ADM	09/08-09/2016	Springfield, IL
20.	Stefanie Gummelt	ADM	7/22/2016	Chicago, IL
21.	William Hale	Cargill	05/18-19/2016; 06-29-30/2016	Minneapolis, MN
22.	Arvid Hawk	Cargill	7/25/2016	Minneapolis, MN
23.	JuHui Huang	ADM	09/22-23/2016	Chicago, IL
24.	Maurice Hurst	Cargill	12/16/2016	Minneapolis, MN
25.	Douglas Johns	ADM	07/18-19/2016	Chicago, IL
26.	Corey Jorgenson	Cargill	05/25-26/2016	Minneapolis, MN
27.	Andrew Keighin	ADM	5/26/2016	Chicago, IL
28.	Dinh Lai	Cargill	7/27/2016	Washington, DC
29.	Chris Langholz	Cargill	6/29/2016	Minneapolis, MN

	Witness	Company	Dates	Location
30.	Oscar Li	Cargill	08/23-24/2016	Hong Kong
31.	Sean Miller	ADM	6/2/2016	Chicago, IL
32.	Anthony Reed	ADM	06/01/2016; 06/03/2016; 10/14/2016	Washington, DC
33.	Alex Sanfeliu	Cargill	06/23-24/2016	London, England
34.	Steven Smalley	Cargill	5/18-19/2016; 2/16/2017	Minneapolis, MN
35.	Mark Stonacek	Cargill	03/24/2017; 05/23-24/2016	Minneapolis, MN
36.	Joseph Taets	ADM	06/25-26/2016	Chicago, IL
37.	Wes Uhlmeyer	ADM	06/15-16/2016; 6/23/16	Chicago, IL
38.	Stephen Von Lamezan	ADM	7/12/2016	Chicago, IL
39.	Andrew Wong	Cargill	08/29-31/2016	Hong Kong
40.	Jason Xu	Cargill	08/25-26/2016	Hong Kong

434. Because these depositions could be used in the MDL for any purpose, Co-Lead Counsel believed it was necessary to appear at these depositions to preserve objections and to ask questions of these witnesses. Co-Lead Counsel personally or counsel at the Co-Lead firms appeared at each of the depositions.

435. Because Cargill fact witnesses were important to the standard of care issues as well as the Chinese regulatory approval process and superseding cause issues, I prepared for and extensively participated in the following Cargill depositions: William Hale on June 29-30, 2016; Steven Becraft on June 27, 2016; Dr. Giroux on May 16-17 and June 9-10, 2016; and Steve Smalley on May 18-19, 2016.

436. These depositions required extensive review of Cargill and ADM documents and put additional strain on what was already a very short window in which to complete the affirmative discovery needed by Plaintiffs in the MDL.

437. At the Kansas trial, we played an excerpt from the deposition of Anthony Reed from ADM and used Dr. Giroux as a live expert witness.

438. Syngenta played video excerpts from David Baudler, David Buchanan, Richard

Grabiel, Matt Giltner, Alex Sanfeliu, Stephen Smalley, William Hale and Andrew Wong.

XII. CLASS CERTIFICATION

439. In preparing to file the motion for class certification, I and my fellow Co-Leads extensively discussed that class certification had been denied in arguably the most closely analogous lawsuit.

440. In 2008, the Honorable Catherine Perry denied class certification in a lawsuit involving lost market opportunities when unapproved genetically-modified rice contaminated the supply. She found that the individual damages issues predominated over the common issues asserted by the class representatives. "I am not persuaded that the calculation of damages in this case is a common issue. What plaintiffs have proposed is a convenient shorthand calculation that might represent an estimate of some damages for some plaintiffs. For many plaintiffs, such an award might even be a fair and equitable compensation for their alleged loss. It might be a reasonable basis on which to reach a settlement of the claims. But plaintiffs' proposed method for calculating damages does not represent an actual *adjudication* of any one plaintiff's claims. Rather, calculation of actual damage is an individual issue specific to each plaintiff in this case, involving a unique inquiry into the time, place, and manner in which each plaintiff both priced and sold his rice." *In re Genetically Modified Rice Litig.*, 251 F.R.D. 392, 398 (E.D. Mo. 2008).

441. In anticipation that Syngenta would challenge class-wide damages in this litigation, we engaged two of the country's most distinguished agricultural economists to explain how damages in this litigation could be reasonably calculated on a class-wide basis. Don Downing and I worked with them extensively to ensure that their methodologies and analyses were sound, reliable, and would withstand the attacks that we expected Syngenta to raise against us.

442. Dr. Bruce Babcock is a Professor of Economics at Iowa State University who has studied the commodity corn market for more than 25 years.

443. Dr. Colin Carter is a Distinguished Professor of Agricultural and Resource Economics at the University of California, Davis. He has studied commodity markets for over 36 years and is a Fellow of the American Agricultural Economics Association, the profession's highest honor.

444. Dr. Carter and Dr. Babcock performed independent analyses of the impact of the premature commercialization of MIR162 and Event 5307 on the United States corn market.

445. Dr. Babcock used a multi-year, competitive-storage model to account for the impact on the corn price from Syngenta's actions. Ultimately, he was able to calculate the per-bushed decline in corn prices as a result of the loss of Chinese demand for U.S. corn. He calculated an aggregate amount of damage nationwide, which was capable of being further broken down on a state-by-state level.

446. Dr. Carter used an event study to measure class-wide injury and aggregate damages. Dr. Carter discovered a structural break between price of corn and the price of sorghum, a close feed substitute. Dr. Carter identified that the price of corn began to drop in September 2013 and he was able to calculate the per-bushel drops in the price of U.S. corn on a weekly basis, which were used to calculate the aggregate damages for the class for each marketing year.

447. On June 15, 2016, both economists served expert reports in support of class certification, laying out their damages methodology. Plaintiffs also filed their motion and memorandum in support seeking to certify a nationwide class under the Lanham Act and eight state class actions asserting Lanham Act and common law claims. ECF Nos. 2156, 2164. On

June 28, 29 and July 6, we produced both experts for deposition.

448. In support of the motion for class certification, we collected, prepared and submitted a tremendous amount of supporting evidence. In addition to the expert materials, we included a twelve-page summary (Appendix B) of thousands of pages of deposition testimony from the class representatives for the nationwide and state classes supporting that corn is priced based on the CBOT, that the Plaintiffs were proper representatives, and that they were part of the proposed classes. We also included 61 separate exhibits of evidence supporting class certification. In total, the memorandum in support of the class certification was 1,627 pages long. *See generally* ECF No. 2164. Preparation of the Memorandum and supporting evidence was a collective effort on the part of all four Co-Lead Counsel firms and several other common-benefit firms with discrete tasks assigned to individual lawyers where all work product was then finalized and reviewed by one of the Co-Lead firms. We shared the draft of our brief, and the expert reports, with Minnesota interim class counsel.

449. Plaintiffs' motion was attacked on two fronts. First, Syngenta filed a voluminous opposition, totaling nearly 1,000 pages inclusive of exhibits. ECF No. 2335. Unlike most class actions, Syngenta had and drew upon an extensive record that included individualized discovery aimed at putative class members, including over 110 producer depositions and 30,000 plaintiff facts sheets from the MDL and Minnesota litigation.

450. Its submission also included three expert reports: Mr. Charles E. Finch, Prof. Daniel R. Fischel, and Dr. Walter N. Thurman. I took the lead in analyzing Mr. Finch's report. I additionally assisted Mr. Downing in the analysis of Mr. Fischel and Dr. Thurman's reports.

451. All three experts were deposed: I deposed Mr. Finch on August 9, 2016; and Mr. Downing deposed Dr. Thurman on August 8, 2016, and Professor Fischel on August 11, 2016.

Mr. Downing and I worked together ahead of these depositions to coordinate the cross-examinations of all three critical witnesses and we both attended all three depositions.

452. Among other arguments, Syngenta's opposition brief attacked the ascertainability of the class and, similar to the successful arguments in the *Rice* litigation, the individualized nature of the claims and damages, both of which were alleged to defeat commonality and predominance. *See generally id.*

453. Second, the Phipps/Clark Plaintiffs filed an opposition memorandum. ECF No. 2348. Numerous ancillary briefs were drafted and filed relating to this memorandum. This opposition primarily attacked Plaintiffs' damages models from Drs. Carter and Babcock, alleging that the models were unreliable and failed to establish common class-wide damages. *See id.*

454. In support of this Opposition, the Phipps/Clark Plaintiffs attached a joint expert report that attacked the expert reports from Drs. Babcock and Carter that was authored, prepared and approved by five experts and that contained four additional signatures of experts that purportedly agreed and approved of the conclusions in the report. *See* ECF No. 2348 at Ex. A.

455. On August 17, 2016, Plaintiffs' reply in support of their class certification motion and supporting exhibits totaled more than 1,900 pages, including 106 pages of argument and rebuttal declarations from Dr. Carter and Dr. Babcock that responded to the Phipps/Clark Plaintiffs' experts. ECF No. 2436. Like the initial motion, the reply was the product of collective work in which we assigned discrete tasks to other law firms, which were then incorporated and reviewed. In many ways, preparing the reply was a tremendous effort because of the size of the record in this case. Unlike most class actions, where there is little or no absent class member discovery, there was a huge record developed as part of the bellwether process in the MDL and in Minnesota, which was fair game for Syngenta to rely upon under the

Coordination Order. Many of Syngenta's arguments were fact-based, such as its ascertainability and its predominance arguments. In replying to its arguments, we collected rebuttal evidence from dozens of producer depositions and document productions, organized in over 1,000 pages of Appendices. ECF No. 2436. We shared this reply with Minnesota as well.

456. We additionally briefed the propriety of the Phipps/Clark Plaintiffs' expert report, responded to Syngenta's attempts to strike certain evidence and Syngenta's request for an evidentiary hearing, which the Court granted. ECF No. 2492.

457. On August 16, 2016, Syngenta requested an evidentiary hearing in response to Plaintiffs' reply brief. ECF No. 2418-19. We prepared and filed an opposition to that brief on August 24, 2016. ECF No. 2456. The Court granted Syngenta's motion in part, permitting the evidentiary hearing, but only permitting a party to call the opposing side's expert for cross-examination. The Court treated the expert reports as the direct testimony of the proponent.

458. The Court conducted a two-day hearing on the class certification motion on September 13, 2016. Syngenta chose to cross examine Drs. Carter and Babcock at the hearing, and Don Downing handled the rebuttal examination of those witnesses. We chose not to call Syngenta's experts. These examinations were attended by the Minnesota court as well.

459. On September 14, 2016, Don Downing argued on behalf of Co-Lead Counsel argued in favor of certifying the class. Collectively, we spent significant amounts of time preparing for the argument, ultimately submitting to the Court an 89-page PowerPoint presentation summarizing the argument.

460. On September 26, 2016, the Court granted the motion and certified the nationwide and eight state classes. ECF No. 2547.

461. This ruling, which was the first class certification decision in any Syngenta corn

case, materially changed the dynamics of the litigation. Rather than undertaking the time and expense of trying individual cases, we could now proceed with class trials, which greatly increased Syngenta's risk.

462. Co-Lead Counsel drafted and filed our Motion for Approval of Class Notice and supporting Memorandum and exhibits. ECF No. 2598-99.

463. The notice drew objections from the Toups/Coffman Plaintiffs, ECF No. 2642, the Craig Eiland Plaintiffs, ECF No. 2645, and the Phipps/Clark Plaintiffs, ECF No. 2660.

464. On November 23, 2016, the Court approved a revised draft of the notice. ECF No. 2703.

465. Bradley Wilders took the lead in working with Analytics LLC to administer the notice.

XIII. EXPERT DISCOVERY

466. In the MDL, Plaintiffs disclosed the following experts:

- Bruce Babcock
- Colin Carter
- Randy Giroux
- Joe Keaschall
- Kevin Latner
- Dirk Maier[10]

467. These experts, who included two agricultural economists, intended to testify on issues related to the standard of care for the commercialization of new GMOs, the efficacy of Syngenta's new GMO corn seeds, the Chinese regulatory system, agricultural economics, and damages. Reports for these experts were shared with the Minnesota litigation, and I understand used there as well.

[10] Plaintiffs originally designated Bernard Black and David Teece, but both experts were voluntarily withdrawn. ECF No. 2988. Plaintiffs additionally designated Eric C. Frye to provide individual economic analyses of specific plaintiffs.

468. I, along with others at my firm, took the lead role in searching for and retaining potential liability experts, including those intended to testify regarding the Chinese regulatory system, Syngenta's standard of care and the efficacy of Syngenta's new GMO corn seeds. Experts who had any connection to the biotechnology industry were ultimately conflicted-out, making our efforts to find qualified experts extremely challenging.

469. Ultimately, we retained, prepared and produced for their depositions the following damages and liability experts: Dr. Babcock and Dr. Carter (who were produced for deposition twice and once at the evidentiary hearing on class certification); Dr. Giroux; Dr. Maier, Mr. Latner, and Mr. Keaschall. Dr. Babcock, Dr. Carter, Dr. Keaschall, and Dr. Giroux testified at the Kansas trial and did or were expected to testify at the Minnesota trial. Mr. Paul, from the EC, assisted with the preparation of Mr. Latner and initially identified and retained Mr. Maier.

470. The Co-Leads divided up our work with these experts. Stueve Siegel Hanson took the lead on preparing and producing Randy Giroux and Kevin Latner and I worked with Mr. Downing on the damages experts, Dr. Carter and Dr. Babcock. We spent months reviewing drafts of expert reports, discussing the opinions with the experts, and preparing and defending their depositions.

471. Not including exhibits, Kevin Latner's expert report was 562 paragraphs over 77 pages. Based on his experiences working in China, he concluded, among others, that China has a functioning regulatory system for the review and approval of new genetically-modified traits.

472. As a non-retained expert, Dr. Giroux did not provide a report. Rather, pursuant to Rule 26, Bradley Wilders and I, working with counsel at Greene Espel, prepared a six-page disclosure identifying the areas that Dr. Giroux was expected to testify about, with citations to his prior deposition testimony, including the standard of care and practices within the

biotechnology and grain industry with regard to the commercialization of new biotech traits. He additionally disclosed that he expected to testify about Syngenta's breach of the standard of care and that, unlike other biotechnology companies, Syngenta had repeatedly commercialized biotech traits in an unreasonable manner.

473. I prepared and produced Mr. Latner for his deposition in Kansas City on October 28, 2016.

474. Syngenta also asked to depose Dr. Giroux again. We objected on the grounds that Dr. Giroux had already been deposed several times as a third-party witness. On October 20, 2016, the parties submitted a joint motion identifying the dispute to the Court. Judge O'Hara permitted a further deposition, but imposed strict limitations on it. I defended the deposition of Dr. Giroux on November 16, 2016 in Minneapolis, Minnesota.

475. On January 13, 2017, Syngenta disclosed or produced new expert reports for the following 12 experts in the Kansas MDL proceedings:

- J. Thomas Carrato
- Philip Shull
- Travis Milne, non-retained expert
- William Sheppard, non-retained expert
- Alan McHughen
- Walter Thurman
- Barry Goodwin
- Robert Daines
- Antony Page
- Daniel Fischel
- Quentin Mimms
- Hongjun Zhang

476. These experts intended to testify on subjects including the USDA process for approving new GM products, the U.S. commodity system, routes of transgenic contamination, industry standards for commercialization of new GM crops, China's regulatory system and purported political manipulation of this system, Chinese law on sale, shipping and import/export

of foreign agricultural products containing GM traits, and damages.

477. My firm took the lead on responding to the expert testimony from Mr. Carrato and Mr. Shull and I also assisted Mr. Downing with his depositions of Mr. Fischel and Dr. Thurman.

478. In his Expert Report, Mr. Carrato opined that Plaintiffs were seeking to impose an unreasonable standard on biotechnology companies like Syngenta regarding the commercialization of U.S.-approved corn seed products. He stated that Syngenta did not need to wait for Chinese approval before commercializing a U.S.-approved corn seed product because China lacks a functioning regulatory system and waiting would effectively give China veto power over the commercialization of new biotech. As the purported author of the BIO Policy, Mr. Carrato's testimony could potentially have carried significant weight with the jury.

479. As a basis for his expert analysis, Mr. Carrato relied in part on his 21 years of experience in Monsanto's General Counsel's office and his experiences with Monsanto's development and commercialization of new biotech products.

480. In preparing to depose Mr. Carrato, my firm drafted and served a subpoena duces tecum seeking 19 categories of documents responsive to his expert testimony, including actions undertaken by Monsanto in commercializing new biotech traits and his knowledge of industry practices with regard to commercialization.

481. On January 6, 2017, we filed the notice of this subpoena duces tecum, which additionally confirmed that Mr. Carrato's deposition would occur on January 19th. ECF No. 2782.

482. On January 18, 2017, Monsanto filed an emergency motion to intervene to protect Monsanto's attorney-client information and information protected by confidentiality clauses in

Mr. Carrato's employment and consulting agreements with Monsanto. ECF No. 2813. I received a copy of the motion while flying to San Francisco to take the deposition of Mr. Carrato, scheduled for January 19, 2017.

483. On January 19, 2017, I participated in an emergency telephonic hearing conducted by the Court to discuss the motion to intervene. The Court granted Monsanto the right to intervene and to attend the deposition in person. The Court additionally moved the deposition of Mr. Carrato to Saturday-Sunday, January 28-29, 2017, during which Judge O'Hara would attend and preside over the deposition in-person to resolve any objections. ECF No. 2819.

484. On January 26, 2017, Monsanto filed a motion to quash the subpoena. ECF No. 2834.

485. I took the lead in questioning Mr. Carrato on the first day of his deposition. Throughout the deposition, counsel for Monsanto objected repeatedly on the basis of Monsanto's attorney-client privilege and Judge O'Hara resolved those objections throughout the depositions.

486. Following the two-day deposition, my firm drafted and filed a Motion to Strike Mr. Carrato from providing expert testimony in this litigation, ECF No. 2904, and a combined motion to compel materials and a response to Monsanto's motion to quash, ECF No. 2903. After analyzing the opposition to the motion to compel, we additionally drafted and filed a reply in support of our motion to compel. ECF No. 2939.

487. On February 27, 2017, the Court entered an order regarding the *in camera* review of certain documents that were withheld on the basis of privilege. ECF No. 2938. In response to the Court's order requiring that the Parties group and categorize certain representative documents for review, my firm took the lead in that endeavor, providing a list of documents for *in camera* review to the Court.

488. On March 7, 2017, Special Master John B. Van de North, Jr. and Judge O'Hara issued a Joint Discovery Order setting deadlines related to this privilege dispute. ECF No. 2979.

489. In a subsequent order on March 15, 2017, the Court required the production of certain documents previously withheld on the basis of privilege. ECF No. 3013.

490. On April 6, 2017, Syngenta officially withdrew Mr. Carrato as an expert in this litigation, which removed Syngenta's only standard of care expert from Syngenta's defense. ECF No. 3059. It also withdrew Mr. Carrato in Minnesota.

491. Syngenta's expert Philip A. Shull provided a 67-page report expounding on the Chinese approval system, stretching back to food shortages in the 1950s, China's food security policy and how that policy purportedly affects its regulatory system. He additionally opined on that China's rejection of U.S. corn due to the presence of MIR162 was pretextual, China was not a "key market" for U.S. corn, China's agricultural trade policies are contrary to WTO rules, China misuses its regulatory process to erect trade barriers, and that China should not be given control over advances in U.S. corn seed technology.

492. On January 27, 2017, I took the full-day deposition of Mr. Shull in Washington D.C.

XIV. SYNGENTA'S 23(F) APPEAL

493. On October 11, 2016, Syngenta filed its Rule 23(f) Petition for Permission to Appeal Class Certification Order.

494. If granted, this Petition likely would have delayed the June 2017 trial and put at substantial risk the chance of trying Plaintiffs' claims as class actions. There was a substantial likelihood that the Tenth Circuit might accept the appeal, given the high stakes and value of the class claims. Moreover, Syngenta argued that there were two important legal issues unresolved in the Tenth Circuit: the ascertainability standard, which it contended was subject to a Circuit-

split, and the applicability of the evidentiary standard at class certification post-*Tyson* in pre-trial class certification order. It also pointed to the number of individual cases excluded from the class and those filed in Illinois and Minnesota.

495. In my opinion, the elimination of the class mechanism likely would have substantially decreased the overall value of these cases because of the substantial increase in costs and risks in trying producer cases individually and the greater likelihood that an individual case would lead to appellate review of the key legal rulings in the case, such as duty and ELD.

496. Plaintiffs filed their Answer to the Petition on October 21, 2016. This Answer explained that an immediate appeal was unwarranted because there were neither issues unlikely to evade received end-of-case review nor unsettled issues of law other than those that typically arise in class actions.

497. While the Petition was on appeal, both sides submitted and responded to submissions of supplemental authorities, and Plaintiffs opposed Syngenta's request to file a reply brief.

498. On December 7, 2016, the Tenth Circuit denied the Rule 23(f) Petition because the "district court's rulings in the order granting class certification are well-researched and reasoned, and, if any rulings are in error, those errors can be addressed on appeal, if necessary." *In re Syngenta AG MIR162 Corn Litigation*, Case No. 16-607, at 3 (10th Cir. Dec. 7, 2016).

XV. SUMMARY JUDGMENT BRIEFING

499. On February 6, 2017, Plaintiffs and Syngenta both filed summary judgment motions.

500. On behalf of the Plaintiffs, we filed a motion for partial summary judgment and memorandum in support on certain affirmative defenses raised by Syngenta, including assumption of risk, comparative fault, mitigation, intervening and superseding cause and the

purported business and economic justification. *See* ECF Nos. 2858, 2859. The memorandum and supporting exhibits totaled more than 1,900 pages and asserted 123 statements of undisputed facts. ECF No. 2859.

501. Syngenta's opposition totaled more than 2,000 pages, inclusive of exhibits. ECF No. 2947.

502. In our reply, we responded to Syngenta's 208 statements of additional material fact and the legal arguments raised in opposition. ECF No. 2994.

503. Although the briefs were extensive, work was confined almost exclusively, or nearly exclusively, to the four Co-Lead Counsel firms. My firm and Mr. Downing's firm took the lead on Plaintiffs' motion for summary judgment. Mr. Powell's firm took the lead on preparing and responding to an extensive statement of facts opposing Syngenta's motions and on arguments opposing Syngenta's request that punitive damages be thrown out of the case. Mr. Downing's firm was responsible for responding to Syngenta's proximate-cause arguments, which were extensive and detailed. My firm was responsible for responding to Syngenta's arguments for judgment on any claims related to limited launch and Duracade. And, Mr. Chaney's firm took the lead on responding to Syngenta's arguments for judgment on the Lanham Act and misrepresentation claims.

504. Syngenta's motion sought dismissal of "all claims asserted by the Nationwide Lanham Act Class and Kansas State Class." ECF No. 2860 at 2. Syngenta's memorandum was 121 pages and included 137 paragraphs of purportedly undisputed materials facts. ECF No. 2861.

505. In support of its motion, Syngenta attached 323 exhibits, totaling more than 2,900 pages. *See generally* ECF No. 2861.

506. The response to this summary judgment motion was one of the most complicated in my 30-year career. Plaintiffs' opposition to Syngenta's summary judgment and supporting exhibits totaled more than 9,000 pages. ECF Nos. 2940-46.

507. We drafted 587 statements of additional facts that canvassed the totality of the discovery in this litigation, including excerpts from depositions taken across the world to citations to documents produced by Syngenta and third parties throughout the course of the litigation. We additionally included factual responses to Syngenta's 137 paragraphs of material facts, nearly all of which were materially disputed. ECF No. 2940.

508. On April 5, 2017, the Court entered a comprehensive Memorandum and Order granting in part and denying in part both motions. ECF No. 3051. With regard to Plaintiffs' motion, the Order substantially narrowed the affirmative defenses Syngenta could raise at trial, including certain applications of intervening cause, assumption of the risk, mitigation, business and economic justification, antitrust preemption, and comparative fault. ECF No. 3051.

509. While the Court did dismiss Plaintiffs' Lanham Act claim, this is an issue that Plaintiffs would have appealed to the Tenth Circuit.

XVI. *DAUBERT* MOTIONS

510. In total, Co-Lead Counsel filed motions to exclude Syngenta experts in whole or in part. *See* ECF Nos. 2868 (Philip Shull), 2871 (Travis Milne), 2912 (William Sheppard), 2877 (Alan McHughen), 2884 (Walter Thurman) and 2886 (Barry Goodwin).

511. My firm took the lead on drafting the motion to exclude Philip Shull, which we shared with Minnesota counsel.

512. Syngenta ultimately filed motions to exclude all of Plaintiffs' experts. *See* ECF Nos. 2863 (Dirk Maier), 2866 (Joe Keaschall), 2870 (Kevin Latner), 2876 (Randal Giroux), 2888 (Dr. Bruce Babcock) and 2892 (Dr. Colin Carter).

513. My firm took the lead on responding to Syngenta's motions to exclude Plaintiffs' experts Randal Giroux and Kevin Latner.

514. On May 4, 2017, the Court entered its Memorandum and Order resolving all of the motions to exclude experts. ECF No. 3134.

515. Plaintiffs' motion to exclude Dr. Goodwin was granted in its entirety. ECF No. 3134. This was a significant victory because it eliminated Syngenta's alternative damages model, which left the jury with only the damages model proposed by Plaintiffs' experts. It additionally eliminated Dr. Goodwin's criticisms of Dr. Carter's economic analysis.

516. Ultimately none of our experts were struck in their entirety. The Court denied in their entirety Syngenta's motions to exclude Mr. Keaschall and Dr. Babcock and denied in part the remaining motions to exclude experts for both sides. ECF No. 3134.

XVII. KANSAS TRIAL, JUNE 2017

A. SYNGENTA'S TRIAL TEAM

517. Syngenta brought in additional counsel from Kirkland & Ellis to try this first bellwether class trial.

518. On May 10 and 11, 2017, Mike Brock and Leslie M. Smith, from Kirkland's Washington D.C. and Chicago offices respectively, entered their appearances as counsel of record for Syngenta. ECF Nos. 3149-50.

519. I understood these actions as further evidence of Syngenta's commitment to trying these cases. Mr. Brock had previously served as the lead trial lawyer for BP in the Deepwater Horizon oil spill litigation and as national trial counsel for Merck in a variety of drug cases.[11]

520. Syngenta's trial team involved at least eight different Kirkland partners with

[11] *See* https://www.kirkland.com/sitecontent.cfm?contentID=220&itemid=11248.

additional assistance from associates and support staff, including jury consultants. Throughout the litigation, at least three additional Kirkland partners and additional associates participated in discovery and oral arguments before the Court.

521. Syngenta was additionally represented at trial by two partners from Berkowitz Oliver LLP, a well-known and well-respected law firm in Kansas City.

B. PRE-TRIAL WORK

522. Throughout the litigation, Syngenta' statements at status conferences and its actions showed that it did not intend to settle this litigation before trial.[12]

523. Because of these statements, from the very beginning of the litigation I assumed that at least one trial would occur in this litigation and prepared accordingly.

524. To prepare for trial, the Co-Leads worked with trial consultants in helping to shape the themes and demonstrative exhibits for trial. The Co-Leads additionally conducted one focus group and one mock trial.

525. The Co-Leads and additional attorneys who were on the trial team met with a trial consultant with whom I have worked for nearly 20 years. We met with him on three separate occasions: the week of October 26, 2015; the week of October 31, 2016; the week of April 10, 2017. The first session was designed to create the initial trial themes that the Co-Lead Counsel would attempt to establish through discovery. The second and third sessions were focused on the creation of trial demonstratives, and refining those themes and the presentation of evidence.

[12] *See, e.g.*, Tr. of Feb. 3, 2015 Scheduling Conference (ECF No. 127) at 81:20-24 ("Your Honor, we agree it's premature and it's an issue for later. On Syngenta's part, we're in it for the long haul and we're going to litigate. We believe it to be dismissed. And if not dismissed at the pleadings stage, take the case to trial."); Tr. of Feb. 12, 2016 Telephone Conference (ECF No. 1552) at 16:13-21 ("So that, while we absolutely will cooperate with any guidance from the court or suggestions from the court, in terms of a settlement tract, it's not something that either the MDL plaintiffs nor Syngenta are necessarily suggesting for now. But that's – that's certainly not to try to sound bull-headed in any way, Your Honor. I'm just trying to convey what directions I do or don't have from my client, if that makes sense.").

Many of these trial demonstratives were used in the opening statement and closing arguments as well as with our expert witnesses.

526. The focus group occurred on September 29, 2016. The goal of the focus group was to focus on the reactions from a cross-section of individuals from the Kansas City area to certain case themes and defenses likely to be raised by Syngenta.

527. The focus group was valuable in helping us to shape our initial trial themes on GMOs generally and how to better explain the roles of China and Syngenta's actions relevant to this litigation.

528. The mock trial occurred on March 18, 2017, before a cross-section of more than 30 individuals from the Kansas City area dived into three juries.

529. The mock jury involved full opening statements, on behalf of Plaintiffs and Syngenta, and a rebuttal by Plaintiffs.

530. Following the presentations, the jury deliberated and then participated in moderated focus groups.

531. For the mock trial, the Co-Leads continued to create and revise demonstrative exhibits that, depending on the feedback from the mock jury, were intended to be used at trial.

532. The fulsome feedback received from the mock jury additionally helped us to refine our trial arguments and demonstratives. It additionally helped us identify areas of concern to the mock jurors so that we could proactively address these issues at trial.

533. Prior to trial, Co-Lead Counsel met with the live witnesses we each intended to put on the stand at trial.

534. I personally met with class representative Daniel Grafel numerous times in person and communicated with him by phone as well.

535. I also took the lead in retaining and working with a jury selection expert who assisted in the preparation of the proposed jury questionnaire submitted to the Court and participated in jury selection at trial.

C. PRETRIAL BRIEFING: MOTIONS IN LIMINE AND JURY INSTRUCTIONS

536. On April 24, 2017, both sides filed their motions in limine. ECF Nos. 3100-01.

537. As explained in our supporting memorandum, our motion sought to exclude certain evidence and arguments, including claims regarding mitigation of damages, government subsidies and actions

538. The Court announced its ruling at the in limine conference on May 12, 2017. ECF No. 3155.

539. One pre-trial issue that was complicated by the multi-national aspects of this litigation was the jury instructions.

540. On May 26, 2017, a little more than one week before the start of trial, Syngenta suggested for the first time that international law applies to the issues in this litigation and that the Court should give an instruction on the WTO's Sanitary and Phytosanitary Measures Agreement (the "SPS Agreement"). *See* ECF No. 3205.

541. Responding to this proposed jury instruction required significant legal analysis of international law and its relationship to this litigation at a time in which Co-Lead Counsel were preparing to start trial.

542. After meet and confer discussions with Syngenta failed to result in agreement, the parties briefed their disputes on the jury instructions. ECF No. 3187.

543. The Court ultimately gave Jury Instruction No. 17, which discussed the SPS Agreement and stated that China's compliance with the SPS Agreement "may be relevant to your consideration of whether China had a functioning regulatory system or whether China's conduct

was a superseding cause." ECF No. 3302 at 18.

544. The Court additionally gave Jury Instruction No. 16, which addressed Syngenta's affirmative defense that U.S. corn shipments were rejected for reasons unrelated to Syngenta's actions. ECF No. 3302 at 17. The Verdict Form's Question 2 specifically required the jury to make a finding on whether there was or was not a superseding cause. ECF No. 3304.

545. If the jury had found that Syngenta had proven its superseding cause affirmative defense, this would have been a complete victory for Syngenta.

D. JUNE 2017 KANSAS CLASS TRIAL

546. There were several weeks of trial preparation wherein each of the Co-Leads prepared their assigned direct and cross examinations, reviewed deposition designations and counter-designations, reviewed and edited trial demonstratives, and worked with fact and expert witnesses to prepare them for their trial testimony. I also reviewed and edited the opening statement and participated in several mock presentations of the opening. In addition, I began outlining the rebuttal closing argument.

547. The Kansas class trial began on June 5, 2017, and lasted until June 23, 2017, when the jury returned its verdict. Without a doubt, this was the most complex, hard-fought and sophisticated trial of my career. Co-Lead Counsel tried all aspects of the Kansas lawsuit. They put on every fact and expert witness for Plaintiffs and cross-examined all of Syngenta's witnesses. Preparation was extensive. Syngenta identified 12 persons as potential live witness on its pre-trial witness list and 58 potential depositions to be offered into evidence. ECF No. 3131. Plaintiffs identified 21 potential live witnesses. ECF No. 3076. Co-Lead Counsel prepared for the examination of many, if not all, of these witnesses in anticipation that they might be called at trial.

548. Voir dire began on the morning of June 5th. After the Court completed its

questioning of potential jurors, I conducted the voir dire on behalf of Plaintiffs.

549. Following the selection of the jury, Scott Powell made the Plaintiffs' opening statement.

550. I put on the first witness at the trial, Class Representative Plaintiff Daniel Grafel.

551. Mr. Grafel testified about his Kansas farm, which totals approximately 10,000 tillable acres, how he runs his farm and the types of corn he grew on those acres. He additionally helped the jury to understand corn farming generally, from the purchase of corn seed by farmers, to the planting of the seed and harvesting of the corn, to how the corn is stored on farms and at elevators and finally to how corn is priced and how he would be damaged by a drop in the price of corn.

552. I also put Dr. Randal Giroux on the stand. Dr. Giroux was the only person to give expert testimony to the jury about the standard of care in the Kansas trial. Dr. Giroux was not a retained expert, but an employee of Cargill. We developed the topics that he would testify to at trial over the course of several meetings and prior depositions in the litigation. He testified about the standard of care and practices within the biotechnology and grain industry with regard to the commercialization of new biotechnology traits, and gave an opinion about the standard of care in this case. Dr. Giroux's testimony was an important, and possibly critical, evidence in the case, as it provided the jury with direct and express evidence as to Syngenta's alleged negligence and breach of its duty of care.

553. In addition to Mr. Grafel and Dr. Giroux, my fellow Co-Lead Counsel put the following live witnesses on the stand during their case-in-chief: class representative Charles Frickey; class representative Bret Kendrick; Plaintiffs' expert Dr. Bruce Babcock; Plaintiffs' expert Dr. Colin Carter; and class representative David Polifka.

554. Because Syngenta's employees were outside of the subpoena power of the Court, a substantial portion of our evidence was pre-recorded deposition video testimony. Pursuant to the Court's Trial Order, the Parties were required to exchange depositions designations on May 5, 2017; to make counter designations and objections by May 10; and to make objections and counter-counter-designations by May 15. ECF No. 2984. Substantial work went into selecting deposition testimony for trial. Initially, the four Co-Leads made designations for each of the depositions that they took or attended, and other attorneys at our firms made designations to non-Syngenta witnesses. Then, cognizant of the need to limit video testimony at trial, we exchanged those designations and took turns making cuts. We received Syngenta's designations on May 5 and had five days to make counter designations and objections. Because of the volume of work and the short deadline, and the importance of the work, the four Co-Lead Firms handled counter designations of all Syngenta witnesses, but we asked other firms to assist on third party and producer plaintiff designations. Where possible, and to promote efficiency, we asked firms who handled the deposition to be responsible for the counter designations. Myself, Mr. Wilders, Mr. Shank and Mr. Six handled designations for my firm. Similar work was done on objections to the counter-designations.

555. We continued to cut the depositions up to and including during trial, to streamline and shorten our presentation of evidence. A sub-team of lawyers from the Co-Lead firms was primarily responsible for this endeavor. From my firm, it included: Mr. Wilders and myself. After we settled on our final deposition cut, a team, consisting primarily of attorneys from Hare Wynn and Gray Reed, exchanged cuts with Syngenta's lawyers. Each night, agreements were struck on what would be played. Objections were then presented to the Court, if necessary. This work often went from evening into early morning. Once a cut was finalized, the video was

prepped and a lawyer watched the cut from beginning to end in sync with the documents for presentation purposes.

556. We played the following deposition video clips during our case-in-chief:

- Syngenta's Jack Bernens
- ADM's Anthony Reed
- Syngenta's Dennis Ward
- Syngenta's Grant Ozipko
- Syngenta's Jill Wheeler
- Syngenta's Miloud Araba
- Plaintiffs' expert Joe Keaschall
- Syngenta's Sarah Hull
- Syngenta's Paul Bertels
- Syngenta's Davor Pisk
- North American Export Grain Association's Gary Martin
- Syngenta's Duane Martin
- Syngenta's Paul Minehart
- Syngenta's Jessica Adelman
- Syngenta's Andrew McConville
- Syngenta's Charles Lee
- Syngenta's Lisa Zannoni
- Syngenta's David Morgan
- Syngenta's Scott Huber
- Syngenta's Yongsheng Zhang
- Syngenta's Eddie Zhu
- Syngenta's Michael Mack

557. During trial, we exchanged a list of exhibits expected to be used with Syngenta and objections to those lists were exchanged each night. Lawyers from the Co-Lead firms then met and conferred over the admissibility of the exhibits, and disputes were presented to the Court. Typically, these conferences between counsel occurred late at night. Kirkland always had one or more partners handling these conferences. Mr. Wilders handled these meet and confer efforts for my firm. Our diligence on these fronts was successful, as we kept out a number of documents that would have hurt the Plaintiffs' case.

558. At the close of Plaintiffs' case-in-chief on June 14, 2017, Syngenta filed a Rule

50(a) Motion for Judgment as a Matter of Law, ECF No. 3265. Syngenta filed this motion at approximately 6:00 p.m. that day and we filed a 16 page opposition approximately four hours later. ECF No. 3267. The next morning, the Court ruled on this motion orally, largely denying the motion.

559. Co-Lead Counsel additionally cross-examined each of Syngenta's live witnesses: David O'Reilly; Syngenta's expert Philip Shull; Syngenta's expert Travis Milne; Syngenta's expert Daniel Fischel; and Syngenta's expert Walter Thurman. In addition, I prepared extensively to cross-examine David Morgan, who would have been the most senior Syngenta executive to testify live at trial. Mr. Morgan had been disclosed by Syngenta as a live witness. After we exchanged exhibit lists, previewing the evidence we had intended to use for Mr. Morgan's cross examination, Syngenta elected not to call Mr. Morgan, even though we understood here was in Kansas City.

560. I cross-examined Mr. Shull, who was Syngenta's expert on the Chinese regulatory system and was proffered to support Syngenta's intervening cause defense. The jury ultimately rejected Syngenta's intervening cause affirmative defense, answering no to this jury question. ECF No. 3304.

561. In addition to the five live witnesses, each of whom Co-Lead Counsel cross examined, Syngenta played the following video clips from depositions during their case-in-chief:

- Bryan Lohmar
- Matt O'Mara
- Davor Pisk
- Richard Grabiel
- David Baudler
- David Buchanan
- Gary Martin
- Matt Giltner
- Alex Sanfeliu
- Stephen Smalley

- William Hale
- Pamela Moses
- Nathan Fields
- Andrew Wong
- Thomas Sleight

562. In total, Plaintiffs admitted 426 exhibits at trial, not including a substantial number of additional demonstrative exhibits.

563. On trial day 14, June 22, 2017, the parties gave their closing arguments.

564. Scott Powell gave Plaintiffs' closing argument and I gave Plaintiffs' rebuttal closing argument. Mr. Powell and I and our trial teams worked together during the days leading up to closings arguments to make sure our arguments addressed the key pieces of evidence and anticipated the likely arguments Syngenta would make in its closing arguments.

565. The jury began deliberations on June 22 and returned a verdict on the morning of June 23, 2017, which was trial day 15.

566. The jury found that Plaintiffs proved, by a preponderance of the evidence, the requirements of negligence and Syngenta failed to prove its defense of a superseding cause. ECF No. 3304.

567. The jury awarded $217,700,000, the entire compensatory damages amount requested by Plaintiffs. *Id.*

568. This verdict was the 10th largest jury verdict in the United States in 2017 and the first and only verdict secured against Syngenta in all of the proceedings.[13]

569. Following the trial, I continued to work with our jury consultant on analyzing the feedback we received from jurors. I also spoke at length in person with one of the jurors who provided additional insight into the strengths of our case, information we intended to use in

[13] *See* https://www.law.com/nationallawjournal/2018/04/30/top-100-verdicts-2017-chart (Top 100 Verdicts 2017: Chart).

future trials.

XVIII. POST-TRIAL MOTIONS

570. On July 21, 2017, Syngenta filed their Rule 50(b) motion for judgment as a matter of law and alternatively Rule 59 motion for a new trial and/or remittitur. ECF No. 3343.

571. Mr. Wilders coordinated the response to this motion. As before, senior attorneys from the other Co-Leads divided drafting responsibilities with respect to Syngenta's arguments. To be efficient, we typically tried to stay consistent with respect to topic division of work. For example, as she had on the summary-judgment briefing, Ms. Garrison at Mr. Downing's firm handled proximate causation and ELD arguments, and Mr. Wilders handled duty and limited-launch causation arguments. We filed our 77-page opposition brief on August 21, 2017. ECF No. 3392.

572. Before this motion could be ruled upon, the parties were able to reach a global class settlement.

XIX. FURTHER TRIALS AND CLASS CERTIFICATION

573. After the Kansas trial, the parties disagreed on the order and course of the trials for the remaining 7 certified classes. Plaintiffs moved to consolidate the trials of multiple classes together. ECF No. 3082. Syngenta opposed and wanted all of the class claims severed and cases remanded to judges unfamiliar with the litigation. The Court ordered supplemental briefing following a status conference. ECF Nos. 3314, 3317. Ultimately, the Court adopted Plaintiffs' argument that Syngenta waived personal jurisdiction for these Plaintiffs, and grouped the class cases for a set of consolidated trials. ECF No. 3319.

574. On September 21, 2017, the Court entered its Trial Order for the first such trial, of the Arkansas and Missouri classes. ECF No. 3438. The Parties prepared a Pretrial Order and conducted a final pretrial conference with the Court. Ms. Schwartz took the lead on this effort

for the Plaintiffs.

575. Moreover, the Co-Leads assisted with some of the preparation of the Minnesota trial.

576. For example, I assisted Minnesota counsel with the jury selection, including providing the analysis we had undertaken with our jury consultant regarding the Kansas jurors and jury feedback we had received and our work regarding the Chinese regulatory issues and potential expert testimony from Mr. Latner. I additionally conferred with Dr. Giroux's counsel regarding his Minnesota trial testimony.

577. I ultimately attended multiple days of the Minnesota trial to further assist on these same issues. Much of the deposition testimony played by Plaintiffs at the Minnesota trial included questioning by MDL Co-Lead Counsel.

578. When the Minnesota trial ended, we were already well underway preparing for the next trial in the Kansas MDL. Indeed, we had already gone back through and streamlined further our video deposition testimony, an effort lead by attorneys from Hare Wynn and Gray Reed.

XX. STRENGTHS AND WEAKNESSES OF THE CASE

579. In more than 30 years of practicing, this has been the most challenging case I have ever had and an enormously difficult case to prosecute.

580. From a discovery perspective, there was no way to subpoena documents from China, which made it difficult to explain the reasons for China's rejections of Syngenta's applications and to respond to Syngenta's claims that the rejections were all for political reasons.

581. Syngenta produced many documents in Chinese and multiple witnesses who required translators, which further complicated discovery.

582. From a coordination perspective, there were enormous complications unique to

this litigation. For example, with isolated exceptions, Syngenta was able to produce their witnesses a single time, which required Co-Lead Counsel to work with counsel in Minnesota, Illinois and Louisiana on scheduling depositions and then time splits within that single deposition between the various counsel.

583. There were substantial disputes over the interpretation of important documents in this litigation. By way of example only, both sides had starkly different interpretations of the Product Launch Stewardship policy created by the Biotechnology Innovation Organization (the "BIO Policy"). We argued that Syngenta failed to comply with the BIO Policy's analysis in determining what countries are key export countries for U.S. corn and whether China had a functioning regulatory system.

584. In contrast, Syngenta argued that China was never a key or functioning regulatory system under the definitions in the BIO Policy. If a jury had been convinced that China was neither a key nor functioning market, this could have made obtaining a favorable verdict much more challenging.

585. There were substantial legal risks in these cases, particularly with regard to establishing the duty Syngenta owed to Plaintiffs and overcoming Syngenta's causation, ELD and superseding cause challenges.

586. The risk that this litigation could be dismissed because of a legal ruling on duty is underscored by the June 28, 2017 Judgement Entry entered by the Court of Common Pleas of Seneca County, Ohio in *Fostoria Ethanol, LLC v. Syngenta Seeds, Inc.*, No. 15 CV 0323. In that Order, the Ohio Court granted Syngenta's motion to dismiss in its entirety, finding that Syngenta did not owe a duty to plaintiffs. The Court stated in relevant part: "There has been no case from any court in Ohio presented to this Court to show that Syngenta's duty should extend to

economic harm caused by the intended use of its products, and this court declines to invent such a duty." *Id.* at 7.

587. There was additionally a substantial amount of risk that the Kansas jury or any subsequent jurors would find China as a superseding cause of the injuries to Plaintiffs. This risk increased when the Court gave Jury Instruction No. 17, explaining to the jury that China's actions may be relevant to the superseding cause analysis. ECF No. 3302 at 18.

588. All of these risks informed my judgment on what could be a reasonable settlement for potential nationwide classes that could resolve this litigation.

XXI. SETTLEMENT NEGOTIATIONS

589. On March 23, 2016, the Court appointed Ellen K. Reisman of Reisman Karron Greene, LLP as the special master "to assist the court in efficiently coordinate settlement discussions in these proceedings." ECF No. 1745 at 2.

590. On October 17, 2016, Judge Herndon appointed Hon. Daniel J. Stack (Ret.) as a Special Master to "facilitate discovery in this case and to assist the Court in coordinating with the litigation pending in Illinois State Court in Williamson County, Illinois before Judge Brad Bleyer." *In re Syngenta Mass Tort Actions,* Case No. 3:16-cv-00255-DRH, ECF No. 168 (S.D. Ill. Oct. 17, 2016).

591. From the start of the MDL through the verdict in the Kansas trial and continuing for weeks following the trial, Syngenta never made a settlement offer to Plaintiffs.

592. Prior to the Kansas verdict, Co-Lead Counsel and EC members funded the on-going prosecution of the Kansas MDL without any guarantee that these millions of dollars in hard costs would be repaid and without any guarantee of compensation for the tens of thousands of hours of time spent representing these plaintiffs.

593. After the completion of the successful Kansas trial, on August 9, 2017, the Court

created the Plaintiffs' Settlement Negotiation Committee (the "PNC"). ECF No. 3366.

594. PNC member Christopher Seeger's firm, Seeger Weiss, was part of the Kansas MDL Executive Committee. I and the other Co-Lead Counsel were active in communicating with Mr. Seeger over the course of the negotiations, participating in strategy decisions regarding settlement terms.

595. When the PNC announced that a term sheet had been executed, I asked the Court for permission to join the PNC to work with Mr. Seeger to help finalize the settlement.

596. Mr. Seeger and I spent the next several months participating in weekly calls and attended multiple in person meetings in Washington D.C., New York and Kansas City to negotiate all remaining material terms of the settlement. In addition to these group meetings, Mr. Seeger and I additionally separately corresponded by phone and by email.

597. With assistance from Bradley Wilders, I worked directly with Mr. Seeger in substantially editing the draft Settlement Agreements and all settlement papers, including the proposed long and short-form notices, the proposed claim forms, and the notice plan.

598. In the hopes of creating a simple claim process, Mr. Chaney and I reached out to the United States Department of Agriculture's Farm Service Agency (the "FSA") to discuss with the FSA the possibility of allowing a settlement administrator to have access to the data reported to the FSA on FSA 578 forms, such as corn acreage. We had multiple in-person meetings facilitated by our consultant to explain to the FSA why allowing direct access to the FSA database would substantially reduce the burden on farmers to participate in the settlement claims process.

599. We sought to achieve three goals in reaching out to the FSA. First, we hoped to eliminate the need for each corn producer in the United States to individually have to contact the

FSA for acreage and other data as part of the settlement.

600. Second, by greatly simplifying a potential claims process, we intended to eliminate the need for any farmer to have to seek out individual representation for help in completing the claim form.

601. Third, the hope was to minimize the cost and administrative burden on the FSA to respond to potentially hundreds of thousands of request for this data.

602. In December 2017, Co-Lead Counsel ultimately executed a memorandum of understanding that would allow the FSA to provide this data, which was ultimately a key part of the claims process. During this several month process, I advised the Special Masters, the PNC and Syngenta of our efforts. As soon as we were able to secure the FSA's written consent, I disclosed the agreement with the FSA to Syngenta, the PNC and the Special Masters.

XXII. SETTLEMENT TERMS

603. On October 9, 2017, we filed a Joint Motion to Stay pending the execution of the settlement agreement. ECF No. 3452.

604. Mr. Seeger and I, on behalf of the Co-Leads, then spent the following months finalizing and then executing the formal settlement agreement with Syngenta's counsel and the additional members of the PNC.

605. On March 12, 2018, the terms of the settlement and the settlement negotiations were fully disclosed in Plaintiffs' motion seeking preliminary approval of the settlement and memorandum in support. ECF Nos. 3506-07. Attached as Exhibit A to the memorandum was the fully-executed Settlement Agreement. ECF No. 3507-2.

606. The motion drew objections from the Toups/Coffman Plaintiffs and joinders in those objections by the Hossley-Embry Plaintiffs. ECF Nos. 3514, 3517.

607. The Court conducted a preliminary approval hearing on April 5, 2018. ECF No.

3529.

608. On April 10, 2018, the Court granted preliminary approval of the settlement and denied the motions and joinders filed by the Toups/Coffman and Hossley-Embry Plaintiffs. ECF No. 3532. That Order additionally appointed Settlement Class and Sub-Class Counsel. *Id.*

609. As one of the appointed Settlement Class Counsel, I have continued to work with the other Settlement Class and SubClass Counsel, Co-Lead Counsel and the Settlement Administrator to ensure that the settlement website is easy to navigate and that the final electronic claim forms are as simple as possible.

610. By May 11, 2018, notice had been mailed to potential class members.

XXIII. FEE-SHARING AGREEMENTS

611. After extensive negotiations between attorneys from the various litigations, the Court-appointed Special Master made a mediator's proposal on an allocation of attorneys' fees between the various groups of Plaintiffs' attorneys.

612. Although we believed that the mediator's proposed allocation to the Kansas MDL was far below what counsel prosecuting the Kansas MDL should have received based upon the value of the work performed during the Syngenta corn litigation, Co-Lead Counsel accepted the proposal. Not all of the attorneys accepted, however, and negotiations continued.

613. Ultimately, to secure agreement and avoid a protracted fight, a Fee-Sharing Agreement was executed on or about February 23, 2018, with lawyers prosecuting the Illinois state and Minnesota class litigations. In this Agreement, the parties agreed that any attorneys' fees awarded by the Court would be divided as follows: 50% would go to all attorneys who performed common benefit work in the Kansas MDL consistent with the Kansas MDL Court's

orders;[14] 12.5% would go to attorneys who performed common benefit work in the Minnesota MDL[15] consistent with the Minnesota MDL Court's orders; and 17.5% would go to Clayton Clark and his group.[16] *See* Exhibit 8.

614. The Agreement additionally stated that the remaining 20% of any attorneys' fees awarded by the Court will be allocated by the Kansas MDL Court, in consultation and agreement with the Minnesota MDL Court and Judge Herndon of the United States District Court for the Southern District of Illinois, taking into consideration the recommendation by the Special Masters.

615. At the request of Seeger Weiss, Co-Lead Counsel additionally entered into an agreement with Settlement Class Counsel Christopher Seeger and his law firm Seeger Weiss

[14] This group includes Patrick J. Stueve (Stueve Siegel Hanson LLP), Don M. Downing (Gray, Ritter & Graham, PC), William B. Chaney (Gray Reed & McGraw, LLP), Scott A. Powell (Hare Wynn Newell & Newton), Christopher M. Ellis (Bolen Robinson & Ellis, LLP), David F. Graham (Sidley Austin LLP), Jayne Conroy (Simmons Hanly Conroy), John W. Utsu (Greene Espel PLLP), Richard M. Paul, III (Paul McInnes, LLP and Paul LLP)(Kansas MDL common benefit work), Robert K. Shelquist (Lockridge Grindal Nauen)(Kansas MDL common benefit work), Scott E. Poynter (Emerson Poynter LLP), Stephen A. Weiss (Seeger Weiss Law Firm), and Thomas V. Bender (Walters Bender Strohbehn & Vaughan, PC) and all "Referring Counsel." "Referring Counsel" means a law firm engaged with the named law firm in the joint representation of one or more Claimants in connection with the prosecution of their Claims. The four Kansas MDL Co-Lead Counsel (William B. Chaney, Don Downing, Scott Powell and Patrick J. Stueve) will allocate the fees represented by this percentage among all firms that provided common benefit work in the Kansas MDL consistent with the Kansas MDL Court's orders. The four Kansas MDL Co-Lead Counsel will have the right to review, revise and approve any common benefit time and expense submissions for common benefit work performed in the Kansas MDL that will be submitted by Settlement Class Counsel to the Kansas MDL Court consistent with the Kansas MDL Court's orders."

[15] The Agreement states that the "Gustafson Gluek PLLC party" "includes Lewis A. Remele, Jr. (Bassford Remele), William R. Sieben (Schwebel Goetz & Sieben, P.A.), Richard M. Paul, III (Paul Mclnnes LLP and Paul LLP)(Minnesota work), Will Kemp (Kemp, Jones & Coulthard, LLP), Tyler Hudson (Wagstaff & Cartmell, LLP), Robert K. Shelquist (Lockridge Grindal Nauen)(Minnesota work), and Paul Byrd (Paul Byrd Law firm PLLC) and all Referring Counsel. Daniel E. Gustafson and Lew Remele will allocate fees represented by this percentage among all firms that provided common benefit work in the Minnesota MDL consistent the Minnesota MDL Court's orders. Daniel E. Gustafson and Lew Remele will have the right to review, revise and approve any common benefit time and expense submissions for common benefit work performed in the Minnesota MDL that will be submitted by Settlement Class Counsel to the Kansas MDL Court consistent with the Minnesota MDL Court's orders."

[16] This group includes Peter J. Flowers (Meyers & Flowers) and Martin J. Phipps (Phipps Anderson Deacon LLP), as well as Clark's, Flowers' and/or Phipps' Referring Counsel, co-counsel and / or joint venture partners.

LLP on or about February 22, 2018. The Agreement states that if the Court awards attorneys' fees and reimbursements costs and expenses and delegates that allocation of attorneys' fees to Co-Lead Counsel, Co-Lead Counsel will, in allocating that sum to the various counsel in the Kansas MDL, accord to Seeger Weiss the same multiplier to its lodestar that would be allocated to the Co-Leads and that the allocation to Seeger Weiss would be no less than ten percent of the gross sum awarded to counsel in the Kansas MDL. Co-Lead Counsel additionally committed to seeking reimbursement of Seeger Weiss's costs and expenses in the petition to the Court. Exhibit 9.

616. Earlier in the litigation, Co-Lead Counsel disclosed to the Court the existence of Joint Prosecution Agreements between certain groups of Plaintiffs' Counsel, which in part discussed the application of the Common Benefit Assessments in the Common Benefit Order. *See*, *e.g.*, ECF Nos. 326, 2719.

617. The Common Benefit Order assessments, however, do not apply here because there is a class settlement. *See* ECF No. 936 at 20 ("In the event that there is a class settlement, recovery or judgment in favor of the class, no assessment pursuant to this Section will be made, either for attorneys' fees or for expenses, individually from any class member or his/her/its individual attorney as to the portion of any class recovery distributed to that individual class member if the class member remains in the class (i.e., does not opt-out of the class). Instead, all fees and expenses for that class member will come out of the overall class recovery funds provided by defendants, as approved by the Court, or otherwise Ordered by the Court.").

XXIV. COMMON BENEFIT TIME AND EXPENSE SUBMISSIONS

A. THE COMMON BENEFIT ORDER

618. The Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (the "Common Benefit

Order") stated that "Time and expense submissions shall be made to Lead Counsel on a monthly basis, by deadlines to be set by Lead Counsel, in accordance with the guidelines set forth herein and using monthly reports to be distributed by Lead Counsel so that Lead Counsel may retain those forms for later submission to this Court if and when necessary." ECF No. 936 at 17.

619. Rachel Schwartz, with substantial input from Co-Lead Counsel, took the lead in drafting the guidelines and the Excel chart that each common benefit firm would complete and submit to Stueve Siegel Hanson each month.

620. Consistent with the Common Benefit Order, all common benefit law firms were directed to submit their common benefit time and expense submissions by the last calendar day of each month, with the submissions covering time period through the end of the preceding month. *See* ECF No. 936 at 17.

B. EFFORTS TO ENSURE MDL EFFICIENCY

621. Throughout the litigation, the Co-Lead Counsel took steps to ensure that work in this litigation was done efficiently with the goal of minimizing duplication of tasks.

622. In June 2015, Co-Lead Counsel circulated guidelines to common benefit firms regarding billing in the MDL.

623. In these guidelines, common benefit firms were told that "[g]eneral review of MDL filings, orders, transcripts, emails or other documents not directly related to work assigned by Co-Lead Counsel will not be considered common benefit time."

624. The guidelines additionally stated that it "is the expectation that counsel will minimize the number of individual timekeepers from a single firm to ensure the efficiency of time spent on this litigation."

625. Throughout the litigation, Co-Lead Counsel took proactive steps to assign the same counsel to related tasks to avoid having new counsel spend material amounts of time re-

learning an area of the litigation.

626. By way of example only, a core group of EC members assisted with the discovery from producer plaintiffs and this same group of attorneys helped with the depositions of these same producer plaintiffs.

627. In order to minimize turnover from the document reviewers, we asked all Co-Lead and EC firms to provide only those document reviewers who were able to devote substantial amounts of time over multiple months.

628. The goal was to eliminate inefficiencies by minimizing document reviewer turnover to avoid having to repeatedly re-train new document reviewers throughout the course of the litigation.

629. A small group of attorneys assisted with the briefing throughout the course of the litigation, which minimized time that would otherwise be required to bring a new attorney up to speed on prior briefing.

C. REVIEW AND REVISING OF COMMON BENEFIT SUBMISSIONS

630. James Vaglio in my office reviewed these common benefit submissions each month, responded to questions from common benefit counsel about these submissions and corresponded with counsel regarding technical problems with their submissions, including the failure to provide required information or the failure to provide the information in the correct format. After the settlement was announced, we took the Excel charts that had been submitted from all law firms and combined these entries into a single Excel chart.

631. Ms. Schwartz then began to substantively review the combined Excel spreadsheet to begin to fix substantive problems with these submissions, including miscalculated lodestar totals. She additionally identified entries that were potentially inconsistent with the Common Benefit Order and the guidelines provided to common benefit counsel by Co-Lead Counsel. She

ultimately drafted a memorandum addressed to common benefit counsel identifying some of the more common errors that needed to be fixed.

632. Beginning in February and continuing through March 2018, all law firms that submitted common benefit time and expenses were emailed a comprehensive Excel spreadsheet with two tabs containing all of the common benefit time and expenses each firm had submitted.

633. Counsel were asked to re-review this Excel spreadsheet to confirm that all entries were in compliance with the Common Benefit Order and the guidelines provided by Co-Lead Counsel and to exercise billing discretion on the previously-submitted entries.

634. Common benefit firms were additionally emailed a memorandum with guidelines on this re-review, which included: ensuring that time descriptions were sufficiently-detailed and giving examples of time descriptions that would not be accepted; to exclude time and expenses for work on behalf of plaintiffs who were not ultimately class representative or bellwether plaintiffs, including time spent on Plaintiff Fact Sheets for non-bellwether and non-class representative plaintiffs; ensuring that no time or expenses were submitted for marketing activities; and specific types of entries that should be removed because the work was on behalf of individual clients, not bellwether or class representative plaintiffs, and excluding secretarial work, which should not be submitted as common benefit time.

635. Additionally, in the email forwarding this memorandum, we identified issues that were unique to each individual firm and that required attention on the re-review.

636. In my firm, Ms. Schwartz re-reviewed the time and expense submissions we had previously submitted.

637. Once these re-reviewed Excel spreadsheets were returned, Co-Lead Counsel divided up the submissions for another re-review of the submitted time and expenses.

638. If there were concerns that an entry did not comply with the Common Benefit Order or the Guidelines provided by Co-Lead Counsel, Co-Lead Counsel were to directly contact the common benefit firm to gain additional information on the entry or to discuss cutting the entry.

639. Additionally, these entries were reviewed to ensure that firms were efficient throughout the course of the litigation and took steps to eliminate unnecessary duplication of efforts by multiple timekeepers.

640. After the completion of this process, the re-reviewed time and expense entries were re-combined and finalized.

641. As a final double-check of the time entries to ensure there were no duplicate entries from the same timekeeper for the same day, we ran formulas in Excel to identify and potentially eliminate any true duplicate entries.

642. Even though many or all of the law firms listed below incurred such time, the final common benefit lodestar does not include time spent: advertising, soliciting, or retaining clients; time spent communicating with individual, non-bellwether, non-representative plaintiffs; or time spent responding to PFS obligations for non-bellwether, non-representative plaintiffs. Additionally, with a few exceptions, the rates for all time entries were standardized to the rate submitted by each timekeeper in 2017.

D. COMMON BENEFIT TIME AND EXPENSES SUBMITTED BY COMMON BENEFIT FIRMS

643. A total of 49 law firms have submitted common benefit time and/or expenses in the Kansas MDL, including 44 law firms that performed common benefit work.

644. In total, these firms have submitted the following common benefit expenses and

lodestar. This reflects the work by 44 of the 49 firms in the Kansas Common Benefit Group.[17] Approximately sixty-eight percent of all common-benefit time was performed by Co-Lead Counsel. When the next highest-performing firm – Seeger Weiss – is included, that figure increases to 75% of the overall time.

Firm	Expenses	Lodestar	Total hours
Anderson, Bottrell, Sanden & Thompson	$72.45	$11,430.00	48.40
Barrack, Rodos & Bacine	$17,458.17	$1,819,463.00	3,166.60
Battle & Winn LLP	$587.45	$5,394.00	11.60
Batts, Batts & Bell, LLP	$380.22	$62,192.00	276.10
Bohrer Brady LLC	$5,022.28	$42,210.00	120.60
Bolen Robinson & Ellis, LLP	$211,984.72	$1,744,392.50	4,080.30
Brady Preston Brown PC	$5,000.00	$14,909.50	112.30
Brooks Pierce	$400.00	$4,550.00	13.30
Coffman Law Firm	$2,371.22	$117,300.00	223.20
Emerson Poynter LLP	$20,949.26	$288,342.00	379.80
Emerson Scott LLP	$83,413.32	$910,632.50	1,400.50
English, Lucas, Prist & Owsley, LLP	$313.61	$5,152.50	28.50
Gray Reed & McGraw P.C.	$805,484.03	$10,462,531.60	16,859.90
Gray, Ritter & Graham, P.C.	$690,244.26	$12,771,320.50	18,480.50
Greene Espel PLLP	$199,822.80	$1,767,880.80	4,390.50
Hare Wynn Newell & Newton	$911,263.79	$11,728,489.50	20,153.10
Heninger Garrison Davis, LLC	$145,000.00		
Holland Law Firm	$1,395.11	$69,760.00	139.30
Jake W. Brooks Attorney at Law	$41.70	$1,912.50	8.50
Kruml Law Office, P.C.	$221.98	$1,555.00	11.40
Lockridge Grindal Nauen PLLP	$216,121.06	$1,350,611.00	3,607.00
Lundberg Law Firm PLC		$9,922.50	44.10
Martin, Browne, Hull & Harper PLL	$117.74	$34,295.00	141.00
McCulley McCluer		$212,287.50	298.00
Milberg Tadler Phillips Grossman LLP	$825.50	$77,057.50	173.80
Miller Schirger LLC	$81.59	$79,950.00	119.60
Paul LLP	$216,571.29	$1,379,386.50	4,009.80
Quinn Emanuel	$150,000.00		
Roth Law Office	$719.28	$6,375.00	42.50
Saeed & Little, LLP		$500.00	2.50

[17] Five firms in the Kansas Common Benefit Group reported no common-benefit work, but made contributions to the litigation fund and seek reimbursement of those contributions.

Firm	Expenses	Lodestar	Total hours
Schirger, Kirk, McDougall & Winzeler, P.C.	$249.99	$14,350.00	41.00
Scott Poynter	$763.82	$75,922.50	95.50
Seeger Weiss LLP	$438,883.72	$6,990,276.00	9,745.20
Sidley Austin LLP	$175,000.00		
Simmons Hanly Conroy LLC	$730,928.00	$1,197,732.50	3,294.20
Sneed Lang PC	$882.91	$58,240.00	145.60
Soper Leddin Law Firm, PC	$185.00	$4,631.50	15.70
Stinson Leonard Street LLP	$172,315.00	$782,219.50	2,032.40
Stueve Siegel Hanson LLP	$1,026,482.73	$24,362,269.50	42,413.40
Thrash Law Firm, P.A.	$497.10	$39,530.00	48.80
Wadler Perches Hundl Kerlick		$15,186.00	69.60
Wagner Reese	$711.50	$35,240.00	54.80
Wagstaff & Cartmell	$15,000.00		
Waller Jorgenson Warzynski, PLLC		$4,000.00	10.00
Walters Bender Strohbehn & Vaughan, P.C.	$219,345.88	$2,573,422.50	5,412.60
Weller, Green, Toups & Terrell, L.L.P.		$71,957.50	99.50
Whaley Law Firm	$5,000.00		
Westerfield, Janoush & Bell, P.A.		$23,560.00	58.90
Zimmerman Reed, LLP	$120,043.57	$496,720.50	943.60
Totals	$6,592,152.05	$81,725,060.90	142,823.50
Additional Class Certification Notice Expense[18]	$103,198		
Grand Expense Total	$6,695,350.05		

645. Common benefit firms maintained these expenses by category code. Not including the additional class certification notice expense listed above, across all law firms that submitted common benefit expenses, here are the total expenses per category code.

[18] On June 29, 2018, Analytics, the class certification notice administrator, sent a final invoice for $172,310.49. This invoice exceeded the remaining balance in the litigation fund by $103,198, which we are including as an additional common benefit expense in this submission.

Category Code	Description of Category Code	All Kansas Common Benefit Expenses by Category Code
1	Federal Express / Local Courier	$25,713.95
2	Postage Charges	$1,807.54
3	Facsimile Charges	$48.00
4	Long Distance Calls	$31,359.11
5	In-House Photocopying	$99,144.89
6	Outside Photocopying	$187,185.79
7	Hotels	$559,548.83
8	Meals	$148,438.47
9	Mileage	$28,793.07
10	Air Travel	$387,787.08
11	Deposition Costs	$62,319.31
12	Lexis/Westlaw/Bloomberg	$555,248.82
13	Witness and Expert Expenses	$423,794.32
14	Court Fees	$7,629.22
15	Service of Process Fees	$9,485.11
16	Hearing and Trial Transcripts	$180.90
17	Ground Transportation	$94,272.26
18	Miscellaneous	$169,395.38
19	Litigation Fund Assessment	$3,800,000.00
	TOTAL	**$6,592,152.05**[19]

646. The overall blended rate across all law firms is $572.21 per hour.

E. LITIGATION FUND

647. To fund the on-going prosecution of the MDL, Co-Lead Counsel, Executive Committee members and additional firms in the MDL made periodic contributions to the litigation fund.

648. Our firm was responsible for setting up and managing the litigation fund. I was responsible for updating all common benefit firms on the status of expenses in the litigation and requesting periodic contributions to the litigation fund. I would send regular updates to the Co-Leads on the status of the fund and the payment of all invoices. I worked with all firms who

[19] Some of these out-of-pocket costs were shared with Lead Counsel in Minnesota, such as the hosing cost of the MDL Document Database and costs for shared experts. Co-Lead Counsel seek reimbursement here only for their share of these costs advanced for the litigation. I understand Minnesota Lead Counsel will seek reimbursement for their share of these costs in their separately-filed application.

agreed to share costs to make sure they complied with those funding commitments and answered any questions they had regarding shared costs.

649. No money was accepted by a non-party or non-lawyer funders.

650. There was no guarantee that these litigation fund contributions would be repaid. If the litigation had been unsuccessful, none of these contributions would have been repaid.

651. In total, the following law firms contributed $3,800,000 to the litigation fund, which are expenses included in the chart above listing total common benefit expenses across all law firms. The contributions are as follows:

Law Firm	Total Litigation Fund Contribution
Gray Reed & McGraw P.C.	$405,000
Gray, Ritter & Graham, P.C.	$405,000
Hare Wynn, Newell & Newton LLP	$405,000
Stueve Siegel Hanson LLP	$405,000
Seeger Weiss LLP	$275,000
Walters Bender Strohbehn & Vaughan, P.C.	$195,000
Bolen Robinson & Ellis LLP	$190,000
Greene Espel PLLP	$190,000
Lockridge Grindal Nauen P.L.L.P.	$190,000
Paul LLP	$190,000
Simmons Hanly Conroy	$190,000
Sidley Austin LLP	$175,000
Stinson Leonard Street	$160,000
Quinn Emanuel	$150,000
Heninger Garrison Davis	$145,000
Emerson Scott LLP	$80,000
Emerson Poynter LLP	$15,000
Wagstaff & Cartmell	$15,000
Barrack Rodos & Bacine	$10,000
Brady Preston Brown PC	$5,000
Whaley Law Firm	$5,000
TOTAL	**$3,800,000**

652. The litigation fund expenses broke down under the following categories:

	Description of Expense Category	Total Litigation Fund Expense
1	Deposition-related expenses	$382,022.20
2	ESI expenses, including the ESI Relativity Database	$294,591.27
3	Special Master Expenses	$299,807.06[20]
4	Court Transcripts	$17,382.25
5	Expert-related expenses	$1,546,672.02
6	Translation services	$46,997.61
7	Subpoena expenses	$306,391.98
8	Trial consultants	$306,039.11
9	Trial expenses	$188,298.88
10	Class Certification Notice Expenses	$363,042.46[21]
11	FSA Information for the settlement	$48,412.34
12	Bank Charges for the Litigation Fund	$342.82
	TOTAL	**$3,800,000**

653. Additional details on these categories are below:

a. Category 1, Deposition-related expenses: included in this category are court reporter fees and purchases of deposition transcripts and videotapes of these depositions. We negotiated competitive rates for this work.

b. Category 2, ESI expenses: this includes all costs related to the Relativity database, which stored all of the documents produced by Syngenta and third parties in this litigation. We negotiated competitive rates for this work, after reviewing several submissions.

c. Category 3, Special Master Expenses: this includes payment of the invoices submitted by Special Master Reisman and the Honorable Judge Daniel J. Stack. The fees for Ms. Reisman were split between the parties. ECF No. 1745 at 5. Ultimately, the Kansas MDL

[20] Not included in the number above is a recent invoice for $7,200 from the Special Masters, moving the total expenses for this category above $300,000. We anticipate that the Special Masters may have additional invoices in the coming months. Neither this recent invoice nor any future invoices are included in the total number above.

[21] Invoices from Analytics for the class certification notice totaled $466,240.46: $363,042.46 was paid directly out of the litigation fund; and the remaining $103,198 from a recent June 2018 invoice is included in Section XXIV.D as an additional common benefit expense.

was responsible for paying 3/32 of the total invoices, which later increased to 5/32 after ADM settled.

d. Category 4, Court Transcripts: this includes purchases of transcripts from court hearings.

e. Category 5, Experts: this includes costs for the experts retained by Plaintiffs and their expenses to prepare their reports, appear at depositions and testify at the class certification hearing and trial.

f. Category 6, Translation services: this includes costs for the translation of certain Chinese documents produced by Syngenta.

g. Category 7, Subpoena expenses: this includes the reasonable expenses related to the production of documents from subpoenaed third parties and other costs associated with the service of process for these subpoenas.

654. Category 8, Trial Consultants: this includes expenses related to services of the trial consultant used to prepare for the MDL trials, the jury consultant, and the expenses related to the focus group and mock trial. To be efficient, we utilized one trial consultant group to conduct the focus group and the mock trial, so they did not have to re-learn the basics of the case. We intended to continue using these consultants for the remaining trials.

655. Category 9, Trial Expenses: this includes charges for the copying of highlighted deposition designation binders for the Court, meals for the trial team, travel expenses for trial, a planning session for the 2018 trials and printing of demonstratives for trial.

656. Category 10, Class Certification Notice: this includes the amounts paid to Analytics LLC for work related to the class certification notice. We selected Analytics following a competitive bidding process.

657. Category 11, FSA data: this includes the amounts paid to retained counsel who aided in discussions with the USDA regarding providing FSA data for the settlement.

658. Category 12, bank charges: this includes charges from the bank for maintaining the litigation fund.

XXV. STUEVE SIEGEL HANSON'S FEE AGREEMENTS WITH INDIVIDUAL CLIENTS

659. My firm has individually retained more than 1,140 producer plaintiffs who now have the opportunity to participate in the class settlement.

660. Some of the individual retainer agreements with these producer plaintiff clients involved co-counsel. These co-counsel relationships were disclosed on the face of the individual retainer agreements. Other than these relationships and the relationships disclosed in this declaration and as part of this briefing, Stueve Siegel Hanson does not have other agreements to pay any share of any fees that may be awarded to our firm in this litigation to attorneys outside of our law firm.

661. If a class had not been certified, our individual fee agreements required each client to pay 33 1/3% of any net benefit received.

662. If a class were certified, my firm's fee agreements expressly waive any right to seek attorneys' fees individually from these clients and to instead seek fees and expenses solely from the Court.

663. Consequently, my firm is seeking compensation and expense reimbursement solely from the common benefit fee and expense award made by this Court and will not seek to recover individual attorneys' fees or expense reimbursement from any individual client.

664. In total, my firm has expended more than 5,600 hours on these individual clients, totaling more than $2.5 million in lodestar. We have additionally incurred more than $330,000

in expenses. We have not included this lodestar amount or the expenses for our individual clients in this application for attorneys' fees.

XXVI. STUEVE SIEGEL HANSON'S COMMON BENEFIT TIME AND EXPENSES

665. Stueve Siegel Hanson maintains contemporaneous records of its time and expenses. These records are prepared and maintained in the ordinary course of business through software systems maintained by the firm.

A. STUEVE SIEGEL HANSON'S LODESTAR

666. As part of the preparation of my declaration, Ms. Schwartz and I reviewed the time and expenses incurred in this litigation to exercise billing judgment. This work was performed in compliance with the CBO.

667. After exercising billing judgment and making billing reductions based on our review of the records, the number of hours spent on this litigation by my firm is 42,313.40 hours. A breakdown of the lodestar is provided below.

	Name	Title	Total Hours	Hourly Rate	Lodestar
1.	Stueve, Patrick	Partner	6,398.70	$865.00	$5,534,875.50
2.	Schwartz, Rachel	Partner	5,846.50	$725.00	$4,238,712.50
3.	Walters, Stephanie	e-Discovery Counsel	5,350.10	$625.00	$3,343,812.50
4.	Wilders, Bradley	Partner	4,301.20	$695.00	$2,989,334.00
5.	Campbell, Michelle	Paralegal	2,674.90	$295.00	$789,095.50
6.	Shank, Curtis	Associate	2,651.30	$425.00	$1,126,802.50
7.	Cooper, Sean	Associate	2,538.30	$425.00	$1,078,777.50
8.	Cooper, Matt	Associate	2,334.60	$350.00	$817,110.00
9.	Vaglio, James	Associate	1,736.60	$425.00	$738,055.00
10.	Six, Steve	Partner	1,399.90	$825.00	$1,154,917.50
11.	Storrs, Sam	Associate	1,378.50	$350.00	$482,475.00
12.	Tompkins, John	Associate	1,041.70	$350.00	$364,595.00
13.	Perez, Cheri	Paralegal	737.90	$295.00	$217,680.50
14.	Hickey, David	Associate	481.30	$450.00	$216,585.00
15.	Cervantes, Katrina	Paralegal	442.50	$245.00	$108,412.50

	Name	Title	Total Hours	Hourly Rate	Lodestar
16.	Calabro, Toji	Of Counsel	402.80	$625.00	$251,750.00
17.	Barry, Sherry	Paralegal	385.80	$295.00	$113,811.00
18.	Reyes, Erika	Paralegal	377.50	$245.00	$92,487.50
19.	Marquart, Mary Rose	Paralegal	371.50	$295.00	$109,592.50
20.	Stueve, Ben	Paralegal	229.20	$225.00	$51,570.00
21.	Moore, Austin	Associate	214.50	$475.00	$101,887.50
22.	Tazkargy, Ariel	Associate	208.90	$350.00	$73,115.00
23.	Williams, Sheri	Paralegal	172.70	$245.00	$42,311.50
24.	Weiner, Adrian	Staff: IT Manager	116.70	$275.00	$32,092.50
25.	Carter, Jennifer	Associate	108.90	$475.00	$51,727.50
26.	Rupp, Peter	Staff: Systems Director	98.90	$425.00	$42,032.50
27.	Walsh, Larkin	Of Counsel	83.80	$495.00	$41,481.00
28.	Siegel, Norman	Partner	65.50	$865.00	$56,657.50
29.	Marquart, Brendan	Paralegal	61.80	$225.00	$13,905.00
30.	Perkins, Lindsay	Of Counsel	59.70	$550.00	$32,835.00
31.	Shaw, Daniel	Associate	35.20	$375.00	$13,200.00
32.	Ricke, Alex	Associate	26.40	$425.00	$11,220.00
33.	Smith, Margaret	Paralegal	21.00	$245.00	$5,145.00
34.	Scurlock, Jeffrey	Of Counsel	17.20	$575.00	$9,890.00
35.	Lange, Ethan	Associate	16.70	$495.00	$8,266.50
36.	Warner, Melissa	Paralegal	8.20	$245.00	$2,009.00
37.	DeMoss, Lori	Paralegal	7.20	$245.00	$1,764.00
38.	Olivas, Julie	Paralegal	7.00	$245.00	$1,715.00
39.	Switzer, Janet	Staff: Finance/HR Director	2.30	$245.00	$563.50
	TOTALS		42,413.40		$24,362,269.50

668. These figures do not include the anticipated additional time necessary to finalize the administration of this settlement. The claims deadline is not until October 12, 2018, which means there are three additional months in which we will continue working with the claims administrator and answering questions from class members. There is additional work to draft the

final approval papers and attend the final approval hearing. It has been our experience in similar class actions that class counsel will spend between 500 to 1,000 hours following final approval to finalize the administration of this settlement.

B. PRECLUSION OF OTHER WORK

669. Stueve Siegel Hanson's attorneys and staff collectively spent more time on this MDL than the firm has ever spent on a single case in the history of the firm.

670. At times throughout the litigation, we had partners, associates and staff members devoting all or nearly all of their time to this litigation. I worked almost exclusively on this case for the past several years. I had a full docket of cases that I had to delegate to other partners because of the time commitment of this case. This was necessary to complete the extensive amounts of discovery in the time frame allotted and to prepare the Kansas case for trial. For extensive periods throughout the litigation, Ms. Schwartz and Mr. Wilders also worked almost exclusively on this case during that time frame. Without a doubt, the needs of this case precluded us, and our firm, from accepting other assignments. During the time I was working on this case, I spent little, if any, time evaluating and developing new cases, which is something I have historically spent substantial amounts of time on. The needs of this case, and the desire to prosecute these claims effectively on behalf of the Plaintiffs, required that I, and my firm, put this case first, above and beyond other business opportunities. It is not an exaggeration to say that this required that level of commitment and sacrifice.

C. STUEVE SIEGEL HANSON'S EXPENSES

671. As part of the Common Benefit Guidelines provided by Co-Lead Counsel, all common benefit firms tracked common benefit expenses using Category Codes 1-19.

672. In total, my firm seeks reimbursement of common benefit expenses in the amount of $1,026,482.73. Those expenses and charges are summarized by below:

Category Code	Description of Category Code	Stueve Siegel Hanson LLP Amounts
1	Federal Express / Local Courier	$6,969.44
2	Postage Charges	$45.89
3	Facsimile Charges	
4	Long Distance Calls	$2,591.06
5	In-House Photocopying	$38,017.30
6	Outside Photocopying	$41,016.26
7	Hotels	$84,587.24
8	Meals	$22,763.46
9	Mileage	
10	Air Travel	$63,624.19
11	Deposition Costs	
12	Lexis/Westlaw/Bloomberg	$340,522.53
13	Witness and Expert Expenses	
14	Court Fees	$800.00
15	Service of Process Fees	$302.00
16	Hearing and Trial Transcripts	
17	Ground Transportation	$16,820.32
18	Miscellaneous	$3,423.04
19	Litigation Fund Assessment	$405,000.00
	TOTAL	**$1,026,482.73**

673. Additional details on these expenses are below:

a. Category 1, Federal Express / Local Courier, etc.: This category includes common benefit expenses for shipping, courier, and delivery expenses of documents to and from class representatives, bellwether plaintiffs, co-counsel, opposing counsel, and the Court. This category also includes expenses related to shipping deposition exhibits. These expenses are reported at actual cost.

b. Category 2, Postage Charges: This category includes common benefit postage charges for mailing letters and accompanying documents to class representatives, bellwether plaintiffs, document custodians, ESI vendors, co-counsel, opposing counsel, the Court, and other necessary parties. These expenses are reported at actual cost.

c. Category 3, Facsimile Charges: Stueve Siegel Hanson is not seeking reimbursement for any facsimile expenses.

d. Category 4, Long Distance, Conference Call, and Cellular Telephone Charges: This category includes Stueve Siegel Hanson's common benefit expenses for long distance and conference calls to co-lead counsel, opposing counsel, the Court, and other necessary parties to discuss the common benefit order, ESI protocol, discovery disputes, class certification, trial, and other matters for the common benefit of all producer and non-producer plaintiffs. These expenses are reported at actual cost.

e. Category 5, In-House Photocopying: This category includes Stueve Siegel Hanson's common benefit expenses for photocopying and printing documents for use in depositions, class certification briefing, trial notebooks, trial exhibits, and other matters for the common benefit of all producer and non-producer plaintiffs. Consistent with the Common Benefit Order, these expenses were billed at $.10/page, which is below what we normally charge for these expenses.

f. Category 6, Outside Photocopying: This category includes Stueve Siegel Hanson's common benefit expenses for photocopying, scanning, printing, and binding documents by third-party vendors. Stueve Siegel Hanson typically utilized such vendors to assist with large projects requiring the printing, scanning, and binding of thousands of pages of documents for use in depositions and at trial. Stueve Siegel Hanson also relied on the services of a third party vendor for the design and creation of demonstratives for use at trial. These expenses are reported at actual cost.

g. Category 7, Hotels: This category includes Stueve Siegel Hanson's common benefit expenses for hotel room charges for the average available room rate of a business hotel in the city in which the stay occurred. Stueve Siegel Hanson attorneys and staff incurred hotel room charges while traveling to collect documents from class representatives and bellwether

plaintiffs, attending depositions, meeting with trial experts, and performing other matters for the common benefit of all producer and non-producer plaintiffs. Stueve Siegel Hanson negotiated reduced Kansas City hotel rates for the benefit of all counsel. These expenses are reported at actual cost.

h. Category 8, Meals: This category includes Stueve Siegel Hanson's common benefit expenses for meals. Stueve Siegel Hanson attorneys and staff incurred meal expenses while attending depositions, meeting with co-counsel, collecting documents from class representatives and bellwether plaintiffs, and performing other tasks for the common benefit of all producer and non-producer plaintiffs. Stueve Siegel Hanson also incurred common benefit meal expenses while hosting a team of attorneys that traveled to Kansas City for several weeks to review and code Defendants' document productions. These expenses are reported at actual cost.[22]

i. Category 9, Mileage: Stueve Siegel Hanson is not individually seeking reimbursement for common benefit mileage expenses.

j. Category 10, Air Travel: This category includes Stueve Siegel Hanson's common benefit airfare expenses. Stueve Siegel Hanson is seeking reimbursement for the lowest available, convenient coach fair. Stueve Siegel Hanson incurred these airfare expenses in order to attend depositions, meet with co-counsel to plan for settlement discussions and trial, meet with trial consultants, and perform other tasks for the common benefit of all producer and non-producer plaintiffs. These expenses are reported at actual cost.[23]

---

[22] Charges for alcohol were excluded from these meal totals. From an analysis of the itemized meal bills that included alcohol, alcohol was approximately 33% of the total bill. If some instances, an itemized bill was not provided. In those circumstances and out of an abundance of caution for any meal that may *potentially* have included alcohol, 33% was removed from total meal bill.

[23] First class domestic airfare and business international airfare were reduced to the charge for a contemporarily-priced coach airfare. From an analysis of these flights, coach flights were 74% of

k. Category 11, Deposition Costs: Stueve Siegel Hanson is not individually seeking reimbursement for deposition costs.

l. Category 12, Lexis/Westlaw/Bloomberg: This category includes Stueve Siegel Hanson's common benefit expenses related to conducting computerized research on Westlaw, Bloomberg Law, and PACER. Stueve Siegel Hanson's attorneys and staff used these electronic databases in order to access court filings and conduct legal research on a broad range of legal topics. For example, Stueve Siegel Hanson attorneys utilized Westlaw and Bloomberg Law in order to perform legal research on the Lanham Act, choice-of-law issues, class certification, preemption, Defendants' affirmative defenses, the admissibility of expert reports, whether PowerPoint presentations constitute business records for hearsay purposes, and numerous other legal issues that Plaintiffs faced during the course of this litigation. These costs are billed in the same manner in which Stueve Siegel Hanson bills its hourly clients.

m. Category 13, Witness and Expert Expenses: Stueve Siegel Hanson is not individually seeking reimbursement for witness or expert expenses.

n. Category 14, Court Fees: This category includes Stueve Siegel Hanson's common benefit expenses related to court filing fees. These expenses are reported at actual cost.

o. Category 15, Service of Process Fees. This category includes Stueve Siegel Hanson's common benefit expenses related to service of process. These expenses are reported at actual cost.

p. Category 16, Hearing and Trial Transcripts: Stueve Siegel Hanson is not individually seeking reimbursement for hearing and trial transcript expenses.

q. Category 17, Ground Transportation: This category includes Stueve Siegel

---

the price of a first class domestic plane ticket and business international airfare. For those few instances in which there was not a documented contemporarily-priced coach airfare, the charge was reduced by that 26%.

Hanson's common benefit expenses related to automobile rentals, shuttle service, taxis, and Uber service. Stueve Siegel Hanson attorneys and staff incurred these expenses while attending depositions and trial, meeting with co-counsel, collecting documents from class representatives and bellwether plaintiffs, and performing other tasks for the common benefit of all producer and non-producer plaintiffs. These expenses are reported at actual cost.

r. Category 18, Miscellaneous: This category includes Stueve Siegel Hanson's common benefit expenses related to miscellaneous cash expenses for which receipts generally are not available (e.g., tips, luggage handling) and other items which do not fall within another category. For example, Stueve Siegel Hanson incurred miscellaneous expenses related to baggage handling, hotel computing, wireless internet, trial supplies and exhibits, and other miscellaneous items necessary for the common benefit of all producer and non-producer plaintiffs. These expenses are reported at actual cost.

s. Category 19, Litigation Fund Assessments: This category includes Stueve Siegel Hanson's periodic monetary contributions to the Syngenta Litigation Fund. Co-Lead Counsel, Executive Committee members, and additional firms in the multidistrict litigation made periodic contributions to the litigation fund. These funds were utilized for the on-going prosecution of the multidistrict litigation. In total, my firm has contributed $405,000 to the litigation fund.

674. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from receipts, expense vouchers, check records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 10th day of July, 2018, in Kansas City, Missouri.

Patrick J. Stueve

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT: ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG, et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**MDL No. 2591**

DECLARATION OF SCOTT A. POWELL IN SUPPORT OF
MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES

Table of Contents

I. Background 4
A. Hare, Wynn, Newell & Newton, LLP 4
B. Partners 5
Scott Powell 5
Bruce McKee 7
Jamie Moncus 9
Jason Earley 10
Hughston Nichols 10
Brian Vines 11
C. Associates 12
Tempe Smith 12
Chris Randolph 13
Sarah Jewell 14
D. Staff Attorney 14
Virginia Applebaum 14
E. Paralegals and Support Staff 14
Debbie Byrd 14
Martha Miller 15
Laura Riedinger 15
Andi Marquez 15
Brian Snipes 15
Zondra Bess 15
Phillip Carter 16
Darcy Glasgow 16
Brittney Wilson 16
Sarah Nelson 16
Emily Rubino 16
Rasheedah Heath 16
Amy Camp 17
Dax Whitfield 17
Jennifer Young 17
Chanelle Parker 17
Mary Ellen Davis 17

Tara Crowden Dickerson 18
Ryan Gordon 18
Emilie Estep 18
Jason Henry 18
Brian Ware 18
Hellana Marshall 18
II. Summary of Common Benefit Work Performed by Hare Wynn 19
A. Preparation of Original Class Action Complaints 19
B. Coordination with Leadership in Parallel Litigation 19
C. Preparation of Amended Producer Plaintiffs Master Complaint 20
D. State Court Class Action Complaints 21
E. Response to Motion to Dismiss 21
F. Bellwether Discovery Pool Selection 21
G. Producer Plaintiff Written Discovery 22
1. Producer plaintiffs' discovery obligations 24
2. Plaintiff Fact Sheets 27
3. Syngenta's First Set of Requests for Production to Class Representatives and Bellwether Plaintiffs 30
4. Syngenta's Second Set of Requests for Production to Discovery Pool Plaintiffs 33
5. Discovery Pool Plaintiff Depositions 34
6. Interrogatories and Requests for Admission to Producer Plaintiffs 35
7. Efforts to Collect the Information and Documents Syngenta Sought 37
H. Written Discovery Served on Syngenta 48
I. Depositions of Current and Former Employees of Syngenta and Third-Parties 50
J. Plaintiff's Experts 51
K. Syngenta's Experts 52
L. Class Certification Briefing 53
M. Summary Judgment Briefing for the Kansas Class 53
N. Kansas Class Trial Preparation 54
O. Kansas Class Trial 56
P. Post-Kansas Class Trial Motions 58
Q. Preparation for Arkansas and Missouri Classes Trial 58
R. Settlement Discussions 59
III. Fee Agreements with Individual Clients 59
IV. Hare Wynn's Common Benefit Time and Expenses 60

I, Scott A. Powell, declare as follows:

1. I am a partner at Hare, Wynn, Newell & Newton, LLP ("Hare Wynn") and counsel of record for Plaintiffs.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so.

3. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

I. BACKGROUND

4. The following section provides background information on Hare Wynn and all Hare Wynn lawyers and staff members who performed common benefit work in this litigation.

A. Hare, Wynn, Newell & Newton, LLP

5. Hare Wynn was founded in 1890. Hare Wynn currently has 22 lawyers and 36 staff members and has its primary office in Birmingham, Alabama.

6. Hare Wynn's practice focuses exclusively on the representation of plaintiffs in civil litigation across the United States. While the firm continues to represent plaintiffs in personal injury, medical malpractice, and commercial cases, Hare Wynn over the past twenty years has maintained an active complex litigation practice. Hare Wynn primarily represents individual plaintiffs, but in recent years has also represented corporations, institutional investors, and the several state governments. Since I joined Hare Wynn in 1986, Hare Wynn's lawyers have tried hundreds of cases to verdict.

7. Numerous national and regional publications have recognized Hare Wynn. *U.S. News and World Report* has recognized Hare Wynn in its annual "Best Law Firm" rankings for each of the past eight years, with Hare Wynn earning the distinction as a U.S. News "Tier 1" firm

in nine practice areas in 2018. *VerdictSearch* recognized Hare Wynn for obtaining one of the 100 largest jury verdicts in the United States in the years 2010, 2011, 2013, and 2017.

8. Hare Wynn lawyers have served in numerous leadership positions in the bar. One of our partners is a former member of the Uniform Law Commission. Another lawyer at our firm is a former justice of the Alabama Supreme Court. Five current Hare Wynn lawyers have also served as president of the Alabama Association for Justice (formerly known as the Alabama Trial Lawyers Association), one lawyer has served as president of the Alabama State Bar, and another has served as president of the Birmingham Bar Association.

B. Partners

Scott Powell

9. I received a J.D. *cum laude* from Samford University's Cumberland School of Law in 1978. I obtained my undergraduate degree from the University of Alabama in 1975.

10. Over the past forty years my practice has focused exclusively on the representation of plaintiffs in civil litigation. I joined Hare Wynn as an equity partner in 1986 after working for eight years at another plaintiffs' firm in Birmingham. Over my career I have represented individuals, corporations, *qui tam* relators, state governments, and institutional investors. I have tried over a hundred civil cases to verdict and served as lead trial counsel in cases that resulted in million dollar verdicts.

11. Since the mid-1990s, I have focused my practice largely on complex, class, and multi-district litigation, and have practiced exclusively in those areas for over ten years. I am currently the chairman of Hare Wynn's complex litigation group.

12. I played a leading role in *In re Genetically Modified Rice Litigation*, MDL 1811 (E.D. Mo.) ("GM Rice" litigation). I was lead counsel in *Schafer v. Bayer, et al.*, (Cir. Ct. Lonoke

Cnty., Ark.), a state court proceeding related to the GM Rice litigation. In *Schafer*, a jury returned a $48 million verdict for a group of Arkansas rice farmers following a multi-week trial. The Arkansas Supreme Court later affirmed that verdict in an opinion that held the Arkansas punitive damages cap unconstitutional. *See Bayer CropScience LP v. Schafer*, 385 S.W.3d 822 (Ark. 2011). I later served on the trial teams for one of the federal bellwether trials in the GM Rice litigation and, working with Mr. Downing and Mr. Chaney, helped negotiate a $750 million settlement in the GM Rice litigation.

13. I am lead class counsel in a nationwide fraud class action that is pending in state court in Birmingham, Alabama, *Johnson v. Caremark, et al.*, Case No. 01-cv-2003-006630 (Cir. Ct. of Jefferson Cnty, Ala.). The *Johnson* case settled for $310 million in 2016 after the Alabama Supreme Court affirmed the trial court's class certification order and remanded the case for trial, *see CVS Caremark Corp. v. Lauriello*, 175 So. 3d 596 (Ala. 2014).

14. I have held leadership roles in some of the largest *qui tam* actions in U.S. history. I served as co-lead counsel in the oil royalty litigation, *United States ex rel. Johnson v. Shell Oil Co.*, No. 9:96-cv-00066-TH (E.D. Tex.), which resulted in a $410 million settlement—then the highest recovery on behalf of the United States in the history of the False Claims Act. I was also co-lead counsel in *United States ex rel. Pogue v. Diabetes Treatment Centers of America*, No. 1:99-cv-03298-RCL (D.D.C.), a health care fraud case prosecuted under the False Claims Act which, at the time of its resolution in 2009, was the highest recovery in a non-intervened health care *qui tam* case in history. I also represented one of the relators in a False Claim Act action against Novartis Pharmaceuticals that resulted in a $422 million recovery.

15. I also recently represented the State of Alaska, the State of Montana, and the Commonwealth of Kentucky in litigation under those states' consumer protection laws against the

manufacturer of the anti-inflammatory drug Vioxx. *See Commonwealth of Kentucky v. Merck*, MDL 1657 (E.D. La.); *State of Alaska v. Merck & Co., Inc*., No. 3:06-cv-00018-TMB (D. Alaska); *State of Montana ex rel. Timothy C. Fox, Attorney General v. Merck & Co., Inc.*, No. CV-06-07-H-DWM (D. Mont.). Those three cases settled for a total of nearly $60 million.

16. In October 2017 I filed a putative copyright infringement class action against the e-commerce company Alibaba. *See Keck v. Alibaba.com, Inc*., et al, Case No. 5:17-cv-05672-BLF (N.D. Cal.). That case remains pending.

17. I also held a leadership position in *In re Biomet M2a Magnum Hip Implant Products Liab. Litigation*, MDL 2391 (N.D. Ind.)

18. I have been active in state and national bar organizations. I am a past president of both the Alabama Trial Lawyers Association and International Society of Barristers. I am also a Fellow of the American College of Trial Lawyers, Fellow of the International Society of Barristers, Fellow of the American Bar Foundation, and Fellow of the Alabama Bar Foundation. I am also a member of the United States Magistrate Judge Selection Committee for the Northern District of Alabama and recently served as Chairman of the Cumberland Law School Advisory Board.

19. I was selected as the 2013 Alabama Litigator of the Year by *Benchmark Litigation*. I have also been named to *The Best Lawyers in America* in three different fields, and Taxpayers Against Fraud honored me as its Lawyer of the Year in 2009. I have also been recognized by *Chambers USA* as a leading lawyer representing plaintiffs.

Bruce McKee

20. Bruce McKee obtained his B.A. from the University of Alabama in 1978, his J.D. from Columbia University School of Law in 1981, and his LL.M. from the University of Virginia School of Law in 1984. Bruce formerly served as the central staff attorney for the Alabama

Supreme Court and has taught various courses—including federal civil procedure, Alabama civil procedure, and conflict of laws—at Samford University's Cumberland School of Law and Faulkner University's Jones School of Law.

21. Bruce has been the primary appellate lawyer and brief writer at Hare Wynn for nearly 30 years. Bruce joined Hare Wynn as a partner in 1989, after working for Hare Wynn on a part-time basis for several years while serving as a full-time professor and assistant dean at Cumberland School of Law. After joining Hare Wynn, Bruce continued to teach civil procedure at Cumberland School of Law as an adjunct professor for another 17 years.

22. Bruce served as a member of the Uniform Law Commission for 15 years, has worked on or with the amicus curiae brief committee of the Alabama Association for Justice (formerly, Alabama Trial Lawyers Association), has served on several Alabama Law Institute committees tasked with drafting legislation for Alabama, and has been appointed by the Alabama Supreme Court to serve on several other committees.

23. Bruce was appellate counsel in *Bayer CropScience LP v. Schafer*, 385 S.W.3d 822 (Ark. 2011), where he successfully argued that the Arkansas statutory cap on punitive damages was unconstitutional.

24. Bruce has served as the lead legal researcher and brief writer at the trial court level in numerous class actions, including *Johnson v. Caremark, et al*., Case No. 01-cv-2003-006630 (Cir. Ct. of Jefferson Cnty., Ala.), which eventually settled for $310 million, and *Johns Manville v. Tennessee Valley Authority*, No. 2:99-CV-2294 (N.D. Ala.), which resulted in a $18 million settlement.

25. Bruce has been recognized as a *Super Lawyer*, is listed in the *Best Lawyers in America*, and in 2018, *Birmingham Magazine* recognized him as the top appellate lawyer in

Birmingham.

Jamie Moncus

26. Jamie Moncus obtained his J.D. from Vanderbilt University Law School in 2003 and earned his undergraduate degree from Auburn University in 2000. During law school, Jamie received the Morgan Prize for the most outstanding piece of student writing for his class. Jamie has worked as a trial lawyer at Hare Wynn since 2003.

27. Jamie is a member of the Alabama, Tennessee, Mississippi, and West Virginia state bars and represents plaintiffs in civil actions across the United States.

28. Jamie has tried numerous complex tort cases to verdict. *VerdictSearch* recognized Jamie in both 2011 and 2013 for obtaining one of the 100 largest verdicts in the United States in both of those years. Jamie is currently representing several hundred Texas property owners whose homes were damaged in flooding due to the negligent design of a levee just south of Houston. Jamie also recently concluded a case in Corpus Christi, Texas, where he acted as lead counsel in securing an $11 million settlement in a high profile tort case.

29. Jamie frequently lectures on trial advocacy, having taught seminars, conferences, and continuing legal education events to lawyers from 47 states.

30. Jamie is also active in bar organizations. He serves on the American Association for Justice Board of Governors, serves on the Alabama Association for Justice Executive Committee, is a Member of the American Inns of Court, and is a fellow of the American Bar Foundation.

31. Jamie is listed in the *Best Lawyers in America* and in Mid-South *Super Lawyers*. He is also Life Member of the Multi-Million Dollar Advocates Forum. Martindale-Hubbell has rated Jamie as “AV Preeminent” since 2012.

Jason Earley

32. Jason Earley received his J.D. with High Honors from the University of Arkansas at Little Rock William H. Bowen School of Law in 2004. During law school, Jason served on the Law Review and National Trial Team. Jason received his B.A. in Politics *cum laude* from Lyon College in 1999.

33. Jason has served as the Managing Partner of the Hare Wynn office in Little Rock since 2014. At Hare Wynn, Jason has focused his practice on class action litigation. He served as class counsel in *Mounce v. Community Health Systems, Inc. et al*., No. 5:15-CV-05197-TLB (W.D. Ark.), which successfully resolved after three years of litigation. He is currently prosecuting a putative class action on behalf of copyright owners against e-commerce giant Alibaba. *See Keck v. Alibaba.com, Inc*., No. 5:17-cv-05672-BLF (N.D. Cal.)

34. Prior to joining Hare Wynn, Jason practiced complex litigation with a boutique Little Rock law firm and has litigated complex cases across the country. He has first-chair experience in numerous jury trials.

35. In 2018, Jason attended the Duke Law Judicial Studies Center's MDL Conference. He has been repeatedly recognized by *Super Lawyers* as a Mid-South "Rising Star" and "Super Lawyer." Jason has served nine years on the Arkansas Bar Association's House of Delegates.

36. Jason is also an officer and board member of the Downtown Little Rock Kiwanis Club and is on the board of trustees of Philander Smith College.

Hughston Nichols

37. Hughston Nichols obtained his B.S. from the University of Alabama in 2003 and his J.D. from the University of Alabama School of Law in 2006. Hughston began working at Hare Wynn as an associate in 2006 and was promoted to partner in 2014.

38. Hughston is past president of the Young Lawyers Section of the Alabama State Bar, is recognized as a *Super Lawyers* "Rising Star," and in 2016 *Birmingham Magazine* selected him as "Best Attorney in Birmingham."

Brian Vines

39. Brian Vines received a J.D. from the University of Virginia School of Law in 2007, where he served on the Managing Board of the *Virginia Law Review* and graduated as a member of the Order of the Coif. Brian received a B.S. in Civil Engineering from Auburn University, where he graduated *summa cum laude* in 2002.

40. After law school, Brian served as a law clerk to the Honorable William H. Pryor Jr. of the United States Court of Appeals for the Eleventh Circuit and then began his private career at the law firm of Bradley Arant Boult Cummings, LLP. In 2011, Brian left Bradley Arant and became an associate at Hare Wynn, where he became a partner in May 2017.

41. Brian has worked on numerous complex cases throughout his legal career. While at Bradley Arant, he represented the State of Alabama in several cases, including filing a brief in front of the United States Court of Appeals for the Fourth Circuit on behalf of the state. At Hare Wynn, Brian represented the Commonwealth of Kentucky as well as the states of Montana and Alaska in litigation against Merck arising out of its sale of Vioxx. *See Commonwealth of Kentucky v. Merck*, MDL 1657 (E.D. La.); *State of Alaska v. Merck & Co., Inc*., No. 3:06-cv-00018-TMB (D. Alaska); *State of Montana ex rel. Timothy C. Fox, Attorney General v. Merck & Co., Inc*., No. CV-06-07-H-DWM (D. Mont.).

42. Brian also represented shareholders in a fraud class action against CVS Caremark and AIG related to their fraudulent settlement of a securities class action in the late 1990s. This case settled for $310 million in 2016. *Johnson v. Caremark, et al*., Case No. 01-cv-2003-006630

(Cir. Ct. of Jefferson Cnty., Ala.).

C. Associates

Tempe Smith

43. Tempe Smith received her J.D. *magna cum laude*, Order of the Coif, from the University of Alabama School of Law in 2010. While in law school, Tempe received Best Paper in Civil Procedure, Appellate Advocacy, and Public International Law. She chaired the Campbell Moot Court Board and was an Articles Editor and Managing Board Member of the *Alabama Law Review*. Tempe received her B.S. in Psychology from Mary Washington College in 2004.

44. After law school, Tempe served as law clerk to the Hon. James H. Hancock, R. David Proctor, and John E. Ott, all in the Northern District of Alabama.

45. Tempe joined Hare Wynn as an associate in 2015. Her practice focuses on mass tort and class action cases. Tempe has first-chair trial experience and has handled a number of complex commercial cases in both state and federal courts.

46. Tempe and a team of Hare Wynn attorneys serve as Class Counsel in a nationwide fraud class action that is pending in state court in Birmingham, Alabama, *Johnson v. Caremark, et al*., Case No. 01-cv-2003-006630. The *Johnson* case settled for $310 million in 2016, although the claims administration process is still ongoing.

47. Tempe also worked on a team of Hare Wynn attorneys to represent the states of Montana and Alaska in their consumer protection cases against Merck related to Vioxx. *State of Alaska v. Merck & Co., Inc*., No. 3:06-cv-00018-TMB (D. Alaska); *State of Montana ex rel. Timothy C. Fox, Attorney General v. Merck & Co., Inc*., No. CV-06-07-H-DWM (D. Mont.)

48. In October 2017, Tempe along with other Hare Wynn attorneys, filed a putative class action in the Northern District of California against e-commerce giant Alibaba for violating

the copyrights of visual artists. *Keck v. Alibaba.com, Inc., et al*, Case No. 5:17-cv-05672-BLF (N.D. Cal.).

49. *Super Lawyers* has recognized Tempe as a Mid-South region "Rising Star."

Chris Randolph

50. Chris Randolph received a J.D., *cum laude*, from Harvard Law School in 2010, where he was a Dean's Scholar, earned the Joseph H. Beale Prize for Conflict of Laws, and was Submissions Editor for the *Harvard Journal on Legislation*. He received a B.A., *summa cum laude* with High Honors in Political Science, from Vanderbilt University in 2007. At Vanderbilt he was inducted into Phi Beta Kappa and received the Founder's Medal for First Honors for finishing first in his college class.

51. After law school, Chris clerked for Hon. William H. Pryor Jr. of the United States Court of Appeals for the Eleventh Circuit. After completing his clerkship, Chris worked for over three years as an associate at Maynard, Cooper & Gale, P.C., a 200-lawyer full-service firm based in Birmingham, Alabama. Chris' practice at Maynard Cooper focused on complex, class action, and appellate litigation.

52. Chris joined Hare Wynn as an associate in early 2015. Chris' practice at Hare Wynn focuses on class action and mass tort litigation, though he also has experience handling single event cases. He has briefed and argued multiple federal appeals and is also a member of the Alabama Association for Justice Amicus Committee.

53. Chris was on the team of lawyers that obtained a $27 million settlement in *In re Duke Energy Corp. Derivative Litigation*, C.A. No. 7705-VCG (Del. Ch.). Chris has also been actively involved in litigating *Keck v. Alibaba.com, Inc., et al*, Case No. 5:17-cv-05672-BLF (N.D. Cal.), a putative class action Hare Wynn filed in October 2017 on behalf of copyright owners

whose works have been infringed on Alibaba.com and related e-commerce platforms.

54. *Super Lawyers* has recognized Chris as a "Rising Star" for the Mid-South region.

Sarah Jewell

55. Sarah Jewell holds a B.A. from the University of Arkansas, a M.A. from Texas Christian University, and a J.D. from the University of Arkansas School of Law. Sarah began work at Hare Wynn after finishing law school in 2015 and worked at Hare Wynn until 2018.

D. Staff Attorney

Virginia Applebaum

56. Virginia Applebaum received her J.D. from Cumberland School of Law in 2004 and received a B.S. and M.S. from Jacksonville State University in 1995 and 1999, respectively. Virginia has worked in private law practice since 2006. Virginia started working as a paralegal at Hare Wynn in 2014 and became a staff attorney in 2017.

57. Virginia has extensive experience in mass tort litigation, including experience in the GM Rice litigation, pharmaceutical litigation, and medical device litigation. Since 2017, Virginia, at the request of the Circuit Court of Jefferson County, Alabama, has served as coordinating counsel for nearly 300 plaintiffs asserting claims against Alabama Gas Corporation (now Spire, Inc.) arising out of a gas pipeline explosion.

58. *Super Lawyers* has recognized Virginia as a "Rising Star" for the Mid-South region.

E. Paralegals and Support Staff

Debbie Byrd

59. Debbie Byrd has worked as a legal secretary and paralegal since 1980. Debbie became Hare Wynn's interim litigation support director in 2016 and became Hare Wynn's permanent litigation support director in 2017. She is experienced in using numerous litigation

management software programs, including Lexbe, IPro Eclipse, and Summation.

Martha Miller

60. Martha Miller received a B.S. in business administration from Samford University and has worked at Hare Wynn since 1983. She has experience working with accounting software that several bellwether discovery pool plaintiffs used to record financial information that had to be produced in discovery.

Laura Riedinger

61. Laura Riedinger has worked in the legal industry since 1985, working as a legal secretary, paralegal, law librarian and, for five years, as a deputy clerk of the U.S. District Court for the Eastern District of Arkansas. Laura has worked as a paralegal at Hare Wynn since 2010. She has extensive experience working as a mass tort and class action paralegal, including work on the GM Rice litigation and several pharmaceutical and medical device MDLs. Laura holds a bachelor's degree from the University of Oregon and a master's degree in library and information science from the University of Illinois.

Andi Marquez

62. Andi Marquez has worked as a paralegal and legal administrative assistant since 2001. Andi has a B.A. from the University of Alabama.

Brian Snipes

63. Brian Snipes has worked as the information technology manager at Hare Wynn since 2002 and has worked in the technology industry since 1996. He is a Microsoft Certified Professional, RedHat Certified Engineer, Linux Certified Professional, Master Certified Novell Engineer, and Cisco Certified Network Associate.

Zondra Bess

64. Zondra Bess started working as a paralegal/litigation support assistant at Hare Wynn in 2003. She worked as a paralegal on the GM Rice litigation.

Phillip Carter

65. Phillip Carter has worked as a full-time technology consultant at Hare Wynn since 2003. Philip is a Certified TrialDirector Trainer and has coordinated the courtroom audio and video presentations in over 100 trials. Phillip has taken film and theater classes at George C. Wallace State Community College and at Samford University.

Darcy Glasgow

66. Darcy Glasgow has worked as a paralegal/litigation support assistant at Hare Wynn since 2003. She was a paralegal case manager in the GM Rice litigation.

Brittney Wilson

67. Brittney Wilson holds a bachelor's degree in Paralegal Studies from Eastern Kentucky University and a Master's Degree in Human Resources Management from Sullivan University. Brittney has worked as a paralegal since 2004.

Sarah Nelson

68. Sarah Nelson holds an Associate Degree in Paralegal Studies from Virginia College and has worked as a litigation paralegal since 2008. She previously served as the primary paralegal for an environmental class action.

Emily Rubino

69. Emily Rubino holds a B.A. from the University of Montevallo and has worked as a paralegal/litigation support assistant at Hare Wynn since 2012.

Rasheedah Heath

70. Rasheedah Heath holds an undergraduate degree from the University of Alabama

at Birmingham and obtained her J.D. from Miles Law School in 2011. She worked as a paralegal at another firm from 2008 to 2014 and has worked at Hare Wynn since 2016.

Amy Camp

71. Amy Camp is a graduate of the Paralegal Certification Program at the University of Alabama at Birmingham and also completed coursework in Stenography and Paralegal Studies at Gadsden State Community College. Amy has worked as a paralegal since 1997.

Dax Whitfield

72. Dax Whitfield worked in litigation support at Hare Wynn starting in 2002 and worked as Hare Wynn's litigation support director from 2013 until 2016. Dax obtained an engineering degree from the University of Alabama at Birmingham.

Jennifer Young

73. Jennifer Young worked as a paralegal/legal secretary at Hare Wynn starting in 2014. Before coming to Hare Wynn, Jennifer had 15 years of experience in general insurance administration.

Chanelle Parker

74. Chanelle Parker started working at Hare Wynn as a paralegal/litigation support assistant in 2014. Before coming to Hare Wynn, Chanelle worked as computer consultant/troubleshooter, a patient services manager at a health care practice, and as an insurance claims adjuster.

Mary Ellen Davis

75. Mary Ellen Davis obtained her undergraduate degree from Samford University and was enrolled in paralegal classes at Cumberland School of Law while working at Hare Wynn. She began working at Hare Wynn in 2014.

Tara Crowden Dickerson

76. Tara holds a bachelor's degree from the University of North Alabama. She began her career as a paralegal/litigation support assistant at Hare Wynn in 2015.

Ryan Gordon

77. Ryan Gordon obtained a bachelor's degree from Auburn University in 2012 and attended Jones School of Law of Faulkner University in 2012-13. Ryan had two years of experience as a law clerk and paralegal at other Birmingham firms before starting work as a contract paralegal at Hare Wynn in 2015.

Emilie Estep

78. Emilie Estep obtained a B.A. *cum laude* from the University of Alabama in 2015. She worked as a legal assistant at Donald & Estep, LLC in Mobile, Alabama, in the summers of 2011 and 2014, and worked at Hare Wynn as a contract paralegal in 2016.

Jason Henry

79. Jason Henry obtained a B.A. from Virginia College in 2009. He had nine years of experience working in business and on a political campaign before starting work as a contract paralegal at Hare Wynn in 2016.

Brian Ware

80. Brian graduated *magna cum laude* from Auburn University in 2012 and obtained a J.D. from Cumberland School of Law in 2016. Brian worked as a paralegal at Hare Wynn in 2016 after he completed law school.

Hellana Marshall

81. Hellana Marshall worked as a paralegal/litigation support staff member while pursuing a degree from Auburn University at Montgomery.

II. SUMMARY OF COMMON BENEFIT WORK PERFORMED BY HARE WYNN

82. Pat Stueve in his declaration has provided a chronological overview of this litigation and described much of the common benefit work performed jointly by co-lead counsel. In the discussion below, I supplement Mr. Stueve's declaration with description of common benefit work that Hare Wynn handled or coordinated.

A. Preparation of Original Class Action Complaints

83. Hare Wynn lawyers Brian Vines and Jason Earley in 2014 worked with Gretchen Garrison of Gray Ritter & Graham, P.C. ("Gray Ritter") in conducting research for the original producer plaintiff complaints. Brian and Jason helped draft the factual sections of those complaints and worked with me in reviewing several draft versions of the complaint.

84. The original producer plaintiff complaints were filed in the District of Kansas and the Eastern District of Missouri in November 2014. *See Five Star Farms, et al v. Syngenta AG et al*, No. 2:14-cv-02571-JWL-JPO (D. Kan.); *Wilson Farm, Inc., et al v. Syngenta AG, et al*, No. 4:14-cv-01908-RWS (E.D. Mo.). These complaints formed the basis for the Master Complaints filed in the MDL.

B. Coordination with Leadership in Parallel Litigation

85. In January 2015, this Court appointed as co-lead counsel for the plaintiffs in the MDL Don Downing of Gray Ritter; Patrick Stueve of Stueve Siegel Hanson, LLP ("Stueve Siegel"); William Chaney of Gray Reed & McGraw LLP ("Gray Reed"); and myself. (ECF No. 67.) In the days immediately following the leadership order, the co-lead counsel divided up work responsibilities.

86. In the spring of 2015 I worked with the co-leads in negotiating a Joint Prosecution Agreement with Phipps Anderson Deacon, LLP and Watts Guerra, LLP, firms that were

prosecuting parallel litigation on behalf of producer plaintiffs in Minnesota and Illinois. In connection with the negotiation of the Joint Prosecution Agreement I traveled to meetings in St. Louis and Phoenix. The Joint Prosecution Agreement was submitted to the Court on April 1, 2015. (ECF No. 331)

87. Throughout the litigation the other co-leads and I maintained communication with counsel prosecuting claims against Syngenta in other venues. I also attended court hearings in parallel cases in Hennepin County, Minnesota, St. John the Baptist Parish, Louisiana, and Williamson County, Illinois.

C. Preparation of Amended Producer Plaintiffs Master Complaint

88. I worked with the other co-leads in vetting potential additional class representatives who would be named in the Amended Producer Plaintiffs Master Complaint.

89. In connection with the preparation of the Amended Producer Plaintiffs Master Complaint, Jason Earley, Brian Vines, and Chris Randolph were part of the team that researched potential causes of action, some of which were ultimately asserted, under the laws of about 24 states.

90. For each of those states, Jason, Brian, and Chris researched approximately 30 legal issues related to various causes of action, including negligence, trespass to chattels, trespass to land, private nuisance, tortious interference, violation of an unlawful trade practices act, and prima facie tort. Research issues included the scope of and theoretical basis for the economic loss doctrine; whether in a negligence action the foreseeability of harm gives rise to a duty; the availability of punitive damages for a negligence claim; and whether malice or an intent to cause harm is required for a tortious interference claim.

91. After completing this research, Jason was part of the team that drafted for the

Amended Producer Plaintiffs Master Complaint new allegations supporting claims under the laws of various states and reviewed edited drafts of the Amended Producer Plaintiffs Master Complaint.

D. State Court Class Action Complaints

92. Chris Randolph and Tempe Smith, in consultation with Drew York, coordinated the filing of state court class action complaints in several states with two-, three-, and four-year statutes of limitations to toll the running of those statutes. Chris and Tempe identified class representatives from among the producer plaintiffs who had retained the co-lead firms, prepared state class action complaints based on the Master Complaint, and worked with Drew to identify local counsel to assist with the filing of complaints in state court in Alabama, South Dakota, Arkansas, Wisconsin, New Mexico, Montana, Kentucky, and Nebraska.

E. Response to Motion to Dismiss

93. Syngenta filed its Motion to Dismiss on June 19, 2015. (ECF No. 856)

94. Jason Earley worked with Gretchen Garrison in preparing the opposition to the Motion to Dismiss. Jason drafted responses to Syngenta's arguments directed to the trespass to chattels and tortious interference claims. Jason also worked with Chris Randolph in preparing a response to Syngenta's arguments directed to the private nuisance claims.

95. I reviewed and edited the Opposition to the Motion to Dismiss and, along with Jason Earley, attended the hearing on the Motion to Dismiss in Kansas City. At the hearing, Jason handled oral argument relating to the tortious interference claims.

F. Bellwether Discovery Pool Selection

96. The Court ruled that the bellwether pool would consist of: "(1) the 5 non-producer plaintiffs who have filed suit (4 of whom are named class representatives in any event); (2) the 2 milo plaintiffs named in the milo master complaint; (3) a sampling of 6 producer-plaintiffs from 8

of the 22 states at issue, with each side selecting 4 states on an alternating basis, with plaintiffs selecting first, and further with each side selecting 3 plaintiffs per state on a similar alternating basis; and (4) the named class representative(s) in each of the 8 selected states." (ECF No. 1098 at 6.)

97. To prepare for the bellwether selection process, I worked with the other co-lead lawyers and executive committee members in identifying the states most desirable to include in the bellwether discovery pool and evaluating potential candidates for the bellwether pool.

98. On November 12, 2015, the parties selected the eight bellwether states: Arkansas, South Dakota, Illinois, Iowa, Missouri, Kansas, Nebraska, and Ohio. The following week, on November 19-20, 2015, the parties made their bellwether plaintiff selections.

99. Over the following months, several bellwether selections had to be replaced; in a few instances, Co-Lead Counsel elected not to choose a replacement bellwether. Ultimately the bellwether discovery pool included 69 corn producers, some of whom farmed through multiple farming entities.

G. Producer Plaintiff Written Discovery

100. The MDL included hundreds of complaints filed by dozens of law firms, class representatives from over 20 states, and a bellwether discovery pool that included approximately 70 farmers. All of those plaintiffs had to provide discovery to Syngenta, and the co-lead counsel agreed that Hare Wynn would coordinate the production of written discovery from the producer plaintiffs in the MDL, handle the service of those discovery responses to Syngenta, and coordinate plaintiffs' responses to complaints that Syngenta raised about the plaintiffs' discovery responses. Hare Wynn took on this coordinating responsibility consistent with the Court's directives that co-lead counsel "organize and supervise the efforts of plaintiffs' counsel in a manner to ensure that

the pretrial and trial preparation for the plaintiffs is conducted effectively, efficiently, expeditiously, and economically," "coordinate the initiation of and conduct discovery on behalf of plaintiffs . . .," and "be the primary contact for all communications between plaintiffs and defendants." (ECF No. 67 at 6-7.) Co-lead counsel's supervision of producer plaintiff discovery was also necessary given that Syngenta was expected to (and did) rely on discovery obtained from individual plaintiffs in supporting its opposition to class certification; moreover, had class certification been denied, individual farmers' claims would have likely been tried in bellwether trials.

101. The following discussion first provides an overview of Hare Wynn's responsibilities in coordinating plaintiffs' production of discovery, then identifies the discovery obligations of various categories of plaintiffs, and then provides more detailed discussion of Hare Wynn's work related to plaintiff fact sheets, document productions, depositions, and requests for admission and interrogatories directed to the plaintiffs.

102. Hare Wynn, as co-lead counsel, coordinated the service to Syngenta of all discovery from the producer plaintiffs. In that role, Hare Wynn coordinated the production to Syngenta of approximately 350 volumes of written discovery between 2015 and 2017. Those production volumes included

a. Approximately 2,900 original and amended plaintiff fact sheets;

b. Approximately 400,000 pages of documents produced by the producer plaintiffs;

c. Approximately 200 sets of original and amended interrogatory responses;

d. Approximately 200 sets of original and amended request for admission responses;

e. Documents that the plaintiffs' experts relied on in forming their opinions.

103. For these productions, Hare Wynn would

a. Assemble documents that the producer plaintiffs' law firms had collected from their clients;

b. Determine the Bates numbers for all documents being produced, using a unique prefix for each plaintiff;

c. Prepare a load file for each document production, as required by the ESI protocol; usually, Hare Wynn worked with an outside vendor, SourceOne, in preparing the load files;

d. Upload fact sheets, written discovery responses, documents, and load files to a secure website accessible by Syngenta's counsel;

e. Prepare and file with the Court a certificate of service that identified the plaintiffs who were providing discovery in each production volume.

104. On a few occasions Syngenta encountered technical issues when attempting to access the producer plaintiff's document productions. In those instances Chris Randolph worked with Hare Wynn staff or SourceOne to respond to those issues—usually within a few hours of Syngenta raising the issue.

105. Tara Dickerson, and other Hare Wynn staff members, also maintained a separate cloud site, accessible by plaintiffs' counsel, where Bates numbered versions of all documents produced by the plaintiffs in the bellwether discovery pool were organized by plaintiff.

1. Producer plaintiffs' discovery obligations

106. The discovery obligations of the producer plaintiffs differed based on whether a plaintiff was a bellwether selection, was a class representative from one of the states in the bellwether discovery pool, or was a class representative from one of the states outside the bellwether discovery pool:

a. The Kansas class representatives attended and testified at trial; provided deposition testimony; responded to the 27 requests in Syngenta's First Set of Requests for Production to Producer Plaintiffs which sought, among other things, detailed information pertaining to the producer's farming operations over an extended

time period; responded to Syngenta's second Set of Requests for Production to Producer Plaintiffs, which included 70 document requests; were required to respond to three sets of interrogatories; were required to answer requests for admission; and were required to provide a plaintiff fact sheet, which included four requests for production. These Kansas class representatives, designated as "Tier 3" plaintiffs, are listed below:

Name	State
Grafel Farms, LLC/Beaver Creek Farms, Inc./D&S Grain & Cattle Co./Demmer Farms, Inc.	KS
Charles Frickey	KS
Five Star Farms	KS
David Polifka Rev. Living Trust	KS

b. The remaining plaintiffs in the bellwether discovery pool were deposed; required to provide documents responsive to Syngenta's First Set of Requests for Production, were required to respond to Syngenta's Second Set of Requests for Production to Producer Plaintiffs, were required to respond to three sets of interrogatories, were required answer requests for admission, and were required to provide a plaintiff fact sheet, which included four requests for production. These bellwether discovery pool plaintiffs, designated as "Tier 2" plaintiffs, are listed below:

Name	State
Noonan Farms, Inc.	IA
LBJ Ventures	IA
Shane Curry	IA
J. Anderson Farm, Inc.	SD
Richard Glanzer	SD
McKee Family Farms	OH
Fulkerson Farms, LLC	OH
Evelyn I. Linder Child's Trust	OH
Matt & Robin Bargen/Bar Cattle Limited Partnership	NE
Linden Kaliff	NE
Russ Koeller	IL
Tom Justison	IL
Leon Taylor	IL
Sandra Boyer	IL
Eagle Lake/Kenny Falwell	AR
Crandall Farms/Three Guys Farming, Inc.	AR
Robert Luck/H and R Operations/R and L Partnership	KS
Eugene Goering Trust	KS
Gregory Harris	MO
Wright Brothers Partnership	MO
State Line Farm Co.	MO
W. Edgar Willman Trust/Estate of Lloyd Willman	AR

Name	State
Bieber Farm/Rolling Ridge Ranch, LLC	SD
Martin and Patricia Petska	NE
Cronin, Inc.	IA
J3B Partnership/Don Prohaska	IA
Rodney Olthoff	IA
Steven and John S. Cap	SD
Chad Murphy	SD
Ross Ulmer	SD
Randy Overgard	SD
Partners 5, LLC	OH
Gary Duane Matthews	OH
R&W Farms, Inc.	NE
Dustin Wegner/Wegner Hillside Farms, LLC	NE
Charlynn Hamilton	NE
B&A Riessland Farms	NE
McDonald AG	IL
Ken Kennedy	IL
Pat Skarda	AR
Orville Williams/Williams and Sons, Inc./ROR General Partnership	KS
Gary Harshberger/Harshberger Enterprises	KS
James Shortt Trust	KS
Joseph Murname Trust	KS
Claas Farms	MO
Glenn Bix	MO
Dierking Farms	MO
Steven Wentworth	IL
White Brothers	IL
Bottoms Farms P'ship/JPPL, Inc./ NEBCO, Inc./ Triple BG)	MO
Mike DaVault	AR
Alan and LaRae Pedersen	IA
Charles Lex	IA
Kaffenbarger Farms, Inc.	OH
Haerr Grain Farms/Three H Farms, LLC/HGF Irrigated	OH
Henderson Farms Partnership	AR
R&R Farms, LLC/Ensor Bros.	MO
Daniel Chism/R&D Chism Farms, LLC	IA
John Holmbeck	NE
James McKinney	IL
David Schwaninger	NE
Richard Oswald	MO
Hadden Farms	IL
Volnek Farms	NE
B-F James & Sons, Inc.	SD

c. All remaining class representatives named in the Master Complaint, in addition to providing a fact sheet, were required to respond to the

27 requests in Syngenta's First Set of Requests for Production to Producer Plaintiffs. These requests sought, among other things, detailed information pertaining to the producer's farming operations over an extended time period. These class representatives from outside the bellwether discovery pool, designated as "Tier 1" plaintiffs, are listed below:

Name	State
Robert Walker, Jr. Farms	AL
Walker Farms	AL
James H. Walker Farms	AL
Ravenkamp Farms Partnership	CO
Jackle Farms, Inc.	IN
Mark Lueder	IN
Thomas Goode	IN
Brenda Hunt	KY
Frith Farms Partnership	LA
Clark Hill d/b/a Clark Hill Farms/ Delta Farms P'ship	LA
Steve Lott Farms & Services, Inc.	MI
Gilbert Jones & Sons Farms, LLC	MI
Harvey Farms/Tim Harvey	MN
Little Omega Farms Partnership	MS
Steve & Penny Bernstein d/b/a Bernstein Farms	ND
Tom Belzer/ Belzer Bros. Potato Co./ B&G	ND
F.R. (Fowler) Sheffield	OK
Jamerson Farms	TN
Robert Hahn d/b/a Bull Hide Creek Farms	TN
Whispering Oats Farms, Inc.	WI

d. All plaintiffs in the MDL were required to serve a plaintiff fact sheet and documents responsive to the four document requests in the fact sheet.

2. Plaintiff Fact Sheets

107. This Court on February 4, 2015, ordered that each producer plaintiff in the MDL complete and serve a plaintiff fact sheet "providing detailed information using a standard form about which the parties' lead counsel must meet and confer." (ECF No. 123 at 11) Hare Wynn, in its role as one of the co-lead firms, coordinated the fact sheet production for the plaintiffs in the MDL.

108. Brian Vines and I took the lead in developing a plaintiff fact sheet and handled the

meet and confer with Syngenta's counsel regarding the content of the plaintiff fact sheet. We were eventually able to reach agreement with Syngenta on a plaintiff fact sheet form without Court involvement.

109. The fact sheet required producer plaintiffs to provide their corn acreage for each year from 2011 to the present and the variety of corn grown. The fact sheet also required each plaintiff to answer 14 additional questions.

110. The fact sheet included four requests for production. Those document requests sought 1) documents sufficient to show corn seed purchases from 2011 to the present; 2) documents sufficient to show "all terms and conditions for all of your sales or contracts for sale of corn" from 2011 to the present; 3) documents sufficient to show "any cost you believe you have incurred or injury you believe you have suffered as a result of the presence of Viptera or Duracade in corn," and 4) "all documents for crop insurance related to corn for the 2013 and 2014 crop years."

111. In spring 2015, Hare Wynn staff members, including Zondra Bess, Andi Marquez, Virginia Applebaum, Darcy Glasgow, and Emily Rubino, working under the supervision of Brian Vines and Chris Randolph, helped contact class representatives named in the Master Complaint to obtain from them information and documents requested in the plaintiff fact sheet. The team later coordinated the production of amended fact sheets for those class representatives following an exchange of golden rule letters with Syngenta's counsel.

112. Chris Randolph worked with Hare Wynn staff members including Dax Whitfield, Andi Marquez, Emily Rubino, Virginia Applebaum, Zondra Bess, Sarah Nelson, Darcy Glasgow, Ryan Gordon, and Tara Dickerson to coordinate the production of plaintiff fact sheets to Syngenta for all plaintiffs in the MDL. In carrying out this responsibility:

a. Hare Wynn's litigation support manager, Dax Whitfield, set up an online cloud site containing folders for each plaintiff in the MDL. Plaintiffs' lawyers could upload documents responsive to the fact sheet's document requests to the cloud site.

b. Dax worked with Stueve Siegel's staff to set up an online portal where plaintiffs' lawyers could enter for each plaintiff information responsive to the questions in the plaintiff fact sheet.

c. Chris contacted all lawyers who represented producer plaintiffs in the MDL to notify them of their obligations to produce plaintiff fact sheets, provided them detailed instructions regarding the process for completing plaintiff fact sheets, and provided them reminders of fact sheet deadlines.

d. All plaintiffs' firms with cases in the MDL in the summer of 2015 were assigned a contact person at Hare Wynn who could provide assistance with completing fact sheets. Chris and Hare Wynn staff fielded thousands of questions related to plaintiff fact sheets from lawyers representing plaintiffs in the MDL.

e. Hare Wynn, ahead of fact sheet production deadlines, would collect responses to the plaintiff fact sheet questions that had been entered into the portal and configure those responses into the proper format for production.

f. Hare Wynn would collect documents responsive to the fact sheet's document requests that plaintiffs' lawyers had uploaded to the cloud site, determine the appropriate Bates numbers for those documents, and work with an outside vendor, SourceOne, in having load files prepared for those documents.

g. Hare Wynn, when feasible, identified potential deficiencies in plaintiff fact sheets and communicated with the lawyers completing those fact sheets regarding those potential deficiencies.

h. Chris and I managed communications with Syngenta's counsel regarding purported fact sheet deficiencies.

113. As the litigation continued, Hare Wynn coordinated the production of amended fact sheets that included updated information about farmers' operations.

114. This Court on October 21, 2015, issued an order directing producer plaintiffs to serve completed fact sheets by December 1, 2015, or risk having their claims dismissed for failure to prosecute. (ECF No. 1098 at 7.) Over the following weeks, Hare Wynn worked to help

plaintiffs' lawyers identify potential deficiencies in their plaintiff fact sheets and coordinated the production of hundreds of amended fact sheets. (*See, e.g.*, ECF Nos. 1235, 1250, 1255) No plaintiffs' claims were involuntarily dismissed for failure to produce a completed fact sheet.

115. Hare Wynn continued to work with plaintiffs lawyers in coordinating the production of plaintiff fact sheets for plaintiffs whose cases were transferred to the MDL. In early 2016, for example, Hare Wynn coordinated the production of hundreds of fact sheets for plaintiffs whose cases were filed shortly before the statute of limitations ran in states with two-year statutes. (*See, e.g.* ECF No. 1392, 1438-1445.)

116. Throughout this process, I monitored the status of the plaintiff fact sheet production, regularly spoke with Chris about the production of plaintiff fact sheets, and discussed the status of plaintiff fact sheets with the other co-lead counsel. I also invited all lawyers representing plaintiffs in the MDL to conference calls I hosted where I stressed the importance of completing plaintiff fact sheets and answered questions from plaintiffs' lawyers. I volunteered Hare Wynn's assistance to any lawyers who needed help collecting from their clients the information and documents necessary to complete plaintiff fact sheets.

3. Syngenta's First Set of Requests for Production to Class Representatives and Bellwether Plaintiffs

117. Syngenta in July 2015 circulated proposed requests for production to producer and non-producer plaintiffs. Over the following weeks I participated in meet and confer discussions with Syngenta's counsel regarding the scope of those requests. Syngenta ultimately agreed to narrow the scope of some of its requests for production.

118. We were unable to reach agreement with Syngenta about the scope of several of Syngenta's proposed discovery requests and submitted those discovery disputes to the Court for

resolution. Jason Earley and Chris Randolph worked with Rachel Schwartz in drafting the plaintiffs' portion of a Joint Motion Regarding Disputes Concerning Syngenta's First Set of Requests for Production of Documents to Producer Plaintiffs. (ECF No. 945). The Court in its August 11, 2015 order, overruled some of our objections to Syngenta's discovery requests while also sustaining our objection to the production of tax returns and to certain financial records from farming entities in which a producer plaintiff had any ownership interest. (ECF No. 951 at 4, 7)

119. Syngenta served its First Set of Requests for Production to named plaintiffs ("Syngenta's First RFPs") on August 17, 2015. This set of discovery requests included 27 document requests. These discovery requests were served on all the plaintiffs named in the operative version of the Master Complaint. Syngenta later served these requests on all the producer plaintiffs in the bellwether discovery pool.

120. Hare Wynn coordinated the production of producer plaintiff's written responses and objections to Syngenta's First RFPs and Second Set of Requests for Production.

121. Chris Randolph, working with several Hare Wynn staff members, coordinated the production of documents responsive to Syngenta's First RFPs. These efforts included identifying potentially responsive categories of documents and assembling responsive documents that several law firms—including Gray Ritter, Stueve Siegel, Gray Reed, and Paul McInnes[1]—collected from producer plaintiffs. Chris also fielded questions from lawyers at those firms regarding Syngenta's First RFPs.

122. Hare Wynn worked with Rachel Schwartz in handling meet and confers with Syngenta's counsel regarding search terms used in searching plaintiffs' e-mail accounts for responsive documents.

[1] Rick Paul and Ashlea Schwarz formerly worked at Paul McInnes, LLP. Both of them are now affiliated with Paul, LLP.

123. Hare Wynn worked directly with a number of plaintiffs in collecting documents responsive to Syngenta's First RFPs. Those plaintiffs included W. Edgar Willman Trust/Estate of Lloyd Willman, Pat Skarda, Henderson Farms Partnership, Robert Walker, Jr. Farms, Walker Farms, James H. Walker Farms, Brenda Hunt, Frith Farms Partnership, Clark Hill d/b/a Clark Hill Farms, Delta Farms Partnership, Jackle Farms, Inc., Steve & Penny Bernstein d/b/a Bernstein Farms, Wilson Farms, Inc., and Whispering Oats Farms, Inc. Hare Wynn and Gray Ritter split discovery responsibilities for Mike DaVault and Hare Wynn worked with the Holland Firm, and Paul, LLP in collecting discovery from James McKinney. Hare Wynn also worked with Anderson Bottrell Sanden & Thompson as that firm collected discovery directly from Tom Belzer, Belzer Bros. Potato Co., and B&G, and worked with Milberg, LLP as that firm collected discovery directly from Gilbert Jones & Sons Farms, LLC. In order to ensure that all responsive documents within the plaintiffs' possession, custody, or control were collected, Hare Wynn lawyers and staff, including Virginia Applebaum, Darcy Glasgow, and Chris Randolph, worked with some farmers to obtain authorization to collect documents from third parties, such as crop insurance agents, grain elevators, and seed dealers, and then collected responsive documents directly from those third parties.

124. Collection of documents during the fall of 2015 was complicated by the fact that the producer plaintiffs in most parts of the country were at that time working long hours harvesting their crops.

125. Aside from some productions from Kansas farmers which lawyers at Stueve Siegel reviewed for privilege, Chris Randolph reviewed for privilege all documents produced in response to Syngenta's First RFPs.

126. Chris and Virginia worked with other plaintiffs' firms in coordinating the

supplementation of those plaintiffs' document productions with responsive corn sales documents that were generated after the initial document productions.

127. Chris reviewed corn seed purchase documents produced by class representatives and the producer plaintiffs in the bellwether discovery pool to determine if they purchased Viptera or Duracade.

4. Syngenta's Second Set of Requests for Production to Discovery Pool Plaintiffs

128. Syngenta in November 2015 served its Second Set of Requests for Production to Producer Plaintiffs ("Syngenta's Second RFPs"), which included 70 document requests. Syngenta served these discovery requests on all plaintiffs in the bellwether discovery pool.

129. Chris Randolph identified categories of documents potentially responsive to Syngenta's Second RFPs and worked with other lawyers, including Rachel Schwartz, in preparing model responses and objections to Syngenta's Second RFPs.

130. Chris Randolph and Hare Wynn staff members coordinated the production of documents responsive to Syngenta's Second RFPs that several firms—including Gray Ritter Graham, Stueve Siegel, Gray Reed, Paul McInnes, and Walters Bender[2]—collected from the plaintiffs in the bellwether discovery pool. Chris also fielded questions from lawyers at those firms regarding Syngenta's Second RFPs.

131. Hare Wynn also worked directly with several plaintiffs in the bellwether discovery pool to collect documents responsive to Syngenta's Second RFPs. Hare Wynn worked directly with W. Edgar Willman Trust/Estate of Lloyd Willman, Pat Skarda, and Henderson Farms Partnership in collecting documents responsive to Syngenta's Second RFPs. Hare Wynn worked with Gray Ritter in collecting that discovery from Mike DaVault and with the Holland Firm and

[2] Tom Bender and Dirk Hubbard assisted with producer plaintiff discovery when they were affiliated with Walters Bender Strohbehn & Vaughn; they have since left that firm and joined Horn Aylward & Bandy, LLC.

Paul, LLP in collecting that discovery from James McKinney. Again, in order to ensure that all responsive documents within the plaintiff's possession, custody, or control were collected, Hare Wynn lawyers and staff obtained authorization to collect documents from third parties such as crop insurance agents, grain elevators, and seed dealers.

132. Aside from some document productions from Kansas farmers which lawyers at Stueve Siegel reviewed for privilege, Chris Randolph reviewed for privilege all documents produced in response to Syngenta's Second RFPs.

5. Discovery Pool Plaintiff Depositions

133. All producer plaintiffs in the bellwether discovery pool were deposed. Dirk Hubbard, Tom Bender, Chris Ellis, Ashlea Schwarz, Rick Paul, Steve Six, Don Downing, Jason Sapp, Bill Chaney, Drew York, and Steve Weiss divided amongst themselves the defense of most of the producer plaintiff depositions, which were taken between December 2015 and May 2016. In a few instances more than one person testified on behalf of a plaintiff partnership or corporation, so over 70 individuals provided deposition testimony on behalf of producer plaintiffs.

134. Ahead of each deposition, Chris confirmed that all documents collected from that producer plaintiff had been produced to Syngenta. He also reviewed producer plaintiffs' document productions for completeness and, when appropriate, contacted the lawyers defending the producer plaintiff's depositions regarding potential deficiencies in document productions. After obtaining confirmation that a producer plaintiff's document production was substantially complete, he would relay that confirmation to Syngenta's counsel and also provide Syngenta a list of the production volumes that included that plaintiff's documents.

135. Syngenta after several producer plaintiff depositions raised concerns about potential deficiencies in producer plaintiff's document productions. Chris in several of those

instances worked with the lawyers who defended the relevant producer plaintiffs' depositions in responding to Syngenta's concerns and coordinating supplemental document productions.

6. Interrogatories and Requests for Admission to Producer Plaintiffs

136. On February 29, 2016, Syngenta served three sets of interrogatories on the producer plaintiffs in the bellwether discovery pool:

a. Syngenta AG's First Set of Interrogatories to Producer Plaintiffs (21 interrogatories)

b. Syngenta Corporation's First Set of Interrogatories to Producer Plaintiffs (15 interrogatories)

c. Syngenta Crop Protection AG's First Set of Interrogatories to Producer Plaintiffs (20 interrogatories)

137. On March 15, 2016, Syngenta served its First Set of Requests for Admission ("Syngenta's RFAs") on the producer plaintiffs in the bellwether discovery pool. Syngenta's RFAs included 98 requests. One of the interrogatories in Syngenta Corporations' First Set of Interrogatories asked the plaintiffs, for any request for admission that is not answered with an unqualified admission, to "state the factual basis for your denial or qualified admission."

138. Given that these interrogatories and requests for admission were served on all the plaintiffs in the bellwether discovery pool, plaintiffs' attorneys were responsible for collecting and providing approximately 10,000 interrogatory and request for admission responses.

139. A team of lawyers from approximately 10 plaintiffs' firms worked directly with the producer plaintiffs in collecting responses to Syngenta's interrogatories and requests for production. Chris Randolph and Tempe Smith worked directly with several producer plaintiffs, including Pat Skarda, Henderson Farms Partnership, Jim McKinney, Mike DaVault, and W. Edgar Willman Trust/Estate of Lloyd Willman in collecting responses to these discovery requests.

140. Chris Randolph worked with Rachel Schwartz to identify potential objections to the interrogatories and requests for production.

141. Chris Randolph worked with other plaintiffs firms in coordinating the collection of the interrogatory and request for admission responses from various plaintiffs' lawyers and serving those responses on Syngenta. The plaintiffs in the bellwether discovery pool produced their responses to Syngenta's interrogatories and requests for admission on a rolling basis, which was completed by the end of April 2016.

142. Syngenta Corporation's interrogatories sought the bases of several of the contentions in the producer plaintiff's master complaint. Jason Earley took the lead in preparing a joint response to those contention interrogatories that relied on documents obtained in discovery which Syngenta had designated as confidential.

143. Syngenta on May 25, 2016, sent an 88-page single-spaced letter identifying purported deficiencies in the plaintiffs' interrogatory and request for admission responses. Chris Randolph took the lead in coordinating the plaintiffs' responses to this letter. As part of this process, Chris:

a. Reviewed Syngenta's letter to identify areas where the plaintiffs' responses may need to be supplemented and identify some of Syngenta's general complaints that appeared to be meritless;

b. Assembled a series of response letters to Syngenta, which consisted of inserts prepared by plaintiffs' lawyers who were working directly with the producer plaintiffs in collecting discovery responses. These response letters addressed Syngenta's complaints, noted where the plaintiffs intended to supplement their previous discovery responses, and explained why plaintiffs believed that many of Syngenta's complaints about plaintiffs' discovery responses were baseless. These letters, sent between mid-June and early July 2016, totaled approximately 150 single-spaced pages;

c. Collected from other plaintiffs' lawyers amended discovery responses and served those responses on Syngenta.

144. Syngenta on July 15, 2016, sent a 94-page single-spaced reply to the letters that plaintiffs sent in June and early July. Chris Randolph worked with Tom Bender and Dirk Hubbard in coordinating the plaintiffs' response to that letter; Chris, Tom, and Dirk held a lengthy meet and confer with Syngenta's counsel and coordinated the production of some supplemental interrogatory and request for admission responses over the following weeks. Chris also worked with other plaintiffs' lawyers in putting together several letters to Syngenta that responded to points made in the July 15 letter.

145. Syngenta on November 23, 2016 sent a final letter complaining about purported deficiencies in plaintiffs' interrogatory and request for admission responses. Chris worked with other plaintiffs' lawyers in preparing response letters to Syngenta in December. Ultimately, all disputes over the producer plaintiffs' interrogatory and request for admission responses were resolved without Court intervention.

7. Efforts to Collect the Information and Documents Syngenta Sought

146. As noted above, Hare Wynn worked with, among other class representatives, Robert Walker, Jr. Farms, Walker Farms, James H. Walker Farms, Brenda Hunt, Frith Farms Partnership, Clark Hill d/b/a Clark Hill Farms, Delta Farms Partnership, Jackle Farms, Inc., Steve & Penny Bernstein d/b/a Bernstein Farms, Wilson Farms, Inc., and Whispering Oats Farms, Inc.. Hare Wynn also worked closely with firms collecting documents directly from Tom Belzer, Belzer Bros. Potato Co., and B&G, and Gilbert Jones & Sons Farms, LLC.

147. All of these plaintiffs provided discovery in addition to plaintiff fact sheets.

148. Robert Walker, Jr. Farms, Walker Farms, and James H. Walker Farms were selected and agreed to serve as Alabama class representatives and, in that capacity, responded to Syngenta's requests for production, which sought documents pertaining to numerous details about

their farming operation and other information over significant time periods, and also called for personal financial information. James Walker, who owns and operates James H. Walker Farms, assumed the responsibility for collecting documents pertaining to the operations of Robert Walker, Jr. Farms (which is owned by James' brother) and Walker Farms (which is owned by James' father). James conducted an extensive search through records kept at his home in order to find responsive documents. James also made about a dozen trips to Florence, Alabama, to collect documents responsive to Syngenta's requests from third parties, such as the FSA office, a crop insurance agent, and an accountant. Each round trip to Florence would have taken over an hour. James furthermore authorized several third parties, such as grain elevators, to release copies of responsive records to Hare Wynn. James had to collect most of the documents Syngenta requested during the harvest season, when he was normally working 16 hours per day in his fields. Chris' notes indicate that he spoke with James 10 times in fall 2015 regarding the collection of documents. Chris also spoke with James on several other occasions about the status of the litigation. James estimates that he spent 20-25 hours collecting documents requested by Syngenta and that this total exceeded 40 hours when counting the time he spent making trips to Florence. Based on Hare Wynn's records and Chris' contemporaneous involvement in James' document collection efforts and discussions with James, this estimate is reasonable. James was also willing, if necessary, to sit for a deposition and attend a multi-week trial in Kansas City.

149. Brenda Hunt was selected and agreed to serve as a Kentucky class representative. In that capacity, she responded to Syngenta's requests for production, which sought documents pertaining to numerous details about her farming operation and other information over significant time periods, and also called for personal financial information. Ms. Hunt conducted an extensive search to locate records and had several discussions with Chris in order to understand the requests

and properly respond. She does not use a computer but spent hours searching through paper files for documents. To ensure that she produced complete records, Ms. Hunt made special trips to grain elevators in Auburn, Kentucky (which is 60 miles from Ms. Hunt's farm) and in Bowling Green, Kentucky (which is 40 miles from Ms. Hunt's farm) to collect corn sales records. She also made special trips to her accountant in LaFayette, Tennessee, and to her crop insurance in Westmoreland, Tennessee (which is a 45 minute drive from Ms. Hunt's farm) to collect records. She also made trips to FSA offices in three different counties to obtain records to produce to Syngenta. Ms. Hunt made these efforts to collect documents during harvest season, when she regularly worked in the fields from 6:00 AM until midnight or later; and Ms. Hunt is no longer young--she has farmed full time after retiring from a 26-year career as a school teacher. Ms. Hunt estimates that she spent 30-40 hours collecting records responsive to Syngenta's requests for production. Based on Chris' contemporaneous involvement with Ms. Hunt's document collection efforts and discussions with Ms. Hunt, Ms. Hunt's estimate is reasonable.

150. Frith Farms Partnership was selected and agreed to serve as a Louisiana class representative. In that capacity, John David Frith, a member of Frith Farms Partnership, responded to Syngenta's requests for production, which sought documents pertaining to numerous details about Frith's farming operation and other information over significant time periods, and also called for personal financial information. Mr. Frith conducted an extensive search to locate and review records. In collecting documents, he searched through thousands of pages of paper and electronic records he keeps on his farm and also visited and requested records from his seed dealer, multiple grain elevators, his local FSA office, and his crop insurance agent. His crop insurance agent's office is about 45 miles away from Mr. Frith's farm, and one of the grain elevators is about 30 miles away from the farm. Mr. Frith obtained copies of financial records from his accountant, who

charged Mr. Frith for her time. He also had multiple phone conversations about documents requests with George Snellings, Esq. of Nelson, Zentner, Sartor & Snellings, LLC and Hare Wynn employees. Mr. Frith also had multiple in-person meetings with George Snellings at Snellings' office in Monroe, Louisiana—which is about 75 miles from Mr. Frith's farm. Mr. Frith was also willing to sit for a deposition and attend a multi-week trial in Kansas City. Mr. Frith estimated that he spent over 40 hours collecting documents responsive to Syngenta's requests for production. Based on discussions with Mr. Frith and his report of discussions with Mr. Snellings, Mr. Frith's estimate is reasonable.

151. Clark Hill Farms and Delta Farms Partnership were selected and agreed to serve as Louisiana class representatives. In that capacity, Clark Hill—who operates both Clark Hill Farms and Delta Farms Partnership—responded to Syngenta's requests for production, which sought documents pertaining to numerous details about Hill's farming operation and other information over significant time periods, and also called for personal financial information. Mr. Hill searched through thousands of pages of paper and electronic records to find responsive documents he had kept on his farm. To ensure that he collected all responsive documents within his possession, custody, or control, Mr. Hill also visited his local FSA office, a grain elevator and a second grain buyer, his crop insurance agent, and his accountant. The crop insurance agent's office is a 40 minute drive from Mr. Hill's farm. He had to visit some of those third parties multiple times to ensure that all responsive records were collected. Mr. Hill spoke with Hare Wynn employees on multiple occasions regarding the collection of documents, and also spoke with George Snellings, Esq. of Nelson, Zentner, Sartor & Snellings, LLC. Mr. Hill made multiple visits to Mr. Snellings' office in Monroe, Louisiana, which is nearly 70 miles from Mr. Hill's farm. Mr. Hill had to collect many of the requested records during harvest season, when he was normally working 12-15 hours

per day in his fields. Mr. Hill agreed to, if necessary, provide deposition testimony and attend a multi-week trial in Kansas City. Mr. Hill estimates that he spent 20-40 hours collecting documents responsive to Syngenta's discovery requests. Based on discussions with Mr. Hill and Mr. Snellings, Mr. Hill's estimate is reasonable.

152. Jackle Farms, Inc. was selected and agreed to serve as an Indiana class representative. In that capacity, John Jackle—who operates Jackle Farms, Inc.—responded to Syngenta's requests for production, which sought documents pertaining to numerous details about Jackle Farms, Inc.'s farming operation and other information over significant time periods, and also called for personal financial information. Mr. Jackle and his wife spent hours sorting through thousands of pages of paper records they had maintained. In order to make sure that he collected all documents within his possession custody, or control, he requested and received records from multiple grain elevators, his crop insurance agent, and the FSA office. He had to collect many of these records during harvest season, when he would normally be working 15-18 hour days in his fields. He incurred additional expense in having copies of his records prepared at a Staples store in a nearby town. Mr. Jackle estimates that he and his wife spent 15-20 hours collecting documents responsive to Syngenta's requests for production. Based on discussions with Mr. Jackle and of Chris' contemporaneous involvement in the collection of documents from Mr. Jackle, that estimate is reasonable.

153. Bernstein Farms (Steve & Penny Bernstein) was selected and agreed to serve as a North Dakota class representative. In that capacity, Steve Bernstein responded to Syngenta's requests for production, which sought documents pertaining to numerous details about his farming operation and other information over significant time periods, and also called for personal financial information. During the 2015 harvest season, he made special trips to a grain elevator, a local FSA

office, and to his accountant's office to authorize the release of documents requested by Syngenta. He also made a special trip to his crop insurance agent's office, 30 miles away from his farm, to discuss the release of records responsive to Syngenta's discovery requests. He also contacted other grain and oilseed purchasers and authorized the release of his records to Hare Wynn. He had to make repeated calls to some seed dealers to request the release of records. In addition, Mr. Bernstein searched through his paper files at his home to identify potentially responsive documents. Mr. Bernstein was required to collect these documents during harvest season—during harvest, he regularly works 15-16 hours per day in the field, sometimes working all night. Chris' notes indicate that he spoke with Mr. Bernstein at least seven times in the fall of 2015 regarding the collection of documents. Mr. Bernstein also agreed that, if necessary, he would provide deposition testimony and attend a multi-week trial in Kansas City. Based on conversation with Mr. Bernstein, Hare Wynn's records, and Chris' contemporaneous involvement in the collection of documents from Mr. Bernstein, 20 hours is a reasonable approximation of the total number of hours that Mr. Bernstein devoted to the collection of documents requested by Syngenta.

154. Whispering Oats Farms, Inc. was selected and agreed to serve as a Wisconsin class representative. In that capacity, Kenneth Newman—who operates Whispering Oats Farms, Inc.—responded to Syngenta's requests for production, which sought documents pertaining to numerous details about his farming operation and other information over significant time periods, and also called for personal financial information. Mr. Newman spent weeks collecting documents responsive to Syngenta's requests for production. Mr. Newman searched through years' worth of paper records that he maintained in his attic and also made repeated trips to the Farm Service Agency office in Elkhorn, Wisconsin, a grain elevator in Darien, Wisconsin, and a seed dealer in East Troy, Wisconsin, to collect additional records that he had authority to obtain. He also collected

documents from a landlord. To ensure that the financial information he provided was complete and accurate, Mr. Newman requested numerous records from his accountant, and the accountant charged him for collecting those records. Mr. Newman would mail paper records he collected to Hare Wynn for production to Syngenta. The collection of documents was particularly burdensome because he was having to collect this discovery during harvest season, when he would normally be working 80 hour weeks in his fields. Mr. Newman recalls that he spoke with plaintiffs' lawyers about document collection on numerous occasions in an effort to ensure that he was collecting all responsive documents, and Chris' notes indicate that he spoke with Mr. Newman at least eight times in October 2015 regarding the collection of documents. Mr. Newman estimates that he spent 40-60 hours collecting documents responsive to Syngenta's requests. Mr. Newman furthermore committed to attend a multi-week class trial in the event that the Wisconsin class claims went to trial. Based on conversation with Mr. Newman, Hare Wynn's records, and Chris' contemporaneous involvement in the collection of documents from Mr. Newman, the estimate Mr. Newman provided is a reasonable approximation of the total number of hours that Mr. Newman devoted to the collection of documents requested by Syngenta.

155. Tom Belzer, Belzer Bros. Potato Co., and B&G were selected and agreed to serve as North Dakota class representatives. In that capacity, Tom Belzer—who farms under his own name and also operates Belzer Bros. Potato Co. and B&G—responded to Syngenta's requests for production, which sought documents pertaining to numerous details about his farming operations and other information over significant time periods, and also called for personal financial information. Mr. Belzer searched through thousands of pages of records he kept at his home and requested additional documents from third parties, including his FSA office and his crop insurance agent. He estimates that he made up to a dozen special trips to various third parties to either collect

responsive documents or authorize the release to class counsel of responsive documents. Mr. Belzer spoke with Michelle Donarski, Esq. of Anderson, Bottrell, Sanden & Thompson on numerous occasions regarding the collection of documents—Mrs. Donarski discussed document collection with Mr. Belzer in at least 10 conference calls and in at least 45 e-mails. Mr. Belzer also spoke with Bill Chaney and Chris. Mr. Belzer agreed to, if necessary, provide deposition testimony and attend a multi-week trial in Kansas City. Mr. Belzer estimated that he spent 30-40 hours collecting documents responsive to Syngenta's requests for production. Based on conversation with Mr. Belzer and Mrs. Donarski, as well as Chris' contemporaneous involvement in the collection of documents from Mr. Belzer, this estimate is reasonable.

156. Gilbert Jones & Sons Farms, LLC was selected and agreed to serve as a Michigan class representative. In that capacity, David Jones—who helps operate Gilbert Jones & Sons Farms, LLC—responded to Syngenta's requests for production, which sought documents pertaining to numerous details about his farming operations and other information over significant time periods, and also called for personal financial information. In ensuring that all responsive documents in his possession, custody, and control were produced, Mr. Jones made multiple special trips to his county FSA office, his accountant, his seed dealer, and an ADM elevator. The ADM elevator is about 20 miles away from Mr. Jones' farm. Mr. Jones, to collect crop insurance records, also made a special trip to his crop insurance agent, whose office is about 60 miles from Mr. Jones' farm. He also estimates that he spoke with John Hughes, Esq. of Milberg, LLP at least a dozen times regarding the collection of documents. Mr. Jones' document production was also due during harvest season, when Mr. Jones routinely works long hours on his farm. Mr. Jones agreed to provide deposition testimony and to attend a multi-week trial in Kansas City in the event that the Michigan class' claims were tried. Based on conversation with Mr. Jones and knowledge of the

scope of Syngenta's discovery requests, it is reasonable to estimate that Mr. Jones spent at least 20 hours collecting documents responsive to Syngenta's discovery requests.

157. As noted above, my firm served as a repository for all documents produced by the producer plaintiffs. In connection with the request for service awards, and under my supervision, Chris Randolph worked with several Hare Wynn staff members in tabulating, for each plaintiff for whom a service award is sought, the number of pages of documents produced and the number of pages in the latest versions of the plaintiffs' interrogatory and request for admission responses.

State	Name	Pages of docs. produced[3]	Pages of final interrog. responses	Pages of final RFA responses
KS	Grafel plaintiffs (Grafel Farms, LLC, Beaver Creek Farms, Inc., D&S Grain & Cattle Co., Demmer Farms, Inc.)	23,291	32	31
KS	Charles Frickey	120	26	24
KS	Five Star Farms (Bret Kendrick)	1426	27	20
KS	David Polifka Rev. Living Trust (David Polifka)	6349	26	24
IA	Noonan Farms, Inc.	693	23	20
IA	LBJ Ventures	3917	28	20
IA	Shane Curry	224	25	21
SD	J. Anderson Farm, Inc.	524	25	20
SD	Richard Glanzer	327	27	22
OH	McKee Family Farms	589	25	21
OH	Fulkerson Farms, LLC	1466	27	21
OH	Evelyn I. Linder Child's Trust (Yvonne Vogel)	118	24	21
NE	Matt & Robin Bargen Bar Cattle Limited Partnership	2019 1125 Total: 3144	28	24
NE	Linden Kaliff	227	26	20
IL	Russ Koeller	1402	24	20
IL	Tom Justison	2544	24	20
IL	Leon Taylor	834[4]	23	21
IL	Sandra Boyer	43973	24	21
AR	Eagle Lake/Kenny Falwell	3380	31	19

[3]In instances where a plaintiff group produced documents under separate Bates prefixes, the number of pages produced with each Bates prefix is provided, along with the total number of pages produced by that plaintiff group.
[4] An additional 42,000 pages of documents were responsive to requests directed to both Taylor and Sandra Boyer; to avoid unnecessary duplication, those documents were produced only under the Boyer Bates prefix.

State	Name	Pages of docs. produced[3]	Pages of final interrog. responses	Pages of final RFA responses
AR	Crandall Farms Three Guys Farming, Inc.	617 375 Total: 992	27 28 Total: 55	20 2 Total: 40
KS	Robert Luck H and R Operations R and L Partnership	1740	25	24
KS	Eugene Goering Trust	1760	31	20
MO	Gregory Harris	723	25	20
MO	Wright Brothers Partnership	3588	27	20
MO	State Line Farm Co. (Ivan Woltemath)	195	24	20
AR	W. Edgar Willman Trust/Estate of Lloyd Willman	387	24	21
SD	Bieber Farm Rolling Ridge Ranch, LLC	1194 192 Total: 1386	27	20
NE	Martin and Patricia Petska	6459	26	18
IA	Cronin, Inc.	284	20	22
IA	J3B Partnership/Don Prohaska	537	24	20
IA	Rodney Olthoff	1719	26	21
SD	Steven and John S. Cap	1730	24	27
SD	Chad Murphy	509	24	20
SD	Ross Ulmer	216	25	21
SD	Randy Overgard	313	33	22
OH	Partners 5, LLC	1561	25	21
OH	Gary Duane Matthews	821	24	20
NE	R&W Farms, Inc.	6915	30	24
NE	Dustin Wegner Wegner Hillside Farms, LLC	563	24	20 20 Total: 40
NE	Charlynn Hamilton	872	24	21
NE	B&A Riessland Farms	522	28	20
IL	McDonald AG	448	26	20
IL	Ken Kennedy	255	26	
AR	Pat Skarda	1706	24	20
KS	Orville Williams Williams and Sons, Inc. ROR General Partnership	16,252	31	23
KS	Gary Harshberger Harshberger Enterprises	32,915	32	23
KS	James Shortt Trust	182	25	21
KS	Joseph Murname Trust	107	23	21

State	Name	Pages of docs. produced[3]	Pages of final interrog. responses	Pages of final RFA responses
MO	Claas Farms	2327	27	20
MO	Glenn Bix	209	26	20
MO	Dierking Farms	453	26	20
IL	Steven Wentworth	8996	28	20
IL	White Brothers	2334	26	20
MO	Bell entities (Bottoms Farms P'ship, JPPL, Inc., NEBCO, Inc., Triple BG)	1781 899 140 959 162 Total: 3941	29	21
AR	Mike DaVaut (farms under the name DaVault Ark-Mo P'ship with sons David DaVault and Brad DaVault)	1380 98 Total: 1478	22	21
IA	Alan and LaRae Pedersen	825	25	
IA	Charles Lex	343	23	20
OH	Kaffenbarger Farms, Inc.	881	25	19
OH	Haerr Grain Farms; Three H Farms, LLC; HGF Irrigated	4164 3376 365 129 Total: 8034	24 24 24 Total: 72	20 20 20 Total: 60
AR	Henderson Farms Partnership	254	23	20
MO	R&R Farms, LLC/Ensor Bros. (Richard Ensor is the owner of R&R; he is one of the two partners in Ensor Bros.)	631 1389 Total: 2020	24	20
IA	Daniel Chism/R&D Chism Farms, LLC	726	24	21
NE	John Holmbeck	893	23	20
IL	James McKinney	536	24	
NE	David Schwaninger	9349	31	23
MO	Richard Oswald	2236	25	20
IL	Hadden Farms (Dale Hadden)	1294	26	20
NE	Volnek Farms (Eugene Volnek)	1483	25	20
SD	B-F James & Sons, Inc. (Frank James)	1114	26	21
AL	Robert Walker, Jr. Farms	120		
AL	Walker Farms	167		
AL	James H. Walker Farms	153		
CO	Ravenkamp Farms Partnership	1158		
IN	Jackle Farms, Inc.	1108		
IN	Mark Lueder	111		
IN	Thomas Goode	105		
KY	Brenda Hunt	269		

State	Name	Pages of docs. produced[3]	Pages of final interrog. responses	Pages of final RFA responses
LA	Frith Farms Partnership	365		
LA	Clark Hill d/b/a Clark Hill Farms; Delta Farms P'ship	229 247 Total: 476		
MI	Steve Lott Farms & Services, Inc.	340		
MI	Gilbert Jones & Sons Farms, LLC	114		
MN	Harvey Farms/Tim Harvey	142		
MS	Little Omega Farms Partnership	268		
ND	Steve & Penny Bernstein d/b/a Bernstein Farms	672		
ND	Tom Belzer/Belzer Bros. Potato Co./B&G	6010 24 73 Total: 6107		
OK	F.R. (Fowler) Sheffield	8948		
TN	Jamerson Farms	1277		
TX	Robert Hahn d/b/a Bull Hide Creek Farms	478		
WI	Whispering Oats Farms, Inc. (Kenneth Newman)	1998		

H. Written Discovery Served on Syngenta

158. Jason Earley, working with Rachel Schwartz, drafted the discovery requests served on Syngenta, including:

a. The producer plaintiffs' 30(b)(6) deposition notice, which contained 126 topics

b. Plaintiffs' First Set of Requests for Production to Syngenta, which included 75 document requests

c. Plaintiffs' Second Set of Requests for Production to Syngenta, which included 8 document requests

d. Plaintiffs' Third Set of Requests for Production to Syngenta, which included 134 document requests

e. Plaintiffs' Fourth Set of Requests for Production to Syngenta, which included 4 document requests

f. Plaintiffs' Fifth Set of Requests for Production to Syngenta, which

included 46 document requests

g. Plaintiffs' First Interrogatories to Syngenta Corporation, which included 4 interrogatories

h. Plaintiffs' First Interrogatories to Syngenta AG, which included 19 interrogatories

i. Plaintiffs' First Interrogatories to Syngenta Crop Protection, LLC, which included 14 interrogatories

j. Plaintiffs' First Interrogatories to Syngenta Crop Protection AG, which included 6 interrogatories

k. Plaintiffs' First Interrogatories to Syngenta Seeds, Inc., which included 13 interrogatories

l. Plaintiffs' Second Interrogatories to Syngenta Crop Protection AG, which included 6 interrogatories

m. Plaintiffs' Second Interrogatories to Syngenta Seeds, Inc., which included 9 interrogatories

n. Plaintiffs' First Requests for Admission to Syngenta, which included 7 requests for admission. Plaintiffs also served an interrogatory seeking the basis for each response to a request for admission that was not an unqualified admission.

159. Jason Earley drafted subpoenas to several third parties, including Crop Life International and the National Corn Growers Association.

160. Jason Earley also helped prepare the document review protocol to provide guidance to the lawyers who reviewed the documents produced by Syngenta. That protocol, *inter alia*, identified issues that document reviewers should be looking for in reviewing documents and listed issue codes that document reviewers were to apply when reviewing documents.

161. Jason Earley, Laura Riedinger, Brian Vines, Virginia Applebaum, and Chris Randolph assisted with the first-round review of documents. Included in their document reviews were documents that Syngenta had produced in *Syngenta Seeds, Inc. v. Bunge North America, Inc.*, No. C 11-4074-MWB (N.D. Iowa); documents Syngenta produced in response to the requests for

production that Jason and Rachel Schwartz drafted; and documents that ADM, Cargill, and Gavilon produced. Jason and Chris also attended multiple multi-day document review sessions with lawyers from other plaintiffs' firms in Kansas City in 2015.

162. Jason, Brian, and Chris also reviewed and summarized the deposition testimony that Syngenta employees provided in *Syngenta Seeds, Inc. v. Bunge North America, Inc*., No. C 11-4074-MWB (N.D. Iowa).

163. The first-round document review team—which included lawyers from the co-lead counsel's firms as well as executive committee members' firms—flagged thousands of pages of key documents as "hot." Jason Earley then reviewed all the documents that the first-round document review team identified as "hot documents." Based on his review of those "hot documents," Jason was able to identify key events, review factual bases of certain anticipated defenses, build a factual timeline, and identify topics for questioning at depositions.

I. Depositions of Current and Former Employees of Syngenta and Third-Parties

164. Jason helped the co-leads prepare for depositions of current and former Syngenta employees as well as the depositions of current and former ADM and Cargill employees.

165. Jason, based on his review of the "hot documents," helped prepare deposition outlines in advance of over 40 depositions and identified and organized potential deposition exhibits. For depositions that Jason was not taking, Jason met with the co-lead lawyer who would be taking that deposition to assist with deposition preparation.

166. Jason and/or I took, defended, or attended over 40 depositions. These depositions took place at locations around the world. I traveled to London twice for depositions. Jason traveled to London and Hong Kong twice for depositions. Jason and/or I also traveled to

Washington, D.C. (on numerous occasions), St. Louis, Chicago (on numerous occaions), Minneapolis (on numerous occasions), and Bend, Oregon for depositions.

167. Jason and I took depositions of several current and former Syngenta employees, including Paul Minehart, Grant Ozipko, David Roberts, Patrick Steiner, and John Ramsay. Jason took or attended the depositions of other Syngenta employees, including Jingwen Chen, Duane Martin, David Morgan, Abigail Vulcan, and Michael Bierman. Jason or I went first in questioning all current or former Syngenta employees that we deposed.

168. Jason and I also participated in numerous depositions of ADM and Cargill employees, as well as depositions of third parties. I took the deposition of Nathan Fields of the National Corn Growers Association, and also took the depositions of Corey Jorgenson, Alex Sanfeliu, and Mark Stonacek. Jason took the depositions of Robert Aspell, Elliott Brammer, and Brett Bell; Jason also took the depositions of David Buchanan, Jerrity Chen, Nick Friant, Oscar Li, Andew Wong, Christopher Langholz, Sean Miller, and Jason Xu.

J. Plaintiff's Experts

169. I worked with the other co-leads in vetting and selecting expert witnesses.

170. Jason Earley and I worked directly with two of the producer plaintiffs' experts, Dirk Maier and Joe Keaschall.

171. Dr. Maier is a professor at Iowa State University who we retained to testify about the dispersion of the MIR-162 trait. His expert report and deposition testimony demonstrated how the MIR-162 trait contaminated the U.S. corn supply.

172. Dr. Keaschall was a professor at the University of Nebraska who we retained to testify about the limited benefits the MIR-162 trait provided to U.S. corn farmers. Dr. Keaschall explained that MIR-162 did not increase corn yield and provides resistance only against pests that

are not serious problems in the major corn growing areas in the U.S. Dr. Keaschall's testimony was key to refuting Syngenta's theme at trial that it in commercializing MIR-162 Syngenta was providing U.S. farmers access to much-needed technology.

173. Jason and I worked with Dr. Maier and Dr. Keaschall over a period of months as we discussed their opinions, reviewed drafts of their expert reports, prepared them for deposition, and defended their depositions. In carrying out these responsibilities, Jason and I had numerous phone conversations with those experts and traveled to meet with them in person on several occasions.

174. Tempe Smith, with input from Jason and me, drafted the producer plaintiffs' opposition to Syngenta's motion to exclude Dr. Maier's testimony. (ECF No. 2954.) The Court ultimately granted in part and denied in part Syngenta's motion to exclude Dr. Maier's testimony. (ECF No. 3134 at 30-31.) Chris Randolph, also with input from Jason and me, drafted the producer plaintiffs' opposition to Syngenta's motion to exclude Dr. Keaschall's testimony. (ECF No. 2952.) The Court denied Syngenta's motion to exclude Dr. Keaschall's testimony. (ECF No. 3134 at 32-34.)

175. Chris Randolph also worked with Jason Sapp and several other lawyers from other firms to collect corn sales data for the producer plaintiffs' damages experts.

K. Syngenta's Experts

176. I deposed three of Syngenta's experts: Alan McHughen, William Sheppard, and Travis Milne. Jason assisted with my preparation for those three expert depositions and traveled with me to California, Arizona, and Missouri for these depositions.

177. Tempe Smith, with input from Jason and me, briefed the producer plaintiffs' motion to exclude McHughen's testimony. (ECF No. 2878, 3001) Chris Randolph, also with input from

Jason and me, briefed the producer plaintiffs' motion to exclude Sheppard's and Milne's testimony. (ECF Nos. 2875, 3000, 2912, 3002) The Court granted in part the motions to exclude testimony from McHughen, Milne, and Sheppard. (ECF No. 3134 at 9-20.)

L. Class Certification Briefing

178. Dirk Hubbard and Chris Randolph collected from the producer plaintiffs' document productions documents that were included in appendices submitted with the producer plaintiffs' reply brief in further support of the motion for class certification. These documents included sales contracts demonstrating that the various types of corn pricing arrangements used by class members were based on the Chicago Board of Trade price for corn. They also collected documents for an exhibit demonstrating that the members of the bellwether discovery pool had priced corn during the relevant time period. These exhibits countered Syngenta's arguments that the various methods of pricing corn prevented class certification and that class membership was not readily ascertainable.

179. Bruce McKee and I reviewed and provided comments on plaintiff's response to Syngenta's Rule 23(f) petition.

M. Summary Judgment Briefing for the Kansas Class

180. Jason Earley was an instrumental part of the team of attorneys who opposed Syngenta's summary judgment motion and sought summary judgment on behalf of Plaintiffs. Jason was responsible for coordinating and preparing fact sections for the filings, including the 587-paragraph Statement of Additional Facts ("Statement of Additional Facts") filed with Plaintiffs' Memorandum in Opposition to Syngenta's Motion for Summary Judgment (ECF No. 2940 at xviii-cxxiv) and the 79-page Plaintiffs' Response to Defendants' Statement of Undisputed

Material Facts ("Response to Syngenta's Statement of Facts") that was submitted with the response to Syngenta's motion for summary judgment (*See* ECF No. 2940-1).

181. Jason worked with attorneys responsible for the legal arguments (including Brad Wilders and Gretchen Garrison) in analyzing what facts were needed to respond to Syngenta's summary judgment motion, and working with Laura Riedinger, collected and organized the over 400 exhibits, totaling over 9,000 pages, that the producer plaintiffs filed with Plaintiffs' Response to Defendants' Statement of Undisputed Material Facts and which provided the evidentiary basis for the Statement of Additional Facts and Response to Syngenta's Statement of Facts. (*See* ECF Nos. 2940-2946.)

182. Bruce McKee helped draft for the response to Syngenta's summary judgment motion a response to Syngenta's punitive damages arguments.

N. Kansas Class Trial Preparation

183. Jason Earley and I, along with lawyers from the other co-lead firms, attended several meetings with outside trial consultants. These meetings included:

a. three multi-day trial strategy sessions with a trial consultant;

b. a focus group in Kansas City where we evaluated laymen's attitudes to our potential arguments and Syngenta's anticipated defenses;

c. a mock trial in Kansas City where we presented our case, and Syngenta's anticipated defenses, to three mock jury panels. Jamie Moncus also attended the mock trial and assisted with the development of trial themes.

184. Jason and I also had several in-person trial strategy meetings with lawyers from the other co-lead firms. These meetings were in addition to the weekly conference calls among the four co-lead lawyers.

185. Most of the Syngenta and third-party witnesses whose testimony we wanted to present were not within the subpoena power of the Court. Jason and I in April 2017 reviewed

dozens of witness' deposition testimony and designated portions of those witnesses' deposition testimony that we wanted to have available to present at trial.

186. Tempe Smith, Jason Earley, and Chris Randolph in May 2017 identified objections to Syngenta's deposition designations for eight witnesses and identified counter-designations to Syngenta's deposition designations. They also identified objections to Syngenta's counter-designations and identified counter-to-counter designations for those witnesses' designated deposition testimony.

187. Tempe traveled to Kansas City to help organize binders identifying proposed deposition designations for the Court.

188. In addition to working on the deposition designations, Tempe Smith and Chris Randolph worked with audio visual litigation support staff to edit and finalize the video deposition presentations. Beginning on May 28, 2017, the video team began preparing the excerpts for 26 potential witnesses. Lawyers from each firm reviewed the designations remaining after the Court's evidentiary rulings, and provided instructions to paralegals and support staff to insert, highlight, and zoom in on certain exhibits being discussed during the testimony. After the initial production of each video was made, an attorney from one of the co-lead firms would watch the video. The attorney then provided instructions to the paralegals and support staff to make additional edits to the videos as necessary. This process continued through the presentation of Plaintiffs' case at trial.

189. Tempe Smith participated in meet and confers with Syngenta's counsel in the days leading up to the beginning of trial about the impact of the Court's rulings on deposition designations on the exhibits identified therein. There were three meetings that collectively lasted approximately 8 hours.

190. The Co-Leads decided in spring 2017 that I would present the opening statement at trial. Jason Earley and Jamie Moncus worked with me in drafting an opening statement. As part of that preparation, Jason and Jamie held in-person meetings in Birmingham and Little Rock. Phillip Carter, working under Jamie's and Jason's direction, prepared the visual presentation for the opening statement.

191. The co-leads also agreed that I would present at trial the testimony of David Polifka, one of the Kansas class representatives. In May 2017, Chris Randolph and I traveled to Mr. Polifka's farm near Quinter, Kansas, to meet with Mr. Polifka and start his trial testimony preparation.

192. Jason and I worked together on preparing an outline for Joe Keaschall's direct examination.

193. Jason Earley helped prepare the order of proof for the trial.

O. Kansas Class Trial

194. Six Hare Wynn lawyers and two Hare Wynn staff members attended all or part of the Kansas class trial. Jason, Tempe, Chris, Jamie Moncus, Phillip Carter, and I arrived in Kansas City 7-10 days before the start of trial and stayed in town for the entire trial. Sarah Jewell provided assistance to the trial team in Kansas City for two days during the first week of trial. Laura Riedinger traveled to Kansas City on the first day of the trial and stayed for the rest of the trial.

195. One of our experts, Joe Keaschall, was unable to travel to Kansas City for the trial due to health problems. The Court permitted us to take Dr. Keaschall's deposition for presentation at trial, and we noticed Dr. Keaschall's deposition for June 2, 2017. (ECF No. 3184, 3186.) Jason Earley, Jamie Moncus, and I traveled to Lincoln, Nebraska, the week before the trial to meet with Dr. Keaschall. I took Dr. Keaschall's trial deposition on June 2.

196. Tempe Smith and Drew York coordinated the exchange of trial exhibits with Syngenta during trial, consistent with an agreement between the parties under which exhibits would be exchanged in advance of the relevant witness' testimony.

197. Tempe and Drew conducted dozens of meet and confers with Syngenta's counsel regarding deposition designations and trial exhibits. These meetings began before trial and continued through the end of Syngenta's case; generally, multiple meet and confers were held each day--some of those meet and confers were conducted at the courthouse and others were conducted by phone late at night. As a result of those discussions, the volume of deposition testimony designated for presentation to the jury was reduced significantly.

198. During trial Laura Riedinger, Phillip Carter, and two employees of Midwest Court Reporting continued the process of editing deposition videos to include only the designated testimony that plaintiff's counsel and Syngenta's counsel had elected to present to the Court. This editing process also included editing the videos to treat exhibits introduced by Syngenta through Syngenta's counter-designations in accordance with any exhibit treatment instructions provided by Syngenta. Tempe Smith, Jason Earley, Chris Randolph, and Laura Riedinger worked with lawyers from the other co-lead firms in reviewing those edited videos to ensure that the correct testimony was included, identify the exhibits that needed to be presented on-screen during the deposition designation videos, and identify portions of exhibits that needed to be highlighted on screen. Ultimately plaintiffs played during their case 22 of the 26 videos presented at trial. During the presentation of Syngenta's case, Tempe Smith and Drew York coordinated with other attorneys and staff to provide Syngenta with instructions for the display of exhibits introduced by Plaintiffs during video depositions offered by Syngenta.

199. I held several preparation sessions with David Polifka in the days leading up to his testimony. I then conducted his direct examination at trial.

200. I worked with Jason Earley in preparing for the cross-examination of Syngenta witnesses Lawrence Zeph, David O'Reilly, Duane Martin, Alan McHughen, Michael Mack, and Travis Milne. Syngenta chose not to present most of those witnesses in Court. Syngenta did put Mr. Milne on the stand, and I conducted his cross-examination.

201. Jamie Moncus attended the entire trial and advised the co-leads on trial presentation.

202. The co-leads agreed that I would present the closing argument at the trial. I worked with Jamie Moncus and Jason Earley in preparing the closing argument. Phillip Carter, working under Jamie's and Jason's direction, prepared the visual presentation for the closing argument.

P. Post-Kansas Class Trial Motions

203. Bruce McKee helped prepare the response to Syngenta's post-trial motions.

Q. Preparation for Arkansas and Missouri Classes Trial

204. The Court determined that the Arkansas and Missouri class claims would be tried in the second MDL class trial. (ECF No. 3319.)

205. In preparation for the Arkansas and Missouri class trial, Tempe Smith working with Drew York and Jason Earley, spent three weeks studying the video deposition testimony from the Kansas class trial. They identified testimony that should be added or removed for the Arkansas and Missouri class trial and testimony from the Kansas class trial was cumulative of other evidence.

206. I attended some of the Minnesota class trial in Minneapolis in fall 2017. Jamie Moncus and Jason Earley attended all of that trial to prepare for the Arkansas and Missouri trials.

R. Settlement Discussions

207. In the summer of 2017 through the spring of 2018, the co-leads and I participated in confidential settlement discussions with Syngenta's counsel and Special Master Reisman. These discussions included several in-person meetings in various locations across the United States.

III. FEE AGREEMENTS WITH INDIVIDUAL CLIENTS

208. A number of plaintiffs in the class retained Hare Wynn and the other co-lead firms to represent them on an individual basis. If a class had not been certified, our individual fee agreements required each client to pay 33 1/3% of any net benefit received.

209. If a class were certified, Hare Wynn's fee agreements expressly waived any right to seek attorneys' fees individually from these clients and to instead seek fees and expenses solely from the Court.

210. Consequently, Hare Wynn is seeking compensation and expense reimbursement solely from the common benefit fee and expense award made by this Court and will not seek to recover individual attorneys' fees or expense reimbursement from any individual client.

211. Hare Wynn has maintained files on all individual clients that Hare Wynn, Gray Reed, and Gray Ritter originated. Hare Wynn has coordinated the mailing of status updates to those clients, maintained communication with referring lawyers, obtained from clients authorizations to collect FSA 578 forms (which, in many instances, expired after one year, necessitating requests for new authorizations), and requested FSA 578 forms for those clients from FSA offices around the country. Many FSA offices charged Hare Wynn for those 578 records. Hare Wynn has also developed and maintained an electronic database that includes FSA 578 data

on those clients. Hare Wynn hired contract employees to assist Hare Wynn's permanent employees with the management of these individual clients' files.

212. Hare Wynn filed individual claims on behalf of the Kentucky and Mississippi clients that Hare Wynn and the other co-lead firms represented since it was not clear that the filing of a class action in those states would toll the statute of limitations. For those Mississippi and Kentucky clients, Hare Wynn submitted plaintiff fact sheets and filed notices to conform. Hare Wynn is not counting as common benefit time the hours spent collecting from those individual clients the information and documents requested in the plaintiff fact sheet and preparing notices to conform for those clients.

213. In total, my firm has expended nearly 15,000 hours on these individual clients. The lodestar for this time exceeds $4 million.[5] The firm in handling claims of individual plaintiffs incurred hundreds of thousands of dollars in out-of-pocket expenses, including labor costs. We have not included this lodestar amount or the expenses for our individual clients in this application for attorneys' fees.

IV. HARE WYNN'S COMMON BENEFIT TIME AND EXPENSES

214. Hare Wynn maintained contemporaneous records of its time and expenses for this matter. These records are prepared and maintained in the ordinary course of business.

215. I prepared my declaration with the assistance of other lawyers and staff at Hare Wynn with knowledge of the matters reflected herein. I have personally reviewed the information supporting the fee and expense requests that are the subject of this declaration, and, based on that review, I believe that the information contained herein is accurate.

[5] Several Hare Wynn employees and contract workers who helped handle individual claims did not perform common benefit work. In calculating the lodestar value of those individuals work, we have applied a $250 per hour rate.

216. As part of the preparation of my declaration, I reviewed the time and expenses incurred in this litigation to exercise billing judgment. These figures do not include the anticipated additional time preparing for and attending the Final Approval Hearing and the additional time to administer the Settlement and finalize payments to class members. I anticipate, based on past experience, that our firm will have to devote, at a minimum, several hundred hours to those tasks.

217. I and the other co-lead counsel reviewed the time and expense submissions of common benefit firms to determine compliance with the requirements for common benefit time and expense. I personally reviewed Gray Reed's submissions, as well as the submissions of over a dozen other firms that performed common benefit work. In reviewing those firms common benefit time and submissions, I eliminated from those common benefit submissions time and expenses that I believed did not qualify as common benefit.

218. After exercising billing judgment and making billing reductions based on my review of the records, the number of hours spent on this litigation by my firm (excluding all time associated with this motion) is 20,153.10 hours. The rates for each timekeeper are reasonable in this judicial district and consistent with my own knowledge and understanding as to the range of rates charged by attorneys of comparable experience in comparable cases. A breakdown of the lodestar is provided below. The lodestar amount for attorney time is $11,728,489.50.

	Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
1.	Earley, Jason	Partner	5,425.80	$725.00	$3,933,705.00
2.	Randolph, Chris	Associate	4,134.50	$565.00	$2,335,992.50
3.	Powell, Scott	Partner	3,041.90	$865.00	$2,631,243.50
4.	Whitfield, Dax	Paralegal	1,072.80	$295.00	$316,476.00
5.	Riedinger, Laura	Paralegal	899.60	$295.00	$265,382.00
6.	Rubino, Emily	Paralegal	780.80	$295.00	$230,336.00
7.	Smith, Tempe	Associate	759.50	$565.00	$429,117.50
8.	Glasgow, Darcy	Paralegal	758.30	$295.00	$223,698.50

	Name	Title	Total Hours	Hourly Rate	Lodestar
9.	Moncus, Jamie	Partner	552.80	$700.00	$386,960.00
10.	Applebaum, Virginia	Associate	517.30	$500.00	$258,650.00
11.	Crowden Dickerson, Tara	Paralegal	489.50	$250.00	$124,625.00
12.	Carter, Phillip	Paralegal	486.80	$300.00	$146,040.00
13.	Marquez, Andi	Paralegal	306.20	$295.00	$90,329.00
14.	Gordon, Ryan	Paralegal	188.50	$250.00	$47,125.00
15.	Bess, Zondra	Paralegal	140.60	$295.00	$41,477.00
16.	Nelson, Sarah	Paralegal	137.00	$295.00	$40,415.00
17.	McKee, Bruce	Partner	106.60	$865.00	$92,209.00
18.	Vines, Brian	Associate	104.90	$625.00	$65,562.50
19.	Heath, Rasheedah	Paralegal	40.40	$295.00	$11,918.00
20.	Davis, Mary Ellen	Paralegal	34.50	$250.00	$8,625.00
21.	Henry, Jason	Paralegal	31.00	$250.00	$7,750.00
22.	Jewell, Sarah	Associate	30.00	$400.00	$12,000.00
23.	Parker, Chanelle	Paralegal	22.00	$250.00	$5,500.00
24.	Marshall, Hellana	Paralegal	19.40	$250.00	$4,850.00
25.	Ware, Brian	Paralegal	18.80	$300.00	$5,640.00
26.	Byrd, Debbie	Paralegal	14.70	$295.00	$4,336.50
27.	Camp, Amy	Paralegal	8.50	$295.00	$2,507.50
28.	Estep, Emilie	Paralegal	8.50	$250.00	$2,125.00
29.	Snipes, Brian	Paralegal	6.20	$295.00	$1,829.00
30.	Miller, Martha	Paralegal	4.50	$295.00	$1,327.50
31.	Young, Jennifer	Paralegal	1.70	$250.00	$425.00
32.	Nichols, Hughston	Partner	0.50	$625.00	$312.50
	TOTALS		20,153.10		$11,728,489.50

219. As part of the Common Benefit Guidelines provided by Co-Lead Counsel, all common benefit firms tracked common benefit expenses using Category Codes 1-19.

220. In total, my firm seeks reimbursement of common benefit expenses in the amount of $911,263.79. Those expenses and charges are summarized by below:

Category Code	Description of Category Code	Amounts
1	Federal Express / Local Courier	$3,711.91
2	Postage Charges	$16.30

4	Long Distance Calls	$219.75
5	In-House Photocopying	$5,842.40
6	Outside Photocopying	$12,719.93
7	Hotels	$181,136.21
8	Meals	$42,818.20
9	Mileage	$5,690.13
10	Air Travel	$123,699.56
12	Lexis/Westlaw/Bloomberg	$48,412.67
13	Witness and Expert Expenses	$4,587.50
14	Court Fees	$225.00
16	Hearing and Trial Transcripts	$107.10
17	Ground Transportation	$22,127.21
18	Miscellaneous	$54,949.92
19	Litigation Fund Assessment	$405,000.00
	TOTAL	**$911,263.79**

Additional details on these expenses are below:

221. Category 1, Federal Express / Local Courier, etc.: This category includes common benefit expenses for shipping, overnight, courier, and delivery expenses of documents to and from class representatives, bellwether plaintiffs, co-counsel, and opposing counsel. These expenses are reported at actual cost.

222. Category 2, Postage Charges: This category includes common benefit postage charges for mailing letters and accompanying documents to class representatives, bellwether plaintiffs, document custodians, ESI vendors, co-counsel, opposing counsel, the Court, and other necessary parties. These expenses are reported at actual cost.

223. Category 4, Long Distance, Conference Call, and Cellular Telephone Charges: This category includes Hare Wynn's common benefit expenses for long distance and conference calls to co-lead counsel, opposing counsel, the Court, and other necessary parties to discuss the common benefit order, ESI protocol, discovery disputes, class certification, trial, and other matters for the common benefit of all producer and non-producer plaintiffs. These expenses are reported at actual cost.

224. Category 5, In-House Photocopying: This category includes Hare Wynn's common benefit expenses for photocopying and printing documents for use in depositions, class certification briefing, trial notebooks, trial exhibits, and other matters for the common benefit of all producer and non-producer plaintiffs. Consistent with the Common Benefit Order, these expenses were billed at $.10/page, which is below what we normally charge for these expenses.

225. Category 6, Outside Photocopying: This category includes Hare Wynn's common benefit expenses for photocopying, scanning, printing, and binding documents by third-party vendors. Hare Wynn typically utilized such vendors to assist with large projects requiring the printing, scanning, and binding of thousands of pages of documents for use in depositions and at trial. Hare Wynn also relied on the services of a third party vendor for the design and creation of demonstratives for use at trial. These expenses are reported at actual cost.

226. Category 7, Hotels: This category includes Hare Wynn's common benefit expenses for hotel room charges for the average available room rate of a business hotel in the city in which the stay occurred. Hare Wynn attorneys and staff incurred reasonable hotel room charges while attending depositions, meeting with trial experts, attending Court hearings and trial, and performing other matters for the common benefit of all producer and non-producer plaintiffs. Stueve Siegel negotiated reduced Kansas City hotel rates for the benefit of all counsel. These expenses are reported at actual cost.

227. Category 8, Meals: This category includes Hare Wynn's common benefit expenses for meals. Hare Wynn attorneys and staff incurred meal expenses while attending depositions, meeting with co-counsel, attending court hearings and trial, and performing other tasks for the common benefit of all producer and non-producer plaintiffs. Evening meals costing more than

$70 were discounted by one-third to account for alcohol. These expenses are reported at actual cost.

228. Category 9, Mileage: This category includes Hare Wynn's common benefit expenses for mileage incurred while traveling to Kansas City for trial, traveling to meetings with co-counsel, and performing other tasks for the common benefit of all producer and non-producer plaintiffs.

229. Category 10, Air Travel: This category includes Hare Wynn's common benefit airfare expenses. Hare Wynn is seeking reimbursement for the lowest available, convenient coach fare on domestic flights; if a first-class ticket was purchased, reimbursement is only sought for 74 percent of the airfare cost. Hare Wynn incurred these airfare expenses in order to attend depositions, meet with co-counsel to plan for settlement discussions and trial, meet with trial consultants, and perform other tasks for the common benefit of all producer and non-producer plaintiffs. These expenses are reported at actual cost.

230. Category 12, Lexis/Westlaw/Bloomberg: This category includes Hare Wynn's common benefit expenses related to conducting computerized research on Westlaw and PACER. Hare Wynn attorneys and staff used these electronic databases in order to access court filings and conduct legal research on a broad range of legal topics. For example, Hare Wynn attorneys utilized Westlaw in order to perform legal research on damages issues, causes of action under the laws of various states, *Daubert* standards, potential discovery objections, and numerous other legal issues that Plaintiffs faced during the course of this litigation. These costs are billed in the same manner in which Hare Wynn calculates costs in other hourly or contingency fee cases. Specifically, Hare Wynn has reported PACER charges at the actual cost reflected in PACER invoices. In calculating Westlaw charges, Hare Wynn multiplied each monthly Westlaw invoice by the percentage of the

firm's Westlaw usage that month that was devoted to this litigation. (For example, if Hare Wynn's monthly Westlaw charge was $10,000 and 25 percent of Hare Wynn's Westlaw time that month related to this litigation, a $2,500 Westlaw expense would be reported for that month.) Hare Wynn did not use Lexis or Bloomberg in this litigation.

231. Category 13, Witness and Expert Expenses: This category includes Hare Wynn's common benefit expenses related to retaining expert witnesses to testify on matters for the common benefit of all producers and non-producers. Such matters include the Chinese regulatory system, the efficacy of Syngenta's new GMO products, Plaintiffs' damages, and other matters for the common benefit of all producers and non-producers.

232. Category 14, Court Fees: This category includes Hare Wynn's common benefit expenses related to court fees. These expenses are reported at actual cost.

233. Category 16, Hearing and Trial Transcripts: This category Hare Wynn's common benefit expenses related to ordering transcripts from various hearings and trials.

234. Category 17, Ground Transportation: This category includes Hare Wynn's common benefit expenses related to automobile rentals, shuttle service, taxis, and Uber service. Hare Wynn attorneys and staff incurred these expenses while attending depositions, meeting with co-counsel and experts, and performing other tasks for the common benefit of all producer and non-producer plaintiffs. These expenses are reported at actual cost.

235. Category 18, Miscellaneous: This category includes Hare Wynn's common benefit expenses related to miscellaneous cash expenses for which receipts generally are not available (*e.g.*, tips, luggage handling) and other items which do not fall within another category. These expenses are reported at actual cost.

236. Category 19, Litigation Fund Assessments: This category includes Hare Wynn's periodic monetary contributions to the Syngenta Litigation Fund. Co-Lead Counsel, Executive Committee members, and additional firms in the multidistrict litigation made periodic contributions to the litigation fund. These funds were utilized for the on-going prosecution of the multidistrict litigation.

237. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from receipts, expense vouchers, check records and other documents and are an accurate record of the expenses.

238. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 9th day of July 2018 in Birmingham, Alabama.

/s/ Scott A. Powell
Scott A. Powell

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG, et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF DON M. DOWNING IN SUPPORT OF FEE AND EXPENSE REQUEST AND SERVICE AWARDS

I, Don M. Downing, under penalty of perjury, hereby declare:

1. I am an officer, director and shareholder at Gray, Ritter & Graham, P.C. ("GRG") and counsel of record for Plaintiffs in this litigation.

2. I am making this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so.

3. This declaration is submitted in support of Plaintiffs' request for attorneys' fees, expenses and service awards.

I. GRG AND ITS TIMEKEEPERS

GRG was founded in 1946 and has maintained its legal practice in St. Louis, Missouri continuously since then. The firm has 14 attorneys. It handles class actions, mass torts, commercial litigation, and personal injury litigation (including medical negligence and product liability cases). The firm itself has won numerous awards, including being listed in Martindale-Hubbell's Bar Register of Preeminent Lawyers. Ten of our attorneys are included in the 2018 edition of Best Lawyers in America, including four who are listed as "Lawyer of the Year" in their respective categories. Only one attorney in St. Louis is chosen per year per category for this distinction. Ten of our attorneys have been listed as "Super Lawyers" and nine have an "AV" rating from Martindale-Hubbell. Our firm also has been very active in the organized bar. The current Missouri Bar President and a former Missouri Bar President are shareholders, as well as a former President of our local bar association.

4. The following provides background information on GRG lawyers and staff members who performed common benefit work in this litigation:

a. Don Downing

I graduated from the University of Missouri School of Law in 1982, where I served as an editor on the Missouri Law Review. I then served for two years as law clerk for the Honorable Edward L. Filippine, District Judge for the Eastern District of Missouri. In 1984, I joined the Kansas City office of Stinson, Mag & Fizzell (now Stinson Leonard Street) as an associate and became a partner in 1990. My practice at Stinson focused on complex commercial litigation, including class actions.

From 1993 through 1995, I served as Chief Deputy Attorney General for the State of Missouri, the state's top appointed legal officer. I was the lead lawyer in cases involving

consumer protection, antitrust, environmental, securities and many other areas of law. I appeared before the United States Supreme Court four times, including one case I personally argued. I also argued six cases before the Missouri Supreme Court and tried substantial cases in federal and state court. I also was responsible for hiring, training and supervising more than 170 assistant attorneys general.

I rejoined Stinson as a partner in 1996 and served as the Managing Partner of the firm's St. Louis office and on the Firm's Managing Committee. I continued to practice in the areas of complex commercial litigation and class actions.

In 2004, I became a shareholder at GRG and have been the leader of our complex litigation, class action and mass tort group since then. I have represented thousands of consumers in class action litigation against cellular telephone and internet service providers, drug companies, hospital systems and other entities that engaged in unfair and deceptive trade practices. I also have represented businesses in commercial disputes.

I began representing farmers in litigation in the mid-1990's when genetically modified seeds were first beginning to be sold. For example, I brought multiple individual cases on behalf of hundreds of farmers against Monsanto for defective genetically modified seed and against a large chemical company for damage caused by herbicide drift. I also brought a class action on behalf of farmers against the federal government for misinformation supplied regarding federal farm program payments. Each of these cases resulted in substantial payments to farmers. I also defended farmers in cases in which Monsanto had sued them for alleged breaches of its technology/stewardship agreements.

In part because of my extensive experience representing farmers, I was appointed in 2007 as one of two Co-Lead Counsel in *In re Genetically Modified Rice Litigation*, MDL # 1811

("*Rice Litig.*"), a large MDL against another large bio-tech company Bayer (which recently acquired Monsanto) in which dozens of law firms worked together and devoted over 100,000 hours of common benefit time and millions of dollars of their resources over a period of several years to achieve a global settlement of $750 million for rice producers and over $1 billion dollars in total payments. I managed this litigation from beginning to end, took and defended many depositions, was lead trial counsel in the four MDL bellwether trials (the first three of which resulted in plaintiffs' verdicts and the fourth of which settled after the first week of trial) and led the global settlement negotiations that resulted in the $750 million rice producer settlement. Other GRG attorneys, including Ms. Garrison and Mr. Sapp, also took significant part in that litigation, as did GRG paralegal Jackie Statz (a veteran who worked closely with the farmers and served as a hub for leadership counsel).

I have been active in community and bar activities, and have received awards for my service as well as for my legal work. I was appointed to the University of Missouri Board of Curators in 2009 and served as Chair in 2014. I have served on the University of Missouri Law School Foundation Board of Trustees and have received the Citation of Merit, the law school's highest award. I also received the Faculty-Alumni Award from the University of Missouri. I was selected by the District Judges of the Eastern District of Missouri to serve on the merit selection panel for the appointment of a United States Magistrate Judge. I have been named by Best Lawyers "Lawyer of the Year" for five of the past six years in three different categories, including "Mass Tort Litigation/Class Action-Plaintiffs." I have an AV Peer Review Rating from Martindale-Hubbell Law Directory, which is the highest given. I have been annually selected to *Missouri & Kansas Super Lawyers* since 2006, in the area of Business Litigation, and

have been named among the Top 50 attorneys in St. Louis and the Top 100 attorneys in Missouri by the same publication.

b. Gretchen Garrison

Receiving her law degree in 1986 from the University of Missouri Kansas City, where she was managing editor of the law review, Ms. Garrison began her legal career as a law clerk to the Honorable Edward Robertson, Missouri Supreme Court. Ms. Garrison is a Principal at GRG and has extensive experience in complex litigation. Prior to joining GRG, Ms. Garrison was a litigation partner with Stinson Morrison Hecker. For many years, she has litigated class actions, MDL and other complex cases involving complicated issues and large corporate defendants including SBC Communications, Inc., MCI Worldcom, Merck, Bayer, Monsanto, BASF, and Aurora Dairy. Ms. Garrison's litigation skills are complemented by extensive appellate experience. Prior to private practice, she served as Deputy Appellate Counsel for the Missouri Attorney General, handling her own appellate matters and overseeing appeals handled by other assistant attorneys general, including analysis and editorial review of briefing and preparation for oral argument. She has briefed and presented argument in all Missouri appellate courts, the Eighth Circuit, and the United States Supreme Court. Ms. Garrison has directly handled some 70 appeals and assisted in countless more. Ms. Garrison has authored several articles and has been a speaker at a number of CLEs and seminars. From 2008 to the present, she has been listed in *Best Lawyers® in America*, and *Best Lawyers in St. Louis* in appellate practice, and also among *Missouri & Kansas Super Lawyers* in the area of commercial litigation. Other recognition includes National Trial Lawyers; Top 100 Trial Lawyers; Top Lawyers of Missouri; and Missouri Lawyers Weekly, Largest Reported Settlement.

Ms. Garrison was heavily involved in the *Rice Litig*. whereas one of the trial counsel at three of the federal bellwether trials, she presented the direct testimony of plaintiffs' liability expert and cross-examined Bayer's liability expert. She also took the lead on most of the research, briefing and argument pertaining to the extensive motion practice under federal and state laws. Among other things, she was primarily responsible for several key rulings, including the court's rejection of Bayer's causation and economic loss doctrine defenses (under five state's laws), rejection of express federal preemption under the Plant Protection Act, and its finding (the first in the country); and that applicable regulations did not permit adventitious presence of regulated GMOs. Ms. Garrison drafted and argued the jury instructions as well as numerous motions *in limine* for each bellwether trial. She also drafted and coordinated briefing of all post-trial motions and was lead appellate counsel on Bayer's appeals of the first three bellwether trials, as well as two subsequent appeals related to attorney's fees, one of which challenged an MDL court's authority to establish a common benefit fund for the payment of common benefit attorneys.

c. Jason Sapp

Mr. Sapp graduated with honors (Order of the Coif) from the University of Missouri School of Law, where he served as Editor in Chief of the *Missouri Law Review*. Prior to joining GRG, he was an associate at Lewis, Rice & Fingersh (now known as Lewis Rice LLC) working on litigation and transaction matters. Mr. Sapp has also litigated numerous class, MDL and complex cases against large corporate defendants including Bayer, UMB Bank, Commerce Bank, BJC Healthcare and Universal Tax Systems, Inc. (a division of Wolters Kluwer). Mr. Sapp has received a number of awards including being named as a Rising Star by *Missouri and Kansas Super Lawyers* magazine from 2012 through 2016, as a 2011 "Up and Coming Lawyer"

by *Missouri Lawyers Weekly*, and as a 2012 Top 40 Under 40 attorney by the National Trial Lawyers Association. Mr. Sapp serves as the Co-Chair of the Complex Litigation Committee for the Missouri Bar.

Mr. Sapp was also heavily involved in the *Rice Litig*. He worked extensively with farmer plaintiffs regarding discovery and damages issues, including collecting, analyzing and producing documents and developing a thorough understanding of the way in which commodity crops are marketed. Mr. Sapp defended numerous plaintiff and damage expert depositions and assisted in presenting these witnesses at trial. He also spent significant time working with FSA farm data, which experience was utilized significantly in the damages analysis and settlement structure in this matter. Mr. Sapp also spent considerable time implementing the global settlement in the *Rice Litig*. case, which provided valuable insight in structuring a resolution in this case.

d. Kaitlin Bridges

Ms. Bridges graduated from the University of Missouri School of Law with honors (cum laude and Order of the Coif) in 2008. She was the Managing Editor of the *Missouri Law Review* and received the William H. Howard Legal Research and Writing Award. After graduation, Ms. Bridges worked as a law clerk for United States District Court Judge E. Richard Webber. Since joining GRG, she has litigated numerous class, MDL and complex cases against large corporate defendants, including UMB Bank, Commerce Bank, Iowa Health System, Blue Buffalo Company, and Universal Tax Systems, Inc. (a division of Wolters Kluwer). She was also involved in implementing the global settlement in the *Rice Litig*.

Ms. Bridges has received a number of awards, including the John C. Shepherd Professionalism Award in 2015 and an "Up & Coming Lawyer" award in 2012. She has been listed in *Best Lawyers® in America* from 2015 to the present and in 2018 was named the St.

Louis Mass Tort Litigation/Class Actions – Plaintiffs Lawyer of the Year. She has also been named as a Rising Star by *Missouri & Kansas Super Lawyers* every year since 2015.

e. Cort VanOstran

Mr. VanOstran is a 2014 honors graduate of Washington University School of Law, where he served as President of the Student Bar Association and Managing Editor of the *Washington University Journal of Law and Policy* and received the Dean's Leadership Award for his contributions to the law school and an Honor Scholar award for his academic performance.

Prior to joining GRG, Mr. VanOstran served as law clerk to the Honorable Audrey Fleissig and the Honorable John Ross, both United States District Judges in the Eastern District of Missouri. Mr. VanOstran previously worked as an associate at an international products liability and commercial litigation firm based in Kansas City. In addition to practicing law, Mr. VanOstran serves as a Visiting Lecturer in Law at Washington University.

f. Jackie Statz

Ms. Statz received her bachelor's degree from Virginia Tech in 1976 and began working in the legal field in 1976 as a legal assistant/paralegal. She obtained her paralegal certificate with honors from Roosevelt University in Chicago in 1980 with an emphasis on litigation. Since arriving at GRG, she has worked on class actions, MDL and complex litigation cases. Ms. Statz was heavily involved in the *Rice Litig*. where she worked closely with the farmers in gathering information, documents and assisting them in completion of their plaintiff fact sheets and later, their settlement documents. She worked with leadership counsel throughout the case, worked with attorneys on the various briefing issues, assisted at the trials and was heavily involved with the entire settlement claims process.

g. Charles Fasterling

Mr. Fasterling received his bachelor's degree from the University of Rochester in 2009 and his paralegal certification from St. Louis Community College in 2010. Mr. Fasterling began working at GRG in the fall of 2010, assisting the commercial litigation team in implementing the settlement achieved in the *Rice Litig.*

5. The knowledge and unique expertise GRG attorneys gained during the *Rice Litig.* proved to be extraordinarily valuable in investigating, developing, and prosecuting the claims in this litigation against Syngenta. For example, Ms. Garrison developed detailed expertise on: genetic modification, channeling, and means of contamination; the nature of the federal regulatory system governing regulation and deregulation of genetically modified organisms; the federal Plant Protection Act and related preemption arguments that could be asserted by defendants; WTO and BIO policies relating to asynchronous approvals; the nebulous economic loss doctrine and its state-law variant and policies; analyses of duty and causation; and a host of other issues that were directly relevant to the claims asserted, and Ms. Garrison's work, in this MDL. Likewise, Mr. Sapp gained valuable expertise about the manner in which farmers farm, keep and maintain their records (including records showing their seed purchases and crop sales, government farm programs and government records available relating to those programs (including FSA 578 forms and the data which FSA maintains regarding farming operations)), the structure and legal issues of farming entities and landlord relationships, the market and pricing mechanisms used in selling commodity crops, and the methods through which experts can determine damages to each farmer resulting from a loss of a foreign market and related legal issues.

6. For me, in addition to developing or refreshing expertise in each of the areas listed above, the *Rice Litig.* allowed me to gain additional expertise in developing damage models consistent with the requirements of *Daubert* in a context much like this MDL — price impacts to farmers resulting from the loss of a foreign market for their crop. *Rice Litig*. also gave me invaluable insight and expertise on how juries would react to claims by farmers against biotech companies involving a loss of a foreign market, the importance of selecting farmers as class representatives and bellwether plaintiffs who are genuine, articulate and can explain farming in a manner that urban juries relate to, as well as the importance and means of explaining complex economic analyses. (For example, we developed and presented in the *Rice* trials the same tutorial that Dr. Babcock presented in the trial in this MDL against Syngenta on the law of supply and demand. Jurors in the *Rice* trial told us it was very helpful to their understanding of the price impacts of the loss of a foreign market.) Although class certification was not granted in *Rice*, I gained much from the class motion practice in that case, including examining firsthand the types of arguments and evidence that experienced counsel would likely present to oppose class certification in a case involving price impacts stemming from the loss of a foreign market. That experience strengthened our collective ability to frame persuasive class certification arguments and evidence in this litigation.

7. Another valuable lesson was the importance of developing admissible evidence through depositions of witnesses who may not be available at trial and the art of editing large volumes of video deposition clips down to the essence of what is necessary to support the claims and assist the jury in understanding the facts. My management skills also were honed in ways invaluable to an effective, efficient MDL: assembling a team of leadership attorneys; coordination, communication and team building; effective means of managing scores of lawyers

around the country over a period of several years toward our common goal of maximizing recovery for our clients; and coordination with and early resolution of disputes with counsel prosecuting related litigation in other venues which was our primary motivation in reaching out to the Minnesota state court leadership and entering into our cooperation agreements with that group. In short, the expertise and experience GRG attorneys gained through the *Rice Litig.* made us uniquely qualified to prosecute this litigation and allowed us to hit the ground running when we began to receive calls from farmers in the early fall of 2014.

II. EARLY WORK AND LEADERSHIP TEAM

8. Given my experience in the *Rice Litig.* and other farmer cases, it is not surprising that beginning in the early fall of 2014, I began to receive numerous calls from farmers and others inquiring about my and my firm's willingness to investigate and prosecute litigation against Syngenta based upon its decision to commercialize Viptera and the ensuing loss of the Chinese corn market to U.S. farmers. Attorneys from GRG devoted significant time and resources in the fall of 2014 to investigating the facts, consulting with and retaining experts, researching potential legal claims that could be asserted by farmers and others and drafting two 100-plus page complaints that were filed in November 2014 in the Eastern District of Missouri and the District of Kansas. That work was foundational to the first Master Complaints filed in this MDL on March 13, 2015.

9. I personally had numerous conversations in the fall of 2014 with farmers, seed dealers, agricultural economists, lawyers for Cargill and ADM and others directly or indirectly involved in the corn industry to immerse myself in the issues that likely would be relevant in the litigation.

10. The primary researcher, coordinator and drafter of the complaints was GRG attorney Gretchen Garrison. Ms. Garrison was assisted by Jason Sapp and me (including my extensive work with experts on the section pertaining to damages), along with attorneys from other leadership firms. As mentioned above, Ms. Garrison was uniquely qualified to lead the drafting team given her extensive experience in the *Rice Litig.* She and others carefully and methodically researched potential legal theories that might be available to farmers under several different state laws, as well as potential defenses that might be asserted by Syngenta, under both federal and state law. The *Wilson Farms* complaint asserted claims on behalf of farmers in 13 states (Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Tennessee and Wisconsin) and the *Five Star Farms* complaint asserted claims on behalf of farmers in 6 states (Kansas, Colorado, Nebraska, North Dakota, South Dakota and Oklahoma). Both complaints were filed on November 11, 2014 and amended on December 18, 2014. Mr. Sapp also conducted substantial factual investigation and legal research, and was heavily involved in drafting portions of the complaints. These complaints were the template used in drafting the Master Complaints that were filed on March 13, 2015.

11. It was also vitally important early on to fully understand and evaluate the effect of the loss of the Chinese market on the price of U.S. corn. I spent significant time with two agricultural economists I had retained in the *Rice Litig.*, Dr. Colin Carter and Dr. Bruce Babcock, each of whom is among the top agricultural economists in the world. Both had performed similar economic analyses in the *Rice Litig.* to evaluate the loss of the European Union market on U.S. rice prices. I worked with these economists to examine various methodological options and to ensure that the methods chosen reflected sound economic principles, would pass *Daubert* scrutiny and could be explained in a manner that juries would understand.

12. I also spent much time communicating with lawyers for farmers, some of whom I had worked with in the *Rice Litig.* and in previous farmer-related litigation, in an effort to put together the best legal team possible. I knew from personal experience in previous cases against Monsanto and Bayer that large biotech companies like Syngenta would present a formidable challenge, both in terms of the quality of the attorneys it would retain and in the amount of resources it would devote to the litigation. Thus, it was vitally important that we put together a team that had the skills, talents, and resources necessary to wage an expensive, multi-year battle against a tough and well-financed adversary. It was also necessary to assemble a team that could work harmoniously and represent all interests in the litigation.

13. I had worked extensively with William Chaney and Scott Powell and their firms in the *Rice Litig*., and found them both to be honest, talented and hard-working lawyers dedicated to their clients. Mr. Chaney was on the Executive Committee in the *Rice Litig.* and also was on our trial team in each of the four *Rice* bellwether trials. He also performed a multitude of other important tasks and did each of them well. I was particularly impressed by the thoroughness of his work, and his consideration of all the details. I was also impressed with a then young lawyer in Mr. Chaney's firm, Drew York. Mr. York performed a number of tasks in the *Rice Litig.*, and I knew he would be a valuable member of our leadership group in this MDL.

14. Scott Powell also was extensively involved in the *Rice Litig*. and was on our trial team for the second bellwether trial. Mr. Powell also tried a related state court case and obtained the largest damage award of all the *Rice* trials. Mr. Powell has many talents which he demonstrated during our work together, and foremost among them is his extraordinary ability in the courtroom.

15. Given our extensive work together on a case with many similarities to this MDL and our respect for each other, Mr. Chaney, Mr. Powell and I agreed early on that it made sense for us to work together.

16. I have known Pat Stueve from the time we were young attorneys at the old Stinson Mag firm. We worked extensively together on a significant commercial litigation case for a large client in the 1990s. I have always had tremendous respect for Mr. Stueve's abilities as a lawyer, his tireless work ethic and for the honorable manner in which he conducts himself. After we both left Stinson, we worked together again on a consumer fraud class action against a major pharmaceutical firm on behalf of Missouri consumers. After working on that case for years and within just a couple of months of a class trial, we settled that litigation for $220 million, the full amount our experts had determined the class would be entitled to if we won at trial. The work performed by Mr. Stueve and his firm in that litigation was top notch in every respect. When I found out Mr. Stueve was representing farmers with claims against Syngenta, I thought he would be a perfect addition to our leadership group. As it turned out, he was.

17. After the Judicial Panel on Multi-District Litigation consolidated this litigation in the District of Kansas, Mssrs. Chaney, Powell and Stueve and I looked to add to our leadership group lawyers who could bring the experience, expertise and resources necessary to prosecute a case of this magnitude.

18. One of the lawyers we invited to become a part of our leadership was Steve Weiss of Seeger Weiss. Mr. Weiss was a member of the Executive Committee in the *Rice Litig.* and also involved in previous litigation involving farmers, including corn farmers in the *Starlink* case. He is very knowledgeable about farmer litigation and he and his firm brought a wealth of

experience in mass tort and class action litigation. Seeger Weiss also brought substantial human and financial resources to the litigation.

19. Scott Poynter also was on the Executive Committee in the *Rice Litig.* and likewise very experienced in farmer, class action and mass tort litigation. Rob Shelquist also had previous experience in farmer litigation through his involvement in *Starlink* and substantial class action experience. Jayne Conroy, Chris Ellis and Rick Paul each had substantial mass tort and class action experience, and were involved early on in this litigation. John Ursu and David Graham, representing Cargill and ADM respectively, and their firms brought significant human and financial resources to the table, and had a wealth of experience representing both plaintiffs and defendants in commercial and class action litigation. Mr. Ursu's client filed the first case against Syngenta. In short, we assembled a team that had the expertise, experience and financial resources to take on a large biotech company like Syngenta and was well suited to handle class, individual, Producer and Non-Producer cases.

20. Tom Bender, added by the Court to our leadership group, was a valuable addition. Mr. Bender and Dirk Hubbard of his firm conscientiously provided leadership and organization to the process of preparing for and defending farmer depositions.

21. As the litigation progressed, dozens of other firms provided quality assistance to our efforts. Our fee application seeks funds to provide compensation to all firms that provided common benefit work in accordance with this Court's common benefit order.

III. GRG WORK AFTER LEADERSHIP APPOINTMENT

22. In the paragraphs below, I summarize work that was performed by GRG timekeepers at each stage in the litigation after the leadership appointment. I understand that the other Co-Leads are providing similar declarations as to work performed by their respective firms,

and that other firms that provided common benefit work are likewise providing declarations summarizing their work. By providing the detail below regarding the work performed by GRG personnel, I do not mean to suggest that attorneys from other firms were not involved in the listed activities. In fact, the vast majority of the work performed on behalf of plaintiffs was a team effort and resulted from the harmonious and collegial working relationships we shared. Virtually every piece of work product was reviewed and scrutinized by lawyers in firms that were not the primary authors of the work. We collectively were far better lawyers and law firms than any of us could have been individually.

23. After the Court's appointment of the leadership group on January 22, 2015, a multitude of tasks needed to be performed in relatively short order. One of the most significant was to draft Producer and Non-Producer Master Complaints, which were filed on March 13, 2015. The legal research and drafting that created our first Master Complaints was led by Ms. Garrison. Like she had done in the *Rice Litig.*, Ms. Garrison masterminded legal claims, arguments and strategies, and coordinated a team of lawyers from GRG and other firms in conducting the necessary legal and factual research and drafting processes. Ms. Garrison later was joined in the briefing role by Brad Wilders of the Stueve Siegel firm, and those two extremely gifted lawyers divided responsibilities for being plaintiffs' experts on numerous legal issues and taking the lead on substantive motion practice. GRG attorney Jason Sapp also was significantly involved in various research and drafting, as well as selection of class representatives. Mr. Sapp was very familiar with many of the issues given his prior involvement in the *Rice Litig*.

24. As for me, the leadership appointment in January 2015 began a whirlwind of non-stop activity that lasted all the way through and beyond the June 2017 class trial. Before and

throughout this entire time period, the resources of my firm's entire commercial litigation/class action/mass tort practice were so fully devoted to this litigation that I was required to instruct those responsible for new client screening and intake to advise all new potential clients that our group was not taking new matters. We had to decline several significant matters due to our commitment to this litigation.

25. At the beginning of any MDL, numerous organizational, procedural and substantive tasks have to be performed. In addition to working with Ms. Garrison and others on the Master Complaints filed on March 13, 2015 as described above, I spent significant time early on working with my fellow Co-Leads and members of our Executive Committee to try to ensure that we had processes in place that would allow our group to operate effectively and efficiently, and would allow for the free flow of information to those who needed it to perform the work they were assigned to perform. As I had learned from the *Rice Litig*., it also was important early on to reach out and attempt to resolve disputes with fellow plaintiffs' attorneys in other venues, which we spent significant time on. That early work on coordination paid off later and helped us avoid major disputes over written discovery, depositions, class certification and experts. The following is a non-exclusive list of various categories of work I personally performed from the date of our Leadership appointment on January 22, 2015 through April 30, 2015 (and throughout the litigation where indicated):

a. Drafted and distributed agendas for Co-Lead meetings and conference calls (throughout the litigation).

b. Drafted and distributed agendas for and led EC meetings and conference calls (throughout the litigation).

c. Reviewed, edited and approved all substantive court filings (along with other Co-Leads, throughout the litigation).

d. Worked on proposed scheduling orders, the protective order and the common benefit order.

e. Made assignments of work to non-co-lead firms, and suggested allocation of work to Co-Lead firms (along with other Co-Leads, throughout the litigation).

f. Monitored progress of assigned work to ensure timely completion (along with other Co-Leads, throughout the litigation).

g. Led process of identifying and vetting class representatives and bellwether plaintiffs.

h. Led work on coordination with Minnesota leadership (along with other Co-Leads, throughout the litigation).

i. Worked on coordination issues with those that later filed cases in the Southern District of Illinois (along with other Co-Leads, throughout the litigation).

j. Worked on coordination with Cargill and ADM (along with other Co-Leads, throughout the litigation).

k. Worked on written discovery requests.

l. Reviewed summaries of depositions in related litigation involving Bunge prepared by GRG attorney Kaitlin Bridges.

m. Reviewed "hot" documents identified by document review team which included Ms. Bridges.

26. The next several months were focused primarily on obtaining, reviewing and analyzing discovery obtained from Syngenta, modifying the complaints to include facts revealed by that discovery, responding to Syngenta's lengthy motion to dismiss, reviewing and digesting the Court's rulings on Syngenta's motions and beginning preparation for class certification motion practice.

27. My firm and the Stueve Siegel firm took the overall lead in coordinating the opposition to Syngenta's motion to dismiss, which involved numerous issues, including complicated and potentially dispositive issues of duty, causation and the economic loss doctrine

under the laws of 22 states. Ms. Garrison took the lead on economic loss and other areas of research and drafting. Mr. Sapp did extensive work regarding consumer protection statute issues, including the nationwide Minnesota Consumer Protection Act class claims. Ms. Garrison, Mr. Sapp, Mr. Wilders, and Jason Earley later argued at the motion to dismiss hearing.

28. From May 2015 through September 2015, the following is a non-exclusive list of various categories of work I performed and, where indicated, others performed:

a. Continued detailed review and analysis of hot documents; drafted inserts for amended complaints containing references thereto.

b. Worked with Ms. Garrison and Mr. Sapp on other amendments to producer, non-producer and milo Master Complaints.

c. Participated in multiple in-person and telephone conferences and had many other communications with Dr. Carter and Dr. Babcock regarding damage methodologies.

d. Continued to work on coordination issues with related litigation including negotiations and drafting of joint prosecution agreements, and common benefit orders and related motions.

e. Detailed review and analysis of motions to dismiss producer and non-producer complaints; worked on assignments related thereto.

f. Worked with Ms. Garrison, Mr. Wilders, Mr. Sapp and others on the responses to Syngenta's motions to dismiss.

g. Worked with others on response to motion to dismiss milo complaint.

h. Worked on class certification issues; made assignments relating thereto.

i. Planned, coordinated and worked on gathering of documents and preparation of discovery responses for class representatives and bellwether plaintiffs (with Mr. Sapp and members of other firms).

j. Detailed review and analysis of the Court's 117-page ruling on motions to dismiss; outlined process and assignments for amendments and other issues relating to the ruling.

k. Reviewed and analyzed class certification issues in light of the ruling; made assignments relating thereto.

l. Multiple communications with class representatives and economic experts relating to class certification issues.

29. The remainder of 2015 was devoted to continuing review and analysis of written discovery provided by Syngenta, identifying and developing trial strategies and themes based upon that discovery, continued work preparing for class certification motion practice, identifying and vetting potential bellwether plaintiffs, producing discovery from farmers and defending their depositions (plaintiffs ultimately produced documents for and defended depositions of 77 farmers from eight different states), and scheduling and preparing for the upcoming depositions of Syngenta's corporate representatives and executives.

30. Others at GRG including Mr. Sapp and Ms. Bridges were heavily involved in reviewing documents produced by Syngenta and gathering and preparing plaintiff discovery.

31. The following is a non-exclusive list of my activities during those months:

a. Worked on scheduling orders and detailed assignments related thereto.

b. Continued working on class certification issues, including with our experts.

c. Prepared for and attended week-long trial strategy session with trial consultant (with Co-Leads and others).

d. Designed and oversaw bellwether trial selection and vetting process and identification of plaintiffs' bellwether selections; assignments regarding same.

e. Continued work on coordination with related litigation.

f. Began preparations for depositions of Syngenta corporate representatives.

g. Worked with Syngenta on developing a master schedule for upcoming depositions of Syngenta executives.

h. Addressed multiple issues regarding ongoing farmer depositions.

32. Depositions of Syngenta corporate representatives and executives began in January 2016. Over the course of the next six months, plaintiffs deposed 32 Syngenta executives on four different continents.

33. One of the four MDL Co-Leads took the lead on virtually every Syngenta deposition. Normally, the MDL Co-Lead taking the deposition would share the deposition outline with the attorney for the Minnesota leadership and counsel for Cargill and ADM in advance of the deposition to give other plaintiffs' counsel, to the extent they wished to question the witness, the ability to avoid non-duplicative questions.

34. The preparation time for each of these depositions was lengthy given the numerous documents produced by Syngenta that contained the name of or was related to each deponent. I personally took the depositions of 12 fact witnesses, most of which lasted more than one day, including the top two Syngenta executives, Mssrs. Mack and Pisk. I also took the deposition of Mr. Bernens, whose multiple warnings to other Syngenta executives about the significance of the Chinese market to U.S. corn producers, was important to several of our trial themes and strategies.

35. Much of the deposition testimony I elicited from these and other witnesses I deposed was played in both the federal MDL trial as well as the Minnesota trial. For many of the depositions I took, Ms. Bridges undertook the tedious document review process with substantial assistance from Mr. Sapp to cull the number of documents for my detailed review for each deposition to a manageable number and also worked on deposition outlines. This work by Ms. Bridges was very time consuming, but necessary given the numerous depositions we were required to take in a relatively short time period.

36. Also, during this time period, I and others continued to work on class certification issues and with our economic experts and began working with the Settlement Special Master and others on multiple preliminary settlement issues.

37. Mr. Sapp and I also prepared for and defended multiple class representative and bellwether depositions. Mr. Sapp also worked with others to address plaintiffs' discovery issues.

38. The following is a non-exclusive list of my activities from January 2016 through April 2016:

a. Continued working on master schedule for depositions of Syngenta executives.

b. Prepared class representatives for depositions; defended those depositions along with Mr. Sapp.

c. Detailed review of numerous facts and important documents identified by document review team.

d. Worked with Drs. Carter and Babcock on draft reports related to class certification.

e. Addressed multiple class certification briefing issues, as did Ms. Garrison.

f. Detailed review of witness-specific documents in preparation for Syngenta executives' depositions.

g. Prepared for and took depositions of Syngenta's corporate representatives Martin (2 days) and Vulcan.

h. Provided guidance to Mr. Sapp and others regarding the meet and confer process regarding plaintiff discovery.

i. Prepared for and took the depositions of Syngenta witnesses: Rennie, Sather (2 days), Wheeler (2 days), Hull (2 days), Bernens (3 days), Pisk (2 days in London), Mack (2 days in London).

j. Began working on settlement issues with Settlement Special Master.

k. Continued detailed work with Drs. Carter and Babcock on their class reports.

l. Worked on expert sharing agreement with Minnesota leadership.

m. Worked with class certification briefing team on class issues.

39. During the next several months, the depositions of Syngenta executives continued.

40. In addition, our class certification briefing team led by Mr. Wilders devoted significant time to our class opening and reply briefs. I devoted much time to working with Mr. Wilders on those briefs and with our class experts, Drs. Carter and Babcock, in finalizing their class expert reports, preparing and producing them for their depositions and for their testimony at the class certification hearing. I also devoted significant time in preparing for and taking the depositions of Syngenta's class experts, and preparing for and participating in the two-day class certification hearing. I also devoted significant time in preparing for and taking the depositions of Syngenta's class experts, and preparing for and participating in the two-day class certification hearing, including a dry run with Minnesota Lead Counsel the day before the hearing.

41. Ms. Garrison and Mr. Wilders again took the lead on opposing Syngenta's motion for judgment on the pleadings, with assistance from me and attorneys from other firms.

42. I also continued to work on multiple settlement issues as directed by the Settlement Special Master and on bellwether selections. Mr. Powell and I also worked on designing a focus group and mock trial session to enable us to test our trial strategies and themes.

43. The following is a non-exclusive list of my activities from May 2016 through September 2016:

a. Monitored Fisher deposition.

b. Continued detailed work with Drs. Carter and Babcock on class reports.

c. Detailed work on class certification brief.

d. Worked with Mr. Powell on design and scheduling of focus group and mock trial sessions.

e. Worked on response to Syngenta's motion for judgment on the pleadings.

f. Prepared for and took deposition of NAEGA corporate representative Martin (2 days), NGFA corporate representative Gordon, and Cargill's Bodin (2 days).

g. Deposition preparation of Drs. Carter and Babcock.

h. Defended Carter and Babcock depositions (2 days each).

i. Worked with Bill Chaney on non-producer bellwether selections.

j. Worked with Co-Leads on producer bellwether selections.

k. Detailed review of Syngenta's class certification brief and accompanying expert reports; made assignments related thereto.

l. Consulted with Drs. Carter and Babcock regarding Syngenta's expert reports.

m. Prepared for and took depositions of Syngenta experts Thurman and Fischel; attended deposition of Syngenta expert Finch.

n. Detailed work on class certification reply brief.

o. Worked with Drs. Carter and Babcock on declarations.

p. Reviewed and analyzed ruling dismissing ABCD defendants and its impact on trials for producers.

q. Detailed preparation for evidentiary class certification hearing and oral argument.

r. Redirect of Drs. Babcock and Carter at class certification hearing.

s. Oral argument at class certification hearing.

t. Continued work on settlement issues and meetings with Settlement Special Master; worked on Master Settlement Agreement and settlement memorandum.

u. Worked on focus group presentation.

v. Detailed review and analysis of class certification ruling and its impacts on the litigation; mapped out remainder of litigation.

44. After the Court issued its ruling certifying our proposed nationwide and state classes in September 2016, we immediately began work on identifying and assigning all work that needed to be performed through our first trial.

45. I also devoted significant time to continued development of trial themes and strategies, working with our merits experts on their reports and producing them for their depositions. The merits experts were identified by the federal MDL Co-Leads, who also worked with them on their reports and prepared them for and defended their depositions. The federal MDL Co-Leads made the experts available to the Minnesota leadership under an Expert Sharing Agreement entered into by the parties.

46. GRG attorney Kaitlin Bridges also devoted substantial time to working with our experts on their merits expert reports and preparing them for their depositions.

47. I also continued working on multiple settlement issues as directed by the Special Master. The following is a non-exclusive list of my activities in October and November 2016:

a. Detailed work on assignments through trial.

b. Worked on project to identify and organize all jury points to be made during trial.

c. Worked with Drs. Carter and Babcock to finalize their merits expert reports. Ms. Bridges assisted with this work.

d. Detailed review of all other plaintiff expert reports; suggested edits and additions.

e. Worked on class notice issues.

f. Worked on response to Rule 26(f) petition.

g. Prepared for and attended week-long session with trial consultant.

h. Worked with Mr. Sapp on expert analysis from Mr. Frye.

i. Prepared for and defended Dr. Babcock's second deposition.

j. Prepared for and defended Dr. Carter's second deposition.

k. Continued work on multiple settlement issues as directed by Special Master.

48. In December 2016, our pretrial preparation began to accelerate. We began the incredibly time-consuming and tedious process of conducting a detailed review of all depositions to identify portions that should be considered for designation. After later winnowing down those portions to the ones we ultimately decided should be offered at trial, we then began the tedious process of reviewing and editing video clips for each of those designations. A similar process was undertaken to identify documents that we would consider offering into evidence.

49. Also, in late 2016 and early 2017, we worked on the detailed and important pretrial order, as well as plaintiffs' motion for summary judgment on several important issues including Syngenta's efforts to assign fault to producers, exporters, and the Republic of China, and to claim that the conduct of exporter (as well as China) was a superseding cause of the harm in this case.

50. Ms. Garrison and Mr. Wilders led the summary judgment team, both from the plaintiffs' side, and in opposing Syngenta's lengthy motion for summary judgment against plaintiffs. Ms. Garrison was primarily responsible for gathering, assembling, and drafting the memorandum and supporting exhibits for Plaintiffs' summary judgment motion, which included 123 statements of undisputed facts. Paralegal Jackie Statz assisted in gathering and assembling exhibits. Jason Earley from Hare Wynn also was instrumental in compiling the extraordinarily

comprehensive set of facts for the opposition. Jason Sapp also assisted with the summary judgment opposition.

51. Additional work during this period included various *Daubert* motions directed at some of Syngenta's experts (whose depositions we took during this period), responding to Syngenta's *Daubert* motions directed at our experts, and refinement of trial strategies and themes (including through a mock jury trial).

52. I also continued working on multiple settlement issues as directed by the Settlement Special Master.

53. The following is a non-exclusive list of my activities from December 2016 through March 2017:

a. Began work on deposition designation and video clip project. Ms. Garrison and Ms. Bridges also worked on this process.

b. Continued work with Mr. Sapp on issues relating to Mr. Frye's expert analysis.

c. Continued working with Drs. Carter and Babcock on issues related to their reports and trial testimony. Ms. Bridges continued to assist with this work.

d. Continued work on multiple settlement issues as directed by Special Master.

e. Worked on selection of class plaintiffs for upcoming trials.

f. Worked on summary judgment motions.

g. Drafted damage section of proposed pretrial order.

h. Reviewed voluminous evidentiary materials to assist with other sections of pretrial order.

i. Worked with Mr. Powell to design mock trial session and suggest assignments.

j. Detailed reviews of all of Syngenta's expert reports.

k. Prepared for and took Thurman, Fischel and Goodwin depositions. Ms. Bridges assisted.

l. Drafted *Daubert* motions directed at Goodwin and Thurman with assistance from Ms. Bridges.

m. Detailed review of and suggestions for summary judgment briefing.

n. Detailed review of draft *Daubert* motions directed at five other Syngenta experts; made edits and additions.

o. Detailed review of *Daubert* motions directed at Drs. Carter and Babcock; worked on responses, with assistance from Ms. Bridges.

p. Review of *Daubert* motions directed at other Plaintiffs' experts; provided suggestions and edits on responses.

q. Worked on and participated in mock trial presentation. GRG attorney Cort VanOstran assisted on this work.

r. Detailed and extensive work on deposition designation project.

s. Detailed review of 149-page summary judgment response from Syngenta; outlined assignments for response.

t. Drafted replies in support of *Daubert* motions directed at Goodwin and Thurman, with assistance from Ms. Bridges.

u. Worked on responses to motions to strike Carter and Babcock declarations. Ms. Bridges assisted.

v. Continued working on multiple settlement issues, with the assistance of Mr. Sapp, including Master Settlement Agreement and settlement conferences as directed by Special Master.

54. During this period, Ms. Garrison and Mr. Wilders took the lead on plaintiffs' extensive 112-page summary judgment reply briefing.

55. Important successes on the summary motions had significant effect on the scope of issues at trial, among them, that Syngenta could not attribute fault to producers, exporters Cargill and ADM, or China and could not assert that the conduct of Cargill and ADM was a superseding cause of Plaintiffs' harm.

56. From April 2017 through the June 2017 three-week trial, we were absorbed in final trial preparation and the trial itself. We spent much time preparing all live witnesses and experts for their testimony, preparing for cross-examination, preparing direct and cross-examination outlines, preparing opening statement and closing argument outlines and slides, preparing and responding to motions in limine, finalizing our deposition designations and responding to Syngenta's designations (including both objections and counter-designations), reviewing and responding to Syngenta's counter-designations (including objections and counters to the counter-designations), working on jury instructions, attending a final week-long session with our trial consultant, working on jury selection issues and working with our jury consultant and trying the case. Given the complexities and length of the trial, all of our GRG team was heavily involved in numerous trial issues.

57. Ms. Garrison drafted the jury instructions proposed by Plaintiffs, analyzed and researched issues relating to the instructions proposed by Syngenta, and, with Mr. Chaney, engaged in numerous meet and confer sessions with Syngenta's counsel in an effort to find common ground for a set of stipulated instructions. She also was the primary drafter of briefing that pertained to disputed instructions, and presented oral argument at the instruction conference.

58. Ms. Garrison, along with Mr. Wilders, were primarily responsible for responding to Syngenta's pre- and post-verdict motions for judgment.

59. Mr. Sapp spent much time preparing each of the class representatives for their trial testimony, preparing cross-examinations of anticipated Syngenta witnesses, participating in meet and confer sessions with defendants regarding trial exhibits and addressing various other legal issues related to admissibility and damages requirements that arose before and during the

trial including numerous motion in limine and evidentiary issues. Mr. Sapp also worked with the notice administrator regarding exclusion requests and other class administrative issues.

60. Ms. Bridges assisted me in preparing our agricultural economists for their testimony and in preparing for cross-examination of Syngenta's damage experts, including identifying a discrepancy between one of Syngenta's expert report exhibits and a similar exhibit that expert presented at trial which I pointed out to the jury. She also devoted time to multiple meet and confer sessions with opposing counsel regarding exhibits. Ms. Bridges also devoted considerable time to the deposition designation and video editing process.

61. Mr. VanOstran worked with me and lawyers from Hare Wynn on our opening and closing arguments.

62. The following is a non-exclusive list of my activities from April 2017 through June 2017:

a. Continued detailed work on deposition designations of many witnesses.

b. Continued work on settlement, together with Mr. Sapp, under direction of the Special Master.

c. Detailed review of the Court's summary judgment rulings and analyzed impact on trial presentation.

d. Reviewed motions in limine drafts and provided input.

e. Reviewed jury instruction drafts and provided input.

f. Drafted opening statement outline of points.

g. Prepared for and attended week-long session with trial consultant focused on opening statement and demonstratives.

h. Worked on numerous pretrial issues and followed up on assignments.

i. Multiple meetings with Mr. Sapp and plaintiff Bret Kendrick to prepare him for his trial testimony; worked on direct examination outline.

j. Meetings with Ms. Bridges and Drs. Carter and Babcock to prepare them for their trial testimony; worked on direct examination outlines.

k. Detailed work on review of all videos to be played by Plaintiffs (divided among Co-Leads).

l. Worked with Drs. Carter and Babcock on supplemental reports.

m. Detailed work on objections to Syngenta's designations, counter-designations and counters to the counters, assisted by Ms. Garrison, Mr. Sapp and Ms. Bridges.

n. Detailed review and analysis of Court's *Daubert* rulings and implications on trial.

o. Detailed work on all witness direct and cross-examination outlines, with assistance from Ms. Bridges.

p. Worked on closing argument outline.

q. Final trial preparation.

r. Attended and participated in trial.

63. After the trial, we began the process of preparing for the upcoming trial of the Arkansas and Missouri classes, and worked with our experts to supplement their reports. Ms. Bridges assisted.

64. We also worked with the Minnesota leadership to assist them in preparing for their trial of claims of the Minnesota class, including working with our experts who would be testifying in the Minnesota trial. In addition, we provided the Minnesota Leadership counsel with our Daubert briefing on our experts.

65. We also continued work on settlement as directed by the Settlement Special Master. After the Settlement Negotiation Committee was appointed, we spent significant time educating Mr. Seeger on the litigation and settlement issues that had been previously addressed or raised and reviewing and analyzing all settlement issues we were made aware of.

66. GRG attorney Jason Sapp and I were heavily involved in the settlement process, conducting detailed reviews of all versions of term sheets and final settlement agreements, working with our experts to analyze various settlement issues and multiple other tasks related to settlement. Mr. Sapp also worked with FSA personnel and the notice and claims administrator on multiple data, notice and claims issues.

67. The following is a non-exclusive list of my activities during this post-trial time period:

a. Worked on class certification brief for the remaining 12 states and class representative vetting.

b. Worked with Drs. Carter and Babcock on supplemental reports for upcoming MDL trials.

c. Worked with Drs. Carter and Babcock and Minnesota counsel in preparation for Minnesota trial.

d. Worked on response to damages section of Syngenta's post-trial motion, with assistance from Ms. Bridges.

e. Provided assistance to Minnesota counsel on cross-examination of Syngenta's damage experts.

f. Multiple meetings, conference calls and other communications to educate Mr. Seeger on litigation and prior settlement discussions after appointment of Settlement Negotiation Committee and to evaluate various settlement proposals and issues.

g. Worked with Dr. Babcock on various settlement related issues.

h. Provided input, together with Mr. Sapp, on a proposed Allocation Plan for the June trial judgment.

i. Consulted with Mr. Sapp and others regarding meetings and discussions with FSA regarding data production and allocation methodology.

j. Worked extensively, with Mr. Sapp and others, on potential settlement structures and allocations methodologies.

k. Reviewed and provided input, together with Mr. Sapp, on settlement format, notice and implementation processes.

68. Also during this period, we were preparing for summary judgment motions respecting the Arkansas/Missouri trial. Briefing on summary judgment positions was well underway at the time of settlement. Based on meet and confer sessions with Syngenta (conducted by Mr. Wilders), we were aware of the issues Syngenta would assert, as well as active issues on which Plaintiffs would seek summary judgment against Syngenta on which Syngenta did not believe the Court's prior order applied. Among other things, Syngenta would raise an assumption of risk defense under Arkansas and Missouri law not available under Kansas law. It also would seek to assign fault to China, all exporters who shipped corn to China in addition to Cargill and ADM under Arkansas and Missouri law. Syngenta also would assert that all exporters, not just Cargill and ADM, were a superseding cause for Plaintiffs' injury. Ms. Garrison was in the midst of drafting the summary judgment oppositions and motion for Plaintiffs when the parties reached an agreement in principal to settle the case.

69. From the onset of the case, Jackie Statz worked with the class representative/ bellwether clients in gathering information needed for the Kansas and Missouri complaints and the Master complaint. She assisted with document collection from class representative and bellwether clients and worked on the responses to discovery. Because she worked extensively with plaintiff fact sheets in *Rice Litig.*, she was consulted by the team of attorneys who developed the plaintiff fact sheet in this case. During the discovery stage, Ms. Statz reviewed and coded documents produced by Syngenta. Ms. Statz worked closely with Don Downing, Jason Sapp and Kaitlin Bridges on their work with experts Dr. Colin Carter and Dr. Bruce Babcock and gathered the experts' materials used in all of their reports for production to Syngenta. She assisted the attorneys in preparing for the experts' depositions and Syngenta

witnesses which included extensive work on numerous Excel spreadsheets produced by Syngenta witnesses. Ms. Statz was tasked with collecting and organizing the spreadsheets and corresponding documents from the Minnesota counsel regarding their clients who were opting out. Throughout the duration of the case, she responded to requests from GRG and other Co-Lead firm attorneys for various work products and materials needed for use in preparing briefs and assisted with preparing exhibits to the briefs. She was also the main contact with the court reporters in resolving issues, reviewing all invoices for accuracy and approving the invoices for payment. In preparation for trial, Ms. Statz worked with the team on creating deposition designations and preparing video clips for use at trial.

70. Charles Fasterling assisted the GRG attorneys with various tasks such as deposition preparation and document production. He corresponded with farmer clients regarding obtaining and producing client records and information.

IV. CONTINGENCY FEE PERCENTAGE

71. As the Court is aware, tens of thousands of corn producers were signed up as clients by numerous lawyers. Having seen many of those contracts and spoken with many lawyers whose firms entered into those contracts, I am aware that most of those contracts require payment of 40% of the gross recovery to the lawyers.

72. The retention contract that the Co-Leads utilized required payment of a fee of 33 1/3 % of the gross recovery. Our firms collectively have over 4,600 clients in the litigation.

73. Fee contracts with a one-third or higher contingency fee are customary in farmer cases, and in most other cases as well. It is customary for my firm to have at least a one-third contingency fee arrangement for commercial litigation. In the *Rice Litig.*, the vast majority of fee contracts also required payment of 40% and my firm's contract required payment of 33 1/3%.

Given the risk, uncertainty, and lengthy time period involved before any potential recovery and the enormous resources that must be devoted, these fee percentages are reasonable and conform to standard practice.

74. GRG will not seek to recover attorneys' fees or expense reimbursement from any individual client that is part of the global settlement. Instead, GRG will look solely to the Court for those fees and expenses.

75. The result obtained in this litigation is extraordinary by any measure. The $1.51 billion settlement is the largest agricultural settlement in history, and one of the largest settlements of any kind. The $217.7 million verdict that led to this settlement was one of the top ten verdicts in the United States in 2017. Each of the 600,000 corn producers in the country will receive significant monetary compensation through the settlement. Depending on the number of claims filed, it is possible that all corn producers who file claims could receive full compensation for their losses as determined by plaintiffs' experts.

V. GRG LODESTAR

76. GRG attorneys and staff devoted a total of 18,480.50 hours of common benefit time to this litigation through June 2018.

77. I have reviewed our contemporaneous time entries by each of our timekeepers who performed work on this case and exercised billing judgment in carefully reviewing and excluding time that was not common benefit time under the Court's common benefit order, or that I otherwise perceived was duplicative, excessive or otherwise inappropriate. Unitemized evening meal receipts were reduced by one-third to account for alcohol.

78. These hours do not include the significant time spent on non-common benefit activities. The timekeepers from my firm spent at least 1100 hours (with a lodestar over

$890,000) on non-common benefit activities that are not included in our submission of common benefit time. Most of this time was incurred with respect to individual clients, including written communications keeping them abreast of developments in the litigation, numerous in-person meetings and telephone communications answering questions about the litigation and settlement, and numerous meetings, telephone conferences and emails with referral counsel. Additional time not included in our submission is a host of other activities including numerous meetings, telephone conferences with and presentations to counsel for farmers, attendance at town hall meetings and trade shows, participation in activities to communicate and explain the settlement to farmers and agriculture attorneys, work before the Judicial Panel on Multidistrict Litigation, work on our leadership application, meetings and telephone conferences with various non-producers, and a host of other activities.

79. The total hours of common benefit time by each timekeeper from my firm, after my reductions, are accurately set forth in the chart below.

Name	**Title**	**Year graduated from Law School**	**Total Hours**	**Hourly Rate**	**Lodestar**
Don Downing	Director/Shareholder	1982	6,515.10	$865	$5,635,561.50
Gretchen Garrison	Principal	1986	3,999.70	$825	$3,299,752.50
Jason Sapp	Partner	2006	1,900.30	$695	$1,320,708.50
Kaitlin Bridges	Associate	2008	2,670.80	$565	$1,509,002.00
Cort VanOstran	Associate	2014	582.60	$400	$233,040.00
Jack Downing	Associate	2017	15.00	$330	$4,950.00
Jack Downing	Law Clerk		360.80	$225	$81,180.00
Statz, Jackie	Paralegal		1,894.50	$295	$558,877.50

Name	Title	Year graduated from Law School	Total Hours	Hourly Rate	Lodestar
Stinson, Judy	Paralegal		91.30	$295	$26,933.50
Charles Fasterling	Paralegal		449.90	$225	$101,227.50
Cameron Roark	Law Clerk		0.50	$175	$87.50
Totals			18,480.50		$12,771,320.50

80. This time does not include the anticipated additional time preparing for and attending the Final Approval Hearing or to administer the Settlement and finalize payments to class members.

81. The rates for each timekeeper are reasonable in this judicial district as explained by the Honorable Richard Ralston, and consistent with my own knowledge and understanding as to the range of rates charged by attorneys of comparable experience in comparable cases. As mentioned above, the rates for GRG attorneys are well justified by each of their experience and skills, including the unique experience and qualifications gained in prior farmer cases in general and in the *Rice Litig*. in particular. I was retained last year in a matter at the rate of $800 per hour. Six years ago, attorneys at GRG received court approval for a fee range of $375 to $650 per hour and five years ago, they received court approval for a fee range of $250 to $675 per hour.

82. As part of the Common Benefit Guidelines provided by Co-Lead Counsel, all common benefit firms tracked common benefit expenses using Category Codes 1-19. *See* the chart at ¶220 of Scott Powell's Declaration dated July 9, 2018.

83. GRG also devoted $690,244.26 in common benefit costs to this litigation. Much of those funds were utilized to pay for expert and consultant fees, deposition transcripts and videos, travel expenses, Westlaw charges, copy charges and other expenses that were necessarily incurred in prosecuting this litigation. All expenses were incurred at my direction and were contemporaneously tracked. The expenses are reflected in GRG's records prepared from receipts, expense vouchers, check records and other documents. I have reviewed our records of expenses to ensure that each expense is reasonable and is properly considered a common benefit expense under the Court's Common Benefit Order, and have excluded expenses that do not qualify, including all expenses related to work done for and communications with individual clients who were not class representatives or bellwether clients.

84. As part of our review process, the four Co-Leads reviewed the submitted common benefit time and expenses of the firms that performed common benefit work in this MDL. I personally reviewed the common benefit time and expenses of nine firms and eliminated time and expenses that I believed were not reasonable or properly compensable under the standards set forth in the Court's Common Benefit Order. I then sent my proposed reductions to each of those firms and conducted telephone conferences to explain the bases for my reductions and listen to any justifications offered. As to some reductions I proposed, I was convinced during the conversations that the eliminated time and/or expense was properly compensable. For those entries, I eliminated my exclusion. The remainder of my exclusions were eliminated from that firm's submission and the total hours and/or total expense was reduced accordingly. The firms whose time and expenses I personally reviewed are: Bolen Robinson & Ellis, LLP; Jake W. Brooks; Schirger, Kirk, McDougall & Winzeler, P.C.; Stinson Leonard Street; Stueve Siegel

Hanson LLP; Thrash Law Firm; Waller Jorgenson Warzynski, PLLC (formerly with Sneed Lang PC); Walters Bender Strohbehn & Vaughan, P.C.; and Westerfield, Janoush & Bell, P.A.

VI. SERVICE AWARDS

85. In connection with the fee request, Co-Lead Counsel also are asking that service awards be made to class representatives and bellwether plaintiffs for their efforts and contribution to this litigation.

86. My firm and I worked with the following class representative and bellwether plaintiffs: Bottoms Farms Partnership; JPPL, Inc.; NEBCO, Inc.; Triple BG Partnership; Mike DaVault, Bradley DaVault, and David DaVault d/b/a ArkMo Farms; and Wright Brothers Farms Partnership**.** All of these plaintiffs provided discovery in addition to plaintiff fact sheets. All were in the group of plaintiffs from eight bellwether discovery pool states. These plaintiffs responded to, and produced documents responsive to, a first and second set of requests for production. These plaintiffs also answered three sets of interrogatories, answered requests for admission, and were deposed. I or attorneys in my firm assisted in preparing discovery responses. I or attorneys in my firm also assisted with the preparation and defense of these plaintiffs in depositions.

87. My firm and I spent considerable time and effort responding to Syngenta's discovery requests. As described below, each of these individuals also spent many hours doing so, and where applicable, preparing for and providing deposition testimony.

88. Bottoms Farms Partnership, JJPL, Inc., NEBCO, Inc. and Triple BG Farms (collectively, the "Bell Farming Entities") were selected and agreed to serve as a Missouri class representative and/or bellwether representative and in that capacity, responded to Syngenta's first and second requests for production, which sought documents pertaining to numerous details

about the Bell Farming Entities' farming operation and other information over significant time periods, and also called for personal financial information. In responding to both requests, the Bell Farming Entities conducted an extensive search to locate, and review records, and had several discussions with me and other attorneys at my firm in order to understand the requests and properly respond. Many of these documents were located at the Bell Farming Entities' offices, on their computers or in storage, but others were obtained from third parties including the FSA, insurance companies, grain buyers, seed and other farming input vendors. Representatives from the Bell Farming Entities made numerous telephone calls as well as personal visits to these third parties to obtain documents. The Bell Entities also answered interrogatories, which also requested detailed information, as well as a request for admission. Based on my and my firm's time records, my own contemporaneous involvement, and discussion with Nathan Bell of the Bell Farming Entities, approximately 50 hours were devoted to these tasks by the Bell Farming Entities, three representatives of which were also deposed. Based on my and my firm's time records and my own contemporaneous involvement, and discussions with representatives of the Bell Farming Entities spent approximately 40 additional hours preparing for and providing deposition testimony, not including the time needed to travel approximately 140 miles to St. Louis for depositions on two separate occasions. In total the Bell Farming Entities devoted at least 90 hours in pursuit of this litigation.

89. Mike DaVault, Bradley DaVault and David DaVault d/b/a ArkMo Farms were selected and agreed to serve as an Arkansas class representative and/or bellwether representative and in that capacity, responded to Syngenta's first and second requests for production, which sought documents pertaining to numerous details about the DaVaults' farming operation and other information over significant time periods, and also called for personal financial

information. In responding to both requests, Mike DaVault conducted an extensive search to locate, and review records, and had several discussions with me and attorneys at my firm in order to understand the requests and properly respond. Some of the documents that Mr. DaVault produced were located in their own physical and electronic files, but others had to be obtained from third parties, which required trips to three separate county FSA offices, and multiple phone calls to others including insurance agents. Mike DaVault also answered interrogatories, which also requested detailed information, as well as a request for admission. Based on my and my firm's time records, my own contemporaneous involvement, and discussion with Mike DaVault, approximately 40 hours were devoted to these tasks by him. Based on my and my firm's time records and my own contemporaneous involvement, Mike DaVault spent approximately 20 additional hours preparing for and providing deposition testimony, not including an additional 10 hours of time traveling to and from St. Louis for the deposition, which required an overnight stay. In total Mike DaVault devoted approximately 60 hours in pursuit of this litigation.

90. Wright Brothers Partnership was selected and agreed to serve as a Missouri bellwether representative and in that capacity, responded to Syngenta's first and second requests for production, which sought documents pertaining to numerous details about the Wright Brothers Partnership farming operation and other information over significant time periods, and also called for personal financial information. In responding to both requests, the Wrights conducted an extensive search to locate, and review records, and had several discussions with me and attorneys at my firm in order to understand the requests and properly respond. Some of the records were located in Wright Brothers Partnership's office, storage and/or electronic files. Others were in the possession of third parties including the FSA, grain elevators and vendors, which required personal visits and phone calls to obtain. The Wrights also answered

interrogatories, which also requested detailed information, as well as a request for admission. Based on my and my firm's time records, my own contemporaneous involvement, and discussion with the Wrights, over 75 hours were devoted to these tasks by the Wrights, who were also deposed. Based on my and my firm's time records and my own contemporaneous involvement, three representatives of Wright Brothers Partnership spent approximately 25 hours each preparing for, providing deposition testimony and attending the deposition. In total the Wrights devoted over 150 hours in pursuit of this litigation, not including the time spent traveling approximately 160 miles each way to St. Louis on at least three occasions related to production of documents and attending a deposition.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 9th day of July, 2018, in St. Louis, Missouri.

/s/ Don M. Downing
Don M. Downing

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT: ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG, et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**MDL No. 2591**

DECLARATION OF WILLIAM B. CHANEY IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES

TABLE OF CONTENTS

TABLE OF CONTENTS i
BACKGROUND 1
A. Gray Reed & McGraw LLP 1
B. Partners 2
1. William B. Chaney 2
2. Drew York 6
3. Clint Brown 8
4. Cleve Clinton 8
5. David Earhart 9
6. David Gair 10
7. John G. George, Jr. 11
8. Jennifer Gurevitz 11
9. J.J. Hardig 12
10. David Henry 13
11. Bob Mangum 14
12. Jim Moseley 14
13. Jim Ormiston 15
14. Jim Reed 16
15. Tom Rhodus 17
16. Ken Stone 18
C. Associates and Of Counsel 19
1. Angela Brown 19
2. Jason Brown 20
3. Casey Doherty 20
4. William Drabble 20
5. Dylan Drummond 21
6. Marcus Fettinger 21
7. Alex Fuller 22
8. Jeff Hopkins 22
9. Russell Jumper 23
10. Taylor Lamb 23
11. Trevor Lawhorn 24
12. Jeff Leach 24

13. Logan Leal 25
14. Michael Lillibridge 25
15. David Lisch 25
16. Brock Niezgoda 26
17. Sonya Reddy 27
18. Ricky Rivera 27
19. Cole Robinson 28
20. Skyler Stuckey 28
21. Alexandria Twiss (Moore) 29
22. Lydia Webb 29
23. Mary Ann Zaki 29

D. Paralegals and Additional Staff 30

1. Elayne Cameau 30
2. Beth Cook 30
3. Chris Donaldson 30
4. Leah Hart 31
5. Lan Lam 31
6. Casey Lindsey 31
7. Clark Patterson 31
8. Paul Savoy 32
9. Jill Wall 32

GENERAL OVERVIEW 32

GRAY REED'S INITIAL INVOLVEMENT AND FILINGS IN THE SYNGENTA CORN LITIGATION 34

LEADERSHIP APPOINTMENT 37

SYNGENTA'S REMOVAL OF STATE COURT CASES, INCLUDING THOSE FILED BY ADM AND CARGILL 38

PREPARATION AND FILING OF MASTER AND AMENDED MASTER CLASS ACTION PRODUCER AND NON-PRODUCER COMPLAINTS 39

STATE COURT CLASS ACTION COMPLAINTS 41

SYNGENTA'S MOTIONS TO DISMISS 42

SYNGENTA'S COUNTERCLAIMS AND THIRD PARTY CLAIMS 42

BELLWETHER DISCOVERY POOL SELECTION 43

BELLWETHER POOL JURISDICTION AND VENUE DISPUTE 43

FACT DISCOVERY 44
A. Written Discovery to Syngenta and Third Parties 44
B. Document Review 44
C. Written Discovery to Producer and Non-Producer Plaintiffs 46
1. Gray Reed's Work with Producer Plaintiffs; Efforts to Collect the Information and Documents Syngenta Sought 46
2. Gray Reed's Work with Non-Producer Plaintiffs 57
D. Depositions 58
1. Producer Plaintiff Depositions 58
2. Non-Producer Plaintiff Depositions 59
a. Trans Coastal 59
b. Rail Transfer 61
c. Winnsboro 61
3. Depositions of Syngenta Witnesses 61
4. Third Party Depositions 63
5. Depositions of ADM and Cargill Witnesses 63
a. ADM Witnesses 64
b. Cargill Witnesses 65
EXPERT DISCOVERY AND DAUBERT MOTIONS 65
SUMMARY JUDGMENT BRIEFING 67
PRE-TRIAL PREPARATION FOR KANSAS CLASS TRIAL 67
JUNE 2017 KANSAS CLASS TRIAL 71
POST-TRIAL 74
PREPARATION FOR ARKANSAS AND MISSOURI CLASSES TRIAL 74
SETTLEMENT NEGOTIATIONS 74
GRAY REED'S TAX, CORPORATE AND CREDITOR'S RIGHTS COMMON BENEFIT WORK 75
FEE AGREEMENTS WITH INDIVIDUAL CLIENTS 76
COMMON BENEFIT TIME AND EXPENSE SUBMISSIONS 77
A. Common Benefit Time and Expenses submitted by Common Benefit Firms 77
B. Gray Reed's Common Benefit Time And Expenses 78
SIGNATURE PAGE 84

I, William B. Chaney, declare as follows:

1. I am a partner of Gray Reed & McGraw LLP ("Gray Reed") and counsel of record for Plaintiffs.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

BACKGROUND

A. GRAY REED & MCGRAW LLP

3. Gray Reed was founded in 1985, and was formerly known as Looper Reed & McGraw, P.C., and then later, as Gray Reed & McGraw, P.C. Gray Reed is an AV rated law firm with over 130 lawyers in offices in Dallas and Houston, Texas.

4. Gray Reed is a full service commercial law firm. Its philosophy, since its founding in 1985, is to provide high-quality legal services in a streamlined manner, to provide reasonably priced, sophisticated and complex legal advice, and to provide big-firm results with small-firm efficiency. For over 30 years, the lawyers at Gray Reed have dedicated themselves to achieving success for their clients, as those clients define success - whether that is winning a critical lawsuit, closing a key deal, consulting to save taxes, or just giving good business advice to avoid disputes.

5. Gray Reed was included in the 2018 *U.S. News & World Report* and *Best Lawyers*' "Best Law Firms" rankings. Twelve of the firm's practices were recognized. The firm was also ranked 146 out of the 319 firms listed on the BTI Client Service A-Team 2018, and was further recognized with the BTI "Honor Roll" distinction, the third-highest level of achievement in client service. *Best Lawyers in America* in 2018 recognized 26 of the firm's attorneys and *The National*

Law Journal included the firm in its 2017 "Top 500" Rankings. *Texas Super Lawyers* in 2017 recognized 32 of the firm's attorneys as "Super Lawyers" and 22 as "Rising Stars."

6. As outlined in more detail below, the attorneys in Gray Reed's litigation practice have significant experience in class and mass action cases, from both the plaintiff and defense sides, including work on the agriculture and biotechnology issues raised in the cases before this Court.

7. Gray Reed's lawyers are deeply involved in the legal community, holding leadership roles in national, state and local bar organizations. Other Gray Reed lawyers are similarly active in leadership roles in over a hundred community-focused organizations.

8. Gray Reed previously submitted its firm resume for the Court's review in this litigation (ECF No. 2164 at Ex. JJJ) and substantially more information regarding the firm is available at www.grayreed.com.

B. PARTNERS

1. William B. Chaney

9. I received a J.D. from Southern Methodist University in 1977 and a B.A. in Political Science and Mass Communications from Trinity University (San Antonio, Texas) in 1974.

10. During my over 40 year career and as outlined below, I have principally handled complex, multiparty corporate, commercial and financial litigation and trials, in state and federal courts, as well as arbitration panels, in Texas and nationwide. I have represented plaintiffs in class or mass actions, including investors in securities fraud actions and farmers and industry members damaged by the premature release of genetically modified seed.

11. After law school, from June 1977 through June 1979, I served as law clerk to William M. Steger, United States District Court Judge for the Eastern District of Texas.

12. After my clerkship, I began my private law practice with, and later became partner at, Shank, Irwin & Conant (also, at various times, known as Shank, Irwin, Conant, Williamson & Grevelle, and Shank, Irwin, Conant, Lipshy and Casterline) ("Shank Irwin") in Dallas, Texas. While at Shank Irwin, I principally engaged in a commercial litigation practice, but also handled a wide variety of additional matters, including bankruptcy and creditors' rights matters as well as some corporate and real estate transactions. My experience at Shank Irwin was broad and included, among other matters, the following:

13. As an associate, I was as a member of the trial team for the defendants in the 1981 trial in the United States District Court for the Southern District of Texas, of *Valero Energy Corporation and Coastal States Marketing, v. Nelson Bunker Hunt, Herbert Hunt, and Lamar Hunt.* In that antitrust, group boycott case, we obtained for the defendants a directed verdict after the close of Plaintiffs' evidence. The case involved the trade of oil expropriated by Libya and the application of the *Noerr Pennington* doctrine (and, in parallel state court litigation resolved prior to my involvement, but affecting the 1981 trial, the application of the Act of State Doctrine and the Hickenlooper Amendment).

14. Also as an associate, I worked on several matters and issues in connection with the disruption of the silver commodity market in the early 1980's.

15. As a partner, I represented a defendant, surety bond company, in various securities fraud, bankruptcy and related actions in connection with the issuance of surety bonds supporting investors' promissory notes executed in tax shelters promoted by Gas Reclamation, Inc.,

16. I also represented various parties in the late 1980's in claims by or against financial institutions arising from the savings and loan industry disruptions at the time, including efforts by

the acquirers of several failed savings and loans to reject data processing contracts performed by Affiliated Computer Systems, Inc.

17. Shank Irwin disbanded in 1990 and I joined the Dallas office of a Chicago based law firm, Bell Boyd and Lloyd. Bell Boyd closed its Dallas, Texas office in 1992 and I joined Conant Whittenburg and Schachter ("Conant Whittenburg"), a law firm originally based in Amarillo, Texas, but which had opened an office in Dallas and with which my former partner at Shank Irwin, Al Conant ("Conant"), had become a partner. While working at Bell Boyd and then later in the Dallas office of Conant Whittenburg, I continued my general commercial litigation, creditors rights and bankruptcy practice. Also, while at Conant Whittenburg, and as one of its shareholders, I was on the team representing the plaintiff investors in two securities fraud class actions challenging proprietary, net lease real estate tax shelters promoted by institutional brokerage houses. Both cases resulted in significant settlements in favor of the plaintiff investor classes prior to trial.

18. In 1999, Conant, William French and I were the founding partners of Conant French & Chaney, at which I practiced until 2005 when, with French, I joined Gary Reed (at the time, Looper Reed & McGraw, P.C.). While at Conant French and Chaney, I represented UBS, as the successor to PaineWebber, in several actions pending in Texas state district court in which a mortgage loan servicer and bondholder sought to return to UBS hundreds of millions of dollars of commercial mortgage backed loans syndicated by PaineWebber.

19. After joining Gray Reed, I represented the trustee of the Margaret Hunt and Haroldson L. Hunt Trust Estates against claims by a contingent beneficiary for an accounting and alleged breaches of fiduciary duty. Additionally, I assisted my partner William French in his then on-going representation of tomato and vegetable farmers with claims pending in Arkansas state

court against BASF and aerial applicators for spray drift damages resulting from the herbicide FACET. Thereafter, and while at Gray Reed, I have represented rice mills, exporters and rice farmers, and served as a member of the court appointed Plaintiffs' Executive Committee, in *In re Genetically Modified Rice Litigation*, MDL 1811 (the "LLRICE Litigation"), before the Honorable Catherine M. Perry, then Chief Judge of the United States District Court, Eastern District of Missouri. I participated in all phases of the LLRICE Litigation, including (i) Plaintiffs' efforts to secure personal jurisdiction over, and to establish liability of, Bayer's foreign parent and affiliates, (ii) taking depositions of Bayer's representatives, employees and experts, (iii) coordinating and participating in discovery, both fact and expert, and settlement negotiations for rice mills and other non-producers who had claims pending in the LLRICE Litigation; and (iv) preparing for and participating in the trial teams for 4 bellwether trials for producers from the states of Missouri, Mississippi and Arkansas, Louisiana, and Texas. Each of those bellwether trials ended with unanimous jury verdicts in favor of the farmers against Bayer or, in one, a settlement prior to submission to the jury. I also participated as a member of the Plaintiffs Negotiating Committee in the global settlement for the producer claims of those cases and separately negotiated settlements for several non-producers.

20. After my work on the LLRICE Litigation, I continued my interest in and work on genetically modified crop issues. I joined the American Agricultural Law Association and at its October 2014 annual symposium, made a presentation on the Lessons Learned from the Genetically Modified Rice Litigation. Later, in the fall of 2015, I made a similar presentation to the Arkansas Trial Lawyers Association meeting in Little Rock, Arkansas. Additionally, in the Spring of 2016 I made a presentation on regulatory and other issues related to the development of

drought resistant crops using gene editing technology to the 45th Spring Conference of the ABA's Section on Environment, Energy and Resources.

2. Drew York

21. Drew York earned his B.A. in Economics from Southwestern University in 2002 and then attended Baylor Law School where he earned his J.D., *cum laude*, in 2005. While at Baylor he was a member of the Order of the Barristers and served as an articles editor for the Baylor Law Review. Drew clerked at Gray Reed while in law school, and started as an associate in the firm's litigation section shortly after graduation.

22. Selected eleven times consecutively as a "Rising Star" by *Texas Monthly* magazine, Drew focuses his practice primarily on class action/mass tort (both plaintiff and defense) and complex commercial litigation disputes. Among other cases, Drew served as lead counsel for a Texas-based homebuilder in the *In re Chinese-Manufactured Drywall Products Liability Litigation*, 2:09-MD-2047-EEF, pending before Judge Fallon in the Eastern District of Louisiana. Drew's representation included managing the client through inspections of more than 150 homes that were identified by the homebuilder's drywall supplier as potentially containing defective drywall, negotiating resolutions of potential claims affected homeowners against his client, and then negotiating settlement of his client's contribution and indemnity claims against its supplier and the drywall manufacturer. Ultimately, all claims by and against his client were settled short of trial.

23. Drew also served as counsel for a trust in the *In re Tremont Securities Law, State Law and Insurance Litigation*, 1:11-CV-016870TPG, pending in the Southern District of New York. The litigation was brought by numerous investors in funds managed by Tremont Securities, which served as a "feeder fund" that invested its clients' funds with Bernard Madoff. Drew successfully represented the client past the motion to dismiss stage, becoming one of the few

plaintiffs in the litigation that survived dismissal. The Tremont defendants settled the trust's claims before any depositions were taken in the case.

24. Drew also was a key member of three of the four trial teams in the LLRICE Litigation, as well as a member of the trial team led by Scott Powell of Hare Wynn Newell & Newton LLP that obtained the 42nd largest jury verdict in the United States in 2010 according to Verdict Search. The team represented twelve Arkansas farmers suing Bayer in a related state court case to the LLRICE Litigation. The jury verdict, and corresponding judgment, awarded the twelve farmers one hundred percent of the compensatory damages sought ($5,975,605.00) as well as $42 million in punitive damages. The Arkansas Supreme Court affirmed the judgment in all respects in 2011.

25. Drew's commercial litigation experience includes serving as lead counsel for a consumer lending institution in multiple arbitrations. In one arbitration, the arbitrator awarded $400 to a claimant that was seeking over $300,000 on claims of usury, fraud, and violations of the Texas Deceptive Trade Practices Act. In another arbitration the claimant was awarded one-tenth ($1/10^{th}$) of the damages sought on similar claims. Just last month Drew also successfully obtained separate writs of habeas corpus and mandamus on behalf of a client who was held in criminal contempt for allegedly violating a permanent injunction prohibiting the use, disclosure or dissemination of a former employer's confidential information. The trial court had sentenced the client to 38 days in jail and awarded the employer $221,000 in attorney's fees as sanctions.

26. Drew has attended two of the multidistrict litigation conferences put on by the Bolch Judicial Institute at Duke University, and spoke at the 2017 Arkansas Trial Lawyers Association's SECLE Conference on the use of deposition testimony under Fed. R. Civ. P. 32. He is chair of Gray Reed's contingency committee. Drew is a former trustee (recent graduate-elect)

of Southwestern University, and was also recently invited to sit on the University's Board of Visitors.

3. Clint Brown

27. Clint Brown earned his B.S. in Econometric Studies from Southern Methodist University in 2000, graduating *summa cum laude*. He also earned his B.B.A, in General Business with a concentration in Marketing from Southern Methodist University in 2000, graduating *magna cum laude*. He then earned his J.D. from Southern Methodist University Dedman School of Law in 2006.

28. Clint's practice focuses on family law disputes, related litigation, and collaborative law. He is Board Certified in Family Law. Additionally, Clint prepares agreements and handles proceedings associated with family relationships, including premarital and marital agreements, same-sex cohabitation agreements, surrogate parenting arrangements and child adoptions. In disputes involving sophisticated assets, Clint provides a diverse skill set ranging from complex property tracing and asset valuation to asset characterization and reimbursement claims assessment.

29. Clint has appeared in over 100 contested hearings, mediations, or trials. He has also completed over 60 collaborative law divorce matters. He is the Founder and Director of the Collaborative Professionals of Dallas, an Adjunct Professor at the Southern Methodist University Dedman School of Law, and has been named a Rising Star by Texas Super Lawyers every year from 2010 to the present.

4. Cleve Clinton

30. Cleve Clinton earned his B.B.A. in Finance from the University of Texas in 1975, then earned his J.D. from the Southern Methodist University Dedman School of Law in 1978.

31. Cleve is a Board Certified Civil Trial Law specialist, with a long history of success in business and commercial litigation matters. He is also a regular contributor to the Tilting the Scales legal blog.

32. Cleve is the former director of the Dallas Association of Young Lawyers, an active member of the State Bar of Texas, and a prior Director and President of the Rotary Club of Park Cities.

33. He is an AV Rated Attorney, having successfully served as counsel on matters involving over a billion dollars in loans, multi-million dollar joint venture disputes, insider bond trading claims, and discrimination matters.

5. David Earhart

34. David Earhart earned his B.B.A. from the University of Notre Dame in 1988, graduating with highest honors. He then earned his J.D. From the University of Texas School of Law in 1991, graduating with honors.

35. David's practice focuses on corporate law, securities, private equity, and financing. This includes mergers and acquisitions, dispositions and public and private offerings of debt and equity (including the representation of both issuers and underwriters). David also represents numerous oil and gas, technology and internet-related companies, and has significant experience with the Hart-Scott Rodino Antitrust Improvements Act of 1976. David also represents clients in connection with project finance transactions. In addition, David has been involved in numerous private equity and debt financing transactions, including workouts, recapitalizations and restructurings.

36. David is a member of the State Bar of Texas as well as a member of the Mergers and Acquisitions and Securities sections of the Dallas Bar Association.

6. David Gair

37. David Gair earned his B.A. from Bates College in 1996, followed by his M.A. at Middlebury College in 1999. He then received his J.D. from the University of Denver Sturm College of Law in 2005 where he was an editor of the Denver Journal of International Law & Policy from 2003-2005. He went on to receive his LL.M. in Taxation from the University of Denver Sturm College of Law in 2006.

38. As a trial lawyer Board Certified in Tax Law by the Texas Board of Legal Specialization, David focuses his practice on guiding businesses, high-net-worth individuals and tax professionals through all types of complex civil and criminal tax controversies, everything from audits and litigation to investigations and collection matters. David devotes a substantial part of his practice to defending businesses and individuals facing tax problems that not only trigger a potentially higher tax bill, but also a criminal investigation or prosecution.

39. David has handled several recent controversies involving issues that are currently in the crosshairs of the IRS, including energy efficiency credits and deductions, tax shelter liability and collection cases targeting nominees and fraudulent transfers. David is also helping clients decipher the recently-enacted U.S. Tax Code provisions, with a particular emphasis on the new rules governing partnership audits. In addition to his controversy practice, David helps businesses and entrepreneurs develop proactive tax and estate planning strategies to avoid future disputes and minimize all taxes, including income, estate, gift, GST, franchise and sales/use tax.

40. David was selected by his peers for inclusion in Woodward/White, Inc.'s *The Best Lawyers in America* in the field of Tax Law (2016-2018), He was also selected as one of the Best Lawyers in Dallas, Tax Litigation, by *D Magazine* (2014, 2018). David was named a "Rising Star" (2010 - 2013) and a "Super Lawyer" (2014 - 2017) by Texas Super Lawyers as published in *Texas*

Monthly magazine. He was also selected as an "Outstanding Attorney Under 40" by the Cardozo Society of the Jewish Federation of Greater Dallas (2014).

7. John G. George, Jr.

41. John George, Jr., earned his B.B.A., *cum laude*, from Sam Houston State University in 2004. John then earned his J.D., *cum laude*, from St. Mary's University School of Law, where he was the Editor in Chief of St. Mary's Law Journal, Volume 38, as well as a member of the honors fraternity Phi Delta Phi – Tarlton Inn and the John M. Harlan Society.

42. John manages a diverse caseload of civil litigation matters in Texas and across the country, ranging from complex real estate and energy litigation to general business disputes involving novel theories of contract and commercial tort law.

43. John also manages complex energy litigation throughout Texas and a national docket of commercial and collection cases. He helps businesses within every oil and gas sector resolve litigation involving a variety of contracts and issues, including branded marketer agreements, farm-out agreements, landowner disputes and royalty interests.

44. John was named a Rising Star by Texas Super Lawyers as published in *Texas Monthly* (2012-2018).

8. Jennifer Gurevitz

45. Jennifer earned her M.P.A. and B.B.A. from the University of Texas in 2000. She then earned her J.D. from the University of Florida in 2003, graduating with honors. She earned her LL.M. in Taxation from New York University in 2005.

46. Jennifer has also served as an attorney-adviser for Judge Juan F. Vasquez at the United States Tax Court.

47. Jennifer has broad experience in health care, tax and corporate transactional matters. She has an extensive background in handling and structuring business transactions,

partnership and corporate tax planning and corporate governance in a variety of areas. Her practice areas include healthcare, real estate transactions, energy matters, international deals, business joint ventures, start-ups, reorganizations and corporate separations.

48. Jennifer left Gray Reed in November of 2016, and she now works as a Vice President and Regional General Counsel at CHRISTUS Health in Dallas, Texas.

9. J.J. Hardig

49. J.J. earned his B.S. from Texas A&M University in 1995 and his J.D. from South Texas College of Law in Houston in 1998.

50. His practice typically relates to businesses in the construction, oil and gas, manufacturing, food and automobile industries. His trial and appellate practice focuses primarily on high-stakes commercial disputes, as well as very serious personal injury matters. J.J. also serves his clients by providing tailor-made advice and counsel on a variety of matters affecting their businesses, including risk analysis, litigation prevention strategies and employment related issues.

51. His broad commercial litigation experience includes successfully handling complex disputes involving breach of contract, breach of warranty, fraud, DTPA, misappropriation of trade secrets, as well as indemnity issues. J.J.'s personal injury experience includes successfully defending catastrophic products and premises liability claims involving toxic exposure, food contamination, industrial accidents and crane failure.

52. He has been named a "Super Lawyer" by Texas Super Lawyers as published in *Texas Monthly* magazine six times (2005, 2013 - 2017).

53. Prior to private practice, J.J. served as Justice Adele Hedges' briefing attorney at the First Court of Appeals of Texas in Houston.

10. David Henry

54. David Henry earned his B.A. from Baylor University and then received his J.D. from the Baylor University School of law.

55. David focuses his practice on patent litigation prosecution and defense, patent and trademark strategic planning, prosecution and licensing; and trademark and trade secret litigation. David has extensive experience in assisting his clients in identifying, strategically managing and protecting domestic and foreign intellectual property assets, as well as prosecuting or defending patent infringement and trademark infringement claims in federal courts throughout the United States. He has had some emphasis in both patent prosecution and litigation in the areas of pharmaceuticals and medical and surgical devices (scoliosis-related devices, surgical instruments, suturing tools, and introducers, to name a few), but has also prosecuted and litigated patents relating to a wide variety of technologies. These other areas include petroleum exploration technologies, electrical grid management systems, prosthetic joints, food and beverage production technologies and devices, systems used in space missions, and animal care products.

56. At any given time, David is involved in a number of federal court patent infringement or trademark infringement actions throughout the United States, as well as certain, selected activities at the United States Patent & Trademark Office (USPTO). His experience and circumstances are such that he is particularly well-suited for assisting clients in intensive, fast-paced patent litigation arenas, such as the Eastern District of Texas.

57. Alongside his longstanding legal career, David has served as a patent law professor at Baylor Law School since 1994, and now teaches in the Entrepreneurship Program of Baylor's Hankamer School of Business. He is also an Accredited CLE Presenter for multiple bar associations.

11. Bob Mangum

58. Bob Mangum earned his B.S. in Architectural Engineering from The University of Texas in 1963. He then received his J.D. from the University of Texas School of Law in 1971, where he served as an Associate Editor of the Texas Law Review.

59. He has over thirty plus years of experience as a business lawyer in the Dallas-Fort Worth area, both as a transactional lawyer and a business litigator. His transactional experience includes representing banks and borrowers in all types of commercial lending transactions, representing owners, tenants, and investors in all types of real estate transactions, such as purchases and sales, construction of facilities, construction and permanent financings, mechanic's liens, and leases, and representing nationally-known banks as indenture trustees for debt financings involving hundreds of millions–and even billions–of dollars in debt securities.

60. Bob also has extensive business litigation experience covering a wide range of commercial law, including state and federal court cases and arbitrations for both plaintiffs and defendants in the areas of finance, construction, sales, deceptive trade practices, fraud, securities laws, letters of credit, foreclosures, bankruptcy, manufacturing, covenants not to compete, leases, real estate and personal property.

61. Bob left Gray Reed in 2017 and now practices law as a solo practitioner.

12. Jim Moseley

62. Judge Jim Moseley earned his B.A. from Baylor University in 1976, followed by his J.D. at Baylor University's School of Law in 1978. He was a Notes & Comments Editor for the Baylor Law Review and a member of the Phi Delta Phi legal honors fraternity.

63. Judge Moseley served on the Texas Fifth District Court of Appeals for eighteen years before joining Gray Reed to head the firm's appellate practice section. As one of the 13 justices on the Fifth District Court of Appeals, Jim authored more than 1,500 opinions in all areas

of civil and criminal law and sat as a non-authoring justice in more than 3,000 additional cases. In 2003, Jim was commissioned to sit for a recused Texas Supreme Court justice and authored the Court's plurality opinion (*St. Joseph's Hospital v. Wolff*, 94 S.W.3d 514 (2003)).

64. A licensed AAA arbitrator, Jim is in high demand to adjudicate a broad range of complex commercial disputes involving substantial dollar amounts. Jim's strength is working through complex disputes, i.e. complex fact issues, contractual terms, causation theories, damage models, or procedural (arbitrability) issues.

65. Before serving on the Fifth Court of Appeals, Jim practiced law in Dallas and Odessa (Texas) for 14 years. He also served four years as Regional Director of the Federal Trade Commission during the Reagan Administration. There he was responsible for the FTC's enforcement of federal antitrust and consumer laws in a five-state area. Jim is a former chair of the Antitrust & Business Litigation Section of the State Bar of Texas and an elected member of the American Law Institute.

13. Jim Ormiston

66. Jim earned his B.A. from St. Mary's University of San Antonio in 1982, graduating *magna cum laude*. He then earned his J.D. from the University of Texas School of Law in 1987.

67. The majority of Jim's practice involves handling energy litigation, he's also well-equipped to represent clients in other complex commercial disputes in jurisdictions across Texas and the rest of the country. Jim is also chair of the firm's Commercial Litigation practice group.

68. Among his other representative experience, Jim has successfully obtained more than $75 million in three separate class action settlements on behalf of royalty owners against operators for the underpayment of royalties and failure to reasonably market gas. Additionally, Jim obtained a $29.5 million settlement on behalf of approximately 130 royalty owners for the failure to reasonably market natural gas production.

69. Jim was selected by his peers for inclusion in Woodward/White, Inc.'s *The Best Lawyers in America* in the field of Commercial Litigation (2013 – 2018). He was named a "Super Lawyer" by Texas Super Lawyers as published in *Texas Monthly* magazine (2008 – 2017). He is also AV Preeminent® rated (the highest possible Martindale-Hubbell Peer Review Rating designation). Jim is on the executive committee of the University of Texas School of Law Alumni Association.

14. Jim Reed

70. Jim Reed earned his B.B.A. from the University of Oklahoma in 1976, followed by his J.D. from the University of Houston in 1978, where he graduated *cum laude.*

71. Jim has successfully represented the interests of clients in a wide variety of trial work, commercial disputes and other relationships requiring aggressive representation. He has represented both plaintiffs and defendants in state and federal courts, as well as in arbitration. Jim has been lead counsel in a wide variety of complex civil litigation, including cases involving breach of contract, fraud, breach of fiduciary duty, tortious interference, conspiracy, anti-trust, deceptive trade, insurance code violations, partnership disputes, corporate governance/ownership disputes, breach of express and implied warranty/covenants, RICO, sexual harassment, constitutional claims, assault, battery, libel, slander, trespass, nuisance, product defect and negligence.

72. Jim's notable cases include obtaining a $30 million settlement in 2004 on behalf of a statewide royalty owner class comprising approximately 36,000 royalty owners. Jim also obtained a $20 million judgment on behalf of a class of approximately 1,600 West Texas royalty owners in 2000. He also successfully settled the claims of 130 royalty owners in West Texas for $29.5 million.

73. He was selected by his peers for inclusion in Woodward/White, Inc.'s *The Best Lawyers in America* in the field of Commercial Litigation (2015 – 2018). Jim was named a "Super

Lawyer" by Texas Super Lawyers as published in *Texas Monthly* magazine (2005 – 2017), and a Top Lawyer by H Texas Magazine (2010-2013). He is AV Preeminent® rated (the highest possible Martindale-Hubbell Peer Review Rating designation).

15. Tom Rhodus

74. Tom received his B.A. from Southern Methodist University in 1968 and his J.D. from the Southern Methodist University Dedman School of Law in 1971.

75. Tom combines his early experience as a government trial lawyer with over 30 years of private practice to help clients navigate the complex landscape of federal regulation and law enforcement. With diverse clients ranging from healthcare groups and publicly-traded companies to non-profits and wealthy entrepreneurs, Tom focuses primarily on resolving tax and other regulatory controversies involving civil and criminal liability. He has tried numerous cases to successful verdicts in federal and state courtrooms across the country and has also guided clients through investigations conducted by the IRS, the Department of Health and Human Services and other government agencies.

76. During his seven-year tenure as a trial lawyer for the Tax Division of the U.S. Department of Justice, Tom prosecuted countless civil and criminal tax cases. Tom is now chair of the firm's Taxation practice group.

77. Dedicated to educating future lawyers and giving back to the legal community, Tom has taught as an adjunct professor at the SMU Dedman School of Law for over 35 years, including courses in federal tax procedure and criminal tax fraud.

78. Tom was selected as a Best Lawyer in Dallas by *D Magazine* (2017-2018). He was also selected by his peers for inclusion in Woodward/White, Inc.'s *The Best Lawyers in America* in the fields of Tax Litigation & Controversy and Tax Law (2009 – 2018). He was named a "Super Lawyer" by Texas Super Lawyers as published in *Texas Monthly* and *Law & Politics* magazine

(2005 – 2017). Also, Tom is AV Preeminent® rated (the highest possible Martindale-Hubbell Peer Review Rating designation).

16. Ken Stone

79. Ken received his undergraduate degree from Baylor University in 1981 and his J.D. from the Baylor School of Law in 1984.

80. Ken's practice focuses on commercial and personal injury litigation matters, primarily within the healthcare field but also across several other industries. He spends a substantial portion of his time assisting parties in resolving contractual disputes, and he works with a diverse group of healthcare clients – individual physicians, physician groups, hospitals, nursing homes and dialysis centers – resolving insurance, billing and recoupment disputes that arise when their valid claims for payment are either denied or reduced by insurers and Medicare.

81. Ken maintains an active administrative law practice as well, representing healthcare clients in licensing disputes and other professional licensure matters before various boards in Texas, including the Texas Medical Board, the Texas Board of Nursing and the Texas Physician Assistant Board. Clients also rely on Ken to provide quick answers to everyday licensing and peer review questions and to advise on best practices for handling similar issues internally.

82. Since state and federal agencies have recently intensified their enforcement activities in many of the firm's key industries, Ken now devotes part of his practice to defending corporate and individual clients facing investigations and enforcement proceedings with potential criminal and civil liability. These matters typically involve allegations of fraud and abuse within any heavily regulated industry, including healthcare, financial services, pharmaceuticals, manufacturing and many more.

83. Ken is AV Preeminent® rated (the highest possible Martindale-Hubbell Peer Review Rating designation).

C. ASSOCIATES AND OF COUNSEL[1]

1. Angela Brown

84. Angela Laughlin Brown received her B.A. in Government from the University of Virginia. She received her J.D. from Northeastern University School of Law. While in law school, Angela gained extensive experience in the law school's externship program, clerking for the Honorable Robert E. Keeton, U.S. District Court, District of Massachusetts, the Committee for Long-Term Debt and Capital Expenditures ("Big-Dig"), in Boston, Massachusetts, and the law firms Miller, Cassidy, Larocca & Lewin and Shea & Gardner, in Washington, D.C.

85. After graduating from law school, Angela clerked for the Honorable Nancy M. Koenig, U.S. Magistrate Judge for the Northern District of Texas. In 2002, Angela joined the faculty of Texas Tech University School of Law and taught Legal Practice & Procedure. In 2004, Angela was promoted to Associate Professor of Law and taught federal evidence and civil procedure. Angela was awarded Tenure and promoted to Full Professor in 2009.

86. Angela joined the firm of Gray Reed in 2015 and now focuses her practice on white collar criminal and regulatory matters. She has represented numerous corporate and individual clients in high stakes litigation before federal courts, the SEC and other regulators. She represents the firm's healthcare clients in connection with individuals and corporations accused of healthcare fraud, and has defended healthcare clients under investigation by the Department of Justice and the Office of Inspector General of the Department of Health and Human Services. Angela is also on faculty at the National Institute of Trial Advocacy ("NITA").

[1] In addition to the associates listed below, the following law students who worked as law clerks at Gray Reed also performed work on these cases: London England (Summer 2017, SMU School of Law); Nathan Cox (Summer 2016, Baylor School of Law); and Kyle A. Gardner (Summer 2018, Baylor School of Law).

2. Jason Brown

87. Jason earned his B.S. in Finance from Louisiana State University in 2009, graduating *cum laude*. He then earned his J.D. from the Southern Methodist University Dedman School of Law in 2013, also graduating *cum laude*. While at the Dedman School of Law he was the Associate Managing Editor of the SMU International Law Review.

88. Jason focuses his practice on general corporate and finance matters. He is engaged in the negotiation and documentation of a wide variety of commercial lending transactions. He additionally has experience representing both debtors and creditors in financial restructuring and insolvency matters, including complex chapter 11 bankruptcy cases.

89. Jason left Gray Reed in 2016 and he now practices law at the international law firm of Norton Rose Fulbright in Dallas, Texas.

3. Casey Doherty

90. Casey earned his B.A. in Political Science, with high honors, from Boston College in 2008. He then received his J.D. from the New York University School of Law in 2011.

91. Before entering private practice, Casey clerked for Bankruptcy Judge Robert L. Jones of the Northern District of Texas-Lubbock Division from 2011 to 2012.

92. Casey left Gray Reed in 2018 to pursue other employment.

4. William Drabble

93. William Drabble earned his J.D., *summa cum laude*, from Baylor University School of Law in 2010, graduating first in his class. He was the Senior Technical Editor for the Baylor Law Review, the winner of the 2008 Strasburger & Price Moot Court Tournament, and a member of the Order of the Barristers. William received his B.A., *summa cum laude*, in Political Science from Texas Tech University in 2007.

94. Following his graduation, William clerked from the Honorable Walter S. Smith, Jr. of the United States District Court for the Western District of Texas, Waco Division, from 2010 to 2012. During that time, William coached three moot court teams for Baylor University School of Law. William joined Gray Reed in 2012, and his practice focuses on commercial litigation, corporate-governance disputes, and real-estate litigation.

5. Dylan Drummond

95. Dylan earned his B.S. from Texas Tech University in 1999, graduating *summa cum laude*. He then earned his J.D. from Texas Tech University School of Law in 2003, while also earning his M.B.A. at the same time.

96. After law school, Dylan served as a clerk of the Texas Supreme Court.

97. Dylan's commercial litigation practice includes providing strategic counsel aimed at preserving error through pre- and post-trial motion practice, expert designation disputes, jury charge preparation, class certification and dispositive motion practice. His civil appellate practice before state and federal appellate courts consists of pursuing traditional, accelerated, agreed, and permissive appeals; original proceedings and extraordinary writs; as well as petition, merits, and amicus briefing before the Texas Supreme Court.

98. HE is AV rated by Martindale-Hubbell in Appellate Practice, Litigation, (2012–present). He has been named a Texas Rising Star in appellate practice; Super Lawyers, (2009–2015). He is a Fellow of the Texas Bar Foundation, (2012–present) (top 1/3 of 1% of Texas attorneys invited to join annually). He was also a recipient of the Rising Star Alumni Award for Texas Tech University School of Law in 2015.

6. Marcus Fettinger

99. Marcus received his B.B.A. from the University of Texas McCombs School of Business in 2007. He then earned his J.D. from the Southern Methodist University Dedman School

of Law in 2011, graduating *cum laude*. At the Dedman School of Law, he served as an Articles Editor for the SMU Law Review.

100. His practice focuses primarily on management-side employment matters and litigation, though he has extensive experience in general commercial and business litigation as well.

101. Marcus was named a Rising Star by Texas Super Lawyers as published in *Texas Monthly* magazine in 2018.

7. Alex Fuller

102. Alex earned his B.S. from the University of Houston in 2003, graduating *summa cum laude*. He then earned his J.D. from the Baylor University School of Law in 2006, graduating *cum laude* and serving as the Executive Editor of the Baylor Law Review.

103. After law school Alex joined the Smith County District Attorney's office, eventually serving as Chief Misdemeanor Prosecutor and Asset Forfeiture Attorney. He joined Gray Reed as an associate in 2007 with a wide ranging practice focusing on General Civil and Commercial Litigation, with experience in cases involving collections, deceptive trade practices, fraud, property disputes, health care litigation, defense of corporations and businesspersons against violations of city ordinances, oil and gas and probate litigation.

104. Alex left Gray Reed in 2016 to open the Law Office of H. Alex Fuller, PLLC, in Plano, Texas, where he practices today.

8. Jeff Hopkins

105. Jeff graduated with a B.A. degree in Politics and Russian Studies from Oberlin College in 1992. He received his J.D. in 1997 from the University of Houston Law Center, where he graduated *cum laude* and served as a member of the Houston Journal of International Law.

106. Jeff focuses his practice in transactional, corporate and securities matters. Licensed in Texas and New York, he has represented clients in negotiation of private equity investments, mergers and acquisition, joint ventures, debt financings, restructurings and securities offerings

9. Russell Jumper

107. Russell earned his B.A. from Baylor University in 2005. He then earned his J.D. from the Texas Tech University School of Law in 2008, where he graduated *magna cum laude* and was a member of the Order of the Barristers. Russell clerked for the Honorable Walter Smith, United States District Judge, Western District of Texas.

108. Russell's practice focuses on construction litigation and commercial disputes. He also has worked extensively in healthcare and employment litigation.

109. Russell was named a Rising Star by Texas Super Lawyers as published in *Texas Monthly* from 2014-2018.

10. Taylor Lamb

110. Taylor Lamb earned her B.A. with distinction from the University of Oklahoma in 2007, where she was a member of Phi Beta Kappa. She then earned her J.D. from the University of California-Los Angeles School of Law in 2010.

111. After receiving her J.D., Taylor worked at the White House in the Office of Cabinet Affairs where she was responsible for coordinating communications, policies, and logistics between the Executive Office of the President and the Cabinet.

112. Taylor's practice at Gray Reed focused on corporate and transaction matters, including mergers and acquisitions and commercial contracts.

113. Taylor left Gray Reed in 2016 and now works for the law firm of Fizer, Beck, Webster, Bentley & Scroggins, P.C., in Houston, Texas.

11. Trevor Lawhorn

114. Trevor Lawhorn received his Juris Doctor *cum laude* from Southern Methodist University Dedman School of Law in 2017. Trevor received his bachelor of arts from Louisiana State University where he majored in political science and minored in disaster science management.

115. During law school, Trevor served as Staff Editor and ADR Symposium Editor for the SMU Law Review Association. Trevor also completed an internship for the Honorable Cynthia Wheless, 417th Judicial District Court, Collin County, Texas, and completed an externship for the Honorable A. Joe Fish, Senior District Judge, Federal District Court of the Northern District of Texas. Trevor received the "Best Representative of the SMU Law Review Association 2016-2017" award for his service for the SMU Law Review Association and the "Frank and Debbie Branson Trial Advocacy Scholarship" for his excellence in SMU's trial advocacy program. Trevor joined Gray Reed in 2017 as an associate in its litigation section.

12. Jeff Leach

116. Jeff Leach serves as Of Counsel at Gray Reed, where his practice is focused primarily in the areas of complex commercial and civil litigation, construction law and real estate.

117. Jeff serves as an elected Member of the Texas House of Representatives, representing House District 67, consisting of portions of Plano, Allen, Richardson and Dallas in Collin County. Since taking office in 2013, Jeff has served on the House Committee on Criminal Jurisprudence, the House Committee on Government Transparency and Operation, the House Committee on Urban Affairs and the House Committee on Rules & Resolutions. Currently, Jeff is serving as Vice Chairman of the House Committee on Urban Affairs. Jeff also was elected by his colleagues to serve on the House Republican Caucus Policy Committee.

118. Jeff graduated from Baylor University in 2005, and received his law degree in 2008 from the Southern Methodist University Dedman School of Law. In 2004, Jeff served in George W. Bush's White House, where he worked in the President's Office of Political Affairs.

13. Logan Leal

119. Logan Leal graduated *summa cum laude* from Texas State University, where she was a member of Alpha Lambda Delta. She received her J.D. from the University of Texas School of Law, where she directly represented children as an attorney *ad litem.*

120. Logan joined Gray Reed after law school. Logan's practice is concentrated in complex commercial litigation and family law matters.

14. Michael Lillibridge

121. Michael earned his B.A. from Texas A&M University in 1993. He then earned his J.D. from the University of Houston Law Center in 1997.

122. Michael later joined Gray Reed where he provided investigative research and analyses for various civil litigation matters, including business disputes, fraud claims, class actions, and complicated family law matters. He conducted due diligence inquiries to review clients' potential joint venture partners, targets for mergers/acquisitions, and prospective vendors, both within the United States and internationally. Much of his practice was focused on asset investigation, both pre-litigation and post judgment, as well as enforcing domestic and foreign judgments.

123. Michael left Gray Reed in 2017 and opened an office as a solo practitioner in Houston, Texas.

15. David Lisch

124. David Lisch earned his Electrical Engineering degree from the University of Texas at Austin in 2006 and worked as an engineer for four years prior to attending law school. David

earned his J.D. from South Texas College of Law in 2013. During law school, he was a member of the South Texas Law Review. David also participated in numerous student organizations and was President of the South Texas intellectual property society. David further participated in various moot court tournaments and was a national quarter-finalist in the Giles Sutherland Rich Moot Court competition. Additionally, prior to completing law school, David became admitted to practice before the U.S. Patent and Trademark Office.

125. David's practice focuses on patent litigation, along with trademark and copyright matters. David has represented business in enforcing their patent rights, including in *Optis Cellular Tech. et al. v. Kyocera Commc'ns., Inc. et al.*, Case No. 2:16-cv-0059-JRG-RSP (E.D. Tex.), *Optis Wireless Tech et al. v. BlackBerry Ltd. et al.*, Case No. 2:16-cv-62 (E.D. Tex.), and *Optis Wireless Tech., LLC, et al. v. Huawei Techs. Co. Ltd., et al.*, Case No. 2:17-cv-123 JRG-RSP (E.D. Tex.).

16. Brock Niezgoda

126. Brock Niezgoda earned his B.B.A. from the University of Texas in 2008. He then earned his J.D. from the University of Texas School of Law in 2011.

127. Brock's practice focuses on financing, securities and transactional matters. He advises clients on financing transactions, mergers and acquisitions, business formations and reorganizations, corporate governance issues, SEC reporting and compliance issues, private equity offerings and commercial transactions. A majority of Brock's practice is devoted to both financing matters, including representing both borrowers and lenders, primarily in energy related secured lending, project finance and acquisition financing, and mergers and acquisitions.

128. Brock was named a Rising Star by Texas Super Lawyers as published in *Texas Monthly* from 2014-2018.

17. Sonya Reddy

129. Sonya Reddy received her J.D. from the University of Virginia School of Law in 2011. During her undergraduate studies, Sonya Reddy was a member of the Phi Beta Kappa academic honor society.

130. Since graduating from law school, she has focused her practice on commercial litigation, which has included representing claimants and defendants in oil and gas matters, construction litigation, employment litigation, trade secret misappropriation actions. Included in that representative experience, she was the key draftsperson for submissions addressing purported class representative's motion for conditional certification in case involving FLSA allegations in connection with representation of defendant.

18. Ricky Rivera

131. Ricky Rivera earned his B.B.A. in Accounting from the University of Puerto Rico in 1999, graduating *magna cum laude*. He then earned his J.D. from the University of Puerto Rico in 2003, graduating *magna cum laude*. He also received his LL.M. in Taxation from the Georgetown University Law Center in 2006.

132. Ricky has broad experience in matters relating to US and international taxes, corporate transactions, employee benefits, and executive compensation. He has an extensive background in handling and structuring business transactions, partnership and corporate tax planning and corporate governance in a variety of areas.

133. Prior to joining Gray Reed, Ricky served as Director and Tax Counsel for American Airlines, where he was in charge of federal taxes, international taxes with a focus in Latin America, and employee benefits and executive compensation.

19. Cole Robinson

134. Cole earned his B.B.A. in Finance from Baylor University in 2008. He then earned his J.D. from Southern Methodist University Dedman School of Law in 2013, graduating *cum laude.*

135. Cole is currently a member of Gray Reed's real estate and corporate law sections. His experience includes mergers and acquisitions, drafting purchase and sale agreements, and various corporate matters.

20. Skyler Stuckey

136. Skyler earned his B.A. in Theatre from Pepperdine University in 2005. He then earned his J.D. from the Texas Tech University School of Law in 2011, graduating *magna cum laude*, a member of the Phi Delta Phi legal honors fraternity, a member of the Order of the Barristers, an Articles Editor for the Texas Tech Law Review, and as a national moot court champion.

137. His practice covers on a wide range of matters including commercial litigation, complex multi-state litigation, appellate matters, white collar criminal defense, class actions, e-commerce development and technology, and internet and media issues.

138. Before joining Gray Reed, Skyler served as an intern for the Honorable Ken Molberg in the 95th District Court in Dallas and the Honorable Robert Junell in the U.S. District Court for the Western District of Texas.

139. Skyler has been named a Rising Star by Texas Super Lawyers as published in *Texas Monthly* in 2017 and 2018.

21. Alexandria Twiss (Moore)

140. Alexandria earned her B.A. in Psychology from Texas Tech University in 2012, graduating *cum laude*. She then earned her J.D. from Baylor University School of Law in 2015 where she served on the Baylor Law Review.

141. Her practice of law focuses on commercial litigation and general business matters.

142. Alexandria left Gray Reed in 2018 and now practices at the national law firm of Dykema Gossett, PLLC, in Dallas, Texas.

22. Lydia Webb

143. Lydia Webb received her J.D. from Baylor University School of Law in 2012, where she graduated *cum laude* and top 5 in her class. Lydia was a member of the Baylor Law Review, serving as technical editor, and her article on shareholder oppression was published in the Spring 2012 edition of the journal. She received her undergraduate degree *cum laude* in Finance and Economics, also from Baylor University.

144. Since joining Gray Reed in 2012, Lydia has specialized in federal practice and procedure, primarily in the area of corporate restructuring and bankruptcy. Lydia was named a Rising Star by Texas Super Lawyers in 2018.

23. Mary Ann Zaki

145. Maryann Zaki earned her B.A. in International Relations from Boston University in 2008. She is also a graduate of the University of Houston Law Center, where she graduated *cum laude*, and was inducted into Order of the Barons. While in law school, Maryann was named Candidate of the Year of the Houston Journal of Health Law & Policy, and served as Senior Articles Editor. Maryann also interned for the Honorable United States District Judge Gray Miller during her final year of law school.

146. Maryann's practice at Gray Reed focused on general litigation matters. She left Gray Reed in 2015 and now works at the law firm of Morgan, Lewis & Bockius, LLP, in Houston, Texas.

D. PARALEGALS AND ADDITIONAL STAFF

1. Elayne Cameau

147. Elayne Cameau is a paralegal with 13 years of experience and a B.S. in Legal Studies from Kaplan University.

2. Beth Cook

148. Beth Cook is a paralegal in the litigation section of Gray Reed in Dallas. Her background includes over 25 years of experience as a legal assistant and paralegal handling a variety of matters including commercial and civil litigation. She has prior experience with family law, employment law and probate law as well.

149. Beth's current work includes all stages of pretrial and trial preparation including document production and review, preparation and assisting with trials, depositions and hearings; summary of depositions, records acquisition, summary of medical, billing and employment records; Pacer, Westlaw and Secretary of State research and client communications.

150. Prior to becoming a paralegal, Beth worked as a Legal Assistant at Gray Reed from 2005 to 2011.

3. Chris Donaldson

151. Chris Donaldson is a paralegal with 13 years of experience working for numerous law firms.

152. Chris has dealt with e-discovery and complex trial litigation support since 2010, working on numerous trials and disputes.

4. Leah Hart

153. Leah Hart was a paralegal at Gray Reed who worked on matters including commercial litigation, civil litigation, and class action lawsuits.

154. Leah retired from her work at Gray Reed in 2017.

5. Lan Lam

155. Lan Lam is a PACE Registered Paralegal® since 2012. She received her B.A.A.S. with an emphasis on Legal Information Management from the University of North Texas in 2006 and received her Paralegal Certificate from Dallas County Community College in 2002.

156. She has 17 years of experience in the legal industry with 7 years as a legal secretary, 10 years as a litigation paralegal and has assisted in more than 5 trials and arbitrations.

6. Casey Lindsey

157. Casey was a paralegal at Gray Reed who had seven years of experience in family law-related matters.

158. Casey left Gray Reed in 2017 to pursue other employment opportunities.

7. Clark Patterson

159. Clark D. Patterson received a B.S. in Criminal Justice from the University of Wisconsin – Milwaukee in 1984. Clark obtained his paralegal certification in 1987 from Southeastern Paralegal Institute in Dallas.

160. He worked for the Attorney General's Office as a Child Support Enforcement Agent between 1988 and 1990. He has over 30 years of experience as a paralegal working in the areas of Intellectual Property, Commercial Litigation, Labor and Employment and Bankruptcy. He has assisted in more than 15 trials, Arbitrations and Mediations.

8. Paul Savoy

161. Paul Savoy serves as Manager of Litigation Support. During his 24-year legal career as a Litigation Paralegal, Paul has developed expertise with litigation support, case management and extensive trial work (70+ trials). In the last seven years, he has focused on all aspects of the Electronic Discovery Reference Model (EDRM) from data identification, early case assessment, processing, review, production and presentation. Paul is a member of the Association of Certified E-Discovery Specialists (ACEDS) and CEDS Certified.

9. Jill Wall

162. After previous employment as a paralegal working in municipal utility districts/bonds and litigation, Jill brings 25 years of paralegal experience to Gray Reed in Houston. Her responsibilities include: assisting attorneys in all aspects of trial preparation from the initial stage of discovery; maintaining and analyzing large amounts of data; utilizing concordance to final stages of trial by creating video deposition clips, electronic exhibits and demonstratives utilizing PowerPoint, Sanction and Trial Director, and running such programs at trial.

GENERAL OVERVIEW

163. I, and Gray Reed lawyers, paralegals and staff under my supervision, participated in all aspects of this litigation from the initial factual and legal investigation, through the drafting and filing of initial complaints, motion practice, discovery, pre-trial, trial and settlement.

164. As appointed by this Court, I served as one of 4 Co-Lead Counsel in these MDL proceedings, and then later as one of 4 class counsel for a nationwide and 8 state classes certified by this Court. During the course of this litigation, I regularly conferred with my Co-Lead Counsel regarding all aspects of the development and prosecution of these cases, attended all status conferences and hearings when all Co-Lead Counsel's attendance was required, and participated in the June 2017 trial of Kansas state class claims which resulted in a $217.7 million verdict and

judgment for the Plaintiffs. My partner Drew York was involved in all phases of the litigation, and regularly conferred and coordinated with his counterparts at each of the firms for the other Co-Lead Counsel. Mr. York and I regularly and throughout the litigation communicated and coordinated with other plaintiffs' counsel as well, including counsel appearing in the parallel Minnesota state court and Southern District of Illinois federal court proceedings, and counsel serving as members of the Executive Committee appointed by this Court. The legal and factual complexity of the case required the extensive coordination with Co-Lead Counsel and other plaintiffs' counsel. This case has been the most factually and legally complex piece of litigation I have handled during my over 40 year career.

165. I understand that Pat Stueve's declaration provides a chronological overview of this litigation and describes much of the common benefit work performed jointly by Co-Lead Counsel. In the sections of this Declaration which follow, and in support of our fee application, I supplement Mr. Stueve's declaration with descriptions of common benefit work that Gray Reed handled or coordinated. The following paragraphs summarize the work performed by Gray Reed timekeepers at each stage in the litigation both before and after the leadership appointment, and provide more detail on the key areas of Gray Reed's and my involvement in the institution, prosecution and settlement of these cases. I have made an effort to mention instances where Gray Reed attorneys, including myself, collaborated with attorneys from other firms. This by no means is an exhaustive summary of those collaborative efforts. The bulk of the work performed on behalf of all of the plaintiffs in this litigation was a team effort that produced far better work product than any one lawyer, or one firm, could have produced on its own.

GRAY REED'S INITIAL INVOLVEMENT AND FILINGS IN THE SYNGENTA CORN LITIGATION

166. In the fall of 2014, several of Gray Reed's clients in the LLRICE Litigation also grew corn or participated in other aspects of the corn market. They, and others with whom we communicated, expressed interest in the allegations made against Syngenta and wanted to determine if they had been damaged, or were continuing to experience damage, as a result of Syngenta's marketing of Agrisure Viptera and Duracade without key market approvals, including China's.

167. I worked at length in the LLRICE Litigation with Don Downing ("Downing"), of Gray Ritter & Graham, P.C. ("Gray Ritter"), as well as Scott Powell ("Powell"), of Hare Wynn Newell & Newton, LLP ("Hare Wynn"). Downing and Powell are talented, trustworthy, hard-working lawyers. Additionally, they both have a number of partners and associates at their firms who are brilliant legal minds. I spoke to Downing and Powell not long after I was contacted by several of the firm's clients about potential claims against Syngenta. Because we had worked well together in the LLRICE Litigation, Downing, Powell and I agreed early on that our firms should work together in this litigation. We then contacted Patrick Stueve ("Stueve") of Stueve Siegel Hanson, in Kansas City, Missouri ("Stueve Siegel"), whom he had known for many years beginning when they worked together at the law firm now known as Stinson Leonard Street. The four of us agreed that our firms should work together to prosecute this litigation on behalf of our clients.

168. I, along with others from Gray Reed, worked with Downing, Powell and Stueve, as well as members of each of their firms, to research the facts and applicable law arising from Syngenta's premature marketing of its Agrisure Viptera and Duracade seeds. Those investigations and research culminated in the drafting and filing in November 2014 of two class action lawsuits

on behalf of corn producers from 10 states against Syngenta. Those actions were filed in the United States District Courts for the Eastern District of Missouri and the District of Kansas, styled *Wilson Farm, Inc., et al v. Syngenta AG, et al*, No. 4:14-cv-0198, E.D. Mo. (filed November 11, 2014, on behalf of producers from the states of Alabama, Arkansas, Illinois, Iowa, Louisiana, Minnesota and Missouri) and *Five Star Farms, et al v. Syngenta AG, et al*, No. 2:14-cv-0257, D. Kan. (filed on November 11, 2014, on behalf of producers from the states of Kansas, Nebraska and South Dakota). Both the *Wilson Farm* and *Five Star Farms* cases asserted statewide, common law and statutory class claims, as well as claims on behalf of a nationwide class of corn producers under the Lanham Act.

169. The factual and legal research undertaken prior to the filing of the *Five Star Farms* and *Wilson Farms* complaints included investigation of the then publicly available facts regarding Syngenta's development, U.S. approval, and marketing of the Agrisure Viptera and Duracade seeds, as well as the then unsuccessful efforts by Syngenta to obtain approval from key markets, including China. We also investigated the facts, allegations and proceedings in a 2011 lawsuit filed by Syngenta Seeds, Inc. against Bunge North America, Inc., *Syngenta Seeds, Inc. v. Bunge North America, Inc*, No. 5:11-cv-04074, in the United States District Court for the Northern District of Iowa (the "Bunge Litigation"). Several Gray Reed lawyers assisted me in these initial efforts to investigate and research the claims against Syngenta. Those lawyers included Drew York, who had worked extensively on the LLRICE Litigation with me, Carol Wilhelm, who had background and experience with Lanham Act issues, associates Alex Fuller, Russell Jumper, Skyler Stuckey, and paralegal Leah Hart, who had also worked with me on the LLRICE Litigation. We coordinated our investigation and research with lawyers at Gray Ritter, Hare Wynn and Stueve Siegel, most specifically including Gretchen Garrison of Gray Ritter. We also reviewed several

draft versions of the complaints, and provided suggested edits and comments to those who were leading the drafting effort.

170. On behalf of the plaintiffs in the *Five Star Farms* and *Wilson Farm* actions, Downing, Powell, Stueve and I sought transfer by the Judicial Panel on Multidistrict Litigation ("JPML") of the federal litigations filed against Syngenta for pretrial proceedings to either the Eastern District of Missouri or, alternatively, the District of Kansas. Downing made our group's presentation to the JPML at a hearing held in Charleston, South Carolina, which Powell, Stueve and I attended. On December 11, 2014, the JPML consolidated for pretrial purposes under 28 U.S.C. § 1407 the federal litigation against Syngenta and transferred those cases to this Court.

171. On December 18, 2014, we amended the *Five Star Farms* and *Wilson Farm* lawsuits and added producer plaintiffs asserting class claims on behalf of producers from 9 additional states: Colorado, North Dakota and Oklahoma to the *Five Star Farms* action and Indiana, Kentucky, Michigan, Mississippi, Tennessee and Wisconsin to the *Wilson Farm* action.

172. With the assistance of other Gray Reed lawyers, as well as counsel in Louisiana, Ohio, and North Carolina, I arranged for the filing of similar class action lawsuits on behalf of producers in federal and state courts in those states. Additionally, we filed a case on behalf of a producer from Texas. The Louisiana, Ohio, North Carolina, and Texas filings were the following: (i) *Clark Hill Farms, et al v. Syngenta AG, et al*, No. 2014-000220, 6th Judicial District Court, Madison Parish, Louisiana (November 18, 2014), removed to the United States District Court for the Western District of Louisiana, No. 3:14-cv-03482 (December 19, 2014); (ii) *Kaffenbarger Farms v. Syngenta AG, et al*, No. 3:15-cv-00022, in the United Stated District Court for the Southern District of Ohio (January 22, 2015);; (iii) *Jack H. Winslow Farms, Inc., et al v. Syngenta AG, et al*, No. 4:15-cv-00016, in the United States District Court for the Eastern District of North

Carolina (January 21, 2015); and (iv) *Hahn v. Syngenta AG, et al*, No. 6:15-cv-00013, in the United States District Court for the Western District of Texas (January 21, 2015). Syngenta removed the *Clark Hill* case to federal court asserting as grounds for removal both diversity of citizenship jurisdiction as well as federal question jurisdiction under the Federal Common Law of Foreign Relations. Each of the *Kaffenbarger, Winslow, Hahn* and *Clark Hill* (after its removal) lawsuits were transferred to this Court under 28 U.S.C. § 1407.

173. With the amendments to the *Five Star Farms* and *Wilson Farm* complaints, as well as the filing of the *Kaffenbarger, Winslow, Hahn* and *Clark Hill* lawsuits, Gray Reed, Gray Ritter, Hare Wynn and Stueve Siegel, had initiated class actions asserting state law claims on behalf producers from 22 states as well as nationwide class claims under the Lanham Act. Based upon our research, the corn production from these 22 states represented in excess of 90% of the total corn production in the United States. As demonstrated below, the actions filed by our firms formed the basis of the later allegations made in the master complaints filed in this MDL proceeding.

LEADERSHIP APPOINTMENT

174. On December 22, 2014, this Court entered a Preliminary Practice and Procedure Order, setting an initial status conference on January 21, 2015. (ECF No. 2). Paragraph 6 of that Preliminary Practice and Procedure Order also required the Plaintiffs and Syngenta to submit a letter to the Court on or before January 16, 2015, summarizing the legal and factual issues raised by the claims asserted in these cases. I took a leading role in the coordination of the drafting, revision and finalization of the Plaintiffs' summary. In that effort, I worked closely with other Plaintiffs' lawyers, including those representing non-producers such as ADM and Cargill, as well as lawyers representing producer plaintiffs other than those represented by Gray Reed, Gray Ritter, Hare Wynn and Stueve Siegel in the cases we had filed.

175. Following submissions and hearing argument at the January 21, 2015 status conference, the Court appointed Downing, Powell, Stueve and me as Co-Lead Counsel (hereinafter and collectively, "Co-Lead Counsel"). The Court also appointed Downing as Interim Class Counsel and Stueve as Liaison Counsel. (ECF No. 67).

176. Soon after my appointment as one of the Co-Lead Counsel, the Court scheduled a Status Conference for February 3, 2015. I worked with the other Co-Lead Counsel in preparation for this Status Conference and attended that conference. Thereafter, on February 4, 2015, the Court entered Scheduling Order No. 1 establishing established deadlines related to: cases seeking remand to state court, the filing of consolidated amended complaints, and the filing of Rule 12(b)(6) motions to dismiss. (ECF No. 123).

177. Soon after the Court issued its leadership order, the Co-Lead Counsel divided up work responsibilities.

SYNGENTA'S REMOVAL OF STATE COURT CASES, INCLUDING THOSE FILED BY ADM AND CARGILL

178. Early in the litigation, Syngenta not only removed the *Clark Hill* case that we had filed in Louisiana, but also began removing hundreds of cases originally filed in state courts across the country on the basis of the Federal Common Law of Foreign Relations. (*See, e.g.,* ECF No. 283-1.) These removals included lawsuits separately filed by Cargill and ADM in Louisiana state courts.

179. Together with the other Co-Lead Counsel and members of their firms, I worked with counsel for these removed cases, including counsel for Cargill and ADM, in drafting a motion to remand these cases back to state court. Although we did not oppose removal of the *Clark Hill* case on diversity of citizenship grounds, we did join in the opposition to removals based upon the Federal Common Law of Foreign Relations.

180. On March 2, 2015, Co-Lead Counsel and the parties whose cases Syngenta had removed based on the Federal Common Law of Foreign Relations finalized and filed the motion and memorandum in support seeking to remand all of the cases that Syngenta had removed on this basis. (ECF Nos. 283-84).

181. On May 5, 2015, the Court granted the motion to remand, finding that the Federal Common Law of Foreign Relations did not give rise to federal question jurisdiction under 28 U.S.C. § 1331. (ECF No. 395). The *Clark Hill* case, however, was not among the cases remanded and remained pending in this Court based upon the alternate, diversity of citizenship grounds for its removal that we had not opposed.

PREPARATION AND FILING OF MASTER AND AMENDED MASTER CLASS ACTION PRODUCER AND NON-PRODUCER COMPLAINTS

182. In its February 4, 2015, Scheduling Order No. 1, the Court set March 13, 2015, as the deadline for the filing of "consolidated amended complaints." (ECF No. 123 at 3). Lawyers at Gray Reed, including Drew York, Alex Fuller, Russell Jumper and me, assisted Co-Lead Counsel and members of their firms in drafting portions of the Producers' and Non-Producers' Class Action Master Complaints filed on March 13, 2015 (ECF No. 296, 297). We reviewed, edited, and commented on several drafts of those complaints. The March 13, 2015 master class action complaints followed the allegations made the basis of the claims made by Co-Lead Counsel in the *Five Star Farms, Wilson Farm, Clark Hill Farms, Kaffenbarger Farms, Jack H. Winslow Farms* and *Hahn* cases.

183. Additionally, in working on the Non-Producer Class Action Master Complaint, I and Mr. York worked with not only Co-Lead Counsel, including Gretchen Garrison and Jason Sapp of Gray Ritter, but also coordinated and communicated with counsel for the named, non-producer plaintiffs, Trans Coastal Supply Company, Inc. ("Trans Coastal"), Winnsboro Elevator

("Winnsboro"), and Rail Transfer, Inc ("Rail Transfer") regarding the drafting and filing of the Non-Producer Class Action Master Complaint. Like the Producer Master Complaint, Mr. York and I reviewed, edited and commented on multiple drafts of the Non-Producer Class Action Master Complaint.

184. After the March 13, 2015 filing of the Producers' and Non-Producers' Master Class Action Complaints, Syngenta produced the documents and other materials, including deposition transcripts from, the *Bunge Litigation* as required by the Court's February 4, 2015, order. Gray Reed lawyers, including Russell Jumper, Alex Fuller, Drew York and I participated in the review of those materials. Mr. York and I also assisted in the drafting of the amended master class complaints filed on May 29, 2015, (ECF Nos. 450, 451). Our assistance again included the review, editing, and commenting on multiple drafts of both complaints. As we had done with the original Non-Producer Class Action Master Complaint, we coordinated, together with other Co-Lead Counsel and members of their firms, including specifically Gretchen Garrison and Jason Sapp with Gray Ritter, with counsel for Trans Coastal, Winnsboro and Rail Transfer in the drafting of the Amended Non-Producer Class Action Master Complaint, as well as counsel for a newly added Non-Producer Class Representative, Express Grain Terminal, LLC ("Express Grain"). Gray Reed also worked with Ms. Garrison and Scott Poynter to draft the Milo Producers' Class Action Master Complaint also filed on that date. (ECF No. 452).

185. Throughout the course of the preparation and filing of the *Five Star Farms*, *Winslow Farm*, and master complaints (including the amendments thereto), Mr. York, Mr. Fuller, and Mr. Jumper researched various legal issues in certain states that were being considered for inclusion. Those issues included whether the states recognized causes of action for public nuisance, private nuisance, trespass to chattels, trespass to land, and tortious interference, as well

as the elements necessary to support each cause of action. They also researched whether each state recognized the economic loss doctrine, and if so, the scope of the same. Finally, they assisted in researching the availability, and standard for, punitive damages in certain states. Ms. Wilhelm also researched issues associated with the Lanham Act claim. They also updated their research throughout the course of the litigation as each iteration of the complaints containing these claims was being prepared for filing.

186. After the May 29, 2015 filings, Mr. York, at the request of Co-Lead Counsel, retained the firms that translated and served those complaints upon Syngenta's foreign-based defendants under the Hague Convention. During the course of this litigation, a number of counsel for Producer and Non-Producer Plaintiffs contacted Co-Lead Counsel and requested assistance to serve the Syngenta foreign-based defendants. Those counsel were directed to Mr. York in those instances for assistance. Ultimately, we proposed and the Court entered an Order Relating to Consolidated pleadings that provided all plaintiffs with the ability to piggyback off our service under the Hague Convention saving those plaintiffs substantiated trial and expense.

STATE COURT CLASS ACTION COMPLAINTS

187. Drew York, in consultation with Chris Randolph from Hare Wynn, coordinated the filing of class action complaints in state courts on behalf of producer plaintiffs in states where the applicable statutes of limitation might arguably be two, three, or four years. As part of that effort, Alex Moore (Twiss) and Lydia Webb performed additional research and then provided an analysis of the respective state statutes of limitation. Based on that research, Mr. York, Ms. Moore and Mr. Randolph divided responsibilities each year and identified potential class representatives from the applicable states who had retained the co-lead firms. Mr. York, Ms. Moore and Mr. Randolph then drafted the state court class action complaints and coordinated with local counsel to assist in the filing of those complaints. I also assisted with the preparation, coordination and filing of state

court complaints in some states that arguably had two-year statutes of limitations. Among others, Gray Reed attorneys worked to file state court class action complaints in Colorado, Illinois, Indiana, Iowa, Kansas, Mississippi, North Carolina, Ohio, Oklahoma, Texas, and Wisconsin.

SYNGENTA'S MOTIONS TO DISMISS

188. On June 19, 2015, Syngenta filed their Motion to Dismiss the Producer and Non-Producer Plaintiffs' Amended Class Action Master Complaints (ECF No. 856) and memorandum in support (ECF No. 857).

189. Lawyers at Gray Reed reviewed and assisted with various portions of the opposition to Syngenta's Motion to Dismiss. Skyler Stuckey, Alex Moore (Twiss) and I principally focused on responding to Syngenta's arguments seeking dismissal of Plaintiffs' Lanham Act claims. In doing so, I coordinated not only with Co-Lead Counsel, but also with counsel for Trans Coastal in fashioning the arguments opposing dismissal of the Lanham Act claims. Although the Court did narrow the scope of the Lanham Act claims, it did not dismiss that claim upon Syngenta's motion to dismiss. Additionally, Mr. York and I reviewed, edited and commented on other sections of the response to those attorneys taking the lead with drafting the response.

190. Mr. York and I also attended the hearing on the Motion to Dismiss in Kansas City. We also joined lawyers from the other Co-Lead Counsel firms in Kansas City for approximately two days before the hearing to prepare.

SYNGENTA'S COUNTERCLAIMS AND THIRD PARTY CLAIMS

191. In response to Syngenta's Counterclaims and Third Party Claims filed on November 19, 2015, and December 3, 2015, I coordinated and communicated with counsel for the Non-Producer class representatives. In particular, I worked with and assisted counsel for these parties in the coordinated efforts by Co-Lead Counsel and Counsel for ADM and Cargill, to seek, and obtain, dismissal of the Counter and Third-Party Claims.

BELLWETHER DISCOVERY POOL SELECTION

192. In response to the Court's order establishing Producer and Non-Producer bellwether pools, I worked with the other Co-Lead Counsel and lawyers from the executive committee to identify the states most desirable to include in the Producer Plaintiff bellwether discovery pool, and to assess the viability of potential candidates from those states. Additionally, I took the lead, in coordination with the other Co-Lead Counsel, to discuss with counsel for Non-Producer Plaintiffs the Court's order and impact on their claims.

193. The parties selected the eight bellwether states for the Producer Plaintiffs on November 12, 2015. One week later, the parties made their bellwether plaintiff selections. Among other things, during this time I contacted Alan Embree to discuss whether a particular plaintiff from South Dakota would be willing to serve as a bellwether plaintiff.

194. During the course of the litigation after those selections were made, some bellwether selections had to be replaced. I coordinated with the other Co-Lead Counsel and other attorneys representing those bellwether plaintiffs to discuss those issues. In a few instances, we elected to not choose a replacement bellwether plaintiff.

BELLWETHER POOL JURISDICTION AND VENUE DISPUTE

195. After the Court informed both sides that the Kansas class would be in the first bellwether trial, the Court invited the parties to meet and confer, and then submit briefing on how the trials for the remaining bellwether classes should be conducted, including the Nationwide class. During the course of the meet and confer process, a dispute arose between Plaintiffs and Syngenta concerning where the trials of the remaining bellwether state classes would be held. Syngenta contended those state classes should be remanded back to their home states for trial. Plaintiffs argued that those state classes should be tried in Kansas, and that Syngenta had waived any defense to jurisdiction or venue in Kansas for those states by failing to assert that defense in their initial

responsive pleading to the operative complaints. Mr. York and I took the lead on drafting those arguments for Plaintiffs. Ultimately, the Court agreed that Syngenta waived those defenses and determined the classes would be tried in Kansas, and that the Nationwide class claims would be tried in conjunction with the Kansas class.

FACT DISCOVERY

196. Gray Reed participated in all phases of written, fact discovery in this case. In particular, work by Gray Reed lawyers on written discovery matters included the following:

A. WRITTEN DISCOVERY TO SYNGENTA AND THIRD PARTIES

197. Mr. York and I assisted Jason Earley with written discovery to Syngenta. Specifically, we reviewed, edited and commented on multiple drafts of the requests for production, interrogatories, and requests for admission that were ultimately served on the various Syngenta defendants.

198. I also assisted Jason Early in the initial drafts of document production requests to Third-Party trade organizations such as the National Corn Growers Association ("NCGA"), the American Seed Trade Association ("ASTA"), the National Grain and Feed Association ("NGFA"), the BioTechnology Industry Organization ("BIO"), and the US Grains Council ("USG"). I had personally met with counsel or representatives of several of these organizations prior to the drafting and service of subpoenas, and had previously worked with trade organizations such as the US Rice Federation in the LLRICE Litigation. Skyler Stuckey of Gray Reed provided substantial assistance to me in these efforts. I then followed up with the initial contact with counsel for these organizations regarding their compliance with the subpoenas.

B. DOCUMENT REVIEW

199. Because of his involvement in the LLRICE Litigation's document review process, Co-Lead Counsel asked Mr. York to coordinate and oversee the document review team in this

litigation. Together with Jason Earley from Hare Wynn, Mr. York prepared the document review protocol to guide the lawyers from a number of firms that would be reviewing the documents produced by Syngenta, ADM, Cargill, other Non-Producer Plaintiffs, and third parties. The protocol identified issues that document reviewers should be looking for when reviewing documents. It also contained a list of issue codes that document reviewers were supposed to apply when reviewing the documents.

200. Mr. York, Skyler Stuckey, and Russell Jumper assisted with the first-round review and coding of Syngenta's document production. That first round of review initially took place over five days in Kansas City. The first-round document review team – including lawyers from other Co-Lead and executive committee firms – flagged thousands of documents as "hot." Mr. York and Mr. Earley reviewed those documents and coordinated a summary of key events to begin preparation for depositions of Syngenta witnesses.

201. Ultimately, Mr. Stuckey, Mr. Jumper and Marcus Fettinger (among others), reviewed and coded Syngenta's document production and third party documents produced in response to Plaintiffs' requests for production to Syngenta and subpoenas to third parties. These document reviews occurred on multiple occasions throughout the litigation as Syngenta and third parties produced more documents in discovery. Gray Reed attorneys reviewed documents in Kansas City at Stueve Siegel's offices and at Gray Reed's offices in Dallas, Texas. Additionally, paralegal Leah Hart reviewed and coded producer stewardship agreements produced by Syngenta that Stueve Siegel assigned to her for review.

C. WRITTEN DISCOVERY TO PRODUCER AND NON-PRODUCER PLAINTIFFS

1. Gray Reed's Work with Producer Plaintiffs; Efforts to Collect the Information and Documents Syngenta Sought

202. Throughout discovery, Gray Reed worked directly with the following producer class representatives: Martin Petska (Nebraska), Greg Kaffenbarger (Ohio), Scott Haerr (Ohio), Alan Pedersen (Iowa) and Charles Lex (Iowa).

203. Each of these plaintiffs were required to: (i) provide a plaintiff fact sheet; (ii) respond to Syngenta's First Set of Requests for Production; (iii) respond to Syngenta's Second Set of Requests for Production; (iv) respond to three different sets of interrogatories served by three different Syngenta entities; (v) respond to Syngenta's First Set of Requests for Admission; and (vi) appear for a deposition. Gray Reed attorneys provided assistance to these plaintiffs at each stage.

204. Beginning in late winter of 2015, Mr. York and I began contacting each of these class representatives to discuss the plaintiff fact sheets ordered by the Court. We assisted them in obtaining some of the requested information from their local USDA Farm Service Agency (FSA) office, their crop insurance agent, seed dealer, grain elevator, or other buyer of their grain. In some instances our firm would contact those third parties on behalf of the plaintiff to obtain the requested information. Leah Hart, Alex Moore (Twiss) and Drew York were primarily responsible for contacting those third parties in those instances. During the course of the litigation, we also amended each class representative plaintiff's fact sheet to provide acreage for additional corresponding years. Throughout this process, we coordinated with Mr. Randolph at Hare Wynn and uploaded the completed PFS forms, or amendments, to the online portal maintained by Hare Wynn.

205. Syngenta served its First Set of Requests for Production on August 17, 2015. This set of discovery requests included 27 document requests. Working in coordination with Hare Wynn's Chris Randolph, Mr. York, Ms. Moore and I prepared the formal objections and responses to the requests for each of these plaintiffs. We also conferred directly with each of these plaintiffs about their responsibilities to produce the responsive documents that they could find during a diligent search of their files, and the need to contact third parties for whom they had control over the right to obtain documents that might otherwise be responsive. We also discussed with each plaintiff whether they had an email account that they used for their farming operation, and where appropriate, coordinated with Hare Wynn to access that email account to run searches for responsive documents.

206. The document collection process required a considerable amount of time and resources to complete, as well as close collaboration between Gray Reed, plaintiffs, and in some instances the plaintiffs' accountants, banks, the FSA offices, and the plaintiffs' grain elevators or ethanol plants. Collection of documents during the fall of 2015 was complicated by the fact that many of these producer plaintiffs, like others across the country, were at that time working long hours harvesting their crops.

207. Once the documents were collected, Mr. York, Ms. Moore and Ms. Hart divided responsibilities to review them to ensure that no privileged documents were produced.

208. In November 2015 Syngenta served its Second Set of Requests for Production. This set included 70 document requests. Once again, in coordination with Hare Wynn's Chris Randolph, Mr. York, Ms. Moore and I prepared the formal objections and responses to the requests for each of these plaintiffs. Mr. York, Ms. Moore, Ms. Hart and I contacted the plaintiffs directly

to discuss the requests and coordinate production of any responsive documents that had not already been produced.

209. Syngenta served three sets of interrogatories in late February 2016. The three sets comprised 56 separate interrogatories, not counting discrete subparts. Mr. York and Ms. Moore coordinated with Mr. Randolph and with Rachel Schwartz from Stueve Siegel concerning potential objections that might be lodged in response. Mr. York and Ms. Moore then worked with each of these plaintiffs to prepare the formal responses to the interrogatories.

210. In March 2016 Syngenta served its First Set of Requests for Admission comprising 98 separate requests. Again working in coordination with Chris Randolph, Mr. York identified potential objections to certain requests, as well as potential responses based on the wording of certain requests. Mr. York and Ms. Moore then worked directly with these plaintiffs to prepare formal responses to the requests for admission.

211. In May 2016, Mr. Randolph forwarded to the Co-Lead Counsel firms as well as other firms responsible for handling plaintiff written discovery an 88-page, single-spaced letter from Syngenta's counsel identifying alleged deficiencies in the plaintiffs' interrogatory and request for admission responses. Mr. York reviewed the letter, as well as the interrogatory and request for admission responses, with respect to the plaintiffs Gray Reed was directly responsible for. Mr. York identified those alleged deficiencies that he disputed, as well as others he thought arguably had merit. Mr. York then worked with Ms. Moore to obtain additional information, where appropriate, to respond to those arguably meritorious deficiencies. Mr. York and Ms. Moore then worked to prepare supplemental or amended responses where appropriate and discussed those outstanding issues with Mr. Randolph and the plaintiffs on numerous occasions.

212. In July 2016, Mr. Randolph forwarded a second letter from Syngenta's counsel. Just as they had done in responding to the May 2016 letter, Mr. York and Ms. Moore performed the same process for the plaintiffs that Gray Reed was responsible for.

213. Martin Petska was selected and agreed to serve as a Nebraska class representative. In that capacity, he responded to all of Syngenta's requests for production. Those requests sought documents pertaining to numerous details about his farming operation and other information over lengthy periods of time. Mr. Petska was also required to produce personal financial information. He conducted an extensive search of his records, both hard copy and electronic, that were kept at his home and his office to collect responsive documents. He also requested responsive documents from his bank, the FSA county offices that oversee the land he farms, his crop insurance agent, and the grain elevator that regularly purchases some of his corn. Mr. Petska also authorized some of these third parties to release copies of responsive records to Gray Reed. Mr. Petska also provided Gray Reed and Hare Wynn with access to his personal email account to obtain any responsive documents. Mr. Petska had to collect many of the documents during harvest season, when he was normally working 17 hours per day in his fields. All told, Mr. Petska produced more than 6,400 pages of documents to Syngenta. Mr. York and I spoke to Mr. Petska more than ten times in the fall and winter of 2015-16 regarding the collection of documents and also exchanged at least 175 emails during the course of this litigation. We both also spoke to Mr. Petska on many other occasions about the status of the litigation. Mr. Petska estimates that he spent 258 hours collecting documents requested by Syngenta. Based on Gray Reed's records and my and Mr. York's contemporaneous involvement in those collection efforts, and discussions with Mr. Petska, this estimate is reasonable. Mr. Petska also responded to Syngenta's three sets of Interrogatories and 98 Requests for Admission. As noted in more detail below, Mr. Petska also sat for a full-day

deposition and met with Mr. York and me on different occasions to prepare for the deposition. Mr. Petska was also willing, if necessary, to travel from Ord, Nebraska to Kansas City to attend a multi-week trial.

214. Kaffenbarger Farms, Inc. was selected and agreed to serve as an Ohio class representative. Greg Kaffenbarger, who owns and operates Kaffenbarger Farms, assumed responsibility for collecting documents. In that capacity, he responded to all of Syngenta's requests for production. Those requests sought documents pertaining to numerous details about his farming operation and other information over lengthy periods of time. Mr. Kaffenbarger was also required to produce personal financial information. He conducted an extensive search of his records, both hard copy and electronic, that were kept at his home and his office to collect responsive documents. He also requested responsive documents from his bank, the FSA county offices that oversee the land he farms, his crop insurance agent, and the multiple grain elevators that regularly purchases his crops. Mr. Kaffenbarger also authorized some of these third parties to release copies of responsive records to Gray Reed. Mr. Kaffenbarger had to collect many of the documents during harvest season, when he was normally working 16 hours per day in his fields. All told, Mr. Kaffenbarger produced almost 900 pages of documents to Syngenta. Mr. York and I spoke to Mr. Kaffenbarger directly or indirectly through Greg Flax, who also represented Mr. Kaffenbarger, more than ten times in the fall and winter of 2015-16 regarding the collection of documents. We both also spoke to Mr. Kaffenbarger on many other occasions about the status of the litigation. Mr. Kaffenbarger estimates that he spent 50 hours collecting documents requested by Syngenta. Based on Gray Reed's records and my and Mr. York's contemporaneous involvement in those collection efforts, and discussions with Mr. Kaffenbarger, this estimate is reasonable. Mr. Kaffenbarger also responded to Syngenta's three sets of Interrogatories and 98

Requests for Admission. As noted in more detail below, Mr. Kaffenbarger also sat for a full-day deposition and met with me to prepare for the deposition. Mr. Kaffenbarger was also willing, if necessary, to travel from Ohio to Kansas City to attend a multi-week trial.

215. Haerr Grain Farms, Three H Farms, LLC, and HGF Irrigated were selected and agreed to serve as Ohio class representatives. These entities are owned jointly by Richard A. Haerr and Richard S. "Scott" Haerr. Scott assumed responsibility for collecting documents. In that capacity, he responded to all of Syngenta's requests for production. Those requests sought documents pertaining to numerous details about his farming operation and other information over lengthy periods of time. Scott was also required to produce financial information for all three entities. He conducted an extensive search of his records, both hard copy and electronic, that were kept at his home and his office to collect responsive documents. He also requested responsive documents from the FSA county offices that oversee the land he farms, his crop insurance agent, seed dealer and the grain elevator that regularly purchases some of his corn. Scott also authorized some of these third parties to release copies of responsive records to Gray Reed. Scott had to collect many of the documents during harvest season, when he was normally working at least 15 hours per day in his fields. The document production and collection efforts were done on multiple occasions. All told, the three entities collectively produced over 8,000 pages of documents to Syngenta. Mr. York, Greg Flax (who also represented Mr. Haerr's entities) and I spoke to Scott more than ten times in the fall and winter of 2015-16 regarding the collection of documents. We also spoke to Scott on many other occasions about the status of the litigation. Scott estimates that he spent 85 hours collecting documents requested by Syngenta for all three entities. Based on Gray Reed's records and my and Mr. York's contemporaneous involvement in those collection efforts, and discussions with Scott, this estimate is reasonable. Scott also responded to Syngenta's

three sets of Interrogatories and 98 Requests for Admission for each entity. As noted in more detail below, Scott also sat for a full day of three successive corporate representative depositions on behalf of each entity. He also met with me to prepare for the depositions. Scott was also willing, if necessary, to travel from Ohio to Kansas City to attend a multi-week trial.

216. Alan Pedersen was selected and agreed to serve as an Iowa class representative. Alan and his wife LaRae farm in their individual capacities. Alan assumed responsibility for collecting documents about their farming operation. In that capacity, he responded to all of Syngenta's requests for production. Those requests sought documents pertaining to numerous details about his farming operation and other information over lengthy periods of time. Mr. Pedersen was also required to produce personal financial information. He conducted an extensive search of his records, both hard copy and electronic, that were kept at his home and his office to collect responsive documents. He also requested responsive documents from his bank, the FSA county offices that oversee the land he farms, his crop insurance agent, and the grain elevator that regularly purchases his corn. Mr. Pedersen also authorized some of these third parties to release copies of responsive records to Gray Reed, including specifically from his local FSA office. Mr. Pedersen had to collect many of the documents during harvest season, when he was normally working 12-14 hours per day in his fields. All told, Mr. Pedersen produced almost 800 pages of documents to Syngenta. Mr. York and I spoke to Mr. Pedersen more than five times in the fall and winter of 2015-16 regarding the collection of documents. We both also spoke to Mr. Pedersen on many other occasions about the status of the litigation. Mr. Pedersen estimates that he spent 20-25 hours collecting documents requested by Syngenta. Based on Gray Reed's records and my and Mr. York's contemporaneous involvement in those collection efforts, and discussions with Mr. Pedersen, this estimate is reasonable. Mr. Pedersen also responded to Syngenta's three sets

of Interrogatories and 98 Requests for Admission. As noted in more detail below, Mr. Pedersen also sat for a full-day deposition and met with Mr. York on two separate occasions to prepare for the deposition. Mr. Pedersen traveled from Humboldt, Iowa to West Des Moines, Iowa for the deposition. It is approximately 120 miles from Humboldt to West Des Moines. Mr. Pedersen was also willing, if necessary, to travel from Humboldt to Kansas City to attend a multi-week trial.

217. Charles Lex selected and agreed to serve as an Iowa class representative. Mr. Lex, who owns land that is farmed by another Iowa farmer, assumed responsibility for collecting documents. In that capacity, he responded to all of Syngenta's requests for production. Those requests sought documents pertaining to numerous details about his farming operation and other information over lengthy periods of time. Mr. Lex was also required to produce financial information about his farming operation. He conducted an extensive search of his records, both hard copy and electronic, that were kept at his home and his office to collect responsive documents. Mr. Lex sometimes requested that his business assistant, Cheryl Sutton, gather and provide responsive financial documents. He also requested, or authorized Cheryl Sutton to request, responsive documents from his bank, the FSA county offices that oversee the land he farms, his crop insurance agent, and the grain elevator that regularly purchases some of his corn. Mr. Lex also authorized some of these third parties to release copies of responsive records to Gray Reed. All told, Mr. Lex produced almost 350 pages of documents to Syngenta. Mr. York spoke to Mr. Lex and Ms. Sutton more than five times in the fall and winter of 2015-16 regarding the collection of documents. He both also spoke to Mr. Lex on many other occasions about the status of the litigation. Mr. Lex and Ms. Sutton estimate that collectively they spent at least 40 hours collecting documents requested by Syngenta. In some instances, Mr. Lex and Ms. Sutton had to drop everything and search again for additional documents that Syngenta contended Mr. Lex had in

meet and confer processes. Ms. Sutton also made multiple trips to the cooperative and FSA office to retrieve documents. Each trip was at least 75 miles roundtrip, meaning that Ms. Sutton would spend close to a half day gathering those documents. Based on Gray Reed's records and Mr. York's contemporaneous involvement in those collection efforts, and discussions with Mr. Lex and Ms. Sutton, this estimate is reasonable. Mr. Lex also responded to Syngenta's three sets of Interrogatories and 98 Requests for Admission. As noted in more detail below, Mr. Lex also sat for a full-day deposition and met with Mr. York on two occasions to prepare for the deposition. The preparation sessions, as well as the deposition, took place in West Des Moines, Iowa, which was approximately 30 minutes from Mr. Lex's home. Mr. Lex made three roundtrips in association with his deposition. Mr. Lex was also willing, if necessary, to travel from Iowa to Kansas City to attend a multi-week trial.

218. Gray Reed, in conjunction with Lockridge Grindal Nauen ("Lockridge Grindal"), also worked with Steve Lott Farms & Services, Inc., which was a named Michigan class representative. Steve Lott, who owns the corporation, agreed to let his company serve as a class representative. Because Michigan was not among the states selected for the bellwether pool, Steve Lott Farms & Services, Inc., was required to produce a plaintiff fact sheet and respond to Syngenta's First Set of Requests for Production. Mr. Lott also assumed responsibility for collecting documents. In that capacity, he responded to all of Syngenta's requests for production. Those requests sought documents pertaining to numerous details about his farming operation and other information over lengthy periods of time. He conducted an extensive search of his records, both hard copy and electronic, that were kept at his home office to collect responsive documents. He also requested responsive documents from the FSA county office that oversee the land he farms, his crop insurance agent, seed dealer and the grain elevator that regularly purchases his corn. Mr.

Lott had to collect many of the documents during harvest season, when he was normally working 12-14 hours per day in his fields. All told, Mr. Lott produced almost 350 pages of documents to Syngenta. Mr. York spoke to Mr. Lott several times in the fall and winter of 2015-16 regarding the collection of documents. We also understand Mr. Lott spoke to Kelly LeRoy at Lockridge Grindal Nauen multiple times concerning Syngenta's document requests. Mr. York and Ms. LeRoy also spoke to Mr. Lott on other occasions about the status of the litigation. Mr. Lott estimates that he spent 27 hours collecting documents requested by Syngenta. Based on Gray Reed's records and Mr. York's contemporaneous involvement in those collection efforts, and discussions with Mr. Lott and Ms. LeRoy, this estimate is reasonable. Mr. Lott also provided a declaration as part of Plaintiffs' motion for certification of the remaining states, and was willing to travel from Michigan to Kansas City to attend a multi-week trial if necessary.

219. Tim Harvey is a farmer from Minnesota who operates his farming operation as a sole proprietorship. Mr. Harvey was selected and agreed to serve as a class representative for the Minnesota class. Gray Reed, in conjunction with Lockridge Grindal, worked with Mr. Harvey regarding his discovery obligations. Because Minnesota was not selected as one of the bellwether states, Mr. Harvey was only required to produce a plaintiff fact sheet and respond to Syngenta's First Set of Requests for Production. In that capacity, he responded to all of Syngenta's requests for production. Those requests sought documents pertaining to numerous details about his farming operation and other information over lengthy periods of time. He conducted an extensive search of his records, both hard copy and electronic, that were kept at his home and his office to collect responsive documents. He also requested responsive documents from the FSA county office that oversee the land he farms, his crop insurance agent, seed dealer and the grain elevator that regularly purchases his corn. Mr. Harvey had to collect many of the documents during harvest season, when

he was normally working 12-14 hours per day in his fields. All told, Mr. Harvey produced almost 150 pages of documents to Syngenta. We also understand Mr. Harvey spoke to Kelly LeRoy at Lockridge Grindal Nauen on multiple occasions concerning Syngenta's document requests. Mr. York and Ms. LeRoy also spoke to Mr. Harvey on other occasions about the status of the litigation. Mr. Harvey estimates that he spent 30 hours collecting documents requested by Syngenta. Based on Gray Reed's records and Mr. York's contemporaneous involvement in those collection efforts, and discussions with Mr. Harvey, Mr. York and Ms. LeRoy, this estimate is reasonable.

220. Robert Hahn agreed to and was selected to serve as a Texas class representative. Mr. Hahn farms under the assumed name Bull Hide Creek Farms. Some of the land he farms has been in his family for more than 100 years. Gray Reed worked with Mr. Hahn to fulfill his discovery obligations. Because Texas was not selected as one of the bellwether states, Mr. Hahn was only required to produce a plaintiff fact sheet and respond to Syngenta's First Set of Requests for Production. In that capacity, he responded to all of Syngenta's requests for production. Those requests sought documents pertaining to numerous details about his farming operation and other information over lengthy periods of time. He and his wife conducted an extensive search of his records, both hard copy and electronic, that were kept at his home and his office to collect responsive documents. He also requested responsive documents from his FSA county office that oversees the land he farms, his crop insurance agent, and seed dealer. Mr. Hahn even traveled to the seed dealer and FSA office a couple of times each to collect some of these documents. Each roundtrip was between 40 and 60 miles. Mr. Hahn also authorized some of these third parties to release copies of responsive records to Gray Reed. Mr. Hahn had to collect many of the documents during harvest season, when he was normally working 16-18 hours per day in his fields. All told, Mr. Hahn produced almost 480 pages of documents to Syngenta. Mr. York spoke to Mr. Hahn

several times in the fall and winter of 2015-16 regarding the collection of documents. He both also spoke to Mr. Hahn on other occasions about the status of the litigation. Mr. Hahn estimates that he and his wife spent 55-60 hours reviewing Syngenta's requests, combing their files, and collecting documents requested by Syngenta. Based on Gray Reed's records and Mr. York's contemporaneous involvement in those collection efforts, and discussions with Mr. Hahn, this estimate is reasonable. Mr. Hahn also was willing to travel from Texas to Kansas City to attend a multi-week trial if necessary.

2. Gray Reed's Work with Non-Producer Plaintiffs

221. Gray Reed worked directly with counsel for the Non-Producer bellwether plaintiffs in the prosecution of those Non-Producer plaintiffs' claims.[2] Mr. York and I assisted counsel for Trans Coastal, Rail Transfer, Winnsboro and Express Grain to prepare and serve their clients' Fed. R. Civ. P. 26 initial disclosures.

222. Additionally, Syngenta served three sets of requests for production on Trans Coastal, Rail Transfer, and Winnsboro. Many of the requests for production to each Non-Producer plaintiff mirrored each other. Mr. York and I jointly drafted objections to these requests, and then worked with each Non-Producer plaintiff's counsel to complete the responses and produce any responsive, non-privileged information to Syngenta's counsel.

223. Syngenta also served two separate sets of interrogatories on Trans Coastal, Rail Transfer and Winnsboro. Like the requests for production, the majority, if not all, of the interrogatories to each Non-Producer plaintiff mirrored each other. Mr. York and I jointly drafted

[2] Trans Coastal and Rail Transfer participated throughout as Non-Producer bellwether plaintiffs. Express Grain dismissed its claims in February 2016. (ECF 1596, February 24, 2016). Prior to Express Grain's dismissal, Gray Reed assisted Express Grain and its counsel with written discovery directed to Express Grain. In August 2016, Winnsboro dismissed its claims (ECF 2416, 2417, August 16, 2016). Prior to Winnsboro's dismissal, Gray Reed assisted Winnsboro, and its counsel with the written discovery described this and subsequent paragraphs.

objections to these interrogatories, and then worked with each Non-Producer plaintiff and their counsel to prepare responses to the interrogatories.

224. Syngenta likewise served requests for admission on Trans Coastal, Rail Transfer and Winnsboro that mostly mirrored each other. Mr. York and I jointly drafted objections to the requests where appropriate, and then worked with each Non-Producer Plaintiff's counsel to complete the responses and serve them on Syngenta's counsel.

225. Paragraph intentionally omitted.

D. DEPOSITIONS

226. Gray Reed attorneys took and defended more than 60 separate depositions in this litigation. In preparation for and during each of these depositions, Gray Reed attorneys customarily and regularly undertook to coordinate and communicate with attorneys for other producer plaintiffs' groups (namely, the Minnesota state court plaintiffs and the plaintiffs from the Southern District of Illinois), as well as counsel for the Non-Producer Plaintiffs, ADM and Cargill.

1. Producer Plaintiff Depositions

227. Gray Reed attorneys made at least 5 trips to Central Iowa, South Central Nebraska, and Central Ohio to prepare and defend the Producer Plaintiff class representatives in their depositions. For example, I traveled to Ord, Nebraska, to prepare Martin Petska for his deposition, although we ultimately rescheduled that deposition. I spent approximately one full day preparing Mr. Petska. I flew in and out of Omaha, Nebraska, and then drove 3 hours to Ord. Thereafter, Mr. York made two trips to Ord, Nebraska, to prepare Mr. Petska for his deposition a second time. Mr. York flew from Dallas to Grand Island, Nebraska, and then drove to Ord to meet with Mr. Petska. After their first preparation session, a massive blizzard resulted in the cancellation of the deposition. Due to the blizzard, Mr. York was unable to get out of Grand Island for two days. Mr.

York then flew back to Grand Island the following month for the deposition. Each time he spent approximately a half-day preparing Mr. Petska. Mr. Petska's deposition lasted a full day.

228. Mr. York also made two trips from Dallas to Des Moines, Iowa, to prepare and defend Alan Pedersen and Charles Lex in their depositions. The first trip occurred April 14-15, 2016. During the first trip, Mr. York drove approximately 120 miles from Des Moines to Humboldt, Iowa for a half-day preparation session with Mr. Pedersen. Mr. York then returned to Des Moines and met with Mr. Lex the following day for approximately 4 hours. The second trip to Des Moines occurred on May 8-10, 2016. Mr. Pedersen was deposed on May 9 for a full day. Mr. Lex was deposed on May 10 for a full day. Mr. York met with both class representatives for final deposition preparation. Each meeting lasted approximately two hours.

229. On January 6, 2016, I traveled to Springfield, Ohio, to prepare Scott Haerr and Greg Kaffenbarger for their depositions as Ohio class representatives. I spent approximately one day preparing both witnesses. Their depositions were taken over the next two days, on January 7th and 8th, 2016. I defended both of their depositions.

2. Non-Producer Plaintiff Depositions

230. Gray Reed attorneys also participated in depositions of Non-Producer Plaintiffs, including the Non-Producer Class Representatives as well as representatives and employees of ADM and Cargill, whose cases the Court remanded to Louisiana state court:

a. Trans Coastal

231. Mr. York traveled to St. Louis and met with Pam Moses and Trans Coastal's counsel on April 6, 2016, to prepare Ms. Moses for the first two days of her deposition as Trans Coastal's corporate representative. Mr. York then attended both days of the deposition on April 7-8.

232. Mr. Stuckey also traveled to St. Louis to meet with Pam Moses and Trans Coastal's counsel on May 24-25, 2016, to prepare Ms. Moses for additional days of her deposition as Trans Coastal's corporate representative. Mr. Stuckey then attended the third and fourth days of the deposition on May 26-27, 2016.

233. Mr. York and Mr. Stuckey also traveled to Chicago to prepare for and attend the deposition of Robert Briscoe. Mr. Briscoe appeared in his individual capacity, and then as a corporate representative of Prairie Grain, on May 17-18, 2016. Mr. York and Mr. Stuckey met with Mr. Briscoe, as well as Trans Coastal's counsel, on May 16 for approximately a half day to prepare for Mr. Briscoe's depositions.

234. Mr. Stuckey then traveled to Ontario, California, on June 1, 2016, and met with MingLu Li and Pauline Yang, former employees of Trans Coastal, as well as Trans Coastal's counsel to prepare Mrs. Li and Ms. Yang for their depositions. Mr. Stuckey then traveled to Los Angeles on June 2, 2016, to attend the deposition of Pauline Yang. After Ms. Yang's deposition, Mr. Stuckey met with Mrs. Li and Trans Coastal's counsel to continue preparing for Mrs. Li's deposition.

235. Mr. York also traveled to Houston on June 6 to meet with Eric Woodie and Trans Coastal's counsel in preparation for Mr. Woodie's deposition. The preparation session lasted approximately a half day. Mr. Woodie's deposition took place on June 7 and lasted a full day.

236. Mr. Stuckey next traveled to St. Louis to meet with Dave Stanko, a former employee of Trans Coastal, and Trans Coastal's counsel on June 8, 2016, to prepare for Mr. Stanko's deposition. Mr. Stuckey then attended Mr. Stanko's deposition on June 9, 2016.

237. Mr. Stuckey then traveled to Minneapolis on June 13, 2016, to meet with Greg Molnar, a former employee of Trans Coastal, and Trans Coastal's counsel to prepare Mr. Molnar for his deposition. Mr. Stuckey then attended Mr. Molnar's deposition on June 14, 2016.

238. Mr. Stuckey also traveled to St. Louis on September 26, 2016, to attend an additional day of the ongoing deposition of Pam Moses as Trans Coastal's corporate representative. Mr. Stuckey returned to St. Louis to meet with Ms. Moses and counsel for Trans Coastal on October 24, 2016, and then attended another day of Ms. Moses's deposition as Trans Coastal's corporate representative on October 25, 2016.

b. Rail Transfer

239. Mr. York traveled to Minneapolis and met with Todd Nimmo and Hart Robinovitch, Rail Transfer's counsel, to prepare Mr. Nimmo for his testimony as a corporate representative of Rail Transfer. The preparation sessions lasted approximately a day and half on April 19-20, 2016. Mr. York then attended the first two days of Mr. Nimmo's corporate representative deposition on April 21-22. Syngenta took a third day of Mr. Nimmo's deposition on August 24, 2016. Mr. York flew to Minneapolis on August 23, met with Mr. Nimmo and Mr. Robinovitch for a half day to prepare, and then attended Mr. Nimmo's deposition.

c. Winnsboro

240. On May 4, 2016, Mr. York traveled to Baton Rouge, Louisiana to meet with Ryan Ellington and Winnsboro's counsel to prepare Mr. Ellington to testify as Winnsboro's corporate representative. Mr. York then attended Mr. Ellington's deposition on May 5-6.

3. Depositions of Syngenta Witnesses

241. I prepared and served upon Syngenta's counsel Rule 30(b)(6) deposition notices and topic lists in late 2015 in anticipation of depositions commencing the following January. I

consulted with Co-Lead Counsel in preparing those notices, as well as counsel for other parties, including Cargill, ADM and the plaintiffs with cases pending in Minnesota state court.

242. I took the lead in deposing Syngenta's employees who were involved with the commercialization decisions for Agrisure Viptera and Duracade, the U.S. regulatory approval and testing of those products, and as the background on the corporate organization and structure of the Syngenta entities. In each deposition, I questioned the witness first, and prior to, and during, the deposition communicated and coordinated with other plaintiffs' counsel, including in some instances sharing outlines, so that they could prepare supplemental examinations. Because of the inability to subpoena many of these witnesses to trial, in these depositions it was necessary to conduct them in a manner designed to permit video play back at trial of critical testimony. Drew York, Skyler Stuckey or Alex Moore (Twiss) assisted me in the preparation for these depositions, and in most instances one of them attended the deposition with me. These employees' depositions included:

- Cheryl Quain, as a corporate representative on certain topics, January 19, 2016, in Washington, DC (Mr. York also attended);
- Lawrence Zeph, as a corporate representative on certain topics, January 20 – 21, 2016, in Washington, DC (Mr. York also attended);
- Scott Huber, as a corporate representative on certain topics, January 28 – 29, 2016, in Washington, DC (Co-Lead Counsel Patrick Stueve took Mr. Huber's deposition on other topics after my examination);
- David Morgan, as a corporate representative on certain topics, February 10 – 11, 2016, and individually, April 12 – 13, 2016, all in Washington, DC (Mr. York also attended both depositions);

- Dennis Ward, in his individual capacity as a former Syngenta employee, February 17, 2016, in Washington, DC (Mr. York also attended);
- Charles Lee, in his individual capacity, March 8 – 10, 2016, in Washington, DC (Mr. York also attended);
- David Roberts, in his individual capacity, via telephone with Jason Earley of Hare Wynn conducting the examination, in Washington, DC; and
- Rex Martin, in his individual capacity as a former Syngenta employee, May 3, 2016, in Washington, DC (Mr. Stuckey also attended).

4. Third Party Depositions

243. I took the lead on behalf of the Plaintiffs in these multidistrict proceedings in the following depositions of third party witness:

244. Mathew O'Mara, as the corporate representative of the BioTechnology Industry Organization on certain topics, June 28 – 29, 2016, in Washington, DC.;

245. Andrew LaVigne, as the corporate representative of the America Seed Trade Association on certain topics, June 3, 2016, in Washington, DC; and,

246. Thomas Sleight and Bryan Lohmar, as the corporate representatives of the United States Grain Council on certain topics, June 22 – 24, 2016, in Washington, DC (together with Lew Garrison, counsel for the plaintiffs in actions pending in the Southern District of Illinois).

5. Depositions of ADM and Cargill Witnesses

247. At the Co-Leads Counsel's request, Gray Reed also took the lead role attending the depositions of ADM employees. Additionally, Gray Reed attorneys attended the depositions of several Cargill employees. Gray Reed attorneys examined the witnesses at virtually all of these

depositions, and in many instances took the lead role examining the witnesses for all plaintiffs. Below is a list of all ADM and Cargill depositions attended by Gray Reed attorneys:

a. ADM Witnesses

248. Pablo Altuna, September 29, 2016 in Chicago (Mr. York).

249. Chris Boerm, as a corporate representative of ADM on certain topics, June 20-21, 2016 in Chicago (Mr. York).

250. Henry Cooklin, May 25, 2016 in Chicago (Mr. York).

251. Stefan Fiedler, July 15, 2016, in Chicago (Mr. York)

252. Brett Flickinger, as a corporate representative of ADM on certain topics, June 30, 2016 in Chicago (Mr. York).

253. Brett Flickinger, in his individual capacity, July 8, 2016 in Chicago (Mr. York by telephone).

254. Matt Giltner, October 14, 2016 in Chicago (Mr. Stuckey).

255. Richard Grabiel, September 8-9, 2016 in Springfield, Illinois (Mr. York).

256. Stefanie Gummelt, July 22, 2016 in Chicago (Mr. Stuckey).

257. JuHui Huang, September 22-23, 2016 in Chicago (Mr. York).

258. Douglas Johns, July 18-19, in Chicago (Mr. York).

259. Andrew Keighin, May 26, 2016 in Chicago (Mr. York).

260. Anthony Reed, as a corporate representative of ADM on certain topics, June 1, 2016 in Washington D.C. (Mr. York).

261. Anthony Reed, in his individual capacity, June 3, 2016 in Washington D.C. (Mr. York).

262. Anthony Reed, as a corporate representative of ADM on certain topics, October 14, 2016 in Washington D.C. (Mr. York).

263. Joseph Taets, June 25-26, 2016 in Chicago (Mr. York).

264. Wesley Uhlmeyer, as a corporate representative of ADM on certain topics, June 15-16, 2016 in Chicago (Mr. York).

265. Wesley Uhlmeyer, in his individual capacity, June 23, 2016 in Chicago (Mr. York).

266. Stephan von Lamezan, July 12, 2016 in Chicago (Mr. York).

b. Cargill Witnesses

267. David Baudler, as a corporate representative on certain topics and in his individual capacity, May 16 and 17, 2016, in Minneapolis (I took the deposition).

268. William Hale, as a corporate representative on certain topics, May 18 and 19, 2016, in Minneapolis (I took the deposition).

269. Arvid Hawk, a former Cargill employee, in his individual capacity and as a corporate representative of Global Agricultural Consulting on certain topics, July 25, 2016, in Minneapolis (I took the deposition).

270. William Barksdale, June 13-14, 2016 in Minneapolis (Mr. Stuckey).

271. Cheryl Eldstrom, December 13, 2016 in Minneapolis (Mr. York).

272. Maurice Hurst, as a corporate representative for Cargill on certain topics, December 16, 2016 in Minneapolis (Mr. York).

273. Steve Smalley, as corporate representative for Cargill on certain topics, February 16, 2017 in Minneapolis (Mr. York).

EXPERT DISCOVERY AND DAUBERT MOTIONS

274. Gray Reed took the lead role in searching for and retaining potential experts to testify on issues related to the Plaintiffs' Lanham Act claims. We did retain a consulting expert on those issues who furnished valuable advice that assisted with our litigation strategy.

275. The Co-Lead Counsel and I divided the work necessary to investigate and depose Syngenta's designated, testifying experts. Gray Reed took the lead for the Co-Lead Counsel in deposing Dr. Hongjun Zhang, a purported expert on Chinese law. We worked closely with counsel for both Cargill and ADM, each of which had particular expertise in this area. Mr. York and I spent more than four days preparing for Dr. Zhang's deposition, including meeting in person with other attorneys representing producer and non-producer plaintiffs to outline the deposition examination. I deposed Dr. Zhang on February 1, 2017.

276. At Co-Lead Counsel's request, Mr. York also attended the depositions of Antony Page on January 24, 2017, and Robert Daines on January 27, 2017, on behalf of the Federal MDL Plaintiffs. (ECF Nos. 2988, 3063). Counsel for the Minnesota Plaintiffs took the lead examining both witnesses. Mr. York coordinated with Minnesota counsel both before and during the depositions concerning the examinations. He also examined both witnesses.

277. Gray Reed took the lead on drafting the motion to exclude Dr. Zhang and coordinated with counsel for the Minnesota state court plaintiffs concerning motions to exclude Drs. Page and Daines, including drafting sections of the argument specifically tailored to issues arising in the Federal MDL proceedings. Mr. York was responsible for drafting these three motions for this MDL. Syngenta withdrew all three experts prior to trial. (ECF Nos. 2988, 3063).

278. Additionally, Mr. York and I coordinated with counsel for Trans Coastal and Rail Transfer concerning the designation of their testifying expert witnesses. Mr. York and I reviewed and commented on drafts of the reports prepared by James Woods opining on the damages suffered by both Non-Producer Plaintiffs. We also participated in conference calls with Mr. Woods and counsel for Rail Transfer and Trans Coastal regarding those reports. I met with Mr. Woods and

counsel for Rail Transfer and Trans Coastal to prepare Mr. Woods for his separate depositions, and then I attended both depositions.

SUMMARY JUDGMENT BRIEFING

279. On February 6, 2017, Plaintiffs and Syngenta both filed summary judgment motions. With respect to Plaintiffs' motion, Gray Reed took the lead drafting the section challenging Syngenta's independent, legitimate business, and economic justifications. We also reviewed, edited, and commented on drafts of the entire memorandum in support of the motion.

280. With respect to Plaintiffs' response to Syngenta's motion, Gray Reed took the lead drafting the response to Syngenta's arguments seeking summary judgment on Plaintiffs' Lanham Act claims. In that regard, I not only worked with Co-Lead Counsel, but also counsel for Trans Coastal Supply. We also reviewed, edited and commented on drafts of the entire memorandum in opposition to Syngenta's motion. Mr. York also assisted Jason Earley from Hare Wynn to prepare Plaintiffs' Response to Defendants' Statement of Undisputed Facts, as well as Plaintiffs' Statement of Additional Facts that was filed with the Memorandum in Opposition to Syngenta's Motion for Summary Judgment. Among other things, Mr. York coordinated the gathering of certain exhibits for the Statement of Additional Facts. He also led a team of attorneys at Gray Reed – including Mr. Stuckey, Sonya Reddy, Angela Brown, and Marcus Fettinger, among others – who cite checked the final draft of the Memorandum in Opposition.

PRE-TRIAL PREPARATION FOR KANSAS CLASS TRIAL

281. Mr. York and I, along with lawyers from other co-lead firms, prepared extensively for several meetings with outside trial consultants including: (i) a focus group in Kansas City to evaluate local attitudes to our potential arguments and anticipated defenses Syngenta would raise; (ii) a mock trial in Kansas City where Mr. Downing and I presented a portion of Syngenta's anticipated case; and (iii) three, week-long strategy sessions with a trial consultant. Mr. York also

traveled to Little Rock, Arkansas in early 2017 to meet with Mr. Earley for several days to work on potential trial themes.

282. Most of the fact witnesses – both Syngenta employees and third-party witnesses – who we would have wanted to testify at trial were not within the Court's subpoena power. Therefore, Co-Lead Counsel assigned responsibility to each firm that attended a fact witness deposition to identify excerpts they believed should be introduced at trial if the witness did not appear live. Mr. York and I reviewed the transcripts of the depositions of each witness we attended and marked potential excerpts to play at trial. If we both attended the deposition, we discussed any excerpts that we disagreed on and reached a final consensus. We then circulated all of the selected excerpts to all of the Co-Leads. Co-Lead counsel Stueve and Powell then made the initial proposed edits and cuts of the excerpts submitted by all of the firms. Co-Lead Counsel Downing and I then reviewed and made secondary edits and cuts to proposed video deposition designations for use at trial. I reviewed dozens of potential witnesses during this time. This process was quite complicated as we had to read, and some instances watch, the initial video deposition selections to determine the precise points we needed to present to the jury, and further to attempt to remove duplication among the witnesses. This was most time-consuming, but critical work in this case as much of our case at trial depended on video testimony, and we had to carefully balance the need to offer a complete record with the jury's limited attention span for video testimony.

283. Gray Reed also coordinated and prepared the disclosures of many of the pre-trial disclosures for the Kansas class trial. For example, Gray Reed was responsible for serving Plaintiffs' witness lists and Plaintiffs' deposition designations. Mr. York led that effort, coordinating the deposition designation selections from each Co-Lead firm, as well as other executive committee firms or others whom Co-Lead Counsel had assigned to attend depositions

of fact witnesses in this litigation, based on the Co-Leads edits through their two-step review process described above. Mr. York utilized Ms. Moore, as well as paralegals Elayne Cameau and Beth Cook, to collect and organize the disclosures from each firm into the singular disclosure that was filed with the Court and/or served on Syngenta's counsel.

284. Mr. York, Mr. Stuckey and I reviewed Syngenta's designated deposition testimony for the deponents we attended, and identified objections and counter-designations for the same. Mr. York was also in charge of coordinating, organizing and finalizing service of Plaintiffs' objections to Syngenta's designations as well as Plaintiffs' counter-designations for all depositions. Again, Mr. York, Ms. Moore, Ms. Cameau and Ms. Cook compiled the information provided by each plaintiff's firm into a singular disclosure that was served on Syngenta's counsel.

285. Mr. York, Mr. Stuckey and I also reviewed Syngenta's counter-designations for those plaintiffs' witnesses whose depositions we attended. We identified objections to the counter-designations as well as counter-to-the-counter designations. Mr. York was once again responsible for coordinating and finalizing Plaintiffs' objections to Syngenta's counter-designations and counter-to-counter designations. He, Ms. Moore, Ms. Cameau and Ms. Cook compiled the information provided by each plaintiff's firm, reviewed it for accuracy, and prepared a singular disclosure that was served on Syngenta's counsel.

286. Mr. York, Mr. Stuckey and I also reviewed Syngenta's counter-to-the-counter designations for those witnesses on Syngenta's witness list for whom we attended their deposition. We prepared objections to the same. Mr. York, along with Ms. Moore, Ms. Cameau, and Ms. Cook, compiled the objections for all of these witnesses from all of the plaintiffs' counsel, reviewed for accuracy, and prepared a singular disclosure that was served on Syngenta's counsel.

287. Mr. York oversaw a team of 12 comprising Gray Reed associates, paralegals, and summer law clerks, as well as Tempe Smith and Laura Riedinger from Hare Wynn, to prepare .pdf copies of the transcripts of Plaintiffs' deposition witnesses that identified designated testimony in accordance with the Court's color-coding instructions. The team also inserted objections in the margins following service of all objections to designations, counter-designations, and counters-to-the-counters. Drafts of the transcripts were provided to Syngenta's counsel for review and approval. Mr. York also met and conferred with Syngenta's counsel regarding the deposition designations and objections prior to providing the Court with the deposition notebooks for rulings on Plaintiffs' designations.

288. Mr. York, Ms. Cook and Lan Lam traveled to Kansas City to help organize the binders identifying disputed deposition designations for Plaintiffs' case, and then delivered them to the Court. Additionally, Mr. York led this same team of lawyers, paralegals and staff to review the drafts of the color-coded binders that Syngenta submitted to the Court before trial.

289. Mr. York was also responsible for leading a team of lawyers, paralegals, and audio visual litigation support staff to produce, review, edit and finalize the videotape excerpts of each witness Plaintiffs called to testify by deposition. This was an extremely laborious process. Beginning on May 28, 2017, the video team began preparing videos of the designation excerpts for 26 potential witnesses. Lawyers from each Co-Lead Counsel firm reviewed the designations remaining after the Court's evidentiary rulings, and provided instructions to paralegals and support staff to insert, highlight, and zoom in on certain exhibits discussed during the testimony. After the initial production of each video was made, an attorney from one of the Co-Lead firms would watch the video. The attorney then provided instructions to the paralegals and support staff to make additional edits to the videos as necessary. The video team worked extremely long hours before

and during trial. During weekdays, on average, the team started at 8 a.m. each day and finished between 1 and 2 a.m. In some instances, members of the team worked all night. The team's work on weekends started between 8 and 9 a.m. and went until 6 or 7 p.m. on Saturdays, and then around midnight on Sundays. The video team's time was due in large measure to the drawn out meet and confer process with Syngenta's counsel over cumulativeness and scope objections, which resulted in the final edits of many videos being made the night before the video was played in Court. Ultimately, Plaintiffs played 22 of the 26 videos during our case-in-chief. This team's work continued during Syngenta's case in which we offered counter-designations and sought to prevent the introduction of cumulative evidence by Syngenta.

290. Mr. York and Tempe Smith from Hare Wynn met and conferred with Syngenta's counsel on the weekend before trial began to discuss the impact of the Court's rulings on deposition designations and exhibits identified therein. There were three meetings that collectively lasted approximately 8 hours.

291. Additionally, in preparation for the trial of the Kansas class, I assisted Gretchen Garrison in the preparation of proposed jury instructions and in conferences with Syngenta's counsel to determine which instructions to which the parties could agree and those as to which they could not agree. Dylan Drummond also provided significant assistance to Ms. Garrison and me in the legal research regarding, as well as preparation, review, and finalizing of the proposed jury instructions.

JUNE 2017 KANSAS CLASS TRIAL

292. The Kansas class trial began on June 5, 2017, and lasted until June 23, 2017, when the jury returned its verdict. Three Gray Reed attorneys and one paralegal attended all or part of the Kansas class trial. Drew, Skyler, and I arrived approximately a week before the start of trial

and stayed in Kansas City for the entire duration. Beth Cook also arrived approximately 5 days early and stayed for the first week of trial.

293. During the trial, I prepared for and presented the testimony of Charles Frickey, one of the Kansas class representatives. I had met with Mr. Frickey on at least 3 occasions in preparation for his testimony, spending approximately 2 days total. Mr. Frickey testified early in the trial.

294. I also prepared for and conducted the cross-examination of one of Syngenta's witnesses, David O'Reilly. Mr. O'Reilly had been deposed by lawyers not involved in the Kansas class trial and my preparation included not only studying the deposition transcript but also reviewing other documents produced by Syngenta authored by or sent to him.

295. During the trial, I also briefed and conducted conferences with Syngenta's counsel on several issues, including proof of Syngenta's net worth and other factors bearing upon Plaintiffs' claims for punitive damages. I also negotiated with Syngenta and obtained approval of the Court to publish to the jury certain documents without a sponsoring witness. I additionally helped coordinate the preparation of agreed statements by counsel introducing and describing to the jury each of the witnesses for whom Plaintiffs presented video deposition testimony.

296. I also prepared for the direct testimony, or cross examination, of other witnesses who did not testify at trial. Additionally, I consulted with and assisted the other Co-Lead Counsel in their preparation for direct or cross examination of other witnesses, or in the preparation of voir dire, opening statements and closing argument.

297. Drew York and Tempe Smith of Hare Wynn coordinated the exchange of trial exhibits and witness disclosures with Syngenta during trial, consistent with both sides' agreement concerning the timing of those exchanges.

298. Mr. York and Ms. Smith conducted dozens of meet and confers with Syngenta's counsel regarding deposition designations and trial exhibits. Multiple meet and confers were held each day – some at the courthouse in the attorney conference rooms while trial was going on. Other meet and confers were held by phone late at night. As a result of those discussions, both sides significantly narrowed the volume of designated deposition testimony that was ultimately presented to the jury.

299. To the extent there were unresolved evidentiary disputes, Mr. York primarily handled those arguments before the Court for Plaintiffs. Mr. York also handled the admission of exhibits identified in Plaintiffs' depositions, and ensured that the page/line designations of the deposition testimony played in Plaintiffs' case-in-chief were filed with the Court by the time Plaintiffs rested.

300. During trial Skyler Stuckey, Beth Cook, attorneys and paralegals from Hare Wynn, and two employees of Midwest Court Reporting continued the process of editing deposition videos to include only the designated testimony that Plaintiffs' counsel and Syngenta's counsel had elected to present in Plaintiffs' case in chief. This editing process also included editing the videos to treat exhibits introduced by Syngenta through Syngenta's counter-designations in accordance with any exhibit treatment instructions provided by Syngenta. Mr. York, Tempe Smith, Jason Earley, and Chris Randolph reviewed those edited videos to ensure that the correct testimony was included, worked with lawyers from the other Co-Lead Counsel firms to identify the exhibits that needed to be presented on-screen during the deposition designation videos, and identified portions of exhibits that needed to be highlighted on screen. Ultimately Plaintiffs played during their case 22 of the 26 that were videos presented at trial. During the presentation of deposition testimony in Syngenta's case-in-chief, Mr. York and Ms. Smith coordinated with other attorneys and staff to

provide Syngenta with instructions for the display of exhibits introduced through Plaintiffs' counter-designations.

POST-TRIAL

301. Dylan Drummond assisted Gretchen Garrison and Brad Wilders with research regarding issues raised in Plaintiffs' Motion to Amend the Nationwide and Kansas Class Judgment, as well as Plaintiffs' Opposition to Syngenta's Post-Trial Rule 50(b) Motion for Judgment and, Alternatively, Rule 59 Motion for a New Trial and/or Remittitur.

PREPARATION FOR ARKANSAS AND MISSOURI CLASSES TRIAL

302. After the Court determined that the Arkansas and Missouri class claims would be included in the second MDL class trial (ECF No. 3319), Mr. York, along with Tempe Smith and Jason Earley, spent approximately three weeks studying the video deposition designations from the Kansas class trial. They met in Birmingham, Alabama and Little Rock, Arkansas to identify testimony that they believed should be added or removed, including testimony that they felt was unnecessarily cumulative. Mr. York and Mr. Earley then presented their recommendations to Co-Lead Counsel.

SETTLEMENT NEGOTIATIONS

303. After the initial appointment of Special Master Ellen Reisman, I participated in initial discussions with her in person and on the phone. I participated in those early discussions with Co-Lead Counsel, including at least one meeting with Ms. Reisman and Stueve, and in one telephone conference with Ms. Reisman and Powell. I regularly consulted with Co-Lead Counsel regarding the settlement negotiations after the appointment by the Court of the Plaintiffs' Negotiating Committee and then following the September 25, 2017, announcement that the parties had signed a term sheet.

304. After the announcement of the preliminary settlement framework on September 25, 2017, I evaluated, with the assistance of Gray Reed associates Alex Moore (Twiss) and Skyler Stuckey, the USDA FSA's procedures for gathering and maintenance of the producers' acreage and related data through its Form 578, and the means by which that data might most efficiently be accessed and used in the administration of the settlement of these cases. That evaluation led to meetings which Stueve, legislative affairs counsel Adam Sachs of the firm of Husch & Blackwell, and I had with the staffs of Senate and members of the House of Representatives serving on Senate and House Agriculture Committees, and ultimately counsel to the USDA. I drafted and negotiated with the USDA, with the assistance and input of Stueve and Sachs, a Memorandum of Understanding executed by the FSA to provide electronic access to the Form 578 data. That Memorandum of Understanding provided the basis for the current arrangement to make that data available in connection with this settlement.

305. In support of this settlement, following this Court's preliminary approval and at the request of the American Agricultural Law Association, Downing and I prepared for and made on June 4, 2018, a one-hour webinar entitled the "Nuts and Bolts of the Syngenta Corn Settlement."

GRAY REED'S TAX, CORPORATE AND CREDITOR'S RIGHTS COMMON BENEFIT WORK

306. Gray Reed's tax, corporate and creditors' rights attorneys additionally assisted in several important issues during the prosecution and settlement of these cases.

307. Gray Reed's corporate lawyers, Brock Niezgoda and Jeff Hopkins provided valuable assistance in monitoring and evaluating developments arising from ChemChina's tender offer for Syngenta.

308. Gray Reed's litigation, bankruptcy and creditors' rights associate, Lydia Webb, also assisted me with a survey of and preliminary research regarding enforceability in Switzerland of a judgment against Syngenta AG or its Swiss, affiliated co-defendants.

309. Tom Rhodus assisted me and supervised the preparation of the qualified settlement fund trust established by this court to hold the common benefit fees and expenses paid upon settlement of the *Minsk* case in Minnesota state court. (ECF No. 3354). We also sought and obtained additional comments on that trust document from lawyers at the Stinson Leonard Street law firm.

310. Mr. Rhodus and David Gair assisted me in reviewing and providing comments on drafts of the escrow agreement with CitiBank established and approved by this Court in connection with the class settlement now awaiting final approval by this Court. (ECF No. 3535).

FEE AGREEMENTS WITH INDIVIDUAL CLIENTS

311. Gray Reed has been individually retained by a number of plaintiffs who are now members of the settlement class. If a class had not been certified, our individual fee agreements required each client to pay 33 1/3% of any net benefit received.

312. If a class were certified, Gray Reed's fee agreements expressly waived any right to seek attorneys' fees individually from these clients and to instead seek fees and expenses solely from the Court.

313. Consequently, Gray Reed is seeking compensation and expense reimbursement solely from the common benefit fee and expense award made by this Court and will not seek to recover individual attorneys' fees or expense reimbursement from any individual client who is a member of the settlement class.

314. In total, my firm has expended more than 1,000 hours on these individual clients, totaling more than $600,000 in lodestar. We have additionally incurred approximately $100,000

in expenses. We have not included this lodestar amount or the expenses for our individual clients in this application for attorneys' fees.

COMMON BENEFIT TIME AND EXPENSE SUBMISSIONS

A. COMMON BENEFIT TIME AND EXPENSES SUBMITTED BY COMMON BENEFIT FIRMS

315. Co-Lead Counsel divided the time and expense submission of common benefit firms for a review to conduct a robust review to determine compliance with the requirements for common benefit time and expense under the Court's orders. Each Co-Lead Counsel reviewed the submissions of another Co-Lead Counsel. For example, Mr. York and I both reviewed the Hare Wynn time and expense submissions and Scott Powell reviewed Gray Reed's submissions. Additionally, Mr. York and I both reviewed in May and June, 2018, the submissions of 17 other firms. I then sent to each firm our comments and proposed reductions in either their common benefit time or expenses. I also conducted a telephone conference with each firm to explain the bases for our reductions and listened to any justifications offered. In some instances I was convinced that the eliminated time and/or expense was properly compensable. The remainder of our exclusions were removed from that firm's submission and the total hours and/or total expense was reduced accordingly. The firms whose time and expenses that Mr. York and I personally reviewed were: Hare Wynn Newell Newton LLP; Batts, Batts & Bell, LLP; Battle & Winn LLP; Bohrer Brady LLC; Brooks Pierce; Coffman Law Firm; Greene Espel PLLP; Kruml Law Office, P.C.; Lockridge Grindal Nauen PLLP; Martin, Browne, Hull & Harper PLL; McCauley McClure; Miller Schirger LLC; Paul LLP; Simmons Hanly Conroy LLC; Soper Leddin Law Firm, PC; Wagner Reese, LLP; Weller, Green, Toups & Terrell, L.L.P.; and Zimmerman Reed, LLP

B. GRAY REED'S COMMON BENEFIT TIME AND EXPENSES

316. Gray Reed maintains contemporaneous records of its time and expenses. These records are prepared and maintained in the ordinary course of business through software systems maintained by the firm.

317. I prepared my declaration with the assistance of other lawyers and staff at the firm with knowledge of the matters reflected herein. I have personally reviewed the information supporting the fee and expense requests that are the subject of this declaration, and, based on that review, I believe that the information contained herein is accurate.

318. As part of the preparation of my declaration, I reviewed the time and expenses incurred in this litigation to exercise billing judgment. These figures do not include the anticipated additional time preparing for and attending the Final Approval Hearing and the additional time to administer the Settlement and finalize payments to class members. It has been our experience in similar class actions that class counsel will spend between 500 to 1,000 hours following final approval to finalize the administration of this settlement.

319. After exercising billing judgment and making billing reductions based on my review of the records, the number of hours spent on this litigation by my firm is 16,859.90 hours. A breakdown of the lodestar is provided below. The lodestar amount for attorney time based on the rates is $10,462,531.60, using the rates for each individual consistent with rates approved by this Court for similarly experienced counsel in contingent class action cases.

	Name	Title	Total Hours	Hourly Rate	Lodestar
1.	Chaney, William	Partner	4,942.90	$865.00	$4,275,608.50
2.	York, Andrew K.	Partner	3,796.10	$695.00	$2,638,289.50
3.	Stuckey, Skyler	Associate	2,583.10	$565.00	$1,459,451.50
4.	Hart, Leah J.	Paralegal	1,585.90	$225.00	$356,827.50
5.	Twiss, Alexandria	Associate	776.20	$400.00	$310,480.00

	Name	Title	Total Hours	Hourly Rate	Lodestar
6.	Moore, Alexandria	Associate	647.30	$400.00	$258,920.00
7.	Jumper, Russell	Associate	469.80	$575.00	$270,135.00
8.	Cook, Beth A.	Paralegal	458.40	$295.00	$135,228.00
9.	Brown, Angela L.	Associate	191.70	$725.00	$138,982.50
10.	Fuller, Alex	Associate	186.70	$625.00	$116,687.50
11.	Lam, Lan G.	Paralegal	116.30	$225.00	$26,167.50
12.	Reddy, Sonya	Associate	111.90	$500.00	$55,950.00
13.	Fettinger, Marcus	Associate	109.10	$500.00	$54,550.00
14.	Cameau, Elayne J.	Paralegal	98.20	$295.00	$28,969.00
15.	Donaldson, Christopher M.	Paralegal	97.10	$295.00	$28,644.50
16.	Wilhelm, Carol M.	Of Counsel	81.00	$725.00	$58,725.00
17.	Webb, Lydia	Associate	68.90	$525.00	$36,172.50
18.	Drummond, Dylan	Associate	59.40	$695.00	$41,283.00
19.	Langley, Susan L.	Paralegal	56.20	$75.00	$4,215.00
20.	Drabble, William	Associate	49.90	$565.00	$28,193.50
21.	Savoy, Paul	Paralegal	49.70	$295.00	$14,661.50
22.	Patterson, Clark D.	Paralegal	48.30	$165.75	$8,005.73
23.	Wall, Jill F.	Paralegal	41.60	$295.00	$12,272.00
24.	England, London R.	Law Clerk	35.10	$170.00	$5,967.00
25.	Nizegoda, Brock	Associate	32.20	$500.00	$16,100.00
26.	Brown, Jason M.	Associate	30.80	$275.00	$8,470.00
27.	Moseley, Jim	Partner	29.20	$865.00	$25,258.00
28.	Zaki, Maryann	Associate	21.80	$425.00	$9,265.00
29.	Hopkins, Jeffrey D.	Partner	15.10	$775.00	$11,702.50
30.	Cox, Nathan	Law Clerk	14.20	$170.00	$2,414.00
31.	Doherty, Casey	Associate	7.80	$500.00	$3,900.00
32.	Lamb, Taylor	Associate	6.60	$565.00	$3,729.00
33.	Lawhorn, Trevor	Associate	5.80	$330.00	$1,914.00
34.	Gillam, Cindy	Paralegal	5.30	$63.75	$337.88
35.	Gardner, Kyle, A.	Law Clerk	4.80	$170.00	$816.00
36.	Leal, Logan	Associate	4.50	$330.00	$1,485.00
37.	Earhart, David R.	Partner	4.30	$525.00	$2,257.50
38.	Henry, David G.	Of Counsel	4.10	$825.00	$3,382.50
39.	Reed, Jim	Partner	4.00	$865.00	$3,460.00

	Name	Title	Total Hours	Hourly Rate	Lodestar
40.	Lindsey, Casey L.	Paralegal	3.00	$160.00	$480.00
41.	Gair, David	Partner	1.50	$650.00	$975.00
42.	Stone, Ken	Partner	1.50	$825.00	$1,237.50
43.	DeBerg, Laura, J.	Paralegal	1.20	$63.75	$76.50
44.	Lisch, David	Associate	0.50	$425.00	$212.50
45.	Ormiston, Jim	Partner	0.50	$825.00	$412.50
46.	Gurevitz, Jennifer	Partner	0.40	$650.00	$260.00
	TOTALS		16,859.90		$10,462,531.60

320. The rates for each timekeeper are reasonable in this judicial district as explained by the Honorable Richard Ralston, and consistent with my own knowledge and understanding as to the range of rates charged by attorneys of comparable experience in comparable cases.

321. As part of the Common Benefit Guidelines provided by Co-Lead Counsel, all common benefit firms tracked common benefit expenses using Category Codes 1-19.

322. In total, my firm seeks reimbursement of common benefit expenses in the amount of **$805,484.03** Those expenses and charges are summarized by below:

Category Code	Description of Category Code	Amounts
1	Federal Express / Local Courier	$6,663.97
2	Postage Charges	$121.50
3	Facsimile Charges	
4	Long Distance Calls	$1,404.84
5	In-House Photocopying	$20,394.90
6	Outside Photocopying	$5,683.75
7	Hotels	$113,739.60
8	Meals	$22,237.13
9	Mileage	$2,155.75
10	Air Travel	$70,446.08
11	Deposition Costs	
12	Lexis/Westlaw/Bloomberg	$33,376.90
13	Witness and Expert Expenses	
14	Court Fees	$409.00
15	Service of Process Fees	$7,881.91
16	Hearing and Trial Transcripts	
17	Ground Transportation	$14,537.98
18	Miscellaneous	$101,430.72

Category Code	Description of Category Code	Amounts
19	Litigation Fund Assessment	$405,000.00
	TOTAL	**$805,484.03**

323. Additional details on these expenses are below:

324. Category 1, Federal Express / Local Courier, etc.: This category includes common benefit expenses for shipping, overnight, courier, and delivery expenses of documents to and from class representatives, bellwether plaintiffs, co-counsel, for use at depositions, and opposing counsel. These expenses are reported at actual cost.

325. Category 2, Postage Charges: This category includes common benefit postage charges for mailing letters and accompanying documents to class representatives, bellwether plaintiffs, document custodians, co-counsel, opposing counsel, the Court, and other necessary parties. These expenses are reported at actual cost.

326. Category 4, Long Distance, Conference Call, and Cellular Telephone Charges: This category includes Gray Reed's common benefit expenses for long distance and conference calls to co-lead counsel, opposing counsel, the Court, and other necessary parties to discuss the common benefit order, ESI protocol, discovery disputes, class certification, trial, and other matters for the common benefit of all producer and non-producer plaintiffs. These expenses are reported at actual cost.

327. Category 5, In-House Photocopying: This category includes Gray Reed's common benefit expenses for photocopying and printing documents for use in depositions, class certification briefing, trial notebooks, trial exhibits, and other matters for the common benefit of all producer and non-producer plaintiffs. Copies were either in black/white or color. Consistent with the Common Benefit Order, these expenses were billed at $.10/page, which is below what we normally charge for these expenses.

328. Category 6, Outside Photocopying: This category includes Gray Reed's common benefit expenses for photocopying, scanning, printing, and binding documents by third-party vendors. Gray Reed typically utilized such vendors to assist with large projects requiring the printing, scanning, and binding of thousands of pages of documents for use in depositions and at trial. These expenses are reported at actual cost.

329. Category 7, Hotels: This category includes Gray Reed's common benefit expenses for hotel room charges for the average available room rate of a business hotel in the city in which the stay occurred. Gray Reed attorneys and staff incurred reasonable hotel room charges while attending depositions, meeting with witnesses to prepare for trial, attending Court hearings and trial, and performing other matters for the common benefit of all producer and non-producer plaintiffs. Stueve Siegel negotiated reduced Kansas City hotel rates for the benefit of all counsel. These expenses are reported at actual cost.

330. Category 8, Meals: This category includes Gray Reed's common benefit expenses for meals. Gray Reed attorneys and staff incurred meal expenses while attending depositions, meeting with co-counsel, attending court hearings and trial, and performing other tasks for the common benefit of all producer and non-producer plaintiffs. Evening meals costing more than $70 were discounted by one-third to account for alcohol. These expenses are reported at actual cost.

331. Category 9, Mileage: This category includes Gray Reed's common benefit expenses for mileage incurred while traveling to Kansas City for trial, traveling to meetings with co-counsel, and performing other tasks for the common benefit of all producer and non-producer plaintiffs.

332. Category 10, Air Travel: This category includes Gray Reed's common benefit airfare expenses. Gray Reed is seeking reimbursement for the lowest available, convenient coach

fare on domestic flights. Gray Reed incurred these airfare expenses in order to attend depositions, meet with co-counsel to plan for settlement discussions and trial, meet with trial consultants, and perform other tasks for the common benefit of all producer and non-producer plaintiffs. These expenses are reported at actual cost.

333. Category 12, Lexis/Westlaw/Bloomberg: This category includes Gray Reed's common benefit expenses related to conducting computerized research on Westlaw and PACER. Gray Reed attorneys and staff used these electronic databases in order to access court filings and conduct legal research on a broad range of legal topics. For example, Gray Reed attorneys utilized Westlaw in order to perform legal research on damages issues, causes of action under the laws of various states, Syngenta's anticipated defenses and numerous other legal issues that Plaintiffs faced during the course of this litigation. These costs are billed in the same manner in which Gray Reed calculates costs in other hourly or contingency fee cases. Specifically, Gray Reed has reported Pacer charges at the actual cost reflected in PACER invoices. In calculating Westlaw charges for purposes of this application, Gray Reed has a flat-fee monthly subscription that provides the firm with access to certain databases. Gray Reed did not allocate any portion of the flat-fee monthly subscription charge to this litigation. The Westlaw charges included here are the actual costs incurred by the firm for only those instances where Gray Reed attorneys exceeded the monthly subscription allowance, or conducted research through necessary databases that were not included in the firm's monthly subscription. Gray Reed did not use Lexis or Bloomberg in this litigation.

334. Category 14, Court Fees: This category includes Gray Reed's common benefit expenses related to court fees. These expenses are reported at actual cost.

335. Category 15, Service of Process Fees. This category includes Gray Reed's common benefit expenses related to service of process. Gray Reed is not individually seeking reimbursement for common benefit service of process costs.

336. Category 17, Ground Transportation: This category includes Gray Reed's common benefit expenses related to automobile rentals, taxis, and Uber service. Gray Reed attorneys and staff incurred these expenses while attending depositions, meeting with co-counsel and experts, meeting with producer or non-producer plaintiffs, and performing other tasks for the common benefit of all producer and non-producer plaintiffs. These expenses are reported at actual cost.

337. Category 18, Miscellaneous: This category includes Gray Reed's common benefit expenses related to miscellaneous cash expenses for which receipts generally are not available (*e.g.,* tips, luggage handling) and other items which do not fall within another category. These expenses are reported at actual cost.

338. Category 19, Litigation Fund Assessments: This category includes Gray Reed's periodic monetary contributions to the Syngenta Litigation Fund. Co-Lead Counsel, Executive Committee members, and additional firms in the multidistrict litigation made periodic contributions to the litigation fund. These funds were utilized for the on-going prosecution of the multidistrict litigation.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 10th day of July, 2018, in Dallas, Texas.

William B. Chaney

EXHIBIT 5

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS
AT KANSAS CITY

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** *Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al.*, No. 16-2788-JWL-JPO *Trans Coastal Supply Company, Inc. v. Syngenta AG, et al.*, No. 2:14-cv-02637-JWL-JPO *The Delong Co., Inc. v. Syngenta AG, et al.*, No. 2:17-cv-02614-JWL-JPO *Agribase International Inc. v. Syngenta AG, et al.*, No. 2:15-cv-02279-JWL-JPO	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF RICHARD H. RALSTON

I, Richard H. Ralston, declare as follows:

1. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so.

2. I am an attorney, arbitrator and mediator with The Ralston Law Group, LLC. I have practiced law in this region for approximately 50 years, and have substantial experience litigating cases on behalf of both plaintiffs and defendants. From 1976 to 1988, I was a United States Magistrate Judge for the Western District of Missouri. Since that time, I have focused my practice primarily on arbitrations and mediations. I have been involved as a settlement judge or mediator in more than 4,000 cases. My professional history and background are summarized in greater detail below.

3. I have testified on a number of occasions as an expert witness regarding the appropriate award of attorneys' fees and expenses in a wide range of cases.

4. I respectfully submit this declaration in support of Stueve Siegel Hanson LLP, Hare Wynn Newell & Newton, Gray Reed & McGraw P.C. and Gray, Ritter & Graham, P.C's (collectively, "Co-Lead Counsel") motion for attorneys' fees and expenses in the above-captioned litigation. I understand that all of the attorneys' fees and expenses submitted in Co-Lead Counsel's motion have been subject to Co-Lead Counsel's billing judgment and billing rate judgment. I further understand that this motion includes all attorneys' fees and expenses expended by counsel from all firms that worked at the direction of or in coordination with Co-Lead Counsel for the common benefit of the litigation (collectively, "common benefit counsel" and "common benefit time").

I. My Professional Background Relevant to My Expert Opinions

5. I graduated with honors from the University of Missouri – Kansas City School of Law in 1969 where I was Editor-In-Chief of the UMKC Law Review. I was admitted to the Missouri Bar, the Bar of the United States District Court for the Western District of Missouri, and the Bar of the United States Court of Appeals for the Eighth Circuit in the fall of 1969. I have appeared as a trial lawyer in the United States District Court for the Western District of Missouri, and other federal trial courts, on many occasions. I have argued cases before the United States Court of Appeals for the Eighth Circuit and the Missouri appellate courts on many occasions.

6. I was a law clerk to United States District Judge Elmo B. Hunter of the United States District Court for the Western District of Missouri from 1969 through 1972.

7. I previously served as a law professor at two law schools: The Creighton University School of Law and the University of Missouri – Kansas City School of Law. At the Creighton University School of Law, I was honored with the award for the Outstanding Professor of the Year in 1974. At each law school I taught litigation subjects such as evidence, civil procedure, federal

jurisdiction, litigation with the federal government, environmental law, and complex and multidistrict litigation. I was a tenure-track Assistant Professor at Creighton, and an Adjunct Professor at the University of Missouri – Kansas City.

8. I became a member of the United States District Court for the Western District of Missouri in 1976 when I was appointed as a United States Magistrate Judge. As a United States Magistrate Judge, I routinely presided over civil trials, both jury and bench trials, for approximately 12 years. While on the federal bench, I presided over approximately 150 trials and hundreds of other cases. I also sat on the Model Jury Instruction Committee for the Eighth Circuit for approximately 10 years.

9. I left the bench in August of 1988 and joined the litigation department of the law firm of Polsinelli, White, Vardeman & Shalton (now known as Polsinelli) in Kansas City. While at the Polsinelli firm, I represented clients in trials and hearings in both state and federal courts in Kansas and Missouri.

10. In 1995, because of the rising demand from the bar for more alternative dispute resolution proceedings, I began to limit my practice to arbitration and mediation. Throughout my legal career, I have served as a mediator or settlement judge in more than 4,000 civil cases. I am regularly involved in arbitration and mediation proceedings involving millions of dollars and complex legal and factual issues.

11. I have mediated or arbitrated cases in most of the major metropolitan areas of the United States, such as San Francisco, Dallas, Baltimore, Los Angeles, Chicago, New Orleans, Washington, D.C., New York City, Boston, Philadelphia, Denver and Atlanta. I have mediated cases involving the Department of Justice, the Nuclear Energy Commission, the Equal Employment Opportunity Commission, the University of Missouri, the City of Kansas City, Jackson County, and

the State of Missouri, among others.

12. I have served as an arbitrator in more than 150 arbitration proceedings across the country.

13. I have served (as recently as last year) as a Special Master, appointed by the Circuit Court of Jackson County, in several proceedings.

14. I have been a member of the American College of Trial Mediators and the College of Commercial Arbitrators, both by invitation. I have been honored by recognition by Super Lawyers, Best Lawyers in America, 100 Best Judges in America, and Best of the Bar. I am Preeminent AV rated by Martindale Hubble.

15. I have been the Chairman of the Federal Courts Committee of the Missouri Bar Association; a member of the Board of Directors of the Kansas City Metropolitan Bar Association; a panelist of the International Center for the Prevention and Resolution of Disputes (CPR); a panelist of the American Arbitration Association; a Master of the Ross T. Roberts Inn of Court; a member of the American Bar Association; a member of the Kansas City Metropolitan Bar Association; a member of the National Institute for Trial Advocacy; a member of the Association for Women Lawyers; a member of the Committee on Federal Model Jury Instructions; a member of the Ad Hoc Committee of the Missouri Supreme Court on Mediation Practice; a member of the KCMBA Committee on Professionalism and Civility; and the Speed Trial Reporter for the United States District Court for the District of Nebraska.

16. I regularly serve as an expert witness addressing issues such as the reasonableness of settlements and, in particular, assessing the reasonableness of attorneys' fees for class counsel when those fees are determined through application of the percentage of a common fund methodology. Notably, I testified before the Honorable Sandra Midkiff in the Circuit Court of Jackson County,

Missouri in *Hale v. Wal-Mart*, where a $90,000,000 class settlement was approved and class counsel were awarded $34,000,000 in attorneys' fees (over one-third of the common fund). I have also testified in the Circuit Court of Jackson County, Missouri on several occasions with respect to attorneys' fees.

17. I served as the primary expert in the *Americold* litigation in Kansas with respect to the reasonableness of consent judgments which were entered in the District Court of Wyandotte County, Kansas. In his lengthy opinion rendered after almost 15 years of litigation, District Judge Seavy relied extensively on my expert opinions in awarding millions of dollars in total recovery.

18. I have taught trial advocacy across the country since 1973 when I joined the initial staff of the National Institute for Trial Advocacy (NITA). I have taught trial advocacy for NITA in various locations in the United States, and in private advocacy training for such companies as the Aetna Insurance Company and the Hartford Insurance Company. I have taught trial advocacy at the University of Kansas, Creighton University, the University of Missouri, and the University of Missouri – Kansas City. I have been a regular speaker for the Missouri Bar Association, the University of Missouri – Kansas City, the Kansas City Metropolitan Bar Association, the Clay County Bar Association, and the Federal Bar Association on such widely varied topics as civil procedure, mediation, arbitration and evidence.

II. Assignment and Compensation

19. I have been asked by Co-Lead Counsel to assess the reasonableness of the common benefit counsel's lodestar submitted in support of their requests for a fee award, and, more particularly, the reasonableness of the hourly rates and blended hourly rate utilized by common benefit counsel to generate that lodestar.

20. The Ralston Law Group is being compensated for my work in submitting this declaration at my hourly rate of $650. Compensation in this matter is not contingent upon the

content of my testimony or the outcome of this litigation.

III. Summary of Expert Opinions

21. In assessing the reasonableness of common benefit counsel's hourly rates, blended hourly rates, and total lodestar, I believe there are three relevant benchmarks: (1) the national market for attorney hourly rates charged in complex MDL and class action litigation of the type and character at issue in this case; (2) the hourly rates charged by opposing counsel in this case, Kirkland & Ellis, LLP; and (3) the Kansas City market for attorney hourly rates charged in complex litigation.

22. Based on my approximately 50 years of professional experience working in this area of the law both in Kansas City and around the country, the hourly rates charged by common benefit counsel and utilized to calculate the lodestar in this case are reasonable. When measured against any of the relevant benchmarks – the national market for complex MDL and class action litigation, opposing counsel's rates, and the Kansas City market for complex litigation – common benefit counsel's hourly rates, blended rate, and lodestar are reasonable. Moreover, these rates do not account for the risk undertaken by counsel in accepting these cases on a contingent-fee basis.

IV. My Analysis and Conclusions

A. The Tenth Circuit's Framework for Awarding Reasonable Attorneys' Fee in Class Action Settlements Yielding a Common Fund

23. In the Tenth Circuit, as is common in many other circuits, attorneys' fees for a class action settlement or judgment are typically awarded as a percentage of the fund created.[1]

24. After analyzing national and Tenth Circuit precedent, this Court has recently opined that one-third of the settlement fund is an appropriate award of attorneys' fees in complex class

[1] *See, e.g., Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994) ("In our circuit . . . *Uselton* implies a preference for the percentage of the fund method.").

action and Multidistrict Litigation ("MDL") within this District.[2]

25. In this litigation, my understanding is that Settlement Class Counsel (including Patrick J. Stueve on behalf of the Co-Lead Counsel and Kansas common benefit counsel) collectively seek an award of one-third of the $1,510,000,000 settlement fund that will then be divided among counsel for the various plaintiff groups. Based on my experience, an award of one third of the settlement fund is consistent with the percentages that courts in this District and in this Circuit have found to be fair and reasonable in similarly situated cases.

26. Although there is a clear preference for utilizing the percentage of the fund methodology to award attorneys' fees, courts in this Circuit also look to other factors, including lodestar – the number of hours spent on the case multiplied by the reasonable hourly rate for the professionals – as a crosscheck to confirm the reasonableness of the requested attorneys' fees.[3]

27. In litigation such as this one, in which the attorneys will be paid solely on a contingency, it is my experience and a view shared by courts that contingency counsel have little incentive to work more hours than are necessary to achieve the best result for the client.[4] Indeed, a

---

[2] *See, e.g., In re: Urethane Antitrust Litig.*, No. 04-1616-JWL, 2016 WL 4060156, at *8 (D. Kan. July 29, 2016) (analyzing Tenth Circuit case law regarding percentage of the settlement fund awards in class actions and approving a one third percentage of the fund attorneys' fees award in a case that, like this case, was settled following a class action trial in the District of Kansas).

[3] *See Johnson v. Georgia Highway Express, Inc.*, 488 F. 2d 714, 717-19 (5th Cir. 1974); *see also Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454-55 (10th Cir. 1988) (adopting the Fifth Circuit's "*Johnson* factors" and identifying "time and labor involved" as one factor to consider in approving a fee award).

[4] *See, e.g., Been v. O.K. Indus., Inc.*, No. CIV-02-285-RAW, 2011 WL 4478766, at *7 (E.D. Okla. Aug. 16, 2011) ("The Court notes that in a contingent fee action there is little incentive for attorneys to 'churn' a file, that is to work more hours than necessary to accomplish a favorable result. In other words, had Class Counsel been able to obtain the same result while spending less time, they certainly would have done so."); *accord Eatinger v. BP America Prod. Co.*, No. 07-1266-EFM-KMH, ECF No. 375 at 12-13 (D. Kan. Sept. 17, 2012) (holding that reviewing time and labor "is of lesser importance in a non-hourly case").

contingency arrangement is likely to result in the most reasonable economic arrangement because counsel is paid based on their success, rather than on their time.

28. The risks inherent in litigation such as this are daunting and substantial. Class counsel must invest millions of dollars and tens of thousands of hours to sustain prosecution of this type of litigation. So, reflecting the benefit of a contingent arrangement to enhance efficient litigation, as well as the inherent risk of such an arrangement, it is common for courts within the Tenth Circuit and within this District to approve fee awards that represent a multiplier on the lodestar.[5]

29. When the lodestar is used, pursuant to the *Johnson* factors, as a cross-check on the requested fee, courts do not typically scrutinize every time entry, but instead rely on the total number of hours expended as reported by counsel and the blended hourly rate.[6]

B. Common Benefit Counsel's Hourly Rates and Blended Hourly Rate

30. In conducting my analysis, I have neither reviewed common benefit counsel's detailed time records nor made any assessment regarding time spent on any particular aspect of the litigation. As noted previously, however, the very nature of contingent litigation, particularly one contested as vigorously as the case here, encourages efficiency. Instead, I have focused my analysis

---

[5] *See, e.g., In re Crocs., Inc. Sec. Litig.*, No. 07-cv-2351-PAB-KLM, 2014 WL 4670886, at *4 (D. Colo. Sept. 18, 2014) (holding that the 1.23 multiplier was "well below what courts in this District typically award" and noting other approved multipliers that range from 2.5 to 4.6).

[6] *See, e.g., In re Crocs., Inc. Sec. Litig.*, 2014 WL 4670886, at *4 n.4 ("Because the Court has adopted the percentage method, the lodestar calculation is used only for comparison purposes. Thus, the Court will not undertake an exhaustive lodestar analysis.") (internal citations omitted); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005) ("The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records."); *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 999 (D. Minn. 2005) (same); *In re NuvaRing Prod. Liab. Litig.*, No. 4:08 MDL 1964 RWS, 2014 WL 7271959, at *4 (E.D. Mo. Dec. 18, 2014) (same).

on the reasonableness of common benefit counsel's hourly rates.

31. Because the Supreme Court (and this Court) has held that the use of current rates for all hours expended is proper since current rates take into account inflation and the loss of use of funds, it would have been appropriate for me to have evaluated common benefit counsel's current rates.[7] However, in an exercise of billing rate judgment, Co-Lead Counsel utilized 2017 rates for common benefit counsel's time to reflect the fact that the trial and substantive settlement of this matter took place in 2017. In my experience, this exercise of billing rate judgment further supports the reasonableness of common benefit counsel's hourly rates and, as a result, their blended hourly rate and lodestar.

32. The hourly rate ranges used by common benefit counsel to calculate their lodestar in this case are as follows:

Position at Common Benefit Firm	2017 Hourly Rate Range
Partner	$150-$985
Of Counsel	$495-$825
Associate	$170-$775
Paralegal	$63.75-$305
Law Clerk / Summer Associate	$150-$325
Professional Staff	$225-$425

33. Co-Lead Counsel have also informed me that, as of the date of this submission, common benefit counsel have expended approximately 142,823.50 hours in furtherance of this litigation yielding a total lodestar of $81,725,060.90. This represents a blended hourly rate of $572.21. As discussed in additional detail below, this is consistent with blended rates that have been approved in this District.

34. As stated above, I evaluate common benefit counsel's rates against the following

[7] *See Missouri v. Jenkins*, 491 U.S. 274, 282-84 (1989); *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *7 n.7 ("Because of the long delay in receiving payment for past work, the Court concludes that use of current billing rates is appropriate in conducting this lodestar cross-check.").

three relevant benchmarks: (1) the national market for attorney hourly rates charged in complex MDL and class action litigation of the type and character at issue here; (2) the hourly rates charged by opposing counsel in this case, Kirkland & Ellis, LLP; and (3) the Kansas City market for attorney hourly rates charged in complex litigation. It is my opinion that each benchmark supports the reasonableness of common benefit counsel's hourly rates and blended hourly rate, and, by extension, the lodestar calculation.

C. Common Benefit Counsel's Hourly Rates Are Consistent with or less than the National Market for Complex MDL and Class Action Litigation

35. An MDL is necessarily national in scope because it involves cases transferred from courts throughout the country to a single, centralized location. As such, my inquiry at this level focuses on the national marketplace for attorney hourly rates in complex MDL and class action litigation.

36. Following my review of Co-Lead Counsel's and common benefit counsel's hourly rates, blended hourly rate, and lodestar (all outlined above), I conclude that all three are comfortably in line with the national market for experienced and capable counsel litigating complex MDL and class action cases.

37. The *Volkswagen "Clean Diesel" Marketing, Sales Practices, and Product Liability Litigation* provides a compelling data point supporting the reasonableness of common benefit counsel's hourly rates in this case. In conducting a lodestar crosscheck and awarding the requested attorneys' fees (including a lodestar multiplier), Judge Breyer of the United States District Court for the Northern District of California found that "$529 per hour for all work performed and projected, with billing rates ranging from $275 to $1600 for partners, $150 to $790 for associates, and $80 to $490 for paralegals" was reasonable. *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017). At the

top end of the ranges, the hourly rates in the *Volkswagen "Clean Diesel" Marketing, Sales Practices, and Product Liability Litigation* are materially higher than those charged by common benefit counsel in this case. This supports the reasonableness of common benefit counsel's hourly rates in this case.

38. In addition, the *NFL Players' Concussion Injury Litigation* – itself a complex national MDL – provides an apt comparison for this case considering attorneys' fees were awarded in April of this year. One of the Settlement Class Counsel in this case – Chris Seeger of Seeger Weiss LLP – is co-lead counsel in the *NFL Players' Concussion Injury Litigation* where Judge Brody of the U.S. District Court for the Eastern District of Pennsylvania calculated class counsel's common benefit lodestar using a blended hourly rate of $623.05 per hour. *In re Nat'l Football League Players' Concussion Injury Litig*., No. 2:12-MD-02323-AB, 2018 WL 1635648, at *9 (E.D. Pa. Apr. 5, 2018).

39. In this matter, is my understanding that Mr. Seeger has the highest hourly rate of the common benefit counsel in this case at $985 per hour. In the *NFL Players' Concussion Injury Litigation*, Mr. Seeger's rate was approved at $985 per hour. *In re Nat'l Football League Players' Concussion Injury Litig*., No. 2:12-MD-02323-AB, ECF No. 10019 at *20-21 (E.D. Pa. May 24, 2018); *see id*. at ECF No. 7151-2 at *41 (identifying Mr. Seeger and his firm's submitted and approved rates including partner rates ranging from $750 to $985 per hour, of counsel rates ranging from $775 to $795 per hour, associate rates of $600 per hour, and professional staff rates of $215 to $290 per hour).

40. In addition, recognizing its contribution to the litigation, Seeger Weiss' lodestar was approved at a blended hourly rate of $861.28 (an upward enhancement from the standard $623.05 blended hourly rate approved for all common benefit counsel). *Id*. at ECF No. 10019 at *21

("Seeger Weiss has submitted 21,044 hours for a lodestar of $18,124,869.10," which yields a blended hourly rate of $861.28.). In dividing total fees among the various plaintiff firms, Judge Brody then applied a 3.5 lodestar multiplier to Seeger Weiss' approved hourly rates. *Id*. at ECF No. 10019 at *21. In this case, common benefit counsel's blended hourly rate of $572.21 is comfortably below the $623.05 un-multiplied blended hourly rate for common benefit counsel approved in *NFL Players' Concussion Injury Litigation* and significantly less than the $861.28 un-multiplied blended hourly rate approved for Seeger Weiss in that litigation.

41. Common benefit counsel's blended hourly rate of $572.21 is less than or commensurate with the blended hourly rates for complex class action litigation awarded both nationally and within the Kansas City area in the recent past. *See*, *e.g.*, *Abbott v. Lockheed Martin Corp*., No. 06-CV-701-MJR-DGW, 2015 WL 4398475, at *3 (S.D. Ill. July 17, 2015) (awarding attorneys' fees constituting one third of a common fund where class counsel expended 25,084 hours yielding a lodestar of $15,541,544 for a blended hourly rate of $619.58, which was then subject to a 1.33 multiplier); *Bruner v. Sprint/United Mgmt. Co*., No. CIV.A. 07-2164-KHV, 2009 WL 2058762, at *10 (D. Kan. July 14, 2009) (awarding Stueve Siegel Hanson, one of the Co-Lead Counsel in this case, a blended hourly rate of $590.91 nearly nine years ago); *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *7 (awarding one third of a common fund as attorneys' fees to class counsel who expended 193,000 hours yielding lodestar of approximately $100,000,000 at a blended rate of approximately $518 per hour); *Will v. Gen. Dynamics Corp*., No. CIV. 06-698-GPM, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010) (awarding one-third of a settlement fund as attorneys' fees following a lodestar cross-check based on a $514.60 blended hourly rate nearly eight years ago); *Tussey v. ABB Inc*., No. 2:06-CV-04305-NKL, 2015 WL 8485265, at *5 n.2 (W.D. Mo. Dec. 9, 2015), *reversed on other grounds*, 850 F.3d 951 (8th Cir. 2017) (awarding attorneys' fees based on a

$514.60 blended hourly rate in an ERISA class action); *In re Bank of Am. Wage & Hour Employment Litig.*, No. 10-MD-2138-JWL, 2013 WL 6670602, at *3 (D. Kan. Dec. 18, 2013) (finding a blended hourly rate of $488 in FSLA case reasonable within this District nearly five years ago where Stueve Siegel Hanson was co-lead counsel). In two of these class action cases – *Urethane* ($518 per hour) and *Tussey* ($514 per hour) – the claims were tried and resulted in a favorable verdict for the class. *Urethane* was a local MDL centralized before this Court, and *Tussey* was a class action tried nearby in Jefferson City, Missouri, where rates are typically lower than Kansas City. That these cases were tried, and successfully, represents strong evidence of the complexity issues at stake in the case, justifying the engagement of high-quality counsel, which necessarily require higher costs. There are clear parallels between those two cases and this case, although this MDL was larger with a longer jurisdictional spread, involved greater administrative challenges, fraught with a number of complex legal issues that did not have ready answers, and was premised on legal claims that had not been tested under the unique facts presented here. Thus, I give these two precedents particular weight in my consideration.

42. This benchmark – the national market for complex MDL and class action litigation – supports the reasonableness of common benefit counsel's hourly rates, blended hourly rate, and lodestar.

D. Common Benefit Counsel's Hourly Rates Are Commensurate with or Less Than Those Charged by Opposing Counsel

43. The national scope of this particular litigation is confirmed by the lead law firm the Syngenta Defendants selected to represent them in this litigation in Kansas City. In this case, I understand that the Syngenta Defendants are represented by attorneys from primarily the Washington D.C., Chicago and Los Angeles offices of Kirkland & Ellis, LLP ("Kirkland"), one of the largest law firms in the world.

44. In assessing the reasonableness of the hourly rates charged by common benefit counsel, I frequently look at the hourly rates charged by the counsel selected by the opposing party as a reference point. Indeed, this may be the best measure of reasonableness, as clients have broad discretion in choosing the firms that will represent them and do so knowing that they will be paying the hourly rates, regardless of result, on a regular basis. This is particularly true where, as here, the opposing counsel are paid by the hour without any of the risks of contingent litigation. *See In re: Urethane Antitrust Litig*., 2016 WL 4060156, at *7 (finding that the "amounts at issue justified use of the best counsel charging the highest rates (just as [the Defendant] Dow used similarly high-priced counsel in the litigation).").

45. In 2015, to my knowledge the last year in which the National Law Journal conducted an annual survey of billing rates across the country, the NLJ found that Kirkland had a top hourly billing rate of $995 for partners, with an overall partner billing rate average of $825. The top hourly billing rate for associates was $715, with an average associate rate of $540.[8]

46. Since that survey was conducted, the ABA published an article based on public filings that found Kirkland has reported billable rates as high as $1,445 per hour.[9]

47. In a 2016 article, the Wall Street Journal reported that the hourly rates of partners at Kirkland ranged between $875 and $1,445/hour.[10]

---

[8] *See* January 5, 2015 *National Law Journal* survey, available at http://www.nationallawjournal.com/id=1202713809557/Billing-Rates-Rise-Discounts-Abound.

[9] *See* February 8, 2016 article entitled "Top partner billing rates at BigLaw firms approach $1,500 per hour," available at http://www.abajournal.com/news/article/top_partner_billing_rates_at_biglaw_firms_nudge_1500_per_hour.

[10] *See* February 9, 2016 article entitled "Legal Fees Cross New Mark: $1,500 an Hour," available at https://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708.

48. In an article dated May 11, 2018, The New York Times reported that Kirkland was billing at rates as high as $1,745 per hour.[11]

49. Perhaps most relevant, on Kirkland's own website, Kirkland currently reports that "[r]ecent court filings show that Kirkland partners are billing [their client] between $930 to $1,745 per hour for their services; of counsel at hourly rates ranging from $555 to $1,745; and associates between $555 and $1,015 per hour."[12]

50. Critically, Syngenta's engagement of Kirkland attorneys reflects how the Syngenta Defendants viewed this litigation—it was national in scope, required nationally-recognized counsel to defend, and Syngenta was willing to pay national rates to ensure this defense.

51. In addition, the rates charged by the Special Master in this case are similarly relevant to this Court's analysis of the reasonableness of common benefit counsel's hourly rates. In its Order appointing Ellen K. Resiman as the Special Master in this MDL, the Court approved hourly rates for Special Master Reisman up to $950/hour, Andrew Karron up to $850/hour, and Ethan Greene up to $750/hour. In addition, associates were approved to bill up to $550/hour and legal assistants were approved up to $200/hour. ECF No. 1745 at *5.

52. Here, the common benefit partners, of counsels, and associates in this litigation have billable hour rates that are in line with or substantially less than each rate range reported by the Kirkland lawyers and approved for the Special Master. It is also fair to note that none of these rates are contingent and/or reflect risk tied to the outcome of the case. Thus, it is appropriate to consider these rates in the calculation of common benefit counsel's lodestar, before it is adjusted upward

---

[11] *See* May 11, 2018 article entitled "At Toys 'R' Us, a $200 Million Debt Problem Could Lead to $348 Million in Fees," available at https://www.nytimes.com/2018/05/11/business/toys-r-us-bankruptcy.html.

[12] *See* https://www.kirkland.com/sitecontent.cfm?contentID=230&itemId=13055.

based on the other *Johnson* factors, such as the contingent nature of the representation. Importantly, contingent lawyers in litigation like this assume significant risk that hourly lawyers collecting fees based on these rates do not. Specifically, they undertake the risk that (1) the litigation will result in a successful recovery for their clients and (2) that the size of this recovery will be sufficient to justify their investment of time and labor and their advancement of expenses. In my experience, people often discount the risks undertaken in such an endeavor. It is not unusual for contingency attorneys to invest years of their labor in a case without being compensated, as this case demonstrates. During this time, firms have to pay their staff and employees, cover overhead, and, typically (as here), advance significant litigation costs the recovery of which is also at risk and tied to the outcome of the litigation. Typically, these firms fund operations through firms or personal savings guaranteed by the partners of the firm; thus, it is not just their own labor at risk in these cases, but their personal finances as well.[13] I note this for two reasons: *first*, to show the extent of the risk undertaken by counsel in a case like this that requires a massive investment of time and advancement of costs on behalf of the client; and, *second*, to note that the hourly rates I have reviewed do *not* take this risk into account, as these rates are supported by hourly rates found reasonable before they were enhanced through the use of a multiplier and by Kirkland's own hourly, non-contingent rates.

53. In my opinion, this supports the reasonableness of common benefit counsel's hourly rates in this case.

E. Common Benefit Counsel's Hourly Rates Are Commensurate with the Kansas City and Midwestern Market for Complex Litigation

54. Although the national scope of this type of litigation makes it most appropriate to consider rates charged by similar practitioners, regardless of geographic location, a review of the

[13] Although some firms now use outside funders whose recovery is contingent on the outcome of the case, allowing firms to share that risk, I understand here that none of the Co-Lead Counsel used such funders.

rates charged in the Kansas City and Midwest markets for complex litigation supports the reasonableness of common benefit counsel's hourly rates.

55. Of the Co-Lead Counsel firms, only Stueve Siegel Hanson is based in the Kansas City area. Although Stueve Siegel Hanson is based in the Kansas City area, I know from personal experience that the firm's practice is national in scope. As with the other Co-Lead Counsel firms, Stueve Siegel Hanson has represented to me that the rates they charge in litigation locally is the same as what they charge in all of their matters regardless of location. My review of Stueve Siegel Hanson's recent attorneys' fee awards demonstrates that the firm charges the same hourly rates both nationally and locally.

56. A sample of Stueve Siegel Hanson's recent attorneys' fee awards confirms that their hourly rates – and by extension, common benefit counsel's rates – are reasonable both nationally and within the Kansas City area:

- *Hapka v. CareCentrix, Inc.*, No. 16-cv-02372-KGG, 2018 WL 1879845, at *1 (D. Kan. Feb. 15, 2018) (applying a pure lodestar analysis and approving Stueve Siegel Hanson's 2017 hourly rates in a data breach class action ranging from $645 to $865 per hour for partners, $375 to $475 per hour for associates, and $225 to $275 for professional staff); *see id.* at ECF No. 95 at *10 (identifying Stueve Siegel Hanson's requested hourly rates);

- *Spangler v. Nat'l Coll. of Tech. Instruction*, 2018 WL 846930, at *2 (S.D. Cal. Jan. 5, 2018) (approving Stueve Siegel Hanson's 2016 rates of $795 to $825 per hour for partners, $595 per hour for of counsels, and $315 to $525 per hour for associates after applying the lodestar method to a contested attorneys' fee application);

- *Criddell v. Premier Healthcare Services, LLC*, Case No. 2:16-cv-05842-R-KS, ECF No. 64 at *3 (C.D. Cal. Jan. 16, 2018) (adopting an arbitration award of attorneys' fees after a fully contested fee application and approving Stueve Siegel Hanson's 2016 hourly rates, including a partner at $825 per hour, an of counsel at $525 per hour, an associate at $395 per hour, and professional staff at $245 per hour after applying the lodestar method); *see also id.* at ECF No. 59-4 at (21-31 (arbitrator's award analyzing timekeepers' hourly rates);

- *Magill v. DIRECTV, LLC*, No. CV 16-00356-SVW-AS, 2017 WL 8894320, at *2 n.1 (C.D. Cal. June 23, 2017) (approving Stueve Siegel Hanson's 2016 rates of $825 per hour for partners, $600 to $650 per hour for of counsels, $375 per hour for an associate,

and $245 per hour for professional staff after applying the lodestar method); *see also id.* at ECF No. 56-1 at *5-6 (identifying Stueve Siegel Hanson's requested hourly rates);

- *Bennett v. Sprint Nextel Corp., et al.*, Case No. 2:09-cv-02122-EFM-GEB, ECF No. 301 at *2 (D. Kan. Aug. 12, 2015) (approving Stueve Siegel Hanson's rates at $600 to $725 per hour for partners and approving the firm's co-counsel at rates of $725 to $975 per hour for partners, $300 to $625 per hour for associates, and $175 to $295 per hour for paralegals); *see also id*. at ECF No. 289-5 at *9 (identifying hourly rates for specific Stueve Siegel Hanson timekeepers); *see id* at ECF No. 289-3 at *6 (identifying Motley Rice LLC's submitted and approved hourly rates);

- *Garcia v. Tyson Foods, Inc.*, No. 06-2198-JTM, 2012 WL 5985561, at *3 (D. Kan. Nov. 29, 2012) *aff'd* 770 F.3d 1300 (10th Cir. 2014) (approving Stueve Siegel Hanson's rates of $600 per hour for senior partners, $400 per hour for junior partners and $125 to $175 for professional staff, with an overall blended hourly rate of $302.29 nearly six years ago);

- *Berry v. Volkswagen of America*, Case No. 0516-CV01171-01, May 3, 2011 Findings of Fact, Conclusions of Law, and Judgment (Circuit Court of Jackson County, Missouri) *aff'd* 397 S.W.3d 425 (Mo. banc 2013) (approving Stueve Siegel Hanson's 2013 rates of $400 to $650 for partners, $252 to $375 for associates, and $75 to $196 for professional staff, holding that the "hourly rates charged by class counsel were reasonable" over seven years ago);

- *In re: Pre-Filled Propane Tank Marketing Litigation*, Case No. 09-md-2086, ECF No. 164 at *2 (W.D. Mo. Oct. 20, 2010) (approving a blended hourly rate of $495 for Stueve Siegel Hanson nearly eight years ago);

- *In re: H&R Block Inc. Express Marketing Litigation*, Case No. 4:06-md-01786, ECF No. 232 at *2 (W.D. Mo. May 17, 2010) (approving Stueve Siegel Hanson and its co-counsel at rates of $425 to $750 per hour for partners, $225 to $485 per hour for associates, and $75 to $290 for professional staff nearly eight years ago);

57. The rates charged by other plaintiff-side lawyers in complex MDL and class action litigation in the Kansas City area likewise confirm the reasonableness of common benefit counsel's hourly rates.

58. For example, two of the common benefit law firms in this MDL – Bolen Robinson & Ellis and The Holland Law Firm – were involved in litigation pending in the United States District Court for the Western District of Missouri. *Pollard v. Remington Arms Co., LLC*, Case No. 13-0086-ODS, ECF No. 181 ("Plaintiffs' Supplemental Fee Application") (W.D. Mo. Jan. 17, 2017).

Ultimately, the court approved the fee application in that consumer class action with rates ranging from $261 to $897 per hour and finding that "the average hourly fees, although some are on the high side, are not dissimilar to those hourly rates charged in the Kansas City area." *Pollard v. Remington Arms Co., LLC*, 320 F.R.D. 198, 222 (W.D. Mo. 2017) (awarding a 1.08 multiplier on attorneys' fees where class counsel expended 19,293.64 hours for a lodestar of $11,499,027.50, which yields a blended hourly rate of $596).

59. Additional examples from the Kansas City area and from around the Midwest are:

- *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *3 (S.D. Ill. July 17, 2015) (approving attorneys' fees in an employee retirement benefits class action and awarding an hourly rate of $974 per hour for attorneys with 25 or more years of experience, $826 per hour for attorneys with 15-24 years of experience, $595 per hour for attorneys with 5-14 years of experience, $447 per hour for attorneys with 2-4 years of experience, and $300 per hour for paralegals);

- *Tussey v. ABB Inc.*, No. 2:06-CV-04305-NKL, 2015 WL 8485265, at *5 n.2 (W.D. Mo. Dec. 9, 2015), *reversed on other grounds*, 850 F.3d 951 (8th Cir. 2017) (awarding a $514.60 blended hourly rate in an employee benefits class action based on the following hourly rate ranges: "for attorneys with 25 years or more experience, $800 per hour; for attorneys with 15-24 years of experience, $625 per hour; 5-15 years of experience, $450 per hour; 2-4 years of experience, $325 per hour; and for professional support staff, $125 per hour." It should be noted that the Eighth Circuit specifically declined to overturn the blended hourly rate of $514.60 over the defendant's vigorous protest);

- *Will v. Gen. Dynamics Corp.*, No. CIV. 06-698-GPM, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010) (awarding attorneys' fees nearly eight years ago and noting that $514.60 was a reasonable blended hourly rate and $800 per hour was a reasonable hourly rate for partners because "[t]his is national litigation which few lawyers or law firms are capable of handling.").

60. Based on data published by the National Law Journal from 2014, common benefit counsel's hourly rates are commensurate with those of lawyers with similar experience at Kansas City's largest law firms handling complex litigation on a national basis. For example, four non-contingent, hourly rate law firms that are either based in or have a significant presence in Kansas City that handle complex litigation cases reported billing ranges that are comparable or higher to

those submitted here: Polsinelli (top range of $750); Bryan Cave (top range of $860); Husch Blackwell (top range $925); and Dentons (top range $1,050).[14]

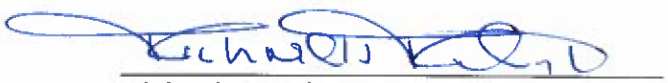
61. The attorneys' fee awards (both nationally and in the Kansas City area) to the local Co-Lead Counsel firm (Stueve Siegel Hanson), the attorneys' fee awards to other plaintiff-side lawyers in the Kansas City area and around the Midwest, and the hourly rates charged by counsel at the largest, non-contingent firms in the Kansas City area all commensurate with the rates charged by common benefit counsel in this case. In my opinion, this benchmark supports the reasonableness of common benefit counsel's hourly rates, blended hourly rate, and lodestar.

V. Conclusion

62. For all of the reasons discussed above and using these rates for the sole purpose of performing the lodestar cross-check, I believe that the hourly rates used by common benefit counsel are reasonable and appropriate in light of the nature of this specific litigation.

[14] *See, e.g.*, January 13, 2014, Nat'l L.J., available at http://www.nationallawjournal.com/id=1202636785489/Billing-Rates-Across-the-Country (the 2015 survey cited above only included the Top 50 law firms, unlike the 2014 survey that included many more law firms).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 9th day of July, 2018, at Kansas City, Missouri.



Richard H. Ralston

EXHIBIT 6

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION

THIS DOCUMENT RELATES TO ALL CASES EXCEPT:

Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO

Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO

The Delong Co., Inc. v. Syngenta AG, et al., No. 2:17-cv-02614-JWL-JPO

Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO

Master File No. 2:14-MD-02591-JWL-JPO

MDL No. 2591

DECLARATION OF PROFESSOR ROBERT H. KLONOFF RELATING TO ATTORNEYS' FEES, COSTS, AND INCENTIVE PAYMENTS

TABLE OF CONTENTS

I. INTRODUCTION 1

II. QUALIFICATIONS 1

III. MATERIALS RELIED UPON 7

IV. BACKGROUND OF THIS LITIGATION AND SETTLEMENT 8

V. SUMMARY OF OPINIONS 15

VI. DETAILED DISCUSSION OF OPINIONS 16

A. The Attorneys' Fees Requested by Class Counsel Are Reasonable 17

1. This Court Should Use the Percentage-of-the-Fund Method 17

2. The 33⅓ Percent Requested Here Is Reasonable 19

a. The Percentage Requested Is Justified Under the *Johnson* Factors Based on the Compelling Circumstances in This Case 19

i. Time and Labor Required 21

ii. Novelty and Difficulty of the Questions 22

iii. Skill Requisite to Perform the Legal Service Properly 30

iv. Preclusion of Other Employment Due to Acceptance of the Case 33

v. Customary Fee 33

vi. Any Prearranged Fee 35

vii. Time Limitations Imposed by the Client or the Circumstances 35

viii. Amount Involved and Results Obtained 36

ix. Experience, Reputation, and Ability of Attorneys 36

x. Undesirability of the Case 37

xi. Nature and Length of Professional Relationship With the Client 37

xii. Awards in Similar Cases 37

b. The Percentage Requested Is Supported by Awards in Other Class Actions, Including So-Called Mega-Fund Cases 38

3. There Is No Need for a Lodestar Cross Check 46

4. In Any Event, a Lodestar Analysis Supports the Fees Requested 47

a. The Hours Spent by MDL Class Counsel Are Reasonable 48

b. The Billing Rates Proposed by MDL Class Counsel Are Reasonable 49

c. Additional Expected Hours Should Be Included 54

d. The Multiplier Is Well Justified Based on Tenth Circuit Precedent 54

e. The Multiplier Is Well Justified in Comparison With Other Mega-Fund Cases 57

f. The Multiplier Is Supported by the Relevant *Johnson* Factors 59

5. Conclusion on Attorneys' Fees 59

B. The Proposed Allocation of Attorneys' Fees Is Reasonable 60

C. The Out-of-Pocket Costs Sought by Class Counsel Are Reasonable 61

D. The Proposed Incentive Payments for the Class Representatives Are Reasonable 62

VII. CONCLUSION 67

APPENDIX A: Curriculum Vitae 69

APPENDIX B: Materials Reviewed 83

ROBERT H. KLONOFF, under penalty of perjury, declares as follows:

I. INTRODUCTION

1. I have been asked by class counsel to opine on the reasonableness of: (1) the requested attorneys' fees; (2) the proposed allocation of attorneys' fees; (3) the requested out-of-pocket costs; and (4) the proposed incentive payments to certain MDL class representatives and bellwether plaintiffs. I am offering my opinions for the Court's consideration based on my background and experience. I recognize, of course, that my role is limited and that this Court will make the ultimate decision.

II. QUALIFICATIONS

2. I have served as an expert in numerous class action cases, including several recent high-profile class settlements. I am currently the Jordan D. Schnitzer Professor of Law at Lewis & Clark Law School and have held that position since June 1, 2014. This is an endowed, tenured position at the rank of full professor. From July 1, 2007, to May 31, 2014, I served as the Dean of Lewis & Clark Law School, and I was also a full professor at Lewis & Clark during that time. Immediately prior to assuming the deanship at Lewis & Clark, I served for four years as the Douglas Stripp/Missouri Professor of Law at the University of Missouri-Kansas City School of Law (UMKC). That appointment was an endowed, tenured position at the rank of full professor. Prior to my academic post at UMKC, I served for more than a dozen years as an attorney with the international law firm of Jones Day, working in the firm's Washington, D.C. office. For most of that time, I was an equity partner at the firm. (I continued to work at Jones Day while I was employed at UMKC; my status with the firm during that period changed from partner to of counsel.) While working at Jones Day (before joining the UMKC faculty), I also served for many years as an adjunct professor of law at Georgetown University Law Center. Before joining Jones Day, I served as an Assistant United States Attorney and as an Assistant to the Solicitor General of the United States. Immediately after graduating from law school, I served as a law clerk for Chief Judge John R. Brown of the U.S. Court of Appeals for the Fifth Circuit. I received my law degree from Yale Law School.

3. In my various academic positions, I have taught (among other subjects) complex litigation, class actions, civil procedure, federal courts, and federal appellate procedure.

4. In September 2011, the Chief Justice of the United States appointed me to serve a three-year term as the academic voting member of the Judicial Conference Advisory Committee on Rules of Civil Procedure ("Advisory Committee"). The Advisory Committee considers and recommends amendments to the Federal Rules of Civil Procedure. Only one civil procedure professor in the United States is selected by the Chief Justice to serve in that role during any three-year term. In May 2014, the Chief Justice reappointed me to serve a second three-year term on the Advisory Committee. I completed that service in May 2017. (The maximum period of service on the Advisory Committee is six years.) I also served on the Advisory Committee's Class Action Subcommittee, which took the lead for the full Advisory Committee on proposed amendments to the federal class action rule, Federal Rule of Civil Procedure 23. Those proposed amendments are currently making their way through the rules adoption process and are on track to become effective on December 1, 2018.[1]

5. I served for five years as an Associate Reporter for the American Law Institute's class action (and other multi-party litigation) project, *Principles of the Law of Aggregate Litigation*. I was the principal author of Chapter 3, which addresses class action settlements and attorneys' fees. The ALI project was unanimously approved by the membership of the American Law Institute at its annual meeting in May 2009, and was published by the American Law Institute in May 2010. It has been frequently cited by courts and commentators.[2]

---

[1] *See* Pending Rules and Forms Amendments, U.S. COURTS, http://www.uscourts.gov/rules-policies/pending-rules-and-forms-amendments (last visited July 7, 2018).

[2] *See*, *e.g.*, *Smith v. Bayer Corp.*, 131 S. Ct. 2368, 2381 n.11 (2011); *Keepseagle v. Perdue*, 856 F.3d 1039, 1069–70 (D.C. Cir. 2017) (Brown, J., dissenting); *In re Google Referrer Header Privacy Litig.*, 869 F.3d 737, 744, 749 (9th Cir. 2017); *Baker v. Microsoft Corp.*, 797 F.3d 607, 615 n. 5 (9th Cir. 2015), *rev'd on other grounds*, 137 S. Ct. 1702 (2017); *Hill v. State Street Corp.*, 794 F.3d 227, 229, 231 (1st Cir. 2015); *In re BankAmerica Corp. Secs. Litig.*, 775 F.3d 1060, 1063–67 (8th Cir. 2015); *In re Nexium Antitrust Litig.*, 777 F.3d 9, 19–20 (1st Cir. 2015); *In re Trans Union Corp. Privacy Litig.*, 741 F.3d 811, 813 (7th Cir. 2014); *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 171–72 (3d Cir. 2013); *Ira Holtzman, CPA v. Turza*, 728 F.3d 682, 689–90 (7th Cir. 2013); *In re Lupron Mktg. & Sales Practices Litig.*, 677 F.3d 21, 32–33 (1st Cir. 2012); *Klier v. Elf Atochem N.A., Inc.*, 658 F.3d 468, 474–75 nn.14–16 (5th Cir. 2011); *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1039 n.2 (9th Cir. 2011); *Cabiness v. Educ. Fin. Solutions, LLC*, No. 16-cv-01109-JST, 2018 WL 3108991, at *8 n.4 (N.D. Cal. June 25, 2018); *Keepseagle v. Vilsack*, 118 F. Supp. 3d 98, 116 (D.D.C. 2015); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1355–56 (S.D. Fla. 2011); Richard Marcus, *Revolution v. Evolution in Class Action Reform*, 96 N.C. L. REV. 903, 927–28, 933 n.161, (2018); Sergio J. Campos, *Mass Torts and Due Process*, 65 VAND. L. REV. 1059, 1063 (2012); Tanya J. Monestier, *Transnational Class Actions and the Illusory Search for Res Judicata*, 86 TUL. L. REV. 1, 66 (2011); Rhonda Wasserman, *Cy Pres in Class Action Settlements*, 88 S. CAL. L. REV. 97, 111 (2014); Ryan C. Williams, *Due Process, Class Action Opt Outs, and the Right to Sue*, 115 COLUM. L. REV. 599, 649–50 (2015).

6. I have more than 30 years of experience as a practicing lawyer. I have had eight oral arguments before the U.S. Supreme Court, and numerous oral arguments in other federal and state appellate courts throughout the country, including oral arguments in eight federal circuits. As an attorney at Jones Day, I personally handled more than 100 class action cases, mostly (but not entirely) on the defense side.

7. I have lectured and taught on class actions and other litigation topics throughout the United States and abroad, including presentations at law schools in Cambodia, Canada, China, Colombia, Croatia, Ecuador, Germany, India, Israel, Italy, Japan, the Philippines, Russia, South Korea, Taiwan, and Turkey. Over the years, I have frequently appeared as an invited speaker at class action symposia, conferences, and continuing legal education programs.[3]

8. I co-authored the first casebook devoted specifically to class actions, and I am now the sole author of that book: *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 4th ed. 2017). I am also the sole author of the Nutshell on class actions: Robert H. Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West 5th ed. 2017). These texts are used at law schools throughout the United States and have been cited by many courts and commentators.[4] In addition, I have authored or co-authored numerous scholarly articles on class actions and other topics.[5] I also serve on the advisory board of Class Action Litigation Report, a Bloomberg/BNA publication.

---

[3] Examples of those courses and speaking engagements are contained in my attached curriculum vitae (Appendix A).

[4] *See*, *e.g.*, *Kolbe v. BAC Home Loans Servicing, LP*, 738 F.3d 432, 468 (1st Cir. 2013) (citing *Nutshell*); *Culver v. City of Milwaukee*, 277 F.3d 908, 913 (7th Cir. 2002) (citing *Nutshell*); *Adams v. United Services Automobile Ass'n*, No. 2:14-CV-02013, 2016 WL 1465433, at *7 (W.D. Ark. Apr. 14, 2016) (citing *Nutshell*), *rev'd on other grounds*, 863 F.3d 1069 (8th Cir. 2017); Libby Jelinek, *The Applicability of the Federal Rules of Evidence at Class Certification*, 65 UCLA L. REV. 280, 286 n.27, 291 n.65, 316 n.206 (2018) (citing casebook and *Nutshell*); Jaime Dodge, *Privatizing Mass Settlement*, 90 NOTRE DAME L. REV. 335, 337 n.12 (2014) (citing casebook); Vaughn R. Walker, *Class Actions Along the Path of Federal Rule Making*, 44 LOY. U. CHI. L.J. 445, 449 n. 17 (2012) (citing *Nutshell*); Richard A. Nagareda, *The Preexistence Principle and the Structure of the Class Action*, 103 COLUM. L. REV. 149, 151 n.5 (2003) (citing casebook); Kenneth S. Rivlin & Jamaica D. Potts, *Proposed Rule Changes to Federal Civil Procedure May Introduce New Challenges in Environmental Class Action Litigation*, 27 HARV. ENVTL. L. REV. 519, 521 n.10 (2003) (citing *Nutshell*).

[5] For example, my 2013 article, *The Decline of Class Actions*, 90 WASH. U. L. REV. 729 (2013), has been widely cited. *See*, *e.g.*, *In re National Football League Players' Concussion Injury Litig.*, 775 F.3d 570, 576 (3d Cir. 2014); *Eubank v. Pella Corp.*, 753 F.3d 718, 719 (7th Cir. 2014) (Posner, J.); *In re Johnson*, 760 F.3d 66, 75 (D.C. Cir. 2014); *Dickens v. GC Services Limited Partnership*, 220 F. Supp. 3d 1312, 1324 (M.D. Fla. 2016), *vacated on other grounds*, 706 F. App'x 529 (11th Cir. 2017); *In re Kosmos Energy Ltd. Sec. Litig.*, No. 3:12-cv-373-B, 2014 WL 1095326, at *2 n.20 (N.D. Tex. Mar. 19, 2014); David C. Miller, *Abuse of Discretion and the Sliding Scale of Difference: Restoring the Balance of Power Between Circuit Courts and District Courts for Rule 23 Class*

9. In October 2014, I was elected to membership in the International Association of Procedural Law (IAPL), an organization of preeminent civil procedure scholars from around the world. I was selected in a competitive process to present a scholarly article on class actions at the May 2015 Congress of the IAPL, an event held once every four years.

10. I have testified as an expert in numerous class action cases and in other cases raising civil procedure issues. Between 2011 and the present, I testified in the following cases:

- *Jabbari v. Wells Fargo & Co.*, No. 15-cv-02159-VC (N.D. Cal.) (submitted expert declaration on class certification, settlement fairness, attorneys' fees, costs, and incentive payments in unauthorized accounts litigation, dated 1/19/18; submitted supplemental declaration on 5/21/18);
- *Lynch v. Lynch*, No. F.D. 14-6239-006 (Pa. Ct. Comm. Pl., Allegheny Cnty.) (submitted expert declaration on the nature of class action law practice in the context of a divorce proceeding involving a class action attorney) (dated 9/05/17);
- *In re Chinese-Manufactured Drywall Litigation*, MDL No. 2047 (E.D. La.) (submitted expert declaration on attorneys' fees issues) (dated 5/04/17);

Certification Decisions in Oil and Gas Royalty Litigation, 103 IOWA L. REV. 1811 *passim* (2018); Libby Jelinek, *The Applicability of the Federal Rules of Evidence at Class Certification*, 65 UCLA L. REV. 280, 297 n.101 (2018); Andrew D. Bradt & D. Theodore Rave, *Aggregation on Defendants' Terms:* Bristol-Myers Squibb *and the Federalization of Mass Tort Litigation*, 59 B.C. L. REV. 1251, 1261 n.39, 1266 n.78, 1286 n.196 (2018); Joseph A. Seiner, *Tailoring Class Actions to the On-Demand Economy*, 78 OHIO ST. L.J. 21, 25 n.14, 32 n.54 (2017); Brian T. Fitzpatrick, *Justice Scalia and Class Actions: A Loving Critique*, 92 NOTRE DAME L. REV. 1977, 1979 (2017); Deborah R. Hensler, *From Sea to Shining Sea: How and Why Class Actions Are Spreading Globally*, 65 KAN. L. REV. 965, 965 n.2 (2017); Richard Marcus, *Bending in the Breeze: American Class Actions in the Twenty-First Century*, 65 DEPAUL L. REV. 497, 497 & n.2 (2016); Maureen Carroll, *Class Action Myopia*, 65 DUKE L.J. 843, 846 n.8, 876–78 & nn.181, 183 & 190–93, 881 nn.211 & 213, 883 n.225 (2016); Claire E. Bourque, Note, *Liability Only, Please—Hold the Damages: The Supreme Court's New Order for Class Certification*, 22 GEO. MASON L. REV. 695, 698 n.29 (2015); Martin H. Redish & Julie M. Karaba, *One Size Doesn't Fit All: Multidistrict Litigation, Due Process, and the Dangers of Procedural Collectivism*, 95 B.U. L. REV. 109, 110 n.2 (2015); Robert G. Bone, *The Misguided Search For Class Unity*, 82 GEO. WASH. L. REV. 651, 654 n.6 (2014); David Freeman Engstrom, *Private Enforcement's Pathways: Lessons From Qui Tam Litigation*, 114 COLUM. L. REV. 1913, 1920 n.17 (2014); Howard M. Erichson, *The Problem of Settlement Class Actions*, 82 WASH. U. L. REV. 951, 956 n.20 (2014); Arthur R. Miller, Keynote Address, The Preservation and Rejuvenation of Aggregate Litigation: A Systemic Imperative, 64 EMORY L.J. 293, 294 n.7 (2014); Linda S. Mullenix, *Ending Class Actions As We Know Them: Rethinking the American Class Action*, 64 EMORY L.J. 399, 403 n.14 (2014); Stephen R. Subrin & Thomas O. Main, *The Fourth Era of American Civil Procedure*, 162 U. PA. L. REV. 1839, 1853 n.80 (2014); Erin L. Geller, *The Fail-Safe Class as an Independent Bar to Class Certification*, 81 FORDHAM L. REV. 2769, 2775 n. 38 (2013); Arthur R. Miller, *Simplified Pleading, Meaningful Days in Court, and Trials on the Merits: Reflections on the Deformation of Federal Procedure*, 88 N.Y.U. L. REV. 286, 314 n.105 (2013); D. Theodore Rave, *Governing the Anticommons in Aggregate Litigation*, 66 VAND. L. REV. 1183, 1186 n.5 (2013); Brandon L. Garrett, *Aggregation and Constitutional Rights*, 88 NOTRE DAME L. REV. 593, 610 n.82 (2012); Richard Marcus, *Still Confronting the Consolidation Conundrum*, 88 NOTRE DAME L. REV. 557, 560 n.17, 589 n.154 (2012); *Hearing on "The State of Class Actions Ten Years after the Class Action Fairness Act" Before the Committee on the Judiciary, Subcommittee on the Constitution and Civil Justice* (U.S. House of Representatives, Feb. 27, 2015) (statement of Prof. Patricia W. Moore), at 2 n.4.

- *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.) (submitted expert declaration addressing objections by class members to proposed 3.0-liter and Bosch settlements) (dated 4/28/17);
- *State of Louisiana & Vermilion Parish School Board v. Louisiana Land and Exploration Co., et al.,* No. 82162 (15th Judicial Court, Parish of Vermilion) (submitted expert declaration on attorneys' fees issues) (dated 3/9/17);
- *Thacker v. Farmers Insurance Exchange*, Case No. 2006CV342 (Dist. Ct. Boulder County, Colo.) (submitted expert declaration on class certification issues) (dated 1/24/17);
- *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.) (submitted expert declaration addressing objections by class members to proposed 2.0-liter settlement) (dated 9/30/16);
- *In the Matter of Gosselin Group*, No. 15/3925/B (Antwerp Court of First Instance, Belgium) (submitted expert declaration discussing the role of U.S. federal appellate courts in the factfinding process) (dated 9/27/16);
- *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, Nos. 12-970, 15-4143, 15-4146, and 15-4645 (E.D. La.) (submitted expert declaration on class certification, settlement fairness, and attorneys' fees relating to proposed Halliburton/Transocean class settlement) (dated 8/5/16);
- *Ben-Hamo v. Facebook, Inc. and Facebook Ireland Limited*, No. 46065-09-14 (Central District Court, Israel) (submitted expert declaration on Sept. 3, 2015, on behalf of Facebook, Inc. and Facebook Ireland Limited addressing various issues of U.S. civil procedure and class action law);
- *Skold v. Intel Corp.*, Case No. 1-05-CV-039231 (Super. Ct. of Cal., Santa Clara County) (submitted expert declaration on class settlement approval, attorneys' fees, and incentive payments to class representatives) (dated 12/30/14);
- *In re National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323-AB (E.D. Pa.) (submitted expert declaration on class certification, class notice, and settlement fairness) (dated 11/12/14);
- *MBA Surety Agency, Inc. v. AT&T Mobility, LLC*, Case No. 1222-CC09746 (Mo. 22d Dist.) (submitted expert declaration on class certification and settlement fairness on 2/13/13; submitted supplemental expert declaration on 2/19/13; and testified in court on 2/20/13);
- *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, No. 2:10-md-02179-CJB-SS (E.D. La.) ("Deepwater Horizon") (submitted expert declarations on class certification, fairness, and attorneys' fees for the economic and property damages settlement (Doc. No. 7104-3) and

class certification, fairness, and attorneys' fees for the personal injuries settlement (Doc. No. 7111-4) (both dated 08/13/12), and submitted supplemental expert declarations for both class settlements (Doc. No. 7727-4) (economic), (Doc. No. 7728-2) (medical) (both dated 10/22/12));

- *Robichaux v. State of Louisiana, et. al.* (No. 55,127) (18th Judicial Dist. Ct., Iberville Parish, La.) (submitted written report on attorneys' fees on February 20, 2012, gave deposition testimony on March 7, 2012, and testified in court on April 11, 2012); and
- *In re AT&T Mobility Wireless Data Services Sales Tax Litig.*, MDL No. 2147, Case No. 1:10-cv-02278 (N.D. Ill.) (submitted expert declarations on the fairness of a proposed class action settlement (Doc. No. 163-3) and on attorneys' fees and incentive payments (Doc. 164-1) (both dated 03/08/11), and testified in court on March 10, 2011).

11. Courts reviewing class settlements and attorneys' fees issues have relied extensively on my testimony. For example, in the *Wells Fargo Unauthorized Accounts* litigation, Judge Chhabria cited my testimony in ordering that objectors to the class settlement post an appeal bond.[6] In the *Volkswagen Clean Diesel* litigation, Judge Charles Breyer repeatedly cited and quoted my two Declarations in his three opinions—relating to the 2.0-liter VW class settlement, the 3.0-liter VW class settlement, and the class settlement with VW's co-defendant, Bosch.[7] In the *Deepwater Horizon* case, Judge Carl Barbier cited and quoted my Declarations (relating to a proposed settlement with British Petroleum) more than 60 times in his two opinions analyzing class certification and fairness.[8] In a later order in that MDL, Judge Barbier repeatedly cited my Declaration (which I filed in connection with a class settlement involving Transocean and Halliburton).[9] In the *AT&T Mobility* litigation, Judge Amy St. Eve (now a Judge on the Seventh

[6] *See Jabbari v. Wells Fargo & Co.*, No. 15-cv-02159-VC, slip op. at 14 (N.D. Cal. June 14, 2018) (Dkt. No. 271), *available at* https://www.courthousenews.com/wp-content/uploads/2018/06/Wells-Fargo-settlement.pdf.

[7] *See In re Volkswagen "Clean Diesel" Marketing, Sales Practices & Prods Liab. Litig.*, No. 3:15-md-02672-CRB, 2016 WL 6248426, at *18, *19, *20 (N.D. Cal. Oct. 25, 2016), *appeal filed*, No. 16-17185 (9th Cir. Nov. 29, 2016); Order Granting Final Approval of the Consumer and Reseller Dealership 3.0-Liter Class Action Settlement, Case No. 3:15-md-02672-CRB (Doc. 3229) (filed 05/17/17), at 34, 35, 38; Order Granting Final Approval of the Bosch Class Action Settlement, Case No. 3:15-md-02672-CRB (Doc. 3230) (filed 05/17/17), at 18.

[8] *See In re Deepwater Horizon*, 910 F. Supp. 2d 891, 903, 914–16, 918–21, 923–24, 926, 929–33, 938, 941, 947, 953, 955, 960, 962 (E.D. La. 2012) (approving economic and property damages settlement), *aff'd*, 739 F.3d 790 (5th Cir. 2014); *In re Deepwater Horizon*, 295 F.R.D. 112, 133–34, 136, 138–41, 144–45, 147 (E.D. La. 2013) (approving medical benefits settlement).

[9] *See* Order and Reasons, Case No. 2:10-md-02179-CJB-JCW (Doc. 22252) (E.D. La. 02/15/17); *available at* http://www.laed.uscourts.gov/sites/default/files/OilSpill/2152017OrderAndReasons%28HESI%26TOsettlement%29.pdf (last visited July 7, 2018).

Circuit) cited and quoted my Declarations more than 20 times in approving a class settlement and awarding attorneys' fees.[10] And in *Skold v. Intel Corp.*, Judge Peter Kirwan cited my Declaration in approving a class settlement and awarding attorneys' fees.[11]

12. Along with my expertise and experience in the areas of class certification and settlement fairness, I have done extensive work in the area of attorneys' fees. In addition to my expert witness work, I have litigated attorneys' fees issues in private practice, have worked on such issues in my role as Associate Reporter for the ALI *Aggregate Litigation* project, and have addressed attorneys' fees issues in my academic writings.[12] In those various tasks, I have developed expertise in attorneys' fees concepts, such as percentage of the fund and the lodestar.

13. I have extensive knowledge of typical hourly rates for attorneys and paralegals in class action litigation. I have served as counsel and as an expert in class action cases throughout the United States, and have gained knowledge of hourly rates during that work. I have also gained familiarity with hourly rates of legal personnel through my work as a scholar.

14. I am being compensated at the rate of $785 per hour. My fee is not contingent on the substance of my opinions.

15. Additional information regarding my qualifications and experience—including a list of my publications—can be found in my curriculum vitae, attached hereto as Appendix A.

III. MATERIALS RELIED UPON

16. In addition to reviewing cases and materials in other class actions, I reviewed numerous documents in the instant case. *See* Appendix B (listing those documents).

---

[10] *See In re AT&T Mobility Wireless Data Svcs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 956–59, 961, 963–65 (N.D. Ill. 2011) (approving class settlement); *In re AT&T Mobility Wireless Data Svcs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1032 n.3, 1034–35, 1037, 1040, 1042 (N.D. Ill. 2011) (awarding attorneys' fees).

[11] *See Skold v. Intel Corp.*, No. 1-05-CV-039231 (Cal. Super. Ct. Santa Clara County) (Jan. 29, 2015), at 7, *available at* http://lawzilla.com/blog/janet-skold-et-al-vs-intel-corporation/.

[12] *See, e.g.*, ROBERT H. KLONOFF, CLASS ACTIONS AND OTHER MULTI-PARTY LITIGATION: CASES AND MATERIALS 632–49 (West 4th ed. 2017) (overview of attorneys' fees issues); ROBERT H. KLONOFF, CLASS ACTIONS AND OTHER MULTI-PARTY LITIGATION IN A NUTSHELL 351–56 (West 5th ed. 2017) (similar); Robert H. Klonoff & Mark Herrmann, *The Class Action Fairness Act: An Ill-Conceived Approach to Class Settlements*, 80 TULANE L. REV. 1695 (2006) (discussing attorneys' fees issues in the settlement context); PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION §§ 3.08, 3.13 (Am. Law Inst. 2010) (addressing attorneys' fees in class actions and other aggregate litigation).

IV. BACKGROUND OF THIS LITIGATION AND SETTLEMENT

17. This Court is thoroughly familiar with the background of this litigation. Thus, I focus only on those facts that bear on my opinions in this matter. The factual statements in this Declaration are based on the case-specific materials I have reviewed, which are listed in Appendix B.

18. The instant litigation commenced in the fall of 2014, with numerous lawsuits filed against Syngenta[13] in federal and state court resulting from Syngenta's decision to commercialize two genetically modified organisms (GMO) corn seeds (containing the new traits MIR162 and Event 5307), with trade names Viptera and Duracade. According to plaintiffs, Syngenta's commercialization of Viptera caused corn containing MIR162 to become commingled with the rest of the U.S. corn supply, and, as a result, China ceased importation of corn from the U.S. for a period of time. Because of Syngenta's actions, the price of corn fell, harming corn producers and various non-producers (grain elevators and ethanol production facilities).

19. In December 2014, the Judicial Panel on Multidistrict Litigation (JPML) consolidated the pending federal cases in this Court. On January 22, 2015, this Court entered an order appointing Co-Lead Counsel, the Executive Committee, Interim Class Counsel, and Liaison Counsel. That order also defined the authority, duties, and responsibilities of counsel appointed to leadership positions in the federal multidistrict litigation (MDL).

20. In March 2015, the MDL plaintiffs filed two consolidated master complaints (one on behalf of producers, the other on behalf of non-producers).

21. In May 2015, the MDL plaintiffs filed two amended master complaints. Syngenta moved to dismiss both complaints, arguing, *inter alia*, that it owed no legal duty to prevent commingling of corn grown by third parties from its GMO corn seed and plaintiffs could not establish proximate cause; that various claims were barred by the economic loss doctrine; and that the various causes of action were barred for a variety of other reasons. In a 120-page opinion, this Court granted in part and denied in part the motion dismiss (dismissing various counts but leaving intact claims under the Lanham Act (15 U.S.C. §§ 1051 et seq.), claims of

[13] "Syngenta" is used herein as shorthand for the various Syngenta entities and companies named in this litigation. These are: Syngenta AG; Syngenta Crop Protection AG; Syngenta Corp.; Syngenta Crop Protection, LLC; Syngenta Seeds, Inc. (now known as Syngenta Seeds, LLC); and Syngenta Biotechnology, Inc. (now merged with Syngenta Crop Protection, LLC, as the remaining entity).

negligence and tortious interference, and various consumer protection claims). The Court denied Syngenta's request for interlocutory appeal under 28 U.S.C. § 1292(b).

22. On July 27, 2015, this Court entered an order establishing protocols for common benefit work and expenses. The order also established the common benefit fee and expense funds. As the Court described it, the order "provides for the fair and equitable sharing among plaintiffs' counsel of the burden of services performed and expenses incurred by attorneys acting for the common benefit of all producer and/or all non-producer plaintiffs in this complex litigation." Order Establishing Protocols for Common Benefit Work & Expenses & Establishing the Common Benefit Fee & Expense Funds (Dkt. No. 936) (hereinafter "Common Benefit Order"). The Common Benefit Order further stated that, in the event of a class settlement:

> [N]o assessment pursuant to this Section will be made, either for attorneys' fees or for expenses, individually from any class member or his/her/its individual attorney as to the portion of any class recovery distributed to that individual class member if the class member remains in the class (*i.e.*, does not opt-out of the class). Instead, all fees and expenses for that class member will come out of the overall class recovery funds provided by defendants, as approved by the Court, or as otherwise Ordered by the Court.

Id. at 20.

23. Approximately six months after the JPML consolidated the federal cases in this Court, the Minnesota Supreme Court entered an order consolidating the cases filed in Minnesota state court in a single venue in Hennepin County, Minnesota. Consolidated master complaints were filed in the Minnesota action.

24. On October 21, 2015, at the request of the MDL parties, this Court entered a Coordination Order, encouraging the parties to coordinate discovery against Syngenta. The following month, numerous producer plaintiffs filed suit in Illinois state court. Syngenta removed those cases to federal court. The Illinois federal court held that, because those cases were a mass action under the Class Action Fairness Act, they could not be transferred to this Court. Numerous additional cases were filed in Illinois state court in January 2016 and were consolidated before a single judge. Subsequently, thousands of additional individual cases were filed in Illinois state court, and numerous class actions were filed in state courts in Indiana, Iowa, Michigan, Nebraska, and Ohio, many of which were removed by Syngenta and transferred to the

MDL. Additionally, in December 2015, class actions were filed by ethanol production facilities in several state courts, including Ohio and Indiana. Syngenta did not remove those cases.

25. In addition to attacking the MDL complaints, Syngenta also moved to dismiss the Minnesota complaint. In a 55-page opinion, the Minnesota court largely denied the motion, citing with approval to this Court's order on Syngenta's motions to dismiss in the MDL. The judges in the Illinois state and federal cases rejected similar challenges by Syngenta. Syngenta was successful, however, in securing dismissal of all of the Ohio claims by one ethanol production facility.

26. On October 21, 2015, this Court lifted the general stay of discovery, opening the door to full discovery against Syngenta and third parties, and full discovery from the producer and non-producer bellwether plaintiffs and the class representatives from the bellwether states. Among other discovery, MDL plaintiffs obtained more than 2.3 million pages of documents, which were placed in a document depository. All of the MDL bellwether plaintiffs (both representatives and non-representative individuals) were deposed and produced written discovery. Similar discovery occurred in the Minnesota case. MDL plaintiffs retained two agricultural economists as experts, both of whom were deposed twice and were additionally utilized in the Minnesota action. MDL plaintiffs also prepared for and took over 30 depositions of current and former Syngenta employees, many of which proved critical at trial given that these individuals were outside the subpoena power of the Court. Plaintiffs and Syngenta also sought discovery from a number of non-parties, and deposed representatives of the National Corn Growers Association, the National Grain and Feed Association, the American Seed Trade Association, the United States Grains Council, the North American Export Grain Association, and the Biotechnology Innovation Organization. Syngenta also cross-noticed the depositions of at least 40 individuals deposed in coordinated actions involving ADM and Cargill. And both sides prepared for and conducted several lengthy depositions of many of the more than 16 experts disclosed by plaintiffs and Syngenta.

27. On June 15, 2016, the MDL plaintiffs moved for class certification of a nationwide class (and eight state-law classes). Plaintiffs' submission included 114 pages of briefing and more than 1500 pages of evidence. Syngenta's opposition briefing totaled 127 pages, with more than 800 pages of evidence (including reports of three economists, whom plaintiffs deposed).

Plaintiffs' reply totaled 104 pages, along with 1800 additional pages of evidence. Plaintiffs' motion was also opposed by the Phipps/Clark plaintiffs, who argued that plaintiffs' expert damages models were unreliable and failed to establish classwide damages. *See id*. ¶ 350. This Court conducted a two-day hearing on September 13–14, 2016, consisting of both evidentiary presentations (attended by the Minnesota judge) and oral argument. Also on June 15, 2016, Minnesota plaintiffs moved for class certification, using the same economists that plaintiffs in the MDL used. The Minnesota court heard argument on September 16, 2016.

28. On September 26, 2016, this Court granted class certification, and the Minnesota court granted class certification on November 13, 2016. On December 7, 2016, the Tenth Circuit denied Syngenta's request for Rule 23(f) interlocutory review of this Court's class certification order, and on January 10, 2017, the Minnesota Court of Appeals denied interlocutory review of the Minnesota trial court's class certification order.

29. Bellwether trial dates were set in the MDL and in Minnesota, and the parties engaged in further expert discovery. The MDL plaintiffs produced six experts. Syngenta produced 12 experts in the MDL.

30. In February 2017, both sides moved for summary judgment in both the MDL and Minnesota cases. Plaintiffs moved for summary judgment as to various defenses raised by Syngenta. Syngenta moved for summary judgment as to plaintiffs' Lanham Act claims, negligence claims, claims based on Syngenta's sale of Duracade, and punitive damages claims. Both motions were granted in part and denied in part. On April 5, 2017, this Court granted summary judgment for plaintiffs with respect to certain applications of Syngenta's defenses of intervening cause, assumption of risk, mitigation, business and economic justification, antitrust preemption, and comparative fault. The Court granted summary judgment for Syngenta as to all of plaintiffs' claims under the Lanham Act, as well as all claims of negligence based on alleged misrepresentation, voluntary undertaking, failure to warn, and duty to recall. The court otherwise denied both motions. The Minnesota court entered its summary judgment order on April 11, 2017.

31. The Minnesota bellwether case, which was intended to try the claims of a single bellwether producer plaintiff, commenced trial in April 2017. On April 26, 2017, a mistrial was declared in that case because of a jury issue before opening statements began.

32. On June 5, 2017, the Kansas bellwether class action (involving more than 7,000 Kansas corn growers) went to trial in the MDL. Plaintiffs' trial team included the four co-lead attorneys appointed by the Court and attorneys and staff from their law firms. Syngenta's trial team included at least seven Kirkland & Ellis partners, with assistance from a number of associates and support staff, and at least two partners from Berkowitz Oliver. On June 23, 2017, a jury returned a verdict of $217.7 million for the Kansas class, the full amount of compensatory damages requested by plaintiffs.[14]

33. Settlement discussions had begun even prior to the MDL trial, and this Court had appointed a special master, Ellen K. Reisman, to assist in settlement discussions. Syngenta made clear, however, that it had no intention of settling the litigation prior to trial. After the June 23, 2017 jury verdict in the MDL, this Court appointed a plaintiffs' negotiation committee. The committee included an attorney from one of the firms on the MDL plaintiffs' executive committee (Christopher Seeger), class counsel in Minnesota, and counsel representing thousands of individual producer and non-producer plaintiffs. Subsequently, the Court requested that the special discovery master in the Illinois state and federal cases (the Honorable Daniel J. Stack, retired) participate in the settlement discussions.

34. Although a class trial began in Minnesota state court in September 2017, the trial was halted when the negotiating committee announced the execution of a settlement term sheet. The term sheet provided for a settlement of up to $1.51 billion. Settlement discussions continued after the execution of the term sheet, and separate counsel participated in the negotiations to determine the relief for each of the four subclasses (discussed below).

35. The settlement, as ultimately embodied in the settlement agreement, provides for Syngenta to pay the $1.51 billion in three installments between March 2018 and April 2019. The settlement provides that, upon final approval, none of the $1.51 billion will revert to Syngenta. The settlement class consists of four subclasses: (1) a producer subclass that did not purchase and/or produce Viptera or Duracade, (2) a producer subclass that did purchase and/or produce Viptera or Duracade, (3) a grain handling facility subclass, and (4) an ethanol production facility subclass. The settlement did not include the large corn exporters such as Cargill, ADM, Bunge,

[14] According to the National Law Journal, this represents the 10th-largest verdict in 2017. *See Top 100 Verdicts 2017: Chart*, THE NATIONAL LAW JOURNAL (Apr. 30, 2018), https://www.law.com/nationallawjournal/2018/04/30/top-100-verdicts-2017-chart/?slreturn=20180530185632.

or Louis Dreyfus, several of whom had filed separate lawsuits against Syngenta. The class period is defined as starting on September 15, 2013, and ending as of the date of preliminary approval of the settlement. Under the settlement, class members release their economic claims against Syngenta relating to the conduct at issue but do not release claims for bodily harm.

36. Under the settlement, the costs of settlement administration, attorneys' fees, and class counsel's out-of-pocket costs will first be deducted from the total fund. Specific dollar amounts are allocated to three of the subclasses, with the remainder of funds being used to pay members of the remaining subclass.[15] The agreement sets forth a detailed compensation formula that considers, among other things, the number of corn acres reported on a producer's USDA Form FSA 578 as well as acres not reported to USDA but for which data is available. Weighted averages are set forth for each of five marketing years beginning with 2013–2014. Allocation methodologies are also provided for non-producer grain handling facilities and ethanol production facilities. As part of the preliminary approval process, the parties proposed a multi-faceted notice program, including direct mail and publication notice (print and digital). Regarding attorneys' fees, costs, and incentive payments to class representatives and other plaintiffs, the agreement does not reflect any position by Syngenta with respect to such awards. Any disputes arising from the fact that many individual plaintiffs have separate contingency fee agreements with individual attorneys will be resolved by the Court.

37. On February 23, 2018, MDL co-lead counsel, Minnesota lead counsel, and certain other plaintiffs' counsel entered into a fee-sharing agreement, which provides that any attorneys' fees awarded by the Court will be distributed among the various common benefit law firms as follows: (1) 50 percent will be allocated to Kansas MDL Co-Lead Counsel (Stueve Siegel Hanson; Gray, Ritter & Graham; Gray Reed & McGraw; and Hare Wynn Newell & Newton) to allocate "among all firms that provided common benefit work in the Kansas MDL consistent with the Kansas MDL Court's orders"; (2) 12.5 percent will be allocated to Minnesota counsel Gustafson Gluek to allocate to "all firms that provided common benefit work in the Minnesota MDL consistent with the Minnesota MDL Court's orders"; (3) 17.5 percent will be allocated to

[15] In particular, a maximum of $22.6 million is allocated to producers who purchased and planted Viptera or Duracade; a maximum of $29.9 million is allocated to the grain handling facilities; a maximum of $19.5 million is allocated to the ethanol production facilities; and the remainder is allocated to producers who did not plant Viptera or Duracade corn.

Illinois counsel Clark, Love & Hutson, who "shall petition the Honorable David R. Herndon of the United States District Court for the Southern District of Illinois concerning the allocation of fees among the members of [its] group"; and (4) the remaining 20 percent "will be allocated by the MDL Court, in consultation and agreement with the Minnesota Court and Judge Herndon of the United States District Court for the Southern District of Illinois, taking into consideration the recommendation by the Special Masters." Fee Sharing Agreement at 1–2.[16]

38. On March 12, 2018, the parties moved for preliminary approval of the settlement. A group of plaintiffs (Toups/Coffman) opposed the settlement at the preliminary approval stage for a number of reasons, including an objection as to the anticipated amount of attorneys' fees that might be sought. *See* Toups/Coffman Pls.' Response in Opposition to Class Pls.' Mot. for Preliminary Approval at 3–18 (Dkt. No. 3514) (hereinafter "Toups/Coffman Obj."). The objection stated that class counsel intended to seek attorneys' fees of 33⅓ percent and challenged such fees as being "exorbitant." *Id*. at 14. The objection argued that fees at that level were well above the average fees awarded in mega-fund cases, and particularly for funds of $1 billion or more.

39. On April 10, 2018, this Court entered an order preliminarily approving the settlement. In its order, the Court set a deadline of July 10, 2018, for the filing of attorneys' fees and expense applications (including applications for incentive payments to class representatives). The Court additionally rejected the objections raised by Toups/Coffman. Motions for final approval of the settlement are due October 17, 2018, and the final approval hearing is set for November 15, 2018.

40. MDL co-lead counsel now seek approval of (1) attorneys' fees of one-third (33⅓ percent) of the $1.51 billion settlement fund; (2) the proposed allocation of those fees pursuant to the February 23, 2018 agreement among common benefit counsel; (3) out-of-pocket costs for the MDL plaintiffs of $6,695,350.05; and (4) incentive payments to certain MDL class representatives and bellwether plaintiffs of $5,000 (for 20 bellwether and class representative plaintiffs who participated in written discovery beyond plaintiff fact sheets but were not deposed); $15,000 (for 65 bellwether and class representative plaintiffs who participated in written discovery and were deposed); and $100,000 (for four class representatives who

[16] It is my understanding that the Fee Sharing Agreement will be filed with the Court on July 10, 2018.

participated in written discovery, were deposed, and participated in the Kansas class trial on behalf of Kansas corn farmers).

V. SUMMARY OF OPINIONS

41. The Syngenta litigation has been extremely challenging and hard-fought, with extraordinary lawyers on both sides. Syngenta made clear that it would not settle prior to trial. Thus, the MDL plaintiffs had to litigate class certification and conduct a classwide bellwether trial. Class counsel succeeded in obtaining class certification and eventually won the bellwether trial, recovering the entire $217.7 million that they sought in compensatory damages. Only after that trial verdict did Syngenta agree to a record-setting $1.51 billion settlement.[17] Prior to litigating class certification and proceeding to trial, class counsel conducted extensive and wide-ranging fact and expert discovery, and litigated myriad dispositive legal questions.

42. **Reasonableness of Fees.** The first issue is whether the fees sought (33⅓ percent) are reasonable. In my view, they are. Under the percentage-of-the-fund method, a 33⅓ percentage is justified by the so-called *Johnson* factors: Enormous time and expertise were required to litigate the claims, which raised extremely difficult factual, legal, and expert issues. Class counsel displayed exceptional skill and were largely precluded from taking on other significant matters. Despite extraordinary pressures placed on class counsel, they were victorious at every critical juncture—dispositive motions, class certification, and the bellwether trial—and ultimately reached an historic settlement. Class counsel came to the case with impressive experience and national reputations, and took a great risk by investing enormous time and money in such a challenging case. The fact that thousands of individual plaintiffs agreed to 40 percent contingency arrangements confirms the reasonableness of the requested fee. All of these factors support the request for 33⅓ percent, an award that is supported by numerous cases awarding comparable percentages.

43. I do not believe that a lodestar cross check is necessary or appropriate. In any event, I have done a lodestar cross check for the MDL common benefit counsel and believe that the pertinent figures (142,823.50 total hours, a blended rate of $572.21, and a total lodestar of

[17] The settlement is more than twice what Bayer agreed to pay rice farmers in the most recent lawsuit involving the loss of an export market due to the release of unapproved genetically modified traits. *See Bayer Settles With Farmers Over Modified Rice Seeds*, N.Y. TIMES (July 1, 2011), https://www.nytimes.com/2011/07/02/business/02rice.html.

$81,725,060.90—resulting in a multiplier of 3.079 to reach the fees requested by MDL counsel) fully justify the 33⅓ percent sought under the percentage method.

44. **Allocation of Fees.** Class counsel recommend that the Court divide the fee by awarding 50 percent to MDL common benefit counsel, 12.5 percent to common benefit counsel in the Minnesota litigation, and 17.5 percent to leadership counsel in the Illinois litigation, with the remaining 20 percent to be allocated in the Court's discretion. This approach makes perfect sense to me: It was determined through arms-length bargaining under the auspices of the special masters, and I see nothing to suggest that it is unfair to any segment of plaintiffs' attorneys involved in this litigation.[18]

45. **Out-of-Pocket Costs.** In my view, the out-of-pocket costs sought by counsel are eminently reasonable. Totaling $6,695,350.05, which is only 0.44 percent of the settlement, they consist of essential costs, such as fees and costs for expert witnesses, costs of class certification notice, deposition expenses, etc. These are the types of costs commonly reimbursed by paying clients.

46. **Incentive Payments.** Incentive payments are sought for certain MDL class representatives and bellwether plaintiffs. Those who produced written discovery beyond responding to plaintiff fact sheets would receive $5,000; those who, in addition, sat for depositions would receive $15,000; and those who also attended the Kansas class bellwether trial would receive $100,000. As I explain, these awards are supported by the case law, given the significant time investments involved, the tangible risks to the plaintiffs' livelihoods (including time spent away from their farms), coupled with the substantial risk that at the end of the day, they—like class counsel—would recover nothing.

VI. DETAILED DISCUSSION OF OPINIONS

47. In the remaining sections of this Declaration, I explain in detail my opinions on the reasonableness of (1) the proposed attorneys' fees, (2) the proposed allocation of attorneys' fees, (3) the out-of-pocket costs requested by the MDL plaintiffs, and (4) the proposed incentive payments to certain MDL class representatives and bellwether plaintiffs.

[18] I may offer further opinions on this issue after I review all of the fee and expense applications filed on July 10, 2018.

ATTORNEYS' FEES

A. The Attorneys' Fees Requested by Class Counsel Are Reasonable

48. Class counsel are seeking, as attorneys' fees, 33⅓ percent of the $1.51 billion settlement fund (approximately $503 million). In this section of the Declaration, I analyze the reasonableness of that request.

1. This Court Should Use the Percentage-of-the-Fund Method

49. As an initial matter, this Court must decide whether to use the percentage-of-the-fund method (the percentage method) or the lodestar method. Courts in the Tenth Circuit have discretion in common fund cases to choose either the percentage method or the lodestar method.[19] Both in the Tenth Circuit and nationwide, however, courts have a strong preference for the percentage method.[20] This preference for the percentage method—which I

[19] *See, e.g.*, *Gottleib v. Barry*, 43 F.3d 474, 483, 487–88 (10th Cir. 1994) (noting that "either method is permissible in common fund cases," but holding that the district court abused its discretion in applying the lodestar method contrary to the special master's recommendation; special master had recommended that the percentage method be applied because: "(1) it most closely matches the methodology actually employed in the marketplace; (2) because it matches the market, it provide[s] incentive for counsel to pursue actions such as this on behalf of large groups of investors; (3) it is less subjective than the lodestar plus multiplier approach; (4) it gives primary consideration to the results obtained by counsel; (5) because class counsel was initially retained on a contingent fee basis, a percentage fee most closely approximates the original agreement between client and counsel; (6) a fee expert retained by class counsel opined that percentage fee awards are customary and reasonable in cases like this one; and (7) because of the large number of law firms seeking compensation in this case, a lodestar approach could result in overcharging the class" (citations and internal quotation marks omitted; alteration in original)).

[20] *See, e.g.*, *Gottleib*, 43 F.3d at 487–88 (noting "preference for the percentage of the fund method"); *Rosenbaum v. MacAllister*, 64 F.3d 1439, 1445 (10th Cir. 1995) (to the same effect); *In re Urethane Antitrust Litig.*, No. 2:04-md-01616-JWL, 2016 WL 4060156, at *4 (D. Kan. July 29, 2016) (Lungstrum, J.) ("The Tenth Circuit has expressed a preference for the percentage-of-the-fund method of awarding attorney fees in common fund cases." (citations omitted)); *CompSource Okla. v. BNY Mellon, N.A.*, No. CIV 08-469-KEW, 2012 WL 6864701, at *8 (N.D. Okla. Oct. 25, 2012) (to the same effect); *In re Univ. Serv. Fund Tel. Billing Practices Litig.*, No. 02-MD-1468-JWL, 2011 WL 1808038, at *2 (D. Kan. May 12, 2011) (to the same effect); *Been v. O.K. Indus., Inc.*, No. CIV-02-285-RAW, 2011 WL 4478766, at *4 (E.D. Okla. Aug. 16, 2011) (to the same effect); *Millsap v. McDonnell Douglas Corp.*, No. 94-CV-633-H(M), 2003 WL 21277124, at *6 (N.D. Okla. May 28, 2003) (to the same effect); *In re Southeastern Milk Antitrust Litig.*, No. 07-cv-1000, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013) (noting that the "percentage-of-the-fund method clearly appears to have become the preferred method in common fund cases"); *Jones v. Dominion Resources Services, Inc.*, 601 F. Supp. 2d 756, 758 (S.D. W. Va. 2009) ("The percentage method has overwhelmingly become the preferred method for calculating attorneys' fees in common fund cases."); MANUAL FOR COMPLEX LITIGATION (FOURTH) § 14.121 (2004) (noting that the "vast majority" of courts apply the percentage method); Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009–2013*, 92 N.Y.U. L. REV. 937, 963 (2017) (noting that the lodestar method "was used in only 6.29 [percent] of cases during the 2009–2013 period"); Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811, 832–33 (2010) (noting that district courts "employed the lodestar method in only 12 percent of settlements" from 2006–2007); Theodore Eisenberg & Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. EMPIRICAL LEGAL STUD. 248, 267 (2010) (lodestar method was used in only 9.6 percent of settlements from 2003–2008); AM. LAW

wholeheartedly support—stems primarily from the fact that the percentage method "aligns the interests of class counsel with the interests of the class because the more the class recovers, the more class counsel recovers."[21] By contrast, the lodestar method gives class counsel an incentive to work more hours than are necessary and to avoid early settlement.[22] As one district court in the Tenth Circuit emphasized, "[t]he lodestar method encourages attorneys to bill as many hours as possible, preferably to the firm's most expensive attorneys, and discourages early settlement, even on terms favorable to plaintiffs, because the attorneys will earn more the longer a litigation lasts."[23] Another court observed that, "[w]hile the lodestar approach incentivizes attorneys to work more hours, without regard to the quality of the output or the class's needs, the percentage

---

INST., PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 3.13(b) (2010) (noting that the "percentage-of-the-fund approach is the method [that should be] utilized in most common fund cases"); *Report of the Third Circuit Task Force on Court Awarded Attorney Fees*, 108 F.R.D. 237, 246–49 (1985) (concluding that courts should generally use the percentage method in common fund cases).

[21] *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1241 (D.N.M. 2016). *Accord, e.g.*, *Wal-Mart Stores, Inc. v. Visa USA, Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (noting that the percentage method "provides a powerful incentive for the efficient prosecution and early resolution of litigation"); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269 (D.C. Cir. 1993) ("It matters little to the class how much the attorney spends in time or money to reach a successful result."); *Shaw v. Interthinx, Inc.*, No. 13-CV-01229-REB-NYW, 2015 WL 1867861, at *5 (D. Colo. Apr. 22, 2015) ("The Tenth Circuit favors the common fund approach, as opposed to the lodestar method, because a percentage of the common fund is less subjective than the lodestar plus multiplier approach, matches the marketplace most closely, and is the better suited approach when class counsel were retained on a contingent fee basis . . . ." (citation omitted)); *Craft v. Cnty. of San Bernardino*, 624 F. Supp. 2d 1113, 1123 (C.D. Cal. 2008) (emphasizing that the percentage method "aligns the interests of counsel and the class by allowing class counsel to directly benefit from increasing the size of the class fund"); *see also* NAT'L ASS'N OF CONSUMER ADVOCATES, STANDARDS AND GUIDELINES FOR LITIGATING AND SETTLING CONSUMER CLASS ACTIONS 27 (3d ed. 2014) (noting that the percentage method is preferable from consumers' perspective because it "keeps class counsel's financial interest closely aligned with that of the class itself" and "approximates the 'free market' negotiated fees obtained in traditional contingency litigation").

[22] *See, e.g.*, *McDaniel v. Cnty. of Schenectady*, 595 F.3d 411, 418 (2d Cir. 2010) ("The lodestar method . . . creates an incentive for attorneys to bill as many hours as possible, to do unnecessary work, and for these reasons also can create a disincentive to early settlement. Under certain conditions, moreover, lodestar awards can create the near opposite incentive, encouraging attorneys to settle before trial even when it is not in their clients' best interest."); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 n.5 (9th Cir. 2002) ("[I]t is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary . . . , [and] the lodestar method does not reward early settlement."); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 721 (7th Cir. 2001) ("[T]he lodestar approach creates [an] incentive to run up the billable hours."); *Swedish Hosp. Corp*, 1 F.3d at 1268–69 ("[U]sing the lodestar approach . . . attorneys are given incentive to spend as many hours as possible, billable to a firm's most expensive attorneys [and] . . . there is a strong incentive against early settlement since attorneys will earn more the longer a litigation lasts."); *In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, slip op. at 18 (N.D. Cal. Mar. 18, 2013) ("[T]he lodestar method's limitations lie in its creating a possible incentive for counsel to expend more hours than is necessary on a litigation or to delay settlement."); REPORT OF THE FEDERAL COURTS STUDY COMMITTEE 104 (Fed. Judicial Ctr. Apr. 2, 1990), *available at* https://www.fjc.gov/sites/default/files/2012/RepFCSC.pdf (noting that the lodestar method gives class counsel "incentives to run up hours unnecessarily").

[23] *In re Copley Pharm., Inc.*, 1 F. Supp. 2d 1407, 1411 (D. Wyo. 1998).

approach instead rewards counsel for success and penalizes it for failure."[24] Moreover, the lodestar method has been heavily criticized by courts and commentators as "difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation to reach a predetermined result."[25]

50. Here, the policies favoring the percentage method are directly applicable. Class counsel took on a difficult case and did everything possible (including obtaining class certification and winning a Kansas class bellwether trial) to achieve the maximum possible settlement. In any event, although there is no need for the Court to undertake the time-consuming effort of a lodestar cross check, the fee award sought by MDL class counsel here is fully supported by a lodestar cross check, which I conducted for the MDL common benefit counsel (*see* ¶¶ 103–127).

2. The 33⅓ Percent Requested Here Is Reasonable

51. As noted, class counsel seek attorneys' fees of 33⅓ percent of the $1.51 billion settlement fund. As I discuss below, it is my opinion that this percentage is reasonable.

a. The Percentage Requested Is Justified Under the *Johnson* Factors Based on the Compelling Circumstances in This Case.

52. The determination of the reasonableness of fees must depend on the precise facts and circumstances of the particular case. Courts in the Tenth Circuit have long recognized that attorneys' fees awards must be "decided on the totality of the circumstances of the case and the uniqueness of the litigation."[26] For a very difficult and risky case, a high award is justified,

[24] *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 762 (S.D. Ohio 2007).

[25] *Ramah Navajo Chapter v. Babbitt*, 50 F. Supp. 2d 1091, 1108 (D.N.M. 1999). *Accord, e.g.*, *Swedish Hosp. Corp.*, 1 F.3d at 1269–70 ("The lodestar method makes considerable demands upon judicial resources since it can be exceptionally difficult for a court to review attorney billing information over the life of a complex litigation and make a determination about whether the time devoted to the litigation was necessary or reasonable. . . . A related weakness in the lodestar approach is that it often results in substantial delay in distribution of the common fund to the class. . . ."); REPORT OF THE FEDERAL COURTS STUDY COMMITTEE 104 (Fed. Judicial Ctr. Apr. 2, 1990), *available at* https://www.fjc.gov/sites/default/files/2012/RepFCSC.pdf (noting that the lodestar method may "unduly burden judges").

[26] *In re King Resources Co. Sec. Litig.*, 420 F. Supp. 610, 640 (D. Colo. 1976). *Accord, e.g.*, *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 736 (3d Cir. 2001) ("[A] district court may not rely on a formulaic application of the appropriate range in awarding fees but must consider the relevant circumstances of the particular case."); *Urethane*, 2016 WL 4060156, at *5 (noting, in rejecting objectors' contention that percentage fee awards should necessarily be lower in mega-fund cases, that "the fee percentage must be determined on a case-by-case basis . . . based on the unique circumstances of the case."); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1359 (S.D. Fla. 2011) ("There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case.")

while a lower award would be appropriate where such concerns are not present.[27]

53. In the Tenth Circuit, the facts and circumstances are assessed by looking at 12 specific factors. These so-called *Johnson* factors, originally set forth by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*,[28] are:

> (1) the time and labor involved; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) any prearranged fee—this is helpful but not determinative; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.[29]

The *Johnson* factors are considered "in totality," and no one factor is dispositive.[30] Moreover, courts in the Tenth Circuit have recognized that "[t]he weight to be given to each of the *Johnson* factors varies from case to case, and each factor is not always applicable in every case."[31] Moreover, "[i]n a common fund case, the greatest weight should be given to the monetary results achieved for the benefit of the class."[32]

---

[27] *See, e.g.*, *In re Cendant Corp. Litigation*, 264 F.3d 201, 221 (3d Cir. 2001) (noting that plaintiffs' had "a simple case in terms of liability" in rejecting the district court's fee award as excessive); *Urethane*, 2016 WL 4060156, at *4 (noting that "the case presented a great deal of risk" to class counsel in awarding attorneys' fees of 33⅓ percent of $835 million fund); *In re U.S. Foodservice, Inc. Pricing Litig.*, No. 3:07-md-01894 (AWT), slip op. at 5 (D. Conn. Dec. 9, 2014) (Dkt. No. 521) (noting that "Class Counsel undertook numerous and significant risks" in awarding attorneys' fees of 33⅓ percent of $297 million fund); *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (noting that "[t]here were significant risks involved in this litigation" and that "the case did not lend itself to easy proof of liability or damages" in awarding attorneys' fees of 33 percent); *Been v. O.K. Indus., Inc.*, No. CIV-02-285-RAW, 2011 WL 4478766, at *6 (E.D. Okla. Aug. 16, 2011) (emphasizing that the case had been "prosecuted to judgment and through two appeals" in awarding attorneys' fees of 42 percent); *Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 148 (E.D. Pa. 2000) (noting that "[v]irtually nothing about this case was simplistic" in awarding attorneys' fees of 33⅓ percent); *In re Quantum Health Resources, Inc.*, 962 F. Supp. 1254, 1259 (C.D. Cal. 1997) (noting that "[t]he facts of [the] case weighed heavily in the Class' favor from the start" in awarding attorneys' fees of 10 percent).

[28] 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989).

[29] *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454–55 (10th Cir. 1988).

[30] *In re Copley Pharm., Inc. Albuterol Prods. Liab. Litig.*, 50 F. Supp. 2d 1141, 1156 (D. Wyo. 1999).

[31] *Lucken Family Ltd. P'ship, LLLP v. Ultra Resources, Inc.*, No. 09-cv-01543-REB-KMT, 2010 WL 5387559, at *3 (D. Colo. Dec. 22, 2010).

[32] *Id.* at *3. *See also Urethane*, 2016 WL 4060156, at *4 ("[T]he amount involved and the results obtained . . . may be given greater weight when, as in this case, the trial judge determines that the recovery was highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class." (citation and internal quotation marks omitted)).

54. In my opinion, the *Johnson* factors, taken as a whole, support the reasonableness of the 33⅓ percent fee award requested in this case. I address each factor separately below.

i. Time and Labor Required

55. This case has required (and will continue to require) a significant investment of time by class counsel. As set forth more fully below (*see* ¶¶ 105, 119), to date, MDL class counsel have devoted 142,823.50 hours to the case, and expect to devote at least 500–1,000 hours in the future to implement the settlement.

ii. Novelty and Difficulty of the Questions

56. Class counsel faced numerous difficulties and challenges. They include the following:

57. **Difficult Legal Claims.** There were a number of exceptionally difficult legal issues in this case, particularly in light of the unique underlying facts of the litigation. Syngenta argued that the alleged tort law duty underlying the complaint was "novel" because it required Syngenta "not to sell Viptera at all in the U.S. [after being approved to do so] absent Chinese approval—thereby effectively giving China a veto over the sale of U.S.-approved biotechnology *in the U.S.*"[33] Syngenta's legal challenges resulted in hundreds of pages of briefing and numerous orders of the Court. Syngenta raised challenges to the entire array of claims asserted by plaintiffs, including claims under the Lanham Act; state law claims of negligence, nuisance, negligent misrepresentation, tortious interference, and misrepresentation; and claims under state consumer protection acts. In addition to contending that various elements of the claims could not be satisfied, Syngenta raised additional overarching legal and policy issues, including: whether the Lanham Act should apply to the facts here, which are not the typical trademark/trade dress claims; the interpretation and application of the principles of proximate and superseding cause, where the decision to reject U.S. corn was made by a foreign state; application of the economic loss doctrine to tort claims for financial injury; and application of the Grain Standards Act (7 U.S.C. §§ 71 et seq.) and federal preemption. Syngenta also contested the availability of punitive damages. Syngenta succeeded on some of its arguments (such as successfully obtaining summary judgment on plaintiffs' Lanham Act claims, as well as all of plaintiffs' claims of negligence based on alleged misrepresentation, voluntary undertaking, failure to warn, and duty

[33] Rule 23(f) Petition for Permission to Appeal Class Certification Order at 4–5 (10th Cir.) (filed Oct. 11, 2016) (emphasis in original).

to recall (*see* ¶ 30)). But even where Syngenta was not successful, its arguments offered potentially dispositive grounds for appeal (both in the Tenth Circuit and in the U.S. Supreme Court).[34]

58. Substantial attorneys' fees are justified when the legal issues are particularly complex. Indeed, this Court in the *Urethane Antitrust* litigation relied heavily on the fact that it "was an extremely difficult and complex case . . .with significant disputed issues arising at [various stages of the litigation]."[35] In awarding attorneys' fees of 33⅓ percent, the Court emphasized that "[l]iability on these claims was far from certain, and thus the case presented a great deal of risk" to class counsel.[36] Similarly, in *Cullen v. Whitman Medical Corp*., the court noted, in awarding attorneys' fees of 33⅓ percent, that "[v]irtually nothing about this case was simplistic . . . [and that] both the legal theories and litigation process were complex."[37]

59. **Difficult Factual Issues.** There were a number of exceptionally difficult factual issues embedded in plaintiffs' claims and Syngenta's defenses. Those claims and defenses required not only proof of Syngenta's conduct and China's reasons for rejecting the U.S. corn, but also proof of the conduct of numerous third parties involved in the transportation and trade of U.S. corn, including grain handlers, trade associations, and foreign buyers. Plaintiffs' bone of contention—that Syngenta should have taken steps to limit the launch of its seeds until it had obtained China's approval—necessarily required proof that those steps would have prevented the trade

[34] The difficulty of the legal issues is also confirmed by the fact that in Ohio, the court dismissed an ethanol production facility's entire lawsuit against Syngenta, accepting Syngenta's argument that the company had no duty to prevent the economic harm alleged by plaintiffs. *See Fostoria Ethanol v. Syngenta Seeds, Inc.*, No. 15-cv-00323, slip op. at 7 (C.P. Seneca Cnty., Ohio June 28, 2017). Such prior success by the defendant has been relied upon by courts in awarding fees. *See, e.g.*, *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1635648, at *7 (E.D. Pa. Apr. 5, 2018) ("Class Counsel was actually fighting *against* prior cases in which the NFL Parties had successfully utilized defenses to obtain pretrial dismissals. This litigation required Class Counsel to reinvent the Plaintiffs' position by conducting new research, developing experts, and briefing issues without the benefit of previous successful lawsuits." (emphasis in original)). In addition, Syngenta cited and relied on earlier cases that had rejected similar claims against seed manufacturers. *See* Syngenta's Mem. of Law in Support of Mot. to Dismiss Producer & Non-Producer Pls.' Amended Class Action Master Complaints at 31 (Dkt. No. 857) (citing *Sample v. Monsanto Co.*, 283 F. Supp. 2d 1088, 1093 (E.D. Mo. 2003); *Hoffman v. Monsanto Canada,* 2005 SKQB 225, 2005 SK.C. LEXIS 330 (Can. Sask. Q.B. May 11, 2005)).

[35] *Urethane*, 2016 WL 4060156, at *5.

[36] *Id.* at *4.

[37] 197 F.R.D. 136, 148 (E.D. Pa. 2000). *Accord, e.g.*, *Buettgen v. Harless*, No. 3:09-cv-00791-K, 2013 WL 12303194, at *2 (N.D. Tex. Nov. 13, 2013) (emphasizing in awarding attorneys' fees that the case involved "particularly complex issues of law" and "numerous rounds of complicated briefing"); *In re Lease Oil Antitrust Litig. (No. II)*, 186 F.R.D. 403, 445 (S.D. Tex. 1999) (relying on the existence of "difficult questions" of law in awarding "an above-average recovery").

disruption. Also, Syngenta argued that China's reasons for rejection of U.S. corn were put in issue under plaintiffs' theory of the case, even though plaintiffs could not, in any way, compel direct evidence from a foreign state.

60. At bottom, Syngenta raised substantial arguments pointing to the difficulties in proving the nexus between its actions and plaintiffs' injuries. As it argued:

> Plaintiffs' convoluted theory of causation winds its way through a host of actions taken by others *after* Syngenta relinquished control of its Viptera seed, including farmers who planted the seed (allowing cross-pollination); grain elevators that bought and mixed corn without distinguishing for Viptera (and then shipped it to China knowing that it likely contained Viptera); and Chinese officials who conveniently invoked Viptera as the reason for turning away U.S. corn after the price of corn had dropped over 30% (thus giving Chinese buyers a way out of expensive contracts). And the last step in the chain turns on Plaintiffs' speculation that China's actions lowered the price of U.S. corn.[38]

61. Class counsel's task in combating Syngenta's arguments was made more challenging by their inability to subpoena documents from China. Without access to that critical information, it became difficult for class counsel to explain China's actions and to refute Syngenta's arguments that China acted for purely political reasons rather than because of the presence of Viptera in corn shipments.

62. The existence of difficult factual issues can warrant substantial fees. For example, in awarding attorneys' fees of more than 30 percent in *Allapattah Services, Inc. v. Exxon Corp.*, the district court emphasized that "[t]he factual and legal framework out of which this case arose made it an extraordinarily difficult case."[39] Similarly, in the *Heritage Bond Litigation*, the court noted that "the case was factually complex" and reasoned that "[t]he complexity of this case justifies the requested fees [of 33⅓ percent]. . . .[T]his case cannot be considered a garden variety securities class action."[40]

63. **Difficult Expert Issues.** Substantial briefing (and analysis by this Court) was

[38] Def.'s Mem. of Law in Support of Mot. to Dismiss at 2 (Dkt. No. 857) (emphasis in original).

[39] 454 F. Supp. 2d 1185, 1206 (S.D. Fla. 2006).

[40] *In re Heritage Bond Litig.*, No. 02-ML-01475-DT, 2005 WL 1594403, at *20–21 (C.D. Cal. June 10, 2005). *Accord, e.g.*, *Cullen*, 197 F.R.D. at 148 (relying on factual complexity and voluminous discovery in awarding fees); *Eashoo v. Iovate Health Sciences U.S.A., Inc.*, No. 15-cv-01726-BRO (PJWx), 2016 WL 6205785, at *10 (C.D. Cal. Apr. 5, 2016) (similar); *Schwartz v. TXU Corp.*, No. 3:02-cv-02243-K, 2005 WL 3148350, at *29 (N.D. Tex. Nov. 8, 2005) (similar).

necessitated by Syngenta's argument that plaintiffs' various experts did not satisfy the standards of *Daubert v. Merrell Dow Pharmaceuticals, Inc*.[41] Especially challenging issues arose because of the effort of plaintiffs' experts to address classwide injury by (1) focusing on the price of corn on the Chicago Board of Trade (CBOT) and then (2) opining that price changes on the CBOT caused uniform changes nationwide to all local corn prices. Plaintiffs had to establish via expert testimony a counterfactual economic world where Syngenta did not commercialize—or limited the commercialization of—Viptera and Duracade until the company received Chinese approval. This required experts who could reliably predict what Chinese demand for U.S. corn would have been in this counterfactual world and what impact that demand would have had on U.S. corn prices. To prevail in the Kansas class jury trial, plaintiffs also had to develop an economic model that applied to the entire class, including persuading the Court and the jury that changes in the CBOT price would be reflected in changes to all local prices paid to producers in the class. Moreover, plaintiffs had to establish what the standard of care should be for GMO manufacturers in commercializing new traits that have not obtained export approvals in all key export markets. I am advised that plaintiffs developed expert testimony through one of the third-party grain handlers in the case, and navigated the use of that expert at trial in the face of potentially difficult cross-examination on bias, based on his employment with a plaintiff who was suing Syngenta. In addition, class counsel successfully obtained orders compelling the production of documents from Syngenta's standard-of-care expert, ultimately resulting in that expert's withdrawal as an expert in this litigation.

64. The existence of hotly contested *Daubert* issues can warrant substantial fees. For example, the court in the *Flonase Antitrust Litigation*, in awarding 33⅓ percent of the settlement fund as attorneys' fees, relied upon the fact that class counsel had litigated a number of hotly contested *Daubert* challenges.[42] Similarly, in *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, the court cited "multiple *Daubert* challenges" in awarding attorneys' fees of 33⅓ percent.[43]

---

[41] 509 U.S. 579 (1993).

[42] *In re Flonase Antitrust Litig*., 291 F.R.D. 93, 106 (E.D. Pa. 2013).

[43] No. 1:04-cv-3066-JEC, 2012 WL 12540344, at *3 (N.D. Ga. Oct. 26, 2012). *Accord, e.g.*, *Kleen Prods. LLC v. Int'l Paper Co.*, No. 1:10-cv-05711, 2017 WL 5247928, at *5 (N.D. Ill. Oct. 17, 2017) (relying on "substantial motion practice, including . . . motions to exclude expert testimony under *Daubert*" in awarding fees); *Cook v. Rockwell Int'l Corp*., No. 90-cv-00181-JLK, 2017 WL 5076498, at *3 (D. Colo. Apr. 28, 2017) (relying on multiple

65. **Hotly Contested Class Certification Issues.** Although I ultimately agree with this Court's decision to certify a class, given the overarching common issues, there is no question that class counsel took a serious risk that class certification would be denied. In the case that arguably was the most similar to this one, *In re Genetically Modified Rice Litigation*, the court denied class certification.[44] Syngenta relied extensively on that case in opposing class certification. *See* Syngenta's Opposition to Producer Pls.' Mot. for Class Certification at 5–6, 29, 75, 83, 111–12, 115–16, 124 (Dkt. No. 2335). Syngenta also made numerous other forceful arguments in vigorously contesting class certification, including: that the class was not ascertainable because individualized inquiries were required regarding each producer; that individualized inquiries were required to determine whether specific class members were injured (thus defeating commonality and predominance); that individualized inquiries were required to resolve Syngenta's affirmative defenses (including failure to mitigate damages); that a class action was not the superior mechanism; and that an issues class under Rule 23(c)(4) would not be efficient or consistent with the Seventh Amendment. Syngenta also attacked plaintiffs' experts in opposing class certification, arguing that the Court must resolve any disputes between the class's experts and Syngenta's experts, instead of just ruling that, under *Daubert*, the class's experts offered admissible testimony. The briefing and evidentiary submissions on class certification were extensive (*see* ¶ 27), and Syngenta's arguments were supported by substantial authority.

66. Although Syngenta did not prevail in opposing class certification, and it was unsuccessful in seeking Rule 23(f) interlocutory review, it nonetheless raised substantial arguments for appealing the class certification ruling after final judgment. At the same time, class counsel's success in obtaining certification undoubtedly placed substantial settlement pressure on Syngenta, thereby contributing to the $1.51 billion settlement.[45] After the $217.7 million judgment in the Kansas class bellwether trial, Syngenta faced even greater damages in

---

Daubert motions in awarding fees); *Buettgen*, 2013 WL 12303194, at *2 (relying on contentious *Daubert* motions in awarding fees); *Allapattah*, 454 F. Supp. 2d at 1193, 1232 (noting "week-long *Daubert* evidentiary hearing" in awarding fees).

[44] 251 F.R.D. 392, 398 (E.D. Mo. 2008).

[45] *See, e.g.*, *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 475 (2013) (noting the "[s]ettlement pressure exerted by class certification"); *In re Zurn Pex Plumbing Prods. Liab. Litig.*, 644 F.3d 604, 629 (8th Cir. 2011) (noting that "many defendants face substantial settlement pressures as a result of class certification" (citation omitted)).

the forthcoming Minnesota, Arkansas, Missouri, Illinois, Iowa, Ohio, Nebraska, and Missouri trials. Thus, by the time Syngenta might have received an appellate ruling on class certification (or any of several other dispositive issues) from the Tenth Circuit, it potentially would have incurred multiple jury verdicts as large as (or larger than) the Kansas verdict. Thus, class counsel's efforts in obtaining class certification in the face of numerous hotly contested issues were immensely beneficial to the class.

67. A number of courts have relied on the fact that class counsel litigated difficult class certification issues in justifying a substantial percentage fee award. The district court in *Montague v. Dixie National Life Insurance*, for example, reasoned that the fact that the case "was hotly contested both on the merits of the claims *and on the issue of class certification* . . . provide[d] support for a 33 percent fee award."[46] Similarly, in awarding attorneys' fees of 33⅓ percent of the $586 million settlement fund in the *Initial Public Offering Securities Litigation*, the court emphasized that "class counsel briefed and argued three hotly contested class certification motions."[47]

68. **Contested Trial.** One of the most compelling justifications for the award sought here is the fact that MDL class counsel conducted a full trial on the merits.[48] That trial, involving a Kansas class of more than 7,000 Kansas growers, resulted in a verdict of $217.7 million in compensatory damages—100 percent of the compensatory relief requested by plaintiffs. Syngenta vigorously disputed plaintiffs' claims at trial and brought in a distinguished and experienced trial team of seven Kirkland & Ellis partners, including Mike Brock—one of the country's most prominent trial lawyers in bet-the-company litigation—and additional attorneys and staff. Realistically, I have no doubt that had plaintiffs lost the trial, their ability to negotiate a settlement anywhere near the magnitude of $1.51 billion would have vanished. The fact that MDL class counsel achieved a major verdict against such formidable opposition helped pave the way for the substantial global settlement.

---

[46] No. 3:09-00687-JFA, 2011 WL 3626541, at *3 (D.S.C. Aug. 17, 2011) (emphasis added).

[47] *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 508 (S.D.N.Y. 2009). *Accord, e.g.*, *In re Schering-Plough Corp. Enhance Sec. Litig.*, Nos. 08-397 & 08-2177 (DMC) (JAD), 2013 WL 5505744, at *26 (D.N.J. Oct. 1, 2013) (relying on contested class certification and "unusual class certification issues" in awarding fees); *Cullen*, 197 F.R.D. at 148 (relying on contested class certification motions in awarding fees); *Heritage Bond*, 2005 WL 1594403, at *20 (similar).

[48] Notably, class counsel also conducted portions of two bellwether trials in Minnesota. *See* ¶¶ 31, 34.

69. Because relatively few class actions go to trial,[49] courts reviewing attorneys' fee requests justifiably give significant weight to the fact—when present—that a contested trial occurred. For example, in its order awarding attorneys' fees in the *Deepwater Horizon Litigation*, the court noted that class counsel "did something that rarely happens in class actions: they actually went to trial."[50] The court emphasized that the "massive two-phase trial effort" weighed in favor of the fees requested by class counsel.[51] Similarly, in *Allapattah*, the district court emphasized that the settlement was reached only after class counsel succeeded at trial, noting that "[c]lass counsel . . . faced a potential catastrophic risk in the event the case was lost at trial."[52] And in *Urethane*, this Court relied heavily in its fee award on the impressive jury verdict obtained by class counsel.[53] The Court emphasized that "the case was not settled pretrial" but rather was litigated before a jury, resulting in a verdict of over $400 million—an "incredible success on the merits."[54]

70. **Absence of Government Litigation.** In some instances, private counsel are aided by the existence of parallel government litigation. Such government litigation—which may involve

---

[49] *See, e.g.*, *Hughes v. Kore of Ind. Enter., Inc.*, 731 F.3d 672, 676 (7th Cir. 2013) (noting that it is "the rare case in which a class action not dismissed pretrial goes to trial rather than being settled"); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1299 (11th Cir. 1999) ("Rarely do class action litigations proceed to trial."); Robert H. Klonoff, *Class Actions in the Year 2026: A Prognosis*, 65 EMORY L.J. 1569, 1642 (2016) (indicating that "settlement is still the norm").

[50] *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, No. 2:10-md-02179-CJB, 2016 WL 6215974, at *18 (E.D. La. Oct. 25, 2016).

[51] *Id.*

[52] 454 F. Supp. 2d 1185, 1203 (S.D. Fla. 2006).

[53] *Urethane*, 2016 WL 4060156, at *4–7.

[54] *Id.* at *4. *Accord, e.g.*, *Brady v. Air Line Pilots Ass'n*, 627 F. App'x 142, 144–45 (3d Cir. 2015) (emphasizing that "Class Counsel conducted a five-week liability trial that resulted in a jury verdict in favor of the class" in upholding district court's 30 percent attorneys' fee award); *In re Apollo Grp. Inc. Sec. Litig.*, No. 04-cv-02147-PHX-JAT, 2012 WL 1378677 (D. Ariz. Apr. 20, 2012) (awarding attorneys' fees of 33⅓ percent of $145 million fund based in large part on favorable jury verdict secured by class counsel, and noting: "[S]ecurities class actions rarely proceed to trial . . . [and] there was a great risk that this case would not result in a favorable verdict after trial."); *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 768 F. Supp. 912, 931–32 (D.P.R. 1991) (relying on multi-phase trial in setting aside total attorneys' fees of $68 million out of $220 million fund, or 30.9 percent), *rev'd on other grounds*, 56 F.3d 295 (1st Cir. 1995). Indeed, courts give substantial weight in awarding fees to the fact that a case was *close* to going to trial. *See, e.g.*, *Fleisher v. Phoenix Life Ins. Co.*, Nos. 11-cv-8405(CM), 14-cv-8714(CM), 2015 WL 10847814, at *12–13 (S.D.N.Y. Sept. 9, 2015) (noting, in awarding 33⅓ percent of cash settlement fund, that "the litigation was hard-fought" and a settlement was reached "on the eve of trial" and after an "all-day mock trial"); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 99, 104, 106 (E.D. Pa. 2013) (noting that class counsel "had completed significant preparation for trial" in awarding attorneys' fees of 33⅓ percent); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-cv-3066-JEC, 2012 WL 12540344, at *3 (N.D. Ga. Oct. 26, 2012) (emphasizing that "[t]he case settled only within 48 hours of trial" in awarding attorneys' fees of 33⅓ percent). *A fortiori*, a completed, successful trial is a strong circumstance justifying large fees.

both criminal actions and civil enforcement—can provide valuable resources and can help uncover underlying wrongdoing. Thus, some courts have noted the heavy involvement of the government in setting awards below what class counsel requested. For example, in reducing class counsel's fee request in the *AOL Time Warner Securities Litigation*, the court noted that class counsel "benefited to a degree from work performed by others," including "[p]arallel government investigations."[55] Similarly, in explaining its fee award of only 10 percent in *In re Quantum Health Resources, Inc*., the court emphasized that "[t]he facts of [the] case weighed heavily in the Class' favor from the start, largely because the material allegations of the complaint were supported by the unequivocal results of public investigations conducted by [California state agencies]."[56] Conversely, courts have also noted the *absence* of government involvement in approving substantial fee requests. For example, in *In re Gulf Oil/Cities Services Tender Offer Litigation*, the court emphasized that the case was "not [one] where plaintiffs' counsel can be cast as jackals to the government's lion, arriving on the scene after some enforcement or administrative agency has made the kill. [Class counsel] did all the work on their own."[57] As this Court noted in *Urethane*, the fact that "[class] [c]ounsel had to build this case on their own, *without the help of a government investigation or prosecution*," weighed in favor of the requested 33⅓ percent fee award.[58]

71. Here, class counsel had no assistance of any kind from the government. They bore the entire burden of investigating and proving Syngenta's alleged improper conduct. Indeed, statements and actions by the U.S. government were used *against* class counsel: Syngenta sought to use U.S. government deregulation as a defense in this case, cited to U.S. government reports on China to support its argument that China's biotechnology approval process was

[55] *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. 02-cv-05575 (SWK), 2006 WL 3057232, at *17 (S.D.N.Y. Oct. 25, 2006).

[56] 962 F. Supp. 1254, 1259 (C.D. Cal. 1997).

[57] 142 F.R.D. 588, 597 (S.D.N.Y. 1992).

[58] *Urethane*, 2016 WL 4060156, at *6 (emphasis added). *Accord, e.g.*, *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1635648, at *7 (E.D. Pa. Apr. 5, 2018) ("This was not a case where government prosecutions laid the groundwork for private litigation. This case required a pioneering effort by Class Counsel." (citation, internal quotation marks, and brackets omitted)); *Standard Iron Works v. ArcelorMittal*, No. 08-cv-05214, 2014 WL 7781572, at *1 (N.D. Ill. Oct. 22, 2014) (noting, in awarding attorneys' fees of 33 percent, that "Class Counsel initiated and developed this case with no assistance from any prior government investigation or prosecution"); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748–49 (E.D. Pa. 2013) (relying on absence of government investigation); *In re Automotive Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2008 WL 63269, at *5 (E.D. Pa. Jan. 3, 2008) (similar).

politically driven, and hired a former U.S. trade official as one of its experts.

72. **No Public Admission of Liability.** In some instances, class counsel benefit from the fact that the defendant has publicly admitted wrongdoing. Such admissions no doubt make it easier for class counsel to prosecute the claims and negotiate a settlement. For example, in *Quantum Health*, the court emphasized the "significant public admissions by Quantum" in concluding that class counsel did not face "any significant risk" and awarding attorneys' fees of 10 percent of the common fund.[59] Here, Syngenta vigorously contested liability prior to settlement, and it still admits no wrongdoing even today despite its agreement to pay $1.51 billion. Indeed, Syngenta even argued at trial that its actions *benefited* farmers, rather than harming them.

73. **No Public Relations Reason to Settle.** In some cases, widespread adverse publicity creates a public relations nightmare for a defendant, thus increasing the need for such a defendant to settle on terms favorable to plaintiffs. Examples include the *Deepwater Horizon Litigation*, where British Petroleum faced "a torrent of criticism" in the wake of the oil spill disaster;[60] the *Volkswagen Clean Diesel Litigation*, where Volkswagen's admission of fraud shook consumer confidence and resulted in "something like a tsunami" of bad press;[61] and the *NFL Concussion Litigation*, where commentators noted that "regular updates from a courtroom had the potential to be a PR nightmare for the NFL, especially because of the possibility of unflattering documents coming to light."[62] Here, there were no similar pressures that compelled Syngenta to seek an early resolution. To the contrary, as noted (¶ 33), the company showed no

[59] 962 F. Supp. at 1259. *See also, e.g.*, *In re Schering-Plough Corp. Enhance Sec. Litig.*, Nos. 08-397 & 08-2177 (DMC) (JAD), 2013 WL 5505744, at *43 (D.N.J. Oct. 1, 2013) (noting that the litigation "was no easy task for [class counsel] because no Defendant ever admitted wrongdoing"). Additionally, even if the defendant has not publicly admitted wrongdoing, courts have focused on the relative ease of establishing liability in awarding fees below those requested by class counsel. For example, the Third Circuit, in rejecting the district court's fee award in *In re Cendant Corp. Litigation*, emphasized that plaintiffs had "a simple case in terms of liability." 264 F.3d 201, 221 (3d Cir. 2001).

[60] Leon Kaye, *Five Years After Deepwater Horizon, Can BP Repair Its Reputation?*, SUSTAINABLE BRANDS (Feb. 19, 2015), http://www.sustainablebrands.com/news_and_views/marketing_comms/leon_kaye/five_years_after_deepwater_horizon_can_bp_repair_its_reputa.

[61] Danny Hakim, *VW's Crisis Strategy: Forward, Reverse, U-Turn*, N.Y. TIMES (Feb. 26, 2016), https://www.nytimes.com/2016/02/28/business/international/vws-crisis-strategy-forward-reverse-u-turn.html.

[62] Dan Diamond, *NFL Pays $765 Million to Settle Concussion Case*, Still Wins, FORBES (Aug. 29, 2013), https://www.forbes.com/sites/dandiamond/2013/08/29/nfl-pays-765-million-to-settle-concussion-case-still-wins/#67a1d1317e62.

interest in settlement until after its defeat in the Kansas bellwether trial.

74. In sum, class counsel faced numerous difficult circumstances that justify a fee award of 33⅓ percent. This Court's observations in *Urethane* are equally applicable here:

> [Class] counsel achieved an incredible result for the class, in a case with an extreme amount of risk at all stages of the litigation, and they obtained that result because they won what is reported to be one of the largest verdicts of its kind in United States history. Counsel had to build this case on their own, without the help of a governmental investigation or prosecution, . . . and they toiled for many years, at great expense to themselves, with a very real risk that they would not recover anything . . . .[63]

iii. Skill Requisite to Perform the Legal Service Properly

75. A high level of skill was necessary to litigate and settle these cases. As noted above (*see* ¶¶ 56–74), this case involved a number of difficult legal and factual challenges. The plaintiffs' team needed to be at the top of their game in trial skills, legal research and analysis, class certification, knowledge of the national and international commodity system, knowledge of markets for corn (as well as the rules and regulations governing importation and exportation of genetically modified corn), and the development of technical expert testimony.

76. Thus, it is not surprising that the team representing the class included some of the country's most accomplished class action plaintiff lawyers. Team members have received recognition as the "The Best Lawyers in America,"[64] "Super Lawyers,"[65] and "Rising Stars."[66]

---

[63] *Urethane*, 2016 WL 4060156, at *6.

[64] The Best Lawyers in America are selected based on a peer-review process "designed to capture, as accurately as possible, the consensus opinion of leading lawyers about the professional abilities of their colleagues within the same geographical area and legal practice area." *Methodology Process*, BEST LAWYERS, https://www.bestlawyers.com/methodology (last visited July 7, 2018). Attorneys on plaintiffs' team who have been named to The Best Lawyers in America include (among others) Patrick Stueve, Norman Siegel, Steve Six, and Rachel Schwartz of Stueve Siegel Hanson, *see Attorneys*, STUEVE SIEGEL HANSON, http://www.stuevesiegel.com/ssh/about-us/attorneys.html (last visited July 7, 2018); Don Downing, Gretchen Garrison, and Jason Sapp of Gray, Ritter & Graham, *see Attorneys*, GRAY, RITTER & GRAHAM, P.C., https://www.grgpc.com/attorneys/ (last visited July 7, 2018); and Scott Powell of Hare Wynn Newell & Newton, *see Scott A. Powell*, HARE WYNN NEWELL & NEWTON, https://www.hwnn.com/our-people/scott-a-powell/ (last visited July 7, 2018).

[65] Super Lawyers are selected each year based on an extensive research and peer-evaluation process. They represent the top five percent of attorneys in each state and practice area. *See Selection Process Detail*, SUPER LAWYERS, https://www.superlawyers.com/about/selection_process_detail.html (last visited July 7, 2018). Attorneys on plaintiffs' team who have been selected as Super Lawyers include (among others) Patrick Stueve, Norman Siegel, Steve Six, and Rachel Schwartz of Stueve Siegel Hanson, *see Attorneys*, STUEVE SIEGEL HANSON, http://www.stuevesiegel.com/ssh/about-us/attorneys.html (last visited July 7, 2018); Don Downing and Gretchen Garrison of Gray, Ritter & Graham, *see Attorneys*, GRAY, RITTER & GRAHAM, P.C.,

Many have held prominent leadership roles in other major class actions and MDL cases.[67] These are, in short, some of the country's premier complex litigation attorneys.

77. An important factor in evaluating a proposed fee award is the quality of opposing counsel. For example, in awarding attorneys' fees of 33⅓ percent in *Dartell v. Tibet Pharmaceuticals, Inc.*, the court noted that "the quality and vigor of opposing counsel is relevant when evaluating the quality of services rendered by [class counsel]. . . . The performance and quality of defense counsel . . . favors a finding that [class counsel] prosecuted this case with skill and efficiency."[68] Similarly, in awarding attorneys' fees of 33⅓ percent of the $510 million fund in the *Initial Public Offering Securities Litigation*, the court noted that class counsel "were pitted against . . . prominent national defense firms," emphasizing that the favorable settlement

---

https://www.grgpc.com/attorneys/ (last visited July 7, 2018); and Dan Gustafson and Karla Gluek of Gustafson Gluek, *see Our People*, GUSTAFSON GLUEK PLLC, http://gustafsongluek.com/our-people/ (last visited July 7, 2018).

[66] Attorneys under 40 years of age or in practice for ten years or less are eligible to be designated Rising Stars if they have not been designated Super Lawyers. The Rising Stars selection process is similarly based on independent research and a peer-evaluation process. Only 2.5 percent of eligible lawyers are designated Rising Stars. *See The Rising Stars Selection Process*, SUPER LAWYERS, https://www.superlawyers.com/about/selection_process_detail.html (last visited July 7, 2018). Attorneys on plaintiffs' team who have been selected as Rising Stars include (among others) Jason Sapp of Gray, Ritter & Graham (selected for five consecutive years), *see Jason D. Sapp*, GRAY, RITTER & GRAHAM, P.C., https://www.grgpc.com/attorneys/jason-d-sapp/ (last visited July 7, 2018); and Drew York of Gray Reed & McGraw (selected 11 consecutive times as of 2018), *see Drew York*, GRAY REED & MCGRAW, http://www.grayreed.com/Our-People/Andrew-K-York (last visited July 7, 2018).

[67] For example, Clayton Clark of Clark, Love & Hutson has been appointed as national co-lead counsel in the pending *Pelvic Repair System* products liability MDL, served as plaintiffs' liaison counsel in the *Phen-Fen* and *Paxil* cases, and was appointed to the executive committee in the *Pradaxa* litigation. *See Clayton A. Clark*, CLARK, LOVE & HUTSON, http://www.triallawfirm.com/Firm-Overview/Clayton-A-Clark.shtml (last visited July 7, 2018). Christopher Seeger of Seeger Weiss was appointed to the plaintiffs' steering committee in the *Volkswagen Clean Diesel Litigation*, served as co-lead counsel in the *NFL Concussion*, *Vioxx*, and *Testosterone Replacement Therapy Products* cases, and was appointed chair of the plaintiffs' trial committee in the *Chinese Drywall Litigation*. *See Christopher A. Seeger*, SEEGER WEISS LLP, https://www.seegerweiss.com/attorneys/partners/christopher-a-seeger (last visited July 7, 2018). Stephen Weiss of Seeger Weiss was appointed to the plaintiffs' executive committee in the *Polyurethane Foam* antitrust MDL, was appointed to the plaintiffs' steering committee in the *Initial Public Offering Securities Litigation*, and served as co-lead counsel in the *Vytorin/Zetia* and *StarLink Corn* MDLs. *See Stephen A. Weiss*, SEEGER WEISS LLP, https://www.seegerweiss.com/attorneys/partners/stephen-a-weiss/ (last visited July 7, 2018). Scott Powell of Hare Wynn Newell & Newton holds a seat on the plaintiffs' steering committee in the ongoing *Biomet M2a Magnum Hip Implant* litigation, and served as co-lead counsel in *Genetically Modified Rice*. Don Downing of Gray, Ritter & Graham was recently appointed lead plaintiffs' counsel and chair of the plaintiffs' executive committee in the *Monsanto Dicamba Herbicide* MDL, and also served as co-lead counsel in *Genetically Modified Rice*. Patrick Stueve of Stueve Siegel Hanson served as co-lead counsel in the *Lincoln National Life Insurance Litigation*, and as lead counsel in *Berry v. Volkswagen of America, Inc*. *See Patrick Stueve*, STUEVE SIEGEL HANSON, http://www.stuevesiegel.com/attorney/Stueve (last visited July 7, 2018). And Norman Siegel of Stueve Siegel Hanson has served as lead counsel in the *SFPP Right-of-Way Claims Litigation*, the *Home Depot Data Breach Litigation*, and the *Target Data Breach MDL*. *See Norman E. Siegel*, STUEVE SIEGEL HANSON, http://www.stuevesiegel.com/attorney/Siegel (last visited July 7, 2018). Numerous other examples could be cited.

[68] No. 14-cv-03620, 2017 WL 2815073, at *9–10 (D.N.J. June 29, 2017) (citations and internal quotation marks omitted).

achieved "against such formidable opponents [was] an impressive feat."[69] Numerous other courts have applied similar reasoning.[70]

78. Not surprisingly, Syngenta retained some of the top defense lawyers in the country, including (as noted) Mike Brock and others from Kirkland & Ellis. There can be no serious doubt that Kirkland & Ellis is a prestigious and formidable national law firm. Indeed, Kirkland generally—and Brock in particular—have received widespread recognition.[71] Berkowitz Oliver, the Kansas City-based defense firm representing Syngenta, likewise has a stellar national reputation.[72] The fact that class counsel achieved such an impressive settlement against these top-flight defense attorneys is a testament to class counsel's skill.

---

[69] *In re Initial Public Offering Sec. Litig.*, 671 F. Supp. 2d 467, 510 (S.D.N.Y. 2009).

[70] *See, e.g.*, *Allapattah*, 454 F. Supp. 2d at 1207 ("Further adding to the difficulty of the case was the quality of Plaintiffs' legal adversaries. Exxon hired some of the most able lawyers and experts in America and spared no expense in doing so."); *Billitteri v. Sec. Am., Inc.*, Nos. 3:09-cv-01568-F & 3:10-cv-01833-F, 2011 WL 3585983, at *7 (N.D. Tex. Aug. 4, 2011) ("Because of the extremely effective work of opposing counsel . . . the skill required here . . . certainly justifies the contemplated [fee] award."); *In re OSB Antitrust Litig.*, No. 06-cv-00826 (D. Pa. Dec. 9, 2008) (Dkt. No. 947) (noting, in awarding attorneys' fees of 33⅓ percent, that "counsel for Defendants—dozens of extremely distinguished lawyers from across the country—skillfully and vigorously opposed [class counsel]"); *Schwartz v. TXU Corp.*, No. 3:02-cv-2243-K, 2005 WL 3148350, at *29–30 (N.D. Tex. Nov. 8, 2005) ("The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs' attorneys. The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation."); *Walco Investments, Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997) ("Given the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude [than class counsel] could have achieved similar results"); *In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1377 (C.D. Cal. 1977) ("[P]laintiff's attorneys in this class action have been up against established and skilled defense lawyers, and should be compensated accordingly."); *Arenson v. Bd. of Trade*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974) (emphasizing, in awarding attorneys' fees to class counsel, that "attorneys for the defendants represent the cream of the antitrust bar in the United States").

[71] *See, e.g.*, *Mike Brock, P.C. - Partner*, KIRKLAND & ELLIS LLP, https://www.kirkland.com/sitecontent.cfm?contentId=220&itemid=11248&section=1 (last visited July 7, 2018) (listing numerous accolades and awards received by Mike Brock and the Kirkland & Ellis firm, including, *e.g.*, awards for top trial lawyer(s), top litigation firm, and The Best Lawyers in America"). Brock led the trial team representing British Petroleum in the *Deepwater Horizon Litigation*, represented Merck Pharmaceuticals in the *Vioxx* and *Fosamax* cases, and has received prominent recognition as a leading trial lawyer in bet-the-company litigation. *See* Andrew Westney, *Trial Ace: Kikland's Robert C. 'Mike' Brock*, LAW360 (Aug. 27, 2015), https://www.law360.com/articles/696061/trial-ace-kirkland-s-robert-c-mike-brock.

[72] Berkowitz Oliver counts among its clients BMW of North America, Ford Motor Company, H&R Block, Hyundai Motors America, Mazda Motors of America, and Morgan Stanley Smith Barney. *See About Us*, BERKOWITZ OLIVER, http://www.berkowitzoliver.com/about-us/ (last visited July 7, 2018). Lead attorney Thomas Schult has been named to the Best Lawyers in America in numerous categories, has been repeatedly selected as a Super Lawyer, and has tried numerous major cases. *See Thomas P. Schult*, BERKOWITZ OLIVER, http://www.berkowitzoliver.com/people/thomas-schult/ (last visited July 7, 2018).

iv. Preclusion of Other Employment Due to Acceptance of the Case

79. As a result of this case, the lead firms representing plaintiffs were clearly hampered in their ability to take on significant other work. The demands of this case were enormous by any measure. At least five lawyers have billed more than 5,000 hours on the case; at least 12 lawyers have billed more than 3,000 hours; and at least 20 lawyers and paralegals have billed more than 2,000 hours. More than 180 depositions were taken on both sides, including depositions of current and former Syngenta employees, plaintiffs, and third parties in the United States, Great Britain, Hong Kong, and Australia, and depositions of numerous experts. Millions of pages of documents and electronic records were prepared, exchanged, and reviewed during discovery, including voluminous interrogatories and tens of thousands of Chinese regulatory documents, many of which required translation. Co-lead counsel Patrick Stueve, Scott Powell, Don Downing, and William Chaney detail in their voluminous declarations the massive discovery efforts undertaken by plaintiffs.[73]

80. This case has been a huge resource drain on the various plaintiffs' law firms involved, and has significantly impeded the ability of those firms to take on other work. For example, Patrick Stueve notes that "Stueve Siegel Hanson's attorneys and staff collectively spent more time on this MDL than the firm has ever spent on a single case in the history of the firm." Stueve Decl. ¶ 669. Stueve himself "worked almost exclusively on this case for the past several years," and thus "spent little, if any, time evaluating and developing new cases." *Id*. ¶ 670. Ultimately, he notes that he and his firm "put this case first, above and beyond other business opportunities." *Id*. Given the major challenges in this case (*see* ¶¶ 56–74), I have no doubt that such commitment and singular focus were reasonable and necessary, and were the reasons why plaintiffs achieved such an impressive settlement.

v. Customary Fee

81. In individual contingency-fee contracts, the attorneys' fees percentage is typically 33⅓

[73] *See* Decl. of Patrick J. Stueve ¶¶ 237–492 (filed contemporaneously) (hereinafter "Stueve Decl."); Decl. of Scott Powell ¶¶ 100–177 (filed contemporaneously) (hereinafter "Powell Decl."); Decl. of Don Downing ¶¶ 25–26, 29–35, 37–40, 43, 45–48, 51, 86–90 (filed contemporaneously) (hereinafter "Downing Decl."); Decl. of William Chaney ¶¶ 196–278 (filed contemporaneously) (hereinafter "Chaney Decl.").

percent, although the percentage can go much higher if, for example, the case goes to trial.[74] Here, I understand that there were potentially *thousands* of contingent fee contracts *at the 40 percent level even pre-trial*, a level that is well above the typical 33⅓ percent.[75] In assessing reasonable fees, numerous courts have cited the actual amount of individual fee agreements. As the Seventh Circuit has explained:

> When attorney's fees are deducted from class damages, the district court must try to assign fees that mimic a hypothetical *ex ante* bargain between the class and its attorneys. The court must base the award on relevant market rates and the *ex ante* risk of nonpayment. To determine the market for attorney's fees, the court should look to actual fee contracts that were privately negotiated for similar litigation . . . .[76]

Similarly, the court in *Allapattah* noted that, "when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time."[77] Here, the market rate (the rate negotiated by individual plaintiffs and counsel) was clearly well above 33⅓ percent. The fact that so many individual plaintiffs agreed to a 40

---

[74] *See, e.g.*, *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (noting that the "usual range for contingent fees is between 33 and 50 percent"); *Urethane*, 2016 WL 4060156, at *5 (noting that "a one-third fee is customary in contingent-fee cases, and indeed that figure is often higher for complex cases or cases that proceed to trial"); *Sanchez v. Roka Akor Chicago LLC*, No. 14-cv-04645, 2017 WL 1425837, at *6 (N.D. Ill. Apr. 20, 2017) (collecting cases noting that the usual contingent fee percentage is between 33⅓ percent and 50 percent); Ted Schneyer, *Legal-Process Constraints on the Regulation of Lawyers' Contingent Fee Contracts*, 47 DEPAUL L. REV. 371, 381, 409 (1998) (noting that "standard contingent fees . . . [are] one-third of any recovery" and that fees "may vary with the stage at which the matter is resolved (*e.g.*, one-third of the recovery if the case settles before trial; forty percent thereafter)"); Eric Helland et al., *Contingent Fee Litigation in New York City*, 70 VAND. L. REV. 1971, 1971 (2017) (study finding that, in New York, contingent fees "are almost always one-third"); Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 DEPAUL L. REV. 267, 286 (1998) (survey of Wisconsin attorneys revealed that "a contingency fee of 33% was by far the most common," but the "range for those cases involving a suit but not a trial was 20% to 43%[, and] [f]or those going to trial, the range was from 25% to as high as 50%").

[75] *See, e.g.*, *Montague v. Dixie Nat'l Life Ins. Co.*, No. 3:09-00687-JFA, 2011 WL 3626541, at *3 (D.S.C. Aug. 17, 2011) ("A 33% fee award from the common fund in this case is consistent with what is routinely privately negotiated in contingency fee litigation."); Eisenberg & Miller, *supra* note 20, at 35 ("Substantial empirical evidence indicates that a one-third fee is a common benchmark in private contingency fee cases."); Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 DEPAUL L. REV. 267, 284–86 (1998) (noting that 33⅓ percent "is the standard contingency fee figure" and finding, in a study of Wisconsin attorneys, that "a contingency fee of 33% was by far the most common, accounting for 92% of those cases").

[76] *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 635 (7th Cir. 2011).

[77] 454 F. Supp. 2d at 1211. *Accord, e.g.*, *In re Continental Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) ("The object in awarding a reasonable attorneys' fee . . . is to simulate the market."); *RJR Nabisco Inc. Sec. Litig.*, Fed. Sec. L. Rep. (CCH) ¶ 94, 268 (S.D.N.Y. 1992) (noting that "what should govern [fee] awards is . . . what the market pays in similar cases").

percent contingency fee speaks volumes regarding the difficulty of the litigation and the fairness of a fee request of 33⅓ percent.

vi. Any Prearranged Fee

82. As noted (*see* ¶ 81), thousands of individual farmers entered into private contingency fee contracts of 40 percent.

vii. Time Limitations Imposed by the Client or the Circumstances

83. Serious time limitations were imposed in this case. This Court held both sides' feet to the fire, resolving the complicated class certification issues, pressing forward on case management and discovery, setting tight deadlines, and moving forward with a Kansas class trial. Similar pressures were imposed in the Minnesota litigation, including the adjudication of class certification and the commencement (on two occasions) of bellwether trials. The intense time pressures are demonstrated by the accelerated discovery and class certification schedules, which (based on my many years of experience as a litigating partner at Jones Day) were extremely unusual. Prior to its ruling on Syngenta's motion to dismiss, the Court permitted only "highly targeted discovery." Thus, full discovery did not commence until October 21, 2015. Plaintiffs completed virtually all of their discovery in seven months, and the Court's decision on class certification—which was preceded by extensive briefing, evidentiary submissions, and a hearing—was rendered within 11 months of the start of full discovery. Moreover, within about 20 months of the start of full discovery, the parties had completed the Kansas class trial and plaintiffs had obtained the $217.7 million verdict. And a term sheet to settle the cases for $1.51 billion was announced within only 33 months of the commencement of the MDL and 23 months after the start of full discovery. These figures suggest that class counsel were under extreme pressure to work essentially non-stop to conduct the rigorous investigation, discovery, briefing, class certification work, and trial preparation necessary to achieve success for the class.

84. Courts have emphasized similar litigation pressures in awarding attorneys' fees. For example, in *Johnson*, the court noted that "priority work that delays the lawyer's other legal work is entitled to some premium."[78] And in *Allapattah*, the court cited the "frantic pace" of the

[78] *Johnson*, 488 F.2d at 718.

litigation in "giv[ing] significant weight to this factor in setting the [fee] percentage."[79]

viii. Amount Involved and Results Obtained

85. As noted, courts in the Tenth Circuit have widely recognized that, "in evaluating the various *Johnson* factors, the greatest weight should be given to the monetary results achieved for the benefit of the class."[80] Here, class counsel successfully negotiated a settlement worth approximately $1.51 billion, twice as large as the *Genetically Modified Rice* settlement. I understand that this may well be the largest agricultural settlement in history,[81] and indeed, it is one of the largest class settlements of any kind.[82] Settlements or verdicts in excess of a billion dollars are exceedingly rare.[83] This is the polar opposite of a case in which class members end up with little of value, such as a settlement involving worthless coupons.[84] Here, class members will receive substantial compensation for their losses. In my opinion, this is a superb result, especially given the difficulties noted in ¶¶ 56–74. The fact that class counsel achieved this strong result weighs strongly in favor of the requested 33⅓ percent fee.

ix. Experience, Reputation, and Ability of Attorneys

86. As noted in ¶¶ 75–78, class counsel are highly skilled and experienced class action

[79] 454 F. Supp. 2d at 1215. *Accord, e.g.*, *In re OSB Antitrust Litig.*, No. 06-cv-00826, slip op. at 5 (D. Pa. Dec. 9, 2008) (Dkt. No. 947); *Lucas v. Kmart Corp.*, No. 99-cv-01923, 2006 WL 2729260, at *6 (D. Colo. July 27, 2006).

[80] *Anderson v. Merit Energy Co.*, Nos. 07-cv-00916-LTB-BNB, 07-cv-01025-REB-MJW, 2009 WL 3378526, at *4 (D. Colo. Oct. 20, 2009).

[81] *See, e.g.*, *Syngenta Settles in Largest Ag Litigation in U.S. History*, AGDAILY (Mar. 13, 2018), https://www.agdaily.com/news/syngenta-largest-ag-litigation-u-s/ (noting that the settlement "is believed to be the largest agricultural litigation settlement in U.S. history"); *$1.51 Billion Believed to Be Largest Agricultural Litigation Settlement in U.S. History*, HIGH PLAINS/MIDWEST AG JOURNAL (Mar. 14, 2018), http://www.hpj.com/crops/billion-believed-to-be-largest-agricultural-litigation-settlement-in-us/article_6f21e1b4-2790-11e8-a7e5-6f5f4a94c8a3.html (same).

[82] *See, e.g.*, SECURITIES CLASS ACTION SERVICES, THE TOP 100 U.S. CLASS ACTION SETTLEMENTS OF ALL TIME AS OF 31 DECEMBER 2017 at 6–17 (2018), *available at* https://www.issgovernance.com/library/the-top-100-u-s-settlements-of-all-time-as-of-december-2017/ (listing only seven securities class action settlements over $1.51 billion since the passage of the Private Securities Litigation Reform Act of 1995); *List of Largest Pharmaceutical Settlements*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_largest_pharmaceutical_settlements (last visited July 7, 2018) (listing only three pharmaceutical settlements over $1.51 billion in U.S. history).

[83] *See, e.g.*, Fitzpatrick, *supra* note 20, at 826 (study found seven settlements over $1 billion in 2006 and only one such settlement in 2007); SECURITIES CLASS ACTION SERVICES, *supra* note 82, at 6–17 (finding only 13 securities settlements over $1 billion since 1995).

[84] *See, e.g.*, *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-cv-3066-JEC, 2012 WL 12540344, at *3 (N.D. Ga. Oct. 26, 2012) (noting, in awarding attorneys' fees of 33⅓ percent, that "unlike some class settlements, the recovery here consists entirely of cash, rather than coupons or discounts on future purchases from the defendants").

attorneys, whose prior representations included many important class action and MDL cases. And they were litigating against one of the country's most prestigious and formidable law firms, Kirkland & Ellis.

x. Undesirability of the Case

87. Although a number of attorneys sought leadership opportunities in the MDL and/or filed individual cases, any lawyer considering involvement on the plaintiffs' side had to understand that the litigation involved a huge commitment of time and resources, with an outcome that was anything but certain. Plaintiffs were facing exceedingly difficult legal, factual, and expert issues. *See* ¶¶ 56–64. And they were litigating against a defendant—and team of defense attorneys—who were willing (and financially able) to devote any and all necessary resources to achieving success. Moreover, as fiduciaries, class counsel could not simply cut their losses and quit when the case became too challenging and expensive.[85] Indeed, the challenges of this litigation explain why numerous plaintiffs' lawyers were able to negotiate 40 percent individual contingency fee agreements, a figure well above the typical 33⅓ percentage. *See* ¶ 81.

xi. Nature and Length of Professional Relationship With the Client

88. Because of their prior work on behalf of farmers in the *Genetically Modified Rice* litigation, three of the four MDL co-lead attorneys had pre-existing professional relationships with a small number of class members. *See* Powell Decl. ¶ 12. For the vast majority of class members, however, there was no such prior relationship. Courts have generally given little weight to this factor, noting that "[t]he meaning of this factor . . . and its effect on the calculation of a reasonable fee has always been unclear."[86] As a result, courts typically state that this particular *Johnson* factor is irrelevant or immaterial. Here, to the extent that this factor is relevant at all, it is largely neutral.

xii. Awards in Similar Cases

89. Fee awards in other cases involving significant challenges confirm the reasonableness of

[85] *See, e.g.*, *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (noting the "fiduciary duty owed [to] the class" by class counsel); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 801 (3d Cir. 1995) ("Beyond their ethical obligations to their clients, class attorneys . . . also owe the entire class a fiduciary duty once the class complaint is filed.").

[86] *Bruner v. Spring/United Mgmt. Co.*, No. 07-cv-02164-KHV, 2009 WL 2058762, at *9 (D. Kan. July 14, 2009).

the fees sought here. As I explain in detail below, the percentage requested here (33⅓ percent) is in line with percentages awarded in numerous other class actions. *See* ¶ 94 (Table 1), and ¶¶ 91–101.

* * *

90. As the above discussion reflects, analysis of the *Johnson* factors demonstrates the reasonableness of the fees sought here. The case imposed enormous demands on class counsel, and it entailed a significant risk that counsel would invest massive hours and substantial funds, only to recovery nothing. The multi-jurisdictional and complex nature of the litigation, the extensive work required of class counsel under severe time pressure, the favorable class certification ruling and bellwether jury verdict, and the compelling $1.51 billion settlement support the requested fee of 33⅓ percent. This is anything but a garden-variety case, and in my opinion, the fee award should reflect that reality.

b. The Percentage Requested Is Supported by Awards in Other Class Actions, Including So-Called Mega-Fund Cases

91. In this section, I explain why, in my opinion, an award of 33⅓ percent is in line with awards in other complicated class actions that resulted in impressive settlements.

92. I am fully aware that a fee of 33⅓ percent is above the average and median fee awards in class actions.[87] I also recognize that, in general, fee awards (as a percentage) tend to decline as the amount of the settlement increases, with the lowest percentage awards appearing in so-called mega-fund settlements (*i.e.*, those above $100 million).[88] Nonetheless, it should be obvious that

[87] *See, e.g.*, Eisenberg, Miller & Germano, *supra* note 20, at 947, 951 (finding average of 27 percent and median of 29 percent for 2009–2013 period); Fitzpatrick, *supra* note 20, at 811, 833 (finding, for 2006–2007 period, average and median of about 25 percent); Eisenberg & Miller, *supra* note 20, at 259 (finding, in 1993–2008 study, average fees of 24 percent and median fees of 25 percent); THOMAS E. WILLGING, LAURAL L. HOOPER & ROBERT J. NIEMIC, EMPIRICAL STUDY OF CLASS ACTIONS IN FOUR FEDERAL DISTRICT COURTS: FINAL REPORT TO THE ADVISORY COMMITTEE ON CIVIL RULES 151 (Fed. Judicial Ctr. 1996), *available at* http://www.uscourts.gov/sites/default/files/rule23_1.pdf (1996 study of four federal districts found that average and median awards ranged from 26 to 31 percent).

[88] *See, e.g.*, Fitzpatrick, *supra* note 20, at 811 (noting that fee percentages are "inversely associated with the size of the settlement" and finding that, in cases involving settlements between $1 billion and $6.6 billion during 2006–2007, average and median awards were 13.7 percent and 9.5 percent, respectively); Eisenberg, Miller & Germano, *supra* note 20, at 947–48 (describing "scaling effect" where, "as [the] recovery amount increases, the ratio of the size of the attorneys' fee relative to the size of the recovery (*i.e.*, the fee percentage) tends to decrease" and finding that average and median fees for settlements greater than $100 million varied from "a low of 16.6% in 2009 to a high of 25.5% in 2011").

a median means that half of the awards are *above* that amount and half are below. And in the case of an average, the figure is also comprised of awards *above* that amount as well as awards below it.[89]

93. It is thus not surprising that there are numerous mega-fund cases with percentage awards comparable to those sought here. As would be expected, those awards are based on a careful analysis of the specific facts and challenges of a given case. For example, in *In re Vitamins Antitrust Litigation*,[90] *Standard Iron Works v. ArcelorMittal*,[91] and *In re Flonase Antitrust Litigation*,[92] the courts awarded, respectively, 34.06 percent, 33 percent, and 33⅓ percent as attorneys' fees because of the complex issues involved, the quality of class counsel's work, and the results obtained. Importantly, the courts approved those awards even though none of the cases actually went to trial. The litigation challenges in the instant case were substantially greater, since class counsel had to tackle a full bellwether trial (and two partial bellwether trials).

94. The above cases are just three examples. In the table below, I have collected more than 40 mega-fund cases that involved fee awards of 30 percent or greater.

TABLE 1: Fee Awards of 30 Percent or More in Mega-Fund Class Actions

Case	Recovery	Fee Award	Trial?
Lobo Exploration Co. v. BP Am. Prod., No. CJ-1997-72 (Oka. Dist. Ct., Beaver Cnty. Dec. 8, 2005)	$150 million	40 percent	No
Simmons v. Anadarko Petroleum Corp., No. CJ-2004-57 (Okla. Dist. Ct., Caddo Cnty., Dec. 23, 2008)	$155 million	40 percent	No
Lauriello v. Caremark RX LLC, No. 01-cv-2003-006630.00 (Ala. Cir. Ct., Jefferson Cnty. Aug. 15, 2016)	$310 million	40 percent	No

[89] Indeed, in one study, more than one-third of all fee awards were 30 percent or higher. *See* Fitzpatrick, *supra* note 20, at 834.

[90] No. MISC 99-197(TFH), 2001 WL 34312839, at *11–13 (D.D.C. July 16, 2001).

[91] No. 08-cv-05214, 2014 WL 7781572, at *1 (N.D. Ill. Oct. 22, 2014).

[92] 951 F. Supp. 2d 739, 747–49 (E.D. Pa. 2013).

Case	Recovery	Fee Award	Trial?
In re Merry-Go-Round Enterprises, Inc., 244 B.R. 327 (Bankr. D. Md. 2000)	$185 million	40 percent	No
In re Combustion, Inc., 968 F. Supp. 1116 (W.D. La. 1997)	$127 million	36 percent	No[93]
In re Managed Care Litig. v. Aetna, MDL No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003)	$100 million	35.5 percent	No
Haddock v. Nationwide Life Ins. Co., No. 3:01-cv-01552-SRU (D. Conn. Apr. 9, 2015) (Dkt. No. 601)	$140 million	35 percent	No
In re Vitamins Antitrust Litig., No. 99-197, 2001 WL 34312839 (D.D.C. July 16, 2001)	$365 million	34.06 percent	No
DeLoach v. Phillip Morris Co., No. 1:00-cv-01235, 2003 WL 25683496 (M.D.N.C. Dec. 19, 2003)	$212 million	33.33 percent	No
In re Tricor Direct Purchaser Antitrust Litig., 1:05-cv-00340-SLR (D. Del. Apr. 23, 2009) (Dkt. No. 543)	$250 million	33.33 percent	No
In re Neurontin Antitrust Litig., No. 2:02-cv-01830 (D.N.J. July 6, 2014) (Dkt. No. 114)	$190 million	33.33 percent	No
In re Titanium Dioxide Antitrust Litig., No. 1:10-cv-00318 (D. Md. Dec. 13, 2013) (Dkt. No. 555)	$163.5 million	33.33 percent	No
In re U.S. Foodservice, Inc. Pricing Litig., No. 3:07-md-01894 (AWT) (D. Conn. Dec. 9, 2014) (Dkt. No. 521)	$297 million	33.33 percent	No
In re Urethane Antitrust Litig., No. 2:04-md-01616-JWL (D. Kan. July 29, 2016) (Dkt. No. 3276)	$835 million	33.33 percent	Yes
In re Relafen Antitrust Litig., No. 01-cv-12239-WGY (D. Mass. Apr. 9, 2004) (Dkt. No. 297) (direct purchaser litigation)	$175 million	33.33 percent	No
In re Flonase Antitrust Litig., 951 F. Supp. 2d 739 (E.D. Pa. 2013)	$150 million	33.33 percent	No
City of Greenville v. Syngenta Crop Prot., No. 3:10-cv-00188 (S.D. Ill. Oct. 23, 2012)	$105 million	33.33 percent	No

[93] A trial was conducted in the parallel government enforcement action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq., but the private class action based on plaintiffs' tort claims was settled prior to trial.

Case	Recovery	Fee Award	Trial?
In re OSB Antitrust Litig., No. 06-cv-00826 (D. Pa. Dec. 9, 2008) (Dkt. No. 947)	$120.7 million	33.33 percent	No
In re Apollo Grp. Inc. Sec. Litig., No. 04-cv-02147-PHX-JAT, 2012 WL 1378677 (D. Ariz. Apr. 20, 2012)	$145 million	33.33 percent	Yes
In re Buspirone Antitrust Litig., No. 1:01-md-01413-JGK (S.D.N.Y. Apr. Nov. 18, 2003) (Dkt. No. 171)	$220 million	33.30 percent	No
In re Initial Pub. Offering Sec. Litig., 671 F. Supp. 2d 467 (S.D.N.Y. 2009)	$510 million	33.30 percent	No
Standard Iron Works v. ArcelorMittal, No. 08-cv-05214, 2014 WL 7781572 (N.D. Ill. Oct. 22, 2014)	$164 million	33 percent	No
Dahl v. Bain Capital Partners, LLC, No. 1:07-cv-12388 (D. Mass. Feb. 2, 2015) (Dkt. No. 1095)	$590.5 million	33 percent	No
San Allen, Inc. v. Buehrer, No. CV-07-644950 (C.P., Cuyahoga Cnty., Ohio Nov. 25, 2014)	$420 million	32.7 percent	Yes
In re Auto. Refinishing Paint Antitrust Litig., No. MDL-1426, 2008 WL 63269 (E.D. Pa. Jan. 3, 2008)	$105.7 million	32.7 percent	No
Allapattah Services, Inc. v. Exxon Corp., 454 F. Supp. 2d 1185 (S.D. Fla. 2006)	$1.06 billion	31.33 percent	Yes
In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig., 56 F.3d 295 (1st Cir. 1995)	$220 million	30.9 percent	Yes
Weatherford Roofing Co. v. Employers Nat'l Ins. Co., No. 91-05637 (116th Tex. Dist. Ct., Dallas Cnty. Dec. 1, 1995)	$140 million	30 percent	Yes
In re (Bank of America) Checking Account Overdraft Litig., 830 F. Supp. 2d 1330 (S.D. Fla. 2011)	$410 million	30 percent	No
Tennille v. Western Union Co., No. 09-cv-00938-JLK-KMT, 2014 WL 5394624 (D. Colo. Oct. 15, 2014)	$180 million	30 percent	No
In re Linerboard Antitrust Litig., No. 98-cv-05055, 2004 WL 1221350 (E.D. Pa. June 2, 2004)	$202.5 million	30 percent	No
In re Home-Stake Prod. Co. Sec. Litig., MDL No. 153 (N.D. Okla. Jan. 2, 1990)	$185 million	30 percent	Yes

Case	Recovery	Fee Award	Trial?
In re (Chase Bank) Checking Account Overdraft Litig., No. 1:09-md-02036 (S.D. Fla. Dec. 19, 2012) (Dkt. No. 3134)	$162 million	30 percent	No
In re (Citizens Bank) Checking Account Overdraft Litig., No. 1:09-md-02036 (S.D. Fla. Mar. 12, 2013) (Dkt. No. 3331)	$137.5 million	30 percent	No
In re Informix Corp. Sec. Litig., No. 97-cv-01289-CRB (N.D. Cal. Nov. 23, 1999) (Dkt. No. 471)	$132.2 million	30 percent	No
Kurzweil v. Philip Morris Co., Inc., Nos. 94-civ-2373 (MBM), 94-civ-2546 (BMB), 1999 WL 1076105 (S.D.N.Y. Nov. 30, 1999)	$123 million	30 percent	No
In re Ikon Office Solutions, Inc. Sec. Litig., 194 F.R.D. 166 (E.D. Pa. 2000)	$111 million	30 percent	No
Klein v. O'Neal, Inc., 705 F. Supp. 2d 632 (N.D. Tex. Apr. 9, 2010), *as modified* (June 14, 2010)	$110 million	30 percent	No
In re Prison Realty Sec. Litig., No. 3:99-cv-00458 (M.D. Tenn. Feb. 9, 2001) (Dkt. No. 108)	$104 million	30 percent	No

95. These cases show that, even in mega-fund cases, there is nothing unusual about awards in the range requested here. If any case justifies an award of 33⅓ percent, it is this one, which involved difficult factual, legal, and expert issues, a contested class certification, a trial on the merits, formidable opposing counsel, and a significant risk of no recovery.

96. At bottom, it is erroneous to focus solely on averages and medians. The Toups/Coffman objection, for example, is fatally deficient because it fails to conduct any nuanced, fact-specific analysis of the 33⅓ percent fee request in light of the particular circumstances of this case, including the litigation's difficult legal and factual challenges, the precise work performed by class counsel, and the fact that class counsel prevailed after a hard-fought bellwether trial.

97. Moreover, given that mega-fund class actions are relatively less common than those with smaller recoveries, average and median fee percentages for those cases are subject to greater

variation.[94] Notably, a number of mega-fund settlements have been securities class actions, where average and median fee awards tend to be lower than the overall averages and medians.[95] A reason for lower fees in securities cases, presumably, is that the crucial issue of class certification—a major source of dispute here (*see* ¶¶ 65–66)—is generally less challenging in securities cases.[96] Moreover, in some mega-fund securities settlements, courts have pointed to the lack of complex legal and factual challenges and the relative ease of achieving settlement in awarding lesser attorneys' fees.[97]

98. In my opinion, the important point is that attorneys' fee awards should bear a relationship to the degree of risk involved.[98] Indeed, courts often expressly point to the degree of risk assumed by class counsel in approving larger fee awards. As one court noted in awarding attorneys' fees of 33 percent, "Courts recognize that the risk of receiving no recovery is a major factor in awarding attorneys' fees . . . . [T]he riskier the case, the greater the justification for a substantial fee award."[99] Another court suggested that "[a]ttorneys' risk is perhaps the foremost factor in determining an appropriate fee award."[100] Indeed, a number of the *Johnson* factors

---

[94] *See, e.g.*, *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, No. 2:10-md-02179-CJB, 2016 WL 6215974, at *16 (E.D. La. Oct. 25, 2016) (noting that in mega-fund cases "there are fewer percentage awards to serve as a benchmark; consequently, there is some variability in the percentages awarded in these cases"); Fitzpatrick, *supra* note 20, at 839 (noting that recoveries in the $1 billion to $6.6 billion range were subject to the largest standard deviation among fee awards).

[95] *See* Fitzpatrick, *supra* note 20, at 834.

[96] *See, e.g.*, *In re FedEx Ground Package Sys., Inc. Employment Practices Litig*., No. 3:05-MD-527 RLM, 2017 WL 1735541, at *5 (N.D. Ind. Apr. 28, 2017) (noting, in awarding attorneys fees of 30 percent and distinguishing lower fee awards in comparable securities cases, that "securities cases . . . differ . . . in many ways, not least of which that class certification in securities cases is nearly automatic under today's laws"); *see also* Robert H. Klonoff, *The Decline of Class Actions*, 90 WASH. U. L. REV. 729, 824 (2013) (noting that because "securities fraud suits . . . tend to involve overarching issues that impact all class members and seek damages that can be easily calculated," they "are commonly certified").

[97] In *In re Cendant Corp. PRIDES Litigation*, for example, the Third Circuit noted that the "case was neither legally nor factually complex and did not require significant motion practice or discovery by [class counsel], and the entire duration of the case from the filing of the Amended Complaint to the submission of a Settlement Agreement to the District Court was only four months." *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 742–43 (3d Cir. 2001).

[98] *See, e.g.*, Eisenberg & Miller, *supra* note 20, at 27, 38 ("[f]ees are . . . correlated with risk: the presence of high risk is associated with a higher fee, while low-risk cases generate lower fees. . . . That fees are adjusted for risk is widely accepted in the literature."). In their more recent study, Professors Eisenberg, Miller, and Germano found that "the association between risk and fee percentage continues in the 2009–2013 data." Eisenberg, Miller & Germano, *supra* note 20, at 958

[99] *Montague v. Dixie Nat'l Life Ins. Co*., No. 3:09-00687-JFA, 2011 WL 3626541, at *3 (D.S.C. Aug. 17, 2011).

focus specifically on the risks imposed by the litigation. *See* ¶¶ 52–90.

99. An emphasis on risk is especially relevant in mega-fund cases, where class counsel often invest thousands of attorney hours and millions of dollars in expenses. For example, in awarding attorneys' fees of 33⅓ percent in *Heekin v. Anthem, Inc.*, the court noted that class counsel "had a great deal at stake . . . with the burden of advancing litigation costs of over $6 million" despite "the risk presented by [the] case."[101]

100. It should also be emphasized that the very concept that fees as a percentage should decline as the size of the fund increases has been roundly criticized by courts. In *Urethane*, for example, this Court expressly rejected objectors' reliance on statistical studies in arguing—much like the Toups/Coffman objectors here—that fee awards should necessarily decrease with the size of the fund. To the contrary, in awarding attorneys' fees of 33⅓ percent in *Urethane*, this Court stated:

> [Objector] repeatedly cites the "principle" in the Tenth Circuit that fee award percentages decrease as settlement funds increase. . . . *[T]here is no such Tenth Circuit principle*. . . . This Court appreciates that some courts have awarded lower percentages to avoid granting an excessive windfall to counsel under the unique circumstances of those cases. On the other hand, *the Court agrees with those courts who have noted that such a diminishing scale can fail to provide the proper incentive for counsel*. . . . [I]n the present case, . . . class counsel achieved extraordinary success in a very long litigation. Thus, use of a declining-scale approach is not appropriate here, and the Court will award fees based on the unique circumstances of the case.[102]

Likewise, the Third Circuit has noted that the "position [that fees should decrease with the size of the fund] has been criticized by respected courts and commentators, who contend that such a

---

[100] *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-61677-CIV, 2008 WL 649124, at *14 (S.D. Fla. Jan. 31, 2008). *Accord, e.g.*, *In re Ocean Power Technologies, Inc.*, No. 3:14-cv-03799, 2016 WL 6778218, at *28 (D.N.J. Nov. 15, 2016) ("Courts across the country have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees."); *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 309 (S.D. Miss. 2014) (noting that "courts have found that class counsel ought to be compensated . . . for risk of loss or nonpayment assumed by carrying through with the case").

[101] No. 1:05-CV-01908-TWP, 2012 WL 5878032, at *3–4 (S.D. Ind. Nov. 20, 2012). *Accord, e.g.*, *In re Tyco Int'l Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 260 (D.N.H. 2007) (noting that the case "involved a greater risk of non-recovery than other multibillion-dollar securities class action settlements" and emphasizing that, "[h]ad [class counsel] lost at summary judgment or fallen short of establishing liability at trial, they would have lost the tens of millions of dollars in expenses and all of the attorney time that they collectively invested in th[e] case").

[102] *Urethane*, 2016 WL 4060156, at *5–6 (emphasis added).

fee scale often gives counsel an incentive to settle cases too early and too cheaply."[103] In the *Rite Aid Securities Litigation*, the Third Circuit made clear that "there is no rule that a district court must apply a declining percentage reduction in every settlement involving a sizeable fund."[104] In the court's view, "the declining percentage concept does not trump the fact-intensive [attorneys' fees] analysis."[105] And in *Allapattah*, the court emphasized that a declining percentage reduction:

> is antithetical to the percentage of the recovery method . . . the whole purpose of which is to align the interests of Class Counsel and the Class by rewarding counsel in proportion to the result obtained. By not rewarding Class Counsel for the additional work necessary to achieve a better outcome for the class, the sliding scale approach creates the perverse incentive for the Class Counsel to settle too early for too little.[106]

Echoing the same analysis, the court in *In re Ikon Office Solutions, Inc. Securities Litigation* noted:

> Such an approach . . . fails to appreciate the immense risks undertaken by attorneys in prosecuting complex cases in which there is great risk of no recovery. Nor does it give significant weight to the fact that large attorneys' fees serve to motivate capable counsel to undertake these actions.[107]

Other courts have made the same points.[108] In my opinion, these courts have correctly criticized

---

[103] *In re Cendant Corp. Litig.*, 264 F3d 201, 284 n.55 (3d Cir. 2001).

[104] *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 303 (3d Cir. 2005), *as amended* (Feb. 25, 2005).

[105] *Id.*

[106] 454 F. Supp. 2d at 1213.

[107] 194 F.R.D. 166, 197 (E.D. Pa. 2000).

[108] *See, e.g.*, *In re Auto. Parts Antitrust Litig.*, No. 2:12-cv-00203, 2017 WL 3525415, at *2 (E.D. Mich. July 10, 2017) ("[T]here is no requirement that the Court necessarily apply a declining fee percentage based on the absolute dollar amount of [the settlement]. . . . [O]ther federal courts have also rejected the so-called 'mega fund' adjustment to fee awards based solely on the size of a settlement. Instead, consideration must be given to, among other things, the stage of the litigation when a settlement has been achieved and the labor and expense that were required . . . to achieve the settlement."); *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, No. 2:10-md-02179-CJB, 2016 WL 6215974, at *16 (E.D. La. Oct. 25, 2016) ('[C]ourts have rejected a blanket rule that would automatically cap the fee percentage at a low figure when the class recovery is quite high."); *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011) (rejecting "[o]bjectors argu[ment] that the fact of a large settlement justifies a reduction in the percent fee awarded" because "[s]uch an approach . . . fails to appreciate the immense risks undertaken by attorneys in prosecuting complex cases in which there is a great risk of no recovery"); *Nichols v. SmithKline Beecham Corp.*, No. 00-cv-06222, 2005 WL 950616, at *21 (E.D. Pa. Apr. 22, 2005) (noting that "reducing the percentage of recovery awarded as a fee in this case to a mean fee percentage derived from other cases . . . [would be] an impermissibly formulaic approach"); *In re Linerboard Antitrust Litig.*, No. 98-cv-05055, 2004 WL 1221350, at *16 (E.D. Pa. June 2, 2004) (rejecting "sliding

the notion that fee percentages should necessarily decline with the size of the fund.[109]

101. In short, the requested fee of 33⅓ percent of a $1.51 billion judgment fits comfortably within the case law, given the facts and circumstances of this case.

3. There Is No Need for a Lodestar Cross Check

102. The next issue is whether the fees requested by class counsel should be tested using a "lodestar cross check"—*i.e.*, a procedure that courts sometimes use to verify the reasonableness of the fees sought based on sheer percentages.[110] This Court is certainly not *required* to conduct a lodestar cross check.[111] Indeed, a lodestar cross check can lead to the very harmful consequences that the percentage method is designed to avoid. As one court has noted, "[t]he lodestar analysis, even when used as a cross check to determine a reasonable percentage award, has the effect of rewarding attorneys for the same undesirable activities that the percentage method was designed to discourage, namely 'incentiviz[ing] [class counsel] to multiply filings and drag along proceedings to increase their lodestar.'"[112] (*See* ¶¶ 49–50.) It is not surprising, therefore, that even when approving relatively high percentage fee awards, courts in the Tenth

---

scale approach" as "economically unsound" and reasoning that "the highly favorable settlement was attributable to [class counsel's] skill and it is inappropriate to penalize them for their success").

[109] Likewise, numerous scholars agree that fee percentages should not necessarily be lower in mega-fund cases. *See, e.g.*, John C. Coffee, Jr., *Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 COLUM. L. REV. 669, 697 (1986); Declaration of Professor Geoffrey P. Miller at 11, *In re Takata Airbag Prods. Liab. Litig.*, No. 1:15-md-02599-FAM (S.D. Fla.) (Dkt. No. 2318-3) (filed Jan. 24, 2018), *available at* https://www.autoairbagsettlement.com/Content/Documents/Exhibit%20C%20to%20Response%20to%20Objections%20HN.pdf; Declaration of Professor Lucian A. Bebchuk at 11, *In re Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.) (filed Nov. 13, 2007), *available at* http://www.enronfraud.com/pdf/Bebchuk_Decl_with_Appendix_A.pdf; Declaration of Brian T. Fitzpatrick at 14 & n.4, *In re High-Tech Employees Antitrust Litig.*, No. 11-CV-2509-LHK (N.D. Cal.) (filed May 8, 2015), *available at* http://www.hightechemployeelawsuit.com/media/303927/15-5-8__1079__fitzpatrick_decl__motion_for_attorney_fees.pdf; Declaration of Brian T. Fitzpatrick on the Reasonableness of Class Counsel's Requested Award of Attorneys' Fees at 7, *In re Urethane Antitrust Litig.*, No. 2:04-md-01616-JWL (D. Kan.) (Dkt. No. 3269-1) (filed July 15, 2016), *available at* http://polyetherpolyolsettlement.com/docs/Reply_Mem_iso_Attys_Fees_etc_Exhibits_for_website.pdf. Although the Toups/Coffman objection relies almost entirely on Professor Fitzpatrick, that scholar in fact refutes the entire premise of the objection.

[110] *See In re Crocs, Inc. Sec. Litig.*, No. 07-cv-02356-PAB-KLM, 2014 WL 4670886, at *4 & n.4 (D. Colo. Sept. 18, 2014) (describing role of lodestar cross check as a means to confirm the reasonableness of a percentage fee award, and noting that the "cross-check calculation need entail neither mathematical precision nor bean counting" (citation omitted)).

[111] *See, e.g.*, *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1241 (D.N.M. 2016) ("The Tenth Circuit has made it clear that district courts need not calculate a lodestar when applying the percentage method." (citing *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994))).

[112] *Jewell*, 167 F. Supp. 3d at 1242 (citation omitted).

Circuit have often declined to apply a lodestar cross check.[113] Many other jurisdictions follow a similar approach.[114] Indeed, in awarding attorneys' fees of 30 percent in the $410 million *Bank of America Checking Account Overdraft Litigation* without conducting a lodestar cross check, the court emphasized that "[t]he lodestar approach should not be imposed through the back door via a cross-check."[115]

4. In Any Event, a Lodestar Analysis Supports the Fees Requested

103. Even if the Court were to conduct a lodestar cross check, such an analysis, in my opinion, would only confirm the reasonableness of the fees requested by MDL class counsel. (I have only been given data for MDL counsel and thus am not in a position to opine on the lodestar with respect to Illinois and Minnesota counsel.)

104. In the Tenth Circuit, a lodestar cross check involves "determining the lodestar amount—*i.e.,* the number of hours [class] counsel reasonably expended multiplied by a reasonable [hourly rate]—and then multiplying the lodestar amount by a subjective 'multiplier'

[113] *See, e.g.*, *Fankhouser v. XTO Energy, Inc.,* 2012 WL 4867715, at *3 (W.D. Okla. Oct. 12, 2012) (awarding 36 percent fee without lodestar cross check); *Hill v. Marathon Oil Co*., No. 5:08-cv-00037, slip op. at 5–6 (W.D. Okla. Oct. 3, 2012), *available at* https://ecf.okwd.uscourts.gov/doc1/14912670884 (awarding 33⅓ percent fee without lodestar cross check); *CompSource Okla. v. BNY Mellon, N.A*., No. CIV 08-469-KEW, 2012 WL 6864701, at *8 (N.D. Okla. Oct. 25, 2012) (awarding 25 percent fee without lodestar cross check); *Droegemueller v. Petroleum Dev. Corp.,* 2009 WL 961539, at *4 (D. Colo. Apr. 7, 2009) (awarding 33⅓ percent fee without lodestar cross check); *Lewis v. Wal-Mart Stores, Inc.,* 2006 WL 3505851, at *2 (N.D. Okla. Dec. 4, 2006) (awarding 33⅓ percent fee without lodestar cross check); *Millsap v. McDonnell Douglas Corp.*, No. 94-CV-633-H(M), 2003 WL 21277124, at *9 (N.D. Okla. May 28, 2003) (awarding 25 percent fee without lodestar cross check).

[114] *See, e.g.*, *Swedish Hosp. v. Shalala*, 1 F.3d 1261, 1266–70 (D.C. Cir. 1993) (lodestar analysis not required); *Bacchi v. Mass. Mut. Life Ins. Co.*, No. 12-11280-DJC, slip op at 7 (D. Mass. Nov. 8, 2017) (noting that lodestar cross check is discretionary in the First Circuit); *CompSource Okla. v. BNY Mellon, N.A*., No. CIV 08-469-KEW, 2012 WL 6864701, at *8 (N.D. Okla. Oct. 25, 2012) ("[A] majority of circuits recognize that trial courts have the discretion to award fees based solely on a percentage of the fund approach and are not required to conduct a lodestar analysis in common fund class actions."); *Smith v. Krispy Kreme Doughnut Corp*., No. 1:05CV00187, 2007 WL 119157, at *3 (M.D.N.C. Jan. 10, 2007) (noting that "[i]t is not necessary for the Court to conduct a lodestar analysis" in the Fourth Circuit); *Laffitte v. Robert Half Int'l Inc.*, 376 P.3d 672, 688 (Cal. 2016) (noting that courts "retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee").

[115] *In re Bank of Am. Checking Account Overdraft Litig*., 830 F. Supp. 2d 1330, 1362 (S.D. Fla. 2011). Likewise, numerous scholars have argued that courts should not use a lodestar cross check when applying the percentage method. *See, e.g.*, Declaration of Brian T. Fitzpatrick at 6–7, *In re High-Tech Employees Antitrust Litig*., No. 11-CV-2509-LHK (N.D. Cal.) (filed May 8, 2015), *available at* http://www.hightechemployeelawsuit.com/media/303927/15-5-8__1079__fitzpatrick_decl__motion_for_attorney_fees.pdf; MORRIS RATNER, CIVIL PROCEDURE: CLASS ACTION FEE AND COST AWARDS 30–32 THE JUDGE'S BOOK: Vol. 1, Article 9 (2017); Charles Silver, *Due Process and the Lodestar Method: You Can't Get There From Here*, 74 TUL. L. REV. 1809, 1813–14 (2000).

to compensate for the risk of [the] litigation."[116] I focus on these calculations below.

a. The Hours Spent By MDL Class Counsel Are Reasonable

105. I have been provided with copies of all time entries from all common benefit counsel in the Kansas MDL. In total, common benefit counsel in the Kansas MDL have spent 142,823.50 hours prosecuting this litigation to date.

106. I should note that I see no red flags suggesting that the work of the MDL plaintiffs' firms was inefficient or that there was needless duplication. Attorneys at the MDL plaintiffs' common benefit law firms targeted specific tasks: overseeing overall strategy and case management; performing legal research; drafting briefs and memoranda; reviewing, analyzing, and coding documents; focusing on particular kinds of depositions (*e.g.*, producer depositions and expert depositions); drafting discovery responses; drafting pleadings; and trial preparation. Moreover, the paralegals assigned to the case focused on traditional paralegal tasks, such as preparation of potential exhibits for depositions; document management; assisting with filing of court documents; and performing basic research. I have seen nothing to suggest that the case was overstaffed, that there was needless duplication of effort, or that attorneys or paralegals were focusing on unnecessary tasks.

107. Indeed, the MDL leadership took great efforts to minimize duplication of tasks. Co-lead counsel created and circulated billing guidelines to the various common benefit law firms. Among other things, those guidelines directed the firms to minimize the number of individual timekeepers at each firm, directed the firms to assign the same attorneys and staff members to related tasks to avoid extra time getting others up to speed, and provided that time spent generally reviewing filings and other materials not directly related to work assigned by co-lead counsel would not be billable as common benefit time. *See* Stueve Decl. ¶¶ 621–629. Moreover, small groups of attorneys focused on discovery in particular subject areas to promote efficiency, while a core group of attorneys consistently worked on legal research and briefing

[116] *Been v. O.K. Indus.*, Inc., No. CIV-02-285-RAW, 2011 WL 4478766, at *10 (E.D. Okla. Aug. 16, 2011). *Accord, e.g.*, *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 8:10-ml-02151-JVS (FMOx), 2013 WL 12327929, at *34 (C.D. Cal. July 24, 2013) (multiplier awarded based on "all the circumstances of [the] litigation, particularly the risks"); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 680 (N.D. Tex. 2010), *as modified* (June 14, 2010) (noting that a multiplier was "warranted due to the risks entailed in this litigation"); *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1271 (D. Kan. 2006) (finding multiplier resulting from lodestar cross check "[e]minently reasonable based on the risks associated with counsel taking on this case").

throughout the litigation. *See id*. ¶¶ 625–626. Even document reviewers were kept consistent, with priority given to "those document reviewers who were able to devote substantial amounts of time over multiple months." *Id*. ¶ 627. Stueve Siegel Hanson collected and reviewed monthly time records from all of the common benefit firms, and then combined, reviewed, and corrected the cumulative records. After this initial review, each firm involved was asked to review its time for consistency with the Common Benefit Order and the above-mentioned billing guidelines provided by co-lead counsel, which resulted in meaningful cuts. Co-lead counsel then performed a final review of all time entries, which again resulted in a meaningful reduction in the overall lodestar. *See id*. ¶¶ 630–641.

108. I understand that additional time was logged by Minnesota counsel and by members of the Clark, Love & Hutson group in the Illinois action. I further understand that those attorneys are submitting their hours to the Court separately.

b. The Billing Rates Proposed by MDL Class Counsel Are Reasonable

109. The designated hourly rates for the various MDL law firms submitting lodestar hours[117] range from $175 to $985 for partners; $170 to $775 for associates; $495 to $825 for of counsel; $150 to $325 for law clerks; and $63.75 to $305 for paralegals. To gauge the reasonableness of class counsel's rates, courts in the Tenth Circuit begin by referring to "the prevailing market rates in the relevant community"—defined as "the area in which the litigation occurs."[118]

110. Courts have approved rates for prominent plaintiffs' complex litigation firms that are comparable to those designated by the plaintiffs' firms in this case. Examples include Motley Rice (hourly rates as high as $975 approved in litigation in this District three years ago),[119] and

[117] Those firms are: Anderson, Bottrell, Sanden & Thompson; Barrack, Rodos & Bacine; Battle & Winn; Batts, Batts & Bell; Bohrer Brady; Bolen Robinson & Ellis; Brady Preston Brown; Brooks Pierce; Coffman Law Firm; Emerson Poynter; Emerson Scott; English, Lucas, Prist & Owsley; Gray Reed & McGraw; Gray, Ritter & Graham; Greene Espel; Hare Wynn Newell & Newton; Holland Law Firm; Jake W. Brooks Attorney at Law; Kruml Law Office; Lockridge Grindal Nauen; Lundberg Law Firm; Martin, Browne, Hull & Harper; McCulley McCluer; Miller Schirger; Paul LLP; Saeed & Little; Schirger, Kirk, McDougall & Winzeler; Seeger Weiss; Simmons Hanly Conroy; Sneed Lang; Soper Leddin Law Firm; Stinson Leonard Street; Stueve Siegel Hanson; Wadler Perches Hudl Kerlick; Wagner Reese; Walters Bender Strohbehn & Vaughan; Weller, Green, Toups & Terrell; Westerfield Janoush & Bell; and Zimmerman Reed. These firms are referred to collectively as "plaintiffs' firms."

[118] *Garcia v. Tyson Foods, Inc.*, No. 06-cv-02198-JTM, 2012 WL 5985561, at *3 (D. Kan. Nov. 29, 2012) (citations and internal quotation marks omitted).

[119] *See, e.g.*, Decl. of James M. Hughes at Ex. A, *Bennett v. Sprint Nextel Corp*., No. 2:09-cv-02122-EFM (D. Kan.) (filed May 8, 2015), *available at* https://ecf.ksd.uscourts.gov/doc1/07914018030.

litigation involving both Bolen Robinson & Ellis and the Holland Law Firm (hourly rates up to $897 approved in 2017 in the Western District of Missouri, where the court noted that such rates "are not dissimilar to those hourly rates charged in the Kansas City area").[120] Stueve Siegel Hanson has an impressive record of having substantial rates approved, both in the Kansas City area and elsewhere, with several judicial opinions in 2018 approving rates as high as $865 for partners and $525 for associates.[121]

111. Indeed, even higher rates than those requested here would be justified given the complicated, multi-jurisdictional nature of this case.[122] For example, in *Volkswagen*, class counsel's hourly rates were as high as $1,600 for partners and $790 for associates.[123] And in *Nitsch v. DreamWorks Animation SKG, Inc.*, billing rates for partners were as high as $1,200 per hour.[124] Here, all of the proposed rates are below $1,000 per hour, despite the prominence and

[120] *Pollard v. Remington Arms Co., LLC*, 320 F.R.D. 198, 222 (W.D. Mo. 2017). It is also notable, as Retired Judge Ralston points out in his declaration (at ¶ 51), that this Court's order appointing Ellen K. Reisman as special master designated her rate at $950 per hour.

[121] *See, e.g.*, *Hapka v. Carecentrix, Inc*., No. 2:16-cv-02372-KGG, slip op. at 3 (D. Kan. Feb. 15, 2018), *available at* https://ecf.ksd.uscourts.gov/doc1/07914925572 (citing Pls.' Mem. in Support of Mot. for an Award of Attorneys' Fees, Expenses, & Costs to Class Counsel & a Class Representative Service Award at 13–20 (filed Dec. 8, 2017)); *Criddell v. Premier Healthcare Services, LLC*, No. 16-cv-05842-R-KS (C.D. Cal. Jan. 16, 2018) (Dkt. No. 64) (approving hourly partner rate of $825 and hourly associate rate of $395); *Spangler v. Nat'l Coll. of Tech. Instruction*, No. 14-cv-03005-DMS (RBB), 2018 WL 846930, at *2 (S.D. Cal. Jan. 5, 2018) (approving Stueve Siegel Hanson's 2016 rates of $795 to $825 per hour for partners and $315 to $525 per hour for associates); *see also* Decl. of Richard H. Ralston ¶ 56 (filed contemporaneously) (hereinafter "Ralston Decl.") (discussing additional examples from 2010–2017).

[122] *See, e.g.*, *Jeffboat LLC v. Office of Workers' Comp. Programs*, 553 F.3d 487, 490 (7th Cir. 2009) (noting that the "national market" is relevant to complex cases where the attorneys involved are "highly specialized"); *Jane L. v. Bangerter*, 61 F.3d 1505, 1510 (10th Cir. 1995) (noting that the relevant market may be expanded where "special skills" are required by the litigation); *In re Agent Orange Prods. Liab. Litig*., 818 F.2d 226, 232 (2d Cir. 1987) (approving "the use of national hourly rates in exceptional multiparty cases of national scope"); *Urethane*, 2016 WL 4060156, at *7 ("[T]he amounts at issue justified use of the best counsel charging the highest rates (just as [the defendant] used similarly high-priced counsel in the litigation)."); *In re Vioxx Prods. Liab. Litig*., 760 F. Supp. 2d 640, 660 (E.D. La. 2010) ("[T]he attorneys come from states across the country. Thus a more national rate is the appropriate pole star to guide the Court."); *Lucas v. Kmart Corp*., No. 99-cv-01923, 2006 WL 2729260, at *4 (D. Colo. July 27, 2006) ("Hourly rates must reflect the prevailing market rates in the relevant community. Because of the significant resources and skill required, as well the risks entailed, to litigate large-scale actions on behalf of a class, very few attorneys handle such cases. Thus the relevant community . . . likely consists of attorneys who litigate nationwide, complex class actions.").

[123] *In re Volkswagen "Clean Diesel" Marketing, Sales Practices & Prods Liab. Litig.*, No. 3:15-md-02672-CRB, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017).

[124] No. 14-CV-04062-LHK, 2017 WL 2423161, at *9 (N.D. Cal. June 5, 2017). *See also, e.g.*, *In re Cathode Ray Tube (Crt) Antitrust Litig.*, MDL 1917, No. 3:07-cv-5944 JST, 2016 WL 721680, at *43 (N.D. Cal. Jan. 28, 2016) (finding $875/hr for lead counsel "reasonable and responsible" for purposes of lodestar cross check in antitrust class settlement); *In re Amgen Sec. Litig.*, No. CV 7-2536 PSG, 2016 U.S. Dist. LEXIS 148577, at *27 (C.D. Cal. Oct. 25, 2016) (approving "a billing rate ranging from $750 to $985 per hour for partners, $500 to $800 per hour for 'of

vast experience of the attorneys involved (*see* ¶ 76).

112. The rates proposed by the MDL plaintiffs' firms here are also extremely reasonable when compared to rates for prominent defense firms. For instance, a 2016 American Bar Association report (relying on public filings in Chapter 11 bankruptcy cases) noted billing rates as high as $1,475 at Proskauer Rose; $1,450 at Ropes & Gray; and $1,425 at both Akin Gump Strauss Hauer & Feld and Skadden Arps Slate Meagher & Flom.[125] Similarly, a 2015 fee application of Gibson Dunn revealed rates for partners in a bankruptcy case as high as $1,475.[126] Indeed, according to some sources (discussing rates in 2014 and 2015), some prominent partners at top law firms have billed rates as high as $2,000 per hour.[127] For associates, a 2011 study found rates at DLA Piper as high as $730; at Kay Scholer, rates as high as $705; and at Winston

---

counsels'/senior counsel, and $300 to $725 per hour for other attorneys"); *Abbott v. Lockheed Martin Corp.*, No. 06-cv-701-MJR-DGW, 2015 WL 4398475, at *3 (S.D. Ill. July 17, 2015) (awarding fees of $974/hr for attorneys with at least 25 years of experience; $826/hr for attorneys with 15–24 years in ERISA class settlement); *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-2509-LHK, 2015 WL 5158730, at *9 (N.D. Cal. Sept. 2, 2015) (billing rates for partners as high as $975/hr); *Cheesemore v. Alliance Holdings, Inc.*, No. 09-cv-413-wmc, 2014 WL 4415919, at *6 (W.D. Wis. Sept. 5, 2014) (approving rate of $895/hr for highest level partners in ERISA class settlement); *In re Heartland Payment Systems, Inc.*, 851 F. Supp. 2d 1040, 1087–88 (S.D. Tex. 2012) (noting hourly rates as high as $825/hr; court found the hourly rates were "within the 'prevailing market rates for lawyers with comparable experience and expertise' in complex class-action litigation and thus are reasonable.") (citation omitted); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 10-ml-02151 NS, 2013 WL 12327929, at *33 n.15 (C.D. Cal. July 24, 2013) (approving rates up to $950 per hour). Rates for paralegals in other major class actions have ranged from $150 to $490 per hour. *See, e.g.*, *In re Volkswagen*, 2017 WL 1047834, at *5 ($150 to $490 per hour); Co-Lead Class Counsel's Pet. for An Award of Atty's Fees at Add. 1, Ex. C, *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 12-MD-2323 (AB) (E.D. Pa.) (filed Feb. 13, 2017) ($215 to $325 per hour); *Astiana v. Kashi Co.*, No. 11-cv-01967-H (BGS), slip op. at 6 (S.D. Cal. Sept. 2, 2014) (Dkt. No. 241) ($245 to $315 per hour).

[125] *See* Martha Neil, *Top Partner Billing Rates at BigLaw Firms Approach $1,500 Per Hour*, ABA JOURNAL (Feb. 8, 2016), http://www.abajournal.com/news/article/top_partner_billing_rates_at_biglaw_firms_nudge_1500_per_hour.

[126] *See* Final Application of Gibson, Dunn & Crutcher LLP as General Bankruptcy and Restructuring Co-Counsel for Debtors and Debtors-in-Possession for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for the Final Period Mar. 12, 2015–Nov. 19, 2015 at 4, *In re SRC Liquidation, LLC*, No. 15-10541-BLS (Bankr. D. Del.) (Dkt. No. 1404) (filed Dec. 15, 2015).

[127] *See, e.g.*, Aebra Coe, *What Do the Highest-Paid Lawyers Make an Hour?*, Law360 (May 11, 2016), https://www.law360.com/legalindustry/articles/794929/what-do-the-highest-paid-lawyers-make-an-hour- (noting that research conducted by the BTI Consulting Group revealed that rates "reached $2,000 per hour" in 2016, up from the previous high of $1,600 per hour in 2015); Kathryn Rubino, *$2,000 An Hour Lawyers: That's One Way to Fund Salary Increases*, ABOVE THE LAW (June 13, 2016), https://abovethelaw.com/2016/06/2000-an-hour-lawyers-thats-one-way-to-fund-salary-increases/ (similar); *see also* Karen Sloan, *$1,000 Per Hour Isn't Rare Anymore*, NAT'L L.J. (Jan. 13, 2014), https://www.law.com/nationallawjournal/almID/1202637587261/NLJ-Billing-Survey%3A-%241%2C000-Per-Hour-Isn%27t-Rare-Anymore/ (noting that "four-figure hourly rates for in-demand partners at the most prestigious firms don't raise eyebrows—and a few top earners are closing in on $2,000 an hour").

& Strawn, rates as high as $600.[128] Of course, today's rates for partners and associates would presumably be even higher.[129]

113. It is especially instructive, in gauging billing rates for class counsel, to look at rates for the firm actually representing the defendant in the litigation.[130] Here, partners at Syngenta's law firm, Kirkland & Ellis, bill at substantially higher rates than plaintiffs' counsel here are proposing. For instance, Kirkland's own web site reveals that the firm's partners bill at rates as high as $1,745 per hour, with associates billing out as high as $1,015 per hour.[131] Other sources confirm similarly high rates for Kirkland lawyers.[132]

114. The rates designated by the MDL plaintiffs' common benefit lawyers in the instant case are comparable to (or below) the above-described billing rates. For example, the billing rates designated by those lawyers are well below Kirkland's billing rates, with no attorney from any of the plaintiffs' common benefit firms proposing rates for partners anywhere close to $1,745 per hour, or for associates anywhere close to $1,015 per hour. Indeed, at Kirkland, some *associates* bill out at more than the rates proposed by even the most senior and prominent partners in the instant case, such as Christopher Seeger and Patrick Stueve.

115. Importantly, in other cases, the MDL plaintiffs' law firms involved here have been

---

[128] *See A Nationwide Sampling of Law Firm Billing Rates*, NAT'L L.J. (Dec. 19, 2011), *available at* http://tpmlaw.com/global_pictures/NationalLawJournal2011.PDF.

[129] *See* Hugh A. Simons, *Why Elite Law Should Raise Rates*, THE AM. LAWYER (Feb. 26, 2018), https://www.law.com/americanlawyer/2018/02/26/why-elite-law-should-raise-rates/ (noting that attorneys' hourly billing rates "rose by 33 percent from 2007 to 2017" and that rates continue to increase, "with standard rates rising at 3 percent [per year]").

[130] *See, e.g.*, *Chrapliwy v. Uniroyal, Inc.*, 670 F.2d 760, 768 n.18 (7th Cir. 1982) ("The rates charged by the defendant's attorneys provide a useful guide to rates customarily charged in this type of case." (citation omitted)); *Ruiz v. Estelle*, 553 F. Supp. 567, 589 (S.D. Tex. 1982) ("In an action for which no adequate parallel can be found, the best example of a fee paid for similar work is that paid by opposing counsel in the same action."); *cf. I.W. v. School Dist. of Philadelphia*, No. 14-3141, 2016 WL 147148, at *13 (E.D. Pa. Jan. 13, 2016) ("Evidence of the hours expended by the non-prevailing party on the same task is relevant to the determination of whether the hours requested by the prevailing party are reasonable." (citations omitted)); *Mitroff v. Xomox Corp.*, 631 F. Supp. 25, 28 (S.D. Ohio 1985) ("Pertinent to any consideration of a reasonable amount of time expended in the prosecution of a law suit is the amount of time expended by the defendant in defending that law suit.").

[131] *See Kirkland, Kutak Rocke Unite Again in Toys 'R' Us Bankruptcy*, KIRKLAND & ELLIS LLP (Sept. 29, 2017), https://www.kirkland.com/sitecontent.cfm?contentID=230&itemId=13055.

[132] *See, e.g.*, Ryan Lovelace, *Hourly Rate Gap Widens as Top Billers Leave Others Behind*, NAT'L L.J. (May 17, 2018), https://www.law.com/nationallawjournal/2018/05/17/hourly-rate-gap-widens-as-top-billers-leave-others-behind/ (noting hourly rates for Kirkland partners as high as $1,745); Sara Randazzo & Jacqueline Palank, *Legal Fees Cross New Mark: $1,500 an Hour*, WALL ST. J. (Feb. 9, 2016), https://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708 (2016 article noting hourly rates for Kirkland partners ranging from $875 to $1,445).

awarded hourly rates comparable to those requested. For example, as noted (¶ 110), rates as high as $865 per hour have been approved for attorneys at Stueve Siegel Hanson in prior litigation in this District. In the *NFL Concussion* case, the court approved hourly billing rates for partners ranging from $750 to $985, including $985 per hour for Christopher Seeger of Seeger Weiss (settlement class counsel in this case).[133]

116. The blended rate for the MDL plaintiffs' common benefit firms in this case is $572.21. That rate is consistent with or below blended rates in other major MDL cases. For example, in *NFL Concussion*, the court approved a blended rate of $861.28 per hour for Seeger Weiss specifically, and a blended rate of $623.05 per hour for all common benefit counsel.[134] In *Hightower v. JPMorgan Chase Bank, N.A.*, the court approved a blended rate of $575 per hour.[135] And Lieff Cabraser Heimann & Bernstein designated a blended rate of $529 per hour in the *Volkswagen Clean Diesel Litigation*.[136] Notably, none of those cases went to trial (where hours billed by senior lawyers would be expected to increase).

117. In any event, in my opinion, it is not useful to compare the blended rate here with the rates in other cases, especially those in which the tasks performed were very different. Here, much of the work was, by its very nature, high-level and thus not suitable for a paralegal or low-level attorney. For example, the firm could not assign paralegals or recent law school graduates to try the bellwether cases, conduct high-level settlement negotiations, interview and work with experts, or evaluate, brief, and argue the complicated issues of law. It should not be surprising, therefore, that four of the top five billers (all with more than 5,000 hours) are partners, and that among the top ten billers, all but two are partners. Given the nature of the tasks that make up

[133] *See In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, slip op. at 20-21 (E.D. Pa. May 24, 2018) (Dkt. No. No. 10019) (approving full lodestar for Seeger Weiss based on submitted rates); Co-Lead Class Counsel's Pet. for An Award of Atty's Fees at Ex. 2, *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB (E.D. Pa.) (filed Feb. 13, 2017) (Dkt. No. 7151) (identifying Seeger Weiss's submitted and approved hourly rates, including rates for partners ranging from $750 to $985, rates for of counsel ranging from $775 to $795 per hour, rates for associates of $600 per hour, and rates for professional staff ranging from $215 to $290 per hour).

[134] *See In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, slip op. at 20-21 (E.D. Pa. May 24, 2018) (Dkt. No. No. 10019) (approving lodestar for Seeger Weiss); *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1635648, at *9 (E.D. Pa. Apr. 5, 2018) (approving blended rate of $623.05 per hour for all common benefit counsel).

[135] No. 11-cv-01802-PSG, 2015 WL 12644569, at *11 (C.D. Cal. Feb. 3, 2015) (preliminary approval); 2015 WL 9664959, at *1 (Aug. 4, 2015) (final approval).

[136] *See In re Volkswagen*, 2017 WL 1047834, at *5.

many of the hours spent by class counsel, the blended rate here is very reasonable. Simply comparing that number to other cases—in which the mix of tasks performed may be very different—is not an especially probative exercise.[137]

c. Additional Expected Hours Should Be Included

118. When calculating the lodestar, courts routinely take into account hours that class counsel reasonably anticipate spending on the matter after final approval (*e.g.*, hours to be spent on claims administration issues).[138]

119. I am advised by MDL class counsel that they have spent 142,823.50 hours on the case to date, and expect to spend at least 500–1,000 hours in the future due to the size of the class and the complexity of the settlement administration process. Because the claims deadline is not until October 12, 2018, MDL class counsel will continue working with the claims administrator and answer questions from class members for three additional months. Additional work will also include drafting the final approval papers and preparing for and attending the final approval hearing. As discussed in ¶¶ 105–107, the figure for time spent thus far on this complicated case—with a full and two partial bellwether trials, contested class certification, and extensive dispositive and *Daubert* motions—strikes me as entirely reasonable, as does the figure representing hours likely to be expended by the firm going forward.

d. The Multiplier Is Well Justified Based on Tenth Circuit Precedent

120. Based on the number of hours expended and the hourly rates proposed, class counsel's lodestar would be $81,725,060.90. MDL class counsel are requesting 50 percent of the total 33⅓ percent attorneys' fees requested, or approximately $251.6 million, pursuant to the above-noted

[137] *See also, e.g.*, *Young v. Polo Retail, LLC*, No. 02-cv-4546-VRW, 2007 WL 951821, at *7 (N.D. Cal. Mar. 28, 2007) ("[T]he central role of settlement negotiations in this litigation—and the central role of senior attorneys in those negotiations—suggest that typical blended hourly rates . . . are inappropriate here.").

[138] *See, e.g.*, *Tennille v. Western Union Co.*, No. 09-cv-00938-MSK-KMT, 2013 WL 6920449, at *3 (D. Colo. Dec. 31, 2013) (instructing plaintiffs to include in their lodestar calculation "an estimate of the future hours that will be necessary to carry the case to completion under the Settlement Agreement"); *Reyes v. Bakery & Confectionery Union*, 281 F. Supp. 3d 833, 853, 856–57 (N.D. Cal. 2017) (including estimated hours for "future work" related to, *inter alia*, "managing class members' claims"); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), slip op at 8 (N.D. Cal. Mar. 17, 2017) (granting fee request reserving "an additional 21,000 hours to (1) guide the hundreds of thousands of Class Members through [claims period]; (2) assist in the implementation and supervision of the Settlement . . . ; and (3) defend and protect the settlement on appeal, among other things" (citation and internal quotation marks omitted)); *AT&T Mobility*, slip op at 16–17 (citing the "considerable ongoing efforts" required of class counsel to implement the settlement as a "factor [that] supports a generous reward").

fee-sharing agreement. *See* ¶ 37. (I opine separately on that proposed allocation in ¶¶ 129–131.) That calculates to a multiplier of 3.079 for MDL class counsel, not counting hours going forward.[139] Counting 750 hours going forward as well (based on class counsel's estimate of 500–1,000 additional hours), the multiplier would be 3.06. In my view, either multiplier is justified here.

121. As a threshold matter, I believe that MDL class counsel are clearly entitled to a multiplier. Courts in the Tenth Circuit generally apply a multiplier to the lodestar "to compensate for the risk of [the] litigation."[140] In analyzing the multiplier, the ultimate standard is "reasonableness," and courts often look to those *Johnson* factors that are not already subsumed within the lodestar calculation (excluding, for example, "the time and labor involved," because class counsel's hours and rates are already accounted for by the lodestar).[141]

122. In this case, there is no question that MDL class counsel reasonably expected to be awarded a multiplier (assuming that the Court were to apply the lodestar method). Counsel took on a case that, as explained in ¶¶ 56–74, entailed enormous risk and challenges. It would be illogical and unfair to rely solely on normal billing rates, without enhancement, in a situation where there was a high likelihood that class counsel would recover nothing. Class counsel's designated hourly rates do not reflect that risk. As noted, those rates are in line with (or below) those awarded to plaintiffs' firms (before factoring in a multiplier) in other major class actions. *See* ¶¶ 109–111, 116. And they are comparable to—or below—what prominent defense firms charge (*see* ¶¶ 112–114), even though such defense firms are paid those rates regardless of whether they win or lose.[142] As the court emphasized in the *Toyota Unintended Acceleration* case, a multiplier is awarded based on "all the circumstances of [the] litigation, particularly the

[139] This figure is based on a lodestar (excluding future time, *see* ¶¶ 118–119) of $81,725,060.90. A multiplier of 3.079 is thus required to reach MDL class counsel's requested fee of $251.6 million.

[140] *Been*, 2011 WL 4478766, at *10.

[141] *See, e.g.*, *In re Miniscribe Corp.*, 309 F.3d 1234, 1243 (10th Cir. 2002) (applying "*Johnson* criteria for determining the multiplier . . . to be applied to the lodestar amount"); *Koehler v. Freightquote.com, Inc.*, No. 12-2505-DDC-GLR, 2016 WL 3743098, at *6–9 (D. Kan. July 13, 2016) (approving class counsel's requested multiplier where "the other *Johnson* factors demonstrate[d] the reasonableness of the fee").

[142] *See also, e.g.*, *Lowery v. City of Albuquerque*, No. CIV 09-0457 JB/WDS, 2013 WL 1010384, at *44 (D.N.M. Feb. 27, 2013) (noting that class counsel "had to take considerable risks so its hourly rate should be more"); note 116, *supra* (cases noting multiplier's role in compensating plaintiffs' attorneys for risk of little or no recovery).

risks."[143]

123. Multipliers in the 3.079 range are not uncommon, especially for a complicated, challenging case such as this one. In the Tenth Circuit, "[a] multiplier of four or less is commonly accepted as reasonable."[144] And courts in the Tenth Circuit and elsewhere have approved similar or greater multipliers in numerous other major cases. For example, in *Urethane*, this Court stated that a multiplier of "4 or 5 would fall within the range of multipliers accepted by a number of courts in megafund cases."[145] Another court within the Tenth Circuit noted that "[t]ypical multipliers range from one to four depending on the facts, with many courts awarding multipliers larger than four on case-specific grounds."[146] Likewise, in *Steiner v. American Broadcasting Co., Inc.*, the Ninth Circuit upheld a multiplier of 6.85, and emphasized that it "f[ell] well within the range of multipliers that courts have allowed."[147] Another court noted that "[c]ourts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."[148] And the court in *In re Charter Communications*

[143] *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 8:10-ml-02151-JVS (FMOx), 2013 WL 12327929, at *34 (C.D. Cal. July 24, 2013). *Accord, e.g.*, *Tennille v. Western Union Co.*, No. 09-cv-00938-MSK-KMT, 2013 WL 6920449, at *3 (D. Colo. Dec. 31, 2013) ("A multiplier is then added to [the] lodestar amount to account for risk."); *Vaszlavik v. Storage Corp.*, No. 95-B-02525, 2000 WL 1268824, at *1 (D. Colo. Mar. 9, 2000) (lodestar multiplier is necessary to "compensate for risk").

[144] *Been*, 2011 WL 4478766, at *11. *Accord, e.g.*, *In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 999 (D. Minn. 2005) (noting that numerous other courts "have approved attorney fees based on the percentage method that resulted in lodestar multipliers in excess of four" and citing cases); *Vaszlavik*, 2000 WL 1268824, at *3 ("Courts in common fund cases regularly award multipliers of two to three times the lodestar or more to compensate for risk and to reflect the quality of the work performed.").

[145] *Urethane*, 2016 WL 4060156, at *7.

[146] *Cook v. Rockwell Int'l Corp.*, No. 90-cv-00181-JLK, 2017 WL 5076498, at *4 (D. Colo. Apr. 28, 2017).

[147] 248 F. App'x 780, 783 (9th Cir. 2007).

[148] *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013). *See also, e.g.*, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6, app. (9th Cir. 2002) (collecting cases applying multipliers ranging as high as 19.6); *In re Credit Default Swaps Antitrust Litig.*, No. 1:13-md-02476, 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (multiplier of 6.2); *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732 (S.D. Tex. 2008) (multiplier of 5.2); *Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1123–25 (C.D. Cal. 2008) (multiplier of 5.2); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (multiplier of 6); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589–90 (E.D. Pa. 2005) (multiplier of 6.96); *Stop & Shop Supermarket Co. v. Smith-Kline Beecham Corp.*, No. Civ. A. 03-4578, 2005 WL 1213926, at *18 (E.D. Pa. May 19, 2005) (multiplier of 15.6); *In re Buspirone Antitrust Litig.*, No. 1:01-md-01413-JGK, slip op. at 8 (S.D.N.Y. Apr. 18, 2003) (Dkt. No. 171) (multiplier of 8.46); *Newman v. Carabiner International, Inc.*, No. 1:99-cv-02271, slip op. at 11 (S.D.N.Y. Oct. 25, 2001) (Dkt. No. 31) (multiplier of 7.7); *In re 3COM Corp. Sec. Litig.*, No. C-97-21083, slip op. at 12 (N.D. Cal. Mar. 9, 2001) (multiplier of 6.67); *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327, 335 (Bankr. D. Md. 2000) (multiplier of 19.6); *Perera v. Chiron Corp.*, No. 95-20725-SW (N.D. Cal. 1999), *cited in* ELIZABETH J. CABRASER, CALIFORNIA CLASS ACTIONS AND COORDINATED PROCEEDINGS § 15.05 (2d ed. 2017) (multiplier of 9.14).

Securities Litigation noted, in awarding a multiplier of 5.61, that the multiplier was "fully justified here given the effort required, the hurdles faced and overcome, and the results achieved."[149]

e. The Multiplier Is Well Justified in Comparison With Other Mega-Fund Cases

124. Multipliers much higher than 3.079 have been approved in other mega-fund cases. Such cases include, among others:

TABLE 2: Multipliers Over 3.079 in Mega-Fund Class Actions

Case	Recovery	Multiplier	Trial?
Stop & Shop Supermarket Co. v. Smith-Kline Beecham Corp., No. 03-cv-04578, 2005 WL 1213926 (E.D. Pa. May 19, 2005)	$100 million	15.6	No
Lobo Exploration Co. v. BP Am. Prod., No. CJ-1997-72 (Oka. Dist. Ct., Beaver Cnty. Dec. 8, 2005)	$150 million	8.7	No
In re Buspirone Antitrust Litig., No. 1:01-md-01413-JGK (S.D.N.Y. Apr. 18, 2003) (Dkt. No. 171)	$220 million	8.46	No
In re Rite Aid Corp. Sec. Litig., 362 F. Supp. 2d 587 (E.D. Pa. 2005)	$126.6 million	6.96	No
In re Cendant Corp. Litig., 243 F. Supp. 2d 166 (D.N.J. 2003), *aff'd*, 404 F.3d 173 (3d Cir. 2005)	$3.18 billion	6.87	No
In re 3COM Corp. Sec. Litig., No. C-97-21083 (N.D. Cal. Mar. 9, 2001)	$259 million	6.67	No
In re Credit Default Swaps Antitrust Litig., No. 1:13-md-02476, 2016 WL 2731524 (S.D.N.Y. Apr. 26, 2016)	$1.86 billion	6.2	No
In re Cardinal Health Inc. Sec. Litig., 528 F. Supp. 2d 752 (S.D. Ohio 2007)	$600 million	6	No
In re Charter Commc'ns, Inc. Sec. Litig., No. 4:02-cv-01186-CAS, 2005 WL 4045741 (E.D. Mo. June 30, 2005)	$146.2 million	5.6	No
Roberts v. Texaco, 979 F. Supp. 185 (S.D.N.Y. 1997)	$115 million	5.5	No

[149] No. 4:02-cv-01186-CAS, 2005 WL 4045741, at *18 (E.D. Mo. June 30, 2005).

Case	Recovery	Multiplier	Trial?
In re Enron Corp. Sec., Derivative & ERISA Litig., 586 F. Supp. 2d 732 (S.D. Tex. 2008)	$7.22 billion	5.21	No
DeLoach v. Phillip Morris Co., No. 1:00-cv-01235, 2003 WL 25683496 (M.D.N.C. Dec. 19, 2003)	$212 million	4.45	No
Simmons v. Anadarko Petroleum Corp., No. CJ-2004-57 (Okla. Dist. Ct., Caddo Cnty., Dec. 23, 2008)	$155 million	4.2	No
In re WorldCom, Inc. Sec. Litig., 388 F. Supp. 2d 319 (S.D.N.Y. 2005)	$3.42 billion	4.03	No
In re NASDAQ Market-Makers Antitrust Litig., 187 F.R.D. 465 (S.D.N.Y. 1998)	$1.07 billion	3.97	No
In re AOL Time Warner, Inc. Sec. & ERISA Litig., No. 02-cv-05575(SWK), 2006 WL 3057232 (S.D.N.Y. Oct. 25, 2006)	$2.65 billion	3.69	No
In re Visa Check/Mastermoney Antitrust Litig., 297 F. Supp. 2d 503 (E.D.N.Y. 2003), *aff'd sub nom.*, *Wal-Mart Stores, Inc. v. Visa USA, Inc.*, 396 F.3d 96 (2d Cir. 2005)	$3.38 billion	3.5	No
Bussie v. Allamerica Fin. Corp., No. 97-cv-040204, 1999 WL 342042 (D. Mass. May 19, 1999)	$108 million	3.3	No

125. As the court noted in the *Enron Litigation*: "The multiplier represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors."[150] It can be "adjusted to account for particular circumstances, such as the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risks involved . . . ."[151] In *Enron*, class counsel faced complex legal and factual issues, obtained class certification over vigorous opposition, took on numerous rounds of briefing and motion practice, contributed to (rather than relying entirely on) a parallel government investigation, and ultimately obtained a record-setting settlement. The court held that "the extraordinary recovery under extremely challenging circumstances . . . justifies . . . application of a significant [5.21] multiplier."[152] Similarly, in the *Rite Aid Securities Litigation*,

[150] *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 752 (S.D. Tex. 2008).

[151] *Id.*

[152] *Id.* at 797.

the court cited the "undeniably unique" facts, the complexity of the legal issues, the lack of reliance "on the fruits of any official investigation," class counsel's skillful representation, and the impressive "nine-figure settlement" in support of a multiplier of 6.96.[153] Importantly, in neither *Enron* nor *Rite Aid* was there a trial on the merits, unlike the instant case.

126. Here, a multiplier of 3.079 for MDL class counsel is well justified under the case law because class counsel took on a challenging, risky case with extremely complex legal and factual issues, prosecuted it skillfully over the course of several years without assistance from any official investigation, obtained class certification despite Syngenta's opposition, conducted a complete trial that resulted in an impressive $217.7 million jury verdict, and obtained a superb $1.51 billion settlement for the class.

f. The Multiplier Is Supported by the Relevant *Johnson* Factors

127. The reasonableness of the 3.079 multiplier is further confirmed by those *Johnson* factors that are not already subsumed by the lodestar calculation. In particular, this is an unusually complicated case, with difficult legal and factual issues, and it involved a contested class certification, a successful bellwether trial, and contentious dispositive and *Daubert* motions. MDL class counsel took on substantial risks, were precluded to a significant extent from doing other work, and achieved an enormous $1.51 billion settlement, even though the case was not a desirable one at the outset. *See* ¶¶ 52–90.

5. Conclusion on Attorneys' Fees

128. The attorneys' fees sought (33⅓ percent) are well justified based on the percentage method, and the 50 percent of those fees sought by MDL class counsel remain fully justified even if this Court were to analyze the fees under a lodestar cross check.

[153] *See In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 590 (E.D. Pa. 2005).

ALLOCATION OF FEES[154]

B. The Proposed Allocation of Attorneys' Fees Is Reasonable

129. As explained above (¶ 37), on February 23, 2018, class counsel entered into a fee-sharing agreement. Specifically, co-lead counsel in the federal MDL, co-class counsel in the Minnesota cases, and appointed lead counsel in the Illinois state cases agreed on an allocation among their various groups, after mediations with the Court-appointed special master. Under the agreement, those attorneys propose that the Court divide the fee award as follows: 50 percent to co-lead counsel in the federal MDL and the attorneys who performed and reported common benefit work in the federal MDL; 12.5 percent to attorneys who performed common benefit work in the Minnesota MDL; and 17.5 percent to appointed counsel in the Illinois state-court cases. Under the agreement, the remaining 20 percent of the requested fee would be distributed as the Court deems appropriate.

130. I understand that class counsel are now recommending that the Court allocate the common benefit portion pursuant to the February 23, 2018 agreement (50/12.5/17.5 percent). As to the remaining 20 percent, class counsel urge that that portion be allocated: (1) to subclass counsel for the Viptera purchaser, grain elevator, and ethanol production subclasses for their efforts representing those subclasses during settlement negotiations and for any service awards sought by subclass counsel for the subclass representatives; (2) to other counsel who make timely fee requests as the Court deems appropriate; and (3) if funds remain, to lawyers whose services were of demonstrable class benefit (including those in the Kansas MDL group) as the Court deems appropriate in accordance with the *Johnson* factors.

131. The February 2018 agreement was negotiated under the auspices of the special masters, and the allocations were the result of arms-length negotiations between the federal MDL common benefit group, the Minnesota common benefit group, and the Illinois common benefit group. Given the arms-length bargaining and the involvement of the special masters, I have no basis to second-guess the 50/12.5/17.5 allocation among common benefit counsel. MDL common benefit counsel did much of the heavy lifting in developing and investigating the case, and took the lead on discovery, class certification, briefing key legal issues, and trying the

[154] I offer no opinions in connection with a putative class action lawsuit filed against the Watts Guerra law firm, *Kellogg v. Watts Guerra et al.*, No. 0:18-cv-01082-DWF-BRT (D. Minn. filed Apr. 24, 2018).

Kansas case. Also, it makes perfect sense for common benefit counsel to defer to the Court on allocations to subclass counsel and other attorneys from the remaining 20 percent. Finally, it makes good sense for the Court to divide among common benefit counsel any of the 20 percent that is left over, and the *Johnson* factors can be used to determine precisely how to divide those funds.

OUT-OF-POCKET COSTS

C. The Out-of-Pocket Costs Sought by Class Counsel Are Reasonable

132. MDL class counsel seek out-of-pocket costs in the amount of $$6,695,350.05. It is well settled in the Tenth Circuit and nationwide that "an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred."[155]

133. In my opinion, the costs sought by class counsel are eminently reasonable. Those costs represent only 0.44 percent of the settlement fund. They include: expert-related expenses (more than $1.5 million), class certification notice (more than $460,000), deposition-related expenses (more than $380,000), payments to the special masters (close to $300,000), ESI expenses (close to $300,000), as well as substantial outlays for travel, research, fax and mailing charges, court costs, etc. Notably, as previously discussed, class counsel paid those enormous costs without any assurance that the case would ultimately succeed.

134. Based on my experience, costs of that magnitude are well within (indeed, below) the norm for major class actions. For example, in the *Enron* case, costs were 0.50 percent;[156] in *Visa Antitrust*, costs were 0.55 percent;[157] in the *Tyco Securities Litigation*, costs were 0.87 percent,[158]

---

[155] *Lucas v. Kmart Corp.*, No. 99-cv-01923-JLK-CBS, 2006 WL 2729260, at *9 (D. Colo. July 27, 2006). *Accord, e.g.*, *Been v. O.K. Indus., Inc.*, No. CIV-02-285-RAW, 2011 WL 4478766, at *3 (E.D. Okla. Aug. 16, 2011) ("Attorneys who recover a common fund for a class are entitled to . . . reasonable . . . costs and expenses from the fund."); *Wakefield v. Wells Fargo & Co.*, No. 3:13-CV-05053-LB, 2015 WL 3430240, at *6 (N.D. Cal. May 28, 2015) ("Class counsel are entitled to reimbursement of reasonable out-of-pocket expenses."); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 534–35 (E.D. Mich. 2003) ("Under the common fund doctrine, class counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document productions, consulting with experts and consultants, travel and other litigation-related expenses.").

[156] *See In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732 (S.D. Tex. 2008) (approximately $39 million in costs compared to $7.2 billion settlement).

[157] *See In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503 (E.D.N.Y. 2003) ($18.7 million in costs compared to $3.4 billion settlement).

in *Dahl v. Bain Capital Partners, LLC*, costs were 2.03 percent,[159] and in the *U.S. Foodservice Pricing Litigation*, costs were 2.7 percent.[160] Moreover, the costs are for standard (and expected) expenses for a case like this, and thus do not raise any concerns.

INCENTIVE PAYMENTS

D. The Proposed Incentive Payments for the Class Representatives Are Reasonable

135. The Kansas class representatives, and certain other class representatives and bellwether plaintiffs here, invested significant time and effort on behalf of the class. For most, their work on this case took them away from their families and from their day-to-day responsibilities of running their family-owned farms. Those who attended the three-week Kansas class trial had to travel to Kansas City, far from their homes and farms, and some spent the full three weeks at trial. They had to prepare to testify, and ultimately provided persuasive testimony that helped win a major verdict for the class. All of those plaintiffs who attended the Kansas class trial were also deposed, and many had to travel to prepare for and attend their sometimes lengthy depositions. A number of plaintiffs who did not attend the Kansas class trial nonetheless had to travel to prepare for and attend depositions. And all of the plaintiffs who were deposed also responded to lengthy written discovery—including at least six sets of interrogatories propounded by Syngenta and nearly 100 requests for admissions—and produced numerous documents detailing their farming operations in response to Syngenta's requests for production. Other plaintiffs were not deposed, but spent significant time responding to voluminous requests for production beyond plaintiff fact sheets. In addition to searching and reviewing their own files to respond to Syngenta's discovery requests, many plaintiffs in each category had to put in additional effort to obtain documents from third parties.

136. Class counsel seek incentive payments for those class representatives and bellwether plaintiffs, to be structured as follows: (1) $100,000 for each plaintiff who attended the Kansas

---

[158] *See In re Tyco Int'l Ltd. Litig.*, 535 F. Supp. 2d 249 (D.N.H. 2007) ($28.9 million in costs compared to $3.3 billion settlement).

[159] *Dahl v. Bain Capital Partners, LLC*, No. 1:07-cv-12388 (D. Mass. Feb. 2, 2015) (Dkt. No. 1095) ($12 million in costs compared to $590.5 million settlement).

[160] *In re U.S. Foodservice, Inc. Pricing Litig.*, No. 3:07-md-01894 (AWT), slip op. at 7 (D. Conn. Dec. 9, 2014) (Dkt. No. 521) ($8.08 million in costs compared to $297 million settlement). Professors Eisenberg and Miller found that mean and median costs awarded in all class settlements between 2003 and 2008 were 2.7 percent and 1.7 percent, respectively. *See* Eisenberg & Miller, *supra* note 20, at 274.

class trial; (2) $15,000 for each plaintiff who was deposed but did not attend the Kansas class trial; and (3) $5,000 for each plaintiff who responded to written discovery but was not deposed and did not attend the Kansas class trial. The first category encompasses four plaintiffs; the second encompasses 65 plaintiffs; and the third encompasses 20 plaintiffs.[161] Thus, the proposed incentive payments total $1.475 million, or 0.1 percent of the $1.51 billion common fund. In my view, these requests are reasonable based on the facts and circumstances presented here.

137. In the Tenth Circuit and elsewhere, incentive payments serve as compensation to class representatives "for personal risk incurred by the [class representative] or additional effort and expertise provided for the benefit of the class."[162] Courts often look to "the extent of the plaintiff's personal involvement in the lawsuit in terms of discovery responsibilities and/or testimony at depositions or trial."[163] Moreover, courts frequently evaluate incentive payments "in comparison to the total recovery on behalf of the class."[164]

138. Courts have approved substantial incentive payments where the class representatives undertook particularly demanding work on behalf of the class. The payments sought here are substantial but not unprecedented. Thus, courts have awarded $100,000 or more in a number of cases, such as where the representatives participated in trials or otherwise performed major roles. For instance, in *Urethane*, this Court awarded incentive payments as high as $150,000 to $200,000 out of a fund of $835 million.[165] In *Boynton v. Headwaters, Inc.*, the court approved incentive payments of $100,000 out of a fund of $16 million, noting the "diligence" of the class representatives and the "significant financial sacrifices" they made in playing such active, time-

[161] The plaintiffs in each category are identified in the Memorandum in Support of Kansas MDL Co-Lead Counsel and Settlement Class Counsel Christopher Seeger's Petition for Award of Attorneys' Fees, Reimbursement of Expenses, Service Awards to Class Representatives/Bellwether Plaintiffs and Allocation of Attorneys' Fee Award (filed contemporaneously).

[162] *UFCW Local 880–Retail Food Emp'rs Joint Pension Fund v. Newmont Mining Corp*., 352 F. App'x 232, 235–36 (10th Cir. 2009). *Accord, e.g.*, *Hadix v. Johnson*, 322 F.3d 895, 898 (6th Cir. 2003) (noting that "incentive awards are efficacious ways of . . . rewarding individual efforts taken on behalf of the class," noting that "[n]umerous courts have authorized incentive awards," and citing cases approving incentive awards); *Lane v. Page*, 862 F. Supp. 2d 1182, 1234 (D.N.M. 2012) (noting that incentive payments serve "to compensate a class representative for risks they take and work they perform on behalf of the class").

[163] *Reibstein v. Rite Aid Corp*., 761 F. Supp. 2d 241, 257 (E.D. Pa. 2011).

[164] *Meijer, Inc. v. Warner Chilcott Holdings Co. III, Ltd*., 565 F. Supp. 2d 49, 57 (D.D.C. 2008).

[165] *See In re Urethane Antitrust Litig*., No. 04-md-01616-JWL, slip op. at 2 (D. Kan. July 29, 2016) (Dkt. No. 3276).

consuming roles.[166] Other examples are *In re High-Tech Employee Antitrust Litigation*,[167] *In re Titanium Dioxide Antitrust Litigation*,[168] *Ivax Corp. v. Aztec Peroxides, LLC*,[169] *In re Neurontin Antitrust Litigation*,[170] *Marchbanks Truck Services v. Comdata Network, Inc.*,[171] *Been v. O.K. Industries, Inc.*,[172] *Columbus Drywall & Insulation, Inc. v. Masco Corp*,[173] *Velez v. Novartis Pharmaceutical Corp.*,[174] and the *NFL Concussion Litigation*.[175] And of course, myriad cases have awarded payments of less than $100,000.[176]

139. In evaluating the reasonableness of proposed incentive payments, courts in the Tenth Circuit consider a number of factors:

> (1) the actions the class representative took to protect the interests of the class; (2) the level of benefit that the class received from the class representative's actions; and (3) the quantity of time and effort the class representative spent in pursuing the litigation.[177]

---

[166] No. 10:2-cv-01111-JPM-EGB, 2012 WL 12546853, at *3 (W.D. Tenn. Mar. 27, 2012).

[167] No. 11-cv-02509-LHK, 2015 WL 5158730, at *17–18 (N.D. Cal. Sept. 2, 2015) ($100,000–$140,000 incentive payments out of $16 million settlement fund).

[168] No. 10-cv-00318(RDB), 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) ($125,000 incentive payment out of $163.5 million fund).

[169] No. 1:02-cv-00593, slip op. at 2 (D.D.C. Aug. 24, 2005) (Dkt. No. 78) ($100,000 incentive payments out of $21 million fund).

[170] No. 02-cv-01830, slip op. ¶ 31 (D.N.J. Aug. 6, 2014) (Dkt. No. 114) ($100,000 incentive payments out of $190 million fund).

[171] No. 07-cv-01078, slip op. at 2, 8 (E.D. Pa. July 14, 2014) (Dkt. No. 713) ($150,000 and $75,000 incentive payments out of $130 million fund).

[172] No. CIV-02-285-RAW, 2011 WL 4478766, at *12 (E.D. Okla. Aug. 16, 2011) ($100,000 incentive payments out of $15.6 million fund).

[173] No. 1:04-cv-03066-JEC, 2008 WL 11319972, at *3 (N.D. Ga. Mar. 4, 2008) ($100,000 incentive payments out of $37.25 million fund).

[174] No. 04-cv-09194-CM, 2010 WL 4877852, at *4, *8, *28 (S.D.N.Y. Nov. 30, 2010) ($125,000 incentive payments out of $152.5 million fund).

[175] *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1635648, at *10–11 (E.D. Pa. Apr. 5, 2018) ($100,000 incentive payments out of $1 billion fund).

[176] *See, e.g.*, *In re Online DVD Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (permitting $5,000 incentive payments); *Thompson v. Qwest Corp.*, No. 17-cv-01745-WJM, 2018 WL 2183988, at *3 (D. Colo. May 11, 2018) (same); *Waldbuesser v. Northrop Grumman Corp.*, No. 06-cv-06213-AB (JCX), 2017 WL 9614818, at *6–8 (C.D. Cal. Oct. 24, 2017) ($25,000 incentive payments out of $16.75 million fund); *see also, e.g.*, *In re AT&T Mobility Wireless Data Services Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1041–42 (N.D. Ill. 2011) (awarding $5,000 incentive payments despite noting that "the parties undertook no formal discovery" and thus "the class representatives' roles were largely prospective").

[177] *Nieberding v. Barrette Outdoor Living, Inc.*, 129 F. Supp. 3d 1236, 1251 (D. Kan. 2015).

Courts also consider the personal risk assumed by the class representative.[178] I assess each of these factors below:

140. **Actions to Protect the Interests of the Class.** Here, the class representatives and other bellwether plaintiffs ensured that common benefit counsel could properly litigate the case. Without their cooperation, common benefit counsel could not have complied with their discovery obligations or satisfied plaintiffs' burden of proof in the bellwether trial. All of the plaintiffs for whom incentive payments are sought responded to written discovery and produced documents. Some of those plaintiffs also prepared for and sat for depositions. And a subgroup of the latter group actually attended and participated in all or most of the three week trial. *See* Stueve Decl. ¶ 305. All of these actions were designed to ensure that plaintiffs satisfied their discovery obligations and succeeded at trial.

141. **Benefit to the Class.** The benefit to the class is obvious: the class representatives and other bellwether plaintiffs did important heavy lifting that enabled class counsel to win the Kansas class bellwether trial, secure a jury verdict of $217.7 million, and thereby parlay that verdict into a $1.51 billion settlement. As the court noted in *In re Linerboard Antitrust Litigation*: "Like the attorneys in this case, the class representatives have conferred benefits on all other class members and they deserve to be compensated accordingly."[179]

142. **Time and Effort.** The declarations contemporaneously filed by counsel detail the substantial time and effort put into the case by each plaintiff for whom an incentive payment is sought. *See, e.g.*, Stueve Decl. ¶¶ 279–401.

143. **Risk.** The class representatives and bellwether plaintiffs took a huge risk that, despite all the hours they put into the case, causing them at times to put their farming operations on hold, they (and the class) might end up recovering nothing. And, of course, had the case not gone well for the class, there would be no chance that these plaintiffs would be eligible for incentive

[178] *See, e.g.*, *In re Motor Fuel Temperature Sales Practices Litig.*, 271 F.R.D. 263, 293 (D. Kan. 2010) (noting that incentive awards are justified "to compensate [class representatives] for personal risk incurred"); *In re Auto. Refinishing Paint Antitrust Litig.*, No. MDL-1426, 2008 WL 63269, at *7 (E.D. Pa. Jan. 3, 2008) (noting, in awarding incentive payments of $30,000 each, that "[t]he Class Representatives not only conferred benefits on all of the Class Members, but also risked jeopardizing their existing relationships with their suppliers of automotive refinishing paint products"); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299–300 (N.D. Cal. 1995) (noting that, in evaluating the reasonableness of incentive payments, courts consider "the risk to the class representative in commencing suit, both financial and otherwise").

[179] No. 98-cv-05055, 2004 WL 1221350, at *18 (E.D. Pa. June 2, 2004).

payments. Moreover, the Kansas class representatives took on unique risk because of the timing of the Kansas class trial. The June 2017 trial occurred during the final weeks of the Kansas corn planting season (and for some, the wheat harvest season), a critical time for farmers to be on their farms. *See* Stueve Decl. ¶ 305. The Kansas class representatives' willingness to travel to Kansas City for up to three weeks during planting season put their families' livelihoods at risk, and represents a much different situation than a company merely sending a designated corporate representative to sit at trial.

144. Two examples that illustrate the hardships borne by the Kansas class representatives who attended the trial are David Polifka and Daniel Grafel. Polifka, a corn and wheat farmer in Quinter, Kansas, completed a fact sheet for class counsel, responded to numerous interrogatories propounded by Syngenta, and produced over 6,000 pages of documents detailing his farming operations. He attended a deposition 50 miles from his home, spent nearly three full weeks in Kansas City at the trial, and provided live testimony on day eight of the trial. During corn planting and wheat harvest season, Polifka would normally have been putting in long days on his family farm—as well as providing equipment for and assisting his two sons with their farms—but abandoned those duties for the benefit of the class. Grafel, a corn and wheat farmer in Oberlin, Kansas, also completed a fact sheet for class counsel and responded to numerous interrogatories propounded by Syngenta. In total, he produced over 22,000 pages of documents detailing his farming operations. He was deposed locally, but traveled to Kansas city for nearly three weeks for the trial, and was the first live witness at trial. Like Polifka, Grafel would normally have been working long days during the corn planting and wheat harvest season—the busiest time of the year for his family farm. His efforts on behalf of the class and absence during that critical time placed "significant stress" on his farming operation. Stueve Decl. ¶¶ 309–333.

145. Finally, none of the questionable circumstances that have caused courts to reject or overturn incentive payments in other cases exist here. In *Radcliffe v. Experian Information Solutions Inc.*, for example, the Ninth Circuit overturned a class settlement on the ground that the settlement agreement provided for incentive awards *only* if the class representatives supported the settlement, creating a "patent divergence of interests between the named representatives and the class."[180] By contrast, the incentive payments in this case are not conditioned on support for

[180] 715 F.3d 1157, 1161 (9th Cir. 2013).

the settlement. Additionally, this is not a case where the unnamed class members receive nothing.[181] Indeed, the proposed incentive payments represent only a tiny fraction (0.1 percent) of the total recovery. Here, the class will receive significant monetary compensation for their losses. Thus, the entire class directly benefited from the class representatives' investment of time in the case.

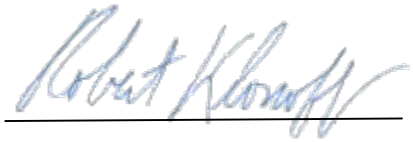
VII. CONCLUSION

146. It is my opinion that the attorneys' fees requested, proposed fee allocation, expenses claimed, and proposed incentive payments are reasonable.

[181] Even in a case where the settlement went entirely to a *cy pres* entity and attorneys' fees, the Ninth Circuit affirmed incentive payments. *See Lane v. Facebook, Inc*., 696 F.3d 811, 817 (9th Cir. 2012).

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct based on information known to me.



Robert H. Klonoff

July 10, 2018

APPENDIX A

CURRICULUM VITAE

ROBERT H. KLONOFF
Lewis & Clark Law School
10015 SW Terwilliger Blvd.
Portland, Oregon 97219
Tel: 503-768-6601 (Office)
E-Mail: klonoff@lclark.edu

Date of Birth: March 15, 1955
Place of Birth: Portland, Oregon

EDUCATION:

J.D., Yale University, 1979

A.B., University of California, Berkeley, 1976, Majored in Political Science/Economics (Highest Honors)

WORK EXPERIENCE:

Current Position:

Jordan D. Schnitzer Professor of Law, Lewis & Clark Law School (since 2014)

Prior Positions:

Dean of the Law School, Lewis & Clark Law School (2007-2014)

Douglas Stripp/Missouri Endowed Professor of Law, University of Missouri-Kansas City School of Law (2003-2007)

Jones Day, Washington, D.C. (Partner, 1991-July 2003; Of Counsel, 1989-1991, 2003- 2007)

Adjunct Professor of Law, Georgetown University Law Center (class action law and practice) (1999-2003)

Visiting Professor of Law, University of San Diego School of Law (1988-1989)

Assistant to the Solicitor General of the United States (1986-1988)

Assistant United States Attorney (Criminal Division, District of Columbia) (1983-1986)

Associate, Arnold & Porter, Washington, D.C. (1980-1983)

Law Clerk to the Honorable John R. Brown, Chief Judge, United States Court of Appeals for the Fifth Circuit (1979-1980)

Summer Associate, Baker & Botts, Houston, and Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C. (1978)

Summer Associate, Sidley & Austin, Washington, D.C. (1977)

SPECIAL HONORS AND ACHIEVEMENTS:

Member, 2011-2017, United States Judicial Conference Advisory Committee on Civil Rules (appointed by Chief Justice John G. Roberts, Jr., in 2011 as the sole voting member from the law school academy; reappointed May 2014 for a second three-year term)

Elected Member, International Association of Procedural Law

Selected in November 2013 for the J. William Fulbright Specialist Roster

Recipient, Oregon Consular Corps Award for Individual Achievement in International Outreach, Portland, Oregon (May 2013)

Associate Reporter, American Law Institute's *Principles of the Law of Aggregate Litigation* (class action project; drafts presented at several annual meetings; final version approved by full ALI in May 2009 annual meeting and published in May 2010)

Fellow, American Academy of Appellate Lawyers

Fellow, American Bar Foundation

Academic Fellow, Pound Institute

Elected Member, American Law Institute

Recipient, 2007 Award for Outstanding UMKC Law Professor (based on vote of 3d year class)

2007 UMKC Law School Commencement Speaker (based on vote of 3d year class)

Recipient, 2006 UMKC Law School Elmer Pierson Teaching Award for Most Outstanding Teacher in the Law School (selected by the Dean)

Recipient, 2005 President's Award for Outstanding Service from the UMKC Law School Foundation

Reporter, 2005 National Conference on Appellate Justice (co-sponsored by the Federal Judicial Center, National Center for State Courts, and other organizations)

Co-Recipient, District of Columbia Bar's Frederick B. Abramson Award for Superior Service to the Community (June 1998)

Attorney General's Special Achievement Award for Outstanding Work as an Assistant to the Solicitor General of the United States (1986, 1987)

Attorney General's Special Achievement Award for Outstanding Work as an Assistant United States Attorney (1984, 1985)

The Benjamin N. Cardozo Prize for Best Moot Court Brief for Academic Year 1978-1979, Yale Law School

Semi-Finalist, Moot Court Oral Argument, Yale Law School (Fall, 1978)

Phi Beta Kappa

U.C. Berkeley's Most Outstanding Political Science Student (1976)

The Edward Kraft Award for Outstanding Work as a Freshman Student, U.C. Berkeley (1974)

MEMBERSHIPS:

U.S. Supreme Court Bar

Various Federal Circuit and District Courts

District of Columbia Bar

Missouri State Bar

Oregon State Bar

Multnomah County Bar

American Law Institute

American Bar Association

American Bar Association Committee on Class Actions & Derivative Suits (Section of Litigation)

PUBLICATIONS:

Books:

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West 5th ed. 2017)

Castanias & Klonoff, *Federal Appellate Practice in a Nutshell* (West 2d ed. 2017)

Klonoff, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 4th ed. 2017) (with teacher's manual)

Klonoff, *Introduction to the Study of U.S. Law: Cases and Materials* (West 2016)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (Thomson West 4th ed.) (2012)

Klonoff, Bilich & Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 3d ed.) (2012) (with teacher's manual)

Klonoff (associate reporter), *Principles of the Law of Aggregate Litigation*, American Law Institute Publications (2010) (along with Samuel Issacharoff, reporter, and associate reporters Richard Nagareda and Charles Silver)

Castanias & Klonoff, *Federal Appellate Practice and Procedure in a Nutshell* (Thomson West) (2008)

Klonoff & Colby, *Winning Jury Trials: Trial Tactics and Sponsorship Strategies* (NITA 3d ed.) (2007)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (Thomson West 3d ed.) (2007)

Klonoff, Bilich & Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (Thomson West 2d ed.) (2006) (with teacher's manual)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (Thomson West 2d ed.) (2004)

Klonoff & Colby, *Winning Jury Trials: Trial Tactics and Sponsorship Strategies* (Lexis Nexis 2d ed.) (2002)

Klonoff & Bilich, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West Group 2000)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West Group 1999)

Klonoff & Colby, *Sponsorship Strategy: Evidentiary Tactics for Winning Jury Trials* (Michie Co. 1990)

Articles and Book Chapters:

Application of the New Discovery Rules in Class Actions: Much Ado About Nothing, 6 Vanderbilt L. Rev. ___ (forthcoming, 2018)

Class Actions in the U.S. and Israel: A Comparative Approach, 19 Theoretical Inquiries in the Law 151 (2018) (co-author)

Class Actions Part II: A Respite from the Decline, 92 N.Y.U. L. Rev. 971 (2017)

The Remedy For Election Fraud Is A New Election, Law 360 (July 20, 2017) (www.law360.com/whitecollar/articles/946569/the-remedy-for-election-fraud-is-a-new-election)

Class Actions in the Year 2025: A Prognosis, 65 Emory L.J. 1569 (2016)

Why Most Nations Do Not Have U.S.-Style Class Actions, 16 BNA Class Action Litigation Report, Vol. 16, No. 10, at 586 (May 22, 2015) (selected for presentation at the May 2015 World Congress of the International Association of Procedural Law, Istanbul, Turkey)

Federal Rules Symposium: A Tribute to Judge Mark R. Kravitz -- Introduction to the Symposium, 18 Lewis & Clark L. Rev. 583 (2014) (co-author)

Class Actions for Monetary Relief Under Rule 23(b)(1)(A) and (b)(1)(B): Does Due Process Require Notice and Opt-Out Rights?, 82 Geo. Wash. L. Rev. 798 (2014)

The Decline of Class Actions, 90 Wash. U. (St. Louis) L. Rev. 729 (2013)

Reflections on the Future of Class Actions, 44 Loy. U. Chi. L.J. 533 (2013)

Richard Nagareda: In Memorium, 80 U. Cin. L. Rev. 289 (2012)

Introduction and Memories of a Law Clerk, 47 Houston L. Rev. 529, 573 (2010)

ALI's Aggregate Litigation Project Has Global Impact, 33 ALI Reporter 7 (Fall 2010)

Book Review, *In the Public Interest,* 39 Env. Law 1225 (2009)

The Public Value of Settlement, 78 Fordham L. Rev. 1177 (2009)(co-author)

Making Class Actions Work: The Untapped Potential of the Internet, 69 U. Pitt. L. Rev. 727 (co-author)(2008), adapted and published in 13 J. Internet Law 1 (2009)

The Class Action Fairness Act: An Ill-Conceived Approach to Class Settlements, 80 Tul. L. Rev. 1695 (co-author) (2006)

The Twentieth Anniversary of Phillips Petroleum v. Shutts, *Introduction to the Symposium*, 74 UMKC L. Rev. 433 (2006)

The Adoption of a Class Action Rule: Some Issues for Mississippi to Consider, 24 Miss. C. L. Rev. 261 (2005)

Antitrust Class Actions: Chaos in the Courts, 11 Stan. J. L. Bus. & Fin. 1 (2005), reprinted in Litigation Conspiracy: An Analysis of Competition Class Actions (Stephen G.A. Pitel ed. Irwin Law 2006), and 3 Canadian Class Action Review 137 (2006)

The Judiciary's Flawed Application of Rule 23's "Adequacy of Representation" Requirement, 2004 Mich. St. L. Rev. 671 (2004)

Class Action Rules — Are They Driven by Substance?, 1 Class Action Litigation Report 504 (Nov. 10, 2000) (co-author)

Response to May 2000 Article on Sponsorship Strategy, 63 Tex. B.J. 754 (Sept. 2000) (co-author)

A Look at Interlocutory Appeals of Class Certification Decisions Under Rule 23(f), 1 Class Action Litigation Report 69 (May 12, 2000) (co-author)

The Mass Tort Class Action Gamble, 7 Metro. Corp. Counsel 1, 8 (Aug. 8, 1999) (co-author)

"Legal Approaches to Sex Discrimination" (co-author), in H. Landrine & E. Klonoff, *Discrimination Against Women: Prevalence, Consequences, Remedies* (Sage Pub. 1997)

Sponsorship Strategy: A Reply to Floyd Abrams and Professor Saks, 52 Md. L. Rev. 458 (1993) (co-author)

A Trial Lawyer's Roadmap for Handling Bad Facts: The Role of Credibility, 16 Trial Diplomacy Journal 139 (July/Aug. 1993) (co-author)

Opening Statement, 17 Litigation 1 (ABA Spring 1991) (co-author)

Contributing Editor, *Criminal Practice Institute Trial Manual*, Young Lawyers Section, Bar Ass'n of D.C. (1986)

The Congressman as Mediator Between Citizens and Government Agencies: Problems and Prospects, 15 Harv. J. Legis. 701 (1979)

A Dialogue on the Unauthorized Practice of Law, 25 Villanova L. Rev. 6 (1979) (co-author)

The Problems of Nursing Homes: Connecticut's Non Response, 31 Admin. L. Rev. 1 (1979)

SIGNIFICANT LEGAL EXPERIENCE:

Argued eight cases before the U.S. Supreme Court

Authored dozens of U.S. Supreme Court filings (certiorari petitions, certiorari oppositions, merits briefs, reply briefs)

Briefed and argued numerous cases before various U.S. circuit and district courts and state trial and appellate courts

Tried dozens of cases (primarily jury trials)

Handled more than 100 class action cases as counsel

Served as an expert witness in numerous federal and state class action cases, including the British Petroleum Deepwater Horizon oil spill case, the National Football League Concussion case, and the Volkswagen "Clean Diesel" case

Worked extensively with testifying and consulting experts on class action issues, including economists, securities experts, medical and scientific experts, and leading academics

Presented more than 100 cases to the grand jury while serving as an Assistant U.S. Attorney

Handled hundreds of sentencing hearings, preliminary hearings, and probation revocation hearings

SIGNIFICANT TEACHING AND SPEAKING ENGAGEMENTS

Speaker on Class Actions, Freie University Faculty of Law, Berlin, Germany (June 26, 2018)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (April 2018) (taught course on Introduction to United States Law)

Co-Chair, Moderator, and Panelist, Posner on Class Actions, Columbia Law School, New York, New York (March 2, 2018)

Panelist on Civil Discovery, Vanderbilt University School of Law, Nashville, Tennessee (October 13, 2017)

Panelist on the Civil Rules Committee Process, University of Arizona College of Law, Tucson, Arizona (October 7, 2017)

Visiting Professor of Law, University of Bologna School of Law, Ravenna, Italy (July 2017) (faculty member for environmental law program; lectured on environmental class actions)

Visiting Professor of Law, University of Trento School of Jurisprudence, Trento, Italy (May 2017) (taught course on Introduction to U.S. Law)

Panelist on Class Actions, Beard Group, Class Action Money and Ethics Conference, New York, New York (May 1, 2017)

Visiting Professor of Law, Tel Aviv University, Tel Aviv, Israel (January 2017) (taught course on class actions)

Panelist on Class Actions, Tel Aviv University, Fifty Years of Class Actions – A Global Perspective (January 4, 2017)

Panelist on Class Actions, New York University Law School Conference on Rule 23@50, New York, New York (December 2, 2016)

Panelist on Class Actions, Appellate Judges Education Institute, Philadelphia, Pennsylvania (November 11, 2016)

Speaker on Class Actions, National Legal Aid Defender Association National Farmworker Conference, Indianapolis, Indiana (November 10, 2016)

Panelist on Class Actions, American Bar Association Class Action Institute, Las Vegas, Nevada (October 20, 2016)

Panelist, Duke University Law School Conference on Class Action Settlements, San Diego, California (October 6, 2016)

Fulbright Scholar, Hong Kong University School of Law (August- September 2016) (taught course on class actions and delivered campus-wide lecture on criminal procedure)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (June 2016) (taught course on Introduction to United States Law)

Speaker on Class Actions, University of Zagreb Law School, Zagreb, Croatia (May 11, 2016)

Panelist on Civil Litigation, Association of American Law Schools Annual Meeting, New York, New York (January 8, 2016)

Visiting Professor of Law, Bahçeşehir University School of Law, Istanbul, Turkey (December 2015) (taught Introduction to United States Law)

Invited Participant, Conference on Civil Justice (Pound Institute) Emory University Law School, Atlanta, Georgia (October 15, 2015)

Invited Participant, Conference on Class Actions, Duke Law School, Arlington, Virginia (July 23-24, 2015)

Invited Participant, Conference on Class Actions, Defense Research Institute, Washington, D.C. (July 23-24, 2015)

Invited Participant, Civil Procedure Workshop, Seattle University Law School, Seattle, Washington (July 17, 2015)

Panelist on Class Actions, Annual Meeting, American Association for Justice, Montreal, Canada (July 12, 2015)

Speaker on Class Actions, International Association of Procedural Law, Istanbul, Turkey (May 28, 2015)

Panelist, Subcommittee on Class Actions of U.S. Judicial Conference Advisory Committee on Civil Rules, American Law Institute Annual Meeting, Washington, D.C. (May 17, 2015)

Moderator, Ethical Issues in Class Actions and Non-Class Aggregate Litigation, American Law Institute Annual Meeting, Washington, D.C., (May 17, 2015)

Visiting Professor of Law, University of Trento, Trento, Italy (March 2015) (taught U.S. Class Actions)

Speaker on Class Actions, European University Institute, Fiesole, Italy (February 23, 2015)

Visiting Professor of Law, University of Notre Dame, Fremantle Australia (January 2015) (taught course on U.S. Civil Rights and Civil Liberties)

Visiting Professor of Law, Universidad Sergio Arboleda, Bogota and Santa Marta, Colombia (December 2014) (taught course on Introduction to United States Law)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (November 2014) (taught course on Introduction to United States Law)

Panelist, American Bar Association, National Institute on Class Actions, Chicago, Illinois (October 23, 2014)

Visiting Professor of Law, East China University of Political Science and Law, Shanghai, China (October 2014) (taught U.S. Class Actions)

Visiting Professor of Law, Herzen State Pedagogical University of Russia, St. Petersburg, Russia (September 2014) (taught U.S. Class Actions)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (July 2014) (taught Introduction to United States Law)

Speaker on U.S. Legal Education, Universidad Sergio Arboleda School of Law, Bogota, Colombia (June 3 and 5, 2014)

Speaker on Class Actions, Superintendencia de Industria y Comercio, Bogota, Colombia (June 3, 2014)

Speaker on Class Actions and the Fukushima Nuclear Accident, Waseda University School of Law, Tokyo, Japan (January 24, 2014)

Speaker on Class Actions, Osaka Bar Association, Osaka, Japan (January 23, 2014)

Speaker on Class Actions, East China University of Political Science and Law, Shanghai, China (January 15, 2014)

Speaker on Class Actions, AmCham Shanghai, Shanghai, China (January 14, 2014)

Speaker on Development of Animal Law in the Legal Academy, 2013 Animal Law Conference, Stanford Law School, Palo Alto, California (November 25, 2013)

Speaker on U.S. Law and Legal Education, Royal University of Law and Economics, Phnom Penh, Cambodia (October 1, 2013)

Speaker on U.S. Law and Legal Education, Paññāsāstra University of Cambodia, Phnom Penh, Cambodia (October 1, 2013)

Speaker on U.S. Legal Education, International Association of Law Schools International Deans' Forum, National University of Singapore Law School, Singapore (September 26, 2013)

Speaker on Class Actions, Japan Federation of Bar Associations, Tokyo, Japan (September 19, 2013)

Speaker on Class Actions, Waseda University School of Law, Tokyo, Japan (September 19, 2013)

Speaker on Ethics of Aggregate Settlements, American Association for Justice Annual Meeting, San Francisco, California (July 22, 2013)

Speaker on the British Petroleum Class Action Settlement, International Water Law Conference, National Law University of Delhi, Delhi, India (May 31, 2013)

Speaker on U.S. Supreme Court Confirmation Process, Jewish Federation of Greater Portland's Food for Thought Festival, Portland, Oregon (April 21, 2013)

Speaker on Class Actions, Class Action Symposium, George Washington University Law School, Washington, D.C. (March 8, 2013)

Speaker on Class Actions, Impact Fund Class Action Conference, Oakland, California (March 1, 2013)

Speaker on Class Actions, Hong Kong University Department of Law (November 15, 2012)

Speaker on Class Actions, Fudan University Law School (Shanghai, China) (November 13, 2012)

Keynote Speaker, National Consumer Law Center Symposium, Seattle, Washington (October 28, 2012)

Speaker, American Bar Association, National Institute on Class Actions, Chicago, Illinois (October 25, 2012)

Speaker, Conference on Class Actions, Washington University St. Louis School of Law and the Institute for Law and Economic Policy (April 27, 2012)

Speaker, Conference on Class Actions, Loyola Chicago School of Law (April 13, 2012)

Panelist on leadership and world peace with Former South African President F.W. De Klerk, University of Portland (February 29, 2012)

Panelist on class actions before the Standing Committee on Rules of Practice and Procedure, Phoenix, Arizona (January 5, 2012)

Speaker on Class Actions Lawsuits in the U.S., University of the Philippines, College of Law, Quezon City, Philippines (August 2011)

Speaker on Environmental Class Actions, Kangwon University Law School, Chuncheon, South Korea (August 2011)

Speaker on Class Actions, Federal Judicial Center Conference on Class Actions, Duke University School of Law (May 20, 2011)

Speaker, Conference on Aggregate Litigation, University of Cincinnati College of Law (April 1, 2011)

Speaker on Class Actions, Seoul National University School of Law (May 18, 2010)

Keynote Speaker (addressing US Supreme Court confirmation process), Alaska Bar Annual Meeting (April 28, 2010)

Speaker, Conference on the Future of Animal Law, Harvard Law School (April 11, 2010)

Speaker, Conference on Aggregate Litigation: Critical Perspectives, George Washington University Law School (Mar. 12, 2010)

Speaker, U.S. Supreme Court Confirmation Process, Multnomah County Bar Association and City Club of Portland, (Sept. 30, 2009)

Speaker on Class Actions, American Legal Institutions, and American Legal Education at National Law Schools of India in Bangalore, Hyderabad, Calcutta, Jodhpur, and Delhi (August 2009)

Speaker, China/U.S. Conference on Tort and Class Action Law, Renmin University of China School of Law, Beijing, China (July 11-12, 2009)

Speaker on Class Actions, Southeastern Association of Law Schools annual meeting, Palm Beach, Florida (August 1, 2008)

Speaker on Class Actions, National Foundation for Judicial Excellence (meeting of 150 state appellate court judges), Chicago, Illinois (July 12, 2008)

Speaker on Class Actions, Practising Law Institute, New York, NY (July 10, 2008)

Speaker at Conference on Class Actions in Europe and North America, sponsored by New York University School of Law, the American Law Institute, and the European University Institute, Florence, Italy (June 13, 2008)

Speaker on Class Actions at the American Bar Association Tort and Insurance Section Meeting, Washington, D.C. (Oct. 26, 2007)

Speaker on Antitrust Class Actions at the American Bar Association's Annual Antitrust Meeting, Washington D.C. (April 18, 2007)

Chair, Organizer, and Moderator of Class Action Symposium at UMKC School of Law (April 7, 2006) (other speakers (26 in all) included, *e.g.*, Professors Arthur Miller, Edward Cooper, Sam Issacharoff, Geoffrey Miller, and Linda Mullenix, as well as several prominent federal judges and practicing lawyers)

Speaker on Class Actions, Missouri CLE (Nov. 18, 2005)

Speaker on Class Actions, Practising Law Institute (July 29, 2005)

Speaker on Class Actions, Kansas CLE (June 23, 2005)

Speaker on Class Actions at Bureau of National Affairs Seminar on the Class Action Fairness Act of 2005 (June 17, 2005)

Visiting Lecturer on Class Actions, Peking University (May 30-June 3, 2005)

Speaker on Oral Argument, American Bar Association 2005 Section of Litigation Annual Conference (April 22, 2005) (part of panel including Second Circuit Chief Judge Walker and several others)

Speaker on Class Actions, Federal Trade Commission/Organization for Economic Co-operation and Development, Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace (April 19, 2005)

Speaker at Antitrust Class Action Symposium, University of Western Ontario College of Law (April 1, 2005)

Speaker at Class Action Symposium, Mississippi College of Law (February 18, 2005)

Speaker on Class Actions, Practising Law Institute (July 30, 2004)

Visiting Lecturer on Class Actions, Peking University (June 2004)

Visiting Lecturer on Class Actions, Tsinghua University (June 2004)

Speaker at Class Action Symposium, Michigan State University (April 16-17, 2004)

Speaker on U.S. Supreme Court advocacy, David Prager Advanced Appellate Institute (Kansas City Metropolitan Bar Association) (Feb. 27, 2004)

Speaker on Class Actions, Institute of Continuing Legal Education in Georgia (Oct. 24, 2003)

Speaker on Class Actions, Practising Law Institute (July 31, 2003)

Speaker on Class Actions, Practising Law Institute (Aug. 5, 2002)

Speaker on Class Actions, Practising Law Institute (Aug. 16, 2001)

Speaker on many occasions throughout the country on "Sponsorship Strategy" (1990-present) and advocacy before the U.S. Supreme Court (1988-present)

OTHER LEGAL ACTIVITIES:

Member of American Bar Association Group Evaluating Qualifications of Merrick Garland to serve on the U.S. Supreme Court

Advisory Board Consulting Editor, *Class Action Litigation Report* (BNA)

Advisory Board, The Flawless Foundation (an organization that serves troubled children)

Member, Board of Directors, Citizens' Crime Commission (Portland, Oregon) (2007-2011)

Served on numerous UMKC School of Law committees, including Programs (Chair), Promotion and Tenure, Appointments, and Smith Chair Appointment

Chair of pro bono program for all 27 offices of Jones Day (2000-2004); also previously Chair of Washington office pro bono program (1992-2003)

Member, Board of Directors, Bread for the City (a D.C. public interest organization providing medical, legal, and social services) (2001-2003)

Master, Edward Coke Appellate Practice Inn of Court in Washington, D.C. (other participants include Ted Olson, Seth Waxman, Ken Starr, Walter Dellinger, and several sitting appellate judges) (2001-2003)

Member, Board of Directors, Washington Lawyers' Committee for Civil Rights and Urban Affairs (2000-2003); Advisory Board Member (2003-present)

Member, D.C. Court of Appeals Committee on Unauthorized Practice of Law (1997-2000)

Handled and supervised numerous pro bono matters (*e.g.*, death penalty and other criminal defense, civil rights, veterans' rights)

Played a major role in establishing a walk-in free legal clinic in Washington, D.C.'s Shaw neighborhood

VOLUNTEER WORK:

Numerous guest speaker appearances at public schools and retirement homes; volunteer at local soup kitchen; volunteer judge for Classroom Law Project.

APPENDIX B

MATERIALS REVIEWED

In addition to the documents and information identified in my Declaration, below are additional materials considered in forming the opinions expressed above:

- **Court Filings (including accompanying exhibits and/or addendums) in *In re Syngenta AG MIR162 Corn Litigation*, Case No. 14-2591 (D. Kan.):**
  - Order Concerning Appointment of Counsel (Dkt. No. 67).
  - Syngenta's Motion to Dismiss Producer and Non-Producer Plaintiffs' Amended Class Action Master Complaints (Dkt. No. 856).
  - Syngenta's Memorandum of Law in Support of Motion to Dismiss Producer and Non-Producer Plaintiffs' Amended Class Action Master Complaints (Dkt. No. 857).
  - Plaintiffs' Memorandum in Opposition to Syngenta's Motion to Dismiss Producer and Non-Producer Plaintiffs' Amended Class Action Master Complaints (Dkt. No. 927).
  - Syngenta's Motion to Dismiss Milo Producer Plaintiffs' Master Complaint (Dkt. No. 929).
  - Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Dkt. No. 936).
  - Syngenta's Reply in Support of Motion to Dismiss Producer and Non-Producer Plaintiffs' Amended Class Action Master Complaints (Dkt. No. 950).
  - Plaintiffs' Sur-Reply to Syngenta's Motion to Dismiss Producer and Non-Producer Plaintiffs' Amended Class Action Master Complaints and Motion to Dismiss Milo Producer Plaintiffs' Master Complaint (Dkt. No. 960).
  - Syngenta's Sur-Sur-Reply in Support of Motions to Dismiss Producer and Non-Producer Plaintiffs' Amended Class Action Master Complaints and Milo Producer Plaintiffs' Master Complaint (Dkt. No. 963).
  - Memorandum and Order (Dkt. No. 1016) (on Syngenta's Motion to Dismiss).
  - Memorandum and Order (Dkt. No. 1679) (on Syngenta's Motion to Dismiss).
  - Memorandum and Order (Dkt. No. 1803) (on Joint Motion to Dismiss Syngenta's Counterclaims and Third-Party Complaint).
  - Producer Plaintiffs' Memorandum in Support of Motion for Class Certification (Dkt. No. 2164).
  - Syngenta's Opposition to Producer Plaintiffs' Motion for Class Certification (Dkt. No. 2335).

- The Phipps/Clark Plaintiffs' Memorandum in Opposition to Producer Plaintiffs' Motion for Class Certification (Dkt. No. 2348).
- Memorandum and Order (Dkt. No. 2426) (on Syngenta's Motion for Judgment on the Pleadings).
- Producer Plaintiffs' Reply in Support of Motion for Class Certification (Dkt. No. 2436).
- Memorandum and Order (Dkt. No. 2547) (on Plaintiffs' Motion for Class Certification).
- Memorandum in Support of Motion for Partial Summary Judgment on Syngenta's Affirmative Defenses of Assumption of Risk, Comparative Fault, Mitigation, Intervening/Superseding Cause, and "Business and Economic Justification" (Dkt. No. 2859).
- Corrected Memorandum in Support of Syngenta's Motion for Summary Judgment on Nationwide Lanham Act Class Claims and Kansas State Class Claims (Dkt. Nos. 2861–2862).
- Plaintiffs' Memorandum in Opposition to Syngenta's Motion for Summary Judgment (Dkt. No. 2940).
- Syngenta's Opposition to Plaintiffs' Motion for Partial Summary Judgment (Dkt. No. 2947).
- Plaintiffs' Reply in Support of Motion for Partial Summary Judgment on Syngenta's Affirmative Defenses of Assumption of Risk, Comparative Fault, Mitigation, Intervening/Superseding Cause, and "Business and Economic Justification" (Dkt. No. 2994).
- Syngenta's Reply in Support of Motion for Summary Judgment on Nationwide Lanham Act Class Claims and Kansas State Class Claims (Dkt. No. 2996).
- Syngenta's Letter Notice of Supplemental Authority (Dkt. No. 3026).
- Memorandum and Order (Dkt. No. 3051) (on both parties' Motions for Summary Judgment).
- Memorandum and Order (Dkt. No. 3134) (on both parties' *Daubert* Motions).
- Producer Plaintiffs' Memorandum in Support of Second-Phase Motion for Certification of Additional State Classes (Dkt. No. 3436).
- Producer and Non-Producer Plaintiffs' Consolidated Fourth Amended Class Action Master Complaint (Dkt. No. 3505).
- Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Approval of Settlement, Provisional Certification of Settlement Class and Subclasses, Appointment of Settlement Class Counsel, Subclass Counsel, and Class Representatives, Approval to Disseminate the Class Notice, Appointment of the Notice Administrators and Claims Administrator and Special Masters, and Adoption of a Schedule for the Final Approval Process (Dkt. No. 3507).

- Toups/Coffman Plaintiffs' Response in Opposition to Class Plaintiffs' Motion for Preliminary Approval of Proposed Class Settlement Agreement (Dkt. No. 3514).
- Plaintiffs' Reply Memorandum of Law in Further Support of Motion for Preliminary Approval of Settlement, Provisional Certification of Settlement Class and Subclasses, and Other Relief (Dkt. No. 3526).
- Order Preliminarily Approving the Settlement Between Class Plaintiffs and the Syngenta Defendants, Provisionally Certifying the Settlement Class, Appointing Settlement Class Counsel, Subclass Counsel, and Class Representatives, Approving the Notice Plan and Authorizing Dissemination of Notice, Appointing the Notice Administrator and Claims Administrator and Special Masters, and Setting a Schedule for the Final Approval Process (Dkt. No. 3532).
- Syngenta's Rule 23(f) Petition for Permission to Appeal Class Certification Order (10th Cir.) (filed Oct. 11, 2016).
- Plaintiff's Response to Rule 23(f) Petition to Appeal Class Certification Order (10th Cir.) (filed Oct. 21, 2016).
- Plaintiffs–Respondents' Answer in Opposition to Defendants–Petitioners' Petition to Appeal (10th Cir.) (filed Oct. 21, 2016).
- Petitioners' Motion for Leave to File Reply (10th Cir.) (filed Oct. 28, 2016).
- Order (on Rule 23(f) Petition) (10th Cir.) (entered Dec. 7, 2016).

- **Additional Documents:**
  - Fee-Sharing Agreement.
  - Time and Expenses Spreadsheet (detailing all expense entries, all time entries, timekeeper information and billing rates, and lodestar figures for MDL class counsel).
  - Declaration of Patrick Stueve (filed contemporaneously).
  - Declaration of Scott Powell (filed contemporaneously).
  - Declaration of Don Downing (filed contemporaneously).
  - Declaration of William Chaney (filed contemporaneously).
  - Declaration of Richard Ralston (filed contemporaneously).
  - Memorandum in Support of Kansas MDL Co-Lead Counsel and Settlement Class Counsel Christopher Seeger's Petition for Award of Attorneys' Fees, Reimbursement of Expenses, Service Awards to Class Representatives/ Bellwether Plaintiffs, and Allocation of Attorneys' Fee Award (filed contemporaneously).
  - Complaint for Declaratory and Injunctive Relief and Damages in *Kellogg, et al v. Watts Guerra*, No. 0:18-cv-01082-DWF-BRT (D. Min.).
  - Petition for Discretionary Review of the District Court's Order Granting Class Certification (Minn. Ct. App.) (filed Dec. 2, 2016).

- Opposition to Petition for Discretionary Review of the District Court's Order Granting Class Certification (Minn. Ct. App.) (filed Dec. 9, 2016).
- Reply in Support of Petition for Discretionary Review of the District Court's Order Granting Class Certification (Minn. Ct. App.) (filed Dec. 14, 2016).
- Order (on Petition for Discretionary Review) (Minn. Ct. App.) (entered Jan. 10, 2017).
- Legal Representation Agreement, Syngenta Seed Litigation (Phipps Anderson Deacon LLP and Morascysk & Polochak), via link to: http://mopolaw.com/wp-content/uploads/2016/04/Legal-Representation-Agreement-Syngenta-Corn.pdf.
- Conmy Feste Law Firm Syngenta Corn Litigation Webpages, via link to: https://www.conmylaw.com/Commercial-Litigation/Syngenta-Corn-Litigation.shtml.
- Contract to Hire Attorneys (Weller, Green, Toups & Terrell, LLP and The Coffman Law Firm), via link to: https://corncasesettlement.com/docs/Corn-Contract-to-Hire-Attorneys-Rev-August-2016.pdf.

EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 2:16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF STEPHEN A. WEISS

SETEPHEN A. WEISS declares the following, pursuant to 28 U.S.C. § 1746:

1. I am a partner of the firm of Seeger Weiss LLP ("Seeger Weiss"), and was appointed by the Court to the Plaintiffs' Executive Committee in its Order Concerning Appointment of Counsel, dated January 22, 2015 (ECF No. 67).

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and reimbursement of expenses in this litigation, and in support of a request for service/case contribution/incentive awards to certain class representatives and bellwether plaintiffs in this litigation.

3. My firm has been recognized by federal and state courts, as well as by its adversaries, peers, and the legal media, as one of the leading plaintiffs' law firms in the nation. The firm, which is comprised of approximately 25 lawyers, handles all manner of complex individual, mass and class action litigation on behalf of injured persons, consumers and investors nationwide, and has been appointed to leadership positions in scores of highly notable mass and class actions, including some of the largest and most successful multidistrict ("MDL") or complex litigation proceedings in history. *E.g.*, *In re National Football League Players' Concussion Injury Litig.*, MDL No. 2323 (E.D. Pa.; nationwide settlement valued at over $1 billion) (Co-Lead Class Counsel); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC) (N.D. Cal.) (combined nationwide settlements of over $11 billion) (member of Plaintiffs' Steering Committee and one of lead negotiators); *In re Vioxx Prods. Liab. Litig.*, MDL No. 1657 (E.D. La.) (Co-Lead Counsel; $4.85 billion nationwide settlement); *In re Zyprexa Prods. Liab. Litig.*, MDL No. 1596 (E.D.N.Y.) (Liaison Counsel; $700 million nationwide settlement); *In re StarLink Corn Prods. Liab. Litig.*, MDL No. 1403 (N.D. Ill.) (Co-Lead Counsel; $110 million nationwide settlement); *In re Genetically Modified Rice Litig.*, No. 4:06-md-1811-CDP (E.D. Mo.) (Plaintiffs' Executive Committee; $750 million settlement); *In re Vytorin/Zetia Mktg. Sales Practices & Prods. Liab. Litig.*, MDL No. 1938 (D.N.J.) (Co-Lead Counsel; $41.5 million recovery); and *In re Initial Pub. Offering Secs. Litig.*, No. 21 MC 92 (S.D.N.Y.) (Plaintiffs' Steering Committee; $586 million recovery).

4. Attached is my law firm's resume. Additional information concerning Seeger Weiss is available at www.seegerweiss.com/our-firm and www.seegerweiss.com/team.

5. As detailed below, my firm was involved extensively in almost every phase of this litigation, including the drafting of the opposition to Syngenta's motion to dismiss the Producer

Plaintiffs' amended master consolidated class action complaint, the vetting of bellwether and class representative plaintiffs, handling of bellwether plaintiff and class representative written and deposition discovery (in particular, the bellwether states of Iowa and Nebraska), the drafting of Plaintiffs' opening and reply class certification motion papers and numerous ancillary motions or responses to motions (*e.g.*, Syngenta's objections to consolidated class trials, its objection to a trial of the nationwide Lanham Act claim, its motion for an evidentiary class certification hearing, and Plaintiffs' second-phase class certification motion), the drafting of the opposition to Syngenta's Tenth Circuit Rule 23(f) petition, the drafting of the opposition to Syngenta's motion for summary judgment, the extensive settlement negotiations, and the drafting of various settlement-related documents and motion papers.

6. As concerns the background of individual timekeepers at my firm, I received a B.A. degree from Brandeis University in 1986 and my J.D. degree in 1990 from Benjamin N. Cardozo School of Law, where I served as the Business Editor of the *Cardozo Law Review* and where I have served on that school's Board of Overseers for the past 17 years. Prior to co-founding Seeger Weiss in 1999, I worked for a leading defense firm in New York City for almost a decade.

7. Since the formation of Seeger Weiss in 1999, I have represented injured people and businesses across a wide array of legal disciplines, including environmental and toxic exposures, securities and consumer frauds, and antitrust, employment, insurance and *qui tam* actions. I have held leadership roles in numerous MDLs, including the *Initial Public Offering Securities Litigation* MDL mentioned above. I have received numerous accolades for my work, including repeated selection to New York Super Lawyers.

8. As specifically concerns the subject matter of this litigation, over some 18 years, I have represented family farmers in agricultural litigation concentrated in the midwestern United

States. I was appointed by the Honorable James B. Moran (deceased) to serve as Co-Lead Counsel in the *StarLink Corn Products* MDL mentioned above, litigation strikingly similar to this one in that it stemmed from the introduction of an unapproved genetically-modified corn into the crop cycle. I was later appointed by the Honorable Catherine D. Perry as a member of the Plaintiffs' Executive Committee in the *Rice Contamination* MDL, an MDL involving contamination of the U.S. long-grain rice supply by genetically-modified rice strains.

9. My trial work in agricultural cases is similarly notable. For over a decade beginning in 2001, I represented over 300 family farmers in northern Missouri in odor nuisance litigation against their industrial agricultural neighbors. In March 2010, as co-lead trial counsel in a five-week Jackson County, Missouri trial before the Honorable Jay A. Daugherty (ret.), I and my co-counsel obtained an $11,050,000 verdict on behalf of fifteen farmer plaintiffs (believed to be the largest temporary nuisance verdict ever obtained against a hog producer, and which followed a $4.5 million verdict in 2006 against the same corporate defendants). Following those verdicts, I served as lead negotiator in the successful global resolution of the approximately 300 remaining claims.

10. On January 22, 2015, the Court appointed me to the Plaintiffs' Executive Committee in this MDL in its Order Concerning Appointment of Counsel (ECF No. 67). In that capacity, I was involved in numerous aspects of this litigation. I participated in numerous in-person and telephonic meetings of the Plaintiffs' Executive Committee, in which case strategy and the management of the litigation were formulated, and I reviewed numerous drafts of papers in this litigation. In addition, I handled the preparation of several bellwether and class representative plaintiffs for their deposition and/or the defense of their deposition: B & A Riessland (Brian Riessland), Cronin Inc. (Robert Cronin), Shane Curry, Charlynn Hamilton, Randy Olthoff, and

Richard Oswald. The Plaintiffs' Executive Committee tasked Seeger Weiss with preparing the bellwether plaintiffs from the states of Iowa and Nebraska for deposition. Moreover, I was intimately involved in the intense negotiations that ultimately yielded the $1.51 billion global settlement of this litigation that is pending final approval. Those negotiations required hundreds of hours of my time over a period of many months, beginning well before the Court's August 2017 appointment of the Plaintiffs' Settlement Negotiation Committee.

11. My partner, **Christopher A. Seeger**, received a B.A. degree *summa cum laude* from Hunter College of the City University of New York in 1987 and a J.D. degree *magna cum laude* in 1990 from Benjamin N. Cardozo School of Law, where he was the Managing Editor of the *Cardozo Law Review*.

12. Mr. Seeger has served in leadership roles in innumerable MDLs and has tried several cases to verdict, including a $47.5 million verdict in a pharmaceutical injury action against Merck. He was the lead or co-lead negotiator of some of the country's most notable litigation settlements, resulting in recoveries in the hundreds of millions and billions of dollars, including those resolving *In re National Football League Players' Concussion Injury Litigation* (MDL No. 2323), *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation* (MDL No. 2672), *In re Vioxx Products Liability Litigation* (MDL No. 1657), and *In re Zyprexa Products Liability Litigation* (MDL No. 1596). He has received countless awards and accolades for his work, including repeated selection to Best Lawyers in America; New York Super Lawyers; New Jersey Super Lawyers; Law Dragon 500; and Best Lawyers, Mass Tort Litigation.

13. In its Order dated August 9, 2017 (ECF No. 3366), the Court appointed Mr. Seeger to the Plaintiffs' Settlement Negotiation Committee to work towards reaching a global resolution of this MDL and the related litigations pending in other courts, both state and federal. As concerns

those settlement negotiations, Mr. Seeger interacted frequently with Special Master Reisman and Special Master Stack, the Honorable David R. Herndon of the Southern District of Illinois, Syngenta's counsel, the court-appointed leadership in the cognate Minnesota state class action Syngenta MIR162 litigation, and attorneys representing tens of thousands of individual clients in the various Syngenta MIR162-related litigations. He spearheaded negotiations that were conducted both in person in various locations and telephonically and which led initially to a settlement term sheet and ultimately to the operative settlement agreement (ECF No. 3507-2) that is pending final approval. As the Court is aware, those negotiations, which required hundreds of hours of Mr. Seeger's time over a six-month period, were complex, spirited, and multidimensional given the parallel litigations, both class and non-class, that had been filed in various state and federal courts.

14. My partner, **Diogenes P. Kekatos**, received a B.A. degree from Columbia University in 1980 and a J.D. degree from Brooklyn Law School in 1983. Prior to joining Seeger Weiss in December 2000, he served for 14 years as an Assistant U.S. Attorney in the Southern District of New York, where he received numerous awards and award nominations for outstanding service and argued some 120-30 appeals and appellate motions. Mr. Kekatos was involved extensively in the analogous *Genetically Modified Rice Litigation* MDL. In that MDL he had central roles in the research, drafting, and editing of the operative consolidated master pleading; plaintiffs' class certification briefs, and a Rule 23(f) petition to the Eighth Circuit for leave to appeal that court's class certification ruling; Eighth Circuit briefs in appeals taken by the defendants from the judgments rendered in the plaintiffs' favor in the MDL court's first three bellwether trials; and various briefs filed in the district court and the Arkansas Supreme Court pertaining to common benefit assessment issues. Mr. Kekatos also worked extensively on the

StarLink Corn Products MDL. Overall, Mr. Kekatos has an extensive background in the areas of complex, class action, and mass tort litigation in federal and state courts, including numerous MDLs, and has been selected numerous times to New York Super Lawyers.

15. Mr. Kekatos performed extensive work from the inception of this MDL. He was a principal draftsman and editor of Plaintiffs' class certification motion papers, the successful opposition to Syngenta's Tenth Circuit Rule 23(f) petition that sought interlocutory review of this Court's September 2016 class certification ruling, and Plaintiffs' second-phase class certification motion, as well as several ancillary motions or objections (the opposition to Syngenta's motion for an evidentiary class certification hearing and the response to Syngenta's objections to trial of the nationwide Lanham Act claim). He also contributed to the drafting of the brief in opposition to Syngenta's motion to dismiss the amended master consolidated class action complaint (specifically, the economic loss doctrine discussion) and to the editing of that brief, and to the drafting of the brief in opposition to Syngenta's motion for summary judgment (in particular, the punitive damages discussion).

16. In addition, Mr. Kekatos had a central role in the drafting and/or editing of the various settlement papers, including the fourth amended master consolidated class action complaint, sundry settlement documents (including the settlement agreement and associated settlement documents, such as the Class Notice and Claim Forms), the opposition to the Coffman and Toups' Plaintiffs' motion to delay preliminary approval, and the reply brief in support of the motion for preliminary approval. Mr. Kekatos was also involved in the vetting of class representative and bellwether plaintiffs, drafted the outline that was used to prepare all bellwether and class representative plaintiffs for their deposition, and researched a number of class

certification-related and other case strategy issues at the request of the Plaintiffs' Executive Committee.

17. My partner, **David R. Buchanan**, received a B.S. degree from the University of Delaware in 1990 and a J.D. degree in 1990 from the Benjamin N. Cardozo Law School, where he was a Samuel Belkin Scholar and a member of the *Cardozo Law Review* and its Administrative Editor in 1992-93. Prior to joining Seeger Weiss in 1999, Mr. Buchanan was worked in the New York City office of a prominent national defense firm. He has extensive experience, including at the trial level, in mass tort litigation. He has been selected numerous times to Best Lawyers in America, New York Super Lawyers, Legal 500, and Law Dragon 3000. Mr. Buchanan assisted with formulating mediation strategy.

18. My partner, **TerriAnne Benedetto**, received a B.A. degree from Franklin & Marshall College in 1986 and a J.D. degree in 1990 from the Villanova University School of Law, where she was a member of the *Villanova Law Review*. A former law clerk to the Honorable Jacob Kalish of the Commonwealth Court of Pennsylvania and the Honorable William W. Vogel of the Montgomery County Court of Common Pleas, Ms. Benedetto worked for several prominent plaintiff's law firms before joining Seeger Weiss in 2006. Ms. Benedetto, who had a major role in the drafting of the settlement papers in the landmark *NFL Football Players' Concussion Injury Litigation* MDL mentioned above, assisted here in the drafting of the settlement agreement and preliminary approval papers.

19. My former partner, **Moshe Horn**, received a B.A. degree in 1989 from the George Washington University and a J.D. degree in 1993 from the Benjamin Cardozo School of Law. He was an Assistant District Attorney in New York Country from 1993-99, he held numerous supervisory positions and tried 50 jury cases, and afterwards was a senior associate with a leading

national defense firm before joining Seeger Weiss in 2004. Mr. Horn handled the preparation for deposition, the defense of the deposition, or both of two bellwether plaintiffs, LBJ Ventures (William Determan) and Eugene Goering.

20. Another former partner, **Eric H. Jaso**, received a B.A. degree from Harvard University in 1989 and a J.D. degree from the University of Chicago in 1992. Prior to joining Seeger Weiss in 2012, he had, among other things, served as a federal prosecutor. Mr. Jaso assisted in the vetting of potential plaintiff class representatives.

21. **James A. O'Brien**, formerly a counsel with the firm, received a B.A. degree from the University of Massachusetts at Amherst in 1984 and a J.D. degree in 1988 from the New England School of Law, where he was a member of the *New England Law Review*. Prior to joining Seeger Weiss in 2001, Mr. O'Brien was a Special Assistant U.S. Attorney in the Southern District of New York for 11 years, where he drafted scores of appellate and district court briefs, many of them involving constitutional challenges to legislation. Mr. O'Brien assisted in the drafting of the opposition to Syngenta's motion to dismiss the Producer Plaintiffs' amended master consolidated class action complaint and Syngenta's summary judgment motion (specifically, the response to Syngenta's First Amendment Petition Clause arguments), and principally drafted other motion papers (in particular, the motion for consolidation of class trials).

22. **Hailemariam DeBass, Jr.**, an associate with the firm, received a B.A. degree from the University of Maryland at College Park in 1995 and a J.D. degree from Georgetown University Law Center in 1999. He performed extensive document review and also assisted several bellwether plaintiffs in preparing their responses and supplemental responses to Syngenta's written discovery requests.

23. **Laura Muldowney**, an associate with the firm, received a B.S. degree from Lehigh University in 1987 and a J.D. degree from the Villanova University School of Law in 1990. Along with Mr. DeBass, Ms. Muldowney was the firm's other principal document reviewer in this litigation.

24. **Asa R. Danes**, a senior associate with the firm, received his B.A. degree from Oberlin College in 1994, and his J.D. degree *cum laude* in 2001 from Brooklyn Law School, where he was the Notes and Comments Editor of the *Brooklyn Journal of International Law*. Mr. Danes assisted in legal research.

25. **Kseniya Lezhnev** is an associate with the firm who graduated from Brooklyn College of the City University of New York in 2012, and received a J.D. degree from Benjamin N. Cardozo School of Law in 2016. Ms. Lezhnev assisted in legal research.

26. **Maxwell Goins**, a student at Lewis & Clark Law School in Portland Oregon, was employed by the firm as a summer associate in 2016. He assisted with class certification-related research.

27. **Scott D. Seigel** joined the firm in 2015 and is currently the firm's Paralegal Manager. He received a B.A. degree from the State University of New York at Buffalo in 2007 and an M.S. degree from The New School of Management & Urban Policy in New York City in 2011. He has been a paralegal for 11 years, having worked at a prominent national defense firm in New York City and for the New York City Law Department prior to joining Seeger Weiss. In this litigation, Mr. Siegel assisted with briefing, discovery, and deposition preparation assignments and provided general litigation support.

28. **Sabrina Tyjer** is a Senior Litigation Paralegal who joined the firm in 2017. She received a B.S. degree in Criminal Justice from Rutgers University in 1999 and has 18 years'

experience as a paralegal. Before joining Seeger Weiss, Ms. Tyjer was employed as a paralegal and later as a senior litigation paralegal at several prominent defense firms. Ms. Tyjer has assisted with "Blue-Booking" and cite-checking of briefs and hearing preparation support.

29. **Darryl A. Bailey** was a senior litigation paralegal with some 30 years' experience who was employed by the firm from 2017-18. He received a B.A. degree from the City College of New York in 1985 and had worked for a number of plaintiff's and defense firms prior to joining Seeger Weiss. Mr. Bailey assisted with the finalization of Plaintiffs' second-phase class certification motion and other motion papers and provided general litigation support.

30. **J. Daniel Mora** was a paralegal with the firm from 2004-16. He was a senior litigation paralegal with over 15 years' experience in state and federal litigation support. He received a B.A. degree *cum laude* from the City College of New York, and an ABA-approved diploma in Paralegal Studies from New York University. Mr. Mora handled sundry support tasks for the attorneys in this litigation, including the "Blue-booking" and cite-checking of briefs, downloading and organization of documents entered on this Court's ECF system, and preparation of witness binders in connection with the firm's handling of bellwether and class representative depositions, and he also provided general litigation support.

31. **Christine Essler** was a senior litigation paralegal with nearly 30 years' experience who worked for the firm in 2016. She received a B.A. degree from Beaver College in Glenside, Pennsylvania in 1974 and a Paralegal Certificate from Adelphi University in Garden City, New York in 1989. Prior to her employment at Seeger Weiss, Ms. Essler had worked for a number of prominent defense firms. Ms. Essler assisted with briefing and hearing preparation assignments, including "Blue-Booking" and cite-checking of briefs.

32. **Corey B. Madin** was employed as a paralegal in 2016-17. He received a B.S. degree from the State University of New York at Albany in 2004 and had 12 years' experience as a legal assistant and paralegal before joining Seeger Weiss. Mr. Madin provided litigation support in connection with the Rule 23(f) proceedings in the Tenth Circuit.

33. **Antoine Barzey** was employed as a paralegal in 2017-18. He was enrolled in the Legal Studies Certificate program at Hunter College (an evening program). Mr. Barzey had 10 years' experience as a paralegal prior to joining Seeger Weiss. Mr. Barzey provided general litigation support.

34. My firm and/or its co-counsel worked with a total of 10 class representative and bellwether plaintiffs in this litigation: B & A Riessland, Cronin Inc., Shane Curry, Eugene Goering, Charlynn Hamilton, Gregory Harris, Linden Kaliff, LBJ Ventures, Randy Olthoff, and Richard Oswald.

35. These plaintiffs were bellwether and (then-proposed) class representative plaintiffs from the bellwether discovery pool states of Iowa (Cronin Inc., LBJ Ventures, and Messrs. Curry and Olthoff), Kansas (Mr. Goering), Missouri (Messrs. Harris and Oswald), and Nebraska (B & A Riessland, Mr. Kaliff, and Ms. Hamilton).

36. All of these bellwether and (then-proposed) class representative plaintiffs provided oral and written discovery in addition to plaintiff fact sheets. They responded to, and produced documents responsive to, requests for production, answered interrogatories, and answered requests for admission. In most instances, it was my firm (and/or our co-counsel) that assisted in preparing those responses, either because we represented those plaintiffs individually or because the bellwether plaintiff's individual counsel ceded that its responsibility for its clients. My firm, its co-counsel, or both spent considerable time and effort working with Mr. Riessland (B & A

Riessland), Mr. Cronin (Cronin Inc.), Ms. Hamilton, Mr. Harris, Mr. Kaliff, Mr. Determan (LBJ Ventures), and Mr. Oswald to respond to Syngenta's discovery requests

37. In addition, all of these bellwether and (then-proposed) class representative plaintiffs were deposed. I or my former partner Moshe Horn prepared for deposition or assisted in preparing for deposition Robert Cronin (the principal of Cronin Inc.), Charlynn Hamilton, Linden Kaliff, William Determan (the principal of LBJ Ventures), Randy Olthoff, Richard Oswald, and Brian Riessland (the principal of B & A Riessland), and we defended the deposition of all these plaintiffs, except Mr. Oswald. In addition, my former Partner, Mr. Horn, defended the deposition of Kansas bellwether plaintiff Goering.

38. As described in detail below, these individuals devoted many hours to providing written discovery and preparing for and providing deposition testimony.

39. **B & A Riessland (Brian Riessland)**. B & A Riessland is a Nebraska bellwether plaintiff. I both prepared Mr. Riessland for his deposition and defended it. I met with him in Kearney, Nebraska for deposition preparation of about 8 hours. Mr. Riessland traveled roughly 1 hour each way to his deposition, and the deposition itself ran about 6 hours. In addition, my firm, rather than Mr. Riessland's individual counsel, worked with Mr. Riessland in the preparation of responses to written discovery, including supplementations in response to Syngenta's counsel's deficiency letters. Mr. Riessland devoted no fewer than 25 hours towards such written discovery efforts.

40. **Cronin Inc. (Robert Cronin)**. Cronin Inc. is an Iowa bellwether plaintiff. I both prepared Mr. Cronin for his deposition and defended it. Mr. Cronin devoted a total of about 12 hours for deposition preparation, including travel time, and another 8 hours towards his deposition, also including travel time. Mr. Cronin's individual counsel also assisted in in preparing him for

deposition. In addition, my firm and Mr. Cronin's individual counsel worked with him in the preparation of responses to written discovery, including supplementations in response to Syngenta's counsel's deficiency letters. Mr. Cronin devoted no fewer than 25 hours towards such written discovery efforts, including assisting in organizing and producing documents and in responding to interrogatories and requests for admission.

41. **Shane Curry**. Mr. Curry is an Iowa bellwether plaintiff. I both prepared Mr. Curry for his deposition and defended it. I met with him for deposition preparation of about 2.5 to 3 hours. Mr. Curry had to travel about 240 miles round-trip from Lu Verne, Iowa for purposes of deposition preparation and 240 miles round-trip to Des Moines, Iowa for his deposition. Mr. Curry devoted 8 hours towards his deposition, including final day-of-deposition preparation and post-deposition discussion. His individual counsel (the Watts Guerra firm) worked with him in responding to Syngenta's written discovery responses and requests for supplementation. Mr. Curry devoted 8 hours over several time periods to original and supplemental interrogatory responses and to original and supplemental responses to Syngenta's requests for admissions. Also, Mr. Curry committed some 20 hours over several time periods for purposes of responding to Syngenta's requests for production of documents, traveling a total of approximately 75 miles on several occasions to grain elevators, accountants, an FSA office, and banks to obtain responsive documents.

42. **Eugene Goering**. Mr. Goering is a Kansas bellwether plaintiff. Another firm (the Paul McInnes firm) was tasked by the Plaintiffs' Executive Committee with preparing Mr. Goering for and defending his deposition, but subsequently my firm was asked to defend his deposition because that firm ran into a scheduling conflict owing to the large number of depositions that were clustered together and often needed to be rescheduled due to counsel or plaintiff availability issues

or weather issues. My former partner, Moshe Horn, defended Mr. Goering's deposition, which ran about 4-6 hours.

43. **Charlynn Hamilton**. Ms. Hamilton is a Nebraska bellwether plaintiff whom, coincidentally, my firm represents individually. I both prepared Ms. Hamilton for her deposition and defended it. Ms. Hamilton's in-person deposition preparation lasted about 4 hours. Her deposition consumed at least 8 hours, including 2 hours of final day-of-deposition preparation and post-deposition discussion. She had to travel 90 miles round-trip from McCook, Nebraska to then take a one-hour flight to Denver for her deposition. In addition, our co-counsel, The Speer Law Firm, worked with Ms. Hamilton in the preparation of responses to written discovery, including supplementations in response to Syngenta's counsel's deficiency letters. Ms. Hamilton devoted about 72 hours over several time periods towards such written discovery efforts, including efforts to obtain documents (having to travel some 70 miles round-trip to obtain documents from grain elevators, accountants, an FSA office, and banks, and 90 miles round-trip to ship documents), and in answering interrogatories and requests for admission, and dealing with needed supplementations.

44. **Gregory Harris**. Mr. Harris is a Missouri bellwether plaintiff whom the Walters Bender firm was tasked by the Plaintiffs' Executive Committee with preparing him for his deposition and defending it. Mr. Harris is individually represented by Seeger Weiss and The Speer Law Firm. Our co-counsel, The Speer Law Firm, worked with Mr. Harris in helping prepare him for his deposition and in the preparation of responses to written discovery, including any needed supplementations in response to Syngenta's counsel's deficiency letters. Mr. Harris committed some 14 hours to telephonic and in-person preparation for his deposition, and travelled some 280 miles round-trip from Golden City, Missouri for in-person preparation. He also devoted about 82

hours on independent study to fully prepare for his deposition. Mr. Harris also traveled some 280 miles round-trip from Golden City, Missouri for his deposition, which lasted about 5.5 hours, including final day-of-deposition preparation, the deposition itself, and post-deposition discussion. He devoted no fewer than 110 hours over several time periods to answering written discovery, including independent research to support his interrogatory responses, time spent with counsel in the drafting of responses, and travelling as many as 120 miles to grain elevators, accountants, an FSA office, and banks to obtain responsive documents or to deliver responsive documents to counsel.

45. **Linden Kaliff**. Mr. Kaliff is a Nebraska bellwether plaintiff. My firm worked with Mr. Kaliff in the preparation of responses to written discovery, including supplementations in response to Syngenta's counsel's deficiency letters. Mr. Kaliff devoted no fewer than 12 hours towards such written discovery efforts. Our co-counsel (The Speer Law Firm) both prepared Mr. Kaliff for his deposition and defended it. Mr. Kaliff devoted some 9-10 hours towards preparation for his deposition and his deposition, including round-trip travel time.

46. **LBJ Ventures (William Determan)**. LBJ Ventures is an Iowa bellwether plaintiff. My former partner, Moshe Horn, both prepared Mr. Determan for his deposition and defended it. He met with Mr. Determan at his home for deposition preparation of about 4 hours. Mr. Determan had to drive about 4 hours each way to and from his deposition, and the deposition itself lasted about 5-6 hours. In addition, my firm worked with Mr. Determan in the preparation of responses to written discovery, including supplementations in response to Syngenta's counsel's deficiency letters. Mr. Determan devoted no fewer than 15 hours towards such written discovery efforts.

47. **Rodney Olthoff**. Mr. Olthoff is an Iowa bellwether plaintiff. I both handled Mr. Olthoff's preparation for his deposition and defended it. I met with Mr. Olthoff for deposition

preparation of about 2.5 to 3 hours. He had to travel about 400 miles round-trip for purposes of deposition preparation and he also had to travel about 400 miles round-trip to attend his deposition. Mr. Olthoff devoted 8 hours towards his deposition, including final day-of-deposition preparation and post-deposition discussion. His individual counsel (the Watts Guerra firm) worked with him in responding to Syngenta's written discovery responses and requests for supplementation. Mr. Olthoff devoted 5 hours over several time periods to original and supplemental interrogatory responses and to original and supplemental responses to Syngenta's requests for admissions. Also, Mr. Olthoff committed some 15 hours over several time periods for purposes of responding to Syngenta's requests for production of documents, traveling a total of approximately 50 miles on several occasions to grain elevators, accountants, an FSA office, and banks to obtain responsive documents.

48. **Richard Oswald**. Mr. Oswald is one of the representatives of the Missouri Class whom, coincidentally, my firm represents individually. Although the Plaintiffs' Executive Committee tasked the Walters Bender firm with the defense of his deposition, I prepared Mr. Oswald for his deposition because Seeger Weiss is Mr. Oswald's individual counsel. Mr. Oswald devoted some 12 hours on three occasions for deposition preparation, and on two of those occasions had to travel about 4 hours from Langdon, Missouri to Kansas City for deposition preparation. He also had to travel about 4 hours miles from Langdon, Missouri for the deposition itself, and devoted a total of about 9.5 hours to his deposition, including final in-person preparation on the day of the deposition and post-deposition discussion. In addition, my co-counsel (The Speer Law Firm) worked with Mr. Oswald in the preparation of responses to written discovery, including supplementations in response to Syngenta's counsel's deficiency letters. Mr. Oswald devoted no fewer than 42 hours over several time periods towards such written discovery efforts, including

locating and gathering documents (having to travel some 50 miles to obtain certain documents), answering interrogatories and requests for admission, and dealing with needed supplementations.

49. My firm maintains contemporaneous records of its time and expenses in the ordinary course of business and will provide those to the Court for its review thereof if requested.

50. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

51. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent on behalf of the firm's individual clients who were neither bellwether nor class representative plaintiffs.

52. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction or in consultation with me. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

53. The total lodestar for my law firm is **$6,990,276**. A breakdown of the lodestar is provided below.

Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
DeBass, Haile Jr.	Associate	3,275.10	$500.00	$1,637,550.00
Kekatos, Dion	Partner	2,597.70	$925.00	$2,402,872.50
Weiss, Stephen A.	Partner	1,188.10	$975.00	$1,158,397.50
Muldowney, Laura	Associate	1,144.80	$450.00	$515,160.00

Name	Title	Total Hours	Hourly Rate	Lodestar
Seeger, Christopher A.	Partner	751.90	$985.00	$740,621.50
O'Brien, Jim	Counsel	416.40	$775.00	$322,710.00
Horn, Moshe	Partner	176.00	$850.00	$149,600.00
Mora, Daniel	Paralegal	93.30	$295.00	$27,523.50
Siegel, Scott	Paralegal	27.70	$295.00	$8,171.50
Essler, Christine	Paralegal	23.80	$295.00	$7,021.00
Tyjer, Sabrina	Paralegal	15.40	$215.00	$3,311.00
Bailey, Darryl	Paralegal	8.70	$215.00	$1,870.50
Benedetto, TerriAnne	Partner	7.10	$895.00	$6,354.50
Lezhnev, Kseniya	Associate	5.30	$375.00	$1,987.50
Jaso, Eric	Partner	4.00	$750.00	$3,000.00
Goins, Maxwell	Law Clerk	2.70	$150.00	$405.00
Barzey, Antoine	Paralegal	2.00	$215.00	$430.00
Madin, Corey	Paralegal	2.00	$215.00	$430.00
Buchanan, David	Partner	1.90	$975.00	$1,852.50
Danes, Asa R.	Associate	1.30	$775.00	$1,007.50
TOTALS		9,745.20		$6,990,276

54. Because my firm dedicated a substantial amount of time to common benefit work, this resulted in significant opportunity costs, precluding it from taking on other matters.

55. My firm seeks an award of **$438,883.72** in reimbursement of expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
1	Federal Express / Local Courier	$1,011.64
4	Long Distance Calls	$314.11

Category Code	Description of Category Code	Amounts
5	In-House Photocopying	$1,475.70
7	Hotels	$33,542.08
8	Meals	$29,398.67
9	Mileage	$334.71
10	Air Travel	$50,022.51
11	Deposition Costs	$4,646.70
12	Lexis/Westlaw/Bloomberg	$21,193.33
14	Court Fees	$227.00
15	Service of Process Fees	$556.25
17	Ground Transportation	$21,161.02
19	Litigation Fund Assessment	$275,000.00
	TOTAL	**$438,883.72**

56. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (ECF No. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

57. The expenses pertaining to this litigation are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records, and other documents, and are an accurate record of the expenses.

58. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of July 2018, at New York, New York.

/s/ Stephen A. Weiss
STEPHEN A. WEISS

SEEGER WEISS LLP
COMPLEX LITIGATION | SIMPLE JUSTICE

Firm Overview

With offices in New Jersey, New York, and Philadelphia, Seeger Weiss is one of the preeminent trial law firms in the nation, known for its high-stakes, landmark verdicts and settlements in multidistrict mass tort and class action litigation on behalf of consumers, athletes, farmers, municipalities, and other injured parties. Since its founding in 1999, the firm has led and tried some of the most complex and high-profile litigations in the U.S. in both state and federal courts, including multiple bellwether trials.

Professionals

Managing Partners**:** Christopher A. Seeger, Stephen A. Weiss, David R. Buchanan

Number of partners: 8

Number of lawyers: 23

Languages: English, Hindi, Korean, Russian, Spanish, Urdu

Representative Matters

Consumer Protection/Product Liability:

- *In re Nat'l Prescription Opiate Litig.*: Plaintiffs' Executive Committee prosecuting negligence, fraud, and related claims.
- *In re FieldTurf Artificial Turf Mktg. & Sales Litig.*: Co-Lead Counsel prosecuting fraud, product defect and related claims.
- *In re Mercedes-Benz Emissions Litig.*: Co-Counsel prosecuting class action alleging consumer fraud, RICO, and related claims.
- *Gamboa v. Ford Motor Co.*: Co-Counsel prosecuting class action alleging consumer fraud, RICO, and related claims.
- *Fenner v. General Motors Co.*: Co-Counsel prosecuting class action alleging consumer fraud, RICO, and related claims.
- *Volkswagen "Clean Diesel" Marketing, Sales Practices and Prods. Liab. Litig.*: Steering Committee. Over $20 billion settlement on behalf of over 500,000 plaintiffs.
- *Depuy Orthopaedics, Inc. ASR Hip Implant Prods. Multidistrict Litig.*: Executive Committee. $2.5 billion settlement.
- *Chinese-Manufactured Drywall Prods. Liab. Litig.*: Lead trial counsel & Trial Committee chair. Over $1 billion settlement on behalf of nearly 5,000 plaintiffs.

Personal Injury:

- *NFL Players' Concussion Injury Litig.*: Co-lead counsel & chief negotiator. Over $1 billion uncapped settlement fund plus medical testing program on behalf of over 20,000 plaintiffs.

- *Wildcats Bus Crash Litig.*: Lead counsel. $2.25 million verdict followed by $36 million settlement on behalf of 11 plaintiffs.

Drug Injury:

- *Vioxx Prods. Liab. Litig.*: Co-lead counsel. $4.85 billion global settlement on behalf of more than 45,000 plaintiffs in approximately 27,000 claims.
- *Zyprexa Prods. Liab. Litig.*: Liaison counsel. $700 million first-round settlement and $500 million second-round settlement.
- *Kendall v. Hoffman-La Roche, Inc.*: Co-trial counsel. $10.6 million verdict on behalf of plaintiff.
- *McCarrell v. Hoffman-La Roche, Inc.*: Liaison counsel. $25.16 million verdict on behalf of plaintiff.
- *Rossitto & Wilkinson v. Hoffmann La Roche, Inc.*: Lead trial counsel. $18 million verdict on behalf of two plaintiffs.
- *Accutane Litigation*: Lead trial counsel. $25.5 million verdict on behalf of plaintiff.
- *Humeston v. Merck & Co.*: Co-trial counsel. $47.5 million verdict on behalf of plaintiff.
- *Vytorin/Zetia Marketing, Sales Practices and Prods. Liab. Litig.*: Co-liaison counsel & principal negotiator. $41.5 million settlement.
- *Phenylpropanolamine (PPA) Prods. Liab. Litig.*: Co-lead counsel & principal negotiator. $41.5 million nationwide settlement.

Antitrust:

- *In re German Automotive Mfrs. Antitrust Litig.*: Plaintiffs' Steering Committee prosecuting consumer antitrust claims.
- *In re Liquid Aluminum Sulfate Antitrust Litig.*: Plaintiffs' Steering Committee prosecuting antitrust class action on behalf of water treatment chemical purchasers.
- *In re Polyurethane Foam Antitrust Litig.*: Executive Committee. Approximately $428 million settlement on behalf of plaintiffs.

Toxic Exposure:

- *Bayer CropScience Rice Contamination MDL*: Executive Committee. $750 million settlement.
- *"StarLink" Corn Products Litig.*: Co-lead counsel. $110 million settlement.
- *Owens v. ContiGroup Companies*: Lead trial counsel. $11 million settlement for 15 plaintiffs.

Offices

55 Challenger Road
Ridgefield Park, NJ 07660

77 Water Street
New York, NY 10005

1515 Market Street
Philadelphia, PA 19102

www.seegerweiss.com

877-539-4125

EXHIBIT 8

FEE-SHARING AGREEMENT
Syngenta MIR162 Litigation

Pursuant to the terms of the Agrisure Viptera/Duracade Class Settlement Agreement ("Master Settlement Agreement"), Settlement Class Counsel shall make a Fee and Expense Application to the Court for an attorneys' fee and expense award.[1] This Fee-Sharing Agreement ("Agreement") governs the division of attorney's fees and expenses between the Parties associated with any fee and expense award ordered by the Court in *In re Syngenta AG MIR 162 Corn Litigation*, MDL 2591, in the United States District Court for the District of Kansas.

The Parties agree to divide any attorney's fees awarded by the Court as follows:

Party	Percentage (%)
Patrick J. Stueve *STUEVE SIEGEL HANSON LLP* Don Downing *GRAY, RITTER & GRAHAM, PC* William B. Chaney *GRAY REED & MCGRAW, LLP* Scott A. Powell *HARE WYNN NEWELL & NEWTON*[2]	50%
Daniel E. Gustafson *GUSTAFSON GLUEK PLLC*[3]	12.5%

[1] The Clayton A. Clark group shall submit expenses on their own behalf to Settlement Class Counsel, who will include them in the Attorneys' Fee and Expense Petition.

[2] This group includes Patrick J. Stueve (Stueve Siegel Hanson LLP), Don M. Downing (Gray, Ritter & Graham, PC), William B. Chaney (Gray Reed & McGraw, LLP), Scott A. Powell (Hare Wynn Newell & Newton), Christopher M. Ellis (Bolen Robinson & Ellis, LLP), David F. Graham (Sidley Austin LLP), Jayne Conroy (Simmons Hanly Conroy), John W. Ursu (Greene Espel PLLP), Richard M. Paul, III (Paul McInnes, LLP and Paul LLP)(Kansas MDL common benefit work), Robert K. Shelquist (Lockridge Grindal Nauen)(Kansas MDL common benefit work), Scott E. Poynter (Emerson Poynter LLP), Stephen A. Weiss (Seeger Weiss Law Firm), and Thomas V. Bender (Walters Bender Strohbehn & Vaughan, PC) and all "Referring Counsel." "Referring Counsel" means a law firm engaged with the named law firm in the joint representation of one or more Claimants in connection with the prosecution of their Claims. The four Kansas MDL Co-Lead Counsel (William B. Chaney, Don Downing, Scott Powell and Patrick J. Stueve) will allocate the fees represented by this percentage among all firms that provided common benefit work in the Kansas MDL consistent with the Kansas MDL Court's orders. The four Kansas MDL Co-Lead Counsel will have the right to review, revise and approve any common benefit time and expense submissions for common benefit work performed in the Kansas MDL that will be submitted by Settlement Class Counsel to the Kansas MDL Court consistent with the Kansas MDL Court's orders.

[3] This group also includes Lewis A. Remele, Jr. (Bassford Remele), William R. Sieben (Schwebel Goetz & Sieben, P.A.), Richard M. Paul, III (Paul McInnes LLP and Paul LLP)(Minnesota work), Will Kemp (Kemp, Jones &

Clayton A. Clark *CLARK, LOVE & HUTSON, GP*[4]	17.5%

The remaining 20% of any attorneys' fees awarded by the Court will be allocated by the Kansas MDL Court, in consultation and agreement with the Minnesota MDL Court and Judge Herndon of the United States District Court for the Southern District of Illinois, taking into consideration the recommendation by the Special Masters.

The Parties to this Agreement agree that it is in the Parties' and Class Members' best interest to consummate this Agreement and to cooperate with each other and take all actions reasonably necessary to obtain Court approval of this Agreement. The Parties also agree to take all actions necessary to obtain entry of Orders required to implement this Agreement, and that all Orders entered to implement and approve this Agreement shall be final. The Parties further agree to waive any right to appeal any Order implementing and approving this Agreement.

The Parties agree that no signatory to this Agreement, or their co-counsel, partners, or referring counsel will seek to void this Agreement or take any actions in any Court contrary to any provision in this Agreement. In the event that any Party challenges this Agreement for any reason, any dispute shall be submitted exclusively to the Honorable David R. Herndon, John W. Lungstrum, and Laurie J. Miller for final resolution, with no right of appeal, and consistent with the terms of the Master Settlement Agreement.

Coulthard, LLP), Tyler Hudson (Wagstaff & Cartmell, LLP), Robert K. Shelquist (Lockridge Grindal Nauen)(Minnesota work), and Paul Byrd (Paul Byrd Law Firm PLLC) and all Referring Counsel. Daniel E. Gustafson and Lew Remele will allocate fees represented by this percentage among all firms that provided common benefit work in the Minnesota MDL consistent the Minnesota MDL Court's orders. Daniel E. Gustafson and Lew Remele will have the right to review, revise and approve any common benefit time and expense submissions for common benefit work performed in the Minnesota MDL that will be submitted by Settlement Class Counsel to the Kansas MDL Court consistent with the Minnesota MDL Court's orders.

[4] This group also includes Peter J. Flowers (Meyers & Flowers) and Martin J. Phipps (Phipps Anderson Deacon LLP), as well as Clark's, Flowers' and / or Phipps' Referring Counsel, co-counsel and / or joint venture partners. Clayton A. Clark shall petition the Honorable David R. Herndon of the United States District Court for the Southern District of Illinois concerning the allocation of fees among the members of this group.

All Parties must consent before any Party may amend or supplement this Agreement. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected. This Agreement shall be liberally construed so as to carry out the intent of the Parties. It shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting same. If any Party perceives another may be in default in connection with this Agreement, such Party shall provide such other Party notice of, and a reasonable opportunity to cure, such default; if the latter cures such default, or if the former provides the latter notice of the former's intent to waive such default, then there shall have been no default under this Agreement. To the extent this Agreement requires a Party consent to, or give notice of, anything, such consent or notice must be in writing and signed by such Party, and a copy of such consent or notice must delivered to each of the other Parties.

The Parties also agree that this Agreement, along with the Master Settlement Agreement and the separate fee agreement between Seeger Weiss LLP and Kansas MDL Co-Lead Counsel (collectively, "Fee Agreements"), embodies the entire agreement between the Parties with respect to its subject matter and, if the Master Settlement Agreement is granted final approval, this Agreement supersedes and cancels all prior oral or written agreements by and among the parties, other than the Fee Agreements, including, without limitation, the March 23, 2015 Joint Prosecution Agreement ("JPA"), the June 18, 2015 JPA, and the January 21, 2016 JPA. All parties to the JPAs will sign a separate agreement confirming that this Agreement supersedes and cancels all JPAs if the Master Settlement Agreement is granted final approval. No party that signed a JPA may receive any fee or expense reimbursement from the monies awarded by the Court without signing this separate agreement.

Finally, the Parties further agree to take all actions reasonably necessary to effectuate the terms of the Master Settlement Agreement and ensure all participation thresholds are met. In the event that the Master Settlement Agreement is not granted final approval, this Agreement shall be null and void.

SIGNED on this the 23rd day of February, 2018.

STUEVE SIEGEL HANSON LLP

By: Patrick J. Stueve
Title: Partner

GRAY, RITTER & GRAHAM, PC

By: Don Downing
Title: Shareholder

GRAY REED & MCGRAW, LLP

By: William B. Chaney
Title: Partner

HARE WYNN NEWELL & NEWTON

By: Scott Powell
Title: Partner

SEEGER WEISS LLP

By: Christopher A. Seeger
Title: Partner

GUSTAFSON GLUEK PLLC

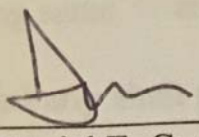
By: Daniel E. Gustafson
Title: Member

CLARK LOVE HUTSON GP

By: Clayton A. Clark
Title: Partner

By: Christopher A. Seeger
Title: Partner

GUSTAFSON GLUEK PLLC



By: Daniel E. Gustafson
Title: Member

CLARK LOVE HUTSON GP

By: Clayton A. Clark
Title: Partner

SEEGER WEISS LLP

By: Christopher A. Seeger
Title: Partner

GUSTAFSON GLUEK PLLC

By: Daniel E. Gustafson
Title: Member

CLARK LOVE HUTSON GP

By: Clayton A. Clark
Title: Partner

EXHIBIT 9

February 22, 2018

Christopher A. Seeger, Esq.
Seeger Weiss LLP
77 Water Street, 26th Floor
New York, NY 10005

Re: **In re Syngenta AG MIR162Corn Litigation**
MDL No. 2591; No. 2:14-md-2591-JWL-JPO (D. Kan.)

Dear Chris:

This letter shall memorialize the agreement by and among Seeger Weiss LLP ("Seeger Weiss") and the four Co-Lead Class Counsel appointed by Judge Lungstrum in the above-referenced matter ("the Kansas MDL") on September 26, 2016 (collectively "MDL Class Counsel").

1. MDL Class Counsel hereby agree that, out of the sum to be allocated by Judge Lungstrum for an award of attorney's fees and reimbursement of costs and expenses to all counsel collectively in the Kansas MDL in connection with the Final Approval of the Master Settlement Agreement with the Syngenta Defendants ("Syngenta"), MDL Class Counsel will, in allocating that sum to the various counsel in the Kansas MDL, (a) accord to Seeger Weiss the same multiplier to its lodestar that they accord to that of their own firms;[1] and (b) under no circumstances allocate to Seeger Weiss less than ten percent (10%) of the gross sum awarded by Judge Lungstrum as attorney's fees to counsel in the Kansas MDL.

2. To the extent that Judge Lungstrum does not delegate the allocation of attorney's fees outright to MDL Class Counsel, MDL Class Counsel agree that any application, petition, or motion to Judge Lungstrum for an award of fees to counsel in the Kanas MDL or any recommended allocation of fees submitted to him shall reflect the formula for division of fees set forth in the preceding paragraph.

---

[1] In the event that the MDL Class Counsel accord different multipliers to their respective four firms, they will accord the highest of those multipliers to Seeger Weiss' lodestar.

3. In addition to the aforementioned allocation of attorney's fees, MDL Class Counsel agree to fully reimburse Seeger Weiss's costs and expenses, in allocating the award made by Judge Lungstrum, or to the extent that Judge Lungstrum does not delegate the allocation of attorney's fees and reimbursement of costs and expenses outright to MDL Class Counsel, to see such full reimbursement in any application, petition, or motion to Judge Lungstrum for an reimbursement of fees and costs to counsel in the Kanas MDL or in any recommended allocation of costs and expenses reimbursement that is submitted to him.

Very truly yours,

Patrick J. Stueve (on behalf of MDL Class Counsel)
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, MO 64112
Telephone: (816) 714-7100
stueve@stuevesiegel.com

13036-999

EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF MICHELLE M. DONARSKI

I, Michelle M. Donarski, declare as follows:

1. I am a shareholder attorney with the North Dakota law firm Anderson, Bottrell, Sanden & Thompson ("ABST"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. ABST is a full service commercial law firm with attorneys licensed to practice law in North Dakota, South Dakota and Minnesota state and federal courts, the United States Court of

Appeals for the Eighth Circuit and the US Court of Appeals for the Federal Circuit. ABST advises businesses of all sizes throughout the United States, from small to large, with regard to business and litigation needs.

4. Our litigation team prosecutes and defends complex civil cases in both state and federal courts, including multi-million dollar matters to successful resolution. Our attorneys have achieved the Top Rated Lawyer recognition by Martindale-Hubbell, the Leading Lawyers in Chambers USA and the Great Plains Super Lawyers recognition. Our attorneys include former judicial law clerks to the North Dakota Supreme Court, the North Dakota Federal District Court, and the North Dakota Bankruptcy Court. We regularly represent farmers, ranchers and agricultural related businesses in their business needs in areas such as Farm Service Agency/United States Department of Agriculture, Federal Crop Insurance Corporation, Plant Variety Protection and other various issues that affect agriculture. ABST handles complex litigation and has successfully litigated multi-million dollar matters.

5. The following timekeepers have worked on this matter:

Michelle Donarski. Michelle is a shareholder attorney at ABST. She received her J.D. degree from the University of North Dakota in 1995 and has litigated cases for over 22 years. Michelle is licensed to practice in the state and federal courts of North Dakota and Minnesota. She is also admitted to practice before the U.S. Court of Appeals. She specializes in agriculture law, commercial litigation and labor and employment. She is also an Alternate Municipal Judge for the cities of West Fargo, ND and Fargo, ND. She received the Top Rated Lawyer award by Martindale-Hubbell and is AV Rating. She is also recognized as a Leading Lawyer by the Chambers USA-America's Leading Business Lawyers. She received 2018 Lawyer of the Year and is Great Plains Super Lawyer.

Michelle represents farmers in all aspects of their farming operations, including multi-million dollar claims.

Lowell Bottrell. Lowell is a shareholder attorney at ABST. He received his J.D. degree from the University of North Dakota in 1983 and has litigated cases for over 35 years. He is licensed to practice in the state and federal courts of North Dakota and Minnesota. He is also admitted to practice before the U.S. Court of Appeals. He specializes in agriculture law, bankruptcy, commercial transactions and debtor-credit law and represents farmers in all aspects of their farming operation, including multi-million dollar claims. He is listed in Best Lawyers in America and Great Plains Super Lawyers. He is a member of the Best Attorneys Network. He is also ranked one of America's Leading Business Lawyers by Chambers USA and is AV Rating.

Michael Gust. Michael Gust is a shareholder attorney at ABST. He received his J.D. degree, *with distinction,* from the University of North Dakota in 2001 and has litigated cases for over 13 years. Michael Gust is licensed to practice in the state and federal courts of North Dakota and Minnesota. He is also admitted to practice before the U.S. Court of Appeals and B.A.P. 8th Circuit. Michael Gust specializes in banking law, bankruptcy, corporate law, debtor-creditor law, and insurance law.

Michael Andrews. Michael Andrews is a shareholder attorney at ABST. He received his J.D. degree, *with distinction,* from the University of North Dakota in 1998 and has litigated cases for over 18 years. He is licensed to practice in the state and federal courts of North Dakota, Minnesota and South Dakota. He is also admitted to practice before the U.S. Court of Appeals. Michael Andrews specializes in commercial litigation and real estate. He is AV Rated.

Liza Gion. Liza has been a paralegal with ABST since May 2012. She graduated with an Associate of Applied Science in Business Management-Emphasis in Business Administration in 2008 and an Associate of Applied Science in Paralegal in 2012 from Rasmussen College, Fargo, ND. She specializes in litigation.

6. In this Syngenta matter, ABST assisted with the drafting and filing of the South Dakota state law class action claim captioned *Triple K Farms and John Schneider, et al., v. Syngenta Ag, et al.*, Case No. 16-4174 (filed in Hughes County, South Dakota, U.S. District Court, Southern Division). This case was removed to the United States District Court for the District of Kansas as Case No. 14-md-2591-JWL and transferred by the MDL Panel on January 12, 2017 as CTO-77.

7. ABST also partnered with the law firms of Stueve Siegel Hanson LLP, Gray, Ritter & Graham, P.C., Gray, Reed & McGraw, P.C., and Hare, Wynn, Newell and Newton, LLP to recruit class representative Plaintiffs in the states of North Dakota, Minnesota and South Dakota and worked with the class representatives in completing the fact sheet. ABST also worked with the North Dakota class representative to review, compile and draft discovery responses and collect and review responsive documents. ABST also researched North Dakota claims, statute of limitations and assisted lead counsel with drafting of Complaint to include North Dakota state law claims. ABST also worked with the North Dakota state FSA office to coordinate collection of FSA information from North Dakota class members.

8. Our firm maintains contemporaneous records of its time and expenses in the ordinary course of business. Time is entered daily from the timesheets prepared by attorneys and paralegals. No bill is sent out until it has been reviewed and approved by the lead attorney involved in the matter.

9. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

10. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

11. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

12. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

13. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $11,430.00. A breakdown of the lodestar is provided below.

	Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
1.	Donarski, Michelle	Partner	37.40	$250.00	$9,350.00
2.	Gion, Liza	Paralegal	6.70	$150.00	$1,005.00
3.	Bottrell, Lowell	Partner	2.00	$250.00	$500.00
4.	Andrews, Michael	Partner	1.70	$250.00	$425.00
5.	Gust, Michael	Partner	0.60	$250.00	$150.00
	TOTALS		48.4		$11,430.00

14. My firm seeks $72.45 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
14	Court Fees	$72.45
	TOTAL	**$72.45**

15. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

16. Our firm is not requesting expense reimbursement for capital contributions to the litigation fund.

17. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Fargo, North Dakota.

/s/ Michelle M. Donarski
Michelle M. Donarski (ND ID 05316)
Anderson, Bottrell, Sanden & Thompson
4132 30th Avenue SW, Suite 100
P.O. Box 10247
Fargo, ND 58106-0247
(701) 235-3300
mdonarski@andersonbottrell.com

EXHIBIT 11

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF STEPHEN R. BASSER

I, Stephen R. Basser, declare as follows:

1. I am a partner of Barrack, Rodos & Bacine ("Barrack" or "Firm"). Based on my position with the Firm, I am authorized to submit this declaration on its behalf.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for an award of attorneys' fees and reimbursement of expenses in this litigation.

3. Barrack, Rodos & Bacine (www.barrack.com), founded in 1976, is a national boutique litigation firm comprised of 19 attorneys with offices in Pennsylvania, New York,

California, Michigan and New Jersey. The firm specializes in complex class actions alleging violations of federal and/or state law, including federal and state securities laws, federal antitrust laws, the Racketeering Influenced and Corrupt Organizations Act ("RICO Act"), contracts and tort common law, and state consumer protection statutes. As more fully discussed in the Barrack firm biography appended as Exhibit A to this declaration, the Firm has been appointed to serve as a lead or executive committee counsel in and has prosecuted numerous large, complex class actions over the past 40-plus years since its inception. Barrack has secured some of the nation's largest class action recoveries, including several in excess of one billion dollars. The Firm possesses significant trial experience with respect to large, complex class actions, including, for example, *In re Apollo Group, Inc. Securities Litigation*, *Litigation*, Master File No. CV-04-2147 PHX-JAT (District of Arizona). ("*Apollo*") which resulted in a unanimous jury verdict in the full amount of damages sought by the class. The Firm's extensive litigation experience in complex class actions includes the examination and critical analysis of massive document productions by defendants, often well exceeding a million pages. The Firm is expert in identifying and condensing a massive universe of documents into those that are essential, and synthesizing them in aid of conducting thorough, substantive and productive discovery depositions and in proving plaintiffs' class claims at trial. Barrack, Rodos & Bacine has received numerous judicial accolades for its achievements and trial work, as more fully noted in its biography attached hereto.

4. The Barrack team members whose time entries contributed to its reported lodestar in this case are attorneys William J. Ban, Samuel M. Ward and Stephen R. Basser, and paralegals Nina L. McGarvey, Gavin R. O'Hara and Jennifer R. Mueller. Their individual backgrounds are summarized as follows for the Court's convenience:

Stephen R. Basser, a senior level partner in Barrack, Rodos & Bacine, is a graduate of American University, Washington, D.C. (1973, B.A., English Literature with Honors) and Temple University School of Law, Philadelphia, Pennsylvania (1976, J.D., *cum laude*), where he received the honor of "Highest Grade and Distinguished Class Performance" in its nationally renowned Civil Trial Advocacy Program, and was further honored by being selected to serve as a student prosecutor under the supervision of the United States Attorney's Office for the Eastern District of Pennsylvania. Mr. Basser was admitted to the bars of the Supreme Court of Pennsylvania in 1976, and the Supreme Court of California in 1985. An experienced civil litigator in federal and state courts, Mr. Basser has extensive experience prosecuting complex class actions involving various forms of corporate wrongdoing, including securities fraud, antitrust violations, unfair and deceptive business practices, elder abuse and violations of the RICO Act, and was the Firm's lead counsel and lead trial attorney in *Apollo*. Mr. Basser, an "AV Preeminent™ Rated" attorney by Martindale-Hubbell, has been perennially named a "Super Lawyer" by Super Lawyer Magazine and recognized as a "Top Lawyer" by San Diego Magazine and the Los Angeles Times through 2018. A more complete discussion of Mr. Basser's complex class action litigation experience is included in the Barrack biography.

William J. Ban, a partner with Barrack, Rodos & Bacine, is a graduate of Brooklyn Law School (J.D. 1982) and Lehman College of the City University of New York (A.B. 1977). Mr. Ban was admitted to the bars of New York in 1983 and Pennsylvania in 2005. Over the past thirty-five years, Mr. Ban's practice of law has focused on federal securities, antitrust and consumer class action litigation on behalf of plaintiffs. Mr. Ban has participated as a lead or co-lead counsel and on executive committees and in significant defined roles in scores of major class action litigation in federal and state courts throughout the country, including participation in major class action trials such as *In re WorldCom, Inc. Securities Litigation*, (02-Civ-3288 (DLC)) (S.D.N.Y. 2005) and *In re Brand Name Pharmaceutical Antitrust Litigation*, MDL No. 997 (N.D. Ill. 1998). Mr. Ban has been a highly skilled and experienced senior member of document review teams in complex, mega-class action litigation requiring experienced analysis of massive document productions and their refined synthesis for use in depositions and trial. Mr. Ban's extensive and high-level experience in that important, critical litigation function has played an important role in successfully prosecuting and securing large recoveries for class members. A more complete discussion of Mr. Ban's litigation experience is included in the Barrack biography.

Samuel M. Ward, a partner with Barrack, is a graduate of the University of California, Hastings College of Law (J.D. 2001), and a 1995 honors graduate of the University of California, San Diego (B.A. 1995). Mr.

Ward was admitted to practice law in California in 2001. Since joining the Firm in 2003, Mr. Ward has litigated numerous complex class actions, including those asserting claims under federal securities and state consumer protection statutes. Mr. Ward was member of the trial team in *Apollo.* Mr. Ward also has extensive experience handling document review projects in large, complex and mega-class actions and in developing and synthesizing the documentary evidence. *See also* Exhibit A hereto.

Nina L. McGarvey started her career as a paralegal with Barrack in 1996. Ms. McGarvey received a Bachelor of Arts in Criminal Justice from Temple University, Philadelphia, PA in 1983, a Masters of Science in Public Safety from St. Joseph's University, Philadelphia, PA in 1994, and a paralegal certificate from an ABA approved Philadelphia paralegal institute in 1996. Ms. McGarvey has extensive experience with respect to document review projects associated with large, complex and mega-class actions prosecuted by the Firm over many years.

Gavin R. O'Hara, a paralegal under Cal. Bus. & Prof. Code 6450(c)(4) since 1996, has been with the Firm for over 15 years. Mr. O'Hara received a Bachelor of Arts in Legal Studies from National University, San Diego, CA in 1999. In addition to his function and experience as a paralegal, Mr. O'Hara possesses significant IT experience. Mr. O'Hara secured a CompTIA Certification (Network+) in 2001 and completed a Microsoft Certification Courses (MCSA), Vertex Data Systems, in 2002. Mr. O'Hara has extensive experience with respect to document review projects associated with large, complex class actions prosecuted by the Firm over many years.

Jennifer R. Mueller was a paralegal with Barrack from June 2015 to August 2017, and earned a Bachelor's Degree in Paralegal Studies from Roger Williams University in 2013. Prior to joining the Firm, Ms. Mueller served as a Petty Officer, Second Class, in the United States Navy and was a clerk with Navy Legal Southwest, Judge Advocate Generals' Office from 2008 to 2009. Ms. Mueller was honorably discharged from the Navy. Ms. Mueller possesses experience in all phases of paralegal document review projects, including large documents productions in class action cases. Ms. Mueller is now employed with the Clerk of the United States District Court for the Southern District of California.

5. The Firm's attorneys and paralegals identified above devoted significant time and effort in aid of the successful prosecution of the Action and for the common benefit of the class at the direction of Co-Lead Counsel. Among other activities, the Firm engaged in extensive

document examination and analysis of Syngenta and third party documents produced in the Action. Barrack also assisted Co-Lead Counsel with respect to discrete groups of documents for specific purposes, including non-party document productions that needed to be analyzed quickly for substantive analysis and to determine compliance with discovery parameters. The Firm also thoroughly researched, investigated, analyzed and addressed potential federal claims asserting violations of the RICO Act, including conducting the review of documents produced by third parties associated with that project. During the course of the litigation, the Firm also dedicated attorney William Ban to assist Co-Lead Counsel's prosecution of the Action. Working under the direction of Co-Lead Counsel, and beyond the time and effort he devoted to a more general examination and analysis of documents, Mr. Ban:

- Attended a series of multi-week, in person, closely supervised document review sessions at the offices of Steuve Siegel in Kansas City, Missouri.
- Was frequently assigned to examine documents of a more nuanced nature that required insightful analysis and comment or evaluation.
- Targeted useful information on many different levels, identified and shared his analysis of hot documents, provided analysis and insights for the potential use of these documents at depositions and/or at trial, and identified additional key individuals for deposition.
- Identified issues with respect to redacted, incomplete or withheld documents in support of discovery negotiations with defendant and non-party producers as well as documents that presented potential attorney-client and/or attorney work product waiver issues.

- Assisted in fine-tuning an understanding of the chronology of distinct efforts being made by Syngenta's personnel in China, thereby facilitating the focus for the depositions of significant individuals.
- Examined and analyzed e-mails relating to Syngenta's China-based individuals who were attempting to obtain approval for the 162 product over several years in order to distinguish between their efforts to obtain approval to grow 162 in China as a commercial product as opposed to obtaining permission to grow 162 in China in order to conform to Chinese requirements for import approval.
- Completed discreet projects outside the ordinary document review and analysis protocols established by Co-Lead Counsel, such as: independent searches in specially created document libraries; developing suggestions for creation of additional defined document libraries; conducting expedited analysis and examination of newly produced documents from Syngenta or non-parties; performing Quality Assurance by examining work performed by less experienced document examiners; and editing the same as deemed necessary.
- Developed an understanding of the GMO industry history for commercialization of a variety of GMO products in foreign markets compared to commercialization of such products in the United States.
- Examined the commercialization history of many GMO products, including corn, soy and cotton, by primary industry participants such as Monsanto and Cargill and examined a large volume of documents produced by Syngenta from the files of its designated witness for industry practice for the commercialization of GMO traits, namely, J. Thomas Carrato, former General Counsel for Monsanto.

Facilitated the ability of Co-Lead Counsel taking the Carrato deposition to focus on the most relevant parts of those documents and cross-reference them, in particular identifying contradictions between the documents and Mr. Carrato's expert opinions. Following that deposition, Mr. Ban continued analysis and work with Mr. Carrato's expert report, his deposition transcript and additional documents produced subsequent to his deposition. Mr. Carrato was ultimately withdrawn as defendant's expert on industry practice in April 2017, a few weeks following his deposition.

- Relying on a personal understanding of maritime trade practices and terminology, Mr. Ban painstakingly reviewed significant documentation about individual vessels, their cargos and, importantly, the cost to the grain shippers of the cargo rejections in China or from re-routing vessels. This was done efficiently, cutting through the mass of materials and creating a summary memo listing all of the vessels and relevant details of their voyages and identified the master files for each. This allowed a comprehensive view, with specific evidentiary backing, of all of the concerned vessels and voyages providing dates, cargo tonnage, cargo disposition as well as the general costs sustained by the grain exporters.

6. The schedule included in paragraph 12 below, defining and summarizing Barrack's hours and resulting lodestar arising from the Firm's work in this Action, was prepared from regularly maintained contemporaneous daily time records. The Firm maintains contemporaneous records of its time and expenses in the ordinary course of its business. The attorneys and paralegals who devoted time and effort in this Action entered their time on daily time sheets. Their time was collected and reported in periodic time reports. My Firm provided

regular reporting of its time and expenses to Co-Lead Counsel based on the reports prepared from those contemporaneous daily time records.

7. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my Firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

8. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent on any individual claim.

9. I am the principle attorney/partner who oversaw the day-to-day activities performed by the Barrack team in the Action. I reviewed printouts of my Firm's periodic time reports based on contemporaneous daily time records before each periodic lodestar report was provided to Co-Lead Counsel. As part of the preparation of my declaration, I reviewed the Court's Common Benefit Order. I also conducted a re-review of all of the time entries and expenses previously submitted to Co-Lead Counsel in this litigation in order to remove all time devoted and expenses incurred prior to the appointment of Co-Lead Counsel, and any time that was not performed for the benefit of the Class or under the direction of Co-Lead Counsel. Based on this review, and with input from Lead Counsel, reductions were made to my Firm's time and lodestar. I cut a total of approximately 407 hours of time incurred by my Firm since the inception of the case, totaling approximately $300,000.00 in lodestar, which also included the deletion of *de minimus* and/or redundant time.

10. I did not include in the Firm's time and lodestar report below any time expended in periodically reviewing the Firm's time or expenses, or any expended in preparing this application for fees and payment of expenses. Nor has any time expended subsequent to May 31, 2017 been included. I confirm that Co-Lead Counsel conducted a thorough review and vetting

of my Firm's omnibus time and expenses in order to further make certain that its time/lodestar and expense reporting is in full compliance with the Common Benefit Order.

11. After a re-review, I can confirm that the reported time herein was undertaken by the members of my Firm at the direction and with approval from Co-Lead Counsel or their designee. I further believe and aver that the Common Benefit time and expense information submitted on behalf of the Firm is accurate and in compliance with the Court's Common Benefit Order, is reasonable, and was necessary for the effective prosecution and resolution of the Action.

12. Based on the foregoing, the total lodestar for my law firm for which compensation is being sought is **$1,819,463.00**. A breakdown of the Firm's lodestar based on contemporaneous daily time records regularly prepared and maintained by my Firm at 2017 billing rates is provided below.

	Name	Title	Total Hours	Hourly Rate	Lodestar
1.	Ban, William J.	Partner	2,314.10	$660.00	$1,527,306.00
2.	McGarvey, Nina	Paralegal	452.20	$300.00	$135,660.00
3.	O'Hara, Gavin	Paralegal	273.70	$290.00	$79,373.00
4.	Basser, Stephen R.	Partner	79.20	$770.00	$60,984.00
5.	Mueller, Jennifer	Paralegal	39.70	$290.00	$11,513.00
6.	Ward, Samuel M.	Partner	6.20	$560.00	$3,472.00
7.	Golan, Jeffrey W.	Partner	1.50	$770.00	$1,155.00
	TOTALS		3,166.6		$1,819,463.00

13. The common benefit work that the attorneys and paralegals at my Firm devoted to this case, and especially with respect to Mr. Ban, who was dedicated almost exclusively to

working on the Action at the direction of Co-Lead Counsel, precluded the undertaking of work in other matters.

14. My firm seeks **$17,458.17** in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
4	Long Distance Calls	$266.67
7	Hotels	$4,474.47
8	Meals	$499.39
10	Air Travel	$1,627.90
17	Ground Transportation	$589.74
19	Litigation Fund Assessment	$10,000.00
	TOTAL	**$17,458.17**

15. As part of the Firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Common Benefit Order. The requested award is in conformity with the Common Benefit Order.

16. Included in the expenses for which the Firm is requesting expense reimbursement are capital contributions to the Syngenta litigation fund, made on February 8, 2015 and April 20, 2016 in the amounts of $5,000 each, for a total litigation fund contribution of $10,000, as more fully itemized in paragraph 14 above.

17. The expenses pertaining to this case are reflected in the records of the Firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents, and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in San Diego, California.

/s/ STEPHEN R. BASSER
STEPHEN R. BASSER

BARRACK | RODOS | BACINE

FIRM BIOGRAPHY

www.barrack.com

3300 TWO COMMERCE SQUARE
2001 MARKET STREET
PHILADELPHIA, PA 19103
215.963.0600 F: 215.963.0838

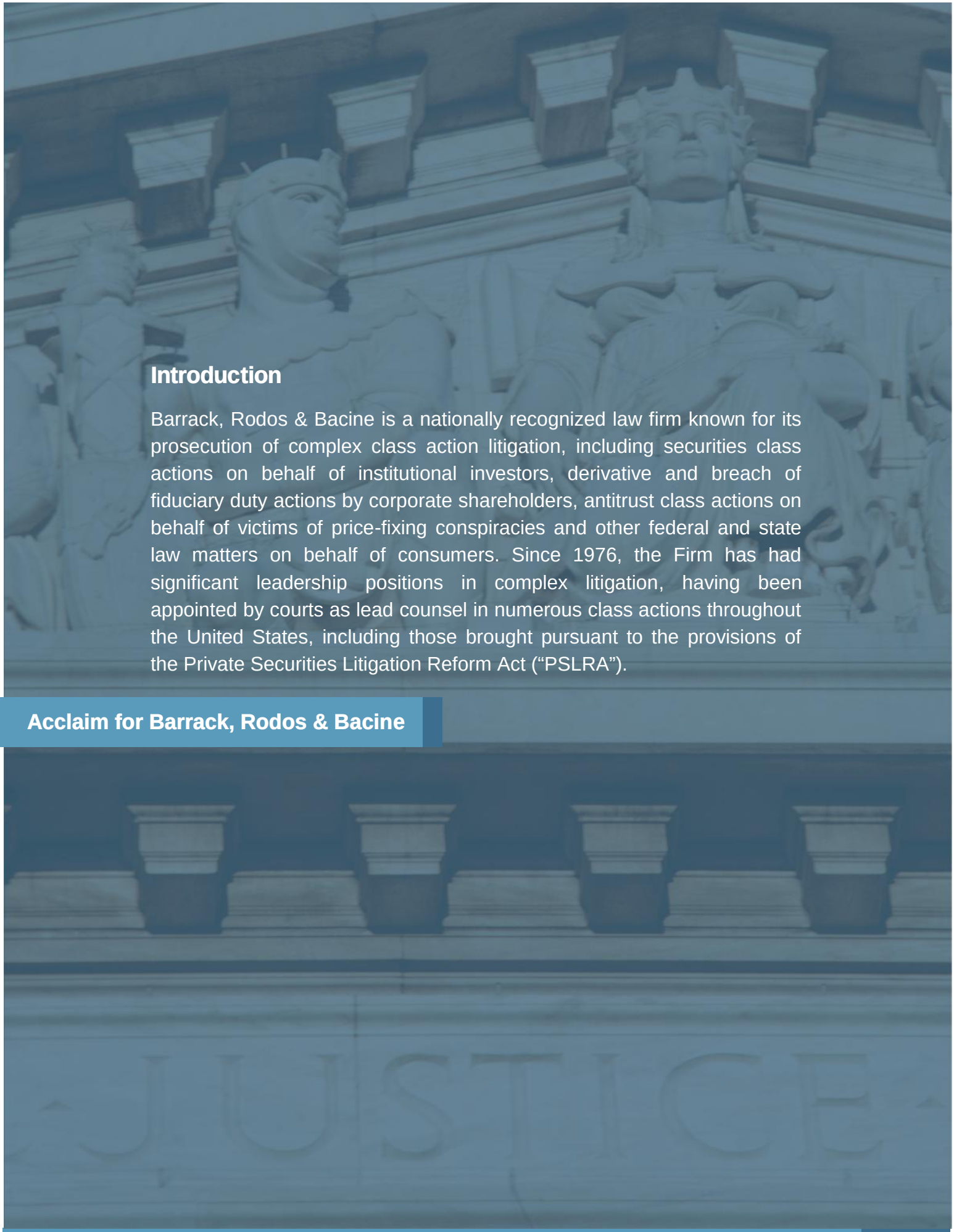
ONE AMERICA PLAZA
600 WEST BROADWAY, SUITE 900
SAN DIEGO, CA 92101
619.230.0800 F: 619.230.1874

ELEVEN TIMES SQUARE
640 8TH AVENUE, 10TH FLOOR
NEW YORK, NY 10036
212.688.0782 F: 212.688.0783

BARRACK | RODOS | BACINE

Table of Contents

Introduction	**1**
Acclaim for Barrack, Rodos & Bacine	**2**
Significant Cases – Securities Laws	**5**
Significant Cases – Derivative and Fiduciary Duty Cases	**7**
Significant Cases – Antitrust	**8**
Trial Experience	**10**
Shareholder Advocacy	**12**
Significant Recoveries in Securities Litigation	**14**
Significant Recoveries and Corporate Governance Achieved in Other Securities Litigation	**20**
Significant Recoveries in Antitrust Litigation	**24**
Significant Recoveries in Consumer Cases	**25**
Significant Legal Authority	**27**
Attorney Resumes	**30**
Professional Staff Resumes	**47**
Representative Client List	**47**



Introduction

Barrack, Rodos & Bacine is a nationally recognized law firm known for its prosecution of complex class action litigation, including securities class actions on behalf of institutional investors, derivative and breach of fiduciary duty actions by corporate shareholders, antitrust class actions on behalf of victims of price-fixing conspiracies and other federal and state law matters on behalf of consumers. Since 1976, the Firm has had significant leadership positions in complex litigation, having been appointed by courts as lead counsel in numerous class actions throughout the United States, including those brought pursuant to the provisions of the Private Securities Litigation Reform Act ("PSLRA").

Acclaim for Barrack, Rodos & Bacine

Courts throughout the United States have praised the work done by the Firm on behalf of injured investors and victims of price-fixing.

In ***In re Apollo Group Inc. Securities Litigation***, Master File No. CV-04-2147 PHX-JAT (U.S. District Court for the District of Arizona), Barrack, Rodos & Bacine, as the sole lead counsel for the class, secured a jury verdict for the full amount per share requested. Judge Teilborg commented that trial counsel ***"brought to this courtroom just extraordinary talent and preparation.... The technical preparation, the preparation for your examination and cross-examination of witnesses has been evident in every single instance. The preparation for evidentiary objections and responses to those objections have been thorough and foresighted. The arguments that have been made in every instance have been well-prepared and well-presented throughout the case. *** Likewise, for the professionalism and the civility that you -- and the integrity that you have all demonstrated and exuded throughout the handling of this case, it has just, I think, been very, very refreshing and rewarding to see that. *** [W]hat I have seen has just been truly exemplary."***

BR&B ultimately secured payment of $145 million from the defendants – the largest post-verdict judgment and recovery achieved in a shareholder class action for violations of the federal securities laws since passage of the PSLRA. In approving the $145 million resolution on April 20, 2012 (*see* 2012 WL 1378677), Judge Teilborg noted BR&B's "***high degree of competence"*** in litigating the case, and further stated: "[S]ince the enactment of the Private Securities Litigation Securities Reform Act ("PLSRA"), securities class actions rarely proceed to trial. Because Plaintiffs faced the burden of proving multiple factors relating to securities fraud, there was great risk that this case would not result in a favorable verdict after trial. Further, after the jury verdict, this Court granted judgment as a matter of law in favor of Defendants and Class Counsel pursued a risky and successful appeal to the Ninth Circuit Court of Appeals. Thereafter, Class Counsel successfully opposed a petition for certiorari to the United States Supreme Court. ***Based on this procedural history and the seven years of diligence in representing the Class, Class Counsel achieved an exceptional result for the Class. Such a result is unique in such securities cases and could not have been achieved without Class Counsel's willingness to pursue this risky case throughout trial and beyond***. … [A]s discussed above, ***Plaintiffs' Lead Counsel achieved exceptional results for the Class and pursued the litigation despite great risk***."

In ***In re WorldCom, Inc. Securities Litigation***, No. 02 Civ. 3288 (DLC) (U.S. District Court for the Southern District of New York), Barrack, Rodos & Bacine was co-lead counsel for the Class and achieved settlements in excess of $6.19 billion. After a partial settlement with one group of defendants for $2.575 billion, the Court stated that ***"the settlement amount ... is so large that it is of historic proportions."*** The Court found that ***"Lead Counsel has performed its work at every juncture with integrity and competence. It has worked as hard as a litigation of this importance demands, which for some of the attorneys,***

including the senior attorneys from Lead Counsel on whose shoulders the principal responsibility for this litigation rests, has meant an onerous work schedule for over two years." The Court further found that ***"the quality of the representation given by Lead Counsel is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation. Lead Counsel has been energetic and creative. Its skill has matched that of able and well-funded defense counsel. It has behaved professionally and has taken care not to burden the Court or other parties with needless disputes. Its negotiations with the Citigroup Defendants have resulted in a settlement of historic proportions. It has cooperated with other counsel in ways that redound to the benefit of the class and those investors who have opted out of the class. The submissions of Lead Counsel to the Court have been written with care and have repeatedly been of great assistance."*** The Court also found that ***"In sum, the quality of representation that Lead Counsel has provided to the class has been superb".*** In approving final settlements totaling $3.5 billion with certain defendants, in an opinion and order dated September 20, 2005, the Court stated ***"The impressive extent and superior quality of Lead Counsel's efforts as of May 2004 were described in detail in the Opinion approving the Citigroup Settlement. … At the conclusion of this litigation, more than ever, it remains true that 'the quality of representation that Lead Counsel has provided to the class has been superb.' … At trial against Andersen, the quality of Lead Counsel's representation remained first-rate. .. The size of the recovery achieved for the class – which has been praised even by several objectors – could not have been achieved without the unwavering commitment of Lead Counsel to this litigation."***

The Court also found that ***"Despite the existence of these risks, Lead Counsel obtained remarkable settlements for the Class while facing formidable opposing counsel from some of the best defense firms in the country;"*** and ***"If the Lead Plaintiff had been represented by less tenacious and competent counsel, it is by no means clear that it would have achieved the success it did here on behalf of the Class."*** As the Court further stated: ***"It is only the size of the Citigroup and Underwriters' Settlements that make this recovery so historic, and it is likely that less able plaintiffs' counsel would have achieved far less."***

In ***In re Cendant Corporation Litigation***, No. 98-CV-1664 (WHW) (U.S. District Court for the District of New Jersey), Barrack, Rodos & Bacine was co-lead counsel for the Class and achieved settlements with defendants of **$3.3 billion**, more than three times larger than the next highest recovery ever achieved in a securities law class action suit by that time. The *Cendant* settlement included what was, at the time, the largest amount by far ever paid in a securities class action by an issuing company and what was, and remains, the largest amount ever paid in a securities class action by an auditor. The *Cendant* settlement further included extensive corporate governance reforms, and a contingency recovery of one-half the net recovery that Cendant and certain of its affiliated individuals may recover in on-going proceedings against CUC's former auditor – a contingency that resulted in the Class receiving another **$132 million** in 2008. The *Cendant* court stated that ***"we have all been favored with counsel of the highest competence and integrity and fortunately savvy in the ways of the law and the market."*** The Court found that the "***standing, experience and expertise of counsel, the skill***

and professionalism with which counsel prosecuted the case and the performance and quality of opposed counsel were and are high in this action." The Court further found that the result of lead counsel's efforts were "***excellent settlements of uncommon amount engineered by highly skilled counsel with reasonable cost to the class.***" And on April 11, 2005, the Third Circuit noted (404 F.3d 173, 209 (3d Cir. 2005)) that**: *"Lead Counsel's handling of the case was thorough, expert, and extraordinarily successful…. Lead Counsel's efforts ...led to the plaintiff class's gigantic recovery."***

In ***In re Automotive Refinishing Paint Antitrust Litigation***, 2:10-md-01426-RBS (U.S. District Court for the Eastern District of Pennsylvania), Barrack, Rodos & Bacine, co-lead counsel for a Class of direct purchasers of automotive refinishing paint, achieved settlements with five defendants in excess of $100 million. After reaching a settlement with the last two defendants remaining in the litigation, the Court stated, ***"I want to commend counsel on both sides of this litigation. I think that the representation on both sides of this litigation is as good as I've ever seen in my entire professional career. Counsel worked together in this case. They frankly made the job of this Court very easy and I commend all of you for what you've done in this litigation."***

In ***Payne v. Micro Warehouse, Inc.***, No. 3:96CV1920(DJS) (U.S. District Court for the District of Connecticut), where Barrack, Rodos & Bacine was co-lead counsel for the shareholder class, the Court noted ***"the exceptional results achieved by plaintiffs' counsel,"*** who ***"were required to develop and litigate this complex case solely through their own efforts,"*** and concluded that ***"the benefit conveyed to the class plaintiffs amply supports the conclusion that the plaintiffs' counsels' work was exceptional."***

Our clients have also praised our efforts on their behalf. One public pension fund client has made the following comments about the Firm:

- "BR&B has performed superbly in its representation of [our fund]. BR&B keeps [us] informed of every step in the litigation and is very responsive to [our] needs and requests for information."
- "BR&B is highly responsive to [our fund]. Telephone calls are returned quickly by a return call or email. Any response by BR&B that requires a written document also is provided to [us] in a timely manner."
- "BR&B has a very good understanding of unique problems faced by public sector institutional clients. … BR&B is good about screening cases it might recommend to [us]."
- "BR&B is also not afraid to take a case to trial, and has done so to a successful conclusion."

Significant Cases – Securities Laws

Among the many securities law cases where the Firm has been appointed lead counsel are the following:

Patricia A. Shenk, et al. v. Mallinckrodt PLC, et al., Civil Action No. 17-cv-00145 (DLF), before the Honorable Dabney L. Friedrich in the District of Columbia;

In re Roadrunner Transportation Systems, Inc. Securities Litigation, No. 2:17-cv-144-PP, before the Honorable Pamela Pepper in the Eastern District of Wisconsin;

In re DFC Global Corp. Securities Litigation, Civ. A. No. 2:13-cv-06731-BMS, before the Honorable Berle M. Schiller in the Eastern District of Pennsylvania;

Pennsylvania Public School Employees' Retirement System v. Bank of America Corp., et al., Civil Action No. 1:11-cv-733-WHP, before the Honorable William H. Pauley, III, in the Southern District of New York;

In re OmniVision Technologies, Inc. Securities Litigation, Case No. 5:11-cv-05235, before the Honorable Ronald M. Whyte in the Northern District of California;

Louisiana Municipal Police Employees Retirement System v. Green Mountain Coffee Roasters et al., Case No. 11-cv-00289, before the Honorable William K. Sessions, III, in the District of Vermont;

In re American International Group Inc. 2008 Securities Litigation, Master File No. 08-CV-4772-LTS, before the Honorable Laura Taylor Swain in the Southern District of New York;

In re McKesson HBOC, Inc. Securities Litigation, No. C-99-20743-RMW, before the Honorable Ronald M. Whyte in the Northern District of California;

In re WorldCom, Inc. Securities Litigation, Master File No. 02-Civ-3288 (DLC), before the Honorable Denise L. Cote in the Southern District of New York;

In re Cendant Corporation Litigation, Master File No. 98-1664 (WHW), before the Honorable William H. Walls in the District of New Jersey;

In re Apollo Group, Inc. Securities Litigation, Master File No. CV 04-2147-PHX-JAT, before the Honorable James A. Teilborg in the District of Arizona;

In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation, Master File No. 07-cv-9633 (LBS)(AJP)(DFE), before the Honorable Jed S. Rakoff in the Southern District of New York;

Waldrep v. ValueClick, Inc., et al., Case No. 07-05411 DDP (AJWx), before the Honorable Dean D. Pregerson in the Central District of California;

In re The Mills Corporation Securities Litigation, Civil Action No. 1:06-77, before the Honorable Liam O'Grady in the Eastern District of Virginia;

In re R & G Financial Corp. Securities Litigation, No. 05 cv 4186, before the Honorable John E. Sprizzo in the Southern District of New York;

In re Bridgestone Securities Litigation, Master File No. 3:01-0017, before the Honorable Robert L. Echols in the Middle District of Tennessee;

In re DaimlerChrysler AG Securities Litigation, No. 00-0993, before the Honorable Joseph J. Farnan, Jr. in the District of Delaware;

In re Schering-Plough Securities Litigation, Master File No. 01-CV-0829 (KSH/RJH), before the Honorable Katherine Hayden in the District of New Jersey;

Rubin v. MF Global, Ltd., et al., Case No. 1:08cv2233-VM, before the Honorable Victor Marrero in the Southern District of New York;

In re Michael Baker Inc. Securities Litigation, Civil Action No. 2:08-cv-00370-JFC, before the Honorable Joy Flowers Conti in the Western District of Pennsylvania;

In re PainCare Holdings, Inc. Securities Litigation, Case No. 6:06-cv-362-Orl-28DAB, before the Honorable John Antoon, II in the Middle District of Florida;

In re Sunbeam Securities Litigation, No. 98-8258-CIV-MIDDLEBROOKS, before the Honorable Donald M. Middlebrooks in the Southern District of Florida;

In re Applied Micro Circuits Corp. Securities Litigation, No. 01-CV-0649-K (AJB), before the Honorable Judith N. Keep in the Southern District of California;

Jason Stanley, et al. v. Safeskin Corporation, et al., Lead Case No.: 99cv0454-BTM (LSP), before the Honorable Barry Ted Moskowitz in the Southern District of California;

In re Hi/Fn, Inc. Securities Litigation, Master File No. C-99-4531-SI , before the Honorable Susan Illston in the Northern District of California;

In re Theragenics Corp. Securities Litigation, No. 1:99-CV-0141 (TWT), before the Honorable Thomas W. Thrash in the Northern District of Georgia, Atlanta Division;

Bell, et al. v. Fore Systems, Inc., et al., Civil Action No. 97-1265, before the Honorable Robert J. Cindrich in the Western District of Pennsylvania;

In re Envoy Corp. Securities Litigation, Civil Action No. 3-98-00760, before the Honorable John T. Nixon in the Middle District of Tennessee, Nashville Division;

In re Paradyne Networks, Inc. Securities Litigation, Case No. 8:00-CV-2057-T-17E, before the Honorable Elizabeth A. Kovachevich in the Middle District of Florida, Tampa Division;

Smith v. Harmonic, Inc., et al., No. C-00-2287 PJH, before the Honorable Phyllis J. Hamilton in the Northern District of California; and

Smith, et al. v. Electronics For Imaging, Inc., et al., No. C-97-4739-CAL, before the Honorable Charles A. Legge in the Northern District of California.

Significant Cases – Derivative and Fiduciary Duty Cases

Among the many derivative and fiduciary duty cases where the Firm has been appointed lead counsel are the following:

Government Employees' Retirement System of the Virgin Islands v. Michael D. Huggins, et al. (Synthes), Civil Action No. 11-01993, before the Honorable Robert J. Shenkin in the Court of Common Pleas in Chester County, Pennsylvania;

In re Pepsi Bottling Group Shareholder Litigation, C.A. No. 4526-VCS, before the Honorable Leo E. Strine, Jr. in the Delaware Court of Chancery:

In re Barnes & Noble Stockholder Derivative Litigation, C.A> No. 4813-CS, before the Honorable Leo E. Strine, Jr. in the Delaware Court of Chancery:

In re Cheniere Energy, Inc. Stockholders Litigation, Consolidated C.A. No. 9710-VCL, before the Honorable J. Travis Laster in the Delaware Chancery Court,

In re Allion Healthcare Inc. Shareholders Litigation, Cons. C.A. No. 5022-CC, before Chancellor William B. Chandler III in the Delaware Chancery Court;

Herbert Resnik v. Patricia A. Woertz, et al. (Archer-Daniels-Midland Company), Civil Action No. 1:10-cv-00527-GMS, before the Honorable Gregory M. Sleet, Chief Judge of the District of Delaware;

Ruby Resnick v. Spencer Abraham, et al. (Occidental Petroleum Corp.), Case No. 10-cv-00390, before the Honorable Robert F. Kelly (sitting by designation) in the District of Delaware;

Dennis Rice v. Lafarge North America, Inc., et al., Civil No. 268974-V, before the Honorable Michael D. Mason in the Circuit Court for Montgomery County, Maryland;

In re Nationwide Financial Services Litigation, Civil Action No. 2:08cv00249, before the Honorable Michael H. Watson in the Southern District of Ohio;

In re Chiron Shareholder Deal Litigation, Case No. RG05-230567, before the Honorable Robert B. Freedman in the California Superior Court for Alameda County;

In re AOL Time Warner Shareholder Derivative Litigation, Master File No. 02-CV-6302 (SWK), before the Honorable Shirley Wohl Kram in the Southern District of New York;

In re Apple Computer, Inc., *Derivative Litigation*, Lead Case No. 1:06CV066692, before the Honorable Joseph H. Huber in the Superior Court of the State of California, County of Santa Clara;

In re Computer Sciences Corporation Derivative Litigation, Lead Case No.: 06-CV-5288 MRP (Ex), before the Honorable Mariana R. Pfaelzer in the Central District of California;

In re Monster Worldwide, Inc. Stock Option Derivative Litigation, Civil Action No. 1:06cv04622 (NRB-DCF), before the Honorable Naomi R. Buchwald in the Southern District of New York;

In re Quest Software, Inc. Derivative Litigation, Lead Case No. 06-cv-751 Doc(Rnbx), before the Honorable David O. Carter in the Central District Of California, Southern Division;

Bader v. Ainslie (Lehman Brothers Holdings, Inc.), Civil Action No. 06cv5884, before the Honorable William H. Pauley, III in the Southern District of New York;

Insulators and Asbestos Workers Local 14 Pension Fund v. Buckley, et al. (3M Corporation), Case No. 1:07-cv-00416-GMS, pending before the Honorable Gregory M. Sleet in District of Delaware;

Hill v. Berdon (*Barnes & Noble, Inc.)*, Index No. 06602889, before the Honorable Richard B. Lowe, III, in the Supreme Court of New York County New York; and

The Edward Goodman Life Income Trust v. Huang (NVIDIA Corp.), Case No. 3:06cv06110-MHP (N.D.Cal.), before the Honorable Saundra Brown Armstrong in the Northern District of California.

Significant Cases – Antitrust

The Firm has also been appointed lead counsel or to the leadership group in many antitrust law class action cases, including:

In re Fasteners Antitrust Litigation, MDL Docket No. 1912, the Honorable R. Barclay Surrick in the Eastern District of Pennsylvania;

In re Lithium Ion Batteries Antitrust Litigation, MDL Docket No. 2420, the Honorable Yvonne Gonzalez Rogers in the Northern District of California;

In re Publication Paper Antitrust Litigation, Docket No. 3:04 MD 1631 (SRU), before the Honorable Stefan R. Underhill in the District of Connecticut;

In re Automotive Paint Refinishing Antitrust Litigation, MDL No. 1426, before the Honorable R. Barclay Surrick in the Eastern District of Pennsylvania;

In re Flat Glass Antitrust Litigation, Master Docket Misc. No. 970550, MDL No. 1200, before the Honorable Donald E. Ziegler in the Western District of Pennsylvania;

Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives and Composites, Inc., et al., No. CV-99-07796-GHK(Ctx), before the Honorable Florence Marie Cooper in the Central District of California, Western Division;

Brookshire Brothers, Ltd., et al. v. Chiquita Brands International, Inc., et al., Lead Case No. 05-21962-Cooke/Brown, before the Honorable Marcia G. Cooke in the Southern District of Florida, Miami Division;

In re Citric Acid Antitrust Litigation, Master File No. 95-2963, before the Honorable Charles A. Legge in the Northern District of California;

In re Graphite Electrodes Antitrust Litigation, Master File No. 97-CV-4182 (CRW), before the Honorable Charles R. Weiner in the Eastern District of Pennsylvania; and

In re Sorbates Antitrust Litigation, Master File No. C 98-4886 MCC, before the Honorable William H. Orrick, Jr. in the Northern District of California.

In re Sodium Gluconate Antitrust Litigation, No. C-97-4142CW, the Honorable Claudia Wilken in the Northern District of California;

In re: Metal Building Insulation Antitrust Litigation, Master File No. H-96-3490, the Honorable Nancy F. Atlas in the Southern District of Texas;

In re Carpet Antitrust Litigation, MDL No. 1075, the Honorable Harold L. Murphy in the Northern District of Georgia, Rome Division;

In re Citric Acid Antitrust Litigation, Master File No. 95-2963, the Honorable Charles A. Legge in the Northern District of California; and

Capital Sign Company, Inc. v. Alliance Metals, Inc., et al., Civil Action No. 95-CV-6557 (LHP), the Honorable Louis H. Pollak in the Eastern District of Pennsylvania; and

Plastic Cutlery Antitrust Litigation, Master File No. 96-728, the Honorable Joseph L. McGlynn in the Eastern District of Pennsylvania.

Trial Experience

The Firm approaches each case as if it will go to trial. And while very few securities class actions go to trial, the Firm has extensive experience in nationwide class actions, has demonstrated its willingness to bring cases to trial, and has achieved stellar results at trial.

BR&B has litigated one of the few securities class actions that (a) was tried to a jury verdict, (b) resulted in a verdict in favor of the plaintiff class, and (c) was upheld in all respects on appeal. In *In re Apollo Group, Inc. Securities Litigation* before the Honorable James A. Teilborg in the United States District Court for the District of Arizona, BR&B acted as lead counsel for lead plaintiff, the PABF. After three years of vigorous and contentious litigation, BR&B took the case to trial. At the conclusion of the 22-day trial, the jury entered a unanimous verdict in January 2008 for the lead plaintiff and class of investors it represented in the full amount of damages sought on a per share basis. Although the court entered a post-trial ruling in defendants' favor, the U.S. Circuit Court of Appeals for the Ninth Circuit reversed that ruling and reinstated the jury verdict. The U.S. Supreme Court denied defendants' petition for certiorari and allowed the decision of the Ninth Circuit to stand. In August 2011, BR&B, on behalf of the lead plaintiff, entered into an agreement with the defendants to resolve a dispute over claims procedures in exchange for the payment of **$145 million** for the benefit of the class.

The *Apollo* court approved the resolution in 2012, noting that BR&B had obtained "an exceptional result for the class." The court also commented that the Firm "demonstrated a high degree of competence in the eight years of litigation of this case." The court also observed that the result achieved for the class:

> [I]s unique in such securities cases and could not have been achieved without Class Counsel's willingness to pursue this risky case throughout trial and beyond. … [A]s discussed above, Plaintiffs' Lead Counsel achieved exceptional results for the Class and pursued the litigation despite great risk.

The *Apollo* case is not the Firm's only experience in taking securities class actions to trial. BR&B also conducted a trial in the landmark *WorldCom, Inc. Securities Litigation*. After obtaining more than $6 billion in settlements from various defendants, including WorldCom's financial advisor, underwriters, directors, and members of management, the Firm and co-counsel conducted a five-week trial against WorldCom's auditor, Arthur Andersen. After nearly five weeks of trial and as the parties were approaching closing arguments, Andersen agreed to settle the claims for $65 million in cash plus the maintenance of a contingent claim that was ultimately resolved in exchange for a further payment of $38 million.

In April 2018, Barrack Rodos & Bacine began a trial before Judge Juan R. Sánchez in the United States District Court for the Eastern District of Pennsylvania in *Becker v. The Bank of*

New York Mellon Trust Company, N.A., et al., a class action lawsuit brought on behalf of former bondholders of Lower Bucks Hospital. The lawsuit was brought against The Bank of New York Mellon Trust Co., N.A., and J.P. Morgan Trust Company, National Association, as indenture trustees for bonds issued on behalf of Lower Bucks Hospital. The plaintiff alleged that the defendants breached their fiduciary and contractual duties to the bondholders by failing to ensure that the bondholders' security interest in the collateral backing the bonds was perfected, resulting in a diminished recovery for the bondholders in the Lower Bucks Hospital bankruptcy, and sought $15 million in damages, plus interest, from the indenture trustees. On April 19, 2018, on the eve of closing arguments, the parties entered into an agreement in principle to settle the action for $13.5 million, to be distributed to the bondholders on a pro rata basis. The parties are currently seeking preliminary approval of the settlement.

The Firm's other trial experience includes: *Gutierrez v. Charles J. Givens Organization, et al.*, Case No. 667169 (Superior Court of California, County of San Diego) (jury verdict in excess of $14 million for plaintiff consumer class); *Equity Asset Investment Trust, et al. v. John G. Daugman, et al.*, C.A. No. 20395 (Del. Ch.) (2003 trial involving board composition of Iridian Technologies followed by settlement); *In re Control Data Corporation Securities Litigation*, 933 F.2d 616 (8th Cir. 1991); *Gould v. Marlon*, CV-86-968-LDG (D. Nev.) (jury verdict for plaintiff class); *Herskowitz v. Nutri/System, et al.*, 857 F.2d 179 (3rd Cir. 1988); and *Betanzos v. Huntsinger*, CV-82-5383 RMT (C.D. Cal.) (jury verdict for plaintiff class).

In addition to the *Equity Asset v. Daugman* case, the Firm was also one of the Shareholder Plaintiffs' co-lead counsel in *In re Airgas Inc. Shareholder Litigation,* C.A. No. 5256-CC (Del. Ch.), which went to trial before former Chancellor William B. Chandler, III, of the Delaware Chancery Court. On January 27, 2011, after a trial and supplemental hearing, the Court ruled in defendants' favor, based primarily on testimony provided by board members who had been elected from a slate proposed by the potential acquirer of Airgas but testified in favor of maintaining Airgas as an independent company. At the conclusion of the supplemental hearing, Chancellor Chandler stated the following: "Unless there's some question about that, the only thing I'll end with is to thank all of you again. *As I said the last time you were here, this is really the dream team for me. This group of litigants, the lawyers involved in this case, I can't imagine a finer group*. And I'm not just saying that. It reminds me a little bit of what I'm looking forward to in a few weeks when I'm going to watch the Packers and the Steelers. Truly legendary teams with legendary histories and great legacies. And the tough part is, just like in a sporting event, it's a zero sum game. And I wish it were [not], because I think that much of both teams. The work you've done has just been so impressive. You've been so helpful to me in getting me things that I've asked you to on a very accelerated basis. And I realize that's not equal -- not seeing your families, being away on weekends and nights. I apologize for that. *You've done a superb job. I wish your clients were here, but I think they'll get the message that they couldn't have gotten a better team of litigators assembled anywhere to do the job you've done. I congratulate you all on your effort*."

Shareholder Advocacy

In addition to our representation of institutional investors and public and private pension funds in securities litigation, BR&B also seeks to further the interests of institutional investors through the submission of amicus curiae briefs in important securities class action and other stockholder appeals. Below are three examples of our work in this regard.

- *Halliburton II Supreme Court Appeal:* On November 15, 2013, the United States Supreme Court granted certiorari in *Halliburton Co. v. Erica P. John Fund (Halliburton II)*, in which the Supreme Court agreed to consider the viability of the fraud-on-the-market presumption of reliance necessary to certify a class of putative securities fraud plaintiffs under Section 10(b) of the Securities Exchange Act of 1934 and alternatively what is needed to invoke and rebut the presumption. In the appeal, the Supreme Court was being asked to overturn the 1988 landmark decision in *Basic, Inc. v. Levinson*, which established the "fraud-on-the-market" presumption of reliance, now a cornerstone of securities fraud class actions. Under the decision in *Basic*, investors are not required to prove directly that they relied on a defendant's material misstatements. The *Basic* decision held that such reliance may be presumed where the investor shows that the security at issue traded on an efficient market. In the years since *Basic,* when seeking class certification, plaintiffs had been able to show class-wide reliance by demonstrating that the market for a particular stock was efficient and, as a result, the stock price reflected material, publicly-available material information.

BR&B, working on behalf of fourteen renowned financial economists, including Nobel Laureate Eugene Fama, submitted an amicus brief in the *Halliburton II* case. The brief filed by BR&B explained that while financial economists may disagree about whether markets perfectly process information and how quickly they do so, there is generally no disagreement about whether market prices respond to material information for securities that trade in well-developed markets. The brief also explained that under the Efficient Capital Market Hypothesis, financial economists generally believe that stock prices respond to material information in a predicable direction and that the primary debate among economists is whether stock prices reflect fundamental value—the actual value of the company—not whether stock prices will move in response to material information. The brief demonstrated that the premise upon which the fraud-on-the-market theory rests is widely accepted by financial economists, and took the position that the Supreme Court should not overrule or significantly modify the fraud-on-the-market presumption enunciated in *Basic.*

On June 23, 2014, the United States Supreme Court issued its much-anticipated ruling in the *Halliburton II* appeal. In a victory for investors, the Court rejected the defendant's challenge to the "fraud-on-the-market" theory, which has been a lynchpin of securities fraud class action litigation for almost 30 years. BR&B's commentary about the Supreme Court's decision is accessible at: http://www.barrack.com/node/241. The amicus brief submitted by BR&B was cited by the Supreme Court in support of its decision.

➢ *Wal-Mart Shareholder Proposal Litigation:* On February 11, 2015, Barrack, Rodos & Bacine submitted an amicus brief on behalf of the Robert F. Kennedy Center for Justice and Human Rights, also known as Robert F. Kennedy Human Rights, in *Trinity Wall Street v. Wal-Mart Stores, Inc.*, a dispute arising from Wal-Mart's refusal to include a shareholder proposal in its 2014 proxy materials.

In December 2013, Trinity Wall Street, a church parish located at the corner of Broadway and Wall Street in New York City, and a shareholder of Wal-Mart Stores, Inc., submitted a shareholder proposal for inclusion in Wal-Mart's proxy materials for its 2014 annual shareholder meeting. The proposal was submitted in the wake of the unspeakable tragedy involving the mass killing at the Sandy Hook Elementary School in Newtown, Connecticut, and was intended to cover policies and standards that would be applicable to determining whether Wal-Mart should continue to sell assault-style firearms with high-capacity magazines. The proposal sought to be presented for approval by Wal-Mart's shareholders, would require Wal-Mart's board to provide specific oversight "concerning the formulation and implementation of, and the public reporting of the formulation and implementation of, policies and standards that determine whether or not the Company (i.e., Wal-Mart) should sell a product that: (1) especially endangers public safety and well-being; (2) has the substantial potential to impair the reputation of the Company; and/or (3) would reasonably be considered by many offensive to family and community values integral to the Company's promotion of its brand."

After Wal-Mart refused to include the proposal in its 2014 proxy materials, Trinity brought suit in the U.S. District Court in Delaware. On November 26, 2014, the District Court determined that Wal-Mart had wrongfully excluded the proposal from its proxy materials, and ordered the Company to include the proposal in the proxy materials for its upcoming 2015 annual shareholder meeting. The District Court ruled that the proposal did not relate to Wal-Mart's "ordinary business operations," which would have allowed the Company to exclude it, but rather raised policy issues that are appropriate for shareholder consideration. As the District Court wrote: "The significant social policy issues on which the Proposal focuses include the social and community effects of sales of high capacity firearms at the world's largest retailer and the impact this could have on Wal-Mart's reputation, particularly if such a product sold at Wal-Mart is misused and people are injured or killed as a result."

Wal-Mart appealed the District Court's decision to the U.S. Court of Appeals for the Third Circuit. In support of Trinity's position on the appeal, BR&B submitted an amicus brief on behalf of the Robert F. Kennedy Human Rights. The brief filed by BR&B took the position that upholding the District Court's decision was necessary to protect and facilitate the use of the Sustainable Investing investment philosophy as a best practice in the financial evaluation of a company and the role of shareholders. Sustainable Investing, where shareholders integrate Environmental, Social, and Governance ("ESG") factors into their financial objectives, has been gaining visibility for its utility in evaluating the long-term financial health of a company and shareholder value. The brief filed by the Firm included extensive research and findings concerning gun violence and mass killings, examples of boards of other companies having taken actions in response to social and public health imperatives, and a series of shareholder proposals that have been offered to ensure that companies are abiding by the Sustainable

Investing factors in light of changing societal demands for companies to engage in socially responsible behavior. The brief concluded that the sale of products that are dangerous to public health is a serious policy and human rights issue, and that upholding the District Court's decision was necessary to protect Sustainable Investors' attempts to ensure that Wal-Mart is appropriately and effectively applying the relevant Sustainable Investing factors. Unfortunately, however, the Court of Appeals overturned the decision of the District Court, finding that the shareholder proposal related to the "ordinary business" of the company, and was therefore not an appropriate subject for a shareholder proposal.

- *Second Circuit Class Certification Appeals:* In the first half of 2016, the United States Court of Appeals for the Second Circuit accepted appeals from district court decisions granting class certification in a series of cases involving Goldman Sachs Group, Inc. (No. 16-250), Barclays PCL (No. 16-1912), and Petroleo Brasileiro S.A. Petrobras (No. 16-1914). One of the primary issues common to all of the appeals was the legal impact of the presumption of reliance created by the U.S. Supreme Court, in *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988), and reiterated and further explained in *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014) (*Halliburton II*), for securities fraud actions stemming from a plaintiff's showing that a market for a security is efficient, *i.e.,* the fraud-on-the-market presumption. While courts were uniform in holding that a showing of market efficiency creates a presumption of reliance, questions remained as to whether the plaintiff or defendant would have the "burden of persuasion" when a defendant sought to rebut the presumption and the type of proof that is required to rebut the presumption.

Barrack, Rodos & Bacine worked with a solo practitioner in Washington, D.C. in representing, through the filing of amicus briefs in each of the appeals, sixteen eminent professors of law who teach, research and write about the law of evidence. As noted in the amicus briefs, the law school professors "share the view that principles of the law of evidence dictate that, once plaintiffs have satisfied their burden of triggering the presumption of reliance …, the burden of persuasion shifts to the defendants to rebut that presumption by a preponderance of the evidence." The briefs argued that the Supreme Court has recognized the need to shift burdens of persuasion to effectuate the intent of Congress or to implement judicially-created legal doctrines (in many diverse fields of law), and that given the presumption of reliance as explained in *Basic* and *Halliburton II*, the Court of Appeals should rule that the defendants – as the parties rebutting the presumption – should have the burden of persuasion in seeking to rebut the fraud-on-the-market presumption. As such, the amicus briefs were submitted in support of the positions of the plaintiffs-appellees in the three appeals, which were primarily institutional investors and public pension funds. The Court of Appeals ruled in the three appeals consistent with the positions BR&B advocated in the amicus briefs.

Significant Recoveries in Securities Litigation

The Firm has achieved significant recoveries on behalf of class members, including institutional clients, in more than 50 cases since passage of the PSLRA, including the following:

- *In re WorldCom, Inc. Securities Litigation*, Master File No. 02 Civ. 3288 (DLC) (S.D.N.Y.). BR&B, as co-lead counsel for lead plaintiff the Comptroller of the State of New York, the sole Trustee for the New York State Common Retirement Fund ("NYSCRF"), negotiated **$6.19 billion** in settlements with defendants. The first of the settlements, in which Citigroup and its affiliates and its former analyst Jack Grubman agreed to pay $2.575 billion (adjusted), was approved by the Court in November 2004. An additional $3.428 billion in settlements with WorldCom's other investment bankers were reached in February and March 2005, during the final phases of trial preparation. Before trial, BR&B also participated with the NYSCRF in negotiating an historic settlement of the claims against WorldCom's outside directors, which included personal contributions of $4.5 million from WorldCom's former chairman, Bert Roberts, and $20.25 million from the other director defendants. Jury selection began on March 23, 2005, and BR&B participated with the NYSCRF in negotiating a $65 million cash settlement (plus certain contingent claims left open) with WorldCom's former auditor, Arthur Andersen, which settlement was reached in April 2005, after nearly five weeks of trial and on the eve of closing arguments. And there were also settlements with former WorldCom CEO Bernard Ebbers and CFO Scott Sullivan for $43.49 million, entered into just before they were sentenced in their criminal cases. The proceeds achieved through the settlements yielded approximately 70% and 58% of the recognized claim amounts for class members who purchased May 2001 and May 2000 WorldCom bonds, respectively, and approximately 5.8% for class members who purchased WorldCom stock and other bonds – amounts that appear to exceed recoveries obtained by most of the opt-out plaintiffs for comparable securities. And finally, a settlement with Arthur Andersen of the contingent claims was reached in September 2012, and approved by the Court in December 2012, for an additional $38 million for the Class.

- *In re Cendant Corporation Litigation*, Civil Action No. 98-1664 (WHW) (D.N.J.). BR&B, as co-lead counsel, represented co-lead plaintiffs NYSCRF and the California Public Employees Retirement System. This litigation was settled in March 2000 for **$3.18 billion** – which, at the time, was by far the largest recovery ever achieved in a class action under the securities laws. The settlements, consisting of $2.85 billion from Cendant and $335 million from Ernst & Young LLP, also included a contingent payment of one-half of the company's net recovery, if any, obtained on its claims against E&Y, which occurred in December 2008 when Cendant paid the class $132 million from the amount it received through a settlement of its claims against E&Y. Thus, the total recovery to the class was more than **$3.32 billion**. And finally, as part of the settlement with Cendant, the company agreed to significant corporate governance changes, many of which were later mandated by the Sarbanes-Oxley Act of 2002. The settlements were approved by the district court on August 15, 2000, and affirmed on appeal on August 28, 2001.

- *In re McKesson HBOC, Inc. Securities Litigation*, Master File No. CV-99-20743 RMW (N.D.Cal.). BR&B, as co-lead counsel, represented the NYSCRF as sole lead plaintiff. BR&B vigorously prosecuted the case against the company, its management, HBOC, Inc.'s former auditor, Arthur Andersen LLP, and Bear Stearns & Co., Inc., which had issued a fairness opinion in connection with the merger between McKesson and HBOC. After contentious motion practice and during discovery, BR&B participated with the NYSCRF in negotiating settlements totaling **$1.052 billion**, consisting of a $960 million settlement from the company approved by

the court in 2006, a $72.5 million cash settlement from Arthur Andersen (plus certain contingent claims left open) approved in 2007, and a $10 million settlement from Bear Stearns approved in 2008. The recovery is the largest securities fraud class action recovery in the Northern District of California. And, in November 2012, Arthur Andersen agreed to pay an additional $9.5 million to resolve the outstanding contingent claims. The court approved this additional settlement in February 2013.

- *In re American International Group, Inc. 2008 Securities Litigation*, Master File No. 08-CV-4772-LTS (S.D.N.Y.). BR&B served as a Lead Counsel on behalf of the court-appointed lead plaintiff, the State of Michigan Retirement Systems, as custodian of the Michigan Public School Employees' Retirement System, the State Employees' Retirement System, the Michigan State Police Retirement System, and the Michigan Judges Retirement System. The case, before the Honorable Laura Taylor Swain, alleged, among other things, that the defendants violated the federal securities laws by misrepresenting and concealing the full extent of American International Group, Inc.'s exposure to the U.S. subprime residential mortgage market. BR&B vigorously litigated the case for more than six years, completing all fact witness discovery and fully briefing lead plaintiff's motion for class certification, on which the Court thereafter held a three-day evidentiary hearing and oral argument. In July and August 2014, the lead plaintiff reached settlements with the various defendants totaling **$970.5 million** to resolve the case. The settlement was the result of negotiations spanning more than two years, assisted by mediator Layn Phillips, a former U.S. District Court Judge. The court granted final approval to the settlement on March 20, 2015, stating that it was an "outstanding result obtained on behalf of the Settlement Class" and a "very substantial" recovery in a highly complex case with such significant risks. The total settlement amount is among the largest recoveries in a securities fraud class action stemming from the 2008 financial crisis, and appears to be the largest recovery ever achieved in a securities class action where there was not also a criminal prosecution, SEC enforcement action, or a restatement of financial results.

- *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, Master File No. 07-cv-9633 (LBS)(AJP)(DFE), pending before the Honorable Jed S. Rakoff in the Southern District of New York. BR&B, as co-lead counsel for sole lead plaintiff the State Teachers Retirement System of Ohio, negotiated a **$475 million** settlement with defendants in January 2009. The settlement was approved by the court in August 2009.

- *Pennsylvania Public School Employees' Retirement System v. Bank of America Corp., et al.*, Civil Action No. 1:11-cv-733-WHP, before the Honorable William H. Pauley, III, in the United States District Court for the Southern District of New York. BR&B, as sole lead counsel for the sole lead plaintiff, Pennsylvania Public School Employees' Retirement System ("PSERS"), prosecuted this securities fraud class action case for investors in Bank of America ("BAC") securities for false or misleading statements made to investors by BAC and its executives concerning, among other things, BAC's exposure to billions of dollars in repurchase claims stemming from mortgages securitized and sold into the marketplace as residential mortgage-backed securities. On September 23, 2011, PSERS filed a consolidated class action complaint on behalf of purchasers of BAC common stock and Common Equivalent Securities during the period from February 27, 2009 through October 19, 2010. After full briefing by the

parties, the court denied the motions to dismiss in 2012, and thereafter denied motions for reconsideration filed by certain of the defendants. In February 2014, the court certified the class as sought by the lead plaintiff. The case progressed through extensive discovery, which involved the production and review of tens of millions of pages of BAC documents, as well as documents from certain non-parties, and more than 30 fact witness depositions. In mid-2015, after a series of mediation sessions supervised by former U.S. District Judge Layn Phillips, the parties agreed to the **$335 million** settlement. The settlement was approved by the court in December 2016.

- *In re DaimlerChrysler AG Securities Litigation*, Master File No. 00-993 (JJF) (D.Del.). BR&B, as co-lead counsel for institutional investors the Denver Employees Retirement Plan, the PABF, and the Municipal Employees Annuity and Benefit Fund of Chicago, negotiated in October 2003, a **$300 million** settlement of this case involving the purported "merger of equals" between Daimler Benz and Chrysler Corporation. The settlement, which was approved by the court in February 2004, was reached after extensive discovery in the United States and Europe, and during the pendency of one of defendants' numerous motions for summary judgment. Based on the amount recovered and the plan of allocation approved by the court, the recovery appears to have been approximately 10% of recognized claim amounts for class members who purchased DaimlerChrysler stock on the open market and filed claims, and 30% for class members who exchanged Chrysler stock for DaimlerChrysler stock and filed claims.

- *In re 3Com Securities Litigation*, Master File No. C 97-21083-EAI (N.D. Cal.). This case, in which BR&B represented a lead plaintiff group of individual investors, involved discovery taken throughout the United States and in Europe with respect to 3Com and its outside auditing firm. A settlement in the amount of **$259 million** was reached at the end of the discovery process, and was approved by the court in February 2001.

- *In re The Mills Corporation Securities Litigation*, Civil Action No. 1:06-cv-00077 (LO/TRJ), before the Honorable Liam O'Grady, in the Eastern District of Virginia. BR&B, as co-lead counsel and counsel for co-lead plaintiff the Iowa Public Employees Retirement System ("IPERS"), negotiated settlements totaling **$202.75 million** with the defendant real estate investment trust corporation, for a release of claims against itself and its former officers, directors and underwriters ($165 million plus interest), with Mills' former auditor, Ernst & Young ($29.75 million), and with a foreign real estate development company ($8 million). In approving the settlement, Judge O'Grady noted that lead counsel were "very experienced and skilled in the field of securities litigation and achieved here a very favorable result for the Class."

- *In re Schering-Plough Securities Litigation*, Master File No. 01-CV-0829 (KSH/RJH), before the Honorable Katherine Hayden in the District of New Jersey. BR&B, as lead counsel for lead plaintiff the Florida State Board of Administration, negotiated a **$165 million** settlement after 8 years of hard-fought litigation. The settlement, approved in December 2009, was described by the Court as the product of "hard work and good judgment in ultimately achieving a negotiated resolution of substantial value to the class."

- *In re Apollo Group, Inc. Securities Litigation*, Master File No. CV 04-2147-PHX-JAT, before the Honorable James A. Teilborg in the District of Arizona. BR&B, as lead counsel for sole lead plaintiff the Policemen's Annuity and Benefit Fund of Chicago ("PABF"), conducted a two month trial which resulted in a unanimous jury verdict in January 2008 for the lead plaintiff and investor class for the full amount of price inflation per share that the lead plaintiff had requested. Although the district court judge entered a judgment for defendants notwithstanding the verdict on loss causation grounds, on June 23, 2010, the Ninth Circuit overturned the judgment and reinstated the jury verdict in favor of plaintiffs and the investor class. The decision of the Court of Appeals to reinstate the plaintiffs' jury verdict appears to be the only time such an appellate decision has been made since passage of the PSLRA. On March 7, 2011, the U.S. Supreme Court denied defendants' petition for certiorari, thereby allowing the Ninth Circuit's decision to stand and for the district court to enter judgment in favor of the plaintiff class. In August 2011, an agreement in principle was reached regarding claims administration, and the defendants made a cash payment of **$145 million** to be distributed to injured investors. On April 20, 2012, the court granted final approval of the case resolution.

- *In re Sunbeam Securities Litigation*, Case No. 98-8258-Civ-Middlebrooks (S.D. Fla.). BR&B represented a lead plaintiff group that included the CWA/ITU Negotiated Pension Plan in this litigation, which could not be prosecuted against Sunbeam itself due to its bankruptcy filing. This case resulted in settlements in 2002 totaling more than $140 million from Arthur Andersen LLP, Albert J. Dunlap, Russell Kersh and one of the Company's insurers. The settlement included a record breaking **$110 million** settlement with Arthur Andersen and one of the largest individual securities settlements ($15 million) from the company's former chief executive officer, "Chainsaw" Al Dunlap.

- *In re Informix Corporation Securities Litigation*, Civil Action No. C-97-1289 (N.D. Cal.). This case, in which BR&B represented a lead plaintiff group of individual investors, was resolved during the discovery process by a settlement in 1999 valued at **$132 million**, consisting of $98 million from the Company and its insurance carriers and $34 million from the company's outside accounting firm.

- *Michael Rubin v. M.F. Global Ltd.*, Case No. 08cv2233 (VM), before the Honorable Victor Marrero in the Southern District of New York. BR&B, as co-lead counsel and counsel for co-lead plaintiffs IPERS and the PABF, negotiated a **$90 million** settlement after the Second Circuit Court of Appeals reversed the trial court's dismissal of the complaint. The court granted final approval to the settlement in November 2011.

- *In re R&G Financial Corporation, et al.*, Civil Action No. 1:05cv04186 (JES), before the Honorable John E. Sprizzo in the Southern District of New York. BR&B, as co-lead counsel for co-lead plaintiff the City of Philadelphia Board of Pensions and Retirement, negotiated a **$51 million** settlement with defendants in May 2008. The settlement was approved by the court in October 2008.

- *In re DFC Global Corp. Securities Litigation*, Civil Action No. 2:13-cv-06731-BMS, before the Honorable Berle M. Schiller, in the United States District Court for the Eastern District

of Pennsylvania. BR&B as co-lead counsel, on behalf of co-lead plaintiffs the Macomb County Employees' Retirement System and Laborers' District Council and Contractors' Pension Fund of Ohio, negotiated a **$30 million** settlement of the litigation after defendants' motions to dismiss were denied and the lead plaintiffs' motion for class certification was granted, and while discovery was ongoing. The settlement was approved by the Court on September 20, 2017.

- *In re Bridgestone Securities Litigation*, Master File No. 3:01-0017, pending before the Honorable Robert L. Echols in the Middle District of Tennessee. BR&B, as co-lead counsel, represented intervening plaintiff IPERS. BR&B, as co-lead counsel for the original lead plaintiff, vigorously opposed the motion to dismiss filed by defendants. This case was dismissed in 2002, which dismissal was reversed by the United States Court of Appeals for the Sixth Circuit in 2004. IPERS intervened in the litigation after the appellate court decision and BR&B, on its behalf, engaged in extensive discovery. At the end of 2008, the parties reached a **$30 million** settlement of this litigation, during the pendency of both a renewed motion to dismiss and the motion for class certification. The settlement was approved by the court in January 2009.

- *In re Applied Micro Circuits Corp. Securities Litigation*, Civil Action No. 01-cv-0649-K (AJB) (S.D.Cal.). BR&B, as sole lead counsel for lead plaintiff the Florida State Board of Administration, negotiated a **$60 million** settlement in 2005. The settlement was reached in this vigorously litigated case after extensive discovery and contentious motion practice. Final approval of the settlement occurred on June 17, 2005.

- *Stanley, et al. v. Safeskin Corp.*, Lead Case No. 99cv0454-BTM (LSP) (S.D. Cal.). This case, in which BR&B represented an institutional investor, was resolved for **$55 million** after discovery was complete and while summary judgment motions were pending. The settlement was approved by the court on March 20, 2003.

- *In re: 1996 Medaphis Corporation Securities Litigation*, Civil Action No. 1:96-CV-2088-TWT (N.D. Ga.). This case – one of the first prosecuted on behalf of a class of purchasers by a state retirement fund as lead plaintiff, the Pennsylvania Public School Employees Retirement System ("PSERS") – was filed in August 1996, and resolved in December 1997 during the discovery process by a settlement valued at **$72.5 million**, consisting of $20 million in cash and Medaphis securities valued at $52.5 million.

- *Payne, et al. v. MicroWarehouse, Inc.*, et al., Case No. 3:96:-CV-1920 (DJS) (D. Conn.). This case, which was prosecuted on behalf of the class with PSERS as lead plaintiff, was filed in the District of Connecticut on October 1, 1996. In 1998, the MicroWarehouse defendants and KPMG Peat Marwick, the company's outside accounting firm, agreed to settle the case for **$30 million** in cash, one of the largest in the District of Connecticut.

- *In re Theragenics Corp. Securities Litigation*, Civil Action No. 1:99-cv-0141 (N.D.Ga.). BR&B acted as co-lead counsel for a group of investors in this litigation, which was settled in July 2004 for **$10 million** after extensive discovery and during the pendency of defendants' summary judgment motion.

- *In re HI/FN, Inc. Securities Litigation*, Master File No. C-99-4531-SI (N.D.Cal.). BR&B acted as co-lead counsel for a group of investors in this litigation, which was settled in May 2002, during the discovery process for **$9.5 million**, consisting of $6.8 million in cash and 270,000 shares of Hi/fn common stock valued at $2.7 million.

- *In re PeopleSoft, Inc. Securities Litigation*, Master File No. C-99-0472-WHA(JL) (N.D.Cal.) BR&B acted as co-lead counsel for a group of investors in this litigation, which was settled for **$15 million** in May 2001, during the discovery process.

- *In re Envoy Corporation Securities Litigation*, Case No. 3:98-0760 (M.D. Tenn.). This litigation, in which BR&B was co-lead counsel for a group of individual investors, was settled in September 2003, for **$11 million**, during the pendency of defendants' motions for summary judgment.

- *In re Silicon Graphics, Inc. II Securities Litigation*, Master File No. C-97-4362-SI (N.D.Cal.). This litigation, in which BR&B represented a lead plaintiff group of individual investors, was resolved in 2001 during the discovery process for **$12 million**, consisting of $4 million in cash and 8 million shares of Silicon Graphics common stock, valued at approximately $8 million.

- *In re Green Tree Financial Corporation Stock Litigation*, Master File No. 97-2666 (JRT/RLE) (D. Minn.). This case, in which BR&B represented a lead plaintiff group of individual investors, was resolved with its related options case in 2003 during the discovery process for **$12.45 million**.

- *Sherman Steele et al., v. Electronics for Imaging, Inc.*, Lead Case No. 403099 (Cal. Super. Ct., San Mateo Cty.). BR&B acted as co-lead counsel for a group of investors in this California state court case for violations of the California Corporations Code. This litigation settled in July 2002 for **$8 million**.

- *Robert K. Bell, et al., v. Fore Systems, Inc.*, Consolidated Civil Action No. 97-1265 (W.D. Pa.). BR&B acted as co-lead counsel for a group of investors in this litigation which was settled for **$11.7 million** in September 2003, during the discovery phase of the litigation.

Significant Recoveries and Corporate Governance Achieved in Other Shareholder Litigation

The Firm has also achieved significant recoveries as well as highly valuable corporate governance reforms through other shareholder litigation, including the following:

- *In re Pepsi Bottling Group Shareholder Litigation,* C.A. No. 4526-VCS, before the Honorable Leo A. Strine in the Delaware Court of Chancery. BR&B, as co-lead counsel, represented IBEW Local 98 and the class in this class action contesting the proposed

acquisition of Pepsi Bottling Group ("PBG") by PepsiCo. After significant litigation and through negotiations of special committees, PepsiCo agreed to a significantly higher acquisition price that provided PBG shareholders as a group with **$1.022 billion** more in value, and other terms including deletion of cross-conditionality provision for related deals, reductions in the merger agreement' termination fees and termination tail periods, and additional disclosures in the final proxy statement. At the final settlement hearing in June 2010, the court credited the litigation brought by the plaintiffs and their counsel as a causal factor in prompting PepsiCo to make fuller offers for PBG and a related PepsiCo bottling company, and approved the settlement.

- *In re Nationwide Financial Services Litigation*, Case No. 2:08-CV-00249, before the Honorable H. Michael Watson, in the U.S. District Court for the Southern District of Ohio. BR&B, as co-lead counsel, represented lead plaintiff the International Brotherhood of Electrical Workers Local 98 Pension Fund in this class action litigation contesting the buy-out of Nationwide Financial Services, Inc. by its majority owner Nationwide Mutual Insurance Company and certain affiliates in 2008. After extensive negotiations, Nationwide Mutual agreed to increase its tender offer price from its initial offer of $47.20 per share to the final price of $52.25 per share, a benefit to the class of approximately **$232.8 million** (a 10.7% increase), and further agreed to additional disclosures in the final proxy statement that the Court found provided the class "with material information about NFS's financial projections and valuation, as well as additional details of the merger process, …, all of which enabled Class members to make a more informed decision about whether they were receiving fair value for their shares." In assessing the settlement, the Court agreed with lead plaintiffs that it represented an "excellent result for the Class" and found that the "quality and skill in the work performed by Plaintiffs' Counsel is evident through the significant economic and non-economic recovery achieved in this Action."

- *Dennis Rice v. Lafarge North America, Inc., et al.*, Civil No. 268974-V, before the Honorable Michael D. Mason in the Circuit Court for Montgomery County, Maryland. BR&B, as co-lead counsel, represented lead plaintiff the City of Philadelphia Board of Pensions and Retirement in this class action litigation contesting the buy-out of Lafarge North America by majority owner Lafarge S.A in 2006. After extensive discovery and injunction practice, Lafarge SA agreed to increase its tender offer price from its initial offer of $75 per share to the final price of $85.50, a benefit to the class of approximately **$388 million**.

- *In re Chiron Shareholder Deal Litigation*, Case No. RG 05-230567, before the Honorable Robert B. Freedman in the California Superior Court for Alameda County. BR&B, as lead counsel, represented an individual investor and the class in this class action litigation contesting the proposed acquisition of Chiron Corp. by Novartis AG in 2005. After extensive discovery and injunction practice, Novartis agreed to increase the offering price from its initial offer of $40 per share to the final price of $48, a benefit to the class of approximately **$880 million**.

- *In re Cheniere Energy, Inc. Stockholders Litigation*, Consolidated C.A. No. 9710-VCL, before Vice Chancellor J. Travis Laster in the Delaware Chancery Court, provides another example of the Firm's ability to obtain corporate governance remedies and recoveries of assets.

In 2015, BR&B achieved a settlement of lawsuits initiated by BR&B on behalf of investors against Cheniere's CEO, certain other senior executives, and the members of Cheniere's board of directors alleging that Cheniere's management team and board breached the terms of the company's bylaws as well as their fiduciary duties to the company and its shareholders with respect to stock awards made in 2013. The lawsuits also challenged the board's plan to seek stockholder authorization at a June 12, 2014 Annual Stockholder Meeting to place an additional 30 million shares within the share reserve of the company's long-term stock incentive plan so that the board would have those shares available to grant to company insiders from 2014 through 2018. Upon BR&B's filing of the initial complaint, Cheniere postponed the Annual Stockholder Meeting for three months, and thereafter took off the agenda for the Meeting the proposal to add another 30 million shares to the stock incentive plan's share reserve. The settlement negotiated with defendants, following oral argument on motions to dismiss the action, among other things: (a) invalidated the board's ability to issue to company insiders 7.845 million shares of stock that the company claimed had been validly set aside for compensation purposes based on a prior stockholder vote, **which shares had a market price-based value at the time of the settlement of approximately $565 million**; (b) provided that the 7.845 million shares could be used for compensation purposes only if the company scheduled a new vote and obtained stockholder authorization pursuant to a voting standard in line with the default provision of Delaware law, a so-called "present and entitled to vote" standard under which abstentions are counted as "no" votes; and (c) prohibited the company from granting to company insiders or seeking stockholder approval for any further stock-based compensation to company insiders until January 1, 2017. The settlement was approved by the Delaware Chancery Court on March 16, 2015. Notably, the company never sought a new vote concerning the 7.845 million shares that were invalidated through the litigation settlement.

- *Government Employees' Retirement System of the Virgin Islands v. Michael D. Higgins, et al.,* Civil Action No. 11-01993 (Ct. Comm. Pleas, Chester Cty., PA). In this case, before the Honorable Robert J. Shenkin in the Court of Common Pleas in Chester County, Pennsylvania, BR&B was retained by the Government Employees' Retirement System of the Virgin Islands to bring a shareholder derivative action on behalf of Synthes, Inc., a medical device company headquartered in Pennsylvania. The case arose from the indictment of several company executives for illegal "off label" promotion of a bone cement product. The case was settled on the basis of significant corporate governance and compliance reforms that Synthes agreed to undertake. These included: the elimination of staggered board terms for the board of directors; the establishment of a nominating committee of the board comprised solely of independent directors; the adoption of a by-law provision prohibiting the chairman of the board from also being the CEO; the appointment of a chief compliance officer reporting directly to the board of directors; the establishment of a compliance committee consisting of most of the company's senior management; and policies strictly forbidding the off-label promotion of the company's products.

- *K12, Inc.*: BR&B achieved significant corporate governance remedies on behalf of shareholders of K12 Inc. In October 2012, the Firm, on behalf of its client Oakland County Employees' Retirement System, demanded the inspection of certain K12 books and records pursuant to Section 220 of the Delaware General Corporation Law. The purpose of the

requested inspection was to investigate possible mismanagement and breach of fiduciary duties by the Company's officers and directors in connection with student enrollment, retention, teacher qualifications and certification, and K12's reported revenues. Following a mediation that also included stockholders who had filed a derivative case against K12 and stockholders who had made a demand upon the Board of K12, all plaintiffs and the individual K12 defendants entered into a settlement agreement that provided for significant corporate governances changes at K12. BR&B sought these corporate governance reforms to remedy alleged deceptive recruiting, sales practices, and strategies at K12 designed to illegally increase enrollment. Among other corporate governance reforms, the Board agreed to approve a Legal and Ethics Compliance Program to prevent misconduct and detect potential violations of applicable law, regulations and Company policies. To implement these changes, K12's charter was to provide for a management-level Compliance Committee that will report to the Audit Committee. In addition, this Committee was to establish a Chief School Compliance Officer who will report to the General Counsel and will have the responsibility to review all existing policies, practices, and procedures pertaining to applicable education laws, rules and regulations to ensure the Company's compliance. Other corporate governance reforms included (1) the retention of a subject matter consultant to deliver a "boot camp" training program to all members of senior management regarding SEC disclosure and compliance regulations; and (2) the establishment of an employee hotline for K12 employees to report violations of policies, procedures or ethical violations. The settlement agreement was approved in November 2013. *Staal v. Tisch, et al.*, 12-cv-00365-SLR (D. Del.).

- *In Re Barnes & Noble Stockholder Derivative Litigation*, C.A. No. 4813-CS (Del. Chancery Ct.), before the Honorable Leo E. Strine, Jr. in the Delaware Court of Chancery. BRB served as co-lead counsel in this derivative action challenging the corporation's overpayment for an asset owned by its controlling stockholder. After extensive litigation, an eve-of-trial settlement providing a reduction in the purchase price of the asset of **$29 million** was achieved. The settlement was approved on September 4, 2012.

- *Edward J. Goodman Life Income Trust v. Huang, et al*., No. 4:06-cv-06110 (N.D. Cal.). BR&B served as a co-lead counsel in this consolidated derivative action relating to a stock options backdating scheme that benefited Nvidia Corp. executives and board members at the expense of the company and its public shareholders. The plaintiffs alleged that beginning when Nvidia became a public company and moving forward, certain executives had engaged "in a secret scheme to grant undisclosed, in-the-money stock options to themselves and others by backdating stock option grants to coincide with historically low prices for Nvidia's common stock." After consulting with the plaintiffs and other influential institutional investors, the Firm and our co-counsel negotiated a historic settlement that achieved not only a direct economic benefit to the Company, with an aggregate value of $15.8 million, but also significant corporate governance measures that included: (1) board members would be limited to service on the board of directors of no more than four publicly traded companies; (2) at least three-quarters of board members were required to be independent; (3) board members would receive at least 50% of their annual compensation through common stock payments; (4) a required series of director education programs; (5) annual election of a lead independent director with various responsibilities set forth in the settlement agreement; (6) the lead independent director would

contact the five largest shareholders, offering to meet with them to discuss matters of importance to such shareholders, including but not limited to board composition and other corporate governance matters; and (7) certain compensation practice reforms, including but not limited to changes in the company's stock option plans and granting practices.

- *Resnick v. Occidental Petroleum, et al.*, Case No. 10-cv-00390 (D. Del.). BR&B led this corporate governance case before the Honorable Robert Kelly, in which the Firm successfully advocated for corporate governance and excessive executive compensation reforms through shareholder rights claims asserted in direct and derivative claims alleging that the company's directors had breached fiduciary and other legal duties. The litigation resulted in corporate therapeutics and benefits that were described by the Court as "meaningful change" to the company's executive compensation and reporting policies and practices that "affords valuable consideration to Occidental and its shareholders."

- *Herbert Resnik v. Patricia A. Woertz, et al. (Archer-Daniels-Midland Company),* Civil Action No. 1:10-cv-00527-GMS (D. Del.). In this action, before Chief Judge Gregory M. Sleet, BR&B alleged that ADM's 2009 Incentive Compensation Plan failed to comply with S.E.C. regulations and the Internal Revenue Code by failing to disclose the consultants and advisors eligible for compensation under it and by dramatically increasing the maximum awards participants could receive. Through a settlement, ADM agreed to make all necessary curative disclosures and to take steps to ensure the violations would not continue in the future, including that ADM's Compensation and Succession Committee, or a properly delegated subcommittee or officer, would be charged with adhering strictly to Delaware's law regarding awards of equity compensation.

Significant Recoveries in Antitrust Litigation

The Firm has achieved significant recoveries on behalf of class members in antitrust cases, including the following:

- *In re Urethane Antitrust Litigation*, 2:04-md-01616-JWL (D. Kan.). After nearly nine years of litigation and four weeks of trial, the Jury reached a verdict for plaintiffs in excess of $400 million (before trebling) against defendant Dow Chemical Company, and the District Court entered a Judgment of $1.06 billion, which was upheld on appeal by the Tenth Circuit Court of Appeals. While on appeal to the U.S. Supreme Court, the case against Dow settled for **$835 million**, which was in addition to earlier settlements reached with other defendants. BR&B served as a member of the trial team for the case.

- *In re Vitamins Antitrust Litigation*, MDL No. 1285 (D.D.C.). In this highly complex litigation, plaintiffs achieved settlements **in excess of $1 billion**. BR&B served as a member of the executive committee.

- *In re Citric Acid Antitrust Litigation*, Master File No. 95-2963 (N.D. Cal.). After five years of litigation, plaintiffs achieved settlements totaling **over $80 million**. BR&B served as co-lead counsel.

- *In re Graphite Electrodes Antitrust Litigation*, Master File No. 97-CV-4182 (CRW) (E.D. Pa.). After six years of litigation, plaintiffs achieved settlements totaling **over $133 million**. BR&B served as co-lead counsel.

- *In re Automotive Refinishing Paint Antitrust Litigation*, MDL No. 1426 (E.D. Pa.). After five years of litigation, plaintiffs achieved settlements totaling **over $105 million**. See 617 F. Supp.2d 336 (E.D. Pa. 2007). BR&B served as co-lead counsel.

- *In re Sorbates Antitrust Litigation,* No. C 98-4886 (N.D. Cal.). After four years of litigation, plaintiffs achieved settlements in the total amount of **$96.5 million**. BR&B served as co-lead counsel.

- *Thomas & Thomas Rodmakers, Inc., et al. v. Newport Adhesives and Composites, et al.*, No. CV-99-07796 FMC (RNBx) (C.D. Cal.) (Carbon Fiber Antitrust Litigation). Plaintiffs achieved settlements totaling **$67.5 million**. BR&B served as co-lead counsel.

- *In re Polypropylene Carpet Antitrust Litigation*, MDL No. 1075 (N.D. Ga.). After five years of litigation, plaintiffs achieved a recovery of **nearly $50 million**. See 93 F. Supp. 2d 1348 (N.D. Ga. 2000). BR&B served as co-lead counsel.

- *In re Flat Glass Antitrust Litigation*, MDL No. 1200 (W.D. Pa.). After more than seven years of litigation, plaintiffs were successful in maintaining the case on appeal, see 385 F.3d 350 (3d Cir. 2004), and achieved total recoveries of **more than $120 million**. BR&B served as co-lead counsel.

Significant Recoveries in Consumer Cases

The Firm has also achieved significant recoveries on behalf of class members in consumer cases, including the following:

- "Senior Annuity" cases in which BR&B served as a co-lead counsel or participated in the prosecution group, which achieved settlements valued in the aggregate **between $552 million and $1.273 billion**, after asserting claims against insurance companies under consumer protection and elder abuse statutes and the Racketeer Influenced and Corrupt Organizations Act, including the following:

  - *Negrete. et al. v. Allianz Life Insurance Company of North America*, Case No. 05-cv-06838-CAS-MAN (C.D. Cal.), resulted in a claims-made settlement valued between $251 million and $971 million;

  - *In re American Equity Annuity Practices and Sales Litigation*, Case No. 2:05-cv-06735-CAS-MAN (C.D. Cal.), resulted in a settlement valued at approximately $129 million;

  - *Rand v. American National Insurance Co*., Case No. 3:09-cv-0639-WDB (N.D. Cal.), resulted in a settlement valued at more than $9 million;

- *Negrete, et al. v. Fidelity and Guaranty Life Insurance* Company, Case No. 2:05-cv-06837-CAS-MAN (C.D. Cal), resulted in a settlement valued at approximately $52.7 million;

- *Meadows v. Jackson National Life Insurance Co*., Case No. 4:12-cv-1380-CW (N.D. Cal), resulted in a settlement valued at more than $11.2 million;

- *Midland National Life Insurance Co Annuity Sales Practices Litigation*, Case No. 2:07-ml-01825-CAS-MAN (C.D. Cal.), resulted in a settlement valued at $79.5 million; and

- *In re National Western Life Insurance Deferred Annuities Litigation*, Case No. 05-cv-1018-AJB (WVG), resulted in a settlement valued at more than $21 million.

➢ *Rieff v. Evans* (Allied Mutual Insurance Company Demutualization Litigation), Civil Action No. CE 35780 (Polk Cty., Iowa, District Ct.). BR&B, as co-lead counsel for a class of individual mutual insurance company policyholders (as owners of the mutual, similar to shareholder-owners of a stock company), brought an action against management for, inter alia, conversion of the value of their ownership interests in the mutual under a theory of de facto demutualization. The Iowa Supreme Court upheld the plaintiffs' theory in *Rieff v. Evans*¸ 630 N.W.2d 278 (Iowa 2001), and the case was subsequently resolved for **approximately $130 million**.

➢ *Hernandez, et al. v. Google, Inc., et al.,* Case No. 1-15-CV-280601 (Santa Clara Cty., California, Superior Ct.), before the Honorable Brian C. Walsh. BR&B, on behalf of the plaintiffs and similarly situated purchasers of gift cards issued by Google, Inc. for use in its Google Play Store, prosecuted this action to require defendants to abide by California law with regard to gift cards with less than a $10.00 balance on them. Pursuant to the settlement reached in the case, which is pending final approval, Google agreed to comply with California law, which requires sellers to refund gift card balances of less than $10.00 upon request. In addition, Google agreed to (1) provide refunds to all Google Play users who had previously requested, but were denied, such refunds; (2) provide additional training regarding the refund requirements to its customer service representatives; and (3) provide notice of the availability of refunds on its website. Notably, after the filing of the lawsuit, Google revised its payment system, allowing gift card users to combine their gift cards with other forms of payment. The changes adopted by Google pursuant to the settlement are ongoing, providing benefit to millions of Google Play gift card users.

➢ *Gutierrez v. Charles J. Givens Organization, et al.*, Case No. 667169 (San Diego Cty., California, Superior Court). BR&B, on behalf of the plaintiff and similarly situated class members, achieved a jury verdict in **excess of $14 million** for the benefit if the plaintiff consumer class.

➢ In litigation involving the Harleysville Mutual insurance company in the Court of Common Pleas of Philadelphia County, Pennsylvania, BR&B served as co-lead counsel representing policyholders of Harleysville Mutual challenging Nationwide Mutual Insurance

Company's 2011 attempt to acquire Harleysville Mutual without providing any compensation to its mutual policyholders, even though it agreed to pay $60 per share to acquire the shares of Harleysville's stock subsidiary. As a result of the plaintiffs' persistent litigation efforts, including expedited discovery and motion practice, in 2012 defendants agreed to pay **$26 million** in compensation for the benefit of Harleysville's mutual policyholders.

- BR&B also successfully litigated an insurance-related takeover matter for the New York Liquidation Bureau ("NYLB"). The NYLB, an arm of the Department of Financial Services of the State of New York (formerly the Department of Insurance), selected BR&B (following a competitive process in 2012) to serve as lead trial counsel in an major piece of litigation then pending in the New York Supreme Court against predecessor banks of J.P. Morgan Chase and Bank of America. The suit, filed in 2000, charged those banks with wrongfully obtaining $13 million from a New York-domiciled insurer, United Community Insurance Company ("UCIC"), to pay off debts that UCIC's principals owed the banks. In the lawsuit, NYLB alleged that this transfer constituted a violation of the New York fraudulent conveyance statute because, at the time the funds were transferred, UCIC was insolvent, or was rendered insolvent by the transfer, and UCIC did not receive reasonably equivalent value in exchange for the $13 million. In assuming responsibility for that litigation, BR&B reviewed the results of 12 years of discovery and motion practice, engaged in additional fact and expert discovery in preparing the case for trial, and ultimately obtained a favorable settlement of the case for the NYLB.

Significant Legal Authority

The Firm has been responsible for establishing significant legal authority in the securities litigation field in many cases, including the following:

- *Blackie v. Barrack,* 524 F.2d 891 (9th Cir. 1975) (establishing the standards for class actions in securities cases).

- *In re WorldCom, Inc. Securities Litigation:* Throughout the litigation, the court issued dozens of decisions including the following significant reported decisions: 234 F.Supp.2d 301 (S.D.N.Y. 2002) (granting discovery motion prior to motions to dismiss); 294 F.Supp.2d 392 (S.D.N.Y. 2003) (denying in major part the defendants' motions to dismiss); 219 F.R.D. 267 (S.D.N.Y. 2003) (granting plaintiffs' motion for class certification); 2004 WL 2591402 (S.D.N.Y. Nov. 12, 2004) (approving settlement with Citigroup defendants and proposed plan of allocation); 2005 WL 638268 (S.D.N.Y. Mar. 21, 2005) (denying director defendant's summary judgment motion); 346 F.Supp.2d 628 (S.D.N.Y. 2004) (denying the underwriter defendants' motion for summary judgment, and granting in part lead plaintiff's motion for summary judgment, and setting the standard for underwriters in order to comply with their due diligence obligations under the Securities Act); 352 F.Supp.2d 472 (S.D.N.Y. 2005) (denying auditor's motion for summary judgment and setting the standard for outside auditors in conducting audits and issuing audit opinions for financial statements); 2005 WL 375313 (S.D.N.Y. Feb. 17, 2005) (granting in part and denying in part auditor's motions in limine, including denial of motion to exclude introduction of the WorldCom restatement at trial); 2005 WL 375314 (S.D.N.Y. Feb. 17,

2005) (denying in major part underwriter defendants' motions in limine, including denial of motion to exclude plaintiffs from presenting aggregate damages evidence); 2005 WL 375315 (S.D.N.Y. Feb. 17, 2005) (denying underwriter defendants' motion to separate trial into three phases, and granting lead plaintiff's motion to exclude evidence relating to individual plaintiffs from trial of the class claims); 2005 WL 627698 (S.D.N.Y. Mar. 16, 2005) (allowing lead plaintiff's accounting and auditing expert to rely on reports issued by the WorldCom Audit Committee and the WorldCom Bankruptcy Examiner in formulating expert opinions); 2005 WL 638268 (S.D.N.Y. Mar. 21 2005) (denying director defendant's summary judgment motion and setting the standard for directors of public companies); 2005 WL 2319118 (S.D.N.Y., Sept. 21, 2005) (approving settlements with all remaining defendants and supplemental plan of allocation); and 366 F.3d 70 (2d Cir. 2004) (granting in part appeals from class certification ruling prior to withdrawal of appeal).

- *Employees' Retirement System of Government of the Virgin Islands v. Blanford*, 794 F.3d 297 (2d Cir. 2015) (reversing dismissal of complaint and setting important precedent in rulings that: (1) rather than being exculpatory, the executives' adoption of a pre-determined 10b5-1 trading plan during the class period could support an inference of their scienter; and (2) efforts to hide inventory from auditors may indicate scienter).

- *Iowa Public Employees' Retirement System v. MF Global, Ltd., 620* F3d. 137 (2d Cir. 2010) (reversing dismissal of complaint).

- *In re Apollo Group, Inc. Securities Litigation*, 2010 WL 5927988 (9th Cir. June 23, 2010), *cert. denied,* 562 U.S. 1270 (2011) (reversing judgment notwithstanding the verdict on loss causation grounds, and reinstating jury verdict).

- *Becker v. BNY Mellon Trust Co., N.A.,* 172 F. Supp. 3d 777 (E.D. Pa. 2016) (denying motion for summary judgment); 2016 WL 6397415 (E.D. Pa. October 28, 2016) (reconsideration denied); 2016 WL5816075 (E.D. Pa. October 5, 2016) (granting class certification).

- *Pennsylvania Public School Employees' Retirement System v. Bank of America Corp.*, 874 F.Supp.2d 341 (S.D.N.Y. 2012) (denying motion to dismiss complaint); 2013 WL 1664696 (S.D.N.Y., April 17, 2013) (denying motion to dismiss amended complaint).

- *In re American International Group, Inc. 2008 Securities Litigation*, 741 F.Supp.2d 511 (S.D.N.Y. 2010) (denying all motions to dismiss complaint).

- *In re OmniVision Technologies, Inc. Securities Litigation*, 2013 WL 1334250 (N.D.Cal., March 29, 2013) (denying motion to dismiss complaint).

- *Herbert Resnik v. Patricia A. Woertz, et al. (Archer-Daniels-Midland Derivative Litigation)*, 2011 U.S. Dist. LEXIS 31868 (D. Del. March 28, 2011) (denying motion to dismiss derivative complaint).

- *Arkansas Teachers Retirement System v. Caiafa (Countrywide Financial Corp./Bank of America Merger Litigation),* 996 A.2d 321 (Del. 2010) (approving settlement and establishing potential basis for challenging mergers).

- *In re Cendant Corp. Securities Litigation*: Throughout the course of the litigation, the court issued several important decisions including the following reported decisions: 182 F.R.D. 144 (D.N.J. 1998); 191 F.R.D. 387 (D.N.J. 1998); 182 F.R.D. 476 (D.N.J. 1998); 60 F.Supp.2d 354 ((D.N.J. 1999); 2000 WL 1288307 (D.N.J., April 7, 2000); 194 F.R.D. 158 (D.N.J. 2000); 109 F.Supp.2d 235 (D.N.J. 2000); 109 F.Supp.2d 273 (D.N.J. 2000); 109 F.Supp.2d 285 (D.N.J. 2000); 243 F.Supp.2d 166 (D.N.J. 2003); 264 F.3d 201 (3rd Cir. 2001); 264 F.3d 286 (3d Cir. 2001); 404 F.3d 173 (3rd Cir. 2005).

- *In re McKesson HBOC, Inc. Securities Litigation*: Throughout the course of the litigation, the court issued several important decisions including the following reported decisions: 79 F.Supp.2d 1146 (N.D. Cal. 1999); 97 F.Supp.2d 993 (N.D. Cal. 1999); 126 F.Supp.2d 1239 (N.D. Cal. 2000); 2000 WL 34016195 (9th Cir. 2000); 126 F.Supp.2d 1248 (N.D. Cal. 2000); 339 F.3d 1087 (9th Cir. 2003) (9th Circuit affirmed the dismissal of a complaint brought by McKesson against lead plaintiff the New York State Common Retirement Fund, which sought to hold the NYSCRF and innocent class members responsible for damages allegedly suffered by the McKesson defendants); 2005 WL 946456 (N.D. Cal., March 31, 2005); 2005 WL 946455 (N.D. Cal., March 31, 2005); 2005 WL 934331 (N.D. Cal., March 31, 2005).

- *In re DaimlerChrysler AG Securities Litigation:* Throughout the course of the litigation, the court issued several important decisions including the following reported decisions: 197 F.Supp.2d 42 (D. Del. 2002); 197 F.Supp.2d 86 (D. Del. 2002); 200 F.Supp.2d 439 (D. Del. 2002); 247 F.Supp.2d 579 (D. Del. 2003); 216 F.R.D. 291 (D. Del. 2003), as amended by 2003 U.S.Dist. LEXIS 10849 (D. Del. June 19, 2003); 216 F.R.D. 395 (E.D. Mich. 2003); 269 F.Supp.2d 508 (D. Del. 2003).

- *City of Monroe Employees Retirement System v. Bridgestone Corp.*, 399 F.3d 651 (6th Cir. 2005).

- *In re PainCare Holdings Securities Litigation*, 2008 WL 348781 (M.D. Fla., Feb. 7, 2008).

- *In re Schering-Plough Corp. Sec. Litigation*, Master File No. 01-0829 (KSH), 2003 WL 25547564 (D.N.J. Oct. 10, 2003) (opinion granting motion for class certification).

- *Rieff v. Evans*, 630 N.W.2d 278 (Iowa 2001) and 672 N.W.2d 728 (Iowa 2003) (Allied Mutual Insurance Company demutualization litigation).

- *Rasner v. Sturm*, No. 00-K-1376 (D. Colo. June 20, 2001) (First World Communications, Inc. litigation).

- *In re Envoy Corporation Securities Litigation*, No. 3:98-0760 (WJH) (M.D. Tenn.).

- *In re HI/FN, Inc. Securities Litigation*, Master File No. C-99-4531-SI (N.D. Ca.).

- *Bell v. Fore Systems, Inc.,* 1998 U.S. Dist. LEXIS 7910 (W.D. Pa. 1998), adopted, 1998 U.S. Dist. Lexis 9589 (W.D. Pa. 1998).

- *In re Ancor Communications, Inc. Securities Litigation*, Master File No. 97-CV-1696 ADM/JGL (D. Minn. July 14, 1998).

- *Blaich v. Employee Solutions, Inc.*, No. Civ-97-545 (D. Ariz. August 11, 1998).

- *In re Burlington Coat Factory Securities Litigation*, 114 F.3d 1410 (3d Cir. 1997).

- *Weiner v. The Quaker Oats Company*, 129 F.3d 310 (3d Cir. 1997).

- *Cooper v. Pickett*, 137 F.3d 616 (9th Cir. 1997).

- *Gross v. Medaphis Corp.*, 977 F.Supp. 1463 (N.D. Ga. 1997).

- *Kaplan v. Rose*, 49 F.3d 1363 (9th Cir. 1995).

- *Shapiro v. UJB Financial Corp.*, 964 F.2d 272 (3d Cir. 1992).

- *In re Control Data Corporation Securities Litigation*, 933 F.2d 616 (8th Cir. 1991).

- *Gladwin v. Medfield*, 1975 WL 360, CCH Fed.Sec.L.Rep. ¶95,012 (M.D. Fla. 1975), aff'd, 540 F.2d 1266 (5th Cir. 1976).

- *Herskowitz v. Nutri/System, et al.*, 857 F.2d 179 (3rd Cir. 1988).

Attorney Resumes

Leonard Barrack, senior partner in Barrack, Rodos & Bacine, is a graduate of Temple University Law School (J.D. 1968) where he was Editor in Chief of the Temple Law Reporter. Mr. Barrack has been practicing in the area of securities class and derivative actions, and corporate litigation generally, for more than 40 years, during which time he has analyzed laws and provided advice on issues relevant to pension fund boards of trustees. He was admitted to the bar of the Supreme Court of Pennsylvania in 1969, and is also a member of the bars of the United States Supreme Court, the United States Courts of Appeals for the First, Third, Eighth and Tenth Circuits, and the United States District Court for the Eastern District of Pennsylvania. Mr. Barrack can be reached at the Firm's Philadelphia, PA office.

Since enactment of the PSLRA, Mr. Barrack has been appointed lead or co-lead counsel in dozens of securities cases throughout the United States, including three of the largest case settlements in securities class action history. In *In re WorldCom, Inc. Securities Litigation,* before the Honorable Denise L. Cote in the Southern District of New York, Mr. Barrack was responsible for guiding both the vigorously prosecuted litigation – including the five-week trial against Arthur Andersen – as well as negotiating on behalf of the NYSCRF the ground-breaking settlements totaling more than $6.19 billion with WorldCom's underwriters, its outside directors, and Arthur Andersen, in the midst of trial. He was also co-lead counsel in *In re Cendant Corporation Litigation*, before the Honorable William H. Walls in the District of New Jersey, which, at $3.3 billion, was the previously highest recovery ever achieved in a securities fraud class case; *In re McKesson HBOC, Inc. Securities Litigation,* before the Honorable Ronald M. Whyte in the Northern District of California, which settled for $1.052 billion. Mr. Barrack was also appointed co-lead counsel in *In re Merrill Lynch & Co. Securities, Derivative and ERISA Litigation*, before the Honorable Jed S. Rakoff in the Southern District of New York (settlement of $475 million approved in August 2009) and co-lead counsel in *In re American International Group, Inc. Securities Litigation*, before the Honorable Laura Taylor Swain in the Southern District of New York, which settled for $970.5 million.

Mr. Barrack has had extensive trial and deposition experience in complex actions including the successful trial of derivative lawsuits under Section 14(a) of the Securities Exchange Act of 1934; *Gladwin v. Medfield*, CCH Fed. Sec. L. Rep. ¶95,012 (M.D. Fla. 1975), *aff'd*, 540 F.2d 1266 (5th Cir. 1976); *Rafal v. Geneen*, CCH Fed. Sec. L. Rep. ¶93,505 (E.D. Pa. 1972). In addition, Mr. Barrack has lectured on class actions to sections of the American and Pennsylvania Bar Association and is the author of *Developments in Class Actions*, The Review of Securities Regulations, Volume 10, No. 1 (January 6, 1977); Securities Litigation, *Public Interest Practice and Fee Awards*, Practicing Law Institute (March, 1980).

Gerald J. Rodos, partner in Barrack, Rodos & Bacine, is a graduate of Boston University (B.A. 1967) and an honor graduate of the University of Michigan Law School (J.D. *cum laude* 1970). Mr. Rodos has been practicing in the area of securities class and derivative actions, antitrust litigation and corporate litigation generally, for more than 40 years, during which time he has analyzed laws and provided advice on issues relevant to pension fund boards of trustees. He was admitted to the bar of the Supreme Court of Pennsylvania in 1971, and is also a member of the bars of the Supreme Court of the United States, the United States Court of Appeals for the Third Circuit, and the United States District Court for the Eastern District of Pennsylvania. Mr. Rodos can be reached at the Firm's Philadelphia, PA office.

Mr. Rodos has been appointed lead counsel, *inter alia*, in *Payne, et al. v. MicroWarehouse, Inc., et al.*, before the Honorable Dominic J. Squatrito in the District of Connecticut; *In re Sunbeam Securities Litigation,* pending before the Honorable Donald M. Middlebrooks in the Southern District of Florida; *In re Regal Communications Securities Litigation*, before the Honorable James T. Giles in the Eastern District of Pennsylvania; *In re Midlantic Corp. Shareholders Securities Litigation*, before the Honorable Dickinson R. Debevoise in the District of New Jersey; *In re Craftmatic Securities Litigation*, before the Honorable Joseph L. McGlynn, Jr. in the Eastern District of Pennsylvania; *In re New Jersey Title*

Insurance Litigation, Case No. 2:08-cv-01425-PGS-ES, before the Honorable Peter G. Sheridan in the District of New Jersey; *In re Automotive Refinishing Paint Antitrust Litigation*, Case No. 2:01-cv-02830-RBS, before the Honorable R. Barclay Surrick in the Eastern District of Pennsylvania; and *In re Publication Paper Antitrust Litigation*, Docket No. 3:04 MD 1631 (SRU), before the Honorable Stefan R. Underhill in the District of Connecticut, among many others. Mr. Rodos also represented lead plaintiff in the *WorldCom* litigation.

Mr. Rodos is the co-author of *Standing To Sue Of Subsequent Purchasers For Antitrust Violations -- The Pass-On Issue Re-Evaluated*, 20 S.D.L. Rev. 107 (1975), and *Judicial Implication of Private Causes of Action; Reappraisal and Retrenchment*, 80 Dick. L. Rev. 167 (1976).

Daniel E. Bacine, partner in Barrack, Rodos & Bacine, is a graduate of Temple University (B.S. 1967) and of Villanova University School of Law (J.D. 1971), where he was an Associate Editor of the Law Review and a member of the Order of the Coif. Mr. Bacine has been practicing in the area of securities class and derivative actions, and corporate litigation generally, for more than 40 years, during which time he has analyzed laws and provided advice on issues relevant to pension fund boards of trustees. He was admitted to the bar of the Supreme Court of Pennsylvania in 1971, and is also a member of the bars of the United States Courts of Appeals for the Third and Seventh Circuits and the United States District Court for the Eastern District of Pennsylvania. Mr. Bacine can be reached at the Firm's Philadelphia, PA office.

Mr. Bacine is an experienced civil litigator in both the federal and state courts, having tried jury and non-jury securities and other commercial cases, including cases involving disputes between securities brokerage firms and their customers. He has been lead or co-lead counsel in various class actions, including, *inter alia*, *In re American Travelers Corp. Securities Litigation*, in the Eastern District of Pennsylvania; *In re IGI Securities Litigation, in the District of New Jersey; Kirschner v. CableTel Corp.*, in the Eastern District of Pennsylvania; *Lewis v. Goldsmith*, in the District of New Jersey; *Rieff v. Evens (Allied Mutual Demutualization Litigation)*, in the District Court for Polk County, Iowa; *Crandall v. Alderfer (Old Guard Demutualization Litigation)*, in the Eastern District of Pennsylvania; and *In re Harleysville Mutual*, in the Court of Common Pleas of Philadelphia.

Mr. Bacine served as senior plaintiff's counsel in *Becker v. BNY Mellon Trust Co., N.A.*, in the Eastern District of Pennsylvania, a class action case that resulted in several important decisions delineating the duties of indenture trustees to bondholders: 172 F. Supp. 3d 777 (E.D. Pa. 2016) (denying motion for summary judgment); 2016 WL 6397415 (E.D. Pa. October 28, 2016) (reconsideration denied); 2016 WL5816075 (E.D. Pa. October 5, 2016) (granting class certification). He was senior counsel at the trial of the *Becker* matter, which settled just before closing arguments.

Mr. Bacine is an adjunct professor of law at Drexel University's Thomas R. Kline School of Law and an adjunct lecturer in law at Villanova University School of Law, teaching courses in class actions and complex litigation. He also sits as an arbitrator for the Financial Industry

Regulatory Authority, hearing disputes involving the securities industry, and has chaired numerous FINRA arbitration panels since 2000.

William J. Ban, partner in Barrack, Rodos & Bacine, is a graduate of Brooklyn Law School (J.D. 1982) and Lehman College of the City University of New York (A.B. 1977). For more than thirty-five years, Mr. Ban's practice of law has focused on securities, antitrust and consumer class action litigation on behalf of plaintiffs and he has participated as lead or co-lead counsel, on executive committees and in significant defined roles in scores of major class action litigations in federal and state courts throughout the country. Since Mr. Ban came to the Firm in 2004, he has been an important member of the firm's litigation teams for: *In re WorldCom, Inc. Securities Litigation*, Master File No. 02-Civ-3288 (DLC), before the Honorable Denise L. Cote in the Southern District of New York; *IPERS v. MF Global, Ltd.*, 08-Civ-2233 (VM), before the Honorable Victor Marrero in the Southern District of New York; *PPSERS v. Bank of America, Corp*., 11-Civ-00733 (WHP), before the Honorable William H. Pauley in the Southern District of New York; *In re Automotive Refinishing Paint Antitrust Litigation*, MDL Docket No. 1426, before the Honorable R. Barclay Surrick in the Eastern District of Pennsylvania; *In re: OSB Antitrust Litigation*, 06-CV-00826 (PSD), before the Honorable Paul S. Diamond in the Eastern District of Pennsylvania; and the recently concluded *In re: Lithium Ion Batteries Antitrust Litigation*, MDL Docket No. 2420, before the Honorable Yvonne G. Rogers in the Northern District of California, among others. Mr. Ban was admitted to practice in New York in 1983 and in Pennsylvania in 2005. He is a member of the bars of United States District Courts for the Southern and Eastern Districts of New York and the Eastern District of Pennsylvania and is a member of the New York City Bar Association. Mr. Ban can be reached at the Firm's New York, NY office.

Jeffrey A. Barrack, partner in Barrack, Rodos & Bacine, is a graduate of Clark University (B.A. 1990), Boston College (M.A. 1992) and Temple University School of Law (J.D. 1996). He was admitted to practice in Pennsylvania in 1996 and in New York in 2009, is a member of the bars of the United States Court of Appeals for the Third Circuit and the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Pennsylvania, and has been admitted *pro hac vice* in district courts throughout the United States. Mr. Barrack has represented plaintiffs in securities fraud, antitrust and other class actions since joining the Firm in 1996. He also has represented both plaintiff and defendant individual and corporate clients in environmental, consumer, business tort and commercial litigation in state and federal courts. Before joining the Firm, Mr. Barrack served under the United States Attorney assisting in the prosecution of complex white-collar crime in the Eastern District of Pennsylvania and the Philadelphia District Attorney assisting in the prosecution of crime in Philadelphia. He has been honored repeatedly by the First Judicial District of Pennsylvania as an attorney whose "work has been recognized by the judiciary as exemplary." Mr. Barrack can be reached at the Firm's Philadelphia, PA office.

Mr. Barrack served as a principal member of the litigation team and as a trial attorney in *In re Apollo Group Inc. Securities Litigation*, Master File No. CV-04-2147 PHX-JAT, before the Honorable James A. Teilborg of the United States District Court for the District of Arizona, which resulted in a $145 million recovery for the class. With the firm representing the Policemen's Annuity and Benefit Fund of Chicago, the *Apollo Group* federal jury trial began in November

2007 and ended in a unanimous verdict for investors in January 2008 for the full amount requested per damaged share. After the District Court entered a judgment notwithstanding the verdict on loss causation grounds, Mr. Barrack participated on the briefing team before the Ninth Circuit Court of Appeals, which led to the Court of Appeals vacating the JNOV and reinstating the jury verdict. Mr. Barrack also participated on the briefing team before the U.S. Supreme Court, which denied defendants' petition for certiorari. Mr. Barrack led the successful loss causation evidentiary and expert presentation at trial.

Mr. Barrack was also a principal member of the litigation team in *In re WorldCom, Inc. Securities Litigation*, Master File No. 02-Civ-3288 (DLC), before the Honorable Denise L. Cote of the United States District Court for the Southern District of New York, in which the Firm represented the New York State Common Retirement Fund. He served as the lead attorney on auditing and accounting issues through the case and actively participated in the five-week trial of the only non-settling defendant, WorldCom's former auditor Arthur Andersen LLP. The 2005 jury trial against Arthur Andersen resulted in an additional $103 million for the benefit of the class of WorldCom investors, prompting Judge Cote to commend in an opinion and order that in the "trial against Andersen, the quality of Lead Counsel's representation remained first-rate."

Mr. Barrack was a principal member of the litigation team in *Pennsylvania Public School Employees' Retirement System v. Bank of America Corp., et al.,* Civil Action No. 1:11-cv-733-WHP, before the Honorable William H. Pauley, III, in the United States District Court for the Southern District of New York. With the firm serving as counsel on behalf of the lead plaintiff and class representative, the Pennsylvania Public School Employees' Retirement System, Mr. Barrack served as a lead member in the litigation and resolution of the case, which settled for $335 million.

Mr. Barrack has also served public pensions as an important member of many successful litigation teams for the Firm. He represented the New York State Common Retirement Fund in the prosecution of *In re McKesson HBOC, Inc. Securities Litigation*, No. C-99-20743-RMW, before the Honorable Ronald M. Whyte in the Northern District of California, which resulted in more than $1.052 billion for investors from defendants, including Bear Stearns, the investment bank that issued a fairness opinion on the merger that was the subject of the action; the State Teachers Retirement System of Ohio in the prosecution of *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, Master File No.: 1:07-cv-9633-JSR-DFE, before the Honorable Judge Jed S. Rakoff, in the Southern District of New York, which settled for $475 million; the Iowa Public Employees Retirement System in the prosecution of *The Mills Corporation Securities Litigation*, Civil Action No. 1:06-cv-00077 (LO/TRJ), before the Honorable Liam O'Grady, in the Eastern District of Virginia, which settled for $202.75 million; the Denver Employees Retirement Plan, the Policemen's Annuity and Benefit Fund of Chicago, and the Municipal Employees Annuity and Benefit Fund of Chicago in the prosecution of *In re DaimlerChrysler AG Securities Litigation*, Master Docket No. 00-0993 (JJF), before the Honorable Joseph J. Farnan, Jr. in the District of Delaware ($300 million settlement); the CWA/ITU Negotiated Pension Plan in the prosecution of *In re Sunbeam Securities Litigation*, No. 98-8258-CIV-MIDDLEBROOKS, before the Honorable Donald M. Middlebrooks in the Southern District of Florida ($140 million settlement recovered from corporate defendants and the company's independent public accounting firm); the City of Philadelphia Board of Pensions

and Retirement in the prosecution of *In re R&G Financial Corporation Securities Litigation*, Master File No. 05 Civ. 4186 (JES), before the Honorable John E. Sprizzo, in the Southern District of New York ($51 million settlement from corporate defendants and the company's independent public accounting firm); and the Iowa Public Employees Retirement System in the prosecution of *In re Bridgestone Securities* Litigation, Master File No. 3:01-cv-0017, before the Honorable Robert L. Echols in the Middle District of Tennessee ($30 million settlement from Japanese corporation).

Mr. Barrack has successfully advocated corporate governance and excessive executive compensation reforms through shareholder rights claims asserted in direct and derivative cases alleging corporate directors' breaches of fiduciary and other legal duties. For example, Mr. Barrack was a principal member of the litigation team in *Resnick v. Occidental Petroleum, et al.*, Case No. 10-cv-00390, before the Honorable Robert F. Kelly, presiding by special designation in the District of Delaware, which resulted in benefits described by the Court as "meaningful change" to the company's executive compensation and reporting policies and practices that "affords valuable consideration to Occidental and its shareholders." And in *Gralnick v Apple, Inc*., No. 13 Civ. 900 (RJS), 13 Civ. 0976 (RJS) (S.D.N.Y.), Mr. Barrack was a principal member of the litigation team that successfully challenged an improper proxy statement issued by Apple, Inc., seeking to preserve shareholders' right to a fair and informed shareholder vote and to enjoin the vote on the offending proposal. The Court issue the injunction ruling that plaintiff shareholder was "likely to succeed on the merits and [would] face irreparable harm if the vote ... [was] permitted to proceed. Further, the Court finds that the balance of hardships tips in [plaintiff's] favor, and that a preliminary injunction would be in the public interest."

Mr. Barrack has participated in public pension board educational programs and conferences designed for the education of public pension fiduciaries. For example, Mr. Barrack participated at a board educational program hosted by the Pennsylvania Public School Employees' Retirement System, and presented on trial practice in securities fraud litigation. In addition, Mr. Barrack has presented to the members of the National Association of Public Pension Attorneys ("NAPPA") during its annual summer seminar, and has published work in its periodical, *The NAPPA Report*. Mr. Barrack currently serves on NAPPA's Securities Litigation Working Group. Mr. Barrack has lectured on private securities litigation at the Beasley School of Law at Temple University, has been a featured columnist on securities litigation for *The Legal Intelligencer*, the oldest law journal in the United States, and has written on trial practice for the *American Journal of Trial Advocacy*.

Stephen R. Basser, partner in Barrack, Rodos & Bacine, is a graduate of the American University, Washington D.C. (B.A., with Honors, 1973) and Temple University School of Law, Philadelphia, Pennsylvania (J.D. *cum laude* 1976), where he was awarded the honor of "Highest Grade and Distinguished Class Performance" by its nationally renowned clinical trial litigation program and was selected to serve as a student prosecutor under the supervision of the United States Attorney's Office for the Eastern District of Pennsylvania. Mr. Basser has been practicing in the area of securities class and derivative actions, and corporate litigation generally, for over 32 years, during which time he has analyzed laws and provided advice on issues relevant to pension fund boards of trustees. He was admitted to the bars of the Supreme

Court of Pennsylvania in 1976, and the Supreme Court of California in 1985. He is also a member of the bars of the United States Circuit Courts of Appeals for the Sixth and Ninth Circuits, and the United States District Courts for the Southern, Central and Northern Districts of California, the District of Colorado, the Eastern District of Pennsylvania and the Northern District of Texas. Mr. Basser is the managing partner of the Firm's San Diego, CA office.

Mr. Basser is an experienced civil litigator in federal and state courts and has successfully tried numerous civil jury and non-jury cases to verdict. In addition to litigating product liability, medical malpractice, catastrophic injury, mass toxic tort and complex business disputes, Mr. Basser has extensive experience prosecuting securities class actions, including actions against Pfizer, Inc., Procyte Corp., Wall Data Corp., Louisiana-Pacific Corp., Samsonite Corp., TriTeal Corp., Sybase, Inc., Silicon Graphics, Inc., Orthologic Corp., Adobe, PeopleSoft, Inc., Safeskin Corp., Bridgestone Corp., Harmonic, Inc., 3Com Corp., Dignity Partners, Inc., Daou, Vivus, Inc., FPA Medical, Inc., Union Banc of California, Merix Corporation, Simulation Sciences, Inc., Informix Corporation, OmniVision Technologies, Inc. and Hewlett Packard Company. Mr. Basser served as lead counsel representing lead plaintiff the Florida State Board of Administration in *In re Applied Micro Circuits Corp. Securities Litigation*, Lead Case No. 01-cv-0649-K (AJB), which settled for $60 million, one of the largest recoveries in a securities class action in the Southern District of California since passage of the PSLRA. He also acted as co-lead counsel for lead plaintiff the NYSCRF in *In re McKesson HBOC, Inc. Securities Litigation*, Master File No. CV-99-20743 RMW, which settled for a total of $1.052 billion from all defendants and is the largest securities fraud class action recovery in the Northern District of California. Mr. Basser was the lead attorney in *In re Chiron Shareholder Deal Litigation*, Case No. RG 05-230567, (Superior Court in and for the County of Alameda, California), resulting in a settlement for the shareholder class valued at approximately $880 million, constituting one of the largest securities ever achieved in a merger related class action alleging breach of fiduciary duties by corporate officers and directors. He was the lead trial attorney in *In re Apollo Group Inc. Securities Litigation*, Master File No. CV-04-2147 PHX-JAT (District of Arizona), before the Honorable James A. Teilborg, which was tried to a federal jury from November 2007 until the jury returned a unanimous verdict for investors on January 16, 2008, ultimately recovering $145 million for the shareholder class.

Mr. Basser has prosecuted derivative shareholder actions on behalf of and for the benefit of nominal corporate entities such as Pfizer, Apple, Nvidia and Quest, achieving significant corporate governance therapeutics on behalf of those entities. Mr. Basser has also vigorously pursued the rights of the elderly, serving as a co-lead counsel and as part of a group of firms prosecuting class actions alleging federal RICO claims against companies that target senior citizens in the sale of deferred annuity products, ultimately securing benefits collectively valued at over $1 billion.

Mr. Basser has regularly shared his experience and knowledge with attorneys, Judges, public pension funds and the lay public. He also lectured on the topic of securities related litigation and shareholder issues in the wake of the derivative securities, toxic debt portfolio and real estate mortgage default related global economic crisis of 2008, at the American Association of Justice, Winter Convention, February 2010 and the American Association of Justice, Summer Convention 2010, presented on the topic of "Securities Litigation" at the Federal Judicial

Center's Workshop for Judges of the Ninth Circuit on February 1, 2011 and lectured on the topic of trying a complex class action at Vanderbilt Law School entitled "Battle in the Valley of the Sun: Strategy Tactics and Honor in Litigation," October 17, 2013. He has written for the American Association of Justice Quarterly Newsletter, Fall 2009, co-authoring "*Securities Litigation in the Wake of the Sub-Prime Crisis.*" Mr. Basser has been repeatedly selected as a California "Super Lawyer" through 2018, as LAWDRAGON's "100 Attorneys You Need to Know in Securities Litigation" and has been regularly commended by San Diego Magazine and the Los Angeles Times as a "Top Lawyer."

Daniel Brooker, an associate at Barrack Rodos & Bacine, is a graduate of the University of Wisconsin – Madison (2004, B.S. Biology & Political Science) and the University of San Diego School of Law (2007, J.D.). Mr. Brooker is admitted to practice law in California and is a registered patent attorney with the United States Patent and Trademark Office. He is also a member of the California Bar Association. Mr. Brooker can be reached at the Firm's San Diego, CA office.

Before joining the Firm, Mr. Brooker worked as a patent attorney and in private practice as a criminal defense attorney. He has trial experience in various civil cases and has helped clients resolve disputes through mediation as well.

Chad A. Carder, partner in Barrack, Rodos & Bacine, is an honors graduate of The Ohio State University (B.A. 1999), and College of William and Mary, Marshall-Wythe School of Law (J.D. 2002), where he was a Graduate Research Fellow and served on the William and Mary Moot Court Board. From 2002 to 2003, Mr. Carder served as the law clerk to the Honorable Michael J. Hogan of the New Jersey Superior Court. Mr. Carder was admitted to practice in Pennsylvania and New Jersey in 2002 and is a member of the bars of the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. He can be reached at the Firm's Philadelphia, PA office.

Mr. Carder concentrates his practice on federal securities class action litigation, is experienced in representing both institutional investor plaintiffs and individual defendants, and has been a member of the teams that have litigated major securities class actions to their landmark conclusions, including *In re WorldCom, Inc. Securities Litigation*, Master File No. 02-Civ-3288 (DLC), before the Honorable Denise L. Cote in the Southern District of New York; *In re Schering-Plough Securities Litigation*, Master File No. 01-CV-0829 (KSH/RJH), before the Honorable Katherine Hayden in the District of New Jersey; *Eastwood Enterprises, LLC v. Farha, et al.*, Case No. 8:07-cv-1940-T-33EAJ, before the Honorable Virginia M. Hernandez Covington in the Middle District of Florida; and *In re The Mills Corporation Securities Litigation*, Civil Action No. 1:06-cv-00077 (LO/TJR), before the Honorable Liam O'Grady in the Eastern District of Virginia.

In addition to representing plaintiffs in securities class actions, Mr. Carder also has an active antitrust litigation practice, representing plaintiffs in the prosecution of the following antitrust cases, among others: *In re Chocolate Confectionary Antitrust Litigation*, before the Honorable Christopher C. Connor, in the Middle District of Pennsylvania; *In re Processed Egg*

Products Antitrust Litigation, before the Honorable Gene E.K. Pratter, in the Eastern District of Pennsylvania; *In re New Jersey Title Insurance Antitrust Litigation*, before the Honorable Garrett E. Brown, Jr., in the District of New Jersey; *In re Flat Glass (II) Antitrust Litigation*, before the Honorable Donetta W. Ambrose in the Western District of Pennsylvania; and *In re Publication Paper Antitrust Litigation*, before the Honorable Stefan R. Underhill in the District of Connecticut. Mr. Carder is also currently litigating several corporate takeover class and derivative actions, and has extensive experience litigating shareholder derivative actions in various state and federal courts.

Matthew Cyr, an associate at Barrack, Rodos & Bacine, is a graduate of St. Joseph's University, Philadelphia, Pennsylvania (B.A. 1998) and the University of Wisconsin Law School, Madison, Wisconsin (J.D. 2005). Mr. Cyr was admitted to practice in Wisconsin in 2005, in New Jersey in 2006 and in Pennsylvania in 2012. He can be reached at the Firm's Philadelphia, PA office.

At the Firm, Mr. Cyr has worked on major class action litigation in the securities and antitrust fields, including cases against Mills Corporation, WellCare Health Plans, Inc., American International Group, RAIT Financial Trust, Merrill Lynch & Co., and companies involved in the municipal derivatives industry.

Alexander Arnold Gershon, partner in Barrack, Rodos & Bacine, is a graduate of the Georgia Institute of Technology (B.S. 1962), Emory University School of Law (L.L.B. 1964) and New York University (L.L.M. 1966). For more than 35 years, Mr. Gershon's practice has focused on representing plaintiffs in cases arising under the federal securities laws, state corporations laws, and similar kinds of matters in class actions, individual actions, and stockholders' derivative actions in the state and federal courts. Mr. Gershon was admitted to practice in New York in 1966 and in Georgia in 1964 (inactive status) and is a member of the bars of the United States Supreme Court, United States Courts of Appeals for the District of Columbia Circuit, the Second, Third and Ninth Circuits, and the United States District Courts for the Southern, Eastern and Western Districts of New York and the Northern District of Georgia. Mr. Gershon can be reached at the Firm's New York, NY office.

Mr. Gershon is an experienced civil litigator in federal and state courts and has contributed to the jurisprudence of class action settlements in cases such as *National Super Spuds, Inc. v. New York Mercantile Exchange,* 660 F.2d 9 (2d Cir. 1981); has helped to establish important standards in shareholder derivative actions: *Seinfeld v. Barrett,* 2006 WL 890909 (D. Del. 2006), and *Vides v. Amelio,* 265 F.Supp.2d 273 (S.D.N.Y. 2003) (exceptions to the demand requirement in stockholders' derivative actions); *Lewis v. Vogelstein,* 699 A.2d 327 (Del.Ch. 1997), and *Kaufman v. Beal,* 1983 WL 20295 (Del.Ch. 1983) (standards for executive compensation); and contributed to the establishment of the standards of required disclosure under the federal securities laws when corporate stockholders are solicited to approve executive bonus plans seeking tax benefits under the Internal Revenue Code in *Shaev v. Saper,* 320 F.3d 373 (3d Cir. 2003).

Mr. Gershon has successfully advocated corporate governance and excessive executive compensation reforms through shareholder rights claims asserted in direct and derivative cases alleging corporate directors' breaches of fiduciary and other legal duties. Most recently, Mr. Gershon led the litigation team in *Resnick v. Occidental Petroleum, et al.*, Case No. 10-cv-00390, before the Honorable Robert F. Kelly, presiding by special designation in the District of Delaware, which resulted in benefits described by the Court as "meaningful change" to the company's executive compensation and reporting policies and practices that "affords valuable consideration to Occidental and its shareholders."

Jeffrey B. Gittleman, partner in Barrack, Rodos & Bacine, is an honors graduate of Tulane University (B.A. 1993), and Temple University School of Law (J.D. 1996), where he served on the Moot Court Honors Society. Mr. Gittleman was admitted to practice in Pennsylvania and in New Jersey in 1996. He is admitted to the bars of the United States Court of Appeals for the Third Circuit and the United States District Courts for the District of New Jersey, the Eastern District of Pennsylvania and the Northern District of Illinois. Mr. Gittleman can be reached at the Firm's Philadelphia, PA office.

Mr. Gittleman has represented plaintiffs in securities fraud, antitrust and other class actions since joining the firm in 1998. Mr. Gittleman regularly consults with institutional investors, including international, state, county, municipal and Taft-Hartley pension funds, regarding domestic and international securities litigation. He assists clients in their evaluation of whether and when to take an active role in securities litigation. Mr. Gittleman works closely with the Firm's portfolio monitoring department and case evaluation teams to help the Firm's clients maximize their recoveries from securities litigation.

Mr. Gittleman has been actively involved in the prosecution of numerous securities litigation cases. He has represented the State of Michigan Retirement Systems in *In re American International Group, Inc. 2008 Securities Litigation*, Master File No. 08-CV-4772-LTS (S.D.N.Y.), which settled for $970.5 million; the Florida State Board of Administration in *In re Schering-Plough Securities Litigation*, which settled for $165 million, and the Iowa Public Employees' Retirement System in *In re Mills Securities Litigation*, which settled with the defendant real estate investment trust corporation, its officers and directors, its auditor, Ernst & Young, and a foreign real estate development company, for $202.75 million. He has also represented the State Teachers Retirement System of Ohio, the Pennsylvania Public School Employees' Retirement System, and the Oakland County Employees' Retirement System in securities litigation class actions across the country.

Recently, Mr. Gittleman served as trial counsel for a class of bondholders in *Becker v. BNY Mellon* in the Eastern District of Pennsylvania. The case settled the same day that closing arguments were set to begin. Mr. Gittleman also served as trial counsel for Iridian Technologies, Inc. and its common shareholder-elected directors in *Equity Asset Investment Trust, Inc. v. John Daugman, et al*, in a case tried in Delaware Chancery Court.

Mr. Gittleman has served in leadership roles in numerous multi-district antitrust class actions. He has helped secure multi-million dollar recoveries against the manufacturers of carbon fiber, automotive refinishing paint, graphite electrodes, flat class and other products. Mr.

Gittleman is currently serving as a member of the Executive Committee in *In re Lithium Ion Batteries Antitrust Litigation*.

Jeffrey W. Golan, a partner in Barrack, Rodos & Bacine, graduated with honors from Harvard College in 1976 with a degree in Government. He graduated in 1980 from the Georgetown University Law Center, where he served as the Topics Editor for the school's international law review, and from the School of Foreign Service, with a Master's of Science Degree in Foreign Service. In 1980, he received the Francis Deák Award from the American Society of International Law for the year's best student writing in an international law journal. Mr. Golan served as a Law Clerk for the Honorable Edwin D. Steel, Jr., in the United States District Court for the District of Delaware, and thereafter joined a large firm in Philadelphia, where he concentrated on commercial litigation, including the representation of plaintiffs and defendants in federal securities and antitrust cases. Mr. Golan was admitted to practice in Pennsylvania in 1981 and is a member of the bars of United States Court of Appeals for the Second, Third, and Fourth Circuits, and the United States District Court for the Eastern District of Pennsylvania. Mr. Golan can be reached at the Firm's Philadelphia, PA office.

Since joining BR&B in 1990, Mr. Golan has been the Firm's primary attorney in many major securities fraud cases throughout the country. Of particular note, he was BR&B's lead trial attorney in the *WorldCom* securities class action – a prosecution that yielded a record-breaking recovery of more than $6.19 billion for defrauded investors – one of the most notable fraud cases ever to go to trial. In April 2005, Mr. Golan led the BR&B team that took the only non-settling defendant, WorldCom's former auditor Arthur Andersen LLP, to trial. Andersen agreed to settle in the fifth week of trial, shortly before closing arguments. In approving this and other settlements, Judge Denise Cote found "the quality of the representation given by Lead Counsel is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation" and that "the quality of representation that Lead Counsel has provided to the class has been superb." From 2008 to 2015, Mr. Golan was the Firm's lead attorney in *In re American International Group, Inc. 2008 Securities Litigation*, which settled for $970.5 million. The settlement is believed to be the largest recovery in a securities class action in the absence of a restatement, an SEC enforcement action or a criminal indictment. In approving the settlement in March 2015, Judge Laura Taylor Swain found the recovery to be an "outstanding result obtained on behalf of the settlement class."

Mr. Golan also served as BR&B's primary attorney for the landmark *Cendant* case, in which the lead plaintiffs and lead counsel achieved what is still the third highest recovery ever achieved in a securities fraud class case ($3.32 billion), which included the most ever paid in a securities fraud class case by an outside auditor ($335 million). He served as the Firm's lead attorney in the securities fraud class action involving The Mills Corporation, which settled with the defendant real estate investment trust corporation, its officers and directors, its auditor, and a foreign real estate development company, for $202.75 million, as well as in cases against DaimlerChrysler ($300 million obtained for the class), DFC Global Corp. ($30 million recovered), and many others.

Mr. Golan also served as the lead trial attorney in an action in the Delaware Court of Chancery, *Equity Asset Investment Trust, et al. v. John G. Daugman, et al.*, in which the Firm

represented Iridian Technologies, Inc. (the world leader in iris recognition technologies) and its common shareholder-elected directors. The case was brought against the Company and the common directors, prepared for trial on an expedited basis under the Chancery Court's "fast-track" procedures for Board contests, and went to trial two months after the complaint was filed.

Mr. Golan has also headed up the Firm's representation of lead plaintiffs in a number of derivative actions stemming from the stock option backdating scandal, and served as the Firm's lead attorney in cases challenging proposed corporate transactions. He served as a co-lead counsel in consolidated shareholder cases challenging PepsiCo's acquisition of Pepsi Bottling Group. After such lawsuits were filed, PepsiCo increased its offer price from $29.50 to $36.50 per share, which provided PBG's public shareholders with an additional $1.022 billion in value. He represented institutional and individual lead plaintiffs in a case that challenged the proposed buy-out of Lafarge N.A. by its majority shareholder, Lafarge S.A., which was settled when Lafarge S.A. agreed to increase the buy-out price from the $75.00 per share initially offered to $85.50 per share (a $388 million increase in the amount paid to Lafarge N.A.'s public shareholders) and to make additional disclosures about the company and the proposed transaction. And, among other cases, Mr. Golan served as a co-lead counsel in consolidated shareholder cases challenging the majority shareholder buy-out of Nationwide Financial Services, Inc., where as part of a settlement the acquirer raised its offer price from $47.20 per share to $52.25 per share, thereby providing a $232 million benefit to class members.

Mr. Golan also successfully represented investors in the class and derivative action in the Delaware Court of Chancery in *In re Cheniere Energy Stockholders Litigation*, which challenged whether shareholders approved an equity compensation plan that provided Cheniere's CEO with $126 million in equity compensation for one year. The successful settlement of this litigation resulted in the withdrawal of a new equity compensation plan that had earlier been proposed to grant executives 30 million shares that would have had a market value of $565 million at the time, a new stockholder vote on the shares that were challenged by the litigation, and several other corporate reforms.

Mr. Golan has been selected as a "Pennsylvania Super Lawyer" in the field of securities litigation. In June 2000, he was honored as the "Featured Litigator" in the on-line magazine published by Summation Legal Technologies, the legal software company. Mr. Golan, who has served as a faculty member at various deposition training programs, has also served in numerous capacities for the Public Interest Law Center of Philadelphia, including as Vice-Chair of the Board, on the staff of the Mayor's Task Force for the Employment of Minorities in the Philadelphia Police Force, and as a member of the Philadelphia Bar Association's Pro Bono Task Force (report issued October 2017).

Robert A. Hoffman, partner in Barrack, Rodos & Bacine, is a graduate of Rutgers University (B.A. 1980) (with high distinction) and Rutgers University School of Law - Camden (J.D. 1983). Mr. Hoffman clerked for the Honorable Charles R. Weiner, United States District Court for the Eastern District of Pennsylvania, during the years 1984-1985. Mr. Hoffman has been practicing in the area of securities class and derivative actions, and corporate litigation generally, for more than 25 years, during which time he has analyzed laws and provided advice

on issues relevant to pension fund boards of trustees. He was admitted to the bars of the Supreme Court of Pennsylvania and Supreme Court of New Jersey in 1983, and is also a member of the bars the United States Court of Appeals for the Eighth Circuit and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. Mr. Hoffman can be reached at the Firm's Philadelphia, PA office.

Mr. Hoffman has broad experience in prosecuting securities class actions in federal courts around the country. He served as lead counsel for the Florida State Board of Administration in *In re Schering-Plough Securities Litigation*, before the Honorable Katherine Hayden in the District of New Jersey, which settled in 2009 for $165 million. Mr. Hoffman also prosecuted one of the most significant subprime related securities class actions, *In Re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, before the Honorable Judge Jed S. Rakoff, in the Southern District of New York, which settled for $475 million for defrauded investors, and was a member of the litigation team in prosecuting *In re American International Group, Inc. 2008 Securities Litigation*, before the Honorable Laura Taylor Swain in the Southern District of New York, which settled in 2014 for $970.5 million. He was one of the lead attorneys representing plaintiffs in *In re MicroWarehouse Securities Litigation*, (D.Conn.), which resulted in a $30 million recovery for the plaintiff class. He also has significant experience in the trial and appeal of securities class actions. *See, e.g. In re Control Data Corp. Securities Litigation*, 933 F.2d 616 (8th Cir. 1991). Mr. Hoffman also led a derivative case against Synthes, Inc., a large medical device company that had been cited by the U.S. Government for illegal "off-label" promotions. The case resulted in the implementation of significant corporate governance changes at the company.

Leslie Bornstein Molder, partner in Barrack, Rodos & Bacine, is an honors graduate from the University of Michigan (A.B. *magna cum laude* 1980) as well as from the National Law Center at the George Washington University (J.D. *cum laude* 1983) and was admitted to practice in Pennsylvania in 1983 and is a member of the bar of the United States Court of Appeals for the Seventh Circuit and the United States District Court for the Eastern District of Pennsylvania. For over 25 years, Ms. Molder has practiced primarily in the area of complex civil litigation, including securities class actions, antitrust class actions and policyholder actions against insurance companies and has participated in the trials of a variety of commercial cases, including cases involving disputes between securities brokerage firms and their customers. Ms. Molder oversees the Firm's portfolio monitoring services for institutional clients. She is also the Firm's settlement attorney, specializing in documenting and effectuating settlements of class actions and assisting clients throughout the settlement process. She can be reached at the Firm's Philadelphia, PA office.

Julie B. Palley, an associate at Barrack, Rodos & Bacine, joined the Firm in 2008. Ms. Palley graduated from the University of Pennsylvania *cum laude* in 2003 with a double major in Communications and Psychology with honors. She received her J.D. from Temple University School of Law in May of 2007. At Temple, Mrs. Palley was on the Dean's List and received an award for distinguished class performance. She was also a member of the Law School's budget committee, the Women's Law Caucus and the Jewish Law Students' Association. Ms. Palley was admitted to practice in Pennsylvania and New Jersey in 2007 and is a member of

the bar of the United States District Court for the Eastern District of Pennsylvania. Before joining Barrack, Rodos & Bacine, Mrs. Palley was counsel at the Pennsylvania Securities Commission. Ms. Palley can be reached at the Firm's Philadelphia, PA office.

At BR&B, Ms. Palley has been a member of the Firm's litigation teams representing investors, including state, local and union pension funds, in securities class action litigations and derivative actions, including cases involving securities fraud, shareholders rights and corporate governance. Ms. Palley was a member of the litigation team that prosecuted *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation* before the Honorable Jed S. Rakoff in the Southern District of New York, which settled for $475 million. Ms. Palley has also been part of the litigation teams in other successful class actions, including the team that successfully challenged the majority shareholder buy-out of Nationwide Financial Services, Inc., where as part of a settlement the acquirer raised its offer price from $47.20 per share to $52.25 per share, a $232 million benefit to class members, and as part of the teams challenging the proposed acquisition of Wm. Wrigley Jr. Company by Mars, Incorporated, and the proposed acquisition of King Pharmaceuticals by Pfizer. Ms. Palley also successfully represented shareholders in a derivative case involving the buyout of Barnes & Noble by its chairman, resulting in a $29 million payment to settle shareholder claims.

Ms. Palley was a member of the team prosecuting *In re American International Group, Inc. 2008 Securities Litigation*, before the Honorable Laura Taylor Swain in the Southern District of New York, which settled in 2014 for $970.5 million. She is also a member of the teams prosecuting *Pennsylvania Public School Employees' Retirement System v. Bank of America Corp.,* before the Honorable William H. Pauley, III, in the Southern District of New York as well as a member of litigation teams pursuing claims for violations of the federal antitrust laws on behalf of small businesses and other individuals who have been injured by price-fixing conspiracies.

Lisa Lamb Port, partner in Barrack, Rodos & Bacine, graduated *summa cum laude* from Villanova University School of Law in 2003, where she was a member of the Order of the Coif and an associate editor of the *Villanova Law Review* and *Villanova Journal of Law and Investment Management*. She received her B.A. in psychology, with honors, from Princeton University in 2000. Ms. Port was admitted to practice in Pennsylvania in 2003 and joined BR&B in 2005. She is also admitted to practice before the United States Court of Appeals for the Third Circuit and United States District Courts for the Eastern District of Pennsylvania and the Northern District of Illinois. She has been selected as a "Pennsylvania Rising Star" by *Philadelphia Magazine* and *Pennsylvania Super Lawyers* every year since 2013. Ms. Port is a member of the Villanova Inn of Court and a Volunteer Attorney for the Support Center for Child Advocates. Ms. Port can be reached at the Firm's Philadelphia, PA office.

Ms. Port's practice focuses on the representation of investors, including state, local and union pension funds, in securities class action litigations, derivative actions, and breach of fiduciary duty cases. Most recently, Ms. Port served as lead attorney for the plaintiff and the class of bondholders in *Becker v. BNY Mellon*, in the Eastern District of Pennsylvania, a class action case that resulted in several important decisions delineating the duties of indenture trustees to bondholders: 172 F. Supp. 3d 777 (E.D. Pa. 2016) (denying motion for summary

judgment); 2016 WL 6397415 (E.D. Pa. October 28, 2016) (reconsideration denied); 2016 WL5816075 (E.D. Pa. October 5, 2016) (granting class certification). She was the lead trial attorney at the trial of the *Becker* matter, which settled just before closing arguments.

She was also an integral part of the litigation team that prosecuted *In re American International Group, Inc. 2008 Securities Litigation*, which resulted in a $970.5 million settlement on behalf of the class. The settlement was reached after six years of intensive litigation and is among the largest recoveries ever achieved in a securities fraud class action stemming from the 2008 financial crisis. Ms. Port was also a member of the highly successful trial team in *In re WorldCom, Inc. Securities Litigation*, which resulted in a record-breaking recovery of more than $6.19 billion for defrauded investors.

Among other successful securities class action cases, Ms. Port was a key member of the teams that prosecuted cases against DFC Global Corp., Green Mountain Coffee Roasters, Inc. and The Mills Corporation. The case against Mills settled for $202.75 million, the largest recovery ever in Virginia and the second largest recovery ever in the Fourth Circuit. She has also been part of the litigation teams in other successful securities fraud class actions, including *In re Michael Baker Corp. Securities Litigation*, *In re R&G Financial Securities Litigation*, and *In re Bridgestone Securities Litigation*.

Mark R. Rosen, partner in Barrack, Rodos & Bacine, is an honors graduate of the University of Pennsylvania (A.B. *summa cum laude* 1976), where he was elected to Phi Beta Kappa, and the Harvard Law School (J.D. *cum laude* 1979). Mr. Rosen, who served as a law clerk to Judge Stanley S. Brotman, of the United States District Court for the District of New Jersey, has handled many trials and appeals as an experienced civil litigator representing plaintiffs and defendants in federal and state courts in, *inter alia*, constitutional, securities, antitrust, corporate takeover, environmental, consumer and other class and derivative litigation and individual commercial actions. Mr. Rosen can be reached at the Firm's Philadelphia, PA office.

Mr. Rosen has successfully litigated high-profile cases which received nationwide recognition. In *Strawn v. Canuso*, 140 N.J. 43, 657 A.2d 420 (1995), the New Jersey Supreme Court ruled in favor of his clients, a group of homeowners, in establishing that builders and real estate brokers must inform prospective buyers if the property for sale is near a landfill. In *Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders*, 48 F.3d 701 (3d Cir. 1995), *on remand*, 931 F. Supp. 341 (D.N.J. 1996), *aff'd*, 112 F.3d 652 (3d Cir.), *cert. denied*, 522 U.S. 966 (1997), Mr. Rosen represented an out-of-state recycling facility and persuaded the court to strike down the New Jersey system of waste "flow control," holding that it violated the constitutional protection for interstate commerce.

At BR&B, Mr. Rosen has handled a variety of matters, including antitrust, securities and corporate takeover class and derivative actions, as well as individual commercial actions. Mr. Rosen was a principal member of the litigation team in *Pennsylvania Public School Employees' Retirement System v. Bank of America Corp., et al.,* Civil Action No. 1:11-cv-733-WHP, before the Honorable William H. Pauley, III, which settled for $335 million. He was also a member of the successful team that litigated *In re WorldCom, Inc. Securities Litigation*, before the

Honorable Denise L. Cote in the Southern District of New York, to its landmark conclusion. He served as one of the lead counsel in the *Rubin v. MF Global Ltd.* securities litigation, where he successfully argued an appeal to the United States Court of Appeals for the Second Circuit, *Iowa Public Employees' Retirement System v. MF Global, Ltd.*, 620 F.3d 137 (2d Cir. 2010), establishing a landmark precedent that defendants could not immunize their statements under the "bespeaks caution" doctrine, and, upon remand, settled for $90 million. He currently serves as one of the lead counsel in the Green Mountain Coffee Roasters Securities Litigation, where he successfully argued an appeal to the Second Circuit reinstating the plaintiffs' claims. *Employees' Retirement System of Government of the Virgin Islands v. Blanford*, 794, F.3d 297 (2d Cir. 2015).

He was one of the lead counsel for plaintiffs in *In re Automotive Refinishing Paint Antitrust Litigation*, before the Honorable R. Barclay Surrick in the Eastern District of Pennsylvania, which yielded $105 million in settlements, and *In re Publication Paper Antitrust Litigation*, before the Honorable Stefan R. Underhill in the District of Connecticut, among others. He was one of the lead counsel for plaintiffs in the litigation over the acquisition of Chiron, which resulted in an increase of several hundred million dollars in the price paid to buy out its public shareholders, and for the mutual policyholders of Harleysville Mutual Insurance Company, in which he worked to secure a $26 million recovery. Mr. Rosen has also handled the defense of several matters, including representing a group of defendants in a securities action arising from the upheaval in the financial markets. He also served as lead trial counsel representing a major international bank in an injunction hearing successfully defending its acquisition of an American bank.

Mr. Rosen has argued or had principal responsibilities for appeals in a number of state and federal appellate courts. In 2012, Mr. Rosen was selected as a Top Rated Lawyer in Commercial Litigation by American Lawyer Media. He is admitted to practice in California, the District of Columbia, New Jersey and Pennsylvania, and is a member of the bars of the United States Supreme Court, the United States Courts of Appeals for the District of Columbia, Second, Third, Sixth, Seventh, Ninth, and Eleventh Circuits and the United States District Courts for the Southern, Central and Northern Districts of California, the District of Colorado, the District of Columbia, District of New Jersey, the Eastern District of Pennsylvania and the Eastern District of Wisconsin.

Michael A. Toomey, an associate in Barrack, Rodos & Bacine's New York office, joined the Firm in 2011. Mr. Toomey received his B.A. from Tufts University in 2005 and his J.D. from Temple University School of Law in 2010. At BR&B, Mr. Toomey has represented investors, including state, local and union pension funds, in several class and derivative actions, including cases involving securities fraud, shareholder rights and corporate governance. Mr. Toomey was an integral part of the litigation team that prosecuted *In re American International Group, Inc. 2008 Securities Litigation*, which resulted in a $970.5 million settlement for defrauded investors, among the largest recoveries ever achieved in a securities fraud class action stemming from the 2008 financial crisis. Mr. Toomey has also successfully represented investors in class and derivative actions such as *In re Cheniere Energy Stockholders Litigation*, which challenged whether shareholders approved an equity compensation plan that provided

Cheniere's CEO with $126 million in equity compensation for one year. The successful settlement of this litigation resulted in the withdrawal of a new equity compensation plan that proposed to grant executives 30 million shares, a new stockholder vote on the shares that were challenged by the litigation, and several other corporate reforms. Mr. Toomey also successfully represented shareholders in a derivative case challenging the payment by Barnes & Noble for an asset held by its chairman Leonard Riggio whereby Riggio agreed to pay $29 million to settle shareholders' claims. Mr. Toomey has also helped to establish important standards in shareholder derivative actions such as *Seinfeld v. Slager*, No. CIV.A. 6462-VCG, 2012 WL 2501105 (Del. Ch. June 29, 2012) (directors must show entire fairness of their own compensation if compensation plan lacks meaningful limits).

Mr. Toomey is admitted to practice in New York and New Jersey and is a member of the bars of the United States District Courts for the Southern and Eastern Districts of New York. While at Temple, Mr. Toomey was an intern in the Chambers of Judge Lerner of the Philadelphia Court of Common Pleas and Magistrate Judge Elizabeth Hey of the Eastern District of Pennsylvania. He also interned at the Philadelphia Public Defender where he advocated in court on behalf of indigent defendants. Mr. Toomey can be reached at the Firm's New York, NY office.

Samuel M. Ward**,** partner in Barrack, Rodos & Bacine, is a graduate of the University of California, Hastings College of Law (J.D. 2001), and a 1995 honors graduate of the University of California, San Diego (B.A. 1995). Mr. Ward was admitted to practice in California in 2001 and is a member of the bars of the United States District Courts for the Southern, Central and Northern District of California. Before joining BR&B, Mr. Ward worked as a political consultant, managing both Congressional and State Assembly campaigns. At the Firm, he has litigated numerous securities cases in federal district courts throughout the country. Mr. Ward was a member of the trial team in *In re Apollo Group Inc. Securities Litigation*, before the Honorable James A. Teilborg in the District of Arizona, where he played a critical role in mastering the deposition and documentary proof that was used at trial to secure the jury's unanimous verdict. Mr. Ward also represented the plaintiff class in *In re Applied Micro Circuits Corp. Securities Litigation*, achieving a $60 million settlement for class members, one of the largest recoveries in a securities class action in the Southern District of California since passage of the PSLRA. Mr. Ward is the former Chair of Planned Parenthood Affiliates of California and former Vice-Chair of the Board of Directors of Planned Parenthood of the Pacific Southwest. Mr. Ward can be reached at the Firm's San Diego, CA office.

Frances Vilella-Vélez, of-counsel to Barrack, Rodos & Bacine, is a graduate of Syracuse University College of Law, Syracuse, New York (J.D. 1977) and Swarthmore College (B.A. 1974). She was admitted to practice in Puerto Rico in 1977 and in Pennsylvania in 1978 and is a member of the bars of the United States Court of Appeals for the Third Circuit and the United States District Court for the Eastern District of Pennsylvania. Ms. Vilella-Vélez began her legal career in 1978 as a trial attorney in the Office of the Regional Solicitor, U.S. Department of Labor, where she litigated OSHA cases before the United States district courts and the Occupational Safety and Health Review Commission (OSHRC). She then served as the first law clerk for the Honorable Nelson A. Diaz, on the Court of Common Pleas of

Philadelphia County, Philadelphia, Pennsylvania. During her tenure with Judge Diaz, Ms. Vilella-Vélez also served as a staff member on the Mayor's Task Force on Minority Employment in the Police Department, in Philadelphia, where she conducted legal and policy analyses of alternative proposals to increase minority employment in the Policy Department, and assisted in drafting the report to the mayor. Ms. Vilella-Vélez can be reached at the Firm's Philadelphia, PA office. Among other community activities, Ms. Vilella-Vélez served for many years on the board of the Valentine Foundation and currently serves on the board of the Chester Children's Chorus.

Professional Staff Resumes

Brett G. Wilmot, *Director of Institutional Research*, joined the Firm in 2008. Mr. Wilmot brings extensive financial analysis experience to the Firm's securities and corporate litigation practice. Using a wide array of market research tools and resources, Mr. Wilmot investigates securities class actions, derivative actions, appraisal cases and other shareholder and corporate governance actions on behalf of our institutional clients. Mr. Wilmot identifies instances where fraud or other corporate wrongdoing has adversely affected the value of our clients' investments, and otherwise assists the Firm's effort in protecting client interests. Before joining the Firm, Mr. Wilmot worked for a Delaware-based securities litigation law firm where he created and instituted a proprietary portfolio monitoring program. He has extensive experience with calculations of client losses and recoverable damages. Mr. Wilmot also spent several years as an investment analyst for a $1 billion investment management firm. In 1999, Mr. Wilmot received a B.A. in statistics from the University of Michigan. He can be reached at the Firm's Philadelphia, PA office.

Eric J. Roode, *Senior Enterprise Developer*, joined the Firm in 2006. Mr. Roode is a career database engineer who brings a broad array of analytical skills to the Firm. He leads a team of information technology (IT) specialists who compile data about BR&B's clients' financial interests in pending and settled securities class actions. Mr. Roode designs, develops, and maintains the Firm's databases and its proprietary **BEAMS**® software. Mr. Roode has been developing software since 1985, and has been designing and developing database applications since 1989. His work has been cited in Damian Conway's seminal Perl Best Practices, and use of his Read-only module was ranked as one of the "Ten Essential Coding Practices." Mr. Roode's work was also cited in Mark Dominus's advanced text Higher-Order Perl. Before joining the Firm, Mr. Roode maintained and developed software for a large database of over a billion records for a private marketing corporation. He has given talks before Philadelphia's Perlmongers professional association, and before Philadelphia's Linux Users Group. Mr. Roode can be reached at the Firm's Philadelphia, PA office.

Representative Client List

BR&B has represented a wide range of institutional investors, including:

State Pension Funds:

Arizona Public Safety Personnel Retirement System, plan assets[1] of $9.3 billion (case evaluation and portfolio monitoring services since 2009)

Arizona State Retirement System, plan assets of $40 billion (case evaluation and portfolio monitoring services since 2018)

California Public Employees' Retirement System, plan assets of $336.6 billion (case evaluation and securities litigation services since 1998)

Colorado Public Employees' Retirement Association, plan assets of $52.4 billion (case evaluation services since 2008)

Florida State Board of Administration, plan assets of $167.9 billion (case evaluation, portfolio monitoring and securities litigation services since 1998)

Iowa Public Employees' Retirement System, plan assets of $31.5 billion (case evaluation, portfolio monitoring and securities litigation services since 2002)

Maine Public Employees' Retirement System, plan assets of $13.8 billion (case evaluation, portfolio monitoring and securities litigation services since 2006)

Massachusetts Pension Reserves Investment Board on behalf of the Massachusetts Pension Reserves Investment Trust Fund, plan assets of $69.4 billion (case evaluation services since 2016)

Michigan State Retirement System, plan assets of $75.5 billion (case evaluation and litigation services since 2008)

Montana Board of Investments, plan assets of $17.6 billion (case evaluation and portfolio monitoring services since 2005)

New Mexico Educational Retirement Board, plan assets of $12.5 billion (case evaluation and portfolio monitoring services since 2016)

New Mexico State Investment Council, plan assets of $24.3 billion (case evaluation and portfolio monitoring services since 2016)

New York State Common Retirement Fund, plan assets of $201.2 billion (case evaluation and litigation services since 1998)

Ohio Highway Patrol Retirement System, plan assets of $829.8 million (case evaluation services since 2007)

[1] All plan asset values are estimated and reflect currently-available information.

Ohio Police & Fire Pension Fund, plan assets of $15.3 billion (case evaluation services since 2007)

Ohio Public Employees' Retirement System, plan assets of $97.7 billion (case evaluation services since 2007)

Ohio School Employees' Retirement System, plan assets of $13.9 billion (case evaluation services since 2007)

Ohio State Teachers' Retirement System, plan assets of $76.4 billion (case evaluation and securities litigation services since 2007)

Oregon Public Employees Retirement Fund, plan assets of $77.4 billion (case evaluation and portfolio monitoring services since 2014)

Pennsylvania Public School Employees' Retirement System, plan assets of $52.8 billion (case evaluation and securities litigation services since 1996)

Public Employees Retirement Association of New Mexico, plan assets of $15.8 billion (case evaluation and portfolio monitoring services since 2016)

Public Employees' Retirement System of Mississippi, plan assets of $29.4 billion (case evaluation, portfolio monitoring and litigation services since 2009)

Vermont Pension Investment Committee, on behalf of the Vermont State Retirement System, the State Teachers Retirement System of Vermont, and the Municipal Employees Retirement System of Vermont, combined plan assets of $5 billion (case evaluation and portfolio monitoring services since 2014)

Municipal Pension Funds:

Brockton Retirement System, plan assets of $380.3 million (case evaluation and portfolio monitoring services since 2010)

City of Philadelphia Board of Pensions and Retirement, plan assets of $5 billion (case evaluation, portfolio monitoring and securities litigation services since 1996)

Denver Employees' Retirement Plan, plan assets of $2.5 billion (case evaluation, portfolio monitoring and securities litigation services since 2000)

Fort Worth Employees Retirement Fund, plan assets of $2.2 billion (case evaluation and portfolio monitoring services since 2012)

Laborer's Annuity and Benefit Fund of Chicago, plan assets of $1.5 billion (case evaluation, portfolio monitoring and securities litigation services since 2001)

Lehigh County Employee Pension Board, plan assets of $412.5 million (case evaluation and portfolio monitoring services since 2009)

Macomb County Employees Retirement System, plan assets of $1.2 billion (case evaluation and portfolio monitoring services since 2012)

Montgomery County Employees' Retirement System, plan assets of $390.4 million (case evaluation and portfolio monitoring services since 2011)

Oakland County Employees' Retirement System, plan assets of $1.1 billion (case evaluation, portfolio monitoring and securities litigation services since 2011)

Orange County Employees Retirement System, plan assets of $14.8 billion (case evaluation and portfolio monitoring services since 2017)

Public School Teachers' Pension and Retirement Fund of Chicago, plan assets of $10.7 billion (case evaluation, portfolio monitoring and securities litigation services since 1999)

San Bernardino County Employees' Retirement Association, plan assets of $9.6 billion (case evaluation and portfolio monitoring services since 2016)

Territories Pension Funds:

Government Employees Retirement System of the Virgin Islands, plan assets of $961 million (case evaluation, portfolio monitoring and securities litigation services since 2003)

Non-US Pension Funds:

Bedford Borough Council Pension Scheme, plan assets of $2.8 billion (case evaluation and portfolio monitoring services since 2008)

Cheshire Pension Fund, plan assets of $5.7 billion (case evaluation and portfolio monitoring services since 2014)

City and County of Swansea Pension Fund, plan assets of $2.5 billion (case evaluation and portfolio monitoring services since 2017)

Civil Aviation Authority Pension Scheme, plan assets of $3.2 billion (case evaluation and portfolio monitoring services since 2010)

Devon County Council Pension Fund, plan assets of $5.4 billion (case evaluation and portfolio monitoring services since 2012)

Fjärde AP-fonden, plan assets of $42.2 billion (case evaluation and portfolio monitoring services since 2009)

Hampshire County Council, plan assets of $8.7 billion (case evaluation and portfolio monitoring services since 2010)

Lancashire County Pension Fund, plan assets of $10 billion (case evaluation and portfolio monitoring services since 2012)

London Borough of Camden, plan assets of $2 billion (case evaluation and portfolio monitoring services since 2014)

London Borough of Lambeth, plan assets of $1.5 billion (case evaluation and portfolio monitoring services since 2014)

London Borough of Southwark, plan assets of $2 billion (case evaluation and portfolio monitoring services since 2010)

Norfolk County Council Pension Fund, plan assets of $4.7 billion (case evaluation and portfolio monitoring services since 2013)

Rhondda Cynon Taff County Borough Council, plan assets of $4.1 billion (case evaluation and portfolio monitoring services since 2009)

Strathclyde Pension Fund, plan assets of $27.1 billion (case evaluation and portfolio monitoring services since 2009)

Suffolk Pension Fund, plan assets of $3.7 billion (case evaluation and portfolio monitoring services since 2012)

Surrey County Council Pension Fund, plan assets of $5.3 billion (case evaluation and portfolio monitoring services since 2009)

Wiltshire Pension Fund, plan assets of $2.5 billion (case evaluation and portfolio monitoring services since 2009)

Worcestershire County Council Pension Fund, plan assets of $3.4 billion (case evaluation and portfolio monitoring services since 2012)

Labor Pension Funds:

Assistant Deputy Wardens-Deputy Wardens Annuity Fund, plan assets of $8.3 million (case evaluation and portfolio monitoring services since 2016)

Board of Education Employees' Pension Fund of Essex County, plan assets of $144 million (case evaluation, portfolio monitoring and securities litigation services since 2008)

Central Laborers Pension Fund, approximately plan assets of $936.7 million (case evaluation, portfolio monitoring and securities litigation services since 2009)

Communications Works of America, AFL-CIO Local 1180 Benefits Funds, plan assets of $75 million (case evaluation and portfolio monitoring services since 2017)

Communication Workers of America/International Typographical Union Negotiated Pension Fund, plan assets of $723.7 million (case evaluation, portfolio monitoring and securities litigation services since 1998)

Correction Captains' Association, Inc., plan assets of $18 million (case evaluation and portfolio monitoring services since 2016)

Detectives' Endowment Association Inc., plan asset of $150.3 million (case evaluation, portfolio monitoring and securities litigation services since 2016)

IATSE National Pension Plan, plan assets of $293.7 million (case evaluation and portfolio monitoring services since 2009)

International Brotherhood of Electrical Workers, Local 98, plan assets of $589.5 million (case evaluation, portfolio monitoring and securities litigation services since 2005)

International Brotherhood of Electrical Workers, Local 309 Health & Welfare Trust, plan assets of $20 million (case evaluation and portfolio monitoring services since 2017)

International Brotherhood of Teamsters Local 272, plan assets of $248 million (case evaluation and portfolio monitoring services since 2016)

International Brotherhood of Teamsters Local 282, plan assets of $835 million (case evaluation and portfolio monitoring services since 2017)

International Brotherhood of Teamsters Local 808, plan assets of $55 million (case evaluation and portfolio monitoring services since 2017)

The International Union of Painters and Allied Trades Industry Pension Plan, plan assets of $3.9 billion (case evaluation and portfolio monitoring services since 2012)

Iron Workers' Local 25 Fringe Benefit Funds, plan assets of $470 million (case evaluation, portfolio monitoring and securities litigation services since 2013)

Laborers' District Council and Contractors Pension Fund of Ohio, approximate plan assets of $2 billion (case evaluation, portfolio monitoring and securities litigation services since 2009)

Laborers District Council Construction Industry Pension Funds, plan assets of $320 million (case evaluation and portfolio monitoring services since 2013)

Michigan BAC Fringe Benefit Funds, plan assets of $125.7 million (case evaluation and portfolio monitoring services since 2015)

Northern California Laborers District Council Pension Fund, plan assets of $2.8 billion (case evaluation and portfolio monitoring services since 2012)

Philadelphia Marine Trade Association-International Longshoremen's Association Pension Trust Fund, plan assets of $93 million (case evaluation and portfolio monitoring services since 2012)

Sheet Metal Workers' Pension Fund of Local Union No. 19 and Sheet Metal Workers' Welfare Fund of Local Union 19, combined plan assets of $282 million (case evaluation and portfolio monitoring services since 2012)

Southeastern Pennsylvania Transportation Authority Pension Fund, plan assets of $1.6 billion (case evaluation, portfolio monitoring and securities litigation services since 2010)

Waterfront Employers-ILA Pension and Welfare Fund, plan assets of $325 million (case evaluation and portfolio monitoring services since 2018)

Other Institutional Investors:

MMIP Investment Management Limited, plan assets of $2 billion (case evaluation and portfolio monitoring services since 2009)

EXHIBIT 12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT: ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**MDL No. 2591**

DECLARATION OF ADAM P. PLANT

I, Adam P. Plant, declare as follows:

1. I am a partner in the law firm of Battle & Winn LLP. Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Battle & Winn is a firm of innovative, experienced litigation lawyers. We have a proven track record of achieving results for our clients by creating and implementing smart litigation strategies that earn the respect of judges, juries, and our peers.

4. Battle & Winn lawyers prosecute and defend complex civil cases for diverse clients—from aggrieved individuals to businesses of all sizes—in both state and federal courts. Battle & Winn lawyers have served as lead counsel for plaintiffs and defendants, and proven that they have the skills, experience, and smarts to take cases to trial and win.

5. Among the complex litigation matters this firm has handled are the *Allianz* cases (lead case: *William H. Clark v. Allianz Life Insurance Company*, Civ. Action No. 07-132 in the Circuit Court for Walker County, Alabama). Battle & Winn represented more than 300 individual plaintiffs against Allianz Life Insurance Company and its agents for fraud and breach of fiduciary duty for selling unsuitable equity-indexed annuities to elderly individuals, many of whom were in their seventies and eighties.

6. This firm litigates multi-million-dollar insurance coverage disputes, business disputes, False Claims Act matters, multi-party complex litigation, class action litigation, and conducts external investigations for private businesses, government agencies, and regulatory bodies.

7. I am a 2003 *cum laude* graduate of The University of Alabama School of Law. While in law school, I was Editor in Chief of the *Alabama Law Review*.

8. I am admitted to practice in Alabama and the District of Columbia. I also am admitted to practice in federal courts in Alabama and before the United States Court of Appeals for the Eleventh Circuit. I previously have been admitted *pro hac vice* in several courts including the Southern District of California, Northern District of California, Northern District of Georgia, Eastern District of Missouri, Southern District of Florida, District of New Mexico, the United States Courts of Appeals for the Eighth and Ninth Circuits, and state courts in California and Tennessee.

9. After my law school graduation, I served as a Deputy Solicitor General of Alabama. I represented the State of Alabama and wrote winning briefs before the Alabama Court of Criminal Appeals, Alabama Supreme Court, and the Eleventh Circuit Court of Appeals and had substantial experience in the Supreme Court of the United States, including briefs *amicus curiae*. Among the published decisions in which I was counsel are *Nelson v. Campbell*, 541 U.S. 637 (2004); *Altherr v. State*, 911 So. 2d 1105 (Ala. Crim. App. 2004); *Ex parte Med. Licensure Comm'n*, 897 So. 2d 1093 (Ala. 2004). In *McGinley v. Houston*, 361 F.3d 1328 (11th Cir. 2004), I represented the Justices of the Alabama Supreme Court in litigation concerning the removal of a 5,280-pound granite monument with the Ten Commandments engraved on it, which the former Chief Justice of Alabama installed.

10. The Hon. William H. Pryor Jr. then hired me as his first law clerk on the United States Court of Appeals for the Eleventh Circuit. I served as a law clerk to Judge Pryor from April 2004 to September 2005.

11. Before joining Battle & Winn, I had significant complex litigation experience individually as an attorney at a national class action and complex litigation firm based in Birmingham, Alabama. I represented the plaintiff in a groundbreaking Title IX retaliation case, *Jackson v. Birmingham Bd. of Ed.*, No. 2:01-cv-01866 (N.D. Ala.), *on remand from*, 544 U.S. 167 (2005). I have represented classes of consumers, shareholders, members of the United States Armed Forces, cattle ranchers, medical associations, and doctors during the course of my law practice. *See, e.g., McPhail v. First Command Fin. Planning, Inc.*, 247 F.R.D. 598 (S.D. Cal. 2007), 251 F.R.D. 514 (S.D. Cal. 2008); *Grimes v. Rave Motion Pictures Birmingham, LLC*, 552 F. Supp. 2d 1302 (N.D. Ala. 2008) (*Floyd v. Express Oil Change, LLC*), *rev'd sub nom*, *Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301 (11th Cir. 2009); *Carpenters Health & Welfare*

Fund v. Coca-Cola Co., 587 F. Supp. 2d 1266 (N.D. Ga. 2008); *Ex Parte Johnson*, 993 So. 2d 875 (Ala. 2008); *Utility Consumers' Action Network v. Sprint Solutions, Inc.*, No. 07-CV-2231 (S.D. Cal. May 12, 2010) (final settlement approval); *Feller v. Anthem Blue Cross*, No. 56-2010-00368587 (Ventura Co., Cal., Super. Ct. Aug. 26, 2011) (final settlement approval). My previous firm was named to the *National Law Journal* "Plaintiffs' Hot List" multiple times while I worked there. During my approximately six years working at my previous firm, clients and classes I represented were awarded more than $750 million in monetary and injunctive relief under judgments and settlements on which I personally worked.

12. Perhaps my most relevant complex litigation experience for the purposes of this Court's decision today is working with the leadership of *In re Genetically Modified Rice Litig.*, No. 4:06-MD-1811 (E.D. Mo.). In that matter, I helped develop litigation strategy, prepared merits experts, participated in mock trials, and actively participated numerous depositions. I reported directly to co-lead counsel and members of the plaintiff's leadership team. I drafted pretrial motions, performed legal research, and shepherded discovery concerning numerous third parties, including USDA NASS.

13. Attached to my declaration is my law firm's resume which further describes my background and that of my law firm.

14. In this case, I filed an Alabama state-law class action case. *Walter R. Richardson, et al. v. Syngenta Corp., et al.*, Case No. 01-CV-2015-000408.00 (filed in Jefferson County, Ala. Circuit Ct.). This case was removed to the Northern District of Alabama as Case No. 2:15-cv-02272-JEO and transferred by the MDL Panel on January 7, 2017 under CTO 51.

15. I was responsible for all aspects of the filing and management of this case until it was subsumed in the MDL litigation. This matter performed a critical function of ensuring that

all Alabama farmers' claims were protected against arguments that the statute of limitations was not tolled during the pendency of the MDL before class certification.

16. Battle & Winn maintains contemporaneous records of its time and expenses in the ordinary course of business.

17. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

18. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

19. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

20. I have substantially reduced my time and expenses, including writing off attendance at the initial hearing regarding applications for leadership of the MDL in Kansas City before this Court and participation in telephonic hearings at which I did not speak.

21. I also have ensured that none of my time spent working with my firm's numerous individual clients was included in the common benefit time entries.

22. After this re-review, I can confirm this time was undertaken by my firm at my direction. I believe the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

23. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $5,394.00. A breakdown of the lodestar is provided below.

	Name	Title	Total Hours	Hourly Rate	Lodestar
1.	Plant, Adam	Partner	11.60	$465.00	$5,394.00
	TOTALS		11.60		$5,394.00

24. My firm seeks $587.45 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
14	Court Fees	$551.00
15	Service of Process Fees	$36.45
	TOTAL	**$587.45**

25. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award conforms to the Common Benefit Order.

26. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records, and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Birmingham, Alabama.

/s/ *Adam P. Plant*
Adam P. Plant

BATTLE & WINN LLP

BATTLE & WINN
ATTORNEYS AT LAW

Firm Resume of Battle & Winn LLP

Battle & Winn LLP is a litigation law firm in Birmingham, Alabama. The firm was founded in 2004 when Robert E. Battle and Harlan F. Winn III left a large regional law firm of more than 200 lawyers to found their firm under a previous name. At Battle & Winn, the "litigation process" is not as an end unto itself—it's how we prepare a persuasive argument for our clients that is convincing to a judge or jury. We bring efficiency, creativity, and intensity to large-scale litigation and single-event cases. We focus our resources on important issues that improve our clients' results.

This resume discusses our practices areas and its successes in those practice areas over the past 14 years, then addresses the background of Battle & Winn lawyers.

Class Actions and Complex Litigation

Battle & Winn lawyers prosecute and defend complex civil cases for diverse clients—from aggrieved individuals to businesses of all sizes—in both state and federal courts. Battle & Winn lawyers have served as lead counsel for plaintiffs and defendants, and proven that they have the skills, experience, and smarts to take cases to trial and win.

Some notable class action successes of Battle & Winn include:

- *Hillis v. Equifax Consumer Services, Inc. and Fair Isaac Corporation*, Case No. 1:04-cv-03400 (N.D. Ga.). Appointed co-lead class counsel and recovered in-kind compensation exceeding $100 million in value and extensive injunctive relief for a class of approximately 6.6 million consumers under the Credit Repair Organization Act. The settlement of this case was approved by the district court on June 12, 2007. The settlement of this matter also covered the class pleaded in *Slack*.
- *Slack vs. Fair Isaac Corporation and Myfico Consumer Services, Inc.* (N.D. Cal.). We represented class members pleading violations of the Credit Repair Organization Act.
- *Townes vs. Transunion, LLC, and Truelink, Inc.* (D. Del.). Served as Co-Class Counsel. This case involved claims of violation of the Credit Repair Organization Act; a classwide settlement was reached and approved by the district court.

Whistleblower Litigation

Battle & Winn lawyers represent whistleblowers and qui tam relators in state and federal courts. When good people see bad things happen, they call us. Taxpayers deserve to know their hard-earned money is being used wisely, and not stolen through fraud, waste, and abuse.

Some of the notable successes of Battle & Winn in this practice area include:

- *United States ex rel. Fite v. Aperian Laboratory Solutions, et al.* (N.D. Ala.). Relator's counsel in ongoing False Claims Act matter, which has recovered more than $6 million for the United States.
- *Other matters remain under seal until final approval of pending settlements.*

Business & Commercial Litigation

We are experienced lawyers who handle business litigation nationwide. We prepare to win every case at trial, but we approach business cases with a business mindset. We create smart litigation strategies and recognize that not every dispute demands long, protracted litigation. We work with our clients to find a strategy that fits. While many matters were resolved according to settlement agreements that included confidentiality provisions, we have obtained multi-million-dollar recoveries for our clients.

Insurance Coverage Litigation

We represent policyholders when their insurance companies will not honor their agreements. Battle & Winn lawyers litigate coverage disputes for business and individuals, including bad faith denials of legitimate claims. We work to ensure our clients receive the insurance coverage they paid for and deserve. We regularly litigate and win cases where tens of millions of dollars are in dispute.

Litigation for Individuals

We believe individuals should have access to the civil justice system at the same high level as businesses. Battle & Winn represents our individual clients with the same creativity and intensity as our business clients. We regularly litigate non-compete and non-solicitation clause cases, shareholder direct and derivative cases, fraud cases, business dissolutions, and cases involving serious injury or wrongful death. We have obtained settlements and judgments worth millions of dollars to our clients. Battle & Winn lawyers represented more than 300 opt-out class members in cases against Allianz and resolved those cases in our clients' favor.

Estate Litigation

Sadly, when a family member dies, a family can be torn apart rather than brought together. Battle & Winn lawyers have represented families in disputes where substantial assets hang in the balance. We can litigate your will dispute, protect your interests, and maximize the assets of the estate. We have litigated will contests throughout Alabama, and all the way to the Alabama Supreme Court.

Issues, Appeals, and Special Matters

Battle & Winn lawyers are fully prepared to litigate every case through trial and appeal. We have significant experience in front of the Alabama Supreme Court, the Federal Courts of Appeals, and the Supreme Court of the United States. We believe that great appeals begin at the trial and pre-trial levels, and we prepare our cases with that in mind. Battle & Winn lawyers also can be retained post-verdict to litigate issues and appeals in state and federal appellate

courts. We will identify issues on which you can succeed, brief your appeal, and argue your case before the appellate courts.

Battle & Winn lawyers have been retained as counsel by special investigation committees, boards of directors, and government and regulatory bodies. We have litigated election law contests, including a disputed United States Senate election. We hold ourselves to high standards of ethics and competency, and we work discreetly to protect our clients' interests.

Members of the Battle & Winn Team

Relied on by clients and co-counsel. Respected by judges. Highly rated by our peers.

Robert E. Battle

B.A., Political Science (Yale College, 1992); J.D. (Vanderbilt Law School 1995). Law clerk (1995-'96) to Hon. Ira DeMent, U.S. District Judge for the Middle District of Alabama.

Battle & Winn lawyer Bob Battle is a founding partner in the firm. Mr. Battle's practice has focused primarily on business and commercial litigation, and he also has significant experience in class actions and complex litigation, personal injury, and wrongful death cases. Mr. Battle is admitted to practice in Alabama state and federal courts; the U.S. District Court for the District of Colorado; the U.S. District Court for the Central District of Illinois; the Northern District of Alabama Bankruptcy Court; and the Fifth and Eleventh Circuit Courts of Appeals. Bob also has been admitted *pro hac vice* in courts in Florida, Delaware, Oklahoma, Louisiana, Mississippi, and Pennsylvania.

Mr. Battle was an appointed special deputy Attorney General for the Alabama Department of Mental Health and Mental Retardation and led the defense of ten wrongful death and personal injury cases filed against the Department, its Commissioner, and its employees. Mr. Battle has tried complex litigation matters to successful verdicts. Bob also has significant appellate experience, including obtaining favorable rulings from appellate courts to uphold verdicts he won at trial.

Since 2005, Mr. Battle has been AV-rated by Martindale-Hubbell. Since 2010, Bob has been consistently recognized as an Alabama "Super Lawyer"—a recognition limited to only 5% of Alabama lawyers each year. *B-Metro* magazine has recognized Bob as one of the top lawyers in Birmingham in since 2010.

Mr. Battle grew up in Huntsville, Alabama. He is married to Brooke Tanner Battle, and they have two daughters. When not spending time with his family, Mr. Battle serves as the president of the Yale Club of Alabama and on the board of directors for Impact Alabama. He is the a past chair of the Federal Practice Section of the Birmingham Bar Association, serves as a member of the Birmingham Bar Foundation board of directors, and has served on the executive committee of the Birmingham Bar Association. Mr. Battle is a member of The Kiwanis Club of Birmingham. Mr. Battle has been honored with selections to the Project Corporate Leadership class of 1999, the Birmingham Business Journal "Top 40 Under 40" class of 2001, the Alabama State Bar Leadership Forum class of 2006, the Leadership

Birmingham class of 2012, and the Leadership Alabama Class of 2018. He also previously has served on the Alabama State Bar Young Lawyer's Executive Committee, and the Birmingham-Southern College President's Advisory Council.

Harlan F. Winn IIII

B.A., Economics (Washington & Lee University, 1990); J.D., *summa cum laude*, (Cumberland School of Law at Samford University, 1994). In law school, Mr. Winn was awarded the Dean's Scholarship, elected to the Honor Court, and was an editor of the *Cumberland Law Review*. Law clerk (1994-'95) to Hon. Edwin L. Nelson, United States District Judge for the Northern District of Alabama.

Battle & Winn lawyer Harlan Winn is a founding partner in the firm. Mr. Winn is licensed to practice in the state and federal courts of Alabama and Mississippi, and the Fifth and Eleventh Circuit Courts of Appeals. He has appeared *pro hac vice* in courts in Florida, Georgia, Louisiana, Tennessee, California, Delaware, Pennsylvania, and Oklahoma.

Mr. Winn has served both as class counsel and lead defense counsel in state and nationwide class actions. Mr. Winn's practice focuses on complex litigation, business litigation, estate litigation, and insurance coverage disputes. Mr. Winn's clients include individuals, privately held companies, and publicly-traded corporations. He represents these clients as plaintiffs and defendants in cases in federal and state courts nationwide. Mr. Winn is rated AV by Martindale-Hubbell, and is recognized as an Alabama "Super Lawyer"—a recognition limited to only 5% of Alabama lawyers each year. Mr. Winn has been recognized as one of the top lawyers in Birmingham by *B-Metro* magazine since 2010.

Mr. Winn is a native of Pensacola, Florida. He and his wife, Gina, have four children. Harlan is a retired youth baseball, basketball, softball, and soccer coach. He has served on the Board of Directors of the Birmingham Golf Association. Harlan teaches youth Sunday school at Canterbury United Methodist Church. When time permits, he is an avid outdoorsman.

Adam P. Plant

B.A., Journalism and Mass Communication (Samford University, 1999); J.D. *cum laude* (The University of Alabama School of Law, 2003). While in law school, Mr. Plant was Editor in Chief of the *Alabama Law Review*. Law clerk to Hon. William H. Pryor Jr., United States Circuit Judge for the Eleventh Circuit.

Battle & Winn lawyer Adam Plant joined the firm in 2011 after spending six years at a national litigation firm based in Birmingham. As a law student, Mr. Plant authored *With a Little Help from my Friends: The Intersection of the Gestational Carrier Surrogacy Agreement Legislative Inaction, and Medical Advancement*, 54 Ala. L. Rev. 639 (2003), which has been cited by with approval by state and federal courts. Before entering private practice, Mr. Plant served as a Deputy Solicitor General for the State of Alabama. During his time working at the Office of the Alabama Attorney General, Mr. Plant litigated for the people of Alabama in state and federal appellate courts, including the Supreme Court of Alabama, the United States Court of Appeals for the Eleventh Circuit, and the Supreme Court of the United States, including at the cert

stage, merits briefing, and briefs *amicus curiae*. His reported decisions include *Nelson v. Campbell*, 541 U.S. 637 (2004); *Altherr v. State*, 911 So. 2d 1105 (Ala. Crim. App. 2004); and *Ex parte Med. Licensure Comm'n*, 897 So. 2d 1093 (Ala. 2004). In *McGinley v. Houston*, 361 F.3d 1328 (11th Cir. 2004), Mr. Plant represented the Justices of the Alabama Supreme Court in litigation concerning the removal of a 5,280-pound granite monument with the Ten Commandments engraved on it, which the former Chief Justice of Alabama installed.

Mr. Plant is admitted to practice in Alabama and the District of Columbia. He also is admitted to practice in federal courts in Alabama and before the United States Court of Appeals for the Eleventh Circuit. He has been admitted *pro hac vice* in the Southern District of California, Northern District of California, Northern District of Georgia, Eastern District of Missouri, Southern District of Florida, District of New Mexico, United States Courts of Appeals for the Eighth and Ninth Circuits, and state courts in California and Tennessee.

Mr. Plant has represented clients in antitrust, securities, and shareholder derivative cases; class actions; and complex litigation. He has represented small businesses, shareholders, members of the United States Armed Forces, doctors and medical associations, cattle ranchers, and row crop farmers in state and federal courts nationwide, including extensive experience in multidistrict litigation. Some of his matters included *McPhail v. First Command Fin. Planning, Inc.*, 247 F.R.D. 598 (S.D. Cal. 2007), 251 F.R.D. 514 (S.D. Cal. 2008); *Grimes v. Rave Motion Pictures Birmingham, LLC*, 552 F. Supp. 2d 1302 (N.D. Ala. 2008) (*Floyd v. Express Oil Change, LLC*), *rev'd sub nom, Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301 (11th Cir. 2009); *Carpenters Health & Welfare Fund v. Coca-Cola Co.*, 587 F. Supp. 2d 1266 (N.D. Ga. 2008); *Ex Parte Johnson*, 993 So. 2d 875 (Ala. 2008); *Utility Consumers' Action Network v. Sprint Solutions, Inc.*, No. 07-CV-2231 (S.D. Cal. May 12, 2010) (final settlement approval); *Feller v. Anthem Blue Cross*, No. 56-2010-00368587 (Ventura Co., Cal., Super. Ct. Aug. 26, 2011) (final settlement approval). In *In re Genetically Modified Rice Litig.*, No. 4:06-MD-1811 (E.D. Mo.), Mr. Plant helped develop litigation strategy, prepared merits experts, participated in mock trials, and actively participated numerous depositions as a lawyer for thousands of American rice farmers. He drafted motions, performed legal research, and shepherded discovery concerning numerous third parties, including USDA NASS. Mr. Plant also represented the plaintiff in a groundbreaking Title IX retaliation case, *Jackson v. Birmingham Bd. of Ed.*, No. 2:01-cv-01866 (N.D. Ala.), *on remand from*, 544 U.S. 167 (2005).

Mr. Plant represents *qui tam* relators in whistleblower litigation and other clients in matters including prosecuting and defending personal injury, fraud, financial services, and contract cases. He is rated AV by Martindale-Hubbell and, before he aged out of the category, Mr. Plant was named as an Alabama "Super Lawyers Rising Star"—a recognition limited to only 2.5% of Alabama lawyers under 40 each year. Mr. Plant has been recognized as one of the top lawyers in Birmingham by *B-Metro* magazine multiple times.

Mr. Plant grew up on a farm in Madison County, Alabama. He and his wife have three children. He served as a member of the Cahaba Heights Master Plan Steering Committee for the City of Vestavia Hills, and the Samford University Department of Journalism and Mass Communication advisory board. He is a graduate of the Alabama State Bar Leadership Forum,

chaired the Leadership Forum Program Committee, and is the vice-chair of the Alabama State Bar Long Range Strategic Planning Task Force. Mr. Plant leads a Sunday school class for young professionals at Shades Mountain Baptist Church, where he is an ordained Deacon.

EXHIBIT 13

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF JOSEPH L. BELL, JR.

I, Joseph L. Bell, Jr., declare as follows:

1. I am a partner of Batts, Batts & Bell, LLP, located in Rocky Mount, North Carolina. Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Attached hereto is my firm's resume, which also includes biographies of all attorneys and a certified paralegal who submitted time in this matter.

4. Also attached is a list of representative complex cases that my firm has handled during the previous fifteen (15) years.

5. My firm assisted with locating, preparing pleadings for, and producing discovery for class representatives for the state of North Carolina. These undertakings were complicated by the withdrawal or dismissal of three North Carolina class representatives for various reasons, which required my firm to search for and find new class representatives and to help prepare and file pleadings for them well into this litigation. The new North Carolina class representatives are Benson and Russ, Inc., Mart Benson Farms, Inc. and Russ Company, Inc.

6. My firm and our timekeepers maintain contemporaneous records of our time and expenses in the ordinary course of business.

7. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

8. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

9. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

10. In re-reviewing the time entries, and in consultation with Co-Lead Counsel, I ensured that my firm is submitting time that qualifies as Common Benefit Work and edited out a substantial amount of time entries in an abundance of caution.

11. After this re-review, I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

12. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $62,192.00. A breakdown of the lodestar is provided below.

	Name	Title	Total Hours	Hourly Rate	Lodestar
1.	McKellar, Joseph	Associate	122.20	$200.00	$24,440.00
2.	Batts, Jeffrey	Partner	97.10	$280.00	$27,188.00
3.	Bell, Joseph	Partner	30.20	$260.00	$7,852.00
4.	Cottle, Jennifer	Paralegal	23.40	$80.00	$1,872.00
5.	Batts, Michael	Partner	2.00	$300.00	$600.00
6.	Smith, Michael	Associate	1.20	$200.00	$240.00
	TOTALS		276.10		$62,192

13. My firm seeks $380.22 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
1	Federal Express / Local Courier	$153.22
12	Lexis/Westlaw/Bloomberg	$27.00
14	Court Fees	$200.00
	TOTAL	**$380.22**

14. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

15. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 9th day of July, 2018, in Rocky Mount, North Carolina.

/s/ Joseph L Bell, Jr.
Joseph L. Bell, Jr.

BATTS, BATTS & BELL, LLP

HISTORY AND OVERVIEW OF THE FIRM

Batts, Batts & Bell, LLP was founded in 1980 by the late Jeff. D. Batts, and has been in continuous operation since that time. The firm takes pride in its history of providing valuable, quality services to its clients in a broad range of business and personal needs. We help clients anticipate and avoid problems, resolve disputes, and achieve their business and individual goals. We value our relationship with each client and dedicate our best resources to each matter in order to arrive at a positive resolution.

Our attorneys and other legal professionals are involved in professional organizations, volunteer groups, and committees that are focused upon and lead our industry's areas of service and expertise. We emphasize involvement and leadership in our respective fields.

The firm's office is located at 103 Candlewood Road, Rocky Mount, North Carolina. We have a staff of twelve, including six attorneys and three legal assistants.

The firm is engaged in a widely diversified practice which includes both litigation and commercial matters. Specific areas of practice include: general civil and commercial litigation, estate planning and administration, trust administration, tax litigation, business and corporate law, labor and employment law, state and federal criminal defense, family law, estate and fiduciary litigation, personal injury litigation, professional malpractice litigation, and dispute resolution including mediation and collaborative law.

ATTORNEYS

The firm's attorneys, for the most part, have areas of specialization and interest. The following list identifies the firm's attorneys, their respective backgrounds, and areas of interest and/or expertise.

Michael S. Batts

Michael S. Batts is a partner in the firm and primarily handles matters involving estate planning, estate and trust administration, federal and state taxation, and tax-exempt organizations. Mike's clients come from a wide area of eastern North Carolina. Mike has consulted with clients on estates of all sizes, from very large to rather modest. He also represents clients before IRS and North Carolina tax departments in audits and other reviews. Mike spends a good portion of his practice in estate planning, but also works with businesses and individuals on a variety of federal and state tax issues outside the estate and inheritance tax fields.

Mike is a native of North Carolina, born and raised in Rocky Mount. He graduated from Wake Forest University in 1980 with a B.S. in Business and a B.A. in Chemistry. After graduating from college, he worked as an industrial engineer for Blue Bell, Inc., for four

years in the Shenandoah Valley area of Virginia. Mike then returned to Wake Forest University and graduated from Wake Forest University School of Law in 1987. Mike then attended the University of Florida and received a degree of Masters of Laws in Taxation in 1988 before returning to Rocky Mount to practice law with his father.

Mike is admitted to practice before all state courts in North Carolina as well as the United States Tax Court. He was recognized by the North Carolina State Bar as a specialist in Estate Planning and Probate Law in November of 1995, and still retains his certification. Mike is also a member of state and local professional associations, the East Carolina Estate Planning Council, and the Eastern North Carolina Inn of Court.

Email: mikebatts@battslaw.com
Practice Areas: Estate Planning and Administration, Trust Administration, Tax Litigation
Bar Admissions: North Carolina, United States Tax Court
Bar Certifications: Estate Planning and Probate Law Specialist

Jeffrey A. Batts

Jeffrey A. Batts is a partner in the firm and handles a wide range of business, corporate, and civil litigation matters. Jeffrey's recent cases include: a number of closely held business disputes, including litigation between owners of a four closely held businesses resulting in a settlement and buyout of the minority shareholder; representation of 110 victims of an investment advisor who defrauded his clients of more than $12 million; defense of claims against one of the five primary defendants in the catastrophic explosion of a West Pharmaceutical plant in Kinston, North Carolina that resulted in several deaths and serious injuries with damages exceeding $50 million; ERISA and state law fraud and related claims for more than $10 million against a fiduciary arising from a profit sharing plan and related estate administration; representation of propounders and caveators in several caveat proceedings involving estates having asset values up to $25 million; defense of an ambulance service provider in the United States District Court against Medicare fraud claims of several million dollars, and pursuit of a related claim in the federal courts against a medical records service company that provided billing services to the provider; disputes involving estate administration; business disputes involving employment, non-competition, unfair and deceptive business claims practices, and trade secrets claims; real property disputes; and appeals arising from these.

In addition to matters in litigation, Jeffrey's practice involves a substantial amount of advice to businesses and the principals and owners of those businesses. Jeffrey has organized a large number of businesses, with emphasis on the form of business, ownership structure, and succession and forward-looking planning for relationships among principals and owners.

Jeffrey became a Certified Public Accountant in 1983, and kept his license active until 2006. His experience in the financial aspects of a wide range of businesses provides him with a valuable background in understanding the challenges faced by businesses today.

Jeffrey is a native of North Carolina, born and raised in Rocky Mount. He graduated from Wake Forest University in 1981 with a B.S. in Accounting, and graduated *cum laude* from Wake Forest University School of Law in 1986, where he served as Managing Editor of the Wake Forest Law Review. Jeffrey worked with Brooks, Pierce, McLendon, Humphrey & Leonard in Greensboro from 1986 to 1990 before returning home to join in practice with his father and brother. He is admitted to practice before all state and federal courts in North Carolina as well as the United States Tax Court, and was admitted to the United States Supreme Court Bar in 2001. Jeffrey is also a member of several state and local professional associations, the Eastern North Carolina Inn of Court, is Vice-Chairman of Nash UNC Hospitals and a founder, director and officer of North Carolina Civil Collaborative Law Association.

Email: jabatts@battslaw.com
Practice Areas: Business and Corporate Law, General Civil Litigation, Dispute Resolution, Collaborative Law
Bar Admissions: All State and Federal Courts in North Carolina, United States Tax Court, United States Supreme Court

Joseph L. Bell, Jr.

Joseph L. Bell, Jr. is a partner in the firm and handles a wide range of criminal and civil litigation matters. Joe typically handles serious felony cases in both state and federal courts, capital and non-capital murder cases in both state and federal courts, medical malpractice and serious personal injury matters, domestic matters related primarily to the equitable distribution of significant marital estates, guardianship matters, estate litigation, other general litigation matters, and appeals.

Joe is a member of the North Carolina State Bar and the 7th Judicial District Bar. He is also a member of the American Bar Association, North Carolina Bar Association [Sections: Family Law and Criminal Justice (Criminal Justice Section Council Member 2003-2006)], Nash-Edgecombe Counties Bar Association (President 1998-2003), North Carolina Academy of Trial Lawyers [Sections: Family Law and Professional Negligence], National Association of Criminal Defense Lawyers, and the Eastern North Carolina Inn of Court.

Joe graduated from the University of North Carolina at Chapel Hill in 1984 with an A.B. in Zoology. After several years working in sales, Joe returned to law school, graduating from Wake Forest University School of Law in 1991. While in law school, Joe served as the Managing Editor of the Wake Forest Law Review. Upon his graduation, Joe spent two years clerking for the Honorable Hiram H. Ward, United States District Judge, Middle District of North Carolina. After completing his clerkship in 1993, Joe came to Rocky Mount to join the practice of his father-in-law and brothers-in-law. He is admitted to practice before all state and federal courts in North Carolina, the United States Court of Appeals for the Fourth Circuit, and was admitted to the United States Supreme Court Bar in 2001. Joe is also admitted to practice before the United States Tax Court.

Email: jbelljr@battslaw.com
Practice Areas: Criminal Defense, General Civil Litigation, Family Law, Estate and Fiduciary Litigation
Bar Admissions: All State and Federal Courts in North Carolina, United States Tax Court, 4th Circuit Court of Appeals, Unites States Supreme Court

Michael R. Smith, Jr.

Michael R. Smith, Jr. joined the firm in 2008 and works primarily in the areas of criminal defense, family law, employment law, and general civil litigation. Mike regularly represents clients on a variety of criminal matters throughout Eastern North Carolina, from routine traffic tickets up to and including first degree murder. Mike also devotes a significant portion of his practice to representing clients on a variety of family law issues such as child custody, child support, spousal support, property division, separation, divorce, and domestic violence matters. The remainder of Mike's practice is devoted to civil litigation, with a focus on employment related issues. Mike has represented both employers and employees regarding a variety of issues such as sexual harassment, age discrimination, wrongful termination, and matters before the U.S. Equal Employment Opportunity Commission (EEOC).

Mike is a member of the North Carolina State Bar and the 7th Judicial District Bar. Mike is also a member of the North Carolina Bar Association as well as the North Carolina Advocates for Justice with membership in the criminal law, family law, and employment law sections. Mike is admitted to practice in all North Carolina state courts as well as the Federal District Court of the Eastern District of North Carolina.

Mike was born in Rocky Mount and raised in Hobgood, NC. After graduating high school, Mike enlisted in the United States Air Force where he served with the Air Force Security Forces for several years guarding aircraft and performing law enforcement related duties. Mike had the opportunity to live in various locations during his service including: California, Texas, New Jersey, South Korea, and Saudi Arabia. After leaving the military, Mike returned to North Carolina to work as a police officer with the Wilson Police Department before returning to college on a full time basis. In 2004, Mike graduated *summa cum laude* from North Carolina State University with a B.A. in Criminology. Shortly thereafter, Mike enrolled in law school at the University of North Carolina at Chapel Hill, graduating in May 2008.

Email: msmith@battslaw.com
Practice Areas: Criminal Defense, Family Law, Employment Law, General Civil Litigation
Bar Admissions: All State Courts in North Carolina; The United States District Court of the Eastern District of North Carolina

Joseph G. McKellar

Joseph G. McKellar joined the firm in 2011 and practices in the areas of general civil litigation and estate and fiduciary litigation. He has represented both plaintiffs and defendants in trials and hearings throughout the state in a wide variety of cases, which have included closely held business and shareholder disputes, Medicare fraud litigation, fiduciary litigation under ERISA and North Carolina law, business contract disputes, will caveats, real property disputes, personal injury cases, and appeals.

Joe is admitted to practice in the state courts of North Carolina and the United States District Court for the Eastern District of North Carolina. He is a member of the 7th Judicial District Bar, the North Carolina Bar Association, and the Nash-Edgecombe Counties Bar Association.

Joe is from Jackson, North Carolina. In 2000 he graduated with distinction from the University of North Carolina at Chapel Hill with a B.A. in Religious Studies and was inducted into Phi Beta Kappa. Joe received his law degree from the University of North Carolina at Chapel Hill in 2006.

Email: jmckellar@battslaw.com
Practice Areas: General Civil Litigation, Estate and Fiduciary Litigation
Bar Admissions: All State Courts in North Carolina; The United States District Court for the Eastern District of North Carolina.

Benjamin D. Carter

Benjamin D. Carter is an associate in the firm and primarily handles matters involving estate planning, estate and trust administration, guardianship, and estate and fiduciary litigation. Ben also represents clients before the IRS and North Carolina tax departments in audits and other reviews.

Ben moved to Rocky Mount, North Carolina as a child and has remained. He graduated from North Carolina State University in 2010 with a B.A. in History. In 2014, Ben graduated *cum laude* from the Campbell University School of Law. Ben was a Dean's List honoree, and a recipient of an academic scholarship which he maintained throughout his time at Campbell. Ben received the North Carolina Advocates for Justice Student Award in recognition of his accomplishments in trial advocacy,

Ben is admitted to practice before all state courts in North Carolina, the United States District Court for the Eastern District of North Carolina, and the United States Tax Court.

Email: bdcarter@battslaw.com
Practice Areas: General Civil Litigation, Estate and Fiduciary Litigation, Estate Planning and Administration, Trust Administration, Guardianship, Tax Litigation

Bar Admissions: All State Courts in North Carolina, United States District Court for the Eastern District of North Carolina, and the United States Tax Court.

PARALEGALS

Jennifer R. Cottle

Jennifer is a certified paralegal who joined the firm in 2007 and assists primarily in civil litigation and corporate matters. She is a North Carolina State Bar Certified Paralegal and has been working in the legal field since 1999. She obtained her paralegal certification in 2014, her Associate of Science Degree in Paralegal Technology from Wilson Community College, Wilson, NC in 2014, and her Bachelor of Science Degree in Business Administration from North Carolina Wesleyan College in 2016. She is in the process of obtaining her Associate of Science Degree in Accounting from Wilson Community College.

Jennifer currently serves as an Item-Writer for the North Carolina State Bar Paralegal Certification Exam and is a member of the North Carolina Paralegal Association. She also serves on the Advisory Committed to the Paralegal Technology Program and the Structured Programs of Study Subcommittee of Completion by Design at Wilson Community College in Wilson, North Carolina.

BATTS, BATTS & BELL, LLP

Representative Complex Cases:

Represented more than one hundred plaintiffs in litigation against investment manager who fraudulently procured investments in a number of real estate ventures. After several years of pretrial litigation, the firm secured a settlement of all available and recoverable funds from those investments for the benefit of the firm's clients, which represented more than 80% of the affected parties.

Represented the executor of an estate valued at over $20 million against a will caveat brought by beneficiaries of the decedent's prior will. After a month long trial, appeals to N.C. Court of Appeals and the N.C. Supreme Court, the firm secured a settlement favorable to our client.

Represented a multi-national chemical supplier who was one of five primary defendants in a case involving an explosion at a large manufacturing facility, resulting in six deaths and thirty-eight injuries and damages claimed in excess of $50 million. The client's product was alleged to be a primary cause of the explosion. After several years of pretrial litigation, the firm secured a settlement favorable to our client.

Represented car dealership against national finance company who wrongfully withheld servicing fees from firm's client. At trial before an appointed complex business judge, recovered significant verdict against defendant on behalf of firm's client which included an award of attorney's fees and costs. The verdict was upheld in appeal before the N.C. Court of Appeals and appellate review was denied by the N.C. Supreme Court.

Represented ambulance transport service in federal court action by United States to recover several million dollars for alleged Medicare fraud. Negotiated settlement allowed client to continue its business and pursue related claim by client against third-party medical billing company that resulted in a favorable settlement for the client.

Represented minority shareholder sued by majority shareholder for alleged fraud involving $8 million actual damages for fraud and other matters involving four companies, three co-owned. Following several years of pre-trial litigation, negotiated settlement with no liability for client and favorable cash purchase of all interests in co-owned companies and retention of fourth company solely owned by client.

Representing charitable bequest beneficiary with $6.4 million interest in estate and profit-sharing plan in federal court against fiduciary of estate and profit-sharing plan who failed to make distributions in accordance with plan and fiduciary responsibility on ERISA and state law claims; case involves more than 19 parties and is ongoing.

Represented plaintiff in sexual harassment case against large national corporation. Just prior to trial, successfully secured a significant settlement for firm's client.

EXHIBIT 14

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF SCOTT E. BRADY

I, Scott E. Brady, declare as follows:

1. I am a partner of Bohrer Brady, LLC ("Bohrer Brady"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Bohrer Brady is a Louisiana law firm that primarily represents individuals and companies who have been injured or suffered losses by the fault of another. The firm practices in the areas of personal injury, mass torts, class actions, pharmaceutical and medical device litigation,

wage and hour and consumer law. Bohrer Brady has been involved in numerous MDL and mass tort litigations including representing both producers and non-producers in *In re Genetically Modified Rice Litigation*, MDL 1811 (E.D. Mo.).

4. Attached to my declaration is my resume.

5. I received a Bachelor of Arts from Louisiana State University in 1994 before attending Southern University Law Center, where I graduated as Valedictorian of my law school class. I have been admitted to practice law in Louisiana since 1998. I am in good standing and admitted to practice before the following United States District Courts and Courts of Appeal: Middle District of Louisiana; Western District of Louisiana; Eastern District of Louisiana; Fifth Circuit Court of Appeals; Eastern District of Michigan; Eleventh Circuit Court of Appeals; District Court of Colorado; Western District of Texas; Northern District of Texas; Western District of Oklahoma; District Court of North Dakota; District Court of New Mexico; Southern District of Texas; Eastern District of Arkansas; Sixth Circuit Court of Appeals; and Northern District of Indiana.

6. My role in the instant litigation was focused on non-producers. As such, I participated in drafting, editing and reviewing various pleadings including the original, amended and Master complaints and discovery to the defendants. I also participated in drafting and editing master responses to discovery responses, in addition to responding to individual discovery requests from our client, Winnsboro Elevator, who was serving as a class representative. In responding to the defendants' class discovery, I collected, reviewed and produced thousands of documents in both paper and electronic form. I also produced Winnsboro Elevator as a class representative for a two-day deposition.

7. As part of our practice, Bohrer Brady maintains contemporaneous time and expenses.

8. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

9. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

10. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

11. Although paralegals, legal assistants and other attorneys of Bohrer Brady participated in the litigation on behalf of a class representative, their time was not included in the firm's common benefit submission.

12. After this re-review, I can confirm that this time was undertaken by myself. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

13. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $42,210.00. A breakdown of the lodestar is provided below.

	Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
1.	Brady, Scott	Partner	120.60	$350.00	$42,210.00
	TOTALS		120.60		$42,210.00

14. My firm seeks $5,022.28 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
6	Outside Photocopying	$480.48
11	Deposition Costs	$1,641.80
14	Court Fees	$400.00
18	Miscellaneous	$2,500.00
	TOTAL	**$5,022.28**

15. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

16. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 10th day of July, 2018, in Baton Rouge, Louisiana.

/s/ *Scott E. Brady*

Scott E. Brady
BOHRER BRADY, LLC
8712 Jefferson Highway, Suite B
Baton Rouge, Louisiana 70809
Telephone: (225) 925-5297
Facsimile: (225) 231-7000
scott@bohrerbrady.com

SCOTT E. BRADY

BOHRER BRADY, L.L.C.
8712 Jefferson Highway, Suite B
Baton Rouge, Louisiana 70809
Telephone: (225) 925-5297
Facsimile: (225) 231-7000
Email: scott@bohrerbrady.com

EDUCATION

Louisiana State University (B.A., 1994)
Southern University Law Center (J.D., 1997)

BAR ADMISSIONS

Louisiana State Bar, United States 5th Circuit Court of Appeals, United States 6th Circuit Court of Appeals, United States 11th Circuit Court of Appeals, United States District Court, Middle District of Louisiana, United States District Court, Western District of Louisiana, United States District Court, Eastern District of Louisiana, United States District Court, Eastern District of Michigan, United States District Court, Western District of Texas, United States District Court, Northern District of Texas, United States District Court, Southern District of Texas, United States District Court, Western District of Oklahoma, United States District Court, District of Colorado, United States District Court, District of New Mexico, United States District Court, Eastern District of Arkansas, United States District Court, District of North Dakota, Northern District of Indiana

PROFESSIONAL AFFILIATIONS AND MEMBERSHIPS

Baton Rouge Bar Association
Louisiana Association for Justice
Louisiana State Bar Association
American Association for Justice
National Employment Lawyers Association

HONORS/ACHIEVEMENTS

Valedictorian, Southern University Law Center, 1997
Circado Award, 1994-1996
Outstanding Achievement Award, 1991
Academic Achievement Award, 1995-1997
AV Rated, Martindale Hubbell

SEMINAR PRESENTATIONS

An Overview of State and Federal Privacy Law; Omerta Legal; March 11, 2017.

Class Actions: An Overview; Omerta Legal; November 13, 2016

MASS TORT/COLLECTIVE ACTION/CLASS ACTION EXPERIENCE

In Re: September 25, 1996 Chemical Exposure, Plaquemine, La., 18th Judicial District Court, Parish of Iberville, State of Louisiana
Mass Tort – Chemical Exposure

Hilton v. TCI of Louisiana, Inc., 18th Judicial District Court, Parish of Iberville, State of Louisiana
Class Action – Late Fee Overcharge

Erwin v. American River Transportation Company, Inc., 18th Judicial District Court, Parish of Iberville, State of Louisiana
Mass Tort – Toxic Exposure

Richard P. Ieyoub, Attorney General ex rel. State of Louisiana v. Philip Morris, Inc. et al., 14th Judicial District Court, Parish of Calcasieu, State of Louisiana
Recovery of Medicaid and Medicare Benefits

In Re: Propulsid Products Liability Litigation, Multi District Litigation Docket Number 1355, Eastern District of Louisiana
Mass Tort – Product Liability

Adams v. Environmental Purification Advancement Co., et al., United States District Court, Western District of Louisiana
Mass Tort – Toxic Exposure

Dipaola v. Colonial Life & Accident Insurance Company, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana
Class Action – Breach of Contract

Oldham, et al. v. The State of Louisiana Through Department of Health and Hospitals, 18th Judicial District Court, Parish of Iberville, State of Louisiana
Class Action – Toxic Tort

In Re: Industrial Life Insurance Litigation, MDL No. 1371, United States District Court, Eastern District of Louisiana
Class Action – Discrimination

Thomas, et al. v. A. Wilbert & Sons, L.L.C., et al., 18th Judicial District Court, Parish of Iberville, State of Louisiana
Class Action – Chemical Exposure

In Re: United Parcel Services, Inc. Excess Value Insurance Coverage Litigation, United States District Court, Southern District of New York
Class Action – Consumer

In Re: Custom Bus Litigation, United States District Court, Eastern District of Louisiana
Mass Tort – Bus Crash

In Re: Phenylpropanolamine (PPA) Products Liability Litigation, MDL No. 1407
Mass Tort – Product Liability

In Re: McDonald's Corp. Promotional Game Litigation, MDL No. 1437
Class Action - Consumer Fraud

Jarreau v. Central United Life Insurance Company, United States District Court, Middle District of Louisiana
Class Action – Denial of insurance benefits

Doiron v. Conseco Health Insurance Company, United States District Court, Middle District of Louisiana
Class Action – Denial of insurance benefits

Lincoln v. Shell Pipeline Company, LP, United States District Court, Eastern District of Louisiana
Class Action – Hurricane Litigation

Thomas v. Beverly Enterprises – Arkansas, Inc., Circuit Court for Independence County, State of Arkansas
Class Action – Nursing Home Litigation

Hellmers v. Countrywide Home Loans, Inc., United Stated District Court, Eastern District of Louisiana
Class Action – Hurricane Litigation

In Re: Apple iPod Nano Litigation, MDL 1754, United States District Court, Northern District of California, San Jose Division
Class Action – Products Liability

Allen v. All Homecaring, United States District Court, District of Minnesota,
Collective/Class Action – Unpaid wages

Crane v. J & M Communications, Inc., United States District Court, Northern District of Texas,
Collective Action – Unpaid wages

Buberry v. Absolute Care Staffing Health Agency, Inc., United States District Court, Middle District of North Carolina,
Collective/Class Action – Unpaid wages

Goodwin v. Home Health Care Plus, Inc., First Judicial District of Philadelphia, Court of Common Pleas,
Collective/Class Action – Unpaid wages

Hollis v. Alston Personal Care Services, Inc., United States District Court, Middle District of North Carolina,
Collective/Class Action – Unpaid wages

Kilpatrick v. Homeality, LLC, United States District Court, Eastern District of Arkansas,
Collective/Class Action – Unpaid wages

Lee v. Caregivers for Independence, LLC, United States District Court, Southern District of Ohio,
Collective/Class Action – Unpaid overtime wages

Lopez v. El Mirador, **Incorporated,** United States District Court, District of New Mexico,
Collective/Class Action – Unpaid overtime wages

Mayfield-Dillard v. Direct Home Health Care, Inc., United States District Court, District of Minnesota,
Collective/Class Action – Unpaid overtime wages

McKinstry v. Developmental Essential Services, Inc., United States District Court, Eastern District of Michigan,
Collective/Class Action – Unpaid overtime wages

Ray v. California Department of Social Services, United States District Court, Central District of California,
Collective/Class Action – Unpaid overtime wages

Scott v. Promptime Home Heathcare Services, Inc., United States District Court, Northern District of Texas,
Collective/Class Action – Unpaid overtime wages

Scott v. We Care Homes, Incorporated, 18th Judicial District Court, Iberville Parish, State of Louisiana,
Collective/Class Action – Unpaid overtime wages

In Re: OnStar Contract Litigation, United States District Court, Eastern District of Michigan, Southern Division
Class Action – Contract Litigation

In Re: Genetically-Modified Rice Litigation, United States District Court, Eastern District of Missouri
Mass Tort – Contamination of Rice Crop

In Re: Seroquel Products Liability Litigation, United States District Court, Middle District of Florida
Mass Tort – Product Liability

In Re: Gadolinium Based Contrast Agent Products Liability Litigation, United States District Court, Northern District of Ohio
Mass Tort – Product Liability

In Re: Human Tissue Product Liability Litigation, United States District Court for New Jersey
Mass Tort – Product Liability

Martin v. Liberty Life Insurance Company, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, State of South Carolina
Class Action – Discriminatory Sale of Insurance

Stassi v. Cox Communications Louisiana, L.L.C., 18th Judicial District Court, State of Louisiana
Class Action – Inadequate Internet Access

Runyan v. Life Investors Insurance Company of America, Circuit Court for Pulaski County, Arkansas
Class Action – Denial of Insurance Benefits

In Re: AT&T Mobility Wireless Data Services Tax Litigation, MDL 2142
Class Action – Taxation

In Re: Denture Cream Products Liability Litigation, MDL 2051
Mass Tort – Products Liability

In Re: DirecTV, Inc. Early Cancellation Fee Marketing and Sales Practice Litigation, MDL 2093
Class Action – Early Termination Fees

Schormann v. Central United Life Insurance Company, 18th Judicial District Court, Parish of Iberville, State of Louisiana
Class Action – Denial of Insurance Benefits

Bach v. Amedisys, United States District Court,
Middle District of Louisiana
Class Action – ERISA

In Re: Apple Iphone/Ipod Warranty Litigation, United States District Court
Northern District of California
Class Action – Breach of warranty

In Re: Syngenta AG MIR162 Corn Litigation, United States District Court,
District of Kansas
Class Action – Contamination of corn crop

Risperdal and Invega Product Liability Cases, Superior Court of California, County of Los Angeles
Mass Tort – Product Liability

In Re: Testosterone Replacement Therapy Products Liability Litigation,
United States District Court, Northern District of Illinois
Mass Tort – Product liability

Eschete v. Medtronic, Inc., 4th Judicial District of Minnesota
Mass Tort – Defect medical device

Hetherington v. Omaha Steaks, Inc., United States District Court
District of Oregon
Class Action – TCPA violations

Brorman v. Water Transfer, LLC, United States District Court
Western District of Texas
Class Action – Denial of overtime wages

Blankenship v. Kwick Rentals, United States District Court,
Northern District of Texas
Class Action – Denial of overtime wages

Spruel v. Professional Transportation, Inc., 18th Judicial District Court, State of Louisiana
Employment – Denial of overtime wages, retaliatory discharge

Fabre v. Malcolm Travel Enterprises, Inc., 19th Judicial District Court, State of Louisiana
Employment – non-payment of wages

Ellis v. Texas Prisoner Transportation Division, United States District Court Western District of Texas
Employment – denial of overtime pay

Voisin v. Axis Drilling, Inc., United States District Court Eastern District of Louisiana
Employment – WARN Act claims

Aston v. Global Prisoner Services, Inc., Civil Action No.: 5:16-cv-00420-DAE, United States District Court for the Western District of Texas; Employment - denial of overtime pay.

Daverlynn Kinkead, et al v. Humana, Inc., et al, Case No. 3:15-cv-01637-JAM, United States District Court for the District of Connecticut; Employment - denial of overtime pay.

Dana Cooper, et al v. Integrity Home Care, Inc., Civil Action No.: 4:16-cv-01293-SWH, United States District Court for the Western District of Missouri; Employment - denial of overtime pay.

Shalegra Williams, et al v. Albany Advocacy Resource Center, Inc., Civil Action No.: 1:16-cv-00216-LJA, United States District Court for the Middle District of Georgia; Employment - denial of overtime pay.

Marjorie Whitehead, et al v. Lutheran Homes of South Carolina, Inc., Civil Action No. 3:16-cv-3937-JFA, United States District Court for the District of South Carolina; Employment - denial of overtime pay.

EXHIBIT 15

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT: ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**MDL No. 2591**

DECLARATION OF CHRISTOPHER M. ELLIS

I, Christopher M. Ellis, declare as follows:

1. I am a Managing Partner of Bolen Robinson & Ellis, LLP ("BRE Law"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Since BRE Law's formation in 2004, my co-managing partner, Jon D. Robinson, and I have served as lead counsel and/or co-counsel or liaison counsel on numerous complex

litigation cases in both State and Federal Courts throughout the country. Many of the timekeepers contained herein also played pivotal roles in those cases.

4. Attached to my declaration is my law firm's Curriculum Vitae ("CV"), which lists many representative complex litigation cases where Jon or I served as lead counsel and/or co-counsel or liaison counsel.

5. Below is a list of each timekeeper contained on BRE Law's time submission documents, along with relevant background on each timekeeper. In order, the time keepers contained herein are: (a) Jon D. Robinson; (b) Christopher M. Ellis; (c) Shane M. Mendenhall; (d) Matthew C. Spain; (e) Joshua G. Rohrscheib; (f) L. Drew Hickey/Lea Jacobs; (g) Nrupa Patel; (h) Zachary T. Anderson; (i) Sandra Jones; (j) Donna Whitsett; (k) Lori Stephens; (l) Dawn Nichols.

(a) **Jon D. Robinson:** Jon is the senior partner and founding member of BRE Law. Over his 45+ years of practicing law, Jon has tried numerous cases to verdict, including, as outlined in the firm's CV, serving as class counsel for the Plaintiffs in numerous complex litigation/class action cases throughout the country.

(b) **Christopher M. Ellis:** Chris is the managing partner and founding member of BRE Law. After graduating from Georgetown University School of Law and practicing in large firms in Washington D.C. and Chicago, Chris returned to Decatur, Illinois and became a founding partner of BRE Law. Since founding the firm in 2004, Chris has directed and controlled BRE Law's complex litigation practice. A representative list of complex litigation cases where Chris served as class counsel is attached to the firm's CV. Here, Chris was selected to serve on the Executive Committee. In this capacity, Chris directed and controlled the firm's effort to prosecute this case on behalf of the class, while directly working with co-lead counsel to complete all

assigned work and responsibilities. As described more fully below, these responsibilities including defending numerous depositions, assisting an expert witness in calculating a damage formula, analyzing Syngenta's conduct under the purview of the World Trade Organization, working with and updating the Illinois class representatives regarding all aspects of the litigation, and working with Analytics LLC both on submitting the class notice to all farmers nationwide ("notice project") and tracking all exclusions from the class after notice was submitted ("exclusion project"). A full list of the assigned work and responsibilities is contained herein in Paragraph 6.

(c) **Shane M. Mendenhall:** After graduating from the Oklahoma City College of Law and joining BRE Law approximately 10 years ago, Shane has played an instrumental role in BRE Law's complex litigation practice. In this case, Shane played a variety of pivotal roles, including serving on the document review team at the request of leadership, which required him to review thousands of documents produced during discovery on the computer program Relativity.

(d) **Matthew C. Spain:** Matt graduated from Southern Illinois University College of Law. Like Shane, Matt served on the document review team. Throughout the course of the litigation, Matt expended many hours reviewing thousands of documents produced during discovery on the computer program Relativity.

(e) **Joshua G. Rohrscheib:** Josh graduated from the University of Illinois College of Law. After working at a large, multi-national law firm in Washington D.C., Josh returned to his hometown of Decatur, Illinois, and eventually joined BRE Law. In this case, Josh spent a significant amount of time assisting our local class

representative and bellwether plaintiffs respond to discovery requests from Syngenta and assisted in their deposition preparation and defending the actual depositions.

(f) **L. Drew Hickey/Lea Jacobs:** Drew is a Partner at BRE Law. Because of her past work related to international law and specifically the scope and enforcement of international treaties, Drew worked with Chris to research and draft a legal memorandum for leadership related to Syngenta's conduct and its relation to country obligations under the WTO.

(g) **Nrupa Patel:** Nrupa joined BRE Law in 2017, so her work here was limited to assisting in preparing a declaration for Russell Simmons of Analytics, LLC concerning class exclusions in July 2017.

(h) **Zachary T. Anderson:** Zach graduated from the University of Illinois College of Law and worked at BRE Law throughout law school. In addition to assisting local class representatives and bellwether plaintiffs respond to discovery, Zach, as described in paragraph 6, spent a significant amount of time working on what has been called the "Exclusion Project," a project assigned by co-lead counsel. This project required Zach to work jointly with Analytics LLC (the assigned class notice administrator) to track all individual exclusions from the class. While working with Analytics, Zach helped streamline exclusion tracking, which significantly alleviated the need for the class to expend attorney time on tracking individual exclusions.

(i) **Sandra Jones:** Sandy started with BRE as an accounts' manager in 2004 and retired from that role in 2018. Sandy's role in this matter was limited to coordinating production of plaintiff fact sheets in 2015.

(j) **Donna Whitsett:** Donna has worked in the legal field for nearly 43 years, serving as long-time paralegal to Jon D. Robinson. She has served as the lead paralegal on virtually of the complex litigation cases contained on the firm's CV. In this case, Donna primarily assisted in helping our assigned class representative and bellwether plaintiffs respond to discovery requests.

(k) **Lori Stephens:** Lori has been a paralegal for approximately 29 years, 7 of which have been at BRE Law. Since joining our firm, Lori has played a pivotal role on our complex litigation cases. Here, Lori spent a significant amount of time coordinating discovery on behalf of our class representative and bellwether plaintiffs, while working on many administrative tasks.

(l) **Dawn Nichols:** As a legal assistant, Dawn performed many administrative tasks and did some spot document coding in Relativity in late 2015.

6. During the course of the litigation, BRE Law expended a significant amount of time on seven primary issues, all of which are discussed below: (a) depositions; (b) document review; (c) discovery; (d) notice project; (e) damage models; (f) exclusion project; (g) WTO/Legal research.

(a) **Depositions.** I personally defended six depositions on behalf of class representatives and bellwether plaintiffs, including depositions for plaintiffs Steven Wentworth, Roger White, Dave McDonald, Chuck Fulkerson, Kenneth Kennedy, and Jim McKinney. At the request of leadership, I also attended five depositions scheduled in the Minnesota case to serve as a representative on behalf of class counsel. Following each deposition, I reported to leadership regarding the strategies developed during those depositions.

(b) **Document Review.** Two BRE Law attorneys, Shane Mendenhall and Matthew C. Spain joined the document review team. This required training in Kansas City. Both spent a significant amount of time reviewing documents produced by Syngenta and others during the discovery process, with a goal of identifying relevant documents for pleadings, trial, etc.

(c) **Discovery.** As more fully described in paragraph 7 of this declaration, my firm was in charge of responding to discovery request for plaintiffs Wentworth, White, McDonald, Fulkerson, and Kennedy. To say the least, responding to many of the discovery requests was very time consuming. Obtaining old sales documentations was especially difficult, as we found that many grain elevators were more included to "assist" a farmer than an attorney since many farmers either did not maintain their sales documentation or had trouble finding all of the documents. Moreover, many of the documents we received from our clients were in bulk, requiring us to go through each document to determine whether it was subject to a discovery request by Syngenta. BRE Attorneys spent hundreds of hours on this project.

(d) **Notice Project.** At the direction of lead counsel, I worked with class action notice administrator Analytics LLC to propose the nationwide class notice. This required detailed coordination with the FSA in order to acquire addresses of individuals and entities entitled to receive notice. We also had to work through individual firm client lists to determine what individuals were not to receive class notice. In addition, objections to the notice were filed by various firms, necessitating constant edits to the original proposed notice plan. After notice was sent, I personally worked with Analytics to prepare a consistent and coordinated response to questions and

comments received from class members. I made multiple trips to Minnesota to oversee this process and personally spoke with numerous producers from all over the country.

(e) **Damage Models.** I assisted the plaintiff's experts in preparing damage models on behalf of Illinois class members. At least some of the experts Illinois damage models were based on documentation provided by local class representatives during the discovery phase.

(f) **Exclusion Project.** Following the verdict obtained on behalf of the Kansas class, lead counsel asked BRE to prepare a list of all class members (1) who were excluded from the class because of ongoing litigation in Minnesota or representation by one of 12 identified law firms and (2) who opted out of the class following the procedures set in place in the class notice. What began as a relatively straightforward task quickly snowballed into a time intensive and at times contentious process. With ongoing settlement talks in the background, BRE navigated various potential pitfalls to cordially work with law firms from across the country to properly identify what producers were truly not part of the class or otherwise not entitled to receive benefits. Working in conjunction with the notice provider Analytics, BRE was able to put together state-by-state lists that were on average over 98% accurate, which allowed the class damage experts to accurately calculate the total damages suffered by the class by state. As a demonstration of the broad scope of the work, Zach Anderson traveled to Minnesota to meet with Analytics and was ultimately given unfettered access to their internal database so he could help develop a better tracking procedure to use in this process. In total, BRE spent hundreds of hours on the exclusion project,

which played an important role in allowing the parties, including all of the various plaintiff groups, to reach a global settlement.

(g) **WTO/Legal Research.** BRE worked with leadership to respond to the motion to dismiss filed by Syngenta. We also conducted spot research at other times as requested by leadership. Importantly, BRE questioned whether Syngenta's conduct, and specifically its representations that it's seed would soon obtain Chinese approval, interfered with the ability of the US government to file a complaint with the WTO related to the disruption of trade resulting from Syngenta's early commercialization of MIR 162.

7. My firm worked with five class representative and bellwether plaintiffs: (a) Steven Wentworth; (b) Roger White; (c) Dave McDonald; (d) Chuck Fulkerson; and (e) Kenneth Kennedy. All five were deposed, with me defending the deposition. In addition, my firm spent a considerable amount of time responding to discovery requests received from Syngenta directed to each individual. As described below, each of the five individuals also spent many hours of their own time responding to those discovery requests.

(a) **Steven Wentworth.** Steve was selected as an Illinois class representative. In this capacity, Steve was deposed and responded to Syngenta's discovery requests, both in the form of Interrogatories and Requests to Produce. As reflected in my firm's billing records, his total deposition time, including preparation for and the actual deposition, amounted to 16 hours. During the discovery process, Steve personally corresponded with and traveled to grain elevators to obtain sales documentation, reviewed his own records, and corresponded with numerous third parties to obtain additional information, such as insurance documents. All told, Steve estimates that

he spent approximately 50 hours of his time responding to the discovery request, not including the aforementioned deposition time. As a result, Steve spent approximately 66 hours in pursuit of this litigation.

(b) **Roger White.** Roger was also selected as an Illinois class representative. Roger was deposed by Syngenta and, as reflected in my firm's billing records, spent a total of 11 hours preparing for and sitting through his deposition. During discovery, Roger personally corresponded with and traveled to grain elevators to obtain sales documentation, reviewed his own records, and corresponded with numerous third parties to obtain additional information, such as insurance documents. Roger estimates that he spent approximately 50 hours responding to discovery, not including deposition time. As a result, Roger spent approximately 61 hours in pursuit of this litigation.

(c) **Dave McDonald.** Dave was a bellwether plaintiff. In this capacity, Dave was deposed by Syngenta and asked to respond to discovery requests, both written and requests to produce. As reflected in my firm's billing records, Dave's deposition preparation and actual deposition amounted to 13 hours. During discovery, Dave personally corresponded with and traveled to grain elevators to obtain sales documentation, reviewed his own records, and corresponded with numerous third parties to obtain additional information, such as insurance documents. All told, Dave reasonably estimates that he spent approximately 25 hours on the discovery process, not including his deposition time. As a result, Dave spent approximately 38 hours in pursuit of this litigation.

(d) **Chuck Fulkerson.** Chuck was a bellwether plaintiff. In this capacity, Chuck was deposed by Syngenta and asked to respond to discovery requests, both written and requests to produce. As reflected in my firm's billing records, Chuck's deposition preparation and actual deposition amounted to 10 hours. During discovery, Chuck personally corresponded with and traveled to grain elevators to obtain sales documentation, reviewed his own records, and corresponded with numerous third parties to obtain additional information, such as insurance documents. Chuck was unable to provide an estimate on the amount of time he spent on recovery. However, considering the amount of documents he produced relative to the above individuals, we estimate that Chuck spent approximately 15 hours on the discovery process, not including his deposition. As a result, Chuck spent approximately 25 hours in pursuit of this litigation.

(e) **Kenneth Kennedy.** Ken was a bellwether plaintiff. In this capacity, Ken was deposed by Syngenta and asked to respond to discovery requests, both written and requests to produce. As reflected in my firm's billing records, Ken's deposition preparation and actual deposition amounted to 11 hours. During discovery, Ken personally corresponded with and traveled to grain elevators to obtain sales documentation, reviewed his own records, and corresponded with numerous third parties to obtain additional information, such as insurance documents. Ken was unable to provide an estimate on the amount of time he spent on recovery. However, considering the amount of documents he produced relative to the above individuals, we estimate that Ken spent approximately 15 hours on the discovery process, not

including his deposition. As a result, Ken spent approximately 26 hours in pursuit of this litigation.

8. During this litigation, BRE Law used a law practice management called Abacus. Abacus has a time billing program that allows users to keep time contemporaneously while work is done on a given project. The policy at BRE is for all attorneys to keep their time contemporaneously with their work.

9. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

10. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients, who were not either bellwether or class representative plaintiffs.

11. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

12. In re-reviewing our common benefit time and expense submissions, I cut any submission for matters that I deemed to be questionable as to whether it would fall under common benefit time or expense. For example, I had a health issue in 2016 which required me to be out of the office and directed a member of my team to review ECF filings on my behalf to keep me updated about the litigation. The time spent reviewing those ECF filings were initially billed for; however, on re-review, I ultimately determined that they likely did not fall within the allocated common benefit time. Moreover, if a meal receipt could not be produced, I permitted lead counsel to remove 1/3 of the expense from that particular meal receipt from my firm's expense reimbursement request.

13. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

14. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $1,744,392.50. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
Ellis, Christopher	Partner	1,256.00	$650.00	$816,400.00
Mendenhall, Shane	Partner	1,018.90	$425.00	$433,032.50
Anderson, Zachary	Law Clerk	599.50	$250.00	$149,875.00
Spain, Matt	Partner	346.30	$350.00	$121,205.00
Rohrscheib, Josh	Partner	338.40	$375.00	$126,900.00
Nichols, Dawn	Paralegal	252.10	$150.00	$37,815.00
Stephens, Lori	Paralegal	153.80	$150.00	$23,070.00
Whitsett, Donna	Paralegal	83.80	$150.00	$12,570.00
Robinson, Jon	Partner	25.20	$875.00	$22,050.00
Jacobus, Lea	Partner	2.80	$325.00	$910.00
Jones, Sandy	Paralegal	1.90	$150.00	$285.00
Patel, Nrupa	Partner	1.60	$175.00	$280.00
TOTALS		4,080.3		$1,744,392.50

15. Given our significant capital contributions and the amount of common benefit time my firm was spending on various assigned projects, I was hesitant to take on a substantial amount of additional work for fear of over-stretching our small firm.

16. My firm seeks $211,984.72 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Description of Category Code	Amounts
Federal Express / Local Courier	$59.00
Postage Charges	$208.58

Description of Category Code	Amounts
In-House Photocopying	$569.40
Hotels	$8,837.03
Meals	$3,007.46
Mileage	$2,503.02
Air Travel	$1,870.94
Deposition Costs	$1,670.44
Lexis/Westlaw/Bloomberg	$20.00
Witness and Expert Expenses	$2,094.60
Court Fees	$790.50
Service of Process Fees	$16.50
Ground Transportation	$286.76
Miscellaneous	$50.49
Litigation Fund Assessment	$190,000.00
TOTAL	**$211,984.72**

17. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

18. I am requesting expense reimbursement for capital contributions made by BRE Law to the litigation fund in the amount of $190,000.

19. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Decatur, Illinois.

/s/ Christopher M. Ellis

Christopher M. Ellis
BOLEN ROBINSON & ELLIS, LLP

202 S. Franklin Street, 2nd Floor
Decatur, Illinois 62523
Telephone: 217-429-4296
Email: cellis@brelaw.com

BOLEN ROBINSON & ELLIS, LLP

Although officially formed in July 2004, the law firm of Bolen, Robinson & Ellis is the culmination of the merger and expansion of one of the oldest and most respected firms in Central Illinois. In 1971, Jon D. Robinson joined the law firm of Hull, Campbell & Robinson. In 2004, Mr. Robinson joined with T.G. Bolen and Christopher M. Ellis to form Bolen, Robinson & Ellis. Bolen, Robinson & Ellis is a full service law firm representing clients in various complex litigation matters, including complex class action litigation.

Jon D. Robinson practices primarily in the areas of commercial and class action litigation on behalf of plaintiffs. In addition, he has been involved as counsel for both plaintiffs and defendants in numerous major civil litigations, including commercial, labor relations, personal injury and products liability. A graduate of the University of Tennessee College of Law, Mr. Robinson has been practicing law since 1971. He has tried multiple cases to a verdict, successfully obtaining millions of dollars for his clients in awards and settlements and continues to litigate complex cases in Federal and State courts throughout the United States.

Mr. Robinson participated as co-lead counsel for plaintiffs in *Garza v. Remington Arms Company*, Civil Action No. SA-93-CA-1082, filed in the United States District Court, Western District of Texas, San Antonio Division. This case involved ten million class members who owned Remington Model 1100, Model 870 and Model 11-87 12-gauge shotguns. The Remington litigation led to a change of the steel barrels of the popular 12-gauge shotguns, which produced a safe product. This class action was the culmination of eighteen years of litigation from Mr. Robinson against Remington Arms Company involving defective 12-gauge shotguns which had caused numerous personal injuries, at a time when few, if any, others had been successful against Remington. Notable cases against Remington include, *King v. Remington Arms Company*, 89-CA-340-MR, Ky, Appellate Court (1990), which was upheld on appeal, through the filing of a

certiorari petition, by the United States Supreme Court; *Loitz v. Remington Arms Company*, 177 Ill.App.3d 1034, 127 Ill.Dec. 262, 532 N.E.2d 1091 (4th Dist. 1989); *Moore v. Remington Arms Co., Inc.*, 100 Ill.App.3d 1102, 56 Ill.Dec. 413, 427 N.E.2d 608 (4th Dist. 1981). Mr. Robinson also successfully settled a class action complaint on behalf of hundreds of retirees for employee benefits in *Bland, et al. v. FiatAllis North America, Inc. et al.*, Case No. 2002-cv-69 (United States District Court for the Northern District of Illinois, Eastern Division) (following reversal of summary judgment against his clients by the 7th Circuit) and *Carney, et al. v. FiatAllis North America, Inc., et al.*, Case No. 04-cv-002128I) (settled after appeal from the State of Wisconsin Court of Appeals District 1, No. 2006-AP-001529).

Mr. Robinson is licensed to practice in all courts for the State of Illinois. He is also admitted to practice before the United States District Courts for the Northern, Central and Southern Districts of Illinois, the Seventh Circuit Court of Appeals, the United States Supreme Court and a numerous other Federal District Courts throughout the United States.

Christopher M. Ellis has substantial experience representing plaintiffs and defendants in major civil litigation, including commercial, personal injury and products liability. He practices primarily in the areas of commercial and class action litigation on behalf of plaintiffs. A graduate of Georgetown University Law Center, Mr. Ellis has been practicing law since 2001.

Mr. Ellis is licensed to practice in all courts for the State of Illinois and was formerly admitted to practice before the District Court of Columbia Court of Appeals. He is also admitted to practice before the United States District Courts for the Northern, Central and Southern Districts of Illinois and the Seventh Circuit Court of Appeals.

Shane M. Mendenhall has an extensive practice of representing plaintiffs in complex litigation, including matters involving commercial law, consumer law, product defects and personal injury. He practices primarily in the areas of commercial and consumer class action

litigation on behalf of plaintiffs. A graduate of Oklahoma City University School of Law, Mr. Mendenhall has been practicing law since 2008.

Mr. Mendenhall is licensed to practices in all courts for the State of Illinois. He is also admitted to practice before the United States District Courts for the Northern, Central and Southern Districts of Illinois.

Mr. Robinson, Mr. Ellis and Mr. Mendenhall served or are currently serving as lead counsel and/or co-counsel or liaison counsel or on the executive committee on multiple class action cases in both State and Federal court, including the following representative cases:

In re IKO Roofing Shingles Products Liability Litigation, Case No. 2:09-md-02104-MPH-HAB (United States District Court for the Central District of Illinois, Urbana Division);

Tucker, et al. v. Soy Capital Bank and Trust Company, Case No. 09-CH-42951 (Circuit Court of Cook County, Illinois);

Vought, et al. v. Bank of America, N.A. et al., Case No. 2:10-cv-02052-MPM-DGB (United States District Court for the Central District of Illinois, Urbana Division);

Tom Kowa v. The Auto Club Group, et al., Case No. 1:11-cv-07476, (United States Court for the Northern District of Illinois, Eastern Division);

In Re: JPMorgan Chase Mortgage Modification Litigation, MDL 2290, 1:11-md-02290 (United States District Court for the District of Massachusetts);

In re: Groupon Marketing and Sales Practice Litigation, Case No. 11-md-2238-DMS-RBB, (United States District Court for the Southern District of California);

In re: Living Social Marketing and Sales Practices Litigation, Case No. 1:11-mc-04721-ESH (United States District Court for the District of Columbia);

In re: HardiePlank Fiber Cement Siding Litigation, MDL No. 2359 (United States District Court for the District of Minnesota);

In re: Dial Complete Marketing and Sales Practices Litig., No. 11-md-2263 (NH)

In re: Colgate-Palmolive Marketing Practices Litig., MDL No. 2320 (JPML)

Robert S. Melillo, et al. v. Building Products of Canada Corp., et al., Case No. 1:12-cv-00016-JGM (United States District Court for the District of Vermont);

Macon County, Illinois v. Merscorp, Inc., et al., Case No. 2:12-cv-02214-MPM-DGB (United States District Court for the Central District of Illinois, Urbana Division);

Macon County, Illinois v. Federal Housing Finance Agency, et al., Case No. 2:12-cv-02295-HAB-DGB (United States District Court for the Central District of Illinois, Urbana Division);

Moodie v. Remington, et al. No. 2:13-cv-00172-JCC (United States District Court for the Western District of Washington, Seattle Division);

Pollard v. Remington, et al., No. 4:13-cv-00086-ODS (United States District Court for the Western District of Missouri);

Ashley Energy, Inc., et al. v. L & J Producers, Inc., et al., Case No. 2009-MR-7 (Circuit Court for the Fifth Judicial Circuit of Illinois, Clark County); and

In Re: Syngenta AG MIR 162 Corn Litigation, MDL 2591, Case No. 2:14-md-2591 (United States District Court for the District of Kansas)

JON D. ROBINSON
Attorney at Law
jrobinson@brelaw.com
217.429.4296

BRE LAW
BOLEN ROBINSON & ELLIS LLP

202 South Franklin ♦ 2nd Floor

Decatur, Illinois 62523

CURRICULUM VITAE

Behind every great law firm is a great leader, and Jon Robinson fills that role at BRE LAW. Although officially formed in July 2004, BRE LAW is the culmination of the merger and expansion of one of the oldest and most respected law firms in Central Illinois. BRE LAW is a full service law firm representing clients in various litigation matters, including complex class action litigation.

Mr. Robinson is the grounding force behind the success of BRE LAW as he models integrity, competence and passion. A graduate of the University of Tennessee, College of Law, he has practiced law since 1971. For over 40 years Robinson has been rated "AV," Martindale Hubbell's highest rating, as possessing high ethical standards and significant professional ability. During his legal career, Jon has settled and tried countless cases, successfully obtaining millions of dollars for his clients.

Education

B.A. 1968 – University of Illinois at Urbana-Champaign
J.D. 1971 – College of Law, University of Tennessee, Knoxville
Cadet Commander - ROTC
National Moot Court Team (1969-70)
Volunteer U.T. Legal Clinic (1969-71)

State Court Bar Admissions

Illinois – November 15, 1971

Admitted *Pro Hac Vice*

Jefferson County, Kentucky
Jefferson County, Wisconsin
Indian River County, Florida

Federal Court Admissions

United States Supreme Court - March 18, 1991
United States Court of Appeals, Seventh Circuit–February 5, 1993
United States Court of Appeals, Ninth Circuit – May 3, 2013
United States District Court Central District of Illinois – November 18, 1991
United States District Court Northern District of Illinois – December 13, 2011
United States District Court Southern District of Illinois – November 14, 1991

Admitted *Pro Hac Vice*

United States District Court Northern District of Indiana (2 cases)
United States District Court Southern District of Texas
United States District Court Western District of Texas (3 cases)
United States District Court Montana (2 cases)
United States District Court Oregon
United States District Court Middle District of North Carolina (3 cases)
United States District Court Western District of Missouri
United States District Court Western District of Washington
United States District Court Northern District of Florida
United States District Court Western District of Kentucky (2 cases)

Litigation Experience

Remington Arms Co. Litigation (Lead or Primary Counsel of Record)

1. *Garza, et al. v. Remington Arms Co., et al.,* No. 5:93-cv-01082 (W.D. Tex. 1993) (National Class Action)
2. *Moore v. Remington Arms Co.*, 427 N.E. 2d 608 (4th Dist. 1981) (Jury Verdict for Plaintiff)
3. *Gurnitz v. Remington Arms Co.,* 79-l-16220, Cook County, Illinois (Jury Verdict for Defendant – gun (evidence) was lost by UPS)
4. *Loitz v. Remington Arms Company*, 532 N.E.2d 1091 (4th Dist. 1989) (Jury Verdict for Plaintiff)
5. *King v. Remington Arms Company*, No. 89-CA-340-MR (KY. App. Ct. 1990) (Jury Verdict for Plaintiff upheld and cert denied by United States Supreme Court.)
6. *Devlin v. Remington Arms Company,* No. 89-C-7652, (N.D. IL 1989) (settled)
7. *Jiles v. Remington Arms Company,* Civ.A. No. 17489P232, Carroll, GA (settled)
8. *Glover v. Remington Arms Company,* Gallatin County, Illinois Case No. 84-L-11 (settled)

9. *Bowman v. Remington Arms Company*, No. H-83-78 (N.D. Ind. 1989) (settled)
10. *Deutsch v. Remington Arms Company*, No. L-84-70 (S.D. Tex 1987) (Jury Verdict for Plaintiff)
11. *Gengler v. Remington Arms Company*, No. 85-L-35, Kendall County, Illinois (Jury Verdict for Plaintiff)
12. *Kieper v. Remington Arms Company*, Cook County, Illinois (case dismissed upon death of Plaintiff)
13. *Cramer v. Remington Arms Company*, No. 89-L-4, Clark County, Illinois (settled)
14. *Schoenicke v. Remington Arms Company*, No. 90-CV-522, Jefferson County, Wisconsin (Jury Verdict for Plaintiff)
15. *Staninger v. Remington Arms*, No. CV9286M (Mont. 1992) (
16. *Clark v. Remington Arms Company*, No. SA 93 CA 993 (W.D. Tex. 1993) (settled)
17. *Janek v. Remington Arms Company, No.* 2:93-cv-0020JM (N.D. Ind. 1993) (settled)
18. *DeBruin v. Remington Arms Company*, No. 95-cv-4555 (W.D. Tex 1995)
19. *James Adams v. Remington Arms Company*, No. 93-L-17, Fayette County, Illinois
20. *See v. Remington Arms Company,* No. 3:13-cv-01765-BR, (D. Or. 2014) (mediated/settled)
21. *Yancey v. Remington Arms Co., LLC et al*, No. 1:12-cv-477 (M.D. NC) (settled)
22. *Henderson v. Remington Arms Co., LLC, et al*, No. 3:12-cv-00322-B, (N.D. Tx.) (settled)
23. *Pollard v. Remington Arms Co., LLC, et al.*, No. 4:13-cv-00086 (W.D. Mo. Jan. 28, 2013) (pending)
24. *Moodie v. Remington Arms Co., LLC, et al.*, No. 2:13-cv-00172 (W.D. Wash. Jan. 29, 2013) (pending)
25. *Huleatt v. Remington Arms Co., LLC, et al.*, No. 9:13-cv-00113-DLC (D. Mont. June 4, 2013) (pending)
26. *Chapman v. Remington Arms Co., LLC, et al*, No. 1:12-cv-24561-JEM (S.D. Fla. Dec. 31, 2012) (dismissed by Plaintiffs)
27. *Maxwell v. Remington Arms Co., LLC,* No. 1:10-CV-00918-UA-LPA (M.D. NC) (class action involving recall of 597 Remington rifles; dismissed)

In addition to the above litigation, Robinson has negotiated settlements for over 40 unfiled cases involving loss from Remington firearms.

Other Firearm Litigation

1. *Koby v. Star Ammunition and Sigarms*, No. 3:97CV-96S (W. D. Ky. 2003) (settled)
2. *Spencer, et al. v. American Arms, et al*., No. 4:99 CV 093-M (W. D. Ky. 2002) (Summary Judgment)
3. *Bellone v. Krieghoff*, et al., No. 96-0300-CA04, Indian River County, Florida (settled)

Class Action and Complex Litigation

In 1978 Mr. Robinson took on the first of many personal injury cases due to the failure of Remington Models 1100, 870 and 11-87 12-gauge shotguns. Over the next 18 years, Robinson would successfully litigate more than 20 Remington shotgun cases and negotiate the settlement of numerous others. Finally, in 1993, Robinson filed a class action against Remington involving its defective Model 1100, 870, and 11-87 12-gauge shotguns in an attempt to resolve the ongoing issues with these shotguns. That lawsuit, *Garza v. Remington Arms Co.*, No. 5:93-cv-01082 (W.D. Tex. 1993) involved approximately five million class members, and Mr. Robinson served as the lead counsel. After years of vigorous litigation, Mr. Robinson secured settlement for the plaintiff class members which included a change of the steel barrels in the popular 12-gauge shotguns.

As early as February, 2002, Mr. Robinson was contacted by a couple whose Remington Model 700 had discharged without a trigger pull. After investigating the incident, Mr. Robinson researched this malfunction at Kansas City by reviewing over 18,000 pages of Remington documents. This investigation revealed many customer complaints and ultimately culminated in the filing of class actions regarding the defective Remington product throughout the United States, including *Pollard v. Remington Arms Co., LLC, et al.*, No. 4:13-cv-00086 (W.D. Mo. Jan. 28, 2013).

Mr. Robinson also successfully resolved two class action complaints on behalf of hundreds of retirees for employee benefits. *See Bland v. FiatAllis North America, Inc.*, 401 F.3d 779 (7th Cir. 2005). In *Bland*, Robinson successfully appealed to the Seventh Circuit in this complex ERISA-related pension case and ultimately obtained a significant settlement for approximately 2000 Fiat-Allis retirees. *See also, Carney, et al. v. FiatAllis North America, Inc., et al.*, 04CV002128I, which was settled after appeal from the State of Wisconsin Court of Appeals District 1, No. 2006AP001529.

In 2009, Mr. Robinson was approached by a group of national class action firms to act as liaison counsel for *In re: IKO Roofing Shingles Prods. Liab. Litig*, No. 2:09-md-02104 (C.D. Ill), which is pending in the United States District Court for the Central District of Illinois (Urbana). In early 2010, the court approved the appointment of Mr. Robinson as liaison counsel, and since that time he has assisted in this complex litigation through numerous motions, hearings, and most recently a successful appeal in the Seventh Circuit. His role in the IKO case has expanded significantly since 2009, culminating in co-lead IKO counsel unanimously choosing him to present oral arguments in the two-day class certification hearing.

In addition to the above, Robinson has litigated numerous complex cases in Federal and State courts throughout the United States, and he has surrounded himself with a team of successful attorneys at BRE LAW to protect consumers and the public. These cases include the following:

1. *Bland v. FiatAllis North America, Inc.*, 401 F.3d 779 (7th Cir. 2005)
2. *Carney, et al. v. FiatAllis North America, Inc., et al.*, 04CV002128I
3. *In re: IKO Roofing Shingles Prods. Liab. Litig*, No. 2:09-md-02104 (C.D. Ill)
4. *Carlock v. Williamson, et al.*, No. 3:08-cv-03075 (C.D. Ill. 2014)
5. *Vought, et al. v. Bank of America, N.A., et al.*, No. 2:10-cv-02052 (C.D. Ill.)

6. *In re: Living Social Marketing and Sales Practices Litig.*, No. 1:11-mc-04721 (D. Columbia)
7. *Melillo, et al. v. Building Prods. of Canada Corp., et al.*, No. 1:12-cv-00016 (D. Vermont)
8. *Kowa v. The Auto Club Group*, No. 1:11-cv-07476 (N.D. Ill.)
9. *In re: JP Morgan Chase Mortg. Mod. Litig.*, No. 11-md-02290 (D. Mass.)
10. *In re: Groupon Market. and Sales Practice Litig.*, No. 11-md-2238 (S.D. CA) (currently on appeal)
11. *In re: HardiePlank Fiber Cement Siding Litig.*, MDL No. 2359 (D. Minn.)
12. *Macon County Illinois v. Merscorp, Inc. et al.*, No. 2:12-cv-02214 (C.D. Ill)
13. *Macon County Illinois v. Fed. Housing Finance Agency, et al.*, No. 2-12-cv-02295 (C.D. Ill)
14. *In Re Colgate-Palmolive Marketing Practices Litig.*,MDL No. 2320 (JPML)
15. *In Re Dial Complete Marketing And Sales Practices Litigation*, No. 11-md-2263-SM (D. NH)
16. *Hamilton County Illinois, et al. v. Trinity Industries, Inc.*, 3:14-cv-01320 (S.D. Ill.)
17. *IN RE: Syngenta AG MIR162 Corn Litigation*, MDL No. 2591 (JPML)

Professional Achievements

Mr. Robinson co-authored the Appellee's brief and successfully argued in the Illinois Supreme Court the case *Andrews, et al. v. Kowa Printing Corp., et al.*, 217 Ill.2d 101, 838 N.E.2d 894, 298 Ill.Dec. 1 (2005). Andrews is a seminal case under the Illinois Wage Pay and Collection Act that, among other things, clarified that corporate officers of defunct Illinois corporations cannot be held liable for unpaid wages when he or she was not in control of the corporation at the time the payments came due. This case provides significant protection to Illinois corporate officers and clarifies, for the first, certain provisions of the Wage Act.

The settlement in *Garza* accomplished the change in barrel steel for all Remington 12-gauge shotgun barrels, and as a result, the incidence of barrel bursts went from several hundred per year to zero for the new barrels.

Loitz v. Remington remains the seminal case on punitive damages in the State of Illinois.

As of 1991, the jury verdict of $6 Million in *King v. Remington* was the largest single personal injury verdict in the history of the State of Kentucky.

Community and Professional Membership and Activities

- Decatur Bar Association
- Illinois Bar Association
- Association of Trial Lawyers of America
- Illinois State Bar Committee for Civil Practice (1991-94)

- Active Ruling Elder and Past Deacon of Lampstand Presbyterian Church
- Founder and active participant in Decatur House of Prayer
- Speaker, Spiritual Director and Team Member for Lampstand Ministry, Inc. Great Banquets in Illinois, Colorado, Indiana, Florida, and Jamaica

- United Way of Decatur and Macon County, Illinois Board (Past Chairman) (1981-82)
- YMCA Board of Directors (1978-81)
- Decatur Public Library Board (past President) (1980-85)
- Community Home Environmental Learning Program Board (CHELP) Board of Directors (Past Chairman) (1980 – 2000)
- Mutual Home & Savings Bank Board of Directors (1997-1999)
- Regions Bank Community Board (2000-2004)
- St. Mary's Hospital Board of Directors (Vice Chair) (2005 - 2012)
- Friends of St. Mary's Hospital Foundation (Chairman) (1990 – 2005)
- St. Mary’s Hospital Institutional Board of Review (1983 – present)

BOLEN ROBINSON & ELLIS, LLP
CHRISTOPHER M. ELLIS
Attorney at Law
cellis@brelaw.com
217.429.4296

202 South Franklin ♦ 2nd Floor

Decatur, Illinois 62523

BIOGRAPHY

Chris is the managerial partner and, along with Jon D. Robinson, a founding member of Bolen Robinson & Ellis, LLP. He graduated from Illinois Wesleyan University and Georgetown University School of Law with honors. Prior to starting BRE Law, Chris was an associate in the Washington, D.C. and Chicago offices of Ross Dixon & Bell, LLP (now Troutman Sanders). He is a member of various professional organizations and admitted to practice before multiple courts throughout the country.

Involved in nearly every practice area at BRE, Chris has become the central contact and go-to-person for a majority of the firm's clients. Clients routinely come to Chris with complex issues, whether related to litigation, business or family planning; in turn, Chris assembles the appropriate team at BRE to meet and exceed the client's expectations. Working closely with both the client and BRE team, Chris remains intimately familiar with the issues and typically takes the lead in negotiating a solution, litigating the matter in court or drafting the final documents needed to accomplish the client's goals.

One of Chris's primary roles is to direct and control the Firm's high stakes litigation. Chris has tried numerous cases on behalf of both plaintiffs and defendants and argued multiple times before the appellate courts. Representing both individuals severely injured or wronged by the misdeeds and frauds of another, as well as corporations defending themselves against claims of liability or seeking to enforce contractual rights, gives Chris a unique perspective in his approach to litigation, allowing him to see all cases from both sides. Recently Chris has become actively

involved in the prosecution of multiple class actions throughout the United States where he has served as lead counsel, liaison counsel and on various executive and steering committees.

Chris also serves as lead counsel for multiple local corporations. On a daily basis he advises business owners and professionals on matters varying from contract interpretation to employment issues. Chris's experience in the labor law arena runs the gamut from negotiating collective bargaining agreements to defending and pursuing unfair labor practice charges in front of the NLRB. ERISA is another area that Chris and his team at BRE have been extensively involved with, both on behalf of corporate clients and as counsel for union pension funds. In addition, Chris assists many of these clients and other of our community's most influential leaders with their personal and business estate succession plans.

Recognizing that being actively involved in one's community is not only a privilege but a duty, Chris has given countless hours of his time assisting those in need of support. Chris currently serves on the local United Way Board, where in the past he has held the roles of Chairman, Vice-Chairman and Campaign Chair. He is also actively involved with the St. Mary's Hospital Foundation Board, where he has served as Chairman, Vice-Chairman and on the Capital Campaign Committee. In the past Chris has served on various other civic boards and held varying titles and roles. All of his efforts have been geared towards making Decatur and the surrounding communities a better place for everyone, particularly those less fortunate.

Chris has been married 11 years to his beautiful wife and high school sweetheart, Kelli. Together they have three wonderful children – Nicholas, Ashlyn and Abigail. In his spare time Chris enjoys coaching every team that his kids play on, from baseball and football to softball and soccer.

Education

B.A. 1998 – Illinois Wesleyan University
J.D. 2001 – Georgetown University Law Center

State Court Bar Admissions

Illinois – 2001
District of Columbia – 2001 (Inactive)

Federal Court Admissions

Seventh Circuit Court of Appeals - 2010
Northern District of Illinois – 2002
Central District of Illinois – 2003
Southern District of Illinois – 2008
Eastern District of Missouri – 2012

Litigation Experience

Chris and the attorneys at BRE LAW have successfully litigated a number of complex cases in Federal and States courts throughout the United States and are currently involved in multiple complex class actions throughout the country. Recently, Chris has actively participated in the following class actions:

- *Kowa v. The Auto Club Group,* No. 1:11-cv-07476 (N.D. IL) (national settlement approved with a value to the class of $17,500,000)
- *Melillo, et al. v. Building Prods. Of Canada Corp., et al.* No. 1:12-cv-00016 (VT) (national settlement approved with a settlement value of $36,000,000 - $100,000,000)
- *Pollard v. Remington Arms Co., LLC et al,* No. 4:13-cv-00086 (W.D. MO) (settlement pending)
- *Moodie v. Remington Arms Co., LLC et al,* No. 2:13-cv-00172 (W.D. WA) (stayed pending settlement)
- *Banderman v. First Financial Corp., et al.,* No. 84D03-1112-PL-11766 (IN state court)
- *Myers v. Lumber Liquidators, Inc., et al.*, No. 3:15-cv-00112 (E.D.TN)
- *Vought, et al v. Bank of America, N.A., et al,* No. 2:10-cv-02052 (C.D. IL) (national settlement approved with a value to the class of $44,000,000)
- *In re: IKO Roofing Shingles Prods. Liab. Litig,* No. 2:09-md-02104 (C.D. IL)
  In re Syngenta AG MIR162 Corn Litigation, No. 14-md-2591 (D.Kan)
- *In re: JP Morgan Chase Mortg. Mod. Litig.*, No. 11-md-02290 (D.Mass) (settled with a value to the class in excess of $500,000,000)
- *In re: Colgate-Palmolive Marketing Practices Litig.*, MDL No. 2320 (JPML)
- *In re: Dial Complete Marketing and Sales Practices Litig.*, No. 11-md-2263 (NH)
- *In re: Groupon Market and Sales Practice Litig.*, No. 11-md-2238 (S.D. CA) (settled)
- *In re: Living Social Marketing and Sales Practices Litig.*, 1:11-mc-04721 (D. Columbia) (settled)
- *Five Star Farms, et al. v. Syngenta AG, et al.*, 2:14-cv-02571 JWL (Dist. KA)
- *Wilson Farm Inc., et al. v. Syngenta AG, et al.*, 4:14-cv-01908 RWS (E.D. MO)
- *Macon County Illinois, et al. v. Trinity Industries.*, 3:14-cv-01320 (S.D. IL)
- *DCN Lewis v. Pella Corp.*, 2:14-cv-00549 (Dist. SC)

EXHIBIT 16

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT: ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**MDL No. 2591**

DECLARATION OF MATTHEW L. PRESTON

I, Matthew L. Preston, declare as follows:

1. I am an officer of Brady Preston Gronlund PC ("BPG"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. BPG has practiced in class action and complex litigation in state and federal courts in the State of Iowa and other jurisdictions. BPG's counsel noted below were co-counsel in *Rieff* v. *Evans,* No. CE 35780 (Iowa Dist. Ct., Polk County) (representing class of 200,000

mutual insurance policyholders in class and derivative action resulting in cash settlement of $100 million for class); and BPG was also counsel in the class action jury trial *Gutierrez* v. *Givens,* No. 667169 (Cal. Super.Ct., San Diego Cty.) (jury verdict in excess of $14 million for 19,000 member consumer class); and BPG also served as class counsel in the further matters noted below. BPG's attorneys have been counsel in the following proposed or certified class actions:

Gutierrez v. Tedder, No. 97-01218 (S.D. Cal)

Great Rivers Co-op. of Southeastern Iowa v. Farmland Ind., Inc., No. 96-2751 (S.D. Iowa)

In Re: Norand Sec. Litig., No. 95-00323 (N.D. Iowa) (co-counsel on behalf of plaintiffs)

OOIDA v Heartland Express, No. 01- 80179 (S.D. Iowa)

Townsend, et. al v. Templeton Rye Spirits, LLC, filed on October 3, 2014, in the Iowa District Court for Polk County, case number CVCV048581

Backhaus v. Syngenta Corporation, et. al, filed on November 18, 2014, in the United States District Court – Northern District of Iowa – Western Division, case number 5:14-cv-04108-DEO

Dennard v. Aegon USA LLC, et. al, filed on April 7, 2015, in the United States District Court – Northern District of Iowa – Cedar Rapids Division, case number 1:15-cv-0030-EJM

Gutierrez v. Givens, filed in the United States District Court – Southern District of California, case number 97cv1218B (JAH)

Rieff v. Evans, filed in the Iowa District Court for Polk County

Miller v. Remedy Intelligent Staffing, Inc., filed in the Iowa District Court for Linn County, case number LACV062766

Backhaus v. AG Processing Inc. a Cooperative, filed in the United States District Court – Northern District of Iowa – Western Division

Rakes v. Life Investors Insurance Company of America, filed on July 17, 2006 in the United States District Court – Northern District of Iowa – Cedar Rapids Division

Peterson v. Cottage Grove Place, Inc. et. al, filed on March 10, 2010, in the Iowa District Court for Linn County, case number LACV068465

Beard, et. al v. Toyota Motor Corporation, et. al, filed on March 12, 2010, in the United States District Court for the Southern District of Iowa – Davenport Division, case number 3:10-cv-00033-CRW-CFB

Haun, et. al v. Perry Comeau, et. al, filed on December 1, 2009, in the Iowa District Court for Fayette County, case number LACV052412

Murr v. Midland National Life Insurance Company, filed on August 11, 2010, in the United States District Court – Southern District of Iowa – Central Division, case number 4:10-cv-00369-JAJ-CFB

Inechien v. Nichols Aluminum, LLC, et. al, filed on March 18, 2011, in the United States District Court for the Southern District of Iowa – Davenport Division, case number 3:11-cv-00032-CRW-RAW

Legg v. West Bank, et. al, filed in the Iowa District Court in and for Polk County, case number CVCV008364, certification and appointment as Class Counsel upheld by the Iowa Supreme Court in Case No. 14-0692 (January 22, 2016)

4. Attached to this declaration is my law firm's resume.

5. Following is background on each BPG timekeeper who worked on common benefit work:

a. **Brad J. Brady** is a native of Anamosa, Iowa and currently lives in Cedar Rapids, Iowa. Mr. Brady has practiced law in Cedar Rapids, Iowa since graduation from law school in 1978. He practices primarily in the areas of personal injury, wrongful death, products liability and commercial litigation. He also serves as a civil litigation mediator and has mediated a variety of disputes, including in the areas of personal injury and wrongful death, insurance coverage, probate and estate planning, commercial and business, banking, real estate, employment and civil rights. Mr. Brady graduated from Cornell College in 1974, earning a Bachelor's degree in

philosophy, summa cum laude. He graduated from University of Iowa College of Law, with Distinction in 1978.

b. **Matthew L. Preston** practices primarily in the area of commercial litigation. Mr. Preston is a native of Cedar Rapids, Iowa. Mr. Preston attended the University of Iowa, where he received a Bachelor of Business degree in Economics, with honors. He received his law degree, with distinction, from the University of Iowa College of Law, in 1996. While in law school, he was one of four students of 230 selected to compete in the National Moot Court Competition. He also was a member of the Iowa Law Review, which included editing articles published in the nationally circulated journal. Mr. Preston is a Fellow in the Iowa Academy of Trial Lawyers, an organization devoted to trial practice and limited to approximately 3% of Iowa attorneys. Mr. Preston is also a member of the American Board of Trial Advocates, which invites attorneys who meet criteria of character, reputation, and jury trial experience. Mr. Preston is a member of the trial group – the Dean Mason Ladd Inn of Court and served as its President for 2014-15 and Counselor for 2013-14.

c. **Ann E. Brown**, formerly an attorney with BPG, is a native of Cedar Rapids Iowa. She attended Cornell College, where she graduated cum laude with a degree in Political Science. While at Cornell, Ms. Brown was inducted into the Phi Sigma Alpha Honor Society and given the Mark E. Hutchinson Scholarship for excellence in Political Science. Ms. Brown

attended the University of Iowa College of Law, where she graduated in 2004, with distinction. While in law school, Ms. Brown was selected to participate in the Van Oosterhout Memorial Moot Court Competition and later served on the Moot Court Board as a student judge.

d. **Kristine M. Reed** (f/k/a Kristine M. Bunger), paralegal, is a native of Waterloo, Iowa and practices primarily in the area of commercial litigation. Ms. Reed is a 1999 graduate of the paralegal program at Kirkwood Community College, in Cedar Rapids, Iowa and has been working as a paralegal for the past 19 years.

6. BPG represents Rod Backhaus, class representative for the Iowa class action lawsuit, and prepared and filed the Iowa class action Complaint. BPG prepared and submitted Mr. Backhaus Fact Sheet and related materials. BPG also assisted with reviewing and summarizing Stewardship Agreements relevant to this matter.

7. BPG maintains contemporaneous records of its time and expenses in the ordinary course of business.

8. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

9. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

10. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

11. I have exercised my billing judgment in the re-review of common benefit time and expenses, including any cuts that were made thereto.

12. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

13. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $14,909.50. A breakdown of the lodestar is provided below.

	Name	Title	Total Hours	Hourly Rate	Lodestar
1.	Bunger, Kristine	Paralegal	103.70	$120.00	$12,444.00
2.	Preston, Matthew	Partner	5.30	$275.00	$1,457.50
3.	Brady, Brad	Partner	3.00	$310.00	$930.00
4.	Brown, Ann	Partner	0.30	$260.00	$78.00
	TOTALS		112.30		$14,909.50

14. BPG dedicated the time submitted herein to common benefit work, which precluded BPG from working on other matters during those times.

15. My firm seeks $5,000.00 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
19	Litigation Fund Assessment	$5,000.00
	TOTAL	**$5,000.00**

16. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

17. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Cedar Rapids, Linn County, Iowa.

/s/ *Matthew L. Preston*
Matthew L. Preston, PIN: AT0006314
BRADY PRESTON GRONLUND PC
2735 1st Avenue SE
Cedar Rapids, IA 52402
Phone: 319/866-9277
FAX: 319/866-9280
MPreston@BPGLegal.com

BIOGRAPHY OF BRADY PRESTON GRONLUND PC, BRAD BRADY, MATTHEW PRESTON, AND ANN BROWN

Brady Preston Gronlund PC practices primarily in civil litigation, including both general and complex litigation. The firm's attorneys have been involved in litigation and trial work throughout Iowa and other states, and have appeared pro hac vice in state and federal courts in approximately 20 states, including cases involving employment issues, employee benefits claims, ERISA claims, consumer fraud, and class and derivative actions, both on behalf of Plaintiff and Defendant.

Brady Preston Gronlund PC was co-counsel, with other firms, and played an active role in all aspects of *Rieff v. Evans, et al.*, Iowa District Court, Polk County No. CE 35780 (representing a class of 200,000 mutual insurance policyholders in a class and derivative action resulting in a cash settlement of $100 million for the class). Rieff was litigated for seven years, and resulted in three appeals to the Iowa Supreme Court, with the first two reported at *Rieff v. Evans, et al.*, 630 N.W.2d 278 (Iowa 2001) and 672 N.W.2d 728 (Iowa 2003), and the third pending before the Iowa Supreme Court when the case was settled.

BRAD BRADY is a native of Anamosa, Iowa and currently lives in Cedar Rapids, Iowa. Mr. Brady has practiced law in Cedar Rapids, Iowa since graduation from law school in 1978. He practices primarily in the areas of personal injury, wrongful death, products liability and commercial litigation. He also serves as a civil litigation mediator and has mediated a variety of disputes, including in the areas of personal injury and wrongful death, insurance coverage, probate and estate planning, commercial and business, banking, real estate, employment and civil rights.

Education:

Mr. Brady graduated from Cornell College in 1974, earning a Bachelor's degree in philosophy, summa cum laude. He graduated from University of Iowa College of Law, with Distinction in 1978.

Professional Honors & Activities:

Mr. Brady is the recipient of an AV rating, the highest peer review rating by Martindale-Hubbell®.

Mr. Brady has been inducted into the American College of Trial Lawyers, an organization devoted to trial practice and limited to approximately 1% of practicing Iowa attorneys (see the press release) and into the Iowa Academy of Trial Lawyers, an organization devoted to trial practice and limited to approximately 3% of Iowa attorneys. He also has been selected as a "Super Lawyer" in the area of personal injury for the Great Plains region, a peer-reviewed selection process limited to 5% of the lawyers in a state.

He is a member and former chair of the Litigation Legislation Committee of the Iowa State Bar Association, a member of the Jury Committee of the American College of Trial Lawyers, a member of the Litigation Legislation committee of the Iowa Association for Justice and a former member of the Justice For All Group of the Iowa Trial Lawyers Association.

He has mediated in the area of civil litigation since 2002, is a Certified Mediator under Iowa Rule of Professional Conduct 32:7.4(d)(1) and is a Qualified Neutral under Rule 114 of the Minnesota Rules of General Practice. He is a member of the American Academy of ADR Attorneys.

Presentations & Speeches:

Mr. Brady has delivered numerous lectures and presentations relating to civil trial practice, including the following:

- 1994 - Consumer Fraud, Annual Meeting, National Association of State Attorneys General
- 1994 - Taking Effective Depositions, Lorman Education Services
- 1994 - Effective Discovery Procedures in Iowa, National Business Institute
- 1995 - RICO Claims, Iowa Defense Counsel Association
- 1995 - Use of Paralegals at Trial, Iowa Association of Legal Assistants
- 1995 - Federal Civil Litigation, Lorman Education Services
- 1997 - Class Action Trials, Iowa Academy of Trial Lawyers
- 1998 - Complex Business Litigation, Iowa Association for Justice
- 1998 - Trial Instructor for attorneys, Closing Argument, Iowa Academy of Trial Lawyers Trial College
- 1998 - Probate Trial Presentation, Linn County Estate Planning Council
- 1998 - Civil Rico - Overview and Developments, Iowa Association for Justice
- 1998 - Legal Assistants in Depositions - Assisting Throughout the Deposition Process
- 1999 - Probate Trial Presentation, Linn County Estate Planning Council
- 1999 - Intentional Interference with Employment, Iowa Association for Justice
- 2001 - Taking and Defending Depositions
- 2002 - How to Survive Your Client's Deposition, Iowa Association for Justice
- 2002 - Ethical Considerations for Legal Assistants, Iowa Association of Legal Assistants
- 2002 - Advertising, Linn County Bar Association
- 2003 - Deposition Techniques, Young Lawyers Division
- 2003 - Directing The Personal Injury Trial, Iowa Association for Justice
- 2003 - "Consumer Protection - Are We Protected," Iowa Association for Justice
- 2004 - Voir Dire, Opening Statement and Closing Argument, Iowa State Bar Association
- 2008 - Iowa Class Action Update; Revised Hospital Lien Statute, Iowa Academy of Trial Lawyers
- 2009 - Iowa's New Consumer Fraud Statute, Iowa Association for Justice
- 2011 - Private Right of Action for Consumer Fraud, Iowa Attorney General's Office

- 2013 - Plaintiff's Perspective on Defense Tactics, Iowa Defense Council Association Annual Meeting

Mr. Brady also has made presentations throughout Iowa and nationally to local, state and national insurance groups.

Publications:

Civil RICO: Overview & Developments
Intentional Interference with Employment
Chapter 714H Private Right of Action for Consumer Fraud Plaintiff's Perspective

Bar Admissions:

Mr. Brady is a member of the American Bar Association, where he is a member of the Litigation Section. He is also a member of the Iowa State Bar Association and the Linn County Bar Association.

Court Admissions:

Mr. Brady is admitted to practice before the federal district courts for Northern and Southern Districts of Iowa, the Eighth Circuit Court of Appeals. He previously has been admitted by court order and/or appeared *pro hac vice* in cases in:

United States District Court for:
- The N. District of Alabama
- The E. District of Arkansas
- The S. District of California
- The District of Colorado
- The S. District of Illinois
- The Middle District of North Carolina
- The District of Minnesota
- The W. District of Oklahoma

State Courts:
- Arizona Superior Court
- California Superior Court
- Connecticut Superior Court
- Florida Circuit Court
- Illinois Superior Court
- Indiana Superior Court
- Minnesota Superior Court
- Nebraska District Court

Reported Cases:

Dindinger v. Allsteel, Inc. 2017 WL 1209942 (Apr. 3, 2017)
Dennard v. Transamerica Corporation, 2016 WL 6471254 (Oct.28, 2016)
Dennard v. Transamerica Corporation, 2016 WL 7654650 (Oct. 25, 2016)
West Side Salvage, Inc. v. RSUI Indemnity Co., 2016 WL 6124637 (Oct.17, 2016)
Dennard v. Aegon, 2016 WL 3679199 (July 5, 2016)
Dennard v. Transamerica Corporation, 2016 WL 3554978 (June 24, 2016)
Dennard v. Transamerica Corporation, 2016 WL 7654649 (June 10, 2016)
Legg v. West Bank, 873 N.W. 2d 756 (Iowa 2016)
Legg v. West Bank, 873 N.W.2d 763 (Iowa 2016)
Dindinger v. Allsteel, Inc., 2016 WL 7426580 (Jan. 4, 2016)
Dindinger v. Allsteel, Inc., 2015 WL 11181335 (July 17, 2015)
Dindinger v. Allsteel, Inc., 2015 WL 11143144 (June 8, 2015)
Dindinger v. Allsteel, Inc., 2015 WL 968718 (March 6, 2015)
West Side Salvage, Inc. v. RSUI Indemnity Co., 2014 WL 144918 (S.D. Ill. Jan 15, 2014) (No. 13-CV-0363-MJR-PMF)
West Side Salvage, Inc. v. RSUI Indemnity Company, 2013 WL 6169927 (S.D. Ill. Nov 25, 2013) (No. 313CV00363MJRPMF)
Dindinger v. Allsteel, Inc., 2013 WL 11727240 (Nov. 22, 2013)
Inechien v. Nichols Aluminum, LLC, 728 F.3d 816 (8th Cir. Ct. App. Aug 28, 2013)
Dindinger v. Allsteel, Inc., 2013 WL 12034436 (July 26, 2013)
Amera-Seiki Corp. v. Cincinnati Ins. Co., 721 F.3d 582 (8th Cir. Ct. App. July 23, 2013)
West Side Salvage, Inc. v. RSUI Indemnity Co., 2013 WL 12195852 (June 26, 2013)
Mitchell v. Cedar Rapids Community School Dist., 832 N.W.2d 689 (Iowa S. Ct. June 21, 2013)
Murr v. Midland Life Insurance Company, 2013 WL 12044540 (S .D. Iowa)
In re Estate of Whalen, 827 N.W.2d 184 (Iowa S. Ct. Feb 22, 2013)
Dindinger v. Allsteel, Inc., 2012 WL 12829998 (Oct. 31, 2012)
Inechien v. Nichols Aluminum, LLC, 2012 WL 12905700 (Oct. 16, 2012)
In re Chantix (Varenicline) Products Liability Litigation, 889 F. Supp.2d 1272 (N.D. Ala. Aug 21, 2012)
In re Chantix (Varenicline) Products Liability Litigation, 881 F. Supp.2d (N.D. Ala. July 23, 2012)
In re Hydroxycut Marketing and Sales Practices Litigation, 810 F.Supp.2d 1100 (S.D. Cal. Aug 29, 2011)
In re Hydroxycut Marketing and Sales Practices Litigation, 801 F.Supp.2d 993 (S.D. Cal. May 31, 2011)
In re Toyota Motor Corp., 785 F.Supp.2d 883 (C.D. Cal. Apr 08, 2011)
In re Hydroxycut Marketing and Sales Practices Litigation, 2011 WL 1045166 (S.D. Cal. March 23, 2011) (No. 10CV874 BTM AJB, 09MD2087 BTM AJB)
In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices and Products Liability Litigation, 754 F.Supp.2d 1208 (C.D. Cal. Dec 09, 2010)
In re Zicam Cold Remedy Marketing, Sales Practices, Products Liability Litigation, 2010 WL 4511014 (D. Ariz. Nov 02, 2010)

Cedar Rapids Lodge & Suites, LLC v. JFS Development, Inc., 2010 WL 2836949 (N.D. Iowa July 19, 2010)
Cedar Rapids Lodge & Suites, LLC v. JFS Development, Inc., 2010 WL 2836789 (N.D. Iowa July 19, 2010)
Gaskell v. Maharishi Ayurveda Arogyadham, 2010 WL 11493768 (June 28, 2010)
Gaskell v. Arogyadham, 2010 WL 11493684 (June 28, 2010)
Cedar Rapids Lodge & Suites, LLC v. JFS Development, Inc., 2010 WL 1780760 (N.D. Iowa Apr. 29, 2010)
Gaskell v. A*rogyadham,* 2010 WL 11493774 (Apr. 7, 2010)
Cedar Rapids Lodge & Suites, LLC v. JFS Development, Inc., 2010 WL 1030497 (N.D. Iowa March 8, 2010)
Gaskell v Maharishi Ayurveda Arogyadham, 2010 WL 11493773 (Mar. 4, 2010)
Kramer v. Perez, 595 F.3d 825 (8th Cir. Ct. App. Feb 19, 2010)
Cedar Rapids Lodge & Suites, LLC v. JFS Development, Inc., 2010 WL 364562 (N.D. Iowa Feb 01, 2010)
Rakes v. Life Investors Ins. Co. of America, 582 F.3d 886, (8th Cir.(Iowa) (Sep 18, 2009)
Blazek v. Eastern Iowa Const., L.L.C., 764 N.W.2d 783, (Iowa App. Feb 04, 2009)
Gaskell v Maharishi Vedic Education Development Corporation, 2009 WL 10665017 (Jan. 16, 2009)
Rakes v. Life Investors Ins. Co. of America, 2008 WL 4852932, (N.D.Iowa Nov 07, 2008)
Kramer v. Perez, 579 F.Supp.2d 1164, (S.D.Iowa Sep 30, 2008)
Gaskell v Maharishi Vedic Education Development Corporation, 2008 WL 11350060 (July 14, 2008)
Rakes v. Life Investors Ins. Co. of America, 622 F.Supp.2d 755, (N.D.Iowa Jun 20, 2008)
Rakes v. Life Investors Ins. Co. of America, 2008 WL 429060, (N.D.Iowa Feb 14, 2008) (No. C06-0099)
McGowan, Ltd., Inc. v. Soy Basics, L.L.C., 2008 WL 346044, (N.D.Iowa Feb 06, 2008) (No. C06-2064)
Walters v. Prudential Ins. Co. of America, 2007 WL 4531311, (N.D.Iowa Dec 18, 2007) (No. 06-CV-20-LRR)
Rakes v. Life Investors Ins. Co. of America, 2007 WL 2122195, (N.D.Iowa Jul 20, 2007) (No. 06-CV-99-LRR)
Walters v. Prudential Ins. Co. of America, 2007 WL 1385387, (N.D.Iowa May 08, 2007) (No. 06CV0020-LRR)
Richard L. McGowan, Ltd., Inc. v. Soy Basics, LLC, 2007 WL 576484, (N.D.Iowa Feb 21, 2007) (No. C06-2064)
Lutz v. General Motors Corporation – Pontiac Div., 2007 WL 7625090 (N.D. Iowa Feb 8, 2007) (No. C04-0078)
Northrup v. Penford Products Co., 2006 WL 753218, (N.D.Iowa Mar 23, 2006) (No. C05-0012-LRR)
GreatAmerica Leasing Corp. v. Rohr-Tippe Motors, Inc., 394 F.Supp.2d 1058, (N.D.Iowa Oct 06, 2005) (No. C05-119-LRR)
GreatAmerica Leasing Corp. v. Rohr-Tippe Motors, Inc., 387 F.Supp.2d 992, (N.D.Iowa Sep 06, 2005) (No. C05-119-LRR)
Kreinbring v. Alternative Claims Services, Inc., 2004 WL 1293927, (N.D.Iowa May 27, 2004) (No. C03-123-LRR)

Rieff v. Evans, 672 N.W.2d 728, (Iowa Dec 17, 2003) (No. 02-0727)
Rieff v. Evans, 630 N.W.2d 278, (Iowa May 31, 2001) (No. 99-0313)
Luker v. Wal-Mart Stores, Inc., 1999 WL 33655475 (N.D. Iowa Nov 15, 1999) (No. C98-2067)
Young v. FDL Foods, Inc., 1999 WL 33656872 (N.D. Iowa May 18, 1999) (No. C96-1049)
GreatAmerica Leasing Corp. v. Telular Corp., 1999 WL 33656867, (N.D.Iowa Apr 20, 1999) (No. C98-127)
Gutierrez v. Givens, 1 F.Supp.2d 1077, 1998 WL 162195, RICO Bus.Disp.Guide 9486, S.D.Cal., April 03, 1998 (No. CIV. 97-1218-B (LAB))
Gutierrez v. Givens, 989 F.Supp. 1033, 1997 WL 816502, RICO Bus.Disp.Guide 9374, 98 Daily Journal D.A.R. 9111, S.D.Cal., November 05, 1997 (No. Civ. 97-1218-B(LAB))
Great Rivers Co-op. of Southeastern Iowa v. Farmland Industries, Inc., 120 F.3d 893, (8th Cir.(Iowa) Jul 29, 1997) (No. 96-2751)
Great Rivers Co-op of Southeastern Iowa v. Farmland Industries, Inc., 934 F.Supp. 302, (S.D.Iowa Jul 03, 1996) (Civil No. 4-95-70529)
Jolly v. Pittore, 1995 WL 566002 (S.D. NY Sept 22, 1995) (No. 92 CIV. 3593 (JSM), 92 CIV. 5244 (JSM))
Great Rivers Co-op. of Southeastern Iowa v. Farmland Industries, Inc., 59 F.3d 764 1995 (8th Cir. Ct. App. July 12, 1995) (No. 95-1249)
Kalell v. Petersen, 498 N.W.2d 413, (Iowa App. Feb 02, 1993) (No. 92-475)
Nichols v. Schweitzer, 472 N.W.2d 266, (Iowa Jun 19, 1991) (No. 89-1507)
In re Marriage of Hasley, 433 N.W.2d 40 (Iowa Ct. App. Sept 28, 1988) (No. 87-1114)
U.S. v. Copper, 709 F.Supp. 905 (N.D. Iowa Sept 14, 1988) (No. C86-0160)
Taylor v. Wiebold, 390 N.W.2d 128 (Iowa S. Ct. July 23, 1986) (No. 85-1661)
Smalley v. Dewberry, 379 N.W.2d 922, 54 USLW 2420 (Iowa S. Ct., Jan 15, 1986), (No. 85-367)
Munz v. State, 382 N.W.2d 693 (Iowa App., Dec 18, 1985) (No. 84-1109)
In re Voss, 20 B.R. 598 (Bankr. N.D. Iowa, Jun 04, 1982) (No. 81-00070, 81-0309)
W. Side Salvage, Inc. v. RSUI Indem. Co., 878 F.3d 219, 221 (7th Cir. 2017)

MATTHEW L. PRESTON attended the University of Iowa, where he received a Bachelor of Business degree in Economics, with honors. He received his law degree, with distinction, from the University of Iowa College of Law, in 1996. While in law school, he was one of four students of 230 selected to compete in the National Moot Court Competition. He also was a member of the Iowa Law Review, which included editing articles published in the nationally circulated journal.

Professional Honors & Activities:

Mr. Preston is a Fellow in the Iowa Academy of Trial Lawyers, an organization devoted to trial practice and limited to approximately 3% of Iowa attorneys. Mr. Preston is also a member of the American Board of Trial Advocates, which invites attorneys who meet criteria of character, reputation, and jury trial experience. Mr. Preston is a member of the trial group – the Dean Mason Ladd Inn of Court and served as its President for 2014-15 and Counselor for 2013-14.

Presentations & Speeches:

Mr. Preston has spoken to Lawyers and Legal Assistant groups on litigation and trial skills topics.

Bar Admissions:

Mr. Preston is a member of the Linn County Bar Association, and served as its Vice President from 1998 - 2000. He served as President of the Iowa State Bar Association Young Lawyer Division for the term 2005-2006.

Mr. Preston belongs to the American Bar Association, where he is a member of the Tort and Insurance Practice Section, Section of Intellectual Property Law, and Forum on Franchising. Mr. Preston's other recent professional affiliations include serving as President of the Linn County group for young lawyers (1998 - 2000), and sitting on the Bench-Bar Relations Committee (1999 - 2000).

Court Admissions:

Mr. Preston is admitted to practice before all Iowa state courts. In federal court he is admitted to the Northern and Southern Districts of Iowa, the Southern District of Illinois, the Western District of Michigan and the Western District of Wisconsin, as well as the 7th and 8th Circuit Court of Appeals. Mr. Preston has also been admitted pro hac vice to practice before the state and/or federal courts of: California, Colorado, Illinois, Michigan, Minnesota, Nebraska, Nevada, Oklahoma, Wisconsin, and Wyoming.

Reported Cases:

W. Side Salvage, Inc. v. RSUI Indem. Co., 878 F.3d 219 (7th Cir. 2017*)*
Innis v. Bankers Trust Company of South Dakota, 2017 WL 4876240 (S.D. Iowa 2017)
College Park TIC1, LLC, et al.v. William J. Carden, 2017 WL 4349247 (N.D. Iowa 2017)
BVS, Inc. v. Credit Union Executives Society, Inc. 2017 WL 3200434 (8th Cir. 2017)
BVS, Inc. v. Credit Union Executives Society, Inc. 2016 WL 744088 (N.D. Iowa 2016)
Legg v. West Bank, 873 N.W.2d 756 (Iowa 2016)
Legg v. West Bank, 2016 873 N.W.2d 763 (Iowa 2016)
J. Lloyd International, Inc. v. Super Wings International, Ltd., 2016 WL 7411132 (N.D. Iowa 2016)
J. Lloyd International, Inc. v. Super Wings International, Ltd., 2016 WL 7116122 (N.D. Iowa 2016)
J. Lloyd International, Inc. v. Super Wings International, Ltd., 2016 WL 6440135 (N.D. Iowa 2016)
J. Lloyd International, Inc. v. Super Wings International, Ltd., 2016 WL 498428 (N.D. Iowa 2016)
West Side Salvage, Inc. v. RSUI Indemnity Co., 2014 215 F.Supp.3d 728 (S.D. Ill. 2016)
West Side Salvage, Inc. v. RSUI Indemnity Co., 2014 WL 144918 (S.D. Ill. 2014)
West Side Salvage, Inc. v. RSUI Indemnity Company, 2013 WL 6169927 (S.D. Ill. 2013)

Amera-Seiki Corp. v. Cincinnati Ins. Co., 721 F.3d 582 (8th Cir. 2013)
Murr v Midland Nat. Life Ins. Co., 2013 WL 12044540 (N.D. Iowa 2013)
In Re Toyota Motor Corp. 785 F. Supp. 2d 883 (C.D. Cal. 2011)
Cedar Rapids Lodge & Suites, LLC v. JFS Development, Inc., 2010 WL 1030497 (N.D. Iowa 2010)
Kramer v. Perez, 595 F3d. 825 (8th Cir. 2010)
Cedar Rapids Lodge & Suites, LLC v. JFS Development, Inc., 2010 WL 364562 (N.D. Iowa 2010)
Lakes Gas Co. v. Lou's LP Co., 2010 WL 3385186 (N.D. Iowa 2010)
In Re Toyota Motor Corp. 754 F. Supp. 2d 1208 (C.D. Cal. 2010)
Lakes Gas Co. v. Lou's LP Co., 2010 WL 1254322 (N.D. Iowa 2010)
Rakes v. Life Investors Ins. Co. of America, 582 F.3d 886 (8th Cir. 2009)
Hills Bank & Trust Co. v. Converse, 772 N.W.2d 764 (Iowa 2009)
Rakes v. Life Investors Ins. Co. of America, 2008 WL 4852932 (N.D. Iowa 2008)
Kramer v. Perez, 579 F. Supp. 2d 1164 (S.D. Iowa 2008)
Hills Bank & Trust Co. v. Converse, 2008 WL 3364334 (Iowa Ct. App. 2008)
Rakes v. Life Investors Ins. Co. of America, 622 F. Supp. 2d 755 (N.D. Iowa 2008)
McGowan, Ltd., Inc. v. Soy Basics, L.L.C., 2008 WL 346044, (N.D. Iowa Feb 06, 2008)
Richard L. McGowan, Ltd., Inc. v. Soy Basics, LLC, 2007 WL 576484, (N.D. Iowa Feb 21, 2007)
Kreinbring v. Alternative Claims Services, Inc., 2004 WL 1293927, (N.D. Iowa May 27, 2004)
Rieff v. Evans, 672 N.W.2d 728 (Iowa 2003)
United Fire & Cas. Co. v. Northwind Developers, L.L.C., 666 N.W.2d 620, (Iowa Ct. App. 2003)
Weems v. Federated Mut. Ins. Co., 220 F.Supp.2d 979, (N.D. Iowa 2002)
Berstler v. Flender, 2001 WL 34780405, (Iowa Dist. Dec 12, 2001)
Rieff v. Evans, 630 N.W.2d 278, (Iowa 2001)
GreatAmerica Leasing Corp. v. Telular Corp., 1999 WL 33656867, (N.D. Iowa 1999)

ANN BROWN attended Cornell College, where she graduated in 2001 cum laude with a degree in Political Science. Ms. Brown attended the University of Iowa College of Law, where she graduated with distinction in 2004.

Ms. Brown is admitted to practice in all Iowa state courts as well as the Northern and Southern Districts of Iowa's federal courts. She is a member of the Iowa Bar Association, the Iowa Organization of Women Attorneys, the Iowa Association for Justice and the American Association for Justice.

Ms. Brown authored the Iowa Chapter in the American Bar Association, A Practitioner's Guide to Class Actions, published in 2010.

Ms. Brown acted as counsel in the following class actions: *Thompson, et al. v. Remedy Intelligent Staffing, Inc.*, Iowa District Court in and for Linn County Case No. LACV 63237 (counsel on behalf of Plaintiff class of employees for recovery of wages) and *Peterson, et al. v. Cottage Grove Place, Inc., et al*., Iowa District Court in and for Linn

County Case No. LACV68465 (counsel on behalf of Plaintiffs), and she is acting as counsel in the following pending proposed class actions: *Haun, et al. v. Wheaton Franciscan Healthcare-Iowa, Inc. et al.*, Iowa District Court in and for Fayette County Case No. LACV052412 (counsel on behalf of Plaintiffs), *Beard, et al. v. Toyota*, S.D. Iowa Case No. 10-33 (counsel on behalf of Plaintiffs), and *Ineichen, et al. v. Nichols Aluminum, LLC, et al.*, U.S. District Court for the Southern District of Iowa-Davenport Division Case No. 3:11-cv-00032-RAW (appointed as class counsel on behalf of class).

Reported Cases:

Legg v. West Bank, 873 N.W.2d. 756 (Jan 22, 2016)
Legg v. West Bank, 873 N.W.2d. 763 (Jan 22, 2016)
Dindinger v. Allsteel, Inc., 2015 WL 11181335 (Jul 17, 2015)
Dindinger v. Allsteel, Inc., 2015 WL 11143144 (Jun 8, 2015)
Dindinger v. Allsteel, Inc. 860 N.W.2d. 557 (Mar 6, 2015)
Dindinger v. Allsteel, Inc., 2013 WL 11727240 (Nov 22, 2013)
Inechein v. Nichols Aluminum, LLC, 728 F.3d. 816 (Aug 28, 2013)
Dindinger v. Allsteel, Inc. 2013 WL 12034436 (Jul 26, 2013)
Mitchell v. Cedar Rapids Community School Dist., 832 N.W.2d. 689 (Jun 21, 2013)
In re Estate of Whalen, 827 N.W.2d. 184 (Feb 22, 2013)
Dindinger v. Allsteel, Inc., 2012 WL 12829998 (Oct 31, 2012)
In re Chantix (Varenicline) Products Liability Litigation, 889 F.Supp.2d. 1272 (Aug 21, 2012)
In re Chantix (Varenicline) Products Liability Litigation, 881 F.Supp.2d. 1333 (Jul 23, 2012)
Robertson v. Metropolitan Life Ins. Co., 212 WL 899333 (Mar 15, 2012)
In re Hydroxycut Marketing and Sales Practices Litigation, 810 F.Supp.2d. 1100 (Aug 29, 2011)
In re Hydroxycut Marketing and Sales Practices Litigation, 801 F.Supp.2d. 993 (May 31, 2011)
In re Toyota Motor Corp., 785 F.Supp.2d. 883 (Apr 8, 2011)
In re Hydroxycut Marketing and Sales Practices Litigation, 2011 WL 1045166 (Mar 23, 2011)
In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices and Products Liability Litigation, 754 F.Supp.2d. 1208 (Dec 09, 2010)
In re Zicam Cold Remedy Marketing, Sales Practices, Products Liability Litigation, 2010 WL 4511014 (Nov 2, 2010)
Walters v. Prudential Ins. Co. of American, 2007 WL 451311 (Dec 18, 2007)
Walters v. Prudential Ins. Co. of America, 2007 WL 1385387 (May 8, 2007)
Northrup v. Penford Products Co., 2006 WL 753218 (Mar 23, 2006)
GreatAmerica Leasing Corp. v. Rohr-Tippe Motors, Inc., 294 F.Supp2d 1068 (Oct 6, 2005)
GreatAmerica Leasing Corp. v. Rohr-Tippe Motors, Inc., 387 F.Supp.2d 992 (Sep 6, 2005)

EXHIBIT 17

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT: ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**MDL No. 2591**

DECLARATION OF CLINTON R. PINYAN

I, Clinton R Pinyan, declare as follows:

1. I am a partner with the North Carolina law firm of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP ("Brooks Pierce"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge, and, if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Brooks Pierce is a business law firm founded in 1897, which regularly assists its client to handle significant and complex matters. Brooks Pierce represents regional, national,

and international clients, including businesses, governmental entities, non-profits, trade associations, and individuals. Our litigation attorneys include former judicial law clerks to the United States Supreme Court, federal circuit courts of appeal, the North Carolina Supreme Court, and the North Carolina Business Court. For the past three years (2016, 2017, and 2018), Brooks Pierce has been named the "North Carolina Law Firm of the Year" by *Benchmark Litigation*, an independent research organization. Our litigation practice received a Band 1 Ranking from Chambers USA in 2018. As these rankings and awards reflect, Brooks Pierce regularly handles complex litigation to successful resolution.

4. Attached to my declaration is my law firm's resume.

5. I graduated from Wake Forest University, *summa cum laude*, with a Bachelor of Arts in 1991. I obtained my J.D. from the University of Chicago in 1995, graduating with high honors and Order of the Coif. After graduation, I served as a law clerk to Chief Judge Frank W. Bullock, Jr. of the United States District Court for the Middle District of North Carolina. Before joining Brooks Pierce, I spent three years practicing in the appellate section of an international law firm, with my practice focused on representing clients in the federal appellate courts and the United States Supreme Court. I joined Brooks Pierce in October of 1999 and have litigated numerous cases since then. From 2013 through the present, I have been selected by my peers for inclusion in *The Best Lawyers in America* for commercial litigation.

6. Senior Associate Daniel F. E. Smith has also worked on this matter. Mr. Smith graduated from Duke University, *summa cum laude*, with a Bachelor of Science degree in 2002. He then obtained a Master of Arts in Teaching degree in 2003, also from Duke University. After teaching high school science for four years, Mr. Smith returned to law school. Mr. Smith obtained his J.D. from the University of North Carolina School of Law in 2010, graduating with

highest honors and Order of the Coif. Mr. Smith also served as Editor in Chief of the *North Carolina Law Review*. During the 2010-2011 term of the Supreme Court of North Carolina, Mr. Smith served as a law clerk to Justice Mark D. Martin. Since joining Brooks Pierce in August 2011, Mr. Smith has litigated numerous complex business matters, including class actions. From 2016 through the present, Mr. Smith has been recognized by his peers for inclusion in *North Carolina Super Lawyers* as a "Rising Star" in environmental law.

7. Mr. Pinyan and Mr. Smith have represented both plaintiff classes and defendants in a number of class-action cases including but not limited to, *Seaman v. Duke University et al.* (M.D.N.C.), *DeLoach et al. v. Philip Morris USA, Inc. et al.* (M.D.N.C.), *North Carolina Association of County Commissioners et al. v. Thompson et al.* (M.D.N.C.), *State of North Carolina ex rel. Woods et al. v. American Tobacco Co. et al.* (M.D.N.C.), *Hall et al. v. United Airlines et al.* (E.D.N.C.), *Haney v. USAA Casualty Ins. Co.* (E.D.N.C.), *Gay v. Peoples Bank* (N.C. Business Court), *Awartani v. Moses H. Cone Memorial Hospital Operating Corporation* (Guilford County Superior Court), *Children's Home Society of North Carolina v. City of Greensboro* (Guilford County Superior Court), and *Stafford v. Fairbanks Capital Corp.* (Guilford County Superior Court).

8. Brooks Pierce assisted with the drafting of the class action complaint filed on behalf of North Carolina farmers in the United States District Court for the Eastern District of North Carolina, partnering with the law firm of Batts, Batts & Bell, LLP to recruit representative plaintiffs for that class and completing fact sheets for participating class members. Brooks Pierce also assisted in November 2016 with the drafting of a complaint to be filed in North Carolina state court if necessary to preserve claims for impacted North Carolina farmers.

9. Brooks Pierce maintains contemporaneous records of the time and expenses of its attorneys in the ordinary course of business. Time entries are made on a daily basis and compiled at month end for secondary review prior to billing.

10. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

11. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

12. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

13. Of the $34,626.00 in attorneys' fees that have been billed to this matter, I determined, after re-review of the Common Benefit Order and consultation with national counsel, that the amount of $4,550.00 fell within the definition of common benefit time and expenses. Brooks Pierce is not making a claim for the remaining $30,034.00 of attorneys' fees that were spent on individual client work or that otherwise fell outside the definition of common benefit time.

14. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

15. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $4,550.00. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
Clinton R. Pinyan	Partner	11.6	$360.00	$4,176.00
Daniel F. E. Smith	Associate	1.7	$220.00	$374.00
TOTALS	**--**	**13.3**	**--**	**$4,550.00**

16. My firm seeks $400.00 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Costs	Amount
14	Filing Fees, Clerk, N.C. Eastern District—Filing Fee for Initial Complaint	$400.00
	TOTAL	**$400.00**

17. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

18. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Greensboro, North Carolina.

/s/ Clinton R. Pinyan
Clinton R. Pinyan

About Us

Brooks, Pierce, McLendon, Humphrey & Leonard, LLP is a business law firm that, since 1897, has been providing creative solutions for the significant and complex dealings of our clients. We serve businesses, government, non-profit institutions, trade associations and individuals. Brooks Pierce works with clients on a regional, national, and international level. The multi-faceted approach to the solutions offered by Brooks Pierce derives from the expertise resident in this firm. Our unique philosophy results in powerful analysis and effective solutions for our clients.

What is our philosophy? It is that exceptional service for our clients is developed by exposing our bright and dedicated attorneys to multiple areas of the sophisticated law with which we deal every day. These practice areas include mergers and acquisitions, media, banking, corporate finance, real estate, employment and labor law, litigation, trusts and estates and complex business litigation.

Our attorneys are experienced. Represented among the Brooks Pierce ranks are present and former state officials, law professors, regulatory commissioners, and a former political campaign manager.

Our attorneys embrace the highest standards of professional and personal excellence. Our attorneys exhibit intelligence, integrity, leadership, have a demonstrated record of professional excellence, and show a commitment to the law not only as a profession, but as a calling. Our attorneys have excelled in some of the nation's leading law schools, including Duke, Georgetown, Harvard, Stanford, UCLA, University of Chicago, University of North Carolina at Chapel Hill, University of Virginia, University of Texas, Wake Forest, Emory, Washington and Lee, William and Mary, and Yale.

Our attorneys are highly ranked in the top legal directories by their clients and peers. Our attorneys have received multiple honors from credentialing directories, such as *Chambers USA: America's Leading Lawyers for Business, The Best Lawyers in America©, North Carolina Super Lawyers,* and *Business North Carolina* Magazine's "Legal Elite."

Our attorneys are committed to understanding and empathizing, on a personal level, with the people who manage the businesses we represent. This allows our firm to be responsive to the professional needs of our clients. Our atmosphere is collaborative and collegial.

Our attorneys work closely with one another to exchange ideas and strategy in order to address the complex legal issues our clients bring to us. The Brooks Pierce team approach maximizes the scope and quality of the service we provide to our clients.

Only lawyers with a demonstrated record of professional excellence and the highest standards of personal integrity become part of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP.

Awards & Honors

Seven Brooks Pierce practice areas and twenty-one firm attorneys were ranked among the best in North Carolina in the 2018 edition of *Chambers USA – America's Leading Lawyers for Business*. The practice areas that received recognition were Antitrust, Bankruptcy/Restructuring, Corporate/Mergers & Acquisitions, Environment, Intellectual Property, Labor & Employment, and Litigation: General Commercial.

Brooks Pierce was named "North Carolina Law Firm of the Year" for litigation in 2016, 2017 and 2018 by *Benchmark Litigation*. The publication, which is the only ranking directory that focuses exclusively on litigation, also gave the firm a Highly Recommended" score for 2018, and listed eleven attorneys as "Litigation Stars."

U.S. News and World Report gave Brooks Pierce tier-one rankings in thirty-six of its practice areas in their respective metropolitan areas in their 2018 edition of "Best Law Firms." The honored practice areas include Banking & Finance Law, Commercial Litigation, Corporate Law, Securities/Capital Markets Law, Tax Law, and Trusts & Estates Law.

Fifty-four Brooks Pierce attorneys were recognized as industry leaders in their respective practice areas in the 2018 edition of *The Best Lawyers in America*©. Ten of our attorneys were also recognized as "Greensboro Lawyer of the Year" in their respective practice areas.

Thirty-eight Brooks Pierce attorneys were recognized in the 2018 edition of *North Carolina Super Lawyers*. In addition, Kearns Davis was named one of the state's Top 10 attorneys, and partners Jennifer Van Zant, Reid Phillips, David Sar, and Gary Parsons were ranked among the Top 100 attorneys in the state.

Practice Areas

Administrative & Regulatory
Antitrust
Antitrust Litigation
Appellate Litigation
Bankruptcy & Creditor's Rights
Business & Corporate
Class Actions
Complex Business Litigation
Compliance & Internal Investigations
Construction
Construction Litigation
Education
Employee Benefits
Employment
Employment Litigation
Entertainment
Entity Formation
Environmental
Federal Litigation
Film & Television
Financial Services & Banking
Franchises
Governmental Relations & Public Policy
Health Care
Intellectual Property
International & Cross-Border
IP Litigation
Land Use & Zoning
Litigation
Media & Publishing
Mediation & Arbitration
Mergers & Acquisitions
Music
North Carolina Business Court
Privacy
Professional Liability Litigation
Real Estate
Securities
Tax
Telecommunications
Trusts & Estates
Union & Labor Issues
Utilities
White Collar Defense & Investigations

EXHIBIT 18

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF JOHN G. EMERSON

I, John G. Emerson, declare as follows:

1. I am the owner of Emerson Firm, PLLC, an entity which has no time or expense submitted in this matter. Previously, I was a partner of Emerson Scott, LLP ("ES") from August 1, 2015 through May 31, 2018. Further, I was a partner of Emerson Poynter, LLP ("EP") from before and at the time of the inception of this case through July 31, 2015. Based on my positions with these firms, I am authorized on behalf of them to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Attached to this declaration is the Firm Resume of ES. ES began its practice on August 1, 2015 and had a national class action and complex litigation practice with offices in Little Rock, Arkansas and Houston, Texas. The Firm continued the practice begun by me at the predecessor Firm, EP, with additional emphasis on antitrust, data breach, and catastrophic injury medical negligence cases. ES's legal practice was as follows:

a. In antitrust area, ES was a member of the Plaintiffs' Counsel Steering Committee in the *Aluminum Warehousing Antitrust Litigation* representing first level purchasers in this Multi- District Litigation ("MDL"), 13 MDL 2481 (KBF), which was pending in the Southern District of New York and is currently on appeal in the U.S. Court of Appeals for the 2nd Circuit where we are waiting on a ruling following recent oral argument. At ES I was involved for plaintiffs in the following antitrust cases: *Lithium Ion Batteries Antitrust Litigation, Trans-Pacific Airline Surcharge Litigation, Domestic Airlines Antitrust*, *Liquid Aluminum Sulfate Antitrust Litigation*, and *Washington County Health Care Authority, Inc. v. Baxter International Inc. et a*l (the Saline Solution Antitrust case). At ES I also represented one of the named plaintiff/direct purchaser plaintiffs in *Bridgestone Anti-Vibration Rubber Parts Antitrust Litigation*.

b. In the privacy and data breach areas, ES was actively involved prosecuting cases for aggrieved consumers in the following pending MDL cases: *In re: Anthem Healthcare Data Breach Litigation*, MDL No. 2617 (N.D. Cal.); *In re: Premera Healthcare Data Breach Litigation,* (D. OR.) MDL No. 2633; *In re: Medical Informatics Engineering Data Breach Litigation,* MDL No.

2667 (N.D. Ind.); *In re: Office of Personnel Management Data Breach Litigation* (D.D.C.) MDL No. 2664; *In re: Experian Data Breach Litigation* (C.D.CA.) MDL No. 2676 in which nearly half of the named plaintiffs in the consolidated amended complaint are clients of Emerson Scott, and *In re: Vizio, Inc., Consumer Privacy Litigation* (C.D.CA.). Emerson Scott was also actively involved in prosecuting two data breach cases in Arizona, *In re: Banner Health Data Breach Litigation* and *In re: Valley Anesthesiology Data Breach Litigation*. Most recently, ES represented three of the named plaintiffs in the consolidated amended complaint stemming from MDL No. 2800, *IN RE: Equifax, Inc., Customer Data Security Breach Litigation* (N.D. GA.).

c. In other consumer protection cases, ES represented three of the named plaintiffs in the certified class case involving premiums increases allegedly related to cost of insurance in the case styled *Gordon Feller et al v. Transamerica Life Insurance Company* (C.D. Cal.). ES represented the Arkansas bellwether trial plaintiff Mr. Kenny Falwell and numerous other corn producers in the *United States in consolidated actions in MDL No. 2591, In re: Syngenta AG MIR162 Corn Litigation* before this Court.

d. In May 2018, ES successfully concluded a catastrophic brain injury case against a major Arkansas hospital and a doctor by way of a confidential mediated settlement and is involved in representing many other persons allegedly injured as a result of medical negligence.

4. The timekeepers at ES working on the Syngenta litigation were John Emerson, David Scott, and Tanya Autry.

a. **John Emerson** was a founding partner of ES. He was born in Little Rock, Arkansas, and was raised there and in Houston, Texas. He is a member of the state bars of Texas, Washington and Arkansas. Mr. Emerson obtained his Bachelor of Arts from the University of Texas at Austin and then earned his Juris Doctorate from South Texas College of Law in Houston. Mr. Emerson has been rated "AV Preeminent" for the last 19 years by Martindale- Hubbell. Mr. Emerson was admitted to the Texas Bar in 1980. He is admitted to practice before the U.S. Supreme Court; U.S. Court of Appeals for the 2nd, 5th, and 8th Circuits; U.S. District Courts for the Northern, Southern, Eastern, and Western Districts of Texas; Eastern and Western Districts of Arkansas; Western District of Washington; District of Colorado; Eastern District of Michigan; and all Texas, Washington, and Arkansas state courts. Mr. Emerson has extensive jury trial experience over the past 37 years. He is a member of the legal fraternity Delta Theta Phi. He is also a member of The National Trial Lawyers; American Association for Justice ("AAJ"); AAJ Class Action Litigation Group; AAJ Medical Negligence Information Exchange Group; Fellow of The Pound Civil Justice Institute; Texas Trial Lawyers Association; American Bar Association (Tort and Insurance Practice and Legal Economics Sections); State Bar of Texas (Grievance Committee 4-D, Houston, 1991-94); Membership Services Committee, 1991-92); Sustaining Life Fellow Texas Bar Foundation; Bar Association

for the United States District Court for the Eastern District of Texas; Houston Bar Association; Fellow of the Houston Bar Foundation; Washington State Bar; King County Bar Association; Arkansas Trial Lawyers Association; Pulaski County Bar Association; and the Arkansas Bar Association. Mr. Emerson was honored by the Governor of Arkansas when he was named an Arkansas Traveler, an Ambassador of Good Will on behalf of the people of the state of Arkansas to people everywhere. Mr. Emerson has had a robust class action practice for over twenty years as can be seen from paragraph 3, *supra*, and Exhibits A and B attached hereto.

b. **David G. Scott** was a founding partner of ES. He was born and raised in Warren, Arkansas. Mr. Scott received his Bachelor of Science degree in Business Administration, with a major in Finance, from the University of Arkansas at Fayetteville in 1982 and his Juris Doctorate from the William H. Bowen School of Law in Little Rock, Arkansas in 2006. Mr. Scott received his Chartered financial analysts (CFA) designation from The Institute of Chartered Financial Analysts in 1993 and was an institutional investments representative and manager prior to law school with Prudential-Bache Securities, Dean Witter Reynolds, Inc., and SouthWest Securities, Inc. While working in the field of institutional investments for eighteen years, Mr. Scott specialized in the areas of asset/liability management, portfolio immunization, and hedging in the financial futures markets and cash markets for large institutional clients such as banks, insurance companies, savings and loans, and mortgage bankers. He further specialized

in the mortgage-backed securities and mortgage markets where he was involved in the development of the first collateralized mortgage obligation securities. Mr. Scott has extensive experience in representation of clients in the personal injury, drug injury, medical malpractice, and complex litigation areas. Mr. Scott has worked extensively in the MDL *In re: Syngenta AG MIR162 Corn* Litigation (MDL 2591) and the case, *In Re: Aluminum Warehousing Antirust Litigation*, (13 MDL 2481 (KBF)). He is also deeply involved in the representation of class action plaintiffs in numerous consumer protection and antitrust cases, including *In re: Anthem Healthcare Data Breach Litigation*, MDL No. 2617 (N.D. Cal.); *In re: Premera Healthcare Data Breach Litigation,* (D. OR.) MDL No. 2633; *In re: Medical Informatics Engineering Data Breach Litigation,* MDL No. 2667 (N.D. Ind.); *In re: Office of Personnel Management Data Breach Litigation* (D.D.C.) MDL No. 2664; and *In re: Experian Data Breach Litigation* (C.D. Cal.) MDL No. 2676 as well as two data breach cases in Arizona, *In re: Banner Health Data Breach Litigation* and *In re: Valley Anesthesiology Data Breach Litigation.* He has extensive criminal law experience as he was previously a Special Prosecutor for the State of Arkansas and successfully prosecuted to conviction over 1000 felony cases. Mr. Scott is a member of the Bar of the State of Arkansas and is admitted to practice in the United States District Courts for the Eastern and Western Districts of Arkansas. He is also a member of the Arkansas Trial Lawyers Association, the Arkansas

Bar Association, American Association for Justice ("AAJ"), and the AAJ Class Action Litigation Group.

c. **Tanya Autry** was a paralegal at ES. She earned her Paralegal Certification from Arkansas State University in December 2002. She has over seventeen years of experience as a paralegal in the areas of securities fraud, ERISA, consumer cases, personal injury law, and class action cases. Tanya was actively involved in several aspects of litigation support, including editing pleadings and correspondence, legal research, shareholder relations, timekeeping matters, and dealing with clients, attorneys, experts, court personnel, and administrative agencies.

5. Also attached to this declaration is the Firm Resume of EP. With regard to my prior law firm, EP, this Firm began in 2003 with offices in Houston, Texas and Little Rock, Arkansas and had a national class action and complex litigation practice. The Firm handled numerous securities cases representing investors and, in addition, investors involved in shareholder derivative cases where they pursued breach of fiduciary duty claims derivatively against corporate boards of directors. In the class action litigation area, EP represented plaintiffs in well over 100 class actions. For example:

a. EP served as Co-Lead Counsel in several Multidistrict Litigation ("MDL") cases involving product liability and consumer protection issues. In 2004, EP was appointed by the Honorable Stephen P. Friot as Plaintiffs' Co-Lead counsel in *In re Farmers Insurance Co., Inc. FCRA Litigation*, which was settled in the Western district of Oklahoma. This case was litigated on behalf of a certified class of Farmers' current and past customers who were

charged more than the lowest premium for insurance based upon information in a consumer report, and received certain "adverse action: notices that willfully failed to conform to the Fair Credit Reporting Act. The case resolved in late 2011 and provided class members with about $100 million in cash and other relief.

b. EP also represented numerous long-grain rice farmers in Arkansas and other states, and served as Co-Chair of Plaintiffs' Executive Committee in the MDL action *In re Genetically Modified Rice Litigation* (the "*Rice MDL Action*") having been appointed to such position by the Honorable Catherine D. Perry of the Eastern District of Missouri in April 2007. The *Rice MDL Action* sought damages for long-grain rice producers in Arkansas, Missouri, Mississippi, Louisiana, and Texas for defendants' contamination of the United States' rice supply with genetically modified rice as revealed by Bayer and the USDA in August 2006. This MDL action was settled for over $750 million in cash relief for American rice farmers.

c. EP was also active in cases seeking to improve corporate governance in public companies through its involvement in shareholder derivative litigation. Most notably, EP served as Co-Lead Counsel in cases resulting in significant and far-reaching corporate governance and compliance improvements within companies such as AOL/Time Warner, Computer Associates, Nicor, Cryolife, Inc., and Crompton (Chemtura). The Firm also represented shareholders in claims involving corporate buyouts and other change-of-control transactions. In 2007, EP represented shareholders of

Alltel Corporation in an acquisition of the company by an affiliate of Goldman Sachs. The action was settled favorably for the shareholders and it was settled in August of 2008.

d. In the consumer protection litigation area, EP was a leader in fighting for the rights of consumers. EP was a leader in the MDL action styled *In Re; Bisphenol-A (BPA) Polycarbonate Plastic Products Liability Litigation* in the United States District Court for the Western District of Missouri. EP was Co-Lead Counsel in the *Webb et al. v. Carters Inc. et al.* litigation in the United States District Court for the Central District of California concerning Carter's line of tagless baby clothing; in the *Montanez et al. v. Gerber Childrenswear, Inc., et al.* litigation in the United States District Court for the Central District of California concerning Gerber's line of tagless baby clothing; in the *Horne et al. v. The Dannon Company Inc.* litigation in the United States District Court for the Eastern District of Arkansas concerning Dannon's line of yogurt products.

e. In the retirement plan/pension area, EP served as Co-Lead Counsel in the *Winn- Dixie Stores, Inc. ERISA Litigation* that settled in the Middle District of Florida in 2008, and served as Co-Lead Counsel in the *ADC Telecommunications ERISA Litigation* that settled in the District of Minnesota in 2006. John Emerson of EP served on the *Enron ERISA Litigation* Plaintiffs' Counsel Steering Committee. This case settled in 2005 in the United States District Court, Southern District of Texas.

6. The timekeepers at EP include John Emerson (background described, *supra*), Tanya Autry (background described, *supra*), Scott Poynter, William Crowder, Corey McGaha, and Paige Parham.

a. **Scott E. Poynter** was a founding partner of EP with John Emerson. Mr. Poynter was born in Fayetteville, Arkansas and was raised in Mountain Home. He earned his Bachelor of Science Degree in Accounting from Arkansas Tech University. He then earned his Juris Doctorate from the University of Arkansas in 1989. While in law school, Mr. Poynter was active in Phi Alpha Delta legal fraternity and was awarded a leadership scholarship from the school. After completing law school, Mr. Poynter joined the Judge Advocate Department of the United States Air Force and served six years of active duty as a Judge Advocate and litigated more than fifty jury trials. In 1995, then Captain Poynter was selected by the Air Force for its Advanced Trial Advocacy Course, a course reserved for the military's finest litigators. After leaving active duty, Mr. Poynter was a partner at a national class action law firm which focused its work on the representation of investors. He also continued his military career in the Arkansas Air National Guard and attained the rank of Major. Mr. Poynter is admitted to practice before: U.S. Court of Appeals for the Armed Forces; U.S. District Courts for the Western and Eastern Districts of Arkansas; 8th Circuit court of Appeals; and all Arkansas State Courts. Mr. Poynter was engaged to represent homeowners after man-made earthquakes damaged their homes. In 2010 and 2011, central Arkansas was hit with thousands of

earthquakes, which were caused by oil and gas operations in the Fayetteville Shale. This seismic activity was due to fracking operations, specifically, when fracking fluids and wastewater was injected under pressure deep into the earth through the industry's injection wells. About 35 homeowners in the Guy and Greenbrier areas of Arkansas filed suit alleging both physical and market value losses to their homes. Mr. Poynter was retained by residents of Prague, Oklahoma who have similarly suffered due to more substantial earthquakes rattling central Oklahoma. Mr. Poynter assisted clients faced with abusive insurance practices. One example is in *In re: Farmers Insurance Co., Inc., FCRA Litigation.* As a result of efforts by Mr. Poynter and his co-counsel, a $100 million settlement was secured on behalf of class members. In another MDL action, *In Re Genetically Modified Rice Litigation,* Mr. Poynter served as Co-Chair of Plaintiffs' Executive Committee on behalf of rice farmers who experienced a deflated rice market after America's rice supply was contaminated by Bayer's genetically modified rice in 2006 and markets in Europe and Asia were lost. A $750 million cash settlement was achieved in 2012. Mr. Poynter was appointed by this Court to the Executive Committee in *In re: Syngenta AG MIR162 Corn Litigation*.

b. **William T. Crowder** was a partner with EP. He was born and raised in Camden, Arkansas. In 2000, Mr. Crowder earned a Bachelor of Arts Degree in Political Science from the University of Arkansas. In 2003, Mr. Crowder earned his Juris Doctorate from the William H. Bowen School of Law at the

University of Arkansas at Little Rock. Mr. Crowder is a member of the Arkansas Bar and admitted to the United States District Court for the Eastern and Western Districts of Arkansas, the District of Colorado, and the U.S. Court of Appeals for the Eighth Circuit. Mr. Crowder was a member of the American Bar Association, American Association for Justice, the Arkansas Trial Lawyers Association and the Pulaski County Bar Association. In 2009, 2010, and 2011, Mr. Crowder was selected as a *Mid-South Super Lawyer* Rising Star. After law school, Mr. Crowder served as a Law Clerk for the Hon. Harry F. Barnes, United States District Court for the Western District of Arkansas. Following his clerkship he was employed by the Little Rock law firms of Jack, Lyon & Jones, P.A. (where he focused on defense work) and McMath Woods, P.A. (where he began his representation of the injured.) During his time at EP, Mr. Crowder was extensively involved in all manner and types of class cases, including the firms' consumer litigation cases:

1. *Carrera v. Bayer Corporation*, (D.N.J.), deceptive trade practices action for marketing of Bayer's WeightSmart diet pill.
2. *Montantez v. Gerber Childrenswear, LLC* (C.D. Cal) and *Webb v. Carter's, Inc.* (C.D. Cal), cases involving tagless labels on children's garments.
3. *In re: Cheerios Marketing and Sales Practices Litigation* (D.N.J.), multidistrict litigation pending against General Mills for health and cancer-prevention claims made by their products.

Mr. Crowder was a leader in EP's efforts in litigation of cases on behalf of Arkansas's citizens:

1. Claims against major retailers who manufacture products with dangerous levels of heavy metals and other chemicals;
2. Claims against manufacturers of "toning shoes" on behalf of Arkansas's citizens;
3. Claims against banks relating to overdraft practices.

c. **Corey D. McGaha**, began as an associate with EP in July, 2011. He is admitted to practice in the state courts of Arkansas and Texas, the United States Court of Appeals for the Eighth Circuit, the United States District Courts for the Eastern and Western Districts of Arkansas, and the United States District Court for the Eastern District of Texas. Mr. McGaha graduated cum laude from Ouachita Baptist University and received his law degree from the University of Arkansas in 2002. After law school, Mr. McGaha served as a Law Clerk to the Hon. Harry F. Barnes, United States District Court for the Western District of Arkansas from 2002-2006. He is a member of the American Bar Association, the Arkansas Bar Association, the State Bar of Texas, and the Pulaski County Bar Association. Mr. McGaha worked as an attorney at Patton Roberts PLLC in Texarkana, Texas from 2006 through 2011. Mr. McGaha assisted the firm in successfully litigating and settling a number of security fraud cases including:

1. *In Re: Brocade Securities Litigation, Northern District of California* - A national securities fraud class action which resulted in a court-approved cash settlement of $160 million for shareholders. *In Re*: *Salomon Analyst Metromedia Litigation, Southern District of New York* – A securities fraud class action which resulted in a court-approved cash settlement of $35 million for shareholders of Metromedia Fiber Network.
2. *Walker v. Rent-A-Center, Inc., Eastern District of Texas* – A securities fraud class action which resulted in a court approved cash settlement of $3.6 million for the shareholders of Rent-A-Center, Inc.
3. *McClure, et al, v. AOL Time Warner, Inc., Texas state court* – An individual securities fraud action in which our clients received 100% more than they would have received in the global settlement of the national securities fraud class action.

After he joined EP, Mr. McGaha assisted the firm in prosecuting several class actions and real estate litigation cases, including:

(1) Over 30 property damage cases litigated in state and federal court for clients in Faulkner County, Arkansas alleging that wastewater injection wells caused the Guy-Greenbrier Earthquake Swarm in 2010-2011, which damaged his clients' homes.

(2) Reported decision in *Asset Acceptance v. Newby*, 2014 Ark. 280 (2014) – Mr. McGaha successfully argued his clients' claims were not subject to arbitration because Asset Acceptance, LLC, a debt-collector, had no specific evidence Ms. Newby agreed to arbitration, that the arbitration clause at issue was ever communicated to her, nor that she assented to the arbitration clause at issue.

d. Paige Parham was a Paralegal at EP. She had over four years of experience as a paralegal in the areas of securities fraud, family law, and consumer cases. Paige was actively involved in several aspects of litigation support, including legal research, and coordinating with clients and administrative agencies.

7. At ES and EP, we had key responsibilities in working with the Arkansas Bellwether Trial Plaintiff Mr. Kenny Falwell of Eagle Lake Farms, his assistant Richard Smith, his crop consultants and advisors, and accountants. We gathered and analyzed Mr. Falwell's documents and records at the direction of Co-Lead Counsel, met with him many times, assisted him in the preparation of his answers to defendant's interrogatories and responses to defendant's requests for production of documents, prepared supplements to written discovery, worked with him on his deposition preparation, and assisted in his defense at his video deposition. Throughout this litigation, we stayed in frequent communication with Mr. Falwell and his assistant via emails, phone calls, and written correspondence with regard to the progress and status of the litigation and to answer their questions. At ES, we were deeply involved in document review at the direction of Co-Lead Counsel and this included all documents produced by defendants as well as documents

produced by third parties. Further, David Scott of ES was one of the top document reviewers on the document review team by the document review leadership at Stueve, Siegel, took on special assignments and got the job done quickly and efficiently.

8. Arkansas Bellwether Trial Plaintiff Kenny Falwell spent many hours meeting in person with me, and co-counsel, Mr. Tom Bender and Mr. Dirk Hubbard, gathering his documents, talking to his crop consultants, talking to his accountant, working on his answers and responses to written discovery and supplements thereto, reviewing and approving pleadings, preparing for his deposition, and appearing for his deposition. Mr. Falwell has always made himself available, been cooperative, put the interests of the Class on a par with his own individual interests, and has always been mindful of his duties and obligations as a class representative and bellwether trial plaintiff. The categories and estimates of time spent by Mr. Falwell and his employee, Richard Smith, on this litigation are as follows:

Deposition Date/Location/Length/Distance Traveled:

- February 9, 2016 deposition in Little Rock, Arkansas.
- 9.5 hours for total deposition time, day-of-depo prep, and post-depo discussion
- Traveled 180 miles round trip from Newport, AR to attend deposition

Deposition Prep Date(s)/Length/Distance Traveled:

- Phone prep discussions on January 22, 2016 and other dates totaling 3 hours
- In-person prep on January 2 and February 8, 2016 totaling 9 hours
- Traveled 180 miles round trip from Newport, AR to attend deposition prep

Estimated Time Spent on Paper Discovery Responses:

- 10 hours spent over several time periods on original and supplemental interrogatory responses and on original and supplemental responses to requests for admissions

Estimated Time Spent and Distances Traveled on Document Gathering and Production

- 25 hours spent over several time periods on document production

- Traveled approximately 386 miles total on several occasions to meet with my attorneys, go to grain elevators, accountants, FSA office, and banks to obtain documents.
- Coordinating with attorney Mr. John Emerson on miscellaneous Syngenta litigation issues (not related to paper discovery, deposition preparation, or deposition). This includes, but is not limited to, common benefit matters, bellwether trial issues, where meetings will be held, discovery disputes, witness list matters, review of producer plaintiffs' third amended class action complaint, class certification, damage experts and phone calls with damage expert, new trial dates, miscellaneous phone calls with counsel relating to case status and updates on the litigation, and settlement matters. 12 hours

Mr. Falwell's total hours are 68.5. His total mileage is 746 miles.

9. Both ES and EP maintained contemporaneous records of their time and expenses in the ordinary course of business as complex litigation law firms.

10. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), both of my prior Firms, ES and EP, submitted common benefit time and expense submissions to Co-Lead Counsel in the MDL.

11. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs. Extensive cuts were made to any time and expense submissions which inadvertently included work and/or expenses for clients other than our firms' bellwether trial plaintiffs. EP had completed extensive work on the Syngenta matter prior to January 23, 2015 and almost the entirety of time and expense entries prior to that date were stricken and deleted from our submissions. Also all work on producer PFS sheets were stricken with the exception of bellwether trial plaintiffs represented by the respective Firms, ES and EP.

12. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

13. After this re-review, I can confirm that this time was undertaken by the members of my firms at my direction. I believe that the common benefit time and expense information submitted on behalf of my firms is accurate and in compliance with the Court's Common Benefit Order.

14. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for ES is $910,632.50. A breakdown of the lodestar is provided below.

NAME	TITLE	TOTALHOURS	HOURLY RATE	LODESTAR
JOHN EMERSON	PARTNER	219.50	$795.00	$174,502.50
DAVID SCOTT	PARTNER	1,176.80	$625.00	$735,500.00
TANYA AUTRY	PARALEGAL	4.20	$150.00	$630.00
TOTALS		1,400.50		$910,632.50

15. ES seeks $83,413.32 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
2	Postage Charges	$25.41
4	Long Distance Calls	$5.04
5	In-House Photocopying	$18.90
7	Hotels	$2,006.24
8	Meals	$568.74
9	Mileage	$296.74
10	Air Travel	$119.64
11	Deposition Costs	$68.81
13	Witness and Expert Expenses	$300.00
18	Miscellaneous	$3.80
19	Litigation Fund Assessment	$80,000.00
	TOTAL	**$83,413.32**

16. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for EP is $288,342.00. A breakdown of the lodestar is provided below.

NAME	TITLE	TOTALHOURS	HOURLY RATE	LODESTAR
JOHN EMERSON	PARTNER	170.60	$795.00	$135,627.00
SCOTT POYNTER	PARTNER	162.00	$795.00	$128,790.00
WILLIAM CROWDER	PARTNER	2.40	$650.00	$1,560.00
COREY MCGAHA	ASSOCIATE	34.90	$600.00	$20,940.00
TANYA AUTRY	PARALEGAL	8.70	$150.00	$1,305.00
PAIGE PARHAM	PARALEGAL	1.20	$100.00	$120.00
TOTALS		379.80		$288,342.00

17. EP seeks $20,949.26 in expense in connection with the prosecution of this litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
1	Federal Express / Local Courier	$27.62
2	Postage Charges	$541.32
4	Long Distance Calls	$29.80
5	In-House Photocopying	$5.60
7	Hotels	$1,370.34
8	Meals	$92.66
9	Mileage	$481.85
10	Air Travel	$667.20
12	Lexis/Westlaw/Bloomberg	$1,007.29
13	Witness and Expert Expenses	$1,590.00
17	Ground Transportation	$71.68
18	Miscellaneous	$63.90
19	Litigation Fund Assessment	$15,000.00
	TOTAL	**$20,949.26**

18. As part of my request for an award of expenses on behalf of both ES and EP, I have reviewed Section III(B) of the Court's Order Establishing Protocols for common Benefit Work

and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (The "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

19. ES requests expense reimbursement for capital contributions to the litigation fund, in the amount of its capital contributions, the sum of $70,000.00.

20. EP requests expense reimbursement for capital contributions to the litigation fund, in the amount of its capital contributions, the sum of $15,000.00.

21. The expenses pertaining to this case are reflected in the records of both ES and EP. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records, and other documents and are an accurate record of expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Little Rock, Arkansas.

/s/ John G. Emerson .
JOHN G. EMERSON
Emerson Firm, PLLC
830 Apollo Lane
Houston, TX 77058
Telephone: (281) 488-8854
Facsimile: (281) 488-8867
Email: jemerson@emersonfirm.com

Emerson Scott, LLP

Attorneys at Law

Little Rock
Houston

Class Action Litigation
Antitrust Litigation
Securities Litigation
ERISA Litigation
Consumer Litigation
Trials and Appeals
Personal Injury and Wrongful Death
Criminal Defense
Martindale-Hubble AV Rated

Our Firm

Emerson Scott, LLP ("ES") has a national class action legal practice with offices in Houston, Texas, and Little Rock, Arkansas.

The Firm and its team of experienced attorneys and paralegals, handles complex commercial litigation with a concentration on cases that involve violations of federal antitrust statutes, violations of federal and state consumer protection laws, securities laws, and violations of the Employee Retirement Income Security Act of 1974 ("ERISA"). ES has prosecuted numerous antitrust class action cases, consumer class action cases, securities fraud, and shareholder derivative cases representing consumers, damaged companies, and investors around the country and abroad. ES and its predecessor firms have been active in many class action and individual cases of note. In the class action litigation area, ES and its predecessor firm have represented plaintiffs in well over 100 class action or other complex litigation cases.

In antitrust, ES is currently a member of the Plaintiffs' Counsel Steering Committee in the *Aluminum Warehousing Antitrust Litigation* representing first level purchasers in this Multi-District Litigation ("MDL"), 13 MDL 2481 (KBF), which was pending in the Southern District of New York and is currently on appeal in the U.S. Court of Appeals for the 2nd Circuit. ES has represented plaintiffs in the *Compact Disc Antitrust Litigation* filed against the music industry in

the United States, and plaintiffs in the *High Pressure Laminates Antitrust Litigation* in the direct purchaser case. ES has been or is currently involved in the following antitrust cases: *Lithium Ion Batteries Antitrust Litigation, CRT (Cathode Ray Tube) Antitrust Litigation, Flash Memory Antitrust Litigation, GPU (Graphics Processing Units) Antitrust Litigation, Ocean Shipping Antitrust Litigation, TFT-LCD (Flat Panel) Antitrust Litigation, Trans-Pacific Airline Surcharge Litigation, Domestic Airlines Antitrust, Liquid Aluminum Sulfate Antitrust Litigation,* and *Bridgestone Anti-Vibration Rubber Parts Antitrust Litigation,* among other cases.

In privacy and data breach, ES is actively involved prosecuting cases for aggrieved consumers in the following pending MDL cases: *In re: Anthem Healthcare Data Breach Litigation*, MDL No. 2617 (N.D. Cal.); *In re: Premera Healthcare Data Breach Litigation,* (D. OR.) MDL No. 2633; *In re: Medical Informatics Engineering Data Breach Litigation,* MDL No. 2667 (N.D. Ind.); *In re: Office of Personnel Management Data Breach Litigation* (D.D.C.) MDL No. 2664; *In re: Experian Data Breach Litigation* (C.D.CA.) MDL No. 2676 in which nearly half of the named plaintiffs in the consolidated amended complaint are clients of ES, and *In re: Vizio, Inc., Consumer Privacy Litigation* (C.D.CA.). ES is also actively involved in prosecuting two data breach cases in Arizona, *In re: Banner Health Data Breach Litigation* and *In re: Valley Anesthesiology Data Breach Litigation*.

In other consumer protection cases, ES currently represents numerous corn farmers in the United States in consolidated actions in the MDL *In re: Syngenta AG MIR162 Corn* Litigation (MDL 2591) pending before Judge John W. Lungstrum in the District of Kansas. In September, 2016, this case was certified as a national class and eight states had classes certified including the state of Arkansas where ES represents the designated Arkansas bellwether trial plaintiff and many other Arkansas corn farmers. John Emerson of Emerson Scott was a leader in the MDL baby bottle action captioned *In Re: Bisphenol-A (BPA) Polycarbonate Plastic Products Liability Litigation* in the United States District Court for the Western District of Missouri. John Emerson of Emerson Scott was Co-Lead Counsel in the *Webb et al. v. Carters Inc. et al.* class action litigation in the United States District Court for the Central District of California concerning Carter's line of tag-less baby clothing; in the *Montanez et al. v. Gerber Childrenswear, Inc., et al.* class action litigation in the United States District Court for the Central District of California concerning Gerber's line of tag-less baby clothing.

ES's predecessor firm served as Co-Lead Counsel in several MDL cases involving product liability and consumer protection issues. In 2004, Emerson Scott's predecessor firm was appointed by the Honorable Stephen P. Friot as Plaintiffs' Co-Lead Counsel in *In re: Farmers Insurance Co., Inc. FCRA Litigation,* which was settled in the Western District of Oklahoma. This case was litigated on behalf of a certified class of Farmer's current and past customers who were charged

more than the lowest premium for insurance based upon information in a consumer report, and received certain "adverse action" notices that willfully failed to conform to the Fair Credit Reporting Act. The case resolved in late 2011 and provided class members with about $100 million in cash and other relief. ES's predecessor firm represented numerous long-grain rice farmers in Arkansas and other states, in the MDL action *In re: Genetically Modified Rice Litigation* (the "*Rice MDL Action*"). The *Rice MDL Action* sought damages for long-grain rice producers in Arkansas, Missouri, Mississippi, Louisiana, and Texas for defendants' contamination of the United States' rice supply with genetically modified rice as revealed by Bayer and the USDA in August 2006. This MDL action was settled for over $750 million in cash relief for American rice farmers. ES's predecessor served as Co-Lead Plaintiffs' Counsel in an MDL case transferred to the Honorable Richard D. Bennett of the District of Maryland captioned *In Re: Tyson Foods, Inc. Chicken Raised Without Antibiotics Consumer Litigation*. The case involved false advertising claims associated with the sale of Tyson Foods' chicken as being raised without antibiotics, when in fact the chicken was raised with antibiotics. The action was settled for $5 million in cash and other relief for class members who purchased the chicken products at issue.

The Firm has been active in prosecuting cases seeking to improve corporate governance in public companies through its involvement in shareholder derivative litigation. Most notably, John Emerson, served as Co-Lead Counsel in cases resulting in significant and far-reaching corporate governance and compliance improvements within companies such as AOL/Time Warner, Computer Associates, Nicor, Cryolife, Inc., and Crompton (Chemtura). The Firm has also represented shareholders in claims involving corporate buyouts and other change-of-control transactions.

Finally, John Emerson of ES served on the *Enron ERISA Litigation* Plaintiffs' Counsel Steering Committee. This case settled in the United States District Court, Southern District of Texas, Houston Division in 2005.

Our Attorneys

John G. Emerson **Partner**

Mr. Emerson is a founding partner of ES. He was born in Little Rock, Arkansas, and was raised there and in Houston, Texas. He is a member of the state bars of Texas, Washington and Arkansas. Mr. Emerson obtained his Bachelor of Arts from the University of Texas at Austin and then earned his Juris Doctorate from South Texas College of Law Houston. Mr. Emerson has been rated "AV Preeminent" for the last 18 years by Martindale-Hubbell. This is the highest possible peer review rating in legal ability and ethical standards. Mr. Emerson was honored by being named one of the Top 100 Trial Lawyers in America by the National Trial Lawyers in 2013 -2016.

In his antitrust practice, Mr. Emerson is currently a member of the Plaintiffs' Counsel Steering Committee in the *Aluminum Warehousing Antitrust Litigation* representing first level purchasers in this MDL, 13 MDL2481 (KBF), which was pending in the Southern District of New York and is currently on appeal in the U.S. Court of Appeals for the 2nd Circuit. Mr. Emerson has represented plaintiffs in the *Compact Disc Antitrust Litigation* filed against the music industry in the United States, and plaintiffs in the *High Pressure Laminates Antitrust Litigation* in the direct purchaser case. Notably, Mr. Emerson also has been or is currently involved in the following antitrust cases: *Lithium Ion Batteries Antitrust Litigation, CRT (Cathode Ray Tube) Antitrust Litigation, Flash Memory Antitrust Litigation, GPU (Graphics Processing Units) Antitrust Litigation, Ocean Shipping Antitrust Litigation, TFT-LCD (Flat Panel) Antitrust Litigation, Trans-Pacific Airline Surcharge Litigation, Domestic Airlines Antitrust Litigation, Liquid Aluminum Sulfate Antitrust Litigation*, and the *Bridgestone Anti-Vibration Rubber Parts Antitrust Litigation* case, among others.

In his privacy and data breach practice, Mr. Emerson is actively involved prosecuting cases for aggrieved consumers in the following pending MDL cases: *In re: Anthem Healthcare Data Breach Litigation*, MDL No. 2617 (N.D. Cal.); *In re: Premera Healthcare Data Breach Litigation*, (D. OR.) MDL No. 2633; *In re: Medical Informatics Engineering Data Breach Litigation*, MDL No. 2667 (N.D. Ind.); *In re: Office of Personnel Management Data Breach Litigation* (D.D.C.) MDL No. 2664; *In re: Experian Data Breach Litigation* (C.D.CA.) MDL No.

2676, and *In re: Vizio, Inc., Consumer Privacy Litigation* (C.D.CA.). He is also actively involved in prosecuting two Arizona data breach cases, *In re: Banner Health Data Breach Litigation* and *In re: Valley Anesthesiology Data Breach Litigation*.

In his consumer class action practice, Mr. Emerson represents numerous corn farmers in the United States in consolidated actions in the MDL *In re: Syngenta AG MIR162 Corn* Litigation (MDL 2591) pending before Judge John W. Lungstrum in the District of Kansas. On September 11, 2016 the Court denied defendant's motion to dismiss in major part. On September, 26, 2016 this case was certified as a national class and eight states had classes certified including the state of Arkansas where Mr. Emerson represents the designated Arkansas bellwether trial plaintiff as well as many other Arkansas corn producers. This case is currently set for trial on June 5, 2017. Currently, he also is prosecuting cases involving food products allegedly contaminated with the synthetic chemical glyphosate such as a case against General Mills involving Nature Valley snack bars and a case against Sioux Honey Association Cooperative involving honey products. Finally, Mr. Emerson is currently representing policyholders in cases against Transamerica and Lincoln Life concerning increased cost of insurance rates and/or increased monthly deductions. Mr. Emerson served as Chairman of the Expert Witness Committee in the consolidated MDL action styled *In Re: Bisphenol-A (BPA) Polycarbonate Plastic Products Liability Litigation* filed in the United States District Court for the Western District of Missouri. Mr. Emerson represented one of the named lead plaintiffs in the *AOL Version 5.0 Software Litigation*. He was Co-Lead Counsel in an action filed against the Farmers Insurance Group of Companies involving alleged violations of the Fair Credit Reporting Act which resolved for plaintiffs. He was Co-Lead Counsel for a number of parents in the Gerber's baby clothing litigation and the Carter's baby clothing litigation. Both cases resolved for plaintiffs in 2013. Mr. Emerson was a consultant to Canadian plaintiffs' counsel in the Canadian *Medtronic Pacemaker Pacing Lead Product Liability Litigation* that was certified and settled in British Columbia as a Canadian national class action. He has been a consultant to Canadian counsel in the Canadian *Compact Disc Antitrust Litigation*, the Canadian *Publishers Clearing House Litigation*, and the Canadian *AOL 5.0 Software Litigation*.

In his retirement plan practice, Mr. Emerson was appointed to the Plaintiffs' Counsel Steering Committee by Judge Melinda Harmon, United States District Judge, Southern District of Texas – Houston Division, in the consolidated Enron ERISA Litigation, styled *Pamela M. Tittle v. Enron Corp., et al.*

In his corporate practice, Mr. Emerson has represented numerous stockholders in shareholder derivative lawsuits brought against corporate boards alleging breaches of fiduciary duties. These suits sought to impose corporate governance reforms aimed at protecting

shareholders and eliminating corporate waste and abuse. In the past, Mr. Emerson served as one of the lead counsel in the Computer Associates shareholder derivative action in the Federal District Court for the Eastern District of New York. This action was brought against the Computer Associates' board of directors and led to the resignation of the Company's CFO, the resignation of two other senior financial officers, and the adoption of certain corporate governance measures that Computer Associates has since represented as the "gold standard" of governance reform. Mr. Emerson was Co-Lead Counsel in the case styled *In Re: Nicor, Inc. Shareholder Derivative Litigation* in the Circuit Court of Cook County, Illinois County Department, Chancery Division. This action was brought against Nicor's board of directors and its settlement resulted in major corporate governance improvements at Nicor. Mr. Emerson was Co-Lead Counsel in the case styled *In Re: Cryolife Derivative Litigation* pending in the Superior Court of Fulton County, Georgia. The settlement of this action resulted in wide-sweeping corporate governance improvements at Cryolife. Mr. Emerson was also Co-Lead Counsel in the case styled *In re: AOL Time Warner Shareholder Derivative Litigation* which was settled in the Federal District Court for the Southern District of New York. This settlement resulted in wide ranging corporate governance and compliance changes and was recognized as a substantial factor in Time Warner's ability to obtain $200 million from its Directors' and Officers' (D&O) insurance carriers. Mr. Emerson was Lead Counsel in the action styled *In re: Crompton* (now known as Chemtura) *Shareholder Derivative Litigation* which settled with Crompton's D & O carrier, AIG, at JAMS in New York and was thereafter approved by the Bankruptcy Court for the Southern District of New York. This settlement resulted in major corporate governance improvements.

Mr. Emerson was admitted to the Texas Bar in 1980. He is admitted to practice before the U.S. Supreme Court; U.S. Court of Appeals for the 2nd, 5th, and 8th Circuits; U.S. District Courts for the Northern, Southern, Eastern, and Western Districts of Texas; Eastern and Western Districts of Arkansas; Western District of Washington; District of Colorado; Eastern District of Michigan; and all Texas, Washington, and Arkansas state courts.

Mr. Emerson has extensive jury trial experience over the past 36 years. He is a member of the legal fraternity Delta Theta Phi. He is also a member of The National Trial Lawyers; American Association for Justice ("AAJ"); AAJ Class Action Litigation Group; Fellow of The Pound Civil Justice Institute; Texas Trial Lawyers Association; American Bar Association (Tort and Insurance Practice and Legal Economics Sections); State Bar of Texas (Grievance Committee 4-D, Houston, 1991-94); Membership Services Committee, 1991-92); Sustaining Life Fellow Texas Bar Foundation; Bar Association for the United States District Court for the Eastern District of Texas; Houston Bar Association; Fellow of the Houston Bar Foundation; Washington State Bar; King

County Bar Association; Arkansas Trial Lawyers Association; Pulaski County Bar Association; and the Arkansas Bar Association. Mr. Emerson was honored by the Governor of Arkansas when he was named an Arkansas Traveler, an Ambassador of Good Will on behalf of the people of the state of Arkansas to people everywhere.

Mr. Emerson is married with two children, two grandsons, and five rescued dachshunds. He enjoys the outdoors and has hunted and fished in the United States, Canada, Mexico, Honduras, Uruguay, Argentina, Botswana, and South Africa. He is a member of Ducks Unlimited and is a life member of Safari Club International.

Mr. Emerson's email address is jemerson@emersonfirm.com.

David G. Scott	**Partner**

Mr. Scott is a founding partner of Emerson Scott, LLP. He was born and raised in Warren, Arkansas. Mr. Scott received his Bachelor of Science degree in Business Administration, with a major in Finance, from the University of Arkansas at Fayetteville in 1982 and his Juris Doctorate from the William H. Bowen School of Law in Little Rock, Arkansas in 2006.

Mr. Scott received his Chartered Financial Analysts (CFA) designation from The Institute of Chartered Financial Analysts in 1993, charter number 18365. He was an institutional investments representative and manager prior to law school with Prudential-Bache Securities, Dean Witter Reynolds, Inc., and SouthWest Securities, Inc. While working in the field of institutional investments for eighteen years, Mr. Scott specialized in the areas of asset/liability management, portfolio immunization, and hedging in the financial futures markets and cash markets for large institutional clients such as banks, insurance companies, savings and loans, and mortgage bankers. He further specialized in the mortgage-backed securities and mortgage markets where he was involved in the development of the first collateralized mortgage obligation securities.

Mr. Scott has extensive experience in representation of clients in the personal injury, drug injury, medical malpractice, and complex litigation areas. Mr. Scott has worked and is working extensively in the MDL *In re: Syngenta AG MIR162 Corn* Litigation (MDL 2591) and the case, *In Re: Aluminum Warehousing Antirust Litigation*, (13 MDL 2481 (KBF)). He is also deeply involved in the representation of class action plaintiffs in numerous consumer protection and antitrust cases, including *In re: Anthem Healthcare Data Breach Litigation*, MDL No. 2617 (N.D. Cal.); *In re: Premera Healthcare Data Breach Litigation*, (D. OR.) MDL No. 2633; *In re: Medical Informatics Engineering Data Breach Litigation*, MDL No. 2667 (N.D. Ind.); *In re: Office of Personnel Management Data Breach Litigation* (D.D.C.) MDL No. 2664; and *In re: Experian*

Data Breach Litigation (C.D. Cal.) MDL No. 2676 as well as two data breach cases in Arizona, *In re: Banner Health Data Breach Litigation* and *In re: Valley Anesthesiology Data Breach Litigation*.

Mr. Scott has extensive criminal law experience as he was previously a Special Prosecutor for the State of Arkansas and successfully prosecuted to conviction over 1000 felony cases.

Mr. Scott was tendered and qualified as expert witness in the area of financial analysis and testified as to his opinion in the embezzlement case, *State v. Jean Leek*, CR 2010-4307, in the Fourth Division of Pulaski County, Arkansas Circuit Court. The defendant was convicted.

Mr. Scott is a member of the Bar of the State of Arkansas and is admitted to practice in the United States District Courts for the Eastern and Western Districts of Arkansas. He is also a member of the American Association of Justice, the Arkansas Trial Lawyers Association, the Arkansas Bar Association, American Association for Justice ("AAJ"), and the AAJ Class Action Litigation Group.

Mr. Scott's email address is dscott@emersonfirm.com

Emerson Poynter LLP

Attorneys at Law

Little Rock
Houston

Class Action Litigation
Securities Litigation
Antitrust Litigation
ERISA Litigation
Consumer Litigation
Trials and Appeals
Product Liability and Tort Law Litigation
Securities Arbitration
Martindale-Hubble AV Rated

Our Firm

Emerson Poynter LLP has a national class action legal practice with offices in Houston, Texas, and Little Rock, Arkansas.

Emerson Poynter, and its team of experienced Attorneys and Paralegals, handles complex commercial litigation with a concentration in those cases that involve violations of federal and state securities or antitrust laws, consumer protection laws, and violations of the Employee Retirement Income Security Act of 1974 ("ERISA"). Our law firm has handled numerous securities and shareholder derivative cases representing investors. Emerson Poynter and its predecessor firms have also been active in many mass tort, class action, and individual cases of note. In the class action litigation area, Emerson Poynter has represented and currently represents plaintiffs in well over 100 class action cases, some of which are being prosecuted with other leading national firms.

Emerson Poynter has served as Co-Lead Counsel in several recent Multidistrict Litigation ("MDL") cases involving product liability and consumer protection issues. In 2004, Emerson Poynter was appointed by the Honorable Stephen P. Friot as Plaintiffs' Co-Lead Counsel in *In re Farmers Insurance Co., Inc. FCRA Litigation*, which was settled in the Western District of Oklahoma. This case was litigated on behalf of a certified class of Farmers' current and past customers who were charged more than the lowest premium for insurance based upon information in a consumer report, and received certain "adverse action" notices that willfully failed to conform to the Fair Credit

Reporting Act. The case resolved in late 2011 and provided class members with about $100 million in cash and other relief. Emerson Poynter LLP also represent numerous long-grain rice farmers in Arkansas and other states, and continues to serve as Co-Chairman of Plaintiffs' Executive Committee in the MDL action *In re Genetically Modified Rice Litigation* (the "*Rice MDL Action*") having been appointed to such position by the Honorable Catherine D. Perry of the Eastern District of Missouri in April 2007. The *Rice MDL Action* sought damages for long-grain rice producers in Arkansas, Missouri, Mississippi, Louisiana, and Texas for defendants' contamination of the United States' rice supply with genetically modified rice as revealed by Bayer and the USDA in August 2006. This MDL action was settled for over $750 million in cash relief for American rice farmers. Emerson Poynter additionally served as Co-Lead Plaintiffs' Counsel in an MDL case transferred to the Honorable Richard D. Bennett of the District of Maryland captioned *In Re; Tyson Foods, Inc. Chicken Raised Without Antibiotics Consumer Litigation*. The case involved false advertising claims associated with the sale of Tyson Foods' chicken as being raised without antibiotics, when in fact the chicken was raised with antibiotics. The action was settled for $5 million in cash and other relief for class members who purchased the chicken products at issue.

Emerson Poynter is also active in cases seeking to improve corporate governance in public companies through its involvement in shareholder derivative litigation. Most notably, Emerson Poynter served as Co-Lead Counsel in cases resulting in significant and far-reaching corporate governance and compliance improvements within companies such as AOL/Time Warner, Computer Associates, Nicor, Cryolife, Inc., and Crompton (Chemtura). The Firm has also represented shareholders in claims involving corporate buyouts and other change-of-control transactions. In 2007, Emerson Poynter represented shareholders of Alltel Corporation in an acquisition of the company by an affiliate of Goldman Sachs. The action was settled favorably for the shareholders, and the Honorable Judge Chris Piazza of the Pulaski County Circuit Court, Arkansas, approved the settlement in August of 2008.

In the consumer protection litigation area, Emerson Poynter is a leader in fighting for the rights of consumers. Besides the aforementioned *Tyson RWA Chicken MDL Action*, Emerson Poynter was also a leader in the MDL action captioned *In Re; Bisphenol-A (BPA) Polycarbonate Plastic Products Liability Litigation* in the United States District Court for the Western District of Missouri. Emerson Poynter was Co-Lead Counsel in the *Webb et al. v. Carters Inc. et al.* litigation in the United States District Court for the Central District of California concerning Carter's line of tagless baby clothing; in the *Montanez et al. v. Gerber Childrenswear, Inc., et al.* litigation in the United States District Court for the Central District of California concerning Gerber's line of tagless baby clothing; in the *Horne et al. v. The Dannon Company Inc.* litigation in the United States District Court for the Eastern District of Arkansas concerning Dannon's line of yogurt products.

In the retirement plan/pension area, Emerson Poynter served as Co-Lead Counsel in the Winn-Dixie Stores, Inc. ERISA Litigation that settled in the Middle District of Florida in 2008, and served as Co-Lead Counsel in the ADC Telecommunications ERISA litigation that settled in the District of Minnesota in 2006. Emerson Poynter served on the Enron ERISA Litigation Plaintiffs' Counsel Steering Committee. This case settled in the United States District Court, Southern District of Texas, Houston Division in 2005.

Our Attorneys

John G. Emerson — Partner

Mr. Emerson is a founding partner of the Firm. He was born in Little Rock, Arkansas, and was raised there and in Houston, Texas. He is a member of the state bars of Texas, Washington and Arkansas. Mr. Emerson obtained his Bachelor of Arts from the University of Texas at Austin and then earned his Juris Doctorate from South Texas College of Law. Mr. Emerson has been rated "AV Preeminent" for the last 17 years by Martindale-Hubbell which is the highest possible peer review rating in legal ability and ethical standards. Mr. Emerson was honored by being named one of the Top 100 Trial Lawyers in America by the National Trial Lawyers in 2013 and 2014.

In his antitrust practice, Mr. Emerson is currently a member of the Plaintiffs' Counsel Steering Committee in the Aluminum Warehousing Antitrust Direct Purchaser action. Mr. Emerson has represented plaintiffs in the Compact Disc Antitrust Litigation filed against the music industry in the United States, and plaintiffs in the High Pressure Laminates Antitrust Litigation in the direct purchaser case. Notably, Mr. Emerson also has been or is currently involved in the following antitrust cases: CRT (Cathode Ray Tube) Antitrust Litigation; Flash Memory Antitrust Litigation; GPU (Graphics Processing Units) Antitrust Litigation; Ocean Shipping Antitrust Litigation; TFT-LCD (Flat Panel) Antitrust Litigation; Trans-Pacific Airline Surcharge Litigation, among others.

In his corporate practice, Mr. Emerson has represented numerous stockholders in shareholder derivative lawsuits brought against corporate boards. These suits sought to impose corporate governance reforms aimed at protecting shareholders and eliminating corporate waste and abuse. Mr. Emerson is currently Co-Lead Counsel in cases involving Wal-Mart, Citigroup and JP Morgan Chase. In the past, Mr. Emerson served as one of the lead counsel in the Computer Associates derivative action in the Federal District Court for the Eastern District of New York. This action was brought

against the Computer Associates' board of directors and led to the resignation of the Company's CFO, the resignation of two other senior financial officers, and the adoption of certain corporate governance measures that Computer Associates has since represented as the "gold standard" of governance reform. Mr. Emerson was Co-Lead Counsel in the case styled *In Re Nicor, Inc. Shareholder Derivative Litigation* in the Circuit Court of Cook County, Illinois County Department, Chancery Division. This action was brought against Nicor's board of directors and its settlement resulted in major corporate governance improvements at Nicor. Mr. Emerson was Co-Lead Counsel in the case styled *In Re Cryolife Derivative Litigation* pending in the Superior Court of Fulton County, Georgia. The settlement of this action resulted in wide-sweeping corporate governance improvements at Cryolife. Mr. Emerson was also Co-Lead Counsel in the case styled *AOL Time Warner Shareholder Derivative Litigation* which was settled in the Federal District Court for the Southern District of New York. This settlement resulted in wide ranging corporate governance and compliance changes and was a substantial factor in Time Warner's ability to obtain $200 million from its Directors' and Officers' (D&O) insurance carriers. Mr. Emerson was Lead Counsel in the action styled *Crompton* (now known as Chemtura) *Shareholder Derivative Litigation* which settled in the Bankruptcy Court for the Southern District of New York. This settlement resulted in major corporate governance improvements.

In his consumer class action practice, Mr. Emerson served as Chairman of the Expert Witness Committee in the consolidated Multi-District Litigation action styled *In Re Bisphenol-A (BPA) Polycarbonate Plastic Products Liability Litigation* filed in the United States District Court for the Western District of Missouri. Mr. Emerson represented one of the lead named plaintiffs in the AOL Version 5.0 software litigation. He was Co-Lead Counsel in an action filed against the Farmers Insurance Group of Companies involving alleged violations of the Fair Credit Reporting Act which resolved for plaintiffs. He was Co-Lead Counsel for a number of parents in the Gerber's baby clothing litigation and the Carter's baby clothing litigation. Both case resolved for plaintiffs in 2013. Mr. Emerson was a consultant to Canadian plaintiffs' counsel in the Canadian Medtronic Pacemaker Pacing Lead Product Liability Litigation that was certified and settled in British Columbia as a Canadian national class action. He has been a consultant to Canadian counsel in the Canadian Compact Disc Antitrust Litigation, the Canadian Publishers Clearing House Litigation, and the Canadian AOL 5.0 Software Litigation.

In his retirement plan practice, Mr. Emerson was appointed to the Plaintiffs' Counsel Steering Committee by Judge Melinda Harmon, United States District Judge, Southern District of Texas – Houston Division, in the consolidated Enron ERISA Litigation, styled *Pamela M. Tittle v. Enron Corp., et al.*

Mr. Emerson was admitted to the Texas Bar in 1980. He is admitted to practice before the U.S. Supreme Court; U.S. Court of Appeals for the 2nd, 5th, and 8th Circuits; U.S. District Courts for the Southern, Northern, Western and Eastern Districts of Texas; Western and Eastern Districts of Arkansas; Western District of Washington; District of Colorado; and all Texas, Washington and Arkansas state courts.

Mr. Emerson has extensive jury trial experience over the past 35 years. He is a member of the legal fraternity Delta Theta Phi. He is also a member of The National Trial Lawyers; American Association for Justice ("AAJ"); AAJ Class Action Litigation Group; Fellow of The Pound Civil Justice Institute; Texas Trial Lawyers Association; American Bar Association (Tort and Insurance Practice and Legal Economics Sections); State Bar of Texas (Grievance Committee 4-D, Houston, 1991-94); Membership Services Committee, 1991-92); Sustaining Life Fellow Texas Bar Foundation; Bar Association for the United States District Court for the Eastern District of Texas; Houston Bar Association; Fellow of the Houston Bar Foundation; Washington State Bar; King County Bar Association; Pulaski County Bar Association; and, the Arkansas Bar Association. Mr. Emerson was honored by the Governor of Arkansas when he was named an Arkansas Traveler, an Ambassador of Good Will on behalf of the people of the state of Arkansas to people everywhere.

Mr. Emerson is married with two children, one grandson, and six rescued dachshunds. He enjoys the outdoors and has hunted and fished in the US, Canada, Mexico, Honduras, Uruguay, Argentina, Botswana, and South Africa. He is a life member of Safari Club International.

Mr. Emerson's email address is jemerson@emersonpoynter.com.

Scott E. Poynter Partner

Mr. Scott Poynter is a founding partner of the Firm. He was in Fayetteville, Arkansas and was raised in Mountain Home. Mr. Poynter earned his Bachelor of Science Degree in Accounting from Arkansas Tech University. He then earned his Juris Doctorate from the University of Arkansas in 1989. While in law school, Mr. Poynter was active in Phi Alpha Delta legal fraternity and was awarded a leadership scholarship from the school. After completing law school, Mr. Poynter joined the Judge Advocate Department of the United States Air Force and served six years of active duty as a Judge Advocate and litigated more than fifty jury trials. In 1995, then Captain Poynter was selected by the Air Force for its Advanced Trial Advocacy Course, a course reserved for the military's finest litigators. After leaving active duty, Mr. Poynter was a partner at a national class action law firm, which focused its work on the representation of investors. He also continued his military career in the Arkansas Air National Guard and attained the rank of Major.

Mr. Poynter is serving Arkansas homeowners in class action cases alleging certain banks outside the state of Arkansas violate the provisions of the Arkansas Statutory Foreclosure Act, which provides that foreclosing entities must strictly comply with its provisions. But often, the banks do not comply with the statute's requirements. He is also working for Arkansas homeowners that have been forced to purchase insurance at excessively high prices and in order for many of these same banks to receive illegal kickbacks from the insurers. Mr. Poynter is also pleased to help those that encounter other abusive lending and debt collection practices throughout Arkansas and the United States.

Over one hundred Alaska Airlines' flight attendants have retained Mr. Poynter in demonstrating that uniforms manufactured and supplied to them by Twin Hill contained harmful chemicals. The flight attendants allege the Twin Hill uniforms they were required to wear caused them to break out in skin rashes, suffer from contact dermatitis, have problems breathing, lose hair, and further, caused thyroid problems. The case is being pursued by almost 170 flight attendants, and is on file in Orange County, California before Judge Kim G. Dunning.

Mr. Poynter has also been engaged to represent homeowners after man-made earthquakes damaged their homes. In 2010 and 2011, central Arkansas was hit with thousands of earthquakes, which were caused by oil and gas operations in the Fayetteville Shale. This created seismicity was due to fracking operations, and specifically, when the fracking fluids and wastewater was injected

under pressure back down and deep into the earth through the industry's injection wells. About 35 homeowners in the Guy and Greenbrier areas of Arkansas filed suit alleging both physical and market value losses to their homes. Due to this experience, Mr. Poynter has been also been retained by residents of Prague, Oklahoma who have similarly suffered due to more substantial earthquakes rattling central Oklahoma.

Mr. Poynter has also helped clients faced with abusive insurance practices. As Plaintiffs' Co-Lead Counsel in *In re: Farmers Insurance Co., Inc., FCRA Litigation* (the "*Farmers MDL Action"*), Mr. Poynter was devoted to recovering statutory damages in a certified class action brought on behalf of Farmers' customers who paid higher insurance premiums based upon credit information without their knowledge due to faulty FCRA notices prepared by Farmers. As a result of his and his co-counsel's effort, they secured a $100 million settlement on behalf of class members.. In another MDL action, *In Re Genetically Modified Rice Litigation,* Mr. Poynter served as Co-Chair of Plaintiffs' Executive Committee on behalf of rice farmers who experienced a deflated rice market after America's rice supply was contaminated by Bayer's genetically modified rice in 2006 and markets in Europe and Asia were lost. A $750 million cash settlement was achieved in 2012.

Mr. Poynter leads the firm in prosecuting privacy violations and other similar breaches of federal law. In today's electronic environment, big business collects an enormous amount of financial and other information from consumers. Often times this data collection is done secretly and in order to directly market those who have had private information unknowingly taken from them. Moreover, and all to often now, businesses have utterly failed to protect the financial and personal information of their customers through data breaches, which expose consumers to risks of identify theft. In short, our rights to privacy have been substantially diminished. Mr. Poynter is engaged in prosecuting claims under the federal Driver's Privacy Protection Act of 1994 (or "DPPA"), which was designed to protect privacy and the disclosure of information gathered by state Departments of Motor Vehicles, and the Telephone Consumer Protection Act (or "TCPA") passed into law to restrict the telemarketing.

Mr. Poynter is also dedicated to serving consumers cheated by deceitful marketing. For example, he served as Co-Lead Plaintiffs' Counsel in the *Tyson RWA Chicken MDL Action* before Judge Bennett in the District of Maryland, which involved the false marketing of chicken as being raised without the use of antibiotics. Mr. Poynter and his co-counsel provided class members over $5 million in relief. Additionally, he served as class counsel in multiple consumer actions against Alltel, and thus far, has secured over $60 million of relief former Alltel subscribers who were members of certain consumer classes. Mr. Poynter has been extensively involved in many

telecommunications class action cases brought under consumer protection statutes, and appeared on the nationally syndicated television show *The Morning Show with Mike and Juliet* as an expert on the cell phone industry's early termination fees. Mr. Poynter provided viewers of this show with legal information regarding the response of consumers to such fees, and the Federal Communications Commission's hearings on the subject.

Mr. Poynter also represents shareholders in various kinds of securities actions. He currently leads a shareholder derivative action brought on behalf of Wal-Mart after its directors and executives caused the Company to pay bribes to Mexican officials and then acted to cover-up their illegal bribery scheme – all in violation of the Federal Corrupt Practices Act. The case is on file in the Western District of Arkansas, the Honorable Susan Hickey presiding. As an active participant in the representation of investors whose shares are acquired through leveraged buyouts, mergers, tender offers, and other "change of control" transactions, Mr. Poynter has challenged the fairness of such transactions, the adequacy of disclosures made in connection with the transactions, and the price offered to shareholders for their equity. These types of cases have resulted in the restructuring of scores of corporate transactions. Most recently, Mr. Poynter was a lead counsel in such litigation and represented Alltel shareholders in a case in Pulaski County Circuit Court, and Baldor shareholders in another like action filed in Sebastian County Circuit Court.

Mr. Poynter is admitted to practice before: U.S. Court of Appeals for the Armed Forces; U.S. District Courts for the Western and Eastern Districts of Arkansas; 8th Circuit Court of Appeals; and all Arkansas State Courts.

Mr. Poynter's e-mail address is scott@emersonpoynter.com.

Will T. Crowder	Partner

Mr. Crowder is a partner with the firm. He was born and raised in Camden, Arkansas. In 2000, Mr. Crowder earned a Bachelor of Arts Degree in Political Science from the University of Arkansas. In 2003, Mr. Crowder earned his Juris Doctorate from the William H. Bowen School of Law at the University of Arkansas at Little Rock. Mr. Crowder is a member of the Arkansas Bar and admitted to the United States District Court for the Eastern and Western Districts of Arkansas, the District of Colorado, and the U.S. Court of Appeals for the Eighth Circuit.

Following his clerkship he has been employed by the Little Rock law firms of Jack, Lyon & Jones, P.A. (where he focused on defense work) and McMath Woods, P.A. (where he began his representation of the injured).

During his time at Emerson Poynter, Mr. Crowder has been extensively involved in all manner and types of class cases, including the firms' consumer litigation cases:

- *Carrera v. Bayer Corporation*, (D.N.J.), deceptive trade practices action for marketing of Bayer's WeightSmart diet pill.
- *Montantez v. Gerber Childrenswear, LLC* (C.D. Cal) and *Webb v. Carter's, Inc.* (C.D. Cal), cases involving tagless labels on children's garments.
- *In re: Cheerios Marketing and Sales Practices Litigation* (D.N.J.), multidistrict litigation pending against General Mills for health and cancer-prevention claims made by their products.

Mr. Crowder has also lead the firm's efforts in litigation of cases on behalf of Arkansas's citizens

- Claims against major retailers who manufacture products with dangerous levels of heavy metals and other chemicals;
- Claims against manufacturers of "toning shoes" on behalf of Arkansas's citizens;
- Claims against banks relating to overdraft practices.

Mr. Crowder is a member of the American Bar Association, American Association for Justice, the Arkansas Trial Lawyers Association and the Pulaski County Bar Association.

In 2009, 2010, and 2011, Mr. Crowder was selected as a *Mid-South Super Lawyer* Rising Star.

Mr. Crowder's email is wcrowder@emersonpoynter.com.

Corey D. McGaha Senior Associate

Mr. Corey D. McGaha, an associate with Emerson Poynter LLP since July 2011, is admitted to practice in the state courts of Arkansas and Texas, the United States Court of Appeals for the Eighth Circuit, the United States District Courts for the Eastern and Western Districts of Arkansas, and the United States District Court for the Eastern District of Texas. Mr. McGaha graduated cum laude from Ouachita Baptist University and received his law degree from the University of Arkansas in 2002

After graduating law school, Mr. McGaha served as a law clerk to the Hon. Harry F. Barnes, United States District Court for the Western District of Arkansas from 2002-2006. He is a member of the American Bar Association, the Arkansas Bar Association, the Texas Bar Association, and the Pulaski County Bar Association.

Since joining Emerson Poynter LLP, Mr. McGaha has assisted the firm in prosecuting several class actions and real estate litigation cases, including:

- Over 30 property damage cases litigated in state and federal court for clients in Faulkner County, Arkansas alleging that wastewater injection wells caused the Guy-Greenbrier Earthquake Swarm in 2010-2011, which damaged his clients' homes.
- Reported decision in *Asset Acceptance v. Newby*, 2014 Ark. 280 (2014) – Mr. McGaha successfully argued his clients' claims were not subject to arbitration because Asset Acceptance, LLC, a debt-collector, had no specific evidence Ms. Newby agreed to arbitration, that the arbitration clause at issue was ever communicated to her, nor that she assented to the arbitration clause at issue.

Mr. McGaha worked as an attorney at Patton Roberts PLLC in Texarkana, Texas from 2006 through 2011. Mr. McGaha assisted the firm in successfully litigating and settling a number of security fraud cases including:

- *In Re: Brocade Securities Litigation, Northern District of California* - A national securities fraud class action which resulted in a court-approved cash settlement of $160 million for shareholders.
- *In Re*: *Salomon Analyst Metromedia Litigation, Southern District of New York* – A securities fraud class action which resulted in a court-approved cash settlement of $35 million for shareholders of Metromedia Fiber Network.
- *Walker v. Rent-A-Center, Inc., Eastern District of Texas* – A securities fraud class action which resulted in a court approved cash settlement of $3.6 million for the shareholders of Rent-A-Center, Inc.
- *McClure, et al, v. AOL Time Warner, Inc., Texas state court* – An individual securities fraud action in which our clients received 100% more than they would have received in the global settlement of the national securities fraud class action.

Mr. McGaha also assisted the Firm in representing the Industrial Technology Research Institute (ITRI), the prominent Taiwanese national research institute, in its first prosecution of its patent portfolio in the United States against Samsung Electronics, and its second ongoing prosecution of its patent portfolio against LG Electronics.

Mr. McGaha enjoyed a strong local civil litigation practice at Patton Roberts, focused on commercial, real estate, and personal injury litigation that included:

- *Arkansas State Highway Commission v. Wilson, et al, Arkansas state court* - In his first jury trial, Mr. McGaha secured an $188,000 jury verdict on his client's counterclaim against the Arkansas State Highway Commission after the State condemned a third of his clients' farm. The jury verdict substantially higher than the amount of money the State $116,000 originally interpled into the court's registry.
- Reported decision in *Buck v. City of Hope*, 2009 Ark. App. 105, 303 S.W.3d 85 (Ark.App. 2009) – Mr. McGaha successfully argued for his client that the trial court erred in finding it lacked subject matter jurisdiction over claims for nuisance, inverse condemnation, trespass and negligence against the City of Hope, Arkansas.
- *Watz, et al. v. Red Robin International, Inc., et al, Arkansas state court* – Mr. McGaha successfully gained a dismissal of a wrongful death lawsuit against his clients, the Red Robin restaurant chain, for lack of subject matter jurisdiction.
- *Lancaster v. Red Robin International, Inc., Arkansas state court* – Mr. McGaha achieved another success for the Red Robin restaurant chain by defeating a former employee's defamation claim by a motion for summary judgment.

While living in Texarkana, Mr. McGaha was active in the bar as a member of the Texarkana Bar Association, and treasurer for the Texarkana Young Lawyers Association. Mr. McGaha was also a member of the Texarkana Chapter of Kiwanis International. Mr. McGaha's email address is cmcgaha@emersonpoynter.com

Robert Jigarjian — Of Counsel

Mr. Jigarjian received his Bachelor of Arts degree from Hamilton College in 1981, his Masters of Business Administration from Tulane University in 1985 and his Juris Doctorate from Golden Gate University in 1993. Prior to law school, Mr. Jigarjian worked as an institutional sales trader with Keefe Bruyette & Woods, Inc., where he specialized in sales and trading of equity securities in the bank and savings and loan sectors.

Mr. Jigarjian was a founding member of Green & Jigarjian LLP. He joined Emerson Poynter in 2007. Prior to founding Green & Jigarjian, Mr. Jigarjian was employed at Girard & Green LLP.

Mr. Jigarjian has substantial experience in the representation of individual and institutional investors in class action and derivative litigation. He represented one of the lead plaintiffs in the class action captioned *In re Prison Realty Securities Litigation*, Case No. 3:99-0452 (M.D. Tenn.) which resulted in a settlement that created a fund for the class valued at approximately $105 million. He also represented one of the lead plaintiffs in the consolidated class and derivative action captioned *In re Digex, Inc. Shareholders Litigation*, C.A. No. 18336 NC (Del. Ch.), which resulted in a settlement that created a fund for the class valued at approximately $180 million and provided for other non-cash benefits valued at approximately $450 million. Mr. Jigarjian currently represents the derivative plaintiffs in *Saito, et al. v. McCall, et al.*, C.A. No. 17132-NC (Del. Ch.). The Delaware Chancery Court recently approved a settlement in the Saito litigation that provided for payment by directors and officers liability insurers to McKesson Corporation of $30 million and certain corporate governance improvements. Mr. Jigarjian also represents the lead class plaintiffs in *In Re: Salomon Analyst XO* Litigation, 02-CV-8114 (GEL) (S.D.N.Y.).

Mr. Jigarjian is a member of the State Bar of California and is admitted to the United States District Courts for the Northern, Southern, Eastern and Central Districts of California and to the Ninth Circuit Court of Appeals.

Mr. Jigarjian's email address is jigarjianlaw@gmail.com.

EXHIBIT 19

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF KURT W. MAIER

I, Kurt W. Maier, declare as follows:

1. I am a partner of English, Lucas, Priest & Owsley, LLP ("ELPO"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. ELPO was founded in 1973 and has been handling complex litigation since its formation, including involvement in leadership committees in the New England Compound Company (NECC) litigation and involvement with numerous mass torts. Kurt Maier has litigated

complex litigation cases involving GM and Daimler-Chrysler, Vioxx, mesothelioma, Agent Orange, Firestone tire/rim separation, farm equipment amputations and roll-overs, hotel fires, hotel pool electrocutions, defective warning labels on cleaning solutions, defective power line fasteners, nursing home, train and trucking accidents. Jessica Surber has litigated multiple complex medical device product liability cases, including being involved in the following mass tort litigation: Stryker Rejuvenate hips, Depuy ASR, Depuy Pinnacle, Zimmer Durom hips, IVC filters, Bair Hugger Forced Air Warming Blankets, hernia mesh products, Actos, Xarelto, Levaquin, Zofran and Testosterone Replacement Therapy.

4. Attached to my declaration is my law firm's resume.

5. **Partner, Kurt W. Maier**, graduated Denison University in 1976 with a Bachelor's Degree in Political Science and Environmental Studies. He graduated from the University of Kentucky College of Law in 1979 where he was a member of the Kentucky Law Journal. He then immediately began his career in ELPO. Kurt Maier is licensed to practice law in Kentucky, and Tennessee and is also admitted to practice in the following federal courts: Western District of Kentucky, Eastern District of Kentucky, Middle District of Tennessee, Supreme Court of Kentucky, Supreme Court of Tennessee and the 6th Circuit United States Court of Appeals. Kurt is a member of the American, Kentucky, Tennessee and Bowling Green-Warren County Bar Associations, the American Association for Justice and the Kentucky Justice Association. He is also a member of the Tennessee Trial Lawyers Association. For the past five years, Kurt has been chosen for inclusion in Super Lawyers. Kurt was involved in ELPO's large settlement with Merck over the drug Vioxx several years ago. He also worked on the cases involving fungal meningitis outbreak in 2012 involving the New England Compounding Company.

6. **Partner, Jessica Surber (associate at the time common benefit work completed)**, graduated from Western Kentucky University, *magna cum laude*, in 2009 with a Bachelors of Science degree in Accounting. She graduated from the University of Kentucky College of Law in 2012, Order of the Coif. Jessica has worked primarily at ELPO on products liability and personal injury cases, with most of her practice focusing on defective medical products and pharmaceuticals as well as complex nursing home abuse/neglect and medical malpractice cases. In the medical device field, Jessica has handled many cases against the manufacturers of metal-on-metal hip replacements including the Stryker Rejuvenate, Stryker ABG II, Depuy ASR, Depuy Pinnacle and Zimmer Durom. Jessica also handles cases involving the makers of IVC filters, Bair Hugger Forced Air Warming Blankets and various hernia mesh products. Beyond medical devices, Jessica is handling cases involving numerous prescription drugs that have been linked to injuries and illnesses; including but not limited to, Actos, Xarelto, Levaquin, Zofran and Testosterone Replacement Therapy. She is a member of the American Association for Justice, the Kentucky Justice Association, the American, Kentucky and Bowling Green-Warren County Bar associations. She graduated from the Leadership Bowling Green program, served on the Western Kentucky University Young Alumni Council and the Board of Directors of the American Red Cross of South Central Kentucky. She currently serves on the Board of Directors for the Kentucky Justice Association, Bowling Green-Warren County Bar Association and Junior Achievement of South Central Kentucky.

7. **Paralegal, Bridget Stratton** graduated from Western Kentucky University May 10, 2013 with Associates Degrees in Paralegal Studies and Office Systems Technology. She was awarded the Western Kentucky University Paralegal Studies Legal Research and Writing Award upon graduation. She began working at ELPO on May 13, 2013 managing all mass tort/complex

litigation cases. Bridget passed the Certified Kentucky Paralegal exam on May 17, 2015. She has five years of experience in mass tort/complex litigation cases.

8. Our firm filed the class action complaint in Kentucky, and worked with lead counsel in reviewing the current case inventory of Kentucky firms in identifying the appropriate class representatives. We also worked with the Kentucky class representative both before and after the class action complaint was filed.

9. ELPO maintains contemporaneous records of its time and expenses in the ordinary course of business.

10. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

11. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

12. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

13. Prior to submitting our common benefit time, I and my partner, Jessica Surber, reviewed our billing records and removed any time entries that could not be solely traced to common benefit time. After a review of our billing records, it was determined no significant cuts were necessary, as the time recorded was appropriate for the tasks completed.

14. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information

submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

15. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $5,152.50. A breakdown of the lodestar is provided below.

	Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
1.	Surber, Jessica	Associate	16.60	$175.00	$2,905.00
2.	Stratton, Bridget	Paralegal	6.10	$145.00	$884.50
3.	Maier, Kurt	Partner	5.80	$235.00	$1,363.00
	TOTALS		28.50		$5,152,50

16. The time dedicated to completing common benefit work in this case did not prevent our firm from taking on other work.

17. My firm seeks $313.61 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	**Description of Category Code**	**Amounts**
14	Court Fees	$313.61
	TOTAL	**$313.61**

18. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

19. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Bowling Green, Kentucky.

/s/ Kurt W. Maier

KURT W. MAIER
ENGLISH, LUCAS, PRIEST & OWSLEY, LLP
1101 College Street, P.O. Box 770
Bowling Green, Kentucky 42102-0770
Telephone: (270) 781-6500
Facsimile: (270) 782-7782
kmaier@elpolaw.com

English, Lucas, Priest & Owsley, LLP is a full-service law firm in Bowling Green, and is deeply rooted in Kentucky.

Our clients include established international and national businesses, regional companies, family-owned businesses, utilities, start-ups and entrepreneurs. Our business clients touch all sectors of the economy and operate from all corners of the globe – from as far away as Japan and as close as right down the street.

Alongside our business practice, we also represent individuals in a wide variety of personal matters, particularly people who have been seriously injured in accidents, need assistance with divorce or custody or those who need help with estate planning and probate. Our experienced litigators have represented clients in state and federal courts throughout Kentucky, in neighboring states and in federal courts from coast to coast, including the U.S. Supreme Court. We have extensive experience in alternative dispute resolution, and our attorneys are always willing to work with clients on negotiations, mediations or arbitrations. Should the need arise, however, our attorneys will represent our clients zealously in the courtroom or in administrative hearings.

ELPO LAW

English Lucas Priest & Owsley, LLP

1101 COLLEGE ST., PO BOX 770
BOWLING GREEN, KY 42102
P 270.781.6500
F 270.782.7782
W WWW.ELPOLAW.COM

This is an advertisement

@ELPOLaw

facebook.com/ELPOLaw

Strength. Knowledge. Experience.

ELPO LAW

English Lucas Priest & Owsley, LLP

Areas of practice

Appellate
Banking
Business and Corporate
Business Litigation
Business Startup Services
Civil Litigation
Collaborative Divorce
Condemnation
Dispute Resolution
Education
Environmental
Family Law
Health Care
Immigration
Intellectual Property
Labor and Employment
Mediation
Medical Malpractice
Personal Injury
Product Liability
Real Estate
Tax Law and Litigation
Trusts, Estates, Wills and Probate
Utilities
Workers' Compensation

Our Attorneys

Our firm includes 15 attorneys who have earned an AV rating by Martindale-Hubbell, the highest ranking available from the organization. Our three founding members are all members of the American College of Trial Lawyers, which is a highly selective group where only one-half of one percent of the nation's attorneys are chosen for membership. Four of our attorneys are members of the Federation of Defense & Corporate Counsel. Additionally, six of our lawyers have been selected for inclusion in Super Lawyers, the annual recognition of the state's top attorneys.

E. Kenly Ames
- Business Litigation
- Civil Litigation
- Intellectual Property
- Appellate Practice

David W. Anderson
- Business Litigation
- Civil Litigation
- Education
- Appellate Practice

Heather Coleman Brooks
- Business and Corporate
- Business Startup Services
- Immigration
- Trusts, Estates, Wills and Probate

Joseph Brown
- Education
- Labor and Employment
- Civil Litigation

Keith M. Carwell
- Real Estate
- Utilities
- Banking
- Business and Corporate

Charles E. English
- Civil Litigation
- Trusts, Estates, Wills and Probate
- Business and Corporate
- Banking
- Appellate Practice

Charles E. English Jr. (Buzz)
- Civil Litigation
- Business Litigation
- Condemnation

Regina A. Jackson
- Education
- Labor and Employment

Sarah P. Jarboe
- Civil Litigation
- Environmental

Kurt W. Maier
- Personal Injury
- Pharmaceutical Litigation
- Product Liability

Elizabeth J. McKinney
- Business and Corporate
- Trusts, Estates, Wills and Probate

Leah A. Morrison
- Tax Law and Litigation
- Trusts, Estates, Wills and Probate

Michael A. Owsley
- Business Litigation
- Education
- Labor and Employment
- Product Liability
- Civil Litigation

D. Gaines Penn
- Business and Corporate
- Health Care
- Labor and Employment
- Workers' Compensation

W. Cravens Priest III
- Education
- Labor and Employment
- Workers' Compensation

Park L. Priest
- Business Litigation
- Civil Litigation
- Health Care
- Product Liability
- Utilities

Whayne C. Priest Jr.
- Business and Corporate
- Real Estate
- Appellate Practice

Murry A. Raines
- Business and Corporate
- Health Care
- Medical Malpractice

Brett A. Reynolds
- Immigration
- Real Estate
- Banking

J. Kyle Roby
- Civil Litigation
- Business Litigation
- Personal Injury

Aaron D. Smith
- Business Litigation
- Personal Injury
- Product Liability

Rebecca Simpson
- Collaborative Divorce
- Family Law
- Mediation

J.A. Sowell
- Civil Litigation
- Personal Injury

Jessica R. Surber
- Business Litigation
- Civil Litigation
- Personal Injury

F. Nathan Vinson
- Trusts, Estates, Wills and Probate
- Tax Law and Litigation
- Business and Corporate

Michael S. Vitale
- Business and Corporate
- Business Litigation
- Civil Litigation

LaJuana S. Wilcher
- Civil Litigation
- Environmental
- Utilities

Robert A. Young
- Pharmaceutical Litigation
- Medical Malpractice
- Personal Injury

EXHIBIT 20

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF JOHN URSU

I, John Ursu, declare as follows:

1. I am a partner of Greene Espel, PLLP, ("Greene Espel"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Our practice embraces the wide variety of complex disputes. We have defended and prosecuted complex class actions involving allegations of securities fraud, breach of fiduciary duty in the corporate context, and business torts. Our attorneys are experienced in handling matters

involving complex financial instruments and transactions, trade secrets, and professional liability issues, and are regularly called upon to teach and write about these issues.

4. Greene Espel is an elite litigation boutique located in Minneapolis, Minnesota. Our firm has both a constitutional practice that represents cities and municipalities, a complex commercial practice that represents numerous Fortune 500 firms, and a white collar and investigatory practice those navigating government investigations. For many years, by nearly every reputational measure, our firm has ranked at the top level of firms in the region. Our success is the direct result of our unusual structure in which every attorney—whether a partner or non-partner—has an equal voice in the firm's management. Greene Espel's unique approach attracts and retains top-notch talent, resulting in each attorney's investment in every firm client's success. We are proud that Greene Espel encourages participation and contribution at every level—from administrative assistants and paralegals as well as our most junior and most senior attorneys. Everyone at our firm contributes to our representation of each client.

5. The following chart contains background information on every timekeeper for whom we are submitting our common benefit request.

Attorney Name (Last Name, First Name)	Law School Graduation Year	Experience, Honors/Awards
Baker, John	1986	John Baker is one of the founding attorneys of Greene Espel. An exceptional brief writer, John is an experienced appellate advocate and trial attorney. John has presented oral argument on appeal more than 30 times. While John has significant experience in private and public-sector matters, he is best known as an advocate, author and speaker on constitutional law, land-use litigation, appellate practice, telecommunications law, and defamation. • Listed in *The Best Lawyers in America* (2015-2018) • Selected to Super Lawyers list, *Minnesota Super Lawyers* (2003-2017)

		• Selected to list of "Top 25 Appellate Law Super Lawyers," *Minnesota Journal of Law and Politics* (2005)

Dunlop, Sybil	2008	Sybil Dunlop helps clients resolve complex commercial and intellectual property disputes. Sybil advises Fortune 100 clients as they navigate business disputes with contractors, clients, and business partners. As a litigator, Sybil is a passionate advocate with first-chair trial and arbitration experience. She has also represented clients before the Patent Trial and Appeal Board, including the first patent owner to score a complete victory in a CBM proceeding.
		• Recognized as Minnesota State Bar Association North Star Lawyer for pro bono service (2016)
		• Selected to Rising Stars list, *Minnesota Super Lawyers* (2013-2016)
		• Recognized as Up and Coming *Attorney, Minnesota Lawyer* (2015)
		• Vanderbilt University Law School
		  ○ 2L Mock Trial Champion and Top Litigator Award Recipient
		  ○ Best Brief Award 2006
		  ○ Scholastic Achievement Awards: Conflicts of Law, Professional Responsibility, and Legal Writing
		• Smith College
		  ○ Andrew C. Slater Prize for Excellence in Debate

Espel, Larry	1977	Larry Espel founded the law firm with Cliff Greene in 1993. Larry's well-reputed practice includes federal and state litigation in Minnesota and throughout the country. It has involved class actions and multi-district lawsuits, arbitration, and administrative proceedings to resolve commercial, environmental, construction, products liability, and telecommunications disputes. Larry is an experienced mediator and arbitrator, and was a Certified Civil Trial Specialist for 30 years. He has published articles and lectures in the fields of contracts, construction law, environmental litigation, and products liability. • Named Local Litigation Star - Minnesota, Benchmark Litigation, The

		Guide to America's Leading Firms and Attorneys (2010-2018) • Selected to Super Lawyers list, Minnesota Super Lawyers (2003-2017) • Winner of The Hennepin County Pro Bono Publico Award For Excellence By An Attorney in the Private Sector (2015) • Recognized as Minnesota State Bar Association North Star Lawyer for Pro Service (2012-2015) • Selected to list of the "Top 40 Business Litigation Super Lawyers," Minnesota Journal of Law and Politics (2009) • Distinguished Service Award, Children's Law Center (2006)
Gassman-Pines, Jenny	2006	Jenny is an experience litigator whose cases involve the defense of private and public-sector clients facing employment claims in courtroom and agency settings, including discrimination, whistleblower, and retaliation lawsuits. She also regularly advises and defends corporate clients and individuals related to non-competition and non-solicitation agreements. • Selected to Rising Stars list, Minnesota Super Lawyers (2012-2016) • Recognized as Minnesota State Bar Association North Star Lawyer for pro bono service (2015-2016) • Wesleyan University Service Award, presented to volunteers who have given sustained or significant service to Wesleyan University (2013) • Arthur T. Pfefer Memorial Award, Twin Cities Cardozo Society (2009) • Outstanding Achievement Award in Employment Discrimination Law, Minnesota State Bar Association, Labor & Employment Law Section (2006) • Baldwin Fellowship, awarded to the member of the senior class who shows the most promise of becoming an outstanding lawyer and public-spirited citizen, Wesleyan University (2003) • Camp Prize, awarded for excellence in English Literature, Wesleyan University (2003)

Gilbertson, Robert	1991	Bob Gilbertson is an experienced trial lawyer who has successfully handled litigation and arbitrations across the United States in cases involving intellectual property, commercial disputes, insurance, industrial catastrophes, and products liability. He has tried cases to verdict in all of these areas and has handled cases in 30 states around the country. He also has deep experience representing companies faced with putative class action and antitrust lawsuits, having defended 36 such actions in 16 different states around the country. • U.S. Courts of Appeals for the Federal, Second, Sixth and Eighth Circuits • Listed in The Best Lawyers in America (2013-2018) • Selected to Super Lawyers list, Minnesota Super Lawyers (2014-2017) • Recognized as Minnesota State Bar Association North Star Lawyer for pro bono service (2012-2015) • Named a "Rising Star" and a "Super Lawyer" by Minnesota Journal of Law & Politics • Led teams that received the Volunteer Award, The Advocates for Human Rights (1998 and 2004)
Greene, Clifford	1976	Cliff Greene is one of Minnesota's preeminent trial advocates. He consistently earns this recognition from leading legal publications—including Best Lawyers in America, Chambers, and Benchmark Litigation—as well as his peers. Most recently, Best Lawyers elected Cliff as the"2018 Minneapolis Litigation - Labor and Employment Lawyer of the Year." Cliff represents clients in complex business, employment, and product liability actions. He also regularly counsels and defends government agencies and officials in disputes involving high-profile claims and significant precedent. Cliff maintains a special focus on federal practice and procedure. He has been appointed by three different chief judges of the District of Minnesota to chair the Local Rules Advisory Committee. In 2016, the Chief Judge appointed Cliff to co-chair the federal magistrate Merit Selection Panel. U.S. Supreme Court • Named Leading Commercial Litigator, *Chambers USA*, America's

		Leading Lawyers for Business-The Client's Guide (2009-2018)
		• Listed in The Best Lawyers in America (2008-2018)
		• Selected as '2018 Minneapolis Litigation - Labor & Employment Lawyer of the Year", *Best Lawyers in America*
		• Selected to Super Lawyers list, *Minnesota Super Lawyers* (2003-2017)
		• Named Local Litigation Star - Minnesota, Benchmark Litigation, The Guide to America's Leading Firms and Attorneys (2010-2016)
		• Listed in Who's Who: Products Liability (2014-2016)
		• Listed as Minneapolis Lawyer of the Year by *Best Lawyers in America* for Litigation: Labor and Employment (2015)
		• Named Eighth Circuit Litigation Star – Minnesota, Benchmark Appellate, The Guide to America's Leading Appeals Litigation Firms and Attorneys (2012-2013)
		• Selected to Minnesota Super Lawyers list, *Super Lawyers*
		  ○ Selected to "Top Ten" Super Lawyers list (2005, 2011-2013)
		  ○ Selected to "Top 100" Super Lawyers list (multiple years)
		• 2001 Award from Minnesota Federal Court recognizing 12 Years of Service as Chair of Local Rules Advisory Committee

Hagerty, Brian (Of Counsel)	2004	Brian graduated first in his class from the University of Michigan Law School in 2004, then completed a clerkship with Judge John M. Walker, Jr. of the U.S. Court of Appeals for the Second Circuit—the first of his four clerkships. In all, over the course of about 10 years, Brian clerked for judges at every level of court in both the state and federal systems and worked on cases of almost every description, from multi-million-dollar derivatives-related litigation, to patent suits involving medical devices and electronics, to civil-rights cases, personal-injury cases, and criminal cases of all kinds. • Daniel H. Grady Prize (highest GPA in graduating class), Class of 1908 Award (highest GPA, first two years), and Maurice

		Weigle Award (highest first-year GPA), University of Michigan Law School • West Publishing Company Award (outstanding scholarship and extracurricular contributions), University of Michigan Law School • Ralph M. Freeman Award (excellence in criminal law and procedure), University of Michigan Law School • Hubert H. Humphrey Merit Scholarship, University of Minnesota — Humphrey School of Public Affairs
Hibbard, Kathryn	2006	Kate has represented clients in class-action lawsuits, actions involving personal injuries and wrongful death claims, as well as litigation involving shareholder and intellectual property disputes, antitrust and employment claims, special litigation committees, and business torts. Kate has also represented clients facing governmental investigations involving the Federal Trade Commission, the Commodities Futures Trading Commission, the Securities and Exchange Commission, and the Office of the Comptroller of the Currency. • Selected to Rising Stars list, *Minnesota Super Lawyers* (2013-2016) • Presidential Scholarship Recipient (full tuition), University of St. Thomas School of Law
Johnson, Mark	2003	Mark Johnson is lead counsel in complex commercial litigation and arbitration matters for several Fortune 1000 corporations and sophisticated individuals. Mark regularly brings and defends lawsuits involving trade secrets, trademarks, and other intellectual property; professional liability; the enforcement of contractual and fiduciary duties; finance and securities; and international business disputes. • Selected to Super Lawyers list, *Minnesota Super Lawyers* (2015-2017) • Honored as Attorney of the Year, *Minnesota Lawyer* (2012) • Selected to Rising Stars list, *Minnesota Super Lawyers* (2011-2014) • Recognized as Up and Coming Attorney, *Minnesota Lawyer* (2011)

Kimble, Janine	2010	Janine Kimble represented public and private sector clients in complex litigation and compliance matters. She has assisted clients through all phases of cases in both state and federal court. Janine joined Greene Espel after clerking for Justice Alan C. Page of the Minnesota Supreme Court. Janine received her J.D. from Stanford Law School, where she was on the board of the Stanford Law Review. She received her B.A. magna cum laude from St. Olaf College. Before attending law school, Janine was a Recruitment Director for Teach For America in Minneapolis and taught eighth grade math for two years as a Teach For America Corps Member in Mississippi. Janine currently works as an Assistant Attorney general for the Minnesota Attorney General's Office.
Paul, Jeya (Of Counsel)	2006	Jeya Paul is an experienced litigator whose practice focuses on intellectual property and other complex commercial disputes. She has experience with all stages of litigation, from pre-suit investigations to trial and post-trial proceedings. Jeya has represented clients in patent litigation matters in district courts across the country and at the Federal Circuit. She also has experience with inter partes reviews at the United States Patent and Trademark Office. Jeya is a graduate of Stanford Law School and a former federal district court law clerk.
Rashid, Faris	2010	Faris Rashid represents private sector clients in complex commercial matters, including cases involving trade secrets, non-competition and non-solicitation agreements, technology and software-related disputes, and product liability claims. He advises corporate clients regarding FCPA and anti-corruption laws, and coordinates responses to government investigations, including those conducted by the Securities and Exchange Commission and the Federal Trade Commission. aris has represented both local enterpreneurs and Fortune 500 companies. Faris received his J.D., magna cum laude from the University of Wisconsin Law School, and his B.A., with high distinction, from the University of Wisconsin. After law school, he clerked for the Honorable Ann D. Montgomery of the United States District Court for the District of Minnesota.

		• Recognized as Minnesota State Bar Association North Star Lawyer for pro bono service (2015) • University of Wisconsin Law School--Davis Award for Excellence in the Study of Constitutional Law
Schmitter, Chris	2013	Chris Schmitter uses experience gained from federal trial and appellate court clerkships to represent clients in both the public and private sectors. Chris joined Greene Espel after clerking for the Honorable Sidney R. Thomas of the U.S. Court of Appeals for the Ninth Circuit and for the Honorable John Tunheim of the U.S District Court for the District of Minnesota. While in law school, Chris clerked for the U.S. Attorney's Office for the District of Minnesota and served as a legal intern for the U.S. Department of Justice's Civil Rights Division (Criminal Section). He worked as a research assistant to Professor Kristin Hickman. Chris also served as the student director of the Misdemeanor Prosecution Clinic. Before attending law school, Chris served as Deputy Chief of Staff and Legislative Director for U.S. Representative Tim Walz. • Class of 2013 Most Outstanding Contribution Award, University of Minnesota Law School • Judge Edward J. Devitt Award for excellence in the study of federal law and practice, University of Minnesota Law School • ALI-CLE Scholarship and Leadership Award, University of Minnesota Law School • Book Award for highest grade in Property, Federal Securities Regulation, and Advanced Corporate Law, University of Minnesota Law School • Recipient of the Leonard, Street & Deinard Law Review Award for excellence in legal writing
Sindberg Porter, Erin	2007	Erin has over a decade of experience litigating complex cases. She has counseled individuals and corporations facing civil litigation, criminal prosecutions, and government investigations. Erin's clients include Fortune 500 companies as well as individuals and smaller organizations. She has represented clients facing mortgage repurchase

		claims, defending the originators and sellers of mortgage loans against banks and other investors demanding repurchase and indemnification. She also represents companies in complex business tort cases helping clients navigate multiple actions in different states and jurisdictions. Erin also maintains a robust pro bono practice, advocating for mothers and children. Her advocacy includes; representing children through the Children's Law Center who recognized her as Volunteer of the Month, helping review the City of Minneapolis Youth Violence Prevention Program, a founding member of the Minnesota Mother Attorneys Association, and serving on the Board of Directors of Our Fair Carousel. Erin also currently serves as the President of Macalester College's Alumni Board. • Recognized as Up and Coming Attorney, *Minnesota Lawyer* (2017) • Selected to Rising Stars list, *Minnesota Super Lawyers* (2011-2017) • Recognized as Minnesota State Bar Association North Star Lawyer for pro bono service (2012-2015) • Named Children's Law Center October 2013 Volunteer of the Month • CALI Award for highest grade in Constitutional Law, Federal Jurisdiction
Ursu, John	2002	John has practiced at Greene Espel since 2005 where, according to the 2010 edition of Benchmark: The Definitive Guide to America's Leading Litigation Firms and Attorneys, he "has made a name for himself managing complex business disputes." In 2011, John was named as one of Minnesota Lawyer's 28 "Up & Coming Attorneys," and from 2013 to 2017, one of Benchmark's "Local Litigation Stars." John graduated from the University of Michigan Law School in 2002, where he was Managing Editor of the Michigan Law Review. While at Michigan, he won the 78th Annual Henry M. Campbell Moot Court Competition, which the university describes as "one of the highest honors a Michigan law student can achieve." John won several awards while at Michigan, including the Jason L. Honigman award for his contributions to the Law Review over two years. Following law school, John clerked for the Honorable Richard H.

		Kyle of the United States District Court for the District of Minnesota. • Named to 2018 BTI Client Service All-Stars List (2018) • Listed in The Best Lawyers in America (2018) • Honored as Local Litigation Star, Benchmark: The Definitive Guide to America's Leading Litigation Firms and Attorneys (2013-2017) • Named Up & Coming Attorney, *Minnesota Lawyer* (2011) • Listed as Rising Star, *Minnesota Super Lawyers* (2011, 2012) • Recognized as Future Star, *Benchmark: The Definitive Guide to America's Leading Litigation Firms and Attorneys* (Third Annual Edition, Fourth Annual Edition, Fifth Annual Edition) • Champion, 78th Annual Henry M. Campbell Moot Court Competition at University of Michigan Law School, as awarded by Judge Frank Easterbrook (7th Cir.), Judge Steven Reinhardt (9th Cir.), and Barbara Underwood, former Acting Solicitor General for the United States (2002) • Jason L. Honigman Award, for the greatest contributions to the *Michigan Law Review* (2002) • Certificate of Merit, for the highest grade in Constitutionalism in South Africa (2002) • James A. Dykema Award, for election to the editorial board of the *Michigan Law Review* (2001)
Wallace-Jackson, David	1998	David Wallace-Jackson litigates complex matters in federal and state courts throughout the United States. He represents companies and individuals in complex business and intellectual property disputes, internal investigations and due diligence work, and white-collar criminal defense matters. David routinely litigates complex cases involving contract, trade secret and unfair competition issues. He defends companies against product liability lawsuits and related agency investigations. David investigates international business conduct issues as they arise under the Foreign Corrupt Practices Act

		and the U.K. Bribery Act. And he defends clients caught up in the criminal justice system. • Listed in The Best Lawyers in America (2013-2018) • Dana Award for Personal Achievement, Carleton College (1987)
Zhao, X. Kevin	2010	X. Kevin Zhao represents clients in complex litigation, including multidistrict class actions, business disputes and arbitration, and product-liability litigation. Kevin has prosecuted and defended a variety of claims in federal and state courts across the country. Kevin also has substantial experience in cross-border disputes. Leveraging his fluency in Mandarin, for instance, Kevin has prepared, defended, and taken numerous depositions of Chinese-speaking witnesses in China and Hong Kong. In addition to complex litigation, Kevin advises clients on regulatory-compliance matters, including trade compliance and export controls, and conducts sensitive internal investigations. Kevin maintains an active pro bono practice, working with asylum seekers in partnership with The Advocates for Human Rights. • Appointed to the Merit Selection Panel by Chief Judge John R. Tunheim to advise the U.S. District Court of the District of Minnesota on the selection of a new U.S. Magistrate Judge (February, 2018) • Recognized as Minnesota State Bar Association North Star Lawyer for pro bono service (2014-2016) • Graduate Fellow for Constitutional Law and Corporations, Harvard Law School

Staff Name (Last Name, First Name)	Years of experience in the legal industry	Experience
Dolphin, Kathleen	30	As a litigation specialist paralegal, Katy Dolphin helps clients in all phases of litigation. Katy is a critical member of case teams who masters the factual record and deploys that mastery to provide tactical and strategic input. She is responsible for investigative support, including factual research and interviews; document review and management; preparation of summary

		investigative memoranda and court filings; and trial preparation and support.
Frisell, Sharon	28	Sharon is a litigation specialist at Greene Espel with over 25 years of litigation experience. As a seasoned litigation paralegal, her experience includes high volumes of document collection and management, witness interviews and preparation, discovery tasks, pretrial preparation, and trial support.
Jones, Debra	23	Deb Jones, RP® is a senior paralegal with more than 20 years of experience providing key support in a broad range of legal areas, with a focus on employment and complex commercial litigation. She assists in all phases of litigation, including document preservation and collection, factual analysis and development, depositions, and trial preparation.
Levy, Carynne	22	Carynne Levy is a Senior Paralegal at Greene Espel with over twenty years' experience in all aspects of complex litigation case management in multiple jurisdictions including Alabama, Arizona, Florida, Georgia, and Minnesota. Carynne has an extensive background in orchestrating crucial day-to-day assistance to attorneys in the areas of mass tort product liability cases, general commercial litigation matters with significant claims at stake, FINRA arbitrations, and SEC investigations. She assists in all phases of litigation, including document collection and analysis, discovery requests and responses, fact development, case investigation and organization, depositions, arbitration, trial preparation and trial support. Carynne also has experience in bankruptcy and immigration matters. Carynne regularly works with the latest litigation support and courtroom technologies.
Ling, Lynn	1	Lynn Ling is a 2016 graduate of the University of Minnesota Law School with a Bachelor's Degree from Nanjing University in Nanjing, China. Before clerking at Greene Espel during her final two years of law school, Ms. Ling worked at private law firms in Minneapolis and New York and at a corporate legal department. A native Mandarin speaker, Ms. Ling's professional experience also included liaising between the United States and China for universities in both countries. Ms. Ling now a senior associate at Clifton Larson Allen in Minneapolis.
Nikolai, Mary	1	Mary Nikolai is a 2018 graduate of the University of St. Thomas Law School with eight years' experience working for private law firms on commercial litigation matters and legislative initiatives. Mary has worked as a legal assistant, providing drafting assistance for legal

		documents and has broad experience researching a range of legal and legislative matters.
Nusbaum, Ann	18	Ann Nusbaum joined Greene Espel as a paralegal in 2014. Ann had significant experience as a paralegal in large litigation firms, where she specialized in ediscovery, technical collection, review, and database management, especially on large, complex matters. Ann's experience included all aspect of discovery, from collection to production, and managing internal litigation support and external vendors for each step in the discovery process. Ann retired from private practice in 2016.
Richart, Laura	10	Laura Richart provides important support to Greene Espel attorneys and paralegals by managing documents and databases. Laura Richart is a Case Assistant at Greene Espel.
Yackley, Melanie	8	As a Case Manager, Mel Yackley helps manage and triage all the moving parts of complex litigation matters. She assists matter teams with defining goals, standardizing processes, and delivering results that align with each client's objectives.

6. Our firm was the first to file suit against Syngenta for its premature, broad commercialization. When the MDL was created, I was appointed to the Executive Committee, where I have been deeply involved in multiple strategic decisions on procedural matters, discovery, dispositive motions, and trial. My partners and colleagues and I have conducted extensive legal research, have drafted and and assisted co-lead counsel in the drafting of significant motions, including Syngenta's motion to dismiss, motion to remand (which included the complicated area of foreign relations), dismissal of third-party complaints (which included the Grain Standards Act), and summary judgment motions involving Syngenta's arguments pertaining to exporters and China, worked with co-lead counsel regarding information pertaining to China's regulatory system, assisted in research and drafting of the motion for class certification, argued important motions (including motion to remand and motions to dismiss third-party complaint), assisted in developing facts pertaining to the United States commodity system and means of bulk transportation, developed the procedural framework for the coordinated cases, took depositions of

critical witnesses as lead lawyer (including representatives of NGFA and NAEGA), reviewed documents, assisted in preparing trial witnesses including Randy Giroux, and sat as thought partners in every step of this litigation.

7. Our firm has been heavily invested in every piece of the multi-district and class action litigation against Syngenta. We have had to forego other work due to our commitments to this litigation.

8. Greene Espel maintains contemporaneous records of time and expenses in the ordinary course of business. Clients are sent monthly invoices detailing those time records and expenses, which are recorded and saved (along with non-billable, administrative time) in a software system.

9. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

10. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

11. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

12. My partner Erin Sindberg Porter and I have exercised billing judgment in re-reviewing common benefit time and expenses. We scrutinize each invoice, and I have done so again here, and again in a teleconference with Co-Lead Counsel.

13. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information

submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

14. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $1,767,880.80. A breakdown of the lodestar is provided below.

	Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
1.	Ursu, John W.	Partner	972.30	$534.00	$519,208.20
2.	Zhao, X. Kevin	Associate	718.30	$361.00	$259,306.30
3.	Hagerty, Brian	Associate	564.90	$400.00	$225,960.00
4.	Schmitter, Chris L.	Associate	475.10	$337.00	$160,108.70
5.	Hibbard, Kathryn N.	Partner	330.00	$412.00	$135,960.00
6.	Wallace-Jackson, David	Partner	280.90	$501.00	$140,730.90
7.	Levy, Carynne L.	Paralegal	256.20	$266.00	$68,149.20
8.	Sindberg Porter, Erin	Partner	243.90	$374.00	$91,218.60
9.	Dolphin, Kathleen A.	Paralegal	98.10	$258.00	$25,309.80
10.	Rashid, Faris A.	Associate	94.00	$361.00	$33,934.00
11.	Nusbaum, Ann J.	Paralegal	76.70	$238.00	$18,254.60
12.	Richart, Laura S.	Paralegal	52.40	$90.00	$4,716.00
13.	Gilbertson, Robert J.	Partner	46.90	$585.00	$27,436.50
14.	Jones, Debra A.	Paralegal	41.30	$258.00	$10,655.40
15.	Kimble, Janine W.	Associate	37.40	$302.00	$11,294.80
16.	Dunlop, Sybil L.	Partner	31.90	$322.00	$10,271.80
17.	Baker, John M.	Partner	21.80	$305.00	$6,649.00
18.	Gassman-Pines, Jenny	Partner	15.10	$345.00	$5,209.50
19.	Greene, Clifford M.	Partner	11.20	$596.00	$6,675.20
20.	Paul, Jeya	Associate	5.20	$391.00	$2,033.20
21.	Frisell, Sharon C.	Paralegal	5.00	$238.00	$1,190.00
22.	Johnson, Mark L.	Partner	4.50	$400.00	$1,800.00
23.	Yackley, Melanie M.	Paralegal	3.40	$112.00	$380.80
24.	Espel, Larry D.	Partner	1.70	$643.00	$1,093.10

	Name	Title	Total Hours	Hourly Rate	Lodestar
25.	Nikolai, Mary M.	Paralegal	1.50	$160.00	$240.00
26.	Ling, Lynn Y.	Paralegal	0.80	$119.00	$95.20
	TOTALS		4,390.50		$1,767,880.80

15. Our firm's investment in this litigation resulted in our timekeepers spending significant amounts of time, advancing the case against Syngenta.

16. My firm seeks $199,822.80 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
1	Federal Express / Local Courier	$153.91
5	In-House Photocopying	$1,634.32
7	Hotels	$457.70
8	Meals	$151.35
9	Mileage	$975.90
10	Air Travel	$508.60
12	Lexis/Westlaw/Bloomberg	$5,759.62
17	Ground Transportation	$24.40
18	Miscellaneous	$157.00
19	Litigation Fund Assessment	$190,000.00
	TOTAL	**$199,822.80**

17. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

18. Greene Espel requests $160,000 as reimbursement for capital contributions to the litigation fund.

19. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Minneapolis, Minnesota.

/s/ John W. Ursu
JOHN URSU

EXHIBIT 21

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF R. SETH CROMPTON

I, R. Seth Crompton, declare as follows:

1. I am a partner at Holland Law Firm, LLC. Based on my position at the firm, I am authorized on behalf of my firm to submit this declaration. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

2. My firm's work on this case was performed on a wholly contingent basis pursuant to contingency fee contracts with plaintiffs, including named class representative James McKinney. My firm has not received any amounts in connection with this case either as fee income

or expense reimbursement. Additionally, all expense amounts were incurred and paid by my firm out of operating funds.

3. The firm practices throughout the United States and its partners have been appointed as co-lead, steering committee and executive committee in a variety of complex litigations, including consumer, product, and financial litigations from coast to coast. The partners credentials are more fully set forth in the curriculum vitae of. R. Seth Crompton, attached hereto and the curriculum vitae of Eric D. Holland, also attached hereto. A small amount of time was spent by one associate – Philip Proud – who while at the firm worked with the partners in all of the firm's practice areas, including class action, and has continued in complex litigation at his current firm.

4. The majority of the firm's work in this case was with named class representative James McKinney. This work involved responding to discovery, including multiple rounds of supplemental discovery, multiple rounds of production that involved collecting, analyzing, and producing hundreds of complex documents, preparing Mr. McKinney for his deposition, and defending Mr. McKinney's deposition. All of this work required extensive communications and involvement with Mr. McKinney as well as various lead counsel attorneys.

5. Mr. McKinnney was invaluable to the prosecution of the litigation. He was actively involved throughout the process, including the initial investigation and filing, which required researching and gathering supporting documents, responding to discovery, including multiple rounds of supplemental discovery and document production, traveling a variety of distances to obtain documentation, executing authorizations, extensive communication with counsel, multiple deposition preparation sessions, and appearing at a deposition, just to name a few of the task he performed for the benefit of the class. But for people such as Mr. McKinney stepping forward and

prosecuting the litigation, the members of the class would not have had the issues raised in the Complaint remedied.

6. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

7. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to individual clients, who were not either bellwether or class representative plaintiffs.

8. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment, including cutting any time related to work not performed either for common benefit or as it relates to named representative Mr. McKinney. Moreover, assignments were coordinated so as to avoid duplicative work, as evidenced by the fact that the vast majority of the work for the firm was done by one timekeeper, R. Seth Crompton. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

9. The lodestar below is derived from contemporaneous daily time records the firm compiled on this matter, which are recorded in our computerized database. The firm requires regular and contemporaneous recording of time records, which occurred in this case.

10. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $69,760.00. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
R. Seth Crompton	Partner	137.10	$500	$68,550.00
Eric D. Holland	Sr. Partner	1.10	$850	$935.00
Philip Proud	Associate	1.10	$250	$275.00
TOTALS		139.30		$69,760.00

11. Additionally, the firm advanced a total of $1,395.11 in expenses reasonably and necessarily incurred in connection with the prosecution of this litigation. These expenses are reflected in the books and records regularly kept and maintained by my firm.

12. My firm seeks $1,395.11 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
1	Federal Express / Local Courier	$23.56
2	Postage Charges	$84.96
3	Facsimile Charges	$13.00
4	Long Distance Calls	
5	In-House Photocopying	$53.10
6	Outside Photocopying	
7	Hotels	$24.24
8	Meals	$613.33
9	Mileage	$498.22
10	Air Travel	
11	Deposition Costs	
12	Lexis/Westlaw/Bloomberg	$84.70
13	Witness and Expert Expenses	
14	Court Fees	
15	Service of Process Fees	
16	Hearing and Trial Transcripts	
17	Ground Transportation	
18	Miscellaneous	
19	Litigation Fund Assessment	
	TOTAL	**$1,395.11**

13. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

14. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in St. Louis, MO.

/s/ *R. Seth Crompton*

Curriculum Vitae

ERIC D. HOLLAND

Eric D. Holland, managing and founding partner of Holland Law Firm, LLC, leads a nationally recognized trial practice at his firm's City of St. Louis headquarters. He has extensively litigated and tried cases in federal and state courts serving as lead counsel, co-lead counsel, or in other leadership capacities in a variety of banking, product liability, railroad disaster and mass tort matters.

Holland has been regularly interviewed by and quoted in a variety of international, national and local media outlets regarding pharmaceutical, class action, mass tort and railroad cases including the following:

- The New York Times
- The Chicago Sun-Times
- The St. Louis Post-Dispatch
- Law360
- CBS News Radio
- Die Zeit (German national newspaper)
- KSDK News Channel 5
- KTVI Fox 2 News
- St. Louis Business Journal
- KMOX News Radio
- Bloomberg BNA

Holland has received a host of awards and honors including Martindale's AV Preeminent rating, the Super Lawyer designation, Top Attorneys, and Top 100 Trial Lawyers, to name a few. He serves as designated legal counsel for a member union of the Transportation Trades Department of the AFL-CIO, and has been appointed a special assistant State's Attorney in Illinois.

Mr. Holland's experience in the courtroom began 27 years ago. Starting his practice at one of St. Louis' largest law firms, Eric immediately began handling serious injury-related litigation. Early in his career, he handled a large number of individual cases, many of which resulted in record-setting jury verdicts and settlements. He has dozens and dozens of multi-million dollar jury verdicts and settlements in single event cases. These results came primarily in railroad, trucking and product liability matters and include the largest railroad jury verdicts in the State of Missouri for 1999, 2001 and 2005 as well as the largest railroad jury verdict in Florida history, returned in 2006. Mr. Holland also holds the record for the largest F.E.L.A jury verdict in Missouri history, obtained in the 22nd Judicial Circuit, on August 29, 2005, where he has litigated and tried cases for his entire career.

He also has developed an extensive practice in aggregate litigation. He has been nominated and selected to a variety of leadership positions by both his peers and courts. Mr. Holland's most recent appointed leadership positions in aggregate litigation include a number of high profile product liability, banking, pharmaceutical and complex litigation matters including serving as co-lead counsel in a federal multidistrict litigation in the United States District Court for the Eastern District of Missouri pending before the Hon. Henry Autrey, in which nationwide class certification was recently granted. He has served as lead counsel in many cases that have resulted in nationwide settlement classes including cases against international

automotive companies, some of the world's largest banks, and the oldest firearms maker in the United States. He has served in a leadership capacity in the following cases:

Vought, et al., v. Bank of America, N.A., Case No. 2:10 CV 2052 (C.D. Ill.)(co-lead counsel)

Parisot v. U.S. Title Co., 8:22 CC 9381 (Circuit Court, City of St. Louis)(co-lead counsel)

In re: Michigan Oil Spill Litigation/Volstromer v. Enbridge, 1:10 CV 752 (W.D. Mich.)(executive committee)

In re: Yasmin and Yaz Sales, Marketing Practices and Product Liability Litigation, Case No. 3:09-md-02100 (MDL 2100) (S.D. Ill.)(PSC's science committee)

In re IKO Roofing Products Liability Litigation, Case No. 2:09-md-02104 (MDL 2104) (C.D. Ill.)(executive committee)

Christiansen v. Volkswagen Group of America, Inc., Case No. 1:10-cv-6484 (N.D. IL)(class counsel)

In re Dial Complete Sales and Marketing Litigation, Case No. 1:11-md-02263 (MDL 2263) (D.N.H.)(executive committee)

In re JPMorgan Chase Bank Mortgage Loan Modification Litigation, Case No. 1:11-md-2290 (MDL 2290) (D. Mass.)(executive committee, discovery chairman and settlement team)

In re CitiBank HAMP Loan Modification Litigation, Case No. 2:11-ml-02274 (MDL 2274)(C.D. CA)(executive committee)

In re KV Pharmaceutical Securities Litigation, Case No. 4:11-cv-01816 (E.D. MO)(liaison counsel)

In re HardiePlank Fiber Cement Siding Litigation, Case No. 12-md-2359 (MDL 2359)(D. MN)(trial team)

In re Eliason, et al. v Gentek Building Products, Inc. Case No. 1:10-cv-2093 (ND OH) (executive committee)

In re Espinoza, et al v Whiting, et al. Case No. 4:12-cv-01711 (E.D. MO) (liaison counsel)

In re Emerson Electric Wet/Dry Vac Sales and Marketing Litigation, MDL 2382 (E.D. MO)(co-lead counsel)

In re Mirena IUD Products Liability Litigation, MDL 2434 (S.D. N.Y.)(plaintiffs' steering committee)

In re H&R Block IRS Form 8863 Litigation, MDL 2474 (W.D. MO)(co-lead counsel)

In re Carrier IQ Consumer Privacy Litigation, MDL 2330 (N.D. CA)(executive committee)

Smith, et al. v. Volkswagon Group of America, et al., 13-cv-00370- SMY (S.D. IL)(co-lead counsel)

Hayes v. Integrity Title Company, 11SL-cc-1529 (21st Judicial Circuit, State of Missouri)(lead counsel)

Pollard v Remington Arms Company, 4:13-cv-00086-ODS (W.D. MO)(co-lead counsel)

Simpkins v Wells Fargo Bank, N.A., et al, 12-cv-768-DRH (S.D. IL)(liaison counsel)

United Desert Charities v. Flushmate, 2:12-cv-6878-SJO (C.D.

CA)(executive committee)

Wilson v. Everbank, N.A., 14-cv-22264 (S.D. FL)(class counsel)

Jackson v. U.S. Bank, N.A., 14-cv-21252 (S.D. FL)(class counsel)

Mr. Holland's results in aggregate litigation follow the results of his personal injury practice. For example, he served as co-lead counsel in a national products liability class action involving allegedly defective wire harnesses, leading the case through successful settlement and resolution that provided a complete fix of the allegedly defective part at no cost to class members. Just three years before, he obtained certification of a nationwide settlement class against the same international auto maker for a defective Bluetooth system. Mr. Holland also served in the leadership and was on the settlement team in a banking class action that resulted in a settlement valued at over $500 million by a former Department of Treasury official arising out of the financial crisis and Big Bank bailout. He also represented individuals in the General Motors Ignition Switch Litigation including one of the original 13 victims of the GM cover-up, successfully concluding that matter. Recently, his acumen in complex litigation was cited by the judge presiding over an insurance class action: "The Court further finds, based on the appearance of Class Counsel at hearings and filing of pleadings in the case, that Class Counsel's prosecution and handling of this complex class action case has been exemplary.

Attorney Holland, who personally appeared at all substantive hearings, demonstrated a command of complex litigation that resulted in the rare opportunity for complete relief for class members. The Court commends Holland and his firm…for their prosecution of this action." *Hayes v. Integrity Title Company*, 11SL-cc-1529 (21st Judicial Circuit-Honorable Tom J. DePriest, Jr., presiding).

Mr. Holland is a frequent lecturer regarding complex litigation topics. He has been featured on a variety of topics with a particular focus on state court litigation of complex matters. Mr. Holland has also been a featured speaker on complex litigation at a number of nationally acclaimed symposia across the country regarding complex federal litigation. He has shared the podium with many of the country's most recognized lawyers and legal scholars, including when he spoke at the 13th Annual Class Action and Complex Litigation Symposium in New Orleans, Louisiana, serving on a panel chaired by Professor Arthur Miller and including Mark Geragos, Ken Starr and Professor Francis McGovern discussing the topic of aggregate litigation. He also recently co-chaired, along with Richard Arsenault, the opioid conference held in St. Louis in connection with the MDL hearing concerning the national opioid litigation. This conference was attended by attorneys from across the country and Holland moderated and participated in all discussions regarding the various aspects of the opioid crisis and resulting litigation.

Mr. Holland has been consulted or retained as counsel by judges, national and

local labor unions, Fortune 500 companies, elected officials, public entities, and, most importantly, a variety of catastrophically injured victims and their families. His background in the labor movement has led to Eric's keen interest in the rights of those injured, maimed and killed due to the negligent conduct of others. As part of his practice, he serves as designated legal counsel to one of the national labor unions who form the Transportation Trades Department (TTD) of the AFL-CIO and has served the last four years as liaison counsel for a national labor union's regional convention. He is also a member of the Academy of Rail Labor Attorneys.

Mr. Holland is a 1988 graduate of the University of Illinois at Urbana-Champaign and a 1991 graduate of the St. Louis University School of Law, where he was elected to the Law Review. He is admitted to practice in the state courts of Missouri, Illinois, and Michigan, as well as federal courts across the country. Particularly, he has been generally or pro hac vice admitted in federal districts in Missouri, Illinois, Michigan, Ohio, Pennsylvania, New York, New Hampshire, Florida, Texas, Oklahoma, Arkansas, Iowa, Colorado, California, Oregon, Washington, New Jersey, Tennessee, Iowa, and Minnesota.

Mr. Holland has been recognized for his professional accomplishments for many years including holding an AV Preeminent rating from Martindale-Hubbell, which is a peer-reviewed analysis of attorneys primarily focused on skills and ethics. He has also been designated a "Top Rated Lawyer "(Product Liability, Mass Tort,

and Class Action), a "Super Lawyer", and noted by the National Trial Lawyers as a "Top 100 Trial Lawyer". He is a past member of the Board of Governors for the Missouri Association of Trial Attorneys, has served on the steering committee for the Midwest Innocence Project, and does a variety of volunteer work including on behalf of Legal Services of Eastern Missouri and the Muscular Dystrophy Association.

EDUCATION:

St. Louis University, J.D., 1991. The St. Louis University Law Journal, 1991- 1992.

University of Illinois, B.A., 1988. Dean's List. Lambda Chi Alpha social fraternity.

ADMISSIONS:

1991, Illinois; 1992, Missouri and U.S. District Court, Eastern District of Missouri; 1993, U.S. District Court, Southern District of Illinois; 2005, U.S. District Court, Northern District of Illinois; 1998, U.S. District Court, Eastern District of Texas and U.S. District Court, Eastern District of Michigan; 2004, Michigan.

HONORS, AWARDS, PUBLICATIONS AND PRESENTATIONS:

Author, "Mitigation of Damages: The Plaintiff's Duty but the Railroad's Burden," Missouri Lawyer's Weekly, October 1997;

Speaker: "Federal Employer's Liability Act," National Business Institute's Workplace Injury Seminar, St. Louis, Missouri, 2003;

"Presentation of Psychiatric Evidence in Work Injury Cases," ABA Labor and Employment Law Section Mid-Year Meeting, February,

2005;

Chairman, ABA Labor and Employment Law Section subcommittee on FELA/Jones Act Litigation, 2005;

Panel Member, "Electronically Stored Information—Plaintiff, Defense and Judicial Perspectives", Missouri Best Practices Seminar, 2010; Speaker, "Electronically Stored Information—What you Don't Know Will Hurt You", Women's Lawyer's Association, 2010;

Speaker, Class Action Litigation Developments, Harris Martin MDL symposium, Savannah, Georgia, November, 2011;

Speaker, Consumer Class Actions in the Mass Tort Context, Harris Martin MDL symposium, Miami, Florida, January, 2012;

Panel Chair, Carrier IQ Privacy Litigation, Harris Martin MDL Conference, San Diego, California, March, 2012;

Speaker, Complex Litigation and RICO, 12th Annual Class Action and Complex Litigation Symposium, November, 2012;

Panelist, Louisiana Bar Association's Annual Maritime Seminar, September 2014;

Panelist, Led by Professor Arthur Miller regarding Professor Miller's 2013 article in N.Y.U. Law Review, 13th Annual Class Action and Complex Litigation Symposium, November 2013;

Panelist, Traumatic Brain Injury in Maritime Cases, Louisiana Bar Association's Annual Maritime Seminar, September 2015;

Panelist, Led by Dean Thomas Galligan, Recent Developments in Complex Litigation, 14th Annual Class Action and Complex Litigation Symposium, November 2014;

Panelist, The Medtronic Infuse Scandal, Harris Martin MDL Conference, September 2015;

Panelist, Volkswagen Emissions Litigation, Harris Martin MDL

Conference, September 2015;

Co-Chair, Volkswagen Emissions Litigation Conference, Harris Martin Publishing Company, Miami, Florida, October 2015;

Co-Chair, Harris Martin MDL Conference, New Orleans, Louisiana, November 2015

Co-Chair, Harris Martin MDL Conference, Chicago, Illinois (scheduled) May 2016

Top 100 Trial Lawyer Award, National Trial Lawyers, 2011 to present;

Missouri and Kansas "Super Lawyers", 2006 to present;

Martindale "AV Preeminent" Attorney, 2003 to present;

Detroit Business Magazine "Top Lawyers";

"Top Rated Lawyers", American Lawyer 2012 (Product Liability, Mass Tort, and Class Actions);

"Top Rated Lawyers", Chicago Tribune 2015 (Class Actions);

Co-Author, American Bar Association: A Practitioner's Guide to Class Actions, Chapter: "MDL's – A Practitioner's Global Positioning Guide", 2017;

Speaker, "Personal Jurisdiction after Tyrell v. BNSF: What Happens in Texas Stays in Texas", 24th Annual Admiralty Symposium, Louisiana State Bar Association, September 2017;

Panelist, "Managing MDL's: MDL Remand Options – Jurisdictional Challenges – Mandamus – Lexecon Waivers – Confidentiality: The De-designation process", 17th Annual Class Action/Complex Litigation Symposium, Louisiana State Bar Association, November 2017;

Co-Chair, Harris Martin MDL Conference: Opioid, Equifax & Talcum Powder, St. Louis, Missouri, November 2017;

Moderator, "Key MDL and California State Court Developments: Talcum Powder Ovarian Cancer", Harris Martin MDL Conference: Opioid, Equifax & Talcum Powder, St. Louis, Missouri, November 2017;

Panelist, "Evolving Asbestos Developments in Connection with the Talcum Powder Litigation", Harris Martin MDL Conference: Opioid, Equifax & Talcum Powder, St. Louis, Missouri, November 2017;

Moderator, "Opioid Litigation Landscape: Venues, Jurisdictional Hurdles, Defenses and Causes of Action", Harris Martin MDL Conference: Opioid, Equifax & Talcum Powder, St. Louis, Missouri, November 2017;

Panelist, "The Increasing Role of Diverse Functions of Special Masters Managing Mass Torts", Harris Martin MDL Conference: Opioid, Equifax & Talcum Powder, St. Louis, Missouri, November 2017;

Panelist, "Update on Current MDL Cases: Taxotere, Xarelto, Ivokana, Hernia Mesh, Talcum Powder and Limbrel", Harris Martin's MDL Conference: Onglyza, Opioid & Sorin 3T Heater-Cooler System Litigation, January 2018;

Speaker, "Why Mass Torts Make Sense as a Compliment to Your Existing Personal Injury or Med Mal Practice", Masters of Mass Tort Conference, January 2018.

MEMBERSHIPS:

Bar Association of Metropolitan St. Louis;
Illinois State Bar Association;
The Missouri Bar;
American Bar Association
American Association for Justice;
Missouri Association of Trial Attorneys (Member, Board of Governors, 2004-07);
National Institute of Trial Advocacy;
National Trial Lawyers.

HOLLAND LAW FIRM, LLC
Attorneys at Law
www.ehollandlaw.com

Office:
St. Louis, Missouri

300 North Tucker Blvd, Suite 801
St. Louis, MO 63101
Telephone: (314) 241-8111
Facsimile: (314) 241-5554
Toll Free: (877) 255-3352

FIRM BACKGROUND

Holland Law Firm, LLC is a civil litigation firm offering a wide range of services to its clients. The firm handles litigation in state and federal courts across the country on behalf of individuals, corporations, and government entities. The firm's attorneys are experienced trial lawyers handling litigation involving class and mass actions, railroad, maritime, and trucking accidents, catastrophic personal injuries, wrongful death, traumatic brain injuries, and complex commercial litigation. From the firm headquarters in St. Louis, Missouri, the firm provides clients with powerful resources coupled with nationally recognized trial attorneys in their fight for justice.

The firm has extensive experience in federal court litigation including product liability, consumer, antitrust, banking, railroad, maritime, and diversity matters. The

firm's attorneys litigate cases in state and federal courts across the country.

R. Seth Crompton, Esq.

Curriculum Vitae

R. Seth Crompton is a distinguished trial lawyer litigating complex civil cases throughout the United States. He has been appointed by courts across the country to lead complex litigations and has obtained significant verdicts, settlements, and results on behalf of his clients. His cases have been featured on various media outlets across the country.

Received the Martindale-Hubbell preeminent AV rating (5.0/5.0), which is given to a select group of attorneys that have been designated by their colleagues and the judiciary as demonstrating preeminence in the practice of law.

Designated as a National Trial Lawyers – Top 100 Trial Lawyer. National Trial Lawyers is an invitation-only organization wherein members are evaluated on the basis of stringent qualifications, and is comprised of the most premier trial attorneys across the United States.

Received Global Directory of Who's Who (Top Lawyers). Who's Who (Top Lawyers) honors attorneys who have demonstrated achievement and leadership in the legal field based on an attorneys' position and professional accomplishments.

Recognized by Super Lawyers as a Top-Rated Class Action and Mass Tort attorney. Super Lawyers uses an independent selection process to rate outstanding lawyers who have attained a high-degree of peer recognition and professional achievement.

Recognized by Best Lawyers in America as ranking in the top 5% of private practice attorneys nationwide, as determined by my legal peers. Inclusion in Best Lawyers is based on a rigorous peer-review survey comprising more than 7.4 million confidential evaluations by top attorneys.

In addition to other not-for-profit and community leadership activities, he serves on the Board of Governors for the Missouri Association of Trial Attorneys.

Business Address:
300 N. Tucker
Suite 801
St. Louis, MO 63101

Office direct: 314.244.2014
Cell: 618.559.5111
Email: scrompton@allfela.com

Current Position:

Holland Law Firm, St. Louis, MO, 2010-present (formerly Holland, Groves, Schneller & Stolze)

Partner, Trial Attorney and Counselor at Law

- 1st chair jury and bench trial practice representing consumers, individuals, union members, and business entities in complex cases
- Trial practice concentration (*not exhaustive*):
  - *Aggregate/Mass/Class litigation* – consumer, product, insurance, and financial class action; pharmaceutical and medical device mass tort; whistleblower/qui tam; and environmental and oil spill
  - *Individual litigation* – catastrophic personal injury; product liability; FELA; Jones Act; trucking accidents; toxic exposure; and business/commercial litigation
- Representative results:
  - Significant settlements and deals resolving a variety of complex individual, multi-party, business, environmental, class actions, and mass litigations
  - *Aggregate/class litigation (excludes confidential settlements)*:
    - $506 million – JP Morgan Chase mortgage modification litigation
    - Forced place insurance litigation – recovered hundreds of millions of dollars against banks and insurance companies including Wells Fargo, U.S. Bank, HSBC, Everbank, SunTrust, SGIC, Assurant, and ASIC
    - $46 million – VW Jetta wiring harness litigation
    - $18 million – Flushmate toilet system litigation
    - $17.5 million – AAA membership renewal backdating litigation
    - Represented over 200 franchise owners in a business interruption matter that resulted in a multi-million dollar recovery
  - *Individual litigation (excludes both confidential settlements and lesser results)*:
    - Several million dollar settlement in medical malpractice case involving a woman misdiagnosed with cancer

Business Address:
300 N. Tucker
Suite 801
St. Louis, MO 63101

Office direct: 314.244.2014
Cell: 618.559.5111
Email: scrompton@allfela.com

    - $4.5 million – wrongful death
    - $1.6 million – mild traumatic brain injury
    - $750,000 (gross) – mild traumatic brain injury
    - Resolution of a lawsuit on behalf of an Illinois landowner following environmental land contamination
- Representative Appellate Decisions
    - *Hobbs, et al v. Tamko Building Products, Inc.*, 479 S.W.3d 147 (Mo. App. S.D. 2015), *cert. denied* (U.S. No. 15-1318, May 22, 2017) (upholding trial court's denial of motion to compel arbitration in class action suit)
    - *Crompton v. BNSF Railway Company*, 745 F.3d 292 (7th Cir. 2014) (upholding $1.6 million verdict)
    - *Swift v. Litchfield Hotel Ventures, LLC,* 2013 WL 5658700, No. 5-12-0589 (Ill. App. 5th 2013) (overturning trial court's order sustaining motion to dismiss)
    - *Cooper v. Chrysler Group, LLC*, 361 S.W.3d 60 (Mo. App. E.D. 2012) (overturning trial court's order sustaining summary judgment)
- Counseled a fight promotion company and fighters in various respects
- Personal counsel to select individuals providing strategic personal, professional, political, and business guidance
- Provide guidance to businesses, organizations, and individuals on strategic language to incorporate into transactional documents

Summation of Past Legal Experience (2005-2010):

- Trial attorney at one of the region's most respected corporate civil defense firms, and thereafter at a national corporate civil defense firm, representing multinational corporations, Fortune 500 companies, and other large business entities
- 1st and 2nd chair jury and bench trials
- Practice concentration included catastrophic personal injury, product liability, trucking accidents, and commercial litigation in the areas of construction, property development, real estate, and finance

Bar Admissions

- State – Missouri; Illinois

Business Address:
300 N. Tucker
Suite 801
St. Louis, MO 63101

Office direct: 314.244.2014
Cell: 618.559.5111
Email: scrompton@allfela.com

- Federal – E.D. Mo.; W.D. Mo.; S.D. Ill.; C.D. Ill.; N.D. Ill. (incl. Trial Bar); E.D. Mich.; W.D. Mich.; 7th Circuit Ct. of App.; 8th Circuit Ct. of App.

Education:

- St. Louis University School of Law
  - J.D., 2005, including Health Law Certificate (#1 nationally ranked program)
  - Intern, City of St. Louis Circuit Attorneys' Office (white collar crime/fraud)
  - Intern, United States Attorneys' Office for the S.D. of IL (white collar and healthcare crime/fraud)
  - Legal Study Abroad – Madrid, Spain

- University of Illinois at Urbana Champaign
  - B.A., 2002, Economics and Political Science
  - Dean's List
  - National Society of Collegiate Scholars

Publications/Speaking/Consulting:

- Speaker, *2018 Annual Law Update – Torts and Civil Actions*, Missouri Bar, June 2018

- Faculty, *Bet the Company* Mass Tort Litigation Conference, HarrisMartin, May 2018

- Author, *The "In-Use" Requirement Under the Locomotive Inspection Act,* National Trial Lawyers Top 100 – Blog, February 2018

- Faculty, *Opioid, Equifax & Talcum Powder*, HarrisMartin MDL Conference, November 2017

- Speaker, *Class and Mass Actions*, Missouri Bar Mini Law School for the Public, October 2017

- Speaker, *Consumer Law for Missouri Attorneys*, Missouri Bar, April 2017

Business Address:
300 N. Tucker
Suite 801
St. Louis, MO 63101

Office direct: 314.244.2014
Cell: 618.559.5111
Email: scrompton@allfela.com

- Author, *Baseball and the Mild Traumatic Brain Injury Case*, The Missouri Trial Attorney, Fall 2016

- Speaker, *Developing, Defending and Evaluating Damages: Perspectives From the Bench and Bar*, 23rd Annual Admiralty Symposium, Louisiana State Bar Association, September 2016

- Moderator, *Nuts & Bolts of Deposition Practice*, Missouri Bar, August 2016

- Panelist, SLU Law New Student Orientation Reception, August 2016

- Faculty, *Bet the Company* Mass Tort Litigation Conference, HarrisMartin, May 2016

- Author, *Missouri Tort Law Desk Book, 4th Ed., Chapter 22 – Federal Employers' Liability Act, Jones Act, and the Longshore and Harbor Workers' Compensation Act*, May 2016

- Panelist, SLU Law Admitted Students Day Reception, March 2016

- Consultant for moot court program for nearby high school, Fall 2015

- Contributing Author, LaceupBoxing.com, Aug. 2013 – Nov. 2013

- Panelist, Discussion on medical lien resolution and complex/mass tort settlement administration, November 2012

- Instructor of intra-firm continuing legal education courses, as well as legal and marketing presentations to clients on various topics, while at corporate civil defense firms from 2005 – 2010

Not-for-Profit and Community Board/Committee Activities:

- Craftsmen Masonic Lodge, St. Louis, MO, 2006-present
  - Including Audit Committee

- St. Margaret of Scotland Athletics

Business Address:
300 N. Tucker
Suite 801
St. Louis, MO 63101

Office direct: 314.244.2014
Cell: 618.559.5111
Email: scrompton@allfela.com

- Head Tee-Ball Coach, 2018
- Assistant Tee-Ball Coach, 2017

- Metro St. Louis Illini Club, St. Louis, MO, 2008-2014, President
  - Developed the club to include a board of directors, fundraising, and regular business, social, and sporting events
  - Developed all events to be either profitable or at no-cost to the club
  - Jointly operated with various departments of the University, including alumni association, foundation, and athletics

- Young Friends of the St. Louis Zoo, 2009-2013, Board Member
  - Fundraising, community organization/awareness, and volunteer work

- Lafayette Square Restoration Committee, Development Committee, Member-at-large, 2012-2016
  - Oversight of standards for development, construction, and rehabilitation

Legal Affiliations:

- American Association of Justice
- Missouri Association of Trial Attorneys
  - *Board of Governors, 2016 – present*
- Missouri Bar Association
- Illinois Trial Lawyers Association
- American Bar Association

Personal Interests:

- Travel, boxing, MMA, horseracing

Business Address:
300 N. Tucker
Suite 801
St. Louis, MO 63101

Office direct: 314.244.2014
Cell: 618.559.5111
Email: scrompton@allfela.com

EXHIBIT 22

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** *Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al.*, No. 16-2788-JWL-JPO *Trans Coastal Supply Company, Inc. v. Syngenta AG, et al.*, No. 2:14-cv-02637-JWL-JPO *The Delong Co., Inc. v. Syngenta AG, et al.*, No. 2:17-cv-02614-JWL-JPO *Agribase International Inc. v. Syngenta AG, et al.*, No. 2:15-cv-02279-JWL-JPO	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF JAKE BROOKS

I, Jake Brooks, declare as follows:

1. I am attorney licensed to practice law in the State of Kansas.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. I obtained my J.D. from Washburn University School of Law in 1978 and have been in private practice in Scott City, Kansas, for the past forty years. I practice civil litigation, and also practice in the areas of criminal defense, family law, and estate planning and probate.

4. I coordinated the filing of a class action complaint in the District Court of Scott

County, Kansas that asserted claims against Syngenta on behalf of Kansas corn farmers. That action was subsequently removed to this Court and included in the MDL. *See Compton v. Syngenta AG*, et al., No. 6:16-cv-01004-JWL-JPO (D. Kan.). In carrying out my responsibilities related to the *Compton* case I spoke with Steve Six of Stueve, Siegel, Hanson, LLP on multiple occasions, assisted Mr. Six with the vetting of potential class representatives, reviewed the draft complaint, and filed the complaint.

5. I maintain contemporaneous records of my time and expenses in the ordinary course of business.

6. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), I submitted my common benefit time and expense submissions to Co-Lead Counsel in the MDL.

7. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

8. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

9. My billing is based upon actual time spent on representing the class representative in this litigation. My re-review of time spent was compared to all of the emails, letters and travel time spent.

10. After this re-review, I can confirm that this time was undertaken by me personally. I believe that the common benefit time and expense information I am submitting is accurate and in compliance with the Court's Common Benefit Order.

11. After exercising billing judgment and making billing reductions based on my

review of the records, the total lodestar for my work is $1,912.50. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
Jake Brooks	Attorney	8.5	$225.00	$1,912.50

12. I seek an award of $41.70 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
1	Federal Express / Local Courier	
2	Postage Charges	$6.70
3	Facsimile Charges	
4	Long Distance Calls	
5	In-House Photocopying	$35.00
6	Outside Photocopying	
7	Hotels	
8	Meals	
9	Mileage	
10	Air Travel	
11	Deposition Costs	
12	Lexis/Westlaw/Bloomberg	
13	Witness and Expert Expenses	
14	Court Fees	
15	Service of Process Fees	
16	Hearing and Trial Transcripts	
17	Ground Transportation	
18	Miscellaneous	
19	Litigation Fund Assessment	
	TOTAL	**$41.70**

13. As part of my request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

14. The expenses pertaining to this case are reflected in my records. These records are contemporaneously prepared from receipts; expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Scott City, Kansas.

/s/ Jake Brooks
Jake Brooks
101 E 6th Street
Scott City, Kansas 67871

EXHIBIT 23

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF THOMAS S. KRUML

I, Thomas S. Kruml, declare as follows:

1. I am a shareholder and President of Kruml Law Office, P.C., LLO of 1501 M Street, PO Box 347, Ord, NE 68862 ("Kruml"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. I have been in practice for twenty-five years, handling various matters in state and federal court. In addition, I have represented clients in complex litigation in U.S. Bankruptcy

Court, in matters such as serving as lead counsel for one of 5 members of the creditor's committee in the VeraSun Ethanol Bankruptcy. I represented Trotter, Inc., James Trotter, President, as a member of that creditor's committee on behalf of all nationwide corn producers in that VeraSun matter.

4. In the present matter, all attorney work has been done by me personally, and has also involved my legal assistant, Lacey Fauss. As indicated, I have been representing clients for the past twenty-five years in Nebraska, including many corn producers, and various other businesses including grain elevators. I graduated from the University of Nebraska College of Law in 1993, and have been working since that time. My assistant, Lacey Fauss, has a both a bachelors degree (2009), and a masters degree in 2012 from Doane University.

5. I assisted in various actions connected to the filing of the Nebraska State Court Complaint in order to preserve potential state court claims as part of this action. I also hosted various meetings in preparation for the deposition involving one of the lead plaintiffs for Nebraska in the federal case, namely Martin Petska. I also hosted the deposition.

6. My firm utilizes and continuously maintains a contemporaneous time keeping/records systems for all client matters, including the pending Syngenta matter, all in the ordinary and usual course of our operation.

7. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

8. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients, who were not either bellwether or class representative plaintiffs.

9. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

10. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

11. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $1,555.00. A breakdown of the lodestar is provided below.

	Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
1.	Kruml, Thomas S.	Partner	7.00	$175.00	$1,225.00
2.	Fauss, Lacey	Paralegal	4.40	$75.00	$330.00
	TOTALS		11.4		$1,555.00

12. My firm seeks $221.98 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	**Description of Category Code**	**Amounts**
5	In-House Photocopying	$40.00
9	Mileage	$98.98
14	Court Fees	$83.00
	TOTAL	**$221.98**

13. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

14. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July 2018, in Ord, Valley County, Nebraska.

/s/ Thomas S. Kruml
Thomas S. Kruml, NE Bar ID #20097
Kruml Law Office. P.C., LLO
1501 M Street / PO Box 347
Ord, NE 68862
PH (308) 728-5088
Email: tkruml @ordlegal.com

EXHIBIT 24

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF ROBERT K. SHELQUIST

I, Robert K. Shelquist, declare as follows:

1. I am a partner of Lockridge Grindal Nauen P.L.L.P. ("Lockridge"). Based on my position with my firm and in furtherance of my Court-appointment to the MDL Plaintiff Executive Committee, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Founded in 1978, Lockridge has served clients throughout the Midwest and in Washington, D.C. Our attorneys and lobbyists have extensive experience in government relations,

antitrust, business, health care, employment, environmental, consumer protection, products liability, intellectual property, real estate, securities, utilities and technology law. The firm has litigated and/or tried scores of products liability/personal injury and consumer protection/antitrust cases in state and federal district and appellate courts across the country. The firm is known for complex class action and consolidated litigation, and has litigated numerous collective and class actions for a diverse range of products and injuries, including asbestos products, pharmaceuticals, farm seed and chemical technology, medical devices, electronic appliances, industrial accidents, construction products, consumer products, and construction equipment. Lockridge attorneys are assisted by experienced paralegals and support staff. The firm has offices in Minneapolis, Minnesota, Bismarck, North Dakota and Washington, D.C. Our firm represents clients of all shapes and sizes and include agribusiness, banks, local and tribal governments, real estate developers, telecommunications providers, energy companies, health care professionals, casualty insurers, trade and industry associations, pension funds, unions, publishers and authors, as well as issue-based coalitions.

4. Attached to my declaration is the Lockridge firm resume. Further information about the firm can be found at locklaw.com.

5. The Lockridge attorneys and staff involved in this matter are well-versed in complex litigation and coordinated multidistrict litigation, several of them have held court-appointed leadership positions in the context of certified classes and coordinated litigation, and all are required by the firm to submit daily time records in this and other firm matters.

a. Richard Lockridge graduated from law school in 1974. He is a former Minnesota Assistant Attorney General and was a law clerk to the Honorable Myron H. Bright of the Eighth Circuit Court of Appeals. During the past

forty years, Mr. Lockridge has focused his practice on securities and antitrust class action litigation. He has led litigation teams in a number of high profile complex class action matters and has developed a national reputation for fairness, integrity and superior legal representation.

b. Robert Shelquist graduated from law school in 1990. Mr. Shelquist heads up the firm's consumer protection and products liability litigation practice groups. During the course of his career, he has represented individuals, small businesses and corporations in a wide range of civil litigation including defective and mispriced products, securities and ERISA, anti-competitive conduct, privacy, and the use of sharp business practices, fraud, misrepresentations, and other statutory violations in conjunction with the sale of goods and services. Mr. Shelquist has represented plaintiffs as court-appointed counsel and was one of the trial attorneys in two national class actions tried to verdict. In *Peterson v. BASF Corp*., a judgment in excess of $60 million was paid following a jury verdict, multiple state appellate opinions, and two trips to the U.S. Supreme Court. Mr. Shelquist has been and continues to be named Lead, Executive Committee, Plaintiff Steering Committee, and Committee Chair in complex litigation in both federal and state courts throughout the United States. Over the course of his career, Mr. Shelquist has led cases which have collectively resulted in close to $1 billion worth of recoveries by way of judgment and settlement. He continues to lecture at continuing legal education events on a variety of topics, has been involved in the leadership of the consumer section of the

Bar Association, and is a member of a working group for Standards and Best Practices, Duke Law Center for Judicial Studies. Mr. Shelquist was named one of Minnesota Lawyer's Attorney of the Year in 2017.

c. Rebecca Peterson graduated from law school in 2005. She practices in the firm's class action group with an emphasis in securities, products liability, ERISA and data privacy litigation. Ms. Peterson had extensive experience prior to joining the firm including Thomson Reuters, the California Attorney General's Office, North State Advisors and private law firms. Ms. Peterson was named one of Minnesota Lawyer's Attorney of the Year in 2017.

d. Krista Freier graduated from law school in 2009. Krista Freier practices in the firm's class action group with an emphasis in products liability. She is a 2009 graduate of Hamline University School of Law where she was a Student Attorney in Hamline's Child Advocacy Clinic and interned with the Honorable Gregory G. Galler in Minnesota State Court. While attending law school, Krista clerked with the Hennepin County Attorney's Office in the divisions of Juvenile Prosecution-Victim Witness and Child Support.

e. Kevin Ravenscroft graduated from law school in 2009. Mr. Ravenscroft has extensive experience in research and legal writing. He has worked individually and with junior attorney teams to prepare deposition support and reports for senior partners. Mr. Ravenscroft has also conducted ad hoc research queries to locate specific documentary support and drafted motions as support in litigation. He has also provided partners with background and

preliminary research into suspect product markets prior to drafting of complaints.

f. Rachel Christiansen graduated from law school in 2004. Ms. Christiansen has extensive litigation experience in which she has prepared deposition materials and outlines, written deposition summaries and gathered factual evidence for depositions and second-chaired depositions. She has also been lead attorney for depositions. Ms. Christiansen has drafted discovery, addressed privilege log issues and drafted pleadings. She has worked internationally, researching and drafting memoranda on various issues.

g. Kristin Marttila graduated from law school in 2005. Kristen Marttila practices primarily in the areas of antitrust, environmental and land use, business law, and health care law. She frequently serves as local counsel in a wide variety of matters, including intellectual property, consumer, and complex ERISA cases. She clerked for the Honorable Patrick J. Schiltz in the United States District Court for the District of Minnesota. In 2005, she graduated from the University of Iowa College of Law with high distinction and was a member of the Order of the Coif. She was also awarded the Boyd Service Medallion for her public interest work. In law school, she was a symposium editor for the Journal of Transnational Law and Contemporary Problems and competed in the Jessup International Moot Court. She also earned her M.S. in urban and regional planning, with an emphasis in land-use and environmental planning, and a B.A. in English. Ms. Marttila

received the Sierra Club North Star Achievement Award in recognition of service as Chapter Legal Chair (2007).

h. Rick Linsk graduated from law school in 2008. Mr. Linsk is an experienced second-career lawyer devoted to rigorous attention to detail and zealous representation of his clients. He works primarily in the firm's health care, insurance, employment, and products liability litigation practices. He frequently represents medical practitioners in regulatory and litigation matters. He has particular experience with insurance bad-faith claims and employee benefit litigation brought under the Employee Retirement Income Security Act (ERISA). Mr. Linsk is a member of the Minnesota Supreme Court's Advisory Committee on the Rules of Public Access to Records of the Judicial Branch. Mr. Linsk served as an extern to Judge David Minge of the Minnesota Court of Appeals. Mr. Linsk was a judicial law clerk at the Minnesota Supreme Court for the Honorable Paul H. Anderson, the Honorable G. Barry Anderson, and the Honorable Lorie S. Gildea, associate justices at the time.

i. Scott Moriarity graduated from law school in 2002. Mr. Moriarity is an active member of the Federal Bar Association, where he has provided pro bono representation through its Pro Se Project; served as editor of the IP Browser, the FBA newsletter on intellectual property law; and worked on the Minnesota Chapter's legal education committee. An engaged community member, Mr. Moriarity is on the board of In the Heart of the Beast Mask and Puppet Theater, which supports theater and school-age

programming on the environment and social diversity. He also serves on the board of the TwinWest Chamber of Commerce Foundation, which champions workforce development and early childhood education in Minneapolis' western suburbs. Mr. Moriarity also served as a law clerk in the state and federal courts, with Judge Mark S. Wernick in Hennepin County district court; with Judge Wilhelmina M. Wright in the Minnesota Court of Appeals; and with Magistrate Judge Jeanne J. Graham in the U.S. District Court, District of Minnesota.

j. Laura Matson graduated from law school in 2014. She has extensive research experience and authored many articles regarding various environmental issues. She has consulted internationally on these issues, as well.

k. Ke Huang graduated from law school in 2015. Ms. Huang has experience in legal research and drafting in the areas of civil law and immigration. She is fluent in Chinese.

l. Laurie Meyer graduated from law school in 1989. Ms. Meyer has extensive experience in insurance defense, securities and arbitration cases. She has represented clients in mediation and arbitration hearings and argued motions in court in insurance defense cases.

m. Kelly LeRoy earned an Associate of Science Degree from North Hennepin Community College in Paralegal Studies. Ms. LeRoy has more than twenty years' experience as a paralegal in the area of complex litigation, specializing in consumer fraud and products liability. She has experience

working with cases venued in many federal courts and through the Multi-District Litigation Panel. Ms. LeRoy has maintained voluminous case files, designed and implemented document coding databases, coordinated and monitored multiple coding projects, and prepared attorneys for depositions and hearings. She has also prepared for and participated in several trials.

6. As an Executive Committee member, I participated in all calls and meetings as requested by lead counsel, identified class representatives in several states, oversaw projects assigned by lead counsel to the firm, and helped develop case themes and shape motion practice as requested by lead counsel.

7. Lockridge was asked to dedicate experienced lawyers to pursue several document review and related deposition preparation projects. Several attorneys were requested to and traveled to Kansas City for on-site training and document review. These attorneys reviewed many significant sets of documents including third-party documents from Bunge, Cargill, ADM and Gavilon. They reviewed Syngenta documents from M. Mack, P. Trivisvavet, M. Araba, D. Ward and Y. Zhang. Lockridge attorneys also provided assistance with deposition preparation. They also reviewed Syngenta internal documents that included marketing materials, business plans, technical information, biosafety documents, Agrisure and Duracade documents, China deregulation documents, distributor contracts and efficacy trials. Of additional importance, Huang Ke, who is fluent in Chinese, provided summaries for many of the documents produced by several parties in Chinese and identified and translated hot documents for depositions and motion practice. Lockridge attorneys contributed to legal research for choice of law issues and opposition to motions to dismiss. They also contributed to research on the experts for this case and conducted legal research at the request of co-lead counsel for the MDL. I also was appointed as Liaison

Counsel in the Minnesota action and in that position was a bridge between the MDL and the Minnesota action and worked closely with the MDL co-leads on various projects and issues, including providing information from mock jury projects, jury instructions, and coordinated motion practice regarding an expert witness (ultimately withdrawn) and expert documents in the litigation and non-litigation context.

8. Lockridge obtained several class representative for the MDL action: Charles Lex, Alan Pederson, Tim Harvey, David Elijah and Willimack Farms. Lockridge also assisted with the filing of the *Hammerstrom* Wisconsin state action and provided legal research for the complaint, which was ultimately removed to the Kansas MDL. In all cases and for a number of other clients being considered to act as class representatives or who may be offered in an anticipated bellwether selection process, Lockridge helped evaluate the viability for each role and ensured all discovery and plaintiff fact sheet obligations as to class representatives were met.

9. Our time report was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm. The hourly rates for the partners, attorneys, and professional support staff in my firm included in this submission are the same as the usual and customary hourly rates currently charged for their services in similar complex contingent or class action litigation matters.

10. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL on a monthly basis.

11. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs or being considered for such roles.[1]

12. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

13. In a coordinated effort with staff, we have reviewed time and expense entries internally and a second time with MDL co-Lead Counsel to again ascertain the appropriateness of the activities in light of this Court's directives and authorizations received from Co-Lead MDL Counsel to proceed with the tasks. All of this review work in support of the fee and expense application was accomplished without any time and expenses being billed.

14. After this re-review, I can confirm that this time was undertaken by the members of my firm at the direction of MDL lead counsel and overseen by me. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

15. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $1,350,611.00. A breakdown of the lodestar is provided below.

Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
Christiansen, Rachel	Associate	999.70	$325.00	$324,902.50
Ravenscroft, Kevin	Associate	691.20	$325.00	$224,640.00

[1] Through my appointment as Liaison Counsel in the Minnesota state court consolidated proceedings, our firm took on separate assignments which were billed contemporaneously with daily time records to a separate billing matter number. None of the time spent working on Minnesota projects is being submitted for consideration via the MDL petition. All of my firm's Minnesota time will be included in the separately-filed Minnesota petition seeking fees and cost reimbursement.

Name	Title	Total Hours	Hourly Rate	Lodestar
Freier, Krista	Associate	492.20	$420.00	$206,724.00
Huang, Ke	Associate	448.10	$325.00	$145,632.50
Matson, Laura	Associate	404.30	$325.00	$131,397.50
Shelquist, Robert	Partner	236.20	$785.00	$185,417.00
Meyer, Laurie	Associate	123.70	$375.00	$46,387.50
LeRoy, Kelly	Paralegal	65.80	$200.00	$13,160.00
Marttila, Kristen	Associate	46.00	$500.00	$23,000.00
Peterson, Rebecca	Associate	42.10	$500.00	$21,050.00
Moriarty, Scott	Associate	32.30	$500.00	$16,150.00
Linsk, Rick	Associate	23.80	$450.00	$10,710.00
Lockridge, Richard	Partner	1.60	$900.00	$1,440.00
TOTALS		3,607.00		$1,350,611.00

16. Each of the attorneys are firm partners or associates and hours spent by each in this matter precluded them from working those hours on other firm matters.

17. My firm seeks $216,121.06 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Description of Category Code	Amounts
Federal Express / Local Courier	$102.80
Postage Charges	$59.15
Long Distance Calls	$57.56
In-House Photocopying	$618.40
Hotels	$10,097.65
Meals	$987.40
Mileage	$136.26
Air Travel	$8,745.28
Lexis/Westlaw/Bloomberg	$1,445.67
Court Fees	$1,301.00
Service of Process Fees	$365.00
Hearing and Trial Transcripts	
Ground Transportation	$1,560.83
Miscellaneous	$644.06
Litigation Fund Assessment	$190,000.00
TOTAL	**$216,121.06**

18. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

19. My firm is requesting expense reimbursement for capital contributions to the litigation fund. The full amount requested by MDL lead counsel for each capital contribution was timely paid. Our litigation fund contributions totaled $190,000.00[2] over the course of this litigation.

20. The expenses pertaining to this case are reflected in the records of my firm, maintained by our accounting department and reviewed by attorneys on a monthly basis.. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Minneapolis, Minnesota.

/s/ Robert K. Shelquist
Robert K. Shelquist

[2] As a court-appointed Liaison Counsel to the Minnesota state court consolidated proceedings, my firm also paid assessments in Minnesota. Those Minnesota assessments are not being included in this request and we will separately seek reimbursement through the separately-filed Minnesota petition for fees and cost reimbursement.

LOCKRIDGE GRINDAL NAUEN P.L.L.P.
Attorneys at Law

Founded in 1978, Lockridge Grindal Nauen P.L.L.P. has extensive experience in antitrust, securities, environmental, employment, health care, commercial, intellectual property and telecommunications law.

The firm's clients include agri-businesses, business enterprises, banks, local governments, trade and industry associations, real estate developers, telecommunications providers, health care professionals, casualty insurers, union pension funds, publishers and authors, and a major computer manufacturer and retailer.

Lockridge Grindal Nauen P.L.L.P. attorneys are assisted by more than 20 paralegals and government relations specialists, and an extensive support staff. The firm has offices in Minneapolis, Minnesota and Washington, D.C.

Lockridge Grindal Nauen P.L.L.P. has been continuously active in class action and other complex litigation, including the following illustrative cases, in which the firm has served as lead or co-lead counsel:

- *Peterson v. BASF Corp.*, Civil No. C2-97-295 (Norman County District Court, Minn.);
- *In Re Baycol Products Litig.*, MDL No. 1431 (D. Minn.);
- *Benacquisto, et al. v. American Express Financial Corp. et al.*, Master File No. 00-1980 (D. Minn.), Civil Action No. 96-18477 (Henn. Cty. Dist. Ct.) (insurance class action);
- *In Re Catfish Antitrust Litig.*, MDL No. 928 (N.D. Miss.);
- *In Re CertainTeed Corp. Roofing Shingle Products Liability Litig.*, MDL 1817 (E.D. Pa.);
- *George Guenther, et al. v. Cooper Life Sciences, et al.* (Cooper Life Sciences Securities Litig.), No. C 89-1823 MHP (N.D. Cal.).

- *In Re HardiePlank Fiber Cement Siding Litig.*, MDL No. 2359 (D. Minn.);
- *In Re IKO Roofing Shingle Products Liability Litig.*, MDL No. 2104 (C.D. Ill.);
- *In Re Kitec Plumbing Systems Products Liab. Litig.* MDL No. 2098 (N.D. Tex.);
- *In Re Lutheran Brotherhood Variable Insurance Products Co. Sales Practices Litig.*, MDL No. 1309 (D. Minn.);
- *Meyers v. The Guardian Life Insurance Company of America, Inc. Litig.*, Civil No. 2:97CV35-D-B (N.D. Miss.);
- *In Re Monosodium Glutamate Antitrust Litig.*, MDL No. 1328 (D. Minn.);
- *In Re Northstar Education Finance, Inc. Contract Litig.*, MDL 08-1990 (D. Minn.);
- *In Re Piper Funds, Inc. Institutional Government Income Portfolio Litig.*, Master File No. 3-94-587 (D. Minn.);
- *In Re Polypropylene Carpet Antitrust Litig.*, MDL No. 1075 (N.D. Ga.);
- *In Re: Potash Antitrust Litigation (II)*, MDL No. 1996 (N.D. Ill.);
- *Judith Thorkelson, et al. v. Publishing House of the Evangelical Lutheran Church in America, et al.*, Court File 10-01712 (D. Minn.);
- *In Re Residential Doors Antitrust Litig.*, MDL No. 1039 (E.D. Pa.);
- *Gary G. Smith, et al. v. Little Caesar Enterprises, Inc., et al.* (Little Caesar Franchise Litig.), Civil No. 93 CV 74041 DT (E.D. Mich.);
- *In Re Unisys Savings Plan Litig.*, Master File No. 91-3067 (E.D. Pa.).
- *In Re Laminates*, MDL File No. 1368 (S.D.N.Y.);
- *Patricia Wright, et al. v. Owens Corning*, MDL No. 1567 (W.D. Pa);
- *George v. Uponor Corporation, et al.*, Court File No. 12-249 (D. Minn.).

LGN also had substantial involvement in the following litigation:

- *In Re Air Cargo Shipping Services Antitrust Litig.,* Civil No. 1:06-md-1775-CBA-VVP (E.D.N.Y.);
- *American Telephone and Telegraph Antitrust Litig.,* Civil Action No. 81-2623 (D.D.C.);
- *In Re AOL Time Warner Securities Litig.,* MDL No. 1500 (S.D.N.Y.);
- *In Re Blue Cross Blue Shield Subscriber Litig.*, Master File No. 19-C3-98-7780 (Dakota County District Court, Minn.);
- *In Re Connecticut General Life Insurance Co. Premium Litig.*, MDL No. 1336 (C.D. Cal.);
- *Davenport, et al. v. Illinois Farmers Insurance Company, et al.*, Case No. CIV-03-158-F (W.D. Ok.);
- *In Re Delphi Corporation Securities, ERISA, and Shareholder Derivative Litig.,* Master Case No. 05-md-1725 (E.D. Mich.);
- *In Re Domestic Air Transportation Antitrust Litig.,* MDL No. 861 (N.D. Ga.);
- *Eliason v. Gentek Building Products, Inc., et al.*, Civ. No. 10-cv-2093 (N.D. Ohio) (Executive Committee).
- *In Re Federal National Mortgage Association Securities, Derivative and ERISA Litig.,* MDL No. 1668 (D.D.C.);
- *In Re Flat Glass (1) Antitrust Litig.,* MDL No. 1200 (W.D. Pa.);
- *In Re Guidant Corp. Implantable Defibrillators Products Liability Litig.,* MDL No. 1708 (DWF/AJB)(D. Minn.);
- *Haritos, et al. v. American Express Financial Advisors, Inc.,* 02-2255-PHX-PGR (D. Ariz.);
- *In Re ICN/Viratek Securities Litig.,* 87 Civ. 4296 (S.D.N.Y.);
- *In Re IPhone Application Litig.*, Civil No. 10-CV-05878-LHK (N.D. Calif.);
- *In Re Lease Oil Antitrust Litig.,* MDL No. 1166 (S.D. Tex.);

- *In Re Lutheran Brotherhood Variable Insurance Products Co. Sales Practices Litig.*, MDL No. 1309 (D. Minn.);
- *In Re Medtronic, Inc. Implantable Defibrillator Products Liability Litig.*, MDL No. 1726 (JMR/AJB) (D. Minn.)
- *In Re Medtronic, Inc. Sprint Fidelis Leads Products Liability Litig.*, MDL 08-1905 (D. Minn.) (Liaison Counsel);
- *In Re Merck & Co., Inc., Securities, Derivative & ERISA Litig.*, No. 3:05-cv-1151 (D.N.J.);
- *In Re Meridia Products Liability Litig.*, MDL No. 1481 (N. D. Ohio);
- *In Re Nasdaq Market-Maker Antitrust Litig.*, MDL No. 1023 (S.D.N.Y.);
- *Ohio Public Employees Retirement System, et al. v. Freddie Mac, et al.*, MDL No. 1584 (S.D.N.Y.);
- *In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, MDL No. 1720 (E.D.N.Y.);
- *In Re Propulsid Products Liability Litig.*, MDL No. 1355 (E.D. La.);
- *In Re Rezulin Litig.*, MDL No. 1348 (S.D.N.Y.);
- *In Re Vioxx Product Liability Litig.*, MDL No.1657 (E.D.La.);
- *In Re Vytorin/Zetia Marketing, Sales Practices, and Products Liability Litig.*, MDL 1938 (D.N.J.); and
- *In Re Worldcom, Inc. Securities Litig.*, No. 02-CV-3288 (S.D.N.Y.).
- *In re FCA US LLC Monostable Electronic Gearshift Litigation*, Civ. No. 16-md-02744 (E.D. Mich.)

EXHIBIT 25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT: ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**MDL No. 2591**

DECLARATION OF PAUL D. LUNDBERG

I, Paul D. Lundberg, declare as follows:

1. I am the sole member of Lundberg Law Firm PLC ("Lundberg"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Lundberg was organized in Sioux City, Iowa in 2002. The firm's principal, Paul D. Lundberg, has practiced law in Sioux City since 1981 and is licensed to practice in the state and federal courts of Iowa, Nebraska, and South Dakota, the Eighth Circuit Court of Appeals, and the

United States Supreme Court. Paul D. Lundberg is a Fellow of the Iowa Academy of Trial Lawyers and just recently resigned as a Fellow of the American College of Trial Lawyers. In addition to the firm's work in the Syngenta litigation, Lundberg is participating local counsel in the *Blue Cross Blue Shield* antitrust MDL now pending in the Northern District of Alabama. In that proceeding Lundberg has participated in a discovery committee for the central United States with direct responsibility for identification and review of defendant document production for Iowa, South Dakota and North Dakota, along with document review for document production by all defendants. Lundberg has also been lead counsel for a telecommunications entity for 10 years in the "Tier One" telecommunications cases pending before Senior Judge James Gritzner in the Southern District of Iowa. (See Case No. 07-cv-00078, SD of Iowa).

4. Attached to my declaration is my law firm's resume.

5. Paul D. Lundberg is the sole timekeeper for Lundberg Law Firm in this proceeding. I am a 1981 graduate of the University of Iowa college of Law. I graduated with high distinction and was a member of the Order of the Coif. I have practiced civil trial law in Sioux City, Iowa since 1981. I am a Fellow of the Iowa Academy of Trial Lawyers and recently resigned as a Fellow of the American College of Trial Lawyers. I have tried over 100 cases to jury verdict in Iowa, Nebraska, and South Dakota. Some of my significant cases are set forth in the resume attached.

6. Lundberg has participated in discovery on behalf of bellwether plaintiff Cronin, Inc. (Iowa) including conferences with client principal, Robert Cronin, review and production of client documents, reviewing and drafting responses to requests for admissions and interrogatories and assisting lead counsel with preparation of Robert Cronin for his deposition.

7. Our firm worked with bellwether plaintiff Cronin, Inc. (Iowa) and its principal Robert Cronin. Robert Cronin spent approximately 15 hours assisting in organization and

production of Cronin, Inc. documents, 10 hours in assisting with responding to interrogatories and requests for admissions, 12 hours in deposition preparation and 8 hours attending his deposition including travel time.

8. Through our QuickBooks system my firm maintains contemporaneous records of its time and expenses for all matters in the ordinary course of business.

9. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

10. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients, who were not either bellwether or class representative plaintiffs.

11. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

12. In reviewing the time entries submitted in this litigation I removed, and did not submit, all time entries pertaining to our other clients in this litigation. These other clients included Maas-Ruba Farms (Iowa); Volnek Farms (Nebraska); Charlene Hamilton (Nebraska) and Meinke Farms (Missouri). All entries submitted pertain to bellwether plaintiff Cronin, Inc.

13. After this re-review, I can confirm that this time was undertaken by me on behalf of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

14. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $9,922.50. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
Paul D. Lundberg	Partner	44.10	$225.00	$9,922.50
TOTALS		44.10		$9,922.50

15. My firm does not seek reimbursement of expenses in connection with the prosecution of the litigation.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July 2018, in Sioux City, Iowa.

/s/ Paul D. Lundberg
Lundberg Law Firm PLC

Lundberg Law Firm PLC

- Home
- Biography
- Significant Cases
- Contact

Paul Lundberg has practiced law in Sioux City since 1981. Lundberg Law Firm PLC is engaged in the general practice of law including, but not limited to litigation involving personal injury, wrongful death, medical negligence, premises liability, construction defect, insurance claims, product liability, professional liability, breach of contract, telecommunications, employment and civil rights. Mr. Lundberg is licensed to practice law in Iowa, Nebraska, and South Dakota and is a Fellow of the Iowa Academy of Trial Lawyers and a former Fellow of the American College of Trial Lawyers (2007-20018).

© 2010-2018 Lundberg Law PLC. All Rights Reserved. 600 4th Street, Suite 906, Sioux City, IA, 51101, 712-234-3030 Site made from Web Concentrate

Lundberg Law Firm PLC

Significant Cases

Paul Lundberg has tried over 100 cases to jury verdict in the state and federal courts of Iowa, Nebraska, and South Dakota. He has handled hundreds of other civil litigation matters that were settled prior to trial.

Below is a sampling of significant cases.

- Represented small manufacturer in libel action against national television network. Verdict of $1.5 million.
- Represented client with serious head inquiry from packing house fall. $870,000 verdict.
- Represented guardian of baby against State of Iowa for head injuries received in foster care. $2 million settlement.
- Co-counsel for widow in wrongful death action from fertilizer plant explosion. $1.8 million settlement.
- Represented plaintiff in medical negligence action against podiatrist. $550,000 settlement.
- Represented plaintiff in medical negligence action for failed back surgery. $350,000 settlement.
- Represented start-up telephone company in suit against national long distance carrier. Confidential 7 figure settlement.
- Co-Counsel for plaintiff in suit for construction defects in grain storage facility. $2.2 million settlement.
- Co-Counsel for parents of baby in medical negligence action for failure to diagnose meningitis. Settled during trial for $1.8 million.
- Represented widower in wrongful death medical negligence case involving negligent administration of clot-busting drug. Confidential settlement.
- Represented plaintiff in medical negligence case for removal of ovaries without consent. Confidential settlement.

© 2010-2018 Lundberg Law PLC. All Rights Reserved. 600 4th Street, Suite 906, Sioux City, IA, 51101, 712-234-3030 Site made from Web Concentrate

Lundberg Law Firm PLC

- Home
- Biography
- Significant Cases
- Contact

Biography

Personal Information

Born: March 9, 1951 Harlan, Iowa

Spouse: Patricia A. Lundberg

Children: Son Tate and three step-daughters

Grandchildren: Seven

Military service

1971- 74 USAF

Public Health Technician

Honorable discharge as staff sergeant (E-5)

Education

1969 South Sioux City, Nebraska High School

1978 B.S (Political Science) University of Nebraska at Omaha

Summa Cum Laude

Halsey Award (1978) Outstanding Political Science Student

1981 J.D. (with high distinction) University of Iowa College of Law

Order of the Coif (top 10% of class)

Bar Admissions

U.S Supreme Court

U.S Court of Appeals 8th Circuit

Iowa Supreme Court

Nebraska Supreme Court

South Dakota Supreme Court

U.S District Courts: Iowa Nebraska and South Dakota

Professional Organizations

American Bar Association (Litigation Section)

Iowa, Nebraska, and South Dakota Bar Associations

Woodbury County Bar Association (President 2004)

Fellow, American College of Trial Lawyers

Fellow, Iowa Academy of Trial Lawyers

© 2010-2018 Lundberg Law PLC. All Rights Reserved. 600 4th Street, Suite 906, Sioux City, IA, 51101, 712-234-3030 Site made from Web Concentrate

EXHIBIT 26

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF GREGORY R. FLAX

I, Gregory R. Flax, declare as follows:

1. I am a partner of Martin, Browne, Hull & Harper, PLL ("Martin Browne"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Martin Browne has been serving clients in Springfield, Ohio and surrounding areas for more than 140 years. Attorneys within the firm practice in a variety of areas, including agriculture, civil litigation, labor and employment, real estate, and estate planning and

administration. The firm consists of eleven attorneys and has offices in Springfield and Urbana, Ohio.

4. My biographical information is attached along with biographical information for all other timekeepers in the firm who provided services in the above-captioned case.

5. Martin Browne has worked closely with Co-Lead Counsel in the above-reference case. The firm filed, at the request of Co-Lead Counsel, complaints on behalf of the Ohio class in state and federal court. The firm also identified Ohio class representatives and bellwether plaintiffs, Kaffenbarger Farms, Inc., Haerr Grain Farms, Three H Farms, LLC, and HGF Irrigated. Martin Browne collected written discovery from those clients and hosted Defendants' depositions of those clients at its office in Springfield, Ohio.

6. The Ohio class representatives and bellwether plaintiffs Kaffenbarger Farms, Inc., Haerr Grain Farms, Three H Farms, LLC, and HGF Irrigated, provided hundreds of pages of documents to Defendants in discovery, responded to numerous interrogatories and requests for admissions, appeared for depositions, and assisted Co-Lead Counsel in preparing for trial of the Ohio claims.

7. Martin Browne maintains contemporaneous records of its time and expenses in the ordinary course of business.

8. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

9. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

10. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

11. I personally omitted and/or cut time entries that did not meet the requirements of the Common Benefit Order.

12. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

13. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $34,295.00. A breakdown of the lodestar is provided below.

Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
Gregory R. Flax	Partner	113.1	$275.00	$31,102.50
Steven J. McCready	Partner	1.5	$275.00	$412.50
Richard F. Heil, Jr.	Partner	0.8	$275.00	$220.00
Brenda Rushing	Paralegal	25.6	$100.00	$2,560.00
TOTALS		141.0		$34,295.00

14. My firm seeks $117.74 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	**Description of Costs**	**Amount**
2	Federal Express/Local Courier	66.14
5	In-House Photocopying	51.60
	TOTAL	**$117.74**

15. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

16. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 9th day of July, 2018, in Springfield, Ohio.

/s/ Gregory R. Flax
Gregory R. Flax

Gregory R. Flax, Partner

Greg has been a partner with the firm since July 2014. His primary practice areas include agricultural law, environmental law and business litigation. Greg operated a family farm in Clark County before attending law school. He is a lifelong resident of Clark County. Greg was an associate in the Columbus office of Baker & Hostetler from 2006 to 2011, and then launched a successful solo practice in Springfield. Greg and his wife, Holly, have three children. They enjoy participating in youth sports and the Clark County and Ohio State Fairs.

Practice Areas

- Agriculture
- Environmental
- Corporate, Business, and Commercial
- Complex Litigation

Bar Admissions

- Ohio, 2006
- U.S. District Court, Southern District of Ohio
- U.S. District Court, Northern District of Ohio
- U.S. Court of Appeals for the 6th Circuit

Professional Activities

- Ohio State Bar Association, 2006 – Present
- Clark County Bar Association, 2011 – Present
- Ohio State Bar Association's Agricultural Law Committee, Chairman, 2014-2016

Community Activities

- Southeastern Local School District Board of Education
- Plattsburg United Church of Christ, Trustee
- Clark County Republican Party Executive Committee
- Springfield Foundation, Board of Directors
- OIC of Clark County, Board of Directors

Awards & Recognition

- Selected as *Rising Star* by Ohio *Super Lawyers* Magazine: 2012-2016

Education

- Ohio State University, B.S., Agriculture, 1997
- University of Michigan School of Law, J.D., *magna cum laude*, 2006

Steven J. McCready, Partner

Steve has been with Martin Browne since 1983, his entire professional career, and became a partner in 1991. He has a broad practice and focuses on working with his clients to meet their legal needs and solve problems in business, employment and litigation including alternative dispute resolutions.

Practice Areas

- Corporate, Business, and Commercial
- Litigation
- Labor and Employment

Bar Admissions

- Ohio, 1983
- U.S. District Court, Southern District of Ohio
- U.S. Supreme Court

Professional Activities

- Ohio State Bar Association, 1983 – Present
- Clark County Bar Association, 1983 – Present
- American Bar Association

Community Activities

- United Way of Clark, Champaign and Madison Counties Board of Trustees
  - • Vice President of Development
  - • Community Challenge 2016 chair
- The Wescott House Board of Directors
- Promise Neighborhood Board of Trustees
- Springfield Rotary Club

Education

- Miami University, A.B., *cum laude*, 1980
  - • Phi Beta Kappa
- The Ohio State University, J.D., with honors, 1983

Richard F. Heil, Jr., Partner

Dick joined the firm in 1986 and has been a partner since 1995. He has enjoyed helping clients with their legal needs for over 30 years. In his spare time, Dick enjoys spending time with his family, including motorcycling with his wife, Lilly.

Practice Areas

- Corporate, Business, and Commercial
- Litigation
- Creditor's Rights and Foreclosures

Bar Admissions

- Ohio, 1986

Professional Activities

- Ohio State Bar Association (1986 – present)
- Clark County Bar Association (1986 – present)

Community Activities

- Glen Helen Association Board, Legal Advisor
- Clark State Interfaith Campus Ministry, Incorporated, Legal Advisor
- First United Church of Christ, Legal Advisor

Education

- Wittenberg University, B.A., 1974
- Cleveland State University, Cleveland-Marshall College of Law, J.D., 1986

Brenda Rushing, OSBA Certified Paralegal

Brenda has been a paralegal for more than 20 years, and has been with Martin Browne since 2003. Brenda has extensive experience in real estate transactions and 1031 tax-deferred exchanges, as well as employment law, workers' compensation and litigation. She graduated with honors from Sinclair Community College in 2008 with an Associate of Arts in Paralegal Studies, and was certified as a paralegal by the Ohio State Bar Association in 2009.

Practice Areas

- Litigation
- Real Estate
- Labor and Employment

Certifications

- Ohio State Bar Ass'n Paralegal Certification, 2009-present

Education

- Sinclair Community College, Associates in Arts in Paralegal Studies, 2008

EXHIBIT 27

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT: ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**MDL No. 2591**

DECLARATION OF STUART H. MCCLUER

I, Stuart H. McCluer, declare as follows:

1. I am a member of McCulley McCluer PLLC ("McCulley McCluer"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. McCulley McCluer is a boutique litigation firm focused on representing plaintiffs in complex commercial litigation. With offices in Charleston, South Carolina and Oxford,

Mississippi, the Firm has a national practice and primarily litigates significant antitrust, commercial, and healthcare matters in courts throughout the country.

McCulley McCluer has extensive experience prosecuting class actions and other complex litigation. This experience has been recognized by Courts and co- counsel through the Firm's selection to serve in leadership roles in a broad range of matters. The Firm has also been selected to serve as outside counsel by numerous State Attorneys General to pursue complex fraud claims on behalf of their States.

In recent years, McCulley McCluer has recovered over $250 million for its clients. For example, the Firm served as Plaintiffs' Executive Committee Counsel in an antitrust class action on behalf of independent truck stop owners that settled for $130 million and significant injunctive relief. *Universal Delaware, Inc., et al. v. Comdata Corp.*, 07-cv-1078 (E.D. Pa.). In addition, the Firm and its co-counsel recovered $82 million for a nationwide class of self-insured local governmental entities in a complex prescription drug fraud matter. *In re: McKesson AWP Governmental Entity Litigation*, 08-cv-11349 (D. Mass.). The Firm reached this settlement shortly before trial after achieving the rare certification of a nationwide RICO class and defeating a Rule 23(f) petition to the First Circuit Court of Appeals. The Firm also recovered over $40 million for the Attorneys General of the States of Mississippi, Ohio, Oklahoma, and Utah in numerous healthcare fraud matters.

4. Attached to this declaration is my law firm's resume. Background information regarding Messrs. McCulley and McCluer is included therein.

Frank B. Ulmer is a magna cum laude graduate of Wofford College, where he was elected to Phi Beta Kappa. He then graduated from the Washington & Lee University School of Law in 2002, magna cum laude, where he served as Lead Articles Editor of the Washington &

Lee Law Review. After graduating from law school, Mr. Ulmer served on active duty as a Captain in the Judge Advocate General's Corps of the United States Army. Mr. Ulmer also served a year-long deployment in Baghdad, Iraq in support of Operation Iraqi Freedom III. Following his military service and before entering private practice, Mr. Ulmer served as a law clerk to Judge David C. Norton, United States District Court for the District of South Carolina. Justin Bouchard graduated from the Georgia Institute of Technology in 2012 and the University of Mississippi School of Law in 2015. He is licensed to practice law in Georgia and Alabama.

5. McCulley McCluer was the primary counsel for non-producer class representative Express Grain Terminals LLC ("Express Grain"). Key responsibilities in the litigation included coordinating discovery responses and production and also assisting with the non-producer damages models.

6. Express Grain, and counsel on Express Grain's behalf, spent a substantial amount of time preparing written responses to discovery and also coordinating document production. These amounts are reflected in the daily time entries provided to the Court in connection with this petition and declaration.

7. McCulley McCluer maintains contemporaneous records of its time and expenses in the ordinary course of business.

8. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

9. In compliance with the Common Benefit Order, I did not include in these submissions any time and expenses spent in respect to individual clients who were not either bellwether or class representative plaintiffs.

10. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

11. I individually reviewed my firm's time and made significant edits to narrow the scope of the time submitted. Thereafter I coordinated with Co-Lead counsel and agreed to further reductions in the interest of efficiency.

12. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

13. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $212,287.50. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
R. Bryant McCulley	Partner	154.5	$750	$115,875.00
Stuart H. McCluer	Partner	122.9	$725	$89,102.50
Frank B. Ulmer	Of Counsel	7.2	$550	$3,960.00
Justin Bouchard	Associate	13.4	$250	$3,350.00
TOTALS		**298**		**$212,287.50**

14. My firm is not seeking reimbursement for any expenses associated with its participation in this matter.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Charleston, South Carolina.

/s/ *Stuart H. McCluer*

FIRM RÉSUMÉ AND BIOGRAPHIES

MCCULLEY MCCLUER PLLC is a boutique litigation firm focused on representing plaintiffs in complex commercial litigation. With offices in Charleston, South Carolina and Oxford, Mississippi, the Firm has a national practice and primarily litigates significant antitrust, commercial, and healthcare matters in courts throughout the country.

McCulley McCluer has extensive experience prosecuting class actions and other complex litigation. This experience has been recognized by Courts and co- counsel through the Firm's selection to serve in leadership roles in a broad range of matters. The Firm has also been selected to serve as outside counsel by numerous State Attorneys General to pursue complex fraud claims on behalf of their States.

In recent years, McCulley McCluer has recovered over $250 million for its clients. For example, the Firm served as Plaintiffs' Executive Committee Counsel in an antitrust class action on behalf of independent truck stop owners that settled for $130 million and significant injunctive relief. *Universal Delaware, Inc., et al. v. Comdata Corp.*, 07-cv-1078 (E.D. Pa.). In addition, the Firm and its co-counsel recovered $82 million for a nationwide class of self-insured local governmental entities in a complex prescription drug fraud matter. *In re: McKesson AWP Governmental Entity Litigation*, 08-cv-11349 (D. Mass.). The Firm reached this settlement shortly before trial after achieving the rare certification of a nationwide RICO class and defeating a Rule 23(f) petition to the First Circuit Court of Appeals. The Firm also recovered over $40 million for the Attorneys General of the States of Mississippi, Ohio, Oklahoma, and Utah in numerous healthcare fraud matters.

Additional representative matters for the Firm include:

ANTITRUST

Universal Delaware, Inc., et al. v. Comdata Corp., 07-1078 (E.D. Pa.) (Plaintiffs' Executive Committee in direct purchaser antitrust class action that settled for $130 million).

In re: Pre-Filled Propane Tank Antitrust Litigation, MDL 2567 (W.D. Mo.) (represent lead plaintiff in antitrust action seeking damages for overcharge damages related to the pricing of propane exchange tanks).

In re: Delta/AirTran Baggage Fee Antitrust Litigation, MDL 2089 (N.D. Ga.) (Interim Co-Lead Counsel in direct purchaser antitrust class action).

In re: Aftermarket Filters Antitrust Litigation, MDL 1957 (N.D. Ill.) (Co-Chair of the Class Certification Committee in direct purchaser antitrust class action) ($8.3 million settlement).

In re: Aftermarket Automotive Lighting Products Antitrust Litigation, MDL 2007 (C.D. Cal.) (direct purchaser antitrust class action) ($50 million settlement).

FINANCIAL / SECURITIES

MF Global Inc. Customer Cases (Deangelis, et al., v. Corzine, et. al., 11-cv-7866) (S.D.N.Y.)) (represent lead plaintiff in class action seeking damages resulting from failure of MF Global) ($100 million partial settlement).

In re LIBOR-Based Financial Instruments Antitrust Litigation, MDL No. 2262 (S.D.N.Y.) (represent lead plaintiff in class action seeking damages for LIBOR-Based Securities holders as a result of the alleged suppression of LIBOR).

HEALTHCARE

In re: McKesson AWP Governmental Entity Litigation, (08-cv-11349, D. Mass.) (member of Plaintiffs' Executive Committee in nationwide class action of public payors of pharmaceuticals that settled for $82 million) (class representatives included the City of Baltimore, Maryland; Douglas County, Kansas; City of Panama City, Florida; Anoka County, Minnesota; City of Columbia, South Carolina; City of Goldsboro, North Carolina).

State of Ohio v. McKesson Corp., (13-cv-2000 N.D. Cal.) (Co-Lead Counsel for the State of Ohio in pharmaceutical pricing litigation) ($18.3 million settlement).

Average Wholesale Price Litigation – Mississippi (Special Assistant Attorneys General to the State of Mississippi in pharmaceutical pricing litigation) (favorable settlements).

Average Wholesale Price Litigation – Oklahoma (Co-Lead Counsel for the State of Oklahoma in pharmaceutical pricing litigation against drug manufacturers) (approximately $20 million recovery).

State of Oklahoma v. McKesson Corp. (08-cv-11349, D. Mass) (Co-Lead Counsel for the State of Oklahoma in pharmaceutical pricing litigation) (recovered funds for both Oklahoma Medicaid and OSEEGIB, Oklahoma's State Health Plan) (favorable settlements).

State of Utah v. McKesson Corp. (10-cv-4743 N.D. Cal.) (Co-Lead Counsel for the State of Utah in pharmaceutical pricing litigation) (favorable settlements).

State of Mississippi v. McKesson Corp. (251-10-862 Hinds County, Miss. Circuit Court) (Co-Lead Counsel for the State of Mississippi in pharmaceutical pricing litigation) (favorable settlement).

ENVIRONMENTAL

In re: Syngenta AG MIR162 Corn Litigation, MDL 2591 (D. Kan.) (represented lead plaintiff non-producer in class action arising from contamination of corn industry).

In re: BP Oil Spill Litigation, MDL 2179 (E.D. La.) (represent hundreds of Business Economic Loss claimants).

In re: Genetically Modified Rice Litigation, MDL 1811 (E.D. Mo.) (represented numerous long-grain rice farmers in multi-district litigation).

COMMERCIAL

Southeast Georgia Reg'l Med. Ctr., Inc., et al. v. Humana Military Healthcare Services, Inc., Case No. 11 193 00446 09 (Co-Lead Counsel in arbitration resulting in $2.2 million judgment for client).

The City of Jacksonville, et al. v. Hotels.com, et al., (Duval County, Florida Circuit Court) (Co-Lead Counsel for Duval County, Florida in class action involving taxation of internet travel transactions) (favorable settlement for client).

PRINCIPAL ATTORNEYS

R. BRYANT MCCULLEY

Admitted: Florida, Alabama (U.S. District Court for the Northern District of Alabama, U.S. District Court for the Middle District of Florida).

Education: Hampden-Sydney College (B.A., *summa cum laude*, Phi Beta Kappa); University of Strathclyde (Master of Environmental Studies, *with distinction*); Washington & Lee University School of Law (J.D., *magna cum laude*, Order of the Coif). Editor-in-Chief, WASHINGTON AND LEE LAW REVIEW.

Clerkship: Hon. Karon O. Bowdre, U.S. District Court for the Northern District of Alabama.

Publications: The Proof is in the Policy: The Bush Administration, Nonpoint Source Pollution and EPA's Final TMDL Rule, 59 WASH. & LEE L. REV. 237 (2002).

Practice: Mr. McCulley has significant experience representing plaintiffs and defendants in complex commercial litigation.

R. Bryant McCulley has been engaged in complex civil litigation since he entered private practice with the national law firm Boies, Schiller & Flexner LLP. While at Boies Schiller, Mr. McCulley prosecuted and defended class action claims seeking hundreds of millions of dollars in damages. Such matters include: *In re Terazosin Hydrochloride Antitrust Litig*., S.D. Fla. ($74.5 million settlement); *In re Scrap Metal Antitrust Litig*., N.D. Ohio ($10 million partial settlement); *Spartanburg Regional Healthcare Servs. v. Hillenbrand Indus., Inc.*, D.S.C. (defense of manufacturer in action seeking in excess of $1 billion).

Since co-founding McCulley McCluer PLLC in 2007, Mr. McCulley has continued to focus on the representation of plaintiffs in high-stakes fraud, antitrust, securities and natural resource damage litigation. A large part of Mr. McCulley's practice involves the prosecution of significant claims on behalf of governmental entities. For example, Mr. McCulley recently as outside counsel to the States of Ohio, Mississippi, Oklahoma, and Utah in healthcare fraud litigation and as a member of the Plaintiffs' Executive Committee in *In re McKesson Gov't Entity Average Wholesale Price Litig*., D. Mass. These matters resulted in over $120 million in recoveries for Mr. McCulley's clients.

Mr. McCulley has particular experience litigating issues related to class certification, having represented both plaintiffs and defendants in class actions seeking billions of dollars in damages. Most recently, Mr. McCulley was a member of the litigation team that achieved nationwide certification of a RICO claim against a major pharmaceutical wholesaler. This litigation, *In re McKesson Gov't Entity Average Wholesale Price Litig*., D. Mass., settled shortly before trial for $82 million. In addition, among other matters, Mr. McCulley recently secured a $2.2 million arbitration judgment in favor of a large hospital system in a contract dispute with a health insurance company, a settlement for a medical device company asserting unfair competition and antitrust claims, and settlements for the City of Jacksonville, Florida in litigation against online travel companies for unpaid occupancy taxes.

Mr. McCulley is a summa cum laude graduate of Hampden-Sydney College, where he was elected to Phi Beta Kappa and Omicron Delta Kappa and served as the Chairman of the Student Honor Court. He received a MSc in Environmental Studies, with distinction, from the University of Strathclyde in Glasgow, Scotland, which he attended on a Rotary Ambassadorial Scholarship. He then graduated from the Washington & Lee University School of Law, magna cum laude, where he served as Editor-in-Chief of the *Washington & Lee Law Review*. Following law school, Mr. McCulley served as a law clerk to the Hon. Karon O. Bowdre, United States District Judge for the Northern District of Alabama.

Mr. McCulley is admitted to the Bars of the States of Florida and Alabama and the United States District Courts for the Northern District of Alabama and the Middle District of Florida.

Mr. McCulley has been repeatedly selected as a "Florida Rising Star" by *Super Lawyers*. This honor is awarded to less than 2.5% of the attorneys in the State.

STUART H. MCCLUER

Admitted: Mississippi, Alabama (all State and Federal Courts in both states).

Education: The University of Virginia (B.A.); Washington & Lee University School of Law (J.D.). Executive Officer, MOOT COURT BOARD.

Clerkship: Hon. Callie V.S. Granade, Chief Judge of the U.S. District Court for the Southern District of Alabama.

Publications: PWORA § 115: The Devastating Impact of a Little-Known Provision, Shepherd Consortium (2002).

Practice: Mr. McCluer's primary experience has been representing plaintiffs in complex commercial litigation and serving as both compliance and litigation counsel to governmental entities.

Stuart H. McCluer was born in New Haven, Connecticut. He obtained his undergraduate degree in Philosophy from the University of Virginia. After working in the publishing industry in New York City, Mr. McCluer enrolled in law school at the Washington & Lee University School of Law. While in law school Mr. McCluer served as an Executive Officer of the Moot Court Board, assisted federal prisoners through the law school's legal practicum program, and published articles regarding post-incarceration disparate treatment through the school's Shepherd Poverty Program.

After graduation from law school Mr. McCluer served as a law clerk to the Honorable Callie V.S. Granade, Chief United States District Judge for the Southern District of Alabama. Following his clerkship, Mr. McCluer represented both private and governmental entities in litigation matters and served as the City Attorney for the City of Oxford, Mississippi.

In 2007, Mr. McCluer and his colleague Bryant McCulley formed the law firm of McCulley McCluer PLLC with the goal of prosecuting significant claims on behalf of private

and governmental entities. Mr. McCluer has served as Special Assistant Attorney General to numerous States in pharmaceutical fraud litigation. Mr. McCluer has also served in leadership positions on behalf of class representatives and plaintiffs in numerous class actions. Currently pending matters include: *In re: Pre-Filled Propane Tank Antitrust Litig.*, MDL No. 2567 (W.D. Mo.) and *In re: Syngenta AG MIR 162 Corn Litig.*, MDL No. 2591 (D. Kan.).

Outside the practice of law, Mr. McCluer is involved in a number of community service organizations. He serves on the Board of Directors of the Mississippi Innocence Project, which assists innocent prisoners seeking exoneration and release from prison on the basis of DNA evidence, and recently concluded a three-year term on the vestry of St. Peter's Episcopal Church in Oxford, Mississippi. Mr. McCluer is past-president of the American Bar Association's local Young Lawyers chapter and has been listed as a "Rising Star" in Mid-South Super Lawyers every year since 2010.

EXHIBIT 28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** *Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al.*, No. 16-2788-JWL-JPO *Trans Coastal Supply Company, Inc. v. Syngenta AG, et al.*, No. 2:14-cv-02637-JWL-JPO *The Delong Co., Inc. v. Syngenta AG, et al.*, No. 2:17-cv-02614-JWL-JPO *Agribase International Inc. v. Syngenta AG, et al.*, No. 2:15-cv-02279-JWL-JPO	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF PEGGY J. WEDGWORTH

I, Peggy J. Wedgworth, declare as follows:

1. I am an attorney licensed to practice law in the State of New York and am a partner at Milberg Tadler Phillips Grossman LLP ("Milberg").[1]

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Several lawyers and staff members at Milberg performed common benefit work in

[1] Milberg Tadler Phillips Grossman LLP was established in 2018 by members of Milberg LLP and Sanders Phillips Grossman LLC. As of January 1, 2018, Milberg LLP's lawyers are now prosecuting new and active cases out of Milberg Tadler Phillips Grossman LLP.

this litigation.

Peggy Wedgworth

4. I am a managing partner and Chair of the Antitrust Practice Group at Milberg. I was an Assistant District Attorney in Brooklyn, New York from 1986 to 1989. Since leaving the public sector in 1989, I have handled numerous securities, commodities, antitrust and whistleblower matters, and is a *Super Lawyer* in New York, New York since 2016 and recommended in the *Legal 500 United States* for 2016. I represent defrauded investors and consumers, and currently represents consumers in *In re Contact Lens Antitrust Litigation*, and car dealerships in *In re Dealer Management Systems Antitrust Litigation*, a class action brought against software suppliers, where I was recently named Interim Lead Class Counsel. I actively litigated *In re Initial Public Offering Securities Litigation* for over five years, which settled for $586 million, and *In re Merck & Co. Securities Litigation*, which had a combined settlement totaling $1.062 billion. I also won a jury trial against R.J. Reynolds in a wrongful death tobacco case in Florida state court.

5. I have litigated antitrust and commodities class actions on behalf of plaintiffs including extensive experience in all aspects of pretrial discovery in, among other cases, *In re Brand Name Prescription Drugs Antitrust Litigation*, No. 94-897, 1996 WL 351180 (N.D. Ill. June 24, 1996) (approving $351 million settlement); *In re NASDAQ Market-Makers Antitrust Litigation*, 187 F.R.D. 465 (S.D.N.Y.) ($1,027,000,000 settlement); *In re Microsoft Litigation*, MDL 1332 (D. Md.) (consolidated class actions alleging long term unlawful maintenance of a monopoly and other anticompetitive conduct by Microsoft resulting favorable partial settlements); *In re Soybean Futures Litigation*, No. 89-7009 (N.D. Ill.) ($21,500,000 class settlement providing claiming class members/soybean futures traders a full recovery under

plaintiffs' expert's formula); *In re Sumitomo Copper Litigation*, 74 F. Supp. 2d 393, 395 (S.D.N.Y. 1999) ("The recovery is the largest class action recovery in the 75 plus year history of the Commodity Exchange Act."); *Kohen v. Pacific Investment Management Company, LLC*, No. 05-4681 (N.D. Ill.) (certified class of treasury bond futures purchasers alleging manipulation of the futures market); *Leider v. Ralfe*, No. 01-3137 (D.N.J.) (alleging price-fixing and monopolization in the diamond market by DeBeers resulting in a settlement of $250,000,000 and extensive injunctive relief); and *In re Natural Gas Commodities Litigation*, 03-6186 (S.D.N.Y.) ($101 million settlement).

6. I regularly speak on topics relating to antitrust litigation, multi-district litigation and class action issues, and consumer matters. I am a member of the New York State Bar Association's Antitrust Committee, where she has served as both a speaker and panelist, and the American Bar Association, Antitrust Committee, and a member of the American Association of Justice.

Paul F. Novak

7. Paul F. Novak received his B.A. and M.A. degrees from Michigan State University in 1983, and J.D. from Emory University School of Law in 1986. Mr. Novak was the head of Milberg's antitrust practice group and the managing partner of the Firm's Detroit office. In his time with the firm, He was active in a host of antitrust, securities, and consumer protection class action matters, and served as interim co-lead counsel in multiple antitrust cases. Mr. Novak is no longer with the firm.

8. Prior to joining Milberg, Mr. Novak practiced law in both the public sector, as an Assistant Attorney General for the State of Michigan and as the City Attorney of Lansing, and in the private sector consulting with clients on antitrust, environmental, and regulatory matters. As

an assistant attorney general, Mr. Novak served as the Division Head of the Special Litigation Division with responsibility for antitrust enforcement, public utility matters, and securities litigation. He emerged as a national leader in multistate litigation involving pricing practices in the pharmaceuticals industry, and served as lead counsel on behalf of all fifty state attorneys general in the *In re Cardizem CD Antitrust Litigation*. He also served as lead counsel on behalf of the State of Michigan in several price fixing, monopolization, and merger cases in a broad spectrum of industries including health care, pharmaceuticals, and in cases involving Microsoft and Oracle Corporation.

9. Mr. Novak is the former Chair of the Michigan Bar Association's Antitrust, Franchising, and Trade Regulation Section and is a contributing editor of the American Bar Association's Antitrust and Health Care Newsletter. He is also a member of the State Bar of Michigan United States Court Committee. He was awarded the Frank J. Kelley Excellence in Trial Advocacy Award for his work in antitrust enforcement. He has lectured on antitrust issues in the pharmaceuticals and insurance industries for the Practicing Law Institute. He served as chair of the National Association of Attorneys General ("NAAG") Midwest Antitrust Enforcement Task Force and as a member of the NAAG Airlines Industry Working Group and Prescription Drug Pricing Task Force.

John Hughes

10. John Hughes focuses his practice on antitrust, consumer protection, and False Claims Act Litigation as well as e-discovery.

11. Mr. Hughes graduated from Michigan State University with a B.A. in Political Science in 2005 and earned his J.D. degree from Wayne State Law School in 2012.

12. During law school, Mr. Hughes served as Director of The Free Legal Aid Clinic in Detroit, Co-managing a facility that specializes in providing family and elder law services to city residents. Prior to joining Milberg, Mr. Hughes helped lead a non-profit organization with a presence in New York City, Detroit, and Los Angeles that focused on providing legal support to creative communities.

13. Mr. Hughes is admitted to practice in Michigan.

Diana Gjonaj

14. Diana Gjonaj focused her practice at Milberg LLP primarily on antitrust litigation, targeting illegal and anti-competitive practices on behalf of consumers and investors. She received her Bachelor Degree, *cum laude,* from the University of Michigan and her Juris Doctor from Wayne State University Law School. During law school, Ms. Gjonaj clerked for Milberg LLP in the Firm's Detroit office. Ms. Gjonaj is no longer with the firm.

15. Ms. Gjonaj is admitted to practice in the state courts of Michigan, the United States District Court for the Eastern District of Michigan and the United States Court of Appeals for the Sixth Circuit. She is a member of the American Bar Association, Women's Lawyer Association of Michigan, and Michigan Association for Justice.

16. ***Peter Chevere*** is an experienced project manager for the litigation support department of Milberg, He oversaw the logistical aspect of discovery, managing the document repositories and the production of data from our clients. Mr. Chevere is no longer with Milberg.

17. ***Christine Porras*** is an experienced project manager for the litigation support department of Milberg, she oversaw the logistical aspect of discovery, managing the document repositories and the production of data from our clients. Ms. Porras is no longer with Milberg.

18. ***Paul McVoy*** is the director of the litigation support department, Mr. McVoy

oversaw the day to day operations of the Milberg Litigation Support team. In addition, he consulted with the legal teams on discovery related topics, including the collection and preservation of our client's data. Mr. McVoy is no longer with Milberg.

19. The attorneys and professional support staff of the firm performed numerous tasks on behalf of all producer plaintiffs, specifically by performing services on behalf of Gilbert Jones and Sons Farm, LLC, a named plaintiff and possible class representative for the Michigan corn producer class claims. These tasks, performed at the request of Lead Counsel, included but were not limited to:

a. Corresponding with Lead counsel for assignments and completing, with client Gilbert Jones and Sons Farm, LLC, the class representative questionnaire and Plaintiff Fact Sheet, as well as conducting research as appropriate for the completion of these submissions.

b. Ensuring the client's ESI was properly imaged and preserved for future document productions with the use of in-house litigation support specialists and e-discovery vendors as appropriate, as well as subsequently reviewing client's ESI documents for relevance and privilege.

c. Drafting responses to Defendants' requests for the production of documents, Interrogatories, gathering client documents and arranging the production thereof, and by working directly and indirectly with client's agricultural supply vendors, insurance providers, financial advisors, and the Farm Service Agency to ensure that discovery obligations were met in a timely fashion.

20. The firm maintains contemporaneous records of time and expenses in the ordinary course of business.

21. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), Milberg submitted common benefit time and expense submissions to Co-Lead Counsel in the MDL.

22. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to any individual clients who were not contemporaneously either under consideration as plaintiff in a future bellwether trial or as a proposed class representative.

23. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

24. Milberg's billing is based upon actual time spent on representing a named plaintiff in this litigation. My re-review of time spent was compared to all of the emails, letters and travel time spent.

25. After this re-review, I can confirm that this time was undertaken by me personally and by attorneys and professional support staff of Milberg. I believe that the common benefit time and expense information I am submitting is accurate and in compliance with the Court's Common Benefit Order.

26. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for work performed by my firm is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
Hughes, John	Associate	93.30	$400.00	$37,320.00
Gjonaj, Diana	Associate	51.40	$350.00	$17,990.00
Novak, Paul F.	Partner	12.40	$800.00	$9,920.00
Wedgworth, Peggy	Partner	12.00	$875.00	$10,500.00

Name	Title	Total Hours	Hourly Rate	Lodestar
Porras, Christine	Staff: Litigation Support	2.70	$300.00	$810.00
Chevere, Peter	Staff: Litigation Support	1.50	$225.00	$337.50
McVoy, Paul	Staff: Litigation Support	0.50	$360.00	$180.00
TOTALS		173.8		$77,057.50

27. Milberg seeks expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
18	Miscellaneous (Collection of client ESI)	$825.50
	TOTAL	**$825.50**

28. As part of my request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

29. The expenses pertaining to this case are reflected in Milberg's records. These records are contemporaneously prepared from receipts; expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 7th day of July, 2018, in Denver, Colorado.

/s/Peggy J. Wedgworth

EXHIBIT 29

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT: ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**MDL No. 2591**

DECLARATION OF MATTHEW W. LYTLE

I, Matthew W. Lytle, declare as follows:

1. I am a partner in the law firm of Miller Schirger, LLC, located at 4520 Main Street, Suite 1570, Kansas City, Missouri 64111 ("Miller Schirger"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Miller Schirger is a civil litigation firm with substantial nationwide experience in complex business and commercial litigation, and multi-party actions, including class actions. In

the last 10 years, the three Miller Schirger attorneys primarily responsible for rendering services in this case have devoted the majority of their time and practice to prosecuting and litigating complex commercial class action lawsuits. Those efforts include securing a settlement on behalf of more than 77,000 life insurance policy holders against The Lincoln National Life Insurance Company, which provided additional death benefits valued at $2.25 billion at a market value of approximately $171.8 million. *See Bezich v. The Lincoln National Life Insurance Co.*, No. 02C01-0906-PL-73 (Allen County, Indiana). Those efforts also include securing a $59.75 million settlement on behalf of a nationwide class of life insurance policy holders against John Hancock Life Insurance Company (U.S.A.). *See Larson v. John Hancock Life Insurance Co. (U.S.A.)*, No. RG16813803 (Superior Court of California, County of Alameda). In addition, in June 2018, the three Miller Schirger attorneys primarily responsible for rendering services in this case were on the team of attorneys that tried a case on behalf of a class of approximately 24,000 Missouri life insurance policy holders in the United States District Court for the Western District of Missouri, which resulted in a jury verdict of $34.3 million on behalf of the class. *See Vogt v. State Farm Life Insurance Co.*, No. 2:16-cv-04170-NKL, (W.D. Mo.). Currently, Miller Schirger is prosecuting simultaneous complex commercial class actions in federal courts in California, Colorado, Connecticut, Iowa, Texas, and Wisconsin.

4. The three Miller Schirger attorneys primarily responsible for rendering services in this case have a combined 48 years of legal experience in complex business and commercial litigation, including multi-party and class action litigation, as more fully described below:

a. I, Matthew W. Lytle, obtained a B.A. from Creighton University in 1996, and a J.D. from Creighton University School of Law (*magna cum laude*) in 2004. I am currently admitted and licensed to practice in the states of Missouri and Nebraska

(inactive), as well as before numerous federal district and appellate courts. I began my legal career at McGrath, North, Mullin & Kratz, PC LLO, a large regional law firm located in Omaha, Nebraska. I then spent approximately three years practicing at Shughart Thompson & Kilroy and Bryan Cave LLP, large national and international law firms in Kansas City, Missouri. In 2009, I left Bryan Cave LLP to join Miller Schirger, and was named a partner in the firm in 2013. I have been named a "Rising Star" and "Super Lawyer" by Missouri and Kansas Super Lawyers and was also named to the 2012 BTI Client Service All-Stars, a select group of only 272 lawyers nationwide chosen solely on unprompted, unequivocal recommendations by corporate counsel for their understanding of business issues, innovative approaches to legal services, and commitment to client needs. Throughout my career, I have represented clients ranging from individuals to Fortune 500 companies in various complex business and commercial matters, including class actions and other multi-party actions, in state and federal courts across the United States. Since joining Miller Schirger, I have devoted the majority of my time and practice to prosecuting and litigating complex commercial class action lawsuits and have developed significant experience representing plaintiffs in complex class action lawsuits brought in a number of state and federal courts nationwide.

b. John J. Schirger obtained a B.A. from the University of Notre Dame in 1988, and a J.D. from Creighton University School of Law in 1992. He is admitted and licensed to practice in the states of Missouri and Nebraska (inactive), as well as before numerous federal district and appellate courts. He began his legal career at

McGrath, North, Mullin & Kratz, PC LLO, a large regional law firm located in Omaha, Nebraska, where he was elected partner after four years of practice. After 12 years of private practice, Mr. Schirger spent approximately three years as in-house counsel in the insurance industry, including approximately two years as a senior legal officer for a Fortune 500 life and health insurance company. He returned to private practice in 2008, when he co-founded Miller Schirger. He has been named a "Top 100 Missouri & Kansas Super Lawyer" by Missouri and Kansas Super Lawyers and "Best of the Bar" by the Kansas City Business Journal and has been "AV" rated by Martindale-Hubbell for approximately 21 years. Throughout his career, Mr. Schirger has represented clients ranging from individuals to Fortune 500 companies in various complex business and commercial matters, including class actions and other multi-party actions, in state and federal courts across the United States. In addition, his 26 years of experience includes representing clients, both individuals and corporations, in a wide variety of litigation and regulatory matters.

c. Joseph M. Feierabend obtained his B.B.A. from the University of Notre Dame in 2005, with a major in accounting, and his J.D. from the University of Missouri School of Law in 2008. He is currently admitted and licensed to practice in the State of Missouri, as well as before the United States District Courts for the Western District of Missouri, and the District of Kansas. Before he began practicing law, Joe spent approximately two years running the business operations of a local Kansas City company, where his responsibilities included overseeing the financial and accounting functions. In 2010, Joe joined Miller Schirger as an

associate. Joe focuses his practice in the areas of complex business and commercial litigation and represents individuals and businesses in insurance disputes involving coverage and bad faith claims. Joe has significant experience representing plaintiffs in cost of insurance class actions brought in a number of state and federal courts throughout the United States.

5. The services rendered by Miller Schirger in this case principally involved working with Robert Borneman, the class representative in the Illinois class action. In that respect, Miller Schirger was responsible for: the preparation, filing and service of the Illinois class action complaint; the removal of the Illinois class action and its subsequent transfer into the MDL; the preparation of Mr. Borneman's Plaintiff Fact Sheet, including gathering and reviewing documents, and conferring with Mr. Borneman; and consultation with lead counsel throughout the case.

6. In the ordinary course of business, Miller Schirger maintains contemporaneous records of the time and expenses spent and incurred on the firm's cases, and all timekeepers are instructed to keep detailed records of their time spent working on the firm's cases.

7. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

8. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

9. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

10. In re-reviewing the time entries and expenses previously submitted, I sought to identify those entries for which the timekeepers responsible for rendering services recorded time related to this case that, although they accurately reflected time expended in relation to this case, did not comply with the Court's Common Benefit Order or otherwise qualify as compensable common benefit time. In an exercise of billing judgment, I made reductions of approximately 18 hours of the firm's time as a result of my re-review.

11. After this re-review, I can confirm that this time was undertaken by the members of my firm. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

12. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $79,950.00. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
John J. Schirger	Partner	67.3	$675	$45,427.50
Matthew W. Lytle	Partner	44.5	$675	$30,037.50
Joseph M. Feierabend	Partner	7.8	$575	$4,485.00
TOTALS		119.6		$79,950.00

13. My firm seeks $81.59 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Description of Costs	Amount
Online Legal Research	$58.14
Postage	$17.25
Photocopy Charges	$6.20
TOTAL	**$81.59**

14. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

15. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Kansas City, Missouri.

/s/ Matthew W. Lytle
Partner, Miller Schirger, LLC

EXHIBIT 30

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF RICHARD M. PAUL III

I, Richard M. Paul III, declare as follows:

1. I am the managing partner of Paul LLP. Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of the federal MDL Plaintiffs' request for attorneys' fees and expenses and service awards in this litigation.

3. Paul LLP practices almost exclusively in the area of complex litigation in state and federal courts across the country. Our cases frequently involve class, mass, multi-district, or other

multi-party litigation. Our firm takes on a limited number of large-scale cases so that we can focus on achieving the best possible results for our clients. Since the founding of Paul LLP in 2013, this case has consumed the majority of our time, but our attorneys have a history of achieving outstanding results in large-scale litigation on behalf of our clients. For example, we led the litigation of a multi-party, multiple death airplane crash case that resulted in a record settlement, settled a class action against JPMorgan Chase for charging unlawful home mortgage interest, and recently obtained a jury verdict in favor of an internet service provider arising out of a dispute over a failed acquisition. Both myself and my partner Ashlea Schwarz have served as court-appointed lead or co-lead counsel and members of leadership committees of numerous class and/or multi-district litigations.

4. Attached to this Declaration is my law firm's resume.

5. The following is biographical information on all attorneys and staff from Paul LLP that billed common benefit time in this litigation:

a. **Rick Paul:** I was appointed to the Plaintiffs' Executive Committee in the federal MDL as well as in the Minnesota MDL, and served as co-lead trial counsel in the individual bellwether and Minnesota class trials. After graduating law school in 1995, I worked as a judicial clerk at the Missouri Supreme Court. I was hired to clerk for the Honorable Elwood Thomas, and then, after Judge Thomas' untimely death, clerked for the remaining members of the Missouri Supreme Court until Judge Thomas' replacement was appointed. I then continued my judicial clerkship with the Honorable Edwin Smith at the Missouri Court of Appeals, Western District. In 1996, I joined the Kansas City law firm Shughart Thomson & Kilroy, P.C., n/k/a Polsinelli, where I was mentored by very fine lawyers, including Larry Ward and Jack Brady. In 2002, I was elected to become a shareholder and a director of the firm. During my tenure at Shughart Thomson, I both

prosecuted and defended numerous class action cases and also tried a number of individual business disputes. In 2008, because my growing contingent fee practice on behalf of individuals was falling more and more outside of the direction of the firm, I left Shughart Thomson and joined Stueve Siegel Hanson LLP. There, I continued to handle business and employment litigation, primarily in class and collective action litigation. While there, I tried, and won, several cases on behalf of my clients and achieved numerous substantial settlements on behalf of other clients. In 2013, I left Stueve Siegel Hanson to start Paul LLP. I have successfully tried cases to judges and juries in both state and federal court, and tried (and won) several cases in arbitration, including two collective action arbitrations on behalf of thousands of employees. In addition to trial work, I have argued over 45 cases before various state and federal appellate courts. In 2006, Missouri Lawyers Weekly named me as of one of eight "Up and Coming Lawyers." I have repeatedly been named a "Missouri/Kansas Super1Lawyer," am listed on American Registry's "Top Attorneys in Missouri/Kansas," and have an AV Preeminent Peer Review Rating with Martindale-Hubbell.

b. **Ashlea Schwarz:** Ashlea is a partner at Paul LLP and spent a substantial amount of time prosecuting this case both in the federal and Minnesota MDLs. During law school, Ashlea worked as a judicial clerk at the United States District Court, District of Kansas. Ashlea graduated from the University of Kansas School of Law in 2007. Ashlea began her career at Stueve Siegel Hanson LLP where she practiced business and employment litigation, primarily in multi-district litigation and/or class and collective actions. She moved her practice to Paul LLP in August 2014 and became a partner in 2015. She has served on the board of the Kansas City Metropolitan Bar Association's Federal Court Advocates Section and as a subcommittee chair for the Association of Women Lawyers. In 2014, she was named one of Missouri Lawyers' Weekly's "Up and Coming Lawyers," an award recognizing litigators under age 40 who demonstrate excellence in the legal

profession and in their commitment to their communities. Ashlea continues to be selected yearly as a Kansas City Business Journal Rising Star and Super Lawyers' Missouri and Kansas Rising Star.

c. **John Cracken:** John is the managing partner of The Cracken Law Firm PC but joined Paul LLP as of counsel for purposes of this litigation. He attended the University of Texas and since beginning his private practice in 1987, John built a successful trial practice in Texas winning more than 30 verdicts and/or settlements in excess of $1 million for his clients. Since 1997, John has been rated AV Preeminent by Martindale-Hubbell and in 2012 was named a Top Rated Lawyer in Mass Tort Litigation. He has been recognized for his work by both *Corporate Counsel* and *The American Lawyer*.

d. **Susan Becker:** Sue worked as an associate at Paul LLP. She graduated from the University of Missouri Kansas City School of Law in 2012, where she served as Executive Editor of the online UMKC Law Review journal. During law school, she worked as a judicial intern for Chief Judge Fernando Gaitan, Jr. at the United States District Court for the Western District of Missouri for two consecutive summers. Following graduation, she worked as a law clerk for the Hon. Gary Witt, Missouri Court of Appeals, Western District, before entering private practice with Paul LLP. She left Paul LLP in 2017 to accept a position as Chief Legal Counsel for Kansas Secretary of State Kris Kobach.

e. **Robert Kinsman:** Robert graduated from the University of Missouri Kansas City School of Law in 2014. He immediately opened his own law firm, Krause and Kinsman, and sub-leased space within Paul LLP's office. As he was getting his young firm going, Robert agreed to work for Paul LLP, part-time, on a purely contingent fee basis. He is an active member of the Missouri Bar, Kansas City Metropolitan Bar Association, Missouri Association of Trial Attorneys

and serves on KCMBA's Young Lawyers Section. His practice focuses on mass torts, business litigation, employment discrimination, and personal injury.

f. **Adam Krause:** Adam graduated from the University of Missouri Kansas City School of Law in 2014. He immediately opened his own law firm, Krause and Kinsman, and sub-leased space within Paul LLP's office. As he and Robert were getting their young firm going, Adam agreed to work for Paul LLP, part-time, on a purely contingent fee basis. His practice focuses on mass torts, business litigation, employment discrimination, and personal injury.

g. **Steven Rowe:** Steven graduated from the University of Kansas School of Law in 2015. Steven was a law clerk for Paul LLP during law school and continued to work for Paul LLP on a part-time basis as he was getting his own law firm started. After a short period in private practice, Steven decided to work for Legal Aid of Western Missouri.

h. **Cameron Riemensnider:** Cam graduated cum laude from Truman State University and is a 2018 graduate of Washington University Law School, graduating in the top third of his class. He worked as a law clerk at Paul LLP during two consecutive summers where his duties included legal research, document review, and collection of documents and data in response to discovery requests.

i. **Kendra John:** Kendra is the head paralegal at Paul LLP and has over 24 years of experience working for law firms. She has extensive experience in document management for large cases including numerous multi-district cases and admiralty casualties, including being primarily responsible for collection and organization of records in support of a multi-million-dollar successful claim to the National Pollution Funds Center. Throughout her career, she has taken the lead in the initial document review and collection of information from clients through the discovery phase of litigation.

j. **Linda Davis:** Linda is a paralegal at Paul LLP and has over 21 years of experience as a paralegal working on class and mass action cases. Prior to joining Paul LLP in 2016, she provided document and claims management for numerous product liability multi-district cases for Shook Hardy & Bacon where she also served on numerous trial teams. She has continued to provide document and discovery support for class action and mass tort cases during her employment with Paul LLP.

k. **R. Patrick Neal:** Pat is a paralegal at Paul LLP. He obtained his paralegal certificate in 2011 and has experience in document management and pleading preparation in the fields of personal injury and civil litigation. Since joining Paul LLP in 2016, Patrick has been responsible for discovery and document/data management for numerous multi-party cases.

l. **Melissa Casady:** Melissa worked for Paul LLP as a contract paralegal. She worked exclusively on the federal MDL litigation.

m. **Pam Williams:** Pam worked for Paul LLP as a contract paralegal. She worked exclusively on the federal MDL litigation.

n. **Heather Webb:** Heather was a paralegal at Paul LLP. She earned her paralegal certificate in 2015 and joined Paul LLP as a paralegal shortly after graduation. She was responsible for data collection and document organization for the firm's multi-district, class, and mass action cases.

o. **Sydney Estelle:** Sydney was a paralegal at Paul LLP. Prior to joining Paul LLP, she worked in the Jackson County, Missouri clerk's office. She joined Paul LLP in 2015, assisting with data entry and document review.

p. **Caroline Abbott:** Caroline has worked for Paul LLP as a Case Clerk for three consecutive summers while on break from Emory University where she earned a bachelor's degree

in neuroscience and behavioral biology. Caroline will begin law school in the fall of 2018 at the University of Virginia. She provides research assistance for a variety of cases, in particular those utilizing her science degree, and also assists with data entry and data collection from clients.

6. In addition to representing over 1,400 firm clients in the Syngenta litigation, Paul LLP was appointed to serve as a member of the Plaintiffs' Executive Committee for both the federal and Minnesota MDLs, While the bulk of Paul LLP's common benefit work was performed in the Minnesota MDL due to my role as head of the discovery committee and co-lead trial counsel, I and Paul LLP performed a substantial amount of common benefit work in the federal MDL, which is summarized by category below:

a. **Pleadings:** Paul LLP helped draft several of the key pleadings in the case, including the First and Second Master Consolidated Complaints for Producers and Non-Producers, the Opposition to the Motion to Dismiss, and the Trial Plan Proposal for Bellwether Plaintiffs.

b. **Depositions:** Paul LLP was heavily involved in the discovery process. I was one of the few attorneys outside of the Co-Lead Counsel who deposed Syngenta employees on behalf of the federal MDL (and took dozens of depositions on behalf of the Minnesota MDL), deposing David O'Reilly and Claire Xu. The video-taped deposition testimony of these witnesses was played at both the Kansas and Minnesota class trials. Between Ashlea and I, we produced 17 of the class representatives and bellwether plaintiffs for deposition.

c. **Written Discovery/Document Review:** Both Ashlea and I helped draft the initial set of written discovery directed to Syngenta. Paul LLP also participated heavily in the document review. Ashlea participated in the identification of the key custodians and search terms used to identify the critical documents needed for liability, damages, and expert witnesses. Paul LLP was also on the document review team from day one and reviewed tens of thousands of documents.

Paul LLP staff coded the handwritten personal information, including thousands of stewardship agreements produced by Syngenta, that was produced in a format that could not be OCR'ed or searched.

d. **Class Representative/Bellwether Discovery:** Ashlea and I both worked on the class representative and bellwether team. We assisted in the process to select proposed class representatives and potential bellwether plaintiffs, including conducting multiple interviews of farmers, working with their counsel, and conducting in-person meetings. Once selections were made by both Plaintiffs and Syngenta, Paul LLP was directed by Co-Lead Counsel to oversee the discovery of selected bellwethers and class representatives for the states of Ohio, Kansas, and Illinois, in addition to the eight bellwethers and class representatives that were Paul LLP clients. Ashlea was one of the attorneys who negotiated and drafted the ESI search terms that were used to search class representative and bellwethers' computers. In total, Paul LLP oversaw the discovery process for 17 of the class representatives and bellwethers. Our work generally included:

- conducting interviews to gather information for the Plaintiff Fact Sheets;
- completing the Plaintiff Fact Sheets;
- conducting interviews to respond to the Interrogatories, Requests for Admission, and 3 sets of Requests for Production of Documents;
- drafting responses and objections to the written discovery;
- drafting multiple Golden Rule letters to Syngenta's counsel regarding supposed deficiencies in discovery responses;
- on-site document collection;
- working with farmers and Cicayda on ESI document collection from farmers' computers;

- reviewing all documents produced for relevance, privilege, and responsiveness;
- organizing and uploading all documents responsive to the Requests for Production of Documents;
- drafting amendments to responses to Syngenta's written discovery;
- telephone prep-sessions for depositions;
- in-person prep-sessions for depositions;
- defending depositions;
- post-deposition follow-up for changes and errata sheets;
- preparing plaintiff specific information needed by the damages experts; and
- continuing communications with bellwethers and class representatives regarding litigation status and updates.

In addition to the 17 class representatives and bellwethers for the eight certified states, Paul LLP also oversaw the initial discovery phase for six additional farmers (some of whom were our clients and some that were not) who were selected as class representatives for states that were not part of the initial certification motion. Our work with these farmers included preparing the first round of discovery responses, document collection and production, communications regarding status of their class cases, and completing declarations in support of class certification.

e. **Class Certification:** Paul LLP was tasked by Co-Lead Counsel to cumulate for each of the bellwethers and class representatives "Ascertainability Charts," that identified information for several ascertainability issues. One set of charts identified information related to corn sales transactions pulled from the various settlement sheets, sales contracts, and personal farming documents for each year during the statute of limitations. The information from these charts was incorporated into the class certification briefing to prove all class representatives (and

bellwethers) made purchases during the relevant statute of limitations and the extent of those sales. Another set of charts related to livestock and whether the farmer owned livestock, how many, whether the farmer fed corn it raised to livestock and/or feed, and whether the livestock numbers had increased during the statute of limitations period. A third set of charts pertained to ownership arrangements and included information for each farm tract whether it was owned or leased, whether it was cash rent or crop share, and any changes over time for each farm tract.

Additionally, our firm was asked to create a spreadsheet for use in class certification briefing and the hearing that detailed every sale of corn from 2013-2016 for each of the 17 bellwethers and class representatives we worked up. This was an extraordinary effort to identify and document each and every corn sale made in 2013-2016, including who the sale was made to, the price date, settlement date, delivery date, bushels sold, price paid, contract number, and correlating bates numbers for all the data for each plaintiff.

f. **Expert Witnesses:** I served on the expert witness committee. As such, I helped identify and vet potential substantive experts in the areas of containment, agronomy, MIR162 technology, and Chinese regulatory issues.

a. **Dirk Maier:** My firm made the initial contact with and retained the containment expert for the litigation, Dr. Dirk Maier. Thereafter, in collaboration with Scott Powell, Ashlea and I worked with Dr. Maier to provide him the information he needed to complete his expert report and to prepare and produce him for deposition. This required us to spend a substantial amount of time culling Syngenta's document productions for necessary information requested by Dr. Maier to run dispersion models for Viptera. Dr. Maier's report was a critical piece to combat several of Syngenta's summary judgment arguments.

b. **Kevin Latner:** I was part of the team that worked with Plaintiffs' Chinese Regulatory Expert, Dr. Kevin Latner, to provide him the information he needed to prepare his expert report. Ashlea and I both helped prepare him for his deposition. While we ultimately decided not to call Dr. Latner as a witness in the Kansas class action trial, I worked to prepare him to testify, including preparing and conducting a mock cross-examination of Dr. Latner in case we needed him to testify.

c. Ashlea also analyzed the reports of Syngenta's experts Dr. Thurman and Mr. Finch submitted in opposition to Plaintiffs' motion for class certification to address their opinions in Plaintiffs' reply brief in support of class certification.

d. Ashlea also prepared Damage Questionnaires (regarding harvested corn and milo and crop share arrangements) for 4 class representatives and helped Plaintiffs' damage expert, Mr. Eric Frye, prepare his expert report providing individualized analyses of each class representative's damages.

g. **Trial:** Because I was co-lead trial counsel for the first bellwether trial in Minnesota (which began before the Kansas class trial but ended in a mistrial), I had already prepared much of the trial material and shared it with the Kansas class trial team, including deposition designations (which I re-cut based on the theories and time constraints in the Kansas trial), my opening statement and PowerPoint slides, and consulted with the trial team on both direct and cross-examinations.

7. Paul LLP worked with 17 of the class representative or bellwether plaintiffs, each of whom are deserving of a service award. Specific details regarding the class representative and bellwether plaintiffs with whom Paul LLP worked are:

a. Noonan Farms, Inc. Noonan Farms Inc., represented by Ed Noonan, was selected and agreed to serve as an Iowa bellwether plaintiff and as a result of this position, was required to answer Interrogatories, Requests for Admission and two sets of Requests for Production of Documents. In order to respond to the discovery, Mr. Noonan reviewed several years' worth of documents located in his possession, and telephoned third parties to locate additional documents. He contacted his accountant, seed vendors, the elevators where he sells grain, and his insurance provider who all forwarded additional documents. Mr. Noonan also had to work with outside vendor who remotely logged into this computer to search for any responsive documents located in his email account. After his initial discovery response, Mr. Noonan continued to produce additional relevant documents including updating his sales documents as the litigation continued, which required multiple additional phone calls and trips to various offices to keep getting the next year's documents. And, he submitted both supplemental and amended answers to his initial Interrogatories, and amended his Requests for Admission. Mr. Noonan produced nearly 700 pages of documents in response to the discovery. He estimates that he spent over 20 hours completing his plaintiff fact sheet, locating and producing the document required for both his plaintiff fact sheet and the discovery requests, and working with Paul LLP to respond to the discovery and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 7 hours assisting Mr. Noonan with his discovery responses, which included numerous telephone calls, review of his documents, and review of the emails downloaded from Mr. Noonan's home computer. Mr. Noonan sat for a 6 ½ hour deposition in Des Moines, Iowa, which required over four hours of preparation, both in person with Ashlea and I, as well as by telephone. He traveled 5 ½ hours round trip to attend the deposition. Once the deposition concluded, Mr. Noonan spent additional time reading through his deposition transcript and

providing an errata sheet and signature page. With travel time, deposition preparation, and producing Mr. Noonan for deposition, Paul LLP spent 30.5 hours on the deposition of Mr. Noonan. In total, without travel time, Mr. Noonan estimates he spent in excess of 36 hours in pursuit of this litigation, and Paul LLP spent approximately 37.5 hours assisting Mr. Noonan with his discovery obligations.

b. McKee Family Farms. McKee Family Farms, represented by David McKee, was selected and agreed to serve as an Ohio bellwether plaintiff and as a result, was required to respond to Interrogatories, Requests for Admission, two sets of Requests for Production, and a plaintiff fact sheet. Mr. McKee produced nearly 600 pages of documents in response to the discovery some of which he obtained from his own files, and the majority he retrieved personally from the business locations of third parties such as his seed vendors, the elevators where he sells grain, and his insurance provider. After his initial discovery response, Mr. McKee continued to produce additional relevant documents and amended his Requests for Admission following Syngenta's request for clarification. Mr. McKee spent over 16 hours locating and producing the documents in his possession, speaking with and retrieving documents from third parties, and working with Paul LLP to respond to the discovery and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 8.6 hours assisting Mr. McKee with his discovery responses, which included numerous telephone calls, review of his documents, and review of the emails downloaded from Mr. McKee's home computer. Mr. McKee sat for an 8-hour deposition in Columbus, Ohio, which was a 2-hour round trip drive for him, and prepared over 4.5 hours, both in person with Ashlea and I, as well as by telephone. After the conclusion of the deposition, Mr. McKee read his transcript to ensure accuracy. With travel time, deposition preparation, and attendance at the deposition, Paul LLP spent 32.5 hours on the deposition of Mr.

McKee. In total, without travel time, Mr. McKee estimates he spent in excess of 32 hours in pursuit of this litigation and Paul LLP spent over 41 hours assisting him with his discovery obligations.

c. Evelyn I. Linder Child's Trust. Yvonne Vogel on behalf of the Evelyn I. Linder Child's Trust was selected and agreed to serve as an Ohio bellwether and as a result, was required to answer Interrogatories, Requests for Admission, two sets of Requests for Production of Documents, and a plaintiff fact sheet. Ms. Vogel produced over 115 pages of documents in response to the discovery, which she obtained from her own files as well as those she collected from her vendors. She contacted her FSA office, elevators where she sells corn, and her seed distributor to obtain the documents she produced. Ms. Vogel was a landowner and thus had much more difficulty figuring out where to get documents and from whom. She relies solely on her farmer to do the farming, but she does her own selling. After her initial discovery response, Ms. Vogel continued to produce additional relevant documents, including updating her 2016 sales, and submitted two amended responses to her Requests for Admission as a result of Syngenta's request for additional information. She also worked with an outside vendor search her computer for any additional responsive documents located in her email. Ms. Vogel spent over 17 hours locating and producing the documents and working with Paul LLP to respond to the discovery and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent 5.6 hours assisting Ms. Vogel with her discovery responses, which included numerous telephone calls, review of her documents, and review of the emails downloaded from Ms. Vogel's home computer. Ms. Vogel sat for a 6 ½ hour deposition in Fremont, Ohio, which required over 4 hours of preparation, both in person and on the telephone with Ashlea Schwarz. After her deposition, Mr. Vogel reviewed the transcript and provided an errata sheet with corrections. With travel time, deposition preparation and attendance at the deposition, Paul LLP spent 25.1 hours on the

deposition of Ms. Vogel. In total, without travel time, Ms. Vogel spent in excess of 29 hours in pursuit of the litigation, and Paul LLP spent in excess of 30 hours assisting her with her discovery obligations.

d. Russell Koeller. Russell Koeller was selected and agreed to serve as a Illinois bellwether and as a result of this position, he was required to answer Interrogatories, Requests for Admission, two sets of Requests for Production of Documents, and complete a plaintiff fact sheet. Mr. Koeller produced over 1,400 pages of documents in response to the discovery requests, which he obtained from his own files as well as his seed vendors, the elevators where he sells grain, his local FSA office, and his insurance provider. Ashlea and Adam Krause also traveled to Mr. Koeller's home to assist him with his document collection. After his initial discovery response, Mr. Koeller continued to produce additional relevant documents including obtaining updated 2016 sales information, and he submitted an amended response to his Requests for Admission. Mr. Koeller spent over 30 hours locating and producing the documents and working with Paul LLP to respond to the discovery and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 40 hours assisting Mr. Koeller with his discovery responses, which included numerous telephone calls with Mr. Koeller and his vendors, review of his documents, and review of the emails downloaded from Mr. Koeller's home computer. Mr. Koeller sat for a 9-hour deposition in St. Louis, Missouri, which required him to travel 4 hours round trip. In addition, he spent over 5 hours preparing for the deposition, both in person with Ashlea and Adam Krause, as well as by telephone. After the deposition, Mr. Koeller read the lengthy transcript to ensure accuracy and provided an errata sheet. With travel time, deposition preparation and attendance at the deposition, Paul LLP spent 40.2 hours on the deposition of Mr. Koeller. In total, without travel time, Mr. Koeller estimates he spent in excess

of 51 hours in pursuit of this litigation, and Paul LLP spent in excess of 80 hours assisting Mr. Koeller with his discovery obligations.

e. Thomas Justison. Thomas Justison was selected and agreed to serve as an Illinois bellwether plaintiff and as a result of this position, he was required to answer Interrogatories, Requests for Admission, two sets of Requests for Production of Documents, and a plaintiff fact sheet. Mr. Justison produced over 2,500 pages of documents in response to the discovery requests. Because of the large geographic area where Mr. Justison farms, the vendors from whom he gathered documents were widespread. He obtained documents from his own files as well as his seed vendors, the numerous elevators where he sells grain, five FSA offices in the counties where he farms, and his insurance provider. Mr. Justison's brother also assisted with the document collection as some of the records were in his possession. After his initial discovery response, Mr. Justison continued to produce additional relevant documents and submitted amended Interrogatory responses and two amended responses to his Requests for Admission. He also updated his responses in late 2016 to provide new sales information. Mr. Justison spent over 50 hours locating and producing the documents in his possession, retrieving documents from his brother, and those in the possession of his vendors, and working with Paul LLP to respond to the discovery and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 40 hours assisting Mr. Justison with his discovery responses, which included numerous telephone calls with Mr. Justison and his vendors, review of his documents, and review of the emails downloaded from Mr. Justison's home computer. Mr. Justison sat for a 5 ½ hour deposition in St. Louis, Missouri, which required him to travel 2.5 hours round trip. In addition, he spent over 4 hours preparing for the deposition, both in person with Ashlea and Adam Krause, as well as by telephone. After the deposition, Mr. Justison read his transcript for accuracy

and provided an errata sheet. With travel time, deposition preparation and attendance at the deposition, Paul LLP spent 33.2 hours on the deposition of Mr. Justison. In total, without travel time, Mr. Justison estimates he spent over 62 hours in pursuit of this litigation, and Paul LLP spent over 73 hours assisting him with his discovery obligations.

f. Leon Taylor. Leon Taylor was selected and agreed to serve as an Illinois bellwether plaintiff. He was represented in this litigation by William Rosborough, the producer who sharecrops with Mr. Taylor and handles the day-to-day farming operation. Mr. Taylor was required to answer Interrogatories, Requests for Admission, two sets of Requests for Production of Documents, and a plaintiff fact sheet. In response to these discovery requests, Mr. Rosborough produced over 800 pages of documents on behalf of Mr. Taylor, which he obtained from his own files as well as his seed vendors, the elevators where he sells grain, his local FSA office, and his insurance provider. In addition, approximately 42,000 pages of documents were produced for Mr. Taylor and Ms. Boyer as a result of the third-party vendor's search of Mr. Rosborough's computer to locate relevant documents based on search terms defined by defendants. The documents were located in both Missouri and Florida and required substantial time coordinating the efforts in both locations to ensure all documents were provided. After the initial discovery response, Mr. Rosborough continued to produce additional relevant documents, amended the Interrogatory responses twice, and submitted two amended responses to the Requests for Admission. Mr. Rosborough, on behalf of Mr. Taylor, spent approximately 25 hours locating and producing the documents and working with Paul LLP to respond to the discovery and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 5.5 hours assisting Mr. Rosborough with his discovery responses, which included numerous telephone calls, review of his documents, and review of the emails downloaded from Mr.

Rosborough's computer. Mr. Rosborough sat for a 9-hour deposition in Ft. Myers, Florida on behalf of both Mr. Taylor and another bellwether plaintiff, Ms. Boyer. The deposition required over 7 hours of preparation, in person with me and with Ashlea by telephone, as well as Mr. Rosborough's review of all documents on his own. After the deposition, Mr. Rosborough reviewed his lengthy deposition transcript to ensure it was accurate and provided an errata sheet. With travel time, deposition preparation and attendance at the deposition, Paul LLP spent 32.8 hours on the deposition of Mr. Rosborough on behalf of Mr. Taylor and Ms. Boyer. In total, without travel time, Mr. Rosborough estimates he spent in excess of 42 hours in pursuit of this litigation, and Paul LLP spent in excess of 38 hours assisting Mr. Rosborough with his discovery obligations.

g. Sandra Boyer. Sandra Boyer was selected and agreed to serve as was an Illinois bellwether plaintiff. She was represented in this litigation by William Rosborough, the producer who sharecrops with Ms. Boyer and handles the day-to-day farming operation. Ms. Boyer was required to answer Interrogatories, Requests for Admission, two sets of Requests for Production of Documents, and a plaintiff fact sheet. In response to these discovery requests, Mr. Rosborough produced approximately 800 pages of documents on behalf of Ms. Boyer, which he obtained from his own files as well as his seed vendors, the elevators where he sells grain, his local FSA office, and his insurance provider. In addition, approximately 42,000 pages of documents were produced for Ms. Boyer and Mr. Taylor as a result of the third-party vendor's search of Mr. Rosborough's computer to locate relevant documents based on search terms defined by defendants. The documents were located in both Missouri and Florida and required substantial time coordinating the efforts in both locations to ensure all documents were provided. After the initial discovery response, Mr. Rosborough continued to produce additional relevant documents, amended the Interrogatory responses twice, and submitted two amended responses to the Requests for

Admission. Mr. Rosborough, on behalf of Ms. Boyer, spent over 25 hours locating and producing the documents and working with Paul LLP to respond to the discovery and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 5.5 hours assisting Mr. Rosborough with his discovery responses, which included numerous telephone calls, review of his documents, and review of the emails downloaded from Mr. Rosborough's home computer. Mr. Rosborough sat for a 9-hour deposition in Ft. Myers, Florida on behalf of both Mr. Taylor and another bellwether plaintiff, Ms. Boyer. The deposition required over 7 hours of preparation, in person with me and with Ashlea by telephone, as well as Mr. Rosborough's review of all documents on his own. After the deposition, Mr. Rosborough reviewed his lengthy deposition transcript to ensure it was accurate and provided an errata sheet. With travel time, deposition preparation and attendance at the deposition, Paul LLP spent 32.8 hours on the deposition of Mr. Rosborough on behalf of Mr. Taylor and Ms. Boyer. In total, without travel time, Mr. Rosborough estimates he spent in excess of 42 hours in pursuit of this litigation, and Paul LLP spent in excess of 38 hours assisting Mr. Rosborough with his discovery obligations.

h. J3B Partnership. J3B Partnership, represented by its owner, Don Prohaska, was selected and agreed to serve as an Iowa bellwether plaintiff and as a result of this position, he was required to answer Interrogatories, Requests for Admission, two sets of Requests for Production of Documents, and a plaintiff fact sheet. Mr. Prohaska produced over 500 pages of documents in response to the discovery, which he obtained from his own files as well as his seed vendors, the elevators where he sells grain, his accountant, and his insurance provider. After his initial discovery response, Mr. Prohaska continued to produce additional relevant documents, amended his Requests for Admission to clarify his responses, and supplemented his responses to include his

2016 sales after harvest. Mr. Prohaska spent over 18 hours locating and producing the documents, contacting third party vendors for missing information, and working with Paul LLP to respond to the discovery and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 7.3 hours assisting Mr. Prohaska with his discovery responses, which included numerous telephone calls, review of his documents, and review of the emails downloaded from Mr. Prohaska's home computer. Mr. Prohaska sat for a 9-hour deposition in Des Moines, Iowa, which required over six hours of preparation, both in person with Ashlea and I, as well as by telephone. In addition, Mr. Prohaska had to travel 4 hours round trip to attend the deposition. After the deposition, he reviewed his lengthy deposition transcript to ensure accuracy and provided an errata sheet. With travel time, deposition preparation and attendance at the deposition, Paul LLP spent 45.5 hours on the deposition of Mr. Prohaska. In total, without travel time, Mr. Prohaska estimates he spent in excess of 39 hours in pursuit of this litigation, and Paul LLP spent in excess of 52 hours assisting Mr. Prohaska with his discovery obligations.

i. Partners 5 LLC. Partners 5 LLC, represented by owner Vincent Schroeder, was selected and agreed to serve as an Ohio bellwether plaintiff. Partners 5 LLC was required to answer Interrogatories, Requests for Admission, two sets of Requests for Production of Documents and a plaintiff fact sheet. Mr. Schroeder produced over 1,550 pages of documents in response to the discovery requests, which he obtained from his own files as well as his seed vendors, the elevators where he sells grain, his local FSA office, and his insurance provider. After his initial discovery response, Mr. Schroeder continued to produce additional relevant documents and amended his Requests for Admission to clarify his responses. After harvest in 2016, Mr. Schroeder updated his sales information and provided purchase contracts. Mr. Schroeder spent over 25 hours locating and producing documents and working with Paul LLP to respond to discovery requests and

subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 13.4 hours assisting Mr. Schroeder with his discovery responses, which included numerous telephone calls, review of his documents, and review of the emails downloaded from Mr. Schroeder's home computer. Mr. Schroeder sat for a 7 ½ hour deposition in Columbus, Ohio, which required over 5 hours of preparation, both in person with Ashlea and I, as well as by telephone. In addition, Mr. Schroeder had to travel 4 hours round trip to attend the deposition. After the deposition, Mr. Schroeder reviewed his transcript for accuracy and provided the necessary errata sheet and signature pages. With travel time, deposition preparation, and attendance at the deposition, Paul LLP spent 38.4 hours on the deposition of Mr. Schroeder. In total, without travel time, Mr. Schroeder estimates he spent over 43 hours in pursuit of this litigation, and Paul LLP spent over 51 hours assisting Mr. Schroeder with his discovery obligations.

j. Gary Duane Matthews. Gary Matthews was selected and agreed to serve as an Ohio bellwether plaintiff and was required to answer Interrogatories, Requests for Admission and two sets of Requests for Production of Documents. Mr. Matthews produced approximately 820 pages of documents in response to discovery requests over a nine-month period, which he obtained from his own files as well as his seed vendors, the elevators where he sells grain, and his insurance provider. After his initial discovery response, Mr. Matthews continued to produce additional relevant documents and submitted two amended answers to his initial Interrogatories, amended his Requests for Admission, and updated his 2016 sales information after harvest. Mr. Matthews spent over 16 hours locating and producing documents and working with Paul LLP and The Gibbs Firm (his personal counsel) to respond to discovery requests and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 8 hours

assisting Mr. Matthews with his discovery responses, which included numerous telephone calls, review of his documents, and review of the emails downloaded from Mr. Matthews's home computer. In addition, pursuant to the billing records I have reviewed, his local counsel, The Gibbs Firm, billed 38 hours assisting Mr. Matthews with his discovery obligations, including an in-person meeting at Mr. Matthews' home to assist in the document collection. Mr. Matthews sat for a 7 ½ hour deposition in Fremont, Ohio and spent 4.7 hours in preparation, both in person as well as by telephone with Ashlea. Mr. Matthews traveled 2 hours round trip to attend his deposition. After the deposition, Mr. Matthews reviewed his transcript for accuracy and provided an errata sheet. With travel time, deposition preparation, and attendance at the deposition, Paul LLP spent 23.7 hours on the deposition of Mr. Matthews. In total, without travel time, Mr. Matthews estimates he spent over 31 hours in pursuit of this litigation, and counsel spent in excess of 69 hours assisting Mr. Matthews with his discovery obligations.

k. Dustin Wegner and Wegner Hillside Farms. Dustin Wegner and Wegner Hillside Farms were selected and agreed to serve as Nebraska bellwether plaintiffs and as such, were required to each answer Interrogatories, Requests for Admission, two sets of Requests for Production of Documents, and a plaintiff fact sheet. Mr. Wegner produced over 560 pages of documents in response to the discovery, which he obtained from his own files as well as retrieving records from the offices of his seed vendors, the elevators where he sells grain, his local FSA office, and his insurance provider. After his initial discovery responses, Mr. Wegner continued to produce additional relevant documents and submitted amended Interrogatory responses and amended responses to his Requests for Admission. He also updated his 2016 sales information after harvest. Mr. Wegner spent over 30 hours locating and producing the documents in his possession and in the possession of his vendors, and working with Paul LLP to respond to the

discovery and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 13 hours assisting Mr. Wegner with his discovery responses, which included numerous telephone calls with Mr. Wegner and his vendors, review of his documents, and review of the emails downloaded from Mr. Wegner's home computer. Mr. Wegner was deposed for 5 ½ hours in Lincoln, Nebraska, which required him to travel 2 hours round trip. In addition, he spent over 4.5 hours preparing for the deposition, both in person with Ashlea, as well as by telephone. With travel time, deposition preparation and attendance at the deposition, Paul LLP spent 17.7 hours on the deposition of Mr. Wegner. In total, without travel time, Mr. Wegner estimates he spent over 43 hours in pursuit of this litigation, and Paul LLP spent over 30 hours assisting Mr. Wegner with his discovery obligations.

l. James Shortt Trust. The James Shortt Trust, through Trustee James Shortt, was selected and agreed to serve as a Kansas bellwether plaintiff and as such, he was required to answer Interrogatories, Requests for Admission, two sets of Requests for Production of Documents and a plaintiff fact sheet. Mr. Shortt produced over 180 pages of documents in response to the discovery requests, which he obtained from his own files as well as personally retrieving records from the offices of his seed vendors, the elevators where he sells grain, his local FSA office, and his insurance provider. After his initial discovery responses, Mr. Shortt continued to produce additional relevant documents and submitted amended Interrogatory responses and amended responses to his Requests for Admission. Mr. Shortt spent approximately 20 hours locating and producing the documents in his possession and in the possession of his vendors, and working with Paul LLP to respond to the discovery and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 4.7 hours assisting Mr. Shortt with his discovery responses, which included numerous telephone calls with him, review of

his documents, and review of the emails downloaded from Mr. Shortt's home computer. Mr. Shortt was deposed for 3 hours in Manhattan, Kansas. In addition, he spent approximately 2 hours preparing for the deposition, both in person with Ashlea, as well as by telephone. After the deposition, Mr. Shortt reviewed his transcript for accuracy and provided an errata sheet. With travel time, deposition preparation and attendance at the deposition, Paul LLP spent 10 hours on the deposition of Mr. Shortt. In total, without travel time, Mr. Shortt estimates he spent in excess of 26 hours in pursuit of the litigation, and Paul LLP spent over 14 hours assisting Mr. Shortt with his discovery obligations.

m. Joseph Murnane Trust. The Joseph Murname Trust through Trustee Joseph Murnane, was selected and agreed to serve as a Kansas bellwether plaintiff and as such, was required to answer Interrogatories, Requests for Admission, two sets of Requests for Production of Documents, and a plaintiff fact sheet. Mr. Murnane produced over 100 pages of documents in response to the discovery requests, which he obtained from his own files as well as personally retrieving records from the offices of his seed vendors, the elevators where he sells grain, his local FSA office, and his insurance provider. After his initial discovery responses, Mr. Murnane continued to produce additional relevant documents and submitted amended Interrogatory responses and amended responses to his Requests for Admission. Mr. Murnane spent approximately 15 hours locating and producing the documents in his possession and in the possession of his vendors, and working with Paul LLP to respond to the discovery and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 6.2 hours assisting Mr. Murnane with his discovery responses, which included numerous telephone calls with him, review of his documents, and review of the emails downloaded from Mr. Murnane's computer. He was deposed for 3 hours in Joplin, Missouri which required

him to travel 2 hours round trip. In addition, he spent approximately 4.2 hours preparing for the deposition, both in person with me, as well as by telephone with Ashlea. After the deposition, Mr. Murnane reviewed his transcript and provided an errata sheet. With travel time, deposition preparation and attendance at the deposition, Paul LLP spent 14.5 hours on the deposition of Mr. Murnane. In total, without travel time, Mr. Murnane estimates he spent in excess of 22 hours in pursuit of this litigation, and Paul LLP spent in excess of 20.5 hours assisting Mr. Murnane with his discovery obligations.

n. R&R Farms LLC and Ensor Brothers. R&R Farms LLC and Ensor Brothers, both represented by Richard Ensor, were selected and agreed to serve as Missouri class representatives and were required to each answer Interrogatories, Requests for Admission, two sets of Requests for Production of Documents, and a plaintiff fact sheet. Mr. Ensor produced over 2,000 pages of documents in response to the discovery all of which he obtained from his own files with the exception of the insurance records. After his initial discovery responses, Mr. Ensor continued to produce additional relevant documents and submitted amended Interrogatory responses and amended responses to his Requests for Admission in response to Syngenta's demands for additional information. Mr. Ensor and his wife Julie spent over 150 hours locating and producing the documents in their possession which, because of the time frame involved, required them to search through their closed files. Additionally, the Ensors operate R&R Farms and Ensor Brothers separately and thus, in effect, were required to do the searching and document collection twice. Paul LLP attorneys and staff spent approximately 23 hours assisting Mr. Ensor with his discovery responses, which included numerous telephone calls with the Ensors, review of their extensive documents, and review of the emails downloaded from the Ensor's computer. Mr. Ensor was deposed for 4 hours in Kansas City, Missouri, which required him to travel 6 hours round trip. In

addition, he spent over 4 hours preparing for the deposition, both in person with Ashlea and I, as well as by telephone. Mr. Ensor reviewed his transcript after the deposition and provided an errata sheet. With deposition preparation and attendance at the deposition, Paul LLP spent 8 hours on the deposition of Mr. Ensor. Because Missouri was going to be the next class trial to take place, Mr. Ensor and Paul LLP had begun trial preparations. Ashlea and I traveled to Holliday, Missouri to meet with Mr. Ensor and collect updated documents, which would be required for trial. Mr. Ensor spent 3 hours preparing for trial, and with travel time, Paul LLP spent 21.8 hours on trial preparation of Mr. Ensor. In total, without travel time, Mr. Ensor estimates he spent in excess of 168 hours in pursuit of this litigation, and Paul LLP spent in excess of 52.5 hours assisting Mr. Ensor with his discovery obligations and preparing him for trial.

o. R&D Chism Farms LLC. R&D Chism Farms LLC, represented by its owner, Daniel Chism, was selected and agreed to serve as an Iowa class representative and as a result, was required to answer Interrogatories, Requests for Admission and two sets of Requests for Production of Documents. Mr. Chism produced over 725 pages of documents in response to the discovery requests, which he obtained from his own files as well as his seed vendors, the elevators where he sells grain and his insurance provider. After his initial discovery response, Mr. Chism continued to produce additional relevant documents and amended his Requests for Admission to clarify his responses. In addition, he contacted seven grain-handling facilities after the 2016 harvest in order to update his records and provide sales contracts. Mr. Chism spent approximately 25-30 hours locating and producing the documents and working with Paul LLP to respond to the discovery and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 29.7 hours assisting Mr. Chism with his discovery responses, which included numerous telephone calls with Mr. Chism and his vendors, review of

his documents, and review of the emails downloaded from Mr. Chism's computer. He sat for a 7.5-hour deposition in Ft. Dodge, Iowa, which required over 4 hours of preparation, both in person with Adam Krause, as well as by telephone. In addition, Mr. Chism had to travel 3 hours round trip to attend the deposition. After the deposition, Mr. Chism spent additional time reviewing the transcript to ensure accuracy and provided an errata sheet. With travel time, deposition preparation and attendance at the deposition, Paul LLP spent 21.3 hours on the deposition of Mr. Chism. In total, without travel time, Mr. Chism estimates he spent in excess of 40 hours in pursuit of this litigation, and Paul LLP spent 51 hours assisting Mr. Chism with his discovery obligations.

p. John Holmbeck. John Holmbeck was selected and agreed to serve as a Nebraska class representative and as a result, was required to answer Interrogatories, Requests for Admission, two sets of Requests for Production of Documents, and a plaintiff fact sheet. Mr. Holmbeck produced nearly 900 pages of documents in response to the discovery which he obtained from his own files as well as from his seed vendors, the elevators where he sells grain and his insurance provider. Mr. Holmbeck was residing out of state for a period of time while collecting documents, which required additional effort on his part to contact all his vendors since he did not have immediate access to his own records. After his initial discovery response, Mr. Holmbeck continued to produce additional relevant documents and amended his answers to the Interrogatories and Requests for Admission to clarify his responses and add additional information. Mr. Holmbeck spent approximately 25 hours locating and producing documents and working with Paul LLP to respond to the discovery requests and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 15.2 hours assisting Mr. Holmbeck with his discovery responses, which included numerous telephone calls with Mr. Holmbeck and his vendors, review of his documents, and review of the emails downloaded from

his computer. Mr. Holmbeck was deposed for 4.5 hours in Lincoln, Nebraska, which required over 4.5 hours of preparation, both in person with Ashlea, as well as by telephone. In addition, Mr. Holmbeck had to travel over 2 hours round trip to attend the deposition. With travel time, deposition preparation and attendance at the deposition, Paul LLP spent 12.5 hours on the deposition of Mr. Holmbeck. In total, without travel time, Mr. Holmbeck estimates he spent in excess of 35 hours in pursuit of this litigation, and Paul LLP spent in excess of 27 hours assisting Mr. Holmbeck with his discovery obligations.

q. Eugene Goering. Eugene Goering was selected and agreed to serve as a Kansas bellwether plaintiff and as a result, he was required to answer Interrogatories, Requests for Admission, two sets of Requests for Production of Documents, and a plaintiff fact sheet. Mr. Goering produced 1760 pages of documents in response to the discovery requests, which he obtained from his own files as well as documents located at his bank, and spent an entire day copying bank records which were not in his possession. After his initial discovery response, Mr. Goering continued to produce additional relevant documents and amended his answers to the Requests for Admission twice to clarify his responses and add additional information. Mr. Goering spent approximately 24 hours locating and producing documents and working with Paul LLP and Watts Guerra LLP (his personal counsel) to respond to discovery requests and subsequent demands by Syngenta's counsel for additional information. Paul LLP attorneys and staff spent approximately 15.5 hours assisting Mr. Goering with his discovery responses, which included numerous telephone calls with Mr. Goering and his vendors, review of his documents, and review of the emails downloaded from his computer. Mr. Goering was deposed for 7 hours in Wichita, Kansas, which required over 5 hours of preparation, both in person with Ashlea, as well as by telephone. In addition, he had to travel 2 hours round trip to attend the deposition. After the

deposition, Mr. Goering reviewed his transcript to ensure accuracy and provided an errata sheet. With travel time, deposition preparation and attendance at the deposition, Paul LLP spent 21.3 hours on the deposition of Mr. Goering. In total, without travel time, Mr. Goering estimates he spent in excess of 40 hours in pursuit of this litigation, and Paul LLP spent in excess of 36 hours assisting Mr. Goerring with his discovery obligations.

r. James McKinney. James McKinney was selected and agreed to serve as an Illinois bellwether plaintiff and was required to respond to discovery. Mr. McKinney collected over 530 pages of documents from his personal files, and also retrieved documents in person from his local FSA office, his seed dealer, his insurance provider, and the elevator where he sells his corn. Mr. McKinney was also deposed and spent time preparing for the deposition with his personal counsel, Holland Law Firm, both in person and by telephone. Mr. McKinney spent approximately 50 hours preparing for and attending his deposition, locating and producing the documents and working with Paul LLP and Holland Law Firm to respond to the discovery and subsequent demands by Syngenta's counsel for additional information. Mr. McKinney as asked at least seven times to supplement his answers, provide additional information, execute additional authorizations and/or provide additional documents. In at least two instances, the third-party vendors would not accept Mr. McKinney's release and he was required to travel a long distance to retrieve records. According to their time sheets, Holland Law Firm billed 121.2 hours assisting Mr. McKinney with his document production, reviewing documents, and drafting discovery responses and amendments.

s. Mark Lueder. Mark Lueder was selected and agreed to serve as an Indiana class representative and as such, he was required to respond to discovery. Mr. Lueder collected over 110 pages of documents from his local FSA office, his seed dealer, the elevators where he sells his

corn, and his insurance provider. He spent approximately 8 hours collecting the documents, and Paul LLP spent approximately 4 hours working with Mr. Lueder to respond to the discovery and review his documents.

t. Thomas Goode. Thomas Goode was selected and agreed to serve as an Indiana class representative and as such, he was required to respond to discovery. Mr. Goode collected over 100 pages of documents from his files and those of his vendors including his local FSA office, seed dealer, elevator, and insurance provider. Mr. Goode does not recall the exact amount of time he spent collecting documents, but assumes it was in excess of 8 hours. Paul LLP spent approximately 9 hours working with Mr. Goode, reviewing his documents and responding to discovery.

u. Little Omega Farms Partnership. Little Omega Farms Partnership, represented by George Cunningham, was selected and agreed to serve as a Mississippi class representative and was therefore required to respond to discovery. Mr. Cunningham produced 268 pages of documents from his files and spent between fifteen and twenty hours going through his files to locate the documents. Paul LLP spent approximately 2 hours working with Mr. Cunningham to respond to discovery requests and review documents.

8. Paul LLP maintains contemporaneous records of its time and expenses in the ordinary course of business. Paul LLP bills time both on an hourly and a contingent fee basis and uses the same timekeeping practices for both.

9. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the federal MDL.

10. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent on behalf of my individual clients who were not either

bellwether or class representative plaintiffs. In addition, Paul LLP was one of only two firms to serve as part of the Plaintiffs' Leadership in both the federal and Minnesota MDLs. Throughout the pendency of the global litigation, Paul LLP kept two separate timekeeping systems to track Kansas and Minnesota time to ensure that no time or expense was double-billed. When we performed common benefit work, or incurred a common benefit expense, for the benefit of both the federal and Minnesota MDLs, we split the time and/or expense evenly between the two to avoid duplication.

11. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

12. Even before the final review of our time referenced in paragraph 11, each month before submitting our time to Co-Lead Counsel in the federal MDL, Ashlea and I both reviewed all staff and attorney time to ensure entries were appropriately billed, tracked in the correct MDL, and were reasonable entries for the work performed. This frequently led to the amount of time being cut or time being re-allocated from the Federal MDL common benefit billing file to either the Minnesota billing file or a separate file we kept for work performed for our roughly 1,400 clients. Notably, we have over $1.6 million in billings for time related to our individual clients that we did not deem to be common benefit time, which is more time than we billed as common benefit in the Federal MDL. This includes filling out plaintiff fact sheets, providing status reports and general information about the litigation, and ultimately filling out their claim forms. As a further example, Paul LLP oversaw the discovery and contact with several of the class representatives, Ashlea attended several hearings, conferences, and telephone calls related to class certification and scheduling/discovery of the 14 state classes that had not been certified yet. During the re-review

process, we chose to cut all time related to these hearings, conferences, and telephone calls as those classes did not move forward before settlement.

13. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

14. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $1,379,386.50. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
Schwarz, Ashlea	Of Counsel	1,074.50	$500.00	$537,250.00
Rowe, Steven	Paralegal	868.80	$225.00	$195,480.00
Becker, Sue	Associate	376.60	$275.00	$103,565.00
Williams, Pam	Paralegal	339.70	$175.00	$59,447.50
Paul, Rick	Partner	335.40	$650.00	$218,010.00
Casady, Melissa	Paralegal	308.30	$175.00	$53,952.50
Krause, Adam	Associate	181.70	$225.00	$40,882.50
Cracken, John	Of Counsel	158.60	$675.00	$107,055.00
John, Kendra	Paralegal	151.70	$185.00	$28,064.50
Estell, Sydney	Paralegal	83.40	$125.00	$10,425.00
Kinsman, Robert	Associate	63.80	$225.00	$14,355.00
Riemensnider, Cam	Paralegal	34.90	$175.00	$6,107.50
Neal, Pat	Paralegal	26.40	$150.00	$3,960.00
Davis, Linda	Paralegal	3.20	$175.00	$560.00
Webb, Heather	Paralegal	2.00	$100.00	$200.00
Abbott, Caroline	Paralegal	0.80	$90.00	$72.00
TOTALS		4,009.80		$1,379,386.50

15. Between the Kansas and Minnesota MDLs, including the non-common benefit time we spent representing our individual clients, nearly half of the total time worked by my firm in 2016 and 2017 was spent on this litigation, and nearly one-quarter in 2015. Personally, over 90% of all the hours I billed in 2016 was billed to this litigation and over 70% in 2017. Similarly, nearly 80% of Ashlea's time in 2016 and nearly 70% in 2017 was spent on this litigation. For much of

this time, Paul LLP had 4 attorneys and 3 paralegals, so it is not a stretch to say that Ashlea and I bet our law firm on this litigation. We turned down other work we did not have time to appropriately handle on behalf of other clients because the demands of this litigation precluded us from taking on other cases.

16. My firm seeks reimbursement, without markup, of $216,571.29 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Description of Costs	Amount
Federal Express	120.76
Postage	33.39
In House Photocopies ($.03-.05/page)	920.06
Outside Photocopies	22.46
Hotels / Lodging	8,496.62
Meals	1,445.56
Mileage Reimbursement	1,189.64
Airfare	10,390.36
Deposition Costs	620.00
Westlaw Charges	32.72
Transportation (Cabs, airport parking)	3,299.72
Litigation Fund Assessment	$190,000.00
TOTAL	**$216,571.29**

17. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

18. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Kansas City, Missouri.

/s/Richard M. Paul, III
Richard M. Paul III

601 Walnut, Suite 300
Kansas City, Missouri 64106
Tel (816) 984-8100
Fax (816) 984-8101

www.PaulLLP.com

Rick Paul and Ashlea Schwarz founded Paul LLP after years of litigating high stakes commercial cases together. We have fought against some of the biggest companies in the country, including Syngenta, Monsanto, JPMorgan Chase, Phillips 66, Commerce Bank, General Motors, and Wal-Mart. And we have won big. We founded the firm on two overriding principles: (1) a strong passion for litigating cases on behalf of our clients; and (2) a desire to make meaningful, industry-wide changes that create reshaped markets and improved lives.

The Work We Do

Agriculture: Agricultural law is rapidly developing—almost as fast as the advances in technology are being put on the market. Uniquely situated in the heart of farming country, we have a deep knowledge of how law and agriculture intersect, including the areas of negligence, crop-drift, trespass, antitrust, food safety, trade, marketing, and resource management. Our lawyers are well-versed in the common law and regulatory requirements related to agricultural production in individual, mass, and class actions.

Antitrust: Antitrust laws were enacted to ensure that businesses play by the rules. We make sure that companies who engage in unfair business practices are kept in check, allowing other businesses the opportunity to compete in a fair marketplace.

Class and Collective Actions: We know how difficult it is for a single person to bring a case against a large corporation or entity. The enormity of this task prevents many people from pursuing legitimate claims, which allows companies to continue with unsafe, unlawful, or unfair practices. These are often pervasive, industry-wide violations. Our

attorneys have the assets and skill sets necessary to bring about meaningful change whether it be through mass, class, or collective actions.

Commercial Litigation: Partnerships within or between businesses often lead to disputes. When partnerships are exploited, or contracts are not followed through on, we help pick up the pieces.

Commodities: In recent years, trillions of dollars in financial losses have been attributed to unlawful investment practices. We help protect both individual and institutional investors whose financial losses resulted from fraud, breaches in fiduciary duty, and other violations of securities laws. This includes misinforming shareholders, failing to disclose information to shareholders, misrepresentation, and more.

Intellectual Property: Great ideas deserve protection. That's why laws exist to guard intellectual property, including copyright, trademarks, and patents. When works and ideas created by an individual or company are exploited by others, we help ensure that credit is duly awarded. Our contingency fee structuring allows individuals to bring cases they otherwise may not be able to afford.

Products Liability: We have a breadth of experience in ensuring manufacturers take responsibility for products that cause harm or injury to consumers. Injury and financial harm can result from products with faulty design or improper manufacturing, as well as a company's failure to warn consumers of possible injury or unwanted side effects from use of that product.

The Results We Have Achieved

In re Syngenta MIR162 Corn Litigation (District of Kansas) and *In re Syngenta Litigation* (Minnesota Fourth Judicial District) (trial counsel for individual bellwethers and Minnesota class leading to $1.51 Billion settlement)

In re General Motors Dex-Cool Cases (Alameda County Superior Court, California; Jackson County Circuit Court, Missouri) (negotiated cash reimbursements for class for vehicle repairs)

In re Eclipse Aviation Depositor Litigation (Bernalillo County, New Mexico) (negotiated settlement of approximately $49,000,000 on behalf of purchasers of jet aircraft)

In re: Air Crash of N51RX (Santa Fe County, New Mexico) (negotiated complex 8-figure settlement in a 5-death air ambulance crash with multiple defendants and insurance companies)

Malloy v. Pratt & Whitney (U.S. District Court, Northern District of Oklahoma) ($2.1 million settlement of product liability claim for defective aircraft engines)

In re Great Plains Air Lines (U.S. Bankruptcy Court, Northern District of Oklahoma) (negotiated confidential settlement with officers and directors of defunct regional airline carrier)

In re Mountain Energy Corp. (U.S. Bankruptcy Court, Western District of Missouri) (officer/director liability, negotiated 14-party settlement with more than $60 million recovery)

In re Oak Hills Drilling & Operating Co. (U.S. Bankruptcy Court, Eastern District of Oklahoma) (obtained judgment after trial for over $1.5 million on behalf of bankruptcy estate)

De La Cruz v. Masco Retail Cabinet Group (Arbitration – AAA) (obtained $2.6 million arbitration award for group of account representatives who were misclassified in violation of the FLSA)

Malloy v. Commerce Bank (District Court of Tulsa County, Oklahoma) (negotiated settlement for claims alleging aiding and abetting breach of fiduciary duty, fraudulent transfers, and civil conspiracy on behalf of bankruptcy estate)

Sanchez v. DISH Network LLC (Arbitration – AAA) (received $2.9 million judgment on behalf of 3,000 call center employees seeking unpaid overtime wages under the FLSA)

Cabreros, et al. v. Spansion, LLC et al. (U.S. Bankruptcy Court, District of Delaware) (negotiated $8 million settlement of a California class action for violations of the Worker Adjustment and Retraining Notification Act)

PAUL LLP
TRIAL ATTORNEYS

The Lawyers and Reputation We Enjoy

Rick Paul

Rick, managing partner of Paul LLP, specializes in complex antitrust, business, bankruptcy, product liability, and consumer litigation—typically involving multi-parties, class or mass actions, or bankruptcy estates. Rick graduated from the University of Missouri-Columbia School of Law, where he served as Associate Managing Editor of the Missouri Law Review. After law school, Rick was a judicial law clerk at the Missouri Supreme Court and the Missouri Court of Appeals, Western District. In 1996, he began private practice with the firm formerly known as Shughart Thomson & Kilroy, a large Kansas City law firm with offices in Missouri, Kansas, Colorado, and Arizona. In 2002, the Board of Directors of Shughart Thomson elected him a Shareholder and Director. In 2008, Rick moved his practice to Stueve Siegel Hanson LLP. In May 2013, Rick started Paul LLP.

Rick has recovered more than $2 billion for his clients through trial or settlement. Rick has been appointed by numerous courts across the country to serve as lead class counsel in class actions and MDL proceedings and as special litigation counsel for bankruptcy trustees in numerous bankruptcy estates. Currently, Rick is serving on the Plaintiffs' Executive Committee in *In re Dicamba Herbicides Litigation*, MDL 2820, pending in the United States District Court for the Eastern District of Missouri.

Rick enjoys being in the courtroom and has tried and won many types of cases in jury trials, bench trials, and arbitrations. He has repeatedly been brought in to a case shortly before trial for just that purpose. Recently, Rick served as trial counsel in the *In re Syngenta Litigation* pending in the Minnesota Fourth Judicial District. Rick was co-lead trial counsel for the first individual bellwether trial as well as the Minnesota class action trial. During the third week of the Minnesota class trial, the litigation was settled on behalf of all farmers (individual and classes) across the country. This is just the most recent in a string of litigations where Rick has been lead trial counsel, including two class arbitrations, where he prevailed in both. He has also argued more than 40 appeals to various state and federal appellate courts and briefed over 100 appeals.

Rick is active in the local bar, including the Kansas City Metropolitan Bar Association and the Lawyers Association of Kansas City. In 2004, he served as the Chair of the Appellate Courts Committee of the KCMBA. He has also served as Vice-Chair on the Business Torts Committee, where he authored the Chapter on Fiduciary Duties for the Business Torts Handbook. Rick is a frequent speaker and moderator at seminars and presentations on handling appeals, electronic discovery, and the use of technology in the courtroom. In 2006,

Missouri Lawyers Weekly named Rick as one of eight “Up and Coming Lawyers.” He has also been named a “Missouri/Kansas Super Lawyer,” is listed on American Registry’s “Top Attorneys in Missouri/Kansas,” and is a member of The National Trial Lawyers: Top 100. He has an AV Preeminent Peer Review Rating with Martindale-Hubbell and is listed as a 2012 Top Rated Lawyer in Appellate Law.

Court Admissions

Missouri, 1995	U.S. Court of Appeals, 9th Circuit
Kansas, 1997	U.S. Court of Appeals, 10th Circuit
U.S. Supreme Court	U.S. Court of Appeals, 11th Circuit
U.S. Court of Appeals, 3rd Circuit	U.S. District Court, District of Colorado
U.S. Court of Appeals, 4th Circuit	U.S. District Court, District of Kansas
U.S. Court of Appeals, 6th Circuit	U.S. District Court, Eastern District of Missouri
U.S. Court of Appeals, 7th Circuit	U.S. District Court, Western District of Missouri
U.S. Court of Appeals, 8th Circuit	U.S. District Court, Eastern District of Wisconsin

Education

University of Missouri-Columbia School of Law, Columbia, Missouri, 1995
J.D., Assistant Managing Editor, Missouri Law Review
University of Missouri, Columbia, Missouri, 1992
B.A., Economics and Political Science, Honors College
Honors: MU Varsity Tennis Team, Letter winner; Academic All Big-8

PAUL LLP
TRIAL ATTORNEYS

Ashlea Schwarz

Ashlea litigates complex business disputes including claims for breach of contract, breach of fiduciary duty, intellectual property and trade secrets, fraud, and misrepresentation. She also represents clients in a range of litigation matters including complex, consumer class and collective actions, and acts as special counsel for Chapter 7 bankruptcy trustees in multifaceted adversary proceedings to bring monies back into the estate to pay creditors typically including for fraudulent transfers, aiding and abetting, breach of fiduciary duties, conspiracy, re-characterizing debt instruments as equity, equitable subordination, products liability, and director/officer liability.

Ashlea has represented thousands of clients from the inception of a case through a verdict and litigated over 50 mass and class actions. Ashlea has taken 6 cases to trial, including two collective/class actions where she recovered over $5 million collectively for her clients. Her practice is nationwide and traditionally includes multi-party and multi-district litigation.

Ashlea remains involved in the legal community through her work as a board member for the Kansas City Bar Association's Federal Court Advocates Section, subcommittee chair for American Women Lawyers, and participation in the Lawyers Association of Kansas City. She is a contributing author for the American Bar Association's yearly FLSA Midwinter Report and co-author of *FLSA Arbitration Strategies* for the April 2013 edition of Trial Magazine, Employment Law. In 2014, she was named one of Missouri Lawyers' Weekly's "Up and Coming Lawyers," an award recognizing litigators under age 40 who demonstrate excellence in the legal profession and in their commitment to their communities. Ashlea continues to be selected yearly as a Kansas City Business Journal Rising Star and Super Lawyers' Missouri and Kansas Rising Star.

Court Admissions

Missouri, 2007
Kansas, 2008
U.S. Court of Appeals, 4th Circuit
U.S. Court of Appeals, 10th Circuit
U.S. District Court, District of Colorado
U.S. District Court, District of Kansas
U.S. District Court, Western District of Missouri

PAUL LLP
TRIAL ATTORNEYS

Education

University of Kansas School of Law, Lawrence, Kansas, 2007
J.D., Clerk for Judge Julie Robinson, U.S. District, District of Kansas, 2005-2006
Honors: P. Mize Award for Trial Advocacy, Robert F. Bennett Award for Public Service

Kansas State University, Manhattan, Kansas, 2004
B.A. in Journalism and Mass Communications and minors in English and German
Honors: Phi Beta Kappa, Phi Kappa Phi, Golden Key, Journalism and Mass Communication Ambassador, K-State Student Foundation Board Member, University Ambassador

PAUL LLP
TRIAL ATTORNEYS

Sean Cooper

Sean focuses his practice on complex commercial litigation, class actions, wrongful death and catastrophic injury, antitrust litigation, mass torts and wage and hour litigation. Sean earned his J.D. from the University of Kansas School of Law in 2013. During law school, Sean was an Associate Editor of the Kansas Law Review and won CALI Excellence for the Future Awards in KU's Immigration and Asylum Clinic and International Human Rights Law. Before law school, Sean earned a B.A. in English from Truman State University and graduated summa cum laude. Sean also received his M.A. in English from Truman State, where he was graduate student of the year in the English program. Sean was a four-year varsity tennis player at Truman State, posting one of the winningest records in school history. After receiving his M.A., Sean taught English as a second language in Bangkok, Thailand.

Court Admissions

Missouri, 2013
Kansas, 2014
U.S. Court of Appeals, 7th Circuit
U.S. Court of Appeals, 8th Circuit
U.S. District Court, District of Kansas
U.S. District Court, Western District of Missouri

Education

University of Kansas School of Law, Lawrence, Kansas, 2013 J.D.
Truman State University
M.A., English, 2008
B.A., English, 2006 – summa cum laude

EXHIBIT 31

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF SCOTT POYNTER

I, Scott Poynter, declare as follows:

1. I am a Partner of Poynter Law Group. Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. On January 28, 2015, I was appointed to the Plaintiffs' Executive Committee.

3. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

4. I have practiced law for nearly 28 years, and have focused my practice on complex litigation since about 1996. Before my appointment to the Plaintiffs' Executive Committee, I also

served on the Plaintiffs' Executive Committee in the *In Re Genetically Modified Rice Litigation* via an appointment by Judge Catherine Perry.

5. Attached to my declaration is my law firm's resume.

6. Primarily, I was appointed to the Executive Committee due to our representation of milo producers, which had unique claims with this multidistrict litigation. However, I served Lead Counsel as a member of the Executive Committee and advised the leadership on all aspects of the litigation. As for the milo producers, the work focused on the investigation of the claims, work with experts on damages theories, legal research and drafting of the milo producer master complaint and responding to and propounding discovery requests.

7. Poynter Law Group maintains contemporaneous records of its time and expenses in the ordinary course of business through a cloud based time/expense record keeping system.

8. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

9. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to individual clients who were not either bellwether or class representative plaintiffs.

10. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation and exercised billing judgment.

11. In exercising fair billing judgment, I re-reviewed each time and expense entry recently to ensure all of my work and expenses commonly benefited the prosecution of claims within this multidistrict litigation. Additionally, I also worked closely with Lead Counsel to ensure such time and expense entries were fair and appropriate.

12. After this re-review, I can confirm that this time was fair and appropriate. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

13. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $75,922.50. A breakdown of the lodestar is provided below.

	Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
1.	Poynter, Scott	Partner	95.50	$795.00	$75,922.50
	TOTALS		95.50		$75,922.50

14. My firm also seeks $763.82 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	**Description of Category Code**	**Amounts**
8	Meals	$56.52
10	Air Travel	$624.00
17	Ground Transportation	$83.30
	TOTAL	**$763.82**

15. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested expense award is in conformity with the Common Benefit Order.

16. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Little Rock, Arkansas.

/s/ Scott Poynter
Scott Poynter, Poynter Law Group

plg

POYNTER LAW GROUP

400 W. Capitol Ave., Suite 2910
Little Rock, AR 72201
(501) 251-1587

Scott Poynter

Mr. Poynter and his firm Poynter Law Group serve as Of Counsel to Steel, Wright, Gray, & Hutchinson, PLLC of Little Rock, Arkansas.

Mr. Poynter was born in Fayetteville, Arkansas and raised in Mountain Home. In 1987, he earned a Bachelor of Science Degree in Accounting from Arkansas Tech University. He then earned his Juris Doctorate from the University of Arkansas School of Law in 1989. While in law school, Mr. Poynter was active in Phi Alpha Delta legal fraternity and was awarded a leadership scholarship from the school.

Military Service

After law school, Mr. Poynter was commissioned a First Lieutenant and entered the Judge Advocate Department of the United States Air Force. While on active duty, he was involved in more than fifty jury trials. In 1995, then Captain Poynter was selected by the Judge Advocate General to attend the Air Force's Advanced Trial Advocacy Course, a course reserved for the military's finest litigators. After leaving active duty 1996, Mr. Poynter became a partner at a national class action law firm, which focused its work on the representation of shareholders, employees, and consumers. He also continued his military career in the Arkansas Air National Guard and attained the rank of Major.

Agricultural Litigation Experience

Mr. Poynter has more than a decade of experience in agricultural law, and represents clients in civil litigation both from a plaintiffs' perspective, and as a defense attorney.

From 2006 through 2012, Mr. Poynter served thousands of rice farmers in the LLRICE 601 Genetically Modified Rice MDL Action. Mr. Poynter was appointed to the Plaintiffs' Executive Committee in the multidistrict litigation by Judge Catherine D. Perry of the Eastern District of Missouri. The Rice MDL has now recovered more than one billion dollars in damages for farmers and others involved in the American rice market.

On January 22, 2015, Mr. Poynter was appointed by the Honorable John W. Lungstrum of the U.S. District Court, District of Kansas, to the Plaintiffs' Executive

Committee in the *In re Syngenta AG MIR162 Corn Litigation*. In this mulitidistrict litigation, Mr. Poynter represents both corn and milo farmers seeking damages for market losses incurred after Syngenta contaminated America's corn market with genetically modified corn varieties that had not been approved in China.

Since December of 2016, Mr. Poynter has also served as counsel to local and international grain merchandisers as both an advisor and as litigation counsel.

Consumer Litigation

Over the past two decades, Mr. Poynter has represented consumers in various actions across the United States. He served in leadership positions in the *Tyson Foods Inc., Chicken Raised Without Antibiotics Consumer Litigation*, District of Maryland, Case No. 1:08-md-01987 (an MDL action on behalf of a nationwide false advertising class; $8 million in class settlement relief); *In re: Farmers Insurance Co., Inc. FCRA Litigation*, Western District of Oklahoma, MDL No. 1564 (an MDL case brought on behalf of a nationwide class of insureds and resolving with $104.3 million in class-wide relief); *Sumner v. Alltel*, Lonoke County Circuit Court, Arkansas, Case No. CV-2003-68 (nationwide false advertising case securing $44 million in settlement); *Tyler v. Alltel*, Eastern District of Arkansas, Case No. 4:07-cv-0019-JLH ($17.1 million class resolution for consumers); and, *Rosenow v. Alltel,* Circuit Court of Saline County, Arkansas, Case No. CV-2006-182-3 (securing $8 million in relief for Arkansas payers of early termination fees).

Man-Made Earthquakes

In 2010 and 2011, central Arkansas was hit with thousands of earthquakes, which were caused by oil and gas wastewater disposal operations in the Fayetteville Shale. This created seismicity was due to fracking fluids and waste being disposed of into the earth with injection wells – known as Class II Disposal Wells. About 35 homeowners in the Guy and Greenbrier areas of Arkansas retained Mr. Poynter and filed suit alleging both physical and market value losses to their homes. These man-made earthquake cases were the very first of their kind filed anywhere.

Thus, Mr. Poynter pioneered induced seismicity litigation, and currently pursues both class action and individual cases throughout Oklahoma, which has become the Nation's most seismic state.

In the fall of 2011, residents around Prague, Oklahoma suffered then the largest quake Oklahoma had ever experienced. During November of 2011 quakes measuring about 5.7 in magnitude in Prague, Ms. Sandra Ladra was watching television in her living room with her family when rocks from her two-story fireplace and chimney fell onto her legs causing substantial injuries. Her case was originally dismissed on jurisdictional grounds, but the

Oklahoma Supreme Court unanimously reversed that decision freeing the way for these cases to be heard in Oklahoma courtrooms. *Ladra v. New Dominion*, 2015 OK 53, 353 P.3d 529 (2015). The *Ladra* action was settled by August of 2018, and was the very first induced seismicity case settled in Oklahoma.

Mr. Poynter also represented the Sierra Club in a Resource Conservation and Recovery Act environmental suit before Judge Friot of the Western District of Oklahoma. This suit was designed to eliminate the continued threat of devastating earthquakes in Oklahoma, which are a byproduct of the oil and gas industry's fracking operations. *Sierra Club v. Chesapeake, et al.,* Western District of Oklahoma, Case No. CV-16-134.

Tribal Law Experience: Mr. Poynter filed the first-ever tribal court case brought over induced seismicity. He brought the claim on behalf of the Pawnee Nation of Oklahoma after the tribe suffered nearly $400,000.00 in property damages to its historic governmental buildings. The Nation's damages were the result of largest earthquake that Oklahoma had ever suffered – a 5.8 magnitude earthquake shaking the areas around Pawnee, Oklahoma on September 3, 2016, and caused by oil and gas wastewater disposal operations nearby.

Mr. Poynter has both individual actions and class action cases designed to recover property damages, market losses, emotional harm, and punitive damages due to the oil and gas industry's induced seismicity across the State of Oklahoma since 2011. He recently settled with some of the defendants in a class action regarding the swarm of over 5.0 magnitude earthquakes that hit near Prague, Oklahoma, in November of 2011. This class settlement will be the first induced earthquake case settled anywhere on behalf of a class of property owners.

These cases and Scott's win before the Oklahoma Supreme Court have gained national media attention from the Wall Street Journal, the New York Times, the New Yorker, Bloomberg, Reuters, CBS News, 60 Minutes, and CBS Saturday Morning. He has also been published on the topic of induced seismicity. *What the Frack? Man-Made Earthquakes Are For Real*; The Legal Examiner, Feb. 2, 2015.

Scott is admitted to practice before the U.S. Court of Appeals for the Armed Forces; the Pawnee Nation District Court and Supreme Court; the U.S. District Courts for the Western and Eastern Districts of Arkansas; the Eighth Circuit Court of Appeals; and all Arkansas State Courts.

Please contact Mr. Poynter at: scott@poynterlawgroup.com or (501) 251-1587.

EXHIBIT 32

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF KENT ROTH

I, Kent Roth, declare as follows:

1. I am a sole owner of Roth Law Office, Ten North Main, Ellinwood, KS 67526, Tax Payer ID No. 48-1205550 ("Kent Roth d/b/a Roth Law Office"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. My background and that of my law firm, including experience with complex litigation, includes general practice of law for over Forty (40) years.

4. Attached to my declaration is my attorney resume.

5. All legal work by the Roth Law Office in connection with this class action litigation was performed by me.

6. I was asked by federal MDL Co-Lead Counsel Scott Powell to facilitate the filing of a class action in New Mexico. I had direct contact with class representatives in the New Mexico case, Todd & Honey Poling d/b/a Road Runner Farms and Cherie Goodan as President of Atchley Inc. I drove to New Mexico and personally met with those class representatives, identified and worked with New Mexico counsel in filing a class action complaint in New Mexico state court, and communicated with Scott's firm regarding the status of the New Mexico class action.

7. My firm maintains contemporaneous records of its time and expenses in the ordinary course of business by maintaining calendar and time sheets evidencing actual amount of time expended by activity.

8. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

9. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

10. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

11. I exercised my billing judgment in the re-review of common benefit time and expenses, including an effort to avoid duplication.

12. After this re-review, I can confirm that this time was undertaken by me. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

13. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $6,375.00. A breakdown of the lodestar is provided below.

	Name	Title	Total Hours	Hourly Rate	Lodestar
1.	Roth, Kent A.	Partner	42.50	$150.00	$6,375.00
	TOTALS		42.50		$6,375.00

14. My firm dedicated a substantial amount of time to common benefit work, this precluded you from taking on other work, as traveling from Kansas to New Mexico alone was an over five (5) hour one-way trip and I would be out of the office for several days at a time when traveling in connection with the common benefit work.

15. My firm seeks $719.28 in expenses in connection with the prosecution of this litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
9	Mileage	$719.28
	TOTAL	**$719.28**

16. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

17. This firm is not requesting expense reimbursement for capital contributions to the litigation fund.

18. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 8th day of July, 2018, in Ellinwood, KS 67526.

/s/ *Kent Roth*
Kent A. Roth, KS S. Ct. #10033
ROTH LAW OFFICE
TEN NORTH MAIN
ELLINWOOD, KS 67526
(620) 564-2090 Office
(620) 282-4054 Mobile
Attorney for Great Bend Cooperative Association & New Mexico Representative Clients

KENT ALAN ROTH

OBJECTIVE

Provide for and protect my family, community, state and nation.

EXPERIENCE

1976-1982 State Representative, 113th District Barton County, KS

Committee Assignments

- Judiciary
- Insurance
- Ways and Means

1982-1988 Administrative Law Judge State of Kansas

Appeals decided

- employment security hearings, over 5,000
- Wage and hour hearings
- Adult Care Home Administrators License

1979-present Lawyer Central Kansas

Experience of over 39 years including above and:

- Oil & Gas Partition, Division Orders
- Prosecutor Great Bend City Court 1979-1982.
- *Pro tem* Municipal Court Judge, 1985-1996
- Lead Trial Counsel on dozens of criminal and civil jury trials

EDUCATION

1971 Graduate of Ellinwood High School, Class president 3 years

1971–1975 University of Kansas Lawrence. KS

- B.Sc., Business Administration
- Honor Roll, G.P.A. 3.48

1975-1978 Washburn University of Topeka, School of Law

- Law Degree, Juris Doctor
- Active in Washburn law clinic
- Continuing Legal Education Requirements met to present

INTERESTS

1996 Attended Republican National Convention

314 WEST 3RD, ELLINWOOD, KS 67530 **HOME (620) 564-2920**
10 N. MAIN, ELLINWOOD, KS 67526 **OFFICE (620) 564-2090**

EXHIBIT 33

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT: ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**MDL No. 2591**

DECLARATION OF DAVID E. MILLER

I, David E. Miller, declare as follows:

1. I am a partner of Saeed & Little LLP ("Saeed & Little"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. The attorneys at Saeed & Little are highly experienced in consumer protection cases, including consumer collection defense, mortgage foreclosure defense, Fair Debt Collection Practices Act violations and Telephone Consumer Protection Act. Our attorneys have served

clients in an individual capacity in consumer protections cases, and have successfully pursued class action cases against large financial institutions for consumer law violations

4. In 2007, Jon Little started a private practice in Flagstaff, Arizona with the goal of providing passionate legal services to those typically swept down the conveyor belt of the American justice system. In 2009, Ali Saeed began working with Jon, and in 2011, they became partners. In 2018, David Miller became the third partner at Saeed & Little LLP. Today, Saeed & Little, LLP has attorneys licensed in Arizona, California, Illinois, Indiana, New York, and Ontario, Canada, all zealously fighting to ensure that justice is not meted out a sliding economic scale. Saeed & Little only represents individuals and small businesses**.** We help our clients fight against the corporate and, increasingly, governmental powers that are infringing on their rights. We strive to use our passion and training to create systematic change. We are particularly proud of the work we have done on behalf of athletes who have been sexually abused by coaches in the United States Olympic Sports movement. In 2008, we filed the first sexual abuse case against United States Swimming; a case that would ultimately result in the exposure of decades of sexual abuse by the coaches sanctioned by that organization. Saeed & Little has also successfully represented dozens of clients in disputes against the largest corporations in America; corporations like Bank of America, Chase Bank, Audi, and Blue Cross/ Blue Shield. In 2012, we obtained the two largest Telephone Consumer Protection Act settlements in the history of the United States against Chase and Bank of America.

5. David Miller graduated from a specialized, dual-degree law program earning an American and a Canadian Juris Doctor from the University of Detroit Mercy's School of Law and the University of Windsor's Faculty of Law respectively in May 2012. David grew up in Hendricks County, Indiana and attended Tri-West High School and he received his B.S. from Ball State

University in Athletic Training. David practices law to help those that have been taken advantage of by institutions larger than themselves. Far too often people are harmed because companies do not fear the repercussions for their actions. David feels that everyone deserves fair and affordable representation when they have been harmed. David is currently involved in multi district litigation against Narconon and Blue Cross Blue Shield and he is actively involved in litigation against the State of Indiana working on behalf of mentally handicapped children denied benefits from the State. David is currently admitted to practice in California, Indiana, New York and Ontario, Canada. David is currently admitted to practice in the following Federal Circuit Courts: Southern District of Indiana, District of Colorado, Western District of Michigan, Central District of California, Southern District of California, and Northern District of California.

6. Our work in this case included being the point of contact for Potential class reps in Indiana, Kentucky, and Wisconsin, and vetting class representative Tom Goode in Indiana.

7. Saeed & Little LLP utilizes Bill4Time to track all work conducted during litigation on behalf of our clients in the normal course of business. Our time was maintained throughout the course of this litigation through this method.

8. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

9. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

10. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

11. Our hours were only conduction at the direct request of Paul McInnes and we did not include time spent outside of those direct requests.

12. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

13. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $500.00. A breakdown of the lodestar is provided below.

	Name	Title	Total Hours	Hourly Rate	Lodestar
1.		Miller, David	Associate	2.50	$200.00
	TOTALS		2.50		$500.00

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Indianapolis, Indiana

/s/ David E. Miller
David E. Miller – Partner
Saeed & Little, LLP

EXHIBIT 34

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIRI162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASE EXCEPT** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG, et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International, Inc. v. Syngenta AG, et al., No. 23:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-0259-JWL-JPO** **MDL No. 2591**

DECLARATION OF SCHIRGER, KIRK, MCDOUGALL & WINZELER, P.C.

I, Michael J. Schirger, declare as follows:

1. I am a partner of Schirger, Kirk, McDougall & Winzeler, P.C. ("SKMW"), successor law firm of Schirger Law Offices, LLC. Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. SKMW represents businesses and individuals. We provide legal counsel in entity formation, business and real-estate transactions, contracting, and civil and appellate litigation. We also provide counsel for estate planning, dispute resolution, leases, and a variety of other issues.

4. SKMW is a general-practice law firm in downstate Illinois representing, among others, clients engaging in agricultural business (farming). SKMW was formed in the fall of 2016. It is the successor law firm to Schirger Law Offices, LLC, with roots going back over 50 years of providing legal services in northern Illinois. It engages its legal services in commercial transactions, estate planning, estate disputes, commercial litigation, family law, general litigation, and appeals. It has provided legal services as counsel to SewardAg, a major Illinois agricultural supply company, and to a variety of several agricultural banks in the region. And it has represented people in litigation of several family disputes over estates involving thousands of acres of Illinois farmland valued in the millions of dollars.

5. Resumes:

a. Michael Schirger, JD University of Iowa. Licensed to practice law in Illinois in 2006. His work involves both litigation and transactional matters as well as estate and succession planning. Attorney Schirger received his law school's best oralist and best advocate awards for Moot Court.

b. Richard Kirk, JD DePaul University. Licensed to practice law in Illinois in 2005. Mr. Kirk represents clients before the trial and appellate courts of Illinois, obtaining a unanimous decision from the Illinois Supreme Court reversing the trial court in favor of his client in 2010. His practice includes commercial and contract disputes, eminent domain matters, and estate disputes.

c. Taja D. Winzeler, JD University of Illinois. Licensed to practice law in 1993. Ms. Winzeler gained extensive experience litigating homicide and major drug cases during her time as Senior Felony Assistant with the Winnebago County Public Defender's office. Ms. Winzeler combines this experience with her experience in Winnebago County's first Rehabilitative Drug Court, which focused on a collaborative approach to the resolution of issues.

6. Attorneys Schirger, Kirk, and Winzeler represented, prepared and filed the Illinois class action complaint, *Borneman et al., v. Syngenta AG*, No. 15-L-36 in the Fifteenth Judicial Circuit Ogle County, Illinois; that action was subsequently removed to the United States District Court for the Northern District of Illinois, see *Borneman et al., v. Syngenta*, No. 16-CV-2943, and then transferred to the MDL.

7. As part of its representation, SKMW met with the plaintiff in *Borneman* to obtain the information and documents requested in the plaintiff fact sheet and communicated that information and those documents to lead attorneys in the case.

8. In addition, SKMW researched and drafted a Memorandum detailing said research regarding the filing of the Illinois Claim, service of Complaint and other matters.

9. Further, SKMW travelled to Ogle County Courthouse on multiple occasions, both to file documents in the case and attend Court hearings while the matter was pending in the Fifteenth Judicial Circuit Court of Ogle County in Illinois.

10. SKMW maintains contemporaneous records of its time and expenses in the ordinary course of business which such invoice reflects an explanation of time spent in this matter.

11. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

12. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

13. As part of the preparation of my declaration, I reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

14. SKMW exercised billing judgment by re-reviewing the common benefit time and expenses to confirm that its billing in this matter is correct and accurately reflects the substantive time its attorneys spent in providing legal services in these matters.

15. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

16. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $14,350.A breakdown of the lodestar is provided below.

	Name	Title	Total Hours	Hourly Rate	Lodestar
1.	Schirger, Michael J.	Partner	38.80	$350.00	$13,580.00
2.	Winzeler, Taja	Partner	2.20	$350.00	$770.00
	TOTALS		41.00		$14,350

15. My firm seeks $249.99 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
2	Postage Charges	$19.99
14	Court Fees	$230.00
	TOTAL	**$249.99**

17. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expenses Funds.) Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

18. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Rockford, Illinois

/s/ Michael J. Schirger

EXHIBIT 35

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF JAYNE CONROY

I, Jayne Conroy, declare as follows:

1. I am a shareholder of Simmons Hanly Conroy ("SHC"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Simmons Hanly Conroy LLC is a limited liability corporation organized under the laws of the State of Illinois. The principal office location is in Alton, Illinois.

4. Attached as to my declaration is my law firm's resume.

5. Below are biographies on the attorneys who worked on this matter:

6. ***Jayne Conroy:*** Attorney Jayne Conroy is a named shareholder of Simmons Hanly Conroy, one of the United States' largest mass tort law firms, and has developed a superb national reputation as a skilled strategist, trial lawyer, and negotiator over her thirty year career. Based in the New York office, Ms. Conroy litigates products liability and mass torts cases, among other complex actions. Ms. Conroy has spearheaded efforts to help thousands of victims in some of the largest cases in the United States obtain the medical help or financial resolution they need to again be whole. The high-profile cases she has litigated include the Toyota Unintended Acceleration controversy, the Sept. 11 terrorist attacks, the Deepwater Horizon oil disaster, sex abuse in Catholic institutions and more. Ms. Conroy has served in leadership positions on over a dozen multidistrict litigations throughout America.

> Her recent accomplishments include the more than $16 billion resolution for the *VW Diesel Emission* scandal for VW owners in the U.S., three verdicts totaling in excess of $1.7 billion in the U.S. litigation against the Dallas, Texas *DePuy/J&J Pinnacle Hip Litigation* and the $1.5 billion settlement of the genetically modified corn case against *Syngenta*. Ms. Conroy and her firm are currently leading the nationwide U.S. litigation against the *Opioid* manufacturers and distributers. The *National Law Journal* has named Ms. Conroy as one of the nation's Outstanding Women Lawyers and Law360 has named her a 2017 Product Liability MVP for the second consecutive year. Ms. Conroy earned her J.D. from New England School of Law in 1985.

7. ***Sarah Burns:*** Sarah Burns is a shareholder at Simmons Hanly Conroy LLC. She has substantial legal experience handling consumer safety cases, mass tort multidistrict litigations and other complex business torts. In the past ten years, she has secured millions of dollars in settlements on her clients' behalf. Her clients are regular, everyday people, businesses or municipalities who've been harmed by larger, multi-national corporations. Sarah brings an in-depth understanding of the law and how it applies to her clients' unique circumstances. Around

the firm, her work has garnered her a reputation as equal parts secret weapon, taskmaster and quarterback. Her cases regularly take on some of the largest companies in the world. Not only is Sarah adept at overcoming the stall tactics big defense law firms deploy against smaller plaintiffs, she leverages the firm's resources to put her clients on an equal playing field. Her responsibilities include overseeing pre-filing investigations and preparing cases for trial and the appeal process. Sarah's current caseload includes representing county and municipal governments against the pharmaceutical companies over the aggressive and fraudulent marketing of prescription opioid painkillers that has led to the opioid epidemic throughout the country. Sarah serves as the deputy chief of the opioid litigation team, led by Shareholder Paul Hanly, which includes attorneys, paralegals and staff dedicated to helping counties and municipal governments enforce their legal rights against pharmaceutical companies responsible for the opioid crisis. Currently, she oversees casework for more than 125 cases filed on behalf of government entities in New York, Illinois, Wisconsin, Louisiana, Connecticut, Pennsylvania, Iowa and Indiana. Sarah also represents Trans Coastal Supply Co., a regional exporter in the agricultural industry that was forced to declare bankruptcy after it lost $41 million because its exports to China were contaminated with Agrisure Viptera corn seed. The lawsuit is part of the federal multidistrict litigation, *Syngenta AG MIR 162 Corn Litigation MDL 2591,* that farmers, exporters and other companies have filed against the international biotechnology seed company Syngenta for misleading them about the status of Viptera's approval in China. Sarah also handled the consumer protection cases the firm has filed against Volkswagen, regarding the automaker's highly-publicized emission scandal, and is currently focused on the marketplace unfair competition claims brought by competing dealerships. She earned her J.D. in 2004 from the University of Tulsa College of Law, where she graduated with honors.

8. As a member of the Plaintiffs' Executive Committee in this MDL, I participated, and was deeply involved, in numerous conference calls with Co-Lead Counsel and other Executive Committee members about various legal, practical and strategic issues in this litigation concerning procedural matters, discovery, dispositive motions, and trial.

9. In addition to my appointment as a member of the Plaintiffs' Executive Committee, I and my firm represented the Non-Producer Bellwether Plaintiff Trans Coastal. As such, in addition to PSC tasks, we prepared the Non-Producer Bellwether case for trial including all depositions, expert preparation and reports, motion practice and relevant pre-trial work. This included both the development of Trans Coastal's case as well as the defense of the damage models and other relevant positions common to other non-producer plaintiffs. The discovery relating to Trans Coastal's claims was enormous. Trans Coastal produced over 3,250,000 pages of documents in the litigation. SHC lawyers had to collect and review those documents, as well as thousands of pages of others for responsiveness and privilege issues. All documents were then produced in the form required by the agreed document production protocol, which took significant time by SHC. While Trans Coastal maintained some records electronically, a substantial portion of its records were maintained in hard copy. SHC lawyers, including Ms. Burns and myself, traveled to warehouses in Decatur, Illinois and Kansas City, Missouri, where we combed through hundreds of boxes of Trans Coastal documents to find information that was responsive to Syngenta's multiple sets of requests for production. Trans Coastal also responded to interrogatories and requests for admission served by Syngenta. SHC lawyers, in coordination with Co-Lead Counsel and Trans Coastal, prepared the responses. SHC lawyers also engaged in multiple meet and confer sessions with Syngenta concerning alleged discovery deficiencies. The fact and expert witnesses relating to Trans Coastal's claims were located throughout the country

and required both preparation and defense at their depositions. SHC lawyers defended seven current or former Trans Coastal employees in depositions that collectively lasted for 13 days and took place in five different states. Early on in the litigation, my firm retained James Woods as a potential expert for Trans Coastal. SHC lawyers spent many hours gathering relevant documents to Trans Coastal's damages and assisting Mr. Woods to understand Trans Coastal's business, as well as to understand the business of non-producers in the corn and ethanol industry. We also coordinated with Mr. Woods regarding his expert report, and defended his deposition. SHC lawyers also deposed Mr. Quentin Mimms, one of Syngenta's experts who rebutted the non-producer damage expert reports issued by Mr. Woods in the litigation. SHC lawyers coordinated with Mr. Woods in preparation for Mr. Mimms' deposition, and I deposed Mr. Mimms.

10. In addition to work specifically related to Trans Coastal's claim that benefitted other non-producers, I and other SHC lawyers were also assigned work by Co-Lead Counsel. These included:

a. Legal research and writing on issues related to Syngenta's motion to dismiss the Non-Producer Amended Master Class Action Complaint, including on the Lanham Act and the economic loss doctrine;

b. In coordination with Co-Lead Counsel, SHC lawyers researched various states' laws for purposes of the class action complaints, as well as legal issues related to the pled sub-classes;

c. SHC lawyers, including Sarah Burns and Eric Disney, were part of the plaintiffs' document review team. SHC lawyers traveled to Kansas City for multiple weeks of in-person review, and then conducted additional review from SHC offices. At the request of Co-Lead Counsel, SHC lawyers

performed targeted reviews for documents associated with particular issues that Plaintiffs wanted to investigate for possible questioning at depositions;

d. I would be contacted by attorneys representing potential non-producer plaintiffs who asked questions about the status of the litigation and discussed issues concerning whether their clients had viable claims against Syngenta.

11. Simmons Hanly Conroy maintains contemporaneous records of its time and expenses in the ordinary course of business.

12. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

13. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients, who were not either bellwether or class representative plaintiffs.

14. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

15. I personally reviewed the time entries also with my partner, Sarah Burns, and my head Paralegal Jill Kraus. In addition, I reviewed each entry and discussed the billing with co-lead William Chaney on several occasions. Some time entries from other firm cases that were mistakenly logged with the Syngenta time system were removed. In addition, entries related to one of the Bellwether clients, TransCoastal, concerning its bankruptcy proceedings were removed. Expenses were likewise reviewed for accuracy.

16. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

17. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $1,197,732.50. A breakdown of the lodestar is provided below.

	Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
1.	Disney, Eric	Associate	1,387.00	$185.00	$256,595.00
2.	Burns, Sarah	Associate	785.30	$400.00	$314,120.00
3.	Conroy, Jayne	Partner	459.20	$950.00	$436,240.00
4.	Payne, Gary	Associate	336.50	$275.00	$92,537.50
5.	Kraus, Jill	Paralegal	181.20	$125.00	$22,650.00
6.	Bierstein, Andrea	Partner	61.80	$950.00	$58,710.00
7.	Bond, Julie	Paralegal	56.50	$100.00	$5,650.00
8.	Hurd, Ellyn	Associate	25.70	$400.00	$10,280.00
9.	Hanly, Paul	Partner	1.00	$950.00	$950.00
	TOTALS		3,294.20		$1,197,732.50

18. My firm seeks $730,928.00 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	**Description of Category Code**	**Amounts**
1	Federal Express / Local Courier	$3,557.35
5	In-House Photocopying	$5,510.55
6	Outside Photocopying	$125,611.14
7	Hotels	$17,368.42
8	Meals	$3,152.63
10	Air Travel	$20,288.96
11	Deposition Costs	$48,634.46
13	Witness and Expert Expenses	$312,193.28
14	Court Fees	$248.00
17	Ground Transportation	$4,057.12
18	Miscellaneous	$306.09

19	Litigation Fund Assessment	$190,000.00
	TOTAL	**$730,928.00**

19. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

20. Simmons Hanly Conroy is requesting expense reimbursement for capital contributions to the litigation fund, in the amount of $190,000.00.

21. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 9th day of July, 2018.

/s/ Jayne Conroy
Jayne Conroy

Simmons Hanly Conroy is one of the nation's largest plaintiff law firms and has recovered over $5 billion in verdicts and settlements for both individuals and businesses in a variety of complex matters. Led by John Simmons, Paul J. Hanly, Jr. and Jayne Conroy, the firm encompasses centuries of cumulative litigation experience in service to our clients. SHC has a dedicated staff of over 200 people, including 75 attorneys licensed in multiple states in the following areas of litigation: Mesothelioma & Asbestos, Prescription Opioid Litigation, Dangerous Drugs & Devices, Consumer Protection, Business/Commercial, Environmental, Personal Injury, and Sexual Abuse. The firm has sued the largest corporations in the United States and prevailed, utilizing its skills and resources to try cases effectively and efficiently.

In 2003, our asbestos attorneys secured a $250 million verdict on behalf of a U.S. steel worker who was diagnosed with mesothelioma as a result of his asbestos exposure at an Indiana factory. The verdict remains the largest result for a single plaintiff against a single defendant in the history of asbestos litigation. In the same year, members of the firm effectively invented large-scale, multi-defendant opioid litigation when it commenced truly groundbreaking opioid litigation against opioid manufacturers for damages suffered by more than 5,000 clients prescribed the prescription opioid OxyContin. In the past year, building upon its decade-long experience and expertise, SHC has filed litigation on behalf of more than 200 municipalities across the country against opioid drug manufacturers for their role in the opioid epidemic. SHC is seen as an authority on the topic, with one of our lead shareholders appointed co-lead counsel of the federal MDL.

Simmons Hanly Conroy has offices in the following cities: Alton, Illinois; New York, New York; Chicago, Illinois; San Francisco, California; El Segundo, California; and St. Louis, Missouri.

EXHIBIT 36

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF MARK A. WALLER

I, Mark A. Waller, declare as follows:

1. I am a shareholder of Sneed Lang PC ("Sneed Lang"), which is currently winding up its affairs. Based on my position with that firm, I am authorized on behalf of that firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Sneed Lang attorneys litigated class action oil and gas royalty underpayment cases, class actions against banks for abusive overdraft practices, Fair Labor Standards Act collective

actions on behalf of a national class, a mass tort action against directors and officers of a failed aircraft manufacturer, and been involved in complex commercial litigation matters over the last two decades.

4. Mark A. Waller performed the majority of the work at Sneed Lang in the referenced case. I graduated from The University of Tulsa with a Bachelors of Science degree in Economics in 1980. I graduated from The University of Tulsa, College of Law, in 1991. I was significantly involved, from 1990-1991, in defending a group of individual defendants in two large depositor class actions involving the Republic Bancorp financial institutions. In 1995 I was a founding partner with Inhofe, Jorgensen, Balman & Waller, where I worked primarily in the areas of complex commercial litigation and employment law. In 1998 I was hired by a Fortune 500 energy and communications company headquartered in Tulsa, Oklahoma -- The Williams Companies, Inc. ("Williams") -- to handle Williams' and its subsidiaries' labor and employment matters, both nationally and internationally. I re-entered private practice in 2003 with Herrold Herrold & Co., Lawyers, and this firm merged with Sneed Lang in 2009. I currently practice primarily in the areas of commercial litigation, business torts, class action, mass action and multi-plaintiff litigation, and employment litigation representing both plaintiffs and employers.

5. J. David Jorgenson has extensive commercial litigation experience. Mr. Jorgenson graduated from the University of Texas, College of Law, with honors in 1978. Mr. Jorgenson was a partner at Conner & Winters in Tulsa, Oklahoma until 1995 and subsequently was a partner or was "of counsel" at four other Tulsa firms, including Sneed Lang PC.

6. At Sneed Lang, I was primarily responsible for securing class representative plaintiffs for the states of South Dakota and Colorado, interfacing with and between these representatives and the Gray Ritter Graham firm, responding to discovery from the Syngenta

defendants, preparing the South Dakota class representative for his deposition, and securing documentation and authorizations from these class representatives. As well, I was consulted regarding and involved in the filing of a class action on behalf of Oklahoma corn producers, *ALLAN AND CAROLYN FISCHER FLP, et al v. SYNGENTA AG, et al*, Case No. CJ-2-15-4252 (District Court in and for Tulsa County, State of Oklahoma). The *Fischer* case was subsequently transferred to the MDL.

7. At Sneed Lang I worked extensively with (i) Richard Bieber of Bieber Farm and Rolling Ridge Ranch, LLC, which were class representatives for South Dakota, and (ii) Lyle Ravenkamp and Scott Ravenkamp, both of Ravenkamp Farms Partnership, the class representative for Colorado. Each of these individuals was extremely cooperative and prompt in providing requested information and documentation during the discovery process. Mr. Bieber was extensively prepared for his deposition and then deposed on March 8, 2016. Sneed Lang's time records reflect the hours spent working with Mr. Bieber on discovery and related matters, including his deposition. Similarly, Sneed Lang time records reflect the time spent with Mr. Ravenkamp in producing documents and responding to Syngenta's discovery requests.

8. Ravenkamp Farms Partnership was selected and agreed to serve as a Colorado class representative and, in that capacity, responded to Syngenta's requests for production, which sought documents pertaining to numerous details about Ravenkamp Farm Partnership's farming operation and other information over significant time periods, and also called for personal financial information. Lyle and Scott Ravenkamp conducted an extensive search to locate, and reviewed records, and had several discussions with me in order to understand the requests and properly respond. Lyle and/or Scott Ravenkamp produced over 1000 pages of documents and made several special roundtrips of over 30 miles to collect documents held by third parties; Lyle estimates that

they spent 20 hours collecting documents responsive to Syngenta's discovery requests. Based on my time records, my contemporaneous involvement in the collection of discovery from Ravenkamp Farm Partnership, and discussions with Lyle Ravenkamp, I believe that Lyle's estimate is reasonable. Lyle Ravenkamp also agreed to, if necessary, sit for a deposition and attend a multi-week trial in Kansas City.

9. Sneed Lang assigned each matter a specific matter number. All attorneys at Sneed Lang, including myself and Mr. Jorgenson, regularly recorded and contemporaneously maintained records of time spent on each matter, and those records were recorded electronically and kept on the firm's server.

10. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

11. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

12. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment. In that regard, and subsequent to a teleconference with Don Downing, I deleted 1.5 hours of time incurred by Sneed Lang attorneys that arguably was not common-benefit time.

13. With respect to billing judgment, I used that judgment each time I contemporaneously recorded time. In that regard, I incurred significant time reviewing select pleadings that kept me apprised of how the case was progressing, and for which I recorded no

time. My time records reflect my work in the referenced case as directed by Co-Lead Counsel and in the performance of tasks that I was asked by Co-Lead Counsel to perform.

14. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

15. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for Sneed Lang is $58,240.00 A breakdown of the lodestar is provided below.

Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
Jorgenson, David	Associate	0.80	$400.00	$320.00
Waller, Mark	Partner	144.80	$400.00	$57,920.00
TOTALS		145.60		$58,240.00

16. The work Sneed Lang performed was almost entirely common benefit time. The amount of time is not such that it significantly impacted Mr. Waller's ability to perform other work at Sneed Lang, except during certain periods of intense discovery development, responses, and the deposition of Mr. Bieber.

17. My firm seeks an award of $882.91 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Description of Category Code	**Amounts**
Federal Express / Local Courier	$75.63
Postage Charges	$2.08
Hotels	$272.25
Meals	$9.46
Mileage	$247.43
Lexis/Westlaw/Bloomberg	$16.40

Description of Category Code	Amounts
Court Fees	$238.66
Service of Process Fees	$21.00
TOTAL	**$882.91**

18. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

19. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Tulsa, Oklahoma.

/s/ *Mark A. Waller*

EXHIBIT 37

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	)	Master File No. 2:14-MD-2591-JWL-JPO
	)	
	)	MDL No. 2591
THIS DOCUMENT RELATES TO ALL CASES EXCEPT:	)	
	)	
Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al, No. 16-2788-JWL-JPO	)	
	)	
Trans Coastal Supply Company Inc. v. Syngenta AG, et al, No. 2:14-cv-02637-JWL-JPO	)	
	)	
The Delong Co., Inc. v. Syngenta AG, et al, No. 2:17-cv-02614-JWL-JPO	)	
	)	
Agribase International, Inc. v. Syngenta AG, et al, No. 2:15-c-02279-JWL-JPO	)	

DECLARATION OF JERRY A. SOPER

I, Jerry A. Soper, declare as follows:

1. I am a shareholder of Soper Leddin Law Firm, P.C. Based on my position with the firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based upon my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. I have been licensed in Illinois since 1982 and Iowa since 1986. I have been involved in Civil RICO litigation in Federal Court. I passed the Uniform Certified Public Accountants Examination in Illinois in 1978. I have been in private practice since 1982. I have concentrated on personal injury and workers' compensation since 1991.

4. Soper Leddin Law Firm, P.C. maintains contemporaneous records of its time and expenses in the ordinary course of business.

5. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

6. The work I performed includes discovery for class representatives. In compliance with the Common Benefit Rule, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

7. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment. The only time entries presented are for time spent by myself.

8. After this re-review, I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order,

9. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $4,631.50. A breakdown of the lodestar is provided below.

	Name	Title	Total Hours	Hourly Rate	Lodestar
1.	Soper, Jerry	Partner	15.70	$295.00	$4,631.50
	TOTALS		15.70		$4,631.50

10. My firm seeks $185.00 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
14	Court Fees	$185.00
	TOTAL	**$185.00**

11. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

12. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts; expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Davenport, Iowa.

/s/ Jerry A. Soper

Jerry A. Soper
Soper Leddin Law Firm, P.C.
5108 Jersey Ridge Road
Davenport, IA 52807-3133
563-441-1616
563-441-1622 fax
jerry@soperlaw.com

EXHIBIT 38

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF DANIEL BUKOVAC

I, Daniel Bukovac, declare as follows:

1. I am a partner of Stinson Leonard Street LLP ("Stinson") in its Kansas City, Missouri office. Based on my position with Stinson, I am authorized on Stinson's behalf to submit this declaration.

2. I make this declaration based on my personal knowledge and, if called to testify about the information herein, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation ("Syngenta MDL").

3. Stinson is one of the 200 largest law firms in the United States with approximately 470 lawyers in sixteen offices. Stinson provides sophisticated corporate, transactional and litigation legal services to clients ranging from Fortune 500 corporations to small businesses and individuals. In the agriculture industry, the firm represents a variety of clients, including farm entities and owners, suppliers and producers, and animal health companies. Scott Roberts, another Stinson partner working on the Syngenta MDL, formerly served as a member of ADM's law department and has experience in complex agribusiness legal issues, including mergers and acquisitions, regulatory matters, class action and multidistrict litigation ("MDL"), antitrust and internal and external investigations. The class action experience of Stinson's attorneys spans the litigation spectrum, including antitrust, product liability, employment and financial and securities litigation. Stinson's attorneys also have experience in initiating and representing parties in MDLs, including MDLs coordinating or consolidating pretrial proceedings in multiple class actions. My own experience also includes representing both plaintiffs and defendants in complex litigation, including antitrust and securities litigation and class actions. In addition to the Syngenta MDL, I have represented parties in five other MDLs and have served as court-appointed liaison counsel for a group of parties in one of those MDLs. I have substantial agribusiness experience and, prior to the Syngenta MDL, had represented clients in other litigation involving genetically-modified (GMO) crops, including GMO sugarbeets, GMO rice and other GMO corn. In addition to my litigation experience in this Court and in courts in the State of Missouri, where I am admitted to practice, I have represented parties as lead counsel (*admitted pro hac vice*) in state and federal courts in other jurisdictions, including Arizona, California, Illinois, New Jersey, Oklahoma, Ohio and Texas. Similarly, other Stinson attorneys represent clients in litigation throughout the United States.

4. A two-page introduction about Stinson listing its offices, practices and industry experience is attached hereto. More detailed information about Stinson, its attorneys, practices and industry experience can be found at its website at https://www.stinson.com/.

5. A list of Stinson timekeepers (both attorneys and staff) working on the Syngenta MDL also is attached hereto. The list shows the positions and law school graduation years for attorneys and the years of experience for staff. The experience of each of the paralegals and other staff on the list is in the litigation practice area. The experience of attorneys on the list is also in litigation, with some exceptions mentioned below. Scott Roberts' experience has already been described above. Thomas J. Lynn, a former Stinson partner and currently the general counsel of an agribusiness company, has experience in mergers and acquisitions, corporate finance, securities law compliance and other corporate matters. Nicholas Hoffman, a Stinson associate, also has experience in mergers and acquisitions, corporate finance and other corporate matters. Sarah King, a Stinson partner, has experience in trusts and estates. Joel Leviton, also a Stinson partner, has significant trademark and other intellectual property experience in transactional and counseling matters and also has intellectual property litigation experience. The reasons for assigning projects to non-litigation attorneys will be apparent in the explanation of Stinson's responsibilities in the Syngenta MDL provided below.

6. Co-Lead Counsel contacted me to obtain Stinson's assistance on various projects in the Syngenta MDL. Stinson's responsibilities included the following:

a. Stinson assisted in research and analysis of legal issues related to Syngenta agreements (with producers), including warranty disclaimers and limitations, remedy limitations and unconscionability issues;

b. Stinson assisted in researching and drafting sections of plaintiffs' opposition to Syngenta's motion to dismiss;

c. Stinson researched and analyzed the comparative fault schemes of the States whose laws would govern producer negligence claims; the research addressed the applicability of comparative fault and contributory negligence principles and the treatment of non-parties at fault under the laws of multiple States and the extent to which different schemes applied to different types of injury (e.g., economic loss or property damage); the research and analysis was relevant to the selection and potential consolidation of State classes for bellwether trials;

d. Similarly, Stinson researched the elements of, and jury instructions for, negligence claims under the laws of multiple States; this research was also relevant to the potential consolidation of State classes for bellwether trials;

e. Stinson researched and analyzed the laws of multiple States related Syngenta's affirmative defenses, the pleading standards for those defenses and potential motions to address those defenses and the availability of and any limitations on punitive damages;

f. Stinson (Joel Leviton because of his intellectual property experience) analyzed expert issues related to Lanham Act claims;

g. Stinson drafted interrogatories and requests for admission addressing evidentiary issues as to the admissibility of Syngenta's documents and researched related issues;

h. Stinson (including Thomas J. Lynn and Nicholas Hoffman because of their mergers and acquisition and corporate finance experience) analyzed the structure

of ChemChina's proposed acquisition of Syngenta, including the proposed financing of the transaction, based on publicly available information; Stinson then researched and analyzed the transaction's potential impact on plaintiffs' claims and the collection of any judgments on those claims; the research addressed potential sovereign immunity and international comity issues arising from the transaction;

i. Stinson researched and analyzed legal issues arising from class counsel's communications with class members represented by other personal counsel and other counsel's communications with class members after class certification;

j. Stinson (Sarah King because of her trusts and estates experience) researched issues related to qualified settlement funds or trusts; and

k. Stinson conducted reviews and related coding and analysis of documents, including Syngenta Stewardship Agreements, other documents produced by Syngenta, and documents produced by other parties and non-parties.

7. In addition to the responsibilities described above, Stinson also worked with Fowler Sheffield on tasks related to his role as a named plaintiff and proposed class representative for the State of Oklahoma producers in the Syngenta MDL. Stinson attorneys and staff spent approximately 150 hours directly related to the representation of Mr. Sheffield as a named plaintiff, working on various tasks, including the following: interviews of Mr. Sheffield (including an interview with the participation of Don Downing, one of the Co-Lead Counsel in the Syngenta MDL); follow-up questions to Mr. Sheffield; preparing (and later updating) Mr. Sheffield's Plaintiff Fact Sheet; collecting documents from Mr. Sheffield; with Mr. Sheffield's authorization, collecting documents relating to his farm operations from other sources, including the USDA, an crop insurance broker and a seed dealer; responding to defendants' requests for production and

reviewing and preparing the documents collected for production in the Syngenta MDL; preparing a declaration for Mr. Sheffield in connection with a class certification motion in the Syngenta MDL; and communications with Mr. Sheffield related to those tasks and about class certification procedures and his role as a proposed class representative.

8. Mr. Sheffield was selected and agreed to serve as an Oklahoma class representative and, in that capacity, responded to Syngenta's requests for production, which sought documents pertaining to numerous details about his farming operation and other information over significant time periods, and also called for personal financial information. Mr. Sheffield conducted an extensive search through records kept on his farm to find responsive documents. Mr. Sheffield also gave my firm authority to collect responsive documents held by various third parties, including the FSA office, grain elevators, a crop insurance agent, and a seed dealer. Mr. Sheffield spoke on numerous occasions with Stinson lawyers and staff members regarding the collection of documents; Mr. Sheffield also spoke with Don Downing regarding his responsibilities as a class representative. Mr. Sheffield estimates that he spent 55 to 65 hours working on the tasks related to this litigation, with most of that time spent collecting documents responsive to Syngenta's requests for production. Based on Stinson's records and my contemporaneous involvement in Mr. Sheffield's document collection efforts and discussions with him, Mr. Sheffield's estimate is reasonable. Mr. Sheffield was also willing, if necessary, to sit for a deposition and attend a multi-week trial in Kansas City.

9. Stinson maintains contemporaneous records of its time and expenses in the ordinary course of its business. At my request, the firm established a matter for recording time and expenses in connection with the representation of clients with claims against Syngenta, including claims asserted in the Syngenta MDL, and related work requested by Co-Lead Counsel (the "Syngenta

Matter"). Pursuant to Stinson's internal procedures, Stinson attorneys and staff submitted time entries, specifying for each date the amount of time worked and a narrative describing the work performed related to the Syngenta Matter. Stinson's accounting department then provided me, as the "billing attorney" for the Syngenta Matter, a monthly proforma statement showing the time entries and expenses charges recorded in the Syngenta Matter as of the statement date.

10. In order to comply with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), I reviewed the monthly proforma statements for the Syngenta Matter before making common benefit time and expense submissions to Co-Lead Counsel in the Syngenta MDL and deleted entries that in my judgment were not properly included as common benefit time. In making submissions to Co-Lead Counsel, I excluded more than 500 hours of time entries outside the scope of the Common Benefit Order.

11. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted to Co-Lead Counsel in the Syngenta MDL to exercise billing judgment.

12. Because I excluded time entries outside the scope of the Common Benefit Order *before* making submissions to Co-Lead Counsel, I did not discover time entries outside the scope during my re-review of those submissions. However, I did find 43.6 hours of duplicate entries in the submissions to Co-Lead Counsel that resulted from clerical errors in creating the submissions from the proforma statements.

13. After this re-review, I can confirm that the legal work reflected in the time entries in the re-reviewed and revised submission on behalf of Stinson was undertaken by Stinson's attorneys and staff at the direction of Scott Roberts or me and after authorization or approval by Co-Lead Counsel. I believe that the common benefit time and expense information in the re-

reviewed and revised submission on behalf of Stinson is accurate and in compliance with the Court's Common Benefit Order.

14. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $782,219.50. A breakdown of the lodestar is provided below.

	Name	Title	Total Hours	Hourly Rate	Lodestar
1.	Montgomery, James	Associate	340.00	$345.00	$117,300.00
2.	Bukovac, Daniel	Partner	283.90	$730.00	$207,247.00
3.	Froelich, Steve L	Paralegal	279.20	$305.00	$85,156.00
4.	Hart, Joyce E	Paralegal	223.70	$280.00	$62,636.00
5.	Combs, Tamara V	Associate	202.40	$305.00	$61,732.00
6.	Stevens, Leisa C	Paralegal	185.30	$280.00	$51,884.00
7.	Sevedge, Christopher B	Associate	178.00	$345.00	$61,410.00
8.	Habiger, Ashley G.	Associate	91.60	$405.00	$37,098.00
9.	Bechina, Katherine A	Associate	65.30	$345.00	$22,528.50
10.	Diaz, Cheri M	Paralegal	65.20	$255.00	$16,626.00
11.	Roberts, Scott A	Partner	38.00	$670.00	$25,460.00
12.	Hoffman, Nicholas	Associate	18.70	$405.00	$7,573.50
13.	Turner, Colin	Associate	17.40	$455.00	$7,917.00
14.	Grutsch, Derek	Law Clerk	8.20	$325.00	$2,665.00
15.	King, Sarah	Partner	7.30	$515.00	$3,759.50
16.	Harrison, Courtney	Associate	7.10	$330.00	$2,343.00
17.	Leviton, Joel D	Partner	6.20	$590.00	$3,658.00
18.	Lynn, Thomas	Partner	3.70	$580.00	$2,146.00
19.	Henson, Renee	Law Clerk	2.80	$165.00	$462.00
20.	Woodard, Benjamin D.	Associate	2.50	$365.00	$912.50
21.	Pixler, Jessica	Associate	2.30	$345.00	$793.50
22.	Whalen, Patsy J	Paralegal	1.70	$250.00	$425.00
23.	Cusimano, Cindy	Paralegal	1.40	$255.00	$357.00
24.	Benson, John E	Paralegal	0.50	$260.00	$130.00
	TOTALS		2,032.40		$782,219.50

15. My firm seeks $172,315.00 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
12	Lexis/Westlaw/Bloomberg	$12,315.00
19	Litigation Fund Assessment	$160,000.00
	TOTAL	**$172,315.00**

16. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

17. Stinson is including in its request for expenses reimbursement for capital contributions to the litigation fund in the total amount of $160,000.00.

18. The expenses pertaining to the Syngenta MDL are reflected in Stinson's records, including the proforma statements for the Syngenta Matter. These records are contemporaneously prepared from vendor invoices, receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July 2018, in Kansas City, Missouri.

/s/*DanielBukovac*
Daniel Bukovac, D.Kan. # 70111
STINSON LEONARD STREET LLP
1201 Walnut Street, Suite 2900

Kansas City, MO 64106
Telephone: (816) 842-8600
Facsimile: (816) 691-3495
Email: daniel.bukovac@stinson.com

STINSON LEONARD STREET

GET TO KNOW US

CLIENT SERVICE PRINCIPLES

Stinson Leonard Street LLP has served clients with great dedication for more than 135 years. Our success is built upon a commitment to the highest level of client service, expansive legal knowledge and a clear-eyed focus on our clients' objectives. We strive to create rewarding relationships with each client and to contribute valuable insights on each legal matter. To deliver this distinctive experience, we hold ourselves accountable to these client service principles:

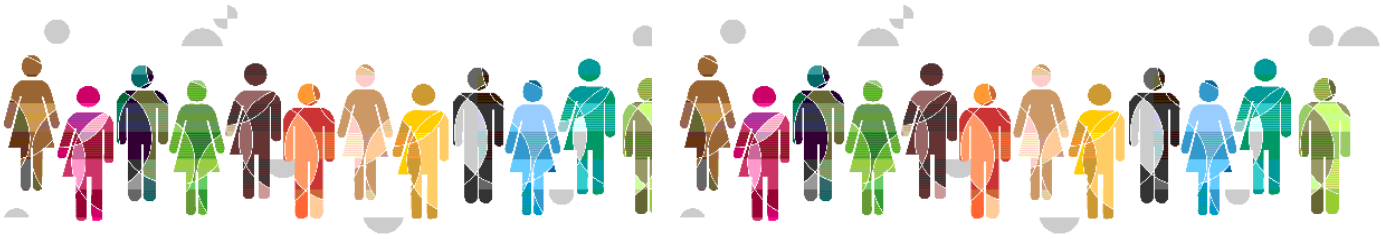
- Serving as a seamless extension of each client's business and strategy
- Understanding each client's specific legal needs
- Communicating effectively and responding in a timely manner
- Delivering value-based results

PRACTICES & INDUSTRIES

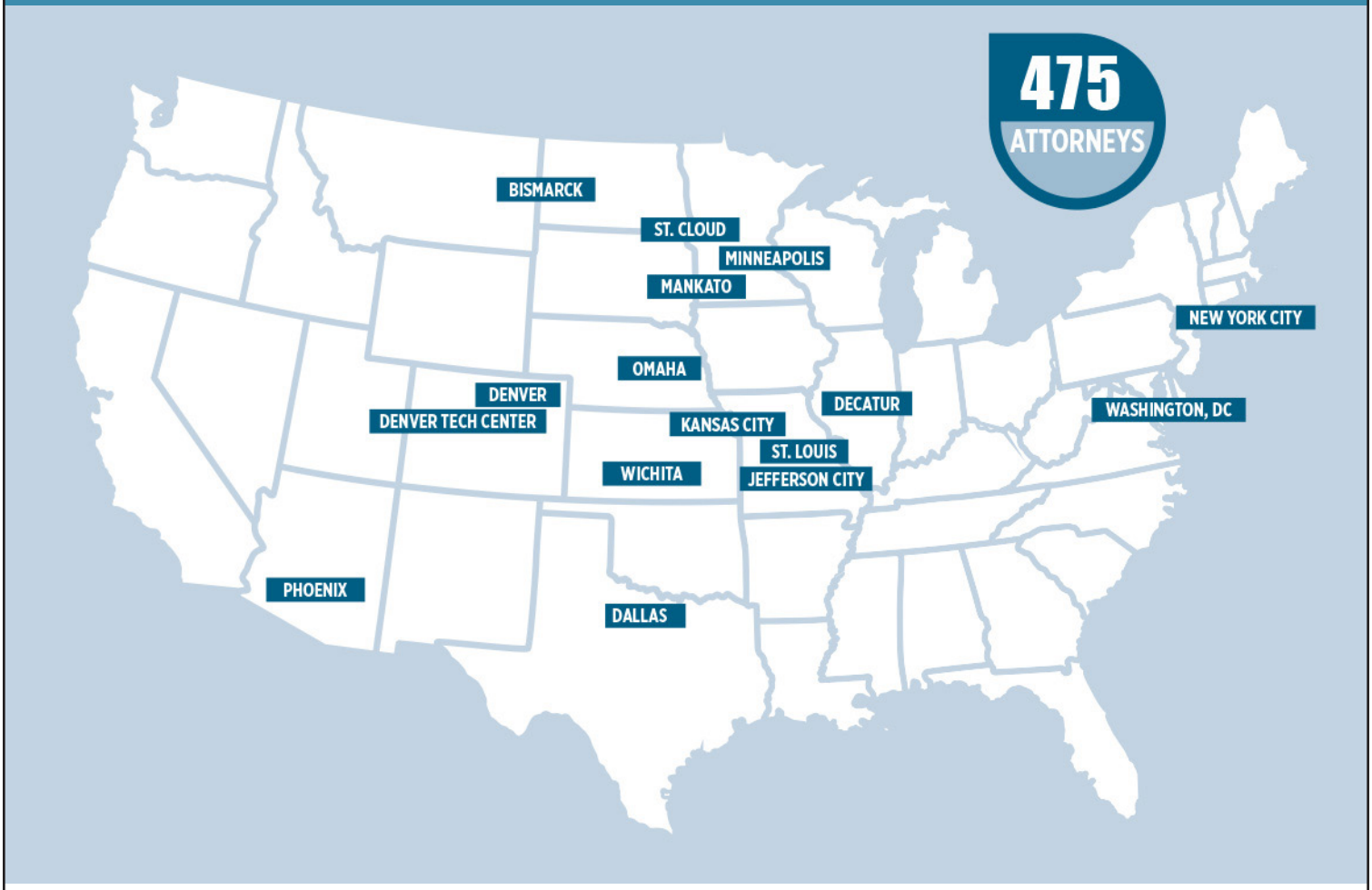
- AGRIBUSINESS
- BANKRUPTCY
- EMPLOYMENT & BENEFITS
- ENERGY & UTILITIES
- ENVIRONMENTAL
- FINANCIAL SERVICES & PRODUCTS
- GOVERNMENT SOLUTIONS
- HEALTH CARE & INSURANCE
- INTELLECTUAL PROPERTY & TECHNOLOGY
- INTERNATIONAL
- BUSINESS LITIGATION
- PUBLIC & PRIVATE BUSINESSES
- MERGERS & ACQUISITIONS
- REAL ESTATE
- TAX, TRUSTS & ESTATES
- TRANSPORTATION

COMMITMENT TO DIVERSITY

We believe that providing a diverse and welcoming workplace is the best path to serving the needs of our clients. We are committed to equal opportunity, non-harassment, diversity and inclusion without regard to race, religion, color, age, sex, sexual orientation, national origin, citizenship, disability, veteran status, gender identity and gender expression. The firm participates in a broad range of efforts designed to attract, retain and promote talented individuals from a broad variety of backgrounds.



OFFICES IN 16 LOCATIONS



PRO BONO & COMMUNITY SERVICE

For more than a century, our attorneys, paralegals and staff have volunteered time and counsel to help people in need and to make our communities stronger, more resilient, more welcoming places to live and work. We invest our pro bono resources in programs and communities around the country.

Stinson is committed to meeting the annual Law Firm Pro Bono Challenge® of dedicating 3 percent of total billable hours to pro bono efforts. Each year, our attorneys provide thousands of hours of pro bono legal representation to low-income individuals and the nonprofit organizations that serve them.

In 2017, the firm exceeded this goal, donating nearly 3.5 percent of total billable hours—for a total of 23,959 hours—to pro bono, at a value of $8.8 million in free legal services.

STINSON LEONARD STREET LLP \\ STINSON.COM
LAW OFFICES IN 16 U.S. LOCATIONS

STINSON LEONARD STREET

STAY IN TOUCH

facebook.com/stinsonleonardstreet twitter.com/stinsonleonard linkedin.com/company/stinson-leonard-street

SYNGENTA MDL LITIGATION
COMMON BENEFIT TIME
ATTORNEYS AND PARALEGALS LIST
STINSON LEONARD STREET LLP

Attorney Name (Last Name, First Name)	**Law School Graduation Year**	**List appropriate description: partner or shareholder (PT), associate (A), of counsel (OC) or law clerk or summer associate (LC)**
Bechina, Katherine	2015	A
Bukovac, Dan	1977	PT
Combs, Tamara	2015	A
Grutsch, Derek		LC
Habiger, Ashley	2010	A
Harrison, Courtney	2016	A
Henson, Renee		LC
Hoffman, Nicholas	2011	A
King, Sarah	2002	PT
Leviton, Joel	2001	PT
Lynn, Thomas	1999	PT
Montgomery, James	2015	A
Pixler, Jessica	2013	A
Roberts, Scott	1984	PT
Sevedge, Christopher	2015	A
Turner, Colin	2009	A
Woodard, Benjamin	2014	A

SYNGENTA MDL LITIGATION
COMMON BENEFIT TIME
ATTORNEYS AND PARALEGALS LIST
STINSON LEONARD STREET LLP

Staff Name (Last Name, First Name)	**Years of experience in the legal industry**	**List appropriate description: paralegal (PR) or other staff (staff). If staff designation is used, please additionally provide a job title for this staff member**
Benson, John	10	staff (practice support consultant)
Cusimano, Cindy	19	staff (practice support consultant)
Diaz, Cheri	31	PR
Froelich, Steve	33	PR
Hart, Joyce	32	PR
Stevens, Leisa	29	PR
Whalen, Patsy	17	PR

EXHIBIT 39

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF THOMAS P. THRASH

I, Thomas P. Thrash, declare as follows:

1. I am a partner of the Thrash Law Firm, P.A. (the "Thrash Law Firm"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Since its founding in 1998, the Thrash Law Firm has litigated complex cases against some of the largest corporations in the world, including Exxon, Philip Morris, State Farm, Pfizer, Lincoln Electric, Ford Motor Company, Bridgestone/Firestone, and AT&T. Serving as Lead

Counsel in a class action against Philip Morris Incorporated filed in 2003, the firm recently recovered $45 million on behalf of Arkansans who smoked Marlboro Lights.

4. Members of the Thrash Law Firm who worked on this case are as follows:

Thomas P. Thrash: Tom Thrash graduated from Ouachita Baptist University in 1977 with a bachelor's degree in business administration, and he received his juris doctor degree, with honors, from the University of Arkansas in 1980. He then spent 18 years at the Rose Law Firm in Little Rock, where he became a Senior Partner. Mr. Thrash started the Thrash Law Firm in 1998 to specialize in Class Action, Mass Tort, and Complex Litigation. In 2000, Mr. Thrash was voted Arkansas Trial Lawyer of the Year by the Arkansas Trial Lawyers Association, and he currently serves on the Board of Trustees of Ouachita Baptist University.

Marcus Bozeman: Marcus Bozeman received his Bachelor of Arts from the University of Arkansas and his law degree from Bowen School of Law at the University of Arkansas at Little Rock. Mr. Bozeman graduated first in his class from law school and served as Editor in Chief of the UALR Law Review. Immediately after law school, Mr. Bozeman completed a two-year clerkship with the Honorable Floyd R. Gibson of the United States Court of Appeals for the Eighth Circuit. He began his private practice at Rouse Hendricks German May PC in Kansas City, Missouri before eventually returning to Little Rock to concentrate in class action and mass tort litigation.

5. The Thrash Law Firm played a critical role in this litigation on behalf of Arkansas class members. Specifically, the firm researched the underlying claims and filed an action against Defendants on behalf of the W. Edgar Willman 2000 Trust (the "Trust") and the Estate of Lloyd Willman (the "Estate"). After that Arkansas lawsuit became a part of this MDL, the Thrash Law

Firm participated in discovery on behalf of these bellwether Arkansas Plaintiffs, assisting in the collection of information necessary to prepare and serve discovery responses on behalf of the Trust and the Estate. The Thrash Law Firm also attended the deposition of Ed Willman, the representative of the Trust and the Estate.

6. The Thrash Law Firm worked with Ed Willman, the representative of the Trust and the Estate as bellwether Plaintiffs, to respond to discovery and to prepare for and appear at a deposition in this litigation. Mr. Willman expended much time and effort to assist in discovery and offer his deposition in this matter, summarized as follows:

Bellwether Deposition

- May 11, 2016 deposition in Little Rock, Arkansas
- 5.5 hours in total deposition time, day of deposition preparation, and post-deposition discussion
- Traveled 50 miles round trip from Lonoke, Arkansas to attend deposition

Deposition Preparation

- Phone prep discussions in April and May, 2016 totaling 3 hours
- In-person meeting with counsel to review documents in preparation for deposition
- In-person prep on May 10, 2016 totaling 4 hours
- Traveled 50 miles round trip from Lonoke, Arkansas to attend each deposition prep and meeting with counsel

Time Spent on Paper Discovery Responses and Collecting Documents

- 19 hours, plus travel time, spent over several time periods on collecting documents, providing original and supplemental interrogatory responses, and on providing original and supplemental responses to requests for admissions
- Traveled approximately 225 miles total on several occasions to grain elevators, accountants, FSA office, and banks to obtain documents
- Traveled several times to Little Rock from Lonoke, Arkansas to meet with counsel regarding discovery

7. Mr. Willman, prior to his selection as a bellwether plaintiff, also traveled to Little Rock several times to meet with counsel regarding his complaint and spent 8 meeting with counsel and collecting information for his complaint.

8. The Thrash Law Firm maintains contemporaneous records of its time and expenses in the ordinary course of business.

9. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

10. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

11. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

12. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

13. Based on my review of the records, the total lodestar for my law firm is $39,530. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
Bozeman, Marcus	Partner	13.00	$700.00	$9,100.00
Thrash, Thomas	Partner	35.80	$850.00	$30,430.00
TOTALS		48.8		$39,530

14. The time spent by the Thrash Law Firm in this litigation prevented the firm from accepting other available work.

15. My firm seeks $ 497.10 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
5	In-House Photocopying	$289.10
14	Court Fees	$180.00
17	Ground Transportation	$28.00
	TOTAL	**$497.10**

16. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

17. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Little Rock, Arkansas.

/s/ Thomas P. Thrash
Thomas P. Thrash

EXHIBIT 40

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF I. RAY KERLICK

I, I. Ray Kerlick, declare as follows:

1. I am a partner in Wadler, Perches, Hundl & Kerlick ("WPHK") Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. WPHK is a full service firm with its principal offices in Wharton County, Texas. During the pendency of this matter we have had between 6 and 8 lawyers on staff. We have handled a variety of civil matters including complex civil litigation involving multiple claimants

and defendants, as well complex litigation in federal and state district courts. Our firm filed, to my knowledge, the first lawsuit in Texas involving the Syngenta GMO corn which was filed in the 23rd District Court in Wharton County, Texas. These Wharton County cases were transferred to the MDL. One of our initial plaintiffs, Clint Kalina, was initially identified as a bellwether claimant in the MDL litigation.

4. Attached to my declaration is my law firm's resume.

5. The following timekeepers were involved in the litigation and additional details of their background and experience are included the attachment hereto:

6. Ray Kerlick (IRK) - Partner in the firm, licensed in 1994 in Texas, 24 years of experience in civil litigation, including multi-plaintiff tort litigation, construction litigation, and real estate damage litigation, Martindale AV-rated attorney, also admitted in the Fifth Circuit, the Southern District, Eastern District and Western District of Texas.

7. Kari D. Lutringer (KDL) - Associate in the firm, licensed in 2007 in Texas, 11 years of experience in civil litigation and transactional matters. Handled multiple transactions involving purchase and sale of assets in excess of a million dollars.

8. Audra B. Smith (ABS) - Associate in firm, licensed in 2014 in Texas. Four years of experience in civil litigation, agricultural and livestock law. Handled several matters involving damage to agricultural property and livestock. Admitted to practice in the Southern District of Texas.

9. Laura Chapa (LC) - Paralegal with the firm for four years, with an additional five years experience at a litigation firm in Houston handling multi-party defense.

10. Michelle Nunley (MN) - Paralegal with the firm for four years. Also has in excess of fifteen years experience as an insurance adjuster.

11. Matthew Jirkovsky (MJ) - Paralegal with the firm for three years while attending law school, now a licensed attorney in Texas.

12. Our firm was the attorney of record and drafted the initial pleadings two of the first cases filed in Texas: *Clint Kalina, et al v. Syngenta Corporation, et al*, C.A. No. 47,911, in the 23rd Judicial District Court of Wharton County, Texas and *Derrick Lutringer v. Syngenta Corporation, et al*, C.A. No. 47,853, in the 23rd Judicial District of Wharton County, Texas. We handled the removal of these cases to the Southern District of Texas, Houston Division (Judge Gray Miller), before the cases were transferred to the MDL. Our firm coordinated ongoing discovery responses for our 48 clients throughout the process, as well as coordinated all communications and physical pickup and delivery from the seed companies, the crop insurance agents, and the local FSA office. In addition, we coordinated the bellwether discovery for our client, Clint Kalina, for the MDL case. Details of our activities, including dates and times and tasks, our included in our time entry submissions herewith.

13. In March, 2016, our client Clint Kalina was initially designated as a bellwether client in the MDL litigation. We assisted MDL counsel by taking the lead in completing answers to interrogatories, responses to requests for admission and two sets of requests for production and took the lead on preparing these responses and gathering the documents. In addition, we met with our client in preparation for his deposition on several occasions. The total common benefit hours was approximately 70 hours of attorney time. However, prior to completion of his deposition in April, 2016, Mr. Kalina was de-designated by MDL counsel.

14. Our firm keeps daily and contemporaneous time records using the TimeSlips program for each matter in office. Each timekeeper is required to keep daily time records for all

billable time. The submission herewith is based on a printout of each timekeeper from our TimeSlips program based on time entries contemporaneous to the time spent.

15. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

16. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

17. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

18. I have reviewed the time entry and removed entries for strictly clerical or administrative time, including "file review," "making copies," or other similar entries. This is consistent with the practice we have with all of our clients.

19. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

20. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm for the bellwether work is $15,186.00. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
Smith, Audra B.	Associate	32.40	$195.00	$6,318.00
Kerlick, Ray	Partner	31.60	$250.00	$7,900.00
Lutringer, Kari	Associate	4.00	$200.00	$800.00
Chapa, Laura	Paralegal	1.60	$105.00	$168.00
TOTALS		69.60		$15,186.00

21. Because our firm's standard business is taken on an hourly basis, every hour spent on the Syngenta litigation was an hour that was not spent working on other billable time files. Specifically, the workload of Audra B. Smith on the Syngenta matter prevented our firm from taking other transactional and/or litigation matters which would have been assigned to her.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July 2018, in Wharton County, Texas.

/s/I. Ray Kerlick/s/
I. Ray Kerlick

WADLER, PERCHES, HUNDL & KERLICK
Telephone: 979-532-3871
Toll Free: 1-800-929-1725
Facsimile: 979-532-3508
101 West Burleson Street
Wharton, Texas 77488-5003

General Civil Trial Practice, Personal Injury, Commercial Collections, Banking, Business, Contract, Criminal, Estate Planning, Family Law, Oil & Gas, Real Estate and Taxation Law, & Mediation Services

Larry E. Wadler (Retired), of counsel, born Wharton, Texas, September 20, 1936; admitted to bar, 1960, Texas. Preparatory education, Tulane University of Louisiana; legal education, University of Texas (LL.B., 1960). Member: State Bar of Texas.

John D. Perches, born Wharton, Texas, July 10, 1970; admitted to bar, 1994, Texas; also admitted to practice before U.S. District Court, Southern District of Texas. Preparatory and legal education, University of Texas (B.A., 1991; J.D. 1994). Member: Wharton County Bar Association (President, 2001); State Bar of Texas. E-Mail: jperches@wphk-law.com

Philip J. Hundl, born Galveston, Texas, February 11, 1970; admitted to bar, 2002, Texas; also admitted to practice before U.S. District Court, Northern, Southern, Eastern, and Western Districts of Texas. Preparatory education, Texas A&M University (B.S., 1992); legal education, University of Denver (J.D., 2001). Member: Wharton County (President, 2005) Bar Associations, and San Antonio (Secretary, International Section, 2003-04); State Bar of Texas; Mediator. E-Mail: phundl@wphk-law.com

I. Ray Kerlick, born Wharton, Texas, February 17, 1969; admitted to bar, 1994; also admitted to practice before U.S. District Court, Southern, Eastern, and Western Districts of Texas. Preparatory education, University of Texas (B.A. Plan II 1991); legal education, University of Texas (J.D., 1994). Member: Wharton County Bar Association, Federal Bar Association; Defense Research Institute; Life Health & Disability & ERISA Committee. E-Mail: rkerlick@wphk-law.com

Rachel L. Rust, of counsel, born Wharton, Texas, October 18, 1955; admitted to Texas Bar 1995, admitted to Virginia Bar 1996. Preparatory education, University of Texas at Austin (BSW, 1978), University of Texas at Dallas (MS, 1981), University of Texas at Arlington (MSSW, 1983); legal education, Washington and Lee University (J.D. 1995). Member: Wharton County Bar Association, Virginia State Bar, State Bar of Texas. E-mail: rrust@wphk-law.com

Kari D. Lutringer, born Wharton, Texas, September 17, 1981; admitted to bar, 2007, Texas. Preparatory education, Texas A&M University (B.S. Accounting, 2004; M.S. Accounting 2004); legal education, University of Houston (J.D., 2007). Member: Houston and Wharton County Bar Associations; State Bar of Texas. E-Mail: klutringer@wphk-law.com

Audra B. Smith, born Wharton, Texas, June 29, 1988; admitted to bar, 2014, Texas. Preparatory education, Texas A&M University (B.S., 2009); legal education, South Texas College of Law (J.D., 2014). Member: Wharton County Bar Association; State Bar of Texas. Email: asmith@wphk-law.com

☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆

Representative Clients: Commercial State Bank, First State Bank of Louise, Community Bank of Texas, Dorian Tool International, Inc.; McGowan Partners, LTD., Perma Pom, Inc.; Sam's Boat, Schramme Construction Co., Sterling Vacuum Services, Inc.; El Campo Machine & Repair, Inc.; Southern Farm Bureau Life Insurance Co., Viper Well Services, L.L.C.; Patriot Oil Field Services, LLC; K-C Lease Service Inc.; Gresham Trucking; Catholic Union of Texas- The KJT; Mangum's Oilfield Services Ltd.; Greene's Energy Group; LP; SKL Services, Inc; Maxim Production Co.

EXHIBIT 41

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT: ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**MDL No. 2591**

DECLARATION OF STEPHEN M. WAGNER

I, Stephen M. Wagner, declare as follows:

1. I am a partner of Wagner Reese, LLP ("Wagner Reese"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Wagner Reese, LLP was founded by partners Stephen M Wagner and Jason R. Reese in 2000. The Firm handles personal injury, product liability, complex litigation, and class action matters throughout Indiana and Illinois. Mr. Wagner was admitted to the Indiana bar in

1994 and has taken numerous cases to jury trial throughout his career. He was named the Trial Lawyer of the Year by the Indiana Trial Lawyers' Association (ITLA) in 2006 and is an elected member of the ITLA Board of Directors. Jason R. Reese was admitted to the bar in 1997 and is currently licensed in Indiana and Illinois. Mr. Reese has extensive jury trial experience throughout his career and has been repeatedly recognized by his peers as one the best trial lawyers in Indiana. His recognition began in 2003 when the Indiana State Bar Association named him "Outstanding Young Lawyer of the Year." In 2016 and 2018, Mr. Reese's peers voted him a Top 50 Super Lawyer for the State of Indiana.

4. See Firm History referenced above, and timekeeper background below.

5. The following is background information on the Firm's timekeepers:

Stephen Wagner

6. Obtained bachelor's degree, *cum laude*, from the University of Notre Dame in 1991

7. Obtained law degree, *cum laude*, from Indiana School of Law – Bloomington in 1994

8. Has been admitted to practice law since 1994

9. Areas of practice: complex litigation, personal injury, civil rights, class action, and business litigation

10. Accepted into the U.S. Attorney General's Honors Program and worked as an attorney for the Department of Justice in 1994-1995

11. Selected by his peers as an "Indiana Super Lawyer" from 2004-present

12. In 2006, was selected as the Indiana Trial Lawyer of the Year by Indiana Trial Lawyers Association (ITLA)

13. Elected member of the ITLA Board of Directors

Jason Reese

14. Obtained bachelor's degree, *cum laude*, from University of Arizona in 1994

15. Obtained law degree from Indiana University School of Law – Bloomington in 1997

16. Has been admitted to practice law since 1997

17. In 2003, named "Outstanding Young Lawyer of the Year" by the Indiana State Bar Association

18. In 2007, selected as one of the prestigious "Forty Under Forty" by the *Indianapolis Business Journal*

19. In 2013, named as one of the "Top 100 Trial Lawyers" by the *National Trial Lawyers*

20. Selected by his peers as an "Indiana Super Lawyer" from 2004-present

21. In 2016, recognized as "Top 50 Indiana Lawyer" by *Super Lawyer* magazine

Jamie Polk – Senior Paralegal

22. Obtained Paralegal Studies associates degree from University of Indianapolis in 1982

23. Has been working in the legal field since 1978

24. Areas of Practice: Environmental class actions, complex wrongful death, personal injury, and civil rights, complex mergers and acquisitions, and corporate law

Jessie Wolfe – Syngenta Litigation Coordinator

25. Obtained business bachelor's degree from Butler University in 2012

26. Has been working in the legal field since 2012

27. Areas of practice include personal injury and mass tort litigation support

28. The Firm filed a class action case against Syngenta on behalf of all Indiana farmers in the U.S. District Court for the Southern District of Indiana (OREBAUGH, et al v. SYNGENTA AG et al, Case No. 2:15-cv-09922-JWL-JPO). The undersigned helped prepare that class action complaint, traveled to personally meet with the class representative, Keith Orebaugh, and kept in regular communication with him.

29. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), our firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

30. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

31. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

32. After exercising billing judgment and conducting this re-review, I hereby confirm the total lodestar for my law firm is $35,240. A breakdown of the lodestar is provided below.

	Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
1.	Wagner, Steve	Partner	29.80	$700.00	$20,860.00
2.	Reese, Jason	Partner	19.80	$700.00	$13,860.00
3.	Polk, Jamie	Paralegal	4.00	$100.00	$400.00
4.	Wolfe, Jessie	Paralegal	1.20	$100.00	$120.00
	TOTALS		54.80		$35,240.00

33. My firm seeks $711.50 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
2	Postage Charges	$34.75
6	Outside Photocopying	$45.75
12	Lexis/Westlaw/Bloomberg	$425.00
15	Service of Process Fees	$206.00
	TOTAL	**$711.50**

34. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

35. The Firm did not make capital contributions to the litigation fund.

36. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Carmel, Indiana.

Stephen M. Wagner

EXHIBIT 42

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF MARK A. WALLER

I, Mark A. Waller, declare as follows:

1. I am the managing member of Waller Jorgenson Warzynski, PLLC ("WJW"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. WJW attorneys have litigated class action oil and gas cases, class actions against banks for abusive overdraft practices, Fair Labor Standards Act collective actions on behalf of a

national class, a mass tort action against directors and officers of a failed aircraft manufacturer, and been involved in complex commercial litigation matters over the last two decades.

4. Mark A. Waller performed the work at WJW in the referenced case. I graduated from The University of Tulsa with a Bachelors of Science degree in Economics in 1980. I graduated from The University of Tulsa, College of Law, in 1991. I was significantly involved, from 1990-1991, in defending a group of individual defendants in two large depositor class actions involving the Republic Bancorp financial institutions. In 1995 I was a founding partner with Inhofe, Jorgensen, Balman & Waller, where I worked primarily in the areas of complex commercial litigation and employment law. In 1998 I was hired by a Fortune 500 energy and communications company headquartered in Tulsa, Oklahoma -- The Williams Companies, Inc. ("Williams") -- to handle Williams' and its subsidiaries' labor and employment matters, both nationally and internationally. I re-entered private practice in 2003 with Herrold Herrold & Co., Lawyers, and this firm merged with Sneed Lang in 2009. I currently practice primarily in the areas of commercial litigation, business torts, class action, mass action and multi-plaintiff litigation, and employment litigation representing both plaintiffs and employers.

5. At WJW, and after Sneed Lang PC ceased operations in the referenced case, I was primarily responsible for working with the class representative plaintiffs for the states of South Dakota and Colorado and interfacing with and between these representatives and the Gray Ritter Graham firm.

6. At WJW I worked with (i) Richard Bieber of Bieber Farm and Rolling Ridge Ranch, LLC, which were class representative for South Dakota, and (ii) Lyle Ravenkamp and Scott Ravenkamp, both of Ravenkamp Farms Partnership, the class representative for Colorado. Each of these individuals was extremely cooperative and prompt in providing requested information and

documentation during the discovery process. Mr. Bieber was extensively prepared for his deposition and then deposed on March 8, 2016. WJW's time records reflect the hours spent working with Mr. Bieber on discovery and related matters.. Similarly, WJW's time records reflect the time spent with Mr. Ravenkamp in producing documents and responding to Syngenta's discovery requests.

7. At WJW, I regularly record and contemporaneously maintain records of time spent on each matter, and those records are recorded on time sheets and maintained at the WJW offices.

8. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

9. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

10. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment. In that regard, and subsequent to a teleconference with Don Downing, I reviewed time I incurred at WJW.

11. With respect to billing judgment, I used that judgment each time I contemporaneously recorded time. In that regard, I incurred significant time reviewing select pleadings that kept me apprised of how the case was progressing, and for which I recorded no time. My time records reflect my work in the referenced case as directed by Co-Lead Counsel and in the performance of tasks that I was asked by Co-Lead Counsel to perform.

12. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time information submitted on behalf of WJW is accurate and in compliance with the Court's Common Benefit Order.

13. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for WJW is $4,000.00. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
Mark A. Waller	Shareholder	10.00	$400.00	$4,000.00
TOTALS				$4,000.00

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July 2018, in Tulsa, Oklahoma.

/s/ *Mark A. Waller*
Managing Member of Waller Jorgenson Warzynski, PLLC

EXHIBIT 43

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF THOMAS V. BENDER

I, Thomas V. Bender, declare as follows:

1. I was a shareholder in the former firm of Walters Bender Strohbehn & Vaughan, P.C. and am currently a member in the firm of Horn Aylward & Bandy, LLC. I am authorized to submit this declaration on behalf of both firms.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. Walters Bender Strohbehn & Vaughan, P.C. was involved in complex litigation,

including MDL litigation and national and state class actions, for over 20 years. It handled complex litigation cases involving predatory lending and mortgage fraud, life insurance fraud, antitrust matters and consumer fraud, serving as lead counsel or in steering committee capacities in many of those cases, including:

a. Thomas v. U.S. Bank National Association, Case No 1216-CV20561, involving a $92,000,000 class action settlement to 2,400 class members.

b. Mitchell v. Residential Funding Company, LLC, et al, Case NoCV-220489, a verdict of $5,100,000 in actual damages and $99,000,000 in punitive damages, which was ultimately settled in part.

c. A history of seventeen verdicts or settlements of $5,000,000 or more, and 4 verdicts or settlements of over $50,000,000, with over $750 Million recovered since 2007.

d. Defense of multidistrict national class actions involving annuity sales practices, vanishing premiums and funding of multiple employer welfare benefit plans.

Attached is a copy of that law firm's resume.

4. Horn Aylward & Bandy, LLC and its members have been lead counsel in numerous class action cases on behalf of consumers and others involving motor fuel, life insurance products, cable television services, actions against the United States, and other complex cases, including:

a. Counsel for various State Treasurers or Attorneys General in actions seeking the return of billions in unclaimed and abandoned US Savings Bond proceeds to various states and their citizens, with the value of judgments obtained being in excess of 4.2 billion dollars.

b. Byrd v. Sprint and Network 2000, involving defense of claims of 100,000

independent sales representatives alleging underpayment of commissions and fraud, with successful cross-claim in arbitration resulting in an arbitration award of over $60,000,000.

c. In re Motor Fuel Temperature Litigation, Case No , co-lead counsel in MDL action involving many years of litigation, appeals, a bellwether trial, and ultimately settlements with more than two dozen motor fuel refiners and retailers.

d. City of Moberly, Missouri/Mamtek litigation, involving a series of complex investor securities lawsuits brought under state blue sky laws against a large bond underwriter, stemming from the collapse of a multimillion dollar municipal bond offering.

e. Block v. Ohio State Life Insurance Company, involving an action brought by policy holders across the country against an insurer and several corporate parent companies, resolved for a total value in excess of $20,000,000.

f. Rockhill Orthopedics v. Humana, an action against a health insurance company for breach of contract, brought by thousands of physicians in Kansas and Missouri, alleging breaches of agreements with physicians for reimbursements.

g. In re Bisphenol A litigation, co-lead counsel in MDL action brought against manufactures of baby bottles containing BPA for damages and injunctive relief

h. In re Multi-Piece Rim Liability Litigation, MDL 362, involving defense of class action litigation for a major manufacturer.

5. The timekeepers involved in the Syngenta litigation were partners or partner equivalents, Tom Bender, Brett Milbourn and Dirk Hubbard. Associates working on the case were Patrick McAndrews and Brooke Edenfield. Paralegals were Sarah Varney Stevens and Melissa Woods Williamson.

Partners/partner equivalents:

a. Tom Bender began his career as an accountant for Price Waterhouse in 1975 before returning to law school. He became a partner at Linde Thomson Fairchild Langworthy Kohn and VanDyke, and worked there until he left to help form the firm of Walters Bender Strohbehn & Vaughan in 1991. During his more than 38 years of trial work, he has been involved in representing both plaintiffs and defendants in a variety of litigation matters. He began his career doing medical negligence, product liability and personal injury defense for a number of local and national insurance carriers. He also assisted in the defense of a Texas real estate syndicator and served as general trial counsel for a large trucking company located in Joplin, Missouri. Over time, he became more active in the representation of plaintiffs, handling cases involving minority shareholders or limited partners in breaches of fiduciary claims, medical negligence suits, vexatious refusal to pay and fraud actions, including numerous class action matters. He has served as co-lead or liaison counsel in MDL actions, including as co-lead in the In re Bisphenol A Litigation; and as Liaison Counsel in the In re Motor Fuel Litigation as well as in in the Monsanto Genetically-Engineered Wheat Litigation, MDL No: 2473. He has also served in various committee positions including on the discovery committees in the pending In re Blue Cross Blue Shield Litigation, Case No 2:13 –CV-20000 and In re Disposable Lens, Case No: 3:15-MD-2626-J-20JRK

Mr. Bender has been recognized for his expertise by Best Lawyers, Super Lawyers for Kansas and Missouri, Best of the Bar of the Kansas City Business Journal, National Trial Lawyers Top 100 and a consistent AV Premier and Judicial Edition rating by Martindale Hubbell. He has been an active member of the Bar, serving as President of the Kansas City Metropolitan Bar Association and as President of the Kansas City Metropolitan Bar Foundation

(receiving president awards from both of those organizations for prior service) as well as currently serving as the Vice-President of the Missouri Bar.

b. Brett Milbourn began his practice at Linde Thomson Fairchild Langworthy & Van Dyke in 1986 before leaving to help co-found Walters Bender Strohbehn & Vaughan in 1991. Since then, he has been involved as lead and co-counsel in several multi-million dollar local and national lawsuits for individuals and businesses. In state and federal courts, he has represented a diverse clientele in complex cases involving business and commercial litigation, class action consumer fraud, property disputes with constitutional implications, and breach of contract actions. He and his legal team have been retained by the Kansas State Treasurer and 11 other states in cutting-edge, unclaimed property litigation against the U.S. Treasury in the "*US Savings Bond Litigation*". Additionally, Mr. Milbourn was involved in complex litigation that involved, among other parties, the National Collegiate Athletic Association (NCAA).

Mr. Milbourn was retained as local counsel in the Vitamins Antitrust Litigation; United States District Court for the District of Columbia in a nationwide vitamin antitrust case against the world's leading manufacturers of vitamins. The state anti-trust claims for Kansas producers involved vitamins for livestock located within the state, resulting in a multi-million dollar settlement for his large hog producer clients before trial. Likewise, in a separate matter, Mr. Milbourn represented several large hog farmers whose high-value breeder boars and market pigs were poisoned from feed mix containing excessive amounts of selenium, resulting in a confidential but very favorable monetary settlement.

Mr. Milbourn has been recognized by Best of the Bar by the Kansas City Business Journal, as a Super Lawyer Kansas and Missouri, and carries the AV Premier and Judicial Edition rating from Martindale Hubbell. He has been an active member of the Bar, serving as

President of the Johnson County Bar Association, President of the Johnson County Bar Foundation and President of the Young Lawyers Section of the Kansas Bar Association. He has been recognized as the Recipient of the Outstanding Service Award to the Legal Profession and Public by the Kansas Bar Association as well as the Legacy Award recipient of the Johnson County Bar Foundation.

c. Dirk Hubbard graduated from the University of Missouri, where he was President of the Student Body, and then attended law school at the University of Missouri at Kansas City. Upon graduation in 1990, he began his career at Payne and Jones where he worked until 1997. He then worked with John Klamm at a firm that became Klamann & Hubbard, where he remained until 2009, and then transitioned to Hubbard & Ardebili until 2014. He began with Walters Bender Strohbehn & Vaughan in 2015 before joining Horn Aylward & Bandy in 2018. Mr. Hubbard is a member of the Bar in Kansas and Missouri, and he is admitted to practice before U.S. District Courts for Kansas and the Western District of Missouri. Mr. Hubbard has extensive litigation experience over the past 27 years, and he is rated "AV Preeminent" by Martindale-Hubbell. He has served as class counsel in the following insurance and consumer class actions: American Family Vanishing Premiums Life Insurance Litigation, a class action venued in Minnesota; the Silver Creek Subdivision litigation venued in Joplin Missouri involving groundwater contamination; and payday lender class actions, ***Jennifer Lundy v. Mid-America Credit, Inc.***, Case No. 1116-CV02060, Jackson County Circuit Court (final class settlement approval on 10/11/11); and, ***Jennifer Lundy v. Check Into Cash of Missouri,*** Case No. 1216-CV10150, Jackson County Circuit Court, final class settlement approval on 3/15/13. He has also served as counsel in several multiple-plaintiff joinder actions brought by former students against various for-profit colleges. He has also been class counsel in various employment discrimination class actions/collective

actions including national gender and regional gender discrimination class actions against Rent-A-Center and Dillard's, as well as aregional race discrimination class action and a nationwide age discrimination collective action against Sprint.

Associates:

a. Patrick McAndrew graduated from Michigan State University School of Law, with honors, in 2009. He clerked with the Honorable Vernon Schoville before beginning to work with Walters Bender Strohbehn & Vaughan. While there, he worked on numerous class action cases involving claims against financial and lending institutions and nationwide retailers, as well as biotech companies. Since 2014, he has been recognized by his peers for inclusion in the Kansas and Missouri Super Lawyers Rising Stars. Mr. McAndrew's involvement in the Syngenta included document review and analysis as well as communication with bellwethers and class representatives.

b. Brooke Edenfield graduated from Washington University in 2004 and later decided to return to law school, graduating from Kansas University in 2011, where she was a member of the Jessup International and the National Environmental Law Moot Court teams. She began work with Walters Bender Strohbehn & Vaughan in October 2011 and worked there until April of 2016. Her involvement in the Syngenta case, included document review and analysis as well as obtaining and analyzing farmer records.

Paralegals

a. Sarah Varney Stevens, obtained her undergraduate degree from Scripps College 2013 and her Masters from University of Illinois in 2015. During the time she was pursuing her graduate degree, Sarah worked as a legal assistant with Torricelli & Limentato in Urbana, Illinois, while also working as a freelance translator. Sarah then joined Walters Bender Strohbehn &

Vaughan in 2015. Sarah Stevens involvement in the Syngenta case included document review and analysis, communication with bellwethers and class representatives, and coordination of discovery responses and deposition of class representatives and bellwethers.

b. Melissa Woods Williamson graduated from the University of Missouri, with a bachelor's degree in English and Creative Writing. She joined Walters Bender Strohbehn & Vaughan in 2009, and has been involved in numerous class actions as a legal assistant in both plaintiff and defense cases, including several MDL matters involving predatory lending and life insurance and annuity cases. Melissa Williamson's involvement in the Syngenta case included document review and analysis.

6. As a summary of the work done by our firms, Tom Bender served on the Plaintiff Executive Committee and provided general oversight and participation in that capacity, including initial discussions on strategy, experts, industry groups to be consulted and similar matters. Tom Bender and Dirk Hubbard were initially tasked with preparing the proposed trial plan for the overall litigation, and the draft that was prepared was generally followed in the course of the litigation. Patrick McAndrews and Brooke Edenfield were assigned to assist in the review of documents produced by Syngenta. Thereafter, we were assigned responsibilities with identifying potential class representatives and bellwethers, as well as the background work associated with reviewing qualifications, adequacy of recordkeeping and the like. As discovery commenced, we were asked to oversee producer discovery for the MDL class representatives and bellwether plaintiffs. In addition to coordinating the efforts of several law firms with regard with regard to class representative and bellwether plaintiffs discovery, we worked with the farmers to get their records produced and worked with opposing counsel on meet and confer issues as the scope of discovery evolved. We worked with co-counsel to develop deposition preparation materials and

met with numerous plaintiffs to again determine suitability as class representatives or bellwethers. We coordinated the deposition scheduling and preparation for all class representatives and bellwethers in the Kansas MDL, and we also prepared twenty-two of those farmers in Iowa, Illinois, South Dakota, Nebraska, Kansas, Missouri and Arkansas for deposition. That preparation was most often in person, and then also involved again traveling to their locations to actually produce those farmers. As expert reports were prepared, we assisted in providing requested financial and economic information for the experts as well as that information needed to challenge opposing experts' data. We assisted in producer fact citing and checked multiple briefs filed on expert and summary judgment issues. We also helped co-counsel Chris Ellis with the notice plan, meeting with the provider in Minneapolis to insure that notice was properly sent and opt outs properly captured, as well as responding to class member calls.

7. As reflected in paragraph 6 above, we worked extensively with class representatives and bellwethers in numerous states, coordinating discovery responses and producing 22 of the farmers for their depositions. My firm and I worked with the following 22 class representative and bellwether plaintiffs: (1) B-F James & Sons, Inc. (Frank James); (2) Bieber Farm/Rolling Ridge Ranch, LLC (Rick Bieber); (3) Glenn Bix; (4) Steven and John S. Cap; (5) Claas Farms (Howard and Luke Claas); (6) Crandall Farms/Three Guys Farming, Inc. (Morris and Dulane Crandall); (7) Dierking Farms (Les Dierking); (8) Eagle Lake (Kenny Falwell); (9) Five Star Farms (Brett Kendrick and Gary Kendrick); (10) Richard Glanzer; (11) Hadden Farms (Dale Hadden); (12) Greg Harris; (13) Henderson Farms Partnership (Tyler Henderson); (14) J. Anderson Farm, Inc.; (15) Chad Murphy; (16) Richard Oswald; (17) Randy Overgard; (18) Pat Skarda; (19) State Line Farm Co. (Ivan Woltemath); (20)Volnek Farms (Eugene and Deborah

Volnek); (21) Ross Ulmer; and, (22) W. Edgar Willman Trust and Lloyd C. Willman Estate (Ed Willman).

8. All of these plaintiffs provided discovery in addition to plaintiff fact sheets.

9. Of the 22 plaintiffs noted above, seven were class representative plaintiffs from the bellwether discovery pool states as follows: B-F James & Sons, Inc. and Bieber Farm/Rolling Ridge Ranch, LLC – South Dakota; Five Star Farms – Kansas; Hadden Farms – Illinois; Richard Oswald – Missouri; Henderson Farms Partnership – Arkansas; and, Volnek Farms – Nebraska. These class representative plaintiffs responded to, and produced documents responsive to, a first and second set of requests for production, answered three sets of interrogatories and answered requests for admission. My firm assisted in responding to this discovery. These six class representative plaintiffs were each deposed as well, and my firm assisted in preparing for and defending these depositions.

10. Of the 22 plaintiffs noted above, 15 were bellwether plaintiffs from the bellwether discovery pool states as follows: Glenn Bix, Claas Farms, Dierking Farms, LLC, Greg Harris, and State Line Farm Co. – Missouri Bellwethers; Steven and John S. Cap, Richard Glanzer, J. Anderson Farm, Inc., Chad Murphy, Randy Overgard, and Ross Ulmer – South Dakota Bellwethers; Crandall Farms/Three Guys Farming, Inc., Eagle Lake, Pat Skarda, and Willman Trust and Estate – Arkansas Bellwethers. These 16 bellwether plaintiffs responded to and produced documents in response to requests for production, answered interrogatories, and answered requests for admission. My firm assisted in responding to this discovery. These 16 bellwether plaintiffs were each deposed as well, and my firm assisted in preparing for and defending these depositions.

11. My firm and I spent considerable time and effort responding to Syngenta's discovery

requests. As described below, each of these individuals also spent many hours doing so, and where applicable, preparing for and providing deposition testimony.

12. B-F James & Sons, Inc. (Frank James):

a. B-F James & Sons, Inc. was selected and agreed to serve as a South Dakota class representative plaintiff and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about B-F James & Sons, Inc.'s farming operation and other information over significant time periods, and which also called for personal financial information. B-F James & Sons, Inc. conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at B-F James & Sons, Inc.'s farm, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. B-F James & Sons, Inc. traveled 200 miles total on several occasions in obtaining these documents. B-F James & Sons, Inc. also incurred $150 in postage costs in forwarding various documents to counsel. B-F James & Sons, Inc. also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with B-F James & Sons, Inc., approximately 28 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. B-F James & Sons, Inc. also prepared for and provided deposition testimony. To prepare for this deposition, B-F James & Sons, Inc. reviewed materials, participated in phone call preparations, and attended in-person meetings. B-F James & Sons, Inc. traveled 300 miles round trip for in-person deposition preparation and another 300 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with B-F James

& Sons, Inc., approximately 21 additional hours (not including travel time) were devoted to these deposition efforts by B-F James & Sons, Inc., for a total of 49 hours in pursuit of this litigation.

13. **Bieber Farm/Rolling Ridge Ranch, LLC (Rick Bieber):**

a. Bieber Farm and Rolling Ridge Ranch, LLC. were selected and agreed to serve as South Dakota class representative plaintiffs and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Bieber Farm/Rolling Ridge Ranch, LLC.'s farming operation and other information over significant time periods, and which also called for personal financial information. Bieber Farm/Rolling Ridge Ranch, LLC. conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Bieber Farm/Rolling Ridge Ranch, LLC.'s farm, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Bieber Farm/Rolling Ridge Ranch, LLC. traveled numerous miles on several occasions in obtaining these documents. Bieber Farm/Rolling Ridge Ranch, LLC. also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Bieber Farm/Rolling Ridge Ranch, LLC. approximately 32 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents. Additional time was also spent by Bieber Farm/Rolling Ridge Ranch, LLC with its counsel on these tasks.

b. Bieber Farm/Rolling Ridge Ranch, LLC. also prepared for and provided deposition testimony. To prepare for this deposition, Bieber Farm/Rolling Ridge Ranch, LLC. reviewed materials, participated in phone call preparations, and attended in-person meetings. Bieber Farm/Rolling Ridge Ranch, LLC. traveled from South Dakota to Kansas City for in-person

deposition preparation and for his deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Bieber Farm/Rolling Ridge Ranch, LLC. approximately 16 additional hours (not including travel time) were devoted to these deposition efforts by Bieber Farm/Rolling Ridge Ranch, LLC., for a total of 48 hours in pursuit of this litigation.

14. **Glenn Bix**:

a. Glenn Bix was selected and agreed to serve as a Missouri bellwether and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Glenn Bix's farming operation and other information over significant time periods, and which also called for personal financial information. Glenn Bix conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Glenn Bix's farm, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Glenn Bix traveled numerous miles on several occasions in obtaining these documents. Glenn Bix also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Glenn Bix, approximately 16 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Glenn Bix also prepared for and provided deposition testimony. To prepare for this deposition, Glenn Bix reviewed materials, participated in phone call preparations, and attended in-person meetings. Glenn Bix traveled 30 miles round trip for his deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Glenn Bix,

approximately 14 additional hours were devoted to these deposition efforts by Glenn Bix, for a total of 30 hours in pursuit of this litigation.

15. **Steven and John S. Cap**:

a. Steven and John S. Cap were selected and agreed to serve as South Dakota bellwethers and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Steven and John S. Cap's farming operation and other information over significant time periods, and which also called for personal financial information. Steven and John S. Cap conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Steven and John S. Cap's farm, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Steven and John S. Cap traveled 275 miles total on several occasions in obtaining these documents. Steven and John S. Cap also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Steven and John S. Cap, approximately 33 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Steven and John S. Cap also prepared for and provided deposition testimony. To prepare for this deposition, Steven and John S. Cap reviewed materials, participated in phone call preparations, and attended in-person meetings. Steven and John S. Cap traveled 175 miles round trip for in-person deposition preparation and then another 175 miles round trip for their depositions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Steven and John S. Cap, approximately 20 additional hours (not including travel

time) were devoted to these deposition efforts by Glenn Bix, for a total of 53 hours in pursuit of this litigation.

16. **Claas Farms (Howard and Luke Claas):**

a. Claas Farms was selected and agreed to serve as a Missouri bellwether and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Claas Farms' farming operation and other information over significant time periods, and which also called for personal financial information. Claas Farms conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Claas Farms' location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Claas Farms traveled numerous miles on several occasions in obtaining these documents. Claas Farms also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Claas Farms, approximately 22 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Claas Farms also prepared for and provided deposition testimony. To prepare for this deposition, Claas Farms reviewed materials, participated in phone call preparations, and attended in-person meetings. Claas Farms traveled 260 miles round trip for in-person deposition preparation and then another 260 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Claas Farms, approximately 17 additional hours (not including travel time) were devoted to these deposition efforts by Claas Farms, for a total of 39 hours in pursuit of this litigation.

17. **Crandall Farms/Three Guys Farming, Inc. (Morris and Dulane Crandall):**

a. Crandall Farms/Three Guys Farming, Inc. were selected and agreed to serve as Arkansas bellwethers and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Crandall Farms/Three Guys Farming, Inc.'s farming operation and other information over significant time periods, and which also called for personal financial information. Crandall Farms/Three Guys Farming, Inc. conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Crandall Farms/Three Guys Farming, Inc.'s location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Crandall Farms/Three Guys Farming, Inc. traveled numerous miles on several occasions in obtaining these documents. Crandall Farms/Three Guys Farming, Inc. also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Crandall Farms/Three Guys Farming, Inc., approximately 30 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Crandall Farms/Three Guys Farming, Inc. also prepared for and provided deposition testimony. To prepare for this deposition, Crandall Farms/Three Guys Farming, Inc. reviewed materials, participated in phone call preparations, and attended in-person meetings. Crandall Farms/Three Guys Farming, Inc. traveled 200 miles round trip for in-person deposition preparation and then another 200 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Crandall Farms/Three Guys Farming, Inc., approximately 20 additional hours (not including travel time) were devoted to these

deposition efforts by Crandall Farms/Three Guys Farming, Inc., for a total of 50 hours in pursuit of this litigation.

18. **Dierking Farms (Les Dierking):**

a. Dierking Farms was selected and agreed to serve as a Missouri bellwether and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Dierking Farms' farming operation and other information over significant time periods, and which also called for personal financial information. Dierking Farms conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Dierking Farms' location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Dierking Farms traveled 120 miles total on several occasions in obtaining these documents. Dierking Farms also spent $100 on postage in forwarding documents to counsel. Dierking Farms also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Dierking Farms, approximately 32 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Dierking Farms also prepared for and provided deposition testimony. To prepare for this deposition, Dierking Farms reviewed materials, participated in phone call preparations, and attended in-person meetings. Dierking Farms traveled 170 miles round trip for in-person deposition preparation and then another 170 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Dierking Farms,

approximately 20 additional hours (not including travel time) were devoted to these deposition efforts by Dierking Farms, for a total of 52 hours in pursuit of this litigation.

19. **Eagle Lake Farm Partnership (Kenny Falwell):**

a. Eagle Lake Farm Partnership was selected and agreed to serve as an Arkansas bellwether and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Eagle Lake Farm Partnership's farming operation and other information over significant time periods, and which also called for personal financial information. Eagle Lake Farm Partnership conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Eagle Lake Farm Partnership's location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Eagle Lake Farm Partnership traveled 386 miles total on several occasions in obtaining these documents. Eagle Lake Farm Partnership also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Eagle Lake Farm Partnership, approximately 35 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents. An additional 12 hours was also spent by Eagle Lake Farm Partnership in working with its attorney regarding various tasks associated with service as a bellwether plaintiff.

b. Eagle Lake Farm Partnership also prepared for and provided deposition testimony. To prepare for this deposition, Eagle Lake Farm Partnership reviewed materials, participated in phone call preparations, and attended in-person meetings. Eagle Lake Farm Partnership traveled 180 miles round trip for in-person deposition preparation and then another 180 miles round trip

for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Eagle Lake Farm Partnership, approximately 23 additional hours (not including travel time) were devoted to these deposition efforts by Eagle Lake Farm Partnership, for a total of 70 hours in pursuit of this litigation.

20. **Five Star Farms (Brett Kendrick and Gary Kendrick):**

a. Five Star Farms was selected and agreed to serve as a Kansas class representative plaintiff, attending each day of trial and testifying at trial. Five Star Farms responded to Syngenta's requests for production which sought documents pertaining to numerous details about Five Star Farms' farming operation and other information over significant time periods, and which also called for personal financial information. Five Star Farms conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Five Star Farms' location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Five Star Farms traveled numerous miles on several occasions in obtaining these documents. Five Star Farms also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Five Star Farms, approximately 50 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Five Star Farms also prepared for and provided deposition testimony. To prepare for this deposition, Five Star Farms reviewed materials, participated in phone call preparations, and attended in-person meetings. Five Star Farms traveled 200 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with

Five Star Farms, approximately 20 additional hours (not including travel time) were devoted to the deposition testimony efforts by Five Star Farms.

c. Five Star Farms worked with counsel to prepare for its participation in the Kansas Trial, including spending at least 15 hours in April, 2017 reviewing documents and providing information to counsel, a significant portion of which occurred during a visit by counsel to Five Star Farms' farming operation over significant parts of a two day period. Five Star Farms also attended the Kansas trial from June 5, 2017 to June 23, 2017, testifying at the Kansas trial on June 8, 2017. Brett Kendrick of Five Star Farms attended every day of trial and provided assistance and input to counsel whenever possible. Mr. Kendrick spent approximately 120 hours at trial over three weeks. To prepare for trial testimony, Five Star Farms reviewed materials and attended in-person meetings, including a meeting that occurred the weekend before trial. Mr. Kendrick spent at least 10 hours preparing for Five Star Farms' testimony. Five Star Farms traveled 800 miles round trip to attend and testify at trial. Five Star Farms devoted a total of approximately 145 hours in preparing for, attending and testifying at the Kansas trial, for a total of at least 215 hours in pursuit of this litigation. Additional time was also spent by Five Star Farms in working with its attorney regarding the various tasks associated with service as a class representative.

d. In addition to the time devoted to this litigation, the Kansas trial occurred during planting season for Five Star Farms. In order to timely complete its necessary farming operations during the time of trial, Five Star Farms hired one additional full-time laborer to perform work that would have been performed by Brett Kendrick. Five Star Farms paid this additional person approximately $12 per hour for over 40 hours of work a week during trial.

21. **Richard Glanzer:**

a. Richard Glanzer was selected and agreed to serve as a South Dakota bellwether and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Richard Glanzer's farming operation and other information over significant time periods, and which also called for personal financial information. Richard Glanzer conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Richard Glanzer's farm, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Richard Glanzer traveled numerous miles on several occasions in obtaining these documents. Richard Glanzer also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Richard Glanzer, approximately 20 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Richard Glanzer also prepared for and provided deposition testimony. To prepare for this deposition, Richard Glanzer reviewed materials, participated in phone call preparations, and attended in-person meetings. Richard Glanzer traveled 250 miles round trip for in-person deposition preparation and then another 250 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Richard Glanzer, approximately 18 additional hours (not including travel time) were devoted to these deposition efforts by Richard Glanzer, for a total of 38 hours in pursuit of this litigation.

22. **Hadden Farms (Dale Hadden):**

a. Hadden Farms was selected and agreed to serve as an Illinois class representative plaintiff and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Hadden Farms' farming operation and other information over significant time periods, and which also called for personal financial information. Hadden Farms conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Hadden Farms' location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Hadden Farms traveled a total of 120 miles on several occasions in obtaining these documents. Hadden Farms also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Hadden Farms, approximately 85 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Hadden Farms also prepared for and provided deposition testimony. To prepare for this deposition, Hadden Farms reviewed materials, participated in phone call preparations, and attended in-person meetings. Hadden Farms traveled 90 miles round trip for in-person deposition preparation and then another 90 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Hadden Farms, approximately 18 additional hours (not including travel time) were devoted to these deposition efforts by Hadden Farms, for a total of 103 hours in pursuit of this litigation.

23. **Greg Harris:**

a. Greg Harris was selected and agreed to serve as a Missouri bellwether plaintiff and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Greg Harris's farming operation and other information over significant time periods, and which also called for personal financial information. Greg Harris conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Greg Harris's location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Greg Harris traveled numerous miles on several occasions in obtaining these documents. Greg Harris also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Greg Harris, approximately 27 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Greg Harris also prepared for and provided deposition testimony. To prepare for this deposition, Greg Harris reviewed materials, participated in phone call preparations, and attended in-person meetings. Greg Harris traveled 280 miles round trip for in-person deposition preparation and then another 280 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Greg Harris, approximately 20 additional hours (not including travel time) were devoted to these deposition efforts by Hadden Farms, for a total of 47 hours in pursuit of this litigation. Additional time was spent by Greg Harris with his counsel in numerous tasks associated with his service as a bellwether plaintiff.

24. **Henderson Farms Partnership**:

a. Henderson Farms Partnership was selected and agreed to serve as an Arkansas class representative plaintiff and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Henderson Farms Partnership's farming operation and other information over significant time periods, and which also called for personal financial information. Henderson Farms Partnership conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Henderson Farms Partnership's location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Henderson Farms Partnership traveled numerous miles on several occasions in obtaining these documents. Henderson Farms Partnership also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Henderson Farms Partnership, approximately 16 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Henderson Farms Partnership also prepared for and provided deposition testimony. To prepare for this deposition, Henderson Farms Partnership reviewed materials, participated in phone call preparations, and attended in-person meetings. Henderson Farms Partnership traveled 60 miles round trip for in-person deposition preparation and then another 60 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Henderson Farms Partnership, approximately 14 additional hours (not including travel time) were devoted to these deposition efforts by Henderson Farms Partnership, for a total

of 30 hours in pursuit of this litigation. Additional time was spent by Henderson Farms Partnership with his counsel on numerous tasks associated with his service as a class representative.

25. **J. Anderson Farm, Inc. (Jon Anderson)**:

a. J. Anderson Farm, Inc. was selected and agreed to serve as a South Dakota bellwether plaintiff and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about J. Anderson Farm, Inc.'s farming operation and other information over significant time periods, and which also called for personal financial information. J. Anderson Farm, Inc. conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at J. Anderson Farm, Inc.'s location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. J. Anderson Farm, Inc. traveled numerous miles on several occasions in obtaining these documents. J. Anderson Farm, Inc. also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with J. Anderson Farm, Inc., approximately 28 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. J. Anderson Farm, Inc. also prepared for and provided deposition testimony. To prepare for this deposition, J. Anderson Farm, Inc. reviewed materials, participated in phone call preparations, and attended in-person meetings. J. Anderson Farm, Inc. traveled 220 miles round trip for in-person deposition preparation and then another 220 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with J. Anderson Farm, Inc., approximately 19 additional hours (not including travel time) were devoted

to these deposition efforts by J. Anderson Farm, Inc., for a total of 47 hours in pursuit of this litigation. Additional time was spent by J. Anderson Farm, Inc. with his counsel on numerous tasks associated with his service as a bellwether plaintiff.

26. **Chad Murphy:**

a. Chad Murphy was selected and agreed to serve as a South Dakota bellwether plaintiff and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Chad Murphy's farming operation and other information over significant time periods, and which also called for personal financial information. Chad Murphy conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Chad Murphy's location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Chad Murphy traveled numerous miles on several occasions in obtaining these documents. Chad Murphy also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Chad Murphy, approximately 25 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Chad Murphy also prepared for and provided deposition testimony. To prepare for this deposition, Chad Murphy reviewed materials, participated in phone call preparations, and attended in-person meetings. Chad Murphy traveled 150 miles round trip for in-person deposition preparation and then another 150 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Chad Murphy, approximately 18 additional hours (not including travel time) were devoted to these deposition

efforts by Chad Murphy, for a total of 43 hours in pursuit of this litigation. Additional time was spent by Chad Murphy with his counsel on numerous tasks associated with his service as a bellwether plaintiff.

27. **Richard Oswald:**

a. Richard Oswald was selected and agreed to serve as a Missouri class representative plaintiff and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Richard Oswald's farming operation and other information over significant time periods, and which also called for personal financial information. Richard Oswald conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Richard Oswald's location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Richard Oswald traveled numerous miles on several occasions in obtaining these documents. Richard Oswald also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Richard Oswald, approximately 42 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Richard Oswald also prepared for and provided deposition testimony. To prepare for this deposition, Richard Oswald reviewed materials, participated in phone call preparations, and attended in-person meetings. Richard Oswald traveled 230 miles round trip on two occasions for in-person deposition preparation and then another 230 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Richard Oswald, approximately 22 additional hours (not including travel time) were devoted to

these deposition efforts by Richard Oswald, for a total of 64 hours in pursuit of this litigation. Additional time was spent by Richard Oswald with his counsel on numerous tasks associated with his service as a class representative.

28. **Randy Overgard:**

a. Randy Overgard was selected and agreed to serve as a South Dakota bellwether plaintiff and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Randy Overgard's farming operation and other information over significant time periods, and which also called for personal financial information. Randy Overgard conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Randy Overgard's location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Randy Overgard traveled numerous miles on several occasions in obtaining these documents. Randy Overgard also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Randy Overgard, approximately 20 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Randy Overgard also prepared for and provided deposition testimony. To prepare for this deposition, Randy Overgard reviewed materials, participated in phone call preparations, and attended in-person meetings. Randy Overgard traveled 70 miles round trip for in-person deposition preparation and then another 70 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Randy Overgard,

approximately 17 additional hours (not including travel time) were devoted to these deposition efforts by Randy Overgard, for a total of 37 hours in pursuit of this litigation.

29. **Pat Skarda:**

a. Pat Skarda was selected and agreed to serve as an Arkansas bellwether plaintiff and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Pat Skarda's farming operation and other information over significant time periods, and which also called for personal financial information. Pat Skarda conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Pat Skarda's location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Pat Skarda traveled numerous miles on several occasions in obtaining these documents. Pat Skarda also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Pat Skarda, approximately 20 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Pat Skarda also prepared for and provided deposition testimony. To prepare for this deposition, Pat Skarda reviewed materials, participated in phone call preparations, and attended in-person meetings. Pat Skarda traveled 120 miles round trip for in-person deposition preparation and then another 120 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Pat Skarda, approximately 17 additional hours (not including travel time) were devoted to these deposition efforts by Pat

Skarda, for a total of 37 hours in pursuit of this litigation. Additional time was spent by Pat Skarda with his counsel on numerous tasks associated with his service as a bellwether plaintiff.

30. **State Line Farm Co. (Ivan Woltemath):**

a. State Line Farm Co. was selected and agreed to serve as a Missouri bellwether plaintiff and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about State Line Farm Co.'s farming operation and other information over significant time periods, and which also called for personal financial information. State Line Farm Co. conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at State Line Farm Co.'s location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. State Line Farm Co. traveled numerous miles on several occasions in obtaining these documents. State Line Farm Co. also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with State Line Farm Co., approximately 28 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. State Line Farm Co. also prepared for and provided deposition testimony. To prepare for this deposition, State Line Farm Co. reviewed materials, participated in phone call preparations, and attended in-person meetings. State Line Farm Co. traveled 120 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with State Line Farm Co., approximately 17 additional hours (not including travel time) were devoted to these deposition efforts by State Line Farm Co., for a total of 45 hours in pursuit of this litigation.

31. **Volnek Farms (Eugene and Deborah Volnek):**

a. Volnek Farms was selected and agreed to serve as a Nebraska class representative plaintiff and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about Volnek Farms' farming operation and other information over significant time periods, and which also called for personal financial information. Volnek Farms conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Volnek Farms' location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Volnek Farms traveled numerous miles on several occasions in obtaining these documents. Volnek Farms also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Volnek Farms, approximately 28 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Volnek Farms also prepared for and provided deposition testimony. To prepare for this deposition, Volnek Farms reviewed materials, participated in phone call preparations, and attended in-person meetings. Volnek Farms traveled 110 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Volnek Farms, approximately 17 additional hours (not including travel time) were devoted to these deposition efforts by Volnek Farms, for a total of 45 hours in pursuit of this litigation.

32. **Ross Ulmer:**

a. Ross Ulmer was selected and agreed to serve as a South Dakota bellwether plaintiff and, in that capacity, responded to Syngenta's requests for production which sought documents

pertaining to numerous details about Ross Ulmer's farming operation and other information over significant time periods, and which also called for personal financial information. Ross Ulmer conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at Ross Ulmer's location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. Ross Ulmer traveled numerous miles on several occasions in obtaining these documents. Ross Ulmer also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with Ross Ulmer, approximately 25 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. Ross Ulmer also prepared for and provided deposition testimony. To prepare for this deposition, Ross Ulmer reviewed materials, participated in phone call preparations, and attended in-person meetings. Ross Ulmer traveled 70 miles round trip for in-person preparation and then another 70 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with Ross Ulmer, approximately 17 additional hours (not including travel time) were devoted to these deposition efforts by Ross Ulmer, for a total of 42 hours in pursuit of this litigation.

33. **W. Edgar Willman Trust/Lloyd C. Willman Estate (Ed Willman):**

a. W. Edgard Willman Trust/Lloyd C. Willman Estate were selected and agreed to serve as Arkansas bellwether plaintiffs and, in that capacity, responded to Syngenta's requests for production which sought documents pertaining to numerous details about W. Edgard Willman Trust/Lloyd C. Willman Estate's farming operation and other information over significant time

periods, and which also called for personal financial information. W. Edgard Willman Trust/Lloyd C. Willman Estate conducted an extensive search to locate records, reviewed records, and had several discussions with attorneys at my firm in order to understand the requests and properly respond. Some of the records were housed at W. Edgard Willman Trust/Lloyd C. Willman Estate's location, but some were in possession of third parties, including grain elevators, accountants, and the FSA office. W. Edgard Willman Trust/Lloyd C. Willman Estate traveled numerous miles on several occasions in obtaining these documents. W. Edgard Willman Trust/Lloyd C. Willman Estate also answered Syngenta's interrogatories, which requested detailed information, as well as a request for admissions. Based on my firm's time records, my own contemporaneous involvement, and discussion with W. Edgard Willman Trust/Lloyd C. Willman Estate, approximately 19 total hours were devoted to these tasks of responding to paper discovery and obtaining and providing documents.

b. W. Edgard Willman Trust/Lloyd C. Willman Estate also prepared for and provided deposition testimony. To prepare for this deposition, W. Edgard Willman Trust/Lloyd C. Willman Estate reviewed materials, participated in phone call preparations, and attended in-person meetings. W. Edgard Willman Trust/Lloyd C. Willman Estate traveled 50 miles round trip for in-person preparation and then another 50 miles round trip for the deposition. Based on my firm's time records, my own contemporaneous involvement, and discussion with W. Edgard Willman Trust/Lloyd C. Willman Estate, approximately 13 additional hours (not including travel time) were devoted to these deposition efforts by W. Edgard Willman Trust/Lloyd C. Willman Estate, for a total of 32 hours in pursuit of this litigation. Additional time was spent by W. Edgard Willman Trust/Lloyd C. Willman Estate with its counsel on numerous tasks associated with its service as a bellwether plaintiff.

34. Both Walters Bender Strohbehn & Vaughan, P.C. and Horn Aylward & Bandy, LLC timely record and maintain contemporaneous records of their time and expenses in the ordinary course of their businesses as complex litigation firms.

35. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), both firms submitted their common benefit time and expense submissions to Co-Lead Counsel in the MDL.

36. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients, who were not either bellwether or class representative plaintiffs.

37. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment. Any time entries that related to matters I felt involved clients who were not either bellwethers or class representative plaintiffs were not submitted to co-lead counsel. Further, as the time entries were later discussed with reviewing counsel, for those few entries that were difficult to identify as being related to work done in respect to a bellwether or class representative as opposed to an individual, I readily agreed to remove those from the bill.

38. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

39. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $2,573,422.50. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
Hubbard, Dirk	Of Counsel	1,958.10	$525.00	$1,028,002.50
Bender, Thomas	Partner	1,739.10	$725.00	$1,260,847.50
Varney, Sarah	Paralegal	1,264.30	$125.00	$158,037.50
McAndrews, Patrick	Associate	224.80	$250.00	$56,200.00
Blake, Brooke	Associate	118.60	$250.00	$29,650.00
Milbourn, J. Brett	Partner	98.70	$400.00	$39,480.00
Stevens, Sarah	Paralegal	8.60	$125.00	$1,075.00
Renwick, Karen	Partner	0.20	$400.00	$80.00
Sichter, Michael	Associate	0.20	$250.00	$50.00
TOTALS		5,412.60		$2,573,422.50

40. In connection with this work, our firm dedicated large blocks of time to the common benefit of the class, particularly during the vetting and production of farmers for their depositions, along with all the associated discovery and document related issues. During this time, it was difficult to take on new cases or to take assignments of additional work in existing cases in which other counsel were available to accept the work if we declined.

41. My firm seeks $219,345.88 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Category Code	Description of Category Code	Amounts
1	Federal Express / Local Courier	$152.12
2	Postage Charges	$545.15
4	Long Distance Calls	$243.67
5	In-House Photocopying	$188.30
7	Hotels	$11,428.33

Category Code	Description of Category Code	Amounts
8	Meals	$374.58
9	Mileage	$4,139.69
10	Air Travel	$1,412.66
11	Deposition Costs	$1,693.89
12	Lexis/Westlaw/Bloomberg	$378.60
14	Court Fees	$400.00
17	Ground Transportation	$164.00
18	Miscellaneous	$3,224.89
19	Litigation Fund Assessment	$195,000.00
	TOTAL	**$219,345.88**

42. As part of my firm's request for expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

43. As a member of the Executive Committee, we did contribute capital contributions to the litigation fund for which we seek reimbursement. The amount we contributed was $195,000.00.

44. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 9th day of July, 2018, in Kansas City, Missouri.

/s/*Thomas V. Bender*
Thomas V. Bender

WALTERS
BENDER
STROHBEHN
VAUGHAN, P.C.
ATTORNEYS AT LAW

2500 City Center Square
1100 Main Street
Kansas City, Missouri 64105
(816) 421-6620 (p)
(816) 421-4747 (f)
www.wbsvlaw.com

Walters Bender Strohbehn & Vaughan, P.C. is a Kansas City based firm with a nationwide practice and reputation. We specialize only in trial work, including, particularly, class action cases and complex litigation involving predatory lending and other consumer protection issues. We also work in the areas of commercial litigation, insurance law, securities litigation and we handle catastrophic injury cases. Since our inception in 1991, we have been involved in representing both plaintiffs and defendants throughout the United States. Our efforts on behalf of plaintiffs have resulted in settlements and verdicts valued well in excess of $930 million dollars. The profiles of the talented attorneys and staff that make up our Firm can be viewed at www.wbsvlaw.com.

COMPLEX AND CLASS ACTION LITIGATION

The 15 attorneys in our Firm have been involved in a number of complex, multi-district and class action lawsuits during their respective careers, representing both plaintiffs and defendants. Our class action work includes cases concerning predatory lending, unlawful mortgage loan fees, securities fraud, life insurance premiums, shareholder derivative suits, products liability, deceptive trade and merchandising practices, anti-trust practices, commercial code violations, motor vehicle repossessions and employment benefits. Beyond these class cases, our Firm has been involved in nationwide litigation concerning hundreds of millions of dollars invested in allegedly abusive tax shelters, and we have obtained multiple million dollar settlements in cases involving sexual abuse by an athletic coach, the breach of a shareholder agreement and severe electrical shock injuries. We are always investigating new cases, exploring new and developing areas of the law, and incorporating the latest technology into our practice.

In the class action arena, on behalf of thousands of individuals, our Firm has achieved some truly extraordinary results as class counsel. For example, in 2007, as class counsel we successfully prosecuted and settled a consumer class action involving over 4,100 second mortgage loans that resulted in a $36.3 million dollar settlement. In 2008, we took to trial and achieved a jury awarded of $104 million dollars in favor of the plaintiffs' class of victimized second mortgage borrowers. In August 2012, we settled a number of class action cases involving over 3,200 second mortgage loans for over $160 million dollars. In 2013, we settled class claims in connection with more than 44,000 predatory loans made to borrowers throughout the United States and obtained an allowed claim in the amount of $300 million for these borrowers. In all, since 2007, our Firm has successfully obtained and gained court approval of no fewer than 28 class action settlements in various consumer protection cases. As a result, more than $690 million have been recovered on behalf of more than 82,000 class members that make up the various classes in the cases prosecuted by our Firm.

A listing of our representative complex and class action cases is set forth below.

AUGUST 2017

PREDATORY LENDING

Baker v. Century Financial Group, Inc.,
Circuit Court of Clay County, Missouri, Case No. CV 100-4294,
Missouri Second Mortgage Loans Act – lead counsel for class of plaintiffs.

Beaver, et al. v, U.S. Bank, National Association, et al.,
Circuit Court of Jackson County, Missouri, Case No. 1216-CV21345
Missouri Second Mortgage Loans Act – lead counsel for class of plaintiffs.

Bertels, et al. v. U.S. Bank, National Association, et al.,
Circuit Court of Jackson County, Missouri, Case No. 1616-CV28515
Missouri Second Mortgage Loans Act – lead counsel for class of plaintiff

Couch v. SMC Lending, Inc.,
Circuit Court of Clay County, Missouri, Case No. CV100-4332
Missouri Second Mortgage Loans Act – lead counsel for class of plaintiffs.

Gilmor v. Preferred Credit Corp.,
Circuit Court of Clay County, Missouri, Case No. CV 100-4263
Missouri Second Mortgage Loans Act – lead counsel for class of plaintiffs.

Hall v. America West Financial, et al.,
Circuit Court of Jackson County, Missouri, Case No.00CV218553-01
Missouri Second Mortgage Loans Act – lead counsel for class of plaintiffs.

Hopkins v. Kansas Teachers Community Credit Union,
United States District Court for the Western District of Missouri, Case No. 08-5052-CV-SW-GAF
Uniform Commercial Code and Missouri Merchandising Practices Act – counsel for class of plaintiffs.

In re Community Bank of Northern Virginia Mortgage Practices Lending Litigation,
United States District Court for the Western District of Pennsylvania, MDL No.-1674
Predatory lending, racketeering – counsel for plaintiffs and objectors in multidistrict litigation – co-lead counsel for class of plaintiffs.

Landrum v. Meadows Credit Union,
United States District Court for the Western District of Missouri, Case No. 08-441-CV-W-DW
Uniform Commercial Code and Missouri Merchandising Practices Act – counsel for class of plaintiffs.

McLean v. First Horizon Home Loan Corporation f/k/a McGuire Mortgage Company,
Circuit Court of Jackson County, Missouri, Case No.00 CV 228530
Missouri Second Mortgage Loans Act – lead counsel for class of plaintiffs.

Mitchell v. Residential Funding Corp., et al.
Circuit Court of Jackson County, Missouri, Case No.03CV220489
Missouri Second Mortgage Loans Act – lead counsel for class of plaintiffs.

Shokere, et al v. Residential Funding Company, et al.,
Circuit Court of Jackson County, Missouri, Case No. 1116-CV30478
Missouri Second Mortgage Loans Act – lead counsel for class of plaintiffs.

Smith v. Premier Associates Mortgage Company, et al.,
Circuit Court of Jackson County, Missouri, Case No.01CV201263
Missouri Second Mortgage Loans Act – lead counsel for class of plaintiffs.

Thomas, et al. v. U.S. Bank, N.A., et al.,
Circuit Court of Jackson County, Missouri, Case No. 1216-CV20561
Missouri Second Mortgage Loans Act – lead counsel for class of plaintiffs.

Daniel and Amy Thompson vs. Sovereign Bank, N.A.,
Circuit Court of Jackson County, Missouri, Case No. 1216-CV09804
Missouri Second Mortgage Loans Act – lead counsel for class of plaintiffs.

In re Residential Capital, LLC, et al.,
Bankruptcy Court for the United States District Court for the Southern District of New York,
Case No. 12-12020 (MG)
Violations of Real Estate Settlement Procedures Act, Truth in Lending Act, Home Ownership and Equity Protection Act, and Racketeer Influenced and Corrupt Organizations Act – co-lead counsel for class claimants.

OTHER SIGNIFICANT LITIGATION

Doe, et al. v. Johnson County Park & Recreation District, et al.
District Court of Johnson County Kansas, Consolidated Case Nos. 0516-CV-23636,
07-EXEC-3929, 0716-CV-24114-01
Vexatious refual to pay, insurance coverage dispute – counsel for plaintiffs.

In re American Investors Life Ins. Co. Annuity Marketing and Sales Practices Litigation
United States District Court of the Eastern District of Pennsylvania, MDL-1712
Nationwide putative class action involving deferred annuities – counsel for American Investor defendants.

In re Indianapolis Life Insurance Company I.R.S. § 412(i) Plans Life Insurance Marketing Litigation
United States District Court for the Northern District of Texas, MDL 1983
Nationwide putative class action involving the sale of life insurance to fund § 412(i) Plans – counsel for defendant Indianapolis Life.

In re Motor Fuel Litigation,
United States District Court for the District of Kansas, MDL Case No.:1840
Multi-state proceeding to remedy unfair motor fuel sales practices – liaison counsel for plaintiffs.

McLaughlin v. Fire Insurance Exchange,
Circuit Court of Jackson County, Missouri, Case No. 1316-CV11140
Breach of contract – counsel for class of plaintiffs.

Strube v. American Equity Investment Life Insurance Co. and Creative Marketing International Corp.,
United States District Court, Middle District of Florida, Case No. 6:01-CV-1236-Orl-19DAB
Fraud and Unfair Business Practices – counsel for defendant Creative Marketing Int'l Corp.

Sylvester v. Wintrust Financial Corp., et al.
United States District Court for the Northern District of Illinois, Case No. 12-CV-01899
Fair Labor Standards Act – counsel for class of plaintiffs.

In re Monsanto Company Genetically-Engineered Wheat Litigation,
United States District Court for the District of Kansas, Case No. 2:13-md-02473-KHV-KMH, MDL No. 2473
Consolidated multi-state action concerning claims against Monsanto for the negligent release of experimental genetically engineered wheat - liaison counsel for putative class of plaintiffs.

Rowena Drennen, et al., vs. Certain Underwriters at Lloyd's of London, et al.,
United States Bankruptcy Court for the Southern District of New York, Case Number: 15-01025-shl;
Insurance coverage action against liability insurers following settlement of Class Proofs of Claim and confirmation of Chapter 11 Plan in *In re Residential Capital, LLC*. Representing Plaintiff Classes certified in *Mitchell v. Mortgage Capital Resources, et al.* and in *In re Residential Capital, LLC*, based upon assignment of the rights of Residential Funding Company, LLC under General Motors Corp.'s insurance policies – co-lead counsel for class claimants.

In re Syngenta AG MIR162 Corn Litigation,
United States District Court for the District of Kansas; Case No. 2:14-md-2591-JWL-JPO
Represent plaintiffs in putative class alleging violation of national and state laws in contamination of corn products and damages to corn market; initial stages of litigation; steering committee membership.

PRODUCTS LIABILITY

Foster, et al. v. ABTCo., Inc., et al.,
Circuit Court of Choctaw County, Alabama, Case No. CV95-151-M,
Products liability – counsel for class of plaintiffs.

Heilman, et al. v. Perfection Corp., et al.,
United States District Court for the Western District of Missouri, Case No. 99-0679-CW-W-6,
Products liability/Magnuson-Moss – counsel for class of plaintiffs.

In re Bausch & Lomb Inc. Contact Lens Solution Products Liability Litigation,
United States District Court for South Carolina, Case No. 2:06-mn-77777,
Products liability – counsel for plaintiffs.

In re Bisphenol-A (BPA) Polycarbonate Plastics Product Liability Litigation,
United States District Court for Western District of Missouri, Case No. 08-MD-01967-ODS,
Products liability – co-lead counsel for class of plaintiffs.

SECURITIES LITIGATION

The Amalgamated Bank v. LeMay, Sprint Corporation, et al.
Circuit Court for Jackson County, Missouri, Case No. 00CV 230077
Shareholders' derivative suit – liaison counsel for plaintiffs.

Antonson v. Robertson, et al.,
United States District Court for the District Court of Kansas, Case 2:88-cv-02567-GTV
Securities Exchange Act – counsel for defendants.

Boyd, et al. v. Novastar,
United States District Court of the Western District of Missouri, Case No. 07-0139-CV-W-ODS
Securities violations – counsel for putative class of plaintiffs.

Epstein, et al v. Wittig, Inc.,
United States District Court for the District of Kansas, Case No. 03CV-4081,
Shareholders' derivative suit – liaison counsel for plaintiffs.

In re NovaStar Financial Securities Litigation,
United States District Court for the Western District of Missouri,
Consolidated Case No. 04CV0330-CV-W-ODS
Private Securities Litigation Reform Act – liaison counsel for class of plaintiffs.

In re Royal Dutch/Shell Transport Securities Litigation,
United States District Court for the District of New Jersey, Civil Action No. 04-374(JWB)
Securities violations – counsel for Kansas Public Employee Retirement System.

In re Sprint Corp. Securities Litigation,
United States District Court for the District of Kansas, Case No. 5:01-cv-04080
Securities violations – liaison counsel for class of plaintiffs.

New England Health Care Employees Pension Fund v. Sprint Corporation, et al./In re Sprint Corporation Securities Litigation,
United States District Court for the District of Kansas, Master File No. 01CV04080, Case No. 01-4080-DES
Securities violations – liaison counsel for class of plaintiffs.

Seiffer v. Topsy's International, Inc.,
United States District Court, for the District of Kansas, Civ. A. No. KC-3455
Securities fraud class action – counsel for plaintiffs.

ANTITRUST LITIGATION

In re Vitamins Antitrust Litigation,
United States District Court for the District of Columbia, Misc. No. 99-197 (TFH), MDL No. 1285,
District Court for Wyandotte County, Kansas, Case No. 00 C 1890
Antitrust – counsel for plaintiffs and opt-out plaintiffs.

Kansas City Urology, P.A., et al. v. Blue Cross & Blue Shield of Kansas City, Inc. et al.,
Circuit Court of Jackson County, Missouri, Case No. 0516-CV-04219
Antitrust, contract and other claims – co-lead counsel for plaintiffs.

Prime Care of Northeast Kansas, LLC, et al. v. Blue Shield of Kansas City, Inc. et al.,
District Court of Wyandotte County, Kansas, Case No. 05-CV-02227
Antitrust, contract and other claims – co-lead counsel for plaintiffs.

In re Blue Cross Blue Shield Antitrust Litigation,
United States District Court for the Northern District of Alabama, Southern Division,
Case No. 2:13-cv-20000-RDP
Antitrust, contract and other claims – counsel for putative class of plaintiffs.

In re Disposable Contact Lens Antitrust Litigation,
United States Judicial Panel on Multidistrict Litigation, MDL No. 2626
Nation and state consumer and antitrust violations in setting retail floor pricing of contact lenses – counsel for putative class of plaintiffs.

LIFE INSURANCE LITIGATION

Bhat v. AmerUs Life Insurance Co., et al.,
United States District Court for the Northern District of California, Case No. C 96-02026,
SI Universal Life Insurance class action-DAC tax litigation – counsel for defendant.

Cozad v. American Mutual Life Insurance Co.,
District Court of Travis County, Texas
Life Insurance - vanishing premium litigation – counsel for defendant.

In re Millennium Multiple Employer Welfare Benefit Plan,
United States Bankruptcy Court for the Western District of Oklahoma, Adversary No. 10-01152
Nationwide interpleader action under Federal Interpleader Act - counsel for Aviva Life and Annuity Company.

Ireton, et al. v. American Family Life Insurance Co.,
United States District Court for Eastern District of Wisconsin, Case No. 97-C-1184,
Life insurance class action - vanishing premium litigation – counsel for defendant.

Kortebein v. AmerUs Life Insurance Co.,
Circuit Court of Cook County, Illinois, Case No. 00CH00932,
Life Insurance - post settlement objections – counsel for defendant.

UNITED STATES SAVINGS BOND LITIGATION

(Seeking the return of billions of dollars in unclaimed and abandoned US savings bond proceeds to various states and their citizens by way of title based escheat)

In re Matured, Unredeemed, and Unclaimed United States Savings Bonds with Purchasers or Owners with Last Known Addresses in the State of Kansas, District Court for Shawnee County, Kansas, Case No. 13-C-05.
Kansas Disposition of Unclaimed Property Act – counsel for plaintiff, State of Kansas.

In re Matured, Unredeemed, and Unclaimed United States Savings Bonds with Purchasers or Owners with Last Known Addresses in the State of South Dakota, Circuit Court of Hughes County, South Dakota, Case No. 15-27.
South Dakota Disposition of Unclaimed Property Act – counsel for plaintiff, State of South Dakota.

In re Matured, Unredeemed, and Unclaimed United States Savings Bonds with Purchasers or Owners with Last Known Addresses in the State of Louisiana, 19th Judicial District Court, Parish of East Baton Rouge, Louisiana,
Docket No. 638348 Sec. 24.
Louisiana Disposition of Unclaimed Property Act – counsel for plaintiff, State of Louisiana.

In re Matured, Unredeemed, and Unclaimed United States Savings Bonds with Purchasers or Owners with Last Known Addresses in the State of Kentucky, Commonwealth of Kentucky, Franklin Circuit Court, Case No. 15-CI-890.
Kentucky Disposition of Unclaimed Property Act – counsel for plaintiff, State of Kentucky.

In re Matured, Unredeemed, and Unclaimed United States Savings Bonds with Purchasers or Owners with Last Known Addresses in the State of Mississippi, Circuit Court of the First Judicial District of Hinds County, Mississippi,
Cause No. 15-597.
Mississippi Disposition of Unclaimed Property Act – counsel for plaintiff, Attorney General, State of Mississippi.

In re Matured, Unredeemed, and Unclaimed United States Savings Bonds with Purchasers or Owners with Last Known Addresses in the State of South Carolina, Court of Common Pleas, Fifth Judicial Circuit, County of Richland, South Carolina, Case No. 2015-CP-40-7526.
South Carolina Disposition of Unclaimed Property Act – counsel for plaintiff, State of South Carolina.

In re Matured, Unredeemed, and Unclaimed United States Savings Bonds with Purchasers or Owners with Last Known Addresses in the State of Ohio, Court of Common Pleas, Franklin County, Ohio, Case No. 15CVH-11486.
Ohio Disposition of Unclaimed Property Act – counsel for plaintiff, State of Ohio.

In re Matured, Unredeemed, and Unclaimed United States Savings Bonds with Purchasers or Owners with Last Known Addresses in the State of Indiana, Superior Court of Marion County, Indiana, Cause No. 49D13-1512-PL-41911.
Indiana Disposition of Unclaimed Property Act – counsel for plaintiff, Attorney General, State of Indiana.

In re Matured, Unredeemed, and Unclaimed United States Savings Bonds with Purchasers or Owners with Last Known Addresses in the State of Florida, Circuit Court for the Second Judicial Circuit for Leon County, Florida, Case No. 2015 CA 003008.
Florida Disposition of Unclaimed Property Act – counsel for plaintiff, State of Florida.

Estes v. United States of America
United States Court of Federal Claims; Case No. 1:13-CV-01011-EDK
Counsel for Treasurer and State.

Sattgast v. United States of America
United States Court of Federal Claims; Case No. 1:15-cv-01364-EDK
Counsel for Treasurer and State.

Kennedy v. United States of America
United States Court of Federal Claims; Case No. 1:15-cv-01365 EDK
Counsel for Treasurer and State.

Ball v. United States of America
United States Court of Federal Claims; Case No. 1:16-cv-00221 EDK
Counsel for Treasurer and State.

Fitch v. United States of America
United States Court of Federal Claims; Case No. 1:16-cv-00231-EDK
Counsel for Treasurer and State.

Loftis v. United States of America
United States Court of Federal Claims; Case No. 1:16-cv-00451-EDK
Counsel for Treasurer and State.

Zoeller v. United States of America
United States Court of Federal Claims; Case No. 1:16-cv-00699-EDK
Counsel for Attorney General and State.

Williams v. United States of America
United States Court of Federal Claims; Case No. 1:16-cv-01021-EDK
Counsel for Attorney General, Department of Commerce, and State.

Atwater v. United States of America
United States Court of Federal Claims; Case No. 1:16-cv-01482-EDK
Counsel for Department of Financial Services and State.

Estes, et al. v. United States Department of the Treasury, et al.
United States District Court for the District of Columbia; Case No. 1:16-cv-00450-CRC
Counsel for Kansas, South Dakota, Louisiana, Kentucky and Mississippi seeking to overturn Treasury rule change.

For more information about Walters Bender Strohbehn & Vaughan, P.C., please visit:
www.wbsvlaw.com

EXHIBIT 44

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF WARREN BELL

I, Warren Bell, declare as follows:

1. I am a partner of Westerfield, Janoush & Bell, P.A. Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. I have been practicing in the State of Mississippi for approximately 13 years. I have been involved in the following complex litigations: *In Re Genetically Modified Rice*

Litigation 4:06 MD 1811 CDP; *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico* MDL No. 2179; as well as this litigation with Syngenta.

4. My involvement with this litigation was working with class representative discovery including the Tennessee class representative in this litigation. I worked with class representative Jamerson Farms, including travelling to its farms to review documents necessary to respond to all information requested by the defendants, answering the interrogatories and requests for production, extensive communications to coordinate the responses, and all other work that was required of me.

5. Jamerson Farms also spent many hours working on responses to discovery requests. Jamerson Farms was selected and agreed to serve as a Tennessee class representative and in that capacity, responded to Syngenta's requests for production, which sought documents pertaining to numerous details about Jamerson Farms' farming operation and other information over significant time periods, and also called for personal financial information. The partners of Jamerson Farms, Gary and Larry Jamerson, conducted an extensive search to locate, and reviewed records, and had several discussions with me in order to understand the requests and properly respond. Gary made numerous trips to three different county FSA Offices, trips to the crop insurance agent, several trips to various third parties to obtain the seed records as well as the grain sales records at the elevators. The Jamersons spent a significant amount of time sorting through records at the office in order to respond to the interrogatories and the requests for production. Based on my time records, my own contemporaneous involvement, and discussion with the Jamersons, approximately 25-30 total hours were devoted to these tasks.

6. Our firm maintains contemporaneous records of its time and expenses in the ordinary course of business.

7. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

8. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

9. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

10. My billing is based upon actual time spent on representing the class representative in this litigation. My re-review of time spent was compared to all of the emails, letters and travel time spent.

11. After this re-review, I can confirm that this time was undertaken by me personally. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order.

12. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $23,560.00. A breakdown of the lodestar is provided below.

	Name	**Title**	**Total Hours**	**Hourly Rate**	**Lodestar**
1.	Bell, Warren	Partner	58.90	$400.00	$23,560.00
	TOTALS		58.90		$23,560.00

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018.

/s/ Warren Bell
Partner, Westerfield, Janoush & Bell P.A.

EXHIBIT 45

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT: ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**MDL No. 2591**

DECLARATION OF HART L. ROBINOVITCH

I, Hart L. Robinovitch, declare as follows:

1. I am a partner of Zimmerman Reed LLP ("Zimmerman Reed"). I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. I am a 1992 graduate of the University of Toronto Law School in Toronto, Ontario, Canada. I have been a member in good standing of the State Bar of Minnesota since 1993 and the State Bar of Arizona since 2001. I am also admitted to practice before the

following courts: the United States District Court for the District of Arizona, the District of Minnesota, and the Eastern District of Michigan; the United States Court of Appeals for the Sixth Circuit, the Eighth Circuit, the Ninth Circuit, and the Eleventh Circuit; and the United States Supreme Court. I started working at Zimmerman Reed as an associate attorney in 1994. I have been a partner at Zimmerman Reed since approximately 2003.

4. Since 1994, my practice has continuously focused on serving as class counsel in a variety of different types of class actions including, but not limited to, those involving consumer fraud, breach of contract, wage and hour law violations, deceptive trade practices, and mortgage and banking law violations, among other cases.

5. With offices in Minneapolis, Scottsdale, Arizona and Los Angeles, the law firm of Zimmerman Reed has extensive experience in the prosecution, trial, and settlement administration of a broad range of class actions and other types of complex litigation. Attached hereto is Zimmerman Reed's firm resume reflecting its role as lead or liaison counsel in MDLs, steering committee or sub-committee positions in MDLs, and lead counsel in class action lawsuits. Further details about the firm, its partners, and associates can be found on our website, www.zimmreed.com.

6. I have been found to be qualified to serve as lead and/or class counsel by numerous federal and state courts. By way of example, in 2016 I was appointed Interim Lead Counsel by United States District Judge R. Gary Klausner in *In Re Pacquiao-Mayweather Boxing Match Pay-Per-View Litigation*, MDL No. 2639 (C.D. Cal.).

7. In January 2017, along with my partners Carolyn Anderson and Brian Gudmundson, I was appointed co-lead counsel by United States District Judge Michael J. Davis

in *In re CenturyLink Residential Customer Billing Disputes Litigation*, MDL No. 2522 (D. Minn.).

8. In February 2018, I was appointed class counsel in *Park v. Zuffa, LLC, et al.*, No. 2:17-cv-02282-APG-VCF by United States District Judge Andrew P. Gordon when he preliminarily approved the class action settlement reached in that case.

9. I was also named class counsel in a consumer class action involving defective recreational vehicle refrigerators that eventually settled for $36 million. *See*, *Etter v. Norcold, Inc.*, No. SACV1300081JLSRNB [Doc. 539] (C.D. Cal. Oct. 24, 2016), and *Etter v. Thetford Corp*., No. SACV1300081JLSRNB, 2017 WL 1433312, at *1 (C.D. Cal. Apr. 14, 2017).

10. I recently served as counsel in *Longest v. Green Tree Servicing LLC,* No. 2:14-cv-08150 (C.D. Cal.), a case where we were able to negotiate a $46 million global settlement against Green Tree Servicing and Assurant with counsel in a related case in Florida. *See*, *Circeo-Loudon v. Green Tree Servicing, LLC*, No. 14-21384-CIV-MORENO (S.D. Fla.).

11. I was involved in litigating each of the following consumer class action lawsuits, certain of which were successfully resolved as class actions:

Gallant v. Gen. Mills, et al., Los Angeles County Superior Court, State of California, No. BC481325;

Tamas v. Gen. Mills, et al., Riverside County Superior Court, State of California, No. RIC1206341;

DeGrise v. Ensign Grp., Inc., et al., Sonoma County Superior Court, State of California, No. SCV248896 (settled as class action);

Monteuil v. Ensign Grp., Inc., et al., Los Angeles County Superior Court, State of California, No. BC449162 (settled); and

Pistilli v. Life Time Fitness, Hennepin County District Court, State of Minnesota, No. 27-CV-07-2300 (settled as class action).

12. I was one of the court-appointed class counsel in the following consumer class actions contending deceptive practices in relation to real estate financing and settlement practices:

Mitchell v. Chicago Title Ins. Co., Hennepin County District Court, State of Minnesota, No. 02-107299, 2003 WL 23786983 (Dec. 22, 2003.);

Schlink v. Edina Realty Title, Hennepin County District Court, State of Minnesota, No. 02-18380, 2003 WL 23786984 (Sept. 9, 2003);

Boschee v. Burnet Title Co., United States District Court, District of Minnesota, No. 0:00-cv-00194;

Boschee v. Burnet Title Co., Hennepin County District Court, State of Minnesota, No. 03-016986

Lund v. Universal Title Co., Hennepin County District Court, State of Minnesota, No. 05-00411;

Edwards v. Long Beach Mortg. Co., Hennepin County District Court, State of Minnesota, No. 02-16446, consolidated with *White. v. Wash. Mutual, Inc., et al.*, No. 03-1282, 2003 WL 22176087 (Sept. 16, 2003);

Nobles v. Countrywide Home Loans, Alameda County Superior Court, State of California, No. RG04138349;

Mahoney v. Fidelity Nat'l Title Co., United States District Court, Central District of California, No. SACV 08-0561; and

Lang v. Town and Country Credit, United States District Court, District of Minnesota, No. 00-CV-243.

13. I was also one of the plaintiffs' counsel handling over 50 class actions challenging distinct mortgage lender's escrow account servicing practices. Many of these class actions were consolidated before The Honorable James B. Zagel under *In re Mortgage Escrow Litigation*, MDL No. 899 (N.D. Ill.). The cases that I was involved in representing the class on include but were not limited to the following:

De Boer v. Mellon Mortg. Co., United States District Court, District of Minnesota, Court File No. 4-92-822, 64 F.3d 1171 (8th Cir. 1995);

Graham v. Knutson Mortg. Corp., Hennepin County District Court, State of Minnesota, No. 94-11043, 1996 WL 407491 (June 18, 1996);

Calkins vs. Fidelity Bond & Mortg. Co., United States District Court, Northern District of Illinois, No. 94-C-5971, 1998 WL 719569 (Oct. 8, 1998);

Miller v. Chevy Chase Bank, F.S.B., United States District Court, Northern District of Illinois, No. 97-CV-4494, 1998 WL 142394 (Mar. 24, 1998);

Mark v. KeyCorp Mortg., Inc., United States District Court, Northern District of Illinois, No. 95-C-4878, 1996 WL 465400 (Aug. 8, 1996); and

Goss v. Alliance Mortg., United States District Court, Northern District of Illinois, No. 95-CV-7324, 1997 WL 119918 (Mar. 4, 1997).

14. I was one of the class counsel in the following actions challenging mortgage lenders' practices paying yield spread premiums to borrower's mortgage brokers when interest rates were inflated above "par" rates:

Glover v. Standard Federal Bank, United States District Court, District of Minnesota, No. 97-2068;

Wilson v. Commercial Federal Mortg. Corp., United States District Court, Northern District of Alabama, No. 98-J-0184-S;

McBride v. Reliastar, United States District Court, Northern District of Georgia, No. 98-00215-1-CV; and

Schuetz v. Banc One, United States District Court, District of Arizona, No. 97-01295.

While those cases were initially certified for litigation purposes after extremely hard-fought class certification motions, those actions were subsequently decertified for reasons completely apart from satisfaction of the adequacy of counsel requirement, *i.e.*, the applicable legal standard for such claims changed. *Compare Culpepper v. Irwin Mortg. Corp.*, 253 F.3d 1324 (11th Cir. 2001), *cert. denied*, 534 U.S. 1118 (2002) *with Heimmermann v. First Union Mortg. Corp.*, 305 F.3d 1257 (11th Cir. 2002). *See also*, *Glover v. Standard Fed. Bank*, 283 F.3d 953 (8th Cir. 2002); *McBride v. Reliastar*, 58 Fed. App'x 835 (11th Cir. 2003); *Schuetz v. Banc One Mortg. Corp.*, 292 F.3d 1004 (9th Cir. 2002).

15. The courts in certain of the above-referenced actions have specifically commented on my abilities and qualifications to serve as class counsel. For instance, in *Edwards*, *supra*,

Judge Isabel Gomez certified a national class appointed me class counsel and later remarked at the Final Approval hearing:

> Here, there *is no doubt that the class has had competent counsel and, in fact, both sides have had counsel well beyond competent.* It's been a pleasure, so far as it can be a pleasure, to deal with such a complex case, which it can be, it's been a pleasure to have counsel of this quality on both sides.
>
> I wish you would together go out and teach seminars about class action litigation. It would make my life a lot easier.

Edwards, No. 02-16446, Excerpts from Transcript of Proceedings, p. 10:4-12 (Minn. Dist. Ct. July 19, 2005) (Final Approval Hearing). Similarly, in *Boschee*, *supra*, United States District Court Judge James M. Rosenbaum remarked in granting the plaintiff's motion for class certification from the bench and appointing me class counsel:

> There is no question that the counsel in this case have previously had experience in these kinds of cases and can adequately represent the class which they seek to certify.
>
> * * *
>
> The desirability of concentrating the suit in a particular forum, and it seems to the Court most appropriate that it be in a single form and this is now it, and the difficulties of managing a class. If the Court were to listen to some of the plaintive cries of the protectors who array themselves among the defense bar, this Court would be sheltered, coddled and cosseted beyond the dreams of a madman. I can handle this case and so can the lawyers on both sides, and I'm confident we'll be able to do so.

Boschee, No. 0:00-cv-00194, Excerpts from Transcript of Proceedings, pp. 37:11-13; 39:5-14 (D. Minn. May 22, 2001) (Motion for Class Certification).

16. Most recently, in my appointment as class counsel in *Park v. Zuffa, LLC*, the Honorable Andrew P. Gordon remarked:

> I want to congratulate all the counsel that's involved in this case for diligently working to achieve a reasonable and realistic settlement. I have, in my practice and time on the bench, seen too many I won't say frivolous but questionable lawsuits filed on cases, class action matters when things go bad… I applaud the plaintiffs' side for being realistic in evaluating and agreeing to mediation and trying to resolve cases and doing the preliminary investigation with an expert and -- and kind of setting this up right away. So I applaud everyone in this courtroom for their good efforts to get this resolved quickly and efficiently and ultimately

> assisting the consumers with a reasonable settlement that also is appropriate for the defense.

Park, No. 2:17-cv-02282-APG-VCF, Excerpt from Transcript of Proceedings, p. 23:11-25. (D. Nev. Feb. 22, 2018) (Motion for Preliminary Approval).

17. At that same hearing, counsel for defendants commented:

> I cannot say enough positive things about my adversaries. They were adversarial, don't get me wrong, and it was a very hard-fought mediation, but what they didn't do was prolong vexatiously litigation when it made much more sense for us to get together and resolve a problem that we knew our customers had and we wanted to make right as much as they wanted to make it right.

Id. at p. 19:2-9.

18. Since the inception of this case, I have worked closely with other professionals and paraprofessionals at my firm to litigate the claims of Rail Transfer, Inc. including, but not limited to Charles S. Zimmerman, senior partner and founder of Zimmerman Reed; Caleb L. Marker, a partner in our firm's California office; Alyssa J. Leary, an associate attorney in our Minneapolis office; associate attorney Brad Buhrow; and Sabine Asser King, a senior paralegal. Mr. Zimmerman is a 1972 graduate of the University of Minnesota Law School and has extensive experience leading class actions and MDL cases. Mr. Marker is a 2007 graduate of the Michigan State University College of Law and has significant experience litigating class action and consumer fraud cases. Alyssa J. Leary graduated magna cum laude from Tulane University Law School in New Orleans, Louisiana in 2015. Brad Buhrow was formerly an associate at Zimmerman Reed before leaving to join a family business in late 2016. Mr. Buhrow graduated cum laude from California Western School of Law in 2011. Sabine Asser King is a graduate from the George Washington University with a B.A. Ms. Asser King has over twenty years' experience as a Paralegal. I have also consulted and worked closely with members of the lead-MDL counsel's firms, including William Chaney and Drew York, throughout the process.

19. With respect to this case, Zimmerman Reed represented Rail Transfer, Inc., a transloading company based in St. Paul, Minnesota that was initially one of the putative Non-Producer class representatives named on the Non-Producer Plaintiffs' Amended Master Class Action Complaint (Doc. 1377). Rail Transfer was subsequently selected as a bellwether Plaintiff for the Non-Producer class. Further details about Rail Transfer's business operations can be found on its website at http://www.railtransfer.com.

20. In its role as a putative class representative and then as a bellwether Plaintiff, Rail Transfer and our firm engaged in significant work to help prosecute the claims of non-producers like Rail Transfer and to demonstrate the financial loss suffered from the Defendants' activities complained of. As outlined in Zimmerman Reed's contemporaneous time and expense records, throughout the course of the litigation, our firm assisted Rail Transfer in responding to discovery, including numerous requests for production and interrogatories that were served upon it. Many of the discovery requests served on Rail Transfer resulted in disputes that led to numerous meet and confer sessions with counsel for Defendants in effort to compromise and avoid motion practice. Ultimately, Rail Transfer's principal, Todd Nimmo, was deposed by Defendants' counsel for three full days (April 20-21, 2016 and August 24, 2016).

21. Our firm was also involved in dispositive motion practice, working diligently to successfully seek the dismissal of counterclaims that Defendants filed against Rail Transfer and other non-producers. (Doc. 1224, 1437, 1803)

22. Our firm was also involved in expert discovery as Rail Transfer retained an expert economist, James D. Woods, Ph.D. of BDO Consulting, a Division of BDO USA, LLP ("BDO"), who prepared a detailed expert report quantifying Rail Transfers' damages. Mr. Woods was

deposed in December 2016 in Dallas. I then took the deposition of Defendants' rebuttal expert, Quintin Mimms in April 2017 in Los Angeles.

23. From the outset of the case, Rail Transfer, along with our firm, sought to assist the larger group of non-producers in addressing wrongs complained of in the Non-Producer Plaintiffs Amended Master Class Action Complaint. Through the class certification filing deadline in mid-2016, our efforts aimed to benefit not only Rail Transfer, but the putative class of non-producers defined in the Non-Producer Plaintiffs Amended Master Class Action Complaint. Thereafter, Rail Transfer assumed the role of a court-selected bellwether plaintiff and through its continuing efforts continued to benefit the larger group of non-producers by prosecuting its individual claim as a test case representative of more widely contested issues. *See generally Bellwether Trials in Multidistrict Litigation*, 82 TUL. L. REV. 2323 (2008). All of this work, for which compensation is now sought, was conducted for the common benefit of the class.

24. As a putative class representative and then-bellwether plaintiff, Rail Transfer and its principal, Todd Nimmo, were intimately involved in the forgoing processes spending well over 100 hours working with our firm to respond to discovery and to help prosecute the case not only for its own interest, but for the benefit of the broader group of non-producers.

25. The work that the professionals at my firm performed in furtherance of the forgoing tasks are listed in detail on the contemporaneous time records that my firm maintains in the ordinary course of business. These records also list the expenses that our firm incurred with respect to the foregoing tasks, the most significant being the costs related to expert discovery.

26. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its

common benefit time and expense submissions to Co-Lead Counsel in the MDL. We also separately submitted our contemporaneous time and expense records relating to our representation of class representative Roger Ward to lead counsel in the Minnesota consolidated action, consistent with adopted protocols in that case.

27. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to any individual clients who were neither bellwether or class representative plaintiffs in the federal MDL proceedings. Time spent by Zimmerman Reed attorneys and staff performing litigation tasks for class representatives and related expenses in the Minnesota action have been segregated, separately submitted, and are not reflected in this declaration.

28. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment. I have personally reviewed the detailed, work-in-progress reports/time records kept contemporaneously by my firm and have verified that the information contained in such records is accurate. The billable rates for attorneys, paralegals, and legal assistants reflected on the report are the regular and customary rates charged by our firm at the time the work was performed.

29. Care was taken to bill only actual time devoted to the matter and, where possible, we utilized associate attorneys such as Ms. Leary and Mr. Buhrow with lower billable rates; tasks that did not require an attorney were performed by a paralegal such as Ms. King. Still, not all professional time devoted by Zimmerman Reed to this case has been submitted. In order to be reasonable and conservative, time entries for certain tasks and/or expenses were reduced or eliminated. For example, time spent keeping apprised of general developments in the litigation was not billed for and any duplicative time entries were eliminated.

30. After this re-review, I can confirm that the time submitted was undertaken by the members of my firm at my direction. I believe that the common benefit time and expense information submitted on behalf of my firm is accurate, reasonable, and in compliance with the Court's Common Benefit Order.

31. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for Zimmerman Reed LLP is $496,720.50. A breakdown of the lodestar is provided below:

	Name	Title	Total Hours	Hourly Rate	Lodestar
1.	Robinovitch, Hart L.	Partner	361.60	$795.00	$287,472.00
2.	Buhrow, Bradley C.	Associate	332.00	$375.00	$124,500.00
3.	King, Sabine A.	Paralegal	129.80	$275.00	$35,695.00
4.	Leary, Alyssa J.	Associate	96.70	$375.00	$36,262.50
5.	Marker, Caleb L.	Partner	9.70	$505.00	$4,898.50
6.	Zimmerman, Charles S.	Partner	5.90	$900.00	$5,310.00
7.	Harms, Leslie A.	Paralegal	3.40	$150.00	$510.00
8.	Cialkowski, David M.	Partner	3.00	$595.00	$1,785.00
9.	Cuppy, Heidi S.	Paralegal	1.00	$150.00	$150.00
10.	Colt, Karen M.	Paralegal	0.50	$275.00	$137.50
	TOTALS		943.60		$496,720.50

32. All partners and associates at Zimmerman Reed maintain very full caseloads. In performing the work in this case, as reflected above, Zimmerman Reed attorneys precluded themselves from taking on additional work in other cases.

33. My firm seeks $120,043.57 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Description of Costs	***Amount***
Category 1 – Federal Express Charges	$444.84
Category 2 – Postage Charges	$45.12
Category 4 – Long Distance Phone Charges	$36.63
Category 5 – Photocopying Charges – In House	$2,917.80
Category 6 – Outside Photocopying Charges	$158.74
Category 7 – Hotels	$2,845.05
Category 8 – Meals	$1,749.60
Category 10 – Air Travel	$3,252.53
Category 11 – Deposition Costs	$3,343.21
Category 12 – Lexis/Westlaw/Bloomberg/Pacer	$72.10
Category 13 – Expert Expenses	$103,028.94
Category 14 – Court Fees	$150.00
Category 17 – Ground Transportation	$1,449.46
Category 18 – Miscellaneous	$549.55
TOTAL	**$120,043.57**

34. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order.

35. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records, and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July, 2018, in Scottsdale, Arizona.

/s/ Hart L. Robinovitch
Hart L. Robinovitch

ZIMMERMAN | REED

FIRM RESUME

MINNEAPOLIS
Zimmerman Reed LLP
1100 IDS Center,
80 South 8th Street
Minneapolis, MN 55402
t: 612.341.0400
f: 612.341.0844
zimmreed.com

LOS ANGELES
Zimmerman Reed LLP
2381 Rosecrans Avenue,
Suite 328
Manhattan Beach, CA 90245
t: 877.500.8780
f: 877.500.8781
zimmreed.com

PHOENIX
Zimmerman Reed LLP
14646 North Kierland Blvd
Suite 145
Scottsdale, AZ 85254
t: 480.348.6400
f: 480.348.6415
zimmreed.com

TABLE OF CONTENTS

ZIMMERMAN REED ATTORNEYS 1
Alia M. Abdi 1
Carolyn G. Anderson 1
David M. Cialkowski 3
Benjamin Gubernick 4
Brian C. Gudmundson 4
June P. Hoidal 5
Jason P. Johnston 6
Andre S. LaBerge 7
Michael J. Laird 7
Alyssa J. Leary 8
Daniel T. Lindquist 8
Caleb LH Marker 9
Bryce D. Riddle 10
Christopher P. Ridout 10
Hart L. Robinovitch 11
J. Gordon Rudd, Jr. 12
Behdad C. Sadeghi 13
Charles R. Toomajian, III 13
Charles S. Zimmerman 14
CASE RESUME: RECENT LEADERSHIP POSITIONS 16
Consumer Litigation 16
Defective Drugs and Devices 18
Securities, Investment Fraud, Corporate Governance and Antitrust 19
Sports Law 21
Employment Violations – Wage and Hour Litigation 21
Environmental and Toxic Torts 22
Homeowner Mortgage Litigation 23

FIRM PRACTICE AND ACHIEVEMENTS

Zimmerman Reed is a nationally recognized leader in complex and class action litigation and has been appointed as lead counsel in some of the largest and most complex cases in federal and state courts across the country. The firm was founded in 1983 and has successfully represented thousands of consumers and injured individuals nationwide in significant and demanding cases. The firm's practice includes a wide range of legal issues and complex cases involving consumer fraud, ERISA, shareholder actions, environmental torts, pharmaceutical drugs, dangerous or defective products, human rights violations, and privacy litigation. Since 2010, Zimmerman Reed has earned a first-tier "Best Law Firm" ranking released by U.S. News & World Report.

ZIMMERMAN REED ATTORNEYS

Alia M. Abdi is an associate at Zimmerman Reed concentrating her practice on complex litigation involving consumer protection, and securities and financial fraud in state and federal courts. She is currently representing consumers alleging violations of the Telephone Consumer Protection Act.

Prior to joining the firm, Alia externed for the Honorable John R. Tunheim, Chief Judge of the United States District Court for the District of Minnesota. She lent her expertise as a summer law clerk at Arthur, Chapman, Kettering, Smetak and Pikala, P.A., conducting research on railroad, workers' compensation, and construction law. Alia graduated from the University of Minnesota Law School, where she served as the student managing director for the Maynard Pirsig Moot Court and was mock trial team captain for Phi Alpha Delta. Alia is admitted to the state courts of Minnesota and the U.S. District Courts for the District of Minnesota.

Carolyn G. Anderson is a Managing Partner at Zimmerman Reed and leads the firm's Securities & Financial Fraud, Antitrust, and Public & Attorney General practice groups.

Carolyn has successfully represented small investors, institutional clients, and states in individual and nationwide securities fraud, ERISA, and antitrust actions. She has served in a leadership role in obtaining significant recoveries in both individual actions and multi-state actions.

Carolyn is co-leading the legal team representing the State of Indiana in its investigation into pharmaceutical manufacturers, drug distributors, and pharmacies for their roles in the ongoing opioid crisis.
She is a member of the Lead Counsel Committee in nationwide litigation involving CenturyLink customers alleging they were overcharged and billed for services they didn't request or authorize. Carolyn is currently serving as Lead Counsel in a case representing the State of New Mexico. In that case, the State is alleging antitrust and unfair practices against Visa and MasterCard. Carolyn also served as Lead Counsel in an antitrust action, working with a coalition of four Attorneys General, against manufacturers of LCD displays. The case was filed in state court but removed to federal court under the Class Action Fairness Act (CAFA). After opposing this removal at the district court and the Fifth Circuit, the State petitioned the U.S. Supreme Court. The Supreme Court ruled unanimously in favor of

Mississippi, reversing the Fifth Circuit's decision and clarifying the standard for removal of state actions under CAFA. *Mississippi ex rel. Hood v. AU Optronics*, 134 S. Ct. 736 (2014).

Carolyn also represents the Office of Attorney General for the State of Mississippi, defending that Office in an action brought by Google, challenging the State's authority to issue a Civil Investigative Demand (CID). Google attempted to enjoin the Attorney General's CID authority and the district court granted that motion. In April, 2016, the State prevailed and the district court's decision was reversed by the Fifth Circuit.

Carolyn was also appointed Co-Lead Counsel on behalf of investors alleging losses due to Wells Fargo's securities lending program. The case settled for $62 million, two days before trial was set to commence. She serves as Interim Co-Lead Counsel in an ERISA matter pending in the District of Minnesota, against fiduciaries of U.S. Bancorp Pension Plan for violations of ERISA. Carolyn also served as Class Counsel on behalf of investors who had purchased bond funds from Morgan Keegan in a lawsuit that arose from the collapse of three mutual funds. The case also involved the auditor as a defendant. In 2016, a $125 million settlement was reached with the assistance of mediator Layn Phillips, a former U.S. Attorney and former United States District Judge.

In prior representation, Carolyn represented large groups of investors with significant losses involving Merrill Lynch, AIG, Boston Scientific, and Lehman Brothers. Carolyn also led a legal team in a case brought by investors against American Express Financial Advisors, challenging that company's practices and breaches of fiduciary duty with its investing customers. The case, brought under the Investment Advisor Act, resulted in a $100 million settlement. Carolyn also successfully represented Midwest farmers/shareholders who challenged an ethanol plant's merger with Archer Daniels Midland; she was appointed Class Counsel in that matter. The case was resolved weeks prior to trial. Carolyn was also appointed Lead Counsel in a securities fraud lawsuit involving Boston Scientific, representing a public pension fund and a certified class.

In addition to serving in positions of leadership in investor protection litigation, Carolyn currently represents *pro bono* one hundred not-for-profit organizations related to their losses from the $3.6 billion Petters Ponzi scheme, centered in Minnesota. She was appointed by the federal judge to serve as Assistant Liquidating Trustee under the supervision of the Court and the Liquidating Trustee for assets being distributed to some of those investors. In *U.S. v. Petters*, No. 08-cv-05348 (D. Minn.), the Firm worked with the Department of Justice and the court-appointed receiver, to successfully recover and distribute millions of dollars to victims pursuant to a settlement with one of the Petters financiers.

Carolyn maintains strong ties with the National Association of Attorneys General, individual state Attorneys General, state pension fund officers, and other institutional investors. She is a frequent lecturer at colleges and law schools, and has served as a legal education faculty member on the topics of complex litigation, legal ethics, the 2008 financial crisis, and securities law.

Carolyn currently serves as a board member and Chairperson for Children's Shelter of Cebu, an interdenominational ministry for abandoned and neglected children. She also serves as a board member with Bloomberg Law on its Litigation Innovation Board.

Carolyn graduated cum laude from Trinity College, where she received a Bachelor of Arts degree in Psychology. She received her law degree cum laude from Hamline University School of Law where she was a Dean's Scholar, received the Cali Award for Excellence in Constitutional Law, and served on Hamline Law Review, where her case note article was selected for publication. Carolyn also studied law at Hebrew University in Jerusalem, Israel in course-work focusing on Law, Religion, & Ethics. Carolyn was previously honored as Rising Star of Law, and since 2014 she has been recognized as a Super Lawyer by her peers in Minnesota.

Carolyn is admitted to practice before, and is a member in good standing of, the Bar of the State of Minnesota, the United States District Court for the District of Minnesota, the Court of Appeals for the Eighth Circuit and the First Circuit, and the U.S. Supreme Court. In addition to these courts, Carolyn works on cases with local counsel nationwide. She is a member of the Federal Bar Association, the American Association for Justice, the Minnesota Bar Association, and the Hennepin County Bar Association.

David M. Cialkowski is a partner with Zimmerman Reed, and dedicates a substantial portion of his practice to the area of complex and mass tort litigation, with a primary focus on consumer protection and products liability litigation.

David was a member of the legal team that represented the Mississippi Attorney General's Office in Mississippi ex rel. Hood v. AU Optronics, 134 S. Ct. 736 (2014), an antitrust case against manufacturers of LCD displays in which the Court held that an attorney general's parens patriae case is not a "mass action" under the Class Action Fairness Act. The Supreme Court ruled unanimously in Mississippi's favor. He served as a member of the Plaintiffs' Steering Committee in In re Apple iPhone 3G and 3GS "MMS" Marketing and Sales Practices Litigation, a consumer protection class action, MDL 2116, based in New Orleans, Louisiana. He worked extensively on the Levaquin MDL trial team on behalf of clients who experienced tendon ruptures and tears after taking the popular Johnson & Johnson antibiotic. He also served as court-appointed co-lead counsel in In re Dockers Roundtrip Airfare Promotion Sales Practices Litigation, a consumer protection class action based in the U.S. District Court for the Central District of California. David has worked extensively on behalf of plaintiffs in In re St. Jude Silzone Heart Valves Product Liability Litigation, MDL 1396. He has also contributed substantially to pretrial summary judgment and class certification briefing in the Fedex Ground Package Systems employment status litigation, MDL 1700. David represented residents of Minot, North Dakota, in In re Soo Line Railroad Company Derailment of January 18, 2002 in Minot, N.D., who were injured by the toxic spill caused by the derailment of a Canadian Pacific Railway train, and helped draft federal legislation clarifying the scope, and thus reducing courts' application, of railroad preemption.

David earned his undergraduate degree from the University of Illinois's College of Liberal Arts and Sciences *cum laude* with High Distinction in the Department of English. Additionally, he participated in the honors program as a James Scholar, received the Elizabeth and Charles Ellis

Merit Scholarship, and is a member of Phi Beta Kappa. David graduated from the University of Illinois College of Law, where he participated in the civil litigation clinic, was an editor for the Poetic Justice literary magazine, and was voted one of the top ten percent of university teaching assistants.

David is licensed to practice and a member in good standing, for the Bars of the State of Minnesota and the State of Illinois. His professional associations include membership in the Minnesota State Bar Association and Hennepin County Bar Association. David has been recognized as a Rising Star of Law from 2006–2008, 2010-2013 and a Super Lawyer from 2015 to 2017.

Benjamin Gubernick is a seasoned trial attorney and entrepreneur. He takes a creative approach in obtaining the best possible outcomes for clients. His practice focuses on complex litigation and consumer class actions. Prior to joining the firm, Ben worked as a prosecutor, specializing in major financial crimes. He has successfully tried numerous cases to jury verdict. His courtroom successes include a high-profile Ponzi scheme case that resulted in convictions on all counts after a month of trial. Prior to beginning his career as a plaintiff-side litigator, he co-founded a venture-backed software startup in Ann Arbor, Michigan.

Ben received his J.D. from the University of Michigan Law School, graduating cum laude. He also holds a B.A. in English and History, graduating magna cum laude, from the University of Arizona. Ben is licensed to practice law in New Mexico.

Brian C. Gudmundson is a partner and concentrates his practice on complex litigation and commercial class actions, including the areas of Consumer, Antitrust, Securities & Financial Fraud, Intellectual Property, and Sports Law. Brian represents individuals, businesses, and public and private institutional clients in a variety of complex cases.

Brian is a member of the Lead Counsel Committee in a nationwide action challenging CenturyLink, Inc's alleged systematic and deceptive sales and overbilling practices, MDL 2795. He is appointed to Plaintiffs' Executive Committee in *In re: Fieldturf Artificial Turf Marketing Practices Litigation,* MDL 2779, representing schools, universities, municipalities, and private companies around the country that purchased allegedly defective artificial turf prone to rapid degradation. He is appointed co-lead counsel in *In re: Arby's Restaurant Group, Inc., Data Security Litig.,* 17-cv-00514, (N.D. Ga.), representing banks and credit unions who issued payment cards that were subject of alleged data breach. Brian is also a member of the Plaintiffs Executive Committee representing United Health Group insurance plan participants alleging that UHG illegally inflated and clawed back prescription copays. He is a member of the Plaintiffs Executive Committee representing consumers insured by Cigna Health Insurance Co. *In re: Negron v. Cigna Corp., et al.,* 16-cv-01702 (D. Conn.) alleging that Cigna Health illegally inflated and clawed back prescription copayments. He is a member of the Plaintiffs Executive Committee representing Humana insurance plan participants alleging that Humana illegally inflated and clawed back prescription copayments, *In re: Humana, Inc. PBM Litig.,* 16-cv-00706 (W.D. Ky.). Brian is a member of Plaintiffs Executive Committee in *In Re General Mills Glyphosate Litigation*, Case No. 16-cv-2869-MJD-BRT, asserting deceptive sales practices based upon alleged presence of glyphosate in products labeled "100% natural" and in *Vikram Bhatia, D.D.S. v. 3M Company*, 16-cv-01304-DWF-TNL, asserting claims on behalf of dentists and dental practices for

allegedly defective dental crown products. Brian is appointed to serve on the Plaintiffs' Steering Committee on behalf of financial institutions nationwide *In re: Equifax Data Breach,* MDL 2800, representing banks and credit unions in recovering losses. He is a member of the Plaintiffs' Steering Committee in *In re: Vizio, Inc. Consumer Privacy Litigation*, MDL 2693, asserting violations of state and federal law for unlawful collection and sale of private consumer data. He is co-lead counsel in *GLS Companies, et al. v. Minnesota Timberwolves Basketball LP*, challenging implementation of paperless ticketing system and restrictions on transfer of game tickets on behalf of ticketholders. Brian is also a member of the Plaintiffs' Steering Committee in the Home Depot Data Breach MDL 2583 and in *First Choice Fed. Credit Union v. The Wendy's Co.*, 16-cv-00506 (W.D. Pa.) representing banks and credit unions in recovering losses. Brian represents retired NHL players alleging the National Hockey League minimized concussion risks from its players for decades, MDL 2551. Brian is a member of the lead counsel team that achieved a $39 million settlement on behalf of banks and other financial institutions in recovering losses due to the 2013 Target data breach, MDL 2522. He is also a member of the lead counsel team that achieved a $50 million settlement on behalf of retired National Football League players in a class action against the League for the unauthorized use of former players' identities to generate revenue *In re: Dryer v. National Football League,* 09-cv-02182 (D. Minn.). He represents hundreds of individual retired NFL players in claims arising from concussive head injuries suffered while NFL players, MDL 2323. Presently, Brian represents MoneyGram Payment Systems, Inc. in claims against several Wall Street banks alleging over $400 million of losses due to the fraudulent sale of securities containing undisclosed, toxic mortgage-based assets. He also specializes in claims under the RICO Act and currently represents multiple non-profit and faith-based investors pro bono in RICO claims arising from the $3.5 billion Petters Ponzi scheme.

Brian served as court-appointed co-lead counsel in *In Re: Dockers Roundtrip Airfare Promotion Sales Practices Litigation* (C.D. Cal.), which culminated in a multimillion dollar settlement on behalf of a nationwide class of consumers. In 2005, Brian was part of a securities litigation team that achieved a $2.5 billion settlement against AOL-Time Warner on behalf of investors.

Brian received his BA from the University of Minnesota and his JD, *cum laude*, from the University of Minnesota Law School. Brian is admitted to the state courts of Minnesota, the U.S. District Courts for the District of Minnesota and the Northern District of Illinois, and the Tenth Circuit Court of Appeals. Brian has been recognized as a Rising Star of Law 2010-2016 and a Super Lawyer in 2017.

June P. Hoidal is an partner representing individuals and businesses who experienced losses as a result of securities and consumer protection and antitrust violations. Currently represents the State of Indiana in its investigation of claims related to the manufacturing, distribution, advertisement, dispensing, and marketing of opioid pain killers. She is a member of the legal team representing the State of Mississippi in an antitrust action against manufacturers of LCD screens. Her work included assisting with briefing before the U.S. Supreme Court, which unanimously ruled in favor of Mississippi by finding the State's *parens patriae* action was not removable to federal court. *Mississippi ex rel. Hood v. AU Optronics*, 134 S. Ct. 736 (2014). June also represented investors alleging losses due to Wells Fargo's securities lending program, a case that settled two days before trial was set to commence for $62 million. She currently represents the State of New Mexico in a matter against Visa and MasterCard, alleging antitrust

and unfair practices; participants of the U.S. Bancorp Pension Plan alleging violations of ERISA; and investors of Medtronic in a shareholder derivative case.

Prior to joining the firm, June served as a judicial law clerk to the Honorable Arthur J. Boylan on the United States District Court for the District of Minnesota. She gained substantial experience following law school at two law firms in Washington, D.C. and Minneapolis, practicing in diverse subject areas, including contract disputes, franchise, products liability, insurance, and employment law.

June currently serves as a board member and as the lead co-chair of the Associates Campaign for The Fund for Legal Aid. She also currently serves as a member of the Advisory Board for the Minnesota Urban Debate League and the Publications Committee for the Bench & Bar of Minnesota. Previously, she served as a Commissioner for the City of Saint Anthony Parks Commission, and a member of the Diversity Committee and the Women in the Legal Profession Committee of the Minnesota State Bar Association. In addition, June volunteered as an assistant debate coach for the Minnesota Urban Debate League and worked pro bono for Legal Assistance of Dakota County, Volunteer Lawyers Network, and The Advocates for Human Rights.

June graduated cum laude from the University of Minnesota Law School in 2003, where she was the Lead Managing Editor for the Minnesota Law Review and a member of the Dean's List. She is admitted to the state courts of Minnesota and the U.S. District Courts for the District of Minnesota. June has been recognized as a Rising Star of Law in 2007, 2015-2017.

Jason P. Johnston is a partner at our Minneapolis office, focusing primarily on complex cases involving individuals injured by defective drugs and faulty medical devices, advocating for clients both locally and nationally. Jason's personal engagement, resolute view of the law, and solid practice style make him a strong voice for his clients and an integral part of our firm.

Jason represents clients injured from defective orthopedic hip devices manufactured by DePuy, Biomet, Stryker, Smith & Nephew and other manufacturers of hip replacement systems. In the Stryker Rejuvenate and ABG II Multidistrict Litigation (MDL), Jason represents patients who experienced serious health complications as a result of a modular hip that was recalled from the market. Jason also serves as a member of the Plaintiff Steering Committee in the Stryker LFIT V40 MDL. During the Biomet M2a hip litigation, Jason was a member of the Plaintiffs' Science Committee where he reviewed technical documents and participated in depositions involving the design and development of the hip implant systems. In the Zimmer NexGen knee litigation, Jason serves as a member of the Plaintiffs' Steering Committee and has played an active role in the science and discovery phases of the litigation, as well as preparing cases for trial.

Jason's medical device litigation experience extends beyond orthopedic devices, including, representing clients injured by defibrillators and leads manufactured by St. Jude, Medtronic, and Guidant. In the Medtronic Sprint Fidelis litigation, Jason served as a member of the Claims Review Committee following a mass settlement involving Sprint Fidelis leads. He has also represented plaintiffs injured by various pharmaceutical drugs, including, Abilify, Invokana, Viagra, Avandia, Aredia/Zometa, testosterone replacement therapy drugs, and other medications.

Jason has participated in pro bono service during his career, including accepting cases in the District of Minnesota's Federal Pro Se Project which provides *pro se* plaintiffs with volunteer counsel to improve access to justice in the Federal Courts. Jason is also an active member of the American Association for Justice and the Minnesota Association for Justice. In 2016, the Minnesota Association for Justice recognized Jason as the "Member of the Year" for his contributions to the organization.

Since 2014, Jason has been selected as a Minnesota Rising Star of Law by Super Lawyers a distinction award given to only 2.5% of attorneys in the state. In addition, Jason has also been selected as a member of The National Trial Lawyers Top 100 Trial Lawyers and Top 40 Under 40. A graduate of the University of St. Thomas School of Law, he was recognized by the Minnesota Justice Foundation for his pro bono service while attending law school. Prior to law school, Jason attended Winona State University, earning his Bachelor of Science degree, magna cum laude, in Marketing.

Jason is admitted to the state courts of Minnesota and U.S. District Court for the District of Minnesota.

Andre S. LaBerge brings over twenty years of professional experience – as an attorney and as a business executive – in his advocacy for the rights of investors and consumers, providing counsel to several of the firm's practice areas. He has represented participants in Wells Fargo's securities lending program, investors with losses in Morgan Keegan open end bond funds, and the Office of Attorney General in the LCD antitrust litigation.

Andre has practiced law in Chicago and Minneapolis, and has represented clients at all court levels and in various regulatory forums. He has also served as Vice President, Chief Compliance Officer, General Counsel, and FINRA Registered Principal and Designated Supervisor in the financial services industry with companies that supervised and supported large numbers of securities brokers, financial planners, and insurance agents.

Andre is a graduate of DePaul University College of Law, where he was a Senior Editor for the Journal of Health and Hospital Law, and worked as a Mansfield Foundation Fellowship intern at Southern Minnesota Regional Legal Services. He is a member of the Minnesota State Bar Association and the Hennepin County Bar Association.

Michael J. Laird is an Associate at Zimmerman Reed focusing on the areas of sports law and consumer protection. He currently supports the firm's efforts in representing retired NHL & NFL players in separate lawsuits alleging that the chronic cumulative effects of concussions were minimized.

A magna cum laude graduate of the University of Minnesota Law School, Michael served as a member of the Journal of Law, Science & Technology, and a member of the American Bar Association Moot Court team. While in law school, Michael also started a medical-legal partnership with the Phillips Neighborhood Clinic to identify and resolve legal issues affecting patient care and well-being in under-served communities, as a member of the Community Practice and Policy Development Clinic.

While in law school, Michael externed for the Honorable Jeffrey J. Keyes of the United States District Court for the District of Minnesota. He also was a law clerk for both the Bad River Band of Chippewa Indians Natural Resources Department and the Minnesota Pollution Control Agency. Michael is licensed to practice law in Minnesota.

Alyssa J. Leary focuses her practice on environmental and consumer protection law. In environmental protection, Alyssa represents corn farmers and exporters in the Syngenta litigation who suffered economic harm from the release of Syngenta's unapproved, genetically modified corn strain. She also represents farmers whose crops have been damaged by off-target drift from dicamba herbicides in litigation against Monsanto. In consumer protection, Alyssa is part of the team representing consumers alleging Pacquiao and his promoters kept his shoulder injury secret prior to the highly publicized Pacquiao-Mayweather Pay-Per-View fight.

Alyssa graduated magna cum laude and Order of the Coif from Tulane University Law School and holds a Certificate in Environmental Law. While at Tulane, she worked as an editor for the Tulane Law Review, and studied economic and environmental issues in Brazil.

In addition to her law degree, Alyssa holds a Master of Science in Resource Conservation and a Certificate in Natural Resource Conflict Resolution from the University of Montana. She obtained a Bachelor of Science degree in Biology/Natural Science from the University of Puget Sound.

Prior to joining Zimmerman Reed, Alyssa worked as a renewable energy and construction law attorney and interned at the U.S. Attorney's Office for the Eastern District of Louisiana, the U.S. Marshals Service Office of General Counsel in Washington D.C., and also for the Cottonwood Environmental Law Center in Bozeman, Montana. She serves on the ReGenerateMN Steering Committee for the Minnesota Center for Environmental Advocacy. Alyssa is licensed to practice law in Minnesota and Texas.

Daniel T. Lindquist is an associate at Zimmerman Reed, with his practice concentrating in the firm's Public & Attorney General practice and complex and mass tort litigation practice group. He is a member of the consumer fraud litigation team representing the State of New Mexico in the Visa/MasterCard Interchange litigation, conducted case investigation in representing schools and athletic facilities in the FieldTurf litigation, is part of the drug and device team, preparing discovery, briefs, and deposition preparation, and currently is part of the firm's opioid litigation team.

Daniel received his law degree from the University of Michigan Law School, where he served as a lead Article Editor of the Michigan Business & Entrepreneurial Law Review and participated in the Henry M Campbell Moot Court. He earned his Bachelor of Arts in Economics from Wheaton College. He served as a judicial extern to the Honorable Jeffrey J. Keyes of the United States District Court for the District of Minnesota. He is admitted to practice law in Illinois, Minnesota, and Missouri.

Prior to joining Zimmerman Reed, Daniel worked at a Chicago law firm on cases involving antitrust violations, corporate law, employment, law, regulatory compliance and securities

fraud related to auction rate securities and mortgage backed securities. Daniel's extensive experience in e-discovery includes the following subject matters: Antitrust review in proposed hospital system merger; corporate law regarding alleged breach of fiduciary duties; Employment law in age discrimination and wrongful termination lawsuits; EPA/DEC environmental regarding superfund site; regulatory compliance regarding FCPA investigation; regulatory compliance regarding pseudoephedrine sales; securities fraud allegations regarding auction rate securities and mortgage-backed securities; and securities law claims regarding private-label, residential mortgage-backed securities.

Caleb LH Marker is a partner at Zimmerman Reed, working out of the firm's Los Angeles office. Caleb has dedicated a significant portion of his practice to consumer protection and employment cases, including consumers, misclassified employees, mortgage borrowers, student loan borrowers, and senior citizens.

Caleb is a creative litigator who has been a leader in the consumer protection area and has been actively involved as class counsel in cases that have provided meaningful recoveries, through trial or settlement. He has first-chair trial experience in court and arbitration, having tried several cases to verdict and award. In 2016, he tried the first merits arbitration in the United States that alleged that a "gig economy" worker was an employee as opposed to an independent contractor and has continued to try and advance such cases in arbitration and courtrooms. He has briefed and argued appeals in California, Michigan, and the Ninth Circuit.

Caleb is currently part of the ZR team representing the State of Indiana in its investigation into pharmaceutical manufacturers, drug distributors, and pharmacies for their roles in the ongoing opioid crisis. Caleb also represents tobacco consumers as a member of the plaintiffs' steering committee for *In Re: Santa Fe Natural Tobacco Company Marketing and Sales Practices Litigation* (MDL 2695) currently pending in the U.S. District Court for the District of New Mexico. The Santa Fe MDL was recently the subject of an in-depth article published by Bloomberg Businessweek in an article entitled "Nature's Cancer Sticks: American Spirits Long, Strange Trip to Court."

In recent years, Caleb's successes include leading a class action against the City of Los Angeles and Xerox that drew widespread media attention, winning a trial that now requires the City to end its decades-long outsourcing of the City's parking violations bureau in a case that will help over a hundred thousand motorists in Los Angeles in the next few years. Caleb later defended the trial court's verdict on appeal, resulting in a unanimous opinion fully affirming the trial court's verdict and award under the private attorney general doctrine. *Weiss v. City of Los Angeles*, 2 Cal. App. 5th 194 (August 8, 2016).

Caleb has been a driving force in a number of class actions that have resulted in eight-figure settlements, including actions that have involved misclassified employees, homeowners that have fallen victim to force-place insurance practices, patients at understaffed nursing homes, consumers of dangerous gas absorption refrigerators, and student loan borrowers who were overcharged for interest.

Caleb serves on the Los Angeles County Bar's Litigation Executive Committee and Access to Justice Committee, the latter of which aims to maximize the delivery of legal services to the

poor and encourage attorneys to provide free legal services to those in need. Several of his successes have been recognized as a "Top Settlement & Verdict" by the Los Angeles Daily Journal and Michigan Lawyers Weekly. He has been interviewed by numerous media outlets, including NBC, Fox Business, NPR, *The Wall Street Journal*, AP, the *Los Angeles Times*, *LA Weekly*, and Law360. He has also been recognized as a Rising Star of Law in Southern California by Super Lawyers from 2015-2018, after a peer-nomination and review process awarded to less than 2.5% of attorneys under 40.

A native of Michigan, Caleb graduated from Michigan State University's James Madison College and College of Law. He is a member of the Los Angeles County Bar Association (LACBA), Duke Law's Bolch Judicial Institute and Electronic Discovery Reference Model (EDRM), the Federal Bar Association (FBA), the American Association for Justice (AAJ), Consumer Attorneys Association of Los Angeles (CAALA), and Consumer Attorneys of California (CAOC).

Bryce D. Riddle concentrates his practice on complex litigation and commercial class actions in the areas of Sports Law, Data Breach, and Consumer Protection. Currently, Bryce works on the team representing retired NHL players alleging the National Hockey League failed to minimize concussion risks for its players for decades. In data breach litigation, he represents financial institutions in cases against The Home Depot and Wendy's to recover losses arising from breaches that compromised customer financial information. Bryce also works on the Vizio consumer privacy litigation asserting violations of state and federal law for the unauthorized collection and sale of customers' private and personal data.

Bryce graduated cum laude from the University of Minnesota Law School in 2014, where he was a member of the Minnesota Journal of International Law and a Dean's Scholarship recipient. While in law school, he participated in the Student Exchange Program in Milan, Italy at Bocconi University School of Law and also externed for the Honorable David S. Doty of the United States District Court for the District of Minnesota. He subsequently served as a judicial law clerk for the Honorable Elizabeth V. Cutter and the Honorable Bridget A. Sullivan in Minnesota's Fourth Judicial District. Bryce is licensed to practice law in Minnesota and California state courts, as well as federal court in the District of Minnesota.

Christopher P. Ridout is a partner working in the firm's Los Angeles, California office practicing in the areas of complex litigation including consumer protection, labor and employment, unfair business practices, false advertising, toxic tort, commercial and residential hazardous substance exposure.

Chris was appointed to serve on the Plaintiffs' Executive Committee in the iPhone Device Performance Litigation alleging that Apple released a software update that deliberately diminished the battery life of older devices forcing customers to spend hundreds of dollars on replacement batteries and new phones. He was appointed as co-interim lead counsel representing a class of consumers in a mislabeling lawsuit alleging that Celestial Seasonings tea products falsely claim to be "all natural" when they contain pesticide residue from the agricultural process. In consumer litigation, Chris represents classes of consumers and employees in connection with data breaches that have compromised personal, financial, medical, and employment information. He represents a class of GM diesel truck owners

alleging that the DMAX diesel engine design is defective causing a reduction in fuel efficiency by 25-30 percent. He served as class counsel reaching a $52 million settlement on behalf of customers alleging the billing practices of the Los Angeles Department of Water contained excessive fees and inflated rates, and that the charges to customers exceeded the costs of provided water and power services. Chris obtained a $36 million settlement representing RV owners in a class action lawsuit alleging that Norcold knew of a potentially dangerous RV refrigerator fire risk, but hid that information from the public. He also advocates on behalf of musicians and entertainers in Internet-related copyright and royalty disputes.

Over the last decade, Chris has been involved in the resolution of a series of class action lawsuits including a settlement of more than $24 million on behalf of misclassified employees, an $11.5 million settlement for Michigan students loan borrowers over an interest rate dispute, a $9 million settlement claiming Naked Juice violated state and federal laws regarding the marketing and sale of its product, and a multi- million dollar award for residents of various nursing home facilities alleging widespread and intentional failure to provide sufficient care to the residents due to understaffing.

Chris attended Harvard University where he received his Bachelor of Arts Degree in 1986. While focusing on his major of American History, he was a member of the Harvard Varsity Football Team and played in the historic 100th Harvard-Yale match-up commonly referred to as "The Game." In his senior year, Chris was awarded the "William Payne LeCroix Memorial Award" given to that team member exhibiting the most loyalty and dedication to the Harvard Varsity Football Team.

After graduating from the University of the Pacific McGeorge School of Law in 1989, he was admitted to the California Bar that same year. He has also been admitted to practice before the United States District Court for the Southern, Central, and Northern Districts of California; the United States District Court for the District of Colorado; the United States District Court for the District of Minnesota; the United States District Court for the Northern District of Ohio; and the United States Court of Appeals for the Ninth Circuit.

Hart L. Robinovitch is a partner with Zimmerman Reed, working in the firm's Scottsdale, Arizona office. Hart focuses his practice in the areas of consumer and shareholder actions, and sports law.

Hart currently represents corn farmers and DDGS exporters in the Syngenta Viptera Litigation who have experienced the effects of China's ban of U.S. corn and corn-derived products, suffering lower prices, decreased sales and other losses as the prices of U.S. corn has decreased. He is a member of the lead counsel team representing retired NHL players alleging the National Hockey League minimized the chronic cumulative effects of concussion risks from its players for decades. Hart also represents clients in a class action lawsuit on behalf of RV owners alleging that Norcold knew of a potentially dangerous RV refrigerator fire risk, but hid that information from the public.

Hart has been involved in numerous state and federal court lawsuits around the country challenging the misclassification of entertainers as independent contractors opposed to employees in the nightclub industry. He also represented consumers in other actions alleging

deceptive and unlawful business conduct towards customers including, but not limited to, false advertising practices, "bait and switch" tactics, altering contractual terms without valid consideration, and retailers' requests and/or requirements that their customers provide personal identification information when they complete a transaction using their credit card, in violation of state and/or federal statutes. In addition, Hart represented residents of various skilled nursing facilities alleging pervasive and intentional failure to provide sufficient direct nursing care staffing resulting in harm to the residents.

For the past decade, Hart has represented clients in a series of class action lawsuits contesting mortgage lenders' excessive billing and deposits practices for mortgage escrow accounts. Hart is now involved in numerous federal court lawsuits around the country alleging that mortgage banks and lenders have violated federal and state laws. These cases allege payment of kickbacks and/or illegal and unearned referral fees by the banks and lenders to mortgage brokers who refer mortgage clients who are then charged inflated interest rates on the mortgages. In addition, he represents consumers in other actions contesting the imposition of overcharges and improper fees or other contractual violations in various mortgage transactions. He has worked with co-counsel in state and federal courts across the country.

A native of Canada, Hart earned his degree from the University of Toronto Law School in 1992 where he served as an Associate Editor on the University of Toronto Faculty of Law Review. He received his Bachelor of Science degree in 1989 from the University of Wisconsin-Madison.

Hart is admitted to practice before, and is a member in good standing of, the Bars of the States of Arizona and Minnesota and the United States District Court for the Districts of Arizona, Minnesota, and the Eastern District of Michigan. Hart is also licensed to practice law before the United States Courts of Appeals for the Sixth, Eighth, Ninth, and Eleventh Circuits, and the United States Supreme Court. Hart's memberships include the National Association of Consumer Advocates and Canadian American Bar Association.

J. Gordon Rudd, Jr. is a managing partner at Zimmerman Reed, representing clients in the areas of mass tort, consumer protection, and employment law. Gordon has been appointed class counsel in cases venued in both state and federal courts across the country.

Gordon was recently part of the team that achieved a $50 million settlement in the complicated court fight over publicity rights for retired NFL players. In a separate lawsuit, he represents hundreds of retired NFL players suffering from concussive head injuries that occurred while playing in the league. Gordon also represented thousands of individuals injured by the largest release of anhydrous ammonia in U.S. history. Two of those individuals were awarded $1.2 million by a jury. Eventually, these trials led to a settlement on behalf of other residents of Minot, North Dakota injured by the derailment. Currently, he is representing hundreds of homeowners whose properties have been exposed to a toxic chemical vapor called trichloroethylene (TCE).

In Mass Tort litigation, Gordon leads several cases, including representing clients who experienced uncontrollable urges to gamble while taking top-selling prescription drug Abilify, representing nursing home residents sickened by a Hepatitis C outbreak (the second-largest outbreak of the disease in U.S History), men who have suffered cardiovascular injuries

following their use of testosterone therapy supplements, and clients who experienced severe bleeding problems while taking Xarelto.

Gordon is also working on a number of multi-district litigation cases. Gordon is a member of the lead counsel team representing banks and other financial institutions seeking recovery of losses from the 2013 Target data breach. He also holds leadership positions on several Plaintiffs' Steering Committees including *In re H&R Block IRS Form 8863 Litigation*, MDL 2474, *In re Life Time Fitness, Inc., Telephone Consumer Protection Act (TCPA) Litigation*, MDL 2564, *In re FedEx Ground Package System, Inc.*, MDL 1700, and *In re Building Materials Corp. of America Asphalt Roofing Shingle Products Liability Litigation*, MDL 2283.

Gordon graduated from Connecticut College, where he received a Bachelor of Arts degree in English Literature & Government. He received his law degree from the University of Cincinnati College of Law. Gordon is licensed to practice before, and is a member in good standing of, the Bar of the State of Minnesota and the United States District Court for the District of Minnesota. Gordon is admitted to the United States Court of Appeals for the Eighth Circuit. He has been admitted to appear pro hac vice in cases pending in the states of California, Oregon, Arizona, New Mexico, Texas, North Dakota, Ohio, Florida, Georgia, Tennessee, and Michigan. Since 2006, Gordon has been selected as a Super Lawyer by his peers in Minnesota.

Behdad C. Sadeghi focuses his practice on complex litigation involving consumer protection, securities fraud, and financial fraud in state and federal courts around the country.

Behdad worked on the team representing investors who sustained losses as a result of alleged federal securities law violations by Morgan Keegan and its affiliates that achieved a $125 million settlement. He also represented a class of financial institutions who suffered losses resulting from a major data breach in a class action against the Target Corporation that resulted in a $39 million dollar settlement. In consumer litigation, he successfully achieved a multi-million dollar wrongful death settlement against a major automobile manufacturer, and a settlement on behalf of a group of elderly victims of one of the largest hepatitis C outbreaks in the nation's history. He also represents a putative class of consumers alleging violations of the Telephone Consumer Protection Act by Papa Murphy's and SuperAmerica.

Behdad graduated magna *cum laude* from William Mitchell College of Law, where he was a member of the William Mitchell Journal of Law and Practice and the Niagara International Moot Court Team; he also participated in the school's Civil Advocacy Clinic. His academic honors include a CALI Excellence for the Future Award, four Dean's List honors, and a Burton Award Nomination for Excellence in Legal Writing. Behdad is licensed to practice law in Minnesota.

Charles R. Toomajian, III is an associate at Zimmerman Reed concentrating his practice in the consumer protection area and representing individuals injured by defective drugs or faulty medical devices. In the consumer protection context, Chuck represents public entities seeking recovery and finding solutions for the rampant harm caused nation-wide by the opioid crisis. He has also successfully represented individuals with claims under the TCPA. In the medical arena, he represents patients who took Abilify and experienced financial devastation as a result of compulsive gambling associated with the top-selling drug and patients who experienced

severe injuries after taking the diabetes drug, Invokana. He also supports the firm's efforts in helping patients and families affected by the Stryker LFIT V40, involving recalled femoral heads that have been associated with hip replacement failure. Prior to joining Zimmerman Reed, Chuck worked at a multi-state trial and litigation firm advocating for injured clients.

A magna cum laude graduate from the University of Minnesota Law School, Chuck was a symposium editor for Law and Inequality: A Journal of Theory and Practice. He was a three-year consecutive Dean's List recipient and received the First Amendment law Book Award, a prestigious award for having the highest score in the class. He externed for the Honorable Mark Wernick of the Hennepin County District Court where he prepared and drafted memoranda and conducted legal research. He holds a Bachelor of Arts in English from Williams College. Chuck is licensed to practice before, and is a member in good standing of, the Bar of the State of Minnesota, the Bar of the State of California, and is admitted to the U.S. District Court for the Central District of California.

Charles S. Zimmerman, founding partner of Zimmerman Reed, is a nationally recognized leader in complex and class action litigation. He frequently speaks at industry conferences and CLEs, and is the author of a newly published book on complex litigation. During more than 30 years of practice, Bucky has successfully represented thousands of clients through individual actions and nationwide class actions. His cases have involved the tobacco industry, pharmaceutical companies, and shareholder suits. Bucky has served as lead counsel, PSC member and liaison counsel in numerous major pharmaceutical and medical device cases over the last 15 years. He currently serves on the Plaintiffs' Executive Committee for the Dicamba Herbicides Litigation, Lead Counsel Committee for the Stryker Hip Litigation, was appointed to the Plaintiffs' Steering Committee in the NFL Players' Concussion Injury Litigation, and is Lead Counsel representing banks in the Target Data Breach case. He has also served as Co-Lead Plaintiffs' Counsel in the Baycol, Guidant, Levaquin, Medtronic, Zicam, NFL Retired Players Publicity Rights, and National Arbitration Forum MDLs. Through his leadership in these and other groundbreaking cases, Bucky continues to advance the interests of his clients and the legal profession.

In addition to his case work, Bucky continues to lecture on complex litigation and working with the media in high profile cases for a variety of organizations including the Minnesota State Bar Association, Minnesota Continuing Legal Education, the University of Minnesota Law School, William Mitchell College of Law, the Minnesota Association for Justice, and Mealey's Publications. He is also an adjunct professor of law teaching Mass Torts at the University of Minnesota Law School. In 2006, Bucky authored "Pharmaceutical and Medical Device Litigation," a mass tort manual published by Thompson/West.

He has been recognized by his peers in Minnesota as a Super Lawyer from 2000 - 2007, 2011-2017. He was also selected as the 2013 & 2014 Minneapolis Mass Tort Litigation / Class Actions - Plaintiffs Lawyer of the Year by The Best Lawyers in America.

Bucky is a graduate of the University of Minnesota Law School. He also received his undergraduate degree from the University of Minnesota and was a three letter winner, Williams Scholar, and captain of the varsity U of M tennis team his junior and senior years. Bucky is a member of the United States Professional Tennis Association obtaining national

ranking, and has won gold and silver medals at the world Maccabiah and Pan American Maccabiah games.

Bucky is licensed to practice law in the States of Minnesota and Arizona, and is admitted to the United States District Court for the District of Minnesota, District of Colorado, and District of North Dakota, and the United States Supreme Court. He is also admitted to the Third, Fifth, Sixth, and Eighth United States Circuit Courts of Appeals.

Bucky served as co-chairman of the Advisory Committee for Mealey's Propulsid Litigation Conference and he chaired the faculty of a Minnesota Institute for Legal Education seminar, "Dealing with Complex Litigation." Bucky has also lectured and served as a member of the faculty at Mealey's "Norplant Conference," Mealey's "Breast Implant Conferences," Andrew's Publications' "Medical Devices Litigation Conference," as well as numerous conferences on the subject of Tobacco Litigation and "Youth and Addiction." Additionally, he was a guest lecturer on the subject of Complex Litigation at the University of Minnesota School of Law in conjunction with course work prepared by Professor Robert J. Levy, and the William Mitchell College of Law in conjunction with course work prepared by the Honorable Thomas Carey.

Bucky's memberships include the Minnesota Association for Justice, American Association for Justice, the Federal Bar, the Minnesota State Bar Association, the Hennepin County Bar Association, and the Bar Associations of the Fifth and Eighth Federal District Courts.

CASE RESUME: RECENT LEADERSHIP POSITIONS

Consumer Litigation

- *Adams v. Target Corporation*, United States District Court, Central District of California
- *Chapman v. Sport Chalet*, Superior Court of Los Angeles County, State of California
- *Chavez v. Wal-Mart Stores Inc.*, United States District Court, Central District of California
- *City of Wyoming, et al. v. Procter & Gamble Company, et al.*, United States District Court, District of Minnesota
- *Coyle v. Flowers Food and Holsum Bakery*, District of Arizona
- *Dearmon, et al. v. Mercury Finance Company*, Fourth Judicial District Court, State of Minnesota
- *DeGrise, et al. v. Ensign Group, Inc., et al.*, Superior Court of Sonoma County, State of California
- *DeLillo, et al. v. NCS Pearson, et al.*, United States District Court, District of Minnesota
- *Diamond, et al. v. AVCO Auto Finance, et al.*, Superior Court of California, Monterey County
- *Drobnak, et al. v. Andersen Windows, Inc.*, United States District Court, District of Minnesota
- *Esparza v. Coach, Inc., et al.*, United States District Court, Central District of California
- *First Choice Fed. Credit Union v. The Wendy's Co.*, United States District Court, Western District of Pennsylvania
- *Fischl, et al. v. Direct Merchants Bank*, Fourth Judicial District, State of Minnesota
- *Garcia, et al. v. Metro Gang Strike Force*, United States District Court, District of Minnesota
- *Grant, et al. v. Regions Mortgage Co. f/k/a First Commercial Mortgage Co.*, Superior Court of California, Ventura County
- *Gutter, et al. v. Bank One Louisiana*, Orleans Parish Civil District, State of Louisiana
- *In re Apple iPhone "MMS" Sales Practices Litigation*, MDL 2116 (Member of the Plaintiffs' Steering Committee)
- *In re Apple Inc. Device Performance Litigation*, MDL 2827 (Member of the Plaintiffs' Executive Committee)
- *In re Arby's Restaurant Group, Inc., Data Security Litig.*, United States District Court, Northern District of Georgia (Co-Lead Counsel)
- *In re Building Materials Corp. of America Asphalt Roofing Shingle Products Liability Litigation,* MDL 2283 (Member of the Plaintiffs' Steering Committee)
- *In re Castano Tobacco Litigation*, United States District Court for the Eastern District of Louisiana
- *In re CenturyLink Residential Customer Billing Disputes Litigation*, MDL 2795, United States District Court, District of Minnesota (Co-Lead and Liaison Counsel)
- *In re CIGNA Corporation PBM Litigation*, United States District Court, District of Connecticut*In re Dockers Roundtrip Airfare Promotion Sales Practices Litigation*, United States District Court, Central District of California
- *In re Dry Max Pampers Litigation*, United States District Court, Southern District of Ohio
- *In re Equifax, Inc. Customer Data Security Breach Litigation*, MDL No. 2800
- *In re H&R Block IRS Form 8863 Litigation*, MDL 2474, United States District Court, Western District of Missouri

- *In re Humana, Inc. PBM Litigation*, United States District Court, Western District of Kentucky
- *In re Life Time Fitness, Inc., Telephone Consumer Protection Act (TCPA) Litigation*, MDL 2564
- *In re McCormick & Company, Inc. Pepper Products Marketing and Sales Practice Litigation*, MDL 2665
- *In re Medco Health Solutions, Inc., Pharmacy Benefits Management Litigation, MDL 1508* (Lead Counsel)
- *In re National Arbitration Forum Trade Practices Litigation*, MDL 2122
- *In re Target Corporation Customer Data Security Breach Litigation*, MDL 2522, United States District Court, District of Minnesota
- *In re UnitedHealth Group PBM Litigation*, United States District Court, District of Minnesota
- *In* re *Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation*, MDL 2247 (Member of the Plaintiffs' Steering Committee)
- *In* re *Zurn Pex Plumbing Products Liability Litigation*, MDL 1958 (Liason Counsel)
- *Kurvers, et al. v. National Computer Systems, Inc.*, Fourth Judicial District Court, State of Minnesota
- *Lennartson v. Papa Murphy's Holdings, Inc., et al.*, United States District Court, Western District of Washington
- *McDonald, et al. v. Eli Lilly & Company*, United States District Court, District of Minnesota
- *Mehrens v. Redbox Corp.*, Superior Court of Los Angeles County, State of California
- *Mills, et. al., v. Roto-Rooter Services Company*, Fourth Judicial District Court of Hennepin County, State of Minnesota
- *Monteuil v. Ensign Group, Inc., et al.*, Superior Court of Los Angeles County, State of California
- *Minnerath, et al. v Zurn Pex Inc.*, United States District Court, District of Minnesota
- *O'Hara, et al. v. Marvin Lumber, et al.*, Fourth Judicial Court, State of Minnesota
- *Pistilli, et al. v. Life Time Fitness*, Fourth Judicial District, State of Minnesota
- *Rapp v. Green Tree Servicing, LLC et al.,* United States District Court, District of Minnesota
- *Rubinstein v. Michaels*, Superior Court of Los Angeles County, State of California
- *Russo, et al. v. NCS Pearson, Inc., et al.,* United States District Court, District of Minnesota
- *Sara Lee Meat Contamination Litigation, Cress v. Sara Lee*, Circuit Court of Cook County, State of Illinois, Court File No. 98 L 15072
- *Scott v. American Tobacco Co., Inc., et al., Court File No.: 96-8461*, Civil District Court for the Parish of New Orleans, Louisiana
- *Soular v. Northern Tier Energy, LP, et al.*, United States District Court, District of Minnesota
- *U.S. Hotel and Resort Management, Inc. et al. v. Onity Inc.*, United States District Court, District of Minnesota
- *Vikram Bhatia, D.D.S. v. 3M Company* (D. Minn.)
- *Wallace, et al. v. ConAgra Foods Inc. d/b/a Hebrew National*, United States District Court, District of Minnesota
- *Wick v. Twilio, Inc.*, United States District Court, Western District of Washington
- *Wright, et al. v. Malt-O-Meal Company*, Fourth Judicial District, State of Minnesota

Defective Drugs and Devices

- *Guttormson et al. v. Manor Care of Minot ND, LLC* et al., United States District Court, District of North Dakota
- *In re Avandia Pharmaceutical Litigation*
- *In re Baycol Products Litigation*, MDL 1431 (Co-Lead Counsel)
- *In re Biomet M2A Magnum Hip Implant Products Liability Litigation*, MDL 2391 (Member of the Plaintiffs' Steering Committee)
- *In re Breast Implant Litigation*, MDL 926 (Member of the Plaintiffs' Steering Committee)
- *In re Celebrex and Bextra Products Liability Litigation*, MDL 1694 (Member of the Plaintiffs' Steering Committee)
- *In* re *Darvocet, Darvon And Propoxyphene Products Liability Litigation*, MDL 2226
- *In* re *DePuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation*, MDL 2197
- *In re Diet Drugs Products Liability Litigation (Phentermine / Fenfluramine / Dexfenfluramine)*, MDL 1203 (Member of the Plaintiffs' Steering Committee)
- *In re Digitek Products Liability Litigation*, MDL 1968 (Member of the Plaintiffs' Steering Committee)
- *In re Ephedra Products Liability Litigation*, MDL 1598
- *In* re *Guidant Implantable Defibrillators Products Liability Litigation*, *MDL 1708 (Co-Lead Counsel)*
- *In* re *Intergel Products Litigation*, Carver County, Minnesota
- *In* re *Levaquin Products Liability Litigation*, MDL 1943 (Lead Counsel)
- *In re Meridia Products Liability Litigation*, MDL 1481 (Member of the Plaintiffs' Steering Committee)
- *In re Medtronic Implantable Defibrillators Products Liability Litigation*, MDL 1726 *(Co-Lead Counsel)*
- *In re Medtronic, Inc., Sprint Fidelis Leads Products Liability Litigation (Co-Lead Counsel)*
- *In re Neurontin "Off-Label" Marketing Litigation*, MDL 1629 (Member of the Plaintiffs' Steering Committee)
- *In re Orthopedic Bone Screw Litigation*, MDL 1014 (Member of the Plaintiffs' Steering Committee)
- *In* re *Phenylpropanolamine (PPA) Products Liability Litigation*, MDL 1407
- *In re Propulsid Products Liability Litigation*, MDL 1355 (Member of the Plaintiffs' Steering Committee)
- *In re Rezulin Products Liability Litigation*, MDL 1348 (Member of the Plaintiffs' Steering Committee)
- *In re Serzone Products Liability Litigation*, MDL 1477 (Member of the Plaintiffs' Steering Committee)
- *In re St. Jude Silzone Heart Valves Product Liability Litigation*, MDL 1396 (Liason Counsel)
- *In re Stryker Rejuvenate and ABG II Hip Implant Products Liability Litigation*, MDL 2441 (Lead Counsel Committee)
- *In re Sulzer Inter-Op Orthopedic Hip Implant Litigation*, MDL 1401 (Member of the Plaintiffs' Steering Committee)
- *In re Telectronics Pacemaker Litigation*, MDL 1057 (Member of the Plaintiffs' Steering Committee)

- *In* re *Viagra Products Liability Litigation*, MDL 1724 (Lead Counsel)
- *In re Vioxx Products Liability Litigation*, MDL 1657 (Member of the Plaintiffs' Steering Committee)
- *In re Zicam Cold Remedy Product Liability Litigation*, MDL 2096 (Lead Counsel)
- *In* re *Zimmer NexGen Knee Implant Products Liability Litigation*, MDL 2272 (Member of the Plaintiffs' Steering Committee)

Securities, Investment Fraud, Corporate Governance and Antitrust

- *Adedipe, et al. v. U.S. Bank, Nat'l Ass'n, et al.*, United States District Court, District of Minnesota (Co-Lead Counsel)
- *AI Plus, Inc. and IOC Distribution, Inc. v. Petters Group Worldwide, et al.*, United States District Court, District of Minnesota
- *Alessi v. Medicis Pharmaceutical Corp., et al.*, Superior Court of Maricopa County, State of Arizona
- *Apotheker v. Insight Enterprises, Inc., et al.*, Superior Court of Maricopa County, State of Arizona
- *Bamboo Partners v. Apollo Group, Inc., et al.*, United States District Court, District of Arizona
- *Barnett v. Apollo Group, Inc., et al.*, Superior Court of Maricopa County, State of Arizona
- *City of Ann Arbors Employees' Retirement System v. MoneyGram International, Inc.*, United States District Court, District of Minnesota
- *City of Farmington Hills Employees Retirement System v. Wells Fargo Bank*, N.A., United States District Court, District of Minnesota
- *City of Tallahassee Pension Plan v. Insight Enterprises, Inc., et al.*, Superior Court of Maricopa County, State of Arizona
- *Dillen v. Insight Enterprises, Inc., et al.*, United States District Court, District of Arizona
- *Fry v. Fry*, Fourth Judicial District, State of Minnesota
- *Gaither v. Computer Network Technology Corporation, et al.*, Fourth Judicial District, State of Minnesota
- *Garg v. Virtual Radiologic Corporation, et al.*, Fourth Judicial District, State of Minnesota
- *Haritos, et al. v. American Express Financial Advisors*, U.S. District Court, District of Arizona
- *Hazuka v. Hypercom Corporation, et al.*, United States District Court, District of Arizona
- *In re ATS Medical, Inc. Shareholders Litigation*, Fourth Judicial District, State of Minnesota
- *In re Blue Cross Blue Shield Antitrust Litigation*, MDL 2406
- *In re Boston Scientific Corporation Securities Litigation*, U.S. District Court, District of Massachusetts
- *In re Ditropan XL Antitrust Litigation*, United States District Court, Northern District of California
- *In re Domestic Drywall Antitrust Litigation*, MDL 2437
- *In re E.W. Blanch Holdings Securities Litigation*, United States District Court, District of Minnesota
- *In re LCD Antitrust Litigation*, United States District Court, Northern District of California
- *In re Lipitor Antitrust Litigation*, MDL 2332

- *In re Medtronic, Inc. Derivative Litigation*, United States District Court, District of Minnesota
- *In re Medtronic, Inc. Securities Litigation*, United States District Court, District of Minnesota
- *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, United States District Court, Southern District of New York
- *In re Pemstar, Inc. Securities Litigation*, United States District Court, District of Minnesota
- *In re Pool Products Distribution Market Antitrust Litigation*, MDL 2328
- *In re Region Morgan Keegan Securities, Derivative and ERISA Litigation [In re Regions Morgan Keegan Open-End Mutual Fund Litigation]*, United States District Court, Western District of Tennessee
- *In re Region Morgan Keegan Securities, Derivative and ERISA Litigation [Landers v. Morgan Asset Management]*., United States District Court, Western District of Tennessee
- *In re St. Jude Medical, Inc. Securities Litigation*, United States District Court, District of Minnesota
- *In re Stellent, Inc. Securities Litigation*, United States District Court, District of Minnesota
- *In re Stratasys Ltd. Shareholder Securities Litigation*, United States District Court, District of Minnesota
- *In re Suboxone Antitrust Litigation*, MDL 2445
- *In re SuperValu, Inc. Securities Litigation*, United States District Court, District of Minnesota
- *In re Target Corporation Securities Litigation*, United States District Court, District of Minnesota
- *In re Taser International Securities Litigation*, United States District Court, District of Arizona
- *In re The St. Paul Companies, Inc., et al.*, United States District Court, District of Minnesota
- *In re Tricor Indirect Purchaser Antitrust Litigation*, United States District Court, District of Delaware
- *In re Vitamins Antitrust Litigation*, United States District Court, District of District of Columbia
- *In re Xcel Energy, Inc. Securities Litigation*, United States District Court, District of Minnesota
- *In re Zomax, Inc. Securities Litigation*, United States District Court, District of Minnesota
- *Klosek, et al. v. Ameriprise Financial, Inc., et al.*, United States District Court, District of Minnesota
- *Krause v. UnitedHealth Group, Inc., et al.*, United States District Court, District of Minnesota
- *Langdale v. Mobility Electronics, Inc., et al.*, United States District Court, District of Arizona
- *Langley v. Syntax-Brillian Corp., et al.*, United States District Court, District of Arizona
- *Liu v. JDA Software Group., et al.*, Superior Court of Maricopa County, State of Arizona
- *Mars Hill Media v. Petters Group Worldwide, et al.*, United States District Court, District of Minnesota
- *Mok v. Rucker, et al.*, United States District Court, District of Minnesota
- *MoneyGram Payment Systems, Inc. v. Citigroup, Inc., et al.*, Fourth Judicial District, State of Minnesota

- *MoneyGram Payment Systems, Inc. v. Deutsche Bank AG, et al.*, Fourth Judicial District, State of Minnesota
- *New Orleans Employees' Retirement System v. UBS, AG, et al.*, United States District Court, Southern District of New York
- *Reinhardt v. Syntax-Brillian Corp., et al.*, Superior Court of Maricopa County, State of Arizona
- *Rensch v. Northern Oil & Gas, Inc., et al.*, United States District Court, District of Minnesota
- *Rupp, et al. v. Thompson et al. (Minnesota Corn Processors)*, Fifth Judicial District Court, State of Minnesota
- *Schmidt, et al. v. eFunds Corporation, et al.*, Superior Court of Arizona, Maricopa County
- *Scull v. Compellent Technologies, Inc., et al.*, United States District Court, District of Minnesota
- *St. Barnabas Hospital, Inc., et al. v. Ovation Pharmaceuticals, et al.*, United States District Court, District of Minnesota
- *State of New Mexico v. Visa, Inc., et al,* First Judicial District, State of New Mexico
- *Stevenson v. ev3 Inc., et al.*, Fourth Judicial District, State of Minnesota
- *Surooj v. Polaris Industries, Inc.*, United States District Court, District of Minnesota
- *Tran v. Joly, et al.*, United States District Court, District of Minnesota
- *West, Jr. v. American International Group, Inc., et al.,* United States District Court, Southern District of New York
- *Yurman v. Plato Learning, Inc., et al.,* United States District Court, District of Minnesota
-

Sports Law

- *Dryer v. National Football League*, United States District Court, District of Minnesota (Lead Counsel)
- *In re National Collegiate Athletic Association Student-Athlete Concussion Litigation*, MDL 2492 (Member of the Executive Committee)
- *In re National Hockey League Players' Concussion Injury Litigation*, MDL 2551 (Co-Lead Counsel)
- *In* re *National Football League Players' Concussion Injury Litigation*, MDL 2323 (Member of the Plaintiffs' Steering Committee)

Employment Violations – Wage and Hour Litigation

- *Bernstein, et al. v. M.G. Waldbaum, Inc., et al.*, United States District Court, District of Minnesota
- *Christman, et al. v. FPMI Solutions, Inc.*, United States District Court, Northern District of California
- *Daud, et al. v. Gold'n Plump Poultry, Inc.*, United States District Court, District of Minnesota
- *DeKeyser, et al. v. ThyssenKrupp Waupaca, Inc.*, United States District Court, Eastern District of Wisconsin
- *Doe v. Cin-Lan, Inc., et al.*, United States District Court, Eastern District of Michigan
- *Doe I, et al., v. R&B Muskegon, Inc., et al.*, United States District Court, Western District of Michigan

- *Fluegel, et al. v. FedEx Ground Package System, Inc.,* United States District Court, Northern District of Illinois
- *Ford, et al. v. Townsends, Inc.*, United States District Court, Eastern District of Arkansas
- *Frank, et al. v. Gold'n Plump Poultry, Inc.*, United States District Court, District of Minnesota
- *Garner, et al v. Butterball, LLC*, United States District Court, Eastern District of Arkansas
- *Grabman, et al. v. Brakebush Brothers, Inc.*, United States District Court, Eastern District of Wisconsin
- *Griffin, et al. v. FedEx Corporation, et al.,* United States District Court, Northern District of Illinois Eastern Division
- *Helmert, et al. v Butterball, LLC*, United States District Court, Eastern District of Arkansas
- *Hudson, et al. v. Butterball, LLC*, United States District Court, Western District of Missouri
- *In re Fedex Ground Package System, Inc.,* MDL 1700 (Member of the Plaintiffs' Steering Committee)
- *Larkin et al. v. CPI Corp, et al.*, United States District Court, Western District of Wisconsin
- *Milner, et al. v. Farmers Insurance Exchange*, United States District Court, District of Minnesota
- *Patterson, et al. v. 68-444 Perez, Inc., et al.*, United States District Court, Central District of California
- *Patzke, et al. v. American Express TRS Co., Inc.*, United States District Court, District of Arizona
- *Phelps, et al. v. Green Bay Dressed Beef, LLC*, United States District Court, Eastern District of Wisconsin
- *Robinson, et al. v. Novellus Systems, Inc.*, United States District Court, Northern District of California
- *Salazar, et al. v. Butterball, LLC*, United States District Court, District of Colorado
- *Trauth v. Spearmint Rhino Companies Worldwide, Inc., et al.*, United States District Court, Central District of California
- *Trauth v. Déjà vu Consulting, Inc., et al.*, Superior Court of Los Angeles County, State of California
- *Trejo et al. v. Townsends, Inc.*, United States District Court, Middle District of North Carolina
-

Environmental and Toxic Torts

- *Adams, et al. v. DPC Enterprises, LP, et al.*, Jefferson County Circuit Court, State of Missouri
- *Cooksey v. Hawkins Chemical Company*, Hennepin County District Court File No. 95-3603
- *Cuff, et al. v. Brenntag North America, Inc., et al.*, United States District Court, Northern District of Georgia Atlanta Division
- *Ebert et al. v. General Mills, Inc.,* United States District Court, District of Minnesota
- *Fastrip, Inc., et al. v. CSX Corporation*, United States District Court, Western District of Kentucky
- *In re MTBE Water Contamination Litigation, MDL 1358*, United States District Court, Southern District of New York

- *In re Soo Line Railroad Company Derailment of January 18, 2002 in Minot, N.D.*, Hennepin County District Court File No. 06-1833
- *In re Welding Rods Products Liability Litigation*, MDL 1535, United States District Court, Northern District of Ohio
- *Martin, et al. v. BioLab, Inc., et al.*, United States District Court, Northern District of Georgia Atlanta Division
- *McGruder, et al. v. DPC Enterprises, LP, et al.*, Maricopa County Superior Court, State of Arizona
- *Mehl, et al. v. Canadian Pacific Railway, et al.*, United States District Court, District of North Dakota
- *Ponce, et al. v. Pima County, et al.*, Maricopa County Superior Court, State of Arizona
- *Sanders, et al. v. Norfolk Southern Corporation, et al.*, United States District Court, District of South Carolina
- *Weincke, et al. v. Metropolitan Airports Commission*, State of Minnesota, Hennepin County District Court (Class Counsel)

Homeowner Mortgage Litigation

- *Anderson, et al. v. The Money Store*, United States District Court, District of South Carolina
- *Boschee v. Burnet Title Company*, Fourth Judicial District, State of Minnesota
- *Edwards / White, et al. v. Long Beach Mortgage Company / Washington Mutual Bank F.A., et al.*, Fourth Judicial District Court, State of Minnesota
- *Gewecke v. U.S. Bank, et al.*, United States District Court, District of Minnesota
- *Glover v. Standard Federal Bank*, United States District Court, District of Minnesota
- *Grady v. Burnett Realty*, Fourth Judicial District, State of Minnesota
- *Henry, et al. v. Associate Home Equity Services*, United States Bankruptcy Court, Southern District of California
- *Holland v. Countrywide Home Loans*, Nassau County Supreme Court, State of New York
- *In re Mortgage Escrow Litigation, MDL 899* (Lead Counsel)
- *Lang v. Town and Country Credit*, United States District Court, District of Minnesota
- *Larpenteur, et al. v. Burnet Realty, Inc., et al.*, Fourth Judicial District, State of Minnesota
- *Logan, et al. v. Norwest Mortgage Bank Minnesota*, N.A., Fourth Judicial District Court, State of Minnesota
- *Lund v. Universal Title Company*, Fourth Judicial District, State of Minnesota
- *Nobles, et al. v. Countrywide Home Loans*, Alameda County Superior Court, State of California
- *Mahoney v. Fidelity National Title Company*, United States District Court, Central District of California
- *McBride v. Reliastar*, United States District Court, Northern District of Georgia
- *Mitchell, et al. v. Chicago Title Insurance Company*, Fourth Judicial District Court, State of Minnesota
- *Ricci, et al. v. Ameriquest Mortgage Company*, Fourth Judicial District, State of Minnesota
- *Schlink v. Edina Realty Title*, Fourth Judicial District, State of Minnesota
- *Schuetz v. Banc One*, United States District Court, District of Arizona
- *Stepan v. Edina Realty Title*, Fourth Judicial District Court, State of Minnesota

- *Taft v. Wells Fargo Bank N.A.*, Fourth Judicial District, State of Minnesota
- *Wilson v. Commercial Federal Mortgage Corp.*, United States District Court, Northern District of Alabama

EXHIBIT 46

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT:	**MDL No. 2591**
Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO	
Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO	
The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO	
Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO	

DECLARATION OF MITCHELL A. TOUPS

Pursuant to 28 U.S.C. § 1746, I, Mitchell A. Toups, declare as follows:

1. I am a partner of Mitchell A. Toups, Ltd., ("Toups"). Based on my position with my firm, I am authorized to submit this declaration.

2. I am an attorney in good standing licensed to practice law in the States of Texas and New York. I am also admitted to practice in the United States District Courts for the Eastern, Northern, and Southern Districts of Texas, the Northern District of Illinois, the Eastern District of Wisconsin, the United States Court of Appeals for the First, Third, Fifth, Sixth, Seventh, Ninth and Tenth Circuits, the United States Court of Federal Claims, and the United States Supreme Court. I also have been, and am, admitted *pro hac vice* in various other state and federal courts.

3. I am a partner of Mitchell A. Toups, Ltd., and the law firm of Weller, Green, Toups & Terrell, L.L.P., in Beaumont, Texas. I have practiced law for over 35 years. I am Board Certified by the Texas Board of Legal Specialization in Personal Injury Law and Civil Trial Law. I am also Board Certified in Civil Trial Law and Civil Pretrial Practice by the National Board of Trial Advocacy. I am AV peer review rated by the Martindale-Hubbell Law Directory. I am an America's Top 100 High Stakes Litigators for Southern Texas (2017, 2018), a Top 100 Lawyers by the National Trial Lawyers (2011, 2014-2017), Law Dragon's Houston Region Top 100 Lawyers (2007, 2009-2017), a Texas Super Lawyer (2003-2004, 2006-2018), Law Dragon's Top Trial Lawyer (2007-2010), Texas Super Lawyer Top Attorneys in Texas (2008, 2012, 2015-2017), Texas Super Lawyer Top 100 in the State of Texas (2011-2012), Texas Super Law Excellence in Practice (2012); Law Dragon Leading Plaintiff Lawyers in America (2007), National Association of Distinguished Counsel – Top 1% (Lifetime Member) and Trial Masters (Lifetime Member). For my entire legal career, my practice has focused on business cases, consumer cases, complex commercial litigation, class actions, and mass actions in state and federal courts throughout the United States. I have served in leadership roles in MDL and non-MDL class action litigation. I also have represented opt-out plaintiffs in class action litigation. I am knowledgeable about class action and opt-out plaintiff jurisprudence. For more information about Mitchell A. Toups, Ltd, and my law practice, please refer to my resume attached hereto as Exhibit "A".

4. I, along with Richard L. Coffman, of The Coffman Law Firm, represent over 9,000 United States corn producers in forty-four states farming over 2.9 million acres of corn on the average during each year in the damages period in this litigation. We also represent 14 of the 48 designated bellwether plaintiffs. We have a signed contingent fee contract with each and every

client we represent in this litigation—including our bellwether plaintiff clients. Our clients comprise the plaintiff group commonly known as the Toups/Coffman Plaintiffs.

5. I make this declaration based on my personal knowledge, and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration for the sole purpose of supporting my Firm's application for an award of common benefit attorneys' fees and expenses in this litigation. As a partner of Mitchell A. Toups, Ltd. and Weller, Green, Toups & Terrell, L.L.P., I am authorized to submit this Declaration on behalf of Mitchell A. Toups, Ltd. and Weller, Green, Toups & Terrell, L.L.P. By submitting this Declaration, however, neither Mitchell A. Toups, Ltd., Weller, Green, Toups & Terrell, L.L.P., nor I, in any way, waive our right to (i) recover attorneys' fees and expenses under the contingent fee contracts with our clients, which we incurred on a wholly-contingent basis, assuming full risk of non-payment, and for which we have not been paid or reimbursed to date, or (ii) object to any aspect of the settlement of this litigation, including without limitation, attorneys' fees and expenses.

6. My Firm's common benefit time and expenses were incurred solely on behalf of our clients who were designated as bellwether plaintiffs and/or considered to serve as prospective replacement bellwether plaintiffs for other bellwether plaintiffs who no longer qualified to serve or decided to discontinue serving as bellwether plaintiffs. Our final group of bellwether plaintiff clients included LBJ Ventures, LLC, McKee Family Farms, Partners 5, LLC, Evelyn I. Linder Child's Trust, Linden Kaliff, B&A Riessland Farms, Sandra Boyer, Leon Taylor, Ken Kennedy, James Shortt Trust, Joseph Murname Trust, Glenn Bix, State Line Farm Co., Dierking Farms, and William Rosborough Farms, Inc. My Firm also incurred common benefit time and expenses representing and working with Vincent T. Schroeder Revocable Trust, C&S Farms, Cold Run Jersey, LLC, Springvale Stock Farms, LLC, Fulkerson Farms, and San Buhr Farms, all of which

were prospective or former bellwether plaintiffs who were identified, vetted, ultimately decided they did not want to serve as a bellwether plaintiff, did not qualify to serve as a bellwether plaintiff, were rejected by Co-Lead Counsel and/or Defendants as a bellwether plaintiff, and/or ultimately not needed to serve as a bellwether plaintiff.

7. My Firm's work with and on behalf of our bellwether plaintiff clients and prospective bellwether plaintiff clients included, without limitation, (i) working with Co-Lead Counsel to identify and vet prospective bellwether plaintiffs from our client base, (ii) numerous telephonic and email communications with multiple clients regarding serving as bellwether plaintiffs and replacement bellwether plaintiffs, (iii) working with clients chosen to serve as bellwether plaintiffs and replacement bellwether plaintiffs to complete their Plaintiff Fact Sheets, respond to written discovery (original and amended responses), and produce relevant documents, (iv) schedule and coordinate bellwether plaintiff client depositions, (v) several post-deposition bellwether plaintiff client telephonic and email communications, and (vi) numerous telephonic and email communications with co-counsel and our respective staffs to properly administer (i)-(vi), above.

8. The background of Mitchell A. Toups is contained in his resume' attached hereto as Exhibit "A". The only paralegal, Laura Castille, with time included herein only had limited time in this application of .30 hours. She is a two-year legal assistant, no longer with our firm.

9. Our firm maintains contemporaneous records on cases in which time is required. We set up time records for our work on these Bellwether Plaintiffs that were submitted for purpose of common benefit time since class counsel and/or their representative requested that we do so.

10. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common

benefit time and expense submissions to Co-Lead Counsel in the MDL for this work regarding the bellwether plaintiffs.

11. In compliance with the Common Benefit Order, I did not include time spent on behalf of my individual clients in these submissions, who were not either bellwether or class representative plaintiffs. Keeping time for my contingent fee clients (in excess of 9,000) was not required under any Common Benefit Order.

12. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

13. I spoke with William "Bill" Chaney regarding all time submitted to class counsel. He made reductions and/or cuts in my time. I reviewed and agreed with most of the changes made by Mr. Chaney. I also had a phone conference with Mr. Chaney and Scott Powell to further review my time before completing the final common benefit time product. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the common benefit time (there are no expenses submitted) on behalf of my firm is accurate, and in compliance with the Court's Common Benefit Order.

14. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $71,957.50. A breakdown of the lodestar is provided below. These were approved by Mr. Chaney and Mr. Powell.

Name	Title	Total Hours	Hourly Rate	Lodestar
Mitchell A. Toups	Partner	99.20	$725.00	$71,920.00
Laura Castille	Paralegal	.30	$125.00	$37.50
TOTAL				**$71,957.50**

15. My firm does not seek an award of expenses in connection with the prosecution of this litigation related to common benefit work.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on June 25, 2018, in Beaumont, Texas.

/s/ Mitchell A. Toups
Mitchell A. Toups

MITCHELL A. TOUPS, LTD.

Attorneys at Law

Bank of America Tower
2615 Calder Avenue, Suite 400
Beaumont, TX 77702
(409) 832-1800
(877) 453-5297
Fax: (409) 832-8577
E-mail: matoups@wgttlaw.com
Licensed in Texas and New York

Houston Office:

3900 Essex Lane, Suite 690
Houston, TX 77027
(713) 626-1126

CV OF MITCHELL A. TOUPS

Mitchell A. Toups received his doctorate of Jurisprudence, cum laude, from Texas Tech University School of Law in 1982. He has been licensed to practice law in the State of Texas since May, 1983. He has also been licensed to practice law in the State of New York since August, 2013. In addition, Mr. Toups is Board Certified in Civil Trial Law and Personal Injury Trial Law by the Texas Board of Legal Specialization and Board Certified in Civil Trial Law and Pretrial Practice by the National Board of Trial Advocacy. Mr. Toups is A-V rated by Martindale-Hubbell. Mr. Toups has practiced both Defense work and Plaintiffs work over his career which began in 1983. The total value of settlements/verdicts for cases in which Mr. Toups has been involved over his career exceeds $1 Billion.

In addition, Mr. Toups has been admitted to practice before, and remains in good standing in the following courts:

COURT	DATE ADMITTED
United States Supreme Court	June 6, 1994
U.S. Court of Appeals – First Circuit (1127347)	April 20, 2017
U.S. Court of Appeals – Third Circuit	June 3, 2015
U.S. Court of Appeals – Fifth Circuit	November 22, 1983
U.S. Court of Appeals – Sixth Circuit	October 22, 2010
U.S. Court of Appeals – Seventh Circuit	December 1, 2008
U.S. Court of Appeals – Ninth Circuit	December 2, 2009
U.S. Court of Appeals – Tenth Circuit	April 12, 2018
U.S. Court of Appeals – Eleventh Circuit	May 14, 2009
U.S. District Court - Southern District of Texas	April 9, 1984
U.S. District Court - Eastern District of Texas	November 18, 1983
U.S. District Court - Northern District of Texas	October 5, 2004
U.S. District Court – Northern District of Illinois	December 7, 2015
U.S. District Court – Eastern District of Wisconsin	August 15, 2005
United States Court of Federal Claims (Formerly United States Claims Court)	December 1, 1990
Supreme Court of Texas	May 13, 1983
Supreme Court of New York	August 21, 2013

Mr. Toups has also been admitted on a Pro Hac basis in Federal and State Courts around the U.S. and has never been denied admission.

Mitchell A. Toups

Mitchell A. Toups has appeared as counsel through the United States and has tried hundreds of cases to verdict, judgment or arbitration award. Mr. Toups' accomplishments include:

- J.D., cum laude, in 1982 from Texas Tech University School of Law
- B.B.A. in Finance in 1980 from Lamar University with Honors
- Who's Who in American Colleges and Universities in 1978, 1979, and 1980
- Who's Who in American Law Schools in 1982
- Former Editor of the Texas Tech Law Review
- Author of "Admiralty, Fifth Circuit Survey: July 1981-June 1982," 14 Texas Tech Law Review 71 (1983).
- Member of the Order of the Coif and of Phi Kappa Phi Honor Society

- Board Certified – Personal Injury Law, Texas Board of Legal Specialization since 1989
- Board Certified – Civil Trial Law, Texas Board of Legal Specialization since 1990
- Board Certified – Civil Trial Law, National Board of Legal Specialization since 1991
- Board Certified – Civil Pretrial Practice, National Board of Legal Specialization since 2012

- America's Top 100 High Stakes Litigators – Southern Texas – 2017, 2018
- National Trial Lawyers – Top 100 Lawyers – 2011, 2014, 2015, 2016 and 2017
- Law Dragon's Houston Region Top 100 Lawyers – 2007, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017
- Texas Super Lawyer – 2003, 2004, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018
- Law Dragon's Top Trial Lawyers – 2007, 2009 and 2010
- Texas Super Lawyer Top 100 in the State of Texas – 2011 and 2012
- Texas Super Lawyer Top Attorneys in Texas – 2008, 2012, 2015, 2016 and 2017
- Texas Super Lawyer Excellence in Practice – 2012
- Law Dragon Leading Plaintiff Lawyers in America – 2007
- AV Peer Review Rating by Martindale Hubbell for more than 30 years
- National Association of Distinguished Counsel – Top 1% - Lifetime Member
- TrialMasters – Lifetime Member

- Memberships:
  - State Bar of Texas
  - New York Bar Association
  - American Bar Association
  - The Fellows of the American Bar Foundation
  - American Association for Justice
  - Texas Trial Lawyers Association
  - Jefferson County Bar Association
  - Houston Trial Lawyers Association
  - The Class Action Trial Lawyers
  - Million Dollar Advocates Forum

The following cases are representative of some of the matters Mr. Toups has handled during his career beginning in May, 1983.

COMPLEX / CLASS LITIGATION EXPERIENCE OF MITCHELL A. TOUPS

Experience involving mass tort litigation and class actions includes some of the following important cases:

Cook vs. Colonial - Lead Counsel for 5,000 Plaintiffs in State Court in Jefferson County, Texas. This was a consolidation of 9,000 Plaintiffs regarding the pipeline ruptures in Houston, Texas, in 1994. Class allegations were involved in this case. The case was settled for a confidential amount. This was one of the largest ruptures and leaks of two of the nation's most important pipelines of fuel, oil and gasoline.

Albright v. Aeroquip - Lead Counsel for All Plaintiffs in State Court in Jefferson County, Texas. Involved over 100 Plaintiffs and Decedents regarding the Imperial Food Fire in North Carolina where 25 people died and 80 others were injured. This case involved over 40 defendants. Class allegations were involved in this case although the case was settled for a confidential amount as a mass tort. The Imperial Food Fire was one of the worst in American history – one of the doors in the case is now in the Smithsonian Museum of American History.

Adams v. Wyeth - Lead Counsel in a consolidated action of over 1,200 Plaintiffs in State Court in Jefferson County, Texas. This case settled for a confidential amount. The case involves the Norplant Contraceptive device.

Vitek TMJ Litigation - Lead Counsel for ~700 Plaintiffs Individually & Co-Lead Class Counsel in the Federal Class Action and MDL. This litigation involves over 10 years of action in State and Federal Court in Texas and Louisiana. Part of the cause of action includes the Methodist Hospital National Class Action which settled in Federal District Court for the Southern District of Texas, Houston Division. The other part of the litigation involves class actions in Louisiana and over 700 individual cases filed in the State of Louisiana and Texas. Over $100 Million in settlements were achieved in the Class Action and individual cases.

Wesley v. Colonial - Co-Lead Counsel in this national class action in the United States District Court for the Middle District of Alabama, Northern Division. This case is settled for all property owners in thirteen (13) states which the Colonial Pipeline traverses. The settlements involved approximately $500 Million to be spent over 10 years in improvements to the pipeline nationwide to bring the pipeline up to current DOT Guidelines. Mr. Toups was class counsel that oversaw the implementation of the program each year for ten years by reviewing the Colonial's plan of action and approving same.

HCA National Class Action - Co-Lead Counsel for action in the United States District Court for the Middle District of Tennessee, Nashville Division. This case involved health care fraud and was settled by the U.S. Government for more than $1 Billion.

Washington v. Smith-Kline - Co-Lead Counsel for national class action in the United States District Court for the Northern District of Alabama, Western Division and then transferred to an MDL action in Connecticut. These cases have now settled on a national basis with millions of dollars returned to patients and healthcare funds that were overbilled for lab tests.

City of San Juan vs. CP&L - Co-Lead Class Counsel in class action in State District Court in Hidalgo County, Texas, on behalf of approximately 200 cities in South Texas against a utility company for failure to pay franchise fee taxes. This case was certified as a litigation class and then settled.

In re Hyundai - Co-Lead Counsel in a consumer class involving approximately 2 Million automobile owners whose horsepower was misrepresented over a period of ten years. This case involves 17 state class actions. The case settled and was valued at approximately $110 Million.

King v City of Austin, Texas - Co-Lead Counsel in a class action for 900 police officers for back pay owed to them and a Summary Judgment was entered on both liability and damages for the Plaintiffs. The case was settled with the City repaying all back pay and attorneys' fees.

In re: Mass Mutual (Santa Fe, New Mexico) - Co-Lead Counsel of Objector Group wherein an attempt was made to settle the litigation with no compensation to the class and $10 Million in attorney's fees to class counsel. After objections were made, the case settled for more than $180 Million in cash to the class.

In re Blockbuster - Counsel herein served as an expert on attorney's fees in the settlement of this class action in Jefferson County, Texas, which was a consolidation of cases from around the country. The attorney's fees of $9 Million were approved by the trial court and upheld on appeal by the 9th Court of Appeals in Beaumont, Texas.

Clark v. Equifax, Clark v. Transunion, and Clark v. Experian (MDL) - Co-Lead Objector Counsel was appointed co-lead counsel for a coordinated group of objecting class members who opposed the approval of proposed nationwide class settlements that would have provided only illusory benefits to the class members and would have allowed the defendants to continue to improperly report bankruptcies for consumers who had not actually filed for bankruptcy themselves (but were joint account holders with others who had filed for bankruptcy). Counsel herein was instrumental in ensuring approval of revised settlements that will provide significant relief (valued in the hundreds of millions of dollars) to many consumers nationwide by requiring the defendants to discontinue their improper bankruptcy reporting practices and providing favorable resolution provisions for breaches of the settlement by the Defendants.

In re Cosmetics (MDL) - Co-Lead Counsel for the coordinated objector's group in this class action pending in US. District Court, Oakland, California. Counsel was instrumental in making substantial changes to the settlement. Due to the objections, the Court did not approve the original settlement. After substantial changes were made to the settlement the Court approved the settlement on March 8, 2005. The settlement was valued at $175 Million.

White/Hernandez v Equifax - Counsel herein is one of the counsel for the class in a nationwide class action in the Central District of California regarding an FCRA case against all three credit reporting agencies for failure to accurately report whether a debt has been discharged in bankruptcy. The case settled for $45 Million cash and injunctive relief worth hundreds of millions and is currently on Appeal to the 9th Circuit for the third time.

Jowers v TransUnion (MDL) – Co-Counsel herein is one of the counsel for the class in a nationwide class action in the Northern District of Illinois regarding an FCRA case against credit reporting agency TransUnion for allowing confidential consumer credit information to be sold, leased and/or improperly disclosed by TransUnion in the form of target marketing lists and failure to notify said consumers that their information had been released. The case settled for $75 Million and additional relief making the settlement in excess of $100 Million. This was the largest FCRA settlement in U.S. history at the time.

Ford EMS Litigation – Co-Counsel herein is one of the counsel for the class in a nationwide class action in the Eastern District of Texas involving ambulance owners with 6.0L diesel engines for breach of warranty on the engines. The case settled and valued at approximately $40 Million for more than 20,000 ambulances nationally.

Charles vs. Kings Park – Co-counsel for over 250 tenants in a mass tort involving the improper application of Chlordane at an apartment complex, which exposed tenants to harmful levels of this pesticide. The case culminated in a confidential settlement in Harris County, Texas.

US/Woodard v DaVita - Qui Tam – Co-Lead Counsel for Relator, Ivey Woodard in the Eastern District of Texas. The Government declined intervention and the high profile and complicated *qui tam* ultimately settled for 8 figures to the U.S. Government with counsel's client receiving $14.6 Million for his efforts.

Ford/Navistar Litigation (MDL) – Co-Lead Class Counsel in a nationwide class action for approximately One Million (1,000,000) truck owners. The case settled with an estimated value by Plaintiffs' Counsel of more than $400 Million.

Ford Spark Plug Litigation (MDL) – Counsel herein was one of Five Members on the Plaintiffs' Steering Committee in the Northern District of Ohio. This case involves defective spark plugs in more than 2 Million vehicles. The case settled with an estimated value by Plaintiffs' Counsel of more than $225 Million.

In re Heartland Payment Systems, Inc. Customer Data Security Breach Litigation (MDL) - Counsel herein is one of the counsel for the Financial Institution Plaintiffs in the Southern District of Texas, who filed suit against Heartland for a massive data breach which occurred in 2009 resulting in the compromise of up to 100 million credit card numbers and affected more than 150 banks and financial institutions in 40 states. This claim was appealed and recently remanded for further proceedings on behalf of the Financial Institution Plaintiffs. The case settled as a non-class.

GM Ignition Switch Litigation – Lead Counsel for more than 200 death and injury cases filed in the MDL in Federal Court in New York. This was one of the larges coverups by any automobile manufacturer in the history of the United States. All settlements to date have been confidential.

Las Vegas Shooting – Counsel for more than 300 victims of the Las Vegas shooting wherein the shooter fired multiple weapons equipped with bump stocks through the windows of the Mandalay Bay Casino into concert goers at the Route 91 Harvest Festival.

In re Syngenta GMO Corn Litigation – Counsel for more than 9,000 U.S. Corn Farmers filed in the MDL and in Illinois related to Syngenta's bioengineered corn that was not approved in China, which caused the price of corn to plummet. The Class Action settled for $1.5 Billion.

HURRICANE LITIGATION

Toups has handled over 2,300 residential and commercial property claims in Hurricane Ike and Rita cases.

In re Hurricane Ike Litigation (MDL) – Lead Counsel. This case settled with over 1,000 individual cases and a class action with remaining class members in Galveston, Texas. The total settlement was estimated to be at least $189 Million.

Hurricane Mass Torts Settlement – Co-Lead Counsel hired by more than 1,000 property owners in Galveston, Brazoria and Jefferson County, Texas, who were paid $135 Million in 2013 for property damage missed by the original adjusting companies by Texas Windstorm Insurance Association (TWIA).

State Farm Hurricane Litigation (MDL) – Co-Lead Counsel for more than 500 State Farm Hurricane cases in the MDL. Toups tried first case where State Farm was found to have committed fraud and punitive damages were awarded to Plaintiff. All remaining cases were ultimately settled for confidential amounts.

COMMERCIAL TRANSPORTATION CASES

Commercial Transportation Cases - Toups has handled several bus crash cases against companies such as the Coach companies, Greyhound and several independent companies. These cases have included various sizes and types of buses. In addition, Toups has handled numerous other public transportation/common carrier transportation accident cases, including buses, airplanes, boats/ships, and helicopters. As a result of handling these cases and the accident reconstruction issues that they involve over the course of the past twenty-seven years, Toups has developed a specialized expertise in the unique areas of laws and regulations that apply, particularly in this case the complex rules and regulations promulgated by the United States Department of Transportation. As a result of the expertise Toups has developed, over the past five years alone Toups has been hired in this type of public transportation/common carrier accident cases by clients (typically on the recommendation of their local attorneys) in Texas, New York, New Jersey, Alabama, Connecticut, Canada, the Dominican Republic, Venezuela and Mexico.

CATASTROPHIC CASES

Catastrophic Cases - Over his career, Toups has handled hundreds of cases involving explosions; premises liability; brain damage caused by medical negligence or accident; as well as death cases from various accidents and medical negligence cases. These cases are too numerous to list. Examples are as follows:

BP Oil Spill Litigation – Toups represented more than 6,000 fishermen and businesses affected by the Oil Spill in the Gulf of Mexico over five years.

Grant v Union Pacific – Railroad Death case. Confidential Settlement for 22-year-old involved as a bystander; killed by flying debris.

Jones Plant Accident– Lead Counsel for family of man that fell through a rusty roof on an oil storage unit. Settled individual case for $6.75 Million.

Ranolls v Pilot – Eighteen Wheeler/Automobile Accident resulting in death of 39-year-old woman. Ranolls' vehicle hit an 18 wheeler. Confidential Settlement.

Biloxi Bus Crash – 2017 – Co-Lead Counsel for more than 50 victims including four deaths and over 35 serious injuries related to a bus that high-centered on a railroad crossing and was struck by a train in Biloxi, Mississippi.

Drunk Driver Case – This case involved the sale of alcohol to an obviously intoxicated individual resulting in the death of the client's husband and only child. The total verdict was more than $100 Million.

Refinery Case – This case arose out of an explosion at a Houston Refinery resulting in the client being rendered a quadriplegic. This case settled for a seven figure confidential amount.

Day Care Case – This case arose out of an incident at a day care resulting in the death of a baby, which the day care then tried to cover up. A verdict was rendered in excess of $8 Million after a month-long trial.

Nursing Home Case – This case arose out of the death of a nursing home resident due to decubitus ulcers, starvation allegations. This case settled for approximately $7.5 Million.

Rollover Case – This case involved an automobile rollover resulting in the driver being rendered a quadriplegic. The case settled for a confidential amount.

Automobile Accident – This case arose out of an automobile accident resulting in the death of a young woman. This case settled for approximately $3 Million.

Hotel Case – This case arose when several guests of a hotel became intoxicated, brought a gun into the hotel, which went off, resulting in the death of another hotel guest in the adjacent room. This case settled for a confidential amount.

Sexual Abuse Case – This case arose out of improper actions of a member of the clergy with a minor. This case settled for a confidential amount.

Apartment Building – This case involved a diving injury at an apartment complex swimming pool resulting in the client being rendered a quadriplegic. The total value of all settlements was in excess of $5 Million.

Oilfield Case – This case involved severe burns resulting from an explosion. This case settled for approximately $3.5 Million.

COMMERCIAL LITIGATION / CONTRACT DISPUTES

HeatEx Industries v. Vardell - Counsel herein is lead counsel for HeatEx for a contract dispute in excess of $5 Million in Jefferson County, Texas. The dispute involves a contract between two companies concerning the sale of one company to the other company and tortious interference claims. The case was settled for a confidential amount.

Fee Dispute - This case involves a contract dispute concerning Millions in fees between several law firms. The case was settled during trial for a judgment with more than $10 Million being paid to the Plaintiffs.

Naidu v Brask – This case involved a minority shareholder being frozen out by the majority shareholder in Louisiana. The case settled for a confidential amount.

INTERNATIONAL LITIGATION

Firestone Tire/Ford Litigation - Co-Lead Counsel in more than 50 death cases in Mexico and Venezuela related to product liability filed in Texas State Court. This case settled for a confidential amount.

Valdez - Co-Lead Counsel in case in the Southern District of Texas wherein Venezuelan flagged ship sank in the Gulf of Mexico. All Plaintiffs (11 families) were Venezuelan nationals. This case settled for a confidential amount.

Venezuela Fireman Litigation - Lead Counsel in case in Texas State Court involving the death of four Venezuelan firemen and the catastrophic injuries of a fifth fireman involving not only personal injuries, but contractual disputes with Leasing/Rental company in the U.S. This case settled for a confidential amount.

Quebec Lac-Megantic Quebec Train Derailment (MMA) – Counsel for hundreds of people that died or lost businesses related to train that exploded and destroyed an entire town – the worst accident in the history of Quebec, Canada, involving a runaway train. Ultimately 50 individuals died and the entire downtown area was destroyed. This case has partially settled for more than $400 Million.

Coach Canada Litigation –Lead Counsel for more than 50 passengers in three accidents related to busses traveling from Canada to the United States.

GM Ignition Switch Canada Litigation – Lead Counsel for 9 deaths that occurred in the various provinces of Canada related to the GM Ignition Switch Recall.

Dubois v Autobus Fleur de Lys – Lead counsel for 40 passengers on a bus traveling to New York from Quebec, Canada, resulting in injuries or the death of all passengers when the bus rolled off the roadway in North Hudson, New York. Case ongoing.

EXHIBIT 47

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF RICHARD L. COFFMAN IN SUPPORT OF THE COFFMAN LAW FIRM'S APPLICATION FOR COMMON BENEFIT ATTORNEYS' FEES AND EXPENSES

Pursuant to 28 U.S.C. § 1746, I, Richard L. Coffman, declare as follows:

1. I am an attorney in good standing licensed to practice law in the State of Texas. I am also admitted to practice in the United States District Courts for the Eastern, Western, Northern, and Southern Districts of Texas, the Central and Southern Districts of Illinois, the Eastern District of Michigan, the United States Court of Appeals for the First, Third, Fifth, Sixth, Seventh, and Ninth Circuits, the United States Court of Federal Claims, and the United States Supreme Court. I also have been, and am, admitted *pro hac vice* in various other state and federal courts.

2. I am a shareholder in, and President of, the Coffman Law Firm in Beaumont, Texas. I have practiced law for over twenty-eight (28) years. I am AV peer review rated by the Martindale-Hubbell Law Directory and a Texas Super Lawyer (Class Actions and Mass Torts) (2016-2018). I also have a Master of Professional Accounting and am a Certified Public Accountant. For my entire legal career, my practice has focused on business cases, consumer cases, agriculture cases, securities cases, complex commercial litigation, class actions, and mass actions in state and federal courts throughout the United States and in FINRA arbitrations. I have served in leadership roles in MDL and non-MDL class action litigation. I also have represented (and am representing) opt-out plaintiffs in class action litigation. I am knowledgeable about class action and opt-out plaintiff jurisprudence. For more information about the Coffman Law Firm and my law practice, please refer to my Firm website, www.coffmanlawfirm.com.

3. I, along with Mitchell A. Toups of Weller, Green, Toups & Terrell, LLP, represent over 9000 United States corn producers in forty-four states farming over 2.9 million acres of corn on the average during each year in the damages period in this litigation. We also represent 14 of the 48 designated bellwether plaintiffs. We have a signed contingent fee contract with each and every client we represent in this litigation—including our bellwether plaintiff clients. Our clients comprise the plaintiff group commonly known as the Toups/Coffman Plaintiffs.

4. I have personal knowledge of the statements in this Declaration and, if called as a witness, I could, and would, testify competently about them. I make this Declaration for the sole purpose of supporting my Firm's application for an award of common benefit attorneys' fees and expenses in this litigation. As a shareholder in, and President of, the Coffman Law Firm, I am authorized to submit this Declaration on behalf of the Coffman Law Firm. By submitting this Declaration, however, my Firm and I do not in any way waive our right to (i) recover attorneys'

fees and expenses under the contingent fee contracts with our clients, which we incurred on a wholly-contingent basis, assuming full risk of non-payment, and for which we have not been paid or reimbursed to date, or (ii) object to any aspect of the settlement of this litigation, including, without limitation, attorneys' fees and expenses.

5. My Firm's common benefit time and expenses were incurred solely on behalf of our clients who were designated as bellwether plaintiffs and/or considered to serve as prospective replacement bellwether plaintiffs for other bellwether plaintiffs who no longer qualified to serve or decided to discontinue serving as bellwether plaintiffs. Our final group of bellwether plaintiff clients included LBJ Ventures, LLC, McKee Family Farms, Partners 5, LLC, Evelyn I. Linder Child's Trust, Linden Kaliff, B&A Riessland Farms, Sandra Boyer, Leon Taylor, Ken Kennedy, James Shortt Trust, Joseph Murname Trust, Glenn Bix, State Line Farm Co., Dierking Farms, and William Rosborough Farms, Inc. My Firm also incurred common benefit time and expenses representing and working with Vincent T. Schroeder Revocable Trust, C&S Farms, Cold Run Jersey, LLC, Springvale Stock Farms, LLC, Fulkerson Farms, and San Buhr Farms, all of which were prospective or former bellwether plaintiffs who were identified, vetted, ultimately decided they did not want to serve as a bellwether plaintiff, did not qualify to serve as a bellwether plaintiff, were rejected by Co-Lead Counsel and/or Defendants as a bellwether plaintiff, and/or ultimately not needed to serve as a bellwether plaintiff.

6. My Firm's work with and on behalf of our bellwether plaintiff clients and prospective bellwether plaintiff clients included, without limitation, (i) working with Co-Lead Counsel to identify and vet prospective bellwether plaintiffs from our client base, (ii) numerous telephonic and email communications with multiple clients regarding serving as bellwether plaintiffs and replacement bellwether plaintiffs, (iii) working with clients chosen to serve as bellwether

plaintiffs and replacement bellwether plaintiffs to complete their Plaintiff Fact Sheets, respond to written discovery (original and amended responses), and produce relevant documents, (iv) schedule and coordinate bellwether plaintiff client depositions (including, without limitation, LBJ Ventures, LLC, Dierking Farms, William Rosborough Farms, Inc., Glenn Bix, B&A Riessland Farms, and Linden Kaliff), (v) schedule and coordinate deposition preparation sessions, (vi) assist with preparing certain bellwether plaintiff clients for deposition, (vii) attend certain bellwether plaintiff client depositions (Dierking Farms, William Rosborough Farms, Inc., and Glenn Bix) (viii) multiple post-deposition bellwether plaintiff client telephonic and email communications, (ix) numerous telephonic and email communications with Co-Lead Counsel and/or their designated subordinate counsel regarding (i)-(viii), above, and (x) numerous telephonic and email communications with co-counsel and our respective staffs to properly administer (i)-(ix), above.

7. The only Firm employee other than myself who incurred time on behalf of our bellwether plaintiff clients and prospective bellwether plaintiff clients was Heather McAdams, a paralegal with over ten years' of experience at the time who worked under my direction. Ms. McAdams no longer works for the Firm.

8. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses (Doc. #936) (the "Common Benefit Order"), my Firm contemporaneously maintained and submitted its common benefit time and expenses to Co-Lead Counsel in the MDL proceeding. My Firm's common benefit time and expense submission was compiled from contemporaneous time and expense records maintained by my Firm in the ordinary course of business. In fact, my Firm's common benefit time and expenses were recorded and maintained under a separate billing code specifically established to record common benefit time and

expenses. In compliance with the Common Benefit Order, I did not include in my Firm's common benefit time and expense submission any time and expenses spent on behalf of our contingent fee, non-bellwether plaintiff clients. Nor does the Common Benefit Order require my Firm to record and maintain the time incurred on behalf of our other 9000+ contingent fee, non-bellwether plaintiff clients.

9. In preparing this Declaration, I exercised billing judgment by re-reviewing my Firm's common benefit time and expenses originally submitted in this litigation. I also conferred with Co-Lead Counsel, William Chaney and Scott Powell, about my Firm's original common benefit time and expense submission via numerous emails and during a June 8, 2018 conference call. As a result of these consultations, I made certain minor adjustments and re-submitted my common benefit time and expenses to Messrs. Chaney and Powell. In a June 14, 2018 email, Mr. Chaney stated that both he and Scott Powell approved my re-submitted common benefit time and expenses (as set forth below), which are accurate and comply with the Common Benefit Order.

10. After exercising billing judgment, consulting with Co-Lead Counsel, and making the above-referenced adjustments, the total common benefit lodestar for my Firm approved by Co-Lead Counsel, for which I seek an award (including an appropriate multiplier to be determined by the Court), is $117,300, broken down as follows:

Name	Title	Total Hours	Hourly Rate	Lodestar
Richard L. Coffman	Partner	139.70	$750	$104,775
Heather McAdams	Paralegal	83.50	$150	12,525
TOTALS	**-**	**223.20**	**-**	**$117,300**

11. My Firm also seeks an award of $2,371.22 as reimbursement of the common benefit expenses incurred in connection with representing our bellwether plaintiff clients and prospective bellwether plaintiff clients, as follows:

Description of Costs	Amount
Hotels	$734.55
Meals	140.77
Mileage	216.00
Airline tickets	811.59
Ground transportation	354.31
Parking and misc. expenses	114.00
TOTAL	**$2,371.22**

12. These common benefit expenses are reflected in my Firm's books and records, and compiled from contemporaneously maintained receipts, expense vouchers, check and credit card records, and other documents, all of which comprise an accurate record of such expenses. As part of my Firm's request for an award of these common benefit expenses, I reviewed Section III (B) of the Common Benefit Order. The requested common benefit expense award conforms to the Common Benefit Order and, in fact, also was approved by Co-Lead Counsel William Chaney and Scott Powell.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 24, 2018, in Beaumont, Texas.

/s/ *Richard L. Coffman*
Richard L. Coffman, President
The Coffman Law Firm

EXHIBIT 48

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF JAMES E. CECCHI

I, JAMES E. CECCHI, declare as follows:

1. I am a partner of Carella Byrne Cecchi Olstein Brody & Agnello, P.C. ("Carella Byrne"). Based on my position with my firm, I am authorized on behalf of my firm to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. My firm, Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., is a 38-lawyer law firm with significant experience in complex litigation and federal class action litigation,

including consumer fraud claims, antitrust claims, securities claims, and product defect cases. We have been privileged to serve in an executive capacity in many large plaintiffs' class actions in the nation over the past ten years. By way of example, we are Lead Counsel in *In re: Liquid Aluminum Sulfate Antitrust Litigation*, MDL 2687 (D.N.J.), an important national MDL involving bid rigging and price fixing in the market for Liquid Aluminum Sulfate, a coagulant utilized in water treatment and paper production. In *In Re: Takata Airbag Prod. Liab. Litig.*, MDL No. 2599 (S.D. Fla.), we were appointed to the Plaintiffs' Steering Committee to prosecute, along with Co-Lead Counsel, this national MDL involving defective airbag litigation against Takata Corporation and many vehicle manufacturers. We also served on the Plaintiffs' Steering Committee in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Prods. Liab. Litig.* 15-MD-2672-CRB (N.D. Cal.), an MDL, and are currently Co-Lead counsel in *In Re Mercedes Benz Emissions Litig.*, Civ. No. 16-881 (D.N.J.), and were Co-Lead Counsel in *In re: Caterpillar, Inc. C13 and C15 Engine Prods. Liab. Litig.*, MDL No. 2540 (D.N.J.), which, in 2016, successfully resolved claims that Caterpillar's diesel emissions systems were defective and de-rated and shut down at unacceptably high rates.

4. Backgrounds of Timekeepers at Carella Byrne:

A. JAMES E. CECCHI is partner in the firm's litigation department and a member of his firm's executive committee. He specializes in complex federal class actions, and has extensive experience litigating and resolving complex class actions both in the Multi-District Litigation context as well as otherwise. Mr. Cecchi is currently prosecuting numerous consumer fraud and other plaintiff-side related class actions on behalf of the firm. Mr. Cecchi served in the United States Department of Justice as an Assistant United States Attorney for the District of New Jersey. In that capacity, Mr. Cecchi participated in numerous significant criminal prosecutions involving money laundering, narcotics smuggling and violations of federal firearms laws. Mr. Cecchi graduated from Colgate University in 1989 with honors, majoring in History and Political Science. Mr. Cecchi was Executive Editor of the Colgate News. In 1989 he graduated from Fordham University School of Law and was a member of the International Law Journal. Mr. Cecchi served as Law Clerk to the Honorable

Nicholas H. Politan in the United States District Court, District of New Jersey from 1989-1991.

B. LINDSEY H. TAYLOR, a partner in the firm's litigation department, specializes in complex commercial litigation in federal court. He graduated received a bachelor's degree with honors from the University of North Carolina at Chapel Hill in 1983 and a juris doctor degree in 1986. He joined Carella, Byrne, Cecchi, Olstein, Brody & Agnello as of counsel in 2002 and became a partner in 2008. Mr. Taylor was a merit selection to the 2005, 2008, 2009 and 2010 New Jersey "Super Lawyers."

C. DONALD E. ECKLUND, a partner in the firm's litigation department, Mr. Ecklund focuses his practice on all aspects of complex commercial disputes, including consumer fraud, and class action litigation. Mr. Ecklund obtained a B.S. degree in Environmental Science from Rutgers University in1998, and a juris doctor degree from Rutgers School of Law in 2001. Prior to joining the firm, Donald was an associate at a prestigious New York law firm for four years where he represented clients in complex products liability litigation, as well as various environmental contamination cases and other matters. Donald has served on committees in several multi-district litigations (MDLs) involving pharmaceutical drugs and medical devices. Most recently, he has been extensively involved in class action litigation arising from deceptive sales practices and engaged in commercial litigation relating to direct broadcast satellite television. He is a former law clerk for the Honorable Marina Corodemus, Mass Tort Judge for the State of New Jersey (Retired), where he focused on complex mass tort and environmental litigation, and for the Honorable Joseph C. Messina, Presiding Judge Chancery Division, General Equity Part, Superior Court of New Jersey (Retired) where he focused on business and commercial litigation.

D. JAMES A. O'BRIEN III, of counsel at the firm and employed as part of the firm's litigation department, graduated with a Bachelor of Arts in Economics from the University of Massachusetts at Amherst in 1984 and received his J.D. in 1988 from the New England Law School of Law. He was a symposium editor for the New England Law Review, After receiving his J.D., Mr. O'Brien served as an attorney advisor with the U.S. Department of Labor, Office of Administrative Law Judges, in Washington, D.C., from 1988 to 1989. Subsequently, Mr. O'Brien was accepted into the Attorney General's Honors Program of the U.S. Department of Justice. He served as a Special Assistant U.S. Attorney with civil division of the U.S. Attorney's Office, Southern District of New York, from 1990 to 2001. Between 2001 and 2017, Mr. O'Brien was employed as of counsel at the law firm of Seeger Weiss LLP in New York City. His practice there focused on complex litigation including false claims act cases, class actions, mass torts, and multidistrict litigation. Mr. O'Brien co-authored an article, Administrative Housekeeping and Ethical Matters in Mass Tort MDLs and Class Actions, published in the Sedona

Conference Journal in 2012, and a chapter for MDL Standards and Best Practices published by the Duke Law Center for Judicial Studies in 2014. Mr. O'Brien joined Carella, Byrne, Cecchi, Olstein, Brody & Agnello as of counsel in June 2017.

E. MARY ELLEN RAGO has been an administrative assistant at Carella Byrne for ten years.

5. My firm engaged in common benefit work and work related to the bellwether cases. In particular, we were responsible for researching, drafting, and editing a significant portion of the Plaintiffs' ten-page supplemental memorandum of law in further support of the plaintiffs' motion for consolidation of state classes for trial (filed on June 30, 2017, ECF 3081). James O'Brien, of counsel at this firm, was responsible for this work, and was asked by co-lead counsel to assist in the drafting of this memorandum of law, along with Diogenes Kekatos of Seeger Weiss. The memorandum was filed at the request of the Court, in order to assist the Court in making an important determination as to how many bellwether trials the Court should hold and how many of those trials could involve combined cases from different states. The memorandum successfully argued that the number of bellwether trials should be limited, as the defendants request seven such trials, the plaintiffs requested three such trials, and the Court, on July 6, 2017, ultimately ordered that four such trials to take place (ECF 3319). The limitation to four such trials was a significant victory for the plaintiffs, as, from the plaintiffs' perspective, the less bellwether trials that took place, the chances of a settlement favorable to plaintiffs being reached were increased.

6. My firm also served as sub-class counsel for the Ethanol producer plaintiffs ("Ethanol Plaintiffs") in the above-captioned litigation. Specifically, in or about January 2018, I was advised by Class Counsel that I would be tasked with representing the Ethanol producers and that my function as sub-class counsel would be to negotiate an appropriate allocation for the

Ethanol producers from the overall settlement fund. I was advised that my principal contact would be Christopher Seeger.

7. I have been actively involved in negotiating an allocation of the settlement fund to the Ethanol sub-class and I have a comprehensive understanding to the strengths and weaknesses of the Ethanol sub-classes potential claims if the Ethanol sub-class were to pursue litigation instead of supporting this settlement.

8. Prior to my engagement and to ensure that I had a fulsome understanding of the claims, defenses, pertinent rulings, and potential issues that an Ethanol Plaintiffs would need to overcome, I reviewed relevant pleadings, motions filed before this Court, including the motion for class certification, and key motions filed in the state court. I also reviewed and analyzed the decisions issued by this Court and the state court on these various motions.

9. Upon my formal engagement to represent the ethanol producers, I obtained extensive materials from class counsel concerning the merits of the claims including all of the expert reports filed in the action (both plaintiff and defense) and all substantive motions. I began my work by reviewing and studying the expert reports which were, as the Court knows, voluminous.

10. In order to effectively represent the Ethanol sub-class, I knew that I would have to gain an understanding of not only how the corn market functioned but, just as importantly, the Ethanol market. Toward that end, I researched and reviewed extensive academic literature on the Ethanol industry and the correlation (if at all) between corn prices and Ethanol prices. As the Court also knows, this is not a straightforward area of study.

11. Most importantly, I knew that in order to negotiate effectively, I would need the assistance of a noted expert who could give me a defensible report on the theoretical damages

suffered by the Ethanol sub-class. Toward that end, I retained Colin A. Carter, a Professor of Agricultural and Resource Economics at the University of California, Davis. He drafted a report for me showing the impact of the de-facto Chinese embargo on the Ethanol sub-class. I engaged in discussions with Professor Carter. This was, obviously, an essential component of my work.

12. After educating myself fully and obtaining Professor Carter's report, I began my negotiations with Mr. Seeger in earnest. It is not an exaggeration to say that we had dozens and dozens of phone calls in an effort to reach a sensible solution here.

13. It is also important to note that I also interacted extensively with counsel for other Ethanol producers who often had different views of the strengths and weaknesses of the Ethanol claims. Those conversations were also extensive.

14. Finally, I also engaged directly with direct counsel for Al-Corn, and explained to him my theories and the ultimate resolution I reached with Class Counsel. I also engaged in review of damage models.

15. Ultimately, the negotiations resulted in a settlement proposal that I and counsel for my client agreed would represent and excellent outcome, namely, a gross allocation of $19,500,000 for the Ethanol sub-class.

16. Donald Ecklund, a partner at my office, assisted in drafting my declaration for this fee application, and in preparation of that reviewed the underlying documents and assembled any supporting papers that might be helpful.

17. Lindsey Graham, a partner at my office, prepared my notice of appearance in this matter, and had communications with the clerk of the district court in connection with my admission to the Court for this litigation.

18. Mary Ellen Rago, an administrative assistant at my office, obtained the necessary

documents for my review in preparing this declaration and processed administrative matters.

19. A1-Corn Clean Fuel, LLC ("A1-Corn") agreed to serve the named plaintiff for the Ethanol Plaintiffs subclass. A1-Corn's participation for settlement purposes was instrumental to achieving the result for the Ethanol Plaintiffs subclass. A1-Corn was responsive to my questions and its answers helped me formulate my understanding of several damages issues. Given the role A1-Corn Corn assumed and fulfilled as the named plaintiff for the Ethanol Plaintiffs subclass, I respectfully request that A1-Corn be granted an incentive award of $2,500.

20. My firm maintains contemporaneous records of its time and expenses in the ordinary course of business.

21. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), my firm submitted its common benefit time and expense submissions to Co-Lead Counsel in the MDL.

22. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to my individual clients who were not either bellwether or class representative plaintiffs.

23. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

24. I exercised billing judgment in the re-review of common benefit time and expenses, including any cuts that were made.

25. After this re-review, I can confirm that this time was undertaken by the members of my firm at my direction. I believe that the time and expense information submitted on behalf of my firm is accurate and in compliance with the Court's Common Benefit Order, with the caveat that a substantial portion of this firm's time was dedicated to representation of the ethanol producer

subclass.

26. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $139,680.00. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
James E. Cecchi	Partner	133.90	$850.00	$113,815.00
Donald E. Ecklund	Partner	4.70	$650.00	$3055.00
Lindsey H. Taylor	Partner	.40	$650.00	$260.00
James A. O'Brien	Counsel	34.50	$650.00	$22,425.00
Mary Ellen Rago	Admin. Assist.	1.0	$125.00	125.00
TOTALS		174.50		$139,680.00

27. My firm seeks $15,046.20 in expenses in connection with the prosecution of the litigation. Those expenses are summarized below:

Description of Costs	Amount
Disbursements:	
Costs Advanced for April 5, 2018 hearing transcript	$46.20
Costs Advanced to Prof. Colin Carter, PhD	$15,000.00
TOTAL	**$15,046.20**

28. As part of my firm's request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order, with the caveat that a substantial portion of these expenses related to my firm's representation of the ethanol producer subclass.

29. The expenses pertaining to this case are reflected in the records of my firm. These records are contemporaneously prepared from receipts, expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 7th day of July, 2018, in Roseland, New Jersey.

/s/ *James E. Cecchi*
JAMES E. CECCHI

EXHIBIT 49

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** ***Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No. 16-2788-JWL-JPO*** ***Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO*** ***The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO*** ***Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO***	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF KENNETH A. WEXLER

I, Kenneth A. Wexler, declare as follows:

1. I am the managing partner of Wexler Wallace LLP ("WW"). Based on my position with WW, I am authorized on behalf of WW to submit this declaration.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees, expenses, and incentive awards in this litigation.

3. I have been a lawyer for 37 years. I have served and am serving as lead counsel in multiple complex cases. My experience is more detailed in our firm resume, a copy of which

accompanies this declaration. Additional information is located at www.wexlerwallace.com. In sum, WW is a complex litigation firm with an excellent national reputation. We have a strong antitrust and consumer fraud practice, together with a specialization in mass tort litigation. We have tried class action and mass tort cases to verdict. We are well-versed in all aspects of the kind of litigation that is the subject of this declaration.

4. I served as allocation counsel for Subclass 3. While I asked another attorney at WW to test my thinking on certain matters related to that role, as WW's hours reflect, I essentially handled the engagement myself.

5. I have been familiar with the Syngenta litigation for quite some time. In September 2015, WW made a producer client referral in connection with the case. We are waiving our right to our referral fee because of my responsibilities described below.

6. In January 2018, I received a call from co-lead counsel asking if I would be interested in serving as allocation counsel on behalf of grain handlers in connection with the global settlement of the litigation. I was ultimately retained by a grain elevator - Kruseman Fertilzer Company – and undertook my best efforts to perform the function of allocation counsel for the grain handler settlement subclass.

7. Not having had substantive involvement with the litigation, I set out educating myself about the procedural postures of the various cases, the competing interests involved, the significant orders that had been entered, and the issues that had arisen in the settlement process. I felt I needed to understand what I could about the course of the litigation, including points of contention between Syngenta and the various plaintiff subclasses, how certain arguments had been received by the judges involved, inherent differences among subclass members and how those differences would likely be perceived by fact-finders (with regard to pre-trial summary

proceedings, trial, and post-trial summary proceedings), how the experts would be received, and the strength of Syngenta's legal arguments with regard to grain handlers in particular.

8. Among other pleadings, I read the Third Amended Minnesota Class Action Master Complaint For Producers (Court File No.: 27-CV-15-3785); Syngenta's Memorandum of Law in Support of Rule 12.03 Motion for Judgment on the Pleadings (File No.: 27-CV-15-3785); the Preliminary Expert Report of Stephen J. Lucas – with its supporting materials – submitted in the Minnesota non-producer case (File No.: 27-CV-15-3785); the rebuttal report and supporting tables, charts, and graphs of Syngenta's expert – Quentin L. Mimms -- in the same case; selected (by me) portions of the deposition of Mr. Lucas taken in the MDL (MDL 2591, case no.: 2:14-MD-02591-JWL-JPO); selected (by me) portions of various sessions of the deposition of Mr. Mimms taken in the same case; the Petition for Damages filed by Archer Daniels Midland Company in the Parish of St. Charles, Louisiana (case no.: 79219); the Louisiana Petition for Damages and Second Amended Petition for Damages filed in the Parish of St. John the Baptist by Cargill companies (docket no.: 67061); the expert damages report of Colin A. Carter submitted for the producers in the MDL; the expert report of Bruce Babcock also submitted for the producers in the MDL; selected (by me) portions of the Colin Carter and Bruce Babcock depositions taken in the MDL; selected (by me) portions of the Mimms deposition taken in the MDL; and selected (by me) portions of the Lucas deposition taken in the MDL.

9. As part of gaining an understanding of the litigation landscape, I personally engaged in literature and legal research into agricultural economics, including the ways in which the various parties in the supply chain make and/or lose money, and how disruptions at various points in the supply chain affect, if at all, profitability. I read economic literature on grain pricing and futures trading I located on the internet and from the CBOT. I spoke at length with a former

trader on the CBOT to understand certain economic mechanics relating to risks and profitability along the grain supply chain. I spoke telephonically with Colin Carter, who had provided expert reports for the producers, and asked for and read specific literature he recommended with an eye on the economics of and related to grain handling.

10. During this process, I flew to New York and, on February 7, 2018, met with Chris Seeger, Steve Weiss, and Pat Stueve from the lead counsel team. Dan Gustafson could not make that meeting but we spoke by telephone at various other times. My purpose in speaking to them was to gain more insight as to the competing positions of the subclasses, including what was being perceived as their strengths and weaknesses – both by the courts and counsel. I understood my role was to maximize the recovery for the grain handlers, and I thereafter tested what I heard in these conversations in my own analysis of the competing and compelling issues.

11. At the February 7, 2018 meeting, I asked to be put in touch with Colin Carter, and, on February 20, 2018, I met with Mr. Carter in his office at the University of California at Davis. I had asked him to review the Lucas report that had been submitted for grain handlers and to discuss with me the financial impacts of the Chinese embargo on grain handlers. Through various questions, I tested various theories I had developed on damages to grain handlers. Although I retained (and paid) him for this purpose, I knew Mr. Carter had advocated for the producers, and I conducted myself with that in mind. I believe our session helped me to more fully understand certain economic facts, and after the meeting, I was better able to assess the various damages scenarios I had been contemplating and working on with respect to the grain handlers. As it turned out, this was the last step I took before making an allocation demand for the grain handlers and negotiating a result.

12. The negotiations for the allocation to Subclass 3 were always arms-length and vigorous. The final allocation to Subclass 3 was achieved after numerous offers and counteroffers, disagreements, and narrowing of differences. In my view, the result was and is a good one.

13. Kruseman Fertilizer Company ("Kruseman") retained WW and volunteered to be the named plaintiff for Subclass 3. Kruseman has been involved in this litigation since 2016, filing case No. 27-CV-16-18209 in Minnesota. Although Kruseman was not deposed as part of that case, its participation for settlement purposes was instrumental to achieving the result for Subclass 3. Kruseman was responsive to my questions and its answers helped me formulate my understanding of several damages issues. Kruseman also authorized its litigation counsel to provide me with pleadings and expert reports they had available. Kruseman's litigation counsel likewise answered my inquiries or directed me to others as I endeavored to arrive at a negotiating position. Given the role Kruseman assumed and fulfilled as the named plaintiff for Subclass 3, I respectfully request that Kruseman be granted an incentive award of $2,500.

14. Below is a detailed summary indicating the amount of time spent by each of the attorneys in WW who worked on this litigation and lodestar calculation based on WW's current billing rates. The summary was prepared from computerized records that were contemporaneously generated and kept by WW in the ordinary course of business. Time expended in preparing the application for fees and reimbursement of expenses has not been included in this lodestar. As reflected below, all the time WW expended in this matter was dedicated to common benefit work. Of course, the time spent on tasks related to representation of Subclass 3 was in lieu of performing other work that was available to WW.

15. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), WW submitted to Co-Lead Counsel in the MDL its time and expense submissions related to its WW's representation of Subclass 3.

16. As part of the preparation of my declaration, I re-reviewed all the time entries and expenses previously submitted in this litigation to exercise billing judgment.

17. After this re-review, I can confirm that this time was undertaken by the members of WW at my direction. I believe that the benefit time and expense information submitted on behalf of WW is accurate and in compliance with the Court's Common Benefit Order, with the caveat that these time and expenses related solely to the representation of Subclass 3 only.

18. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my law firm is $63,890. A breakdown of the lodestar is provided below.

Name	Title	Total Hours	Hourly Rate	Lodestar
Kenneth A. Wexler	Partner	72.7	$850	$61,795
Justin N. Boley	Partner	2.9	$675	$1,957.50
Rose Campo	Paralegal	.5	$275	$137.50
TOTALS		76.1		$63,890

19. In addition, WW expended and seeks reimbursement of a total of $5,621.16 in expenses in connection with the prosecution of this litigation. WW recorded these expenses as they were incurred, and they are reflected in its computerized bookkeeping records that were created from invoices, receipts, and other proofs of the charges and payments.

20. The expenses incurred by WW are summarized as follows:

Description of Costs	Amount
Experts	$2,700.00

Description of Costs	Amount
Delivery services/messengers	$75.63
Copying	$0.09
Online research	$0.26
Out-of-town travel	$2,407.22
Out-of-town meals	$437.96
TOTAL	**$5,621.16**

21. As part of WW's request for expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order, with the caveat that the expenses incurred related to the representation of Subclass 3 only.

22. Except insofar as the Court or co-lead counsel determine that a multiplier is warranted for the value created by WW's work for Subclass 3, WW seeks an award of $63,890 in fees and reimbursement of expenses in the amount of $5,621.16.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 6th day of July 2018, in Chicago, IL.

/s/ Kenneth A. Wexler
Kenneth A. Wexler

FIRM RESUME

WEXLER WALLACE LLP

55 W. Monroe St. Suite 3300 // Chicago, IL 60603
Phone 312.346.2222 // Fax 312.346.0022
www.wexlerwallace.com // info@wexlerwallace.com

Table of Contents

The Firm....2
Leadership Positions....4
Successes....8
Practice Areas and Representative Cases....10
- Antitrust....10
- Business and Commercial Litigation....12
- Consumer Protection....12
- Government Representation....13
- Healthcare Litigation....13
- Mass Torts....14
- Securities and Corporate Governance....15
- Whistleblower and False Claims....15

Our Professionals....17

The Firm

WHO WE ARE.

Wexler Wallace LLP is nationally recognized as a leading firm in complex class action and multidistrict litigation, from investigation to trial and appeals, within the following legal areas:

// Antitrust

// Business and Commercial Litigation

// Consumer Protection

// Government Representation

// Healthcare Litigation

// Mass Torts

// Securities and Corporate Governance

// Whistleblower and False Claims

WE WORK FOR ALL.

At Wexler Wallace, we rely on the justice system to hold the powerful accountable for conduct that harms others. We are dedicated to protecting the rights and interests of all and, in this pursuit, represent shareholders, consumers, pension plans, institutional investors, businesses, governments, and organizations from all over the world. We act with the utmost integrity in our determination to achieve the most meaningful relief for our clients.

WE GET RESULTS.

Wexler Wallace is frequently retained by clients to pursue high-stakes litigation – often against some of the largest corporations represented by the most renowned law firms in the country. We regularly are asked by co-counsel to work with them and their clients on cases of wide-ranging importance. Through this work, we have helped shape the law and continue to pave the way for future successes for those aggrieved by fraud, antitrust violations, unfair competition, and other types of unlawful conduct.

OUR WORK IS RECOGNIZED.

Wexler Wallace attorneys have been recognized by their peers as well as by legal organizations for their outstanding level of service and commitment to the firm's cases and clients. Partners Ken Wexler and Ed Wallace each have an **AV Preeminent** rating from Martindale-Hubbell – the highest peer review rating. Ken has been named an **Illinois Super Lawyer** since 2008, Ed was named a Super Lawyer in 2014 and 2015, and other attorneys have been named Rising Stars.

Wexler Wallace was named a highly recommended Illinois litigation firm in the 2012 inaugural edition of **Benchmark Plaintiff**, with both partners named local litigation stars. The firm and its named partners have received the same honors every year since.

"Despite a small roster of attorneys, (Wexler Wallace LLP) regularly goes toe-to-toe with some of the largest companies and corporations in the world."
Benchmark Plaintiff, 2012

"I admire very much the work that you have done in this case, and you have taught me something. I think I'm more knowledgeable and a better judge because I've had contact with you. And thank you very much."
Hon. G. Patrick Murphy, *Clancy-Gernon Funeral Homes, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 09 Civ. 1008 (S.D. Ill.)

"I wanted to express appreciation again to class counsel for taking this case. I believe these are the kind of cases Federal Courts should do and are appropriate for class resolution."
Hon. Patti B. Saris, *In re Pharmaceutical Industry Average Wholesale Price Litig.*, MDL No. 1456, No. 01-cv-12257-PBS (D. Mass.) (final settlement hearing, with defendant GlaxoSmithKline, July 19, 2007)

"[T]his multiplier is justified by the risk of non-recovery in this case and the need to reward counsel for their significant achievement on behalf of the End-Payor Class . . . End-Payor Plaintiffs' counsel are highly experienced in complex antitrust class action litigation . . . . they have obtained a significant settlement for the Class despite the complexity and difficulties of this case."
Hon. John R. Padova, *Nichols v. SmithKline Beecham Corp.*, No. 00 Civ. 6222, 2005 U.S. Dist. LEXIS 7061, at *71-72, 79 (E.D. Pa. Apr. 22, 2005)

Leadership Positions

Wexler Wallace is frequently appointed as lead counsel and to plaintiff steering committees in complex, high-stakes litigation. Some of those appointments include:

CASE	COURT	APPOINTMENT
Coordinated Essure® Litigation	TBD	Plaintiffs' Executive Committee
Wolosyzn v. General Mills Inc., No: 0:16-cv-02869	D. Minn.	Plaintiffs' Executive Committee
In re Broiler Chicken Antitrust Litigation No. 16-cv-8637	N.D. Ill.	Liaison Class Counsel
Gibson v. The Quaker Oats Co., No. 1:16-cv-04853	N.D.Ill.	Interim Liaison Class Counsel
Edward Shapiro and Pacific Holistic Dental, INC., v. 3M Company, No. 0:16-cv-02606	D. Minn.	Plaintiffs' Executive Committee
Pension Trust Fund for Operating Engineers v. DeVry Education Group, Inc., et al., No. 16-cv-05198	N.D.Ill.	Interim Liaison Class Counsel
United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund, et. al. v. Allergan, PLC No.: 15-cv-12731	D.C. Mass.	Co-Lead Counsel
Lynch v. Motorola Mobility LLC et al., No. 1:16-cv-04524	N.D. Ill.	Interim Co-Lead Class Counsel
In re Windsor Wood Clad Window Products Liability Litigation, MDL No. 2688	E.D. Wis.	Plaintiffs' Steering Committee
In re VTech Data Breach Litigation, No. 1:15-cv-10889	N.D. Ill	Interim Liaison Class Counsel
In re Nexium (Esomeprazole) Antitrust Litig., 12-md-02409	D. Mass.	Co-Lead Counsel
In re: Fluidmaster, Inc., Water Connector Components Prods. Liab. Litig	N.D. Ill.	Interim Liaison Class Counsel
In re Actos End-Payor Antitrust Litigation, Case No. 13-cv-09244	S.D.N.Y.	Interim Co-Lead Counsel

CASE	COURT	APPOINTMENT
Underwood v. I.F.F.A. Servs., No. 09-390-GPM; Clancy-Gernon Funeral Homes, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., No. 09-1008-GPM; Pettett Funeral Home, Ltd. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., No. 10-1000-GPM	S.D. Ill.	Lead Settlement Class Counsel
Celebrex Antitrust Litigation No: 14-cv-0395	E.D. Va	Interim Co-Lead Class Counsel
In re Suboxone Antitrust Litigation, MDL 2445	E.D. Pa.	Interim Co-Lead Class Counsel
In re Niaspan Antitrust Litigation, Case No. 13-md-02460	E.D. Pa.	Interim Co-Lead Counsel
In re Kugel Mesh Hernia Patch Products Liability Litigation, MDL No. 1842	D.R.I	Plaintiffs' Steering Committee
Levine v. American Psychological Association, Inc., Case No. 10-cv-01780	D.D.C.	Co-Lead Class Counsel
Roberts v. Electrolux Home Products Inc., Case No. 12-cv-1644	C.D. Cal	Co-Lead Class Counsel
In re Skelaxin (Metaxalone) Antitrust Litigation, MDL No. 2343	E.D. Tenn.	Plaintiffs' Executive Committee
In re Effexor XR Antitrust Litigation, Case No. 11-cv-05661	D.N.J.	Plaintiffs' Executive Committee
In re Flonase Antitrust Litigation, Case No. 08-cv-3301	E.D. Pa.	Plaintiffs' Executive Committee
In re Prograf Antitrust Litigation, Case No. 11-cv-11870	D. Mass.	Plaintiffs' Executive Committee
In re Lipitor Antitrust Litigation, MDL No. 2332	D.N.J	Interim Co-Lead Class Counsel
Gomez v. PNC Bank, National Association No. 1:12-cv-1274	N.D. Ill.	Lead Class Counsel
In re Wellbutrin XL Indirect Purchaser Antitrust Litigation, Case No. 2:08-CV-02433-MAM	E.D. Pa.	Co-Lead Class Counsel
Carter v. Allstate Ins. Co., Case No. 02-CH-16092	Cir. Ct. Ill. – Cook County	Co-Lead Counsel
In re Webloyalty.com, Inc. Marketing and Sales Practices Litigation No.: MDL No. 1820	D. Mass.	Co-Lead Counsel

CASE	COURT	APPOINTMENT
In re C.R. Bard, Inc. Pelvic Repair Systems Products Liability Litigation (MDL No. 2187); In re American Medical Systems, Inc. Pelvic Repair Systems Products Liability Litigation (MDL No. 2325); In re Boston Scientific Corp. Pelvic Repair Systems Products Liability Litigation (MDL No. 2326); In re Ethicon, Inc. Pelvic Repair Systems Products Liability Litigation (MDL No. 2327)	Multiple MDL Cases	Plaintiffs' Steering Committee
Levie v. Sears Roebuck & Co. et al, No. 1:04-cv-7643	N.D.Ill.	Liaison Class Counsel
In re Medtronic, Inc. Implantable Defibrillators Products Liability Litigation, MDL No. 1726	D. Minn.	Plaintiffs' Steering Committee
In re Pet Foods Products Liability Litigation, MDL No. 1850	D.N.J.	Co-Lead Counsel
New England Carpenters Health Benefits Fund v. First Databank, Case No. 1:05-CV-11148	D. Mass.	Co-Lead Class Counsel
In re BP Products North America, MDL No. 1801	N.D. Ill.	Co-Lead Class Counsel
In re Hypodermic Products Antitrust Litigation No.: MDL No. 1730	D.N.J	Co-Lead Class Counsel
In re Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1456	D. Mass.	Co-Lead Counsel
Nichols v. SmithKline Beecham Corp., Case No. 2:00-CV-06222-JP	E.D. Pa.	Co-Lead Class Counsel
Virginia M. Damon Trust v. Mackinac Financial Corp., f/k/a North Country Financial Corp., Case No. 2:03-CV-0135	W.D. Mich.	Co-Lead Counsel
Stephen A. Ellerbrake and John E. Casey v. Campbell-Hausfeld et al. No.: 01-L-540	Cir. Ct. Ill. – St. Clair County	Co-Lead Counsel

Successes

Since its founding in 2000, Wexler Wallace has achieved millions of dollars in settlements and savings for its clients and consumers. In cases in which the firm has served as Co-Lead Counsel, it has recovered over a billion dollars for its clients. Listed below are some of the firm's representative settlements and verdicts.

SIGNIFICANT RECOVERIES AND VERDICTS

CASE	COURT	RECOVERY
Barbara Kaiser et al v. Ethicon, Inc. et al., Case Number 2:17-cv-00114	N.D. Ind.	$35M (jury verdict) The jury awarded $10M in injury compensation, as well as $25M in punitive damages.
Jammal, et al. v. American Family Insurance, Case No.: 13-cv-00437	N.D. Oh	Unanimous advisory jury verdict; Formal ruling and damages proceeding pending
Huskey v. Ethicon, Case No. 12-cv-0521	S.D.W. Va.	$3.27M (jury verdict)
Roberts v. Electrolux Home Products, Inc., Case No. 12-cv-01644	C.D. Cal.	Settlement valued at more than $35.5M
In re Hypodermic Products Antitrust Litigation, MDL No. 1730	D.N.J.	$22M
New England Carpenters Health Benefits Fund v. First Databank, Case No. 05-cv-11148	D. Mass	$350M settlement with McKesson; $2.7M with FDB and Medispan
In re Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1456	D. Mass.	Multiple settlements totaling more than $350M
In re Guidant Defibrillators Products Liability Litigation, MDL No. 1708	D. Minn.	$195M
Underwood v. I.F.F.A. Servs., No. 09-390-GPM; *Clancy-Gernon Funeral Homes, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 09-1008-GPM; *Pettett Funeral Home, Ltd. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 10-1000-GPM	S.D. Ill.	$41.15M

CASE	COURT	RECOVERY
In re Flonase Antitrust Litigation, Case No. 08-cv-3301	E.D. Pa.	$46M
In re OSB Antitrust Litigation, Case No. 06-cv-00826	E.D. Pa.	$120M
In re Air Cargo Shipping Services Antitrust Litigation, MDL. No. 1775	E.D.N.Y.	$85M
In re Pet Food Products Liability Litigation, MDL No. 1850	D.N.J.	$24M
In re Webloyalty.com, Inc. Marketing and Sales Practices Litigation, MDL No. 1820	D. Mass.	Allowed customers to recover up to 100% of unauthorized charges
In re BP Prods. North America, Inc. Antitrust Litigation, MDL No. 1801	N.D. Ill.	$15.25M
In re Medtronic Inc. Implantable Defibrillator Products Liability Litigation, MDL No. 1726	D. Minn.	$75M
Wington v. CB Richard Ellis, Inc., Case No. 02-cv-6832	N.D. Ill.	A favorable settlement that made available monetary relief for eligible claimants, as well as a charitable contribution to the Commercial Real Estate Women Network
In re Pressure Sensitive Labelstock Antitrust Litigation, MDL No. 1556	E.D. Pa.	$46.5M
In re Synthroid Marketing Litigation, MDL No. 1182	N.D. Ill.	$87.4M
Vista Healthplan, Inc. v. Bristol-Myers Squibb Co., Case No. 01-cv-01295	D.D.C.	$135M settlement
Nichols v. Smithkline Beecham Corp. ("Paxil"), Case No. 00-cv-6222	E.D. Pa.	$65M

Practice Areas

Wexler Wallace is a nationally-recognized leader in complex class action and multidistrict litigation, with a commitment to excellence and achieving meaningful relief for its clients. The firm's diverse litigation practice spans the areas of antitrust, business and commercial litigation, consumer fraud litigation, government representation, healthcare litigation, mass torts, securities and corporate governance, and whistleblower and false claims litigation.

ANTITRUST

Unfortunately, individuals and businesses sometimes violate the rules of our market-based system, imposing artificially inflated prices on market participants. Conduct prohibited by state and federal antitrust laws can take the form of illegally-maintained monopolies, price fixing, the improper exchange of competitive information, patent abuses, and other forms of unfair competition.

Wexler Wallace is a leader in private antitrust enforcement, litigating a wide variety of class action cases involving many prominent industries, including the pharmaceutical, entertainment, service rental, lumber, energy, and electronic products industries.

Representative cases in the firm's antitrust practice area include:

IN RE BROILER CHICKEN ANTITRUST LITIGATION, 16-CV-8637 (N.D. ILL.)

Wexler Wallace, along with co-counsel, filed this class action alleging that the nation's largest chicken producers (such as Tyson and Pilgrims) agreed with each other to limit the supply of broiler chickens, in order to raise the prices on chicken and chicken products. The Court appointed Wexler Wallace as Liaison Counsel on behalf of a class of restaurants (and institutions, such as prisons and nursing homes) that purchased the defendants' chicken from a wholesaler. The plaintiffs are seeking to recover damages suffered when they overpaid on purchases of the defendants' chicken. The defendants filed motions to dismiss the case, but in November of 2017 the Court denied those motions almost entirely, issuing a 92-page opinion. The parties are in the discovery phase of the case, which will last into 2019.

FOREST RIVER FARMS V. MONSANTO COMPANY, NO. 4:18-CV-00181 (E.D. MO.)

Wexler Wallace and co-counsel filed this class action case against Monsanto in February 2018, alleging that Monsanto's rollout of genetically modified seeds that are resistant to the herbicide dicamba has created a distorted and monopolized market, manipulated by and susceptible to Monsanto's domination. Genetically-modified ("GM") crops and food are often touted to farmers and the public as miracle products. But when patented GM technology so changes the economics of agriculture that farmers have no choice but to use it, thus allowing biotech companies to charge monopoly prices and unfairly control the market, it is illegal conduct as alleged in the complaint. Monsanto knew that commercializing

dicamba-resistant technology would cause a spike in the use of dicamba, and conspired, agreed, and combined with other major biotech firms to unlawfully dominate the soy and cotton seed market.

UNITED FOOD AND COMMERCIAL WORKERS UNIONS AND EMPLOYERS MIDWEST HEALTH BENEFITS FUND, ET. AL. V. ALLERGAN, PLC NO.: 15-CV-12731 (D.C. MASS.)

Wexler Wallace filed this case against Allergan in June 2015 on behalf of a putative class of end-payors alleging that Plaintiffs and all Asacol end-payors were harmed by defendants' conduct in engaging in an unlawful "product hop." Patients had always paid for the brand name version of Asacol. In July 2013, a generic version was planned for release on the market, but because of the defendant's withdrawal of the drug from the market, a generic version does not exist and consumers are still paying higher prices for similar brand name versions. Wexler Wallace was appointed co-lead counsel. The Hon. Judge Denise J. Casper of the United States District Court District of Massachusetts granted plaintiffs' motion for class certification and denied the defendants' motion for summary judgement. The First Circuit stayed the trial set to begin on January 22, 2018 pending the resolution of Defendants' appeal of the District Court's class certification decision.

IN RE NEXIUM ANTITRUST LITIG., MDL NO. 2409 (D. MASS.)

Wexler Wallace, along with co-counsel, filed this antitrust class action, alleging that defendant AstraZeneca entered into non-competition agreements with a number of generic pharmaceutical manufacturers in order to delay marketing entry of generic versions of its blockbuster drug Nexium. Starting in October 2014, Wexler Wallace participated in a six-week jury trial in the action; it was the first trial of a "reverse payment" antitrust action since the Supreme Court's *Actavis* decision. While the jury made several key findings in favor of the Plaintiffs, it ultimately returned a verdict in favor of defendants AstraZeneca and Ranbaxy. Plaintiffs have since moved for a new trial, and end-payor plaintiffs (represented by Wexler Wallace and others) have moved for injunctive relief.

IN RE LIPITOR ANTITRUST LITIG., MDL. NO. 2332 (D.N.J.)

Wexler Wallace filed this class action against Pfizer Inc. and Ranbaxy Pharmaceuticals Inc., among others, seeking damages and equitable relief on behalf of end-payors of Lipitor and/or its generic bioequivalents for violations of antitrust and consumer protection laws. Plaintiffs allege that, among other things, defendants fraudulently procured a patent covering Lipitor and entered into an anticompetitive settlement with Ranbaxy in order to keep generic versions of the blockbuster drug off of the market.

NICHOLS V. SMITHKLINE BEECHAM CORP. ("PAXIL"), NO. 00-CV-6222 (E.D. PA.)

Wexler Wallace served as co-lead counsel in this case involving alleged efforts by GlaxoSmithKline, including "sham" patent litigation, to keep generic versions of Paxil off the market. This case is believed to be one of the first, if not the first, to allege misuse of patents to delay generic competition in a pharmaceutical market brought under Section 2 of the Sherman Act (rather than Section 1). The case settled for $65 million.

IN RE EFFEXOR XR ANTITRUST LITIG., NO. 11-CV-5661 (D.N.J.)

Wexler Wallace was appointed to the Indirect Purchaser Class Executive Committee in this antitrust litigation against pharmaceutical manufacturer Wyeth, Inc. regarding its antidepressant Effexor XR. The complaint alleges that Wyeth fraudulently obtained a number of method-of-use patents for Effexor XR and engaged in sham litigation against sixteen potential generic competitors in an effort to protect the Effexor XR monopoly. Plaintiffs further allege that Wyeth entered into an anticompetitive settlement with the first generic ANDA filer, Teva Pharmaceutical Industries, Ltd., and its US subsidiary Teva Pharmaceuticals USA, Inc., which delayed the entry of generic Effexor XR competitors for more than two years.

For more information about the firm's Antitrust Litigation practice, please visit the firm's website, at http://www.wexlerwallace.com/practice-areas/antitrust-litigation/.

BUSINESS AND COMMERCIAL LITIGATION

Confronting well-heeled and well-represented adversaries, Wexler Wallace attorneys represent businesses throughout the country in complex disputes ranging from breach of contract claims to business torts, including fraud, unfair competition, and breaches of fiduciary duty. The firm has represented small businesses on a contingency basis when those businesses were faced with litigating against larger adversaries that engaged in unfair and unlawful conduct.

Although Wexler Wallace attorneys are always prepared to offer zealous advocacy for the firm's clients in state or federal courts, they also have employed creative approaches to successfully handle difficult cases through alternative dispute resolution such as mediation or arbitration. The firm's willingness to extend its services in cases that other firms are unwilling or unable to handle is just another testament to its commitment to positive change.

For more information about the firm's Business and Commercial Litigation practice, including summaries of representative cases, please visit the firm's website, at http://www.wexlerwallace.com/practice-areas/business-commercial-litigation/.

CONSUMER PROTECTION

Wexler Wallace is a national leader in prosecuting consumer protection claims on behalf of both businesses and individuals in state and federal courts throughout the country. The firm has successfully prosecuted cases involving, but not limited to:

// unlawful environmental dumping
// improper Internet "lead generation" practices

// unfair billing practices of telecommunications companies

// mislabeling of dietary supplements

// the sale of defective drugs and household appliances

// unfair payment policies of health insurance companies

// false advertising by Internet service providers

// deceptive practices of social networking sites

// unlawful debt reduction scams

For more information about the firm's Consumer Protection practice, including summaries of representative cases, please visit the firm's website, at http://www.wexlerwallace.com/practice-areas/consumer-protection/.

GOVERNMENT REPRESENTATION

Our state, local, and federal governments are often victims of the same securities and healthcare frauds that are inflicted on businesses and individuals in the private sector. The government is an insurer through Medicare or Medicaid, and therefore overpays when brand name pharmaceutical manufacturers unlawfully suppress generic competition for their drugs. Similarly, government entities are investors with respect to their treasuries and pension plans. Thus, when false and misleading statements are issued by public companies, government entities are entitled to the same securities fraud damages that are available to private investors. Governments are also owed fiduciary duties in certain circumstances, and are often parties to multi-million-dollar contracts, the breach of which can result in significant damages.

Wexler Wallace helps government entities recover the funds taken from them through the unlawful conduct of others. Ultimately, those funds belong to taxpayers, who are the intended beneficiaries of government services. Wexler Wallace believes that government officials have not only the right, but also the obligation, to try to recover these assets for their constituents.

For more information about the firm's Government Representation practice, including summaries of representative cases, please visit the firm's website, at http://www.wexlerwallace.com/practice-areas/government-representation/.

HEALTHCARE LITIGATION

In the wake of ever-rising healthcare costs, Wexler Wallace is at the forefront of legal action being taken nationwide to challenge wide-ranging fraudulent and unfair conduct in the healthcare industry. Wexler Wallace has prosecuted claims for:

// reporting of fraudulent pharmaceutical prices

// failures to recall defective health devices

// an industry-wide conspiracy to increase the prices of over 400 brand name drugs

// the filing of baseless lawsuits and administrative actions to delay generic drug entry

// a pharmacy's illegal substitution of more expensive versions of generic drugs

Bringing claims under RICO, the antitrust laws, state consumer protection statutes, and more, Wexler Wallace has successfully prosecuted cases against some of the largest companies in the healthcare industry, including McKesson Corp., Becton Dickinson, AstraZeneca, GlaxoSmithKline, Abbott Laboratories, Bristol-Myers Squibb, Johnson & Johnson, and Bayer Corporation.

Wexler Wallace's case against McKesson Corp. for manipulating the reimbursement benchmark for drug purchases resulted in one of the largest, if not the largest, RICO settlements ever.

For more information about the firm's Healthcare Litigation practice, including summaries of representative cases, please visit the firm's website, at http://www.wexlerwallace.com/practice-areas/healthcare-litigation/.

MASS TORT LITIGATION

Wexler Wallace is a nationally-recognized leader in complex mass tort litigation involving defective drugs and medical devices that have injured hundreds or even hundreds of thousands of individuals. The firm investigates and aggressively pursues mass tort claims to promote industry-wide changes intended to benefit the public, prevent future lawsuits, and provide the maximum remedies under the law for those

who have been harmed. The firm's lawyers and staff are intimately familiar with the nuances of this complicated practice area and continually track the impact of new technological and scientific developments on mass tort litigation.

To deepen the legal team's medical knowledge and resources and to support those clients who have suffered injuries, Wexler Wallace employs a full-time registered nurse with certification as a Legal Nurse Consultant (LNC). Debbie A. Pritts, RN, LNCC has over twenty-five years of experience and works directly with the firm's clients throughout each stage of the legal process.

For more information about the firm's Mass Torts practice, including summaries of representative cases, please visit the firm's website, at http://www.wexlerwallace.com/practice-areas/mass-tort-litigation/.

SECURITIES AND CORPORATE GOVERNANCE

Over the last few years, we have learned all too well that lack of regulation and oversight can lead to corrupt corporate leadership, lack of transparency regarding the risks of significant investments, and the repeated securitization of the same bad investments.

Wexler Wallace has committed its resources to helping pension plans, governments, and others recover assets lost as a result of the weakness of mortgage-backed securities, auction rate securities, credit swaps, derivative swaps, and overextended securities lending programs. Through its membership in the National Association of State Treasurers, and its increased involvement in institutional finance and investment conferences, Wexler Wallace has catapulted itself to the forefront of this area of litigation, seeking redress and the recovery of assets lost through gross negligence and breaches of fiduciary duties by those in whom institutional investors placed their trust and confidence.

Securities litigation can often result in changes to corporate governance and policies designed to prevent future misconduct. Wexler Wallace believes the importance of this work cannot be overstated. The firm seeks to ensure that corporate officers and directors fulfill their responsibilities and provide full disclosure and transparency to those buying and selling securities, helping to ensure that our capital markets truly reflect the accurate information that should underlie every commercial transaction.

For more information about the firm's Securities and Corporate Governance practice, including summaries of representative cases, please visit the firm's website, at http://www.wexlerwallace.com/practice-areas/securities-corp-governance/

WHISTLEBLOWER AND FALSE CLAIMS LITIGATION

Under the Federal False Claims Act and state law counterparts, private citizens or "whistleblowers" may sue on behalf of the government for fraud committed against it. This type of fraud costs taxpayers billions of dollars each year. If a case is successful, the government may be able to recover treble damages and civil penalties for each violation and the private citizen or "relator" can receive his or her attorneys' fees and costs, as well as a portion of the funds awarded by the court.

Wexler Wallace is committed to seeing companies and individuals held responsible for fraud against the government and to representing private citizens willing to come forward and expose fraud.

For more information about the firm's Whistleblower and False Claims Litigation practice, including summaries of representative cases, please visit the firm's website, at http://www.wexlerwallace.com/practice-areas/whistleblower-false-claims-litigation/.

Our Professionals

Our legal team consists of professionals with a broad range of experiences and diverse backgrounds. Many of our lawyers serve as leaders in charitable institutions, teach at universities, and are members of national, state, and local bar associations. All of our professionals have earned the respect and admiration of our clients, judges, and co-counsel by the strength of their experience, diverse backgrounds, and overall commitment to excellence.

OUR PARTNERS

The partners of Wexler Wallace have been selected 15 times as "Super Lawyers" and "Rising Stars" in Illinois. Named partners, Kenneth A. Wexler and Edward A. Wallace, are each rated AV® Preeminent™ by Martindale-Hubbell, the highest rating in legal ability and ethics a lawyer can obtain. In addition, they have been named Illinois Local Litigation Stars by Benchmark Plaintiff every year since 2012.

OUR ASSOCIATES

Our associates hail from some of the top schools in the nation and have been recognized for outstanding academic achievement. As law students, Wexler Wallace associates served on the editorial boards of law reviews and journals, received academic honors, acted as student leaders, and participated in a variety of clinical programs to receive real-world legal experience before entering practice. Combined, our associates garnered 17 top of the class CALI awards for the highest grades in their courses and graduated with GPAs that placed them near the top of their respective law school classes.

KENNETH A. WEXLER

MANAGER AND FOUNDING PARTNER

Kenneth A. Wexler, the founder of the firm, is a 1980 graduate of the Georgetown University Law Center. He received a Bachelor of Arts degree in 1977, *summa cum laude*, from Washington University in St. Louis, Missouri.

For over 30 years, Ken has devoted himself to helping those whose rights have been denied, or who have been victims of the unscrupulous or fraudulent actions of others, typically more powerful persons or entities. Founder of Wexler Wallace, Ken was also a founding partner of the firm formerly known as Miller Faucher Cafferty and Wexler LLP. He began his career and was a partner in the Chicago law firm now known as Much Shelist Dennenberg Ament & Rubenstein, PC.

Ken has been in leadership positions in cases with far-ranging subject matters, including brand name manufacturer suppression of competition from generic drugs, fraudulent and deceptive product overcharges, discrimination and harassment, corporate waste and mismanagement, cost recovery for defective medical devices, false advertising, and government fraud. Ken's practice is devoted to complex class action and commercial litigation, which includes a substantial amount of health care litigation, claims brought under federal and state false claims statutes, and cases alleging violations of the securities and antitrust laws. At present, Ken is particularly focused on protecting issuers of municipal bonds, recovering losses for pension funds and other investors that were victimized by unlawful and improvident securities lending practices, and cost-recovery for victims of health care fraud, including Taft-Hartley Funds, self-insured employers, and government entities.

Ken is a member of the Chicago Bar Association, Illinois State Bar Association, Federal Bar Association, American Bar Association, Chicago Council of Lawyers, American Association for Justice, and the Illinois Trial Lawyers Association. He is admitted to the bar in Illinois and is licensed to practice before the Illinois Supreme Court, United States District Court for the Northern and Southern Districts of Illinois, the United States Court of Appeals for the First, Second, Third, Sixth, and Seventh Circuits, and the United States Court of Appeals for the District of Columbia. With so many of the firm's cases pending in jurisdictions across the country, Ken has also been admitted to practice *pro hac vice* in United States District Courts of California, Connecticut, the

District of Columbia, Florida, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New Mexico, New York, Ohio, Pennsylvania, South Dakota, Tennessee, Virginia, and Wisconsin.

Along with bar activities, Ken is a fellow of The Roscoe Pound Institute and is a member of the American Constitution Society for Law and Policy, the Center for International Legal Studies, the National Association of State Treasurers, and the Executive Committee of the Civil Rights for the Anti-Defamation League. Ken also volunteers with the Chicago coalition for the Homeless and is a lifetime member of the 100 Club of Chicago.

EDWARD A. WALLACE

PARTNER

Ed joined the firm in February 2000, a little over a month after its founding. Since then, he has helped lead the firm to national prominence. He became a partner of the firm in 2003 and joined Ken Wexler as an equity partner in 2006.

Ed focuses his practice on large scale multi-party complex litigation, and has been asked to serve in leadership positions in numerous high-profile cases, including recent appointments in securities litigation and mass torts. In August 2014, Ed led a trial team that achieved the first verdict involving a transvaginal sling mesh (a device used to treat stress urinary incontinence) in federal court. Wexler Wallace, along with co-counsel, tried this defective mesh product case, securing a $3.27 million verdict for Plaintiff Jo Huskey, a 52-year-old woman who was implanted with the mesh in 2011. Ed has been critical in the development of the firm's mass tort practice, and, in the process, he has gained a national reputation for integrity, efficiency, strategic planning, understanding the relevant science, and achieving success.

Ed's hard work led to his recognition as an Illinois Super Lawyer in 2014 and 2015, an award given annually to no more than 5 percent of lawyers in the state. Ed has an AV® Preeminent™ rating by Martindale-Hubbell, the highest rating a lawyer can obtain, indicating a very high to preeminent legal ability and exceptional ethical standards. Every year since its inaugural edition in 2012, Ed also has been named an Illinois Local Litigation Star by Benchmark Plaintiff.

He is admitted to the bar in Illinois and is licensed to practice before the Illinois Supreme Court, the United States District Court for the Northern and Southern Districts of Illinois, the United States District Court for the Western District of Michigan, the United States District Court for the District of Colorado, and the United States Court of Appeals for the Third and Seventh Circuits. He also has been admitted *pro hac vice* in many courts around the country.

Ed is a member of the American Bar Association and is a former Consumer Protection Law Subcommittee Newsletter Co-Chair. He also is a member of the Chicago Bar Association, where he is a member of the Class Action Committee, the Illinois State Bar Association, the National Association of Shareholder and Consumer Attorneys, Public

Justice, and the American Association for Justice ("AAJ"). Within AAJ, he belongs to the Commercial Law Section, the Product Liability Section, and the Section on Toxic, Environmental and Pharmaceutical Torts. At the AAJ's recent annual convention, Ed was re-elected co-chair for the Kugel Mesh Litigation Group.

Ed is a 1995 graduate of DePaul University College of Law. He received a Bachelor of Arts degree in 1991 from Eastern Illinois University.

KARA A. ELGERSMA

PARTNER

Kara A. Elgersma is a 2000 graduate of Georgetown University Law Center, with Bachelor of Arts Degrees in English and History obtained from the University of Kansas in 1997.

Kara came to Wexler Wallace from K&L Gates LLP, where she was a partner. At K&L Gates, Kara was a member of the Antitrust and Trade Regulation Department, focusing on antitrust litigation, franchising and dealership disputes, class actions and other complex commercial litigation, as well as advising clients on a variety of regulatory matters, including antitrust, FCC, and energy regulatory policies.

Kara's experience includes all aspects of complex commercial litigation. In addition, she is well-versed in arbitration, including pre-hearing case development and management, as well as the conduct of full hearings.

For six months in 2004, Kara was "on loan" to Kraft Foods Global, Inc., Northfield, Illinois, where she directly assisted the Chief Litigation Counsel for the company and handled a wide variety of litigation matters, including small and large product liability claims, general commercial litigation, civil investigative demands, business subpoenas, labor and employment litigation, and bankruptcy matters.

She is admitted to the bars of the Supreme Court of Illinois and Wisconsin, the District of Columbia Court of Appeals, the United States District Courts for the Northern District of Illinois, the District of Columbia, the District of Colorado and the Western District of Wisconsin, the United States Courts of Appeals for the Third, Fourth, Sixth, Seventh, and Tenth Circuits, and the Supreme Court of the United States.

Kara is a member of the American Bar Association, the Illinois State Bar Association, and the District of Columbia Bar Association. She was a Board Member of the Competition Law360 Advisory Board for 2009 to 2010, and she was involved as a Board Member for Girls On The Run of Northern Virginia, as well as a volunteer with Chicago Volunteer Legal Services.

MARK R. MILLER

PARTNER

Mark R. Miller received his J.D. from Loyola University Chicago School of Law in 2004 after graduating from Central Michigan University with a Bachelor of Science in History in 2001.

Over the last decade, Mark has represented both plaintiffs and defendants in all phases of complex litigation—from the investigation and filing of the complaint through discovery, motion practice, class certification, summary judgment, and trial or settlement. Since joining Wexler Wallace in 2006, his practice has included handling a wide variety of consumer protection, antitrust, securities, banking regulation, business, and contractual class action cases. In addition to his background in commercial and consumer litigation, his practice has evolved to focus on products liability mass torts; and he has recently played pivotal roles in the jury trials of several mass tort MDL cases. His work in those cases included working with experts, taking fact and expert witness depositions, participating on bellwether trial teams, and drafting much of the briefing addressing complex discovery, pre-trial, and post-trial motions. In doing so, he has enhanced the firm's reputation and developed solid relationships with judges, co-counsel, and clients alike.

Mark is admitted to the bar of the State of Illinois, the United States Court of Appeals for the First Circuit, and the United States District Courts for the Northern District of Illinois, Southern District of Illinois, and Eastern District of Michigan.

BETHANY R. TURKE

PARTNER

Bethany R. Turke joined Wexler Wallace after practicing in the New York and Chicago offices of Latham & Watkins LLP. Bethany's practice at Latham involved a wide range of civil and criminal litigation matters, including securities litigation, contract disputes, government investigations, and employment matters. She was also very active in Latham's *pro bono* practice, working tirelessly on behalf of clients facing various immigration, employment, and housing discrimination issues. Before joining Latham & Watkins, Bethany served as a law clerk to the Honorable Cheryl L. Pollak of the United States District Court for the Eastern District of New York. She received her J.D. from Harvard Law School in 2006.

Bethany is actively involved on cases in a number of Wexler

Wallace's practice specialties, including the firm's antitrust, healthcare, and consumer protection practice areas.

JUSTIN N. BOLEY

PARTNER

Justin's principal area of practice is complex class action litigation in antitrust matters. Since joining the firm, he has been heavily involved with virtually all of the firm's pharmaceutical antitrust cases, including, among others: In re Nexium (Esomeprazole) Antitrust Litigation, In re Wellbutrin XL Antitrust Litigation; In re Prograf Antitrust Litigation, In re Lipitor Antitrust Litigation, In re Effexor Antitrust Litigation, In re Androgel Antitrust Litigation, and In re Skelaxin (Metaxalone) Antitrust Litigation. He has also worked on antitrust cases involving price-fixing in international commodities markets and manipulation of benchmark interest rates, and he has taken the lead on investigations into the cartelization of the credit derivatives market and price-fixing among online travel sites and hotels.

Justin came to the firm after attending school abroad and obtaining a Master's Degree in International Relations. During law school, Justin's focus on corporate law, finance, and complex litigation earned him numerous top-of-the-class academic honors; he was awarded CALI Awards in Antitrust, Contracts, Legal Analysis, Research, and Writing III, Commercial Arbitration, Natural Resource Law, and Legal Profession (Ethics). Justin was a member of the Public Interest Law Committee at DePaul College of Law for three years. He also worked as a member of the New Media Team in President Obama's Presidential campaign headquarters in Chicago, where he helped facilitate the online organizing efforts of grassroots groups nationwide.

Justin is admitted to the bar of the State of Illinois, Western District of Wisconsin, United State Court of Appeals, Seventh Circuit, and the United States District Court for the Northern District of Illinois.

THOMAS A. DOYLE

OF COUNSEL

Thomas A. Doyle came to Wexler Wallace in the spring of 2012. Prior to joining Wexler Wallace, Tom was a principal of Thomas A. Doyle Ltd., where he focused his practice on antitrust and employment litigation. He has litigated class

and other complex litigation in state and federal courts throughout the United States, recovering millions of dollars for his clients.

Tom has been able to pursue claims efficiently and effectively, helping large groups of people recover for injuries that they have suffered from unlawful conduct by others. His appointed positions and representative matters include *In re TFT-LCD (Flat Panel) Antitrust Litigation*, *In re TransUnion Corp. Privacy Litigation*, and *Gomez v. PNC Bank.*

As a result of his work, he is often asked to lecture and write articles on topics relating to class litigation as well as alternative dispute resolution. Tom has been a lecturer, moderator, and panelist at several conferences, including the Annual Meetings of the ABA's Committee on Alternative Dispute Resolution, The University of Louisville's 29th Annual Labor & Employment Law Institute, and the ABA Section of Labor & Employment Law's National CLE Conferences.

He is admitted to the bars of the Supreme Court of Illinois, the United States District Court for the Northern District of Illinois (including the Trial Bar), the United States Court of Appeals for the Seventh Circuit, and the Supreme Court of the United States.

Tom is a member of the American Bar Association and recent co-chair of the Committee on Alternative Dispute Resolution, Section of Labor & Employment. He is also a member of the Chicago Bar Association and the Illinois State Bar Association. He recently served as a Director of the Chicago Bar Foundation, and he is an active member of the CBF's *Cy Pres* Committee. He serves on the Board of Directors of Latinos Progresando (a community service agency in Chicago's Little Village neighborhood).

He is a 1990 graduate of the University of Illinois College of Law, with a Bachelor of Science Degree obtained from Bradley University.

TIMOTHY E. JACKSON

ASSOCIATE

Timothy E. Jackson began work at Wexler Wallace as a summer associate while in law school. Tim received his J.D. from The Ohio State University Michael E. Moritz College of Law in 2010, where he was a Managing Editor on The Ohio State Journal on Dispute Resolution. He received his M.S. in

Psychology from Tulane University in 2007 and his B.S. in Psychology from Tulane in 2006. Tim's primary practice areas at Wexler Wallace are medical device litigation, product liability law and mass tort litigation.

TYLER J. STORY

ASSOCIATE

Beginning in law school, Tyler has focused his attention towards antitrust litigation. While a student at Pennsylvania State University, he held two antitrust research assistant positions: one in which he explored issues of indirect purchaser standing in state antitrust suits, the other in which he focused specifically on the application of antitrust law and economics in the pharmaceutical industry

Since joining Wexler Wallace, Tyler has been actively involved in various aspects of litigation concerning brand name manufacturer suppression of competition from generic drugs.

TANIA E. YUSAF

ASSOCIATE

Tania practices in the area of mass tort litigation, focusing primarily on transvaginal mesh multidistrict litigation. She has prepared deposition examinations for high-level company witnesses, drafted a number of pre-trial briefs, and implemented trial strategy as part of the transvaginal mesh trial team.

Tania joined Wexler Wallace after working as a health care regulatory analyst, a position in which she assisted hospitals and health plans in complying with Medicare, Medicaid, the Health Insurance Portability and Accountability Act (HIPAA), and the Affordable Care Act. She also previously worked at the American Academy of Pediatrics (AAP) helping AAP state chapters further anti-tobacco initiatives, including restrictions and bans involving electronic cigarettes, smokeless tobacco, tobacco sales, and smoking in cars with children. During her time as an LL.M. student, Tania externed with the American Medical Association (AMA), where she drafted white papers and issue briefs on a number of topics, including a brief on state health insurance exchanges featured at the 2010 AMA State Legislative Strategy Conference.

BRYAN D. PASCIAK

ASSOCIATE

Bryan received his J.D. from Notre Dame Law School, where he graduated with honors and was the recipient of the International Academy of Trial Lawyers Award. Prior to joining Wexler Wallace, Bryan practiced at a civil litigation law firm in Pittsburgh, where he assisted in representing clients in all stages of complex civil litigation. Before practicing law, Bryan gained valuable experience and insight as an intern for state and federal court judges, the Financial Industry Regulatory Authority, and plaintiff and defense law firms.

At Wexler Wallace, Bryan applies his skills and experience toward assisting with cases that span many of the firm's practice areas, including antitrust litigation, business and commercial litigation, securities and corporate governance, and whistleblower-false claims litigation.

ANDREW D. WELKER

ASSOCIATE

Andrew joined Wexler Wallace in the spring of 2017, from Katten Muchin Rosenman LLP, bringing with him a deep background in commercial litigation, healthcare fraud, and Corrupt Organizations Act (RICO) matters. Andrew has extensive experience representing multi-billion dollar corporations, mid-sized companies, and individuals in complex legal matters of fraud, class actions, contract disputes, copyright infringement, and product liability litigation. His contributions to the firm include work on numerous antitrust, mass tort, business and commercial, and healthcare litigation cases.

Andrew received his J.D. from Washington University in St. Louis School of law. He also attended the University of Missouri for his B.A., where he graduated cum laude.

LAUREN C. KAPLAN

ASSOCIATE

Lauren joined Wexler Wallace in the fall of 2017, where she uses her experience in medical malpractice, professional negligence, and commercial litigation to assist with the firm's numerous mass tort cases.

Lauren received a Bachelor's of Science in Public Affairs from Indiana University in 2011. Since receiving her J.D. from Chicago-Kent College of Law in 2014, Lauren has focused her career on helping clients who had been the victims of negligence, medical and professional carelessness, fraud, and similar legal disputes.

Lauren has been deeply involved with all aspects of the legal process throughout her career. From co-drafting an Illinois Supreme Court brief to sitting second chair in a negligence trial that secured a multi-million dollar jury verdict, Lauren possesses a keen legal mind and a desire to seek justice for her clients.

RICHARD L. MILLER II

OF COUNSEL

Richard L. Miller II specializes in commercial litigation and class action cases. He has advised multi-billion dollar clients and litigated disputes involving contracts, real estate, insurance coverage, creditors' rights, products liability, trademarks, and employment law. He has also represented consumers in various cases that resulted in tens of millions of dollars being distributed to class members.

Early in his career, Richard served as a prosecutor for Champaign County, Illinois. In a little over two years, he litigated approximately 50 jury trials, as well as innumerable bench trials. He prosecuted four murder cases, two of which resulted in pleas and two of which went to trial, resulting in guilty verdicts and sentences of 45 and 55 years. Richard once conducted five jury trials, back-to-back, and obtained guilty verdicts in all five cases.

Richard is an Adjunct Professor at the Northwestern School of Law where he has taught Trial Advocacy since 2005 and Advanced Trial Advocacy since 2013. Further, in his role as an arbitrator, Richard presides over proceedings litigated by

others. Richard was an arbitrator for the Cook County Mandatory Arbitration program for two years. Since 2008, Richard has considered evidence and arguments, and decided cases, as an arbitrator for the American Arbitration Association.

DEBBIE A. PRITTS

LEGAL NURSE CONSULTANT

Debbie A. Pritts, R.N., LNCC is a Registered Nurse with more than 20 years of clinical experience in Oncology, Med-Surg, Endoscopy, Ambulatory/Outpatient Care, Orthopedics, Ophthalmic Laser, Home Health and Utilization Review. She has been certified in BLS (Basic Life Support), ACLS (Advanced Cardiac Life Support) and Chemotherapy Administration. Debbie achieved the status as Legal Nurse Consultant Certified (LNCC) through the American Association of Legal Nurse Consultants (AALNC) in November 2005. LNCC certification is designated after successfully meeting the requirements through examination and experience that validate qualifications, knowledge, and practice in the field of legal nurse consulting. LNCC is the only legal nurse consulting credential recognized by American Association of Legal Nurse Consultants and accredited by the American Board of Nursing Specialties (ABNS).

Debbie has experience in Product Liability, Medical Malpractice, Personal Injury, and Workers Compensation. Debbie is a member of the American Association of Legal Nurse Consultants and the West Virginia Upper Ohio Valley Chapter of the AALNC, presently serving as the chapter's president. She has been a Member of the Board of Directors since 2005, serving as a past Treasurer and is Chair of the Website Committee. Additionally she is a founding member of the WV Bar Association, Legal Nurse Consultant Section.

She works directly with clients of Wexler Wallace, from the first time they contact the firm, through trial. Her expertise and passion for the job has provided the firm's clients with the service they deserve.

EXHIBIT 50

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** *Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al.,* No. 16-2788-JWL-JPO *Trans Coastal Supply Company, Inc. v. Syngenta AG, et al.,* No. 2:14-cv-02637-JWL-JPO *The Delong Co., Inc. v. Syngenta AG, et al.,* No. 2:17-cv-02614-JWL-JPO *Agribase International Inc. v. Syngenta AG, et al.,* No. 2:15-cv-02279-JWL-JPO	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

DECLARATION OF LYNN R. JOHNSON

I, Lynn R. Johnson, declare as follows:

1. I am a member of the Kansas and Missouri bars and am a partner at Shamberg, Johnson, and Bergman in Kansas City, Missouri.

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so. I respectfully submit this declaration in support of Plaintiffs' request for attorneys' fees and expenses in this litigation.

3. I obtained by undergraduate degree in accounting from Kansas State University in 1967 and obtained by J.D., with honors, from Washburn University School of Law in 1970. I joined my firm as an associate in 1970 and became a partner in 1974. I have been listed in the

Best Lawyers in America, have been recognized multiple times by *Super Lawyers* as one of the top fifty lawyers in the Kansas City Area, am a member of the Inner Circle of Advocates, and am a fellow of both the International Academy of Trial Lawyers and the American College of Trial Lawyers.

4. I served as settlement counsel for the subclass defined in the Settlement Agreement as "Subclass 2," a subclass of U.S. corn producers that purchased Viptera or Duracade seed and produced corn from Viptera or Duracade seed. *See* ECF No. 3507-2 § 1.2.2. In fulfilling my duties as counsel for Subclass 2, I

a. Reviewed Syngenta's and the plaintiffs' briefing on dispositive motions;

b. Reviewed the reports submitted by the plaintiffs' experts;

c. Attended two settlement conferences in Washington, D.C. and one settlement conference in New York;

d. Negotiated the terms of the settlement for Subclass 2.

5. In compliance with the Court's Order Establishing Protocols for Common Benefit Work and Expenses, ECF No. 936 (the "Common Benefit Order"), I submitted my time and expense submissions to Co-Lead Counsel in the MDL.

6. In compliance with the Common Benefit Order, I did not include in these submissions time and expenses spent in respect to any individual clients who were not either bellwether or class representative plaintiffs.

7. As part of the preparation of my declaration, I re-reviewed all of the time entries and expenses previously submitted in this litigation to exercise billing judgment.

8. My billing is based upon actual time spent on representing Subclass 2 in this litigation. My re-review of time spent was compared to all of the emails, letters and travel time

spent.

9. After this re-review, I can confirm that this time was undertaken by me personally.

10. After exercising billing judgment and making billing reductions based on my review of the records, the total lodestar for my work is $55,100 as shown in the chart below.

Name	Title	Total Hours	Hourly Rate	Lodestar
Lynn Johnson	Attorney	76	$725	$55,100

11. I seek $4,910.16 in expenses in connection with the prosecution of the litigation, most of which are related to my trips to settlement conferences in Washington and New York. Those expenses are summarized below:

Description of Costs	Amount
Travel to settlement conference in Washington, March 2017	$1,543.63
Travel to settlement conference in Washington, May 2017	$1,450.29
Travel to settlement conference in New York, February 2018	$1,777.84
Parking, postage, copies	$138.40
TOTAL	$4,910.16

12. As part of my request for an award of expenses, I have reviewed Section III(B) of the Court's Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (Doc. 936) (the "Common Benefit Order"). The requested award is in conformity with the Common Benefit Order, with the caveat that these amounts were incurred in the course of my representation of Subclass 2, rather than in

representing the general class.

13. The expenses pertaining to this case are reflected in my records. These records are contemporaneously prepared from receipts; expense vouchers, check and credit card records and other documents and are an accurate record of the expenses.

14. Custom Farm Services, LLC, Marvin Miller, and CE Cobb Farms agreed to serve as class representatives for Subclass 2. Custom Farm Services, LLC, Marvin Miller, and CE Cobb Farm's participation for settlement purposes was instrumental to achieving the result for Subclass 2. These plaintiffs were responsive to my questions and their answers helped me formulate my understanding of several damages issues. Given the role Custom Farm Services, LLC, Marvin Miller, and CE Cobb Farms assumed and fulfilled as the class representatives for Subclass 2, I respectfully request that they each be granted an incentive award of $2,500.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 10th day of July, 2018, in Kansas City, Missouri.

/s/ Lynn R. Johnson

Lynn R. Johnson
SHAMBERG, JOHNSON, AND BERGMAN
2600 Grand Blvd., Suite 550
Kansas City, Missouri 64108
(816) 474-0004

EXHIBIT 51

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation **This Document Relates to:** **ALL ACTIONS**	Court File No.: 27-CV-15-3785 Honorable Thomas M. Sipkins Case Type: Civil Other **MINNESOTA CLASS ACTION MASTER COMPLAINT FOR PRODUCERS AND NON-PRODUCERS** **AND JURY DEMAND**

Plaintiffs Leroy Edlund, Douglas A. Redman, Marvin Jensen, and Roger Ward (collectively "Producer Plaintiffs") and Matawan Grain and Feed, LLC ("Non-Producer Plaintiff"), bring this action individually and on behalf of others similarly situated as more fully described below against Syngenta Seeds, Inc. ("Syngenta Seeds", "Defendant" or "Syngenta") and allege as follows:

27-CV-15-13285
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

Table of Contents

Introduction 1

I. Jurisdiction and Venue 4

II. Parties 5

III. Factual Allegations 7

IV. Class Action Allegations 69

V. Causes of Action 75

Count I. Violation of Minn. Stat. §§325d.13, 325d.44 and 325f.69 75

Count II. Common Law Negligence 81

Count III. Strict Liability – Products Liability 83

Count IV. Strict Liability – Failure to Instruct and/or Warn 84

VI. Request for Relief 85

27-CV-15-13285
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

INTRODUCTION

Non-Producer Plaintiff and Producer Plaintiffs (collectively "Plaintiffs") bring their claims individually and on behalf of two proposed classes of persons and entities harmed by Syngenta's conduct at issue: (1) Minnesota "Producers" (i.e. corn growers), and (2) Minnesota "Non-Producers" (e.g. entities that purchased, stored, transported, and/or exported corn grown in the U.S.). Syngenta is a multibillion-dollar global agribusiness enterprise that develops and sells genetically modified corn seeds. Plaintiffs and Syngenta are part of an interconnected industry and market that demands and expects all market participants to act, at least in part, for the mutual benefit of all others in their interconnected web.

Biotechnology sits at the heart of this industry. It holds great promise but can also cause great harm. Biotechnology companies such as Syngenta must act responsibly when commercializing new products containing genetically modified traits. All industry participants, including Syngenta, understand that irresponsible commercialization of a new genetically modified product can cause major trade disruption and massive harm to both Producers and Non-Producers. That is why industry leaders, including Syngenta, have pledged to all other stakeholders that they will act responsibly in introducing new genetically modified traits.

Syngenta broke that pledge. Starting in 2010, it took unreasonable and irresponsible actions to launch two new products containing genetically modified traits before obtaining approval from China, a key export market. These actions caused the Chinese market to be effectively closed to U.S. corn shipments starting in November 2013.

After a period of development, Syngenta petitioned the United States Department of Agriculture ("USDA") in 2007 for deregulation of its Agrisure Viptera® branded cornseed in 2007, which contains the genetically modified MIR162 trait. The USDA approved Viptera for sale

27-CV-15-13285
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

in 2010. Syngenta recognized that China had not approved MIR162. Syngenta further knew that China's approval was important, as a large and growing export market. In fact, Syngenta had recently sought regulatory approval in China, which on average takes two to three years. Syngenta had previously been warned by industry participants not to introduce the MIR162 genetic trait without key export market approval because of the devastating consequences that were likely to occur from premature commercialization. But Syngenta had a limited patent life for this genetic trait. Every year that passed without commercialization resulted in lost monopoly profits for Syngenta.

Syngenta had a choice. It could gamble, or it could wait. Syngenta decided to gamble and immediately brought Viptera to market. Syngenta knew that China would not approve MIR162 until sometime after that trait had entered export channels, which, in turn, created a huge risk that the U.S. corn industry could lose one of their large and growing export markets. Thus, Syngenta knew that Producers and Non-Producers were likely to be adversely impacted by a sudden loss of China as a market for U.S. corn.

From 2011 through 2013, Syngenta was asked by industry participants to stop its aggressive commercialization of Viptera. China's importance as a purchaser of U.S. corn was growing rapidly, and China still had not approved MIR162. Syngenta ignored these pleas. It expanded sales for the 2012 and 2013 growing seasons. By then, Viptera corn had infiltrated the general domestic corn supply.

In November 2013, Syngenta's gamble went bust. China did exactly what everyone in the industry, including Syngenta, knew would happen if China found U.S. shipments contaminated with MIR162: China began rejecting entire shipments of corn from the United States. Industry participants reacted in early 2014 by demanding that Syngenta halt commercialization of Viptera,

27-CV-15-13285
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

as well as a new product, Agrisure Duracade. Duracade contained both MIR162 and a new trait called Event 5307, which was also not approved by China and other key export markets. Syngenta had petitioned the USDA for deregulation of Duracade in 2011, and approval was granted for that product in 2013. Industry participants raised "grave concerns about the serious economic harm" to those in the industry, including farmers, from the loss of the Chinese market. The National Grain and Feed Association quantified the harm at that time as ranging from $1 billion to $2.9 billion.

Syngenta again ignored the pleas. Instead, it continued to sell Viptera and launched Duracade for the 2014 crop year. These actions prolonged the problem and expanded the economic loss to Producers and Non-Producers. Corn grown by farmers who did not purchase Syngenta's products had become contaminated with the MIR162 and Event 5307 traits through cross-pollination from neighboring fields. In addition, Viptera- and Duracade-grown corn was commingled with other corn in grain elevators and other storage facilities.

During this process, Syngenta actively misled Producers and Non-Producers. For instance, Syngenta represented repeatedly that China would approve MIR162 in March 2012, even though it knew that approval in that time-frame was extremely unlikely. Syngenta also made false representations about the effect of the Chinese market on the global corn market and about measures it would take to prevent genetically-altered crops from contaminating other crops. Syngenta went so far as to represent to the USDA and the public that "there should be no effects on the U.S. maize export market" from deregulation, and that it would impose stewardship and channeling requirements to steer Viptera corn away from unapproved export markets. Syngenta, however, did not follow through in any meaningful way on these commitments. In fact, Syngenta actually increased the risk of contamination and commingling of Viptera. For example, when Bunge North America, Inc. ("Bunge") refused to accept Viptera corn, hoping to minimize the risk

27-CV-15-13285
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

of MIR162 contaminating shipments bound for China, Syngenta sued in an attempt to force Bunge to accept its unapproved product.

Syngenta's actions foreclosed the China market for U.S. corn exports for an extended term and with a lasting, material impact since it reopened. The loss and subsequent restricted growth of this market, which the USDA had predicted to be the largest export market for corn by 2020, has caused enormous harm to Producers and Non-Producers. That harm continues to grow. China approved MIR162 in December 2014; however, it still has not approved Event 5307. U.S. corn exports to China have not yet begun to recover, and it remains to be seen whether they will ever regain the levels they would have attained if not for the Syngenta trade disruption.

This action seeks compensation for thousands of U.S. corn Producers and Non-Producers, who have suffered substantial losses as a direct result of Syngenta's irresponsible conduct, as well as punitive damages for Syngenta's willful harm to the U.S. corn industry.

I. JURISDICTION AND VENUE

1. This is a civil case in which the Court has original jurisdiction under the Constitution of the State of Minnesota, Article 6, §3.

2. Plaintiffs do not assert any claims arising under federal law.

3. The Court has personal jurisdiction over defendant Syngenta Seeds, Inc. because Syngenta Seeds, Inc. maintains its principal place of business in Minnesota, transacts business here, and uses real or personal property situated in Minnesota. Minn. Stat. § 543.19. Syngenta Seeds, Inc., has used or possessed real or personal property in Minnesota, has transacted business in Minnesota, and has committed acts outside of Minnesota that have caused injury or property damage in Minnesota.

4. Venue is proper in Hennepin County under Minn. Stat. §§ 542.01, 542.02, and 542.11

because Defendants have marketed, sold, or otherwise disseminated, and continue to market, sell, or disseminate Viptera and Duracade corn in Hennepin County, and throughout Minnesota.

5. Venue is also proper in this district pursuant to the Minnesota Supreme Court's orders of May 22, 2015, A15-0758 and A15-0764, appointing this Court and the Honorable Thomas M. Sipkins "to hear and decide all matters, including pretrial and trial proceedings, in the cases currently filed in any Minnesota state district court, or filed in the future in any Minnesota state district court, against Syngenta Corporation, Syngenta Seeds, Inc., or any related Syngenta entities, and asserting claims alleging that Syngenta unlawfully released or launched a genetically modified corn seed."

II. PARTIES

A. Plaintiffs

6. Leroy Edlund ("Edlund") is a citizen of Minnesota residing in Cyrus, Minnesota. Edlund is engaged in the business of planting, growing, harvesting and selling corn. Edlund does not buy corn seed with Syngenta's MIR162 event. Rather, Edlund only buys corn seed that has either not been genetically modified or corn seed genetically modified with traits that have been approved by all major corn importing countries, including China. At all times relevant to this action, Edlund has been engaged in farming in the State of Minnesota. Edlund's income results from the ultimate sale of corn grown on his farmland.

7. Douglas A. Redman ("Redman") is a citizen of Minnesota residing in Wells, Minnesota. Redman is engaged in the business of planting, growing, harvesting and selling corn. Redman does not buy corn seed with Syngenta's MIR162 event. Rather, Redman only buys corn seed that has either not been genetically modified or corn seed genetically modified with traits that have been approved by all major corn importing countries, including China. At all times relevant to

27-CV-15-13285
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

this action, Redman has been engaged in farming in the State of Minnesota. Redman's income results from the ultimate sale of corn grown on his farmland.

8. Marvin Jensen ("Jensen") is a citizen of Minnesota residing in Kensington, Minnesota. Jensen is engaged in the business of planting, growing, harvesting and selling corn. Jensen does not buy corn seed with Syngenta's MIR162 event. Rather, Jensen only buys corn seed that has either not been genetically modified or corn seed genetically modified with traits that have been approved by all major corn importing countries, including China. At all times relevant to this action, Jensen has been engaged in farming in the State of Minnesota. Jensen's income results from the ultimate sale of corn grown on his farmland.

9. Roger Ward ("Ward") is a citizen of Minnesota residing in Mapleton, Minnesota. Ward is engaged in the business of planting, growing, harvesting and selling corn. Ward does not buy corn seed with Syngenta's MIR162 event. Rather, Ward only buys corn seed that has either not been genetically modified or corn seed genetically modified with traits that have been approved by all major corn importing countries, including China. At all times relevant to this action, Ward has been engaged in farming in the State of Minnesota. Ward's income results from the ultimate sale of corn grown on his farmland.

10. Plaintiff Matawan Grain and Feed, Inc. ("Matawan") is a Minnesota corporation with its principal place of business in Minnesota. Matawan operates a grain elevator at which it bought, stored, and sold grain, including corn. Matawan's income results from the sale of corn and other grains.

B. Defendant

11. Syngenta Seeds is a Delaware corporation with its principal place of business at 11055 Wayzata Boulevard, Minnetonka, Minnesota 55305-1526. Syngenta Seeds is a direct subsidiary of

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

Syngenta Corporation and described itself in its Complaint filed in *Syngenta Seeds, Inc. v. Bunge North America, Inc.*, No. 5:11-cv-04074-MWB, United States District Court, Northern District of Iowa ("*Syngenta v. Bunge*"), as

> a leading agribusiness company committed to sustainable agriculture through research and technology. Syngenta is, among other things, in the commercial seed business. It develops, produces, and sells, through dealers and distributors or directly to growers, a wide range of agricultural products, including corn and soybean seed exhibiting useful traits that have been developed with the techniques of modern biotechnology. The seed products are then grown and harvested as raw materials for the production of biofuels or grain for livestock feed; or are milled and processed for food products.

Among Syngenta Seeds' products that it has sold in the State of Minnesota are the Viptera and Duracade variety of corn seeds that are at issue here. These seeds express, or contain, genetically-engineered traits that were designed to confer resistance to insects.

12. Syngenta Seeds is liable for the actions of those with whom it acted in concert through agreements or other arrangements to act in a collective manner and/or as a joint venture, including Syngenta Corporation ("Syngenta Corp."), Syngenta AG, Syngenta Crop Protection AG ("Crop Protection AG"), Syngenta Crop Protection, LLC ("Crop Protection LLC"), and Syngenta Biotechnology, Inc. ("Syngenta Biotech"). Syngenta AG wholly owns, directly or indirectly, each of Syngenta Seeds, Crop Protection AG, Syngenta Corp., Crop Protection LLC, and Syngenta Biotech (hereinafter, collectively "Syngenta").

III. FACTUAL ALLEGATIONS

13. Biotechnology firms such as Syngenta develop and obtain patents on their bio- engineered products, in this instance seeds. These products are also referred to as genetically-modified organisms, or "GMOs." A patent gives the biotechnology firm the exclusive right to sell its bio-engineered products; however, those patents eventually expire. Biotechnology firms have an

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

economic incentive to "commercialize" (i.e. bring their products to market for planting and harvest) as soon as possible after filing a patent application to maximize profitability.

14. Syngenta set a market share goal for MIR162 by 2014 and sought to achieve commercialization as soon as possible.

15. Premature commercialization poses a well-known and significant risk of harm to Producers and Non-Producers if bio-engineered commodity products are commercialized before they are approved by key importing nations. Certain importing nations, such as China, have a "zero tolerance" policy and will reject grain imports from the United States if they detect the presence of even trace amounts of an unapproved bio-engineered genetic trait in grain shipments. This was well known in the biotechnology industry, including Syngenta, by 2007 at the latest.

16. Syngenta commercialized MIR162 and Event 5307 despite clear risk of harm to its stakeholders, including the Plaintiffs, despite Syngenta's knowledge of that risk, and despite Syngenta's own professed commitment to responsible management.

17. Moreover, Syngenta commercialized MIR162 by consistently misrepresenting the importance and status of China's approval, and without adequate systems in place to isolate or channel MIR162, virtually assuring that MIR162 would contaminate the U.S. corn supply.

A. Recognized Risk of Irresponsible Commercialization

18. As recognized within the industry, including by Syngenta, the harm threatened by irresponsible commercialization is very real.

19. "There have been a number of high-profile cases involving genetically modified varieties ... and disruption of international shipments of commodity grains such as corn, wheat, and rice." http://www.syngentafoundation.org/index.cfm?pageID=703.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

20. For example, bio-engineered corn contaminated the U.S. corn supply in 2000 and disrupted international trade causing loss to producers and non-producers. *See In re StarLink Corn Prods. Liab. Litig.*, 212 F. Supp. 2d 828 (N.D. Ill. 2002).

21. In 2006, bio-engineered rice contaminated the U.S. rice supply, again disrupting trade and causing massive damages to U.S. rice producers and non-producers. *See In re Genetically Modified Rice Litig.*, 666 F. Supp. 2d 1004 (E.D. Mo. 2009); *Bayer CropScience LP v. Schafer*, 385 S.W.3d 822 (Ark. 2011).

22. In addition to being aware of these and other well-publicized incidents at the time it commercialized MIR162, Syngenta had (and has been) continuously warned by stakeholders about the importance of, and need for, responsible commercialization.

23. For example, when Syngenta commercialized MIR604 (Agrisure® RW) in 2007, the National Grain and Feed Association ("NGFA") (of which Syngenta is a member) and the North American Export Grain Association ("NAEGA") warned against an "'ill-conceived' plan to commercialize" Syngenta's Agrisure biotechnology-enhanced corn as endangering U.S. corn and corn-product exports, because Syngenta had not obtained regulatory approval for food and feed use in Japan and other U.S. export markets. *See* Houin, "Feed and grain organizations warn growers of limited export markets," Farm World (4/25/2007).

24. The International Grain Trade Coalition also chastised Syngenta, stating that Syngenta "did not respect the responsibility of importing governments to perform necessary risk assessments as demanded by their legislation," that the introduction of Agrisure® RW "was not done in an open transparent manner," and that Syngenta "did not complete authorization in major international markets possessing scientifically sound approval systems prior to commercialization." Letter from International Grain Trade Coalition to Michael Pragnell, CEO

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

Syngenta dated April 18, 2007, p2. The International Grain Trade Coalition further stated that Syngenta's conduct "[e]xposed downstream members of the value chain including producers, handlers, exporters, importers, food processors and distributors to significant liability as currently all countries employ a zero threshold policy for an event not authorized by the importing country" and strongly urged Syngenta to "reverse immediately its decision to commercialize Agrisure RW at this time." *Id.*

25. The Biotechnology Industry Organization ("BIO") is the world's largest biotechnology trade association, of which Syngenta is or was a member. BIO has expressly recognized that "[a]synchronous authorizations combined with importing countries maintaining 'zero tolerance' for recombinant-DNA products not yet authorized results in the potential for major trade disruptions." BIO Product Launch Stewardship Policy, May 21, 2007, at Annex 1 Introduction; *see also* BIO Product Launch Stewardship, December 10, 2009, at Annex 1 Introduction (same); BIO "Stewardship: Actions to be Taken Prior to Launching Special Traits," October 4, 2010, at Annex 1 Introduction (same); BIO Product Launch Stewardship: Food and Agriculture Section, November 27, 2012, at Annex 1 Introduction (same).

26. As stated in BIO's December 10, 2009 "Product Stewardship Policy":

> Since the commercial introduction of biotechnology-derived plant products in 1996, an increasing number of biotechnology-derived plant products intended for food or feed use are authorized for commercial production in many countries throughout the world; however, authorizations in importing countries vary depending on the timing of submissions for import authorization as well as the duration of the authorization process in each country. As a consequence of these asynchronous authorizations, low levels of recombinant-DNA plant materials that have completed full safety assessments in accordance with national and international standards in one or more countries may, on occasion, be present in food or feed in countries in which the authorization process of the relevant recombinant-DNA plant material has not been completed. Asynchronous authorizations combined with importing countries maintaining 'zero tolerance' for recombinant-DNA products not yet authorized results in the potential for major trade disruptions.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

http://www.bio.org/sites/default/files/Product_Launch_Stewarship_12_10_09.pdf.

B. Syngenta Recognizes Its Stewardship Obligation

27. Under the "Corporate Responsibility" section of its website, Syngenta acknowledges the integrated nature of the commodity market and its responsibility to stakeholders affected by its business, including but not limited to Producers and Non-Producers:

> Our stakeholders are the people who can affect our business or who are affected by it. They include the following groups:
>
> Growers
>
> Industry
>
> Non-governmental organizations and international agencies
>
> Investors Employees Government

28. Syngenta has committed to "respond to feedback from its stakeholders" and "to implement high standards of stewardship for the safe, effective and environmentally responsible use of its products." http://www.syngenta.com/global/corporate/en/about-syngenta/corporate-responsibility/Pages/cr-policy-and-commitments.aspx.

29. Syngenta represents that "it prioritize[s] the issues that are most relevant to our business and most important to our stakeholders." http://www.syngenta.com/global/corporate/en/about-syngenta/corporate-responsibility/pages/focus-areas.aspx

30. Syngenta also represented that it maintains high standards and even eclipses regulatory requirements.

31. In Syngenta's "Code of Conduct," posted on its website for all stakeholders to read, Syngenta represents:

- "The trust and confidence of Syngenta's stakeholders is critical to our continuing success and will only be sustained if the company acts and is seen to act in accordance with the highest standards of ethics and integrity.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

> To ensure we meet the standards which our stakeholders expect, we have produced this new Syngenta Code of Conduct . . . ."

- "We provide innovative, reliable, high-quality products and have safeguards to protect stakeholders."
- "The creativity of our people provides products which help growers meet the global challenges to agriculture."
- "We will work closely with customers, contractors, users and all other stakeholders to ensure proper and responsible use of our products and understanding of the precautions that apply ...."

32. In November 2007, Syngenta adopted its own "Bio Product Launch Policy." The Syngenta Bio Product Launch Policy incorporates BIO's Product Launch Policy and requires Syngenta to perform a market and trade assessment to identify key importing nations and obtain those nations' approval before commercializing a new bio-engineered product. http://www.syngentabiotech.com/biopolicy.aspx.

33. On its website, Syngenta also suggests that it complies with the stewardship standards adopted by CropLife International and Excellence Through Stewardship, advising farmers that they may learn more about "stewardship" by visiting the provided links. *See* http://www.syngentabiotech.com/BioStewardshipLinks.aspx.

34. It is clear that the importance of obtaining import approval from key markets was well known and recognized within the biotechnology industry and by Syngenta before Syngenta commercialized MIR162 under the Viptera brand name and trademark for the 2011 crop year.

35. Syngenta committed to not commercializing new genetically modified traits that had not been approved by key import markets. *See, e.g.*, BIO Product Launch Policy, Syngenta Implementation Principles (Nov. 2007). Syngenta clearly knew the risks of premature commercialization and knew that without stringent containment and channeling procedures, MIR162 would contaminate the U.S. corn supply and move to export markets, causing significant

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

trade disruption, as set out below. Based on clear warnings and its own knowledge, Syngenta knew, or plainly should have known that China was a key and growing market. Responsible practice dictated that Syngenta not commercialize Viptera, and certainly not do so without adequate containment and effective channeling measures in place, before obtaining import approval. Syngenta, however, did just the reverse.

C. Regulation, Testing, and Deregulation of MIR162

36. The process of commercialization begins with obtaining approvals from U.S. agencies, including but not limited to deregulation from the Animal, Plant, and Health Inspection Service ("APHIS") of the USDA.

37. The regulations in 7 C.F.R. part 340 (the "GMO Regulations") regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe may be plant pests. Such genetically-engineered organisms and products are considered "regulated articles." The GMO Regulations were promulgated under the Plant Protection Act (the "PPA"), 7 U.S.C. § 7701, *et seq*., or its predecessor statutes.

38. MIR162 is a genetically modified trait that before its deregulation, was regulated by the USDA under the PPA and GMO Regulations.

39. The GMO Regulations at 7 C.F.R. §§ 340.3 and 340.4 allow release into the environment of regulated, genetically modified traits, such as MIR162, before their deregulation, through field trials conducted under permits issued by, or notifications to, APHIS. Developers who field test genetically modified traits, such as Syngenta Biotech in its field testing of MIR162, are required to adhere to certain performance standards in the GMO Regulations to ensure the regulated genetically modified organism does not persist in the environment or enter the food or feed

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

supply. Similarly, at the end of all field tests, developers must destroy or properly contain any viable plant material in the field and ensure no regulated material persists in the environment beyond the duration of the trial.

40. Syngenta is no stranger to release of regulated GMO events. In 2005, Syngenta entered into a settlement with the USDA ($375,000 fine plus a required training program) stemming from its release of still-regulated Bt10 corn, which Syngenta supplied as deregulated Bt11 corn between 2001 and 2004. About 14,000 bags of Bt10 seeds were sold from 2001 to 2004, mainly to U.S. farmers but also in Canada and Argentina. The Bt10 event was found in at least five Bt corn breeding lines in the U.S, and it was estimated that the seeds could have been planted on 37,000 acres in the U.S, producing "an estimated 150,000 tons of corn from this area" and accounting for approximately .01% of the total U.S. corn acreage. *See* New York Times, "U.S. Fines Swiss Company Over Sale of Altered Seed," (Apr. 9, 2005); PR Newswire, "Syngenta Agrees to Settlement With USDA on Unintended Bt10 Corn" (http://www.prnewswire.com/news-releases/syngenta-agrees-to-settlement-with-usda-on-unintended-bt10-corn-54220787.html). Syngenta later paid a $1.5 million fine to the EPA, which conducted an investigation confirming the distribution of unregistered Bt10 corn on "over 1000 occasions." EPA News Release "EPA Fines Syngenta $1.5 Million for Distributing Unregistered Genetically Engineered Pesticide." (Dec. 21, 2006).

41. Between 1999 and 2007, Syngenta Biotech conducted at least 119 field trials of MIR162 corn under at least 20 permits issued by, or notifications to, APHIS under the GMO Regulations at sites in 31 states, including multiple field tests in Minnesota.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

42. The GMO Regulations in 7 C.F.R. § 340.6(a) provide that any person may submit a petition to APHIS seeking a determination that an article should not be regulated under 7 C.F.R. §340.

43. On May 24, 2007, Syngenta filed a patent application for MIR162 to secure its exclusive right to market that corn trait, pending regulatory approval by the USDA.

44. On or about September 10, 2007, Syngenta Biotech submitted a petition (the "MIR162 Deregulation Petition") seeking a determination of nonregulated status (APHIS Petition Number 07-253-01p) for corn (Zea mays L.) designated as transformation event MIR162, which has been genetically engineered for insect resistance, stating that the corn line MIR162 is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under the GMO Regulations.

45. On information and belief, Syngenta Biotech continued its field tests of MIR162 under the GMO Regulations during the approximately 31-month period after filing the MIR162 Deregulation Petition and the USDA decision deregulating MIR162 in April 2010.

46. Syngenta Biotech stated in the MIR162 Deregulation Petition that it understood "that a copy of the MIR162 Deregulation Petition may be made available to the public as part of the public comment process." MIR162 Deregulation Petition at 3 of 268. APHIS's notice, published in the Federal Register on January 13, 2010 (75 Fed. Reg. 1749) (the "MIR162 Deregulation Notice"), expressly invited public comment regarding the MIR162 Deregulation Petition and further provided instructions as to how copies of the petition and accompanying draft environmental assessment and plant pest risk assessment could be obtained either by placing a phone call or accessing them on the internet.

47. In a preliminary observation to Section IX of the MIR162 Deregulation Petition, entitled "Adverse Consequences of Introduction" (the "Adverse Consequences Discussion"), Syngenta

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

Biotech represented that it knew "of no data or observations that indicate [that] MIR162 would adversely impact the quality of the human environment, directly, indirectly, or cumulatively. This includes a lack of anticipated effects on ... the economy, either within or outside the U.S."

48. Specifically, among the matters addressed in the Adverse Consequences Discussion were "Economic Impacts" at Section IX.D. In the introduction to that section, at pages 108-09, Syngenta Biotech stated:

> Economic considerations are not explicitly described in the factors listed in 40 CFR § 1508.27. However, economic impacts do relate to the significance of the requested action and have been considered by some courts in reviewing NEPA [National Environmental Policy Act] compliance.

49. The economic impacts discussed included the "Effects on the Export Market," at Subsection IX.D.4, page 111, which included Syngenta Biotech's representation that "there should be no effects on the U.S. maize export markets" and advised that applications for approval of MIR162 maize were in process in a number of such export markets with "functioning regulatory systems," including China, stating:

> There should be no effects on the U.S. maize export market since **Syngenta is actively pursuing regulatory approvals** for MIR162 maize in countries with functioning regulatory systems for genetically modified organisms and that import maize from the U.S. or Canada. Regulatory filings for MIR162 maize are in process for Colombia, Japan, South Korea, Taiwan, China, the Philippines, Australia and New Zealand, South Africa, the European Union, Russia, and Switzerland. (Emphasis added).

50. Other portions of the MIR162 Deregulation Petition made similar representations regarding China.

51. Syngenta Biotech also stated in Subsection IX.D. of the MIR162 Deregulation Petition that stewardship agreements with growers would require channeling of MIR162 away from export markets that had not approved import of MIR162 maize, that Syngenta would undertake "a wide-

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

ranging grower education campaign" respecting channeling, and that channeling would be effective based on prior experiences with the specialty maize market:

> Syngenta's stewardship agreements with growers will include a term requiring growers to divert this product away from export markets (i.e. channeling) where the grain has not yet received regulatory approval for import. Syngenta will communicate these requirements to growers using a wide-ranging grower education campaign (e.g., grower Stewardship Guide). As noted in the context of the IRM program, these procedures are not hypothetical.
>
> The ability to channel particular types of maize for particular uses, such as the export market, is demonstrated by the continuing success of the specialty maize market. Use of identity preservation measures has enabled growers to maintain a wide variety of specialized maize products, including white food maize, waxy maize, hard endosperm maize, high oil maize, nutritionally enhanced maize, high extractable starch maize, non GMO maize, and organic maize (U.S. Grains Council, 2006). Channeling programs are well established for separating each of these maize varieties. As set out above, these practices have continued successfully long after the introduction of numerous varieties of transgenic maize.

52. The stewardship agreements to which Syngenta Biotech referred were later used between growers and Syngenta Seeds.

53. In December 2009, based on its review of the MIR162 Deregulation Petition, APHIS prepared a Draft Environmental Assessment that parroted what Syngenta Biotech had represented in the MIR162 Deregulation Petition:

> There should be no effects on the U.S. corn export market since Syngenta is actively pursuing regulatory approvals for the MIR162 corn in countries with functioning regulatory systems for genetically modified organisms and that import corn from the U.S. or Canada. Regulatory filings for the MIR162 corn are in process for ... China.

54. The Draft Environmental Assessment was among the documents publicly available under the MIR162 Deregulation Notice.

55. On April 12, 2010, APHIS concluded that MIR162 corn should be deregulated. *See* Determination of Nonregulated Status for MIR162 Corn (Apr. 12, 2010); *see also* Syngenta

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

Biotechnology, Inc. Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance, 75 Fed. Reg. 20560 (Apr. 20, 2010).

56. Before making that determination, APHIS, on April 9, 2010, issued its National Environmental Policy Act Decision and Finding of No Significant Impact and, in March 2010, issued its Final Environmental Assessment. APHIS compared the anticipated impact by taking no action (i.e., keeping MIR162 as a regulated article) with deregulating MIR162 and concluded in the Finding of No Significant Impact that in each instance the impact on the "Export Market" would remain "unchanged." Similarly, in the Final Environmental Assessment dated March 2010, APHIS adopted and repeated Syngenta's representations that it did not expect any effects on the U.S. corn export market "by the cultivation of the MIR162 corn cultivars" and that applications to countries with functioning regulatory systems, including China, were in process.

57. Thereafter, on April 21, 2010, Syngenta issued its press release, "Syngenta receives approval for breakthrough corn trait technology in the U.S." (Apr. 21, 2010). In making the announcement that MIR162 had been deregulated, Syngenta noted the plans for its imminent commercialization, stating that "[t]he trait will be combined with the Agrisure 3000GT trait stack to provide corn growers with broad-spectrum, insect control and glyphosate tolerance for maximum convenience and productivity" and that "Syngenta plans to commercialize hybrids containing the Agrisure Viptera trait for the 2011 growing season."

58. The April 21, 2010 press release confirms that the MIR162 Deregulation Petition was a document prepared and published by Syngenta for the sole purpose of facilitating, promoting, and inducing the commercial sale of its products containing the MIR162 trait. The MIR162 Deregulation Petition contained statements and representations to induce APHIS to deregulate MIR162, thereby beginning the commercialization of the product. Further, the MIR162

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

Deregulation Petition was filed with full knowledge that the statements and representations therein would be published to stakeholders, including Producers and Non-Producers. The commercial nature of the statements in the MIR162 Deregulation Petition is clear: In explaining the rationale of the MIR162 Deregulation Petition, Syngenta stated that "[t]ransformation event MIR162 maize has been developed by Syngenta to provide growers with maize varieties that are resistant to feeding damage caused by a number of significant lepidopteran insect pests. This trait will be offered to growers in combination with other deregulated maize traits." MIR162 Deregulation Petition at 11. The MIR162 Deregulation Petition espoused the sale of the product to growers, and was rife with representations about the commercial benefits of Syngenta's product and expected market impact. The following further indicates that Syngenta made commercial representations in the MIR162 Deregulation Petition:

a. "Transformation event MIR162 has been developed by Syngenta to provide U.S. growers with maize hybrids that are resistant to feeding damage caused by a number of lepidopteran insect pests. … Commercialization of this new trait has the potential to reduce conventional insecticide use in maize, increase grower profits, and improve grain quality." (p.13);

b. "[I]t [MIR162] will be commercialized as a combined-trait hybrid with Syngenta's Bt11 maize event." (p.96);

c. Syngenta's numerous references to and representations regarding the commercial benefits to farmers from introduction of MIR162. (*see, e.g.*, pp. 5, 97, 109 (enhanced productivity), p.110 (increased competition and farmer and consumer choice));

d. Syngenta's repeated observations that no adverse consequences should occur to the economy, either within or outside the United States (*see e.g.*, p.5) and the statements regarding the lack of impact on exports and intended channeling away from export markets that had yet to approve MIR162 as alleged above;

e. An appendix report regarding the economic implications of the introduction of MIR162; and

f. Syngenta's acknowledgement that the MIR162 Deregulation Petition would be made available to the public as previously alleged (p.3).

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

59. Contrary to Syngenta's representations that its regulatory filings were "in process" in China, Syngenta first sought regulatory approval for MIR162 from China's Ministry of Agriculture three years later, in or around March 2010. *See* http://www.syngenta-us.com/viptera_exports/images/MIR162-Regulatory-Timeline-9-2014.pdf.

60. Consistent with its statements to the USDA in the MIR162 Deregulation Petition, Syngenta considered China to have a functioning and predictable regulatory system.

D. Syngenta's Initial Commercialization

61. As Syngenta knows, nothing about USDA deregulation requires a developer such as Syngenta to commercialize.

62. Responsible practice dictated Syngenta obtain import approval from key market countries before commercialization (or at minimum, before first planting). *See, e.g.*, BIO Product Launch Stewardship, December 10, 2009, at p.4.

63. As early as 2009, Syngenta acknowledged that China was a key export country.

64. In a presentation to the NGFA in 2010, Syngenta listed China as among "key import approvals" it was or would be seeking. *See* Powerpoint titled "2010 Syngenta Pipeline," Presentation to the National Grain and Feed Association.

65. Syngenta, however, knew well that it would not have import approval from China for the 2011 crop year.

66. The typical time period for import approval from China at that time was approximately 2-3 years.

67. Syngenta was not even projecting approval from China for the 2011 crop year but rather, was hoping for approval by the 2012 crop year.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

68. Syngenta privately planned from the outset to commercialize Viptera with or without China's regulatory approval, notwithstanding the commitments it had made to stakeholders and industry participants not to commercialize genetically modified traits until after approval from key export markets.

69. Syngenta commercialized Viptera for the 2011 growing season despite the lack of regulatory approval from China, and despite Syngenta's knowledge that China was a key (and growing) export market for U.S. corn.

70. Syngenta did not disclose these facts to Producers or Non-Producers.

71. Syngenta was well aware in 2010 of the strong likelihood that China would be a significant import market by 2011.

72. It was well known at least by August 2010 that China was an important and growing export market for US corn. As reflected in a trade publication at the time:

> China is entering a 'new era' of corn buying. The world's most populous country may import as much as 15 million tons of corn in 2015, according to the U.S. Grains Council. ... Chinese imports of corn will grow from 1.7 million tons in 2010 to 5.8 million tons in 2011, and to 15 million tons in 2014-15, according to Hanver Li, Chairman of Shanghai JC, speaking to the U.S. Grains Council.... Where will China import all this corn from? The first place they will turn is the U.S., which is the world's largest corn exporter, accounting for 60% of global corn exports in 2009.... If China imports an incremental 600 million bushels of corn in 2014 from the U.S., using the USDA's baseline projections, U.S. corn ending stocks would be 960 million bushels. This would put the Ending Stocks to Use Ratio at 6.3%, the lowest level since 1995. 2010 is a major turning point in the grain market. The Chinese transition to becoming a net importer of corn will have a substantial implication on the world's corn supply.

http://www.farmlandforecast.com/2010/08/chinese-imports-to-change-grain-markets/.

73. Syngenta was, and continues to be, a member of the U.S. Grains Council. Indeed, Syngenta's Rex Martin has, on information and belief, actively participated as a member of the Council's Biotechnology Advisory Team.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

74. In addition, NAEGA warned Syngenta of the importance of obtaining Chinese regulatory approval before launch during a meeting in or around August 2010 with NGFA's Biotechnology Committee. *See* July 14, 2011 NGFA Newsletter. The same issue was discussed at the subsequent NGFA Biotechnology Committee meetings – during the March 2011 convention and another meeting on June 29, 2011 in Washington.

75. Syngenta knew of NAEGA's warning by the summer of 2010 and also knew of NAEGA's position that import approval should be obtained from China before marketing MIR162.

76. Nevertheless, Syngenta refused to stop its commercialization of Viptera in 2010 for planting and harvest in 2011.

77. In the fall of 2010, NGFA, in a private meeting with David Morgan, Regional Director of North America and President of Syngenta Seeds, also urged Syngenta to delay commercialization of Viptera, emphasizing the risk of trade disruption with China.

78. On October 29, 2010, a Reuters article was circulated among Syngenta executives stating: "Chinese corn imports have rocketed this year and are expected to continue growing next year, after China's own harvest couldn't keep up with a boom in demand...."

79. Evidence of China's importance continued to mount before planting in 2011.

80. In January 2011, Syngenta knew that China had become the second most important market for U.S. corn.

81. The USDA's long-term projections, compiled in November 2010 and issued in February 2011, forecast dramatic increases in China's imports of corn from the USDA's prior year's projections. As stated by the USDA, the "increase in China's imports account for one-third of the growth in world corn trade."

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

82. As early as 2011, Syngenta knew that China's import requirements influenced global commodity prices and understood the risk of proceeding with commercialization without approval from China.

83. At the time it was marketing and selling Viptera – and before planting in 2011 – Syngenta clearly knew of China's importance.

84. In a June 2010 Risk Management Report," Syngenta recognized that MIR162 [would be] detected as unapproved trait" as a consequence of large scale production "before all import approvals are in place." The report recognized that increased production in 2010 of corn containing MIR162 increased the "likelihood of MIR162 being detected as [adventitious presence] in an export channel." Syngenta classified the impact of this risk as "high." Risk Management Report, dated June 2010; *see also* MIR162 & EU approvals Powerpoint attached to e-mail from David O'Reilly, dated Oct. 21 2009.

85. On February 25, 2011, Syngenta's Head of Industry Relations corresponded with the Head of Syngenta's Southeast Asian Territory as follows:

> I believe I have discussed with you several times about our risk with MIR162 and not having approval in EU and China. I have been getting more questions from traders … lately and [Charles Lee, Head of Corn for North America] wanted me to be sure you understood the potential risk for China.

86. Syngenta could, and should, have waited to market Viptera. It also could, and should, have withdrawn it from the market before planting. But it did not.

87. To the contrary, and despite the risks, Syngenta Seeds sold Viptera to approximately 12,000 Producers with a projected yield estimated in September 2011 of 250 million bushels. *See Syngenta v. Bunge*, 820 F. Supp. 2d 953, 958 (N.D. Iowa 2011). Viptera growers could be found in nearly every state such that the market for Viptera products was very broad across the U.S. *See*

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

id. at 963. Syngenta projected that Viptera seed sales would exceed twenty percent (20%) of the U.S. corn seed market in future years. *See id.* at 958.

88. Other published estimates indicate that during the 2011 crop year, Viptera had been planted on 1.1% of the acres in the U.S. on which corn was grown.

E. Syngenta's Continuing Irresponsibility After 2011 Planting

89. After planting, but before harvest in 2011, the importance of China, and the risk of MIR162 contamination and market disruption, continued to grow.

90. A 2011 news article projected that China "will probably buy 5 million metric tons this year from 2 million tons in 2010."

91. On July 22, 2011, Syngenta's CEO Michael Mack stated: "The need to improve yield and quality is present across all emerging markets in the region, although it's China which continues to have the greatest impact on world markets, with increasing imports not just of soybeans but also now of corn." July 22, 2011 Transcript of Remarks (http://www.syngenta.com/global/corporate/SiteCollectionDocuments/pdf/transcripts/H1-2011-results-transcript.pdf).

92. In fact, Syngenta had known for some time that China would be a significant importer of corn in 2011.

93. In August 2011, still before the first commercially-grown corn planted with the MIR162 trait had been harvested, NGFA and NAEGA issued a Joint Statement warning Syngenta about MIR162:

> U.S. farmers, as well as the commercial grain handling and export industry, depend heavily upon biotechnology providers voluntarily exercising corporate responsibility in the timing of product launch as part of their product stewardship obligation.... The negative consequences of overly aggressive commercialization of biotech-enhanced events by technology providers are numerous, and include exposing exporting companies to financial losses because of cargo rejection,

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

> reducing access to some export markets, and diminishing the United States' reputation as a reliable, often-preferred supplier of grains, oilseeds and grain products. Premature commercialization can reduce significantly U.S. agriculture's contribution to global food security and economic growth.
>
> Putting the Chinese and other markets at risk with such aggressive commercialization of biotech-enhanced events is not in the best interest of U.S. agriculture or the U.S. economy.

94. As stated by these associations: "The grain handling and export industry have communicated consistently, clearly and in good faith with biotechnology providers and seed companies about the importance of biotech-enhanced events in commodity crops receiving regulatory approvals or authorizations – prior to commercialization – in key export markets where foreign governments have functioning regulatory systems that approve biotech-enhanced traits. These communications regarding key export markets, identified through market and trade assessments, have been conveyed through industry trade associations and in direct communications by individual companies." *Id.*

95. Not only did Syngenta commercialize Viptera prematurely, it did so without adequate systems in place to either isolate MIR162 or channel it away from markets, including China, from which approval was not obtained.

F. Transgenic Contamination

96. Corn, or maize, has staminate (male) and pistillate (female) flowers on the same plant and is wind pollinated. While there is some possibility of self-fertilization, corn generally is considered an outcrossing species. Under normal field conditions, some 95% of the ovules are fertilized by pollen from other plants. Pollen is released in large quantities. "Individual corn plants produce 4 to 5 million pollen grains. Therefore, even if only a small percentage of the total pollen shed by a field of corn drifts into a neighboring field, there is considerable potential for

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

contamination through cross pollination." Thomison, "Managing 'Pollen Drift' to Minimize Contamination of Non-GMO Corn," Ohio State University Extension Fact Sheet.

97. "Once released from the tassels into the air, pollen grains can travel as far as 1/2 mile (800 m) in 2 minutes in a wind of 15 miles per hour (27 km/h) (Nielsen 2003b)." Kent Brittan, "Methods to Enable the Coexistence of Diverse Corn Production Systems," University of California. Studies indicate that "cross-pollination between cornfields could be limited to 1% or less by a separation distance of 660 feet (200 m), and to 0.5% or less by a separation distance of 984 feet (300 m). However, cross-pollination frequencies could not be reduced to 0.1% consistently, even with isolation distances of 1,640 feet (500 m)." *Id.*

98. The Association of Official Seed Certifying Agencies (AOSCA) recognizes that "[a]lthough most corn pollen is deposited near its origin, isolation by very long distance (several miles) from any other corn is probably the only means of assuring complete confinement other than assuring complete asynchrony of flowering." However, "[t]he matter of whom or what entity controls the area constituting a proposed isolation zone and beyond could be crucial and/or problematic to successful confinement. AOSCA Report at 62. Assuring "complete asynchrony of flowering" also is fraught with shortcomings. For example, "[d]ifferences in maturity between the early and late hybrid may not be large enough to ensure that the flowering periods of each hybrid will not overlap, especially when certain climatic conditions may accelerate or delay flowering. Moreover this strategy will only work if [the farmer] control[s] the adjacent fields or can closely coordinate [his] corn planting operations with those of [his] neighbors." Thomison, "Managing 'Pollen Drift' to Minimize Contamination of Non-GMO Corn," Ohio State University Extension Fact Sheet.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

99. In addition, "[p]lanting operations to control pollen drift are only part of the process of producing an IP corn grain crop." *Id.* Other major issues include harvesting, storage, and commingling within the production and supply chain.

100. "Different corn breeds within an individual farm are commingled at the harvesting stage. Corn from hundreds of thousands of farms is then further commingled as it is gathered, stored and shipped through a system of local, regional and terminal grain elevators. Elevators, storage and transportation facilities are generally not equipped to test and segregate corn varieties. The commingled corn is then marketed and traded as a fungible commodity." *In re StarLink Corn Prods. Liab. Litig.*, 212 F. Supp. 2d 828, 834 (N.D. Ill. 2002).

101. As a developer of genetic events, including genetically engineered corn, Syngenta knew or certainly should have known the very high likelihood that if commercialized, MIR162 would disseminate throughout the supply chain – in fields, storage and transportation – via the numerous routes that transgenic contamination occurs.

102. Syngenta knew that enough commingling of Viptera with non-Viptera corn would occur at harvest in the fall of 2011 to be detectable in export channels, and that as a result there was a risk that China would reject shipments of corn due to the presence of Viptera.

103. Before commercializing MIR162, Syngenta also knew the risk that MIR162 would move into export channels from planting and harvest of MIR162, knew that risk was significant, and knew that detection of MIR162 in markets lacking approval created significant risk of trade disruption.

104. Syngenta, however, took few to no steps to assure that MIR162 would not enter the U.S. corn supply through cross-pollination and/or commingling in fields, and took wholly inadequate steps to prevent commingling within grain elevators or otherwise within the supply

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

chain as described below, virtually assuring that MIR162 would contaminate the U.S. corn supply in every way possible.

G. Syngenta's Nonsensical and Ineffective "Stewardship" Program

105. Syngenta's representation in its MIR162 Deregulation Petition that the "ability to channel particular types of maize for particular uses such as the export market" is demonstrated by success in the "specialty maize market" is grossly misleading. In specialty markets like organic farming, the grower receives a premium and, as such, takes the onus on himself to isolate his specialty corn crop from transgenic contamination from neighboring fields (such as spatial and temporal isolation and detasseling). *See* Thomison, "Managing Pollen Drift in Maize Seed Production," Department Horticulture and Crop Science, Ohio State University ("Growers of value added identity preserved (IP) grains need to control pollen contamination in order to optimize expression of value added traits in specialty maize and thereby obtain premiums."). The specialty seller also markets to a specialty buyer to whom he channels. Both have incentive to take all measures necessary to avoid contamination by non-specialty corn. The growing, marketing, and distribution system of commodity corn is vastly different. A "Commodity Crop" is "a crop which in the ordinary course is grown using common agricultural practices and is commingled and not segregated for special handling or use when it enters the chain of commerce." Biotechnology Industry Organization, "Product Launch Stewardship: Food and Agriculture Section," November 27, 2012, at Annex 1 Introduction n.3.

106. Syngenta knew that the commodity market is different from the specialty market.

107. The difficulties with channeling are illustrated by the infamous "StarLink" contamination in 2000 that was the subject of significant litigation. *See In re StarLink Corn Prods. Liab. Litig.*, 212 F. Supp. 2d 828 (N.D. Ill. 2002). That is particularly so where millions of acres

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

of the commodity to be channeled – MIR162 corn – were planted all across the U.S. Syngenta did not make even minimally reasonable efforts to prevent transgenic contamination.

108. Syngenta's representations to the USDA illustrate Syngenta's awareness of the kind of system designed to avoid contamination. Well-known measures in specialty markets include specifying strict containment protocols by contract (e.g., cleaning combines and storage areas, isolation distances, dedicated facilities, and inspections) and tracing the product through the supply chain.

109. Syngenta, however, did not take meaningful steps to even minimize the risk of pollen-mediated gene flow and commingling of Viptera with non-Viptera corn.

110. Responsible stewardship procedures include, at minimum, "generally accepted best seed quality practices designed to prevent low level presence of unauthorized products and [to] minimize unintended incidental presence of products authorized in the county of production" and "[m]ak[ing] available prior to commercialization a reliable detection method or test for use by growers, processors and buyers that enables crop identity verification for intended use." *See* BIO "Product Launch Stewardship," dated December 10, 2009 Annex 1, Policy Guidance; BIO "Stewardship Actions to be Taken Prior to Launching Special Traits," dated October 4, 2010, Annex 1, Policy Guidance; BIO "Product Launch Stewardship: Food and Agriculture Section," dated November 27, 2010, Annex 1 Policy Guidance.

111. Syngenta stated that it would make available a reliable detection method or test for MIR162 before commercializing Viptera.

112. In July 2010, Syngenta executives discussed methods for detecting genetically modified traits.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

113. Syngenta did not provide a test method to farmers or grain handlers as part of a required stewardship program.

114. Syngenta also could have contractually required that Viptera growers adhere to stringent practices that would have decreased the likelihood of contamination. Syngenta did not do so, however, because to do so would have drastically reduced sales of that product.

115. Instead, and contrary to requiring isolation, Syngenta Seeds gave away free bags of Viptera to farmers as part of a campaign to encourage growers to grow Viptera side-by-side with other corn to compare performance. *See Syngenta*, 820 F. Supp. 2d at 958.

116. Syngenta expected Viptera corn to cross-pollinate with non-Viptera corn and told farmers to consider the adjacent corn Viptera corn. Yet, there was no contractual requirement for growers to take measures to prevent such cross-pollination in their own fields, to segregate Viptera from non-Viptera corn, or to prevent contamination of other farmers' fields.

117. In fact, Syngenta advised at least one grower that he had no obligation to tell neighboring corn farmers or grain originators that he had planted Viptera. This advice was in response to the farmer's concern that he might be liable if his Viptera corn cross-pollinated with his neighbor's corn.

118. Moreover, on information and belief, in addition to the acreage on which Viptera (and later Duracade) have been grown from sales of those products, Syngenta has grown on land within the U.S. corn containing the MIR162 trait for purposes of seed increase and to develop inventories of product to sell to farmers. This additional growth further increased the presence of MIR162 within U.S. agriculture and the widespread, pervasive contamination that has caused disruption of trade in U.S. corn with China.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

119. Syngenta's commercial sales of Viptera for planting, growing, and harvest in 2011 reached across the U.S., covering nine hundred nineteen (919) counties and thirty-eight (38) states. *See* "Unit Stats by State and County, Viptera Only" (Lee Bunge deposition exhibit); *see also Syngenta v. Bunge*, 820 F. Supp. 2d at 958, 963. Despite the pervasive presence of Viptera and Syngenta's knowledge of the risks, Syngenta did not require growers to comply with the kind of strict measures Syngenta knew were minimally necessary to even have a chance at containment.

120. Syngenta's professed "channeling" efforts, which could and should have been in place well before harvest to direct Viptera away from markets lacking import approval, also were wholly—and purposefully—inadequate.

121. In its 2007 MIR162 Deregulation Petition, Syngenta represented that a lack of Chinese approval would not pose a problem for Producers and Non-Producers because:

> Syngenta's stewardship agreements with growers will include a term requiring growers to divert this product away from export markets (i.e. channeling) where the grain has not yet received regulatory approval for import. Syngenta will communicate these requirements to growers using a wide-ranging grower education campaign (e.g., grower Stewardship Guide) ... [T]hese procedures are not hypothetical.

122. Syngenta's "stewardship" program, however, presented "hypothetical" and ineffective procedures, which made contamination of the U.S. corn supply virtually certain.

123. Contrary to representations in its MIR162 Deregulation Petition, Syngenta did not, on information and belief, institute a "wide ranging grower education campaign" through its Stewardship Agreements, Stewardship Guides or otherwise. Syngenta certainly did not do so in a manner that would be meaningful and effective.

124. On information and belief, none of Syngenta Seeds' Stewardship Agreements with growers contained any details on Syngenta's stewardship program. Instead, the agreement

27-CV-15-17855
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

provided that growers should comply with the "most current" version of a "Stewardship Guide," which might or might not be given to them when they received the product, and was subject to unilateral change at any time via modification to a website. *See* Syngenta Seeds, Inc. Stewardship Agreement (Revised 08/2009) at 1; Syngenta Seeds, Inc. Stewardship Agreement (Revised 03/14/2011) at 1; Syngenta Seeds, Inc. Stewardship Agreement (Revised 05/11/2011) at 1; Syngenta Seeds, Inc. Stewardship Agreement (Revised 06/05/2013) at 1.

125. In other words, Syngenta's "stewardship" program for Viptera depended, at the outset, on thousands of individual farmers across the country locating and understanding a Stewardship Guide that they may not have been provided at the time of signing the Stewardship Agreement or receiving the product.

126. Moreover, while the Stewardship Agreements contained a provision for "channeling," they made no mention of China.

127. The 2009 version of the Stewardship Agreement provided that the grower "agrees to: Channel grain produced from seed to appropriate markets to prevent movement to markets where the grain has not received regulatory approval for import." It does not, however, identify China as one of those markets. Rather, the agreement states that: "Grain harvested from corn hybrids containing Agrisure Technologies ... may not be fully approved for grain export to **Japan or the European Union**" and that "grain from hybrids that do not have the appropriate import approvals from **Japan and the European Union** must be directed to domestic uses and away from export channels." Syngenta Seeds, Inc. Stewardship Agreement (Revised 08/2009) at 2 (emphasis added). There is no reference to any other unapproved markets, including China.

128. The March and May 2011 versions of Syngenta Seeds' Stewardship Agreement said—and did not say—the same thing. *See* Syngenta Seeds, Inc. Stewardship Agreement

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

(Revised 03/14.2011) at 1, 2; Syngenta Seeds, Inc. Stewardship Agreement (Revised 05/11/2011) at 1, 2.

129. Syngenta Seeds' 2013 version of the Stewardship Agreement removed the reference to Japan and the European Union but even then did not mention China.

130. None of the agreements contain any instruction on how the grower was supposed to "channel."

131. Syngenta knew or should have known that bare reference to channeling (and at that, without reference to China) would be ineffective.

132. To the extent that other versions of the Stewardship Agreement (or Stewardship Guide) reference China, the concept of "channeling" by thousands of individual corn farmers under Syngenta's non-existent— or, at minimum, inadequate— "stewardship" program, was certain to fail.

133. "Channeling" can only work if all grain handlers and others in the supply chain are engaged in that endeavor. For example, BIO recognizes that a realistic assessment of conditions related to handling, distributing, processing, and testing products must engage the various stakeholders. *See* BIO Product Launch Stewardship, December 10, 2009 at Introduction.

134. On information and belief, Syngenta did not obtain channeling commitments from supply chain participants, and took no further action to create a marketing plan or channeling mechanism. Syngenta also failed to coordinate with grain handling, export, and other post-harvest firms, to ensure that Viptera corn was not directed to markets for which regulatory approval had not been received, including China.

135. This failure was purposeful. Syngenta made a decision that no special provisions would be made for grain redirection.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

136. Not only did Syngenta decide it would take no measures for channeling Viptera, Syngenta sought to stop exporters and grain elevator operators from attempting to "channel" Viptera away from China. Specifically, Syngenta brought a lawsuit against Bunge, a grain elevator operator, who refused to accept Viptera corn because that operator exported corn to China.

137. On August 17, 2011, Syngenta issued a letter to Viptera growers expressing disappointment that Bunge and Consolidated Grain & Barge reportedly would "not be accepting grain with the Agrisure Viptera trait." Syngenta recommended to growers that they simply "[d]eliver[] to elevators accepting grain with the Agrisure Viptera trait." Syngenta made no mention that these elevators should channel the grain to markets in which that trait had been approved.

138. Syngenta Seeds sued Bunge, complaining that Bunge could not refuse to accept Viptera corn at its grain elevators. Bunge had posted notices at its grain elevators that it would not accept Viptera corn because the MIR162 trait was not then approved in China, China had a zero tolerance policy regarding non-approved GMO events such as MIR162, and Bunge has significant contracts with Chinese markets that it wanted to fulfill.

139. Syngenta Seeds sought an injunction requiring Bunge to accept the Viptera corn despite: (i) its earlier representations in the MIR162 Deregulation Petition that corn grown with its MIR162 trait would be channeled away from export markets that had not yet approved of its importation; (ii) the requirement in its Stewardship Agreement with growers who had purchased Viptera seed requiring them to channel their harvested grain away from export markets that had not yet approved the importation of MIR162 corn; and (iii) the protocols referenced above approved by BIO and other organizations, of which Syngenta was/is a member, requiring

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

consultation with industry stakeholders and not commercializing approved traits without major market approval.

140. At the end of the 2010 crop year in August 2010, China had already become the seventh-largest importer of U.S. corn. *See Syngenta*, 820 F. Supp. 2d at 860-61. Thereafter, in the spring of 2011, Bunge had sold millions of dollars of U.S. corn for delivery to China between September 2011 and January 2012. *Id.*

141. The Court in *Syngenta v. Bunge* denied Syngenta Seeds' requested injunction on September 26, 2011. In denying the requested injunction, the Court found that it was foreseeable that China would not approve importation of MIR162 during the 2010-2011 crop year, that during that year U.S. exports to China might be significant, and that Syngenta Seeds had caused the very harm of which it complained. The Court refused to shift the risk to Bunge for Syngenta's commercializing of Viptera before receipt of approval from China. Specifically, the Court in that case concluded that:

> [a]t least to some extent, Syngenta's reputational injuries [allegedly caused by Bunge's refusal to accept Agrisure Viptera], though significant, are the result of Syngenta's decision to commercialize Viptera corn before obtaining import approval from significant import markets, including China, where Bunge's rejection of unapproved traits was not wholly unforeseen or unforeseeable.

Syngenta, 820 F. Supp. 2d at 988.

142. The Court also concluded that:

> no reasonable balance of equities would impose upon Bunge the prodigious additional expense of segregating Viptera corn (or segregating non-Viptera corn earmarked for Chinese export), where Bunge did not create the situation in Viptera corn has not been yet approved for import to China. That situation arises entirely because Syngenta decided to commercialize Viptera corn knowing that it did not yet have Chinese and some other import approvals and would not have them for the 2011 crop year, and under circumstances in which Syngenta should have reasonably recognized that Chinese imports of United States corn for the 2011 crop year might well be very significant. Syngenta accepted the risk of commercializing Viptera corn, albeit with more than the required or recommended import approvals,

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

> but without import approval from all of the reasonably likely foreign markets. I reject Syngenta's request that I shift that risk, instead, to Bunge....

Id. at 990.

143. In addressing the public interest element for injunctive relief, the Court declined to shift the risk of the decision to commercialize MIR162 away from Syngenta: "I find that the public interest strongly favors allocating the risks of a decision to introduce a new transgenic grain into the commercial market on the company that decided to commercialize that grain before obtaining all import approvals." *Id.* at 992.

144. The Court also found that in the late summer and fall of 2011, exporters other than Bunge, including Cargill and Archer Daniels Midland ("ADM"), had also refused to accept Viptera at some of their facilities due to export market issues such as the failure of Syngenta to receive approval from the European Union. *Id.* at 962.

H. Syngenta's Irresponsibility and Misrepresentations Moving into the 2012 Crop Year

145. Despite the risk of contamination and movement of Viptera into export markets, Syngenta continued its course and sold even more Viptera for planting in 2012, further increasing those risks.

146. Syngenta expanded sales of Viptera even as China was dramatically increasing imports of U.S. corn and was projected to be the largest importer of U.S. corn by the year 2020.

147. In 2011, Syngenta was selling Viptera for the 2012 growing season.

148. Syngenta was concerned. If grain handlers like Bunge refused to take Viptera, the lack of approval from China might reduce its sales.

149. As reflected in internal correspondence, Syngenta also knew by July 2011 that China would not change its zero-tolerance policy.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

150. Syngenta, however, chose not to inform Producers and Non-Producers of the growing danger. Instead, it crafted a plan to mislead Producers and Non-Producers to believe that Syngenta would have import approval from China by the time Viptera was harvested, despite all indications to the contrary. For instance, one e-mail from Sarah Hull, Head of Global External Affairs, stated that it was "most important" to get grain traders "comfortable that the approval is close," so that they did not tell farmers to avoid MIR162 corn.

151. The purpose of this plan was to sell more Viptera.

152. United States Grains Council President, Tom Dorr, in a memorandum dated August 2, 2011 to "Seed Technology Members" and e-mailed to Syngenta, stated that "the current situation regarding the commercialization of unapproved events in China has raised industry-wide concern about potential near and longer-term disruption to US corn exports in China." In the same memorandum, he referred to China as a "major corn importer."

153. By at least early July 2011, Syngenta was already managing its message and had scripted its responses.

154. Among other things, Syngenta launched a "blame the grain trade" campaign. Another e-mail from Sarah Hull stated, in pertinent part: "I think we have to find the right balance of making this a 162 problem versus an evolutionary challenge of global grain trade and adjust our actions to reflect the latter."

155. Syngenta remained focused on its bottom line in commercializing MIR162. For instance, Syngenta internally communicated its "Yields Without Borders Program" and its "Top 10 Tactics to Energize Sales Force and Leverage Grain Marketing Channel to Secure Sales." See Syngenta document entitled: "The Role of Grain Marketing for Future Trait Technologies." Part

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

of this program was to provide regular (and misleading) updates "on progress and plans for China trait approval and to drive trait acceptance."

156. To encourage further sales and planting of Viptera, Syngenta, by at least August 2011, was representing to stakeholders, including corn Producers and Non-Producers, that Syngenta would obtain China's approval by March 2012.

157. As one of Syngenta's business partners wrote, "[i]f we say March enough, there should be no issue in ordering seed stock and seed companies will have confidence in the March date."

158. Syngenta, however, did not have a reasonable basis to believe that approval from China would be received in March 2012 and did not itself expect approval by that time.

159. Indeed, Syngenta's approval submissions to China included insufficient, incorrect, and/or incomplete information, resulting in multiple additional submissions, and also included significant delays by Syngenta in providing standard information. For example, Syngenta did not submit PCR detection methods until January 10, 2011, and had to redeliver the PCR detection method on May 16, 2011, because the first submission was unclear. This information was a required precursor to testing in China, which may take—and is expected to take—months. On June 22, 2011, Syngenta sent a letter of correction regarding mislabeling of samples. Testing did not begin in China until June 24, 2011. Testing results are known requirements of completed applications. Even after an application is complete, review and deficiency notices requiring correction are not atypical but expected.

160. No later than July 2011, and likely before that time, Syngenta knew it could not expect approval by March 2012.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

161. Syngenta's own employees recognized that approval would take significantly longer. For instance, a July 1, 2011 e-mail from Syngenta's Brian Walsh indicated that Viptera would not receive approval in China "for a few years yet."

162. Syngenta received field trial and safety test results in October and November 2011, respectively. Syngenta submitted these results in a now-completed application on November 9, 2011. At that point, Syngenta knew or clearly should have known that it would not have approval by March 2012.

163. As of May 2012, China's Ministry of Agriculture had reviewed Syngenta's application and had rejected it for deficiencies including all applicable safety analyses. Syngenta submitted another application in June 2012.

164. In addition, on information and belief, Syngenta sought approval to cultivate MIR162 in, as well as import MIR162 to, China. *See* Reuters "Update 1 – Syngenta confirms it applied to cultivate GMO corn in China" (Oct. 8, 2014) (http://www.reuters.com/article/2014/10/08/china-gmo-syngenta-idUSL3N0S317520141008).

165. China has more severely restricted the right to cultivate bio-engineered crops than to import them, has not previously allowed any such cultivation by a foreign firm without Chinese participation, and has taken significantly longer to approve cultivation applications than importation applications, all of which may have materially delayed import approval.

166. Syngenta was projecting that cultivation approval would not be obtained until 2016.

167. Syngenta continued to downplay the importance of China and misrepresent the status of China's approval for the purpose of increasing sales of Viptera.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

168. Syngenta was far more focused on a potential loss of profits than it was on the risk of trade disruption caused by Viptera. For instance, Syngenta's project lead for Commercial Traits noted a seed shortage, saying it "will work in our favor. … Hence key business is more the black-eye we now have, vs. actual impact on sales."

169. Syngenta e-mails reveal that executives were plotting strategies to try to get China to expedite its review, including strategies to try to convince U.S. government officials to tell China that failing to approve MIR162 would "put US corn trade at serious risk."

I. Syngenta's Continued Deception Regarding China's Approval of MIR162

170. Syngenta continued its deception regarding the status of approval from China throughout 2012.

171. Despite knowing that its incomplete and delayed regulatory filings with China assured that Syngenta would not obtain import approval for Viptera by March 2012, Syngenta nevertheless instructed employees in January 2012 to tell grain handlers that Syngenta would obtain approval from China by March of 2012.

172. After the first quarter passed without approval from China, Syngenta told employees to "**verbally**" communicate that Syngenta "continue[s] to anticipate that this approval will be received shortly." (Emphasis in original).

173. During Syngenta's first quarter 2012 earnings conference call on April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, publicly stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." http://www.morningstar.com/earnings/37715637-syngenta-ag-adrsyt-q1-2012-earnings-call-transcript.aspx. This, of course, was a year after Syngenta had already sold large quantities of Viptera to farmers across the country.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

174. On information and belief, however, Syngenta did not as of April 2012 have a reasonable basis to believe China's approval was "done," or for its representation that approval was imminent. Syngenta certainly did not have any sort of official approval.

175. Indeed, Syngenta received a rejection and deficiency letter from China's Ministry of Agriculture on May 15, 2012.

176. Syngenta also distributed misleading written materials indicating that Viptera **could** be exported to China.

177. For example, Syngenta distributed a "Request Form for Bio-Safety Certificates Issued by the Chinese Ministry of Agriculture" for Viptera. In China, "Bio-Safety Authorizations" are required for the issuance of shipment-specific "Bio-Safety Certificates." However, applying for shipment-specific Bio-Safety Certificates was, and is, pointless because MIR162 had not been approved for importation in China.

178. Syngenta knew that its Request for Bio-Safety Certificates Forms was pointless but distributed it in an effort to mislead U.S. corn Producers and Non-Producers.

179. Syngenta also distributed a "Plant with Confidence Fact Sheet," which contains deceptive statements regarding the importance of China as an export market. http://www.syngenta-us.com/viptera_exports/images/Agrisure-Viptera-Fact-Sheet.pdf.

180. For example, the "Plant with Confidence Fact Sheet" states:

> The vast majority of corn produced in the U.S. is used domestically. There is a misconception that China imports more grain than it actually does from the U.S. China has imported, on average, a little more than half of one percent – 0.5% – of all U.S. corn produced in the past five years....
>
> Since very few U.S. grain outlets actually export to China, most have no reason to restrict your right to plant the latest technologies.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

http://www.syngenta-us.com/viptera_exports/images/Agrisure-Viptera-Fact-Sheet.pdf (emphasis removed).

181. Contrary to the Plant with Confidence Fact Sheet, the NGFA reported:

> The U.S. Department of Agriculture (USDA) forecasts that China will become the world's largest corn importer by 2020. China is projected to increase its corn imports to 22 million metric tons (866 million bushels) by 2023, up from 2.7 million metric tons (106 million bushels) in 2012. For 2013, USDA had projected that the United States would export 37 million metric tons (1.457 million bushels) of corn, and that China would import an estimated 7 million metric tons (276 million bushels) – virtually all of it from the United States.

http://www.ngfa.org/wp-content/uploads/NGFA-Flyer-for-Farmer-Customers-on-Potential-Market-Impacts-of-Commercializing-Biotech-Enhanced-Seeds-Not-Approved-for-Import-into-U.S.-Export-Markets.pdf.

182. In other words, for 2013, the USDA estimated that China represented nearly 20% of the U.S. export market.

183. Before China's discovery in November 2013 of MIR162 in U.S. corn shipments, China was the third-largest market for U.S. corn, and its share of our market was projected to grow substantially. China is by far the largest potential growth market for U.S. corn.

J. Syngenta Expanded Sales of Viptera Acreage Despite Having No Approval from China, Even While the Importance of the Chinese Market Continued to Increase.

184. China continued to be a major and growing market for U.S. corn and corn products during the 2012 and 2013 crop years.

185. However, during that period, China still had not yet approved the import of MIR162. Syngenta was still in the approval process and was correcting deficiencies identified by the Chinese Ministry of Agriculture. It had no assurance that approval would be conferred by the 2013 crop year. In fact, as of October 2013, Syngenta was still completing required research for its application.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

186. Corn industry groups continued to object to Syngenta Seeds' commercialization of Viptera.

187. In fact, during 2012-2013, China had become the third largest export market for U.S. corn. As reported by Iowa Corn Growers Association, "[i]n 2012/13, China was the third largest export market for U.S. corn and up until the recent issue [the rejections beginning in November 2013] [China] was on track to meet or exceed that position." China and MIR162, 2-2014, Iowa Corn Growers Association (Feb. 6, 2014).

188. Nevertheless, Syngenta continued to market Viptera during the 2012 and 2013 crop years. Estimates were that during this period Syngenta had increased the market share of Viptera to well more than 2%, and, by some estimates as high as 3.5%, of the corn area grown in the U.S.

189. This increase further ensured that Viptera would disseminate throughout the U.S. corn supply and that it could not— and would not—be channeled away from export markets, such as China, which had not approved MIR162.

K. China's Rejection of U.S. Corn

190. In November 2013, China began rejecting shipments of U.S. corn that tested positive for the presence of MIR162.

191. On December 24, 2013, the General Administration of Quality Supervision, Inspection, and Quarantine of China issued a warning notification strengthening the inspection and supervision for the import of GMO feed materials. The December 24 notification indicated that all batches of corn would now be tested at the Chinese ports for MIR162, and that any cargo that tested positive for MIR162 would be returned or destroyed.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

192. Before this notification, statements from the seller/exporter that the products were tested and negative for MIR162 were sufficient. The December 24 notification thus substantially altered the conditions for export of U.S. corn into China.

193. It was not possible to ensure a "zero" level of MIR162 in the Chinese testing (i.e., a negative test of a container in the U.S. could still result in a positive test in China).

194. The uncertainty associated with the possibility that a shipment might test positive for MIR162 when tested in China caused Chinese customers to walk away from their contracts for U.S. corn and added a great deal of uncertainty to the market. Not surprisingly, prices for corn and distillers dried grains with solubles ("DDGS") fell.

195. In December 2014, China finally approved MIR162 for importation into China. By then, however, Syngenta had already begun commercializing another unapproved bio-engineered corn trait. U.S. corn exports to China have not yet begun to recover, and this approval is not likely to lessen the impact of Syngenta's conduct and the resulting embargo in the near future, if ever.

L. Regulation, Testing, and Deregulation of Event 5307

196. Despite China's rejection of U.S. corn because of the presence of MIR162, Syngenta nonetheless pressed on with commercialization of yet another GMO corn seed product.

197. On April 22, 2011, just months after Syngenta Seeds released Viptera for the 2011 crop year, Syngenta Biotech filed with APHIS a petition seeking the deregulation of another insect resistant, genetically-modified trait known as Event 5307. Event 5307 was ultimately deregulated by APHIS on January 29, 2013.

198. Between 2005 and 2011, Syngenta Biotech conducted at least 101 field trials of Event 5307 corn under at least 22 notifications made to APHIS under the GMO Regulations at sites in 23 states.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

199. At least some of the field trials of Event 5307 included tests of corn stacked with multiple traits, including both Event 5307 and MIR162. Further, on information and belief, field tests conducted under the GMO Regulations of Event 5307, either singly or together with other traits (including MIR162), continued during the period after the filing of the Event 5307 Deregulation Petition and the January 29, 2013 decision to deregulate Event 5307.

200. In its deregulation petition for Event 5307, Syngenta Biotech disclosed that upon deregulation of Event 5307, Syngenta Seeds did not intend to market Event 5307 as a stand-alone product, but intended to combine it with other traits, including MIR162. It also stated that it intended to seek approval of products containing Event 5307 in countries that had functioning regulatory systems and that "Syngenta is also pursuing regulatory approvals for importation of corn commodities and processed goods containing 5307 corn in key export markets for U.S. and Canadian corn" and that applications were currently planned for a number of additional countries, including China. In the discussion of "Adverse Consequences of Introduction," Syngenta Biotech stated that an upcoming Environmental Report would discuss a range of issues related to the deregulation of Event 5307 corn, "including any potential direct, indirect or cumulative impacts on ... the economy, either within or outside the U.S." Petition for Determination of Nonregulated Status for Rootworm-Resistant Event 5307 Corn, at 156 (Apr. 22, 2011) (http://www.aphis.usda.gov/biotechnology/petitions_table_pending.shtml).

201. Following approval of Event 5307, Syngenta Seeds announced that it would commercialize Duracade for the 2014 crop year, containing both Event 5307 and MIR162, despite the continued failure to obtain approval from China for MIR162 and the fact that Event 5307 also had not been approved.

M. Commercialization of Duracade Despite MIR162's Continued Disruption of the U.S. Corn Trade

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

202. In November 2013, China began rejecting shipments of U.S. corn that tested positive for MIR162. Syngenta has, nevertheless, continued its false statements and misrepresentations, as alleged herein, including through its decision to market Duracade in the 2014 crop year.

203. The NGFA has detailed the disastrous results of China's rejection of U.S. corn based on the presence of MIR162:

> This development resulted in a series of trade disruptions – including testing; delays in vessel discharge; and deferrals, diversion and rejections of cargoes – when MIR162 subsequently was detected in U.S. shipments of corn and distillers dried grains with solubles (DDGS). These disruptions effectively shut U.S. corn farmers out of China's feed grain import market, which previously almost exclusively had been supplied by the United States. China subsequently has taken actions to utilize domestic, as well as international alternatives to U.S. corn. For instance, China's imports of U.S. grain sorghum have increased significantly. China also has sourced corn from Ukraine. And most recently, Brazil and Argentina each were granted approval to begin exporting corn to China....
>
> This disruption, tied to positive detections of MIR162 that began in November 2013, has virtually halted U.S. corn trade with China.
>
> . . .
>
> USDA currently is projecting Chinese corn imports will reach 22 mmt [million metric tons] by 2023, which if realized would account for nearly half of the projected growth in total world corn trade. However, if the MIR162-related trade disruption continues, other corn exporting nations, such as Ukraine, are capable of replacing the United States as the principal corn exporter to China....
>
> [T]he MIR162-induced trade disruption has resulted in market price loss on unfulfilled export sales, price loss on diverted sales because of the compromised economic negotiating position of U.S. exporters, demurrage costs, and lower market prices for U.S. commodities and products. The total loss for these sectors of the U.S. grain industry is estimated to range from $1 billion to $2.9 billion.

http://ngfa.org/wp-content/uploads/Agrisure-Viptera-MIR-162-Case-Study-An-Economic-Impact-Analysis.pdf.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

204. Syngenta nevertheless moved forward with commercialization of Duracade for the 2014 planting season.

205. On January 23, 2014, the NGFA and the NAEGA issued another Joint Statement imploring Syngenta to stop its heedless and irresponsible commercialization:

> On Jan. 22, 2014, the National Grain and Feed Association (NGFA) and North American Export Grain Association (NAEGA) sent a letter to Syngenta asking the company to immediately halt commercialization in the United States of its Agrisure Viptera corn and Agrisure Duracade corn until such time as China and certain other U.S. export markets have granted required regulatory approvals/authorizations.
>
> The NGFA and NAEGA ... are gravely concerned about the serious economic harm to exporters, grain handlers and, ultimately, agricultural producers – as well as the United States' reputation to meet its customers' needs – that has resulted from Syngenta's current approach to stewardship of Viptera. Further, the same concerns now transcend to Syngenta's intended product launch plans for Duracade, which risk repeating and extending the damage. Immediate action is required by Syngenta to halt such damage.
>
> There are numerous negative consequences incurred when the Chinese and other U.S. export markets are put at risk through commercialization of biotechnology-enhanced seeds before approvals for import into foreign markets are obtained. Such consequences may include reducing the value and demand for the U.S. farmers' products, preventing foreign consumer access to much-needed supplies, shutting off or increasing the cost of U.S. producers' access to some export markets for their crops, exposing exporting companies to financial losses because of cargo rejections and contract cancellations, and ultimately diminishing the United States' reputation as a reliable, often-preferred supplier of grains, oilseeds and grain products in world markets. Commercialization prior to foreign regulatory approvals also has a negative impact on the overall U.S. corn and other grain value chains, and reduces significantly U.S. agriculture's contribution to global food security and economic growth.
>
> Within the U.S. grain and oilseed handling and marketing system, each purchaser or handler makes its own determination as to whether to accept various commodity crops – including those produced from biotechnology-enhanced seeds. Such a decision likely is driven by customer preferences, infrastructure and operational limitations, regulatory regimes and contractual commitments, as well as meeting regulatory requirements in the respective markets they serve. Given the nature of the U.S. grain marketing system, these business decisions extend to the first point of sale or transfer from the producer.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

> As a matter of policy, NGFA and NAEGA have communicated consistently, clearly and in good faith with biotechnology providers and seed companies about the importance of biotechnology providers actually obtaining regulatory approvals/authorizations for import in foreign markets before such traits are commercialized in the United States. Individual grain handler, processor, service provider and exporter member companies of our Associations represent further system-wide support and advocacy for this policy.
>
> U.S. farmers, as well as the commercial grain handling and export industry, depend heavily upon the exercise of due corporate responsibility by biotechnology providers with respect to the timing of product launch and commercialization. We therefore seek assurances from Syngenta that it will follow suit by publicly announcing that it will suspend immediately its commercialization of Viptera and Duracade products in the United States until such time as China and other U.S. export markets have granted required regulatory approvals and authorizations.

http://www.ngfa.org/wp-content/uploads/NAEGA-NGFA-Joint-Public-Statement-on-Syngenta-Agrisure-Viptera-and-Duracade-Biotech-Traits-Jan-23-2014.pdf.

206. Syngenta spokesman, Paul Minehart, responded by stating: "Changing our marketing plan in the U.S. now **would have no effect on grain in the system** or Chinese acceptance of corn imports." Reuters, "U.S. Groups urge Syngenta to hold back on GM corn barred by China" (Jan. 23, 2014) (emphasis added).

207. This pronouncement recognizes that MIR162 has indeed contaminated the U.S. corn supply to an extent that it cannot be undone. This is particularly true given that Syngenta continues to market and sell Duracade in addition to Viptera.

208. In March 2014, in meetings with the NGFA, Syngenta advised that its introductory launch of Duracade would likely extend to 250,000 to 300,000 acres in a launch zone that included portions of each of the ten states that grow the largest amounts of corn. In the same meetings, Syngenta refused to accept responsibility or liability if and when Duracade becomes present in countries that had not approved it. NGFA, Latest News, "Syngenta Provides Additional Details on Plans for 'Introductory launch' of Duracade, Biotech Corn in 2014" (March 7, 2014)

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

(http://www.ngfa.org/2014/2014/03/07/Syngenta-provides-additional-details-on-plans-for-introductory-launch-of-duracade-biotech-corn-in-2014/).

209. In launching Duracade, Syngenta stated that growers would be required to sign a stewardship agreement requiring the grower to either feed the corn to livestock or poultry on the farm, or deliver it to a grain handling facility, feed mill, feed lot, or ethanol plant not exporting corn or corn co-products to China or the European Union. *See* National Grain and Feed Association Newsletter Vol. 66, No. 5 at 2 (dated March 7, 2014).

210. The version of the stewardship agreement at launch, and referencing Duracade, did not do so. *See* Syngenta Seeds Inc. Stewardship Agreement (Rev. 6/05/2013). This version is, even now, the agreement Syngenta posts on its website. *See* http://www3.syngenta.com/country/us/en/agriculture/Stewardship/Documents/SyngentaStewardshipAgreement.pdf.

211. Syngenta also did not require planting or harvesting protocols, but only made "recommendations" that the grower: (1) select fields for planting Duracade surrounded by the grower's own corn fields or planted next to a non-corn field; (2) place signs to notify others that Duracade was planted in the field; (3) plant buffer rows; (4) clean planters; (5) properly dispose of unused seed and return unopened seed units to the seed provider; (6) separately harvest Duracade; (7) flush the combine; (8) deliver corn containing Duracade to a previously arranged delivery point; (9) store Duracade in a separate bin on the grower's farm; and (10) clean the bin floor.

212. Syngenta officials stated that while Syngenta would apprise growers of such "recommendations," it "declined to incorporate the recommendations into the stewardship agreement because they did not want to dictate such practices to producers." National Grain and Feed Association Newsletter Vol. 66, No. 5 at 2 (March 7, 2014).

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

213. Syngenta was and is well aware that such measures are minimally necessary to an adequate stewardship program. Yet, Syngenta did not require such measures in connection with either Viptera or Duracade.

214. The NGFA issued a dire forecast of the damage Duracade's premature commercialization would cause:

> For the 2014 planting season, Syngenta has introduced another trait called Agrisure Duracade 5307 (hereafter referred to as 5307) that currently lacks Chinese import approval, potentially prolonging the U.S. loss of the large, growing Chinese feed grain import market....
>
> China is roughly one year into its semi-regular, two-year process of evaluating the authorization of 5307 for import in food, feed and for further processing. Since Chinese authorization of 5307 is not expected for at least another year, China is expected to continue enforcing a zero-tolerance policy for unapproved biotech-enhanced traits in 2014/15, as occurred in marketing year 2013/14 for MIR162. Thus, the commercialization in the United States of 5307 is expected to prolong the economic impact on U.S. corn and other commodities that began in mid-November 2013.
>
> Similarly to 2013/14, when the United States lost access to the Chinese corn import market, the 2014/15 market price impact caused by the presence of 5307 in U.S. commodity exports is expected to extend beyond the corn market and potentially affect other commodities, such as DDGS, soybean meal and soybeans, because of the substitutability of corn for these commodities in domestic feed rations....
>
> [A]fter accounting for projected benefits and costs, the net economic impact of the 5307 commercial launch is estimated to result in a loss to the U.S. grain value chain ranging from $1.2 billion to $3.4 billion, with a mid-point estimated net economic loss of $2.3 billion.

http://www.ngfa.org/wp-content/uploads/Agrisure-Duracade-5307-Economic-Impact-Analysis.pdf.

215. In March 2014, Syngenta pulled Duracade from the Canadian market for the 2014 growing season because China and the European Union had not yet approved MIR162.

216. Syngenta said in a notice to Canadian growers: "While the vast majority of the Canadian corn crop is typically directed to domestic markets in North America, some corn may be

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

destined for these markets." Reuters, "Syngenta halts sales of new GMO corn seed in Canada" (Mar. 10, 2014). "Accordingly, we want to ensure the acceptance of any trait technology grown in Canada meets end-market destination requirements." *Id.*

217. As illustrated by the statements of its own representatives and this action, Syngenta knew that China was and is a key corn importer and that responsible management requires that its approval be obtained before commercialization of a bio-engineered corn trait.

218. As further illustrated, Syngenta knows how to withdraw an unapproved GMO trait from the market when it wants to do so.

219. Nevertheless, Syngenta continued to market and sell MIR162 corn in the U.S.

220. Compounding its irresponsibility, Syngenta then decided to commercialize Duracade in 2014, even though it contains MIR162 Event 5307.

221. In September 2014, Syngenta announced 52 new corn hybrids for the 2015 growing season. MIR162 was in 23 new Viptera products and 18 new Duracade products. See "Syngenta Announces 52 New Corn Hybrids for 2015 Season" (Sept. 17, 2014) (http://www.agprofessional.com/news/Syngenta-announces-52-new-corn-hybrids-for-2015-season-275494841.html).

222. In December 2014, China finally approved MIR162 for importation into China. By then, however, Syngenta already had begun commercializing yet another GMO corn seed product as discussed above. In addition, China's December 2014 approval is not likely to lessen the impact of Syngenta's conduct anytime soon.

223. Syngenta affirmatively and purposefully engaged in all the actions and inactions described above to increase its own profits, ignoring the tremendous risks its profit-driven strategy imposed on U.S. corn Producers and Non-Producers.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

224. Syngenta knew, or should have known, before its commercialization of Viptera and at all times since then of the high likelihood that Viptera would contaminate the U.S. corn supply and that channeling in the circumstance of its clearly inadequate "stewardship" program would not work. It was inevitable that Viptera corn would move into export channels, including China, and cause trade disruption, as Syngenta well knew.

225. Syngenta's acts and omissions have resulted in, and will continue to result in, the pervasive contamination of the U.S. corn supply, including fields, grain elevators and other facilities of storage and transport, causing physical harm to Producers' and Non-Producers' corn, equipment, storage facilities, and land.

226. The likelihood that Viptera—and Duracade—would (and will continue to) contaminate the U.S. corn supply was readily foreseeable to, and indeed foreseen by, Syngenta, as was the harm to Producers and Non-Producers, whom Syngenta describes as among its stakeholders "affected by" Syngenta's business.

227. Syngenta had the right and ability to control the timing, size, and geographic scope of its commercialization of Viptera and Duracade, as well as the extent to which adequate containment measures would be required of its customers. Syngenta also could have instituted channeling measures but did not. Syngenta also ignored repeated warnings from stakeholders and misrepresented and concealed material information, all to further its own profit.

228. Syngenta did not simply fail to take precautions against foreseen and foreseeable harm. Syngenta acted affirmatively to create such harm.

229. Syngenta's conduct has directly caused and contributed to cause significant economic harm to Producers and Non-Producers, as explained below.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

N. Economic Impact

230. The characteristics of the world corn market have important implications for understanding the market price impact of the Chinese MIR162 ban on corn from the U.S. Those include:

a. Corn is the most widely used feed grain in the world.

b. The U.S. is by far the largest producer and exporter of corn.

c. Before the import ban, virtually all of China's corn imports were from the U.S.

d. Before the import ban, China was the third largest market for U.S. corn exports.

e. The latest USDA agricultural trade projections placed China as becoming the world's largest importer of corn by 2020.

f. The import ban virtually halted U.S. corn sales to China indefinitely.

g. The world price of corn is established in Chicago, and the loss of a key market for the U.S. put downward pressure on the world price that reverberated to farmgate prices throughout the U.S.

h. Corn is a commodity and a relatively small change in the global volume of trade in a commodity market like corn will have a magnified price impact.

i. An exporter's reputational loss in an agricultural commodity market due to an event like a GMO contamination can persist for many years. Once an exporter has lost a foreign market, it is difficult to get it back.

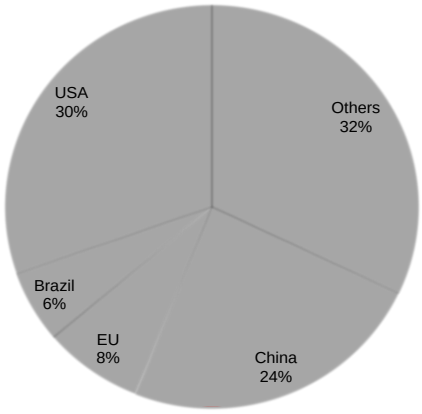
O. Global Corn Market

231. World corn production totaled 983.3 million metric tons (mmt) in 2013/14 (about 38.7 billion bushels). This supply was concentrated in a relatively small number of countries. The world's largest corn producers are the U.S. with about 36% of global production in 2013/14; China (about 22% of production); Brazil (8%), and the EU (7%).

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

232. Global usage of corn has expanded by about 37% in the last decade, due to rising population and incomes, and increased urbanization with its associated changing dietary patterns. Feed usage accounts for about 58% of total global corn use, industrial use 27%, and food 11%. The pie chart below shows corn consumption by region.

World Corn Consumption By Region



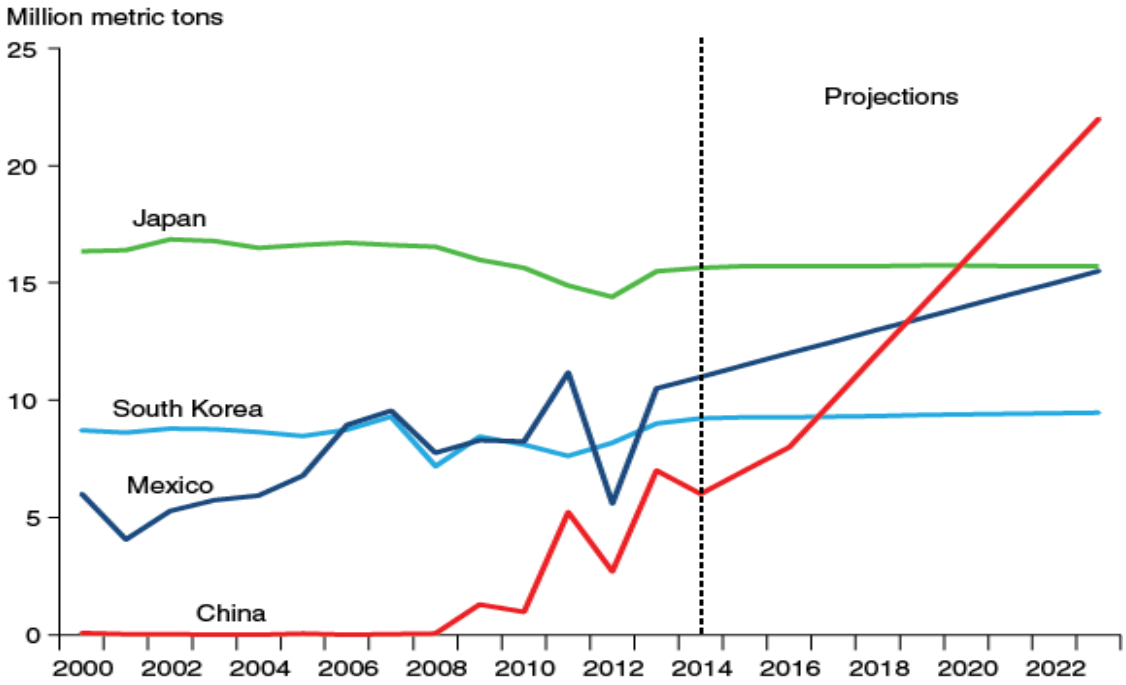
Source: International Grains Council

233. At the end of each crop year, corn inventories are carried forward in case of a short harvest. The U.S. and China are the largest holders of corn inventories. At the end of 2013/14, these two countries held 70% of the 176 mmt of global stocks.

234. Total world corn trade is about 100 to 120 mmt per year. Before the MIR162 ban, China was importing about 4% of global corn sales. That amount was projected by the USDA to increase substantially by 2020, when the USDA projects that China will be the world's largest importer of corn at 16 million metric tons.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

China expected to become largest global corn importer



Source: USDA Production, Supply and Distribution database and projections.

235. The U.S. is the dominant exporter of corn. The big exporters include the U.S. (36% of world trade), Brazil (20% of exports), the Ukraine (17%), and Argentina (10%). These four countries alone account for over 82% of global exports.

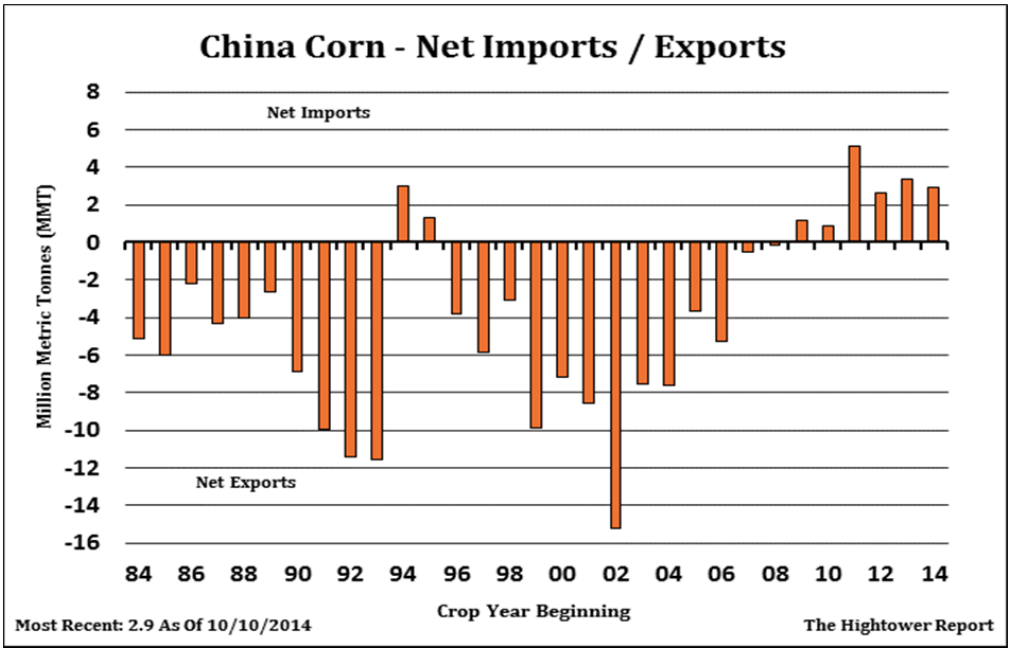
Table: Major Corn Exporters: July 2013/ June 2014

Exporting Country	**U.S.**	**Brazil**	**Ukraine**	**Argentina**	**Others**	**Total**
Exports (million metric tons)	42.8	23.5	19.9	12.0	21.8	120.0
Exports (million bushels)	1,685	925	783	472	858	4,724

Source: International Grains Council

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

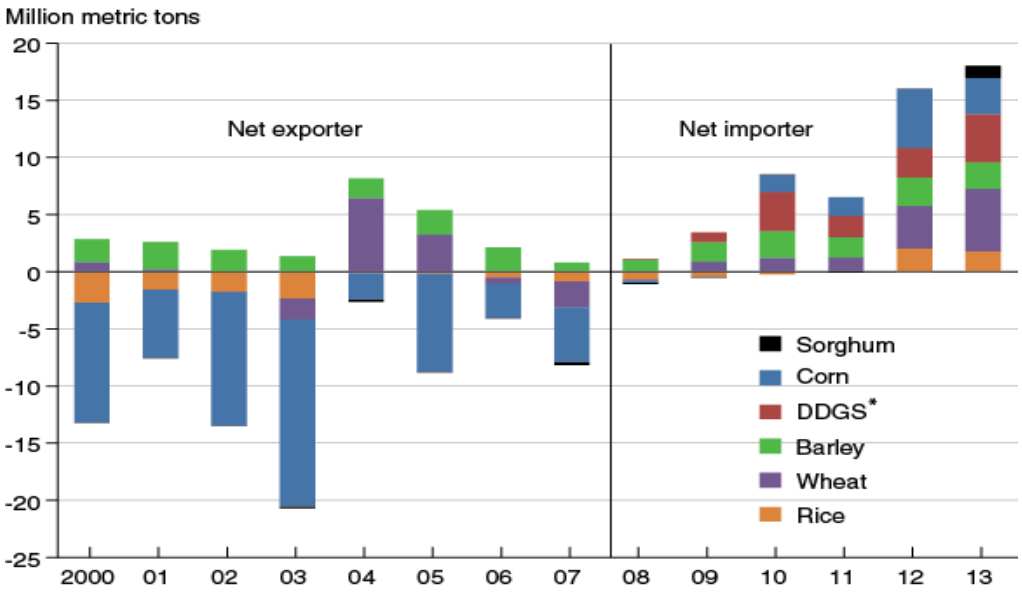
236. Just over 10 years ago, China was a significant exporter of corn (as well as all grains) with exports peaking at 15.2 million metric tons in 2002/03. China flipped from being a net corn exporter to a net corn importer in 2009/2010.



237. As the chart below shows, China turned from a net exporter to a net importer of grains in 2008. Imports of grains (including corn) surged during the 2012-13 time period, reaching 18 mmt. Most of this grain originated from the U.S.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

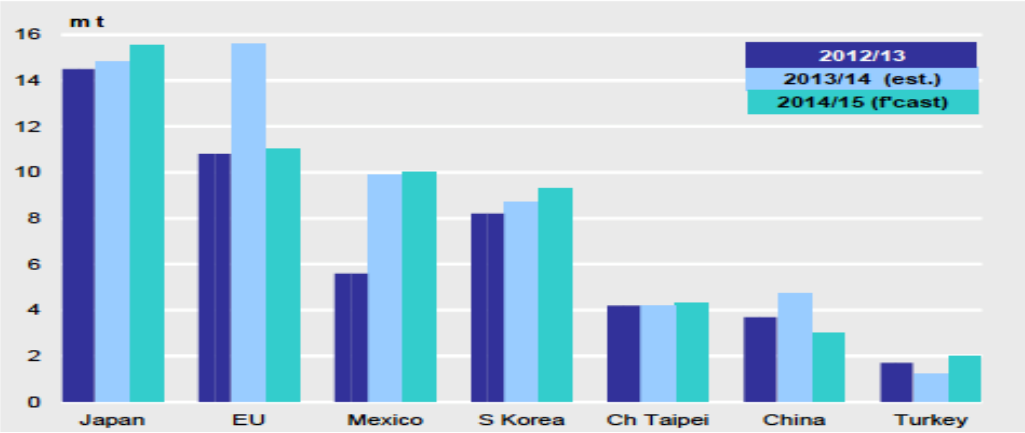
China's net imports of grains surged during 2012-13



Note: Net imports = imports – exports. Data for calendar years.
*DDGS= Distillers Dried Grains With Solubles.
Source: USDA, Economic Research Service analysis of China customs statistics.

238. The import side of the international trade equation is more diverse, with the major importers including the EU, Japan, Mexico, South Korea, Chinese Taipei, China, and Turkey (together accounting for 55% of imports in 2013/14). This leaves 45% of the corn imports destined for a large number of small importers.

Major Corn Importers



Source: International Grains Council.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

239. In its annual long-term grain trade projections, released in February 2014, the USDA projected that China's corn imports would grow from 2.7 mmt in 2012/13 to 22 mmt in 2023/24. China is by far the largest potential growth market for U.S. corn. These projections place China as the largest corn importer in the world by 2020.

P. U.S. Corn Market

240. Corn is the largest crop in the U.S. by both value of production and planted acres. In the 2013/14 September-August fiscal year, U.S. Producers produced about 13.9 billion bushels of corn, worth more than $60 billion. Corn is used for livestock feed (37% of 2013/14 crop), food, alcohol and industrial usage (46% of the 2013/14 crop), and exports (14% of the 2013/14 crop). USDA, Economic Research Service, Feedgrains Yearbook, Table 4 (http://www.ers.usda.gov/data-products/feed-grains-database.aspx#.VEJk-SiwRzo).

241. Corn production in the U.S. is concentrated in the neighboring Midwestern states comprising the "corn belt," where soil and climatic conditions are highly conducive to growing corn.[1] About 95.4 million acres of corn were planted in the U.S. in the September-August 2013/14 marketing year.

242. The U.S. corn marketing system is predominantly commodity-based. Corn grown by farmers is harvested, gathered, commingled, consolidated, and otherwise shipped from thousands of farms to local, regional, and/or terminal distribution centers. From there, it is often transported by exporters to foreign countries.

243. Grain elevators are facilities at which grains are received, stored, and then distributed for direct use, process manufacturing, or export. They can be generally referred to as either "country," "subterminal," or "terminal" elevators.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

244. "Country elevators" are a linchpin of the U.S. commodity grain handling and marketing system. Country elevators are smaller elevators that receive grain by truck directly from local farms during the harvest season. In addition to providing grain storage and drying services to farmers, country elevators buy individual loads of grain from local farmers for cash. A country elevator then will sell the grain it has purchased and stored in volume to subterminal or terminal grain elevators for further movement in the commodity corn supply chain.

245. Grain elevators thus play a crucial role in agriculture.

246. Corn prices throughout the U.S. are tied to the Chicago Board of Trade Futures (CBOT) price through the "basis" (defined as the futures price minus the local cash price). The U.S. corn market is spatially integrated and informationally efficient. Basis levels for spatially separated markets are also closely linked. Events like trade disruptions that affect the CBOT corn prices directly affect the price that U.S. corn farmers receive for their corn.

247. Grain elevators test and grade corn for weight, moisture content, and foreign materials. Grain elevators are not equipped to test and segregate corn for genetic traits due to the costs associated with such a time-consuming process. Many grain elevators are not equipped to test for the MIR162 trait in corn.

248. The terminal grain elevator receives grain via rail or truck. Terminal grain elevators have the capacity to hold larger quantities of corn, with some holding several million bushels of grain. After receiving the grain, terminal operators sell large shipments to manufacturers or continue to store the grain for later sale to domestic and foreign buyers.

[1] The top ten producing states are Iowa, Illinois, Nebraska, Minnesota, Indiana, South Dakota, Wisconsin, Kansas, Ohio, and Missouri.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

249. Some corn is sold for manufacture into corn ethanol. Ethanol manufacture results in a corn by-product known as DDGS. DDGS from the ethanol industry is commonly sold as a high protein livestock feed. In the U.S., DDGS is packed and traded as a commodity product.

250. Corn and processed grain from terminal elevators are transported by truck, rail, and/or ship to their final destination. Exporters may load the products themselves, or may contract with others for hauling and/or loading/transfer services. Corn bound for China is typically loaded into shipping containers and shipped by rail either to the West Coast or New Orleans, where the containers are loaded onto ships. Large exporters may deal in entire vessels loaded with corn, while smaller exporters ship containers of these products on container ships that may carry containers of other products, or from other exporters, as well.

251. Once the corn or DDGS arrives in China, it must be cleared for import before the counter-party who has purchased the product may take delivery.

252. Thus, the commodity supply chain for corn bound for China may involve country elevators, sub-terminal elevators, terminal elevators, truckers and other haulers, loaders and transport companies, and exporters who ship the product to China.

253. Elevators both own and store corn for sale further down the supply chain.

254. Similarly, exporters may purchase and sell corn and DDGS, or may expect these products under a variety of consignment agreements. They have incurred injury due to the loss of the Chinese export market under either arrangement.

Q. China's Corn Market

255. China has emerged as a large player in the global market for agricultural products. As of 2012, it was the fourth largest exporter and second largest importer of agricultural products in the world according to World Trade Organization trade statistics. Its import growth has been

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

driven by a shift in its domestic production mix and changing consumer diets with rising incomes and urbanization. The changing diets have especially driven strong demand growth for meat (mainly pork and chicken), which requires a large supply of feed grains including corn and soybeans.

256. China is now the largest foreign market for U.S. agricultural products. The USDA reports that U.S. agricultural exports to China have almost doubled in the last five years, totaling $28 billion in fiscal October 2013-September 2014. USDA, Outlook for U.S. Agricultural Trade, AES-83 (Aug. 28, 2014).

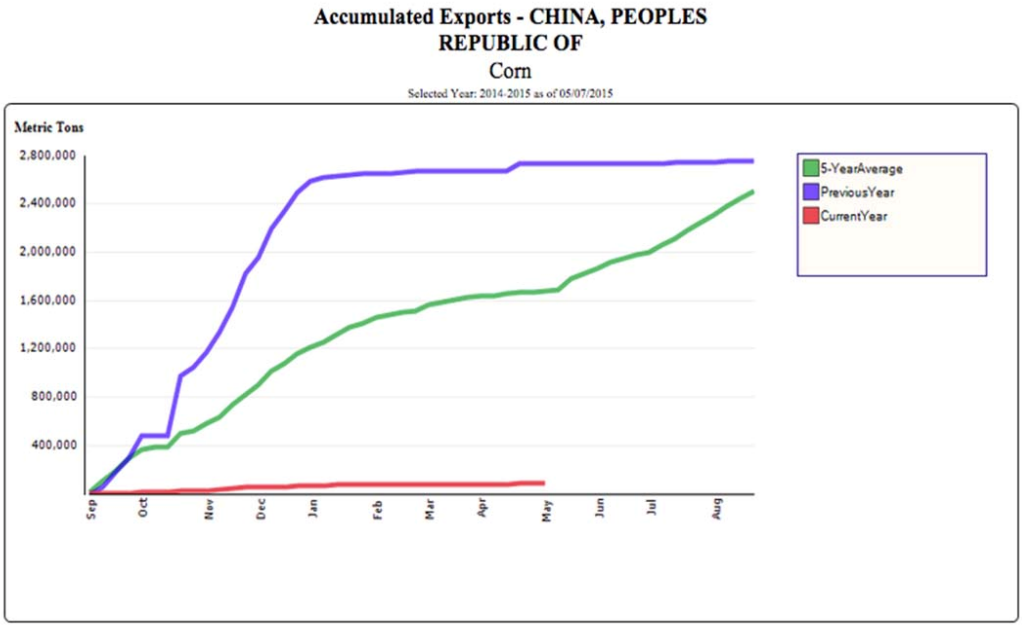
257. Before China banned the import of U.S. corn, the top three U.S. agricultural exports to China (in order of importance) were soybeans, cotton, and corn, based on value of trade. In November 2013, China started turning back cargoes containing Syngenta's MIR162 corn. While MIR162 is now approved, Event 5307 is not.

258. U.S. corn exports to China reached 5.146 mmt in 2011/12 (approximately 13% of U.S. exports that September-August marketing year) and were 2.39 mmt in 2012/13–still about 13% of exports (lower export volume due to the big U.S. drought). By contrast, due to China's import ban of U.S. corn beginning in November 2013, the absolute volume of U.S. corn exports to China in 2013/14 was not much higher than the drought year and fell to less than 6% of exports.

259. If the current trend that began after November 2013 continues, U.S. corn exports to China in the future will be negligible.

260. The following graph shows the dramatic difference in accumulated U.S. exports to China after the MIR162 ban, taking into account seasonal variations in export quantities:

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN



5/15/2015 Source: USDA/FAS/Export Sales Reporting

261. If the China market continues to deny access to U.S. corn imports, the losses will be even more significant. As the following quote explains, China was expected to be a very rapidly growing import market for corn:

> China's corn imports are projected to rise steadily and reach 22 million tons by 2023/24. China's strengthening domestic demand for corn is driven by structural change and growth in its livestock sectors, as well as by rising industrial use. The increase in China's imports accounts for nearly half of the projected growth in world corn trade. USDA Long-Term Projections at p.20 (February 2014).

USDA Agricultural Projections to 2023, www.usda.gov/oce/commodity/projections/.

262. For fiscal year 2013/2014 China was expected to import 7 mmt of corn and 6 mmt in 2014/15. Since the news of the rejected cargoes surfaced, USDA analysts have lowered projections of China's total annual imports from 7 to 3.5 mmt in 2013/14 and from 6 to 3 mmt for 2014/15. These projections obviously reflect the assumption that U.S. corn trade with China will begin again sometime in 2014/15. The damage to the U.S. corn market and the prices U.S. corn Producers and Non-Producers receive for their corn likely will be long lasting.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

263. China replaced imports from the U.S. with has increased imports from the Ukraine; and reportedly small shipments from Brazil and Argentina. In other words, the U.S. is already beginning to lose China as an important corn export market, and it will be difficult to get it back.

R. GMOs in China

264. China imports more biotech soybeans than any other country. The vast majority of China's soybean imports are biotech varieties, even though biotech soybeans (and corn) are not commercially grown in China. China imports soybeans primarily from the U.S., Brazil, and Argentina.

265. China has approved five-biotech crops for importation – canola, cotton, corn, soybeans, and sugar beets. Approximately 15 different corn biotech products have been approved by China, including "events" developed by Monsanto, Syngenta, Bayer, and DuPont. The number of approved soybean products is approximately eight and there are six cotton and seven canola products. Only one sugar beet product has been approved.

266. China started testing and rejecting cargoes of U.S. corn in November 2013.

267. By mid-December 2013, China had rejected shipments of U.S. corn totaling 545,000 metric tons. *See* http://www.reuters.com/article/2013/12/20/china-corn- idUSL3N0JZ0EZ20131220.

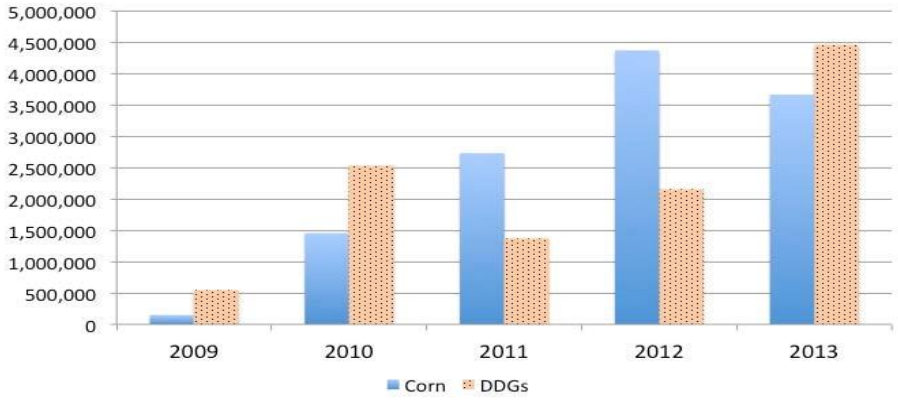
268. Beginning in July 2014, China's General Administration of Quality Supervision, Inspection, and Quarantine announced that it would require official government certification from the point of origin that shipments of DDGS are free of MIR162. China's rejection of U.S. DDGS due to the presence of MIR162 hurt the price of U.S. corn.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

S. DDGS Trade

269. U.S. DDGS exports to China totaled 2.16 mmt in calendar year 2012 and 4.45 mmt in calendar year 2013. DDGS trade has been hit hard recently but the extent of the impact on corn prices may not show up in the trade data yet.

U.S. Exports of Corn and DDGS to China: 2009-2013 (calendar years)



Source: USDA, GATS. DDG HS code 2303300000

270. China was by far the largest market for U.S. DDGS exports accounting for approximately 50% of all exports. The U.S. exports over 20% of annual DDGS production. http://www.extension.iastate.edu/agdm/crops/outlook/dgsbalancesheet.pdf.

271. The loss of the large Chinese market for DDGS displaces corn in the U.S. domestic market, pushing corn prices down further.

272. The impact of the loss of the Chinese market for corn and corn products to U.S. corn Producers and Non-Producers likely will be long lasting. The MIR162 incident has similarities to other international GMO contamination incidents, which have had long-lasting market effects. For instance, more than eight years after the 2006 Bayer Crop Science's Liberty Link contamination of the U.S. long-grain rice supply, exports to Europe have yet to recover. Before the 2006 marketing year, the EU-27 procured approximately 25% of its rice imports from

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

the U.S. Immediately after the contamination event, the EU blocked imports of any new commercial U.S. long-grain rice imports. In fact, U.S. long grain rice farmers lost one of their most important markets, and they have yet to get it back despite considerable effort and expense. Recently, an official delegation from the U.S. rice industry visited countries in the EU (such as Germany and the United Kingdom) where they held discussions focused on the re-introduction of U.S. rice into this important market. After this visit, the USA Rice Federation reported that market re-entry faces significant hurdles:

> The U.S. has a superior product and the industry has successfully addressed environmental and social concerns of this market, but it's clear we have more work to do before our German customers return to us," said Keith Glover, president and CEO of Producers Rice Mill and chairman of USA Rice's World Market Price committee. USA Rice Federation, *USA Rice Daily* (Oct. 14, 2014).

273. In commodity markets like corn, a relatively small change in trade volume can have a significant impact on price. One of the prime examples of the operation of this basic law of economics occurred in 1973, when Middle Eastern oil producers (Iran and Arab members of OPEC) cut off exports to the U.S. to protest American military support for Israel. Even though imports from this region accounted for only about 10% of the U.S. oil supply, petroleum prices quadrupled in response to the export embargo and there were long lines for gasoline at filling stations.

274. Another more recent example of inelastic demand at work is evident from the world coffee market. Brazil produces about 35% of the world's coffee and is unfortunately in the middle of a drought that is affecting both the 2014 and 2015 coffee harvests in that country. In 2014, the Brazilian coffee harvest was down about 13% and this doubled the price of coffee. World coffee production is about 150 million bags per year, and as the following quote from the *Financial Times* indicates, a 10 million bag swing in Brazil's production over a two-year period

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

(about a 3.5% change in production) can mean the difference in coffee prices ranging between $3 and $1.50 per pound:

> Brazil is the largest coffee producer in the world, accounting for about 35 per cent of all output. Industry consensus around the 2014 Brazilian harvest seems to have settled at about 48m 60kg bags, down from the previous year's 54-55m, but the 2015 forecasts have ranged widely between 40m and 53m bags. Estimates for the cumulative Brazil supply 2014 and 2015 combined, range from 92m to 102m bags, which is the difference between $3.00 and $1.50 per pound of coffee. *Financial Times* (Sept. 17, 2014).

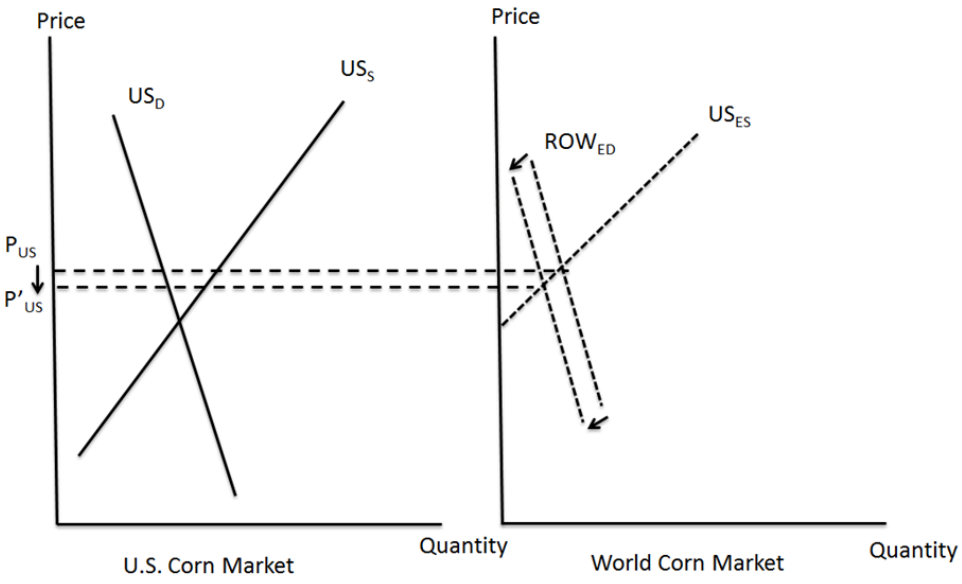
275. Based on the same economic logic, the *Wall Street Journal* reasoned that the loss of the Chinese corn market to the U.S. industry over MIR162 will have an important impact on the U.S. corn price, even though that market represented only about 12% of U.S. exports: "Exports account for only about 12% of the U.S. corn crop, but China's rapid growth gives the country an outsize influence over prices." *Wall Street Journal*, U.S. Corn Exports to China Dry Up Over GMO Concerns (Apr. 11, 2014).

276. In the U.S. corn market, both domestic demand and supply curves are relatively inelastic, especially in the short run. Elasticity measures the degree of responsiveness in supply or demand to price changes. If both the supply and demand curves are inelastic, then for each curve it will take a relatively large change in price to effect a change in quantity demanded or supplied. This is shown in the left panel of the diagram below, where the U.S. domestic demand for corn is represented as schedule US_D and the domestic supply is labeled as US_S. Both of these curves are inelastic as drawn. The horizontal difference between the supply (US_S) and demand (US_D) at world price (P_{US}) is the amount of corn exported.

277. The right hand panel of the diagram shows the market for U.S. corn exports. The U.S. export supply curve shown to the world market is labeled as US_{ES}. This curve is based on the U.S. domestic supply and demand curves in the left hand panel. For any price above the point

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

where US_D and US_S intersect in the left-hand panel, there is excess domestic corn that is supplied to the world market according to the schedule US_{ES} in the right hand panel. The world demand for U.S. corn is shown by the curve ROW_{ED} in the right hand panel. This includes demand from China. Following the MIR162 ban the ROW_{ED} curve shifts left as shown by the arrows in the right hand panel. An inward shift of the global demand for U.S. corn reduces exports from the U.S. The intersection of the shrunken ROW_{ED} curve and US_S determines the volume of trade after the MIR162 ban. U.S. corn exports are reduced by a fixed volume due to a foreign market closing, and the U.S. price falls to P'_{US}. The drop in price is relatively large, even if the shrinkage in exports is a small share of production, because the price must fall to clear a market in which supply and demand are inelastic.



278. Under the bedrock economic law of supply and demand, for an exportable good, when there is less foreign demand for a product, particularly one with relatively inelastic demand and supply curves, the price is lower than it otherwise would be.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

279. As a result, all U.S. corn Producers who priced their corn after November 2013 have received a lower price for their corn than they would have received if China's imports of U.S. corn had not effectively stopped.

280. These effects are likely to continue in the future, both because Chinese purchasers may not necessarily return to former U.S. suppliers even though MIR162 is now approved, and also because the presence of Event 5307 in Syngenta's Duracade corn may cause contamination similar to the contamination caused by MIR162 alone.

T. Losses Suffered by Non-Producers

281. Producers were not the only ones to suffer the impact of lost sales, or sales at lower prices than they would have received if China's imports of U.S. corn had not effectively stopped. Grain elevators, which buy from farmers and re-sell further down the supply chain, similarly suffered losses from the drop in corn prices, as well as reduced volumes and reduced margins. And, to the extent that exporters have purchased corn or DDGS for re-sale in the export market, they also suffered losses when the price of corn and DDGS fell.

282. When the price of corn and DDGS drops, and those products cannot be exported to China, there is far less need for the services of those who process, haul, or otherwise transport those products. Thus, transporters for the export trade have seen their business decimated with the evaporation of Chinese exports.

283. Exporters have also been hit hard. They have suffered from reduced shipments and canceled or rescinded export contracts as well as delayed payments on stalled deliveries to China. With respect to shipments held in Chinese ports, exporters have incurred huge costs for storage, moving, late customs clearance, customs checking, import taxes, and diversion fees. Delays in

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

payment on shipments to China further affected the credit of exporters and thus impaired their ability to divert their corn or DDGS to other markets.

284. Many companies seeking to import U.S. corn and DDGS who accepted shipments that later tested positive for MIR162 have been forced to default on contracts to purchase additional quantities of U.S. corn and DDGS because they are no longer able to obtain import permits. They are also unable to enter into new contracts. This has seriously affected the business of exporters.

285. These effects are likely to continue in the future, both because Chinese purchasers may not necessarily return to former U.S. suppliers even though MIR162 is now approved and because the presence of Event 5307 in Syngenta's Duracade corn may cause contamination similar to the contamination caused by MIR162 alone.

IV. CLASS ACTION ALLEGATIONS

286. **Producer Class.** Plaintiffs Leroy Edlund, Douglas A. Redman, Marvin Jensen, and Roger Ward bring this action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure on behalf of themselves and a class consisting of:

> All residents of Minnesota that grew and harvested corn in Minnesota, and then sold the corn on a commercial basis (or who received revenue from or such corn under a crop-share agreement), from November 2013 to the present.

Excluded from the Class are the Court and its employees; Syngenta; any parent, subsidiary, or affiliate of Syngenta; and all employees and directors who are or have been employed by Syngenta during the relevant time period. Also excluded from the Class are any corn producers that knowingly planted corn containing the MIR162 event. Plaintiff reserves the right to amend the Class definition prior to class certification.

27-CV-15-17855
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

287. **Non-Producer Class.** Plaintiff Matawan Grain and Feed, LLC , brings this action under Minnesota Rule of Civil Procedure 23 on behalf of itself and a Class of similarly situated Non-Producers defined as:

> All residents of Minnesota who, since January 1, 2013, prepared, stored, transported, loaded, exported, sold, or purchased for resale, on a commercial basis, U.S. commodity corn or DDGS produced by others.

Excluded from the Class are the Court and its employees; Syngenta; any parent, subsidiary, or affiliate of Syngenta; and all employees and directors who are or have been employed by Syngenta during the relevant time period; and all Producers. Plaintiff reserves the right to amend the Class definition prior to class certification.

288. Plaintiffs seek to represent the Classes for any damages and injunctive relief. Plaintiffs assert claims against Syngenta individually and on behalf of all Class members for the violations of law alleged herein.

289. All requisite elements of Minnesota Rules of Civil Procedure 23.01 and 23.02 are satisfied, making class certification appropriate.

290. **Numerosity.** The numerosity requirement of Minnesota Rule of Civil Procedure 23.01(a) is satisfied for the proposed Producer and Non-Producer Classes, because the members of the proposed Classes are so numerous and geographically dispersed that joinder of all their members is impracticable. Although the exact number and identity of each member of each of the Classes, there are believed to be not less than thousands each of Producers and Non-Producers in Minnesota.

291. **Commonality.** The commonality requirement of Minnesota Rule of Civil Procedure 23.01(b) is satisfied because there are questions of law or fact common to Plaintiffs and the other members of the Classes. Among those common questions of law and fact are as follows:

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

a. whether the members of the Classes have sustained damages in their business or property by reason of Syngenta's violation of Minnesota law, and, if so, the proper measure and appropriate formula to be applied in determining damages;

b. whether Syngenta, through its acts or omissions, caused or contributed to cause the loss of export markets for U.S. corn and DDGS, including China;

c. whether Syngenta knew or should have known that their acts or omissions would cause or contribute to cause the loss of export markets for U.S. corn and DDGS, including China;

d. whether the loss of export markets for U.S. corn and DDGS, including China, resulted in a reduction in the price Non-Producers received for U.S. corn and DDGS;

e. whether Syngenta is legally responsible for the loss of U.S. corn and DDGS export markets and the reduction in price received for U.S. corn and DDGS, as well as lost business and increased costs associated with the loss of the Chinese export market under one or more of the legal theories asserted in this Complaint;

f. whether Plaintiffs and the members of the proposed Classes are entitled to compensatory, consequential, and exemplary damages;

g. whether Syngenta had a duty to exercise reasonable care in its commercialization of MIR162 and/or Event 5307 corn;

h. whether Syngenta breached its duty of care in its commercialization of MIR162 and/or Event 5307 corn; and

i. whether Syngenta was negligent in breaching its duty of care in its commercialization of MIR162 and/or Event 5307 corn.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

292. **Typicality.** The typicality requirement of Minnesota Rule of Civil Procedure 23.01(c) is satisfied because Plaintiffs' claims arise from the same course of conduct by Syngenta and are based on the same legal theories as the claims of the Classes. Plaintiffs and the other Class members each sustained damages arising from Defendant's wrongful conduct, as alleged more fully herein. All Class members have been the subject of Defendant's unfair and unlawful business practices as described herein. The relief sought is common, unitary, and class-wide in nature. The same material facts that Defendant withheld from Plaintiffs were withheld from the other Class members. Further, Plaintiffs seek the same forms of relief as other Class members. More specifically, Plaintiffs Edlund, Redman, Jensen, and Ward's claims are typical of the claims of members of the Producer Class; and Plaintiff Matawan Grain and Feed, LLC's claims are typical of members of the Non-Producer Class. Therefore, the "typicality" requirement of Minnesota Rule of Civil Procedure 23.01(c) is satisfied.

293. **Adequacy.** The adequacy requirement of Minnesota Rule of Civil Procedure 23.01(d) is satisfied because Plaintiffs are committed to the vigorous prosecution of this action, which is reflected in Plaintiffs' retention of competent counsel experienced in complex litigation and, for purposes of this action, agricultural biotechnology litigation. Because Plaintiffs' Edlund, Redman, Jensen, and Ward's claims are typical of the claims of members of the Producer Class, and Plaintiff Matawan Grain and Feed, LLC's claims are typical of members of the Non-Producer Class, Plaintiffs have every incentive to vigorously pursue those claims and adequately protect interest of the respective Classes they seek to represent. Plaintiffs have no conflicts with, or interests antagonistic to, the other members of the Classes they respectively seek to represent who have been damaged as a result of the conduct alleged herein.

27-CV-15-17855
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

294. **Class Counsel.** Plaintiffs' counsel satisfies the requirements of Minnesota Rule of Civil Procedure 23.07 to serve as Class counsel. Plaintiffs' counsel has identified and thoroughly investigated the claims set forth herein, and are highly experienced in the management and litigation of class actions and complex litigation in general and agricultural and biotechnology litigation in particular. Plaintiffs' counsel has extensive knowledge of the applicable law and possesses the resources to commit to the vigorous prosecution of this action on behalf of Plaintiffs and the other members of the Classes.

295. This action also meets the requirements of Minnesota Rule of Civil Procedure 23.02(b). Syngenta has acted, or refused to act, on grounds generally applicable to Plaintiffs and other members of the Classes, making final injunctive relief or corresponding declaratory relief with respect to the proposed Classes appropriate.

296. **Predominance.** Moreover, this action meets the requirements of Minnesota Rule of Civil Procedure 23.02(c). Common questions of law and fact, including those set forth above, exist as to all Class members' claims. These common questions predominate over questions affecting only individual Class members. A class action is superior – if not the only method – for the fair and efficient adjudication of this controversy.

297. The proposed Classes have a well-defined community of interest in the questions of fact and law to be litigated. The common questions of law and fact are predominate with respect to the liability issues, relief issues and anticipated affirmative defenses. The named Plaintiffs have claims typical of the members of the respective Classes they seek to represent. Without limitation, as a result of Defendant's conduct alleged herein, Plaintiffs and members of the Classes were: (a) injured; and, (b) sustained pecuniary loss in an ascertainable amount to be proven at the time of trial.

27-CV-15-17855
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

298. Class treatment will permit large numbers of Producers and Non-Producers, similarly situated, to prosecute their respective claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would produce. The certification of Producer and Non-Producer classes in this action is superior to the litigation of a multitude of cases by members of the putative classes. Class adjudication will conserve judicial resources and will avoid the possibility of inconsistent rulings. Moreover, there are members of the Classes who are unlikely to join or bring an action due to, among other reasons, their reluctance to sue Defendant and/or their inability to afford a separate action. Equity dictates that all persons who stand to benefit from the relief sought herein should be subject to the lawsuit and hence subject to an order spreading the costs of the litigation among the members of the Classes in relationship to the benefits received. Even if the members of the classes themselves could afford individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

299. This action is manageable as a class action. Notice may be provided to members of the Classes by First Class U.S. Mail and through alternative means, including publication. Furthermore, the claims set forth below based on Minnesota law will apply evenly to all proposed members of the Classes (as noted below). Thus, the superiority and manageability requirements Minnesota Rule of Civil Procedure 23.02(c) are satisfied.

27-CV-15-17855
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

V. CAUSES OF ACTION

COUNT I. VIOLATION OF MINN. STAT. §§325D.13, 325D.44 AND 325F.69

300. Plaintiffs repeat and reallege and incorporate herein by reference as though fully set forth herein all preceding paragraphs of this Complaint.

301. Plaintiffs bring this cause of action individually and on behalf of the Classes.

302. Minnesota Statutes §§325D.13, 325D.44 and 325F.69, prohibit misrepresenting the quality of goods as well as sales sounding in fraud, misrepresentation, or deceptive practices, providing in pertinent part:

> 325D.13 QUALITY, MISREPRESENTED
> No person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise.
>
> 325D.44 DECEPTIVE TRADE PRACTICES
> A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:
>
> (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
>
> (3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
>
> . . .
>
> (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
>
> . . .
>
> (7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
>
> . . .

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

> (13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.
>
> 325F.69 UNLAWFUL PRACTICES
>
> Subdivision 1.Fraud, misrepresentation, deceptive practices. The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoinable as provided in section 325F.70.

303. Minn. Stat. §§8.31 and 325D.45 provide private remedies for violations of these provisions.

304. Syngenta used and/or continues to use in commerce false or misleading descriptions of fact, and/or false or misleading representations of fact, which were likely to cause and/or did cause confusion and mistake.

305. Syngenta's representations, statements, and commentary have been largely disseminated, and included:

a. To APHIS and the public, including stakeholders interested in the MIR162 Deregulation Petition, that deregulation of MIR162 should not cause an adverse impact on export markets for U.S. corn, that Syngenta would communicate the stewardship requirements "using a wide ranging grower education program," and that at the time the MIR162 Deregulation Petition was submitted to APHIS, regulatory filings were in progress in China;

b. To APHIS and the public, that MIR162 could and would be channeled away from markets that had not yet approved MIR162;

c. To the press and to investment analysts on quarterly conference calls;

d. Through statements in marketing materials published on the Internet such as its "Plant With Confidence" fact sheet; and

e. Through other statements indicating that approval from China for MIR162 corn was expected at times when Syngenta knew it was not.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

306. In addition, Syngenta stated in 2007 that its regulatory filings with China were "in process" when it did not actually file for approval from China until 2010.

307. Syngenta made numerous misrepresentations pertaining to the status of China's import approval for MIR162. Among others, and as more fully set forth above, Syngenta during the summer of 2011, represented to stakeholders, including Producers (to encourage further sales, planting, and harvesting of MIR162), that it would receive China's approval in March 2012. Syngenta continued making this misrepresentation throughout the planting and harvesting season in 2011 and into 2012. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process, and its own status within that process for MIR162, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

308. In addition to these false and misleading statements, Syngenta failed to disclose, and actively suppressed and concealed, that approval from China was not reasonably likely to occur (at least) for the 2011 and 2012 growing seasons and that purchase and planting of Viptera created at least a substantial risk of loss of the Chinese market.

309. Syngenta also has at all times made false and misleading statements regarding the ability to channel MIR162 corn, as well as the state and effectiveness of its supposed stewardship generally and in regard to MIR162.

310. Syngenta also failed to disclose, and actively suppressed and concealed, that there was not (and would not be) an effective system in place for isolation or channeling of Viptera or Duracade.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

311. As a developer of genetically modified products (including MIR162), Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which Producers and Non-Producers, including Plaintiffs, do not have access.

312. Syngenta also has special knowledge regarding the systems it did and did not institute for isolation and channeling of its genetically modified products, including Viptera and Duracade, which was not available to Producers or Non-Producers, including Plaintiffs.

313. Syngenta knew but failed to disclose, suppressed, and concealed that systems were not in place to isolate or effectively channel Viptera and Duracade, and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would disseminate throughout the U.S. corn supply and into export markets, including China, which had not approved import, causing market disruption.

314. Syngenta also knew but failed to disclose, suppressed, and concealed, at minimum, in 2010-2011 that it would not have import approval from China by the 2011 crop year and in 2011-2012 that it would not have import approval from China by the 2012 crop year, and failed to disclose that China was a significant and growing import market. Syngenta further failed to disclose at all relevant times the insufficiency of its approval request to China, and that it sought approval to cultivate MIR162 in China, both of which Syngenta knew would cause delay in China's approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolation or channeling of Viptera or Duracade and the very high likelihood that MIR162 would move into export channels where it was not approved, causing market disruption.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

315. Syngenta engaged in these deceptions to sell and increase its sales of Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and Producers and Non-Producers would be harmed.

316. Syngenta knew that Producers and Non-Producers, like Plaintiffs here, are affected by its business and depend on it for responsible commercialization practices.

317. For all these reasons, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not imminent or indeed anticipated for (at least) the 2011 and 2012 growing seasons, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which it did not have approval, and that commercializing Viptera (and later Duracade) without Chinese import approval or an effective channeling system created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

318. In addition, Syngenta made numerous misrepresentations to the effect that approval from China was on track and/or would be received during time periods when Syngenta knew it was not, and that Viptera and Duracade could, and would, be channeled away from markets for which approval had not been obtained. Syngenta had a duty to prevent words it communicated from misleading others.

319. Syngenta's misrepresentations and omissions were made intentionally or recklessly.

320. Syngenta, in connection with the sale of merchandise – Viptera and Duracade – knowingly misrepresented, directly or indirectly, the true quality of that merchandise in violation of Minn. Stat. §325D.13.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

321. Syngenta's actions caused a likelihood of confusion or misunderstanding as to: the source, sponsorship, approval or certification of Viptera and Duracade; the affiliation, connection, or association with, or certification by, another in violation of Minn. Stat. §325D.44.

322. Syngenta represented that Viptera and Duracade: had sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have; were of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another in violation of Minn. Stat. §325D.44.

323. Syngenta used or employed fraud, false pretense, false promise, misrepresentation, misleading statements, or deceptive practices, with the intent that others rely thereon in connection with the sale of Viptera and Duracade in violation of Minn. Stat. § 325F.69.

324. Syngenta's violations of Minn. Stat. §§325D.13, 325D.44, and 325F.69 proximately caused harm to Producers and Non-Producers.

325. This action will serve a public benefit. Not only were Syngenta's misrepresentations made to a large segment of the public, Syngenta's conduct vitally affects a large segment of the public as well – all Producers and Non-Producers in the business of growing, selling, storing, exporting, and transporting corn and corn products– who depend on the responsible stewardship practices of developers like Syngenta when commercializing GM products. Harm to Producers and Non-Producers has a reverberating effect throughout Minnesota as the community depends, particularly the economies of rural areas, on the success of Producers and Non-Producers. The issues surrounding what duties and liabilities such developers have for irresponsible and intentional acts is not limited to corn but impact all developers and stakeholders in a similar position. Agribusinesses—notably Syngenta—routinely rush products to the market

27-CV-15-17855
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

prior to full regulatory approval both domestically and internationally and often fail to implement appropriate protocols to keep these unapproved products out of the market. Corn[2], Rice[3], and Wheat[4] farmers have all suffered damages related to such conduct. Defendant's history of conduct similar to that alleged here indicates that Defendant has not been, and will not be deterred, absent significant and sweeping consequences. This action should proceed under Minn. Stat. §8.31 to promote the public benefit by increasing the consequences of recklessly marketing seeds and trait stacks, and to provide the deterrence necessary to ensure similar events do not occur in the future.

326. Producers and Non-Producers are entitled to compensatory damages and attorneys' fees. (See Minn. Stat. §§ 8.31, subd. 3a and 325D.45. subd. 3).

327. As a direct and proximate result of the foregoing, Plaintiffs and the classes have been injured and suffered financial loss for which damages, injunctive, declaratory and/or other relief as may be available at law or equity is warranted.

COUNT II. COMMON LAW NEGLIGENCE

328. Plaintiffs repeat and reallege and incorporate herein by reference as though fully set forth herein all preceding paragraphs of this Complaint.

329. Plaintiffs bring this cause of action individually and on behalf of the Classes.

330. Syngenta owed a duty to Producers and Non-Producers to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

331. Syngenta breached its duties by acts and omissions including but not limited to:

[2] In 2001, Aventis settled a class action suit after failing to keep its Starlink corn, approved only for animal feed, out of the US food supply.

[3] In 2011 Bayer CropScience settled thousands of cases related to the contamination of the US long grain rice supply with its LibertyLink rice strain.

[4] In 2014, Monsanto settled three putative class actions brought after genetically engineered, unapproved, wheat was discovered in Oregon.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

a. Prematurely commercializing Viptera and Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective "stewardship" program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or "channel" those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that planting Viptera would lead to the loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

332. Syngenta's negligence is a direct and proximate cause of the injuries and damages sustained by Producers and Non-producers.

333. Producers and Non-producers are thus entitled to an award of compensatory damages, pre-judgment, and post-judgment interest.

334. Syngenta's conduct was willful, wanton, grossly negligent, and in reckless disregard of the rights of others, including Producers and Non-producers. Moreover, Syngenta had knowledge of facts or intentionally disregarded facts that created a high probability of harm to the rights of Producers and Non-producers, and deliberately proceeded to act in conscious or intentional disregard of that high probability of harm; alternatively, Syngenta deliberately proceeded to act with indifference to that high probability of harm. Syngenta's acts and omissions thus showed deliberate reckless disregard for the rights of Producers and Non-producers. Punitive damages are thus warranted.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

COUNT III. STRICT LIABILITY – PRODUCTS LIABILITY

335. Plaintiffs repeat and reallege and incorporate herein by reference as though fully set forth herein all preceding paragraphs of this Complaint.

336. Plaintiffs bring this cause of action individually and on behalf of the Class.

337. Syngenta has in the past and continues to manufacture, sell, or otherwise distribute corn containing MIR162.

338. Syngenta sold Viptera and Duracade into the stream of commerce by selling it to farmers.

339. Viptera and Duracade was in a defective condition, unreasonably dangerous to users' property because it is nearly impossible to keep corn containing MIR162 from contaminating non-MIR162-containing corn.

340. The defective condition of Viptera and Duracade existed at the time the product left Syngenta's control.

341. Corn containing the MIR162 event Viptera and Duracade was used in a manner reasonably anticipated, as it was planted to grow corn, a reasonable use of which was selling the corn on the open market, both foreign and domestic.

342. Syngenta should have reasonably expected Plaintiffs, and the other members of the Classes, to be subject to the harm caused by the defective condition of corn containing the MIR162 event.

343. As a direct and proximate result of the defective and unreasonably dangerous condition of Viptera and/or Duracade as it existed when Syngenta supplied it, Plaintiffs, and the other members of the Classes, have sustained injuries and damages as alleged above.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

344. Syngenta knew, or should have known, that its conduct would result in injuries and damages to Plaintiffs and the other Class members.

345. As a direct and proximate result of the foregoing, Plaintiffs and the other Class members have been injured and suffered financial loss for which damages, injunctive, declaratory and other relief as may be available at law or equity is warranted.

COUNT IV. STRICT LIABILITY – FAILURE TO INSTRUCT AND/OR WARN

346. Plaintiffs repeat and reallege and incorporate herein by reference as though fully set forth herein all preceding paragraphs of this Complaint.

347. Plaintiffs bring this cause of action individually and on behalf of the Classes.

348. Syngenta has in the past and continues to manufacture, sell, or otherwise distribute corn containing MIR162.

349. Syngenta sold Viptera and Duracade into the stream of commerce by selling it to farmers.

350. Viptera and Duracade was used as intended.

351. Viptera and Duracade were used in a manner Syngenta could reasonably anticipate.

352. Syngenta is strictly liable to Plaintiffs and the other members of the Classes as a result of its failure to warn about the dangers of Viptera and Duracade.

353. Syngenta knew, or had reason to know, of the dangers associated with corn containing the MIR162 event.

354. Syngenta had a duty to warn and/or instruct Plaintiffs and the other members of the Classes.

355. Syngenta did not give adequate warning of the danger of Viptera and Duracade. Nor did Syngenta give adequate instructions as to the use of Viptera and Duracade.

27-CV-15-17845
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

356. Plaintiffs and the other members of the Classes suffered injury and damages as a direct and proximate result of Syngenta's failure to provide an adequate warning and/or instructions regarding the dangers of Viptera and Duracade.

357. Thus, Syngenta knew, or should have known, that its conduct would result in injuries to Plaintiffs and the other members of the Classes.

358. Nevertheless, Syngenta continued such conduct in reckless disregard of or conscious indifference to those consequences.

359. As a direct and proximate result of the foregoing, Plaintiffs and the other members of the Classes have been injured and suffered financial loss for which damages, injunctive, declaratory and other relief as may be available at law or equity is warranted.

VI. REQUEST FOR RELIEF

All Plaintiffs, on behalf of themselves and their respective Classes, respectfully request that the Court enter judgment in their favor and against Defendant, as follows:

A. That the Court certify the Classes pursuant to the Minnesota Rule of Civil Procedure 23 and designate Plaintiffs as representatives of the Classes and the undersigned Class Counsel as counsel to the Classes;

B. All monetary and compensatory relief to which they are entitled and will be entitled at the time of trial;

C. That the Court enter a judgment finding:

i. Syngenta violated Minnesota Statutes §§325D.13, 325D.44 and 325F.69.

ii. Syngenta's release of corn containing the MIR162 event was negligent.

iii. Syngenta is strictly liable for damages caused as a result of the release of corn containing the MIR162 event.

27-CV-15-17765
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

iv. Syngenta failed to adequately warn or instruct Producers and Non-Producers as to the danger of corn containing the MIR162 event.

D. That the Court award monetary damages, including compensatory relief, to which Plaintiff and the other Class members are entitled to, in an amount to be determined at trial;

E. That the Court award Plaintiff his costs incurred in this action and reasonable attorney's fees;

F. That the Court award Plaintiff prejudgment interest;

G. That the Court award such other and further relief as may be available at law or equity as the court deems just and proper.

VIII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues.

Dated: October 2, 2015

Respectfully Submitted,

/s/ Daniel E. Gustafson

Daniel E. Gustafson #0202241
GUSTAFSON GLUEK PLLC
Canadian Pacific Plaza - Suite 2600
120 South 6th Street
Minneapolis, MN 55402
Telephone: 612-333-8844
Facsimile: 612-339-6622
Email: dgustafson@gustafsongluek.com

William R. Sieben
SCHWEBEL GOETZ & SIEBEN, P.A.
IDS Center - Suite 5120
80 South 8th Street
Minneapolis, MN 55402
Telephone: 612-377-7777
Facsimile: 612-333-6311
Email: bsieben@schwebel.com

CO-LEAD INTERIM CLASS COUNSEL FOR PLAINTIFFS

27-CV-15-17845
Filed in Fourth Judicial District Court
10/2/2015 3:05:00 PM
Hennepin County, MN

ACKNOWLEDGMENT

The undersigned acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minnesota Statutes §549.211, to the party against whom the allegations in this pleading are alleged.

Dated: October 2, 2015

/s/ Daniel E. Gustafson
GUSTAFSON GLUEK PLLC
Canadian Pacific Plaza - Suite 2600
120 South 6th Street
Minneapolis, MN 55402
Telephone: 612-333-8844
Facsimile: 612-339-6622
Email: dgustafson@gustafsongluek.com

EXHIBIT 52

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

This Document Relates to: ALL ACTIONS

Case Type: Civil Other

Honorable Thomas M. Sipkins

Court File No.: 27- CV-15-3785

MASTER COMPLAINT FOR PRODUCERS AND NON-PRODUCERS (NON-CLASS)

AND JURY DEMAND

Plaintiffs Brekken Farms, Terry Ahlbrecht, Red River Grain Company, and Porter Elevator, Inc. bring this action against Syngenta Seeds, Inc. ("Syngenta Seeds"), Syngenta AG, Syngenta Crop Protection AG ("Crop Protection AG"), Syngenta Corporation ("Syngenta Corp."), Syngenta Crop Protection, LLC ("Crop Protection LLC"), Syngenta Biotechnology, Inc. ("Syngenta Biotech") (collectively "Defendants" or "Syngenta"). The terms "Plaintiffs," "Producers," and "Non-Producers" are used generically to refer to any Producer or Non-Producer who has filed an action that has been or becomes related to this Court File Number 27-CV-15-3785. All Producers and Non-Producers must file an individual Notice to Conform to conform their complaints to the facts alleged herein. Plaintiffs state as follows:

27-CV-15-17855
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

INTRODUCTION

The Plaintiffs named herein and all those who file a Notice to Conform their actions to this Complaint (collectively "Plaintiffs") consist of thousands of corn "Producers" (U.S. corn growers) and "Non-Producers" (entities that purchased, stored, transported, and/or exported corn grown in the United States). Plaintiffs bring this action against Syngenta, a multibillion-dollar global agribusiness enterprise that develops and sells genetically modified corn seed. Plaintiffs and Syngenta are part of an interconnected industry that demands and expects all market participants to act, at least in part, for the mutual benefit of all others in their interconnected web.

Biotechnology sits at the heart of this industry. It holds great promise but can also cause great harm. Biotechnology companies such as Syngenta must act responsibly when commercializing new products containing genetically modified traits. All industry participants, including Syngenta, understand that irresponsible commercialization of a new genetically modified product can cause major trade disruption and massive harm to both Producers and Non-Producers. That is why industry leaders, including Syngenta, have pledged to all other stakeholders that they will act responsibly in introducing new genetically modified traits.

Syngenta broke that pledge. Starting in 2010, it took unreasonable and irresponsible actions to launch two new products containing genetically modified traits before obtaining approval from China, a key export market. These actions caused the Chinese market to be effectively closed to U.S. corn shipments starting in November 2013.

After a period of development, Syngenta petitioned the United States Department of Agriculture ("USDA") in 2007 for deregulation of its Agrisure Viptera® branded corn seed, which contains the genetically modified MIR162 trait. The USDA approved Viptera for sale in 2010. Syngenta recognized that China had not approved MIR162. Syngenta further knew that

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

China's approval was important, as a large and growing export market. In fact, Syngenta had recently sought regulatory approval in China, which on average takes two to three years. Syngenta had previously been warned by industry participants not to introduce MIR162 without key export market approval because of the devastating consequences that were likely to occur from premature commercialization. But Syngenta had a limited patent life for this genetic trait. Every year that passed without commercialization resulted in lost monopoly profits for Syngenta.

Syngenta had a choice. It could gamble, or it could wait. Syngenta decided to gamble and immediately brought Viptera to market. Syngenta knew that China would not approve MIR162 until sometime after that trait had entered export channels, which, in turn, created a huge risk that the U.S. corn industry could lose one of their large and growing export markets. Thus, Syngenta knew that Producers and Non-Producers were likely to be adversely impacted by a sudden loss of China as a market for U.S. corn.

From 2011 through 2013, Syngenta was asked by industry participants to stop its aggressive commercialization of Viptera. China's importance as a purchaser of U.S. corn was growing rapidly, and China still had not approved MIR162. Syngenta ignored these pleas. It expanded sales for the 2012 and 2013 growing seasons. By then, Viptera corn had infiltrated the general domestic corn supply.

In November 2013, Syngenta's gamble went bust. China did exactly what everyone in the industry, including Syngenta, knew would happen if China found U.S. shipments contaminated with MIR162: China began rejecting entire shipments of corn from the United States. Industry participants reacted in early 2014 by demanding that Syngenta halt commercialization of Viptera, as well as a new product, Agrisure Duracade™. Duracade contained both MIR162 and a new trait called Event 5307, which was also not approved by China and other key export markets. Syngenta

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

had petitioned the USDA for deregulation of Duracade in 2011, and approval was granted for that product in 2013. Industry participants raised "grave concerns about the serious economic harm" to those in the industry, including farmers, from the loss of the Chinese market. The National Grain and Feed Association quantified the harm at that time as ranging from $1 billion to $2.9 billion.

Syngenta again ignored the pleas. Instead, it continued to sell Viptera and launched Duracade for the 2014 crop year. These actions prolonged the problem and expanded the economic loss to Producers and Non-Producers. Corn grown by farmers who did not purchase Syngenta's products had become contaminated with the MIR162 and Event 5307 traits through cross-pollination from neighboring fields. In addition, Viptera- and Duracade-grown corn was commingled with other corn in grain elevators and other storage facilities.

During this process, Syngenta actively misled Producers and Non-Producers. For instance, Syngenta represented repeatedly that China would approve MIR162 in March 2012, even though it knew that approval in that time-frame was extremely unlikely. Syngenta also made false representations about the effect of the Chinese market on the global corn market and about measures it would take to prevent genetically-altered crops from contaminating other crops. Syngenta went so far as to represent to the USDA and the public that "there should be no effects on the U.S. maize export market" from deregulation, and that it would impose stewardship and channeling requirements to steer Viptera corn away from unapproved export markets. Syngenta, however, did not follow through in any meaningful way on these commitments. In fact, Syngenta actually increased the risk of contamination and commingling of Viptera. For example, when Bunge North America, Inc. ("Bunge") refused to accept Viptera corn, hoping to minimize the risk of MIR162 contaminating shipments bound for China, Syngenta sued in an attempt to force Bunge to accept its unapproved product.

27-CV-15-17845
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Syngenta's actions foreclosed the China market for U.S. corn exports for an extended term and with a lasting, material impact since it reopened. The loss and subsequent restricted growth of this market, which the USDA had predicted to be the largest export market for corn by 2020, has caused enormous harm to Producers and Non-Producers. That harm continues to grow. China approved MIR162 in December 2014; however, it still has not approved Event 5307. U.S. corn exports to China have not yet recovered, and it remains to be seen whether they will ever regain the levels they would have attained if not for the Syngenta trade disruption.

This action seeks compensation for thousands of U.S. corn Producers and Non-Producers, who have suffered substantial losses as a direct result of Syngenta's irresponsible conduct, as well as punitive damages for Syngenta's willful harm to the U.S. corn industry.

I. Jurisdiction and Venue

1. This is a civil case in which the Court has original jurisdiction under the Constitution of the State of Minnesota, Article 6, §3. Plaintiffs do not assert any claims arising under federal law.

2. The Court has personal jurisdiction over defendant Syngenta Seeds, Inc. and all other named defendants because Syngenta Seeds, Inc. maintains its principal place of business in Minnesota, transacts business here, and uses real or personal property situated in Minnesota. Minn. Stat. § 543.19. All other defendants have acted in concert with Syngenta Seeds, Inc. and with one another through agreements or other arrangements to act in a collective manner and/or as a joint venture, and thus have used or possessed real or personal property in Minnesota, have transacted business in Minnesota, and have committed acts outside of Minnesota that have caused injury or property damage in Minnesota.

27-CV-15-17855
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

3. Venue is proper in Hennepin County under Minn. Stat. §§ 542.01, 542.02, and 542.11. In addition, venue is also proper in each of the other districts in which Plaintiffs have originally filed because Defendants have marketed, sold, or otherwise disseminated, and continue to market, sell, or disseminate Viptera and Duracade corn in each of the other districts.

4. Without waiving their respective rights to request that their claims be transferred back to the court in which they were originally filed, or to the court in which they could have been originally filed before the Order to Change Venue entered on July 7, 2015, Plaintiffs assert that venue is proper in this district pursuant to the Minnesota Supreme Court's orders of May 22, 2015, A15-0758 and A15-0764, appointing this Court and the Honorable Thomas M. Sipkins "to hear and decide all matters, including pretrial and trial proceedings, in the cases currently filed in any Minnesota state district court, or filed in the future in any Minnesota state district court, against Syngenta Corporation, Syngenta Seeds, Inc., or any related Syngenta entities, and asserting claims alleging that Syngenta unlawfully released or launched a genetically modified corn seed."

II. Parties

A. Plaintiffs

5. Producer Plaintiff Brian Austin Brekken d/b/a Brekken Farms is a citizen of Minnesota that owns and/or operates a farm in Goodhue County, Minnesota. Brekken Farms has been engaged in the business of planting, growing, harvesting, and selling corn during times relevant.

6. Producer Plaintiff Terry Ahlbrecht is a citizen of Minnesota who owns and/or operates a farm in Renville County, Minnesota. Plaintiff Ahlbrecht has been engaged in the business of planting, growing, harvesting, and selling corn during times relevant.

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

7. Non-Producer Plaintiff Red River Grain Company is a Minnesota corporation with its principal place of business in Wilkin County, Minnesota. Red River Grain Company is in the business of purchasing, storing, and selling grain, including corn.

8. Non-Producer Plaintiff Porter Elevator, Inc. is a Minnesota corporation with its principal place of business in Yellow Medicine County, Minnesota. Porter Elevator is in the business of operating a country grain elevator at which it bought, stored, and sold grain, including corn.

B. Defendants

9. Syngenta Seeds is a Delaware corporation with its principal place of business at 11055 Wayzata Boulevard, Minnetonka, Minnesota 55305-1526. Syngenta Seeds is a direct subsidiary of Syngenta Corporation and described itself in its Complaint filed in *Syngenta Seeds, Inc. v. Bunge North America, Inc.*, No. 5:11-cv-04074-MWB, United States District Court, Northern District of Iowa ("*Syngenta v. Bunge*"), as

> a leading agribusiness company committed to sustainable agriculture through research and technology. Syngenta is, among other things, in the commercial seed business. It develops, produces, and sells, through dealers and distributors or directly to growers, a wide range of agricultural products, including corn and soybean seed exhibiting useful traits that have been developed with the techniques of modern biotechnology. The seed products are then grown and harvested as raw materials for the production of biofuels or grain for livestock feed; or are milled and processed for food products.

Among Syngenta Seeds' products that it has sold are the Viptera and Duracade variety of corn seeds that are at issue here. These seeds express, or contain, genetically-engineered traits that were designed to confer resistance to insects.

10. Syngenta AG is a corporation organized and existing under the laws of Switzerland with its principal place of business at Schwarzwaldallee 215, 4058 Basel-Stadt, Switzerland. Syngenta AG is a publicly-traded company on the Swiss stock exchange. American Depositary

27-CV-15-3765
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Receipts for Syngenta AG are traded on the New York Stock Exchange. Syngenta AG was formed in 2000 as a result of the merger of Novartis Agribusiness and Zeneca Agrochemicals and is the only publicly-traded company among the various Syngenta entities named as defendants in this case.

11. Syngenta Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 3411 Silverside Road #100, Wilmington, Delaware 19810-4812. Syngenta Corporation is a subsidiary of Syngenta AG.

12. Crop Protection LLC is a limited liability company organized and operating under the laws of the State of Delaware with its principal place of business located at 410 South Swing Road, Greensboro, North Carolina 27409-2012. Crop Protection LLC is a subsidiary of Syngenta Seeds.

13. Syngenta Biotech is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at P.O. Box 12257, 3054 East Cornwallis Road, Research Triangle Park, North Carolina 27709-2257. Syngenta Biotech is a subsidiary of Syngenta Seeds and traces is operations back to CIBA-Geigy Corporation, a legacy company of Syngenta. Syngenta Biotech field tested under permits issued by or notifications to, and made application for deregulation by, the USDA of the genetically modified corn traits MIR162 and Event 3507. MIR162 is used in Vitpera corn and both MIR162 and Event 5307 are used in Duracade corn.

14. Syngenta AG wholly owns, directly or indirectly, each of Crop Protection AG, Syngenta Corp., Crop Protection LLC, Syngenta Biotech, and Syngenta Seeds.

15. One or more members of Syngenta AG's Board of Directords or the Executive Committee established by the Board of Directors also serve as member(s) of the Board of

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Directors of Crop Protection AG, Syngenta Corp., Crop Protection LLC, Syngenta Biotech, and/or Syngenta Seeds.

16. Employees of the Syngenta group as a whole maintain reporting relationships that are not defined by legal, corporate relationships, but in fact cross those corporate lines. For example, Crop Protection AG maintains two separate product lines – Seeds and Crop Protection – that cross the Defendants' separate, legal corporate existences.

17. The Defendant subsidiaries are subject to additional oversight that requires them to seek approval for certain decisions from higher levels within the functional reporting structure – including in some instances Syngenta AG. Appointments of senior management personnel for the Defendant subsidiaries also may require, in certain instances, approval from individuals or governing bodies that are higher than each subsidiary's respective board of directors.

18. Moreover, Syngenta AG and Syngenta Crop Protection AG management were intimately involved in, and in some instances directed, decisions concerning the commercialization of Vipetera without Chinese approval.

19. Also, Syngenta AG maintains a central global finance function that governs all Defendants. Thus, the Defendant subsidiaries do not function independently but under the Syngenta AG umbrella.

20. Defendants regularly refer to themselves as "Syngenta" with no further description.

21. Thus, the respective jurisdictional contacts of Crop Protection AG, Syngenta Corporation, Crop Protection LLC, Syngenta Biotech, and Syngenta Seeds in the forum state are attributable to Syngenta AG because of the unusually high degree of control Syngenta AG exercises over these subsidiaries.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

22. In addition, on information and belief, Defendants acted in concert under agreements or other arrangements to act in a collective manner and/or as joint venturers regarding the actions and events made the subject of this Complaint. All Defendants, therefore, are jointly and severally liable for the acts for which the Plaintiffs make complaint.

23. Syngenta Seeds is liable for the actions of those with whom it acted in concert through agreements or other arrangements to act in a collective manner and/or as a joint venture, including Syngenta Corp., Syngenta AG, Crop Protection AG, Crop Protection LLC, and Syngenta Biotech.

C. Factual Allegations

24. Biotechnology firms such as Syngenta develop and obtain patents on their bio-engineered products, in this instance seeds. These products are also referred to as genetically-modified organisms, or "GMOs." A patent gives the biotechnology firm the exclusive right to sell its bio-engineered products; however, those patents eventually expire. Biotechnology firms have an economic incentive to "commercialize" (i.e. bring their products to market for planting and harvest) as soon as possible after filing a patent application to maximize profitability.

25. Syngenta set a market share goal for MIR162 by 2014 and sought to achieve commercialization as soon as possible.

26. Premature commercialization poses a well-known and significant risk of harm to Producers and Non-Producers if bio-engineered commodity products are commercialized before they are approved by key importing nations. Certain importing nations, such as China, have a "zero tolerance" policy and will reject grain imports from the United States if they detect the presence of even trace amounts of an unapproved bio-engineered genetic trait in grain shipments. This was well known in the biotechnology industry, including Syngenta, by 2007 at the latest.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

27. Syngenta commercialized MIR162 and Event 5307 despite clear risk of harm to its stakeholders, including Plaintiffs, despite Syngenta's knowledge of that risk, and despite Syngenta's own professed commitment to responsible management.

28. Moreover, Syngenta commercialized MIR162 by consistently misrepresenting the importance and status of China's approval, and without adequate systems in place to isolate or channel MIR162, virtually assuring that MIR162 would contaminate the U.S. corn supply.

1. *Recognized Risk of Irresponsible Commercialization*

29. The corn industry, including Syngenta, recognizes that the harm threatened by irresponsible commercialization is very real.

30. "There have been a number of high-profile cases involving genetically modified varieties ... and disruption of international shipments of commodity grains such as corn, wheat, and rice." http://www.syngentafoundation.org/index.cfm?pageID=703.

31. For example, bio-engineered corn contaminated the U.S. corn supply in 2000 and disrupted international trade causing loss to producers and non-producers. *See In re StarLink Corn Prods. Liab. Litig.*, 212 F. Supp. 2d 828 (N.D. Ill. 2002).

32. In 2006, bio-engineered rice contaminated the U.S. rice supply, again disrupting trade and causing massive damages to U.S. rice producers and non-producers. *See In re Genetically Modified Rice Litig.*, 666 F. Supp. 2d 1004 (E.D. Mo. 2009); *Bayer CropScience LP v. Schafer*, 385 S.W.3d 822 (Ark. 2011).

33. In addition to being aware of these and other well-publicized incidents at the time it commercialized MIR162, Syngenta had (and has been) continuously warned by stakeholders about the importance of, and need for, responsible commercialization.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

34. For example, when Syngenta commercialized MIR604 (Agrisure® RW) in 2007, the National Grain and Feed Association ("NGFA") (of which Syngenta is a member) and the North American Export Grain Association ("NAEGA") warned against an "'ill-conceived' plan to commercialize" Syngenta's Agrisure biotechnology-enhanced corn as endangering U.S. corn and corn-product exports, because Syngenta had not obtained regulatory approval for food and feed use in Japan and other U.S. export markets. *See* Houin, "Feed and grain organizations warn growers of limited export markets," Farm World (4/25/2007).

35. The International Grain Trade Coalition also chastised Syngenta, stating that Syngenta "did not respect the responsibility of importing governments to perform necessary risk assessments as demanded by their legislation," that the introduction of Agrisure® RW "was not done in an open transparent manner," and that Syngenta "did not complete authorization in major international markets possessing scientifically sound approval systems prior to commercialization." Letter from International Grain Trade Coalition to Michael Pragnell, CEO Syngenta dated April 18, 2007, p2. The International Grain Trade Coalition further stated that Syngenta's conduct "[e]xposed downstream members of the value chain including producers, handlers, exporters, importers, food processors and distributors to significant liability as currently all countries employ a zero threshold policy for an event not authorized by the importing country" and strongly urged Syngenta to "reverse immediately its decision to commercialize Agrisure RW at this time." *Id.*

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

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

major trade disruptions." BIO Product Launch Stewardship Policy, May 21, 2007, at Annex 1 Introduction; *see also* BIO Product Launch Stewardship, December 10, 2009, at Annex 1 Introduction (same); BIO "Stewardship: Actions to be Taken Prior to Launching Special Traits," October 4, 2010, at Annex 1 Introduction (same); BIO Product Launch Stewardship: Food and Agriculture Section, November 27, 2012, at Annex 1 Introduction (same).

37. As stated in BIO's December 10, 2009 "Product Stewardship Policy":

> Since the commercial introduction of biotechnology-derived plant products in 1996, an increasing number of biotechnology-derived plant products intended for food or feed use are authorized for commercial production in many countries throughout the world; however, authorizations in importing countries vary depending on the timing of submissions for import authorization as well as the duration of the authorization process in each country. As a consequence of these asynchronous authorizations, low levels of recombinant-DNA plant materials that have completed full safety assessments in accordance with national and international standards in one or more countries may, on occasion, be present in food or feed in countries in which the authorization process of the relevant recombinant-DNA plant material has not been completed. Asynchronous authorizations combined with importing countries maintaining 'zero tolerance' for recombinant-DNA products not yet authorized results in the potential for major trade disruptions.

http://www.bio.org/sites/default/files/Product_Launch_Stewarship_12_10_09.pdf.

2. *Syngenta Recognizes Its Stewardship Obligation*

38. Under the "Corporate Responsibility" section of its website, Syngenta acknowledges the integrated nature of the commodity market and its responsibility to stakeholders affected by its business, including but not limited to Producers and Non-Producers:

> Our stakeholders are the people who can affect our business or who are affected by it. They include the following groups:
>
> Growers
> Industry
> Non-governmental organizations and international agencies
> Investors
> Employees
> Government

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

39. Syngenta has committed to "respond to feedback from its stakeholders" and "to implement high standards of stewardship for the safe, effective and environmentally responsible use of its products." http://www.syngenta.com/global/corporate/en/about-syngenta/corporate-responsibility/Pages/cr-policy-and-commitments.aspx.

40. Syngenta represents that "it prioritize[s] the issues that are most relevant to our business and most important to our stakeholders."

41. Syngenta also represents that it "maintain[s] the highest standards across our entire business and go[es] beyond regulatory compliance."

42. In Syngenta's "Code of Conduct," posted on its website for all stakeholders to read, Syngenta represents:

- "The trust and confidence of Syngenta's stakeholders is critical to our continuing success and will only be sustained if the company acts and is seen to act in accordance with the highest standards of ethics and integrity. To ensure we meet the standards which our stakeholders expect, we have produced this new Syngenta Code of Conduct . . . ."

- "We provide innovative, reliable, high-quality products and have safeguards to protect stakeholders."

- "The creativity of our people provides products which help growers meet the global challenges to agriculture."

- "We will work closely with customers, contractors, users and all other stakeholders to ensure proper and responsible use of our products and understanding of the precautions that apply ...."

43. In November 2007, Syngenta adopted its own "Bio Product Launch Policy." The Syngenta Bio Product Launch Policy incorporates BIO's Product Launch Policy and requires Syngenta to perform a market and trade assessment to identify key importing nations and obtain those nations' approval before commercializing a new bio-engineered product. http://www.syngentabiotech.com/biopolicy.aspx.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

44. On its website, Syngenta also suggests that it complies with the stewardship standards adopted by CropLife International and Excellence Through Stewardship, advising farmers that they may learn more about "stewardship" by visiting the provided links. *See* http://www.syngentabiotech.com/BioStewardshipLinks.aspx.

45. It is clear that the importance of obtaining import approval from key markets was well known and recognized within the biotechnology industry and by Syngenta before Syngenta commercialized MIR162 under the Viptera brand name and trademark for the 2011 crop year.

46. Syngenta committed to not commercializing new genetically modified traits that had not been approved by key import markets. *See, e.g.*, BIO Product Launch Policy, Syngenta Implementation Principles (Nov. 2007). Syngenta clearly knew the risks of premature commercialization and knew that without stringent containment and channeling procedures, MIR162 would contaminate the U.S. corn supply and move to export markets, causing significant trade disruption, as set out below. Based on clear warnings and its own knowledge, Syngenta knew or plainly should have known that China was a key and growing market. Responsible practice dictated that Syngenta not commercialize Viptera, and certainly not do so without adequate containment and effective channeling measures in place, before obtaining import approval. Syngenta, however, did just the reverse.

3. *Regulation, Testing, and Deregulation of MIR162*

47. The process of commercialization begins with obtaining approvals from U.S. agencies, including but not limited to deregulation from the Animal, Plant, and Health Inspection Service ("APHIS") of the USDA.

48. The regulations in 7 C.F.R. part 340 (the "GMO Regulations") regulate, among other things, the introduction (importation, interstate movement, or release into the environment)

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe may be plant pests. Such genetically-engineered organisms and products are considered "regulated articles." The GMO Regulations were promulgated under the Plant Protection Act (the "PPA"), 7 U.S.C. § 7701, *et seq.*, or its predecessor statutes.

49. MIR162 is a genetically modified trait that before its deregulation, was regulated by the USDA under the PPA and GMO Regulations.

50. The GMO Regulations at 7 C.F.R. §§ 340.3 and 340.4 allow release into the environment of regulated, genetically modified traits, such as MIR162, before their deregulation, through field trials conducted under permits issued by, or notifications to, APHIS. Developers who field test genetically modified traits, such as Syngenta Biotech in its field testing of MIR162, are required to adhere to certain performance standards in the GMO Regulations to ensure the regulated genetically modified organism does not persist in the environment or enter the food or feed supply. Similarly, at the end of all field tests, developers must destroy or properly contain any viable plant material in the field and ensure no regulated material persists in the environment beyond the duration of the trial.

51. Syngenta is no stranger to releasing regulated GMO events. In 2005, Syngenta settled with the USDA ($375,000 fine plus a required training program) stemming from its release of still-regulated Bt10 corn, which Syngenta supplied as deregulated Bt11 corn between 2001 and 2004. About 14,000 bags of Bt10 seeds were sold from 2001 to 2004, mainly to U.S. farmers but also in Canada and Argentina. The Bt10 event was found in at least five Bt corn breeding lines in the U.S, and it was estimated that the seeds could have been planted on 37,000 acres in the U.S, producing "an estimated 150,000 tons of corn from this area" and accounting for approximately .01% of the total U.S. corn acreage. *See* New York Times, "U.S. Fines Swiss Company Over Sale

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

of Altered Seed," (Apr. 9, 2005); PR Newswire, "Syngenta Agrees to Settlement With USDA on Unintended Bt10 Corn" (http://www.prnewswire.com/news-releases/syngenta-agrees-to-settlement-with-usda-on-unintended-bt10-corn-54220787.html). Syngenta later paid a $1.5 million fine to the EPA, which conducted an investigation confirming the distribution of unregistered Bt10 corn on "over 1000 occasions." EPA News Release "EPA Fines Syngenta $1.5 Million for Distributing Unregistered Genetically Engineered Pesticide." (Dec. 21, 2006).

52. Between 1999 and 2007, Syngenta Biotech conducted at least 119 field trials of MIR162 corn under at least 20 permits issued by, or notifications to, APHIS under the GMO Regulations at sites in 31 states, including multiple field tests in Minnesota.

53. The GMO Regulations in 7 C.F.R. § 340.6(a) provide that any person may petition APHIS for a determination that an article should not be regulated under 7 C.F.R. § 340.

54. On May 24, 2007, Syngenta filed a patent application for MIR162 to secure its exclusive right to market that corn trait, pending regulatory approval by the USDA.

55. On or about September 10, 2007, Syngenta Biotech submitted a petition (the "MIR162 Deregulation Petition") seeking a determination of nonregulated status (APHIS Petition Number 07-253-01p) for corn (Zea mays L.) designated as transformation event MIR162, which has been genetically engineered for insect resistance, stating that the corn line MIR162 is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under the GMO Regulations.

56. On information and belief, Syngenta Biotech continued its field tests of MIR162 under the GMO Regulations during the approximately 31-month period after filing the MIR162 Deregulation Petition and the USDA decision deregulating MIR162 in April 2010.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

57. Syngenta Biotech stated in the MIR162 Deregulation Petition that it understood "that a copy of the MIR162 Deregulation Petition may be made available to the public as part of the public comment process." MIR162 Deregulation Petition at 3 of 268. APHIS's notice, published in the Federal Register on January 13, 2010 (75 Fed. Reg. 1749) (the "MIR162 Deregulation Notice"), expressly invited public comment regarding the MIR162 Deregulation Petition and further provided instructions as to how copies of the petition and accompanying draft environmental assessment and plant pest risk assessment could be obtained either by placing a phone call or accessing them on the internet.

58. In a preliminary observation to Section IX of the MIR162 Deregulation Petition, entitled "Adverse Consequences of Introduction" (the "Adverse Consequences Discussion"), Syngenta Biotech represented that it knew "of no data or observations that indicate [that] MIR162 would adversely impact the quality of the human environment, directly, indirectly, or cumulatively. This includes a lack of anticipated effects on ... the economy, either within or outside the U.S."

59. Specifically, among the matters addressed in the Adverse Consequences Discussion were "Economic Impacts" at Section IX.D. In the introduction to that section, at pages 108-09, Syngenta Biotech stated:

> Economic considerations are not explicitly described in the factors listed in 40 CFR § 1508.27. However, economic impacts do relate to the significance of the requested action and have been considered by some courts in reviewing NEPA [National Environmental Policy Act] compliance.

60. The economic impacts discussed included the "Effects on the Export Market," at Subsection IX.D.4, page 111, which included Syngenta Biotech's representation that "there should be no effects on the U.S. maize export markets" and advised that applications for approval

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

of MIR162 maize were in process in a number of such export markets with "functioning regulatory systems," including China, stating:

> There should be no effects on the U.S. maize export market since **Syngenta is actively pursuing regulatory approvals** for MIR162 maize in countries with functioning regulatory systems for genetically modified organisms and that import maize from the U.S. or Canada. Regulatory filings for MIR162 maize are in process for Colombia, Japan, South Korea, Taiwan, China, the Philippines, Australia and New Zealand, South Africa, the European Union, Russia, and Switzerland. (Emphasis added).

61. Other portions of the MIR162 Deregulation Petition made similar representations regarding China.

62. Syngenta Biotech also stated in Subsection IX.D. of the MIR162 Deregulation Petition that stewardship agreements with growers would require channeling of MIR162 away from export markets that had not approved import of MIR162 maize, that Syngenta would undertake "a wide-ranging grower education campaign" respecting channeling, and that channeling would be effective based on prior experiences with the specialty maize market:

> Syngenta's stewardship agreements with growers will include a term requiring growers to divert this product away from export markets (i.e. channeling) where the grain has not yet received regulatory approval for import. Syngenta will communicate these requirements to growers using a wide-ranging grower education campaign (e.g., grower Stewardship Guide). As noted in the context of the IRM program, these procedures are not hypothetical.
>
> The ability to channel particular types of maize for particular uses, such as the export market, is demonstrated by the continuing success of the specialty maize market. Use of identity preservation measures has enabled growers to maintain a wide variety of specialized maize products, including white food maize, waxy maize, hard endosperm maize, high oil maize, nutritionally enhanced maize, high extractable starch maize, non GMO maize, and organic maize (U.S. Grains Council, 2006). Channeling programs are well established for separating each of these maize varieties. As set out above, these practices have continued successfully long after the introduction of numerous varieties of transgenic maize.

63. The stewardship agreements to which Syngenta Biotech referred were later used between growers and Syngenta Seeds.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

64. In December 2009, based on its review of the MIR162 Deregulation Petition, APHIS prepared a Draft Environmental Assessment that parroted what Syngenta Biotech had represented in the MIR162 Deregulation Petition:

> There should be no effects on the U.S. corn export market since Syngenta is actively pursuing regulatory approvals for the MIR162 corn in countries with functioning regulatory systems for genetically modified organisms and that import corn from the U.S. or Canada. Regulatory filings for the MIR162 corn are in process for ... China.

65. The Draft Environmental Assessment was among the documents publicly available under the MIR162 Deregulation Notice.

66. On April 12, 2010, APHIS concluded that MIR162 corn should be deregulated. *See* Determination of Nonregulated Status for MIR162 Corn (Apr. 12, 2010); *see also* Syngenta Biotechnology, Inc. Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance, 75 Fed. Reg. 20560 (Apr. 20, 2010).

67. Before making that determination, APHIS, on April 9, 2010, issued its National Environmental Policy Act Decision and Finding of No Significant Impact and, in March 2010, issued its Final Environmental Assessment. APHIS compared the anticipated impact by taking no action (i.e., keeping MIR162 as a regulated article) with deregulating MIR162 and concluded in the Finding of No Significant Impact that in each instance the impact on the "Export Market" would remain "unchanged." Similarly, in the Final Environmental Assessment dated March 2010, APHIS adopted and repeated Syngenta's representations that it did not expect any effects on the U.S. corn export market "by the cultivation of the MIR162 corn cultivars" and that applications to countries with functioning regulatory systems, including China, were in process.

68. Thereafter, on April 21, 2010, Syngenta issued its press release, "Syngenta receives approval for breakthrough corn trait technology in the U.S." (Apr. 21, 2010). In making the

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

announcement that MIR162 had been deregulated, Syngenta noted the plans for its imminent commercialization, stating that "[t]he trait will be combined with the Agrisure 3000GT trait stack to provide corn growers with broad-spectrum, insect control and glyphosate tolerance for maximum convenience and productivity" and that "Syngenta plans to commercialize hybrids containing the Agrisure Viptera trait for the 2011 growing season."

69. The April 21, 2010 press release confirms that the MIR162 Deregulation Petition was a document prepared and published by Syngenta for the sole purpose of facilitating, promoting, and inducing the commercial sale of its products containing the MIR162 trait. The MIR162 Deregulation Petition contained statements and representations to induce APHIS to deregulate MIR162, thereby beginning the commercialization of the product. Further, the MIR162 Deregulation Petition was filed with full knowledge that the statements and representations therein would be published to stakeholders, including Producers and Non-Producers. The commercial nature of the statements in the MIR162 Deregulation Petition is clear: In explaining the rationale of the MIR162 Deregulation Petition, Syngenta stated that "[t]ransformation event MIR162 maize has been developed by Syngenta to provide growers with maize varieties that are resistant to feeding damage caused by a number of significant lepidopteran insect pests. This trait will be offered to growers in combination with other deregulated maize traits." MIR162 Deregulation Petition at 11. The MIR162 Deregulation Petition espoused the sale of the product to growers, and was rife with representations about the commercial benefits of Syngenta's product and expected market impact. The following further indicates that Syngenta made commercial representations in the MIR162 Deregulation Petition:

a. "Transformation event MIR162 has been developed by Syngenta to provide U.S. growers with maize hybrids that are resistant to feeding damage caused by a number of lepidopteran insect pests. … Commercialization of this new trait has the potential to reduce

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

conventional insecticide use in maize, increase grower profits, and improve grain quality." (p.13);

b. "[I]t [MIR162] will be commercialized as a combined-trait hybrid with Syngenta's Bt11 maize event." (p.96);

c. Syngenta's numerous references to and representations regarding the commercial benefits to farmers from introduction of MIR162. (*see, e.g.*, pp. 5, 97, 109 (enhanced productivity), p.110 (increased competition and farmer and consumer choice));

d. Syngenta's repeated observations that no adverse consequences should occur to the economy, either within or outside the United States (*see e.g.*, p.5) and the statements regarding the lack of impact on exports and intended channeling away from export markets that had yet to approve MIR162 as alleged above;

e. An appendix report regarding the economic implications of the introduction of MIR162; and

f. Syngenta's acknowledgement that the MIR162 Deregulation Petition would be made available to the public as previously alleged (p.3).

70. Contrary to Syngenta's representations that its regulatory filings were "in process" in China, Syngenta first sought regulatory approval for MIR162 from China's Ministry of Agriculture three years later, in or around March 2010. *See* http://www.syngenta-us.com/viptera_exports/images/MIR162-Regulatory-Timeline-9-2014.pdf.

71. Consistent with its statements to the USDA in the MIR162 Deregulation Petition, Syngenta considered China to have a functioning and predictable regulatory system.

4. *Syngenta's Initial Commercialization*

72. As Syngenta knows, nothing about USDA deregulation requires a developer such as Syngenta to commercialize.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

73. Responsible practice dictated Syngenta obtain import approval from key market countries before commercialization (or at minimum, before first planting). *See, e.g.*, BIO Product Launch Stewardship, December 10, 2009, at p.4.

74. As early as 2009, Syngenta acknowledged that China was a key export country.

75. In a presentation to the NGFA in 2010, Syngenta listed China as among "key import approvals" it was or would be seeking. *See* Powerpoint titled "2010 Syngenta Pipeline," Presentation to the National Grain and Feed Association.

76. Syngenta, however, knew well that it would not have import approval from China for the 2011 crop year.

77. The typical time period for import approval from China at that time was approximately 2-3 years.

78. Syngenta was not even projecting approval from China for the 2011 crop year but rather, was hoping for approval by the 2012 crop year.

79. Syngenta privately planned from the outset to commercialize Viptera with or without China's regulatory approval, notwithstanding the commitments it had made to stakeholders and industry participants not to commercialize genetically modified traits until after approval from key export markets.

80. Syngenta commercialized Viptera for the 2011 growing season despite the lack of regulatory approval from China, and despite Syngenta's knowledge that China was a key (and growing) export market for U.S. corn.

81. Syngenta did not disclose these facts to Producers or Non-Producers.

82. Syngenta was well aware in 2010 of the strong likelihood that China would be a significant import market by 2011.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

83. It was well known at least by August 2010 that China was an important and growing export market for US corn. As reflected in a trade publication at the time:

> China is entering a 'new era' of corn buying. The world's most populous country may import as much as 15 million tons of corn in 2015, according to the U.S. Grains Council. ... Chinese imports of corn will grow from 1.7 million tons in 2010 to 5.8 million tons in 2011, and to 15 million tons in 2014-15, according to Hanver Li, Chairman of Shanghai JC, speaking to the U.S. Grains Council.... Where will China import all this corn from? The first place they will turn is the U.S., which is the world's largest corn exporter, accounting for 60% of global corn exports in 2009.... If China imports an incremental 600 million bushels of corn in 2014 from the U.S., using the USDA's baseline projections, U.S. corn ending stocks would be 960 million bushels. This would put the Ending Stocks to Use Ratio at 6.3%, the lowest level since 1995. 2010 is a major turning point in the grain market. The Chinese transition to becoming a net importer of corn will have a substantial implication on the world's corn supply.

http://www.farmlandforecast.com/2010/08/chinese-imports-to-change-grain-markets/.

84. Syngenta was, and continues to be, a member of the U.S. Grains Council. Indeed, Syngenta's Rex Martin has, on information and belief, actively participated as a member of the Council's Biotechnology Advisory Team.

85. In addition, NAEGA warned Syngenta of the importance of obtaining Chinese regulatory approval before launch during a meeting in or around August 2010 with NGFA's Biotechnology Committee. *See* July 14, 2011 NGFA Newsletter. The same issue was discussed at the subsequent NGFA Biotechnology Committee meetings – during the March 2011 convention and another meeting on June 29, 2011 in Washington.

86. Syngenta knew of NAEGA's warning by the summer of 2010 and also knew of NAEGA's position that import approval should be obtained from China before marketing MIR162.

87. Nevertheless, Syngenta refused to stop its commercialization of Viptera in 2010 for planting and harvest in 2011.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

88. In the fall of 2010, NGFA, in a private meeting with David Morgan, Regional Director of North America and President of Syngenta Seeds, also urged Syngenta to delay commercialization of Viptera, emphasizing the risk of trade disruption with China.

89. On October 29, 2010, a Reuters article was circulated among Syngenta executives stating: "Chinese corn imports have rocketed this year and are expected to continue growing next year, after China's own harvest couldn't keep up with a boom in demand...."

90. Evidence of China's importance continued to mount before planting in 2011.

91. In January 2011, Syngenta knew that China had become the second most important market for U.S. corn.

92. The USDA's long-term projections, compiled in November 2010 and issued in February 2011, forecast dramatic increases in China's imports of corn from the USDA's prior year's projections. As stated by the USDA, the "increase in China's imports account for one-third of the growth in world corn trade."

93. Syngenta knew by 2011 that China's import requirements influenced global commodity prices and understood the risk of commercializing MIR162 without approval from China.

94. At the time it was marketing and selling Viptera – and before planting in 2011 – Syngenta clearly knew of China's importance.

95. In a June 2010 Risk Management Report," Syngenta recognized that MIR162 [would be] detected as unapproved trait" as a consequence of large scale production "before all import approvals are in place." The report recognized that increased production in 2010 of corn containing MIR162 increased the "likelihood of MIR162 being detected as [adventitious presence] in an export channel." Syngenta classified the impact of this risk as "high." Risk

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Management Report, dated June 2010; *see also* MIR162 & EU approvals Powerpoint attached to e-mail from David O'Reilly, dated Oct. 21 2009.

96. On February 25, 2011, Syngenta's Head of Industry Relations corresponded with the Head of Syngenta's Southeast Asian Territory as follows:

> I believe I have discussed with you several times about our risk with MIR162 and not having approval in EU and China. I have been getting more questions from traders … lately and [Charles Lee, Head of Corn for North America] wanted me to be sure you understood the potential risk for China.

97. Syngenta could, and should, have waited to market Viptera. It also could, and should, have withdrawn it from the market before planting. But it did not.

98. To the contrary, and despite the risks, Syngenta Seeds sold Viptera to approximately 12,000 Producers with a projected yield estimated in September 2011 of 250 million bushels. *See Syngenta v. Bunge*, 820 F. Supp. 2d 953, 958 (N.D. Iowa 2011). Viptera growers could be found in nearly every state such that the market for Viptera products was very broad across the U.S. *See id.* at 963. Syngenta projected that Viptera seed sales would exceed twenty percent (20%) of the U.S. corn seed market in future years. *See id.* at 958.

99. Other published estimates indicate that during the 2011 crop year, Viptera had been planted on 1.1% of the acres in the U.S. on which corn was grown.

5. *Syngenta's Continuing Irresponsibility After 2011 Planting*

100. After planting, but before harvest in 2011, the importance of China, and the risk of MIR162 contamination and market disruption, continued to grow.

101. A 2011 news article projected that China "will probably buy 5 million metric tons this year from 2 million tons in 2010."

102. On July 22, 2011, Syngenta's CEO Michael Mack stated: "The need to improve yield and quality is present across all emerging markets in the region, although it's China which

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

continues to have the greatest impact on world markets, with increasing imports not just of soybeans but also now of corn." July 22, 2011 Transcript of Remarks (http://www.syngenta.com/global/corporate/SiteCollectionDocuments/pdf/transcripts/H1-2011-results-transcript.pdf).

103. In fact, Syngenta had known for some time that China would be a significant importer of corn in 2011.

104. In August 2011, still before the first commercially-grown corn planted with the MIR162 trait had been harvested, NGFA and NAEGA issued a Joint Statement warning Syngenta about MIR162:

> U.S. farmers, as well as the commercial grain handling and export industry, depend heavily upon biotechnology providers voluntarily exercising corporate responsibility in the timing of product launch as part of their product stewardship obligation.... The negative consequences of overly aggressive commercialization of biotech-enhanced events by technology providers are numerous, and include exposing exporting companies to financial losses because of cargo rejection, reducing access to some export markets, and diminishing the United States' reputation as a reliable, often-preferred supplier of grains, oilseeds and grain products. Premature commercialization can reduce significantly U.S. agriculture's contribution to global food security and economic growth.
> Putting the Chinese and other markets at risk with such aggressive commercialization of biotech-enhanced events is not in the best interest of U.S. agriculture or the U.S. economy.

105. As stated by these associations: "The grain handling and export industry have communicated consistently, clearly and in good faith with biotechnology providers and seed companies about the importance of biotech-enhanced events in commodity crops receiving regulatory approvals or authorizations – prior to commercialization – in key export markets where foreign governments have functioning regulatory systems that approve biotech-enhanced traits. These communications regarding key export markets, identified through market and trade

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

assessments, have been conveyed through industry trade associations and in direct communications by individual companies." *Id.*

106. Not only did Syngenta commercialize Viptera prematurely, it did so without adequate systems in place to either isolate MIR162 or channel it away from markets, including China, from which approval was not obtained.

6. *Transgenic Contamination*

107. Corn, or maize, has staminate (male) and pistillate (female) flowers on the same plant and is wind pollinated. While there is some possibility of self-fertilization, corn generally is considered an outcrossing species. Under normal field conditions, some 95% of the ovules are fertilized by pollen from other plants. Pollen is released in large quantities. "Individual corn plants produce 4 to 5 million pollen grains. Therefore, even if only a small percentage of the total pollen shed by a field of corn drifts into a neighboring field, there is considerable potential for contamination through cross pollination." Thomison, "Managing 'Pollen Drift' to Minimize Contamination of Non-GMO Corn," Ohio State University Extension Fact Sheet.

108. "Once released from the tassels into the air, pollen grains can travel as far as 1/2 mile (800 m) in 2 minutes in a wind of 15 miles per hour (27 km/h) (Nielsen 2003b)." Kent Brittan, "Methods to Enable the Coexistence of Diverse Corn Production Systems," University of California. Studies indicate that "cross-pollination between cornfields could be limited to 1% or less by a separation distance of 660 feet (200 m), and to 0.5% or less by a separation distance of 984 feet (300 m). However, cross-pollination frequencies could not be reduced to 0.1% consistently, even with isolation distances of 1,640 feet (500 m)." *Id.*

109. The Association of Official Seed Certifying Agencies (AOSCA) recognizes that "[a]lthough most corn pollen is deposited near its origin, isolation by very long distance (several

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

miles) from any other corn is probably the only means of assuring complete confinement other than assuring complete asynchrony of flowering." However, "[t]he matter of whom or what entity controls the area constituting a proposed isolation zone and beyond could be crucial and/or problematic to successful confinement. AOSCA Report at 62. Assuring "complete asynchrony of flowering" also is fraught with shortcomings. For example, "[d]ifferences in maturity between the early and late hybrid may not be large enough to ensure that the flowering periods of each hybrid will not overlap, especially when certain climatic conditions may accelerate or delay flowering. Moreover this strategy will only work if [the farmer] control[s] the adjacent fields or can closely coordinate [his] corn planting operations with those of [his] neighbors." Thomison, "Managing 'Pollen Drift' to Minimize Contamination of Non-GMO Corn," Ohio State University Extension Fact Sheet.

110. In addition, "[p]lanting operations to control pollen drift are only part of the process of producing an IP corn grain crop." *Id.* Other major issues include harvesting, storage, and commingling within the production and supply chain.

111. "Different corn breeds within an individual farm are commingled at the harvesting stage. Corn from hundreds of thousands of farms is then further commingled as it is gathered, stored and shipped through a system of local, regional and terminal grain elevators. Elevators, storage and transportation facilities are generally not equipped to test and segregate corn varieties. The commingled corn is then marketed and traded as a fungible commodity." *In re StarLink Corn Prods. Liab. Litig.*, 212 F. Supp. 2d 828, 834 (N.D. Ill. 2002).

112. As a developer of genetic events, including genetically engineered corn, Syngenta knew or certainly should have known the very high likelihood that if commercialized, MIR162

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

would disseminate throughout the supply chain – in fields, storage and transportation – via the numerous routes that transgenic contamination occurs.

113. Syngenta knew that enough commingling of Viptera with non-Viptera corn would occur at harvest in the fall of 2011 to be detectable in export channels, and that as a result there was a risk that China would reject shipments of corn due to the presence of Viptera.

114. Before commercializing MIR162, Syngenta also knew the risk that MIR162 would move into export channels from planting and harvest of MIR162, knew that risk was significant, and knew that detection of MIR162 in markets lacking approval created significant risk of trade disruption.

115. Syngenta, however, took few to no steps to assure that MIR162 would not enter the U.S. corn supply through cross-pollination and/or commingling in fields, and took wholly inadequate steps to prevent commingling within grain elevators or otherwise within the supply chain as described below, virtually assuring that MIR162 would contaminate the U.S. corn supply in every way possible.

7. *Syngenta's Nonsensical and Ineffective "Stewardship" Program*

116. Syngenta's representation in its MIR162 Deregulation Petition that the "ability to channel particular types of maize for particular uses such as the export market" is demonstrated by success in the "specialty maize market" is grossly misleading. In specialty markets like organic farming, the grower receives a premium and, as such, takes the onus on himself to isolate his specialty corn crop from transgenic contamination from neighboring fields (such as spatial and temporal isolation and detasseling). *See* Thomison, "Managing Pollen Drift in Maize Seed Production," Department Horticulture and Crop Science, Ohio State University ("Growers of value added identity preserved (IP) grains need to control pollen contamination in order to

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

optimize expression of value added traits in specialty maize and thereby obtain premiums."). The specialty seller also markets to a specialty buyer to whom he channels. Both have incentive to take all measures necessary to avoid contamination by non-specialty corn. The growing, marketing, and distribution system of commodity corn is vastly different. A "Commodity Crop" is "a crop which in the ordinary course is grown using common agricultural practices and is commingled and not segregated for special handling or use when it enters the chain of commerce." Biotechnology Industry Organization, "Product Launch Stewardship: Food and Agriculture Section," November 27, 2012, at Annex 1 Introduction n.3.

117. Syngenta knew that the commodity market is different from the specialty market.

118. The difficulties with channeling are illustrated by the infamous "StarLink" contamination in 2000 that was the subject of significant litigation. *See In re StarLink Corn Prods. Liab. Litig.*, 212 F. Supp. 2d 828 (N.D. Ill. 2002). That is particularly so where millions of acres of the commodity to be channeled – MIR162 corn – were planted all across the U.S. Syngenta did not make even minimally reasonable efforts to prevent transgenic contamination.

119. Syngenta's representations to the USDA illustrate Syngenta's awareness of the kind of system designed to avoid contamination. Well-known measures in specialty markets include specifying strict containment protocols by contract (e.g., cleaning combines and storage areas, isolation distances, dedicated facilities, and inspections) and tracing the product through the supply chain.

120. Syngenta, however, did not take meaningful steps to even minimize the risk of pollen-mediated gene flow and commingling of Viptera with non-Viptera corn.

121. Responsible stewardship procedures include, at minimum, "generally accepted best seed quality practices designed to prevent low level presence of unauthorized products and [to]

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

minimize unintended incidental presence of products authorized in the county of production" and "[m]ak[ing] available prior to commercialization a reliable detection method or test for use by growers, processors and buyers that enables crop identity verification for intended use." *See* BIO "Product Launch Stewardship," dated December 10, 2009 Annex 1, Policy Guidance; BIO "Stewardship Actions to be Taken Prior to Launching Special Traits," dated October 4, 2010, Annex 1, Policy Guidance; BIO "Product Launch Stewardship: Food and Agriculture Section," dated November 27, 2010, Annex 1 Policy Guidance.

122. Syngenta stated that it would make available a reliable detection method or test for MIR162 before commercializing Viptera.

123. In July 2010, Syngenta executives discussed methods for detecting genetically modified traits.

124. Syngenta did not provide a test method to farmers or grain handlers as part of a required stewardship program.

125. Syngenta also could have contractually required that Viptera growers adhere to stringent practices that would have decreased the likelihood of contamination. Syngenta did not do so, however, because to do so would have drastically reduced sales of that product.

126. Instead, and contrary to requiring isolation, Syngenta Seeds gave away free bags of Viptera to farmers as part of a campaign to encourage growers to grow Viptera side-by-side with other corn to compare performance. *See Syngenta*, 820 F. Supp. 2d at 958.

127. Syngenta expected Viptera corn to cross-pollinate with non-Viptera corn and told farmers to consider the adjacent corn Viptera corn. Yet, there was no contractual requirement for growers to take measures to prevent such cross-pollination in their own fields, to segregate Viptera from non-Viptera corn, or to prevent contamination of other farmers' fields.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

128. In fact, Syngenta advised at least one grower that he had no obligation to tell neighboring corn farmers or grain originators that he had planted Viptera. This advice was in response to the farmer's concern that he might be liable if his Viptera corn cross-pollinated with his neighbor's corn.

129. Moreover, on information and belief, in addition to the acreage on which Viptera (and later Duracade) have been grown from sales of those products, Syngenta has grown on land within the U.S. corn containing the MIR162 trait for purposes of seed increase and to develop inventories of product to sell to farmers. This additional growth further increased the presence of MIR162 within U.S. agriculture and the widespread, pervasive contamination that has caused disruption of trade in U.S. corn with China.

130. Syngenta's commercial sales of Viptera for planting, growing, and harvest in 2011 reached across the U.S., covering nine hundred nineteen (919) counties and thirty-eight (38) states. *See* "Unit Stats by State and County, Viptera Only" (Lee Bunge deposition exhibit); *see also Syngenta v. Bunge*, 820 F. Supp. 2d at 958, 963. Despite the pervasive presence of Viptera and Syngenta's knowledge of the risks, Syngenta did not require growers to comply with the kind of strict measures Syngenta knew were minimally necessary to even have a chance at containment.

131. Syngenta's professed "channeling" efforts, which could and should have been in place well before harvest to direct Viptera away from markets lacking import approval, also were wholly—and purposefully—inadequate.

132. In its 2007 MIR162 Deregulation Petition, Syngenta represented that a lack of Chinese approval would not pose a problem for Producers and Non-Producers because:

> Syngenta's stewardship agreements with growers will include a term requiring growers to divert this product away from export markets (i.e. channeling) where

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

> the grain has not yet received regulatory approval for import. Syngenta will communicate these requirements to growers using a wide-ranging grower education campaign (e.g., grower Stewardship Guide) ... [T]hese procedures are not hypothetical.

133. Syngenta's "stewardship" program, however, presented "hypothetical" and ineffective procedures, which made contamination of the U.S. corn supply virtually certain.

134. Contrary to representations in its MIR162 Deregulation Petition, Syngenta did not, on information and belief, institute a "wide ranging grower education campaign" through its Stewardship Agreements, Stewardship Guides or otherwise. Syngenta certainly did not do so in a manner that would be meaningful and effective.

135. On information and belief, none of Syngenta Seeds' Stewardship Agreements with growers contained any details on Syngenta's stewardship program. Instead, the agreement provided that growers should comply with the "most current" version of a "Stewardship Guide," which might or might not be given to them when they received the product, and was subject to unilateral change at any time via modification to a website. *See* Syngenta Seeds, Inc. Stewardship Agreement (Revised 08/2009) at 1; Syngenta Seeds, Inc. Stewardship Agreement (Revised 03/14/2011) at 1; Syngenta Seeds, Inc. Stewardship Agreement (Revised 05/11/2011) at 1; Syngenta Seeds, Inc. Stewardship Agreement (Revised 06/05/2013) at 1.

136. In other words, Syngenta's "stewardship" program for Viptera depended, at the outset, on thousands of individual farmers across the country locating and understanding a Stewardship Guide that they may not have been provided at the time of signing the Stewardship Agreement or receiving the product.

137. Moreover, while the Stewardship Agreements contained a provision for "channeling," they made no mention of China.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

138. The 2009 version of the Stewardship Agreement provided that the grower "agrees to: Channel grain produced from seed to appropriate markets to prevent movement to markets where the grain has not received regulatory approval for import." It does not, however, identify China as one of those markets. Rather, the agreement states that: "Grain harvested from corn hybrids containing Agrisure Technologies ... may not be fully approved for grain export to **Japan or the European Union**" and that "grain from hybrids that do not have the appropriate import approvals from **Japan and the European Union** must be directed to domestic uses and away from export channels." Syngenta Seeds, Inc. Stewardship Agreement (Revised 08/2009) at 2 (emphasis added). There is no reference to any other unapproved markets, including China.

139. The March and May 2011 versions of Syngenta Seeds' Stewardship Agreement said—and did not say—the same thing. *See* Syngenta Seeds, Inc. Stewardship Agreement (Revised 03/14.2011) at 1, 2; Syngenta Seeds, Inc. Stewardship Agreement (Revised 05/11/2011) at 1, 2.

140. Syngenta Seeds' 2013 version of the Stewardship Agreement removed the reference to Japan and the European Union but even then did not mention China.

141. None of the agreements contain any instruction on how the grower was supposed to "channel."

142. Syngenta knew or should have known that bare reference to channeling (and at that, without reference to China) would be ineffective.

143. To the extent that other versions of the Stewardship Agreement (or Stewardship Guide) reference China, the concept of "channeling" by thousands of individual corn farmers under Syngenta's non-existent— or, at minimum, inadequate— "stewardship" program, was certain to fail.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

144. "Channeling" can only work if all grain handlers and others in the supply chain are engaged in that endeavor. For example, BIO recognizes that a realistic assessment of conditions related to handling, distributing, processing, and testing products must engage the various stakeholders. *See* BIO Product Launch Stewardship, December 10, 2009 at Introduction.

145. On information and belief, Syngenta did not obtain channeling commitments from supply chain participants, and took no further action to create a marketing plan or channeling mechanism. Syngenta also failed to coordinate with grain handling, export, and other post-harvest firms, to ensure that Viptera corn was not directed to markets for which regulatory approval had not been received, including China.

146. This failure was purposeful. Syngenta made a decision that no special provisions would be made for grain redirection.

147. Not only did Syngenta decide it would take no measures for channeling Viptera, Syngenta sought to stop exporters and grain elevator operators from attempting to channel Viptera away from China. Specifically, Syngenta brought a lawsuit against Bunge, a grain elevator operator, who refused to accept Viptera corn because that operator exported corn to China.

148. On August 17, 2011, Syngenta issued a letter to Viptera growers expressing disappointment that Bunge and Consolidated Grain & Barge would "not be accepting grain with the Agrisure Viptera trait." Syngenta recommended to growers that they simply "[d]eliver[] to elevators accepting grain with the Agrisure Viptera trait." Syngenta made no mention that these elevators should channel the grain to markets in which that trait had been approved.

149. Syngenta Seeds sued Bunge, complaining that Bunge could not refuse to accept Viptera corn at its grain elevators. Bunge had posted notices at its grain elevators that it would not accept Viptera corn because the MIR162 trait was not then approved in China, China had a zero

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

tolerance policy regarding non-approved GMO events such as MIR162, and Bunge has significant contracts with Chinese markets that it wanted to fulfill.

150. Syngenta Seeds sought an injunction requiring Bunge to accept the Viptera corn despite: (i) its earlier representations in the MIR162 Deregulation Petition that corn grown with its MIR162 trait would be channeled away from export markets that had not yet approved of its importation; (ii) the requirement in its Stewardship Agreement with growers who had purchased Viptera seed requiring them to channel their harvested grain away from export markets that had not yet approved the importation of MIR162 corn; and (iii) the protocols referenced above approved by BIO and other organizations, of which Syngenta was/is a member, requiring consultation with industry stakeholders and not commercializing approved traits without major market approval.

151. At the end of the 2010 crop year in August 2010, China had already become the seventh-largest importer of U.S. corn. *See Syngenta*, 820 F. Supp. 2d at 860-61. Thereafter, in the spring of 2011, Bunge had sold millions of dollars of U.S. corn for delivery to China between September 2011 and January 2012. *Id.*

152. The Court in *Syngenta v. Bunge* denied Syngenta Seeds' requested injunction on September 26, 2011. In doing so, the Court found that it was foreseeable that China would not approve importation of MIR162 during the 2010-2011 crop year, that during that year U.S. exports to China might be significant, and that Syngenta Seeds had caused the very harm of which it complained. The Court refused to shift the risk to Bunge for Syngenta's commercializing of Viptera before receipt of approval from China. Specifically, the Court in that case concluded that:

> [a]t least to some extent, Syngenta's reputational injuries [allegedly caused by Bunge's refusal to accept Agrisure Viptera], though significant, are the result of Syngenta's decision to commercialize Viptera corn before obtaining import

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

> approval from significant import markets, including China, where Bunge's rejection of unapproved traits was not wholly unforeseen or unforeseeable.

Syngenta, 820 F. Supp. 2d at 988.

153. The Court also concluded that:

> no reasonable balance of equities would impose upon Bunge the prodigious additional expense of segregating Viptera corn (or segregating non-Viptera corn earmarked for Chinese export), where Bunge did not create the situation in Viptera corn has not been yet approved for import to China. That situation arises entirely because Syngenta decided to commercialize Viptera corn knowing that it did not yet have Chinese and some other import approvals and would not have them for the 2011 crop year, and under circumstances in which Syngenta should have reasonably recognized that Chinese imports of United States corn for the 2011 crop year might well be very significant. Syngenta accepted the risk of commercializing Viptera corn, albeit with more than the required or recommended import approvals, but without import approval from all of the reasonably likely foreign markets. I reject Syngenta's request that I shift that risk, instead, to Bunge....

Id. at 990.

154. In addressing the public interest element for injunctive relief, the Court declined to shift the risk of the decision to commercialize MIR162 away from Syngenta: "I find that the public interest strongly favors allocating the risks of a decision to introduce a new transgenic grain into the commercial market on the company that decided to commercialize that grain before obtaining all import approvals." *Id.* at 992.

155. The Court also found that in the late summer and fall of 2011, exporters other than Bunge, including Cargill and Archer Daniels Midland ("ADM"), had also refused to accept Viptera at some of their facilities due to export market issues such as the failure of Syngenta to receive approval from the European Union. *Id.* at 962.

8. *Syngenta's Irresponsibility and Misrepresentations Moving into the 2012 Crop Year*

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

156. Despite the risk of contamination and movement of Viptera into export markets, Syngenta continued its course and sold even more Viptera for planting in 2012, further increasing those risks.

157. Syngenta expanded sales of Viptera even as China was dramatically increasing imports of U.S. corn and was projected to be the largest importer of U.S. corn by the year 2020.

158. In 2011, Syngenta was selling Viptera for the 2012 growing season.

159. Syngenta was concerned. If grain handlers like Bunge refused to take Viptera, the lack of approval from China might reduce its sales.

160. As reflected in internal correspondence, Syngenta also knew by July 2011 that China would not change its zero-tolerance policy.

161. Syngenta, however, chose not to inform Producers and Non-Producers of the growing danger. Instead, it crafted a plan to mislead Producers and Non-Producers to believe that Syngenta would have import approval from China by the time Viptera was harvested, despite all indications to the contrary. For instance, one e-mail from Sarah Hull, Head of Global External Affairs, stated that it was "most important" to get grain traders "comfortable that the approval is close," so that they did not tell farmers to avoid MIR162 corn.

162. The purpose of this plan was to sell more Viptera.

163. United States Grains Council President, Tom Dorr, in a memorandum dated August 2, 2011 to "Seed Technology Members" and e-mailed to Syngenta, stated that "the current situation regarding the commercialization of unapproved events in China has raised industry-wide concern about potential near and longer-term disruption to US corn exports in China." In the same memorandum, he referred to China as a "major corn importer."

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

164. By at least early July 2011, Syngenta was already managing its message and had scripted its responses.

165. Among other things, Syngenta launched a "blame the grain trade" campaign. Another e-mail from Sarah Hull stated, in pertinent part: "I think we have to find the right balance of making this a 162 problem versus an evolutionary challenge of global grain trade and adjust our actions to reflect the latter."

166. Syngenta remained focused on its bottom line in commercializing MIR162. For instance, Syngenta internally communicated its "Yields Without Borders Program" and its "Top 10 Tactics to Energize Sales Force and Leverage Grain Marketing Channel to Secure Sales." *See* Syngenta document entitled: "The Role of Grain Marketing for Future Trait Technologies." Part of this program was to provide regular (and misleading) updates "on progress and plans for China trait approval and to drive trait acceptance."

167. To encourage further sales and planting of Viptera, Syngenta, by at least August 2011, was representing to stakeholders, including corn Producers and Non-Producers, that Syngenta would obtain China's approval by March 2012.

168. As one of Syngenta's business partners wrote, "[i]f we say March enough, there should be no issue in ordering seed stock and seed companies will have confidence in the March date."

169. Syngenta, however, did not have a reasonable basis to believe that approval from China would be received in March 2012 and did not itself expect approval by that time.

170. Indeed, Syngenta's approval submissions to China included insufficient, incorrect, and/or incomplete information, resulting in multiple additional submissions, and also included significant delays by Syngenta in providing standard information. For example, Syngenta did not

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

submit PCR detection methods until January 10, 2011, and had to redeliver the PCR detection method on May 16, 2011, because the first submission was unclear. This information was a required precursor to testing in China, which may take—and is expected to take—months. On June 22, 2011, Syngenta sent a letter of correction regarding mislabeling of samples. Testing did not begin in China until June 24, 2011. Testing results are known requirements of completed applications. Even after an application is complete, review and deficiency notices requiring correction are not atypical but expected.

171. No later than July 2011, and likely before that time, Syngenta knew it could not expect approval by March 2012.

172. Syngenta's own employees recognized that approval would take significantly longer. For instance, a July 1, 2011 e-mail from Syngenta's Brian Walsh indicated that Viptera would not receive approval in China "for a few years yet."

173. Syngenta received field trial and safety test results in October and November 2011. Syngenta submitted these results in an application on November 9, 2011. At that point, Syngenta knew or clearly should have known that it would not have approval by March 2012.

174. As of May 2012, China's Ministry of Agriculture had reviewed Syngenta's application and had rejected it for deficiencies including all applicable safety analyses. Syngenta submitted another application in June 2012.

175. In addition, on information and belief, Syngenta sought approval to cultivate MIR162 in, as well as import MIR162 to, China. *See* Reuters "Update 1 – Syngenta confirms it applied to cultivate GMO corn in China" (Oct. 8, 2014). (http://www.reuters.com/article/2014/10/08/china-gmo-syngenta-idUSL3N0S317520141008).

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

176. China has more severely restricted the right to cultivate bio-engineered crops than to import them, has not previously allowed any such cultivation by a foreign firm without Chinese participation, and has taken significantly longer to approve cultivation applications than importation applications, all of which may have materially delayed import approval.

177. Syngenta was projecting that cultivation approval would not be obtained until 2016.

178. Syngenta continued to downplay the importance of China and misrepresent the status of China's approval for the purpose of increasing sales of Viptera.

179. Syngenta was far more focused on a potential loss of profits than it was on the risk of trade disruption caused by Viptera. For instance, Syngenta's project lead for Commercial Traits noted a seed shortage, saying it "will work in our favor. … Hence key business is more the black-eye we now have, vs. actual impact on sales."

180. Syngenta e-mails reveal that executives were plotting strategies to try to get China to expedite its review, including strategies to try to convince U.S. government officials to tell China that failing to approve MIR162 would "put US corn trade at serious risk."

9. *Syngenta's Continued Deception Regarding China's Approval of MIR162*

181. Syngenta continued its deception regarding the status of approval from China throughout 2012.

182. Despite knowing that its incomplete and delayed regulatory filings with China assured that Syngenta would not obtain import approval for Viptera by March 2012, Syngenta nevertheless instructed employees in January 2012 to tell grain handlers that Syngenta would obtain approval from China by March of 2012.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

183. After the first quarter passed without approval from China, Syngenta told employees to "**verbally**" communicate that Syngenta "continue[s] to anticipate that this approval will be received shortly." (Emphasis in original).

184. During Syngenta's first quarter 2012 earnings conference call on April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, publicly stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." http://www.morningstar.com/earnings/37715637-syngenta-ag-adrsyt-q1-2012-earnings-call-transcript.aspx. This, of course, was a year after Syngenta had already sold large quantities of Viptera to farmers across the country.

185. On information and belief, however, Syngenta did not as of April 2012 have a reasonable basis to believe China's approval was "done," or for its representation that approval was imminent. Syngenta certainly did not have any sort of official approval.

186. Indeed, Syngenta received a rejection and deficiency letter from China's Ministry of Agriculture on May 15, 2012.

187. Syngenta also distributed misleading written materials indicating that Viptera **could** be exported to China.

188. For example, Syngenta distributed a "Request Form for Bio-Safety Certificates Issued by the Chinese Ministry of Agriculture" for Viptera. In China, "Bio-Safety Authorizations" are required for the issuance of shipment-specific "Bio-Safety Certificates." However, applying for shipment-specific Bio-Safety Certificates was, and is, pointless because MIR162 had not been approved for importation in China.

189. Syngenta knew that its Request for Bio-Safety Certificates Forms was pointless but distributed it in an effort to mislead U.S. corn Producers and Non-Producers.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

190. Syngenta also distributed a "Plant with Confidence Fact Sheet," which contains deceptive statements regarding the importance of China as an export market. http://www.syngenta-us.com/viptera_exports/images/Agrisure-Viptera-Fact-Sheet.pdf.

191. For example, the "Plant with Confidence Fact Sheet" states:

> The vast majority of corn produced in the U.S. is used domestically. There is a misconception that China imports more grain than it actually does from the U.S. China has imported, on average, a little more than half of one percent – 0.5% – of all U.S. corn produced in the past five years....
>
> Since very few U.S. grain outlets actually export to China, most have no reason to restrict your right to plant the latest technologies.

http://www.syngenta-us.com/viptera_exports/images/Agrisure-Viptera-Fact-Sheet.pdf.

192. Contrary to the Plant with Confidence Fact Sheet, the NGFA reported:

> The U.S. Department of Agriculture (USDA) forecasts that China will become the world's largest corn importer by 2020. China is projected to increase its corn imports to 22 million metric tons (866 million bushels) by 2023, up from 2.7 million metric tons (106 million bushels) in 2012. For 2013, USDA had projected that the United States would export 37 million metric tons (1.457 million bushels) of corn, and that China would import an estimated 7 million metric tons (276 million bushels) – virtually all of it from the United States.

http://www.ngfa.org/wp-content/uploads/NGFA-Flyer-for-Farmer-Customers-on-Potential-Market-Impacts-of-Commercializing-Biotech-Enhanced-Seeds-Not-Approved-for-Import-into-U.S.-Export-Markets.pdf.

193. In other words, for 2013, the USDA estimated that China represented nearly 20% of the U.S. export market.

194. Before China's discovery in November 2013 of MIR162 in U.S. corn shipments, China was the third-largest market for U.S. corn, and its share of our market was projected to grow substantially. China is by far the largest potential growth market for U.S. corn.

10. *Syngenta Expanded Sales of Viptera Acreage Despite Having No Approval from China, Even While the Importance of the Chinese Market Continued to Increase.*

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

195. China continued to be a major and growing market for U.S. corn and corn products during the 2012 and 2013 crop years.

196. However, during that period, China still had not yet approved the import of MIR162. Syngenta was still in the approval process and was correcting deficiencies identified by the Chinese Ministry of Agriculture. It had no assurance that approval would be conferred by the 2013 crop year. In fact, as of October 2013, Syngenta was still completing required research for its application.

197. Corn industry groups continued to object to Syngenta's commercialization of Viptera.

198. In fact, during 2012-2013, China had become the third largest export market for U.S. corn. As reported by Iowa Corn Growers Association, "[i]n 2012/13, China was the third largest export market for U.S. corn and up until the recent issue [the rejections beginning in November 2013] [China] was on track to meet or exceed that position." China and MIR162, 2-2014, Iowa Corn Growers Association (Feb. 6, 2014).

199. Nevertheless, Syngenta continued to market Viptera during the 2012 and 2013 crop years. Estimates were that during this period Syngenta had increased the market share of Viptera to well more than 2%, and, by some estimates as high as 3.5%, of the corn area grown in the U.S.

200. This increase further ensured that Viptera would disseminate throughout the U.S. corn supply and that it could not— and would not—be channeled away from export markets, such as China, which had not approved MIR162.

11. *China's Rejection of U.S. Corn*

201. In November 2013, China began rejecting shipments of U.S. corn that tested positive for the presence of MIR162.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

202. On December 24, 2013, the General Administration of Quality Supervision, Inspection, and Quarantine of China issued a warning notification strengthening the inspection and supervision for the import of GMO feed materials. The December 24 notification indicated that all batches of corn would now be tested at the Chinese ports for MIR162, and that any cargo that tested positive for MIR162 would be returned or destroyed.

203. Before this notification, statements from the seller/exporter that the products were tested and negative for MIR162 were sufficient. The December 24 notification thus substantially altered the conditions for export of U.S. corn into China.

204. It was not possible to ensure a "zero" level of MIR162 in the Chinese testing (i.e., a negative test of a container in the U.S. could still result in a positive test in China).

205. The uncertainty associated with the possibility that a shipment might test positive for MIR162 when tested in China caused Chinese customers to walk away from their contracts for U.S. corn and added a great deal of uncertainty to the market. The market had foreseen these events and not surprisingly, prices for corn and distillers dried grains with solubles ("DDGS") fell.

206. In December 2014, China finally approved MIR162 for importation into China. By then, however, Syngenta had already begun commercializing another unapproved bio-engineered corn trait. U.S. corn exports to China have not yet begun to recover, and this approval is not likely to lessen the impact of Syngenta's conduct and the resulting embargo in the near future, if ever.

12. *Regulation, Testing, and Deregulation of Event 5307*

207. Despite China's rejection of U.S. corn because of the presence of MIR162, Syngenta nonetheless pressed on with commercialization of yet another GMO corn seed product.

208. On April 22, 2011, just months after Syngenta Seeds released Viptera for the 2011 crop year, Syngenta Biotech filed with APHIS a petition seeking the deregulation of another

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

insect resistant, genetically-modified trait known as Event 5307. Event 5307 was ultimately deregulated by APHIS on January 29, 2013.

209. Between 2005 and 2011, Syngenta Biotech conducted at least 101 field trials of Event 5307 corn under at least 22 notifications made to APHIS under the GMO Regulations at sites in 23 states.

210. At least some of the field trials of Event 5307 included tests of corn stacked with multiple traits, including both Event 5307 and MIR162. Further, on information and belief, field tests conducted under the GMO Regulations of Event 5307, either singly or together with other traits (including MIR162), continued during the period after the filing of the Event 5307 Deregulation Petition and the January 29, 2013 decision to deregulate Event 5307.

211. In its deregulation petition for Event 5307, Syngenta Biotech disclosed that upon deregulation of Event 5307, Syngenta Seeds did not intend to market Event 5307 as a stand-alone product, but intended to combine it with other traits, including MIR162. It also stated that it intended to seek approval of products containing Event 5307 in countries that had functioning regulatory systems and that "Syngenta is also pursuing regulatory approvals for importation of corn commodities and processed goods containing 5307 corn in key export markets for U.S. and Canadian corn" and that applications were currently planned for a number of additional countries, including China. In the discussion of "Adverse Consequences of Introduction," Syngenta Biotech stated that an upcoming Environmental Report would discuss a range of issues related to the deregulation of Event 5307 corn, "including any potential direct, indirect or cumulative impacts on ... the economy, either within or outside the U.S." Petition for Determination of Nonregulated Status for Rootworm-Resistant Event 5307 Corn, at 156 (Apr. 22, 2011).

(http://www.aphis.usda.gov/biotechnology/petitions_table_pending.shtml).

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

212. Following approval of Event 5307, Syngenta Seeds announced it would commercialize Duracade for the 2014 crop year, containing both Event 5307 and MIR162, despite the continued lack of approval from China for MIR162 and the fact that Event 5307 also had not been approved.

13. *Commercialization of Duracade Despite MIR162's Continued Disruption of the U.S. Corn Trade*

213. In November 2013, China began rejecting shipments of U.S. corn that tested positive for MIR162. Syngenta has, nevertheless, continued its false statements and misrepresentations, as alleged herein, including through its decision to market Duracade in the 2014 crop year.

214. The NGFA has detailed the disastrous results of China's rejection of U.S. corn based on the presence of MIR162:

> This development resulted in a series of trade disruptions – including testing; delays in vessel discharge; and deferrals, diversion and rejections of cargoes – when MIR162 subsequently was detected in U.S. shipments of corn and distillers dried grains with solubles (DDGS). These disruptions effectively shut U.S. corn farmers out of China's feed grain import market, which previously almost exclusively had been supplied by the United States. China subsequently has taken actions to utilize domestic, as well as international alternatives to U.S. corn. For instance, China's imports of U.S. grain sorghum have increased significantly. China also has sourced corn from Ukraine. And most recently, Brazil and Argentina each were granted approval to begin exporting corn to China....
>
> This disruption, tied to positive detections of MIR162 that began in November 2013, has virtually halted U.S. corn trade with China.
>
> . . .
>
> USDA currently is projecting Chinese corn imports will reach 22 mmt [million metric tons] by 2023, which if realized would account for nearly half of the projected growth in total world corn trade. However, if the MIR162-related trade disruption continues, other corn exporting nations, such as Ukraine, are capable of replacing the United States as the principal corn exporter to China....

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

> [T]he MIR162-induced trade disruption has resulted in market price loss on unfulfilled export sales, price loss on diverted sales because of the compromised economic negotiating position of U.S. exporters, demurrage costs, and lower market prices for U.S. commodities and products. The total loss for these sectors of the U.S. grain industry is estimated to range from $1 billion to $2.9 billion.

http://ngfa.org/wp-content/uploads/Agrisure-Viptera-MIR-162-Case-Study-An-Economic-Impact-Analysis.pdf.

215. Syngenta nevertheless moved forward with commercialization of Duracade for the 2014 planting season.

216. On January 23, 2014, the NGFA and the NAEGA issued another Joint Statement imploring Syngenta to stop its heedless and irresponsible commercialization:

> On Jan. 22, 2014, the National Grain and Feed Association (NGFA) and North American Export Grain Association (NAEGA) sent a letter to Syngenta asking the company to immediately halt commercialization in the United States of its Agrisure Viptera corn and Agrisure Duracade corn until such time as China and certain other U.S. export markets have granted required regulatory approvals/authorizations.
>
> The NGFA and NAEGA ... are gravely concerned about the serious economic harm to exporters, grain handlers and, ultimately, agricultural producers – as well as the United States' reputation to meet its customers' needs – that has resulted from Syngenta's current approach to stewardship of Viptera. Further, the same concerns now transcend to Syngenta's intended product launch plans for Duracade, which risk repeating and extending the damage. Immediate action is required by Syngenta to halt such damage.
>
> There are numerous negative consequences incurred when the Chinese and other U.S. export markets are put at risk through commercialization of biotechnology-enhanced seeds before approvals for import into foreign markets are obtained. Such consequences may include reducing the value and demand for the U.S. farmers' products, preventing foreign consumer access to much-needed supplies, shutting off or increasing the cost of U.S. producers' access to some export markets for their crops, exposing exporting companies to financial losses because of cargo rejections and contract cancellations, and ultimately diminishing the United States' reputation as a reliable, often-preferred supplier of grains, oilseeds and grain products in world markets. Commercialization prior to foreign regulatory approvals also has a negative impact on the overall U.S. corn and other grain value chains, and reduces significantly U.S. agriculture's contribution to global food security and economic growth.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

> Within the U.S. grain and oilseed handling and marketing system, each purchaser or handler makes its own determination as to whether to accept various commodity crops – including those produced from biotechnology-enhanced seeds. Such a decision likely is driven by customer preferences, infrastructure and operational limitations, regulatory regimes and contractual commitments, as well as meeting regulatory requirements in the respective markets they serve. Given the nature of the U.S. grain marketing system, these business decisions extend to the first point of sale or transfer from the producer.
>
> As a matter of policy, NGFA and NAEGA have communicated consistently, clearly and in good faith with biotechnology providers and seed companies about the importance of biotechnology providers actually obtaining regulatory approvals/authorizations for import in foreign markets before such traits are commercialized in the United States. Individual grain handler, processor, service provider and exporter member companies of our Associations represent further system-wide support and advocacy for this policy.
>
> U.S. farmers, as well as the commercial grain handling and export industry, depend heavily upon the exercise of due corporate responsibility by biotechnology providers with respect to the timing of product launch and commercialization. We therefore seek assurances from Syngenta that it will follow suit by publicly announcing that it will suspend immediately its commercialization of Viptera and Duracade products in the United States until such time as China and other U.S. export markets have granted required regulatory approvals and authorizations.

http://www.ngfa.org/wp-content/uploads/NAEGA-NGFA-Joint-Public-Statement-on-Syngenta-Agrisure-Viptera-and-Duracade-Biotech-Traits-Jan-23-2014.pdf.

217. Syngenta spokesman, Paul Minehart, responded by stating: "Changing our marketing plan in the U.S. now **would have no effect on grain in the system** or Chinese acceptance of corn imports." Reuters, "U.S. Groups urge Syngenta to hold back on GM corn barred by China" (Jan. 23, 2014) (emphasis added).

218. This pronouncement recognizes that MIR162 has indeed contaminated the U.S. corn supply to an extent that it cannot be undone. This is particularly true given that Syngenta continues to market and sell Duracade in addition to Viptera.

219. In March 2014, in meetings with the NGFA, Syngenta advised that its introductory launch of Duracade would likely extend to 250,000 to 300,000 acres in a launch zone that

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

included portions of each of the ten states that grow the largest amounts of corn. In the same meetings, Syngenta refused to accept responsibility or liability if and when Duracade becomes present in countries that had not approved it. NGFA, Latest News, "Syngenta Provides Additional Details on Plans for 'Introductory launch' of Duracade, Biotech Corn in 2014" (March 7, 2014).

(http://www.ngfa.org/2014/2014/03/07/Syngenta-provides-additional-details-on-plans-for-introductory-launch-of-duracade-biotech-corn-in-2014/).

220. In launching Duracade, Syngenta stated that growers would be required to sign a stewardship agreement requiring the grower to either feed the corn to livestock or poultry on the farm, or deliver it to a grain handling facility, feed mill, feed lot, or ethanol plant not exporting corn or corn co-products to China or the European Union. *See* National Grain and Feed Association Newsletter Vol. 66, No. 5 at 2 (dated March 7, 2014).

221. The version of the stewardship agreement at launch, and referencing Duracade, did not do so. *See* Syngenta Seeds Inc. Stewardship Agreement (Rev. 6/05/2013). This version is, even now, the agreement Syngenta posts on its website. *See*

http://www3.syngenta.com/country/us/en/agriculture/Stewardship/Documents/SyngentaStewardshipAgreement.pdf.

222. Syngenta also did not require planting or harvesting protocols, but only made "recommendations" that the grower: (1) select fields for planting Duracade surrounded by the grower's own corn fields or planted next to a non-corn field; (2) place signs to notify others that Duracade was planted in the field; (3) plant buffer rows; (4) clean planters; (5) properly dispose of unused seed and return unopened seed units to the seed provider; (6) separately harvest Duracade; (7) flush the combine; (8) deliver corn containing Duracade to a previously arranged delivery point; (9) store Duracade in a separate bin on the grower's farm; and (10) clean the bin floor.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

223. Syngenta officials stated that while Syngenta would apprise growers of such "recommendations," it "declined to incorporate the recommendations into the stewardship agreement because they did not want to dictate such practices to producers." National Grain and Feed Association Newsletter Vol. 66, No. 5 at 2 (March 7, 2014).

224. Syngenta was and is well aware that such measures are minimally necessary to an adequate stewardship program. Yet, Syngenta did not require such measures in connection with either Viptera or Duracade.

225. The NGFA issued a dire forecast of the damage Duracade's premature commercialization would cause:

> For the 2014 planting season, Syngenta has introduced another trait called Agrisure Duracade 5307 (hereafter referred to as 5307) that currently lacks Chinese import approval, potentially prolonging the U.S. loss of the large, growing Chinese feed grain import market....
>
> China is roughly one year into its semi-regular, two-year process of evaluating the authorization of 5307 for import in food, feed and for further processing. Since Chinese authorization of 5307 is not expected for at least another year, China is expected to continue enforcing a zero-tolerance policy for unapproved biotech-enhanced traits in 2014/15, as occurred in marketing year 2013/14 for MIR162. Thus, the commercialization in the United States of 5307 is expected to prolong the economic impact on U.S. corn and other commodities that began in mid-November 2013.
>
> Similarly to 2013/14, when the United States lost access to the Chinese corn import market, the 2014/15 market price impact caused by the presence of 5307 in U.S. commodity exports is expected to extend beyond the corn market and potentially affect other commodities, such as DDGS, soybean meal and soybeans, because of the substitutability of corn for these commodities in domestic feed rations....
>
> [A]fter accounting for projected benefits and costs, the net economic impact of the 5307 commercial launch is estimated to result in a loss to the U.S. grain value chain ranging from $1.2 billion to $3.4 billion, with a mid-point estimated net economic loss of $2.3 billion.

http://www.ngfa.org/wp-content/uploads/Agrisure-Duracade-5307-Economic-Impact-Analysis.pdf.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

226. In March 2014, Syngenta pulled Duracade from the Canadian market for the 2014 growing season because China and the European Union had not yet approved MIR162.

227. Syngenta said in a notice to Canadian growers: "While the vast majority of the Canadian corn crop is typically directed to domestic markets in North America, some corn may be destined for these markets." Reuters, "Syngenta halts sales of new GMO corn seed in Canada" (Mar. 10, 2014). "Accordingly, we want to ensure the acceptance of any trait technology grown in Canada meets end-market destination requirements." *Id.*

228. As illustrated by the statements of its own representatives and this action, Syngenta knew that China was and is a key corn importer and that responsible management requires that its approval be obtained before commercialization of a bio-engineered corn trait.

229. As further illustrated, Syngenta knows how to withdraw an unapproved GMO trait from the market when it wants to do so.

230. Nevertheless, Syngenta continued to market and sell MIR162 corn in the U.S.

231. Compounding its irresponsibility, Syngenta then decided to commercialize Duracade in 2014, even though it contains MIR162 Event 5307.

232. In September 2014, Syngenta announced 52 new corn hybrids for the 2015 growing season. MIR162 was in 23 new Viptera products and 18 new Duracade products. See "Syngenta Announces 52 New Corn Hybrids for 2015 Season" (Sept. 17, 2014)

(http://www.agprofessional.com/news/Syngenta-announces-52-new-corn-hybrids-for-2015-season-275494841.html).

233. In December 2014, China finally approved MIR162 for importation into China. By then, however, Syngenta already had begun commercializing yet another GMO corn seed product as discussed above. In addition, China's December 2014 approval is not likely to lessen the impact of Syngenta's conduct anytime soon.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

234. Syngenta affirmatively and purposefully engaged in all the actions and inactions described above to increase its own profits, ignoring the tremendous risks its profit-driven strategy imposed on U.S. corn Producers and Non-Producers.

235. Syngenta knew, or should have known, before its commercialization of Viptera and at all times since then of the high likelihood that Viptera would contaminate the U.S. corn supply and that channeling in the circumstance of its clearly inadequate "stewardship" program would not work. It was inevitable that Viptera corn would move into export channels, including China, and cause trade disruption, as Syngenta well knew.

236. Syngenta's acts and omissions have resulted in, and will continue to result in, the pervasive contamination of the U.S. corn supply, including fields, grain elevators and other facilities of storage and transport, causing physical harm to Producers' and Non-Producers' corn, equipment, storage facilities, and land.

237. The likelihood that Viptera—and Duracade—would (and will continue to) contaminate the U.S. corn supply was readily foreseeable to, and indeed foreseen by, Syngenta, as was the harm to Producers and Non-Producers, whom Syngenta describes as among its stakeholders "affected by" Syngenta's business.

238. Syngenta had the right and ability to control the timing, size, and geographic scope of its commercialization of Viptera and Duracade, as well as the extent to which adequate containment measures would be required of its customers. Syngenta also could have instituted channeling measures but did not. Syngenta also ignored repeated warnings from stakeholders and misrepresented and concealed material information, all to further its own profit.

239. Syngenta did not simply fail to take precautions against foreseen and foreseeable harm. Syngenta acted affirmatively to create such harm.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

240. Syngenta's conduct has directly caused and contributed to cause significant economic harm to Producers and Non-Producers, as explained below.

14. *Economic Impact*

241. The characteristics of the world corn market have important implications for understanding the market price impact of the Chinese MIR162 ban on corn from the U.S. Those include:

a. Corn is the most widely used feed grain in the world.

b. The U.S. is by far the largest producer and exporter of corn.

c. Before the import ban, virtually all of China's corn imports were from the U.S.

d. Before the import ban, China was the third largest market for U.S. corn exports.

e. The latest USDA agricultural trade projections placed China as becoming the world's largest importer of corn by 2020.

f. The import ban virtually halted U.S. corn sales to China indefinitely.

g. The world price of corn is established in Chicago, and the loss of a key market for the U.S. put downward pressure on the world price that reverberated to farmgate prices throughout the U.S.

h. Corn is a commodity and a relatively small change in the global volume of trade in a commodity market like corn will have a magnified price impact.

i. An exporter's reputational loss in an agricultural commodity market due to an event like a GMO contamination can persist for many years. Once an exporter has lost a foreign market, it is difficult to get it back.

15. *Global Corn Market*

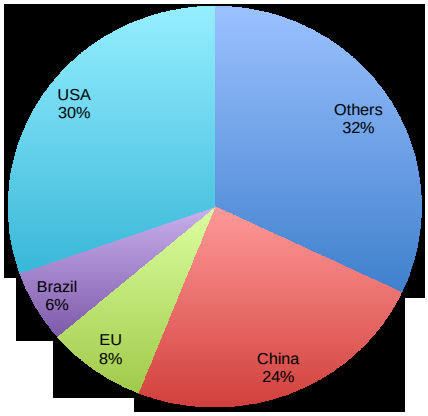
242. World corn production totaled 983.3 million metric tons (mmt) in 2013/14 (about 38.7 billion bushels). This supply was concentrated in a relatively small number of countries. The

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

world's largest corn producers are the U.S. with about 36% of global production in 2013/14; China (about 22% of production); Brazil (8%), and the EU (7%).

243. Global usage of corn has expanded by about 37% in the last decade, due to rising population and incomes, and increased urbanization with its associated changing dietary patterns. Feed usage accounts for about 58% of total global corn use, industrial use 27%, and food 11%. The pie chart below shows corn consumption by region.

World Corn Consumption By Region



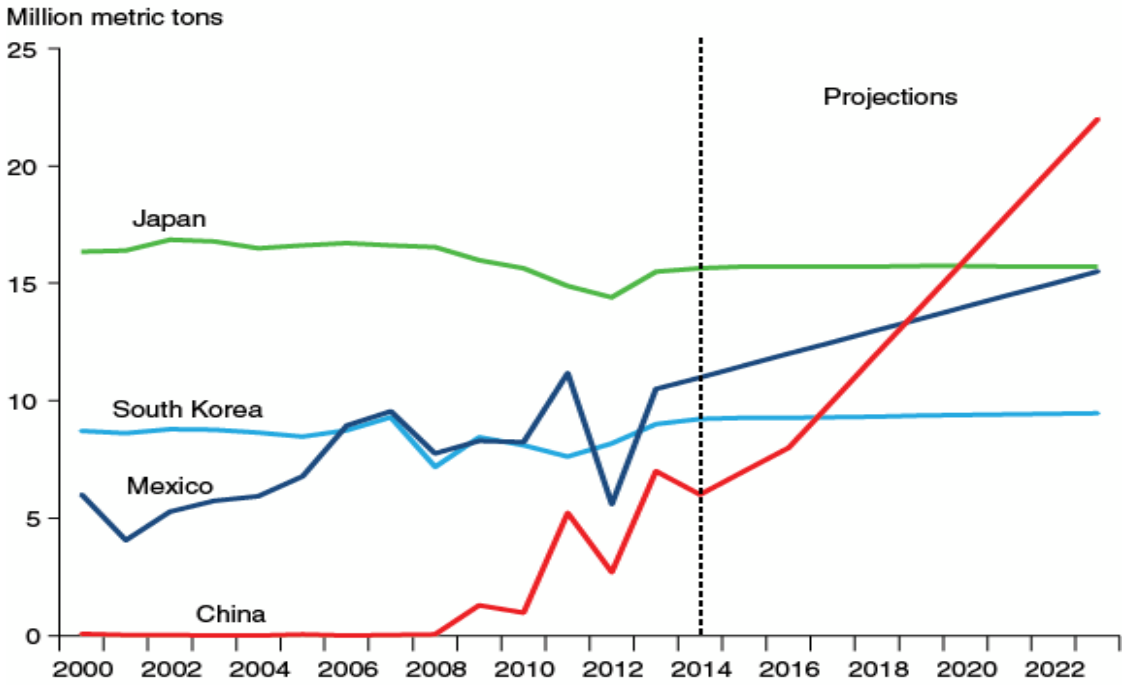
Source: International Grains Council

244. At the end of each crop year, corn inventories are carried forward in case of a short harvest. The U.S. and China are the largest holders of corn inventories. At the end of 2013/14, these two countries held 70% of the 176 mmt of global stocks.

245. Total world corn trade is about 100 to 120 mmt per year. Before the MIR162 ban, China was importing about 4% of global corn sales. That amount was projected by the USDA to increase substantially by 2020, when the USDA projects that China will be the world's largest importer of corn at 16 million metric tons.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

China expected to become largest global corn importer



Source: USDA Production, Supply and Distribution database and projections.

246. The U.S. is the dominant exporter of corn. The big exporters include the U.S. (36% of world trade), Brazil (20% of exports), the Ukraine (17%), and Argentina (10%). These four countries alone account for over 82% of global exports.

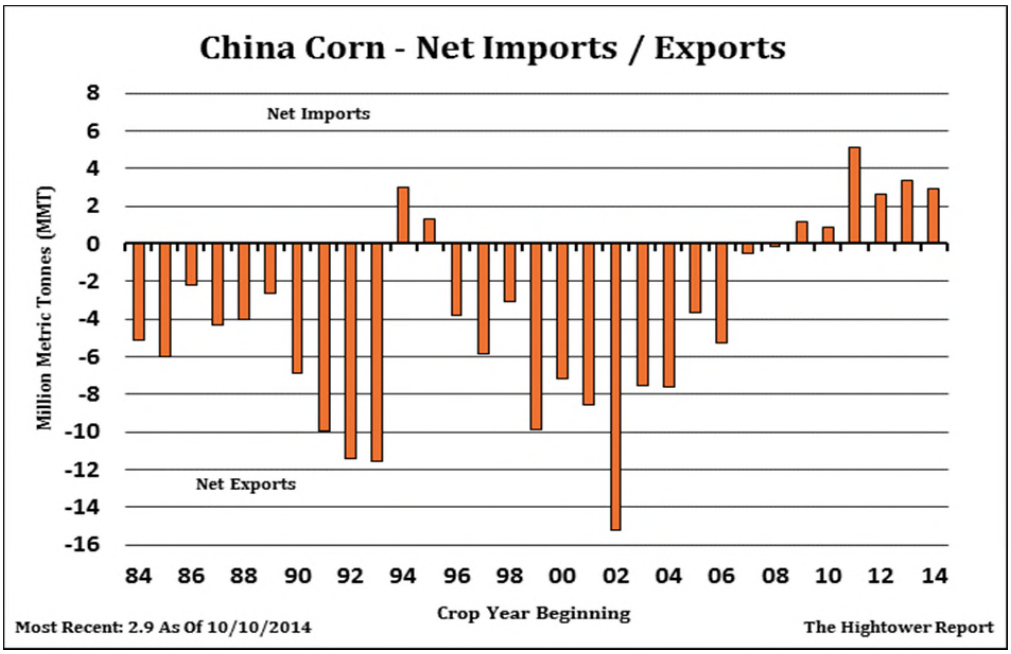
Table: Major Corn Exporters: July 2013/ June 2014

Exporting Country	**U.S.**	**Brazil**	**Ukraine**	**Argentina**	**Others**	**Total**
Exports (million metric tons)	42.8	23.5	19.9	12.0	21.8	120.0
Exports (million bushels)	1,685	925	783	472	858	4,724

Source: International Grains Council

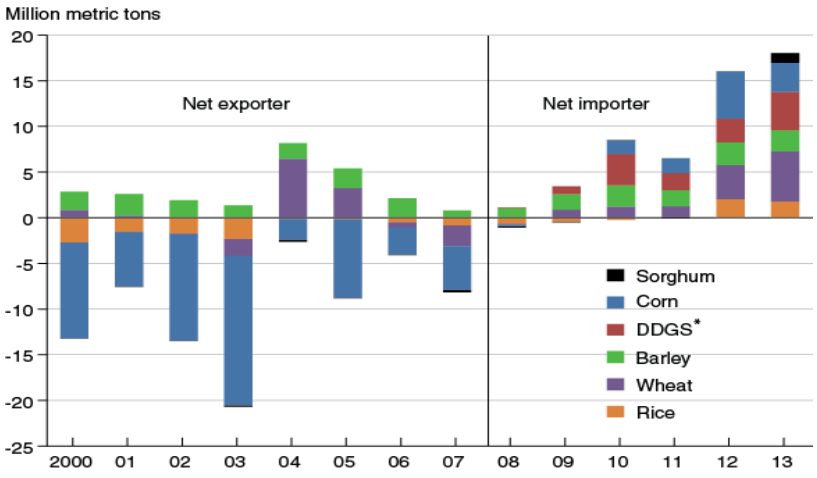
27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

247. China flipped from being a significant net corn exporter (as well as all grains) to a net corn importer in 2009/2010.



248. As the chart below shows, China turned from a net exporter to a net importer of grains collectively in 2008. Imports of grains (including corn) surged during the 2012-13 time period, reaching 18 mmt. Most of this grain originated from the U.S.

China's net imports of grains surged during 2012-13

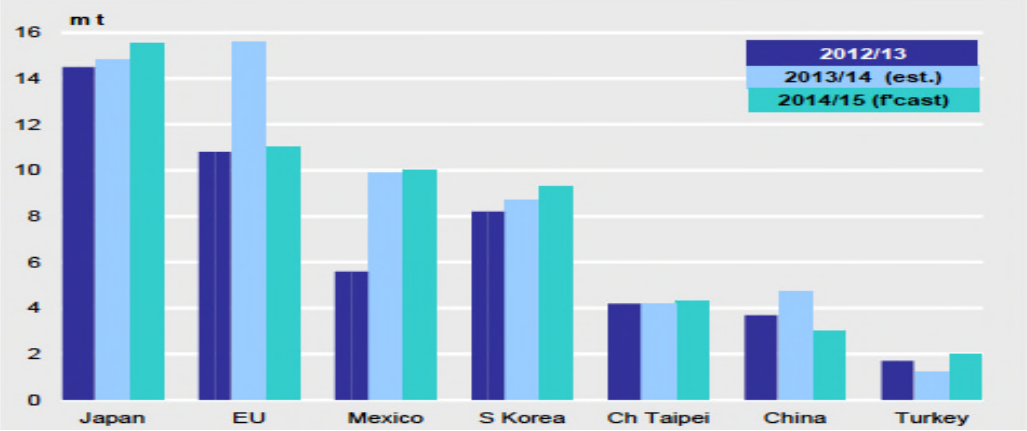


Note: Net imports = imports – exports. Data for calendar years.
*DDGS= Distillers Dried Grains With Solubles.
Source: USDA, Economic Research Service analysis of China customs statistics.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

249. The import side of the international trade equation is more diverse, with the major importers including the EU, Japan, Mexico, South Korea, Chinese Taipei, China, and Turkey (together accounting for 55% of imports in 2013/14). This leaves 45% of the corn imports destined for a large number of small importers.

Major Corn Importers



Source: International Grains Council.

250. In its annual long-term grain trade projections, released in February 2014, the USDA projected that China's corn imports would grow from 2.7 mmt in 2012/13 to 22 mmt in 2023/24. China is by far the largest potential growth market for U.S. corn. These projections place China as the largest corn importer in the world by 2020.

16. *U.S. Corn Market*

251. Corn is the largest crop in the U.S. by both value of production and planted acres. In the 2013/14 September-August fiscal year, U.S. Producers produced about 13.9 billion bushels of corn, worth more than $60 billion. Corn is used for livestock feed (37% of 2013/14 crop), food, alcohol and industrial usage (46% of the 2013/14 crop), and exports (14% of the 2013/14 crop). USDA, Economic Research Service, Feedgrains Yearbook, Table 4 (http://www.ers.usda.gov/data-products/feed-grains-database.aspx#.VEJk-SiwRzo).

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

252. Corn production in the U.S. is concentrated in the neighboring Midwestern states comprising the "corn belt," where soil and climatic conditions are highly conducive to growing corn.[1] About 95.4 million acres of corn were planted in the U.S. in the September-August 2013/14 marketing year.

253. The U.S. corn marketing system is predominantly commodity-based. Corn grown by farmers is harvested, gathered, commingled, consolidated, and otherwise shipped from thousands of farms to local, regional, and/or terminal distribution centers. From there, it is often transported by exporters to foreign countries.

254. Grain elevators are facilities at which grains are received, stored, and then distributed for direct use, process manufacturing, or export. They can be generally referred to as either "country," "subterminal," or "terminal" elevators.

255. "Country elevators" are a linchpin of the U.S. commodity grain handling and marketing system. Country elevators are smaller elevators that receive grain by truck directly from local farms during the harvest season. In addition to providing grain storage and drying services to farmers, country elevators buy individual loads of grain from local farmers for cash. A country elevator then will sell the grain it has purchased and stored in volume to subterminal or terminal grain elevators for further movement in the commodity corn supply chain.

256. Grain elevators thus play a crucial role in agriculture. According to the USDA, there were 8,783 off-farm storage facilities in the U.S. as of January 2014. Iowa had the highest number of facilities with 900; Illinois came in second with 850 facilities. *See* USDA National Agricultural Statistics Service (Grain Stocks January 2014).

[1] The top ten producing states are Iowa, Illinois, Nebraska, Minnesota, Indiana, South Dakota, Wisconsin, Kansas, Ohio, and Missouri.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

257. Corn prices throughout the U.S. are tied to the Chicago Board of Trade Futures (CBOT) price through the "basis" (defined as the futures price minus the local cash price). The U.S. corn market is spatially integrated and informationally efficient. Basis levels for spatially separated markets are also closely linked. Events like trade disruptions that affect the CBOT corn prices directly affect the price that U.S. corn farmers receive for their corn.

258. Grain elevators test and grade corn for weight, moisture content, and foreign materials. Grain elevators are not equipped to test and segregate corn for genetic traits due to the costs associated with such a time-consuming process. Many grain elevators are not equipped to test for the MIR162 trait in corn.

259. The terminal grain elevator receives grain via rail or truck. Terminal grain elevators have the capacity to hold larger quantities of corn, with some holding several million bushels of grain. After receiving the grain, terminal operators sell large shipments to manufacturers or continue to store the grain for later sale to domestic and foreign buyers.

260. Some corn is sold for manufacture into corn ethanol. Ethanol manufacture results in a corn by-product known as DDGS. DDGS from the ethanol industry is commonly sold as a high protein livestock feed. In the U.S., DDGS is packed and traded as a commodity product.

261. Corn and processed grain from terminal elevators are transported by truck, rail, and/or ship to their final destination. Exporters may load the products themselves, or may contract with others for hauling and/or loading/transfer services. Corn bound for China is typically loaded into shipping containers and shipped by rail either to the West Coast or New Orleans, where the containers are loaded onto ships. Large exporters may deal in entire vessels loaded with corn, while smaller exporters ship containers of these products on container ships that may carry containers of other products, or from other exporters, as well.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

262. Once the corn or DDGS arrives in China, it must be cleared for import before the counter-party who has purchased the product may take delivery.

263. Thus, the commodity supply chain for corn bound for China may involve country elevators, sub-terminal elevators, terminal elevators, truckers and other haulers, loaders and transport companies, and exporters who ship the product to China.

264. Elevators both own and store corn for sale further down the supply chain.

265. Similarly, exporters may purchase and sell corn and DDGS, or may expect these products under a variety of consignment agreements. They have incurred injury due to the loss of the Chinese export market under either arrangement.

17. *China's Corn Market*

266. China has emerged as a large player in the global market for agricultural products. As of 2012, it was the fourth largest exporter and second largest importer of agricultural products in the world according to World Trade Organization trade statistics. Its import growth has been driven by a shift in its domestic production mix and changing consumer diets with rising incomes and urbanization. The changing diets have especially driven strong demand growth for meat (mainly pork and chicken), which requires a large supply of feed grains including corn and soybeans.

267. China is now the largest foreign market for U.S. agricultural products. The USDA reports that U.S. agricultural exports to China have almost doubled in the last five years, totaling $28 billion in fiscal October 2013-September 2014. USDA, Outlook for U.S. Agricultural Trade, AES-83 (Aug. 28, 2014).

268. Before China banned the import of U.S. corn, the top three U.S. agricultural exports to China (in order of importance) were soybeans, cotton, and corn, based on value of

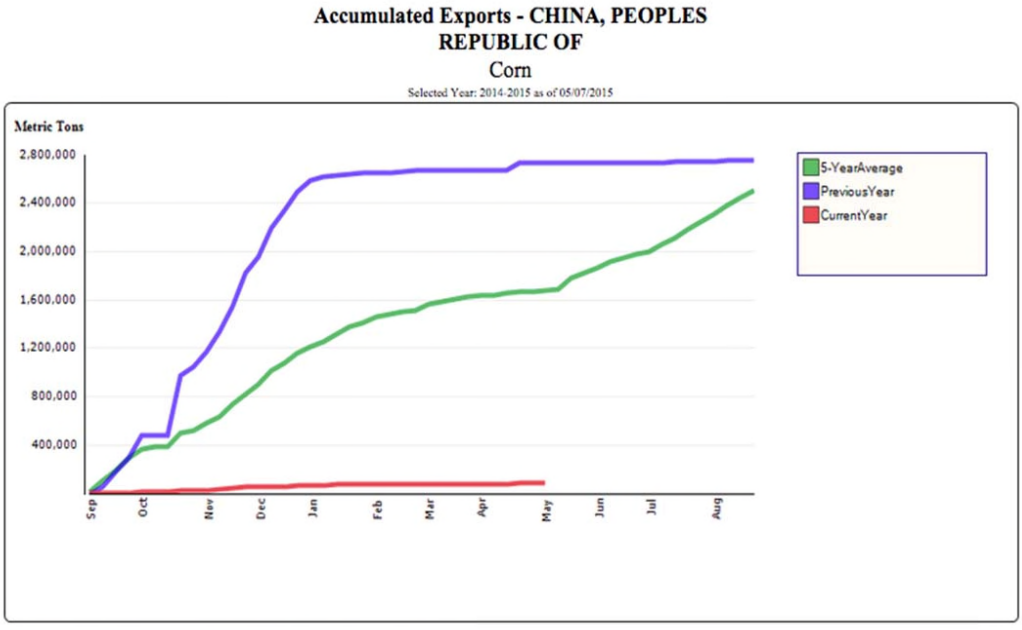
27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

trade. In November 2013, China started turning back cargoes containing Syngenta's MIR162 corn. While MIR162 is now approved, Event 5307 is not.

269. U.S. corn exports to China reached 5.146 mmt in 2011/12 (approximately 13% of U.S. exports that September-August marketing year) and were 2.39 mmt in 2012/13–still about 13% of exports (lower export volume due to the big U.S. drought). By contrast, due to China's import ban of U.S. corn beginning in November 2013, the absolute volume of U.S. corn exports to China in 2013/14 was not much higher than the drought year and fell to less than 6% of exports.

270. If the current trend that began after November 2013 continues, U.S. corn exports to China in the future will be negligible.

271. The following graph shows the dramatic difference in accumulated U.S. exports to China after the MIR162 ban, taking into account seasonal variations in export quantities:



5/15/2015 Source: USDA/FAS/Export Sales Reporting

272. If the China market continues to deny access to U.S. corn imports, the losses will be even more significant. As the following quote explains, China was expected to be a very rapidly growing import market for corn:

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

> China's corn imports are projected to rise steadily and reach 22 million tons by 2023/24. China's strengthening domestic demand for corn is driven by structural change and growth in its livestock sectors, as well as by rising industrial use. The increase in China's imports accounts for nearly half of the projected growth in world corn trade. USDA Long-Term Projections at p.20 (February 2014).

USDA Agricultural Projections to 2023, www.usda.gov/oce/commodity/projections/.

273. For fiscal year 2013/2014 China was expected to import 7 mmt of corn and 6 mmt in 2014/15. Since the news of the rejected cargoes surfaced, USDA analysts have lowered projections of China's total annual imports from 7 to 3.5 mmt in 2013/14 and from 6 to 3 mmt for 2014/15. These projections obviously reflect the assumption that U.S. corn trade with China will begin again sometime in 2014/15. The damage to the U.S. corn market and the prices U.S. corn Producers and Non-Producers receive for their corn likely will be long lasting.

274. China replaced inports from the U.S. with has increased imports from the Ukraine; and reportedly small shipments from Brazil and Argentina. In other words, the U.S. is already beginning to lose China as an important corn export market, and it will be difficult to get it back.

18. *GMOs in China*

275. China imports more biotech soybeans than any other country. The vast majority of China's soybean imports are biotech varieties, even though biotech soybeans (and corn) are not commercially grown in China. China imports soybeans primarily from the U.S., Brazil, and Argentina.

276. China has approved five-biotech crops for importation – canola, cotton, corn, soybeans, and sugar beets. Approximately 15 different corn biotech products have been approved by China, including "events" developed by Monsanto, Syngenta, Bayer, and DuPont. The number of approved soybean products is approximately eight and there are six cotton and seven canola products. Only one sugar beet product has been approved.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

277. China started testing and rejecting cargoes of U.S. corn in November 2013.

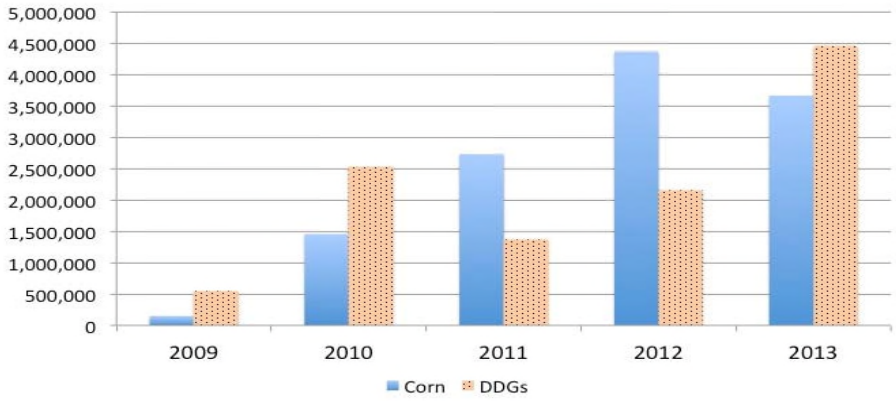
278. By mid-December 2013, China had rejected U.S. corn shipments of 545,000 metric tons. *See* http://www.reuters.com/article/2013/12/20/china-corn- idUSL3N0JZ0EZ20131220.

279. Beginning in July 2014, China's General Administration of Quality Supervision, Inspection, and Quarantine announced that it would require official government certification from the point of origin that shipments of DDGS are free of MIR162. China's rejection of U.S. DDGS due to the presence of MIR162 hurt the price of U.S. corn.

19. *DDGS Trade*

280. U.S. DDGS exports to China totaled 2.16 mmt in calendar year 2012 and 4.45 mmt in calendar year 2013. DDGS trade has been hit hard recently but the extent of the impact on corn prices may not show up in the trade data yet.

U.S. Exports of Corn and DDGS to China: 2009-2013 (calendar years)



Source: USDA, GATS. DDG HS code 2303300000

281. China was by far the largest market for U.S. DDGS exports accounting for approximately 50% of all exports. The U.S. exports over 20% of annual DDGS production. http://www.extension.iastate.edu/agdm/crops/outlook/dgsbalancesheet.pdf.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

282. The loss of the large Chinese market for DDGS displaces corn in the U.S. domestic market, pushing corn prices down further.

283. The impact of the loss of the Chinese market for corn and corn products to U.S. corn Producers and Non-Producers likely will be long lasting. The MIR162 incident has similarities to other international GMO contamination incidents, which have had long-lasting market effects. For instance, more than eight years after the 2006 Bayer Crop Science's Liberty Link contamination of the U.S. long-grain rice supply, exports to Europe have yet to recover. Before the 2006 marketing year, the EU-27 procured approximately 25% of its rice imports from the U.S. Immediately after the contamination event, the EU blocked imports of any new commercial U.S. long-grain rice imports. In fact, U.S. long grain rice farmers lost one of their most important markets, and they have yet to get it back despite considerable effort and expense. Recently, an official delegation from the U.S. rice industry visited countries in the EU (such as Germany and the United Kingdom) where they held discussions focused on the re-introduction of U.S. rice into this important market. After this visit, the USA Rice Federation reported that market re-entry faces significant hurdles:

> The U.S. has a superior product and the industry has successfully addressed environmental and social concerns of this market, but it's clear we have more work to do before our German customers return to us," said Keith Glover, president and CEO of Producers Rice Mill and chairman of USA Rice's World Market Price committee. USA Rice Federation, *USA Rice Daily* (Oct. 14, 2014).

284. In commodity markets like corn, a relatively small change in trade volume can have a significant impact on price. One of the prime examples of the operation of this basic law of economics occurred in 1973, when Middle Eastern oil producers (Iran and Arab members of OPEC) cut off exports to the U.S. to protest American military support for Israel. Even though imports from this region accounted for only about 10% of the U.S. oil supply, petroleum prices

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

quadrupled in response to the export embargo and there were long lines for gasoline at filling stations.

285. Another more recent example of inelastic demand at work is evident from the world coffee market. Brazil produces about 35% of the world's coffee and is unfortunately in the middle of a drought that is affecting both the 2014 and 2015 coffee harvests in that country. In 2014, the Brazilian coffee harvest was down about 13% and this doubled the price of coffee. World coffee production is about 150 million bags per year, and as the following quote from the *Financial Times* indicates, a 10 million bag swing in Brazil's production over a two-year period (about a 3.5% change in production) can mean the difference in coffee prices ranging between $3 and $1.50 per pound:

> Brazil is the largest coffee producer in the world, accounting for about 35 per cent of all output. Industry consensus around the 2014 Brazilian harvest seems to have settled at about 48m 60kg bags, down from the previous year's 54-55m, but the 2015 forecasts have ranged widely between 40m and 53m bags. Estimates for the cumulative Brazil supply 2014 and 2015 combined, range from 92m to 102m bags, which is the difference between $3.00 and $1.50 per pound of coffee. *Financial Times* (Sept. 17, 2014).

286. Based on the same economic logic, the *Wall Street Journal* reasoned that the loss of the Chinese corn market to the U.S. industry over MIR162 will have an important impact on the U.S. corn price, even though that market represented only about 12% of U.S. exports: "Exports account for only about 12% of the U.S. corn crop, but China's rapid growth gives the country an outsize influence over prices." *Wall Street Journal*, U.S. Corn Exports to China Dry Up Over GMO Concerns (Apr. 11, 2014).

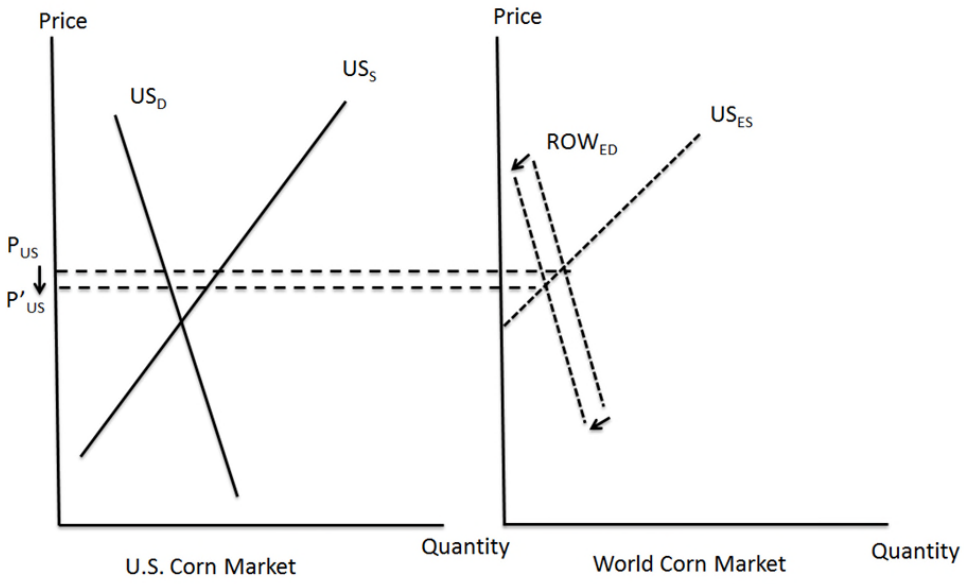
287. In the U.S. corn market, both domestic demand and supply curves are relatively inelastic, especially in the short run. Elasticity measures the degree of responsiveness in supply or demand to price changes. If both the supply and demand curves are inelastic, then for each curve

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

it will take a relatively large change in price to effect a change in quantity demanded or supplied. This is shown in the left panel of the diagram below, where the U.S. domestic demand for corn is represented as schedule US_D and the domestic supply is labeled as US_S. Both of these curves are inelastic as drawn. The horizontal difference between the supply (US_S) and demand (US_D) at world price (P_{US}) is the amount of corn exported.

288. The right hand panel of the diagram shows the market for U.S. corn exports. The U.S. export supply curve shown to the world market is labeled as US_{ES}. This curve is based on the U.S. domestic supply and demand curves in the left hand panel. For any price above the point where US_D and US_S intersect in the left-hand panel, there is excess domestic corn that is supplied to the world market according to the schedule US_{ES} in the right hand panel. The world demand for U.S. corn is shown by the curve ROW_{ED} in the right hand panel. This includes demand from China. Following the MIR162 ban the ROW_{ED} curve shifts left as shown by the arrows in the right hand panel. An inward shift of the global demand for U.S. corn reduces exports from the U.S. The intersection of the shrunken ROW_{ED} curve and US_S determines the volume of trade after the MIR162 ban. U.S. corn exports are reduced by a fixed volume due to a foreign market closing, and the U.S. price falls to P'_{US}. The drop in price is relatively large, even if the shrinkage in exports is a small share of production, because the price must fall to clear a market in which supply and demand are inelastic.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN



289. Under the bedrock economic law of supply and demand, for an exportable good, when there is less foreign demand for a product, particularly one with relatively inelastic demand and supply curves, the price is lower than it otherwise would be.

290. As a result, all U.S. corn Producers who priced their corn after November 2013 have received a lower price for their corn than they would have received if China's imports of U.S. corn had not effectively stopped.

291. These effects are likely to continue in the future, both because Chinese purchasers may not necessarily return to former U.S. suppliers even though MIR162 is now approved, and also because the presence of Event 5307 in Syngenta's Duracade corn may cause contamination similar to the contamination caused by MIR162 alone.

20. *Losses Suffered by Non-Producers*

292. Producers were not the only ones to suffer the impact of lost sales, or sales at lower prices than they would have received if China's imports of U.S. corn had not effectively stopped. Grain elevators, which buy from farmers and re-sell further down the supply chain, similarly suffered losses from the drop in corn prices, as well as reduced volumes and reduced margins.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

And, to the extent that exporters have purchased corn or DDGS for re-sale in the export market, they also suffered losses when the price of corn and DDGS fell.

293. When the price of corn and DDGS drops, and those products cannot be exported to China, there is far less need for the services of those who process, haul, or otherwise transport those products. Thus, transporters for the export trade have seen their business decimated with the evaporation of Chinese exports.

294. Exporters have also been hit hard. They have suffered from reduced shipments and canceled or rescinded export contracts as well as delayed payments on stalled deliveries to China. With respect to shipments held in Chinese ports, exporters have incurred huge costs for storage, moving, late customs clearance, customs checking, import taxes, and diversion fees. Delays in payment on shipments to China further affected the credit of exporters and thus impaired their ability to divert their corn or DDGS to other markets.

295. Many companies seeking to import U.S. corn and DDGS who accepted shipments that later tested positive for MIR162 have been forced to default on contracts to purchase additional quantities of U.S. corn and DDGS because they are no longer able to obtain import permits. They are also unable to enter into new contracts. This has seriously affected the business of exporters.

296. These effects are likely to continue in the future, both because Chinese purchasers may not necessarily return to former U.S. suppliers even though MIR162 is now approved and because the presence of Event 5307 in Syngenta's Duracade corn may cause contamination similar to the contamination caused by MIR162 alone.

21. Harm to Milo and Soybean Prices

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

297. Sorghum, also called milo, is a high energy, drought tolerant crop used most often for animal feed and ethanol production. The "milo belt" runs from South Dakota to southern Texas, and includes Kansas, Missouri, Arkansas, Texas, Oklahoma, Colorado, Nebraska, South Dakota, Illinois, Louisiana, Mississippi, and New Mexico. Texas and Kansas account for two-thirds of the nation's planted acres of milo. Over the last five years, planted acreage ranged from 5.3 million to over 8 million acres. Milo is not listed on the Chicago Board of Trade; instead, the cash price farmers receive for milo is set by the CBOT futures price for corn. Thus, there is a direct relationship between the price of corn and the set price of milo. When the Chinese ban depressed the price of corn, it simultaneously depressed the price of milo.

298. Soybeans are a substitute crop for corn. When corn prices are high, the demand for soybeans increases because the soybean prices are set lower than corn. Soybeans and milo are parallel markets to corn because both markets derive their demand from the corn market. Under the basic laws of supply and demand, when there is less demand for a product, the price is lower than it otherwise would be. With the influx of rejected corn back into the U.S. market, the corn supply in the U.S. increased, causing lower corn prices. With corn cheaper, sales of milo and soybeans dropped because of the substitutability of corn for these commodities in domestic feed rations. Soybean farmers received less money for their soybeans due to the sudden drop in corn prices because purchasers bought cheaper corn rather than the soybeans.

299. Milo and Soybean Plaintiffs have been damaged by Syngenta's material misrepresentations as alleged throughout this Complaint. Milo and Soybean Plaintiffs were injured by the negative market price impact, which resulted in lower revenues and profits. Milo Plaintiffs and Soybean Plaintiffs seek compensation for the losses suffered as a result of Syngenta's irresponsible conduct and punitive damages for Syngenta's reprehensible and

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

outrageous behavior.

I. Causes of Action

Count 1 – Negligence
(On Behalf of Minnesota, or All, Plaintiffs)

300. Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

301. Syngenta owed a duty to Plaintiffs to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

302. Syngenta breached its duties by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that planting Viptera would lead to the loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

303. Syngenta's negligence is a direct and proximate cause of the injuries and damages sustained by Plaintiffs.

304. Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

305. Syngenta's conduct was willful, wanton, grossly negligent, and in reckless

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

disregard of the rights of others, including Plaintiffs. Moreover, Syngenta had knowledge of facts or intentionally disregarded facts that created a high probability of harm to Plaintiffs' rights, and deliberately acted in conscious or intentional disregard of that high probability of harm; alternatively, Syngenta deliberately acted with indifference to that high probability of harm. Syngenta's acts and omissions thus showed deliberate reckless disregard for Plaintiffs' rights. Punitive damages are thus warranted.

Count 2 – Trespass to Chattels
(On Behalf of Minnesota, or All, Plaintiffs)

306. Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

307. By commercializing Viptera and Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and Duracade into contact with non-Viptera/Duracade corn in which Plaintiffs had possession and/or possessory rights.

308. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Plaintiffs' corn through contamination in fields and/or grain elevators and other modes of storage and transport.

309. As a result of the trespass, Plaintiffs' chattels/movables were impaired as to condition, quality, or value, and Plaintiffs were damaged.

310. Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

311. Syngenta's conduct was willful, wanton, grossly negligent, and in reckless disregard of the rights of others, including Plaintiffs. Punitive damages are thus warranted.

Count 3 – Tortious Interference
(On Behalf of Minnesota, or All, Plaintiffs)

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

312. Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

313. Plaintiffs had a business relationship with customers such as grain elevators and exporters to whom they sold their corn. This business relationship was recorded by contracts, invoices, receipts, and other documents demonstrating a consistent course of sales.

314. Plaintiffs had a reasonable expectation of economic gain as a result of these relationships and reasonably expected to continue selling corn to such customers in the future.

315. Syngenta knew that Plaintiffs had business relationships in the chain of crop export and sales. Syngenta knew that Plaintiffs expected such relationships to continue in the future.

316. Despite such knowledge, Syngenta made representations that deceived Plaintiffs about whether customers would accept Viptera and Duracade corn or corn contaminated with MIR162.

317. Syngenta interfered with these prospective future business relationships by prematurely releasing Viptera and Duracade corn into the U.S. market knowing that it would lead to contamination of all U.S. corn shipments. This conduct prevented U.S. corn from being sold to certain export markets, including China, which had not granted approval for purchase or consumption of Viptera and Duracade corn.

318. Syngenta's conduct thus prevented the export of U.S. corn to China, causing depressed prices for Producers and Non-Producers. As a result, Plaintiffs were unable to sell corn at the price they reasonably expected to receive and would have received but for Syngenta's conduct. Plaintiffs, therefore, have been damaged as a result of Syngenta's interference.

319. Plaintiffs were damaged by Syngenta's conduct, including but not limited to suffering consequential damages from depressed prices for the sale of their corn.

320. As a direct and proximate result of Syngenta's conduct, Plaintiffs have been

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

injured and have suffered financial loss in excess of $50,000, for which damages and other relief as may be available at law or equity are warranted.

Count 4 – Private Nuisance
(On Behalf of Minnesota, or All, Plaintiffs)

321. Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

322. By contaminating the U.S. corn supply, Syngenta obstructed the free use of Plaintiffs' property, thereby materially and substantially interfering with their property interests and/or comfortable enjoyment of their property, constituting a private nuisance.

323. Syngenta's conduct was negligent because Syngenta knew or should have known that its conduct involved an unreasonable risk of interfering with or causing an invasion of the Plaintiffs' interest in land. Additionally, or in the alternative, Syngenta's actions were intentional and unreasonable because Syngenta knew that its invasion would result from its conduct, and knew that it would substantially interfere with Plaintiffs' comfortable enjoyment of their property and/or property interests.

324. Syngenta's actions proximately caused damage to Plaintiffs. Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

325. Syngenta had knowledge of facts or intentionally disregarded facts that created a high probability of harm to Plaintiffs' rights and deliberately acted in conscious or intentional disregard of that high probability of harm; alternatively, Syngenta deliberately acted with indifference to that high probability of harm. Syngenta's actions and omissions thus showed deliberate disregard for the rights of others including Plaintiffs. Punitive damages are thus warranted.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 5 - Minn. Stat §§ 325D.13 and 325F.69
(On Behalf of Minnesota, or All, Plaintiffs)

326. Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

327. Syngenta made false or misleading statements regarding MIR162 and its impact on export markets for U.S. corn, including China, and corn prices.

328. Syngenta's representations, statements, and commentary have been largely disseminated and included:

a. To APHIS and the public, including stakeholders interested in the MIR162 Deregulation Petition, that deregulation of MIR162 should not cause an adverse impact on export markets for U.S. corn, that Syngenta would communicate the stewardship requirements "using a wide ranging grower education program," and that at the time the MIR162 Deregulation Petition was submitted to APHIS, regulatory filings were in progress in China;

b. To APHIS and the public, that MIR162 could and would be channeled away from markets that had not yet approved MIR162;

c. To the press and to investment analysts on quarterly conference calls;

d. Through statements in marketing materials published on the Internet such as its "Plant With Confidence" fact sheet; and

e. Through other statements indicating that approval from China for MIR162 corn was expected at times when Syngenta knew it was not.

329. In addition, Syngenta stated in 2007 that its regulatory filings with China were "in process" when it did not actually file for Chinese approval until 2010.

330. Syngenta made numerous misrepresentations pertaining to the status of China's import approval for MIR162. Among others, and as more fully set forth above, during the summer of 2011, Syngenta represented to stakeholders, including Plaintiffs (to encourage further sales, planting, and harvesting of MIR162), that it would receive China's approval in March 2012. Syngenta continued making this misrepresentation throughout the planting and harvesting season in 2011 and into 2012. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack,

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process and its own status within that process for MIR162, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

331. In addition to these false and misleading statements, Syngenta failed to disclose, and actively suppressed and concealed, that approval from China was not reasonably likely to occur (at least) for the 2011 and 2012 growing seasons and that purchase and planting of Viptera created at least a substantial risk of loss of the Chinese market.

332. Syngenta also has at all times made false and misleading statements regarding the ability to channel MIR162 corn, as well as the state and effectiveness of its supposed stewardship generally and in regard to MIR162.

333. Syngenta also failed to disclose, and actively suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling Viptera or Duracade.

334. As a developer of genetically modified products, Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which Plaintiffs do not have access.

335. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling its genetically modified products, including Viptera and Duracade, which was not available to Plaintiffs.

336. Syngenta knew but failed to disclose, suppressed, and concealed that systems were not in place to isolate or effectively channel Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

disseminate throughout the U.S. corn supply and into export markets, including China, which had not approved import, causing market disruption.

337. Syngenta also knew but failed to disclose, suppressed, and concealed, at minimum, in 2010-2011 that it would not have import approval from China by the 2011 crop year and in 2011-2012 that it would not have import approval from China by the 2012 crop year, and failed to disclose that China was a significant and growing import market. Syngenta further failed to disclose at all relevant times the insufficiency of its approval request to China, and that it sought approval to cultivate MIR162 in China, both of which Syngenta knew would cause delay in China's approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling Viptera or Duracade and the very high likelihood that MIR162 would move into export channels where it was not approved, causing market disruption.

338. Syngenta engaged in these deceptions to sell and increase its sales of Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and Plaintiffs would be harmed.

339. Syngenta knew that Plaintiffs are affected by its business and depend on it for responsible commercialization practices.

340. For all these reasons, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not imminent or indeed anticipated for (at least) the 2011 and 2012 growing seasons, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which it did not have approval, and that commercializing Viptera (and later Duracade) without Chinese import approval or an

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

effective channeling system created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

341. In addition, Syngenta made numerous misrepresentations to the effect that approval from China was on track and/or would be received during time periods when Syngenta knew it was not, and that Viptera and Duracade could, and would, be channeled away from markets for which approval had not been obtained. Syngenta had a duty to prevent words it communicated from misleading others.

342. Syngenta's misrepresentations and omissions were made intentionally or recklessly.

343. Syngenta, in connection with the sale of merchandise – Viptera and Duracade – knowingly misrepresented, directly or indirectly, the true quality of that merchandise in violation of Minn. Stat. § 325D.13.

344. Syngenta used or employed fraud, false pretense, false promise, misrepresentation, misleading statements, or deceptive practices, with the intent that others rely thereon in connection with the sale of Viptera and Duracade in violation of Minn. Stat. § 325F.69.

345. Syngenta's violations of Sections 325D.13 and 325F.69 proximately caused harm to Plaintiffs.

346. This action will serve a public benefit. Not only were Syngenta's misrepresentations made to a large segment of the public, Syngenta's conduct vitally affects a large segment of the public as well – all producers and non-producers in the business of growing, selling, storing, exporting, and transporting corn and corn products – who depend on the responsible stewardship practices of developers like Syngenta when commercializing GM products. The issues surrounding what duties and liabilities such developers have for irresponsible

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

and intentional acts is not limited to corn but impact all developers and stakeholders in a similar position.

347. Plaintiffs are entitled to compensatory damages and attorneys' fees. *See* Minn. Stat. 8.31, subd. 3a.

Count 6 - Strict Liability-Failure to Instruct and/or Warn
(On Behalf of Minnesota, or All, Plaintiffs)

348. Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

349. Syngenta has in the past and continues to manufacture, sell, and otherwise distribute corn seed containing MIR162.

350. Syngenta sold Viptera and Duracade into the stream of commerce by selling it to farmers.

351. Viptera and Duracade was used as intended.

352. Viptera and Duracade was used in a manner Syngenta could have reasonably anticipated.

353. Syngenta is strictly liable to Plaintiffs as a result of its failure to warn about the dangers of Viptera and Duracade.

354. Syngenta knew, or had reason to know, of the dangers associated with corn seed containing MIR162.

355. Syngenta had a duty to warn and/or instruct Plaintiffs.

356. Syngenta did not give adequate warning of the danger of Viptera and/or Duracade; nor did Syngenta give adequate instructions as to the use of Viptera and/or Duracade.

357. Plaintiffs suffered injury and damages as a direct and proximate result of Syngenta's failure to provide an adequate warning and/or instructions regarding the dangers of Viptera and Duracade.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

358. Thus, Syngenta knew, or should have known, that its conduct would result in injuries to Plaintiffs.

359. Nevertheless, Syngenta continued such conduct in reckless disregard of or conscious indifference to those consequences.

360. As a direct and proximate result of the foregoing, Plaintiffs have been injured and suffered financial loss for which damages, injunctive, declaratory and other relief as may be available at law or equity is warranted.

Count 7 - Negligence
(On Behalf of Alabama Plaintiffs)

361. Alabama Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

362. Syngenta owed its stakeholders, including the Alabama Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

363. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

364. Syngenta's negligence directly and proximately caused harm to Alabama Plaintiffs.

365. Alabama Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

366. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others including Alabama Plaintiffs and was aware that harm would likely or probably result. Punitive damages are thus warranted.

Count 8 – Trespass to Chattels
(On Behalf of Alabama Plaintiffs)

367. Alabama Plaintiffs incorporate by reference paragraphs 1-299 as though set forth herein.

368. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Alabama Plaintiffs had possession and/or possessory rights.

369. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Alabama Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

370. As a result of the trespass, Alabama Plaintiffs' chattels were impaired as to condition, quality, or value, and Plaintiffs were damaged.

371. Alabama Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

372. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others,

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

including Alabama Plaintiffs. Punitive damages are thus warranted.

Count 9 – Tortious Interference
(On Behalf of Alabama Plaintiffs)

373. Alabama Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

374. Alabama Plaintiffs had business relationships and a reasonable expectancy of continued relationships with purchasers of corn.

375. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

376. Syngenta induced or caused a disruption of that expectancy without justification or privilege.

377. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Alabama Plaintiffs' fields, storage units, equipment, grain elevators, and other facilities of the U.S. supply chain, constituting a trespass and interference with Alabama Plaintiffs' use of their property and in violation of Syngenta's duty of care.

378. Syngenta's interference has proximately caused damage to Alabama Plaintiffs.

379. Alabama Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

380. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Alabama Plaintiffs. Punitive damages are thus warranted.

Count 10 - Private Nuisance
(On Behalf of Alabama Plaintiffs)

381. Alabama Plaintiffs incorporate by reference paragraphs 1-299 as though set forth

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

herein.

382. Syngenta's actions constitute a private nuisance to Alabama Plaintiffs. By contaminating the U.S. corn supply, Syngenta has substantially and unreasonably interfered with Alabama Plaintiffs quiet use and enjoyment of their land and/or property interests.

383. Syngenta's actions proximately caused damage to Alabama Plaintiffs.

384. Alabama Plaintiffs thus entitled to an award of compensatory damages and pre- and post-judgment interest.

385. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Alabama Plaintiffs. Punitive damages are thus warranted.

Count 11 – Negligence
(On Behalf of Alaska Plaintiffs)

386. Alaska Plaintiffs incorporate by reference paragraphs 1-299 as though set forth herein.

387. Syngenta's acts or omissions, as described above and below, constitute negligence, negligence per se, or both.

388. As a product developer and manufacturer, Syngenta had a duty to refrain from selling and distributing Viptera and Duracade in a manner that would foreseeably cause harm to Alaska Plaintiffs, to use ordinary care in the timing, scope, and terms under which it commercialized Viptera and Duracade.

389. Syngenta breached these duties by failing to exercise reasonable care to prevent the foreseeable contamination of the U.S. corn supply through cross-pollination and commingling that would naturally result from the premature sale and distribution of Viptera and Duracade as outlined herein.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

390. Specifically, Syngenta breached these duties by its acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

391. Syngenta's breach is the direct and proximate cause of the damage suffered by Alaska Plaintiffs.

392. The rejection by China of U.S. corn could not have occurred without Syngenta's negligence in prematurely releasing Viptera and Duracade corn seed without prior approval of major export partners because the commercialization of Viptera was solely under its management and control. Syngenta made the decision to commercialize Viptera knowing that it would likely contaminate the U.S. corn supply. Viptera and Duracade in fact contaminated the U.S. corn supply, which could not have occurred without Syngenta's negligence. Syngenta had exclusive control over the commercialization of Viptera and Duracade and these unapproved genetically modified traits could not have contaminated the U.S. corn supply in the absence of a lack of the exercise of proper care by Syngenta.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

393. Alaska Plaintiffs suffered injury and property damage by the sale and distribution of Viptera by Syngenta as outlined herein and seek compensatory damages. Alaska Plaintiffs also seeks all costs and fees allowed by law.

394. Alaska Plaintiffs further see punitive damages as a result of Syngenta's reckless and willful conduct. Syngenta's conduct, as described above, was outrageous, and included acts done with malice or bad motives and/or evidencing reckless indifference to Alaska Plaintiffs' interests. Punitive damages are thus warranted.

Count 12 - Trespass to Chattels
(On Behalf of Alaska Plaintiffs)

395. Alaska Plaintiffs incorporate by reference paragraphs 1-299 as though set forth herein.

396. By commercializing Viptera and Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and Duracade into contact with and contaminated non-Viptera/Duracade corn in which Alaska PlaintiffsPlaintiffs had possessory rights.

397. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with and contaminated Alaska Plaintiffs' corn through contamination in fields and/or grain elevators and other modes of storage and transport.

398. As a result of the trespass, Alaska Plaintiffs' chattels, in which Alaska Plaintiffs had a possessory interest, were contaminated and impaired as to condition, quality, or value, and Alaska Plaintiffs were damaged.

399. Syngenta's intentional interference is the direct and proximate cause of the damage to Alaska Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

400. Alaska Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law.

401. Syngenta's conduct, as described above, was outrageous, and included acts done with malice or bad motives and/or evidencing reckless indifference to Alaska Plaintiffs' interests. Punitive damages are thus warranted.

Count 13 – Tortious Interference
(On Behalf of Alaska Plaintiffs)

402. Alaska Plaintiffs incorporate by reference paragraphs 1-299 as though set forth herein.

403. Alaska Plaintiffs had existing and prospective business relationships and a reasonable expectancy of continued relationships with third-party purchasers of corn.

404. Syngenta had knowledge of such relationships or expectancies and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the relationships or expectancies existed. Syngenta intended to prevent the fruition of the prospective and existing business relationships between Alaska Plaintiffs and third-party purchasers of corn.

405. Syngenta was not a party to the business relationships between Alaska Plaintiffs and third-party purchasers of corn.

406. Syngenta intentionally induced or caused a disruption of that expectancy without justification or privilege.

407. Because of Syngenta's conduct, the existing and prospective business relationships between Alaska Plaintiffs and third-party purchasers of corn did not culminate in pecuniary benefit to Alaska Plaintiffs.

408. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

intentional, and contaminated Alaska Plaintiffs' fields, storage units, equipment, grain elevators, and other facilities of the U.S. supply chain, constituting a trespass and interference with Alaska Plaintiffs' use of their property and in violation of Syngenta's duty of care.

409. Syngenta's interference is the direct and proximate cause of the damage to Alaska Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

410. Alaska Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law.

411. Syngenta's conduct, as described above, was outrageous, and included acts done with malice or bad motives and/or evidencing reckless indifference to Alaska Plaintiffs' interests. Punitive damages are thus warranted.

Count 14 - Private Nuisance
(On Behalf of Alaska Plaintiffs)

412. Alaska Plaintiffs incorporate by reference paragraphs 1-299 as though set forth herein.

413. Syngenta's actions constitute a private nuisance through the sale and distribution of Viptera corn. Syngenta licensed, sold, and distributed Viptera corn without regard for the cross-pollination that results when Viptera corn pollen drifts to neighboring, non-Viptera fields. As a result, the entire U.S. corn farming and production chain, including, but not limited to, farmland, farming equipment, storage facilities, harvesting equipment, transportation facilities, and equipment are contaminated with Viptera.

414. Syngenta's conducts was intentional, or at the very least negligent and/or reckless, and unreasonably interfered with Alaska Plaintiffs' use and enjoyment of their property interests in their corn.

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

415. The interference with Alaska Plaintiffs' use and enjoyment of their property interests, caused by Syngenta's contamination of both Alaska Plaintiffs' corn supply and the U.S. corn supply, is substantial, unreasonable, and ongoing. Alaska Plaintiffs have suffered and continue to suffer injuries in the form of business losses because of reduced and/or restricted demand for Alaska Plaintiffs' corn crops, reduced prices for Alaska Plaintiffs' corn crops, and diminution in the value of Alaska Plaintiffs' corn harvesting.

416. Syngenta's actions are the direct and proximate cause of the damage to Alaska Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

417. Alaska Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law.

418. Syngenta's conduct, as described above, was outrageous, and included acts done with malice or bad motives and/or evidencing reckless indifference to Alaska Plaintiffs' interests. Punitive damages are thus warranted.

Count 15 - Alaskan Unfair Trade Practices and Consumer Protection Act
(On Behalf of Alaska Producer Plaintiffs)

419. Alaska Plaintiffs incorporate by reference paragraphs 1-299 as though set forth herein.

420. Pursuant to Alaska Stat. §§ 45.50.471 through 45.50.561, the Alaskan Unfair Trade Practices and Consumer Protection Act ("AUTPCPA"), unlawful trade practices include:

a. "[C]ausing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services" Alaska Stat. § 45.50.471(b)(3);

b. "[R]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have" Alaska Stat. § 45.50.471(b)(4);

c. "[E]ngaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services" Alaska Stat. § 45.50.471(b)(11); and

d. "[U]sing or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged. Alaska Stat. § 45.50.471(b)(12).

421. Syngenta's deceptive and unfair trade practices constitute a violation of Alaska Stat. §§ 45.50.471(3), (4), (11), and (12).

422. The AUTPCPA provides for a private cause of action. "A person who suffers an ascertainable loss of money or property as a result of another person's act or practice declared unlawful by AS 45.50.471 may bring a civil action to recover for each unlawful act or practice.…" Alaska Stat. § 45.50.531.

423. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving corn farmers and to induce corn farmers, including some Alaska Plaintiffs, to purchase Viptera and Duracade.

424. Syngenta's false and deceptive representations caused confusion and misunderstanding as to Viptera and Duracade's sponsorship, approval, and/or certification.

425. Syngenta further knowingly and recklessly represented that Viptera and Duracade had sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they did not have.

426. Syngenta's conduct created a substantial likelihood of confusion and misunderstanding, and misled, deceived, or damaged Alaska Plaintiffs in connection with the sale

27-CV-15-17585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

or advertisement of Viptera and Duracade.

427. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

428. Syngenta also submitted a MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets...." Based on Syngenta's knowledge of the Chinese regulatory process, and based on its expertise and knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and for the purpose of producing sales.

429. Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China and a "Plant with Confidence Fact Sheet," which contained deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and Syngenta's knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

430. Syngenta also failed to disclose material information to Producers. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose the insufficiency of its approval request to China, and that it sought approval to cultivate MIR162 in China, both of which caused delay in the regulatory approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling Viptera or Duracade.

431. Syngenta's failure to disclose material information and false and misleading representations and omissions occurred in the course of its business and caused damage to a large portion of the public, including Alaska Plaintiffs. Those Alaska Plaintiffs lack the sophistication and bargaining power in matters concerning genetically modified products.

432. As a developer of genetically modified products, Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which Producers, including Alaska Plaintiffs, do not have access.

433. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling its genetically modified products, including Viptera and Duracade, which was not available to Alaska Plaintiffs.

434. Syngenta knew that approval from China would not be forthcoming for (at least) the 2011 growing season, knew that systems were not in place for either isolating or effectively channeling Viptera and Duracade, and knew that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would disseminate throughout the U.S. corn supply.

435. Syngenta engaged in these deceptions in order to sell and increase its sales of

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and Alaska Plaintiffs would be harmed.

436. Syngenta knew that Alaska Plaintiffs would be affected by its business and depend on it for responsible commercialization practices.

437. In equity and good conscience, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not imminent or indeed anticipated for (at least) the 2011 growing season, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which Syngenta did not have approval, and that purchase and planting of Viptera (and later Duracade) created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

438. Syngenta's deceptive trade practices have impacted Alaska ProducersProducers, as well as other corn farmers, including corn farmers who purchased and planted Viptera and/or Duracade.

439. Syngenta's deceptive trade practices have previously impacted actual or potential consumers of its products through the loss of the export market of China. Syngenta's deceptive practices have significant potential to further disrupt the corn export market in the future.

440. Syngenta's deceptive trade practices were fraudulent, willful, knowing, or intentional, and were taken in bad faith. Further, Syngenta knowingly concealed, suppressed, and omitted material facts with the intent that Alaska Producer Plaintiffs and other U.S. corn farmers would rely on the concealment, suppression, or omission in connection with the sale and advertisement of Viptera and Duracade.

441. Syngenta's deceptive trade practices proximately caused an injury in fact to a

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

legally protected interest belonging to Alaska ProcuersProcuers, including but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

442. Alaska Producer Plaintiffs are thus entitled to damages in a sum equal to three times the amount of actual damages they sustained, plus their attorney's fees and costs incurred in this action. Alaska Stat. § 45.50.531(a) & § 45.50.537.

443. Syngenta's conduct, as described above, was outrageous, and included acts done with malice or bad motives and/or evidencing reckless indifference to Alaska Producer Plaintiffs' interests. Punitive damages are thus warranted.

Count 16 - Negligence
(On Behalf of Arizona Plaintiffs)

444. Arizona Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

445. Syngenta's acts or omissions, as described above and below, constitute negligence, negligence per se, or both.

446. As a product developer and manufacturer, Syngenta had a duty to refrain from selling and distributing Viptera and Duracade in a manner that would foreseeably cause harm to Arizona Plaintiffs, to use ordinary care in the timing, scope, and terms under which it commercialized Viptera and Duracade.

447. Syngenta breached these duties by failing to exercise reasonable care to prevent the foreseeable contamination of the U.S. corn supply through cross-pollination and commingling that naturally resulted from the premature sale and distribution of Viptera and Duracade.

448. Syngenta breached these duties by its acts and omissions including but not limited to:

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channelthose products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

449. Syngenta's breach is the direct and proximate cause of the damage suffered by Arizona Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

450. China's rejection of U.S. corn wouldwould not have occurred without Syngenta's negligence in prematurely releasing Viptera corn seed without prior approval of major export partners because the commercialization of Viptera was solely under its management and control. Syngenta made the decision to commercialize Viptera knowing that it would likely contaminate the U.S. corn supply. Viptera in fact contaminated the U.S. corn supply, which could not have occurred without Syngenta's negligence. Syngenta had exclusive control over the commercialization of Viptera and this unapproved genetically modified trait could not have contaminated the U.S. corn supply in the absence of a lack of the exercise of proper care by Syngenta.

451. Arizona Plaintiffs suffered injury and property damage by the sale and distribution

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

of Viptera by Syngenta as outlined herein and seek compensatory damages. Arizona Plaintiffs also seeks all costs and fees allowed by law.

452. Arizona Plaintiffs further seek punitive damages. Syngenta's conduct, was aggravated and outrageous, and included acts done with malice, bad motives, and/or with the intent to injure, defraud, or deliberately interfere with the rights of Arizona Plaintiffs. Syngenta's conduct evidenced a reckless indifference or conscious disregard of the unjustifiably substantial risk of significant harm to Arizona Plaintiffs' interests. Punitive damages are thus warranted.

Count 17 – Trespass to Chattels
(On Behalf of Arizona Plaintiffs)

453. Arizona Plaintiffs incorporate by reference paragraphs 1-299299 as if set forth herein.

454. By commercializing Viptera and Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and Duracade into contact with, and contaminated non-Viptera/Duracade corn in which Arizona Plaintiffs had possessory rights.

455. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with and contaminate Arizona Plaintiffs' corn through contamination in fields and/or grain elevators and other modes of storage and transport.

456. As a result of the trespass, Arizona Plaintiffs' chattels, in which Arizona Plaintiffs had a possessory interest, were contaminated and impaired as to condition, quality, or value, and Arizona Plaintiffs were damaged.

457. Syngenta's intentional interference is the direct and proximate cause of the damage to Arizona Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

458. Arizona Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law.

459. Syngenta's conduct, was outrageous and included acts done with malice or bad motives and/or evidencing reckless indifference to Arizona Plaintiffs' interests. Punitive damages are thus warranted.

Count 18 - International Interference with Business Relationships
(On Behalf Arizona Plaintiffs)

460. Arizona Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

461. Arizona Plaintiffs had valid contracts and/or business expectancies with third-party purchasers of corn and a reasonable expectancy of the continuance of such relationships.

462. Syngenta had knowledge of such contracts and/or expectancies and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the contracts and/or expectancies existed.

463. Syngenta's conduct, as described above, constituted an intentional interference and induced or caused a breach of the contracts and/or termination of the relationships or expectancies.

464. Syngenta was not a party to the contracts and/or business relationships between Arizona Plaintiffs and third-party purchasers of corn.

465. Syngenta intentionally induced or caused a disruption of the contracts and/or business relationships without justification or privilege.

466. Syngenta's conduct was intentional and improper as to motive or means, and wrongful because, *interinter alia*, it was accomplished byby misrepresentations and omissions of material fact, was intentional, and contaminated Arizona Plaintiffs' fields, storage units, equipment, grain elevators, and other facilities of the U.S. supply chain, constituting a trespass

27-CV-15-3585
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

and interference with Arizona Plaintiffs' use of their property in violation of Syngenta's duty of care.

467. Syngenta's interference is the direct and proximate cause of the damage to Arizona Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

468. Arizona Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law.

469. Syngenta's conduct, as described above, was outrageous, and included acts done with malice or bad motives and/or evidencing reckless indifference to Arizona Plaintiffs interests. Punitive damages are thus warranted.

Count 19 - Private Nuisance
(On Behalf of Arizona Plaintiffs)

470. Arizona Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

471. Syngenta's actions constitute a private nuisance through the sale and distribution of Viptera corn. Syngenta licensed, sold, and distributed Viptera corn without regard for the cross-pollination that results when Viptera corn pollen drifts to neighboring, non-Viptera fields. As a result, the entire U.S. corn farming and production chain, including, but not limited to, farmland, farming equipment, storage facilities, harvesting equipment, and transportation facilities and equipment are contaminated with Viptera.

472. Syngenta's conduct was intentional and unreasonably interfered with Arizona Plaintiffs' use and enjoyment of their real property.

473. The interference with Arizona Plaintiffs'Plaintiffs' use and enjoyment of theirtheir property interests caused by Syngenta's contamination of both Arizona Plaintiffs' corn supply and the U.S. corn supply is substantial, unreasonable, and ongoing. Arizona Plaintiffs have suffered

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

and continue to suffer injuries in the form of business losses because of reduced and/or restricted demand for corn, reduced prices for corn, and diminution in the value of corn.

474. Syngenta's actions are the direct and proximate cause of the damage to Arizona Plaintiffs, including butnot limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

475. Arizona Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law.

476. Syngenta's conduct, as described above, was outrageous and included acts done with malice or bad motives and/or evidencing reckless indifference to Arizona Plaintiffs interests. Punitive damages are thus warranted.

Count 20 - Arizona Consumer Fraud Act
(On Behalf of Arizona Plaintiffs)

477. Arizona Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

478. Under A.R.S. §44-1522(A) of the Arizona Consumer Fraud Act ("ACFA"), A.R.S. §§ 44-1521 through 44-1534, unlawful trade practices include: "The act, use or employment by any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby…." A.R.S. § 44-1522(A).

479. Syngenta's deceptive trade practices in connection with the sale and advertisement of Viptera and Duracade constitute a violation of A.R.S. §§ 44-1522.

480. The ACFA provides a private cause of action against Syngenta in connection with Syngenta's violations of A.R.S. §§ 44-1522.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

481. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving corn ProducersProducers and Non-Producers and to induce ProducersProducers and Non-Producers, including Arizona Plaintiffs, to purchase Viptera and Duracade.

482. Syngenta's false and deceptive representations misled and deceived Arizona Plaintiffs as to Viptera and Duracade's approval and/or certification. Syngenta further knowingly and recklessly represented that Viptera and Duracade had approval that it did not have.

483. Syngenta's conduct created a substantial likelihood of confusion and misunderstanding, and misled, deceived, or damaged Arizona Plaintiffs in connection with the sale or advertisement of Viptera and Duracade.

484. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

485. Syngenta also submitted the MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets...." Based on Syngenta's knowledge of the Chinese regulatory process and based on its expertise and knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and for the purpose of

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

producing sales.

486. As described above, Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contains deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and Syngenta's knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

487. Syngenta also failed to disclose material information to corn farmers. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose the insufficiency of its approval request to China, and that it sought approval to cultivate MIR162 in China, both of which caused delay in the regulatory approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolatiors or channeling Viptera or Duracade.

488. Syngenta's failure to disclose material information and false and misleading representations and omissions occurred in the course of its business and caused damage to a large portion of the public, including Arizona Plaintiffs, who lack the sophistication and bargaining power in matters concerning genetically modified products.

489. As a developer of genetically modified products, Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which Arizona Plaintiffs did not have access.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

490. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling of its genetically modified products, including Viptera and Duracade, which was not available to Producers and Non-Producers.

491. Syngenta knew that approval from China would not be forthcoming for (at least) the 2011 growing season, and knew that systems were not in place for either isolating or effectively channeling Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would disseminate throughout the U.S. corn supply.

492. Syngenta engaged in these deceptions to sell and increase its sales of Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and farmers would be harmed.

493. Syngenta knew that farmers like Arizona Plaintiffs here are affected by its business and depend on it for responsible commercialization practices.

494. In equity and good conscience, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not imminent or indeed anticipated for (at least) the 2011 growing season, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which Syngenta did not have approval, and that purchase and planting of Viptera (and later Duracade) created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

495. Syngenta's deceptive trade practices have previously impacted Arizona Plaintiffs and others, including ProducersProducers and Non-Producers who purchased oror planted Viptera or Duracade.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

496. Syngenta's deceptive trade practices have previously impacted actual or potential consumers of its products through the loss of the China export market. Syngenta's deceptive practices have the significant potential to cause further disruption to the corn export market in the future.

497. Syngenta's deceptive trade practices were fraudulent, willful, knowing, or intentional, and were taken in bad faith. Further, Syngenta knowingly concealed, suppressed, and omitted material facts with the intent that Arizona Plaintiffs and other U.S. ProducersProducers and Non-Producers would rely on the concealment, suppression, or omission in connection with the sale and advertisement of Viptera and Duracade.

498. Syngenta's deceptive trade practices proximately caused an injury in fact to a legally protected interest belonging to Arizona Plaintiffs.

499. Arizona Plaintiffs are thus entitled to damages, plus their attorney's fees and costs incurred in this action. A.R.S. § 44-1534. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

500. Syngenta's conduct, as described above, was outrageous, and included acts done with malice or bad motives and/or evidencing reckless indifference to Arizona Plaintiffs' interests. Punitive damages are thus warranted.

Count 21 - Negligence
(On Behalf of Arkansas Plaintiffs)

501. Arkansas Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

502. Syngenta owed its stakeholders, including Arkansas Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

503. Syngenta breached that duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channeling those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that planting Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

504. Syngenta's negligence proximately caused harm to Arkansas Plaintiffs.

505. Arkansas Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

506. In light of the surrounding circumstances, Syngenta knew or ought to have known that its conduct would naturally and probably result in injury and damage to others, including the Arkansas Plaintiffs. Syngenta continued such conduct in reckless disregard of the consequences. Punitive damages are thus warranted.

Count 22 – Trespass to Chattels
(On Behalf of Arkansas Plaintiffs)

507. Arkansas Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

508. By commercializing Viptera and Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Arkansas Plaintiffs had

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

possession and/or possessory rights.

509. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Arkansas Plaintiffs' corn through contamination in fields and/or grain elevators and other modes of storage and transport.

510. As a result of the trespass, these Arkansas Plaintiffs' chattels were impaired as to condition, quality, or value, and Arkansas Plaintiffs were damaged.

511. Arkansas Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

512. In light of the surrounding circumstances, Syngenta knew or ought to have known that its conduct would naturally and probably result in injury and damage. Syngenta continued such conduct in reckless disregard of the consequences. Punitive damages are thus warranted.

Count 23 – Tortious Interference
(On Behalf of Arkansas Plaintiffs)

513. Arkansas Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

514. Arkansas Plaintiffs had business relationships and reasonable expectancy of continued relationships with purchasers of corn.

515. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

516. Syngenta induced or caused a disruption of that expectancy without justification or privilege.

517. Syngenta's conduct was intentional, and was improper and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Arkansas Plaintiffs' fields, storage units, equipment, grain

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

elevators, and other facilities of the U.S. supply chain, constituting a trespass, and interference with Arkansas Plaintiffs' use of their property and in violation of Syngenta's duty of care.

518. Syngenta's interference has proximately caused damage to Arkansas Plaintiffs.

519. Arkansas Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest, including butnot limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

520. In light of the surrounding circumstances, Syngenta knew or ought to have known that its conduct would naturally and probably result in injury and damage. Syngenta continued such conduct in reckless disregard of the consequences. Punitive damages are thus warranted.

Count 24 - Private Nuisance
(On Behalf of Arkansas Plaintiffs)

521. Arkansas Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

522. Syngenta's actions constitute a private nuisance to Arkansas Plaintiffs. By contaminating the U.S. corn supply, Syngenta has unreasonably and substantially interfered with the quiet use and enjoyment of Arkansas Plaintiffs and and/or property interests.

523. Syngenta's actions proximately caused damage to Arkansas Plaintiffs.

524. Arkansas Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest, including but not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

525. In light of the surrounding circumstances, Syngenta knew or ought to have known that its conduct would naturally and probably result in injury and damage. Syngenta continued such conduct in reckless disregard of the consequences. Punitive damages are thus warranted.

Count 2525 - Negligence

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

(On Behalf of the California Plaintiffs)

526. California Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

527. Syngenta's acts or omissions, as described above and below, constitute negligence, negligence per se, or both.

528. As a product developer and manufacturer, Syngenta had a duty to refrain from selling and distributing Viptera and Duracade in a manner that would foreseeably cause harm to California Plaintiffs and, to use ordinary care in the timing, scope and terms under which it commercialized Viptera and Duracade.

529. Syngenta breached these duties by failing to exercise reasonable care to prevent the foreseeable contamination of the U.S. corn supply through cross-pollination and commingling that would naturally result from the premature sale and distribution of Viptera and Duracade herein.

a. channel those products;

b. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

c. Distributing misleading information about the importance of the Chinese market; and

d. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

530. Syngenta's breach is the direct and proximate cause of the damage suffered by California Plaintiffs.

531. China's rejection of U.S. corn would not have occurred without Syngenta's negligence in prematurely releasing Viptera corn seed without prior approval of major export partners because the commercialization of Viptera was solely under its management and control. Syngenta made the decision to commercialize Viptera knowing that it would likely contaminate

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

the U.S. corn supply. Viptera in fact contaminated the U.S. corn supply, which would not have occurred without Syngenta's negligence. Syngenta had exclusive control over the commercialization of Viptera and this unapproved genetically modified trait would not have contaminated the U.S. corn supply in the absence of a lack of the exercise of proper care by Syngenta.

532. California Plaintiffs suffered injury and property damage by the sale and distribution of Viptera and Duracade by Syngenta as outlined herein and seek compensatory damages. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market. California Plaintiffs also seek all costs and fees allowed by law.

533. California Plaintiffs further seek punitive damages. As described above, Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including California Plaintiffs. Punitive damages are thus warranted.

Count 26 - Trespass to Chattels
(On Behalf of California Plaintiffs)

534. California Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

535. By commercializing Viptera and Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and Duracade into contact with and contaminated non-Viptera/Duracade corn in which California Plaintiffs has possessory rights.

536. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with and contaminate California Plaintiffs' corn through

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

contamination in fields and/or grain elevators and other modes of storage and transport.

537. As a result of the trespass, California Plaintiffs' suffered injury. California Plaintiffs' chattels were contaminated and impaired as to condition, quality or value and California Plaintiffs' rights in the chattels were thus diminished.

538. California Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

539. As described above, Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including California Plaintiffs. Punitive damages are thus warranted.

Count 27 - Tortious Interference with Prospective Economic Advantage
(On Behalf of California Plaintiffs)

540. California Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

541. California Plaintiffs had economic relationships with third-party purchasers of corn and the substantial probability of future economic benefit to California Plaintiffs as a result of these economic relationships.

542. Syngenta had knowledge of such economic relationships and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the economic relationships existed.

543. Syngenta's conduct was intentional and was done with the intent to disrupt the relationship between California Plaintiffs and purchasers of corn. Further, Syngenta's conduct was improper and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated California Plaintiffs' fields,

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass, and interference with California Plaintiffs' use of their property and in violation of Syngenta's duty of care.

544. As a result of Syngenta's intentional interference, the economic relationships between California Plaintiffs and the corn purchasers were disrupted and California Plaintiffs suffered economic harm.

545. Syngenta's interference is the direct and proximate cause of the damage to California Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

546. California Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law.

547. As described above, Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including California Plaintiffs. Punitive damages are thus warranted.

Count 28 – Private Nuisance
(On Behalf of California Plaintiffs)

548. California Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

549. Syngenta's actions constitute a private nuisance through the sale and distribution of Viptera corn. Syngenta licensed, sold, and distributed Viptera corn without regard for the cross-pollination that results when Viptera corn pollen drifts to neighboring, non-Viptera fields. As a result, the entire U.S. corn farming and production chain, including, but not limited to, farmland, farming equipment, storage facilities, harvesting equipment, and transportation facilities and equipment are contaminated with Viptera.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

550. Syngenta's conduct was intentional and unreasonably interfered with California Plaintiffs' use and enjoyment of their real property.

551. The interference with California Plaintiffs' use and enjoyment of their property interests caused by Syngenta's contamination of both California Plaintiffs' corn supply, and the U.S. corn supply, is substantial, unreasonable, and ongoing. California Plaintiffs have suffered and continue to suffer injuries in the form of business losses because of reduced and/or restricted demand for California Plaintiffs' corn, reduced prices for California Plaintiffs' corn, and diminution in the value of California Plaintiffs' corn harvesting.

552. Syngenta's actions are the direct and proximate cause of the damage to California Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

553. California Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law.

554. As described above, Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including California Plaintiffs. Punitive damages are thus warranted.

Count 29 - Negligence
(On Behalf of Colorado Plaintiffs)

555. Colorado Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

556. Syngenta owed a duty of at least reasonable care to its stakeholders, including Colorado Plaintiffs in the timing, scope, and terms under which it commercialized MIR162.

557. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/ or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

558. Syngenta's negligence directly and proximately caused harm to Colorado Plaintiffs.

559. Colorado Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

560. Syngenta acted with fraud, malice, and wanton and reckless disregard of the rights of Colorado Plaintiffs. Punitive damages are therefore warranted.

Count 30 - Trespass to Chattels
(On Behalf of Colorado Plaintiffs)

561. Colorado Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

562. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally brought those varieties into contact with non-Viptera/Duracade corn. This contact caused a harmful interference with the physical condition of chattels in which Colorado Plaintiffs had possession and/or possessory rights.

563. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with these Colorado Plaintiffs' corn through contamination in fields

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

and/or in grain elevators and other modes of storage and transport. Syngenta intended to intermeddle with the corn in which these Colorado Plaintiffs had possession and/or possessory rights.

564. Syngenta's trespass proximately caused damage to Colorado Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

565. Colorado Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

566. Syngenta acted with fraud, malice, and wanton and reckless disregard of the rights of Colorado Plaintiffs. Punitive damages are therefore warranted.

Count 31 - Colorado Consumer Protection Act
(On Behalf of Colorado Plaintiffs)

567. Colorado Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

568. Under the Colorado Consumer Protection Act ("CCPA"), "deceptive trade practices," made unlawful, include:

a. "Knowingly mak[ing] a false representation as to the . . . approval . . . of goods." Colo. Rev. Stat. § 6-1-105 (b).

b. "Knowingly mak[ing] a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith." Id. § 6-1-105 (d).

c. "Fail[ing] to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into the transaction." Id. § 6-1-105(u).

569. The CCPA provides a private cause of action to "any person" who was: "(a) an actual or potential consumer of the defendant's goods, services, or property, who is injured as a result of a deceptive trade practice; (b) a successor in interest to an actual consumer who

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

purchased the defendant's goods, services, or property, or (c) injured as the result of a deceptive trade practice in the course of the individual's business or occupation." Colo. Rev. Stat. § 6-1-113.

570. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving Producers and Non-Producers and to induce Producers and Non-Producers to purchase Viptera and/or Duracade corn seed or corn. In addition, Colorado Plaintiffs who did not purchase Viptera and/or Duracade were also damaged in the course of their business or occupation due to Syngenta's false and deceptive representations regarding Viptera and/or Duracade.

571. Syngenta made numerous misrepresentations pertaining to the status of China's import approval for MIR162. Among others, and as more fully set forth above, Syngenta during the summer of 2011, represented to stakeholders, including Colorado Plaintiffs (to encourage further sales, planting and harvesting of MIR162), that it would receive China's approval in March 2012. Syngenta continued making this misrepresentation throughout the planting and harvesting season in 2011 and into 2012. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Agrisure Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process, and its own status within that process for MIR162, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to its consequences.

572. Syngenta also submitted its MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets.…" Based on Syngenta's

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

knowledge of the Chinese regulatory process, and based on its expertise and knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and for the purpose of producing sales.

573. Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contains deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and Syngenta's knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

574. Syngenta failed to disclose material information to Plaintiffs. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose, at minimum, in 2010-2011 that it would not have import approval from China by the 2011 crop year and in 2011-2012 that it would not have import approval from China by the 2012 crop year, and failed to disclose that China was a significant and growing import market. Syngenta further failed to disclose at all relevant times the insufficiency of its approval request to China, and that it sought approval to cultivate MIR162 in China, both of which Syngenta knew would delay China's approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place to isolate or channel Viptera or Duracade and the very high

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

likelihood that MIR162 would move into export channels where it was not approved, causing market disruption.

575. Syngenta's failure to disclose material information and false and misleading representations and omissions occurred in the course of its business and caused damage to a large portion of the public, including thousands of Colorado corn farmers. Those corn farmers lack the sophistication and bargaining power in matters concerning genetically modified products.

576. As a developer of genetically modified products, Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which corn farmers, including Colorado Plaintiffs, do not have access.

577. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling its genetically modified products, including Viptera and Duracade, which was not available to Producers and Non-Producers.

578. Syngenta knew that approval from China would not be forthcoming for (at least) the 2011 and 2012 growing seasons, and knew that systems were not in place for either isolating or effectively channeling Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would disseminate throughout the U.S. corn supply.

579. Syngenta engaged in these deceptions to sell and increase its sales of Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and farmers would be harmed.

580. Syngenta knew that Producers and Non-Producers are affected by its business and depend on it for responsible commercialization practices.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

581. In equity and good conscience, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not expected or reasonably likely to occur for (at least) the 2011 and 2012 growing season, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which Syngenta did not have approval, and that purchase and planting Viptera (and later Duracade) created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

582. Syngenta's deceptive trade practices have previously impacted Colorado Plaintiffs, including those who purchased and/or planted Viptera and/or Duracade seed or corn.

583. Syngenta's deceptive trade practices previously impacted actual or potential consumers of its products through the loss of the China export market. Syngenta's deceptive practices have the significant potential to cause further disruption to the corn export market in the future.

584. Syngenta's deceptive trade practices constitute a violation of Colo. Rev. Stat. §§ 6-1-105 (b), (d) & (u). Colorado Plaintiffs, including purchasers and non-purchasers of Viptera and/or Duracade, were injured in the course of their business or occupation as the result of Syngenta's deceptive trade practices.

585. Syngenta's deceptive trade practices were fraudulent, willful, knowing, or intentional and taken in bad faith.

586. Syngenta's deceptive trade practices proximately caused an injury in fact to a legally protected interest belonging to Colorado Plaintiffs.

587. Colorado Plaintiffs are thus entitled to damages in a sum equal to three times the amount of actual damages they sustained, plus their attorney's fees and costs incurred in this action. Colo. Rev. Stat. § 6-1-113(2). These damages include but are not limited to damaged corn

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

crops and reduced corn prices based on the inability to sell corn to the Chinese market.

588. Syngenta acted with fraud, malice, and wanton and reckless disregard of the rights of Colorado Plaintiffs. Punitive damages are therefore warranted.

Count 32 - Negligence
(On Behalf of Connecticut Plaintiffs)

589. Connecticut Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

590. Syngenta's acts or omissions, as described above and below, constitute negligence, negligence per se, or both.

591. As a product developer and manufacturer, Syngenta had a duty to refrain from selling and distributing Viptera and/or Duracade in a manner that would foreseeably cause harm to Connecticut Plaintiffs, and to use ordinary care in the timing, scope and terms under which it commercialized Viptera and Duracade.

592. Syngenta breached these duties by failing to exercise reasonable care to prevent the foreseeable contamination of the U.S. corn supply through cross-pollination and commingling that would naturally result from the premature sale and distribution of Viptera and Duracade as outlined herein.

593. Specifically, Syngenta breached these duties by its acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

594. Syngenta's breach is the direct and proximate cause of the damage suffered by Connecticut Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

595. China's rejection of U.S. corn would not have occurred without Syngenta's negligence in prematurely releasing Viptera corn seed without prior approval of major export partners because the commercialization of Viptera was solely under its management and control. Syngenta made the decision to commercialize Viptera knowing that it would likely contaminate the U.S. corn supply. Viptera in fact contaminated the U.S. corn supply, which could not have occurred without Syngenta's negligence. Syngenta had exclusive control over the commercialization of Viptera and this unapproved genetically modified trait could not have contaminated the U.S. corn supply in the absence of a lack of the exercise of proper care by Syngenta.

596. Connecticut Plaintiffs suffered injury and property damage by the sale and distribution of Viptera and Duracade by Syngenta as outlined herein and seek compensatory damages. Connecticut Plaintiffs also seek all costs and fees allowed by law.

597. As described above, Syngenta's conduct amounted to reckless indifference to the rights of Connecticut Plaintiffs or an intentional and wanton violation of those rights. Further, Syngenta's conduct amounted to fraud, malice, or willful and wanton conduct. Syngenta's actions and omissions were done heedlessly and recklessly, without regard to consequences, or of the

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

rights and safety of others, specifically, Connecticut Plaintiffs. Punitive damages are thus warranted.

Count 33 - Trespass to Chattels
(On Behalf of Connecticut Plaintiffs)

598. Connecticut Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

599. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally brought those varieties into contact with and contaminated non-Viptera/Duracade corn. This contact caused a harmful interference with the physical condition of chattels in which Connecticut Plaintiffs had possession and/or possessory rights.

600. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with and contaminate Connecticut Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport. Syngenta intended to intermeddle with the corn in which Connecticut Plaintiffs had possession and/or possessory rights.

601. As a result of the trespass, Connecticut Plaintiffs' suffered injury. Connecticut Plaintiffs' chattels were contaminated and impaired as to condition, quality or value and Connecticut Plaintiffs' rights in the chattels were thus diminished.

602. Syngenta's trespass proximately caused damages to Connecticut Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

603. Connecticut Plaintiffs are thus entitled to compensatory damages and all fees and costs permitted by law.

604. As described above, Syngenta's conduct amounted to reckless indifference to the rights of Connecticut Plaintiffs or an intentional and wanton violation of those rights. Further, Syngenta's conduct amounted to fraud, malice, or willful and wanton conduct. Syngenta's actions and omissions were done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, specifically, the Connecticut Plaintiffs. Punitive damages are thus warranted.

Count 34 - Tortious Interference with Business Expectancies
(On Behalf of Connecticut Plaintiffs)

605. Connecticut Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

606. Connecticut Plaintiffs had valid contracts and/or beneficial business relationships and expectancies with third-party purchasers of corn, and a reasonable expectancy of the continuance of such contracts and relationships.

607. Syngenta had knowledge of such contracts and/or relationships/expectancies or knowledge of facts and circumstances that would lead a reasonable person to believe that the contract and/or relationship/expectancy existed.

608. Syngenta's conduct, as described above, constituted an intentional interference and induced or caused a breach of the contracts and/or termination of the relationships or expectancies.

609. Syngenta was not a party to the contracts or business relationships between Connecticut Plaintiffs and third-party purchasers of corn.

610. Syngenta intentionally induced or caused a disruption of those contracts and/or

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

relationships/expectancies without justification or privilege.

611. Syngenta's conduct was intentional, and was improper as to motive or means, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Connecticut Plaintiffs' fields, storage units, equipment, grain elevators, and other facilities of the U.S. supply chain, constituting a trespass, and interference with Connecticut Plaintiffs' use of their property and in violation of Syngenta's duty of care.

612. Syngenta's interference is the direct and proximate cause of the damage to Connecticut Plaintiffs.

613. Connecticut Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

614. As described above, Syngenta's conduct amounted to reckless indifference to the rights of Connecticut Plaintiffs or an intentional and wanton violation of those rights. Further, Syngenta's conduct amounted to fraud, malice, or willful and wanton conduct. Syngenta's actions and omissions were done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, specifically, Connecticut Plaintiffs. Punitive damages are thus warranted.

Count 35 – Private Nuisance
(On Behalf of Connecticut Plaintiffs)

615. Connecticut Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

616. Syngenta's actions constitute a private nuisance through the sale and distribution of Viptera corn. Syngenta licensed, sold, and distributed Viptera corn without regard for the cross-

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

pollination that results when Viptera corn pollen drifts to neighboring, non-Viptera fields. As a result, the entire U.S. corn farming and production chain, including, but not limited to, farmland, farming equipment, storage facilities, harvesting equipment, and transportation facilities and equipment are contaminated with Viptera.

617. Syngenta's conduct was intentional and unreasonably interfered with Connecticut Plaintiffs' use and enjoyment of their real property. Alternatively, Syngenta's conduct in creating the nuisance, as described above, was negligent.

618. The interference with Connecticut Plaintiffs' use and enjoyment of their property interests, caused by Syngenta's contamination of both Connecticut Plaintiffs' corn supply, and the U.S. corn supply, is substantial, unreasonable, and ongoing. Connecticut Plaintiffs have suffered and continue to suffer injuries in the form of business losses because of reduced and/or restricted demand for Connecticut Plaintiffs' corn, reduced prices for Connecticut Plaintiffs' corn, and diminution in the value of the Connecticut Plaintiffs' corn harvesting.

619. Syngenta's actions are the direct and proximate cause of the damage to Connecticut Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

620. Connecticut Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law.

Count 36 - Connecticut Unfair Trade Practices Act
(On Behalf of Connecticut Plaintiffs)

621. Connecticut Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

622. Under C.G.S.A §§ 42-110a through 42-110q, the Connecticut Unfair Trade Practices Act ("CUTPA"), "[n]o person shall engage in unfair methods of competition and unfair

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

or deceptive acts or practices in the conduct of any trade or commerce." C.G.S.A. § 42-110b(a).

623. Syngenta's deceptive and unfair trade practices constitute a violation of C.G.S.A. § 42-110b(a).

624. The CUTPA provides for a private cause of action. "Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by section 42-110b, may bring an action in the judicial district in which the plaintiff or defendant resides or has his principal place of business or is doing business, to recover actual damages." C.G.S.A. § 42-110g(a).

625. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving Connecticut Plaintiffs, and to induce corn farmers, including some Connecticut Plaintiffs, to purchase Viptera and Duracade seed or corn.

626. Syngenta knowingly made false and deceptive representations that Viptera and Duracade had sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they did not have.

627. Syngenta further concealed, suppressed, or omitted material facts in connection with its sale and advertisement of Viptera and Duracade, with the intent that Connecticut Plaintiffs rely on the concealment, suppression, and omissions.

628. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

629. As described above, Syngenta also submitted a MIR162 Deregulation Petition that

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets…." Based on Syngenta's knowledge of the Chinese regulatory process, and based on its expertise and knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and for the purpose of producing sales.

630. As described above, Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contains deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and Syngenta's knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

631. Syngenta also failed to disclose material information to Connecticut Plaintiffs. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose the insufficiency of its approval request to China, and that it sought approval cultivate MIR162 in China, both of which caused delay in the regulatory approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling Viptera or Duracade.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

632. Syngenta's failure to disclose material information and false and misleading representations and omissions occurred in the course of its business and in connection with its sale and advertisement of Viptera and/or Duracade and caused damage to a large portion of the public, including Connecticut Producers and Non-Producers, who lack the sophistication and bargaining power in matters concerning genetically modified products.

633. As a developer of genetically modified products, Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which Connecticut Plaintiffs did not have access.

634. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling its genetically modified products, including Viptera and Duracade, which was not available to Connecticut Plaintiffs.

635. Syngenta knew that approval from China would not be forthcoming for (at least) the 2011 growing season, and knew that systems were not in place for either isolating or effectively channeling Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would disseminate throughout the U.S. corn supply.

636. Syngenta engaged in these deceptions to sell and increase its sales of Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and Connecticut Plaintiffs would be harmed.

637. Syngenta knew that Producers and Non-Producers like Connecticut Plaintiffs here are affected by its business and depend on it for responsible commercialization practices.

638. In equity and good conscience, Syngenta had a duty to disclose the truth – that

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

import approval from China (a key market) was not imminent or indeed anticipated for (at least) the 2011 growing season, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which Syngenta did not have approval, and that purchase and planting of Viptera (and later Duracade) created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

639. Syngenta's deceptive trade practices have previously impacted Connecticut Plaintiffs, as well as others, including Producers and Non-Producers who purchased and/or planted Viptera and/or Duracade seed or corn.

640. Syngenta's deceptive trade practices have previously impacted actual or potential consumers of its products through the loss of the China export market. Syngenta's deceptive practices have a significant potential to further disrupt the corn export market in the future.

641. Syngenta's deceptive trade practices were fraudulent, willful, knowing, or intentional, and were taken in bad faith. Further, Syngenta knowingly concealed, suppressed, and omitted material facts with the intent that Connecticut Plaintiffs and other U.S. Producers and Non-Producers would rely on the concealment, suppression, or omission in connection with the sale and advertisement of Viptera and Duracade.

642. Connecticut Plaintiffs were harmed by Syngenta's misrepresentations and omissions and Syngenta's deceptive trade practices thus directly and proximately caused an injury in fact to a legally protected interest belonging to Connecticut Plaintiffs.

643. Connecticut Plaintiffs are thus entitled to damages, plus their attorney's fees and costs incurred in this action. C.G.S.A. § 42-110g(a) & (d), including but not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

644. Syngenta's conduct amounted to reckless indifference to the rights of Connecticut

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Plaintiffs or an intentional and wanton violation of those rights. Syngenta's conduct amounted to fraud, malice, or willful and wanton conduct. Syngenta's actions and omissions were done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, specifically, Connecticut Plaintiffs. Punitive damages are thus warranted. C.G.S.A. § 42-110g(a).

Count 37 - Negligence
(On Behalf of Delaware Plaintiffs)

645. Delaware Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

646. Syngenta's acts or omissions, as described above and below, constitute negligence, negligence per se, or both.

647. As a product developer and manufacturer, Syngenta had a duty to refrain from selling and distributing Viptera and Duracade in a manner that would foreseeably cause harm to Delaware Plaintiffs, to use ordinary care in the timing, scope and terms under which it commercialized Viptera and Duracade.

648. Syngenta breached these duties by failing to exercise reasonable care to prevent the foreseeable contamination of the U.S. corn supply through cross-pollination and commingling that would naturally result from the premature sale and distribution of Viptera and Duracade.

649. Specifically, Syngenta breached these duties by its acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

650. Syngenta's breach is the direct and proximate cause of the damage suffered by Delaware Plaintiffs.

651. China's rejection of U.S. corn would not have occurred without Syngenta's negligence in prematurely releasing Viptera corn seed without prior approval of major export partners because the commercialization of Viptera was solely under its management and control. Syngenta made the decision to commercialize Viptera knowing that it would likely contaminate the U.S. corn supply. Viptera in fact contaminated the U.S. corn supply, which could not have occurred without Syngenta's negligence. Syngenta had exclusive control over the commercialization of Viptera and this unapproved genetically modified trait could not have contaminated the U.S. corn supply in the absence of a lack of the exercise of proper care by Syngenta.

652. Delaware Plaintiffs suffered injury and property damage by the sale and distribution of Viptera and Duracade by Syngenta as outlined herein and seek compensatory damages. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market. Delaware Plaintiffs also seek all costs and fees allowed by law.

653. As described above, Syngenta's conduct amounted to fraud, malice, or willful and wanton conduct. Syngenta's actions and omissions were done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, specifically, Delaware Plaintiffs.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Punitive damages are thus warranted.

Count 38 - Trespass to Chattels
(On Behalf of Delaware Plaintiffs)

654. Delaware Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

655. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally brought those varieties into contact with and contaminated non-Viptera/Duracade corn. This contact caused a harmful interference with the physical condition of chattels in which Delaware Plaintiffs had possession and/or possessory rights.

656. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with and contaminate Delaware Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport. Syngenta intended to intermeddle with the corn in which these Deleware Plaintiffs had possession and/or possessory rights.

657. As a result of the trespass, Delaware Plaintiffs' suffered injury. Delaware Plaintiffs' chattels were contaminated and impaired as to condition, quality, or value and Delaware Plaintiffs' rights in the chattels were thus diminished.

658. Syngenta's trespass proximately caused damage to Delaware Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

659. Delaware Plaintiffs are thus entitled to compensatory damages and all fees and costs permitted by law.

660. As described above, Syngenta's conduct amounted to fraud, malice, or willful and wanton conduct. Syngenta's actions and omissions were done heedlessly and recklessly, without

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

regard to consequences, or of the rights and safety of others, specifically, Delaware Plaintiffs. Punitive damages are thus warranted.

Count 39 - Tortious Interference with Prospective Business Relations
(On Behalf of Delaware Plaintiffs)

661. Delaware Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

662. Delaware Plaintiffs had substantial probabilities of business opportunities with third-party purchasers of corn, and a reasonable expectancy of the continuance of such relations and opportunities.

663. Syngenta had knowledge of such relations and opportunities and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the opportunities existed.

664. Syngenta's conduct, as described above, constituted an intentional interference with such opportunities. Syngenta's conduct induced or caused purchasers of corn not to enter in to or continue business relationships with Delaware Plaintiffs and/ or prevented Delaware Plaintiffs from acquiring or continuing the prospective relations with purchasers of corn.

665. Syngenta was not a party to the business relationships between Delaware Plaintiffs and third-party purchasers of corn.

666. Syngenta intentionally induced or caused a disruption of that expectancy without justification or privilege. Syngenta's conduct did not fall under its privilege to compete or protect its business interests in a fair and lawful manner.

667. Syngenta's conduct was intentional, and was improper as to motive or means, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Deleware Plaintiffs' fields, storage units, equipment, grain elevators, and other facilities of the U.S. supply chain, constituting a

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

trespass, and interference with Deleware Plaintiffs' use of their property and in violation of Syngenta's duty of care.

668. Syngenta's interference is the direct and proximate cause of the damage to Delaware Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

669. Delaware Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law.

670. As described above, Syngenta's conduct amounted to fraud, malice, or willful and wanton conduct. Syngenta's actions and omissions were done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, specifically, Delaware Plaintiffs. Punitive damages are thus warranted.

Count 40 - Nuisance
(On Behalf Delaware Plaintiffs)

671. Delaware Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

672. Syngenta's actions constitute a private nuisance through the sale and distribution of Viptera corn. Syngenta licensed, sold, and distributed Viptera corn without regard for the cross-pollination that results when Viptera corn pollen drifts to neighboring, non-Viptera fields. As a result, the entire U.S. corn farming and production chain, including, but not limited to, farmland, farming equipment, storage facilities, harvesting equipment, and transportation facilities and equipment are contaminated with Viptera.

673. Syngenta's conduct was intentional and unreasonably interfered with Delaware Plaintiffs' use and enjoyment of their real property.

674. The interference with Delaware Plaintiffs' use and enjoyment of the property interests, caused by Syngenta's contamination of both Delaware Plaintiffs' corn supply, and the

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

U.S. corn supply, is substantial, unreasonable, and ongoing. Delaware Plaintiffs have suffered and continue to suffer injuries in the form of business losses because of reduced and/or restricted demand for Delaware Plaintiffs' corn, reduced prices for Delaware Plaintiffs' corn, and diminution in the value of Delaware Plaintiffs' corn harvesting.

675. Syngenta's actions are the direct and proximate cause of the damage to Delaware Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

676. Delaware Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law.

677. As described above, Syngenta's conduct amounted to fraud, malice, or willful and wanton conduct. Syngenta's actions and omissions were done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, specifically, Delaware Plaintiffs. Punitive damages are thus warranted.

Count 41 - Delaware Consumer Fraud Act
(On Behalf of Delaware Plaintiffs)

678. Delaware Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

679. Under D.C.A. tit. 6, §§2511 through 2527, Delaware Consumer Fraud Act ("DCFA"), "[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is an unlawful practice." D.C.A. tit. 6, § 2513.

680. Syngenta's deceptive and unconscionable trade practices constitute a violation of D.C.A. tit. 6, § 2513.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

681. The DCFA provides for a private cause of action. "A private cause of action shall be available to any victim of a violation of this subchapter." D.C.A. tit. 6, § 2525.

682. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving Producers and Non-Producers and to induce Producers and Non-Producers, including Delaware Plaintiffs to purchase Viptera and Duracade.

683. Syngenta knowingly made false and deceptive representations that Viptera and Duracade had sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they did not have.

684. Syngenta's conduct, in connection with its sale and advertisement of Viptera and Duracade constituted deception, fraud, and false pretense.

685. Syngenta further concealed, suppressed, or omitted material facts in connection with its sale and advertisement of Viptera and Duracade, with the intent that Delaware Plaintiffs rely on the concealment, suppression, and omissions.

686. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

687. As described above, Syngenta also submitted its MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets…." Based on Syngenta's knowledge of the Chinese regulatory process, and based on its expertise and

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The Deregulation Petition was circulated to the public before commercialization and for the purpose of producing sales.

688. Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contains deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and Syngenta's knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

689. Syngenta also failed to disclose material information to corn farmers. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose the insufficiency of its approval request to China, and that it sought approval to cultivate MIR162 in China, both of which caused delay in the regulatory approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling Viptera or Duracade.

690. Syngenta's failure to disclose material information and false and misleading representations and omissions occurred in the course of its business and in connection with its sale and advertisement of Viptera and/or Duracade and caused damage to a large portion of the public, including Delaware Producers and Non-Producers, who lack the sophistication and bargaining

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

power in matters concerning genetically modified products.

691. As a developer of genetically modified products Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which Delaware Plaintiffs did not have access.

692. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling its genetically modified products, including Viptera and Duracade, which was not available to Producers and Non-Producers.

693. Syngenta knew that approval from China would not be forthcoming for (at least) the 2011 growing season, and knew that systems were not in place for either isolating or effectively channeling Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would disseminate throughout the U.S. corn supply.

694. Syngenta engaged in these deceptions to sell and increase its sales of Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and Producers and Non-Producers would be harmed.

695. Syngenta knew that farmers like Delaware Plaintiffs here are affected by its business and depend on it for responsible commercialization practices.

696. In equity and good conscience, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not imminent or indeed anticipated for (at least) the 2011 growing season, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which Syngenta did not have approval, and that purchase and planting of Viptera (and later Duracade) created a substantial risk

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

of loss of the Chinese market and/or prolonging the loss of that market.

697. Syngenta's deceptive trade practices have previously impacted Delaware Plaintiffs, as well as other Producers and Non-Producers, including those who purchased and planted Viptera and/or Duracade.

698. Syngenta's deceptive trade practices have previously impacted actual or potential consumers of its products through the loss of the export market of China. Syngenta's deceptive practices have the significant potential to further disrupt the corn export market in the future.

699. Syngenta's deceptive trade practices were fraudulent, willful, knowing, or intentional, and were taken in bad faith. Further, Syngenta knowingly concealed, suppressed, and omitted material facts with the intent that Delaware Plaintiffs and other Producers and Non-Producers would rely on the concealment, suppression, or omission in connection with the sale and advertisement of Viptera and Duracade.

700. Syngenta's deceptive trade practices proximately caused actual damages and an injury in fact to a legally protected interest belonging to Delaware Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

701. Delaware Plaintiffs are thus entitled to damages, plus their costs incurred in this action. D.C.A. tit. 6, § 2525.

702. As described above, Syngenta's conduct amounted to fraud, malice, or willful and wanton conduct. Syngenta's actions and omissions were done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, specifically, Delaware Plaintiffs. Punitive damages are thus warranted.

Count 42 - Negligence
(On Behalf of Florida Plaintiffs)

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

703. Florida Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

704. Syngenta's acts or omissions, as described above and below, constitute negligence, negligence per se, or both.

705. As a product developer and manufacturer, Syngenta had a duty to refrain from selling and distributing Viptera and Duracade in a manner that would foreseeably cause harm to Florida Plaintiffs, and to use ordinary care in the timing, scope, and terms under which it commercialized Viptera and Duracade.

706. Syngenta breached these duties by failing to exercise reasonable care to prevent the foreseeable contamination of the U.S. corn supply through cross-pollination and commingling that would naturally result from the premature sale and distribution of Viptera and Duracade as outlined herein.

707. Specifically, Syngenta breached these duties by its acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

708. Syngenta's breach is the direct and proximate cause of the damage suffered by Florida Plaintiffs.

709. China's rejection of U.S. corn would not have occurred without Syngenta's negligence in prematurely releasing Viptera corn seed without prior approval of major export partners because the commercialization of Viptera was solely under its management and control. Syngenta made the decision to commercialize Viptera knowing that it would likely contaminate the U.S. corn supply. Viptera in fact contaminated the U.S. corn supply, which could not have occurred without Syngenta's negligence. Syngenta had exclusive control over the commercialization of Viptera and this unapproved genetically modified trait could not have contaminated the U.S. corn supply in the absence of a lack of the exercise of proper care by Syngenta.

710. Florida Plaintiffs suffered injury and property damage by Syngenta's sale and distribution of Viptera and Duracade and seek compensatory damages. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market. Florida Plaintiffs also seek all costs and fees allowed by law.

711. Florida Plaintiffs further seek punitive damages. Syngenta's actions constitute intentional misconduct and/or gross negligence. Syngenta had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to Florida Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Further, Syngenta's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of persons exposed to such conduct, including Florida Plaintiffs.

Count 43 - Trespass to Personal Property

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

(On Behalf of Florida Plaintiffs)

712. Florida Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

713. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally brought those varieties into contact with and contaminated non-Viptera/Duracade corn. This contact caused a harmful interference with the physical condition of chattels in which Florida Plaintiffs had possession and/or possessory rights.

714. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with and contaminate Florida Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport. Syngenta intended to intermeddle with the corn in which these Plaintiffs had possession and/or possessory rights.

715. As a result of the trespass, Florida Plaintiffs' suffered injury. Florida Plaintiffs' chattels were contaminated and impaired as to condition, quality or value and Florida Plaintiffs' rights in the chattels were thus diminished.

716. Syngenta's trespass was done without privilege or justification.

717. Syngenta's trespass proximately caused damage to Florida Plaintiffs.

718. Florida Plaintiffs are thus entitled to compensatory damages and all fees and costs permitted by law. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

719. Florida Plaintiffs further seek punitive damages. Syngenta's actions, as described above, constitute intentional misconduct and/or gross negligence. Syngenta had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to Florida Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Further, Syngenta's conduct was so reckless or wanting in care that it constituted a conscious

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

disregard or indifference to the rights of persons exposed to such conduct, including Florida Plaintiffs.

Count 44 - Tortious Interference with Business Relationships
(On Behalf of Florida Plaintiffs)

720. Florida Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

721. Florida Plaintiffs had business relationships and a reasonable expectancy of continued relationships with purchasers of corn.

722. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

723. Syngenta was not a party to the business relationships between Florida Plaintiffs and third-party purchasers of corn.

724. Syngenta intentionally induced or caused a disruption of that expectancy without justification or privilege.

725. Syngenta's conduct was intentional, and was improper and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass, and interference with Plaintiffs' use of their property and in violation of Syngenta's duty of care.

726. Syngenta's interference has proximately caused damage to Florida Plaintiffs.

727. Florida Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

728. Florida Plaintiffs further seek punitive damages. Syngenta's actions constitute intentional misconduct and/or gross negligence. Syngenta had actual knowledge of the

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

wrongfulness of its conduct and the high probability that injury or damage to Florida Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Further, Syngenta's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of persons exposed to such conduct, including Florida Plaintiffs.

Count 45 - Nuisance
(On Behalf of Florida Plaintiffs)

729. Florida Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

730. Syngenta's actions constitute a private nuisance through the sale and distribution of Viptera corn. Syngenta licensed, sold, and distributed Viptera corn without regard for the cross-pollination that results when Viptera corn pollen drifts to neighboring, non-Viptera fields. As a result, the entire U.S. corn farming and production chain, including, but not limited to, farmland, farming equipment, storage facilities, harvesting equipment, and transportation facilities and equipment are contaminated with Viptera.

731. Syngenta's conducts was intentional and unreasonably interfered with Florida Plaintiffs' use and enjoyment of their real property. At the very least, Syngenta's conduct, as described above, was negligent.

732. The interference with Florida Plaintiffs' use and enjoyment of their property interests, caused by Syngenta's contamination of both Florida Plaintiffs' corn supply and the U.S. corn supply, is substantial, unreasonable, and ongoing. Florida Plaintiffs have suffered and continue to suffer injuries in the form of business losses because of reduced and/or restricted demand for Florida Plaintiffs' corn crops, reduced prices for Florida Plaintiffs' corn crops, and diminution in the value of Florida Plaintiffs' corn harvesting.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

733. Syngenta's actions are the direct and proximate cause of the damage to Florida Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

734. Florida Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law.

735. Florida Plaintiffs further seek punitive damages. Syngenta's actions constitute intentional misconduct and/or gross negligence. Syngenta had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to Florida Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Further, Syngenta's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of persons exposed to such conduct, including Florida Plaintiffs.

Count 46 – Violation of Deceptive and Unfair Trade Practices Act
(On Behalf of Florida Plaintiffs)

736. Florida Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

737. Pursuant to Fla. Stat. §§ 501.201 through 501.213, Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." Fla. Stat. § 501.204(a).

738. Syngenta's deceptive and unconscionable trade practices constitute a violation of Fla. Stat. § 501.204(a).

739. The FDUTPA provides for a private cause of action. Fla. Stat. Ann. § 501.211.

740. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving Producers and Non-Producers and to induce Producers and Non-Producers, including some Florida Plaintiffs, to purchase Viptera and Duracade.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

741. Syngenta knowingly made false and deceptive representations that Viptera and Duracade had sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they did not have.

742. Syngenta's conduct, in connection with its sale and advertisement of Viptera and Duracade constituted deception, fraud, and false pretense.

743. Syngenta further concealed, suppressed, or omitted material facts in connection with its sale and advertisement of Viptera and Duracade, with the intent that Florida Plaintiffs rely on the concealment, suppression, and omissions.

744. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

745. As described above, Syngenta also submitted a MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's "Stewardship Agreements" requiring "channeling" would be "successful" in "diverting this product away from export markets...." Based on Syngenta's knowledge of the Chinese regulatory process, and based on its expertise and knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The Deregulation Petition was circulated to the public before commercialization and for the purpose of producing sales.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

746. As described above, Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contains deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and Syngenta's knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

747. Syngenta also failed to disclose material information to corn farmers. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose the insufficiency of its approval request to China, and that it sought approval to cultivate MIR162 in China, both of which caused delay in the regulatory approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling Viptera or Duracade.

748. Syngenta's failure to disclose material information and false and misleading representations and omissions occurred in the course of its business and in connection with its sale and advertisement of Viptera and/or Duracade and caused damage to a large portion of the public, including Florida Producers and Non-Producers, who lack the sophistication and bargaining power in matters concerning genetically modified products.

749. As a developer of genetically modified products, Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which Producers and Non-Producers, including Florida Plaintiffs, do not have access.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

750. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling its genetically modified products, including Viptera and Duracade, which was not available to Producers and Non-Producers.

751. Syngenta knew that approval from China would not be forthcoming for (at least) the 2011 growing season, and knew that systems were not in place for either isolating or effectively channeling Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would disseminate throughout the U.S. corn supply.

752. Syngenta engaged in these deceptions to sell and increase its sales of Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and farmers, including Florida Plaintiffs, would be harmed.

753. Syngenta knew that Producers and Non-Producers like Florida Plaintiffs here are affected by its business and depend on it for responsible commercialization practices.

754. In equity and good conscience, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not imminent or indeed anticipated for (at least) the 2011 growing season, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which Syngenta did not have approval, and that purchase and planting of Viptera (and later Duracade) created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

755. Syngenta's deceptive trade practices have previously impacted Florida Plaintiffs, as well as other Producers and Non-Producers, including those who purchased and/or planted Viptera and/or Duracade.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

756. Syngenta's deceptive trade practices have previously impacted actual or potential consumers of its products through the loss of the export market of China. Syngenta's deceptive practices have the significant potential to cause further disruption to the corn export market in the future.

757. Syngenta's deceptive trade practices were fraudulent, willful, knowing, or intentional, and were unconscionable and done in bad faith.

758. Further, Syngenta knowingly concealed, suppressed, and omitted material facts with the intent that Florida Plaintiffs and others would rely on the concealment, suppression, or omission in connection with the sale and advertisement of Viptera and Duracade.

759. Syngenta's deceptive trade practices proximately caused an injury in fact to a legally protected interest belonging to Florida Plaintiffs and actual damages to Florida Plaintiffs.

760. Florida Plaintiffs are thus entitled to their actual damages, plus their attorney fees and costs incurred in this action. Fla. Stat. § 501.211(b). These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market

761. Florida Plaintiffs further seek punitive damages. Syngenta's actions, as described above, constitute intentional misconduct and/or gross negligence. Syngenta had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to Florida Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Further, Syngenta's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of persons exposed to such conduct.

Count 47 - Negligence
(On Behalf of Georgia Plaintiffs)

762. Georgia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

763. Syngenta's acts or omissions, as described above and below, constitute negligence, negligence per se, or both.

764. As a product developer and manufacturer, Syngenta had a duty to refrain from selling and distributing Viptera and Duracade in a manner that would foreseeably cause harm to Georgia Plaintiffs and to use ordinary care in the timing, scope, and terms under which it commercialized Viptera and Duracade.

765. Syngenta breached these duties by failing to exercise reasonable care to prevent the foreseeable contamination of the U.S. corn supply through cross-pollination and commingling that would naturally result from the premature sale and distribution of Viptera as outlined herein.

766. Specifically, Syngenta breached these duties by its acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

767. Syngenta's breach is the direct and proximate cause of the damage suffered by Georgia Plaintiffs.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

768. China's rejection of U.S. corn would not have occurred without Syngenta's negligence in prematurely releasing Viptera corn seed without prior approval of major export partners because the commercialization of Viptera was solely under its management and control. Syngenta made the decision to commercialize Viptera knowing that it would likely contaminate the U.S. corn supply. Viptera in fact contaminated the U.S. corn supply, which would not have occurred without Syngenta's negligence. Syngenta had exclusive control over the commercialization of Viptera and this unapproved genetically modified trait could not have contaminated the U.S. corn supply in the absence of a lack of the exercise of proper care by Syngenta.

769. Georgia Plaintiffs suffered injury and property damage by the sale and distribution of Viptera and Duracade by Syngenta as outlined herein and seek compensatory damages. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market. Georgia Plaintiffs also seek all costs and fees allowed by law.

770. Georgia Plaintiffs further seek punitive damages. Syngenta's actions, as described above, constituted willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care that would raise the presumption of conscious indifference to consequences. Syngenta had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to Georgia Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Further, Syngenta's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of persons exposed to such conduct, including Georgia Plaintiffs.

Count 48 - Trespass to Chattels/Personality
(On behalf of Georgia Plaintiffs)

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

771. Georgia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

772. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally brought those varieties into contact with and contaminated non-Viptera/Duracade corn. This contact caused a harmful interference with the physical condition of chattels in which Florida Plaintiffs had possession and/or possessory rights.

773. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with and contaminate Georgia Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport. Syngenta intended to intermeddle with the corn in which these Plaintiffs had possession and/or possessory rights.

774. As a result of the trespass, Georgia Plaintiffs' suffered injury. Georgia Plaintiffs' chattels were contaminated and impaired as to condition, quality or value and Georgia Plaintiffs' rights in the chattels were thus diminished.

775. Syngenta's trespass was done without privilege or justification.

776. Syngenta's trespass proximately caused damage to Georgia Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

777. Georgia Plaintiffs are thus entitled to compensatory damages and all fees and costs permitted by law.

778. Georgia Plaintiffs further seek punitive damages. Syngenta's actions, as described above, constituted willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care which would raise the presumption of conscious indifference to consequences. Syngenta had actual knowledge of the wrongfulness of its conduct and the high probability that injury or

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

damage to Georgia Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Further, Syngenta's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of persons exposed to such conduct, including Georgia Plaintiffs.

Count 49 - Tortious Interference with Potential Business Relations
(On Behalf of Georgia Plaintiffs)

779. Georgia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

780. Georgia Plaintiffs had existing business relationships or potential business relations with third-party purchasers of corn.

781. Syngenta had knowledge of such relationships/potential relationships and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the contracts existed.

782. Syngenta was not a party to the existing and potential business relations between Georgia Plaintiffs and the third-party purchasers of corn.

783. Syngenta acted intentionally and purposely and with malice with the intent to injure Georgia Plaintiffs without justification or privilege.

784. Syngenta's conduct was intentional and was done with the intent to interfere with and disrupt the existing/potential business relations between Georgia Plaintiffs and third-party purchasers of corn and was improper and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass, and interference with Plaintiffs' use of their property and in violation of Syngenta's duty of care.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

785. As a result of Syngenta's intentional interference, the existing/potential business relations between Georgia Plaintiffs and the corn purchasers were disrupted and/or never formed.

786. Syngenta's interference is the direct and proximate cause of the damage to Georgia Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

787. Georgia Plaintiffs further seek punitive damages. Syngenta's actions, as described above, constituted willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care that would raise the presumption of conscious indifference to consequences. Syngenta had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to Georgia Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Further, Syngenta's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of persons exposed to such conduct, including Georgia Plaintiffs.

Count 50 - Private Nuisance
(On Behalf of Georgia Plaintiffs)

788. Georgia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

789. Syngenta's actions constituted a private nuisance through the sale and distribution of Viptera corn. Syngenta licensed, sold, and distributed Viptera corn without regard for the cross-pollination that results when Viptera corn pollen drifts to neighboring, non-Viptera fields. As a result, the entire U.S. corn farming and production chain, including, but not limited to, farmland, farming equipment, storage facilities, harvesting equipment, and transportation facilities and equipment are contaminated with Viptera.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

790. Syngenta's conduct was intentional and unreasonably interfered with Georgia Plaintiffs' use and enjoyment of their real property. At the very least, Syngenta's conduct, as described above, was negligent.

791. The interference with Georgia Plaintiffs' use and enjoyment of their property interests, caused by Syngenta's contamination of both Georgia Plaintiffs' corn supply, and the U.S. corn supply, is substantial, unreasonable, and ongoing. Georgia Plaintiffs have suffered and continue to suffer injuries in the form of business losses because of reduced and/or restricted demand for Georgia Plaintiffs' corn crops, reduced prices for Georgia Plaintiffs' corn crops, and diminution in the value of Georgia Plaintiffs' corn harvesting.

792. Syngenta's actions are the direct and proximate cause of the damage to Georgia Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

793. Georgia Plaintiffs are thus entitled to an award of compensatory damages and all fees and costs permitted by law.

794. Georgia Plaintiffs further seek punitive damages. Syngenta's actions, as described above, constituted willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care that would raise the presumption of conscious indifference to consequences. Syngenta had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to Georgia Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Further, Syngenta's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of persons exposed to such conduct, including Georgia Plaintiffs.

Count 51 - Violation of Fair Business Practice Act
(On Behalf of Georgia Plaintiffs)

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

795. Georgia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

796. Pursuant to Ga. Code Ann. §§ 10-1-390 through 10-1-407, Georgia Fair Business Practices Act ("GFBPA"), "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce are declared unlawful." Ga. Code § 10-1-393(a).

797. Unlawful acts under the GFBPA, include:

a. "Causing actual confusion or actual misunderstanding as to the source, sponsorship, approval, or certification of goods or services;" Ga. Code § 10-1-393(b)(2).

b. "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;" Ga. Code § 10-1-393(b)(5).

798. Syngenta's deceptive and unfair trade practices constitute a violation of Ga. Code § 10-1-393(b)(2) & (5).

799. The GFBPA provides for a private cause of action. "Any person who suffers injury or damages as a result of a violation of Chapter 5B of this title, as a result of consumer acts or practices in violation of this part…or whose business or property has been injured or damaged as a result of such violations may bring an action individually…" Ga. Code § 10-1-399(a).

800. Georgia Plaintiffs have complied with the advance notice requirement in Ga. Code Ann. § 10-1-399(b). Georgia Plaintiffs provided Syngenta with a written demand for relief at least 30 days before filing this action, identifying the claimant and reasonably describing the unfair or deceptive act or practice relied on and the injury suffered.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

801. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving Georgia Plaintiffs and to induce Producers and Non-Producers, including some Georgia Plaintiffs, to purchase Viptera and Duracade seed or corn.

802. Syngenta's conduct caused actual confusion or actual misunderstanding as to the source, sponsorship, approval, or certification of Viptera and Duracade.

803. Syngenta knowingly made false and deceptive representations that Viptera and Duracade had sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they did not have.

804. Syngenta further concealed, suppressed, or omitted material facts in connection with its sale and advertisement of Viptera and Duracade, with the intent that Georgia Plaintiffs rely on the concealment, suppression, and omissions.

805. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

806. Syngenta also submitted a MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's "Stewardship Agreements" requiring "channeling" would be "successful" in "diverting this product away from export markets...." Based on Syngenta's knowledge of the Chinese regulatory process, and based on its expertise and knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The Deregulation

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Petition was circulated to the public before commercialization and for the purpose of producing sales.

807. Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contains deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and Syngenta's knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

808. Syngenta also failed to disclose material information to Producers and Non-Producers. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose the insufficiency of its approval request to China, and that it sought approval to cultivate MIR162 in China, both of which caused delay in the regulatory approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling Viptera or Duracade.

809. Syngenta's failure to disclose material information and false and misleading representations and omissions occurred in the course of its business and in connection with its sale and advertisement of Viptera and/or Duracade and caused damage to a large portion of the public, including Georgia Producers and Non-Producers who lack the sophistication and bargaining power in matters concerning genetically modified products.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

810. As a developer of genetically modified products, Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which Georgia Plaintiffs, do not have access.

811. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling its genetically modified products, including Viptera and Duracade, which was not available to Producers and Non-Producers.

812. Syngenta knew that approval from China would not be forthcoming for (at least) the 2011 growing season, and knew that systems were not in place for either isolating or effectively channeling Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would disseminate throughout the U.S. corn supply.

813. Syngenta engaged in these deceptions to sell and increase its sales of Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and Producers and Non-Producers would be harmed.

814. Syngenta knew that Georgia Plaintiffs here are affected by its business and depend on it for responsible commercialization practices.

815. In equity and good conscience, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not imminent or indeed anticipated for (at least) the 2011 growing season, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which Syngenta did not have approval, and that purchase and planting of Viptera (and later Duracade) created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

816. Syngenta's deceptive trade practices have previously impacted Georgia Plaintiffs, as well as other Producers and Non-Producers, including those who purchased and planted Viptera and/or Duracade.

817. Syngenta's deceptive trade practices have previously impacted actual or potential consumers of its products through the loss of the China export market. Syngenta's deceptive practices have the significant potential to further disrupt the corn export market in the future.

818. Syngenta's deceptive trade practices were fraudulent, willful, knowing, or intentional, and were taken in bad faith. Further, Syngenta knowingly concealed, suppressed, and omitted material facts with the intent that Georgia Plaintiffs and others would rely on the concealment, suppression, or omission in connection with the sale and advertisement of Viptera and Duracade.

819. Syngenta's deceptive trade practices proximately caused an injury in fact to a legally protected interest belonging to Georgia Plaintiffs.

820. Georgia Plaintiffs are thus entitled to three times the sum of their actual damages, plus their attorney's fees and costs incurred in this action. Ga. Code § 10-1-399. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

821. Georgia Plaintiffs further seek punitive damages. Syngenta's actions constituted willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care that would raise the presumption of conscious indifference to consequences. Syngenta had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to Georgia Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Further, Syngenta's conduct was so reckless or wanting in care that it constituted a conscious

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

disregard or indifference to the rights of persons exposed to such conduct, including Georgia Plaintiffs.

Count 52 - Negligence
(On Behalf of Hawaii Plaintiffs)

822. Hawaii Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

823. Syngenta owed its stakeholders, including Hawaii Plaintiffs, a duty to use at least reasonable care in the timing, scope and terms under which it commercialized MIR162.

824. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

825. Syngenta's negligence directly and proximately caused harm to Hawaii Plaintiffs.

826. Hawaii Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

827. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others including Hawaii Plaintiffs and was aware that harm would likely or probably result. Punitive damages are thus warranted.

Count 53 - Tortious Interference
(On Behalf of Hawaii Plaintiffs)

828. Hawaii Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

829. Hawaii Plaintiffs had business relationships and a reasonable expectancy of continued relationships with purchasers of corn.

830. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

831. Syngenta induced or caused a disruption of that expectancy without justification or privilege.

832. Syngenta's conduct was intentional, and was improper and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass, and interference with Plaintiffs' use of their property and in violation of Syngenta's duty of care.

833. Syngenta's interference has proximately caused damage to Hawaii Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

834. Hawaii Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

835. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Hawaii Plaintiffs. Punitive damages are thus warranted.

Count 54 – Hawaii Uniform Deceptive Trade Practice Act
(On Behalf of Hawaii Plaintiffs)

836. Hawaii Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

837. Under Hi. Rev. Stat. §§ 480-2, 481A and 481A-3, the Hawaii Unfair and Deceptive Trade Practices Act ("UDTPA"), "[u]nfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful." Hi. Rev. Stat. § 480-2.

838. Unlawful acts under the UDTPA, include when one, in the course of business:

a. "Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;" Hi. Rev. Stat. § 481A-3(a)(2).

b. "Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by another;" Hi. Rev. Stat. § 481A-3(a)(3).

c. "Uses deceptive representations or designations of origin in connection with goods or services;" Hi. Rev. Stat. § 481A-3(a)(4).

d. "Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" Hi. Rev. Stat. § 481A-3(a)(5).

e. "Represents that goods or services are of a particular standard, quality, grade, or that goods are of a particular style or model, if they are of another;" Hi. Rev. Stat. § 481A-3(a)(7).

f. "Engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding." Hi. Rev. Stat. § 481A-3 (a)(12).

839. Syngenta's deceptive and unfair trade practices constitute a violation of Hi. Rev. Stat. § 481A.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

840. The UDTPA provides for a private cause of action. "No person other than a consumer, the attorney general or the director of the office of consumer protection may bring an action based upon unfair or deceptive acts or practices declared unlawful by this section." § 480-2(d).

841. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving corn farmers and to induce corn farmers, including Hawaii Plaintiffs, to purchase Viptera and Duracade.

842. Syngenta's conduct caused confusion and misunderstanding as to the source, sponsorship, approval, or certification of Viptera and Duracade.

843. Syngenta knowingly made false and deceptive representations that Viptera and Duracade had sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they did not have.

844. Syngenta further concealed, suppressed, or omitted material facts in connection with its sale and advertisement of Viptera and Duracade, with the intent that Hawaii Plaintiffs rely on the concealment, suppression, and omissions.

845. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

846. Syngenta also submitted a MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's "Stewardship Agreements" requiring "channeling" would be

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

"successful" in "diverting this product away from export markets . . . ." Based on Syngenta's knowledge of the Chinese regulatory process and its knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and for the purpose of producing sales.

847. Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contains deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

848. Syngenta also failed to disclose material information to Hawaii Plaintiffs. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose the insufficiency of its approval request to China and that it sought approval cultivate MIR162 in China, both of which caused delay in the regulatory approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolation or channeling of Viptera or Duracade.

849. Syngenta's failure to disclose material information and false and misleading representations and omissions occurred in the course of its business and in connection with its sale and advertisement of Viptera and/or Duracade and caused damage to a large portion of the

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

public, including Hawaii Plaintiffs, who lack the sophistication and bargaining power in matters concerning genetically modified products.

850. As a developer of genetically modified products, Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which corn farmers, including Hawaii Plaintiffs, do not have access.

851. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling Viptera and/or Duracade, which was not available to corn farmers.

852. Syngenta knew that approval from China would not be forthcoming for (at least) the 2011 growing season, and knew that systems were not in place for either isolation or effective channeling of Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would disseminate throughout the U.S. corn supply.

853. Syngenta engaged in these deceptions to sell and increase its sales of Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and Hawaii Plaintiffs would be harmed.

854. Syngenta knew that Hawaii Plaintiffs are affected by its business and depend on it for responsible commercialization practices.

855. In equity and good conscience, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not imminent or indeed anticipated for (at least) the 2011 growing season, that there was not an effective system in place to channel Viptera and/or Duracade away from China (or other foreign markets) from which Syngenta did not have

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

approval, and that purchase and planting of Viptera (and later Duracade) created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

856. Syngenta's deceptive trade practices have previously impacted Hawaii Plaintiffs, as well as other Producers and Non-Producers, including those who purchased and/or planted Viptera and/or Duracade seed or corn.

857. Syngenta's deceptive trade practices have previously impacted actual or potential consumers of its products through the loss of the export market of China. Syngenta's deceptive practices have the significant potential to further disrupt the corn export market in the future.

858. Syngenta's deceptive trade practices were fraudulent, willful, knowing, or intentional, and were taken in bad faith. Further, Syngenta knowingly concealed, suppressed, and omitted material facts with the intent that Hawaii Plaintiffs and other U.S. Producers and Non-Producers would rely on the concealment, suppression, or omission in connection with the sale and advertisement of Viptera and Duracade.

859. Syngenta's deceptive trade practices proximately caused an injury in fact to a legally protected interest belonging to Hawaii Plaintiffs.

860. Syngenta's deceptive trade practices also violated Hawaii law governing the regulation of sale of seeds in that a false and misleading advertisement was made and used with respect to Viptera and Duracade. Hi. Rev. Stat. § 150-23(2).

861. Hawaii Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

862. Hawaii Plaintiffs are thus entitled to costs and attorneys' fees as well as any other relief the court considers reasonable. Hi. Stat. Rev. § 481A-4. These damages include but are not

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

863. Syngenta's actions, as described above, constituted willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care which would raise the presumption of conscious indifference to consequences. Syngenta had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to the Hawaii Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Further, Syngenta's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of persons exposed to such conduct, including the Hawaii Plaintiffs. Punitive damages are thus warranted.

Count 55 - Private Nuisance
(On Behalf of Hawaii Plaintiffs)

864. Hawaii Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

865. Syngenta's actions constitute a private nuisance through the sale and distribution of Viptera corn. Syngenta licensed, sold, and distributed Viptera corn without regard for the cross-pollination that results when Viptera corn pollen drifts to neighboring, non-Viptera fields. As a result, the entire U.S. corn farming and production chain, including, but not limited to, farmland, farming equipment, storage facilities, harvesting equipment, and transportation facilities and equipment are contaminated with Viptera.

866. Syngenta's conducts was intentional and unreasonably interfered with Hawaii Plaintiffs' use and enjoyment of their real property. At the very least, Syngenta's conduct, as described above, was negligent.

867. The interference with Hawaii Plaintiffs' use and enjoyment of the property interests, caused by Syngenta's contamination of both Hawaii Plaintiffs' corn supply and the U.S.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

corn supply, is substantial, unreasonable, and ongoing. Hawaii Plaintiffs have suffered and continue to suffer injuries in the form of business losses because of reduced and/or restricted demand for Hawaii Plaintiffs' corn crops, reduced corn prices for Hawaii Plaintiffs' corn crops, and diminution in the value of the Hawaii Plaintiffs' corn harvesting.

868. Syngenta's actions are the direct and proximate cause of the damage to Hawaii Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

869. Hawaii Plaintiffs are thus entitled to an award of compensatory damages, pre- and post-judgment interest, and all fees and costs permitted by law.

870. Syngenta's actions, as described above, constituted willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care which would raise the presumption of conscious indifference to consequences. Syngenta had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to Hawaii Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Further, Syngenta's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of persons exposed to such conduct, including Hawaii Plaintiffs. Punitive damages are thus warranted.

Count 56 - Trespass to Chattels
(On Behalf of Hawaii Plaintiffs)

871. Hawaii Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

872. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

and/or Duracade into contact with non-Viptera/Duracade corn in which the Hawaii Plaintiffs had possession and/or possessory rights.

873. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

874. As a result of the trespass, Plaintiffs' chattels were impaired as to condition, quality or value, and plaintiffs were damaged. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

875. Hawaii Plaintiffs are thus entitled to an award of compensatory damages and pre- and post- judgment interest.

876. Syngenta's conduct was willful, wanton, and in reckless disregard for the rights of others, including Hawaii Plaintiffs. Punitive damages are thus warranted.

Count 57 - Negligence
(On Behalf of Idaho Plaintiffs)

877. Idaho Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

878. Syngenta owed its stakeholders, including Idaho Plaintiffs, a duty to use at least reasonable care in the timing, scope and terms under which it commercialized MIR162.

879. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

880. Syngenta's negligence directly and proximately caused harm to Idaho Plaintiffs.

881. Idaho Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

882. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others including Idaho Plaintiffs, and was aware that harm would likely or probably result. Punitive damages are thus warranted.

Count 58 - Tortious Interference
(On Behalf of Idaho Plaintiffs)

883. Idaho Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

884. Idaho Plaintiffs had business relationships and a reasonable expectancy of continued relationships with purchasers of corn.

885. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

886. Syngenta induced or caused a disruption of that expectancy without justification or privilege through its use of wrongful and deceptive means to sell the seed to consumers that

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

caused injury to the contractual and business relationships of Idaho Plaintiffs because Viptera and Duracade were not approved in the markets that Syngenta stated it would be approved in, namely China.

887. Syngenta's conduct was intentional, and was improper and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass, and interference with Plaintiffs' use of their property and in violation of Syngenta's duty of care.

888. Syngenta's interference has proximately caused damage to Idaho Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

889. Idaho Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

890. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Idaho Plaintiffs. Punitive damages are thus warranted.

Count 59 - Idaho Consumer Protection Act
(On Behalf of Idaho Plaintiffs)

891. Idaho Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

892. Idaho Plaintiffs relied on deceptive trade acts or practices committed by Syngenta in violation of Idaho's Consumer Protection Act codified at I.C. § 48-603. Syngenta made deceptive representations under § 48-603(5) when it represented that Viptera and/or Duracade would have approval and acceptance status from China's export authorities, and that it was reasonable to buy and plant the seed for export to China.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

893. Syngenta had knowledge that its business practices concerning the sale of seed to consumers were deceptive in that Syngenta sold Viptera and Duracade by lying to consumers about the acceptability of its seed produce in export markets, specifically China. Deceptive practices and acts include lying to consumers that the approval process for Viptera was already underway and that Syngenta's application had already been submitted to China at the time of the sale to consumers. Such a deceptive practice infiltrated the sale of seed to consumers in Idaho and was done with knowledge that such false information would induce consumers to purchase the seed.

894. Syngenta's conduct was intentional, and was improper and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, and was intentional.

895. Syngenta's deceptive practices have proximately caused damage to Idaho Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

896. Idaho Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

897. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Idaho Plaintiffs. Punitive damages are thus warranted.

Count 60 - Trespass to Chattels
(On Behalf of Idaho Plaintiffs)

898. Idaho Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

899. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

and/or Duracade into contact with non-Viptera/Duracade corn in which the Idaho Plaintiffs had possession and/or possessory rights.

900. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Plaintiffs' corn, grain elevators and other modes of storage and transport.

901. As a result of the trespass, these Plaintiffs' chattels were impaired as to condition, quality or value, and plaintiffs were damaged. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

902. Idaho Plaintiffs are thus entitled to an award of compensatory damages and pre- and post- judgment interest.

903. Syngenta's conduct was willful, wanton, and in reckless disregard for the rights of others, including the Idaho Plaintiffs. Punitive damages are thus warranted.

Count 61 - Private Nuisance
(On Behalf of Idaho Plaintiffs)

904. Idaho Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

905. Syngenta's actions constitute a private nuisance through the sale and distribution of Viptera. Syngenta licensed, sold, and distributed Viptera without regard for the cross-pollination that results when Viptera corn pollen drifts to neighboring, non-Viptera fields. As a result, the entire U.S. corn farming and production chain, including, but not limited to, farmland, farming equipment, storage facilities, harvesting equipment, and transportation facilities and equipment are contaminated with Viptera.

906. Syngenta's conducts was intentional and unreasonably interfered with Idaho Plaintiffs' use and enjoyment of their real property. At the very least, Syngenta's conduct was

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

negligent.

907. The interference with Idaho Plaintiffs' use and enjoyment of the property interests, caused by Syngenta's contamination of both the Idaho Plaintiffs' corn supply and the U.S. corn supply, is substantial, unreasonable, and ongoing. Idaho Plaintiffs have suffered and continue to suffer injuries in the form of business losses because of reduced and/or restricted demand for Idaho Plaintiffs' corn crops, reduced prices for Idaho Plaintiffs' corn crops, and diminution in the value of the Idaho Plaintiffs' corn harvesting.

908. Syngenta's actions are the direct and proximate cause of the damage to Idaho Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

909. Idaho Plaintiffs are thus entitled to an award of compensatory damages, pre- and post-judgment interest, and all fees and costs permitted by law.

910. Syngenta's actions constituted willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care which would raise the presumption of conscious indifference to consequences. Syngenta had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to the Idaho Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Further, Syngenta's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of persons exposed to such conduct, including the Idaho Plaintiffs. Punitive damages are thus warranted.

Count 62 - Negligence
(On Behalf of Illinois Plaintiffs)

911. Illinois Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

912. Syngenta owed a duty of at least reasonable care to its stakeholders, including Illinois Plaintiffs in the timing, scope, and terms under which it commercialized MIR162.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

913. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program, which ensured contamination of the U.S. corn supply;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channeling those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

914. Syngenta's negligence is a direct and proximate cause of the injuries and damages sustained by Illinois Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

915. Illinois Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

916. Syngenta's conduct was willful, wanton, and in reckless disregard for the rights of others, including Illinois Plaintiffs. Punitive damages are thus warranted.

Count 63 - Trespass to Chattels
(On Behalf of Illinois Plaintiffs)

917. Illinois Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

918. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

and/or Duracade into contact with non-Viptera/Duracade corn in which Illinois Plaintiffs had possession and/or possessory rights.

919. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

920. As a result of the trespass, these Plaintiffs' chattels were impaired as to condition, quality or value, and Plaintiffs were damaged, including but not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

921. Illinois Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

922. Syngenta's conduct was willful, wanton, and in reckless disregard for the rights of others, including Illinois Plaintiffs. Punitive damages are thus warranted.

Count 64 - Illinois Consumer Fraud and Deceptive Business Practices Act
(On Behalf of Illinois Plaintiffs)

923. Illinois Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

924. Corn seed such as Viptera and Duracade is an object, good, and/or commodity constituting merchandise pursuant to 815 Ill. Comp. Stat. 505/1.

925. Syngenta engaged in numerous unfair acts or practices in the timing, scope, and terms under which it commercialized Viptera and Duracade including:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products; and

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that planting Viptera and/or Duracade would lead to loss of the Chinese market.

926. Syngenta's practices, as set forth above, were unfair in that:

a. The practices offend public policy in that they were done negligently, were done in a manner that brought Viptera and/or Duracade in contact with Illinois Plaintiffs' corn thereby resulting in a trespass to chattels, and/or violated industry recognized stewardship obligations;

b. The practices were immoral, oppressive and unscrupulous in that they imposed no meaningful choice on Plaintiffs, imposed an unreasonable burden on the corn farming industry and was so oppressive as to leave corn farmers with little alternative but to submit to the practices. Corn farmers had no control over the closure of the Chinese market due to the commercialization of Viptera and Duracade; had no reasonable ability to prevent Viptera and Duracade from entering onto their land, into their corn or into the corn market, and had no reasonable ability to separately channel their corn and Viptera and Duracade; and

c. The practices caused unavoidable and substantial injury to Plaintiffs through the loss of the Chinese export market and reduced U.S. corn prices.

927. Syngenta's unfair practices and conduct was directed toward consumers of Viptera and Duracade as well as other corn producers. Syngenta intended consumers of Viptera and Duracade as well as other corn producers to rely on its acts and practices in commercializing and selling Viptera and Duracade as being done in a manner that would avoid negatively impacting corn export markets.

928. Syngenta's unfair practices occurred during the course of conduct involving trade or commerce, specifically the commercialization and sale of Viptera and Duracade.

929. Illinois plaintiffs incurred damages due to the loss of the Chinese import market and resulting drop in the price of corn due to Syngenta's unfair acts and practices.

930. The loss of the Chinese import market and resulting drop in corn prices was directly and proximately caused by Syngenta's unfair acts and practices.

931. Syngenta's conduct was addressed to the market generally and otherwise

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

implicates consumer protection concerns and, therefore, a consumer nexus exists in that:

a. Syngenta's acts and practices in commercializing and selling Viptera and Duracade corn were directed to all corn farmers generally; and

b. Syngenta's acts and practices otherwise implicate consumer protection concerns including, but not limited to, not unreasonably risking the availability and welfare of corn export markets or minimizing the potential for unwanted comingling of crops.

932. Illinois Plaintiffs are authorized to bring a private action under Illinois Consumer Fraud and Deceptive Businesses Practices Act pursuant to 815 Ill. Comp. Stat. 505/10(a).

933. Reasonable attorneys' fees and costs should be awarded pursuant to 815 Ill. Comp. Stat. 505/10a.

934. Syngenta's conduct was willful and intentional and done with evil motive or reckless indifference to the rights of others. Punitive damages are thus warranted.

Count 65 - Negligence
(On Behalf of Indiana Plaintiffs)

935. Indiana Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

936. Syngenta owed a duty of at least reasonable care to its stakeholders, including Indiana Plaintiffs in the timing, scope, and terms under which it commercialized MIR162.

937. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/ or competence to isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

938. Syngenta's negligence directly and proximately caused harm and damages to Indiana Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

939. Indiana Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

940. Syngenta willfully and wantonly subjected Indiana Plaintiffs to probable injury, with an awareness of such impending danger and with heedless indifference of the consequences. Punitive Damages are therefore warranted.

Count 66 - Trespass to Chattels
(On Behalf of Indiana Plaintiffs)

941. Indiana Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

942. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought those varieties into contact with non-Viptera/Duracade corn in which Indiana Plaintiffs had possession and/or possessory rights.

943. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

944. As a result of the trespass, these Plaintiffs' chattels were impaired as to condition, quality or value, and these Plaintiffs were damaged. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

market.

945. Indiana Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

946. Syngenta willfully and wantonly subjected Indiana Plaintiffs to probable injury, with an awareness of such impending danger and with heedless indifference of the consequences. Punitive Damages are therefore warranted.

Count 67 - Tortious Interference
(On Behalf Indiana Plaintiffs)

947. Indiana Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

948. Indiana Plaintiffs had valid business relationships and reasonable expectancy of continued business relationships with purchasers of corn.

949. Syngenta had knowledge of such relationships and/or possessed knowledge of facts and circumstances that would lead a reasonable person to believe that such relationships existed.

950. Syngenta intentionally caused an interference with those business relationships.

951. Syngenta's interference was wrongful and illegal because, among other things, it was accomplished with fraud, was intentional, and contaminated fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass and interference with Plaintiffs' use of their property and in violation of Syngenta's duty of care.

952. Syngenta's interference proximately caused damage to Indiana Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

953. Indiana Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

954. Syngenta willfully and wantonly subjected Indiana Plaintiffs to probable injury,

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

with an awareness of such impending danger and with heedless indifference of the consequences. Punitive damages are therefore warranted.

Count 68 - Negligence
(On Behalf of Iowa Plaintiffs)

955. Iowa Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

956. Syngenta owed a duty of at least reasonable care to its stakeholders, including Iowa Plaintiffs in the timing, scope, and terms under which it commercialized MIR162.

957. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/ or competence to isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

958. Syngenta's negligence is a direct and proximate cause of the injuries and damages sustained by Iowa Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

959. Iowa Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

960. Syngenta's conduct was intentional and unreasonable in disregard of a known or

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

obvious risk so great as to make it highly probably that harm would follow. Its conduct was willful, wanton, and in reckless disregard for the rights of others including Iowa Plaintiffs. Thus, punitive damages are warranted.

Count 69 - Trespass to Chattels
(On Behalf Iowa Plaintiffs)

961. Iowa Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

962. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Iowa Plaintiffs had possession and/or possessory rights.

963. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

964. As a result of the trespass, these Plaintiffs' chattels were impaired as to condition, quality or value, and Plaintiffs were damaged, including but not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

965. Iowa Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

966. Syngenta's conduct was intentional and unreasonable in disregard of a known or obvious risk so great as to make it highly probably that harm would follow. Its conduct was willful, wanton, and in reckless disregard for the rights of others including Iowa Plaintiffs. Thus, punitive damages are warranted.

Count 70 - Negligence
(On Behalf of Kansas Plaintiffs)

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

967. Kansas Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

968. Syngenta owed a duty of at least reasonable care to its stakeholders, including Kansas Plaintiffs in the timing, scope, and terms under which it commercialized MIR162.

969. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/ or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

970. Syngenta's negligence is a direct and proximate cause of the injuries and damages sustained by Kansas Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

971. Kansas Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

972. Syngenta's conduct was malicious and constitutes a willful and wanton invasion of the rights of others, including Kansas Plaintiffs. Punitive damages are thus warranted.

Count 71 - Trespass to Chattels
(On Behalf of Kansas Plaintiffs)

973. Kansas Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

974. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Kansas Plaintiffs had possession and/or possessory rights.

975. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

976. As a result of the trespass, these Plaintiffs' chattels were impaired as to condition, quality or value, and Plaintiffs were damaged.

977. Kansas Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

978. Syngenta's conduct was malicious and constitutes a willful and wanton invasion of the rights of others, including Kansas Plaintiffs. Punitive damages are thus warranted.

Count 72 - Private Nuisance
(On Behalf of Kansas Plaintiffs)

979. Kansas Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

980. Syngenta's actions constitute a private nuisance to Kansas Plaintiffs. By contaminating the U.S. corn supply, Syngenta has unreasonably and substantially interfered with Kansas Plaintiffs' quiet use and enjoyment of their land and/or property interests.

981. Syngenta's actions proximately caused damage to Kansas Plaintiffs, who are entitled to compensatory damages and pre- and post-judgment interest, including but not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

982. Syngenta's conduct was intentional, willful, wanton, and with reckless disregard for the rights of Kansas Plaintiffs, and was grossly negligent and unreasonable. Punitive damages are thus warranted.

Count 73 - Negligence
(On Behalf Kentucky Plaintiffs)

983. Kentucky Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

984. Syngenta owed its stakeholders, including Kentucky Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

985. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

986. Syngenta's negligence proximately caused damages to Kentucky Plaintiffs, including but not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

987. Syngenta acted with oppression, fraud, wantonness, and malice. Punitive damages

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

are therefore warranted.

Count 74 - Trespass to Chattels
(On Behalf of Kentucky Plaintiffs)

988. Kentucky Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

989. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Kentucky Plaintiffs had possession and/or possessory rights.

990. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

991. As a result of the trespass, these Plaintiffs' chattels were impaired as to condition, quality or value, and Plaintiffs were damaged. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

992. Kentucky Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

993. Syngenta acted with oppression, fraud, wantonness, and malice. Punitive damages are therefore warranted.

Count 75 - Negligence
(On Behalf of Louisiana Plaintiffs)

994. Louisiana Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

995. Syngenta owed its stakeholders, including Louisiana Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

996. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

997. Syngenta's negligence proximately caused damages to Louisiana Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

998. Louisiana Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

Count 76 - Damage to Movables
(On Behalf of Louisiana Plaintiffs)

999. The Louisiana Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1000. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

and/or Duracade into contact with non-Viptera/Duracade corn in which Louisiana Plaintiffs had possession and/or possessory rights.

1001. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1002. As a result, these Plaintiffs' chattels were impaired as to condition, quality, or value, and Lousiana Plaintiffs were damaged in their movables for which remedy is provided under La. Civ. Code art. 2315(A).

1003. The Louisiana Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

Count 77 - Negligence
(On Behalf of Maine Plaintiffs)

1004. Maine Plaintiffs incorporate by reference paragraphs 1-299 as if fully alleged herein.

1005. Syngenta owed its stakeholders, including Maine Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1006. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1007. Syngenta's negligence directly and proximately caused harm to Maine Plaintiffs.

1008. Maine Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1009. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others including Maine Plaintiffs and was aware that harm would likely or probably result. Punitive damages are thus warranted.

Count 78 - Tortious Interference
(On Behalf of Maine Plaintiffs)

1010. Maine Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1011. Maine Plaintiffs had business relationships and a reasonable expectancy of continued relationships with purchasers of corn.

1012. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

1013. Syngenta induced or caused a disruption of that expectancy without justification or privilege.

1014. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Plaintiffs' fields, storage units, equipment, grain elevators and

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

other facilities of the U.S. supply chain, constituting interference with Maine Plaintiffs' use of their property and in violation of Syngenta's duty of care.

1015. Syngenta's interference has proximately caused damage to Maine Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1016. Maine Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1017. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Maine Plaintiffs. Punitive damages are thus warranted.

Count 79 - Maine Unfair Trade Practices Act
(On Behalf of Maine Plaintiffs)

1018. Maine Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1019. Under 5 M.R.S.A. § 207 of the Maine Unfair Trade Practices Act, unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful.

1020. Syngenta's deceptive trade practices in connection with the sale and advertisement of Viptera and Duracade constitute a violation of 5 M.R.S.A. § 207.

1021. The Maine Unfair Trade Practices Act provides a private cause of action against Syngenta in connection with Syngenta's violations of 5 M.R.S.A. § 207.

1022. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving corn Producers and Non-Producers and to induce Producers and Non-Producers, including Maine Plaintiffs, to purchase Viptera and Duracade.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1023. Syngenta's false and deceptive representations misled and deceived Maine Plaintiffs as to Viptera and Duracade's approval and/or certification. Syngenta further knowingly and recklessly represented that Viptera and Duracade had approval that it did not have.

1024. Syngenta's conduct created a substantial likelihood of confusion and misunderstanding, and misled, deceived, or damaged Maine Plaintiffs in connection with the sale or advertisement of Viptera and Duracade.

1025. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

1026. Syngenta also submitted the MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets...." Based on Syngenta's knowledge of the Chinese regulatory process and based on its expertise and knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and for the purpose of producing sales.

1027. Syngenta distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Sheet," which contains deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and Syngenta's knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

1028. Syngenta also failed to disclose material information to Plaintiffs. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose the insufficiency of its approval request to China, and that it sought approval to cultivate MIR162 in China, both of which caused delay in the regulatory approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolatiors or channeling Viptera or Duracade.

1029. Syngenta's failure to disclose material information and false and misleading representations and omissions occurred in the course of its business and caused damage to a large portion of the public, including Maine Plaintiffs, who lack the sophistication and bargaining power in matters concerning genetically modified products.

1030. As a developer of genetically modified products, Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which Maine Plaintiffs did not have access.

1031. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling of its genetically modified products, including Viptera and Duracade, which was not available to Producers and Non-Producers.

1032. Syngenta knew that approval from China would not be forthcoming for (at least) the 2011 growing season, and knew that systems were not in place for either isolating or

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

effectively channeling Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would disseminate throughout the U.S. corn supply.

1033. Syngenta engaged in these deceptions to sell and increase its sales of Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and farmers would be harmed.

1034. Syngenta knew that farmers like Maine Plaintiffs here are affected by its business and depend on it for responsible commercialization practices.

1035. In equity and good conscience, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not imminent or indeed anticipated for (at least) the 2011 growing season, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which Syngenta did not have approval, and that purchase and planting of Viptera (and later Duracade) created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

1036. Syngenta's deceptive trade practices have previously impacted Maine Plaintiffs and others, including Producers and Non-Producers who purchased or planted Viptera or Duracade.

1037. Syngenta's deceptive trade practices have previously impacted actual or potential consumers of its products through the loss of the China export market. Syngenta's deceptive practices have the significant potential to cause further disruption to the corn export market in the future.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1038. Syngenta's deceptive trade practices were fraudulent, willful, knowing, or intentional, and were taken in bad faith. Further, Syngenta knowingly concealed, suppressed, and omitted material facts with the intent that Maine Plaintiffs and other U.S. Producers and Non-Producers would rely on the concealment, suppression, or omission in connection with the sale and advertisement of Viptera and Duracade.

1039. Syngenta's deceptive trade practices proximately caused an injury in fact to a legally protected interest belonging to Maine Plaintiffs.

1040. Maine Plaintiffs are thus entitled to damages, plus their attorney's fees and costs incurred in this action. 5 M.R.S.A. § 213. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1041. Syngenta's conduct, as described above, was outrageous, and included acts done with malice or bad motives and/or evidencing reckless indifference to Maine Plaintiffs' interests. Punitive damages are thus warranted.

Count 80 - Trespass to Chattels
(On Behalf of Maine Plaintiffs)

1042. Maine Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1043. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Maine Plaintiffs had possession and/or possessory rights.

1044. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1045. As a result of the trespass, these Plaintiffs' chattels were impaired as to condition, quality, or value, and Plaintiffs were damaged. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1046. Maine Plaintiffs are thus entitled to an award of compensatory damages and pre- and post- judgment interest.

1047. Syngenta's conduct was willful, wanton, and in reckless disregard for the rights of others, including Maine Plaintiffs. Punitive damages are thus warranted.

Count 81 - Negligence
(On Behalf of Maryland Plaintiffs)

1048. Maryland Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1049. Syngenta owed its stakeholders, including Maryland Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1050. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1051. Syngenta's negligence directly and proximately caused damages to Maryland Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1052. Maryland Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1053. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others including Maryland Plaintiffs and was aware that harm would likely or probably result. Punitive damages are thus warranted.

Count 82 - Tortious Interference
(On Behalf of Maryland Plaintiffs)

1054. Maryland Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1055. Maryland Plaintiffs had business relationships and a reasonable expectancy of continued relationships with purchasers of corn.

1056. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

1057. Syngenta induced or caused a disruption of that expectancy without justification or privilege.

1058. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

intentional, and contaminated Plaintiffs' fields, storage units, equipment, grain elevators and other facilities in the U.S. supply chain, in violation of Syngenta's duty of care.

1059. Syngenta's interference proximately caused damage to Maryland Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1060. Maryland Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1061. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Maryland Plaintiffs. Punitive damages are thus warranted.

Count 83 – Maryland Consumer Protection Act
(On Behalf of Maryland Plaintiffs)

1062. Maryland Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1063. Maryland Plaintiffs relied on deceptive trade acts or practices committed by Syngenta in violation of Maryland's Consumer Protection Act, MD Code, § 13-301 *et seq*. Syngenta made deceptive representations under § 13-301 when it represented China's timing of approval of Viptera and that it was reasonable to buy and plant the seed for export to China.

1064. Syngenta had knowledge that its business practices concerning the sale of seed to consumers were deceptive in that Syngenta sold its GMO seed by lying to consumers about the acceptability of its seed produce in export markets, specifically China. Deceptive practices and acts include lying to consumers that the approval process for GMO seed was already underway and that Syngenta's application had already been submitted to China at the time of the sale to consumers. Such a deceptive practice infiltrated the sale of seed to consumers in Maryland and

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

was done with knowledge that such false information would induce consumers to purchase the seed.

1065. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, and was intentional, and contaminated Plaintiffs' fields, storage units, equipment, grain elevators, and other facilities in the U.S. supply chain in violation of Syngenta's duty of care.

1066. Syngenta's deceptive practices have proximately caused damage to Maryland Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1067. Maryland Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1068. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Maryland Plaintiffs. Punitive damages are thus warranted.

Count 84 - Private Nuisance
(On Behalf of Maryland Plaintiffs)

1069. Maryland Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1070. Syngenta's actions constitute a private nuisance through the sale and distribution of Viptera and/or Duracade. Syngenta licensed, sold, and distributed Viptera and/or Duracade without regard for the cross-pollination that results when corn pollen drifts to neighboring, non-Viptera/Duracade fields. As a result, the entire U.S. corn farming and production chain, including, but not limited to, farmland, farming equipment, storage facilities, harvesting

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

equipment, and transportation facilities and equipment are contaminated with Viptera and/or Duracade.

1071. Syngenta's conducts was intentional and unreasonably interfered with Maryland Plaintiffs' use and enjoyment of their real property. At the very least, Syngenta's conduct, as described above, was negligent.

1072. The interference with Maryland Plaintiffs' use and enjoyment of their property interests, caused by Syngenta's contamination of the Maryland corn supply, and the U.S. corn supply, is substantial, unreasonable, and ongoing. Maryland Plaintiffs have suffered and continue to suffer injuries in the form of business losses because of reduced and/or restricted demand for corn crops, reduced corn prices, and diminution in the value of Maryland Plaintiffs' harvesting.

1073. Syngenta's actions are the direct and proximate cause of the damage to Maryland Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1074. Maryland Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1075. Syngenta's actions constituted willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care which would raise the presumption of conscious indifference to consequences. Syngenta had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to Maryland Plaintiffs would result and, despite that knowledge, intentionally pursued its course of conduct. Syngenta's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of persons exposed to such conduct, including Maryland Plaintiffs. Punitive damages are thus warranted.

Count 85 - Trespass to Chattels
(On Behalf of Maryland Plaintiffs)

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1076. Maryland Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1077. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non- Viptera/Duracade corn in which Maryland Plaintiffs had possession and/or possessory rights.

1078. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1079. As a result of the trespass, these Plaintiffs' chattels were impaired as to condition, quality, or value, and Maryland Plaintiffs were damaged. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1080. Maryland Plaintiffs are thus entitled to an award of compensatory damages and pre- and post- judgment interest.

1081. Syngenta's conduct was willful, wanton, and in reckless disregard for the rights of others, including Maryland Plaintiffs. Punitive damages are thus warranted.

Count 86 – Negligence
(On Behalf of Massachusetts Plaintiffs)

1082. Massachusetts Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1083. Syngenta owed its stakeholders, including Massachusetts Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1084. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1085. Syngenta's negligence proximately caused harm to Massachusetts Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1086. Massachusetts Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

Count 87 – Trespass to Chattels
(On Behalf of Massachusetts Plaintiffs)

1087. Massachusetts Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1088. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

and/or Duracade into contact with non-Viptera/Duracade corn in which Massachusetts Plaintiffs had possession and/or possessory rights.

1089. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Massachusetts Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1090. As a result of the trespass, Plaintiffs' chattels were impaired as to condition, quality, or value, and Massachusetts Plaintiffs were damaged. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1091. Massachusetts Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

Count 88 – Tortious Interference with Advantageous Relations'
(On Behalf of Massachusetts Plaintiffs)

1092. Massachusetts Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1093. Massachusetts Plaintiffs had business relationships and reasonable expectancy of continued relationships with purchasers of corn.

1094. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

1095. Syngenta induced or caused a disruption of that expectancy without justification or privilege.

1096. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Plaintiffs' fields, storage units, equipment, grain elevators and other

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

facilities in the U.S. supply chain, constituting a trespass and interference with Plaintiffs' use of their property and in violation of Syngenta's duty of care.

1097. Syngenta had no legitimate interest in Massachusetts Plaintiffs' expectancy but alternatively, if it had such an interest, Syngenta employed wrongful means including without limitation, misrepresentations, nuisance, and trespass.

1098. As a direct and proximate result of Syngenta's conduct, Massachusetts Plaintiffs were damaged. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1099. Massachusetts Plaintiffs are thus entitled to an award of compensatory damages, pre- and post-judgment interest.

1100. Syngenta's conduct showed a complete indifference to or conscious disregard of the rights of others, including Massachusetts Plaintiffs. Punitive damages are thus warranted.

Count 89 – Private Nuisance
(On Behalf of Massachusetts Plaintiffs)

1101. Massachusetts Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1102. Syngenta's actions constitute a private nuisance to Massachusetts Plaintiffs. By contaminating the U.S. corn supply, Syngenta has obstructed the free use of Massachusetts Plaintiffs' property, thereby materially and substantially interfering with their property interests and/or comfortable enjoyment of their property.

1103. Syngenta's conduct was negligent because Syngenta knew or should have known that its conduct involved an unreasonable risk of interfering with or causing an invasion of Massachusetts Plaintiffs' interest in land. Additionally, or in the alternative, Syngenta's actions were intentional and unreasonable because Syngenta knew that its invasion would result from its

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

conduct and knew that it would substantially interfere with Massachusetts Plaintiffs' comfortable enjoyment of their property and/or property interests.

1104. Syngenta's actions proximately caused damage to Massachusetts Plaintiffs. Massachusetts Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

Count 90 – Massachusetts Consumer Protection Act
(On Behalf of Massachusetts Plaintiffs)

1105. Massachusetts Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1106. The Massachusetts Consumer Protection Act provides that "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce…is unlawful." Mass. Gen. Laws ch. 93A, § 2(a). "Trade" and "commerce" includes "the sale…or distribution of any services and any property, tangible or intangible, real, personal or mixed, any security…any contract of sale of a commodity for future delivery, and any other article, commodity, or thing of value…any trade or commerce directly or indirectly affecting the people of this commonwealth." Mass. Gen. Laws ch. 93A, § 1(b).

1107. Syngenta engaged in numerous deceptive acts or practices in the timing, scope, and terms under which it commercialized Viptera and Duracade including:

a. Prematurely commercializing Viptera and Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market.

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1108. Syngenta also made numerous false and deceptive representations regarding the importance of the Chinese market and the timing of China's approval of Viptera and/or Duracade.

1109. Syngenta made numerous misrepresentations pertaining to the status of China's import approval for MIR162. Among others, and as more fully set forth above, Syngenta during the summer of 2011, represented to stakeholders, including growers (to encourage further sales, planting and harvesting of MIR162), that it would receive China's approval in March 2012. Syngenta continued making this misrepresentation throughout the planting and harvesting season in 2011 and into 2012. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process and its own status for MIR162 in that process, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

1110. Syngenta also submitted a MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets . . . ." Based on Syngenta's

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

knowledge of the Chinese regulatory process and its knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and for the purpose of producing sales.

1111. Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contained deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

1112. Syngenta also failed to disclose material information to Producers and Non-Producers. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose at minimum, in 2010-2011 that it would not have import approval from China by the 2011 crop year and in 2011-2012 that it would not have import approval from China by the 2012 crop year, and that China was a significant and growing import market. Syngenta further failed to disclose at all relevant times the insufficiency of its approval request to China and that it sought approval to cultivate MIR162 in China, both of which Syngenta knew would cause delay in China's regulatory approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling Viptera and/or Duracade and the very high likelihood that MIR162 would move into export channels where it was not approved, causing market disruption.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1113. Syngenta engaged in these deceptions to sell and increase its sales of Viptera and/or Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and/or Duracade would disseminate into the U.S. corn supply and Producers and Non-Producers would be harmed.

1114. Syngenta knew that approval from China was not expected or reasonably likely to occur for (at least) the 2011 and 2012 growing seasons and knew that systems were not in place for either isolating or effectively channeling Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera and/or Duracade would disseminate throughout the U.S. corn supply.

1115. Syngenta knew that Plaintiffs here are affected by its business and depend on it for responsible commercialization practices.

1116. Syngenta's conduct, misrepresentations and omissions, were immoral, unethical, oppressive, or unscrupulous and possessed the tendency or capacity to mislead or create the likelihood of deception.

1117. Syngenta's unfair and deceptive practices occurred during the conduct of trade or commerce, specifically the commercialization and sale of Viptera and/or Duracade, affecting the people of the State of Massachusetts.

1118. These unfair and deceptive practices caused the injuries and damages sustained by Massachusetts Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1119. Moreover, Syngenta's acts, practices, and misrepresentations affect the public interest. Syngenta's misrepresentations were made to a large segment of the public and its conduct vitally affects a large segment of the public, including all Producers and Non-Producers, who

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

depend on the responsible stewardship practices of developers like Syngenta when commercializing genetically engineered products.

1120. Massachusetts Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest, as well as costs and reasonable attorneys' fees. Mass. Gen. Laws ch. 93A, § 11.

1121. Syngenta's conduct was grossly negligent and evidenced a reckless disregard for the rights of others, including Massachusetts Plaintiffs, thereby justifying punitive damages.

Count 91 - Negligence
(On Behalf of Michigan Plaintiffs)

1122. Michigan Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1123. Syngenta owed its stakeholders, including Michigan Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1124. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1125. Syngenta's negligence proximately caused harm to Michigan Plaintiffs. These

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1126. Michigan Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

Count 92 - Trespass to Chattels
(On Behalf of Michigan Plaintiffs)

1127. Michigan Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1128. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Michigan Plaintiffs had possession and/or possessory rights.

1129. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Michigan Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1130. As a result of the trespass, Plaintiffs' chattels were impaired as to condition, quality, or value, and Michigan Plaintiffs were damaged. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1131. Michigan Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

Count 93 - Negligence
(On Behalf of Mississippi Plaintiffs)

1132. Mississippi Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1133. Syngenta owed its stakeholders, including Mississippi Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1134. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and /or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1135. Syngenta's negligence proximately caused damages to Mississippi Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1136. Mississippi Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1137. Syngenta's conduct was grossly negligent and evidenced a reckless disregard for the rights of others, including Mississippi Plaintiffs, thereby justifying punitive damages.

Count 94 - Trespass to Chattels
(On Behalf of Mississippi Plaintiffs)

1138. Mississippi Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1139. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Mississippi Plaintiffs had possession and/or possessory rights.

1140. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1141. As a result of the trespass, Plaintiffs' chattels were impaired as to condition, quality, or value, and Mississippi Plaintiffs were damaged, including but not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1142. Mississippi Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1143. Syngenta's conduct was grossly negligent and evidenced a reckless disregard for the rights of others, including Mississippi Plaintiffs, thereby justifying an award of punitive damages.

Count 94 - Private Nuisance
(On Behalf of Mississippi Plaintiffs)

1144. Mississippi Plaintiffs incorporate by reference paragraphs 1-294 as if set forth herein.

1145. Syngenta's actions constitute a private nuisance to Mississippi Plaintiffs. By contaminating the U.S. corn supply, Syngenta has unreasonably and substantially interfered with the quiet use and enjoyment of Mississippi Plaintiffs' land and/or property interests.

1146. Syngenta's conduct was intentional and unreasonable, or if unintentional, was negligent and reckless, and proximately caused damage to Mississippi Plaintiffs. These damages

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1147. Mississippi Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1148. Syngenta's conduct was grossly negligent and evidenced a reckless disregard for the rights of others, including Mississippi Plaintiffs, thereby justifying punitive damages.

Count 95 - Negligence
(On Behalf of Missouri Plaintiffs)

1149. Missouri Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1150. Syngenta owed a duty of at least reasonable care to its stakeholders, including Missouri Plaintiffs, in the timing, scope, and terms under which it commercialized MIR162.

1151. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and /or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1152. Syngenta's negligence is a direct and proximate cause of the injuries and damages sustained by Missouri Plaintiffs. These damages include but are not limited to damaged corn crops

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

and reduced corn prices based on the inability to sell corn to the Chinese market.

1153. Missouri Plaintiffs are thus entitled to an award of compensatory damages, pre- and post-judgment interest.

1154. Syngenta's conduct was grossly negligent and showed a complete indifference to or conscious disregard of the rights of others, including Missouri Plaintiffs. Punitive damages are thus warranted.

Count 96 - Trespass to Chattels
(On Behalf of Missouri Plaintiffs)

1155. Missouri Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1156. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Missouri Plaintiffs had possession and/or possessory rights.

1157. Syngenta's acts took place, or affected commerce, in Missouri.

1158. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1159. As a result of the trespass, Plaintiffs' chattels were impaired as to condition, quality, or value, and they were damaged.

1160. Missouri Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1161. In addition, Syngenta maliciously or wantonly damaged the property of Missouri Plaintiffs, including their corn and their rights in pursuit of business and business relationships in violation of Mo. Rev. Stat. §330, entitling these Missouri Plaintiffs to double the value of their

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

damages.

1162. Syngenta's conduct showed a complete indifference to or conscious disregard for the rights of others, including Missouri Plaintiffs, and thus punitive damages are warranted.

Count 97 - Tortious Interference
(On Behalf of Missouri Plaintiffs)

1163. Missouri Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1164. Missouri Plaintiffs had business relationships and a reasonable expectancy of continued relationships with purchasers of corn.

1165. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

1166. Syngenta induced or disrupted that expectancy without justification or privilege.

1167. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact and contaminated Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass and interference with Missouri Plaintiffs' use of their property and in violation of Syngenta's duty of care.

1168. Syngenta had no legitimate interest in Missouri Plaintiffs' expectancy but alternatively, if it had such an interest, Syngenta employed wrongful means including without limitation, misrepresentations, nuisance, and trespass.

1169. As a direct and proximate result of Syngenta's conduct, Missouri Plaintiffs were damaged.

1170. Missouri Plaintiffs are thus entitled to an award of compensatory damages, pre- and post-judgment interest.

1171. Syngenta's conduct showed a complete indifference to or conscious disregard of

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

the rights of others, including Missouri Plaintiffs, and thus punitive damages are warranted.

Count 98 – Negligence
(On Behalf of Montana Plaintiffs)

1172. Montana Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1173. Syngenta owed its stakeholders, including Montana Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1174. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1175. Syngenta's negligence directly and proximately caused harm to Montana Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1176. Montana Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1177. Syngenta had knowledge of facts or intentionally disregarded facts that created a high probability of harm to the rights of Montana Plaintiffs, and deliberately acted in conscious or intentional disregard of that high probability of harm; alternatively, Syngenta deliberately acted with indifference to that high probability of harm. Syngenta's actions and omissions showed deliberate disregard for the rights of Montana Plaintiffs. Punitive damages are thus warranted.

Count 99 – Private Nuisance
(On behalf of Montana Plaintiffs)

1178. Montana Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1179. Syngenta's actions constitute a private nuisance to Montana Plaintiffs. By contaminating the U.S. corn supply, Syngenta has obstructed the free use of Montana Plaintiffs' property, thereby materially and substantially interfering with their property interests and/or comfortable enjoyment of their property.

1180. Syngenta's conduct was negligent because Syngenta knew or should have known that its conduct involved an unreasonable risk of interfering with or causing an invasion of Montana Plaintiff's interest in land. Additionally, or in the alternative, Syngenta's actions were intentional and unreasonable because Syngenta knew that such invasion would result from its conduct and knew that it would substantially interfere with Montana Plaintiffs' comfortable enjoyment of their property and/or property interests.

1181. Syngenta's actions proximately caused damage to Montana Plaintiffs, including damaged corn crops and reduced corn prices.

1182. Montana Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1183. Syngenta had knowledge of facts or intentionally disregarded facts that created a high probability of harm to the rights of Montana Plaintiffs, and deliberately acted in conscious or

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

intentional disregard of that high probability of harm; alternatively, Syngenta deliberately acted with indifference to that high probability of harm. Syngenta's actions and omissions showed deliberate disregard for the rights of others including Montana Plaintiffs. Punitive damages are thus warranted.

Count 100 – Tortious Interference with Business Relationships
(On Behalf of Montana Plaintiffs)

1184. Montana Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1185. Montana Plaintiffs had business relationships and a reasonable expectancy of continued relationships with purchasers of corn.

1186. Syngenta's acts were intentional and willful and were calculated to cause damage to Montana Plaintiffs in their businesses by making misrepresentations and omissions of material fact, causing its product to contaminate Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain.

1187. Syngenta's interference has proximately caused actual damage to Montana Plaintiffs.

1188. Montana Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1189. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Montana Plaintiffs. Punitive damages are thus warranted.

Count 101 - Negligence
(On Behalf of Nebraska Plaintiffs)

1190. Nebraska Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1191. Syngenta owed a duty of at least reasonable care to its stakeholders, including

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Nebraska Plaintiffs, in the timing, scope, and terms under which it commercialized MIR162.

1192. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/ or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1193. Syngenta's negligence is a direct and proximate cause of the injuries and damages sustained by Nebraska Plaintiffs, including but not limited to damaged corn crops and reduced corn prices due to the inability to sell corn to the Chinese market.

1194. Nebraska Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

Count 102 - Trespass to Chattels
(On Behalf of Nebraska Plaintiffs)

1195. Nebraska Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1196. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Nebraska Plaintiffs had possession and/or possessory rights.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1197. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Nebraska Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1198. As a result of the trespass, Nebraska Plaintiffs' chattels were impaired as to condition, quality, or value, and they were damaged thereby.

1199. Nebraska Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

Count 103 – Private Nuisance
(On Behalf of Nebraska Plaintiffs)

1200. Nebraska Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1201. Syngenta's actions constitute a private nuisance to Nebraska Plaintiffs. By contaminating the U.S. corn supply, Syngenta unreasonably and substantially interfered with Nebraska Plaintiffs' enjoyment of their land and/or property interests.

1202. Said invasion was intentional and unreasonable, or alternatively unintentional and actionable because Syngenta's conduct was negligent and/or reckless.

1203. As a direct and proximate result of Syngenta's conduct, Nebraska Plaintiffs have sustained substantial injury and damage.

1204. Nebraska Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

Count 104 - Nebraska Consumer Protection Act
(On Behalf of Nebraska Plaintiffs)

1205. Nebraska Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1206. The Nebraska Consumer Protection Act provides that "unfair or deceptive acts or practices in the conduct of any trade or commerce shall be unlawful." Neb. Rev. Stat. § 59-1602.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

"Trade and commerce" means "the sale of assets", including any property, tangible or otherwise, real or personal, and anything of value, "or services and any commerce directly or indirectly affecting the people of the State of Nebraska." Neb. Rev. Stat. § 59-1601 (2, 3). Corn seed constitutes assets under Section 59-1601, Neb. Rev. Stat.

1207. Syngenta engaged in numerous unfair and deceptive acts or practices in the timing, scope, and terms under which it commercialized Viptera and/or Duracade including:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/ or competence to effectively isolate or channel those products; and

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market.

1208. Syngenta also made numerous false and deceptive representations regarding the importance of the Chinese market and the timing of China's approval of Viptera and/or Duracade.

1209. Syngenta made numerous misrepresentations pertaining to the status of China's import approval for MIR162. Among others, and as more fully set forth above, Syngenta during the summer of 2011, represented to stakeholders, including growers (to encourage further sales, planting and harvesting of MIR162), that it would receive China's approval in March 2012. Syngenta continued making this misrepresentation throughout the planting and harvesting season in 2011 and into 2012. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process and its own status for

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

MIR162 in that process, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

1210. Syngenta also submitted a MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets . . . ." Based on Syngenta's knowledge of the Chinese regulatory process and its knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public prior to commercialization and for the purpose of producing sales.

1211. Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contains deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

1212. Syngenta also failed to disclose material information to Producers and Non-Producers. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose at minimum, in 2010-2011 that it would not have import approval from China by the 2011 crop year and in 2011-2012 that it would not have import approval from China by the 2012 crop year, and that China was a significant and growing import market. Syngenta further failed to disclose at all relevant

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

times the insufficiency of its approval request to China, and that it sought approval to cultivate MIR162 in China, both of which Syngenta knew would cause delay in China's regulatory approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling of Viptera and/or Duracade and the very high likelihood that MIR162 would move into export channels where it was not approved, causing market disruption.

1213. Syngenta engaged in these deceptions in order to sell and increase its sales of Viptera and/or Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and Nebraska Plaintiffs would be harmed.

1214. Syngenta knew that approval from China was not expected or reasonably likely to occur for (at least) the 2011 and 2012 growing seasons, and knew that systems were not in place for either isolating or effectively channeling Viptera and/or Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera and/or Duracade would disseminate throughout the U.S. corn supply.

1215. Syngenta knew that Nebraska Plaintiffs are affected by its business and depend on it for responsible commercialization practices.

1216. Syngenta's conduct, misrepresentations, and omissions, were immoral, unethical, oppressive, or unscrupulous and possessed the tendency or capacity to mislead or create the likelihood of deception.

1217. Syngenta's unfair and deceptive practices occurred during the conduct of trade or commerce, specifically the commercialization and sale of Viptera and/or Duracade, affecting the people of the State of Nebraska.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1218. These unfair and deceptive practices caused the injuries and damages sustained by Nebraska Plaintiffs.

1219. Moreover, Syngenta's acts, practices, and misrepresentations affect the public interest. Syngenta's misrepresentations were made to a large segment of the public and its conduct vitally affects a large segment of the public, including all farmers and others in the business of selling corn and corn products, who depend on the responsible stewardship practices of developers like Syngenta when commercializing GM products.

1220. Nebraska Plaintiffs are thus entitled to an award of compensatory damages, pre- and post-judgment interest, as well as costs and reasonable attorneys' fees. Neb. Rev. Stat. § 59-1609.

Count 105 - Negligence
(On behalf of Nevada Plaintiffs)

1221. Nevada Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1222. Syngenta owed its stakeholders, including Nevada Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1223. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1224. Syngenta's negligence proximately caused harm to Nevada Plaintiffs including damaged corn and reduced corn prices.

1225. Nevada Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

Count 106 - Trespass to Chattels
(On behalf of Nevada Plaintiffs)

1226. Nevada Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1227. By commercializing Viptera and Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non- Viptera/Duracade corn in which Nevada Plaintiffs had possession and/or possessory rights.

1228. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Nevada Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1229. As a result of the trespass, these chattels were impaired as to condition, quality, or value and Nevada Plaintiffs were damaged.

1230. Nevada Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1231. In addition, Syngenta maliciously or wantonly damaged the property of Nevada Plaintiffs. Syngenta's conduct showed a complete indifference to or conscience disregard for the rights of others, including the rights of Nevada Plaintiffs. Punitive damages are thus warranted.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 107 - Private Nuisance
(On behalf of Nevada Plaintiffs)

1232. Nevada Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1233. Syngenta's actions constitute a private nuisance to Nevada Plaintiffs. By contaminating the U.S. corn supply, Syngenta has unreasonably and substantially interfered with Nevada Plaintiffs' private use and enjoyment of their land and/or property interests.

1234. Said invasion was intentional and unreasonable, or alternatively unintentional and actionable because Syngenta's conduct was negligent and/or reckless.

1235. As a direct and proximate result of Syngenta's conduct, Nevada Plaintiffs have sustained substantial injury and damage, including damaged corn and reduced corn prices, entitling them to compensatory damages and pre- and post-judgment interest.

Count 108 - Nevada Consumer Protection Act
Nev. Stat. §§ 41.600, 598.0915
(On behalf of Nevada Plaintiffs)

1236. Nevada Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1237. Nevada Plaintiffs bring this claim under Nev. Stat. §§ 41.600, 598.0915.

1238. Syngenta engaged in numerous deceptive acts or practices in the timing, scope, and terms under which it commercialized Viptera and Duracade including:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1239. Syngenta also made numerous false and deceptive representations regarding the importance of the Chinese marketing and the timing of China's approval of Viptera and/or Duracade.

1240. Syngenta made numerous misrepresentations pertaining to the status of China's import approval for MIR162. Among others, and as more fully set forth above, Syngenta during the summer of 2011, represented to stakeholders, including growers (to encourage further sales, planting, and harvesting of MIR162), that it would receive China's approval in March 2012. Syngenta continued making this misrepresentation throughout the planting and harvesting season in 2011 and into 2012. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process and its own status for MIR162 in that process, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

1241. Syngenta also submitted its MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets . . . ." Based on Syngenta's knowledge of the Chinese regulatory process, and based on its expertise and knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and for the purpose of producing sales.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1242. Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contained deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and Syngenta's knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

1243. Syngenta also failed to disclose material information to Nevada Plaintiffs. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose at minimum, in 2010-2011 that it would not have import approval from China by the 2011 crop year and in 2011-2012 that it would not have import approval from China by the 2012 crop year, and that China was a significant and growing import market. Syngenta further failed to disclose at all relevant times the insufficiency of its approval request to China, and that it sought approval to cultivate MIR162 in China, both of which Syngenta knew would cause delay in China's regulatory approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling Viptera or Duracade and the very high likelihood that MIR162 would move into export channels where it was not approved, causing market disruption.

1244. Syngenta engaged in these deceptions in order to sell and increase its sales of Viptera and/or Duracade, despite Syngenta's further knowledge that the more acres grown with

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

them, the more likely it would be that Viptera and/or Duracade would disseminate into the U.S. corn supply and Nevada Plaintiffs would be harmed.

1245. Syngenta knew that approval from China was not expected or reasonably likely to occur for (at least) the 2011 and 2012 growing seasons and knew that systems were not in place for either isolating or effective channeling Viptera and/or Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera and/or Duracade would disseminate throughout the U.S. corn supply.

1246. Syngenta knew that Nevada Plaintiffs are affected by its business and depend on it for responsible commercialization practices.

1247. Syngenta's conduct, misrepresentations, and omissions, were immoral, unethical, oppressive, or unscrupulous and possessed the tendency or capacity to mislead or create the likelihood of deception.

1248. Syngenta's deceptive practices occurred during the conduct of trade or commerce, specifically the commercialization and sale of Viptera and Duracade, affecting the people of the State of Nevada.

1249. These deceptive practices caused the injuries and damages sustained by Nevada Plaintiffs.

1250. Moreover, Syngenta's acts, practices, and misrepresentations affect the public interest. Syngenta's misrepresentations were made to a large segment of the public and its conduct vitally affects a large segment of the public, including all farmers and others in the business of selling corn and corn products, who depend on the responsible stewardship practices of developers like Syngenta when commercializing genetically engineered products.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1251. Nevada Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest, as well as costs and reasonable attorneys' fees under Nev. Stat. § 41.600.

Count 109 – Tortious Interference with Prospective Economic Advantage
(On Behalf of Nevada Plaintiffs)

1252. Nevada Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1253. Nevada Plaintiffs had business relationships and prospective contractual relationships with purchasers of corn.

1254. Syngenta had knowledge of prospective relationships and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the prospective relationships existed.

1255. Except for the conduct of Syngenta, Nevada Plaintiffs were reasonably certain to have continued the relationships and realized the expectancy of continued relationships with purchasers of corn.

1256. Syngenta induced or caused a disruption of that expectancy without justification or privilege.

1257. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass and interference with Nevada Plaintiffs' use of their property and in violation of Syngenta's duty of care.

1258. Syngenta's interference has proximately caused damage to Nevada Plaintiffs.

1259. Nevada Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1260. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Nevada Plaintiffs. Punitive damages are thus warranted.

Count 110 - Negligence
(On behalf of New Hampshire Plaintiffs)

1261. New Hampshire Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1262. Syngenta owed its stakeholders, including New Hampshire Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1263. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1264. Syngenta's negligence proximately caused harm to New Hampshire Plaintiffs, including damaged corn and reduced corn prices.

1265. New Hampshire Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 111 - Trespass to Chattels
(On behalf of New Hampshire Plaintiffs)

1266. New Hampshire Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1267. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non- Viptera/Duracade corn in which New Hampshire Plaintiffs had possession and/or possessory rights.

1268. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with New Hampshire Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1269. As a result of the trespass, these chattels were impaired as to condition, quality, or value, and New Hampshire Plaintiffs were damaged.

1270. New Hampshire Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

Count 112 - Private Nuisance
(On behalf of New Hampshire Plaintiffs)

1271. New Hampshire Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1272. Syngenta's actions constitute a private nuisance to New Hampshire Plaintiffs. By contaminating the U.S. corn supply, Syngenta has unreasonably and substantially interfered with New Hampshire Plaintiffs' private use and enjoyment of their land and/or property interests.

1273. Said invasion was intentional and unreasonable, or alternatively unintentional and actionable because Syngenta's conduct was negligent and/or reckless.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1274. As a direct and proximate result of Syngenta's conduct, New Hampshire Plaintiffs have sustained substantial injury and damage, including damage to their corn and reduced corn prices, entitling them to compensatory damages, and pre- and post-judgment interest.

Count 113 - Tortious Interference with Prospective Contractual Relations
(On behalf New Hampshire Plaintiffs)

1275. New Hampshire Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1276. New Hampshire Plaintiffs had existing and prospective business relationships and a reasonable expectancy of continued relationships with third-party purchasers of corn.

1277. Syngenta had knowledge of such relationships or expectancies and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the relationships or expectancies existed. Syngenta intended to prevent the fruition of the prospective and existing business relationships between New Hampshire Plaintiffs and the third-party purchasers of corn.

1278. Syngenta was not a party to the business relationships between New Hampshire Plaintiffs and the third-party purchasers of corn.

1279. Syngenta intentionally induced or caused a disruption of that expectancy without justification or privilege.

1280. Because of Syngenta's conduct, the existing and prospective business relationships between New Hampshire Plaintiffs and the third-party purchasers of corn did not culminate in pecuniary benefit to New Hampshire Plaintiffs.

1281. Syngenta's conduct was intentional, and was improper and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Plaintiffs' fields, storage units, equipment, grain elevators and

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

other facilities of the U.S. supply chain, constituting a trespass and interference with Plaintiffs' use of their property and in violation of Syngenta's duty of care.

1282. Syngenta's interference is the direct and proximate cause of the damage to New Hampshire Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1283. New Hampshire Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1284. Syngenta's conduct, as described above, was outrageous, and included acts done with malice or bad motives and/or evidencing reckless indifference to New Hampshire Plaintiffs' interests. Punitive damages are thus warranted.

Count 114 – New Hampshire Consumer Protection Act
N.H. Rev. Stat. § 358-A:2
(On Behalf of New Hampshire Plaintiffs)

1285. New Hampshire Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1286. The New Hampshire Consumer Sales Practices Act provides for a private right of action by any person injured by another's use of any method, act or practice declared unlawful under the Act. N. H. Rev. Stat. § 358-A:10.

1287. Unfair or deceptive acts or practices shall include, but are not limited to:

a. "Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;"

b. "Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by another;"

c. "Using deceptive representations or designations of origin in connection with goods or services;"

d. "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" and

e. "Representing that goods or services are of a particular standard, quality, grade, or that goods are of a particular style or model, if they are of another." N.H. Rev. Stat. § 358-A:2 (II, III, IV, V, VI).

1288. Syngenta breached its duty by acts and omissions, including but not limited to:

a. Statements to APHIS and the public, including stakeholders interested in the MIR162 Deregulation Petition, that deregulation of MIR162 should not cause an adverse impact upon export markets for U.S. corn, that Syngenta would communicate the stewardship requirements "using a wide ranging grower education program," and that at the time the MIR162 Deregulation Petition was submitted to APHIS, regulatory filings were in progress in China;

b. Statements to APHIS and the public that MIR162 could and would be channeled away from markets which had not yet approved MIR162;

c. Statements to the press and to investment analysts on quarterly conference calls;

d. Statements in marketing materials published on the Internet such as its "Plant With Confidence" fact sheet; and

e. Other statements indicating that approval from China for MIR162 corn was expected at a time when Syngenta knew that it was not.

1289. By deceiving Plaintiffs into believing that Viptera would be marketable to all consumers, Syngenta created a likelihood of confusion or misunderstanding that materially harmed New Hampshire Plaintiffs as a result of China's rejection of Viptera depressed the market for U.S. corn.

1290. Syngenta's acts took place in, or affected commerce in, New Hampshire.

1291. Syngenta's acts and omissions proximately caused the injuries and damages sustained by New Hampshire Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell to the Chinese market.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1292. New Hampshire Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1293. Syngenta engaged in willful, malicious, and intentionally fraudulent conduct, as well as conduct that manifested a knowing and reckless indifference towards the rights of others. Therefore, New Hampshire Plaintiffs are also entitled to an award of punitive damages.

Count 115 - Negligence
(On behalf of New Jersey Plaintiffs)

1294. New Jersey Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1295. Syngenta owed its stakeholders, including New Jersey Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1296. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1297. Syngenta's negligence proximately caused harm to New Jersey Plaintiffs.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1298. New Jersey Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1299. Syngenta had knowledge of facts or intentionally disregarded facts that created a high probability of harm to New Jersey Plaintiffs' rights, and deliberately acted in conscious or intentional disregard of that high probability of harm; alternatively, Syngenta deliberately acted with indifference to that high probability of harm. Syngenta's actions and omissions thus showed deliberate disregard for New Jersey Plaintiffs' rights. Punitive damages are thus warranted.

Count 116 - Trespass to Chattels
(On behalf of New Jersey Plaintiffs)

1300. New Jersey Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1301. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non- Viptera/Duracade corn in which New Jersey Plaintiffs had possession and/or possessory rights.

1302. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with New Jersey Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1303. As a result of the trespass, these chattels were impaired as to condition, quality, or value, and New Jersey Plaintiffs were damaged.

1304. New Jersey Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1305. Syngenta had knowledge of facts or intentionally disregarded facts that created a high probability of harm to New Jersey Plaintiffs' rights, and deliberately acted in conscious or

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

intentional disregard of that high probability of harm; alternatively, Syngenta deliberately acted with indifference to that high probability of harm. Syngenta's actions and omissions thus showed deliberate disregard for New Jersey Plaintiffs' rights. Punitive damages are thus warranted.

Count 117 - Tortious Interference
(On behalf of New Jersey Plaintiffs)

1306. New Jersey Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1307. New Jersey Plaintiffs had business relationships and a reasonable expectancy of continued relationships with third-party purchasers of corn.

1308. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

1309. Syngenta induced or caused a disruption of that expectancy without justification or privilege.

1310. Syngenta's conduct was intentional, improper and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated New Jersey Plaintiffs' fields, storage units, equipment, grain elevators, and other facilities of the U.S. supply chain, constituting a trespass and interference with New Jersey Plaintiffs' use of their property and in violation of Syngenta's duty of care.

1311. There was an absence of justification for Syngenta's conduct.

1312. Syngenta had no legitimate interest in New Jersey Plaintiffs' expectancy but alternatively, if it had such an interest, Syngenta employed wrongful means including without limitation, misrepresentations, nuisance, and trespass.

1313. As a direct and proximate result of Syngenta's conduct, New Jersey Plaintiffs were damaged.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1314. New Jersey Plaintiffs are thus entitled to an award of compensatory damages, pre- and post-judgment interest.

1315. Syngenta's conduct showed a complete indifference to or conscious disregard of the rights of others, including New Jersey Plaintiffs, and thus punitive damages are warranted.

Count 118 - Private Nuisance
(On behalf of New Jersey Plaintiffs)

1316. New Jersey Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1317. Syngenta's actions constitute a private nuisance to New Jersey Plaintiffs. By contaminating the U.S. corn supply, Syngenta has obstructed the free use of New Jersey Plaintiffs' property, thereby materially and substantially interfering with their property interests and/or comfortable enjoyment of their property.

1318. Syngenta's conduct was negligent because Syngenta knew or should have known that its conduct involved an unreasonable risk of interfering with or causing an invasion of New Jersey Plaintiffs' interest in land. Additionally, or in the alternative, Syngenta's actions were intentional and unreasonable because Syngenta knew that its invasion would result from its conduct and knew that it would substantially interfere with New Jersey Plaintiffs' comfortable enjoyment of their property and/or property interests.

1319. Syngenta's actions proximately caused damage to New Jersey Plaintiffs. New Jersey Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1320. Syngenta had knowledge of facts or intentionally disregarded facts that created a high probability of harm to the rights of New Jersey Plaintiffs and deliberately acted in conscious or intentional disregard of that high probability of harm; alternatively, Syngenta deliberately acted with indifference to that high probability of harm. Syngenta's actions and omissions thus showed

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

deliberate disregard for the rights of others, including New Jersey Plaintiffs. Punitive damages are thus warranted.

Count 119 - New Jersey Consumer Protection Act
N.J. Stat. § 56:8-1, *et seq*.
(On behalf of New Jersey Plaintiffs)

1321. New Jersey Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1322. New Jersey Plaintiffs bring this action under N.J. Stat. § 56:8-1, *et seq*.

1323. Syngenta engaged in numerous deceptive acts or practices in the timing, scope, and terms under which it commercialized Viptera and Duracade including:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products; and

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market.

1324. Syngenta also made numerous false and deceptive representations regarding the importance of the Chinese marketing and the timing of China's approval of Viptera and/or Duracade.

1325. Syngenta made numerous misrepresentations pertaining to the status of China's import approval for MIR162. Among others, and as more fully set forth above, Syngenta during the summer of 2011, represented to stakeholders, including growers (to encourage further sales, planting and harvesting of MIR162), that it would receive China's approval in March 2012.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Syngenta continued making this misrepresentation throughout the planting and harvesting season in 2011 and into 2012. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process and its own status for MIR162 in that process, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

1326. Syngenta also submitted its MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets . . . ." Based on Syngenta's knowledge of the Chinese regulatory process and based on its expertise and knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and for the purpose of producing sales.

1327. Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China and a "Plant with Confidence Fact Sheet," which contained deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and Syngenta's knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1328. Syngenta also failed to disclose material information to New Jersey Plaintiffs. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose at minimum, in 2010-2011 that it would not have import approval from China by the 2011 crop year and in 2011-2012 that it would not have import approval from China by the 2012 crop year, and that China was a significant and growing import market. Syngenta further failed to disclose at all relevant times the insufficiency of its approval request to China, and that it sought approval to cultivate MIR162 in China, both of which Syngenta knew would cause delay in China's regulatory approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling Viptera and/or Duracade and the very high likelihood that MIR162 would move into export channels where it was not approved, causing market disruption.

1329. Syngenta engaged in these deceptions in order to sell and increase its sales of Viptera and/or Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and/or Duracade would disseminate into the U.S. corn supply and New Jersey Plaintiffs would be harmed.

1330. Syngenta knew that approval from China was not expected or reasonably likely to occur for (at least) the 2011 and 2012 growing seasons and knew that systems were not in place for either isolating or effective channeling of Viptera and/or Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera and/or Duracade would disseminate throughout the U.S. corn supply.

1331. Syngenta knew that New Jersey Plaintiffs here are affected by its business and depend on it for responsible commercialization practices.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1332. Syngenta's conduct, misrepresentations, and omissions, were immoral, unethical, oppressive, or unscrupulous and possessed the tendency or capacity to mislead or create the likelihood of deception.

1333. Syngenta's unfair and deceptive practices occurred during the conduct of trade or commerce, specifically the commercialization and sale of Viptera and/or Duracade, affecting the people of the State of New Jersey.

1334. These unfair and deceptive practices caused the injuries and damages sustained by New Jersey Plaintiffs.

1335. Moreover, Syngenta's acts, practices, and misrepresentations affect the public interest. Syngenta's misrepresentations were made to a large segment of the public and its conduct vitally affects a large segment of the public, including all farmers and others in the business of selling corn and corn products, who depend on the responsible stewardship practices of developers like Syngenta when commercializing genetically engineered products.

1336. Syngenta's conduct was grossly negligent and evidenced a reckless disregard for the rights of others, including New Jersey Plaintiffs, thereby justifying punitive damages.

1337. New Jersey Plaintiffs are thus entitled to an award of compensatory damages pre- and post-judgment interest, as well as costs and reasonable attorneys' fees and punitive damage under N.J. Stat. § 56:8-19.

Count 120 - Negligence
(On Behalf of New Mexico Plaintiffs)

1338. New Mexico Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1339. Syngenta owed a duty to New Mexico Plaintiffs to use at least reasonable care in the timing, scope, and terms under which is commercialized MIR162.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1340. Syngenta breached its duties by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers in the dangers of contamination by MIR162 and at least the substantial risks that planting Viptera and/or Duracadewould lead to the loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1341. Syngenta's negligence is a direct and proximate cause of the injuries and damages sustained by New Mexico Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1342. New Mexico Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1343. Syngenta's conduct was willful, wanton, malicious, reckless, oppressive, grossly negligent, or fraudulent and in bad faith. Punitive damages therefore are warranted.

Count 121 – Trespass to Personalty
(On Behalf of New Mexico Plaintiffs)

1344. New Mexico Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1345. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

and/or Duracade into contact with non-Viptera/Duracade corn in which New Mexico Plaintiffs had possession and/or possessory rights.

1346. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with New Mexico Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1347. As a result of the trespass, New Mexico Plaintiffs' chattels/personalty was impaired as to condition, quality, or value, and these New Mexico Plaintiffs were damaged.

1348. New Mexico Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1349. Syngenta's conduct was willful, wanton, malicious, reckless, oppressive, grossly negligent, or fraudulent and in bad faith. Punitive damages therefore are warranted.

Count 122 - Tortious Interference
(On Behalf of New Mexico Plaintiffs)

1350. New Mexico Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1351. New Mexico Plaintiffs had valid business relationships with customers throughout the crop chain for export and sales to whom they sold their corn. This business relationship was recorded by contracts, invoices, receipts, and other documents demonstrating a consistent course of sales.

1352. New Mexico Plaintiffs had a reasonable expectation of economic gain as a result of these relationships and reasonably expected to continue selling corn to such customers in the future.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1353. Syngenta knew or should have known that New Mexico Plaintiffs had business relationships in the chain of crop export and sales. Syngenta knew that New Mexico Plaintiffs expected such business relationships to continue into the future.

1354. Despite such knowledge, Syngenta intentionally made representations and material omissions of fact that deceived New Mexico Plaintiffs regarding whether customers would accept Viptera and /or Duracade corn .

1355. Syngenta further interfered with these prospective business relationships by prematurely releasing Viptera and/or Duracade corn into the U.S. market knowing that it would lead to contamination of all U.S. corn shipments. This conduct prevented U.S. corn from being sold to certain export markets, including China, which had not granted approval for purchase or consumption of Viptera and/or Duracade corn.

1356. Such representations and material omissions of fact, and such knowing contamination of U.S. corn shipments, constituted improper means of interfering with New Mexico Plaintiffs' prospective business advantage.

1357. Syngenta's conduct thus prevented the export of U.S. corn to China, causing depressed prices for New Mexico Plaintiffs in the U.S. As a result, New Mexico Plaintiffs were unable to sell corn at the price they reasonably expected to receive and would have received but for Syngenta's conduct. New Mexico Plaintiffs therefore have been damaged as a result of Syngenta's interference.

1358. As a direct and proximate result of Syngenta's conduct, New Mexico Plaintiffs have been injured and have suffered financial loss in excess of $50,000, for which damages and other relief as may be available at law or equity are warranted.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1359. Syngenta's conduct was willful, wanton, malicious, reckless, oppressive, grossly negligent, or fraudulent and in bad faith. Punitive damages therefore are warranted.

Count 123 - Private Nuisance
(On Behalf of New Mexico Plaintiffs)

1360. New Mexico Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1361. Syngenta's actions constitute a private nuisance to New Mexico Plaintiffs. By contaminating the U.S. corn supply, Syngenta has obstructed the free use of the New Mexico Plaintiffs' property, thereby materially and substantially interfering with their property interests and/or private use and enjoyment of land.

1362. Syngenta's conduct was negligent because Syngenta knew or should have known that its conduct involved an unreasonable risk of interfering with or causing an invasion of the New Mexico Plaintiffs' private use and enjoyment of land. Additionally, or in the alternative, Syngenta's actions were intentional and unreasonable because Syngenta knew that its invasion would result from its conduct and knew that it would substantially interfere with New Mexico Plaintiffs' private use and enjoyment of land.

1363. Syngenta's actions proximately caused damage to New Mexico Plaintiffs. New Mexico Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1364. Syngenta's conduct was willful, wanton, malicious, reckless, oppressive, grossly negligent, or fraudulent and in bad faith. Punitive damages therefore are warranted.

Count 124 - Unfair Practices Act
N.M. Stat. § 57-12-1 et seq.
(On Behalf of New Mexico Plaintiffs)

1365. New Mexico Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1366. Under N.M. Stat. § 57-12-3, New Mexico's Unfair Practices Act prohibits "[u]nfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce."

1367. N.M. Stat. § 57-12-2(D) defines unfair or deceptive trade practices to include any false or misleading representations of any kind as well as material omissions of fact made "by a person in the regular course of the person's trade or commerce, that may, tends to or does deceive or mislead any person." Such practices specifically include: "(2) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services; (3) causing confusion or misunderstanding as to affiliation, connection or association with or certification by another; (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have [. . .]; (14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive[.]" *Id*.

1368. Syngenta engaged in unlawful practices by employing deceptive acts or practices, fraud, false pretenses, false promises, and/or misrepresentations in connection with the sale or advertisement of Viptera and/or Duracade.

1369. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving [corn farmers] and to induce them to purchase Viptera and/or Duracade.

1370. Syngenta made numerous misrepresentations pertaining to the status of China's import approval for MIR162. Among others, and as more fully set forth above, Syngenta during the summer of 2011, represented to stakeholders, including [corn farmers and others in the chain of crop export and sales] and with the goal of encouraging further sales of MIR162, that it would

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

receive China's approval in March 2012. Syngenta continued making this misrepresentation throughout the planting and harvesting season in 2011 and into 2012. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple days." Based on Syngenta's knowledge of the Chinese regulatory process and its own status within that process for MIR162, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

1371. Syngenta also submitted its MIR162 Deregulation Petition that falsely states "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets . . . ." Based on Syngenta's knowledge of the Chinese regulatory process and its expertise and knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and was for the purpose of producing sales.

1372. As described above, Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested the Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contained deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and Syngenta's knowledge of past contamination events, Syngenta knew those representations were

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

false and/or made those representations recklessly and willfully without regard to their consequences.

1373. Syngenta also failed to disclose material information to New Mexico Plaintiffs. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose, at minimum, in 2010-2011 that it would not have import approval from China by the 2012 crop year, and failed to disclose that China was a significant and growing import market. Syngenta further failed to disclose at all relevant times the insufficiency of its approval request to China and that it sought approval to cultivate MIR162 in China, both of which Syngenta knew would cause delay in China's regulatory process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) and effective system in place for isolating or channeling Viptera and/or Duracade and the very high likelihood that MIR162 would move into export channels where it was not approved, causing market disruption.

1374. As a developer of genetically modified products Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which New Mexico Plaintiffs do not have access.

1375. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling of Viptera and/or Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera and/or Duracade would disseminate throughout the U.S. corn supply.

1376. Syngenta knew that New Mexico Plaintiffs are affected by Syngenta's business and depend on Syngenta to act responsibly in commercializing new products.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1377. In equity and good conscience, Syngenta had a duty to disclose the truth: that import approval from China, a key market, was neither expected nor reasonably likely to occur for at least the 2011 and 2012 growing season, that there was not an effective system in place to channel Viptera and/or Duracade away from China or other foreign markets for which Syngenta did not have approval, and that purchase and planting Viptera and later Duracade created a substantial risk of loss of the Chinese market and/or prolonging the loss of the market.

1378. Syngenta engaged in these deceptions in order to sell and increase its sales of Viptera and/or Duracade despite Syngenta's knowledge that the greater the market penetration, the more likely it would be that Viptera and/or Duracade would disseminate into the U.S. corn supply and New Mexico Plaintiffs would be harmed.

1379. Syngenta in fact did acquire money or property by means of its unlawful practices through sales of Viptera and/or Duracade.

1380. Syngenta's conduct caused damage to New Mexico Plaintiffs.

1381. New Mexico Plaintiffs therefore are entitled to an award of compensatory damages and pre- and post-judgment interest.

1382. Because Syngenta willfully committed its unfair trade practices, New Mexico Plaintiffs are entitled to treble damages. Additionally or in the alternative, because Syngenta's conduct was willful, wanton, malicious, reckless, oppressive, grossly negligent, or fraudulent and in bad faith, punitive damages therefore are warranted.

1383. New Mexico Plaintiffs are further entitled to an award of attorneys' fees and costs.

Count 125 - Negligence
(On Behalf of New York Plaintiffs)

1384. New York Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1385. Syngenta owed a duty to New York Plaintiffs to use at least reasonable care in the timing, scope, and terms under which is commercialized MIR162.

1386. Syngenta breached its duties by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers in the dangers of contamination by MIR162 and at least the substantial risks that planting Viptera and/or Duracade would lead to the loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1387. Syngenta's negligence is a direct and proximate cause of the injuries and damages sustained by New York Plaintiffs, including but not limited to, damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1388. New York Plaintiffs are thus entitled to an award of compensatory damages, pre- and post-judgment interest.

1389. Syngenta's conduct was willful, wanton, malicious, reckless, oppressive, grossly negligent, or fraudulent and in bad faith, and with conscious disregard for the rights of others, including New York Plaintiffs. Punitive damages therefore are warranted.

Count 126 - Trespass to Chattels
(On Behalf of New York Plaintiffs)

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1390. New York Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1391. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which New York Plaintiffs had possession and/or possessory rights.

1392. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with New York Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1393. As a result of the trespass, New York Plaintiffs' chattels were impaired as to condition, quality, or value, and New York Plaintiffs were damaged.

1394. New York Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1395. Syngenta's conduct was willful, wanton, malicious, reckless, oppressive, grossly negligent, or fraudulent and in bad faith, and with conscious disregard for the rights of others, including New York Plaintiffs. Punitive damages therefore are warranted.

Count 127 - Private Nuisance
(On Behalf of New York Plaintiffs)

1396. New York Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1397. Syngenta's actions constitute a private nuisance to New York Plaintiffs. By contaminating the U.S. corn supply, Syngenta has obstructed the free use of New York Plaintiffs' property, thereby materially and substantially interfering with their property interests and/or comfortable enjoyment of their property.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1398. Syngenta's conduct was negligent because Syngenta knew or should have known that its conduct involved an unreasonable risk of interfering with or causing an invasion of New York Plaintiffs' interest in land. Additionally, or in the alternative, Syngenta's actions were intentional and unreasonable because Syngenta knew that its invasion would result from its conduct and knew that it would substantially interfere with New York Plaintiffs' comfortable enjoyment of their property and/or property interests.

1399. Syngenta's actions proximately caused damage to New York Plaintiffs. New York Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1400. Syngenta had knowledge of facts or intentionally disregarded facts that created a high probability of harm to the rights of New York Plaintiffs, and deliberately acted in conscious or intentional disregard of that high probability of harm; alternatively, Syngenta deliberately acted with indifference to that high probability of harm. Syngenta's actions and omissions thus showed deliberate disregard for the rights of others including New York Plaintiffs. Punitive damages are thus warranted.

Count 128 - Deceptive Trade Practices
(On Behalf of New York Plaintiffs)

1401. New York Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1402. Section 349 of New York's General Business Law prohibits "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in" the State of New York. N.Y. Bus. Law. § 349(a).

1403. Syngenta has willfully committed deceptive acts and practices directed toward consumers with respect to its business, trade and commerce in New York, including but not limited to:

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers in the dangers of contamination by MIR162 and at least the substantial risks that planting Viptera and/or Duracade would lead to the loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1404. A reasonable consumer would have been misled by these deceptive acts and practices.

1405. Syngenta's deceptive acts and practices took place in New York and injured New York Plaintiffs.

1406. Syngenta's deceptive acts and practices offended the public interest and injured New York Plaintiffs.

1407. Syngenta willfully engaged in the deceptive acts and practices set forth herein.

1408. New York Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest, as well as treble or other exemplary damages, and attorneys' fees and costs, under N.Y. Gen. Bus. Law § 349(h).

Count 129 - Negligence
(On Behalf of North Carolina Plaintiffs)

1409. North Carolina Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1410. Syngenta owed its stakeholders, including North Carolina Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1411. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1412. Syngenta's negligence was a direct and proximate cause of the injuries and damages sustained by North Carolina Plaintiffs.

1413. North Carolina Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1414. Syngenta acted fraudulently, maliciously, and with willful and wanton conduct with respect to the rights of North Carolina Plaintiffs. Punitive damages are thus warranted.

Count 130 - Trespass to Chattels
(On Behalf of North Carolina Plaintiffs)

1415. North Carolina Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1416. By commercializing Viptera and/or Duracade prematurely and without adequate

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

systems to isolate and channel it, Syngenta intentionally, unlawfully, and without authorization intermeddled with and brought Viptera and/or Duracade into contact with non- Viptera/Duracade corn in which North Carolina Plaintiffs had possession and/or possessory rights. This contact caused a harmful interference with the physical condition of chattels in which North Carolina Plaintiffs had possession and/or possessory rights.

1417. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with the corn of North Carolina Plaintiffs, through contamination in fields and/or in corn elevators and other modes of storage and transport.

1418. As a result of the trespass, the chattels in which North Carolina Plaintiffs had possession and/or possessory rights were impaired as to condition, quality, or value, and North Carolina Plaintiffs were damaged.

1419. North Carolina Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1420. Syngenta acted fraudulently, maliciously, and with willful and wanton conduct with respect to the rights of North Carolina Plaintiffs. Punitive damages are thus warranted.

Count 131 - Private Nuisance
(On Behalf of North Carolina Plaintiffs)

1421. North Carolina Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1422. Syngenta's actions constitute a private nuisance to North Carolina Plaintiffs. By contaminating the U.S. corn supply, Syngenta has unreasonably and substantially interfered with the quiet use and enjoyment of the land and/or property interests of North Carolina Plaintiffs.

1423. Said invasion was intentional and unreasonable. Syngenta knew of, or was substantially certain of the invasion of property rights resulting from its conduct.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1424. As a direct and proximate result of Syngenta's conduct, North Carolina Plaintiffs have sustained substantial and irreparable injury and damage, entitling them to compensatory damages as well as pre- and post-judgment interest.

1425. Syngenta acted fraudulently, maliciously, and with willful and wanton conduct with respect to the rights of North Carolina Plaintiffs. Punitive damages are thus warranted.

Count 132 - North Carolina Unfair and Deceptive Trade Practices Act
(On Behalf of North Carolina Plaintiffs)

1426. North Carolina Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1427. N.C. Gen Stat. § 75-1.1 declares that unfair or deceptive acts or practices in or affecting commerce are unlawful.

1428. A practice is unfair if it offends established public policy, immoral, unethical, oppressive, unscrupulous, or substantially injurious.

1429. N.D. Gen. Stat. § 75-16 provides that if any person or the business of any person is injured by reason of any act or thing done by another in violation of the North Carolina Unfair and Deceptive Trade Practices Act, the injured person or entity may bring a claim for damages.

1430. Syngenta has committed willful unfair trade practices by a number of acts and omissions taken to inequitably assert its power and position, including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products; and

e. Failing to adequately warn and instruct farmers on the dangers of

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to the loss of the Chinese market.

1431. Syngenta's actions offend public policy, were immoral, unethical, oppressive, unscrupulous, or substantially injurious to North Carolina Plaintiffs.

1432. Syngenta's acts took place in or effected commerce in North Carolina.

1433. Syngenta's actions and omissions proximately caused the injuries and damages sustained by North Carolina Plaintiffs.

1434. Syngenta willfully engaged in the unfair and deceptive acts and practices set forth herein.

1435. North Carolina Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest, as well as treble or other exemplary damages, attorneys' fees and costs under N.C. Gen. Stat §§ 75-16 and 75-16.1.

Count 133 - Negligence
(On Behalf of North Dakota Plaintiffs)

1436. North Dakota Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1437. Syngenta owed its stakeholders, including North Dakota Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1438. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability and/or competence to effectively isolate or channel those products;

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1439. Syngenta's negligence directly and proximately caused harm to North Dakota Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell to the Chinese market.

1440. North Dakota Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1441. Syngenta acted oppressively and maliciously. Punitive damages are thus warranted.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 134 - Trespass to Chattels
(On Behalf of North Dakota Plaintiffs)

1442. North Dakota Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1443. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non- Viptera/Duracade corn in which North Dakota Plaintiffs had possession and/or possessory rights.

1444. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with North Dakota Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1445. As a result of the trespass, these North Dakota Plaintiffs' chattels were impaired as to condition, quality or value, and North Dakota Plaintiffs were damaged.

1446. North Dakota Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1447. Syngenta acted oppressively and maliciously. Punitive damages are thus warranted.

Count 135 - Tortious Interference
(On Behalf of North Dakota Plaintiffs)

1448. North Dakota Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1449. North Dakota Plaintiffs had business relationships and a reasonable expectancy of continued relationships with purchasers of corn.

1450. Syngenta had knowledge of such business and expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that such business and

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

expectancy existed.

1451. Syngenta's conduct interfered with and disrupted that business and expectancy without justification or privilege.

1452. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated North Dakota Plaintiffs' fields, storage units, equipment, grain elevators, and other facilities of the U.S. supply chain, constituting a trespass and interference with North Dakota Plaintiffs' use of their property and in violation of Syngenta's duty of care.

1453. Syngenta's interference has proximately caused damage to North Dakota Plaintiffs.

1454. North Dakota Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1455. Syngenta acted oppressively and maliciously. Punitive damages are thus warranted.

Count 136 - Private Nuisance
(On Behalf of North Dakota Plaintiffs)

1456. North Dakota Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1457. Syngenta's actions constitute a private nuisance to North Dakota Plaintiffs.

1458. Syngenta had a duty to not act in a way that unreasonably interferes with others' use and enjoyment of their property.

1459. By contaminating the U.S. corn supply, Syngenta has substantially and unreasonably interfered with North Dakota Plaintiffs' quiet use and enjoyment of their land and/or property interests.

1460. Syngenta unlawfully acted, or omitted to perform its duty, which annoyed, injured or endangered North Dakota Plaintiffs' comfort and repose, and rendered them insecure in the use

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

of their property.

1461. Syngenta's actions proximately caused damage to North Dakota Plaintiffs.

1462. North Dakota Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1463. Syngenta acted oppressively and maliciously. Punitive damages are thus warranted.

Count 137 - North Dakota Unfair Trade Practices and Consumer Protection Law (On Behalf of North Dakota Plaintiffs)

1464. North Dakota Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1465. Under N.D. Code Ann. § 51-15-02, "[t]he act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice."

1466. Syngenta engaged in unlawful practices by employing deceptive acts or practices, fraud, false pretenses, false promises, and/or misrepresentations in connection with the sale or advertisement of Viptera and/or Duracade.

1467. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving corn farmers and induce them to purchase Viptera and Duracade.

1468. Syngenta made numerous misrepresentations pertaining to the status of China's import approval for MIR162. Among others, and as more fully set forth above, Syngenta during the summer of 2011, represented to stakeholders, including growers (to encourage further sales, planting and harvesting of MIR162), that it would receive China's approval in March 2012.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Syngenta continued making this misrepresentation throughout the planting and harvesting season in 2011 and into 2012. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process and its own status within that process for MIR162, Syngenta knew this representation was false and/or made this representation recklessly and willfully without regard to its consequences.

1469. Syngenta also submitted its MIR162 Deregulation Petition which falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets . . . ." Based on Syngenta's knowledge of the Chinese regulatory process, and based on its expertise and knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and was for the purpose of producing sales.

1470. Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contained deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

1471. Syngenta also failed to disclose material information to corn farmers. Syngenta did

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose, at minimum, in 2010-2011 that it would not have import approval from China by the 2011 crop year and in 2011-2012 that it would not have import approval from China by the 2012 crop year, and failed to disclose that China was a significant and growing import market. Syngenta further failed to disclose at all relevant times the insufficiency of its approval request to China and that it sought approval to cultivate MIR162 in China, both of which Syngenta knew would cause delay in China's regulatory approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling of Viptera and/or Duracade and the very high likelihood that MIR162 would move into export channels where it was not approved, causing market disruption.

1472. As a developer of genetically modified products, Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which North Dakota Plaintiffs do not have access.

1473. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling Viptera and/or Duracade, which was not available to North Dakota Plaintiffs.

1474. Syngenta knew that approval from China would not be forthcoming for (at least) the 2011 and 2012 growing season and knew that systems were not in place for either isolating or effectively channeling Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera nd/or Duracade would disseminate throughout the U.S. corn supply.

1475. Syngenta knew that North Dakota Plaintiffs here are affected by its business and

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

depend on it for responsible commercialization practices.

1476. In equity and good conscience, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not expected or reasonably likely to occur for (at least) the 2011 and 2012 growing seasons, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which Syngenta did not have approval, and that purchasing and planting Viptera (and later Duracade) created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

1477. Syngenta engaged in these deceptions in order to sell and increase its sales of Viptera and Duracade despite Syngenta's knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and farmers would be harmed.

1478. Syngenta in fact did acquire money or property by means of its unlawful practices through sales of Viptera and Duracade.

1479. Syngenta's conduct caused damage to North Dakota Plaintiffs.

1480. North Dakota Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1481. Because Syngenta knowingly committed its conduct, three times actual damage is also warranted, North Dakota Plaintiffs further are entitled to costs, disbursements, and reasonable attorney's fees. See N.D. Code Ann. § 51-15-09.

1482. Syngenta acted oppressively and maliciously. Punitive damages are thus warranted.

Count 138 - Negligence
(On Behalf of Ohio Plaintiffs)

1483. Ohio Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1484. Syngenta owed its stakeholders, including Ohio Plaintiffs, a duty to use at least

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1485. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1486. Syngenta's negligence proximately caused damage to Ohio Plaintiffs.

1487. Ohio Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1488. Syngenta knew or should have realized that its conduct created an unreasonable risk of harm, and that the risk was substantially greater than that which is necessary to make its conduct negligent. Syngenta acted with indifference to the consequences, when the probability that harm would result from such failure was great and such probability was known to Syngenta. Syngenta thus acted wantonly and recklessly and punitive damages are warranted.

Count 139 - Trespass to Chattels
(On Behalf of Ohio Plaintiffs)

1489. Ohio Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1490. By commercializing Viptera and/or Duracade prematurely and without adequate

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non- Viptera/Duracade corn in which Ohio Plaintiffs had possession and/or possessory rights.

1491. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Ohio Plaintiffs' corn through contamination in fields and/or grain elevators and other modes of storage and transport.

1492. As a result of the trespass, Ohio Plaintiffs' chattels were impaired as to condition, quality or value, and Ohio Plaintiffs were damaged.

1493. Ohio Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1494. Syngenta knew or should have realized that its conduct created an unreasonable risk of harm, and that the risk was substantially greater than that which is necessary to make its conduct negligent. Syngenta acted with indifference to the consequences, when the probability that harm would result from such failure was great and such probability was known to Syngenta. Syngenta thus acted wantonly and recklessly and punitive damages are warranted.

Count 140 - Qualified Nuisance
(On Behalf of Ohio Plaintiffs)

1495. Ohio Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1496. Syngenta breached its duty of care by negligently commercializing Viptera and/or Duracade, which caused injury, annoyance, and inconvenience, and endangered the comfort of Ohio Plaintiffs.

1497. Ohio Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1498. Syngenta knew or should have realized that its conduct created an unreasonable

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

risk of harm and that the risk was substantially greater than that which is necessary to make its conduct negligent. Syngenta acted with indifference to the consequences, when the probability that harm would result from such failure was great and such probability was known to Syngenta. Syngenta thus acted wantonly and recklessly and punitive damages are warranted.

Count 141 - Negligence
(On Behalf of Oklahoma Plaintiffs)

1499. Oklahoma Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1500. Syngenta owed its stakeholders, including Oklahoma Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1501. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1502. Syngenta's negligence directly and proximately caused harm to Oklahoma Plaintiffs, including damaged corn and reduced corn prices.

1503. Oklahoma Plaintiffs are thus entitled to an award of compensatory damages and

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

pre- and post-judgment interest.

1504. Syngenta acted with reckless disregard for the rights of Oklahoma Plaintiffs; or in the alternative breached its duties intentionally and with malice. Punitive damages are therefore warranted under 23 Okl. St. Ann. § 9.1.

Count 142 - Trespass to Chattels
(On Behalf of Oklahoma Plaintiffs)

1505. Oklahoma Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1506. By commercializing Viptera and Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non- Viptera/Duracade corn in which Oklahoma Plaintiffs had possession and/or possessory rights.

1507. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Oklahoma Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1508. As a result of the trespass, these Oklahoma Plaintiffs' chattels were impaired as to condition, quality, or value, and Oklahoma Plaintiffs were damaged.

1509. Oklahoma Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1510. Syngenta acted with reckless disregard for the rights of Oklahoma Plaintiffs; or in the alternative, breached its duties intentionally and with malice. Punitive damages are therefore warranted under 23 Okl. St. Ann. § 9.1.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 143 - Tortious Interference
(On Behalf of Oklahoma Plaintiffs)

1511. Oklahoma Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1512. Oklahoma Plaintiffs had business relationships and reasonable expectancy of continued relationships with purchasers of corn.

1513. Syngenta had knowledge of such business and expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that such business and expectancy existed.

1514. Syngenta's conduct interfered with and disrupted that business and expectancy without justification or privilege.

1515. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Oklahoma Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass and interference with the use of their property and in violation of Syngenta's duty of care.

1516. Syngenta's interference has proximately caused damage to Oklahoma Plaintiffs.

1517. Oklahoma Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1518. Syngenta acted with reckless disregard for the rights of Oklahoma Plaintiffs; or in the alternative, breached its duties intentionally and with malice. Punitive damages are therefore warranted under 23 Okl. St. Ann. § 9.1.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 144 - Negligence
(On Behalf of Oregon Plaintiffs)

1519. Oregon Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1520. Syngenta owed its stakeholders, including Oregon Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1521. Syngenta also owed an independent duty of care to Oregon Plaintiffs.

1522. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1523. Syngenta's negligence directly and proximately caused harm to Oregon Plaintiffs, including damaged corn and reduced corn prices.

1524. Oregon Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1525. Syngenta acted with reckless disregard for the rights of Oregon Plaintiffs; or in the alternative breached its duties intentionally and with malice. Punitive damages are therefore warranted.

Count 145 - Trespass to Chattels
(On Behalf of Oregon Plaintiffs)

1526. Oregon Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1527. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Oregon Plaintiffs had possession and/or possessory rights.

1528. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Oregon Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1529. As a result of the trespass, Oregon Plaintiffs' chattels were impaired as to condition, quality, or value, and Oregon Plaintiffs were damaged.

1530. Oregon Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1531. Syngenta acted with reckless disregard for the rights of Oregon Plaintiffs; or in the alternative, breached its duties intentionally and with malice. Punitive damages are therefore warranted.

Count 146 - Tortious Interference
(On behalf of Oregon Plaintiffs)

1532. Oregon Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1533. Oregon Plaintiffs had business relationships and reasonable expectancy of continued relationships with purchasers of corn.

1534. Syngenta also owed an independent duty of care to Oregon Plaintiffs.

1535. Syngenta had knowledge of such business and expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that such business and expectancy existed.

1536. Syngenta's conduct interfered with and disrupted that business and expectancy without justification or privilege.

1537. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Oregon Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass and interference with the use of their property and in violation of Syngenta's duty of care.

1538. Syngenta's interference has proximately caused damage to Oregon Plaintiffs.

1539. Oregon Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1540. Syngenta acted with reckless disregard for the rights of Oregon Plaintiffs; or in the alternative, breached its duties intentionally and with malice. Punitive damages are therefore warranted.

Count 147 - Private Nuisance
(On Behalf of Oregon Plaintiffs)

1541. Oregon Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1542. Under Or. Rev. Stat. § 30.930(2) a "'nuisance' or 'trespass' includes but is not limited to actions or claims based on noise, vibration, odors, smoke, dust, mist from irrigation, use of pesticides and use of crop production substances."

1543. Or. Rev. Stat. §§ 30.936(2)(a)-(b), 30.937(2)(a)-(b) allows for a private right of actions for (a) damage to commercial agriculture products, and (b) death or serious physical injury.

1544. Syngenta's actions constitute a private nuisance to Oregon Plaintiffs to their commercial agricultural products by contaminating the U.S. corn supply, Syngenta has substantially and unreasonably interfered with Oregon Plaintiffs' quiet use and enjoyment of their land and/or property interests.

1545. Syngenta's actions proximately caused damage to Oregon Plaintiffs.

1546. Oregon Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1547. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Oregon Plaintiffs. Punitive damages are thus warranted.

Count 148 - Negligence
(On Behalf of Pennsylvania Plaintiffs)

1548. Pennsylvania Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1549. Syngenta owed its stakeholders, including Pennsylvania Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1550. Syngenta also owed an independent duty of care to Pennsylvania Plaintiffs.

1551. Syngenta breached its duty by acts and omissions including but not limited to:

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1552. Syngenta's negligence directly and proximately caused harm to Pennsylvania Plaintiffs, including damaged corn and reduced corn prices.

1553. Pennsylvania Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1554. Syngenta acted with reckless disregard for the rights of Pennsylvania Plaintiffs; or in the alternative breached its duties intentionally and with malice. Punitive damages are therefore warranted.

Count 149 - Trespass to Chattels
(On behalf of Pennsylvania Plaintiffs)

1555. Pennsylvania Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1556. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

and/or Duracade into contact with non-Viptera/Duracade corn in which Pennsylvania Plaintiffs had possession and/or possessory rights.

1557. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Pennsylvania Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1558. As a result of the trespass, these plaintiffs' chattels were impaired as to condition, quality, or value, and Pennsylvania Plaintiffs were damaged.

1559. Pennsylvania Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1560. Syngenta acted with reckless disregard for the rights of Pennsylvania Plaintiffs; or in the alternative breached its duties intentionally and with malice. Punitive damages are therefore warranted.

Count 150 - Tortious Interference
(On Behalf of Pennsylvania Plaintiffs)

1561. Pennsylvania Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1562. Pennsylvania Plaintiffs had business relationships and reasonable expectancy of continued relationships with purchasers of corn.

1563. Syngenta also owed an independent duty of care to Pennsylvania Plaintiffs.

1564. Syngenta had knowledge of such business and expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that such business and expectancy existed.

1565. Syngenta's conduct interfered with and disrupted that business and expectancy without justification or privilege.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1566. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Pennsylvania Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass and interference with the use of their property and in violation of Syngenta's duty of care.

1567. Syngenta's interference has proximately caused damage to Pennsylvania Plaintiffs.

1568. Pennsylvania Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1569. Syngenta acted with reckless disregard for the rights of Pennsylvania Plaintiffs; or in the alternative, breached its duties intentionally and with malice. Punitive damages are therefore warranted.

Count 151 - Private Nuisance
(On Behalf of Pennsylvania Plaintiffs)

1570. Pennsylvania Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1571. Syngenta's actions constitute a private nuisance to Pennsylvania Plaintiffs contaminating the U.S. corn supply, Syngenta has substantially and unreasonably interfered with Pennsylvania Plaintiffs' quiet use and enjoyment of their land and/or property interests.

1572. Syngenta's actions were intentional and caused significant harm to Pennsylvania Plaintiffs.

1573. Syngenta's actions proximately caused damage to Pennsylvania Plaintiffs.

1574. Pennsylvania Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1575. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Pennsylvania Plaintiffs. Punitive damages are thus warranted.

Count 152 - Unfair Trade Practices and Consumer Protection Law
73 P.S. § 201-1
(On Behalf of Pennsylvania Plaintiffs)

1576. Pennsylvania Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1577. Pursuant to the Unfair Trade and Consumer Protection Law ("UTPCPL") "unfair or deceptive acts or practices" include:

a. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

b. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

c. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; …

1578. The UTPCPL provides for a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful."

1579. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving corn farmers and to induce corn farmers to purchase Viptera and/or Duracade.

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1580. Syngenta made numerous misrepresentations pertaining to the status of China's import approval for MIR162. Among others, and as more fully set forth above, Syngenta during the summer of 2011, represented to stakeholders, including growers (to encourage further sales, planting and harvesting of MIR162), that it would receive China's approval in March 2012.

1581. Syngenta continued making this misrepresentation throughout the planting and harvesting season in 2011 and into 2012. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process and its own status within that process for MIR162, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to its consequences.

1582. Syngenta also submitted its MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets . . . ." Based on Syngenta's knowledge of the Chinese regulatory process and its knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and for the purpose of producing sales.

1583. Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contained deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and its

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

1584. Syngenta also failed to disclose material information to corn farmers. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose, at minimum, in 2010-2011 that it would not have import approval from China by the 2011 crop year and in 2011-2012 that it would not have import approval from China by the 2012 crop year, and failed to disclose that China was a significant and growing import market. Syngenta further failed to disclose at all relevant times the insufficiency of its approval request to China and that it sought approval cultivate MIR162 in China, both of which Syngenta knew would cause delay in China's approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling of Viptera or Duracade and the very high likelihood that MIR162 would move into export channels where it was not approved, causing market disruption.

1585. Syngenta's failure to disclose material information and false and misleading representations and omissions occurred in the course of its business and caused damage to a large portion of the public, including thousands of corn farmers. Those corn farmers lack the sophistication and bargaining power in matters concerning genetically modified products.

1586. As a developer of genetically modified products, Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which Pennsylvania Plaintiffs do not have access.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1587. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling of its genetically modified products, including Viptera and Duracade, which was not available to Pennsylvania Plaintiffs.

1588. Syngenta knew that approval from China would not be forthcoming for (at least) the 2011 and 2012 growing seasons, and knew that systems were not in place for either isolating or effectively channeling Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would disseminate throughout the U.S. corn supply.

1589. Syngenta engaged in these deceptions in order to sell and increase its sales of Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and Pennsylvania Plaintiffs would be harmed.

1590. Syngenta knew that farmers like Pennsylvania Plaintiffs are affected by its business and depend on it for responsible commercialization practices.

1591. In equity and good conscience, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not expected or reasonably likely to occur for (at least) the 2011 and 2012 growing seasons, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which Syngenta did not have approval, and that purchasing and planting Viptera (and later Duracade) created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

1592. Syngenta's deceptive trade practices have impacted Pennsylvania Plaintiffs, as well as corn farmers other than Pennsylvania Plaintiffs, including corn farmers who purchased and planted Viptera and/or Duracade.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1593. Syngenta's deceptive trade practices have previously impacted actual or potential consumers of its products through the loss of the export market of China. Syngenta's deceptive practices have the potential to cause further disruption to the corn export market in the future.

1594. Syngenta's deceptive trade practices constitute a violation of the UTPCPL. Pennsylvania Plaintiffs were injured in the course of their business or occupation as the result of Syngenta's deceptive trade practices.

1595. Syngenta's deceptive trade practices were fraudulent, willful, knowing, or intentional and taken in bad faith.

1596. Syngenta's deceptive trade practices proximately caused an injury in fact to a legally protected interest belonging to Pennsylvania Plaintiffs.

1597. Pennsylvania Plaintiffs are thus entitled to damages three times the actual damages sustained, plus their attorney's fees and costs incurred in this action.

1598. Syngenta acted with fraud, malice, and wanton and reckless disregard of the rights of Pennsylvania Plaintiffs. Punitive damages are therefore warranted.

Count 153 - Negligence
(On Behalf of Rhode Island Plaintiffs)

1599. Rhode Island Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1600. Syngenta owed its stakeholders, including Rhode Island Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1601. Syngenta also owed an independent duty of care to Rhode Island Plaintiffs.

1602. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1603. Syngenta's negligence directly and proximately caused harm to Rhode Island Plaintiffs, including damaged corn and reduced corn prices.

1604. Rhode Island Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1605. Syngenta acted with reckless disregard for the rights of Rhode Island Plaintiffs; or in the alternative, breached its duties intentionally and with malice. Punitive damages are therefore warranted.

Count 154 - Trespass to Chattels
(On behalf of Rhode Island Plaintiffs)

1606. Rhode Island Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1607. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Rhode Island Plaintiffs had possession and/or possessory rights.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1608. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Rhode Island Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1609. As a result of the trespass, Rhode Island Plaintiffs' chattels were impaired as to condition, quality, or value, and Rhode Island Plaintiffs were damaged.

1610. Rhode Island Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1611. Syngenta acted with reckless disregard for the rights of Rhode Island Plaintiffs; or in the alternative, breached its duties intentionally and with malice. Punitive damages are therefore warranted.

Count 155 - Tortious Interference
(On behalf of Rhode Island Plaintiffs)

1612. Rhode Island Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1613. Rhode Island Plaintiffs had business relationships and reasonable expectancy of continued relationships with purchasers of corn.

1614. Syngenta also owed an independent duty of care to Rhode Island Plaintiffs.

1615. Syngenta had knowledge of such business and expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that such business and expectancy existed.

1616. Syngenta's conduct interfered with and disrupted that business and expectancy without justification or privilege.

1617. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

intentional, and contaminated Rhode Island Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass and interference with the use of their property and in violation of Syngenta's duty of care.

1618. Syngenta's interference has proximately caused damage to Rhode Island Plaintiffs.

1619. Rhode Island Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1620. Syngenta acted with reckless disregard for the rights of Rhode Island Plaintiffs; or in the alternative, breached its duties intentionally and with malice. Punitive damages are therefore warranted.

Count 156 - Deceptive Trade Practices
R.I. Gen. Laws Ann. tit. 6, Ch. 13.1, *et seq*.
(On Behalf of Rhode Island Producer Plaintiffs)

1621. Rhode Island Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1622. Under the Deceptive Trade Practices Act "unfair methods of competition and unfair or deceptive acts or practices" include:

a. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

b. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have; and

c. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

1623. The DTPA provides a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful."

1624. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving corn farmers and to induce corn farmers to purchase Viptera and/or Duracade.

1625. Syngenta made numerous misrepresentations pertaining to the status of China's import approval for MIR162. Among others, and as more fully set forth above, Syngenta during the summer of 2011, represented to stakeholders, including growers (to encourage further sales, planting and harvesting of MIR162), that it would receive China's approval in March 2012.

1626. Syngenta continued making this misrepresentation throughout the planting and harvesting season in 2011 and into 2012. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process, and its own status within that process for MIR162, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to its consequences.

1627. Syngenta also submitted a MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets...." Based on Syngenta's knowledge of the Chinese regulatory process and knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and for the purpose of producing sales.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1628. Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contained deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and its knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

1629. Syngenta also failed to disclose material information to corn farmers. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose, at minimum, in 2010-2011 that it would not have import approval from China by the 2011 crop year and in 2011-2012 that it would not have import approval from China by the 2012 crop year, and failed to disclose that China was a significant and growing import market. Syngenta further failed to disclose at all relevant times the insufficiency of its approval request to China and that it sought approval to cultivate MIR162 in China, both of which Syngenta knew would cause delay in China's approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling Viptera and/or Duracade and the very high likelihood that MIR162 would move into export channels where it was not approved, causing market disruption.

1630. Syngenta's failure to disclose material information and false and misleading representations and omissions occurred in the course of its business and caused damage to a large portion of the public, including Rhode Island Plaintiffs. Rhode Island Plaintiffs lack the sophistication and bargaining power in matters concerning genetically modified products.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1631. As a developer of genetically modified products, Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which Rhode Island Plaintiffs do not have access.

1632. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling its genetically modified products, including Viptera and Duracade, which was not available to Rhode Island Plaintiffs.

1633. Syngenta knew that approval from China would not be forthcoming for (at least) the 2011 and 2012 growing seasons and knew that systems were not in place for either isolation or effectively channeling Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would disseminate throughout the U.S. corn supply.

1634. Syngenta engaged in these deceptions in order to sell and increase its sales of Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and farmers would be harmed.

1635. Syngenta knew that Rhode Island Plaintiffs are affected by its business and depend on it for responsible commercialization practices.

1636. In equity and good conscience, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not expected or reasonably likely to occur for (at least) the 2011 and 2012 growing seasons, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which Syngenta did not have approval, and that purchasing and planting Viptera (and later Duracade) created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1637. Syngenta's deceptive trade practices have impacted Rhode Island Plaintiffs, as well as other corn farmers outside of Rhode Island Plaintiffs, including corn farmers who purchased and planted Viptera and/or Duracade.

1638. Syngenta's deceptive trade practices have previously impacted actual or potential consumers of its products through the loss of the export market of China. Syngenta's deceptive practices have the significant potential to cause further disruption to the corn export market in the future.

1639. Syngenta's deceptive trade practices constitute a violation of the DTPA. Rhode Island Plaintiffs were injured in the course of their business or occupation as the result of Syngenta's deceptive trade practices.

1640. Syngenta's deceptive trade practices were fraudulent, willful, knowing, or intentional and taken in bad faith.

1641. Syngenta's deceptive trade practices proximately caused an injury in fact to a legally protected interest belonging to Rhode Island Plaintiffs.

1642. Rhode Island Plaintiffs are thus entitled to damages three times the actual damages sustained, plus their attorney's fees and costs incurred in this action.

1643. Syngenta acted with fraud, malice, and wanton and reckless disregard of the rights of Rhode Island Plaintiffs. Punitive damages are therefore warranted.

Count 157 - Negligence
(On Behalf of South Carolina Plaintiffs)

1644. South Carolina Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1645. Syngenta owed its stakeholders, including South Carolina Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1646. Syngenta also owed an independent duty of care to South Carolina Plaintiffs.

1647. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1648. Syngenta's negligence directly and proximately caused harm to South Carolina Plaintiffs. Those damages include but are not limited to damaged corn and reduced corn prices based on the inability to sell corn to the Chinese market.

1649. South Carolina Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1650. Syngenta acted with reckless disregard for the rights of South Carolina Plaintiffs; or in the alternative, breached its duties intentionally and with malice. Punitive damages are therefore warranted.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 158 - Trespass to Chattels
(On behalf of South Carolina Plaintiffs)

1651. South Carolina Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1652. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which South Carolina Plaintiffs had possession and/or possessory rights.

1653. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with South Carolina Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1654. As a result of the trespass, South Carolina Plaintiffs' chattels were impaired as to condition, quality, or value, and South Carolina Plaintiffs were damaged.

1655. South Carolina Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1656. Syngenta acted with reckless disregard for the rights of South Carolina Plaintiffs; or in the alternative, breached its duties intentionally and with malice. Punitive damages are therefore warranted.

Count 159 - Tortious Interference
(On behalf of South Carolina Plaintiffs)

1657. South Carolina Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1658. South Carolina Plaintiffs had business relationships and reasonable expectancy of continued relationships with purchasers of corn.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1659. Syngenta also owed an independent duty of care to South Carolina Plaintiffs.

1660. Syngenta had knowledge of such business and expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that such business and expectancy existed.

1661. Syngenta's conduct interfered with and disrupted that business and expectancy without justification or privilege.

1662. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact and contaminated Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass and interference with these Plaintiffs' use of their property and in violation of Syngenta's duty of care.

1663. Syngenta's interference has proximately caused damage to South Carolina Plaintiffs.

1664. South Carolina Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1665. Syngenta acted with reckless disregard for the rights of South Carolina Plaintiffs; or in the alternative, breached its duties intentionally and with malice. Punitive damages are therefore warranted.

Count 160 - Private Nuisance
(On Behalf of South Carolina Plaintiffs)

1666. South Carolina Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1667. Syngenta's actions constitute a private nuisance to South Carolina Plaintiffs contaminating the U.S. corn supply. Syngenta has substantially and unreasonably interfered with South Carolina Plaintiffs' quiet use and enjoyment of their land and/or property interests.

1668. Syngenta's actions were intentional and caused significant harm to South Carolina Plaintiffs.

1669. Syngenta's actions proximately caused damage to South Carolina Plaintiffs.

1670. South Carolina Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1671. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including South Carolina Plaintiffs. Punitive damages are thus warranted.

Count 161 - Unfair Trade Practices
S.C. Code Ann. § 39-5-10, *et seq*.
(On Behalf of South Carolina Plaintiffs)

1672. South Carolina Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1673. Under the Unfair Trade Practices Act "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

1674. The UTPA provides a private cause of action for "Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by § 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages."

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1675. Syngenta knowingly and recklessly made numerous false and deceptive representations with the intent of deceiving South Carolina Plaintiffs and to induce Producers and Non-Producers to purchase Viptera and/or Duracade seed and corn.

1676. Syngenta made numerous misrepresentations pertaining to the status of China's import approval for MIR162. Among others, and as more fully set forth above, Syngenta during the summer of 2011, represented to stakeholders, including growers (to encourage further sales, planting and harvesting of MIR162), that it would receive China's approval in March 2012.

1677. Syngenta continued making this misrepresentation throughout the planting and harvesting season in 2011 and into 2012. On April 18, 2012, Syngenta's Chief Executive Officer, Michael Mack, stated that he expected China to approve Viptera "quite frankly within the matter of a couple of days." Based on Syngenta's knowledge of the Chinese regulatory process and its own status within that process for MIR162, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to its consequences.

1678. Syngenta also submitted a MIR162 Deregulation Petition that falsely stated "there should be no effects on the U.S. maize export markets," that Syngenta's regulatory filings were in process in China, and Syngenta's Stewardship Agreements requiring channeling would be "successful" in "diverting this product away from export markets . . . ." Based on Syngenta's knowledge of the Chinese regulatory process and knowledge of past contamination events, Syngenta knew these representations were false and/or made the representations recklessly and willfully without regard to their consequences. The MIR162 Deregulation Petition was circulated to the public before commercialization and for the purpose of producing sales.

1679. Syngenta also distributed misleading written advertisements and promotional materials to the public for the purpose of inducing sales, including a "Request for Bio-Safety

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Certificates," which suggested that Viptera could be exported to China, and a "Plant with Confidence Fact Sheet," which contains deceptive statements regarding the importance of China as an export market. Based on Syngenta's knowledge of the Chinese regulatory process and its knowledge of past contamination events, Syngenta knew these representations were false and/or made these representations recklessly and willfully without regard to their consequences.

1680. Syngenta also failed to disclose material information to corn farmers. Syngenta did not disclose the threat of contamination and the attendant threat to the export market posed by Viptera and/or Duracade. Syngenta also failed to disclose, at minimum, in 2010-2011 that it would not have import approval from China by the 2011 crop year and in 2011-2012 that it would not have import approval from China by the 2012 crop year, and failed to disclose that China was a significant and growing import market. Syngenta further failed to disclose at all relevant times the insufficiency of its approval request to China and that it sought approval to cultivate MIR162 in China, both of which Syngenta knew would cause delay in China's approval process for MIR162. Syngenta also failed to disclose, and suppressed and concealed, that there was not (and would not be) an effective system in place for isolating or channeling Viptera or Duracade and the very high likelihood that MIR162 would move into export channels where it was not approved, causing market disruption.

1681. Syngenta's failure to disclose material information and false and misleading representations and omissions occurred in the course of its business and caused damage to a large portion of the public, including South Carolina Plaintiffs. South Carolina Plaintiffs lack the sophistication and bargaining power in matters concerning genetically modified products.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1682. As a developer of genetically modified products, Syngenta has special knowledge of regulatory matters and facts pertaining to the content and status of its application for foreign approvals to which South Carolina Plaintiffs do not have access.

1683. Syngenta also has special knowledge regarding the systems it did and did not institute for isolating and channeling of its genetically modified products, including Viptera and Duracade, which was not available to South Carolina Plaintiffs.

1684. Syngenta knew that approval from China would not be forthcoming for (at least) the 2011 and 2012 growing seasons, and knew that systems were not in place for either isolating or effectively channeling Viptera and Duracade and that absent robust isolation practices and effective channeling, it was virtually certain that Viptera or Duracade would disseminate throughout the U.S. corn supply.

1685. Syngenta engaged in these deceptions in order to sell and increase its sales of Viptera and Duracade, despite Syngenta's further knowledge that the more acres grown with them, the more likely it would be that Viptera and Duracade would disseminate into the U.S. corn supply and South Carolina Plaintiffs would be harmed.

1686. Syngenta knew that South Carolina Plaintiffs are affected by its business and depend on it for responsible commercialization practices.

1687. In equity and good conscience, Syngenta had a duty to disclose the truth – that import approval from China (a key market) was not expected or reasonably likely to occur for (at least) the 2011 and 2012 growing seasons, that there was not an effective system in place to channel Viptera and Duracade away from China (or other foreign markets) from which Syngenta did not have approval, and that purchasing and planting Viptera (and later Duracade) created a substantial risk of loss of the Chinese market and/or prolonging the loss of that market.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1688. Syngenta's deceptive trade practices have impacted South Carolina Plaintiffs, as well as other corn farmers outside of South Carolina Plaintiffs, including corn farmers who purchased and planted Viptera and/or Duracade.

1689. Syngenta's deceptive trade practices have previously impacted actual or potential consumers of its products through the loss of the export market of China. Syngenta's deceptive practices have the significant potential to cause further disruption to the corn export market in the future.

1690. Syngenta's deceptive trade practices constitute a violation of the UTPA. South Carolina Plaintiffs were injured in the course of their business or occupation as the result of Syngenta's deceptive trade practices.

1691. Syngenta's deceptive trade practices were fraudulent, willful, knowing, or intentional and taken in bad faith.

1692. Syngenta's deceptive trade practices proximately caused an injury in fact to a legally protected interest belonging to South Carolina Plaintiffs.

1693. The public has an interest in ensuring that the deceptive trade practices by Syngenta are not repeated in the future.

1694. South Carolina Plaintiffs thus entitled to damages three times the actual damages sustained, plus their attorney's fees and costs incurred in this action.

1695. Syngenta acted with fraud, malice, and wanton and reckless disregard of the rights of South Carolina Plaintiffs. Punitive damages are therefore warranted.

Count 162 - Negligence
(On Behalf of South Dakota Plaintiffs)

1696. South Dakota Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1697. Syngenta owed its stakeholders, including South Dakota Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1698. Syngenta breached that duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1699. Syngenta's negligence proximately caused harm to South Dakota Plaintiffs, including damaged corn and reduced corn prices.

1700. South Dakota Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1701. Syngenta's conduct was willful and wanton and indicated a reckless disregard for the rights of South Dakota Plaintiffs. Punitive damages are thus warranted.

Count 163 - Trespass to Chattels
(On Behalf of South Dakota Plaintiffs)

1702. South Dakota Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1703. By commercializing Viptera and Duracade prematurely and without adequate

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which South Dakota Plaintiffs had possession and/or possessory rights.

1704. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with South Dakota Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1705. As a result of the trespass, South Dakota Plaintiffs' chattels were impaired as to condition, quality, or value, and South Dakota Plaintiffs were damaged.

1706. South Dakota Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1707. Syngenta's conduct was willful and wanton and indicated a reckless disregard for the rights of South Dakota Plaintiffs. Punitive damages are thus warranted.

Count 164 - Consumer Protection Act
S.D.C.L. § 37-24-1, *et seq.*
(On Behalf of South Dakota Plaintiffs)

1708. South Dakota Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1709. The South Dakota Deceptive Trade Practices and Consumer Protection Act provides a private right of action for damages by any person who claims to have been adversely affected by any act or practice declared to be unlawful by S.D.C.L. § 37-24-6. S.D.C.L. § 37-24-31.

1710. The Act declares unlawful certain conduct deemed to be a "deceptive act or practice," including but not limited to:

> Knowingly act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby.

S.D.C.L. § 37-24-6(1).

1711. Syngenta breached its duty by acts and omissions, including but not limited to:

a. Statements to APHIS and the public, including stakeholders interested in the MIR162 Deregulation Petition, that deregulation of MIR162 should not cause an adverse impact upon export markets for U.S. corn, that Syngenta would communicate the stewardship requirements "using a wide ranging grower education program," and that at the time the MIR162 Deregulation Petition was submitted to APHIS, regulatory filings were in progress in China;

b. Statements to APHIS and the public that MIR162 could and would be channeled away from markets which had not yet approved MIR162;

c. Statements to the press and to investment analysts on quarterly conference calls;

d. Statements in marketing materials published on the Internet such as its "Plant With Confidence" fact sheet; and

e. Other statements indicating that approval from China for MIR162 corn was expected at a time when Syngenta knew that it was not.

1712. By deceiving South Dakota Plaintiffs into believing that Viptera would be marketable to all consumers, Syngenta created a likelihood of confusion or misunderstanding that materially harmed South Dakota Plaintiffs as a result of China's rejection of Viptera depressed the market for U.S. corn.

1713. Syngenta's acts took place in, or affected commerce in, South Dakota.

1714. Syngenta's acts and omissions proximately caused the injuries and damages sustained by South Dakota Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell corn to the Chinese market.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1715. South Dakota Plaintiffs are entitled to an aware of compensatory damages and pre- and post-judgment interest.

1716. Syngenta engaged in conduct involving oppression, fraud, or malice, as well as conduct that manifested a knowing and reckless indifference towards the rights of others, thus entitling South Dakota Plaintiffs to an award of punitive damages under S.D.C.L. § 21-3-2.

Count 165 - Tortious Interference
(On Behalf of South Dakota Plaintiffs)

1717. South Dakota Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1718. To establish a claim for tortious interference with business relationships or expectancy under South Dakota law, a plaintiff must prove (1) the existence of a valid business relationship or expectancy; (2) knowledge by the interferer of the relationship or expectancy; (3) an intentional and unjustified act of interference on the part of the interferer; (4) proof that the interference caused the harm sustained; and (5) damage to the party whose relationship or expectancy was disrupted. *Tibke v. McDougall,* 479 N.W.2d 898, 908 (S.D. 1992).

1719. South Dakota Plaintiffs had valid business relationships or expectancies with purchasers of corn, and expectancies that those business relationships and purchases would continue without interference.

1720. Syngenta had knowledge of the business relationships and expectancies that South Dakota Plaintiffs had with purchasers of corn.

1721. Syngenta acted intentionally or without justification through material misrepresentations and omissions of material facts concerning the marketability of its Viptera and/or Duracade corn products, and by prematurely marketing those products leading to the contamination of fields, storage units, equipment, grain elevators owned and/or operated by South

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Dakota Plaintiffs as well as other facilities in the U.S. supply chain.

1722. Syngenta's acts took place in, or affected commerce in, South Dakota.

1723. This interference by Syngenta proximately caused substantial harm to South Dakota Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell to the Chinese market.

1724. South Dakota Plaintiffs are entitled to an aware of compensatory damages and pre- and post-judgment interest.

1725. Syngenta engaged in conduct involving oppression, fraud, or malice, as well as conduct that manifested a knowing and reckless indifference towards the rights of others, thus entitling South Dakota Plaintiffs to an award of punitive damages under S.D.C.L. § 21-3-2.

Count 166 - Consumer Protection Act
S.D.C.L. § 37-24-1 *et seq.*
(On Behalf of South Dakota Plaintiffs)

1726. South Dakota Plaintiffs incorporate paragraphs 1-299 as if set forth herein.

1727. The South Dakota Deceptive Trade Practices and Consumer Protection Act provides a private right of action for damages by any person who claims to have been adversely affected by any act or practice declared to be unlawful by S.D.C.L. § 37-24-6. S.D.C.L. § 37-24-31.

1728. The Act declares unlawful certain conduct deemed to be a "deceptive act or practice," including but not limited to:

> Knowingly act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby.

S.D.C.L. § 37-24-6(1).

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1729. Syngenta breached its duty by acts and omissions, including but not limited to:

a. Statements to APHIS and the public, including stakeholders interested in the MIR162 Deregulation Petition, that deregulation of MIR162 should not cause an adverse impact upon export markets for U.S. corn, that Syngenta would communicate the stewardship requirements "using a wide ranging grower education program," and that at the time the MIR162 Deregulation Petition was submitted to APHIS, regulatory filings were in progress in China;

b. Statements to APHIS and the public that MIR162 could and would be channeled away from markets which had not yet approved MIR162;

c. Statements to the press and to investment analysts on quarterly conference calls;

d. Statements in marketing materials published on the Internet such as its "Plant With Confidence" fact sheet; and

e. Other statements indicating that approval from China for MIR162 corn was expected at a time when Syngenta knew that it was not.

1730. By deceiving South Dakota Plaintiffs into believing that Viptera would be marketable to all consumers, Syngenta created a likelihood of confusion or misunderstanding that materially harmed South Dakota Plaintiffs as a result of China's rejection of Viptera depressed the market for U.S. corn.

1731. Syngenta's acts took place in, or affected commerce in, South Dakota.

1732. Syngenta's actions and omissions proximately caused the injuries and damages sustained by South Dakota Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell corn to the Chinese market.

1733. Syngenta engaged in conduct involving oppression, fraud, or malice, as well as conduct that manifested a knowing and reckless indifference towards the rights of others, thus entitling South Dakota Plaintiffs to an award of punitive damages under S.D.C.L. § 21-3-2.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 167 - Tortious Interference
(On Behalf of South Dakota Plaintiffs)

1734. South Dakota Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1735. To establish a claim for tortious interference with business relationships or expectancy under South Dakota law, a plaintiff must prove (1) the existence of a valid business relationship or expectancy; (2) knowledge by the interferer of the relationship or expectancy; (3) an intentional and unjustified act of interference on the part of the interferer; (4) proof that the interference caused the harm sustained; and (5) damage to the party whose relationship or expectancy was disrupted.

1736. South Dakota Plaintiffs had valid business relationships or expectancies with purchasers of corn and expectancies that those business relationships and purchases would continue without interference.

1737. Syngenta had knowledge of the business relationships and expectancies that South Dakota Plaintiffs had with purchasers of corn.

1738. Syngenta acted intentionally or without justification through material misrepresentations and omissions of material facts concerning the marketability of its Viptera and Duracade corn products, and by prematurely marketing those products leading to the contamination of South Dakota Plaintiffs' fields, storage units, equipment, grain elevators as well as other facilities in the U.S. supply chain.

1739. Syngenta's acts took place in, or affected commerce in, South Dakota.

1740. This interference by Syngenta proximately caused substantial harm to South Dakota Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell to the Chinese market.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1741. Syngenta engaged in conduct involving oppression, fraud, or malice, as well as conduct that manifested a knowing and reckless indifference towards the rights of others, thus entitling the South Dakota Plaintiffs to an award of punitive damages under S.D.C.L. § 21-3-2.

Count 168 - Private Nuisance
(On Behalf of South Dakota Plaintiffs)

1742. South Dakota Plaintiffs incorporate by reference Paragraphs 1-299 as if set forth herein.

1743. Syngenta's actions constituted a private nuisance to South Dakota Plaintiffs. By contaminating the U.S. corn supply, Syngenta has unreasonably and substantially interfered with the quiet enjoyment of South Dakota Plaintiffs' land and/or property interests.

1744. Syngenta's conduct constitutes interference that was negligent. Syngenta knew or should have known that its conduct involved an unreasonable risk of interfering with or causing an invasion of South Dakota Plaintiffs' land and/or interest in land. Additionally, or in the alternative, Syngenta's actions were intentional and unreasonable because Syngenta knew that its invasion would result from its conduct, and knew that it would substantially interfere with South Dakota Plaintiffs' private use and enjoyment of their land and/or property interests.

1745. Syngenta's actions proximately caused damage to South Dakota Plaintiffs.

1746. Syngenta's conduct included acts and omissions involving oppression, fraud, or malice, as well as conduct that manifested a knowing and reckless indifference towards the rights of others, thus entitling South Dakota Plaintiffs to an award of punitive damages under S.D.C.L. § 21-3-2.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 169 - Negligence
(On Behalf of Tennessee Plaintiffs)

1747. Tennessee Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1748. Syngenta owed a duty of at least reasonable care to its stakeholders, including Tennessee Plaintiffs, in the timing, scope, and terms under which it commercialized MIR162.

1749. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and /or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1750. Syngenta's negligence is a direct and proximate cause of the injuries and damages sustained by Tennessee Plaintiffs, including damaged corn and reduced corn.

1751. Tennessee Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1752. Syngenta acted maliciously, intentionally, or recklessly in disregard of the rights of Tennessee Plaintiffs. Punitive damages are therefore warranted under T.C.A. § 29- 39-104.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 170 - Trespass to Chattels
(On Behalf of Tennessee Plaintiffs)

1753. Tennessee Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1754. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Tennessee Plaintiffs had possession and/or possessory rights.

1755. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Tennessee Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1756. As a result of the trespass, Tennessee Plaintiffs' chattels were impaired as to condition, quality, or value, and they were damaged.

1757. Tennessee Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1758. Syngenta acted maliciously, intentionally, or recklessly in disregard of the rights of Tennessee Plaintiffs. Punitive damages are therefore warranted under T.C.A. § 29-39-104.

Count 171 - Tortious Interference
(On Behalf of Tennessee Plaintiffs)

1759. Tennessee Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1760. Tennessee Plaintiffs had business relationships and a reasonable expectancy of continued relationships with purchasers of corn.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1761. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

1762. Syngenta induced or caused a disruption of that expectancy without justification or privilege.

1763. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was intentional, and contaminated Tennessee Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass and interference with the use of their property and in violation of Syngenta's duty of care.

1764. Syngenta's interference has proximately caused damage to Tennessee Plaintiffs.

1765. Tennessee Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1766. Syngenta acted maliciously, intentionally, or recklessly in disregard of the rights of Tennessee Plaintiffs. Punitive damages are therefore warranted under T.C.A. § 29- 39-104.

Count 172 - Private Nuisance
(On Behalf of Tennessee Plaintiffs)

1767. Tennessee Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1768. Syngenta's actions constitute a private nuisance to Tennessee Plaintiffs. By contaminating the U.S. corn supply, Syngenta has substantially and unreasonably disturbed the free use of their property.

1769. Syngenta's actions proximately caused damage to Tennessee Plaintiffs.

1770. Tennessee Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1771. Syngenta acted maliciously, intentionally, or recklessly in disregard of the rights of Tennessee Plaintiffs. Punitive damages are therefore warranted under T.C.A. § 29-39-104.

Count 173 – Tennessee Consumer Protection Act
T.C.A. § 47-18-104
(On Behalf of Tennessee Plaintiffs)

1772. Tennessee Plaintiffs incorporate paragraphs 1-299 as if set forth herein.

1773. The Tennessee Consumer Protection Act provides for a private right of action by any person injured by another's use of any method, act or practice declared unlawful under the Act. T.C.A. § 47-18-109.

1774. Unfair or deceptive acts or practices shall include, but are not limited to:

a. "Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;"

b. "Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by another;"

c. "Using deceptive representations or designations of origin in connection with goods or services;"

d. "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" and

e. "Representing that goods or services are of a particular standard, quality, grade, or that goods are of a particular style or model, if they are of another." T.C.A. § 47-18-104 (2-5)(7).

1775. Syngenta breached its duty by acts and omissions, including but not limited to:

a. Statements to APHIS and the public, including stakeholders interested in the MIR162 Deregulation Petition, that deregulation of MIR162 should not cause an adverse impact upon export markets for U.S. corn, that Syngenta would communicate the stewardship requirements "using a wide ranging grower education program," and that at the time the MIR162 Deregulation Petition was submitted to APHIS, regulatory filings were in progress in China;

b. Statements to APHIS and the public that MIR162 could and would be

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

channeled away from markets which had not yet approved MIR162;

c. Statements to the press and to investment analysts on quarterly conference calls;

d. Statements in marketing materials published on the Internet such as its "Plant With Confidence" fact sheet; and

e. Other statements indicating that approval from China for MIR162 corn was expected at a time when Syngenta knew that it was not.

1776. By deceiving Tennessee Plaintiffs into believing that Viptera would be marketable to all consumers, Syngenta created a likelihood of confusion or misunderstanding that materially harmed Tennessee Plaintiffs as a result of China's rejection of Viptera depressed the market for U.S. corn.

1777. Syngenta's acts took place in, or affected commerce in, Tennessee.

1778. Syngenta's acts and omissions proximately caused the injuries and damages sustained by Tennessee Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell to the Chinese market.

1779. Tennessee Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1780. Syngenta engaged in willful, malicious, and intentionally fraudulent conduct, as well as conduct that manifested a knowing and reckless indifference towards the rights of others. Therefore, Tennessee Plaintiffs are also entitled to an award of punitive damages.

Count 174 - Negligence
(On Behalf of Texas Plaintiffs)

1781. Texas Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1782. Syngenta owed a duty of at least reasonable care to its stakeholders, including Texas Plaintiffs, in the timing, scope, and terms under which it commercialized MIR162.

1783. Syngenta breached its duty by acts and omissions including but not limited to:

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and /or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1784. Syngenta's negligence proximately caused harm to Texas Plaintiffs, including but not limited to damaged corn and reduced corn prices.

1785. Texas Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1786. Syngenta's actions and omissions, when viewed objectively from Syngenta's viewpoint at the time of the actions and omissions, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Syngenta had actual, subjective awareness of the risk, but proceeded with a conscious disregard for the rights, safety, or welfare of others. Punitive damages are thus warranted.

Count 175 - Trespass to Chattels
(On Behalf of Texas Plaintiffs)

1787. Texas Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1788. Syngenta intentionally interfered with property belonging to Texas Plaintiffs by commercializing Viptera and Duracade prematurely and without adequate systems to isolate and

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

channel it, and thus bringing Viptera and Duracade into contact with non-Viptera/Duracade corn in which Texas Plaintiffs had possession and/or possessory rights.

1789. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Texas Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1790. As a result of the trespass, Texas Plaintiffs' chattels were damaged.

1791. Texas Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1792. Syngenta's actions and omissions, when viewed objectively from Syngenta's viewpoint at the time of the actions and omissions, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Syngenta had actual, subjective awareness of the risk, but proceeded with a conscious disregard for the rights, safety, or welfare of others. Punitive damages are therefore warranted.

Count 176 - Tortious Interference
(On Behalf of Texas Plaintiffs)

1793. Texas Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1794. Texas Plaintiffs had business relationships and a reasonable expectancy of continued relationships with purchasers of corn.

1795. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

1796. Syngenta induced or caused a disruption of that expectancy without justification or privilege.

1797. Syngenta's conduct was intentional, improper, and wrongful because, among other things, it was accomplished with misrepresentations and omissions of material fact, was

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

intentional, and contaminated Plaintiffs' fields, storage units, equipment, grain elevators and other facilities of the U.S. supply chain, constituting a trespass and interference with Plaintiffs' use of their property and in violation of Syngenta's duty of care.

1798. Syngenta's interference has proximately caused damage to exas Plaintiffs.

1799. Texas Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

Syngenta's actions and omissions, when viewed objectively from Syngenta's viewpoint at the time of the actions and omissions, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Syngenta had actual, subjective awareness of the risk, but proceeded with a conscious disregard for the right, safety or welfare of others. Punitive damages are therefore warranted.

Count 177 - Private Nuisance
(On Behalf of Texas Plaintiffs)

1800. Texas Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1801. Syngenta's actions constituted a private nuisance to Texas Plaintiffs. By contaminating the U.S. corn supply, Syngenta has unreasonably and substantially interfered with the quiet enjoyment of Texas Plaintiffs' land and/or property interests.

1802. Syngenta's conduct constitutes interference that was negligent. Syngenta knew or should have known that its conduct involved an unreasonable risk of interfering with or causing an invasion of Texas Plaintiffs' land and/or interest in land. Additionally, or in the alternative, Syngenta's actions were intentional and unreasonable because Syngenta knew that its invasion would result from its conduct and knew that it would substantially interfere with Texas Plaintiffs' private use and enjoyment of their land and/or property interests.

1803. Syngenta's actions proximately caused damage to Texas Plaintiffs.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1804. Texas Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1805. Syngenta's actions and omissions, when viewed objectively from Syngenta's viewpoint at the time of the actions and omissions, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Syngenta had actual, subjective awareness of the risk, but proceeded with a conscious disregard for the rights, safety, or welfare of others. Punitive damages are therefore warranted.

Count 178 – Texas Deceptive Trade Practices-Consumer Protection Act V.T.C.A. § 17.41 (On Behalf of Texas Plaintiffs)

1806. Texas Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1807. The Deceptive Trade Practices-Consumer Protection Act provides for a private right of action by any person injured by another's use of any method, act or practice declared unlawful under the Act. V.T.C.A. § 17-50.

1808. Unfair or deceptive acts or practices shall include, but are not limited to:

a. "Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;"

b. "Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by another;"

c. "Using deceptive representations or designations of origin in connection with goods or services;"

d. "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" and

e. "Representing that goods or services are of a particular standard, quality, grade, or that goods are of a particular style or model, if they are of another." V.T.C.A. § 17-46 (b).

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1809. Syngenta breached its duty by acts and omissions, including but not limited to:

a. Statements to APHIS and the public, including stakeholders interested in the MIR162 Deregulation Petition, that deregulation of MIR162 should not cause an adverse impact upon expert markets for U.S. corn, that Syngenta would communicate the stewardship requirements "using a wide ranging grower education program," and that at the time the MIR162 Deregulation Petition was submitted to APHIS, regulatory filings were in progress in China;

b. Statements to APHIS and the public that MIR162 could and would be channeled away from markets which had not yet approved MIR162;

c. Statements to the press and to investment analysts on quarterly conference calls;

d. Through statements in marketing materials published in the Internet such as its "Plant With Confidence" fact sheet; and

e. Through other statements indicating that approval from China for MIR162 corn was expected at a time when Syngenta knew that it was not.

1810. By deceiving Plaintiffs into believing that Viptera would be marketable to all consumers, Syngenta created a likelihood of confusion or misunderstanding that materially harmed Texas Plaintiffs as a result of China's rejection of Viptera depressed the market for U.S. corn.

1811. Syngenta's acts took place in, or affected commerce in, Texas.

1812. Syngenta's acts and omissions proximately caused the injuries and damages sustained by Texas Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell to the Chinese market.

1813. Texas Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1814. Syngenta engaged in willful, malicious, and intentionally fraudulent conduct, as well as conduct that manifested a knowing and reckless indifference towards the rights of others.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Therefore, Texas Plaintiffs are also entitled to an award of punitive damages.

Count 179 - Negligence
(On Behalf of Utah Plaintiffs)

1815. Utah Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1816. Syngenta owed its stakeholders, including Utah Plaintiffs, a duty to use reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1817. Syngenta breached its duty by acts and omissions, including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to the loss of the Chinese market.

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1818. Syngenta's acts took place in, or affected commerce in, Utah.

1819. Syngenta's actions and omissions proximately caused the injuries and damages sustained by Utah Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices.

1820. Utah Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1821. Syngenta engaged in willful, malicious, and intentionally fraudulent conduct, as well as conduct that manifested a knowing and reckless indifference towards the rights of others. Therefore, Utah Plaintiffs are also entitled to an award of punitive damages under Utah Code Ann. § 78B-8-201.

Count 180 - Trespass to Chattels
(On Behalf of Utah Plaintiffs)

1822. Utah Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1823. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Utah Plaintiffs had possession or possessory rights.

1824. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Utah Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes or storage and transport.

1825. As a result of the trespass, Utah Plaintiffs' corn was impaired as to its condition, quality, and/or value.

1826. Syngenta's acts took place in, or affected commerce in, Utah.

1827. Syngenta's actions and omissions proximately caused the injuries and damages sustained by Utah Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices.

1828. Utah Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1829. Syngenta engaged in willful, malicious, and intentionally fraudulent conduct, as well as conduct that manifested a knowing and reckless indifference towards the rights of others.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Therefore, Utah Plaintiffs are also entitled to an award of punitive damages under Utah Code Ann. § 78B-8-201.

Count 181 - Tortious Interference
(On Behalf of Utah Plaintiffs)

1830. Utah Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1831. Utah Plaintiffs had business relationships with purchasers of corn and an expectancy that those business relationships and purchases would continue.

1832. Syngenta acted intentionally through material misrepresentations and omissions of material facts and by contaminating the fields, storage units, equipment, grain elevators owned and/or operated by Utah Plaintiffs, as well as other facilities in the U.S. supply chain.

1833. This interference by Syngenta proximately caused substantial harm to Utah Plaintiffs by inducing or causing a disruption of their business expectancy without justification or privilege.

1834. Syngenta's acts took place in, or affected commerce in, Utah.

1835. Utah Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1836. Syngenta engaged in willful, malicious, and intentionally fraudulent conduct, as well as conduct that manifested a knowing and reckless indifference towards the rights of others. Therefore, Utah Plaintiffs are also entitled to an award of punitive damages under Utah Code Ann. § 78B-8-201.

Count 182 - Private Nuisance
(On Behalf of Utah Plaintiffs)

1837. Utah Plaintiffs incorporates by reference paragraphs 1-299 as if set forth herein.

1838. Syngenta's actions have contaminated the corn crop in Utah and throughout the U.S., thereby reducing the market for Utah corn.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1839. Syngenta's contamination of the corn crop constitutes a substantial and unreasonable interference with the private use and enjoyment of the land owned or possessed by Utah Plaintiffs.

1840. Syngenta's acts took place in, or affected commerce in, Utah. Syngenta's actions and omissions proximately caused the injuries and damages sustained by Utah Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell to the Chinese market.

1841. Utah Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1842. Syngenta engaged in willful, malicious, and intentionally fraudulent conduct, as well as conduct that manifested a knowing and reckless indifference towards the rights of others. Therefore, Utah Plaintiffs are also entitled to an award of punitive damages under Utah Code Ann. § 78B-8-201.

Count 183 - Utah Consumer Protection Act, § 13-11-1, *et al*.
(On Behalf of Utah Plaintiffs)

1843. Utah Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1844. The Utah Consumer Sales Practices Act provides a private right of action by any consumer who "suffers loss as a result of a violation" of the Act. Utah Code Ann. § 13-11-19.

1845. The Act states that any "deceptive acts or practices by a supplier" as well as any "unconscionable acts or practices by a supplier" violate the Act. *Id*. § 13-11-4.

1846. The list of prohibited practices include, among others:

a. Indicating that the subject of a consumer transaction has sponsorship, approval, performance characteristics, uses or benefits, if it does not;

b. Indicating that the subject of a consumer transaction is of a particular standard, quality, grade, style, model, if it is not;

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

c. Indicating that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not;

d. Indicating that the supplier has a sponsorship, approval, or affiliation the supplier does not have; and

e. Engaging in any unconscionable act or practice in connection with a consumer transaction, as determined as a question of law by a court.

Utah Code Ann. § 13-11-4 (2)(a), (2)(b), (2)(e), (2)(i); § 13-11-5(1)-(2).

1847. Syngenta breached its duty by acts and omissions, including but not limited to:

a. Statements to APHIS and the public, including stakeholders interested in the MIR162 Deregulation Petition, that deregulation of MIR162 should not cause an adverse impact upon export markets for U.S. corn, that Syngenta would communicate the stewardship requirements "using a wide ranging grower education program," and that at the time the MIR162 Deregulation Petition was submitted to APHIS, regulatory filings were in progress in China;

b. Statements to APHIS and the public that MIR162 could and would be channeled away from markets which had not yet approved MIR162;

c. Statements to the press and to investment analysts on quarterly conference calls;

d. Statements in marketing materials published on the Internet such as its "Plant With Confidence" fact sheet; and

e. Other statements indicating that approval from China for MIR162 corn was expected at a time when Syngenta knew that it was not.

1848. By deceiving Utah Plaintiffs into believing that Viptera would be marketable to all consumers, Syngenta created a likelihood of confusion or misunderstanding that materially harmed Utah Plaintiffs as a result of China's rejection of MIR162 depressed the market for U.S. corn.

1849. Syngenta's acts took place in, or affected commerce in, Utah.

1850. Syngenta's acts and omissions proximately caused the injuries and damages sustained by Utah Plaintiffs. These damages include but are not limited to damaged corn and reduced corn prices based on the inability to sell to the Chinese market.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1851. Utah Plaintiffs are entitled to compensatory damages and pre-judgment and post-judgment interest.

1852. Syngenta engaged in willful, malicious, and intentionally fraudulent conduct, as well as conduct that manifested a knowing and reckless indifference towards the rights of others. Therefore, Utah Plaintiffs are also entitled to an award of punitive damages under Utah Code Ann. § 78B-8-201.

Count 184 - Negligence
(On Behalf of Vermont Plaintiffs)

1853. Vermont Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1854. Syngenta owed its stakeholders, including Vermont Plaintiffs, a duty to use reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1855. Syngenta breached its duty by acts and omissions, including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to the loss of the Chinese market.

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1856. Syngenta's acts took place in, or affected commerce in, Vermont.

1857. Syngenta's acts and omissions proximately caused the injuries and damages

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

sustained by Vermont Plaintiffs. These damages include but are not limited to damaged corn and reduced corn prices based on the inability to sell corn to the Chinese market.

1858. Vermont Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1859. Syngenta's conduct was wrongful, reprehensible, completed with malice, and in reckless disregard for the rights of others. Vermont Plaintiffs are thus entitled to an award of punitive damages under Vermont law. *See Fly Fish Vermont, Inc. v. Chapin Hill Estates, Inc.*, 2010 VT 33, ¶ 18, 187 Vt. 541, 548, 996 A.2d 1167, 1173 (2010).

Count 185 - Trespass to Chattels
(On Behalf of Vermont Plaintiffs)

1860. Vermont Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1861. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Vermont Plaintiffs had possession or possessory rights.

1862. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Vermont Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes or storage and transport.

1863. As a result of the trespass, Vermont Plaintiffs' corn was impaired as to its condition, quality, and/or value.

1864. Syngenta's acts took place in, or affected commerce in, Vermont.

1865. Syngenta's acts and omissions proximately caused the injuries and damages sustained by Vermont Plaintiffs. These damages include but are not limited to damaged corn and reduced corn prices based on the inability to sell to the Chinese market.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1866. Vermont Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1867. Syngenta's conduct was wrongful, reprehensible, completed with malice, and in reckless disregard for the rights of others, which supports an award of punitive damages under Vermont law. *See Fly Fish Vermont, Inc.*, 996 A.2d at 1173.

Count 186 - Tortious Interference
(On Behalf of Vermont Plaintiffs)

1868. Vermont Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1869. Vermont Plaintiffs had business relationships with purchasers of corn and an expectancy that those business relationships and purchases would continue.

1870. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

1871. Syngenta induced or caused a disruption of that expectancy without justification or privilege and thereby proximately caused substantial harm to Vermont Plaintiffs.

1872. Syngenta acted intentionally through material misrepresentations and omissions of material facts and by contaminating the fields, storage units, equipment, grain elevators owned and/or operated by Vermont Plaintiffs, as well as other facilities in the U.S. supply chain.

1873. Syngenta's acts took place in, or affected commerce in, Vermont.

1874. Vermont Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1875. Syngenta's conduct was wrongful, reprehensible, completed with malice, and in reckless disregard for the rights of others, which supports an award of punitive damages under Vermont law. *See Fly Fish Vermont, Inc.*, 996 A.2d at 1173.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 187 - Private Nuisance
(On Behalf of Vermont Plaintiffs)

1876. Vermont Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1877. Syngenta's actions have contaminated the corn crop in Vermont and throughout the U.S., thereby reducing the market for Vermont corn.

1878. Syngenta's contamination of the corn crop constitutes a substantial and unreasonable interference with the private use and enjoyment of the land owned or possessed by Vermont Plaintiffs.

1879. Syngenta's acts took place in, or affected commerce in, Vermont.

1880. Syngenta's acts and omissions proximately caused the injuries and damages sustained by Vermont Plaintiffs. These damages include but are not limited to damaged corn and reduced corn prices based on the inability to sell to the Chinese market.

1881. Vermont Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1882. Syngenta's conduct was wrongful, reprehensible, completed with malice, and in reckless disregard for the rights of others, which supports an award of punitive damages under Vermont law. *See Fly Fish Vermont, Inc.*, 996 A.2d at 1173.

Count 188 - Vermont Consumer Fraud Act
Vt. Stat. Ann. tit. 9, § 2451 *et seq.*
(On Behalf of Vermont Plaintiffs)

1883. Vermont Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1884. The Vermont Consumer Fraud Act provides a private right of action by any consumer who purchases or leases goods or services and is harmed by a practice that is declared unlawful by the Act. Vt. Stat. Ann. tit. 9, § 2461(b).

1885. The Act states that "unfair or deceptive acts or practices in commerce, are hereby

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

declared unlawful" as interpreted according to Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45. *Id.* § 2453.

1886. Whether conduct is "unfair" under the Act is determined by a number of factors, including "(1) whether the act offends public policy, (2) whether it is immoral, unethical, oppressive or unscrupulous, and (3) whether it causes substantial injury to consumers." *Drake v. Allergan, Inc.*, 63 F. Supp. 3d 382, 393 (D. Vt. 2014).

1887. To establish a "deceptive practice" under the Act, "(1) there must be a representation, omission, or practice likely to mislead consumers; (2) the consumer must be interpreting the message reasonably under the circumstances; and (3) the misleading effects must be material, that is, likely to affect the consumer's conduct or decision regarding the product." *Madowitz v. Woods at Killington Owners' Ass'n, Inc.*, 2014 VT 21, ¶ 23, 196 Vt. 47, 57, 93 A.3d 571, 579 (2014).

1888. Syngenta breached its duty by acts and omissions, including but not limited to:

a. Statements to APHIS and the public, including stakeholders interested in the MIR162 Deregulation Petition, that deregulation of MIR162 should not cause an adverse impact upon export markets for U.S. corn, that Syngenta would communicate the stewardship requirements "using a wide ranging grower education program," and that at the time the MIR162 Deregulation Petition was submitted to APHIS, regulatory filings were in progress in China;

b. Statements to APHIS and the public that MIR162 could and would be channeled away from markets which had not yet approved MIR162;

c. Statements to the press and to investment analysts on quarterly conference calls;

d. Statements in marketing materials published on the Internet such as its "Plant With Confidence" fact sheet; and

e. Other statements indicating that approval from China for MIR162 was expected at a time when Syngenta knew that it was not.

1889. By deceiving Vermont corn farmers into believing that thViptera would be

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

marketable to all consumers, Syngenta created a likelihood of confusion or misunderstanding that materially harmed Vermont Plaintiffs as a result of China's rejection of Viptera depressed the market for U.S. corn.

1890. Syngenta's acts took place in, or affected commerce in, Vermont.

1891. Syngenta's acts and omissions proximately caused the injuries and damages sustained by Vermont Plaintiffs. These damages include but are not limited to damaged corn and reduced corn prices based on the inability to sell corn to the Chinese market.

1892. Vermont Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1893. Syngenta's conduct was wrongful, reprehensible, completed with malice, and in reckless disregard for the rights of others, which supports an award of punitive damages under Vermont law. *See Fly Fish Vermont, Inc.*, 996 A.2d at 1173.

Count 189 - Negligence
(On Behalf of Virginia Plaintiffs)

1894. Virginia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1895. Syngenta owed its stakeholders, including Virginia Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1896. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1897. Syngenta's negligence directly and proximately caused harm to Virginia Plaintiffs. These damages include but are not limited to damaged corn and reduced corn prices based on the inability to sell corn to the Chinese market.

1898. Virginia Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1899. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Virginia Plaintiffs, and was aware that harm would likely or probably result. Punitive damages are thus warranted.

Count 190 – Trespass to Chattels
(On Behalf of Virginia Plaintiffs)

1900. Virginia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1901. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Virginia Plaintiffs had possession and/or possessory rights.

1902. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Virginia Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1903. As a result of the trespass, Virginia Plaintiffs' corn was impaired as to condition, quality, or value.

1904. Syngenta's actions took place, or affected commerce, in Virginia.

1905. Syngenta's acts and omissions proximately caused damage to Virginia Plaintiffs. These damages include but are not limited to damaged corn and reduced corn prices based on the inability to sell to the Chinese market.

1906. Virginia Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1907. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Virginia Plaintiffs. Punitive damages are thus warranted.

Count 191 – Tortious Interference
(On Behalf of Virginia Plaintiffs)

1908. Virginia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1909. Virginia Plaintiffs had business relationships with purchasers of corn and a reasonable expectancy that those relationships would continue.

1910. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

1911. Syngenta induced or caused a disruption of that expectancy without justification or privilege.

1912. Syngenta's conduct was intentional and improper because, among other things, it was accomplished with misrepresentations and omissions of material fact and contaminated fields, storage units, equipment, grain elevators and other facilities in the U.S. supply chain.

1913. Syngenta's acts took place, or affected commerce, in Virginia.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1914. Syngenta's interference has proximately caused damage to Virginia Plaintiffs. These damages include but are not limited to damaged corn and reduced corn prices based on the inability to sell to the Chinese market.

1915. Virginia Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1916. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Virginia Plaintiffs. Punitive damages are thus warranted.

Count 192 – Private Nuisance
(On Behalf of Virginia Plaintiffs)

1917. Virginia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1918. Syngenta's actions have contaminated the corn crop in Virginia and throughout the U.S., thereby reducing the market for Virginia corn.

1919. Syngenta's contamination of the corn crop constitutes a substantial and unreasonable interference with the private use and enjoyment of the land and/or property owned or possessed by Virginia Plaintiffs.

1920. Syngenta's actions and omissions proximately caused the injuries and damages sustained by Virginia Plaintiffs.

1921. Virginia Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1922. Syngenta acted with gross fraud, malice, oppression, or with wanton, willful, or reckless conduct, or with criminal indifference to civil obligations affecting the rights of the Plaintiffs. Therefore, Virginia Plaintiffs are also entitled to an award of punitive damages.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 193 – Virginia Consumer Protection Act
Va. Code Ann. § 59.1-196 *et seq*.
(On Behalf of Virginia Plaintiffs)

1923. Virginia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1924. The Virginia Consumer Protection Act provides for a private cause of action by any person who suffers loss as the result of a violation of the Act. Va. Code Ann. § 59.1-204(A).

1925. The Act states that certain "fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful," including among other things:

- Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
- Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model; and
- Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.

Va. Code Ann. § 59.1-200(A)(2), (5), (6), and (14).

1926. Syngenta committed a number of such fraudulent acts or practices, including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1927. By deceiving Virginia corn farmers into believing that Viptera and/or Duracade would be marketable to all consumers, Syngenta created a likelihood of confusion or misunderstanding that materially harmed Virginia corn farmers as a result of China's rejection of Viptera depressed the market for U.S. corn.

1928. Syngenta's acts took place in, or affected commerce in, Virginia.

1929. Syngenta's acts and omissions proximately caused the injuries and damages sustained by Virginia Plaintiffs. These damages include but are not limited to damaged corn and reduced corn prices based on the inability to sell to the Chinese market.

1930. Virginia Plaintiffs are entitled to an award of compensatory damages and pre- and post-judgment interest, as well as treble damages because Syngenta's violation of the Act was willful. Va. Code Ann. § 59.1-204(A).

1931. Virginia Plaintiffs are also entitled to attorney's fees and costs under Va. Code Ann. § 59.1-204(B).

1932. Syngenta acted with gross fraud, malice, oppression, or with wanton, willful, or reckless conduct, or with criminal indifference to civil obligations affecting the rights of Plaintiffs. Therefore, Virginia Plaintiffs are also entitled to an award of punitive damages.

Count 194 – Negligence
(On Behalf of Washington Plaintiffs)

1933. Washington Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1934. Syngenta owed its stakeholders, including Washington Plaintiffs, a duty to use at least reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1935. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1936. Syngenta's negligence directly and proximately caused harm to Washington Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1937. Washington Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1938. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others including Washington Plaintiffs and was aware that harm would likely or probably result. Punitive damages are thus warranted.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 195 – Trespass to Chattels
(On Behalf of Washington Plaintiffs)

1939. Washington Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1940. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Washington Plaintiffs had possession and/or possessory rights.

1941. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Washington Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

1942. As a result of the trespass, Washington plaintiffs' corn was impaired as to condition, quality, or value.

1943. Washington Plaintiffs are thus entitled to compensatory damages and pre- and post-judgment interest.

1944. Syngenta's acts and omissions proximately caused damage to Washington Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell to the Chinese market.

1945. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Washington Plaintiffs. Punitive damages are thus warranted.

Count 196 - Tortious Interference
(On Behalf of Washington Plaintiffs)

1946. Washington Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1947. Washington Plaintiffs had business relationships with purchasers of corn and a reasonable expectancy that those relationships would continue.

1948. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

1949. Syngenta induced or caused a disruption of that expectancy without justification or privilege.

1950. Syngenta's conduct was intentional and improper because, among other things, it was accomplished with misrepresentations and omissions of material fact and contaminated Plaintiffs' fields, storage units, equipment, grain elevators and other facilities in the U.S. supply chain.

1951. Syngenta's acts took place, or affected commerce, in Washington.

1952. Syngenta's interference has proximately caused damage to Washington Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell to the Chinese market.

1953. Washington Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

1954. Syngenta acted consciously or deliberately with oppression, fraud, wantonness, and malice. Syngenta acted and failed to act with conscious disregard for the rights of others, including Washington Plaintiffs. Punitive damages are thus warranted.

Count 197 – Private Nuisance
(On Behalf of Washington Plaintiffs)

1955. Washington Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1956. Syngenta's actions, as described above, have contaminated the corn crop in

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Washington and throughout the U.S., thereby reducing the market for Washington corncorn.

1957. Syngenta's contamination of the U.S. corn crop constitutes a substantial and unreasonable interference with Washington Plaintiffs' private use and enjoyment of their land and/or property.

1958. Syngenta's acts and omissions proximately caused the injuries and damages sustained by Washington Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell corn to the Chinese market.

1959. Washington Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1960. Syngenta acted with gross fraud, malice, oppression, or with wanton, willful, or reckless conduct, or with criminal indifference to civil obligations affecting the rights of Washington Plaintiffs. Therefore, Washington Plaintiffs are also entitled to an award of punitive damages.

Count 198 – Washington Consumer Protection Act
Wa. Rev. Code § 19.86.010 *et seq*.
(On Behalf of Washington Plaintiffs)

1961. Washington Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1962. The Washington Consumer Protection Act provides a private cause of action by any person who is injured in his or her business or property by a violation of § 19.86.020 of the Act. Wash. Rev. Code § 19.86.090.

1963. Section 19.86.020 of the Act states that "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

27-CV-15-3785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1964. Syngenta engaged in numerous unfair methods or competition and unfair and deceptive acts or practices in the timing, scope and terms under which it commercialized Viptera and Duracade, including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risk that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

1965. Syngenta's unfair practices and conduct was directed toward consumers of Viptera and Duracade as well as other corn Producers and Non-Producers. Syngenta intended consumers of Viptera and Duracade as well as other corn Producers and Non-ProducersProducers to rely on its acts and practices in commercializing and selling Viptera and Duracade as being done in a manner that would avoid negatively impacting corn expert markets.

1966. Syngenta's unfair practices and conduct had the capacity to injure, and did injure, consumers of Viptera and Duracade as well as other corn Producers and Non-ProducersProducers, including Washington Plaintiffs.

1967. Syngenta's acts took place in, or affected commerce in, Washington.

1968. Syngenta's actions and omissions proximately caused the injuries and damages

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

sustained by Washington Plaintiffs.

1969. Washington Plaintiffs are entitled to an award of compensatory damages, attorney's fees, costs, and treble damages as provided by Wash. Rev. Code § 19.86.090. Washington Plaintiffs' are also entitled to pre- and post-judgment interest.

1970. Syngenta acted with gross fraud, malice, oppression, or with wanton, willful, or reckless conduct, or with criminal indifference to civil obligations affecting the rights of the Plaintiffs. Therefore, Washington Plaintiffs are entitled to an award of punitive damages.

Count 199 – Negligence
(On Behalf of West Virginia Plaintiffs)

1971. West Virginia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1972. Syngenta owed its stakeholders, including West Virginia Plaintiffs, a duty to use reasonable care in the timing, scope, and terms under which it commercialized MIR162.

1973. Syngenta breached its duty by acts and omissions, including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to the loss of the Chinese market.

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

approval of Viptera and/or Duracade.

1974. Syngenta's acts took place in, or affected commerce in, West Virginia.

1975. Syngenta's acts and omissions proximately caused the injuries and damages sustained by West Virginia Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell corn to the Chinese market.

1976. Because Syngenta acted in illegal restraint of trade, West Virginia Plaintiffs are entitled to an award of compensatory damages, treble damages, attorney's fees, filing fees, and other costs of the action under W. Va. Code § 47-18-9.

1977. West Virginia Plaintiffs are further entitled to pre- and post-judgment interest.

1978. Syngenta acted with gross fraud, malice, oppression, or with wanton, willful, or reckless conduct, or with criminal indifference to civil obligations affecting the rights of the Plaintiffs. Therefore, West Virginia Plaintiffs are also entitled to an award of punitive damages. *See Mayer v. Frobe*, 40 W. Va. 246, 22 S.E. 58, 59 (1895).

Count 200 – Trespass to Chattels
(On Behalf of West Virginia Plaintiffs)

1979. West Virginia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1980. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn and storage facilities in which West Virginia Plaintiffs had possession or possessory rights.

1981. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with West Virginia Plaintiffs' corn and facilities through contamination in fields and/or in grain elevators and other modes or storage and transport.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

1982. As a result of the trespass, West Virginia Plaintiffs' corn was impaired as to its condition, quality, and/or value.

1983. Syngenta's acts took place in, or affected commerce in, West Virginia.

1984. Syngenta's actions and omissions proximately caused the injuries and damages sustained by West Virginia Plaintiffs. These damages include but are not limited to damaged corn and reduced corn prices based on the inability to sell to the Chinese market.

1985. West Virginia Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

1986. Syngenta acted with gross fraud, malice, oppression, or with wanton, willful, or reckless conduct, or with criminal indifference to civil obligations affecting the rights of the Plaintiffs. Therefore, West Virginia Plaintiffs are also entitled to an award of punitive damages. *See Mayer*, 22 S.E. at 59.

Count 201 – Tortious Interference
(On Behalf of West Virginia Plaintiffs)

1987. West Virginia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1988. West Virginia Plaintiffs had business relationships with purchasers of corn, and an expectancy that those business relationships and purchases would continue.

1989. Syngenta acted intentionally through material misrepresentations and omissions of material facts, and by contaminating the fields, storage units, equipment, grain elevators owned and/or operated by West Virginia Plaintiffs, as well as other facilities in the U.S. supply chain.

1990. Syngenta's acts took place in, or affected commerce in, West Virginia.

1991. This interference by Syngenta proximately caused substantial harm to West Virginia Plaintiffs. These damages include but are not limited to damaged corn product and

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

reduced corn prices based on the inability to sell to the Chinese market.

1992. Because SyngentaSyngenta acted in illegal restraint of trade, West Virginia Plaintiffs are entitled to an award of compensatory damages, treble damages, attorney's fees, filing fees, and other costs of the action, pursuant to W. Va. Code § 47-18-9.

1993. West Virginia Plaintiffs are further entitled to pre- and post-judgment interest.

1994. Syngenta acted with gross fraud, malice, oppression, or with wanton, willful, or reckless conduct, or with criminal indifference to civil obligations affecting the rights of the Plaintiffs. Therefore, West Virginia Plaintiffs are also entitled to an award of punitive damages. *See Mayer*, 22 S.E. at 59.

Count 202 – Private Nuisance
(On Behalf of West Virginia Plaintiffs)

1995. West Virginia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

1996. Syngenta's actions, as described above, have contaminated the corn crop in West Virginia and throughout the U.S., thereby reducing the market for the corn.

1997. Syngenta's contamination of the corn crop constitutes a substantial and unreasonable interference with West Virginia Plaintiffs' private use and enjoyment of their land.

1998. Syngenta's acts took place in, or affected commerce in, West Virginia.

1999. Syngenta's acts and omissions proximately caused the injuries and damages sustained by West Virginia Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell to the Chinese market.

2000. West Virginia Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

2001. Syngenta acted with gross fraud, malice, oppression, or with wanton, willful, or

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

reckless conduct, or with criminal indifference to civil obligations affecting the rights of the Plaintiffs. Therefore, West Virginia Plaintiffs are also entitled to an award of punitive damages. *See Mayer*, 22 S.E. at 59.

Count 203 - Consumer Credit and Protection Act
W. Va. Code § 46A-1-101, *et seq*.
(On Behalf of West Virginia Plaintiffs)

2002. West Virginia Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

2003. West Virginia Consumer Credit and Protection Act provides a private right of action by any consumer who purchases or leases goods or services and is harmed by a practice that is declared unlawful by the Act. W. Va. Code § 46A-6-106.

2004. The Act states that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." *Id.* at § 46A-6-104.

2005. The list of "unfair methods of competition and unfair or deceptive acts or practices" includes, among others:

a. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

b. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have;

c. Advertising goods or services with the intent not to supply reasonably expected public demand;

d. Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding; and

e. The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, in connection with the

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived, or damaged thereby.

W. Va. Code § 46A-6-102(7)(B), (E), (J), (L), (M).

2006. Syngenta breached its duty by acts and omissions, including but not limited to:

a. Statements to APHIS and the public, including stakeholders interested in the MIR162 Deregulation Petition, that deregulation of MIR162 should not cause an adverse impact upon export markets for U.S. corn, that Syngenta would communicate the stewardship requirements "using a wide ranging grower education program," and that at the time the MIR162 Deregulation Petition was submitted to APHIS, regulatory filings were in progress in China;

b. Statements to APHIS and the public that MIR162 could and would be channeled away from markets which had not yet approved MIR162;

c. Statements to the press and to investment analysts on quarterly conference calls;

d. Statements in marketing materials published on the Internet such as its "Plant With Confidence" fact sheet; and

e. Other statements indicating that approval from China for MIR162 corn was expected at a time when Syngenta knew that it was not.

2007. By deceiving West Virginia corn farmers into believing that Viptera and/or Duracade would be marketable to all consumers, Syngenta created a likelihood of confusion or misunderstanding that materially harmed West Virginia Plaintiffs as a result of China's rejection of Viptera depressed the market for U.S. corn.

2008. Syngenta's acts took place in, or affected commerce in, West Virginia.

2009. Syngenta's acts and omissions proximately caused the injuries and damages sustained by West Virginia Plaintiffs. These damages include but are not limited to damaged corn and reduced corn prices based on the inability to sell to the Chinese market.

2010. West Virginia Plaintiffs have provided the notice to Syngenta required by W. Va. Code § 46A-6-106(c), and Syngenta did not cure the financial losses suffered by the West

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Virginia Plaintiffs.

2011. Because Syngenta acted in illegal restraint of trade, West Virginia Plaintiffs are entitled to an award of compensatory damages, treble damages, attorney's fees, filing fees, and other costs of the action under W. Va. Code § 47-18-9.

2012. West Virginia Plaintiffs are further entitled to pre- and post-judgment interest.

2013. Syngenta acted with gross fraud, malice, oppression, or with wanton, willful, or reckless conduct, or with criminal indifference to civil obligations affecting the rights of the Plaintiffs. Therefore, West Virginia Plaintiffs are also entitled to an award of punitive damages. *See Mayer*, 22 S.E. at 59.

Count 204 - Negligence
(On Behalf of Wisconsin Plaintiffs)

2014. Wisconsin Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

2015. Syngenta owed a duty of at least reasonable care to its stakeholders, including Wisconsin Plaintiffs, in the timing, scope, and terms under which it commercialized MIR162.

2016. Syngenta breached its duty by acts and omissions including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on a widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and /or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

2017. Syngenta's negligence proximately caused damages to Wisconsin Plaintiffs, including damaged corn and reduced corn prices.

2018. Wisconsin Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

2019. Syngenta acted with intentional disregard for the rights of Wisconsin Plaintiffs. Punitive damages are therefore warranted.

Count 205 - Trespass to Chattels
(On Behalf of Wisconsin Plaintiffs)

2020. Wisconsin Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

2021. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Wisconsin Plaintiffs had possession and/or possessory rights.

2022. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Wisconsin Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

2023. As a result of the trespass, Wisconsin Plaintiffs' chattels were impaired as to condition, quality, or value, and Wisconsin Plaintiffs were damaged.

2024. Wisconsin Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

2025. Syngenta acted with intentional disregard to the rights of Wisconsin Plaintiffs.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Punitive damages are therefore warranted.

Count 206 - Private Nuisance
(On Behalf of Wisconsin Plaintiffs)

2026. Wisconsin Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

2027. Syngenta's actions constitute a private nuisance to Wisconsin Plaintiffs. By contaminating the U.S. corn supply, Syngenta has unreasonably and substantially interfered with the quiet use and enjoyment of Wisconsin Plaintiffs' land and/or property interests.

2028. Syngenta's conduct was intentional and unreasonable, or if unintentional, was negligent and reckless, and proximately caused damage to Wisconsin Plaintiffs, including damaged corn and reduced corn prices.

2029. Wisconsin Plaintiffs are thus entitled to an award of compensatory damages and pre- and post-judgment interest.

2030. Syngenta acted with intentional disregard for the rights of Wisconsin Plaintiffs, and thus punitive damages are warranted.

Count 207 – Negligence
(On behalf of Wyoming Plaintiffs)

2031. Wyoming Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

2032. Syngenta owed its stakeholders, including Wyoming Plaintiffs, a duty to use reasonable care in the timing, scope, and terms under which it commercialized MIR162.

2033. Syngenta breached its duty by acts and omissions, including but not limited to:

a. Prematurely commercializing Viptera and/or Duracade on widespread basis without reasonable or adequate safeguards;

b. Instituting a careless and ineffective stewardship program;

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

c. Failing to enforce or effectively monitor its stewardship program;

d. Selling Viptera and/or Duracade to thousands of corn farmers with knowledge that they lacked the mechanisms, experience, ability, and/or competence to effectively isolate or channel those products;

e. Failing to adequately warn and instruct farmers on the dangers of contamination by MIR162 and at least the substantial risks that growing Viptera and/or Duracade would lead to the loss of the Chinese market;

f. Distributing misleading information about the importance of the Chinese market; and

g. Distributing misleading information regarding the timing of China's approval of Viptera and/or Duracade.

2034. Syngenta's acts took place in, or affected commerce in, Wyoming.

2035. Syngenta's actions and omissions proximately caused the injuries and damages sustained by Wyoming Plaintiffs. These damages include but are not limited to damaged corn crops and reduced corn prices based on the inability to sell to the Chinese market.

2036. Because the Defendants breached their duty, and caused damages to Wyoming Plaintiffs, Wyoming Plaintiffs are entitled to an award of compensatory damages, attorney's fees, filing fees, and other costs of the action. Wyo. Stat. Ann. §1-14-126; 1-1-109; Wyo. R. Civ. P., Rule 54.

2037. Wyomng Plaintiffs are further entitled to pre- and post-judgment interest. *KM Upstream, LLC v. Elkhorn Const., Inc*., 2012 WY 79, 278 P.3d 711, 726-27 (Wyo. 2012).

2038. Syngenta acted with gross fraud, malice, oppression, or with wanton, willful, or reckless conduct, or with criminal indifference to civil obligations affecting the rights of Wyoming Plaintiffs. Therefore, Wyoming Plaintiffs are also entitled to an award of punitive damages. *See Farmers Ins. Exchange v. Shirley*, 958 P.2d 1040 (Wyo. 1998).

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Count 208 – Trespass to Chattels
(On behalf of Wyoming Plaintiffs)

2039. Wyoming Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

2040. By commercializing Viptera and/or Duracade prematurely and without adequate systems to isolate and channel it, Syngenta intentionally intermeddled with and brought Viptera and/or Duracade into contact with non-Viptera/Duracade corn in which Wyoming Plaintiffs had possession and/or possessory rights.

2041. Syngenta knew that its conduct would, to a substantial certainty, bring Viptera and/or Duracade into contact with Plaintiffs' corn through contamination in fields and/or in grain elevators and other modes of storage and transport.

2042. As a result of the trespass, these Plaintiffs' chattels were impaired as to condition, quality, or value, and Wyoming Plaintiffs were damaged.

2043. Syngenta's acts took place in, or affected commerce in, Wyoming.

2044. Syngenta's acts and omissions proximately caused the injuries and damages sustained by Wyoming Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell to the Chinese market.

2045. Wyoming Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

2046. Syngenta acted with gross fraud, malice, oppression, or with wanton, willful, or reckless conduct, or with criminal indifference to civil obligations affecting the rights of the Plaintiffs. Therefore, Wyoming Plaintiffs are also entitled to an award of punitive damages.

Count 209 – Tortious Interference
(On behalf of Wyoming Plaintiffs)

2047. Wyoming Plaintiffs incorporate by reference paragraphs 1-299 as if set forth

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

herein.

2048. Wyoming Plaintiffs had business relationships and a reasonable expectancy of continued business relationships with purchasers of corn.

2049. Syngenta had knowledge of such expectancy and/or knowledge of facts and circumstances that would lead a reasonable person to believe that the expectancy existed.

2050. Syngenta induced or caused a breach of that expectancy without justification or privilege.

2051. Syngenta's conduct was intentional and improper because, among other things, it was accomplished with misrepresentations and omissions of material fact, and contaminated Wyoming Plaintiffs' fields, storage units, equipment, grain elevators owned and/or operated by Wyoming Plaintiffs, as well as other facilities in the U.S. supply chain.

2052. Syngenta's acts took place in, or affected commerce in, Wyoming.

2053. The business relationship Wyoming Plaintiffs had with purchasers of corn was disrupted.

2054. Syngenta's interference has proximately caused damage to Wyoming Plaintiffs.

2055. Syngenta's acts and omissions proximately caused the injuries and damages sustained by Wyoming Plaintiffs. These damages include but are not limited to damaged corn product and reduced corn prices based on the inability to sell to the Chinese market.

2056. Wyoming Plaintiffs are entitled to compensatory damages and pre- and post-judgment interest.

2057. Syngenta acted with gross fraud, malice, oppression, or with wanton, willful, or reckless conduct, or with criminal indifference to civil obligations affecting the rights of the Wyoming Plaintiffs. Therefore, Wyoming Plaintiffs are also entitled to an award of punitive

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

damages. Wyo. Stat. Ann. § 1-1-114; *see Farmers Ins. Exchange v. Shirley*, 958 P.2d 1040 (Wyo. 1998).

Count 210 – Wyoming Consumer Protection Act
Wyo. Stat. Ann. § 40-12-101 *et seq.*
(On behalf of Wyoming Plaintiffs)

2058. Wyoming Plaintiffs incorporate by reference paragraphs 1-299 as if set forth herein.

2059. The Wyoming Consumer Protection Act provides a private right of action by any consumer who suffers damages from a deceptive trade practice that is declared unlawful by the Act. Wyo. Stat. Ann. § 40-12-108.

2060. A person unlawfully engages in a deceptive trade practice when, in the course of his business and in connection with a consumer transaction, that person knowingly:

a. Represents that merchandise has a source, origin, sponsorship, approval, accessories, or use it does not have;

b. Represents that he has a sponsorship, approval, or affiliation he does not have;

c. Represents that merchandise is of a particular standard, grade, style, or model, if it is not;

d. Represents that merchandise is available to the consumer for a reason that does not exist;

e. Represents that merchandise has been supplied in accordance with a previous representation, if it has not;

f. Makes false or misleading statements of fact concerning the price of merchandise;

g. Advertises merchandise with intent not to sell it as advertised;

h. Advertises merchandise with intent not to supply reasonably expectable public demand; and

i. Engages in unfair or deceptive acts or practices.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Wyo. Stat. Ann. § 40-12-105(i-v), (vii), (x), (xi), (xv).

2061. Syngenta breached its duty by acts and omissions, including but not limited to:

a. Statements to APHIS and the public, including stakeholders interested in the MIR162 Deregulation Petition, that deregulation of MIR162 should not cause an adverse impact upon export markets for U.S. corn, that Syngenta would communicate the stewardship requirements "using a wide ranging grower education program," and that at the time the MIR162 Deregulation Petition was submitted to APHIS, regulatory filings were in progress in China;

b. Statements to APHIS and the public that MIR162 could and would be channeled away from markets which had not yet approved MIR162;

c. Statements to the press and to investment analysts on quarterly conference calls;

d. Statements in marketing materials published on the Internet such as its "Plant With Confidence" fact sheet; and

e. Other statements indicating that approval from China for MIR162 corn was expected at a time when Syngenta knew that it was not.

2062. By deceiving Wyoming corn farmers into believing that Viptera and/or Duracade would be marketable to all consumers, Syngenta created a likelihood of confusion or misunderstanding that materially harmed Wyoming Plaintiffs after China's rejection of Viptera depressed the market for U.S. corn.

2063. Syngenta's acts took place in, or affected commerce in, Wyoming.

2064. Syngenta's acts and omissions proximately caused the injuries and damages sustained by Wyoming Plaintiffs. These damages include but are not limited to damaged corn and reduced corn prices based on the inability to sell to the Chinese market.

2065. Wyoming Plaintiffs provided the notice to Syngenta required by Wyo. Stat. Ann. § 40-12-109, and Syngenta did not cure the financial losses suffered by Wyoming Plaintiffs.

2066. Because Syngenta engaged in unlawful deceptive trade practices, Wyoming

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

Plaintiffs are entitled to an award of compensatory damages, attorney's fees, filing fees, and other costs of the action. Wyo. Stat. Ann. §1-14-126; 1-1-109; Wyo. R. Civ. P., Rule 54.

2067. Wyoming Plaintiffs are further entitled to pre- and post-judgment interest.

2068. Syngenta acted with gross fraud, malice, oppression, or with wanton, willful, or reckless conduct, or with criminal indifference to civil obligations affecting the rights of the plaintiff. Therefore, Wyoming Plaintiffs are also entitled to an award of punitive damages.

VII. Request for Relief

Plaintiffs demand judgment from all Defendants for:

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

b. Punitive damages;

c. Attorneys' fees;

d. Pre- and post-judgment interest at the maximum rates allowed by law;

e. The costs of this action; and

f. Such other and further relief as is appropriate.

VIII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues.

27-CV-15-13785
Filed in Fourth Judicial District Court
10/2/2015 4:33:44 PM
Hennepin County, MN

ACKNOWLEDGMENT

Plaintiffs hereby acknowledge that sanctions may be imposed under the circumstances set forth in Minn. Stat. § 549.211.

Dated: October 2, 2015

Respectfully Submitted,

/s/ Lewis A. Remele, Jr.
Lewis A. Remele, Jr. (#0090724)
BASSFORD REMELE PA
33 South Sixth Street, Suite 3800
Minneapolis, MN 55402-3707
Telephone: 612-333-3000
Facsimile: 612-333-8829
Email: lremele@bassford.com

Francisco Guerra IV
WATTS GUERRA LLP
Building 3 - Suite 100
Four Dominion Drive,
San Antonio, TX 78257
Telephone: 210-447-0500
Facsimile: 210-447-0501
Email: fguerra@wattsguerra.com

CO-LEAD COUNSEL FOR PLAINTIFFS

EXHIBIT 53

27-CV-15-3785
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**

In re: Syngenta Litigation This Document Related to: ALL ACTIONS	Case Type: Civil Other Honorable Thomas M. Sipkins File No.: 27-CV-15-3785 **PROPOSED NOTICES TO CONFORM**

On September 25, 2015, the Court entered Scheduling Order No. 1, which held that "[a]ny plaintiff wishing to join in one of the consolidated master complaints shall file a notice to conform." That Order further required that "[o]n of before October 9, 2015, the parties shall meet and confer on a form of notice to conform and a deadline for plaintiffs to file said notice to conform."

On October 2, 2015, plaintiff filed a consolidated non-class master complaint for producers and non-producers. In accordance with the Court's September 25, 2015 Scheduling Order No. 1 and the extension granted by the Court's October 13, 2015 Order, the parties respectfully submit a proposed Notice to Conform to Plaintiffs' Non-Class Master Complaint for Producer Plaintiffs, attached hereto as Exhibit A, and a proposed Notice to Conform to Plaintiffs' Non-Class Master Complaint for Non-Producer Plaintiffs, attached hereto as Exhibit B. The parties jointly propose November 19, 2015 as the deadline for plaintiffs to file and serve Notices to Conform.

The parties jointly propose a set of procedures with respect to the Notice to Conform, as set forth in the accompanying Proposed Order.

27-CV-15-13285
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

Date: October 23, 2015

Respectfully Submitted by:

/s/ Lewis A. Remele, Jr.
Lewis A. Remele, Jr. (#0090724)
BASSFORD REMELE PA
33 South Sixth Street, Suite 3800
Minneapolis, Minnesota 55402-3707
Telephone: (612) 333-3000
Facsimile: (612) 333-8829
Email: lremele@bassford.com

Francisco Guerra IV
WATTS GUERRA LLP
Four Dominion Drive, Bldg. 3, Suite 100
San Antonio, Texas 78257
Telephone: (210) 447-0500
Facsimile: (210) 447-0501
Email: fguerra@wattsguerra.com

CO-LEAD COUNSEL FOR PLAINTIFFS

William R. Sieben
SCHWEBEL GOETZ & SIEBEN, P.A.
51st Floor IDS Center
80 S. 8th Street, #5120
Minneapolis, MN 55402
Telephone: (612) 377-7777
Facsimile: (612) 333-6311
Email: bsieben@schwebel.com

Daniel E. Gustafson
GUSTAFSON GLUEK PLLC
Canadian Pacific Plaza
120 South 6th Street, Suite 2600
Minneapolis, MN 55402
Telephone: (612) 333-8844
Facsimile: (612) 339-6622
Email: dgustafson@gustafsongluek.com

CO-LEAD INTERIM CLASS COUNSEL FOR PLAINTIFFS

27-CV-15-13285
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

Date: October 23, 2015

Respectfully Submitted by:

/s/ David T. Schultz
David T. Schultz (#169730)
D. Scott Aberson (#0387143)
MASLON LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone: 612-672-8200
Facsimile: 612-672-8397
david.schultz@maslon.com
scott.aberson@maslon.com

Michael D. Jones (*pro hac vice*)
Edwin John U (*pro hac vice*)
Ragan Naresh (*pro hac vice*)
Patrick Haney (*pro hac vice*)
KIRKLAND & ELLIS, LLP
655 15th Street, NW
Washington, D.C. 20005
Telephone: 202-879-5000
Facsimile: 202-879-5200
michael.jones@kirkland.com
edwin.u@kirkland.com
ragan.naresh@kirkland.com
patrick.haney@kirkland.com

COUNSEL FOR DEFENDANTS

27-CV-15-3785
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

STATE OF MINNESOTA	**DISTRICT COURT**
COUNTY OF HENNEPIN	**FOURTH JUDICIAL DISTRICT**
In re: Syngenta Litigation This Document Related to: ALL ACTIONS	Case Type: Civil Other Honorable Thomas M. Sipkins File No.: 27-CV-15-3785 **[PROPOSED] ORDER APPROVING NOTICES TO CONFORM**

WHEREAS, On September 25, 2015, the Court entered Scheduling Order No. 1, which held that "[a]ny plaintiff wishing to join in one of the consolidated master complaints shall file a notice to conform" and further required that "[o]n of before October 9, 2015, the parties shall meet and confer on a form of notice to conform and a deadline for plaintiffs to file said notice to conform";

WHEREAS, in accordance with that Order and the Court's subsequent October 13, 2015 Order, the parties have jointly submitted for the Court's consideration two proposed Notices to Conform and have jointly proposed November 19, 2015 as a deadline for Plaintiffs to file and serve Notices to Conform;

NOW, THEREFORE, IT IS ORDERED that the parties' proposed Notice to Conform to Plaintiffs' Non-Class Master Complaint for Producer Plaintiffs, attached hereto as Exhibit A, and a proposed Notice to Conform to Plaintiffs' Non-Class Master Complaint for Non-Producer Plaintiffs, attached hereto as Exhibit B, are hereby approved and that the deadline for Plaintiffs to file Notices of Conform is November 19, 2015. The Court furthers orders that the following procedures for the Notices to Conform shall be adopted:

27-CV-15-13285
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

1. For purposes of the Notices to Conform and all other orders of the Court, the term "Producer" shall mean:

> an owner, operator, landlord, waterlord, tenant, or sharecropper, who shares in the risk of producing corn and who is entitled to share in the corn crop available for marketing from the farm, as reflected in FSA Form 578, or who is paid cash rent by a farmer for use of his or her land.

The term "Non-Producer" shall mean all Plaintiffs who are not Producers.

2. The Non-Class Master Complaint shall be deemed to amend the individual claims of any Plaintiff who files a Notice to Conform to the Non-Class Master Complaint. Upon service of the Notice to Conform upon Defendants, the amendment of the constituent case to conform to the Non-Class Master Complaint shall be deemed to have been served. Any responsive pleading filed by the Defendant to the Non-Class Master Complaint, whether filed before or after a Notice to Conform by the Plaintiff is filed, shall apply. If a Plaintiff's constituent complaint names a Defendant that is not named in the Non-Class Master Complaint, then the absent Defendant shall be deemed to have been voluntarily dismissed without prejudice pursuant to Rule 41 of the Minnesota Rules of Civil Procedure. If a Defendant is named in the Non-Class Master Complaint who is not named in the constituent case, by filing a Notice to Conform, the Plaintiff shall be deemed to have added that Defendant to their constituent case pursuant to Rule 21 of the Minnesota Rules of Civil Procedure. If a Plaintiff has not yet filed or served a Complaint, he or she may conform his or her complaint to the Non-Class Master Complaint by filing and serving a complaint and a Notice to Conform on or before November 19, 2015. Any Plaintiff who files suit after November 19, 2015 may conform his or her complaint by filing a Notice to Conform, provided, however, that any Order of the Court related to the Master Non-Class Complaint shall be binding and apply.

27-CV-15-13285
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

3. Plaintiffs have initiated service of the Master Non-Class and Master Class Complaints on the non-U.S. defendants through the Hague Convention, but do not anticipate service to be completed prior to the 60-day deadline set forth in Scheduling Order No. 1. Syngenta does not object to an extension of the deadline, and the deadline for service of the Master Non-Class Complaint and Master Class Complaint on the non-U.S. defendants is hereby extended until and including March 31, 2016. The parties anticipate that the non-U.S. defendants, once properly served under the Hague Convention, would join in the briefing and resulting Order on Defendants' Motions to Dismiss. Any Plaintiff who files a Notice to Conform in this proceeding shall be deemed to have served any foreign defendants upon proper service of the Non-Class Master Complaint, and any amendments thereto, pursuant to the Hague Convention, regardless of whether the Notice to Conform was filed before or after the Non-Class Master Complaint was served.

4. The Court does not intend to revisit issues that already have been decided in these consolidated proceedings. If a plaintiff who is not named in a Master Non-Class Complaint or Master Class Complaint and does not file a Notice to Conform, that does *not* exempt their individual case from the Court's Orders with respect to the Master Complaints. Any Orders issued by the Court that are directed to the Master Non-Class Complaint shall be deemed to apply to all cases to the extent the issues have the same subject-matter as the allegations, claims, and parties in the non-conforming cases. The failure to file an objection within 14 days of an Order explaining why that Order directed to the Master Non-Class Complaint should not apply to his or her non-conforming case, shall be deemed a waiver.

27-CV-15-13285
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

SO ORDERED this __ day of _____, 2015.

BY THE COURT:

_____
Thomas M. Sipkins
Judge of District Court

27-CV-15-13285
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

EXHIBIT A

27-CV-15-3765
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

| Notice to Conform -- PRODUCER PLAINTIFF | | |

		I. Violation of	II. Resident	State of Column H	
		Minnesota Substantive	State	(III.) Allegations	
Filing Date		Law Allegations	Allegations	Listed (1-50)	
		YES	27		
				1. Alabama	
				2. Alaska	
				3. Arizona	
				4. Arkansas	
				5. California	
				6. Colorado	
				7. Connecticut	
				8. Delaware	
				9. Florida	
				10. Georgia	
				11. Hawaii	
				12. Idaho	
				13. Illinois	
				14. Indiana	
				15. Iowa	
				16. Kansas	
				17. Kentucky	
				18. Louisiana	
				19. Maine	
				20. Maryland	
				21. Massachusetts	
				22. Michigan	
				23. Minnesota	
				24. Mississippi	
				25. Missouri	
				26. Montana	
				27. Nebraska	
				28. Nevada	
				29. New Hampshire	
				30. New Jersey	
				31. New Mexico	
				32. New York	
				33. North Carolina	
				34. North Dakota	
				35. Ohio	
				36. Oklahoma	
				37. Oregon	
				38. Pennsylvania	
				39. Rhode Island	

27-CV-15-3765
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

			40. South Carolina
			41. South Dakota
			42. Tennessee
			43. Texas
			44. Utah
			45. Vermont
			46. Virginia
			47. Washington
			48. West Virginia
			49. Wisconsin
			50. Wyoming

27-CV-15-3765
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

EXHIBIT B

27-CV-15-3765
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

Notice to Conform -- NON PRODUCER

Business Name or Last Name of Plaintiff Filing Suit	First Name of Plaintiff Filing Suit	If Non-Producer, Provide Description of Business (i.e. grain elevator; grain transporter; exporter)	State of Residence/ Citizenship	County of Residence/ Citizenship	State of Incorporation (If Business)	County and State of Principal Place of Business (If Business)
Doe	John		Nebraska			

		Amount of Corn Purchased				Has Plaintiff Ever Purchased / Shipped / Stored / Traded Viptera Corn?	Has Plaintiff Ever Purchased / Shipped / Stored / Traded Duracade Corn?
		2011	2012	2013	2014	2015	

27-CV-15-3765
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

| | | |

27-CV-15-3765
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

| | | |

27-CV-15-3785
Filed in Fourth Judicial District Court
10/23/2015 10:11:24 AM
Hennepin County, MN

41. South Dakota		
42. Tennessee		
43. Texas		
44. Utah		
45. Vermont		
46. Virginia		
47. Washington		
48. West Virginia		
49. Wisconsin		
50. Wyoming		

EXHIBIT 54

27-CV-15-3785
Filed in Fourth Judicial District Court
10/30/2015 11:26:23 AM
Hennepin County, MN

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

This Document Relates to: ALL ACTIONS

Case Type: Civil Other
Hon. Thomas M. Sipkins

FILE NO. 27-CV-15-3785

PRESERVATION ORDER

This Agreed Order Regarding Preservation of Communications, Documents, Electronic Data, and Other Tangible Items ("Order") governs the Parties in the above-captioned action ("Action"), including individual cases during their pendency in this Action. Pursuant to the Court's duty to supervise pretrial proceedings in this Action, including discovery, and pursuant to the Court's inherent powers, the Court hereby issues the following agreed Preservation Order. This Order shall continue in full force and effect until further Order of this Court.

The Parties agree that these Guidelines define the scope of their preservation obligations for the purposes of this Action.

I. DEFINITIONS

For the purposes of this Order, the following definitions shall apply. All other terms shall have the meaning defined in The Sedona Conference Glossary.

A. The terms "**Communication**" or "**Communications**" mean the transmission, sending, or receipt of information of any kind (in the form of facts, ideas, inquiries, or otherwise), by computer electronics of any kind (including e-mail),

27-CV-15-13285
Filed in Fourth Judicial District Court
10/30/2015 11:26:23 AM
Hennepin County, MN

magnetic tape, videotape, photographs, graphs, symbols, signs, magnetic or optical disks, floppy disks, hard drives, compact discs, CD-ROM discs, other removable or transportable media, telecommunication, telephone, teletype, facsimile, telegram, microfilm, microfiche, photographic film of all types, or other media of any kind.

B. The terms "**Document**" and "**Documents**" are synonymous and equal in scope to usage of this term in Minn. R. Civ. P. 34.

C. The terms "**Electronic Data**" or "**Data**" mean the original (or identical duplicate when the original is not available), and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description whether inscribed by mechanical, facsimile, electronic, magnetic, digital, or other means.

D. The term "**Syngenta Corn Seed**" refers to Syngenta's genetically modified corn seed containing the MIR162 genetic trait and/or Event 5307, including those marketed as Viptera and Duracade, and any Corn crops containing any of those traits.

E. The term "**Potentially Relevant Information**" means a Document, Electronic Data, Communication or any tangible things containing information within the scope of the categories set forth below.

II. GENERAL PRESERVATION OBLIGATIONS

A. The fact that a particular document or tangible object may or may not be included in the scope of this Order is not intended to, and does not, establish or suggest that the document is or is not discoverable, relevant to, subject to privilege or work

27-CV-15-13285
Filed in Fourth Judicial District Court
10/30/2015 11:26:23 AM
Hennepin County, MN

product protection or admissible in this matter. Each party reserves any and all objections to the collection and/or production of documents or information that may fall within the scope of this Order, including to the time frames specified in the Sections IV and V.

B. The Parties shall take commercially reasonable steps to ensure that Communications, Documents, Electronic Data and other tangible objects that are subject to this Order are not destroyed, removed, mutilated, altered, concealed, deleted or otherwise disposed of.

C. The preservation obligations set forth in this Order apply to currently existing Communications, Documents, Electronic Data, and other tangible objects within the Parties' possession, custody, or control. This Order is not intended to, and shall not be construed by a Party to, require any Party to alter its day-to-day business practices regarding the creation or modification of documents, except to ensure that Potentially Responsive Information in Sections IV and V is adequately preserved. Accordingly, unless a category of Potentially Responsive Information indicates that the preservation obligation extends to the present, the preservation obligation extends to December 31, 2014. Furthermore, persons may generate new business documents without preserving dictation, drafts, interim versions or other temporary compilations of information if such documents would not have been preserved in the ordinary course of business. Similarly, any Party may delete or recycle data electronically stored on servers or hard drives reasonably likely to contain Potentially Responsive Information after the Party has made and secured a copy of the files which contain information

27-CV-15-13285
Filed in Fourth Judicial District Court
10/30/2015 11:26:23 AM
Hennepin County, MN

within the scope of this Order contained on said data storage device.

D. Absent a showing of good cause by the requesting Party, the categories of ESI identified below need not be preserved by any Party:

1. Any cellular or mobile data (including any text messages) and no Party shall be required to request that any service providers preserve such data;

2. Any telephone or VOIP message system data (including voicemail messages) on a system-wide, central or enterprise basis, or on an individual level and no Party shall be required to request that service providers for any Party preserve such data;

3. Any instant messaging systems (including but not limited to Skype, AIM, Yahoo Messenger, Microsoft Lync, or any equivalent) and no Party shall be required to request that any service providers preserve such data;

4. Deleted, slack, fragmented, or other data only accessible by use of computer forensics;

5. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;

6. On-line access or internet searching data such as temporary internet files, browser history, file or memory cache, cookies, and the like; and

7. Operating system files, executable files, server, system or network logs.

III. DEFENDANTS' PRESERVATION OBLIGATIONS

A. **Potentially Relevant Information:** To the extent such Documents, Electronic Data, and other tangible objects exist, Defendants shall take reasonable steps to ensure the preservation of the following Potentially Relevant Information:

1. Field trials and field testing of Syngenta Corn Seed, including controls during the field trials and testing, post-testing destruction, monitoring of field trials and testing, audit and inspection of field

27-CV-15-13285
Filed in Fourth Judicial District Court
10/30/2015 11:26:23 AM
Hennepin County, MN

trials and testing, contracts for field trials and testing, and containment and channeling efforts during field trials and testing, and communications regarding the same;

2. Syngenta's communications with governmental or administrative bodies regarding Syngenta Corn Seed, and other communications relating thereto;

3. Syngenta's efforts to obtain U.S. and Chinese regulatory approval for Syngenta Corn Seed and the export of Syngenta Corn Seed, and other communications relating thereto;

4. Syngenta's efforts to deregulate Syngenta Corn Seed and other communications relating thereto;

5. Stewardship Agreements and Stewardship Guides regarding Syngenta Corn Seed;

6. Any efforts or statements by Syngenta regarding channeling of Syngenta Corn Seed or other efforts and communication undertaken, proposed or considered to maintain segregation of Syngenta Corn Seed from other corn;

7. From 2010 to the present, documents sufficient to show the quarterly and yearly sales of and profits from Syngenta Corn Seed, to the extent such information is maintained on that basis;

8. Syngenta's decision to sell and/or commercialize Syngenta Corn Seed and the impact of that decision on U.S. corn prices and any potential impact on farmers and exporters;

9. The MIR162 genetic trait and/or Event 5307 traces found in corn produced in or exported from the United States;

10. From 2010 to the present, documents sufficient to show the sale, booking, listing, transfer or resale of Syngenta Corn Seed in each county and/or by zip code, to the extent such information is maintained on that basis, each month, to the extent such information is maintained on that basis;

11. Until December 31, 2014, the marketing and advertising of Syngenta Corn, including Defendants' Internet, Intranet (as that term is defined in the Sedona Conference Glossary) and Social Media sites referencing Syngenta Corn;

27-CV-15-13285
Filed in Fourth Judicial District Court
10/30/2015 11:26:23 AM
Hennepin County, MN

12. From 2005 to the present, Defendants' involvement with industry organizations regarding stewardship standards or practices for genetically modified crops or plants, biotechnology issues involving identity preservation, segregation and/or tracing of genetically modified crops or plants, and asynchronous approval of genetically modified crops or plants;

13. Syngenta's involvement in and communications with industry members, trade associations, or government officials regarding Syngenta Corn Seed after January 1, 2010;

14. From 2010 to the present, documents sufficient to show exports of U.S. corn and China's imports of U.S. corn;

15. From 2007 to the present, the actual or possible effect of Syngenta Corn Seed on the market for U.S. corn exports and the importance or significance of the Chinese market for U.S. corn;

16. From 2007 to the present, documents sufficient to show the price for U.S. corn; and

17. Syngenta's efforts or statements regarding the channeling or segregation of other genetically-modified corn or soybean seed products that Syngenta commercialized in the United States before obtaining Chinese regulatory approval, covering the time period from 2005 to the date of such Chinese approval; and

18. Defendants' affirmative defenses.

IV. PLAINTIFFS' PRESERVATION OBLIGATIONS

A. **Potentially Relevant Information for Producer Plaintiffs:** To the extent such Documents, Electronic Data, and other tangible objects exist, each Plaintiff shall take reasonable steps to ensure the preservation of the following Potentially Relevant Information:

1. From 2010 to the present, documents sufficient to show the Plaintiff's total and corn acreage farmed;

2. From 2010 to the present, documents sufficient to show the Plaintiff's purchases of corn seed;

27-CV-15-3285
Filed in Fourth Judicial District Court
10/30/2015 11:26:23 AM
Hennepin County, MN

3. From 2010 to the present, the Plaintiff's sales or contracts for sale of corn, corn by-products, and sorghum/milo (including hedging, option contracts, and futures contracts);

4. From 2010 to the present, testing for the presence of Viptera or Duracade and/or any efforts to remove Syngenta Corn Seed;

5. From 2010 to the present, for any Plaintiff involved in livestock farming, documents sufficient to show whether any corn produced by the Plaintiff was used to feed the plaintiff's livestock and/or any corn purchased to feed the livestock;

6. From 2010 to the present, documents sufficient to show whether the producer was part of an ethanol cooperative and, if so, any corn supplied by the producer to the ethanol cooperative;

7. From 2010 to the present, subsidies received by Plaintiff relating to corn, including applications and claims made;

8. From 2010 to the present, Plaintiff's crop insurance for any corn crops, including applications, policies, claims made, and outcomes of claims;

9. From 2010 to the present, Plaintiff's exposure to or reliance on statements made by Syngenta regarding Syngenta Corn Seed;

10. From 2010 to the present, documents sufficient to show the types of genetically-modified crops grown by Plaintiff and the dates when those crops were grown;

11. From 2010 to the present, Plaintiff's involvement in and communications with trade associations or government officials regarding Syngenta Corn Seed;

12. From 2010 to the present, Plaintiff's allegations;

13. From 2010 to the present, Plaintiff's financials relating to the sale of corn or corn by products; and

14. Plaintiff's alleged damages, including losses from the changes in the price of corn.

B. **Potentially Relevant Information for Non-Producer Plaintiffs:** To the extent such Documents, Electronic Data, and other tangible objects exist, each Plaintiff

27-CV-15-13285
Filed in Fourth Judicial District Court
10/30/2015 11:26:23 AM
Hennepin County, MN

shall take reasonable steps to ensure the preservation of the following Potentially Relevant Information:

1. Plaintiff's efforts to segregate or decision not to segregate corn known or believed by Plaintiff to be grown from Syngenta Corn Seed in its facilities or elsewhere in the supply chain in the United States after January 1, 2010;

2. Plaintiff's efforts or statements regarding the channeling or segregation of other genetically-modified corn or soybean products commercialized in the United States before Chinese regulatory approval was obtained, covering the time period from 2005 to the date of such Chinese approval;

3. Plaintiff's contracts for the sale of corn and corn by-products with buyers of U.S. corn and corn by-products in China dated on or after January 1, 2010, including but not limited to option contracts or hedging or trading mechanisms;

4. Plaintiff's efforts to mitigate damages related to China's rejection of U.S. corn after November 2013;

5. Plaintiff's sales of, and efforts to sell or deliver, corn known or believed by Plaintiff to be grown from or to have been mixed with Syngenta Corn Seed to China from countries other than the U.S. after January 1, 2010;

6. Plaintiff's awareness of China's import approval status of Syngenta Corn Seed and communications with Chinese government officials regarding the same;

7. Plaintiff's knowledge of or reliance on statements made by Syngenta regarding Syngenta Corn Seed;

8. From 2005 to the present, Plaintiff's involvement with industry organizations regarding stewardship standards or practices for genetically modified crops or plants, biotechnology issues involving identity preservation, segregation and/or tracing of genetically modified crops and plants, and asynchronous approval of genetically modified crops or plants;

9. Plaintiff's involvement in and communications with industry members, trade associations, or government officials regarding Syngenta Corn Seed after January 1, 2010;

27-CV-15-3765
Filed in Fourth Judicial District Court
10/30/2015 11:26:23 AM
Hennepin County, MN

10. From 2010 to the present, documents sufficient to show exports of U.S. corn and China's imports of U.S. corn;

11. From 2007 to the present, the actual or possible effect of Syngenta Corn Seed on the market for U.S. corn exports and the importance or significance of the Chinese market for U.S. corn exports;

12. From 2007 to the present, documents sufficient to show the price for U.S. corn;

13. Plaintiff's allegations; and

14. Documents and information regarding Plaintiff's alleged damages related to the litigation.

SO ORDERED.

Dated: 10-30, 2015

BY THE COURT:

Thomas M. Sipkins
Judge of District Court

EXHIBIT 55

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**

In re: Syngenta Litigation This Document Relates to: ALL ACTIONS	Case Type: Civil Other Honorable Thomas M. Sipkins File No.: 27-CV-15-3785 **ESI PROTOCOL**

The parties in the above-captioned litigation (each of the parties is referred to individually as a "party" and collectively as the "parties"), by and through their undersigned counsel, propose this ESI Protocol for the Production of Data ("Protocol"). Pursuant to the provisions of Rule 34 of the Minnesota Rules of Civil Procedure permitting the parties to specify the form or forms in which documents are to be produced, the Protocol sets forth the specifications that shall govern document production during discovery in the above-captioned consolidated litigation ("Action"), including for all individual cases currently pending in the Action and cases that are later filed in, transferred to, or remanded to this Court.

A. SCOPE

1. This Protocol governs the collection and production of electronically-stored information ("ESI") and hard copy documents (collectively "Data"), which are to be produced electronically in the Action.

2. Nothing herein shall alter the parties' respective responsibility to comply with the applicable Minnesota Rules of Civil Procedure and any applicable Local Rules regarding the collection or production of Data. To the extent additional obligations, restrictions, or rights not addressed in this Protocol arise under the Minnesota Rules of Civil Procedure or other applicable law or rules, that law or rule shall govern.

3. The parties incorporate the provisions of the Stipulated Protective Order. For the avoidance of doubt, nothing herein shall contradict the parties' rights and obligations with respect to any information designated as Confidential or Highly Confidential pursuant to the Stipulated Protective Order.

4. Nothing in this Protocol establishes any agreement regarding the subject matter or scope of discovery in this Action, or the relevance, authenticity or admissibility of any Data.

5. Nothing in this Protocol shall be interpreted to require production of Data protected from disclosure by the attorney-client privilege, work-product doctrine, or any other applicable protection or privilege.

6. Although the Court is initially entering this Protocol conforming to the ESI Protocol Order entered in the In re: Syngenta MDL proceedings ("Federal MDL"), no change to this ESI protocol shall be effective unless presented and decided by this Court regardless of whether such change is presented to and/or ordered in the Federal MDL.

7. To promote communication and cooperation between the parties, the parties will designate e-discovery liaisons for purposes of meeting and conferring on ESI topics. The ESI Liaison for Defendants shall be Ragan Naresh of Kirkland & Ellis. The ESI Liaisons for Lead and Liaison Plaintiffs shall be Eric Taubel of Gustafson Gluek, Ashlea Schwarz of Paul McInnes, and Casey Marshall of Bassford Remele. The Parties agree to work in good faith to schedule e-discovery conferences when the ESI Liaisons or their designee(s) are available.

B. DELIVERY OF DOCUMENT PRODUCTIONS

1. Each Party shall transmit its document productions to other Party's Liaison Counsel or such vendor as designated by a Party's ESI Liaison.

2. Document productions shall be made via DVD-ROMs, CD-ROMs, portable hard drives or through secure file transfer protocol ("FTP") or similar secure or encrypted electronic transmission.

3. If either Party chooses to employ a document depository vendor to receive docs for its convenience, that side shall bear the costs of such a vendor and take reasonable steps to ensure that only persons authorized under the Protective Order have access to the depository.

4. Each Party shall bear its own costs of production.

C. ESI PRODUCTION FORMAT

1. Image File Format

Except for the types of documents identified in Paragraphs (C)(2)-(3) below, a Producing Party will convert ESI from its native file format ("Native File") to an image file for production, subject to the following specifications:

a. Single-page, black and white, 300 DPI, 1 bit Group IV TIFF images shall be provided for each page of each document, with each image file named after the production number of that page, with extension ".tif."

b. To the extent reasonably possible, the imaged Data shall retain all attributes of the native or hard-copy file, such as document breaks and original document orientation (i.e. portrait to portrait and landscape to landscape). The following formatting will be applied:

i. Word processing documents will be processed to TIFF format and imaged showing track changes or edits, comments, notes and other similar information;

ii. Spreadsheet files with redactions will be imaged un-hiding any hidden rows and/or columns and/or sheets; and

iii. Presentation files will be processed to TIFF format showing comments,

hidden slides, speakers' notes and similar data, where present in the original file. In addition to TIFF images, native presentation files will be provided upon request from a receiving party. The native file will be named as the first Bates number of the respective document. The corresponding load file shall include native file link information for each native file that is produced.

Embedded ESI documents (e.g., a spreadsheet embedded within a word processing document) will be extracted, produced as independent document records and related back to the respective top level parent document (e.g., standalone file, email message, etc.) via the BegAttach field referenced in Appendix 2. Related documents will be produced within a continuous Bates range. However, a Producing Party may suppress its logo or v-card embedded in email files.

c. To the extent a document is not already unitized, the parties shall undertake reasonable efforts, if a document consists of more than one page, to unitize the document and any attachment(s) as in their original form when creating the image files. The parties shall also undertake reasonable efforts to ensure that distinct documents are not merged into a single record and that single documents are not split into multiple records.

d. Text files shall be produced as one file per document, named after the starting production number assigned to the document and ending with extension ".txt", with a text directory for each production volume, and with a relative file path to the text file provided in the related database load file. With the exception of TIFF, PDF and other image file types for which the text cannot be extracted, the text of documents should be extracted directly from the Native File without using Optical Character Recognition ("OCR"), except in the case of redacted documents, as specified in Paragraph 3(c) and 3(d), below. Documents produced in redacted

form should not have text files populated with extracted text but should instead have text files populated with OCR data which will not contain the redacted data. If a document does not contain extractable text, the Producing Party shall provide OCR files for that document to the extent possible.

e. Data containing color need not initially be produced in color. The Producing Party will honor reasonable requests for a color image, if the original Data contains color necessary to understand the meaning or content of the Data.

f. Electronic documents attached to an email or electronic document and hard-copy documents attached or appended to a hard-copy document, are to be produced contemporaneously and sequentially immediately after the parent document. Parent-child relationships within a document family (the association between an attachment and its parent document) shall be preserved. Each document shall be produced with the production number for the first and last page of that document in the "BegDoc" and "EndDoc" fields of the data load file and with the "BegAttach" and "EndAttach" fields listing the production number for the first and last page in the document family.

g. Except as specified in Paragraph 3(c) below, each of the metadata and coding fields set forth in Appendix 2 that reasonably can be extracted from an electronic document shall be produced for that document. Fields that are not populated shall be left with null values and not populated with fillers or spaces. All metadata pertaining to dates and times will be standardized to Greenwich Mean Time (GMT).

h. Production numbers shall be branded to the lower right hand corner of TIFF images and confidentiality designations (if applicable) shall be electronically branded or burned to the lower left hand corner of TIFF images so that they legibly print with the images. If one or

more production numbers is skipped in a production, the Producing Party will so note in a cover letter accompanying the production or in a privilege log. The parties shall use reasonable efforts to ensure that production numbers: (1) are unique and consistent across the entire production, provided, however, that parties may use multiple prefixes to reflect productions from separate entities or related to specific experts; (2) maintain a constant prefix and page length (0-padded) across the production, consistent with the requirements of sub-paragraph (1); (3) contain a prefix that clearly identifies the Producing Party; (4) contain no special characters or embedded spaces; and (5) are sequential within a given document. Attachments will immediately follow the production number(s) for the parent document. Production number prefixes shall be consistent across all documents a party produces in the litigation. However, to the extent a Producing Party produces documents as they were produced in prior proceedings, the documents shall retain their numbering from the prior proceedings.

i. Upon entry of this Protocol, each party shall also produce accompanying image load/unitization files and delimited text files as described below in Appendix 1. Parties are encouraged to work in cooperation with one another and each other's respective vendors in exchanging sample load files. If this exchange occurs, the Receiving Party will have 14 days to respond with load file change requests. Nothing in this Order will limit the parties from discussing load file changes throughout the course of the litigation.

j. Where TIFF images of certain electronic documents are not readable, the parties may produce such documents in native format. Where TIFF images of certain hard copy documents are not readable, the parties will meet and confer regarding the volume and best method of production prior to producing paper documents in hard copy format. To the extent the Receiving Party obtains through discovery a file or document that the party believes is not

adequately represented in TIFF image format, the Receiving Party may request that the file or document be produced in native format by identifying the document by production number, the production of which shall not unreasonably be withheld.

2. Non-Convertible Files

Certain types of files such as system, program, proprietary files, audio files, and video files may not be amenable to conversion into TIFF format. Such files will not be converted into TIFF format. To the extent that the parties have not excluded these files from production elsewhere in this Protocol, these files will be produced in their native format in accordance with Paragraph 3 below. Examples of file types that are or may not be conducive to conversion into TIFF format include, but are not limited to:

*.exp *.ilk *.res *.trg *.tlh *.idb *.pdb *.pch *.opt *.lib *.cab *.mov *.mp3 *.swf *.psp *.cdi *.chi *.chm *.com *.dll *.exe *.hlp *.ivi *.ivt *.ix *.msi *.nls *.obj *.ocx *.rmi *.sys *.tmp *.ttf *.vbx *.wav *.wpg *.iso *.pdb *.eps *.mpeg *.mpg *.ram *.rm *.psd *.ai *.aif *.bin *.hqx *.snd *.mpe *.wmv *.wma *.xfd *.db *.bat *.xnk *.qtl *.kob *.mso *.dat *.m4a *.bak *.xll *.blank *.wdf *.cdo *.snp *.rename *.mdi *.sda *.ren *.001 *.crf *.dtf *.eds *.ex1 *.dwg *.fdf *.pcl *.wmf *.wps *.fpage *.odttf *.cas *.ldl *.wm *.m4p *.dcx *.3g2 *.sss *.xyz

3. Native Files

In addition to the types of Data listed in Paragraphs C(1) and (2), a Producing Party will produce certain additional types of ESI in their native format, subject to the following specifications:

a. Notwithstanding any provision contained herein, the parties agree that they shall produce Microsoft Excel files, .CSV files and other similar spreadsheet files as Native Files. The Native File shall be renamed in the following format: Bates Prefix-Bates Number-Confidentiality Designation. Except as specified in Paragraph 3(d) below, each of the metadata and coding fields set forth in Appendix 2 that reasonably can be extracted from an electronic document shall be produced for that document. Fields that are not populated shall be left with null values and not

populated with fillers or spaces.

b. Where native files are produced in lieu of TIFF images, each native file will be assigned a unique production number within the litigation database. The Producing Party will produce a placeholder (a single-page TIFF slip sheet indicating that the native item was produced) along with the file itself in native format. The placeholder will be branded with the production number in the lower right hand corner, the original filename of the native file, and the phrase "PRODUCED IN NATIVE ONLY" branded in the center of the page. The Producing Party will also brand any confidentiality or similar endorsements in the lower left hand corner of the placeholder.

c. To the extent that any file identified for production in native format contains information subject to a claim of privilege or any other applicable protection that requires redaction, the Producing Party shall convert that file to TIFF format and produce it with the necessary redactions, along with OCR text that reflects such redactions, unless such conversion and redaction is unduly burdensome to the Producing Party. All such OCR text will be Unicode-compliance (UTF-8) to the extent practical. If such conversion is unduly burdensome or renders the document unusable, the Producing Party may produce the document in any reasonably usable form as may be agreed upon by the respective parties.

d. The portion of the redacted text shall be clearly identified on the face of the TIFF image, either by masking the redacted content with electronic highlighting in black or through the use of redaction boxes. The label "Redacted" shall appear on the face of the redacted portion of the TIFF image. If Personally Identifiable Information ("PII"), such as social security numbers are redacted, the label "Redacted – PII" shall appear on the face of the redacted portion. If information is redacted on the basis of the attorney-client privilege or the work product doctrine,

the basis for the redaction shall appear on the face of the redacted document. Redactions for privilege and work product, including whether such redactions must be included on a privilege log, are discussed in more detail in Section F below. The redacted TIFF image shall be produced in accordance with the image load file specifications in Appendix 1, and any other provisions for the production of TIFF images contained herein. Redacted text shall not be included in the text file for that redacted TIFF image. The original unredacted Native File shall be preserved pending conclusion of the Action.

e. The parties will make reasonable efforts to remove passwords or other security protection from any Native File prior to production. If the security protection cannot be removed from a Native File after reasonable efforts by the Producing Party, a placeholder TIFF image may be produced in place of the Native File indicating that security protection could not be removed from the Data. Upon request from the Requesting Party, the parties shall meet and confer in good faith regarding the reasonable efforts or mechanisms made to remove the security protection from the Native File and/or the production of the available metadata listed in Appendix 2 from the file.

f. If a Native File is used at a deposition or hearing in this Action, or attached to a motion or other filing, it shall be accompanied by its production number-stamped placeholder TIFF image in order to facilitate tracking and authentication thereof. The parties may, but are not required to, further mark fixed images of Native Files with additional numbering for ease of identification at a deposition or hearing.

4. Duplicates

To reduce the unnecessary costs of reviewing and producing duplicate documents, each party will make reasonable efforts to remove duplicate Data prior to producing documents. Data

will be deduplicated vertically within each custodian and horizontally across custodians (e.g., globally) following industry standard de-duplication algorithms. The ALL_CUSTODIANS field will be populated with all of the custodians who had a copy of the document in their files. In order to reduce the volume of entirely duplicative content within email threads, the parties may but are not required to use email thread suppression but shall disclose that they have used email thread suppression.

5. Production of Data from Databases and Other Formats

a. If a Producing Party identifies a particular source or type of responsive Data for which it reasonably believes that application of this Protocol would be unduly burdensome or impractical, the party identifying the source or type of responsive Data shall promptly notify the Requesting Party, explaining in detail the type and source of the Data at issue, and the reason(s) why the party believes that application of this Protocol would be unduly burdensome or impractical, and proposing reasonable modifications of this Protocol with respect to that source or type of responsive Data. Thereafter, the parties shall meet and confer within 14 calendar days to determine if modification of the Protocol with respect to the Data at issue is appropriate, and if an agreement is not reached, the Producing Party bears the burden of seeking relief from the Court from the requirements of this Protocol.

b. If a response to discovery requires production of ESI contained in a database or comprehensive electronic accounting system, the Producing Party shall meet and confer with the Requesting Party concerning a reasonable method of production. To the extent reasonably available, the Producing Party shall also provide any data dictionary, key, or other information sufficient to provide a reasonable understanding of the contents of the database or accounting system.

c. Nothing in this Protocol requires a party to use unreasonably burdensome or expensive data recovery processes, or to search for information, documents, or other materials in locations where responsive information is not likely to be found, absent a showing of good cause. To the extent a party believes that responsive data is likely to be found on data sources that are not reasonably accessible, the party shall disclose that fact to the other parties.

6. Time Zone

Unless otherwise agreed, all dynamic date and time fields, where such fields are processed to contain a value and do not automatically populate, and all metadata pertaining to dates and times will be standardized to Greenwich Mean Time (GMT). The Parties understand and acknowledge that such standardization affects only dynamic fields and metadata values and does not affect, among other things, dates and times that are hard-coded text within a file.

D. HARD COPY DOCUMENT PRODUCTION FORMAT

1. The parties agree that, with respect to documents that exist in hard-copy format ("Hard-Copy Materials"), a Producing Party will image and produce such documents as TIFF images and OCR text in accordance with the specifications delineated in Section C, above. Where paper scanned images have identification spines, file folder labels, "post-it notes," or any other labels, the information on the label shall be scanned and produced to the extent practicable. In addition, folder labels, box labels, or binder labels (including spines), or other similar top level identifiers, to the extent practicable, shall be manually recorded at the time of scanning and coded in the Binder and/or Folder field. Load files for such productions shall include data relevant to the individual documents, including Bates numbering, custodian, OCR and folder labels and box labels that have been manually recorded.

2. To the extent responsive Hard-Copy Materials are included in a large compilation of documents that is compiled solely for the purposes of storage convenience and not for any

purposes related to the litigation and contains irrelevant, non-responsive Hard-Copy Materials, the Producing Party may produce responsive, non-privileged Hard-Copy Materials without also producing non-responsive Hard-Copy Materials.

3. If a Producing Party reasonably believes that production of Hard-Copy Materials as imaged files pursuant to this Section D is unduly burdensome, the Producing Party shall seek to meet and confer in good faith with the Requesting Party regarding content, volume, and related issues before any production of Hard-Copy Materials. If the parties are unable to reach agreement, any party may seek relief from the Court.

E. PREVIOUSLY PRODUCED DATA

For every production of Data in the Action that was made prior to the adoption of this Protocol, the Producing Party shall provide a metadata overlay containing the metadata listed in Appendix 2, as applicable, for the Data in the production to be provided under this Protocol. To the extent a Producing Party is requested or ordered to produce materials that were previously produced in a different action or proceeding, however, the Producing Party shall disclose prior to production how such materials were produced in the previous action. The Producing Party shall produce materials as they were produced in the prior action or proceeding, and no additional metadata overlay need be produced absent a further order from the Court.

F. PRIVILEGE LOGS

1. To the extent that a document is withheld from production on the basis of the attorney client privilege or the work product doctrine, the producing Party shall produce a rolling privilege log of withheld documents within a reasonable period after the document was withheld from the rolling production.

2. Prior to generation of a privilege log, the parties shall meet and confer in a good faith effort to reach agreement on the manner in which a privilege log will be generated and the

contents of such a log. The parties shall consider whether the nature and volume of the privileged documents and ESI warrants category-by-category privilege logs, document-by-document privilege logs, or some combination of these approaches, consistent with Minnesota Rule of Civil Procedure 26. If the parties are unable to agree on the requirements of a privilege log for documents and ESI, the parties shall present such a dispute to the Court. Neither party shall contend that the meet and confer process set forth in this paragraph constitutes a waiver of attorney-client privilege or attorney work product for any document claimed to be protected from disclosure.

3. The following documents presumptively need not be included on a privilege log:

   a. Privileged communications exclusively between a party and its outside litigation counsel after September 12, 2014, and work product performed by a party at the direction of outside litigation counsel after September 12, 2014.

   b. Privileged communications exclusively involving outside litigation counsel after September 12, 2014.

   c. Work product created by in-house or outside litigation counsel, or by an agent of in-house or outside litigation counsel, other than a party, after September 12, 2014.

The parties agree that certain privileged communications between a party and its in-house counsel need not be logged, but will continue to confer on that subject in order to reach agreement or present their disagreements in accordance with Section F(2) above. The parties further agree to meet and confer regarding any proposed additional categories of documents that presumptively need not be logged.

G. OBJECTIONS PRESERVED

Nothing in this Protocol shall be interpreted to require disclosure of relevant information or Data that is protected by the attorney-client privilege, common interest privilege, work-product doctrine, or is prohibited from disclosure under any similar law, regulation, rule, court order, or any other applicable privilege or protection. The parties do not waive any objections to the production, discoverability, or confidentiality of ESI, Hard-Copy Materials or any other discovery materials, including, without limitation, objections regarding the burden, overbreadth or relevance of document requests related to ESI, Hard-Copy Materials or any other discovery materials, or relating to the production of ESI or Hard-Copy Materials in a form specified in this Protocol.

H. RESOLUTION OF DISPUTES

1. The parties agree to meet and confer in good faith regarding matters related to the production of Data not specifically set forth in this Protocol, related to the interpretation of this Protocol, or related to the parties' obligations thereunder. The parties shall make their best efforts to comply with and resolve any differences concerning compliance with this Protocol. If a Producing Party cannot comply with any material aspect of this Protocol, such party shall inform the Requesting Party in writing at or before the time of production as to why compliance with the Protocol is unreasonable or not possible.

2. If the parties are unable to reach resolution regarding any dispute concerning the interpretation of this Protocol or compliance with same, such disputes may be presented for judicial resolution. No party may seek judicial relief concerning this Protocol unless it first has conferred with the applicable Producing or Requesting Party.

SO ORDERED this 25 day of September, 2015

BY THE COURT:

Thomas M. Sipkins
Judge of District Court

APPENDIX 1: Load File Formats

Image Load Files

- ESI will be produced in Concordance load file format. Upon request and demonstration of need, the Parties will meet and confer to discuss production in an alternative load file format or to produce without load files.
- Every document referenced in a production image load file shall have all corresponding images, text, and data. Redacted text shall not be included in a redacted document's text file.
- The name of the image load files shall mirror the name of the delivery volume, and should have an .opt or .log file extension (*e.g.*, ABC001.OPT or ABC001.LOG).
- The volume names shall be consecutive (*i.e.*, ABC001, ABC002, *et. seq.*).
- Every image in the delivery volume shall be contained in the image load file.
- The image key shall be named the same as the production number of the page.
- Load files shall not span across media (*e.g.*, CDs, DVDs, Hard Drives, etc.); instead, a separate volume shall be created for each piece of media delivered.
- Each image load file shall be produced in a standard litigation support image load format (e.g., .opt or .log) providing:
    a. The document number for each image;
    b. The relative path name(s) of each TIFF image file; and
    c. The document boundaries for each document.

- The load file shall be in the order that appropriately corresponds with each image file. The following represents an example of the format of a standard .opt or .log image load/unitization file:

Bates,Volume,PATH_to_image,Document Break,Folder Break,Box Break,Total_Pages.

M_0100000,06150101,\06150101\0000\0001.TIF,Y,,,1
M_0100001,06150101,\06150101\0000\0002.TIF,Y,,,1
M_0100002,06150101,\06150101\0000\0003.TIF,Y,,,1
M_0100003,06150101,\06150101\0000\0004.TIF,Y,,,2
M_0100004,06150101,\06150101\0000\0005.TIF,,,,
M_0100005,06150101,\06150101\0000\0006.TIF,Y,,,1
M_0100006,06150101,\06150101\0000\0007.TIF,Y,,,4
M_0100007,06150101,\06150101\0000\0008.TIF,,,,,
M_0100008,06150101,\06150101\0000\0009.TIF,,,,,
M_0100009,06150101,\06150101\0000\0010.TIF,,,,,

Metadata Load Files

- The metadata load file shall use the following delimiters:
  - Field Delimiter: ¶ (ASCII 020)
  - Text Qualifier: þ (ASCII 254)
  - Multi-value Delimiter: ; (ASCII 059)
  - New line: ® (ASCII 174)
- Metadata fields that are not applicable to a document or are NULL shall be left with null values and not populated with fillers or spaces.
- All date fields shall be produced in "mm/dd/yyyy" format.
- All time fields shall be produced in "hh:mm:ss" format.
- Load files shall not span across media (*e.g.*, CDs, DVDs, Hard Drives, etc.); instead, a separate volume shall be created for each piece of media delivered.
- The name of the metadata load file shall mirror the name of the delivery volume, and shall have a .dat or .txt extension (*i.e.*, ABC001.DAT or ABC001.TXT).

- The volume names shall be consecutive (*i.e.*, ABC001, ABC002, *et. seq.*).
- Furthermore, .dat or .txt files must be encoded in ASCII or ANSI:UTF codings.
- The metadata fields listed in Appendix 2 (as pertain to particular categories of documents pursuant to this Protocol) shall be included in the delimited database load files, to the extent such metadata is already in existence and reasonably accessible. To the extent that metadata does not exist, is not reasonably accessible or available, or would be unduly burdensome to collect, nothing in this Protocol shall require any party to extract, capture, collect or produce such metadata. Any party that intends to withhold existing metadata listed in Appendix 2 on the basis that it is not reasonably accessible or available or would be unduly burdensome to collect shall promptly inform the requesting party and meet and confer. The parties will reasonably endeavor to confirm the accuracy of the metadata extraction process and expressly reserve their rights to object to the use of metadata for any reason or purpose. To the extent that the metadata listed in Appendix 2 relating to any ESI contains information subject to a claim of privilege or any other applicable protection, that metadata may be redacted or withheld, as appropriate, and the Producing Party shall include information regarding the basis and justification for withholding or redacting such information in its privilege log in accordance with Rule 26 of the Minnesota Rules of Civil Procedure.

APPENDIX 2: ESI Metadata and Coding Fields

Field Name	Field Description	Populated For	Example Values
BegDoc	Production number of the first page of the document.	E-mail, E-doc, or Paper as appropriate	Prefix-0000000001
EndDoc	Production number of the last page of the document.	All	Prefix-0000000002
BegAttach	Production number of the first page of the first document of the document family.	All	Prefix-0000000001
EndAttach	Production number of the last page of the last document of the document family.	All	Prefix-0000000004
AttachCount	The number of attachments to a document.	All	3
FileType	The record type of a document.	All	Paper, Email, E-Attachment, Standalone Electronic Document
All_Custodians	Additional custodians who had a copy of the document prior to de-duplication, including duplicate custodians.	All	
To	All recipients that were included on the "To" line of the e-mail.	E-mails	larry.murphy@email.com
From	The name and e-mail address sender of the e-mail.	E-mails	Bart.Cole@email com
CC	All recipients that were included on the "CC" line of the e-mail.	E-mails	sstephens44@email.com
BCC	All recipients that were included on the "BCC" line of the e-mail.	E-mails	ceo-gs@email.com
DateRcvd	Date an e-mail was received (GMT).	E-mails	mm/dd/yyyy
TimeRcvd	The time an e-mail was received (GMT).	E-mails	hh:mm:ss:

Field Name	Field Description	Populated For	Example Values
DateCreated	The date an e-mail or e-file was created (GMT).	E-mails, E-attachments and electronic documents	mm/dd/yyyy
TimeCreated	The time an email or e-file was created (GMT)	E-mails, E-attachments and electronic documents	hh:mm:ss:
DateLastModified	Date the document was last modified.	E-attachments; Electronic documents	mm/dd/yyyy
TimeLastModified	The time an e-file was last modified (GMT).	E-attachments; Electronic documents	hh:mm:ss:
LastSavedBy	Value shows within the "last saved" metadata field.	E-mails, E-attachments and electronic documents	
Cal_Start	Start date and time of calendar or appointment (GMT).	E-mails, E-attachments and electronic documents	
Hash	MD5 hash value of document or "de-duplication key"	All	Hash Value
FileName	The file name of the document, including file extension	E-attachments; Electronic documents	
Author	Author of document	E-attachments and electronic documents	
Subject	Document subject line of an e-mail	E-mails	
Orig_File_Name	The original file name of an electronic document or an attachment to an Email.	E-attachments and electronic documents	
File_Ext	The file extension of a document.	All	Doc, nsf, rtf, pdf, msg, xls, etc.

Field Name	Field Description	Populated For	Example Values
File_Size	The file size of a document (including embedded attachments).	All	
FilePath	The full path to the file at its original location.	All	
NativeFilePath	The path to the corresponding native file included with a production volume.	E-attachments and Electronic documents produced in native format	
TEXTPATH	The relative path to the corresponding OCR or extracted text file included with a production volume.	All	
Confidentiality Designation	The designated level of confidentiality pursuant to the Protective Order.	All	CONFIDENTIAL
Container	Top level source and folder-level source for any scanned document, if available.	All	

EXHIBIT 56

27-CV-15-3785
Filed in Fourth Judicial District Court
11/4/2015 4:16:05 PM
Hennepin County, MN

STATE OF MINNESOTA | **DISTRICT COURT**

COUNTY OF HENNEPIN | **FOURTH JUDICIAL DISTRICT**

In re: Syngenta Litigation This Document Related to: ALL ACTIONS	Case Type: Civil Other Honorable Thomas M. Sipkins File No.: 27-CV-15-3785 **SCHEDULING ORDER NO. 2**

The Court orders that the deadlines in the following Scheduling Order shall govern this case, until further order of this Court:

I. Master Complaint, Notice to Conform, and Motions to Dismiss. By separate orders, this Court previously ordered the Plaintiffs to file a Master Complaint on October 2, 2015, to meet and confer concerning Notices to Conform by October 9, 2015 and to file joint proposals regarding the same by October 23, 2015. On October 23, 2015, the parties filed a proposed agreed order concerning Notices to Conform. The Court entered an Order Approving Notices to Conform and established a deadline of November 19, 2015 for Plaintiffs to file Notices to Conform.

By separate order, this Court previously ordered Defendants to file their Motions to Dismiss the Master Complaints by November 9, 2015, Plaintiffs to file their Oppositions to such Motions to Dismiss by December 1, 2015, and Defendants to file their Replies to such oppositions by December 22, 2015.

The Court will hold a hearing on January 8, 2016 for oral arguments on Defendants' Motions to Dismiss Plaintiffs' Master Complaints.

27-CV-15-37385
Filed in Fourth Judicial District Court
11/4/2015 4:16:05 PM
Hennepin County, MN

II. Answer, Comparative Fault, and Additional Parties. Should one or both complaints survive the Motion to Dismiss, the parties shall meet and confer regarding a date for Defendants to answer the Master Complaints within thirty (30) days following the Court's ruling.

No later than 14 days following the filing of the Answer[s], any party asserting comparative fault must identify all persons or entities whose fault is to be compared. If any person or entity is so identified, then the party asserting comparative fault also must specify the nature of the fault which is claimed, subject to such additional identifications that a party may seek to make upon good cause shown based on facts learned during discovery.

Any motion for leave to join additional parties or to otherwise amend the pleadings must be filed by no later than 21 days following the filing of the Answer[s], subject to such joinders or amendments that a party may seek to make upon good cause shown based on facts learned during discovery.

III. Bellwether Discovery Plaintiff Selection. On October 23, 2015, the parties submitted an agreed proposed bellwether selection order, and the Court subsequently entered it. The Bellwether Selection Order is hereby incorporated by reference.

The initial discovery pool shall consist of (i) all named class representatives; and (ii) the forty (40) bellwether discovery plaintiffs named by the Court in accordance with the Bellwether Selection Order. If a plaintiff selected as a bellwether plaintiff (whether for discovery or trial) voluntarily dismisses its case, Syngenta may identify a replacement within five (5) days thereafter.

IV. Stay of Discovery. Upon entry of this Order and the Coordination Order, the stay of discovery is hereby lifted as to discovery to Defendants and to the named Class Plaintiffs.

27-CV-15-3735
Filed in Fourth Judicial District Court
11/4/2015 4:16:05 PM
Hennepin County, MN

Discovery as to all other Plaintiffs shall remain stayed; however, such stay shall be lifted as to bellwether discovery plaintiffs, once selected by the Court on December 21, 2015.

V. Written Discovery. Except as stayed above, written discovery may commence upon the entry of this Order and the entry of the Coordination Order and pursuant to the terms of both Orders. The parties shall serve written objections and responses to written discovery requests within 30 days. Parties must certify when document discovery is substantially complete for any given party. All fact written discovery must be served by March 15, 2016.

VI. Fact Depositions. Except as stayed above, parties may begin taking fact depositions upon the entry of this Order and the Coordination Order and pursuant to the terms of both Orders (assuming reasonable notice is provided, with individual scheduling to be mutually agreed). Each witness shall only be deposed once absent Order of the Court for good cause shown. All fact depositions shall close on May 2, 2016. The parties have agreed to attempt to conclude the fact depositions of all producer bellwether plaintiffs by April 1, 2016, but without waiving either side's right to conduct any fact depositions up to and including May 2, 2016 if necessary.

VII. Individual Bellwether Plaintiff Selection—Trial. The bellwether trial pool shall be comprised of four (4) producer plaintiffs and two (2) non-producer plaintiffs. On June 13, 2016, each party shall simultaneously provide to each other, at a time to be determined, a list of four (4) producer plaintiffs and two (2) non-producer plaintiffs.

Between June 13 and June 17, 2016, the parties shall meet-and-confer to attempt to reach an agreement as to which cases should serve as individual bellwether trial cases. If the parties reach agreement, the parties shall jointly submit a list of four (4) producer plaintiffs and two (2) non-producer plaintiffs to the Court for consideration on June 20, 2016.

27-CV-15-3735
Filed in Fourth Judicial District Court
11/4/2015 4:16:05 PM
Hennepin County, MN

If the parties do not agree, each Party shall propose in writing to the Court four (4) producer plaintiffs and two (2) non-producer plaintiffs to serve as individual bellwether trial cases, with the reasons stated in a brief totaling five (5) pages and filed by 4:30 p.m. on June 20, 2016. On June 30, 2016, the parties shall each submit to the Court in writing either (a) their agreement with one or more of the bellwether trial cases proposed by the other side, or (b) their grounds for opposition in a brief totaling five (5) pages.

On July 22, 2016, the Court will select four (4) cases to serve as individual bellwether trial cases, including at least one non-producer, and will rank them in the order in which each one will be tried.

VIII. Class Certification. Plaintiffs shall file their class certification motion, along with all class-related expert reports and reliance materials, by June 15, 2016. The parties shall complete discovery of plaintiffs' class-related experts by July 6, 2016. Syngenta shall file its opposition to plaintiffs' class certification motion, along with all class-related expert reports and reliance materials, by July 20, 2016. The parties shall complete discovery of Syngenta's class-related experts by August 12, 2016. Plaintiffs' reply brief shall be due August 17, 2016. After reviewing the parties' briefs and other submissions, the Court will decide whether to convene an oral argument hearing on class certification and, if so, when to schedule that hearing; however, if it does so, the Court intends to hold a hearing on class certification in September 2016.

IX. Merits Experts. Limited to the cases approved by the Court for the initial trial pool (including the named class representatives if a class is certified), plaintiffs must serve their merits (non-class-related) expert reports and reliance materials, with regards to both liability and damages issues, by September 9, 2016. The parties shall complete discovery of plaintiffs' merits experts by October 10, 2016. Syngenta shall file its merits experts and reliance materials by

27-CV-15-3735 Filed in Fourth Judicial District Court
11/4/2015 4:16:05 PM
Hennepin County, MN

November 4, 2016. The parties shall complete discovery of Syngenta's merits experts by November 23, 2016. No further expert disclosures will be allowed.

X. Dispositive and *Frye-Mack* Motions. The parties shall file their dispositive and merits-expert *Frye-Mack* motions, if any, by January 6, 2017. The parties shall file their opposition briefs, if any, by January 27, 2017. The parties shall file their reply briefs, if any, by February 13, 2017. After reviewing the parties' briefs and other submissions, the Court will decide whether to convene an oral argument hearing on summary judgment and/or *Frye-Mack* motions and, if so, when to schedule that hearing; however, if it does so, the Court intends to the Court will hold a hearing on the dispositive and *Frye-Mack* motions in February 2017.

XI. Pre-Trial Conference. The Court will hold a pre-trial conference in February 2017, with the precise date to be determined later.

XII. Trial Sequencing. After the Court decides class certification, the Court will enter an order sequencing the trials beginning in March 2017.[1] The Court may revisit this date, if it appears overly optimistic or aggressive. The issue of whether the first trial will be a class trial or a bellwether trial is deferred until after the Court rules on the motion for class certification.

XIII. First Bellwether Trial. Subject to the caveat in paragraph XII, the first trial will commence in March 2017, with the precise date to be determined later. Each of the four or five initial trials (including the class trial, if one occurs), shall be scheduled to occur approximately four (4) weeks following the conclusion of the previous trial. The Court intends to coordinate trial schedules with the federal MDL and other coordinated state court actions, and as such,

[1] The Court originally indicated in its letter order dated September 28, 2015 that "I believe January through March 2017 is a reasonable target to schedule trials in the bellwether trials." Since then, Class Counsel for the Plaintiffs has indicated a desire for an even earlier trial, while individual counsel proposed an initial bellwether trial of April 3, 2017. The issue of whether the first trial ordered herein in March 2017 will be a class trial or a bellwether trial is deferred for a future date, and is to be decided only after the Court rules on the motion for class certification.

27-CV-15-3735
Filed in Fourth Judicial District Court
11/4/2015 4:16:05 PM
Hennepin County, MN

reserves the right to move the schedule for the above bellwether trials to avoid simultaneous trials in two such jurisdictions during the bellwether period.

SO ORDERED.

Dated: 11-4, 2015

BY THE COURT:

Thomas M. Sipkins
Judge of District Court

EXHIBIT 57

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re Syngenta Litigation

This Document Relates to ALL ACTIONS

Case Type: Civil Other

Court File No: 27-CV-15-3785

Judge Thomas M. Sipkins

ORDER

The above matter came on before the undersigned based on a recommendation made by Special Master Van de North on December 16, 2015:

WHEREAS, on October 30, 2015, the Court entered a Bellwether Selection Order specifying a process by which Plaintiffs' counsel and Defendants' counsel would work with Special Master Van de North to select 40 bellwether discovery plaintiffs.

WHEREAS, the Parties met and conferred pursuant to the Bellwether Selection Order and worked with Special Master Van de North to select the 40 bellwether discovery plaintiffs.

WHEREAS, by letter dated December 16, 2015, Special Master Van de North recommended 40 bellwether discovery plaintiffs to the Court.

WHEREAS, the matter came before the court at the December 18, 2015 hearing.

NOW THEREFORE, in consideration of the foregoing, it is hereby ordered that:

1. The 40 plaintiffs recommended by Special Master Van de North, and attached hereto as Exhibit A, are selected as bellwether discovery plaintiffs.

2. The discovery stay is lifted with respect to the 40 plaintiffs identified in Exhibit A, pursuant to Scheduling Order No. 2 entered on November 4, 2015.

Dated 12-22, 2015.

Thomas M. Sipkins
District Court Judge

EXHIBIT A

PRODUCERS

	Plaintiff	Category
Minnesota	Charles W Ledeboer	MN < 250
	Scott Wubben	MN < 250
	Kosen Family Living Trust	MN < 250
	Nathan Rath	MN 250 - 500
	Lance Allen Gilbertson	MN 250 - 500
	John A. Sumerfelt	MN 250 - 500
	Ewert Farms	MN > 500
	Byro & Byro	MN > 500
	Kirk Kuechenmeister	MN > 500
Iowa	Lyle Wallin Farm	IA < 250
	Jacqueline Montony	IA < 250
	James Dale DeBoom	IA < 250
	Thomas F. Stillman	IA 250 - 500
	M. Gardner Farms ILLC	IA 250 - 500
	Tom Jansen	IA 250 - 500
	Moorman Farms	IA > 500
	Agro Farms, Inc.	IA > 500
	Douglas Maher	IA > 500
Nebraska	Anne M. Gibbons	NE < 250
	Sondra K. Mattes	NE < 250
	Tim Baumgart	NE 250 - 500
	Messersmith	NE 250 - 500
	Pat W. Luther	NE > 500
	Daniel S. Mensik	NE > 500
Contiguous States	Schmaltz Farm	Contiguous <250
	J and S Goebel Farms Inc.	Contiguous <250
	Sam Bell	Contiguous 250-500
	David Adams	Contiguous 250-500
	Ronald W. Albers	Contiguous > 500
	David + Marcia Olson	Contiguous > 500
Non-contiguous States	Doug Underwood	Non-contiguous <250
	Larry Mosier	Non-contiguous <250
	W. Eric Maloney	Non-contiguous 250-500
	Daniel Belknap Farms	Non-contiguous 250-500
	Donald D. Jacobs Individual	Non-contiguous > 500
	Brinkman Pork Farm, Inc.	Non-contiguous > 500

NON-PRODUCERS

Non-Producers	Porter Elevator, Inc.	Non Producer
	Larson Grain Company	Non Producer
	Red River Grain Company	Non Producer
	Smith Feeder Supply Inc.	Non Producer

EXHIBIT 58

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

STATE OF MINNESOTA | **DISTRICT COURT**

COUNTY OF HENNEPIN | **FOURTH JUDICIAL DISTRICT**

In re: Syngenta Litigation This Document Relates To: ALL ACTIONS[†]	Case Type: Civil Other Honorable Thomas M. Sipkins File No.: 27-CV-15-3785 **SYNGENTA'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED NON-CLASS AND FIRST AMENDED MINNESOTA CLASS ACTION MASTER COMPLAINTS FOR PRODUCERS AND NON-PRODUCERS**

[†] Pursuant to this Court's Scheduling Order No. 1, this Motion to Dismiss applies to all claims brought by Plaintiffs who reside in one of the 22 States currently at issue in the federal MDL, with proceedings in all other cases deferred.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

TABLE OF CONTENTS

INTRODUCTION 1

BACKGROUND 5

A. Biotechnology And Genetically Modified Crops In The United States 5

B. Syngenta's Development Of U.S.-Approved Viptera And Duracade Corn 6

C. Syngenta Commercializes Viptera Consistent With Industry Guidelines 9

1. The BIO Stewardship Policy 9

2. Syngenta Commercializes Viptera Consistent With The BIO Policy 10

3. Competing "Stewardship" Guidelines From Other Trade Associations 11

D. Most Grain Elevators And Exporters Treat Viptera As Fungible Corn, Commingle It, And Ship It To China 11

E. The Price Of Corn Drops And China Then Bans U.S. Corn 13

CHOICE OF LAW 14

ARGUMENT 16

I. All Claims Asserted Under The Laws Of Any States Where No Plaintiff Resides Must Be Dismissed As A Matter Of Law. 16

II. Plaintiffs' Claims Are Barred By The Economic Loss Doctrine. 17

A. The Producers' Claims Are Barred By The Stranger ELD. 18

1. The Stranger ELD Is The Majority Rule. 18

2. The Stranger ELD Bars The Producers' Claims. 23

3. The Producers Cannot Avoid The ELD By Claiming Physical Injury To Their Own Property. 26

4. The MDL Order Misstates The Law On The Stranger ELD. 28

5. All States Would Bar The Producers' Claims Under The Stranger ELD. 36

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

B. Non-Producers' Claims Are Barred By The Stranger ELD Or The Contractual ELD. 57

1. All States At Issue Would Apply The Contractual ELD. 64

III. Syngenta Did Not Have A Duty To Control The Conduct Of Others To Segregate Viptera From The Corn Supply. 68

A. The Existence Of Duty Depends On Policy-Based Factors That Limit Liability Regardless Of Foreseeability As A Matter Of Law. 69

B. Applying These Factors, Courts Routinely Hold That Duty Cannot Be Established To Hold A Manufacturer Liable For Third Parties' Post-Sale Use Of Its Safe, Non-Defective Product. 71

C. These Same Principles Limiting Duty Show That Plaintiffs Cannot Establish A Duty Of Care Here. 74

D. The Only Court To Address Parallel Claims Against A Manufacturer Of Another Approved GM Seed Held That Duty Could Not Be Established As A Matter Of Law. 80

E. The MDL Court Erred In Holding That Syngenta Had A Duty. 82

F. Plaintiffs' Allegations Do Not Show That Syngenta Voluntarily Undertook A Duty To Isolate Viptera. 87

IV. As A Matter Of Law, Syngenta Had No Duty To Refrain From Selling Viptera. 89

A. The Law Does Not Impose A Duty On Manufacturers To Refrain From Selling A Safe, Non-Defective Product Based On How Third Parties Might Use It After The Point Of Sale. 89

B. Alleged "Industry Standards" Did Not Impose A Legal Duty On Syngenta. 91

V. FIFRA Preempts Plaintiffs' Failure-To-Warn Theory Of Liability. 92

VI. Plaintiffs' Strict-Liability Claims Fail As A Matter Of Law. 93

A. Minnesota Class Plaintiffs' Products-Liability Claim Does Not Allege Any Defect In The Condition Of Syngenta's Corn Seeds. 94

B. Syngenta Cannot Be Held Strictly Liable For Failure To Warn. 97

VII. Plaintiffs' Trespass-To-Chattels Claims Must Be Dismissed As A Matter Of Law. 99

A. Plaintiffs Fail Adequately To Plead Acts *By Syngenta* Constituting Trespass. 100

27-CV-15-3765
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

B. Plaintiffs Fail Adequately To Plead Intent..... 102

C. Plaintiffs Fail Adequately To Plead That *Their* Corn Suffered Intermeddling..... 103

D. Plaintiffs Fail Adequately To Plead That Their Property Was "Impaired" By Any Alleged Intermeddling..... 104

VIII. Plaintiffs Fail to State A Claim For Tortious Interference. 105

A. The Producers Fail Adequately To Allege Specific Prospective Business Relationships..... 105

B. Plaintiffs Fail To Allege The Requisite Injury: That A Third Party Ended Or Refused To Enter A Business Relationship..... 108

C. The Producers Fail To Allege Improper Means. 111

D. Plaintiffs Fail Adequately To Allege Intent..... 112

IX. Plaintiffs' Private-Nuisance Claims Must Be Dismissed As A Matter Of Law. 113

A. Plaintiffs Fail Adequately To Allege That Syngenta Controlled Or Substantially Participated In the Activity Constituting The Nuisance. 113

B. Plaintiffs Fail Adequately To Allege Interference With The Use And Enjoyment Of Their *Land*. 115

C. Plaintiffs Fail Adequately To Allege Unreasonable Interference..... 117

X. Plaintiffs' Consumer Protection Claims Must Be Dismissed. 118

A. Minnesota Statutes §§ 325D.13, 325D.44, & 325F.69 118

1. Plaintiffs' Allegations Cannot Support Applying MUTPA And MCFA To The Individual Claims Of Non-Minnesota Residents. 118

2. MUTPA And MCFA Do Not Apply Because The Direct Purchasers Of Syngenta's Goods Are Merchants. 122

3. MUTPA And MCFA Claims Fail For Lack Of Public Benefit. 123

4. MDTPA Does Not Apply To Claims For Compensation For Past Harms. 124

B. Illinois Consumer Fraud And Deceptive Business Practices Act 125

C. Nebraska Consumer Protection Act 126

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

D. North Carolina Unfair And Deceptive Trade Practices Act 127

E. North Dakota Unlawful Sales Or Advertising Practices Act 128

F. South Dakota Consumer Protection Act 129

G. Texas Deceptive Trade Practices Act 130

CONCLUSION 130

APPENDIX A: FEDERAL AND STATE LEGISLATIVE PROPOSALS TO ADDRESS LIABILITY FOR GM CROPS A-1

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

TABLE OF AUTHORITIES

Page(s)

Cases

2314 Lincoln Park W. Condo. Ass'n v. Mann, Gin, Ebel & Frazier, Ltd.,
555 N.E.2d 346 (Ill. 1990) 41

A.W. v. Lancaster Cty. Sch. Dist. 0001,
784 N.W.2d 907 (Neb. 2010) 70

Abdo v. Trek Transp. Co., Inc.,
582 N.E.2d 247 (Ill. App. Ct. 1991) 74

ACI Worldwide Corp. v. MasterCard Techns., LLC,
No. 8:14-cv-31, 2014 WL 7409750 (D. Neb. Dec. 31, 2014) 100

Acosta Orellana v. CropLife Int'l.,
711 F. Supp. 2d 81 (D.D.C. 2010) 101

Adcock v. S. Austin Marine, Inc.,
No. 2:08-cv-263KS-MTP, 2009 WL 3633335 (S.D. Miss. Oct. 30, 2009) 64

Addison v. Williams,
546 So. 2d 220 (La. Ct. App. 1989) 102

AdvoCare Int'l, LP v. Ford,
No. 05-10-00590-CV, 2013 WL 505210 (Tex. App. Feb. 5, 2013) 130

Aguilar v. RP MRP Wash. Harbour, LLC,
98 A.3d 979 (D.C. 2014) 19, 20, 24, 34, 37

Aikens v. Debow,
541 S.E.2d 576 (W. Va. 2000) 19, 36

AKA Distrib. Co. v. Whirlpool Corp.,
137 F.3d 1083 (8th Cir. 1998) 40

Allstate Ins. Co. v. Hague,
449 U.S. 302 (1981) 15, 120

Am. Petrol. & Transp., Inc. v. N.Y.C.,
737 F.3d 185 (2d Cir. 2013) 22, 31

American United Life Ins. Co. v. Douglas,
808 N.E.2d 690 (Ind. Ct. App. 2004) 54

27-CV-15-3765
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Amsouth Erectors, LLC v. Skaggs Iron Works, Inc.,
No. W2002-01944-COA-R3-CV, 2003 WL 21878540
(Tenn. Ct. App. Aug. 5, 2003) 49

Anderson Elec., Inc. v. Ledbetter Erection Corp.,
503 N.E.2d 246 (Ill. 1987) 58

Anderson Plasterers v. Meinecke,
543 N.W.2d 612 (Iowa 1996) 20, 38, 42

Anderson v. Regents of Univ. of Cal.,
554 N.W.2d 509 (Wis. Ct. App. 1996) 105

Anderson v. State, Dep't of Nat. Res.,
693 N.W.2d 181 (Minn. 2005).....116

Annett Holdings, Inc. v. Kum & Go, L.C.,
801 N.W.2d 499 (Iowa 2011) ..... *passim*

Anthony v. Slaid,
52 Mass. 290 (1846) 18, 38

Appletree Square 1 Ltd. P'ship v. W.R. Grace & Co.,
815 F. Supp. 1266 (D. Minn. 1993).....114

Ark. La. Gas Co. v. Cent. Utils. Constructors, Inc.,
643 S.W. 2d 566 (Ark. 1982).....100

Ashley Cty., Ark. v. Pfizer, Inc.,
552 F.3d 649 (8th Cir. 2009) 72, 73, 78, 80, 89

Ashtabula River Corp. Grp. II v. Conrail, Inc.,
549 F. Supp. 2d 981 (N.D. Ohio 2008).....46

B.L. Jet Sales, Inc. v. Alton Packaging Corp.,
724 S.W.2d 669 (Mo. Ct. App. 1987).....45

Bailey v. Edward Hines Lumber Co.,
719 N.E.2d 178 (Ill. App. Ct. 1999) 92

Bailey v. Smith,
No. 13-05-085-CV, 2006 WL 1360846 (Tex. App. May 18, 2006).....130

Bajwa v. Metro. Life Ins. Co.,
804 N.E.2d 519 (Ill. 2004).....70

Ball v. SGB Constr. Servs., Inc.,
820 S.W.2d 916 (Tex. App. 1991).....71

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Baptist Health v. Murphy,
373 S.W. 3d 269 (Ark. 2010).....111

Barber Lines A/S v. M/V Donau Maru,
764 F.2d 50 (1st Cir. 1985)..... *passim*

Bates v. Dow Agrosciences LLC,
544 U.S. 431 (2005).....93

Bayer Cropscience LP v. Schafer,
385 S.W.3d 822 (Ark. 2011).....28, 53

BCD LLC v BMW Mfg. Co.,
360 F. App'x 428 (4th Cir. 2010).....109

BE&K Constr. Co. v. NLRB,
536 U.S. 516 (2002).....76

Behrendt v. Gulf Underwriters Ins. Co.,
768 N.W.2d 568 (Wis. 2009).....82

Belmar Drive-In Theatre Co. v. Ill. State Toll Hwy. Comm.,
216 N.E.2d 788 (Ill. 1966).....75

Benz Farm, LLP v. Cavendish Farms, Inc.,
803 N.W.2d 818 (N.D. 2011).....129

Berger v. Cas. Feed Store, Inc.,
543 N.W.2d 597 (Iowa 1996).....112

Blackton Bldg. Supply Co., Inc. v. Garesche,
383 So. 2d 250 (Fla. Dist. Ct. App. 1980).....71

Bladen v. C.B. Fleet Holding Co.,
487 F. Supp. 2d 759 (W.D. La. 2007).....68

Blagg v. Fred Hunt Co., Inc.,
612 S.W.2d 321 (Ark. 1981).....53

Bloxham v. Glock, Inc.,
53 P.3d 196 (Ariz. Ct. App. 2002).....71

Bond v. E.I. DuPont De Nemours & Co.,
868 P.2d 1114 (Colo. App. 1993).....89

Brew City Redevelopment Grp., LLC v. Ferchill Grp.,
724 N.W.2d 879 (Wis. 2006).....52

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

In re Bridgestone/Firestone, Inc.,
288 F.3d 1012 (7th Cir. 2002) 120

Bridgeway Commc'ns, Inc. v. Trio Broad., Inc. (WBLX Radio Station-93 FM),
562 So. 2d 222 (Ala. 1990).....112

Briner Elec. Co. v. Sachs Elec. Co.,
680 S.W.2d 737 (Mo. Ct. App. 1984).....105

Brink v. Wabash Ry. Co.,
60 S.W. 1058 (Mo. 1901) 45

Brown v. CVS Pharm., LLC,
982 F. Supp. 2d 793 (M.D. Tenn. 2013).....108

Buetow v. A.L.S. Enters., Inc.,
888 F. Supp. 2d 956 (D. Minn. 2012).....123

Business Men's Assurance Co. of Am. v. Graham,
891 S.W.2d 438 (Mo. Ct. App. 1994).....45

Byrd v. English,
43 S.E. 419 (Ga. 1903).....20

Camden Cty. Bd. of Chosen Freeholders v. Beretta U.S.A. Corp.,
123 F. Supp. 2d 245 (D.N.J. 2000) 70

Cameron v. Terrell & Garrett, Inc.,
618 S.W.2d 535 (Tex. 1981).....130

Campbell v. Krupp,
961 N.E.2d 205 (Ohio Ct. App. 2011).....46, 47

Capital Motor Lines v. Detroit Diesel Corp.,
799 F. Supp. 2d 11 (D.D.C. 2011).....62

Cariveau v. Golden Valley Motors, Inc.,
No. 27CV06-11202, 2006 WL 6252343 (Minn. Dist. Ct. Nov. 28, 2006).....38, 40

Carvin v. Ark. Power & Light Co.,
Civ. Nos. 90-6055 & 90-6109, 1991 WL 540481 (W.D. Ark. Dec. 2, 1991) 53

Cavanagh v. Electrolux Home Prods.,
904 F. Supp. 2d 426 (E.D. Pa. 2012) 117

Cent. Park Prods., Inc. v. Dorel Juvenile Grp., Inc.,
No. 07-5012, 2007 WL 1821308 (W.D. Ark. June 25, 2007) 108

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

In re Chi. Flood Litig.,
680 N.E.2d 265 (Ill. 1997) 17, 40, 41

Chisolm v. Stephens,
365 N.E.2d 80 (Ill. App. Ct. 1977) 88

City of Bloomington v. Westinghouse Elc. Corp.,
891 F.2d 611 (7th Cir. 1989) 72, 101, 114

City of Bos. v. Smith & Wesson Corp.,
No. 199902590, 2000 WL 1473568 (Mass. Super. Ct. July 13, 2000).....73

City of Chi. v. Beretta U.S.A. Corp.,
821 N.E.2d 1099 (Ill. 2004) 71, 77

City of Cleveland v. Ameriquest Mortg. Sec., Inc.,
621 F. Supp. 2d 513 (N.D. Ohio 2009).....46

City of Lennox v. Mitek Indus., Inc.,
519 N.W.2d 330 (S.D. 1994) 57, 65

City of St. Louis v. Am. Tobacco Co., Inc.,
70 F. Supp. 2d 1008 (E.D. Mo. 1999).....45

Cloverleaf Car Co. v. Philips Petrol. Corp.,
540 N.W. 2d 297 (Mich. Ct. App. 1995) 113

Coastal Conduit & Ditching, Inc. v. Noram Energy Corp.,
29 S.W.3d 282 (Tex. App. 2000).....51

Collins v. Barker,
668 N.W.2d 548 (S.D. 2003) 113

Collins v. Minn. Sch. of Bus., Inc.,
636 N.W.2d 816 (Minn. Ct. App. 2001) 124

Collins v. Reynard,
607 N.E.2d 1185 (Ill. 1992) 57

Community Title Co. v. Roosevelt Fed. Sav. and Loan Ass'n,
796 S.W.2d 369 (Mo. 1990) (en banc) 111

Companio v. Hawkeye Bank & Trust of Des Moines,
588 N.W.2d 462 (Iowa 1999) 112

In re ConAgra Foods Inc.,
908 F. Supp. 2d 1090 (C.D. Cal. 2012) 127

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Conn. Mut. Life Ins. Co. v. N.Y. & N.H. R.R. Co.,
25 Conn. 265 (1856) 20, 38

Corporex Dev. & Constr. Mgmt., Inc. v. Shook, Inc.,
835 N.E.2d 701 (Ohio 2005) 46, 65

Country Corner Food and Drug, Inc. v. First State Bank and Trust Co. of Conway, Ark.,
966 S.W.2d 894 (Ark. 1998).....106

Cruz v. Lawson Software, Inc.,
Civ. No. 08-5900, 2010 WL 890038 (D. Minn. Jan. 5, 2010).....119

Ctr. for Food Safety v. Vilsack,
718 F.3d 829 (9th Cir. 2013) 88

Culwell v. Abbott Const. Co., Inc.,
506 P.2d 1191 (Kan. 1973).....116

Custom Underground, Inc. v. Mi-Tech Servs., Inc.,
No. 10-CV-222-JPS, 2011 WL 5008343 (E.D. Wis. Oct. 20, 2011).....51, 52

Daanen & Janssen, Inc. v. Cedarapids, Inc.,
573 N.W.2d 842 (Wis. 1998).....17, 25, 52, 58, 59, 61, 65

Damon v. Groteboer,
937 F. Supp. 2d 1048 (D. Minn. 2013).....124

Dana Ltd. v. Aon Consulting, Inc.,
984 F. Supp. 2d 755 (N.D. Ohio 2013).....48

Dannix Painting, LLC v. Sherwin-Williams Co.,
No. 4:12 CV 01640 CDP, 2012 WL 6013217 (E.D. Mo. Dec. 3, 2012), *aff'd*, 732 F.3d 902 (8th Cir. 2013).....45

Daugherty v. Fuller Eng'g Serv. Corp.,
615 N.E.2d 476 (Ind. Ct. App. 1993).....88

Dennis Simmons, D.D.S., P.A. v. Modern Aero, Inc.,
603 N.W.2d 336 (Minn. Ct. App. 1999).....124

DG&G, Inc. v. FlexSol Packaging Corp. of Pompano Beach,
576 F.3d 820 (8th Cir. 2009) 98

DiBiasi v. Joe Wheeler Elec. Membership Corp.,
988 So. 2d 454 (Ala. 2008).....84

Dine v. W. Exterminating Co.,
CIV. A. No. 86-1875-OG, 1988 WL 25511 (D.D.C. Mar. 9, 1988) 101

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc.,
844 N.W.2d 210 (Minn. 2014).....106, 107, 111, 112

Dixie-Portland Flour Mills, Inc. v. Nation Enters., Inc.,
613 F. Supp. 985 (N.D. Ill. 1985).....61, 63

Dobrovolny v. Ford Motor Co.,
281 Neb. 86 (Neb. 2011).....65

Doe v. Hunter Oaks Apts., L.P.,
105 So. 3d 422 (Miss. Ct. App. 2013).....88, 92

Dolin v. SmithKline Beecham Corp.,
62 F. Supp. 3d 705, 714 (N.D. Ill. 2014).....82

Estate of Doyle v. Sprint/Nextel Corp.,
248 P.3d 947 (Okla. Civ. App. 2010).....71

Drager by Gutzman v. Aluminum Indus. Corp.,
495 N.W.2d 879 (Minn. Ct. App. 1993).....98

Du Page Aviation Corp. v. Du Page Airport Auth.,
229 Ill.App.3d 793, 171 Ill.Dec. 814, 594 N.E.2d 1334 (1992).....106

Durkee v. C..H. Robinson Worldwide, Inc.,
765 F. Supp. 2d 742 (W.D.N.C. 2011).....71, 72

E. River S.S. Corp. v. Transamerica Delaval, Inc.,
476 U.S. 858 (1986).....58, 62

E.S. Robbins Corp. v. Eastman Chem. Co.,
912 F. Supp. 1476 (N.D. Ala. 1995).....114

Erickson's Flooring & Supply Co., Inc. v Tembec, Inc.,
No. 03-74214, 2006 WL 148759 (E.D. Mich. Jan. 18, 2006),
aff'd, 212 F. App'x 558 (6th Cir. 2007).....108

Erickson v. Curtis Inv. Co.,
447 N.W.2d 165 (Minn. 1989).....84

Everkrisp Vegetables, Inc. v. Tobiason Potato Co.,
870 F. Supp. 2d 745 (D.N.D. 2012).....64

Exclaim Mktg., LLC v. DirecTV, LLC,
___ F. Supp. 2d ___, 2015 WL 5773586 (E.D.N.C. Sept. 30, 2015).....128

Felsher v. Univ. of Evansville,
755 N.E.2d 589 (Ind. 2001).....105

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

First Commercial Trust Co. v. Lorcin Eng'g, Inc.,
900 S.W.2d 202 (Ark. 1995).....70, 73

First Midwest Bank, N.A. v. Stewart Title Guar. Co.,
843 N.E.2d 327 (Ill. 2006).....23

Fla. Fuels, Inc. v. Citgo Petrol. Corp.,
6 F.3d 330 (5th Cir. 1993).....91

Fleischer v. Hellmuth, Obata & Kassabaum, Inc.,
870 S.W. 2d 832 (Mo. Ct. App. 1993).....65

Food Lion, Inc. v. Capital Cities/ABC, Inc.,
194 F.3d 505 (4th Cir. 1999).....128

Forcum-James Co. v. Duke Transp. Co.,
93 So. 2d 228 (La. 1957).....104

Forever Green Athletic Fields, Inc. v. Lasiter Constr., Inc.,
384 S.W.3d 540 (Ark. Ct. App. 2011).....106

Four D, Inc. v. Duthland Plastics Corp.,
No. 01-cv-2073, 2002 WL 570655 (D. Minn. Apr. 15, 2002).....124

Friedman v. Dollar Thrifty Auto. Grp.,
Civ. Act. No. 12-cv-02432-WYD-KMT, 2013 WL 5448078
(D. Colo. Sept. 27, 2013).....120

Funchess v. Cecil Newman Corp.,
632 N.W.2d 666 (Minn. 2001).....86

Gaylord Entm't Co. v. Thompson,
958 P.2d 128 (Okla. 1998).....111

Gaytan v. Wal-Mart,
853 N.W.2d 181 (Neb. 2014).....70

In re Genetically Modified Rice Litig.,
666 F. Supp. 2d 1004 (E.D. Mo. 2009).....7, 28, 45, 82, 127

In re Genetically Modified Rice Litig.,
No. 4:06-md-1811, 2011 WL 339168 (E.D. Mo. Feb. 1, 2011).....50

In re Genetically Modified Rice Litig.,
No. 4:06-md-1811, 2011 WL 5024548 (E.D. Mo. Oct. 21, 2011).....45

Getty Refining & Mktg. Co. v. MT FADI B,
766 F.2d 829 (3d Cir. 1985).....22

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Giddings & Lewis, Inc. v. Indus. Risk Insurers,
348 S.W.3d 729 (Ky. 2011) 55, 64

Goforth v. Smith,
991 S.W.2d 579 (Ark. 1999) 113

Gold Sci. Consultants, Inc. v. Cheng,
No. 3:07-CV-152, 2009 WL 1256664 (E.D. Tenn. May 4, 2009) 106, 108

Gosch v. Juelfs,
701 N.W.2d 90 (Iowa 2005) 20, 38, 42

Gourdine v. Crews,
955 A.2d 769 (Md. Ct. App. 2008) 71

Great Sw. Fire Ins. Co. v. CNA Ins. Cos.,
557 So. 2d 966 (La. 1990) 44

Gruhlke v. Sioux Empire Fed. Credit Union, Inc.,
756 N.W.2d 399 (S.D. 2008) 106

Grund v. Donegan,
700 N.E.2d 157 (Ill. App. Ct. 1998) 111

State of La. ex rel. Guste v. M/V Testbank,
752 F.2d 1019 (5th Cir. 1985) (en banc) 18, 22, 31, 32, 33

Gutierrez v. Eckert Farm Supply, Inc.,
No. C5-02-1900, 2003 WL 21500161 (Minn. Ct. App. July 1, 2003) 70

Haddon View Inv. Co. v. Coopers & Lybrand,
436 N.E.2d 212 (Ohio 1982) 47

Hage v. Gen. Serv. Bureau,
306 F. Supp. 2d 883 (D. Neb. 2003) 126

Ham v. Swift Transp. Co., Inc.,
694 F. Supp. 2d 915 (W.D. Tenn. 2010) 49

Hamilton v. Beretta, U.S.A. Corp.,
750 N.E.2d 1055 (N.Y. 2001) 70, 73, 74

Hammes v. Yamaha Motor Corp. U.S.A., Inc.,
No. 03-6456, 2006 WL 1195907 (D. Minn. May 4, 2006) 94

Hapka v. Paquin Farms,
458 N.W.2d 683 (Minn. 1990) 39

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Harris v. Gaylord Entm't Co.,
No M2013-00689-COA-R3-CV, 2013 WL 6762372
(Tenn. Ct. App. Dec. 19, 2013).....105

Hatleberg v. Norwest Bank Wis.,
700 N.W.2d 15 (Wis. 2005).....87

Hines v. Remington Arms Co.,
648 So. 2d 331 (La. 1994).....98

Hininger v. Case Corp.,
23 F.3d 124 (5th Cir. 1994).....62

Hoffman v. Monsanto Canada (Hoffman I),
2005 SKQB 225, 2005 SK.C. LEXIS 330
(Can. Sask. Q.B. May 11, 2005)..... *passim*

Hoffman v. Monsanto Canada (*Hoffman II*),
2007 SKCA 47, 2007 SK.C. LEXIS 194
(Can. Sask. C.A. May 7, 2007).....5, 27, 28, 80

Hoffman v. WCC Equity Partners, LP,
899 N.E.2d 756 (Ind. Ct. App. 2008).....54

Holt v. Macy's Retail Holdings, Inc.,
719 F. Supp. 2d 903 (W.D. Tenn. 2010).....99

Hot Rod Hill Motor Park v. Triolo,
293 S.W.3d 788 (Tex. App. 2009).....116

In re HSBC Bank, USA, N.A., Debit Card Overdraft Fee Litig.,
1 F. Supp. 3d 34 (E.D.N.Y. 2014).....16

Hunt v. Riley,
909 S.W.2d 329 (Ark. 1995).....107

Huntting Elevator Co. v. Biwer,
No. C9-98-548, 1998 WL 747170 (Minn. Ct. App. Oct. 27, 1998).....123

Hutchens v. MP Realty Grp.-Sheffield Square Apts.,
654 N.E.2d 35 (Ind. Ct. App. 1995).....116

Hutchings v. Bauer,
599 N.E.2d 934 (Ill. 1992).....70

Indianapolis-Marion Cty. Pub. Library v. Charlier Clark & Linard, P.C.,
929 N.E.2d 722 (Ind. 2010).....54, 55, 64

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Ingram Trucking, Inc. v. Allen,
372 S.W.3d 870 (Ky. Ct. App. 2012) 100

Ins. Co. of N. Am. v. Cease Elec., Inc.,
688 N.W.2d 462 (Wis. 2004).....52

Int'l Flavors & Fragrances, Inc. v. McCormick & Co., Inc.,
575 F. Supp. 2d 654 (D.N.J. 2008) 61

J'Aire Corp v. Gregory,
598 P.2d 60 (Cal. 1979) 19

Jefferson v. Lead Indus.,
106 F.3d 1245 (5th Cir. 1997) 68

Jepson v. Gen. Cas. of Wis.,
513 N.W.2d 467 (Minn. 1994).....14, 15, 122

Johnson Cnty., Tenn. By & Through Bd. of Educ. v. U.S. Gypsum Co.,
580 F. Supp. 284 (E.D. Tenn. 1984),
order set aside in part on other grounds sub nom.
Johnson Cnty., Tenn. v. U.S. Gypsum Co.,
664 F. Supp. 1127 (E.D. Tenn. 1985).....114

Johnson v. Knox Cty. P'ship,
728 N.W.2d 101 (Neb. 2007).....113

Johnson v. Ruark Obstetrics & Gynecology Assocs., P.A.,
395 S.E.2d 85 (N.C. 1990).....100

Jordan v. Case Corp.,
993 P.2d 650 (Kan. Ct. App. 1999) 64

Jordan v. S. Wood Piedmont Co.,
805 F. Supp. 1575 (S.D. Ga. 1992).....101, 114

Jorgensen Farms, Inc. v. Country Pride Coop., Inc.,
824 N.W.2d 410 (S.D. 2012) 60, 61, 64, 96

Kaiser v. Kaiser,
186 N.W.2d 678 (Minn. 1971).....10

Kane v. Cameron Intern. Corp.,
331 S.W.3d 145 (Tex. App. 2011).....113

KB Home Ind. Inc. v. Rockville TBD Corp.,
928 N.E.2d 297 (Ind. Ct. App. 2010).....54

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Kidd v. Bass Hotels & Resorts, Inc.,
136 F. Supp. 2d 965 (E.D. Ark. 2000) 107

King v. Hilton-Davis,
855 F.2d 1047 (3d Cir. 1988) 62, 63, 96

Kirk v. Michael Reese Hosp. & Med. Ctr.,
513 N.E.2d 387 (Ill. 1987) 70

Kreisers Inc. v. First Dakota Title Ltd. P'ship,
852 N.W.2d 413 (S.D. 2014) 57

L'Henri, Inc. v. Vulcan Materials Co.,
Civ. No. 2006-177, 2010 WL 924259 (D.V.I. Mar. 11, 2010) 114

Ladd Landing, LLC v. TVA,
874 F. Supp. 2d 727 (E.D. Tenn. 2012) 48, 49

LAN/STV v. Martin K. Eby Constr. Co., Inc.,
435 S.W.3d 234 (Tex. 2014) 49, 50, 65

Lane v. W.J. Curry & Sons,
92 S.W.3d 355 (Tenn. 2002) 113

Larson v. Larson,
373 N.W.2d 287 (Minn. 1985) 69

Leadfree Enters., Inc. v. U.S. Steel Corp.,
711 F.2d 805 (7th Cir. 1983) 51

Leaf River Forest Prods., Inc. v. Ferguson,
662 So. 2d 648 (Miss. 1995) 113

Leeper v. Asmus,
440 S.W.3d 478 (Mo. Ct. App. 2014) 70

Leno v. K & L Homes, Inc.,
803 N.W.2d 543 (N.D. 2011) 56, 65

Lesiak v. Cent. Valley Ag. Co-op, Inc.,
808 N.W.2d 67 (Neb. 2012) 56

Lethu Inc. v. City of Hous.,
23 S.W.3d 482 (Tex. App. 2000) 113

Lexington Ins. Co. v. W. Roofing Co., Inc.,
316 F. Supp. 2d 1142 (D. Kan. 2004) 59, 60

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Lloyd Wood Coal Co. v. Clark Equip. Co.,
543 So. 2d 671 (Ala. 1989).....53, 64

Long Motor Corp. v. SM&P Util. Res., Inc.,
214 P.3d 707, 2009 WL 2595932 (Kan. Ct. App. Aug. 21, 2009).....25, 55

Lord v. Customized Consulting Specialty, Inc.,
643 S.E.2d 28 (N.C. Ct. App. 2007).....56

Ly v. Nystrom,
615 N.W.2d 302 (Minn. 2000).....123

Lyndon Prop. Ins. Co. v. Duke Levy & Assocs., LLC,
475 F.3d 268 (5th Cir. 2007).....56

Mackie v. Bollore S.A.,
No. 286461, 2010 WL 673295 (Mich. Ct. App. Feb. 25, 2010).....100

Marlar v. Daniel,
247 S.W.3d 473 (Ark. 2007).....70

Martens v. Minn. Min. & Mfg. Co.,
616 N.W.2d 732 (Minn. 2000).....5

Martin v. Harrington & Richardson, Inc.,
743 F.2d 1200 (7th Cir. 1984).....73, 77, 78

Marvin Lumber & Cedar Co. v. PPG Indus., Inc.,
401 F.3d 901 (8th Cir. 2005).....122

Mattingly v. Sheldon Jackson Coll.,
743 P.2d 356 (Alaska 1987).....19

May v. Countrywide Home Loans, Inc.,
No. 4:07-cv-375-CDP, 2007 WL 1879781 (E.D. Mo. June 28, 2007).....112, 124, 125

Mayo Clinic v. Elkin,
Civ. No. 09-322, 2010 WL 760728 (D. Minn. Mar. 4, 2010).....100

McDowell v. Davis,
235 S.E.2d 896 (N.C. Ct. App. 1977).....100

MCI WorldCom Network Servs., Inc. v. W.M. Brode Co.,
411 F. Supp. 2d 804 (N.D. Ohio 2006).....99

McLaughlin, Inc. v. Northstar Drilling Techs., Inc.,
138 S.W.3d 24 (Tex. App. 2004).....130

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

McLeodUSA Telecomms. Servs., Inc. v. Qwest Corp.,
469 F. Supp. 2d 677 (N.D. Iowa 2007).....99

McNeill v. Sec. Ben. Life Ins. Co.,
28 F.3d 891 (8th Cir. 1994).....108

Mercatus Grp., LLC v. Lake Forest Hosp.,
641 F.3d 834 (7th Cir. 2011).....88

Metro. Water Reclamation Dist. of Greater Chi. v. Terra Found. for Am. Art,
13 N.E.3d 44 (Ill. App. Ct. 2014).....41, 42

Midwest Knitting Mills, Inc. v. United States,
950 F.2d 1295 (7th Cir. 1991).....51

Mink v. Univ. of Chi.,
460 F. Supp. 713 (N.D. Ill. 1978).....94

Minneapolis Soc'y of Fine Arts v. Parker-Klein Assocs. Architects, Inc.,
354 N.W.2d 816 (Minn. 1984), *overruled on other grounds by Hapka*, 458
N.W.2d 683.....57, 60

Montpetit v. Allina Health Sys., Inc.,
No. C2-00-571, 2000 WL 1486581 (Minn. Ct. App. Oct. 10, 2000).....15

Mooney v. Allianz Life Ins. Co. of N. Am.,
244 F.R.D. 531 (D. Minn. 2007).....119, 120

Moore v. Coachmen Indus., Inc.,
499 S.E.2d 772 (N.C. Ct. App. 1998).....65

Moorman Mfg. Co. v. Nat'l Tank Co.,
435 N.E.2d 443 (Ill. 1982).....58, 64

Morton v. Merrillville Toyota, Inc.,
562 N.E.2d 781 (Ind. Ct. App. 1990).....54

Mountain States Tel. & Tel. Co. v. Horn Tower Constr. Co.,
363 P.2d 175 (Colo. 1961).....100

Mulch Mfg., Inc. v. Advanced Polymer Sols., LLC,
947 F. Supp. 2d 841 (S.D. Ohio 2013).....47, 48

Murphy v. DirecTV, Inc.,
No. 2:01-cv-06465, 2011 WL 3325891 (C.D. Cal. Feb. 11, 2011).....122

Mutua v. Deutsche Bank Nat. Trust Co.,
2013 WL 6839723 (Minn. Ct. App. Dec. 30, 2013).....5

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

N. States Contracting Co. v. Oakes,
253 N.W. 371 (Minn. 1934).....38

Nami Res. Co., LLC v. Asher Land & Mineral, Ltd.,
Nos. 2012-CA-762-MR et al., 2015 WL 4776376
(Ky. Ct. App. Aug. 14, 2015) 55

Nat'l Crane Corp. v. Ohio Steel Tube Co.,
332 N.W. 2d 39 (Neb. 1983).....56

Nat'l Mulch & Seed, Inc. v. Rexius Forest By-Prods. Inc.,
No. 2:02-CV-1288, 2007 WL 894833 (S.D. Ohio Mar. 22, 2007).....48

Neb. Innkeepers, Inc. v. Pittsburgh-Des Moines Corp.,
345 N.W.2d 124 (Iowa 1984) 20, 42

Neibarger v. Univ. Coops., Inc.,
486 N.W.2d 612 (Mich. 1992).....64

Nichols v. Progressive N. Ins. Co.,
746 N.W.2d 220 (Wis. 2008).....82

Nodak Mut. Ins. Co. v. Am. Family Mut. Ins. Co.,
604 N.W.2d 91 (Minn. 2000).....15

Northern Nat. Gas Co. v. L.D. Drilling, Inc.
697 F.3d 1259 (10th Cir. 2012) 113

Northfield Ins. Co. v. St. Paul Surplus Lines Ins. Co.,
545 N.W.2d 57 (Minn. Ct. App. 1996).....87

Novak v. Ind. Family & Soc. Servs. Admin.,
No. 1:10-cv-0677-RLY-DML, 2011 WL 1224813 (S.D. Ind. Mar. 30, 2011).....55

Nw. Ark. Masonry, Inc. v. Summit Spec. Prods., Inc.,
31 P.3d 982 (Kan. Ct. App. 2001) 60, 62

Nygaard v. Sioux Valley Hosps. & Health Sys.,
731 N.W.2d 184 (S.D. 2007) 129

Olson v. Push, Inc.,
Civ. No. 14-1163, 2014 WL 4097040 119

Overnite Transp. Co. v. Teamsters Local Union No. 480,
No. M2002-02116-COA-R3-CV, 2004 WL 383313
(Tenn. Ct. App. Feb. 27, 2004).....107

Overturff v. Read,
442 S.W.3d 862 (Ark. Ct. App. 2014).....105

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

PPG Indus., Inc. v. Bean Dredging,
447 So. 2d 1058 (La. 1984) 43, 44

Parks Hiway Enters., LLC v. CEM Leasing, Inc.,
995 P.2d 657 (Alaska 2000).....101

Parks v. Dick's Sporting Goods, Inc.,
No. 05-CV-6590 (CJS), 2006 WL 170447 (W.D.N.Y. June 15, 2006).....17

Patterson v. Rohm Gesellschaft,
608 F. Supp. 1206 (N.D. Tex. 1985) 77

Paulus v. Citicorp N. Amer., Inc.,
No. 12-cv-856, 2014 WL 4557603 (S.D. Ohio Sept. 12, 2014) 113

Pendergrast v. Aiken,
236 S.E.2d 787 (N.C. 1977).....113

People Expr. Airlines, Inc. v. Consol. Rail Corp.,
495 A.2d 107 (N.J. 1985).....19, 29, 30

Perkins v. F.I.E. Corp.,
762 F.2d 1200 (5th Cir. 1985) 77

Phillips Petrol. Co. v. Shutts,
472 U.S. 797 (1985).....120, 122

Phillips v. G & H Seed Co.,
86 So. 3d 773 (La. Ct. App. 2012).....43

Pickett v. Consignment Enter. Co.,
No. C-77372, 1978 WL 216505 (Ohio Ct. App. Aug. 9, 1978) 32

Pilgrim v. Universal Health Card, LLC,
660 F.3d 943 (6th Cir. 2011) 122

Playboy Enters., Inc. v. Editorial Caballero, S.A. de C.V.,
202 S.W.3d 250 (Tex. App.--Corpus Christi 2006, pet. denied) 106

Pleasant Valley Promenade v. Lechmere, Inc.,
464 S.E.2d 47 (N.C. Ct. App. 1995) 128

Poff v. Hayes,
763 So. 2d 234 (Ala. 2000).....100

Praktika Design & Projectos Ltda. v. Marvin Lumber & Cedar Co.,
No. 06-cv-957, 2007 WL 1582710 (D. Minn. May 30, 2007) 40

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Prescott v. Argen Corp.,
No. 13-cv-6147, 2014 WL 4638607 (N.D. Ill. Sept. 17, 2014) 126

Progressive Ins. Co. v. Monaco Coach Corp.,
No. 1:05-CV-37-DMR-JMR, 2006 WL 839520 (S.D. Miss. Mar. 29, 2006) 62

Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.,
29 S.W.3d 74 (Tex. 2000) 105

Ptacek v. Earthsoils, Inc.,
844 N.W.2d 535 (Minn. Ct. App. 2014) 40, 67

Public Bldg. Auth. of City of Huntsville v. St. Paul Fire and Marine Ins. Co.,
80 So. 3d 171 (Ala. 2010) 53

Pugh v. Westreich,
No. A04-657, 2005 WL 14922 (Minn. Ct. App. Jan. 4, 2005) 123

Queen City Terminals, Inc. v. Gen. Am. Transp. Corp.,
653 N.E.2d 661 (Ohio 1995) 47

Quest Diagnostics, Inc. v. MCI WorldCom, Inc.,
656 N.W.2d 858 (Mich. Ct. App. 2002) 56

J.A.H. ex rel. R.M.H. v. Wadle & Assocs., P.C.,
589 N.W.2d 256 (Iowa 1999) 71

Rainbow Play Sys., Inc. v. Backyard Adventure, Inc.,
2009 WL 3150984 (D.S.D. Sept. 28, 2009) 129

Rassier v. Houim,
488 N.W.2d 635 (N.D. 1992) 113

Reali, Giampetro & Scott v. Soc'y Nat'l Bank,
729 N.E.2d 1259 (Ohio Ct. App. 1999) 108

Richards v. Midland Brick Sales Co., Inc.,
551 N.W.2d 649 (Iowa Ct. App. 1996) 64

Rinehart v. Morton Buildings Inc.,
305 P.3d 622 (Kan. 2013) 55

Robins Dry Dock & Repair Co. v. Flint,
275 U.S. 303 (1927) 18, 33

Rural Dev., LLC v. Tucker,
No. M2008-00172-COA-R3-CV, 2009 WL 112541
(Tenn. Ct. App. Jan. 14, 2009) 49

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Russo v. NCS Pearson, Inc.,
462 F. Supp. 2d 981 (D. Minn. 2006) 93, 94

RWP, Inc. v. Fabrizi Trucking & Paving Co., Inc.,
No. 87382, 2006 WL 2777159 (Ohio Ct. App. Sept. 28, 2006) 46

S K Peightal Eng'rs, LTD v. Mid Valley Real Estate Sols. V, LLC,
342 P.3d 868 (Colo. 2015) 54, 64

Sagebrush Res., LLC v. Peterson,
841 N.W.2d 705 (N.D. 2014) 100

Sample v. Monsanto Co.,
283 F. Supp. 2d 1088 (E.D. Mo. 2003) 3, 24, 27, 28, 80

Schoedinger v. United Healthcare of Midwest, Inc.,
No. 4:07CV904SNLJ, 2011 WL 97735 (E.D. Mo. Jan 12, 2011) 108

Schuetta v. Aurora Nat'l Life Assurance Co.,
No. 13-cv-007-JPS, 2013 WL 6199248 (E.D. Wis. Nov. 27, 2013) 52

Schumacher v. Schumacher,
676 N.W.2d 685 (Minn. Ct. App. 2004) 15

Securian Fin. Grp., Inc. v. Wells Fargo Bank N.A.,
Civ. No. 11-2957 (DWF/HB), 2014 WL 6911100 (D. Minn. Dec. 8, 2014) 122

Selle v. Tozser,
786 N.W.2d 748 (S.D. 2010) 111

ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.,
544 N.W.2d 302 (Minn. 1996) 91

Shaner v. United States,
976 F.2d 990 (6th Cir. 1992) 87

Shipco 2295, Inc. v. Avondale Shipyards, Inc.,
825 F.2d 925 (5th Cir. 1987) 62

Simms v. Jones,
879 F. Supp. 2d 595 (N.D. Tex. 2012) 87

Skinner v. State,
149 So. 3d 342 (La. Ct. App. 2014) 70

Sluis v. Nudelman,
34 N.E.2d 391 (Ill. 1941) 126

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Snyder's Drug Store, Inc. v. Minn. State Bd. of Pharm.,
221 N.W.2d 162 (Minn. 1974).....16

Solvay Pharm., Inc. v. Global Pharm.,
298 F. Supp. 2d 880 (D. Minn. 2004).....123

Sotelo v. DirectRevenue, LLC,
384 F. Supp. 2d 1219 (N.D. Ill. 2005).....100

Speakers of Sport, Inc. v. ProServ, Inc.,
178 F.3d 862 (7th Cir. 1999).....125

People ex rel. Spiegel v. Lyons,
115 N.E.2d 895 (Ill. 1953).....96, 126

People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.,
761 N.Y.S.2d 192 (N.Y. App. Div. 2003).....73, 79, 80, 89

In re St. Jude Med., Inc.,
425 F.3d 1116 (8th Cir. 2005).....119, 120

In re St. Paul & K.C. Grain Co.,
94 N.W. 218 (Minn. 1903).....119

St. Paul Fire & Marine Ins. Co. v. Steeple Jac, Inc.,
352 N.W.2d 107 (Minn. Ct. App. 1984).....62, 66

Staab v. Diocese of St. Cloud,
813 N.W.2d 68 (Minn. 2012).....39, 66

Stanford By and Through Stanford v. Wal-Mart Stores, Inc.,
600 So. 2d 234 (Ala. 1992).....89

In re StarLink Corn Prods. Liab. Litig.,
212 F. Supp. 2d 828 (N.D. Ill. 2002)..... *passim*

State Farm Mut. Auto. Ins. Co. v. Ford Motor Co.,
736 So. 2d 384 (Miss. Ct. App. 1999).....59, 60, 65

State v. Anderson,
603 N.W.2d 354 (Minn. Ct. App. 1999).....110

Sterling Chems., Inc. v. Texaco Inc.,
259 S.W.3d 793 (Tex. App. 2007).....50, 51

Stevenson v. E. Ohio Gas Co.,
73 N.E.2d 200 (Ohio Ct. App. 1946).....20, 34, 45, 46

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Stonebridge Collection v. Carmichael,
791 F.3d 811 (8th Cir. 2015) 106

Superwood Corp. v. Siempelkamp Corp., 311 N.W.2d 159 (Minn. 1981),
overruled on other grounds by
Hapka v. Paquin Farms, 458 N.W.2d 683 (Minn. 1990) 57

In re Syngenta AG MIR162 Corn Litig.,
No. 2:14-md-2591, 2015 WL 5607600 (D. Kan. Sept. 11, 2015) ..... *passim*

Syngenta Seeds, Inc. v. Bunge N. Am., Inc.,
820 F. Supp. 2d 953 (N.D. Iowa 2011).....76

Taco Bell, Inc. v. Lannon,
744 P.2d 43 (Colo. 1987) (en banc).....83

TEC Cogeneration Inc. v. Fla. Power & Light Co.,
76 F.3d 1560 (11th Cir. 1996) 88

In re Temporomandibular Joint (TMJ) Implants Prods. Liab. Litig.,
97 F.3d 1050 (8th Cir. 1996) 95, 96, 97, 98

Terrell v. Rowsey,
647 N.E.2d 662 (Ind. Ct. App. 1995).....99

Texas Disposal Sys. Landfill, Inc. v. Waste Mgmt. Holdings, Inc.,
219 S.W.3d 563 (Tex. App. 2007).....108, 110

Theisen v. Covenant Med. Ctr., Inc.,
636 N.W.2d 74 (Iowa 2001) 87

Thimjon Farms P'ship v. First Int'l Bank & Trust,
837 N.W.2d 327 (N.D. 2013) 129

Thrasher-Lyon v. Ill. Farmers Ins. Co.,
861 F. Supp. 2d 898 (N.D. Ill. 2012) 125

Tioga Pub. Sch. Dist. No. 15 v. U.S. Gypsum Co.,
984 F.2d 915 (8th Cir. 1993) 114, 117

Tipler v. McKenzie Tank Lines,
547 So. 2d 438 (Ala. 1989).....113

Tisdell v. ValAdCo,
Nos. C0-01-2054 *et al.*, 2002 WL 31368336 (Minn. Ct. App. Oct. 16, 2002).....123

Town of Alma v. AZCO Constr., Inc.,
10 P.3d 1256 (Colo. 2000).....54

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Trade 'N Post, L.L.C. v. World Duty Free Ams., Inc.,
628 N.W.2d 707 (N.D. 2001) 105, 111

Trans-Gulf Corp. v. Performance Aircraft Servs., Inc.,
82 S.W.3d 691 (Tex. App. 2002).....51

Trau-Med of Am., Inc. v. Allstate Ins. Co.,
71 S.W.3d 691 (Tenn. 2002).....111

Traube v. Freund,
775 N.E.2d 212 (Ill. App. Ct. 2002) 114

Trinity Indus., Inc. v. McKinnon Bridge Co., Inc.,
77 S.W.3d 159 (Tenn. Ct. App. 2001).....65

TS&C Invs. LLC v. Beusa Energy, Inc.,
637 F. Supp. 2d 370 (W.D. La. 2009).....44

Tucker v. Boulevard At Piper Glen LLC,
564 S.E.2d 248 (N.C. Ct. App. 2002).....128

Tuffy's Inc. v. City of Okla. City,
212 P.3d 1158 (Okla. 2009).....105

Turner v. Fehrs Neb. Tractor & Equip. Co.,
609 N.W.2d 652 (Neb. 2000).....74

Tyler v. Alltel Corp.,
265 F.R.D. 415 (E.D. Ark. 2010).....122

U.S. Bank, N.A. v. Integrity Land Title Corp.,
929 N.E.2d 742 (Ind. 2010) 54

U.S. Enercorp, Ltd. v. SDC Montana Bakken Expl., LLC,
966 F. Supp. 2d 690 (W.D. Tex. 2013).....109

Ultramares Corp. v. Touche,
174 N.E. 441 (N.Y. 1931).....43

Union Oil Co. v. Oppen,
501 F.2d 558 (9th Cir. 1974) 38, 45

Union Pacific R. Co. v. Reilly Indus., Inc.,
4 F. Supp. 2d 860 (D. Minn. 1998).....113

United Textile Workers of Am. v. Lear Siegler Seating Corp.,
825 S.W.2d 83 (Tenn. Ct. App. 1990).....34, 48

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Universal Tube & Rollform Equip. Corp. v. YouTube, Inc.,
504 F. Supp. 2d 260 (N.D. Ohio 2007).....103

Van Duyn v. Cook-Teague P'ship,
694 N.E.2d 779 (Ind. Ct. App. 1998).....91

Van Sickle Constr. Co. v. Wachovia Comm. Mort., Inc.,
783 N.W.2d 684 (Iowa 2010).....23, 43

Vancura v. Katris,
939 N.E.2d 328 (Ill. 2010).....87

Victoria Cruises, Inc. v. Chiangjiang Cruise Overseas Travel Co.,
630 F. Supp. 2d 255 (E.D.N.Y. 2008).....10

Vogel v. Grant-Lafayette Elec. Co-op.,
548 N.W.2d 829 (Wis. 1996).....113

W. Innovations, Inc. v. Sonitrol Corp.,
187 P.3d 1155 (Colo. App. 2008).....71

Waggoner v. Town & Country Mobile Homes, Inc.,
808 P.2d 649 (Okla. 1990).....57, 65

Wal-Mart Stores, Inc. v. Sturges,
52 S.W.3d 711 (Tex. 2001).....111

Walker v. Ranger Ins. Co.,
711 N.W.2d 683 (Wis. Ct. App. 2006).....52

Walsh v. U.S. Bank, N.A.,
851 N.W.2d 598 (Minn. 2014).....101

Walter Energy, Inc. v. Audley Capital Advisors LLP,
No. 1131104, 2015 WL 731152 (Ala. Feb. 20, 2015).....105

Ward v. Ne. Tex. Farmers Co-op. Elevator, 909 S.W. 2d 143 (Tex. App. 1995),
abrogated on other grounds by
Envt'l Processing Sys., L.C. v. FPL Farming Ltd.,
457 S.W.3d 414 (Tex. 2015).....102

Wasau Tile, Inc. v. Country Concrete Corp.,
593 N.W.2d 445 (Wis. 1999).....61

Watters v. TSR, Inc.,
904 F.2d 378 (6th Cir. 1990).....89

Weller & Co. v. Foot & Mouth Disease Research Inst.,
[1966] 1 Q.B. 569.....20

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Western Sur. & Cas. Co. v. Gen. Elec. Co.,
433 N.W.2d 444 (Minn. Ct. App. 1988) 94

White Sands Grp., L.L.C. v. PRS II, LLC,
32 So. 3d 5 (Ala. 2009) 111

Wilkey v. Hull,
366 F. App'x 634 (6th Cir. 2010) 108

Williams Elecs. Games, Inc. v. Garrity,
366 F.3d 569 (7th Cir. 2004) 125, 126

Williams v. Charlotte Copy Data, Inc.,
591 S.E.2d 598 (N.C. Ct. App. 2004) 127

Williams v. Cingular Wireless,
809 N.E.2d 473 (Ind. Ct. App. 2004) 70, 71, 89, 128

Wiltz v. Bayer Cropscience, L.P.,
645 F.3d 690 (5th Cir. 2011) 21, 35, 43, 44, 58

Woodis v. Okla. Gas & Elec. Co,
704 P.2d 483 (Okla. 1984) 100

Wrede v. Exch. Bank of Gibbon,
531 N.W.2d 523 (Neb. 1995) 126, 127

Young v. Bryco Arms,
821 N.E.2d, 1078 (Ill. 2004) 78

Zapata v. Ford Motor Credit Co.,
615 S.W.2d 198 (Tex. 1981) 100

Zutz v. Case Corp.,
No. Civ. 02-1776, 2003 WL 22848943 (D. Minn. Nov. 21, 2003) 124

Statutes, Proposed Legislation, and Regulations

7 C.F.R. § 340.1 6

7 C.F.R. § 810.402 ..... 7, 104

7 U.S.C. § 136a 8

7 U.S.C. § 136q 93

7 U.S.C. § 136v 92

7 U.S.C. § 136w 8

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

7 U.S.C. § 7711(a) 6

Assem. B. 984, 2005 Leg., Reg. Sess. (Cal. 2005) 79, A-1

Assem. Bill 6509, 236th Leg. Sess. (N.Y. 2013) A-2

H.B. 2207, 81st Reg. Sess. (W. Va. 2013) A-2

H.B. 2736, 77th Leg. Assem. (Or. 2013) A-2

H.R. 2919, 108th Cong. 1st (2003) A-1

H.R. 3555, 112th Cong. 1st (2011) A-1

H.R. 4816, 107th Cong. 2d (2002) A-1

H.R. 5579 § 203(a), 111 Cong. 2d (2010) A-1

H.R. 6637 § 203(a), 110th Cong. 2d (2008) A-1

HF 3820, 81st Leg. (Minn. 2000) A-1

Ill. Comp. Stat. 505/1(e) 125

L.B. 959, 96th Leg., 2d Reg. Sess. (Neb. 2000) A-2

La. Civ. Code art. 2315 ..... 100, 102, 104

La. R.S. 9:2800.52 68

Minn. Stat. § 325D.45 124

Minn. Stat. § 336.2-314 67

Minn. Stat. § 604.10 ..... 39, 40

Minn. Stat. § 604.101 ..... *passim*

Minn. Stat. § 645.16 ..... 39, 67

S. 18, 2006 Leg., Reg. Sess. (Vt. 2006) A-2

S.B. 1789 (Mass. 2001) A-1

S.B. 1912 (Mass. 2003) A-1

S.B. 218, 2005 Leg. Reg. Sess. (Mon. 2005) A-1

S.B. 2235, 2005 Leg. Reg. Sess. (N.D. 2005) A-2

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

S.B. 2737 § 2, 27th Leg. Sess. (Haw. 2014) A-1

Tex. Bus. & Com. Code § 17.50(a)(1) 130

Other Authorities

1A Callmann on Unfair Competition, Trademarks, and Monopolies (4th ed.) 107, 110

2007 USDA Census of Agriculture, http://www.nass.usda.gov/Statistics_by_State/Oklahoma/Publications/Media_Resources/Soybean_Factsheet.pdf 25

27 Minn. Practice: Prods. Liab. Law § 13.15 (2015 ed.) 39

Abby Wendle, *Pain From The Grain: Corn Belt Towns Languish As Prices Drop*, NPR (Mar. 18, 2015), http://www.npr.org/sections/thesalt/2015/03/18/393841311/pain-from-the-grain-corn-belt-towns-languish-as-prices-drop 25

Biotechnology Industry Organization, Product Launch Stewardship Policy (Dec. 10, 2009), https://www.bio.org/sites/default/files/Product_Launch_Stewarship_12_10_09_0.pdf 9

Blake A. Biles, *Agricultural Biotechnology: The U.S. Perspective*, 18 ABA Nat. Resources & Env't 12 (2003) 6

Chinese Ministry of Agriculture, Implementation Regulations on the Safety of Import of Agricultural Genetically Modified Organisms, arts. 18-19 (Jan. 5, 2002), http://bch.biodiv.org/database/attachedfile.aspx?id=561 84

Corilyn Shropshire, *Falling Soybean, Corn Prices Hurt Farmland Values*, Chicago Tribune (Feb. 12, 2015) 25

Dan B. Dobbs *et al.*, *The Law of Torts* (2d ed. 2011)
§ 647 ..... 19, 20, 45
§ 164 70
§ 255 ..... 83, 84
§ 399 117
§ 449 61
§ 452 94
§ 606 ..... 23, 48
§ 655 19
§ 666 48

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Daniel S. Kleinberger, Linda J. Rusch & Alan I. Silver, *Building a New Foundation: Torts, Contracts, and the Economic Loss Doctrine*, Bench & Bar of Minn. (Sept. 2000), http://www2.mnbar.org/benchandbar/2000/sep00/econ-loss.htm 39

David B. Gaebler, *Negligence, Economic Loss, and the U.C.C.*, 61 Ind. L.J. 593 (1986).....38

EPA, *Notice of Pesticide Registration, 5307 Corn* (July 31, 2012), http://www3.epa.gov/pesticides/chem_search/ppls/067979-00022-20120731.pdf 8

EPA, *Notice of Pesticide Registration, MIR162 Maize* (Nov. 26, 2008), http://www3.epa.gov/pesticides/chem_search/ppls/067979-00014-20081126.pdf 8

FDA, *Biotechnology Consultation Note to the File BNF No. 000113, Maize Event MIR162* (Dec. 1, 2008), http://www.fda.gov/Food/FoodScienceResearch/GEPlants/Submissions/ucm155598.htm; 8

FDA, *Biotechnology Consultation Note to the File BNF No. 000128, Maize Event 5307* (Jan. 30, 2012), http://www.fda.gov/Food/FoodScienceResearch/GEPlants/Submissions/ucm304082.htm 8

Pain From The Grain: Corn Belt Towns Languish As Prices Drop, NPR (Mar. 18, 2015), http://www.npr.org/sections/thesalt/2015/03/18/393841311/pain-from-the-grain-corn-belt-towns-languish-asprices-drop.....77

Pet. for Determination of Nonregulated Status for Insect-Resistant MIR162 Maize, SYN-IR162-4 (Aug. 31, 2007), http://www.aphis.usda.gov/brs/aphisdocs/07_25301p.pdf 7, 121

Pet. for Determination of Nonregulated Status for Rootworm-Resistant Event 5307 Corn, Pet. No. 5307-USDA-1 (Apr. 22, 2011), http://www.aphis.usda.gov/brs/aphisdocs/10_33601p.pdf 8

Peter Benson, *The Problem with Pure Economic Loss*, 60 S.C. L. Rev. 823 (2009) 19

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Restatement (Second) of Torts
§ 8A....102
§ 217....102, 103
§ 218....99, 104
§ 315....70
§ 323....87
§ 388....93
§ 766B....109
§ 821D....113
§ 821F....117
§ 834....114

Restatement (Third) of Torts: Liab. for Phys. & Emot. Harm
§ 7....83
§ 6....83

Restatement (Third) of Torts: Prods. Liab. § 2....94, 98

Restatement (Third) of Torts: Liab. for Econ. Harm
§§ 5-6....36
§ 7....*passim*
§ 1....17

Robert Holly, *Growing Pains or Gains*, The News-Gazette (Oct. 11, 2015), http://www.news-gazette.com/news/business/2015-10-11/growing-pains-or-gains.html....85

Ronen Perry, *The Economic Bias in Tort Law*, 2008 U. Ill. L. Rev. 1573 (2008)....19

State Council of the People's Republic of China, Regulations on the Safety Administration of Agricultural GMOs arts. 34, 38 (Jan. 8, 2011), http://apps.fas.usda.gov/gainfiles/200106/110681034.pdf....84

USDA APHIS, *Syngenta Biotechnology, Inc.; Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance*, 75 Fed. Reg. 20560 (Apr. 20, 2010)....7

USDA Background on Soybeans & Oil Crops, http://www.ers.usda.gov/topics/crops/soybeans-oil-crops/background.aspx....25

USDA, *Determination of Nonregulated Status for Event 5307 Corn* (Jan. 29, 2013), http://www.aphis.usda.gov/brs/aphisdocs/10_33601p_det.pdf....8

27-CV-15-3735
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

USDA, *Final Environmental Assessment, Syngenta Company Petition for Determination of Nonregulated Status of SYN-05307-1 Rootworm Resistant Corn* (Jan. 2013), http://www.aphis.usda.gov/brs/aphisdocs/10_33601p_fea.pdf 127

USDA, *Finding Of No Significant Impact for Syngenta Seeds, Inc. Alpha-Amylase Maize Event 3272*, http://www.aphis.usda.gov/brs/aphisdocs/05_28001p_fonsi_rtc.pdf 75

USDA, *Nat'l Env'tl Policy Act Decision & Finding of No Significant Impact for Stine Seed Farm, Inc. Event HCEM485*, http://www.aphis.usda.gov/brs/aphisdocs/09_06301p_fonsi.pdf 76

USDA, *Nat'l Env'tl Policy Act Decision & Finding of No Significant Impact for Bayer CropScience LP Event FG72 Soybean*, http://www.aphis.usda.gov/brs/aphisdocs/09_32801p_fonsi.pdf 76

USDA, *Nat'l Envt'l Policy Act Decision & Finding Of No Significant Impact for Syngenta Seeds, Inc. Alpha-Amylase Maize Event 3272*, http://www.aphis.usda.gov/brs/aphisdocs/05_28001p_fonsi_rtc.pdf 75

USDA, *Nat'l Envt'l Policy Act Decision and Finding of No Significant Impact, MIR162 Maize* (April 12, 2010), http://www.aphis.usda.gov/brs/aphisdocs2/07_25301p_com.pdf 7, 127

USDA National Organic Program, Policy Memorandum From Miles McEvoy, Deputy Administrator, to stakeholders and interested parties re: Genetically Modified Organisms (Apr. 15, 2011), http://www.ams.usda.gov/sites/default/files/media/OrganicGMOPolicy.pdf 75

USDA, *USDA's Response to Public Comments on Syngenta SYN-05307-1 Corn*, http://www.aphis.usda.gov/brs/aphisdocs/10_33601_rtc.pdf 76

W. Keeton et al., *Prosser and Keeton on Law of Torts* § 129 (5th ed. 1984).....19

W. Prosser, *The Law of Torts*, § 87, at 579 (4th ed. 1971) 75

William Powers, *Negligence, Breach of Contract, and the "Economic Loss" Rule*, 23 Tex. Tech. L. Rev. 477 (1992).....19

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

INTRODUCTION

Plaintiffs' lawsuit rests on the unprecedented theory that it was a *tort* for Syngenta to sell a U.S.-approved, genetically modified (GM) corn seed called Viptera in the U.S. simply because that biotechnology had not yet been approved for import into China. According to Plaintiffs, absent Chinese approval, the law imposed a duty on Syngenta either (i) to control the way *everyone else* handled corn grown with the new technology to keep it segregated or (ii) to prevent American farmers from having access to the technology *at all*. The claimed reason for this novel duty is not that the GM trait harmed corn in any *physical* way. There is no dispute that the U.S. government allowed corn grown from Viptera to be treated like any other yellow corn and thus that it could be harvested, processed, and consumed without any requirement to keep it separate. Instead, Plaintiffs claim only *economic* injury, asserting that because corn is typically treated as a fungible commodity crop, and because they and others mixed Viptera corn into the U.S. corn supply, China eventually decided to block all U.S. corn shipments (supposedly due to the presence of Viptera), so as to cause a drop in the price of all U.S. corn. In their view, Syngenta should be liable in tort for that entire extended chain of events, including actions taken by *others* entirely outside Syngenta's control. That theory should be recognized for what it is: an attempt to use tort law to allow Plaintiffs to avoid the costs of adapting their businesses to the advent of new technology and to turn a biotechnology manufacturer into an insurer paying out on a policy that Plaintiffs never bought to protect themselves from market drops in the price of corn.

At the heart of this case lies an inescapable fact: when the U.S. approves biotechnology before foreign countries (like China), players in the U.S. corn industry such as grain elevators and exporters face a choice. They can continue to treat all corn as fungible and mix all corn together, in which case they risk losing the ability to export to a market where a U.S.-approved technology has not yet gained approval. Or they can take steps to separate corn to preserve their

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

ability to serve the special demands of particular export markets. The premise of Plaintiffs' case is that tort law eliminates the need for Plaintiffs to face that choice by requiring the manufacturers of new GM technology to hold others in the market harmless from costs that the advent of new technology might place on their current ways of doing business. In their view, tort law dictates that American manufacturers must either *suppress* innovative new technology until it is approved overseas, or else absorb the costs that others in the market incur when they fail to take steps to adapt to the new technology—all because it is supposedly a tort to market technology that others find disruptive for their way of doing business. Under that radical reasoning, a GM manufacturer could be liable in tort for selling a GM seed that increases crop yields and thus causes prices to drop, because of the economic harm to those in the industry who previously enjoyed higher prices. Plaintiffs' theory has no support in precedent and should be rejected as a matter of law.

There is no dispute that when Syngenta began selling Viptera in 2010, it had been found safe and was fully approved by the U.S. Government. It was also well known in the industry that China had not yet approved Viptera. As a result, some grain elevators—like Bunge—chose to change the way they did business to address the advent of this new technology. They decided it was important to preserve their ability to meet the standards of the Chinese export market, so they refused to accept Viptera corn at their grain elevators. Others, including the Non-Producer Plaintiffs here, took a different approach. They chose not to segregate corn grown from Viptera from other corn, treating all such corn for what, by law, it was: fungible U.S. "yellow corn." They mixed corn without distinction in their facilities. Corn producers similarly made no effort to require the grain elevators to whom they sold their corn to segregate it to ensure that it would be exportable to China. And in seeking to profit from record-high prices driven by corn shortages in 2011 and 2012, Non-Producers decided to ship corn containing Viptera to China

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

knowing that Viptera had not yet been approved for import into China. That approach continued for two years, until China began turning away U.S. corn shipments in November 2013.

In addition to suffering from a host of individual defects, Plaintiffs' causes of action are broadly foreclosed by two fundamental principles.

First, Plaintiffs' claims are barred by the economic loss doctrine ("ELD"). Under settled law, purely economic losses are not recoverable in actions for unintentional torts. Indeed, until the Viptera litigation, the only American court to consider claims identical to those here based on the loss of a foreign market due to the spread of an approved GM trait *rejected* those claims by applying the ELD. *See Sample v. Monsanto Co.*, 283 F. Supp. 2d 1088, 1093 (E.D. Mo. 2003).

Although the MDL court presiding over the federal Viptera litigation ("MDL Court") concluded that the ELD did not apply, that court did not acknowledge *Sample*, much less distinguish it. Instead, the MDL decision rests on the creation of a novel exception to the ELD based on a case-by-case assessment of policy factors to determine when the ELD should apply. With all respect, that approach misstates the law: the very reason for the ELD is to provide a bright-line rule barring recovery of economic losses absent physical injury. It forecloses precisely the case-by-case approach that the MDL Court adopted and which, if anything, resembles the *minority* approach to the ELD adopted by only three States and rejected by the Restatement and every other State to have considered it.

Second, Plaintiffs' suggestion that Syngenta had a duty to reorganize the entire industry framework for growing and distributing corn—by controlling the actions of growers, elevators, and exporters, *including Non-Producers themselves*—is literally unprecedented. The standard rule is that a party has no duty to control the conduct of another, and under that rule courts regularly reject the idea that manufacturers of safe, non-defective products have a duty to control third parties' handling of products after the point of sale. Imposing such a duty would also

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

undermine the policy behind the U.S. regulatory framework under which, once approved by the USDA, the EPA, and the FDA, GM crops are treated the same as non-GM crops. No court has purported to create a parallel regulatory regime restricting which GM traits can and cannot be sold freely after federal approval, and this Court should not proceed down that uncharted path.

To the extent Plaintiffs claim that Syngenta had a duty not to sell Viptera *at all* until it had Chinese approval, that theory is even more far-fetched. State tort law does not require the suppression of new technology that current market participants find inconvenient, nor does it give foreign governments a veto over which new technologies—*already approved by the U.S. government*—can be sold in the United States.

The MDL Court's conclusion that Syngenta had a duty to operate its business "for the mutual benefit of all" in the industry so as to avoid economic disruptions for other market participants, MDL Order 10,[2] is similarly unprecedented. The MDL Court cited no prior case recognizing such a duty, and it is completely counter to the usual rule that, absent specifically defined economic torts, market participants are free to pursue their own advantage in the market, including by introducing disruptive new technologies.

Plaintiffs' repeated references to cases involving *unapproved* GM traits are irrelevant. Those cases involved GM traits that had been improperly released into the U.S. food supply *before they had been approved for human consumption.* Before the Viptera litigation, only two courts had addressed claims like the ones here—claims that the *lawful* sale of an *approved* GM seed harmed farmers or exporters by foreclosing their ability to serve an export market. Both courts rejected those claims as a matter of law. As noted above, *Sample* barred such claims under the ELD. In the second case, a Canadian court applied the same common-law principles

[2] "MDL Order" refers to Mem. & Order, Dkt. 1016, *In re Syngenta AG MIR162 Corn Litig.*, No. 2:14-md-2591 (D. Kan. Sept. 11, 2015) (attached as Ex. C).

27-CV-15-3735
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

applicable here and held as a matter of law that the plaintiffs could not show duty *and* that the claims were barred by the ELD as well. *See Hoffman v. Monsanto Canada (Hoffman I)*, 2005 SKQB 225, 2005 SK.C. LEXIS 330 (Can. Sask. Q.B. May 11, 2005) (attached as Ex. A), *aff'd*, *Hoffman v. Monsanto Canada* (*Hoffman II*), 2007 SKCA 47, 2007 SK.C. LEXIS 194 (Can. Sask. C.A. May 7, 2007) (attached as Ex. B).[3] Those decisions provide the proper approach for analyzing this case, and this Court should similarly dismiss Plaintiffs' claims.

BACKGROUND

Because Plaintiffs' complaints hinge on the premise that GM crops must be segregated from those that are not, a brief discussion of the regulatory backdrop is helpful.

A. Biotechnology And Genetically Modified Crops In The United States[4]

The United States Department of Agriculture ("USDA") defines genetic engineering as "a precise and predictable method used to introduce new traits into plants and animals by moving genetic elements from one or more organisms into another."[5] The government has recognized that the use of this biotechnology "has resulted in benefits to farmers, producers, and consumers" by "mak[ing] both insect pest control and weed management safer and easier while safeguarding crops against disease," including "allow[ing] for a significant reduction" in the use of pesticides.[6]

The benefits of biotechnology have prompted a dramatic increase in the use of GM seeds over the past two decades. For some crops, such as corn, this has translated into near-universal

---

[3] Citations to exhibits refer to the exhibits attached to the November 9, 2015 Affidavit of D. Scott Aberson.

[4] The facts relevant to this motion come from the complaints, "[d]ocuments and oral statements referenced in the complaint," *Martens v. Minn. Min. & Mfg. Co.*, 616 N.W.2d 732, 739 n.7 (Minn. 2000), and matters of government and public record cited in the Argument section—all of which are subject to judicial notice, *see Mutua v. Deutsche Bank Nat. Trust Co.*, 2013 WL 6839723, at *1 (Minn. Ct. App. Dec. 30, 2013)—in addition to publicly available information provided solely for background and that is not necessary to the resolution of this motion.

[5] USDA, *Department of Agriculture's Consolidated Financial Statements for Fiscal Years 2010 and 2009*, 57 http://www.usda.gov/oig/webdocs/50401-70-FM.pdf.

[6] USDA, Biotechnology Frequently Asked Questions, http://www.usda.gov/wps/portal/usda/usdahome?navid=AGRICULTURE&contentid=BiotechnologyFAQs.xml.

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

usage across the U.S. Today, GM corn makes up 92% of all corn planted in the U.S.[7] The use of GM technology has also produced corresponding increases in crop yields.[8] As the USDA has explained, biotechnology can help "keep pace with demands for food while reducing production costs."[9] For these reasons, the U.S. Government long ago weighed the benefits of GM crops and adopted the policy of treating approved GM products the same as conventionally bred crops.[10]

Manufacturers of GM traits like the ones at issue here are statutorily restricted from launching GM traits until they have been fully vetted and approved by the USDA, the EPA, and the FDA—as the traits at issue here were.[11] Through its "complex method of evaluation"[12] and testing, the USDA may determine that the GM trait is safe and remove any statutory restrictions by "deregulating" the GM trait, either in whole or in part.

B. Syngenta's Development Of U.S.-Approved Viptera And Duracade Corn

Syngenta has developed, manufactured, and sold GM seeds for decades, and its advances include two corn seed traits called MIR162 and Event 5307. Each trait protects corn crops from insects and pests, thus increasing crop yields and reducing the need for pesticides. MIR162 was incorporated into Syngenta's Viptera corn seed, making it resistant to above-ground pests like

---

[7] USDA, *Adoption of Genetically Engineered Crops in the U.S.* (2014), http://www.ers.usda.gov/amber-waves/2014-march/adoption-of-genetically-engineered-crops-by-us-farmers-has-increased-steadily-for-over-15-years.aspx#.VkDLy7erTGg.

[8] USDA, *Adoption of Genetically Engineered Crops by U.S. Farmers Has Increased Steadily for Over 15 Years* (Mar. 4, 2014), http://www.ers.usda.gov/amber-waves/2014-march/adoption-of-genetically-engineered-crops-by-us-farmers-has-increased-steadily-for-over-15-years.aspx#.VXfIevlVhBc.

[9] USDA, Biotechnology Frequently Asked Questions, http://www.usda.gov/wps/portal/usda/usdahome?navid=AGRICULTURE&contentid=BiotechnologyFAQs.xml.

[10] *See, e.g.*, Blake A. Biles, *Agricultural Biotechnology: The U.S. Perspective*, 18 Nat. Resources & Env't 12, 43 (2003) ("According to the Coordinated Framework [issued by the Executive Office of the President in 1986], products created using genetic engineering are presumed to be as safe (concerning both public health and the environment) as their conventional counterparts unless evidence indicates otherwise.").

[11] 7 U.S.C. § 7711(a) ("[N]o person shall import, enter, export, or move in interstate commerce any plant pest, unless the importation, entry, exportation, or movement is authorized under general or specific permit and is in accordance with such regulations as the [USDA] may issue . . ."). Under USDA regulations, genetically modified organisms are generally regulated as plant pests until approved. 7 C.F.R. § 340.1.

[12] USDA, *USDA's Biotechnology Deregulation Process* (June 28, 2011), http://blogs.usda.gov/2011/06/28/usda%E2%80%99s-biotechnology-deregulation-process/

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Lepidoptera (caterpillars). Several years after Viptera was launched, Syngenta developed Event 5307, which controls pests like rootworm and is found in a corn seed product called Duracade.

According to the complaints, Syngenta "field tested [Viptera and Duracade] under permits issued by or notifications to . . . the USDA." Non-Class Compl. ¶ 13; *see* Class Compl. ¶ 39. The complaints do not allege any unapproved releases of MIR162 during the field testing. Once sufficient laboratory and field testing established that Viptera was safe for humans, animals, and the environment alike, Syngenta petitioned the USDA in 2007 to deregulate MIR162. *See generally* Pet. for Determination of Nonregulated Status for Insect-Resistant MIR162 Maize, SYN-IR162-4 (Aug. 31, 2007) ("Deregulation Petition"), http://www.aphis.usda.gov/brs/aphisdocs/07_25301p.pdf.

Three years later, in 2010, the USDA approved MIR162 for deregulation without any restrictions on how it was to be sold, grown, or handled.[13] The USDA also concluded that MIR162 did not pose risks to humans, animals, or the environment.[14] The USDA rejected alternatives to full deregulation, including partial deregulation that would have restricted where Viptera could be planted.[15] By deregulating a GM trait like MIR162, the USDA "allow[s] it to be sold commercially." *In re Genetically Modified Rice Litig.*, 666 F. Supp. 2d 1004, 1015 n.2 (E.D. Mo. 2009). As a result, the USDA's unrestricted approval made Viptera, just like every other U.S.-approved GM corn product, a lawful and integral part of the U.S. corn supply under the USDA's broad definition of "yellow corn."[16]

---

[13] *See* USDA APHIS, *Syngenta Biotechnology, Inc.; Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance*, 75 Fed. Reg. 20560 (Apr. 20, 2010).

[14] *See* USDA, *Nat'l Envt'l Policy Act Decision & Finding of No Significant Impact, MIR162 Maize*, 5 (April 12, 2010), http://www.aphis.usda.gov/brs/aphisdocs2/07_25301p_com.pdf.

[15] *Id.*

[16] *See* 7 C.F.R. § 810.402(c)(1) ("yellow corn" is "[c]orn that is yellow-kerneled and contains not more than 5.0 percent of corn of other colors," with "kernels of corn with a slight tinge of red [being] considered yellow corn").

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Syngenta petitioned the USDA for deregulation of Event 5307 in April 2011[17] after conducting USDA-authorized field tests. Non-Class Compl. ¶ 13; Class Compl. ¶ 198. As with the MIR162 field tests, the complaints do not allege any unapproved releases of Event 5307 during testing. In 2013, the USDA fully deregulated Event 5307 without any restrictions.[18]

MIR162 and Event 5307 not only received USDA approval, but also were approved by the EPA and the FDA. The EPA regulates the use, sale, and labeling of pesticides, including those in GM traits such as MIR162, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). *See* 7 U.S.C. §§ 136a, 136w. Syngenta secured EPA approval of MIR162 in November 2008[19] and Event 5307 in July 2012.[20] The FDA, which oversees food and feed safety of GM plants,[21] was satisfied with Syngenta's conclusion that "food and feed derived from . . . MIR162 are as safe and nutritious as food and feed derived from conventional maize" (and likewise with respect to Event 5307).[22] Thus, by April 20, 2010, it is undisputed that Viptera had received all approvals required for it to be sold without restriction in the United States, and Duracade had received all required approvals for unrestricted sale by January 29, 2013. There is no dispute in this case about the safety or efficacy of Viptera and Duracade.

---

[17] *See* Pet. for Determination of Nonregulated Status for Rootworm-Resistant Event 5307 Corn, Pet. No. 5307-USDA-1 (Apr. 22, 2011), http://www.aphis.usda.gov/brs/aphisdocs/10_33601p.pdf.

[18] USDA, *Determination of Nonregulated Status for Event 5307 Corn* (Jan. 29, 2013), http://www.aphis.usda.gov/brs/aphisdocs/10_33601p_det.pdf.

[19] EPA, *Notice of Pesticide Registration, MIR162 Maize* (Nov. 26, 2008), http://www3.epa.gov/pesticides/chem_search/ppls/067979-00014-20081126.pdf.

[20] EPA, *Notice of Pesticide Registration, 5307 Corn* (July 31, 2012), http://www3.epa.gov/pesticides/chem_search/ppls/067979-00022-20120731.pdf.

[21] *See* FDA, *FDA's Role in Regulating Safety of GE Foods* (May 14, 2013), http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm352067.htm.

[22] FDA, *Biotechnology Consultation Note to the File BNF No. 000113, Maize Event MIR162* (Dec. 1, 2008), http://www.fda.gov/Food/FoodScienceResearch/GEPlants/Submissions/ucm155598.htm; FDA, *Biotechnology Consultation Note to the File BNF No. 000128, Maize Event 5307* (Jan. 30, 2012), http://www.fda.gov/Food/FoodScienceResearch/GEPlants/Submissions/ucm304082.htm.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

C. Syngenta Commercializes Viptera Consistent With Industry Guidelines

1. The BIO Stewardship Policy

Given the increasingly globalized market for many commodity crops, one issue perennially raised by new GM technologies arises from the fact that a given GM trait typically will not secure approval from regulatory authorities in different countries all at the same time. Thus, a trait may be approved for commercialization in an exporting country before it has received approval for import in all other countries. Because of this issue of asynchronous approvals, various players in the biotechnology and grain industries have suggested "stewardship" guidelines for developers to consider in deciding when to commercialize a new product. One of the earliest was the Biotechnology Industry Organization ("BIO") "Product Launch Stewardship Policy," first approved on May 10, 2007.[23] The BIO Policy sets out recommendations for member companies but expressly refuses to create any binding obligations. *See* 2009 BIO Policy, Ex. D at 1 n.2 ("Under BIO's bylaws and applicable antitrust law, individual member companies ***are not bound*** by this Association policy or its annexes.") (emphasis added). The BIO Policy suggests that, before launching a new GM trait, member companies should assess which countries are "key import markets," which requires, among other things, assessing the volume of trade for the crop at issue. *Id.* at 4. The Policy does not define what makes a market "key" or stipulate any particular market-assessment metrics. The BIO Policy suggests that, before launching a new GM seed, manufacturers consider obtaining import approval from those "key export markets" that have "functioning regulatory systems"—defined as countries with "a track record of systematic authorizations with *consistent and predictable*

[23] BIO updated the BIO Policy on December 10, 2009—the only update prior to Syngenta's decision to launch Viptera, https://www.bio.org/sites/default/files/Product_Launch_Stewarship_12_10_09_0.pdf (attached as Ex. D and incorporated by reference at Non-Class Compl. ¶¶ 73, 116, 121, 144 and Class Compl. ¶¶ 25, 32, 35, 62).

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

timelines and processes." *Id.* at 4 & n.6 (emphasis added).

The BIO Policy has never listed China as a key import country or a country from which approval should be secured prior to commercialization. In fact, the 2009 BIO Policy listed only the U.S., Canada, and Japan as "key markets," *see id.* at 4, and noted only that other countries might be considered later. *See id.* at 4 n.6.

2. Syngenta Commercializes Viptera Consistent With The BIO Policy

In late 2009, Syngenta decided to begin commercialization upon securing deregulation of MIR162 from the U.S. and import approval in the markets named by BIO. It is undisputed that, consistent with the BIO Policy, Syngenta obtained approval from the U.S., Canada, and Japan before Viptera was launched—the countries that BIO had identified at the time. Indeed, even before the first commercial planting began in 2011, many additional foreign countries, including Brazil, Korea, Taiwan, the Philippines, and Mexico, had approved Viptera for import as well.

China does not even permit an application for approval of a trait to be filed until the trait has been approved for human consumption in the exporting country.[24] Syngenta applied for import approval from China as soon as it was permitted to do so in March 2010. Non-Class Compl. ¶ 70; Class Compl. ¶ 59. At the time Syngenta launched Viptera in the United States in 2010, about one-third of 1% of annual U.S. corn production was exported to China.[25]

---

[24] *See* USDA Foreign Agr. Serv., GAIN Report No. CH12046 (July 13, 2012) http://gain.fas.usda.gov/-Recent%20GAIN%20Publications/Agricultural%20Biotechnology%20Annual_Beijing_China%20%20Peoples%20Republic%20of_7-13-2012.pdf.

[25] Plaintiffs' repeated efforts to tout China's significance to the U.S. corn market are belied by the USDA's own statistics in the public record. For example, in 2010, there were 12,425,330,000 bushels of corn produced in the U.S. and 1,025,396 metric tons of that corn exported from the U.S. to China. *See* USDA Economic Research Service Feed Grains Database, http://www.ers.usda.gov/data-products/feed-grains-database/feed-grains-custom-query.aspx (attached as Exhibit F). Converting the latter data point to bushels (39.368 bushels per metric ton, *see* Ex. F, or approximately 40,367,790 bushels) and then dividing it by the total number of bushels produced in the U.S. shows that only 0.32% of the U.S. corn produced in 2010 was exported to China. *Cf. Kaiser v. Kaiser*, 186 N.W.2d 678, 684 n.4 (Minn. 1971) ("We do not doubt that judicial notice may be taken of both the fact of increase and the extent of increase in the cost of living by resort to consumer price indices published by the United States Bureau of Labor Statistics."); *see also, e.g.*, *Victoria Cruises, Inc. v. Chiangjiang Cruise Overseas Travel Co.*, 630 F. Supp. 2d

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

3. Competing "Stewardship" Guidelines From Other Trade Associations

Other industry associations have developed similar non-binding stewardship guidelines like the BIO Policy. The Excellence Through Stewardship ("ETS") "Guide for Product Launch Stewardship," *see* Non-Class Compl. ¶ 44; Class Compl. ¶ 33, leads with a disclaimer that the Guide is "solely an educational tool" and "does not define or create legal rights or obligations."[26] The ETS Guide simply provides "guidance" for companies to consider as they develop their own internal stewardship policies.[27] Likewise, CropLife International has established "Product Launch Stewardship" guidelines that, like the BIO Policy, recommend that CropLife International members should meet regulatory requirements in "key countries" with "functioning regulatory systems."[28] Neither the ETS nor the CropLife guidelines mention China.

D. Most Grain Elevators And Exporters Treat Viptera As Fungible Corn, Commingle It, And Ship It To China

With U.S. and other approvals in hand, Syngenta sold Viptera seeds to independent dealers and directly to growers in the United States for the 2011 growing season. Non-Class Compl. ¶ 80; Class Compl. ¶ 69. Plaintiffs allege that the farmers planting Viptera did so in a way that permitted cross-pollination with neighboring fields.

At the time, it was well known that China had not approved Viptera for import. As Plaintiffs point out, industry organizations, such as NGFA and NAEGA, were well aware of that fact at all relevant times. *See* Non-Class Compl. ¶¶ 85, 104-05; Class Compl. ¶¶ 93-94.

Based on the information available in the market, a few grain elevators and exporters,

---

255, 263 n.3 (E.D.N.Y. 2008) ("The Court can take judicial notice of government statistics.").

[26] Excellence Through Stewardship, Guide for Product Launch Stewardship for Biotechnology-Derived Plant Products, 2 (July 2010), http://excellencethroughstewardship.org/wp-content/uploads/ETS-Stewardship-Guide-Final-Revised-12-13.pdf.

[27] *Id.* at 4.

[28] *See* CropLife International, Product Launch Stewardship, http://croplife.org/plant-biotechnology/stewardship-2/product-launch-stewardship/. Because the guidelines are undated, it is unclear what they recommended at the time Syngenta commercialized Viptera, if they even existed at that time.

27-CV-15-3735
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

including Bunge, decided to protect what they viewed as their economic interests by refusing to accept Viptera corn. Bunge, in mid-2011, announced that it would not "accept Viptera corn because [it] exported corn to China." Non-Class Compl. ¶ 147; *see* Class Compl. ¶ 136.[29]

Unlike Bunge and Consolidated Grain and Barge, Non-Class Compl. ¶ 148; Class Compl. ¶ 137, many other grain elevators and exporters decided to accept and handle Viptera corn without distinction from non-Viptera corn. These grain elevators and exporters did not refuse Viptera corn (like Bunge and others) or ask for any contractual assurance from growers about the seed they had used. Nor did they decide to test for Viptera or to try to segregate Viptera to make sure that their corn complied with Chinese standards. And that made sense because as noted above, the Chinese market accounted for only about one-third of 1% of U.S. corn production when Viptera was launched in the U.S. *See supra* note 25.

During this time, Syngenta kept market analysts and its investors updated on the status of Chinese approval. For example, in April 2012, Syngenta hosted an earnings call for investors.[30] Plaintiffs seize on a statement from then-Syngenta AG CEO Michael Mack that, as to "outstanding approval for China" "we *expect* to have [it] quite frankly within the matter of a couple of days," and try to portray it as misleading.[31] But Mr. Mack cautioned listeners that "the regulatory authorities are not something that we can handicap definitively," and the entire call was preceded by the "usual cautionary statement" that the "presentation contains forward-

[29] As Plaintiffs note, Syngenta Seeds sued Bunge and sought a preliminary injunction requiring Bunge to accept Viptera corn. *See* Non-Class Compl. ¶¶ 149-50; Class Compl. ¶¶ 138-39. The court refused that request and thus established the principle that Bunge—and all other grain elevator operators—remained free to protect their economic interests in exporting to China by refusing to accept Viptera corn. Bunge is not a plaintiff in this case.

[30] *See* Tr. of Q1 2012 Syngenta Earnings Call, http://www.syngenta.com/global/corporate/SiteCollectionDocuments/pdf/transcripts/q1-2012-transcript-syngenta.pdf (attached as Ex. E) (quoted in Non-Class Compl. ¶ 184 and Class Compl. ¶ 173).

[31] *Id.* (emphasis added).

27-CV-15-3735
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

looking statements, which can be identified by terminology such as" the word "*expect*."[32]

If anything, Mr. Mack's statement about the uncertainty of predicting the Chinese regulatory process was prescient. While Plaintiffs allege that China had a functioning regulatory system when Syngenta applied for import approval in 2010, *see* Non-Class Compl. ¶ 60; Class Compl. ¶ 49, as it turned out, it was anything but functional. Under Chinese law, the application for Viptera should have been addressed within 270 days.[33] By April 2012, it had been pending for more than 700 days. In December 2012, the U.S. Trade Representative acknowledged China's "apparent slow-down in issuing approvals" for biotechnology products.[34] Indeed, due in part to public backlash in China over GM products and outstanding trade disputes between the U.S. and China, the Ministry of Agriculture did not approve a single application for importing new GM crops from June 2013 until December 11, 2014 (when Viptera was approved).[35]

E. The Price Of Corn Drops And China Then Bans U.S. Corn

The complaints do not allege any rejections by China from the time Syngenta commercialized Viptera until late 2013. And as the 2013/2014 corn season approached, USDA analysts projected a "record" U.S. corn crop and significantly "[l]ower prices" as a result of "higher production, moderately higher use, and record global supplies"[36]—issues having nothing

---

[32] *Id.* (emphasis added).

[33] USDA Foreign Agricultural Service GAIN Report Number 14032, 8 (Dec. 31, 2014), http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Agricultural%20Biotechnology%20Annual_Beijing_China%20-%20Peoples%20Republic%20of_12-31-2014.pdf.

[34] U.S. Trade Rep., 2012 Rep. to Cong.ress on China's WTO Compliance, 89 (Dec. 2012), https://ustr.gov/sites-/default/files/uploads/2012%20Report%20to%20Congress%20-%20Dec%2021%20Final.pdf; *see also id.* at 88 (noting that "other U.S. concerns with China's biotechnology regulations and implementing rules remain").

[35] USDA Foreign Agricultural Service GAIN Report Number 14032, 8 (Dec. 31, 2014), http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Agricultural%20Biotechnology%20Annual_Beijing_China%20-%20Peoples%20Republic%20of_12-31-2014.pdf.

[36] USDA, *Economic Research Service Feed Outlook, Record Feed Grain Production Projected for 2013/14*, 3 (May 14, 2013), http://usda.mannlib.cornell.edu/usda/ers/FDS/2010s/2013/FDS-05-14-2013.pdf.

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

to do with Viptera. Corn futures reflected the same expectations.[37] That year's bumper crop was a record U.S. corn harvest (after several years of decreasing production) and the world's largest corn harvest in more than 50 years.[38] As predicted, U.S. corn prices dropped significantly in 2013, decreasing from $7.04 per bushel in February to $4.63 per bushel in October.[39]

It was not until late-November 2013, after that 34% price drop, that "China began rejecting shipments of U.S. corn that tested positive for the presence of MIR162." Non-Class Compl. ¶ 201; *see* Class Compl. ¶ 190. By rejecting this and other shipments, Beijing gave Chinese buyers a way out of millions of dollars of corn contracts that had been locked in at higher prices before the bumper crop. *See* Non-Class Compl. ¶ 205; Class Compl. ¶ 194.

Following China's actions, grain elevators and other exporters—the same ones that made no effort to turn away Viptera corn and no effort to protect themselves contractually in their agreements with Chinese buyers—sued Syngenta, later followed by farmers of non-Viptera corn.

China eventually approved Viptera for import in December 2014.[40]

CHOICE OF LAW

For purposes of the issues raised in this Motion to Dismiss, there are no conflicts in the tort laws applied by the relevant States, except where expressly noted. As a result, this Motion cites exemplar cases applying principles that apply across the relevant jurisdictions. *See, e.g.*, *Jepson v. Gen. Cas. of Wis.*, 513 N.W.2d 467, 469 (Minn. 1994) ("In analyzing the choice of law issue, the first consideration is whether the choice of one state's law over another's creates an

[37] *See* Monthly Commodity Futures Price Chart—Corn (CBOT), http://futures.tradingcharts.com/prairielinks/CN/M.
[38] *See* Food and Agriculture Organization of the United Nations Statistics Division Data, http://faostat3.fao.org/browse/Q/QC/E.
[39] *See* USDA National Agricultural Statistics Service, *Quick Stats for Corn*, http://quickstats.nass.usda.gov/data/printable/84286845-EA4D-3EA6-A1C6-4D88693AE168.
[40] Non-Class Compl. ¶ 206; Class Compl. ¶ 195.

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

actual conflict."). Out of an abundance of caution, however, Syngenta outlines the analysis that would apply in the event of a conflict. As the MDL Court recognized, each plaintiff's claim would be governed by the laws of that plaintiff's home state. *See* MDL Order 7.

Minnesota looks to five factors to determine which State's law applies: "(1) predictability of result; (2) maintenance of interstate order; (3) simplification of judicial task; (4) advancement of the forum's governmental interests; and (5) application of the better rule of law." *Schumacher v. Schumacher*, 676 N.W.2d 685, 690 (Minn. Ct. App. 2004). First, Syngenta sold Viptera "in nearly every state," Non-Class Compl. ¶ 98, and would expect that its "business-related . . . activity" would be governed by the State where the activity occurred. *Schumacher*, 676 N.W.2d at 690. The second factor, which requires the Court to weigh each state's governmental interest, *Nodak Mut. Ins. Co. v. Am. Family Mut. Ins. Co.*, 604 N.W.2d 91, 95 (Minn. 2000), favors applying the law of the state where each plaintiff operated its business and allegedly suffered financial harm. The third factor "is not . . . significant" here because no single state's law is more difficult to apply than another's. *Jepson*, 513 N.W.2d at 472. Fourth, "Minnesota's interest in allowing recovery for persons injured within its boundaries" does not extend to the non-resident Plaintiffs. *Montpetit v. Allina Health Sys., Inc.*, No. C2-00-571, 2000 WL 1486581, at *3 (Minn. Ct. App. Oct. 10, 2000). Because the other factors favor each Plaintiff's home state, the Court need not consider the fifth factor. *See Schumacher*, 676 N.W.2d at 691-92.

The Non-Class Complaint's attempt to squeeze *all* Plaintiffs within the claims brought under Minnesota law, *see* Non-Class Compl. ¶¶ 300-60, violates the federal constitutional requirement that a "State must have a significant contact or significant aggregation of contacts" for that State's substantive law to apply. *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981); *see Jepson*, 513 N.W.2d at 469-70. Non-Minnesota Plaintiffs base their claims on decisions and/or statements made outside Minnesota in conjunction with the "widespread"

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

commercialization of Viptera that allegedly caused them economic harm outside Minnesota by lowering the price of the corn they grew and sold outside Minnesota. *See infra* X.A.1. The *only* contact Minnesota has with those claims is that *one* of the *six* defendants, Syngenta Seeds, Inc., has its principal place of business in Minnesota. *See* Non-Class Comp. ¶¶ 9-13. But the Non-Class Complaint makes clear that Syngenta AG, a *Swiss* entity, directed decisions about commercializing Viptera and that Syngenta Seeds, Inc. does "not function independently but under the Syngenta AG umbrella." *Id.* ¶ 18. As the MDL Court recognized in addressing parallel allegations, "the mere fact that one defendant resides in Minnesota does not provide significant contacts with the state with respect to claims by non-residents who had no contact with Minnesota." MDL Order 101. Thus, the Due Process and Full Faith and Credit Clauses preclude applying Minnesota law to non-residents' claims.

ARGUMENT

I. All Claims Asserted Under The Laws Of Any States Where No Plaintiff Resides Must Be Dismissed As A Matter Of Law.

The Non-Class Complaint purports to bring claims under the laws of all 22 States now at issue. As of this filing, however, no notices to conform have been filed, and the complaint itself names only plaintiffs from Minnesota. Non-Class Compl. ¶¶ 5-8. For claims under the law of any State other than Minnesota to survive, there must be a plaintiff from that State to assert those claims. Non-residents of a State lack standing to bring claims under the laws of that State. *See generally Snyder's Drug Store, Inc. v. Minn. State Bd. of Pharm.*, 221 N.W.2d 162, 165 (Minn. 1974) (adopting "'injury in fact' concept of standing"); *see, e.g.*, *In re HSBC Bank, USA, N.A., Debit Card Overdraft Fee Litig.*, 1 F. Supp. 3d 34, 49 (E.D.N.Y. 2014) ("Plaintiffs may only assert a state claim if a named plaintiff resides in, does business in, or has some other connection

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

to that state").[41] In the event that timely Notices to Conform are not filed by plaintiffs from all 22 States, claims under the laws of any State lacking a plaintiff must be dismissed.

II. Plaintiffs' Claims Are Barred By The Economic Loss Doctrine.

Plaintiffs' unintentional tort claims[42] are foreclosed by the economic loss doctrine ("ELD"), which generally "bars recovery in negligence when the plaintiff has suffered only economic loss." *Annett Holdings, Inc. v. Kum & Go, L.C.*, 801 N.W.2d 499, 503 (Iowa 2011); *see also In re Chi. Flood Litig.*, 680 N.E.2d 265, 274 (Ill. 1997) ("[S]olely economic losses are generally not recoverable in tort actions."). As the Restatement (Third) of Torts states the general rule, "[a]n actor has no general duty to avoid the unintentional infliction of economic loss on another." Restatement (Third) of Torts: Liab. for Econ. Harm § 1(a) (Tent. Draft No. 1 2012). That broad rule reflects the fact that the primary function of tort law is to establish duties to protect society from physical "harm to person or property" and that "the general duty of care to refrain from acts unreasonably threatening *physical harm* is not paralleled by any comparable duty when the harm threatened is merely *economic*." *Daanen & Janssen, Inc. v. Cedarapids, Inc.*, 573 N.W.2d 842, 846, 847 (Wis. 1998) (emphases added).

Two strands of the doctrine are relevant here. The "stranger" ELD applies between contractual strangers—like the Producers and Syngenta here.[43] The "contractual" strand of the doctrine generally applies to parties connected by a chain of contracts, particularly those in the chain of distribution for a product that is alleged to cause economic harm. As explained below, the Non-Producers' claims are covered by either the stranger rule or the contractual rule,

---

[41] *See also Parks v. Dick's Sporting Goods, Inc.*, No. 05-CV-6590 (CJS), 2006 WL 170447, at *2 (W.D.N.Y. June 15, 2006) ("The Court finds that the [plaintiff] lacks standing to assert state-law claims arising under the laws of states other than New York, since he was never employed by defendant anywhere other than New York.").

[42] The ELD bars the Class and Non-Class Complaints' negligence claims, the Non-Class Complaint's nuisance claims, and the Class and Non-Class Complaints' strict-liability claims for products liability and failure to warn.

[43] To the extent Plaintiff Producers include farmers who *purchased* Viptera seed, which is unclear from the complaint, their claims are barred by the contractual ELD. *See infra* Part II.B.

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

depending on how the claims are cast. To the extent Non-Producers complain that they were injured by the general presence of Viptera in the corn supply (not in the particular corn they handled), they are in the same position as Producers and their claims are barred by the stranger ELD. To the extent Non-Producers complain that the corn *they purchased* contained corn grown from Viptera, and that that caused their injury, they are in the classic position of purchasers of a product that has disappointed their commercial expectations and their unintentional tort claims are barred by the contractual ELD.

A. The Producers' Claims Are Barred By The Stranger ELD.

1. The Stranger ELD Is The Majority Rule.

The stranger rule is the historical core of the ELD. As the Iowa Supreme Court has explained, "[f]or well over a century it has been a settled feature of American and English tort law that in a variety of situations there is no recovery in negligence for pure economic loss," *Annett Holdings*, 801 N.W.2d at 503 (citation omitted)—a doctrine known as the stranger (or "relational") ELD. Under American law, the rule can be traced to *Anthony v. Slaid*, 52 Mass. 290 (1846), and the most-cited seminal decision is Justice Holmes' opinion in *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303 (1927). There, the charterer of a ship sued in negligence when a dry dock damaged the ship during repairs and thus delayed the ship's return to service. The plaintiff and the defendant had no contractual relationship because the ship's owner had contracted for the repairs. The Supreme Court held that because the charterer sought solely economic damage (for the loss of the use of the ship) and did not allege any physical injury to its own property, an action in negligence would not lie. *Id.* at 309-10;[44] *see also State of La. ex rel. Guste v. M/V Testbank*, 752 F.2d 1019, 1023 (5th Cir. 1985) (en banc) (noting that

[44] The Court made clear that its rationale was based on general principles under common law, not a special admiralty rule. *See Robins Dry Dock*, 275 U.S. at 309-10 (citing Georgia case for the rule).

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

"[t]he principle that there could be no recovery for economic loss absent physical injury to a proprietary interest" was "well established when *Robins Dry Dock* was decided").

The stranger ELD is followed by the "majority of jurisdictions" in the U.S. *Aguilar v. RP MRP Wash. Harbour, LLC*, 98 A.3d 979, 982 (D.C. 2014); *see also Aikens v. Debow*, 541 S.E.2d 576, 583, 587 (W. Va. 2000) (American jurisdictions have followed *Robins Dry Dock* "almost without exception," collecting cases, and describing decisions that reject the stranger rule as a "minority view" that "represents a departure from a substantial collection of American and British cases").[45] Standard tort treatises universally describe it as the majority rule. *See, e.g.*, Dan B. Dobbs *et al.*, *The Law of Torts* § 647 (2d ed. 2011) ("Dobbs"); W. Keeton et al., *Prosser and Keeton on Law of Torts* § 129 (5th ed. 1984). As one treatise puts it, there is only "[a] little authority [that] has expressly rejected the stranger version of the [ELD]," and those cases "have garnered almost no lasting support outside their home states." Dobbs § 655;[46] *see also* Restatement (Third) of Torts: Liab. for Econ. Harm § 7 (Tent. Draft No. 2 2014) (Reporter's Note) (adopting the rule from *Robins Dry Dock* and explaining that "[c]ontrary positions have been taken only occasionally in the case law").

The stranger ELD applies in a variety of situations where the defendant's negligence has disrupted the plaintiff's ability to carry on business or caused economic loss and the plaintiff and defendant have no contractual connection. It applies where the defendant has, for example,

---

[45] *See generally* Peter Benson, *The Problem with Pure Economic Loss*, 60 S.C. L. Rev. 823, 823-24 (2009) (explaining that, "from the start" the stranger ELD "has been a relatively fixed point in thinking about this issue in all its shapes and forms"); William Powers, *Negligence, Breach of Contract, and the "Economic Loss" Rule*, 23 Tex. Tech. L. Rev. 477, 482 (1992) (explaining that "cases between contractual strangers are the paradigm of the traditional 'economic loss' rule"); Ronen Perry, *The Economic Bias in Tort Law*, 2008 U. Ill. L. Rev. 1573, 1578 (2008) ("The law governing this type of loss [between strangers] is also unambiguous. Starting with *Anthony v. Slaid*, and subject to few deviations, American courts have consistently denied recovery for relational economic losses. The leading authority is *Robins Dry Dock & Repair Co. v. Flint* . . . .").

[46] Only three States have rejected the stranger ELD: Alaska, California, and New Jersey. *See* Dobbs § 655 (citing *People Expr. Airlines, Inc. v. Consol. Rail Corp.*, 495 A.2d 107 (N.J. 1985), *Mattingly v. Sheldon Jackson Coll.*, 743 P.2d 356 (Alaska 1987), and *J'Aire Corp v. Gregory*, 598 P.2d 60 (Cal. 1979)).

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

injured the plaintiff's employee[47] and where the defendant has damaged a common resource, such as a bridge or wharf, disrupting business for many potential plaintiffs.[48] Absent physical injury to their own property, claimants cannot sue in negligence for economic losses. The rule thus means that "claimants are barred from recovering lost profits or lost wages due to the negligent interruption of commerce caused by a third party." *Aguilar*, 98 A.3d at 982-83.

Multiple policies underpin the doctrine. As then-Judge Breyer has explained, one rationale is that, unlike physical injuries, economic effects from an event could extend almost infinitely and create unlimited liability. *Barber Lines A/S v. M/V Donau Maru*, 764 F.2d 50, 54 (1st Cir. 1985); *see also Annett*, 801 N.W.2d at 504 ("[E]conomic reverberations travel quickly and widely, resulting in potentially limitless liability."). As a result, financial harm that could "prove[] vast, cumulative and inherently unknowable in amount, could create incentives that are perverse," deterring worthwhile activity. *Barber Lines*, 764 F.2d at 55. In addition, the rule also reflects the view that, while tort law should protect against physical harm, economic losses (especially for commercial plaintiffs) are better addressed through the law of contract—including through the ability of a party to insure in advance against such losses or to secure contracts guaranteeing access to vital business inputs (here, for example, Producers could have contracted with grain elevators to address risks potentially posed by "commingling"). *Id.* at 54; *see also*

---

[47] *See, e.g.*, *Gosch v. Juelfs*, 701 N.W.2d 90, 91 (Iowa 2005) (defendant injured plaintiff's employee); *Anderson Plasterers v. Meinecke*, 543 N.W.2d 612, 613 (Iowa 1996) (same); *Annett Holdings*, 801 N.W.2d at 504 (explaining that *Anderson Plasterers* is a "stranger economic loss rule" case); *see also Conn. Mut. Life Ins. Co. v. N.Y. & N.H. R.R. Co.*, 25 Conn. 265 (1856) (denying recovery for economic loss where defendant had injured plaintiff's insured); Dobbs § 647 (collecting similar cases)

[48] *See, e.g.*, *Neb. Innkeepers, Inc. v. Pittsburgh-Des Moines Corp.*, 345 N.W.2d 124 (Iowa 1984) (damage and closure of bridge reduced access to plaintiffs' business); *Barber Lines A/S v. M/V Donau Maru*, 764 F.2d 50, 50-51 (1st Cir. 1985) (Breyer, J.) (negligent oil spill closed wharf to other shipping traffic); *Byrd v. English*, 43 S.E. 419 (Ga. 1903) (negligent severing of power line shut down printing business); *Weller & Co. v. Foot & Mouth Disease Research Inst.*, [1966] 1 Q.B. 569 (negligent release of virus from research institute caused closure of cattle markets, depriving auctioneers of ability to earn living) (attached as Ex. G); *Stevenson v. E. Ohio Gas Co.*, 73 N.E.2d 200 (Ohio Ct. App. 1946) (damage closed factory so workers could not earn wages).

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Annett, 801 N.W.2d at 504 (the stranger ELD "encourages parties to enter into contracts"). The Restatement, for example, explains that the stranger ELD is "justified by several considerations," one of which is that "contractual lines of protection against economic loss"—including "first-party insurance"—are "considered preferable to judicial assignments of liability in tort." Restatement (Third) of Torts: Liab. for Econ. Harm § 7 cmt. b. The stranger ELD thus "encourages the party with the best information (that is, the party with knowledge of its own risk of loss) to decide whether to assume, allocate, avoid, or insure against its risk of loss." *Wiltz v. Bayer Cropscience, L.P.*, 645 F.3d 690, 697 (5th Cir. 2011) (emphasis added).

Multiple courts and the Restatement have explained that a central purpose of the stranger ELD is to provide a bright-line rule foreclosing the recovery of purely economic losses absent physical injury to the plaintiff or his property. The point of the doctrine is to eliminate the need for a case-by-case assessment of factors such as foreseeability to draw lines cutting off liability for economic losses or the need for a case-by-case policy assessment to decide when recovery for economic losses should be barred. Instead, the doctrine provides a clear rule: absent physical injury, there can be no recovery for purely economic losses. Thus, for example, in *Barber Lines* then-Judge Breyer explained that the rationales justifying the ELD "are highly general and abstract," 764 F.2d at 53, and that, even though they are "unlikely to apply with equal strength to every sort of 'financial harm' claim," nevertheless, "courts cannot weigh or apply them case by case," *id.* at 55. Case-by-case application of concepts like foreseeability to limit liability, for example, can be problematic because the economic ripple effects of a given event are, in many cases, foreseeable.[49] Using foreseeability to cut off liability would inevitably distort the concept

[49] *Barber Lines*, 764 F.2d at 54 (explaining that an oil spill "foreseeably harms not only ships, docks, piers, beaches, wildlife, and the like, that are covered with oil, but also harms blockaded ships, marina merchants, suppliers of those firms, the employees of marina businesses and suppliers, the suppliers' suppliers, and so forth").

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

of foreseeability itself. *Id.* at 54. *Barber Lines* also made clear that the policies behind the ELD derive force based on *cumulative effects* across cases and that part of the purpose of the doctrine is to avoid distortions that would result if courts used case-specific line drawing "to separate the financially injured allowed to sue from the financially injured not allowed to sue." *Id.*

Similarly, in *M/V TESTBANK*, the Fifth Circuit explained that the ELD applies a bright-line rule barring recovery for economic losses absent physical injury and rejected calls for a "case-by-case approach," 752 F.2d at 1026, to applying the doctrine. It was the *dissent* in *M/V TESTBANK* that suggested that recovery for economic losses should be permitted but limited to cases where liability could be circumscribed to avoid the concern for "open ended" liability. *Id.* at 1046 (Wisdom, J., dissenting). The majority rejected such proposals for a fact-specific approach and held that the ELD should be applied as a "bright line rule." *Id.* at 1029. Echoing the concern from *Barber Lines*, the court explained that a case-specific analysis for determining who could recover economic losses would prove "arbitrary" and "much less the product[] of a determinable rule of law" than adhering to a bright line. *Id.* at 1028-29; *accord Am. Petrol. & Transp., Inc. v. N.Y.C.*, 737 F.3d 185, 196-97 (2d Cir. 2013) (where economic injury was "surely foreseeable" and limited in scope such that permitting recovery would *not* create "unbounded exposure . . . to a vast number of economic loss claims," the court nevertheless applied the rule barring recovery because any benefit from creating "an exception on the particular facts here is outweighed by the benefits of adhering to the general rule that denies recovery"); *Getty Refining & Mktg. Co. v. MT FADI B*, 766 F.2d 829, 832-33 (3d Cir. 1985) (similarly rejecting a case-by-case approach).

The Restatement (Third) similarly explains that the rationales behind the ELD "prevail by their cumulative force," and even though "they do not apply equally to every claim," "most courts *reject such claims categorically*." Restatement (Third) of Torts: Liab. for Econ. Harm § 7

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

cmt. b (emphasis added). In other words, courts reject claims for economic losses without a case-specific policy assessment. The majority rule is that "distinctions allowing some plaintiffs to recover but not others, based on a case-by-case inquiry into the policies at issue, cannot be made in a sufficiently principled manner." *Id.* The Restatement acknowledges that this rule imposes "hardship" on those whose claims "fall outside the policies that make the rule attractive," but concludes that a bright-line rule denying recovery has other benefits—"predictability, clarity, and economy of application for courts"—that "outweigh the benefits of occasionally providing relief." *Id.*

There are defined exceptions to the ELD. It does not bar claims for intentional torts, such as fraud, *see* Dobbs § 606, and most States hold that it does not bar malpractice claims against certain professionals. *See, e.g.*, *Annett*, 801 N.W.2d at 504; *see also Barber Lines*, 764 F.2d at 56 (listing exceptions). In addition, many States hold that the ELD does not apply to the tort of negligent misrepresentation, which allows recovery for economic loss where a professional or other expert service provider (*e.g.*, an accountant) has been negligent in providing information or a service that is intended to be relied upon by a known, limited group of third parties.[50]

2. The Stranger ELD Bars The Producers' Claims.

The Producers' claims are barred by the stranger ELD. The essence of their claim is that the distribution and exporting facilities for commodity corn were affected by the pervasive presence of Viptera, making it impossible to export U.S. corn to China. The only harm they claim is economic loss in the form of lower corn prices (followed by milo and soybean prices).[51]

---

[50] *See generally First Midwest Bank, N.A. v. Stewart Title Guar. Co.*, 843 N.E.2d 327, 338-39 (Ill. 2006) (discussing negligent misrepresentation exception to ELD); *Van Sickle Constr. Co. v. Wachovia Comm. Mort., Inc.*, 783 N.W.2d 684, 690-91 (Iowa 2010) (same).

[51] *See, e.g.*, Non-Class Compl. ¶ 290 ("[A]ll U.S. corn Producers who priced their corn after November 2013 have received a lower price for their corn than they would have received if China's imports of U.S. corn had not effectively stopped.").

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Conceptually, those claims are indistinguishable from claims that access to some other shared resource used by multiple parties for their businesses (a bridge, a wharf, etc.) was disrupted by a negligent act. They seek exactly what is barred by the stranger ELD: "lost profits . . . due to the negligent interruption of commerce caused by a third-party." *Aguilar*, 98 A.3d at 982-83.

Until the Viptera litigation, only one American case addressed parallel claims alleging supposed "contamination" of a crop supply with a U.S.-approved GM trait, and that case held that the ELD barred farmers' tort claims. *See Sample v. Monsanto Co.*, 283 F. Supp. 2d 1088 (E.D. Mo. 2003). *Sample* involved GM corn and soybeans that, like Viptera, had been fully approved in the U.S. The plaintiffs abandoned allegations that their own particular crops had been damaged by cross-pollination or commingling because they recognized that such allegations would raise individual issues dooming a class. *See id.* at 1091. Instead, the plaintiffs proceeded on the theory—parallel to Plaintiffs' theory here—that "non-GM farmers lost revenue because the European community rejected Monsanto's genetically modified products and boycotted *all* American corn and soy as a result." *Id.* (emphasis added). Applying Illinois and Iowa law, the court held that "the economic loss doctrine preclude[d] recovery" because the farmers were not alleging "physical 'contamination' or injury to their property." *Id.* at 1093.

Because Plaintiffs here base their claims on the same theory of market-wide price effects from a foreign boycott (not physical injury to *their particular corn*), *see infra* Part II.A.3, the analysis from *Sample* equally applies here and the Producers' claims are barred by the ELD.

This case also aptly highlights some of the policies underlying the ELD. In particular, it shows how alleged economic effects can expand virtually without limit. If farmers could bring claims for economic losses based on an alleged drop in the price of corn, then anyone allegedly affected by a price drop for the largest commodity crop in the U.S.—such as landowners wanting

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

to sell farm land[52] or farm equipment dealers[53]—could try to assert some "inter-connectivity" between their economic interests and the price of corn and turn Syngenta and other GM manufacturers "into insurers with seemingly unlimited tort liability." *Daanen & Janssen, Inc.*, 573 N.W.2d at 850. Indeed, this case has *already* spawned such claims by layers of plaintiffs other than corn farmers asserting ripple effects from the alleged drop in the price of corn. The plaintiffs include both growers of milo—who claim that the price of milo is pegged to the price of corn, *see* Non-Class Compl. ¶ 297—and growers of soybeans—who claim that corn is a substitute for soybeans and that lower corn prices thus increase the usage of corn and reduce demand for soybeans, *see id.* ¶¶ 298-99. Including soybean farmers as plaintiffs almost *doubles* the size of the potential pool of plaintiffs in this case, expanding it to more than 650,000 farmers.[54] As such claims show, the inherent problem with permitting *any* claims for purely economic loss is that "[t]he chain of events leading to economic losses is only limited by one's imagination," and as a result "permitting recovery for purely economic loss . . . could expand the potential pool of plaintiffs beyond reason." *Long Motor Corp. v. SM&P Util. Res., Inc.*, 214 P.3d 707, 2009 WL 2595932, at *2-3 (Kan. Ct. App. Aug. 21, 2009). It is precisely to avoid embroiling the courts in a morass of litigation bringing such claims (and to avoid the task of drawing lines determining which plaintiffs can recover pure economic losses and which cannot) that the law has applied a bright line rule for more than a hundred years barring *all* purely

---

[52] *See, e.g.*, Corilyn Shropshire, *Falling Soybean, Corn Prices Hurt Farmland Values*, Chicago Tribune (Feb. 12, 2015), http://www.chicagotribune.com/business/breaking/ct-farmland-prices-0213-biz-20150212-story.html ("[F]armland values fell 3 percent in 2014, due in large part to the drop in soybean and corn prices[.]").

[53] *See, e.g.*, Abby Wendle, *Pain From The Grain: Corn Belt Towns Languish As Prices Drop*, NPR (Mar. 18, 2015), http://www.npr.org/sections/thesalt/2015/03/18/393841311/pain-from-the-grain-corn-belt-towns-languish-as-prices-drop ("When corn prices peaked, Hofreiter sold close to $11 million worth of shiny blue tractors in a single year. He says he doesn't expect to crack $3 million in 2015.").

[54] *See* 2007 USDA Census of Agriculture 2 http://www.nass.usda.gov/Statistics_by_State/Oklahoma/Publications/Media_Resources/Soybean_Factsheet.pdf (number of soybean farmers); USDA Background on Soybeans & Oil Crops, http://www.ers.usda.gov/topics/crops/soybeans-oil-crops/background.aspx (soybeans are second most planted crop).

27-CV-15-3735
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

economic claims for unintentional torts as a matter of law. *See Barber Lines*, 764 F.2d at 54-56.

3. The Producers Cannot Avoid The ELD By Claiming Physical Injury To Their Own Property.

The Producers cannot sidestep the ELD by arguing that they have alleged physical injury to their own property. Any such argument fails for at least four reasons.

First, the complaint does not allege that each Producer had his particular corn, while it was his property, mixed with or cross-pollinated by Viptera corn. It merely alleges generally that there was a "pervasive contamination of the U.S. corn supply, including fields, grain elevators and other facilities of storage and transport, causing physical harm to Producers' and Non-Producers' corn, equipment, storage facilities, and land." Non-Class Compl. ¶ 236. Vague assertions about generalized "contamination of the U.S. corn supply"—primarily in areas (such as "grain elevators and other facilities of storage and transport") that are involved only *after* the farmer has sold his corn—are not the same as an allegation that each Producer experienced cross pollination (or commingling) on his farm.[55] Indeed, Plaintiffs' allegations simply parrot word-for-word the allegations made in the Federal MDL.[56] And the MDL Court—which *rejected* the ELD on other grounds, *see infra* pp. 29-37—recognized that such vague allegations did not assert that every Plaintiff suffered physical injury to his property. *See* MDL Order 19-20.

Second, allegations of physical harm are irrelevant in any event because Plaintiffs' theory of injury does not depend on physical harm to *their* corn. Their theory is that the presence of Viptera in the U.S. corn supply and China's actions reduced the price for *all* U.S. corn—even

---

[55] Plaintiffs no doubt refrained from making such an allegation for good reason. They know that cross pollination or commingling did not happen on every Producer's farm, and they know that they cannot prove that it happened (much less prove it on a class-wide basis with common proof).

[56] *See* Producers' Am. Compl. ¶ 319, *In re Syngenta AG MIR162 Corn Litig.*, No. 2:14-md-2591 (D. Kan. May 29, 2015) (alleging "pervasive contamination of the U.S. corn supply, including fields, grain elevators and other facilities of storage and transport, causing physical harm to plaintiffs' corn, harvested corn, equipment, storage facilities, and land.").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

corn that might be Viptera-free.[57] As the MDL Court recognized, allegations of physical harm provide an avenue for avoiding the ELD only where the economic loss results from the particular harm to property alleged. Where, as here, the alleged damages "are not derived from the physical harm alleged," physical harm provides no basis for evading the ELD. MDL Order 20.

Third, to the extent the Producers point to commingling of corn in grain elevators and storage facilities *after* they have sold their corn, they provide no allegations whatsoever establishing that they still had a property interest in the corn after it had been sold.

Fourth, even if the Producers had alleged that Viptera cross-pollinated or commingled with *their* corn, that would not qualify as *damage* to their property because Viptera was fully approved in the U.S. Viptera corn could be sold at the same price as all other fungible corn. Plaintiffs' only complaint is that they hypothetically could have secured a higher price if there had been no Viptera. That is the paradigm of pure economic loss, not physical injury.

As the court in *Sample* held in identical circumstances, there was "no evidence to demonstrate that the physical injury requirement would be met *even if* GM seeds were 'commingled' with non-GM seeds in a cooperative grain elevator" precisely because there was no allegation that commingling rendered the crop unfit for human consumption. 283 F. Supp. 2d at 1093 & n.2 (emphasis added). In the *Hoffman* case, a Canadian court considered similar allegations about "contamination" of canola with an approved GM trait and reached the same result. *See Hoffman I*, 2005 SK.C. LEXIS 330 (Ex. A), *aff'd*, *Hoffman II*, 2007 SK.C. LEXIS 194 (Ex. B). There, the plaintiffs claimed that GM canola had cross-pollinated with their non-GM crops, which they hoped to sell at a premium as organic crops and on the European market. The court held that, where a GM seed has been approved for human consumption, "the alleged

[57] *See* Non-Class Compl. ¶ 290 (asserting that "*all* U.S. corn Producers who priced their corn after November 2013 have received a lower price for their corn than they would have . . .") (emphasis added).

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

damage is not of physical harm to the plaintiffs' crops, but arises from the alleged inability to meet the requirements of organic certifiers or of foreign markets for organic canola." *Hoffman I*, 2005 SK.C. LEXIS 330 ¶ 72. The "harm" of receiving a different price for a commodity that is still fully saleable for human use was not sufficient to avoid the ELD.

Cases analyzing the ELD in the context of *unapproved* GM traits are irrelevant. As the court in *In re StarLink Corn Prods. Liab. Litig.* explained, crops are "damaged when they are pollinated" by corn with an unapproved trait (like StarLink) because it "render what would otherwise be a valuable food crop unfit for human consumption." 212 F. Supp. 2d 828, 841 (N.D. Ill. 2002). The court made clear, moreover, that such physical injury was the *sine qua non* for avoiding the ELD as it explained that "*[a]bsent a physical injury*, plaintiffs cannot recover for drops in market prices." *Id.* at 842 (emphasis added). The fact that rendering crops unfit for human consumption may constitute physical "harm" says nothing about the situation here, in which Viptera was fully approved and corn with the MIR162 trait is, by law, fungible U.S. Yellow Corn. In fact, *Sample* distinguished *StarLink* on exactly that basis. *See* 283 F. Supp. 2d at 1093 n.2.[58] Indeed, there is not a *single case* holding that an *approved* GM trait somehow "damages" a crop sufficiently to avoid the ELD. The only cases addressing the issue (*Sample* and *Hoffman*) say the opposite.

4. The MDL Order Misstates The Law On The Stranger ELD.

The MDL Court's ELD ruling does not reflect the majority rule.

a. The MDL Court Mistakenly Applied A Case-By-Case Policy Analysis To Permit Recovery Of Economic Losses.

First, the MDL Court disregarded settled law holding that the ELD is meant to provide a

[58] *Bayer Cropscience LP v. Schafer*, 385 S.W.3d 822, 833 (Ark. 2011), and *In re Genetically Modified Rice Litig.*, 666 F. Supp. 2d at 1013, are distinguishable on the same basis because the GM Rice cases involved an unapproved trait.

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

bright-line rule and does *not* depend on a case-by-case policy assessment. Instead, the court adopted a "case-specific approach," MDL Order 25, to assess whether "the rationales supporting the [doctrine] would necessarily be furthered by application" in a given case, *id.* at 24; *see also id.* at 24 n.10 (asserting that States would apply the ELD "only . . . when the doctrine's purposes would be served"). Thus, the MDL Order held that, because the plaintiffs constituted "discrete classes" all in an "inter-connected market" whose economic losses were "actually fores[een]," allowing their claims would not give rise to the primary concern animating the doctrine—"completely open-ended" liability. MDL Order 24. That approach is counter to the majority rule. As explained above, the majority rule is that "distinctions allowing some plaintiffs to recover but not others, based on a case-by-case inquiry into the policies at issue, cannot be made in a sufficiently principled manner." Restatement (Third) of Torts: Liab. for Econ. Harm § 7 cmt. b; *see also supra* pp. 21-23.

Indeed, the MDL Court's approach is functionally indistinguishable from the *minority* approach that rejects applying the ELD as a bright-line rule. Three minority jurisdictions reject the bright-line "physical harm rule" and instead apply a "more thorough consideration and searching analysis of *underlying policies* to determine whether a particular defendant may be liable for a plaintiff's economic losses." *People Express Airlines, Inc. v. Consol. Rail Corp.*, 495 A.2d 107, 111 (N.J. 1985) (emphasis added). Such jurisdictions rely on a case-by-case analysis to permit recovery in tort for economic losses where there is "[a]n identifiable class of plaintiffs" that is "particularly foreseeable." *Id.* at 116. But that is functionally the *same* analysis that the MDL Court applied. The federal court pointed to "inter-connected relationships and markets," MDL Order 23, to identify "discrete classes" of plaintiffs whose economic losses were "actually fores[een]," *id.* at 24, who may be allowed to recover. That focus on "inter-connected relationships" defining a "discrete" plaintiff group and "actually foreseen" harm is simply

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

another way of expressing the same criteria used by courts applying the *minority* approach—namely, a focus on facts showing "[a]n identifiable class of plaintiffs" that is "particularly foreseeable in terms of the type of persons or entities comprising the class . . . as well as the type of economic expectations disrupted." *People Express*, 495 A.2d at 116. Thus, while it purported to be analyzing the ELD as it would be applied in twenty-two States, the MDL Court actually applied a *minority* analysis that has been overwhelmingly rejected.

Tellingly, moreover, the MDL Order does not cite a *single case* using a similar "case-specific approach" to apply the ELD. *StarLink* does not support that approach. *StarLink* held that the ELD did not apply because the plaintiffs had alleged *physical injury* from an *unapproved* GM trait that rendered their crops unfit for human consumption. 212 F. Supp. 2d at 841-43. *StarLink* does not suggest that a case-by-case policy analysis can provide an *independent* basis for avoiding the ELD where (as here) there was no physical injury. The *StarLink* court noted the "finite number of potential plaintiffs," *id.* at 842, only as additional support for a holding based on physical injury. The court made clear that physical injury was necessary for avoiding the ELD as it explained that "[a]bsent a physical injury, plaintiffs cannot recover for drops in market prices." *Id.* at 842. Indeed, the court reiterated a warning to plaintiffs that "proving *direct harm to their own property* is a *predicate* to any recovery." *Id.* at 843 (emphases added).

To the extent the MDL Order acknowledges settled law rejecting a case-by-case policy analysis, it dismisses the majority rule in a footnote with the observation that there are many exceptions to the ELD and that each existing exception must have been adopted in a first case. *See* MDL Order 23 n.10. The problem with that assertion is that the MDL Court's new exception is *different in kind* from existing ones. Existing exceptions apply to "broad categories of cases," *Barber Lines*, 764 F.2d at 56, typically defined by a type of legal claim (*e.g.*, intentional torts, negligent misrepresentation, malpractice claims against professionals). Here,

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

by contrast, the criterion defining the new exception—"inter-connected relationships and markets," MDL Order 23—rests on a *factual* circumstance in which the interrelatedness of the industry supposedly (i) limits the number of potential plaintiffs to a "discrete" group (still numbering in the hundreds of thousands) and (ii) makes alleged economic losses particularly "foreseeable and foreseen." *Id.* at 24-25. The whole point of the majority rule set out in *Barber Lines*, *M/V TESTBANK*, and the Restatement (Third), however, is to foreclose exactly such case-specific assessments of whether the policies behind the doctrine apply in a particular case.

The MDL Court's focus on "inter-connectedness" also exposes exactly the problems with line-drawing that the majority bright-line rule seeks to avoid. Simply put, this new "inter-connected industry" exception supplies no clear principle marking an identifiable category of cases. The grain industry does not have greater "inter-connected relationships" than many others. In the maritime industry, for example, vessels operating in a confined waterway depend on one another for continued operations. It is readily foreseeable that one vessel's negligence will inevitably cause economic losses to others, and the scope of potential plaintiffs is, as here, limited to "discrete classes." MDL Order 24; *cf. M/V TESTBANK*, 752 F.2d at 1049 (Wisdom, J., dissenting) (noting the "great interdependence of the elements in the maritime industry"). The maritime industry thus seems to satisfy the test for the new exception. *But see, e.g., Am. Petrol. & Transp.*, 737 F.3d at 196 (applying the ELD); *Barber Lines*, 764 F.2d at 55 (same). As that example suggests, the MDL Court's new test provides no clear limiting principle. Applying it would embroil courts in endless fact-based inquiries into whether industry A is more "inter-connected" than industry B, or whether party X is sufficiently "interrelated" with party Y, with no real legal rule to guide them. That exercise would present precisely the problem the Fifth Circuit predicted of producing "arbitrary" results that are not "the product of a determinable rule

of law." *M/V TESTBANK*, 752 F.2d at 1029, 1030.[59]

In fact, the added claims of *soybean* farmers in this case highlight that problem. Beyond the deficiencies that doom the claims of corn farmers, adding more than 270,000 soybean farmers to the plaintiff pool (which would then include growers of the *first* and *second* largest crops in the U.S.)[60] destroys any concept of a "discrete" plaintiff class supporting an exception to the ELD as conceived by the MDL Court. At the same time, if this Court were to apply the MDL Court's novel analysis, the line distinguishing the "inter-connectedness" of corn and milo from the "inter-connectedness" of corn and soybeans (or corn and whatever other related market the next complaint raises) is not going to be based on a clear *legal* rule. Instead, it will be driven by exactly the exercise in *ad hoc*, fact-based line drawing necessary to limit liability that the Fifth Circuit and other courts have warned against and that has prompted them to adhere to a bright-line rule rejecting *all* recovery for economic losses.

b. The MDL Court Applied A Mistaken View Of The Policy Rationales Supporting The ELD.

Second, the MDL Order rested on an overly restrictive understanding of the policies behind the ELD. The MDL Order focused on preventing a risk of indeterminate or disproportionate liability and reasoned that this risk was primarily at issue in "access cases" or "public nuisance" cases in which "any member of the public could potentially assert a claim for economic loss," producing liability that is "completely open-ended." MDL Order 24. The court distinguished the Viptera lawsuits on the basis that they are not "access" cases and reasoned that, because they involve a supposedly more "discrete" tranche of plaintiffs—albeit one numbering

[59] *See also Pickett v. Consignment Enter. Co.*, No. C-77372, 1978 WL 216505, at *2 (Ohio Ct. App. Aug. 9, 1978) (applying ELD as bright-line rule, because "[i]f we wished to place limits on the recovery of economic interests, we would have to draw a line between remote and immediate third party losses, and between foreseeable and unforseeable [sic] risks to third parties, a task we decline to undertake, in the broad interest of justice").

[60] *See supra* note 54.

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

in the hundreds of thousands—the policies behind the ELD were not implicated. *See id.* Every step in that analysis is contrary to precedent.

As an initial matter, nothing in the ELD limits its application to cases involving an indeterminate number of first-tier plaintiffs. *Robins Dry Dock* did not involve exposure to such a huge plaintiff group, or even to a "discrete" group of hundreds of thousands as in the Viptera cases. The first tranche of plaintiffs in *Robins Dry Dock* was limited to *one* charterer for losses related to *one* ship. *See* 275 U.S. at 308-09. Nevertheless, the ELD applied. As noted above, the doctrine similarly applies in various situations—such as where a defendant injures the plaintiff's employee—where there is only one initial plaintiff. *See supra* p. 20 & note 47.

Such cases show that the policies underpinning the doctrine are *not* limited to situations involving an indeterminate number of first-tier plaintiffs. Instead, the doctrine is based on the inherent unpredictability of permitting *any* recovery of pure economic losses because such losses spread outwards indefinitely to second- and third-tier plaintiffs. For example, a charterer as in *Robins Dry Dock* suffers economic losses because a damaged ship is unable to sail; as a result, a shipper also suffers losses because his cargo is delayed; as a result, a shopkeeper who expected a shipment of merchandise suffers losses, and so on. *See, e.g.*, *Barber Lines*, 764 F.2d at 54 (describing such ripple effects as rationale for the doctrine); *M/V TESTBANK*, 752 F.2d at 1028 (describing "wave upon wave of successive economic consequences"); Restatement (Third) of Torts: Liab. for Econ. Harm § 7 cmt. b (describing ripple effect as the primary rationale for the ELD). By focusing solely on the size of the initial tranche of plaintiffs, and holding that the ELD should not apply where the court can identify a supposedly "discrete class" of first-tier plaintiffs, the MDL Court failed to consider the spreading ripple effect of economic losses.[61]

[61] To the extent the MDL Order suggests that the "inter-connectedness" of the corn industry provides a natural

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

The MDL Court was also mistaken in describing access cases as cases in which "any member of the public could potentially assert a claim." MDL Order 24. *Barber Lines* was an access case involving blocked access to a pier. But the number of ships scheduled to dock at the pier (and thus the group of potential first-tier plaintiffs) was necessarily smaller than the more than 350,000 corn farmers who are potentially plaintiffs here—not to mention milo and soybean farmers. Similarly, "access" cases involving the closure of a factory or other workplace routinely involve much smaller groups of workers, but the ELD still applies. *See, e.g.*, *Aguilar*, 98 A.3d at 980 n.1; *United Textile Workers of Am. v. Lear Siegler Seating Corp.*, 825 S.W.2d 83, 84 (Tenn. Ct. App. 1990); *Stevenson v. E. Ohio Gas Co.*, 73 N.E.2d 200 (Ohio Ct. App. 1946).[62]

As a result, the MDL Court's suggestion that there is a "discrete class" of plaintiffs here that is *more limited* and *more narrowly defined* than in the typical access case is demonstrably incorrect. In reality, the MDL Court reached the anomalous conclusion that there was no concern for expansive and indeterminate liability where the court was contemplating a first-tier plaintiff group *vastly larger* than in the typical access case where the ELD is applied. That approach cannot be reconciled with precedent. Indeed, if the MDL Court's analysis were consistently applied—if facts showing a "discrete class" of foreseeable plaintiffs numbering in the hundreds of thousands were sufficient to avoid the ELD—it would gut the doctrine and

---

breaking point after the first tier plaintiffs to cut off liability for more remote economic effects, *cf.* MDL Order 14, that rationale still cannot reconcile the court's approach with the ELD. Courts could always solve the problem of spreading economic effects by pointing to a factual distinction that might justify cutting off liability at the first tier of plaintiffs. The point of the ELD, however, is to avoid the need for such fact-based line-drawing distinguishing between those who are permitted to recover economic losses and those who are not and to replace it with a bright-line rule based on physical injury. *See supra* Part II.A.4.a.

[62] The MDL Court's approach is not supported by *StarLink*. The *StarLink* court did suggest that "access" cases involve situations where "the tort's effects on plaintiffs are not qualitatively different from the effects on society at large" and thus such cases involve an "unbounded group of potential plaintiffs." *StarLink*, 212 F. Supp. 2d at 840. As the cases cited in text show, however, *StarLink*'s generalization is inaccurate. It was based on a mistaken focus on cases involving *bridges*. *See id.* In addition, as explained above, *StarLink* did not suggest that a more limited plaintiff group could, *in itself*, justify refusing to apply the ELD. Physical injury was the critical factor permitting recovery of economic losses in *StarLink*. *See id.* at 842; *see also supra* pp. 28-29.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

require reversing almost every seminal decision applying it. *Robins Dry Dock*, for example, involved a "discrete class[]" of plaintiffs (there was only one); the economic injuries were readily foreseeable (damaging the ship would foreseeably cause losses to those scheduled to use it); and thus the facts could have alleviated concern for "open-ended liability." MDL Order 24. Under the MDL Court's mistaken analysis, the ELD should not have applied.

The MDL Order also fails to consider additional policies behind the ELD, including encouraging the use of contracts to address economic risks. *See, e.g.*, *Barber Lines*, 764 F.2d at 55; *Wiltz*, 645 F.3d at 696. The Restatement, for example, explains that the stranger ELD is "justified by several considerations," one of which is that "contractual lines of protection against economic loss"—including "first-party insurance"—are "considered preferable to judicial assignments of liability in tort." Restatement (Third) of Torts: Liab. for Econ. Harm § 7 cmt. b. That rationale fully applies here. Producers concerned about ensuring exportability for their corn could have contracted for guarantees from grain elevators prohibiting commingling.

c. The MDL Order Does Not Acknowledge, Much Less Address, Directly Contrary Authority From Sample v. Monsanto.

Third, the MDL Court ignored the only American case on all fours with this case. *Sample v. Monsanto* involved exactly parallel claims that an approved GM trait had caused economic losses by triggering the loss of an overseas market, and the court held that such claims were barred by the ELD. *See supra* Part II.A.4.c. The MDL Order does not discuss or distinguish that precedent.[63] Syngenta respectfully submits that a decision contradicting the only American authority squarely on point—without even acknowledging that authority, much less providing a considered rationale to distinguish it—cannot be credited as persuasive precedent.

[63] The assertion that Syngenta had not cited any case in which a court considered and applied the ELD "despite the presence of inter-connected relationships and markets," MDL Order 23, is incorrect. *Sample* was such a case.

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

d. The MDL Order Mistakenly Relies On West Virginia's "Hybrid" "Special Relationship" Exception From The ELD.

Fourth, the MDL Order erred by relying on *Aikens v. Debow*, 541 S.E.2d 576 (W. Va. 2000), to hold that members of an "inter-connected" industry are in a "special relationship" that defeats the ELD. *See* MDL Order 23. The "special relationships" identified in *Aikens* all involved people with special expertise who provided information as part of their business and on which they intended others to rely. *See* 541 S.E.2d at 591 (discussing auditors, surveyors, termite inspectors, engineers, architects, and lawyers). In most States, parallel exceptions to the ELD are treated under the rubric of negligent misrepresentation and require meeting the elements for that tort, including that the defendant must provide the information as part of his business intending that a known group of persons will rely on it. *See supra* p. 23 & note 50; *see also* Restatement (Third) of Torts: Liab. for Econ. Harm §§ 5-6. To the extent *Aikens* adopted a broader principle, permitting a free-ranging use of "special relationships" as exceptions to the ELD, it is not the majority approach. To the contrary, *Aikens* itself described its "special relationship" test as a "hybrid." *Id.* at 590; *see also id.* at 590 (noting that "minority view" cases "reveal[] reasoning similar to ours"); *id.* at 592 (Starcher, J., concurring) (suggesting that *Aikens* took a "bold step forward" departing from majority rule). As a result, the "special relationship" exception in *Aikens* cannot properly be used to predict the law in twenty-two other States.

5. All States Would Bar The Producers' Claims Under The Stranger ELD.

Although the stranger ELD rule is the clear majority rule, some States have never had occasion to address it expressly. For example, the District of Columbia never considered it until just last year. When workers at retail establishments claimed that a defendant's negligence allowed the Potomac River to flood their workplaces (prompting closures that prevented them from earning wages), the D.C. Court of Appeals explained that the stranger ELD raised a

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

question of "first impression" under D.C. law. *Aguilar*, 98 A.3d at 980. The court surveyed other state authorities, explained that the stranger rule was applied by a "majority of jurisdictions," and applied the rule to bar recovery. *Id.* at 982-85.

The question in this case is whether the twenty-two States at issue would apply the majority bright-line rule of the stranger ELD, or whether there is a basis in existing state law to predict that a State would *reject* the majority approach and permit recovery of pure economic loss. For the reasons below, there is no sound basis for predicting that *any* State at issue here would allow Plaintiffs' claims to proceed. Some States have applied the stranger rule in the past and there is no reason for concluding that they would not apply it here. Other States have not yet expressly addressed the stranger rule, but existing cases also provide no basis for holding that the State would *not* apply the majority rule when the issue arises. In particular, the mere fact that existing cases may address the ELD solely in the context of sales of goods provides no basis for concluding that a State would fail to follow the majority approach under the stranger ELD.

The MDL Order does not provide a persuasive rationale for a different result. Indeed, by predicting that *all* States would apply the ELD "only . . . when the doctrine's purposes would be served," MDL Order 24 n. 10, the MDL Court effectively predicted that *all* twenty-two States would *reject* the majority rule, which does not permit "case-by-case inquiry into the policies at issue." Restatement (Third) of Torts: Liab. for Econ. Harm § 7 cmt. b. There was no basis for such a prediction. In addition, the MDL Court assumed that if a State permitted *any* exceptions to the ELD, it would adopt the exception created by the MDL Court. As explained above, however, the MDL Court's new "inter-connected industry" exception is different in kind from existing exceptions, *see supra* pp. 31-32, and the mere fact that a State may recognize an exception for a *legal* category of claims—such as negligent misrepresentation—does not suggest that the State would follow the MDL Court's minority-approach case-by-case policy analysis.

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

This Court should reject the MDL Court's erroneous analysis.

a. Nine States Have Expressly Adopted The Stranger ELD.

Minnesota. The Minnesota Supreme Court long ago applied the stranger ELD to hold that an employer cannot recover increased workers' compensation premiums that resulted after the defendant negligently killed an employee. *See N. States Contracting Co. v. Oakes*, 253 N.W. 371, 372 (Minn. 1934). The decision placed itself squarely in the line of stranger ELD decisions[64] and has been cited as an example of the rule.[65] More recently, a Minnesota court applied the stranger ELD to prevent an employer from recovering "lost profits" incurred as a result of the defendant's negligence injuring an employee. *Cariveau v. Golden Valley Motors, Inc.*, No. 27CV06-11202, 2006 WL 6252343 ¶ 27 (Minn. Dist. Ct. Nov. 28, 2006). The court expressly relied on two Iowa cases applying the stranger rule. *See id.* (citing *Anderson Plasterers*, 543 N.W.2d at 613-14; *Gosch*, 701 N.W.2d at 91).

For the sale of goods, Minnesota has codified the ELD by statute. *See* Minn. Stat. § 604.101. The statute applies only to claims by "a buyer against a seller" relating to "a defect in the goods sold or leased," *id.* subd. 2, and in that context the statute states that the ELD "applies to claims only as stated in this section," *id.* subd. 5. That statute is irrelevant to the Producers' claims, because they do not arise in the context of a sale of goods. Contrary to the MDL Order, there is no basis for reading § 604.101 to displace the common law ELD *outside* the sale-of-goods context addressed by the statute. *See* MDL Order 25-27. In Minnesota, "statutes in derogation of the common law are strictly construed," and courts "do not presume that the Legislature intends to abrogate or modify a common law rule except to the extent expressly

[64] *See N. States Contracting*, 253 N.W. at 372 (citing *Anthony*, 52 Mass. 290, and *Conn. Mut. Life Ins.*, 25 Conn. 265).

[65] *See, e.g.*, *Union Oil Co. v. Oppen*, 501 F.2d 558, 563 n.6 (9th Cir. 1974); David B. Gaebler, *Negligence, Economic Loss, and the U.C.C.*, 61 Ind. L.J. 593, 599 n.24 (1986).

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

declared or clearly indicated in the statute." *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 73 (Minn. 2012). For several reasons, nothing in the statute suggests that it eliminates the common law ELD outside the sale-of-goods context.

First, the statute was a legislative response to a specific decision from the Minnesota Supreme Court *in the context of a sale of goods* in which the court eliminated the distinction for injury to property "other than" the purchased goods. *See* 27 Minn. Practice: Prods. Liab. Law § 13.15 (2015 ed.) (describing *Hapka v. Paquin Farms*, 458 N.W.2d 683 (Minn. 1990)).[66] The original statute was limited to addressing *sales of goods*. *See* Minn. Stat. § 604.10. When difficulties arose in interpreting that statute, the current statute was passed, again limited to *sales of goods*. *See* 27 Minn. Practice: Prods. Liab. Law § 13.15. Given the highly specific purpose for which the legislature acted, there is no basis for concluding that statutory language stating that "[t]he economic loss doctrine applies to claims only as stated in this section," Minn. Stat. § 604.101, subd. 5, was intended to sweep any more broadly than to the types of "claims" actually addressed in the statute—*i.e.*, claims relating to the sale of goods. Nothing in the history of the statute supports reading that language to wipe out the common-law ELD in myriad *other* contexts that were never even considered by the legislature. *Cf.* Minn. Stat. § 645.16 (statute should be construed by "considering" the "occasion and necessity for the law," the "circumstances under which it was enacted," and the "object to be attained").

Second, the official co-reporters of the statute published a definitive account of the statute explaining that its exclusive scope is more limited. They explained that, "*[w]here the statute does apply*, it occupies the field; there is no residual common law economic loss doctrine," and

[66] *See also* Minn. Stat. § 604.101, Reporter's Note (similarly describing response to *Hapka*); Daniel S. Kleinberger, Linda J. Rusch & Alan I. Silver, *Building a New Foundation: Torts, Contracts, and the Economic Loss Doctrine*, Bench & Bar of Minn. (Sept. 2000), http://www2.mnbar.org/benchandbar/2000/sep00/econ-loss.htm (similarly describing legislative response to *Hapka*) (hereinafter "Kleinberger").

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

that the statute "should preempt any common law rules *within its scope*."[67]

Third, courts have treated the exclusive scope of the statute consistent with that description. As noted above, a Minnesota court recently applied the stranger ELD to bar a claim for economic losses brought by an employer against a defendant who had injured an employee. *See Cariveau*, 2006 WL 6252343 ¶ 27. If section 604.101 actually eliminated *all* common law applications of the ELD, that decision would not have been possible. No Minnesota court, moreover, has ever held that the statute precludes application of the ELD *outside* the context of the sale of goods.[68] And the Eighth Circuit has expressly held that the predecessor statute to section 604.101, *see* Minn. Stat. § 604.10(a), did *not* preempt the common law ELD in contexts outside the sale of goods. *See AKA Distrib. Co. v. Whirlpool Corp.*, 137 F.3d 1083, 1086 n.3 (8th Cir. 1998). As the Eighth Circuit explained, the statute "is limited to sales of goods" and there is "no indication that the statute was intended to replace or narrow the scope of the broader common law doctrine." *Id.*; *accord Praktika Design & Projectos Ltda. v. Marvin Lumber & Cedar Co.*, No. 06-cv-957, 2007 WL 1582710, at *3 (D. Minn. May 30, 2007). There is no basis for concluding that the successor statute, section 604.101, was intended to apply more broadly.

Illinois. Illinois applies the stranger ELD. *In re Chicago Flood Litigation* involved classic claims under the stranger rule. When a flood interrupted electrical service, numerous businesses brought claims for "lost revenues, sales, profits and good will," 680 N.E.2d at 268, all of which were held barred where they were not accompanied by physical injury to property, *see*

---

[67] Kleinberger (under "Drafting Policies Underlying the New Statute") (http://www2.mnbar.org/benchandbar/2000/sep00/econ-loss.htm) (emphases added).

[68] *Ptacek v. Earthsoils, Inc.*, 844 N.W.2d 535 (Minn. Ct. App. 2014), does not suggest any broader preemptive scope for the statute. That case involved a sale of goods. *See id.* at 536-37. The court held solely that, where the trial court had held that the plaintiff's negligence claim fell outside the "product defect" claims covered by the statute (a decision that was not appealed), the trial court could not rely on the common law ELD to bar the claim—the statutory rule was exclusive *in that sale-of-goods context*. *Id.* at 539. The decision is irrelevant to the Producers' claims, which do not arise in a sale-of-goods context.

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

id. at 274-75. As explained above, moreover, *Sample v. Monsanto* squarely applied the Illinois ELD to bar claims identical to those in this case.

Contrary to the MDL Order, Illinois cases provide no support for applying a case-by-case policy assessment. In *2314 Lincoln Park W. Condo. Ass'n v. Mann, Gin, Ebel & Frazier, Ltd.*, 555 N.E.2d 346 (Ill. 1990), the *only* exceptions to the ELD the court recognized were for intentional misrepresentation, negligent misrepresentation, intentional interference with contract, and intentional interference with prospective business advantage, *see id.* at 352. That list proves Syngenta's point: those well-established exceptions are all based on defined legal categories of claims, three of which fall outside the ELD because they are *intentional* torts. In noting that the common principle underlying such exceptions was "that the defendant owes a duty in tort to prevent precisely the type of harm, economic or not, that occurred," *id.* at 352, the court was merely acknowledging that there are some types of torts (fraud, negligent misrepresentation) that are designed to protect against economic losses and to which the ELD simply does not apply. Nothing in *2314 Lincoln Park* supports a case-by-case policy assessment.

Similarly, in *Metro. Water Reclamation Dist. of Greater Chi. v. Terra Found. for Am. Art*, 13 N.E.3d 44 (Ill. App. Ct. 2014), the court reasoned that the type of tortious conduct before it—"*intentional* interference with an easement"—was "[s]imilar to the torts of *intentional* interference with a contract or with prospective business advantage" because it was an intentional tort and involved interference with property rights. *Id.* at 59-60 (noting that the case "originates in property law") (emphases added). In pointing out that the "damages suffered by the [plaintiff] were the very damages the [defendant] *sought to inflict upon it*," the court was indicating that, in contrast to *Chicago Flood*, the case at bar involved an *intentional* tort and that provided a basis for avoiding the ELD. *Id.* at 61 (emphasis added). Although the court did note that "the considerations behind the economic loss doctrine articulated in *Moorman* are not

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

present here," *id.* at 61, that single, passing comment from an intermediate appellate court did not flip Illinois from a majority-rule State that applies the ELD as a bright-line rule to a *minority*-view State like New Jersey that applies a case-by-case policy analysis to determine whether economic losses can be recovered in tort.

Lastly, the MDL Order is incorrect in suggesting that Illinois courts would not apply the ELD in Viptera cases because they do not apply it where "the defendant had a duty to act reasonably to avoid the very harm that occurred" and "this Court has now recognized . . . just such a duty to avoid plaintiffs' financial losses." MDL Order 38. That reasoning is circular. The point of the ELD is that it *precludes* a duty to avoid economic harm. The MDL Court cannot point to its *own decision* recognizing a new duty to "avoid . . . financial losses" *in the case before it* as a reason for holding that the ELD does not apply *in the case before it*.

Iowa. Iowa has also adopted the stranger ELD. *See, e.g., Neb. Innkeepers, Inc. v. Pittsburgh-Des Moines Corp.*, 345 N.W.2d 124, 126 (Iowa 1984) (barring recovery of "purely economic or business losses sustained as a result of non-intentional harm to a public bridge, resulting in its closing"). Indeed, the Iowa Supreme Court has stated that it follows "the stranger economic loss rule." *Annett Holdings*, 801 N.W.2d at 503-04; *see also Gosch v. Juelfs*, 701 N.W.2d 90, 91 (Iowa 2005) (business cannot recover against third party that injured an employee for "loss of income to [the] business as a result of the absence of [the] injured employee").

Contrary to the MDL Order, Iowa has not applied the stranger rule solely in access cases. That misstates the law. *See, e.g., Gosch*, 701 N.W.2d at 91 (defendant injured plaintiff's employee); *Anderson Plasterers v. Meinecke*, 543 N.W.2d 612, 613 (Iowa 1996) (same); *see also Annett*, 801 N.W.2d at 504 (explaining that *Anderson Plasterers* is a "stranger economic loss rule" case). In addition, nothing in *Annett* suggests that Iowa applies the ELD through a case-by-case policy analysis. *Cf.* MDL Order 38-39. *Annett* merely acknowledged that there were some

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

categorical exceptions or "qualifications" to the rule (for example, exempting professional malpractice claims against attorneys and accountants from the ELD) and applied the rule upon determining that the case before it "does not fall under any of the recognized exceptions or qualifications to the [ELD]." 801 N.W.2d at 504. And *Van Sickle Constr. Co. v. Wachovia Commercial Mortg., Inc.*, 783 N.W.2d 684 (Iowa 2011), simply recognized that negligent misrepresentation claims provide an exception to the ELD because the tort "is, and always has been, an economic tort allowing for recovery of purely economic damages" and applying the doctrine to bar such claims "would essentially eliminate the tort." *Id.* at 693. Once again, nothing in that analysis endorses the fact-specific policy assessment adopted in the MDL Order.

Louisiana. Louisiana has "adopted a slightly modified version of the economic-loss rule," *Wiltz*, 645 F.3d at 697, in the stranger context. The rule is not a *per se* bar, but rather is applied as part of Louisiana's duty-risk analysis. *See Phillips v. G & H Seed Co.*, 86 So. 3d 773, 780 (La. Ct. App. 2012).

In *PPG Indus., Inc. v. Bean Dredging*, 447 So. 2d 1058 (La. 1984), the Louisiana Supreme Court faced a classic stranger economic loss scenario: a dredging company damaged a gas pipeline and a gas customer sued for losses resulting from the interruption in gas supply. *See id.* at 1060. The court barred recovery for those economic losses. Citing the standard rationale for the ELD, the Court explained that liability in tort for economic losses must be restricted to prevent creating "liability 'in an indeterminate amount for an indeterminate time to an indeterminate class.'" *Id.* at 1061 (quoting *Ultramares Corp. v. Touche*, 174 N.E. 441, 444 (N.Y. 1931) (Cardozo, J.)). "Because the list of possible victims and the extent of economic damages might be expanded indefinitely, the court necessarily makes a policy decision on the limitation of recovery of damages." *Id.* at 1061-62. Restricting recovery in tort reflects the recognition that "a chain reaction occurs when economic harm is done and may produce an

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

unending sequence of financial effects best dealt with by insurance, contract, or other business planning devices." *Great Sw. Fire Ins. Co. v. CNA Ins. Cos.*, 557 So. 2d 966, 970 (La. 1990); *see also Wiltz*, 645 F.3d at 697-98 (noting that "the reasoning and result in *PPG* flow from the standard economic-loss rule," but the case "left the door open for case-by-case adjustments.").

Based on these considerations, the Louisiana Supreme Court has instructed that it is "*highly unlikely* that the moral, social and economic considerations" underpinning the duty/risk analysis would encompass the risk of pure "economic loss" suffered by parties whose property has not been injured. *PPG Indus.*, 447 So. 2d at 1061 (emphasis added). Applying that principle, courts have repeatedly held that the duty-risk analysis would produce precisely the same outcome as the stranger ELD. *See, e.g., id.* at 1061-62 (barring recovery where dredging company severed gas line causing economic loss to plaintiff); *Wiltz*, 645 F.3d at 699-702 (barring recovery where defendant's alleged negligence largely killed the crawfish crop, thus causing economic losses to buyers and processors of crawfish); *TS&C Invs. LLC v. Beusa Energy, Inc.*, 637 F. Supp. 2d 370 (W.D. La. 2009) (barring recovery where defendant's negligence closed an interstate highway, resulting in economic losses to plaintiffs).

The Fifth Circuit's decision in *Wiltz* is particularly instructive and rebuts the conclusion that Louisiana would permit recovery of economic losses in a case such as this. *Wiltz* involved claims by buyers and processors of crawfish who purchased crawfish from rice farmers and who claimed that the maker of an herbicide sold to the rice farmers had ruined the farmers' crawfish crop (thus hurting the plaintiffs' economic interests). In *Wiltz* there was certainly a "discrete" group of plaintiffs far smaller than the 350,000 or more corn farmers potentially at issue here, and there were similar "inter-connected relationships," yet the Fifth Circuit held that Louisiana

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

law barred recovery.[69]

Missouri. The Supreme Court of Missouri adopted the stranger ELD long ago. *See Brink v. Wabash Ry. Co.*, 60 S.W. 1058, 1059-60 (Mo. 1901) (barring parents' claim asserting that railroad's negligence causing death of their son had injured them by preventing the son from keeping his contract to provide for their support).[70] Contrary to the MDL Order, the mere fact that a federal court addressing an action against tobacco manufacturers for restitution found a basis for distinguishing *Brink* based on intervening changes in wrongful death law does not undermine the relevance of the opinion here. *See* MDL Order 39 (citing *City of St. Louis v. Am. Tobacco Co., Inc.*, 70 F. Supp. 2d 1008 (E.D. Mo. 1999)). *Brink* shows that the Missouri courts adopted the principles behind the stranger ELD, and the decision has never been disapproved. Similarly, the mere fact that Missouri (like many States) has recognized exceptions to the ELD for actions for against architects akin to professional malpractice claims, *see Business Men's Assurance Co. of Am. v. Graham*, 891 S.W.2d 438, 454 (Mo. Ct. App. 1994), and for negligent misrepresentation, *B.L. Jet Sales, Inc. v. Alton Packaging Corp.*, 724 S.W.2d 669, 673 (Mo. Ct. App. 1987), provides no basis for thinking that Missouri would not apply the ELD here. As another federal court has recognized, *B.L. Jet Sales* falls into one of the "rare exceptions to the economic loss doctrine" recognized in Missouri, and it does not warrant expanding Missouri law to create new ones. *Dannix Painting, LLC v. Sherwin-Williams Co.*, No. 4:12 CV 01640 CDP,

---

[69] The decisions from *In re Genetically Modified Rice Litigation* are inapposite. They involved GM rice that had *not been approved for human consumption even in the U.S.* The duty to prevent release in those cases was founded entirely on federal laws and regulations, which were designed to "prevent harms arising from market disruptions" caused by the spread of *non-approved* crops. *In re Genetically Modified Rice Litig.*, No. 4:06-md-1811, 2011 WL 5024548, at *4 (E.D. Mo. Oct. 21, 2011); *see also In re Genetically Modified Rice Litig.*, 666 F. Supp. 2d at 1015, 1020 (E.D. Mo. 2009) (duties under federal law to "confine" the unapproved GM material). Those decisions are irrelevant here given that Viptera was fully approved in the U.S.

[70] The decision has been cited as an early application of the ELD. *See, e.g.*, *Union Oil Co.*, 501 F.2d at 563 n.4; *Stevenson*, 73 N.E.2d at 203; *cf. also* Dobbs § 647 (describing cases involving negligent injury of a person who had "contracted to provide [the plaintiff's] upkeep" as stranger economic loss cases).

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

2012 WL 6013217, at *2 (E.D. Mo. Dec. 3, 2012), *aff'd*, 732 F.3d 902 (8th Cir. 2013).

Ohio. Ohio applied the stranger ELD long ago to bar workers from recovering lost wages after the defendant negligently caused an explosion that closed a factory. *See Stevenson*, 73 N.E.2d at 203-04. More recently, Ohio courts applied the rule to bar claims against a defendant that negligently severed telephone cables "resulting in a loss of telephone, fax and some internet and cable services to thousands," *RWP, Inc. v. Fabrizi Trucking & Paving Co., Inc.*, No. 87382, 2006 WL 2777159, at *1 (Ohio Ct. App. Sept. 28, 2006), and to bar an environmental group's effort to recoup remediation costs from a railroad, *see Ashtabula River Corp. Grp. II v. Conrail, Inc.*, 549 F. Supp. 2d 981, 987-88 (N.D. Ohio 2008).[71] *Ashtabula* squarely rejected the theory that the "[ELD] does not bar tort claims that are independent of a contract claim." *Id.* (citing *Corporex Dev. & Constr. Mgmt., Inc. v. Shook, Inc.*, 835 N.E.2d 701, 704 (Ohio 2005)).

Despite that straightforward precedent, the MDL Court concluded that the ELD does not apply in Ohio whenever a plaintiff asserts a tort claim independent of a contract. *See* MDL Order 41. That misstates Ohio law. The federal court pointed to broad dicta in *Campbell v. Krupp*, 961 N.E.2d 205 (Ohio Ct. App. 2011), which suggested that the ELD "does not apply—and the plaintiff who suffered only economic damages can proceed in tort—if the defendant breached a duty that did not arise solely from a contract." *Id.* at 211. But understanding that language requires looking at the *holding* of the case. The plaintiff in *Krupp* sued a title insurance company for negligence, claiming economic losses from a negligent title search. The court held that Ohio law had barred negligence claims against title abstractors (by parties other than those

[71] *See also City of Cleveland v. Ameriquest Mortg. Sec., Inc.*, 621 F. Supp. 2d 513, 516 (N.D. Ohio 2009) (barring city's public nuisance claim against financial institutions for their use of subprime lending that allegedly caused "epidemic of foreclosures afflicting the City").

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

in privity) for over 100 years and thus concluded that the plaintiff's negligence claim *failed* because "no cause of action outside of contract exists against a title abstracter for negligence." *Id.* at 213. Of course, the rule that no cause of action for negligence lies against title abstractors is nothing other than a particular application of—*the ELD*. Thus, when the court stated in dicta that a plaintiff could "proceed in tort" to recover economic losses "*if* the defendant breached a duty that did not arise from a contract," *id.* at 211 (emphasis added), the court was not remotely announcing a general rule that there *is* a duty in tort to avoid economic losses that would allow plaintiffs to bring negligence claims whenever they arise independently of a contract. To the contrary, to determine whether a duty in tort existed at all, the court still applied the ELD—and held that there was *no duty* in that case. *Id.* at 212-13. The holding in *Krupp* thus does nothing to upset the "general rule" under Ohio law that "there is no . . . duty to exercise reasonable care to avoid intangible economic loss or losses to others that do not arise from tangible physical harm to persons and tangible things." *Queen City Terminals, Inc. v. Gen. Am. Transp. Corp.*, 653 N.E.2d 661, 667-68 (Ohio 1995).[72]

The other cases cited by the MDL Court reflect the same principles. *Mulch Mfg., Inc. v. Advanced Polymer Sols., LLC*, 947 F. Supp. 2d 841 (S.D. Ohio 2013), involved claims for fraud, deceptive trade practices in violation of Ohio statute, and negligent misrepresentation, *see id.* at 855-56. The court reached the unremarkable conclusion that such claims came within exceptions to the ELD. The ELD does not apply to intentional torts (such as fraud and intentional

[72] As the discussion in *Krupp* shows, in suggesting that a plaintiff may recover economic losses in tort "*if* the defendant breached a duty that did not arise solely from a contract," *Krupp*, 961 N.E.2d at 211, the court was simply contemplating particular situations—particularly the tort of negligent misrepresentation—where there may be a duty in tort to avoid conduct causing economic losses to others. *See id.* (discussing the fact that, under *Haddon View Inv. Co. v. Coopers & Lybrand*, 436 N.E.2d 212 (Ohio 1982), the tort of negligent misrepresentation imposes a duty by law on certain parties to avoid economic losses).

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

deception), and negligent misrepresentation is also a recognized exception to the doctrine.[73] *See id.* at 856 (noting that "various courts, applying Ohio law, have held that the [ELD] does not apply to the claims involved here"). As the court noted, the particular claims in the case rested on the assertion of duties that did not fall under the rubric of the ELD —namely, duties "not to engage in deceptive, misleading, and/or fraudulent practices." *Id.* at 857; *see also* Dobbs §§ 606 & n.1, 666. Nothing in that conclusion remotely undermines application of the stranger ELD to bar *negligence, nuisance*, or *strict liability* claims as in this case. *Dana Ltd. v. Aon Consulting, Inc.*, 984 F. Supp. 2d 755 (N.D. Ohio 2013), is further afield. The court there merely held that the only duties the plaintiff had identified all arose from a contract and applied the contractual ELD. *See id.* at 767. The case did not hold that a plaintiff may proceed in tort whenever its claims arise *outside* a contract; the court had no occasion to address that question.

At bottom, the MDL Order did not identify a *single* Ohio case—nor is there such a case—allowing a claim for *negligence, nuisance*, or *strict liability* for economic losses to proceed on the theory that the claim arises outside a contractual relationship.

Tennessee. Tennessee has adopted the stranger ELD. *See, e.g., Lear Siegler*, 825 S.W.2d at 85-87 (tracing the rule to *Robins Dry Dock*); *Ladd Landing, LLC v. TVA*, 874 F. Supp. 2d 727, 732 (E.D. Tenn. 2012). In *Lear Siegler*, the court barred workers' claims for wages lost when an industrial park was closed for a day due to the defendant's negligence in permitting a propane leak. 825 S.W.2d at 87. Tennessee cases discussing the ELD in the context of sales of goods and contract scenarios provide no basis for concluding that Tennessee would *restrict* the ELD to that context. As a federal court recently noted, there is a "difference between the [ELD]

[73] *See, e.g., Nat'l Mulch & Seed, Inc. v. Rexius Forest By-Prods. Inc.*, No. 2:02-CV-1288, 2007 WL 894833, at *9 (S.D. Ohio Mar. 22, 2007) (collecting cases and concluding that "the Court does not believe that under Ohio law a negligent misrepresentation claim is barred by the [ELD]").

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

in the context of a case involving contracts and a case in which no contract or privity between the parties is involved—the situation presented in *Lear Siegler* and in this case." *Ladd Landing*, 874 F. Supp. 2d at 732 (rejecting argument that ELD is limited to contracts and the sale of goods and relying on *Lear Siegler* to bar claims for pure economic loss resulting from dike failure).

As the MDL Court has pointed out, another federal court has suggested that, despite the holding in *Lear Siegler*, Tennessee would limit the ELD to the products liability context. *See Ham v. Swift Transp. Co., Inc.*, 694 F. Supp. 2d 915 (W.D. Tenn. 2010). But as *Ladd Landing* has explained, "*Ham* did not offer an explanation for why *Lear Siegler*'s application of the [ELD] to a tort situation was in error or limited to the facts of that case." *Ladd Landing*, 874 F. Supp. 2d at 731-33 (finding *Ham* unpersuasive and following *Lear Siegler* as the "controlling authority" from Tennessee courts). Indeed, the *Ham* court based its analysis on the patently mistaken assertion that the ELD "has its origins in the UCC." *Ham*, 694 F. Supp. 2d at 923. As explained above, that is demonstrably incorrect. The stranger ELD dates back to the nineteenth century. In addition, *Ham*'s holding—purportedly limiting Tennessee's ELD to UCC transactions—cannot be squared with other Tennessee cases applying the ELD outside the UCC context.[74] Lastly, as *Ladd Landing* pointed out, "because *Lear Siegler* is a published decision by the Tennessee Court of Appeals that has not been overruled or modified by a subsequent decision of the Tennessee Supreme Court, it is controlling authority." 874 F. Supp. 2d at 733. The reasoning in *Ham* for ignoring *Lear Siegler* is thus wholly unpersuasive.[75]

Texas. Texas has applied the ELD to contractual strangers. *See LAN/STV v. Martin K.*

[74] *See, e.g.*, *Rural Dev., LLC v. Tucker*, No. M2008-00172-COA-R3-CV, 2009 WL 112541, at *9 (Tenn. Ct. App. Jan. 14, 2009); *Amsouth Erectors, LLC v. Skaggs Iron Works, Inc.*, No. W2002-01944-COA-R3-CV, 2003 WL 21878540, at *4-5 (Tenn. Ct. App. Aug. 5, 2003).

[75] To the extent the federal court attempted to distinguish *Lear Siegler* and *Ladd Landing* as "lack-of-access" cases, MDL Order 43, as explained above, that distinction is meritless. *See supra* Part II.A.4.b.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Eby Constr. Co., Inc., 435 S.W.3d 234, 250 (Tex. 2014). In contrast to most jurisdictions, however, in Texas the "application of the rule depends on an analysis of its rationales in a particular situation." *Id.* at 245-46. Contrary to the MDL Order, however, that does not mean that Texas courts would decline to apply the ELD in this case. *See* MDL Order 44. The Texas Supreme Court has expressly recognized that the "principal rationale[] for the rule" is that "[e]conomic losses *proliferate* more easily than losses of other kinds" and can result in "indeterminate and disproportionate liability." *LAN/STV*, 435 S.W.3d at 240 (emphasis added). "Those liabilities may in turn create an exaggerated pressure to avoid an activity altogether." *Id.* Those concerns fully apply here. As Syngenta has explained, Plaintiffs' theories would, in the first instance, expose Syngenta to claims by hundreds of thousands of corn farmers, not to mention the claims of Non-Producers ranging from grain elevators to exporters to anyone else downstream. And as the milo and soybean producers' claims show, the alleged economic ripple effects from Viptera could expand the potential plaintiff pool to sweep in hundreds of thousands more. The allegations in this case thus provide a classic stranger economic loss scenario, and there is no basis for concluding that Texas law would not apply the stranger rule in this case.

In re Genetically Modified Rice provides no persuasive authority for declining to apply the ELD in a case such as this. That decision predated *LAN/STV* and misread Texas law by holding that the stranger ELD applied only if "the plaintiff could have recovered for the same injury by a contract action against another." *In re Genetically Modified Rice Litig.*, No. 4:06-md-1811, 2011 WL 339168, at *3 n.2 (E.D. Mo. Feb. 1, 2011) (citing *Sterling Chems., Inc. v. Texaco Inc.*, 259 S.W.3d 793, 793 (Tex. App. 2007)). *Sterling Chemicals* did not read the ELD so narrowly, *see* 259 S.W.3d at 799,[76] and other Texas cases (including those cited in *Sterling*

[76] In observing that the ELD was "particularly appropriate" where the plaintiff had a contract action against

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Chemicals) have applied the stranger ELD without any such restriction.[77]

Wisconsin. Federal courts have squarely held that Wisconsin applies the stranger ELD. In *Leadfree Enters., Inc. v. U.S. Steel Corp.*, 711 F.2d 805 (7th Cir. 1983), the Seventh Circuit held that Wisconsin law barred plaintiffs (users of a bridge) from recovering "for lost profits and other purely economic losses caused when [the] bridge was closed as a result of allegedly defective construction." *Id.* at 806. Subsequently, the Seventh Circuit explained that "there is now substantial evidence that Wisconsin would decline *in all circumstances* to allow a negligence suit for the recovery of only economic damages, even when there is no contractual relationship between the parties." *Midwest Knitting Mills, Inc. v. United States*, 950 F.2d 1295, 1300 (7th Cir. 1991) (emphasis added); *see also Custom Underground, Inc. v. Mi-Tech Servs., Inc.*, No. 10-CV-222-JPS, 2011 WL 5008343, at *4 (E.D. Wis. Oct. 20, 2011) (applying ELD to bar contractor's claim seeking to recover increased costs due to engineer's negligent plans where parties were contractual strangers). Federal courts have made clear that Wisconsin's ELD applies even in the absence of a contractual relationship and have refused to "conflat[e] the economic loss doctrine's applicability in cases where contractual privity exists between the parties with Wisconsin's principles regarding recovery of economic losses in tort where no contractual privity exists between the parties." *Custom Underground*, 2011 WL 5008343, at *3.

Wisconsin cases have not undermined the federal opinions and have not confined the ELD to "the context of contractual relationships." MDL Order 44-45. In products liability cases, the Wisconsin Supreme Court has taken a broad approach, holding that "contract notions

---

another, *Sterling Chemicals* did not suggest that fact was determinative. *See* 259 S.W.3d at 799.

[77] *See, e.g., Trans-Gulf Corp. v. Performance Aircraft Servs., Inc.*, 82 S.W.3d 691, 695 (Tex. App. 2002); *Coastal Conduit & Ditching, Inc. v. Noram Energy Corp.*, 29 S.W.3d 282, 288-90 (Tex. App. 2000) (applying ELD to "contractual strangers" where there was no alternative for recovery in contract for excavating company's claims that gas company's negligent marking of its lines had caused economic losses in the form of "additional overhead and expenses" when excavating company struck the improperly marked lines).

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

of privity are irrelevant to the question whether" the ELD applies. *Daanen & Janssen*, 573 N.W.2d at 852. *Brew City Redevelopment Grp., LLC v. Ferchill Grp.*, 724 N.W.2d 879 (Wis. 2006), is not to the contrary. The court there rejected the ELD on multiple grounds, including the square holding that the damages claimed were "non-economic." *Id.* at 888. The court also cited *Daanen* approvingly, *id.*, and cannot be read as *sub silentio* rejecting *Daanen*'s reasoning.

Schuetta v. Aurora Nat'l Life Assurance Co., No. 13-cv-007-JPS, 2013 WL 6199248, at *1 (E.D. Wis. Nov. 27, 2013), involved claims by the beneficiary of an annuity that the insurance company had negligently failed to inform him of his rights and is best understood as falling in the category of cases in which a defendant in the business of providing professional services or information for the benefit of a third party may be held liable for economic losses if it performs the service negligently. *See supra* pp. 24 & n.50; *cf. Ins. Co. of N. Am. v. Cease Elec., Inc.*, 688 N.W.2d 462, 471-72 (Wis. 2004) (holding that Wisconsin would not apply the ELD to claims arising under any contracts for services). To the extent the court there suggested that the ELD should not apply simply because the UCC did not govern the transaction and that ELD cases "most often deal with manufactured products that are under warranty," *Schuetta*, 2013 WL 6199248, at *5, that approach misstates the law and falls into precisely the error of "conflat[ing] the ELD's applicability in cases where contractual privity exists between the parties with Wisconsin's principles regarding recovery of economic losses in tort where no contractual privity exists between the parties." *Custom Underground*, 2011 WL 5008343, at *3.

The MDL Court was also mistaken in relying on *Walker v. Ranger Ins. Co.*, 711 N.W.2d 683, 687 (Wis. Ct. App. 2006), because that case involved *physical injury*. *See id.* (due to defendant's conduct "pipes burst and significant damage occurred as a result"). To the extent the court there suggested that the ELD should not apply because the plaintiffs had no contractual remedy, it plainly misunderstood the most basic parameters of the doctrine. The ELD did not bar

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

recovery in that case because the plaintiffs had suffered physical damage to their property.

b. The Court Should Predict That States That Have Not Expressly Adopted The Stranger ELD Would Apply It Here.

Alabama. The Alabama Supreme Court has adopted the ELD in the products liability context, *see Lloyd Wood Coal Co. v. Clark Equip. Co.*, 543 So. 2d 671, 674 (Ala. 1989), and nothing in that decision indicates Alabama would reject the majority approach here. The MDL Court cited *Public Building Authority of City of Huntsville v. St. Paul Fire and Marine Insurance Co.*, 80 So. 3d 171 (Ala. 2010), for the proposition that Alabama has limited the ELD to products liability. But *Public Building* merely held that the ELD does not apply in "a commercial-construction context" because Alabama has developed a context-specific six-factor test to determine whether "a duty in tort" exists in commercial-construction cases. *Id.* at 184-85.

Arkansas. The Arkansas Supreme Court has held that the ELD does not apply in strict products liability cases, *Blagg v. Fred Hunt Co., Inc.*, 612 S.W.2d 321, 324 (Ark. 1981), and has reserved the question whether to apply the doctrine to negligence cases, *see Bayer CropScience LP v. Schafer*, 385 S.W.3d 822 (Ark. 2011). The MDL Order reached a contrary conclusion primarily by misstating Arkansas law. The Order rests on the assertion that the court in *Carvin v. Ark. Power & Light Co.*, Civ. Nos. 90-6055 & 90-6109, 1991 WL 540481, at *4 (W.D. Ark. Dec. 2, 1991), "declined to apply the ELD under Arkansas law in the stranger context." MDL Order 27. That is flatly incorrect. *Carvin* applied the stranger ELD as it held: "We do not believe that the Arkansas courts if faced with the issue would allow plaintiffs to recover from defendants for the purely economic losses stemming from the loss of the bridge." 1991 WL 540481, at *5. There is no reason to think that *Carvin* does not accurately reflect Arkansas law.

Colorado. The Colorado Supreme Court recently held that one strand of the ELD applying the doctrine where there are "interrelated contracts" does not apply to tort duties that

27-CV-15-3735
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

arise independently of contract duties. *S K Peightal Eng'rs, LTD v. Mid Valley Real Estate Sols. V, LLC*, 342 P.3d 868, 872 (Colo. 2015). But the court made clear that it was addressing scenarios involving "a single contract" or "interrelated contracts" and specifically stated that its holding was "narrowly" tailored to "the specific facts of this case." *Id.* at 868, 877. The MDL Court erred in relying on that decision to hold that Colorado would reject the majority approach to the *stranger* ELD.[78]

Indiana. Indiana has made clear that the "existence or non-existence of a contract is not the dispositive factor for determining whether a tort action [for economic loss] is allowable," *U.S. Bank, N.A. v. Integrity Land Title Corp.*, 929 N.E.2d 742, 748 (Ind. 2010), and has applied the ELD where parties had no contractual privity at all, *Indianapolis-Marion Cty. Pub. Library v. Charlier Clark & Linard, P.C.*, 929 N.E.2d 722, 739 (Ind. 2010). These decisions, which post-date the Indiana state-court decisions erroneously relied on by the MDL Court,[79] show that Indiana does not restrict the ELD to situations where the parties have a contract. In fact, the Indiana Court of Appeals has applied the stranger ELD in the classic scenario of defendant injuring an employee and disrupting plaintiff's business. *See Morton v. Merrillville Toyota, Inc.*, 562 N.E.2d 781, 786 (Ind. Ct. App. 1990).

The MDL Court also erred by relying on a federal decision that erroneously cited *Charlier* for the proposition that Indiana has restricted the ELD to cases involving contracting

[78] The MDL Court also relied on *Town of Alma v. AZCO Constr., Inc.*, 10 P.3d 1256 (Colo. 2000). *See* MDL Order 28-29. But *AZCO* was decided in the context of parties who were in contractual privity and said nothing about how the court would rule in a stranger scenario.

[79] The three state-court cases relied on by the MDL Court not only predate the Indiana Supreme Court's decisions, they also are readily distinguished from this case. Two of the cases involved property damage, which "clearly fall[s] outside the scope of the economic loss doctrine." *Hoffman v. WCC Equity Partners, LP*, 899 N.E.2d 756, at *2 (Ind. Ct. App. 2008) (unpublished decision); *see KB Home Ind. Inc. v. Rockville TBD Corp.*, 928 N.E.2d 297, 300, 304-05 (Ind. Ct. App. 2010). In the third case, the appellate court found the ELD did not apply to a negligence *per se* claim because "it seeks recovery in negligence based upon [a] violation of state statutory and federal regulatory law." *American United Life Ins. Co. v. Douglas*, 808 N.E.2d 690, 705 (Ind. Ct. App. 2004).

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

parties. *See Novak v. Ind. Family & Soc. Servs. Admin.*, No. 1:10-cv-0677-RLY-DML, 2011 WL 1224813, at *8 (S.D. Ind. Mar. 30, 2011). Contrary to *Novak*'s mischaracterization, the defendant in *Charlier* was an engineering subcontractor with whom the plaintiff had no contractual privity whatsoever. *Charlier*, 929 N.E.2d at 739.

Kansas. The MDL Court correctly recognized that the Kansas Supreme Court has held open the possibility that the ELD would apply in the stranger context, *see Rinehart v. Morton Buildings Inc.*, 305 P.3d 622, 632 (Kan. 2013), but erroneously found "no basis" to predict that Kansas courts would apply the doctrine in this case because "Kansas courts have never applied the stranger [ELD]." MDL Order 31. That analysis ignores the fact that the stranger ELD is the *majority* approach and should be applied in Kansas absent some indication that Kansas would *reject* the stranger ELD. Moreover, the Kansas Court of Appeals *has* applied the stranger ELD when an excavator negligently operated its equipment causing "economic harm due to an interruption in phone and internet service." *Long Motor Corp. v. SM & P Utility Res., Inc.*, 214 P.3d 707, at *3 (Kan. Ct. App. 2009) (unpublished).

Kentucky. The Kentucky Supreme Court adopted the ELD in the products liability context in *Giddings & Lewis, Inc. v. Indus. Risk Insurers*, 348 S.W.3d 729 (Ky. 2011), and nothing in that decision restricts the doctrine to that context. The federal and lower-court decisions relied on by the MDL Court arose in the context of a contractual relationship and thus afforded no opportunity for those courts to address the stranger ELD. *See, e.g., Nami Res. Co., LLC v. Asher Land & Mineral, Ltd.*, Nos. 2012-CA-762-MR et al., 2015 WL 4776376, at *2 (Ky. Ct. App. Aug. 14, 2015) (non-final opinion). Accordingly, these cases are irrelevant to the question whether Kentucky would apply the stranger ELD here.

Michigan. Although Michigan courts have indicated that the ELD applies only where parties could have addressed their risks by contract, the Michigan Court of Appeals held open the

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

possibility that claims for economic losses might be barred in "a mass tort claim with the potential for disproportionate economic exposure." *Quest Diagnostics, Inc. v. MCI WorldCom, Inc.*, 656 N.W.2d 858, 866 (Mich. Ct. App. 2002). Plaintiffs have made this case a purported mass tort action, with more than 2,130 plaintiffs pursuing claims. Accordingly, this Court should predict that the Michigan courts would apply the stranger ELD in this "mass tort" action.

Mississippi. Mississippi courts have not addressed, let alone rejected, the stranger ELD. The cases relied on by the MDL Court considered the ELD in the context of contractual relations, *see, e.g.*, *Lyndon Prop. Ins. Co. v. Duke Levy & Assocs., LLC*, 475 F.3d 268, 274 (5th Cir. 2007) (refusing to apply ELD to "a duty shaped by contract"), and consequently took no position on the rationales underpinning the stranger ELD.

Nebraska. The Nebraska Supreme Court has adopted the ELD in the products liability context, *see Nat'l Crane Corp. v. Ohio Steel Tube Co.*, 332 N.W. 2d 39, 44 (Neb. 1983), and the MDL Court's reliance on *Lesiak v. Cent. Valley Ag. Co-op, Inc.*, 808 N.W.2d 67 (Neb. 2012), to limit the doctrine to that context is misplaced. In *Lesiak*, the court held only that the ELD did not apply because the plaintiffs had suffered *physical injury*—that is, "the damage allegedly caused by the breach was not purely economic loss," *id.* at 83. The court did not consider, even in dicta, stranger scenarios and thus *Lesiak* cannot be read as a rejection of the stranger ELD.

North Carolina. North Carolina courts have not addressed the stranger ELD. The MDL Court's conclusion was based on a decision that analyzed the ELD through the lens of products liability cases, and in that context held that lack of contractual privity precluded applying the rule. *See Lord v. Customized Consulting Specialty, Inc.*, 643 S.E.2d 28, 32 (N.C. Ct. App. 2007). *Lord* does not show that North Carolina would reject bright-line application of the stranger ELD.

North Dakota & Oklahoma. North Dakota and Oklahoma have adopted the ELD in the products liability context, *see Leno v. K & L Homes, Inc.*, 803 N.W.2d 543, 550 (N.D. 2011); *see*

27-CV-15-3735
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Waggoner v. Town & Country Mobile Homes, Inc., 808 P.2d 649, 652 (Okla. 1990), and have given no indication that they would not adopt majority approach in the stranger context.

South Dakota. The South Dakota Supreme Court has noted that it "is in agreement with the rationale behind the rule denying economic damages under tort theories and expressly recognize[d] it." *City of Lennox v. Mitek Indus., Inc.*, 519 N.W.2d 330, 333 (S.D. 1994). In defining the doctrine's contours, the court has looked to Illinois—a state that has unquestionably adopted the stranger ELD. *See Kreisers Inc. v. First Dakota Title Ltd. P'ship*, 852 N.W.2d 413 (S.D. 2014) (citing *Collins v. Reynard*, 607 N.E.2d 1185 (Ill. 1992)).

B. Non-Producers' Claims Are Barred By The Stranger ELD Or The Contractual ELD.

The Non-Producers' claims are barred by one of the two strands of the ELD, depending on how the claims are cast. To the extent the Non-Producers assert that they were injured by the general presence of Viptera in the U.S. corn supply, their claims are identical to those of the Producers and are barred under the stranger rule for the reasons explained above. To the extent the Non-Producers assert that they were injured because the particular corn they purchased contained Viptera corn, the contractual strand of the ELD bars tort claims for economic losses arising where the parties are connected (directly or indirectly) by contract.[80]

In particular, the contractual ELD bars tort claims for economic losses arising from the assertion that goods do not have the value or the qualities the purchaser expected.[81] "A buyer's desire to enjoy the benefit of his bargain is not an interest that tort law traditionally protects."

---

[80] *See, e.g.*, *Annett Holdings*, 801 N.W.2d at 503; *Superwood Corp. v. Siempelkamp Corp.*, 311 N.W.2d 159, 162 (Minn. 1981) ("[E]conomic losses that arise out of commercial transactions, except those involving personal injury or damage to other property, are not recoverable under the tort theories of negligence or strict products liability."), *overruled on other grounds by Hapka v. Paquin Farms*, 458 N.W.2d 683 (Minn. 1990).

[81] *See, e.g.*, *Minneapolis Soc'y of Fine Arts v. Parker-Klein Assocs. Architects, Inc.*, 354 N.W.2d 816, 820 (Minn. 1984), *overruled on other grounds by Hapka*, 458 N.W.2d 683 (doctrine bars tort claims for "failure of the product to perform to the level expected by the buyer"); *accord City of Lennox v. Mitek Indus., Inc.*, 519 N.W.2d 330, 333 (S.D. 1994).

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Anderson Elec., Inc. v. Ledbetter Erection Corp., 503 N.E.2d 246, 248 (Ill. 1987).

Like the stranger rule, the contractual ELD precludes the open-ended liability that would result if a manufacturer could be held liable for the spreading economic consequences of some failure of its product to meet expectations. *See, e.g.*, *Daanen & Janssen*, 573 N.W.2d at 849. It is also intended to preserve the distinct roles of tort and contract law. As noted above, tort law is concerned with duties to prevent physical harm. By contrast, claims that "a product has not met the customer's expectations" or "that the customer has received 'insufficient product value'" and suffered economic loss as a result are the concern of "express and implied warranties." *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 872 (1986). The contractual ELD thus reflects a determination that "principles of warranty law remain the appropriate vehicle to redress a purchaser's disappointed expectations when a defect renders a product inferior or unable adequately to perform its intended function." *Moorman Mfg. Co. v. Nat'l Tank Co.*, 435 N.E.2d 443, 450 (Ill. 1982) (citations omitted); *accord Delaval*, 476 U.S. at 867.

Restricting parties to their contract remedies prevents tort law from swallowing contract law and preserves the ability of parties to allocate risks through the terms of their transactions. The doctrine is thus intended to encourage parties to address economic risks by contract.[82]

Here, the Non-Producers' claims are barred by the contractual ELD. Their fundamental claim is that they purchased corn without regard to whether it was grown from Viptera, mixed the corn all together, and then were disappointed when the presence of Viptera in the corn supply (and China's embargo) allegedly lowered the price of corn. The Non-Producers themselves

[82] It encourages "the party with the best information (that is, the party with knowledge of its own risk of loss) to decide whether to assume, allocate, avoid, or insure against its risk of loss." *Wiltz*, 645 F.3d at 697; *see also Daanen & Janssen*, 573 N.W.2d at 850 ("[T]he economic loss doctrine is aimed at encouraging commercial parties ex ante to negotiate for warranty protection or to take other steps, such as purchasing insurance, to protect their purely economic interests.").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

characterize their alleged damages as "economic harm," Non-Class Compl. ¶ 240, and they complain solely of "losses from the drop in corn prices," "reduced volumes and reduced margins," Non-Class Compl. ¶ 292, and other similar economic damages, *see id.* ¶¶ 293-96. Such injuries are paradigmatic economic losses by a purchaser disappointed that the goods he purchased do not have the qualities and the economic value he had hoped for.[83]

The policies behind the doctrine also apply with particular force to the Non-Producers, because they could have protected against their losses through their contracts for purchasing corn—including by seeking warranties that the corn was Viptera free.[84] As noted, one purpose of the ELD is to "encourage" the "*commercial purchaser*[] to assume, allocate, or insure against [economic] risk." *Daanen & Janssen, Inc.*, 573 N.W.2d at 846 (emphasis added). Allowing recovery in tort and making Syngenta (and other manufacturers of GM seeds) the universal insurers for everyone else in the grain industry would give the Non-Producers the benefit of a protection they did not bargain (or pay) for when they were purchasing corn, eliminate incentives for them ever to rely on contracts to address these risks, and prevent the system of contracts between various players in the market from ever developing to address the economic risks at issue here. These are exactly the results the ELD is designed to avoid. The doctrine is premised on the view that "commercial entities [are] quite capable of bargaining for express warranties" and that the courts should not permit after-the-fact tort actions to remove the incentives to do so. *Lexington Ins. Co. v. W. Roofing Co., Inc.*, 316 F. Supp. 2d 1142, 1149 (D. Kan. 2004).

---

[83] *See, e.g., Daanen & Janssen, Inc.*, 573 N.W.2d at 845 (ELD bars claims for "loss in value of the product itself" or "insufficient product value"); *State Farm Mut. Auto. Ins. Co. v. Ford Motor Co.*, 736 So. 2d 384, 387 (Miss. Ct. App. 1999) (ELD bars recovery for "controversies in which commercial purchases do not live up to the expectations of the consumer"); Minn. Stat. § 604.101, subd. 3 (Reporter's Note) (statute bars "recovery for damage to [or] diminution in the value of" the goods sold).

[84] *See, e.g., Daanen & Janssen*, 573 N.W. 2d at 850 ("Since Daanen was free to negotiate for warranty protection with [third parties], the policies underlying the [economic loss] doctrine applied with full force to its claims regardless of whether it was in privity with [Defendant].").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Like the Producers, the Non-Producers also cannot sidestep the ELD by claiming physical injury to property. *See supra* Part II.A.3. The Non-Producers rely on the same generic assertions about "pervasive contamination of the U.S. corn supply," Non-Class Compl. ¶ 236, rather than any assertions about harm to *their* property. And their theory of injury is similarly decoupled from injury to *their* corn. They allege injury from a market-wide drop in the price of *all* U.S. corn, not injury to *their* corn in particular. The MDL Court held that the non-producers before it had not alleged physical injury, and the same logic applies to the Non-Producers here. *See* MDL Order 19-20. As explained above, moreover, the presence of Viptera in corn cannot count as physical injury in any event, because Viptera was fully approved in the U.S. Finally, the Non-Producers face an additional hurdle. In the purchase-of-goods context, physical injury suffices to avoid the ELD only where the purchased good damaged *other* property.[85] Where the only injury is to the good itself, the ELD applies. Here, corn—including corn containing the MIR162 trait—is the product the Non-Producers purchased. Their claim that the corn they purchased did not have the value it should have had does not involve damage to *other* property.

Nor can the Non-Producers claim injury to *other* property on the theory that they commingled MIR162 corn with other corn. Where one component or ingredient allegedly "injures" a product of which it is a part, that does not qualify as injury to "other property." *See, e.g.*, *Jorgensen*, 824 N.W.2d at 419; *W. Roofing*, 316 F. Supp. 2d at 1147-49; *Minneapolis Soc'y of Fine Arts*, 354 N.W.2d at 820.[86] Under this principle, courts have held, for example, that where fertilizer contaminated a crop of wheat with rye (thus preventing the farmer from selling

[85] *See, e.g.*, *Lexington Ins.*, 316 F. Supp. 2d at 1147; *Jorgensen Farms, Inc. v. Country Pride Coop., Inc.*, 824 N.W.2d 410, 419 (S.D. 2012); *State Farm*, 736 So. 2d at 387; Minn. Stat. § 604.101, subd. 3(1) (plaintiff can recover solely for damage to "*other* tangible personal property") (emphasis added).

[86] *See also, e.g.*, *Nw. Ark. Masonry, Inc. v. Summit Spec. Prods., Inc.*, 31 P.3d 982, 988 (Kan. Ct. App. 2001); *StarLink Corn*, 212 F. Supp. 2d at 841 ("[C]ourts have uniformly held that if a defective part of a product harms the rest of the product, that does not constitute 'other property.'").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

the crop at a higher price as certified seed), that did not constitute injury to "other property" because the fertilizer was merely a component part of the finished product—the crop of wheat. *Jorgensen*, 824 N.W.2d at 413, 418-19. Here, the Non-Producers combine corn from multiple sources to create their product: fungible corn. Mixing some corn with the MIR162 trait together with other corn cannot, as a matter of law, produce injury to "other property." *See, e.g.*, *Wasau Tile, Inc. v. Country Concrete Corp.*, 593 N.W.2d 445, 454 (Wis. 1999) (where manufacturer of pavers complained that "the pavers were damaged because one or more of their ingredients was of insufficient quality," there was no damage to "other property"); Dobbs § 449.[87]

The MDL Court offered two reasons for holding that the ELD did not bar non-producers' claims, but both rest upon incorrect statements of the law.[88]

First, the MDL Court held that the ELD did not apply because the non-producers had not purchased Syngenta's own product—Viptera *seed*—directly from Syngenta. Instead, they had purchased harvested corn grain from other intermediaries. *See* MDL Order 47. Contrary to the federal court's assumptions, however, the ELD applies even to remote purchasers who did not purchase directly from the defendant and applies where the defendant made only a component or ingredient incorporated into the product purchased by the plaintiff. It is well settled that, when a remote purchaser sues the manufacturer, the ELD applies just as it would if the plaintiff had purchased from the manufacturer directly. *See, e.g.*, *Daanen & Jansen*, 573 N.W.2d at 849.

---

[87] *See also Int'l Flavors & Fragrances, Inc. v. McCormick & Co., Inc.*, 575 F. Supp. 2d 654, 660-64 (D.N.J. 2008) (plaintiff that had purchased paprika infested with cigarette beetles from defendant could not show injury to "other property" where it had included the paprika in its barbeque sauce and the barbeque sauce was ruined); *Dixie-Portland Flour Mills, Inc. v. Nation Enters., Inc.*, 613 F. Supp. 985, 988-89 (N.D. Ill. 1985) (purchaser of flour contaminated with sand could not recover in tort despite the assertion that other ingredients were "harmed" and wasted when they were mixed with the flour; the "qualitative" defect in the flour "at core . . . merely injures a purchaser's expectations"); *see also StarLink*, 212 F. Supp. 2d at 841 (the "modern trend" is to hold that if "damage is of a type that the buyer could have foreseen resulting from the product failing to perform, it does not constitute harm to other property").

[88] The MDL Court discussed its rationales primarily in the context of Minnesota's statute codifying the ELD, and that statute is addressed more specifically below. *See infra* pp. 66-69.

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Any other rule would produce the anomalous result that those purchasing directly *could not* recover in tort for economic losses, but those who happened to purchase from intermediaries *could*. That is not the law. *See, e.g.*, *StarLink*, 212 F. Supp. 2d at 839-40 (if the ELD did not apply to a remote purchaser, "then manufacturers would become liable for economic expectations of secondary purchasers").[89]

Similarly, it is settled law that the ELD applies where a plaintiff sues the maker of a component or ingredient in a purchased product. The U.S. Supreme Court's seminal decision applying the contractual ELD involved exactly such a scenario—a charterer sued the manufacturer of the turbines in a vessel. *See Transam. Delaval, Inc.*, 476 U.S. at 860-61. Even though the charterer had not purchased the turbines (or anything else) from the defendant, the Supreme Court held that the ELD applied. *See id.* at 871-72. Likewise, in *King v. Hilton-Davis*, 855 F.2d 1047 (3d Cir. 1988), the plaintiff farmer had purchased seed potatoes from a supplier, the seed potatoes had been treated with a sprout-suppressor, and the farmer sued the maker of the sprout-suppressor claiming that it had damaged the seed potatoes (preventing them from growing). The Third Circuit held the claim barred by the ELD because the sprout suppressor was simply a component of the product the farmer had purchased (seed potatoes), even though the farmer had not purchased any sprout suppressor himself.[90] The court explained that all the

---

[89] *See also, e.g.*, *Nw. Ark. Masonry*, 31 P.3d at 988-89 (explaining that "consumers are not typically in privity of contract with the manufacturer when they purchase products from retailers or wholesalers," but that "[n]evertheless, the economic loss rule applies").

[90] This is the rule generally applied across jurisdictions. *See, e.g.*, *Hininger v. Case Corp.*, 23 F.3d 124, 127 (5th Cir. 1994) (under Texas law, consumer cannot recover economic losses in tort in action against a supplier of a component part in the product the consumer purchased); *accord Shipco 2295, Inc. v. Avondale Shipyards, Inc.*, 825 F.2d 925 (5th Cir. 1987) (suit against designer of steering mechanism in ship) *Progressive Ins. Co. v. Monaco Coach Corp.*, No. 1:05-CV-37-DMR-JMR, 2006 WL 839520, at *3 (S.D. Miss. Mar. 29, 2006) (suit against maker of water heater in motor home); *Capital Motor Lines v. Detroit Diesel Corp.*, 799 F. Supp. 2d 11, 17 (D.D.C. 2011) (suit against maker of engine in a motor coach); *St. Paul Fire & Marine Ins. Co. v. Steeple Jac, Inc.*, 352 N.W.2d 107 (Minn. Ct. App. 1984) (suit against maker of defective gear box incorporated into window washing unit).

The Restatement (Third) applies the same approach. It explains that where Buyer purchases a house from Developer and later discovers that windows made by Manufacturer have leaked, damaging the house, the ELD bars

27-CV-15-3585
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

plaintiff-farmer had lost was "the expected performance of the seed potatoes, no more and no less." *Id.* at 1052. The same rationale applies here.

Once again, any other rule would produce an anomalous gap in the doctrine. For example, if a purchaser bought pizza dough from A, and A had made the dough with flour from B that had sand in it, the MDL Court's approach would suggest that the ELD would not bar purchaser's tort claim against B (the remote component supplier) simply because the purchaser did not buy flour from B. But such a result cannot be squared with the settled rule that the ELD bars both (i) any tort claim by A (the maker of the dough) against B (the supplier of contaminated flour) because the flour was merely a component in A's final product (and thus did not injure "other" property)[91] and (ii) any tort claim by the ultimate purchaser against A, his direct counter-party. Nothing in the policies underpinning the doctrine suggests that a tort claim for economic losses should spring to life the minute the maker of a product with a deficient component sells the finished product to a third party. Or as many courts have put it, there is "no principled basis for affording the purchaser of a defective product greater relief against the manufacturer of a component part . . . than against the manufacturer of the assembled defective product." *Hilton-Davis*, 855 F.2d at 1051. To the contrary, the same policy rationales apply with full force, because barring tort claims will both limit indeterminate liability and encourage purchasers to protect themselves by contract (including warranties).[92] Nothing in the situation of a remote component supplier could justify "permitting a tort recovery that will allow a purchaser to reach back up the production and distribution chain, thereby disrupting the risk allocations that have been worked out in the transactions comprising that chain." *Id.* at 1054. In short, the MDL

Buyer's tort claim against the Manufacturer. *See* Restatement (Third) of Torts: Liab. for Econ. Harm § 2 illust. 1.

[91] *See, e.g.*, *Dixie-Portland*, 613 F. Supp. at 988-89.

[92] In the pizza dough example, the ultimate purchaser would seek warranties from A (the maker of the dough), and A, in turn, would find it wise to protect its interests by seeking warranties from B (its flour supplier).

27-CV-15-3735
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Court's suggestion that the ELD would not apply unless the plaintiff had purchased the exact good produced and sold by Syngenta fundamentally misstates the law.[93]

Second, the MDL Court concluded that the ELD did not apply because the non-producers had not asserted that Viptera was "defective" and the ELD applies solely to product defect claims. MDL Order 47. That is also incorrect. Nothing in the purposes underlying the ELD limits it to tort claims asserting that a product meets a particular definition making it "defective." Instead, the fundamental point of the doctrine is that, *whenever* a plaintiff asserts a claim resting on the assertion that the product has disappointed the plaintiff's economic expectations, the plaintiff cannot proceed in negligence or strict liability and instead must look to the law of contract (and warranty) for relief. The doctrine has thus has been applied where, for example, the defendant simply sent the plaintiff the wrong product. *See, e.g.*, *Adcock v. S. Austin Marine, Inc.*, No. 2:08-cv-263KS-MTP, 2009 WL 3633335, at *5 (S.D. Miss. Oct. 30, 2009). If the MDL Court's approach were applied, a plaintiff could evade the ELD by merely describing his alleged economic losses while studiously refraining from calling a product "defective."

1. All States At Issue Would Apply The Contractual ELD.

With minor variations, all States at issue apply the ELD in the context of the purchase of goods to bar recovery of economic losses in tort[94] and, for the reasons above, would apply it to

[93] The Non-Producers cannot avoid the rule described here on the theory that seeds used as an input in producing crops are somehow different from other component parts used as inputs in a final product. Cases applying the ELD in the agricultural context have repeatedly recognized that not only seeds but also even fertilizers are component parts that go into the finished product of a final crop. *See, e.g.*, *Jorgensen Farms*, 824 N.W.2d at 418-19 (applying ELD because fertilizer contaminated with rye was a component part of wheat crop for which fertilizer was used); *Everkrisp Vegetables, Inc. v. Tobiason Potato Co.*, 870 F. Supp. 2d 745, 750-52 (D.N.D. 2012) (applying ELD where seed potatoes infected with ring rot infected entire potato crop).

[94] *See, e.g.*, *Lloyd Wood Coal Co. v. Clark Equip. Co.*, 543 So. 2d 671, 674 (Ala. 1989); *S K Peightal Engineers, LTD v. Mid Valley Real Estate Solutions V, LLC*, 342 P.3d 868, 872 (Colo. 2015); *Moorman Mfg. Co. v. Nat'l Tank Co.*, 435 N.E.2d 443, 447-48 (Ill. 1982); *Indianapolis-Marion Cty. Public Library v. Charlier Clark & Linard, P.C.*, 929 N.E.2d 722, 739 (Ind. 2010); *Richards v. Midland Brick Sales Co., Inc.*, 551 N.W.2d 649, 651-52 (Iowa Ct. App. 1996); *Jordan v. Case Corp.*, 993 P.2d 650, 651-52 (Kan. Ct. App. 1999); *Giddings & Lewis, Inc. v. Indus. Risk Insurers*, 348 S.W.3d 729, 738-39 (Ky. 2011); *Neibarger v. Univ. Coops., Inc.*, 486 N.W.2d 612, 619-20

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

bar the Non-Producers' claims here. Syngenta addresses here solely Minnesota law and those few States whose law requires some further comment.

Minnesota. As noted above, Minnesota has codified the ELD in the context of the sale of goods. *See* Minn. Stat. § 604.101. The statute provides that a "buyer may not bring a product defect tort claim against a seller for compensatory damages unless a defect in the goods . . . caused harm to the buyer's tangible personal property other than the goods." *Id.* subd. 3. The Non-Producers' claims fall under that provision and thus are barred.

The Non-Producers are "buyers" of corn, and Syngenta is properly classified as a "seller" under the statute because Syngenta sold an input (Viptera corn seed) that was used in creating at least some of the harvested corn purchased by the Non-Producers. The Non-Producers cannot escape the statute on the theory that they did not purchase goods *directly* from Syngenta. By its terms, the statute applies "regardless of whether the seller and the buyer were in privity regarding the sale . . . of the goods." Minn. Stat. § 604.101 subdiv. 2(1). And the Reporters' Note makes clear that the statute applies "where, in essence, both the claimant and the party claimed against are in the chain of distribution." *Id.* Reporters' Note. Syngenta is plainly in the chain of distribution for the MIR162 corn that the Non-Producers complain about here.

In addition, contrary to the rationale adopted by the MDL Court, *see* MDL Order 47, the Non-Producers also cannot evade the statute on the theory that Syngenta sold merely corn *seed* whereas the Non-Producers purchased a different "good"—the *harvested corn*. As noted above,

---

(Mich. 1992); *State Farm Mut. Auto. Ins. Co. v. Ford Motor Co.*, 736 So. 2d 384, 386-88 (Miss. App. 1999); *Fleischer v. Hellmuth, Obata & Kassabaum, Inc.*, 870 S.W. 2d 832, 834-36 (Mo. Ct. App. 1993); *Dobrovolny v. Ford Motor Co.*, 281 Neb. 86, 92 (Neb. 2011); *Moore v. Coachmen Indus., Inc.*, 499 S.E.2d 772, 780 (N.C. Ct. App. 1998); *Leno v. K & L Homes, Inc.* 803 N.W.2d 543, 550 (N.D. 2011); *Corporex Develop. & Constr. Mgmt., Inc. v. Shook, Inc.*, 835 N.E.2d 701, 704-05 (Ohio 2005); *Waggoner*, 808 P.2d at 653; *City of Lennox v. Mitek Indus., Inc.*, 519 N.W.2d 330, 333-34 (S.D. 1994); *Trinity Indus., Inc. v. McKinnon Bridge Co., Inc.*, 77 S.W.3d 159, 173-74 (Tenn. Ct. App. 2001); *LAN/STV v. Martin K. Eby Constr. Co., Inc.*, 435 S.W.3d 234, 246-47 (Tex. 2014); *Daanen & Janssen, Inc. v. Cedarapids, Inc.*, 573 N.W.2d 842, 844-46 (Wis. 1998).

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

see supra pp. 38-41, prior to the enactment of the statute, Minnesota common law recognized that the ELD applies to claims against the maker of a component part in a finished product. *See St. Paul Fire & Marine Ins. Co. v. Steeple Jac, Inc.*, 352 N.W.2d 107 (Minn. Ct. App. 1984) (suit against maker of gear box incorporated into window washing unit). The statute itself carries over this concept as it expressly defines the "goods" to which the statute applies to include tangible property "regardless of whether that property is incorporated into or becomes a component of some different property." Minn. Stat. § 604.101, subd. 1(c). The Reporters' Note, for example, explains that cinder blocks are a "good" sold by their maker even after a general contractor has incorporated the blocks into a different finished product—a building. *Id.* Reporters' Note, Example 1. Thus, the Non-Producers are "buyers" of any "good" that is "incorporated into" or that is a "component of" the corn they purchased, and that definition plainly includes Viptera seed. Nothing in the text or history of the statute suggests that the Legislature intended to make the statute narrower than the common law rule by eliminating the ELD whenever a purchaser of a final product sues a component manufacturer. As noted above, the Court should not presume that the Legislature intended "to abrogate or modify a common law rule except to the extent expressly declared" in the statute. *Staab*, 813 N.W.2d at 72.

The Non-Producers also cannot escape the statute on the theory that they are not bringing "product defect tort claims." *Cf.* MDL Order 46-47. The statute defines that term to mean "a common law claim for damages caused by a defect in the goods" and provides that "[a] defect in the goods includes a failure to adequately instruct or warn." Minn. Stat. § 604.101 subd. 1(e). Strict liability claims for failure to warn, *see, e.g.*, Non-Class Compl. Count VI, thus fall squarely within the statute. The statute also sweeps more broadly, as the Reporters' Note makes clear that it "encompasses all common law claims for product defects, such as negligence." Minn. Stat. § 604.101 subd. 1(e) Reporters' Note. In context, the statutory reference to product "defects" is

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

best understood to encompass any characteristic that the plaintiff claims has resulted in deficient value of the product. One of the core purposes of the ELD is to protect the law of contract by restricting purchasers to contract remedies (including warranties) for complaints about disappointed expectations in goods. The purpose behind the doctrine thus has nothing to do with whether a claim in negligence meets a particular definition of a product "defect" developed by another body of law (such as products liability). What matters is whether the plaintiff is proceeding in tort for a claim that alleges only disappointed commercial expectations. Here, the crux of the Non-Producers' claim is that corn with the MIR162 trait has diminished *economic value* because it cannot be exported to China. That is a claim for disappointed commercial expectations that is at the heart of the ELD. If a plaintiff seeking to recover for that sort of alleged harm caused by a characteristic of a product could avoid section 604.101 simply by arguing that the characteristic is not a "defect," the statute could be evaded at will. Again, nothing in the text or history of the statute suggests that the Legislature intended to create such a gap in the coverage of the ELD. The "occasion and necessity for the law," the "circumstances under which it was enacted," the "object to be attained," and the "consequences" of Non-Producers' interpretation all suggest that the statute should be read to cover Non-Producers' claims. Minn. Stat. § 645.16(1), (2), (4), (6).[95]

In any event, the Non-Producers' claims also fit within a standard definition of a "product defect claim," because they essentially assert that corn with the MIR162 trait is not fit for its ordinarily intended purpose, which includes exporting it abroad. *Cf.* Minn. Stat. § 336.2-

[95] *Ptacek v. Earthsoils, Inc.*, 844 N.W.2d 535 (Minn. Ct. App. 2014), is not to the contrary. As explained above, *see supra* note 68, in *Ptacek*, the trial court had held that the plaintiffs' negligence claim was not a "product defect" claim under the statute. That holding is not explained, it was not appealed, and it was not even addressed by the Court of Appeals. Instead, taking that ruling as a given, the court merely held that, where a claim fell outside the statute in the context of a sale of goods, there was no residual common law ELD to apply. *See Ptacek*, 844 N.W.2d at 539. That decision provides no guidance as to what qualifies as a "product defect tort claim" under the statute.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

314(2)(c) ("merchantable," goods must be "fit for the ordinary purposes for which such goods are used"). Non-Producers' basic theory is that corn with a GM trait that has not been approved in key export markets is not fit to be treated as fungible U.S. corn. It does not matter that Non-Producers have not expressly couched their claim in terms of fitness of the corn for its ordinary purpose. Again, if labels chosen by a plaintiff controlled, section 604.101 could be evaded by artful pleading. Substance is what counts. And the substance of the Non-Producers' claim is that the corn they bought was deficient because it could not be exported to China.

Arkansas. As noted, *see supra* p. 53, Arkansas has rejected the ELD for strict liability claims involving the purchase of goods. For other claims, the Court should predict that the contractual ELD would apply.

Louisiana. Although Louisiana does not clearly apply the contractual ELD, all Non-Producers' claims in Louisiana (other than strict liability failure to warn) are barred by the Louisiana Products Liability Act ("LPLA"). The LPLA provides the exclusive means in Louisiana for seeking damages from a manufacturer for injuries allegedly caused by a characteristic or quality of a product. *See* La. R.S. 9:2800.52 (LPLA "establishes the exclusive theories of liability for manufacturers for damage caused by their products").[96]

III. Syngenta Did Not Have A Duty To Control The Conduct Of Others To Segregate Viptera From The Corn Supply.

Plaintiffs' negligence claims fail because Syngenta owes no duty to control the way third parties handle a seed like Viptera with unrestricted U.S. approval simply because it has not been

[96] *See, e.g.*, *Jefferson v. Lead Indus.*, 106 F.3d 1245, 1251 (5th Cir. 1997) (applying LPLA to bar "allegations of negligence, fraud by misrepresentation, market share liability, breach of implied warranty of fitness and civil conspiracy" and collecting similar cases barring non-LPLA claims); *Bladen v. C.B. Fleet Holding Co.*, 487 F. Supp. 2d 759, 767 (W.D. La. 2007) ("The plain language and the unique legislative history of the LPLA demonstrate the legislature's intent to make the LPLA the sole vehicle for a suit against a 'manufacturer' [under Louisiana law]."). And as explained below, the Louisiana Non-Class Plaintiffs' failure-to-warn claim fails to state a claim under the LPLA as a matter of law. *See infra* Part VI.B.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

approved in China. Courts have uniformly declined to impose liability on a manufacturer for failure to control the way *others* use the manufacturer's safe, non-defective[97] product.

A. The Existence Of Duty Depends On Policy-Based Factors That Limit Liability Regardless Of Foreseeability As A Matter Of Law.

Plaintiffs' claims for negligence rest on the premise that Syngenta can be held liable for failing to control a chain of independent parties involved in growing and distributing corn to ensure that none of them would allow corn grown from Viptera seed to enter the U.S. corn supply. Plaintiffs cannot show that Syngenta had a duty to control the conduct of third parties including growers, grain elevator operators, and exporters who actually commingled Viptera corn into the corn supply. Duty ultimately depends on purely legal policy judgments defining how far liability should extend, and these are fundamentally questions of law for the Court. Courts have consistently rejected similar claims that manufacturers should be liable for controlling the way third parties handle their safe, non-defective products after the point of sale. This Court should similarly reject Plaintiffs' radical theory that Syngenta can be liable in tort for failing to reorganize the entire industry framework for growing, harvesting, shipping, and exporting corn. Plaintiffs' approach would essentially require Syngenta to establish a new system for what they now claim they wanted to do—grow and market a specialty product for export based on the laws of China rather than U.S. standards for fungible U.S. corn.

There is no support in existing law for imposing a duty on a manufacturer like Syngenta to reorganize the way third parties handle the manufacturer's safe, non-defective product. Duty is "an issue for the court to determine as a matter of law." *Larson v. Larson*, 373 N.W.2d 287,

[97] Although Plaintiffs' strict products liability claim alleges that Viptera and Duracade were defective, *see* Class Compl. ¶ 339, Plaintiffs' negligence claim does not depend on any allegation of a defect.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

289 (Minn. 1985).[98] Contrary to the impression Plaintiffs attempt to create, moreover, merely alleging that the commingling of Viptera in the corn supply and the consequences that might follow for the China market were "foreseeable" is not sufficient to create a duty. *See, e.g.*, *Leeper v. Asmus*, 440 S.W.3d 478, 489 n.5 (Mo. Ct. App. 2014) ("[F]oreseeability alone is not enough to establish a duty. . . . [T]here must also be some right or obligation to control the activity, which presents the danger."); *Hutchings v. Bauer*, 599 N.E.2d 934, 935 (Ill. 1992) ("[D]uty is not to be bottomed on the factor of foreseeability alone. Instead, we must balance the foreseeability of the harm against the burdens and consequences that would result from the recognition of a duty.").[99] As Minnesota courts have put it, "[p]ublic policy is a major consideration in identifying the legal-duty element of a negligence cause of action." *Gutierrez v. Eckert Farm Supply, Inc.*, No. C5-02-1900, 2003 WL 21500161, at *2 (Minn. Ct. App. July 1, 2003). It is the settled "general common law rule [] that no person has a duty to protect another from harm caused by a third party's conduct" absent certain well-defined special relationships with the third party or injured party. *Id.*; *Kirk v. Michael Reese Hosp. & Med. Ctr.*, 513 N.E.2d 387, 398 (Ill. 1987); *see* Restatement (Second) of Torts § 315. And merely manufacturing and selling a product does *not* create any such special relationship.[100] As courts have observed in

[98] *See also, e.g.*, *Marlar v. Daniel*, 247 S.W.3d 473, 476 (Ark. 2007); *Skinner v. State*, 149 So. 3d 342, 347 (La. Ct. App. 2014); *Gaytan v. Wal-Mart*, 853 N.W.2d 181, 192 (Neb. 2014); *Bajwa v. Metro. Life Ins. Co.*, 804 N.E.2d 519, 526 (Ill. 2004); *accord* Dobbs § 164 ("Judges rather than juries determine whether the defendant was under a duty of care at all and if so what standard of care applied.").

[99] *See also, e.g.*, *A.W. v. Lancaster Cty. Sch. Dist. 0001*, 784 N.W.2d 907, 916, 918 (Neb. 2010) ("Simply put, whether a duty exists is a *policy* decision . . . . We expressly hold that foreseeability is not a factor to be considered by courts when making determinations of duty."); *Williams v. Cingular Wireless*, 809 N.E.2d 473, 478 (Ind. Ct. App. 2004) ("Simply because an action may have some degree of foreseeability does not make it sound public policy to impose a duty.").

[100] *See, e.g.*, *First Commercial Trust Co. v. Lorcin Eng'g, Inc.*, 900 S.W.2d 202, 204-05 (Ark. 1995) (no duty on firearm manufacturer to control third parties by restricting its own distribution of firearms absent a special relationship); *Hamilton*, 750 N.E.2d at 1061 (rejecting claim for negligent distribution of firearms by applying rule that "[a] defendant generally has no duty to control the conduct of third persons" absent a special relationship); *Camden Cty. Bd. of Chosen Freeholders v. Beretta U.S.A. Corp.*, 123 F. Supp. 2d 245, 266-67 (D.N.J. 2000) (rejecting similar claim for sale of firearms because "defendants have no duty to control the misconduct of third

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

rejecting theories that would require manufacturers to control the conduct of their products' purchasers, "judicial resistance to the expansion of duty grows out of practical concerns both about potentially limitless liability and about the unfairness of imposing liability for the acts of another." *City of Chi. v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099, 1119 (Ill. 2004).[101]

B. Applying These Factors, Courts Routinely Hold That Duty Cannot Be Established To Hold A Manufacturer Liable For Third Parties' Post-Sale Use Of Its Safe, Non-Defective Product.

Based on these principles, courts routinely reject efforts to hold manufacturers responsible for injuries resulting from third parties' post-sale use of safe, non-defective products.

For example, courts reject the theory that a cell-phone retailer can be liable for injuries caused by a buyer using a cell phone while driving. A retailer of a safe, non-defective product "cannot control what people do with the [product] after they purchase [it]," and thus "[i]mposing a duty on [a retailer] to prevent car accidents . . . would effectively require the companies to stop selling cellular phones entirely." *Williams v. Cingular Wireless*, 809 N.E.2d 473, 478–79 (Ind. Ct. App. 2004).[102] Adopting a theory that sellers have "a legal duty to third parties to anticipate

---

parties"); *Bloxham v. Glock, Inc.*, 53 P.3d 196, 199 (Ariz. Ct. App. 2002) (rejecting negligent commercialization claim against firearm manufacturer because "there is no duty to control the conduct of a third party"); *Gourdine v. Crews*, 955 A.2d 769, 783-84 (Md. Ct. App. 2008) (rejecting claim against pharmaceutical manufacturer for negligent sale because "there is no duty to control a third person's conduct"); *Blackton Bldg. Supply Co., Inc. v. Garesche*, 383 So. 2d 250, 251-52 (Fla. Dist. Ct. App. 1980) ("[Plaintiff] cites us to no authority which imposes on a retailer or distributor of a safe non-defective product the duty to oversee its use by a third party *over whose actions the distributor has no control*.") (emphasis added); *Ball v. SGB Constr. Servs., Inc.*, 820 S.W.2d 916, 917 (Tex. App. 1991) (rejecting claim against supplier for failure to provide safeguards because "there is no duty to control the conduct of third persons"); *see also, e.g., W. Innovations, Inc. v. Sonitrol Corp.*, 187 P.3d 1155, 1157, 1159 (Colo. App. 2008) (non-actionable nonfeasance where security company "install[ed] and monitor[ed] [] a burglar alarm system" but "failed to notify the police").

[101] *See also, e.g., J.A.H. ex rel. R.M.H. v. Wadle & Assocs., P.C.*, 589 N.W.2d 256, 258 (Iowa 1999) (existence of a duty depends on "three factors": "(1) the relationship between the parties, (2) reasonable foreseeability of harm to the person who is injured, and (3) public policy considerations"); *Williams*, 809 N.E.2d at 476 ("Indiana courts analyze three factors in determining whether to impose a duty at common law: (1) the relationship between the parties, (2) the reasonable foreseeability of harm to the person injured, and (3) public policy concerns.").

[102] *See, e.g., Durkee*, 765 F. Supp. 2d at 750–51 ("Existing precedent from the appellate courts of North Carolina support the legal conclusion that there is no duty to design or manufacture a product so as to anticipate that a user will misuse the product to harm another."); *Estate of Doyle v. Sprint/Nextel Corp.*, 248 P.3d 947, 951 (Okla. Civ. App. 2010) (no duty for telephone company to "protect [a motorist] from [a cell-phone purchaser's] negligent

27-CV-15-33785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

improper use of their products" would mean that "no product" that could cause harm by others' post-sale use "could be marketed"—allowing similar claims against sellers of "GPS devices and even car radios" to flood the courts and "turn[ing] products liability law on its head." *Durkee v. C..H. Robinson Worldwide, Inc.*, 765 F. Supp. 2d 742, 749 (W.D.N.C. 2011).

Similarly, when municipalities tried to hold makers of cold medicine liable for damages resulting from third parties' use of the medicine in making methamphetamine, the Eighth Circuit dismissed all claims for lack of proximate cause, based on the same policy factors that limit duty. *Ashley Cty., Ark. v. Pfizer, Inc.*, 552 F.3d 649, 663 (8th Cir. 2009) (Arkansas law). Paralleling the arguments here, the plaintiffs argued that even though Sudafed and similar products were FDA-approved, the manufacturer should have "take[n] steps to restrict access to the products," by controlling the way retailers sold the medicine (*e.g.*, keeping it behind the pharmacy counter), and thus should have effectively "channeled" the product away from potential meth cooks. *Id.* at 669. The Eighth Circuit rejected the idea that the manufacturer could be held liable based on how others used the product—and that was true "*even if the manufacturers knew* that cooks purchased their products to use in manufacturing methamphetamine." *Id.* at 670 (emphasis added). The court emphasized that the manufacturer lacked "sufficient control over the retailers . . . [to] require [them] to implement the suggested measures." *Id.* at 671. Ultimately, given public policy concerns limiting "how far society is willing to extend liability"—the same public-policy concerns that inform the scope of duty—the court refused to impose liability on a manufacturer of an otherwise-lawful product based on the way third parties used that product.

---

driving and/or warn of the potential dangers associated with using a cell phone while driving"); *see also, e.g.*, *City of Bloomington v. Westinghouse Elc. Corp.*, 891 F.2d 611, 614 (7th Cir. 1989) (Indiana law) (chemical manufacturer could not be held liable for contamination caused by purchaser's dumping of chemicals because tort law does not impose liability on manufacturers of lawful, non-defective products for claims "arising from the use of their products subsequent to the point of sale").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Id. To do so would open a "Pandora's box to [an] avalanche of actions that would follow" against all sorts of manufacturers for injuries caused by those using their products. *Id.*

Identical principles have also been applied by numerous courts to reject tort claims against gun manufacturers based on theories that the manufacturers should restrict firearms sales by independent retailers so as to limit injuries from the use of guns. These courts have applied the settled rule that a "defendant generally has no duty to control the conduct of third persons so as to prevent them from harming others, even where as a practical matter defendant can exercise such control." *Hamilton v. Beretta, U.S.A. Corp.*, 750 N.E.2d 1055, 1061 (N.Y. 2001). A manufacturer usually has "no control over its retailers[,]" *Lorcin Eng'g, Inc.*, 900 S.W.2d at 204-05, and even where it does, the law does not create a "duty of care born of their purported ability to lessen the risks of illegal gun trafficking because they have the power to restrict marketing and product distribution." *People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.*, 761 N.Y.S.2d 192, 196 (N.Y. App. Div. 2003).[103]

Multiple policy factors all weighed heavily against finding a duty on the gun manufacturers, including the flood of litigation against other industries that could be expected if such a duty were created, *see, e.g., People ex rel. Spitzer*, 761 N.Y.S.2d at 196, and the magnitude of the liability—which would have the practical effect of imposing a policy decision by judicial decree shutting down the sale of an otherwise lawful product.[104]

---

[103] The few cases that declined to reject claims against gun manufacturers as a matter of law involved allegations that the manufacturers knowingly facilitated illegal gun-trafficking or marketed defective or dangerous products. *See, e.g., City of Bos. v. Smith & Wesson Corp.*, No. 199902590, 2000 WL 1473568, at *15 (Mass. Super. Ct. July 13, 2000) (alleged "affirmative conduct" constituting "the creation of the illegal, secondary firearms market").

[104] *Cf., e.g., Martin v. Harrington & Richardson, Inc.*, 743 F.2d 1200, 1204 (7th Cir. 1984) (Illinois law) ("Imposing liability for the sale of handguns, which would in practice drive manufacturers out of business, would produce a handgun ban by judicial fiat in the face of the decision by Illinois to allow its citizens to possess handguns.").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

C. These Same Principles Limiting Duty Show That Plaintiffs Cannot Establish A Duty Of Care Here.

The same reasoning shows that Syngenta had no duty here.

First, it makes no sense to impose a duty on a GM seed manufacturer like Syngenta to control the conduct of all those who grow, harvest, process, store, ship, and export corn, because seed manufacturers simply do not control those third parties.[105] The usual approach under tort law is to place the duty "on the person in the best position to avoid the loss." *Turner v. Fehrs Neb. Tractor & Equip. Co.*, 609 N.W.2d 652, 658 (Neb. 2000).[106] Here, as in the pharmaceutical, cell-phone, and gun cases, the manufacturer (Syngenta) has no authority to control how third parties grow corn or handle harvested grain—especially county elevators, terminal elevators, and exporters. Plaintiffs have not even alleged that Syngenta has a contractual relationship with those actors. It is apparent on the face of the complaints that Syngenta has neither the authority nor the expertise to tell those parties how to reorganize their *own* facilities to enable segregation of different types of corn. Those third parties, including the Non-Producers themselves, are in the best position to devise and implement any such system.

Second, the theory that Syngenta had a duty to ensure that *everyone else* isolated Viptera is especially mistaken given that, once Viptera had been approved, it was permissible *by law* for Viptera to be present in U.S. corn because U.S. regulations make no distinction between non-GM corn and GM corn with approved traits. If some growers or handlers wanted to sell or export Viptera-free corn, that was a specialty product distinct from fungible U.S. corn. And the usual background rule is that a person who wants to conduct a specialized or especially sensitive

[105] To the extent Plaintiffs intend to suggest a duty to refrain from selling Viptera *at all* (which is within Syngenta's control), that theory is addressed below. *See infra* Part IV.

[106] *See also, e.g.*, *Abdo v. Trek Transp. Co., Inc.*, 582 N.E.2d 247, 252 (Ill. App. Ct. 1991) ("[W]hen a third party is in the best position to prevent a plaintiff's injury, there is no justification for imposing liability upon [the defendant]."); *Hamilton*, 750 N.E.2d at 1061 (same).

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

enterprise bears the burden of establishing protections enabling him to do so. *See generally* W. Prosser, The Law of Torts, § 87, at 579 (4th ed. 1971) ("The plaintiff cannot, by devoting his land to an unusually sensitive use, . . . make a nuisance out of conduct of the adjoining defendant which would otherwise be harmless."); *see also, e.g., Belmar Drive-In Theatre Co. v. Ill. State Toll Hwy. Comm.*, 216 N.E.2d 788, 791 (Ill. 1966) ("[A] person cannot increase the liability of his neighbor by applying his own property to special and delicate uses."). For the same reason, the USDA has always taken the view for organic crops—another specialty product—that it is "the responsibility of organic operations" to protect their products' special identity by "manag[ing] the potential contact of organic products with other substances not approved for use in organic production systems."[107]

In fact, the USDA has expressly announced its view that parallel logic dictates that those who want to deal in corn free from approved GM traits should bear the burden of implementing the necessary safeguards to enable them to do so: "conventional growers, similar to organic growers who desire to minimize cross pollination from G[M] corn into their plantings, have the same basic options for avoiding pollination from other corn."[108] Indeed, in response to comments filed during numerous deregulation proceedings for GM traits (including Duracade), the USDA has repeatedly addressed concerns that a GM trait has not yet been approved in desired export markets by placing the onus on grain elevators and grain buyers, not GM manufacturers, to avoid the risk of rejection in export markets:

---

[107] USDA, *Nat'l Envt'l Policy Act Decision & Finding Of No Significant Impact for Syngenta Seeds, Inc. Alpha-Amylase Maize Event 3272*, 39 (Comment 5), http://www.aphis.usda.gov/brs/aphisdocs/05_28001p_fonsi_rtc.pdf. ; *see also* USDA National Organic Program, Policy Memorandum From Miles McEvoy, Deputy Administrator, to stakeholders and interested parties re: Genetically Modified Organisms (Apr. 15, 2011), http://www.ams.usda.gov/sites/default/files/media/OrganicGMOPolicy.pdf (explaining that USDA "relies on *organic certifiers* and *producers*"—not GM manufacturers—"to determine preventative practices that most effectively avoid contact with GMOs on an organic operation").

[108] USDA, *Finding Of No Significant Impact for Syngenta Seeds, Inc. Alpha-Amylase Maize Event 3272*, at 41 (Comment 5), http://www.aphis.usda.gov/brs/aphisdocs/05_28001p_fonsi_rtc.pdf.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

> When international acceptance of a specific event has not been attained, ***US elevators and grain buyers*** may either refuse to purchase the grain, or may require that it be diverted to elevators that are solely designated as sources for domestic grain sale.[109]

The Non-Producers' claims are particularly specious since they assert that Syngenta had a duty to ensure that *they themselves* did not commingle Viptera and non-Viptera corn. The Non-Producers could have taken steps to keep Viptera corn out of their elevators, just as Bunge did. *See* Non-Class Compl. ¶ 147. They chose not to, and the law does not make it Syngenta's duty to protect their ability to export a specialized sub-segment of U.S. corn production.[110]

Third, recognizing an unprecedented duty for Syngenta to control the actions of others and imposing liability on Syngenta for those actions would ultimately force this Court to face the impossible task of apportioning responsibility for Plaintiffs' alleged injuries among Syngenta, growers who allegedly allowed cross-pollination, and the multiple elevators along the way who were actually responsible for "commingling" corn—including the Non-Producer Plaintiffs themselves. The Court would then also have to ensure that there was no duplicative recovery among Producer Plaintiffs and Non-Producer Plaintiffs for the same alleged drop in the price of

---

[109] *E.g.*, USDA, *USDA's Response to Public Comments on Syngenta SYN-05307-1 Corn*, 24 (Comment 7), http://www.aphis.usda.gov/brs/aphisdocs/10_33601_rtc.pdf (emphasis added); USDA, *Nat'l Env'tl Policy Act Decision & Finding of No Significant Impact for Bayer CropScience LP Event FG72 Soybean*, 49 (Issue 16), http://www.aphis.usda.gov/brs/aphisdocs/09_32801p_fonsi.pdf; USDA, *Nat'l Env'tl Policy Act Decision & Finding of No Significant Impact for Stine Seed Farm, Inc. Event HCEM485*, 27 (Issue 8), http://www.aphis.usda.gov/brs/aphisdocs/09_06301p_fonsi.pdf. The decision in *Bunge* does not suggest anything to the contrary. *See Syngenta Seeds, Inc. v. Bunge N. Am., Inc.*, 820 F. Supp. 2d 953 (N.D. Iowa 2011). When the *Bunge* court stated that Syngenta "accepted the risk of commercializing Viptera," *id.* at 990, it was addressing an entirely different question (and in the context of a preliminary injunction)—merely explaining that Syngenta took the risk that some purchasers in the free market might decide that they did not want to buy corn with a GM trait like Viptera and they could lawfully refuse to accept Viptera corn. *See id.* (deciding whether Bunge "made a legitimate and reasonable business decision not to accept Viptera corn in order to service the Chinese import market"). The court did not face, and did not address, the entirely different question whether Syngenta had a duty in tort law to police the conduct of others so as to facilitate the ability of third party grain elevators to purchase and sell a specialized product like "Viptera-free" corn.

[110] Plaintiffs assert that Syngenta sought to stop channeling by bringing "a lawsuit against Bunge, a grain elevator operator," for "refus[ing] to accept Viptera corn." Non-Class Compl. ¶ 147; Class Compl. ¶ 136 (same). To the extent Plaintiffs base their claims on that lawsuit, such claims are barred by the First Amendment's Petition Clause. *See, e.g., BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 525–26 (2002) (litigation is protected by the right to petition unless it is objectively and subjectively sham litigation).

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

corn. The intractable problems courts would encounter in apportioning responsibility in that fashion are one of the reasons for the settled rule that a manufacturer is *not* liable for the conduct of third parties using the manufacturer's product.

Fourth, Plaintiffs' theory would impose extraordinary liability on GM seed manufacturers for alleged ripple effects in the market that have no logical stopping point. *Cf. City of Chi.*, 821 N.E.2d at 1126 (the "magnitude of the burden" placed on defendant is a relevant factor in assessing duty). Plaintiffs' theories would effectively transform GM manufacturers into insurers for their otherwise-lawful, non-defective products—a result flatly at odds with settled principles of tort law.[111] Indeed, according to Plaintiffs, Syngenta owes a duty not only to corn producers and corn non-producers, but also to producers of milo and soybeans because the prices of those crops are allegedly affected (in different ways) by the price of corn. The same allegations could be asserted by retailers of farm equipment,[112] or landowners leasing their land, or anyone else arguing that demand for their products or services is affected by the alleged drop in price for the largest commodity crop in the United States—precisely the open-ended liability that the MDL Court failed to foresee.

Fifth, imposing such liability would effectively put courts in the position of usurping policy determinations concerning which GM traits can and cannot be used in the U.S. As a

---

[111] *See, e.g.*, *Martin*, 743 F.2d at 1204 (rejecting liability that "would virtually make [the manufacturers] the insurer for such products as explosives, hazardous chemicals, or dangerous drugs even though such products are not negligently made nor contain any defects"); *Patterson v. Rohm Gesellschaft*, 608 F. Supp. 1206, 1213 (N.D. Tex. 1985) ("If this unconventional and unfounded theory is accepted, then—contrary to one of the basic principles of products liability—handgun manufacturers would become insurers for all injuries resulting from their products."); *Perkins v. F.I.E. Corp.*, 762 F.2d 1200, 1269 (5th Cir. 1985) (rejecting "[t]he argument that the manufacturer should become an insurer of all uses of those products, both legitimate and illegitimate, simply by virtue of having marketed them").

[112] *See, e.g.*, Abby Wendle, *Pain From The Grain: Corn Belt Towns Languish As Prices Drop*, NPR (Mar. 18, 2015), http://www.npr.org/sections/thesalt/2015/03/18/393841311/pain-from-the-grain-corn-belt-towns-languish-asprices-drop ("When corn prices peaked, Hofreiter sold close to $11 million worth of shiny blue tractors in a single year. He says he doesn't expect to crack $3 million in 2015.").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

practical matter, Plaintiffs' theory would shut down the marketing of any GM seed as long as there was a risk of litigation like this one. Halting the introduction of a seed like Viptera, however, would run flatly counter to the policy determination that the USDA made in approving Viptera and the general policy approach the U.S. Government has adopted of treating approved GM products exactly the same as conventional crops.[113]

Indeed, the extensive existing regulation of GM traits strongly counsels against thrusting courts into the role that Plaintiffs' theories would have them adopt. *See, e.g.*, *Young v. Bryco Arms*, 821 N.E.2d 1078, 1090 (Ill. 2004) (fact that sale of firearms is already "highly regulated by law" counsels against judicial creation of additional duties); *Ashley Cty., Ark.*, 552 F.3d at 669 (same for pharmaceuticals). Three federal agencies regulate GM crops, and Syngenta commercialized Viptera only after obtaining unrestricted domestic approval through extensive testing in "at least 119 field trials of MIR162 corn under at least 20 [government] permits" over eight years. Non-Class Compl. ¶ 52.

Plaintiffs' lawsuit is, in effect, an invitation for the courts to become super-regulators, grafting additional obligations onto GM traits without regard to the USDA's decisions by holding that, unless other countries have approved a particular trait, the entire system for growing and distributing corn in the U.S.—or for that matter, soybeans, wheat, or many other crops—should be reorganized to facilitate the desires of a market segment that wants to export to that foreign country. To paraphrase the conclusion of another court in a parallel context, "courts are the least suited, least equipped, and thus the least appropriate branch of government to regulate and micro-manage the manufacturing, marketing, distribution, and sale of" GM seeds.

[113] *Cf. Martin*, 743 F.2d at 1204 (Illinois law) ("Imposing liability for the sale of handguns, which would in practice drive manufacturers out of business, would produce a handgun ban by judicial fiat in the face of the decision by Illinois to allow its citizens to possess handguns.").

27-CV-15-13785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

People ex rel. Spitzer, 761 N.Y.S.2d at 199.

It would be particularly inappropriate for the courts to take on that role given the attention that Congress and state legislatures have given to proposals addressing exactly the subject of this lawsuit—liability of GM seed manufacturers based on the spread of their products. At least six Congresses have considered and failed to enact bills that would have made a "biotech company [] liable to any party injured by the release of a genetically engineered organism into the environment if that injury results from that genetic engineering." *See* App. A-1. Similarly, California eliminated part of a bill that would have made "the manufacturer of a genetically engineered plant . . . liable to any producer, grain, and seed cleaner, handler, or processor injured by the release of that plant into California." Assem. Bill 984, 2005 Leg., Reg. Sess. (Cal. 2005). Minnesota, New York, Nebraska, Massachusetts, Montana, North Dakota, Oregon, West Virginia, and Vermont have all considered and refused to enact similar bills.[114] That legislative activity not only confirms that Plaintiffs' theories are meritless (legislation would be unnecessary if the common law already imposed liability), but also underscores that the task of weighing the public policy implications of liability for GM seed manufacturers is best left to the political branches—all of which have refused to impose the sort of liability that Plaintiffs seek to impose here.

Sixth, and finally, the Court should reject Plaintiffs' proposed expansion of tort law because it would foist a flood of litigation on the courts of Minnesota and other States. As other courts have observed, once a claim is allowed to proceed in a case such as this, the same theories could be brought "against countless other types of commercial enterprises," raising claims about supposed harms from lawful, non-defective products "regardless of the distance between the

[114] A list of relevant bills introduced in state legislatures is appended in Appendix A.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

'causes' of the 'problems' and their alleged consequences." *People ex rel. Spitzer*, 761 N.Y.S.2d at 203; *Ashley Cty., Ark.*, 552 F.3d at 671-72.

D. The Only Court To Address Parallel Claims Against A Manufacturer Of Another Approved GM Seed Held That Duty Could Not Be Established As A Matter Of Law.

Before the Viptera litigation, only one common law court had addressed the theory that a seed manufacturer could be liable in tort for selling an *approved* GM seed that had not yet been approved abroad.[115] In *Hoffman*, Canadian courts applying the same common law principles that govern this case rejected the exact same claims that Plaintiffs raise here. *See Hoffman I*, 2005 SK.C. LEXIS 330; *Hoffman II*, 2007 SK.C. LEXIS 194. *Hoffman* involved Monsanto's GM canola seed that had been fully approved by the Canadian government for "unconfined release." *Hoffman II*, 2007 SK.C. LEXIS 194 ¶ 60. Alleging cross-pollination, non-GM canola farmers sued to recover (1) losses incurred by organic farmers, whose crops could no longer command a premium organic price, and (2) (in a claim exactly paralleling those asserted here) losses allegedly incurred by farmers due to "loss of the European market for all Canadian canola" because Monsanto launched the product in Canada before getting import approval from the EU. *Hoffman I*, 2005 SK.C. LEXIS 330 ¶¶ 21-22.

The Canadian court rejected the plaintiffs' trespass, nuisance, and negligence claims as a matter of law for lack of duty. It found "no existing judicial or legislative authority" imposing a duty on the manufacturer to prevent lawful GM canola seed from cross-pollinating with other crops by regulating farmers' growing practices. *Id.* ¶ 52. In so holding, the court assumed that cross-pollination was foreseeable, *see id.* ¶¶ 61, 63, but recognized that (as in the U.S.) duty was

[115] *Sample v. Monsanto* involved similar tort claims against a GM seed manufacturer for selling a U.S.-approved GM seed, but the court did not address the general duty analysis because it held that plaintiffs' claims were barred by the ELD. 283 F. Supp. 2d at 1093-94; *see also supra* Part II.A.4.c.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

not governed by foreseeability alone, *see id.* ¶¶ 66–67. As the court explained, there was no relationship giving rise to a duty of care between the GM manufacturer and the plaintiffs. *See id.* In addition, the court concluded that the mere sale of the GM canola seed could not be treated as the cause of plaintiffs' alleged harm, because the harm "required the intervention of neighbouring farmers who cultivated GM canola." *Id.* ¶ 114. Finding that proximate cause was lacking as a matter of law, the court cautioned that the "implications of holding a manufacturer . . . liable in *nuisance* for damage caused by the use of its product . . . by another would be very sweeping indeed." *Id.* ¶ 122 (emphasis added); *see also id.* ¶ 114 (explaining that plaintiffs' theory "would be equivalent to holding the manufacturers of pesticide responsible for the nuisance caused by the harmful drift of the pesticide" after a third party's use of it).

The two prior cases that Plaintiffs cite involving GM seeds, *see, e.g.*, Non-Class Compl. ¶¶ 30-32; Class Compl. ¶¶ 19-21, are irrelevant because both involved the release of *unapproved* traits in violation of governing regulations in factual contexts where the manufacturer still had control. In *StarLink*, the trait was not approved for human consumption, and the government conditioned the limited approval for cultivation by imposing on the manufacturer (Aventis) an "affirmative duty to enforce StarLink farmers' compliance with" restrictions, including segregation from other corn. *StarLink*, 212 F. Supp. 2d at 847. The court held that this duty gave Aventis "some measure of control over StarLink's use" and was a "critical factor" that "negate[d]" the usual "concerns [that] courts have expressed about holding manufacturers liable for post-sale nuisances." *Id.* The court thus reasoned that "[t]he *unique obligations* imposed by the limited registration arguably put Aventis in a position to control the nuisance." *Id.* (emphasis added). There are no similar facts here because Viptera enjoyed unrestricted U.S. approval.

In *Genetically Modified Rice*, the theory of the case was not that the GM manufacturer was responsible for the conduct of *others*; instead, the manufacturer itself (Bayer) had caused the

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

improper release of the unapproved trait when conducting its own field trials. *In re Genetically Modified Rice Litig.*, 666 F. Supp. 2d at 1022. Bayer thus violated the USDA's GMO Regulations, which "unambiguously provide performance standards that do not allow adventitious presence of GM material outside the GM plants being tested" before approval is granted. *Id.* Again, there are no similar facts alleged here.

E. The MDL Court Erred In Holding That Syngenta Had A Duty.

The MDL Court is the *only* court that has ever held that a GM seed manufacturer has a duty in tort to restrict commercialization of an *approved* GM trait simply because the trait has not been approved in a foreign country. The MDL Court announced the unprecedented holding that Syngenta owes a duty to run its business "at least in part for the mutual benefit" of others in the corn industry by "exercis[ing] reasonable care in the manner, timing, and scope of . . . commercialization" so as to prevent solely economic harm to other industry participants who would prefer not to have their chosen methods of handling corn disrupted by the presence of a trait with limited exportability. MDL Order 10. That novel duty should not be recognized here.

First, the MDL Court started from the presumption of a "default duty rule" under which everyone owes a duty to avoid foreseeable harm to everyone else and it would be Syngenta's burden to establish an "exception" from that general rule. MDL Order 14. That is not the law. As the MDL Court itself recognized, the presumption of a duty to the whole world is an "alternative" approach adopted in the Restatement (Third) of Torts, which all but a few States have rejected.[116] *See, e.g.*, *Dolin v. SmithKline Beecham Corp.*, 62 F. Supp. 3d 705, 714 (N.D.

[116] *See, e.g.*, *Behrendt v. Gulf Underwriters Ins. Co.*, 768 N.W.2d 568, 574 (Wis. 2009) ("Wisconsin has long followed the minority view of duty set forth in the dissent of *Palsgraf v. Long Island Railroad*."). But even these few jurisdictions like Wisconsin assess policy factors in ultimately determining whether an actionable duty exists. *See, e.g.*, *Nichols v. Progressive N. Ins. Co.*, 746 N.W.2d 220, 225 (Wis. 2008) ("[E]ven if all the elements for a claim of negligence are proved, or liability for negligent conduct is assumed by the court, the court nonetheless may preclude liability based on public policy factors.").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Ill. 2014) ("[T]here is no duty to the world at large.").

Second, the Restatement (Third)'s alternative approach that the MDL Court cited is expressly limited to a duty to avoid *physical harm*. *See* Restatement (Third) of Torts: Liab. for Phys. & Emot. Harm § 7(a) ("An actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of *physical harm*.").[117] The presumption of a duty is flatly inapplicable in these cases, which (as the MDL Court recognized) involve solely allegations of *economic* harm. *See* MDL Order 18-22. As explained above, *see supra* Part II, the ELD should bar Plaintiffs' claims entirely. But even if the Court disagrees on that point, the economic nature of the injury does not drop out of the duty analysis entirely. Evaluating duty involves weighing, *inter alia*, the injury at issue, the burden of placing a duty on the defendant compared to the utility of the defendant's conduct, and administrative difficulties that might arise in enforcing the duty.[118] The economic nature of the injury here has a bearing on all these issues.

Third, the grounds the MDL Court offered to distinguish the consistent line of cases holding that manufacturers do *not* have a duty to control the way third parties use their products is unpersuasive. The MDL Court asserted that in the cell-phone, pharmaceutical, and gun cases, the third parties' conduct was "more culpable" than the conduct here. MDL Order 13. But nothing in the legal analysis in those cases rested on culpability. And culpability does not even work as a factual distinction. Non-producers who commingled Viptera corn are at least as culpable as negligent drivers in the cell-phone cases. Like the cell-phone users, they used a product the way it was intended, but in circumstances where it happened (allegedly) to cause

---

[117] The Restatement (Third) makes clear that it does *not even address* claims, like those here, that involve solely economic harm. *See* Restatement (Third) of Torts: Liab. for Phys. & Emot. Harm § 6 cmt. f ("Liability for breaching the duty of reasonable care addressed in this Section applies *only in cases involving physical and emotional harm* . . . . Cases involving negligence that causes *only economic loss* (that is not property damage or derivative of personal injury) *are not addressed* in this Restatement . . . .") (emphases added).

[118] *See, e.g.*, *Taco Bell, Inc. v. Lannon*, 744 P.2d 43, 46 (Colo. 1987) (en banc); *see also* Dobbs § 255.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

injury. In fact, Plaintiffs' allegations suggest *knowing* violations of the law by Non-Producers that are *more* culpable than mere negligence. Plaintiffs allege that, knowing it was (allegedly) "*inevitable* that Viptera® corn would move into export channels, including China," Class Compl. ¶ 224; Non-Class Compl. ¶ 235, Non-Producers shipped corn containing Viptera to China anyway. That violated Chinese law, which requires importers to obtain a biosafety certificate before importing.[119] Such knowing—or at a minimum, reckless—violations of law are more culpable than distracted driving while using a cell phone.

Fourth, the MDL Court's basis for distinguishing *Hoffman*—the only prior holding directly on point—is also unpersuasive. The MDL Court stated that *Hoffman* rested on Canadian law "that required a sufficiently proximal relationship between the parties," to find a duty. MDL Order 16. But that is no different from American law, which also looks at the relationship between the parties in assessing duty.[120] Moreover, the MDL Court based its entire rationale for finding a duty on the supposed "*relationship between the parties* in an inter-connected market," *id.* at 17 (emphasis added). It thus based a duty on exactly what the *Hoffman* court thought was *lacking* in an identical agricultural market where the spread of an approved GM trait supposedly caused economic harm. The MDL Court provided no rationale for distinguishing *Hoffman*'s diametrically opposed assessment of the significance of any "relationship" between players in

[119] *See* Class Compl. ¶ 177 ("In China, 'Bio-Safety Authorizations' are required for the issuance of shipment-specific 'Bio-Safety Certificates.'"); Chinese Ministry of Agriculture, Implementation Regulations on the Safety of Import of Agricultural Genetically Modified Organisms, arts. 18-19 (Jan. 5, 2002), http://bch.biodiv.org/database/attachedfile.aspx?id=561 (emphasis added); *id.* at art. 18 ("Those who import agricultural GMOs for production or as raw materials for processing *shall obtain the safety certificate of agricultural GMOs* issued by the ministry of agriculture *before signing the contract.*") (emphases added); State Council of the People's Republic of China, Regulations on the Safety Administration of Agricultural GMOs art. 34 (Jan. 8, 2011), http://apps.fas.usda.gov/gainfiles/200106/110681034.pdf ("[T]he introducers or foreign companies must submit the Safety Certificate from the Agricultural Administrative Department of the State Council and relevant approval documents to the Entry-Exit Inspection and Quarantine Department at the border."); *id.* at art. 38 ("[I]f goods arrive without the Safety Certificate . . . the goods will be rejected or destroyed.").

[120] *See generally* Dobbs § 255; *see, e.g.*, *Erickson v. Curtis Inv. Co.*, 447 N.W.2d 165, 169 (Minn. 1989); *DiBiasi v. Joe Wheeler Elec. Membership Corp.*, 988 So. 2d 454, 463 (Ala. 2008). Indeed, the MDL Court itself noted that the "relationship of the parties" is routinely considered as a factor relevant to duty. MDL Order 13.

27-CV-15-13785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

the grain industry at issue there.

The MDL Court thus created an unprecedented new economic tort—what might be termed "tortious commercialization of a product." Under the MDL Court's approach, wherever businesses operate in "an inter-connected market," MDL Order 13, a company can fall under a duty to run its business for the "mutual benefit," *id.* at 10, of others—that is, for the *economic benefit* of others in the industry. Under that duty, the company may be required to delay introducing new products, or to alter the *way* it introduces products, solely because innovations might undermine the *economic* interests of others. The essence of Plaintiffs' complaint is that they have an established way of doing business that involves treating corn as fungible. They do not want new biotechnology products (like GM traits) that have not been approved in overseas markets to be sold in the U.S., because such products force them to a choice: either spend money to alter their methods so that they can keep track of different types of corn, or risk foregoing an export market. Thus, they want to eliminate the threat that technological innovation poses to their business model. This lawsuit is their effort to force Syngenta (and other GM manufacturers) either not to sell seeds with GM traits or to shoulder the cost of creating a system for segregating different types of corn in order to hold Plaintiffs harmless from their own refusal to adapt to technological change in the market. Plaintiffs' radical theory would apply equally to hold a manufacturer liable in "negligence" for marketing a GM corn seed that increases crop yields and thus causes corn prices to drop because of increased supply.[121]

The MDL Court adopted Plaintiffs' vision of tort duties requiring some market players to protect others from the advent of innovative technologies, but that view is literally unprecedented

[121] *See* Robert Holly, *Growing Pains or Gains*, The News-Gazette (Oct. 11, 2015), http://www.news-gazette.com/news/business/2015-10-11/growing-pains-or-gains.html (describing Monsanto's GM seed that would increase the size of corn ears, with some economists cautioning that "increase in yield at the farm level could actually end up reducing producer income because the drop in price may be larger than the increasing quantity").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

in American jurisprudence. The ordinary presumption is that, apart from specific, strictly limited economic torts (fraud, tortious interference, negligent misrepresentation, etc.) or violations of statutory antitrust or unfair competition laws, businesses are free to pursue their own advantage in the marketplace—including by introducing disruptive new products that others may find inconvenient for their business plans—without regard for the effects their products might have on the economic positions of others.[122] As the Minnesota Supreme Court has explained, courts are "generally cautious and reluctant to impose a duty to protect between those conducting business with one another." *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 674 (Minn. 2001). Tellingly, the MDL Court did not cite a *single* case finding a duty in tort to operate one's business for the economic benefit of others or to constrain the introduction of innovative products so as to avoid economic disruptions for others.

The MDL Court also failed to acknowledge the sweeping implications of its novel duty. The court's assertion that its new duty "does not involve the possibility of an endless stream of claims by strangers further and further removed from Syngenta's conduct," MDL Order 14, has already been proved wrong—by the claims of *soybean farmers in this case*. Non-Class Compl. ¶¶ 298-99. As noted above, the MDL Court's rationale provides no clear legal rule to distinguish the claims of milo farmers and soybean farmers, who similarly claim that the price of corn affects the price of their crop. *See supra* pp. 24-26, 32-33.

In addition, the MDL Court's novel duty is broad enough to apply—and to turn settled law upside down—in dozens of industries where businesses have "inter-connected relationships" in which they rely on one another for their products to succeed. For example, in the mobile

[122] Indeed, that is the view reflected in the USDA's determination that grain handlers and growers who do not grow GM corn—not GM seed manufacturers—are responsible for implementing measures to minimize the risk that corn grown from a GM seed is not exported to countries where the GM trait is not yet approved. *See supra* pp. 75-76.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

"ecosystem" where network operators, device manufacturers, app developers, social-media platforms, and other participants rely on one another of the interoperability of their products, the new duty would allow app developers to hold phone manufacturers liable in tort for changing their operating software and causing apps to cease functioning properly (until they adapted their products with new programming). Like Plaintiffs here, the app developers could complain that a phone manufacturer like Apple should have slowed down its rollout of the new operating system or done more to assist them so they could adapt to the new product. The very fact that the MDL Court's theory makes such a claim plausible shows how far it departs from existing law.

F. Plaintiffs' Allegations Do Not Show That Syngenta Voluntarily Undertook A Duty To Isolate Viptera.

Plaintiffs also cannot concoct a duty by claiming that Syngenta voluntarily undertook a duty. Any theory that a duty arose from (1) statements in Syngenta's Deregulation Petition concerning channeling or (2) public statements about Syngenta's role in "stewardship," *see* Class Compl. 3 & ¶¶ 27-35, 51, 305(a)-(b), fails as a matter of law.

First, it is settled that the law "limit[s] liability for the injury in a voluntary undertaking to 'physical harm.'" *Simms v. Jones*, 879 F. Supp. 2d 595, 604 (N.D. Tex. 2012); *see generally* Restatement (Second) of Torts § 323.[123] Plaintiffs allege only "economic harm" supposedly resulting from the loss of the Chinese corn market. *See, e.g.*, Class Compl. 3-4 & ¶ 229; Non-Class Compl. 3-4 & ¶ 240. As explained above, *see supra* Part II.A.3, Plaintiffs' vague assertions that their "corn crops" were "damaged," Non-Class Compl. ¶ 399, and that there was "physical harm to Producers' and Non-Producers' corn, equipment, storage facilities, and land,"

[123] *See also, e.g.*, *Vancura v. Katris*, 939 N.E.2d 328, 347 & n.6 (Ill. 2010) (liability for a negligently performed voluntary "undertaking is explicit[ly] limit[ed] [] to situations in which the plaintiff has suffered 'physical' or 'bodily' harm," and thus does not extend to "economic damages"); *accord Hatleberg v. Norwest Bank Wis.*, 700 N.W.2d 15, 24 (Wis. 2005); *Theisen v. Covenant Med. Ctr., Inc.*, 636 N.W.2d 74, 82 (Iowa 2001); *Northfield Ins. Co. v. St. Paul Surplus Lines Ins. Co.*, 545 N.W.2d 57, 63 (Minn. Ct. App. 1996); *Shaner v. United States*, 976 F.2d 990, 994 (6th Cir. 1992) (Ohio law).

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Class Compl. ¶ 225; Non-Class Compl. ¶ 236, are legal conclusions that must be disregarded and in any event do not allege physical harm as a matter of law. The MDL Court rightly held that indistinguishable allegations failed to assert physical harm. *See* MDL Order 18-22.

Second, Syngenta's statements in its Deregulation Petition are constitutionally protected under the Petition Clause and cannot be the basis for a duty resulting in liability. *See, e.g.*, *TEC Cogeneration Inc. v. Fla. Power & Light Co.*, 76 F.3d 1560, 1573 (11th Cir. 1996).[124]

Third, a voluntary undertaking creates a duty only if it "induce[s] detrimental reliance" that is reasonable. *Doe v. Hunter Oaks Apts., L.P.*, 105 So. 3d 422, 427 (Miss. Ct. App. 2013). *see also, e.g.*, *Daugherty v. Fuller Eng'g Serv. Corp.*, 615 N.E.2d 476, 480 (Ind. Ct. App. 1993) (same); *Chisolm v. Stephens*, 365 N.E.2d 80, 86 (Ill. App. Ct. 1977) (same). But Plaintiffs have not alleged that they detrimentally relied on any statement from Syngenta. They do not claim they would have done anything differently absent some statements from Syngenta. Nor *could* they allege detrimental reliance. To justify reliance, "plaintiff[s] must be unaware of the actual circumstances and not equally capable of determining such facts." *Chisolm*, 365 N.E.2d at 86. The complaints make clear that Plaintiffs knew that cross-pollination and commingling can occur (indeed, Plaintiffs claim it is "*inevitable*," Class Compl. ¶ 224 (emphasis added)), that China had not approved Viptera, and that Syngenta was not attempting to force isolation of Viptera corn. *See, e.g.*, Class Compl. ¶¶ 95, 97-100, 138. Thus, Syngenta's statements "did nothing to prevent plaintiff[s] from obtaining information . . . or from taking precautionary steps on [their] own behalf." *Chisolm*, 365 N.E.2d at 87. That forecloses a claim of reasonable reliance.

[124] To the extent there may be an exception for fraudulent statements in adjudicative proceedings, that exception applies only to statements that were "material, in the sense that they *actually altered the outcome of the proceeding*." *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 843 (7th Cir. 2011) (emphasis added) (collecting cases). As a matter of law, Syngenta's alleged misrepresentations could not have been material to the USDA's decision to deregulate Viptera because the USDA "has no power to regulate the adverse economic effects that could follow [a GM trait's] deregulation." *Ctr. for Food Safety v. Vilsack*, 718 F.3d 829, 841 (9th Cir. 2013).

27-CV-15-13785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

As the court in *Hoffman* explained in rejecting a parallel argument that Monsanto had undertaken a duty to channel its GM canola seed, "no duty of care arises from a gratuitous undertaking in the absence of some element of detrimental reliance." *Hoffman I*, 2005 SK.C. LEXIS 330 ¶¶ 84-88. The same analysis and result apply here.

IV. As A Matter Of Law, Syngenta Had No Duty To Refrain From Selling Viptera.

A. The Law Does Not Impose A Duty On Manufacturers To Refrain From Selling A Safe, Non-Defective Product Based On How Third Parties Might Use It After The Point Of Sale.

To the extent Plaintiffs claim that Syngenta had a duty to refrain from selling Viptera *at all*, that theory is also meritless. For many of the same reasons that courts refuse to impose a duty on manufacturers to control the post-sale use of a product by others, they also refuse to impose a duty to refrain from selling safe, non-defective products altogether. *See, e.g.*, *Ashley Cty., Ark.*, 552 F.3d at 673; *Bond v. E.I. DuPont De Nemours & Co.*, 868 P.2d 1114, 1120 (Colo. App. 1993) (Teflon manufacturer "had no duty to refrain from selling its [non-defective] product"); *People ex rel. Spitzer*, 761 N.Y.S.2d at 200 (rejecting "a duty upon a manufacturer to refrain from the lawful distribution of a non-defective product").[125] Indeed, in circumstances exactly parallel to those here, Canadian courts in *Hoffman* held that the common law does not impose any duty on a GM manufacturer to refrain from selling a GM seed that is fully approved in the country where it is sold. *See Hoffman I*, 2005 SK.C. LEXIS 330 ¶ 71.

A duty-not-to-sell rule would also thrust the judiciary even more clearly into the role of usurping policy decisions properly left to the political branches. A tort duty prohibiting the sale

[125] *See also, e.g.*, *Williams*, 809 N.E.2d at 478 (refusing to impose a duty on a cell-phone retailer for harm caused by distracted drivers because imposing such a duty "would be akin to making a car manufacturer stop selling otherwise safe cars because the car might be negligently used in such a way that it causes an accident"); *Stanford By and Through Stanford v. Wal-Mart Stores, Inc.*, 600 So. 2d 234, 240 (Ala. 1992) (no duty to refrain from selling a product that was not "inherently dangerous"); *Watters v. TSR, Inc.*, 904 F.2d 378, 381 (6th Cir. 1990) (Kentucky law) ("[W]e are confident that the courts of Kentucky would never permit a jury to say that simply by marketing a parlor game, the defendant violated its duty to exercise ordinary care.").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

of Viptera until it had been approved in China would directly conflict with the USDA's determination that Viptera *could* be sold in the U.S. without restriction. It would also give China a veto over which GM traits can and cannot appear in U.S. corn. Indeed, given that the U.S. is the world's largest corn exporter, Plaintiffs' position would give China the power to deny the biotechnology benefits of higher yields and lower prices not only to the United States, but also to much of the rest of the world. Given that China imported *only about one-third of 1%* of U.S. corn production when Viptera was launched, *see supra* note 25, Plaintiffs' theory would mean giving such a biotechnology veto to every country that imported a comparable percentage of any given crop. The common law of tort does not provide the courts with a mechanism for taking over the USDA's role in determining which biotechnology products can and cannot be sold in the U.S. and effectively transferring that decision to foreign sovereigns.

Plaintiffs' theory of duty would also embroil the judiciary in an ongoing flood of policy choices. Courts would have to decide for every significant export crop (1) how to define "key" markets that should be given a veto over the introduction of new biotechnology in the U.S.; (2) how to assess which governments have "functioning regulatory systems" such that they are worthy of being granted that veto power by American courts; and (3) whether changes in a country's circumstances have caused it to lose (or gain) status as a "key" market or a "functioning regulatory system." *Cf.* Nov. 27, 2012 BIO Policy at 4 n.5 ("Since regulatory systems continue to evolve and change globally, countries' systems may become functional or dysfunctional.").[126] Courts simply do not have the experience or expertise to construct and micromanage such a parallel regulatory system governing the introduction of biotechnology products. That is a role for the political branches. *See supra* Part III.C.

[126] https://www.bio.org/sites/default/files/Product-Launch-Stewardship-11272012.pdf.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

B. Alleged "Industry Standards" Did Not Impose A Legal Duty On Syngenta.

None of the supposed industry standards that Plaintiffs cite creates a legal duty on Syngenta to refrain from selling an approved GM seed simply because the trait has not been approved in a foreign country accounting for exports of about one-third of 1% of the relevant U.S. crop. *See supra* note 25. Plaintiffs point to the BIO Policy's guideline that GM products should not be launched without import approval from "key" export markets with "functioning regulatory systems," as well as advocacy statements by other private trade associations. *See* Class Compl. ¶¶ 25-26; Non-Class Compl. ¶¶ 36-37. Industry customs and standards, however, "may not be used to establish a duty in the first place"; instead, they are only "relevant evidence of the standard of care *after* the law has already recognized a duty of care." *Van Duyn v. Cook-Teague P'ship*, 694 N.E.2d 779, 782 (Ind. Ct. App. 1998) (emphasis added).[127]

The supposed industry standards that Plaintiffs invoke also show that it would make no sense to treat them as binding legal duties. The BIO Policy is an advocacy statement that expressly does not bind member companies and sets nothing more than "general policy statements and recommended processes." 2009 BIO Policy, Ex. D at 1 & n.2. Similarly, other supposed "standards" consist of self-serving statements from different sectors of the grain industry on what industry custom *should* be, conveniently asserting that someone *else* should bear the cost of addressing issues raised by asynchronous approvals in different markets.

Nor can Plaintiffs transform any supposed industry standard they cite into a legal duty not to sell Viptera by claiming that Syngenta *adopted* the standard. *Cf.* Class Compl. ¶ 46.

First, as explained above, the law limits liability for a voluntarily undertaken duty to

[127] *See also, e.g.*, *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 307 (Minn. 1996) ("[T]he evidence of industry custom would be relevant as to a standard of care, but did not establish a duty . . . ."); *Fla. Fuels, Inc. v. Citgo Petrol. Corp.*, 6 F.3d 330, 334 (5th Cir. 1993) ("Custom may help define the standard of care . . . , but custom alone cannot create a legal relationship between the parties.").

27-CV-15-33785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

physical harm, not the purely economic harm Plaintiffs allege here. *See supra* Part III.F.

Second, a gratuitous promise cannot create a legal duty absent detrimental reliance. *See supra* Part III.F (collecting cases). Plaintiffs make no allegations showing that they refrained from taking any actions because they were relying on a supposed promise from Syngenta.

Third, a voluntarily undertaken duty is "limited to the extent of the undertaking" and courts "apply a narrow construction" to it. *Bailey v. Edward Hines Lumber Co.*, 719 N.E.2d 178, 184 (Ill. App. Ct. 1999); *see also, e.g.*, *Doe*, 105 So. 3d at 428. A general statement adopting the BIO Policy in 2007 cannot be read as a promise to delay commercialization of Viptera simply because China had not approved it for import. The BIO Policy merely stated in general terms that commercialization should await approval in "key" markets without providing any definition of what makes a market "key." It also specified only the United States, Canada, and Japan—not China—as key export markets. *See* 2009 BIO Policy, Ex. D at 4. At the time Viptera was commercialized, moreover, it is a matter of public record that exports to China accounted for only about one-third of 1% of U.S. corn production. *See supra* note 25. Given the rule of strict construction that would apply to a voluntarily assumed duty, even if Syngenta had promised to abide by the vague standard in the BIO Policy, that could not reasonably be interpreted as a promise to refrain from selling Viptera absent approval from a market such as China.

V. FIFRA Preempts Plaintiffs' Failure-To-Warn Theory Of Liability.

The Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") expressly preempts Plaintiffs' strict liability failure to warn claims in their entirety as well as Plaintiffs' other claims to the extent they are based on an alleged failure "to adequately warn and instruct farmers on . . . the substantial risk that planting Viptera would lead to loss of the Chinese Market."[128] *See* 7

[128] Class Compl. ¶ 331; *see, e.g.*, *id.* ¶¶ 346-59; Non-Class Compl. ¶¶ 302, 348-60.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

U.S.C. § 136v(b) ("[A] State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter."). FIFRA preempts any state rule—including a common law duty—that satisfies two conditions: (1) "it must be a requirement for labeling or packaging" that (2) "is in addition to or different from those required under [FIFRA]." *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 444 (2005). Plaintiffs' failure-to-warn theory would impose requirements that trigger both concerns.

First, failure-to-warn claims qualify as seeking to impose "'requirements for labeling or packaging,'" because they purport to "set a standard for a product's labeling." *Id.* at 446. *Second*, Plaintiffs seek to impose state-law requirements that labels must warn of potential economic loss due to trade disruptions, which is plainly "in addition to or different from" FIFRA's requirement that the label need only contain a warning "adequate to protect health and the environment." 7 U.S.C. § 136q(1)(G). Thus, as the MDL Court correctly held, Plaintiffs' theory that Syngenta failed to warn Viptera farmers is preempted because it "seeks to impose a labeling requirement not found among FIFRA's statutory requirements." MDL Order 49; *see Bates*, 544 U.S. at 452; *StarLink*, 212 F. Supp. 2d at 836 ("FIFRA therefore preempts any claims based on the inadequacy of StarLink's label or defendants' failure to warn StarLink farmers.").

VI. Plaintiffs' Strict-Liability Claims Fail As A Matter Of Law.

As noted above, Plaintiffs' strict-liability claims for products liability and failure to warn are both barred by the ELD. *See supra* Part II. In addition to that independent bar, the law also limits strict liability to defects that cause *physical* harm. *See generally* Restatement (Second) of Torts § 388 (limiting liability to "physical harm caused by the use of the chattel"); *see, e.g.*, *Russo v. NCS Pearson, Inc.*, 462 F. Supp. 2d 981, 996 (D. Minn. 2006) (Minnesota law "requires

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

the 'unreasonably dangerous' condition of the product to cause some 'physical harm'").[129] Like their other claims, however, Plaintiffs' strict-liability claims allege only economic injury based on the theory that Viptera and Duracade were "defective" because Plaintiffs allegedly suffered market losses. *See supra* Part II.A.3. Plaintiffs do not and cannot allege that Viptera or Duracade corn seeds (or corn grown from them)—which were approved by the FDA, USDA, and EPA before sale, Class Compl. ¶¶ 36, 55-56—pose a threat of physical harm.

The strict-liability claims also suffer from further claim-specific defects.[130]

A. Minnesota Class Plaintiffs' Products-Liability Claim Does Not Allege Any Defect In The Condition Of Syngenta's Corn Seeds.

To state a products-liability claim, Minnesota Class Plaintiffs must show that (1) the product was in a defective condition unreasonably dangerous to the user, (2) the defect existed when the product left the manufacturer's control, and (3) causation. *Western Sur. & Cas. Co. v. Gen. Elec. Co.*, 433 N.W.2d 444, 447 (Minn. Ct. App. 1988). Plaintiffs fail to satisfy these requirements because they fail to allege any defect.

First, the Class Complaint does not even try to identify *any* defect in the condition of the Viptera and Duracade seeds that Syngenta sold—which alone requires dismissal. *See, e.g.*, *Russo*, 462 F. Supp. 2d at 996 (dismissing Minnesota products-liability claims based on lack of a defect as a matter of law). Products-liability claims are limited to three types of defects—defects in manufacturing, design, or warnings/instructions. *See generally* Dobbs § 452; Restatement

---

[129] *See also, e.g.*, *Mink v. Univ. of Chi.*, 460 F. Supp. 713, 719 (N.D. Ill. 1978) ("[O]ne of the essential elements in a claim for strict liability is physical injury to the plaintiff.").

[130] Both of Plaintiffs' strict-liability claims must be dismissed to the extent that they are based on the theory that Syngenta should have "withdrawn" Viptera and Duracade corn seed from the market. Class Compl. ¶¶ 86, 218-19; Non-Class Compl. ¶¶ 98-99, 229-30. The law has consistently refused to impose a common-law duty to recall on manufacturers. *See, e.g.*, *Hammes v. Yamaha Motor Corp. U.S.A., Inc.*, No. 03-6456, 2006 WL 1195907, at *11 (D. Minn. May 4, 2006) ("[N]o Minnesota case has imposed a duty upon manufacturers to institute a product recall or retrofit[,]" and "other courts have opined that Minnesota would refuse to impose a duty to recall a defective product because the overwhelming majority of jurisdictions have rejected such an obligation.").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

(Third) of Torts: Prods. Liab. § 2. Plaintiffs' only attempt to allege a defect is the assertion that "Viptera and Duracade was in a defective condition, unreasonably dangerous to users' property because it is nearly impossible to keep corn containing MIR162 from contaminating non-MIR162-containing corn." Class Compl. ¶ 339. That does not allege anything defective about the condition of the *seeds* Syngenta sold; instead, it focuses on cross-pollination and commingling of planted and grown corn long after the corn seeds have left Syngenta's hands.

That allegation does not assert any manufacturing defect because Minnesota Class Plaintiffs do not allege that any units of Viptera or Duracade seeds failed to meet Syngenta's intended design specifications. *See, e.g.*, *In re Temporomandibular Joint (TMJ) Implants Prods. Liab. Litig.*, 97 F.3d 1050, 1054 n.4 (8th Cir. 1996) (explaining that a "manufacturing defect exists only where an item is substandard when compared to other identical units off of the assembly line"). The ability of corn grown from Viptera and Duracade corn seeds to cross-pollinate and commingle with other corn is also not a design defect. Any design defect theory would amount to the unprecedented proposition that Syngenta was legally obligated to overcome biological fact by developing a corn seed that does not pollinate in the air and on contact. Indeed, the *StarLink* court rejected an identical attempt to treat the susceptibility of corn to cross-pollination and commingling as a defective design. *See StarLink*, 212 F. Supp. 2d at 837-38 (rejecting claim that StarLink corn seed is a "defective product" because "it will inevitably commingle and cross-pollinate" with other corn and explaining that "[t]his constitutes a failure to warn, not a design defect"). To the extent that Minnesota Class Plaintiffs' products-liability claim is based on defective warnings or instructions, that theory duplicates their claim for failure to warn and must be dismissed for the same reasons explained below. *See infra* Part VI.B.

Second, Syngenta is a component-parts manufacturer that cannot be held liable as a matter of law for harm resulting from the way growers used Viptera and Duracade seeds to grow

27-CV-15-13785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

corn or for harm resulting from the way non-producers commingled harvested corn. Under the raw-materials or component-parts doctrine, a manufacturer of a safe, non-defective component is not liable for harm resulting from the integration of the component into another product by other producers if the component manufacturer does not substantially participate in the integration. *See, e.g.*, *In re TMJ Implants Prods. Liab. Litig.*, 97 F.3d at 1056-57. And that is true *even if* the harm that may result from the integration is foreseeable or known to the component-part manufacturer. *See, e.g.*, *id.* at 1057 ("The alleged foreseeability of the risk of the finished product is irrelevant to determining the liability of the component part manufacturer . . . ."). Tort law thus generally does not impose duties on manufacturers of non-defective, safe components to refrain from marketing the component, even where the harm from integration is foreseeable. *See, e.g.*, *id.* ("[I]mposing such a duty would force the supplier to retain an expert in every finished product manufacturer's line of business and second-guess the finished product manufacturer whenever any of its employees received any information about any potential problems."). Applying this principle, courts have held that raw materials for plants—including fertilizer and seeds like Viptera and Duracade—are component parts. *See, e.g.*, *Jorgensen Farms, Inc. v. Country Pride Coop., Inc.*, 824 N.W.2d 410, 419 (S.D. 2012) (fertilizer was a component part where it allegedly contaminated wheat crop with rye); *King v. Hilton-Davis*, 855 F.2d 1047, 1052-53 (3d Cir. 1988) (barring claim against sprout-suppressant manufacturer because suppressant was a chemical used in treating a potato crop and was thus a component part of that crop); *cf. People ex rel. Spiegel v. Lyons*, 115 N.E.2d 895, 898 (Ill. 1953) (holding that the law treats commercially sold seeds as "ingredient[s]" of the crops raised by growers for sale).[131]

[131] As noted above, *see supra* note 93, some of these courts held that the ingredients of plants are component parts of the plant in the analogous context of analyzing the "other property" exception. There is no plausible basis for any different analysis under the component-part doctrine.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Minnesota Class Plaintiffs expressly allege that Syngenta is nothing more than a component-parts manufacturer. They allege that Syngenta manufactured a safe component (Viptera corn seed) and that their economic injuries resulted from the way that component was integrated into another product (harvested corn and, subsequently, supplies of commingled, fungible corn) by later producers (who grew the corn and allowed cross-pollination), and non-producers (who commingled the corn). Under the law, the alleged foreseeability of commingling (which Plaintiffs say is "nearly impossible" to prevent, Class Compl. ¶ 339) does not give rise to a duty on Syngenta not to sell its non-defective, safe component.

Plaintiffs do not and cannot allege that their harm resulted from any flaw in Syngenta's seeds such that these component parts were themselves defective. Under Plaintiffs' allegations, if producers and non-producers had never integrated Viptera and Duracade corn seeds into commodity corn destined for export to a country where those genetic traits were not yet approved for import then Plaintiffs would not have suffered any harm. That is the point of the component parts doctrine. Where the source of the harm is the way the component part is integrated into another product (rather than an underlying defect in the component itself without regard to integration), the component-part manufacturer cannot be held liable. *In re TMJ Prods. Liab. Litig.*, 97 F.3d at 1056. Allowing Plaintiffs to hold Syngenta strictly liable would thus impermissibly "cast [Syngenta] in the role of insurer for any accident that may arise after [Viptera and Duracade corn seeds] leaves [its] hands." *Id.*

B. Syngenta Cannot Be Held Strictly Liable For Failure To Warn.

Plaintiffs allege that Syngenta owed them a duty to warn of "the danger of Viptera and Duracade" and a duty to Viptera and Duracade growers to "give adequate instructions as to the use of Viptera and Duracade." Class Compl. ¶ 355; Non-Class Compl. ¶ 356.

First, as explained above, the theory that Syngenta failed to warn Viptera and Duracade

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

purchasers is preempted by FIFRA. *See supra* Part V.

Second, the component-part doctrine likewise bars Plaintiffs' failure-to-warn claims. *See, e.g.*, *In re TMJ Prods. Liab. Litig.*, 97 F.3d at 1058 ("A failure to warn claim brought against suppliers of multi-purpose components is precluded by the same raw material/component part supplier analysis that forecloses design defect claims."). The law does not require a component-part manufacturer like Syngenta to warn of the risks of an infinite number of circumstances in which Viptera and Duracade seed may integrated into growing crops, storage, commingling, sale, and export—particularly because the integrators (producers and non-producers) have superior knowledge about how they intend to use the seed (and harvested corn) and whether their uses are likely to cause harm. *See, e.g.*, *id.* at 1058-59 (rejecting failure-to-warn claim because allowing it "would be tantamount to charging a component part manufacturer with knowledge that is superior to that of the completed product manufacturer").

Third, as a matter of law, Syngenta did not owe any duty to warn of the obvious risks on which Plaintiffs base their claim. *See, e.g.*, *Drager by Gutzman v. Aluminum Indus. Corp.*, 495 N.W.2d 879, 884 (Minn. Ct. App. 1993) (rejecting failure-to-warn claim because risk was obvious as a matter of law). There is no duty to "warn or instruct regarding risks and risk-avoidance measures that should be obvious to, or generally known by, foreseeable product users." Restatement (Third) of Torts: Prods. Liab. § 2 cmt. j; *see also, e.g.*, *Drager by Gutzman*, 495 N.W.2d at 884 ("[E]ven in the instance of an intended or reasonably foreseeable unintended use, a manufacturer has no duty to warn when the product user is aware of the risk."). Likewise, Syngenta owed no duty to warn corn producers, who are knowledgeable users expected to know about inherent parts of their own business including the biological fact of cross-pollination. *See, e.g.*, *DG&G, Inc. v. FlexSol Packaging Corp. of Pompano Beach*, 576 F.3d 820, 824 (8th Cir. 2009); *Hines v. Remington Arms Co.*, 648 So. 2d 331, 337 (La. 1994). Similarly, Syngenta owed

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

no duty to warn everyone in the industry of the risk of commingling or the risk that China might reject U.S. corn containing Viptera. Plaintiffs themselves assert that the entire industry was aware that Syngenta began commercially selling Viptera, that China had not yet approved that genetic trait for import, and that "[i]t was *inevitable* that Viptera corn would move into export channels, including China and cause trade disruption." Class Compl. ¶ 224; *id.* ¶¶ 22, 74, 93 (alleging that Syngenta was publicly warned of risks by others).

Under Plaintiffs' novel theory, however, Syngenta would be required to identify and warn not only all corn producers and non-producers, but also all milo producers and soybean producers. Plaintiffs' proposed duty to warn has no limiting principle and would apply to any business that allegedly lost revenue because demand for its services or products was affected by the alleged drop in corn prices. There is no basis in the law for creating a duty to warn that follows the never-ending ripple effects of those alleged economic injuries.

VII. Plaintiffs' Trespass-To-Chattels Claims Must Be Dismissed As A Matter Of Law.

Plaintiffs' Non-Class Complaint is insufficient to make out the elements of a claim for trespass to chattels. As relevant here, a trespass-to-chattels claim requires: (1) an action by the defendant that is (2) intentionally directed at plaintiff's chattels; (3) that the plaintiff had ownership or possession of the chattels; and (4) that the defendant's action physically intermeddled with the chattels—that is, that it damaged them by "impair[ing] [them] as to [their] condition, quality, or value." Restatement (Second) of Torts §§ 217, 218. This provision of the Restatement has been adopted in 21 of the 22 states under whose law Plaintiffs have asserted claims.[132] Plaintiffs fail to adequately plead all of these required elements.

[132] *See, e.g.*, *Holt v. Macy's Retail Holdings, Inc.*, 719 F. Supp. 2d 903, 914 (W.D. Tenn. 2010); *McLeodUSA Telecomms. Servs., Inc. v. Qwest Corp.*, 469 F. Supp. 2d 677, 703-04 (N.D. Iowa 2007); *MCI WorldCom Network Servs., Inc. v. W.M. Brode Co.*, 411 F. Supp. 2d 804, 810 (N.D. Ohio 2006); *Terrell v. Rowsey*, 647 N.E.2d 662, 666

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

A. Plaintiffs Fail Adequately To Plead Acts *By Syngenta* Constituting Trespass.

Plaintiffs first fail adequately to allege any action *by Syngenta* that "intermeddled" with their chattels. Plaintiffs do not assert that Syngenta directed Viptera pollen onto Producers' farms or introduced Viptera corn into Non-Producers' grain elevators. To the contrary, Plaintiffs acknowledge that Syngenta's limited role is to sell seeds, primarily to dealers and distributors, who then sell them to farmers. *See* Non-Class Compl. ¶ 9. Plaintiffs' allegations about cross-pollination and commingling of corn that resulted in Viptera corn coming into contact with "the U.S. corn supply," *id.* ¶ 236, plainly describe the conduct of *others*. Thus, Plaintiffs describe pollen drift from farmers' fields, *see id.* ¶¶ 107-08, which presupposes that a farmer has planted Viptera close enough to a neighbor's crops for such drift to occur, *cf. id.* ¶ 127 (complaining that Syngenta did not require farmers to "take measures to prevent such cross-pollination in their own fields"). And as for commingling, Syngenta's conduct is even further removed. Plaintiffs affirmatively allege that corn "from hundreds of thousands of farms is then further commingled as it is gathered, stored and shipped through a system of local, regional and terminal grain elevators." *Id.* ¶ 111. Such local, regional, and terminal grain elevators accomplishing this commingling are, of course, none other than *the Non-Producers themselves*. *See id.* ¶¶ 7-8.

Thus, under Plaintiffs' own allegations, any cross-pollination or commingling that came about from the actions of neighboring farmers who planted Viptera and the actions of the Non-

---

(Ind. Ct. App. 1995); *Poff v. Hayes*, 763 So. 2d 234, 238 (Ala. 2000); *Ark. La. Gas Co. v. Cent. Utils. Constructors, Inc.*, 643 S.W. 2d 566, 567 (Ark. 1982); *Mountain States Tel. & Tel. Co. v. Horn Tower Constr. Co.*, 363 P.2d 175, 178 (Colo. 1961); *Ingram Trucking, Inc. v. Allen*, 372 S.W.3d 870, 872 (Ky. Ct. App. 2012); *Mackie v. Bollore S.A.*, No. 286461, 2010 WL 673295, at *4 (Mich. Ct. App. Feb. 25, 2010); *Mayo Clinic v. Elkin*, Civ. No. 09-322 (DSD/JJK), 2010 WL 760728, at *5 n.12 (D. Minn. Mar. 4, 2010); *McDowell v. Davis*, 235 S.E.2d 896, 900 (N.C. Ct. App. 1977), *abrogated on other grounds, Johnson v. Ruark Obstetrics & Gynecology Assocs., P.A.*, 395 S.E.2d 85 (N.C. 1990); *Sagebrush Res., LLC v. Peterson*, 841 N.W.2d 705, 712-13 (N.D. 2014); *Woodis v. Okla. Gas & Elec. Co*, 704 P.2d 483, 485 (Okla. 1984); *Zapata v. Ford Motor Credit Co.*, 615 S.W.2d 198, 201 (Tex. 1981); *Sotelo v. DirectRevenue, LLC*, 384 F. Supp. 2d 1219, 1229-33 (N.D. Ill. 2005); *ACI Worldwide Corp. v. MasterCard Techns., LLC*, No. 8:14-cv-31, 2014 WL 7409750, at *9-10 (D. Neb. Dec. 31, 2014). Because Louisiana does not recognize the common-law tort of trespass to chattels, Plaintiffs proceed under Louisiana's general "offense and quasi-offense" statute, La. Civ. Code art. 2315. *See* Non-Class Compl. Count 76, ¶¶ 999-1003.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Producers themselves (and other grain elevators and exporters like them) who commingled Viptera and non-Viptera corn. The most the complaint alleges is that Syngenta "knew or certainly should have known" that there was a "very high likelihood" that others might take these actions—an allegation insufficient to suggest any set of facts under which Syngenta itself accomplished any intermeddling. *Id.* ¶ 112. In other words, the complaint is deficient because, given the affirmative allegations about Syngenta's limited role and the intervening conduct of farmers, grain elevators, and others after Syngenta sold Viptera seed, the complaint does not leave open any possible set of facts that might be proved consistent with the pleadings that would put Syngenta in the role of accomplishing any intermeddling. *Cf. Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 602 (Minn. 2014) (describing pleading standard under Minnesota law).

That conclusion is buttressed by abundant precedent holding as a matter of law that a manufacturer cannot be liable in trespass based on the way others use its product post sale. The settled rule is that "[c]ourts do not impose trespass liability on sellers for injuries caused by their product after it has left the ownership and possession of the sellers." *City of Bloomington, Ind. v. Westinghouse Elec. Corp.*, 891 F.2d 611, 615 (7th Cir. 1989); *see also Parks Hiway Enters., LLC v. CEM Leasing, Inc.*, 995 P.2d 657, 664 (Alaska 2000) (seller of fuel not liable for trespass after purchaser leaked fuel into groundwater); *Jordan v. S. Wood Piedmont Co.*, 805 F. Supp. 1575, 1582 (S.D. Ga. 1992) (seller not liable for trespass for contamination when buyer released chemicals).[133] As one court explained in rejecting a claim of trespass against the manufacturer of an herbicide that had drifted onto neighboring farm land when it was being applied, "there is no

[133] *See also Acosta Orellana v. CropLife Int'l.*, 711 F. Supp. 2d 81, 94 (D.D.C. 2010) (dismissing plaintiffs' trespass claim because "nowhere in the amended complaint do the plaintiffs allege, or even remotely suggest, that the CropLife Defendants ever personally sprayed" the fungicide at issue); *Dine v. W. Exterminating Co.*, CIV. A. No. 86-1875-OG, 1988 WL 25511, at *9 (D.D.C. Mar. 9, 1988) (pesticide vendor cannot be held liable in trespass based on later application of pesticide by others, because he did not "directly cause" an invasion of plaintiff's land).

27-CV-15-13785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

authority suggesting that a person who merely sells one item to another person is acting in concert with that person when that person eventually uses . . . the purchased item."[134]

Faced with parallel claims, the *Hoffman* court applied common-law principles to hold that trespass will not lie against a GM seed manufacturer based on claims of cross-pollination, because "much more than 'natural and inevitable forces' must intervene between merely marketing GM [seed] and its arrival on the plaintiffs' land." 2005 SK.C. LEXIS 330 ¶ 131.

More recently, the MDL Court applied precisely the rationale outlined above, holding that "plaintiffs may not state a claim for trespass" under the theory that a seller like Syngenta "knew that [its] product would end up interfering with property of non-purchasers" where "the seller *did not cause the interference itself*." MDL Order 54 (emphasis added). That ruling correctly stated the law and the same result should apply here.[135]

B. Plaintiffs Fail Adequately To Plead Intent.

Plaintiffs also fail to adequately plead intent. Plaintiffs cannot satisfy this requirement by simply repeating the conclusory assertion that Syngenta "knew . . . to a substantial certainty" that intermingling would result if it sold Viptera. Non-Class Compl. ¶ 308. Even if that were true, the Restatement's "substantial certainty" standard is expressly intended to convey the same level of intent that is required for other intentional torts—such as battery—and thus requires a state of mind beyond recklessness. *See* Restatement (Second) of Torts § 217 cmt. c; *id.* § 8A cmt. b & Illus. 2. Even the known possibility that selling Viptera might lead to farmers handling it in a way that allowed cross-pollination and grain elevators commingling it is simply not sufficient to

[134] *Ward v. Ne. Tex. Farmers Co-op. Elevator*, 909 S.W. 2d 143, 150-51 (Tex. App. 1995), *abrogated on other grounds by Envt'l Processing Sys., L.C. v. FPL Farming Ltd.*, 457 S.W.3d 414 (Tex. 2015).

[135] The same rule applies under Louisiana law. Plaintiffs rely on Louisiana's general "offense and quasi-offense" statute, La. Civ. Code art. 2315, but a tort under that provision similarly requires showing that the defendant itself *caused* the alleged harm. *See, e.g.*, *Addison v. Williams*, 546 So. 2d 220, 226 (La. Ct. App. 1989).

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

hold Syngenta liable for an intentional tort. That is precisely why the Canadian court in *Hoffman I* held that assertions parallel to those made here could not state a claim for trespass. *See Hoffman I*, 2005 SK.C. LEXIS 330 ¶ 130.

C. Plaintiffs Fail Adequately To Plead That *Their* Corn Suffered Intermeddling.

Plaintiffs' claims also fail because they do not adequately allege that there was any intermeddling with *their corn*—corn that they owned or possessed at the time. Plaintiffs mostly rely on vague allegations of Viptera intermixing with the "U.S. corn supply," Non-Class Compl. ¶ 236, which has nothing to do with their own property. Even in their specific counts, they fail to assert where and how any supposed intermeddling occurred that affected their own property. Instead, they allege only that the trespass occurred "through contamination in fields *and/or* in grain elevators *and* other modes of storage and transport." *E.g.*, Non-Class Compl. ¶ 369 (allegations of Alabama Plaintiffs) (emphases added). The complaint does not assert that any particular Producer (much less *every* Producer) experienced cross-pollination on his land or that any particular Non-Producer (much less *every* Non-Producer) experienced commingling of corn within its facilities. And to the extent Producers generally point to commingling in grain elevators *after* they had sold their corn, in that scenario the Producers no longer owned their corn and certainly lacked possession. They provide no rationale on which such commingling post-sale could be considered commingling with *their* property.[136]

The reason for the lack of any allegations asserting injury to their *own* property is that Plaintiffs' theory of damages has nothing to do with injury to Plaintiffs' own corn from Viptera.

[136] As the MDL Court noted, "one would normally expect growers to have given up their interest in the corn sent to elevators." MDL Order 55. That is fatal for Producers' trespass claims to the extent they are based on commingling *after* a Producer sold his crop to a grain elevator. *See generally* Restatement (Second) of Torts § 217; *see also, e.g.*, *Universal Tube & Rollform Equip. Corp. v. YouTube, Inc.*, 504 F. Supp. 2d 260, 269 (N.D. Ohio 2007) ("To make a claim for trespass, one must have a possessory interest in the property in question.").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

As the MDL Court recognized, Plaintiffs rely on a damage-to-the-market theory. MDL Order 55. Their theory is not that their particular corn lost value due to contact with Viptera. Their theory is that *all* U.S. corn lost value due to the generalized presence of Viptera. *See* Non-Class Compl. ¶¶ 281-291. As a result, their complaint omits the critical assertions for pleading a claim of trespass—namely, allegations asserting intermeddling with their *own* property. As the MDL Court recognized, as a matter of law, trespass claims cannot survive where Plaintiffs have not even alleged that "*each* plaintiff suffered contamination of its own corn or other property." MDL Order 56 (emphasis added).[137] On that basis, the trespass claims should be dismissed.

D. Plaintiffs Fail Adequately To Plead That Their Property Was "Impaired" By Any Alleged Intermeddling.

Finally, Plaintiffs have not adequately alleged damage in the form of "impairment" to the "condition, quality, or value" of their property through alleged intermixing with Viptera.[138]

First, because Viptera was fully approved in the U.S., corn intermingled with Viptera corn cannot be said to be "damaged." By law, the USDA definition of yellow corn permitted the presence of Viptera, *see* 7 C.F.R. § 810.402(c), and Viptera corn was treated the same, could be sold the same, and brought the same price as all other U.S. fungible corn.

Second, and more important, Plaintiffs' theory of damage has nothing to do with their particular corn, milo, or soybeans having been mixed with Viptera. They do not claim that it was Viptera in their particular corn, milo, or soybeans that caused them to receive a lower price for their crop. Their complaint is that *all* U.S. corn—whether or not it specifically was mixed with

---

[137] The claims under Louisiana law fail for the same reason. To sustain a claim under La. Civ. Code art. 2315, a plaintiff must retain ownership of the "damaged" property. *See, e.g.*, *Forcum-James Co. v. Duke Transp. Co.*, 93 So. 2d 228, 230 (La. 1957) ("[S]ince we find that the [property] belonged to [a third party] it would seem to necessarily follow that plaintiff is without a right of action").

[138] Actual damage is a required element for trespass to chattels. *See* Restatement (Second) of Torts § 218 cmt. e ("The interest of a possessor of a chattel in its inviolability, unlike the similar interest of a possessor of land, is not given legal protection by an action for nominal damages for harmless intermeddlings with the chattel.").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Viptera—suffered a market-wide price drop due to a Chinese boycott. *See* Non-Class Compl. ¶¶ 281-91. Because Plaintiffs' corn brought the same price whether or not it had Viptera in it, Plaintiffs simply cannot make out a claim that physical contact with Viptera somehow changed the "condition or quality" of their corn in a manner causing injury as required for a trespass claim. As the MDL Court recognized in addressing identical allegations, "because a producer or non-producer's corn [allegedly] lost value whether or not it experienc[ed] contamination, any trespass by means of contamination cannot have caused plaintiffs' market injury." MDL Order 57. That defect alone requires dismissing Plaintiffs' trespass claims.

VIII. Plaintiffs Fail to State A Claim For Tortious Interference.

Non-Class Plaintiffs fail adequately to allege multiple elements of their claim for tortious interference with prospective business relations. Specifically, the Plaintiffs fail: (1) to identify any specific business relationships that are the subject of the claim; (2) to allege the requisite injury: that third parties stopped doing business (or refused to do business) with Plaintiffs; (3) to provide any allegations suggesting that Syngenta *intentionally* caused third parties to stop doing business with Plaintiffs; and (4) to identify any *improper means* supposedly used by Syngenta.[139]

A. The Producers Fail Adequately To Allege Specific Prospective Business Relationships.

Plaintiffs' tortious interference claims fail at the outset because the complaint does not identify any "precise business expectancy" that is sufficiently concrete to warrant legal

[139] Non-Class Plaintiffs assert tortious interference claims under the laws of ten States: Alabama, Arkansas, Indiana, Minnesota, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, and Texas. Each State requires the four elements noted in text. *See e.g.*, *Walter Energy, Inc. v. Audley Capital Advisors LLP*, No. 1131104, 2015 WL 731152, at *5 (Ala. Feb. 20, 2015); *Overturff v. Read*, 442 S.W.3d 862, 867 (Ark. Ct. App. 2014); *Harris v. Gaylord Entm't Co.*, No M2013-00689-COA-R3-CV, 2013 WL 6762372, at *4 (Tenn. Ct. App. Dec. 19, 2013); *Tuffy's Inc. v. City of Okla. City*, 212 P.3d 1158, 1165 (Okla. 2009); *Felsher v. Univ. of Evansville*, 755 N.E.2d 589, 598 n.21 (Ind. 2001); *Trade 'N Post, L.L.C. v. World Duty Free Ams., Inc.*, 628 N.W.2d 707, 717 (N.D. 2001) (tortious interference with business); *Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 77-78 (Tex. 2000); *Anderson v. Regents of Univ. of Cal.*, 554 N.W.2d 509, 518-19 (Wis. Ct. App. 1996); *Briner Elec. Co. v. Sachs Elec. Co.*, 680 S.W.2d 737, 740 (Mo. Ct. App. 1984).

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

protection. *Country Corner Food and Drug, Inc. v. First State Bank and Trust Co. of Conway, Ark.*, 966 S.W.2d 894, 898 (Ark. 1998). To make out a claim, Plaintiffs "must specifically identify a third party with whom [they had] a reasonable probability of a future economic relationship." *Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc.*, 844 N.W.2d 210, 221-22 (Minn. 2014); *see also Gruhlke v. Sioux Empire Fed. Credit Union, Inc.*, 756 N.W.2d 399, 404 (S.D. 2008) (requiring plaintiff to demonstrate "an identifiable third party who wished to deal with the plaintiff"). A general assertion that the plaintiff has had customers in the past and expects to continue doing business is not sufficient. Merely projecting "future business with unidentified customers, without more, is insufficient as a matter of law," as is asserting a general expectation for the "level of business to continue in the future." *Gieseke*, 844 N.W.2d at 221-22; *see also e.g., Forever Green Athletic Fields, Inc. v. Lasiter Constr., Inc.*, 384 S.W.3d 540, 552 (Ark. Ct. App. 2011) (allegations that "are nothing more than a general desire to be able to contract" for business "do not show a specific relationship or expectancy").[140]

To the extent a plaintiff relies on the assertion that existing relationships will continue, moreover, the plaintiff must identify specific parties in those relationships,[141] and identify particular reasons for concluding that business with the same customers will continue. *See Stonebridge Collection v. Carmichael*, 791 F.3d 811, 820 (8th Cir. 2015) (claim failed where plaintiff failed to state "how many reorders a customer typically would place" or "whether its

[140] *See also Gieseke*, 844 N.W.2d at 221 ("[T]he majority of state courts that have considered the issue require the plaintiff to demonstrate the existence of a prospective economic advantage with at least one specific, identifiable third party with which the defendant interfered.") (collecting cases).

[141] *See, e.g., Gold Sci. Consultants, Inc. v. Cheng*, No. 3:07-CV-152, 2009 WL 1256664, at *10 (E.D. Tenn. May 4, 2009) ("Generalized references to third parties simply fail[] to meet the specificity need for this element."); *Playboy Enters., Inc. v. Editorial Caballero, S.A. de C.V.*, 202 S.W.3d 250, 265 (Tex. App.--Corpus Christi 2006, pet. denied) (allegations that defendant "interfered with [plaintiff's] business relations with investors, advertiser, and others" was insufficient where plaintiff "[did] not identify any such contracts"); *Du Page Aviation Corp. v. Du Page Airport Auth.*, 229 Ill.App.3d 793, 171 Ill.Dec. 814, 594 N.E.2d 1334, 1340 (1992) (allegation of expectancy of future economic advantage through business relationships with "others" is insufficient).

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

relationship with the reordering customers was long-term"); *Kidd v. Bass Hotels & Resorts, Inc.*, 136 F. Supp. 2d 965, 970 (E.D. Ark. 2000) ("[P]ast business relationships with former customers [are] not sufficiently certain, concrete and definite to establish a cognizable prospective relationship.") (internal quotation marks omitted); *see also* 1A Callmann on Unfair Competition, Trademarks, and Monopolies § 9:11 (4th ed.) ("Past business relationships with former customers are usually not sufficient to establish a cognizable prospective relationship.").

Plaintiffs' allegations fall woefully short of making out a claim on these standards. The sum total of Plaintiffs' allegations is that "Plaintiffs had business relationships and a reasonable expectancy of continued relationships with [unidentified] purchasers of corn." *E.g.* Non-Class Compl. ¶ 374. That is precisely the sort of "bald and conclusory assertion that [plaintiff] had . . . a business expectancy" that fails as a matter of law. *Hunt v. Riley*, 909 S.W.2d 329, 332 (Ark. 1995). Contrary to the MDL Court's suggestion, *see* MDL Order 68, it is not sufficient for a plaintiff merely to identify a class of third parties with whom it expects to do business. That amounts to no more than a "projection of future business with unidentified customers," which is "insufficient as a matter of law." *Gieseke*, 844 N.W. at 221-22. A complaint fails where "there are no specific third parties named in the complaint, only general categories of persons." *Overnite Transp. Co. v. Teamsters Local Union No. 480*, No. M2002-02116-COA-R3-CV, 2004 WL 383313, at *13 (Tenn. Ct. App. Feb. 27, 2004). Especially here, where the master complaint presents solely the claims of four individuals, it is hardly asking much for Plaintiffs to identify at least *one* party with whom they claim a business expectancy. Even if identifying a class of current customers were sufficient, moreover, Plaintiffs would still have to identify some basis for expecting the relationship with that group to continue, which they have wholly failed to do.[142]

[142] The Minnesota Non-Class Plaintiffs' allegations are different on this score. Minnesota Non-Class Plaintiffs

27-CV-15-18785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

B. Plaintiffs Fail To Allege The Requisite Injury: That A Third Party Ended Or Refused To Enter A Business Relationship.

Plaintiffs also fail to allege the requisite injury for tortious interference—namely, that the defendant "induc[ed] or caus[ed] a breach or termination of the relationship or expectancy." *McNeill v. Sec. Ben. Life Ins. Co.*, 28 F.3d 891, 893 (8th Cir. 1994) (applying Arkansas law). Where a plaintiff asserts interference with a *prospective* relationship, he must allege "that the defendant's actions *prevented the relationship from occurring.*" *Texas Disposal Sys. Landfill, Inc. v. Waste Mgmt. Holdings, Inc.*, 219 S.W.3d 563, 590 (Tex. App. 2007) (emphasis in original); *accord Wilkey v. Hull*, 366 F. App'x 634, 638 (6th Cir. 2010) ("Absent some factual allegation that [defendant's actions] *ended or prevented a business relationship*," a plaintiff "does not state a claim.") (emphasis added). In other words, "[a] defendant faces potential liability for intentional interference with business relationships *only* when the interference causes a third person to *discontinue* a business relationship or to *refrain from entering* into a prospective business relationship." *Brown v. CVS Pharm., LLC*, 982 F. Supp. 2d 793, 805 (M.D. Tenn. 2013).[143] That rule is reflected in the black-letter of the Restatement, which explains that

---

allege that their existing business relationships with elevators and exporters were "recorded by contracts, invoices, receipts and other documents *demonstrating a consistent course of sales*" and that Minnesota Non-Class Plaintiffs "reasonably expected to continue selling corn *to such customers*." Non-Class Compl. ¶¶ 313, 314 (emphases added). Non-Class Plaintiffs in other States make no similar allegations of repeat business or consistent course of sales. Even if the Minnesota Non-Class Plaintiffs' allegations were sufficient to survive they highlight the deficiency in the remaining plaintiffs' claims.

[143] This rule is consistently applied across jurisdictions. *See, e.g.*, *Schoedinger v. United Healthcare of Midwest, Inc.*, No. 4:07CV904SNLJ, 2011 WL 97735, at *7 (E.D. Mo. Jan 12, 2011) ("Failing to allege whether such actions caused any identified patient to *terminate* his/her business relationship with the plaintiffs is fatal to the plaintiffs' cause of action.") (emphasis added); *Gold Sci. Consultants, Inc.*, 2009 WL 1256664, at *11 (claim failed because "there is insufficient evidence that Defendants' alleged acts caused either Mr. Twigg or Mr. Winfield *to breach or break* their relationships with Plaintiff" and "Mr. Twigg and Mr. Winfield *did not choose to end their relationships* with Plaintiff") (emphases added); *Cent. Park Prods., Inc. v. Dorel Juvenile Grp., Inc.*, No. 07-5012, 2007 WL 1821308, at *2 (W.D. Ark. June 25, 2007) (dismissing claim because "[p]laintiff has not pled any breach or termination of its relationship or expectancy"); *Erickson's Flooring & Supply Co., Inc. v Tembec, Inc.*, No. 03-74214, 2006 WL 148759, at *8 (E.D. Mich. Jan. 18, 2006) (claim failed where there was no evidence that defendant "actually induced or caused a breach or termination of Plaintiff's business relationships or expectancies"), *aff'd*, 212 F. App'x 558, 566 (6th Cir. 2007); *Reali, Giampetro & Scott v. Soc'y Nat'l Bank*, 729 N.E.2d 1259, 1265 (Ohio Ct. App. 1999) (plaintiff must show that defendant "induce[d] or otherwise purposely cause[d] a third person *not to*

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

liability for tortious interference with a prospective relationship arises only when the interference consists of "(a) inducing or otherwise causing a third person *not to enter into* or *continue* the prospective relation or (b) *preventing* the other from *acquiring* or *continuing* the prospective relation." Restatement (Second) of Torts § 766B (emphases added).

Here, Plaintiffs wholly fail to make the requisite assertion that Syngenta's conduct prevented an expectancy from being realized. Plaintiffs do not allege that buyers of corn stopped doing business with them or refused to deal with them. For the most part, they fail to describe any injury at all, relying instead on the bare, boilerplate assertion that Syngenta "induced or caused a disruption of that expectancy" without any further description. *E.g.* Non-Class Compl. ¶¶ 376, 516, 1166, 1451, 1514, 1762, 1796. The Minnesota Non-Class Plaintiffs, however, make clear that the only "interference" Plaintiffs allege is that Viptera in the corn supply supposedly left Plaintiffs "unable to sell corn at the *price* they reasonably expected to receive." *Id.* ¶ 318 (emphasis added). But it is black letter law that such a complaint about the *terms* of a contract that was realized is not sufficient to state a claim. As explained above, the plaintiff must allege that defendant prevented a business relationship from forming at all. "Merely claiming that [a] contract would have been more advantageous to [Plaintiff] in the absence of Defendants' interference—pleading, in other words, that a contract did not end up being as beneficial as the plaintiff had hoped—does not satisfy the requirement that a business relationship be *prevented.*" *U.S. Enercorp, Ltd. v. SDC Montana Bakken Expl., LLC*, 966 F. Supp. 2d 690, 704 (W.D. Tex. 2013) (emphasis in original).[144] The MDL Court's assertion that a plaintiff could state a claim

---

enter into or continue a business relation with another") (emphases added).

[144] *See also Enercorp*, 966 F. Supp. 2d at 703 ("The Court is unaware of . . . any Texas case in which a contract was consummated but the plaintiff was nevertheless successful on a claim for tortious interference with a prospective business relationship."); *BCD LLC v BMW Mfg. Co.*, 360 F. App'x 428, 436 (4th Cir. 2010) ("A claim for prospective interference cannot stand where the plaintiff is able to consummate a contract with another party. . . . [I]t is irrelevant that a plaintiff could have realized a better deal 'but for' the actions of the defendant . . . .") (South

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

by asserting "interference with the expectation of sales *at certain market prices*," MDL Order 72, fails to acknowledge this settled law. The MDL Court did not cite any case supporting its unprecedented conclusion.

Restricting tortious interference to situations in which a relationship has not been realized at all makes sense in light of the greater speculation required to divine the *terrms* parties would have set under hypothetical circumstances. Where an expectancy was not realized *at all*, a court needs to make only a relatively binary determination: the expectancy would have been realized absent the defendant's conduct or not. By contrast, if plaintiffs could state a claim based on the theory that the *terms* would have been better absent defendant's conduct, courts would have to adjudicate a vast new range of speculative assertions about the possible course of negotiations and the terms that "might have been." Plaintiffs' theory highlights that problem, because it would require speculating about what commodity prices for corn (*and* milo *and* soybeans) *would have been* under hypothetical facts. Turning tortious interference into a vehicle for having courts recalculate the market price of various goods any time a plaintiff asserts that someone took some wrongful action supposedly affecting prices would bring the tort a long way from its limited purpose of addressing intentional actions that prevent a plaintiff from securing a business relationship. This Court should not expand the law of Minnesota (and other States) by adopting such a novel extension of the law. *See, e.g.*, *State v. Anderson*, 603 N.W.2d 354, 357 (Minn. Ct. App. 1999) ("[T]he task of extending existing law falls to the supreme court or the legislature . . . ."); *cf. Texas Disposal Sys.*, 219 S.W.3d at 590 (refusing to "expand the doctrine of tortious interference . . . to make actionable conduct that results in *delaying the execution* of a

---

Carolina law); Callman on Unfair Competition, Trademarks & Monopolies § 9:16 ("There is no liability where the plaintiff is able to consummate a contract with another party but could have realized a better deal but for the actions of the defendant; i.e. the plaintiff cannot recover on a theory that the agreement was less profitable to him than it would have been without defendant's interference.").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

contract," which made the contract less profitable) (emphasis in original).

C. The Producers Fail To Allege Improper Means.

Plaintiffs also fail adequately to allege that Syngenta accomplished the supposed interference through "improper means"—that is, through means that are "independently tortious or unlawful." *Gieseke*, 844 N.W.2d at 218.[145] "[I]ndependently tortious [] mean[s] conduct that would violate some other recognized tort duty." *Wal-Mart Stores, Inc. v. Sturges*, 52 S.W.3d 711, 713 (Tex. 2001). In connection with their tortious interference claims, Plaintiffs do not specifically allege that Syngenta's conduct amounted to other, specific torts, and for all the reasons explained above, their other efforts to cast Syngenta's conduct as tortious fail.

To the extent Plaintiffs point to supposed misrepresentations about "whether customers would accept Viptera," Non-Class Compl. ¶ 316, such misrepresentations cannot support a claim for tortious interference unless they were directed at preventing third parties from conducting business with Plaintiffs. *See, e.g.*, *Grund v. Donegan*, 700 N.E.2d 157, 161 (Ill. App. Ct. 1998) ("[P]laintiff must allege action by the defendant *directed towards the party with whom the plaintiff expects to do business*.") (emphasis added). But the Plaintiffs do not point to anything of the sort. Supposed misrepresentations to Plaintiffs themselves about what customers would accept or about the pace of Chinese approval, *see, e.g.*, Non-Class Compl. ¶ 182, are irrelevant, because the Plaintiffs do not and cannot allege that those statements were intended to prevent

[145] Courts in Texas, Minnesota, Missouri, North Dakota, and Oklahoma have explicitly required that the alleged interfering act be actionable under a recognized tort or independently wrongful. *See, e.g.*, *Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc.*, 844 N.W.2d 210, 219-20 (Minn. 2014); *Wal-Mart Stores, Inc. v. Sturges*, 52 S.W.3d 711, 726 (Tex. 2001); *Trade 'N Post, L.L.C. v. World Duty Free Ams., Inc.*, 628 N.W.2d 707, 720 (N.D. 2001); *Community Title Co. v. Roosevelt Fed. Sav. and Loan Ass'n*, 796 S.W.2d 369, 373 (Mo. 1990) (en banc); *Gaylord Entm't Co. v. Thompson*, 958 P.2d 128, 150 (Okla. 1998). Arkansas, Alabama and South Dakota look to a multifactor test to determine if a defendant's conduct was "improper." *See, e.g.*, *Baptist Health v. Murphy*, 373 S.W. 3d 269, 281-82 (Ark. 2010); *Selle v. Tozser*, 786 N.W. 2d 748, 753 (S.D. 2010); *White Sands Grp., L.L.C. v. PRS II, LLC*, 32 So. 3d 5, 13 (Ala. 2009). Tennessee requires that "the plaintiff demonstrate that the defendant's predominant purpose was to injure the plaintiff" to show "improper" motive or means. *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 701 n.5 (Tenn. 2002).

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

counterparties from doing business with Plaintiffs, or that they logically could have that effect.

At bottom, Plaintiffs are trying to treat the lawful sale of a U.S.-approved product, in the U.S. as if it constituted "improper means," and to penalize Syngenta for lawfully pursuing its own economic interests in the marketplace. That is incorrect as a matter of law. The concept of "improper means" is restricted to preserve the ability of actors in a free market to pursue their own economic advantage—that is, to "ensure that fair competition is not chilled." *Gieseke*, 844 N.W.2d at 218.[146] Treating the lawful sale of an approved product as an "improper means" would turn the policy objectives of the law on their head and allow businesses to use tortious interference claims to impair the robust operation of free markets.

D. Plaintiffs Fail Adequately To Allege Intent.

Finally, Plaintiffs fail sufficiently to allege that Syngenta acted with the requisite intent. Even if intent in this context required only that Syngenta "knew to a substantial certainty" that interference with Plaintiffs' business expectancies would result from Syngenta's actions,[147] Plaintiffs have not satisfied that standard. As explained above, the only "interference" that suffices is preventing a business relationship from being realized at all. Plaintiffs do not (and cannot) allege that Syngenta *knew* that would happen; they do not even allege that it *did* happen. And to the extent Plaintiffs erroneously assert that the "interference" was merely causing lower corn prices, Plaintiffs cannot plausibly allege that Syngenta "knew to a substantial certainty" that introducing Viptera would have that effect. At the time Viptera was introduced, China

[146] *See also, e.g.*, *Berger v. Cas. Feed Store, Inc.*, 543 N.W.2d 597, 599 (Iowa 1996) ("A party does not improperly interfere with another's contract by exercising its own legal rights in protection of its own financial interests."); *Companio v. Hawkeye Bank & Trust of Des Moines*, 588 N.W.2d 462, 466 (Iowa 1999) (bank's desire "to improve its own financial condition and improve the service to its client" cannot be "improper means"); *Bridgeway Commc'ns, Inc. v. Trio Broad., Inc. (WBLX Radio Station-93 FM)*, 562 So. 2d 222, 223 (Ala. 1990) (no improper means where "defendants were engaged in lawful competition to increase their own business").

[147] *See, e.g.*, *May v. Countrywide Home Loans, Inc.*, No. 4:07-cv-375-CDP, 2007 WL 1879781, at *4 (E.D. Mo. June 28, 2007).

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

accounted for only one third of one percent of corn exports, *see supra* note 25, and Plaintiffs themselves allege that it was not until *two years* after Viptera had been introduced that China first rejected shipments of U.S. corn. Even under Plaintiffs' theory, the supposed effect of Viptera on the market price of corn depended on a highly contingent sequence of events that no one could have known to a "substantial certainty" in advance.

IX. Plaintiffs' Private-Nuisance Claims Must Be Dismissed As A Matter Of Law.

A claim for private nuisance requires that (1) the defendant control or substantially participate in carrying on an activity that (2) unreasonably interferes (3) with another's interest in the private use and enjoyment of his land. *See* Restatement (Second) of Torts § 821D; *see also, e.g., Lethu Inc. v. City of Hous.*, 23 S.W.3d 482, 489 (Tex. App. 2000); *Goforth v. Smith*, 991 S.W.2d 579, 587 (Ark. 1999).[148] Plaintiffs' complaint fails adequately to allege each element.

A. Plaintiffs Fail Adequately To Allege That Syngenta Controlled Or Substantially Participated In the Activity Constituting The Nuisance.

Plaintiffs have not adequately alleged even in a general fashion that Syngenta controlled or substantially participated in carrying on the activity that amounted to the alleged nuisance. It is well settled in similar situations that, because a "seller in a commercial transaction [like Syngenta] relinquishes ownership and control of its products when they are sold," it *cannot*, as a matter of law, be liable for post-sale nuisances allegedly caused by others' use of its products. *See, e.g., Cloverleaf Car Co. v. Philips Petrol. Corp.*, 540 N.W. 2d 297, 300-01 (Mich. Ct. App.

[148] The applicable principles of law are substantially the same in all relevant States, and each State has analyzed nuisance relying on the private nuisance definition in the Restatement (Second) of Torts. *See, e.g., Paulus v. Citicorp N. Amer., Inc.*, No. 12-cv-856, 2014 WL 4557603 (S.D. Ohio Sept. 12, 2014) (Ohio law); *Northern Nat. Gas Co. v. L.D. Drilling, Inc.* 697 F.3d 1259 (10th Cir. 2012) (Kansas law); *Kane v. Cameron Intern. Corp.*, 331 S.W.3d 145 (Tex. App. 2011); *Johnson v. Knox Cty. P'ship*, 728 N.W.2d 101 (Neb. 2007); *Collins v. Barker*, 668 N.W.2d 548 (S.D. 2003); *Lane v. W.J. Curry & Sons*, 92 S.W.3d 355 (Tenn. 2002); *Union Pacific R. Co. v. Reilly Indus., Inc.*, 4 F. Supp. 2d 860 (D. Minn. 1998) (Minnesota law); *Vogel v. Grant-Lafayette Elec. Co-op.*, 548 N.W.2d 829 (Wis. 1996); *Leaf River Forest Prods., Inc. v. Ferguson*, 662 So. 2d 648 (Miss. 1995); *Rassier v. Houim*, 488 N.W.2d 635 (N.D. 1992); *Tipler v. McKenzie Tank Lines*, 547 So. 2d 438 (Ala. 1989); *Pendergrast v. Aiken*, 236 S.E.2d 787 (N.C. 1977).

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

1995) ("Because Phillips had no control over what happened to the gasoline after it was delivered, it cannot incur liability as the supplier of the gasoline."); *L'Henri, Inc. v. Vulcan Materials Co.*, Civ. No. 2006-177, 2010 WL 924259, at *6 (D.V.I. Mar. 11, 2010) ("there is no support" for saying that a manufacturer "participated to a substantial extent in carrying on" a nuisance where it, "after the time of manufacture and sale, no longer had the power to abate the nuisance"); *City of Bloomington, Ind.*, 891 F.2d at 614 (dismissing nuisance claim because manufacturer did not "retain[] the right to control the [chemicals it sold] beyond the point of sale").[149] The general rule is that "the absence of a manufacturer's control over a product at the time [an alleged] nuisance is created generally is fatal to any . . . claim" based on post-sale uses of the manufacturer's product. *Traube v. Freund*, 775 N.E.2d 212, 216 (Ill. App. Ct. 2002).

Plaintiffs cannot salvage their claim by arguing that Syngenta participated to a "substantial extent" in the activities giving rise to the nuisance. *See* Restatement (Second) of Torts § 834. Plaintiffs have not alleged that Syngenta either controlled or was substantially involved in the growing and distribution activity of either the farmers or grain elevators who accomplished the supposed cross-pollination and commingling of which Plaintiffs complain. To the contrary, the complaint affirmatively alleges that *others* carried out those activities. Plaintiffs allege, for example, that it is grain elevators like the Non-Producers themselves that commingled

[149] *See also, e.g.*, *E.S. Robbins Corp. v. Eastman Chem. Co.*, 912 F. Supp. 1476, 1494 (N.D. Ala. 1995) (dismissing nuisance claim alleging that chemical supplier was liable for spills that occurred after delivery because it "had no control over the off-loading of product by its carriers or [the plaintiff]"); *Jordan*, 805 F. Supp. at 1583 (rejecting tort claims, including nuisance, alleging that a chemical supplier was responsible for post-sale use of the chemicals that led to contamination); *Tioga Pub. Sch. Dist. No. 15 v. U.S. Gypsum Co.*, 984 F.2d 915, 920 (8th Cir. 1993) (under North Dakota law, manufacturer not liable for nuisance arising from post-sale use of product because "liability for damage caused by a nuisance turns on whether the defendant is in control of the instrumentality alleged to constitute a nuisance, since without control a defendant cannot abate the nuisance"); *Appletree Square 1 Ltd. P'ship v. W.R. Grace & Co.*, 815 F. Supp. 1266, 1274 n.13 (D. Minn. 1993) (after defendant had sold fireproofing, "it no longer controlled the fireproofing and consequently a nuisance action cannot be maintained against it"); *Johnson Cty., Tenn. By & Through Bd. of Educ. v. U.S. Gypsum Co.*, 580 F. Supp. 284, 294 (E.D. Tenn. 1984) ("[A]s an elementary principle of tort law, a nuisance claim may only be alleged against one who is in control of the nuisance creating instrumentality."), *order set aside in part on other grounds sub nom. Johnson Cty., Tenn. v. U.S. Gypsum Co.*, 664 F. Supp. 1127 (E.D. Tenn. 1985).

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Viptera corn with other corn. *See, e.g.*, Non-Class Compl. ¶ 111. The most that Plaintiffs allege is that Syngenta supposedly "knew" that there was a "very high likelihood" that cross-pollination and commingling would occur through the actions of others, *id.* ¶ 112, that Syngenta sold Viptera *without* a program in place giving it the ability to control the way others handled the product post-sale, *id.* ¶¶ 135-36, 143, 145, and that Syngenta brought a *failed* lawsuit against Bunge, *id.* ¶¶ 149-52—which actually confirmed that Syngenta could *not* control what grain elevators decided to do with respect to corn grown from Viptera.

The decision in *StarLink* also provides no support for nuisance claims here. The claim in that case survived because of unique circumstances that gave the manufacturer (Aventis) some control over the use of its product (StarLink corn) after the point of sale. *StarLink* recognized the "concerns [that] courts have expressed about holding manufacturers liable for post-sale nuisances." 212 F. Supp. 2d at 847. The "critical" difference "negat[ing]" those concerns was that StarLink had been given only restricted approval by the USDA. The "*unique obligations* imposed by the limited registration" of StarLink issued by the USDA imposed "an affirmative duty to enforce StarLink farmers' compliance with the Grower Agreements" and thus "arguably put Aventis in a position *to control the nuisance*." *Id.* (emphases added). Because there are no similar regulatory obligations here, *StarLink* is wholly inapposite.

In addressing identical private nuisance claims, the MDL Court correctly held that the "general rule" is that "a seller of a product is not liable for a private nuisance caused by the use of that product after it has left the seller's control," and dismissed the claims. MDL Order 59, 61. There is no basis for a different outcome here.

B. Plaintiffs Fail Adequately To Allege Interference With The Use And Enjoyment Of Their *Land.*

The nuisance claims are also fatally flawed because Plaintiffs have not adequately alleged

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

that their injuries arise from an interference with the use and enjoyment of their *land*. Plaintiffs make general assertions about cross-pollination and commingling, but they do not allege those effects took place on every plaintiff's property, *see supra* Part II.A.3, nor do they present a theory of nuisance that depends on such an effect on every plaintiff's property. Instead, they rely on the theory that Syngenta created a nuisance "[b]y contaminating the U.S. corn supply." *E.g.*, Non-Class Compl. ¶ 382 (private nuisance for Alabama plaintiffs); *see also id.* ¶¶ 322, 522, 980, 1145, 1201, 1422, 1459, 1743, 1768, 1801, 2027. Plaintiffs' theory, in other words, is that they can claim a nuisance even if Viptera seed, Viptera pollen, and harvested Viptera corn never came anywhere near their properties. In their view, it is enough that Viptera affected the "corn supply," and that allegedly affected the price of all U.S. corn on the Chicago Board of Trade.

That is incorrect as a matter of law. Private nuisance unequivocally requires interference with the use and enjoyment of *Plaintiffs' land*. *See, e.g.*, *Anderson v. State, Dep't of Nat. Res.*, 693 N.W.2d 181, 185, 192 (Minn. 2005) (beekeepers could not bring a nuisance claim for spraying of pesticide where beekeepers "do not own the land on which they place their hives" and thus "lack[] the requisite property interest" for a private-nuisance claim).[150] That requires allegations of some perceptible, tangible effects on the land. To permit a private nuisance claim to proceed based merely on assertions about the corn supply and a market drop in the price of corn would radically expand the tort, decoupling it from effects on *the land*. Courts routinely reject attempts to expand the tort in that fashion, recognizing that separating nuisance from its connection to the land in order to facilitate claims about manufactured products would result in

[150] *See also Hutchens v. MP Realty Grp.-Sheffield Square Apts.*, 654 N.E.2d 35, 38 (Ind. Ct. App. 1995) (private-nuisance liability requires a "proprietary interest in the land on which [the plaintiff's] injuries occur"); *Hot Rod Hill Motor Park v. Triolo*, 293 S.W.3d 788, 791 (Tex. App. 2009) (rejecting private-nuisance claim where plaintiff did not have a property interest in any of the houses affected by the alleged nuisance); *Culwell v. Abbott Const. Co., Inc.*, 506 P.2d 1191, 1196 (Kan. 1973) (rejecting private-nuisance allegations because "nowhere does it appear that [the plaintiff] was injured in relation to a right which he enjoyed by reason of his ownership of an interest in land").

27-CV-15-33785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

nuisance "becom[ing] a monster that would devour in one gulp the entire law of tort." *Tioga Pub. Sch. Dist. v. U.S. Gypsum Co.*, 984 F.2d 915, 920-21 (8th Cir. 1993).[151] There is no basis for this Court to adopt such a radical expansion of the law.

The MDL Court correctly rejected a nuisance claim on identical allegations. As that court explained, there is no "authority indicating that a landowner may maintain a nuisance claim without any tangible effect on its property," and if such a claim were allowed "then any conduct causing fluctuation in a market for crops would give rise to a nuisance claim." MDL Order 65.

C. Plaintiffs Fail Adequately To Allege Unreasonable Interference.

Lastly, any alleged cross-pollination or commingling of Viptera corn and non-Viptera corn cannot be treated as an *unreasonable* interference with Plaintiffs' use of their land, given that Viptera had unrestricted federal approval to become part of the general corn supply and does nothing inherently harmful to yellow corn. Corn containing Viptera is still fungible yellow corn as defined by the USDA and is marketable at the same price as all other U.S. corn. As explained above, to the extent the Plaintiffs claim that they wanted to produce or transport "Viptera-free corn," they are opting to devote their land and facilities to producing a *specialty* product. But that does not enable them to treat the cultivation of corn meeting ordinary U.S. standards as a nuisance in violation of tort law. To the contrary, it is black letter law that the touchstone for determining what is an "unreasonable" interference depends on "normal uses" of land, and an alleged interference "is not a nuisance if it interferes only with especially sensitive . . . uses" of land. Dobbs § 399; Restatement (Second) of Torts § 821F cmt d & illus. 2. Growing, storing, or transporting exclusively corn that satisfies Chinese standards for international imports rather than

[151] *See also, e.g., Cavanagh v. Electrolux Home Prods.*, 904 F. Supp. 2d 426, 435 (E.D. Pa. 2012) ("Extending the private nuisance doctrine to encompass a products liability claim by a non-neighboring landowner is unsupported by Pennsylvania law or policy.").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

U.S. standards applicable in the U.S. constitutes a specially sensitive use of land and cannot support a claim of nuisance against neighboring farmers or anyone else.

The producers here are no different from the organic farmers in *Hoffman I*, in that they claim that they wanted to grow a crop with specialty characteristics, rather than fungible corn that met USDA standards. *Cf. Hoffman I*, 2005 SK.C. LEXIS 330 ¶ 121. The *Hoffman* plaintiffs based their claims upon the loss of the entire European market for *all* Canadian canola, based on the allegation that the commoditized canola market had become tainted. *Hoffman I*, 2005 SK.C. LEXIS 330 ¶¶ 21-22. The *Hoffman* court recognized that a nuisance claim could not survive where it was not alleged that the GM trait at issue "is harmful per se or that it renders the . . . crops unfit for consumption or otherwise harmful." *Id*. ¶ 121. The same reasoning applies here.

X. Plaintiffs' Consumer Protection Claims Must Be Dismissed.

A. Minnesota Statutes §§ 325D.13, 325D.44, & 325F.69

Plaintiffs bring claims for a Minnesota class and individual claims for *all* Plaintiffs under Minnesota's Unfair Trade Practices Act ("MUTPA") and Prevention of Consumer Fraud Act ("MCFA"). Class Compl. ¶¶ 300-27; Non-Class Compl. ¶¶ 326-47. They also assert Minnesota class claims under the Minnesota Deceptive Trade Practices Act ("MDTPA"). Class Compl. ¶¶ 300-27. These claims all fail as a matter of law for the following reasons.

1. Plaintiffs' Allegations Cannot Support Applying MUTPA And MCFA To The Individual Claims Of Non-Minnesota Residents.

As a threshold matter, Plaintiffs have not adequately alleged any basis for applying MUTPA and MCFA extraterritorially to the individual claims of non-Minnesota residents.

For a state consumer protection statute to be applied to transactions and injuries *outside* the State, three hurdles must be crossed: (1) the statute must apply extraterritorially under state law; (2) the State must have sufficiently significant contacts with the plaintiffs and their

27-CV-15-13785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

transactions for applying its laws to comport with due process; and (3) ordinary choice-of-law rules must warrant applying the State's law. *See In re St. Jude Med., Inc.*, 425 F.3d 1116, 1120-21 (8th Cir. 2005); *see also Cruz v. Lawson Software, Inc.*, Civ. No. 08-5900, 2010 WL 890038, at *7 (D. Minn. Jan. 5, 2010) ("*St. Jude* . . . provides that a Minnesota statute must both be subject to extraterritorial application ***and*** able to be applied under the constitutional analysis and choice of law test before it can be applied to a nationwide class.") (emphasis in original). As the MDL Court recognized, Plaintiffs cannot cross any of those hurdles. *See* MDL Order 103.

First, MUTPA and MCFA cannot apply extraterritorially as a matter of state law. The Minnesota Supreme Court has never applied them extraterritorially, *see St. Jude*, 425 F.3d at 1121, and Minnesota adheres to "the general rule which limits the operation of statutory law to the state of its enactment." *In re St. Paul & K.C. Grain Co.*, 94 N.W. 218, 225 (Minn. 1903); *see Olson v. Push, Inc.*, Civ. No. 14-1163, 2014 WL 4097040 ADM/JJK, at *2 (D. Minn. Aug. 19, 2014) ("Minnesota law does impose a presumption against the extra-territorial application of state law."). Applying that principle, the MDL Court (the only court that has addressed the issue) correctly ruled that MUTPA and MCFA do not apply extraterritorially. MDL Order 99.

Decisions applying these statutes to non-residents, *see Mooney v. Allianz Life Ins. Co. of N. Am.*, 244 F.R.D. 531 (D. Minn. 2007), provide no precedent for extraterritorial application here. In *Mooney*, for example, the court conducted no analysis of extraterritorial application, and under the facts of that case extraterritorial application was not required. The sole defendant was a Minnesota corporation that had allegedly distributed fraudulent materials from Minnesota, and every putative class member had entered into a contract with the Minnesota defendant. This case is wholly different. Only one of six defendants is located in Minnesota, *see* Non-Class Compl. ¶ 9, and as explained below, Plaintiffs do not allege that the Minnesota entity (Syngenta Seeds) was the source of the allegedly deceptive practices. In fact, Plaintiffs do not allege any

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

interactions with Syngenta Seeds at all. Their claims are based on statements that Syngenta Defendants made to *other* people *outside* Minnesota that supposedly encouraged sales of Viptera *outside* Minnesota that allegedly harmed Plaintiffs *outside* Minnesota. There is no precedent for applying Minnesota statutes in such a case. *Cf. Friedman v. Dollar Thrifty Auto. Grp.*, Civ. Act. No. 12-cv-02432-WYD-KMT, 2013 WL 5448078, at *6 (D. Colo. Sept. 27, 2013) (dismissing consumer protection claim because statute did not apply extraterritorially).

Second, Plaintiffs' allegations fail to establish any basis for allowing Minnesota law to apply to non-resident Plaintiffs consistent with the Due Process and Full Faith and Credit Clauses.[152] "For a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981); *see also Phillips Petrol. Co. v. Shutts*, 472 U.S. 797, 818 (1985). Such contacts were found in *Mooney* where the sole defendant was incorporated and headquartered in Minnesota, the allegedly fraudulent materials were "created and distributed . . . from Minnesota," and every putative class member had purchased an annuity from the Minnesota defendant and remitted payments to Minnesota. *Mooney*, 244 F.R.D. at 535. Given the importance in the due process analysis of the parties' expectations, the fact that every class member interacted directly with the Minnesota defendant was particularly significant in *Mooney*. *See id.*; *see also Shutts*, 472 U.S. at 822 ("When considering fairness . . . an important element is the expectation of the parties.").

None of those facts is present here. As noted, only one of six defendants is in Minnesota

[152] Both a constitutional analysis and a choice-of-law analysis are required because it is well settled that "[s]tate consumer-protection laws vary considerably, and courts must respect th[o]se differences rather than apply one state's law to sales in other states with different rules." *In re St. Jude*, 425 F.3d at 1120 (quoting *In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1018 (7th Cir. 2002)).

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

and Plaintiffs do not allege that it was the nerve center setting Syngenta's policies. Instead, they affirmatively allege that Syngenta AG, the Swiss parent, exercises an "unusually high degree of control" over *all* the subsidiaries, who "do not function independently but under the Syngenta AG umbrella." Non-Class Compl. ¶¶ 19, 21. While Syngenta's U.S. corn seed business is based in Minnesota, the Complaint itself alleges that it was the Swiss parent that directed decisions about commercializing Viptera. *Id.* ¶ 18. Those allegations, taken as true for purposes of this motion, establish that decisions relevant to Plaintiffs' claims did not emanate from Minnesota.

The supposedly deceptive statements on which Plaintiffs rely also confirm a lack of significant contacts with Minnesota. For example, Plaintiffs point to the statement of Syngenta AG CEO Michael Mack in an earnings call, but Mack participated in that call from *Switzerland* as CEO of a *Swiss* company.[153] Similarly, Plaintiffs complain of misleading statements in Syngenta's Deregulation Petition. But that was prepared and filed by Syngenta Biotechnology, Inc., a Delaware corporation with its principal place of business in North Carolina, and it was submitted to a government agency office in Maryland and made public on a government website.[154] Addressing parallel allegations, the MDL Court correctly concluded that they failed to allege any statements that were "made in or distributed from Minnesota." MDL Order 100.

Non-Minnesota Plaintiffs, moreover, had no contacts with Minnesota. They complain about statements primarily made outside Minnesota to others outside Minnesota, that supposedly encouraged farmers primarily outside Minnesota to buy more Viptera, which allegedly harmed Plaintiffs outside Minnesota when the price of corn dropped. Nothing in that chain of events could create an "expectation" that Minnesota law might apply to *all* non-residents' consumer

[153] *See* 2012 Q1 Trading Statement (Apr. 18, 2012) ("Basel, Switzerland"), http://www.syngenta.com/global/corporate/en/news-center/events-and-presentations/Pages/1stquarter2012.aspx.
[154] *See* Syngenta Biotechnology, Inc., Petition for Determination of Nonregulated Status for Insect-Resistant MIR162 Maize (Aug. 31, 2007), http://www.aphis.usda.gov/brs/aphisdocs/07_25301p.pdf.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

complaints against all six Syngenta Defendants. *Shutts*, 472 U.S. at 822.

Given Plaintiffs' failure to describe any significant aggregation of contacts with Minnesota, their "allegations are not enough to invoke Minnesota law" under the Due Process and Full Faith and Credit Clauses. *Murphy v. DirecTV, Inc.*, No. 2:01-cv-06465, 2011 WL 3325891, at *3-4 (C.D. Cal. Feb. 11, 2011).

Third, it follows *a fortiori* that Minnesota law also cannot be applied under Minnesota's own choice-of-law principles. *See Jepson v. Gen. Cas. Comp. of Wis.*, 513 N.W.2d 467, 469 (Minn. 1994) (preliminary step in a choice-of-law analysis is to "consider whether the law of both states can be constitutionally applied"). As explained above, *see supra* pp. 15-16, Minnesota's choice-of-law rules would not point to Minnesota law for non-residents' claims because the activities giving rise to their claims did not take place primarily in Minnesota, the alleged injuries did not occur in Minnesota, and each Plaintiff's home State will have a strong interest in applying its own laws to its residents' claims.[155] *See Jepson*, 513 N.W.2d at 470-71.

2. MUTPA And MCFA Do Not Apply Because The Direct Purchasers Of Syngenta's Goods Are Merchants.

Plaintiffs cannot assert claims under Minnesota's consumer protection laws because the direct purchasers of Syngenta's goods are *merchants*, not consumers. "[T]he Minnesota consumer protection statutes do not apply to a merchant." *Marvin Lumber & Cedar Co. v. PPG Indus., Inc.*, 401 F.3d 901, 920 (8th Cir. 2005).[156] Merchants are defined as "entities that deal in goods of the kind or otherwise by occupation hold themselves out as having knowledge or skill

[155] *See Pilgrim v. Universal Health Card, LLC*, 660 F.3d 943, 946 (6th Cir. 2011) ("[T]he state with the strongest interest in [consumer protection lawsuits] is the State where the consumers—the residents protected by *its consumer*-protection laws—are harmed by it.") (emphasis in original); *cf. Tyler v. Alltel Corp.*, 265 F.R.D. 415, 427 (E.D. Ark. 2010) ("States tend to be jealous of their right to protect their own citizens in consumer transactions.").

[156] *See also Securian Fin. Grp., Inc. v. Wells Fargo Bank N.A.*, Civ. No. 11-2957 (DWF/HB), 2014 WL 6911100, at *6 (D. Minn. Dec. 8, 2014) ("Courts examining MCFA and MUTPA claims have indeed distinguished between 'merchants' and consumers.").

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

peculiar to the practices or goods involved," *Solvay Pharm., Inc. v. Global Pharm.*, 298 F. Supp. 2d 880, 887 (D. Minn. 2004), or entities who purchase a good "for the purpose of reselling it," *Ly v. Nystrom*, 615 N.W.2d 302, 310 (Minn. 2000). The relevant question is whether the direct purchaser of the defendant's products is a merchant in the context of the goods that were sold. *See Pugh v. Westreich*, No. A04-657, 2005 WL 14922, at *3 (Minn. Ct. App. Jan. 4, 2005).

Here, the direct purchasers of Syngenta's goods (corn seed) plainly qualify as merchants. Dealers and distributors, by definition, purchase seed to resell it and thus are merchants. *See Solvay*, 298 F. Supp. 2d at 887 ("wholesalers" and "distributors" are merchants "as they are entities that deal in goods of the kind"). Similarly, the growers to whom Syngenta sells directly are merchants because they "deal in goods of the kind" by purchasing the corn seed, growing the corn, and selling the corn to grain elevators and other buyers. Because the direct consumers of Syngenta's seeds qualify as merchants, it is black-letter Minnesota law that Plaintiffs' claims under the MUTPA and MCFA must be dismissed.[157] *See, e.g.*, *Pugh*, 2005 WL 14922, at *3.

3. MUTPA And MCFA Claims Fail For Lack Of Public Benefit.

Plaintiffs' MUTPA and MCFA claims also fail because they will not "benefit[] the public." *Ly*, 615 N.W.2d at 314 ("[T]he Private AG Statute applies only to those claimants who demonstrate that their cause of action benefits the public."). A public benefit will be found only "when the plaintiff seeks relief primarily aimed at altering the defendant's conduct," *Buetow v. A.L.S. Enters., Inc.*, 888 F. Supp. 2d 956, 961 (D. Minn. 2012), which typically requires seeking injunctive relief and always requires the relief to be forward-looking. *See id.*

---

[157] The MDL Court declined to decide this question as a matter of law, *see* MDL Order 97, even though Minnesota courts have made similar merchant determinations on the pleadings, *see, e.g.*, *Pugh*, 2005 WL 14922, at *3. Such a decision is especially appropriate here because there can be little doubt that corn producers "deal in goods of the kind" when it comes to corn seed. *See Tisdell v. ValAdCo*, Nos. C0-01-2054 *et al.*, 2002 WL 31368336, at *10 (Minn. Ct. App. Oct. 16, 2002) ("operators of large commercial farms" are not consumers); *Huntting Elevator Co. v. Biwer*, No. C9-98-548, 1998 WL 747170, at *2 (Minn. Ct. App. Oct. 27, 1998) (corn "producer acted as a merchant in selling his grain products to the grain elevator").

27-CV-15-33785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Plaintiffs fail that test because they seek solely "compensatory damages and attorneys' fees."[158] Class Compl. ¶ 326; Non-Class Compl. ¶ 347. That relief would benefit Plaintiffs, but not the public. *See Zutz v. Case Corp.*, No. Civ. 02-1776 (PAM/RLE), 2003 WL 22848943, at *4 (D. Minn. Nov. 21, 2003) ("Plaintiffs seek only compensatory damages. Where recovery is sought for the exclusive benefit of the plaintiff, there is no public benefit."). Nor can Plaintiffs claim this relief would put a stop to ongoing misrepresentations, because they have not alleged any ongoing misrepresentations. *Cf. Collins v. Minn. Sch. of Bus., Inc.*, 636 N.W.2d 816, 820 (Minn. Ct. App. 2001). The only misrepresentations Plaintiffs allege concern the timing of China's approval, *see, e.g.*, Class Compl. ¶ 305, and China has since approved MIR162. As the MDL Court correctly recognized, claims based on these alleged misrepresentations "would not serve a public benefit and are therefore subject to dismissal." MDL Order 95.

4. MDTPA Does Not Apply To Claims For Compensation For Past Harms.

Plaintiffs' MDPTA claim must be dismissed because MDPTA "provides only injunctive relief" "limited to those persons 'likely to be damaged by a deceptive trade practice.'" *Dennis Simmons, D.D.S., P.A. v. Modern Aero, Inc.*, 603 N.W.2d 336, 339 (Minn. Ct. App. 1999) (quoting Minn. Stat. § 325D.45, subd. 1). MDPTA claims fail where, as here, there is no claim that future deceptive acts will cause *future harm*. *See, e.g., Four D, Inc. v. Duthland Plastics Corp.*, No. 01-cv-2073, 2002 WL 570655, at *4 (D. Minn. Apr. 15, 2002); *Damon v. Groteboer*, 937 F. Supp. 2d 1048, 1070 (D. Minn. 2013) ("The [M]DTPA provides relief from future damage, not past damage."). Plaintiffs fail to state a claim because their MDPTA allegations all refer to past conduct and harm. *See, e.g.*, Class Compl. ¶ 304 (alleging misrepresentations "*were* likely to cause and/or *did* cause confusion and mistake") (emphases added); *id.* ¶¶ 305-07

[158] Although Plaintiffs suggest "injunctive . . . relief *may* be available," Class Compl. ¶ 327, they do not specify what conduct they want enjoined nor do they mention injunctive relief in their requests for relief, *see id.* at 85-86.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

(alleging Syngenta made false misrepresentations concerning China's approval of Viptera, which was granted in 2014); *id.* ¶ 321 (alleging Syngenta's actions "*caused* a likelihood of confusion") (emphasis added). Moreover, Plaintiffs merely assert that "injunctive . . . relief *may* be available" without indicating what the Court should enjoin, *see, e.g.*, *id.* ¶ 327 (emphasis added), and do not mention an injunction in their requests for relief, *see id.* at 85. Because Plaintiffs fail to articulate any actual forward-looking relief they seek, their MDTPA claim must be dismissed.

B. Illinois Consumer Fraud And Deceptive Business Practices Act

As "non-consumer[s]" of Syngenta's products, Plaintiffs lack standing under the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") because they have not alleged a "consumer nexus." *Thrasher-Lyon v. Ill. Farmers Ins. Co.*, 861 F. Supp. 2d 898, 912 (N.D. Ill. 2012). A "consumer nexus" requires showing, among other things, "how defendant's particular [action] involved consumer protection concerns; and . . . how the requested relief would serve the interests of consumers." *Id.* (citation omitted). Plaintiffs cannot meet either requirement.

The term "consumer" in the ICFA means "any person who purchases . . . merchandise not for resale," Ill. Comp. Stat. 505/1(e), meaning "the ultimate buyers of the finished product," *Williams Elecs. Games, Inc. v. Garrity*, 366 F.3d 569, 579 (7th Cir. 2004). A corn farmer who purchases Viptera seed is not a consumer "because his only use of the purchased product is as an input into the making of a product that he sells." *Id.* Grain elevators, exporters, and others along the distribution chain are also not consumers because they purchase corn "for resale in the ordinary course of [their] trade or business." Ill. Comp. Stat. 505/1(e). Thus, Plaintiffs' theory that Syngenta's conduct lowered the overall price of corn falls outside the scope of the ICFA because it means that "the ultimate buyers" (*i.e.*, consumers of corn) paid *less* for corn than they would have absent Syngenta's actions. *See Speakers of Sport, Inc. v. ProServ, Inc.*, 178 F.3d 862, 868 (7th Cir. 1999) (rejecting ICFA claim because "allow[ing] the seller to obtain damages

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

. . . . when no consumer has been hurt is unlikely to advance the consumer interest").

Nor would Plaintiffs' requested relief serve consumers' interests. Plaintiffs seek damages on behalf of individual commercial corn growers and attorneys' fees. ¶¶ Non-Class Compl. ¶¶ 923-34. Because "none of these requests would benefit [consumers] in the least," Plaintiffs "do not have statutory standing to bring this claim." *Prescott v. Argen Corp.*, No. 13-cv-6147, 2014 WL 4638607, at *7 (N.D. Ill. Sept. 17, 2014).

The MDL Court erroneously held that corn farmers qualify as consumers of Syngenta's seeds. *See* MDL Order 107-08 (citing *Sluis v. Nudelman*, 34 N.E.2d 391 (Ill. 1941)). *Sluis* held that, under the tax statute at issue, seeds sold to farmers qualified as property transferred "for use or consumption and not for resale" because the farmer sold vegetables, not seeds. 34 N.E.2d at 392. But a more recent version of that tax statute clarified that when "property as an ingredient or constituent goes into and forms a part" of a product that is later sold, it qualifies as property transferred for resale. *People ex rel. Spiegel v. Lyons*, 115 N.E.2d 895, 898 (Ill. 1953). Under this version of the law, which more closely parallels the ICFA test for consumers,[159] the Illinois courts held that seeds sold to farmers who then sell their crop ***do*** qualify as property transferred for resale and are *not* transferred "for use or consumption." *See id.* at 898.

C. Nebraska Consumer Protection Act

Plaintiffs have failed to plead a violation of the NCPA, which "expressly exempts certain activities of heavily regulated businesses." *Hage v. Gen. Serv. Bureau*, 306 F. Supp. 2d 883, 889-90 (D. Neb. 2003). The NCPA exemption requires that the "*actor* comes within the jurisdiction of some regulatory body" and that the act "was at least indirectly approved." *Wrede v. Exch. Bank of Gibbon*, 531 N.W.2d 523, 529-30 (Neb. 1995) (emphasis added). This

[159] Under the ICFA, "the business purchaser is not a consumer, because the only use of his purchased product is as an input into the making of a product that he sells." *Williams Elecs. Games*, 366 F.3d at 579.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

exception "is broader than federal preemption, and applies to all conduct regulated by federal agencies." *In re ConAgra Foods Inc.*, 908 F. Supp. 2d 1090, 1104 (C.D. Cal. 2012).

Syngenta's GM seed traits come under the jurisdiction of several federal agencies, including the USDA. Non-Class Compl. ¶ 47. And as the Complaints make clear, "[t]he USDA approved Viptera for sale in 2010" and Duracade in 2013. Non-Class Compl. 2, 4; Class Compl. 1-3; *see In re Genetically Modified Rice Litig.*, 666 F. Supp. 2d at 1015 n.2 (USDA's deregulation of a GMO "allow[s] it to be sold commercially").[160] In addition, the USDA considered and rejected alternatives to full deregulation, including partial deregulation that would impose geographic restrictions on where the products could be planted and isolation distance requirements for Duracade.[161] Syngenta's conduct therefore falls within the NCPA's exemption.[162] *See ConAgra*, 908 F. Supp. 2d at 1104 (food mislabeling claim fell within NCPA exemption because FDA has regulatory authority over food labels).

D. North Carolina Unfair And Deceptive Trade Practices Act

Plaintiffs also fail to establish standing under NCUTPA. That statute "was enacted to protect consumers" and only "extend[s] to businesses in appropriate contexts." *Williams v. Charlotte Copy Data, Inc.*, 591 S.E.2d 598, at *2 (N.C. Ct. App. 2004). Namely, "one business is permitted to assert an [NCUTPA] claim against another business only when the businesses are competitors (or potential competitors) or are engaged in commercial dealings with each other" or

---

[160] *See also* USDA, *Nat'l Envt'l Policy Act Decision and Finding of No Significant Impact, MIR162 Maize*, 5 (April 12, 2010) (recognizing that deregulation would allow commercialization), http://www.aphis.usda.gov/brs/aphisdocs2/07_25301p_com.pdf.

[161] *See* USDA, *Nat'l Envt'l Policy Act Decision and Finding of No Significant Impact, MIR162 Maize*, 5 (April 9, 2010), http://www.aphis.usda.gov/brs/aphisdocs2/07_25301p_com.pdf; USDA, *Final Environmental Assessment, Syngenta Company Petition for Determination of Nonregulated Status of SYN-05307-1 Rootworm Resistant Corn*, 40-41 (Jan. 2013), http://www.aphis.usda.gov/brs/aphisdocs/10_33601p_fea.pdf.

[162] The MDL Court did not consider the fact that the USDA not only approved Viptera and Duracade for sale, but also chose not to impose requirements on the manner of sale and growing, such as geographic restrictions or isolation distances. *See* MDL Order 110. This decision by the USDA suffices as the "indirect[] approv[al]" necessary for Syngenta's conduct to fit into the NCPA's exemption. *Wrede*, 531 N.W.2d at 530.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

the conduct giving rise to the cause of action has a negative effect on the consuming public. *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 194 F.3d 505, 520 (4th Cir. 1999); *see Williams*, 2004 WL 193887, at *3; *Pleasant Valley Promenade v. Lechmere, Inc.*, 464 S.E.2d 47, 54 (N.C. Ct. App. 1995). The MDL Court mistakenly held that North Carolina law does not impose such restrictions. *See* MDL Order 111. But less than a month later, a federal court in North Carolina, drawing on multiple North Carolina decisions, reaffirmed exactly the restrictions Syngenta has explained: "When there is no business, competitive, or consumer relationship between two business entities a business tort only 'affects commerce' where the defendant's actions have a negative effect on the consuming public." *Exclaim Mktg., LLC v. DirecTV, LLC*, ___ F. Supp. 2d ___, 2015 WL 5773586, at *6 (E.D.N.C. Sept. 30, 2015).

Syngenta (a company that sells seed) does not compete with the Producers or Non-Producers, and Plaintiffs do not allege that they are engaged in commercial dealings with Syngenta. Moreover, Plaintiffs have not alleged that Syngenta's actions *harmed* the consuming public; instead, under their theory, Syngenta's actions produced lower corn prices for consumers. *See Exclaim Mktg.*, 2015 WL 5773586, at *7 (no harm to consuming public where defendant's actions "had a net positive effect on plaintiff's clients"). "The [NCUTPA], therefore, cannot be used here because there is no competitive or business relationship that can be policed for the benefit of the consuming public." *Food Lion*, 194 F.3d at 520.

Even if Plaintiffs had standing under the NCPA, their claims must be dismissed to the extent they are based on alleged misrepresentations because they do not allege reliance. *See Tucker v. Boulevard At Piper Glen LLC*, 564 S.E.2d 248, 251 (N.C. Ct. App. 2002). The MDL Court dismissed claims under the NCUTPA on exactly this basis. *See* MDL Order 115.

E. North Dakota Unlawful Sales Or Advertising Practices Act

Plaintiffs have not stated a claim under North Dakota's Unlawful Sales Or Advertising

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Practices Act because that law is limited to "deceptive or fraudulent acts [made] 'in connection with the sale' of merchandise." *Benz Farm, LLP v. Cavendish Farms, Inc.*, 803 N.W.2d 818, 825 (N.D. 2011). None of the misrepresentations alleged here was made in connection with the sale of merchandise. The Deregulation Petition was submitted to a government agency three years before any Viptera sales. *See* Non-Class Compl. ¶¶ 55-56. Plaintiffs also erroneously rely on (1) statements made to investors (not consumers) in an earnings call, *id.* ¶ 184; (2) a biosafety certificate request form that Producers would have no reason to see (if ever) until *after* they had purchased Syngenta's product,[163] *id.* ¶ 188; and (3) a fact sheet targeted to Producers already "experiencing the advantages of Agrisure Viptera,"[164] *id.* ¶ 190. These statements cannot support a claim because they "were not made to [consumers], nor were they made 'in connection with the sale or advertisement of any merchandise.'" *Thimjon Farms P'ship v. First Int'l Bank & Trust*, 837 N.W.2d 327, 338 (N.D. 2013).[165]

F. South Dakota Consumer Protection Act

Plaintiffs' SDCPA claims must be dismissed because Plaintiffs have failed to plead reliance. *See Nygaard v. Sioux Valley Hosps. & Health Sys.*, 731 N.W.2d 184, 198 (S.D. 2007). Plaintiffs do not allege that they heard or received the alleged misrepresentations or that the alleged misrepresentations caused them to act. Without such allegations, the SDCPA claims fail as a matter of law. *See Nygaard*, 731 N.W.2d at 198; *Rainbow Play Sys., Inc. v. Backyard Adventure, Inc.*, 2009 WL 3150984, at *7 (D.S.D. Sept. 28, 2009).

---

[163] The Bio-Safety Request Form's stated purpose is "to assist Recipient in obtaining required authorization for shipments containing [Syngenta's] Corn Product(s) into China," http://www3.syngenta.com/country/us/en/agriculture/Stewardship/Documents/Biosafety-Certificate-Request-Form.pdf.

[164] Plant with Confidence, http://www.syngenta-us.com/viptera_exports/images/Agrisure-Viptera-Fact-Sheet.pdf.

[165] With the exception of the fact sheet, the MDL Court correctly held that none of these statements was made in connection with the sale of merchandise for purposes of the North Dakota statute. *See* MDL Order 115-16. With respect to the fact sheet, the MDL Court erred. On its face, that document is nothing more than an update to growers who had *already purchased* Viptera to instill confidence "in your option for marketing and selling your grain." Plant with Confidence, http://www.syngenta-us.com/viptera_exports/images/Agrisure-Viptera-Fact-Sheet.pdf.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

G. Texas Deceptive Trade Practices Act

The Producer Plaintiffs lack standing for a TDTPA claim because they do not qualify as consumers. *See, e.g.*, *AdvoCare Int'l, LP v. Ford*, No. 05-10-00590-CV, 2013 WL 505210, at *2 (Tex. App. Feb. 5, 2013). A "consumer" must have "sought or acquired goods or services by purchase or lease" ***and*** "the goods or services purchased or leased must form the basis of the complaint." *Id.* (citing *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 539 (Tex. 1981)). As Plaintiffs' allegations make clear, the Complaint is based on Syngenta's decision to commercialize Viptera, Non-Class Compl. 2-3, and the Producer Plaintiffs do not allege that they purchased that product.

Even if some Producer Plaintiffs had standing to bring a TDTPA claim, the TDTPA claims brought by all Plaintiffs must be dismissed because Plaintiffs failed to allege that they "relied on the misrepresentation to [their] detriment." *McLaughlin, Inc. v. Northstar Drilling Techs., Inc.*, 138 S.W.3d 24, 30 (Tex. App. 2004) (citing Tex. Bus. & Com. Code § 17.50(a)(1)). The Complaint does not allege that Plaintiffs received the misrepresentations, let alone relied on them. The claim thus fails as a matter of law. *See Bailey v. Smith*, No. 13-05-085-CV, 2006 WL 1360846, at *11 (Tex. App. May 18, 2006).

CONCLUSION

For the foregoing reasons, the First Amended Non-Class and First Amended Minnesota Class Action Master Complaints for Producers and Non-Producers should be dismissed with prejudice.

27-CV-15-23785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Dated: November 9, 2015

Respectfully submitted,

/s/ David T. Schultz

David T. Schultz (#169730)
D. Scott Aberson (#0387143)
MASLON LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone: 612-672-8200
Facsimile: 612-672-8397
david.schultz@maslon.com
scott.aberson@maslon.com

Michael D. Jones (*pro hac vice*)
Edwin John U (*pro hac vice*)
Patrick F. Philbin (*pro hac vice*)
Ragan Naresh (*pro hac vice*)
Patrick Haney (*pro hac vice*)
KIRKLAND & ELLIS LLP
Suite 1200
655 15th Street Northwest
Washington, DC 20005
Telephone: 202-879-5000
Facsimile: 202-879-5200
mjones@kirkland.com
edwin.u@kirkland.com
patrick.philbin@kirkland.com
ragan.naresh@kirkland.com
patrick.haney@kirkland.com

Counsel for Syngenta Corporation, Syngenta Crop Protection LLC, Syngenta Seeds, Inc., and Syngenta Biotechnology, Inc.

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

APPENDIX A:
FEDERAL AND STATE LEGISLATIVE PROPOSALS TO ADDRESS LIABILITY FOR GM CROPS

Jurisdiction	Year(s)	Legislation
Federal (U.S. Congress)	2002 2003 2005 2008 2010 2011	Genetically Engineered Organism Liability Act, H.R. 4816, 107th Cong. 2d (2002), H.R. 2919, 108th Cong. 1st (2003), H.R. 5271, 109th Cong. 2d (2005), H.R. 6637 § 203(a), 110th Cong. 2d (2008), H.R. 5579 § 203(a), 111 Cong. 2d (2010), H.R. 3555 § 203(a), 112th Cong. 1st (2011) (failed bills that would have made "biotech compan[ies] [] liable to any party injured by the release of a genetically engineered organism into the environment if that injury results from that genetic engineering")
California	2005	Assem. B. 984, 2005 Leg., Reg. Sess. (Cal. 2005) (eliminated bill provision that would have made "the manufacturer of a genetically engineered plant . . . liable to any producer, grain and seed cleaner, handler, or processor injured by the release of that plant into California")
Hawaii	2014	S.B. 2737 § 2, 27th Leg. Sess. (Haw. 2014) (bill that would have required GM manufacturer to provide certain minimum notice to purchasers of the "possible legal and environmental risks")
Massachusetts	2003	S.B. 1912 (Mass. 2003) (voted-down bill that would have held GMO manufacturers liable in tort for damages caused by use of their products)
	2001	S.B. 1789 (Mass. 2001) (similar)
Minnesota	2000	HF 3820, 81st Leg. (Minn. 2000) (failed bill to make manufacturers liable for "[a]ny transfer of genetic material from a growing crop of an agriculturally related GMO to a growing crop of nongenetically modified plant organisms, whether by cross pollination or other means" that results in "diminishe[d] value" of the crops)
Montana	2005	S.B. 218, 2005 Leg. Reg. Sess. (Mon. 2005) (failed proposal to make "manufacturer[s] liable for injury suffered by any party because of the release of genetically engineered wheat into Montana")

27-CV-15-3785
Filed in Fourth Judicial District Court
11/9/2015 8:39:52 PM
Hennepin County, MN

Jurisdiction	Year(s)	Legislation
Nebraska	2000	L.B. 959 § 3, 96th Leg., 2d Reg. Sess. (Neb. 2000) (failed bill that would have established liability for "[t]he transfer of a genetically engineered trait from a genetically engineered growing crop, by cross pollination or other means, to a growing crop which is not genetically engineered")
New York	2013	Assem. Bill 6509 § 1, 236th Leg. Sess. (N.Y. 2013) (failed bill that would have made "[a] manufacturer of genetically engineered plants, planting stocks, or seeds . . . liable to any person for any damages . . . due to cross-contamination caused by the manufacturer's products," including "market price reductions incurred by farmers resulting from loss of crop exports, including foreign and domestic markets")
North Dakota	2005	S.B. 2235, 2005 Leg. Reg. Sess. (N.D. 2005) (voted-down bill "to establish liability related to the planting of genetically engineered wheat")
Oregon	2013	H.B. 2736 § 3, 77th Leg. Assem. (Or. 2013) (failed bill that would have made GM manufacturers liable in "private nuisance if the release causes the presence of the plant on property owned or occupied by a person who did not intend for the plant to be present on the property")
Vermont	2006	S. 18, 2006 Leg., Reg. Sess. (Vt. 2006) (vetoed bill that would have allowed farmers to sue GMO seed manufacturers for economic damage caused by cross-contamination)
West Virginia	2013	H.B. 2207, 81st Reg. Sess. (W. Va. 2013) (failed bill that would have made a "biotech company [] liable to any party injured by the release of a genetically engineered organism into the environment if that injury results from that genetic engineering")

EXHIBIT 59

Electronically Served
12/1/2015 6:45:38 PM
Hennepin County, MN

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
CASE TYPE: Civil Other

In re Syngenta Litigation

This Document Relates to ALL ACTIONS

Court File No: 27-CV-15-3785
Judge: Thomas M. Sipkins

**PLAINTIFFS' MEMORANDUM OF LAW
IN OPPOSITION TO MOTION TO DISMISS**

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iv

INTRODUCTION 1

FACTS 2

I. Syngenta created the risk of harm to Plaintiffs 3

II. The harm to Plaintiffs was foreseen by Syngenta 5

III. Syngenta was fully capable of implementing legitimate stewardship and channeling 8

IV. Syngenta undertook stewardship obligations 8

V. Syngenta embarked on a campaign of false statements in commercializing Viptera 9

VI. Plaintiffs suffered both physical and economic harm 11

ARGUMENT 12

I. Legal standard 12

II. Minnesota law applies 13

A. The Non-Class Complaint alleges facts and asserts claims warranting application of Minnesota law 14

B. Minnesota's choice-of-law factors favor Minnesota law 16

C. Minnesota's consumer laws may be constitutionally applied to the claims of all Plaintiffs, regardless of location 18

D. Plaintiffs have alleged facts warranting application of Minnesota law to the common-law claims, regardless of each Plaintiff's residence 19

III. The economic loss doctrine does not bar Plaintiffs' claims 20

A. Syngenta misstates the ELD's narrow scope 21

B. The SELD applies in limited circumstances not present here 22

C. Applying the SELD would not serve the doctrine's underlying purposes 26

1. The contract-based policy rationale does not apply 26

2. The reasonable-limitations rationale is not served by applying the SELD 28

3. Special-relationship considerations do not warrant applying the SELD 30

D. Syngenta misreads the MDL Order 32

E. The relevant states would not apply the ELD here 34

F. The ELD does not bar Producer Plaintiffs' claims because they have adequately pled harm to property 55

G. The ELD does not bar Non-Producer Plaintiffs' claims 57

H. The ELD does not apply to claims seeking damages related to soybeans 62

IV. Syngenta owed a duty to Plaintiffs 64

A. Syngenta's conduct created the foreseeable risk of harm to Plaintiffs 64

B. Alternatively, Syngenta voluntarily undertook a duty 74

C. Foreseeability and public policy support finding a duty 78

1. Syngenta's cases are inapposite 78

2. This is not an exceptional case warranting a no-duty determination 81

3. Public policy should not be adjudicated absent a factual record 88

V. FIFRA does not preempt Plaintiffs' claims 89

VI. Plaintiffs' have adequately pled their duty to warn claims 90

VII. Plaintiffs sufficiently allege claims for tortious interference 93

A. Plaintiffs adequately allege business relationships that Syngenta harmed 94

A. Plaintiffs adequately allege injury 98

B. Plaintiffs sufficiently allege improper means or wrongful conduct 100

C. Plaintiffs adequately allege intent 103

VIII. Plaintiffs have adequately pled their consumer-protection claims 104

A. Minnesota Statutes sections 325D.13, 325D.44, and 325F.69 apply 104

B. This Court may constitutionally hear Non-Class Plaintiffs' MUTPA and MCFA claims against Syngenta 105

C. Syngenta cannot escape liability by mislabeling Plaintiffs as merchants 108

D. Plaintiffs have sufficiently pled a public benefit 109

CONCLUSION 122

TABLE OF AUTHORITIES

Page

Cases:

2314 Lincoln Park W. Condo. Ass'n v. Mann, Gin, Ebel & Frazier, Ltd.,
555 N.E.2d 346 (Ill. 1990) 37

AGFA Corp. v. Wagner Printing Co.,
No. 02 C 2400, 2002 WL 1559663 (N.D. Ill. July 10, 2002) 111

Aguilar v. RP MRP Wash. Harbour, L.L.C.,
98 A.3d 979 (D.C. 2014) 24

Air Prods. & Chems., Inc. v. Eaton Metal Prods. Co.,
272 F. Supp. 2d 482 (E.D. Pa. 2003) 24, 26, 31

Akers v. Levitt,
1992 WL 10288 (Ohio App. Jan. 27, 1992) 65

Al-Salehi v. I.N.S.,
47 F.3d 390 (10th Cir. 1995) 84

Allstate Ins. Co. v. Hague,
449 U.S. 302 (1981) 18

Alvarado v. Sersch,
662 N.W.2d 350 (Wis. 2003) 78

Am. Mut. Liab. Ins. Co. v. St. Paul Fire & Marine Ins. Co.,
179 N.W.2d 864 (Wis. 1970) 74, 76

Am. Oil Co. v. Mahin,
273 N.E.2d 818 (Ill. 1971) 112

Amstadt v. U.S. Brass Corp.,
919 S.W.2d 644 (Tex. 1996) 120

Annett Holdings, Inc. v. Kum & Go, L.C.,
801 N.W.2d 499 (Iowa 2011) 38

Ariola v. City of Stillwater,
No. A14-0181, 2014 WL 5419809 (Minn. App. Oct. 27, 2014) 68

Ashley Cnty. v. Pfizer, Inc.,
552 F.3d 659 (8th Cir. 2009) 70

Ashtabula River Corp. Group II v. Conrail, Inc.,
549 F. Supp. 2d 981 (N.D. Ohio 2008) 41, 56

B.L. Jet Sales, Inc. v. Alton Packaging Corp.,
724 S.W.2d 669 (Mo. App. 1987) 41

BC's Heating & Air & Sheet Metal Works, Inc. v. Vermeer Mfg. Co.,
Civil Action No. 2:11-CV-136-KS-MTP, 2012 U.S. Dist. LEXIS 24420 (S.D. Miss. Feb. 27, 2012) 52

Bahr v. Capella Univ.,
788 N.W.2d 76 (Minn. 2010) 12, 113, 116, 118

Bank One Milwaukee v. Sanchez,
783 N.E.2d 217 (Ill. App. Ct. 2003) 111

Baptist Health v. Murphy,
373 S.W.3d 269 (Ark. 2010) 95, 100

Barber Lines A/S v. M/V Donau Maru,
764 F.2d 50 (1st Cir. 1985) 21

Bates v. Dow Agrosciences LLC,
544 U.S. 431 (2005) 89

Bayer v. Crested Butte Mt. Resort, Inc.,
960 P.2d 70 (Colo. 1998) 72

Bayer CropScience LP v. Schafer,
385 S.W.3d 822 (Ark. 2011) 25, 46, 60

Beasley v. MacDonald Eng'g Co.,
249 So. 2d 844 (Ala. 1971) 74

Behrendt v. Gulf Underwriters Ins. Co.,
768 N.W.2d 568 (Wis. 2009) 66

Bell v. Hutsell,
955 N.E.2d 1099 (Ill. 2011) 69

Bell v. May Dep't Stores Co.,
6 S.W.3d 871 (Mo. 1999) 96, 102

Biscan v. Brown,
160 S.W.3d 462 (Tenn. 2005) 74

Bjerke v. Johnson,
742 N.W.2d 660 (Minn. 2007) 88

Blagg v. Fred Hunt Co., Inc.,
612 S.W.2d 321 (Ark. 1981) 46, 60

Blasing v. P.R.L. Hardenbergh Co.,
226 N.W.2d 110 (Minn. 1975) 72

Block v. Toyota Motor Corp.,
5 F. Supp. 3d 1047 (D. Minn. 2014) 92

Bond v. E.I. Du Pont De Nemours & Co.,
868 P.2d 1114 (Colo. App. 1993) 80

Bonds v. SAPA Extrusions, LLC,
135 So. 3d 799 (La. App. 2014) 78

Bonnell v. Cabo Azul Resort,
No. 2:08-CV-00910-PMP-LRL, 2010 U.S. Dist. LEXIS 89155 (D. Nev. Aug. 27, 2010) 18

Bowman v. Monsanto Co.,
133 S. Ct. 1761 (2013) 87

Brasscorp v. Highside Chems., Inc.,
No. CAUSE NO. 1:02CV84, 2007 U.S. Dist. LEXIS 41690 (S.D. Miss. June 7, 2007) 52

Brew City Redevelopment Group, LLC v. Ferchill Group,
724 N.W.2d 879 (Wis. 2006) 45

Bridgeway Commc'ns, Inc. v. Trio Broad., Inc.,
562 So. 2d 222 (Ala. 1990) 102

Briere v. Lathrop Co.,
258 N.E.2d 597 (Ohio 1970) 74

Briner Elec. Co. v. Sachs Elec. Co.,
680 S.W.2d 737 (Mo. App. 1984) 96

Brink v. Wabash Ry. Co.,
60 S.W. 1058 (Mo. 1901) 40

Brody v. Finch Univ. of Health Scis./The Chicago Med. Sch.,
698 N.E.2d 257 (Ill. 1998) 111

Brown v. CVS Pharm., L.L.C.,
982 F. Supp. 2d 793 (M.D. Tenn. 2013) 99

Bryant Manor, L.L.C. v. Bank of Am., N.A. (*In re Manor, L.L.C.*),
434 B.R. 629 (Bankr. D. Kan. 2010) 49

Burt v. Fumigation Serv. & Supply, Inc.,
926 F. Supp. 624 (W.D. Mich. 1996) 72

Bus. Men's Assurance Co. of Am. v. Graham,
891 S.W.2d 438 (Mo. App. 1984) 41

Bush v. Alabama Power Co.,
457 So. 2d 350 (Ala. 1984) 78

Butz v. Werner,
438 N.W.2d 509 (N.D. 1989) 88

CSX Transp., Inc. v. McBride,
131 S. Ct. 2630 (2011) 85

Calwell v. Hassan,
925 P.2d 422 (Kan. 1996) 69

Camden Cnty. Bd. of Chosen Freeholders v. Beretta,
273 F.3d 536 (3d Cir. 2001) 79

Cameron v. Terrell & Garrett, Inc.,
618 S.W.2d 535 (Tex. 1981) 120

Campbell v. Krupp,
961 N.E.2d 205 (Ohio App. 2011) 42

Capel v. Allstate Ins. Co.,
77 S.W.3d 533 (Ark. 2002) 74

Cargill, Inc. v. Prods. Eng'g Co.,
627 F. Supp. 1492 (D. Minn. 1986) 19

Carlson v. Roetzel & Andress,
Civil No. 3:07-cv-33, 2008 U.S. Dist. LEXIS 27084 (D.N.D. Mar. 27, 2008) 98

Carnes v. St. Paul Union Stockyards Co.,
205 N.W. 630 (Minn. 1925) 102

Carroll v. Action Enters.,
292 N.W.2d 34 (Neb. 1980) 74

Carvin v. Ark. Power & Light Co.,
No. 90-6055, 1991 WL 54048 (W.D. Ark. Nov. 26, 1991) 46

Chattanooga Rapid Transit Co. v. Walton,
58 S.W. 737 (Tenn. 1900) 72

Chisolm v. Stephens,
365 N.E.2d 80 (Ill. 1977) 77

Church & Dwight Co. v. Huey,
961 S.W.2d 560 (Tex. App. 1997) 121

City of Brainerd v. Brainerd Invs. P'ship,
827 N.W.2d 752 (Minn. 2013) 35

City of Cincinnati v. Beretta U.S.A. Corp.,
768 N.E.2d 1136 (Ohio 2002) 69

City of Gary ex rel. King v. Smith & Wesson,
801 N.E.2d 1222 (Ind. 2003) 79, 82

City of Lennox v. Mitek Indus.,
519 N.W.2d 330 (S.D. 1994) 55

City of Phila. v. Beretta U.S.A.,
126 F. Supp. 2d 882 (E.D. Pa. 2000) 79, 80

City of St. Louis v. Am. Tobacco Co.,
70 F. Supp. 2d 1008 (E.D. Mo. 1999) 40

Cmty. Title Co. v. Roosevelt Fed. Sav. & Loan,
796 S.W.2d 369 (Mo. 1990) 100

Collingwood v. Gen. Elec. Real Estate Equities, Inc.,
376 S.E.2d 425 (N.C. 1989) 72

Colonial Sav. Ass'n v. Taylor,
544 S.W.2d 116 (Tex. 1976) 74

Columbus Med. Servs. Org. v. Liberty Healthcare Corp.,
911 N.E.2d 85 (Ind. App. 2009) 98

Congregation of the Passion v. Touche Ross & Co.,
636 N.E.2d 503 (Ill. 1994) 37

Corley v. Gene Allen Air Servs., Inc.,
425 So. 2d 781 (La. App. 1982) 72

Corporex Dev. & Constr. Mgmt. v. Shook, Inc.,
835 N.E.2d 701 (Ohio 2005) 42

Cosmopolitan Homes, Inc. v. Weller,
663 P.2d 1041 (Colo. 1983) 47

Country Corner Food & Drug v. First State Bank & Tr. Co.,
966 S.W.2d 894 (Ark. 1998) 95

Crawford v. Dehl,
Civil Action No. 08-0463, 2008 U.S. Dist. LEXIS 68476 (W.D. La. Sept. 8, 2008) 61

Crawford v. Dehl,
Civil Action No. 08-0463, 2008 U.S. Dist. LEXIS 99133 (W.D. La. July 21, 2008) 61

Custom Underground, Inc. v. Mi-Tech Servs., Inc.,
No. 10-CV-222-JPS, 2011 WL 5008343 (E.D. Wis. Oct. 20, 2011) 45

DJ Coleman, Inc. v. Nufarm Ams., Inc.,
693 F. Supp. 2d 1055 (D.N.D. 2010) 117

Daanen & Janssen v. Cedarapids, Inc.,
216 Wis. 2d 395 (1998) 26, 29, 62

Danielson v. Nat'l Supply Co.,
670 N.W.2d 1 (Minn. App. 2003) 14

Dannix Painting, L.L.C. v. Sherwin-Williams Co.,
No. 4:12 CV 01640 CDP, 2012 U.S. Dist. LEXIS 170845 (E.D. Mo. Dec. 3, 2012) 41

Daugherty v. Fuller Eng'g Serv. Corp.,
615 N.E.2d 476 (Ind. App. 1993) 77

Davidson v. Univ. of N.Carolina at Chapel Hill,
543 S.E.2d 920 (N.C. App. 2001) 74

De Burkarte v. Louvar,
393 N.W.2d 131 (Iowa 1986) 74

DeVecchis v. City of Chi.,
2013 WL 6002084 (Ill. App. 2013) 88

Dinger ex rel. Dinger v. Strata Corp.,
607 N.W.2d 886 (N.D. 2000) 78

Dodson v. Dep't of Human Servs.,
703 N.W.2d 353 (S.D. 2005) 65

Doe ex rel. Doe v. Wright Sec. Servs.,
950 So. 2d 1076 (Miss. App. 2007) 65

Doe v. Brandon,
845 N.W.2d 174 (Minn. 2014) 67

Doe v. WTMJ, Inc.,
927 F. Supp. 1428 (D. Kan. 1996) 67

Domagala v. Rolland,
805 N.W.2d 14 (Minn. 2011) 63, 66, 67, 68, 69

Dornak v. Lafayette Gen. Hosp.,
399 So. 2d 168 (La. 1981) 74

Dr. Pepper Bottling Co. v. Bruner,
148 So. 2d 199 (Miss. 1962) 74

Drager v. Aluminum Indus.,
495 N.W.2d 879 (Minn. App. 1993) 67

Drake v. Dickey,
2 N.E.3d 30 (Ind. App. 2013) 102

Duffin v. Idaho Crop Improvement Ass'n,
895 P.2d 1195 (Idaho 1995) 30

E3 Biofuels-Mead, L.L.C. v. Skinner Tank Co.,
No. 8:06CV706, 2014 U.S. Dist. LEXIS 12302 (D. Neb. Jan. 30, 2014) 53

E. River S.S. Corp. v. Transamerica Delaval Inc.,
476 U.S. 858 (1986) 21, 26

Eischen v. Crystal Valley Coop.,
835 N.W.2d 629 (Minn. App. 2013) 70, 78

Elite Professionals, Inc. v. Carrier Corp.,
827 P.2d 1195 (Kan. App. 1992) 49

Ellis v. Hanson,
No. A11-101, 2011 WL 5829104 (Minn. App. Nov. 21, 2011) 118

Ellis-Don Constr., Inc. v. HKS, Inc.,
353 F. Supp. 2d 603 (M.D.N.C. 2004) 54

Energy, Inc. v. Audley Capital Advisors, L.L.P.,
No. 1131104, 2015 WL 731152 (Ala. Feb. 20, 2015) 94

England v. Fifth La. Levee Dist.,
167 So. 3d 1105 (La. App. 2015) 39, 40

Erickson's Flooring & Supply, Co. v. Tembec, Inc.,
2006 U.S. Dist. LEXIS 1459 (E.D. Mich. Jan. 18, 2006) 99

Estates of Morgan v. Fairfield Family Counseling Ctr.,
673 N.E.2d 1311 (Ohio 1997) 68

Ex parte BASF Constr. Chems., L.L.C.,
153 So. 3d 793 (Ala. 2013) 88

Exclaim Mktg., L.L.C. v. DirecTV, L.L.C.,
No. 5:11-CV-684-FL, 2015 WL 5773586 (E.D.N.C. Sept. 30, 2015) 115

Eysoldt v. Imaging,
957 N.E.2d 780 (Ohio App. 2011) 42

Farwell v. Keaton,
240 N.W.2d 217 (Mich. 1976) 65, 88

Fed. Ins. Co. v. GE,
2009 U.S. Dist. LEXIS 112931 (S.D. Miss. Dec. 3, 2009) 52

Felsher v. Univ. of Evansville,
755 N.E.2d 589 (Ind. 2001) 94

Fireman's Fund Ins. Co. v. SEC Donohue, Inc.,
679 N.E.2d 1197 (Ill. 1997) 32

First Nat'l Bank of Henning v. Olson,
246 Minn. 27, 74 N.W.2d 123 (1955) 13

Flenniken v. Longview Bank & Tr. Co.,
661 S.W.2d 705 (Tex. 1983) 120

Food Lion, Inc. v. Capital Cities/ABC, Inc.,
194 F.3d 505 (4th Cir. 1999) 114

Forever Green Ath. Fields, Inc. v. Lasiter Constr., Inc.,
384 S.W.3d 540 (Ark. App. 2011) 95

Forster v. R.J. Reynolds Tobacco Co.,
437 N.W.2d 655 (Minn. 1989) 92

Frey v. Montgomery Ward & Co.,
258 N.W.2d 782 (Minn. 1977) 89

Fussell v. N.C. Farm Bureau Mut. Ins. Co.,
695 S.E.2d 437 (N.C. 2010) 78

Gardner v. Brillion Iron Works, Inc.,
2014 WL 639960 (D. Minn. Feb. 19, 2014) 89

Gardner v. First Am. Title Ins. Co.,
296 F. Supp. 2d 1011 (D. Minn. 2003) 110

Giddings & Lewis, Inc. v. Indus. Risk Insurers,
348 S.W.3d 729 (Ky. 2011) 50

Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc.,
844 N.W.2d 210 (Minn. 2014) 93, 98, 101

Giggers v. Memphis Hous. Auth.,
277 S.W.3d 359 (Tenn. 2009) 78

Giles v. GMAC,
494 F.3d 865 (9th Cir. 2007) 21, 26

Ginapp v. City of Bellevue,
809 N.W.2d 487 (Neb. 2012) 69

Glorvigen v. Cirrus Design Corp.,
816 N.W.2d 572 (Minn. 2012) 72, 74, 76, 82

Glynos v. Jagoda,
819 P.2d 1202 (Kan. 1991) 72

Golden Spread Council, Inc. # 562 of the BSA v. Akins,
926 S.W.2d 287 (Tex. 1996) 78

Golf Sci. Consultants, Inc. v. Cheng,
No. No.: 3:07-CV-152, 2009 U.S. Dist. LEXIS 37721 (E.D. Tenn. May 4, 2009) 94, 99

Gonzalez v. Sessom,
137 P.3d 1245 (Okla. Civ. App. 2006) 96

Gray v. Badger Mining Corp.,
676 N.W.2d 268 (Minn. 2004) 89, 90

Greenberg v. Perkins,
845 P.2d 530 (Colo. 1993) 64

Greenburg v. Cure,
2013 WL 1767792 (D. Kan. Apr. 24, 2013) 64

Group Health Plan, Inc. v. Philip Morris, Inc.
621 N.W.2d 2 (Minn. 2001) 106

Gruhlke v. Sioux Empire Fed. Credit Union,
756 N.W.2d 399 (S.D. 2008) 95

Grynberg v. Questar Pipeline Co.,
70 P.3d 1 (Utah 2003) 22

Gunkel v. Renovations, Inc.,
822 N.E.2d 150 (Ind. 2005) 47

Gutierrez v. Eckert Farm Supply, Inc.,
No. C5-02-1900, 2003 WL 21500161 (Minn. App. July 1, 2003) 70

H Enters. v. Gen. Elec. Capital Corp.,
833 F. Supp. 1405 (D. Minn. 1993) 16, 19

Hage v. Gen. Serv. Bureau,
306 F. Supp. 2d 883 (D. Neb. 2003) 113

Ham v. Swift Transp. Co.,
694 F. Supp. 2d 915 (W.D. Tenn. 2010) 43

Hamilton v. Beretta U.S.A. Corp.,
750 N.E.2d 1055 (N.Y. 2001) 79

Hansen v. Scott,
645 N.W.2d 223 (N.D. 2002) 65

Hatleberg v. Norwest Bank Wis.,
700 N.W.2d 15 (Wis. 2005) 75

Hayes v. N. Hills Gen. Hosp.,
590 N.W.2d 243 (S.D. 1999) 96

Hegna v. E.I. Du Pont de Nemours & Co.,
806 F. Supp. 822 (D. Minn. 1992) 82

Heigle v. Miller,
965 S.W.2d 116 (Ark. 1998) 88

Hesse v. McClintic,
176 P.3d 759 (Colo. 2008) 71

Hill v. Wilson,
224 S.W.2d 797 (Ark. 1949) 64

Hoffmann v. Wis. Elec. Power Co.,
664 N.W.2d 55 (Wis. 2003) 72, 73

Home Sav. Asso. v. Guerra,
733 S.W.2d 134 (Tex. 1987) 120

Hooks SuperX v. McLaughlin,
642 N.E.2d 514 (Ind. 1994) 78

Hoover's Dairy, Inc. v. Mid-Am. Dairymen, Inc./Special Prods., Inc.,
700 S.W.2d 426 (Mo. 1985) 74

Hospira Inc. v. AlphaGary Corp.,
671 S.E.2d 7 (N.C. App. 2009) 53

Idar v. Cooper Tire & Rubber Co.,
2011 WL 2412613 (S.D. Tex. June 6, 2011) 72

Ill. Cent. R.R. v. Brent,
133 So. 3d 760 (Miss. 2013) 72

In re Chi. Flood Litig.,
680 N.E.2d 265 (Ill. 1997) 28, 36

In re Genetically Modified Rice Litig.,
2011 WL 5024548 (E.D. Mo. Oct. 21, 2011) 25, 41, 61, 81

In re Lutheran Bhd. Variable Ins. Prods. Co. Sales Practices Litig.,
201 F.R.D. 456 (D. Minn. 2001) 106

In re Lutheran Bhd. Variable Ins. Prods. Co.,
2004 U.S. Dist. LEXIS 7789 (D. Minn. Apr. 28, 2004) 15, 18

In re Porsche Cars N. Am., Inc. Plastic Coolant Tubes Prods. Liab. Litig.,
880 F. Supp. 2d 801 (S.D. Ohio 2012) 121

In re Starlink Corn Prods. Liab. Litig.,
212 F. Supp. 2d 828 (N.D. Ill. 2002) 25, 81

In re St. Jude Med. Inc.,
425 F.3d 1116 (8th Cir. 2005) 106

In re TMJ Implants Prods. Liab. Litig.,
872 F. Supp. 1019 (D. Minn. 1995) 91

In re Target Corp. Customer Data Sec. Breach Litig.,
309 F.R.D. 482 (D. Minn. 2015) 18

Indianapolis-Marion Cty. Pub. Library v. Charlier Clark & Linard, P.C.,
929 N.E.2d 722 (Ind. 2010) 47

Ins. Co. of N. Am. v. Cease Elec. Co.,
688 N.W.2d 462 (Wis. 2004) 45

J'Aire Corp. v. Gregory,
598 P.2d 60 (Cal. 1979) 31

J.A.H. by R.M.H ex rel. R.M.H. v. Wadle & Assocs.,
589 N.W.2d 256 (Iowa 1999) 80

J.M. Westall & Co. v. Windswept View of Asheville, Inc.,
387 S.E.2d 67 (N.C. App. 1990) 115

Janis v. Nash Finch Co.,
780 N.W.2d 497 (S.D. 2010) 78

Jefferson Cty. Sch. Dist. v. Justus,
725 P.2d 767 (Colo. 1986) 74

Joyce v. M & M Gas Co.,
672 P.2d 1172 (Okla. 1983) 69

Kantel Commc'ns v. Casey,
865 S.W.2d 685 (Mo. App. 1993) 98

Karas v. Strevell,
884 N.E.2d 122 (Ill. 2008) 64

Kassis v. Perronne,
209 So. 2d 444 (Miss. 1968) 77

Kennedy v. Sale,
689 S.W.2d 890 (Tex. 1985) 120

Kersey v. Harbin,
591 S.W.2d 745 (Mo. App. 1979) 72

Keyes v. Amundson,
391 N.W.2d 602 (N.D. 1986) 72

Kidd v. Bass Hotels & Resorts, Inc.,
136 F. Supp. 2d 965 (E.D. Ark. 2000) 94

Kirk v. Michael Reese Hosp. & Med. Center,
513 N.E.2d 387 (Ill. 1987) 80

Knox v. Calcasieu Par. Police Jury,
900 So. 2d 1128 (La. App. 2005) 65

Kreisers Inc. v. First Dakota Title Ltd.,
852 N.W.2d 413 (S.D. 2014) 55

LAN/STV v. Martin K. Eby Constr. Co.,
435 S.W.3d 234 (Tex. 2014) 43, 44

La. ex rel. Guste v. M/V Testbank,
752 F.2d 1019 (5th Cir. 1985) 23, 29, 57, 62

Ladd Landing, L.L.C. v. TVA,
874 F. Supp. 2d 727 (E.D. Tenn. 2012) 42, 43

Lavergne v. America's Pizza Co.,
838 So. 2d 845 (La. App. 2003) 61

Leno v. K & L Homes, Inc.,
803 N.W.2d 543 (N.D. 2011) 54

Leonard v. Dorsey & Whitney L.L.P.,
553 F.3d 609 (8th Cir. 2009) 22, 54

Leppke v. Segura,
632 P.2d 1057 (Colo. App. 1981) 70

Lesiak v. Cent. Valley Ag Coop.,
808 N.W.2d 67 (Neb. 2012) 53

Lincoln Gen. Ins. Co. v. Det. Diesel Corp.,
293 S.W.3d 487 (Tenn. 2009) 43

Little Rock Land Co. v. Raper,
433 S.W.2d 836 (Ark. 1968) 72

Lloyd Wood Coal Co. v. Clark Equip. Co.,
543 So. 2d 671 (Ala. 1989) 46

Long Motor Corp. v. SM & P Util. Res., Inc.,
214 P.3d 707 (Kan. App. 2009) 50

Lopez v. Three Rivers Elec. Coop.,
26 S.W.3d 151 (Mo. 2000) 78

Lord v. Customized Consulting Specialty, Inc.,
643 S.E.2d 28 (N.C. App. 2007) 53

Louisville Cooperage Co. v. Lawrence,
230 S.W.2d 103 (Ky. 1950) 74

Lowery v. Echostar Satellite Corp.,
160 P.3d 959 (Okla. 2007) 65

Ludwikoski v. Kurotsu,
840 F. Supp. 826 (D. Kan. 1993) 71, 72

Ly v. Nystrom,
615 N.W.2d 302 (Minn. 2000) 108, 109

Lyle v. Mladinich,
584 So. 2d 397 (Miss. 1991) 78

Lyndon Prop. Ins. Co. v. Duke Levy & Assocs.,
475 F.3d 268 (5th Cir. 2007) 52

Martens v. Minn. Mining & Mfg.,
616 N.W.2d 732 (Minn. 2000) 12

Maw Enters. v. City of Marksville,
149 So. 3d 210 (La. 2014) 39

McKellips v. St. Francis Hosp.,
741 P.2d 467 (Okla. 1987) 74

McNeill v. Sec. Benefit Life Ins. Co.,
28 F.3d 891 (8th Cir. 1994) 98

McRunnel v. Batco Mfg.,
917 F. Supp. 2d 946 (D. Minn. 2013) 90, 93

Medtronic, Inc. v. Adv. Bionics Corp.,
630 N.W.2d 438 (Minn. App. 2001) 17

Metro. Gas Repair Serv., Inc. v. Kulik,
621 P.2d 313 (Colo. 1980) 47

Midwest ex rel. English v. Harpole,
293 S.W.3d 770 (Tex. App. 2009) 66

Midwest Knitting Mills v. United States,
950 F.2d 1295 (7th Cir. 1991) 44

Mile Hi Concrete, Inc. v. Matz,
842 P.2d 198 (Colo. 1992) 88

Mine Workers v. Pennington,
381 U.S. 657 (1965) 76

Miss. Phosphates Corp. v. Furnace & Tube Serv., Inc.,
2008 U.S. Dist. LEXIS 11294 (S.D. Miss. Feb. 1, 2008) 52

Mooney v. Allianz Life Ins. Co.,
244 F.R.D. 531 (D. Minn. 2007) 15, 16, 17, 18, 105, 106

Moore v. Coachmen Indus.,
499 S.E.2d 772 (N.C. App. 1998) 54

Moorhead Econ. Dev. Auth. v. Anda,
789 N.W.2d 860 (Minn. 2010) 77

Morton v. Merrillville Toyota, Inc.,
562 N.E.2d 781 (Ind. App. 1990) 48

Mozingo by Thomas v. Pitt Cty. Mem'l Hosp. Inc.,
400 S.E.2d 747 (N.C. App. 1991) 88

Nakanishi v. Foster,
393 P.2d 635 (Wash. 1964) 81

N. Ind. Pub. Serv. Co. v. Sell,
597 N.E.2d 329 (Ind. App. 1992) 72

N. States Power Co. v. Franklin,
265 Minn. 391 (1963) 13

NS Trans. Brokerage Corp. v. Louisville Sealcoat Ventures, L.L.C.,
, 2015 WL 1020598 (W.D. Ky. Mar. 9, 2015) 50

Nagel v. Northern Indiana Public Serv. Co.,
26 N.E.3d 30 (Ind. App. 2015) 88

Neb. Innkeepers, Inc. v. Pittsburgh-Des Moines Corp.,
345 N.W.2d 124 (Iowa 1984) 23, 38

Nelson v. Union Wire Rope Corp.,
199 N.E.2d 769 (Ill. 1964) 74, 77

Nichols v. Coast Distrib. Sys.,
621 N.E.2d 738 (Ohio App. 1993) 72

Niemeyer v. U.S. Fid. & Guar. Co.,
789 P.2d 1318 (Okla. 1990) 98

Nodak Mut. Ins. Co. v. Am. Family Mut. Ins. Co.,
604 N.W.2d 91 (Minn. 2000) 13, 14, 17

Northfield Ins. Co. v. St. Paul Surplus Lines Ins. Co.,
545 N.W.2d 57 (Minn. App. 1996) 75

Nygaard v. Sioux Valley Hospitals & Health Sys.,
731 N.W.2d 184 (S.D. 2007) 119

Old S. Home Co. v. Keystone Realty Group,
233 F. Supp. 2d 734 (M.D.N.C. 2002) 116, 117

Olson v. Push, Inc.,
2014 WL 4097040 (D. Minn. Aug. 19, 2014) 107

Ortiz v. Collins,
203 S.W.3d 414 (Tex. App. 2006) 120

Otis Eng'g Corp. v. Clark,
668 S.W.2d 307 (Tex. 1983) 69

Overnite Transp. Co. v. Teamsters Local Union No. 480,
2004 Tenn. App. LEXIS 139 (Tenn. App. Feb. 27, 2004) 94

Overturff v. Read,
442 S.W.3d 862 (Ark. App. 2014) 94

Palsgraf v. Long Island R. Co.,
162 N.E. 99 (N.Y. 1928) 29

Parret v. UNICCO Serv. Co.,
127 P.3d 572 (Okla. 2005) 102

People ex rel. Spiegel v. Lyons,
115 N.E.2d 895 (Ill. 1953) 111, 112

People ex rel. Spitzer v. Sturm, Ruger & Co.,
761 N.Y.S.2d 192 (App. Div. 2003) 79

People Express Airlines v. Consol. Rail Corp.,
100 N.J. 246 (1985) 21

Perreira v. State,
768 P.2d 1198 (Colo. 1989) 78

Peterson v. BASF Corp.,
657 N.W.2d 853 (Minn. App. 2003) 19

Peterson v. Zerr,
477 N.W.2d 230 (N.D. 1991) 102

Peyer v. Ohio Water Serv. Co.,
720 N.E.2d 195 (Ohio 1998) 88

Phillips Petroleum Co. v. Shutts,
472 U.S. 797 (1985) 18, 106

Photo Arts Imaging Professionals, L.L.C. v. Best Buy Co.,
2011 U.S. Dist. LEXIS 135596 (S.D. Miss. Nov. 22, 2011) 52

Pinnix v. Toomey,
87 S.E.2d 893 (N.C. 1955) 65

Plan-Tec, Inc. v. Wiggins,
443 N.E.2d 1212 (Ind. App. 1983) 74, 77

Playboy Enters. v. Editorial Caballero, S.A. de C.V.,
202 S.W.3d 250 (Tex. App. 2006) 93, 94

Presnell Constr. Managers, Inc. v. EH Constr., L.L.C.,
134 S.W.3d 575 (Ky. 2004) 51

Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.,
29 S.W.3d 74 (Tex. 2000) 96

Ptacek v. Earthsoils, Inc.,
844 N.W.2d 535 (Minn. App. 2014) 34, 58, 59

Pugh v. Westreich,
2005 WL 14922 (Minn. App. Jan. 4, 2005) 107

Quest Diagnostics, Inc. v. MCI WorldCom, Inc.,
656 N.W.2d 858 (Mich. App. 2002) 51

RWP, Inc. v. Fabrizi Trucking & Paving Co.,
2006 Ohio App. LEXIS 4958 (Ohio App. Sept. 28, 2006) 41

Rainbow Play Sys., Inc. v. Backyard Adventure, Inc.,
2009 WL 3150984 (D.S.D. Sept. 28, 2009) 119

Reali Giampetro & Scott v. Soc'y Nat'l Bank,
729 N.E.2d 1259 (Ohio App. 1999) 99

Reed v. Univ. of N.D.,
543 N.W.2d 106 (Minn. App. 1996) 15, 17

Regents of the Univ. of Minn. v. Chief Indus.,
106 F.3d 1409 (8th Cir. 1997) 108

Reid v. Doe Run Res. Corp.,
74 F. Supp. 3d 1015 (E.D. Mo. 2015) 18

Riggs v. Nickel,
796 N.W.2d 181 (Neb. 2011) 65

Rinehart v. Morton Bldgs., Inc.,
305 P.3d 622 (Kan. 2013) 22, 32, 33, 49

Roadway Express, Inc. v. Baty,
114 P.2d 935 (Okla. 1941) 72

Robb v. City of Seattle,
295 P.3d 212 (Wash. 2013) 69

Robins Dry Dock & Repair Co. v. Flint,
275 U.S. 303 (1927) 23

Rodriguez v. Siouxland Urology Assocs.,
No. CIV. 09-4051 (KES), 2013 WL 684243 (D.S.D. Feb. 22, 2013) 119

S K Peightal Eng'rs, Ltd. v. Mid Valley Real Estate Solutions V, L.L.C.,
342 P.3d 868 (Colo. 2015) 47

Sall v. T'S, Inc.,
136 P.3d 471 (Kan. 2006) 74

Saratoga Fishing Co. v. J.M. Martinac & Co.,
520 U.S. 875 (1997) 21

Satterfield v. Breeding Insulation Co.,
266 S.W.3d 347 (Tenn. 2008) 65, 69

Schanz v. N.H. Ins. Co.,
418 N.W.2d 478 (Mich. App. 1988) 74

Schmitt v. Clayton County,
284 N.W.2d 186 (Iowa 1979) 72

Schneidewind v. ANR Pipeline Co.,
485 U.S. 293 (1988) 84

Schoedinger v. United Healthcare of the Midwest, Inc.,
No. No.4:07CV904SNLJ, 2011 U.S. Dist. LEXIS 2937 (E.D. Mo. Jan. 12, 2011) 99

Schumacher v. Schumacher,
676 N.W.2d 685 (Minn. App. 2004) 19

Schwartz v. Consol. Freightways Corp.,
221 N.W.2d 665 (Minn. 1974) 107

Securian Fin. Grp., Inc. v. Wells Fargo Bank,
No. CIV. 11-2957 (DWF/HB), 2014 WL 6911100 (D. Minn. Dec. 8, 2014) 107, 108

Seely v. White Motor Co.,
403 P.2d 145 (Cal. 1965) 29

Select Comfort Corp. v. Tempur Sealy Int'l,
11 F. Supp. 3d 933 (D. Minn. 2014) 109

Selle v. Tozser,
786 N.W.2d 748 (S.D. 2010) 100

Shaner v. United States,
976 F.2d 990 (6th Cir. 1992) 75

Shannon v. Wilson,
947 S.W.2d 349 (Ark. 1997) 78

Shelton v. Ky. Easter Seals Soc'y,
413 S.W.3d 901 (Ky. 2013) 64, 78

Shirley v. Imogene Glass,
308 P.3d 1 (Kan. 2013) 78

Simmons v. Homatas,
925 N.E.2d 1089 (Ill. 2010) 69

Simms v. Jones,
879 F. Supp. 2d 595 (N.D. Tex. 2012) 75

Sisney v. Best Inc.,
754 N.W.2d 804 (S.D. 2008) 119

Sloan v. Bankers Life & Cas. Co.,
1 S.W.3d 555 (Mo. App. 1999) 96

Sluis v. Nudelman,
34 N.E.2d 391 (Ill. 1941) 111

Smith ex rel. Ross v. Lagow Constr. & Dev. Co.,
642 N.W.2d 187 (S.D. 2002) 69

Smith v. Questar Capital Corp.,
2013 U.S. Dist. LEXIS 108703 (D. Minn. Aug. 2, 2013) 35

Smith v. Waggoners Trucking Corp.,
69 So. 3d 773 (Miss. App. 2011) 72

Solvay Pharms., Inc. v. Glob. Pharms.,
298 F. Supp. 2d 880 (D. Minn. 2004) 108

Sparks v. Booth,
232 S.W.3d 853 (Tex. App. 2007) 120, 121

St. Malachy Roman Catholic Congregation of Geneseo v. Ingram,
841 N.W.2d 338 (Iowa 2013) 39

St. Onge Livestock Co. v. Curtis,
650 N.W.2d 537 (S.D. 2002) 98

State ex rel. W. Seed Prod. Corp. v. Campbell,
442 P.2d 215 (Or. 1968) 81

State Auto Ins. Cos. v. B.N.C.,
702 N.W.2d 379 (S.D. 2005) 74

State Farm Mut. Auto. Ins. Co. v. Ford Motor Co.,
736 So. 2d 384 (Miss. App. 1999) 52

Stebbins v. Edwards,
224 P. 714 (Okla. 1924) 98

Stephenson v. Universal Metrics,
641 N.W.2d 158 (Wis. 2002) 71

Sterling Chems., Inc. v. Texaco Inc.,
259 S.W.3d 793 (Tex. App. 2007) 44

Stewart v. Hewlett-Packard Co.,
No. ?DOCKET?, 2012 WL 6043642 (N.D. Ala. Nov. 29, 2012) 72

Stewart Title Guar. Co. v. Am. Abstract & Title Co.,
363 Ark. 530 (2005) 102

Stewart Title Guar. Co. v. Am. Abstract & Title Co.,
215 S.W.3d 596 (Ark. 2005) 95

Stonebridge Collection, Inc. v. Carmichael,
791 F.3d 811 (8th Cir. 2015) 93

Syngenta Seeds, Inc. v. Bunge N. Am., Inc.,
820 F. Supp. 2d 953 (N.D. Iowa 2011) 27, 85, 86, 88

Taylor v. Smith,
892 So. 2d 887 (Ala. 2004) 64

TEC Cogeneration v. Florida Power & Light Co.,
76 F.3d 1560 (11th Cir. 1996) 75

Telecor Communs., Inc. v. Sw. Bell Tel. Co.,
305 F.3d 1124 (10th Cir. 2002) 76

Tex. Disposal Sys. Landfill, Inc. v. Waste Mgmt. Holdings, Inc.,
219 S.W.3d 563 (Tex. App. 2007) 99

Texler v. D.O. Summers Cleaners & Shirt Laundry Co.,
693 N.E.2d 271 (Ohio 1998) 78

Tharp v. Monsees,
327 S.W.2d 889 (Mo. 1959) 65

Theisen v. Covenant Med. Ctr.,
636 N.W.2d 74 (Iowa 2001) 75

Thompson v. Hirano Tecseed Co.,
456 F.3d 805 (8th Cir. 2006) 91

Thompson v. Kaczinski,
774 N.W.2d 829 (Iowa 2009) 64

Thrasher-Lyon v. Ill. Farmers Ins. Co.,
861 F. Supp. 2d 898 (N.D. Ill. 2012) 110

Thurston v. Nelson,
No. A-13-056., 2014 Neb. App. LEXIS 41 (Neb. App. Feb. 4, 2014) 53

Tollefson Dev., Inc. v. McCarthy,
668 N.W.2d 701 (Minn. App. 2003) 12

Trade 'N Post, L.L.C. v. World Duty Free Ams., Inc.,
628 N.W.2d 707 (N.D. 2001) 96, 100

Trau-Med of Am., Inc. v. Allstate Ins. Co.,
71 S.W.3d 691 (Tenn. 2002) 95, 100

Triche v. McDonald's Corp.,
164 So. 3d 253 (La. App. 2014) 61

Tucker v. The Blvd. at Piper Glen L.L.C.,
564 S.E.2d 248 (N.C. App. 2002) 116, 117

Tuffy's, Inc. v. City of Okla. City,
212 P.3d 1158 (Okla. 2009) 96

Tull Bros. v. Peerless Prods., Inc.,
953 F. Supp. 2d 1245 (S.D. Ala. 2013) 46

U.S. Bank v. Integrity Land Title Corp.,
929 N.E.2d 742 (Ind. 2010) 47

Union Oil Co. v. Oppen,
501 F.2d 558 (9th Cir. 1974) 30

United Concrete & Constr., Inc. v. Red-D-Mix Concrete, Inc.,
836 N.W.2d 807 (Wis. 2013) 45

United Textile Workers, etc. v. Lear Siegler Seating Corp.,
825 S.W.2d 83 (Tenn. App. 1990) 42

Van Sickle Constr. Co. v. Wachovia Commer. Mortg., Inc.,
783 N.W.2d 684 (Iowa 2010) 38, 39

Vancura v. Katris,
939 N.E.2d 328 (Ill. 2010) 72, 75

Vesta Fire Ins. Corp. v. Milam & Co. Constr., Inc.,
901 So. 2d 84 (Ala. 2004) 46

Vowell v. Fairfield Bay Cmty. Club,
58 S.W.3d 324 (Ark. 2001) 98

Waggoner v. Town & Country Mobile Homes, Inc.,
808 P.2d 649 (Okla. 1990) 54

Wal-Mart Stores, Inc. v. Sturges,
52 S.W.3d 711 (Tex. 2001) 100

Walker v. Ranger Ins. Co.,
711 N.W.2d 683 (Wis. App. 2006) 45

Walsh v. U.S. Bank,
851 N.W.2d 598 (Minn. 2014) 1, 10, 11, 12, 13, 55, 56, 97, 102, 118

Ward v. K Mart Corp.,
554 N.E.2d 223 (Ill. 1990) 78

Watters v. TSR, Inc.,
904 F.2d 378 (6th Cir. 1990) 70

Weiss v. Bellomy,
278 N.W.2d 119 (N.D. 1979) 74

Wellcraft Marine, Div. of Genmar Indus. v. Zarzour,
577 So. 2d 414 (Ala. 1990) 46

Wenker ex rel. Wenker v. Xcel Energy, Inc.,
2015 WL 1013553 (Minn. App. Mar. 9, 2015) 63

White Sands Group, L.L.C. v. PRS II, L.L.C.,
32 So. 3d 5 (Ala. 2009) 95, 98, 100

Wilkey v. Hull,
366 F. App'x 634 (6th Cir. 2010) 98

Williams v. Cingular Wireless,
809 N.E.2d 473 (Ind. App. 2004) 80

Williams Elecs. Games, Inc. v. Garrity,
366 F.3d 569 (7th Cir. 2004) 111

Willmar Poultry Co. v. Carus Chem. Co.,
378 N.W.2d 830 (Minn. App. 1985) 92

Wilspec Techs., Inc. v. Dunan Holding Group Co.,
204 P.3d 69 (Okla. 2009) 98

Wiltz v. Bayer CropScience, Ltd. P'shp,
645 F.3d 690 (5th Cir. 2011) 27, 40

Winston v. Am. Med. Int'l,
930 S.W.2d 945 (Tex. App. 1996) 96

Wood v. Mercedes-Benz of Okla. City,
336 P.3d 457 (Okla. 2014) 78

Wrede v. Exch. Bank,
247 Neb. 907, 531 N.W.2d 523 (1995) 114

Young v. Bryco Arms,
821 N.E.2d 1078 (Ill. 2004) 77

Zacher v. Budd Co.,
396 N.W.2d 122 (S.D. 1986) 72

Statutes:

La. Civ. Code Ann. art. 2315 65
La. Rev. Stat. Ann. § 9:2800.52 60
La. Rev. Stat. Ann. § 9:2800.54(A) 60
Minn. Stat. § 8.31 104
Minn. Stat. § 645.16 ..... 35, 36
Minn. Stat. § 325D.10 107
Minn. Stat. § 325D.13 104
Minn. Stat. § 325D.44 104
Minn. Stat. § 325D.45 104
Minn. Stat. § 325E.64 105
Minn. Stat. § 325F.69 104
Minn. Stat. § 604.101 ..... 33, 34, 36, 58, 59
Minn. Stat. § 336.2-313 59
Minn. Stat. § 336.2-314 59
Minn. Stat. § 336.2-315 59

Minn. Stat. § 604.10-101 35
Minn. Stat. § 604.101(2) 34, 58
Minn. Stat. § 604.101(3) 58
Minn. Stat. § 604.101(5) 33, 58
Minn. Stat. § 604.101(3)(1)-(2) 58
Minn. Stat. §§ 325D.13, 325F.69 ..... 14, 16
Minn. Stat. §§ 325D.13, 325D.44, 325F.69 104
N.C. Gen. Stat. § 75-16 116
N.C. Gen. Stat. § 75-1.1 ..... 114, 115
N.D. Cent. Code § 37-24-6 118
N.D. Cent. Code § 51-15-02 ..... 117, 118
Neb. Rev. Stat. § 59-1617 113
S.D. Codified Laws § 37-24-31 118
Tex. Bus. & Com. Code Ann. § 17.41 (West) 119

Other:

57A Am. Jur. 2d *Negligence*
§ 88 (2004) 64

Fowler V. Harper & Posey M. Kime, *The Duty to Control the Conduct of Another*,
43 Yale L.J. 886 (1934) 68

Minn. R. Civ. P. 8.01 1
Minn. R. Civ. P. 12.02(e) 12

Oscar S. Gray, *Some Thoughts on "The Economic Loss Rule" and Apportionment*,
48 Ariz. L. Rev. 897, 901-02 (2006) 32

Restatement (Second) of Conflict of Laws § 145 (1971) 15
Restatement (Second) of Torts § 8 (1965) 102
Restatement (Second) of Torts § 314 (1965) 68
Restatement (Second) of Torts § 315 (1965) 68
Restatement (Second) of Torts § 323 (1965) 74
Restatement (Second) of Torts § 767 (1979) 100
Restatement (Second) of Torts § 324A (1965) 74
Restatement (Third) of Torts: Apportionment of Liab. § 7 cmt. b (2000) 27, 28

INTRODUCTION

This Court should deny Syngenta's Motion to Dismiss. A complaint need only contain a "short and plain statement" showing an entitlement to relief. Minn. R. Civ. P. 8.01; *see also Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 601 (Minn. 2014) ("This language from Rule 8.01 has remained the same since we adopted the rule in 1951.").

Remarkably, despite 166 pages of text, Syngenta's brief does not even mention the applicable pleading standard. Instead, Syngenta deluges the Court with citations to federal decisions (143 in total) for which different, more stringent pleading standards apply. Perhaps more remarkably, the majority of Syngenta's cited cases were decided either on summary judgment on a full evidentiary record (128 in total) or after a full merits trial (58 in total). Those cases, which obviously had very different procedural postures than this case, do not trump Judge Lungstrum's reasoned decision in the federal MDL in Kansas, which soundly rejected the same arguments Syngenta recycles here.[1]

In addition, Syngenta all but ignores *Walsh*. Syngenta buries that case deep in its principal brief and relegates it to a single citation (on page 119) without any discussion. But *Walsh* governs the outcome here because the Minnesota Supreme Court rejected the more stringent federal pleading standard established in *Iqbal* and *Twombly*. The Court held, as it has for decades, that Minnesota law permits "'pleading of events by way of a broad general statement which may express conclusions rather than, as was required under code pleading, by a statement of facts sufficient to constitute a cause of action.'" *Walsh*, 851 N.W.2d at 602 (quoting *N. States Power Co. v. Franklin*, 265 Minn. 391, 394-95, 122 N.W.2d 26, 29 (1963)).

---

[1] Granting Syngenta's motion would lead to an anomalous result where the plaintiffs in the Kansas MDL are permitted to proceed with fact discovery while Plaintiffs here (who have asserted, in many respects, identical claims) are not.

The Complaints here satisfy the pleading requirements of Rule 8.03, as interpreted by *Walsh*. In fact, they would satisfy any standard.

Syngenta is also wrong on the substantive law. As Judge Lungstrum concluded, Syngenta's principal argument—that Plaintiffs' claims are barred by the economic loss doctrine—is without merit. Syngenta's attempt to expand the ELD to apply to strangers to the contractual transactions between Syngenta and Viptera purchasers is a bridge too far and is simply untrue to the policy rationale behind the doctrine. Like Judge Lungstrum, this Court should resist Syngenta's invitation to broadly expand the ELD.

Syngenta's other arguments regarding legal duty, the importance of the China market, and Plaintiffs' alleged contributory fault just cast aside and ignore the allegations in the Complaints, which are deemed to be true at this stage. They also misstate the law in several important respects. As explained fully below, the Court should deny Syngenta's motion and allow this case to proceed to discovery.[2]

FACTS

Syngenta mischaracterizes Plaintiffs' claims by asserting that they somehow "hinge on the premise that GM crops must be segregated from those that are not." (Syn. Br. at 5.) This is a fiction of Syngenta's own making.

The Complaints do not allege that GM crops must be segregated from non-GM crops. Rather, the Complaints allege that commercialization of GM traits carries well-known risks, including "major trade disruptions and massive harm to both Producers and Non-Producers"

[2] Both the Class Complaint and Non-Class Complaint include common-law claims of nuisance and trespass. Given Judge Lungstrom's thorough analysis and Order in the federal MDL, which resolved similar common-law claims, Plaintiffs will voluntarily dismiss their claims for nuisance and trespass. In addition, the Class Plaintiffs will voluntarily dismiss their product-liability claims.

(NCC at 2; CC at 1),[3] and requires responsible practices, including approval from significant export markets (NCC ¶¶ 46, 73, 228; CC ¶¶ 34, 62, 217). Syngenta committed to stewardship when, *inter alia*, it represented to the USDA that channeling to "divert [Viptera] away from" unapproved export markets would take place in an effective manner, and affirmatively signed on to industry policies calling for a test to detect its GM trait. (NCC ¶¶ 62, 122, 132; CC ¶¶ 51, 111, 121.)

Because Syngenta's fact section is so contrary to the allegations pled, the Court should disregard it entirely.

I. Syngenta created the risk of harm to Plaintiffs.

Syngenta has publicly acknowledged that the commodity agricultural market is an integrated market where a seed manufacturer's decisions impact farmers, elevators, and exporters. (NCC ¶ 38 ("Our stakeholders are the people . . . affected by [our business]," referring specifically to "[g]rowers" and the "[i]ndustry"); CC ¶ 27 (same).) When a seed manufacturer like Syngenta commercializes a new GM trait without approval from major export markets, that decision imposes substantial risk on the integrated market, which is only exacerbated without responsible safeguards in place. (NCC at 2-3 & ¶ 38; CC at 2-3 & ¶¶ 15.)

In this case, Plaintiffs expressly allege that Syngenta commercialized Viptera with knowledge that "China would not approve MIR162 until sometime after that trait had entered export channels," creating a "huge risk that the U.S. corn industry could lose one of their large and growing export markets." (NCC at 3; CC at 2.) Nevertheless, during the 2012 and 2013 growing seasons, Syngenta expanded sales of Viptera, increasing the known risk of cross-

[3] Throughout this response brief, the First Amended Non-Class Complaint is denoted "NCC," and the First Amended Minnesota Class Action Master Complaint is denoted "CC."

pollination and commingling within the U.S. corn supply. (NCC ¶¶ 156, 199; CC ¶¶ 145, 188.)

Syngenta also:

- "actively misled Producers and Non-Producers" about the importance of the Chinese market and the imminence of Chinese approval in order to encourage sales and thus the spread of MIR162 (NCC at 4; CC at 3);

- misrepresented the measures it would take to prevent Viptera from contaminating other crops (NCC at 4; CC at 3);

- encouraged growers to take actions that increased the risk of cross-pollination (NCC ¶¶ 120, 126, 128 (encouraging growers to plant Viptera side-by-side with other corn and advising that they had no obligation to warn their neighbors); CC ¶¶ 109, 115, 117 (same));

- misrepresented to the USDA and to the public that deregulation would have no impact on the export market (NCC ¶¶ 60, 64; CC ¶¶ 49, 53);

- told the USDA and the public that its filings in China were in process when they were not (NCC ¶¶ 67, 70; CC ¶¶ 56, 59);

- told the USDA and the public that any risk of cross contamination was low because Syngenta would engage in a legitimate stewardship program, channeling MIR162 "away from export markets . . . where [MIR162] has not yet received regulatory approval for import" (NCC ¶ 62; CC ¶ 51);

- increased the presence of Viptera seed on U.S. land, which furthered "the widespread, pervasive contamination that has caused disruption of trade in U.S. corn with China" (NCC ¶ 129; CC ¶ 118);

- crafted a plan to mislead Producers and Non-Producers into believing that Chinese approval of MIR162 was forthcoming and continued its deception regarding the status of Chinese approval throughout 2012, further enhancing the risk of contamination (NCC ¶¶ 161-94; CC ¶¶ 150-83); and

- represented to Viptera growers on August 17, 2011, that Syngenta anticipated Chinese approval by March 2012; publicly represented in April 2012 that Chinese approval was expected in a matter of days; and disseminated a Bio-Safety Request Form and a Plant with Confidence Fact Sheet (NCC ¶¶ 167, 184, 190-93; CC ¶¶ 156, 173, 179-80).

In other words, "Syngenta did not simply fail to take precautions against foreseen and foreseeable harm. Syngenta acted affirmatively to create such harm." (NCC ¶ 239; CC ¶ 228.)

Absent effective stewardship and channeling, Viptera's entry into export channels was inevitable, as Syngenta knew. (NCC ¶¶ 235, 333; CC ¶¶ 224, 313.) That risk, and the resulting harm to Plaintiffs, was of Syngenta's making. (NCC ¶ 236; CAC ¶ 225.) Indeed, when one exporter attempted to exercise the purported "choice" that Syngenta wrongly relies on to put blame on Non-Producers for trying to keep MIR162 out of China, Syngenta sued it, and demanded that a federal court order the exporter to purchase Viptera. (NCC ¶¶ 147-50; CC ¶¶ 136-39). Syngenta also made misrepresentations to increase sales,[4] and decided not to implement a legitimate stewardship or channeling program, all for its own financial benefit. (NCC ¶¶ 106, 115, 124-25, 131, 136-37, 145-46; CC ¶¶ 95, 104, 113-14, 120, 125-26, 134-35.)

Syngenta could—and should—have waited to market Agrisure Viptera. Syngenta also could have withdrawn the seed from the integrated market before planting. (NCC ¶ 97; CC ¶ 86.) But it did not. Syngenta instead "sold even more Viptera for planting in 2012, further increasing th[e] risks." (NCC ¶ 156; CC ¶ 145.) Even after China closed its entire market to U.S. corn, Syngenta launched another GM strain of corn unapproved by China, Agrisure Duracade, for the 2014 crop year, not only prolonging but deepening the damage. (NCC at 4; CC at 3.)

II. The harm to Plaintiffs was foreseen by Syngenta.

Syngenta disputes that China was a key export market, ignoring its prior repeated acknowledgements that it is.[5] (NCC ¶¶ 74-75; CC ¶¶ 63-64.) Syngenta also says that China

---

[4] Syngenta strategized about how to mislead growers to "get them comfortable that [Chinese] approval is close" and ensure continued purchases of Viptera seed. (NCC ¶ 161; CC ¶ 150.) "To encourage further sales and planting of Viptera, Syngenta, by at least August 2011, was representing to stakeholders . . . that [it] would obtain China's approval by March 2012." (NCC ¶ 167; CC ¶ 156.)

[5] A federal court determined that Syngenta should have recognized that Chinese imports of U.S. corn for the 2011 crop year "might well be very significant." (NCC ¶ 153; CC ¶ 142.)

lacked a "functioning regulatory system," and banned U.S. corn for economic reasons. But the Complaints, which are deemed to be true at this stage, allege otherwise. (NCC ¶¶ 60, 71; CC ¶¶ 49, 60.) Syngenta's unsupported suggestion that market-price damages are too "speculative" or that they were due to a "bumper corn crop" in 2013 are also inappropriate at this pleading stage, and in any event will be factually refuted by expert testimony.[6]

In April 2010, the USDA deregulated MIR162. (NCC ¶ 56; CC ¶ 45.) When Syngenta began selling Viptera "for the 2011 crop year," it "knew well that it would not have import approval from China."[7] (NCC ¶ 76; CC ¶ 65.) "The typical time period for import approval from China at that time was approximately 2-3 years." (NCC ¶ 77; CC ¶ 66.) The approval process can take longer if the application is "insufficient, incorrect, and/or incomplete," as Syngenta's was here. (NCC ¶ 170; CC ¶ 159.) Syngenta's request for cultivation approval, which is "more severely restricted," also delayed the process.[8] (NCC ¶¶ 175-76; CC ¶¶ 164-65.)

Syngenta commercialized Viptera for the 2011 growing season "despite the lack of regulatory approval from China, and despite [its own] knowledge that China was a key (and growing) export market for U.S. corn." (NCC ¶ 80; CC ¶ 69.) Syngenta knew the risk was

---

[6] Syngenta hides behind the "U.S. regulatory framework" to defend its conduct. Nothing about the U.S. regulatory system justifies Syngenta's actions.

[7] In fact, Syngenta had only just sought regulatory approval in China. (NCC ¶ 70 ("Contrary to Syngenta's representations that its regulatory filings were "in process" in China, Syngenta first sought regulatory approval for MIR162 from China's Ministry of Agriculture three years later, in or around March 2010."); CC ¶ 59 (same).)

[8] Syngenta relies on materials far outside the Complaints to claim that Chinese authorities have deadlines to act on import applications and that failure to meet those deadlines evidences a non-functioning system. (Syn. Br. at 13.) But Plaintiffs allege that Syngenta knew that its application would not be approved in 270 days, and that delays were due to Syngenta's deficiencies. (NCC ¶¶ 78, 170; CC ¶¶ 67, 159.)

significant that MIR162 would be detectable in export channels before export approval. (NCC ¶¶ 113-14; CC ¶¶ 102-03.) "Syngenta clearly knew the risks of premature commercialization, and knew that without stringent containment and channeling procedures, MIR162 would contaminate the U.S. corn supply and move to export markets." (NCC ¶ 46; CC ¶ 35.) Syngenta also knew that meant "significant risk of trade disruption."[9] (NCC ¶ 114; CC ¶ 103.) The "importance of obtaining import approval from key markets was well known and recognized within the biotechnology industry and by Syngenta before [it] commercialized MIR162." (NCC ¶ 45; CC ¶ 34.)

Syngenta also knew that China was a major, growing export market. On multiple occasions before commercializing MIR162, Syngenta recognized China as a "key" import market for U.S. corn. (NCC ¶¶ 74-75; CC ¶ 63-64.) Industry groups warned Syngenta of China's importance. (NCC ¶¶ 82-89, 151; CC ¶¶ 71-78, 140.) By at least May 2010, Syngenta was "well aware . . . of the strong likelihood that China would be a significant import market by 2011." (NCC ¶ 82; CC ¶ 71.) In 2010, Syngenta itself recognized China as a "key" market to the National Grain and Feed Association. (NCC ¶ 75; CC ¶ 64.) Syngenta continued to recognize China's importance in early 2011, before the first planting of MIR162. (NCC ¶¶ 90-94, 101-105, 151, 153; CC ¶¶ 79-83, 90-94, 140, 142.) And Syngenta was explicitly warned about the importance of Chinese approval before commercialization and throughout 2011. (NCC ¶ 85; CC ¶ 74.) Even as China's importance increased, Syngenta refused to stop marketing Viptera. (NCC ¶¶ 87-90, 96; CC ¶¶ 76-79, 86.)

---

[9] Syngenta's conduct in the face of similarly foreseeable risks continued in the 2014 crop year, when it "announced it would commercialize Duracade for the 2014 crop year . . . despite the continued lack of approval from China for MIR162." (NCC ¶ 212; CC ¶ 201.)

III. Syngenta was fully capable of implementing legitimate stewardship and channeling.

Syngenta contracts with growers who purchase its seed. (NCC ¶¶ 62-63, 132; CC ¶¶ 51-52, 121.) It could have required that "growers adhere to stringent practices that would have decreased the likelihood of contamination," but chose not to in order to avoid "drastically reduced sales." (NCC ¶ 125; CC ¶ 114; *see also* NCC ¶¶ 220, 222-23 (Syngenta represented when it launched Duracade that it would require growers to feed the corn to livestock or poultry or deliver it to those not exporting to China, but declined to require planting/harvesting protocols not because it could not have done so, but because it "did not want to"); CC ¶¶ 209, 211-12.).) Syngenta's contract contained a provision for channeling (without any reference to China), but gave no instruction on how to accomplish it. (NCC ¶¶ 138-41; CC ¶¶ 127-30.) And Syngenta "could have instituted channeling measures but did not." (NCC ¶ 238; CC ¶ 227.) As such, "[i]t was inevitable that Viptera corn would move into export channels, including China, and cause trade disruption, as Syngenta well knew." (NCC ¶ 235; CC ¶ 224.)

IV. Syngenta undertook stewardship obligations.

Syngenta knew the risks posed by premature commercialization and the importance of obtaining approval from key importing countries such as China. (NCC ¶¶ 27, 29-37, 45-46; CC ¶¶ 16, 18-26, 34-35.) Syngenta's experience in 2007 with MIR604 prior to approval in Japan and other export markets led to the Biotechnology Industry Organization's ("BIO") launch policy. (NCC ¶¶ 34-35; CC ¶¶ 23-24.) Syngenta adopted its own launch policy in 2007, incorporating BIO policies, including an assessment to identify key importing nations and secure approval prior to commercialization. (NCC ¶¶ 43, 46; CC ¶¶ 32, 35.) Syngenta also said it supports and will comply with stewardship standards of CropLife International and Excellence Through Stewardship. (NCC ¶ 44; CC ¶ 33.)

Syngenta not only agreed to these industry standards, but promulgated a corporate responsibility code identifying "Growers" and the "Industry" as "stakeholders" affected by Syngenta's decisions. (NCC ¶ 38; CC ¶ 27.) That code requires Syngenta to respond to feedback from stakeholders, implement high stewardship standards, prioritize issues important to stakeholders, and institute safeguards. (NCC ¶¶ 39-42; CC ¶¶ 28-31.) Consistent with these standards, "Syngenta committed to not commercializing new [GM] traits that had not been approved by key import markets." (NCC ¶ 46; CC ¶ 35.) Similarly, in its Deregulation Petition to the USDA, Syngenta represented that it instituted a "wide-ranging grower education campaign" to channel, which it said would be successful "based on prior experiences with the specialty maize market." (NCC ¶ 62; CC ¶ 51.) Despite these representations, Syngenta commercialized Viptera before Chinese approval without any legitimate stewardship. (NCC ¶ 134; CC ¶ 123.)

V. Syngenta embarked on a campaign of false statements in commercializing Viptera.

Syngenta engaged in an operation of misinformation regarding Chinese approval to sell Viptera. To commercialize, Syngenta needed the USDA to deregulate MIR162. (NCC ¶ 47; CC ¶ 36.) Deregulation petitions are publicly disseminated, and Syngenta's petition assured that Viptera would not disrupt the export market for U.S. corn. (NCC ¶ 60; CC ¶ 49.) It represented that: (1) there should be no effects on U.S. corn export markets; (2) applications for approval in export markets with functioning regulatory systems, including China, were in process; and (3) Syngenta would institute a stewardship program and wide-ranging grower education campaign to channel away from markets that had not approved MIR162. (NCC ¶¶ 58, 60-63; CC ¶¶ 47, 49-52.) Syngenta filed the petition with full knowledge that its statements and representations would be published and contained commercial content. (NCC ¶¶ 57, 69; CC ¶¶ 46, 58.)

After launch, Syngenta actively misrepresented that Chinese approval of MIR162 was forthcoming. (NCC ¶¶ 161, 181-94; CC ¶¶ 150, 170-83.) On August 17, 2011, in response to

increasing concern over the lack of Chinese approval and the prospect of grain handlers not purchasing corn grown from Viptera seed, Syngenta sent letters to growers and non-producers stating that Syngenta anticipated Chinese approval by March 2012. (NCC ¶ 167; CC ¶ 156.) Syngenta's CEO stated in April 2012 that approval was expected "in the matter of a couple of days."[10] (NCC ¶ 184; CC ¶ 173.) Syngenta instructed its employees to "verbally" tell potential customers that Syngenta anticipated approval soon. (NCC ¶ 183; CC ¶ 172.) But Syngenta knew these statements falsely represented reality. (NCC ¶¶ 169-73, 182-86; CC ¶¶ 158-62, 171-75.) Syngenta also published and disseminated a pointless Bio-Safety Certificate Request Form, deceptively indicating that Viptera corn could be exported to China, and a Plant with Confidence Fact Sheet deceptively downplaying China's importance to the market. (NCC ¶¶ 187-92; CC ¶¶ 176-81.)

Syngenta was "focused on its bottom line." (NCC ¶ 166; CC ¶ 155.) Contrary to its policies, "Syngenta launched a 'blame the grain trade' campaign," attempting to shift the entire burden of channeling to grain handlers. (NCC ¶ 165; CC ¶ 154.) Syngenta developed a "Top 10" list as part of a sales program designed to neutralize concerns about Chinese approval. (NCC ¶ 166; CC ¶ 155.) The program "provide[d] regular (and misleading) updates 'on progress and plans for China trait approval and to drive trait acceptance.'" (*Id.*) Thus, despite knowing the falsity of its feigned expectation that approval was forthcoming in March 2012, Syngenta decided that "[i]f we say March enough, there should be no issue." (NCC ¶ 168; CC ¶ 157.)

By trying to shift responsibility to non-producers, Syngenta ignores its commitment to manage the introduction of Viptera and its "ability to control the timing, size, and geographic

[10] Syngenta asks the Court to draw an inference that this statement cautions that Syngenta could not handicap the Chinese regulatory process. (Syn. Br. at 12.) Syngenta, as the moving party, is not entitled to this inference (or any other) on a motion to dismiss.

scope of its commercialization . . . , as well as the extent to which adequate containment measures [were] required." (NCC ¶ 238; CC ¶ 227.) Syngenta even re-characterizes the Complaints to support blaming Syngenta's customers for planting Viptera "in a way that permitted cross-pollination with neighboring fields." (Syn. Br. at 11.) But it was Syngenta that recognized the risk of MIR162 moving to export channels. And it was Syngenta that encouraged farmers to grow Viptera "side by side" with other corn, and to not warn their neighbors. (NCC ¶¶ 126-28; CC ¶¶ 115-17.)

Syngenta repeatedly resisted and abandoned its promised stewardship program. In July 2010, for example, Syngenta executives identified a need for a GM detection strategy. (NCC ¶ 123; CC ¶ 112.) That strategy would have been in accord with the BIO policy and Syngenta's internal policy, both requiring availability of a "reliable detection method or test." (NCC ¶¶ 121-22; CC ¶¶ 110-11.) Syngenta, however, utterly failed to execute.[11] (NCC ¶ 124; CC ¶ 113.)

VI. Plaintiffs suffered both physical and economic harm.

The pervasive contamination brought on by Syngenta's acts "caus[ed] physical harm to Producers' and Non-Producers' corn, equipment, storage facilities, and land. (NCC ¶ 236; CC ¶ 225.) Syngenta's conduct also caused significant economic harm. (NCC ¶ 240; CC ¶ 229.) The corn industry began to suffer enormous consequences from Syngenta's actions around November 2013, when China began rejecting U.S. shipments testing positive for MIR162. (NCC ¶ 213; CC

[11] Syngenta also blames grain elevators and other non-producers by claiming they opted not to test for MIR162. (Syn. Br. at 12.) This both assumes that an adequate test was available, and that grain elevators were equipped to test and segregate corn for genetic traits—they were not. (NCC ¶ 111; CC ¶ 100.) Nor is there any allegation to support Syngenta's impermissible inference that the mythical "cost" decision by grain elevators was because "the Chinese market accounted for only about one-third of 1% of U.S. corn production when Viptera was launched in the U.S." (Syn. Br. at 12.)

¶ 202.) It took Syngenta another 13 months to obtain Chinese import approval. (NCC ¶ 233; CC ¶ 222.)

By then, Syngenta had already launched Duracade, not approved in China, thereby prolonging the harm. (*Id.*; *see also* NCC at 4; CC at 3.) China's subsequent approval of MIR162 is not likely to lessen the impact of Syngenta's conduct anytime soon. (*Id.*) Under basic laws of supply and demand, less demand means lower price. (NCC ¶¶ 284-89; CC ¶¶ 273-78.) As a result of Syngenta's actions, Plaintiffs have been harmed.[12] (NCC ¶¶ 241-99; CC ¶¶ 230-85). That harm likely will be long lasting (NCC ¶¶ 273, 283; CC ¶¶ 262, 272), in part because U.S. corn exports to China have not even begun to recover (NCC ¶¶ 269-74; CC ¶¶ 258-63).

ARGUMENT

I. Legal standard.

Syngenta moves to dismiss under Minn. R. Civ. P. 12.02(e). Such dismissals are generally disfavored. *Tollefson Dev., Inc. v. McCarthy*, 668 N.W.2d 701, 703 (Minn. App. 2003).

A motion under Minn. R. Civ. P. 12.02(e) "raises the single question of whether the complaint states a claim upon which relief can be granted." *Martens v. Minn. Min. & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000) (citations omitted). In assessing such a motion, the Court accepts the facts alleged in the complaint as true, and makes all reasonable inferences in favor of the nonmoving party. *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010).

---

[12] Syngenta improperly claims that China began testing U.S. corn shipments in 2013 to get out of contracts at higher prices because a "bumper crop" had caused prices to drop. (Syn. Br. at 14.) Syngenta's unsupported arguments may not be considered on a motion to dismiss. Instead, Plaintiffs' allegations that China's rejection of U.S. corn was because of the MIR162 contamination and that the NGFA, for one, tied trade disruption with China's positive detections of MIR162, must be accepted as true for purposes of this motion. (NCC ¶¶ 213-14; CC ¶¶ 202-03.)

Significantly, in *Walsh*, the Minnesota Supreme Court rejected the application of the federal plausibility standard to State pleadings. 851 N.W.2d at 603 ("We now decline to engraft the plausibility standard from *Twombly* and *Iqbal* onto our traditional interpretation of Minn. R. Civ. P. 8.01"). Minnesota's notice-pleading standard was left untouched. That standard "'does not require absolute specificity in pleading, but rather requires only information sufficient to fairly notify the opposing party of the claim against it.'" *Id*. at 605 (quoting *Hansen v. Robert Half Int'l, Inc*., 813 N.W.2d 906, 917-18 (Minn. 2012)).

"A pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Franklin*, 265 Minn. at 395, 122 N.W.2d at 29; s*ee also First Nat'l Bank of Henning v. Olson*, 246 Minn. 27, 38, 74 N.W.2d 123, 129 (1955) ("[T]here is no justification for dismissing a complaint for insufficiency . . . unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of the claim."). Thus, "[a] claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Walsh*, 851 N.W.2d at 603.

II. Minnesota law applies.

There is no choice-of-law issue with respect to the Class Complaint, in which Plaintiffs and a class entirely within Minnesota have stated claims under Minnesota's consumer statutes. As for the Non-Class Complaint, Syngenta argues that the Court may not apply Minnesota law to the claims of non-resident Plaintiffs. But because the claims here involve false, fraudulent, or deceptive statements made from a defendant's principal place of business in Minnesota, Minnesota law—including its consumer-protection statutes—provides a basis for relief to the non-class plaintiffs, regardless of their location.

In this State, a choice between laws is required where "the choice of one forum's law over the other will determine the outcome of the case." *Nodak Mut. Ins. Co. v. Am. Family Mut. Ins. Co.*, 604 N.W.2d 91, 93-94 (Minn. 2000). If there is such an outcome-determinative conflict and the law of either forum may be constitutionally applied, then Minnesota courts decide which state's law applies by weighing five factors: (1) predictability of result; (2) maintenance of interstate order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interests; and (5) application of the better rule of law. *Nodak*, 604 N.W.2d at 94; *see also Danielson v. Nat'l Supply Co.*, 670 N.W.2d 1, 6 (Minn. App. 2003). Here, even assuming there is such an outcome-determinative conflict, the Court should apply Minnesota law to the claims of all Plaintiffs in the 22 states at issue in Syngenta's motion.

A. The Non-Class Complaint alleges facts and asserts claims warranting application of Minnesota law.

Plaintiffs' claims under Minn. Stat. §§ 325D.13 and 325F.69 pertain to false or misleading statements made in Minnesota by a Minnesota company. Such statements are actionable under Minnesota's consumer-protection laws.

Syngenta's principal place of business is in Minnetonka, Minnesota. (NCC ¶ 9.) Syngenta has stated that it "develops, produces, and sells, through dealers and distributors or directly to growers, a wide range of agricultural products," including Agrisure Viptera and Agrisure Duracade corn seeds. (*Id.*) Syngenta conducted field testing under permits issued by or notifications to, and made application for deregulation by, the USDA. (*Id.* ¶¶ 13, 50.)

Plaintiffs' allegations concerning the role of Syngenta in marketing Viptera warrant application of Minnesota law. (NCC ¶ 18.) Plaintiffs' fact allegations regarding Syngenta's role—drawn directly from Syngenta's representations in federal litigation about the nature of its own business—give rise to the reasonable inference that any false or misleading statements made

by Syngenta in connection with marketing Viptera were made by Syngenta through its principal place of business in Minnesota. (*See, e.g.*, *id*. ¶¶ 167-69, 182-89.)

Minnesota law is properly invoked by non-resident plaintiffs against a Minnesota defendant based on false, fraudulent, or deceptive statements originating in Minnesota. *Mooney v. Allianz Life Ins. Co. of N. Am.*, 244 F.R.D. 531, 535 (D. Minn. 2007) ("As a Minnesota corporation, Allianz [cannot] claim surprise by the application of Minnesota law to conduct emanating from Minnesota, since Minnesota has a 'substantial interest in preventing the corporate form from becoming a shield for unfair business dealing.'") (citation omitted); *Castello v. Allianz Life Ins. Co. of N. Am.*, No. MC 03-20405, slip op. at 2, 7 (Minn. Henn. Cnty. Sept. 5, 2005) (certifying nation-wide class in state-court action alleging violations of Minnesota consumer-protection statutes).

As courts have recognized, the Minnesota Prevention of Consumer Fraud Act "is intended to apply both to the conduct of foreign corporations that injures Minnesota residents and to the conduct of Minnesota companies that injures non-residents." *In re Lutheran Bhd. Variable Ins. Prods. Co. Sales Practices Litig.*, No. 99-MD-1309, 2004 U.S. Dist. LEXIS 7789, at *6 (D. Minn. Apr. 28, 2004) (re-affirming nationwide class based on Minnesota consumer-protection statutes).

This reasoning compels the conclusion that Minnesota's consumer statutes provide non-resident Plaintiffs a remedy for Syngenta's false, misleading, and deceptive practices. *Cf.* Restatement (Second) of Conflict of Laws § 145 (1971) ("[T]he place of injury does not play so important a role for choice-of-law purposes in the case of false advertising . . . as in the case of other kinds of torts. Instead the principal location of the defendant's conduct is the contact that

will usually be given the greatest weight in determining the state whose local law determines the rights and liabilities that arise from false advertising . . . .").

B. Minnesota's choice-of-law factors favor Minnesota law.

The five choice-of-law factors also cut in favor of applying Minnesota's consumer-protection laws.

Predictability of results. Predictability of results has little bearing on a tort case. *See Reed v. Univ. of N. Dakota*, 543 N.W.2d 106, 108 (Minn. App. 1996). Here, Plaintiffs' claims sound principally in tort. Still, as in *Mooney*, applying Minnesota law is predictable. Plaintiffs would expect that fraudulent statements and misrepresentations made in Minnesota would be governed by Minnesota law. 244 F.R.D. at 536. Therefore, the first factor favors Minnesota law.

Maintenance of interstate order. The second factor primarily involves whether Minnesota has a sufficient connection to—and interest in—the facts and issues being litigated. *Id*. Syngenta is a Minnesota corporation, deeply related to the other Defendants, and made fraudulent statements and directed fraudulent activities from Minnesota. "Therefore, application of Minnesota law would not manifest disrespect for the sovereignty of any other state."[13] *Id*. This factor, too, favors Minnesota.

Simplification of the judicial task. For the same reasons explained in *Mooney*, this factor is either neutral (because this Court is capable of applying either Minnesota law or the substantive law of non-residents' states) or it favors Minnesota law (because that may be simpler for the Court to apply). *See, e.g., H Enters. Int'l v. Gen. Elec. Capital Corp.*, 833 F. Supp. 1405,

[13] Syngenta cites no authority that the second factor "favors applying the law of the state where each plaintiff operated its business and allegedly suffered financial harm." (Syn. Br. at 15.) Indeed, this *lex loci* rule was abandoned long ago. *Milkovich v. Saari*, 203 N.W.2d 408, 417 (Minn. 1973).The second factor requires only that "the forum state [have] a substantial connection with the facts and issues involved." *Id.* at 417. For the reasons explained throughout this brief, Minnesota does.

1417 (D. Minn. 1993). Either way, this factor does not lend support to Syngenta's argument for home-state law.

Advancement of forum's governmental interest. Although both Minnesota and Plaintiffs' individual states may have various interests in having their laws applied here, the balance tips in favor of applying Minn. Stat. §§ 325D.13 and 325F.69. As the court explained in *Mooney*:

> By allowing "any person" to sue under [Minnesota's consumer-protection statutes], the Minnesota legislature has evinced a strong policy of providing redress for fraudulent business practices that occur within Minnesota's borders, regardless of where a consumer's injury occurs . . . . Although other states have an interest in applying their own laws, their interest is not so strong so as to prevent their citizens from benefitting from Minnesota's willingness to provide statutory and common law remedies for fraudulent conduct emanating from Minnesota.

244 F.R.D. at 536-37. Put simply, applying the home states' consumer laws—if, indeed, there are any[14]—would "reduce the protection afforded under Minnesota law" when Minnesota companies engage in false and deceptive conduct. *Medtronic, Inc. v. Adv. Bionics Corp.*, 630 N.W.2d 438, 455 (Minn. App. 2001).[15] This factor favors Minnesota law.

---

[14] There are no consumer-protection claims in this action for more than half of the 22 states at issue here. (*See* NCC at 81-83 (Alabama), 102-04 (Arkansas), 167-69 (Indiana), 170-71 (Iowa), 171-73 (Kansas), 173-75 (Kentucky), 175-76 (Louisiana), 195-97 (Michigan), 197-99 (Mississippi), 199-202 (Missouri), 248-50 (Ohio), and 250-52 (Oklahoma).).

[15] Syngenta's citation to *Montpetit v. Allina Health Sys., Inc.*, No. C2-00-571, 2000 Minn. App. LEXIS 1051 (Minn. App. Oct. 10, 2000), regarding the fourth factor is misleading. *Montpetit* did not state that Minnesota's interests are only satisfied when Minnesota residents recover losses. *Montpetit*'s holding was more limited: the district court was not wrong to conclude that, under the circumstances of that particular case, Wisconsin had the predominant governmental interest in distribution of a wrongful-death recovery where the parties claiming entitlement as beneficiaries all lived in Wisconsin. *Id.* at *3.

Better rule of law. Minnesota courts have tended not to use this factor, applying it primarily when the other four factors are not dispositive. *See Nodak*, 604 N.W.2d at 96; *Reed*, 543 N.W.2d at 109. Here the first four factors favor Minnesota law. Accordingly, the fifth factor is inapplicable.

In sum, then, the five choice-of-law factors favor Minnesota law. If there is any doubt, the Court could defer the choice-of-law analysis until discovery has been conducted, which would allow time to examine the extent of Syngenta's actions that emanated from or were connected to Minnesota. *See, e.g.*, *Reid v. Doe Run Res. Corp.*, 74 F. Supp. 3d 1015, 1024 (E.D. Mo. 2015) ("Many courts have concluded that a court is typically in a better position to decide a choice of law issue after the parties have developed the factual evidence through the process of discovery"); *Bonnell v. Cabo Azul Resort*, No. 2:08-CV-00910, 2010 U.S. Dist. LEXIS 89155, at *4 (D. Nev. Aug. 27, 2010) (finding that fact discovery regarding relationships between the various defendants was necessary to determine choice-of-law issues).

C. Minnesota's consumer laws may be constitutionally applied to the claims of all Plaintiffs, regardless of location.

Contrary to Syngenta's argument, no constitutional impediment exists to applying Minnesota law to the nonresidents' claims. "[F]or a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981). "When considering fairness in this context, an important element is the expectation of the parties." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 822 (1985).

Minnesota has significant contacts with Plaintiffs' claims. Syngenta has its principal place of business is in Minnesota. Further, Syngenta made its fraudulent statements and directed

its fellow-Defendant subsidiaries from Minnesota. *Mooney* and *Lutheran Brotherhood* found on similar facts that both the defendant and non-Minnesota class members would have expected Minnesota law to apply, and therefore constitutional requirements were satisfied. *Mooney*, 244 F.R.D. at 535; *Lutheran Bhd.*, 2004 U.S. Dist. LEXIS 7789, at *5-6; *cf. In re Target Corp. Customer Data Sec. Breach Litig.*, 309 F.R.D. 482, 486 (D. Minn. 2015) (court can "presume there are substantive conflicts between the laws of Plaintiffs' home states and Minnesota law and still constitutionally apply Minnesota law" because defendant's headquarters are in Minnesota); *Peterson v. BASF Corp.*, 657 N.W.2d 853, 873 (Minn. App. 2003) (upholding district court's application of New Jersey law to nationwide consumer-fraud class action), *aff'd*, 675 N.W.2d 57 (Minn. 2004), *vacated and remanded on other grounds*, 544 U.S. 1012 (2005); *Castello*, No. MC 03-20405, slip op. at *2, 7 (certifying nationwide class alleging violations of Minnesota consumer-protection statutes).

D. Plaintiffs have alleged facts warranting application of Minnesota law to the common-law claims, regardless of each Plaintiff's residence.

The same conduct by Syngenta noted above supports applying Minnesota law to Plaintiffs' common-law claims as well. When analyzing choice-of-law questions that involve torts, the Minnesota Supreme Court has stressed that only the last two choice-influencing factors—advancement of the forum's governmental interests and application of the better rule of law—are relevant. *H Enter. Int'l. v. Gen'l Elec. Capital Corp.*, 833 F. Supp. 1405, 1416 (D. Minn. 1993) (citing *Milkovich v. Saari*, 295 Minn. 155, 203 N.W.2d 408, 412 (1973)); *Cargill, Inc. v. Prod. Eng'g Co.*, 627 F. Supp. 1492, 1496 (D. Minn. 1986). As a matter of policy, "Minnesota places great value in compensating tort victims." *Schumacher v. Schumacher*, 676 N.W.2d 685, 691 (Minn. App. 2004) (quoting *Jepson v. Gen. Cas. Co. of Wis.*, 513 N.W.2d 467, 472 (Minn. 1994)).

Here, advancing the forum's governmental interests favors applying Minnesota law to judge tortious conduct emanating from Minnesota by a Minnesota corporation. The Court should apply Minnesota law to the common-law claims. As explained above, applying Minnesota common law to these claims also passes constitutional muster.[16]

III. The economic loss doctrine does not bar Plaintiffs' claims.

In seeking to invoke the economic loss doctrine ("ELD"), Syngenta asks this Court to dramatically expand the ELD beyond existing law in 22 states, and to depart from the ELD's underlying policies. Syngenta urges the Court to undertake this broad expansion by mischaracterizing the careful reasoning and analysis of Judge Lungstrum, who expressly rejected the *identical* arguments asserted here.

First, Syngenta ignores that the traditional ELD is limited in scope, and is subject to many exceptions. Courts disfavor the doctrine where its application would not further the underlying purposes for which the doctrine was created.

Second, Syngenta conflates application of the ELD with the stranger ELD ("SELD"), a separate doctrine that courts seldom apply and, when they do, they apply it only in a narrow category of cases. Syngenta acknowledges that it *must* rely on the SELD in this case, but then artfully blurs the lines between the two doctrines. Syngenta conflates these two distinct legal doctrines because the SELD is not recognized in many of the relevant states. Further, in the minority of jurisdictions where it has been recognized, the SELD is applied in extremely limited circumstances where the policies behind the doctrine are clearly served. There is no legitimate dispute that this case does *not* fall into one of the recognized SELD categories and, as discussed

---

[16] Syngenta's argument that claims asserted under states in which no plaintiff resides must be dismissed (Syn. Br. at 16) is moot because a notice to conform has been filed on behalf of at least one plaintiff from all 22 states at issue in Syngenta's motion to dismiss.

at length by Judge Lungstrum in rejecting the SELD, expansion of the doctrine here is not warranted here.

Finally, Syngenta undertakes a broad attack on Judge Lungstrum's MDL Order by misconstruing that court's analysis and conclusion. In denying Syngenta's motion to dismiss, Judge Lungstrum undertook one of the most thorough analyses of the SELD that has been undertaken by any court in any state. In so doing, Judge Lungstrum declined Syngenta's invitation to drastically expand the SELD (the same invitation Syngenta makes here) after carefully considering the historical roots of the doctrine, the pertinent case law, and the facts alleged by plaintiffs in that federal case. The resulting 120-page Order is well-reasoned and relies on a number of compelling factors to hold that the SELD is inapplicable to the facts presented in that parallel case. Nothing in Syngenta's motion provides any valid reason for this Court to rule differently.

A. Syngenta misstates the ELD's narrow scope.

Syngenta argues that the ELD is a broad rule prohibiting *any* recovery of economic loss in tort. But even a cursory read of applicable case law shows that the ELD is a very limited doctrine that, even when applied, is riddled with exceptions, each of which is established to ensure that the doctrine is applied in a manner consistent with its underlying policies.

The ELD has been defined as a rule that "denies the purchaser of a defective product a tort action against the seller or manufacturer for purely economic losses sustained as a result of the product's failure." *Saratoga Fishing Co. v. J.M. Martinac & Co.*, 520 U.S. 875, 885 (1997) (Scalia, J., dissenting). The doctrine developed in the product-liability context to prevent the deterioration of the line between warranty and tort law. *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 866 (1986). Similarly, courts have applied the ELD "to maintain a distinction between damage remedies for breach of contract and for tort." *Giles v. GMAC*, 494

F.3d 865, 873 (9th Cir. 2007). As the United States Supreme Court stated in its seminal *East River* decision, without the ELD, "contract law would drown in a sea of tort." 476 U.S. at 866.

Over the years, though, courts have limited the ELD by creating a number of well-recognized exceptions. *See People Express Airlines v. Consol. Rail Corp.*, 100 N.J. 246, 259 (N.J. 1985) (describing numerous exceptions to the ELD); *Barber Lines A/S v. M/V Donau Maru*, 764 F.2d 50, 56 (1st Cir. 1985) (same). Courts have consistently stated that the ELD should not be applied in categories of cases where the policy provisions underpinning the doctrine are not served by its application. *See, e.g.*, *Rinehart v. Morton Bldgs., Inc.*, 305 P.3d 622, 624 (Kan. 2013) (holding that the ELD did not apply because "the doctrine's purposes would not be furthered by extending it to such claims"); *Grynberg v. Questar Pipeline Co.*, 70 P.3d 1, 11 (Utah 2003) ("[M]any courts have successfully translated the theory by recognizing and applying the underlying premise of the economic loss doctrine"). Taken together, the exceptions and policy limitations placed on the ELD have served to dramatically limit the doctrine's scope.

B. The SELD applies in limited circumstances not present here.

Syngenta does not seek to apply the ELD to Producer Plaintiffs' claims because that doctrine is plainly inapplicable. Rather, Syngenta's argument instead relies on a very narrow offshoot of the ELD, the SELD, which has been applied in a minority of states and in only a limited category of cases. Of the 22 states at issue in this motion, some have rejected the ELD altogether (*see, e.g.*, Arkansas); others have limited application of the ELD to non-stranger cases (*see e.g.*, Colorado, Minnesota, Michigan, and South Dakota); and others have applied the SELD, but only in extremely limited circumstances where the policy rationales behind the doctrine are served (*see, e.g.*, Iowa).

None of the relevant states have applied the SELD in the broad manner Syngenta advocates here. Thus, to apply the SELD, this Court would effectively have to expand the law of all 22 states. As stated in *Leonard v. Dorsey & Whitney LLP*, when predicting the law of another state, a court's "duty is to conscientiously ascertain and apply state law, not to formulate new law based on our own notions of what is the better rule." 553 F.3d 609, 612 (8th Cir. 2009).

Syngenta argues that the SELD is a broad rule barring recovery of economic damages in torts between strangers. (Syn. Br. at 25.) But the cases Syngenta cites reveal that the SELD has been applied primarily in three limited categories of cases: (1) lack-of-access/public nuisance; (2) chain-of-contract; and (3) injured employees. (*See* MDL Order at 23 (noting that in the seven states where the SELD has arguably been applied the vast majority of cases were lack-of-access/public nuisance cases).)

Lack-of-access cases typically involve situations where a negligent actor damages a piece of public infrastructure or a public resource. *See, e.g., Neb. Innkeepers, Inc. v. Pittsburgh-Des Moines Corp.*, 345 N.W.2d 124, 125 (Iowa 1984) (considering claims by restaurant owners and employees against a contractor who damaged a public bridge); *La. ex rel. Guste v. M/V Testbank*, 752 F.2d 1019, 1020-21 (5th Cir. 1985) (considering claims by seafood restaurants, bait shops, marinas, and similar businesses against a ship that caused a chemical spill). In these cases, the public at large was denied access to the infrastructure or resource that was damaged. As Judge Lungstrum stated in his MDL Order, "[t]his is not a lack-of-access case in which any member of the public could potentially assert a claim for economic loss, leading to remote and indeterminate liability." (MDL Order at 23-24.) Thus, the limited exception does not apply.

The second category includes chain-of-contracts cases.[17] Syngenta repeatedly cites *Robins Dry Dock & Repair v. Flint*, which is a classic chain-of-contracts case. 275 U.S. 303 (1927). In *Robins*, plaintiff contracted with a ship owner to use the ship, and the ship owner in turn contracted with defendant to fix the ship. *Id*. Thus, while plaintiff and defendant were strangers because they did not contract with each another, and in fact, had no knowledge of one another, the Court reasoned that the parties had the ability to protect themselves *in contract* due to the chain of contractual obligations among the parties. *Id.*

Syngenta also relies heavily on another chain-of-contract case, *Aguilar v. RP MRP Wash. Harbour, LLC.*, 98 A.3d 979, 980 (D.C. 2014). In *Aguilar*, the plaintiffs had an employment relationship with shopping mall businesses and the shopping mall businesses, in turn, had a lessee-lessor relationship with the defendant. Therefore, although the plaintiff and defendant were not parties to a contract, they were only one step removed from each other in the "chain" of contracts. *Aguilar* carefully noted, however, that the SELD would not apply in chain-of-contracts cases where the parties have a "special relationship." *Id.* at 984. *Aguilar* analogized its application of the SELD to its treatment of claims for negligent infliction of emotional distress ("NIED"). The court reasoned that its rulings on NIED "balanced the need to hold negligent actors accountable while still maintaining limits on liability" by creating an exception based on "the nature of the defendant's undertaking to or relationship with plaintiff." *Id*. at 984. The Court stated that this approach was warranted (and applicable to SELD claims) because it "maintain[s] strong limits on liability while still allowing meritorious claims to proceed by examining the

[17] *See Annett Holdings, Inc. v. Kum & Go, L.C.*, 801 N.W.2d 499, 504-05 (Iowa 2011), for examples of chain of contracts.

special relationship between the parties." *Id.* This reasoning is particularly instructive in this case, where plaintiffs and defendants are participants in a highly interconnected market.

Ultimately, chain-of-contracts cases are best viewed as a modification of the contract ELD, the primary purpose of which is to encourage parties to protect themselves in contract and to preserve the distinction between contract and tort law. *See Air Prods. & Chems., Inc. v. Eaton Metal Prods. Co.*, 272 F. Supp. 2d 482, 499 (E.D. Pa. 2003) ("an underlying reason for the economic loss doctrine is to encourage parties to negotiate liability provisions"). Syngenta tacitly acknowledges this when it argues that "the contractual strand of the ELD bars tort claims for economic losses arising where the parties are connected (directly or indirectly) by a contract." (Syn. Br. at 57.) Regardless of whether chain-of-contracts cases are contract ELD cases or SELD cases, this is not a chain-of-contracts case. Accordingly, *Robins* and *Aguilar* are inapposite.

Syngenta also cites to injured-employee cases, which claims brought by an employer against a third-party tortfeasor who has injured one of the plaintiff's employees. (Syn. Br. at 20 n.47.) For the most part, these cases are not ELD cases, and Syngenta cites them only in passing. Further, to the extent even a few of these cases do rely on the ELD, they are highly distinguishable.

What Syngenta fails to mention is that there is case law addressing whether the SELD should be extended to apply to negligence claims brought by farmers against GM seed companies. The majority of these cases hold that the SELD does not apply. (*See* MDL Order at 19-46) (holding that the ELD does not apply to producer plaintiffs' claims)); *In re Starlink Corn Prods. Liab. Litig.*, 212 F. Supp. 2d 828, 842 (N.D. Ill. 2002) (refusing to apply the ELD); *Bayer CropScience LP v. Schafer*, 385 S.W.3d 822, 833 (Ark. 2011) (same); *In re Genetically Modified Rice Litig.*, 666 F. Supp. 2d 1004, 1017 (E.D. Mo. 2009) (same). Although these cases

considered the SELD in the context of negligence claims brought by farmers against GM seed manufacturers, with the exception of Judge Lungstrum's MDL Order, none of them provide a thorough analysis of the issues in this case. But Judge Lungstrum's MDL Order is directly on point.

Syngenta asks this Court to apply a common-law bar on recovery in circumstances where it has never been applied before, all while ignoring the persuasive decision made by Judge Lungstrum in rejecting identical arguments under virtually identical facts. In so arguing, Syngenta asks this Court to expand the common law in 22 different states. Further, it asks the court to do so for a doctrine that rests on tenuous grounds, in a situation where expansion does not serve the policies underlying the doctrine it seeks to expand. This Court should refuse Syngenta's invitation.

C. Applying the SELD would not serve the doctrine's underlying purposes.

There are two policy rationales underlying the ELD: (1) encouraging the use of contract to address economic loss; and (2) placing reasonable limits on liability. *See, e.g.*, *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 866-75 (1986). Neither rationale would be served by extending the SELD in this case.

1. The contract-based policy rationale does not apply.

The policy of encouraging the use of contracts to manage risk is multifaceted. Many cases state that the ELD is designed "to maintain a distinction between damage remedies for breach of contract and for tort." *See, e.g.*, *Giles v. GMAC*, 494 F.3d 865, 873 (9th Cir. 2007). Other cases state that the policy is to "encourage parties to negotiate liability provisions." *See, e.g.*, *Air Prods. & Chems., Inc. v. Eaton Metal Prods. Co.*, 272 F. Supp. 2d 482, 499 (E.D. Pa. 2003). Still others state that the doctrine is intended "to encourage the party best situated to

assess the risk [of] economic loss . . . to assume, allocate, or insure against that risk." *See e.g. Daanen & Janssen v. Cedarapids, Inc.*, 573 N.W.2d 842, 846 (Wis. 1998).

The contract-based policies that commonly underlie the ELD do not apply here. The Producer Plaintiffs did not have the opportunity to contract around their loss, either through insurance or by entering contracts with other grain market participants. Syngenta half-heartedly argues that "[p]roducers concerned about ensuring the exportability for their corn could have contracted for guarantees from grain elevators prohibiting commingling." (Syn. Br. at 35.) Setting aside whether these types of contracts were even possible, this argument ignores the realities of the modern corn market. Individual farmers do not have the market power to demand unique contracts with grain elevators.[18] Additionally, this argument is particularly unavailing given that Syngenta sued one of the country's largest grain buyers, Bunge, to *force* it to permit the commingling of non-Viptera corn with Viptera. *See Syngenta Seeds, Inc. v. Bunge N. Am., Inc.*, 820 F. Supp. 2d 953 (N.D. Iowa 2011). It cannot reasonably be disputed that Producer Plaintiffs did not have the opportunity to avoid loss through the use of contract.

Not only is the rationale underlying the ELD not served by applying the doctrine, those policies are actually furthered by declining to expand the doctrine to cover the claims asserted here. As argued by Syngenta, "[t]he stranger ELD thus 'encourages the party with the best information (that is, the party with knowledge of its own risk of loss) to decide whether to assume, allocate, avoid, or insure against its risk of loss.'" (Syn. Br. at 21 (*quoting Wiltz v. Bayer CropScience, Ltd. P'shp*, 645 F.3d 690, 697 (5th Cir. 2011)).) Here, *Syngenta* was the party in

[18] *Accord David v. Hett*, 270 P.3d 1102, 1103 (Kan. 2011) (holding that even where a plaintiff entered into a contract with the alleged tortfeasor, the ELD did not apply because of disparate bargaining positions that made the policy underlying the ELD inapplicable).

the best position, and arguably the only position, to avoid the loss, not the individual corn farmers.

Similarly, in discussing application of the ELD, the Restatement (Third) of Torts notes that "courts doubt that threats of such open-ended liability would usefully improve the incentives of parties to take precautions." Restatement (Third) of Torts § 7 cmt. b. That is not the case here. Holding Syngenta responsible for its actions would almost certainly dissuade other GM seed companies from taking similar actions for their own financial benefit.

2. The reasonable-limitations rationale is not served by applying the SELD.

The second policy underlying the SELD is avoiding the nearly endless flow of economic damages that could result from accidents. *See id.* This policy factor is best illustrated in lack-of-access cases, where an accident could cause open-ended and indiscriminate harm to the public at large. *See, e.g.*, *In re Chi. Flood Litig.*, 680 N.E.2d 265, 274 (Ill. 1997). Setting aside the fact that this case does not involve an accident—but rather a calculated decision by Syngenta to put farmers at risk for its own financial benefit—applying the SELD to Producer Plaintiffs' claims would not serve the policy of avoiding remote and indeterminate liability.

Syngenta relies almost exclusively on the policy of placing reasonable limits on liability to argue that the SELD precludes Producer Plaintiffs' claims. Syngenta analogizes to lack-of-access cases by stating "[c]onceptually, [Producer Plaintiff] claims are indistinguishable from claims that access to some other shared resource used by multiple parties for their businesses (a bridge, a wharf, etc.) was disrupted by a negligent act." (Syn. Br. at 25.) The MDL Order distinguished lack-of-access cases by stating that this is not a case "in which any member of the public could potentially assert a claim for economic loss, leading to remote and indeterminate liability." (MDL Order at 24.) The MDL Court reasoned that "the scope of liability is not

completely open-ended, as plaintiffs represent discrete classes of growers and sellers, all in an inter-connected market." *Id*. The MDL Court was correct. This case does not involve the open-ended liability at issue in lack-of-access cases. The injuries suffered by Plaintiffs are not shared by the public at large. Rather, the damage was incurred by a discrete (albeit large) group of participants in the highly interconnected grain market.

Applying the ELD to avoid open-ended liability is not about the scope or amount of damages at issue, but rather the reasonableness of holding the tortfeasor responsible for those damages. The question of how to place proper limitations on tort liability is a fundamental question of law going back to some of this country's seminal cases. *See, e.g*., *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99 (N.Y. 1928). For this reason, cases purporting to analyze the ELD, as well as those cases cited as so-called "ELD cases", often sound in duty and proximate cause. *See, e.g., La. ex rel. Guste*, 752 F.2d at 1023 (noting that the ELD is "a pragmatic limitation imposed by the Court upon the tort doctrine of foreseeability"); *Daanen & Janssen*, 573 N.W.2d at 846 ("At the heart of the distinction drawn by the economic loss doctrine is the concept of duty.").

Duty and proximate cause are the traditional limits on liability in tort. The role of the ELD is to supply an additional limitation where appropriate. For example, the Restatement (Third) of Torts rationalizes the ELD by stating that "[i]n some cases recognition of such claims would also result in liabilities that are indeterminate and out of proportion to the culpability of the defendant." *Id.* § 7 cmt. b. By way of example, a seminal ELD case, *Seely v. White Motor Co.*, 403 P.2d 145, 151 (Cal. 1965), discusses this concept in terms of the "nature of the responsibility" and analyzes what damages a tortfeasor can "appropriately be held liable [for]." *See also Long Motor Corp. v. SM&P Util. Res., Inc.*, No. 100,336, 2009 Kan. App. Unpub.

LEXIS 638, at *6 (Kan. App. 2009) (applying the ELD to prevent expansion of claims "beyond reason").

There is no danger of indeterminate damages—or damages "beyond reason"—in this case. As stated in the MDL Order, this case does not seek "liability that would be far out of proportion to the tortfeasor's culpability." (MDL Order at 24.) The Court reasoned that allowing producer Plaintiffs' claims would "not be disproportionate to Syngenta's specific wrongful conduct that caused the very injuries foreseen." *Id.* (citing *In re StarLink*, 212 F. Supp. 2d at 842). Moreover, this is not an accident case. Instead, Syngenta intentionally released Viptera into the market, fully aware of the damage that premature commercialization would cause and fully aware that Producers and Non-Producers alike would suffer the damage. Requiring Syngenta to take responsibility for the risks it knowingly created is not unreasonable, and the potential class of injured parties is not indefinite. Accordingly, the purpose of the SELD is not furthered by applying it in this case.

3. Special-relationship considerations do not warrant applying the SELD.

Syngenta asks this Court to apply the SELD in a novel context that has not been previously recognized by any of the relevant states, thereby demanding expansion of the doctrine. But this case shares more similarities with a category of cases that are *excepted* from the ELD than with those limited categories of cases in which the SELD has been applied, particularly as it relates to "special relationship" cases.

A special relationship between the parties precludes application of the ELD. *See Union Oil Co. v. Oppen*, 501 F.2d 558, 565 (9th Cir. 1974) (noting that "recovery for pure economic losses in negligence has been permitted in instances in which there exists 'some special relation between the parties.'") (citing Prosser, Law of Torts 952 (4th ed. 1971)); *Aikens v. Debow*, 541

S.E.2d 576, 589 (W. Va. 2000) (holding that the ELD applies absent some "other special relationship between the alleged tortfeasor and the individual who sustains purely economic damages sufficient to compel the conclusion that the tortfeasor had a duty to the particular plaintiff and that the injury complained of was clearly foreseeable to the tortfeasor"); *Duffin v. Idaho Crop Improvement Ass'n*, 895 P.2d 1195, 1201 (Idaho 1995) (noting that the special relationship exception is not limited to professional or quasi-professional relationships).

The California Supreme Court—which first adopted the ELD has held that a Court should consider six factors in determining whether to apply the "special relationship" exception to the ELD:

> (1) the extent to which the transaction was intended to affect the plaintiff, (2) the foreseeability of harm to the plaintiff, (3) the degree of certainty that the plaintiff suffered injury, (4) the closeness of the connection between the defendant's conduct and the injury suffered, (5) the moral blame attached to the defendant's conduct and (6) the policy of preventing future harm.

J'Aire Corp. v. Gregory, 598 P.2d 60 (Cal. 1979). Each of these factors militates against applying the SELD.

The "special relationship" exception exists to permit recovery where—like here—a duty of care exists and the defendant's breach of that duty causes economic loss. *See Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, S.E.2d 85, 87 (S.C. 1995) (stating that the ELD does not prevent tort recovery where there is a "special relationship"). The reasoning in *Air Prods. & Chems., Inc. v. Eaton Metal Prods. Co.* elucidates the purpose of the "special relationship" exception. *Eaton* held that "[a] 'special relationship' exists where the relationship between the parties is such that it would be equitable to impose a duty to exercise due care to avoid purely economic loss." 272 F. Supp. 2d 482, 496 (E.D. Pa. 2003) (internal quotation omitted).

Here, Syngenta and Producer Plaintiffs are part of an interconnected market in which the parties rely on one another to act responsibly. This is underscored because Syngenta was urged by other participants in the interconnected market to take responsible actions with respect to the release and marketing of Viptera and cautioned about damages that would occur if it chose to proceed as it did. (NCC at 3-4.) Given this interconnected market, the policy rationales underpinning the "special relationship" exception are particularly applicable in this case and argue against application of the SELD.

D. Syngenta misreads the MDL Order.

Syngenta urges this Court to depart from the MDL Order based on the false premise that the MDL Court applied an incorrect rule of law. This argument is a red herring. According to Syngenta, Judge Lungstrum erred because he applied a "case-by-case approach" rather than a "bright line rule." (Syn. Br. at 23.) That assessment is faulty. Instead, Judge Lungstrum analyzed whether the ELD applied in the relevant states under analogous circumstances.

Courts routinely analyze whether the ELD should apply—including considering policy factors. *See, e.g.*, Oscar S. Gray, *Some Thoughts on "The Economic Loss Rule" and Apportionment*, 48 Ariz. L. Rev. 897, 901-02 (2006) (noting that courts often refuse to apply the ELD "where the reasons for limiting liability [are] absent"); *Fireman's Fund Ins. Co. v. SEC Donohue, Inc.*, 679 N.E.2d 1197, 1200 (Ill. 1997) (considering "[t]he policy interest supporting the ability to comprehensively define a relationship" in deciding whether to apply the ELD); *Rinehart v. Morton Bldgs., Inc.*, 305 P.3d 622, 624 (Kan. 2013) (holding that the ELD did not apply because "the doctrine's purposes would not be furthered by extending it to such claims"). Judge Lungstrum analyzed whether the ELD applied and correctly found that was inapplicable in this case. Therefore, Judge Lungstrum did not apply any ELD rule or exception, let alone an incorrect one. He simply decided that the doctrine did not apply.

Syngenta also misconstrues Judge Lungstrum's decision by stating that it creates a "new 'inter-connected industry' exception." It did not. Rather, Judge Lungstrum rightly concluded that the SELD should not be expanded as far as Syngenta seeks. *See e.g.*, *Rinehart v. Morton Bldgs., Inc.*, 305 P.3d 622, 626 (Kan. 2013) (framing the question of whether to apply the ELD to a particular tort claim as a question of whether to "extend the doctrine"). Judge Lungstrum merely cited the fact that the parties are part of an interconnected industry as one of the many reasons not to *extend* the SELD. Judge Lungstrum further reasoned that the SELD is inapplicable because the case already presents "a natural cutoff for liability" and does not require the ELD to artificially create one. (MDL Order at 14.)

The central part of MDL Order that Syngenta ignores is that the relevant states would not apply the SELD in this type of case given that the policies underlying the ELD would not be served. First, the Court correctly held that states that have not adopted the SELD doctrine would not adopt it in this case. (MDL Order at 23 (noting that "[a]lthough 22 states provide the governing law for plaintiff's negligence claims, only in seven has a court arguably applied the ELD in a stranger case").) Second, for those limited states that have applied the SELD in its traditional context, the Judge Lungstrum concluded that "those jurisdictions would [apply the doctrine] only in the right circumstances, in which the rationales for the doctrine would be furthered." (*Id*. (noting that the great majority of stranger ELD applications are lack-of-access or public nuisance cases).) Judge Lungstrum's well-reasoned order correctly concluded that the issues here do not support application of the SELD.

E. The relevant states would not apply the ELD here.

Minnesota

Syngenta tacitly recognizes that Minnesota's statutory ELD, Minn. Stat. § 604.101, does not bar the Producers' claims. (Syn. Br. at 38.) But relying on purported common-law ELD, Syngenta argues that the Producers' claims must be dismissed. Syngenta is wrong.

The Minnesota Legislature supplanted the judicially created ELD with Minn. Stat. § 604.101. The ELD "applies to claims only as stated in this section," Minn. Stat. § 604.101, subd. 5, which are confined to claims "by a buyer against a seller for harm caused by a defect in the goods sold or leased, or for a misrepresentation relating to the goods sold or leased."[19] Minn. Stat. § 604.101, subd. 2. From the plain language and the accompanying reporter's notes, it is clear that no common-law ELD survives in Minnesota. *See id.*, rep. note ("[T]he first sentence of Subdivision 5 means that: (1) the statute exhaustively states the economic loss doctrine, and (2) there is no residual common law economic loss doctrine.").

Syngenta ignores the plain language of the statute to argue that the common-law ELD still applies outside the sale-of-goods context. Syngenta's argument must be rejected for two reasons.

First, the Minnesota Court of Appeals rejected this very argument in a published decision. In *Ptacek v. Earthsoils, Inc.*, 844 N.W.2d 535, 537-38 (Minn. App. 2014), farmers sued a manufacturer that sold and recommended fertilizer based on analyses of soil types and field histories. They alleged the fertilizer contained insufficient nitrogen, resulting in yield loss. The trial court correctly held that plaintiffs did not assert a product-defect claim barred by section 604.101, but also held that the negligence claim was barred by the common-law ELD. The

[19] The statute does not apply to statutory misrepresentation claims, and allows common law misrepresentation (of a seller) "made intentionally or recklessly." Minn. Stat. § 604.101, subd. 4.

appellate court reversed noting that section 604.101 "exhaustively states the [ELD]," and "there is no residual common law [ELD]." *Id.* (quoting Minn. Stat. § 604.101 reporter's notes; citing 27 *Minnesota Practice, Products Liability Law* § 13.15). "Because section 604.101 abrogates the common law and sets forth the full extent of the [ELD] as it applies to bar claims arising on or after August 1, 2000, the district court's holding as to the negligence claim was in error." *Id.* at 539.

In a footnote, Syngenta attempts to distinguish *Ptacek* as applicable only to the sale of goods. (Syn. Br. at 40 n.68.) Nothing in *Ptacek*, however, limits its application in this manner. Further, the decision in *Ptacek* is consistent with recent precedent from the federal district court in Minnesota. *See Smith v. Questar Capital Corp.*, No. 12-CV-2669, 2013 U.S. Dist. LEXIS 108703 (D. Minn. Aug. 2, 2013). In *Smith*, the plaintiff, a purported class representative, filed suit alleging violations of Minnesota's securities laws, common-law negligence, and common-law negligent misrepresentation. *Id.* at *4-5. Defendant filed a motion to dismiss, arguing that the negligence and negligent misrepresentation claims were barred by the ELD. The court denied the motion, reasoning that "[i]n Minnesota, the [ELD] is codified at Minn. Stat. §§ 604.10-101." Because the sale at issue concerned investment securities, "not tangible personal property," the court held they were "not 'goods' under Minn. Stat. §§ 604.10-101." Thus, the court held that the ELD did "not preclude [plaintiff's] negligence and negligent misrepresentation claims." *Id.* at *33. If Syngenta were correct, the court would have applied the common-law economic loss doctrine. It did not.

Second, Syngenta relies on extrinsic sources, but the cardinal rule of statutory interpretation is that, "[w]hen legislative intent is clear from the statute's plain and unambiguous language, we interpret the statute according to its plain meaning without resorting to other

principles of statutory interpretation." *City of Brainerd v. Brainerd Invs. P'ship*, 827 N.W.2d 752, 755 (Minn. 2013) (declining "invitation to rely on extrinsic sources" to interpret statute because "the statute is not ambiguous"); *see also* Minn. Stat. § 645.16 ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.").

Section 604.101 expressly provides that "[t]he economic loss doctrine applies to claims only as stated in this section." Minn. Stat. § 604.101. It also provides that it "applies to any claim . . . regardless of whether article 2 or article 2A of the Uniform Commercial Code under chapter 336 governed the sale or lease that caused the seller to be a seller and buyer to be a buyer[.]" *Id.*, subd. 2(2). Syngenta's interpretation would render the statute's express application to situations outside of "article 2 or article 2A of the Uniform Commercial Code" meaningless. *See* Minn. Stat. § 645.16 ("Every law shall be construed, if possible, to give effect to all its provisions."). That is not to interpret the statute, but to rewrite it.

Based on the plain language of Minn. Stat. § 604.101, Judge Lungstrum "reject[ed] Syngenta's argument that a common-law ELD survives in Minnesota" and correctly held that "the Minnesota plaintiffs' claims are not barred by the ELD." (MDL Order at 26.) This Court should do the same.

Illinois

No Illinois state court has ever applied the SELD in the situation presented by this case and nothing supports the notion that Illinois courts would extend the doctrine where the policies

behind the doctrine are not served, and where Syngenta had an independent duty to act reasonably to avoid the very harm that occurred.[20]

Syngenta argues that because Illinois applied the SELD in *In re Chicago Flood Litigation*, 680 N.E.2d at 274-76, it must be applied here. Syngenta makes the misguided argument that because the SELD has been applied in one of the limited categories in which it served the policies underlying the doctrine, it must be applied to all claims. *Chicago Flood* is a lack-of-access case. Thus, it is uninstructive to the question faced by this Court, which is whether an Illinois court would apply the SELD here. The answer is no.

First, Illinois courts have expressly stated that "[i]n mapping the future course of the [ELD], this court should consider the policy behind it." *Congregation of the Passion v. Touche Ross & Co.*, 636 N.E.2d 503, 527 (Ill. 1994). The policies behind the ELD are not served by applying it here; therefore, the ELD should not be applied.

Second, Illinois courts have stated that "[t]he [ELD] does not bar recovery in tort for the breach of a duty that exists independently of a contract." *Id.* at 515; *2314 Lincoln Park West Condo. Ass'n v. Mann, Gin, Ebel & Frazier, Ltd.*, 555 N.E.2d 346, 352 (Ill. 1990) (recognizing that "[t]he principle common to those decisions [where the ELD is not applied] is that the defendant owes a duty in tort to prevent precisely the type of harm, economic or not, that occurred"). Here, Syngenta had a duty to participants in an interconnected market not to take action that it knew would cause an undue risk of harm.

---

[20] Syngenta cites *Sample v. Monsanto Co.*, 283 F. Supp. 2d 1088 (E.D. Mo. 2003). *Sample* is not an Illinois state case, does not cite Illinois law, and overstates the ELD without analysis. Conversely, Judge Lungstrum's Order provides a thorough analysis of the ELD under Illinois law and holds that it does not apply in this case.

The SELD has never been applied by an Illinois court in this context. Because applying it in this context would not serve the policies underlying the doctrine, and because Syngenta had a duty to prevent the precise harm that occurred, the SELD does not apply under Illinois law.

Iowa

Syngenta's analysis of Iowa law relating to the ELD exemplifies its attempt to expand the ELD far beyond the limited circumstances in which it has previously been applied, again arguing that because the SELD has been applied in *some* clearly identifiable circumstances, it *must* be applied in *all* circumstances.[21] Iowa law does not support this conclusion.

There is no dispute that Iowa has applied the SELD in limited circumstances, as Judge Lungstrum recognized in his analysis. (MDL Order at 38.) *See Annett Holdings, Inc. v. Kum & Go, L.C.*, 801 N.W.2d 499 (Iowa 2011) (applying the SELD in a chain-of-contracts case where the application of tort law would "supplant a consensual network of contracts"); *Neb. Innkeepers, Inc. v. Pittsburgh-Des Moines Corp.*, 345 N.W.2d 124 (Iowa 1984) (applying the SELD in a lack-of-access case). But this is not a lack-of-access or chain-of-contracts case. And the rationales underpinning the SELD in those cases do not apply here.

Rather, the question before the Court is whether Iowa courts would *expand* the ELD to the facts presented here. Case law suggests Iowa courts would decline this invitation where—like

---

[21] Syngenta cites *Anderson Plasterers v. Meinecke*, 543 N.W.2d 612, 613 (Iowa 1996) and *Gosch v. Juelfs*, 701 N.W.2d 90, 91 (Iowa 2005), as examples of the application of the SELD in Iowa. These cases involved questions of whether an employer could recover economic damages based on an employee's injury caused by a third party. As noted in *Anderson Plasterers*, the rationale for precluding the employer's recovery of purely economic damages was two-fold: (1) the Restatement (Second) of Torts § 766(c) did not recognize a claim for "unintentional interference" with the performance of a contract or making the performance "more expensive or burdensome"; and (2) unlike under English common law, which recognized a claim for *per quod servitium amisit* and permitted a "master to recover for the loss of a servant's services," the modern employer-employee relationship no longer treats employees like property. These rationales are inapplicable in this case, and do not support applying the ELD here.

here—the policies underlying the ELD are inapplicable. *See Van Sickle Constr. Co. v. Wachovia Commer. Mortg., Inc.*, 783 N.W.2d 684 (Iowa 2010) (declining to expand the ELD to negligent misrepresentation claims after "a review of the purposes of the ELD and the situations in which it has been applied convinces [the court] that it provides no bar to the recovery of economic losses caused by a negligent misrepresentation"); *accord St. Malachy Roman Catholic Congregation of Geneseo v. Ingram*, 841 N.W.2d 338, 351-52 (Iowa 2013) (recognizing and affirming previous decision to reject expanding the ELD to cases involving principal-agent relationships). The Iowa Supreme Court's analysis in *Van Sickle* relied on a nearly identical policy analysis approach as Judge Lungstrum in determining whether the purposes of the ELD were furthered by applying the doctrine in a new context. *Van Sickle*, 783 N.W.2d at 692. Judge Lungstrum's decision properly analyzed Iowa precedent and, like the Iowa Supreme Court, declined to expand the ELD where the purposes underlying the doctrine are inapplicable.

Louisiana

Louisiana does not apply the ELD, but rather engages in a case-by-case duty-risk analysis to determine whether the policies underlying the doctrine are implicated. *See Maw Enters., L.L.C. v. City of Marksville*, 149 So. 3d 210, 221 (La. 2014) (noting that the Louisiana Supreme Court "abandoned the per se rule excluding recovery [of economic losses] in favor of a case-by-case application of the duty-risk analysis"). Thus, any analysis of Louisiana law *must* consider the policies underpinning the ELD. As discussed in detail above, and as noted in Judge Lungstrum's Order declining to apply the SELD, the rationale supporting the doctrine is not furthered by applying it here. (MDL Order at 24.)

Applying the ELD here would be inconsistent with Louisiana law. In *England v. Fifth Louisiana Levee Dist.*, 167 So. 3d 1105, 1107 (La. App. 2015), for example, the court upheld the

plaintiffs' recovery of "economic damage only for the loss of use of their water" after they were required to stop using it for fear that the defendant had negligently contaminated it with herbicide. Saliently, *England* permitted recovery even though the plaintiffs water supply had not been contaminated—and thus there was no actual damage to property—after conducting its duty-risk analysis and finding a connection between the duty breached by the defendant and the purely economic damage suffered by plaintiffs. *Id.* at 1111. *England* directly demonstrates that a Louisiana court would not apply the ELD here.

Conversely, Syngenta cites *Wiltz v. Bayer CropScience, Ltd.*, 645 F.3d 690 (5th Cir. 2011), which is inapposite. *Wiltz* specifically noted that "although Bayer may have foreseen harm to the crawfish industry generally, *there is no indication that it should have foreseen harm to the plaintiffs specifically*." 645 F.3d at 702 n.16 (emphasis added). Plaintiffs here allege that Syngenta not only *could* foresee the harm it caused, but that the harm was "indeed foreseen" by Syngenta. (NCC ¶ 226.) Thus, neither the policies underlying the ELD nor Louisiana case law support application of the doctrine in this case.

Missouri

Syngenta insists that Missouri has adopted the SELD based on a case decided over 100 years ago, *Brink v. Wabash Ry. Co.*, 60 S.W. 1058 (Mo. 1901). (Syn. Br. at 45.) *Brink* relied on English common law and determined that parents could not maintain an action against the railroad for the negligent death of their son, which caused them to lose his financial support. *Id.* at 1059-60. The court carefully noted, however, that the outcome would be different had the railroad acted willfully. *Id.* at 1060.

Moreover, as the MDL Order observed, "much has changed in tort law since that case was decided," and thus *City of St. Louis v. Am. Tobacco Co.*, 70 F. Supp. 2d 1008, 1013 (E.D.

Mo. 1999), declined to follow *Brink*. (*See* MDL Order at 39.) *City of St. Louis* reasoned that "claims and issues" being considered differed substantially from those in *Brink*; the same is true here. Moreover, Missouri has repeatedly recognized exceptions in other cases. *Bus. Men's Assurance Co. of Am. v. Graham*, 891 S.W.2d 438, 454 (Mo. App. 1984) (refusing to apply the ELD to a claim relating to architectural services);[22] *B.L. Jet Sales, Inc. v. Alton Packaging Corp.*, 724 S.W.2d 669, 673 (Mo. App. 1987) (concluding negligent misrepresentation cases are in a different category than cases in which the ELD has been applied). *In re Genetically Modified Rice Litig.*, 666 F. Supp. 2d 1004, 1016-17 (E.D. Mo. 2009), concluded that the SELD did not bar rice contamination claims, and noted "Missouri has traditionally allowed tort claims even where the only damages sought were economic."

Syngenta cites *Dannix Painting, LLC v. Sherwin-Williams Co.*, No. 4:12-CV-01640, 2012 U.S. Dist. LEXIS 170845 (E.D. Mo. Dec. 3, 2012), to argue that the SELD would apply in Missouri. (Syn. Br. at 45.) In doing so, Syngenta ignores the rationale of the ELD: preventing "tort law from 'altering the allocation of costs and risks negotiated by the parties.'" *Dannix*, 2012 U.S. Dist. LEXIS 170845, at *3-4 (citation omitted). Thus, as Judge Lungstrum concluded, there is no basis for predicting that Missouri courts would apply the SELD "without consideration of whether the purposes of the rule would be served." (MDL Order at 40.)

Ohio

Ohio courts have applied the SELD only in public-nuisance claims. *RWP, Inc. v. Fabrizi Trucking & Paving Co.*, No. 87382, 2006 Ohio App. LEXIS 4958 (Sept. 28, 2006). This Court

[22] Syngenta attempts to distinguish *Graham* by analogizing it with a professional malpractice claim. (Syn. Br. at 45.) This analogy ignores the reasoning of the court: even where a contract exists, damages arising from a breach of duty are still recoverable. *Graham*, 891 S.W.2d at 454.

should not expand the SELD in Ohio where, as here, applying it would not serve the SELD's underlying policies and where there is an independent duty precluding the ELD.

Syngenta argues that applying the ELD in *River Corp. Group II v. Conrail, Inc.*, 549 F. Supp. 2d 981 (N.D. Ohio 2000), mandates applying it here because *Ashtabula* "squarely rejected the theory that the ELD does not bar tort claims that are independent of a contract claim." (Syn. Br. at 46.) Syngenta's reliance on *Ashtabula* is misleading and misplaced. *Ashtabula* is a public-nuisance case and the court's decision is limited to that context. Further, Syngenta misstates the holding. *Ashtabula* simply recognized that the plaintiff was "not alleging a tort independent of a breach of contract" without further discussion. Finally, the issue was not whether there was a tort claim without an accompanying contract claim, but that the defendant had no duty in tort.

The Ohio Supreme Court has held that the ELD does not apply where there is a "discrete, preexisting duty in tort." *Corporex Dev. & Constr. Mgmt. v. Shook, Inc.*, 835 N.E.2d 701, 705 (Ohio 2005); *Campbell v. Krupp*, 961 N.E.2d 205 (Ohio App. 2011); *see also* MDL Order at 41 ("Other courts in Ohio, however, have held that the ELD does not apply to a claim based on the breach of a non-contractual duty."). Plaintiffs have alleged that Syngenta had an independent tort duty.

Ohio courts have deemed it appropriate to consider the policies underlying the ELD in determining whether the doctrine should be applied. *Eysoldt v. Imaging*, 957 N.E.2d 780, 785 (Ohio App. 2011) (considering "the fundamental policy consideration underlying the economic loss rule" in deciding not to apply the doctrine). Because the SELD has never been applied under Ohio law in the context presented by this case, Syngenta had an independent duty in tort, and applying the SELD here would not serve the doctrine's underlying policies, the SELD does not apply under Ohio law.

Tennessee

Tennessee courts have applied the SELD only in lack-of-access cases. (MDL Order at 42 (citing *United Textile Workers, etc. v. Lear Siegler Seating Corp.*, 825 S.W.2d 83, 84 (Tenn. App. 1990); *Ladd Landing, LLC v. TVA*, 874 F. Supp. 2d 727, 728 (E.D. Tenn. 2012).) Syngenta relies solely on *Lear Siegler* and *Ladd Landing* to argue that the SELD should be expanded to apply in this case. This Court should reject Syngenta's argument for several reasons.

First, Tennessee Courts consider the policies underlying the ELD and SELD when determining if those doctrines apply. For instance, in *Lear Siegler*, the Court discussed the possibility for "limitless liability, or liability out of proportion to the defendants fault" and other "policy reasons" when deciding whether to apply the ELD. *Id*. at 85; *see also Lincoln Gen. Ins. Co. v. Detroit Diesel Corp.*, 293 S.W.3d 487, 492 (Tenn. 2009) (adopting an approach to ELD that "fairly balances the competing policy interests"). Tennessee courts are unlikely to expand the SELD in this case because the policies underlying the doctrine would not be served by its application.

Second, Tennessee Courts have indicated that the ELD should be limited to product-liability cases. As stated in *Ham v. Swift Transp. Co.*, "[t]he Tennessee Court of Appeals has since implicitly restricted the economic loss doctrine to claims involving products liability or the sale of goods, at least where the plaintiff can establish a sufficiently direct relationship between the defendant's negligent act and the plaintiff's economic loss." 694 F. Supp. 2d 915, 922 (W.D. Tenn. 2010). Since Tennessee courts have so limited the ELD, they are unlikely to expand the SELD into a new category of case in which the policies underlying the doctrine are not served.

Texas

Texas courts also consider the policies underlying the ELD in determining whether to apply the doctrine. *See LAN/STV v. Martin K. Eby Constr. Co.*, 435 S.W.3d 234 (Tex. 2014) (stating that "whether and how to apply the economic loss rule does not lend itself to easy answers or broad pronouncements. Rather, as we have already observed, the application of the [ELD] depends on an analysis of its rationales in a particular situation"). In *LAN/STV*, two policy rationales supported applying the ELD: (1) avoiding indeterminate and disproportionate liability; and (2) deference to contract law. *Id.* at 240-41. The court carefully confined its opining by noting that a "duty may exist when the rationales just stated for limiting recovery are 'weak or absent.'" *Id.* at 241. Neither of these policy rationales supports applying the ELD in this case. As Judge Lungstrum explained, his "consideration of the pertinent rationales in deciding whether to apply the ELD in this case [was] consistent with the approach mandated by the Texas Supreme Court." (MDL Order at 44.)

Further, the primary case law cited by Syngenta in its attempt to undermine Judge Lungstrum's order *supports* Plaintiffs' arguments against applying the ELD. For example, *Sterling Chems., Inc. v. Texaco Inc.*, 259 S.W.3d 793, 799-800 (Tex. App. 2007), applied the ELD only because "although [plaintiff] may not have been in privity with [defendant], the economic losses claimed . . . were the subject matter of [plaintiff's] product supply agreement with [a third party], and the contract specifically addressed the issue of consequential damages." Thus, *Sterling* is a classic chain-of-contracts case applying the ELD to protect the bargained-for contract rights negotiated between parties in a series of linked contracts. *Sterling* is inapplicable here.

Wisconsin

Syngenta relies on *Midwest Knitting Mills, Inc. v. United States*, 950 F.2d 1295 (7th Cir. 1991), to argue that Wisconsin would unequivocally apply the SELD here. But in the 25 years after *Midwest*'s prediction that "Wisconsin would decline in all circumstances to allow a negligence suit for the recovery of only economic damages, even where there is no contractual relationship,"[23] Wisconsin courts have fulfilled that prediction. Instead, they have remained steadfast in applying the ELD only to product liability and contract claims. (MDL Order at 44-45.)

For example, *United Concrete & Construction, Inc. v. Red-D-Mix Concrete, Inc.*, 836 N.W.2d 807, 822 (Wis. 2013), affirmed that the ELD barred claims related to concrete work done pursuant to a contract because to hold otherwise "would prevent contractual rules from serving their legitimate function in governing commercial transactions." The court went on, however, to hold that claims unrelated to the concrete, *i.e.*, for landscaping, were not subject to the ELD because they were not governed by a contract. *Id.* at 823 n.19, *see also Ins. Co. of N. Am. v. Cease Elec. Co.*, 688 N.W.2d 462 (Wis. 2004) (refusing to extend the ELD to service contracts because "a recognition of tort actions in cases under the U.C.C. would upset the remedies contained in the U.C.C.; when the rationale is not applicable, *i.e.*, when the U.C.C. does not apply, there is no reason for the [ELD] to apply"); *Brew City Redevelopment Grp., LLC v. Ferchill Grp.*, 724 N.W.2d 879, 884 (Wis. 2006) (concluding the ELD did not apply because claims were not predicated on contract); *Walker v. Ranger Ins. Co.*, 711 N.W.2d 683, 687 (Wis.

---

[23] *Custom Underground, Inc. v. Mi-Tech Servs., Inc.*, No. 10-CV-222-JPS, 2011 WL 5008343 (E.D. Wis. Oct. 20, 2011), accepted *Midwest Knitting*'s broad proclamation without any analysis of the Wisconsin opinions that subsequently refused to apply the ELD outside of the product liability or contractual context. (*See* MDL Order at 45 n.14.)

App. 2006) (declining to expand the ELD beyond product liability or contract cases because "[t]he ELD exists to compel parties bound by a contractual relationship to pursue damages via contract, not to prevent an injured party from bringing a potentially viable negligence claim when no contract exists").

Alabama

Alabama courts have not applied the ELD outside the context of product-liability cases. *Lloyd Wood Coal Co. v. Clark Equip. Co.*, 543 So. 2d 671, 673 (Ala. 1989); *see also Vesta Fire Ins. Corp. v. Milam & Co. Constr.*, 901 So. 2d 84, 107 (Ala. 2004) (rejecting the ELD absent evidence that damage was caused by a "product" within the meaning of Alabama's product-liability statutes); *Wellcraft Marine, a Div. of Genmar Indus., Inc. v. Zarzour*, 577 So. 2d 414 (Ala. 1990) (applying the ELD to a defective-boat claim); *Tull Bros. v. Peerless Prods., Inc.*, 953 F. Supp. 2d 1245, 1256 (S.D. Ala. 2013) (holding that the ELD did not apply in an action by a subcontractor where there was no damage to the product itself, but rather only the cost to install a new one). Syngenta has not—and cannot—point to any authority to support its argument that the Alabama courts would so drastically expand the ELD to apply here.

Arkansas

Arkansas has completely rejected applying the ELD, even in the strict-liability context. *See Bayer CropScience LP v. Schafer*, 385 S.W.3d 822, 832 (Ark. 2011) (declining to "extend the doctrine to claims involving negligence" because of allegations of damage to property); *Blagg v. Fred Hunt Co., Inc.*, 612 S.W.2d 321, 324 (Ark. 1981) (rejecting application in the strict-liability context). The MDL Order concluded that "at least one federal court has declined to apply the ELD under Arkansas law in the stranger context." (MDL Order at 27 (citing *Carvin v. Ark. Power & Light Co.*, No. 90-6055, 1991 WL 54048, at *4-5 (W.D. Ark. Nov. 26, 1991),

which stated "[t]he question then is not whether the so-called economic loss rule applies but whether the plaintiffs have a right to recover losses for the kind of harm they sustained").) Syngenta attacks this as "flatly incorrect." (Syn. Br. at 53.) In so doing, Syngenta ignores that recovery was barred in *Carvin* because plaintiffs did not have a sufficient "property interest" to warrant recovery, not because the court applied the SELD. *Carvin*, 1991 WL 54048, at *5. Judge Lungstrum's analysis of Arkansas law was correct, and he properly declined to apply the SELD in a state that has not even adopted the ELD.

Colorado

Colorado law clearly precludes applying the ELD to any claim based on the breach of a duty that is independent of any contractual obligation. *See, e.g., S K Peightal Eng'rs, Ltd. v. Mid Valley Estate Sols. V, LLC*, 342 P.3d 868, 875 (Colo. 2015) ("If, however, the duty breached arises 'independently of any contract duties between the parties,' then a tort action premised on that breach remains viable."); *Cosmopolitan Homes, Inc. v. Weller*, 663 P.2d 1041, 1042 (Colo. 1983) (the ELD will not bar a tort claim against a homebuilder because it has an independent duty to act without negligence in constructing the home); *Metro. Gas Repair Serv., Inc. v. Kulik*, 621 P.2d 313 (Colo. 1981) (holding that the contractual relationship gave rise to a common-law duty for defendant to perform its work with reasonable care and skill). Here, the duties alleged by Plaintiffs arise from common law, not contract, and are thus independent of any contractual duty owed by Syngenta. Thus, the SELD does not bar Plaintiffs' claims.

Indiana

As Judge Lungstrum noted, Indiana courts apply the ELD in a limited number of contexts. *See Indianapolis-Marion Cnty. Pub. Library v. Charlier Clark & Linard, P.C.*, 929 N.E.2d 722, 736-37, 742 (Ind. 2010) (applying the ELD to preclude purely economic recovery in

a chain-of-contracts case); *Gunkel v. Renovations, Inc.*, 822 N.E.2d 150, 152 (Ind. 2005) (applying the ELD to claims for failure of performance of products or services). In seeking to invoke the ELD, Syngenta relies on three decisions: *U.S. Bank, N.A. v. Integrity Land Title Corp.*, 929 N.E.2d 742, 748 (Ind. 2010); *Charlier*, 929 N.E.2d at 739; and *Morton v. Merrillville Toyota, Inc.*, 562 N.E.2d 781, 786 (Ind. App. 1990). (Syn. Br. at 54-55.) None of these cases support applying the ELD.

Morton affirmed that an employer could not recover solely economic losses resulting from an injury to an employee, reasoning that any such claim was "outmoded" and the "policy reasons for adopting it are dubious." 562 N.E. 2d at 786. The court cited the potential "multiplicity of actions" whereby an employee would sue the tortious actor for the injury incurred while the employer would file a parallel suit seeking damages for lost revenue and profits. *Id. Morton* provides no evidence to support application of the ELD in this case.

Charlier analyzed the context in which the ELD had previously applied, *i.e.*, product liability and contract claims. 292 N.E.2d at 741. *Charlier* then applied the ELD reasoning "there is no liability in tort to the owner of a major construction project for pure economic loss caused unintentionally by contractors, subcontractors, engineers, design professionals, or others engaged in the project with whom the project owner, whether or not technically in privity of contract, is connected through a network or chain of contracts." *Id.* Thus, *Charlier* was a chain-of-contracts case and is inapposite.

Finally, Syngenta cites *U.S. Bank* to argue that Indiana courts have "made clear that the 'existence or non-existence of a contract is not the dispositive factor for determining whether a

tort action [for economic loss] is allowable.'"[24] (Syn. Br. at 54.) But *U.S. Bank* determined whether the ELD applied to claims of negligent misrepresentation by a title insurer, with the court *reversing* the trial court's dismissal of the plaintiffs tort claim and permitting the plaintiff to pursue the claim for solely economic damages. 929 N.E.2d at 749-50. Moreover, in so holding, the court favorably cited a prior decision that observed: "[A] defendant's exposure to tort liability is best framed in terms of what the defendant did. . . . To the extent that a plaintiff's interests have been invaded beyond mere failure to fulfill contractual obligations, a tort remedy should be available." *Id.* at 749 (quoting *Greg Allen Constr. Co., Inc. v. Estelle*, 798 N.E.2d 171, 173 (Ind. 2003)). Indiana case law does not support applying the ELD.

Kansas

Under Kansas law, the ELD has been applied in product-defect cases. *See Elite Profs., Inc. v. Carrier Corp.*, 827 P.2d 1195, 1197 (Kan. App. 1992). In *Rinehart v. Morton Buildings, Inc.*, 305 P.3d 622, 625-26 (Kan. 2013), the Kansas Supreme Court explicitly declined to expand the ELD to cover claims of negligent misrepresentation because "the duty at issue arises by operation of law and the doctrine's purposes are not furthered by its application under these circumstances." *Rinehart* acknowledged that the ELD is "still unfolding" under Kansas law, but declined to "extend the doctrine" where the rationales and policies underpinning the doctrine are not present. *Id.*; *see also Bryant Manor, LLC v. Bank of Am., N.A. (In re Manor, LLC)*, 434 B.R. 629, 636 (Bankr. D. Kan. 2010) (declining to expand the ELD where the plaintiff was not

[24] Syngenta has omitted a substantial portion of the quotation, which properly reads: "Moreover, consistent with our opinion in *Indianapolis-Marion County Public Library*, the existence or non-existence of a contract is not the dispositive factor for determining whether a tort action is allowable where special circumstances and overriding public policies have carved out exceptions for tort liability." The omitted portion of the quotation demonstrates that Indiana courts engage in a public-policy analysis to determine whether the policies underlying the ELD are served by its application.

"seeking to circumvent claims that could be brought under contract law by instead bringing tort claims"). Accordingly, in considering the expansion of the ELD from its traditional application under Kansas law—product defect cases—this Court *must* consider whether the policies underpinning the ELD support its application. As demonstrated above, and in the detailed analysis of the MDL Order, those policies do not support expansion of the doctrine to apply the ELD here.

Syngenta relies on *Long Motor Corp. v. SM & P Utility Res., Inc.*, 214 P.3d 707 (Kan. App. 2009) (unpublished), to argue that the SELD should be expanded in Kansas to preclude Plaintiffs' claims. (Syn. Br. at 55.) *Long Motor* affirmed the application of the ELD outside of the traditional product-liability context after a thorough policy and factual analysis. This case is distinguishable because *Long Motor* feared that permitting recovery would "expand the potential pool of plaintiffs beyond reason." *Id.* at *6. Here there is an identifiable group of claimants who participated in an interconnected market and whose injuries were actually foreseen by Syngenta. Further, *Long Motor* was cabined to the facts of that case, with the notation that the claim was dismissed "[d]ue to these public policy concerns, and based on the specific facts presented here." *Id*. Significantly, this Court should be hesitant to contradict Judge Lungstrum's conclusion that Kansas courts would not apply the ELD here. (MDL Order at 24.)

Kentucky

Under Kentucky law, the ELD has been limited to product-liability and sales cases. *Giddings & Lewis, Inc. v. Indus. Risk Insurers*, 348 S.W.3d 729, 738 (Ky. 2011), adopted the ELD, by recognizing that "economic losses, in essence, deprive the purchaser of the benefit of his bargain and that such losses are best addressed by the parties' contract and relevant provisions of Article 2 of the Uniform Commercial Code." Kentucky's federal courts have held

that where a "negligence claim does not arise from the sale of a defective product in a commercial transaction . . . under the controlling authority of Kentucky's highest court, the [ELD] does not apply." *NS Trans. Brokerage Corp. v. Louisville Sealcoat Ventures, LLC*, No. 3:12-CV-00766 (JHM), 2015 WL 1020598, at *3 (W.D. Ky. Mar. 9, 2015). Both of these cases demonstrate that in Kentucky, the ELD is confined to product-liability and contract cases.

Finally, a concurring opinion in *Presnell Construction Managers, Inc. v. EH Construction, LLC*, 134 S.W.3d 575, 589-90 (Ky. 2004), observed that *if* the economic loss doctrine *were* to be expanded, exceptions should be recognized for "special relationships" that "by their nature automatically trigger an independent duty of care" and instances where "a duty independent of any contractual obligations" exists, precluding application of the rule. *Id.* Thus, the *only* applicable analysis is firmly against applying the ELD in this case.

Michigan

Michigan law makes it abundantly clear that the ELD applies only where "there was a contract or commercial transaction that governed the plaintiff's economic expectations." *Quest Diagnostics, Inc. v. MCI WorldCom, Inc.*, 656 N.W.2d 858, 866 (Mich. App. 2002). Here, there is no contract or commercial transaction that governed Plaintiffs' economic expectations. Nevertheless, Syngenta argues that this Court "should predict that the Michigan courts would apply the SELD in this 'mass tort' action." (Syn. Br. at 56.) As support, Syngenta cites to a single decision in which the defendants argued that there *should* be an exception to the ELD in "mass tort claims" and the Michigan Court of Appeals refused to even consider that argument. *Quest Diagnostics*, 656 N.W.2d at 866. This fact was explicitly noted by Judge Lungstrum in rejecting Syngenta's recycled argument. (MDL Order at 33.) There is no basis to predict that a Michigan court would apply the SELD here.

Mississippi

Syngenta contends that Mississippi has "not addressed, let alone rejected, the stranger ELD." (Syn. Br. at 56.) This argument loses the forest for the trees. The Mississippi Supreme Court has not adopted the ELD; thus, of course it has not expressly rejected the SELD.

Moreover, Syngenta ignores that the Mississippi Court of Appeals and federal courts have repeatedly observed that the ELD applies only in product-liability cases. *State Farm Mut. Auto. Ins. Co. v. Ford Motor Co.*, 736 So. 2d 384, 387 (Miss. App. 1999); *Lyndon Prop. Ins. Co. v. Duke Levy & Assocs. LLC*, 475 F.3d 268, 274 (5th Cir. 2007) (refusing to apply the ELD to a contract case because no Mississippi case applies the ELD outside the realm of product liability); *BC's Heating & Air & Sheet Metal Works, Inc. v. Vermeer Mfg. Co.*, 2012 U.S. Dist. LEXIS 24420, at *26-27 (S.D. Miss. Feb. 27, 2012) (considering a motion to dismiss and refusing to apply the ELD where claims based on contract, tort, warranty, and product liability were pled because the ELD applies only to product liability cases, and barring Plaintiffs' claims would "effectively choose [the] theory of liability"); *Photo Arts Imaging Prof'ls, LLC v. Best Buy Co.*, 2011 U.S. Dist. LEXIS 135596, at *10-11 (S.D. Miss. Nov. 22, 2011) (denying motion for summary judgment based on the ELD because the ELD applies to only product liability cases and "Plaintiff's claims sound in both tort and contract, and the Court does not have sufficient evidence to sort out which rubric is a closer fit"); *Fed. Ins. Co. v. Gen. Elec. Co.*, 2009 U.S. Dist. LEXIS 112931, at *22 (S.D. Miss. Dec. 3, 2009) (noting that in Mississippi the ELD "has not been extended beyond product liability cases"); *Miss. Phosphates Corp. v. Furnace & Tube Serv., Inc.*, 2008 U.S. Dist. LEXIS 11294 (S.D. Miss. Feb. 1, 2008) (denying motion to dismiss because the ELD does not apply to non-product liability cases); *Brasscorp v. Highside Chems., Inc.*, 2007 U.S. Dist. LEXIS 41690 (S.D. Miss. June 7, 2007) (denying motion for summary

judgment because the ELD applies only to product liability cases). (S*ee also* MDL Order at 33-34. This is not a product-liability case. Therefore, in Mississippi, the ELD would not bar Plaintiffs' claims.

Nebraska

Nebraska has "expressly limited" the ELD to two contexts: product liability and situations where the alleged breach is based on a contractual duty, and no independent tort duty exists. *Lesiak v. Cent. Valley Ag Coop.*, 808 N.W.2d 67, 81-82 (Neb. 2012); *see also Thurston v. Nelson*, 2014 Neb. App. LEXIS 41, at *21 (Neb. App. Feb. 4, 2014); *E3 Biofuels-Mead, LLC v. Skinner Tank Co.*, 2014 U.S. Dist. LEXIS 12302, at *4 (D. Neb. Jan. 30, 2014) (the ELD does not bar tort theories if "there exists an independent tort duty alleged to be breached that is separate and distinct from the contractual duty"). Syngenta's urging that *Lesiak* does not support Nebraska's rejection of the SELD ignores the circumspect clarification of the ELD's "application and scope in Nebraska." *Id.* at 80-81 (observing that the ELD is a "judicially created doctrine" akin to the "ever-expanding, all-consuming alien life form portrayed in the 1958 B-movie class *The Blob*," which might "consume much of tort law if left unchecked"). *Lesiak* concluded that the primary and most compelling rationale of the ELD "is to preserve the distinction between contract and tort theories in circumstances where both theories could apply." *Id.* at 81. Thus, as the MDL Order observed, *Lesiak* "would preclude application of the ELD in this case." (MDL Order at 35.)

North Carolina

North Carolina has not applied the ELD outside of product-liability cases and has observed that the ELD does not overturn 25 years of case law allowing tort claims for negligence based on breaches in the duty of care. (MDL Order at 35 (citing *Lord v. Customized Consulting*

Specialty, Inc., 643 S.E.2d 28, 32 (N.C. App. 27).) *See Hospira Inc. v. AlphaGary Corp.*, 671 S.E.2d 7, 14 (N.C. App. 2009) (the rationale behind the ELD is to "encourage[] contracting parties to allocate risks for economic loss themselves," and is therefore inapplicable where no privity exists); *Moore v. Coachmen Indus.*, 499 S.E.2d 772, 780 (N.C. App. 1998) ("[T]he rationale for the [ELD] is that the sale of goods is accomplished by contract and the parties are free to include, or exclude, provisions as to the parties' respective rights and remedies . . . . To give a party a remedy in tort . . . would permit the party to ignore and avoid the rights and remedies granted or imposed by the parties' contract."); *Ellis-Don Constr., Inc. v. HKS, Inc.*, 353 F. Supp. 2d 603, 606 (M.D. N.C. 2004) (rejecting defendant's argument that the ELD required granting a motion to dismiss and stating that the ELD "does not limit tort action that arise in the absence of a contract, nor is there any indication that the courts of North Carolina have expanded the [ELD] beyond its traditional role in products liability cases").

Thus, Syngenta's contention that there is no indication that "North Carolina would reject bright-line application of the stranger ELD" is unavailing and does not support its motion to dismiss. (Syn. Br. at 56.)

North Dakota and Oklahoma

Neither North Dakota nor Oklahoma have adopted the SELD. Rather, like many other states, both North Dakota and Oklahoma have limited the ELD to the product-liability context. *See Leno v. K & L Homes, Inc.*, 803 N.W.2d 543, 550 (N.D. 2011); *Waggoner v. Town & Country Mobile Homes, Inc.*, 808 P.2d 649, 652 (Okla. 1990). There is no authority to indicate that North Dakota or Oklahoma would expand the ELD, let alone that they would do so when the policies underlying the doctrine do not support its application. When predicting the law of another state, the Court's "duty is to conscientiously ascertain and apply state law, not to

formulate new law based on our own notions of what is the better rule." *Leonard v. Dorsey & Whitney LLP*, 553 F.3d 609 (8th Cir. 2009). Thus, this Court should decline to expand the law of these states by applying the ELD.

South Dakota

South Dakota courts have applied the ELD only in commercial transactions governed by the UCC, reasoning that in that context "the general rule is that economic losses are not recoverable under tort theories; rather, they are limited to the commercial theories found in the U.C.C." *City of Lennox v. Mitek Indus., Inc.*, 519 N.W.2d 330, 333-34 (S.D. 1994). The South Dakota Supreme Court has explicitly *rejected* expanding the ELD to cases outside the context of the UCC. *See Kriesers Inc. v. First Dakota Title Ltd. P'ship*, 852 N.W.2d 413, 421-22 (S.D. 2014) (rejecting expansion of the ELD to apply to the provision of professional services).

Further, Syngenta mischaracterizes the Court's reasoning in *Kriesers*, arguing that the Court "looked to Illinois—a state that has unquestionably adopted the SELD" in defining the contours of the ELD. (Syn. Br. at 57.) Leaving aside that Illinois courts *would not* apply the SELD under the facts presented in this case, the South Dakota Supreme Court relied on Minnesota law, not the law of Illinois, in analyzing the application of the ELD. *See id.* at 421 ("In formulating our economic loss rule, we cited Minnesota law, which has declined to extend the [ELD] beyond commercial transactions."). Simply put, Syngenta cannot provide any case law supporting extension of the ELD.

F. The ELD does not bar Producer Plaintiffs' claims because they have adequately pled harm to property.

Judge Lungstrum relied on the federal plausibility standard to hold that Producer Plaintiffs did not adequately allege physical injury. (MDL Order at 20-21.) Plaintiffs here are not required to meet this higher standard. *Walsh*, 851 N.W.2d at 603, explicitly rejected application

of the federal plausibility standard to pleadings under Minnesota's Rules of Civil Procedure. *Id.* ("[W]e now decline to engraft the plausibility standard from *Twombly* and *Iqbal* onto our traditional interpretation of Minn. R. Civ. P. 8.01."). Minnesota's notice-pleading standard "does not require absolute specificity in pleading, but rather requires only information sufficient to fairly notify the opposing party of the claim against it." *Id.* at 605 (quoting *Hansen*, 813 N.W.2d at 917-18.)

As discussed, Producer Plaintiffs do not rely on allegations of physical damage to their corn to defeat Syngenta's ELD argument. But to the extent this Court considers it necessary, Producer Plaintiffs have adequately alleged physical damage precluding application of the SELD. *See e.g.*, *Ashtabula River Corp. Group II v. Conrail, Inc.*, 549 F. Supp. 2d 981, 988 (N.D. Ohio 2008) ("Where 'plaintiff suffers both physical injury and economic loss, economic losses resulting from physical injury are recoverable.'") (citation omitted).

Plaintiffs allege that "Syngenta's acts and omissions have resulted in, and will continue to result in, the pervasive contamination of the U.S. corn supply, including fields, grain elevators and other facilities of storage and transport, causing physical harm to Producers' and Non-Producers' corn, equipment, storage facilities, and land." (*See*, *e.g.*, NCC ¶ 236.) Producers and Non-Producers are participants in the U.S. corn market reliant on the corn supply that was contaminated and damaged by Syngenta's conduct. Plaintiffs also allege that "Plaintiffs' chattels/movables were impaired as to condition, quality, or value, and Plaintiffs were damaged." (*Id*. ¶ 309.) Therefore, Plaintiffs have made sufficient allegations of physical damage to place Syngenta on notice of the economic damages Plaintiffs intend to recover. Under Minnesota's notice-pleading standard, that is sufficient to survive a motion to dismiss.

G. The ELD does not bar Non-Producer Plaintiffs' claims.

Syngenta's argument with respect to Non-Producers contradicts the SELD argument it makes regarding Producers. Specifically, Syngenta argues that either (or both) the contractual ELD and the SELD apply based on whether Non-Producers allege damage to their own corn. But the question of whether any application of the ELD would fall under the stranger strand, or the traditional contract strand, does not hinge on injury to a proprietary interest, it hinges on the relationship between Plaintiffs and Syngenta. Here the Non-Producer Plaintiffs are *not* parties to a contract with Syngenta and Non-Producers did not buy any of Syngenta's products. As Syngenta readily acknowledges, "Syngenta sells corn seed. It does not grow corn for commercial sale, distribute corn, segregate corn or export corn."[25] (Third Party Compl. ¶ 43.) Therefore, the lack of a contractual relationship between Syngenta and Non-Producers dictates that if the ELD applies at all, it can only do so under the SELD, the only iteration that applies to strangers.

Further, Syngenta's attempt to shoehorn the Non-Producer Plaintiffs' claims into the contractual ELD is backwards. Syngenta argues that "[t]o the extent the Non-Producers assert that they were injured because the particular corn they purchased contained Viptera corn, the contractual strand of the ELD bars tort claims for economic losses arising where the parties are connected (directly or indirectly) by a contract." (Syn. Br. at 57.) Presumably, by arguing that the contract ELD applies "directly or indirectly," Syngenta is referring to the chain-of-contracts cases, stemming from *Robins*. But *Robins* precludes applying the ELD where Non-Producers plead damage to their own corn. "[T]he prevailing rule denie[s] a plaintiff recovery for economic loss if that loss resulted from physical damage to property in which he had no proprietary interest." *La. ex rel. Guste*, 752 F.2d at 1022 (explaining the holding of *Robins*). Therefore, if

[25] On November 19, 2015, Syngenta filed a Third-Party Complaint in the Federal MDL asserting claims against Cargill and ADM. Citations to the "Third Party Compl." refer to that document.

Non-Producers' corn was damaged by Syngenta's premature commercialization, that fact would remove their claims from the ELD under *Robins*, rather than urging its application as Syngenta argues.

Regardless, Syngenta's argument is irrelevant. What matters is that neither the contractual ELD nor the SELD applies to Non-Producers' claims. As established above, there is no contract, or opportunity to contract, that would make the contractual ELD apply. The SELD cannot apply because Non-Producers' claims do not fall into one of the recognized categories of SELD cases. Syngenta argues that Non-Producers' "claims are identical to those of the Producers." (Syn. Br. at 57.) That argument is inaccurate, but it is true that the same policy factors precluding expansion of the SELD to Producers' claims also preclude expansion of the SELD to Non-Producers' claims.

Although it is clear that the contractual ELD does not bar Non-Producers' claims, Syngenta makes additional arguments for three of the relevant states. Those arguments are unpersuasive.

Minnesota

Minnesota's ELD does not bar claims by Non-Producers. As already explained, Minnesota's ELD is entirely statutory. Minn. Stat. § 604.101; Minn. Stat. § 604.101, subd. 5; *Ptacek*, 844 N.W.2d at 538-39. Other than common law misrepresentation claims, it applies to claims "for harm caused by a defect in the goods sold." Minn. Stat. § 604.101, subd. 2; *see also* Minn. Stat. § 604.101, subd. 3 (setting out when a buyer may bring a "product defect tort claim").[26]

[26] A buyer may bring a "product defect tort claim" if a "defect in the goods sold or leased caused harm to the buyer's tangible personal property other than the goods or to the buyer's real

Contrary to Syngenta's arguments, section 604.101 does not apply to Non-Producers' claims because they did not purchase a "good" sold by Syngenta. As Syngenta readily acknowledges, "Syngenta sells corn seed. It does not grow corn for commercial sale, distribute corn, segregate corn or export corn." (Third Party Compl. ¶ 43.) Therefore, Judge Lungstrum correctly noted that the Non-Producers "bought corn, but [they] did not buy any product sold by Syngenta, which sold seeds, and Syngenta has not cited any authority to support a theory allowing for liability under this statute if the plaintiff did not buy the particular product sold by the defendant." (MDL Order at 47.)

In addition, section 604.101 is unavailing to Syngenta because neither Producers nor Non-Producer Plaintiffs have alleged a product defect. They do not allege that Viptera seed was defectively designed or manufactured, or that Syngenta's instructions or warnings on safe use were inadequate. They do not allege that Viptera seed was unfit for a particular purpose required by a particular buyer (Minn. Stat. § 336.2-315), was unmerchantable (Minn. Stat. § 336.2-314), or failed express warranties (Minn. Stat. § 336.2-313). In strikingly similar circumstances (the sale of fertilizer to farmers), *Ptacek* held that that the plaintiff "did not assert . . . a product-defect tort claim." 844 N.W.2d at 539; *see also* MDL Order at 47 ("In addition, plaintiffs have not alleged any sort of product defect, as Syngenta's seeds are not alleged to have failed to perform as intended. Therefore, the Court concludes that the claims by the Minnesota non-producer plaintiff are not barred by the ELD."); Minn. Stat. § 604.101, rep. note ("To come within the definition of 'product defect tort claim' a common law tort claim must seek recovery 'for damages caused by a defect in the goods.'").

---

property," in which case the buyer may recover loss for, *e.g.*, "diminution in value of the other tangible personal property or real property" including costs of repair, replacement and restoration, and "business interruption losses." Minn. Stat. § 604.101, subd. 3(1)-(2).

Because the Non-Producer Plaintiffs did not purchase a "good" sold by Syngenta and have not alleged a "product defect tort claim," Syngenta's motion to dismiss must be denied.

Arkansas

Syngenta argues that this Court should apply the "contractual ELD" to bar Non-Producers' claims under Arkansas law. (Syn. Br. at 68.) Syngenta is wrong for at least two reasons. First, there are no allegations by Plaintiffs that Non-Producers contracted with Syngenta and, as Judge Lungstrum noted, there is no evidence to support that assertion because Non-Producers purchase corn, not corn seed. (MDL Order at 47.) Thus, the contractual ELD does not apply.

Second, Arkansas courts have not adopted the ELD in any form under any circumstance. See Blagg v. Fred Hunt *Co., Inc*., 612 S.W.2d 321, 324 (Ark. 1981) (rejecting application in the strict liability context); *see also Bayer CropScience LP v. Schafer*, 385 S.W.3d 822, 832 (Ark. 2011) (declining to "extend the doctrine to claims involving negligence" because of allegations of damage to property). As such, there is no Arkansas law to support applying the ELD to Non-Producers' claims in this case.

Louisiana

Syngenta argues that the Louisiana Products Liability Act ("LPLA"), La. Rev. Stat. § 9:2800.52, *et seq.*, bars any claims by Non-Producers under Louisiana law. (Syn. Br. at 68.) This argument overlooks two critical facts. First, the claims against Syngenta do not arise from damages that were "proximately caused by a characteristic of the product that renders the product unreasonably dangerous" and thus the LPLA does not apply. La. Rev. Stat. § 9:2800.54(A). Plaintiffs do not argue that Syngenta created a product that contained a characteristic that somehow rendered the Viptera or Duracade unreasonably dangerous. Rather,

Plaintiffs argue, and have pled, that Syngenta's conduct in commercializing its product was tortious and damaged Plaintiffs. Thus, neither the Producer nor Non-Producer claims are subject to the LPLA.

Second, Syngenta ignores a line of cases that reject the LPLA's exclusivity. These cases demonstrate that nothing in the LPLA precludes a plaintiff from bringing a non-LPLA claim against a manufacturer for damages caused by the manufacturer's wrongful conduct unrelated to the product's manufacture, design, warnings, or warranties. *See, e.g.*, *Triche v. McDonald's Corp.*, 164 So. 3d 253, 258 (La. App. 2014) ("[T]he LPLA does not eliminate a general negligence cause of action for damages caused by the negligent use or handling of the product."); *Lavergne v. Am. Pizza Co.*, 838 So. 2d 845, 848 (La. App. 2003) (rejecting argument that LPLA provided exclusive remedy for negligence claim derived from the negligent use of a product); *Crawford v. Dehl*, No. 08-0463, 2008 U.S. Dist. LEXIS 99133, at *8 (W.D. La. Jul. 21, 2008), *report and recommendation adopted*, 2008 U.S. Dist. LEXIS 68476 (W.D. La. Sept. 8, 2008) (rejecting LPLA exclusivity argument and permitting independent negligence claim reasoning that "[t]he exclusivity provision is better construed as barring only those claims against manufacturers in which the defendant's capacity as manufacturer is essential"); *accord In re Genetically Modified Rice Litig.*, No. 06-1811, 2011 WL 5024548, at *3-4 (E.D. Mo. Oct. 21, 2011) (allowing plaintiffs to pursue non-LPLA negligence claims under Louisiana law in GM contamination case).

H. The ELD does not apply to claims seeking damages related to soybeans.

Syngenta's premature release of Viptera caused damage to farmers by affecting the price of corn and soybeans.[27] (NCC ¶¶ 298-99.) Corn and soybeans are inherently connected commodities because corn and soybeans are used together as rotational crops and because they are feed ration substitutes. (*Id.* ¶ 298.)[28] Therefore, the damage incurred by Producer Plaintiffs' cannot be measured solely by the drop in corn prices, but instead must factor in the drop in soybean prices.

Despite the interconnected nature of these two crops, Syngenta's motion to dismiss implies that because Producer Plaintiffs were adversely affected by the drop in both corn and soybean prices, their claims are subject to the ELD. This argument fails.

As previously discussed, none of the relevant states have applied the SELD to negligence claims filed by farmers against a GM seed company, and there is no reason to extend the SELD in this case because its application would not serve the policies underlying the doctrine. The fact that farmers were harmed by the drop in corn and soybean prices does not change the policy analysis. First, the farmers still had no opportunity to contract around the losses they suffered.

---

[27] The individual producers in these consolidated proceedings are all corn producers who are alleging that liability and damages both rest with the Syngenta entities. There are no named plaintiffs or individual plaintiff producers who grew only soybeans during the relevant time period, and no such claims are being pursued. The individual and named plaintiff producers grew both corn and soybeans. Plaintiffs do allege that Syngenta's actions with respect to the Chinese market caused them harm in their capacity as corn producers and, further, that because the corn and soybean markets are interrelated or otherwise inter-connected that their damages as corn producers were impacted in a manner consistent with how corn farmers who also grew milo were impacted. The extent and nature of the interrelationship or interconnectedness of the corn-farmer damages will be the subject of documentary evidence and expert testimony. Contrary to Syngenta's arguments, it would be inappropriate to decide the reasonable foreseeability or the nature and extent of the damages caused to corn farmers by Syngenta's conduct on a motion to dismiss, especially when all of the facts alleged in the Complaints must be accepted as true.

[28] Plaintiffs' Class Complaint makes no allegations regarding soybeans.

See Daanen & Janssen, 216 Wis. 2d at 403 (detailing contract rationale behind the ELD). Second, there is still no risk of the type of unlimited damages that exist in lack-of-access cases. *See e.g. La. ex rel. Guste*, 752 F.2d at 1021. Soybean related damages do not change Syngenta's culpability. Instead, the harm was foreseen, the damages are rationally limited to those suffered by farmers, Syngenta was in the best position to prevent the harm, and Producer Plaintiffs and Syngenta are part of an interconnected market.

Syngenta incorrectly compares soybean-related damages to the ripple effect of economic damages that exist in lack-of-access cases. (Syn. Br. at 50.) Syngenta has no basis to argue that the existence of damages related to the price of soybeans "almost doubles the size of the potential pool of plaintiffs," because corn farms and soybean farmers are principally the same group. More importantly, Syngenta confuses one of the ways in which Producer Plaintiffs were damaged with the multiple categories of claims that arise in lack-of-access cases. In lack-of-access cases, the risk is that almost any member of the public could have a valid claim for economic loss resulting from the inability to access a public resource or piece of public infrastructure. Syngenta claims that allowing Producer Plaintiffs to recover all of their damages, including soybean related damages, opens up the risk of such claims. "This is not a lack-of-access case, in which any member of the public could potentially assert a claim for economic loss, leading to remote or indeterminate liability that would be far out of proportion to the tortfeasors culpability . . . the scope of liability is not completely open-ended, as plaintiffs represent discrete classes of growers and sellers, all in an inter-connected market." (MDL Order at 24.) The fact that Producer Plaintiffs suffered multiple types of injury as a result of Syngenta's actions does not change that rationale.

IV. Syngenta owed a duty to Plaintiffs.

Plaintiffs allege that Syngenta owes a duty to exercise reasonable care in the "timing, scope and terms under which it commercialized MIR162." (*See, e.g.*, NCC ¶ 301; CC ¶ 328.) Syngenta knew the risks that existed if it chose to commercialize MIR162 absent approval by major export markets and adequate stewardship, and in fact, was explicitly warned that it would lead to devastating consequences. (NCC at 2-3, ¶¶ 18-26, 334; CC at 2-3, ¶¶ 29-37.) Syngenta's efforts to escape a legal duty fail based on established Minnesota law.

A. Syngenta's conduct created the foreseeable risk of harm to Plaintiffs.

Under Minnesota law, a party owes a duty of reasonable care where its "'conduct creates a foreseeable risk of injury to a foreseeable plaintiff.'" *Wenker ex rel. Wenker v. Xcel Energy, Inc.*, No. A14-0047, 2015 WL 1013553, at *2 (Minn. App. Mar. 9, 2015) (quoting *Doe 169 v. Brandon*, 845 N.W.2d 174, 177-78 (Minn. 2014) and *Domagala v. Rolland*, 805 N.W.2d 14, 23 (Minn. 2011)). "In other words, when a person acts in some manner that creates a foreseeable risk of injury to another, the actor is charged with an affirmative duty to exercise reasonable care to prevent his conduct from harming others." *Domagala*, 805 N.W.2d at 26.

This principle is widely recognized outside of Minnesota. For example, the Restatement (Second) of Torts states that when performing "acts which affect[] the interests of another, there is a duty not to be negligent with respect to the doing of the act." Restatement (Second) of Torts Div. 2, Ch. 12, Topic 4, Scope Note; *see also* Dan B. Dobbs et al., The Law of Torts § 125 (2d ed. 2015) ("In the ordinary case . . . the defendant does owe a duty of care."); 57A Am. Jur. 2d Negligence § 88 ("[T]he law imposes upon every member of society the duty to refrain from conduct of a character likely to injure a person with whom he or she comes in contact and to use his or her own property in such manner as not to injure that of another."). Other jurisdictions at

issue here have likewise adopted the general duty to exercise reasonable care when the actor's conduct creates the risk of injury to another:[29]

- *Taylor v. Smith*, 892 So. 2d 887, 893 (Ala. 2004) ("'[E]very person owes every other person a duty imposed by law to be careful not to hurt him' . . . In a variety of circumstances, this Court has recognized a duty to foreseeable third parties, based on a general 'obligation imposed in tort to act reasonably.'");
- *Hill v. Wilson*, 224 S.W.2d 797, 800 (Ark. 1949) ("Actionable negligence itself is a relational concept. There is no such thing as 'negligence in the air.' Conduct without relation to others cannot be negligent; it becomes negligent only as it gives rise to an appreciable risk of injury to others.");
- *Greenberg v. Perkins*, 845 P.2d 530, 537 (Colo. 1993) ("people owe a duty to use reasonable care with regard to their affirmative conduct" and "such a duty extends to all who may foreseeably be injured if that conduct is negligently carried out," rejecting application of the no-duty-to-control rule);
- *Karas v. Strevell*, 884 N.E.2d 122, 129 (Ill. 2008) ("[E]very person owes a duty of ordinary care to guard against injuries to others[.]");
- *Thompson v. Kaczinski*, 774 N.W.2d 829, 834 (Iowa 2009) ("An 'actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm.'");
- *Greenburg v. Cure*, 2013 WL 1767792, at *5 (D. Kan. Apr. 24, 2013) (applying Kansas law and holding that "'[a]n actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm,' and it is only in exceptional cases that no such duty is present");
- *Shelton v. Kentucky Easter Seals Soc., Inc.*, 413 S.W.3d 901, 914 (Ky. 2013), as corrected (Nov. 25, 2013) ("'The concept of liability for negligence expresses a universal duty owed by all to all.' And 'every person owes a duty to every other person to exercise ordinary care in his activities to prevent foreseeable injury.'");
- *Knox v. Calcasieu Parish Police Jury*, 900 So. 2d 1128, 1132 (La. App. 2005) ("every person has an 'almost universal' legal duty to conform his or her actions 'to the standard of conduct of a reasonable person in like circumstances.' "); *see also* La. Civ. Code Art. 2315 ("every act whatever of a man that causes damage to another obliges him by whose fault it happened to repair it");
- *Farwell v. Keaton*, 240 N.W.2d 217, 220 (Mich. 1976) ("Without regard to whether there is a general duty to aid a person in distress, there is a clearly recognized legal duty of every person to avoid any affirmative acts which may make a situation worse.");

[29] Internal citations and quotation marks in the bullet point parentheticals are omitted.

- *Doe ex rel. Doe v. Wright Sec. Servs., Inc.*, 950 So. 2d 1076, 1079 (Miss. App. 2007) ("The general duty is to act as a reasonable prudent person would under the circumstances.");

- *Tharp v. Monsees*, 327 S.W.2d 889, 893 (Mo. banc 1959) ("'Every person has the duty to exercise ordinary care to so conduct himself as not to injure others, and is liable to one who is harmed by a breach of that duty.'");

- *Riggs v. Nickel*, 796 N.W.2d 181, 187 (Neb. 2011) ("[A]n actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm.");

- *Pinnix v. Toomey*, 87 S.E.2d 893, 898 (N.C. 1955) (duty "arises out of the concept that every person is under the general duty to so act, or to use that which he controls, as not to injure another");

- *Hansen v. Scott*, 645 N.W.2d 223, 232 n.1 (N.D. 2002) ("'Every person has a duty to act reasonably to protect others from harm.'");

- *Akers v. Levitt*, 1992 WL 10288, at *1 (Ohio. App. Jan. 27, 1992) ("Every person has a duty to exercise that degree of care that a reasonably careful person would use under the same or similar circumstances.");

- *Lowery v. Echostar Satellite Corp.*, 160 P.3d 959, 964 (Okla. 2007) ("[A] person owes a duty of care to another person whenever the circumstances place the one person in a position towards the other person such that an ordinary prudent person would recognize that if he or she did not act with ordinary care and skill in regard to the circumstances, he or she may cause danger of injury to the other person.");

- *Dodson v. S. Dakota Dep't of Human Servs.*, 703 N.W.2d 353, 355 (S.D. 2005) (every person has a duty of care "that a reasonable and prudent person would exercise in the same or similar circumstances");

- *Satterfield v. Breeding Insulation Co.*, 266 S.W.3d 347, 355 (Tenn. 2008) ("persons have a duty to others to refrain from engaging in affirmative acts that a reasonable person 'should recognize as involving an unreasonable risk of causing an invasion of an interest of another' or acts 'which involve[ ] an unreasonable risk of harm to another'");

- *Midwest Emp'rs Cas. Co. ex rel. English v. Harpole*, 293 S.W.3d 770, 776 (Tex. App. 2009) ("Every person has a duty to exercise reasonable care to avoid a foreseeable risk of injury to others."); and

- *Behrendt v. Gulf Underwriters Ins. Co.*, 768 N.W.2d 568, 575 (Wis. 2009) ("In the vast majority of cases . . . every person is subject to a duty to exercise ordinary care in all of his or her activities[.]").

Plaintiffs allege that Syngenta's affirmative acts—misfeasance[30]—are at the core of Plaintiffs' negligence claims. These acts include:

- Premature commercialization of Viptera and Duracade;
- Instituting a "careless and ineffective 'stewardship' program";
- The sale of Viptera and Duracade to thousands; and
- Distributing misleading and inadequate information regarding Viptera and Duracade and the timing of China's approval.

(*See, e.g.*, CC ¶ 331; NCC ¶ 302.) Plaintiffs further allege that "Syngenta clearly knew [of] the risks" that the above affirmative conduct would—and did—create for the U.S. corn market. (*See, e.g.*, CC at 2-3, ¶¶ 15-16, 35, 80-83, 101-03, 334; NCC at 2-3; ¶¶ 46, 93-94, 112-14.) These acts created a risk of (and caused) "physical harm to Producers' and Non-Producers' corn, equipment, storage facilities, and land" as a result of the "pervasive contamination of the U.S. corn supply." (CC ¶ 225; NCC ¶ 236.)

These allegations are further supported by numerous other affirmative acts that Syngenta took to create the risk and harm to Plaintiffs: (1) Syngenta recognized Plaintiffs as stakeholders "affected by" its business (CC ¶ 226; NCC ¶ 237);[31] (2) Syngenta knew commercialization created a risk of losing the Chinese market (CC ¶ 102; NCC ¶ 113); (3) without Chinese approval, Syngenta gave away, planted, and sold Viptera seed and increased commercialization even as certainty of a Chinese ban intensified (*see, e.g.*, CC ¶¶ 184-89; NCC ¶¶ 115, 195-200);

---

[30] "Misfeasance is 'active misconduct working positive injury to others'" while nonfeasance, or nonaction, is "'passive inaction or a failure to take steps to protect [others] from harm.'" *Domagala*, 805 N.W.2d at 22 (quoting W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 56 (5th ed.1984)).

[31] *See, e.g.*, *Doe v. WTMJ, Inc.*, 927 F. Supp. 1428, 1434 (D. Kan. 1996) (radio station had a duty of care because it "create[d] and foster[ed] a relationship with its listeners.").

(4) Syngenta purposefully decided not to institute responsible stewardship and channeling programs despite publicly acknowledging its obligation to do so (*see, e.g.*, CC ¶¶ 27-35, 108-36; NCC ¶¶ 38-46, 119-47); and (5) even after China's ban on MIR162, Syngenta introduced a new unapproved trait, enhancing and prolonging the risk and duration of injury (CC at 3-4; NCC at 3-4.) "Syngenta did not simply fail to take precautions against foreseen and foreseeable harm," but "acted affirmatively to create such harm." (CC ¶ 228; NCC ¶ 239.) As such, Syngenta owed a duty of care to Plaintiffs since its affirmative conduct contributed directly to the foreseeable harm suffered by Plaintiffs.[32] *See* MDL Order at 10 ("plaintiffs' particular injuries were not only foreseeable, they were actually foreseen by Syngenta, with the plaintiffs suffering the very harm expected . . . and thus plaintiffs' injury is sufficiently connected to Syngenta's conduct"); *see also Domagala*, 805 N.W.2d at 26.

Syngenta's argument that there is no duty to protect another from harm caused by a third party's conduct without a special defined relationship (Syn. Br. at 70-71) misses the mark. Syngenta asks the Court to apply Restatement (Second) of Torts § 315 and conclude that, absent a special relationship, there is "no duty so to control the conduct of a third person." Syngenta fails to address Plaintiffs' controlling and dispositive allegations—Syngenta's conduct, timing,

[32] Syngenta does not dispute that Plaintiffs sufficiently plead a breach of duty or that the harm was foreseeable. Instead, it attempts to argue that public policy is the critical factor in considering a duty. (Syn. Br. at 70.) This is untrue under Minnesota law, which considers the foreseeability of the harm as the threshold issue. *See e.g.*, *Doe 169 v. Brandon*, 845 N.W.2d 174, 178 (Minn. 2014) ("Once we identify the defendant's 'own conduct,' we then determine whether that conduct created a foreseeable risk of injury to a foreseeable plaintiff."). It is only when the harm is too remote that public policy dictates whether a legal duty exists. *Drager by Gutzman v. Aluminum Indus. Corp.*, 495 N.W.2d 879, 884 (Minn. App. 1993). Here, Plaintiffs were stakeholders (CC ¶ 226; NCC ¶ 237) and the harm suffered was the "very harm expected to occur" and known by Syngenta (MDL Order at 10).

scope, and manner of commercialization, is being challenged, not a third party's.[33] (*See, e.g.*, CC ¶ 331; NCC ¶ 302.) As discussed above, the "no-duty" rule turns on the distinction between "nonfeasance" and "misfeasance." *See Ariola v. City of Stillwater*, No. A14-0181, 2014 WL 5419809, at *7 (Minn. App. Oct. 27, 2014) ("[T]he duty to protect another from one's own conduct attaches only in the case of misfeasance, or "active misconduct working positive injury to others.") (internal quotations omitted); *Estates of Morgan v. Fairfield Family Counseling Ctr.*, 673 N.E.2d 1311, 1320 n.2 (Ohio 1997);[34] W. Page Keeton et al., Prosser and Keeton, On the Law of Torts § 56, at 373-74 (5th ed. 1984). As Minnesota Supreme Court explained, "when a person acts in some manner that creates a foreseeable risk of injury to another, the actor is charged with an affirmative duty to exercise reasonable care to prevent his conduct from harming others."[35] *Domagala*, 805 N.W.2d at 26.

Syngenta did not fail to remove a preexisting risk, but committed "a new risk of harm to the plaintiff." *Satterfield*, 266 S.W.3d at 356 (quoting Prosser, *supra*, §56, at 373). That is misfeasance, for which liability extends to the foreseeable plaintiff suffering the foreseeable

---

[33] Moreover, in light of Syngenta's premature commercialization, Plaintiffs pled that no third party could have prevented the harm absent adequate stewardship and channeling managed by Syngenta.

[34] The classic example is an ordinary bystander, even an expert swimmer with a rope, who has no duty to save a child from drowning. *Estates of Morgan*, 673 N.E.2d at 1319 n.2; Restatement (Second) of Torts § 314 Illustr. No. 4. Modern cases involve the duty of a mental health professional to act with regard to patients for the benefit of third parties. *Estates of Morgan*, 673 N.E.2d at 1328.

[35] *See* Dobbs, *supra*, § 414 ("The rule that one owes no duty to control others is a particular instance of the general rule that nonfeasance is not a tort unless there is a duty to act."); Fowler V. Harper & Posey M. Kime, *The Duty to Control the Conduct of Another*, 43 Yale L.J. 886 (1934) (Restatement draft founded on nonfeasance, where relationship of the parties imposes an "affirmative obligation").

injury.[36] *Domagala*, 805 N.W.2d at 26; Prosser, *supra*, § 56, at 375; *accord* Restatement (Second) of Torts, Div. 2, Ch. 12, Topic 4, Scope Note. Even Syngenta's cited cases recognize that misfeasance establishes a duty, even if a third party might alleviate the harm.[37] *See Leppke v. Segura*, 632 P.2d 1057, 1059 (Colo. App. 1981) (defendant who "jump-start[ed] an automobile for an obviously drunken driver" took "an affirmative act" creating a duty). Further, not one case cited by Syngenta excuses negligent commercialization by a corporation when there was far-reaching and foreseeable harm.[38] And the only Court to consider whether Syngenta

---

[36] The no-duty-to-control rule "has no logical application" when a defendant affirmatively "creat[es] a risk of harm . . . through the instrumentality of another or otherwise." Dobbs, *supra*, § 414.

[37] Numerous cases in the relevant states hold that the no-duty-to-control rule does not apply where defendant's affirmative acts create or enhance the risk of harm. *See Simmons v. Homatas*, 925 N.E.2d 1089, 1100 (Ill. 2010) (club that "affirmatively assisted" intoxicated driver into car had duty to victims); *Bell v. Hutsell*, 955 N.E.2d 1099, 1109-10 (Ill. 2011) (discussing Simmons and distinguishing it from a "case of true nonfeasance" where the defendant "took no action"); *Calwell v. Hassan*, 925 P.2d 422, 431 (Kan. 1996) (identifying as a "basis for imposing a 'special relationship' duty under § 315 [of the Restatement where defendant's] "actions created a risk of harm to" the plaintiffs, but finding record inadequate); *Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136, 1144 (Ohio 2002) (rejecting defendant's attempt to characterize duty as one of control over third persons, where plaintiffs alleged that they "engaged in affirmative acts (*i.e.*, creating an illegal, secondary firearms market) by failing to exercise adequate control over the distribution of their firearms"); *Joyce v. M & M Gas Co.*, 672 P.2d 1172, 1174 (Okla. 1983) (where actor's own affirmative act has created or exposed the other to a recognizable high degree of risk of harm through such misconduct," no-duty rule inapplicable); *Smith ex rel. Ross v. Lagow Const. & Developing Co.*, 642 N.W.2d 187, 192 (S.D. 2002) (landlords whose "own affirmative acts or omissions create a high risk of harm from crime owe a duty to exercise reasonable care to protect tenants from that increased risk"); *Robb*, 295 P.3d at 216 (no-duty rule does not apply when "the actor's own affirmative act creates a recognizable high degree of risk of harm"); *Otis Eng'g Corp. v. Clark*, 668 S.W.2d 307, 309 (Tex. 1983) ("One who voluntarily enters an affirmative course of action affecting the interests of another is regarded as assuming a duty to act and must do so with reasonable care."); *accord Ginapp v. City of Bellevue*, 809 N.W.2d 487, 492 (Neb. 2012) (identifying relationship between section 315 of the Restatement (Second) and section 37 of the Restatement (Third)).

[38] Syngenta's cases excusing misfeasance do so because the harm was unforeseeable. *Watters v. TSR, Inc.*, 904 F.2d 378, 381 (6th Cir. 1990) (game manufacturer had no reason to foresee

owed a duty under virtually identical facts as those before this Court concluded Syngenta did owe such a duty based on its own conduct. (MDL Order at 10-11 ("[T]he Court recognizes a duty here, based on Plaintiffs' allegations that Syngenta created an unreasonable risk of harm to plaintiffs by its conduct").)

Syngenta's attempt to skirt liability by arguing various policy considerations fails to address the relevant inquiry: whether Syngenta's conduct created a foreseeable risk of harm.[39] *Eischen v. Crystal Valley Coop.*, 835 N.W.2d 629, 634 (Minn. App. 2013); *see also* Prosser, *supra*, § 56 at 375 (when defendant has engaged in acts that have "begun to affect the interests of the plaintiff adversely, as distinguished from merely failing to confer a benefit upon him," the course of conduct is misfeasance). The allegations here are that "Syngenta did not simply fail to take precautions against foreseen and foreseeable harm," but it "acted affirmatively to create such harm." (CC ¶ 228; NCC ¶ 239.) And Syngenta's "failure" to implement stewardship and channeling programs was not an omission, but a decision. In choosing not to act as a steward, so as to bolster its gain, Syngenta created the risk of pervasive contamination. Syngenta has not and cannot argue a lack of foreseeability; therefore, existence of a duty is well founded.

---

plaintiff's son was mentally ill and would commit suicide after playing the game); *Ashley Cnty., Ark. v. Pfizer, Inc.*, 552 F.3d 659, 670 (8th Cir. 2009) (criminal acts were an intervening cause between chemical manufacturer and city fighting methamphetamine crime). In contrast here, the harm was actually foreseen. (MDL Order at 10-11.)

[39] Syngenta offers one unpublished case for the rule that public policy is a major consideration in finding a legal duty under Minnesota law. (Syn. Br. at 70.) That case, however, offers no guidance. First, although the court states that public policy is a consideration, there is no mention of any guiding public policy in its analysis. Second, the court is considering whether a person has a duty to protect another from criminal activity in the landlord-tenant or hotel-guest situation. *Gutierrez v. Eckert Farm Supply, Inc.*, No. C5-02-1900, 2003 WL 21500161, at *4 (Minn. App. July 1, 2003).

Tacitly acknowledging the flaw in its duty argument, Syngenta makes straw-man arguments that Plaintiffs seek to impose a "novel duty" (and that the MDL Order imposed such a duty) and a duty "to refrain from selling Viptera *at all*." (Syn. Br. at 82, 89-90.) Plaintiffs do not assert, nor did the MDL Order impose, a novel duty on Syngenta. Instead, the duty invoked is one of "reasonable care" under the circumstances of this case. *See* Dobbs, *supra*, § 253 ("duty states a rule or standard of law rather than a conclusion about the defendant's breach of duty on the particular facts"). In Minnesota, it is well recognized that a defendant has a legal duty when its "'own conduct creates a foreseeable risk of injury to a foreseeable plaintiff.'" *Wenker ex rel. Wenker*, 2015 WL 1013553, at *2 (quoting *Doe 169 v. Brandon*, 845 N.W.2d 174, 177-78 (Minn. 2014)). Moreover, and contrary to Syngenta's contentions, Plaintiffs do not seek relief prohibiting GM seed developers from ever commercializing, or always waiting for approval from every foreign export market, "effectively transferring that decision to foreign sovereigns," as Syngenta argues. (Syn. Br. at 89-92.)

Courts have rejected similar efforts to recast duty in a manner that conflates its existence with breach.[40] In *Ludwikoski v. Kurotsu*, 840 F. Supp. 826 (D. Kan. 1993), the victim of an errant golf ball sued the golfer for negligence. Defendant moved to dismiss, arguing that Kansas law "does not impose upon a golfer a duty to hit a golf ball precisely." *Id.* at 827. The court rejected that argument: "Contrary to defendant's position, it is not necessary . . . to recognize a duty to

---

[40] *See also Stephenson v. Universal Metrics, Inc.*, 641 N.W.2d 158, 163 (Wis. 2002) ("[T]he primary question we ask is not whether the defendant has a duty to take (or refrain from) certain actions, but whether the defendant's actions (or lack thereof) were consistent with the general duty to exercise a reasonable degree of care under the circumstances."); *Hesse v. McClintic*, 176 P.3d 759, 763 (Colo. 2008) ("[T]here is no general requirement that a driver *always* pull over to the side of the road when confronted by animals on the road. However, simply because a driver need not pull over *every* time she is confronted by animals on the road does not mean that she *never* needs to pull over in such a situation.").

'hit a ball precisely' in order to find that plaintiff states a claim. The court need only find that the defendant had a duty to exercise ordinary care, or the care of a reasonable person under the circumstances." *Id.* at 827; *see also* Dobbs, *supra*, § 253 (discussing the "duty vs. breach confusion").

The same is true here. By collapsing duty and breach, Syngenta is trying to turn a jury question into a legal one. *See Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 582 (Minn. 2012) ("Other issues such as adequacy of the warning, breach of duty and causation remain for jury resolution."). Syngenta attempts to create new law and insists that the USDA's deregulation precludes a duty to refrain from selling Viptera. (Syn. Br. at 90.) But, that is not the duty owed. Instead, "nothing about USDA deregulation requires a developer like Syngenta to commercialize" or dictates the timing, scope, and manner of that commercialization. (CC ¶ 61; NCC ¶ 72.) Deregulation meant Viptera was no longer under USDA oversight at the time of commercialization. Syngenta's argument is like saying a driver's license confers a right to drive negligently. It does not.[41] And, of course, an activity need not be unlawful to be negligent.[42]

---

[41] *See, e.g., Smith v. Waggoners Trucking Corp.*, 69 So. 3d 773, 778 (Miss. App. 2011) ("[S]tatutory driving laws [do not] supplant the common-law duty of ordinary care," and that driver who had the statutory right-of-way "still owed a duty of reasonable care during the entire parking maneuver[.]").

[42] *Vancura v. Katris*, 939 N.E.2d 328, 344 (Ill. 2010), cited by Syngenta, acknowledges that "the mere existence of a statute . . . does not foreclose the possibility of a common law negligence action based on an extra-statutory duty of care." Every other relevant state agrees. *See Stewart v. Hewlett-Packard Co.*, 2012 WL 6043642, at *5 (N.D. Ala. Nov. 29, 2012); *Little Rock Land Co. v. Raper*, 433 S.W.2d 836, 842 (Ark. 1968); *Bayer v. Crested Butte Mountain Resort, Inc.*, 960 P.2d 70, 79 (Colo. 1998), *as modified on denial of reh'g* (June 22, 1998); *N. Ind. Pub. Serv. Co. v. Sell*, 597 N.E.2d 329, 331-32 (Ind. App. 1992); *Schmitt v. Clayton Cnty.*, 284 N.W.2d 186, 190 (Iowa 1979); *Glynos v. Jagoda*, 819 P.2d 1202, 1210 (Kan. 1991); *Corley v. Gene Allen Air Servs., Inc.*, 425 So. 2d 781, 784 (La. App. 1982); *Burt v. Fumigation Serv. & Supply, Inc.*, 926 F. Supp. 624, 634 (W.D. Mich. 1996); *Blasing v. P. R. L. Hardenbergh Co.*, 226 N.W.2d 110, 115 (Minn. 1975); *Ill. Cent. R. Co. v. Brent*, 133 So. 3d 760, 772 (Miss. 2013); *Kersey v. Harbin*,

Finally, Syngenta seeks to avoid the universal rule that industry standards are relevant in determining whether Syngenta exercised reasonable care. (*See* Syn. Br. at 91-92.) The question here is not whether these standards created a duty (although they did under the voluntary undertaking doctrine, discussed below), but whether Syngenta's noncompliance is evidence of a breach, a point Syngenta concedes. (*Id.* at 91.)

B. Alternatively, Syngenta voluntarily undertook a duty.

It is well established that:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
>
> (a) his failure to exercise such care increases the risk of such harm, or
>
> (b) the harm is suffered because of the other's reliance upon the undertaking.

Restatement (Second) of Torts § 323; *see also id.* § 324A (applying same principle to third parties). Minnesota has specifically adopted this section of the Restatement. *Glorvigen*, 816 N.W.2d at 587. Additionally, relevant state law further recognizes these principles.[43]

---

591 S.W.2d 745, 750 (Mo. App. 1979); *Collingwood v. Gen. Elec. Real Estate Equities, Inc.*, 376 S.E.2d 425, 428 (N.C. 1989); *Keyes v. Amundson*, 391 N.W.2d 602, 607 (N.D. 1986); *Nichols v. Coast Distrib. Sys.*, 621 N.E.2d 738, 740 (Ohio App. 1993); *Roadway Express v. Baty*, 114 P.2d 935, 937 (Okla. 1941); *Zacher v. Budd Co.*, 396 N.W.2d 122, 133 (S.D. 1986); *Chattanooga Rapid Transit Co. v. Walton*, 58 S.W. 737, 739 (Tenn. 1900); *Idar v. Cooper Tire & Rubber Co.*, 2011 WL 2412613, at *6 (S.D. Tex. June 6, 2011); *Hoffmann v. Wis. Elec. Power Co.*, 664 N.W.2d 55, 62 (Wis. 2003).

[43] *Beasley v. MacDonald Eng'g Co.*, 249 So. 2d 844, 846-47 (Ala. 1971); *Capel v. Allstate Ins. Co.*, 77 S.W.3d 533, 543 (Ark. 2002); *Jefferson Cnty. Sch. Dist. R-1 v. Justus By & Through Justus*, 725 P.2d 767, 771 (Colo. 1986); *Nelson v. Union Wire Rope Corp.*, 199 N.E.2d 769, 773 (Ill. 1964); *Plan-Tec, Inc. v. Wiggins*, 443 N.E.2d 1212, 1219-20 (Ind. App. 1983); *DeBurkarte v. Louvar*, 393 N.W.2d 131, 135 (Iowa 1986); *Sall v. T's, Inc.*, 136 P.3d 471, 477-78, 482 (Kan. 2006); *Louisville Cooperage Co. v. Lawrence*, 230 S.W.2d 103, 105 (Ky. 1950); *Dornak v. Lafayette Gen. Hosp.*, 399 So. 2d 168, 170 (La. 1981); *Schanz v. New Hampshire Ins. Co.*, 418

Syngenta voluntarily undertook a duty to exercise due care as it repeatedly and expressly acknowledged the integrated nature of the commodity market and adopted policies assuring stakeholders that it would engage in responsible commercialization consistent with industry policies. (*See* CC ¶¶ 27-35, 226.) These included stewardship, channeling, and a commitment not to commercialize new GM traits without approval by key import markets. (*See* CC at 2-3; ¶¶ 27-35, 61-88.) Syngenta does not dispute that Plaintiffs have adequately pled these facts; instead, it argues Plaintiffs cannot satisfy the elements of a voluntary undertaking as a matter of law. Syngenta's argument fails.

First, Syngenta notes that courts generally "limit[] liability for injury in a voluntary undertaking to 'physical harm.'" (Syn. Br. at 87.) Syngenta's own cases, however, recognize that "physical harm" includes property damage.[44] All Plaintiffs allege physical harm to their own property. (*See e.g.*, CC ¶¶ 96-104 (contamination of crops); NCC ¶¶ 107-15.)

N.W.2d 478, 481 (Mich. App. 1988); *Dr. Pepper Bottling Co. of Miss. v. Bruner*, 148 So. 2d 199, 201 (Miss. 1962); *Hoover's Dairy, Inc. v. Mid-Am. Dairymen, Inc./Special Products, Inc.*, 700 S.W.2d 426, 433 (Mo. 1985); *Carroll v. Action Enter's, Inc.*, 292 N.W.2d 34, 36 (Neb. 1980); *Davidson v. Univ. of N. Carolina at Chapel Hill*, 543 S.E.2d 920, 929 (N.C. App. 2001); *Weiss v. Bellomy*, 278 N.W.2d 119, 121 (N.D. 1979); *Briere v. Lathrop Co.*, 258 N.E.2d 597, 602 (Ohio 1970); *McKellips v. Saint Francis Hosp., Inc.*, 741 P.2d 467, 474 (Okla. 1987); *State Auto Ins. Cos v. B.N.C.*, 702 N.W.2d 379, 388 (S.D. 2005); *Biscan v. Brown*, 160 S.W.3d 462, 482-83 (Tenn. 2005); *Colonial Sav. Ass'n v. Taylor*, 544 S.W.2d 116, 119 (Tex. 1976); *Am. Mut. Liab. Ins. Co. v. St. Paul Fire & Marine Ins. Co.*, 179 N.W.2d 864, 868 (Wis. 1970).

[44] *See Hatleberg v. Norwest Bank Wis.*, 700 N.W.2d 15, 23-24 (Wis. 2005) ("[P]hysical harm" encompasses damage to property in discussing tax liability arising out of improperly drafted trust documents); *Northfield Ins. Co. v. St. Paul Surplus Lines Ins. Co.*, 545 N.W.2d 57, 63 (Minn. App. 1996) (tort "applied to property damage" in discussing a bad faith failure to settle within insurance policy limits); *Shaner v United States*, 976 F.2d 990, 994 (6th Cir. 1992) (finding no evidence of damage to persons "or their property" in litigation regarding cancellation of emergency loans); *Simms v. Jones*, 879 F. Supp. 2d 595 (N.D. Tex. 2012) (breach of contract action in which NFL failed to disclose that plaintiff's seating had obstructed view); *Theisen v. Covenant Med. Ctr., Inc.*, 636 N.W.2d 74 (Iowa 2001) (termination of employment); *Vancura v.*

Second, Syngenta's suggestion that the statements in its Deregulation Petition cannot be considered under the *Noerr-Pennington* doctrine is misconceived. (Syn. Br. at 88.) In *Pennington*, the Supreme Court noted that conduct, which may otherwise be protected, is admissible to establish such facts as the defendants' purpose, character, a continuing course of concerted conduct, and the effect of such conduct:

> It would of course still be within the province of the trial judge to admit this evidence, if he deemed it probative and not unduly prejudicial, under the established judicial rule of evidence that testimony of prior or subsequent transactions, which for some reason are barred from forming the basis for a suit, may nevertheless be introduced if it tends reasonably to show the purpose and character of the particular transactions under scrutiny.[45]

United Mine Workers of Am. v. Pennington, 381 U.S. 657, 670 n.3 (1965) (citing *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1, 45 (1911) (allowing evidence regarding defendants' "purpose, of their continuing conduct, and of its effect") and *FTC v. Cement Inst.*, 333 U.S. 683, 704 (1948) (permitting evidence to show a continuous course of concerted effort")); *Telecor Commc'ns, Inc. v. Sw. Bell Tel. Co.*, 305 F.3d 1124, 1139 (10th Cir. 2002) (no error in admitting prior statements to agency in course of rulemaking proceedings).

Plaintiffs do not premise liability exclusively on Syngenta's statements in the Deregulation Petition. Rather, they point to Syngenta's misrepresentations there,[46] along with the

---

Katris, 939 N.E.2d at 347 (recognizing distinction between "physical" and "bodily" harm in discussing an improperly notarized mortgage loan).

[45] The one case cited by Syngenta does not alter this exception to the *Noerr-Pennington* doctrine. Instead, *TEC Cogeneration Inc. v. Florida Power & Light Co.*, 76 F.3d 1560, 1573 (11th Cir. 1996), considered whether the motive or intent was a proper consideration in deciding whether to apply any exception.

[46] Syngenta's statements that its stewardship agreements would "include a term requiring growers to divert this product away from export markets (*i.e.*, channeling) where the grain has not yet received regulatory approval for import" (CC ¶ 121; NCC ¶ 132), for example, may be

lawsuit Syngenta waged against Bunge to enjoin channeling safeguards and all of the affirmative steps Syngenta took, to show the character and purpose of Syngenta's concerted, continuing efforts to get Viptera on the market and, once there, abandon undertakings to Plaintiffs' detriment.

Third, Syngenta misreads its own cases when it argues that "a voluntary undertaking creates a duty only if the promise induces detrimental reliance." (Syn. Br. at 88.) Detrimental reliance is only one potential element. If a defendant's failure to exercise reasonable care increases the risk of harm, for example, then reliance is not required. *See Glorvigen*, 816 N.W.2d at 587 (recognizing that Restatement (Second) of Torts § 323 attaches liability if failure to exercise reasonable care increases risk of harm or defendant detrimentally relied on the undertaking); Restatement (Second) of Torts §§ 323 & 324A; *Am. Mut. Liab. Ins. Co.*, 179 N.W.2d at 868 ("neither the [common law] nor the Restatement section make 'reliance' . . . a necessary element for recovery . . . reliance on the act is merely an alternative basis for liability."); *Nelson*, 199 N.E.2d at 779 ("Defendant's contention that the element of reliance is essential to its liability . . . either overlooks or misapprehends that defendant was charged with misfeasance[.]").

Some jurisdictions draw a distinction between misfeasance and nonfeasance; only the latter requires detrimental reliance.[47] *See Daugherty v. Fuller Eng'g Serv. Corp.*, 615 N.E.2d 476, 480 (Ind. App. 1993) ("Where nonfeasance is involved . . . liability may arise only where

---

considered by this Court in considering the foreseeability that a stewardship program would help prevent the known risks. *Pennington*, 381 U.S. at 670; *Telecor*, 305 F.3d at 1139.

[47] *See also Kassis v. Perronne*, 209 So. 2d 444, 446 (Miss. 1968) (distinguishing between nonfeasance and misfeasance in holding that if a landlord "voluntarily repairs . . . he will be responsible for the want of due care in the execution of the work"); *Plan-Tec, Inc. v. Wiggins*, 443 N.E.2d 1212, 1221 (Ind. App. 1983) ("[R]eliance is not an issue in a case involving misfeasance").

the beneficiaries have actually relied on the performance."); *Chisolm v. Stephens*, 365 N.E.2d 80, 85 (Ill. 1977) ("The instant case involves non-feasance . . . rather than misfeasance[.]"). And as alleged, Syngenta committed misfeasance that not only increased the risk of harm, but actually harmed Plaintiffs and therefore a showing of detrimental reliance is not required. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 888 (Minn. 2010) ("If the injury is foreseeable, the duty owed to the plaintiff is one of ordinary care.").

C. Foreseeability and public policy support finding a duty.

1. Syngenta's cases are inapposite.

Likening farmers who purchased and planted Viptera to "gun-wielding killers," *Young v. Bryco Arms*, 821 N.E.2d 1078, 1089-90 (Ill. 2004), Syngenta urges the Court to release it from liability as some courts have done for firearm manufacturers. Syngenta's argument is premised on its assertion that foreseeability alone is "not sufficient to create a duty." (Syn. Br. at 70.) But in at least five relevant states (Minnesota, Alabama, Arkansas, North Dakota, and Wisconsin), foreseeability is indeed the ultimate test. *See, e.g.*, *Eischen v. Crystal Valley Coop.*, 835 N.W.2d 629, 634 (Minn. App. 2013).[48] In virtually all other states, while duty may be refused on public policy grounds, foreseeability remains the most important consideration.[49] Syngenta does not contest foreseeability, so dismissal of these claims is wholly improper.

---

[48] *See also Bush v. Alabama Power Co.*, 457 So. 2d 350, 353 (Ala. 1984) ("ultimate test of a duty" is "foreseeability that harm may result if care is not exercised"); *Shannon v. Wilson*, 947 S.W.2d 349, 352 (Ark. 1997) (same); *Dinger ex rel. Dinger v. Strata Corp.*, 607 N.W.2d 886, 891 (N.D. 2000) ("The risk reasonably to be perceived defines the duty to be obeyed . . . within the range of apprehension."); *Janis v. Nash Finch Co.*, 780 N.W.2d 497, 502 (S.D. 2010) ("The risk reasonably to be perceived defines the duty to be obeyed."); *Alvarado v. Sersch*, 662 N.W.2d 350, 353 (Wis. 2003) ("duty to use ordinary care is established whenever it is foreseeable that a person's act or failure to act might cause harm to some other person.").

[49] *See Perreira v. State*, 768 P.2d 1198, 1209 (Colo. 1989) (while not alone sufficient, foreseeability is "an important factor for consideration"); *Ward v. K Mart Corp.*, 554 N.E.2d

More than that, Plaintiffs allege that the harm was actually foreseen and the MDL Court agreed that at the pleadings stage it was foreseen harm. (MDL Order at 10; CC ¶ 228; NCC ¶ 239.) The Court therefore should begin from the premise that duty exists, asking whether circumstances warrant exception from normal tort principles. To be clear, Syngenta seeks immunity for itself and all GM seed manufacturers—a rule that would free the industry to act with impunity regardless of the risk of harm to others.

Syngenta relies on cases that consider misuse of a manufacturer's product.[50] (*See* Syn. Br. at 71 (using "misuse" to describe conduct justifying the no-duty rule); MDL Order at 12-13 ("[T]hose cases generally have involved the clear misuse of the product. Syngenta does not have a point in arguing that any results in harm to another could be described as "misuse . . . ").) Thus, while some courts are reluctant to hold firearm manufacturers liable for injuries or social

---

223, 226 (Ill. 1990) (foreseeability "is one important concern"); *Hooks SuperX, Inc. v. McLaughlin*, 642 N.E.2d 514, 517 (Ind. 1994) (duty imposed "where a reasonably foreseeable victim is injured by reasonably foreseeable harm."); *Shirley v. Glass*, 308 P.3d 1, 9 (Kan. 2013) ("duty of care is intertwined with the foreseeability of harm"); *Shelton*, 413 S.W.3d at 908 ("foreseeability . . . is the most important factor in determining whether a duty exists"); *Bonds v. SAPA Extrusions, LLC*, 135 So. 3d 799, 802-03 (La. App. 2014) (error to find no duty where harm foreseeable); *Lyle v. Mladinich*, 584 So. 2d 397, 399 (Miss. 1991) ("important component" of duty is that injury is "reasonably foreseeable"); *Lopez*, 26 S.W.3d at 156 ("foreseeability is paramount in determining whether a duty exists"); *Fussell v. N. Carolina Farm Bureau Mut. Ins. Co.*, 695 S.E.2d 437, 440 (N.C. 2010) (duty extends to injury "reasonably foreseeable and avoidable through the exercise of due care"); *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.*, 693 N.E.2d 271, 274 (Ohio 1998) (duty "depends on the foreseeability of the injury"); *Wood v. Mercedes-Benz of Okla. City*, 336 P.3d 457, 459 (Okla. 2014) ("one of the most important considerations in establishing a duty is foreseeability"); *Giggers v. Memphis Hous. Auth.*, 277 S.W.3d 359, 365 (Tenn. 2009) (to determine duty, "courts must first establish that the risk is foreseeable"); *Golden Spread Council, Inc. No. 562 of Boy Scouts of Am. v. Akins*, 926 S.W.2d 287, 290 (Tex. 1996) ("[F]oreseeability weighs heavily in favor of imposing a duty").

[50] Syngenta's attempt to sway this Court that because this case deals with a "safe, non-defective product," no legal duty should be imposed has no legal support. (Syn. Br. at 71-72.) Indeed, none of the cases cited by Syngenta show that is even a consideration in determining whether a duty exists.

costs associated with policing illegal firearm use, those holdings are premised on the fact that most people use the firearms lawfully and safely.[51] *See City of Philadelphia v. Beretta U.S.A., Corp.*, 126 F. Supp. 2d 882, 899 (E.D. Pa. 2000) ("[M]ore than 99% of the gun maker's vendees transact their business lawfully" and distinguishing case where defendant "k[new] of illegal resales"). Additionally, as the MDL Court rightly determined, the cases relied on by Syngenta involved a user who was more culpable.[52] (MDL Order at 17.)

Finally, in other cases, the no-duty rule rested, in part, on a lack of foreseeability that the product would be misused.[53] *See Williams v. Cingular Wireless*, 809 N.E.2d 473, 478 (Ind. App. 2004) ("[C]ellular phone does not cause a driver to wreck a car . . . . Drivers frequently use cellular phones without causing accidents[.]"); *Kirk v. Michael Reese Hosp. & Med. Ctr.*, 513 N.E.2d 387, 394 (Ill. 1987) (drug manufacturers could not foresee that "drugs would be dispensed without warnings by physicians, . . . [and] patient would be discharged from the

---

[51] Most of Syngenta's cases address laws of states not relevant here. *See Hamilton v. Beretta, U.S.A. Corp.*, 750 N.E.2d 1055 (N.Y. 2001) (New York law); *People ex rel. Spitzer v. Sturm, Ruger & Co.*, 761 N.Y.S.2d 192, 194 (App. Div. 2003) (same); *Camden Cnty. Bd. of Chosen Freeholders v. Beretta, U.S.A. Corp.*, 273 F.3d 536, 538 (3d Cir. 2001) (New Jersey law). Courts in relevant states have held to the contrary. *See, e.g., City of Gary ex rel. King v. Smith & Wesson Corp.*, 801 N.E.2d 1222, 1235 (Ind. 2003) (plaintiff stated claim where gun manufacturers were alleged to have notice of illegal handgun sales and ability to control distribution).

[52] Syngenta argues this finding by the MDL Court was improper and also incorrect. This fails, however, as cell phones are not intended for use when driving. Indeed, it is not known to a cell phone manufacturer if any consumer would own a car or plan to use the phone while driving. In contrast, here Syngenta knew the exact purpose, use, and associated risks that existed by commercializing MIR162. And the end-users were not unknown but instead "participants in an inter-connected market." (MDL Order at 13.)

[53] The Nebraska case cited by Syngenta, *J.A.H. ex rel. R.M.H. v. Wadle & Assocs., P.C.*, 589 N.W.2d 256 (Iowa 1999), held on public policy grounds that a mental health professional owed no duty to the child of a patient who claimed that therapy caused estrangement between the patient and the child. In rejecting a duty to protect the child, the court relied on doctor-patient confidentiality as inconsistent with a duty to warn. *Id.* at 260-64. This case does not instruct the Court's decision here.

hospital, drink alcohol, drive a car, lose control of it, hit a tree, and injure the passenger"); *Bond v. E.I. DuPont De Nemours & Co.*, 868 P.2d 1114, 1119-20 (Colo. App. 1993) (finding no evidence that component supplier knew that final product was dangerous").

Unlike these cases, Syngenta foresaw the harm and Viptera seed was not misused. Indeed, it was used exactly as Syngenta intended. Moreover, misuse is no defense if the defendant knew of impending harm. *See City of Philadelphia*, 126 F. Supp. 2d at 901-02 (distinguishing cases on this ground). This Court should not abide Syngenta's request for judicial clemency, particularly at the motion-to-dismiss stage.

2. This is not an exceptional case warranting a no-duty determination.

As one of Syngenta's leading cases acknowledges, an analysis of public policy is required only "[i]n cases in which the existence of a duty is not previously established." *Williams*, 809 N.E.2d at 476. Such an analysis might be appropriate in cases attempting to hold firearm manufacturers liable for "gun-wielding killers," cold-medicine makers liable for meth-cooking criminals, or cell-phone makers liable for irresponsible drivers. But here, every American court has found that seed manufacturers owe a duty of care when their release of a GM trait results in harm to others, including the MDL considering the exact same wrongdoing alleged here.[54] (MDL Order at 17.) To paraphrase Judge Perry in the *Rice* litigation, Syngenta had a duty to introduce Viptera and Duracade "without negligence" and contamination of non-GM [corn] and a resulting disruption of the U.S. [corn] markets was "the known and foreseeable risks that [Syngenta] had a duty to prevent." *In re Genetically Modified Rice Litig.*, 2011 WL

[54] Syngenta attempts to distinguish *Rice* and *Starlink* because the USDA had not yet deregulated the traits at issue. But again, deregulation is not a license to commercialize negligently. In *Rice*, the court implicitly rejected this distinction when it held that plaintiffs could not pursue a negligence per se claim. *In re Genetically Modified Rice Litig.*, 666 F. Supp. 2d at 1022.

5024548, at *5-6 (E.D. Mo. Oct. 21, 2011) (granting plaintiffs' summary judgment on Bayer's intervening-cause defense); *accord In re StarLink*, 212 F. Supp. 2d at 843 (denying motion to dismiss founded on a purported lack of duty, holding that "Aventis had a duty to ensure that StarLink did not enter the human food supply, and their failure to do so caused plaintiffs' corn to be contaminated)"; *see also State ex rel. W. Seed Prod. Corp. v. Campbell*, 442 P.2d 215, 218-19 (Ore. 1968) (manufacturer had duty to avoid foreseeable harm and complaint alleged that defendant "negligently reproduced and sold seed which caused plaintiffs to lose the expected profit from their crop"); *Nakanishi v. Foster*, 393 P.2d 635, 640 (Wash. 1964) (seed distributor had duty on ground that manufacturer or processor who offers goods on the market "must use reasonable care where there is a foreseeable risk of harm to the consumer").

Duty is not foreign in this area, and there is no need to impose a policy-based limitation. Indeed, under Minnesota law, no policy argument would support precluding a duty here as the connection between Syngenta's conduct and the harm is not remote.[55] *See e.g.*, *Glorvigen*, 816 N.W.2d at 582. This is true as it is Syngenta's conduct that created the risks and later caused the harm to Plaintiffs. There was no unknown factor or misuse of its product that ultimately caused the harm as alleged in the complaint. Thus, as "the consequence is direct and is the type of occurrence that was [] reasonably foreseeable [this Court should] hold as a matter of law a duty exists." *Hegna v. E.I. du Pont de Nemours & Co.*, 806 F. Supp. 822, 825 (D. Minn. 1992) on

[55] Relevant policy factors vary by state. Indiana, for example, considers three factors: relationship between the parties, foreseeability, and "public policy concerns." *City of Gary ex rel. King v. Smith & Wesson Corp.*, 801 N.E.2d 1222, 1241 (Ind. 2003) (declining balancing test of factors "[w]here a duty is already recognized"). Syngenta has not identified what factors are relevant in which states. Its motion should be denied for this reason alone and attempts to cure this deficiency in a reply brief should likewise be denied.

reconsideration, 825 F. Supp. 880 (D. Minn. 1993), *aff'd sub nom*, *Abrams v. E.I. Du Pont De Nemours & Co.*, 27 F.3d 571 (8th Cir. 1994).

Desperate, Syngenta turns to a Canadian court applying Canadian law. That case considered whether seed manufacturers owed a duty to organic growers when contamination from GM canola seed contaminated their organic crops, depriving them of the premium that organic produce commands.[56] *Hoffman v. Monsanto Canada*, 2007 SKCA 47, 2007 SK.C. LEXIS 194, at *8 (Can. Sask. C.A. May 7, 2007) ("*Hoffman II*"). As Syngenta is well aware, specialty markets are far different than commodity markets. Among other things, they are "closed loop" systems where specialty producers have incentive to isolate because they get a premium. (*See* CC ¶ 105; NCC ¶ 116.) Commodity markets are not a "closed-loop" system, and Plaintiffs do not allege they are seeking premium over commodity price. Here, it was not just those exporting to China who were harmed, but everyone whose corn was priced at the commodity market. Syngenta is the intermeddler in this non-specialty system by destroying (or at least diminishing) its own stakeholders' market (the commodity market)—something Syngenta represented would not happen.[57]

Importantly, the *Hoffman* plaintiffs did not allege that defendant knew of a European standard prohibiting use of GMs and GM derivatives in products labeled or advertised as

---

[56] Also, plaintiffs in *Hoffman* did "not allege physical harm to themselves or their property." *Hoffman v. Monsanto Canada*, 2005 SK.C. LEXIS 330, at *59 (Can. Sask. Q.B. May 11, 2005) ("*Hoffman I*"). Neither did they allege they were "stakeholders" of the defendant. *Id.*

[57] Syngenta states that the MDL Court incorrectly distinguished *Hoffman*. First, the MDL Court correctly noted that it was non-binding authority with different facts. (MDL Order at 16.) Nevertheless, Syngenta asks this Court to give Canadian law precedential value. In doing so, Syngenta fails to address the fact that the MDL Court noted *Hoffman* did not include allegations that the defendant represented it would actively protect its stakeholders and that the duties at issue in the two cases differed. (*Id.*; MDL Order at 16-17.) This Court should, likewise, reject application of the *Hoffman* case.

organic. *Hoffman I*, at *59. In fact, the defendant could not have known of that standard because it did not exist when the trait was commercialized. *Hoffman II*, at *8-10. By contrast, Syngenta is alleged to have known that China was a key market and required its own approval of MIR162. (CC ¶¶ 35, 317; NCC ¶ 337.) The court also emphasized that "defendants are not alleged to have grown Roundup Ready and Liberty Link canola." *Hoffman II*, at *39. Here, Syngenta grew Viptera. Plaintiffs also allege (missing in *Hoffman*) "a close and direct relationship of such a nature that the defendants may be said to have been under an obligation to be mindful of the plaintiffs' legitimate interests." *Hoffman I*, at *61. Plaintiffs allege that Syngenta acknowledges them as stakeholders, and took affirmative, strategic steps that created, and increased, the very risk that befell them. *See id.* at *75 (distinguishing *Hoffman I* plaintiffs from other plaintiffs whose losses were "clearly foreseeable" and were in a class "vulnerable" to defendants' actions).

One axiom stands clear: "No better general statement can be made than that the courts will find a duty, where in general reasonable persons would recognize it and agree that it exists." Prosser, *supra*, § 53, at 359. Here, seed manufacturers have pledged to act "responsibly in introducing new genetically modified traits." (CC at 1; NCC at 2.) Syngenta acknowledges that this is reasonable, having obtained approval from export markets (except China) prior to commercializing Viptera. Syngenta's no-duty rule disregards what the industry—and Syngenta—recognizes as responsible practice against a known risk of harm. Now, Syngenta wants complete discretion to act with impunity. Rather than promoting responsible conduct, such immunity promotes a race to the bottom. Nothing would prevent manufacturers from introducing a new GM trait before any export market had approved it, a devastating proposition to the American agricultural industry, and wholly inappropriate for a motion to dismiss.

Moreover, the present system is working. In the last 15 years, there have been three other recorded lawsuits of this nature (*Rice*, *Wheat*, and *Starlink*). That hardly heralds a dysfunctional tort system in need of the radical protection demanded by Syngenta. The fact that some states have declined to pass legislation on this issue, proves, at most, that they believe the current tort system is adequately policing unreasonable commercialization of GM crops.[58] Good policy favors keeping the *status quo*, not upending it to allow GM developers impunity to alter their conduct to cause new, widespread harm. Thus, Syngenta's protests are empty since it offers nothing to demonstrate that the "magnitude of the burden" on seed manufacturers would, in fact, be "extraordinary" or that recognizing liability would create a flood of litigation. (Syn. Br. at 73.) *See CSX Transp., Inc. v. McBride*, 131 S. Ct. 2630, 2641 (2011) (rejecting argument that proximate cause instruction would open the door to unlimited liability when defendant could "not identify even *one* trial in which the instruction generated an absurd or untoward award").

Plaintiffs are not asking Syngenta "to reorganize the entire industry framework for growing and distributing corn" (Syn. Br. at 3), but simply to act reasonably. By contrast, and having disregarded its own commitment to "work closely" with stakeholders and manage introduction in a responsible way (CC ¶¶ 28, 31; NCC ¶¶ 39, 42), Syngenta wants to force the burden onto non-producers at huge and unreasonable individual cost. As one court to have considered these issues, *Syngenta Seeds, Inc. v. Bunge North America, Inc.*, 820 F. Supp. 2d 953

---

[58] *See, e.g.*, *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 306 (1988) ("[P]etitioners' reliance on Congress' subsequent failure to enact proposed legislation . . . deserves only passing mention. This Court generally is reluctant to draw inferences from Congress' failure to act."); *Al-Salehi v. I.N.S.*, 47 F.3d 390, 394-95 (10th Cir. 1995) ("Mere nonadoption" of legislation "is not probative of congressional intent . . . since several equally tenable inferences [] may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change.").

(N.D. Iowa 2011),[59] readily concluded, on a fulsome record that included fact and expert testimony, it was "not commercially reasonable or feasible for Bunge [an exporter] to make . . . modifications to its facilities" to ensure segregation of even a single GM trait "that would then service the Chinese market." *Id.* at 990. The cost to Bunge was "$6 million to $8 million *per facility*." *Id.* (further finding that it would cost "$4 million to $20 million" to "redirect[] a shipment of corn that China refused on delivery because of Viptera tainting"). "[N]o reasonable balance of equities would impose upon [non-producers] the prodigious additional expense of segregating Viptera corn (or segregating non-Viptera corn earmarked for Chinese export), where [they] did not create the situation in which Viptera corn has not been yet approved for import in China." *Id.* 990. The problem "arises entirely because Syngenta decided to commercialize Viptera corn knowing that it did not yet have Chinese and some other import approvals and would not have them for the 2011 crop year, and under circumstances in which Syngenta should have reasonably recognized that Chinese imports of United States corn for the 2011 crop year might well be very significant." *Id.* The court rejected Syngenta's request to shift the risk to Bunge. *Id.* at 988. Here, any such shift would be entirely premature at the motion-to-dismiss stage.

These findings are inapplicable to the "gun-wielding killer" cases Syngenta cites, where a fraction of customers misuse a product and the Court is asked to impose a duty on the manufacturer to prevent such misuse. In contrast, "public interest strongly favors allocating the risks of a decision to introduce a new transgenic grain into the commercial market on the company that decided to commercialize before obtaining all import approvals, not on the party

[59] Syngenta, who brought the lawsuit in *Bunge*, should be collaterally estopped from challenging these findings, an issue for resolution at a later date.

that is simply confronted with that decision and has reasonable countervailing business interests in not accepting the grain."[60] *Bunge*, 820 F. Supp. 2d at 992.

Moreover, beyond having a profit motive to commercialize before approval by major export markets, seed manufacturers are the only market participants with knowledge about the status of any export approval they have sought. Immunizing them from liability would make no sense given their ability to mislead the market about that approval, as Syngenta did here. (*See* CC ¶¶ 150-155, 176-180, 307.) Indeed, as internal communications reveal, Syngenta capitalized on farmers' lack of knowledge about the status of Chinese approval, celebrating that by the time growers learned of non-approval, it would be to their advantage as there would be a seed shortage. (CC ¶ 168; NCC ¶ 147.) A party with the ability to manipulate the flow of information should not be immunized from its negligence and push responsibility downstream.

Seed manufacturers are the only parties capable of shifting the cost of acting non-negligently to the users of those seeds. *See* Prosser, *supra*, § 98 at 692-93 ("Those . . . engaged in the manufacturing enterprise have the capacity to distribute the losses of the few among the many who purchase the products."). "This can be regarded as fairness and justice reason of policy." *Id.* at 693. Where the cost of negligence can be incorporated into the sale, the natural forces of an economic market disperse the harm caused by that seed to the beneficiaries of that seed.

And it is not outside Syngenta's control to exercise reasonable care. Manufacturers go to extensive lengths to control the use of GM seed when it serves their profit interests. *See Bowman*

---

[60] It is hypocritical for Syngenta to argue that seed manufacturers have no duty because non-producers (like Bunge) can police segregation given that when Bunge attempted to do so, Syngenta sued because it interfered with Syngenta's ability to sell Viptera seed. (CC ¶ 136; NCC ¶ 147.) That action alone exposes Syngenta's thinly veiled motive in seeking a no-duty rule.

v. Monsanto Co., 133 S. Ct. 1761, 1764 (2013) (GM seed manufacturers do not allow growers to save any seed to preserve their patent monopoly profits). Plaintiffs are not seeking to make seed manufacturers "insurers" (Syn. Br. at 33), but to hold them accountable when their unreasonable conduct upsets the *status quo* and expose others to risks that would not exist but for their (monopoly) profiteering.

Finally, a decision not to extinguish Syngenta's duty has no implications beyond this case. By contrast, a no-duty rule would have wide implications, freeing manufacturers to create market-wide harms.

3. Public policy should not be adjudicated absent a factual record.

Alternatively, it would be premature to extinguish Syngenta's liability on an incomplete factual record because Syngenta relies on assertions and inferences that are nowhere in the Complaints and are, in fact, contradicted by the allegations. In the context of duty, disputed facts are submitted to the jury.[61] *Bjerke v. Johnson*, 742 N.W.2d 660, 667 n.4 (Minn. 2007) (although

[61] *Ex parte BASF Constr. Chemicals, LLC*, 153 So. 3d 793, 804 (Ala. 2013) ("Where the facts upon which the existence of a duty depends, are disputed, the factual dispute is for resolution by the jury") (internal citations and quotation marks omitted); *Heigle v. Miller*, 965 S.W.2d 116, 121 (Ark. 1998) (reversing summary judgment because "there was an issue of disputed facts" regarding duty to warn); *Mile Hi Concrete, Inc. v. Matz*, 842 P.2d 198, 203-04 (Colo. 1992) ("Because of the evidentiary conflict, the district court's instruction on the duty owed . . . properly left the factual determination of [what the duty encompasses] . . . for the jury"); *DeVecchis v. City of Chicago*, 2013 WL 6002084, at *12 (Ill. App. 2013) ("where the duty depends on the existence of facts that are in dispute, the existence of the relevant facts presents a question for the jury to resolve" (internal quotations omitted)); *Nagel v. Northern Indiana Public Serv. Co.*, 26 N.E.3d 30, 44 (Ind. App 2015) ("whether a duty exists…may depend upon resolution of underlying facts by the trier of fact"); *Farwell*, 240 N.W.2d at 220 (disputed fact issues pertaining to duty "must be submitted to the jury, our traditional finders of fact, for ultimate resolution" (internal citations and quotation marks omitted)); *Mozingo by Thomas v. Pitt Cnty. Mem'l Hosp., Inc.*, 400 S.E.2d 747, 753 (N.C. App. 1991) ("when the facts are in dispute or when more than a single inference can be drawn from the evidence, the issue of whether a duty exists is a mixed question of law and fact. The issues of fact must first be resolved by the fact finder"); *Butz v. Werner*, 438 N.W.2d 509, 511 (N.D. 1989) ("if the existence of a duty depends upon factual determinations, their resolution is for the trier of fact"); *Peyer v. Ohio*

duty is generally a question of law, "this would not foreclose the possibility that there may be situations in which the facts necessary to establish a special relationship are in dispute and should be submitted to the jury."). The Court cannot simply accept Syngenta's contradictory assertions, such as when it claims that recognizing a duty would "run flatly counter to the policy determination that the USDA made in approving Viptera" (Syn. Br. at 33), while simultaneously arguing that the "USDA 'has no power to regulate the adverse economic effects that could follow [a GM trait's] deregulation'" (*id.* at 39). Moreover, the findings in *Syngenta Seeds, Inc.*, 820 F. Supp. 2d at 966-67, which were made on a more complete record, counsel against adopting a no-duty argument, as Syngenta requests.

V. FIFRA does not preempt Plaintiffs' claims.

As Syngenta acknowledges, FIFRA governs warnings provided on labels and packaging of certain agricultural products. But the Supreme Court has held that only claims for fraud or failure to warn that would impose a labeling or packaging obligation broader than or inconsistent with that provided under FIFRA are preempted. *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 453-54 (2005). The Court further noted that FIFRA does not preempt common-law claims for negligence where a verdict in a plaintiff's favor would not impose any requirement on the manufacturer's labels. *Id.* at 444 (common law rules such as negligence do not "require[] that manufacturers label or package their products in any particular way").

Plaintiffs do not assert a direct failure to warn claim asserting that the label on the bags of Viptera seed were inaccurate. Indeed, Plaintiffs' claims are not tied to Viptera labels. What Syngenta refers to as a "failure to warn" claim is actually just a sub-bullet point in a laundry list

---

Water Serv. Co., 720 N.E.2d 195, 201 (Ohio 1998) (sufficient evidence created fact issue on duty).

of ways Syngenta failed to act in a reasonable manner, which is not tied to any labeling. FIFRA has no application.

Nevertheless, to the extent the Complaints can be construed to include a claim that Syngenta failed to warn purchasers of its products, as the MDL Court found, Plaintiffs do not take issue with the MDL Court Order dismissing a claim for the sake of clarity that Plaintiffs never intended to plead in the first place. (MDL Order at 49.)

VI. Plaintiffs' have adequately pled their duty to warn claims.

Minnesota law places on manufactures a "duty to warn end users of a dangerous product if it is reasonably foreseeable that an injury could occur in its use." *Gray v. Badger Min. Corp*., 676 N.W.2d 268, 274 (Minn.2004); *see also Gardner v. Brillion Iron Works, Inc.*, No. CIV. 11-3528 (JRT/LIB), 2014 WL 639960, at *9 (D. Minn. Feb. 19, 2014); *Frey v. Montgomery Ward & Co*., 258 N.W.2d 782, 788 (Minn. 1977). To prevail under Minnesota law, a plaintiff must show that "(1) the defendant[ ] had reason to know of the dangers of using the product; (2) the warnings fell short of those reasonably required, breaching the duty of care; and (3) the lack of an adequate warning caused the plaintiff's injuries." *McRunnel v. Batco Mfg.*, 917 F. Supp. 2d 946, 957 (D. Minn. 2013) (citing *In re Levaquin Prods. Liab. Litig*., 700 F.3d 1161, 1166 (8th Cir. 2012)). To meet its obligation Syngenta was required to provide "adequate instructions for safe use" as well as to warn of the dangers of proper use of MIR162. *Id.* (quoting *Glorvigen v. Cirrus Design Corp*., 816 N.W.2d 572, 582 (Minn.2012)).

Under Minnesota notice pleading standards, Plaintiffs have met their pleading requirements. The Complaints allege that Syngenta knew of the dangers posed to the corn market by releasing MIR162; that Syngenta made no warnings of the dangers, and that failure caused Plaintiffs' damages. (CC ¶¶ 22, 65, 68, 83-87, 353-56; NCC ¶¶ 33, 76, 79, 354-57.) Nevertheless, Syngenta grasps at three arguments for why Plaintiffs' claims are barred:

(1) FIFRA preemption, (2) component-part doctrine, and (3) lack of a duty to Plaintiffs. Each of these arguments falls short.

First, Plaintiffs' claims are plainly not preempted by FIFRA for the reasons previously discussed.

Second, Syngenta misstates the scope and application of the component-parts exception. That exception applies where the defendant produces a part of the whole; here, the product in question is the end product. *See Gray v. Badger Min. Corp.*, 676 N.W.2d 268, 281 (Minn. 2004) ("According to the Restatement (Third), a supplier of a raw material should not be held liable when its product is integrated as a component into a finished product if the component itself is not dangerous."). Here there is but a single use for corn seeds, to grow corn. (*See* CC ¶¶ 11, 13; NCC ¶¶ 9, 24.) An argument by Syngenta that corn could be used for either livestock feed or human consumption creates a false difference, because the corn is the same whatever its intended market.

To bolster this argument, Syngenta cites *TMJ Implants*, which states: "Plaintiffs have cited no case involving multi-use materials that were not inherently dangerous in which the raw material supplier defense was rejected." *In re TMJ Implants Products Liab. Litig.*, 872 F. Supp. 1019, 1028 (D. Minn. 1995); *aff'd sub nom, In re Temporomandibular Joint (TMJ) Implants Products Liab. Litig.*, 97 F.3d 1050 (8th Cir. 1996). *TMJ Implants* involved "implants out of polytetrafluoroethylene (PTFE) powder and fiber, fluorinated ethylene propylene (FEP) film, and other raw materials." *Id.* at 1021. The parties at issue were DuPont, who manufactured the PTFE and FEP (collectively "Teflon"), and American Durafilm, who served as a middleman selling FEP to customers whose orders were below DuPont's minimum direct order requirements. *Id.* at 1022. The court held that there were myriad non-dangerous uses for Teflon, and that as a matter

of law DuPont and Durafilm could not be liable, because "[t]o impose liability upon [defendants] for the uses to which those products are put would force [defendants] to retain experts in a huge variety of areas in order to determine the possible risks associated with each potential use." *Id.* at 1025.

Syngenta's product is not multi-use, and it is not simply a part used in the construction of a larger product. The seed sold by Syngenta is put to a single use: growing a corn stalk. The purpose of the component-parts exception—to protect a manufacturer who produces a safe component from liability when used correctly in an otherwise dangerous product—is inapplicable because Syngenta seed was not an amalgamation of components from numerous manufactures. *See Thompson v. Hirano Tecseed Co.*, 456 F.3d 805, 810 (8th Cir. 2006). Viptera was a singular product, there were no other components and it was not sold to another manufacture to be combined with any other products prior to distribution; it was a single strain of corn seed produced by Syngenta. (CC ¶¶ 11, 13, 41-45; NCC ¶¶ 9, 24, 27, 52-56.)

Finally, Syngenta owed a duty to plaintiffs to warn them of the dangers of MIR162 entering the corn supply. "The duty to warn arises when a manufacturer knew or should have known about an alleged defect or danger, and should have reasonably foreseen that the defect or danger would cause injury." *Block v. Toyota Motor Corp.*, 5 F. Supp. 3d 1047, 1070 (D. Minn. 2014). Plaintiffs' Complaints make clear that Syngenta knew the risk premature commercialization posed. (*See, e.g.*, CC ¶¶ 35, 224; NCC ¶¶ 46, 235.)

Syngenta's argument regarding its lack of a duty to warn is primarily premised on the position of Plaintiffs in the market—that Plaintiffs were expected to know the risk. Syngenta bases this claim on its contention that Plaintiffs were experienced in the corn market and as such were knowledgeable about the dangers of MIR162 and the biological fact of cross-pollination.

(Syn. Br. at 98.) First, any such consideration is outside the scope of a motion to dismiss, which simply accepts the facts pled as true. Second, "[p]ast experience with a product . . . does not necessarily alert users to all of the dangers associated with the product." *Willmar Poultry Co. v. Carus Chem. Co.*, 378 N.W.2d 830, 835 (Minn. App. 1985). Third, even if Plaintiffs knew about the possibility of cross-pollination, Plaintiffs cannot reasonably be expected to have full knowledge of the international regulatory market. Instead, Syngenta had a duty to disseminate truthful information about that process, and the dangers of selling an unapproved product prematurely. *See Forster v. R.J. Reynolds Tobacco Co.*, 437 N.W.2d 655, 662 (Minn. 1989) ("the duty to warn assumes truthfulness and is concerned with how much of what is truthful must be disseminated").

Syngenta owed Plaintiffs a duty to warn them of the potential dangers, to provide "adequate instructions for safe use," and to warn of the dangers of proper use of MIR162. *McRunnel v. Batco Mfg.*, 917 F. Supp. 2d 946, 957 (D. Minn. 2013) (quoting *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 582 (Minn. 2012)). Plaintiffs allege that Syngenta utterly failed in all three respects, and such allegations must be accepted as true at the motion-to-dismiss stage.

VII. Plaintiffs sufficiently allege claims for tortious interference.

Producers in Alabama, Arkansas, Indiana, Minnesota, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, and Texas allege claims for tortious interference. Syngenta argues that Plaintiffs' allegations lack (1) specific business relationships; (2) adequate injury; (3) intentional conduct by Syngenta; and (4) improper means used by Syngenta. (Syn Br. at 105.) These arguments were rejected in the MDL Order, and should likewise be rejected by this Court. (*See* MDL Order at 67-72.)

A. Plaintiffs adequately allege business relationships that Syngenta harmed.

Any requirements regarding specific third parties for tortious interference claims apply at the summary judgment or trial stage. Despite Syngenta's twisted presentation of the law—that naming specific third parties in a complaint is somehow required—no such mandate exists in any of the states at issue. For example, in *Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc.*, 844 N.W.2d 210, 212 (Minn. 2014), the tortious-interference claim failed only after a trial during which no testimony or evidence was presented regarding a specific third party with whom plaintiff expected to do business but did not. Syngenta distorts *Gieseke*'s proof requirement into a pleading requirement.[62] This tortured construction ignores the court's holding: "We conclude that to prove [not successfully plead] the defendant tortiously interfered with plaintiff's prospective economic advantage, a plaintiff must specifically identify a third party with whom the plaintiff had a reasonable probability of a future relationship." *Id.* at 221; *see also id.* at 219 (specifying the elements a plaintiff must "prove," not plead, to succeed on a tortious interference claim); *id.* at 220 (analyzing whether plaintiff "present[ed] sufficient evidence" of a specific third party with whom he expected to do business, not whether he named a specific third party in his pleading); *id.* at 221 (explaining why plaintiffs must "demonstrate," not plead, the existence of specific third parties with whom they expect to do business).

[62] Syngenta also ignored the four-day trial in *Stonebridge Collection v. Carmichael*, 791 F.3d 811, 815, 819-20 (8th Cir. 2015) (holding the tortious interference failed due to lack of proof, not insufficient pleadings). Similarly, the tortious interference claim in *Playboy Enters., Inc. v. Editorial Caballero, S.A. de C.V.*, 202 S.W.3d 250, 265 (Tex. App. 2006), failed after plaintiff failed to present any potential contracts at trial.

Syngenta also misconstrues the law of Alabama,[63] Arkansas,[64] Indiana,[65] South Dakota, and Tennessee,[66] which requires interference not with a specific third party, but merely with an identifiable class of third parties.[67] For example, in *Baptist Health v. Murphy*, 373 S.W.3d 269, 282 (Ark. 2010), doctors alleged that a hospital's privileging policies interfered

---

[63] Alabama does not require naming a specific third party in a tortious interference claim to survive a motion to dismiss. Syngenta cites only one Alabama case to support this argument—*Walter Energy, Inc. v. Audley Capital Advisors, LLP*, No. 1131104, 2015 WL 731152 (Ala. Feb. 20, 2015). (Syn. Br. at 105 n.139.) *Walter Energy* simply concluded that a tortious interference claim requires interference by a stranger to the transaction, not that a specific third party must be named in the complaint.

[64] *Overturff v. Read*, 442 S.W.3d 862, 867-68 (Ark. App. 2014), cited by Syngenta, did not require naming a specific third party in a tortious interference claim to survive a motion to dismiss. Instead, summary judgment was affirmed when after over a year of discovery, no "sufficiently concrete" expectancy was identified to support the tortious interference claim. Likewise, in *Kidd v. Bass Hotels & Resorts, Inc.*, 136 F. Supp. 2d 965, 970 (E.D. Ark. 2000), the tortious interference claim was rejected on summary judgment due to "insufficient evidence."

[65] The only Indiana case cited by Syngenta listed the elements for tortious interference in a footnote, but did not even consider a tortious interference claim, let alone hold that a specific third party must be named in the complaint to survive a motion to dismiss. *See Felsher v. Univ. of Evansville*, 755 N.E.2d 589, 598 n.21 (Ind. 2001).

[66] Syngenta cites *Golf Sci. Consultants, Inc. v. Cheng*, 2009 U.S. Dist. LEXIS 37721, at *10 (E.D. Tenn. May 4, 2009), to argue that specific third parties must be named in the complaint to survive a motion to dismiss. *Cheng* involved a summary judgment motion decided after two years of discovery during which the plaintiff failed to show "a prospective relationship with an identifiable class of third persons." *Id.* at *6, *26-27. Syngenta's reliance on *Overnite Transp. Co. v. Teamsters Local Union No. 480*, 2004 Tenn. App. LEXIS 139, at *13 (Tenn. App. Feb. 27, 2004), is also improper. *Overnite* expressly did not consider tortious interference with prospective economic advantage, but instead considered interference with employees and security guards who had been hired for protection during a strike with picketing. *Id.*

[67] *White Sands Grp., L.L.C. v. PRS II, LLC*, 32 So. 3d 5, 15 (Ala. 2009) (ongoing business relationship sufficient); *Stewart Title Guar. Co. v. Am. Abstract & Title Co.*, 215 S.W.3d 596, 604 (Ark. 2005) (upholding a complaint that did not name a specific third party with whom interference occurred, and further noting that "whether a valid business expectancy exist[s is] a question of fact for the jury to determine"); *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 701 (Tenn. 2002) (identifiable class of third persons sufficient).

with their business expectancy in ongoing relationships with patients. The hospital argued, like Syngenta, that the doctors failed to identify in the complaint "a specific contract" that was affected. *Id. Murphy* held that showing that the hospital disrupted the doctors' reasonable expectations for ongoing relationships was sufficient.[68] *Id.* at 283-84. Similarly, the South Dakota Supreme Court made clear, after a lengthy analysis, that:

> If we were to require that prospective third parties be identified by name we would render [tortious interference] for the most part, a nullity and, in all actuality, never allow a plaintiff to proceed with its claim beyond summary judgment especially if the business enterprise is dependent upon a large pool of clientele. The parties must only be identifiable—not identified as to provide an individual name for each.

Hayes v. N. Hills Gen. Hosp., 590 N.W.2d 243, 250 (S.D. 1999) (citation omitted).

Missouri,[69] North Dakota, Oklahoma,[70] and Texas[71] require pleading interference with a reasonably expected economic advantage, not with a specific third party. For example, Texas has

---

[68] Syngenta's reliance on *Country Corner Food & Drug, Inc. v. First State Bank & Trust Co. of Conway, Ark.*, 966 S.W.2d 894, 898 (Ark. 1998), is misplaced. Any requirement by *Country Corner* to identify a specific party was abolished by *Stewart Title*, 215 S.W.3d at 604, and *Murphy*, 373 S.W.3d at 283-84. *Gruhlke v. Sioux Empire Fed. Credit Union, Inc.*, 756 N.W.2d 399, 404 (S.D. 2008), is inapposite. The claim considered was for intentional interference with an existing contract by a corporate officer in the employment context. *Forever Green Athletic Fields, Inc. v. Lasiter Constr., Inc.*, 384 S.W.3d 540, 552 (Ark. App. 2011), is unavailing because the plaintiff merely alleged damage to its reputation and a general desire to be able to do business within Arkansas.

[69] Syngenta cites only one Missouri case to argue that a specific third party must be pled in a tortious interference claim to survive a motion to dismiss: *Briner Elec. Co. v. Sachs Elec.*, 680 S.W.2d 737, 740 (Mo. App. 1984). *Briner* requires only "the existence of a valid business expectancy" and concludes that the jury verdict on the tortious interference claim was proper because plaintiff failed to prove an absence of justification. *Id.* at 740-41. Moreover, *Sloan v. Bankers Life & Cas. Co.*, 1 S.W.3d 555, 565 (Mo. App. 1999), makes clear that "a regular course of prior dealings suggests a valid business expectancy."

[70] Syngenta improperly cites *Tuffy's, Inc. v. City of Okla. City*, 212 P.3d 1158, 1165 (Okla. 2009), for the notion that specific third parties must be named in the complaint to withstand a

recognized that "[a]lthough plaintiffs do not specify the business relationships or actual or prospective contracts [at issue], such is not their burden to defeat a motion for summary judgment." *Winston v. Am. Med. Int'l*, 930 S.W.2d 945, 953 (Tex. App. 1996). *See also Bell v. May Dep't Stores Co.*, 6 S.W.3d 871, 876-88 (Mo. 1999) (holding plaintiff's expectation of obtaining credit was disrupted when a retailer reported false and negative information to credit agencies and that it was immaterial that plaintiff had not yet been denied credit by any particular company); *Trade 'N Post, L.L.C. v. World Duty Free Ams., Inc.*, 628 N.W.2d 707, 717 (N.D. 2001) (requiring the existence of a valid business expectancy); *Gonzalez v. Sessom*, 137 P.3d 1245, 1249 (Okla. Civ. App. 2006) (same).

Moreover, assuming Syngenta's interpretation of the applicable law was correct, which it is not, Plaintiffs have sufficiently pled their claim for tortious interference. Indeed, the Introduction and Paragraphs 27-46, 59-62, 70, 73-106, 112-205, 213-40, 290-91, 310-18, 368-74, 494-500, 885-91, 1077-84, 1336-42, 1391-97, 1575-82, 1611-17, 1640-46 of the Non-Class Complaint provide the factual and legal basis for Plaintiffs' tortious interference claim. Specifically, Plaintiffs alleged that they had business relationships and a reasonable expectancy of continued relationships with purchasers of corn and that Syngenta induced or caused a disruption of that expectancy. (NCC ¶¶ 310-18, 368-74, 494-500, 885-91, 1077-84, 1336-42, 1391-97, 1575-82, 1611-17, 1640-46.) The MDL Order concluded that such allegations were sufficient to meet heightened federal pleading standards. (MDL Order at 68-69 ("Here plaintiffs

---

motion to dismiss. *Tuffy's* held that a city had immunity against such a claim and did not analyze the sufficiency of the pleading. *Id.* at 1164-65.

[71] *Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74 (Tex. 2000), is not informative. In *Prudential*, the court considered tortious interference with an existing contract and whether an agency relationship affected that claim. *Id.* at 78.

have alleged relationships and expectancies with an identifiable class of third parties, namely purchasers of corn from them. The Court concludes that such allegations are sufficient to state a claim for tortious interference that gives sufficient notice to Syngenta, particularly since the case involves a commodity that is sold in a defined market.").)

The information in Plaintiffs' Complaint provides "information sufficient to fairly notify [Syngenta] of the claim against it." *Walsh*, 851 N.W.2d at 605. The Minnesota Supreme Court has made clear that when Minnesota's "rules of civil procedure require more factual specificity—or 'particularity'—for a certain type of pleading, they say so clearly." *Id.* Nothing in the Minnesota Rules of Civil Procedure requires Plaintiffs to name specific third parties in their tortious interference claims, despite Syngenta's urging. Plaintiffs have sufficiently alleged their claims for tortious interference.

A. Plaintiffs adequately allege injury.

Syngenta contends that Plaintiffs have not pled that Syngenta induced or caused a breach or termination of Plaintiffs' economic expectancy. But this is not the law. The jurisdictions at issue allow for tortious interference if Syngenta (1) made a relationship with a third party more expensive or burdensome[72] or (2) interfered with an expected economic advantage.[73] Plaintiffs

---

[72] *White Sands Grp., L.L.C. v. PRS II, LLC*, 32 So. 3d 5, 17 (Ala. 2009) (plaintiff "need not 'establish that but for' the interference it would have been awarded a contract"); *Columbus Med. Servs. Org., LLC v. Liberty Healthcare Corp.*, 911 N.E.2d 85, 92 (Ind. App. 2009) (tortious interference where defendant caused "detrimental consequences" to plaintiff); *Wilspec Techs., Inc. v. Duncan Holding Grp. Co.*, 204 P.3d 69, 73 (Okla. 2009) (claim only requires showing that interference made "plaintiff's performance more oppressive"); *Niemeyer v. U.S. Fid. & Guar. Co.*, 789 P.2d 1318, 1321 (Okla. 1990) (plaintiff stated a claim for tortious interference "with business" when liability insurer gave false information to plaintiff's carrier, resulting in a lower settlement offer); *Stebbins v. Edwards*, 224 P. 714, 714-16 (Okla. 1924) (plaintiff stated claim for tortious interference where defendants made false statements that caused a disruption in plaintiffs' sales).

allege that Syngenta's conduct prevented the export of U.S. corn to China, thereby decreasing sales and depressing prices, and therefore have sufficiently pled the requisite injury. (*See, e.g.*, NCC ¶¶ 316-17, 373, 499-500, 890, 1083, 1341, 1581, 1616, 1645.)

The cases relied on by Syngenta to suggest the contrary are uninformative. *See McNeill v. Sec. Benefit Life Ins. Co.*, 28 F.3d 891, 894 (8th Cir. 1994) (concluding on summary judgment that the claimed interference was indirect and could not support a tortious interference claim); *Wilkey v. Hull*, 366 Fed. App'x 634 (6th Cir. 2010) (applying Ohio law, which is not at issue); *Erickson's Flooring & Supply Co. v. Tembec, Inc.*, 2006 U.S. Dist. LEXIS 1459 (E.D. Mich. Jan. 18, 2006) (applying Michigan law, which is not at issue); *Schoedinger v. United Healthcare of Midwest, Inc.*, 2011 U.S. Dist. LEXIS 2937, at *19-21 (E.D. Mo. Jan. 12, 2011) (determining plaintiff's claim of tortious interference was actually a claim for breach of contract); *Reali, Giampetro & Scott v. Soc'y Nat'l Bank*, 729 N.E.2d 1259 (Ohio App. 1999) (applying Ohio law, which is not at issue); *Brown v. CVS Pharm., L.L.C.*, 982 F. Supp. 2d 793, 805 (M.D. Tenn. 2013) (affirming summary judgment because during plaintiff's deposition, "she was unable to state whether she had in fact lost a single dollar of income because of the defendants' alleged actions"); *Golf Sci. Consultants, Inc. v. Cheng*, 2009 U.S. Dist. LEXIS 37721, at *28-29 (E.D.

---

[73] *Vowell v. Fairfield Bay Cmty. Club*, 58 S.W.3d 324, 329 (Ark. 2001) (holding that disruption of the plaintiff's expectancy in "a stream of dues" was sufficient to support tortious interference). Further, the Arkansas Model Jury Instruction on tortious interference provides that either "disruption or termination" of the expectancy will support liability. Ark. Model J. Instr. Civ. § 403 (2015). *See also Gieseke*, 844 N.W.2d at 219 (plaintiff must prove that defendant "interfered with plaintiff's reasonable expectation of economic advantage," not that a relationship must have terminated); *Kantel Commc'ns v. Casey*, 865 S.W.2d 685, 693 (Mo. App. 1993) ("A reasonable expectation of economic advantage . . . support[s] a claim for wrongful interference with a business expectancy"); *Carlson v. Roetzel & Andress*, 2008 U.S. Dist. LEXIS 27084, at *13 (D. N.D. Mar. 27, 2008) (holding "plaintiff must show he would have obtained the economic benefit in the absence of the interference"); *St. Onge Livestock Co. v. Curtis*, 650 N.W.2d 537 (S.D. 2002) (noting that the alleged injury of causing lost revenue is sufficient to withstand summary judgment).

Tenn. May 4, 2009) (affirming summary judgment decided after two years of discovery due to "insufficient evidence" regarding injury to plaintiff); *Tex. Disposal Sys. Landfill, Inc. v. Waste Mgmt. Holdings, Inc.*, 219 S.W.3d 563, 590 (Tex. App. 2007) (affirming summary judgment because plaintiff failed to "prove" tortious interference and noting that potential contracts were delayed, not prevented).

Syngenta has utterly failed to show that Plaintiffs' alleged injury is insufficient to survive a motion to dismiss. Indeed, as the MDL Order concluded:

> To some extent, Syngenta's argument raises only a matter of semantics. If there is an expectation of a particular business—a sale at a certain price—and then the sale at that price becomes impossible, then there has been an unrealized expectation that could support a tortious interference claim—even if the plaintiff mitigates its losses by making a deal at a lower price. Syngenta has not explained why interference could not be the prevention of a sale at a particular price.

(MDL Order at 72.)

B. Plaintiffs sufficiently allege improper means or wrongful conduct.

Syngenta argues that Plaintiffs have failed to adequately allege interference with their business expectancies through "improper means," asserting that such means must be "independently tortious or unlawful." (Syn. Br. at 111.) In so doing, Syngenta attempts to place an additional burden on Plaintiffs, arguing that Plaintiffs must *allege* that Syngenta's conduct "amounted to other, specific torts," to state a claim for tortious interference.

The majority of cases cited by Syngenta to support this purported pleading standard involved decisions rendered on a full record, where a jury weighed the evidence to determine whether independently tortious or otherwise wrongful conduct had occurred.[74] Further, of the

[74] *See Wal-Mart Stores, Inc. v. Sturges*, 52 S.W.3d 711, 726 (Tex. 2001) (reversing jury decision awarding damages for tortious interference with prospective advantage); *Trade'N Post, L.L.C. v. World Duty Free Ams., Inc.*, 628 N.W.2d 707, 721 (N.D. 2001) (determining on request for certification from federal court that a claim for unlawful interference with business is a

ten states at issue, three require a multifactor test to determine whether defendant's conduct was "improper," not "independently tortious," thereby negating Syngenta's contention that such a universal pleading standard should apply. *See Baptist Health v. Murphy*, 373 S.W.3d 269, 281-82 (Ark. 2009) (requiring analysis of the factors in the Restatement (Second) of Torts[75] for "guidance about what is improper"); *Selle v. Tozser*, 786 N.W.2d 748, 753 (S.D. 2010); *White Sands Grp., L.L.C. v. PRS II, LLC*, 32 So. 3d 5, 13 (Ala. 2009). Similarly, Tennessee has adopted a much more expansive definition of conduct that may constitute "improper interference." *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 701 n.5 (Tenn. 2002) (noting that improper means is "dependent on the particular facts and circumstances of a given case"). In the MDL Order, Judge Lungstrum also properly concluded that the interference need only be "improper," pointing out the "fact-intensive" nature of the inquiry in many of the at-issue states, and that Syngenta failed to show that the interference alleged by Plaintiffs could not be deemed improper.[76] (MDL Order at 70.) Syngenta similarly fails here.

---

recognized tort in North Dakota, but leaving it to the federal district court to "resolve the factual disputes and determine whether [defendant's] conduct provides a basis for tort liability"); *Community Title Co. v. Roosevelt Federal Sav. & Loan Ass'n*, 796 S.W.2d 369, 374 (Mo. 1990) (reversing grant of new trial and remanding for entry of judgment because plaintiffs failed, at trial, to establish the absence of justification for defendant's interferential conduct.)

[75] The factors are: (a) the nature of the actor's conduct; (b) the actor's motive; (c) the interests of the other with which the actor's conduct interferes; (d) the interests sought to be advanced by the actor; (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other; (f) the proximity or remoteness of the actor's conduct to the interference; and (g) the relations between the parties. *See* Restatement (Second) of Torts § 767 (1979).

[76] This aligns with the policy goal of limiting tortious interference to improper conduct to encourage healthy competition among business. *See Gieseke ex rel. Diversified Water Diversion, Inc.*, 844 N.W.2d at 218 (noting that "[t]he heart of our national economic policy long has been faith in the value of competition"). That policy concern is not implicated here, however, where Plaintiffs' allegations are that Syngenta deliberately, and for its own gain, interfered with the entire U.S. corn market.

Moreover, even if allegations of independent tortious conduct were required to survive a motion to dismiss, Plaintiffs' Complaint contains such allegations. Plaintiffs allege that Syngenta engaged in independently actionable conduct in that it made material misrepresentations and/or omissions of fact, trespassed upon the property rights of Plaintiffs, and otherwise breached its duty of care to Plaintiffs, all of which caused Plaintiffs harm. (NCC ¶¶ 300-86, 484-504, 875-91, 1065-84, 1326-67, 1381-97, 1557-1659.) Thus, Plaintiffs have sufficiently pled their claims for tortious interference.

Syngenta also argues that Plaintiffs must demonstrate that Syngenta's improper conduct was directed towards the particular business expectancy in question. (*See* Syn. Br. at 111.) As the MDL Order aptly observed, Syngenta's support for this contention is a single case from Illinois. (MDL Order at 71.) The law of Illinois is not at issue here, and Syngenta provides no other authority for the implementation of such a standard of proof, much less pleading. Thus, this argument should be flatly rejected.

Finally, Syngenta argues that because it had regulatory approval to sell Viptera in the United States, its pursuit of profit renders any action it took "lawful" and therefore not improper. Again, as noted in the MDL Order, regulatory approval does not equate with lawfulness or otherwise immunize Syngenta from liability for its wrongful conduct. (MDL Order at 71.) Plaintiffs' overarching contention is that the methods Syngenta employed in introducing Viptera into the marketplace were unlawful. Syngenta's response—that selling an approved product "rubber stamps" any conduct associated with selling that product—is entirely circular.[77]

---

[77] In support of its argument, Syngenta refers to two Iowa decisions (Iowa law is not at issue here) and an Alabama case, *Bridgeway Commc'ns, Inc. v. Trio Broad., Inc.*, 562 So. 2d 222 (Ala.

At the pleading stage, and under the standard articulated in *Walsh*, 851 N.W.2d at 605, Plaintiffs have sufficiently alleged improper means engaged in by Syngenta, and the tortious interference claims should not be dismissed.

C. Plaintiffs adequately allege intent.

Syngenta argues that Plaintiffs have failed to adequately allege that it acted with the requisite level of intent. (Syn. Br. at 112.) In the states at issue in this motion, intentional torts are routinely governed by the standard of the Restatement (Second) of Torts; *i.e.*, intent is present when the defendant either desired to bring about the harm suffered or knew that the harm was substantially certain to occur.[78] Plaintiffs repeatedly assert in the Complaint that Syngenta knew Plaintiffs had a reasonable expectancy of continued relationships with corn purchasers, and that by introducing Viptera into the interconnected marketplace, Syngenta intentionally caused a

---

1990), in which summary judgment was granted because plaintiff failed to produce any evidence regarding defendant's improper conduct. (*See* Syn. Br. at 112, n.146.)

[78] Restatement (Second) of Torts § 8A; *see also Stewart Title Guar. Co. v. Am. Abstract & Title Co.*, 363 Ark. 530, 547 (2005) (noting that the "tort of interference with contractual relations is similar to other intentional torts 'in the sense that the defendant must have either desired to bring about the harm to the plaintiff or have known that this result was substantially certain to be produced by his conduct'") (citation omitted); *Drake v. Dickey*, 2 N.E.3d 30, 39 (Ind. App. 2013) (finding that in the tortious interference context, "intent may be demonstrated by showing either that [defendant] specifically intended to interfere . . . or that it acted for another purpose but knew that the interference was certain or substantially certain to occur"); *Carnes v. St. Paul Union Stockyards Co.*, 205 N.W. 630, 632 (Minn. 1925) (finding malice non-essential in tortious interference context); *Bell v. May Dep't Stores Co.*, 6 S.W.3d 871, 879 (Mo. 1999) (finding that defendant had requisite intent to substantiate tortious interference claim "if it knew interference was certain or substantially certain to occur as a result of its actions, even if its express purpose was not to interfere"); *Peterson v. Zerr*, 477 N.W.2d 230, 234 (N.D. 1991) (asserting that the standard for intent in interference cases does not encompass only situations in which the defendant has "acted with this purpose or desire," but also when "the actor does not act for the purpose of interfering with the contract or desire it but knows that the interference is certain or substantially certain to occur as a result of his action"); *Parret v. UNICCO Serv. Co.*, 127 P.3d 572, 577 (Okla. 2005) (applying the "substantially certain" standard in the context of tortious interference).

disruption[79] of that expectancy without justification or privilege. Judge Lungstrum concluded in the MDL Order that:

> [o]ne could reasonably infer from the facts alleged in the complaints that defendants knew that Viptera had not been approved in a key export market, that contamination of plaintiffs' corn would occur after commercialization of Viptera without certain safeguards, and thus that interference with plaintiffs' sales would be substantially certain to occur.

(MDL Order at 73.) There is no reason to reach a different conclusion here.

Syngenta's assertions regarding the relative scope of the Chinese market in the global market are of no legal moment. Especially at the pleading stage, it is irrelevant whether China accounted for one-third of one percent, five percent, or thirty-five percent of the corn market—other than for purposes of establishing damages at the proof stage of this litigation. If Syngenta was substantially certain that their conduct could have a negative effect on the corn market, the resultant relationships and expectancies producers had with corn purchasers, or both, and engaged in interferential conduct armed with that knowledge, then their actions were sufficiently intentional to substantiate a claim for tortious interference. At a minimum, Plaintiffs have made sufficient allegations regarding Syngenta's intent, and Plaintiffs' claims for tortious interference should not be dismissed.

VIII. Plaintiffs have adequately pled their consumer-protection claims.

A. Minnesota Statutes sections 325D.13, 325D.44, and 325F.69 apply.

Plaintiffs assert violations of Minnesota's Unfair Trade Practices Act (MUTPA), Minn. Stat. § 325D.13, and Minnesota's Consumer Fraud Act (MCFA), Minn. Stat. § 325F.69. Class Plaintiffs additionally assert a claim under Minnesota's Deceptive Trade Practices Act

---

[79] Syngenta attempts to insert the purported requirement that interference is only cognizable when business expectancy is prevented. That assertion fails.

(MDTPA), Minn. Stat. § 325D.44. Minnesota has established a private remedy for violations of MUTPA and MCFA under its private attorneys-general statute. Minn. Stat. § 8.31. The MDTPA contains its own private enforcement mechanism. Minn. Stat. § 325D.45.

B. This Court may constitutionally hear Non-Class Plaintiffs' MUTPA and MCFA claims against Syngenta.

Syngenta argues that it is inappropriate for this Court to allow non-Minnesotans to assert Minnesota statutory claims. This position is incorrect for two reasons, and recent decisions bolster Plaintiffs' position that the MUTPA and MCFA should apply extraterritorially. First, recent decisions suggest a choice of law analysis is unnecessary. Second, Minnesota law has a policy of openness and access.

First, the conflict of law analysis is unnecessary. Syngenta claims that to determine whether this Court can apply the MUTPA and MCFA, it must determine if application of Minnesota law to non-Minnesotans is constitutionally permissible, as well as undergo a choice-of-law analysis. (Syn. Br. at 118-19.) Syngenta points to the MDL order, as the only court to address the issue of whether a non-Minnesotan may assert Minnesota statutory claims. (*Id.* at 119.) As Syngenta notes, the MDL Court held that the MUTPA and MCFA could not be applied extraterritorially. At the same time, however, a federal court in the District of Minnesota was considering the same issue. *In re Target Corp. Customer Data Sec. Breach Litig.*, citing pg. 18, 2015 WL 5432115. *In re Target* confronted statutory claims under Minn. Stat. § 325E.64. *Target* held: "To apply Minnesota law to a non-resident plaintiff's claims, the Constitution requires that Minnesota 'have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.'" 2015 WL 5432115, at *3 (quoting *Hague*, 449 U.S. at 312-13).

Target, however, unlike the MDL Court, did not see the need for choice-of-law analysis: "[T]he Court may presume there are substantive conflicts between the laws of Plaintiffs' home states and Minnesota law and still constitutionally apply Minnesota law." *Id.* This is not a novel legal theory. In *Mooney*, the Court stated plainly: "As a Minnesota corporation, Allianz can not [sic] claim surprise by the application of Minnesota law to conduct emanating from Minnesota, since Minnesota has a 'substantial interest in preventing the corporate form from becoming a shield for unfair business dealing.'" 244 F.R.D. at 535 (quoting *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 93 (1987)).

Minnesota plays a crucial role in the present litigation. One of the six Syngenta entities identified in the Non-Class Complaint, Syngenta Seeds, is headquartered in Minnesota. (NCC ¶ 9.) Among the products that Syngenta markets and sells are the Viptera and Duracade varieties of corn seed at issue in this litigation. (*Id.*) Minnesota was the site of field tests for Viptera. (NCC ¶ 52.) As such, application of Minnesota law to Syngenta is fair and constitutionally permissible.

Syngenta attempts to argue around the significant contacts it has with Minnesota, by arguing that it has significant contacts with other jurisdictions as well. (Syn. Br. at 120-21 (noting corporate activity in Delaware and North Carolina).) "However, the Due Process Clause and Full Faith and Credit Clause are satisfied as long as Minnesota has significant contacts with an out-of-state class member's claims." *Mooney*, 244 F.R.D. at 535. Additionally, the question of constitutionally permissible application is not zero sum; multiple jurisdictions may be able to exercise jurisdiction without offending the U.S. Constitution. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818 (1985) ("[A] particular set of facts giving rise to litigation could justify, constitutionally, the application of more than one jurisdiction's laws."). Moreover, the

expectations of the parties are a central feature of determining fairness and constitutionality. *Id.* at 822 ("When considering fairness in this context, an important element is the expectation of the parties."). Syngenta has chosen Minnesota as the corporate headquarters for its Seed business and used Minnesota farms and lands as sites of field tests; it would be fundamentally unfair to Plaintiffs to foreclose the application of Minnesota law to Syngenta under these facts, particularly at the motion-to-dismiss stage.[80] (NCC ¶¶ 9, 52.)

Finally, in rejecting the application of Minnesota statutes, the MDL Order relied on *St. Jude*, and its criticism of two cases cited by the MDL Plaintiffs: *In re Lutheran Bhd. Variable Ins. Products Co. Sales Practices Litig.*, 201 F.R.D. 456, 461 (D. Minn. 2001) and *Group Health Plan, Inc. v. Philip Morris, Inc.*, 621 N.W.2d 2 (Minn. 2001). *In re St. Jude* criticized these cases because they failed to conduct a search analysis of the constitutionality of applying Minnesota law to out-of-state plaintiffs, but indicated, that were such an analysis conducted it may well be proper to apply Minnesota law extraterritorially. *In re St. Jude Med., Inc.*, 425 F.3d 1116, 1120 (8th Cir. 2005) ("Application of Minnesota law to all plaintiffs' claims ultimately may be proper."). Moreover, the MUTPA does not define person in terms of citizenship, and so there is no question that Plaintiffs can assert claims under these statutes, so long as the application of Minnesota law is constitutionally permissible. *See* Minn. Stat. § 325D.10 (defining person to "include[] any individual, firm, partnership, corporation or other organization, whether organized for profit or not")

Second, Minnesota courts have a policy of openness and access to residents and non-residents alike. Minnesota courts may express a reluctance to apply their statutes

---

[80] To the extent the Court believes a choice-of-law analysis is necessary, Plaintiffs have shown that Minnesota law should apply.

extraterritorially, as argued by Syngenta, however, they also are open to both residents and non-residents who file permissible claims. *Compare Olson v. Push, Inc.*, No. CIV. 14-1163 (ADM/JJK), 2014 WL 4097040, at *2 (D. Minn. Aug. 19, 2014) (noting presumption against extraterritorial application), *with Schwartz v. Consol. Freightways Corp. of Delaware*, 221 N.W.2d 665, 669 (Minn. 1974) ("Suffice it to say that the courts of this state are open to those residents and nonresidents alike who properly invoke, within constitutional limitations, the jurisdiction of these courts."). The language in the statutes at issue reinforces this openness, as the private attorneys-general statute empowers "any person injured by a violation of any of the laws" to bring an action.

C. Syngenta cannot escape liability by mislabeling Plaintiffs as merchants.

Syngenta argues that Minnesota law has a prohibition against 'merchants' asserting MUTPA and MCFA claims, however, this overstates the nature of the law in Minnesota—as the MDL also recognized. *See Securian Fin. Grp., Inc. v. Wells Fargo Bank, N.A.*, No. CIV. 11-2957 (DWF/HB), 2014 WL 6911100, at *6 (D. Minn. Dec. 8, 2014) ("Plaintiffs assert that the controlling Minnesota Supreme Court case on this issue, *Church of the Nativity of Our Lord v. Watpro*, 491 N.W.2d 1 (Minn. 1991), does not include any prohibition against "merchants" for consumer fraud claims. The Court agrees."); *Pugh v. Westreich*, No. A04-657, 2005 WL 14922, at *3 (Minn. App. Jan. 4, 2005) ("The MCFA is broadly construed to protect consumer rights.").

Given the lack of a strict prohibition, "courts focus their analysis on whether a party can be considered a sophisticated merchant in the specific skills or goods at issue, and only those parties that are in fact deemed to be sophisticated merchants in the specific skills or goods at issue have been precluded from asserting Minnesota consumer claims." *Securian*, 2014 WL 6911100, at *6. Further, "to be a sophisticated merchant, a party must have knowledge or skill particular to the practices involved in the transaction at issue." *Id.* (citing Minn. Stat. § 336.2-

104(1)). Syngenta relies on *Solvay Pharmaceutical, Inc. v. Global Pharmaceuticals*, which involved claims by one drug manufacturer against another. 298 F. Supp. 2d 880, 881-82 (D. Minn. 2004). Likewise, the other case relied on by Syngenta, *Pugh v. Westreich*, involved insurance companies all of which were "heavily involved in the practice of providing IMEs." No. A04-657, 2005 WL 14922, at *4 (Minn. App. Jan. 4, 2005).

Plaintiffs are not sophisticated parties as Minnesota law requires to invoke the merchant exception simply because they are in the corn industry. *See Ly v. Nystrom*, 615 N.W.2d 302, 310 (Minn. 2000) (holding Ly to be a consumer in purchase of restaurant even though he had worked in restaurant industry); *see also Regents of the Univ. of Minn. v. Chief Indus., Inc.*, 106 F.3d 1409, 1412 (8th Cir. 1997) ("To be sure, not all large, sophisticated purchasers are necessarily merchants in goods of the kind they buy.").

At the very least, any such finding would be improper at this stage in the litigation. As the MDL Court recognized, this argument is inappropriate at this stage of the litigation, and therefore the court denied Syngenta's motion to dismiss on this basis. (MDL Order at 97 (quoting *Securian*, 2014 WL 6911100, at *7 ("[A] fact question remained for trial concerning whether the plaintiffs were sophisticated merchants, even though they would 'undoubtedly have an uphill battle convincing a jury of their lack of sophistication.'")).)

D. Plaintiffs have sufficiently pled a public benefit.

Syngenta challenges Plaintiffs' MUTPA and MCFA allegations on the basis that they lack a public benefit, because Plaintiffs seek compensatory damages and attorneys' fees and China's approval of MIR162 moots any injunctive relief. (Syn. Br. at 123-24.) This, however, overstates the public-benefit requirement. *Select Comfort Corp. v. Tempur Sealy Int'l, Inc.*, 11 F. Supp. 3d 933, 937-38 (D. Minn. 2014) ("[A] public benefit typically will be found when the plaintiff seeks relief primarily aimed at altering the defendant's conduct").

This action will, as Plaintiffs allege, serve a public benefit. (CC ¶ 325; NCC ¶ 343.) "Minnesota courts have not definitively delineated what factors are necessary to establish a public benefit. However, generally, courts examine the degree to which the defendants' alleged misrepresentations affected the public; the form of the alleged misrepresentation; the kind of relief sought; and whether the alleged misrepresentations are ongoing." *Select Comfort*, 11 F. Supp. 3d at 937-38. All Plaintiffs have pled specific benefits that would accrue to the public under this action. (CC ¶ 325; NCC ¶ 343.) Plaintiffs have made numerous allegations as to the breadth and effect Syngenta's behavior had on the U.S. Corn Market, the DDGS market, and the impact that these types of premature commercialization have on consumers. (*See, e.g.*, CC ¶¶ 230, 240-54, 269-80; NCC ¶¶ 241, 251-65, 280-91.) Plaintiffs have easily met their burden under Minnesota's pleading standards that a public benefit will be served.

Finally, this action is the very type of action contemplated by the drafters of Minnesota's private attorneys-general statute. "The Private AG Statute thus advances the legislature's intent to prevent fraudulent representations and deceptive practices with regard to consumer products by offering an incentive for defrauded consumers to bring claims in lieu of the attorney general." *Ly*, 615 N.W.2d at 311. In fact, Syngenta's behavior with subsequent product launches proves that intervention is necessary and will benefit the public. (CC ¶¶ 196-229; NCC ¶¶ 207-40.)

Minnesota

Class Plaintiffs have pled violations of the MDTPA. (CC ¶¶ 300-27.) Syngenta argues that because Class Plaintiffs have not made a specific injunctive request of this Court their claims are subject to dismissal. To prevail on a MDTPA claim, "[p]laintiffs must advance record evidence sufficient to support an inference of future harm to Plaintiffs." *Gardner v. First Am. Title Ins. Co.*, 296 F. Supp. 2d 1011, 1020 (D. Minn. 2003). The Class Complaint makes

numerous allegations about the behavior of Syngenta with respect to the commercialization of Viptera that allow this Court, under Minnesota's pleading standards, to draw an inference of future harm. (CC ¶¶ 196-221.) In the wake of the Viptera/MIR162 debacle, Syngenta engaged in similarly disruptive behavior by marketing Duracade, which contained both MIR162 (still unapproved in China) and a new unapproved trait, Event 5307. (CC ¶¶ 196-221.) To the extent the Court believes a specific prayer for injunctive relief is required, Plaintiffs should be granted leave to amend the complaint.

Illinois

Syngenta argues that Plaintiffs lack standing under the Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA). This argument—pressed and failed in the Federal MDL—asserts that Plaintiffs have failed to show a "consumer nexus" that shows how Syngenta's actions involve consumer protection concerns, and how the requested relief would benefit consumers. (Syn. Br. at 125 (citing *Thrasher-Lyon v. Illinois Farmers Ins. Co.*, 861 F. Supp. 2d 898, 912 (N.D. Ill. 2012)).) The ICFA allows actions by non-consumers where it meets the consumer nexus test. (MDL Order at 105.) The consumer nexus test requires that:

> plaintiffs must plead and otherwise prove (1) that their actions were akin to a consumer's actions to establish a link between them and consumers; (2) how defendant's representations . . . concerned consumers other than themselves; (3) how defendant's particular breach . . . involved consumer protection concerns; and (4) how the requested relief would serve the interests of consumers.

Brody v. Finch Univ. of Health Scis./The Chicago Med. Sch., 698 N.E.2d 257, 269 (Ill. 1998). The consumer nexus test is required only when the plaintiff is a non-consumer and the action at issue does not "involve trade practices addressed to the market generally." (*See* MDL Order at 105-06 (citing *Banks One Milwaukee v. Sanchez*, 783 N.E.2d 217, 220 (Ill. App. 2003)).) The MDL Court rejected these very arguments and held that "growers that purchased Syngenta's

seeds were consumers of Syngenta's product under the ICFA . . . and Plaintiffs have alleged conduct addressed to Syngenta's purchasers." (MDL Order at 108.)

Syngenta argues that Plaintiffs are not consumers under the ambit of the ICFA because they are not end-users of corn. Syngenta argues that the ICFA allows only for "the ultimate buyer of the finished product" to bring claims. (Syn. Br. at 125 (citing *Williams Elecs. Games, Inc. v. Garrity*, 366 F.3d 569, 579 (7th Cir. 2004)).) As the MDL Order revealed, Syngenta has attempted to redefine the market at issue. Syngenta's argument requires the Court to analyze the corn market, rather than the corn seed market. (*See* MDL Order at 107 (citing *AGFA Corp. v. Wagner Printing Co.*, No. 02 C 2400, 2002 WL 1559663, at *2 (N.D. Ill. July 10, 2002)).) Relying on *Sluis v. Nudelman*, the MDL Court determined the applicable market was seeds, as "a seed becomes something different in producing a plant." (MDL Order at 107 (citing *Sluis v. Nudelman*, 34 N.E.2d 391 (Ill. 1941)).)

Syngenta argues that the MDL Court's reliance on *Sluis* is misplaced because a subsequent case came to a different conclusion. (Syn. Br. at 126 (citing *People ex rel. Spiegel v. Lyons*, 115 N.E.2d 895, 897 (Ill. 1953)).) *Spiegel* was based on the same issue as *Sluis*: the taxability of the sale of seeds. *Spiegel* turns not on the question of whether seeds and produce are distinct, however, but on statutory interpretation. *Spiegel* noted that in the wake of *Sluis* the Illinois legislature passed a law to overturn the decision. *People ex rel. Spiegel v. Lyons*, 115 N.E.2d 895, 898 (Ill. 1953). The Department of Finance then promulgated rules to distinguish between seeds sold for personal consumption (taxable) and seeds sold for commercial production (non-taxable). *Id.* The MDL Court relied on the fact that seeds become a crop, and *Spiegel* does not rely on abrogating that line of thought, rather it simply defers to the executive branch on rules that have been promulgated pursuant to statute. 115 N.E.2d at 898; *see Am. Oil Co. v.*

Mahin, 273 N.E.2d 818, 823 (Ill. 1971) (discussing *Siegel* and noting "[t]he statute did not especially exempt the seeds, but the Department had for more than ten years promulgated the rule"). In the end, *Spiegel* represents the Department of Finance's preference for not taxing seeds sold to farmers and vendors re-selling seeds.

Moreover, Syngenta reads *Spiegel* too broadly, as the very language at issue in *Spiegel*, demonstrates the distinction drawn by the MDL Court—that seeds produce something new:

> Sellers of seeds-When not liable for tax. Persons who sell seeds to purchasers who employ such seeds in raising vegetables, crops or other plants for sale are selling seeds to purchasers for purposes of resale and are not required to remit Retailer's Occupation Tax measured by their gross receipts from such sales.

115 N.E.2d at 896. Thus, the rule makers recognized that seeds turn into crops.[81]

Syngenta also argues that "Plaintiffs' theory that Syngenta's conduct lowered the overall price of corn falls outside the scope of the ICFA because it means that the 'ultimate buyers' (*i.e.* consumers of corn) paid less for corn than they would have absent Syngenta's actions." (Syn. Br. at 125.) Syngenta offers no evidence to suggest that grocery store consumers were paying less for corn and corn food products due to the sharp price decline cause by Syngenta, nor would the Court be able to examine such evidence on a motion to dismiss.[82] Moreover, to make such a determination would require the court to *infer* that market prices on the Chicago Board of Trade

---

[81] Syngenta's own materials, as alleged in the Complaints, indicate that it distinguishes between seed and what it becomes. (CC ¶ 127 (citing to the stewardship agreement that "grain produced from seed" should be appropriately channeled.").)

[82] While not relevant to present inquiry, and beyond the scope of the pleadings, in point of fact, it is likely that consumers of corn and corn based food (continued on next page) products have not seen any change in prices. *See* Randy Schnepf, *Farm-to-Food Price Dynamics* 21 (Congressional Research Service Sept. 27, 2013), *available at* https://www.fas.org/sgp/crs/misc/R40621.pdf ("The general perception (supported by considerable empirical evidence) is that retail food prices are "sticky"—that is, retail prices follow commodity prices upwards rapidly, but fall back only slowly and partially when commodity prices recede.").

were tied to the price grocery store consumers paid for corn and corn products. Any inferences drawn based on the facts pled should be drawn in favor, not against Plaintiffs. *Bahr*, 788 N.W.2d at 80. As discussed above, the consumers in question are the buyers of corn seed, who the Non-Class Complaint alleges were harmed by the actions of Syngenta. (NCC ¶¶ 236, 283, 292, 299.)

Nebraska

Syngenta's sole argument for dismissal of Plaintiffs' Nebraska Consumer Protection Act claims is that Nebraska exempts from its statutory scheme "actions or transactions otherwise permitted, prohibited, or regulated under laws administered by the Director of Insurance, the Public Service Commission, the Federal Energy Regulatory Commission, or any other regulatory body or officer acting under statutory authority of this state or the United States." Neb. Rev. Stat. § 59-1617. Syngenta reads the statute too broadly, it is not enough that the actor—Syngenta—is subject to regulation; the very act complained of must be as well. *See Hage v. Gen. Serv. Bureau*, 306 F. Supp. 2d 883, 890 (D. Neb. 2003) ("However, particular conduct is not immunized from the operation of the Consumer Protection Act merely because the actor comes within the jurisdiction of some regulatory body, the immunity arises if the conduct itself is also regulated."); *Wrede v. Exch. Bank of Gibbon*, 247 Neb. 907, 915, 531 N.W.2d 523, 529 (1995) ("The teaching of *Kuntzelman* is that while particular conduct is not immunized from the operation of the Consumer Protection Act merely because the actor comes within the jurisdiction of some regulatory body, immunity does arise if the conduct itself is also regulated.").

Thus the mere fact that Viptera is subject to USDA approval is not sufficient ground for immunity under the Nebraska Consumer Protection Act. Here the complained of actions, *inter alia*, releasing the seed prior to Chinese approval and failing to implement and effectively run a stewardship program address the manner in which Viptera was marketed and sold, are outside

the purview of any Nebraska state or Federal regulatory body. (*See* Syn. Br. at 9 (noting stewardship programs are not mandatory and are promoted by non-governmental industry groups).) As such, Syngenta is subject to the Nebraska Consumer Protection Act, and cannot claim immunity from it based on regulatory requirements not germane to the complained of action. The MDL Court likewise denied Syngenta's motions to dismiss on these grounds, noting that it could not "say as a matter of law that the specific manner in which Syngenta sold its products, as alleged here, was regulated by the agencies that authorized those products sale." (MDL Order at 110.)

North Carolina

Syngenta argues that Plaintiffs' claims under the North Carolina Unfair and Deceptive Trade Practices Act (NCUTPA), N.C. Gen. Stat. § 75-1.1, are barred because Syngenta and Plaintiffs are neither in competition nor in privity. This argument is unpersuasive, and for the same reasons the MDL Court rejected it, so too must this Court. (MDL Order at 111.) Syngenta relies on *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, for the contention that the NCUTPA is limited in business to business cases to those where the two businesses are competitors or engaged in commercial dealings. 194 F.3d 505, 519-22 (4th Cir. 1999). The MDL Court noted that the cases *Food Lion* cites to draw those boundaries, are actually examples of cases where North Carolina courts expanded the reach of the NCUTPA, not restricted it. (MDL Order at 111, n.19.)

Syngenta argues this is a misreading of the law and cites to a recent case, once again, citing three ways a business may bring an NCUPTA claim. *Exclaim Mktg., LLC v. DirecTV, LLC*, No. 5:11-CV-684-FL, 2015 WL 5773586, at *5 (E.D.N.C. Sept. 30, 2015) (noting that claims are available where "1) the plaintiff-business is in the marketplace acting as a consumer

or is otherwise engaged in commercial dealing with defendant . . . [2]) the businesses are competitors, . . . or 3) the conduct giving rise to the cause of action has a negative effect on the consuming public" (citations omitted)). While *Exclaim* states that these are the only causes of action afforded to business to business transactions, it does not address the analysis of the MDL Court that these mechanisms were all, at the time the cases creating them were decided, expansions of the NCUTPA. Moreover, North Carolina law places the burden of proof on the party seeking exemption from NCUPTA. N.C. Gen. Stat. § 75-1.1.

Even if Syngenta's reading is correct that this is an exhaustive list of the manners in which Plaintiffs may bring a claim, Plaintiffs have met such definitions.[83] Plaintiffs have alleged that they were in the corn seed market place acting as consumers when they bought non-MIR162 seeds to grow corn, even if they did not directly engage Syngenta. (NCC ¶¶ 5-8.) North Carolina does not require that the two parties be in privity in order to maintain an action. *J.M. Westall & Co. v. Windswept View of Asheville, Inc.*, 387 S.E.2d 67, 69 (N.C. App. 1990). Additionally, it is clear that the third category applies, because Plaintiffs have alleged a widespread negative effect on the consuming public. (NCC ¶¶ 236, 283, 292, 299.)

Again, Syngenta argues, without providing any evidence, that the "ultimate buyers" of corn experienced lower prices, not higher, of corn, and as such there was no harm to consumers. As noted above, in the Illinois Consumer Protection section, such a determination would require the court to *infer* that market prices on the Chicago Board of Trade were tied to the price grocery store consumers paid for corn and corn products. Any such inference is not allowed under Minnesota law. *See, e.g., Bahr*, 788 N.W.2d at 80. Additionally, Syngenta does not articulate why Plaintiffs cannot bring this action as consumers in the corn seed market. *See* N.C. Gen. Stat.

---

[83] Plaintiffs do not claim that they compete with Syngenta.

§ 75-16 (allowing "any person [who] shall be injured" by violations of the NCUTPA to bring actions).

Finally, Syngenta argues that Plaintiffs have failed to plead reliance, and as such the claim is fatally flawed. Under the NCUTPA an act falls under its purview, where the acts in question "offend public policy and that are immoral, unethical, or substantially injurious to consumers, as well as acts that possess the tendency or capacity to mislead." *Old S. Home Co. v. Keystone Realty Grp., Inc.*, 233 F. Supp. 2d 734, 736 (M.D. N.C. 2002). "To establish a prima facie claim for unfair trade practices under the NCUTPA, a plaintiff must establish: (1) that the defendants committed an unfair or deceptive act or practice; (2) in or affecting commerce; and (3) that the plaintiff was injured thereby." *Id.*

The MDL Court relied on *Tucker v. Boulevard at Piper Glen LLC*, in dismissing Plaintiffs' North Carolina Unfair and Deceptive Trade Practices Act claims. (*See* MDL Order at 114-15 (citing 564 S.E.2d 248, 251 (N.C. App. 2002)).) *Tucker* held: "Where an unfair or deceptive practice claim is based upon an alleged misrepresentation by the defendant, the plaintiff must show 'actual reliance' on the alleged misrepresentation in order to establish that the alleged misrepresentation 'proximately caused' the injury of which plaintiff complains." *Id.* (quoting *Promenade v. Lechmere, Inc.*, 464 S.E.2d 47, 58 (N.C. App. 1995)). Plaintiffs' claims are based on more than misrepresentation. They include Syngenta's failure to administer an effective stewardship program, prematurely releasing Viptera, and failure to warn of potential risks. (NCC ¶ 1430.) These acts "offend public policy and [ ] are immoral, unethical, or substantially injurious to consumers." *Keystone*, 233 F. Supp. 2d at 736. To that end, under NCUTPA, Plaintiffs have adequately pled the requirements to state a claim.

North Dakota

Syngenta argues that Plaintiffs' North Dakota deceptive trade practices claim under N.D. Cent. Code § 51-15-02 should be dismissed because none of the alleged conduct was made in connection with the sale of MIR162. (Syn. Br. at 128-29.) Syngenta argues that because the complained of conduct was not made in connection with the sale of MIR163, it is beyond the reach of North Dakota's statutory scheme. This reads Plaintiffs' allegations too narrowly.

The misrepresentations that Plaintiffs allege were made in connection with the sale of MIR162. First, Plaintiffs allege that Syngenta used its website to make false and misleading statements. (NCC ¶ 38-44.) Second, Plaintiffs allege that Syngenta promulgated a "Plant with Confidence Fact Sheet" which was directed at encouraging farmers to plant Viptera. (NCC ¶ 190.) These are clearly marketing tools used to make sales of its product. *See DJ Coleman, Inc. v. Nufarm Americas, Inc*., 693 F. Supp. 2d 1055, 1077 (D. N.D. 2010) (finding that "The evidence clearly establishes that Nufarm advertised on its website that Assert® is safe for use on sunflowers in North Dakota" and those statements were found to be made in connection with the sale of Assert). Indeed the "Plant with Confidence" sheet cited in the complaint (NCC ¶ 190), is forward looking, encourages farmers to plant Viptera in order to increase yields, and is the very type of communication that falls under N.D. Cent. Code § 51-15-02.[84] (*See* MDL Order at 116 (denying dismissal of Plaintiffs' claims because the Fact Sheet "could plausibly be considered advertising intend to induce future sales of the same product").)

---

[84] "Given current commodity prices, it is critical that corn growers get the most out of their hybrids. Corn hybrids with the Agrisure Viptera trait offer in-seed defense against a collection of lepidopteran corn pests that costs U.S. corn growers 238 million bushels of corn and more than $1.65 billion in annual yield and grain quality losses." While the Fact Sheet is outside the pleadings, in Minnesota, a court is permitted to consider documents embraced by the complaint, which surely includes the Fact Sheet. *See, e.g., Ellis v. Hanson*, No. A11-101, 2011 WL 5829104, at *2 (Minn. App. Nov. 21, 2011).

Syngenta argues that the Fact Sheet is an update to growers who have already purchased Viptera. (Syn. Br. at 129 n.156.) As noted by the MDL Court, the document is plausibly directed at future sales, and indeed, under Minnesota pleading standards the Court must draw the reasonable inference that this is a communication made in connection with the sale or advertisement of Viptera. *See Walsh*, 851 N.W.2d at 603; *Bahr*, 788 N.W.2d at 80.

South Dakota

South Dakota's Deceptive trade Practices and Consumer Protection laws (SDCPA) make it illegal for "any person to (1) Knowingly act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby." S.D. Codified Laws § 37-24-6.

Syngenta, relying on *Nygaard v. Sioux Valley Hospitals & Health Systems*, argues that Plaintiffs' SDCPA claims must be dismissed because they fail to plead "reliance." (Syn. Br. at 129.) *Nygaard* does not require that a Plaintiff plead "reliance" but merely holds that "to state a claim under SDCL 37-24-31, [Plaintiffs] must have pleaded that their economic damages were proximately caused by one or more of the three alleged violations of the Act." 731 N.W.2d 184, 198 (S.D. 2007), *see also Rodriguez v. Siouxland Urology Assocs. P.C.*, No. CIV. 09-4051 (KES), 2013 WL 684243, at *5 (D. S.D. Feb. 22, 2013) ("Rodriguez must show that his damages "were proximately caused by" the alleged violations of the Consumer Protection Act." (quoting *Nygaard*)); *Rainbow Play Sys., Inc. v. Backyard Adventure, Inc.*, No. CIV.06-4166, 2009 WL 3150984, at *7 (D.S.D. Sept. 28, 2009) ("in a civil action a claim for damages pursuant to the South Dakota Deceptive Trade Practices Act [] specifically requires a causal connection between

the alleged deceptive practice and the damages suffered by a plaintiff"); *Sisney v. Best Inc*., 754 N.W.2d 804, 811 (S.D. 2008) ("Therefore, to state a claim under SDCL 37-24-31 and 37-24-6, Sisney must have pleaded that he was adversely affected as a *result of* a deceptive practice used by the Defendants in connection with their sale or advertising of the bread.").

Nygaard required a showing of reliance to prove causation: "In this case, Patients have only pleaded subjective characterizations of belief and legal conclusions of proximate cause that are untethered to any factual predicate that could constitute causation." *Nygaard*, 731 N.W.2d at 198. The present case is distinguishable in the breadth and depth of the allegations pled that show the statements made by Syngenta are directly tied to the damages suffered. (NCC ¶¶ 132, 161, 167, 188-92.) The Non-Class Complaint adequately alleges the causal mechanism between the false statements made and the harm done to the US market.

Texas

The Texas Deceptive Trade Practices-Consumer Protection Act (TDTPA), Tex. Bus. & Com. Code § 17.41, requires that Plaintiffs be consumers, that Syngenta acted in a manner that was false, deceptive or misleading, and that the act described caused the damage to the Texas Plaintiffs. *See Sparks v. Booth*, 232 S.W.3d 853, 864 (Tex. App. 2007) (citing *Doe v. Boys Clubs of Greater Dallas, Inc.*, 907 S.W.2d 472, 478 (Tex. 1995)). "To be a consumer, the plaintiff must have sought or acquired goods or services by purchase or lease, and those goods or services must form the basis of the complaint." *Ortiz v. Collins*, 203 S.W.3d 414, 424 (Tex. App. 2006).

Syngenta's primary argument for dismissal of the TDTPA claims is that the Non-Class Complaint fails to allege proper facts to establish that the Plaintiffs are 'consumers' under the TDTPA. Syngenta, mistakenly, claims that because the Non-Class Complaint does not allege

that Plaintiffs purchased Viptera these claims fail.[85] It is well established that Texas does not require that the plaintiff and defendant be in privity in order for the plaintiff to qualify as a consumer. *See, e.g.*, *Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644, 649 (Tex. 1996); *Home Sav. Ass'n v. Guerra*, 733 S.W.2d 134, 136 (Tex. 1987); *Kennedy v. Sale*, 689 S.W.2d 890, 892-93 (Tex. 1985); *Flenniken v. Longview Bank & Trust Co.*, 661 S.W.2d 705, 707 (Tex. 1983); *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540-41 (Tex. 1981); *Sparks v. Booth*, 232 S.W.3d 853, 864-65 (Tex. App. 2007). Rather all that is required is that "the plaintiff must show the defendant's deceptive conduct occurred in connection with a consumer transaction." *Sparks*, 232 S.W.3d at 864-65 (citing *Ortiz*, 203 S.W.3d at 424). Plaintiffs have amply alleged that they are consumers under the TDTPA. Plaintiffs bought goods—corn seeds—and those goods form the basis of the complained of injurious actions of Syngenta.

Syngenta's second line of attack, similar to its arguments against other state consumer protection claims, is that Texas requires reliance in order to prevail. "To establish the producing cause element, the plaintiff must show the defendant's action was a substantial factor in bringing about the plaintiff's injury, without which the injury would not have occurred." *Sparks*, 232 S.W.3d at 865 (citing *Doe v. Boys Clubs of Greater Dallas, Inc.*, 907 S.W.2d 472, 479 (Tex. 1995)). Again Plaintiffs' Complaint includes multiple factual allegations that Syngenta's unfair and misleading practices were false, misleading, and intended to reach Plaintiffs and other similarly situated farmers. (NCC ¶¶ 132, 161, 167, 188-92.); *see also In re Porsche Cars N. Am., Inc.*, 880 F. Supp. 2d 801, 877 (S.D. Ohio 2012) (analyzing requirements of TDTPA); *Church &*

[85] While the Class Complaint defines its class to exclude farmers who grew Viptera (CC ¶ 286), the Non-Class Complaint does not include a prohibition on claims by producers who purchased and grew Viptera. To the extent that the Court finds Syngenta's strained reading of Texas case law persuasive, this claim should survive for those individual farmers who in fact purchased Viptera.

Dwight Co. v. Huey, 961 S.W.2d 560, 565 (Tex. App. 1997) (finding the causation requirement met where marketing efforts and materials formed basis of complaint).

CONCLUSION

The Court should deny Syngenta's motion to dismiss. The motion is based largely on cases decided at a different procedural stage, and is dependent on this Court expanding the economic-loss doctrine beyond its bounds. Judge Lungstrum correctly allowed the Kansas plaintiffs to proceed with fact discovery. This Court should, too.

Dated: December 1, 2015

Respectfully submitted,

By: s/Lewis A. Remele Jr.
Lewis A. Remele Jr. (#0090724)
BASSFORD REMELE, PA
33 South Sixth Street, Suite 3800
Minneapolis, MN 55402-3707
P: (612) 333-3000
F: (612) 333-8829
lremele@bassord.com

Daniel E. Gustafson
GUSTAFSON GLUEK, PLLC
Canadian Pacific Plaza
120 South Sixth Street, Suite 2600
Minneapolis, MN 55402
P: (612) 333-8844
F: (612) 339-6622
dgustafson@gustafsongluek.com

Francisco Guerra IV
WATTS GUERRA LLP
Four Dominion Drive, Bldg. 3, Suite 100
San Antonio, TX 78257
P: (210) 447-0500
F: (210) 447-0501
fguerra@wattsguerra.com

William R. Sieben
SCHWEBEL GOETZ & SIEBEN PA
5120 IDS Center
80 South Eighth Street, Suite 5120
Minneapolis, MN 55402
P: (612) 377-7777
F: (612) 333-6311
bsieben@schwebel.com

CO-LEAD COUNSEL FOR PLAINTIFFS

Richard M. Paul III
PAUL McINNES LLP
601 Walnut Street, Suite 300
Kansas City, MO 64106
P: (816) 984-8100
F: (816) 984-8101
paul@paulmcinnes.com

Robert K. Shelquist
LOCKRIDGE GRINDAL NAUEN PLLP
100 Washington Avenue South
Minneapolis, MN 55401
P: (612) 339-6900
F: (612) 339-0981
rkshelquist@locklaw.com

Will Kemp
KEMP, JONES & COULTHARD, LLP
Wells Fargo Tower
3800 Howard Hughes Parkway, 17th Fl.
Las Vegas, NV 89169
P: (702) 385-6000
F: (702) 385-6001
wkemp6000@gmail.com

Tyler Hudson
WAGSTAFF & CARTMELL, LLP
4740 Grand Avenue, Suite 300
Kansas City, MO 64112
P: (816) 701-1177
F: (816) 531-2372
thudson@wcllp.com

Paul Byrd
PAUL BYRD LAW FIRM, PLLC
415 N. McKinley Street, Suite 210
Little Rock, AR 72205
P: (501) 420-3050
F: (501) 420-3128
paul@paulbyrdlawfirm.com

PLAINTIFFS' EXECUTIVE COMMITTEE

1508976.docx

EXHIBIT 60

** CONFIDENTIAL **

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other
Hon. Thomas M. Sipkins

This Document Relates to:

Daniel Mensik (Orig. Case No. 27-CV-15-16826)

FILE NO. 27-CV-15-3785

ORDER REGARDING SUMMARY JUDGMENT MOTIONS

The above-entitled matter came on for hearing before the Honorable Thomas M. Sipkins, Judge of District Court, on March 17, 2017, pursuant to Defendants' motion for summary judgment and Plaintiff's motion for partial summary judgment.

Lewis A. Remele, Jr., Esq., appeared on behalf of Plaintiff Daniel Mensik.

Patrick F. Philbin, Esq., appeared on behalf of Defendants.

Based on all the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Defendants' motion for summary judgment is granted in part and denied in part. Defendants' motion is granted with respect to strict liability for failure to warn and any claims for damages other than a lower market price for corn and any such claims are dismissed with prejudice. The motion is otherwise denied.

2. Plaintiff's motion for partial summary judgment is granted in part and denied in part. Plaintiff's motion is granted with respect to the defenses of the disclaimer and limitation of warranties in the Stewardship Agreement, contractual economic loss doctrine, contributory

negligence, allocation of fault, superseding cause, assumption of the risk, and unjust enrichment. The motion is otherwise denied.

3. The attached Memorandum of Law is incorporated herein.

BY THE COURT:

Dated: 4-11-2017

Thomas M. Sipkins
Judge of District Court

** CONFIDENTIAL **

MEMORANDUM OF LAW

I. Introduction

Plaintiffs in this consolidated action assert claims relating to Defendants' (collectively "Syngenta") commercialization of genetically modified ("GM") corn seed products known as Agrisure Viptera ("Viptera") and Agrisure Duracade ("Duracade"). Viptera contains the GM trait called MIR162 and Duracade includes Event 5307. After receiving approval from U.S. regulatory agencies, Syngenta broadly commercialized Viptera prior to receiving regulatory approval of MIR162 for import from China. In November 2013, China began to enforce its zero tolerance policy regarding corn containing the non-approved GM trait in Viptera and rejected all shipments of U.S. corn. Plaintiffs are Producers and Non-Producers alleging that Syngenta's widespread release of Viptera was premature; that Syngenta knew that its decision could cause a trade disruption; that such rejection caused corn prices to drop in the United States; and that Plaintiffs were harmed by that market effect.

In an Order dated April 7, 2016, the Court granted in part and denied in part Syngenta's motion to dismiss finding Plaintiffs stated a legally cognizable claim for relief. The Court determined that Syngenta had a duty to use reasonable care in the timing, scope, and manner in the commercialization of Viptera and Duracade. This duty arises out of an inter-connected industry and market. In the Second Amended Master Complaint for Producers and Non-Producers (Non-Class) ("Master Complaint"), Plaintiffs assert claims for negligence, violations of consumer protections statutes, and strict liability duty to warn.

This matter consists of the consolidated individual claims of approximately 50,000 Producers and Non-Producers and a class of Minnesota farmers as certified by Order dated November 3, 2016. Of the group of individual claims, Plaintiff Daniel Mensik ("Plaintiff" or "Mensik") is the first bellwether case set for trial and this Order applies only to his case. Mensik is a corn producer who lives in Morse Bluff, Nebraska. His farm is located in Saunders County, Nebraska. He began farming full-time in the mid-1980's as an employee of Otte Enterprises. In 2013, Mensik began his own farming operation. In 2013, 2014, and 2015, Mensik purchased Viptera seed and planted, grew, harvested, and sold corn grown from Viptera seed. Each year he increased the number of bags of Viptera seed he purchased and grew from 16 bags in 2013 to 26 bags in 2015. In 2014, Mensik purchased Duracade seed and planted, grew, and harvested corn grown from Duracade seed. Mensik also purchased, planted, grew, harvested, and sold corn grown from seed from other manufacturers from 2013 to the present.

Mensik testified that he was unaware which foreign markets had approved corn grown from Viptera or Duracade for import. According to Mensik, he did not discuss with his Syngenta seed representatives which foreign markets had approved corn grown from Viptera for import and did not discuss any restrictions on the planting or grain-channeling procedures for his Viptera corn. From 2013 to the present, Mensik has not harvested his corn grown from Viptera separately from the non-Viptera corn that he grew. None of the parties that bought Mensik's corn asked him if he was delivering Viptera or any other types of corn. After Mensik delivered his harvested corn, he was unaware of what the buyer did with the corn. Mensik did not take any affirmative steps from 2013 to 2015 to sell any of his corn to the Chinese export market.

II. Legal Analysis

Mensik moves the Court for partial summary judgment on several of Syngenta's defenses and Syngenta moves the Court for summary judgment on all of Mensik's claims.[1] A party is entitled to summary judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. An issue of fact is genuine if it can only be resolved by a finder of fact because it may reasonably be resolved in favor of either party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A material fact "is one of such a nature as will affect the result or outcome of the case depending on its resolution." *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976). The Court must view all evidence in a light most favorable to the nonmoving party, and must resolve all factual inferences against the moving party. *Nord v. Herreid*, 305 N.W.2d 337, 339 (1981).

The moving party has the burden to show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 897 (Minn. 1996). No genuine issue of material fact exists if the record as a whole "could not lead a rational trier of fact to find for the non-moving party." *DLH, Inc. v. Russ,* 566 N.W.2d 60, 69 (Minn. 1997) (quoting *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). A defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff's claim. *See Nicollet Restoration, Inc. v. City of St. Paul,* 533 N.W.2d 845, 847-48 (Minn. 1995) (citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 325, 106 S.Ct. 2548, 2553-54, 91 L.Ed.2d 265 (1986)).

[1] The parties submitted comprehensive and voluminous undisputed and disputed fact sections for both motions. The Court reviewed all of the materials submitted. Although judgment will not be rendered upon the whole case, the Court finds that specifying the undisputed facts is not practicable. *See* Minn. R. Civ. P. 56.04.

The non-moving party must "present specific admissible facts showing a material fact issue." *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012). There is no genuine issue of material fact for trial when the evidence is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ,* 566 N.W.2d 60, 71 (Minn. 1997). The non-movant "may not establish genuine issues of material fact by relying upon unverified and conclusory allegations, or postulated evidence that might be developed at trial, or metaphysical doubt about the facts." *Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 783 (Minn. 2004). "Speculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial." *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995).

A. Contractual Economic Loss Doctrine

Syngenta argues Mensik's claims are barred by the contractual economic loss doctrine ("ELD").[2] Mensik cross moves the Court for an order holding that Syngenta's Fifteenth Defense fails as a matter of law. The ELD is a "judicially created doctrine that sets forth the circumstances under which a tort action is prohibited if the only damages suffered are economic losses." *Lesiak v. Cent. Valley Ag Co-op, Inc.*, 808 N.W.2d 67, 80 (Neb. 2012) (quotation marks omitted). The doctrine is designed to "maintain the line of demarcation between tort law and contract law" and reflects the view that "if a party could simply avoid its contractual bargain by suing in tort, which often offers more generous terms of recovery, then the effectiveness of contract law would be reduced." *Id.* at 81. The doctrine "should not be interpreted so broadly as to undermine tort law and preclude tort remedies in situations which, historically, have presented viable tort cases." *Id.* at 81-82. The *Lesiak* court stated:

[2] The Court did not analyze contractual ELD with respect to individual producers in the April 7, 2016 Order on Syngenta's motion to dismiss.

> After reviewing our own case law, the case law from other jurisdictions, and the scholarly work done on the subject, we hold that the economic loss doctrine precludes tort remedies only where the damages caused were limited to economic losses and where either (1) a defective product caused the damage or (2) the duty which was allegedly breached arose solely from the contractual relationship between the parties. And economic losses are defined as commercial losses, unaccompanied by personal injury or other property damage.

Id. at 81. The Nebraska Court of Appeals subsequently explained the *Lesiak* court "clarified the [ELD] in Nebraska, however, limiting its application to the products liability context and to situations where the alleged breach is only of a contractual duty, and no independent tort duty exists." *Thurston v. Nelson*, 21 Neb. App. 740, 753 (Neb. Ct. App. 2014).

Plaintiff does not claim that Viptera or Duracade were defective. Although Mensik purchased Viptera and Duracade seed from Syngenta, none of claims are based on contractual duties arising from the sale of the seed products. Plaintiff's negligence claim is based on an independent tort duty; the duty to exercise reasonable care in the timing, manner, and scope of the commercialization of Viptera and Duracade. This case is not a products liability action and does not allege a breach of only a contractual duty. Syngenta's motion for summary judgment of all claims based on application of the contractual ELD is denied and Plaintiff's motion to dismiss Syngenta's Fifteenth Defense is granted.

B. Physical Injury

Syngenta moves the Court for summary judgment on any theory of liability or claim for damages based on physical injury. Beginning in 2013, Mensik planted and grew a mix of corn seeds, including Viptera and non-Syngenta seeds. Mensik testified that he planted, harvested, and stored his non-Viptera/Duracade corn with his Vipetra/Duracade corn. Plaintiff has affirmed that he does not claim that Viptera or Duracade were defective. Syngenta argues that: 1) Mensik has no evidence of damages from the alleged harm; 2) no evidence of the alleged harm; 3) Mensik's theory

of injury does not depend on physical harm; and 4) even if there is proof of cross-pollination or commingling, there is no evidence that Viptera and Duracade cause physical damage.

Syngenta argues Plaintiff cannot prove commingling or contamination because none of the non-Viptera/Duracade corn grown by Mensik was ever tested for the presence of Viptera or Duracade. Mensik testified that it nearly impossible to prevent cross-pollination. Dirk Maier ("Maier") opined that there will be commingling of corn seeds planted in a given row if seed tanks used while planting are not completely emptied or there is corn seed left in the hoppers between planting different corn brands varieties. He stated that combines are not typically cleaned between the harvests of different corn varieties, which leads to commingling. A reasonable juror could find physical harm to the non-Viptera/Duracade corn based on the testimony of Mensik and Maier. Viewing the evidence in the light most favorable to Mensik, and giving him the benefit of all reasonable inferences from the evidence, there is a genuine issue of material fact whether non-Viptera/Duracade corn mixed with or came into contact with Viptera or Duracade corn on Mensik's property and caused physical damage.

Plaintiff alleges his crops were damaged by Viptera and Duracade through cross-pollination and commingling, rendering it unfit for sale in China. Contamination of a farmer's corn supply, through cross-pollination or by commingling in storage and shipping, can constitute a physical injury. *In re StarLink Corn Prod. Liab. Litig.*, 212 F. Supp. 2d 828, 842-43 (N.D. Ill. 2002). A GM crop can damage a non-GM crop when pollen causes the non-GM crop to develop the GM trait and renders the crop unfit for its intended use. *Id.* at 841. Non-GM corn can also be damaged when it is commingled with GM corn. *Id.* Syngenta's attempt to limit *StarLink* to crops where contamination renders the crops unfit for human consumption is rejected. A broader reading finding that the contamination renders the crop unfit for its intended use addresses other types of crops and uses. In

this case, the intended use was unrestricted sale as a commodity corn crop. Plaintiff has presented sufficient evidence that contact with Viptera and Duracade corn rendered all of his corn unfit for sale to all markets.

Furthermore, Plaintiff's claims for damages for physical harm does not fail for lack of damages. The Court is not persuaded by Syngenta's argument that because Mensik's theory of injury is not dependent on harm to his property that the Court should declare no physical harm occurred. Syngenta cites to no case law that requires such action.

> Where a growing crop is injured but not rendered entirely worthless, the damage to it may be measured by the difference between the value at maturity of the probable crop, if there had been no injury, and the value of the actual crop, less the expense of fitting for market that portion of the probable crop which was prevented from maturing by the injury.

Lesiak, 808 N.W.2d at 76. Plaintiff is not under a duty to calculate a separate figure for the actual physical damage. The Rao King Report opines that contamination of corn with Viptera/Duracade caused Mensik to suffer damages in the amount of $140,925. This amount reflects the difference between the price at which Plaintiff would have sold his corn without the contamination and the price at which he was, is, and will be able to sell his corn after the contamination. Syngenta is not entitled to summary judgment on any theory of liability or claim for damages based on physical injury.

C. Duty to Conduct a Limited Launch

Syngenta moves to dismiss any portion of any of Mensik's claims that rely on the imposition of a duty to limit the sale of Viptera for lack of causation. Specifically, Syngenta argues that a reasonable jury could not conclude that limiting the sale of Viptera to farmers that agreed to use certain planting methods;[3] promised not to sell their crop in interstate commerce; or

[3] In an Order dated March 21, 2017, the Court held that claims regarding channeling or containment of grown corn is preempted by the Grain Standards Act ("GSA").

withdrawing Viptera would have avoided the alleged injuries because the GM trait still would have dispersed into the corn supply through cross-pollination and commingling during harvesting, storage, and shipping. In light of China's policy of zero tolerance, the presence of MIR162 would have resulted in the same trade disruption.[4]

Plaintiff has presented admissible evidence showing a material fact issue on the claim for negligence based on a limited launch. "In order to recover in a negligence action, a plaintiff must show a legal duty owed by the defendant to the plaintiff, a breach of such duty, causation, and damages." *Hall v. County. of Lancaster*, 846 N.W.2d 107, 118 (Neb. 2014) (footnote omitted). A proximate cause is a cause (1) that produces a result in a natural and continuous sequence, and (2) without which the result would not have occurred. *Id.* at 983-84 (citing *Stacy v. Great Lakes Agri Mktg.*, 276 Neb. 236, 753 N.W.2d 785 (Neb. 2008)). "To establish proximate cause, the plaintiff must meet three basic requirements: (1) Without the negligent action, the injury would not have occurred, commonly known as the 'but for' rule or 'cause in fact'; (2) the injury was a natural and probable result of the negligence; and (3) there was no efficient intervening cause." *Roskop Dairy, L.L.C. v. GEA Farm Techs., Inc.*, 871 N.W.2d 776, 794 (Neb. 2015) (footnote omitted). "Proximate causation is generally a question for the jury, and only where but one inference can be drawn is it proper for the court to decide the issue." *McKinney v. Okoye*, 842 N.W.2d 581, 594 (Neb. 2014).

1. Inevitable Cross-Pollination and Commingling

First, Syngenta argues Mensik failed to carry his burden by not submitting expert opinion on the issue of causation from cross-pollination and commingling. Expert testimony is necessary to show proximate cause where the issue of causation is "not within the common knowledge and usual

[4] The Court considered and rejected this argument based solely on the allegations in the pleadings in the March 21, 2017 Order.

experience of a factfinding jury." *McVaney v. Baird, Holm, McEachen, Pedersen, Hammann & Strasheim*, 466 N.W.2d 499, 508 (Neb. 1991). The issue of causation with respect to Plaintiff's claim regarding a limited launch duty is not a technical matter beyond the scope of ordinary knowledge. While jurors may not have actual experience growing corn, the concept of cross-pollination and trait dispersion does not require expertise under these circumstances. The issue can be determined from the evidence presented and the common knowledge of fact finders. *See, e.g., Canas v. Maryland Cas. Co.*, 459 N.W.2d 533, 539 (Neb. 1990).

Syngenta's expert, Dr. Alan McHughen, a geneticist and biotechnology specialist, opines that ensuring 100% genetic purity is scientifically impossible because corn naturally cross-pollinates and pollen can travel substantial distances. Plaintiff's experts Dirk Maier and Joseph Keaschall provide opinion regarding the distance that pollen can travel and that the launch of Viptera that occurred resulted in inevitable cross-pollination. Cargill employee, Randall Giroux ("Giroux") testified that he did not think that one could find anyone in the grain or seed industry who says they can contain pollen to 100 percent. In addition, the testimony of the deposed producers, including Mensik, is that most measures cannot completely eliminate cross-pollination.

There is also evidence that a zero tolerance standard for GM traits in commodity crops is difficulty to satisfy. The U.S. National Academy of Science has stated that a zero tolerance is not technically or economically feasible. The North American Export Grain Association ("NAEGA") stated in a 2014 letter to the United States Drug Administration ("USDA") that with respect to zero tolerance requirements, a limited launch is no different than product commercialization because of an inherent risk that the GM trait will be detected. Giroux testified that zero tolerance is impossible as a standard to meet and it was unlikely that Syngenta could have managed to zero tolerance under a limited launch.

However, the Court also notes that there is evidence that this interconnected corn market often operates under the belief that launches of GM traits can be limited so as to avoid trade disruptions. *See, e.g., In re StarLink Corn Prod. Liab. Litig.*, 212 F. Supp. 2d 828, 834 (N.D. Ill. 2002). For example, manufacturer signatories to the BIO Policy agree to manage launches of new products to avoid trade disruption in key export markets; Syngenta stated in its Deregulation Petition to the USDA for Viptera that it would require the diversion of MIR162 corn away from export markets where the trait was not yet approved and that such ability to channel corn was not merely hypothetical; Syngenta promoted that it could launch seed products such as Enogen in a "closed-loop system" to minimize dispersion; and Monsanto used a "managed" system to prevent corn contamination with the limited launch of Droughtguard. The Court notes, however, that these programs include some component of channeling, which is a duty preempted by the GSA.

In any event, the inevitability of cross-pollination is not fatal to a finding of causation. Even in light of China's zero tolerance policy, Plaintiff does not need to demonstrate that a more limited launch would have resulted in "100% genetic purity" or no kernel of corn with the MIR162 trait in shipments to China. Plaintiff can satisfy his burden by showing that it is more likely than not that no trade embargo would have occurred. *See, e.g., Doe v. Zedek*, 587 N.W.2d 885, 894 (Neb. 1999). Despite China's zero tolerance policy, there is evidence that a more limited launch would not have resulted in the rejection of all U.S. corn by China. When asked if Syngenta could have used a system similar to Monsanto's Droughtguard, Giroux responded, "If [Syngenta] had chosen to, they could have grown much fewer acres and in a much more controlled manner to help protect that export market, that's correct." He also stated that it is more likely than not that exporters could have serviced Chinese demand for U.S. corn if Syngenta had taken certain precautions in launching Viptera. In addition, Plaintiff provided evidence that China tested only a small percentage of

kernels, China accepted shipments of U.S. corn that likely contained some amount of MIR162, and some Cargill testing showed 50% of the shipments to China contained MIR162. All of this evidence, taken in a light most favorable to the Plaintiff, demonstrates that a limited launch may not have resulted in 0% of exported corn containing MIR162 but could support a finding that it is more probable than not that it would have avoided the embargo. The evidence is sufficient to create a question of fact on the issue of causation under Plaintiff's limited launch theory.

2. Non-Interstate Sales

One of the measures Plaintiff indicates Syngenta could have taken to limit the launch of Viptera in order to avoid a trade disruption was to only sell Viptera seed to farmers in counties where the corn is not sold into interstate or foreign commerce. Syngenta's expert Charles Finch provided testimony that farmers sell to local or county elevators, sub-terminal and terminal elevators, river elevators and port elevators, all of which sell to the export market. He also states that even in areas with ethanol plants, which absorb a significant amount of corn production, the plants produce DDGS as an output that may be sold locally, interstate, and in the export market. Finch opines that based on the many uses and demand for corn along with the modern transportation infrastructure, "there are few counties, if any, in the Corn Belt that consume all of the corn and DDGS produced within that county."

Syngenta's argument that this theory should be dismissed for lack of evidence is rejected. Plaintiff has presented evidence that Syngenta uses a "closed-loop" production system designed to ensure that all Enogen corn is sold and delivered to ethanol plants. Giroux's description of part of Monsanto's Droughtguard program includes, "Farmer signs a contract to surround Droughtguard with other corn (pollen scrubber) and all material fed on farm in feed application or volumes contracted to a feed operation locally[.] Not allowed to deliver to an elevator in this program, even

if its heading to feed ultimately[.]" The evidence of these programs demonstrates that it is possible to grow and manage corn not sold in interstate or foreign commerce. Questions of fact exist whether Syngenta could have used such measures in a limited launch of Viptera.

3. Duty to Recall

Syngenta also seeks summary judgment on any theory of liability based on a duty to recall seeds already sold. Plaintiff argues his theory of liability is that the exercise of reasonable care in launching Viptera required ceasing the sale of Viptera to prevent harm to the market. In a products liability case, the Eighth Circuit has determined that Nebraska would not impose either a post-sale duty to warn or a duty to retrofit. *Anderson v. Nissan Motor Co.*, 139 F.3d 599, 602 (8th Cir. 1998); *see also Vallejo v. Amgen, Inc.*, No. 8:14CV50, 2014 WL 4922901, at *4 (D. Neb. Sept. 29, 2014) ("In light of *Anderson,* Plaintiff's claims based on strict liability and negligent failure to warn are barred to the extent that they allege post-sale duties to warn). These cases relied upon by Syngenta are distinguishable and not persuasive. *Anderson* and *Vallejo* are applicable to products liability cases and bar claims alleging post-sale duties to warn or retrofit. This is not a products liability case and Plaintiff's claim is that the exercise of reasonable care include ceasing the sale of Viptera. Syngenta is not entitled to summary judgment on this theory of liability.

D. Negligence Based on Misrepresentations

In the March 21, 2017 Order on Syngenta's motion for judgment on the pleadings, the Court dismissed with prejudice Plaintiffs' claims in the Master Complaints for negligence based on misrepresentations.

E. Failure to Warn Claims

This Court previously dismissed any claim that Syngenta failed to include adequate warnings accompanying the Viptera and Duracade seeds it sold as preempted under the Federal

Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). Syngenta now seeks summary judgment on any other failure to warn claims asserted by Mensik. Mensik does not oppose Syngenta's motion with respect to strict liability failure to warn and the motion is so granted.

Mensik argues that he may allege a failure to warn of the damages of MIR162 entering the corn supply as part of the totality of conduct by Syngenta that was negligent.[5] Plaintiff must show: (1) that Syngenta owed a duty to warn; (2) that Syngenta breached its duty to warn; and (3) that Syngenta's breach of its duty caused Mensik's injuries. *McRunnel v. Batco Mfg.*, 917 F. Supp. 2d 946, 957 (D. Minn. 2013) (citing *In re Levaquin Prods. Liab. Litig.*, 700 F.3d 1161, 1166 (8th Cir. 2012)). "[G]eneral negligence law imposes a general duty of reasonable care when the defendant's own conduct creates a foreseeable risk of injury to a foreseeable plaintiff." *Domagala v. Rolland*, 805 N.W.2d 14, 23 (Minn. 2011). "In other words, when a person acts in some manner that creates a foreseeable risk of injury to another, the actor is charged with an affirmative duty to exercise reasonable care to prevent his conduct from harming others." *Id.* at 26. A duty to use reasonable care can include a duty to warn of known dangers. *See, e.g., Tite v. Omaha Coliseum Corp.*, 12 N.W.2d 90, 93 (Neb. 1943).

First, Syngenta argues that the claim fails because it did not owe a duty to warn because the risks were obvious and well known in the industry. There is no duty to warn of a known danger. *Waegli v. Caterpillar Tractor Co.*, 251 N.W.2d 370, 372 (Neb. 1977). "This is especially true when the user is a professional who should be aware of the characteristics of the product." *Harmon Contract Glazing, Inc. v. Libby-Owens-Ford Co.*, 493 N.W.2d 146, 151 (Minn. Ct. App. 1992) (citing *Strong v. E.I. DuPont de Nemours Co.*, 667 F.2d 682, 687 (8th Cir. 1981). Syngenta claims

[5] Syngenta did not object to Plaintiff's inclusion of this duty in its general negligence claim. The Court also finds it is distinguishable from the assertion of misrepresentations as the basis for a negligence claim. Unlike a separate claim for negligent misrepresentation, there is no element of proof that Plaintiff would be circumventing.

that the Producers and grain handlers know about cross-pollination and contamination of the corn supply. The testimony of the Plaintiffs deposed, including Mensik, demonstrate that they are knowledgeable on these topics, characteristics regarding the seed, and their use of the seed. However, the depositions also show the farmers do not have specialized knowledge of seed manufacturers' commercialization programs, foreign processes for approval of GM traits, China's policies and process for approval of GM traits in particular, and international shipping and export of agricultural commodity crops. Mensik testified that he did not know what countries had approved MIR162. In addition, while other members of the interconnected market such as grain handlers have more knowledge regarding foreign approval processes, export procedures, and the possibility of trade disruptions, there is evidence that Syngenta failed to provide accurate information regarding its commercialization and foreign approval of MIR162. The commercialization of Viptera and process of obtaining approval of MIR162 in other foreign export markets was in the control and knowledge of Syngenta. The interconnected market was dependent on the information provided by Syngenta. The danger of a trade disruption was not a known danger that negated Syngenta's duty to warn.

Second, Syngenta claims it provided adequate warnings to Mensik and other industry participants regarding the risks of a trade disruption. Syngenta points to the Stewardship Agreement, Know Before You Grow website, and updates it provided to the grain trade associations. These warnings, however, did not discuss the potential for and the scope of a possible trade disruption. Questions of fact exist whether Syngenta satisfied its duty to warn.

Finally, Syngenta argues that Plaintiff cannot show that the failure to warn caused Plaintiff harm. Plaintiff has not asserted a separate failure to warn claim in a products liability action. As discussed in Section H *infra*, a proximate cause "is a cause (1) that produces a result in a natural and

continuous sequence and (2) without which the result would not have occurred." *Brandon v. County of Richardson*, 624 N.W.2d 604, 627 (Neb. 2001). Where there is conflicting evidence, causation is a question of fact. *Zeller v. County of Howard*, 419 N.W.2d 654, 658 (Neb. 1988). Plaintiff presented evidence that an additional warning could have prevented the injury. *See, e.g., Kapps v. Biosense Webster, Inc.*, 813 F. Supp. 2d 1128, 1157 (D. Minn. 2011). Mensik testified that producers "wouldn't have been in this problem if Syngenta would have been honest with us." He went on to explain that Syngenta should have "had one large document in front of us" stating, "if you're going to purchase this, we have no outlet for it at this time. And we are going to need to channel this, just like they brought up Duracade after the fact, and we would have all obeyed the rules like we do." In addition, when Giroux asked Bernens if China would approve Viptera by fall, Bernens told other Syngenta employees that the answer is "no," but, "I am trying to find a response that does not prompt them to put up signs right away." A reasonable inference from this evidence is that Syngenta knew that producers and grain handlers would have taken a different course of conduct to prevent the harm had Syngenta given adequate warning. Taking the evidence in a light most favorable to Plaintiff, questions of fact exist whether Syngenta's failure to warn caused Plaintiff harm. Syngenta is not entitled to summary judgment on a failure to warn duty as part of Plaintiff's negligence claim.

F. Voluntary Duty / Broken Promises

Syngenta moves the Court to dismiss any negligence claim based on any theory that it owed a duty to Plaintiffs based on a "voluntary undertaking." Nebraska follows the Restatement, which states:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking.

Restatement (Second) of Torts §323; *see also id.* at § 324.

Syngenta argues that any theory of liability under this provision fails for lack of physical harm. Liability for voluntary undertakings is applicable only where the product causes physical harm. *National Crane Corp. v. Ohio Steel Tube Co.*, 332 N.W.2d 39, 43 (Neb. 1983). As discussed in section B *supra*, Mensik has sufficiently presented evidence of physical harm.

Plaintiff argues that Syngenta voluntarily undertook compliance with the Biotechnology Industry Organization's ("BIO") "Product Launch Stewardship Policy" ("BIO Policy") in the commercialization of Viptera and Duracade.[6] The BIO Policy establishes guidelines for launching GM products for those manufacturers that agree to abide by the recommendations.[7] Syngenta relies on an Eighth Circuit case that declined to extend the holding of the Arkansas Supreme Court under this section of the Restatement to a plaintiff that contended the defendant assumed a duty by publicly representing that they would pursue public health research about the dangers of cigarette smoking, and breached that duty by withholding information on the health ramifications and addictiveness of cigarettes. *Boerner v. Brown & Williamson Tobacco Corp.*, 260 F.3d 837, 849 (8th Cir. 2001). The Court found that the plaintiff failed to show either that the public health community owed him or his wife a legally enforceable duty through "unilateral public statements." *Id.* The BIO Policy is more than a typical internal corporate policy or "unilateral public statement." It is an

[6] To the extent Plaintiff relies on "numerous statements regarding its plans, progress, and projections for obtaining import approval from China and about its plans for a limited release with proper stewardship," the duty of a voluntary undertaking is rejected. Plaintiff has not identified any of these statements or the duty they give rise to with specificity.

[7] Syngenta's commercialization of Agrisure RW was the catalyst for development of the BIO Policy.

agreement among manufacturers in the industry to abide by certain conduct. It does not contain vague public statements but rather sets forth specific guidelines, standards, and requirements.

Seed manufacturers could decide whether they would execute the BIO Policy and agree to be bound by the standards and requirements in the agreement. An undertaking requires that the defendant "must have agreed to perform a certain act and have assumed the performance of that act." *Jordan v. NUCOR Corp.*, 295 F.3d 828, 838 (8th Cir. 2002). A fact finder could determine this was a voluntary undertaking necessary for the protection of others in the interconnected market. Questions of fact remain and Syngenta is not entitled to judgment as a matter of law on the duty based on a voluntary undertaking.

G. Petition Clause

Syngenta moves the Court to declare that statements made in Syngenta's Deregulation Petition to the USDA and Syngenta's litigation in *Syngenta Seeds, Inc. v. Bunge North America, Inc.*, 773 F.3d 58 (8th Cir. 2014) ("*Bunge* lawsuit") cannot be used as the basis for any liability because they enjoy immunity under the First Amendment's Petition Clause. *See, e.g., N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886 (1982). The Court agrees with Plaintiff that Syngenta has not asserted a proper basis for summary judgment on this issue in this case. Mensik does not assert a claim against Syngenta based on the Deregulation Petition or *Bunge* lawsuit. Plaintiff has asserted they are pieces of evidence relevant to his claims for negligent commercialization. Syngenta's motion is denied at this time.

H. Proximate Cause

Syngenta moves the Court to dismiss all of Mensik's claims for lack of proximate cause. A proximate cause is a cause (1) that produces a result in a natural and continuous sequence, and (2) without which the result would not have occurred. *Hall,* 846 N.W.2d at 983-84 (citing *Stacy v.*

Great Lakes Agri Mktg., 276 Neb. 236, 753 N.W.2d 785 (Neb. 2008)).

> To establish proximate cause, the plaintiff must meet three basic requirements: (1) Without the negligent action, the injury would not have occurred, commonly known as the 'but for' rule or 'cause in fact'; (2) the injury was a natural and probable result of the negligence; and (3) there was no efficient intervening cause.

Roskop Dairy, L.L.C. v. GEA Farm Techs., Inc., 871 N.W.2d 776, 794 (Neb. 2015) (footnote omitted). "Proximate causation is generally a question for the jury, and only where but one inference can be drawn is it proper for the court to decide the issue." *McKinney v. Okoye*, 842 N.W.2d 581, 594 (Neb. 2014).

Plaintiff has presented sufficient evidence upon which a reasonable jury could find proximate cause. A proximate cause need not be the sole cause; it need only be a proximate cause. *See, e.g., Maclovi-Sierra v. City of Omaha*, 860 N.W.2d 763, 774 (Neb. 2015). It also does not need to be the immediate cause; it may be enough that the act complained of set in motion a series of events through which it produced the damage. *See Meyer v. State*, 650 N.W.2d 459, 463 (Neb. 2002). It is not necessary, however, that the specific injury sued upon have been foreseeable; it suffices if what occurred was one of the kind of consequences reasonably foreseeable. *Erickson v. Monarch Indus.*, 347 N.W.2d 99, 105 (Neb. 1984). Here, Plaintiff has presented evidence that without Syngenta's act of launching Viptera in the absence of approval from China, the injury of trade disruption would not have occurred. The injury of a trade embargo is a natural and probable result of releasing a GM trait without approval from for import by a foreign market. And as discussed in Section I *infra*, there was no efficient intervening cause.

Syngenta's argument that it created a "condition" by which Mensik's injury was made possible is unpersuasive. Syngenta claims that its actions of launching Viptera merely created a condition under which the presence of Viptera in the corn supply permitted the actions of Cargill and ADM to cause the harm. Syngenta relies heavily on the fact that Cargill and ADM chose not to

ship corn to China in 2011 and thus no harm would have occurred if Cargill and ADM kept the status quo. Syngenta's argument, however, fails to account for the fact that its negligence altered Cargill and ADM's actions in the first place. If Syngenta's negligence had not occurred, the status quo would have been unrestricted shipments to China by Cargill and ADM. In addition, the distance in time between the negligence and the injury may be a factor in assessing proximate cause but it does not defeat causation. *See, e.g., Landmesser v. Ahlberg*, 166 N.W.2d 124, 128 (Neb. 1969). Simply because other participants in the interconnected market changed their behavior in response to Syngenta's alleged negligence which resulted in a delay before the harm occurred does not create an automatic break in the chain of causation.

I. Superseding Cause

Syngenta argues that summary judgment should be granted on the issue of causation because the grain exporters' act of shipping U.S. corn to China was an intervening cause that broke the chain of proximate causation. Conversely, Plaintiff moves to dismiss Syngenta's defense of intervening/superseding cause. Syngenta claims Cargill and ADM chose not to ship corn to China in 2011 because of Viptera. In 2012, Cargill and ADM chose to ship corn to China, knew shipments contained MIR162, and knew China had a zero tolerance for unapproved GM traits. Syngenta claims Cargill and ADM made these shipments in violation of Chinese law, contracts with Chinese buyers, and their own policies. Syngenta concludes that it was China's rejection of those shipments made by Cargill and ADM that caused Plaintiff's damages. Plaintiff argues that the grain exporters' acts do not constitute intervening causes because they were foreseeable, were not new and independent of Syngenta's conduct, were not sufficiently wrongful, and Cargill and ADM did not have full control of the situation.

"An efficient intervening cause is new and independent conduct of a third person, which

itself is a proximate cause of the injury in question and breaks the causal connection between the original conduct and the injury." *Willet v. County of Lancaster*, 713 N.W.2d 483, 488 (Neb. 2006).

> An efficient intervening cause is a new, independent force intervening between the defendant's negligent act and the plaintiff's injury by the negligence of a third person who had full control of the situation, whose negligence the defendant could not anticipate or contemplate, and whose negligence resulted directly in the plaintiff's injury. Thus, an intervening act that is reasonably foreseeable by the defendant does not preclude the defendant's liability.

Kozicki v. Dragon, 583 N.W.2d 336, 340 (Neb. 1998) (citations omitted); *see also Brandon v. County of Richardson*, 624 N.W.2d 604, 627 (Neb. 2001). "The causal connection is severed when (1) the negligent actions of a third party intervene, (2) the third party had full control of the situation, (3) the third party's negligence could not have been anticipated by the defendant, and (4) the third party's negligence directly resulted in injury to the plaintiff." *Malolepszy v. State*, 729 N.W.2d 669, 675 (Neb. 2007) (citing *Willet*). A superseding cause relieves the defendant of responsibility for the injury. *Id.* at 675-77. Ordinarily, the issue of whether an intervening force was a superseding cause is for the jury. *Kozicki*, 583 N.W.2d at 340. Where reasonable minds could not differ on the issue, however, the question is one for the court. *Egenberger v. National Alfalfa Dehydrating & Milling Co.*, 83 N.W.2d 523, 532 (Neb. 1957).

The act of Cargill and ADM in shipping corn to China does not constitute an efficient intervening cause. First, Cargill and ADM's shipments of corn to China were not new and independent acts unrelated to Syngenta's conduct. A "new and independent" act is one that is "not set in motion by him, and not connected with but independent of his acts and not flowing therefrom." *Hersh v. Miller*, 99 N.W.2d 878, 881 (Neb. 1959).

> If the original negligence is of a character which, according to the usual experience of mankind, is liable to invite or induce the intervention of some subsequent cause, the intervening cause will not excuse it, and the subsequent mischief will be held to be the result of the original negligence. A cause of an injury may be the proximate cause notwithstanding it acted through successive instruments or a series of events,

> if the instruments or events were combined in one continuous chain or train through which the force of the cause operated to produce the disaster.

Kroeger v. Safranek, 72 N.W.2d 831, 838 (Neb. 1955) (quotation omitted). Plaintiff has presented evidence that Syngenta negligently commercialized Viptera, causing MIR162 to contaminate the U.S. corn supply despite lack of approval in China. Shipment of corn to foreign markets is a regular occurrence in the agricultural commodities industry. Shipments by Cargill and ADM would not have triggered the rejection by China if Viptera had not been present. Syngenta set in motion the rejection of shipments of corn. The act of shipping corn containing MIR162 flowed from Syngenta's commercialization of Viptera. The conduct of ADM is therefore not new or independent from Syngenta's alleged negligence.

Second, ADM and Cargill did not have full control of the situation. Third parties have control over a situation where they could have avoided the harm through the exercise of reasonable care. *Latzel v. Bartek*, 846 N.W.2d 153, 167 (Neb. 2014). Syngenta was the party responsible for obtaining import approval of MIR162 from China. Cargill and ADM did not have knowledge of the application for approval and its status. No reasonable jury could find that the shipments of corn to China by Cargill and ADM were unrelated and independent acts of parties that had full control of the situation.

Furthermore, Cargill and ADM's conduct was reasonably foreseeable. Third-party conduct that is reasonably foreseeable is not an intervening cause, as a matter of law. *Zeller v. County of Howard*, 419 N.W.2d 654, 658 (Neb. 1988); *Brandon v. County of Richardson*, 624 N.W.2d 604, 627 (Neb. 2001). "Any action that was foreseeably within the scope of the risk occasioned by the defendant's negligence cannot be said to supersede that negligence." *Fuhrman v. State*, 655 N.W.2d 866, 875 (2003) (citation and internal quotation marks omitted). In the January 9, 2017 Order granting Plaintiff's motion to amend to add a claim for punitive damages, the Court reviewed

in length the evidence demonstrating Syngenta was aware that its conduct of commercializing Viptera without approval for import from a foreign market could result in a trade disruption. The evidence shows the knowledge came from prior releases of GM traits by Syngenta and other companies and foreseeability was shown in numerous discussions among Syngenta employees on how to react to the situation.

Syngenta argues that Cargill and ADM's conduct was not foreseeable because shipping corn with MIR162 to China was unlawful conduct. The Restatement provides:

> The act of a third person in committing an intentional tort or crime is a superseding cause of harm to another resulting therefrom, although the actor's negligent conduct created a situation which afforded the opportunity to the third person to commit such a tort or crime, unless the actor at the time of his negligent conduct realized or should have realized the likelihood that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a tort or crime.

Restatement (Second) of Torts § 448; *Shelton v. Board of Regents*, 320 N.W.2d 748, 752-53 (Neb. 1982). This is a situation where at the time of Syngenta's commercialization of Viptera without approval from China, it realized or should have realized that it created a situation where Cargill, ADM, and other grain exporters may ship corn with MIR162 in violation of China's rules. Since the unlawful conduct by others was foreseeable, it cannot be an intervening cause. Unlike the cases relied upon by Syngenta involving motorists who failed to obey traffic laws, the reason Cargill and ADM's action was unlawful was because of Syngenta's negligence.

For all of these reasons, Syngenta failed to offer evidence to create a question of fact concerning whether Cargill and ADM's shipments to China constitutes an efficient intervening cause. Plaintiff is entitled to summary judgment on Syngenta's defense of superseding cause.

J. Contributory Negligence

Plaintiff seeks summary judgment of Syngenta's defense of Mensik's contributory negligence. Syngenta argues that as a grower of Viptera, Mensik was subject to a duty to prevent

contamination. "One is contributorily negligent if (1) he breaches the duty imposed upon him by the law to protect himself from injury; (2) his actions concur and cooperate with actionable negligence of the defendant; and (3) his actions contribute to the injuries as a proximate cause." *Steinauer v. Sarpy County*, 353 N.W.2d 715, 721 (Neb. 1984). A proximate cause is a cause that produces a result in a natural and continuous sequence and without which the result would not have occurred. *Meyer v. State*, 650 N.W.2d 459, 463 (Neb. 2002).

First, the Court notes that any duty imposed upon Mensik would be subject to the same GSA preemption analysis. Therefore, any requirement of inspection or description based on the presence of genetic traits in Viptera or Duracade as a condition of shipment or sale of grown corn in interstate or foreign commerce is preempted. In general, stewardship measures based on containment or channeling are preempted but isolation measures applying actions taken with regard to seed and not corn are not preempted.

Plaintiff argues that Syngenta's claim fails for lack of causation. China would have rejected shipments of corn containing MIR162 causing the trade disruption and drop in price even if Mensik had not grown Viptera. Plaintiff argues that when China began rejecting U.S. corn in November 2013, the corn supply was so contaminated with corn grown form Viptera that Mensik's very small amount of Viptera corn did not affect the presence of MIR162 in the corn supply. He claims that China would have rejected U.S. corn whether he planted Viptera or not and he was thus not a "but for" cause of the trade disruption. The Court agrees with Plaintiff. No reasonable jury could find that Mensik's conduct was a proximate cause of the injury.

K. Allocation of Fault

Plaintiff moves the Court to dismiss Syngenta's defense to allocate fault to grain handlers, China, and other non-producers. Nebraska law does not allow the allocation of fault to non-parties.

Neb. Rev. Stat. Sec. 25-21, 185.10 provides:

> the liability of each defendant for economic damages shall be joint and several and the liability of each defendant for noneconomic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic damages allocated to that defendant in direct proportion to that defendant's percentage of negligence, and a separate judgment shall be rendered against that defendant for that amount.

The Nebraska Supreme Court has made clear that this statute is only applicable to actions involving more than one defendant. *Tadros v. City of Omaha*, 735 N.W.2d 377, 380 (Neb. 2007).

> Because [the statute's] effect is on only the apportionment of damages between multiple defendants after liability has been established, the proper timeframe to consider in determining whether there are, in fact, multiple defendants in a case is when the case is submitted to the finder of fact. In other words, if there is only one defendant in a particular case at the point the case is submitted to a jury, the jury will not be allowed to allocate a percent of damages or negligence to 'phantom' defendants who have never been part or are no longer part of a proceeding. Again, only when there are multiple defendants in a case at the time the case is submitted to the finder of fact can there be the possibility of an allocation of damages between damages under [the statute.]

Maxwell v. Montey, 631 N.W.2d 455, 462 (Neb. 2001).

The law in Minnesota does not prohibit the allocation of fault to non-parties. "When apportioning negligence, a jury must have the opportunity to consider the negligence of all parties to the transaction, whether or not they be parties to the lawsuit and whether or not they can be liable to the plaintiff or to the other tortfeasors either by operation of law or because of a prior release." *Lines v. Ryan*, 272 N.W.2d 896, 903 (Minn. 1978); *see also Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 77 (Minn. 2012). Syngenta argues the Court should apply Minnesota law to the allocation of fault.

In an Order dated April 7, 2016 on Syngenta's motion to dismiss, the Court conducted a choice of law analysis and concluded that the law of each Plaintiff's state of residence would apply to their common law claims. In a separate Order issued on April 11, 2017, the Court performed a

choice of law analysis and held that Minnesota law applied to Mensik's claim for punitive damages. Syngenta's argument that allocation of fault is simply a rule applied to damages and not a substantive law is rejected. Allocation of fault is an issue of state substantive law. *See Ryan v. McDonough Power Equip., Inc.*, 734 F.2d 385, 389 (8th Cir. 1984). In order to allocate fault between parties, the fact finder must determine that each individual party is liable. Such a finding is thus a substantive law query and the Court's choice of law analysis regarding common law claims in the April 7, 2016 Order is applicable and is incorporated herein.

However, the Court will also conduct a choice of law analysis on the issue. Choice of law determinations are made on an issue-by-issue, and not a case-by-case, basis. *Zaretsky v. Molecular Biosystems, Inc.*, 464 N.W.2d 546, 548 (Minn. Ct. App. 1990) (citing Restatement (Second) of Conflict of Laws § 2 comment a(3) (1971)). The difference between Nebraska and Minnesota in allocating the potential fault of non-parties is outcome determinative because it affects who may be found liable. The Court also previously determined that Minnesota law may be constitutionally applied to Defendants in this matter in the April 4, 2016 Order. Consistent with the Court's two previous choice of law analyses, the distinguishing *Milkovich* factor is the advancement of each state's governmental interest. *See also H Enter. Int'l v. Gen. Elec. Capital Corp.*, 833 F. Supp. 1405, 1416 (D. Minn. 1993) (advancement of the forum's governmental interests and the application of the better rule of law are the only two factors relevant in torts). The competing interests involved in allocation of fault rules are ensuring victims are fully compensated and protecting defendants from paying for harm caused by others. In the context of compensatory damages, the Court finds ensuring full compensation to victims is the dominant interest. The Court finds that Nebraska's governmental interest is more significant on the issue of allocation of fault.[8]

[8] The Court does not find the better rule of law a relevant factor. The law on allocation of fault in Minnesota compared to Nebraska cannot be said to be the better law. As discussed above, the laws serve different purposes.

Here, Cargill, ADM, and China are not parties to this action. In Orders dated September 2, 2016 and September 14, 2016, this Court specifically denied Syngenta's motion to assert claims against Cargill and ADM. Accordingly, Syngenta's defense that fault should be allocated to Cargill, ADM, and China is dismissed as a matter of law.

Syngenta also argues that fault can be allocated to non-Viptera growers. The other Producer Plaintiffs are not technically parties to Mensik's case. Therefore, no portion of damages can be allocated to them. In addition, Syngenta has not provided any evidence that Plaintiffs who did not grow Viptera could have taken action on their own farm to prevent cross-pollination from Viptera growers' farms.

L. Assumption of the Risk

Syngenta claims Plaintiff's claims are barred by the doctrine of assumption of the risk. Plaintiff claims this defense fails as a matter of law. An affirmative defense of assumption of the risk requires that, "(1) the person knew of and understood the specific danger, (2) the person voluntarily exposed himself or herself to the danger, and (3) the person's injury or death or the harm to property occurred as a result of his or her exposure to the danger." Neb. Rev. Stat. § 25-21, 185.12; *see also Burke v. McKay*, 679 N.W.2d 418, 424 (Neb. 2004). Assumption of the risk applies a subjective standard, geared to the individual plaintiff and his actual comprehension and appreciation of the nature of the danger. *Burke*, 679 N.W.2d at 424. The defendant has the burden to establish the elements of assumption of risk as an affirmative defense. *Mandery v. Chronicle Broad Co.*, 423 N.W.2d 115, 120 (Neb. 1988).

The evidence regarding Mensik's knowledge of the risk of trade disruption is that he knew China rejected corn imports in 2013. This demonstrates knowledge after-the-fact and not an appreciation of the risk before it occurred. The Court finds that no reasonable jury could find

that Mensik knew the risk associated with purchasing Viptera seed, that he appreciated the risk of a trade disruption, or that he voluntarily chose to incur it. Syngenta's defense of assumption of the risk is dismissed as a matter of law.

M. Stewardship Agreement

Syngenta moves the Court for summary judgment enforcing the terms of the Stewardship Agreement by limiting Mensik's remedies to the purchase price of his seeds. Conversely, Mensik moves the Court for summary judgment on Syngenta's Eighteenth Defense, that Mensik's claims are barred by the disclaimer and limitation of warranties in the Stewardship Agreement. Each bag of Viptera and Duracade seed sold by Syngenta bore a tag stating, "By opening this package of seed, you affirm that you have signed and are obligated to follow the terms and conditions of the Syngenta Stewardship Agreement and will practice responsible Insect Resistance Management (IRM) on your farm."[9]

Syngenta's Stewardship Agreement states:

> This Stewardship Agreement ('Agreement') is entered into between You ('Grower') and Syngenta Seeds, Inc., 11055 Wayzata Blvd., Minnetonka, Minnesota 55305 ('Syngenta'). By signing and returning this Agreement the Grower received from Syngenta a limited license to use the following technologies as they are contained in any Syngenta seed product and/or in any seed product distributed by a third party Syngenta-licensee (such products collectively referred to as 'Seed Product'):
>
> (I) Agrisure® CB/LL corn, Agrisure GT corn, Agrisure RW corn, Agrisure Viptera™ corn (the 'Agrisure Technologies');
>
> (II) **** (the 'DAS Technologies'); and
>
> (III) **** (the 'Gennuity RR2Y Technology').
>
> The Agrisure Technologies, DAS Technologies and Gennuity RR2Y Technology shall collectively be referred to as the 'Licensed Technologies' throughout this Agreement.

The Stewardship Agreement includes the following provisions under the heading

[9] Plaintiff's argument that there is no affirmative evidence to prove that the bags of seed purchased by Mensik contained these tags creates nothing more than a "metaphysical doubt about the facts" and is rejected. *See, e.g., Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 783 (Minn. 2004).

"LIMITATIONS OF WARRANTIES AND REMEDIES":

> Syngenta warrants that the Licensed Technologies licensed hereunder conform to the written description on the seed bag affixed to each unit of Seed Products containing the Licensed Technologies. This warranty applies only to the Licensed Technologies contained in the Seed Products that have been purchased from Syngenta seed companies licensed by Syngenta, or their authorized dealers or distributors and planted from the original sealed bag. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH ARE HEREBY EXPRESSLY DISCLAIMED. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE LABEL.
>
> No claim shall be asserted against Syngenta unless Grower reports to Syngenta promptly after discovery any condition that may lead to a complaint. All claims must be asserted within one year from the date of acceptance. GROWER'S EXCLUSIVE REMEDY FOR ANY CLAIM OR LOSS, INCLUDING WITHOUT LIMITATION, CLAIMS RESULTING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY OR NEGLIGENCE, SHALL BE LIMITED TO REPAYMENT OF THE AMOUNT OF THE PURCHASE PRICE. IN NO EVENT SHALL SYNGENTA, ITS DISTRIBUTORS, OR DEALERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES.

Syngenta argues that by opening the bags and using the seeds, Mensik accepted the terms of the Stewardship Agreement.[10] To form a contract under Nebraska law,[11] "there must be both an offer and an acceptance; there must also be a meeting of the minds or a binding mutual understanding between the parties to the contract." *Gibbons Ranches, L.L.C. v. Bailey*, 857 N.W.2d 808, 812 (Neb. 2015); *Houghton v. Big Red Keno,* 574 N.W.2d 494, 499 (Neb. 1998). A binding mutual understanding or meeting of the minds sufficient to establish a contract requires no precise formality or express utterance from the parties themselves as to all the details of the proposed

[10] There is a dispute whether Mensik ever signed the Stewardship Agreement. There is one copy of the Stewardship Agreement with a signature of Mensik but he denies it is his signature and the parties have retained handwriting experts to evaluate the signature. In addition, an electronic copy of the Stewardship Agreement was downloaded on a computer at the Mensik home. For purposes of this motion, Syngenta relies on a contract formed by opening the seed bags.

[11] The Stewardship Agreement states that Minnesota law shall govern. The Court finds no difference between the law of Minnesota and Nebraska on contract formation.

agreement; it may be implied from the parties' conduct and the surrounding circumstances. *Nebraska Nutrients, Inc. v. Shepherd*, 261 Neb. 723, 751–52, 626 N.W.2d 472, 498–99 (2001) (citing *Hoeft v. Five Points Bank,* 248 Neb. 772, 539 N.W.2d 637 (1995)). An agreement to make a future contract is not binding upon either party unless all terms and conditions are agreed upon and nothing is left to future negotiation. *Cimino v. FirsTier Bank,* 530 N.W.2d 606, 614 (Neb. 1995). A contract is not formed if the parties contemplate that something remains to be done to establish contractual arrangements or if elements are left for future arrangement. *Id.* To create a contract, there must be both an offer and an acceptance; there must also be a meeting of the minds or a binding mutual understanding between the parties to the contract. An agreement to agree is not enforceable in Nebraska. *Id.*

Syngenta argues that Mensik manifested assent to the terms of the contract by opening the bags and using the seeds. Mutual assent is measured under an objective standard. *Sorenson v. Dager*, 601 N.W.2d 564, 569 (Neb. 1999). Syngenta argues that the situation is the same as cases wherein courts have held that offers to license that are included with product packaging can be accepted by software end users and are enforceable agreements. *See, e.g., Siebert v. Amateur Athletic Union of U.S., Inc.*, 422 F. Supp. 2d 1033, 1039-40 (D. Minn. 2006) ("Most courts which have considered the issue have upheld arbitration and forum selection clauses in so-called "clickwrap" or "shrinkwrap" form contracts. These occur when the terms are provided online, or only after plaintiffs have manifested assent"). Unlike these primarily software cases, there was no affirmative "click" by the purchaser in this case to affirmatively demonstrate acceptance. This transaction involved the purchase of a product that did not require any involvement with accessing a computer, where you are unable to download software or continue with an application unless you signal assent by clicking a box.

In addition, all of the cited cases involved upholding arbitration and forum selection clauses in the contracts. *Id.* As the court noted in *Siebert*, "both state and federal governments have strong policies favoring arbitration." *Id.* at 1038. While parties to a commercial agreement may limit or alter the measure of damages, Minn. Stat. § 336.2-719(1)(a), there is no "strong policy" favoring such provisions. Here, the terms of the Stewardship Agreement were not known to Mensik until after he purchased the product and did not make an affirmative showing of assent to those post-sale terms. The parties did not enter into a binding contract.

Furthermore, the scope of the Stewardship Agreement terms is too narrow to govern the claims in this case. The scope of a contract is determined by the parties' intent. *See, e.g., Joe v. First Bank Sys., Inc.*, 202 F.3d 1067, 1070 (8th Cir. 2000). The Stewardship Agreement applies to the technology license, express and implied warranties. Mensik's claims do not relate to defective seed product, or a failure to perform, or Mensik's use of Syngenta technologies. Even if the parties entered into this contract, the evidence shows they did not intend the agreement to apply to claims for negligent commercialization. Mensik's tort claims are unrelated to his purchases and use of Viptera or Duracade corn seed, the Stewardship Agreement does not apply to his claims in this case.

The parties did not enter into binding contract with mutual assent to the terms in the Stewardship Agreement. In addition, the parties did not intend the agreement to govern Plaintiff's claim in this case. Therefore, the Stewardship Agreement will not be enforced as a matter of law. The Stewardship Agreement does not operate to limit the damages available for Mensik's claims in this case.

N. Restraint of Trade

Plaintiff moves the Court to dismiss Syngenta's affirmative antitrust defense. Syngenta argues that some of the duties Plaintiff seeks to impose on Syngenta would be a violation of

antitrust laws. "Federal antitrust laws pre-empt state laws authorizing or compelling private parties to engage in anticompetitive behavior." *324 Liquor Corp. v. Duffy*, 479 U.S. 335, 345 n. 8 (1987). For example, Syngenta argues it would be a violation of antitrust laws to agree with Cargill and ADM about which seed products could be sold in the U.S. or agree with other seed manufacturers on identifying key export markets. Similar to the discussion in Section G *supra* regarding Syngenta's motion on the Petition Clause, the Court finds this is not a proper basis for summary judgment. There does not appear to be a specific claim or affirmative defense at issue but rather concern over evidence. Plaintiff's motion is denied at this time.

O. Unjust Enrichment

Syngenta asserted an affirmative defense of unjust enrichment. Syngenta claims Mensik unjustly received an increased yield from planting Viptera. Plaintiff moves for summary judgment, arguing unjust enrichment cannot be used as an affirmative defense and there is no evidence to support a finding if unjust enrichment. The Court agrees.

Syngenta's argument that unjust enrichment may be used as an affirmative defense is not persuasive. Unjust enrichment is a quasi-contractual theory of recovery, having "its origin in the principle that a person shall not be allowed to enrich himself unjustly at the expense of another." *Bush v. Kramer*, 173 N.W.2d 367, 369 (Neb. 1969). "Generally, unjust enrichment is not argued as a defense to an action because a party cannot recover for unjust enrichment until the allegedly inequitable benefits have been received and retained." *Ag Servs. of Am., Inc. v. Empfield*, 587 N.W.2d 871, 874 (Neb. 1999) (citing *In re Estate of Krueger,* 235 Neb. 518, 455 N.W.2d 809 (1990); *Professional Recruiters v. Oliver,* 235 Neb. 508, 456 N.W.2d 103 (1990)). Syngenta's reliance on the case of *Bank of Beaver City v. Southwest Feeders, L.L.C.*, No. 4:10-CV-3209, 2011 WL 4632887, at *14 (D. Neb. Oct. 4, 2011) is misplaced. In the context of a Rule 12(f)

motion to strike, the court in *Bank of Beaver City* held that it would "not strike the 'unjust enrichment' theory solely on the ground that it may have been mistakenly designated as an affirmative defense." *Id.* at *13. The court did not sanction the use of unjust enrichment as an affirmative defense. The Court agrees with Plaintiff that unjust enrichment is not a valid affirmative defense.

Even if the Court recognized unjust enrichment as an affirmative defense, Plaintiff would still be entitled to summary judgment. Syngenta argues Mensik unjustly received an increased yield from planting Viptera. A reasonable jury could not find this "benefit" to be "unjust." "Where benefits have been received and retained under such circumstances that it would be inequitable and unconscionable to permit the party receiving them to avoid payment therefor, the law requires the party receiving and retaining the benefits to pay their reasonable value." *Hoffman v. Reinke Mfg. Co.,* 416 N.W.2d 216, 219 (Neb. 1987). Plaintiff paid for the Viptera and Duracade seed that he purchased. Presumably, the price reflected any additional increase in the value of the seed. A reasonable jury could not find the purchase of a GMO corn seed at the price set by the seller to be inequitable or unconscionable. In addition, there is no evidence to show what the yield of Mensik's crop would have been had he not planted Viptera seed. For all of these reasons, Plaintiff's motion is granted with respect to the affirmative defense of unjust enrichment.

P. Consumer Protection Act Claim

In the Master Complaint, Plaintiffs identify four alleged misrepresentations that violate the consumer protection act: 1) a statement made by Mack in the 2012 earnings call; 2) statements made in the Deregulation Petition; 3) statements made in the request for a biosafety certificate; and 4) the Plant with Confidence Sheet. The Nebraska Consumer Protection Act ("NCPA") requires

Mensik to prove causation by showing that he was "injured in his … business or property by" the allegedly false and deceptive representations, Neb. Rev. Stat. § 59-1609, and that the allegedly false and deceptive representations affected the public interest. *See Bruno v. Sunglass Hut Trading Corp.*, 2008 WL 2277550, at *3 (Neb. Ct. App. June 3, 2008).

The Nebraska Consumer Protection Act ("NCPA") prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce" that "affect the public interest." Neb. Rev. Stat. § 59-1602; *see also* Neb. Rev. Stat. § 59-1601; *Infogroup, Inc. v. DatabaseLLC*, 95 F. Supp. 3d 1170, 1184 n.11 (D. Neb. 2015) (citing *Eicher v. Mid America Fin. Inv. Corp.*, 748 N.W.2d 1, 12 (Neb. 2008); *Arthur v. Microsoft Corp.*, 676 N.W.2d 29, 36 (Neb. 2004)). "The terms 'unfair' and 'deceptive' are not defined in by the [NCPA]" leaving courts to "try to predict how the Nebraska Supreme Court would define and then apply those words ...." *Raad v. Wal-mart Stores, Inc.*, 13 F. Supp. 2d 1003, 1011 (D. Neb. 1998); *Reynolds v. Credit Mgmt. Servs., Inc.*, No. 8:14CV391, 2016 WL 756469, at *2 (D. Neb. Feb. 25, 2016).

> Any person who is injured in his or her business or property by a violation of sections 59-1602 to 59-1606, whether such injured person dealt directly or indirectly with the defendant, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of sections 59-1603 to 59-1606, may bring a civil action in the district court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee, and the court may in its discretion, increase the award of damages to an amount which bears a reasonable relation to the actual damages which have been sustained and which damages are not susceptible of measurement by ordinary pecuniary standards; except that such increased award for violation of section 59-1602 shall not exceed one thousand dollars. For the purpose of this section, person shall include the counties, the municipalities, and all political subdivisions of this state.

Neb. Rev. Stat. Ann. § 59-1609.

Syngenta moves for judgment of dismissal as a matter of law, arguing no one saw or acted

upon the four representations listed in the Master Complaint: 1) Mack's comment in the earnings call; 2) statements in the Deregulation Petition; 3) statements in the request for biosafety certificate; and 4) the Plant with Confidence Sheet. Syngenta notes that out of the more than 100 farmers deposed, 106 testified they had not seen Mack's earnings call statement, 107 had never seen the biosafety certificate request form, and 105 had not seen the Deregulation Petition. The statute does not specifically require reliance on a misrepresentation. Rather, the Act prohibits unfair and deceptive trade practices and allows any person who is injured in his business by the conduct to bring an action.

The Act requires that the person be injured "by" the violation. Syngenta argues Mensik failed to prove causation. Causation is generally a question of fact. *Brandon v. County of Richardson*, 624 N.W.2d 604 (Neb. 2001). Mensik has alleged that Syngenta used unfair and deceptive acts in the commercialization of Viptera and Duracade, which is more expansive than just misrepresentations. Mensik has presented facts upon which a jury could find Syngenta's acts caused him damages.

Syngenta also claims Mensik cannot prove that any of the statements were unfair or deceptive. "Reinbrecht next assigns that the trial court erred by using the wrong definitions of "unfair" and "deceptive" in analyzing his CPA claim. After noting that the terms "unfair" and "deceptive" are not defined in the NCPA and that no Nebraska case law defines the terms as used in the NCPA, the *Raad* court stated that an unfair trade practice is one that is immoral, unethical, oppressive, or unscrupulous. *Raad v. Wal–Mart Stores, Inc.*, 13 F.Supp.2d 1003 (D. Neb. 1998). It defined a deceptive practice as one which possesses the tendency or capacity to mislead, or creates the likelihood of deception, and that fraud, misrepresentation, and similar conduct are examples of what is prohibited. *Id.* The Nebraska Court of Appeals subsequently found no error with these

definitions. *Reinbrecht v. Walgreen Co.*, 742 N.W.2d 243, 249 (2007). Mensik has presented evidence of statements made by Syngenta to growers and grain handlers, members of the interconnected market, regarding the expected timing of approval from China that a jury could conclude were deceptive.

Finally, Syngenta argues the claim should be dismissed because a plaintiff cannot redress a private wrong where the public interest is unaffected. The NCPA only applies to unfair or deceptive practices which affect the "public interest." *Eicher v. Mid Am. Fin. Inv. Corp,* 748 N.W.2d 1, 12 (2008). "The purpose of the Act is to provide consumers with protection against unlawful practices in the conduct of any trade or commerce which directly or indirectly affects the people of Nebraska. *See Nelson v. Lusterstone Surfacing Co.,* 258 Neb. 678, 605 N.W.2d 136 (2000). Syngenta attempts to characterize the dispute as a private transaction between two merchants with a Stewardship Agreement limiting available remedies. There are five sets of related litigation surrounding Syngenta's commercialization of Viptera. This matter involves approximately 50,000 producers and Plaintiffs indicate there are over 7,000 farmers from Nebraska in the action. The federal MDL involves a nationwide class action and a Kansas class action and this matter includes a class action of Minnesota farmers. In *Arthur*, the court found that an alleged class of 4,000 consumers affected by the defendant's alleged violation of the Act was sufficient to show the public interest was affected. *Arthur v. Microsoft Corp.*, 676 N.W.2d 29, 38 (2004). Similarly, Mensik has made a sufficient showing that based on the large number of Nebraska farmers affected, the public interest was affected.

Q. Duracade

Syngenta seeks summary judgment to the extent Mensik's claims are based on the commercialization of Duracade. Mensik argues there is a question of fact whether Syngenta's

commercialization of Duracade increased or extended Plaintiff's damages. Mensik states that because Duracade is not approved for import into China, it has delayed full resumption of Chinese purchases of U.S. Corn.

Syngenta argues that Plaintiff lacks evidence that Duracade had any impact on U.S. corn prices. Plaintiff submitted the Rao/King Report which opines that Duracade extended the duration of the economic damage from the trade embargo. Rao/King calculated static damages of $.50 per bushel of corn from November 18, 2013 to December 7, 2014 and $0.15 per bushel from December 8, 2014 to August 26, 2016. Given the bushels of corn sold by Mr. Mensik in this period, Rao/King calculated his damages at $104,460.00. Although only calculating damages to August 2016, Rao/King opined that, "the fact that China has yet to resume any meaningful imports of US corn suggests that this price suppressive effect continues to this day." Based on the assumption that the $0.15 per bushel price suppression continues through the 2017 marketing year, Rao/King calculated Mensik's damages at $36,465.00 from August 2016 through the 2017 marketing year.

Syngenta attacks this evidence as speculative and lacking support. The Court has found there is sufficient foundational reliability for the Rao/King report. Syngenta will have ample opportunity to cross-examine the opinions of Dr. Rao and Anna King; allowing the jury to determine the credibility and weight to be given to their testimony. Plaintiff has presented sufficient evidence to raise a question of fact and the Court cannot conclude that no reasonable jury could award damages based on Syngenta's actions in commercializing Duracade. Syngenta's motion for summary judgment with respect to Duracade is denied.

R. Damages

Syngenta moves the Court for summary judgment of any claims brought by Plaintiff other than claims for damages due to the alleged lower market price of corn. Mensik confirmed that the

only damages he seeks are market-loss damages and does not oppose Syngenta's motion. The motion is therefore granted.

S. Collateral Source Offsets

Mensik moves for summary judgment on Syngenta's Thirty Ninth Defense, which states that Mensik's damages must be reduced by any payments and income received from other sources related to his corn farming operation. Under Nebraska law, "benefits received by the plaintiff from a source wholly independent of and collateral to the wrongdoer will not diminish the damages otherwise recoverable from the wrongdoer." *Hiway 20 Terminal, Inc. v. Tri-County Agri-Supply, Inc.*, 443 N.W.2d 872, 874-75 (Neb. 1989); *Tetherow v. Wolfe*, 392 N.W.2d 374, 380 (Neb. 1986). The theory underlying the adoption of this rule by a majority of jurisdictions is to prevent a tort-feasor from escaping liability because of the act of a third party, even if a possibility exists that the plaintiff may be compensated twice. *Id.* Syngenta does not dispute that insurance payments and government subsidies are collateral sources precluded from offsetting damages under Nebraska law.

Syngenta argues that Mensik's use of options contracts should reduce any damages. Mensik testified that he generally tries to sell half of his corn in the futures market by December of the prior year. Syngenta argues this use of pricing advantage does not constitute a benefit received and is not wholly independent of wrongdoing.

While Nebraska law governs the substantive provision of collateral source law, the Court finds that Minnesota procedure should govern the request for collateral source offsets. If the matter is one of procedural law, Minnesota follows the "almost universal rule that matters of procedure and remedies [are] governed by the law of the forum state." *Davis v. Furlong,* 328 N.W.2d 150, 153 (Minn. 1983) (citation omitted). In tort actions where a jury determines liability and issues an award providing compensation for past losses, a party may move the Court to reduce the amount of

the award by amounts received from collateral sources. Minn. Stat. § 548.251, subd. 2. Upon motion, the Court determines the "amounts of collateral sources that have been paid for the benefit of the plaintiff or are otherwise available to the plaintiff as a result of losses except those for which a subrogation right has been asserted." Minn. Stat. § 548.251, subd. 2(1). The Court must then reduce the award by the collateral source amount less any sums paid by the plaintiff to secure the collateral sources. Minn. Stat. § 548.251, subd. 3(a). Therefore, any request for collateral source offsets can be made by motion following a verdict.

T.M.S.

EXHIBIT 61

** CONFIDENTIAL **

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other
Hon. Thomas M. Sipkins

This Document Relates to:
Daniel S. Mensik (Orig. Case No. 27-CV-15-16826)
Minnesota Class Action (Orig. Case No. 27-CV-15-12625)

FILE NO. 27-CV-15-3785

ORDER

The above-entitled matter came before the Honorable Thomas M. Sipkins, Judge of District Court, on March 17, 2017, pursuant to Plaintiffs' motion to exclude the expert testimony and opinions of Travis Milne.

Attorneys Lewis A. Remele, Jr., Daniel E. Gustafson, Richard M. Paul III, Francisco Guerra, IV, William R. Sieben, Robert K. Shelquist, Aram V. Desteian, and Rebecca A. Peterson appeared on behalf of Plaintiffs.

Attorneys Patrick F. Philbin, Patrick Haney, Bridget K. O'Connor, Steven L. Schleicher, and D. Scott Aberson appeared on behalf of Syngenta.

Based on all the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Plaintiffs' motion to exclude Travis Milne's expert testimony and opinions is granted. Travis Milne may testify as a fact witness regarding his personal experiences with Viptera to the extent that such testimony is relevant.

2. The attached Memorandum of Law is incorporated herein.

BY THE COURT:

Dated: April 12, 2017

Thomas M. Sipkins
Judge of District Court

** CONFIDENTIAL **

MEMORANDUM OF LAW

I. Introduction

After receiving approval from U.S. regulatory agencies, Syngenta broadly commercialized MIR 162, "Viptera," a genetically modified seed, prior to receiving regulatory approval from China. In November 2013, China began to enforce its "zero tolerance" policy regarding corn containing Viptera; and it rejected all shipments of US corn. Plaintiffs are corn farmers alleging that Syngenta's widespread release of Viptera was premature; that Syngenta knew that its decision could cause a trade disruption; that such rejection caused corn prices to drop in the United States; and that plaintiffs were harmed by that market effect.

Syngenta has designated Travis Milne as a non-retained expert. According to Syngenta, Mr. Milne will provide expert testimony regarding the benefits of Viptera to US corn growers, including its effectiveness in increasing yield and combating pests; the demand for Viptera among US corn farmers; and the impact on US corn farmers if new US-approved biotechnology traits are unavailable. Plaintiffs have made a motion to exclude this testimony.

II. Expert Opinions

Travis Milne obtained an undergraduate degree in Business Administration from Williams Jewell College in 2008 and became a seed dealer for Syngenta in 2010; selling Syngenta seed to between 80 and 120 customers in Oregeon, Missouri. Aside from Missouri, Mr. Milne has a few customers located in Nebraska, Kansas and maybe Iowa. Travis Milne is also a farmer who has planted Viptera. Mr. Milne is not an agronomist, geneticist, entomologist or economist. Aside from his first-hand knowledge in selling Viptera seed and growing Viptera corn, Mr. Milne's only knowledge about Viptera comes from talking to his customers, other seed dealers, and reading pamphlets and other information; most of which was supplied by Syngenta. He has never performed any independent investigation regarding the benefits or demands for

Viptera among US farmers.

Plaintiffs seek to exclude Mr. Milne's expert testimony. Plaintiffs contend that Mr. Milne lacks the necessary qualifications to provide expert opinions regarding the benefits, demand, or necessity of Viptera seed. Additionally, Plaintiffs assert that Mr. Milne's opinions lack foundational reliability, are irrelevant, and are not helpful to the jury.

III. Legal Analysis

To be admissible, testimony must be relevant and helpful to the trier of fact. *Goeb v. Tharaldson,* 615 N.W.2d 800, 814 (Minn.2000) (citing *Minn. R. Evid. 402 and 702*). The proponent of expert evidence bears the burden of proving its admissibility. *Id.* Generally, all relevant evidence is admissible. *Minn. R. Evid. 402.* Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Minn. R. Evid. 401.* "Expert testimony is inadmissible if it is irrelevant." *Doe v. Archdiocese of St. Paul and Minneapolis*, 817 N.W.2d 150, 164 (Minn. 2012). Even if relevant, evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Minn. R. Evid. 403.*

Expert testimony must also satisfy the requirements of Rule 702 of the Minnesota Rules of Evidence. Under a Rule 702 analysis, expert testimony is admissible if: "(1) the witness is qualified as an expert; (2) the expert's opinion has foundational reliability; (3) the expert testimony is helpful to the jury; and (4) if the testimony involves a novel scientific theory, it must satisfy the *Frye-Mack* standard." *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). Mr. Milne's opinions do not involve a *Frye-Mack* analysis.

To be qualified, an expert must have "both sufficient scientific knowledge and practical experience with respect to [the] subject matter of the offered testimony." *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 726 (Minn. 2005). Theoretical expertise is not sufficient to establish the competency of an expert witness. *Fiedler v. Spoelhof*, 483 N.W.2d 486, 489 (Minn. Ct. App. 1992), *rev. denied* (Minn. Jun. 10, 1992) (citing *Lundgren v. Eustermann,* 370 N.W.2d 877, 880 (Minn. 1985)). "There must also be some practical knowledge or experience." *Lundgren v. Eustermann*, 370 N.W.2d 877, 880 (Minn. 1985). A witness may qualify as an expert not only on the basis of knowledge which he has gained through formal education but also on the basis of knowledge gained through occupational experience. *Kastner v. Wermerskirschen*, 295 Minn. 391, 394, 205 N.W.2d 336, 338 (1973).

An analysis of foundational reliability "requires the court to: (1) analyze the proffered testimony in light of the purpose for which it is being offered, (2) consider the underlying reliability, consistency, and accuracy of the subject about which the expert is testifying, and (3) determine if the proffered evidence is reliable." *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 638 (Minn. Ct. App. 2014) (citing *Doe* at 167–68). Finally, expert testimony "is not helpful if the expert opinion 'is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury's ability to reach conclusions.'" *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011) (quoting *State v. Helterbridle,* 301 N.W.2d 545, 547 (Minn.1980)). Determinations regarding the weight and credibility to be given to a particular witness are decided by a finder-of-fact and not by the court. *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 639 (Minn. Ct. App. 2014).

Travis Milne's only experience with Viptera is derived from selling seed and growing corn in a limited geographical area. Any knowledge outside this geographical region is derived

from reading pamphlets or listening to stories from other farmers and seed sellers; assuming that the information they provide is correct. His opinions are not based on any independent investigation, analysis, or other research regarding Viptera's benefits or the demand for this seed by US farmers. Additionally, Mr. Milne's opinion regarding how farmers are impacted by a delayed release in US approved genetic modifications is not reliable as it is not based on any investigation or economic analysis. Finally, Mr. Milne's belief that there is a general benefit to farmers from genetically modified products is not helpful to the jury. A jury will hear testimony regarding Viptera, its uses, and the history of genetic modifications from other witnesses. After determining the credibility and weight to be given such testimony, a jury can decide whether farmers, in general, were or would be negatively impacted by a delay in releasing US approved genetic modifications. Although not allowed to testify as an expert, however, Mr. Milne may testify as a fact witness and provide evidence, to the extent relevant, regarding his first-hand experiences with Viptera.

IV. Conclusion

Plaintiff's motion to exclude the expert testimony and opinions of Travis Milne is granted. Mr. Milne is not qualified to provide expert opinions regarding the benefits, demand, or need for Viptera among US farmers. Mr. Milne, however can testify as a fact witness regarding his personal experiences with Viptera to the extent that such testimony is relevant.

TMS

EXHIBIT 62

** CONFIDENTIAL **

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other
Hon. Thomas M. Sipkins

This Document Relates to:
Daniel S. Mensik (Orig. Case No. 27-CV-15-16826)
Minnesota Class Action (Orig. Case No. 27-CV-15-12625)

FILE NO. 27-CV-15-3785

ORDER

The above-entitled matter came before the Honorable Thomas M. Sipkins, Judge of District Court, on March 17, 2017, pursuant to Syngenta's motion to exclude the expert testimony of Randal Giroux.

Attorneys Lewis A. Remele, Jr., Daniel E. Gustafson, Richard M. Paul III, Francisco Guerra, IV, William R. Sieben, Robert K. Shelquist, Aram V. Desteian, and Rebecca A. Peterson appeared on behalf of Plaintiffs.

Attorneys Patrick F. Philbin, Patrick Haney, Bridget K. O'Connor, Steven L. Schleicher, and D. Scott Aberson appeared on behalf of Syngenta.

Based on all the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Syngenta's motion to exclude the export testimony of Randal Giroux is granted in part and denied in part.

2. The Court is excluding Randal Giroux's opinions: (1) that certain policies constitute an industry standard; (2) regarding his concept of risk responsibility; and (3) regarding the actions taken by other biotechnology companies to commercialize a genetically modified trait to the extent

they occurred after the commercialization of Viptera. In all other respects, Syngenta's motion to exclude the expert testimony of Randal Giroux is denied.

3. The attached Memorandum of Law is incorporated herein.

BY THE COURT:

Dated: April 14, 2017

Thomas M. Sipkins
Judge of District Court

** CONFIDENTIAL **

MEMORANDUM OF LAW

I. Introduction

After receiving approval from U.S. regulatory agencies, Syngenta broadly commercialized MIR 162, "Viptera," a genetically modified seed, prior to receiving regulatory approval from China. In November 2013, China began to enforce its "zero tolerance" policy regarding corn containing Viptera and it rejected all shipments of US corn. Plaintiffs are corn farmers alleging that Syngenta's widespread release of Viptera was premature; that Syngenta knew that its decision could cause a trade disruption; that such rejection caused corn prices to drop in the United States; and that plaintiffs were harmed by that market effect.

Plaintiffs have identified Dr. Randal Giroux ("Dr. Giroux"), an employee of Cargill, as a fact witness to discuss his interactions with Syngenta as well as other stakeholders relating to MIR 162 and other genetically modified seed varieties. Plaintiffs have also identified Dr. Giroux as an expert witness to testify regarding, among other things, risk assessment and the standards within the biotechnology and grain industry for commercialization of new biotechnology traits. Syngenta seeks to exclude the testimony and opinions of Randal Giroux.

II. Qualifications and Expected Testimony

Dr. Giroux graduated from the University of Toronto with an undergraduate degree in cell biology and genetics. He has a masters degree in genetics and is a doctor of philosophy in agriculture. Since 2000, Dr. Giroux has worked for Cargill Incorporated in various positions. From June 2005 to June 2010, he was the senior advisor and scientific and regulatory affairs leader with the key responsibility of managing biotechnology issues. Among his many professional activities, he served as Chairman of the Risk Management Committee from 2006 to 2012 and Co-Chair of the domestic working group for US biotechnology crops alliance from 2012 to 2016. Dr. Giroux has experience dealing with biotech firms regarding the commercialization of new genetic traits and is

knowledgeable about the interconnected corn market.

In addition to his fact testimony, Plaintiffs seek to elicit from Dr. Giroux expert opinions regarding: (1) the general practice in the industry for commercializing a biotechnology seed variety in the United States, and the risks of commercializing this seed variety prior to obtaining approval from key export markets; (2) in commercializing Viptera and Duracade, Syngenta's conduct was not consistent with the conduct of other biotechnology companies when they commercialize new biotechnology seed varieties, and created a known risk for a trade disruption involving China, an important export market for United States corn; (3) the risk management techniques available to prevent the unwanted spread of new biotechnology traits; (4) the effectiveness, cost, and viability of the known risk management techniques in preventing crops grown from certain biotechnology seed varieties from being exported to unapproved markets, including those with zero-tolerance policies; (5) the effectiveness of a limited commercialization of a biotechnology seed variety, including limiting sales and restricting planting to particular geographic regions, and the practices of other biotechnology companies such as Monsanto; (6) decisions by companies like Syngenta to commercialize biotechnology prior to regulatory approvals from significant markets can inflict substantial harm to downstream industry participants, as these downstream participants lack the ability to manage the risk, especially in a zero-tolerance environment; and (7) Syngenta's communications to him and to Cargill about the status of approval of MIR 162 and the "misrepresentations" and general lack of transparency associated therewith.

According to Syngenta, Dr. Giroux's expert testimony should be excluded because Dr. Giroux: (1) has no basis for his opinions regarding industry standards; (2) draws impermissible legal conclusions for his opinions regarding responsibility for damages under his three-legged stool construct; (3) is not qualified to offer opinions regarding the actions of biotechnology companies;

and (4) offers opinions which are unhelpful to the jury concerning what Syngenta knew or believed. The Court agrees in part.

III. Legal Analysis

To be admissible, testimony must be relevant and helpful to the trier of fact. *Goeb v. Tharaldson,* 615 N.W.2d 800, 814 (Minn.2000) (citing *Minn. R. Evid. 402 and 702*). The proponent of expert evidence bears the burden of proving its admissibility. *Id.* Generally, all relevant evidence is admissible. *Minn. R. Evid. 402.* Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Minn. R. Evid. 401*. "Expert testimony is inadmissible if it is irrelevant." *Doe v. Archdiocese of St. Paul and Minneapolis*, 817 N.W.2d 150, 164 (Minn. 2012). Even if relevant, evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Minn. R. Evid. 403*.

Expert testimony must also satisfy the requirements of Rule 702 of the Minnesota Rules of Evidence. Under a Rule 702 analysis, expert testimony is admissible if: "(1) the witness is qualified as an expert; (2) the expert's opinion has foundational reliability; (3) the expert testimony is helpful to the jury; and (4) if the testimony involves a novel scientific theory, it must satisfy the *Frye-Mack* standard." *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). Dr. Giroux's expert opinions do not involve a *Frye-Mack* analysis.

To be qualified, an expert must have "both sufficient scientific knowledge and practical experience with respect to [the] subject matter of the offered testimony." *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 726 (Minn. 2005). Theoretical expertise is not sufficient to

establish the competency of an expert witness. *Fiedler v. Spoelhof*, 483 N.W.2d 486, 489 (Minn. Ct. App. 1992), *rev. denied* (Minn. Jun. 10, 1992) (citing *Lundgren v. Eustermann,* 370 N.W.2d 877, 880 (Minn. 1985)). "There must also be some practical knowledge or experience." *Lundgren v. Eustermann*, 370 N.W.2d 877, 880 (Minn. 1985). A witness may qualify as an expert not only on the basis of knowledge which he has gained through formal education but also on the basis of knowledge gained through occupational experience. *Kastner v. Wermerskirschen*, 295 Minn. 391, 394, 205 N.W.2d 336, 338 (1973).

Expert testimony "is not helpful if the expert opinion 'is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury's ability to reach conclusions.'" *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011) (quoting *State v. Helterbridle,* 301 N.W.2d 545, 547 (Minn.1980)). Generally, opinions involving a legal analysis "are deemed to be of no use to the jury." *State v. Saldana*, 324 N.W.2d 227, 230 (Minn. 1982). Determinations regarding the weight and credibility to be given to a particular witness are decided by a finder-of-fact and not by the court. *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 639 (Minn. Ct. App. 2014).

Given his education and experience in the industry, Dr. Giroux is qualified to testify regarding biotechnology companies and their interpretation of any association policies or documents. The jury will determine the credibility and weight to be given this testimony. In his testimony, however, Dr. Giroux offers legal conclusions regarding the existence or non-existence of industry standards. These opinions are excluded. Additionally, Dr. Giroux's testimony regarding the risk responsibility leg of his three-legged stool analysis is excluded. Dr. Giroux acknowledges that this risk responsibility has never been accepted or agreed upon in the biotech community and, as explained by Dr. Giroux, requires a biotech firm to be strictly liable for any

damage caused to the corn industry by commercialization of a genetic modification. This is an improper legal standard as the Court has dismissed the strict liability cause of action; and the testimony is unhelpful to the jury. Finally, the Court is excluding testimony regarding the conduct of other biotechnology companies as irrelevant to the extent their actions occurred after the commercialization of Viptera. Otherwise, Dr. Giroux's opinions are helpful to the jury and shall be allowed.

IV. Conclusion

Syngenta's motion to exclude the expert testimony of Dr. Giroux is granted in part and denied in part. Dr. Giroux is qualified to testify as an expert witness and his testimony, for the most part, is helpful to the jury. Any opinions, however, that certain policies constitute an industry standard are excluded. Additionally, Dr. Giroux's opinions regarding risk responsibility are excluded. Finally, opinions about the actions taken by other biotechnology companies to commercialize a genetically modified trait are irrelevant to the extent they occurred after the commercialization of Viptera.

TMS

EXHIBIT 63

** CONFIDENTIAL **

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other
Hon. Thomas M. Sipkins

This Document Relates to:
Daniel S. Mensik (Orig. Case No. 27-CV-15-16826)
Minnesota Class Action (Orig. Case No. 27-CV-15-12625)

FILE NO. 27-CV-15-3785

ORDER

The above-entitled matter came before the Honorable Thomas M. Sipkins, Judge of District Court, on March 17, 2017, pursuant to Syngenta's motion to exclude portions of the expert report and testimony of Joseph Keaschall.

Attorneys Lewis A. Remele, Jr., Daniel E. Gustafson, Richard M. Paul III, Francisco Guerra, IV, William R. Sieben, Robert K. Shelquist, Aram V. Desteian, and Rebecca A. Peterson appeared on behalf of Plaintiffs.

Attorneys Patrick F. Philbin, Patrick Haney, Bridget K. O'Connor, Steven L. Schleicher, and D. Scott Aberson appeared on behalf of Syngenta.

Based on all the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Syngenta's motion to exclude portions of the export report and testimony of Dr. Joseph Keaschall is granted in part and denied in part.

2. Paragraphs 18, 21, 22 and 24 and 25 of Dr. Joseph Keaschall's expert report are excluded together with all but the first three sentences of paragraph 20 and the last sentence of paragraph 23. In all other respects, Syngenta's motion to exclude the report and testimony of Dr. Keaschall is denied.

3. The attached Memorandum of Law is incorporated herein.

BY THE COURT:

Dated: April 11, 2017

Thomas M. Sipkins
Judge of District Court

** CONFIDENTIAL **

MEMORANDUM OF LAW

I. Introduction

After receiving approval from U.S. regulatory agencies, Syngenta broadly commercialized MIR 162, "Viptera," a genetically modified seed, prior to receiving regulatory approval from China. In November 2013, China began to enforce its "zero tolerance" policy regarding corn containing Viptera; and it rejected all shipments of US corn. Plaintiffs are corn farmers alleging that Syngenta's widespread release of Viptera was premature; that Syngenta knew that its decision could cause a trade disruption; that such rejection caused corn prices to drop in the United States; and that plaintiffs were harmed by that market effect. Plaintiffs retained Joseph Keaschall to explain and offer opinions regarding agronomy, applied plant breeding, and applied plant genetics. Syngenta moves to exclude portions of the expert report and testimony of Dr. Keaschall.

II. Expert Report

Joseph Keaschall is a geneticist. He received an undergraduate degree in agronomy from the University of Nebraska and has a Ph.D. from Purdue University in plant breeding and genetics. Since August 2016, Dr. Keaschall has worked as a plant breeding professor at the University of Nebraska-Lincoln. Prior to teaching, he worked for DuPont Pioneer for over 30 years. At DuPont Pioneer, Dr. Keaschall was employed as a corn breeder, research director and product program director; teaching corn breeding to students, farmers and employees. As a product program director for DuPont Pioneer, Dr. Keaschall obtained direct experience in analyzing the value and limitations of MIR 162.[1] Dr. Keaschall is not an entomologist, but has knowledge and experience involving insects and the plant damage they cause.

In paragraphs 10 to 17 of his report, Dr. Keaschall generally discusses corn breeding and

[1] The Pioneer Leptra Brand products included MIR 162.

genetic modifications in the United States. Syngenta has no objection to this portion of Dr. Keaschall's report. Dr. Keaschall also provides opinions that: (1) in regulated testing, the presence of MIR 162 does not increase yields; (2) the presence of MIR 162 provides a benefit to farmers in warmer climates but little, if any, benefit to farmers in non-southern growing areas; and (3) that there were alternatives to MIR 162 which did not pose a risk to the Chinese export market. Syngenta objects to these opinions and seeks exclusion of paragraph 18 along with paragraphs 20-26 of Dr. Keaschall's report. The Court agrees in part.

III. Legal Analysis

To be admissible, expert testimony must be relevant and helpful to the trier of fact. *Goeb v. Tharaldson,* 615 N.W.2d 800, 814 (Minn.2000) (citing *Minn. R. Evid. 402 and 702*). The proponent of expert evidence bears the burden of proving its admissibility. *Id.* Generally, all relevant evidence is admissible. *Minn. R. Evid. 402.* Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Minn. R. Evid. 401.* "Expert testimony is inadmissible if it is irrelevant." *Doe v. Archdiocese of St. Paul and Minneapolis*, 817 N.W.2d 150, 164 (Minn. 2012). Even if relevant, evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Minn. R. Evid. 403.*

Expert testimony must also satisfy the requirements of Rule 702 of the Minnesota Rules of Evidence. Under a Rule 702 analysis, expert testimony is admissible if: "(1) the witness is qualified as an expert; (2) the expert's opinion has foundational reliability; (3) the expert testimony is helpful to the jury; and (4) if the testimony involves a novel scientific theory, it must

satisfy the *Frye-Mack* standard." *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). Analysis of Dr. Keaschall's report does not involve the *Frye-Mack* standard.

To be qualified, an expert must have "both sufficient scientific knowledge and practical experience with respect to [the] subject matter of the offered testimony." *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 726 (Minn. 2005). Theoretical expertise is not sufficient to establish the competency of an expert witness. *Fiedler v. Spoelhof*, 483 N.W.2d 486, 489 (Minn. Ct. App. 1992), *rev. denied* (Minn. Jun. 10, 1992) (citing *Lundgren v. Eustermann,* 370 N.W.2d 877, 880 (Minn. 1985)). "There must also be some practical knowledge or experience." *Lundgren v. Eustermann*, 370 N.W.2d 877, 880 (Minn. 1985).

An analysis of foundational reliability "requires the court to: (1) analyze the proffered testimony in light of the purpose for which it is being offered, (2) consider the underlying reliability, consistency, and accuracy of the subject about which the expert is testifying, and (3) determine if the proffered evidence is reliable." *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 638 (Minn. Ct. App. 2014) (citing *Doe* at 167–68). Expert testimony "is not helpful if the expert opinion 'is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury's ability to reach conclusions.'" *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011) (quoting *State v. Helterbridle,* 301 N.W.2d 545, 547 (Minn.1980)). Determinations regarding the weight and credibility to be given to a particular witness are decided by a finder-of-fact and not by the court. *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 639 (Minn. Ct. App. 2014).

Dr. Keaschall bases his opinion regarding the yield of MIR 162 on tests found in Syngenta's Deregulation Petition. These tests were designed to assess whether or not MIR 162 negatively affected yields in the absence of pest pressure and do not address yields in a "real world"

situation. Therefore, the yield information used in Dr. Keaschall's report is misleading and unreliable as used and shall be excluded. In opining that MIR 162 benefits farmers in warmer climates, Dr. Keaschall describes the types of insects controlled by MIR 162, their prevalence in certain regions, and their survivability in colder climates. Although Dr. Keaschall is qualified to describe the types of insects sought to be controlled by certain seed traits, he is not an entomologist and is not qualified to discuss the survivability of certain insects in certain weather conditions. Finally, Dr. Keaschall may testify that Syngenta had alternatives to commercializing Viptera; but the fact that other companies had alternatives to MIR 162 is not relevant. For the above reasons, paragraphs 18, 21, 22, 24 and 25 of Dr. Keaschall's report are excluded, along with all but the first three sentences of paragraph 20 and the last sentence of paragraph 23.

IV. Conclusion

Paragraphs 18, 21, 22, 24 and 25 of Dr. Keaschall's report, together with portions of paragraphs 20 and 23 are excluded. In all other respects, Syngenta's motion to exclude the report of Dr. Keaschall is denied.

TMS

EXHIBIT 64

27-CV-15-12625
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

** CONFIDENTIAL **

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other
Hon. Thomas M. Sipkins
Hon. Laurie J. Miller

This Document Relates to:

Class Action

FILE NO. 27-CV-15-12625

ORDER

The above-entitled matter came before Thomas M. Sipkins and Laurie J. Miller, Judges of District Court, on June 29, 2017, pursuant to Plaintiffs' motions to exclude or limit the expert testimony of Barry K. Goodwin, Walter N. Thurman, and William Sheppard and Syngenta's motions to exclude the expert testimony and opinions of Bruce A. Babcock and Colin A. Carter.

Attorneys Daniel E. Gustafson, Amanda M. Williams, Rebecca A. Peterson, Lewis A. Remele, Jr., Eric S. Taubel, Aram V. Desteian, and Casey D. Marshall appeared on behalf of Class Plaintiffs.

Attorneys Patrick F. Philbin, Leslie M. Smith, Edwin J. U, Patrick Haney, and D. Scott Aberson appeared on behalf of Syngenta.

Based on all the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Plaintiffs' motion to limit the testimony of Barry K. Goodwin is denied. Paragraph 11 and paragraphs 87 to 99 are excluded for the class action trial.

2. Plaintiffs' motion to limit the testimony of Walter N. Thurman is denied.

27-CV-15-12825
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

3. Plaintiffs' motion to exclude the testimony of William Sheppard is granted in part and denied in part. The motion is granted with respect to William Sheppard's expert testimony and opinions. The motion is denied with respect to William Sheppard's testimony as a fact witness regarding his personal experiences with Viptera to the extent that such testimony is relevant.

4. Syngenta's motion to exclude the report and testimony of Bruce A. Babcock is denied.

5. Syngenta's motion to exclude the report and testimony of Collin A. Carter is denied. Footnote 111 to Dr. Carter's report is excluded as irrelevant.

6. The attached Memorandum of Law is incorporated herein.

BY THE COURT:

Dated: 8-17-2017

Thomas M. Sipkins
Judge of District Court

Dated: Aug. 17, 2017

Laurie J. Miller
Judge of District Court

27-CV-15-12825
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

** CONFIDENTIAL **

MEMORANDUM OF LAW

I. Introduction

Defendant Syngenta Seeds Inc. (n/k/a Syngenta Seeds LLC) ("Syngenta") developed genetically modified ("GM") corn seed products known as Agrisure Viptera ("Viptera") and Agrisure Duracade ("Duracade"). Viptera contains the GM trait MIR162 and Duracade also includes the trait Event 5307. After receiving approval from U.S. regulatory agencies, Syngenta commercialized Viptera and Duracade prior to obtaining regulatory approval from China to import corn with MIR162. In November 2013, China began to enforce its zero tolerance policy regarding corn containing MIR162 and rejected all shipments of U.S. corn. In general, corn producers and non-producer corn sellers allege that Syngenta's commercialization of Viptera caused corn containing MIR162 to be commingled throughout the U.S. corn supply; that China rejected imports of all U.S. corn because of the presence of MIR162; that such rejection caused corn prices to drop in the United States; and that Plaintiffs were harmed by that market effect. Plaintiffs make similar allegations with respect to Duracade.

Currently before the Court are the parties' motions to exclude or limit the testimony and report of several expert witnesses. On March 17, 2017, the Court heard motions applicable to both the initial bellwether case of *Mensik* and the class action regarding many experts. At that time, the parties agreed to reserve argument and ruling on experts only relevant to the class action. Final argument on the motions regarding the remaining experts was held on June 29, 2017.[1]

[1] The motions were submitted to and argued before Judge Sipkins. On July 7, 2017, the Minnesota Supreme Court appointed Judge Miller to hear and decide these consolidated matters. Judge Sipkins and Judge Miller are thus jointly issuing this Order.

II. Legal Standard

To be admissible, testimony must be relevant and helpful to the trier of fact. *Goeb v. Tharaldson,* 615 N.W.2d 800, 814 (Minn.2000) (citing *Minn. R. Evid. 402 and 702*). The proponent of expert evidence bears the burden of proving its admissibility. *Id.* Generally, all relevant evidence is admissible. *Minn. R. Evid. 402.* "Expert testimony is inadmissible if it is irrelevant." *Doe v. Archdiocese of St. Paul and Minneapolis*, 817 N.W.2d 150, 164 (Minn. 2012). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Minn. R. Evid. 401.* Even if relevant, evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Minn. R. Evid. 403.* Unfair prejudice under Rule 403 "is evidence that persuades by illegitimate means, giving one party an unfair advantage." *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005).

Expert testimony must also satisfy the requirements of Rule 702 of the Minnesota Rules of Evidence. Under a Rule 702 analysis, expert testimony is admissible if: "(1) the witness is qualified as an expert; (2) the expert's opinion has foundational reliability; (3) the expert testimony is helpful to the jury; and (4) if the testimony involves a novel scientific theory, it must satisfy the *Frye-Mack* standard." *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011).

To be qualified, an expert must have "both sufficient scientific knowledge and practical experience with respect to [the] subject matter of the offered testimony." *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 726 (Minn. 2005). Theoretical expertise is not sufficient to establish the competency of an expert witness. *Fiedler v. Spoelhof*, 483 N.W.2d 486, 489 (Minn.

Ct. App. 1992), *rev. denied* (Minn. Jun. 10, 1992) (citing *Lundgren v. Eustermann,* 370 N.W.2d 877, 880 (Minn. 1985)). "There must also be some practical knowledge or experience." *Lundgren v. Eustermann*, 370 N.W.2d 877, 880 (Minn. 1985). A witness may qualify as an expert not only on the basis of knowledge which he has gained through formal education but also on the basis of knowledge gained through occupational experience. *Kastner v. Wermerskirschen*, 295 Minn. 391, 394, 205 N.W.2d 336, 338 (1973).

The Court may be required to consider foundational reliability in two contexts. *Doe*, 817 N.W.2d at 165. The Rule 702 analysis evaluates the reliability of an expert's opinion while the *Frye-Mack* analysis assesses the reliability of a scientific test. *Id.* The Court, however, conducts the same analysis in both circumstances. *Id.* at 168. An analysis of foundational reliability "requires the court to: (1) analyze the proffered testimony in light of the purpose for which it is being offered, (2) consider the underlying reliability, consistency, and accuracy of the subject about which the expert is testifying, and (3) determine if the proffered evidence is reliable." *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 638 (Minn. Ct. App. 2014) (citing *Doe*, 817 N.W.2d at 167–68).

Finally, expert testimony "is not helpful if the expert opinion 'is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury's ability to reach conclusions.'" *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011) (quoting *State v. Helterbridle,* 301 N.W.2d 545, 547 (Minn.1980)). Generally, opinions involving a legal analysis "are deemed to be of no use to the jury." *State v. Saldana*, 324 N.W.2d 227, 230 (Minn. 1982). Determinations regarding the weight and credibility to be given to a particular witness are decided by a finder-of-fact and not by the court. *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 639 (Minn. Ct. App. 2014).

27-CV-15-12825
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

III. Plaintiffs' Motions to Exclude

A. Dr. Barry K. Goodwin

Dr. Barry K. Goodwin is an economist retained by Syngenta to evaluate the effect of China's ban on U.S. corn on corn prices in Minnesota. He also reviewed and assessed the reports of Plaintiffs' experts Dr. Colin A. Carter, Dr. Mohan Rao, and Anna King that address issues related to the price effect of the China ban on MIR162 corn. Dr. Goodwin received his Ph.D. in economics with a minor in statistics from North Carolina State University in 1988. He is a William Neal Reynolds Professor of Agricultural and Resource Economics at North Carolina State University. He has taught courses and published articles in the areas of applied econometrics and statistics, consumer demand, price analysis, agricultural policy, risk management, and international trade.

Dr. Goodwin used a vector error correction model ("VECM") to analyze the price effect of the Chinese ban on the import of U.S. corn. The VECM is a type of event study that analyzes past trends in commodity prices up until an event date and uses that information to forecast commodity prices after the event. In his report, Dr. Goodwin sets forth the two main equations he used to express changes in the price of corn and sorghum. He then used the equations to estimate "but-for" corn prices representing the prices that would have prevailed but for the ban on MIR162 corn. He then compared the projection of the "but-for" prices to actual prices to determine a price effect. If the "but-for" prices are significantly statistically different from actual prices, that difference represents the price impact of the event. Using the VECM, Dr. Goodwin found that there was a one to two week period of time during which prices in Minnesota were statistically different from actual prices and not statistically distinguishable thereafter. Dr. Goodwin opines that the effect on the market was transitory and dissipated quickly because

27-CV-15-12825
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

market participants responded to other market factors. He concludes that China's ban on U.S. corn did not have an appreciable price effect on Minnesota corn prices after November 18, 2013.

Plaintiffs move the Court to limit Dr. Goodwin's testimony by excluding paragraphs 5 through 8, 12 through 52, 101, and 102 from his report. Plaintiffs claim portions of Dr. Goodwin's report rely on novel scientific methods, which are not accepted in the economics community and lack foundational reliability.

First, Plaintiffs argue that Dr. Goodwin's VECM lacks foundational reliability because it uses a different model than the one disclosed in his report. Dr. Goodwin ran his VECM using a statistical program known as SAS (Statistical Analysis System). According to Dr. Carter[2], the SAS code shows the model actually used two different equations than the ones in Dr. Goodwin's report, stating price levels rather than price changes. Dr. Carter argues that this change in the dependent variable is contrary to the basic assumptions of a VECM. Dr. Carter also claims Dr. Goodwin reported the Adjusted R^2 statistic from the "alternative model," indicating a model with high explanatory power. When Dr. Carter re-calculated the R^2 based on the VECM as described in the report, he found a lower number showing a model with no explanatory power.

Syngenta responds that the equations in Dr. Goodwin's report are identical to the equations in the SAS code but terms are rearranged in order to isolate different terms on one side of the equations. Dr. Goodwin also states that the R^2 values differ because altering the way the equation is written changes which variable is treated as the dependent variable. Dr. Goodwin stated the relevant adjusted R^2 value is the one in his report.

The differences identified by Plaintiffs between Dr. Goodwin's report and the SAS code

[2] In an Order dated March 24, 2017, the Court denied Syngenta's motion to strike the supplemental expert declarations from Dr. Mohan Rao and Anna King and Dr. Colin Carter that evaluate and assess Dr. Goodwin's Vector Error Correction Model ("VECM") data, calculations, analysis, and findings. Plaintiffs use these declarations to support their argument that Dr. Goodwin's model is unreliable.

27-CV-15-12825
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

do not make Dr. Goodwin's VECM unreliable. Demonstrating foundational reliability requires "the proponent of the test to establish that the test itself is reliable and that its administration in the particular instance conformed to the procedure necessary to ensure reliability." *Goeb*, 615 N.W.2d at 814. The Court finds Dr. Goodwin adequately and accurately disclosed his equations and Adjusted R^2 results. Plaintiffs thoroughly examined Dr. Goodwin on how the equations were stated. Plaintiffs' experts had a chance to review and criticize Dr. Goodwin's model and how the equations were stated. Plaintiffs will have the opportunity to cross-examine him on these differences at trial.

Plaintiffs next argue Dr. Goodwin's report lacks foundational reliability because it fails to provide the t-statistic, which shows its reliability and predictive power, and fails a standard F-test, which determines whether regression coefficients are jointly significant. According to Plaintiffs, this is a deviation from standard economic protocol. Dr. Carter ran the t-test and found the VECM regression coefficients are not statistically significant. During his testimony, Dr. Goodwin gave reasons why the t-statistics results were not relevant to the reliability of his model. He also testified that he did not run a separate F-test because the R^2 values tested for the same concerns. Dr. Carter disputes Dr. Goodwin's claim, however, by opining that because Dr. Goodwin rearranged the equations, the coefficients jointly are not equivalent to zero as required by the F-test. Dr. Carter concludes that the R^2 tests and the F-test have lost their one-to-one correspondence, which means that Dr. Goodwin's R^2 results do not provide evidence that his model has explanatory power. The Court finds that Plaintiffs failed to demonstrate that the t-statistic and F-test are required in all economic analyses in order to be valid and accepted. While Dr. Carter's criticism is substantial, the Court concludes that Dr. Goodwin's reliance on the R^2 values to demonstrate reliability is sufficient.

27-CV-15-12625
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

Plaintiffs argue Dr. Goodwin's conclusion that the price change was temporary and only lasted 1 to 2 weeks ignores fundamental econometric and economic principles. Specifically, Plaintiffs point to academic articles stating that price shocks to commodity markets are permanently incorporated in the price and that price shocks to corn markets are long lasting and typically diminish over a 5 to 8 year period. This argument goes to the weight of the opinion but not the admissibility.

Plaintiffs' motion to exclude Dr. Goodwin's testimony is denied, with one exception. Dr. Goodwin's report criticizes the reports of Plaintiffs' experts Dr. Carter, Dr. Rao, and Anna King. It is the Court's understanding that Dr. Rao and Anna King provided expert opinions only with respect to individual claimant damages. In that event, Dr. Goodwin's reference to Mensik's damages or Plaintiffs' experts Dr. Rao and Anna King are not relevant to Class Plaintiffs' damages. Therefore, Paragraph 11 and paragraphs 87 to 99 shall be stricken as to the class action.

B. Dr. Walter N. Thurman

Syngenta named Dr. Walter N. Thurman as an expert to: (1) "evaluate Plaintiffs' claim that China's MIR162 import restriction caused a decline in demand for US corn; and (2) to evaluate Plaintiffs' claim that MIR162 events influenced corn future prices and, through that channel, influenced cash corn bids in local markets through the United States." Dr. Thurman is a William Neal Reynolds Distinguished Professor of Agricultural and Resource Economics at North Carolina State University. He received his Ph.D. in economics from the University of Chicago in 1984. He has lectured and published in the fields of agricultural, natural resource economics, and econometrics; studying, among other things, global transport of grain stocks and markets for feed grains. Dr. Thurman has not written any articles regarding China's agricultural policy or

27-CV-15-12625
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

China's grain markets and has never visited China's mainland. He testified that he is familiar with Chinese agricultural trade policy.

Dr. Thurman, opining that it was inappropriate to analyze China's MIR162 import restriction as a "purely bilateral phenomenon," outlined a four-region economic framework for analyzing this restriction.[3] Dr. Thurman created the framework to analyze supply and demand relationships to explain how imports and exports would adjust among four regions – the United States as exporter of corn, other exporting countries, China as importer, and other importing countries - after a decrease in exports from the U.S. to China. The model is based on the principle that trade disruptions between one export-import trade pair will induce adjustments in other trade flows. The framework indicates that there is little or no net damage from the U.S.-China trade restriction because U.S. corn would be redirected to other importing countries, while non-U.S. exporting countries would redirect their corn shipments to China until trade equilibrium is created. Dr. Thurman concludes that there is no evidence that demand for U.S. corn declined following China's ban on U.S. corn.

Plaintiffs move the Court to limit the testimony of Dr. Thurman. First, Plaintiffs seek to exclude paragraphs 42 through the first sentence of paragraph 59 on the basis that Dr. Thurman's analysis under the four-region framework does not meet the *Frye-Mack* standard. It is only when the proponent offers novel scientific evidence that the two-prong *Frye-Mack* standard applies. *Doe*, 817 N.W.2d at 164-65. Under the *Frye-Mack* standard, novel scientific evidence must (1) be generally accepted in the relevant scientific community and (2) have foundational reliability. *Goeb*, 615 N.W.2d at 814. The Court does not find that Dr. Thurman's four region framework is

[3] In an Order dated March 24, 2017, the Court denied Syngenta's motion to strike the supplemental declaration of Bruce Babcock. Dr. Babcock's declaration analyzes Dr. Thurman's four-region framework. Plaintiffs use this declaration in support of their argument that Dr. Thurman's four-region framework is novel and unreliable.

27-CV-15-12625
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

novel scientific evidence requiring analysis under the *Frye-Mack* standard. The framework analyzes international trade flows based on fundamental economic principles of supply and demand.

Plaintiffs argue Dr. Thurman's four region framework testimony should be excluded because it lacks foundational reliability. Specifically, Plaintiffs argue the four region framework is unreliable because Dr. Thurman did not affirmatively state that it is a reliable "method to calculate damages;" fails to use spatial equilibrium models; and fails to meet the *ceteris paribus* condition. The purpose of Dr. Thurman's analysis was to evaluate the trade disruption's impact on demand for corn and corn prices. The fact that Dr. Thurman did not use some other type or model of analysis, such as spatial equilibrium model, does not render his analysis unreliable. He uses the four region framework to demonstrate how a trade disruption would affect trade flows; he does not attempt to calculate the amount of the effect. He thus did not need to use an econometric model. Dr. Thurman also explained that he did not attempt to construct a model to which *ceteris paribus* might apply. Plaintiffs' criticism goes to the weight of Dr. Thurman's opinion.

Plaintiffs also claim Dr. Thurman did not apply his framework reliably because he selected the 2012/13 marketing year as the base year in his framework. Plaintiffs argue this was a non-typical year due to a drought and using a more typical year would create a different outcome. The 2012/13 year was the last full year preceding the China ban on U.S. corn. There was thus a reasonable basis to use that data. Dr. Thurman testified that he accounted for the drought by scaling his data. Dr. Thurman properly supported his use of the data. Plaintiffs' argument again goes to the weight of Dr. Thurman's opinion and not the admissibility.

Plaintiffs also seek to exclude portions of Dr. Thurman's report, paragraphs 142 through

27-CV-15-12625
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

155, in which he discusses "[e]conomic conditions in China," "China's agricultural trade policy," and "[u]ncertainty associated with Chinese demand." Plaintiffs argue that Dr. Thurman is not qualified to give an opinion on these issues because he lacks the requisite knowledge. The Court notes that this section of Dr. Thurman's report is his criticism of Dr. Babcock's analysis. Plaintiffs argue Dr. Thurman has never been to China, has not authored publications concerning issues particular to China, and his testimony showed a lack of knowledge regarding the economic liberalization in China. The Court finds that Dr. Thurman is sufficiently qualified as an agricultural economist and as someone familiar with Chinese agricultural trade policy to support his testimony. Plaintiffs will have the opportunity to cross-examine and challenge his knowledge. Plaintiffs' motion to limit Dr. Thurman's testimony is denied.

C. William Sheppard

Syngenta designated William Sheppard ("Sheppard") as a non-retained expert and fact witness. According to Syngenta, Sheppard will provide expert testimony regarding the benefits of Viptera to U.S. corn growers, including its effectiveness in increasing yield and combating pests; the demand for Viptera among U.S. corn farmers; and the impact on U.S. corn farmers if new US-approved biotechnology traits are unavailable.

Sheppard is a Missouri farmer who has grown Viptera. He has an undergraduate degree in economics. Sheppard does not have any special training in genetics, agronomy, agriculture, entomology, or statistics. He had an ownership stake in a grain elevator until 1981. Through about 2012, Sheppard was a seed dealer for Syngenta, along with a few other companies. His own farm was his primary customer. He sold seed to less than five individuals annually and made no profit. Sheppard's knowledge about Viptera comes from reading blogs and online articles along with his first-hand knowledge in growing Viptera and comparing the different

27-CV-15-12625
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

varieties of corn that he grows. He has never performed any independent investigation regarding the benefits or demands for Viptera among U.S. farmers.

Plaintiffs seek to exclude Sheppard's testimony. Plaintiffs contend that Sheppard lacks the necessary qualifications to provide expert opinions regarding the benefits of Viptera, U.S. farmers' demand for Viptera, and biotechnology in general. Additionally, Plaintiffs assert that Sheppard's opinions are inadmissible because they lack foundational reliability and are not helpful to the jury.

The Court agrees that Sheppard lacks sufficient knowledge through formal education, training, or occupational experience on the issues of biotechnology and economics. Sheppard's only occupational and practical experience with Viptera is derived from growing corn and selling seed to a handful of other farmers in a limited geographical area. Any knowledge outside this geographical region is derived from reading blogs and online articles. His opinions are not based on any independent investigation, analysis, or other research regarding Viptera's benefits or the demand for this seed by U.S. farmers. Sheppard cannot repeat hearsay that he learned from Syngenta as his own expert opinion. Sheppard's limited experience as a seed dealer with only a few customers to whom he sold seed at cost does not provide a reliable basis to offer an opinion on the demand for Viptera. Finally, Sheppard is not qualified to opine regarding the importance and impact of biotechnology on U.S. farmers and the industry in general. He has no training and has conducted no industry-wide research.

Plaintiff's motion to exclude the expert testimony and opinions of Sheppard is granted. Although not allowed to testify as an expert, however, Sheppard may testify as a fact witness and provide evidence, to the extent relevant, regarding his first-hand experiences with Viptera.

27-CV-15-12625
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

D. Dr. Bruce A. Babcock

Dr. Bruce A. Babcock is an agricultural economist. Plaintiffs retained Dr. Babcock to determine market-loss damages to the Minnesota class. Dr. Babcock is a Professor of Economics at Iowa State University's Biobased Industry Center who has studied commodity markets, particularly the corn market, for more than 25 years. He uses a competitive storage model to demonstrate the economic impact of the Chinese ban. Applying the model, Dr. Babcock creates a demand curve for each use of corn and then determines the magnitude of the shift in corn demand that the ban represents. He determines what the market price would have been but-for China's ban on U.S. corn. The difference between the but-for market price and the actual market price for corn is the per-bushel market loss. He then multiplies the per-bushel market loss by the number of bushels in the Minnesota class.

Using a regression analysis, Dr. Babcock found that 88% of daily variability in local prices "is explained by changes in futures prices." He concludes that, "a change in the demand for U.S. corn caused by China's ban on corn imports would be felt equally in all corn growing areas, because such a change in demand for U.S. corn would be reflected in futures prices and local corn prices are primarily determined by futures prices." Although the basis may vary based on local factors, a change in the futures price will result in a relatively uniform change in all markets.

Syngenta moves the Court to exclude Dr. Babcock's testimony and report. Syngenta argues Dr. Babcock's testimony should be excluded because it is based on unsupported assumptions that a decrease in Chinese demand for U.S. corn resulted in a global decrease as well; that the decrease in Chinese demand was entirely attributable to the presence of MIR162; and that the decrease in demand was of a certain amount and would last a certain number of

years. Dr. Thurman identifies over thirty additional assumptions underlying Dr. Babcock's opinion. Syngenta criticizes the sources of data Dr. Babcock used and cites evidence that Dr. Babcock did not use and that purportedly contradicts the assumptions. Syngenta questioned Dr. Babcock about his model and the data used and retained experts to review and Dr. Babcock's report. Dr. Babcock testified about the basis for the assumptions and alternatives that he considered. Syngenta conceded that some assumptions may be necessary and permissible for a methodology that estimates a price impact. The Court is not persuaded that these assumptions are so unfounded as to make his opinions impermissibly speculative. Syngenta's arguments bear on the weight to be given Dr. Babcock's opinion.

Syngenta argues Dr. Babcock's regression analysis fails because it does not test what it purports to analyze. Syngenta argues that because Dr. Babcock pooled the local price data for his regressions analysis, he is unable to determine whether the relationship between changes in CBOT prices and changes in local prices were different among localities or time periods. Plaintiffs indicate the regression analysis over the entire dataset was meant to show the relative importance of changes in basis in determining local prices compared to changes in futures. Dr. Babcock performed his analysis on a state-by-state basis. Syngenta's argument for smaller pools goes to the weight to be afforded the analysis. Dr. Babcock's testimony and report are sufficiently reliable and Syngenta's motion to exclude is denied.

E. Dr. Colin A. Carter

Plaintiffs retained Dr. Colin A. Carter, an agricultural economist, to provide an opinion regarding the effects of China's rejection of MIR162 corn on the U.S. corn market. Dr. Colin A. Carter is a Distinguished Professor of Agricultural and Resource Economics at the University of California, Davis. He has studied agricultural commodity markets and has expertise in China's

27-CV-15-12625
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

agricultural economy. Dr. Carter conducted an event study to measure the impact of China's ban on U.S. corn in November 2013 on U.S. corn. First, he identified a structural break in September 2013 in the relationship of corn and sorghum, which is a close feed substitute for corn but has a lower yield and no GM varieties. At this point, corn went from commanding a 10% premium over sorghum to an 8% price discount. He opines that the abrupt change in relative prices was a signal that changes were taking place in the global feed grain market and that it is not unusual for a well-functioning informationally efficient market (such as the U.S corn market) to anticipate a forthcoming shock to the market. He used September 2013 as his event date for the purposes of his analysis and damages computation.

Dr. Carter then performed a correlation analysis on ten separate locations to quantify the relationship between corn prices at different locations, relative to an index of futures prices for other commodities. He found that all of the markets have highly correlated prices, meaning that "the demand shock caused by the Chinese *de facto* embargo would have a common impact" on all local prices. Dr. Carter opines that "U.S. corn farmers who priced their corn after August 2013 have received a lower price for their corn than they would have received if China's imports of U.S. corn had not effectively stopped." He calculated the drop in price due to the contamination and determined that damages will continue for five years before dissipating. Dr. Carter calculates aggregate damages for the class using the total bushels marketed in the class.

Syngenta argues that Dr. Carter's event study is unreliable and a novel methodology. Syngenta argues that Dr. Carter improperly "cherry-picked" the September 2013 date without a sufficient basis. Dr. Carter, however, provided a sufficient basis and reasoning for his use of the September 2013 date. Dr. Carter tested for a structural break during the period between June 2013 when China rejected approval of MIR162 and November 2013 when China rejected

shipments of corn. The September 2013 date was based on the increase in milo exports to China and the historic break between corn and milo prices. Syngenta argues that there is no evidence that the market anticipated the later event of corn rejection in November 2013. This is a fact-based argument that is a dispute for the jury at trial. The use of September 2013 is not lacking in foundation. The Court also rejects Syngenta's argument that Dr. Carter's approach to identifying the structural break was so nonconforming that it made his event study a novel theory requiring application of the *Frye-Mack* standard.

Syngenta also argues that Dr. Carter failed to consider and disaggregate other possible causes of the drop in corn prices that occurred in September 2013, both in his structural break analysis and in his event study. Specifically, Syngenta argues that Dr. Carter failed to disaggregate China's Tariff Rate Quotas (TRQ) for public and private companies; failed to control for the USDA World Agricultural Supply and Demand Estimates (WASDE) report; and failed to consider China's move to diversify. Dr. Carter testified, however, that he did consider and reject the particular alternatives proffered by Syngenta. Syngenta also criticizes Dr. Carter's use of certain inputs relating to weekly or monthly data and market index containing wheat, crude oil, and hogs. Dr. Carter provided the reasoning underlying his decisions to use these inputs. Syngenta's challenges go to the weight of the credibility given to the opinion and not the admissibility.

Dr. Carter determined that damages will last until 2018. Syngenta argues that Dr. Carter's opinion that the effect on prices from the Chinese embargo on U.S. corn would last that long is speculative, as Dr. Carter did not perform a separate analysis to determine the duration of the damages period and his event study analyzes the effects in one month. Dr. Carter provided a sufficient basis for his use of a five year period. Dr. Carter's opinion is based on the principle

that the prices of commodities are non-stationary, meaning they do not revert back to their old levels after receiving a shock. The opinion is supported by Dr. Carter's decay figures, the rate of dissipation in other cases, and academic literature. Thus, the Court concludes that Dr. Carter's opinions are not impermissibly speculative, and Syngenta's criticisms regarding that support go to the weight of the opinions and not to their admissibility.

Syngenta argues that Dr. Carter has improperly assumed that global demand for U.S. corn decreased as a result of the Chinese embargo on such corn. Plaintiffs argue that Dr. Carter's analysis does not rely on the assumption but the information is included in his report as background information. As noted above in Section IV.D, this is a permissible assumption that an expert may rely upon.

Syngenta argues that Dr. Carter's opinion that damages increased between August 2014 and February 2015 due to China's ban on U.S. DDGs should be excluded because it is based on an unsupported assumption that the entirety of the U.S. DDGs supply that was not exported to China during this period was backed up to be used on U.S. farms, further decreasing demand for corn. Syngenta argues that Dr. Carter did not perform any investigation to support his opinion. Dr. Carter, however, testified that he looked for a surge in exports to other markets but found no evidence that U.S. DDGs were diverted to another market. Thus, Dr. Carter's opinion is not lacking in foundation on this issue.

Syngenta argues that Dr. Carter is not sufficiently qualified to offer certain opinions relating to China's regulatory approval system and Syngenta's decision to commercialize Viptera. Specifically, Syngenta challenges his opinions that China has a functioning, predictable, and science-based regulatory system for approving biotech events; that system is responsive to market demands; and that Syngenta's cultivation application delayed import

27-CV-15-12625
Filed in Fourth Judicial District Court
8/17/2017 2:11 PM
Hennepin County, MN

approval and violated a Chinese policy. Syngenta asserts these topics are outside of Dr. Carter's expertise in the field of the economics of agricultural commodity markets. Dr. Carter has traveled to China extensively concerning his work on the economics of Chinese agriculture and that he has authored works on China and its institutions. As the Court found in Section III.B with respect to Dr. Thurman, Dr. Carter is sufficiently qualified.

Dr. Carter is also qualified as an economist to render his opinion disputing Syngenta's position that the benefits of Viptera outweigh any costs. However, the Court agrees that Dr. Carter's reference to Syngenta's net worth found in footnote 111 to his report is not relevant to his opinion and should be excluded.

Finally, the Court rejects Syngenta's argument that Dr. Carter improperly opined on the state of mind of Syngenta or others. Upon review of disputed paragraphs, the Court finds that Dr. Carter was commenting on certain evidence. Any opinions included therein are sufficiently related to Dr. Carter's economic opinions and supported by the evidence.

T.M.S. and L.J.M.

EXHIBIT 65

** CONFIDENTIAL **

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other
Hon. Thomas M. Sipkins

This Document Relates to:
Daniel S. Mensik (Orig. Case No. 27-CV-15-16826)
Minnesota Class Action (Orig. Case No. 27-CV-15-12625)

FILE NO. 27-CV-15-3785

ORDER

The above-entitled matter came before the Honorable Thomas M. Sipkins, Judge of District Court, on March 17, 2017, pursuant to Syngenta's motion to exclude portions of the expert report and testimony of Dirk Maier.

Attorneys Lewis A. Remele, Jr., Daniel E. Gustafson, Richard M. Paul III, Francisco Guerra, IV, William R. Sieben, Robert K. Shelquist, Aram V. Desteian, and Rebecca A. Peterson appeared on behalf of Plaintiffs.

Attorneys Patrick F. Philbin, Patrick Haney, Bridget K. O'Connor, Steven L. Schleicher, and D. Scott Aberson appeared on behalf of Syngenta.

Based on all the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Syngenta's motion to exclude portions of the export report and testimony of Dirk Maier is granted. Pages 17 through 30 of Dr. Maier's report are excluded.

2. The attached Memorandum of Law is incorporated herein.

BY THE COURT:

Dated: April 11, 2017

Thomas M. Sipkins
Judge of District Court

** CONFIDENTIAL **

MEMORANDUM OF LAW

I. Introduction

After receiving approval from U.S. regulatory agencies, Syngenta broadly commercialized MIR 162, "Viptera," a genetically modified seed, prior to receiving regulatory approval from China. In November 2013, China began to enforce its "zero tolerance" policy regarding corn containing Viptera and it rejected all shipments of US corn. Plaintiffs are corn farmers alleging that Syngenta's widespread release of Viptera was premature; that Syngenta knew that its decision could cause a trade disruption; that such rejection caused corn prices to drop in the United States; and that plaintiffs were harmed by that market effect.

Plaintiffs retained Dirk Maier ("Dr. Maier") to provide information and opinions regarding the interconnected grain marketing chain. Syngenta does not oppose this testimony. Additionally, Dr. Maier's expert report contains a dispersion model demonstrating the presence of MIR 162 on a county and state level and an overall conclusion regarding the presence of MIR 162 throughout the entire marketing chain. Syngenta seeks to exclude these opinions.

II. Expert Report

Dirk Maier has a B.S., M.S. and Ph.D. in Agricultural Engineering from Michigan State University. There is no dispute that Dr. Maier is an expert in the grain-handling industry with respect to production through export; having taught, lectured, and consulted on issues regarding grain handling and the grain marketing chain. Dr. Maier's expert report contains information and opinions regarding the interconnected nature of the grain marketing chain, a dispersion model showing the presence of MIR 162 in certain states from the years 2011 through 2014, and, based on the wide-spread presence of MIR 162, the opinion that it was found on farms, and in country, terminal and export elevators across the United States.

Dr. Maier's dispersion model is based on the presence of MIR 162 from 2011 through 2014

on a county and state level in Iowa, Minnesota, Nebraska and Ohio. In making his calculations, Dr. Maier did not consider adventitious, or cross-pollination, of MIR 162 and assumed that: (1) every seed was planted in the county in which it was sold; and (2) all corn planted was harvested. Using these assumptions, Dr. Maier determined the estimated number of acres containing Syngenta MIR 162 corn simply by multiplying the number of seed bags containing MIR 162 which were sold[1] in each county by an estimated 80,000 seeds per bag and dividing the result by an estimated 35,000 seeds per acre. Using USDA values to determine the average county yields, Dr. Meier multiplied this figure by the number of estimated acres of Syngenta MIR 162. Dr. Meier used this figure as an estimate for the amount of Viptera which was harvested in certain counties from 2011 to 2014.[2] Dr. Meier then estimated the percentage of MIR 162 in various corn crops in certain counties between 2011 and 2014; using tables and graphs to illustrate his findings.

Given the levels of Syngenta MIR 162 and based on his knowledge of the grain marketing chain, Dr. Meier opined that MIR 162 was present on farms, and in country, terminal and export elevators across the nation; reaching the entire marketing chain including, including all elevators and exports to China. In providing this opinion, Dr. Meier performed no analysis or investigation of various farms or elevators. Instead, this opinion was based solely on his knowledge of the grain marketing chain and the movement of corn through this chain.

In moving to exclude pages 17 through 30 of Dr. Maier's expert report, along with the associated testimony, Syngenta contends that his opinions regarding the presence of MIR 162 in the corn supply are not relevant or helpful to the jury while his opinion that MIR 162 was present throughout all country, terminal and export elevators is both unreliable and unhelpful.

---

[1] This figure is available from Syngenta records.
[2] Daniel Mensik did not reside in any of these counties.

III. Legal Analysis

To be admissible, expert testimony must be relevant and helpful to the trier of fact. *Goeb v. Tharaldson,* 615 N.W.2d 800, 814 (Minn.2000) (citing *Minn. R. Evid. 402 and 702*). The proponent of expert evidence bears the burden of proving its admissibility. *Id.* Generally, all relevant evidence is admissible. *Minn. R. Evid. 402.* Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Minn. R. Evid. 401.* "Expert testimony is inadmissible if it is irrelevant." *Doe v. Archdiocese of St. Paul and Minneapolis*, 817 N.W.2d 150, 164 (Minn. 2012). Even if relevant, evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Minn. R. Evid. 403.*

Expert testimony must also satisfy the requirements of Rule 702 of the Minnesota Rules of Evidence. Under a Rule 702 analysis, expert testimony is admissible if: "(1) the witness is qualified as an expert; (2) the expert's opinion has foundational reliability; (3) the expert testimony is helpful to the jury; and (4) if the testimony involves a novel scientific theory, it must satisfy the *Frye-Mack* standard[3]." *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). Expert testimony "is not helpful if the expert opinion 'is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury's ability to reach conclusions.' " *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011) (quoting *State v. Helterbridle,* 301 N.W.2d 545, 547 (Minn.1980)). To determine if there is foundational reliability, the court

[3] Dr. Meier's dispersion model is based on estimates and simple calculations while his opinion regarding the presence of MIR 162 in all elevators throughout the country is based on his expertise regarding the grain marketing chain. Therefore, Dr. Maier's opinions do not warrant a *Frye-Mack* analysis.

must "(1) analyze the proffered testimony in light of the purpose for which it is being offered, (2) consider the underlying reliability, consistency, and accuracy of the subject about which the expert is testifying, and (3) determine if the proffered evidence is reliable." *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 638 (Minn. Ct. App. 2014) (citing *Doe* at 167–68).

From sources other than Dr. Meier, the jury will have information: (1) regarding the number of bags of Viptera seed which were sold between 2011 and 2014; (2) that Viptera was widely commercialized beginning in 2011; and (3) that MIR 162 was in the corn shipments sent to, and rejected by, China. Given this other information, which is readily available to the jury, Dr. Meier's dispersion model is marginally relevant, not helpful to the jury, and cumulative. Therefore, this model, and the opinions based thereon, shall be excluded. Dr. Maier's opinion that the widespread use of Viptera caused the MIR 162 trait to be present in every country, terminal and export elevator across the nation was not based on any analysis or review of the different elevators and is unreliable. Additionally, any opinion that the MIR 162 trait was present on a widespread basis throughout the grain marketing chain is not disputed. Therefore, this opinion is cumulative and not helpful to the jury.

IV. Conclusion

Dr. Maier's opinions regarding the dispersion of MIR 162 in a few states and its presence in the grain marketing chain from 2011 through 2014 is marginally relevant at best; lacks foundational reliability, is cumulative, and is unhelpful to the jury's decision in this case. For these reasons, Syngenta's motion to exclude pages 17-30 of Dr. Maier's report, and the related testimony, is granted.

TMS

EXHIBIT 66

** CONFIDENTIAL **

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other
Hon. Thomas M. Sipkins

This Document Relates to:
Daniel S. Mensik (Orig. Case No. 27-CV-15-16826)
Minnesota Class Action (Orig. Case No. 27-CV-15-12625)

FILE NO. 27-CV-15-3785

ORDER

The above-entitled matter came before the Honorable Thomas M. Sipkins, Judge of District Court, on March 17, 2017, pursuant to Syngenta's motion to exclude the expert report and testimony of Kevin Latner.

Attorneys Lewis A. Remele, Jr., Daniel E. Gustafson, Richard M. Paul III, Francisco Guerra, IV, William R. Sieben, Robert K. Shelquist, Aram V. Desteian, and Rebecca A. Peterson appeared on behalf of Plaintiffs.

Attorneys Patrick F. Philbin, Patrick Haney, Bridget K. O'Connor, Steven L. Schleicher, and D. Scott Aberson appeared on behalf of Syngenta.

Based on all the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Syngenta's motion to exclude the export report and testimony of Kevin Latner is granted in part and denied in part.

2. Paragraphs 23, 26, 49-56, 137-139, 293-295, 300, 332, 480, 493-496, 512, and 560 of his expert report are excluded together with everything but the first sentence of paragraph 42 and the last sentence of paragraph 343 . The admissibility of paragraphs 26, 512 and 560 may be revisited if there is a punitive damages phase. Syngenta's motion is otherwise denied.

3. The attached Memorandum of Law is incorporated herein.

BY THE COURT:

Dated: April 10, 2017

Thomas M. Sipkins
Judge of District Court

** CONFIDENTIAL **

MEMORANDUM OF LAW

I. Introduction

After receiving approval from U.S. regulatory agencies, Syngenta broadly commercialized MIR 162, "Viptera," a genetically modified seed, prior to receiving regulatory approval from China. In November 2013, China began to enforce its "zero tolerance" policy regarding corn containing Viptera; and it rejected all shipments of US corn. Syngenta later commercialized Event 5307, "Duracade" prior to approval from China. Plaintiffs are corn farmers alleging that Syngenta's widespread release of Viptera, along with the release of Duracade, was premature, that Syngenta knew that its decision could cause a trade disruption; that such rejection caused corn prices to drop in the United States; and that plaintiffs were harmed by that market effect.

Plaintiffs retained Kevin Latner as an expert to provide opinions regarding China's regulatory approval system, whether it was functioning, and to determine whether Syngenta fully and transparently weighed the risks to its stakeholders of commercializing Viptera, and Duracade, prior to Chinese regulatory approval. Syngenta seeks to exclude portions of Mr. Latner's opinons.

II. Expert Report

Kevin Latner has a joint degree in law and agricultural economics from the University of California, Davis; focusing on international trade and policy. Mr. Latner has worked as a delegate for the United States Department of Agriculture ("USDA") to the World Trade Organization; in that capacity he has negotiated trade agreements on behalf of the USDA, and he has provided trade policy support and market analysis of grains and biotechnology. Since leaving the USDA, he has met on a regular basis with Chinese regulators to discuss China's agricultural policies, and he has provided market access support for a variety of clients.

Mr. Latner provided the opinions that: (1) China had a functioning regulatory system at the time Syngenta commercialized the genetic traits at issue in this litigation; (2) Chinese regulators are

clear about the application requirements and convene an independent panel of scientists to review applications and assess the risks of new technologies; (3) the process for seeking approval for biotechnology products in China is predictable, involving three stages for application approval; (4) the average timeline for approval of a genetically modified organism ("GMO") in China is approximately 28 months; (5) Syngenta has discussed the three-stage approval process and that the average time for approval of a GMO was approximately 28 months or longer; (6) China's review and analysis of Syngenta's Viptera application is further evidence of a functioning regulatory system; (7) Syngenta repeatedly made public representations as to the time for Chinese approval of MIR 162 that are inconsistent with the normal approval timelines for such products; (8) if Syngenta truly believed that China was not a predictable or functioning regulatory system, then any representation regarding an anticipated time for approval of new GMO would be unreasonable; (9) based on the application process followed by Syngenta, its public representations regarding China's expected import approval of MIR 162 were unreasonable; (10) Syngenta failed to perform a rigorous risk assessment that weighed the benefits of introducing Viptera and Duracade prior to Chinese approval; (11) by commercializing Viptera and Duracade prior to Chinese approval, Syngenta "knowingly and consciously disregarded" the interests of its stakeholders and the risks to these stakeholders from such commercialization and its failure to transparently disclose these risks.

Syngenta seeks to exclude portions of the report and testimony of Kevin Latner. Specifically, Syngenta seeks to exclude paragraphs 22-23, 25-26, 42, 47, 79-145, 226, 236, 242, 247-255, 272-273, 276-279, 282-284, 293-295, 298-301, 305, 308-310, 312, 323-324, 326-332, 337-338, 343-344, 349, 356, 358-366, 370-371, 375-379, 387-450, 470-480, 482-501, 508, and 512-560 of Mr. Latner's report and accompanying testimony. While conceding that Mr. Latner is qualified to testify regarding China's regulatory system, Syngenta contends that Mr. Latner has

insufficient qualifications to opine on issues concerning the BIO policy, Syngenta's internal approval processes, Syngenta's knowledge of certain events, and the views of the grain trade concerning MIR 162. Syngenta also contends that certain opinions expressed by Mr. Latner are irrelevant and not helpful to the jury. The Court agrees in part.

III. Legal Analysis

To be admissible, expert testimony must be relevant and helpful to the trier of fact. *Goeb v. Tharaldson,* 615 N.W.2d 800, 814 (Minn.2000) (citing *Minn. R. Evid. 402 and 702*). The proponent of expert evidence bears the burden of proving its admissibility. *Id.* Generally, all relevant evidence is admissible. *Minn. R. Evid. 402.* Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Minn. R. Evid. 401.* "Expert testimony is inadmissible if it is irrelevant." *Doe v. Archdiocese of St. Paul and Minneapolis*, 817 N.W.2d 150, 164 (Minn. 2012). Even if relevant, evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Minn. R. Evid. 403.*

Expert testimony must also satisfy the requirements of Rule 702 of the Minnesota Rules of Evidence. Under a Rule 702 analysis, expert testimony is admissible if: "(1) the witness is qualified as an expert; (2) the expert's opinion has foundational reliability; (3) the expert testimony is helpful to the jury; and (4) if the testimony involves a novel scientific theory, it must satisfy the *Frye-Mack* standard." *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). The Court considers Mr. Latner's opinions under Minn. R. Evid. 702; not by the *Frye-Mack* standard.

To be qualified, an expert must have "both sufficient scientific knowledge and practical experience with respect to [the] subject matter of the offered testimony." *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 726 (Minn. 2005). Theoretical expertise is not sufficient to establish the competency of an expert witness. *Fiedler v. Spoelhof*, 483 N.W.2d 486, 489 (Minn. Ct. App. 1992), *rev. denied* (Minn. Jun. 10, 1992) (citing *Lundgren v. Eustermann,* 370 N.W.2d 877, 880 (Minn. 1985)). "There must also be some practical knowledge or experience." *Lundgren v. Eustermann*, 370 N.W.2d 877, 880 (Minn. 1985). Expert testimony "is not helpful if the expert opinion 'is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury's ability to reach conclusions.' " *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011)(quoting *State v. Helterbridle,* 301 N.W.2d 545, 547 (Minn.1980)). Determinations regarding the weight and credibility to be given to a particular witness are decided by a finder-of-fact and not by the court. *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 639 (Minn. Ct. App. 2014).

Kevin Latner has experience with China's regulatory approval process and Chinese regulators and has experience working with the BIO policy. Therefore, Mr. Latner is qualified to provide the majority of the opinions contained in his report. Mr. Latner will be subject to cross-examination and the jury will determine the credibility and weight to be given his testimony. Mr. Latner's expert report, however, contains certain statements which should be excluded as irrelevant, not helpful to the jury, or only relevant to the issue of punitive damages, if this case gets to that bifurcated stage. After a thorough review of Mr. Latner's report, paragraphs 23, 26, 49-56, 137-139, 293-295, 300, 332, , 480, 493-496, 512, and 560 of his expert report are excluded together with everything but the first sentence of paragraph 42 and the last sentence of paragraph 343. Portions of 512 and 560 may be revisited if there is a punitive damages phase. References to

"prematurely" as "factual" statements in various paragraphs of the report are also stricken. This does not preclude Latner's ultimate opinion that Syngenta prematurely commercialized the Viptera and Duracade seeds.

IV. Conclusion

Syngenta's motion to exclude the testimony of Kevin Latner is granted in part and denied in part. Kevin Latner is sufficiently qualified to provide the opinions contained in his report. The jury will decide the credibility and weight to be given to his testimony. Paragraphs 23, 26, everything but the first sentence of 42, 49-56, 137-139, 293-295, 300, 332, the last sentence of 343, 480, 493-496, 512, and 560 of his expert report are excluded as irrelevant, or not helpful to the jury. Paragraphs 26, 512 and 560 may be revisited if there is a punitive damages phase.

TMS

EXHIBIT 67

** CONFIDENTIAL **

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other
Hon. Thomas M. Sipkins

This Document Relates to:
Daniel S. Mensik (Orig. Case No. 27-CV-15-16826)
Minnesota Class Action (Orig. Case No. 27-CV-15-12625)

FILE NO. 27-CV-15-3785

ORDER

The above-entitled matter came before the Honorable Thomas M. Sipkins, Judge of District Court, on March 17, 2017, pursuant to Plaintiffs' motion to exclude the expert report and testimony of Philip A. Shull.

Attorneys Lewis A. Remele, Jr., Daniel E. Gustafson, Richard M. Paul III, Francisco Guerra, IV, William R. Sieben, Robert K. Shelquist, Aram V. Desteian, and Rebecca A. Peterson appeared on behalf of Plaintiffs.

Attorneys Patrick F. Philbin, Patrick Haney, Bridget K. O'Connor, Steven L. Schleicher, and D. Scott Aberson appeared on behalf of Syngenta.

Based on all the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Plaintiffs' motion to exclude the export report and testimony of Philip A. Shull is granted in part and denied in part.

2. Paragraph 10(7) in the Summary of Opinions, together with paragraphs 42, 58, 76, 136 – 142, and 175-179 in the expert report of Philip A. Shull are excluded. Plaintiffs' motion is denied in all other respects.

3. The attached Memorandum of Law is incorporated herein.

BY THE COURT:

Dated: April 10, 2017

Thomas M. Sipkins
Judge of District Court

** CONFIDENTIAL **

MEMORANDUM OF LAW

I. Introduction

After receiving approval from U.S. regulatory agencies, Syngenta broadly commercialized MIR 162, "Viptera," a genetically modified seed, prior to receiving regulatory approval from China. In November 2013, China began to enforce its "zero tolerance" policy regarding corn containing Viptera; and it rejected all shipments of US corn. Plaintiffs are corn farmers alleging that Syngenta's widespread release of Viptera was premature; that Syngenta knew that its decision could cause a trade disruption; that such rejection caused corn prices to drop in the United States; and that plaintiffs were harmed by that market effect.

Syngenta retained Philip A. Shull as an expert to analyze China's biotechnology regulatory system and determine whether: (1) China had a functioning regulatory system; and (2) China was a key importer of the corn when Syngenta commercialized Viptera. Mr. Shull was also asked to provide opinions regarding China's food security policy, its impact on China's trade policy, and whether this policy would lead China to become a consistent and reliable importer of corn. Plaintiffs have made a motion to exclude the expert report and testimony of Mr. Shull

II. Expert Report

Mr. Shull received an undergraduate degree in political science with an emphasis on foreign policy and international relations from Miami University. He also earned a masters' degree at the Food Research Institute at Stanford where he studied agricultural sustainability and food security in developing countries. Mr. Shull served as an official in the US Department of Agriculture ("USDA") for over 30 years. He had multiple USDA assignments both here and abroad during his long tenure in public service. In China, Mr. Shull worked as the Director of the Agricultural Trade office for the US Embassy in Beijing from 1987 to 1988; the Director of the Agricultural Trade Office for the US Consulate in Guangzhou from 1988 through 1992; the Director of the Regional

Agricultural Trade Office at the US Consulate in Hong Kong from 2006 to 2010; and the Minister Counselor for Agriculture at the US Embassy in Beijing from 2014 through 2016.

In his expert report, Mr. Shull opines that: (1) China did not have a functioning regulatory system at the time Syngenta commercialized Viptera; (2) China's food security policy impacts China's demand for US corn; (3) the 2012 political transition in China had a serious impact on the approval process for biotechnology traits; (4) Syngenta's application of the process of requiring cultivation approval of MIR 162 in China was not unique; (5) China was not a "key market" for US corn imports in the years leading up to 2010 when Syngenta commercialized Viptera, or in 2011 when Viptera was sold to farmers for planting; (6) the circumstances under which China rejected the corn shipments in November 2013 suggest that the rejection was pre-textual rather than based on scientific concerns; and (7) China should not be given control over advances in US corn seed technology; or, in other words, a veto on the commercialization of GMO corn seeds by its asynchronous approval process.

Plaintiffs' contend that Mr. Shull, lacking a science or economics degree, is not qualified to make opinions regarding either China's regulatory system or the BIO policy. The Court disagrees. Plaintiffs also contend that many of Mr. Shull's opinions are irrelevant, prejudicial, and not helpful to a jury. The Court agrees in part, and disagrees in part.

III. Legal Analysis

The Court considers this analysis under Minn R. Evid. 402 and 702; not as a *Frye-Mack* matter. To be admissible, expert testimony must be relevant and helpful to the trier of fact. *Goeb v. Tharaldson,* 615 N.W.2d 800, 814 (Minn.2000) (citing *Minn. R. Evid. 402 and 702*). The proponent of expert evidence bears the burden of proving its admissibility. *Id.* Generally, all relevant evidence is admissible. *Minn. R. Evid. 402.* Evidence is relevant if it has "any tendency

to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Minn. R. Evid. 401.* "Expert testimony is inadmissible if it is irrelevant." *Doe v. Archdiocese of St. Paul and Minneapolis*, 817 N.W.2d 150, 164 (Minn. 2012). Even if relevant, evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Minn. R. Evid. 403.*

Expert testimony must also satisfy the requirements of Rule 702 of the Minnesota Rules of Evidence. Under a Rule 702 analysis, expert testimony is admissible if: "(1) the witness is qualified as an expert; (2) the expert's opinion has foundational reliability; (3) the expert testimony is helpful to the jury; and (4) if the testimony involves a novel scientific theory, it must satisfy the *Frye-Mack* standard." *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). This is not an opinion involving *Frye-Mack.*

To be qualified, an expert must have "both sufficient scientific knowledge and practical experience with respect to [the] subject matter of the offered testimony." *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 726 (Minn. 2005). Theoretical expertise is not sufficient to establish the competency of an expert witness. *Fiedler v. Spoelhof*, 483 N.W.2d 486, 489 (Minn. Ct. App. 1992), *rev. denied* (Minn. Jun. 10, 1992) (citing *Lundgren v. Eustermann,* 370 N.W.2d 877, 880 (Minn. 1985)). "There must also be some practical knowledge or experience." *Lundgren v. Eustermann*, 370 N.W.2d 877, 880 (Minn. 1985).

Expert testimony "is not helpful if the expert opinion 'is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury's ability to reach conclusions.' " *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011) (quoting

State v. Helterbridle, 301 N.W.2d 545, 547 (Minn.1980)). Determinations regarding the weight and credibility to be given to a particular witness are decided by a finder-of-fact and not by the court. *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 639 (Minn. Ct. App. 2014).

Although Mr. Shull has substantial experience interacting with Chinese regulators and the Chinese regulatory system as a high-ranking official with the USDA, some of it pre-dated and some post-dated the events in this case. Nevertheless, he is clearly qualified to provide the majority of the opinions given in his report. Any questions regarding his education or experience may be raised in cross-examination. The jury will determine the credibility and weight to be given to Mr. Shull's opinions.

Although qualified to testify, Mr. Shull's opinion that China should not control advances in US corn seed technology, or have a "veto" on the timing of the release of GMOs approved for release by US regulatory agencies, is prejudicial and not relevant. Therefore, paragraph 10(7), along with paragraphs 175-179 are excluded. Additionally, Mr. Shull provides several examples of China using technical barriers to restrict imports other than corn. These examples are irrelevant and unhelpful. Therefore, paragraphs 76 and 136 through 141 are excluded. Finally, Mr. Shull provided examples concerning the application of China's regulatory policy that occurred well after China's acceptance of Viptera in 2014 or do not involve corn. These examples are irrelevant and unhelpful and paragraphs 42, 58, and 142 of Mr. Shull's expert report are also excluded by Minn. R. Evid. 702.

IV. Conclusion

Philip Shull's is qualified to provide the opinions contained in his report. Opinions that China should not be given control over advances in US corn seed technology shall be excluded as both prejudicial and irrelevant. Additionally, opinions regarding events occurring well after

China's acceptance of Viptera or involving products other than corn are irrelevant. Therefore, paragraphs 10(7), 42, 58, 76, 136-142, and 175-179 of Mr. Shull's report are excluded. Plaintiffs' motion to exclude the testimony of Philip Shull is otherwise denied.

TMS

EXHIBIT 68

** CONFIDENTIAL **

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other
Hon. Thomas M. Sipkins

This Document Relates to:
Daniel S. Mensik (Orig. Case No. 27-CV-15-16826)
Minnesota Class Action (Orig. Case No. 27-CV-15-12625)

FILE NO. 27-CV-15-3785

ORDER

The above-entitled matter came before the Honorable Thomas M. Sipkins, Judge of District Court, on March 17, 2017, pursuant to Plaintiffs' motion to exclude the expert report and testimony of Alan McHughen.

Attorneys Lewis A. Remele, Jr., Daniel E. Gustafson, Richard M. Paul III, Francisco Guerra, IV, William R. Sieben, Robert K. Shelquist, Aram V. Desteian, and Rebecca A. Peterson appeared on behalf of Plaintiffs.

Attorneys Patrick F. Philbin, Patrick Haney, Bridget K. O'Connor, Steven L. Schleicher, and D. Scott Aberson appeared on behalf of Syngenta.

Based on all the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Plaintiffs' motion to exclude the export report and testimony of Dr. Alan McHughen is granted in part and denied in part.

2. The last four sentences of paragraph 18, the parenthetical statement found in paragraph 20, all but the last two sentences of paragraph 22, and the last sentence of paragraph 29 of Dr. McHughen's report are excluded along with paragraphs 23, 25, 27, 28, 99, 124, 129, 134-136 and 140-143.

3. The attached Memorandum of Law is incorporated herein.

BY THE COURT:

Dated: April 11, 2017

Thomas M. Sipkins
Judge of District Court

** CONFIDENTIAL **

MEMORANDUM OF LAW

I. Introduction

After receiving approval from U.S. regulatory agencies, Syngenta broadly commercialized MIR 162, "Viptera," a genetically modified seed, prior to receiving regulatory approval from China. In November 2013, China began to enforce its "zero tolerance" policy regarding corn containing Viptera; and it rejected all shipments of US corn. Plaintiffs are corn farmers alleging that Syngenta's widespread release of Viptera was premature; that Syngenta knew that its decision could cause a trade disruption; that such rejection caused corn prices to drop in the United States; and that plaintiffs were harmed by that market effect.

Syngenta retained Alan McHughen to explain and offer opinions related to the US regulatory system for biotechnology, China's "zero tolerance" policy and the benefits of Viptera. Dr. McHughen was also asked to review and comment on the export reports of Dr. Joseph Keaschall and Dr. Dirk Maier. Plaintiffs have made a motion to exclude the expert report and testimony of Dr. McHughen.

II. Expert Report

Alan McHughen is a geneticist with a bachelor's degree in biology and biochemistry from Dalhousie University in Halifax Canada, and a Ph.D. in developmental botany from Oxford University. Dr. McHughen is currently working as a biotechnology specialist and geneticist at the University of California, Riverside. As a molecular geneticist with an interest in biosafety, crop improvement and environmental sustainability, Dr. McHughen helped develop regulations governing the safety testing and release of genetically engineered crops for the United States. Dr. McHughen has also served on US National Academy of Sciences panels investigating the environmental effects of transgenic plants and the safety of genetically modified foods.

In his report, Dr. McHughen describes genetic modification of crops, the safety of

genetically modified crops, the process for getting regulatory approval in the United States and specifically Syngenta's petition for MIR 162 approval; and the benefits of MIR 162. Plaintiffs seek to exclude the report and testimony of Dr. McHughen. Plaintiffs contend that Dr. McHughen is not qualified to testify regarding the Chinese regulatory system or other economic and social matters. Plaintiffs also contend that Dr. McHughen's testimony regarding the benefits of genetically modified foods other than MIR 162 lacks relevance. Finally, Plaintiffs contend that Dr. McHughen's report contains misleading, irrelevant or unsupported statements regarding the United States Department of Agriculture-Animal and Plant Inspection Service ("USDA-APHIS").

III. Legal Analysis

To be admissible, expert testimony must be relevant and helpful to the trier of fact. *Goeb v. Tharaldson,* 615 N.W.2d 800, 814 (Minn.2000) (citing *Minn. R. Evid. 402 and 702*). The proponent of expert evidence bears the burden of proving its admissibility. *Id.* Generally, all relevant evidence is admissible. *Minn. R. Evid. 402.* Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Minn. R. Evid. 401.* "Expert testimony is inadmissible if it is irrelevant." *Doe v. Archdiocese of St. Paul and Minneapolis*, 817 N.W.2d 150, 164 (Minn. 2012). Even if relevant, evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Minn. R. Evid. 403.*

Expert testimony must also satisfy the requirements of Rule 702 of the Minnesota Rules of Evidence. Under a Rule 702 analysis, expert testimony is admissible if: "(1) the witness is qualified as an expert; (2) the expert's opinion has foundational reliability; (3) the expert

testimony is helpful to the jury; and (4) if the testimony involves a novel scientific theory, it must satisfy the *Frye-Mack* standard." *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). The Court considers Mr. Latner's opinions under Minn. R. Evid. 702; not by the *Frye-Mack* standard.

To be qualified, an expert must have "both sufficient scientific knowledge and practical experience with respect to [the] subject matter of the offered testimony." *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 726 (Minn. 2005). Theoretical expertise is not sufficient to establish the competency of an expert witness. *Fiedler v. Spoelhof*, 483 N.W.2d 486, 489 (Minn. Ct. App. 1992), *rev. denied* (Minn. Jun. 10, 1992) (citing *Lundgren v. Eustermann,* 370 N.W.2d 877, 880 (Minn. 1985)). "There must also be some practical knowledge or experience." *Lundgren v. Eustermann*, 370 N.W.2d 877, 880 (Minn. 1985).

An analysis of foundational reliability "requires the court to: (1) analyze the proffered testimony in light of the purpose for which it is being offered, (2) consider the underlying reliability, consistency, and accuracy of the subject about which the expert is testifying, and (3) determine if the proffered evidence is reliable." *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 638 (Minn. Ct. App. 2014) (citing *Doe* at 167–68). Expert testimony "is not helpful if the expert opinion 'is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury's ability to reach conclusions.'" *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011) (quoting *State v. Helterbridle,* 301 N.W.2d 545, 547 (Minn.1980)). Determinations regarding the weight and credibility to be given to a particular witness are decided by a finder-of-fact and not by the court. *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 639 (Minn. Ct. App. 2014).

As a geneticist, Dr. McHughen is qualified to provide testimony regarding the process of creating a genetically modified organism, including the history of genetic modification and the

process of getting a genetically modified trait approved in the United States. Dr. McHughen, however, has no prior experience dealing with China's regulatory process. Additionally, Dr. McHughen is not qualified to testify about economic matters or the social costs involved in delaying commercialization of a genetically modified trait. Plaintiff also argues that certain portions of Dr. McHughen's report are lacking in foundation, irrelevant, or unhelpful to the jury. The Court agrees in part.

Following an extensive review of Dr. McHughen's report, and given Dr. McHughen's specific qualifications, the Court is excluding those portions of paragraphs 18, 20, 22, and 29 which contain references to China's regulatory systems or social costs, along with paragraphs 23, 27, and 28. Based on the lack of foundational reliability, relevance or helpfulness to the jury, the Court is excluding paragraphs 25, 99, 124, 129 and 134 of Dr. McHughen's report. Finally, given the partial exclusion of Dr. Maier's expert testimony, and the limitations placed on Dr. Keaschall's opinions, the Court is excluding paragraphs 135-136 and 140-143 of Dr. McHughen's expert report and testimony as irrelevant.

IV. Conclusion

Plaintiffs' motion to exclude the expert testimony of Dr. Alan McHughen is granted in part and denied in part. Given Dr. McHughen's qualifications and/or a lack of foundational reliability, relevance or helpfulness to the jury, the Court is excluding the last four sentences of paragraph 18, the parenthetical statement found in paragraph 20, all but the last two sentences of paragraph 22, the last sentence of paragraph 29 plus paragraphs 23, 25, 27, 28, 99, 124, 129, 134-136 and 140-143 in their entirety. In all other respects, Plaintiffs' motion is denied.

TMS

EXHIBIT 69

27-CV-15-3785
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other
Hon. Thomas M. Sipkins

This Document Relates to: ALL ACTIONS

FILE NO. 27-CV-15-3785

ORDER

**** CONFIDENTIAL – FILED UNDER SEAL ****

The above-entitled matter came on for hearing before the Honorable Thomas M. Sipkins, Judge of District Court, on September 16, 2016, pursuant to Plaintiffs' motion for class certification of a Minnesota producer (farmer) class.

Attorneys Daniel E. Gustafson, William R. Sieben, Amanda M. Williams, and Karla M. Gluek appeared on behalf of Plaintiffs.

Attorneys Patrick F. Philbin, Patrick Haney, Edwin J. U, and Michael D. Jones appeared on behalf of Syngenta.

Attorney Michael K. Johnson appeared on behalf of four putative class members.

Based on all the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Plaintiffs' motion for class certification is granted. The Court certifies the following class:

> All Minnesota producers that priced corn after September 2013. Excluded from the class are any corn producers that purchased or planted corn containing the MIR 162 trait (including Duracade); the Court, and its employees; Syngenta, and its parents, subsidiaries, affiliates, employees and directors during the relevant time period. A "producer" is a person or entity listed as a producer on an FSA-578 form filed with the United States Department of Agriculture.

27-CV-15-13285
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

2. Leroy Edlund, Roger Ward, Grant Annexstad, and Nathan Thompson are designated as class representatives.

3. Daniel E. Gustafson and William R. Sieben were previously appointed as Co-Lead Class Counsel on an interim basis, and will continue in their leadership roles as Co-Lead Class Counsel.

4. On or before November 18, 2016, Co-Lead Class Counsel shall submit a proposed class notice to the Court for approval along with a proposed plan for providing notice to class members.

5. The accompanying Memorandum of Law is incorporated herein.

BY THE COURT:

Dated: 11-3-2016

Thomas M. Sipkins
Judge of District Court

27-CV-15-13285
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

MEMORANDUM OF LAW

I. Factual and Procedural History[1]

Defendant Syngenta Seeds Inc. (n/k/a Syngenta Seeds LLC) ("Syngenta")[2] is a subsidiary of Syngenta Corporation with its principal place of business in Minnetonka, Minnesota. Syngenta develops, produces, and sells corn seed. In the years before 2007, Syngenta developed a new genetically modified ("GM") corn trait called MIR 162 designed to control above-ground corn pests. Syngenta commercialized corn seed with the MIR 162 trait under the brand name Agrisure Viptera ("Viptera") and later Agrisure Duracade ("Duracade") which added Event 5307.

On August 31, 2007, Syngenta applied to the United States Department of Agriculture ("USDA") to obtain approval for the sale of products containing MIR 162. The USDA deregulated MIR 162 in April 2010, which allowed Syngenta to sell Viptera to U.S. farmers. Syngenta applied for import approval of Viptera from China in March 2010. While Syngenta's application was pending, Viptera entered the U.S. corn supply and shipments were sent to China. Beginning in November 2013, China rejected shipments of corn that tested positive for the presence of MIR 162. China eventually approved the import of Viptera in December 2014. In 2014, Syngenta applied to China for import approval of Duracade. To date, China has not approved Duracade for import.

Farmers throughout the United States claim that Syngenta was negligent in its commercialization of Viptera and Duracade. They allege that in its USDA petition and other communications, Syngenta falsely represented: (1) that there should be no effects on the U.S.

---

[1] The recitation of factual findings is record evidence material to the Court's rigorous analysis of the class certification requirements but not conclusive findings of fact at this pretrial stage.

[2] There are six Syngenta-related companies identified as Defendants in this Litigation. Syngenta Seeds Inc. is the only Defendant named in the Second Amended Class Action Complaint.

27-CV-15-13285
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

maize export market; (2) regulatory filings were in process for China; and (3) it would enter into stewardship agreements with farmers that would require channeling MIR 162 away from markets where it was not yet approved for import. Plaintiffs allege Syngenta knew China was a key export country but misled Plaintiffs by misrepresenting and omitting facts about the importance of China and the timing of Viptera import approval in China.

According to the farmers, China's rejection of U.S. corn caused corn prices to drop in the United States. Producers use several different types of pricing contracts when selling corn, including: spot sales, hedge-to-arrive, basis contracts, forward contracts, average price contracts, participation in a cooperative, options to hedge risk, and consignment sale. Some farmers use more than one pricing mechanism to sell different portions of the same crop. Regardless of the type of pricing, producers assert they were harmed by lower prices for corn caused by the Chinese rejection of corn contaminated with MIR 162.

Thousands of producers, as well as grain handlers and exporters, filed lawsuits based on these allegations surrounding Syngenta's commercialization of Viptera and Duracade in various federal and state courts. The majority of individual producer claims are filed in this action and number approximately 50,000. Approximately 800 federal cases are pending in a multidistrict litigation proceeding in the United States District Court for the District of Kansas, captioned *In re Syngenta AG MIR162 Corn Litigation*, MDL Docket No. 2591, before U.S. District Judge John W. Lungstrum ("Federal MDL"). Three additional federal actions, involving more than 2,800 plaintiffs, are filed in the United States District Court for the Southern District of Illinois before U.S. District Judge David R. Herndon and about 200 cases are pending in the Illinois First Judicial Circuit Court before Judge Brad K. Bleyer. In addition, Cargill and Archer Daniels Midland have initiated related lawsuits against Syngenta in state courts in Louisiana.

27-CV-15-13285
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

Lead Counsel in the Federal MDL and Lead Counsel in this litigation entered into an Amended and Restated Joint Prosecution Agreement dated June 18, 2015 ("JPA"). The JPA states, *inter alia*, that individual producers whose counsel executed the JPA will be excluded from any class proposed by plaintiffs in the Federal MDL and the individual producers agreed not to oppose class certification. Lead Counsel in this action executed and circulated a Minnesota Participation Agreement ("MPA"). The MPA provides that individual producers represented by counsel that execute the MPA will be excluded from any class proposed by Plaintiffs and such producers agree not to contest class certification. Counsel that sign the MPA must provide Lead Counsel a list of the applicable cases and a declaration stating, "We possess records identifying the names of such producers so that they can be excluded from any class in the above-captioned multidistrict litigation based on objective criteria."

Currently before the Court is a motion for class certification. In the Second Amended Minnesota Class Action Master Complaint for Producers ("SAC"), putative class action Plaintiffs ("Plaintiffs") assert claims for negligence, violation of the Minnesota Unfair Trade Practices Act ("MUPTA"), and strict liability duty to warn. Plaintiffs seek certification of a class of all Minnesota producers that priced corn after September 2013, excluding corn producers that purchased or planted Viptera or Duracade. The current motion is brought by four named class representatives, Leroy Edlund, Roger Ward, Grant Annexstad, and Nathan Thompson, on behalf of a class of all Minnesota producers. The USDA's 2012 Census of Agriculture indicates there are over 30,000 corn farms in Minnesota. From 2011 through 2013, Syngenta corn comprised between 2-3% of the total corn acreage in Minnesota. Of this amount, there were very few Minnesota farmers that purchased Syngenta products containing MIR 162. Class counsel have

27-CV-15-13285
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

submitted a list indicating approximately 9,081 Minnesota producers that will be excluded from the class pursuant to the MPA procedure for submitting a list and declaration.

In support of their motion, Plaintiffs retained two agricultural economists to study, measure, and explain the common impact of Syngenta's conduct on U.S. corn prices and determine a method to calculate class-wide damages. Dr. Bruce A. Babcock ("Babcock") is a Professor of Economics at Iowa State University's Biobased Industry Center who has studied commodity markets, particularly the corn market, for more than 25 years. Dr. Colin A. Carter ("Carter") is a Distinguished Professor of Agricultural and Resource Economics at the University of California, Davis who has studied commodity markets for 36 years.

Syngenta opposes certification of a class. In support of its opposition, Syngenta submitted the expert reports of Walter Thurman ("Thurman"), Charles Finch ("Finch"), and Daniel Fischel ("Fischel"). Syngenta did not challenge Drs. Carter and Babcock under Rule 702 of the Minnesota Rules of Evidence or the two-prong *Frye-Mack* test used in Minnesota state courts. Syngenta did not contest the experts' qualifications or methodology.

According to Dr. Carter, corn is an integrated market where demand and supply curves are relatively inelastic, meaning a relatively small shift in the demand or supply will result in a comparatively large change in price. Dr. Carter notes that when a foreign market closes, "The drop in price is relatively large even if the shrinkage in exports is a small share of production, because the price must fall to clear a market in which both supply and demand are inelastic." With respect to supply and demand, Dr. Babcock states, "[b]ut for the presence of MIR 162 in the U.S. corn supply, China would have imported far more U.S. corn than they did. Hence demand for U.S corn would have been higher and … a higher demand from China would have resulted in a higher price of corn to U.S. growers." Syngenta's expert, Thurman, however,

27-CV-15-13285
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

claims that China's actions did not change the overall export demand for U.S. corn and that other outlets absorbed the reduction in China exports. Fischel opines that despite the issues with MIR 162, U.S. exports to China would have declined due to other market factors.

According to Dr. Babcock, "Fundamental economic forces determine U.S. corn prices." The price for corn is equal to the Chicago Board of Trade ("CBOT") futures price plus a "basis," which is controlled by local supply and demand and shipping costs. Dr. Carter states that the CBOT futures market "is spatially integrated and informationally efficient, which means that prices tend to react quickly and rationally to changes in supply and demand information." Therefore, Dr. Carter opines that "Events like trade disruptions affect Chicago and export prices, and in turn the price that U.S. corn farmers receive for their corn."

Finch agrees that the price of corn is the CBOT futures price plus a "basis." Syngenta's experts, however, dispute aspects of the two components. Thurman states that, "local circumstances are important in determining local corn prices," and "local markets reflect distinct supply and demand signals resulting in prices that, in some locations, are only minimally affected, if at all, by events in specific sectors, such as export." Thurman admits that local corn prices and futures prices are correlated over long periods but says the relationship can vary over time and geography. Thurman concludes that because localized market forces can drive price changes, a change in the CBOT price can be reflected in widely varying degrees in local prices.

Dr. Babcock uses a competitive-storage model to calculate the per-bushel decline in corn prices as a result of the loss of Chinese demand. Applying the model, Dr. Babcock creates a demand curve for each use of corn and then determines the magnitude of the shift in corn demand that the ban represents. Dr. Babcock determined the difference between the corn China imported in the 2013-14 marketing year and the amount China expected to import and of the

27-CV-15-13285
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

private tariff-rate quota ("TRQ") set forth in China's agreement with the World Trade Organization. The aggregate amount of damage in each of the marketing years between 2013 and 2023 equals the number of bushels in the class in each year multiplied by the per-bushel price impacts.

To determine the number of bushels in the class, Dr. Babcock used data from the Census of Agriculture to determine the average farm size in acres for Minnesota and the yield per harvested acre in each county. He excluded bushels which were planted by farmers that purchased Viptera or Duracade, corn that was not marketed but was put into storage or fed on the farm, and bushels that were marketed before the price impacts of China's ban on U.S. corn imports showed up in the market. Using these figures, he determined the total Minnesota bushels in the class per year. The "total amount of damage to Minnesota corn producers caused by China's ban on U.S. corn imports is simply the number of bushels in the class multiplied by the per-bushel damages."

Using a regression analysis, Dr. Babcock found that 88% of daily variability in local prices "is explained by changes in futures prices." He concludes that, "a change in the demand for U.S. corn caused by China's ban on corn imports would be felt equally in all corn growing areas, because such a change in demand for U.S. corn would be reflected in futures prices and local corn prices are primarily determined by futures prices." Although the basis may vary based on local factors, a change in the futures price will result in a relatively uniform change in all markets.

Thurman asserts Babcock's analysis is flawed because it is based on a dataset that was constructed haphazardly. He also claims Babcock fails to test the sensitivity of liability results to different time periods and the inclusion of more delivery locations. Thurman performed a series of modifications to Babcock's regression analyses to test the relationship between changes in the

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

CBOT price and changes in the local cash price at delivery points in Minnesota and the MDL states. Thurman's analysis showed varying R-squared values. Based on these results, Thurman concludes that, "alleged changes in the CBOT price result in difference changes (and sometimes no change at all) at different locations at different times for different producers." In addition, he states there is a wide variability in the relationship between changes in the CBOT price and changes in local cash prices within a single state.

Dr. Carter used an event study, which measures the impact of a specific event on the value of a commodity or asset. First, he identified a structural break in September 2013 in the relationship of corn and sorghum, which is a close feed substitute for corn but has a lower yield and no GM varieties. At this point, corn went from commanding a 10% premium over sorghum to an 8% price discount. He opines that the abrupt change in relative prices was a signal that changes were taking place in the global feed grain market and that it is not unusual for a well-functioning informationally efficient market (such as the U.S corn market) to anticipate a forthcoming shock to the market.

Dr. Carter then performed a correlation analysis on ten separate locations to quantify the relationship between corn prices at different locations, relative to an index of futures prices for other commodities. He found that all of the markets have highly correlated prices, meaning that "the demand shock caused by the Chinese *de facto* embargo would have a common impact" on all local prices. Dr. Carter opines that "U.S. corn farmers who priced their corn after August 2013 have received a lower price for their corn than they would have received if China's imports of U.S. corn had not effectively stopped." He calculated the drop in price due to the contamination and determined that damages will continue for five years before dissipating. Dr. Carter calculates aggregate damages for the class using the total bushels marketed in the class.

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

Thurman makes the following criticisms of Carter's analysis: (1) correlation does not imply causation; and (2) the calculation should be between changes in corn prices rather than the prices themselves. Using the same methodology, Thurman re-calculated Carter's correlation analysis to show correlations in the changes in corn prices and found that damages in the CBOT price do not show uniformly high correlation to price changes in other markets.

The Court reviewed the voluminous submissions of the parties, including the expert reports. The Court attended a joint evidentiary hearing in U.S. District Court before Judge Lungstrum in Kansas City. At the hearing, the Court heard testimony from Plaintiffs' experts on cross-examination by Syngenta and re-direct examination by Plaintiffs. Plaintiffs chose not to cross-examine Syngenta's experts at the hearing. The parties also made separate oral arguments before this Court. The Court has reviewed and considered all of this material in its decision on the motion for class certification.

After consideration of substantially the same evidence and argument that is before this Court, the Federal MDL court granted class certification. *In re: Syngenta AG MIR 162 Corn Litig.*, No. 14-MD-2591-JWL, 2016 WL 5371856 (D. Kan. Sept. 26, 2016). In an Order dated September 26, 2016, Judge Lungstrum granted certification to a nationwide class to pursue Lanham Act claims and certification of eight statewide classes (consisting of producers in Arkansas, Illinois, Iowa, Kansas, Missouri, Nebraska, Ohio, and South Dakota) to pursue negligence claims, as well as tortious interference claims in the case of the Arkansas and Missouri classes, and statutory consumer protection claims in the case of the Illinois and Nebraska classes. Producers who filed suit in this action on or before June 15, 2016 and who are represented by attorneys who executed the JPA with the MDL Plaintiff's co-lead counsel are excluded from the class.

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

II. Legal Analysis

Plaintiffs move the Court for class certification under Rule 23 of the Minnesota Rules of Civil Procedure. Minnesota's Rule 23 is nearly identical to Rule 23 of the Federal Rules of Civil Procedure.[3] The Advisory Committee Notes to the Minnesota Rules explain that Federal Rule 23 was adopted in Minnesota "so that consistency between federal decisions and the Minnesota decisions are more likely." Minn. R. Civ. P. Ann. 23 *Advisory Committee Note* (West 1979). Therefore, cases applying Federal Rule 23 provide guidance in applying the parallel Minnesota rules. *See Whitaker v. 3M Co.*, 764 N.W.2d 631, 635 (Minn. Ct. App. 2009).

To certify a class, a class representative must establish the four prerequisites of Minn. R. Civ. P. 23.01 and at least one provision of Rule 23.02 by a preponderance of the evidence. *Id.* at 638; *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1432 (2013). The Court must undertake a rigorous analysis to ensure that the requirements of Rule 23 are satisfied. *Bennett v. Nucor Corp.*, 656 F.3d 802, 814 (8th Cir. 2011). "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule." *Wal-Mart Stores, Inc. v. Dukes,* 564 U.S. 338, 350, 131 S. Ct. 2541, 2551, 180 L. Ed. 2d 374 (2011). "The preliminary inquiry at the class certification stage may require the court to resolve disputes going to the factual setting of the case, and such disputes may overlap the merits of the case." *Blades v. Monsanto Co.*, 400 F.3d 562, 567 (8th Cir. 2005). However, "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage. Merits questions may be considered to the extent – but only to the extent – that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen, Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1194-95 (2013). The Court must

[3] While the text of the two Rules is nearly identical, they are numbered differently. Minn. R. Civ. P. 23.01 corresponds to Fed. R. Civ. P. 23(a) and Minn. R Civ. P. 23.02 corresponds to Fed. R. Civ. P. 23(b). With respect to section II.C *infra*, Minn. R. Civ. P. 23.02(c) correlates with Fed. R. Civ. P. 23(b)(3).

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

address and resolve factual disputes relevant to class-certification requirements, including disputes among expert witnesses. *Whitaker*, 764 N.W.2d at 640. However, any factual findings at the class certification stage are not binding on the ultimate trier of fact. *Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 366 (4th Cir. 2004).

A. Class Definition

Syngenta argues that membership in the class is not sufficiently ascertainable. Most federal circuit courts of appeals have recognized that Rule 23 contains an implicit threshold requirement that that classes be defined clearly and based on objective criteria. *See Mullins v. Direct Digital, LLC*, 795 F. 3d 654, 658 (7th Cir. 2015), cert. denied, 136 S. Ct. 1161 (2016); *Sandusky Wellness Ctr., LLC v. Medtox Sci., Inc.*, 821 F.3d 992, 998 (8th Cir. 2016). Some federal circuit courts use a two-prong ascertainability inquiry, requiring a plaintiff to show: (1) that the class is defined by reference to objective criteria; and (2) that class members may be determined in an economical and administratively feasible manner, such that "class members can be identified without extensive and individualized fact-finding or mini-trials." *See Carrera v. Bayer Corp.*, 727 F.3d 300, 307 (3d Cir. 2013); *see also Brecher v. Republic of Argentina*, 806 F.3d 22, 24 (2d Cir. 2015); *Karhu v. Vital Pharm., Inc.*, 621 F. App'x 945, 947 (11th Cir. 2015). However, the Eighth Circuit, along with the Sixth and Seventh Circuits, have declined to adopt this heightened standard. *Sandusky*, 821 F.3d at 996-98; *Mullins*, 795 F.3d at 658; *Rikos v. Procter & Gamble Co.*, 799 F.3d 97 (6th Cir. 2015). The *Sandusky* court held that ascertainability is not a separate and preliminary requirement. *Sandusky*, 821 F.3d at 998. "Rather, this court adheres to a rigorous analysis of the Rule 23 requirements, which includes that a class 'must be adequately defined and clearly ascertainable.'" *Id.* Pursuant to the governing and persuasive opinions in *Sandusky* and *Mullins*, the Court will not apply a heightened test for ascertainability.

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

Therefore, Plaintiffs must show the class is adequately defined using objective criteria. *See Sandusky*, 821 F.3d at 996-998; *Mullins*, 795 F.3d 654; *Rikos*, 799 F.3d at 660. Where a class definition identifies a particular group, harmed during a particular time frame, in a particular location, in a particular way, it is not overly vague. *Mullins*, 795 F.3d at 660. A class definition is objective when it is defined in terms of conduct rather than a state of mind. *Id.* Finally, a class definition is impermissible where it is a "fail-safe" class, that is, a class that cannot be defined until the case is resolved on its merits. *Id.*

Plaintiffs propose the following class:

> All Minnesota producers that priced corn (or who shared revenue from such corn sales under a crop-share agreement) after September 2013. Excluded from the class are any corn producers that purchased or planted corn containing the MIR 162 trait (including Duracade); the Court, and its employees; and Syngenta, and its parents, subsidiaries, affiliates, employees and directors during the relevant time period.

Plaintiffs' class definition is clearly defined and based on objective criteria. The definition is not impermissibly vague because it identifies a group (producers), harmed during a particular time frame (after September 2013), in a particular location (Minnesota), and in a particular way (priced corn).

Syngenta's argument that Plaintiffs waived any argument on ascertainability by addressing the issue in a footnote in their moving brief is unpersuasive. Where a party bears the burden of establishing a point as part of its affirmative case on a motion, failure to address and develop the issue in a moving brief may amount to waiver. *Freeman v. Gerber Prods. Co.*, 450 F. Supp. 2d 1248, 1259 (D. Kan. 2006). As noted above, the Eighth Circuit has held that ascertainability is not a separate and preliminary requirement for class certification but rather part and parcel of the rigorous analysis of Rule 23. *Sandusky*, 821 F.3d at 998. Plaintiffs thus addressed and developed the issue of ascertainability throughout their moving brief by defining and establishing the criteria for the

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

class as well as its compliance with the requirements of Rule 23. Plaintiffs addressed the issue, Syngenta fully briefed the issue, and Plaintiffs had an opportunity to respond. Plaintiffs did not waive any argument on the issue of ascertainability.

Syngenta argues that the term "priced" is ambiguous due to the various ways producers sell corn. It is reasonable and common to understand the term to refer to the date that the parties to a transaction agreed upon the price of the sale. "Priced" is the term that best captures the relevant date of the alleged harm to Plaintiffs. The date the producers planted, harvested, entered into contracts for the sale, sold, or stored their corn would not uniformly capture the date that the price for the corn was established and agreed upon. Pricing of the corn is the occurrence that Plaintiffs allege caused their injury. The term is an objective criteria to determine whether a Plaintiff was harmed during a particular time frame in a particular way.

The term "priced" also does not necessarily entail cumbersome individual inquiries in light of the various types of contracts and ways to sell corn. While an individual inquiry is necessary to determine if a producer is a member of the class, it is not burdensome. It is a matter of determining whether the potential class member satisfies the objective criteria. Dr. Babcock testified that it is a matter of discovering what type of contract was used and the date on which the contract priced the corn for sale. Syngenta's claim that individual inquiries will be difficult due to poor and incomplete documentation is unavailing. To show membership in the class, a producer will need to establish only one instance where corn was priced after September 2013. The Court is not persuaded that Syngenta has shown that all records of all sales and contracts are difficult to produce. The Court is also not persuaded that the objective criteria of showing the date corn was priced is particularly onerous.

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

Syngenta also argues that the term "producer" is vague and will require individual inquiries. Plaintiffs did not include a separate sentence defining "producer" but included "those who shared revenue from such corn sales under a crop-share agreement." The statutory definition used by the USDA provides:

> *Producer* means an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm, or would have shared had the crop been produced. A producer includes a grower of hybrid seed.

7 C.F.R. § 718.2 (emphasis original). Plaintiffs in the Federal MDL tracked the USDA definition in defining the term for the proposed classes. At the Federal MDL motion hearing, the plaintiffs agreed that their proposed definition turned on the identification of producers on the USDA's Farm Service Agency 578 form ("FSA-578"). Judge Lungstrum modified the definition to reflect use of FSA-578 to identify producers and found the term sufficiently objective and definite. At this Court's hearing on this motion, Plaintiffs indicated they were amenable to a similar modification in the class definition.

Syngenta complains that FSA-578s reflect only what is self-reported to the USDA, contain inaccuracies, and are not required for all producers. Use of a government form, however, provides an objective criteria to identify a particular group – producers. Although the form reflects self-reported information, it is submitted to a government agency which should deter and limit fraudulent reporting and increase reliability. Any inaccuracies or misuse of the form found during discovery in these litigations does not prove that such issues are widespread or invalidate the form entirely. Syngenta's one example where not all farmed acreage was reported on a FSA-578 because the landowner was not participating in USDA programs does not evidence that non-participation is common. Throughout this litigation the FSA-578 has been cited as common proof of farming activity. Furthermore, the form is being used in this instance

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

to show qualification as a producer and not evidence of acreage. Form FSA-578 uses a standard definition of the term "producer" and provides a reasonably reliable and objective method of determining if a class member is a qualifying producer. The Court finds modification of the class to include the definition of a "producer" as a person or entity listed on a FSA-578 will clearly identify a particular group and will change the definition of the class accordingly.

The exclusion of producers that purchased or planted Viptera or Duracade is not an onerous undertaking. Plaintiffs indicate Syngenta produced records to show which farmers purchased Viptera and Duracade, and Plaintiffs' experts used those records in their analyses. Producers will also have evidence to determine if they purchased or planted Viptera or Duracade. Furthermore, the parties indicate this exclusion will apply to a maximum of approximately 2-3% of producers. This is an objective criteria based on conduct used to determine exclusion from the class.

Syngenta argues the definition is defective because it includes producers who suffered no injury. Proof that every class member will be able to recover is not required at the class certification stage. *Kleen Products LLC v. International Paper Co.*, 831 F.3d 919, 927 (7th Cir. 2016). A class is defined too broadly to permit certification if it is "defined so broadly as to include a great number of members who for some reason could not have been harmed by the defendant's allegedly unlawful conduct." *See Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 824 (7th Cir. 2012). A critical distinction in considering if the definition is overly broad is whether it includes class members who *were not* harmed or those that *could not* have been harmed. *Id.* Because "if a proposed class consists largely (or entirely, for that matter) of members who are ultimately shown to have suffered no harm, that may not mean that the class was improperly certified but only that the class failed to meet its burden of proof on the merits." *Id.*

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

Syngenta argues that some producers may not have been injured by a drop in the central market prices because of individualized pricing strategies, variations in local pricing, planting and sale of specialty corn, increased prices for other crops, or the use of corn to feed livestock. These are examples of merits-based defenses, which if proven, would show a class member *was not* harmed. All of these potential class members *could have* been harmed even if these circumstances occurred. There is no basis to conclude that a "great number" of members could not have been harmed as alleged by Plaintiffs. *See, e.g., Oshana v. Coca-Cola Co.*, 472 F.3d 506-514-15 (7th Cir. 2006). The Court is not persuaded that Plaintiffs' proposed class is so overly broad as to require denial of certification.

Accordingly, the class definition, as modified, is adequately defined using objective criteria and clearly ascertainable

B. Rule 23.01 Prerequisites

In order to justify a departure from the rule that litigation is conducted by the individual named parties only, "a class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class members." *Wal-Mart*, 131 S. Ct. at 2550 (citations and internal quotations omitted). Pursuant to Minn. R. Civ. P. 23.01, a member of a class may sue on behalf of a class only if:

> (a) the class is so numerous that joinder of all members is impracticable;
> (b) there are questions of law or fact common to the class;
> (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
> (d) the representative parties will fairly and adequately protect the interests of the class.

Minn. R. Civ. P. 23.01. These prerequisites are referred to as numerosity, commonality, typicality, and representivity. *Streich v. Am. Family Mut. Ins. Co.*, 399 N.W.2d 210, 213 (Minn. Ct. App. 1987). These four requirements ensure that the named plaintiffs are appropriate

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

representatives of the class whose claims they wish to litigate and limits the class claims to those fairly encompassed by the named plaintiffs' claims. *Wal-Mart*, 131 S. Ct. at 2550 (citations and internal quotations omitted). "Sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question, and that certification is proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied. Frequently, that rigorous analysis will entail some overlap with the merits of the plaintiff's underlying claim." *Id.* at 2541.

1. Numerosity

Rule 23.01(a) does not include a specific numeric value for the size of a class. The impracticability of joining all members is a fact-specific determination. *Lewy 1990 Trust ex rel. Lewy v. Investment Advisors, Inc.*, 650 N.W.2d 445, 452 (Minn. Ct. App. 2002). The factors the Court considers in determining impracticability include the size of the proposed class, the size of the class member's individual claim, the inconvenience of trying individual suits, the nature of the action itself, and other factors relevant to the practicability of joining all putative class members. *See Krueger v. Ameriprise Fin., Inc.*, 304 F.R.D. 559, 569 (D. Minn. 2014); *Lewy*, 650 N.W.2d at 452. While mere speculation as to the size of the class is insufficient to satisfy the numerosity requirement, it is also not necessary to prove a number of the class members with specificity. *Id.* Here, the proposed class consists of approximately 30,000 Minnesota farmers. It is estimated that the number of those producers that purchased or grew Syngenta products is 2-3% of the class. And 9,081 Minnesota farmers that have filed individual claims have indicated they will choose to opt-out pursuant to the declaration procedure in the MPA. Even excluding those farmers that grew Viptera or Duracade or have filed an individual case, the proposed class will still include approximately 20,000 Minnesota farmers. The proposed class satisfies the numerosity requirement.

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

2. Commonality

A class must have common questions of law or fact. Minn. R. Civ. P. 23.01(b). The threshold to demonstrate commonality is not high and only requires that "the resolution of the common questions affect all or a substantial number of class members." *Streich v. American Family Mut. Ins. Co.*, 399 N.W.2d 210, 214 (Minn. Ct. App. 1987) (citing *Jenkins v. Raymark Industries, Inc.*, 782 F.2d 468, 472 (5th Cir. 1986)). The existence of just one common issue is enough to satisfy this requirement. *Wal-Mart*, 564 U.S. at 359; *Lockwood Motors, Inc. v. Gen. Motors Corp.*, 162 F.R.D. 569, 575 (D. Minn. 1995). The "common contention" in Rule 23(a)(2) "must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal–Mart,* 564 U.S. at 338. A key consideration in assessing commonality is whether class treatment can "generate common *answers* apt to drive the resolution of the litigation." *Id.* at 338 (citation and internal quotation marks omitted; emphasis original); *see also Ario v. Metropolitan Airports Comm'n*, 367 N.W.2d 509, 515 (Minn. 1985) (noting a class action judgment finding an invasion of privacy would do little to advance an end to the litigation because class members would still have to establish a right to inverse condemnation). Individual class members need not be identically situated so long as the questions linking the class members are substantially related to the resolution of the litigation. *In re Workers' Comp.*, 130 F.R.D. 99, 104 (D. Minn. 1990).

Questions of fact common to all class members include: (1) Syngenta's acts and knowledge in the commercialization of MIR 162; (2) representations made by Syngenta regarding Chinese import approval of MIR 162; (3) Syngenta's warnings regarding use of MIR 162; and (3) the impact of China's ban on the CBOT futures price for corn. Common issues of law include: (1) Syngenta's

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

duty to exercise reasonable care in the commercialization of MIR 162; (2) the scope of Syngenta's duty to Minnesota farmers; (3) whether Syngenta breached its duty of care; (4) whether Syngenta knowingly misrepresented the quality, ingredients, or origin of MIR 162; (5) whether Syngenta's warnings regarding use of MIR 162 were insufficient; (6) causation; and (7) whether Plaintiffs are entitled to damages. These are questions common to all members of the proposed class that can be addressed by common proof. The answers to these common questions will resolve issues central to Plaintiffs' claims. The Rule 23.01(b) prerequisite of commonality is satisfied.

3. Typicality

The typicality requirement of Rule 23.01(c) is met when the claims of the named Plaintiffs arise from the same event or are based on the same legal theory as the claims of the class members. *See Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525, 1540 (8th Cir. 1996). A "strong similarity of legal theories" satisfies the typicality requirement even if substantial factual differences exist. *Lewy*, 650 N.W.2d at 453. Typicality requires that the class representatives "have an interest compatible with that of the class sought to be represented." *Id.* Here, the claims of all members of the proposed class arise from the same conduct by Syngenta and all Plaintiffs assert the same legal claims on behalf of the class that they seek to represent. Like members of the proposed class, the named Plaintiffs farm corn in Minnesota, did not purchase or grow Viptera or Duracade, priced corn after September 2013, and claim they were harmed by Syngenta's alleged breach of its duty to responsibly commercialize MIR 162 and by the alleged misrepresentations made by Syngenta during the commercialization. The claims of the representative parties are typical of the claims of the class.

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

4. Adequacy of Representation

Rule 23.01(d) requires Plaintiffs to show that "the representative parties will fairly and adequately protect the interests of the class." Minn. R. Civ. P. 23.01(d). "A class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class members." *East Texas Motor Freight Sys. Inc. v. Rodriguez,* 431 U.S. 395, 403, 97 S.Ct. 1891, 52 L.Ed.2d 453 (1977) (quoting *Schlesinger v. Reservists Comm. to Stop the War,* 418 U.S. 208, 216, 94 S.Ct. 2925, 41 L.Ed.2d 706 (1974)). To satisfy the adequate representation requirement, the interests of the class must coincide with the interests of the representative parties, and the parties and their counsel must competently and vigorously prosecute the lawsuit. *Lewy*, 650 N.W.2d at 454.

> Factors used to determine if representivity is satisfied include: 1) whether the representatives' interests are sufficiently identical to those of absent class members so that the representatives will vigorously prosecute the suit on their behalf; 2) whether the attorneys are qualified, experienced, and capable of conducting the litigation; and 3) whether the representatives have any interests that conflict with the objection of the class they represent.

Id. The named Plaintiffs, Leroy Edlund, Roger Ward, Grant Annexstad, and Nathan Thompson, are all adequate individuals to represent the interests of the class. Plaintiffs and class members allege to have been injured by the same conduct by Syngenta, and they assert the same legal claims. Plaintiffs have shown that they will vigorously pursue the claims on behalf of the class by answering written discovery, participating in motion practice, and submitting to depositions. The Plaintiffs' interests are sufficiently identical to those of the class and have shown they will vigorously prosecute the claims.

Rule 23.01(d) requires that counsel be "qualified, experienced, and capable of conducting the litigation." *Lewy*, 650 N.W.2d at 454-55. The biographies of Co-Lead Interim Class Counsel indicate they are qualified to prosecute a class action. As the Court previously found when appointing them on an interim basis in its August 5, 2015 Order, Class Counsel are excellent trial

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

lawyers and possess extensive class action experience. Counsel have shown they are capable by drafting pleadings and actively participating in discovery and motion practice in the fourteen months since they were appointed in this matter. Attorneys for Plaintiffs are qualified, experienced, and capable of conducting the litigation.

The four putative Plaintiffs, represented separately by Michael Johnson, contend there is a conflict of interest and due process violation as a result of the JPA and MPA and so oppose class certification. A conflict of interest must be fundamental to defeat the adequacy requirement. *Ward v. Dixie Nat. Life Ins. Co.*, 595 F.3d 164, 180 (4th Cir. 2010) (citing *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 430 (4th Cir. 2003)). A conflict is not fundamental when all class members share common objectives, the same factual and legal positions, and have the same interest in establishing the liability of defendants. *Id.* The Court is not convinced that Minnesota producers whose counsel do not sign the MPA do not share the same factual and legal positions as those producers whose counsel executed the MPA. All putative class members will have the ability to opt-out of the class action and proceed with individual claims. There is no due process violation for absent class members when they are provided an opportunity to opt-out, which occurs after the class is certified. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). The only difference is the form used to opt-out. The difference between submitting the declaration or an opt-out notice does not affect the producers' ultimate factual or legal position regarding their claims against Syngenta.

The four putative members' reliance on *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F. 3d 331 (4th Cir. 1998) is misplaced. In *Broussard*, the class members were franchisees that had three different types of agreements with the defendant. *Id.* at 335. The different types of agreements gave rise to a conflict among the class because the plaintiffs were entitled to different

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

relief as a remedy for their claim against the defendant. *Id.* The court found that the difference in types of remedies available to the subgroups of plaintiffs created a conflict of interest among the class. *Id.* Here, there is no difference among the Plaintiffs in their relation to Syngenta or the type of remedy available. All proposed class members have a shared common objective and interest in establishing Syngenta's liability and damages.

C. Rule 23.02 Maintenance Requirements

Plaintiffs move for certification under Rule 23.02(c), which requires a showing that questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and because a class action is superior to other available methods for the fair and efficient adjudication of the controversy. *See* Minn. R. Civ. P. 23.02(c); *Lewy*, 650 N.W.2d at 455-58.

1. Predominance and Commonality

The "predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623, 117 S. Ct. 2231, 138 l.Ed.2d 689 (1997). The "fundamental question is whether the group aspiring to class status is seeking to remedy a common legal grievance." *Lockwood*, 162 F.R.D. at 580 (quoting Moore's Federal Practice ¶ 23.45[2] at 23-306 to 23-307 (2nd ed. 1995)).

> An individual question is one where members of a proposed class will need to present evidence that varies from member to member, while a common question is one where the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof. The predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues. When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

Tyson Foods, Inc. v. Bouaphakeo, 136 S. Ct. 1036, 1045 (2016) (citations and internal quotations omitted).

"At the core of Rule 23(b)(3)'s predominance requirement is the issue of whether the defendant's liability to all plaintiffs may be established with common evidence." *Avritt v. Reliastar Life Ins. Co.*, 615 F.3d 1023, 1029 (8th Cir. 2010) (citing *Blades v. Monsanto Co.*, 400 F.3d 562, 566 (8th Cir. 2005)). If the same evidence will suffice for each member to make a prima facie showing, it is a common question. *Id.* Predominance is established where "generalized evidence may prove or disprove" the claims, even if individual facts exist that are unique to particular class members. *Lewy,* 650 N.W.2d at 455. Where common evidence can make out a prima facie case for the class, common issues predominate. *See In re Zurn Pex Plumbing Prods.*, 267 F.R.D. 549, 560 (D. Minn. 2010), *aff'd*, 644 F.3d 604 (8th Cir. 2011).

Plaintiffs' common law and statutory claims are appropriate for class adjudication because the elements can be shown with common proof. Evaluating predominance begins with the elements of the underlying causes of action. *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 131 S. Ct. 2179, 2184 (2011). All of the class action claims involve common factual and legal issues. Common evidence can make out a prima facie case for the class on the elements of the claims. Syngenta's defenses relating to its own conduct or to causation also will be the subject of class-wide proof and thus present common issues. The common issues in the case are more prevalent and important than any remaining potential individual issues. Therefore, the Court finds that common questions predominate over individual questions for purposes of certification under Minn. R. Civ. P. 23.02(c).

The elements of a negligence claim are: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) the breach of that duty was the proximate cause of the injury.

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

Engler v. Illinois Farmers Ins. Co., 706 N.W.2d 764, 767 (Minn. 2005). Plaintiffs allege that Syngenta had a duty to all Minnesota farmers to use reasonable care in the commercialization of MIR 162 and breached that duty by commercializing MIR 162 before Chinese import approval and without channeling measures. The central factual issues for this claim are Syngenta's knowledge and actions surrounding its commercialization of MIR 162. The claim presents common legal issues regarding Syngenta's duty to all Minnesota producers, the scope of that duty, whether Syngenta breached that duty, injury, and causation. The evidence on liability will focus on Syngenta's conduct such as the timing and content of Syngenta's submissions for import approval to China, Syngenta's knowledge of the status of China's approval, Syngenta's actions and efforts regarding stewardship and channeling, and Syngenta's representations. The negligence claim will involve common proof of Syngenta's actions and its effect on the market.

Plaintiffs assert violations of Minnesota's Unfair Trade Practices Act (MUTPA), Minn. Stat. § 325D.13. The statute provides that, "No person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise." Minn. Stat. § 325D.13. Plaintiffs must show that "the defendant engaged in conduct prohibited by the statutes and that the plaintiff was damaged thereby." *See Group Health Plan, Inc. v. Philip Morris, Inc.*, 621 N.W.2d 2, 12 (Minn. 2001). Plaintiffs have made allegations and submitted evidence regarding Syngenta's representations to Plaintiffs regarding China's approval of MIR 162. Plaintiffs and the class members allege they were harmed by Syngenta's public misrepresentations and omissions regarding China's import approval of MIR 162 as well as its ability to channel MIR 162 corn away from China. Proof of this claim will involve common evidence of Syngenta's representations and knowledge.

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

Plaintiffs assert a strict liability duty to warn claim. The elements of such a claim are: (1) defendant's knowledge of the dangers of using the product; (2) defendant's warnings were insufficient and thus breached the duty of care; and (3) the lack of adequate warning caused plaintiff's injury. *McRunnel v. Batco Mfg.*, 917 F. Supp. 2d 946, 957 (D. Minn. 2013) (citing *In re Levaquin Prods. Liab. Litig.*, 700 F.3d 1161, 1166 (8th Cir. 2012)). This claim will involve common proof of Syngenta's knowledge, duty of care, sufficiency of warnings, and the effect on the market.

All three of Plaintiffs' claims require a showing of injury and causation. Plaintiffs claim each class member was injured by a lower price for corn priced after September 2013. Plaintiffs intend to prove the fact and amount of damage through expert testimony in a class-wide manner. The reports and testimony of Drs. Carter and Babcock demonstrate on a prima facie basis that Syngenta's actions caused a drop in the CBOT futures price of corn beginning in September 2013. Their analyses show that a change in the CBOT futures price resulted in a uniform change on all local Minnesota corn prices. They then calculate damages based on a cents per bushel mathematical or formulaic calculation that is applicable to each member of the class. While each class member will have a different amount of damages based on how much corn they priced, it is a matter of taking a member-specific factor and inserting it into the class-wide formula.

The parties dispute the extent of the Court's review of the expert evidence. The Eighth Circuit has held that "[e]xpert disputes concerning the factual setting of the case should be resolved at the class certification stage only to the extent necessary to determine the nature of the evidence that would be sufficient, if the plaintiff's general allegations were true to make out a prima facie case for the class." *In re Zurn Pex Plumbing Prods. Liab. Litig.*, 644 F.3d 604, 611 (8th Cir. 2011) (quoting *Blades v. Monsanto Co.*, 562, 567 (8th Cir. 2005) (internal quotation marks omitted). "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

stage," and that "[m]erits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds*, 133 S. Ct. 1184, 1195-96 (2013).

The U.S. Supreme Court recently discussed the review for expert evidence at the class certification stage in an FLSA case where plaintiff employees alleged they were improperly denied pay for time spent donning and doffing their equipment at work. *See Tyson Foods*, 136 S. Ct. at 1042-43. The plaintiffs relied on an expert who averaged and estimated donning and doffing times on a class-wide basis. *See id.* at 1043. The Supreme Court refused to adopt a rule prohibiting the use of such representative evidence in class action cases. *See id.* at 1046. The Court noted that if each class member could have relied on the representative evidence to establish liability in an individual action, then use of that evidence is permissible to establish the number of hours to show class-wide liability in a class action. *See id.* at 1046-47. The Court then addressed a district court's proper consideration of such evidence:

> This is not to say that all inferences drawn from representative evidence in an FLSA case are just and reasonable. Representative evidence that is statistically inadequate or based on implausible assumptions could not lead to a fair or accurate estimate of the uncompensated hours an employee has worked. Petitioner, however, did not raise a challenge to respondents' experts' methodology under *Daubert*; and, as a result, there is no basis in the record to conclude it was legal error to admit that evidence.
>
> Once a district court finds evidence to be admissible, its persuasiveness is, in general, a matter for the jury. Reasonable minds may differ as to whether the average time [the expert] calculated is probative as to the time actually worked by each employee. Resolving that question, however, is the near-exclusive province of the jury. The District Court could have denied class certification on this ground only if it concluded that no reasonable juror could have believed that the employees spent roughly equally time donning and doffing.

See id. at 1048-49 (citations omitted). As noted above, Syngenta did not challenge Plaintiffs'

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

expert's qualifications or their methodologies under *Frye-Mack*.[4] After reviewing all of Plaintiffs' and Syngenta's expert opinions, the Court finds Plaintiffs presented representative evidence that is statistically adequate and based on plausible assumptions. Such evidence could lead the trier of fact to a fair and accurate calculation of the per-bushel drop in corn price. In this action, Plaintiffs could rely on those expert opinions to show liability and damages in an individual class member's suit; thus under *Tyson Foods*, the class may rely on those opinions to show class-wide injury.

Syngenta argues that the representative evidence is deficient because the CBOT price is not sufficiently tied to local corn prices. Plaintiffs' experts relied on standard economic studies to show CBOT price changes are reflected in local prices. Syngenta's experts conceded that local contract prices are customarily expressed in terms of the CBOT price. The data concerning the prices at which corn sales have historically taken place in the United States, the GeoGrains data which both sides have cited, includes reference to the CBOT prices on the data of those sales. As Plaintiffs' experts explained, the fact that local prices may not decrease as much as the CBOT prices, or may even increase despite a CBOT decrease, does not mean that the CBOT change was not locally felt, as the local factors may have added to or offset that CBOT decrease. Syngenta failed to show that the expert evidence is based on inadequate data or statistical analyses. Ultimately, this may be an issue for a jury.

Syngenta's experts made extensive criticisms of Plaintiffs' experts' analyses and opinions. For instance, Syngenta's experts criticize the composition of data sets, the comparable products chosen, the rate of decay of the price effects, and the failure to confirm results against particular

[4] Minnesota uses a two-prong *Frye-Mack* test. *Goeb v. Tharaldson*, 615 N.W.2d 800, 809-10 (Minn. 2000). Under this standard, scientific evidence is admissible when (1) the scientific theory, technique or methodology is generally accepted in the relevant scientific community and (2) the evidence has a scientifically reliable foundation. *Id.* at 810. The Minnesota Supreme Court explicitly rejected *Daubert*, criticizing it for requiring judges to be "amateur scientists," whereas *Frye-Mack* ensures that those most qualified to assess the scientific validity of a technique – i.e., the scientists – have the "determinative voice." *Id.* at 812-13. The court also voiced concern that *Daubert* could lead to non-uniformity, since cases with similar expert testimony could lead to varying decisions on admissibility. *Id.*

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

time periods and locations. "As other courts have recognized, the issue at class certification is not which expert is the most credible, or the most accurate modeler, but rather have the plaintiffs demonstrated that there is a way to prove a class-wide measure of [impact] through generalized proof." *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 583, 604 (N.D. Cal. 2010), *amended in part*, No. M 07-1827 SI, 2011 WL 3268649 (N.D. Cal. July 28, 2011) (citations and internal quotation marks omitted). Syngenta's criticisms go to the manipulation of the data but do not challenge the foundation of the type of analyses performed. The majority of Syngenta's arguments and competing expert opinions go to the persuasiveness of the evidence and not the admissibility. The Court cannot conclude that the experts' methodologies are so statistically inadequate or unreliable as to preclude certification. Plaintiffs' experts sufficiently demonstrated that there is a way to prove a class-wide measure of damages using generalized proof.

Syngenta attacks the experts' use of September 2013 to show anticipation of Chinese rejection as implausible. Syngenta argues that the use of September 2013 means that market participants anticipated the November 2013 rejections by China, even though according to Syngenta Plaintiffs' experts were not able to identify a public prediction of the rejection. Dr. Carter, however, based the use of that date on the structural break in export and prices between corn and sorghum that signaled a change in the market. The use of September 2013 is thus a plausible and supported assumption, and the expert opinions are not lacking in foundation.

Syngenta argues that individual inquiries are needed to: 1) determine whether each producer suffered any injury; (2) determine a methodology for determining damages; and (3) evaluate Syngenta's affirmative defenses. The presence of individualized questions regarding damages does not prevent certification under Rule 23(b)(3). *Tyson Foods*, 136 S. Ct. at 1045; *Wal-Mart*, 564 U.S. at 362. "Courts frequently grant class certification despite individual differences in class members'

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

damages." *Lewy,* 650 N.W.2d. at 456-57. "When injury and damage is capable of mathematical or formulaic calculation, individualized claims are not a barrier to managing the case as a class action." *Id.* at 456.

Syngenta argues that individual inquiries of all class members are required because some producers may have benefitted from the Chinese import ban on U.S. corn. The Court disagrees. "A class will often include persons who have not been injured by the defendant's conduct; indeed this is almost inevitable because at the outset of the case many of the members of the class may be unknown, or if they are known still the facts bearing on their claims may be unknown. Such a possibility or indeed inevitability does not preclude class certification." *Kohen v. Pac. Inv. Mgmt. Co. LLC*, 571 F.3d 672, 677 (7th Cir. 2009). The Court incorporates the discussion in section II.A, *supra*, finding the class definition not overly broad even if it includes producers who suffered no harm.

Syngenta opines that benefits could occur arising from local market factors, a corresponding increase in other crop prices, or lower price for feed for livestock. Plaintiffs respond that any such gains would not fall within the offsetting benefits rules, and that it would violate the collateral source doctrine to reduce damages for such gains. Even if offsets for higher prices of other grain were permitted, Plaintiffs' expert testified that he could conduct a similar analysis involving other grains to determine an aggregate offset on a class-wide basis. In addition, Syngenta has not identified any class member whose benefits from sales of other grains and livestock purchases would completely offset the damages from lower corn prices under Plaintiffs' damage models, and thus it is speculative whether any class members had no injury for these reasons. This Court finds that even if individual inquiries are needed in some instances, they would not be so overwhelming as to defeat predominance. Syngenta also argues that lower overall demand could impact local

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

factors, which impact would skew any direct correlation between CBOT and local price changes. Plaintiffs' expert testified persuasively, however, that decreased exports generally do not affect local factors. Furthermore, the determination of the fact and amount of damage does not pose a risk that individual inquiries will predominate because if the jury rejects Plaintiffs' theory that CBOT price changes are reflected in local prices, the case will effectively be lost, as Plaintiffs will be unable to prove the fact of injury.

Syngenta next argues that individual inquiries are necessary to determine a methodology for calculating damages. Plaintiffs must be able to show that their damages stemmed from the defendant's actions that created the legal liability. *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1433 (2013). Plaintiffs have identified the existence of an integrated market in which events, such as China's rejection of U.S. corn, are felt uniformly throughout the market. Such common impact supports use of a common damages model and formula on a class-wide basis. Dr. Babcock opines that the aggregate amount of damages for all class members "equals the number of bushels in the class multiplied by the … per-bushel price impact." This formula is common to each and every class member and relies on total corn production in Minnesota. The expert testimony establishes a methodology that would permit the jury to determine class-wide aggregate damages as well as per-bushel losses for each class member.

Syngenta challenges Plaintiffs' "aggregate damages model" as inappropriate because it would inflate Syngenta's liability and limit their rights to challenge individual issues. Syngenta's reliance on *McLaughlin v. American Tobacco Co.*, 522 F.3d 215 (2d. Cir. 2008) for the proposition that an aggregated damages model is impermissible where it relies on unsupported assumptions and would mask the prevalence of individual issues is misplaced. The *McLaughlin* court discussed fluid recovery, which is different from aggregate damages. *See In re Scrap Metal Antitrust Litig.*, 527

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

F.3d 517, 534 (6th Cir. 2008). The case is further distinguishable because plaintiffs in *McLaughlin* provided only a rough estimate of gross damages for the class. *McLaughlin*, 522 F.3d at 231. Here, Plaintiffs have presented expert testimony creating models to determine the per-unit effect on class members' sales of corn.

Syngenta urges the Court to follow *In re Genetically Modified Rice Litig.*, 251 F.R.D. 392 (E.D. Mo. 2008), pet. for permission to appeal denied, No. 08-8010 (8th Cir. Oct. 6, 2008), in which the court denied class certification in an action alleging the defendants contaminated the U.S. rice supply with non-approved GM strains of rice and seeking market-loss damages. The court found some producers used various types of contracts based on the CBOT price, some sold rice at a price based on the World Market Price, and others sold at a flat price set by the buyer. *Id.* at 394-95. The plaintiffs proposed to show the total amount of economic harm and quantity of rice affected to calculate each producer's individual damages based on the amount of rice sold. *Id.* While the court found a number of common issues, it decided the calculation of damages was an individual issue, involving a unique inquiry into the time, place, and manner in which each plaintiff priced and sold his rice. *Id.* at 398. The court noted that variation in individual damage amounts does not bar certification. *Id.* But concluded that the claims of the rice producers did not lend themselves to an easy "mathematical or formulaic calculation." *Id.* at 399. In *Rice*, Plaintiffs failed to demonstrate the predominance of common questions respecting the plaintiffs' claims for market-loss damages. In this case, there is no separate price index for corn; and all experts agree that the CBOT price is a component used in the sale of corn. Furthermore, here Plaintiffs have presented persuasive evidence that damages can be determined by an adequate mathematical calculation.

The Court finds that the *Urethane* and *Kleen* cases from the Tenth and Seventh Circuits are more instructive than *Rice*. *See In re Urethane Antitrust Litigation*, 768 F.3d 1245 (10th Cir. 2014);

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

Kleen Products LLC v. International Paper Co., 831 F.3d 919 (7th Cir. 2016). *Urethane* involved allegations of a price-fixing conspiracy in violation of antitrust law. The Tenth Circuit affirmed class certification based on evidence that the alleged price-fixing would have affected the entire market and thus raised baseline prices for all buyers, even if prices were individually negotiated. *See id.* at 1254-55. The court noted that antitrust law permits an inference of class-wide impact from price-fixing. *See id.* at 1254. The court concluded that impact could be treated as a common question capable of class-wide proof for purposes of class certification. *See id.* at 1255. The Tenth Circuit further noted that, "[t]he presence of individualized damages issues would not change this result," as "[c]lass-wide proof is not required for all issues" for predominance under Rule 23(b)(3). *See id.* (citing *Amgen*, 133 S. Ct. at 1196). Finally, the court upheld the use of class-wide aggregate damages as proper and not in violation of *Comcast*. *See id.* at 1268-69. While this is not an antitrust case with an inference of class-wide impact, Plaintiffs here use CBOT, a more centralized commodities exchange, as a benchmark to show the entire market was affected. Class certification is similarly appropriate in this case because there are common factual and legal issues that allow market impact and damages to be treated as a common question capable of class-wide proof.

In *Kleen*, the Seventh Circuit affirmed class certification in a case involving evidence of coordinated price fixing. *Kleen*, 831 F.3d at 931. The court found that containerboard was a commodity whose price is tied to a benchmark price published in an industry periodical. *Id.* at 923. Using this benchmark, plaintiffs presented expert testimony performing regression analyses to calculate aggregate damages for the class. *Id.* at 928-29. When addressing the defendants' claims that the plaintiffs' experts used incorrect models, the Seventh Circuit noted that the plaintiffs "have shown actual price increases, a mechanism for those increases, the communication channels the conspirators used, and factors suggesting that cartel discipline can be maintained. We are not

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

saying that any of these points have been proven, of course, but we are saying that this evidence is enough to support class treatment of the merits." *Id.* at 928. Similarly, Plaintiffs use the CBOT as a benchmark. Plaintiffs' experts show that all putative class members' claims can be determined using a common methodology. All that Plaintiffs must demonstrate is that injury can be shown on a class-wide basis using common proof. Common proof of injury is shown through Plaintiffs' expert testimony that Syngenta's conduct depressed CBOT futures price for corn, which caused a decrease in all local Minnesota corn prices. Both Plaintiffs' experts, Drs. Babcock and Carter, presented methodologies for showing class-wide impact of Syngenta's conduct and concluded that corn prices for all Minnesota class members were affected by Syngenta's actions. Dr. Babcock asserts that he would use the same methodology for each individual class member and the only thing that would differ would be the amount of corn production that is damaged. Plaintiffs have presented an acceptable model for the determination of injury and damages. Whether that model is persuasive is an issue for trial rather than class certification. *See Gordon v. Microsoft Corp.*, No. 00-5994, 2001 WL 366432, at *8 (Minn. Dist. Ct. Mar. 30, 2001).

In addition, the plaintiffs in *Kleen*, used different pricing mechanisms. The *Kleen* court found that "[e]ven for transactions where prices were negotiated individually or a longer term contract existed … the starting point for those negotiations would be higher if the market price for the product was artificially inflated." *Id.* at 928-29. Similarly, whether any class members sold other crops whose sale price increased, raised livestock that consumed the corn when prices were adversely affected, local differences in transportation costs, and the identity of the corn buyer would have no effect on the futures price decrease caused by the China rejection and identified by Plaintiffs' experts. This is analogous to what Plaintiffs allege here; regardless of individual contracts or local factors affecting basis, the price for corn was uniformly affected by Syngenta's

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

conduct. Plaintiffs have sufficiently presented evidence of a methodology to determine damages on a class-wide basis.

Syngenta also argues that individual inquiries are needed to evaluate its affirmative defenses of failure to mitigate damages and comparative negligence as well as issues such as hedging and crop insurance. Syngenta argues that these defenses are "highly producer-specific" and thus do not present common issues. Plaintiffs argue that the collateral source offset rules prevent such evidence from diminishing a plaintiff's recovery. Mitigation of damages, like other damage-related affirmative defenses, is not a barrier to class certification. *In re Checking Account Overdraft Litig.*, 307 F.R.D. 630, 651 (S.D. Fla. 2015). "Rule 23 does not demand that *every* issue be common; classes are routinely certified under Rule 23(b)(3) where common questions exist and predominate, even though other individual issues will remain after the class phase." *Kleen*, 831 F.3d at 922. These affirmative defenses go to the issue of damages and not liability. Whether the class members had a duty to undertake any such efforts and whether the collateral source offset rules prevent such evidence from diminishing a plaintiff's recovery present a common threshold issue that does not need to be decided at the class certification stage. Even if some of these defenses are available with respect to some class members, such individual issues are not so overwhelming as to defeat predominance. Common questions predominate here despite any possible individual questions relating to Syngenta's defenses.

Accordingly, the Court finds, pursuant to Rule 23.02(c), that common questions predominate with respect to the proposed class.

2. Superiority

Plaintiffs must also show under Rule 23.02(c) that a class action is superior to other available methods of adjudication.

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

> The matters pertinent to the findings include: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action.

Minn. R. Civ. P. 23.02(c). Factors to consider in superiority analysis include "manageability, fairness, efficiency, and available alternatives." *Streich v. American Fam. Mut. Ins. Co.*, 399 N.W.2d 210, 218 (Minn. Ct. App. 1987) *review denied* (Minn. Mar. 25, 1987). When collective adjudication promotes efficiency benefits and makes it possible for class members with small claims to bring suit and enforce substantive law, a class action is superior to other available methods for the fair adjudication of the controversy. *Lewy*, 650 N.W.2d at 457.

Syngenta and the four putative plaintiffs note that over 50,000 plaintiffs have filed individual suits against Syngenta. They argue the substantial number of cases demonstrates a desire by class members to control the individual litigation of their claims. Syngenta also highlights the facts that some Plaintiffs have named additional Defendants and that some Individual Plaintiffs have opposed certification.

> [T]he mere existence of individual actions brought by putative class members does not necessarily defeat a claim for superiority. It is enough that class treatment is superior because it will achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.

CGC Holding Co. v. Broad and Cassel, 773 F.3d 1076, 1096 (10th Cir. 2014) (citations and internal quotation omitted). Although there is a large number of Minnesota farmers who have brought individual cases in this Court, there are still twenty thousand Minnesota corn farmers who have not filed individual cases. Given the length this matter has been pending and the publicity received, it is unlikely that individuals that have not yet filed a case will, in the future, file an individual case or opt out of the proposed class because, if there was an interest in pursuing individual claims, they

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

would have likely already done so. Without a class action vehicle, many individual farmers may never pursue their claims. In addition, Plaintiffs request purely economic damages, and thus there is no emotional factor or physical injury that might otherwise provide a reason for class members to wish to control their own cases.

Moreover, the amounts at stake per farm are small enough that separate suits may be impracticable for many class members. The vehicle of a class action is meant to permit plaintiffs with small claims and little money to pursue a claim otherwise unavailable. *In re Workers' Comp.*, 130 F.R.D. 99, 110 (D. Minn. 1990). For class members with a relatively small pecuniary interest, the potentially significant cost of individual litigation is prohibitive of an individual claim. The Federal MDL and this action and the coordinated proceedings have allowed Plaintiffs to pursue individual suits with little investment of time or money. "This prong of the superiority requirement directs courts to determine whether individuals really would want to control their own litigation in the given situation or whether the ideal is more fiction than reality." 2 William B. Rubenstein, *Newberg on Class Actions* § 4:69 (5th ed. 2012). The court notes that several Plaintiffs opted not to pursue their claims when chosen as bellwether cases and faced with discovery. This may indicate that other Plaintiffs would do the same once more involvement was required and trial arrives. In addition, any class member who does desire to control the litigation of its own claims may opt out of the class action and pursue its own claim.

Syngenta's argument that concentrating the litigation in a particular forum would have no benefit beyond pretrial coordination is ineffective. This matter has been pending in this forum for approximately 18 months, and this Court is very familiar with the factual and legal issues. The proposed claims on behalf of the class do not present any difficulties such as state law variations or choice of law determinations. This weighs in favor of class treatment.

27-CV-15-3765
Filed in Fourth Judicial District Court
11/3/2016 4:17:40 PM
Hennepin County, MN

Finally, Syngenta argues that a class action would be unmanageable in light of the individual issues that must be litigated. "[C]ourts generally hold that if the predominance inquiry is met, then the manageability requirement is met as well." 2 William B. Rubenstein, *Newberg on Class Actions* § 4:72 (5th ed. 2012). As noted above, common questions surrounding liability will predominate the trial. In light of those common issues, the litigation of individual suits "would be grossly inefficient, costly, and time consuming because the parties, witnesses, and courts would be forced to endure unnecessarily duplicative litigation." *Urethane*, 237 F.R.D. at 453. It would be a huge burden on the Court to engage in twenty thousand individual trials presenting the same evidence and claims. Conducting one trial on behalf of twenty thousand farmers that would resolve the common questions is superior to thousands of individual trials. Due to the complexity of the issues involved and class-wide issues that can be resolved with common proof, class certification is the superior method for litigating the claims of those Minnesota farmers who have not filed an individual action. Any remaining individual issues do not make class actions any more unmanageable than individual actions would be. The Court does not foresee any particular difficulties in the management of a class action and ascertaining the class members does not require difficult individual inquiries. Accordingly, a class action would be superior to other methods of adjudication of these claims.

For all of these reasons, the Court finds that the requirements of Rule 23.01 and Rule 23.02(c) are satisfied in this case.

T.M.S.

EXHIBIT 70

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other
Hon. Thomas M. Sipkins

This Document Relates to: ALL ACTIONS

FILE NO. 27-CV-15-3785

ORDER

The above-entitled matter came on for hearing before the Honorable Thomas M. Sipkins, Judge of District Court, on August 11, 2016, pursuant to Defendants' motion for leave to file a Third-Party Complaint and to file under seal.

Attorney Lewis A. Remele, Jr., appeared on behalf of Plaintiffs.

Attorneys Patrick Philbin, Patrick Haney, and D. Scott Aberson appeared on behalf of Defendants.

Attorneys John W. Ursu and Kathryn Hibbard appeared on behalf of proposed Third-Party Defendants Cargill, Inc. and Cargill International SA.

Attorney David H. Hoffman appeared on behalf of proposed Third-Party Defendant Archer Daniels Midland.

Based on all the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

Defendants' motion for leave to file a Third-Party Complaint and to file under seal is denied. Opinion to follow.

BY THE COURT:

Dated: 9-6-2016

Thomas M. Sipkins
Judge of District Court

EXHIBIT 71

JKG

713

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARCHBANKS TRUCK SERVICE, INC., *et al.*, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

COMDATA NETWORK, INC., *et al.*,

Defendants.

Civil Action No. 07-1078-JKG

Consolidated Case

FILED
JUL 14 2014
MICHAEL E. KUNZ, Clerk
By ____ Dep. Clerk

ORDER FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND PAYMENT OF SERVICE AWARDS TO THE CLASS REPRESENTATIVES

WHEREAS, the Court, having considered: (a) Plaintiffs' Motion for Final Settlement Approval and supporting documents; (b) the Plan of Allocation and Distribution; (c) the Definitive Master Settlement Agreement, dated March 3, 2014, between and among the Plaintiffs, Plaintiffs' Class Counsel, and all Defendants (the "Settlement Agreement"); (d) the Court's March 17, 2014 Preliminary Approval Order (Dkt. No. 705); (e) Plaintiffs' Unopposed Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Service Awards to the Class Representatives and supporting memorandum and exhibits; and, (f) any supplemental submissions in support thereof, having held a Fairness Hearing on July 14, 2014, and having considered all of the submissions and arguments with respect to the Settlement,[1] and otherwise being fully informed, and good cause appearing therefore;

7-14-14 mailed + e-mailed

[1] Certain capitalized terms used in this Order are defined in Section I of the Settlement Agreement.

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Court has entered a separate order finally approving the Settlement Agreement, finding, among other things, that the Settlement Agreement was the result of extensive *bona fide* arm's-length good faith negotiations, is in all respects fair, reasonable, and adequate, is in the best interest of the Settlement Class, is within a range that responsible and experienced attorneys could accept considering all relevant risks and factors, and is in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Class Action Fairness Act, and in light of the factors set forth in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975).

2. Class Counsel have moved for an award of attorneys' fees and reimbursement of expenses from the Aggregate Settlement Fund. Pursuant to Rules 23(h)(3) and 54(d) of the Federal Rules of Civil Procedure, and pursuant to the factors for assessing the reasonableness of a class action fee request as set forth in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000), and *In re Prudential Ins. Co. of American Sales Practices Litig.*, 148 F.3d 283, 340 (3d Cir. 1998), this Court makes the following findings of fact and conclusions of law:

(a) the Settlement confers an immediate monetary benefit to the Settlement Class of $130 million that is substantial, both in absolute terms, and when assessed in light of the risks of establishing liability and damages in this case;

(b) the Settlement also contains valuable prospective relief in the form of, among other things, (i) meaningful and enforceable commitments by Comdata to modify or not to enforce portions of Comdata's merchant services agreements with Settlement Class Members and the Major Chains that Plaintiffs had challenged in this case as being anticompetitive, and (ii) an agreement by Comdata to engage in a good faith negotiations relating to, *inter alia*, merchant

transaction fees with certain truck stop Buying Groups that are, collectively, composed of hundreds of members of the Settlement Class;

(c) Settlement Class Members were advised of Class Counsel's intention to seek attorneys' fees of one-third of only the cash value of the Settlement Fund, litigation costs of up to $7.5 million and service awards totaling $315,000 ($150,000 for Marchbanks Truck Service, Inc. d/b/a Bear Mountain Travel Stop ("Marchbanks Truck Service"), $75,000 for Gerald F. Krachey d/b/a Krachey's BP South ("Krachey"), $75,000 for Walt Whitman Truck Stop, Inc. ("Walt Whitman"), and $15,000 for Mahwah Fuel Stop ("Mahwah")) in the Long Form Notice, approved by this Court and mailed by the Settlement Administrator to Settlement Class members by the April 14, 2014 deadline established by the Court. Additionally, Settlement Class Members were informed about the fee, costs and service award requests through the Court approved Publication Notice, which was published in the May 2014 issue of NACS (National Association for Convenience and Fuel Retailing) Magazine and NATSO's e-newsletters for the weeks of April 14 through May 5, 2014, and which publications directed Settlement Class Members to the settlement website (www.truckstopantitrustsettlement.com) established by the Settlement Administrator that was launched on April 14, 2014. The settlement website contains copies of, *inter alia*, the Settlement Agreement and the Long Form Notice, both of which notify Settlement Class Members of the fee, costs, and service award requests.

(d) Class Counsel filed a motion for an award of attorneys' fees in the amount of one third of the Aggregate Settlement Fund ($43,333,333) plus interest earned on that amount since the Aggregate Settlement Fund was created, as well as reimbursement of reasonable costs and expenses incurred in the prosecution of this action of $6,696,856.98. Plaintiffs' motion papers have been publicly available since May 5, 2014, on the docket of this

action and on the settlement website;

(e) Representatives of four major Independent Truck Stop Buying Groups, collectively representing hundreds of Settlement Class Members, submitted declarations expressing affirmative support for the fee request, the request for reimbursement of expenses, and the requested service awards;

(f) Class Counsel have effectively and efficiently prosecuted this difficult and complex action on behalf of the members of the Settlement Class for seven years, with no guarantee they would be compensated for their time or reimbursed for their out-of-pocket costs;

(g) Class Counsel undertook numerous and significant risks of nonpayment in connection with the prosecution of this action;

(h) Class Counsel have reasonably expended 85,907.47 hours prosecuting this complex, contingent litigation over the past seven years, resulting in a total lodestar of $49,785.073.74, and reasonably incurred $6,696,856.98 in out-of-pocket expenses, in prosecuting this action, with no guarantee of recovery;

(i) the Settlement achieved for the benefit of the Settlement Class was obtained as a direct result of Class Counsel's skillful advocacy;

(j) the Settlement was reached following negotiations held in good-faith and in the absence of collusion;

(k) the "percentage-of-the-fund" method is the proper method for calculating attorneys' fees in common fund class actions in this Circuit (*see, e.g., In re Rite Aid Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005));

(l) fee awards of one-third of the settlement amount are commonly awarded in this Circuit, while here Class Counsel seek only a fee of one-third of the cash value of the

Settlement, even though the Settlement has valuable prospective relief;

(m) as detailed in Class Counsel's declarations, a fee of one-third of the cash competent of the Settlement would equate to less than Class Counsel's total lodestar and thus result in a multiplier below 1, and therefore no risk premium whatsoever;

(n) Plaintiffs' expert economist, Dr. Hal J. Singer, submitted a Declaration to this Court dated March 4, 2014, detailing an economic analysis of the portion of the prospective relief relating to the enforceable changes in Comdata's merchant services agreements, and valuing that relief at between $260 million and $491 million. Plaintiffs' expert economist has, therefore, opined that the total value of the Settlement to the Settlement Class is between $390 million and $621 million. Thus, if Dr. Singer is correct, the fee Class Counsel is seeking is, at most, slightly more than 11% of the total value of the Settlement;

(o) in light of the factors and findings described above, the requested fee award is within the applicable range of reasonable percentage of the fund awards.

3. Accordingly, Class Counsel are hereby awarded attorneys' fees to be paid from the Aggregate Settlement Fund in the amount of $43,333,333 plus interest in the amount of $19,674, which represents the interest earned on that amount since the Aggregate Settlement Fund was created. The Court finds this award to be fair and reasonable.

4. Further Class Counsel are hereby awarded $6,696,856.98 out of the Aggregate Settlement Fund to reimburse them for the expenses they incurred in the prosecution of this lawsuit, which expenses the Court finds to be fair and reasonably incurred to achieve the benefits to the Settlement Class obtained in the Settlement. The awarded fees and expenses shall be paid to Class Counsel from the Aggregate Settlement Fund in accordance with the terms of the Settlement Agreement.

5. Plaintiffs' Co-Lead Class Counsel[2] shall allocate the fees and expenses among all of Class Counsel in a manner that Plaintiffs' Co-Lead Class Counsel in good faith believes reflects the contributions of each firm working for Plaintiffs and the Settlement Class in the prosecution and settlement of the claims against Defendants in this action.

6. Plaintiffs have requested that the Court approve Class Representatives receiving service awards from the Aggregate Settlement Fund of $150,000 for Marchbanks Truck Service, $75,000 Krachey, $75,000 for Walt Whitman, and $15,000 for Mahwah. In the Third Circuit, service awards may be paid to class representatives to reward efforts that benefit the class. This Court makes the following findings of fact and conclusions of law regarding each of the Class Representatives' service to the Settlement Class in this litigation:

a. Marchbanks Truck Service: (a) through its owner, William Patrick "Pat" Marchbanks, was one of the driving forces behind this lawsuit being filed and prosecuted; (b) submitted its employees, including Mr. Marchbanks twice, to three depositions, requiring many hours of preparation and travel time; (c) dedicated hundreds of hours, mostly by Mr. Marchbanks (i) assisting Class Counsel in the investigation and development of an initial complaint, (ii) overseeing Class Counsel's prosecution of this litigation and settlement negotiations, (iii) traveling to and attending multiple Court hearings, settlement conferences, and mediations, (iv) responding to numerous document requests and interrogatories, (v) producing documents, and (vi) interfacing with Settlement Class members and representatives of the Buying Groups.

b. Krachey: (a) submitted its employee, Douglas Krachey, to two depositions, requiring several hours of preparation and travel time; (b) dedicated numerous hours (i) assisting Class Counsel in the investigation and development of an initial complaint, (ii)

[2] Plaintiffs' Co-Lead Class Counsel are Berger & Montague, P.C., Lieff, Cabraser, Heimann & Bernstein, LLP and Quinn Emanuel Urquhart & Sullivan, LLP. *See* Preliminary Approval Order at ¶ 7 (Dkt. 705).

overseeing Class Counsel's prosecution of this litigation and settlement negotiations, (iii) responding to numerous document requests and interrogatories, and (iv) producing documents.

c. Walt Whitman: (a) diligently represented the interest of the Settlement Class despite having been out of business since before the first complaint was filed and thus having its damages capped at pre-complaint overcharges; (b) submitted David Silverman to two depositions—requiring several hours of preparation and travel time—even though Walt Whitman did not operate as a truck stop between the two depositions; (c) dedicated time (i) assisting Class Counsel in the investigation and development of an initial complaint, (ii) overseeing Class Counsel's prosecution of this litigation and settlement negotiations, (iii) responding to numerous document requests and interrogatories, and (iv) producing documents.

d. Mahwah: (a) submitted an employee for a deposition, requiring several hours of preparation and travel time; (b) dedicated numerous hours (i) assisting Class Counsel in the investigation and development of an initial complaint, (ii) overseeing Class Counsel's prosecution of this litigation and settlement negotiations, (iii) responding to numerous document requests and interrogatories, and (iv) producing documents.

7. In recognition of the above facts regarding the service of the Class Representatives to the Settlement Class, the Class Representatives are hereby awarded service awards in the following amounts as requested by Class Counsel: $150,000 for Marchbanks Truck Service, Inc. d/b/a Bear Mountain Travel Stop, $75,000 for Gerald F. Krachey d/b/a Krachey's BP South, $75,000 for Walt Whitman Truck Stop, Inc., and $15,000 for Mahwah Fuel Stop out of the Aggregate Settlement Fund. The Court finds these awards to be fair and reasonable. These awards are in addition to whatever monetary amounts the Class Representatives may be receiving from the Aggregate Settlement Fund pursuant to the Plan of Distribution.

SO ORDERED this the 14th day of July, 2014.

Hon. James Knoll Gardner
U.S. District Court
Eastern District of Pennsylvania

EXHIBIT 72

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

In re Neurontin Antitrust Litigation	
THIS DOCUMENT RELATES TO:	
LOUISIANA WHOLESALE DRUG COMPANY, INC., MEIJER, INC. and MEIJER DISTRIBUTION, INC., on behalf of themselves and all others similarly situated,	**Civil Action No. 02-1830** **Civil Action No. 02-2731**
Plaintiffs,	
v.	
PFIZER, INC. and WARNER-LAMBERT CO.,	
Defendants.	

FINAL JUDGMENT AND ORDER OF DISMISSAL APPROVING PROPOSED CLASS SETTLEMENT AND DISMISSING ACTIONS

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and in accordance with the terms of the Settlement Agreement dated April 17, 2014, it is hereby ORDERED as follows:

1. This Final Judgment and Order of Dismissal hereby incorporates by reference the definitions in the Settlement Agreement among the parties to these actions on file with this Court, and all capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Settlement Agreement.

2. The Court has jurisdiction over these actions and over each of the parties and over

all members of the Class.

3. The notice of settlement (in the forms presented to this Court as Exhibits B-1 and B-2 to the Settlement Agreement) (the "Notice") directed to the members of the Class, constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice provided for individual notice to all Class members who were identified through reasonable efforts. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finds that the Notice provided Class members due and adequate notice of the Settlement, the Settlement Agreement, these proceedings and the rights of Class members to object to the Settlement.

4. The Court held a preliminary fairness hearing on May 1, 2014 and a final fairness hearing on July 31, 2014, regarding the reasonableness of the parties' settlement. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement, and finds that the Settlement is, in all respects, fair, reasonable and adequate to Class members. Accordingly, the Settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement.[1]

---

[1] The Court has fully considered the *Girsh* factors and finds that, considered together, the factors overwhelming favor approval of the Class settlement. *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *see also In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 323 (3d Cir. 1998). As the Court indicated at the fairness hearing, every issue in this complex antitrust case has been vigorously litigated by both sides for over twelve years. Class Plaintiffs faced significant risks in taking the case to trial, which this Court has discussed in its opinions on dispositive motions and recent status conferences. This Court agrees with counsel's position, as discussed in the extensive briefing and supporting affidavits, that the Settlement Agreement is fair and reasonable for all Class members. The value of the settlement to the Class is confirmed by the fact that no members of the Class of identifiable, sophisticated business

5. The Court hereby approves the Plan of Allocation of the Settlement Fund as proposed by Class Counsel (the "Plan"), which was summarized in the Notice of Proposed Settlement. The Claims Administrator is directed to distribute the net Settlement Fund as provided in the Plan.

6. The Court has certified a Class consisting of "[a]ll persons or entities in the United States that purchased Neurontin from Pfizer at any time during the period of December 11, 2002 through August 31, 2008 and who have purchased generic gabapentin. Excluded from the Class are Defendants and each of their respective parents, employees, subsidiaries, affiliates, and franchisees, and all government entities."

7. Also excluded from the Class are CVS Pharmacy Inc., Caremark, L.L.C., Rite Aid Corporation, Rite Aid HDQTRS Corp., Walgreen Co., American Sales Co, Inc., HEB Grocery Co. LP, Safeway Inc., SuperValu Inc., and The Kroger Co., in their own right as direct purchasers of Neurontin from Pfizer and as assignees limited to their purchases of Neurontin from Class members.

8. The Court has found that the Class meets all the requirements of Fed. R. Civ. P. 23. The Class, made up of sophisticated business entities, had a full and fair opportunity to request exclusion at the time of class certification and, therefore, there is no reason for the Court to afford a new opportunity to individual Class members to request exclusion who had an earlier opportunity to request exclusion but did not do so.

---

entities have objected, rather many have explicitly approved of the Settlement.

9. The Court has appointed Louisiana Wholesale Drug company, Inc., Meijer, Inc., and Meijer Distribution, Inc. as class representatives (the "Class Representatives").

10. The Court has found that Co-Lead Counsel, listed below, along with other Class Counsel, have fairly and adequately represented the interests of the Class and satisfied the requirements of Fed. R. Civ. P. 23(g):

Bruce E. Gerstein, Esq.
GARWIN GERSTEIN & FISHER LLP
88 Pine Street, 10th Floor
New York, NY 10005

Richard J. Kilsheimer, Esq.
KAPLAN FOX & KILSHEIMER LLP
850 Third Avenue, 14th Floor
New York, NY 10022

11. The following actions are hereby dismissed with prejudice, as provided in the Settlement Agreement, and without costs, except as provided for herein and in the Settlement Agreement:

- *Louisiana Wholesale Drug Company, Inc., et al. v. Pfizer, Inc. and Warner-Lambert,* No. 2:02-cv-01830-FSH (D.N.J.)
- *Meijer, Inc., et al. v. Pfizer, Inc. and Warner-Lambert*, No. 2:02-cv-02731 (D.N.J.)

12. Each of the foregoing dismissals shall become effective upon the date the Settlement becomes final in accordance with paragraph 4 of the Settlement Agreement.

13. Upon this Settlement becoming final in accordance with paragraph 4 of the Settlement Agreement, Defendants and their past, present and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, officers, directors, management, supervisory

boards, insurers, general or limited partners, employees, agents, trustees, associates, attorneys and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the "Released Parties") are and shall be unconditionally, fully and finally released and forever discharged from all manner of claims, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, accrued in whole or in part, in law or equity, that Plaintiffs or any member or members of the Class (including any of their past, present or future officers, directors, insurers, general or limited partners, divisions, stockholders, agents, attorneys, employees, legal representatives, trustees, parents, associates, affiliates, joint ventures, subsidiaries, heirs, executors, administrators, predecessors, successors and assigns, acting in their capacity as such) (the "Releasors"), whether or not they object to the Settlement and whether or not they make a claim upon or participate in the Settlement Fund, ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, arising out of or relating in any way to any conduct alleged or asserted in any of Plaintiffs' complaints filed in this Class Action, relating to any alleged delay in the marketing, sale, manufacture, pricing, or purchase of, or the enforcement of intellectual property related to Neurontin or its generic equivalents, prior to the date hereof, except the Settlement does not release any claims between Plaintiffs, members of the Class and the Released Parties concerning product liability, breach of contract, breach of warranty or personal injury (the "Released Claims").

14. In addition, Plaintiffs and each Class member, on behalf of themselves and all

other Releasors, hereby expressly waive, release and forever discharge, upon the Settlement becoming final, any and all provisions, rights and benefits conferred by § 1542 of the California Civil Code, which reads:

> Section 1542. General Release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor;

or by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Class member may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of this paragraph 13, but each Class member hereby expressly waives and fully, finally and forever settles, releases and discharges, upon this Settlement becoming final, any known or unknown, suspected or unsuspected, asserted or un-asserted, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Class member also hereby expressly waives and fully, finally and forever settles, releases and discharges any and all claims it may have against any Released Party under § 17200, *et seq*, of the California Business and Professions Code or any similar, comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which claims are expressly incorporated into the definition of Released Claims.

15. The releases set forth in paragraphs 13 and 14 of this Order shall not release any claims between Plaintiffs, Class members and the Released Parties concerning product liability,

breach of contract, breach of warranty, or personal injury.

16. Upon consideration of Class Counsel's petition for fees, costs and expenses, Co-Lead Counsel, on behalf of all counsel for the Class, are hereby awarded attorneys' fees in the amount of 33⅓% of the Settlement Fund and costs and expenses totaling $2,213,537.35, together with a proportionate share of the interest thereon from the date the funds are deposited in the Escrow Account until payment of such attorneys' fees, costs and expenses, at the rate earned by the Settlement Fund, to be paid solely from the Settlement Fund and only if and after the Settlement becomes final in accordance with paragraph 4 of the Settlement Agreement. Upon consideration of Class Counsel's petition for incentive payments for Plaintiffs in these actions, LWD and Meijer are each hereby awarded an incentive award in the amount of $100,000.00, to be paid solely from the Settlement Fund, and only if and after the Settlement becomes final in accordance with paragraph 4 of the Settlement Agreement. Co-Lead Counsel shall allocate and distribute such attorneys' fees, costs and expenses among the various Class Counsel that have participated in this litigation. Co-Lead Counsel shall distribute such incentive awards to the Plaintiffs as provided herein. The Released Parties (as defined in paragraph 10 of the Settlement Agreement) shall have no responsibility for, and no liability whatsoever with respect to, any payment or disbursement of attorneys' fees, expenses, costs or incentive awards among Class Counsel and/or Plaintiffs, or with respect to any allocation of attorneys' fees, expenses, costs or incentive awards to any other person or entity who may assert any claim thereto. The attorneys' fees, costs and expenses, and incentive award authorized and approved by this Final Judgment and Order shall be paid to Co-Lead Counsel within five (5) business days after this

Settlement becomes final pursuant to paragraph 4 of the Settlement Agreement and in accordance with the terms of the Settlement Agreement and the Escrow Agreement. The attorneys' fees, costs and expenses, and incentive awards authorized and approved by this Final Judgment and Order shall constitute full and final satisfaction of any and all claims that Plaintiffs and any Class member, and their respective counsel, may have or assert for reimbursement of fees, costs, and expenses, and incentive awards, and Plaintiffs and members of the Class, and their respective counsel, shall not seek or demand payment of any fees and/or costs and/or expenses and/or incentive awards from any source other than the Settlement Fund. The Court retains exclusive jurisdiction over the Settlement and the Settlement Agreement as described therein, including the award of attorneys' fees to Plaintiffs' Counsel, the reimbursement of expenses, the award of incentive payments to Plaintiffs, and the administration and consummation of the Settlement, and over this Final Judgment and Order.

17. The Court finds that this Final Judgment and order adjudicates all of the claims, rights and liabilities of the parties to the Settlement Agreement (including the members of the Class), and is final and shall be immediately appealable. Neither this Order nor the Settlement Agreement nor any other Settlement-related document shall constitute any evidence or admission of liability by Defendants or any other Released Party, nor shall either the Settlement Agreement or this Order or any other Settlement-related document be offered in evidence or used for any other purpose in this or any other matter or proceeding except as may be necessary to consummate or enforce the Settlement Agreement of the terms of this Order or if offered by any Released Party in responding to any action purporting to assert Released Claims.

18. Class Counsel for the Direct Purchaser Class Plaintiffs have moved for an award of attorneys' fees, reimbursement of expenses, and incentive awards for class representatives. (Doc. No. 749). Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, and pursuant to the factors for assessing the reasonableness of a class action fee request as set forth in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000), this Court makes the following findings of fact and conclusions of law with respect to Class Counsel's request for an award of attorneys' fees, reimbursement of expenses, and incentive awards for Class Representatives:

19. The Settlement of $190,416,438.36 million (the "Settlement Fund"), representing the agreed-upon $190 million plus 1% per annum interest that had accrued from March 14, 2014 (the date that the parties first orally agreed to the Settlement's terms) to June 2, 2014 (the date that defendants deposited such amount into an escrow account held in trust by UBS AG that is earning interest for the benefit of the Class), plus interest on the Settlement Fund from June 2, 2014, confers a monetary benefit on the Direct Purchaser Class that is substantial, both in absolute terms and when assessed in light of the risks of establishing liability and damages in this case. The Settlement was reached following negotiations held in good-faith and in the absence of collusion, with the aid of a highly-renowned mediator, over the course of three mediation sessions, covering six days.

20. The Court-approved Notice of Proposed Settlement of Class Action (Doc. No. 727) advised Class Members that Class Counsel intended to move for an award of attorneys' fees in an amount up to 33-1/3% of the gross Settlement Fund (including the interest accrued thereon), plus reimbursement of reasonable costs and expenses incurred in the prosecution of this action.

21. Class Counsel have moved for an award of attorneys' fees in the amount of 33-1/3% of the gross Settlement Fund (including the interest accrued thereon), plus reimbursement of reasonable costs and expenses incurred in the prosecution of this action, which such motion has been on the docket and publicly available since July 1, 2014.

22. In prosecuting this action, Class Counsel expended over 60,570 hours of uncompensated time, and incurred substantial out of pocket expenses, with no guarantee of recovery. Class Counsel's hours were reasonably expended in this complex case that was vigorously litigated for over twelve years, and their time was expended at significant risk of nonpayment.

23. No Class Members objected to Class Counsel's fee request. In fact, as described below, the reaction of the Class has been entirely positive and supportive of the Settlement generally and Class Counsel's requested fee award specifically.

24. The Settlement achieved for the benefit of the Direct Purchaser Class was obtained as a direct result of Class Counsel's skillful advocacy. This is confirmed by the entirely positive reaction of the Class Members to the Settlement and Class Counsel's request for a fee award of 33-1/3% of the Settlement. Outside antitrust counsel for the country's three largest pharmaceutical distributors, who made in excess of 70% of the branded and generic Neurontin purchases at issue in this case, wrote to the Court on behalf of their clients to express their clients' support for the Settlement and Class Counsel's request for an award of one-third of the Settlement amount. *See* Exhibits 2-4 to the Joint Declaration of Bruce E. Gerstein and Richard J. Kilsheimer in Support of Direct Purchaser Class Plaintiffs' Motions for Final Approval of Settlement and for

an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards to Class Representatives (the "Joint Declaration" or "Joint Decl.," Doc. No. 748-5) (Doc. Nos. 748-7 – 748-9) (letters to the Court from outside counsel to AmerisourceBergen Corporation, Cardinal Health, Inc., and McKesson Corporation). In addition, a number of other Class Members wrote directly to the Court stating their belief that Class Counsel's requested fees are justified in light of the time and expense that Class Counsel expended prosecuting and favorably resolving this complex litigation. *See* Exhibits 5-12 to the Joint Declaration (Doc. Nos. 748-9 – 748-17) (letters from Class Members Burlington Drug Company, Inc., Dakota Drug, Inc., Drogueria Betances, Inc., King Drug Company of Florence, Inc., Miami-Luken, Inc., Prescription Supply, Inc., J M Smith Corporation d/b/a Smith Drug Co., and Value Drug Co.). All of the above-mentioned Class Members who have written to the Court to express their support for the Settlement and Class Counsel's fee request account for approximately 93% of the purchases at issue in this litigation.

25. The "percentage-of-the-fund" method is the proper method for calculating attorneys' fees in common fund class actions in this Circuit. *See, e.g., In re Rite Aid Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005). The Court concludes that that the fees requested by Class Counsel are comparable to recent awards in similar cases in the Third Circuit and elsewhere, including direct purchaser class actions similarly alleging anticompetitive practices in the pharmaceutical industry.

26. The Court finds that Class Counsel's request for a 33-1/3% fee is consistent with what would have been negotiated for a contingent-fee case of this complexity. For example, the current and former presidents of class representative Louisiana Wholesale Drug Co., Inc. ("LWD")

attested that "had LWD retained the law firms and/or attorneys . . . to represent it in an individual action in this complex litigation, LWD would have retained these same attorneys based on a 33 1/3% contingency fee in the event of settlement or compromise without trial and/or based on a 40% contingency fee in the event of trial, with any applicable contingency fee percentage computed in addition to out-of-pocket expenses." Exhibit 13 to the Joint Decl., Declaration of Chad Gielen, President/Chief Executive Office of LWD, at ¶ 6, and Exhibit 14 to the Joint Decl., Declaration of Gayle White, former President and General Manager of LWD, at ¶ 3. Furthermore, the letters from the Class Members supporting Class Counsel's fee award is further evidence that the 33-1/3% fee award is consistent with what those entities would have assented to had they retained Class Counsel in private litigation.

27. As detailed in Class Counsel's affidavits, a one-third fee award would equate to a lodestar multiplier of approximately 1.99. The Court concludes that, based on recently-approved multipliers in other Third Circuit antitrust class actions alleging similar anticompetitive practices in the pharmaceutical market, the multiplier requested here is well within the acceptable range. *See, e.g., In re Flonase Antitrust Litigation*, 951 F. Supp. 2d 739, 750 (E.D. Pa. 2013) (approving 33 1/3% fee award of $150 million settlement that amounted to multiplier of 2.99).

28. In light of the factors and findings described above, the Court finds that the requested 33-1/3% fee award is within the applicable range of reasonable percentage fund awards.

29. The Court finds this fee award is reasonable pursuant to Federal Rule of Civil Procedure 23(h). The Court orders that Class Counsel request for attorneys' fees of 33-1/3% of the Settlement Fund, which equates to $63,472,146.12, plus one-third of the interest earned on the

Settlement Fund from June 2, 2014 (the date of funding of the Settlement Fund) to the date of payment, at the same net interest rate earned by the Settlement Fund, is granted.

30. Further, the Court orders that Class Counsel is awarded $2,213,537.35 out of the Settlement Fund to reimburse them for the expenses incurred in prosecution of this case, which such expenses the Court finds to be fair and reasonably incurred to achieve the benefits to the Direct Purchaser Class obtained by the Settlement.

31. Further, the Court orders payment of two incentive awards of $100,000 each for each of the Class Representatives – one incentive award of $100,000 to LWD and one incentive award to "Meijer", which consists of Meijer, Inc. and Meijer Distribution, Inc. (together, "Meijer") – for their active participation and assistance in the prosecution of this case, including responding to document requests and interrogatories, appearing for deposition and keeping apprised of the progress of the case, including settlement efforts. The Class Representatives' efforts contributed to the benefits conferred upon the Class through the Settlement. In addition, no Class Member has objected to the awarding of these incentive awards. Moreover, the three largest pharmaceutical distributors have specifically supported granting incentive awards in the requested amounts. *See* Exhibits 2-4 to the Joint Decl. (Doc. Nos. 748-7 – 748-9) (letters to the Court from outside counsel to AmerisourceBergen Corporation, Cardinal Health, Inc., and McKesson Corporation).

IT IS SO ORDERED.

Dated: 8-6-14

Hon. Faith S. Hochberg, U.S.D.J.

EXHIBIT 73

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IVAX CORPORATION *et al.*,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	**Case No. 1:02CV00593 (JR)**
	:	
AZTEC PEROXIDES, LLC *et al.*,	:	
	:	
Defendants.	:	
_____	:	

ORDER

Upon review of Class Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Award to the Named Plaintiffs, it is hereby ordered:

Class Plaintiffs' motion is GRANTED. The Court finds that the requested award of attorneys' fees, amounting to (i) 25% plus accrued interest of the Degussa Settlement Fund, and (ii) 25% plus accrued interest of the Atofina Settlement Fund, to be fair and reasonable and that notice to potential members of the Settlement Class has been given in an adequate and sufficient manner complying in all respects with the requirements of Federal Rule of Civil Procedure 23(e). The notice properly informed Class members that the Degussa and Atofina Settlement Agreements provide that, after Court approval, the payment of attorneys' fees and unreimbursed costs and expenses may be paid out of the Settlement Fund. No Settlement Class member objected to Class Counsel being paid such amounts out of the Settlement Fund. Moreover, neither Degussa nor Atofina have opposed Class Counsel's request for attorneys' fees. Accordingly, the Court awards Class Counsel attorneys' fees in the amount of $5,250,000 plus accrued interest.

The Court further awards Class Counsel $942,776.50 in unreimbursed costs and expenses, and $100,000 as in incentive award to the named plaintiff Ivax Corporation, and $100,000 as an incentive award to the named plaintiff Polyvel, Inc. for their respective roles in bringing about the recovery on behalf of the Class. The notice properly informed Class members that these incentive awards and unreimbursed expenses may be paid out of the Settlement Fund and no Class member objected to Class Counsel being paid such amounts out of the Settlement Fund.

So ORDERED this _24th__ day of August, 2005.

_____/s/_____
Judge James Robertson
United States District Judge

EXHIBIT 74

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE ERICA P. JOHN FUND, INC., et al., *on Behalf of Itself and All Others Similarly Situated*,	§	
Plaintiffs,	§	Civil Action No. 3:02-cv-1152-M
v.	§	
HALLIBURTON COMPANY and DAVID J. LESAR,	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

On February 21, 2017, the Erica P. John Fund, Inc. ("EPJF"), Lead Plaintiff in this securities class action case, filed a Stipulation of Settlement, (ECF No. 794), and a Motion for Preliminary Approval of Class Action Settlement, (ECF No. 795). The Court granted preliminary approval. (ECF No. 805).

EPJF then filed the Motion for Final Approval of Class Action Settlement and Plan of Allocation. (ECF No. 818). Class Counsel—Boies Schiller Flexner LLP ("BSF"), Kahn Swick & Foti, LLC ("KSF"), and Lawrence "Larry" Vincent—filed the Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses. (ECF No. 820). Several other firms have also moved for fees and expenses, namely Federman & Sherwood, (ECF No. 812), Kilgore & Kilgore, PLLC (ECF No. 815), and Robbins Geller Rudman & Dowd LLP, (ECF No. 817). Robbins Geller Rudman & Dowd has since withdrawn its request for fees and instead seeks only expenses. (ECF No. 823).

On July 31, 2017, the Court held a final fairness hearing regarding the Motion for Final Approval and heard argument on the fee and expense motions. For the reasons stated below and

on the record, the Motion for Final Approval of Class Action Settlement and Plan of Allocation is **GRANTED**; Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses is **GRANTED**; Federman & Sherwood's Motion for Attorney Fees and Reimbursement of Expenses is **GRANTED IN PART** and **DENIED IN PART**; Kilgore & Kilgore's Motion for Award of Attorneys' Fees and Expenses is **GRANTED IN PART** and **DENIED IN PART**; and Robbins Geller Rudman & Dowd's Motion for Award of Expenses is **GRANTED**.

I. Factual and Procedural Background

a. Background of the Case

> Erica P. John Fund, Inc. (EPJ Fund), is the lead plaintiff in a putative class action against Halliburton and one of its executives (collectively Halliburton) alleging violations of section 10(b) of the Securities Exchange Act of 1934, and Securities and Exchange Commission Rule 10b–5. According to EPJ Fund, between June 3, 1999, and December 7, 2001, Halliburton made a series of misrepresentations regarding its potential liability in asbestos litigation, its expected revenue from certain construction contracts, and the anticipated benefits of its merger with another company—all in an attempt to inflate the price of its stock. Halliburton subsequently made a number of corrective disclosures, which, EPJ Fund contends, caused the company's stock price to drop and investors to lose money.

Halliburton Co. v. Erica P. John Fund, Inc., 134 S. Ct. 2398, 2405–08 (2014) (*Halliburton I*). Numerous complaints alleging misrepresentations by Halliburton were filed in 2002 and consolidated into this action. (ECF No. 22). Four lead plaintiffs were appointed, including the Archdiocese of Milwaukee Supporting Fund, Inc. ("AMSF"), the precursor in name to EPJF. (*Id.* at 22). Schiffrin & Barroway, LLP ("S&B") was appointed as lead counsel, and Federman & Sherwood ("F&S") and The Emerson Firm were appointed co-liaison counsel. (*Id.*)

On May 10, 2004, all lead plaintiffs except for AMSF moved for preliminary approval of settlement, asserting that all claims had been settled for $6 million. (ECF No. 94). AMSF opposed the settlement, arguing that it had not been included in settlement discussions and that

the proposed figure was insufficient. AMSF further moved to have S&B removed as lead counsel. Following a final fairness hearing, the Court denied approval and held that there was insufficient proof that the proposed settlement was fair, reasonable, and adequate. (ECF No. 133 at 16). On October 7, 2004, Kilgore & Kilgore, PLLC ("K&K") was appointed local counsel for AMSF. (ECF No. 149). On May 3, 2005, S&B was removed as lead counsel. (ECF No. 195). AMSF became the sole remaining lead plaintiff in the action, and at its request and with the Court's approval, Scott+Scott, LLP and Lerach Coughlin Stoia Geller Rudman & Robbins LLP were appointed co-lead counsel. (*Id.*)

In February of 2007, Scott+Scott and Lerach Coughlin Stoia Geller Rudman & Robbins were relieved of their duties as lead counsel and were replaced by BSF. (ECF No. 308). AMSF subsequently changed its name to the "Erica P. John Fund, Inc." (ECF No. 472). At the class certification stage, the case was subject to multiple appeals, and the Supreme Court granted certiorari twice to resolve various issues. *See Halliburton I*, 563 U.S. 804 (2011); *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014) (*Halliburton II*). The following excerpt from *Halliburton II* provides a concise summary of the procedural history and legal issues raised during this stage:

> EPJ Fund moved to certify a class comprising all investors who purchased Halliburton common stock during the class period. . . . [E]xcept for one difficulty, the court would have also concluded that the class satisfied the requirement of Rule 23(b)(3) that "the questions of law or fact common to class members predominate over any questions affecting only individual members." The difficulty was that Circuit precedent required securities fraud plaintiffs to prove "loss causation"—a causal connection between the defendants' alleged misrepresentations and the plaintiffs' economic losses—in order to invoke Basic's presumption of reliance and obtain class certification. Because EPJ Fund had not demonstrated such a connection for any of Halliburton's alleged misrepresentations, the District Court refused to certify the proposed class. The United States Court of Appeals for the Fifth Circuit affirmed the denial of class certification on the same ground. *Archdiocese of Milwaukee Supporting Fund, Inc. v. Halliburton Co.*, 597 F.3d 330 (2010).

> We granted certiorari and vacated the judgment, finding nothing in "Basic or its logic" to justify the Fifth Circuit's requirement that securities fraud plaintiffs prove loss causation at the class certification stage in order to invoke Basic's presumption of reliance. *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. ——, ——, 131 S.Ct. 2179, 2185–2186, 180 L.Ed.2d 24 (2011) (*Halliburton I*). "Loss causation," we explained, "addresses a matter different from whether an investor relied on a misrepresentation, presumptively or otherwise, when buying or selling a stock." We remanded the case for the lower courts to consider "any further arguments against class certification" that Halliburton had preserved.
>
> On remand, Halliburton argued that class certification was inappropriate because the evidence it had earlier introduced to disprove loss causation also showed that none of its alleged misrepresentations had actually affected its stock price. . . . The District Court declined to consider Halliburton's argument, holding that the Basic presumption applied and certifying the class under Rule 23(b)(3).
>
> The Fifth Circuit affirmed. 718 F.3d 423 (2013). The court found that Halliburton had preserved its price impact argument, but to no avail. *Id.*, at 435–436. While acknowledging that "Halliburton's price impact evidence could be used at the trial on the merits to refute the presumption of reliance," *id.*, at 433, the court held that Halliburton could not use such evidence for that purpose at the class certification *2407 stage, *id.*, at 435. "[P]rice impact evidence," the court explained, "does not bear on the question of common question predominance [under Rule 23(b)(3)], and is thus appropriately considered only on the merits after the class has been certified." *Ibid.* We once again granted certiorari, this time to resolve a conflict among the Circuits over whether securities fraud defendants may attempt to rebut the Basic presumption at the class certification stage with evidence of a lack of price impact.

Halliburton II, 134 S. Ct. at 2405–08. In *Halliburton II*, the Supreme Court held that Halliburton could introduce evidence of a lack of price impact at the class certification stage to show the absence of predominance. *Id.* at 2414–17. The Supreme Court again vacated the judgment of the Fifth Circuit and remanded the case to this Court for further proceedings. *Id.* at 2417. After briefing and oral argument addressing *Halliburton II*, this Court certified the class. (ECF No. 601). After Defendants took another appeal to the Fifth Circuit, EPJF filed the Stipulation of Settlement. (ECF No. 794).

b. Summary of the Settlement

The Stipulation of Settlement is between EPJF, on behalf of itself and each of the class members, and Defendants Halliburton Company and David Lesar. (ECF No. 794). Plaintiffs are

agreeing to release all claims based on the purchase or acquisition of common stock during the Class Period, which is defined as between August 16, 1999, and December 7, 2001, inclusive. The Parties agreed to settle the case for $100,000,000.00 subject to the Court's approval. The Stipulation of Settlement does not include claims stemming from purchases of stock between December 8, 2001, and July 22, 2002, which are part of the *Magruder* putative class action. *See Magruder v. Halliburton Co.*, No. 3:05-cv-1156-M (N.D. Tex.). These claims are expressly not released.

II. Motion for Final Approval of Class Action Settlement

Under Rule 23(e), a court must review any "settlement, voluntary dismissal, or compromise" of the "claims, issues, or defenses of a certified class." FED. R. CIV. P. 23(e). Rule 23(e) establishes certain procedures in considering a proposed settlement, each of which will be considered in turn:

> (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
>
> (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
>
> (3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
>
> (4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.
>
> (5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

Id.

a. Notice Must Be Directed in a Reasonable Manner to All Class Members

Notice of the settlement was reasonable, provided ample due process,[1] and satisfied the requirements for settlement notices set out in the Private Securities Litigation Act ("PSLA").[2] Notice was disseminated through the procedures provided in the Court's Preliminary Approval Order. (ECF No. 805). In the Motion for Final Approval, Class Counsel stated that by April 14, 2017, 42,194 copies of the notice had been mailed to potential class members identified through Halliburton's transfer agent records and their nominees, and as of June 28, 2017, an additional 67,008 copies had been sent. (ECF No. 818 at 21). Notice was published in *Investor's Business Daily* and disseminated on PR Newswire. (*Id.*) The Claims Administrator maintained a toll-free phone number and a website providing additional information; as of April 27, 2017, the Claims Administrator had received 56 calls and 174 hits on the website. (*Id.*) In terms of timing, the

[1] "There are no rigid rules to determine whether a settlement notice satisfies constitutional or Rule 23(e) requirements[.]" *Wal–Mart Stores, Inc. v. Visa U.S.A., Inc*., 396 F.3d 96, 114 (2d Cir. 2005). Instead, "a settlement notice need only satisfy the broad reasonableness standards imposed by due process." *In re Katrina Canal Breaches Litig*., 628 F.3d 185, 197 (5th Cir. 2010) (internal quotation marks omitted). Due process is satisfied if the notice provides class members with the "information reasonably necessary for them to make a decision whether to object to the settlement." *Id.*; *see also Wal–Mart Stores*, 396 F.3d at 114 (explaining that "the settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings"). However, due process does not require actual notice to each party intended to be bound by the adjudication of a representative action. *Mullane v. Cent. Hanover Bank & Trust. Co.*, 339 U.S. 306, 313–14 (1950) ("A construction of the Due Process Clause which would place impossible or impracticable obstacles in the way could not be justified."); *In re Integra Realty Res., Inc*., 262 F.3d 1089, 1110–11 (10th Cir. 2001) (holding Rule 23 and due process requisites satisfied where the record indicated that only seventy-seven percent of class members actually received notice of the settlement).

[2] The PSLA requires that notices of settlement must state: (A) the amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis; (B) if the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this chapter (as is the case here), a statement from each settling party concerning the issue or issues on which the parties disagree; (C) if any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought; (D) the name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class; (E) a brief statement explaining the reasons why the parties are proposing the settlement; (F) such other information as may be required by the court. 15 U.S.C. § 78u-4(a)(7)(A)–(F).

class members had 87 days between the initial mailing of the notice on April 14, 2017, and the deadline to request exclusion from the class, which was on July 16, 2017. *See DeJulius v. New Eng. Health Care Emps. Pension Fund*, 429 F.3d 935, 946 (10th Cir. 2005) (notice program upheld as providing sufficient due process even though 70.7% of the class members received fewer than thirty-two days' notice); *Silber v. Mabon*, 18 F.3d 1449, 1452, 1454 (9th Cir. 1994) (due process requirement and Rule 23 satisfied when settlement notices were sent out forty days before the opt-out deadline). Furthermore, the fairness hearing was scheduled more than 75 days after the notice date. *See Schwartz v. TXU Corp.*, 2005 WL 3148350, at *11 (N.D. Tex. Nov. 8, 2005) (stating that a gap of 62 days between when notice was first sent out and the fairness hearing was adequate). Except for the lead plaintiff in *Magruder*, the Court received no objections to the settlement, and only one objection to the fees sought.

b. The Proposed Settlement Must be Fair, Reasonable, and Adequate

Courts evaluate the *Reed* factors to determine whether a proposed class action settlement is fair, reasonable, and adequate. *See Reed v. General Motors Corp.*, 703 F.2d 170 (5th Cir. 1983). The *Reed* factors are: (1) evidence that the settlement was obtained by fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the litigation and available discovery; (4) the probability of plaintiffs prevailing on the merits; (5) the range of possible recovery and certainty of damages; and (6) the opinions of class counsel, class representatives, and absent class members. *Newby v. Enron Corp.*, 394 F.3d 296, 301 (5th Cir. 2004). In light of the *Reed* factors, the proposed settlement is fair, reasonable, and adequate.

i. Evidence that the Settlement Was Obtained by Fraud or Collusion

Nothing in the record indicates that the current settlement was the result of secret negotiations or improper collusion. No parties (other than the lead plaintiff in *Magruder*) have

objected, and those objections do not assert any fraud or collusion. Furthermore, the settlement was obtained through formal mediation before former U.S. District Judge Layn R. Phillips, which strongly suggests that the settlement was not the result of improper dealings. *See In re Bluetooth Headset Products Liability Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (noting that the "presence of a neutral mediator" is a factor "weighing in favor of a finding of non-collusiveness").

ii. The Complexity, Expense, and Likely Duration of the Litigation

Having been heard twice by the Supreme Court and multiple times by the Fifth Circuit, and having lasted more than fifteen years, this case is indisputably complex and of lengthy duration.

iii. Stage of the Litigation and Available Discovery

The litigation was set for trial, subject to the last appeal. The parties have produced over 1.3 million documents and have taken 28 fact depositions. The appendices to the cross-motions for summary judgment exceeded 9,400 pages.

"A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *In re Heartland Payment Sys., Inc.*, 851 F. Supp. 2d 1040, 1063 (S.D. Tex. 2012) (internal quotation marks omitted). Here, the parties have engaged in substantial and meaningful discovery, and thus the parties were fully aware of the complete facts and the strengths and weaknesses of their respective positions.

iv. The Probability of Plaintiffs Prevailing on the Merits

EPJF succeeded in certifying the class on the December 7, 2001, disclosure and had a not insignificant probability of prevailing on the merits. However, there remained a substantial risk for all parties in proceeding to trial.

v. Range of Possible Recovery and Certainty of Damages

In the Motion for Final Approval, EPJF states that the "$100,000,000 all cash recovery constitutes approximately 11.8% of the maximum recoverable damages for the Class (approximately $848 million, as determined in consultation with Lead Plaintiff's damages expert)." (ECF No. 818 at 14). However, EPJF also points out that Defendants had strong arguments that the alleged misrepresentations were not wholly actionable, which would have limited "the maximum recoverable damages to as low as $233 million according to Lead Plaintiff's damages expert."[3] (*Id.* at 14-15). Under this lower recovery, the $100 million settlement would constitute 42.9% of the maximum recoverable damages for the class.

The focus of this factor is whether the settlement falls within the range of reasonableness. The Court is not to try the case via the fairness hearing because "the very purpose of the compromise is to avoid the delay and expense of such a trial." *Reed*, 703 F.2d at 172. In ascertaining whether a settlement falls "within the range of possible approval," courts will compare the settlement amount to the relief the class could expect to recover at trial, i.e., the strength of the plaintiff's case. *See, e.g., In re Nat'l Football League Platers' Concussion Injury Litig.*, 961 F. Supp. 2d 708, 714 (E.D. Pa. 2014) ("To determine whether a settlement falls 'within the range of possible approval,' a court must 'consider plaintiffs' expected recovery balanced against the value of the settlement offer.'"). "The fact that a proposed settlement may

[3] At the final settlement hearing, Lead Plaintiff's damages expert provided testimony on how these estimated recoveries were calculated.

only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Parker v. Anderson*, 667 F.2d 1204, 1210 n.6 (5th Cir. 1982) (citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974)).

Here, the recovery is 11.8% to 42.9% of the maximum possible recovery, depending on the conservativeness of the figures set forth by EPJF. As final approval is frequently given to settlements even when "the settlement amount is a very small fraction of the damages amount projected by the Plaintiffs," this recovery is reasonable in light of the possible damages. *See In re Enron Corp. Sec., Derivative, & ERISA Litig.*, 228 F.R.D. 451, 566 (S.D. Tex. 2005). Even the "low" estimate, 11.8%, is a fairly sizeable recovery compared to other approved securities class action settlements. *See, e.g., In re Initial Public Offering Sec. Litig.*, 671 F. Supp. 2d 467, 483 (S.D.N.Y. 2009) (approving a settlement representing two percent of aggregated expected recovery). Furthermore, the amount to be recovered is more than fifteen times what the Court rejected in 2004, when it found a $6 million settlement not fair, reasonable, or adequate.

vi. Opinions of Class Counsel, Class Representatives, and Absent Class Members

Class Counsel and Lead Plaintiff all agree to the settlement. *See also Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) ("[T]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel."). After notice to the class was given, the only person objecting to the Settlement is Magruder, who is not a member of the class. "Receipt of few or no objections can be viewed as indicative of the adequacy of the settlement." *In re Enron Corp.*, 228 F.R.D. at 567 (internal quotation marks omitted).

c. The Parties Seeking Approval Must File a Statement Identifying Any Agreement Made in Connection with the Proposal

Rule 23(e) requires "[t]he parties seeking approval [to] file a statement identifying any agreement made in connection with the proposal." FED. R. CIV. P. 23(e)(3). This requirement does not only concern disclosure of the basic settlement terms; "[i]t aims instead at related undertakings that, although seemingly separate, may have influenced the terms of the settlement by trading away possible advantages for the class in return for advantages for others." *Id.* Committee Notes (2003). "The spirit of [Rule 23(e)(3)] is to compel identification of any agreement or understanding," written or oral, "that might have affected the interests of class members by altering what they may be receiving or foregoing." *Slipchenko v. Brunel Energy, Inc.*, 2015 WL 338358, at *6 (S.D. Tex. Jan. 23, 2015) (quoting MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.631 (2004)).

The parties have satisfied this requirement by filing the Stipulation of Settlement, which publicly discloses the terms of the agreement between EPJF and Defendants made in connection with the settlement. The Stipulation also describes a "supplemental confidential agreement" between the parties, which "gives Halliburton the right, but not the obligation, to terminate the settlement in the event that a certain portion of the Class delivers timely and valid requests for exclusion from the Class." (ECF No. 794 at 36-37).

d. An Additional Opt-Out Opportunity

Rule 23(e)(4) provides that "[i]f the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so." Rule 23(e)(4) "comes into play when the opt-out opportunity expired before the members received notice of a proposed settlement." *Slipchenko*, 2015 WL

338358, at *7. This factor is inapplicable here. The members of the class received notice of the Settlement well before the opt-out opportunity expired.[4]

e. Class Member Objections

Class members must be provided an opportunity to object to the proposed settlement. FED. R. CIV. P. 23(e). The notice sent to the class here informed them of their right to object and outlined the process for doing so. To date, there have been a total of two objections filed to any aspect of the settlement: one by Patricia Magruder, the lead plaintiff in the *Magruder* class action, to the settlement itself, (ECF No. 810), and one by Channa Weeratunge in a one-page objection to Class Counsel's Motion for Award, (ECF No. 808). As discussed later below, the Court holds that the fee award sought by Class Counsel is reasonable.

Magruder objects to the proposed settlement as being (1) unfair to the shareholders, and (b) an "unlawful infringement on the right of the Magruder Class Claims." (ECF No. 810 at 1). Magruder argues that the release provided for in the Stipulation of Settlement is too broad, arguing that EPJF has "abandoned all other claims, and those [abandoned] claims are the subject of the Magruder Action." (*Id.* at 4).

Magruder's objection is **OVERRULED**. Because she is not a member of the class in this case, she lacks standing to object to the settlement. An objector who does not prove her membership in the class lacks standing to object to a settlement reached in a securities class action. *See Feder v. Electronic Data Systems Corp.*, 248 F. App'x 579, 580 (5th Cir. 2007) ("[O]nly class members have an interest in the settlement funds, and therefore only class members have standing to object to a settlement."); *see also In re Deepwater Horizon*, 739 F.3d 790, 809 (5th Cir. 2014) (holding that the district court did not abuse its discretion in deeming

[4] The deadline to submit requests for exclusion from the class was July 10, 2017. (ECF No. 805 at 7).

objectors who did not substantiate their membership in the class to have waived and forfeited their objections to settlement); *Shaw v. Toshiba Am. Info. Sys.*, 91 F. Supp. 2d 942, 974–75 (E.D. Tex. 2000) (noting that an objector who failed to substantiate his membership in the class did not have "proper standing" to object to class action settlement).

Magruder, as the party seeking to establish jurisdiction, bears the burden of proving standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The Stipulation of Settlement defines the class as "all Persons (including, as to all such Persons, their beneficiaries) who purchased or otherwise acquired common stock of Halliburton Company between August 16, 1999 and December 7, 2001."[5] (ECF No. 794 at 3). Magruder purchased her shares on December 10, 2001.[6] (ECF No. 810 at 2). Magruder provides no other evidence showing that she is a member of the Class and cites to no other authority to suggest that non-class members have standing to object to a proposed settlement.

Instead, Magruder states that she "derives her status to object to this current settlement from (1) being an original objector to the *[earlier]* settlement and (2) as an intervenor who is now Lead Class Plaintiff in the Magruder Class Action." (ECF No. 810 at 3). The fact that Magruder is the lead plaintiff in another class action is irrelevant for determining standing to object to the proposed settlement in this class action. Furthermore, Magruder cites to no authority that being an objector in the earlier $6 million settlement gives standing for her to object now, after her case was severed from this action by the Court's June 3, 2005, Order. (ECF No. 207). Magruder's case became a distinct, independent action upon severance, and she did

[5] In response to the Court's March 21, 2017, Order, (ECF No. 802), EPJF and Halliburton updated the definition of "Released Claim" to remove any ambiguity about whether the release covered Magruder's claims. (*See* ECF No 804).

[6] "Patricia A. Magruder purchased 200 shares of Halliburton stock on December 10, 2001 at a price of $13.97 per share through her online account at CSFB Direct. December 10, 2001 (a Monday) was the first trading day after December 7, 2001 (a Friday). She continues to hold those shares to this date." (ECF No. 810 at 2).

not retain membership in this class. *See also Allied Elevator, Inc. v. E. Tex. State Bank of Buna*, 965 F.2d 34, 36 (5th Cir. 1992) ("Severance under Rule 21 creates two separate actions or suits where previously there was but one. Where a single claim is severed out of a suit, it proceeds as a discrete, independent action, and a court may render a final, appealable judgment in either one of the resulting two actions notwithstanding the continued existence of unresolved claims in the other.").

III. Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses

Class Counsel applies for attorney's fees in the total combined amount of $33,333,333.33, or one-third of the Settlement Fund, plus interest. The request for one-third of the Fund is intended as an award to BSF, KSF, and Lawrence "Larry" Vincent, who "served as local counsel to BSF and later KSF in this action." (ECF No. 820 at 4). Class Counsel indicates that the award will be divided among Class Counsel as follows:

> BSF and KSF have agreed, after paying Mr. Vincent at his lodestar, with the same negative multiplier as Class counsel is seeking, to share remaining fees on a 65/35% basis with BSF receiving 65% of the fees and KSF 35%.

(*Id.* at 4 n.1). In addition, Class Counsel seeks reimbursement for $5,969,540.84 in expenses, plus interest. (*Id.* at 3). Class Counsel also asks for a $100,000 compensation award, plus interest, to Lead Plaintiff. (*Id.*)

Class Counsel argues that the requested fees are reasonable under either the "percentage of the fund" method or the "lodestar" method for calculating fees. In their Reply to the Motion for Award, Class Counsel advocates using a "scaled back lodestar analysis" as a "cross-check" to the percentage method as "a rough gauge of the reasonableness of the proposed fees." (ECF No. 831 at 5–6). Class Counsel points to other district courts in the Fifth Circuit that have accepted fee awards calculated under the percentage method in light of the *Johnson* factors and have then

used the lodestar method as a rough means of checking their work. (*Id.* at 5). Class Counsel states that the requested award equates to a "negative multiplier of 0.77 of Class Counsel's lodestar," and thus argues that the requested award is also reasonable under the lodestar method. (ECF No. 820 at 3).

Broadly, Class Counsel argues that they are entitled to this fee for several reasons, including: overcoming the initial denial of class certification in *Halliburton I*, successfully overcoming efforts to eliminate the fraud-on-the-market presumption in *Halliburton II*, serving more than 60 third-party subpoenas, filing eight motions to compel, reviewing more than 1.3 million pages of documents, taking or defending 40 fact depositions, and taking or defending 11 expert depositions. (ECF No. 820 at 2). Class Counsel also describes the settlement as an "exceptional result," which was the result of many years of hard work. (*Id.*)

a. Legal Standard

The use of a common fund to pay attorney's fees in class action settlements is well established. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[T]his Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."). Courts typically use one of two methods for calculating attorney's fees in common fund cases: (1) the percentage method, in which the court awards fees as a reasonable percentage of the common fund, or (2) the lodestar method, in which the court computes fees by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate and, in its discretion, applying an upward or downward multiplier. *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642–435 (5th Cir. 2012).

Regardless of whether the court uses the percentage method or the lodestar method, it must consider the *Johnson* factors in calculating attorney's fees. The *Johnson* factors are (1) the time and labor required; (2) the novelty and difficulty of the legal issues; (3) the skill required to perform the legal service properly; (4) the preclusion of other employment by the attorney as a result of taking the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or other circumstances; (8) the monetary amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) whether the case is undesirable; (11) the nature and duration of the professional relationship with the client; and (12) awards in similar cases. *Johnson v. Ga. Highway Exp., Inc.*, 488 F.2d 714, 718 (5th Cir. 1974), *overruled on other grounds by Blanchard v. Bergeron*, 489 U.S. 87, 90 (1989).

The PSLA expressly contemplates the percentage method, providing that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class." 15 U.S.C. § 78u–4(a)(6); *see also Union Asset Mgmt.*, 669 F.3d at 644–45 (affirming an 18% fee award in a PSLA case, so long as the *Johnson* framework for assessing the reasonableness of a fee award is used). The statute does not define "reasonable percentage," but the Motion for Final Approval cites to numerous courts in the Fifth Circuit that have approved applications for fee awards of 33⅓% in class actions. *See, e.g.*, *In re Olicom Sec. Litig.*, No. 94-0511 (N.D. Tex. Aug. 30, 1996); *Sims v. Shearson Lehman Bros., Inc.*, Fed. Sec. L. Rep. (CCH) ¶ 98, 134, at 98,976 (N.D. Tex. Nov. 29, 1993).

If the lodestar method is used, the lodestar is calculated by multiplying the number of hours that an attorney reasonably spent on the case by an appropriate hourly rate, which is the market rate in the community for this work. *See Smith & Fuller, P.A. v. Cooper Tire & Rubber*

Co., 685 F.3d 486, 490 (5th Cir. 2012). The party seeking reimbursement of attorney's fees bears the burden of establishing the number of hours expended by presenting adequate time records as evidence. *See Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir. 1993). The court should use this time as a benchmark and then exclude any time that is excessive, duplicative, unnecessary, or inadequately documented. *See id.* The hours remaining are those reasonably expended, and there is a strong presumption of the reasonableness of the lodestar amount. *See Perdue v. Kenny A.*, 559 U.S. 542, 552 (2010); *Saizan v. Delta Concrete Prods. Co.*, 448 F.3d 795, 800 (5th Cir. 2006).

"A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988) (citing *Blum v. Stenson*, 465 U.S. 886, 895–96 n.11 (1984)). The relevant legal community is the community in which the district court sits. *See Tollett v. City of Kemah*, 285 F.3d 357, 368 (5th Cir. 2002). The burden is on the movant to "produce satisfactory evidence—in addition to the attorney's own affidavits—that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum*, 465 U.S. at 896 n.11. After calculating the lodestar, the Court may either (1) accept the lodestar figure or (2) decrease or enhance it based on the circumstances of the case, taking into account the *Johnson* factors.

"[D]istrict courts in [the Fifth Circuit] regularly use the percentage method blended with a *Johnson* reasonableness check." *Union Asset Mgmt.*, 669 F.3d at 643 (endorsing the use of the percentage method, so long as it is cross-checked with "a meticulous *Johnson* analysis");[7] *see*

[7] "To be clear, we endorse the district courts' continued use of the percentage method cross-checked with the *Johnson* factors. We join the majority of circuits in allowing our district courts the flexibility to choose between the

also In Re: Oil Spill, 2016 WL 6215974, at *19 (E.D. La. Oct. 25, 2016) ("[T]he loadstar [sic] cross-check is a streamlined process, avoiding the detailed analysis that goes into a traditional lodestar examination."). Courts often then apply a lodestar calculation as a cross-check of the percentage method. *See City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, 2015 WL 965696, at *4 (W.D. La. Mar. 3, 2015) (conducting "a rough lodestar analysis to cross-check the reasonableness of the percentage fee award"); *In re Vioxx Prod. Liab. Litig.*, 2013 WL 5295707, at *3 (E.D. La. Sept. 18, 2013) ("The lodestar analysis is not undertaken to calculate a specific fee, but only to provide a broad cross check on the reasonableness of the fee arrived at by the percentage method"). The lodestar cross-check is usually applied "to avoid windfall fees, i.e., to ensure that the percentage approach does not lead to a fee that represents an extraordinary lodestar multiple." *Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1086 (S.D. Tex. 2012).

Furthermore, courts using a lodestar as a cross-check to the percentage method have relaxed the degree of scrutiny applied to counsel's billing records. *See, e.g., In re Heartland Payment Sys.*, 851 F. Supp. 2d at 1086–87 ("Those circuits approving the lodestar cross-check have made it clear that district courts need not scrutinize counsel's billing records with the thoroughness required were the lodestar method applied by itself . . . . In this case, the court has reviewed the fees-and-costs reports that counsel submitted and has examined many of the pages thoroughly. It has not taken the extraordinary amount of time needed, however, for a thorough examination of all the time and billing records that counsel generated for purposes of a standalone lodestar analysis.").

---

percentage and lodestar methods in common fund cases, with their analyses under either approach informed by the *Johnson* considerations." *Union Asset Mgmt.*, 669 F.3d at 644.

Class Counsel argues that the proposed settlement is reasonable under both the percentage method and the lodestar method. Based on the Fifth Circuit's precedent, the Court believes that proceeding with the percentage method analyzed under the *Johnson* factors will be sufficient for analyzing fees. The Court will also perform a simplified lodestar analysis as a cross-check.

a. Percentage Method

Class Counsel argues that the percentage of the fund that they request for their award of attorney's fees—one-third of the fund, or 33⅓%—is within the range of percentage fees awarded in the Fifth Circuit in other complex cases.

"The Manual for Complex Litigation states that '[a]ttorney fees awarded under the percentage method are often between 25% and 30% of the fund.'" *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 675 (N.D. Tex. 2010) (quoting MANUAL FOR COMPLEX LITIGATION (FOURTH) § 14.121 (2010)); *Schwartz*, 2005 WL 3148350, at *27 ("The requested fee award of 22.2% of the Settlement Fund is consistent with and, in fact, significantly less than awards made in similar cases."). However, numerous courts in this Circuit have awarded fees in the 30% to 36% range.[8]

[8] *See Hoeck v. Compusa, Inc. et al.*, No. 3:98–CV–0998–M (N.D. Tex. Oct. 14, 2003) (Lynn, C.J.) (approving 30% fee); *In re Firstplus Fin. Group, Inc. Sec. Litig., Master File*, No. 3:98–CV–2551–M (N.D. Tex. Oct. 14, 2003) (Lynn, C.J.) (approving 30% fee in securities class action); *Southland Secs. Corp. v. INSpire Ins. Solutions, Inc.*, No. 4:00–CV–355-Y (N.D. Tex. Mar. 9, 2005) (Means, J.) (approving 30% fee in securities class action); *Scheiner v. i2 Techs., Inc., et al.*, No. 3:01–CV–418–H (N.D. Tex. Oct. 1, 2004) (Sanders, J.) (approving fee of 25% of $80 million settlement in securities class action); *Warstadt v. Hastings Entm't, Inc., et al.*, No. 2:00–CV–089–J (N.D. Tex. Mar. 10, 2003) (Robinson, J.) (approving 30% fee in securities class action); *Silver v. UICI, et al.*, No. 3:99-CV-2860–L (N.D. Tex. Mar 3, 2003) (Lindsay, J.) (approving 30% fee in securities class action); *In re Unistar Fin. Serv. Corp. Sec. Litig.*, No. 3:99–CV–1857–D (N.D. Tex. Aug. 17, 2001) (Fitzwater, J.) (approving 30% fee in a securities class action); *Kisilenko v. STB Sys., Inc.*, No. 3:99–CV–2872–M (N.D. Tex. Nov. 3, 2000) (Lynn, C.J.) (approving 30% fee in a securities class action); *In re Landry's Seafood Rests., Inc. Sec. Litig.*, No. H–99–1948 (S.D. Tex. Jun. 13, 2002) (Harmon, J.) (approving 30% fee in securities class action); *In re Intellicall Sec. Litig.*, No. 3:91–CV–0730–P (N.D. Tex. Sept. 22, 1993) (Solis, J.) (approving 30% fee in a securities class action); *Robertson, et al. v. Strassner, et al.*, No. H–98–0364 (S.D. Tex. Jan. 5, 2000) (Atlas, J.) (approving 30% fee in a securities class action); *In re Combustion, Inc.*, 968 F. Supp. 1116, 1156 (W.D. La. 1997) (Haik, J.) (approving fee of 36% of $127 million settlement); *Neibert, et al. v. Monarch Dental Corp., et al.*, No. 3:99–CV–762–X (N.D. Tex. Jun. 19, 2000) (Kendall, J.) (approving 30% fee); *In re Olicom Sec. Litig.*, No. 3:94–CV–0511–D (N.D. Tex. Aug. 30, 1996) (Fitzwater, J.) (approving 33–1/3% fee); *Belman, et al. v. Warrington, et al.*, No. H–91–3767 (S.D. Tex. Nov. 16, 1993) (Hoyt, J.) (approving 33% fee); *Sims v. Shearson Lehman Bros., Inc.*, Fed. Sec. L. Rep. (CCH) ¶ 98, 134, at

"If the request is relatively close to the average awards in cases with similar characteristics, the court may feel a degree of confidence in approving the award." *Klein*, 705 F. Supp. 2d at 675.

Here, the 33⅓% requested is slightly above the fee range suggested by the Manual for Complex Litigation, but it is not necessarily excessive for that reason alone. The fee request is further analyzed in the context of the *Johnson* factors to see whether it is fair, reasonable, and adequate.

b. *Johnson* Factors

"The court must scrutinize the agreed-to fees under the standards set forth in [*Johnson*], and not merely ratify a pre-arranged compact." *Strong v. BellSouth Telecomm., Inc.*, 137 F.3d 844, 849 (5th Cir. 1988). The court's analysis under *Johnson* must not be merely conclusory, but must establish grounds for the court's decision on each of the relevant factors. *Klein*, 705 F. Supp. 2d at 676; *but see In re High Sulfur*, 517 F.3d 220, 228–29 (5th Cir. 2008) ("If the district court has articulated and clearly applied the correct criteria, we will not require the trial court's findings to be so excruciatingly explicit in this area of minutiae that decisions of fee awards consume more paper than did the cases from which they arose."). However, "[e]ven though it is apparent that the Johnson factors must be addressed to ensure that the resulting fee is reasonable, not every factor need be necessarily considered." *In re Combustion, Inc.*, 968 F. Supp. 1116, 1135 (W.D. La. 1997).

98,976 (N.D. Tex. Nov. 29, 1993) (Kendall, J.) (approving fee of 33–1/3% of $30 million settlement in securities case); *In re ProNet, Inc.1933 Act Sec. Litig.*, No. 3:96–CV–1795–P (N.D. Tex. Nov. 19, 1997) (Solis, J.) (awarding 30% fee); *In re Granada P'ships Sec. Litig.*, No. H–90–0214 (S.D. Tex. Oct. 19, 1992) (Harmon, J.) (approving 30% fee); *Orzel v. Gilliam, et al.*, No. 3:90–CV–0044–G (N.D. Tex. May 16, 1995) (Fish, J.) (approving 30% fee in securities case); *Courtney, et al. v. Am. Airlines, Inc., et al.*, No. 4:97–CV–668–A (N.D. Tex. Sept.3, 1999) (McBryde, J.) (approving 30% fee); *Transamerican Ref. Corp. v. Dravo Corp.*, No. H–88–789 (S.D. Tex. Nov. 16, 1992) (Black, J.) (approving 30% fee); *Plains*, 2001 U.S. Dist. LEXIS 25532 (Rosenthal, J.) (approving 30% fee in securities class action). These cases were compiled by Judge Kinkeade in *Schwartz*, 2005 WL 3148350, at *27.

i. Factor 1: The Time and Labor Required

This case is over fifteen years old. There are over 800 filings on the docket. The docket indicates that there have been at least 17 hearings. There were three appeals to the Fifth Circuit, and two to the Supreme Court. The Court concludes that this case has required an enormous amount of time and labor.

BSF was appointed Class Counsel on February 23, 2007. (ECF No. 308). In the joint declaration of Carl Goldfarb and Kim Miller, Class Counsel describes the efforts put forth to prosecute Lead Plaintiff's claims over the many years that this case has been pending. (ECF No. 819 at App.01–131). Class Counsel states that it has dedicated over 67,399.7 hours to the prosecution and resolution of the claims against Defendants. (*Id.* at App.64). The joint declaration also describes how Class Counsel "overcame various legal and factual hurdles, including two trips to the U.S. Supreme Court related to class certification, the completion of extensive fact and expert discovery, including at least 40 fact depositions (4 of which were two-day depositions), 11 expert depositions, the review of over 1.3 million pages of documents, and summary judgment and *Daubert* briefing." (*Id.* at App.63).

ii. Factor 2: The Novelty and Difficulty of the Legal Issues

Class Counsel is correct that the multiple trips to the Supreme Court, and in particular the Supreme Court's reversal of Fifth Circuit precedent in *Halliburton I*, demonstrate the novelty and difficulty of the legal issues in this case:

> Class Counsel had to challenge and ultimately reverse the Fifth Circuit's now discredited precedent holding that plaintiffs had to establish loss causation by a preponderance of the evidence at class certification in order to invoke the fraud-on-the-market presumption. Even after doing so, because of the evolving case law, Class Counsel had to face novel legal questions regarding when and how the fraud-on-the-market presumption could be rebutted, what type of evidence or argument could be used to rebut the presumption at class certification, the quantum of evidence necessary to do so, and even what weight to accord the presumption

> during the analysis. The fact that the Supreme Court agreed to hear this case twice, and the Fifth Circuit agreed to hear it three times is one indication of the novelty and difficulty of the issues presented, and weighs in favor of granting Class Counsel's fee request.

(ECF No. 820 at 13–14).

iii. Factors 3 and 9: The Skill Required to Perform the Legal Service Properly and the Experience, Reputation, and Ability of the Attorneys

In its briefing, Class Counsel lumps in Factor 3, "the skill required to perform the legal service properly," with Factor 9, the "experience, reputation, and ability of the attorneys." (ECF No. 820 at 15). Class Counsel argues that this case required expertise at the trial, appellate, and Supreme Court levels. Furthermore, Class Counsel describes how much of the trial preparation—in particular, discovery and the dispositive motion preparation—occurred at the same time as the issues being heard on appeal. Class Counsel points to David Boies's "decades of experience in complex litigation" and KSF's specialized skills as securities class action litigators. (*Id.* at 16 ("Currently KSF is lead or co-counsel in ten securities putative class action litigations, including a number of high profile actions.")).

Class Counsel also points to the "quality of the opposition faced by Class Counsel" as a relevant factor in assessing their performance. *See Schwartz*, 2005 WL 3148350, at *30 ("The ability of Plaintiff's Counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation."). The Court agrees that, in this case, that was a substantial factor due to the very high quality of defense counsel's work.

iv. Factor 4: The Preclusion of Other Employment by the Attorney as a Result of Taking the Case

Class Counsel "spent over 67,399 hours prosecuting the Action, with the bulk of that work taking place between February of 2007 and December 2016. Those hours were time that Class Counsel's attorneys could not devote to other matters." (ECF No. 820 at 17). The Court agrees that such a level of work would inevitably preclude other representations.

v. Factor 5: The Customary Fee

Class Counsel points to similar fees awarded in prior, comparable cases. The Court believes that this is one of the *Johnson* factors that does not necessarily need to be considered in this case, because cases like these do not have "customary fees." *See In re Combustion, Inc*., 968 F. Supp. at 1135 ("Even though it is apparent that the Johnson factors must be addressed to ensure that the resulting fee is reasonable, not every factor need be necessarily considered.").

vi. Factor 6: Whether the Fee Is Fixed or Contingent

Class Counsel prosecuted this case on a fully contingent basis, and accordingly, this factor supports the requested fee. The contingent nature of Class Counsel's fee is also significant considering that at numerous points this case stood on shaky ground, such as when the Court denied class certification and was affirmed in doing so by the Fifth Circuit.

vii. Factor 7: Time Limitations Imposed by the Client or Other Circumstances

This factor does not apply in this case because there is no indication that Lead Plaintiff imposed any time limits in the prosecution of this case.

viii. Factor 8: The Monetary Amount Involved and the Results Obtained

The Fifth Circuit has called this factor the "most critical" factor. *See Migis v. Pearle Vision, Inc*., 135 F.3d 1041, 1047 (5th Cir. 1998) (degree of success is "most critical [*Johnson*] factor") (quoting *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)).

According to Lead Plaintiff's damages expert, if Plaintiffs prevailed at trial, the maximum amount of damages estimated was $848 million, and the minimum was $233 million. A settlement of $100 million reflects a reasonable recovery based on the estimated damages figures that the class could have hoped to recover at trial, and as discussed above, the current settlement is more than fifteen times larger than the earlier settlement that the Court rejected.

ix. Factor 10: Whether the Case Is Undesirable

Class Counsel points to BSF being the third lead counsel in this case as evidence of the undesirability of the case, as well as the uphill battle Class Counsel and Lead Plaintiff faced in continuing to prosecute this case after the Court denied class certification in 2008. Additionally, the "risk of non-recovery" and "undertaking expensive litigation against . . . well-financed corporate defendants on a contingent fee" has been held to make a case undesirable, warranting a higher fee. *Braud v. Transport Serv. Co*., 2010 WL 3283398, at *13 (E.D. La. Aug. 17, 2010).

x. Factor 11: The Nature and Duration of the Professional Relationship with the Client

BSF was appointed counsel for Lead Plaintiff on February 23, 2007, and thus has been Class Counsel for more than a decade. Considering that Class Counsel was replaced twice before BSF was appointed, the longevity of BSF's appointment indicates that the professional relationship with Lead Plaintiff was positive.

xi. Factor 12: Awards in Similar Cases

The 33⅓% requested by Class Counsel is within the range of typical awards, and is not the highest fee awarded in securities class action cases. *See In re Combustion*, Inc., 968 F. Supp. at 1156 (approving fee of 36% of $127 million settlement)*; see also In re Olicom Sec. Litig*., No. 3:94–CV–0511–D (N.D. Tex. Aug. 30, 1996) (approving 33⅓% fee); *Belman, et al. v. Warrington, et al.*, No. H–91–3767 (S.D. Tex. Nov. 16, 1993) (approving fees representing 33% of the settlement fund in securities case); *Sims v. Shearson Lehman Bros., Inc*., Fed. Sec. L. Rep. (CCH) ¶ 98, 134, at 98,976 (N.D. Tex. Nov. 29, 1993) (approving fee of 33⅓% of $30 million settlement in securities case).

xii. Conclusion

After considering all of the *Johnson* factors, the Court concludes that the percentage requested by Class Counsel is reasonable and fair. Compared to other common fund cases in this Circuit, Class Counsel is not asking for an unusually large or high fee. Furthermore, there are significant considerations that further justify the fee, such as the dogged perseverance Class Counsel showed in this case, such as eventually convincing the Supreme Court to overturn adverse Fifth Circuit precedent. Other than Channa Weeratunge's objection, which is **OVERRULED**, there were no objections from class members to the fee award. Although the lack of objections is not a *Johnson* factor, the Court finds it relevant in considering the reasonableness and fairness of the award.

c. Lodestar Method

A court is to apply a lodestar calculation as a cross-check of the percentage method. Under this method, the court takes the recorded hours worked by the attorneys and multiplies them by a reasonable hourly rate. *See, e.g.*, *Forbush v. J.C. Penney Co.*, 98 F.3d 817, 821 (5th

Cir. 1996). The resulting lodestar amount may then be adjusted upward or downward depending on the court's application of the *Johnson* factors. *See id.*

BSF presents evidence that it has spent 42,489.70 hours of attorney and other professional time prosecuting this action since February 23, 2007. (ECF No. 819 at App.133-34). Based on current rates,[9] BSF assert that its lodestar is equal to $26,738,490.50. (*Id.*) KSF asserts that it has been involved as "Special Counsel to Lead Plaintiff" since 2009. (*Id.* at App.137). KSF asserts that the firm has spent 24,910 hours prosecuting this action, resulting in a total lodestar amount of $16,385,469.50. (*Id.* at App.137-38)

Lawrence Vincent states that he began working with Lead Plaintiff in 2006, specifically to investigate the removal of then-lead class counsel William Lerach. (ECF No. 819 at App.142). After BSF was appointed lead counsel, Vincent states that he assisted primarily in appellate briefing and serving as local counsel. Vincent asserts that he has performed 321.8 hours of work in connection with the prosecution of the case and that the hourly rate he charges in comparable and non-contingent matters is $600, which results in his lodestar of $193,080. (*Id.* at App.140).

The total lodestar for Class Counsel (BSF, KSF, and Vincent) is $43,317,040.00, representing 67,721.5 hours of work.[10] The Court has examined the contemporaneous billing records submitted by Class Counsel and find them reasonable. The requested fee of $33,333,333.33 is less than the lodestar; specifically, Class Counsel is asking for 77% of their

[9] Both BSF and KSF state that each firm's lodestar was compiled using 2017 hourly rates for individuals still at each respective firm, and for individuals no longer at the firm, by using their last hourly rates. (ECF No. 819 at App.133).

[10] The Motion for Award states that Class Counsel "spent a total of more than 67,399" hours, which is the total number of hours worked by BSF and KSF, excluding Vincent's hours. (ECF No. 820 at 8). Similarly, the Motion for Award states that Class Counsel's total lodestar is $43,123,960.00, which is the total lodestar of BSF and KSF, excluding Vincent's individual lodestar. (*Id.*)

lodestar.[11] Because there is a strong presumption that the lodestar represents a reasonable fee, *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992), the fact that Class Counsel seeks an award less than the lodestar supports finding that the fee award is reasonable.

d. Expenses

Class Counsel also seeks reimbursement of its reasonable expenses in the amount of $5,969,540.84, plus interest. (ECF No. 820 at 24). In the Motion for Preliminary Approval and in the Notice, Class Counsel indicated that it would seek a maximum of $7,500,000.00 in expenses, and thus the requested reimbursement is below the noticed expenses cap. (ECF No. 795 at 16). Class Counsel has provided a 472-page appendix detailing the expenses for which it seeks reimbursement. (ECF No. 834).

"Expenses and administrative costs expended by class counsel are recoverable from a common fund in a class action settlement." *Billitteri v. Sec. Am., Inc.*, 2011 WL 3585983, at *10 (N.D. Tex. Aug. 4, 2011). In *Schwartz*, Judge Kinkeade reimbursed expenses that were "reasonably and necessarily incurred in prosecuting this action and achieving the proposed Settlement." 2005 WL 3148350, at *34. These expenses included consulting expert fees, transportation, meals and lodging, in-house and outsourced photocopying, research, court reporting fees and deposition transcripts, overnight courier services, postage, and other services. *Id.*

The joint declaration of Carl Goldfarb and Kim Miller, of BSF and KSF, respectively, describes why, and for what, the expenses were incurred. (ECF No. 819 at App.070–72). A significant amount—64% of the requested expenses, or $3,818,406.07—was spent on experts

[11] The inclusion or exclusion of Vincent's hours in the total lodestar does not dramatically change the 0.77 multiplier. If Vincent's time is included in the lodestar, the requested fee is 0.7695 of the lodestar (i.e., $33,333,333.33 / $43,317,040). If Vincent's time is excluded from the lodestar, the requested fee is 0.7729 (i.e., $33,333,333.33 / $43,123,960).

and consultants, which Class Counsel claims were necessary to establish the basic elements of Lead Plaintiff's claims, and thus were necessary in the prosecution of this case. Other large expenditures include document maintenance necessary to process and maintain the 1.3 million documents in this case (11% of total); legal research (7% of total); and mediation fees, which were shared with Defendants (0.6% of total). Overall, the expenses were reasonable and necessary for successful prosecution of this case, and there have been no objections to the amount requested. Accordingly, the expenses are reimbursed.

e. $100,000 Award for Lead Plaintiff

Class Counsel seeks a $100,000 award for Lead Plaintiff as compensation for the time it dedicated in supervising this action. (ECF No. 820 at 3). Lead Plaintiff provides a declaration from the CEO of EPJF, Paula John, detailing the involvement of the Lead Plaintiff in this action, including discussing strategy, reviewing pleadings, participating in discovery, being deposed, and attending mediation. (ECF No. 819 at App.150–57). Paula John and EPJF's CFO, Patrick Byrne, argue that the time spent on this case precluded them from working on other matters. (*Id.* at App.155).

Representative parties may be awarded "reasonable costs and expenses (including lost wages)" relating to the representation of the class:

> The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class. *Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class*.

15 U.S.C. § 77z-1(4) (emphasis added).

As stated at the July 31, 2017, hearing, the request for the $100,000 award for Lead Plaintiff is granted**.** Without the hard and diligent work of Lead Plaintiff over fifteen years, this recovery would not have been possible. The requested fee is reasonable based on the value of the time of Lead Plaintiff, and no one has objected to this award.

f. Scott+Scott Expenses

Scott+Scott does not file a separate motion for its expenses. However, Class Counsel "has included in its application the request by [Scott+Scott] for reimbursement of $300,652.90." (ECF No. 820 at 25). In support, Class Counsel attaches Scott+Scott's expense report, (ECF No. 834), and the declaration of Geoffery Johnson, (ECF No. 819 at App.178-82).

The expenses requested by Scott+Scott are reasonable, and there have been no objections to the amount requested. A significant amount—55% of the requested expenses, or $163,933.33—was spent on experts, consultants, and investigators—which Mr. Johnson claims was necessary to contact confidential witnesses and to prepare confidential witness memoranda used to support allegations in the complaint—and thus was reasonably necessary in the successful prosecution of this case. *See also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 308 (2007) (allowing scienter to be inferred from confidential sources). Accordingly, the expenses are reimbursed.

IV. F&S's Motion for Award of Attorney Fees and Reimbursement of Expenses

a. Fees

For their work as original co-liaison counsel on behalf of the class, F&S seeks an award of attorney's fees in the amount of its actual lodestar, without a multiplier or interest, of $200,703.75. (ECF No. 812 at 1). F&S began serving as local counsel to original lead counsel, S&B, on December 6, 2002. (ECF No. 22). On February 10, 2005, following the failed $6 million settlement, S&B moved to withdraw as lead counsel. (ECF No. 160). On May 3, 2005,

the Court appointed EPJF as the sole Lead Plaintiff and appointed Scott+Scott and Lerach Coughlin Stoia Geller Rudman & Robbins as lead counsel. (ECF No. 195). F&S's involvement as counsel ceased at this time.

Lead Plaintiff opposes F&S's request for fees. (ECF No. 825). As a preliminary matter, deference is given to Lead Plaintiff's determination that non-lead counsel is not entitled to fees. The Third Circuit recognizes "that a presumption of correctness should . . . be accorded to the lead plaintiff's decision that a non-lead counsel's work, not made pursuant to an agreement between lead counsel and lead plaintiff, is not entitled to fees to be paid out of the common fund." *In re Cendant Corp. Litig.*, 404 F.3d 173, 199 (3d Cir. 2005). In *In re Enron*, Judge Harmon noted that she "does not believe that the Fifth Circuit would go so far as to accord a presumption of correctness, but would certainly give the Lead Plaintiff's determination considerable weight" in assessing whether fees should be denied to non-lead counsel.[12] 586 F. Supp. 2d at 765. The Fifth Circuit does not appear to have commented on the amount of deference to be accorded.

The Court finds persuasive Lead Plaintiff's opposition to F&S receiving fees and note additionally that F&S has not articulated any substantial or independent benefit conferred to the Class. *In re Enron Corp.*, 2008 WL 2566929, at *3 ("If an attorney creates a substantial benefit for the class in this period . . . then he or she will be entitled to compensation."). If anything, F&S's efforts in supporting the failed settlement delayed the progression of the case and

[12] In an earlier opinion, Judge Harmon adopted the Third Circuit's test for identifying when the presumption of correctness, or "the weight that might be accorded the decision of a properly selected and effective Lead Plaintiff by the Fifth Circuit," can be overcome. 2008 WL 2566929, at *5 (S.D. Tex. June 24, 2008). Specifically, Judge Harmon stated that a lead plaintiff's opposition to non-lead counsel receiving fees could be overcome if non-lead counsel could show (1) that the lead plaintiff had failed in its fiduciary representation of the class, or (2) that the denial of fees was erroneous because non-lead counsel "can and do specifically identify the benefits they independently provided to the class that would not have been provided by the services of lead counsel." *Id.* (citing *Cendant*, 404 F.3d at 199–200).

threatened potential recovery. A significant portion of F&S's requested fees are related to the proffered $6 million settlement, which was rejected, in part, because counsel failed to include all of the lead plaintiffs in settlement negotiations and failed to disclose material details to them. (ECF No. 133 at 12-13). Further, F&S requests fees attending a hearing on August 25, 2003, on EPJF's Motion to Show Cause as to whether S&B violated its fiduciary duties to the class. If F&S was there in a supportive capacity to S&B, it was in support of arguments made against EPJF's Motion and, therefore, arguments made against the Class. *Cf. In re Enron*, 2008 WL 2566929, at *3 ("[An attorney] whose efforts create, discover, increase or preserve a fund to which others also have a claim, is entitled to recover from the fund the costs of his litigation including [fees]."). F&S also improperly requests fees in preparing a fee application in connection with the rejected $6 million settlement.[13] *See Hadden v. Standard Supply & Hardware Co.*, 1997 WL 403239, at *3 (E.D. La. July 17, 1997) ("[W]ork relating to attorneys' fees applications is not compensable from a common fund and that the time spent working on attorneys' fees applications and research regarding attorneys' fees should not be included in the lodestar amount."). The record overall indicates that F&S performed administrative services that did not benefit the class. *See also In re Adelphia Communs. Corp. Sec. & Derivative Litig.*, 2008 U.S. Dist. LEXIS 67220 at *15-16 (S.D.N.Y. Sep. 3, 2008) ("[T]he filing of a complaint, without more, is not fee-worthy" unless the filing attorneys "alone discover grounds for a suit, based on their own investigation rather than on public reports" or lay out "factual research or legal theories that lead counsel did not discover, and upon which lead counsel later rely.").

[13] For example, 3.25 hours on August 11, 2004, for "Work for motion for approval of fees." (ECF No. 814-1 at 21).

Because F&S did not provide a substantial or independent benefit to the Class and acted contrary to the wishes of at least the current Lead Plaintiff, who opposes its fee application, its requested fee award is denied.

b. Expenses

F&S seeks reimbursement of out of pocket expenses in the amount of $10,922.05, without interest. (ECF No. 812 at 1). "Lead Plaintiff does not oppose reimbursement of [F&S's] expenses reasonably incurred in connection with the prosecution of the litigation." (ECF No 825 at 5).

F&S provides detailed expense sheets in support of its request. (ECF No. 814-1 at 39). However, some of the expenses appear to have been expended in support of the failed $6 million settlement. One entry for May 29, 2004, describes a $1,772.80 expense labeled "Copies-stipulation and settlement." (*Id.* at 37). Based on the docket sheet, the stipulation to the failed $6 million settlement was filed on May 10, 2004, and thus it appears that F&S seeks to be reimbursed for making copies of the earlier settlement which, if it had succeeded, would have dramatically reduced the class's recovery. F&S also requests reimbursement for expenses related to attending a hearing on August 25, 2003, on EPJF's Motion to Show Cause as to whether S&B violated its fiduciary duties to the class, which, as discussed, was detrimental to the class. Accordingly, the Court determines that the following expenses were not reasonably and necessarily incurred in prosecuting this action and in achieving the proposed settlement:

Date	**Expense**	**Amount**
August 25, 2003	Car Rental	$47.84
August 25, 2003	Meals	$36.50
August 25, 2003	Parking	$6.50
May 29, 2004	Copies-stipulation and settlement	$1,772.90
May 29, 2004	Postage-stipulation and settlement	$64.80
	Total:	$1,928.54

The remainder of the claimed expenses of $8,993.51 is reimbursed.

V. K&K's Motion for Award of Attorneys' Fees and Expenses

a. Fees

K&K seeks $132,600.20 in fees for its work performed as local counsel for AMSF. (ECF No. 815). K&K's involvement as counsel ceased when Scott+Scott and Lerach Coughlin Stoia Geller Rudman & Robbins were relieved of their duties as lead counsel, and were replaced by BSF. (ECF No. 308). Lead Plaintiff opposes K&K's request for fees. (ECF No. 825).

Unlike F&S, K&K was more actively involved in the litigation of this case, particularly in its opposition to the failed settlement. K&K participated in "strategy regarding opposition to the Settlement, briefing on the opposition, and the preparation for . . . the hearing on the opposition." (ECF No. 815 at 3). Its work benefited the class by ultimately contributing to the current settlement. K&K also assisted in drafting the third and fourth consolidated class action complaints, briefs on the motions to dismiss, traveling to California for strategy and discovery meetings, and traveling to Houston for mediation. *Id.* Notably, Defendants' Motion to Dismiss the third consolidated class action complaint was denied, in part, based on the relation-back doctrine, the arguments for which were "developed and briefed by K&K." (Anderson Aff. ¶ 9, ECF No. 815-1). Despite Lead Plaintiff's opposition, the Court finds that K&K has provided substantial or independent benefit to the class. Moreover, the Court has examined the contemporaneous billing records and find them reasonable. Accordingly, and for the reasons similar to the ones discussed in awarding fees to Class Counsel, the Court awards attorney's fees to K&K.

However, the Court makes two modifications to the fee award. The total lodestar requested by K&K is $132,600.20, representing 305 hours of work. The lodestar is based on

current billing rates. (ECF No. 815 at 6 & n.4). The lodestar must be calculated using historical rates, as opposed to current rates. It is true that "[t]he prevailing rate, unless other factors dictate, is the current rate that is paid to attorneys even though the litigation spans a number of years." *See Pruett v. Harris Cty. Bail Bond Bd.*, 593 F. Supp. 2d 944, 946 (S.D. Tex. 2008). One such factor that militates against using the current rate is when counsel seeks fees based mostly on work performed during the early stages of litigation. *See Rodriguez v. Barrita, Inc.*, 53 F. Supp. 3d 1268, 1280 (N.D. Cal. 2014) (reducing fee award from current (2014) rate because "overwhelming majority of [counsel's] time spent in this case (approximately 93%) occurred in 2013 and earlier"). K&K stopped all work on this case on February 23, 2007, more than 10 years before it submitted its request for fees. While the rate provided by K&K may reasonably reflects the value of its services today, using that rate causes an unwarranted increase in the overall fee award. Based on the record, the fee request, adjusted for historical rates, is $118,391.88. (*See* ECF No. 826 at ¶ 3c). Second, circumstances warrant an additional downward adjustment of K&K's lodestar. K&K should not be entitled to receive proportionally more attorney's fees than Class Counsel; the Court thus applies a 0.77 multiplier, the same multiplier applied to Class Counsel's lodestar. Accordingly, K&K is awarded $91,161.75 in attorney's fees.

b. Expenses

K&K asks for $7,380.87 in expenses, plus interest, and provides a detailed expense report. (ECF No. 815 at 12). As with F&S, "Lead Plaintiff does not oppose reimbursement of [K&K's] expenses reasonably incurred in connection with the prosecution of the litigation." (ECF No. 820 at 5). After reviewing the expense report provided by K&K, the Court finds that

the expenses were reasonable and necessary for successful prosecution of this case. Accordingly, the expenses are reimbursed.

VI. RGRD's Motion for Award of Expenses

RGRD served as co-lead counsel from May 3, 2005, through February 23, 2007. RGRD initially moved for fees and expenses; however, RGRD has since withdrawn its request for an award of attorney's fees, and instead seeks only reimbursement of expenses. (ECF No. 823).

RGRD seeks reimbursement for $112,513.85 in expenses. (ECF No. 817 at 6). RGRD submits exhibits detailing its expenses, separated by category. (ECF No. 817-1 at 6-7). There are no objections to RGRD's request for expenses. After reviewing the evidence provided by RGRD, the Court finds that the expenses were reasonable and necessary for successful prosecution of this case. Accordingly, the expenses are reimbursed.

VII. Conclusion

For the reasons stated below and on the record, the Motion for Final Approval of Class Action Settlement is **GRANTED**. Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses is **GRANTED**. Class Counsel is awarded $33,333,333.33 in attorney's fees, plus interest accrued thereon.[14] Class Counsel is reimbursed $5,969,540.84 for expenses, plus interest accrued thereon. Lead Plaintiff is awarded $100,000, plus interest accrued thereon. Scott+Scott is reimbursed $300,652.90 for expenses, plus interest accrued thereon.

Federman & Sherwood's Motion for Attorney Fees and Reimbursement of Expenses is **GRANTED IN PART** and **DENIED IN PART**. F&S's is reimbursed $8,993.51 for expenses. Kilgore & Kilgore's Motion for Award of Attorneys' Fees and Expenses is **GRANTED IN**

[14] Interest here refers only to the proportionate share of interest accrued by the Settlement Fund while held in escrow. (ECF No. 794 at 32).

PART and **DENIED IN PART**. K&K is awarded $91,161.75 in attorney's fees, plus interest accrued thereon. K&K is reimbursed $7,380.87 for expenses, plus interest accrued thereon. Robbins Geller Rudman & Dowd's Motion for Award of Expenses is **GRANTED**. RGRD is reimbursed $112,513.85 for expenses, plus interest accrued thereon.

SO ORDERED.

April 25, 2018.

BARBARA M. G. LYNN
CHIEF JUDGE

APPENDIX A

Declaration Citations in Support of the Service Awards for Certain Class Representative and Bellwether Plaintiffs

Requesting $100,000 Service Awards

	Class Representative or Bellwether Plaintiff	Supporting declaration(s)
1.	Grafel Farms, LLC/Beaver Creek Farms, Inc./D&S Grain & Cattle Co./Demmer Farms, Inc.	Ex. 1, Stueve Decl. ¶¶ 296-308, 322-33
2.	Charles Frickey	Ex. 1, Stueve Decl. ¶¶ 296-308, 334-45
3.	Five Star Farms	Ex. 43, Bender Decl. ¶¶ 6-11, 20
4.	David Polifka Rev. Living Trust	Ex. 1, Stueve Decl. ¶¶ 296-321

Requesting $15,000 Service Awards

	Class Representative or Bellwether Plaintiff	Supporting declaration(s)
1.	Noonan Farms, Inc.	Ex. 30, Paul Decl. ¶¶ 7-7(a)
2.	LBJ Ventures	Ex. 7, Weiss Decl. ¶¶ 34-38, 46
3.	Shane Curry	Ex. 7, Weiss Decl. ¶¶ 34-38, 41
4.	J. Anderson Farm, Inc.	Ex. 43, Bender Decl. ¶¶ 6-11, 25
5.	Richard Glanzer	Ex. 43, Bender Decl. ¶¶ 6-11, 21
6.	McKee Family Farms	Ex. 30, Paul Decl. ¶¶ 7, 7(b)
7.	Fulkerson Farms, LLC	Ex. 15, Ellis Decl. ¶¶ 7, 7(d)
8.	Evelyn I. Linder Child's Trust	Ex. 30, Paul Decl. ¶¶ 7, 7(c)
9.	Matt & Robin Bargen/Bar Cattle Limited Partnership	Ex. 1, Stueve Decl. ¶¶ 296-308, 355-63
10.	Linden Kaliff	Ex. 7, Weiss Decl. ¶¶ 34-38, 45
11.	Russ Koeller	Ex. 30, Paul Decl. ¶¶ 7, 7(d)
12.	Tom Justison	Ex. 30, Paul Decl. ¶¶ 7, 7(e)
13.	Leon Taylor	Ex. 30, Paul Decl. ¶¶ 7, 7(f)
14.	Sandra Boyer	Ex. 30, Paul Decl. ¶¶ 7, 7(g)
15.	Eagle Lake/Kenny Falwell	Ex. 43, Bender Decl. ¶¶ 6-11, 19; Ex. 18, Emerson Decl. ¶¶ 7-8
16.	Crandall Farms/Three Guys Farming, Inc.	Ex. 43, Bender Decl. ¶¶ 6-11, 17
17.	Robert Luck/H and R Operations/R and L Partnership	Ex. 1, Stueve Decl. ¶¶ 296-308, 364-73
18.	Eugene Goering Trust	Ex. 30, Paul Decl. ¶¶ 7, 7(q); Ex. 7, Weiss Decl. ¶¶ 34-38, 42

	Class Representative or Bellwether Plaintiff	Supporting declaration(s)
19.	Gregory Harris	Ex. 43, Bender Decl. ¶¶ 6-11, 23; Ex. 7, Weiss Decl. ¶¶ 34-38, 44
20.	Wright Brothers Partnership	Ex. 3, Downing Decl. ¶¶ 86-87, 90
21.	State Line Farm Co.	Ex. 43, Bender Decl. ¶¶ 6-11, 30
22.	W. Edgar Willman Trust/Estate of Lloyd Willman	Ex. 43, Bender Decl. ¶¶ 6-11, 33; Ex. 39, Thrash Decl. ¶¶ 5-7
23.	Bieber Farm/Rolling Ridge Ranch, LLC	Ex. 43, Bender Decl. ¶¶ 6-11, 13; Ex. 36 Waller Decl. (on behalf of Sneed Lang) ¶ 7
24.	Martin and Patricia Petska	Ex. 4, Chaney Decl. ¶¶ 213, 227
25.	Cronin, Inc.	Ex. 7, Weiss Decl. ¶¶ 34-38, 40
26.	J3B Partnership/Don Prohaska	Ex. 30, Paul Decl. ¶¶ 7, 7(h)
27.	Rodney Olthoff	Ex. 7, Weiss Decl. ¶¶ 34-38, 47
28.	Steven and John S. Cap	Ex. 43, Bender Decl. ¶¶ 6-11, 15
29.	Chad Murphy	Ex. 43, Bender Decl. ¶¶ 6-11, 26
30.	Ross Ulmer	Ex. 43, Bender Decl. ¶¶ 6-11, 32
31.	Randy Overgard	Ex. 43, Bender Decl. ¶¶ 6-11, 28
32.	Partners 5, LLC	Ex. 30, Paul Decl. ¶¶ 7, 7(i)
33.	Gary Duane Matthews	Ex. 30, Paul Decl. ¶¶ 7, 7(j)
34.	R&W Farms, Inc.	Ex. 1, Stueve Decl. ¶¶ 296-308, 374-82
35.	Dustin Wegner/Wegner Hillside Farms, LLC	Ex. 30, Paul Decl. ¶¶ 7, 7(k)
36.	Charlynn Hamilton	Ex. 7, Weiss Decl. ¶¶ 34-38, 43
37.	B&A Riessland Farms	Ex. 7, Weiss Decl. ¶¶ 34-39
38.	McDonald AG	Ex. 15, Ellis Decl. ¶¶ 7, 7(c)
39.	Ken Kennedy	Ex. 15, Ellis Decl. ¶¶ 7, 7(e)
40.	Pat Skarda	Ex. 43, Bender Decl. ¶¶ 6-11, 29
41.	Orville Williams/Williams and Sons, Inc./ROR General Partnership	Ex. 1, Stueve Decl. ¶¶ 296-308, 383-91
42.	Gary Harshberger/Harshberger Enterprises	Ex. 1, Stueve Decl. ¶¶ 296-308, 392-401
43.	James Shortt Trust	Ex. 30, Paul Decl. ¶¶ 7, 7(l)
44.	Joseph Murname Trust	Ex. 30, Paul Decl. ¶¶ 7, 7(m)
45.	Claas Farms	Ex. 43, Bender Decl. ¶¶ 6-11, 16
46.	Glenn Bix	Ex. 43, Bender Decl. ¶¶ 6-11, 14
47.	Dierking Farms	Ex. 43, Bender Decl. ¶¶ 6-11, 18
48.	Steven Wentworth	Ex. 15, Ellis Decl. ¶¶ 7-7(a)
49.	White Brothers	Ex. 15, Ellis Decl. ¶¶ 7, 7(b)
50.	Bottoms Farms P'ship/JPPL, Inc./ NEBCO, Inc./ Triple BG)	Ex. 3, Downing Decl. ¶¶ 86-88
51.	Mike DaVault	Ex. 3, Downing Decl. ¶¶ 86-87, 89
52.	Alan and LaRae Pedersen	Ex. 4, Chaney Decl. ¶ 216, 228
53.	Charles Lex	Ex. 4, Chaney Decl. ¶ 217, 228
54.	Kaffenbarger Farms, Inc.	Ex. 4, Chaney Decl. ¶ 214, 229

	Class Representative or Bellwether Plaintiff	Supporting declaration(s)
55.	Haerr Grain Farms/Three H Farms, LLC/HGF Irrigated	Ex. 4, Chaney Decl. ¶ 215, 229
56.	Henderson Farms Partnership	Ex. 43, Bender Decl. ¶¶ 6-11, 24
57.	R&R Farms, LLC/Ensor Bros.	Ex. 30, Paul Decl. ¶¶ 7, 7(n)
58.	Daniel Chism/R&D Chism Farms, LLC	Ex. 30, Paul Decl. ¶¶ 7, 7(o)
59.	John Holmbeck	Ex. 30, Paul Decl. ¶¶ 7, 7(p)
60.	James McKinney	Ex. 21, Crompton Decl. ¶¶ 4-5; Ex. 30, Paul Decl. ¶ 7(r)
61.	David Schwaninger	Ex. 1, Stueve Decl. ¶¶ 296-308, 346-54
62.	Richard Oswald	Ex. 43, Bender Decl. ¶¶ 6-11, 27; Ex. 7, Weiss Decl. ¶¶ 34-38, 48
63.	Hadden Farms	Ex. 43, Bender Decl. ¶¶ 6-11, 22
64.	Volnek Farms	Ex. 43, Bender Decl. ¶¶ 6-11, 31
65.	B-F James & Sons, Inc.	Ex. 43, Bender Decl. ¶¶ 6-12

Requesting $5,000 Service Awards

	Class Representative or Bellwether Plaintiff	Supporting declaration(s)
1.	Robert Walker, Jr. Farms	Ex. 2, Powell Decl. ¶ 148
2.	Walker Farms	Ex. 2, Powell Decl. ¶ 148
3.	James H. Walker Farms	Ex. 2, Powell Decl. ¶ 148
4.	Ravenkamp Farms Partnership	Ex. 42, Waller Decl. (on behalf of WJW) ¶ 6; Ex. 36, Waller Decl. (on behalf of Sneed Lang) ¶¶ 7-8
5.	Jackle Farms, Inc.	Ex. 2, Powell Decl. ¶ 152
6.	Mark Lueder	Ex. 30, Paul Decl. ¶¶ 7, 7(s)
7.	Thomas Goode	Ex. 30, Paul Decl. ¶¶ 7, 7(t)
8.	Brenda Hunt	Ex. 2, Powell Decl. ¶ 149
9.	Frith Farms Partnership	Ex. 2, Powell Decl. ¶ 150
10.	Clark Hill d/b/a Clark Hill Farms/ Delta Farms P'ship	Ex. 2, Powell Decl. ¶ 151
11.	Steve Lott Farms & Services, Inc.	Ex. 4, Chaney Decl. ¶ 218
12.	Gilbert Jones & Sons Farms, LLC	Ex. 2, Powell Decl. ¶ 156; Ex. 28, Wedgworth Decl. ¶¶ 19(a), (c)
13.	Harvey Farms/Tim Harvey	Ex. 4, Chaney Decl. ¶ 219
14.	Little Omega Farms Partnership	Ex. 30, Paul Decl. ¶¶ 7, 7(u)
15.	Steve & Penny Bernstein d/b/a Bernstein Farms	Ex. 2, Powell Decl. ¶ 153
16.	Tom Belzer/ Belzer Bros. Potato Co./ B&G	Ex. 2, Powell Decl. ¶ 155
17.	F.R. (Fowler) Sheffield	Ex. 38, Bukovac Decl. ¶¶ 7-8
18.	Jamerson Farms	Ex. 44, W. Bell Decl. ¶ 5
19.	Robert Hahn d/b/a Bull Hide Creek Farms	Ex. 4, Chaney Decl. ¶ 220

	Class Representative or Bellwether Plaintiff	Supporting declaration(s)
20.	Whispering Oats Farms, Inc.	Ex. 2, Powell Decl. ¶ 154

Subclass Representatives Requesting $2,500 Service Awards

	Subclass Representative Plaintiff	Supporting declaration(s)
1.	Al-Corn Clean Fuel, LLC	Ex. 48, Cecchi Decl. ¶¶ 14, 19
2.	Kruseman Fertilizer Company	Ex. 49, Wexler Decl. ¶ 13
3.	Custom Farm Services, LLC/Marvin Miller/CE Cobb Farms	Ex. 50, Johnson Decl. ¶ 14

FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION **THIS DOCUMENT RELATES TO ALL CASES EXCEPT:** *Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al.*, No. 16-2788-JWL-JPO *Trans Coastal Supply Company, Inc. v. Syngenta AG, et al.*, No. 2:14-cv-02637-JWL-JPO *The Delong Co., Inc. v. Syngenta AG, et al.*, No. 2:17-cv-02614-JWL-JPO *Agribase International Inc. v. Syngenta AG, et al.*, No. 2:15-cv-02279-JWL-JPO	**Master File No. 2:14-MD-02591-JWL-JPO** **MDL No. 2591**

INDEX OF EXHIBITS AND APPENDIX

Exhibit 1	Declaration of Patrick J. Stueve of Stueve Siegel Hanson LLP
Exhibit 2	Declaration of Scott Powell of Hare Wynn Newell & Newton
Exhibit 3	Declaration of Don Downing of Gray, Ritter & Graham, P.C.
Exhibit 4	Declaration of William B. Chaney of Gray Reed & McGraw P.C.
Exhibit 5	Declaration of Richard H. Ralston
Exhibit 6	Declaration of Professor Robert H. Klonoff
Exhibit 7	Declaration of Stephen A. Weiss of Seeger Weiss LLP
Exhibit 8	Fee-Sharing Agreement
Exhibit 9	Fee-Sharing Agreement between Seeger Weiss LLP and Co-Lead Counsel
Exhibit 10	Declaration of Michelle M. Donarski of Anderson, Bottrell, Sanden & Thompson
Exhibit 11	Declaration of Stephen R. Basser of Barrack, Rodos & Bacine
Exhibit 12	Declaration of Adam P. Plant of Battle & Winn LLP
Exhibit 13	Declaration of Joseph L. Bell, Jr. of Batts, Batts & Bell, LLP
Exhibit 14	Declaration of Scott E. Brady of Bohrer Brady, LLC
Exhibit 15	Declaration of Christopher M. Ellis of Bolen Robinson & Ellis, LLP
Exhibit 16	Declaration of Matthew L. Preston of Brady Preston Gronlund PC
Exhibit 17	Declaration of Clinton R. Pinyan of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP

Exhibit 18	Declaration of John G. Emerson of Emerson Scott, LLP and Emerson Poynter, LLP
Exhibit 19	Declaration of Kurt W. Maier of English, Lucas, Prist & Owsley, LLP
Exhibit 20	Declaration of John Ursu of Greene Espel, PLLP
Exhibit 21	Declaration of R. Seth Crompton of Holland Law Firm, LLC
Exhibit 22	Declaration of Jake Brooks of Jake W. Brooks Attorney at Law
Exhibit 23	Declaration of Thomas S. Kruml of Kruml Law Office, P.C.
Exhibit 24	Declaration of Robert K. Shelquist of Lockridge Grindal Nauen P.L.L.P.
Exhibit 25	Declaration of Paul D. Lundberg of Lundberg Law Firm PLC
Exhibit 26	Declaration of Gregory R. Flax of Martin, Browne, Hull & Harper PLL
Exhibit 27	Declaration of Stuart H. McCluer of McCulley McCluer PLLC
Exhibit 28	Declaration of Peggy J. Wedgworth of Milberg Tadler Phillips Grossman LLP
Exhibit 29	Declaration of Matthew W. Lytle of Miller Schirger, LLC
Exhibit 30	Declaration of Richard M. Paul III of Paul LLP
Exhibit 31	Declaration of Scott Poynter of Poynter Law Group
Exhibit 32	Declaration of Kent Roth of Roth Law Office
Exhibit 33	Declaration of David E. Miller of Saeed & Little LLP
Exhibit 34	Declaration of Michael J. Schirger of Schirger, Kirk, McDougall & Winzeler, P.C.
Exhibit 35	Declaration of Jayne Conroy of Simmons Hanly Conroy LLC
Exhibit 36	Declaration of Mark A. Waller of Sneed Lang PC
Exhibit 37	Declaration of Jerry A. Soper of Soper Leddin Law Firm, P.C.
Exhibit 38	Declaration of Daniel Bukovac of Stinson Leonard Street LLP
Exhibit 39	Declaration of Thomas P. Thrash of Thrash Law Firm, P.A.
Exhibit 40	Declaration of I. Ray Kerlick of Wadler, Perches, Hundl & Kerlick
Exhibit 41	Declaration of Stephen M. Wagner of Wagner Reese, LLP
Exhibit 42	Declaration of Mark A. Waller of Waller Jorgenson Warzynski, PLLC
Exhibit 43	Declaration of Thomas V. Bender of Walters Bender Strohbehn & Vaughan, P.C.
Exhibit 44	Declaration of Warren Bell of Westerfield, Janoush & Bell, P.A.
Exhibit 45	Declaration of Hart L. Robinovitch of Zimmerman Reed LLP
Exhibit 46	Declaration of Mitchell A. Toups of Weller, Green, Toups & Terrell, L.L.P.
Exhibit 47	Declaration of Richard L. Coffman of Coffman Law Firm
Exhibit 48	Declaration of James E. Cecchi of Carella Byrne Cecchi Olstein Brody & Agnello, P.C.
Exhibit 49	Declaration of Kenneth A. Wexler of Wexler Wallace LLP
Exhibit 50	Declaration of Lynn R. Johnson of Shamberg, Johnson, and Bergman
Exhibit 51	Minnesota Class Action Master Complaint for Producers and Non-Producers, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Oct. 2, 2015)
Exhibit 52	Master Complaint for Producers and Non-Producers (Non-Class), *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Oct. 2, 2015)

Exhibit 53	Proposed Notice to Conform, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Oct. 23, 2015)
Exhibit 54	Preservation Order, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Oct. 30, 2015) (Sipkins, J.)
Exhibit 55	ESI Protocol, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct.)
Exhibit 56	Scheduling Order No. 2, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Nov. 4, 2015)
Exhibit 57	Order Regarding Bellwether Selection, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Dec. 22, 2015)
Exhibit 58	Syngenta's Mem. of Law in Supp. of Mot. Dismiss, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Nov. 9, 2015)
Exhibit 59	Pls.' Mem. of Law in Opp. to Mot. to Dismiss, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Dec. 1, 2015)
Exhibit 60	Order Regarding Summary Judgment Motions, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Apr. 11, 2017)
Exhibit 61	Order Regarding Expert Travis Milne, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Apr 12, 2017)
Exhibit 62	Order Regarding Expert Randy Giroux, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Apr 14, 2017)
Exhibit 63	Order Regarding Expert Joe Keaschall, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Apr. 11, 2017)
Exhibit 64	Order Regarding Damages Experts, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. August 17, 2017)
Exhibit 65	Order Regarding Expert Dirk Maier, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Apr. 11, 2017)
Exhibit 66	Order Regarding Expert Kevin Latner, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Apr. 10, 2017)
Exhibit 67	Order Regarding Expert Philip Shull, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Apr. 10, 2017)

Exhibit 68	Order Regarding Expert Alan McHughen, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Apr. 11, 2017)
Exhibit 69	Order Granting Class Certification, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Nov. 3, 2016)
Exhibit 70	Order Denying Syngenta's Mot. to File Third-Party Complaint, *In re: Syngenta Litigation*, No. 27-CV-15-3785, Dist. Court, County of Hennepin, Fourth Judicial District (Minn. Tr. Ct. Sept. 6, 2016)
Exhibit 71	*Marchbanks Truck Serv. v. Comdata Network, Inc.*, No. 07-CV-1078, ECF No. 713 (E.D. Pa. July 14, 2014)
Exhibit 72	*In re Neurontin Antitrust Litig.*, No. Civ. A. No. 02-1830, ECF No. 114 (D.N.J. Aug. 6, 2014)
Exhibit 73	*Ivax Corp. v. Aztec Peroxides, LLC*, No. 1:02CV00593, ECF No. 78 (D.D.C. Aug. 24, 2005)
Exhibit 74	*The Erica P. John Fund, Inc. v. Halliburton Company*, No. 3:02-cv-1152-M, ECF No. 844 (N.D. Tex. Apr. 25, 2018)
Appendix A	Declaration Citations in Support of the Service Awards for Certain Class Representative and Bellwether Plaintiffs