IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

IN RE: SYNGENTA AG MIR162 CORN LITIGATION This Document Relates to All Cases Except: *Louis Dreyfus Co. Grains Merchandising LLC v. Syngenta AG*, No. 16-2788 *Trans Coastal Supply Co., Inc. v. Syngenta AG*, No. 14-2637 *The Delong Co., Inc. v. Syngenta AG*, No. 17-2614 *Agribase Int'l Inc. v. Syngenta AG*, No. 15-2279	MDL No. 2591 Case No. 14-md-02591-JWL-JPO

STATE OF MINNESOTA COUNTY OF HENNEPIN	DISTRICT COURT FOURTH JUDICIAL DISTRICT
In re: Syngenta Litigation	Case Type: Civil Other Hon. Laurie J. Miller
This Document Relates to: ALL ACTIONS	FILE NO. 27-CV-15-12625 and FILE NO. 27-CV-15-3785

SEALED MOTION BY WATTS GUERRA LLP FOR LEAVE TO FILE IN THE PUBLIC RECORD ITS MEMORANDUM AND TWO EXHIBITS SUPPORTING ITS FEE & EXPENSE APPLICATION

By this motion, Watts Guerra LLP seeks leave to file publicly the three attached documents, which are submitted in support of Watts Guerra's Fee & Expense Application (the "WG Fee Application"). Watts Guerra files its Application, together with all exhibits and this Motion, in both of the above-captioned proceedings—*In Re: Syngenta AG MIR 162 Corn Litigation*, MDL

2591 in the U.S. District Court for the District of Kansas ("the Federal MDL Court"); and *In Re: Syngenta Litigation*, File Nos.: 27-CV-15-3785 and 27-cv-15-12625, a Minnesota Consolidated Proceeding in the Fourth Judicial District Court, Hennepin County ("the Minnesota Court")—because of the shared authority and jurisdiction provided by §§ 7.2.1, 7.2.2, and 7.2.3 in the Agrisure Viptera/Duracade Class Settlement Agreement, ECF No. 3507-2 (MDL 2591) (filed March 12, 2018) ("the Settlement").

The documents whose sealing is at issue are two contracts with confidentiality provisions (which protect information that is no longer sensitive and has been widely disclosed in substantial part already), and a legal Memorandum (which discusses those contracts in some detail). Although Watts Guerra does not believe these materials should or may be kept sealed, it has been advised that one of the parties to the private agreements (Federal MDL Co-Lead-Counsel Don Downing) would not agree to the contracts being filed publicly.

Accordingly, pursuant to D. Kan. Local Rule 5.4.6 and Rule 11.06 of the Minnesota General Rules of Practice, Watts Guerra hereby tenders these documents under seal, together with this Motion—but Watts Guerra is *not* moving the Courts to keep these documents under seal; it seeks leave to file all three documents publicly. In the alternative, if the Courts determine that the contracts should be kept sealed, then Watts Guerra requests leave to file publicly a copy of its legal Memorandum with appropriate redactions. (More precisely, if *both* Courts determine that sealing is required, Watts Guerra should be granted leave to file a redacted version of its Memorandum. Otherwise, full public filing should be allowed; it would not make sense for the same materials to be sealed in one court record, yet publicly available in the other.) To be clear though, Watts Guerra supports and requests transparency in this matter; there is no legitimate reason to hide the contents

of these contracts from Watts Guerra's clients (including more than 57,000 individual plaintiffs in the Minnesota proceeding), other settlement class members, or the general public.

In support of this Motion, Watts Guerra states as follows:

1. **Exhibit A** hereto (and Exhibit 6 to the WG Fee Application) is an "Amended & Restated Joint Prosecution Agreement" ("JPA") dated June 18, 2015. The JPA parties are Watts Guerra, the four attorneys who were appointed by the Federal MDL Court as Co-Lead Counsel, and most of the other attorneys who have since been appointed by the Minnesota Court as Co-Lead Counsel, Co-Lead Interim Class Counsel, and members of a Plaintiffs' Executive Committee (together, "Minnesota Leadership").

2. JPA §3(*i*) provides as follows:

> The Parties will, at all times, in all ways, and for all purposes, treat the content of this Agreement as proprietary and confidential; and, absent each Party's consent, no Party will disclose the existence or content of this Agreement to any person or entity other than (1) the Federal MDL Co-Leads and the members of the Federal MDL Executive Committee, (2) the members of the Remele/Sieben Group, the Remele/Sieben Group Client, and the Remele/Sieben Group Co-Counsel, (3) under seal to the Federal MDL Court and the MN MDL Court, and (4) The Cracken Law Firm PC; provided, the Parties may disclose to the Federal MDL Court and the MN MDL Court by public filing the existence of this Agreement, and the content of Sections 2(a)(i through vi), 2(d), 2(e), 2(f)(i), and 2(f)(ii)(1, 3, and 4), above, and the defined terms used in such sections.

3. **Exhibit B** hereto (and Exhibit 7 to the WG Fee Application) is a "First Addendum to the Amended and Restated Joint Prosecution Agreement" ("JPA Addendum") (dated Jan. 21, 2016). The JPA Addendum parties are the same as the JPA parties, with the addition of certain attorneys who were appointed to Minnesota Leadership, and had not already signed the JPA.

4. JPA Addendum §3(f) provides:

> The Addendum Parties will, at all times, in all ways, and for all purposes, treat the content of this First Addendum as proprietary and confidential; and, absent each Addendum Party's consent, no Addendum Party will disclose the existence or content of this First Addendum or the Agreement to any person or entity other than (1)

> the Federal MDL Co-Leads and members of the Federal MDL Executive Committee, (2) the members of the Remele/Sieben Group, its clients or its co-counsel, (3) any Additional Minnesota Counsel, its clients or its co-counsel or (4) under seal to the Federal MDL Court and the MN MDL Court. The Federal Co-Leads and the Remele/Sieben Group consent to the disclosure of the Agreement to the Additional Minnesota Counsel subject to the same confidentiality terms set forth in this paragraph regarding the First Addendum.

5. **Exhibit C** hereto is the "Memorandum In Support Of The Fee & Expense Application by Watts Guerra LLP." That Memorandum discusses both agreements in some detail, particularly the JPA, including provisions of the JPA that are not covered by the carve-out from confidentiality stated in JPA §3(*i*) (quoted above).

6. Under the provisions quoted above, absent consent from all parties to the JPA and JPA Addendum, Watts Guerra is contractually obliged to file those agreements (and its Memorandum discussing same) under seal. Watts Guerra is advised by Lewis Remele, Jr. of Bassford Remele, P.A. (Minnesota Co-Lead Counsel and party to these agreements) that Don Downing (Federal Co-Lead Counsel and also a party to these agreements) would not consent to public filing.

7. Watts Guerra respectfully submits, however, that there is no legitimate interest in confidentiality sufficient to overcome the "strong presumption" of public access to judicial records of federal proceedings. *See Mann v. Boatright*, 477 F.3d 1140, 1149 (10th Cir. 2007); *see also* Rule 2, Minn. Rules of Pub. Access to Recs. of Jud. Branch ("Records of all courts and court administrators in the state of Minnesota are presumed to be open to any member of the public….").

8. Although both the JPA and JPA Addendum have previously been filed under seal or considered in camera in these proceedings, circumstances today are fundamentally different.

9. ***First***, on information and belief, the JPA was filed in the Minnesota Consolidated Proceeding on June 17, 2015, *and inadvertently served on all parties*. *See Mann*, 477 F.3d at 1149 (privacy interests are decreased where "much of the information … appears to have been disclosed previously" in other court proceedings).

10. ***Second***, the main purpose of the confidentiality provisions in these agreements was to protect litigation strategy from disclosure to other parties in these proceedings. Now, however, the litigation appears to be over, subject only to final approval of the Settlement. *See* Orders, ECF Nos. 3531, 3532 (MDL 2591) (April 10, 2018) (granting preliminary approval). And even if final approval is denied, the strategic provisions in the JPA and JPA Addendum are no longer secret, given that defendants (along with all other parties to the Minnesota proceeding) have received the JPA, at least, nor are those provisions likely to be material to any further litigation that might ensue in any event.

11. Indeed, the JPA at this stage is pertinent principally because of (a) the provisions involving common benefit assessments (which themselves are part of the non-confidential portion of the JPA) and (b) the JPA parties' *completed* performance of and reliance upon the other provisions of the agreement, which were part of the parties' bargain.

12. ***Third***, the "Long Form Notice" sent pursuant to the Settlement Agreement advised all class members (at page 17) that "A copy of the Fee and Expense Applications will be uploaded to the www.CornSeedSettlement.com after July 10, 2018."[1] The JPA is a major component of the WG Application; class members, including Watts Guerra's clients, should see it.

13. Notable in this regard: the JPA confidentiality provision is so broad that it technically includes terms such as "the parties desire to foster from the outset a spirit of coordination between the Federal MDL Co-Leads and the Remele/Sieben Group [which includes Watts Guerra] and resolve all potential, future disputes in connection with Common Benefit Assessments." JPA p.3 (final "WHEREAS" clause). Common benefit assessments appear to be a major issue in dispute between Watts Guerra and certain other JPA parties at this stage of the proceedings; it should

[1] https://www.cornseedsettlement.com/Docs/Long%20Form%20Notice.pdf

be publicly known that the parties wrote and signed that they intended to resolve any such dispute more than three years ago.

14. For each and all of these reasons, Watts Guerra submits that no JPA party can meet the requirement to "articulate a real and substantial interest that justifies depriving the public of access to the records that inform [a federal court's] decision-making process." Order at 2, ECF No. 444 (MDL 2591) (May 28, 2015) (quoting *Helm v. Kansas*, 656 F.3d 1277, 1292 (10th Cir. 2011)). The JPA governs the common benefit assessments due from Watts Guerra to other common benefit counsel from recoveries under the Settlement Agreement by more than 57,000 class members who are clients of Watts Guerra—assessments likely to amount to tens of millions of dollars. As a general rule, public interests are "presumptively paramount against those advanced by the parties." *Id.*. Here, the interests in public disclosure are even more pronounced than usual—and the interests in confidentiality questionable, at best. *See id.* at 4 ("the party seeking to seal 'must come forward with evidence as to the nature of the public or private harm that would result if [publicly] filed'") (quoting *Womack v. Delaware Highlands AL Servs. Provider, LLC*, No. 10-2312, 2012 WL 131033384, at *1 (D. Kan. March 27, 2012)).

WHEREFORE, Watts Guerra respectfully requests that the Court deny any request to maintain Exhibits A, B, and C under seal, and grant leave for Watts Guerra to file them publicly. In the alternative, Watts Guerra should be granted leave to file a public version of its Memorandum, redacting references to any portions of the JPA and/or JPA Addendum as the Court believes should be kept from public scrutiny. (Proposed orders will be electronically filed and/or provided to chambers, per each Court's local rules.).

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Dated: July 10, 2018

Respectfully submitted,

/s/ Mikal C. Watts

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CERTIFICATE OF SERVICE

I certify that on July 10, 2018, I caused the foregoing Motion, together with Exhibits A, B, and C thereto, to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record in the Federal proceeding.

I also caused this same filing to be made electronically with Minnesota state trial court using the eFS System which will serve all counsel of record in the Minnesota proceeding.

/s/ Mikal C. Watts
Mikal C. Watts

EXHIBIT A

AMENDED AND RESTATED JOINT PROSECUTION AGREEMENT
SYNGENTA LITIGATION

This Amended and Restated Joint Prosecution Agreement (this "Agreement") is by and between Gray Reed & McGraw PC ("Chaney"), Gray, Ritter & Graham PC ("Downing"), Watts Guerra LLP ("Guerra"), Paul McInnes LLP ("Paul"), Hare Wynn Newell & Newton ("Powell"), Bassford Remele PA ("Remele"), Lockridge Grindal Nauen PLLP ("Shelquist"), Schwebel, Goetz & Sieben PA ("Sieben"), and Stueve Siegel Hanson LLP ("Stueve," and together with Chaney, Downing, Guerra, Paul, Powell, Remele, Sieben, and Stueve, the "Parties"). The purpose of this Agreement is to create a joint prosecution agreement to control the Parties' work together in connection with the prosecution of claims possessed by Producers and Non-Producers against Syngenta Seeds, Inc. and other Syngenta entities, or their successors, including, without limitation, successors as a result of merger, acquisition, or asset sale, (collectively, "Syngenta") as a result of Syngenta's premature launch of its Agrisure Viptera® and Agrisure Duracade™ corn seed (the "Syngenta Claims" and "Syngenta Litigation," respectively).

RECITALS:

WHEREAS, Chaney is a law firm with its principal offices in Dallas and Houston, Texas;

WHEREAS, Downing is a law firm with its principal office in St. Louis, Missouri;

WHEREAS, Guerra is a law firm with its principal office in San Antonio, Texas;

WHEREAS, Paul is a law firm with its principal office in Kansas City, Missouri;

WHEREAS, Powell is a law firm with its principal office in Birmingham, Alabama;

WHEREAS, Remele is a law firm with its principal office in Minneapolis, Minnesota;

WHEREAS, Shelquist is a law firm with its principal office in Minneapolis, Minnesota;

WHEREAS, Sieben is a law firm with its principal office in Minneapolis, Minnesota;

WHEREAS, Stueve is a law firm with its principal office in Kansas City, Missouri;

WHEREAS, Chaney, Downing, Powell, and Stueve were appointed as co-lead counsel of MDL No. 2591 (ECF No. 67) (the "Federal MDL Co-Leads" and the "Federal MDL," respectively);

WHEREAS, Guerra has filed Minnesota state court Syngenta Cases on behalf of more than 12,000 Producers and Non-Producers, and Guerra continues to file Minnesota state court Syngenta Cases on behalf of Producers and Non-Producers;

WHEREAS, Syngenta has removed thousands of Guerra's Minnesota state court Syngenta Cases on the basis that the Federal MDL Court possesses federal question jurisdiction over such cases under the so called federal common law of foreign relations ("Federal Common Law of Foreign Relations");

WHEREAS, on March 23, 2015, the Federal MDL Co-Leads and Guerra entered into a Joint Prosecution Agreement (Syngenta Litigation) (the Parties' "Original JPA"), which Original JPA is amended, restated, and superseded by this Agreement, as permitted by and in accordance with Section 5(e) of the Original JPA;

WHEREAS, the Federal MDL Court determined that the Federal Common Law of Foreign Relations is inapplicable to the Syngenta Litigation and determined to remand those cases removed on the sole basis of same (ECF No. 395);

WHEREAS, thousands of Guerra's Minnesota state court Syngenta Cases are in the process of remand to their Minnesota state courts of origin;

WHEREAS, the Minnesota Supreme Court formed the MN MDL and appointed the Hon. Thomas M. Sipkins to serve as the presiding judge (the "MN MDL Court");

WHEREAS, the Federal MDL Co-Leads and the MN MDL Leadership will both be tasked with prosecuting the Syngenta Claims;

WHEREAS, Guerra, Paul, Remele, Sieben, and Shelquist have joined together to formulate a slate to submit to the MN MDL Court to serve as the MN MDL Leadership (the law firms[1] who contribute one or more counsel to such slate and the signatories for such law firms in connection with this Agreement to be termed the "Remele/Sieben Group");

WHEREAS, the Federal MDL Co-Leads and the Remele/Sieben Group share the common desire to cooperate and coordinate in their prosecution of the Syngenta Claims consistent with the *Manual for Complex Litigation* (4th edition) and other applicable authorities and resources regarding multijurisdictional and complex litigation, and in furtherance of the interests of Producers and Non-Producers who possess Syngenta Claims; and, to promote cooperation and coordination, the Remele/Sieben Group will include two members of the Federal MDL Executive Committee, to wit, Paul and Shelquist;

WHEREAS, the Federal MDL Co-Leads support including Paul and Shelquist on the Remele/Sieben Group's slate;

WHEREAS, the Federal MDL Co-Leads and the Remele/Sieben Group share the common desire to share their respective common benefit work product consistent with the *Manual for Complex Litigation* (4th edition) and other applicable authorities and resources regarding multijurisdictional and complex litigation, and in furtherance of the interests of Producers and Non-Producers who possess Syngenta Claims; and

WHEREAS, the Parties desire to foster from the outset a spirit of coordination between the Federal MDL Co-Leads and the Remele/Sieben Group and resolve all potential, future disputes in connection with Common Benefit Assessments;

NOW, THEREFORE, in consideration of the foregoing and other good and

[1] At present, such slate includes Guerra, Paul, Remele, Sieben, and Shelquist; provided, such law firms may expand the Remele/Sieben Group to include one or more additional law firms; and, if they do so, each and all of such additional law firms will be required to sign this Agreement as a condition precedent to be included on the Remele/Sieben Group.

valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions.

a. "Benchmark Common Benefit Assessment" means the benchmark common benefit fee and expense assessment ordered by the Federal MDL Court in connection with the Federal MDL. On May 8, 2015, the Federal MDL Court approved a common benefit fee assessment of 8% for Producers and 7% for most Non-Producers and a common benefit expense assessment of 3% for Producers and 2% for Non-Producers.

b. "Common Benefit Assessment" means a common benefit fee and expense assessment ordered by a state or federal MDL court in connection with a state or federal MDL.

c. "Common Benefit Assessment Dispute" means any dispute, large or small, at law or in equity, between two or more of the Parties in connection with the amount of money ,that is, the Benchmark Common Benefit Assessment or, alternatively, 50% of the Benchmark Common Benefit Assessment, owed by any member of the Remele/Sieben Group, any Remele/Sieben Group Client, and/or any Remele/Sieben Group Co-Counsel, whether in the form of a direct payment by such group, client, or co-counsel, or, in the alternative, a holdback by Syngenta on behalf of such group, client, and/or co-counsel, in satisfaction of a Common Benefit Assessment Order and this Agreement.

d. "Common Benefit Assessment Order" means the Federal MDL Court's then-applicable order ordering a Common Benefit Assessment in the Federal MDL.

e. "Document Depository" means a single electronic depository in which Syngenta places all of the documents produced by Syngenta in the Federal MDL and in the MN MDL.

f. "Federal MDL Funds" means the common benefit fee fund and expense fund formed in connection with the Federal MDL in which Syngenta will deposit money in satisfaction of the Common Benefit Assessment Order.

g. "MN MDL Funds" means the common benefit fee fund and expense fund to be formed in connection with the MN MDL in which Syngenta will deposit money in satisfaction of the Common Benefit Assessment ordered by MN MDL Court.

h. "MN MDL Leadership" means the plaintiff leadership appointed to lead the MN MDL by the MN MDL Court.

i. "MN MDL" means the Minnesota state court coordinated proceedings in connection with the prosecution of the Syngenta Claims.

j. "Producer" and "Non-Producer" mean Producer and Non-Producer, as defined in ECF No. 287 (¶ 1).

k. "Remele/Sieben Group Client" means a Producer or Non-Producer who has presently engaged, or in the future engages, any member(s) of the Remele/Sieben Group to prosecute his/her/its Syngenta Claims, as well as any Producer or Non-Producer from whom a member of the Remele/Sieben Group has a right to collect a fee related to resolution of such client's Syngenta Claims, unless such right is limited to such member's collection of a common benefit fee award (in which case, such producer or non-producer is not a Remele/Sieben Group Client).

l. "Remele/Sieben Group Co-Counsel" means a law firm engaged in the joint representation of a Remele/Sieben Group Client with one or more members of the Remele/Sieben Group.

m. "Syngenta Case" means a case filed on behalf of a Producer or Non-Producer to prosecute such producer's or non-producer's Syngenta Claims.

2. Rights and Obligations.

a. Common Benefit Assessments.

i. Remele/Sieben Group Clients with Syngenta Cases Filed in Federal Court.

1. For all Remele/Sieben Group Clients who filed at any time in the past or file at any time in the future their Syngenta Case in federal court (the Remele/Sieben Group's "Federal Court Clients"), the Parties agree that if and as such clients are entitled to any payment from Syngenta in connection with settlement of or judgment on such clients' Syngenta Claims, such clients will be subject to 100% of the then-applicable Benchmark Common Benefit Assessment; and, consistent with same, the applicable member(s) of the Remele/Sieben Group (that is, the law firm that represents such client) will instruct Syngenta to hold back and pay to the Federal MDL Funds 100% of such assessment; provided, such clients will not be subject to a common benefit fee assessment payable to the Federal MDL Funds in excess of 8% for Producers and 7% for Non-Producers or a common benefit expense assessment payable to the Federal MDL Funds in excess of 3% for Producers and 2% for Non-Producers. For purposes of clarification, a Remele/Sieben Group Client is not a Federal Court Client if, at the time of the determination, such client has never filed a Syngenta Case in (1) any court or (2) federal court.[2]

2. The collective exposure of the applicable member(s)

[2] The Parties can envision a circumstance in which a member of the Remele/Sieben Group makes the affirmative choice to acquiesce in Syngenta's removal of a state court Syngenta Case filed by such member on behalf of a Remele/Sieben Group Client and/or propose to try jointly 100 or more Remele/Sieben Group Clients' Syngenta Cases on the ground that such clients' claims involve common questions of law or fact; and, in either event, if and when such member does so, such member, such client, and such member's Co-Counsel, if any, in connection with such client will be subject to a 100% of the then-applicable Benchmark Common Benefit Assessment, as though such client filed his/her/its Syngenta Case in federal court; provided, such member, such client, and such co-counsel will enjoy the "most favored nations" treatment contemplated in Section 2 (a)(iii), below.

of the Remele/Sieben Group, its Federal Court Client, and its Co-Counsel, if any, in connection with such client for payment of a Common Benefit Assessment to one or more of the Federal MDL Funds in connection with such client will be capped at the lesser of (1) 100% of then-applicable Benchmark Common Benefit Assessment or (2) a common benefit fee assessment payable to the Federal MDL Funds of 8% for Producers and 7% for Non-Producers and a common benefit expense assessment payable to the Federal MDL Funds of 3% for Producers and 2% for Non-Producers.

ii. All Other Remele/Sieben Group Clients.

1. For all other Remele/Sieben Group Clients, the Parties agree that if and as such clients are entitled to any payment from Syngenta in connection with settlement of or judgment on such clients' Syngenta Claims, such clients will be subject to 50% of the then-applicable Benchmark Common Benefit Assessment; and, consistent with same, the applicable member(s) of the Remele/Sieben Group (that is, the law firm that represents such client) will instruct Syngenta to hold back and pay to the Federal MDL Funds 50% of such assessment; provided, such clients will not be subject to a common benefit fee assessment payable to the Federal MDL Funds in excess of 4% for Producers and 3.5% for Non-Producers or a common benefit expense assessment payable to the Federal MDL Funds in excess of 1.5% for Producers and 1% for Non-Producers.

2. The collective exposure of the applicable member(s) of the Remele/Sieben Group, its non-Federal Court Client, and its Co-Counsel, if any, in connection with such client for payment of a Common Benefit Assessment to one or more of the Federal MDL Funds in connection with such client will be capped at the lesser of (1) 50% of then-applicable Benchmark Common Benefit Assessment or (2) a common benefit fee assessment payable to the Federal MDL Funds of 4% for Producers and 3.5% for Non-Producers and a common benefit expense assessment payable to the Federal MDL Funds of 1.5% for Producers and 1% for Non-Producers.

iii. If the Federal MDL Co-Leads enter into an agreement with any plaintiff counsel representing Producers and/or Non-Producers who possess Syngenta Claims pursuant to which such counsel and/or their client(s) are entitled to pay, or instruct Syngenta to hold back, less than the amounts set forth in Section 2(a)(i and ii), above, then the Federal MDL Co-Leads will promptly notify the Remele/Sieben Group of same, and the Parties will promptly amend and conform this Agreement to

such lesser amounts, assuring the Remele/Sieben Group, the Remele/Sieben Group Clients, and the Remele/Sieben Group Co-Counsel "most favored nations" treatment in connection with the payment of a Common Benefit Assessment to one or more of the Federal MDL Funds; provided, this subpart does not include an agreement reached with plaintiff counsel representing ADM and Cargill.

iv. The Remele/Sieben Group will not seek any common benefit fee awards or expense reimbursements from the Federal MDL Funds. The Remele/Sieben Group will not seek to impose, and will oppose any effort by any other party to impose, any Common Benefit Assessment payable to the MN MDL Funds on a client of the Federal MDL Co-Leads or a member of the Federal MDL Executive Committee, unless such client filed or files a Syngenta Case in state court.

v. The Federal MDL Co-Leads will not seek any common benefit fee awards or expense reimbursements from the MN MDL Funds.

vi. Notwithstanding any other terms of conditions in this Agreement, Paul and Shelquist may seek common benefit fee awards and expense reimbursements from both the Federal MDL Funds and MN MDL Funds insofar as they performed in the past or perform in the future common benefit work for which they are entitled to such fees and expenses.

vii. The Remele/Sieben Group agree not to file objections to the Federal MDL Co-Leads' proposed Common Benefit Assessment Orders, so long as such orders are consistent with this Agreement or to seek to reduce the Common Benefit Assessment percentages approved in the Federal MDL Court's May 8, 2015 Common Benefit Assessment Order.

viii. Upon a written request and with reasonable notice from the Federal MDL Co-Leads, the members of the Remele/Sieben Group will provide the Federal MDL Co-Leads adequate information and documents to allow the Federal MDL Co-Leads to verify that all Common Benefit Assessments in connection with the Federal MDL and applicable to Remele/Sieben Group Clients have been timely paid to the Federal MDL Funds.

b. Excluded Client List and Excluded Clients' FSA 578 Forms.

i. The Remele/Sieben Group will provide to the Federal MDL Co-Leads (1) a list in Excel format of all individual Remele/Sieben Group Clients who have cases filed in state court, including their names and the style of their cases, (its "Excluded Client List") and (2) copies in PDF format of their FSA 578 forms for calendar years 2013-15 and each future calendar year after 2015 through the year of the first federal court trial, as they become available (its "Excluded Clients' FSA 578 Forms"). To the extent that any Remele/Sieben Group Client has filed a case seeking class treatment, only the Remele/Sieben Group Clients serving as individual named class representatives in such case, and not the proposed putative class members, may be included on an Excluded Client List.

ii. The Remele/Sieben Group will provide its first Excluded Client List 90 days after receipt of a written request by MDL Co-Lead Counsel for such Excluded Client List or December 31, 2015, whichever is earlier; and, will provide its first Excluded Clients' FSA 578 Forms 180 days after receipt of a written request by MDL Co-Lead Counsel for an initial Excluded Client List or March 31, 2016, whichever is earlier; in this way, the Federal MDL Co-Leads will be able to first identify the Remele/Sieben Group Clients 90 days after requesting the initial Excluded Client List or on December 31, 2015, whichever is earlier, and first review such clients' FSA 578 forms 180 days after requesting the initial Excluded Client List or on March 31, 2016, whichever is earlier.[3] The Federal MDL Co-Leads will not request production of an initial Excluded Client List prior to December 31, 2015 unless they intend to file a motion for class certification prior to December 31, 2015.

iii. Next, the Remele/Sieben Group will provide it second Excluded Client List to the Federal MDL Co-Leads on March 31, 2016; and, it will provide its second Excluded Clients' FSA 578 Forms to the Federal MDL Co-Leads on June 30, 2016; in this way, the Federal MDL Co-Leads will be able to first identify the Remele/Sieben Group Clients acquired between December 31, 2015 and March 31, 2016

[3] The members of the Remele/Sieben Group anticipate that they will need approximately 90 days after the acquisition of a client to collect such client's FSA 578 forms, hence the 90-day "stagger" in the production of lists versus forms contemplated in this Section (2)(b).

on March 31, 2016 and first review such clients' FSA 578 forms on June 30, 2016.

iv. Then, the Remele/Sieben Group will continue in this lockstep to supplement its Excluded Client List and Excluded Clients' FSA 578 Forms throughout the pendency of the Federal MDL. The Remele/Sieben Group will timely supplement previously produced Excluded Clients' FSA 578 Forms with FSA 578 Forms for future calendar years through the year of the first federal court trial as they become available.

v. The Federal MDL Co-Leads acknowledge that each Excluded Client List and each Excluded Client's FSA 578 Forms are proprietary and confidential, and the Federal MDL Co-Leads will, at all times, in all ways, and for all purposes, treat the content of same as proprietary and confidential; and, absent the Remele/Sieben Group's consent, the Federal MDL Co-Leads will not (1) disclose any portion of same to any person or entity other than (a) under seal to the Federal MDL Court and/or (b) pursuant to a protective order in a form to which the Remele/Sieben Group consent or (2) knowingly attempt at any time, in any way, or for any purpose to communicate themselves or through an intermediary with a Remele/Sieben Group Client included on any Excluded Client List submitted to the Federal MDL Co-Leads prior to their filing of a motion for class certification. The Parties agree that publication notice of a proposed litigation or settlement class certification will not be deemed a knowing communication with a Remele/Sieben Group Client. By including a client on its Excluded Client List, the applicable member of the Remele/Sieben Group represents and warrants that (1) it believes that it is in such client's best interest to be excluded from the proposed class and (2) would recommend to such client that he/she/it opt out of the proposed class, if such client was included in the applicable class definition; provided, as set forth above, none of the Federal MDL Co-Leads will, under any circumstances whatsoever, move to certify in the Federal MDL or otherwise advocate for certification in the Federal MDL of a class that includes any Producer or Non-Producer included on any Excluded Client List submitted to the Federal MDL Co-Leads prior to their filing of a motion for class certification.

c. Remand. In connection with all Syngenta Cases filed in state court and removed to the Federal MDL Court or removed and transferred to the

Federal MDL Court (each a " Removed Case"), the Federal MDL Co-Leads agree to join[4] in and support[5]any effort by any member of the Remele/Sieben Group to have such cases promptly remanded to state court, if removed on the sole basis of the Federal Common Law of Foreign Relations; further, to the extent such removal was/is based on more than the so called "Federal Common Law of Foreign Relations," the Federal MDL Co-Leads agree not to oppose any effort by any member of the Remele/Sieben Group to have such cases promptly remanded to state court.

d. Syngenta Work Product.

i. Upon a written request and with reasonable notice from the Remele/Sieben Group, the Federal MDL Co-Leads and members of the Federal MDL Executive Committee will provide the Remele/Sieben Group reasonable and continuing access to their Syngenta Work Product. The Remele/Sieben Group will not disclose such work product to other plaintiff counsel, unless such other counsel's clients are subject to payment of a Common Benefit Assessment to the Federal MDL Funds; provided, the Remele/Sieben Group may use such Syngenta work product when taking oral depositions or during hearings or trials, but may not provide or authorize others to provide any deposition or trial transcript to any counsel that is not subject to payment of a Common Benefit Assessment to the Federal MDL Funds.

ii. Upon a written request and with reasonable notice from the Federal MDL Co-Leads, the Remele/Sieben Group will provide the Federal MDL Co-Leads and members of the Federal MDL Executive Committee reasonable and continuing access to its Syngenta Work Product. The Federal MDL Co-Leads and members of the Federal MDL Executive Committee will not disclose such work product to other plaintiff counsel, unless such other counsel's clients are subject to payment of a Common Benefit Assessment to the MN MDL Funds; provided, the Federal MDL Co-Leads and members of the Federal MDL Executive Committee may use such Syngenta work product when taking oral depositions or during hearings or trials, but may not provide or authorize others to provide any deposition or trial transcript to any counsel that is not subject to payment of a Common Benefit Assessment to the MN MDL Funds.

[4] To "join" means to file a joint motion with such member.

[5] To "support" means to support such member's position(s) without obligation to join in a joint motion advancing such position(s).

e. Trials. The Federal MDL Co-Leads will not seek to abate, stay, continue, or otherwise interfere with any state court trial in connection with a Remele/Sieben Group Client, so long as such trial begins after March 31, 2017; and, the members of the Remele/Sieben Group will not obtain a state court trial setting for a trial to begin before March 31, 2017; provided members of the Remele/Sieben Group may before March 31, 2017, seek and obtain trial settings; provided, such trials do not begin before March 31, 2017. The members of the Remele/Sieben Group agree that the initial Federal MDL bellwether trial should be tried before the trial of any Remele/Sieben Group Client's Syngenta Claims, unless undue delay occurs in the Federal MDL, i.e., such bellwether trial does not begin before March 31, 2017. With respect to all trial settings that contemplate trials beginning after March 31, 2017, the Federal MDL Co-Leads and the Remele/Sieben Group will confer to schedule such trials, which trials may occur simultaneously.

f. MN MDL.

i. The Parties agree that it is in the best interests of Producers and Non-Producers for the Federal MDL Co-Leads and the MN MDL Leadership to coordinate in the prosecution of the Syngenta Claims and focus their energies on such prosecution rather than strategies to compete with one another.

ii. In furtherance of same, the Parties endorse the following relationship between the Federal MDL and the MN MDL:

1. That they maintain one joint Document Depository with equal access to same and share the cost of such depository on an equal basis;

2. That the MN MDL Leadership seek from the MN MDL Court a Common Benefit Assessment identical in percentage to the Benchmark Common Benefit Assessment and compel each member of the MN MDL Leadership, whether initially or subsequently appointed by the MN MDL Court, to sign a Joint Prosecution Agreement with the Federal MDL Co-Leads on the same terms and conditions as this Agreement;

3. That for any Producer or Non-Producer who is obligated to pay a Common Benefit Assessment to both the Federal MDL Funds and

MN MDL Funds, such producer or non-producer will be entitled to set off against his/her/its obligation to the MN MDL Funds in an amount equal to the amount such producer or non-producer paid to the Federal MDL Funds;

4. That in the conduct of oral depositions of witnesses controlled by Syngenta:

a. The Federal MDL Co-Leads and the MN MDL Leadership will meet and confer to establish a strategy to conduct such depositions;

b. After such conference, the Federal MDL Co-Leads will take the lead in scheduling such depositions and will provide the MN MDL Leadership the opportunity to cross-notice all such depositions; the Federal MDL Co-Leads will provide the MN MDL Leadership adequate time to question cross-noticed deponents with a presumption that the latter will get one third of the total time available to the Federal and MN MDL Leadership. For witnesses that the Federal MDL Co-Leads do not intend to depose within 60 days of the date proposed by the MN MDL Leadership, the MN MDL Leadership will take the lead in scheduling such depositions and will provide the Federal MDL Co-Leads the opportunity to cross-notice all such depositions; the MN MDL Leadership will provide the Federal MDL Co-Leads adequate time to question cross-noticed deponents with a presumption that the latter will get one third of the total time available to the Federal and MN MDL Leadership. If a dispute arises regarding the adequacy of notice or time for questions during any such depositions, the Parties agree to meet and confer to resolve such dispute; and, if they are unable to do so, then to submit such dispute to the Honorable James O'Hara in the Federal MDL for final resolution; provided, the MN MDL Leadership have the unfettered right to seek from the MN MDL Court one or more additional oral depositions of any witness for any reason; and, the Federal MDL Co-Leads will not interfere with the MN MDL Leadership's efforts to obtain such relief; and

c. Both the Federal and MN MDL Leadership agree that for depositions that require multiple days they will support each other's efforts to secure such additional deposition time in either the Federal MDL or MN MDL; and

d. The Remele/Sieben Group cannot guarantee that the MN MDL Court will adopt the foregoing relationship between the Federal

MDL and MN MDL, and the Federal MDL Co-Leads cannot guarantee that the Federal MDL Court will adopt the foregoing relationship between the Federal MDL and the MN MDL; but, the Remele/Sieben Group and the Federal MDL Co-Leads will endorse such relationship; this Agreement is not conditioned, in whole or in part, upon any member of the Remele/Sieben Group, in fact, being appointed to the MN MDL Leadership or the Federal MDL Court's or the MN MDL Court's adoption of the foregoing relationship between the Federal MDL and MN MDL.

iii. After the MN MDL Court orders the deadline by which interested parties must file in the MN MDL their expression of interest in appointment to the MN MDL Leadership, the Federal MDL Co-Leads will before expiration of such deadline file in the MN MDL a brief supporting the Remele/Sieben Group to serve as the exclusive MN MDL Leadership, and the Federal MDL Co-Leads will not support any other group, law firm, or lawyer; the Federal MDL Co-Leads will exclusively support the Remele/Sieben Group.

g. Class Certification.

i. None of the Federal MDL Co-Leads will propose to certify any litigation or settlement class that includes any Remele/Sieben Group Client whose Syngenta Case was filed in state court and is pending as of the date of such motion for class certification and whose name is included on the Excluded Client List as of the date of such motion for class certification (the "Excluded Clients"); if any of the Federal MDL Co-Leads seek to certify any litigation or settlement class, such co-lead(s) will expressly exclude from his/their proposed class definition(s), and will advocate for the exclusion and oppose the inclusion of, all Excluded Clients.

ii. None of the members of the Remele/Sieben Group will oppose class certification in the Federal MDL if such certification excludes from its class definition(s) the Excluded Clients.

iii. The Federal MDL Co-Leads will not seek to interfere with or alter the terms and conditions of any fee agreement with any Remele/Sieben Group Client (e.g., reduce or cap the fee of any member of the Remele/Sieben Group).

iv. The parties will cooperate and coordinate in good faith in connection with the certification of a class of Producers and Non-Producers from

Minnesota.

h. Plaintiff Fact Sheet. The Federal MDL Co-Leads will not agree with Syngenta to any modifications to the present "plaintiff fact sheet" without conferring with the Remele/Sieben Group; and, the Remele/Sieben Group reserve the right to file objections to any modifications to the present plaintiff fact sheet, absent the Remele/Sieben Group's consent to such modifications. Further, the Remele/Sieben Group intend to seek an order from the MN MDL Court providing for a less onerous plaintiff fact sheet, which expressly excludes any reference to a Producers or Non-Producers electronic data or IT infrastructure.

i. Settlement Negotiations. The Parties are not obligated to include one another in settlement negotiations with Syngenta.

3. Miscellaneous.

a. ADR.

i. Any dispute between one or more of the Federal MDL Co-Leads, on the one hand, and one or more members of the Remele/Sieben Group, one or more Remele/Sieben Group Clients, and/or one or more Remele/Sieben Group Co-Counsel, on the other, (collectively, the "MN Group") arising out of the construction or enforcement of a Common Benefit Assessment Order, other than a Common Benefit Assessment Dispute, will be resolved by the Federal MDL Court.

ii. All other disputes between one or more of the Federal MDL Co-Leads, on the one hand, and one or more of the MN Group, on the other, arising out of this Agreement, including, without limitation, the threshold determination regarding the applicability of this ADR provision to a dispute, will be resolved by binding arbitration administered by the Minneapolis office of JAMS (the "Arbitration"); provided, any Party may file an action in any court of competent jurisdiction to enforce this provision; and, if any Party to a dispute fails to submit to arbitration following such filing, then the Party failing to submit to arbitration will bear the other Party's reasonable costs, including attorneys' fees, paid in connection with compelling arbitration. The rules and procedures applicable to the Arbitration will be JAMS' Streamlined Arbitration Rules and Procedures, effective July 1, 2014, except as modified in this provision (the "Rules"). The Arbitration will be determined by one arbitrator

(the "Arbitrator"). The Arbitrator will be a former state or federal judge before whom none of the Parties to the dispute have appeared, with whom none of the Parties to the dispute has worked, to whom none of the Parties to the dispute made a political contribution, with whom none of the Parties to the dispute has or had a personal relationship, and who has reviewed this provision and affirmed to JAMS that he or she can and will enforce its terms and conditions, including, without limitation, the time line set forth in this provision. JAMS will provide the Parties to the dispute a list of 10 potential arbitrators, each of whom is qualified to serve pursuant to the foregoing qualifications; then, the Party responding to the demand for arbitration will have 10 business days to strike up to five names and serve such strikes on JAMS and the other Party; then, the Party demanding arbitration will have 10 business days to strike up to five names and serve such strikes on JAMS and the other Party; then, JAMS will select the Arbitrator from those names neither Party to the dispute chose to strike; provided, if the Parties chose to strike all names, then JAMS will repeat the process; and, provided, further, the Parties may at any time and from time to time agree on the Arbitrator, and such agreement will control. Upon appointment of the Arbitrator, and in parallel with the Arbitration, JAMS will appoint a mediator (the "Mediator"), other than the Arbitrator, and such mediator will administer a mediation within 30 business days of the foregoing appointment and, again, within 30 business days of the Arbitration (the "Mediations"). All oral or written communications in connection with the Arbitration and Mediation will be confidential and privileged and will not be disclosed to anyone other than the participants in same. If JAMS receives two or more demands for arbitration in connection with the same (or substantially the same) dispute ("Related Demands"), JAMS will consolidate all such proceedings for determination by the Arbitrator appointed in connection with the first of the Related Demands filed with JAMS. Judgment on the Arbitrator's award (the "Award") may be entered in any court of competent jurisdiction. The Arbitration and all related proceedings, including, without limitation, discovery (e.g., oral depositions), and mediations will occur in Minneapolis, Minnesota. The Arbitrator will determine a scheduling order that contemplates no more than 180 business days of pre-arbitration proceedings, including, without limitation, discovery (e.g., oral depositions), with the Arbitration to occur within 30 business days of such cut off, and the Award to be issued within 30 business days of the Arbitration. Further, a Party may serve one or more motions to compel discovery on the Arbitrator and the other Party; such other Party will then serve its response on the Arbitrator and the moving Party within five business days of its receipt of the motion; the moving Party will then serve its reply on the Arbitrator and other Party within five business days of its receipt of the response; and, the Arbitrator will

then rule on the motion within 5 business days of his or her receipt of the motion, response, and reply. The Award will be binding and not subject to appeal, absent breach of this provision. This Agreement will be governed by Minnesota law, exclusive of its choice of law rule; provided, this Agreement involves interstate commerce, and this provision will be governed first by the Federal Arbitration Act (Title 9 of the United States Code) and second by Minnesota law. The Parties will pay their respective costs in connection with the Arbitration and Mediation, and each Party (side) will pay 50% of the reasonable costs payable to JAMS, the Arbitrator, and the Mediator; provided, if the Party demanding arbitration prevails, then the Arbitrator will award such party's damages plus such party's reasonable costs, including attorneys' fees, paid in connection with the Arbitration and Mediation, including, without limitation, its costs paid to JAMS, the Arbitrator, and the Mediator. Statutes of limitations and repose applicable to any dispute will apply to any Arbitration in connection with such dispute. Notwithstanding any other terms of conditions in this Agreement, this ADR provision will survive termination of this Agreement.

iii. In the event that any member of the Federal MDL Executive Committee files a case against any member of the Sieben/Remele Group, any Sieben/Remele Group Client, and/or any Sieben/Remele Group Co-Counsel to resolve any dispute arising out of this Agreement, including, without limitation, the threshold determination regarding the applicability of this ADR provision to a dispute, the Federal MDL Co-Leads will intervene in such case and use their respective best efforts to dismiss such case with prejudice and, in lieu of such case, compel arbitration of such dispute in strict accord with this ADR provision.

b. To the extent that any obligation of Paul or Shelquist in this Agreement is inconsistent with their obligation under the Participation Agreement that either Paul or Shelquist execute in the Federal MDL, the Participation Agreement will control.

c. All notice or consent required by this Agreement must be in writing, signed by the Party giving such notice or consent, and served upon the other Parties.

d. The Parties may by mutual agreement amend or supplement this Agreement at any time and from time to time; provided, they must do so in writing, and such writing must be signed by the Parties.

e. 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 will not be affected.

f. If any Party alleges that any other Party is in breach of this Agreement, then the former will give prompt notice of same to the latter, and the latter will have 90 days to cure before the former may take any action against the latter in connection with the alleged breach; and, if the latter timely cures, the former may not take any action against the latter in connection with the believed breach.

g. Each member of the Federal MDL Executive Committee is a third-party beneficiary of this Agreement and may enforce this Agreement.

h. Each Remele/Sieben Group Client and Remele/Sieben Group Co-Counsel is third-party beneficiary of this Agreement and may enforce this Agreement.

i. The Parties will, at all times, in all ways, and for all purposes, treat the content of this Agreement as proprietary and confidential; and, absent each Party's consent, no Party will disclose the existence or content of this Agreement to any person or entity other than (1) the Federal MDL Co-Leads and the members of the Federal MDL Executive Committee, (2) the members of the Remele/Sieben Group, the Remele/Sieben Group Client, and the Remele/Sieben Group Co-Counsel, (3) under seal to the Federal MDL Court and the MN MDL Court, and (4) The Cracken Law Firm PC; provided, the Parties may disclose to the Federal MDL Court and the MN MDL Court by public filing the existence of this Agreement, and the content of Sections 2(a)(i through vi), 2(d), 2(e), 2(f)(i), and 2(f)(ii)(1, 3, and 4), above, and the defined terms used in such sections.

j. The Parties agree that this Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting same.

k. This Agreement embodies the entire agreement between the Parties in connection with the subject matter of this Agreement, and it amends, restates, and supersedes all prior conflicting or inconsistent oral or written communications between the Parties in connection with such subject matter.

l. The Agreement will be effective when signed by the Parties. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will constitute one and the same document. The electronic exchange of executed copies of the signature pages of this Agreement will constitute effective execution of this Agreement. Signatures of the Parties transmitted by electronic mail in .pdf form will be deemed to be their original signatures for all purposes.

m. The Federal MDL Co-Leads whose signatures appear below agree that the rights, obligations, terms, and conditions of this Agreement shall apply to them individually to the same extent they apply to the Federal MDL Co-Leads and regardless of any future disassociation from their present law firms and/or future association with a different law firm. The Federal MDL Co-Leads whose signatures appear below represent and warrant to the members of the Remele/Sieben Group that they have the authority to, and do in fact, execute this Agreement as Co-Lead Counsel in the Federal MDL and ON BEHALF OF THEMSELVES AND THEIR FIRMS.

n. The members of the Remele/Sieben Group whose signatures appear below agree that the rights, obligations, terms, and conditions of this Agreement shall apply to them individually to the same extent they apply to the Remele/Sieben Group and regardless of any future disassociation from their present law firms and/or future association with a different law firm. The members of the Remele/Sieben Group whose signatures appear below represent and warrant to the Federal MDL Co-Leads that the former have the authority to execute, and do in fact execute, this Agreement ON BEHALF OF THEMSELVES, THEIR LAW FIRMS, THEIR RESPECTIVE REMELE/SIEBEN GROUP CLIENTS, AND THEIR RESPECTIVE REMELE/SIEBEN GROUP CO-COUNSEL.

[Signatures appear on the following pages.]

SIGNED on this the 18th day of June, 2015.

GRAY REED & MCGRAW PC

By: William B. Chaney
Title: Shareholder

6/18/15

GRAY, RITTER & GRAHAM PC

By: Don M. Downing
Title: Shareholder

HARE WYNN NEWELL & NEWTON

By: Scott A. Powell
Title: Partner

STUEVE SIEGEL HANSON LLP

By: Patrick J. Stueve
Title: Partner

6/18/15

SIGNED on this the 18th day of June, 2015.

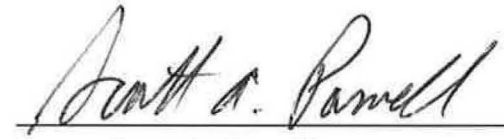
GRAY REED & MCGRAW PC

By: William B. Chaney
Title: Shareholder

GRAY, RITTER & GRAHAM PC

By: Don M. Downing
Title: Shareholder

HARE WYNN NEWELL & NEWTON



By: Scott A. Powell
Title: Partner

STUEVE SIEGEL HANSON LLP

By: Patrick J. Stueve
Title: Partner

SIGNED on this the 18th day of June, 2015.

GRAY REED & MCGRAW PC

_____

By: William B. Chaney
Title: Shareholder

GRAY, RITTER & GRAHAM PC

_____

By: Don M. Downing
Title: Shareholder

HARE WYNN NEWELL & NEWTON

_____

By: Scott A. Powell
Title: Partner

STUEVE SIEGEL HANSON LLP

By: Patrick J. Stueve
Title: Partner

WATTS GUERRA LLP

By: Francisco Guerra IV
Title: Partner

WATTS GUERRA LLP

By: Mikal C. Watts
Title: Partner

PAUL MCINNES LLP

By: Richard M. Paul III
Title: Partner

BASSFORD REMELE PA

By: Lewis A. Remele Jr.
Title: Partner

WATTS GUERRA LLP

_____

By: Francisco Guerra IV
Title: Partner

WATTS GUERRA LLP

_____

By: Mikal C. Watts
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PAUL MCINNES LLP

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BASSFORD REMELE PA

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Title: Partner

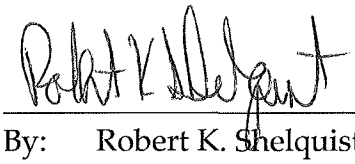
PAUL MCINNES LLP

By: Richard M. Paul III
Title: Partner

BASSFORD REMELE PA

By: Lewis A. Remele Jr.
Title: Partner

LOCKRIDGE GRINDAL NAUEN PLLP



By: Robert K. Shelquist
Title: Partner

SCHWEBEL, GOETZ & SIEBEN PA

By: William R. Sieben
Title: Partner

LOCKRIDGE GRINDAL NAUEN *PLLP*

By: Robert K. Shelquist
Title: Partner

SCHWEBEL, GOETZ & SIEBEN PA

By: William R. Sieben
Title: Partner 7-6-15

EXHIBIT B

FIRST ADDENDUM TO AMENDED AND RESTATED
JOINT PROSECUTION AGREEMENT
SYNGENTA LITIGATION

This First Addendum to Amended and Restated Joint Prosecution Agreement (this "First Addendum") is by and between the Parties to that certain Amended and Restated Joint Prosecution Agreement dated June 18, 2015 (the "Agreement") and Additional Minnesota Counsel (as defined herein) (collectively, the "Addendum Parties"). The purpose of this First Addendum is to address and govern the Addendum Parties' cooperative work and compensation in connection with the prosecution of certain proceedings in the Syngenta Litigation, and to allow Additional Minnesota Counsel to join in the terms of the Agreement.

RECITALS:

WHEREAS, the Parties include the Federal MDL Co-Leads and those members of the MN MDL Leadership who were signatories to the Agreement;

WHEREAS, the Parties entered into the Agreement for the purpose of creating a joint prosecution agreement to control the Parties' work together in connection with the prosecution of the Syngenta Litigation;

WHEREAS, Footnote 1 of the Agreement contemplates that additional law firms serving in leadership with the Remele/Sieben Group will execute the Agreement;

WHEREAS, Section 2(g)(iv) of the Agreement contemplates that the Parties "will cooperate and coordinate in good faith in connection with the certification of a class of Producers and Non-Producers from Minnesota";

WHEREAS, the MN MDL Court by order dated August 5, 2015, appointed William R. Sieben and Daniel E. Gustafson as interim class counsel in the MN MDL;

WHEREAS, the MN MDL Court further appointed Tyler Hudson, Will Kemp and Paul Byrd as members of the MN MDL Leadership.

WHEREAS, William R. Sieben and his law firm, Schwebel, Goetz & Sieben PA, are Parties to the Agreement;

WHEREAS, Daniel E. Gustafson and his law firm, Gustafson Gluek PLLC, (collectively, "Gustafson") have not joined into the Agreement;

WHEREAS, Tyler Hudson and his law firm, Wagstaff & Cartmell, LLP (collectively, "Hudson") have not joined the Agreement;

WHEREAS, Will Kemp and his law firm, Kemp, Jones & Coulthard, LLP (collectively, "Kemp") have not joined the Agreement;

WHEREAS, Paul Byrd and his law firm, Paul Byrd Law Firm PLLC (collectively, "Byrd") have not joined the Agreement;

WHEREAS, the Parties and Additional MN Counsel desire to share their respective common benefit work, cooperate and coordinate their prosecution of certain claims, and create a framework for compensation for such cooperative activities;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Addendum Parties agree as follows:

1. Definitions

a. Unless otherwise defined in this First Addendum, all capitalized terms shall carry the meaning ascribed to such term in the Agreement.

b. "Additional Minnesota Counsel" means Gustafson, Hudson, Kemp, and Byrd and any other counsel appointed as class counsel by the MN Court and/or otherwise representing the plaintiffs in a MN MDL Class Action and/or individual actions in the MN MDL who have not executed the Agreement, but who have executed this First Addendum.

c. "Federal MDL Class Action" means any action pursued in the Federal MDL Court on behalf of a class of Producers or Non-Producers whether or not such class has been certified.

d. "MN MDL Class Action" means any action pursued in the MN MDL Court on behalf of a class of Producers or Non-Producers whether or not such class has been certified.

2. Rights and Obligations

a. MN MDL Class Actions.

i. Use of Syngenta Work Product. Members of the Remele/Sieben Group may use Syngenta Work Product in the prosecution of any MN MDL Class Action subject to the same restrictions upon use of Syngenta Work Product set forth in Section 2(d)(i) of the Agreement; provided however, that such Syngenta Work Product may be disclosed to Additional Minnesota Counsel. Upon written request and with reasonable notice from Additional Minnesota Counsel, the Federal MDL Co-Leads will provide Additional Minnesota Counsel reasonable and continuing access to their Syngenta Work Product. Additional Minnesota Counsel will not disclose such work product, whether obtained from the Federal Co-Leads or members of the Remele/Sieben Group, to other plaintiffs' counsel, unless such other counsel's clients are subject to payment of a Common Benefit Assessment to the Federal MDL Funds or are themselves Additional Minnesota Counsel; provided, Additional Minnesota Counsel

may use such Syngenta work product when taking oral depositions or during hearings or trials, but may not provide or authorize others to provide any deposition or trial transcript to any counsel that is not subject to payment of a Common Benefit Assessment to the Federal MDL Funds or is otherwise Additional Minnesota Counsel.

ii. Minnesota class motion. The Remele/Sieben Group and/or some or all of the Additional Minnesota Counsel shall have the right and obligation to represent the class of Minnesota producers in the MN MDL and shall not seek to represent, in litigation or settlement, any class including producers from any other state without the consent of the Federal MDL Co-Leads. The Federal MDL Co-Leads shall not seek certification of a Minnesota producer class in the Federal MDL unless and until a Minnesota producer class has been denied by the MN MDL Court. Nothing in this paragraph shall prevent the Federal MDL Co-Leads from seeking certification of a nationwide class of producers asserting claims under the Lanham Act; provided, however, that if the Federal MDL Co-Leads intend to seek certification of such a nationwide class, they shall confer with the Remele/Sieben Group and Additional Minnesota Counsel prior to seeking certification and, if the Remele/Sieben Group and Additional Minnesota Counsel so elect, the Federal MDL Co-Leads shall exclude Minnesota producers from such nationwide class prior to certification.

The Remele/Sieben Group, the Addendum Parties and the Federal MDL Co-Leads agree to meet and confer in good faith regarding how best to address any class of Minnesota non-producer plaintiffs.

iii. Participation of Federal MDL Co-Leads. The Remele/Sieben Group and/or Additional Minnesota Counsel will consider in good faith, whether, at their sole discretion, to request in writing that the Federal MDL Co-Leads assist with and participate in the prosecution of any MN MDL Class Action. Upon such request, subject to reasonable restrictions based on availability and other commitments, the Federal MDL Co-Leads will provide such assistance and/or participation as is requested. To the extent that the Federal MDL Co-Leads are requested in writing to participate in the prosecution of any MN MDL Class Action, the Federal MDL Co-Leads agree to track the time and expenses incurred in such representation and to submit such information regarding time and expenses as is required for submission of any fee and expense reimbursement request as may be required by the MN MDL Court. Nothing herein shall constitute a requirement that the Remele/Sieben Group and/or Additional Minnesota Counsel seek the assistance or participation of the Federal MDL Co-Leads in the prosecution of any MN MDL Class Action.

iv. Flat Fee Compensation to the Federal MDL Co-Leads. In consideration for access to Syngenta Work Product and the availability of the Federal

MDL Co-Leads to participate in MN MDL Class Actions, the Addendum Parties agree that the Federal MDL Co-Leads shall be entitled to a flat fee equal 33 1/3% of the attorneys' fees awarded in all MN MDL Class Actions (the "Flat Fee"). The Flat Fee shall be earned upon the granting of access to Syngenta Work Product without regard to whether or not the Federal MDL Co-Leads are asked to participate in the prosecution of any MN MDL Class Action. The Remele/Sieben Group acknowledge that they have been granted access to and have in fact already received Syngenta Work Product. Additional Minnesota Counsel have not received Syngenta Work Product but acknowledge that they will be granted access to it after signing this First Addendum and that they intend to access it.

v. Additional Compensation for Federal MDL Co-Lead Participation. In addition to the Flat Fee, and as additional consideration for their participation or assistance in any MN MDL Class Action, the Federal MDL Co-Leads (or, to the extent asked to participate, any members of the Federal MDL Executive Committee) shall be entitled to submit a request for fees and/or reimbursement for expenses incurred to the MN MDL Court from any recovery, whether by judgment or settlement, in any MN MDL Class Action in which such counsel participated or assisted for any work requested by the Remele/Sieben Group and/or Additional Minnesota Counsel. Except for the Flat Fee, in no event shall the Federal MDL Co-Leads seek, nor shall any such person be entitled to, fees from any MN MDL Class Action solely related to use of their Syngenta Work Product in the prosecution of a MN Class Action.

b. Federal MDL Class Actions.

i. Use of Syngenta Work Product. The Federal MDL Co-Leads may use Syngenta Work Product in the prosecution of any Federal MDL Class Action subject to the same restrictions upon such use as set forth in Section 2(d)(ii) of the Agreement; provided however, that such Syngenta Work Product may be disclosed to Additional Minnesota Counsel assisting with or otherwise participating in such the prosecution of such Federal MDL Class Action. Upon a written request and with reasonable notice from the Federal MDL Co-Leads, Additional Minnesota Counsel will provide the Federal MDL Co-Leads and members of the Federal MDL Executive Committee reasonable and continuing access to its Syngenta Work Product subject to those same restrictions set forth in Section 2(d)(ii) of the Agreement.

ii. Participation of the Remele/Sieben Group and/or Additional Minnesota Counsel in Federal MDL Class Actions. The Federal MDL Co-Leads will consider in good faith whether, at their sole discretion, to request that members of the Remele/Sieben Group or Additional Minnesota Counsel assist with and participate in the prosecution of any Federal Class Action.

Upon such request, any such member of the Remele/Sieben Group or Additional Minnesota Counsel may agree to, but is not obligated to, assist or participate in its sole discretion. To the extent that any member of the Remele/Sieben Group or Additional Minnesota Counsel participates in the prosecution of any Federal MDL Class Action, such counsel agrees to track the time and expenses incurred in such representation and to submit such information regarding time and expenses as is required for submission of any fee and expense reimbursement request as may be required by the Federal MDL Court. Nothing herein shall constitute a requirement that the Federal MDL Co-Leads seek the assistance or participation of any member of the Remele/Sieben Group or Additional Minnesota Counsel in the prosecution of any Federal MDL Class Action, but only that Federal MDL Co-Leads shall consider seeking the participation or assistance of such counsel in good faith.

iii. Compensation to the Remele/Sieben Group or Additional Minnesota Counsel. As sole consideration for their participation or assistance in any Federal MDL Class Action, the members of the Remele/Sieben Group and or Additional Minnesota Counsel shall be entitled to submit a request for fees to the Federal MDL Court from any recovery, whether by judgment or settlement, in the Federal MDL Class Action in which such counsel participated or assisted for any work requested in writing by the Federal MDL Co-Leads. In no event shall the Remele/Sieben Group or any Additional Minnesota Counsel seek, nor shall any such person be entitled to, fees from any Federal MDL Class Action solely related to use of their Syngenta Work Product in the prosecution of a Federal MDL Class Action.

c. Excluded Client List and Excluded Clients' FSA 578 Forms.

i. Additional Minnesota Counsel will provide to Federal MDL Co-Leads (1) a list in Excel format of all individual Additional Minnesota Counsel who have cases filed in state court, including their names and the style of their cases, (its "Excluded Client List") and (2) copies in PDF format of their FSA 578 forms for calendar years 2013-15 and each future calendar year after 2015 through the year of the first federal court trial, as they become available (its "Excluded Clients' FSA 578 Forms"). To the extent that any Additional Minnesota Counsel Client has filed a case seeking class treatment, only the Additional Minnesota Counsel Clients serving as individual named class representatives in such case, and not the proposed putative class members, may be included on an Excluded Client List.

ii. Starting April 15, 2016, on a rolling basis, Additional Minnesota Counsel will provide its Excluded Client List(s) to MDL Co-Lead Counsel along with its

Excluded Clients' FSA 578 Forms. This process will be completed by May 30, 2016.

iii. No Additional Minnesota Counsel will oppose class certification in the Federal MDL and the Minnesota MDL if such certification excludes from its class definition(s) the Excluded Clients.

3. Miscellaneous.

a. All MN MDL Class Counsel and members of the MN MDL Leadership to be Addendum Parties. It is the intent of the Addendum Parties that all counsel acting on behalf of the plaintiffs in any MN MDL Class Action as well as all members of the MN MDL Leadership be parties to this First Addendum. To the extent that the MN MDL Court appoints class counsel or members of the MN MDL Leadership who has not previously executed this First Addendum, the Remele/Sieben Group and Additional Minnesota Counsel will use their best efforts to have any such counsel execute this First Addendum as a condition precedent to being provided access to Syngenta Work Product.

b. Additional Minnesota Counsel Individual Cases. To the extent that class certification of a MN MDL Class Action is denied and/or Additional Minnesota Counsel have been, are engaged to or otherwise decide to pursue cases for Producers or Non-Producers in one or more individual actions, Additional Minnesota Counsel hereby join in the Agreement and are subject to all of the same rights and obligations of the Remele/Sieben Group including, but not limited to, the assessments on individual cases set forth therein.

c. ADR. The Addendum Parties agree that any dispute between one or more of the Federal MDL Co-Leads, on the one hand, and one or more of the Remele/Sieben Group and/or Additional Minnesota Counsel, on the other, arising out of the construction or enforcement of a Common Benefit Assessment Order will be resolved by the Federal MDL Court and any such dispute arising out of the construction or enforcement of any common benefit assessment order issued by the MN MDL Court will be resolved by the MN MDL Court. The Addendum Parties agree that any dispute between one or more of the Federal MDL Co-Leads, on the one hand, and one or more of the Remele/Sieben Group and/or Additional Minnesota Counsel, on the other, arising out of this First Addendum, including, without limitation, the threshold determination regarding the applicability of this ADR provision, will be resolved through binding arbitration in the same manner as set forth in Section 3(a)(ii) of the Agreement.

d. Amendment. The Addendum Parties may by mutual agreement amend or supplement this First Addendum at any time and from time to time; provided, they must do so in writing, and such writing must be signed by the Addendum Parties.

e. No Other Modification. Except as expressly modified by this First Addendum, all terms, conditions and provision of the Agreement shall remain in full force and effect.

f. Confidentiality. The Addendum Parties will, at all times, in all ways, and for all purposes, treat the content of this First Addendum as proprietary and confidential; and, absent each Addendum Party's consent, no Addendum Party will disclose the existence or content of this First Addendum or the Agreement to any person or entity other than (1) the Federal MDL Co-Leads and members of the Federal MDL Executive Committee, (2) the members of the Remele/Sieben Group, its clients or its co-counsel, (3) any Additional Minnesota Counsel, its clients or its co-counsel or (4) under seal to the Federal MDL Court and the MN MDL Court. The Federal Co-Leads and the Remele/Sieben Group consent to the disclosure of the Agreement to the Additional Minnesota Counsel subject to the same confidentiality terms set forth in this paragraph regarding the First Addendum.

g. The Addendum Parties agree that this First Addendum will be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting same.

h. This First Addendum together with those sections of the Agreement referenced and incorporated herein embodies the entire agreement between the Addendum Parties in connection with the subject matter of this Addendum.

i. This First Addendum will be effective when signed by the Addendum Parties. This Addendum may be executed in one or more counterparts, each of which will be deemed an original and all of which will constitute one and the same document. The electronic exchange of executed copies of the signature pages of this Addendum will constitute effective execution of this First Addendum. Signatures of the Addendum Parties transmitted by electronic mail in .pdf form will be deemed to be their original signatures for all purposes.

j. The Federal MDL Co-Leads whose signatures appear below agree that the rights, obligations, terms, and conditions of this First Addendum shall apply to them individually to the same extent they apply to the Federal MDL Co-Leads and regardless of any future disassociation from their present law firms and/or future association with a different law firm. The Federal MDL Co-Leads whose signatures appear below represent and warrant to the members of the Remele/Sieben Group and the Additional Minnesota Counsel that they have the authority to, and do in fact, execute this First Addendum as Co-Lead Counsel in the Federal MDL and on behalf of themselves and their firms.

k. The members of the Remele/Sieben Group and Additional Minnesota Counsel whose signatures appear below agree that the rights, obligations, terms, and conditions of this First Addendum shall apply to them individually to the same extent they apply to the Remele/Sieben Group and/or their respective firms and

regardless of any future disassociation from their present law firms and/or future association with a different law firm. The members of the Remele/Sieben Group and the Additional Minnesota Counsel whose signatures appear below represent and warrant to the Federal MDL Co-Leads that they have the authority to, and do in fact, execute this First Addendum on behalf of themselves, their law firms, their respective clients and their respective co-counsel and, in the case of Lewis A. Remele, Jr. and Francisco Guerra, IV, as Co-Lead Counsel in the MN MDL.

(Signatures Appear on the Following Three Pages)

Signed as of this ____ day of January, 2016.

BASSFORD REMELE PA

By: Lewis A. Remele Jr.

GRAY REED & MCGRAW PC

By: William B. Chaney

GRAY, RITTER & GRAHAM PC

By: Don M. Downing

GUSTAFSON GLUEK PLLC

By: Daniel E. Gustafson

HARE WYNN NEWELL & NEWTON

By: Scott A. Powell

KEMP, JONES & COULTHARD, LLP

1/21/16

By: Will Kemp

Signed as of this ____ day of January, 2016.

BASSFORD REMELE PA

By: Lewis A. Remele Jr.

GRAY REED & MCGRAW PC

By: William B. Chaney

GRAY, RITTER & GRAHAM PC

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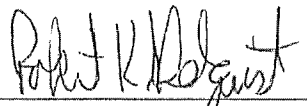
By: Scott A. Powell

KEMP, JONES & COULTHARD, LLP

By: Will Kemp

LOCKRIDGE GRINDAL NAUEN PLLP



By: Robert K. Shelquist

PAUL BYRD LAW FIRM, PLLC

By: Paul Byrd

PAUL McINNES, LLP

By: Rick Paul

SCHWEBEL GOETZ & SIEBEN PA

By: William R. Sieben

STUEVE SIEGEL HANSON LLP

By: Patrick J. Stueve

WAGSTAFF & CARTMELL, LLP

By: Tyler Hudson

LOCKRIDGE GRINDAL NAUEN PLLP

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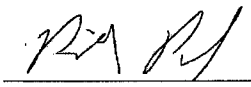
PAUL McINNES, LLP



By: Rick Paul

SCHWEBEL GOETZ & SIEBEN PA

By: William R. Sieben

STUEVE SIEGEL HANSON LLP

By: Patrick J. Stueve

WAGSTAFF & CARTMELL, LLP

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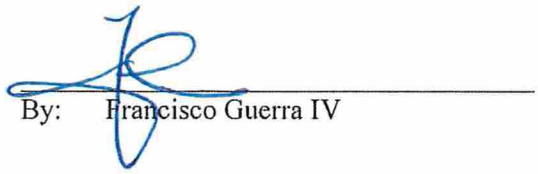
STUEVE SIEGEL HANSON LLP

By: Patrick J. Stueve

WAGSTAFF & CARTMELL, LLP

By: Tyler Hudson

WATTS GUERRA LLP



By: Francisco Guerra IV

WATTS GUERRA LLP

By: Mikal C. Watts

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

IN RE: SYNGENTA AG MIR162 CORN LITIGATION This Document Relates to All Cases Except: *Louis Dreyfus Co. Grains Merchandising LLC v. Syngenta AG*, No. 16-2788 *Trans Coastal Supply Co., Inc. v. Syngenta AG*, No. 14-2637 *The Delong Co., Inc. v. Syngenta AG*, No. 17-2614 *Agribase Int'l Inc. v. Syngenta AG*, No. 15-2279	MDL No. 2591 Case No. 14-md-02591-JWL-JPO

STATE OF MINNESOTA COUNTY OF HENNEPIN	DISTRICT COURT FOURTH JUDICIAL DISTRICT
In re: Syngenta Litigation	Case Type: Civil Other Hon. Laurie J. Miller
This Document Relates to: ALL ACTIONS	FILE NO. 27-CV-15-12625 and FILE NO. 27-CV-15-3785

MEMORANDUM IN SUPPORT OF
THE FEE & EXPENSE APPLICATION BY WATTS GUERRA LLP

[FILED UNDER SEAL]

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INTRODUCTION

The settlement in this case compensates U.S. corn producers for billions of dollars in losses they suffered because of Syngenta's duplicity about whether two of its genetically modified corn seed products had received regulatory approval in China. The current motions concern holding the lawyers who represented the plaintiffs to their representations. Years ago, the lawyers leading these two multi-district proceedings—one in state court in Minnesota, led by Watts Guerra LLP, among others; the other in federal court in Kansas—entered a Joint Prosecution Agreement (the "JPA") that established the economic expectations of Plaintiffs' Leadership in the two proceedings relative to each other, and provided the basis for years of coordinated and cooperative litigation.

That JPA also capped how much of the attorneys' fees earned on any settlement for any Watts Guerra client would be paid to compensate the efforts of other common benefit counsel in both proceedings. And this was only one part of the agreement; the JPA established a framework of rights and obligations, relied-upon and actually performed by all of the attorneys involved. Further, both Courts assented to and encouraged the JPA—as they had been asked to do. The JPA thus permitted Watts Guerra, the other attorneys leading the Minnesota proceeding, and the attorneys leading the Federal MDL to share work product and to coordinate the prosecution of their cases. And, within this privately arranged, court-endorsed framework, Watts Guerra's efforts became a critical factor leading to the Agrisure Viptera/Duracade Class Settlement Agreement, ECF No. 3507-2 (MDL 2591) (filed March 12, 2018) ("SA" or "Settlement") now before the Courts.

Working with 332 law firms across the Corn Belt, on behalf of more than 57,000 individual farmers and grain elevators—who account for more than 23% of the entire U.S. corn harvest and ***more than 50% of the completed claims on file with the Settlement Claims Administrator as of July 2, 2018***—Watts Guerra was instrumental in obtaining recoveries not only for its own clients, but for the other 542,000 class members. It was Watts Guerra that conceived the strategy of suing

Syngenta in Minnesota, where Syngenta executives could be compelled to appear live at trial. It was Watts Guerra partner Frank Guerra who was appointed Minnesota Co-Lead Counsel by Judge Sipkins. It was Watts Guerra partner Mikal Watts that led the plaintiffs' effort for the first Corn case to reach trial in any jurisdiction, the *Mensik* bellwether trial in Minnesota. And it was Watts Guerra on point when this litigation ended, after Mikal Watts savaged Syngenta executives on cross-examination at the Minnesota class trial, procuring admissions showing that the risks of commercialization without approval were known to Syngenta's top managers, and yet Syngenta went forward anyway—testimony that made punitive damages all but inevitable.

That trial forced Syngenta finally to accept that it faced not just hundreds of millions of dollars in compensatory damages but a likely multi-*billion* dollar judgment based on intentional misconduct—for the farmers in a single state. Then, in an instant, it was over. Syngenta agreed to settle for $1.51 billion. And Watts Guerra was at the center of the peace process too, with Mr. Watts serving on the four-member, court-appointed Plaintiffs' Negotiating Committee ("PNC"), and ultimately lending his support to the single-settlement framework—support that was critical, given that Watts Guerra's clients constitute the substantial majority of the individual plaintiffs who filed lawsuits against Syngenta, account for more than 23% of the U.S. corn harvest, and include four of the five largest grain-selling co-ops in the country.

Now, Watts Guerra proposes that Fee & Expense Awards under the Settlement be made consistent with the approach that counsel had negotiated and agreed to in the JPA. Under its proposal, Watts Guerra would receive a percentage of its clients' recoveries, less the common benefit assessment that Watts Guerra already agreed to pay. Specifically, Watts Guerra proposes to reduce its contingent fee from the contracted 40% to 33.33%, from which the agreed-to common benefit assessment of 9.17 percentage points (27.5% of its fees) should be subtracted. Watts

Guerra thus requests a fee award for itself and its associate counsel consisting of 24.16% of the gross benefits to its clients under the settlement, plus reimbursement of its common benefit expenses. Although Watts Guerra would be entitled to claim *additional* compensation—a fee for the benefits it conferred on the other 542,000 class members—Watts Guerra is willing to forgo that additional common benefit fee award insofar as the original agreement is otherwise honored.

Some of the other common benefit counsel may wish to depart from the JPA and ignore Watts Guerra's fee agreements. With few individual clients of their own, they may oppose any method of allocating attorneys' fees that ties the size of the award to the clients the attorney represents or the recoveries those clients receive. They may challenge the agreed-upon 27.5% common benefit assessment against Watts Guerra's fees, and demand that a full one-third of *all class members' recoveries*—including by the Watts Guerra Plaintiffs—be used to compensate common benefit work. Such challenges are ill-conceived and should be rejected as a matter of law, economics, policy, and procedure, as explained below and in Exhibit 1 hereto, the expert report by Professors Arthur R. Miller, Geoffrey P. Miller, Charles Silver, Brian T. Fitzpatrick, & Alexandra Lahav on Issues of Economics, Procedure, & Policy ("Miller Report").[1]

The JPA was agreed to by the both court-appointed Leadership groups; both courts have relied on it; and Watts Guerra and the other attorneys have relied on it as well. There is no basis for departing from the arms-length agreement counsel agreed upon in advance—an agreement which was expressly designed to "resolve all potential, future disputes in connection with Common Benefit Assessments" and which, to that end, specified the portion of Watts Guerra's contract fees that would be taxed to fund common-benefit efforts. That agreement leaves ample compensation

[1] This Memorandum must be filed under seal in the first instance, pending decision on Watts Guerra's Sealed Motion for Leave to File in the Public Record. *See infra* 10 n.4. Accordingly, all "Exhibit __" and "Ex. __" citations herein refer to materials attached to Watts Guerra's Fee & Expense Application.

for other common benefit counsel with few individual clients of their own: They would receive a percentage of the settlement recovery earned by absent class members, *and* also be entitled to share in the common benefit assessments that Watts Guerra and other retained counsel will pay.

This approach ensures that common benefit fees and attorneys' fees required under individual retainer agreements are considered in tandem. It thus ensures that class member recoveries are not unfairly depleted by attorneys' fees. An approach that reserves one-third for common-benefit fees and leaves nothing for individually contracted fees, on the other hand, would penalize class members who retained counsel by requiring them to pay *additional* attorneys' fees on top of the common-benefit fees. Miller Report at 24-26. Not only would it be unfair to charge individual plaintiffs who actually contributed to this litigation more than absent class members who did not, but doing so would conflict with a central tenet from settlement negotiations—that all class members would receive the same recovery in terms of dollars-per bushel net of attorney fees.

Further, as explained in Exhibit 2, the expert report of Professors Andrew Kull & Charles Silver on Issues of Restitution & Unjust Enrichment ("Kull-Silver Report"), even if the JPA were no longer binding as a contract, under normal principles of restitution on which the common benefit doctrine itself is based, the JPA would still be the definitive measure of Watts Guerra's obligation to pay a common benefit assessment. Adhering to the JPA, moreover, closely reflects the appropriate outcome even if Watts Guerra had no contractual rights at all, given the substantial benefits that Watts Guerra's efforts provided to the class as a whole, which are detailed below.

Depending on the final bushel counts and settlement claims made, Watts Guerra estimates that a 24.16% contingency on its clients' recoveries will produce a fee award of roughly $150 million for itself and its 332 associate counsel. Watts Guerra's contract rights, the equities, and normal common benefit principles—each and all—confirm that this award is reasonable.

FACTS

The factual basis for this Application is provided below, and detailed in the Declarations of Mikal Watts (Exhibit 4) and Francisco Guerra IV (Exhibit 5). It is further supported by Joinder Declarations by 224 of Watts Guerra's associate counsel (collected in Exhibit 10).

I. The Federal and State Litigation

A. The Watts Guerra Group

This litigation arises from Syngenta's decision to sell its Viptera and Duracade corn seed products into the U.S. market without obtaining China's approval for the MIR 162 genetic trait. China rejected U.S. corn shipments in November 2013 and thereafter once U.S. corn shipments repeatedly tested positive for MIR 162 that year, causing prices in the U.S. corn market to collapse.

1. The Watts Guerra Group and Watts Guerra Plaintiffs

As the impact of China's rejections became clear during the 2014 crop year, Watts Guerra conceived of, led, and funded a campaign to reach and educate farmers and other market participants about their legal options. Mr. Watts put together a network of law firms in the major corn-producing states. Watts Decl. ¶¶ 27-33. This network—this "Watts Guerra Group"—ultimately grew to include some 332 firms in 32 states. *Id.* ¶31 & Appendix B (state by state listing). Beginning in November 2014, Watts Guerra and other firms in the Group held hundreds of town hall meetings throughout the Corn Belt directed to providing farmers with the information to decide whether, and when, to choose to participate in the litigation against Syngenta. Watts Decl. ¶¶ 39-42.[2] Watts Guerra Group law firms organized the meetings; advertised dates, times, and locations; hosted the meetings; and provided follow up, for example, by answering tens of thousands of attendees' questions. *Id.* ¶¶ 32-33, 39-42 & Appendix C (listing meeting dates and locations).

[2] Beginning in February 2015, the town hall meetings served a second purpose: gathering information necessary to complete a mandatory Plaintiff Fact Sheet for each individual plaintiff. Watts Decl. ¶42.

More than 62,000 farmers and grain elevators retained Watts Guerra—either as sole counsel, or together with one or more other Group members acting as associate counsel with joint responsibility for the representation. Watts Decl. ¶¶ 34-36. Watts Guerra's farmer clients produce roughly 23% of the U.S. corn harvest.[3] *See* The Settlement Alliance Docket Analysis Report at 7, Exhibit 3 ("TSA Report"). And Watts Guerra's 147 elevator clients—including four of the five largest grain-selling co-ops in the country—collectively sell more than 1.2 billion bushels of corn per year. Unlike a typical class action involving small, diffuse injuries, the losses in this case amounted to *thousands* or *tens of thousands* of dollars per plaintiff. *See also id.* at 4-6 (providing size and production information for U.S. corn producers between 2013 and 2017, and showing that farms represented by Watts Guerra are larger than average). The Watts Guerra Plaintiffs chose to actively assert their individual claims, through their retained counsel, in a concerted "mass action."

In return for legal representation, each Watts Guerra Plaintiff agreed to pay its counsel 40% of any recovery (for both fees and expenses). More precisely, each of Watts Guerra's engagements is based on an individual contract, governed by Texas law, prepared from a template fee agreement providing that the client "assigns and grants to the Firm[s] FORTY PERCENT (40%) of any monies, interest, or property recovered.… **Attorneys' fees will be calculated based on the gross recovery. In the event there is no recovery, Client owes the Firm[s] nothing.**" *See* Ex. 8; Watts Decl. ¶35. The 40% fee was to be inclusive of fees *and expenses*—which would be substantial in such a mass action. Indeed, filing fees alone exceeded $1.13 million. Watts Decl. ¶46.

Some Watts Guerra Plaintiffs are represented by Watts Guerra alone, while others are jointly represented by Watts Guerra and other firms in the Watts Guerra Group. Watts Decl. ¶¶

[3] This is more than all farmers in Iowa (the top corn-producing state) and Kansas (the seventh) combined. NASS/USDA (bushels), reprinted at http://beef2live.com/story-states-produce-corn-0-107129.

34-36. Where clients are represented by more than one firm, their agreements specify the division of fees between Watts Guerra and other counsel. Watts Decl. ¶35; Ex. 8 at 3, 5 (template fee agreements). After deducting common benefit assessments and reimbursing all costs and expenses (including its own), on average Watts Guerra is entitled to approximately 62.54% of the remaining aggregate contingent fee. Its associate counsel, other Group members, are entitled to the balance. Watts Decl. ¶37.

2. Initial suits against Syngenta and the Federal MDL

Cargill, Inc. filed the first suit against Syngenta in September 2014, in Louisiana state court. Watts Decl. ¶20. Shortly thereafter, in October and November 2014, Watts Guerra filed state-court suits on behalf of grain elevators in Texas. *Id.* ¶¶ 47-50. Other parties filed similar suits in state and federal courts across the country. *Id.* ¶20.

In December 2014, the Federal MDL was formed and assigned to the Honorable John W. Lungstrum in the District of Kansas. *See* JPML Transfer Order, ECF No. 1 (MDL 2591). Judge Lungstrum moved quickly to appoint a leadership group, including four attorneys to act as Co-Lead Counsel ("Federal CLC"). *See* Order Concerning Appointment of Counsel at 6, ECF No. 67 (MDL 2591) (Jan. 22, 2015). Federal CLC were charged with, *inter alia*, organizing and supervising all plaintiffs' counsel, delegating work, managing discovery, retaining experts, coordinating the preparation and presentation of plaintiffs' claims, communicating with the court and opposing counsel, and consulting with a ten-attorney Plaintiffs' Executive Committee. *Id.* 6-7.

Syngenta removed many of the state cases, including Watts Guerra's Texas suits, to federal court, where they were consolidated into the Federal MDL. Watts Decl. ¶¶ 21, 50, 63-69. Thereafter, Watts Guerra filed additional cases in the Federal MDL. *Id.* ¶¶ 51-54. Watts Guerra immediately began to coordinate with the other attorneys involved in the Federal MDL.

3. The Minnesota Consolidated Action

In December 2014, Watts Guerra began filing suit for Watts Guerra Plaintiffs in Minnesota state court, working with Lewis Remele, Jr. and his firm, Bassford Remele, PA. Watts Decl. ¶¶ 57-58. By July 2015, Watts Guerra had filed suit for nearly 10,000 individual farmer and grain-elevator clients, ultimately filing nearly 2,500 actions for more than 57,000 Watts Guerra Plaintiffs. *Id.* From deep experience with mass tort litigation (*id.* ¶¶ 6-7 & Appendix A), Mr. Watts and his colleagues knew that active proceedings and the threat of juries in multiple jurisdictions would increase the litigation pressure on Syngenta. Minnesota in particular had many advantages, including: trial subpoena power over Syngenta executives, proximity to the Federal MDL court, proximity to the most clients, importance of corn to the state economy, favorable state court procedural rules and verdict history, and strong lawyers (including Lew Remele, Bill Sieben, and Dan Gustafson, among others) experienced in complex civil litigation. *Id.* ¶¶ 22-26.

Syngenta removed all the state actions, including Watts Guerra's in Minnesota, to federal court based on "the federal common law of foreign relations." *See* Mem. & Order, ECF No. 395 (MDL 2591) (May 5, 2015). Watts Guerra worked diligently with others, particularly Cargill's counsel, to secure remand of those cases. Those efforts were successful—Judge Lungstrum rejected Syngenta's removal efforts and remanded the cases: a state-court beachhead thus was created for the Corn Litigation. Watts Decl. ¶¶ 21, 63-69.

With thousands upon thousands of individual claims flowing into the Minnesota court system—most of them by Watts Guerra Plaintiffs—the Minnesota Supreme Court formed a consolidated proceeding in May 2015. That Court assigned the proceeding to the Honorable Thomas M. Sipkins in Hennepin County, Minnesota. (In July 2017, with Judge Sipkins approaching mandatory retirement, the Consolidated Proceeding was reassigned to the Honorable Laurie J. Miller.)

To lead the Minnesota Consolidated Proceeding, Judge Sipkins selected two attorneys as Co-Lead Counsel—Francisco Guerra, IV (Watts Guerra) and Lewis Remele, Jr. (Bassford Remele PA). He appointed two others as Co-Lead Interim Class Counsel—William Sieben (Schwebel, Goetz & Sieben PA) and Daniel Gustafson (Gustafson Gluek PLLC). In addition, he appointed those four attorneys and five others as a Plaintiffs' Executive Committee. *See* Order Appointing Lead Counsel (MDL 3785) (Aug. 5, 2015) ("Minnesota Appointment Order"). These Minnesota Leaders were charged with the same basic responsibilities as their Federal counterparts (*id.* at 2-3), but for more than twenty-five times as many individual cases.

In making these appointments, Judge Sipkins relied on the fact that "the Remele/Sieben Group"—which included Watts Guerra—"represents approximately 92% of the cases currently involved in the litigation." *Id.* at 7; *see* Charles Silver & Geoffrey P. Miller, *The Quasi-Class Action Method of Managing Multi-District Litigations*, 63 Vand. L. Rev. 107, 111 (2010) (advising MDL judges to appoint plaintiffs' management committees "made up of lawyers with valuable client inventories: often, but not necessarily, lawyers with the largest numbers of signed clients"). Judge Sipkins also highlighted the cooperative working relationship these attorneys had established with Federal CLC, and the prospect of avoiding "duplicative work" through "cooperat[ion] and coordinat[ion] with the [Federal] MDL." *See* Minnesota Appointment Order at 7, 9.

Indeed, based on Watts Guerra's attempts to coordinate the state and federal actions from the inception of the Federal MDL, Federal CLC filed a "Statement in Support for the Remele/Sieben Group" (MDL 3785) (July 17, 2015), in which they supported the Remele/Sieben Group to lead in Minnesota, because that group had shown that "[it] intends to avoid all material duplication of effort, leverage the work product of both MDLs, and avoid a common benefit arbitrage…," as "made plain by its actions and by the terms of the Joint Prosecution Agreement."

B. The framework for cooperative litigation

With litigation underway in both federal and state court, Watts Guerra worked with the other lead attorneys and the Courts to develop a framework for effective, efficient, and cooperative litigation. In addition to the leadership appointments just discussed, that framework included (1) private agreements by leading attorney groups with each other to resolve financial and procedural conflicts, preclude gamesmanship, and incentivize cooperation; and (2) orders from both Courts endorsing the private agreements, mandating cooperation across proceedings, and establishing guidelines for common benefit work.

1. The Joint Prosecution Agreement

In June 2015, the lead attorneys in the federal and state suits entered an "Amended & Restated Joint Prosecution Agreement" ("JPA"), Exhibit 6 (filed under seal). ("Amended & Restated" because a prior version was between Federal CLC and Watts Guerra alone.) This agreement was executed by the Plaintiffs' Leadership of both the Federal and Minnesota MDLs—including all four attorneys serving as Federal CLC, *in their capacities as such*. JPA §3(m).[4]

The JPA stated: "the Parties desire to foster from the outset a spirit of coordination between the Federal MDL Co-Leads and the Remele/Sieben Group *and resolve all potential, future disputes in connection with Common Benefit Assessments*." JPA p.3 (emphasis added). It provided:

- A common benefit assessment of no more than 8% for fees and 3% for expenses for producers (for non-producers, 7% and 2%), paid to a federal common benefit fund from any judgment or settlement for Watts Guerra Plaintiffs *in federal court*—or the applicable "Benchmark Common Benefit Assessment" set in the Federal MDL, whichever is less. *See* JPA §2(a)(i).

- A common benefit assessment of no more than 4% for fees and 1.5% for expenses for producers (for non-producers, 3.5% and 1%), paid to a federal common benefit fund from any judgment or settlement for Watts Guerra Plaintiffs *not in federal court*—or

[4] Because of a confidentiality provision, Watts Guerra has filed the JPA, the "JPA Addendum" (discussed below), and this Memorandum under seal, together with a motion for leave to file in the public record.

half the applicable "Benchmark Common Benefit Assessment" set in the Federal MDL, whichever is less. *See* JPA §2(a)(ii).

- That certain members of the Remele/Sieben Group, including Watts Guerra, "will not seek any common benefit fee awards or expense reimbursements" from the *federal* common benefit fund. JPA §2(a)(iv), (vi).

- That Federal CLC "will not seek to interfere with or alter the terms and conditions of any fee agreement with any Remele/Sieben Group Client (e.g., reduce or cap the fee of any member of the Remele/Sieben Group)." JPA §2(g)(iii).

- That Federal CLC will exclude all Watts Guerra Plaintiffs from any class proposed for certification in the Federal MDL. *See* JPA §2(b), §2(g).

- That both groups will share "Syngenta Work Product" with each other. JPA §2(d).

- That "it is in the best interests of Producers and Non-Producers for the [Federal CLC] and the MN MDL Leadership to coordinate in the prosecution of the Syngenta Claims *and focus their energies on such prosecution rather than strategies to compete with one another*," JPA §2(f)(i) (emphasis added); both groups thus endorsed a series of provisions in furtherance of a coordinated, cooperative relationship between the Federal and Minnesota MDLs (for example, a shared document depository). *See generally* JPA §2(f) through (*i*).

In January 2016, Federal CLC and the Minnesota Leadership executed an "Addendum" to the JPA, provided as Exhibit 2 to the Watts Declaration. Among other things, the Addendum was designed to bring into the fold Daniel Gustafson, who was not part of the Remele/Sieben Group but was appointed by Judge Sipkins as Co-Interim Class Counsel, and certain other attorneys appointed to the Minnesota Plaintiffs' Executive Committee. All signatories agreed that, except as specifically modified by the Addendum, the JPA remained in full force and effect.

Meanwhile, as between themselves, the Minnesota Leaders had agreed to the same common benefit assessments for Minnesota as for the Federal MDL—11% for producers, and 9% for non-producers—with half going to the Federal MDL for their own clients (per the JPA). Watts Decl. ¶¶ 77-79; Guerra Decl. ¶¶ 22-24. This agreement was reflected in JPA §2(f)(ii)(2) (which committed "MN MDL Leadership" to "seek from the MN MDL Court" these assessment levels) and JPA §2(f)(ii)(3) (which provided for a "set off" whereby Minnesota assessments would be

reduced dollar-for-dollar for amounts paid for Federal assessments). It was also reflected in the Remele/Sieben Group's leadership application (filed in July 2015), the Minnesota Leadership group's proposed common benefit order (filed in October 2015), and numerous communications between and among these attorneys in 2015. Watts Decl. ¶¶ 77-79; Guerra Decl. ¶¶ 22-24.

2. Both Courts endorse cooperation, establish guidelines for common benefit work, and so-order the JPA common-benefit provisions.

The judges in both proceedings issued a number of orders endorsing cooperation between the Plaintiff Leadership groups and establishing guidelines for common benefit work. Most notably, each judge issued a Common Benefit Order which addressed the types of work eligible for reimbursement from common benefit funds, set common benefit assessment levels for different types of cases, and established frameworks and procedures attorneys must follow to be eligible for common benefit awards at proceeding's end. *See generally* Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds, ECF No. 936 (MDL 2591) (July 27, 2015) ("Federal Common Benefit Order"); Common Benefit Order (MDL 3785) (Dec. 7, 2015) ("Minnesota Common Benefit Order").

In addition, both Courts took the opportunity to review and approve the JPA. In the Federal Common Benefit Order, Judge Lungstrum gave separate treatment to Watts Guerra and the rest of the Remele/Sieben Group. *See* Federal CB Order at 3-6 (defining three groups of counsel—"MDL Counsel," "Participating Counsel," and "Remele/Sieben Group"). Other attorneys would be subject to various assessment amounts based mainly on *where* their cases were first filed and *when* they executed a "Participation Agreement." But for Watts Guerra and the rest of the Remele/Sieben Group, the Court effectively so-ordered the common-benefit portions of the JPA—approving that agreement, and going so far as to specify that *those attorneys'* "*rights and obligations are governed by the specific language in the [JPA]* … and not by the summaries contained

in this Order." *Id.* at 5 n.1 (emphasis added). Continuing, the Court explained:

> *The Remele/Sieben Group and the Remele/Sieben Group Co-Counsel are uniquely situated in this litigation.* They have agreed to undertake significant efforts to promote appropriate federal-state cooperation and coordination. They also have agreed to seek from the Minnesota state court overseeing coordinated proceedings common benefit assessments that are identical in percentage to the MDL assessment percentages, and to take steps to avoid duplicate assessments in federal and state courts. This step should discourage assessment based forum selection decisions. Given these and other undertakings to which the Remele/Sieben Group and the Remele/Sieben Group Co-Counsel have agreed, as described in the [JPA] submitted to and reviewed *in camera* by the Court, *the Court finds that treating the Remele/Sieben Group, the Remele/Sieben Group Clients, and the Remele/Sieben Group Co-Counsel separately is in the best interests of all plaintiffs in this litigation*, and the Court therefore has incorporated into this Order the provisions of the [JPA] relating to common benefit assessments as described herein.

Id. at 5-6 (emphasis added); *see also* Mem. & Order at 13, 16, ECF No. 403 (MDL 2591) (May 8, 2015) (reviewing an earlier common benefit protocol, rejecting objections to "preferential assessment percentages" in Federal CLC's initial joint prosecution agreement with Watts Guerra); Mem. in Support of Mot. for Entry of Common Benefit Order at 17, ECF No. 855 (MDL 2591) (filed June 19, 2015) (Federal CLC arguing that the JPA "not only promotes coordination and facilitates efficiency, but also removes unjust enrichment and greatly reduces the potential for ongoing disputes over use of MDL work product by Watts' clients … and payment for that work product").

The Minnesota Common Benefit Order took a similar view of the JPA. Judge Sipkins set common benefit assessments of 11% for producers (8% fees; 3% expenses) and 9% for non-producers (7% fees; 2% expenses), adding—consistent with the JPA—that such assessments would be offset "dollar-for-dollar" for payments to the Federal MDL. *See* Minnesota Common Benefit Order at 10; *see also id.* at 6, 14 (twice disclaiming any "inconsisten[cy] with the JPA").

Thus, it had been agreed (with both Leadership groups) and ordered (by both Courts) that Watts Guerra would pay an 11% common benefit assessment from recoveries by its producer clients, and 9% for non-producers. For the few hundred clients who had filed in federal court, the

entirety of that amount would go for Federal common benefit work. For the rest, including the 57,000 Watts Guerra Plaintiffs with individual claims in Minnesota, this assessment would be split, 5.5 percentage points for Federal work and 5.5 percentage points for Minnesota.

C. Watts Guerra's work for its clients—and the common benefit

Subject to the Settlement's final approval and claims process, Watts Guerra has now assured a recovery for each Watts Guerra Plaintiff. Through nearly three years of litigation and another five months wrangling over settlement terms (with other PNC members as much as Syngenta), Watts Guerra was there—every step of the way. And not just present; *actively involved*, leading the work and instrumental in extracting the $1.51 billion settlement. A detailed accounting of Watts Guerra's work is provided in the Watts and Guerra Declarations. Here, in broad strokes, are Watts Guerra's contributions to the success of this litigation.[5]

1. Organizing the core liability strategy

As the litigation proceeded in 2015, Watts Guerra worked with the rest of the Minnesota and Federal Leaders to organize the core liability strategy against Syngenta—including by participating in weekly leadership calls and quarterly meetings, negotiating pretrial orders, drafting Minnesota-specific written discovery, opposing Syngenta's motion to dismiss the Master Complaints, and organizing focus groups. Watts Decl. ¶¶ 90-112; Guerra Decl. ¶¶ 11-15. Mr. Watts personally worked with Syngenta counsel to negotiate the necessary pretrial orders for the Minnesota proceeding, including orders relating to the bellwether selection process, coordination with the Federal proceeding, and case management deadlines. Watts Decl. ¶¶ 94-104. Watts Guerra also helped fund the joint effort to prosecute the case against Syngenta. Watts Decl. ¶¶ 88-89.

[5] In addition, 224 members of the Watts Guerra Group have submitted supporting declarations—collected in Exhibit 10—joining this Application and summarizing their contributions. Although we did no audit (each firm takes responsibility for its own submission), these declarations show their performance under the private fee agreements and (in many cases) additional contributions of common benefit work.

2. Plaintiff Fact Sheets ("PFSs")

On February 4, 2015, the Federal MDL court issued an order making it clear that plaintiffs would be required to provide Plaintiff Fact Sheets ("PFSs"). Watts Guerra correctly anticipated that whatever was required for Federal PFSs would also be required for Minnesota PFSs, and that such requirements would include (a) FSA Form 578s, (b) crop insurance applications, and (c) grain elevator summary reports. *See* Watts Decl. ¶¶ 114-121. All of this was indeed required, but the Federal PFS Order entered by Magistrate Judge O'Hara in August 2015 added one item more: (d) corn seed purchase receipts. Discovery Order, ECF No. 951 (MDL 2591) (Aug. 11, 2015); *accord* Order (MDL 3785) (Jan. 11, 2016) ("Minnesota PFS Order") (rejecting plaintiffs objection that the information could be produced "at the claims resolution phase").

Judge Sipkins recognized this would require a substantial amount of work (Minnesota PFS Order at 6), and it did. Starting immediately after the initial federal order, and continuing through 2017, Watts Guerra and its Group undertook extensive efforts to collect and process this documentation—essentially, proof of each individual plaintiff's corn harvests—including:

- Conducting town halls, adding this to the agenda for previously scheduled town halls from February 4, 2015 forward, and scheduling numerous additional town halls for this specific purpose;
- Employing more than 100 permanent and temporary workers in the Watts Guerra Mass Torts office, the majority of whom devoted most or all their time to this PFS work;
- Contracting with a data entry firm in India to "key in" the relevant data; and
- Leasing extra space for the employees and documents.

See Watts Decl. ¶¶ 118, 124-131. Although the initial PFS order required documentation for 2011 to 2015, as time went on, it became necessary to collect the same information for additional crop years (2016 and 2017). *Id.* ¶128. This herculean effort cost Watts Guerra many millions of dollars (*id.* ¶¶ 125-131), and other Group members spent heavily as well. This information collection was

not only necessary to preserve each plaintiff's claim per Judge Sipkins' order, but also important to establishing the extent of Syngenta's liability—both to the individual plaintiffs and to absent members of the various putative classes. *Cf.* Minnesota PFS Order at 6. ("PFSs provide the individual data that can be used for settlement.").[6]

3. Bellwether discovery

In October 2015, the Minnesota court issued an order setting forth a multi-step bellwether selection process, which was based on the bellwether selection plan negotiated by Mr. Watts with Syngenta counsel. Watts Decl. ¶¶ 96-98, 132. That Pursuant to that order, Watts Guerra initially provided discovery in writing with respect to over 480 randomly-selected Watts Guerra Plaintiffs—basic information such as each client's estimated corn acreage, whether they planted Viptera or Duracade, how they sold and/or used their corn, etc. Then, counsel for Plaintiffs and Syngenta used this information to select Bellwether Discovery Plaintiffs, including forty (40) Watts Guerra Plaintiffs. Between February 1 and May 1, 2016, each of these Watts Guerra Plaintiffs gave a deposition, almost all of which were defended by a Watts Guerra attorney. *Id.* ¶¶ 132-133, 136-137.

In addition, eleven (11) other Watts Guerra clients were selected as federal bellwether discovery plaintiffs, and seven sat for depositions defended by Watts Guerra. *Id.* ¶¶134-135.

From the Bellwether Discovery Plaintiffs, Judge Sipkins selected four (4) Watts Guerra Plaintiffs to serve as Bellwether Trial Plaintiffs—including one of the Watts Guerra elevator clients. Of these, and indeed, of all bellwether plaintiffs in both proceedings, the only one even to begin trial was Daniel Mensik. *Id.* ¶138.

[6] The Minnesota Leadership thus concluded unanimously that this work should be treated as common-benefit work because completed PFSs would be the reason Syngenta had the litigation pressure of tens of thousands of individual claims. *See* Guerra Decl. ¶¶ 16-20.

4. Class certification

In Fall 2016, Judge Lungstrum certified a nationwide class (limited to the later-rejected Lanham Act claim) and eight bellwether state-law classes, and Judge Sipkins certified a class of Minnesota farmers. Consistent with the JPA, the Watts Guerra Producer Plaintiffs were excluded from these classes. *See* Mem. & Order at 3, 30-33, ECF No. 2547 (MDL 2591) (Sept. 26, 2016); Order at 5-6, 18 (MDL 3785) (Nov. 13, 2016). The 147 Watts Guerra-represented grain elevators also were never part of any certified litigation class (such a class would not have been viable, given differences in how each elevator does business).

Meanwhile, by prosecuting the case as a mass action, the Watts Guerra Plaintiffs avoided the risk of litigating class certification. That approach did, however, require filing fees and individual client services—for example, Watts Guerra estimates that it received 56,6009 phone calls, and placed 198,252—which Watts Guerra and other members of the Watts Guerra Group provided. Watts Decl. ¶¶ 46, 359; Guerra Decl. ¶31; *see generally* Ex. 10.

5. The Minnesota Bellwether, Kansas Class, and Minnesota Class trials

As the state and federal cases proceeded toward trial, Watts Guerra took a leading role in pre-trial preparations (Watts Decl. ¶¶ 131-141), including: (1) developing arguments to rebut Syngenta's position that corn prices had dropped before China's rejection of GMO corn in late 2013 (*id.* ¶¶ 142-149); (2) helping to select and prepare experts to testify on plaintiffs' behalf (*id.* ¶¶150-156); (3) preparing for depositions and cross examinations of Syngenta's expert witnesses (*id.* ¶¶ 157-162); (4) synthesizing core liability deposition discovery into specific page and line designations for use at trial (*id.* ¶¶ 163-170); (5) working with other Minnesota counsel to obtain the right to seek punitive damages at trial (the factual basis for which was largely drawn from the deposition synthesis performed by Mr. Watts and others) (*id.* ¶¶ 171-174); and (6) designing and creating trial graphics (*id.* ¶¶ 177-179).

Watts Guerra also took a major role in the actual trials. The JPA envisioned that Federal CLC would be the first to take a case to trial. As it happened, however, Judge Sipkins scheduled the first bellwether trial in Minnesota for April 2017—for Watts Guerra Plaintiffs Daniel and Bonnie Mensik—two months before the first trial scheduled in the Federal MDL. Watts Guerra and the other Minnesota Leaders thus necessarily assumed the lead role in preparing for trial on plaintiffs' claims. Watts Decl. ¶180. It was an immense amount of work, and it laid the groundwork not only for the Watts Guerra-led *Mensik* bellwether trial in April, but also for the Kansas Class trial in June and the Minnesota Class trial in September. That is, instead of everyone following in Federal CLC's footsteps, it was the Minnesota Leadership, including Watts Guerra, who blazed the pretrial trail.

Watts Guerra's preparations for the *Mensik* bellwether trial included: (1) preparing cross-examinations for Syngenta executives Jack Bernens (who performed the market and traits assessments for Viptera and Duracade) and Chuck Lee (Syngenta's "Head of Corn" in the United States) (Watts Decl. ¶¶ 184-188); (2) working with a *Mensik*-specific expert and helping to defend plaintiff experts from Syngenta's *Frye-Mack* motions to exclude (*id.* ¶¶ 181-183, 189-191); (3) conferring and litigating over the admissibility of evidence (*id.* ¶¶ 192-196); (4) conferring and litigating over deposition page and line designations (*id.* ¶¶ 197-199); (5) working to resolve objections to trial graphics (*id.* ¶¶ 200-201); and (6) preparing for the jury selection process (*id.* ¶202). Because it was the first Corn trial in any jurisdiction—meaning there were no prior rulings or negotiations to check Syngenta's aggressive, Kirkland & Ellis-led trial team—this work was extraordinarily time-consuming. *Id.* ¶¶ 193-194, 198-199.

On April 24, 2017, the *Mensik* bellwether trial began, and on April 25 it ended: after seating a jury late the first afternoon, the parties learned the following morning that several of the

seated jurors were unable (or unwilling) to serve. Judge Sipkins declared a mistrial, and reset the trial for July 2017. *See id.* ¶¶ 203-205.

With that, all eyes turned to Kansas. For their use for the Kansas Class trial (and per JPA §2(d)), Watts Guerra provided Federal CLC with the full *Mensik* trial package, including trial graphics, finalized deposition page and line designations, and examination outlines. Watts Guerra attorneys monitored the Kansas Class trial, which proceeded over the course of three and a half weeks in June 2017, and resulted in a jury verdict of $217.7 million in compensatory damages, but $0 for punitive damages. *See id.* ¶¶ 206-210.

After the result in Kansas, Watts Guerra prepared for the *Mensik II* trial, scheduled for July. Using the Kansas Class trial package helpfully provided by Federal CLC, as well as insights from Watts Guerra and Cargill attorneys who had attended the Kansas trial, Watts Guerra worked to improve the original *Mensik* and Kansas trial packages. Watts Decl. ¶¶ 211-218. On the eve of re-trial in *Mensik*, however, the parties reached a confidential settlement. *Id.* ¶¶ 219-222. (Pursuant to the JPA and Common Benefit Orders, once the *Mensik* settlement closed, Watts Guerra directed 5.5% of the gross recovery to the Federal common benefit fund and another 5.5% to Minnesota, as a common benefit assessment from Watts Guerra's 40% contingent fee. *See id.* ¶223; Guerra Decl. ¶26.)

Then, Minnesota Class Counsel Dan Gustafson asked the *Mensik* trial team to help with the Minnesota Class trial (initially scheduled for August, then moved back to September). Watts Decl. ¶¶ 224-225. Notably, Mr. Gustafson made this request despite the fact that §2(a)(iii) of JPA Addendum gave Minnesota Class Counsel the right to have "the Federal MDL Co-Leads assist with and participate in the prosecution of" the Minnesota Class trial (for a price). The Watts Guerra-led *Mensik* team was pleased to help, and got right to work. Picking up on its preparations

for *Mensik I* and *Mensik II*, Watts Guerra's work for the Minnesota Class trial consisted principally of: (1) expanding the cross-examination outlines of Bernens and Lee; (2) preparing cross-examination outlines of Syngenta's experts; (3) re-doing the trial graphics; (4) working with Class Counsel and Syngenta counsel on pretrial matters; and (5) actually trying the case. *See id.* ¶¶ 226-252.

With the Minnesota Class seeking $400–$500 million in compensatory damages plus punitive damages, trial began on September 11, 2017 before Judge Miller. Following voir dire and opening statements, Mr. Watts called Plaintiffs' first witness, Syngenta executive Jack Bernens, for cross-examination under Minnesota's adverse party rule. After six hours of cross examination—which referenced approximately ninety exhibits and laid down the timeline of what Syngenta knew, when it knew it, and the actions Syngenta took anyway—it was established that Syngenta had commercialized Viptera and Duracade despite known risks of a trade dispute with China that would adversely impact American farmers. *See* Watts Decl. ¶¶ 242-243. Then, on the Friday of that first trial week, Mr. Watts put Syngenta executive Chuck Lee on the stand. In his examination of Mr. Lee, Mr. Watts obtained admissions regarding China's earlier 2013 rejections of U.S. corn which fit Plaintiffs' damages model—not Syngenta's. Mr. Watts also referenced nearly 100 exhibits showing that the risks of commercialization without approval were known at the very highest level of Syngenta management, yet Syngenta went forward anyway. *Id.* ¶¶ 246-247.

The case was now over. Indeed, the *entire litigation* was over. By the end of the first week of trial, the cross-examination of Bernens and Lee had made it clear that Syngenta risked a multi-billion dollar adverse verdict—including punitive damages for Syngenta's willful conduct—for the Minnesota class alone. Although the Minnesota Class trial continued for another week (*id.* ¶¶ 248-253), by the end of that first week of trial Syngenta had agreed to a settlement in principle amounting to $1.5 billion. *Id.* ¶276.

II. The Term Sheet and Subsequent Global Settlement Efforts

A. Settlement negotiations

The parties had been discussing settlement off and on for at least eighteen months before the breakthrough at the Minnesota Class trial in September 2017. And they would continue for another five months thereafter. *See generally* Watts Decl. ¶¶ 254-337.

As far as Watts Guerra is aware, the first serious settlement effort was in March 2016 with the multi-jurisdiction appointment of Ellen Reisman as Special Master. Before that, Mr. Watts was involved in the Plaintiff-side conferral process over candidates. Watts Decl. ¶255. Thereafter, he participated in various calls and meetings with Special Master Reisman and others in the first half of 2016, as well as a series of negotiations in New York City and Washington, D.C., in December 2016, January–February 2017, and May 2017. *Id.* ¶¶ 256-260. Plaintiffs certainly made demands, but at no point did Syngenta make a formal offer. *Id.* ¶261.

In August 2017, Judge Lungstrum, Judge Miller, and Judge Herndon each appointed a four-member Plaintiffs Negotiating Committee ("PNC") consisting of Chris Seeger, Mikal Watts, Clayton Clark, and Daniel Gustafson. *E.g.*, Order, ECF No. 3366 (MDL 2591) (Aug. 9, 2017). The PNC met with Syngenta counsel repeatedly in August and September 2017 in an unending effort to achieve global settlement. Watts Decl. ¶¶ 262-269. Meetings continued during the Minnesota Class trial and after a week, the parties agreed to the $1.51 billion settlement amount. Further negotiations produced a Term Sheet, execution of which allowed Judge Miller to excuse the Minnesota Class trial jurors. *Id.* ¶¶ 270-276.

It then took the parties five additional months of arms-length negotiations to negotiate and finalize the Settlement. Those negotiations included (1) sessions in Chicago and Washington, D.C., in the thirty days after the Term Sheet was executed; (2) additional negotiations from Octo-

ber through December concerning a proposal made by others (*i.e.*, not Mr. Watts) to divide attorney fees; (3) status conferences and ex parte communications (approved by all parties) to get guidance from the Judges concerning proposed settlement structures and protection / respect for the contributions of both common benefit counsel and retained counsel; (4) a fee-sharing agreement some sought to consummate in New York City after the Settlement had been finalized; and (5) the presentation to the Court of the Settlement for preliminary approval. *See* Watts Decl. ¶¶ 277-337.[7]

The final global settlement departed in one respect from what had been contemplated in the JPA and in the Term Sheet. Under the JPA, the Watts Guerra Producer Plaintiffs were excluded from the Federal litigation classes certified by Judge Lungstrum, and the Minnesota class certified by Judge Sipkins. *Supra* 17. The Term Sheet thus contemplated two settlements, one with the active individual claimants who had filed suit including the Watts Guerra Plaintiffs, and one covering the passive class members who had not. Ultimately, however, Mr. Watts supported a single nationwide settlement class based on (1) his clients' best interests, including because of the huge administrative costs imposed by a two-settlement approach; (2) assurances from, and upon the behest of, both the Special Masters and the Courts; (3) the consensus that a single-settlement framework would provide *all* class members with the same per-bushel recovery net of fees; and (4) certain provisions baked into the Settlement. Watts Decl. ¶¶ 319-323.[8] Had he not done so,

[7] In fact, it appears a fee-sharing agreement *was* consummated—just not with Watts Guerra. Mr. Watts was offered 20% of the fees ultimately awarded to a group consisting of himself, Minnesota Leadership (who would take 12.5%), Federal Leadership (50%), and Clayton Clark (17.5%). Watts Decl. ¶¶ 331-333; Exhibits 11-13. However, the other attorneys, led by Mr. Seeger, declined to give Mr. Watts an opportunity to seek agreement from Watts Guerra's associate counsel. This was necessary because the agreement would have compromised those attorneys' fee rights. *Id.* ¶330. As shown herein—and by Watts Guerra Plaintiffs having submitted *more than 50%* of all completed claims under the Settlement as of July 2 (*id.* ¶340)—Mr. Watts' caution was warranted: under the terms of the Settlement, no more than $500 million may be awarded, and the aggregate contract rights of the Watts Guerra Group are likely to be worth substantially more than the $100 million offered to them by Mr. Seeger in the proposed Fee Sharing Agreement.

[8] A tag-along action has been filed challenging the Watts Guerra Group retainer agreements, *Kellogg v. Watts Guerra, LLP*, No. 18-cv-01082 (D. Minn.) (filed Apr. 24, 2018). The JPML entered a conditional

this settlement would have collapsed; it is inconceivable that Syngenta would have settled with the rest of the class, while leaving open the claims of the Watts Guerra Plaintiffs.

B. Settlement benefits, claims, and fees

The Settlement provides for Syngenta to pay $1.51 billion which, after deductions for attorney fees and certain other expenses, will be distributed to members of a nationwide settlement class comprised of four subclasses as follows:

- Subclass 1: Producers who did not purchase or plant Viptera or Duracade seed receive the lion's share of the net settlement proceeds. After other classes are paid, the remaining funds will be divided pro rata based on each subclass member's "Compensable Recovery Quantity" (a number of bushels, with different weights for each crop year).

- Subclass 2: Producers who purchased or planted Viptera and/or Duracade Corn Seed receive up to $22.6 million, divided pro rata based on each subclass member's Compensable Recovery Quantity. However, the average per-bushel recovery for subclass 2 members may not exceed the average per-bushel recovery of subclass 1 members.

- Subclass 3: Non-Producers who are grain handling facilities receive $29.9 million, divided pro rata based on each subclass member's Compensable Recovery Quantity.

- Subclass 4: Non-Producers who are ethanol production facilities receive $19.5 million, divided pro rata based on each subclass member's Compensable Recovery Quantity.

Watts Guerra Plaintiffs fall primarily into subclass 1, but also into subclasses 2 and 3. These Plaintiffs (not including elevators) collectively represent about 23% of the nation's total corn harvest. TSA Report at 7. Given the support Watts Guerra is providing for the claims process, and the fact that these Plaintiffs have already been active participants in the litigation, it seems likely they will represent a somewhat higher percentage of claims made. Indeed, as of July 2, 2018, ***more than half*** of the completed claims received by the Claims Administrator (32,788 of 64,700) are from class members identifying themselves as Watts Guerra clients. Watts Decl. ¶340. In other words, by July 2, 2018, *some 55% of Watts Guerra Plaintiffs had already completed their*

transfer to the Federal MDL on May 1, 2018, which plaintiffs have moved to vacate. Oblivious to the facts here, that complaint is devoid of merit and Watts Guerra will prove as much, if necessary and in due course.

claims, compared to ***only 6%*** *by non-Watts Guerra clients*. This, no doubt, is because Watts Guerra has made a concerted effort to ensure every last one of its clients makes a claim and recovers what he, she, or it is due under the Settlement.

Specifically, beginning in late September 2017, and continuing through Summer 2018, Watts Guerra has devoted a huge amount of time and money communicating with its clients about the settlement terms, their opt-out and other rights, and the Settlement claims process. This effort includes (1) fifty town hall meetings conducted by Watts Guerra and other members of the Watts Guerra Group in November–December 2017 to advise the clients and get their input; (2) additional town hall meetings in June–July 2018 to provide additional advice and assistance with the claims process; (3) work with the Claims Administrator, Brown Greer, to improve the electronic claims form; and (4) update letters, emails, telephone calls, and more for the Watts Guerra Plaintiffs and other Group attorneys regarding the details of the Settlement and the claims process. *See* Watts Decl. ¶¶ 338-358 (summarizing mail, email, telephonic, and in-person communications with clients and the Watts Guerra Group, including a detailed 24-page colorized, step-by-step "How To" guide sent to all clients on May 7, and a reminder/tip-sheet sent to clients who had yet to file claims on June 1); *id.* ¶354 (estimating the final cost of these efforts, once completed later this summer, will be $499,901, not including attorney or staff time).

In addition to benefits based on their sub-class membership, the Settlement provides for "Plaintiff Service Awards for the Representative Plaintiffs and bellwether plaintiffs"—to be sought by Settlement Class Counsel, approved by Judge Lungstrum, and paid from the Settlement Fund. SA §7.2.4. Watts Guerra requested Class Counsel to seek, and itself hereby seeks and endorses such awards for the fifty-one Watts Guerra Plaintiffs who so served. *See also* Watts Decl. Appendix D (providing individualized factual information to support those service awards).

As for attorney fees, the Settlement does not create a separate fund. It does not address the disposition of amounts already contained in the Minnesota and Federal common benefit funds. Nor does it specify how much of the $1.51 billion gross settlement fund should be directed to Fee & Expense Awards—though the Long Form Notice has advised class members that "Settlement Class Counsel will seek up to one-third of the settlement fund as attorneys' fees and reimbursement for out of pocket costs and expenses," as "compensation to hundreds of lawyers who participated in the litigation against Syngenta, including the lawyers who tried the cases in Kansas and Minnesota, and any other lawyers to whom the Court awards fees."[9] *See also* SA §7.2.1 (authorizing Fee & Expense Applications by "Settlement Class Counsel *and other counsel* representing Class Members who performed work for the benefit of Class Members") (emphasis added).

The Settlement authorizes Fee & Expense Applications to be made to Judge Lungstrum "or" Judge Miller "or" Judge Herndon (*id.*), and provides that Judge Lungstrum will make Fee & Expense Awards "in consultation with and approved by" Judges Miller and Herndon. *Id.* §7.2.2. All "disputes arising from the Fee and Expense Award shall be subject to [Judge Lungstrum's] jurisdiction," except for fee issues involving certain plaintiffs; specifically, "[m]atters arising from client fee contracts and referring counsel agreements involving Class Members with claims pending at any time in *In re Syngenta Class Action Litigation*, Court File No. 27-CV-15-12625" are subject to Judge Miller's jurisdiction (*id.* §7.2.3.2; *accord id.* §9.18.2.2), while such issues "involving the law firm of Clark, Love, & Hutson" are subject to Judge Herndon's jurisdiction (*id.* §7.2.3.1; *accord id.* §9.18.2.1). *See also id.* §9.21.1 (providing for attorney liens filed with the Claims Administrator, "the enforceability of [which]" will be decided by Judge Lungstrum, except as committed to Judge Miller or Herndon by §9.18.2.1 and §9.18.2.2).

[9] https://www.cornseedsettlement.com/Docs/Long%20Form%20Notice.pdf.

* * *

Pursuant to SA §7.2.1, and based upon the facts above and the argument below, for itself and its associate counsel whose joinders are collected in Exhibit 10 hereto, Watts Guerra now applies for a Fee & Expense Award in an amount equal to 24.16% of the gross, aggregate recoveries of the Watts Guerra Plaintiffs under the Settlement, plus $12.85 million for Watts Guerra's common benefit expenses and assessments.

This fee request is based on Watts Guerra's enormous investment into this litigation. Watts Guerra ultimately brought suit for approximately 57,935 plaintiffs, including 212 plaintiffs in the Federal MDL (211 producers and 1 non-producer) and approximately 57,718 plaintiffs in the Minnesota Consolidated Proceeding (55,577 producers and 146 non-producers). *See id.* ¶¶ 45, 54, 58 (figures adjusted to omit dismissed claims).[10] Including its spending on the Settlement claims process to date, Watts Guerra has spent approximately $23.90 million in costs, expenses, and time, including $8.30 million in common benefit work (14,733.30 hours), and $12.85 million for common benefit expenses and assessments. *See* Guerra Decl. ¶¶ 31-43; *see also* Exhibit 9 (copy of Watts Guerra's submission of common benefit time and expenses to Minnesota Co-Lead Counsel).

Other members of the Watts Guerra Group also invested substantial amounts of time and money on this matter—tens of thousands of hours, and millions of dollars in expenses—much of which is detailed in the 224 Joinder Declarations collected in Exhibit 10. (Contract fees for those efforts are covered by this Application; the separate Fee & Expense Application filed by Minnesota Co-Lead Counsel covers their Common Benefit Work and Expenses.)

[10] These actions encompass claims for roughly 75,000 of the approximately 600,000 members of the Settlement class. For example, Watts Guerra might have brought suit in the name of one of a farm's two co-owners. Watts Decl. ¶45. Under the Settlement, both co-owners would be class members, and each would need to file his or her own claim.

SUMMARY OF THE APPLICATION

Under its private fee contracts, Watts Guerra could claim 40% of the benefits provided by the Settlement to the 57,000 Watts Guerra Plaintiffs, in addition to a substantial common benefit fee for the contributions it made to recoveries for the other 542,000 class members. Instead, consistent with the prior court-approved agreement of the parties, and for the sake of efficiency and overall fairness, Watts Guerra proposes to (1) voluntarily reduce its contingent fee from 40% to 33.33%—because its active litigation clients should not pay higher attorney fees than absent class members; (2) cede another 27.5% of its fees (9.17 percentage points from a 33.33% contingent fee), for common benefit fees and expenses—thereby honoring the Joint Prosecution Agreement entered by both court-appointed Leadership groups in 2015; and (3) collect reimbursement for its $12.85 million in common benefit expenses—but forgo any additional common benefit fee award.

The reasonableness of this proposal is shown below, and in the expert reports by Professors Arthur R. Miller, Geoffrey P. Miller, Charles Silver, Brian T. Fitzpatrick, & Alexandra Lahav on Issues of Economics, Procedure, & Policy (Ex. 1) ("Miller Report"), and Professors Andrew Kull & Charles Silver on Issues of Restitution & Unjust Enrichment (Ex. 2) ("Kull-Silver Report").

We understand other common benefit counsel may demand a full one-third of the Settlement Fund ($500 million) as common benefit fees for themselves alone. The Courts should reject any such request, which would be unreasonable, inequitable, and impossible to implement lawfully. A better approach is for the Courts to direct one-third of the Fund to cover *all* attorney fees and expenses—both contract and common benefit. This class-wide fee of 33.33% would then be allocated among counsel using a simple two-step framework: *First*, common benefit counsel would be allotted the share of the 33.33% attributable to absent class members, while retained counsel would receive fees attributable to representation of individual clients. *Second*, to ensure that the final allocation is fair to all, the Courts can impose a counsel-specific common benefit

assessment on retained counsel to increase the amount available for the common benefit awards.

As to these common benefit assessments, Watts Guerra is uniquely positioned. Unlike other retained counsel, Watts Guerra executed a joint prosecution agreement, was part of the court-appointed Leadership, and made substantial contributions to the success of this litigation not only for the 57,000 Watts Guerra Plaintiffs, but also for the Minnesota Class and, indeed, the entire settlement class. Given the common benefits *generated* by Watts Guerra, it might reasonably be excused from any contribution to the common benefit fund. But Watts Guerra contracted in the JPA to pay up to 11% of its clients' recoveries as a common benefit assessment—or, more precisely, to pay 11 percentage points from its own 40% contingent fee, which is 9.17 percentage points on the compressed 33.33% fee—and it stands by that agreement. The same result, moreover, is supported by restitution and the equitable principles at the heart of the common fund doctrine. Given Watts Guerra's reasonable reliance, performance under the JPA, benefits provided to other common benefit counsel, and contributions to the success of this litigation including for the 542,000 other class members who are not paying a fee to Watts Guerra, the Courts should enforce that bargain which, to this point, worked precisely as intended.[11]

As explained below and in the accompanying expert reports, this approach has several advantages: (1) It does not rely on capping private fee agreements, which would be contrary to governing state law (for Watts Guerra, at least), and almost certainly result in appeals and collateral litigation. (2) It would protect the Watts Guerra Plaintiffs and other class members who retained their own counsel and brought suit against Syngenta from being charged more than absent class

[11] If the Courts agree with this framework—effectively, a 24.16% contingent fee for Watts Guerra and its associate counsel for their clients' recoveries—Watts Guerra is willing to forgo any additional fee award from the Minnesota common benefit pool to which it would otherwise be entitled based on its $8.30 million lodestar for common benefit work. Otherwise, if Watts Guerra is awarded less than it bargained for with respect to its contract fees, then it should be awarded not only its expenses, but also a common benefit fee in an amount sufficient to make up the difference.

members who did not. (3) It would provide Watts Guerra with an award commensurate with its private fee contracts, the JPA, and its contributions to the success of this litigation. (4) It would provide rich compensation for other common benefit counsel—a fee of at least $260 million, which could be *substantially* higher, depending on (a) the proportion of claims made by represented versus absent class members, and (b) the size of the common benefit assessment imposed on other retained counsel. (5) Watts Guerra's proposed approach is not only fair, but also simple and easily implemented by the Claims Administrator.

ARGUMENT

I. All Class Members Should Pay 33.33% For All Attorney Fees And Expenses.

The class as a whole should pay 33.33% (one-third) of the Settlement Fund for *all* attorney fees and expenses—including *both* common benefit *and* contract fees. Then, this class-wide fee of 33.33% should be divided based on class member recoveries after all claims are made, with Watts Guerra and its associate counsel taking a 33.33% fee for their clients, other retained counsel taking the same for their clients, and other common benefit counsel being compensated for their work by (1) the 33.33% fee taken out of absent class members' recoveries, and (2) the common benefit assessments paid by each retained counsel. This approach would meet expectations from Settlement negotiations, limit appeals and collateral litigation over fees, and be fair to all involved.

A. One-third overall for attorney fees is reasonable for this litigation.

In the class context, the Tenth Circuit judges the reasonableness of attorney fees against the familiar factors of *Johnson v. Ga. Hwy. Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), under which a one-third fee is reasonable here. It is on the high end of the range, perhaps, but not unprecedented. In fact, Judge Lungstrum presided over another MDL in which he awarded a one-third (33.33%) fee from a class action settlement fund of $835 million. *See In re Urethane Antitrust Litig.*, MDL 1616, 2016 WL 4060156 (D. Kan. July 29, 2016) ("*Urethane* Fee Order"); Miller

Report at 35-36 (collecting data on past $1 billion-plus MDL settlements). Here, as in *Urethane*, the Courts may "award fees based on the unique circumstances of the case" because a "declining-scale approach" is not mandatory under Tenth Circuit (or Delaware) law. *Urethane* Fee Order at *6; *accord Am. Mining Corp. v. Theriault*, 51 A.3d 1213, 1258, 1261 (Del. 2012) ("we decline to impose either a cap or the mandatory use of any particular range of percentages for determining attorneys' fees in megafund cases").

One reason for such a large fee is that the work in this litigation was trial-heavy—with one bellwether and two class cases taken to trial by Watts Guerra and other common benefit counsel. *See Urethane* Fee Order at *4-5, *6 (highlighting this factor, including as a reason to rely on the 31.33% awarded in *Allapattah*); *see also Theriault*, 51 A.3d at 1259-1260 & n.114 (collecting case law to show higher percentages awarded for extended litigation). Notably, however, *this factor cannot vindicate a 33.33% award for other common benefit counsel alone*, given that Watts Guerra led two of the three trials here, and contributed its work product for the third.

In addition, the "customary fee" is one of the twelve "*Johnson* factors" that govern percentage awards in common fund cases (*Urethane* Fee Order at *4)—and here, tens of thousands of class members entered individual agreements hiring private counsel for a contingent fee of 40%. *See id.* at *5 ("The Court agrees with counsel 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.").

Moreover, the Corn Litigation is as much *mass action* as class action, and this "customary fee" is not hypothetical. Indeed, it is really a "prearranged fee"—another *Johnson* factor. *Id.* at 9. And, as shown below, the private fee agreements entered by class members here would be enforceable—at least as to the 57,000 Watts Guerra Plaintiffs. Although Watts Guerra submits that its contract rights should be liquidated through a Fee & Expense Award at a reduced rate of 33.33%—

and presumes other retained counsel will take the same position[12]—the fact that many tens of thousands of class members are already committed to paying 33.33% (or more) supports setting that fee for the class as a whole. *See* Kull-Silver Report at 6-7.

B. The Watts Guerra Plaintiffs are obliged to pay a 33.33% fee to Watts Guerra and it associate counsel.

To facilitate a class-wide fee of 33.33%, Watts Guerra proposes to voluntarily reduce the contingent fee for its clients from 40% to 33.33% if this Application is granted. Apart from that, governing Texas law is clear: "If an attorney fee contract was valid when made, and it was made by and between mentally competent persons, it is to be enforced ***without court review of the reasonableness of attorneys' fees so fixed***." *In re Polybutylene Plumbing Litig.*, 23 S.W.3d 428, 436 (Tex. App. 2000) (emphasis added); *accord* Miller Report at 16-24 (neither policy nor precedent, supports interfering with private fee contracts here); *id.* at 17 (table of MDL precedents).

Here, the Watts Guerra Plaintiffs—some 57,000 individual farmers and grain elevators—retained Watts Guerra and its associate counsel to handle their claims against Syngenta in exchange for a 40% contingency, covering both fees and expenses. Ex. 8. Now, these clients collectively stand to receive several hundred million dollars under the Settlement. These recoveries are due in no small part to Watts Guerra's efforts (and spending) on its clients' behalf.

Although our framework does *not* depend on direct enforcement of private fee agreements as such, these contractual rights are critical to the decisions the Courts must now make. *First*, as already explained, such "prearranged fees" (to use the *Johnson* terminology), show that an overall, class-wide fee of 33.33% is reasonable. *Second*, the Courts should adopt a framework that resolves

[12] Watts Guerra cannot speak for other retained counsel, but would expect them to agree to this same reduction, for the same reasons—to protect their clients, to accommodate the Courts' preferences, and for the sake of receiving an Award under SA §7.2.2. rather than asserting liens under SA §9.21.1, which is inconvenient and likely to cause delay and friction detrimental to counsel and client alike. In addition, other retained counsel may not have such clear-cut rights under their fee agreements as does Watts Guerra.

both common benefit and contract fees—lest the combination of the two consume an unreasonable portion of the $1.51 billion Settlement Fund, and an even more unreasonable portion of the recoveries for the active plaintiffs, who contributed the most to this litigation. *Third*, Watts Guerra's contracts establish its entitlement to the proportion of the Courts' overall fee award corresponding to its clients' share of the overall Settlement Fund. That is, Watts Guerra's fee award should reflect as nearly as possible its rights and expectations under the private agreements with its clients, consistent with the overriding objective of treating all class members alike. Kull-Silver Report at 6.[13]

Under established Texas law, "the general rule [is] that attorneys' fee contracts between attorneys and clients will be enforced as written if they have been fully performed by the attorneys." *In re Polybutylene*, 23 S.W.3d at 437. Because there is no question Watts Guerra "fully performed," Watts Guerra would be entitled to its agreed-upon fees—40% of the gross recovery provided by the Settlement to each and every Watts Guerra Plaintiff. And those fees may ***not*** be reduced on the theory that "the number of plaintiffs involved in [a] settlement" might cause Watts Guerra to "get[] too much money, in the aggregate." *See id.* at 436-439; Miller Report at 13-21.[14]

To be sure, courts will necessarily get involved where there is no written fee agreement—including the typical common fund situation. But this exception would not apply to Watts Guerra's fees because it is *not* an exception for class actions as such; rather, the exception is for fee claims by "class counsel" or other attorneys who seek "compensation from noncontracting plaintiffs."

[13] Watts Guerra itself is entitled to retain roughly 63% of the aggregate contract fees allowed by the Courts for the Watts Guerra Plaintiffs, net of costs and expenses; other members of the Watts Guerra Group are entitled to the rest. Watts Decl. ¶37. The discussion here is framed in terms of "Watts Guerra" for ease of presentation and because Watts Guerra acted as lead counsel for all clients. As between Watts Guerra and its associate counsel, fee-splitting may be handled by the Claims Administrator or Watts Guerra Group members amongst themselves, post-distribution, with any disputes resolved as provided in SA §9.18.2.

[14] Notably, Federal CLC may not argue otherwise. *See* JPA §2(g)(iii) ("The Federal MDL Co-Leads will not seek to interfere with or alter the terms and conditions of any fee agreement with any Remele/Sieben Group Client (e.g., reduce or cap the fee of any member of the Remele/Sieben Group).").

See In re Polybutylene, 23 S.W.3d at 437-38. The trial court in *Polybutylene*—seized with an impression that retained counsel were being overpaid under contingent fee agreements after a mass settlement resolved the claims of 60,000 individual clients—"sua sponte set hearings on the reasonableness of the attorneys' fees and expenses," ultimately reducing an $88.1 million fee to $33.1 million. *Id.* at 434-35 & n.11. The Texas Court of Appeals reversed based on the "general rule" that fee contracts "will be enforced as written if they have been fully performed." *Id.* at 437.

As to "class action/common fund cases," the court explained they were inapposite for several reasons. To start, "every plaintiff had an individual attorney fee contract with [retained counsel], and each plaintiff had to approve the settlement in order for it to apply to that plaintiff. There is no large group of unnamed members whose interests are represented by a named plaintiff; rather, the plaintiffs here have all filed lawsuits in their own names." *Id.* Likewise in this case for the Watts Guerra Plaintiffs: each has an individual fee agreement with Watts Guerra; each has a right to "approve the settlement" or opt out and retain his, her, or its individual claim; and nearly all of these clients have asserted individual claims as plaintiffs in the Minnesota action.

Further, a judge's responsibility in class action cases to "determine[] the amount of attorneys' fees to be awarded class counsel" does not apply to the extent "there are no 'absent class members,' and there is no 'class counsel.'" *See id.* Here, it makes no difference that *other* attorneys and *other* class members must rely upon the Courts to set a fair fee: Those attorneys and class members did not enter written fee agreements, ***but Watts Guerra and the Watts Guerra Plaintiffs did***. And those written fee agreements dictate that each Plaintiff pay 40% of his, her, or its gross recovery to Watts Guerra for its work in this matter. This raises no choice of law, procedural, or forum issue; it is simply what these private contracts provide. *See* Miller Report at 21-24.

For the same reasons, the "common fund doctrine" would be inapplicable too; these clients'

fees are governed by their written, contractual promises—not unjust enrichment. *See In re Polybutylene*, 23 S.W.3d at 438 ("An attorney's compensation from *noncontracting plaintiffs* under the common fund doctrine is limited to the reasonable value of the attorney's services benefitting them.") (emphasis added). In *Polybutylene*, even though the fees were to be taken from the large fund created by the settlement, the court explained: "there are no 'noncontracting plaintiffs,' and [counsel] is not seeking an award of attorneys' fees out of a 'common fund.' Rather, [counsel] has a specific attorney fee contract with each plaintiff that provides for payment of attorneys' fees from each plaintiff in accordance with the particular plaintiff's personal recovery." *Id.* at 438. As between Watts Guerra and its clients, the situation here is the same: the Watts Guerra Plaintiffs are not "noncontracting plaintiffs," and the award sought by Watts Guerra is based on each "particular plaintiff's personal recovery"—*not* the overall $1.51 billion "common fund."

Accordingly, Watts Guerra would have a clear right to fees from the Watts Guerra Plaintiffs under "the general rule that attorneys' fee contracts between attorneys and clients will be enforced as written." *Id.* at 437; *see also* Miller Report at 21-24 (explaining that neither Rule 23 nor inherent powers authorizes judges to override private fee agreements—nor should they). In addition, and in any event, even if these fee contracts were subject to judicial modification, 40% would, nonetheless, be the reasonable fee for Watts Guerra here for the reasons given in Section I.A above, Section II.B.3 below, and the Kull-Silver Report at 4-7.

Yet, notwithstanding its contractual right to a 40% fee, Watts Guerra seeks a Fee & Expense Award for itself and its associate counsel in an amount equal to a 33.33% fee for its clients' aggregate, gross recoveries under the Settlement (less an appropriate common benefit assessment). By agreeing to this reduction and this mechanism, Watts Guerra intends to protect the Watts Guerra Plaintiffs from being charged more for attorney fees than absent class members who contributed

nothing to this litigation, and to simplify the payment process for itself, its clients, and other common benefit counsel. *Cf.* SA §9.21.1 (providing for attorney liens). Even so, the proper measure of Watts Guerra's entitlement to fees is, first and foremost, its written, fully performed, private fee agreements with its 57,000 clients. Miller Report at 10-24; Kull-Silver Report at 5-6, 17.

C. All attorney fees—both common benefit and contractual—should be paid from the same fee pool.

In closing the Settlement, the intent and understanding of the PNC—shared, we believe, by the Special Masters and the Courts, and a critical consideration for Mr. Watts when he agreed to modify the Term Sheet's two-settlement approach—was to normalize *recoveries* (dollars-per-bushel) and *attorney fees* (as a percentage of gross recoveries) *for all class members*. That is, absent class members and individual plaintiffs alike must end up with same payment in terms of dollars-per-bushel, net of fees. Watts Decl. ¶¶ 322-323; 12/19/2017 Hrg. Tr. 10:21-23 (Special Master Reisman explaining that the overarching settlement goal is to create a process "that makes sure all the producer plaintiffs who are included in this settlement are treated the same way").

This imperative supports a class-wide fee of 33.33%, covering fees for both retained and common benefit counsel. Done any other way, represented class members will be forced to pay more. The situation of the Watts Guerra Plaintiffs proves the point: They are obliged under their retainer agreements to pay to Watts Guerra 33.33% (under the proposed modification); Texas law precludes reducing Watts Guerra's fee agreements over its objection, and there is no basis for reduction in any event because Watts Guerra was actively involved and representing its clients at every step of this litigation. Accordingly, the framework adopted by the Courts for Fee & Expense Awards should provide for Watts Guerra to receive 33.33% of its clients' gross recoveries, less an appropriate common benefit assessment. Represented class members should not have to pay 33.33% in common benefit fees on top of what they owe their retained counsel.

Indeed, that result would be particularly inequitable for the Watts Guerra Plaintiffs because they are the ones who cared enough to retain counsel, actively participate in the Corn Litigation, assert individual claims—and the mass of individual claims played an important role in extracting the $1.51 billion settlement from Syngenta. To give just one example: When Syngenta's settlement offer went from $0 to $200 million to $1.51 billion in August-September 2017, it was because (1) Syngenta was facing a ten-figure adverse verdict in Minnesota—largely resulting from a potential punitive damages award, arising in no small part from Watts Guerra's work, culminating in Mr. Watts's cross-examination of key Syngenta executives at that trial; and (2) the PNC, including Mr. Watts, successfully leveraged the pressure created by that potential ten-figure judgment to extract a settlement that finally appropriately compensated the class.

We do not mean to minimize the excellent work done by Federal CLC or other common benefit counsel. The Settlement is a good result, which required many hands to obtain. But Watts Guerra contributed as much as anyone—and more than most. Accordingly, those 57,000 class members who brought Watts Guerra into this litigation, and who have obligations under private fee agreements, may not be asked to pay more than the free-riding, absent class members who contributed nothing. Miller Report at 24-26. *See Polybutylene*, 23 S.W.3d at 438 ("Under [the common fund] doctrine, the trial court … may award reasonable attorneys' fees to a plaintiff who, at his own expense, has maintained a suit that creates a fund benefitting other parties as well as himself."). It is better and more efficient to simply handle contract fees and common benefit fees together, as Watts Guerra proposes. Miller Report at 1-2; Kull-Silver Report at 16-17.

D. Watts Guerra's proposed approach is reasonable, and provides ample compensation for common benefit counsel.

Fairly demanded by the imperative to provide the same net recovery to all farmers (*supra* 35), Settlement negotiations closed with the expectation that the Courts would take a two-step

approach to attorney fees and expenses: Step 1, impose a single assessment on all class members; Step 2, allocate the resulting funds in a way that ensures fairness from one attorney to the next. Watts Decl. ¶¶ 322-323. That is exactly what Watts Guerra proposes: Step 1, charge all class members the same 33.33% for attorney fees and expenses, with retained counsel initially allocated the 33.33% for their own clients, and common benefit counsel allocated the fee for absent class members; Step 2, subject each retained counsel to a calibrated, counsel-specific common benefit assessment, thereby increasing the common benefit fees available.

As Judge Fallon has observed, where a "total fee includes both common benefit fees and the fees of contract attorneys"—as is necessarily the case here, too—"some equitable division must be made between the two groups." *See* Order & Reasons Setting Common Benefit Fees at 20, *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, MDL 2047 (E.D. La. Jan. 31, 2018) (provided as Ex. 14, per D. Kan. Local Rule 7.6(c)). In *Drywall*, the court concluded that the "fair and appropriate division of the total fee" was a **52/48 split**, with priority and a larger share to common benefit fees in part because "[retained counsel's] services were mostly administrative." *Id.* at 22.

Here, even though Watts Guerra's services were certainly *not* "mostly administrative," our proposed approach should yield a common benefit award of no less than $260 million, the same 52/48 split as *Drywall* (if Watts Guerra Plaintiffs recover 50% of the settlement), and more likely around $310 million (62/38). *See* Math Appendix, *infra* A-1. In part this is because the Fund will be distributed based on *bushels of corn* and *claims made*. Only 20% of class members are represented by private counsel, but that number is higher as a percentage of the corn harvest. *See* TSA Report at 7 (estimating that Watts Guerra's 57,000-plus farmer clients alone represent 23.1% of the producer classes in terms of bushels of corn). In addition, it seems likely that represented class members will file claims at a higher rate than absent class members. Of course the opposite could

be true, which is one advantage of our proposed approach: common benefit counsel will get paid more to the extent that more absent class members make claims, while retained counsel will get paid more to the extent their own clients make claims. This gives all counsel an incentive to maximize claim rates, which is good for absent and represented class members alike.

This is manifest in the efforts by Watts Guerra and its associate counsel: with *more than 50%* of the completed claims submitted to the Claims Administrator as of July 2, Watts Guerra Plaintiffs are *far* outperforming their numbers compared to the class as a whole. Watts Decl. ¶340. Of course, at some point, Watts Guerra's clients will finish making claims, and absent class members may close the gap. Upon learning this information, moreover, other counsel may step up their efforts to advise their own clients and/or absent class members—which is exactly as it should be.[15]

In addition to aligning the interests of client and counsel, this approach would meet expectations from Settlement negotiations and limit appeals and collateral litigation over fees. It also would be fair to all involved: It would be fair to the Watts Guerra Plaintiffs—who committed to paying 33.33% (more, really) to their attorneys, contributed to the success of this litigation, and cannot be expected to pay more than absent class members. It would be fair to the Watts Guerra Group—which performed for its individual clients and invested time and money with the expectation (and risk) that it would be compensated if (and only if) its clients recovered. It would be fair to other retained counsel—including "free-riders" who did not contribute to the success of this litigation and thus may be subject to an appropriately large common benefit assessment. And it would be fair to the attorneys who performed common benefit work—who should receive $260 million to $375 million under this approach, equivalent to an overall common benefit fee of

[15] Inexplicably, Settlement Class Counsel have directed Brown Greer withhold from any retained counsel who might inquire the claims data with respect to their respective clients. Watts Decl. ¶340 n.5. Mr. Watts, however, is entitled to summary statistics pursuant to SA §3.9.1.

17.33% to 25%. *See* Math Appendix, *infra* A-1; Miller Report at 33-36. *Cf. Theriault*, 51 A.3d at 1260 & n.114 (awarding $304 million, 15% of $2.03 billion judgment, to counsel who litigated for six years, through trial, "against major-league, first-rate legal talent").[16]

Frankly, the Courts might reasonably ask whether this still takes too much from absent class members who never agreed to pay these attorneys a dime. *See Seinfeld v. Coker*, 847 A.2d 330, 333-34 (Del. Ch. 2000) (purpose of "awarding large fees" is to incentivize "meritorious suits" and "efficient litigation"—"[b]ut a point exists at which those incentives are produced, and anything above that point is a windfall… serving no other purpose than to siphon money away" from a fund's proper beneficiaries). But this much, at least, is clear: our approach liquidates *all* attorney fees and expenses, treats *all* class members equally, effectively precludes appeals over private fee agreements, and leaves other common benefit counsel with no legitimate cause for complaint.

II. The Common Benefit Assessment On Watts Guerra's Contract Fees Should Be 27.5% (9.17 percentage points out of 33.33%).

Both court-appointed Leadership groups already agreed exactly how much Watts Guerra would contribute for common benefit fees and expenses. In particular, all agreed in the JPA that 27.5% of the fee payable to Watts Guerra by each of its clients would go toward paying common benefit fees and expenses as a "Common Benefit Assessment." With Watts Guerra now proposing to reduce its contingency to 33.33%, the Common Benefit Assessment under the JPA amounts to 9.17% of any Watts Guerra client's total settlement recovery (27.5% times 33.33%), leaving Watts Guerra and its associate counsel with 24.16%.

Even were it not binding, the JPA and Common Benefit Orders were the basis for years of

[16] It seems certain attorneys have reached a side agreement to divide their fees in this matter. *See* Watts Decl. ¶¶ 331-333; Exs. 11-13. But Watts Guerra is not a party to this side agreement, and those attorneys have no authority to allocate all fees for *all* counsel; that is the Courts' prerogative. Nor should any other attorney—class counsel, court-appointed leadership, or otherwise—have any say about the distribution of contract fees (net of common benefit assessments) due to retained counsel per their private fee agreements.

cooperation and coordination across these proceedings—and, as such, should be equitably enforced. Indeed, as detailed in the Kull-Silver Report, this is exactly what the law of restitution and the common benefit doctrine demand. In addition, entered well before *any* recovery—individual, class, or otherwise—was within reach, those agreements and orders provided a framework for the cooperative litigation that actually ensued, and created rights and obligations that were relied-upon and performed by both sides. Further, if the Courts were writing on a clean slate, it would be most appropriate to order little, if any, assessment from Watts Guerra, given its substantial contributions to the success of this litigation. Watts Guerra in that respect is in a fundamentally different position from other retained counsel who neither entered a private agreement to govern common benefit assessments nor made substantial contributions to the war against Syngenta or the peace.

A. The Courts should enforce the JPA—the expressly stated purpose of which was to "resolve all potential, future disputes in connection with Common Benefit Assessments."

1. The JPA governs.

The common benefit assessments from Watts Guerra are dictated by the JPA, which is the private contract executed in June 2015 by the entire Minnesota Leadership group and Federal CLC *in their capacities as such*. *See* JPA §3(m); JPA Addendum §3(j). Most of the relevant provisions are written in terms of the "Remele/Sieben Group"—a group of attorneys, including Watts Guerra, who aspired to lead the Plaintiffs'-side work in the Minnesota Consolidated Proceeding. And those attorneys were indeed appointed to Leadership by Judge Sipkins, with Federal CLC's support and in part because of this JPA. (Certain other attorneys, including Dan Gustafson, agreed to the JPA via an Addendum after being appointed to Leadership by Judge Sipkins. *Supra* 11.)

The JPA effectuated "the Parties desire to foster from the outset a spirit of coordination between the Federal MDL Co-Leads and the Remele/Sieben Group ***and resolve all potential, future disputes in connection with Common Benefit Assessments***." JPA p.3 (emphasis added).

To that end, the JPA provided that the recoveries of the Watts Guerra Plaintiffs would be subject to a total assessment of no more than 11% (or 9% for non-producers)—with such amounts taken from, and best read as a proportion of, Watts Guerra's expected 40% contingent fee.

More precisely, the future Minnesota Leaders and Federal CLC agreed as follows:

First, for "all Remele/Sieben Group Clients" who filed in federal court—including 212 Watts Guerra Plaintiffs—any recoveries from Syngenta would be subject to a common benefit assessment "capped" at 11% including fees and expenses (or 9% for non-producers), or the "benchmark" Federal assessment, whichever was less. *See* JPA §2(a)(i)(1)-(2), §1(a). These amounts, the JPA says, are the maximum "collective exposure" of the Watts Guerra Plaintiff, Watts Guerra, and its co-counsel. *Id.* §2(a)(i)(2).

Second, in similar terms as to the Watts Guerra Plaintiffs who did *not* file in federal court, the parties agreed that Watts Guerra would pay half-assessments to federal common benefit counsel (the other half to remain in Minnesota). *See* JPA §2(a)(ii)(2) ("The collective exposure of the applicable member(s) of the Remele/Sieben Group, its non-Federal Court Client, and its Co-Counsel, if any … will be capped at … a common benefit fee assessment payable to the Federal MDL Funds of 4% for Producers and 3.5% for Non-Producers and a common benefit expense assessment payable to the Federal MDL Funds of 1.5% for Producers and 1% for Non-Producers.").

Third, piggybacking on the Remele/Sieben Group's agreement to Minnesota assessments of 11% for producers and 9% for non-, the JPA committed "MN MDL Leadership" to "seek from the MN MDL Court" the "identical" 11% / 9% assessments already approved for the Federal MDL. JPA §2(f)(ii)(2), §1(a); Order, ECF No. 403 (MDL 2591) (May 8, 2015). In addition, all agreed that Minnesota assessments would be reduced dollar for dollar by assessments paid to the Federal MDL. JPA §2(f)(ii)(3). The Minnesota Leaders followed through with these commitments, and

both terms were included by Judge Sipkins in his Common Benefit Order. *Supra* 11-13.

Importantly, these assessment percentages were premised on, and should be understood in terms of, Watts Guerra's 40% contingent fee—so 11%, for example, is best understood *not* as a fixed 11% of the recovery, but rather as 11/40 of the fee. *See* Miller Report at 31-33. For one thing, it was always understood that these payments would come from the lawyers, not the clients. That is what happened in Summer 2017 when Watts Guerra directed Syngenta to make the two JPA-required 5.5% assessments for the *Mensik* settlement from Watts Guerra's 40% fee. Further, no one anticipated Watts Guerra's contingency would shrink. *See* JPA §2(g)(iii) (barring Federal CLC from seeking to "reduce or cap the fee of any member of the Remele/Sieben Group"). And if the 11% is fixed while the 40% floats, the bargain is rendered incoherent, if not absurd. For example, if the Courts allowed a 10% fee to retained counsel, surely Watts Guerra could not be expected to pay 11% (more than it had received). Or if the Courts allowed 22%, a fixed 11% would be a 50/50 split. *But that was not the deal*; Watts Guerra agreed to pay 27.5% of its fees.[17]

Under Minnesota law—which governs, per JPA §3(a)(ii)—this is an enforceable contract. Given the heavy-lifting done by Watts Guerra, its reliance on the JPA terms, and the other equitable and policy reasons provided below, 27.5% (*i.e.*, 11 points on 40%, divided equally between Federal and Minnesota counsel) is a perfectly reasonable common benefit fee. ***But it would make no difference if it weren't.*** As the Minnesota Supreme Court has explained: "We have stated that, in awarding attorney fees, courts should arrive at a fair and reasonable fee. But merely using words like 'fair' and 'just' in conjunction with an award of attorney fees does not transmogrify every request for attorney fees into an equitable claim." *United Prairie Bank-Mountain Lake v. Haugen*

[17] A lower, 7.5% assessment for non-producers applies to 147 Watts Guerra Plaintiffs. In addition, for the 211 farmers (and 1 grain elevator) for whom Watts Guerra filed in federal court, it may be appropriate to direct the entire assessment to Federal MDL counsel.

Nutrition & Equip., LLC, 813 N.W.2d 49, 61 (Minn. 2012) (internal quotation marks, alteration marks, and citations omitted). Rather, where attorney fees are governed by contract—as here—"the amount promised by the parties' contract" ***is*** the "fair" and "just" award; a court may not depart from such amount for the sake of "broad-ranging notions of fairness" or "equitable considerations." *See id.* Accordingly, whatever levy may be imposed on *other* retained counsel, and on whatever basis, as to Watts Guerra the JPA should be dispositive.

2. The Settlement is consistent with the JPA.

Federal CLC may argue that the JPA has been superseded by the Settlement. But the Settlement is between different parties, for a different purpose; does not meet the JPA's explicit requirements for amendment; and does not even purport to address how much Watts Guerra should pay for common benefit work. Indeed, apart from the raw authorization to make Fee & Expense Awards, and some basic procedural and jurisdictional guidelines, the Settlement has very little to say about attorney fees. That is not a mistake. If the other PNC members had attempted to overthrow the JPA as part of the settlement process to facilitate their own fee grab from Watts Guerra's cases, that would have been ethically suspect. And Mr. Watts would not have consented.

To be sure, as a member of the PNC, Mr. Watts allowed the Watts Guerra Plaintiffs to be included in a single nationwide class—a decision made for their benefit of those Plaintiffs and other class members. *See* Watts Decl. ¶¶ 319-323. But that decision cannot be treated as an amendment to the JPA. Particularly not when the Settlement specifically provides that while "*Syngenta and the Released Parties*" have no obligations under "any Common Benefit Fund, *Joint Prosecution Agreement*, or other agreements relating to the pursuit of the MDL Actions or any other litigation," such agreements remain relevant in connection with any "*disputes among plaintiffs' counsel* relating to the award, allocation, or entitlement" to attorney fees and expenses. SA §7.1.2 (emphasis added). That provision precludes any argument that the Settlement somehow

excuses anyone, aside from "Syngenta and the Released Parties," from their otherwise binding JPA commitments.[18]

Watts Guerra supported the settlement because that would be best for its clients; it did not forfeit contract rights as a result. To the extent Federal CLC might be in breach of the obligation not to include Watts Guerra clients in any proposed class (JPA §2(g)), that would give *Watts Guerra* a right to seek relief. For *Federal CLC*, however, the JPA is still binding; they have suffered no breach, no change of circumstances, and certainly no harm. *See St. Jude Med. Inc. v. Carter*, 899 N.W.2d 869, 875 (Minn. App. 2017) ("the court must enforce contractual provisions to prevent the provisions from becoming meaningless and to ensure that the non-breaching party does not lose the benefit of its bargain"). Indeed, until the September 2017 Term Sheet was set aside in January 2018, *everything* in this litigation was as contemplated by the JPA. Nor has there since been any detrimental change for other Plaintiffs' Leaders, whose expectation vis-à-vis Watts Guerra and the Watts Guerra Plaintiffs has *always* been the assessments set by the JPA.

In short, the fact that litigation is ending as a global class settlement is no basis for other common benefit counsel to demand more than the agreed-upon assessment, much less for the Courts to award it. As the JPA says, it was designed to "resolve ***all potential, future disputes*** in connection with Common Benefit Assessments." JPA p.3 (emphasis added). A deal's a deal.

[18] It is also telling that, in a proposed "Fee-Sharing Agreement" from February 23, 2018, the parties—*including Chris Seeger, Clayton Clark, Dan Gustafson, and all four Federal CLC*—recognized that the JPA remained in force. Otherwise, the Fee-Sharing Agreement would not have provided, as it did, that "this Agreement supersedes and cancels all prior oral or written agreements by and among the parties, other than [this agreement, the Master Settlement Agreement, and a side-agreement between Seeger Weiss and Federal CLC], including, without limitation … the June 18, 2015 JPA, and the January 21, 2016 JPA". *See* Exhibit 11. The Fee-Sharing Agreement further required "[a]ll parties to the JPA" to "sign a separate agreement confirming that this Agreement supersedes and cancels all JPAs if the Master Settlement Agreement is granted final approval." *Id.* None of that makes sense unless if the JPA had been nullified by the Settlement already. *See* Exhibits 12, 13.

B. The JPA-level common benefit assessments also should be enforced based on the parties' course of dealing, reliance on the JPA, normal principles of estoppel, and the overall equities.

The JPA also reflects how sophisticated parties decided amongst themselves to allocate fees at a time when not infected with hindsight bias. If the Courts must answer that same question, they should answer it the same way. Kull-Silver Report at 13-16; Miller Report at 26-31.

At a minimum, that "prearranged fee," reflected in both the JPA and the Common Benefit Orders, would be the appropriate starting point. *Urethane* Fee Order at *4 (factors for percentage fee in common fund cases include "any prearranged fee") (citation omitted). From there, Watts Guerra's assessment should, if anything, go *down* given the surrounding facts and circumstances—including the fact that, to the extent anyone claims the JPA was terminated, that could have occurred only "***moments before settlement occur[ed]***." *Cf. Faricy Law Firm, P.A. v. API, Inc., Asbestos Settlement Trust*, 912 N.W.2d 652 (Minn. 2018) (emphasis added) (in setting a quantum meruit fee where a contingent fee agreement is terminated short of completion, courts must consider, among other things, that very "fee arrangement" and the "timing of the termination").

1. The JPA assessments are part of bargains and directives Watts Guerra performed and reasonably relied upon.

The JPA, Leadership Orders, and Common Benefit Orders are not just words; the *actual performance* of these bargains and directives by Watts Guerra and the rest of Plaintiffs' Leadership was the basis for years of cooperative, coordinated, successful litigation. Watts Guerra relied on these bargains; it performed; and other common benefit counsel benefited. Accordingly, Watts Guerra's expectations should be honored. Miller Report at 27-28, 30-31.

Federal CLC represented that their work could be purchased for certain enumerated benefits, including 13.75% of Watts Guerra's fees. Likewise the other Minnesota Leaders, 13.75%. This was their price and Watts Guerra accepted. As a result, other common benefit counsel

avoided having to compete with Watts Guerra for common work. If they had told Watts Guerra in June 2015 they would use that work as an excuse to claim most or all of Watts Guerra's contract fees, two things would have happened: (1) Watts Guerra would not have entered the JPA; and (2) Watts Guerra and its associate counsel would have competed with other common benefit counsel to do much more of the common work. After all, the Watts Guerra Group was hired by 57,000 farmers and grain elevators to handle this matter—these other attorneys were not.

Further, other common benefit counsel have already enjoyed numerous benefits from Watts Guerra, binding them to the 27.5% cap. For example: They got a financial hedge in case they lost class certification here, as they had in GMO Rice. Another: When Bellwether Plaintiff Mensik settled in Summer 2017, Watts Guerra paid the two, JPA-required assessments. Also, they had access to Minnesota work product, per JPA §2(d)(i)-(ii), most notably, for the Kansas Class trial, which took place after Watts Guerra's *Mensik* bellwether mistrial for which Watts Guerra produced a *massive* amount of work product, which it shared. Watts Decl. ¶207.

In addition, as part of the agreement "to coordinate in the prosecution of Syngenta Claims and focus their energies on such prosecution rather than strategies to compete with each other," JPA §2(f)(i), the parties agreed to, among other things: (1) maintain and share the costs of a joint document depository; (2) allow Federal CLC to take the lead in depositions of Syngenta witnesses, with specified conditions and caveats (for example, that the Minnesota Leadership could cross-notice depositions and presumptively receive one-third of the time for their own questions); and (3) take certain positions with the Courts. *See id.* §2(f)(ii). Each of these promises was part of the consideration for the assessment cap, and each was fulfilled by Watts Guerra and the other Minnesota Leaders. Watts Decl. ¶80; Guerra Decl. ¶¶ 25-26.

Just last month, the Minnesota Supreme Court addressed the relevant factors where a contingent fee contract is terminated, leaving the attorney with an unjust enrichment remedy—which is similar to the situation presented here for other common benefit counsel seeking a fee, if the JPA is no longer binding. The Court ruled that the factors to consider include not only *the pre-existing* "*fee arrangement*" itself (here, the JPA's 11/40 assessment), but also the "*involvement of others*" (which here, was precisely as contemplated in the JPA) and "*the timing of the termination*":

> To demonstrate with extreme examples, the value conferred could vary if the client discharges the attorney after one day of representation *compared to moments before settlement occurs*. Considering the timing of the termination is especially crucial to prevent a client from avoiding a contingent fee when it becomes apparent that the client will recover or reach a successful result.

Faricy Law Firm, 912 N.W.2d 652 (emphasis added). Here, either the JPA remains binding or this is a "moments before settlement" situation—and, having benefited from the JPA all these years, no one should be heard to demand new terms now that the work is done and the contemplated success already obtained.

2. Watts Guerra's reliance on the JPA was approved and encouraged by both Courts—at Federal CLC's request.

In the Federal MDL, reviewing an initial common benefit proposal from Federal CLC (which failed for other reasons), the Court rejected objections to "preferential assessment percentages" drawn from Federal CLC's agreement with Watts Guerra, explaining that this "benefits the litigation of the MDL, and CLC reasonably negotiated particular terms to achieve those groups' participation in the common benefit scheme." *See* Mem. & Order at 13, 16, ECF No. 403 (MDL 2591) (May 8, 2015). Then, in the Federal Common Benefit Order, the Court gave special, separate treatment to JPA signatories and clients, including Watts Guerra and its Plaintiffs, explaining:

> *The Remele/Sieben Group and the Remele/Sieben Group Co-Counsel are uniquely situated in this litigation.* They have agreed to undertake significant efforts to promote appropriate federal-state cooperation and coordination… Given these and other undertakings to which the Remele/Sieben Group and the Remele/Sieben

> Group Co-Counsel have agreed, as described in the [JPA] submitted to and reviewed in camera by the Court, *the Court finds that treating the Remele/Sieben Group, the Remele/Sieben Group Clients, and the Remele/ Sieben Group Co-Counsel separately is in the best interests of all plaintiffs in this litigation*."

Id. at 5-6 (emphasis added). Accordingly, the Court "incorporated into [its] Order the provisions of the [JPA] relating to common benefit assessments…" *Id.* at 6. Those "undertakings" and "efforts" which impressed the Court in 2015 have now been performed. It is only fair to enforce the rest of this bargain, which the Court has already found "in the best interest of all plaintiffs." *Id.*

The Minnesota Common Benefit Order, too, effectively so-ordered the JPA. It also specifies, as did the Federal order, that in the event of "class settlement," assessments will not be taken "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." Instead, "all fees and expenses for that class member will come out of the overall class recovery funds …." *Id.* at 6; *accord* Federal Common Benefit Order at 20. Concluding, Judge Sipkins added a caveat: "Nothing in this section is intended to be inconsistent with the JPA or the Federal Common Benefit Order…." *Id.*[19]

Federal CLC strongly advocated for this treatment of Watts Guerra and the JPA—in both Courts. Seeking entry of their Federal Common Benefit Order, Federal CLC presented the JPA, argued it was critical the Court approve the common benefit provisions (at least), and explained: "CLC and Watts have worked out an amended agreement [*i.e.*, the JPA] that not only promotes coordination and facilitates efficiency, *but also removes unjust enrichment*…." ECF No. 855 at

[19] It is unclear whether the Courts meant only that the *source* of assessments would be different in the event of a class settlement. But for the amounts embedded in the JPA, at least, it does not appear that the Courts intended to reserve judgment. To the contrary, the Courts indicated that they appreciated, approved, and would respect that private arrangement—with the Minnesota Common Benefit Order *twice* expressly precluding any "inconsisten[cy]" with the JPA. Minnesota CB Order at 6, 14; *see also Kornberg v. Kornberg*, 525 N.W.2d 14, 18 (Minn. App. 1994) (where judge has retired, successor judge may reverse prior decision only if "clearly erroneous or unjust, or when a substantial change occurs in the essential facts, the evidence, or the applicable law").

17 (emphasis added). Meanwhile, in Minnesota, Federal CLC's endorsement—including the commitment to work cooperatively *pursuant to the JPA*—was relied upon by Judge Sipkins in his decision to appoint Mr. Guerra and the rest of the Minnesota Leadership group. *See* Minnesota Appointment Order at 7; *supra* 9. These words may not lightly be set aside; they spoke to a considered, formal, arm's-length agreement between officers of the court, and were a basis for the decisions by both Judge Sipkins and Judge Lungstrum.

Principles of estoppel and waiver thus dictate that the JPA should control. Federal CLC took the position—in both proceedings, and in no uncertain terms—that the JPA should govern assessments from Watts Guerra, its clients, and its co-counsel; they were successful with that position; they received benefits from that position (from the Courts *and* from Watts Guerra); and Watts Guerra relied on that position—reasonably and, if the JPA is now set aside, to its detriment. As Federal CLC themselves have told the Court: "Equitable estoppel is a 'doctrine preventing one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person have been injured in some way." *Id.* at 13-14 (quoting ESTOPPEL, Black's Law Dictionary (10th ed. 2014)); *accord Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 919 (Minn. 1990).

Even were there no equitable estoppel, these facts also add up to judicial estoppel *and* waiver of any right by the other Leadership attorneys to disclaim the JPA. *See Johnson v. Lindon City Corp.*, 405 F.3d 1065, 1069 (10th Cir. 2005) ("[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.") (quoting *Davis v. Wakelee*, 156 U.S. 680, 689 (1895)); *Engstrom v. Farmers & Bankers Life Ins. Co.*, 41 N.W.2d 422, 424

(Minn. 1950) ("waiver may be established even though the acts, conduct, or declarations are insufficient to establish an estoppel"); *Manor Warehouse & Delivery, Inc. v. Gratton*, No. A17-1647, 2018 WL 2770469 *6 (Minn. App. June 11, 2018) (regardless of estoppel, "contract law already allows [one party] to argue that [the other] waived its right to rescind") (citing *Engstrom*).[20]

Finally, if these litigation agreements can be discarded at the end of the day—despite having garnered strong judicial support—**they will not be used** in the future. Miller Report at 28-31. That policy concern goes beyond attorney honor, the work done here, the commitments made by and to Watts Guerra, the risk assumed, and what is fair in this particular case. *The whole point of the JPA* was to avoid not only inefficiencies and bad incentives during litigation, but also a fee grab at the end of the day. Here we are. If the Courts allow Federal CLC and other common benefit counsel to throw this agreement out the window simply because $500 million has come through the door, the next MDL will not be litigated (or settled) cooperatively. *Id.*

3. Watts Guerra's contributions confirm that it should be assessed no more than 27.5% of its fees (9.17 points out of 33.33%).

What is more, were it not for the JPA parties' agreements, reliance, and performance Watts Guerra would not properly be subject to any assessment at all. *See* Kull-Silver Report at 8-13.

Look at what Watts Guerra did here: Though it took advantage of common benefit work, as was its right, it also *generated* common benefit work and led the charge for all. And, when it came to the claims of its own clients, Watts Guerra took nothing for granted. Class certification could have been denied. All other common benefit counsel could have fallen off the face of the earth. It would not have mattered: Watts Guerra worked up its cases and was ready, willing, and

[20] The Minnesota Supreme Court has not "expressly recognized" judicial estoppel, but understands the doctrine as "intended to prevent a party from assuming inconsistent or contradictory positions during the course of a lawsuit." *State v. Pendleton*, 706 N.W.2d 500, 507-08 (Minn. 2005).

able to try them—as it proved with the *Mensik* bellwether trials, not to mention the Minnesota Class trial, and through its preparations for the other Watts Guerra Bellwether Plaintiffs in line to be tried next in Minnesota. Watts Guerra put itself in that position through a lot of hard work—because it had an obligation to its clients, and to earn the fees for which it bargained.

In particular: it filed claims; fought for its chosen forum; fully worked up the cases for 51 Watts Guerra Plaintiffs who served as Bellwether Discovery Plaintiffs; researched and hired its own experts; did jury research; helped blaze the trail for both subsequent Class trials with its pre-trial work for the *Mensik* trial, including preparing a full trial graphics package. On top of this, it joined dozens of other attorneys in grabbing an oar for normal litigation work (including for motion practice, written discovery, depositions, experts, and more). And it took a major role in leading and winning this litigation—including as Minnesota Co-Lead Counsel, at the Minnesota Class trial, and on the four-member PNC. *See generally supra* 14-20. In short, it is impossible to justify taking more than the JPA-set 27.5% from Watts Guerra's fees. Kull-Silver Report at 8-13.

Without repeating all the facts elsewhere detailed, several more points are worth raising.

First, success for Watts Guerra's clients (and, indeed, the entire settlement class) began with the well-conceived strategy to hang on Syngenta the weight of tens of thousands of individual claims in Minnesota—that is, a mass action, in a forum where Syngenta executives could be sub-poenaed to testify. Now, with hindsight and a global class settlement inked, class-oriented counsel who have no clients might want to pretend that individual retentions were unnecessary. Not so. Numerous class actions and smaller collections of individual claims are pending in courts all over the Midwest—just sitting there. *See* SA Ex. 1 (list of related actions). But Watts Guerra, by bringing and pressing claims for 57,000 individual plaintiffs in the Minnesota state court system, incited the creation of the Consolidated Proceeding, which established a second center of gravity

for the Corn Litigation and mitigated the risk of adverse rulings in the Federal MDL.

As it happened, although Judge Sipkins generally followed Judge Lungstrum, the Minnesota record shows he was no rubber stamp; Judge Sipkins wrote lengthy memorandum opinions of his own, at times reaching the same result by other means, at other times reaching results even more favorable to plaintiffs in Minnesota than Judge Lungstrum in Kansas. For example, Judge Sipkins gave extraterritorial application to Minnesota's Unfair Trade Practices Act and Consumer Fraud Act—disagreeing with Judge Lungstrum's ruling that those statutes were inapplicable to claims by non-Minnesota resident plaintiffs. *Compare* Order at 101-105, ECF No. 1016 (MDL 1291) (Sept. 11, 2015) *with* Order at 40-44 (MDL 3785) (April 7, 2016). Judge Sipkins also retained jurisdiction over discovery disputes involving Minnesota plaintiffs and cut his own path on issues of Minnesota law. To give just one example, Judge Sipkins allowed plaintiffs to amend the Master Complaints to add claims for punitive damages, concluding that this was warranted under Minnesota law (and Iowa and Ohio law). *See* Orders dated Jan. 9, 2017 and April 16, 2017.

Second, the exposure to punitive damages clearly factored into Syngenta's decision to settle, lest the Minnesota Class trial end in a verdict potentially encumbering *billions* of dollars of Syngenta's worth. And how did that happen? The Minnesota team, including Watts Guerra, marshalled the record basis for punitive damages and successfully briefed the addition of that claim in late 2016. Watts Decl. ¶¶ 171-174. But the seed was planted in 2014-2015, when Watts Guerra assessed forum options and recognized that suing in Minnesota would allow it to compel Syngenta Seeds executives to appear at trial—subject to live cross-examination during plaintiffs' case-in-chief. This was a major advantage enjoyed by the Minnesota plaintiffs over all others, which bore fruit in September 2017, as discussed further below.

Third, Watts Guerra was instrumental in extracting and closing the $1.51 billion from Syngenta. As already discussed, Watts Guerra had a hand in all three Corn Litigation trials—including the Minnesota Class trial in September 2017—where Syngenta's resistance finally broke.

Following the $217.7 million verdict for the Kansas class, Syngenta gave this litigation a settlement value of ***zero***. That was its offer in June, post-trial. Then, rather than face the Watts Guerra-led team in the second *Mensik* trial in July, Syngenta made Mr. Mensik an offer he couldn't refuse. In August and September, just before the Minnesota Class trial began (on $400–500 million in actual damages and ten times that in punitives), Syngenta's offer had climbed to $600 million. Watts Decl. ¶268. Yet by the end of the first week of trial—after Mr. Watts' cross-examinations of Syngenta senior executives Jack Bernens and Chuck Lee made it abundantly clear to all that a punitive damages finding was likely—Syngenta determined that it preferred to pay $1.51 billion rather than wait and see whether the Minnesota jury would return a $4 billion verdict.

The Minnesota Class trial settled this litigation, plain and simple. And while at least five or six Minnesota Leaders had some role in that trial, no one can deny that Mr. Watts directed much of its prosecution—including by cutting much of the video testimony, preparing many of the trial demonstratives, and cross-examining Syngenta's main employee witnesses. Meanwhile, even though Minnesota Class Counsel had a right to request help from Federal CLC, for a price (*see* JPA Addendum §2(a)(iii)), they called the *Mensik* trial team instead; as the Minnesota team tried to improve on the result from the Kansas Class trial, the Federal attorneys were helpful spectators.

Then, with the war essentially won, Mr. Watts was central to establishing the terms of the peace. He was one of only four members of the PNC, and held out for numerous concessions from Syngenta as the parties worked from Term Sheet to Settlement. Watts Decl. ¶292. An important part of that role, moreover, was to thwart efforts by other PNC members to force terms that would

have hurt the Watts Guerra Plaintiffs. Mr. Watts remained diligent and helped manage the settlement terms to protect his clients and close the deal. *Id.* ¶¶ 316, 322.

Fourth, any amount taken from Watts Guerra should be limited to the value that other common benefit counsel provided *to these Plaintiffs*. The fact that those other attorneys may have worked hard and recorded piles of hours does *not* mean they were working for the Watts Guerra Plaintiffs. As already shown, Watts Guerra carried the water for its clients. More than this though, *other common benefit counsel didn't*; they never treated the Watts Guerra Plaintiffs as their clients.

That is not meant to denigrate anyone; it is (a) the truth, as the settlement battles within the PNC prove; and (b) *exactly what the parties bargained for in the JPA*. For example, Watts Guerra Plaintiffs were excluded from the litigation classes proposed by Federal CLC, as required by JPA §2(g)—and the Courts agreed this was appropriate. *Supra* 17. For this reason too, there is no basis for exceeding the JPA assessment levels. *See In re Polybutylene*, 23 S.W.3d at 438 ("An attorney's compensation from noncontracting plaintiffs under the common fund doctrine is limited to the reasonable value of the attorney's services benefitting them."). In fact, to whatever extent other common benefit counsel have added value for the Watts Guerra Plaintiffs, it only confirms the quality of *Watts Guerra's* representation—its excellent decisions in conceiving, negotiating, closing, and adhering-to the JPA. In effect, these other attorneys were hired to support Watts Guerra's representation for an 11/40 contingency. If a law firm hires contract attorneys at $150 per hour for discovery and document review services and those attorneys find the document that wins the case, they are not entitled to half the fees; they are entitled to $150 per hour. It is an imperfect analogy but the point is, the other Minnesota and Federal Leaders agreed to provide their work to Watts Guerra for 27.5% of Watts Guerra's fee. That's just good work—by Watts Guerra.

Also, Watts Guerra is plainly out-performing other counsel in the claims process. With

three months to the claims deadline, roughly 11% of class members (by number) have submitted a completed claim to the Claims Administrator as of July 2, 2018, but *more than half* of those claims (50.66%) are by class members who identify as being represented by Watts Guerra. Watts Decl. ¶340. That indicates that ***55% of Watts Guerra's 57,000-plus clients already have completed their claims, compared to only 6% of the other 542,000 class members***. A remarkable disparity. Whatever Class Counsel are doing, Watts Guerra and its associate counsel are doing it better. *See also id.* ¶¶ 338-358 (detailing Watts Guerra's work since preliminary approval).

Finally, Watts Guerra Plaintiffs are paying for services that other common benefit counsel did not provide. The mass action element of the Corn Litigation was not created, much less maintained, from thin air. The Watts Guerra Group spent many millions of dollars putting together and servicing its 57,000-plaintiff docket. Federal CLC did not provide these farmers with counseling, updates, or claims-filing assistance. They did not complete PFSs so the claims could proceed. And they certainly did not tour the Corn Belt personally for weeks at a time answering questions from tens of thousands of individual clients. Watts Guerra and its associate counsel did these things—spending tens of millions of dollars, for which they had no promise of recovery.

All of this is exactly what the Watts Guerra Plaintiffs hired Watts Guerra and its associate counsel to do. And whatever value other counsel may have provided to these 57,000 Plaintiffs, it is more than offset by the value that Watts Guerra provided to the 500,000 absent class members—and to other common benefit counsel themselves, for that matter. Again, Watts Guerra stands by its promise to pay 27.5% of its contract fees to compensate for the assistance provided by other common benefit counsel. But if the Courts decide to revisit that assessment amount, it can only be decreased, if not reduced to 0%, for all the reasons above.

III. Watts Guerra Also Should Receive An Appropriate Common Benefit Award Of Expenses—And Fees, If The JPA Is Not Followed.

A. Watts Guerra should receive reimbursement for Common Benefit Expenses.

Watts Guerra paid $12.85 million for Common Benefit Expenses, including capital assessments—all paid, recorded, and reported per the Minnesota Common Benefit Order. *See* Guerra Decl. ¶¶ 42-43. Watts Guerra should be reimbursed for those expenses, from whatever portion of the overall common benefit award is allocated to Minnesota.[21]

B. If the Courts decline to award the equivalent of a 24.16% contingent fee then—in addition to whatever the Courts do allow for contract fees—Watts Guerra should receive an award for Common Benefit Work.

The final piece is Watts Guerra's $8.30 million (14,733 hours) in Common Benefit Work. Guerra Decl. ¶¶ 40-41. Although this work was proper under the Minnesota Common Benefit Order (*id.* ¶¶ 36-40)—and benefited the other 542,000 class members, who are not paying Watts Guerra's contract fee—Watts Guerra is willing to forgo an additional award of Common Benefit Fees if its contract rights are enforced, as set forth above. Nonetheless, if the Courts do not award Watts Guerra a 24.16% fee pursuant to those contracts, or award some smaller percentage, then Watts Guerra respectfully requests an award of common-benefit fees sufficient to bring its total award to at least 24.16% of the recoveries secured by the Watts Guerra Plaintiffs.

With the well-considered support of six of the country's leading experts on these matters, and in its capacity as lead counsel for the 57,000-plus Watts Guerra Plaintiffs, Watts Guerra has proposed a global framework for resolving all attorney fees in this case in a way that is fair to all class members and all counsel, and likely to withstand any appeal. *See* Miller Report at 1-2, 36;

[21] In early 2016, Minnesota Leadership unanimously agreed that time and expense to comply with the PFS Order would be treated as common benefit work, and all attorneys were so advised. Guerra Decl. ¶¶ 16-20. If other leaders now do not support awards for such efforts, then, for itself and its associate counsel, Watts Guerra objects; this request for reimbursement of Watts Guerra's $12.85 million in common benefit expenses is not contingent on how any other counsel may wish to construe PFS work now, after the fact.

Kull-Silver Report at 1. To that end, in the interest of securing agreement among all stakeholders, Watts Guerra has offered to: (1) reduce its contingent fee by 16.5% (from 40% to 33.33%); (2) voluntarily pay a substantial common benefit assessment of 27.5% of its reduced fee (9.17 points on 33.33%); and (3) waive any additional common benefit fee (although, as noted, it seeks reimbursement for common benefit *expenses*). As to that waiver, it is driven by two concerns.

First, Watts Guerra's associate counsel—the other members of the Watts Guerra Group—will share whatever the Courts award to Watts Guerra for contract fees. Apart from recovering for its clients in the first place, Watts Guerra's commitments as lead counsel for its Group—and, frankly, the commitments made by the clients themselves to pay a contingent fee in return for the efforts, out-of-pocket payments, and risk taken by their counsel—are the most important financial aspects of this case to Watts Guerra. Meeting those obligations and earning those fees is what Watts Guerra has been doing for almost four years now.

Accordingly, Watts Guerra's contributions to recoveries for the other 542,000 class members should be reflected—first and foremost—by limiting the assessment taken from its contract fees. As explained, that assessment should be no more than 27.5% (11/40) of its contract fees. Recognizing, however, that the Courts will not be able to satisfy all applicants and will hear competing views on many of the issues addressed herein, including the JPA, Watts Guerra is putting its common benefit fee on the table as further reason to limit the assessment for itself and its associate counsel to 9.17 percentage points on a base contract fee of 33.33%.

Second, as noted repeatedly herein, *the Watts Guerra Plaintiffs should not be charged more than absent class members*. There is no serious question that Watts Guerra's private fee agreements are enforceable as written, yet other common benefit counsel appear poised to demand a

full 33.33% fee for themselves alone—indifferent to what that might mean for these tens of thousands of class members, whom Class Counsel, at least, now purport to represent. Meanwhile, if the Courts do not give meaningful effect to contract rights as part of a global solution such as the one advocated herein, it would put immense pressure on all retained counsel to resort to attorney liens. In that event, the represented class members who contributed to this litigation could be left paying more than absent class members who contributed nothing; clients and counsel would be at odds with each other; even absent class members could be pulled into the fray; fee litigation and appeals would ensue, in multiple forums. In short, cost, delay, and consternation, all around.

If Watts Guerra's contract fees are reduced below 24.16% (net of any common benefit assessment), Watts Guerra should receive a common benefit award sufficient to make up the difference—24.16% of the recovery secured by the Watts Guerra Plaintiffs being an eminently reasonable fee given the work done here by Watts Guerra under the *Johnson* factors no less than the contract principles already discussed. Here, briefly, are the most pertinent factors:

The amount involved and the result obtained. This is the "*most important* factor," *Jordan v. City of Cleveland*, 464 F.3d 584, 605 (6th Cir. 2006), and Watts Guerra's efforts were instrumental in obtaining a $1.51-billion settlement, of which its clients will likely receive between 23% (their share of the harvest) and 50% (given completed claims as of July 2, 2018).

Awards in similar cases. Courts routinely find fee requests amounting to 25% of client recoveries to be reasonable. *E.g.*, *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1271 (D. Kan. 2006) ("25% of the common fund is the benchmark" for fees). *See* Miller Report at 17, 35.

The customary fee and whether it is fixed or contingent. As explained above, the Watts Guerra clients agreed to pay a 40%, fully contingent, fee on any recoveries. That is powerful evidence of the customary fee appropriate for a case like this one. *Supra* 30-31.

Skill required and counsel's experience, reputation, and ability. Watts Guerra has *extensive* experience in mass tort litigation, including handling the first bellwether trial in numerous national mass tort litigations. Watts Decl. App. A. That depth of skill and experience was critical here; Syngenta refused to settle until put in imminent jeopardy of a multi-billion verdict.

When certain attorneys pressed for a side agreement on fees as the Settlement was being pulled together, the offer for the Watts Guerra Group was 20% of the total fee awarded. Watts Decl. ¶331; Ex. 11. That proposal was problematic for reasons that no longer matter, but 20% was certainly not too *high*. *Cf. In re Sauer-Danfoss Inc. Shareholders Litig.*, 65 A.3d 1116, 1138-1139 (Del. Ch. 2011) (on a lodestar cross-check, observing that "time" and "effort" are not the same—and "time (i.e., hours) that counsel claim to have worked is of secondary importance").

CONCLUSION

For all of these reasons, and as further shown in the accompanying Miller and Kull-Silver Reports, Watts Guerra's Fee & Expense Application should be granted.

Dated: July 10, 2018

Respectfully submitted,

/s/ Mikal C. Watts

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MATH APPENDIX

Fee & Expense Awards Under Different Claims-Rate Scenarios

Given a 33.33% Overall Fee Award

1	**Fee Set-Aside %**	**33.33%**	All $ in millions
2	Settlement Fund	$1,500.00	Scenario (A) is an
3	Fee Set-Aside $	$500.00	illustration based
4	Distributed to class	$1,000.00	in part on 7/2/18 claims data

		Scenarios		
	Common benefit counsel	**(A)**	**(B)**	
5	**Claimed by absent class members**	**25%**	**40%**	*Assumed*
6	Dollars received by absent members	$250.00	$400.00	*=5 x 4*
7	Gross dollar benefit to absent members	$375.00	$600.00	*=5 x 2*
8	Base common benefit fee	$125.00	$200.00	*=5 x 3*
9	CB asessments from contract counsel fees	$137.50	$110.00	*=16 + 23*
10	**Final common benefit award**	**$262.50**	**$310.00**	*=8 + 9*
	Watts Guerra (and other JPA signatories) (subject to 27.5% assessment)			
11	**Claimed by WG Plaintiffs**	**50.00%**	**40.00%**	*Assumed*
12	Dollars received by WG Plaintiffs	$500.00	$400.00	*=11 x 4*
13	Gross dollar benefit to WG Plaintiffs	$750.00	$600.00	*=11 x 2*
14	Gross fee to Watts Guerra Group	$250.00	$200.00	*=11 x 3*
15	CB assessment (%)	27.50%	27.50%	*Per JPA*
16	CB assessment ($)	$68.75	$55.00	*=14 + 15*
17	**Final award to Watts Guerra Group**	**$181.25**	**$145.00**	*=14 - 16*
	Other retained counsel (subject to higher assessment; 55% assumed for illustration)			
18	**Claimed by these plaintiffs**	**25.00%**	**20.00%**	*Assumed*
19	Dollars received by these plaintiffs	$250.00	$200.00	*=18 x 4*
20	Gross dollar benefit to these plaintiffs	$375.00	$300.00	*=18 x 2*
21	Gross fee to other retained counsel	$125.00	$100.00	*=18 x 3*
22	CB assessment (%)	*55.00%*	*55.00%*	*Assumed*
23	CB assessment ($)	$68.75	$55.00	*=21 x 22*
24	**Final award to other retained counsel**	**$56.25**	**$45.00**	*=21 - 23*
	Final awards in percentage terms			
25	**CB award as % of total Fund**	**17.50%**	**20.67%**	*=10 ÷ 2*
26	WG Group award as % of client recoveries	24.17%	24.17%	*=17 ÷ 13*
27	Other counsel as % of client recoveries	15.00%	15.00%	*=24 ÷ 21*
28	**CB award % of total fee award**	**52.50%**	**62.00%**	*=10 ÷ 3*
29	**All retained counsel % of total fee awar**	**47.50%**	**38.00%**	*=(17 + 24) ÷ 3*

*Line 26 (24.17%): 0.01% difference compared to 24.16% in argument is a result of rounding

CERTIFICATE OF SERVICE

I certify that on July 10, 2018, I caused the foregoing Memorandum (as Exhibit C to a Sealed Motion) to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record in the Federal proceeding.

I also caused this same filing to be made electronically with Minnesota state trial court using the eFS System which will serve all counsel of record in the Minnesota proceeding.

/s/ Mikal C. Watts
Mikal C. Watts