

**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 Cases

FILE NO. 27-CV-15-12625
and FILE NO. 27-CV-15-3785

**MEMORANDUM IN SUPPORT OF MOTION OF NOLAN LAW GROUP FOR AWARD
OF ATTORNEY FEES AND REIMBURSEMENT OF COSTS**

Pursuant to ¶17 of the 4/10/18 MDL-2591 Order Preliminarily Approving the Settlement, as well as ¶¶2.25, 7.2.1, 7.2.2 and/or 7.2.3.2 of the Agrisure Viptera/Duracade Class Settlement Agreement (the “Settlement Agreement”) in *In Re: Syngenta AG MIR 162 Corn Litigation* (MDL-2591) and *In Re: Syngenta Litigation*, (Fourth Judicial District Court, Hennepin County, Minnesota, File Nos. 27-CV-15-3785 & 27-cv-15-12625), the Nolan Law Group on behalf of itself and other associated co-counsel law firms (herein collectively referred to as “Movant” and/or the “Firm”) for the thirty one (31) Nolan Law Group Clients identified herein respectfully seeks payment of the contractually agreed upon fees & expense reimbursement of \$3,503.92 based on their clients’ gross recoveries from any fund created to pay attorneys’ fees and expenses arising out of the recent preliminarily approved class action in the Syngenta Litigation.

In the alternative, Movant understands that some individual claimant attorneys may request payment from the Fund based on an hourly fee for reasonable time and costs incurred in the prosecution of the actions, including non-approved common benefit time. To the extent the Court awards attorneys representing individual claimants based on a reasonable hourly fee for time and costs incurred in the prosecution of the action (instead of ratification of their contingency fee agreements), Movant requests leave to supplement this request with detailed

time reports of the Firm and associated co-counsel, which total well over 1,000 hours of attorney time, and any other information or documentation the Court may require.

NOLAN LAW GROUP CLIENTS

Nolan Law Group represents the following claimants (herein collectively referred to as “Clients”) in the Minnesota state court litigation against Syngenta on a contingency basis:

- James F. Barr [27-cv-15-20154]
- Barr Heritage Farm, LLC [27-cv-15-20154]
- Patricia Campion, as Representative of Decedent, James P. Campion [27-cv-15-2015]
- Brian Code [27-cv-15-20156]
- Luke Code, Inc. [27-cv-15-20156]
- Joseph E. Colgan [27-cv-15-20156]
- Michael W. Cox [27-cv-15-20156]
- Fehrenbacher Family Limited Partnership [27-cv-15-20156]
- GF & BF, Inc. [27-cv-15-20156]
- Sally Guth [27-cv-15-20156]
- K & K Farms [27-cv-15-20156]
- H & D Farms [27-cv-15-20156]
- Gerald W. Hickey [27-cv-15-20156]
- William G. Hickey [27-cv-15-20156]
- Donald McCauley [27-cv-16-5291]
- Grant McCauley [27-cv-16-5291]
- Meaker Farms, Inc. [27-cv-15-20156]
- Robert Meaker [27-cv-15-20156]
- Bonnie L. Miller [27-cv-16-5291]
- Robert Groter [27-cv-16-5291]
- Morrissey Farms [27-cv-15-20156]
- Philip Morrissey [27-cv-15-20156]
- Nancy Morrissey, as Representative of Decedent Robert Morrissey) [27-cv-15-20156]
- Johanna L. Mueller (on behalf of Decedent Charles F. Mueller) [27-cv-15-20157]
- Charles Jason Mueller [27-cv-15-20157]
- Brad J. Nelson [27-cv-15-20156]
- Michael D. Rediger [27-cv-15-20157]
- Phillip L. Schaffer [27-cv-15-20156]
- MRI Farms, LLC [27-cv-15-20156]
- Bryan L. Scott [27-cv-15-20156]
- James W. Young [27-cv-15-20156]

Co-counsel who assisted in the prosecution of the Nolan Law Group cases includes Winne Law Office, LLC, Borgess Law, LLC, and Kosieradzki Smith Law Firm, LLC.¹ Copies of these retainer agreements have not been filed but are available for inspection upon request. Background regarding Nolan Law Group and associated co-counsel is set forth in the supporting Declarations of counsel attached hereto.

In the written fee agreements, counsel agreed to advance all court costs and litigation expenses in this matter. If and when clients received a recovery, the clients agreed to pay one third (33.33%) of any recovery as a contingent fee, as well as expenses. Said clients were retained in 2015, well before the MDL Court certified the case as a class action in September, 2016 and the preliminary approval of the certified class settlement in April, 2018.

PROSECUTION OF CLAIMS ON BEHALF OF NOLAN LAW GROUP CLIENTS

Movant incurred and continues to incur substantial costs and litigation expenses in pursuit of its clients' claims. Specifically, Movant (including co-counsel firms) incurred well over 1,000 hours of attorney time, the vast majority of which was tracked contemporaneously. Movant's expenses total \$3,503.92. (See attached expenses spreadsheet and Declaration of counsel.)

Movant (including co-counsel firms) investigated each individual case, filed lawsuits on behalf of Clients and addressed numerous client-specific issues, such as client deaths and proper party substitutions or issues. In pursuit of Clients' claims, to comply with the Court's order for discovery, and to advance each client's individual case and the litigation as a whole, Movant also spent hundreds of hours obtaining various relevant documents from 2011 to present necessary to

¹These co-counsel firms may have also acted as lead, local and/or co-counsel for other non-Nolan Law Group clients not included in this fee/expense application, which may be addressed in separate petitions filed by said firms. However, this application, the expenses submitted on behalf of this application, and the over 1,000 hours of attorney time referenced herein pertain solely to these 31 Nolan Law Group clients.

prove each Client's claim, including from third parties such as the FSA, corn seed suppliers, corn purchasers, and crop insurers. For example, necessary discovery obtained by Movant for said clients included documents reflecting the number and location of all corn acres, variety of corn grown and/or seed purchased, ownership/lease of the land, contracts for the sale of corn, the number of bushels produced, how the bushels were priced (seasonal pool, pricing pool, booking contract, basis contract, hedged to arrive contract, case sale, or other contract), date the corn was priced, the price per bushel, the name and location of the buyer, the FSA # of the farm the corn was grown on, terms and condition of all sales contracts, and any and all crop insurance data. These documents, often totaling hundreds of pages, not only had to be obtained from various 3rd parties, but then sorted and carefully reviewed to identify and extract the necessary and relevant data. In many cases, this information was not obvious from the documents themselves and required additional investigation and communication the producing third party. For example, seed receipts/invoices might only a reflect an internal numeric description which required investigation and/or follow up with the supplier regarding the seed type, or sales documents might not necessarily reflect how exactly the corn was priced and/or the terms. Often times produced documents would also be missing certain information or data for various years, again requiring follow up to obtain the necessary information. Once obtained, reviewed, sorted and relevant data extracted and verified by the client, this data had to produced to the Defendants.

In addition to advancing the claims over the past three years, Movant has kept its Clients regularly informed and answered any and all questions, concerns or requests for information.

Despite the apparent lack of clarity and information from leadership as to fees (as described herein), Movant continues to expend time and resources on behalf of its Clients. Even

though their Clients are part of the class, Movant continues in good faith to answer questions and give guidance on the proposed settlement and claim form, point out deficiencies in their answered claim forms, and ensure the proper submission of the claim forms in accordance with the requirements of the settlement. As the settlement process continues to advance in the following months or even years, Movant's clients will likely continue to turn to the counsel it hired and has relied upon for three years for ongoing assistance, updates, questions and/or concerns.

TIME AND EXPENSES INCURRED ON BEHALF OF NOLAN LAW GROUP CLIENTS

For over three years, Movant has prosecuted and advanced its Clients' claims in good faith and devoted substantial time and expense. When individual cases are prosecuted and advanced it maintains pressure on defendants benefiting the entire litigation and all members as a whole. In addition, the discovery process, such as the completion of Plaintiff Fact Sheets, provides critical information, including information necessary to understand the size, scope and extent of the litigation and assists in settlement discussions.

An award of reasonable attorney's fees and reimbursement of expenses is authorized pursuant to Rule 23.08 of the Minnesota Rules of Civil Procedure and Federal Rule of Civil Procedure 23(h) even if Movant was not designated as Class Counsel. *See e.g.* Fed. Civ. Proc. R. 23, comment to subdivision (h) ("This subdivision...applies when such awards are authorized by law or by agreement of the parties. Against that background, it provides a format for all awards of attorney fees and nontaxable costs in connection with a class action, not only the award to class counsel. In some situations, there may be a basis for making an award to other counsel whose work produced a beneficial result for the class, such as attorneys who acted for the class before certification but were not appointed class counsel, or attorneys who represented objectors

to a proposed settlement under Rule 23(e) or to the fee motion of class counsel. Other situations in which fee awards are authorized by law or by agreement of the parties may exist.”) *See also Faricy Law Firm, P.A. v. API, Inc. Asbestos Settlement Tr.*, 912 N.W.2d 652 (Minn. 2018), (Holding that a contingent fee agreement is a factor to be considered when awarding reasonable attorneys fees.)

Movant requests payment of its agreed upon contingency fee of one-third (33 1/3%) plus expenses as to each of Movant’s Clients be paid from the Fund to be created from the preliminarily approved class action settlement.

In the alternative, Movant understands that some individual claimant attorneys may request payment from the Fund based on an hourly fee for reasonable time and costs incurred in the prosecution of the actions, including non-approved common benefit time. To the extent the Court awards attorneys representing individual claimants based on a reasonable hourly fee for time and costs incurred in the prosecution of the action (instead of ratification of their contingency fee agreements), Movant requests leave to supplement this request with detailed time reports of the Firm and associated co-counsel, which total well over 1,000 hours of attorney time, and any other information or documentation the Court may require.

A. Common Benefit Time for Plaintiff Fact Sheet Work

On 3/23/18, Movant was first informed by Minnesota plaintiffs’ leadership that time and expenses complying with the Minnesota Plaintiff Fact Sheet (“PFS”) Order would be considered Common Benefit Work and that said time should be submitted for review and submission by said leadership as part of its common benefit petition. No further details concerning the process, procedure or criteria were provided by plaintiffs’ leadership.

Therefore, Movant submitted time incurred solely in complying with the PFS order for the Nolan Law Group Clients. This time and expense submission did not include any other time spent on the individual case files, including for example, the hundreds of hours or expenses spent calls with clients, update letters, dealing with client-specific issues, such as client deaths, etc.

On July 4, 2018 Movant received the results of an audit of the submitted PFS time and expenses for the Nolan Law Firm clients and were advised in a cover letter that any objections would need to be provided in writing by July 8, 2018. Movant immediately tried to reach plaintiffs' leadership in an attempt to advise of inconsistencies and errors in their audit and its need to file an objection. However, on July 5, 2018, plaintiffs' leadership advised that firms did not need to provide their objections (or declarations in support) by July 8, 2018 but may still need to do so at an unidentified date in the future, (which Movant intends to do).

As such, it remains unclear at the time of this filing if Movant's time and expenses associated with complying with the PFS order for the Nolan Law Group Clients is or will be approved or submitted by leadership, or what portion, if any, will ultimately be approved by the Court(s).

Irrespective, Movant is not seeking double recovery. Instead, if Movant's time for PFS work is approved and submitted by plaintiffs' leadership for common benefit consideration and if such common benefit work is approved and awarded by the Court(s), Movant would request that the Court deduct any approved common benefit award from any total requested or awarded pursuant to this fee/expense application.

CONCLUSION

For the foregoing reasons, Movant respectfully asks this Court for payment of fees and reimbursement of expenses totaling \$3,503.92 based on their clients' gross recoveries from any

fund created to pay attorneys' fees and expenses arising out of the recently preliminarily approved class action in the Syngenta Litigation.

Date: 7/10/18

Respectfully Submitted,

/s/ Thomas P. Routh

Thomas P. Routh

NOLAN LAW GROUP

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Attorney for Nolan Law Group Clients

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed with the Clerk and an electronic copy served upon all counsel of record this 10th day of July, 2018.

/s/ Thomas P. Routh

Thomas P. Routh

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

IN RE: SYNGENTA LITIGATION

Case Type: Civil Other
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FILE NO. 27-CV-15-12625
and FILE NO. 27-CV-15-3785

**DECLARATION OF THOMAS P. ROUTH IN SUPPORT OF THE NOLAN LAW
GROUP FEE AND EXPENSE APPLICATION**

I, THOMAS P. ROUTH, declare as follows:

1. I am over the age of twenty-one years old and make this declaration based on my personal knowledge. If called as a witness, I could and would testify competently to the facts contained herein, which are true and correct.

2. I am the licensed attorney with Nolan Law Group (hereinafter “the Firm”) and am authorized to submit this declaration on the Firm’s behalf.

3. I have been admitted to the Illinois bar, as well as U.S. District Court for the Northern District of Illinois, since 1996. I have experience with many national, mass tort, and/or class action litigations involving aviation disasters, toxic torts, medical drugs, medical devices, and product defects.

4. I submit this declaration in further support of the Firm’s Motion and Memorandum in Support pursuant to ¶17 of the 4/10/18 MDL-2591 Order Preliminarily Approving the Settlement, as well as ¶¶2.25, 7.2.1, 7.2.2 and 7.2.3.2 of the Agrisure Viptera/Duracade Class Settlement Agreement in *In Re: Syngenta AG MIR 162 Corn Litigation* (MDL-2591) and *In Re: Syngenta Litigation*, (Fourth Judicial District Court, Hennepin County, Minnesota, File Nos. 27-CV-15-3785 & 27-cv-15-12625).

5. The Firm, together with associated co-counsel, represents thirty-one (31) clients identified the Memorandum in Support (herein “Nolan Law Group Clients”) in the Syngenta Litigation filed in Hennepin County, Minnesota.

6. Said clients were retained in 2015 before the MDL Court certified the case as a class action in September, 2016 and the preliminary approval of the certified class settlement in April, 2018.

7. The written fee agreements were on a contingency basis. The Firm agreed to advance all court costs and litigation expenses in this matter. If and when clients received a recovery, the clients agreed to pay one third (33.33%) of any recovery as a contingent fee, as well as expenses, and further agreed to division of those between the Firm and associated co-counsel.

8. The Firm is and remains lead counsel on these cases and is authorized to request payment of the contractually agreed upon fees & expense reimbursement based on its clients’ gross recoveries from any fund created to pay attorneys’ fees and expenses arising out of the recently preliminarily approved class action in the Syngenta Litigation (the “Fund”) and to submit all time and expenses for Nolan Law Group Clients.

9. The Firm and Winne Law Office, LLC submitted time and expenses associated with complying with the Minnesota Plaintiff Fact Sheet (“PFS”) order for the Nolan Law Group Clients as suggested by Minnesota plaintiffs’ leadership in March, 2018 conference call. This submission did *not* include any time or expenses spent on behalf of any individual clients other than time spent complying with the Plaintiff Fact Sheet requirements. However, as described in the Firm’s memorandum in support, at the present time it remains unclear whether the time and expenses associated with complying with the Minnesota Plaintiff Fact Sheet order for Nolan Law Firm clients is or will be approved or submitted by Minnesota plaintiffs’ leadership, or what

portion, if any, will ultimately be approved by the Court. Neither the Firm, nor associated co-counsel who has authorized the Firm to submit all time and expenses on behalf of Nolan Law Group Clients, are seeking double recovery. Instead, if time and expenses for Plaintiff Fact Sheet work for Nolan Law Group Clients is approved and submitted by plaintiffs' leadership for common benefit consideration and if such common benefit work is approved and awarded by the Court, the Firm requests that the Court deduct any approved common benefit award from any total requested or awarded pursuant to this Application.

10. Through its representation thus far, over 1,000 hours of attorney time has been expended and \$3,503.92 in client costs have been incurred for the Firm's clients.

11. If additional information is required from the Court in order to consider the Firm's motion and/or supporting materials, including but not limited to detailed time reports of the Firm and associated co-counsel, the Firm requests leave to amend or supplement its motion as may be necessary.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Executed this 10th day of July, 2018 in Chicago, Illinois.

/s/ Thomas P. Routh

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NOLAN LAW GROUP CLIENT EXPENSES

Name of Individual Who Incurred Expense	Date of Expense	Detailed Description	Amount of Expense
Nolan Law Group	1/21/2016	Filing Fees for Mueller et al (\$431), Barr (\$431), H & D et al (\$431)	\$1,293.00
Nolan Law Group	1/21/2016	Service Fees for Mueller, Barr & H & D	\$1,193.40
Nolan Law Group	5/26/2016	Photocopying of individual PFS and all corresponding documents (715 pages at \$.15 per page)	\$107.25
Nolan Law Group	6/14/2016	Photocopying of individual PFS and all corresponding documents (768 pages at \$.15 per page)	\$115.20
Nolan Law Group	6/20/2016	Photocopying of individual PFS and all corresponding documents (384 pages at \$.15 per page)	\$57.60
Nolan Law Group	6/21/2016	Photocopying of individual PFS and all corresponding documents (252 pages at \$.15 per page)	\$37.80
Nolan Law Group	6/22/2016	Photocopying of individual PFS and all corresponding documents (120 pages at \$.15 per page)	\$18.00
Nolan Law Group	7/6/2016	Photocopying of individual PFS and all corresponding documents (1,540 pages at \$.15 per page)	\$231.00
Nolan Law Group	7/8/2016	Photocopying of individual PFS and all corresponding documents (173 pages at \$.15 per page)	\$25.95
Nolan Law Group	7/10/2016	Photocopying of individual PFS and all corresponding documents (363 pages at \$.15 per page)	\$54.45
Nolan Law Group	9/13/2016	Postage Charges for sending out document requests (18 letters at \$.475)	\$8.46
Nolan Law Group	9/14/2016	Postage Charges for sending out document requests (10 letters at \$.475)	\$4.70
Nolan Law Group	9/19/2016	Postage Charges for sending out document requests (1 letter at \$.475)	\$0.48
Nolan Law Group	9/23/2016	Postage Charges for sending out document requests (2 letters at \$.475)	\$0.95

Nolan Law Group	9/28/2016	Postage Charges for sending out document requests (1 letter at \$.475)	\$0.48
Nolan Law Group	10/3/2016	Postage Charges for sending out document requests (2 letters at \$.475)	\$0.95
Nolan Law Group	10/11/2016	Postage Charges for sending out letters (13 letters at \$.475)	\$6.11
Nolan Law Group	10/17/2016	Postage Charges for sending out client letter (7 letters at \$.475)	\$3.29
Nolan Law Group	11/4/2016	Letters to co-counsel (4 letters x .465)	\$1.86
Nolan Law Group	11/21/2016	Postage Charges for sending out document requests (1 letter at \$.475)	\$0.48
Nolan Law Group	12/2/2016	Postage Charges for sending out document requests (3 letters at \$.475)	\$1.43
Nolan Law Group	1/16/2017	Postage Charges for sending out document requests (5 letters at \$.465)	\$2.33
Nolan Law Group	1/25/2017	FedEx #15073 Syngenta	\$22.55
Nolan Law Group	1/30/2017	Postage Charges for sending out document requests (12 letters at \$.465)	\$5.58
Nolan Law Group	2/3/2017	Postage (.67) for Update Client Letters (x24 letters) and including notice.	\$16.08
Nolan Law Group	2/17/2017	Copy Costs for Clients Letters (10 pgs x 24 letters) @ 15 cents per pg	\$36.00
Nolan Law Group	5/10/2017	Postage (sending out update letters .465 x 27 = \$12.55)	\$12.55
Nolan Law Group	6/6/2017	Postage (sending out update letters .465 x 27 = \$12.55)	\$12.55
Nolan Law Group	8/30/2017	Postage Charges for sending out document requests (6 letters at \$.465)	\$2.79
Nolan Law Group	9/5/2017	Photocopying of individual PFS and all corresponding documents (18 pages at \$.15 per page)	\$2.70
Nolan Law Group	9/19/2017	Postage Charges for sending out document requests (1 letter at \$.465)	\$0.47

Nolan Law Group	9/19/2017	Photocopying of correspondence PFS documents (1 page at \$.15)	\$0.15
Nolan Law Group	9/25/2017	Postage Charges for sending out document requests (5 letters at \$.465)	\$2.79
Nolan Law Group	9/25/2017	Photocopying of correspondence PFS documents (10 pages at \$.15)	\$1.50
Nolan Law Group	9/26/2017	Postage expense sending out requests for additional documents. (9 letters at \$.465)	\$4.18
Nolan Law Group	10/3/2017	Postage Charges for sending out letters for additional documents (5 letters at \$.465)	\$2.33
Nolan Law Group	10/3/2017	Postage Charges for sending out additional document requests (3 letters)	1.40
Nolan Law Group	10/4/2017	Postage for sending out 23 update letters	10.69
Nolan Law Group	10/5/2017	Postage Charges for sending out document requests (14 letters at \$.465)	\$6.51
Nolan Law Group	10/6/2017	Postage Charges for sending out document requests (19 letters at \$.465)	\$8.84
Nolan Law Group	10/9/2017	Postage Charges for sending out document requests (2 letters at \$.465)	\$0.93
Nolan Law Group	10/12/2017	Postage Charges for sending out document requests (11 letters at \$.465)	\$5.12
Nolan Law Group	10/15/2017	Postage Charges for sending out document requests (12 letters at \$.465)	\$5.58
Nolan Law Group	10/17/2017	Postage for co-counsel letter	\$0.47
Nolan Law Group	4/18/2018	Postage for sending out update letters with attachments (\$1.88 x 24 = \$45.12)	\$45.12
Nolan Law Group	5/22/2018	Mass Mailing Expenses- Postage (109 stamps x .47 = \$51.23)	\$51.23
Nolan Law Group	5/29/2018	Mass Mailing Expenses- Copies (294 x .15 = \$44.10)	\$44.10
Nolan Law Group	5/29/2018	Postage for client letters (Postage: 26 letters x .47 = \$12.22)	\$12.22

Nolan Law Group	6/6/2018	Postage for client letters and return envelope: 12 x .47 = \$5.64)	\$5.64
Nolan Law Group	6/19/2018	Letter to Claims Administrator with Claims Packages. (UPS Postage: \$18.72)	\$18.72
		TOTAL:	\$3,503.92