

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN
LITIGATION

Master File No. 2:14-MD-02591-JWL-JPO

THIS DOCUMENT RELATES TO
ALL CASES EXCEPT:

MDL No. 2591

*Trans Coastal Supply Company, Inc. v.
Syngenta AG, et al., No. 2:14-cv-02637-
JWL-JPO*

*The Delong Co., Inc. v. Syngenta AG et
al., No. 2:17-cv-02614-JWL-JPO*

*Agribase International Inc. v. Syngenta
AG, et al., No. 2:15-cv-02279-JWL-JPO*

**JOINT MOTION FOR AN INDICATIVE RULING APPROVING OBJECTOR
SETTLEMENT AGREEMENT AND MOTION TO EXPEDITE**

Over the objections of class members Dale Brookover, Jami Hayhurst, Simon Rademacher, Christopher Roberts, F. Ronalds Walker, Egler Brothers Inc., and W. Lee Egler Farms, Inc. (“Objectors”), the Court granted final approval to the Agrisure Viptera/Duracade Class Settlement Agreement (“Class Settlement”) (ECF No. 3849), awarded aggregate attorneys’ fees of one-third of the \$1.51 billion settlement fund (ECF No. 3882), and entered a Final Order and Judgment regarding the claims set forth in the Producer and Non-Producer Plaintiffs’ Consolidated Fourth Amended Class Action Master Complaint (ECF No. 3850). The Objectors subsequently appealed. Those appeals are fully briefed before the Court of Appeals for the Tenth Circuit, and oral argument has been scheduled for January 22, 2020.

After months of negotiations, first with a private mediator and then with the Tenth Circuit mediator, Settlement Class Counsel and the Objectors have reached an agreement to settle the appeals in exchange for certain consideration, but without changes to the Judgment or terms of

the Class Settlement. The terms of the agreement are set out in the Objector Settlement Agreement, attached as Exhibit A. Pursuant to Rules 62.1 and 23(e)(5)(B) of the Federal Rules of Civil Procedure, Plaintiffs and Objectors (collectively, the “Parties”) respectfully request an indicative ruling approving the agreement so that they can ask the Tenth Circuit to remand this matter for entry of a formal order and subsequent dismissal of the appeals.

In addition, the Parties request that the Court expedite the briefing schedule by requiring any opposition or response to be filed within seven (7) days of the filing of this Motion and any reply brief to be filed seven (7) days thereafter with a hearing set at the Court’s convenience.

Syngenta does not oppose the relief requested by the Objectors and Plaintiffs.

I. PROCEDURAL HISTORY

Objectors made timely objections to the Class Settlement (*see, e.g.*, ECF Nos. 3667, 3669, 3671). Four of the seven objectors sat for depositions, and counsel for five of the objectors appeared in person and argued at the final fairness hearing. The objections were overruled by the Court (ECF Nos. 3849, 3842), but each objection was addressed by Plaintiffs and by the Court in its Memoranda and Orders. *Id.* Objectors each timely appealed from the Court’s judgment, all of which were consolidated into a single appeal. Before the Tenth Circuit, Objectors filed briefs respecting the finality of the Court’s judgment, an opening brief, and reply brief. The matter is presently set for oral argument on January 22, 2020.

Beginning in May 2019, Objectors and Settlement Class Counsel began settlement discussions. They hired and worked for several months with an outside mediator, Kansas City attorney Rex Sharpe, experienced in class-action litigation. Then, they worked directly with the Tenth Circuit chief mediator, David Aemmer, for several more months. After extensive negotiations, the parties have executed an agreement memorialized in the Objector Settlement Agreement attached as Exhibit A. The basic terms of the agreement are as follows:

1. The Objectors agree to dismiss their appeals with prejudice if: the Court enters an indicative ruling approving the Objector Settlement Agreement; the Tenth Circuit remands the matter to the Court without modifying the existing Judgment; and, the Court enters a formal order approving the Objector Settlement Agreement when jurisdiction is returned. *See Exhibit A* at § 2.2. No changes will be made to the Judgment or the Class Action Settlement. *Id.* at § 4.2

2. In consideration thereof, and upon receipt of the Fee and Expense award at a later date, Settlement Class Counsel have agreed to share \$1.975 million from the aggregate Fee and Expense Award with Objectors for attorneys' fees, costs, and service awards related to the objections.¹ The amount will be deducted from the aggregate Fee and Expense Award and any accrued interest *pro rata* from all allocations made to all law firms. *Id.* at § 2.1. In addition, Settlement Class Counsel have agreed that at least \$3 million in interest that has been earned on just the Fee and Expense award only (and not from the settlement funds to pay the classes), while it has been sitting in escrow, will be distributed to the class, increasing the overall class recovery. *Id.* at § 1.11.

II. ARGUMENT

A. Legal Standard

Rule 23(e)(5)(B) of the Federal Rules of Civil Procedure requires court approval before any “payment or other consideration may be provided in connection with ... forgoing, dismissing, or abandoning an appeal from a judgment approving” a class action settlement. As the Rule itself notes, if an appeal is filed “the procedures of Rule 62.1 appl[y] while the appeal

¹ The agreed-upon fee will be distributed in the following manner: \$900,000 to counsel for Rademacher and Roberts; \$325,000 to counsel for Hayhurst and Brookover; and, \$750,000 to counsel for the Walker objectors. *Id.* at § 2.1. Counsel for Rademacher and Roberts as well as Walker will remit service awards of \$15,000 each to the objectors from within these distributions. Counsel for Hayhurst and Brookover will remit \$5,000 each to the objectors.

remains pending.” *Id.* Rule 62.1, in turn, provides that where a “timely motion is made for relief that the court lacks authority to grant because an appeal that has been docketed and is pending, the court may:

- (1) defer considering the motion;
- (2) deny the motion; or
- (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

Fed. R. Civ. P. 62.1. If the Court states in the indicative ruling that it would grant the motion upon return of jurisdiction then Federal Rule of Appellate Procedure 12.1 authorizes the “court of appeals [to] remand for further proceedings” while retaining jurisdiction “unless it expressly dismisses the appeal.”

Rule 23(e)(5)(B)(ii) does not expressly describe the standard for approval of compensation for withdrawal of an appeal. Rule 23(h) provides that the Court may award reasonable attorneys’ fees in a class action “authorized ... by the parties’ agreement.” That rule is directly referenced in the Comments from the Advisory Committee with regard to withdrawal of an objection at the trial court level under Rule 23(e)(5)(B)(i), but not with respect to subsection (ii) which addresses dismissal of an appeal. In any event, the settlement here is both in the best interests of the class and reasonable. Specifically, this settlement is in the best interests of the class members as it will allow the Claims Administrator to begin making distributions to class members sooner. *See* Declaration of Patrick J. Stueve at ¶ 3, attached as Exhibit B. Furthermore, it eliminates risk that approval of the settlement will be reversed, and it increases the size of the fund available for distribution to the class by \$3 million.

B. Analysis

The agreed-upon compensation will be paid exclusively from the Fee and Expense Award and is clearly reasonable. The Objectors expended significant time and labor advancing the objections, prosecuting the appeal, and negotiating the instant settlement. In total, according to their declarations submitted herewith, they have expended 1,943.4 hours. *See* Decl. of Robert Clore ¶ 13, attached as Exhibit C; Decl. of Christopher Braun ¶ 7, attached as Exhibit D; Decl. of George W. Cochran ¶¶ 5-6, attached as Exhibit E. Their work on the case was not administrative or ministerial but involved substantive and complex legal issues. They filed substantive objections regarding the settlement in this Court (ECF Nos. 3667, 3669, 3671); litigated the propriety of Plaintiffs' subpoena duces tecum to four of the objectors; prepared and produced four objectors for depositions; prepared supplemental reply briefs (ECF Nos. 3806 & 3807); perfected their appeals; responded to an order requiring legal briefing on finality from the Tenth Circuit; and researched and drafted opening and reply appeal briefs before the Tenth Circuit, each of which cited over 50 cases. Ex. C at ¶¶ 5, 7, 9, 11; Ex. D at ¶ 7; Ex. E at ¶ 5.

In addition, the results achieved through this settlement are in the best interests of the class. Courts routinely recognize that class counsel are entitled to interest that accrues on a fee and expense award while the money is held in escrow, as the interest reflects the lost value of the money since the award was made. *See In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1458 (N.D. Cal. 1994) (“In contingent attorney fee arrangements, however, interest on the fund generated by the litigation is typically apportioned *pro-rata* between counsel and their clients based on their respective percentage ownership of the recovery.”); *In re Clearly Canadian Sec. Litig.*, No. C-93-1037-VRW, 1999 WL 707737, at *6 (N.D. Cal. Sept. 3, 1999); *In re E.I. Du Pont De Nemours & Co. C-8 Pers. Injury Litig.*, No. 2-13-MD-2433, 2018 WL 4771524, at *6 (S.D. Ohio

Oct. 3, 2018) (“I agree with the Fee Committee’s recommendation that each firm should be reimbursed their common benefit expense awards with compounded interest calculated”), *report and recommendation adopted sub nom. In re E.I. Du Pont De Nemours Co. C-8 Pers. Injury Litig.*, No. 2-13-MD-2433, 2018 WL 4810290 (S.D. Ohio Oct. 3, 2018); *Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 442 (D. Md. 1998) (“attorneys are entitled to interest on a settlement fund in the proportion that the underlying fee award bears to the basic fund.”); *Ripley v. Sunoco, Inc.*, 287 F.R.D. 300, 322-23 (E.D. Pa. 2012) (“Accrued interest will be credited *pro rata* to the Net Settlement Fund, payments to named Plaintiffs, Class Counsel’s reasonable attorneys’ fees and costs awarded, including Administration Costs, in the amounts approved by the District Court.”); *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 469 (E.D. Pa. 2008); *Cooper v. Kana*, No. 3:98-CV-2804-M, 2003 WL 21209563, at *2 (N.D. Tex. May 19, 2003); *In re Intelligent Elecs., Inc. Sec. Litig.*, No. 92-CV-1905, 1997 WL 786984, at *2 (E.D. Pa. Nov. 26, 1997) (“Class counsel are hereby awarded fees in the amount of \$3,000,000.00, which represents 30% of the Settlement Fund, and expenses in the total amount of \$652,248.97, together with a 30% pro-rata share of the interest earned on the Settlement Fund, to be paid to the Executive Committee of Plaintiffs’ Counsel in the manner and on the date as set forth in the Stipulation.”). Here, net of banking fees, more than \$7 million in interest has been earned on the Fee and Expense Award since it was entered by the Court and the settlement fund was put into escrow by Syngenta. Thus, the agreement to defer the first \$3 million in interest, to be used to increase *pro rata* distributions to the class, is in the best interests of the class and supports the agreed-upon fee to be paid to the Objectors.

In addition, some of the arguments raised by Objectors resulted in non-monetary improvements to the claims process, including: sending all claimants a Notice of Determination

so they could confirm the accuracy of the FSA/RMA data collected for their claims; additional information being posted on the settlement website; confirmation from Plaintiffs that they intend to attempt to distribute 100% of the settlement fund without *cy pres* (compare ECF No. 3669 at 13-16 with ECF No. 3798 at 31); and, confirmation by class counsel that there were no “secret, side-bar agreements among lead counsel” (ECF No. 3667 at 5) infecting the settlement (ECF No. 3798 at 24 n.4). In combination with the agreement to forego \$3 million in interest, these improvements confirm the settlement is in the best interests of the class.

Moreover, the compensation of counsel relative to their lodestar shows that the agreed-upon fee is not unreasonable. The Objectors collective lodestar is \$1,059,973, resulting in a multiplier of 1.76.² See Ex. C at ¶ 14; Ex. D at ¶ 8; Ex. E at ¶ 6. That multiplier is within the range of reasonableness, as the Court previously found when it approved the total fee. See Mem. & Order, ECF No. 3849 at 33.³

Finally, the settlement is in the best interests of the class, as it will permit distribution of settlement funds sooner. The Claims Administrator currently hopes to begin making interim payments as early as February 2020. That will only be possible if the appeals have been dismissed. Although accelerating payment to the class may not be a justifiable reason standing alone to approve the agreed-upon fee, in combination with these other factors, it surely tilts the balance in favor of approval.

² This was determined by deducting expenses (\$45,117, see Ex. C at ¶ 14; Ex. D at ¶ 8; Ex. E at ¶ 6) and requested service awards (\$55,000) from the agreed-upon payment of \$1,975,000, resulting in a net fee of \$1,874,883, which results in the above-stated multiplier.

³ Although this settlement does not create a common fund, and the percentage approach is therefore inapt, if the interest and net fee were combined (\$4.975 million), the percentage requested for Objectors’ counsel would represent 38% of the total. That does not render the agreed-upon fee unreasonable. See Klonoff Decl. ¶ 81 n.74-75 (ECF No. 3587-6 at 38) (collecting cases finding 40% contingent fee reasonable).

III. CONCLUSION

For these reasons, the Parties request that the Court enter an indicative ruling approving the Objector Settlement Agreement. The Parties further request that the Court expedite consideration of this motion and require any opposition(s) to be filed on or before **December 16, 2019**, with the expectation that if any interested party fails to file an opposition by that date all arguments contesting approval of the Objector Settlement Agreement will be waived. Proposed orders regarding the briefing schedule and the indicative rulings are being submitted to chambers.

Dated: December 9, 2019

Respectfully Submitted,

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EXHIBIT A

OBJECTOR SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 6th day of December 2019, by and between (i) Simon Rademacher and Christopher Roberts, individually, together and by and in conjunction with their attorney Christopher Bandas and the Bandas Law Firm (collectively, the “Bandas Objectors”); Jami Hayhurst and Dale Brookover by and through their attorney George Cochran and the Cochran Law Firm (collectively, the “Cochran Objectors”); F. Ronalds Walker, Egler Bros., Inc. and W. Lee Egler Farms, Inc. by and through their attorney Christopher Braun and Plews Shadley Racher & Braun (collectively, the “Braun Objectors”) (collectively, Bandas Objectors, Cochran Objectors, and Braun Objectors are the “Objectors”) on the one hand, and (ii) Patrick J. Stueve, Daniel E. Gustafson and Christopher A. Seeger (collectively, “Class Counsel”), on the other hand, with respect to objections asserted by the Objectors against the Settlement filed in *In re Syngenta AG MIR162 Corn Litigation* (the “Litigation”).

Unless otherwise defined herein, all capitalized words, phrases or terms set forth herein shall have the meaning set forth in the Agrisure Viptera/Duracade Class Settlement Agreement (“Settlement”) filed in the Litigation on March 12, 2018 (ECF 3507). Objectors and Class Counsel shall be collectively referred to as the “Parties” and separately referred to as a “Party.”

1. RECITALS

1.1. WHEREAS, certain class members represented by the above identified three sets of Objectors attorneys filed certain objections to the certification of and approval of the Settlement and the requested Fee and Expense Award (*see, e.g.*, ECF 3667, 3669, 3671) (collectively, the “Objectors”).

1.2. WHEREAS, the Bandas Objectors filed an objection on August 9, 2018 (ECF 3669) (“Bandas Objection”), Cochran Objectors filed an objection on August 9, 2018 (ECF 3667) (“Cochran Objection”), and the Braun Objectors filed an objection on August 9, 2018 (ECF 3671) (“Braun Objection”) (collectively “Objections”).

1.3. WHEREAS, Plaintiffs filed a Motion for Final Approval of Class Action Settlement and subsequent briefs, wherein they argued that the objections filed by Objectors lacked merit (ECF 3712, 3776-3777, 3798).

1.4. WHEREAS, some Objectors filed reply briefs in support of their Objection (ECF 3806-07) and some appeared in person to argue their objections at the Final Fairness Hearing.

1.5. WHEREAS, after receiving argument and considering all of the objections, the Honorable John W. Lungstrum (the “Court”) overruled each and every objection and granted final approval to the Settlement totaling \$1.51 Billion (ECF 3849), entered a Fee and Expense Award awarding one-third of the Settlement Fund, totaling \$503 Million, as attorneys’ fees (ECF 3849) and entered a Final Order and Judgment (ECF 3850) (collectively, the “Judgment and Fee Award”).

1.6. WHEREAS, Syngenta funded the Settlement in full on or before April 1, 2019, wherein the \$1.51 billion settlement payment was deposited into an Escrow Account, which is earning interest, including interest that has been earned on the Fee and Expense Award.

1.7. WHEREAS, the Objectors filed Notices of Appeal (Appeal Nos. 18-3253, 19-3005, 19-3006, 19-3009) (“Appeals”).

1.8. WHEREAS, the Appeals are fully briefed by the Parties and no decision has been issued by the Tenth Circuit Court of Appeals.

1.9. WHEREAS, for purposes of this settlement only and pursuant to the parties’ confidential settlement negotiations first with an outside mediator (Rex Sharpe) and then with a mediator (David Aemmer) from the mediation office of the Court of Appeals for the Tenth Circuit, Objectors will agree to withdraw their Objections and request dismissal of their Appeals subject to the terms and conditions set forth below.

1.10. WHEREAS, Class Counsel and other law-firm beneficiaries of the Fee and Expense Award, who were awarded one-third of the Settlement Fund in attorneys’ fees, would be entitled to seek interest equal to at least one-third of the total interest having accrued on the Escrow Account. *See In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1458 (N.D. Cal. 1994) (“In contingent attorney fee arrangements, however, interest on the fund generated by the litigation is typically apportioned *pro-rata* between counsel and their clients based on their respective percentage ownership of the recovery.”); *In re Clearly Canadian Sec. Litig.*, No. 993, 1999 WL 707737, at *6 (N.D. Cal. Sept. 3, 1999); *In re E.I. Du Pont De Nemours & Co. C-8 Pers. Injury Litig.*, No. 2-13-MD-2433, 2018 WL 4771524, at *6 (S.D. Ohio Oct. 3, 2018) (“I agree with the Fee Committee’s recommendation that each firm should be reimbursed their common benefit expense awards with compounded interest calculated”), *report and recommendation adopted sub nom. In re E.I. Du Pont De Nemours Co. C-8 Pers. Injury Litig.*, No. 2-13-MD-2433, 2018 WL 4810290 (S.D. Ohio Oct. 3, 2018); *Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 442 (D. Md. 1998) (“attorneys are entitled to interest on a settlement fund in the proportion that the underlying fee award bears to the basic fund.”); *Ripley v. Sunoco, Inc.*, 287 F.R.D. 300, 322-23 (E.D. Pa. 2012) (“Accrued interest will be credited *pro rata* to the Net Settlement Fund, payments to named Plaintiffs, Class Counsel’s reasonable attorneys’ fees and costs awarded, including Administration Costs, in the amounts approved by the District Court.”); *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 469 (E.D. Pa. 2008); *Cooper v. Kana*, No. 3:98-CV-2804-M, 2003 WL 21209563, at *2 (N.D. Tex. May 19, 2003); *In re Intelligent Elecs., Inc. Sec. Litig.*, No. 92-CV-1905, 1997 WL 786984, at *2 (E.D. Pa. Nov. 26, 1997) (“Class counsel are hereby awarded fees in the amount of \$3,000,000.00, which represents 30% of the Settlement Fund, and expenses in the total amount of \$652,248.97, together with a 30% pro-rata share of the interest earned on the Settlement Fund, to be paid to the Executive Committee of Plaintiffs’ Counsel in the manner and on the date as set forth in the Stipulation.”).

1.11. WHEREAS, for purposes of this settlement only and pursuant to the parties’ confidential settlement negotiations in consideration of and conditioned on all the terms outlined herein, including the issuance of an Indicative Ruling by the Court pursuant to Fed. R. Civ. P. 23(e)(5)(B) and 62.1 approving of the Payment (defined below), remand by the Tenth Circuit pursuant to Fed. R. App. P. 12.1, written order by the Court approving the Payment, and dismissal

of the appeals in the Tenth Circuit without altering the approval of the Payment, Class Counsel will request that at least \$3,000,000.00 (Three Million Dollars) of the interest accrued on the Fee and Expense Award shall be used to directly benefit the class members, including to cover administrative costs or to increase the money available to distribute to claimants.

1.12. WHEREAS, all Class Counsel agree that they will not oppose Objectors' request that \$1,975,000.00 (One Million Nine Hundred Seventy-Five Thousand Dollars) ("the Payment") of the Fee and Expense Award shall be used to pay awards to the Objectors and to reimburse the Objectors attorneys' fees and expenses in the amounts stated herein as resolution of the pending appeals, and that this resolution is in the best interests of the Class, subject to (i) Court approval pursuant to the Fed. Rule Civ. P. 23(e)(5)(B) and (ii) all of the terms and conditions of this Agreement. Further, Class Counsel and Objectors agree to file a joint motion for indicative ruling in support of the request.

NOW, THEREFORE in consideration of the mutual obligations and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

2. WITHDRAWAL OF APPEALS AND REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS

2.1 **Payment.** All Class Counsel will not oppose Objectors' request that the Court award Objectors and their counsel a total amount to be approved by the Court, equal to the Payment and Objector Award, to be divided among the Objectors and their counsel in the following amounts: \$900,000.00 (Nine Hundred Thousand Dollars) to Bandas Objectors, \$325,000.00 (Three Hundred Twenty Five Thousand Dollars) to Cochran Objectors, and \$750,000.00 (Seven Hundred Fifty Thousand Dollars) to Braun Objectors which amounts include any service awards approved by the Court and/or the Tenth Circuit. The Payment shall be paid from the Fee and Expense Award, after (a) receipt of the Court's issuance of an Indicative Ruling pursuant to Fed. R. Civ. P. 23(e)(5)(B) and 62.1 approving of the Payment, (b) remand by the Tenth Circuit under Fed. R. App. P. 12.1, (c) the Court enters an order formally approving this Agreement and (d) the Tenth Circuit's dismissal of the Appeals without alteration of the approval or Fee and Expense Award. Any award to Objectors for less than the amount of the Payment as defined herein renders this agreement null and void. The Payment shall be paid from the Fee and Expense Award at the same time Class Counsel receives payment of their portion of the Fee and Expense Award, subject to the terms and conditions stated below or other terms and conditions as ordered by the Court.

2.2 **Terms and Conditions of the Payment.** Payment to Objectors ("Objector Award") is subject to the following conditions:

- 2.2.1 All Objectors, by counsel, and Class Counsel have executed this Agreement.
- 2.2.2 The Court issues an indicative ruling pursuant to Fed. R. Civ. P. 23(e)(5)(B) and 62.1 that this Agreement and the Objector Award will be approved ("Indicative Ruling") when jurisdiction is returned to the Court.

- 2.2.3 After (a) receipt of the Court’s Indicative Ruling pursuant to Fed. R. Civ. P. 23(e)(5)(B) and 62.1 approving of the Payment, (b) remand by the Tenth Circuit under Fed. R. App. P. 12.1, (c) the Court enters an order formally approving this Agreement and the Objector Award (“Final Approval Order”), and (d) the formal order approving this Agreement and the Objector award becomes final and non-appealable. Payment to Objectors of the Objector Award is further conditioned upon the Court of Appeals for the Tenth Circuit dismissing with prejudice and without any right of reinstatement or continuation by any other person each and every one of the Appeals without modification, reversal, or remand of the Final Order and Judgment, including the Fee and Expense Award.
- 2.2.4 Objectors stipulate and agree not to make, assist or participate in any manner in any further objections, opposition, appeal, collateral attack, petition for review or certiorari, or any other arguments or request for relief related to the Settlement, the Fee and Expense Award, or the allocation among law firms of the Fee and Expense Award.
- 2.2.5 **Dismissal of Appeals and Termination Provision.** If one or more objections are filed to the Joint Motion for Indicative Ruling, the Objectors may, in their discretion, declare this Agreement a nullity and proceed with the Appeals currently pending before the Tenth Circuit Court of Appeals (“Termination”). If Objectors do not elect Termination by unanimous consent communicated in writing to Class Counsel within five (5) business days after the deadline set by the Court for oppositions or objections to the Motion for Indicative Ruling (“Termination Deadline”), the Agreement shall remain in force and Objectors shall have waived their right of Termination. In the event Objectors timely elect Termination, the Parties will file a joint motion to withdraw their motion for indicative ruling and vacate hearing. The Parties will notify the Tenth Circuit Court of Appeals upon withdrawal of the motion for indicative ruling and request abatement of the Appeals, if any, be lifted and that oral argument be set for the next practicable date.

If no objections to the Joint Motion for Indicative Ruling are filed, or Objectors do not elect Termination by the Termination Deadline, the Agreement shall remain in force and Objectors shall file a motion to dismiss their Appeals, with prejudice, within three (3) days of entry of the district court’s Final Approval Order.

In the event the district court denies the Joint Motion for Indicative Ruling, the Parties will notify the Tenth Circuit Court of Appeals and request abatement of the Appeals, if any, be lifted and that oral argument be set for the next practicable date.

2.3 **Process for Approval of the Payment.** Upon execution of this Agreement by the Parties, Class Counsel and Objectors shall file their joint motion for an indicative ruling by December 9, 2019, and the Parties shall file a joint motion to postpone the January 22, 2020 oral argument of the Appeals. In addition, the Parties will request an expedited briefing schedule on the joint motion for indicative ruling as follows: (a) Any objection or opposition to the joint motion for indicative ruling must be filed by December 23, 2019 where the failure to object or oppose will constitute forfeiture and waiver of any right to oppose the Payment or Objector Award, if the award is approved in the Indicative Ruling; (b) Any reply in support of the joint motion for indicative ruling shall be filed by December 30, 2019. The foregoing dates for the requested briefing schedule are subject to modification by the Court at its discretion.

2.4 The Parties agree to cooperate in good faith and to use their respective best efforts to address any concerns or questions raised by the Court or the Tenth Circuit Court of Appeals necessary to obtain approval of the Joint Motion for Indicative Ruling and approval by the Court and the Tenth Circuit and the related dismissal with prejudice of all Appeals subject to the terms and conditions set forth in this Agreement.

3. REPRESENTATIONS AND WARRANTIES

3.1 The Parties represent and warrant that each signatory to this Agreement expressly warrants to the other Party that he, she or it has the authority to execute this Agreement on behalf of the Party or Parties to be bound by his, her or its signature, and on behalf of each and every principal or other owner of a legal, equitable or beneficial interest in such Party or Parties. Class Counsel, however, does not represent or warrant that it has the authority to bind or speak for other attorneys or law firms in the Litigation.

3.2 Each Party to this Agreement has made such investigation of the facts pertaining to the Settlement and this Agreement and of all matters pertaining thereto as he, she or it has independently deemed necessary and appropriate. Each Party has read this Agreement and understands its contents.

3.3 Simon Rademacher, Christopher Roberts, Jami Hayhurst, Dale Brookover, F. Ronalds Walker, Egler Bros., Inc. and W. Lee Egler Farms, Inc. represent and warrant that each individually has received independent legal advice from their attorney(s) with respect to the contents of this Agreement, the obligations in this Agreement, and the advisability of entering into this Agreement.

3.4 The Objectors represent and warrant their respective lodestar (total number of attorney hours expended times billing rate) and expenses they have incurred with respect to the Litigation, including the Objection, as follows: \$481,339.51 for the Bandas Objectors; \$228,750 for the Cochran Objectors, and \$394,938.43 for the Braun Objectors.

4. GENERAL PROVISIONS

4.1 For purposes of this settlement and Agreement only, Objectors agree to dismiss their appeals subject to the terms and conditions set forth in this Agreement

4.2 For purposes of this settlement and Agreement only, the Parties acknowledge that Class Counsel and the Representative Plaintiffs are not proposing any changes to the Settlement, Final Order and Judgment, or the amount of the Fee and Expense Award, notwithstanding the Parties' agreement that Class Counsel shall argue that a portion of the interest accruing on the Fee and Expense Award, to which they and other law firms are legally entitled, shall be used for the benefit of class members and to provide compensation to Objectors and their counsel. The Parties agree that all provisions of the Agreement are consistent with the terms of the Settlement and do not in any way change any of its terms and conditions, or affect, reduce or limit the relief available to the Class therein, except that it may increase the total amount of interest earned on the Settlement Fund to be used for the benefit of Class. Nothing in this Agreement effects the Judgment and Orders issued in the Litigation, the Settlement Agreement, and/or any finding that the Settlement is fair, reasonable and adequate.

4.3 After receipt of the Payment, Objectors agree not to: (i) further object, participate, or assist in any objection to the Settlement, any Judgment, or Orders issued in the Litigation; (ii) file any further appeal in relation to the Litigation, the Settlement, and any Judgment or Orders issued in the Litigation; and (iii) in any way prevent or delay the Effective Date of the Settlement or cooperate with any other person in doing so.

4.4 Neither this Agreement nor any matters relating to the terms or negotiations of this Agreement shall be admissible in any lawsuit or other proceeding for any purpose other than to establish a term or condition of this Agreement that a Party purportedly has breached or to enjoin or dismiss a lawsuit or other proceeding brought in violation of this Agreement..

4.5 All Parties agree expressly that resolution of the Objections is in the best interest of the class.

4.6 This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. Nothing in this Agreement shall be read to limit, abrogate or alter the scope, rights or obligations of the Parties under the Settlement. This Agreement may not be amended orally in any way and may be amended only by an agreement in writing signed by all Parties hereto.

4.7 Each Party has participated, cooperated or contributed to the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the same shall not be construed for or against any Party, but shall be construed fairly according to its plain meaning.

4.8 This Agreement may be executed in counterparts. When each Party has signed and delivered at least one counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one agreement which shall be binding and effective as to all Parties.

4.9 This Agreement, to the extent signed and delivered by means of a facsimile machine, E-mail, or PDF, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party hereto shall raise the use of a facsimile

machine, E-Mail, or PDF to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of these means as a defense to the formation of a contract and each such Party forever waives any such defense.

4.10 This Agreement shall be governed by the laws of the State of Kansas and any dispute shall be resolved exclusively in the United States District Court for the District of Kansas before the Honorable John W. Lungstrum or, in the event of his unavailability, by another federal district judge in the District of Kansas.

4.11 Time is of the essence in this Agreement. All terms set forth herein are material. This Agreement is binding upon and shall inure to the benefit of all Parties hereto, their agents, representatives, insurers, attorneys, accountants, advisors, partners, heirs, assigns, and successors and predecessors in interest.

I have read the foregoing Agreement and I understand its contents. I have reviewed the entire document with my attorney and, understanding its terms and conditions, agree to abide by it.



CHRISTOPHER BANDAS
Date: December 6, 2019



PATRICK J. STUEVE
Date: 12/9/2019



GEORGE W. COCHRAN
Date: Dec. 6, 2019

DANIEL E GUSTFASON
Date: _____

CHRISTOPHER J. BRAUN
Date: _____

CHRISTOPHER A SEEGER
Date: _____

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I have read the foregoing Agreement and I understand its contents. I have reviewed the entire document with my attorney and, understanding its terms and conditions, agree to abide by it.

CHRISTOPHER BANDAS
Date: _____

PATRICK J. STUEVE
Date: _____

GEORGE W. COCHRAN
Date: _____



DANIEL E GUSTFASON
Date: 12-9-19

CHRISTOPHER J. BRAUN
Date: _____

CHRISTOPHER A SEEGER
Date: _____

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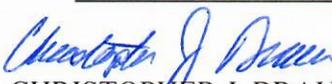


CHRISTOPHER BANDAS
Date: December 6, 2019

PATRICK J. STUEVE
Date: _____

GEORGE W. COCHRAN
Date: _____

DANIEL E GUSTFASON
Date: _____


CHRISTOPHER J. BRAUN
Date: 12/6/2019

CHRISTOPHER A SEEGER
Date: _____

machine, E-Mail, or PDF to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of these means as a defense to the formation of a contract and each such Party forever waives any such defense.

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4.11 Time is of the essence in this Agreement. All terms set forth herein are material. This Agreement is binding upon and shall inure to the benefit of all Parties hereto, their agents, representatives, insurers, attorneys, accountants, advisors, partners, heirs, assigns, and successors and predecessors in interest.

I have read the foregoing Agreement and I understand its contents. I have reviewed the entire document with my attorney and, understanding its terms and conditions, agree to abide by it.

CHRISTOPHER BANDAS
Date: _____

PATRICK J. STUEVE
Date: _____

GEORGE W. COCHRAN
Date: _____

DANIEL E GUSTFASON
Date: _____

CHRISTOPHER J. BRAUN
Date: _____

CHRISTOPHER A SEEGER
Date: 12-9-19

EXHIBIT A

United States Court of Appeals
For the
Tenth Circuit

MIKE DaVAULT, d/b/a DaVAULT ArkMo FARMS; et al.,

Plaintiffs - Appellees,

v.

SYNGENTA AG; SYNGENTA CORPORATION; SYNGENTA CROP PROTECTION AG;
SYNGENTA CROP PROTECTION, LLC; SYNGENTA BIOTECHNOLOGY, INC.;
SYNGENTA SEEDS, LLC, f/k/a Syngenta Seeds, Inc.,

Defendants – Appellees,

SIMON RADEMACHER & CHRISTOPHER ROBERTS
(No. 18-3253, 19-3009)

JAMI HAYHURST & DALE BROOKOVER
(No. 19-3005)

F. RONALDS WALKER; EGLER BROS., INC.; W. LEE EGLER FARMS, INC.
(No. 19-3006)

Objectors – Appellants.

*On Appeal from Decisions of the United States District Court for the District of Kansas
Case No. 2:14-MD-0259-JWL-JPO
Hon. John W. Lungstrum, United States District Judge*

**MOTION TO DISMISS APPEAL
WITH PREJUDICE**

Appellants Simon Rademacher and Christopher Roberts, Dale Brookover and Jami Hayhurst, F. Ronalds Walker, Egler Bros., Inc. and W. Lee Egler Farms, Inc., by their respective counsel, respectfully move to dismiss these appeals with prejudice pursuant to Federal Rule of Appellate Procedure 42(b) and pursuant to the terms of the parties' Settlement Agreement. Subject to the terms and conditions of the parties' Settlement Agreement, Plaintiffs and Appellants agree that each party shall bear his and/or their own attorneys' fees and costs.

Dated: December __, 2019

Respectfully submitted,

/s/ Robert W. Clore

Robert W. Clore

BANDAS LAW FIRM, P.C.

500 North Shoreline, Suite 1020

Corpus Christi, TX 78401

Tel: (361) 698-5200

Fax: (361) 698-5200

Counsel for Objectors/Appellants

Simon Rademacher and

Christopher Roberts

LAW OFFICE OF GEORGE W.
COCHRAN

By: */s/ George W. Cochran*

George W. Cochran
Cochran Professional Bldg.
1385 Russell Drive
Streetsboro, Ohio 44241
Tel: (330) 607-2187
Fax: (330) 230-6136
lawchrist@gmail.com
*Counsel to Objectors/Appellants
Dale Brookover and Jami
Hayhurst*

/s/ Christopher J. Braun
Christopher J. Braun
Plews Shadley Racher and Braun
LLP
1336 N. Delaware Street
Indianapolis, IN 46202
Tel: (317) 637-0700
Fax: (317) 637-0711
*Counsel for Appellants Egler
Bros., Inc. and W. Lee Egler
Farms, Inc. and F. Ronalds
Walker*

Agreed to by:

/s/ Patrick J. Stueve
Bradley T. Wilders
Rachel Schwartz
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, MO 64112

/s/ Christopher A. Seeger
Stephen A. Weiss

Diogenes P. Kekatos
SEEGER WEISS LLP
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660

Daniel E. Gustafson
GUSTAFSON GLUEK PLLC
120 S. 6th Street Suite 2600
Minneapolis, MN 55402

SETTLEMENT CLASS COUNSEL

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**IN RE SYNGENTA AG MIR162 CORN
LITIGATION**

**THIS DOCUMENT RELATES TO
ALL CASES EXCEPT:**

*Trans Coastal Supply Company, Inc. v.
Syngenta AG, et al.*, No. 2:14-cv-02637-
JWL-JPO

*The Delong Co., Inc. v. Syngenta AG, et
al.*, No. 2:17-cv-02614-JWL-JPO

*Agribase International Inc. v. Syngenta
AG, et al.*, No. 2:15-cv-02279-JWL-JPO

Master File No. 2:14-MD-02591-JWL-JPO

MDL No. 2591

**DECLARATION OF PATRICK J. STUEVE
OF STUEVE SIEGEL HANSON LLP**

I, Patrick J. Stueve, declare as follows:

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

2. I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so.

3. I have personally participated in negotiations with counsel for the Objectors and the two mediators who assisted us in reaching the Objector Settlement Agreement. We reached this agreement after months of negotiations. This settlement is in the best interests of the class as it will allow Settlement Class Counsel to begin making distributions to class members sooner. It is for this reason that Settlement Class Counsel have agreed to and signed the Joint Motion for Indicative Ruling.

4. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 9th day of December, 2019, in Kansas City, Missouri.



Patrick J. Stueve

EXHIBIT C

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

IN RE SYNGENTA AG MIR 162 CORN
LITIGATION

THIS DOCUMENT RELATES TO ALL
CASES EXCEPT:

*Louis Dreyfus Company Grains Merchandising
LLC v. Syngenta AG, et al., No.: 16-2788-
JWL-JPO*

*Trans Coastal Supply Company, Inc. v. Syngenta
AG, et al., No. 2:14-cv-02637-JWL-JPO*

*The Delong Co., Inc. v. Syngenta AG, et al., No.
2:17-cv-02614-JWL-JPO*

*Agribase International Inc. v. Syngenta AG, et al.,
No. 2:15-cv-02279-JWL-JPO*

Master File No. 2:14-MD-02591-
JWL-JPO

MDL No. 2591

DECLARATION OF ROBERT CLORE

Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

1. I am Senior Appellate Counsel at Bandas Law Firm, P.C., which maintains its principal place of business in Corpus Christi, Texas. I am competent to make this Declaration and the facts stated herein are based upon my personal knowledge.
2. Along with Christopher Bandas, the sole shareholder of the Bandas Law Firm,

I represent class members Simon Rademacher and Christopher Roberts in the above-styled litigation and in appeals before the United States Court of Appeals, Tenth Circuit.

3. I am an attorney licensed to practice law in Texas since 1999. I am a member in good standing of the State Bar of Texas, and am admitted to practice in various federal courts across the nation. I have 18 years' experience in civil appeals and litigation. I graduated *magna cum laude* from St. Mary's University School of Law, served as Articles Editor with the St. Mary's Law Journal, and clerked for two years at the Thirteenth Court of Appeals, State of Texas. I then worked as appellate counsel for several respected defense firms in Texas before joining the Bandas Law Firm to represent plaintiffs in 2016.

4. As Senior Appellate Counsel for the Bandas Law Firm, I have assisted in securing many victories on behalf of clients in both personal injury and class action matters. *See e.g., Salinas v. World Houseware Producing Co.*, 34 N.Y.3d 925, 926 (Sept. 12, 2019) (New York Court of Appeals reversing in favor of client in products liability action); *Broussard v. Omni Hotels Corp. et al.*, 2019 WL 4309574 (Tex. App.—Corpus Christi Sept. 12, 2019, no pet.) (court of appeals reversing in favor of client in personal injury action); *In re Optical Disk Drive Prods. Antitrust Litig.*, 10-2143, Dkts. 2889 (N.D. Cal. Feb. 21, 2019) (following client class member's objection, the court partially unsealed a portion of class counsels' bid to become class counsel and returned \$650,268.62 in expenses to account for objection that class counsel was

overcompensated under the terms of their bid; client class member seeks to return tens of millions more to the class on appeal); *In re Lithium Ion Batteries Antitrust Litigation*, 13-md-02420, Dkt. 2005 (N.D. Cal. Oct. 27, 2017) (reducing class counsels' fees from 25% to 10% consistent with objection of client; fee ultimately vacated by Court of Appeals for the Ninth Circuit in *In re Lithium Ion Batteries Antitrust Litig.*, 777 Fed. Appx. 231, 232-33 (9th Cir. 2019)); *Birchmeier v. Caribbean Cruise Line*, 12-cv-04069, Dkt. 629 (N.D. Ill. Apr. 10, 2017) (while overruling client's objection, nevertheless awarding class counsel between \$3-\$6 million requested consistent with the sliding-scale fee advocated by client). Though criticism has been lodged at the firm on matters occurring before my arrival, the firm also has a history of securing appellate and trial victories on behalf of class members. *See e.g.*, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 12-4671-CV, 2016 WL 3563719, at *12 (2d Cir. 2016) (Mr. Bandas' client was part of an effort in which the court "vacate[d] the district court's certification of the class, reverse[d] approval of the settlement, and remand[ed] for further proceedings not inconsistent with this opinion"); *Eubank v. Pella Corp.*, 753 F.3d 718 (7th Cir. 2014) ("The judgment [approving the settlement] is reversed and the case remanded for further proceedings"); *Litwin v. iRenew Bio Energy Sols., LLC*, 172 Cal. Rptr. 3d 328, 333 (Cal. App. 2d Dist. 2014), as modified (May 29, 2014) (in a case in which Mr. Bandas represented the objector in the lower court, the "the order granting final approval of the settlement must be reversed"); *In re Baby Products Antitrust Litig.*, 708 F.3d 163,

181-82 (3d Cir. 2013) (“We vacate the District Court's orders approving settlement and the fund allocation plan[;] “[w]e vacate the Court's order awarding attorneys' fees and costs because this award was based on the now-vacated settlement”); *Dennis v. Kellogg Co.*, 697 F.3d 858, 868 (9th Cir. 2012) (“we reverse the district court's order approving the settlement and dismissing the case, vacate the judgment and award of attorneys' fees, and remand for further proceedings”); *Dun & Bradstreet Credibility Corp.*, 2-15-CV-03194, Dkt. 80 (C.D. Cal. Mar. 22, 2017) (reducing fees consistent with objection of client for the benefit of the class).

5. I have devoted a total of 612.2 hours in *In re Syngenta AG MIR 162 Corn Litigation*, on behalf of clients Simon Rademacher and Christopher Roberts. In general, I consulted with the clients on all matters, assisted in securing local counsel, responded to discovery and deposition requests, developed case strategy, conducted legal research, drafted the objection and subsequent papers supporting it, drafted the joint consolidated briefs and other papers before the Tenth Circuit, and compiled the Joint Appendix filed by the objecting class members. My lodestar is \$367,320, calculated at an hourly rate of \$600 per hour. That rate is usual and customary in the community in which I practice for an attorney of similar experience and is well below many of the hourly rates of attorneys in the same geographic region who submitted motions for attorneys' fees to this Court. *See e.g.*, Dkt. 3580-6 at 16 (15 year attorney David McLendon from Watts Guerra charging \$800 per hour; 18 year attorney Travis Headley charging \$700 per hour); Dkt. 3598-4 at 24, 30 (14 year senior associate

Blayne Fisher from Phipps Anderson Deacon charging \$600 per hour).

6. Christopher Bandas has 24 years' experience in civil litigation. Mr. Bandas has been practicing law in Texas since 1993. He is a member in good standing of the State Bar of Texas, and is admitted to practice in various federal courts across the nation. He graduated from the University of Houston Law Center, where he served an associate editor of the Houston Law Review. After years of work with a respected defense firm in Corpus Christi, Texas, Mr. Bandas started his own plaintiff's firm in 2005, achieving outstanding results for many clients.

7. Mr. Bandas has devoted a total of 74.5 hours in *In re Syngenta AG MIR 162 Corn Litigation*, on behalf of clients Simon Rademacher and Christopher Roberts. In general, Mr. Bandas worked closely with Mr. Clore securing local counsel and responding to discovery and deposition requests, analyzing arguments for the objection and appellate briefs, and developing overall case strategy. Mr. Bandas's lodestar is \$52,150, calculated at an hourly rate of \$700 per hour. That rate is usual and customary in the community in which Mr. Bandas practices for an attorney of similar experience and is also well below many of the hourly rates of attorneys from the same geographic region who submitted motions for attorneys' fees to this Court. *See e.g.*, Dkt. 3580-6 at 16 (15 year attorney David McLendon from Watts Guerra charging \$800 per hour; 18 year attorney Travis Headley charging \$700 per hour); Dkt. 3598-4 at 24, 30 (13 year partner Jason Milne and 18 year partner John Plant charging \$750 per hour; 24 year senior partner Martin Phipps charging \$950 per

hour).

8. The Bandas Law Firm, P.C. also retained local counsel, Anthony LaCroix, LaCroix Law Firm, to provide representation of Mr. Rademacher and Roberts. Mr. LaCroix has over ten years' experience in complex and class action litigation representing individuals and companies in high stakes disputes. Mr. LaCroix has been practicing law since 2008 and is a member in good standing of the Missouri (2008) and Kansas (2009) bars. Mr. LaCroix is admitted before the District of Kansas, and the Eighth and Tenth Circuits Courts of Appeals. He graduated *magna cum laude* from the University of Missouri-Kansas City School of Law where he was notes and comments editor of the law-review. Mr. LaCroix clerked for the Honorable Ronald Hollinger of the Missouri Court of Appeals.

9. Mr. LaCroix has devoted a total of 41.3 hours in *In re Syngenta AG MIR 162 Corn Litigation*, on behalf of clients Simon Rademacher and Christopher Roberts. In general, Mr. LaCroix assisted Mr. Clore in review and edit of the objection and subsequent papers supporting it in the district court. Mr. LaCroix also assisted with representing Mr. Rademacher and Mr. Roberts during their depositions and responding to class counsel on discovery matters. Mr. LaCroix's lodestar is \$20,650, calculated at an hourly rate of \$500 per hour. That rate is usual and customary in the community in which Mr. LaCroix practices for an attorney of similar experience and is also below many of the hourly rates of attorneys from the same geographic region who submitted motions for attorneys' fees to this Court. *See e.g.*, Dkt. 3587-1 at 16-18,

131-32 (12 year attorney Brad Wilders from Stueve Siegel Hanson charging \$695 per hour; 12 year attorney Stephanie Walters from Stueve Siegel Hanson charging \$625).

10. The Bandas Law Firm, P.C. also retained attorney Eric Stewart from the Huseman Law Firm, Texas, to provide representation of Mr. Rademacher and Roberts in connection with their depositions. Mr. Stewart has 12 years' experience in civil litigation and has been practicing law in Texas since 2007. He is a member in good standing with the State Bar of Texas, and was admitted to practice in 2007. He graduated from the University of Houston School of Law, and was named a "Rising Star" by *Super Lawyers* from 2014 to 2017 in general litigation.

11. Mr. Stewart has devoted a total of 49.3 hours in *In re Syngenta AG MIR 162 Corn Litigation*, on behalf of clients Simon Rademacher and Christopher Roberts. In general, Mr. Stewart counseled Mr. Rademacher and Mr. Roberts in preparation for their depositions, conferred with Mr. LaCroix and Mr. Clore on discovery matters, communicated with class counsel, and traveled to and participated in the depositions. Mr. Stewart's lodestar is \$25,882.50, calculated at an hourly rate of \$525 per hour. That rate is usual and customary in the community in which Mr. Stewart practices for an attorney of similar experience and is also below many of the hourly rates of attorneys from the same geographic region who submitted motions for attorneys' fees to this Court. *See e.g.*, Dkt. 3580-6 at 10, 16 (11 year attorney Linda Leibfarth charging \$575 per hour; 15 year attorney David McLendon from Watts Guerra charging \$800 per hour); Dkt. 3598-4 at 24, 30 (13 year partner Jason Milne from Clark Phipps

Deacon charging \$750 per hour).

12. Collectively, the team of attorneys representing Mr. Rademacher and Mr. Roberts have worked together in diligently and efficiently advocating the objection before the district court and before the Tenth Circuit. They have travelled across the country to participate in hearings and present Mr. Rademacher and Mr. Roberts for deposition. They have taken the lead in the consolidated objector appeals before the Tenth Circuit, preparing the briefing and joint appendix filed with the Court. Collectively, the attorneys have logged 777.3 hours in uncompensated time in furtherance of Mr. Rademacher's and Mr. Roberts' objection and appeal for a total lodestar of \$466,002.50.

13. The chart below also reflects the level of experience, billable rates, and the hours for the attorneys who represented Mr. Rademacher and Mr. Roberts in this case. That expenditure of time on this case was reasonable and necessary. The rates charged by myself, \$600 per hour, and Mr. Bandas, \$700 per hour, Mr. LaCroix, \$500 per hour, and Eric Stewart, \$525 per hour, for this matter are usual and customary in the communities in which these attorneys practice and, as noted above, are well below the rates in class counsels' fee motions from similar geographic regions.

Attorney	Years of Exp.	Hours	Hourly Rate	Total
Christopher A. Bandas, Sole	24	74.5	\$700	\$52,150

Shareholder, Bandas Law Firm, P.C.				
Robert W. Clore, Senior Appellate Counsel, Bandas Law Firm, P.C.	18	612.2	\$600	\$367,320
Eric Stewart, The Huseman Law Firm	12	49.3	\$525	\$25,882.50
Anthony LaCroix, LaCroix Law Firm	11	41.3	\$500	\$20,650

14. In addition to the foregoing lodestar, the Bandas Law Firm has collectively fronted \$15,397.01 in unreimbursed litigation expenses. Taken with the foregoing lodestar, a total of \$481,339.51 has been invested by the Bandas Law Firm, P.C. in support of Mr. Rademacher's and Mr. Roberts' objection and appeal.

Dated this the 8th day of December, 2019.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Robert W. Clore
Robert W. Clore

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

**IN RE SYNGENTA AG MIR162 CORN
LITIGATION**

Master File No. 2:14-MD-02591-JWL-JPO

**THIS DOCUMENT RELATES TO
ALL CASES EXCEPT:**

MDL No. 2591

*Trans Coastal Supply Company, Inc. v.
Syngenta AG, et al., No. 2:14-cv-02637-
JWL-JPO*

*The Delong Co., Inc. v. Syngenta AG, et
al., No. 2:17-cv-02614-JWL-JPO*

*Agribase International Inc. v. Syngenta
AG, et al., No. 2:15-cv-02279-JWL-JPO*

*Kellogg, et al., v. Watts Guerra, LLP,
et al., No. 2:18-cv-2408-JWL-JPO*

DECLARATION OF CHRISTOPHER J. BRAUN

Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

1. I am a name partner at the Plews Shadley Racher & Braun LLP law firm, which maintains its principal place of business in Indianapolis, Indiana (“PSRB”). I am competent to make this Declaration and the facts stated herein are based upon my personal knowledge.
2. PSRB began its representation of class members W. Lee Egler Farms, Inc., Egler Brothers, Inc. and F. Ronalds Walker in December 2016. Since that time

various attorneys from PSRB have assisted me in the representation of these clients in the above-styled litigation and in appeals before the United States Court of Appeals, Tenth Circuit.

3. I am an attorney licensed to practice law in the District of Columbia since 1984 and in the State of Indiana since 1988. I am a member in good standing of the Bars of D.C. and Indiana, and am admitted to practice in various federal courts across the nation, including the United States Supreme Court, and the United States District Courts for the Southern and Northern Districts of Indiana. I graduated in 1981 from Wabash College, where I also studied at the Centre for Medieval and Renaissance Studies in Oxford, England. In 1984 I graduated from the Southern Methodist University Dedman School of Law, where I served on the *Southwestern Law Journal*. Upon graduation I worked as an Associate for the law firm Baker & Botts in its Washington, D.C. office for two and half years. I subsequently returned to my hometown of Indianapolis, Indiana, where I worked at the law firm Baker & Daniels (n/k/a Faegre Baker Daniels) first as an Associate and then as a Partner for two and a half years. Since July 1, 1994 I have been a Partner at PSRB.

4. I have 35 years' experience as a successful trial and appellate advocate. Since 2001 I have also served as an Adjunct Professor of Law on the Indiana University Robert H. McKinney School of Law teaching advanced trial techniques and dispute resolution. From 2001 to 2020 I was selected for inclusion in *Best Lawyers in America - Environmental Law and Environmental Litigation*. For 2019-2020 I was selected "Lawyer

of the Year” for Environmental Law in Indiana by *Best Lawyers in America*. From 2004 to 2020 I have been selected for inclusion in *Indiana Super Lawyers-Environmental Law*. For the past three years I have been selected for inclusion in *Indiana Super Lawyers* as one of Indiana’s Top 50 lawyers. In 2008 I was inducted as a *Fellow to the American College of Environmental Lawyers*. In 2010 I received the *Indiana Lawyer’s Distinguished Barrister Award* and in 2011 was recognized as a *Distinguished Senior Fellow* by the Indiana Bar Foundation. In 2018 I was the recipient of the *Bishop William L. Higi Leadership Award for Catholic Leadership*. In 2019, I was elected by the alumni of Wabash College to a four-year term on the College’s Board of Trustees.

5. Dennis Gibson has 35 years’ experience in civil litigation. Mr. Gibson graduated from the Southern Methodist University Dedman School of Law in 1984. Mr. Gibson has been practicing law in Texas since 1984. He is a member in good standing of the State Bar of Texas, and is admitted to practice in various federal courts across the nation. Mr. Gibson was also named the Outstanding Young Lawyer of Dallas in 1993.

6. PSRB and Gibson have previously jointly represented clients in other class action cases, including for example the case of *Sullivan v. DB Investment, Inc.*, 667 F.3d 273 (3d Cir. 2011) (*en banc*), where our clients prevailed at the panel stage and sought to file a petition for certiorari after losing in the *en banc* Third Circuit. After being notified that objectors would file a petition for certiorari, but before that petition was filed, the parties settled.

7. Since we began this representation in December 2016 through November 17, 2019, PSRB has incurred 389 hours and Gibson has incurred 339.3 hours in *In re Syngenta AG MIR 162 Corn Litigation*, on behalf of clients W. Lee Egler Farms, Inc., Egler Brothers, Inc. and F. Ronalds Walker. In general, this work consisted of consulting with the clients on all matters, assisting in securing and working closely with co-counsel, counsel for other objectors and class counsel, developing case strategy, conducting extensive legal research, drafting the objections and subsequent papers supporting it, jointly drafting the joint consolidated briefs and other related pleadings with counsel for other objectors before the Tenth Circuit, participating in extensive settlement negotiations with class counsel and counsel for other objectors. The lodestar for PSRB and Gibson is \$380,217.50, consisting of 728.3 hours from December 2016 through November 17, 2019 at an average hourly rate of \$522.06. The hourly rate of \$555 for Messrs. Gibson and Braun are our current standard hourly rates. That rate is usual and customary in the respective communities in Dallas and Indianapolis where we practice for an attorney of similar experience and is well below many of the hourly rates of attorneys who submitted motions for attorneys' fees to this Court. *See e.g.*, Dkt. 3580-6 at 16 (15 year attorney David McLendon from Watts Guerra charging \$800 per hour; 18 year attorney Travis Headley charging \$700 per hour); Dkt. 3598-4 at 24, 30 (14 year senior associate Blayne Fisher from Phipps Anderson Deacon charging \$600 per hour).

8. In addition to the foregoing lodestar, PSRB and Gibson have collectively

advanced \$14,719.93 in unreimbursed litigation expenses. Combined with the foregoing lodestar, through December 7, 2019 a total of \$394,937.43 has been invested by PSRB and Gibson in support of our clients, class members W. Lee Egler Farms, Inc., Egler Brothers, Inc. and F. Ronalds Walker and their objections and appeals.

Dated this the 8th day of December, 2019.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/Christopher J. Braun
Christopher J. Braun

EXHIBIT E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN
LITIGATION

Master File No. 2:14-MD-02591-JWL-JPO

THIS DOCUMENT RELATES TO
ALL CASES EXCEPT:

MDL No. 2591

Trans Coastal Supply Company, Inc. v. Syngenta AG, et al., No. 2:14-cv-02637-JWL-JPO

The Delong Co., Inc. v. Syngenta AG, et al., No. 2:17-cv-02614-JWL-JPO

Agribase International Inc. v. Syngenta AG, et al., No. 2:15-cv-02279-JWL-JPO

Kellogg, et al., v. Watts Guerra, LLP, et al., No. 2:18-cv-2408-JWL-JPO

DECLARATION OF GEORGE W. COCHRAN

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am a sole practitioner in the Law Office of George W. Cochran, located at 1385 Russell Drive, Streetsboro, Ohio 44241. I am competent to make this Declaration. The facts stated herein are based upon my personal knowledge.
2. I graduated in 1974 from Hiram College. In 1979, I graduated from Case Western Reserve University School of Law, where I won the Dean's Briefwriting Award and was a semi-finalist in the moot court competition. I was later awarded

an M.A. in Ministry Management from Ashland Theological Seminary in 1993. Finally, I earned a Ph.D. in Church Leadership from the Southern Baptist Theological Seminary in 2013.

3. I have been licensed to practice law in Ohio since 1979 and Kentucky since 2009. I am a member in good standing of both. I am also admitted to practice in the Northern District of Ohio, Western District of Kentucky and Eastern District of Kentucky. Finally, I am a member in good standing of the following U.S. Circuit Courts of Appeal: Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth and Tenth.

4. I first began serving as lead counsel in consumer class litigation in 1995. For 24 years, I represented manufactured home park residents in class litigation. Many cases were brought under the auspices of Mobile Justice, Inc., an Ohio nonprofit I formed as Executive Director to extend my support statewide. I have secured far-reaching verdicts that have changed the landscape of manufactured home park law in Ohio. I am now part of a litigation team engaged in a longstanding battle with California's largest park operator over unconscionable lease terms.

5. About ten years ago, I represented my first class member objecting to the fairness of a proposed class action settlement. Since then, I have added this area of specialty to my practice. I have represented the lone objector to a national settlement on several occasions, and my analysis has aided the court in ensuring the settlement's fairness or reasonableness of class counsel's fee.

5. In representing Jami Hayhurst and Dale Brookover, I have incurred 437.5 hours through December 6, 2019 by (without limitation) investigating various aspects of the genetically enhanced corn seed industry, reviewing numerous pleadings and other documents already in the docket, analyzing MDL/federal/ state venues, evaluating the proposed settlement, conducting legal research, consulting with my clients, strategizing, drafting the joint objection, responding to discovery and deposition requests, preparing clients for depositions, assisting in joint consolidated briefing, and reviewing/evaluating key filings.

6. The lodestar for these activities is \$213,750, with an average hourly rate of \$488.57 (usual and customary for attorneys of similar experience in greater Cleveland). It is also well below hourly rates of attorneys with fee motions before this Court. *See e.g.*, Dkt. 3580-6 at 16 (David McLendon and Travis Headley of Watts Guerra); Dkt. 3598-4 at 24, 30 (Blayne Fisher of Phipps Anderson Deacon). Finally, I incurred approximately \$15,000 in expenses.

Dated this the 8th day of December, 2019.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ George W. Cochran
George W. Cochran