

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

**IN RE: Syngenta AG MIR162  
Corn Litigation**

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) **MDL No: 2591**

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) **Case No: 14-md-2591-JWL-JPO**

**(This Document Relates to All Cases)**

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**MEMORANDUM AND ORDER**

On October 17, 2016, Co-lead counsel for Producer Plaintiffs filed their Motion for Approval of Class Notice (doc. 2598). Counsel for various putative class members timely filed objections (docs. 2642, 2645 and 2660) and Co-lead counsel replied. The defendants did not weigh in. The Court has carefully considered the submissions and the motion is granted in part, as set forth below.

Subsequent to the filings which were made, the court’s Special Master for Settlement engaged in discussions with those counsel who made the filings in order to attempt to arrive at some agreement resolving the objections to the proposed form of notice. On November 22, 2016, the court was provided a form of notice agreed to by most of the counsel involved. That form of notice purported to resolve the issues among counsel who agreed to it, including removing certain language and compromising on the conflicting suggestions for the time period for opting out of the class. With very few minor edits, the court adopts and

approves that form of notice, which is attached hereto as Exhibit A (“the Notice”). All other objections are overruled.

The Court finds that the Notice complies with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B). Moreover, the Court finds that the requirement, to which some objections were made, that the putative class members who wish to opt out of the class must personally sign a statement to that effect, either individually or on behalf of an affected entity, is permissible, indeed common place, in litigation of this kind, *see In re Oil Spill by the Oil Rig “Deepwater Horizon”*, 910 F. Supp. 2d 891, 945-46 (E.D. La. 2012), *aff’d*, 739 F.3d 790 (5th Cir. 2014), and that it is prudent to include it in this case. The record reflects strongly held disagreements between counsel for some putative class members and the court’s appointed leadership counsel about how litigation against the Syngenta defendants should be handled. Moreover, economic incentives exist for counsel who are not part of the leadership to procure opt outs in order to pursue a course in which those counsel might be better situated to earn a fee. Much information has been disseminated to putative class members in an effort to influence their decisions, some of which is at least arguably inaccurate, which reflects those counsel’s zeal. To ensure that those who actually may possess a potential claim are in fact the decision makers, it is more than reasonable to require that they take the very minimal effort required to sign and mail an opt out.

The Court also grants that portion of the motion which seeks to appoint Analytics LLC as Administrator to supervise and administer the notice procedure. The Administrator

shall compile a list of names and addresses of potential class members; ensure the distribution of the class notice via first class U.S. mail; create a website, which shall include a copy of the Notice and relevant pleadings and orders; and compile any timely requests to opt out, which Producer Plaintiffs Co-lead counsel shall promptly file after the deadline to opt out has expired. The Court will include an item on its agenda for the December 2, 2016 status conference for any desired follow up discussion concerning implementation of the Notice and the role of the Administrator.

IT IS SO ORDERED.

Dated this 23<sup>rd</sup> day of November, 2016 at Kansas City, Kansas.

s/ John W. Lungstrum  
\_\_\_\_\_  
JOHN W. LUNGSTRUM  
UNITED STATES DISTRICT JUDGE

**If you produced, and priced corn after November 18, 2013, you may be a member of a class action against Syngenta that has been certified by a federal judge.**

**This lawsuit may affect your rights**

**A COURT AUTHORIZED THIS NOTICE  
THIS IS NOT A SOLICITATION FROM A LAWYER**

**NOTICE OF CLASS ACTION LAWSUIT**

Corn producers have sued Syngenta alleging premature and irresponsible commercialization and misrepresentations related to sale of corn seed containing genetic traits MIR162 (sold as Agrisure Viptera) and Event 5307 (sold as Agrisure Duracade). They claim Syngenta's conduct caused all corn producers who priced U.S. corn on or after November 18, 2013 to receive a lower price for that corn. These are, however, only the producer's allegations. The Court has not yet decided if they are correct, and Syngenta denies the allegations.

The Honorable John W. Lungstrum, a federal district judge, has certified this case to proceed as a class action on behalf of all U.S. corn producers who meet the definition described below in Paragraph 1. The lawsuit is pending in the United States District Court for the District of Kansas.

**THIS IS NOT A SOLICITATION**

You may have received mail about this lawsuit directly from lawyers seeking to represent you. This is not a solicitation but a notice that was approved by the Court and is required by law. It is the **ONLY** such notice approved by the Court about this lawsuit at this time. Any future notice from this Court or another court should clearly state that fact.

You should review this notice because if you don't want to be part of the class, you must ask to exclude yourself by a letter postmarked no later than [90 days from the mailing date of this notice or from January 1, 2017, whichever is later] (Please see paragraph 14, below, for details).

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b>	
<b>Do NOTHING</b>	<b>Stay in this lawsuit. Await the outcome. Give up right to sue separately.</b>  By doing nothing, you keep the possibility of getting money or benefits that may come from a class trial or a settlement. You cannot, however, recover or try your claims twice; so, by participating in the class action, you give up any rights to individually sue Syngenta

	about the same legal claims in this lawsuit.
<b>ASK TO BE EXCLUDED</b>	<p><b>Get out of this lawsuit. Get no benefits from it. Sue separately.</b></p> <p>If you ask to be excluded, you will not be entitled to any money or benefits that are later obtained in a class trial or a settlement. But, you keep any rights to sue Syngenta separately about the same legal claims in this lawsuit. You may have to hire a lawyer to sue Syngenta <u>separately</u> if you want to seek money from Syngenta.</p>

## BASIC INFORMATION

### 1. Why did I get this notice?

A copy of this Notice was mailed to all corn farmers identified through government Farm Service Agency records, unless that farmer filed a Minnesota lawsuit on or before June 15, 2016, which causes the producer to be excluded from the class. You are a member of the Nationwide Class certified by the Federal Court if you satisfy each of the following conditions:

You are listed as a corn producer, including farmers and crop-share landlords, on a government Farm Service Agency Form 578;

You priced at least one bushel of corn after November 18, 2013;

You did not purchase Agrisure Viptera or Duracade corn seed;

You are not an officer, employee, or relative of the Court; a governmental entity; or an officer, director, employee, contract or agent of Syngenta; and,

You are not (1) a corn producer who resides in Minnesota or produced corn in Minnesota or (2) one of the excluded producers who filed a separate lawsuit in Minnesota on or before June 15, 2016 and hired one of the following law firms to file your case: (1) Bassford Remele; (2) Kemp, Jones & Coulthard LLP; (3) Law Offices of Charles H. Johnson; (4) Lockridge Grindal Nauen PLLP; (5) Paul Byrd Law Firm PLLC; (6) Paul McInnes; (7) Shields Law Group; (8) Wagstaff & Cartmell LLP; (9) Watts Guerra LLP.

The Federal Court also certified eight State Classes. You are a member of one of the State classes if you meet the conditions specified above and you farmed corn in Arkansas, Illinois, Iowa, Kansas, Missouri, Nebraska, Ohio, or South Dakota.

There are potential classes pending in other states of which you may be a member. A list of additional state classes is available at [insert website link].

You have legal rights and options that you may exercise at this time. This lawsuit is known as *In re Syngenta MIR162 Corn* Litigation, Civil Case No. 14-md-2591-JWL-JP0 (D. Kan.).

## **2. What is a class and who is involved?**

In a class action lawsuit, one or more people with a claim similar to yours files a lawsuit on behalf of other people who have similar claims. That person or persons is the “Class Representative.”

Representatives who sue—and all the Class Members like them—are called the Plaintiffs. The companies they sued (in this case Syngenta AG, Syngenta Corporation, Syngenta Biotechnology, Inc., Crop Protection LLC, Syngenta Seeds, Inc., or collectively, "Syngenta") are called the Defendants. In many class actions, to avoid the need for multiple lawsuits, one court resolves the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class. A list of the corn producers who will act as the Class Representatives is available in the Producer Plaintiffs' Third Amended Class Action Complaint, which you can read at [insert website link].

## **3. Why is this lawsuit a class action?**

In this lawsuit, the Court decided that the claims asserted against Syngenta can proceed as a class action because the Plaintiffs satisfied the necessary requirements of federal law governing class actions. The Court determined that a class action is superior to requiring tens of thousands of producers to file individual lawsuits because it will be more efficient for corn producers and the court system. More information about why the Court is allowing this lawsuit to be a class action is in the Court's written opinion, available at [insert website link].

## **4. Are there other lawsuits against Syngenta?**

This Court was selected by the Judicial Panel on Multidistrict Litigation to oversee all individual and class action cases filed against Syngenta that are pending in federal court. There are cases pending elsewhere, including in the United States District Court for the Southern District of Illinois, in Illinois state court, and in Minnesota state court. These include “mass tort” cases filed by lawyers on behalf of corn producers. These are similar to a class action except each corn producer must prove individually his own claims and damages.

You may have received letters or phone calls from lawyers about hiring them to file such a lawsuit on your behalf. If you want to stay in the class, and have your claims addressed through the class action, you do not need to hire another lawyer and you do not need to file an individual lawsuit. This Court appointed Class Counsel to lead the class actions and all of the individual federal lawsuits in the *In re Syngenta MIR162 Corn* Litigation, Civil Case No. 14-md-2591-JWL-JP0 (D. Kan.). A copy of the written order appointing them Class and Co-Lead Counsel, and the reasons the Court appointed them, are available at [insert website link].

## **5. Are Plaintiffs suing anyone other than Syngenta?**

Plaintiffs, on behalf of the class actions, are only suing Syngenta. Other lawyers are suing both Syngenta and Grain Buyers, such as Archer Daniels Midland, Bunge, Cargill, Louis Dreyfus, and Gavilon in Illinois and allege that the Grain Buyers are partly or wholly responsible for harm caused to farmers because the Grain Buyers should have segregated Viptera and Duracade corn and channeled it away from the Chinese market. Class Counsel has not adopted that position and believes Syngenta is wholly responsible for the alleged harm. This Court has agreed that claims against the Grain Buyers are legally barred and dismissed them.

If you stay in the class, you will only be suing Syngenta and may not be able to sue the Grain Buyers in a separate suit. If you want to pursue claims against the Grain Buyers, you may decide to exclude yourself from the class so you can sue the Grain Buyers. If, however, the claims of the Grain Buyers in the Illinois cases are later dismissed by the Illinois judges, you will not be able to rejoin this class.

## **THE CLAIMS IN THE LAWSUIT**

### **6. What is the lawsuit about?**

**According to the Plaintiffs:** This lawsuit is about whether Syngenta is responsible for harm allegedly caused to U.S. corn farmers when Syngenta sold Agrisure Viptera and Duracade before that corn was approved for importation to China. Plaintiffs allege that Syngenta either should have waited to sell those seeds until it had obtained import approval or, at minimum, should have taken reasonable precautions to ensure that its seed was sold in a manner that corn harvested from Viptera seed did not contaminate portions of the U.S. corn supply exported to China. Plaintiffs allege that Syngenta knew that China would not accept corn if it detected these traits, and that it knew that China was an important foreign market for U.S. corn farmers. Although Syngenta alleges that China was not a historical trading partner for U.S. corn, Plaintiffs claim China had begun importing corn and DDGs before Syngenta started selling Agrisure Viptera and Duracade, and China's future need for U.S. corn and DDGs was well known to Syngenta at this time. Plaintiffs also allege that Syngenta did not tell the truth about the status of its import approvals in China. In the fall of 2013, China began rejecting shipments of U.S. corn after allegedly detecting Agrisure Viptera traits in shipments from the United States. Although Viptera has now been approved by China, Plaintiffs allege that Syngenta has prolonged the loss of the Chinese market by commercializing another trait, Agrisure Duracade, without import approval in China. Plaintiffs allege that the loss of Chinese demand for US corn has negatively impacted the price all US corn sold after September 2013.

The legal theories being pursued by the Plaintiffs as part of the Nationwide Class and the State Classes are described in greater detail in the Court's written opinions, available at [insert website link].

**According to Syngenta:** Syngenta denies these allegations. Syngenta disputes that it has a legal duty to restrict its sale in the U.S. of a safe, effective seed trait that has been fully approved by the U.S. government. Syngenta alleges that before Agrisure Viptera and Duracade were made available to U.S. farmers, the products were approved by the U.S. Department of Agriculture, the

U.S. Food and Drug Administration, the U.S. Environmental Protection Agency and all of the historical U.S. trading partners for corn. Syngenta alleges that Chinese approval should not be a precondition before new safe, effective, U.S.-approved biotechnologies are made available to U.S. farmers. Syngenta alleges that it acted with reasonable care in launching these U.S. approved products in the United States and accurately transmitted its own estimates for when Chinese approval might be received. Moreover, Syngenta alleges that the actions of the grain exporters—who knew that Agrisure Viptera was not approved for import into China but shipped corn containing Agrisure Viptera to China anyway—were an intervening cause in any alleged rejection of U.S. corn by China. Finally, Syngenta states that the price drop in corn in 2013 was the product of a worldwide bumper crop of corn and other factors—not due to China's rejection of U.S. corn.

**7. What are the Plaintiffs asking for on behalf of the Class?**

The Plaintiffs are seeking damages from Syngenta for all market losses allegedly suffered by U.S. corn producers as a result of losing Chinese demand for U.S. corn. Plaintiffs have hired two agricultural economists to measure the impact of losing the Chinese market on corn prices who have estimated market losses to farmers in the range of \$5-7 billion dollars. Plaintiffs also seek punitive damages, treble damages and Syngenta's profits from the sale of Viptera and Duracade under the Lanham Act, and attorneys' fees and costs. The Plaintiffs do not claim that damages are the same for every corn producer. If damages are awarded, Plaintiffs will argue that they should be divided by the Court based, at least in part, on the amount of corn each class member grew and marketed.

**8. Has the Court decided who is right?**

The Court has not decided whether Syngenta or the Plaintiffs are correct or whether corn producers suffered any damages. The Court has made a number of legal rulings in the case, and those rulings are available at [insert website link]. By certifying this lawsuit as a class action and issuing this notice, the Court is not suggesting that the Plaintiffs will win or lose the case. The purpose of a class action is to decide those issues on behalf of all Class Members in the class actions.

**9. Is there any money available now?**

No money or benefits are available now. No money will be available unless and until Syngenta and Plaintiffs reach a settlement or the Plaintiffs prevail at trial and following all appeals. There is no guarantee that money or benefits ever will be obtained. If they are, you will be notified of your entitlement to recovery and how to obtain it. To be eligible for any recovery as part of this class action lawsuit, you must remain in the class. If you remain in the class and no benefits are obtained, you will have no right to seek recovery of any damages or other relief from Syngenta.

## WHO IS IN THE CLASS

### **10. Am I part of this class?**

You are part of the class if you meet the following requirements:

You are listed as a corn producer, including farmers and crop-share landlords, on government Farm Service Agency Form 578;

You priced at least one bushel of corn after November 18, 2013;

You did not purchase Agrisure Viptera or Duracade corn seed;

You are not an officer, employee, or relative of the Court; a governmental entity; or an officer, director, employee, contract or agent of Syngenta; and,

You are not one of the excluded producers who (1) resides in Minnesota or produced corn in Minnesota or (2) filed a separate lawsuit in Minnesota on or before June 15, 2016 and hired one of the law firms listed in Paragraph 1.

### **11. I'm still not sure if I am included.**

If you are still not sure whether you are included, you can get free help at [insert website link] or by calling [1-800-xxx-xxxx] or by writing to \_\_\_\_\_ at [Insert Address].

## YOUR RIGHTS AND OPTIONS

### **12. What happens if I do nothing at all?**

By doing nothing you are staying in the class. If Plaintiffs win, you may be entitled to money as determined by the Court. If Plaintiffs lose, you will not be able to sue Syngenta again for the claims in this lawsuit and will be bound by that outcome. If the case settles, you may or may not be afforded another opportunity to exclude yourself from the class as determined by the Court, but you will be afforded the right to object to the terms of any settlement.

The Court will not permit a settlement of your claims unless it is fair and reasonable.

### **13. Why would I ask to be excluded?**

You must ask to be excluded if you want to sue Syngenta and/or the Grain Buyers individually for damages allegedly caused by Agrisure Viptera or Duracade. If you have already filed an individual lawsuit and want to proceed on the basis of that lawsuit, rather than through this class

action, you will have to ask to be excluded. If you make the choice to be excluded and to pursue a lawsuit individually you may have to hire your own lawyer, respond to discovery, potentially have your deposition taken, and appear and prove your claims at trial.

If you stay in the class action, you will not have to do anything unless and until a recovery is obtained. At that point, the Court will notify you what you need to do to receive your share of the recovery. No attorneys' fees will be awarded unless the Plaintiffs prevail against Syngenta. Typically, attorneys' fees deducted from a class action recovery range from 25% - 33% of the overall recovery, but ultimately it will be up to the Court.

Because your claims may be subject to a time deadline, if you want to exclude yourself from the class to file an individual case, you should consult a lawyer.

#### **14. How do I ask to be excluded?**

To ask to be excluded you must send an "Exclusion Request" in the form of a letter sent by U.S. Mail. You must sign the letter personally. The signature of your attorney will not be accepted by the Court.

- In the case of an entity or other business relationship, any natural person who can legally bind the entity may sign the letter personally (other than an attorney representing the entity in litigation or potential litigation related to the sale of corn seed containing genetic traits MIR162 and Event 5307).
- If you are a crop-share landlord whose name is reflected on an FSA 578 form as having an interest in the crop, you must sign and date the letter personally.

Your letter must contain the following information: (1) your name, address, and social security (if you are a natural person) or tax id (for entities) number; (2) if you are a natural person, then your letter must include your original, handwritten signature and date of signature; in the case of an entity, then the letter must include the original, handwritten signature and date of signature of any natural person who can legally bind the entity (other than an attorney representing the entity in litigation or potential litigation related to the sale of corn seed containing genetic traits MIR 162 and Event 5307); (3) a statement that you are choosing to exclude yourself from the Syngenta Federal Class Action and that you understand that you will not share in any recovery obtained by judgment on behalf of the class, and that you have reviewed and understand the Class Notice; and (4) the name of your attorney, if you have one. Your signature must be made and dated on or after [insert mailing date for this Notice]. Your letter must be postmarked by [90 days from mailing or from January 1, 2017, whichever is later], to: [Insert Address]. The Court will not accept electronic copies.

The Court will not accept exclusions signed by a lawyer. Nor will it accept exclusions signed prior to the date this notice was mailed.

## THE LAWYERS REPRESENTING YOU

### **15. Do I have a lawyer in the class action?**

The Court has appointed William Chaney, Don Downing, Scott Powell, and Patrick Stueve to represent the class. These lawyers are referred to as Class Counsel. These lawyers have experience in prosecuting complex cases on behalf of Plaintiffs. They also have experience in crop contamination cases. Several of them tried the federal rice contamination cases against Bayer and secured multiple verdicts on behalf of rice farmers (In re Genetically Modified Rice Litigation, 06-md-1811). Class Counsel has led much of the efforts on behalf of a large group of attorneys in securing evidence on behalf of the Plaintiffs in this litigation. The Court has determined that they are qualified and that they have ably represented the interests of producers in this litigation.

### **16. What if I already hired a lawyer?**

Even if you hired a lawyer, you have the option of staying in the class action certified by the Courts. You can stay in the class by doing nothing. If you want to file a new lawsuit or maintain an existing lawsuit with your own lawyer, you must exclude yourself in the manner described by Paragraph 14. All exclusions must be signed by you. Your lawyer cannot request exclusion on your behalf.

### **17. If I already hired a lawyer, will I have to pay both that lawyer and class counsel?**

In a class action, the Court makes decisions about attorneys' fees and can only award "reasonable" attorneys' fees. If you hired a lawyer before you received this notice and want to stay in the class, the Court will determine how much the lawyers will be paid at the end of the case and how it will be divided, if at all, between the lawyers appointed by the Court and the lawyer you already hired.

### **18. Should I get my own lawyer?**

If you decide to stay in the class, you do not need to hire your own lawyer but you are welcome to do so. Class Counsel, who was appointed by the Court, is working on your behalf. But, if you want another lawyer, you will have to hire one on your own. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

### **19. What about lawyers advising me to exclude myself from the class?**

You may receive letters or calls from lawyers seeking to represent you in this case. You have the right (but not the obligation) to consult an attorney for advice about whether to stay in the class. Please review Paragraph 13 to better understand the consequences of excluding yourself from the Class.

**20. How will the lawyers be paid?**

Class Counsel is working on a contingency-fee basis. You will not have to pay them anything if there is no recovery. They will get paid only if they get money or benefits for the class, whether by favorable judgment or settlement. If that occurs, they may ask the Court for their fees and expenses. The Court will only award fees and expenses that it finds reasonable. If the Court grants Class Counsel's request, the fees and expenses would be either deducted from any money obtained for the Class or paid separately by Syngenta, or may be a combination of the two. Generally, in class actions, the attorneys' fees deducted from any recovery are no more than one-third (33.3%). They can sometimes be less, but will not exceed that amount in this case.

**THE TRIAL**

**21. How and when will the Court decide the case?**

If the case isn't resolved by a settlement or otherwise, Class Counsel will have to prove the Plaintiffs' claims at a trial. During the trial, a jury or the Judge will hear all of the evidence to help them reach a decision about whether the Plaintiffs or Syngenta are right about the claims in the lawsuit. The first trial is expected to start on June 5, 2017, and the Court is currently evaluating the nature of that trial. If the trial date changes, it will be published on the website.

**22. Do I have to come to trial?**

If you stay in the class, you will not have to testify at the trial and will not be required to attend it. Class Counsel will present the case for the Plaintiffs, and Syngenta will present the defenses. You and your own lawyer (if applicable) are welcome to attend the trial at your own expense. If Plaintiffs prevail at trial on the class issues, the Court will inform you as to what information you may need to provide to share in a monetary recovery (if any).

**23. Will I get money after the Court rules?**

If you stay in the class action, and the Plaintiffs obtain money or benefits as a result of the trial or a settlement, you will be notified about how to receive any share recovered on your behalf. We do not know how long this might take.

**GETTING MORE INFORMATION**

**24. Is more information about the lawsuit available?**

Yes. If you have any questions or require additional information, you should contact any of the following individuals who are counsel to the Plaintiffs and the Class in this lawsuit:

[Insert Toll Free Number]

[WEBSITE]

PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK REGARDING THIS  
MATTER.