

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

<b>In Re: Syngenta AG MIR162</b>	)	
<b>Corn Litigation</b>	)	
	)	<b>MDL No. 2591</b>
	)	
<b>This document relates to:</b>	)	<b>Case No. 2:14-md-2591-JWL-JPO</b>
<b>All Cases</b>	)	

**ORDER ESTABLISHING PROTOCOLS FOR COMMON BENEFIT WORK  
AND EXPENSES AND ESTABLISHING THE COMMON  
BENEFIT FEE AND EXPENSE FUNDS**

On January 22, 2015, the Court entered an order appointing Co-Lead Counsel, the Executive Committee, Interim Class Counsel and Liaison Counsel. ECF No. 67 (the “Leadership Order”). The Leadership Order permits Co-Lead Counsel (“Lead Counsel”) to assess other plaintiffs’ counsel for the expenses of the litigation and requires parties to maintain contemporaneous records of their time and expenses devoted to this matter. *Id.* at ¶¶ 4(m), 6.

The Leadership Order also defines the authority, duties and responsibilities of counsel appointed to leadership roles in this multidistrict proceeding (the “MDL”) and supplements the guidelines and rules for staffing, fees, expenses and billing records by attorneys acting for the common benefit of all producer and/or all non-producer plaintiffs in this multidistrict litigation for claims relating to or arising from genetically modified Syngenta corn, the commercialization of Agrisure Viptera or Agrisure Duracade or of any corn including genetically modified traits MIR162 or Event 5307 (“Corn”). This Order additionally provides for the fair and equitable sharing among plaintiffs’ counsel of the burden of services performed and expenses incurred by attorneys acting for the common benefit of all producer and/or all non-producer plaintiffs in this complex litigation.

## I. GOVERNING PRINCIPLES AND THE COMMON BENEFIT DOCTRINE

The common benefit governing principles are derived from the United States Supreme Court's common benefit doctrine, as initially established in *Trustees v. Greenough*, 105 U.S. 527 (1881) and as refined throughout the last century in cases including *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1884), *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939), *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970) and *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); *see also* Manual for Complex Litigation, § 14.215 (4th ed. 2004) (noting that “Lead and liaison counsel may have been appointed by the court to perform functions necessary for the management of the case but not appropriately charged to their clients” and encouraging an order early in the litigation that “establish[es] the arrangements for their compensation, including setting up a fund to which designated parties should contribute in specified proportions.”); Eldon E. Fallon, *Common Benefit Fees in Multidistrict Litigation*, 74 LA. L. REV. 371, 374 (2014) (“Because the work that the PSC performs inures to the common benefit of all plaintiffs and their primary counsel (the counsel that they employed), MDL transferee courts usually establish a procedure for creating a common benefit fee to compensate the members of the PSC and the members of any subcommittees who have done common benefit work.”).

The Court's authority to establish a fund and to order contributions also derives from its equitable authority and its inherent managerial power over this consolidated and multidistrict litigation. *See, e.g., In re Diet Drugs*, 582 F.3d 524, 546-47 (3rd Cir. 2009); *In re Air Crash Disaster at Fla. Everglades*, 549 F.2d 1006, 1008 (5th Cir. 1977); Manual for Complex Litigation, § 20.312 (“MDL judges generally issue orders directing the defendants who settle MDL-related cases contribute a fixed percentage of the settlement to a general fund to pay national counsel.”); Fallon, *supra*, at 378 (the common benefit doctrine is justified “on principles of equity or quantum meruit or class action procedures or [a court's] inherent authority”).

## **II. SCOPE OF THIS ORDER**

This Order governs the use of Common Benefit Work, as defined below, by: (1) MDL Counsel; (2) Participating Counsel; and (3) certain attorneys and their firms seeking leadership in the Minnesota state court coordinated proceedings (the “Remele/Sieben Group”), their clients (the “Remele/Sieben Group Client”), and, with respect to such clients, the Remele/Sieben Group’s co-counsel (the “Remele/Sieben Group Co-Counsel”), as described in the Remele/Sieben Group’s and Co-Lead Counsel’s Amended and Restated Joint Prosecution Agreement dated June 18, 2015 (the “Remele Agreement”).

### **A. MDL Counsel**

For purposes of this Order, the term “MDL Counsel” includes each attorney who represents one or more plaintiffs in a case that at any time has been pending in this MDL or in any case later filed in, transferred to, or removed to this Court, unless all of that attorney’s cases are remanded back to state court, and continues to apply as to any case dismissed from this Court or to any case remanded back to a federal transferor court. The obligations of this Order follow any such cases to their ultimate disposition. The assessment amounts described below as applicable to MDL counsel do not apply to cases outside the MDL, including cases remanded to state court.

### **B. Participating Counsel**

All counsel who are not MDL Counsel, as defined above, or who are MDL Counsel but who also have cases outside the MDL, including cases remanded to state courts, are eligible to sign the Participation Agreement, attached hereto as Exhibit A (the “Participation Agreement”). All counsel who execute the Participation Agreement are hereinafter referred to as “Participating Counsel” and all Participating Counsel are subject to this Order and the jurisdiction of this Court relating to this Order. Solely in their respective capacities as counsel for the Cargill and ADM

plaintiffs, counsel for the Cargill and ADM plaintiffs have agreed to execute Participation Agreements and, solely for purposes of this Order, these counsel are included in the definition of Participating Counsel, and are not MDL Counsel.

The Participation Agreement is a voluntary agreement between Lead Counsel and executing plaintiffs' attorneys allowing the Participating Counsel access to Common Benefit Work. Counsel who sign the Participation Agreement shall be entitled to receive and to use for their cases all Common Benefit Work performed by or for Lead Counsel and other counsel at Lead Counsel's direction in this MDL.

Any plaintiff's attorney who wants to and is eligible to become a Participating Counsel and who currently has at least one Corn case on file in any state or federal court outside of this MDL shall execute the Participation Agreement within 45 days of the entry of this Order or within 45 days of notification by Lead Counsel of this Order, whichever date is later. Any plaintiffs' attorney who at the time this Order is entered does not have a case pending in any state or federal court and who wants to become a Participating Counsel shall execute the Participation Agreement within 45 days of the date their first Corn client is engaged or within 120 days of entry of this Order, whichever date is later. The failure to execute a Participation Agreement within the time frame set forth in the preceding paragraph will result in higher assessment percentages as a result of later execution. *Accord In re: Testosterone Replacement Therapy Prods. Liab. Litig.*, No. 14-cv-1748, MDL No. 2545, ECF No. 488 (Corrected Case Management Order No. 16 (Establishing Common Benefit Fee and Expense Funds)) at 3 (N.D. Ill. Nov. 25, 2014) (ordering an increase in the fee assessment from 8% to 16% if the participation agreement is not timely executed). These higher percentages are set forth in Section IV(B)(3)(c)-(d).

### C. Remele/Sieben Group

The Remele/Sieben Group and the Remele/Sieben Group Co-Counsel shall not be considered MDL Counsel or Participating Counsel under this Order. Rather, their rights and obligations in connection with this Order shall be governed by the Remele Agreement, which rights and obligations, in pertinent part, may be summarized as follows<sup>1</sup>:

1. They shall be entitled to use Common Benefit Work;
2. They shall pay fee and cost assessments identical to those paid by MDL Counsel for clients who: (a) filed their Syngenta claims at any time in the past or at any time in the future in federal court; or (b) choose to have their state cases go to federal court;
3. They shall pay fee and cost assessments of fifty percent (50%) of the level ordered by this Court for MDL Counsel for all other clients; and
4. They shall not be eligible to seek Common Benefit payments from the Common Benefit fund established by this Court (except for members of the Group who are already members of the Executive Committee appointed by this Court) and the Federal MDL Co-Leads shall not be eligible to seek Common Benefit payments from a Common Benefit Fund that may be established by the Minnesota court.

The Remele/Sieben Group and the Remele/Sieben Group Co-Counsel are uniquely situated in this litigation. They have agreed to undertake significant efforts to promote appropriate federal-state cooperation and coordination. They also have agreed to seek from the Minnesota state court overseeing coordinated proceedings common benefit assessments that are

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<sup>1</sup> The Remele/Sieben Group's, the Remele/Sieben Group Client's, and the Remele/Sieben Group Co-Counsel's rights and obligations are governed by the specific language in the Remele Agreement, which was provided *in camera* to the Court, and not by the summaries contained in this Order.

identical in percentage to the MDL assessment percentages, and to take steps to avoid duplicate assessments in federal and state courts. This step should discourage assessment based forum selection decisions. Given these and other undertakings to which the Remele/Sieben Group and the Remele/Sieben Group Co-Counsel have agreed, as described in the Remele Agreement submitted to and reviewed *in camera* by the Court, the Court finds that treating the Remele/Sieben Group, the Remele/Sieben Group Clients, and the Remele/Sieben Group Co-Counsel separately is in the best interests of all plaintiffs in this litigation, and the Court therefore has incorporated into this Order the provisions of the Remele Agreement relating to common benefit assessments as described herein.

**D. Counsel to Whom Common Benefit Work May Be Shared**

Without the express written consent of each of the Co-Lead Counsel, MDL Counsel and Participating Counsel are prohibited from sharing Common Benefit Work Product with counsel who do not execute a Participation Agreement. As described in the Remele Agreement, the Remele/Sieben Group and Remele/Sieben Group Co-Counsel are prohibited from sharing Common Benefit Work Product with counsel who are not subject to Common Benefit payments to the Common Benefit Funds, except when taking depositions or during hearings or trials.

**III. ADOPTION OF CASE MANAGEMENT PROTOCOLS**

The Court hereby adopts the following guidelines for the management of case-staffing, timekeeping, expense reimbursement, and related Common Benefit issues, and instructs Lead Counsel to distribute additional guidelines as may be necessary to ensure the efficient prosecution of this litigation. The recovery of Common Benefit attorneys' fees and expenses will be limited to MDL Counsel and Participating Counsel (together with necessary staff of their respective firms).

MDL Counsel and Participating Counsel shall be eligible to receive Common Benefit

attorneys' fees and reimbursement of expenses only if the time expended, expenses incurred, and activity in question were: (a) for the Common Benefit of all producer and/or non-producer plaintiffs; (b) conducted by Lead Counsel and their respective firms or otherwise appropriately authorized by Lead Counsel in writing; (c) timely submitted; (d) reasonable; and (e) verified by a partner or shareholder in the submitting firm. Lead Counsel is empowered to engage a Certified Public Accountant ("CPA") to review these submissions.

As further detailed below, all counsel who seek to recover Court-awarded Common Benefit fees and expenses shall keep a daily, contemporaneous record of their time and expenses, noting with specificity the amount of time, billing rate, and activities, along with a brief note indicating which Lead Counsel authorized the activity in question. All counsel who seek to recover Court-awarded Common Benefit fees and expenses agree to the terms and conditions herein, including submitting to this Court's jurisdiction and agreeing that this Court has plenary authority regarding the assessment award and allocation of Common Benefit fees and expenses. The Court will determine at a later date, if needed, the methodology for allocating any Common Benefit assessments among those who performed approved work and incurred approved expenses. There is no guaranty that all of the time submitted by any counsel or firm will be compensated and the submitted hourly rate for the work that is compensated is not guaranteed.

**A. Common Benefit Work**

**1. Authorization for Compensable Common Benefit Work**

"Common Benefit Work" means services performed for the benefit of all producer and/or all non-producer plaintiffs ("Common Benefit") and specifically authorized by Lead Counsel. Common Benefit Work includes, but is not limited to, investigation, discovery (whether documents, interrogatories, depositions or otherwise), coding or other analytical work relating to

documents or evidence, research, motions and responses to motions, exhibits, bellwether trials and transcripts, all other work performed under the direction of Lead Counsel for the benefit of all producer and/or all non-producer plaintiffs, and orders on substantive matters involving Common Benefit Work. Authorization to perform Common Benefit Work shall be obtained from Lead Counsel under a procedure that they will determine.

Unless specifically and explicitly authorized in writing, no time spent on developing or processing individual issues in any case for an individual client, no time spent on the solicitation of potential clients and no time spent on any unauthorized work, will be considered or should be submitted. No client-related time, save certain time relating to cases which in the future may be selected as bellwether cases or time related to class representatives in a Master or Consolidated Class Complaint, shall be considered Common Benefit Work. Examples of authorized Common Benefit Work and unauthorized work include, but are not limited to:

a) **Depositions:** Lead Counsel shall exercise discretion, judgment, and prudence to designate only that number of attorneys to participate in any given deposition that is commensurate with the nature of that deposition so as to avoid over-staffing. Time and expenses for counsel not designated as one of the authorized questioners or otherwise authorized to attend the deposition by Lead Counsel shall not be considered Common Benefit Work but, rather, as attending on behalf of such counsel's individual clients.

b) **Conference Calls and Meetings:** Conference calls and meetings held at the direction of Lead Counsel for discussion of case management, coordination, and litigation activity are generally considered Common Benefit Work. Calls and meetings solely to impart status information generally are not Common Benefit Work as to those listening. Attorneys designated by Lead Counsel to run or participate in those calls, on the other hand, are

working for the Common Benefit by keeping other attorneys educated about the litigation and their time is Common Benefit Work. During such telephone or conference calls and meetings, there is a presumption that only the authorized active participants' time will qualify as Common Benefit Work, although exception may be made for good cause as determined by Lead Counsel.

c) **MDL Status Conferences:** Status conferences will be held so that the litigation moves forward and legal issues are resolved with the Court. Counsel may attend any status conference held in open court, but mere attendance at or listening to a status conference will not be considered Common Benefit Work, and expenses incurred in relation thereto will not be considered Common Benefit Expenses. Attorneys designated by Lead Counsel to prepare agendas, confer with opposition counsel and otherwise address issues that will be raised at a given status conference or requested by Lead Counsel to be present at a status conference are considered to be performing Common Benefit Work. Similarly, any attorney whose attendance at a status conference is specifically requested by the Court to address a common issue may submit his or her time for evaluation as Common Benefit Work.

d) **Identification and Work-Up of Experts:** Identification, interview, discussions, preparation of reports and all other matters involving experts on common issues, experts relating to cases selected as bellwether cases or experts related to a Master or Consolidated Class Complaint are considered Common Benefit Work. All services and expenses related to experts retained without authorization by Lead Counsel are not eligible for Common Benefit fees or expenses.

e) **Attendance at Seminars:** Attendance at seminars or Continuing Legal Education programs shall not qualify as Common Benefit Work, or the expenses pertaining thereto as Common Benefit Expenses.

**f) Trial Consultants and Preparation:** Trial consultants and participation in trial preparation, mock trials or focus group activity for bellwether trials may qualify as Common Benefit Work and Common Benefit Expense as authorized by Co-Lead Counsel.

**g) Document Discovery:** All work performed and expenses incurred in connection with document discovery (including meet-and-confers with opposing counsel and any motions to compel) relating to common issues and authorized by Lead Counsel qualify as Common Benefit Work and Common Benefit Expense. If an attorney elects to review documents without prior authorization by Lead Counsel, that review is not considered Common Benefit Work. It is the Court's expectation that counsel will minimize the number of individual timekeepers from a single law firm to ensure the efficiency of time spent on this litigation. Descriptions associated with "document review" must contain sufficient detail to allow those reviewing the time entry to generally ascertain what was reviewed.

**h) Motions:** All research, drafting, and presentation of motions and responses to motions on common issues and authorized by Lead Counsel are considered Common Benefit Work.

**i) Review of Filings and Orders:** Mere review of filings and orders generally does not qualify as Common Benefit Work. It is anticipated that there will be a large number of filings in this case and mere review of these filings will not be approved as Common Benefit Work. Those attorneys working on assignments by Lead Counsel requiring them to reasonably review, analyze, or summarize certain filings and substantive orders of this Court in connection with their assignments are doing so for the Common Benefit. In addition, it is expected that Lead and Liaison Counsel, as well as members of the Executive Committee, will

review case management and substantive orders of the Court as part of their leadership responsibilities. Reasonable time spent reviewing these court rulings and orders by court-appointed leadership will be considered Common Benefit Time.

**j) Emails and Correspondence:** Except for Lead and Liaison Counsel, their assigned attorneys and staff working on this MDL and those designated by Lead Counsel to work on assignments requiring them to review emails and correspondence, time recorded for reviewing emails and other correspondence is not compensable as Common Benefit Work. For example, review of an email or other correspondence sent to dozens of attorneys to keep them informed on a matter on which they are not specifically working would not be compensable as Common Benefit Work.

**k) Written Discovery:** Only those attorneys designated by Lead Counsel to review discovery are working for the common benefit and their time accordingly considered Common Benefit Work. All other counsel are reviewing those discovery responses for the benefit of their own clients, and such review will not be considered Common Benefit Work.

**l) Travel Time:** Reasonable Travel Time may be compensable as Common Benefit Work, to the extent necessary and approved by Lead Counsel in connection with assigned Common Benefit Work or to the extent work otherwise compensable is performed while in transit. In the event that Participating Counsel or MDL Counsel are unsure if the action they are about to undertake is considered Common Benefit Work, they shall ask Lead Counsel in advance as to whether such time may be compensable.

## **2. Verification**

The forms detailing potential Common Benefit Work shall be certified by an attorney

with authority in each firm attesting to the accuracy of the submissions.

**B. Common Benefit Expenses**

“Common Benefit Expenses” means expenses authorized by Lead Counsel and incurred for the benefit of all producers and/or all non-producer plaintiffs. Expense submissions shall be made to Lead Counsel on a monthly basis, by deadlines to be set by Lead Counsel, in accordance with the guidelines set forth herein. Only reasonable expenses incurred while performing work specifically authorized in writing by Lead Counsel will be eligible for consideration as common benefit expenses; any expense over \$500 must be specifically approved in advance in writing by Lead Counsel.

No client-related expenses, save certain expenses relating to cases which in the future may be selected as potential bellwether cases or those related to class representatives in a Master or Consolidated Class Complaint, shall be considered Common Benefit Expenses, unless exceptional circumstances exist and are approved by later order of this Court.

**1. Travel Limitations:** Only reasonable expenses will be reimbursed. Except in extraordinary circumstances approved by Lead Counsel, all travel reimbursements are subject to the following limitations:

**a) Airfare:** Ordinarily, only the price of the lowest available, convenient coach fare seat will be reimbursed. Business/First Class Airfare will not be reimbursed. In the event that non-coach air travel is utilized, including economy plus or premium economy, the attorney shall be reimbursed only to the extent of the lowest available, convenient coach fare, which must be contemporaneously documented. If non-coach, private or charter travel is elected, the applicant is required to document what the lowest available, convenient coach fare in effect at that time was, and that is all that can be reimbursed.

b) **Hotel:** Hotel room charges for the average available room rate of a business hotel, such as the Hyatt, Hilton, Westin, and Marriott hotels, in the city in which the stay occurred, will be reimbursed. Liaison Counsel shall attempt to negotiate a reduced rate for a hotel located near their offices for the benefit of all counsel. Luxury hotels will not be fully reimbursed but, rather, will be reimbursed at the average available rate of a business hotel.

c) **Meals:** Meal expenses must be reasonable. Expenses that significantly exceed the meal allowances for federal employees may not be approved for reimbursement. There will be no reimbursement for alcoholic beverages, room service, mini-bar items, or movies.

d) **Cash Expenses:** Miscellaneous cash expenses for which receipts generally are not available (*e.g.*, tips, luggage handling) will be reimbursed up to \$50.00 per trip, as long as the expenses are properly itemized.

e) **Automobile Rental:** Luxury automobile rentals will not be fully reimbursed, unless only luxury automobiles are available. Counsel must submit evidence of the unavailability of non-luxury vehicles. If luxury automobiles are selected when non-luxury vehicles are available, then the difference between the luxury and non-luxury vehicle rates must be shown on the travel reimbursement form and only the non-luxury rate may be claimed.

f) **Mileage:** Mileage claims must be documented by stating origination point, destination, total actual miles for each trip and rate per mile paid by the attorney's firm. The rate will be the IRS Standard Business Mileage Rate for the period in which the mileage was driven.

## 2. **Non-Travel Limitations**

a) **Long Distance, Conference Call, and Cellular Telephone**

**Charges:** Common Benefit long distance, conference call, and cellular telephone charges must be documented as individual call expenses in order to be compensable. Such charges are to be reported at actual cost.

**b) Shipping, Overnight, Courier, and Delivery Charges:** All claimed Common Benefit shipping, overnight, courier, or delivery expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package. Such charges are to be reported at actual cost.

**c) Postage Charges:** A contemporaneous postage log or other supporting documentation must be maintained and submitted for Common Benefit postage charges. Such charges are to be reported at actual cost.

**d) Facsimile Charges:** Contemporaneous records should be maintained and submitted showing faxes sent and received. The per-fax charge shall not exceed \$0.50 per fax.

**e) In-House Photocopy:** A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is \$0.10 per page for in-firm photocopies and any necessary vendor photocopies shall be at actual cost.

**f) Computerized Research: Lexis, Westlaw, or Bloomberg:** Claims for Lexis, Westlaw, Bloomberg, or other computerized legal research expenses should be in the exact amount charged to the firm and appropriately allocated for these research services.

### **3. Verification**

The forms detailing expenses shall be certified by an attorney with authority in each firm attesting to the accuracy of the submissions. Attorneys shall maintain all receipts for all

expenses, which shall be available upon request.

#### **4. Shared Costs and Capital Contributions**

Each Lead Counsel and other counsel as designated by Lead Counsel shall pay a monetary amount, as directed below, which shall be used to pay reasonable and necessary Common Benefit Expenses on an ongoing basis (the “Shared Costs”). The timing and amount of each contribution will be determined by Lead Counsel and must be paid within 30 days of the date of written request by Lead Counsel. Failure to timely pay capital contributions as may be requested by Lead Counsel throughout this litigation will be grounds for barring counsel from submitting Common Benefit Work or Common Benefit Expenses for reimbursement.

All costs that fall under the following categories and/or other expenses incurred for the benefit of all producer and/or all non-producer plaintiffs as determined by Lead Counsel shall be considered Shared Costs and shall qualify for submission and payment:

- a)** court, filing and service costs related to common issues;
- b)** service costs, including translation fees, for service of the consolidated complaints on all domestic and foreign defendants named in those complaints;
- c)** deposition and court reporter costs for depositions (excluding those that are client-specific);
- d)** document depository creation, operation, staffing, equipment and administration;
- e)** translation costs related to the above;
- f)** Lead Counsel, Liaison Counsel, or Executive Committee administration matters;

- g)** legal, financial institutional and accountant fees relating to expenses;
- h)** expert witness and consultant fees and expenses for experts whose opinions, advice and testimony would be generic and for the common benefit of all producers or all non-producers covered by a consolidated or master complaint. There shall be no reimbursement for case specific experts, except for liability and causation experts in class or bellwether cases, at the discretion of the Lead Counsel;
- i)** printing, copying, coding, scanning related to the above (out-of-house or extraordinary firm costs);
- j)** research by outside third-party vendors/consultants/attorneys, approved by Lead Counsel;
- k)** investigative services, approved by Lead Counsel; and
- l)** mediator costs.

No client-related costs, save certain costs relating to cases selected in the future as potential bellwether cases or those related to class representatives in a Master or Consolidated Class Complaint, shall be considered Shared Costs, unless exceptional circumstances exist. All Shared Costs must be approved by Lead Counsel prior to payment.

Lead Counsel shall prepare and be responsible for distributing additional reimbursement procedures. Requests for payment shall include sufficient information to permit Lead Counsel and a CPA, if engaged by Lead Counsel, to account properly for expenses and to provide adequate detail to the Court.

## **5. Held Costs**

“Held Costs” are Common Benefit Expenses carried by counsel in this MDL or by Participating Counsel and reimbursed as and when Lead Counsel determines to do so. Held Costs are those that do not fall into the above Shared Cost categories but are incurred for the common benefit of all producers or non-producers covered by a consolidated complaint. No client-specific costs can be considered Held Costs, other than certain Common Benefit Expenses relating to class representative or potential bellwether plaintiffs at the discretion of Lead Counsel.

Held Costs shall be recorded in accordance with the guidelines set forth herein and in additional procedures as prepared by Lead Counsel.

### **C. Timekeeping and Submission of Time and Expense Records**

All time and expenses must be accurately and contemporaneously maintained and tracked. In order to qualify for Common Benefit fees or expenses, MDL Counsel and Participating Counsel shall keep contemporaneous billing records of the time spent in connection with Common Benefit Work on this MDL, indicating with specificity the hours and billing rate, along with a brief note indicating the source of authorization for the activity in question and a brief description of the particular activity. Time and expense submissions shall be made to Lead Counsel on a monthly basis, by deadlines to be set by Lead Counsel, in accordance with the guidelines set forth herein and using monthly reports to be distributed by Lead Counsel so that Lead Counsel may retain those forms for later submission to this Court if and when necessary. The first submission is due on May 31, 2015, and should include all time and expense through April 30, 2015. Thereafter, all time and expense reports shall be submitted on the last calendar day of each month and shall cover the time period through the end of the preceding month (*i.e.*,

the June 30, 2015 submission should include all time and expenses incurred during the month of May 2015).<sup>2</sup> Generally, only time and expense incurred after the Court's January 22, 2015 Order appointing Plaintiffs' Leadership shall be submitted and considered as potential Common Benefit Work.<sup>3</sup>

Time and expense entries that are not sufficiently detailed will not be considered for payment of Common Benefit fees. All time for Common Benefit Work by each firm shall be recorded and maintained in tenth-of-an-hour increments. The failure to secure authorization from Lead Counsel to incur Common Benefit time and expenses, or to maintain and timely provide such records or to provide a sufficient description of the activity, will be grounds for denying the recovery of attorneys' fees or expenses in whole or in part. Lead Counsel must maintain all time submissions in a format so that the Court may review any application for fees.

#### **IV. PLAINTIFFS' COMMON BENEFIT FEE AND EXPENSE FUNDS**

##### **A. Establishing the Fee and Expense Funds**

Plaintiffs' Liaison Counsel is directed to establish two interest-bearing accounts to receive and disburse funds (the "Funds") as provided in this and subsequent Orders. The first fund shall be designated the "Corn Common Benefit Fee Fund" and the second fund shall be

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<sup>2</sup> Although counsel should submit all Common Benefit Expenses incurred in a certain month in the submission made on the last calendar day of the next month, some third party billing and credit card statement schedules may make such expense submission difficult. In such circumstances and in compliance with guidelines developed by Lead Counsel, counsel may submit expenses incurred in the previous two months that – because of circumstances outside the submitting counsel's control – could not have been submitted by the Court-ordered deadline. Any common benefit expenses submitted more than two months in arrears shall not be considered as Common Benefit Expenses absent good cause as determined by Lead Counsel.

<sup>3</sup> In their discretion, Lead Counsel may consider time and expense incurred before the Court's January 22, 2015 Order as Common Benefit Work and Common Benefit Expense if the time or expense benefitted all producer and/or all non-producer plaintiffs in a material and direct way. Time and expense incurred in client solicitation, efforts to secure a leadership appointment, pre-appointment attendance at meetings of plaintiffs' counsel, attendance at the JPML hearing, attendance at the initial court hearing and similar tasks shall not be approved.

designated the “Corn Common Benefit Expense Fund.” These funds will be held subject to the direction of this Court.

By subsequent Order of this Court, the Court will appoint a Special Master who is a qualified certified public accountant (the “Special Master”) to serve as Escrow Agent over the Funds and to keep detailed records of all deposits and withdrawals and to prepare tax returns and other tax filings in connection with the Funds, if needed. Such subsequent Order may specify the hourly rates to be charged by the Special Master and for the Special Master’s assistants, who shall be utilized where appropriate to control costs. The Special Master shall submit quarterly detailed bills to Plaintiffs’ Liaison Counsel and the Court, at the Court’s request. Upon approval by the Court, the Special Master’s bills shall be paid from the Corn Common Benefit Expense Fund and shall be considered Shared Costs. Plaintiffs’ Liaison Counsel shall provide a copy of this Order to the Special Master. The parties may jointly propose a Special Master for the Court’s consideration. If the parties are unable to agree on a proposed Special Master, the Court will select a neutral Special Master to serve in this role.

**B. Payments into the Corn Common Benefit Fee and Corn Common Benefit Expense Funds**

**1. General Standards**

All counsel and plaintiffs who are subject to this Order who agree to settle, compromise, dismiss, or reduce the amount of a claim or, with or without trial, recover a judgment for monetary damages or other monetary relief, including compensatory and punitive damages, with respect to Corn claims or a Corn case are subject to an assessment on the Gross Monetary Recovery, as provided herein.

**2. Gross Monetary Recovery**

Gross Monetary Recovery includes any and all amounts paid by defendants through

settlement or pursuant to a judgment. In measuring the “Gross Monetary Recovery,” the parties are to (a) exclude any court costs that are to be paid by the defendant, but include any attorneys’ fee awards under any fee-shifting statute or rule; (b) include any payments to be made by the defendant to a third party; (c) include the present value of any fixed and certain payments to be made in the future; and (d) if applicable, subtract any recovery paid by the plaintiff to a defendant through settlement or pursuant to a judgment for counterclaim(s) asserted in a Corn case by a defendant.

### **3. Assessment Amounts**

In the event that there is a class settlement, recovery or judgment in favor of the class, no assessment pursuant to this Section will be made, either for attorneys’ fees or for expenses, individually from any class member or his/her/its individual attorney as to the portion of any class recovery distributed to that individual class member if the class member remains in the class (i.e., does not opt-out of the class). Instead, all fees and expenses for that class member will come out of the overall class recovery funds provided by defendants, as approved by the Court, or as otherwise Ordered by the Court. The relationship between class counsel fees and costs obtained through any class settlement or judgment and the Common Benefit Fund will be addressed, if necessary, by later order of the court.

The assessments in this Order represent a holdback (*see, e.g., In re Zyprexa Prods. Liab. Litig.*, 467 F. Supp. 2d 256 (E.D.N.Y. 2006)) and shall not be altered absent further order of the Court. The obligations in this Section shall follow the case to its final disposition, including a court having jurisdiction in bankruptcy.

Defendants shall hold back<sup>4</sup> and set aside for placement into the Corn Common Benefit Fee Fund and the Corn Common Benefit Expense Fund the following amounts in this Section.

a) For recoveries by any client whose attorney falls within the definition of MDL Counsel, as defined above, (excluding cases outside the MDL, including cases remanded to state court), the assessments are:

- for each producer client, a total 11% assessment amount (8% for attorneys' fees and 3% for expenses) of the Gross Monetary Recovery; or
- for each non-producer client, a total 9% assessment amount (7% for attorneys' fees and 2% for expenses) of the Gross Monetary Recovery.<sup>5</sup>

b) For recoveries by any client (whether the client's case is filed in a federal or state court or is unfiled) whose attorney is either not an MDL Counsel or whose attorney is an MDL Counsel but whose case is outside the MDL, and whose attorney becomes a Participating Attorney by voluntarily executing the Participation Agreement within 45 days of

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<sup>4</sup> In the event any defendant fails to hold back the assessments required by this Section, plaintiffs' counsel has an equal duty to pay the appropriate holdback amounts to the Corn Common Benefit Fee Fund and the Corn Common Benefit Expense Fund. Under all scenarios (except to the extent the attorney is being paid an hourly rate), the fee assessment shall be paid from the attorney's portion of the recovery and shall not be borne by the client.

<sup>5</sup> As indicated above, the fee and expense assessment percentages contained in this subsection (a) apply to the Remele/Sieben Group Clients who filed at any time in the past or who file at any time in the future their Syngenta claims in federal court or choose to have their state cases go to federal court (all as described in the Remele Agreement). Defendant shall hold back and set aside for placement into the Corn Common Benefit Fee Fund and the Corn Common Benefit Expense Fund the percentages contained in this subsection (a) for the Remele/Sieben Group Clients in these categories. With respect to all other Remele/Sieben Group Clients, the fee and expenses assessment percentages shall be fifty percent (50%) of the amount ordered herein in this subsection (a) (all as described in the Remele Agreement). Defendants shall hold back and set aside for placement into the Corn Common Benefit Fee Fund and the Corn Common Benefit Expense Fund 50% of the percentages contained in this subsection (a) for this group of the Remele/Sieben Group Clients.

entry of this Order or notice by Lead Counsel if the attorney has at least one Corn case on file in any court as of the entry of this Order, whichever date is later and as defined in Section II(B) above, or within 45 days of the date the attorney's first Corn client is engaged or 120 days of entry of this Order, whichever date is later, the assessments are:

- for each producer client, a total 7% assessment amount (4% for attorneys' fees and 3% for expenses) of the Gross Monetary Recovery; or
- for each non-producer client, a total 5.5% assessment amount (3.5% for attorneys' fees and 2% for expenses) of the Gross Monetary Recovery.

**c)** For recoveries by any client (whether the client's case is filed in a federal or state court or is unfiled) whose attorney is either not an MDL Counsel or whose attorney is an MDL Counsel but whose case is outside the MDL, whose attorney has at least one Corn case on file in any court, and whose attorney becomes a Participating Attorney by voluntarily executing the Participation Agreement more than 45 days but less than 90 days of entry of this Order, filing of the Participating Counsel's first Corn case in any court or notice by Lead Counsel, as defined in Section II(B) above, whichever date is later, the assessments are:

- for each producer client, a total 9% assessment amount (6% for attorneys' fees and 3% for expenses) of the Gross Monetary Recovery; or
- for each non-producer client, a total 7.5% assessment amount (5.5% for attorneys' fees and 2% for expenses) of the Gross Monetary Recovery.

**d)** For recoveries by any client (whether the client's case is filed in a federal or state court or is unfiled) whose attorney is either not an MDL Counsel or whose attorney is an MDL Counsel but whose case is outside the MDL, and whose attorney becomes a Participating Attorney by voluntarily executing the Participation Agreement 90 or more days

after entry of this Order or notice by Lead Counsel if the attorney has at least one Corn case on file in any court as of the entry of this Order, whichever is later and as defined in Section II(B) above, or more than 45 days after the date the attorney's first Corn client is engaged or more than 120 days after entry of this Order if the attorney does not have at least one Corn case on file in any court as of the entry of this Order, the assessments are:

- for each producer client, a total 13% assessment amount (10% for attorneys' fees and 3% for expenses) of the Gross Monetary Recovery; or
- for each non-producer client, a total 11.5% assessment amount (9.5% for attorneys' fees and 2% for expenses) of the Gross Monetary Recovery.

#### **4. Defendants' Obligations to Pay Common Benefit Assessments**

Defendants and their counsel shall not distribute any proceeds, whether by settlement or in satisfaction of a judgment, to any plaintiff's counsel (or directly to a plaintiff) in cases covered by this Order until after: (1) defendants' counsel notifies Plaintiffs' Liaison Counsel in writing of the existence of a settlement or judgment and the name of the individual plaintiff's attorney, and (2) Plaintiffs' Liaison Counsel has advised defendants' counsel of the amount (stated as a percentage of the recovery) of the assessment pursuant to this Order. Plaintiffs' Liaison Counsel shall share this information with Plaintiffs' Lead Counsel, who shall otherwise keep this information confidential.

For cases subject to an assessment, defendants are directed to withhold an assessment from any and all amounts paid to plaintiffs and their counsel and to pay the assessment directly into the Funds as a credit against the settlement or judgment. No notice or order of dismissal of any plaintiff's claim, subject to this Order, shall be entered unless accompanied by a certificate of plaintiff's and defendants' counsel that the assessment, if applicable, will be withheld and will

be deposited into the Funds at the same time the settlement proceeds are paid to settling counsel. If, for any reason, the assessment is not or has not been so withheld, the plaintiff's counsel whose case is being resolved is responsible for paying the assessment into the Funds promptly. The Special Master shall provide Plaintiffs' Lead and Liaison Counsel with written verification that defendants have made full and complete payments to the Funds (or to the Escrow Account) in accordance with this Order and with all procedures established by the Special Master. The full and complete payments and the required verification from the Special Master shall discharge defendants' and defendants' counsel's obligations and responsibilities with respect to the deposited funds, including any disputes between or among plaintiffs and plaintiffs' counsel as to the allocation of such funds.

To preserve the confidentiality of settlement amounts, if such confidentiality is agreed to by the settling parties in their settlement agreement(s), details of any individual settlement agreement, individual settlement amount, and/or amounts deposited into escrow by any particular defendant shall be confidential and shall not be disclosed by the Special Master to anyone other than the Court, upon request or by Order of the Court. Monthly statements from the Special Master shall be provided to Plaintiffs' Lead and Liaison Counsel (and, if the Court so requests, to the Court) showing only the total quarterly deposits from all defendants, any disbursements, interest earned, and financial institution charges, if any, and the current balance.

#### **5. Reporting Obligations**

Upon learning of a Corn case being filed in any state court or any federal court outside of this MDL, Defendants' Liaison Counsel shall notify Plaintiffs' Liaison Counsel of such filing within 60 days of service of the complaint/petition upon any defendant. Such notice shall include the case name, the name, firm name, and firm address of the plaintiff's attorney(s) and

the date of such filing or, if the plaintiff's attorney is already a Participating Counsel, just the case name, the name of the plaintiff's attorney and the date of such filing.

Plaintiffs' Liaison Counsel shall provide Defendants' Liaison Counsel, the Special Master, and the Court, if requested, with a list of cases, if filed, and counsel who are subject to signed Participation Agreements. This same list shall be made available to all plaintiffs' counsel with cases in this MDL, as well as any other plaintiffs' counsel who signs the Participation Agreement, upon request. In the event there is a dispute as to whether a case should be on the list, Plaintiffs' Lead Counsel shall seek to resolve the matter with the particular plaintiff's counsel informally, and if that is unsuccessful, upon motion to the Court. The parties' reporting obligations shall continue quarterly until the conclusion of this MDL.

## **V. DISTRIBUTIONS**

### **A. Court Approval**

The amounts deposited into the Corn Common Benefit Fee Fund and the Corn Common Benefit Expense Fund shall be available for distribution to MDL Counsel and Participating Counsel who have performed professional services or incurred expenses for the Common Benefit of all producer and/or all non-producer plaintiffs as authorized by Lead Counsel. No amounts will be disbursed without review and approval by the Court, or such other mechanism as the Court may order. This Court retains jurisdiction over any common benefit award or distribution.

To the extent the funds collected from the holdbacks exceed the amounts ultimately approved by the Court for distribution to attorneys performing Common Benefit Work, that excess shall be refunded to those who have paid assessments on a *pro rata* basis.

### **B. Application for Distribution**

Each MDL Counsel or Participating Counsel performing Common Benefit Work has the right to present a claim(s) for compensation and/or reimbursement through a procedure directed

by Lead Counsel prior to any distribution approved by this Court. Counsel who are not MDL Counsel or Participating Counsel shall not be eligible to receive common benefit payments for any work performed or expenses incurred.

Plaintiffs' Lead Counsel shall make recommendations to this Court for distributions to MDL Counsel and Participating Counsel performing Common Benefit Work and/or incurred Common Benefit Expenses. In the event that there is not unanimous agreement among Plaintiffs' Lead Counsel, each Lead Counsel shall only have one vote and each vote shall bear the same weight. A decision about the recommendation to the Court by the Lead Counsel need only be made by a majority of votes. Lead Counsel shall determine on their own the most fair and efficient manner by which to evaluate all of the time and expense submissions in making its recommendation to this Court. This Court will give due consideration to the recommendation of Lead Counsel in making its ruling on the award of common benefit fees and common benefit cost reimbursement.

**IT IS SO ORDERED.**

Dated this 27<sup>th</sup> day of July, 2015 at Kansas City, Kansas.

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

**EXHIBIT A**

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

<b>In Re: Syngenta AG MIR162</b>	)	
<b>Corn Litigation</b>	)	
	)	<b>MDL No. 2591</b>
	)	
<b>This document relates to:</b>	)	<b>Case No. 2:14-md-2591-JWL-JPO</b>
<b>All Cases</b>	)	

**EXHIBIT A TO ORDER ESTABLISHING PROTOCOLS FOR  
COMMON BENEFIT WORK  
(Common Benefit Participation Agreement)**

**THIS COMMON BENEFIT PARTICIPATION AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the Plaintiffs’ Co-Lead Counsel, as appointed by the United States District Court for the District of Kansas in MDL 2591, and \_\_\_\_\_ [**Name of the Law Firm Executing the Agreement**] (the “Participating Counsel”), on behalf of all of their clients having claims for claims relating to or arising from genetically modified Syngenta corn, the commercialization of Agrisure Viptera or Agrisure Duracade or of any corn including genetically modified traits MIR162 or Event 5307 (“Corn”), or if Participating Counsel is also an MDL Counsel, on behalf of his clients with cases outside the MDL, including cases that are remanded to state court.

**WHEREAS**, the United States District Court for District of Kansas has appointed Don Downing, William Chaney, Scott Powell and Patrick Stueve to serve as Co-Lead Counsel (“Lead Counsel”) and Patrick Stueve to serve as Liaison Counsel (“Liaison Counsel”) to facilitate the conduct of pretrial proceedings in the Corn actions; and

**WHEREAS**, the Lead Counsel, in association with other attorneys working for the common benefit of plaintiffs, have developed or are in the process of developing work product

that will be valuable in all proceedings and benefit all producer and/or all non-producer plaintiffs alleging injury or damages caused by this Corn (“Common Benefit Work Product”); and

**WHEREAS**, Participating Counsel is desirous of acquiring the Common Benefit Work Product for the benefit of his or her client(s).

**NOW THEREFORE**, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

**I. SCOPE OF AGREEMENT**

**A. Purpose**

This Participation Agreement (the “Agreement”) is a private cooperative agreement between plaintiffs’ attorneys to share Common Benefit Work Product pursuant to the Court’s Order Establishing Protocols for Common Benefit Work and Expenses and Establishing the Common Benefit Fee and Expense Funds (the “Order”), which is incorporated herein. By signing this Participation Agreement, the Participating Counsel who executes this Agreement is entitled to receive and use Common Benefit Work Product, regardless of the venue in which Participating Counsel’s cases are pending.

**B. Rights and Obligations of Participating Counsel**

Participating Counsel shall be provided access to the Common Benefit Work Product, including access to the document depository. Participating Counsel agrees that all Corn cases and/or claims in which Participating Counsel has any fee interest, including unfiled cases, tolled cases, and/or cases filed in any state or federal court, are all subject to the terms of this Participation Agreement.

Participating Counsel shall produce a list that correctly sets forth the name of each client represented by them and/or in which they have an interest in the attorney fee, regardless of what that interest is, who has filed a Corn civil action. Such list shall include the court and docket

number of each such case. Participating Counsel shall also produce a list that contains the name of each client represented by them and/or in which they have an interest in the attorney fee, regardless of what that interest is, who has not yet filed a civil action. Participating Counsel shall supplement the lists on a quarterly basis and provide the lists to Plaintiffs' Liaison Counsel via electronic mail at Syngenta@stuevesiegel.com. The initial list shall be provided within 14 calendar days of signing this Agreement and must be supplemented every 90 days thereafter.

## **II. AGREEMENT TO PAY AN ASSESSMENT ON GROSS RECOVERY**

Subject to the terms of this Agreement and the terms of the Order, Participating Counsel who agrees to settle, compromise, dismiss, or reduce the amount of a claim, or with or without trial, recover a judgment for monetary damages or other monetary relief, including compensatory and punitive damages, for any Corn claims on behalf of any client are subject to an assessment of the Gross Monetary Recovery, as provided herein, regardless of whether Participating Counsel has actually accessed or used Common Benefit Work prior to any resolution.

### **A. Gross Monetary Recovery Defined**

"Gross Monetary Recovery" includes any and all amounts paid to plaintiffs' and/or their counsel by defendant(s) through a settlement or pursuant to a judgment. In measuring the Gross Monetary Recovery, the parties are to (a) exclude court costs that are to be paid by the defendant, but include any attorneys' fee awards under any fee-shifting statute or rule; (b) include any payments to be made by the defendant to a third party; (c) include the present value of any fixed and certain payments to be made in the future; and (d) if applicable, subtract any recovery paid by the plaintiff to a defendant through settlement or pursuant to a judgment for counterclaim(s) asserted in a Corn case by a defendant.

### **B. Assessment Amount**

This assessment herein represents a holdback (*see, e.g., In re Zyprexa Prods. Liab. Litig.*,

467 F. Supp. 2d 256 (E.D.N.Y. 2006)). The obligations in this Section shall follow all cases to their final disposition, including a court having jurisdiction in bankruptcy. The following assessment shall be set aside for placement into the Corn Common Benefit Fee Fund and the Corn Common Benefit Expense Fund.

For recoveries by Your clients who never had a case pending in the MDL or whose federal case was remanded to state court (whether the client's case is first filed in a federal or state court or is unfiled) if You are voluntarily executing the Participation Agreement within 45 days of entry of the Order or notice from Lead Counsel if you have at least one Corn case on file in any court as of the entry of this Order, whichever date is later and as defined in the Court's Order, Sections II(B), IV(B)(3)(b), or within 45 days of the date Your first Corn client is engaged or 120 days of entry of the Court's Order, whichever date is later, the assessments are:

- for each producer client, a total 7% assessment amount (4% for attorneys' fees and 3% for expenses) of the Gross Monetary Recovery; or
- for each non-producer client, a total 5.5% assessment amount (3.5% for attorneys' fees and 2% for expenses) of the Gross Monetary Recovery.

For recoveries by Your clients who never had a case pending in the MDL or whose federal case was remanded to state court (whether the client's case is first filed in a federal or state court or is unfiled) if you have at least one Corn case on file in any court as of the entry of the Court's Order and You are voluntarily executing the Participation Agreement more than 45 days but less than 90 days of entry of the Order or notice from Lead Counsel, as detailed in the Court's Order, Sections II(B), IV(B)(3)(c), whichever date is later, the assessments are:

- for each producer client, a total 9% assessment amount (6% for attorneys' fees and 3% for expenses) of the Gross Monetary Recovery; or
- for each non-producer client, a total 7.5% assessment amount (5.5% for attorneys' fees and 2% for expenses) of the Gross Monetary Recovery.

For recoveries by Your clients who never had a case pending in the MDL or whose federal case was remanded to state court (whether the client's case is first filed in a federal or state court or is unfiled) if You are voluntarily executing the Participation Agreement 90 or more days after entry of the Order or notice from Lead Counsel if you have at least one Corn case on file in any court as of the entry of the Court's Order, whichever is later and as detailed in the Court's Order, Sections II(B), IV(B)(3)(d), or more than 45 days after the date Your first Corn client is engaged or more than 120 days after entry of the Court's Order if You do not have at least one Corn case on file in any court as of the entry of this Order, the assessments are:

- for each producer client, a total 13% assessment amount (10% for attorneys' fees and 3% for expenses) of the Gross Monetary Recovery; or
- for each non-producer client, a total 11.5% assessment amount (9.5% for attorneys' fees and 2% for expenses) of the Gross Monetary Recovery.

In the event any defendant fails to hold back the assessments required by this Section, it is Your duty to pay the appropriate holdback amounts to the Corn Common Benefit Fee Fund and the Corn Common Benefit Expense Fund. Under all scenarios (except to the extent You are being paid an hourly rate), the fee assessment shall be paid from Your portion of the recovery and shall not be borne by Your client.

### **C. Covered Cases**

By signing this Agreement, the Participating Counsel agrees that the assessment percentages set forth above shall apply to all of his or her law firm's cases that never were pending in the MDL or that were pending but were remanded to state court, including un-filed cases, tolled cases, federal cases not transferred to the MDL, and/or cases filed in any state court in which they have a fee interest, regardless of the size of that fee interest, and that the assessment percentages for MDL Counsel set forth in the Court's Order will apply to any cases

that have been, are or will become part of this MDL, except those cases that are remanded to state court. To the extent there are one or more MDL global settlements entered into or approved by Plaintiffs' Co-Lead Counsel that include assessment percentages, the assessment percentages in the settlement will control for any client who elects to participate in the settlement.

**D. Attorneys' Fee Lien**

With respect to each client represented in connection with Corn related claims that are filed or pending in any federal or state court, are un-filed, or are subject to a tolling agreement, Participating Counsel agrees to have defendants deposit or cause to be deposited in the Corn Common Benefit Fee and Expense Funds established by the District Court in the MDL a percentage of the Gross Monetary Recovery recovered by each such client that is equal to the assessment amount. In the event defendants do not deposit the assessed percentage into the Funds, Participating Counsel shall deposit or cause to be deposited in the Corn Common Benefit Fee and Expense Funds a percentage of the Gross Monetary Recovery recovered by each such client that is equal to the assessment amount. Participating Counsel, on behalf of themselves, their affiliated counsel, and their clients, hereby grant and convey to Plaintiffs' Lead Counsel a lien upon and/or a security interest in any fee (a) generated as a result of any recovery by any client who they represent in connection with any Corn-related claims and (b) they have any interest in, to the full extent permitted by law, in order to secure payment in accordance with the provisions of this Agreement. Participating Counsel will undertake all actions and execute all documents that are reasonably necessary to effectuate and/or perfect this lien and/or security interest.

**III. COMMON BENEFIT WORK AND EXPENSES**

**A. Common Benefit Expenses Eligible for Reimbursement**

In order to be eligible for reimbursement as Common Benefit Expenses, said expenses

must be: (a) for the common benefit of all producer and/or non-producer plaintiffs; (b) appropriately authorized by Lead Counsel in writing; (c) timely submitted using the monthly reports created by Lead Counsel; (d) reasonable; (e) verified by a partner or shareholder in the submitting firm; and (f) in compliance with the Order. Attorneys shall keep all receipts for all expenses, which shall be made available upon request. Examples of authorized and unauthorized expenses are listed in the Order.

**B. Common Benefit Work Eligible for Reimbursement**

In order to be eligible for reimbursement as Common Benefit Work, time expended must be: (a) for the common benefit of all producer and/or non-producer plaintiffs; (b) appropriately authorized by Lead Counsel in writing; (c) timely submitted using the monthly reports created by Lead Counsel; (d) reasonable; (e) verified by a partner or shareholder in the submitting firm; and (f) in compliance with the Order. Moreover, if counsel is a member of Plaintiffs' Executive Committee or other firm authorized by Lead Counsel to perform Common Benefit Work and fails to timely submit capital contributions as may be requested by Lead Counsel throughout this litigation, such counsel and members of his/her firm shall not be allowed to submit common benefit time or expenses for reimbursement.

“Common Benefit Work” means services performed for the benefit of all producer and/or all non-producer plaintiffs (“Common Benefit”) and specifically authorized by Lead Counsel. Unless specifically and explicitly authorized in writing, no time spent on developing or processing individual issues in any case for an individual client, no time spent on the solicitation of potential clients and no time spent on any unauthorized work, will be considered or should be submitted. No client-related time, save certain time relating to cases which may be selected in the future as bellwether cases or time related to class representatives in a Master or Consolidated

Class Complaint, shall be considered Common Benefit Work. Examples of authorized and unauthorized work are listed in the Order.

**C. Counsel to Whom Common Benefit Work May Be Shared**

Without the express written consent of each of the Co-Lead Counsel, MDL Counsel and Participating Counsel are prohibited from sharing Common Benefit Work Product with counsel who do not execute a Participation Agreement. The Remele/Sieben Group and Remele/Sieben Group Co-Counsel are prohibited from sharing Common Benefit Work Product with counsel who do not execute a Participation Agreement, except when taking depositions or during hearings or trials, but no transcripts containing such work product will be disclosed.

**D. Submission of Time and Expense Records**

All time must be accurately and contemporaneously maintained. Participating Counsel shall keep a daily record of time spent in connection with Common Benefit Work on this litigation, indicating with specificity the hours, location, and particular activity. Time entries that are not sufficiently detailed may not be considered for common benefit payments and time submissions may be audited by a CPA. All common benefit time shall be maintained in tenth-of-an-hour increments.

Participating Counsel must follow the guidelines set forth in the Court's Order and in other written guidelines as established by Lead Counsel. All time and expense submissions must use the forms provided by Liaison Counsel and must be submitted electronically by the end of each calendar month, beginning on May 31, 2015. Failure to provide submissions in a timely manner shall result in a waiver of attorneys' fees and expenses claimed for the time period that is the subject of the submission. Failure to submit time and expense records in the electronic format on forms approved by Plaintiffs' Lead Counsel may also result in the waiver of attorneys'

fees and expenses. Time spent compiling the data for the time and expense submissions is not considered common benefit time.

The undersigned Participating Counsel understands, acknowledges and agrees that there is no guaranty that all of the time submitted by any counsel or law firm will be compensated and that the hourly rate for the work that is compensated is not guaranteed (*e.g.*, that Lead Counsel may award different hourly rates for different work and for the same work performed by different attorneys or law firms). The undersigned also understands, acknowledges, and agrees that all hours are not going to be viewed equally and awarded at the same rate (*e.g.*, document review time and deposition/trial time may not be treated and awarded at the same rate).

**E. Distribution of Fees**

**1. No Individual Right to the Funds:** No party or attorney has any individual right to any common benefit funds except to the extent directed by order of the MDL Court. Common benefit funds will not constitute the property of any party or attorney or be subject to garnishment or attachment for the debts of any party or attorney except when and as directed by court order.

**2. Court Approval:** The amounts deposited in the Corn Common Benefit Fee Fund shall be available for distribution to attorneys who have performed professional services or incurred expenses for the common benefit. The MDL Court retains jurisdiction over any common benefit award. The undersigned Participating Counsel, on behalf of themselves, their law firm, their affiliated counsel, and their clients, hereby consents to the jurisdiction of the MDL Court in connection with any common benefit award.

**[Participation Agreement continues on the next page]**

I \_\_\_\_\_ [name of attorney] hereby represent that I have the authority to execute this Agreement on behalf of my law firm, \_\_\_\_\_ [insert name of law firm], and on behalf of all of my Corn clients. I hereby represent that I have the authority to bind my law firm and all of my Corn clients to the terms of this Participation Agreement.

My law firm's first Corn case was filed in any state or federal court on \_\_\_\_\_, 201\_\_\_. I hereby certify that my law firm DID or DID NOT [please circle] have a Corn case on file in any state or federal court as of \_\_\_\_\_, 2015, the date the MDL Court entered the Order.

**PLEASE INITIAL ONLY ONE OF THE FOLLOWING:**

\_\_\_\_\_ [please initial] I hereby certify that I am executing this Participation Agreement within 45 days of entry or notice as defined in the Court's Order, Sections II(B), IV(B)(3)(b), if I had at least one Corn case on file in any court as of the entry of the Court's Order, or within the 45 or 120 days as defined in the Court's Order, Sections II(B), IV(B)(3)(b), if I did not have at least one Corn case on file in any court as of the entry of the Court's Order, and the assessments on all recoveries by my clients (whether the client's case is filed in a federal or state court or is unfiled) are:

- for each producer client, a total 7% assessment amount (4% for attorneys' fees and 3% for expenses) of the Gross Monetary Recovery; or
- for each non-producer client, a total 5.5% assessment amount (3.5% for attorneys' fees and 2% for expenses) of the Gross Monetary Recovery.

\_\_\_\_\_ [please initial] I hereby certify that I had at least one Corn case on file in any court as of the entry of the Court's Order and I am executing this Participation Agreement more than 45 days and less than 90 days after entry or notice as defined in the Court's Order, Sections

II(B), IV(B)(3)(c), and the assessments on all recoveries by my clients (whether the client's case is filed in a federal or state court or is unfiled) are:

- for each producer client, a total 9% assessment amount (6% for attorneys' fees and 3% for expenses) of the Gross Monetary Recovery; or
- for each non-producer client, a total 7.5% assessment amount (5.5% for attorneys' fees and 2% for expenses) of the Gross Monetary Recovery.

\_\_\_\_\_ [please initial] I hereby certify that I had at least one Corn case on file in any court as of the entry of the Court's Order and I am executing this Participation Agreement 90 or more days after entry or notice as detailed in the Court's Order, Sections II(B), IV(B)(3)(d), or I did not have at least one Corn case on file in any court as of the entry of the Court's Order and I am executing this Participation Agreement more than 45 or 120 days as defined in the Court's Order, Sections II(B), IV(B)(3)(b), and the assessments on all recoveries by my clients (whether the client's case is filed in a federal or state court or is unfiled) are:

- for each producer client, a total 13% assessment amount (10% for attorneys' fees and 3% for expenses) of the Gross Monetary Recovery; or
- for each non-producer client, a total 11.5% assessment amount (9.5% for attorneys' fees and 2% for expenses) of the Gross Monetary Recovery.

I further agree that the fee assessment portion will be deducted from my attorney's fee and not from my client's portion of the recovery (except to the extent I am being paid an hourly rate).

These assessments shall apply to all Corn claims against any defendant by persons or entities represented by my law firm, whether such claims are filed, unfiled or tolled, that have not been asserted in a filed state Corn case.

**[Continued on the next page]**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Law Firm Name:

Attorney's Name:

**[Signatures continue on the next page]**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Patrick J. Stueve  
CO-LEAD COUNSEL AND LIAISON COUNSEL FOR  
PLAINTIFFS

Dated: \_\_\_\_\_

\_\_\_\_\_  
Don M. Downing  
CO-LEAD COUNSEL FOR PLAINTIFFS AND  
INTERIM RULE 23 CLASS COUNSEL

Dated: \_\_\_\_\_

\_\_\_\_\_  
William B. Chaney  
CO-LEAD COUNSEL FOR PLAINTIFFS

Dated: \_\_\_\_\_

\_\_\_\_\_  
Scott Powell  
CO-LEAD COUNSEL FOR PLAINTIFFS