

**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 RELATING TO CONSOLIDATED PLEADINGS**

On February 4, 2015, the Court entered Scheduling Order No. 1 in this MDL. *See* Scheduling Order No. 1, Feb. 4, 2015, ECF No. 123, at 3. That Order set out a deadline for Plaintiffs’ Lead Counsel to file “consolidated amended complaints.” (“CACs”), *id.* at 3 (¶ 2a). In that Order, the Court remarked that the CACs would be “[s]olely as an MDL administrative and procedural tool to narrow predominant legal issues common to the transferred cases.” *Id.* The Order further contemplates that Defendants would file responsive pleadings by way of any motion(s) to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) and that these motions would be “mainly confined to arguments” relating to the CACs and to the separate complaints of ADM and Cargill. *Id.* at 4 (¶ 3a).

The Parties have asked for clarification of Scheduling Order No. 1 to better and more specifically set out the course and impact of any CACs. “Cases consolidated for MDL pretrial proceedings ordinarily retain their separate identities.” *Gelboim v. Bank of Am. Corp.*, 135 S. Ct. 897, 904 (2015). The filing of an “administrative complaint” does not alter the separate identities of the cases. Such complaints are merely an “administrative summary of the claims brought by all the plaintiffs.” *Id.* Some MDL courts treat these complaints as having no legal effect, *id.*, and that a defendant cannot file a Rule 12(b)(6) motion directed at an administrative complaint, *In re Nuvaring Products Liab. Litig.*, No. No. 4:08MD1964 RWS, 2009 WL

2425391, at \*2 (E.D. Mo. Aug. 6, 2009) (defendant had already answered individual complaints and could not move to dismiss anew the consolidated complaint). Other courts, however, hold that motions to dismiss *can* be directed to a consolidated complaint if they are directed at common issues. *See In re Zimmer Nexgen Knee Implant Prods. Liab. Litig.*, No. 11 C 5468, 2012 WL 3582708, at \*4 (N.D. Ill. Aug. 16, 2012) (holding, however, that a motion to dismiss directed at an administrative complaint does not have legal effect on the sufficiency of factual allegations that are contained in the individual complaints). Such complaints do not merge plaintiffs into a single case, nor do they merge all defendants into a single case. *In re Propulsid Prods. Liab. Litig.*, 208 F.R.D. 133, 141 (E.D. La. 2002).

In contrast to an “administrative” complaint the parties “may elect” to file a so-called “Master Complaint” and a corresponding “consolidated answer.” *Id.* Such complaints supersede, like any other amended pleading, prior individual complaints. *Gelboim*, 135 S. Ct. at 904 n.3. They can be (1) used to effect service, (2) set deadlines for substantive answers/responses, and (3) serve as the basis for motion to dismiss practice. The implication of a superseding complaint is that the individual complaints merge into a single case that are later severed, if necessary, upon remand by the JPML. *See In re Refrigerant Compressors Antitrust Litig.*, 731 F.3d 586, 592 (6th Cir. 2013).

At least one Court in this District has held that amendments to a CAC – at least one that states it does not “supercede any pleading in the constituent cases” and is denominated as an administrative complaint – could not be used as a vehicle to add new plaintiffs, new defendants, or new claims. *In re Motor Fuel Temperature Sales Practices Litig.*, 261 F.R.D. 577, 581 (D. Kan. 2009) (overruling objections to order of O’Hara, J.). The Court there also refused to allow an amendment that would have conformed the underlying cases to the CACs. *See id.* at 585.

Although the issues in that case were driven, at least in part, by issues of timeliness (the amendments were being sought after the Court's deadline to join or add parties), *id.*, Plaintiffs here propose that it would be beneficial for all concerned to give more specificity to the impact of any CACs on the constituent cases to eliminate or minimize any misunderstandings in the future.

Moreover, Plaintiffs have stated that they intend to add plaintiffs who have not currently filed cases in the MDL as putative class representatives, asserting claims that may not yet have been pled on a class action basis in one or more of the cases pending in the MDL, and it would be administratively preferable if they did not have to first file a separate lawsuit or join as plaintiffs in an existing underlying lawsuit. In addition, the Court has asked the parties to explore the feasibility of using a CAC as a vehicle to perfect service on the foreign defendants under the Hague Convention. *See* Scheduling Order No. 1, ECF No. 123 at (¶ 2c). Furthermore, the Court anticipates that motions to dismiss, as well as class-certification motion practice (if necessary), will be directed at the CAC, which recognizes a character more than “administrative.”

These circumstances lead the Court to conclude that Plaintiffs, through Co-Lead Counsel, should be permitted to file one or more “substantive” consolidated amended complaints. Pursuant to Rule 42(a)(3), the Court therefore orders that a substantive complaint may be filed by denominating the complaint as a “Master Complaint” and identifying the plaintiffs to whom it applies (*e.g.*, Producers, Non-Producers, or some subset thereof). *See* Fed. R. Civ. P. 42(a)(3) (“If actions before the court involve a common question of law or fact, the court may . . . issue any other orders to avoid unnecessary cost or delay.”). Any “Master Complaint” filed shall be treated according to the following order:

## 1. Types of Pleadings

Plaintiffs shall designate any such CAC as a “Master Complaint.” Plaintiffs shall further designate each CAC as applying either to “Producers” or “Non-Producers,” or some subgroup of either category. For purposes of this Order and all other orders of the Court, unless otherwise noted, the term “Producer” shall mean

an owner, operator, landlord, waterlord, tenant, or sharecropper, who shares in the risk of producing corn and who is entitled to share in the corn crop available for marketing from the farm, as reflected in FSA Form 578. A landlord who receives only a fixed cash amount for renting the land that does not vary with the size of, or pricing for, the crop is not a Producer.

The term “Non-Producer” shall mean all parties who are not Producers.

## 2. Master Complaint(s).

- a. If the CAC is denominated as a “Master Complaint” then Plaintiffs shall be permitted to add new parties, facts, allegations, and claims to it without having to amend previously filed complaints or file new cases. The Master Complaint shall be deemed to supersede by amendment, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, the constituent complaints as to any Plaintiff who is named in it. New Plaintiffs named in the Master Complaint shall be deemed to have filed suit in the District of Kansas for purposes of pretrial proceedings. Nothing in this Order, however, shall be construed to address the appropriate venue for any given Plaintiff for purposes of trial under *Lexecon*, or construed as a ruling on whether venue properly exists for a particular Plaintiff.
- b. The Master Complaint shall also be deemed to amend the individual claims of any Plaintiff who files a Notice to Conform to the appropriate Master Complaint on the MDL docket and in their constituent case. The Notice to Conform shall be

substantially in the form of Exhibit A, as made available and updated as necessary by Liaison Counsel. Together, the Notice to Conform and Master Complaint shall be treated as the operative Complaint in any constituent case for any individual Plaintiff. Any responsive pleading filed by the Defendant to the Master Complaint, whether filed before or after a Notice to Conform by the Plaintiff is filed, shall apply. If a Plaintiff's constituent case names a Defendant that is not named in the Master Complaint, then the absent Defendant shall be deemed to have been voluntarily dismissed without prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure. If a Defendant is named in the Master Complaint who is not named in the constituent case, by filing a Notice to Conform, the Plaintiff shall be deemed to have added that Defendant to their constituent case pursuant to Rule 21 of the Federal Rules of Civil Procedure. Upon service of the Notice to Conform to Defendants via ECF (for all Defendants who are parties to the MDL and who are, or whose counsel are, registered on ECF), the amendment of the constituent case to conform to the Master Complaint shall be deemed to have been served. Amendments to the Master Complaint shall be deemed to automatically apply and amend any case brought by a plaintiff who has filed a Notice to Conform.

- c. Nothing in this Order, the filing of a Master Complaint, or a Plaintiff's filing of a Notice to Conform shall be deemed to affect where that Plaintiff's case is ultimately set for trial, and both sides reserve all of their respective rights and arguments (under *Lexecon* and otherwise) as to venue at the conclusion of pretrial proceedings in this MDL. Whether named in a Master Complaint or having

conformed their pleading to a Master Complaint, Plaintiffs who have already filed a case in the MDL shall be deemed to have filed in the jurisdiction where their case was originally filed.

- d. By filing such a Notice to Conform, no individual Plaintiff shall be deemed to have adopted any class-action allegations nor shall he or she be deemed to have waived any right to object to class certification or opt-out of any class that the Court may certify. Furthermore, by filing a Notice to Conform, no individual Plaintiff shall be deemed to have opted-out of any class that the Court may certify. To the extent necessary, the Court will provide procedures and deadlines for opting out of any class by further order.
- e. Any Plaintiff who files a Notice to Conform in this MDL shall be deemed to have served any foreign defendants upon proper service of the Master Complaint, and any amendments thereto, pursuant to the Hague Convention, regardless of whether the Notice to Conform was filed before or after the Master Complaint was served. However, this does relieve any Plaintiff from the obligation to effect service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure for all domestic defendants. Syngenta has agreed to accept waivers of service, pursuant to Rule 4, for all domestic defendants if such waivers are validly provided to Defendants' Liaison Counsel. For any Plaintiff who has already served (or obtained waivers of service) for one or more domestic defendants and is either named in a Master Complaint or files the Notice of Conform, service of the Master Complaint via ECF shall be deemed service to all domestic Defendants named therein under Rule 4 for that Plaintiff pursuant to Syngenta's agreement. If

a Plaintiff has not previously served a domestic Syngenta defendant, he or she needs to provide a valid waiver of service pursuant to Rule 4 on all domestic defendants by sending that waiver to Defendants' Liaison Counsel.

- f. This Order does not lift the stay of any case pursuant to Scheduling Order No. 1. *See* ECF No. 123 at 14 (¶ 5e), except to the extent that Plaintiffs are permitted to file the attached Notice to Conform as set forth herein and Defendants' responsive pleadings to the Master Complaint shall be deemed responsive to each such constituent Complaint. At a later time, the Court will enter an order addressing the conduct of pretrial proceedings related to individual claims. Orders resulting from motion practice directed at the Master Complaint shall be deemed to apply to the Parties in any case where a Notice to Conform has been filed. The impact of Orders directed to the Master Complaint for those who do not file a Notice to Conform is set out below in paragraph 3.

### **3. Orders of the Court Where a Plaintiff Does Not File a Notice to Conform**

- a. As the Court indicates in paragraph 5(h) of Scheduling Order No. 1, "it does not intend to revisit issues that already have been decided" in the MDL. *Id.* at 15. That applies to cases pending at the time the Order is entered and cases later filed or transferred to the MDL. If a Plaintiff who is not named in a Master Complaint and does not file a Notice to Conform, that does *not* exempt their individual case from the Court's Orders with respect to the Master Complaint. Any Orders issued by the Court that are directed to the Master Complaint shall be deemed to apply to all cases to the extent the issues have the same subject-matter as the allegations, claims, and parties in the individual cases. The failure to file an objection within

14 days of an Order explaining why that Order directed to the Master Complaint should not apply to his or her individual case, shall be deemed a waiver.

Dated: March 10, 2015

s/ John W. Lungstrum

John W. Lungstrum  
United States District Judge

# **EXHIBIT A**

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

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<b>Corn Litigation</b>	)	
	)	<b>MDL No. 2591</b>
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**NOTICE TO CONFORM TO MASTER CLASS ACTION COMPLAINT**

Plaintiff \_\_\_\_\_ files this Notice to Conform to Plaintiff’s Master Complaint (“Notice to Conform”) directed at the [Producers / Non-Producer / [some subset thereof]] as permitted and approved by Order No. \_\_\_\_\_. Upon filing of this Notice, Plaintiff’s constituent case styled as:

\_\_\_\_\_, is deemed amended to conform to the general factual allegations, requested damages, and jury trial demand set forth in Plaintiffs’ Master Complaint. Plaintiff acknowledges that for purposes of the above-captioned case this Notice and the Master Complaint shall be deemed together to be the operative pleading pursuant to Fed. R. Civ. P. 7(a)(1).

**VENUE**

1. Plaintiff filed his/her/its constituent case in the U.S. District Court for the \_\_\_\_\_. Venue for remand and trial is therefore appropriate in the above-named District.

**IDENTIFICATION OF PLAINTIFF IF INDIVIDUAL**

2. Plaintiff \_\_\_\_\_, is a resident and citizen of \_\_\_\_\_.

*[If not applicable leave blank]*

**IDENTIFICATION OF PLAINTIFF IF BUSINESS**

3. Plaintiff \_\_\_\_\_, is incorporated in \_\_\_\_\_, and maintains its principal place of business in \_\_\_\_\_ County, \_\_\_\_\_.

*[If not applicable leave blank]*

**PLAINTIFF SPECIFIC FACTUAL ALLEGATIONS**

4. Plaintiff planted \_\_\_\_\_ acres of corn in 2013 in \_\_\_\_\_ County, \_\_\_\_\_. Plaintiff planted \_\_\_\_\_ acres of corn in 2014 in \_\_\_\_\_ County, \_\_\_\_\_.

5. Plaintiff \_\_\_\_\_ [has / has not] \_\_\_\_\_ knowingly purchased or planted Agrisure Viptera® corn.

6. Plaintiff \_\_\_\_\_ [has / has not] \_\_\_\_\_ knowingly purchased or planted Agrisure Duracade™ corn.

**CAUSES OF ACTION**

7. Plaintiff hereby adopts and incorporates by reference as if set forth fully herein, the following causes of action set forth in Plaintiff's Master Class Action Complaint on file with the Clerk of the Court for the U.S. District Court for the District of Kansas in the matter entitled *In Re: Syngenta AG MIR162 Corn Litigation*, MDL No. 2591 [check all that apply]:

- Count I – Violation of the Lanham Act
- Count II – Negligence
- Count II – Negligent Misrepresentation or Omission
- Count IV – Fraud (including Fraudulent Misrepresentation, Fraudulent Concealment, Misrepresentation by Omission, and Constructive Fraud)

Count V – Violation of Applicable State Unfair and Deceptive Trade Practices Act, specify the statute alleged: \_\_\_\_\_

Count VI – Violation of Applicable State Consumer Fraud Statute, specify the statute alleged: \_\_\_\_\_

Count VII - Violation of Minn. Stat. §§ 325D.13 and 325F.69

Count VIII – Trespass to Chattels

Count IX - Private Nuisance

Count X - Tortious Interference with Business Relations

Count XI – Unjust Enrichment

**[List to be populated with all counts alleged in Master Complaint]**

Plaintiff’s constituent case shall be deemed subject to any relevant responsive pleading filed by one or more Defendants to Plaintiff’s Master Complaint, including answers and motions to dismiss any of the causes of action marked above. By way of filing this notice, Plaintiff shall not be deemed to have adopted any class-action allegations set forth in the Master Complaint or waived any right to object to class certification or opt out of any certified class. This Notice also does *not* serve as a request for exclusion of any class that the Court may certify.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Respectfully submitted,  
Counsel for Plaintiff

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