

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other  
Honorable Thomas M. Sipkins

This Document Related to: ALL ACTIONS

File No.: 27-CV-15-3785

**PROPOSED AGENDA  
FOR SEPTEMBER 25, 2015  
STATUS CONFERENCE**

In accordance with the Court's September 15, 2015 Order For Status Conference, the parties respectfully submit the following proposed agenda for discussion items.

**I. AGREED-UPON AGENDA ITEMS**

- a. **Proposed Scheduling Order #1.** The parties have proposed and submitted an agreed-upon initial scheduling order that establishes deadlines for the filing of consolidated master complaints, Syngenta's motion to dismiss, and other threshold matters. *See* Dkt. Entry 59.
- b. **Proposed Protective Order.** The parties have proposed and submitted an agreed-upon stipulated Protective Order to facilitate the production, exchange, and discovery of documents and information that the parties agree merit confidential treatment. *See* Dkt. Entry 59.
- c. **Proposed ESI Protocol.** The parties have proposed and submitted an agreed-upon ESI Protocol for the production of data. *See* Dkt. Entry 59.

**II. DISPUTED AGENDA ITEMS**

**a. Plaintiffs' Position.**

Plaintiffs request that the Court consider three topics at the status conference:

- (1) Case Management Order – *See* Proposed Order attached as Exhibit A.
- (2) Joinder of Claims – *See* Proposed Order attached as Exhibit B.

- (3) Coordination of MDL and Minnesota Consolidated Proceedings. *See*, Defendants’ draft Proposed Order attached as Exhibit C.

Plaintiffs have also submitted a brief to the Court outlining their positions on the above-cited topics.

**b. Syngenta’s Position**

Syngenta respectfully submits that plaintiffs’ proposals should be deferred until the Master Complaints are on file and the Court has an opportunity to address Syngenta’s Motions to Dismiss, both because the proposals are premature and because—despite repeated requests from Syngenta and promises from plaintiffs’ counsel—plaintiffs have never before identified the contours of their position (for example, on the question of federal-state coordination) with any real specificity so as to permit a concrete discussion among the parties and the Court.

Indeed, it was only on the afternoon of Wednesday, September 23, 2015—just hours before the deadline to submit this agenda—that plaintiffs for the first time provided Syngenta with plaintiffs’ proposed Case Management Order laying out what they plan to propose on that score. Plaintiffs have still not provided any comments on Syngenta’s proposed federal-state Coordination Order, and apparently do not plan to do so except in a separate brief that will reveal their position for the first time. To the extent that the Court construes plaintiffs’ proposals as motions requesting relief, Syngenta respectfully reserves the right to respond more fully as provided by the Minnesota Rules. Even based on our current understanding, however, plaintiffs’ proposals should be rejected for the reasons summarized below, and that Syngenta will detail further in a brief that it will file later today for the Court’s convenience.

***i. Plaintiffs’ Request To Select Bellwether Discovery Plaintiffs And To Set Trial Dates.***

Despite the parties’ agreement on the deadlines that the Court requested in its August 5, 2015 Order Appointing Lead Counsel and that the parties jointly submitted in proposed Scheduling Order #1 on September 4, plaintiffs now seek to propose a case management schedule that goes far beyond what the Court requested. Among other provisions, plaintiffs seek to limit discovery to 0.1% of the plaintiffs as bellwether discovery plaintiffs, to pick those bellwethers at random without the benefit of any initial discovery so that the Court can judge whether those bellwethers are illustrative of other plaintiffs in the case, and to set a schedule for the entirety of the case even before Master Complaints are on file to spell out the scope of the litigation (such as whether it will include producer plaintiffs, non-producers, or both). As set forth in the accompanying response, plaintiffs’ proposed Case Management Order is both premature and prejudicial, and should be rejected.

***ii. Plaintiffs’ Proposal To Waive Filing Fees For Certain Claims.***

Although the Court previously ordered that “[i]f opened by a new plaintiff, the new plaintiffs shall pay the applicable filing fee,” July 7, 2015 Pretrial Order #1 on Procedural Issues

at ¶ 5, Syngenta understands that plaintiffs nevertheless seek to raise a proposal that would exempt certain plaintiffs from paying filing fees if they file before a certain date. Plaintiffs have yet to identify to Syngenta any authority that supports such an approach.

*iii. Federal-State Coordination.*

Syngenta understands that plaintiffs also wish to discuss “various coordination issues [that] have arisen with the MDL proceeding” at the upcoming status conference. Syngenta proposed a federal-state coordination order to plaintiffs’ counsel in the MDL in May 2015, and understands that the Minnesota plaintiffs’ counsel received a copy in August shortly after their selection as lead counsel in this case. Since that time, Syngenta has *repeatedly* requested that plaintiffs identify specific areas of agreement or disagreement so that the parties could meet and confer to discuss the matter. As set forth in the accompanying response, plaintiffs have never provided edits or identified any specific areas of concern despite their promises to do so. Syngenta respectfully suggests that this topic is at least premature until all of the interested constituents—including plaintiffs’ counsel in this case and plaintiffs’ counsel in the MDL—can confer with Syngenta on concrete terms.

**III. CONCLUSION**

The parties look forward to discussing these issues with the Court at the upcoming status conference.

Date: September 23, 2015

Respectfully Submitted by:

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Date: September 23, 2015

Respectfully Submitted by:

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**COUNSEL FOR DEFENDANTS**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

*In re: Syngenta Litigation*

Court File No: 27-CV-153785

Court File Type: Civil

This Document Relates to: **ALL ACTIONS**

**CASE MANAGEMENT ORDER**

The Court orders that the deadlines in the following Case Management Order shall govern this case, until further order of this Court:

**1. Bellwether Trial Selection Process**

(a) On or before December 8, 2015, the Court will randomly select twenty-five (25) individual Bellwether Discovery Plaintiffs. These individual Bellwether Discovery Plaintiffs will all be Minnesota residents who previously filed suit in Minnesota state courts.

**2. Discovery**

(a) With respect to the twenty-five (25) Bellwether Discovery Plaintiffs, the stay of discovery ordered by this Court in Paragraph 17 of this Court's Order of July 7, 2015 shall be lifted.

(b) With respect to the Named Plaintiffs in the Consolidated Amended Class Action, the stay of discovery ordered by this Court in Paragraph 17 of this Court's Order of July 7, 2015 shall be lifted.

(c) As to all other Plaintiffs having filed suit herein, or to file suit herein, the stay of discovery ordered by this Court in Paragraph 17 of this

Court's Order of July 7, 2015 shall be maintained, pending further order of this Court.

**3. Initial Disclosures.** No later than November 1, 2015, the Parties shall serve Rule 26 disclosures.

**4. Production of MDL Documents.** No later than October 2, 2015, the Syngenta Defendants shall produce to the Plaintiffs all documents previously produced in the federal MDL proceeding using the same bates-stamp ordering, or other designation.

**5. Written Discovery Limits.**

- (a) Interrogatories: 50 per side
- (b) Document Requests: 100 per side
- (c) Requests for Admission: 100 per side

**6. Deposition Limits.**

(a) Depositions: 50 per side

(b) Witnesses Who Are or Were Employees of the Syngenta Defendants. The employee witness deposition period concerning the Syngenta Defendants and MIR 162 shall commence no earlier than October 19, 2015 (the date of the next status conference of MDL Judge, John W. Lungstrum) and conclude by July 29, 2016.

(c) Depositions of Third-Parties Involving Core Discovery. Depositions of third-parties involving core discovery issues shall commence no earlier than October 19, 2015 and conclude by July 29, 2016.

(d) Deposition Protocol. The Parties shall meet and confer and submit a Deposition Protocol to govern Depositions in this litigation.

**7. Plaintiff-Specific Discovery**

(a) Pursuant to the procedures set forth in Paragraphs 1(a) herein, the Court will designate twenty-five (25) Bellwether Discovery Plaintiffs.

(b) Between February 1, 2016 and May 2, 2016, bellwether discovery shall take place. On May 2, 2016, each side shall propose from the twenty-five (25) Bellwether Discovery Cases, four particular cases that should be selected as trial or bellwether case. These proposals shall be simultaneously filed by each side on May 2, 2016.

(c) Should the two sides both propose the same case or cases to serve as a trial case, such case or cases will serve as the first cases to be tried. Should the two sides propose different trial cases, by May 16, 2016, the Court will select four bellwether cases to serve as the first four bellwether trial cases, and designate the order of such bellwether trials.

**8. Expert Discovery and Designations for the Bellwether Cases.**

(a) On or before June 13, 2016, Plaintiffs shall designate, pursuant to MINN. R. CIV. P. 26.01(b), their expert witnesses for each of the first four bellwether trial cases.

(b) On or before July 15, 2016, Defendants shall designate their expert witnesses pursuant to the Minnesota rules.

(c) On or before July 29, 2016, Plaintiffs shall designate any rebuttal



expert witnesses, pursuant to the Minnesota rules.

(d) Each expert designation shall include at least two available dates when each expert is being tendered for deposition. Plaintiffs shall tender their experts for deposition between July 29 - August 12, 2016. Defendants shall tender their experts for deposition between August 15 - August 26, 2016. Plaintiffs shall tender their rebuttal experts between August 29 - September 2, 2016.

(e) Even though not otherwise applicable under Minnesota rules, the parties expressly agree to the limitations on expert discovery set forth in Rule 26 of the Federal Rules of Civil Procedure, including the provision of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts.

**9. Expert Discovery and Designations for the Class Case.**

(a) On or before April 11, 2016, Plaintiffs shall designate, pursuant to MINN. R. CIV. P. 26.01(b), their expert witnesses.

(b) On or before May 9, 2016, Defendants shall designate their expert witnesses pursuant to the Minnesota rules.

(c) On or before May 23, 2016, Plaintiffs shall designate any rebuttal expert witnesses, pursuant to the Minnesota rules.

(d) Each expert designation shall include at least two available dates when each expert is being tendered for deposition. Plaintiffs shall tender their experts for deposition between May 23, 2016 - June 3, 2016. Defendants shall

tender their experts for deposition between June 6-10, 2016. Plaintiffs shall tender their rebuttal experts between June 13-17, 2016.

(e) Even though not otherwise applicable under Minnesota rules, the parties expressly agree to the limitations on expert discovery set forth in Rule 26 of the Federal Rules of Civil Procedure, including the provision of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts.

**10. Motion for Class Certification.**

(a) Class Plaintiffs shall file their motion for Class Certification by June 20, 2016.

(b) Responses to the Class Certification Motion shall be filed on or before July 18, 2016.

(c) Replies to the Class Certification Motion shall be filed on or before August 1, 2016.

**11. Dispositive Motions for Individual Bellwether Cases.**

(a) Plaintiffs and Defendants shall file any summary judgment motions or motions for partial summary judgment by September 9, 2016.

(b) All motions concerning the admissibility of expert testimony shall be filed on the same day.

(c) Responses to Summary Judgment Motions and *Daubert* motions shall be filed on or before September 16, 2016.

(d) Replies to Responses to Summary Judgment Motions and *Daubert*

motions shall be filed seven (7) days later, on September 23, 2016.

**12. Bellwether Trials**

(a) The four initial Minnesota bellwether trials shall be scheduled to occur approximately six (6) weeks apart during a five-month-long bellwether trial period.

(b) The schedule for bellwether trials is as follows:

1. Minnesota Bellwether Trial (Minn. BW Trial) #1

\_\_\_\_\_, 201\_

2. Minn. BW Trial #2 -

\_\_\_\_\_, 201\_ (6 weeks later)

3. Minnesota Bellwether #3 -

\_\_\_\_\_, 201\_ (6 weeks later)

4. Minnesota Bellwether #4 -

\_\_\_\_\_, 201\_ (6 weeks later)

IT IS SO ORDERED

Dated: September \_\_, 2015

\_\_\_\_\_  
JUDGE THOMAS M. SIPKINS

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

*In re: Syngenta Litigation*

Court File No. 27-CV-153785

Court File Type: Civil

This Document Relates to: **ALL ACTIONS**

**Order re: Filing and Joinder of Claims in this Court**

It is hereby ORDERED that the following schedule shall apply to filing of claims in this Court:

Numerous claims have been filed in Minnesota courts, wherein multiple plaintiffs have filed their claims against the Defendants in a single complaint. The Court has been informed that this practice of joinder began upon request from certain clerks in this state who were being overwhelmed by the sheer quantity of suits against Defendants being filed in their courts. The Court has also been informed by Plaintiffs' Liaison Counsel, Robert Shelquist, that after the formation of this Coordination Action, and after this Court's order that all such claims be transferred to Hennepin County, that he, as Plaintiffs' Liaison Counsel, together with representatives of various Plaintiffs' attorneys, has met and coordinated with the Hennepin County Clerk's office to facilitate efficiencies in this way concerning the filing of large numbers of complaints here. As such, in order to achieve judicial efficiency, the Court orders:

1. If suit has been, or is, filed on or before November 19, 2015, and a Notice to Conform to the Master Complaints to be filed by the PEC on or before October 2, 2015 is served on the Defendants by that date for each farming entity filing the same, one suit may be filed in this court joining up to 100 Plaintiffs in one complaint. Further, the use of joinder will require the payment of only one filing fee.
2. If suit is filed between November 20, 2015 and June 1, 2016, such a suit may be filed in this Court joining up to 100 farming entities in one complaint, and only a single filing fee shall be paid, provided that a Notice to Conform is filed for each Plaintiff, and that each Plaintiff proves that they retained their attorney between November 20, 2015 and June 1, 2016.
3. If suit is filed after June 1, 2016, each farming entity must file its own individual complaint, and pay a single filing fee.

IT IS SO ORDERED.

Dated this \_\_\_\_ day of September, 2015 at Minneapolis, Minnesota.

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JUDGE THOMAS M. SIPKINS

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

IN RE SYNGENTA AG MIR 162 CORN  
LITIGATION

Master File No. 2:14-MD-02591-JWL-JPO  
MDL No. 2591

THIS DOCUMENT RELATES TO:  
ALL CASES

**[PROPOSED] JOINT COORDINATION ORDER**

WHEREAS, a federal proceeding captioned *In re Syngenta AG MIR 162 Corn Litigation*, MDL Docket No. 2591 (the “MDL Proceeding”), is pending before the Hon. John W. Lungstrum in the United States District Court for the District of Kansas (the “MDL Court”);

WHEREAS, state court actions concerning the same subject matter as the MDL Proceeding are pending along with additional actions that may be filed in the future (the “State-Court Actions”);

WHEREAS, the MDL Proceeding and the State-Court Actions involve many of the same factual allegations and circumstances and many of the same parties, and discovery will substantially overlap;

WHEREAS, coordination of pretrial proceedings in the MDL Proceeding and the State-Court Actions will likely prevent duplication of discovery and undue burden on parties and non-parties in responding to discovery requests, save substantial expense by the parties and non-parties and produce substantial savings in judicial resources;

WHEREAS, each Court adopting this Order (collectively, the “Courts”) finds that coordination of discovery and pretrial scheduling in the MDL Proceeding and the State-Court Actions will further the just and efficient disposition of each proceeding and therefore have concluded that the circumstances presented by these proceedings warrant the adoption of certain procedures to manage these litigations;

WHEREAS, the Courts and the parties anticipate that other courts in which State-Court Actions are now pending may join this Joint Coordination Order (this “Order”);

WHEREAS, a State-Court Action in which this Order has been entered by the Court in which the action is pending is referred to herein as a “Coordinated Action”; and

WHEREAS, each Court entering this Order is mindful of the jurisdiction of each of the other courts in which other Coordinated Actions are pending and does not wish to interfere with the jurisdiction or discretion of those other courts.

NOW, THEREFORE, IT IS ORDERED that the parties are to work together to coordinate discovery to the maximum extent feasible in order to prevent duplication of effort and to promote the efficient and speedy resolution of the MDL Proceeding and the Coordinated Actions and, to that end, the following procedures for discovery and pretrial proceedings shall be adopted:

**A. Discovery and Pre-Trial Scheduling**

1. All discovery and pretrial scheduling in the Coordinated Actions will be coordinated to the fullest extent possible with the discovery and pretrial scheduling in the MDL Proceeding. The MDL Proceeding shall be used as the lead case for discovery and pretrial scheduling in the Coordinated Actions.

2. Plaintiffs in the Coordinated Actions and their counsel shall be entitled to participate in discovery in the MDL Proceeding as set forth in this Order and in accordance with the terms of the Stipulated Protective Order entered in the MDL Proceeding, a copy of which is attached hereto as Exhibit A (the “MDL Protective Order”). Each Court that adopts this Joint Coordination Order thereby also adopts the MDL Protective Order which, except as amended by separate order of the adopting court, shall govern the use and dissemination of all documents and information produced in coordinated discovery conducted in accordance with the terms of this

Order. Discovery in the MDL Proceeding will be conducted in accordance with the Federal Rules of Civil Procedure and the Local Rules and Orders of the MDL Court, including the MDL Protective Order, all as interpreted by the MDL Court. Parties in the MDL Proceeding and their counsel may also participate in discovery in any Coordinated Action as set forth in this Order.

3. The parties in a Coordinated Action may take discovery (whether directed to the merits or class certification) in the state court only upon leave of the Court in which the Coordinated Action is pending. Such leave shall be obtained on noticed motion for good cause shown, including why the discovery sought could not have been obtained in coordinated discovery in the MDL Proceeding.

**B. Use of Discovery Obtained in the MDL Proceeding**

4. Counsel representing the plaintiff or plaintiffs in a Coordinated Action will be entitled to receive all discovery taken in the MDL Proceeding, provided that this Order has been entered by the Court presiding over that Coordinated Action. Any such discovery responses and documents shall be used and disseminated only in accordance with the terms of the MDL Protective Order or a substantially-similar protective order entered in the Coordinated Action. Similarly, counsel representing a party in the MDL Proceeding shall be entitled to receive all discovery taken in any Coordinated Action provided that this Order has been entered by the Court presiding over that Coordinated Action; any such discovery responses and documents shall be used and disseminated only in accordance with the terms of the MDL Protective Order or a substantially-similar protective order entered in the Coordinated Action.

5. Requests for documents, interrogatories, depositions on written questions and requests for admission propounded in the MDL Proceeding will be deemed to have been propounded and served in the Coordinated Actions. The parties' responses to such requests for documents, interrogatories, depositions on written questions and requests for admission will be



deemed to be made in the Coordinated Actions and may be used in those actions, subject to and in accordance with the terms of the MDL Protective Order, as if they had been taken under the applicable civil discovery rules of the respective jurisdictions.

6. Depositions taken in the MDL Proceeding may be used in the Coordinated Actions, subject to and in accordance with the terms of the MDL Protective Order, as if they had been taken under the applicable civil discovery rules of the respective jurisdictions.

**C. Service and Coordination Among Counsel**

7. The MDL Court has previously appointed Liaison Counsel for all parties in the MDL Proceeding (the “MDL Liaison Counsel”). Defendants’ Liaison Counsel shall file with the MDL Court and serve upon all MDL Liaison Counsel copies of all Coordination Orders, Confidentiality or Protective Orders, and Orders designating plaintiffs’ liaison counsel that are entered in the Coordinated Actions. Each MDL Liaison Counsel shall maintain and make available to counsel in their liaison group and to other MDL Liaison Counsel an up-to-date service list for the Coordinated Actions.

8. Any Court wishing to grant the parties before it access to coordinated discovery may do so by joining this Order and appointing one State Court Plaintiffs’ Liaison Counsel to facilitate coordination of discovery in the Coordinated Action and discovery in the MDL Proceeding. Defendants’ Liaison Counsel shall promptly serve upon State Court Plaintiffs’ Liaison Counsel in each Coordinated Action all discovery requests (including requests for documents, interrogatories, depositions on written questions, requests for admission and subpoenas duces tecum), responses and objections to discovery requests; deposition notices; correspondence or other papers modifying discovery requests or schedules; and discovery motions (*i.e.*, motions under Rules 26 through 37 or Rule 45 of the Federal Rules of Civil Procedure) or requests for hearing on discovery disputes regarding coordinated discovery matters

that are served upon the parties in the MDL Proceeding. State Court Plaintiffs' Liaison Counsel in the Coordinated Actions shall be responsible for distributing such documents to other counsel for plaintiffs in their respective actions.

9. Defendants' Liaison Counsel shall maintain a log of all Orders entered in the MDL Proceeding and all discovery requests and responses sent and received in the MDL Proceeding and shall transmit a copy of said log electronically to State Court Plaintiffs' Liaison Counsel in each Coordinated Action by the first business day of each month, unless otherwise agreed. Defendants' Liaison Counsel will promptly transmit a copy of each order entered in the MDL Proceeding to State Court Plaintiffs' Liaison Counsel in the Coordinated Actions.

**D. Participation in Depositions in the MDL Proceeding**

10. Each deposition taken in the MDL Proceeding: (i) will be conducted on reasonable written notice, to be served on State Court Plaintiffs' Liaison Counsel in each Coordinated Action in accordance with the provisions of paragraph [xx] above; and (ii) shall be subject to a reasonable time limit and such other rules as to timing as are imposed by Rule or Order of the MDL Court.

11. For depositions noticed by any plaintiff, at least one Lead Counsel for the MDL Plaintiffs, or their designee, shall confer with State Court Plaintiffs' Liaison Counsel in the Coordinated Actions, or their designees, in advance of each deposition taken in the MDL Proceeding, taking such steps as may be necessary to avoid multiple interrogators and duplicative questions, and to avoid additional depositions in the Coordinated Actions.

12. Counsel representing the plaintiff or plaintiffs in a Coordinated Action shall be permitted to attend any deposition scheduled in the MDL Proceeding. In addition to MDL Plaintiffs' Lead Counsel, one State Court Plaintiffs' Counsel from each Coordinated Action shall be permitted a reasonable amount of time to question the deponent and shall be

permitted to make objections during examination by other counsel in accordance with the Federal Rules of Civil Procedure, the Local Rules of the MDL Court and the Orders of the MDL Court entered in the MDL Proceeding, and in accordance with the terms and procedures set forth in subparts (a) through (c) below providing that:

a. the Court in which the Coordinated Action is pending has adopted the MDL Protective Order or has entered a Protective Order substantially similar to the MDL Protective Order;

b. any questions asked by a counsel for plaintiffs shall be nonduplicative of questions previously asked in the deposition;

c. the deposition is completed within the time limits prescribed by the Federal Rules of Civil Procedure, the Local Rules of the MDL Court and the Orders of the MDL Court; and

d. participation of plaintiffs' counsel from multiple actions shall be arranged so as not to delay discovery or other proceedings as scheduled in the MDL Proceeding or the Coordinated Actions.

13. Counsel representing any party to any Coordinated Action may obtain directly from the court reporter at its own expense a transcript of any deposition taken in the MDL Proceeding or in any other Coordinated Action. The transcript of any deposition taken in the MDL Proceeding shall not be used or disseminated except in accordance with the terms of this Order and the MDL Protective Order.

14. Depositions in addition to those taken in the MDL Proceeding (whether directed to the merits or class certification) may be taken in a Coordinated Action only upon leave of the state court in which the Coordinated Action is pending, obtained on noticed motion

for good cause shown, including why the discovery sought could not have been obtained in coordinated discovery in the MDL Proceeding. The transcript of any such deposition shall not be used or disseminated except in accordance with the terms of the MDL Protective Order.

15. If depositions in addition to those taken in the MDL Proceeding are permitted in a Coordinated Action, the noticing party shall provide reasonable written notice to all MDL Liaison Counsel and all State Court Liaison Counsel in the other Coordinated Actions. Counsel representing parties in the MDL Proceeding and counsel representing plaintiffs in each other Coordinated Action shall be entitled to attend the deposition of any witness whose deposition is taken in a Coordinated Action. One counsel designated by each State Court Plaintiffs' Counsel in the Coordinated Action and each MDL Liaison Counsel shall each be permitted a reasonable amount of time to ask nonduplicative questions and shall be permitted to make objections during examination by other counsel.

16. If the MDL Plaintiffs, through their respective Liaison Counsel, have been provided with reasonable notice of and opportunity to participate in a deposition taken in any Coordinated Action, no MDL Plaintiff shall be permitted to re-depose that deponent without first obtaining an Order of the MDL Court upon a showing of good cause therefor.

17. Any party or witness receiving notice of a deposition which it contends is not permitted by the terms of this Order shall have 14 days from receipt of the notice within which to serve the noticing party with a written objection to the deposition. In the event of such an objection, the deposition shall not go forward until the noticing party applies for and receives an order from the MDL Court granting leave to take the deposition.

**E. Participation in Written Discovery in the MDL Proceeding**

18. At least one Lead Counsel for the MDL Plaintiffs, or their designee, shall confer with State Court Plaintiffs' Liaison Counsel in the Coordinated Actions, or their

designees, in advance of the service of requests for written discovery in the MDL Proceeding, taking such steps as may be necessary to avoid additional interrogatories, depositions on written questions, requests for admission and requests for documents in the Coordinated Actions.

19. State Court Plaintiffs' Liaison Counsel in any Coordinated Action may submit requests for documents, interrogatories, depositions on written questions and requests for admission to MDL Plaintiffs' Liaison Counsel for inclusion in the requests for documents, interrogatories, depositions on written questions and requests for admission to be propounded in the MDL Proceeding. Such requests shall be included in the requests propounded in the MDL Proceeding, provided that:

a. the requests for documents, interrogatories, depositions on written questions and/or requests for admission are submitted to MDL Plaintiffs' Liaison Counsel within 14 days after MDL Plaintiffs' Liaison Counsel have notified State Court Plaintiffs' Liaison Counsel in the Coordinated Actions of MDL Plaintiffs' intent to serve such discovery; and

b. the requests are nonduplicative of requests proposed by MDL Plaintiffs' Lead Counsel.

The number of interrogatories permitted in the MDL Proceeding will be subject to such limitations as are imposed by Rule or Order of the MDL Court.

20. Requests for documents, interrogatories, depositions on written questions and requests for admission in addition to those served in the MDL Proceeding (whether directed to the merits or class certification) may be propounded in a Coordinated Action only upon leave of the state court in which the Coordinated Action is pending, obtained on noticed motion for good cause shown, including why the discovery sought could not have been obtained in coordinated discovery in the MDL Proceeding. A motion for leave to serve additional document

requests, interrogatories, depositions on written questions and/or requests for admission which were proposed by State Court Plaintiffs' Liaison Counsel in a Coordinated Action in accordance with paragraph [xx] and which were not included in the discovery requests served by MDL Plaintiffs' Counsel in the MDL Proceeding shall be filed in the state court on notice within 21 days of service of the MDL Plaintiffs' discovery request from which those requests for documents, interrogatories, depositions on written questions and/or requests for admission were omitted.

21. All parties to the MDL Proceeding, through their respective Liaison Counsel, shall be entitled to receive copies of responses to interrogatories, responses to depositions on written questions, responses to requests for admission and documents produced in any Coordinated Action. Any party or counsel otherwise entitled under this Order to receive copies of discovery from other parties or counsel shall reimburse the producing party for actual out-of-pocket costs incurred in connection with the copying and shipping of such discovery (including but not limited to document productions) and shall use such materials only in accordance with the terms of the MDL Protective Order.

**F. Discovery Dispute Resolution**

21. In the event that the parties are not able to resolve any disputes that may arise in the coordinated pretrial discovery conducted in the MDL Proceeding, including disputes as to the interpretation of the MDL Protective Order, such disputes will be presented to the MDL Court. Resolution of such disputes shall be pursuant to the applicable federal or state law, as required, and such resolution may be sought by any party permitted by this Order to participate in the discovery in question. In the event that additional discovery is sought in a Coordinated Action and the parties to that action are not able to resolve any discovery disputes that may arise

in connection with that additional discovery, such disputes will be presented to the court in which that Coordinated Action is pending.

22. Nothing contained herein shall constitute or be deemed to constitute a waiver of any objection of any defendant or plaintiff to the admissibility at trial, of any documents, deposition testimony or exhibits, or written discovery responses provided or obtained in accordance with this Order, whether on grounds of relevance, materiality or any other basis, and all such objections are specifically preserved. The admissibility into evidence in any Coordinated Action of any material provided or obtained in accordance with this Order shall be determined by the court in which such action is pending.

**G. Implementing This Order**

23. Any Court before which a State-Court Action is pending may join this Order, thereby authorizing the parties to that State-Court Action to participate in coordinated discovery to the extent authorized in this Order, provided that State Court Plaintiffs' Liaison Counsel is first appointed for the State-Court Action and the MDL Protective Order (or a substantially-similar protective order) has been entered in the Coordinated Action.

24. Each Court that joins this Order shall retain jurisdiction to modify, rescind and/or enforce the terms of this Order.

SO ORDERED this \_\_ day of \_\_\_\_\_, 2015.

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U.S. District Judge John W. Lungstrum