

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

This Document Related to: ALL ACTIONS

Case Type: Civil Other
Honorable Thomas M. Sipkins

File No.: 27-CV-15-3785

**PROPOSED AGENDA
FOR OCTOBER 30, 2015
STATUS CONFERENCE**

In accordance with the Court's September 28, 2015 Letter to the Parties setting a Status Conference and the Court's October 6, 2015 Order Resetting the Status Conference, the parties respectfully submit the following proposed agenda for discussion items.

I. AGREED-UPON AGENDA ITEMS

- a. **Proposed Notices to Conform.** The parties have proposed and submitted agreed-upon forms of Notices to Conform for use by plaintiffs wishing to join in one of the consolidated master complaints. The parties have further proposed an agreed-upon deadline of November 19, 2015, for plaintiffs to file Notices to Conform.
- b. **Proposed Preservation Order.** The parties have proposed and submitted an agreed-upon Preservation Order to govern the parties, including individual cases, during their pendency of this action.
- c. **Proposed Bellwether Selection Order.** The parties have proposed and submitted an agreed-upon Bellwether Selection Order to establish a timeline and process for selecting Bellwether Discovery Plaintiffs.
- d. **Scheduling Order No. 2.** The parties have met and conferred and propose an agreed-upon Scheduling Order No. 2. *See* Exhibit A.

II. DISPUTED AGENDA ITEMS

- a. **Coordination Order.**

The parties are continuing to meet and confer on this disputed item, but do not anticipate reaching agreement prior to the October 30, 2015 Status Conference. The parties will each

submit separate briefs addressing each disputed topic (not to exceed five pages per brief) to the Court by 4:30 p.m. on Wednesday, October 28, 2015, outlining the areas of disagreement and each side's respective position thereto. The parties will of course notify the Court should they reach agreement.

III. ADDITIONAL AGENDA ITEMS

- a. **Common Benefit Order.** The parties are continuing to meet and confer on the Common Benefit Order and may reach agreement prior to the October 30, 2015 Status Conference. In the event the parties reach agreement, the parties will notify the Court and submit an agreed order for the Court's review. In the event the parties are unable to agree, the parties will each submit separate briefs addressing the disputes in the Common Benefit Order by 4:30 p.m. on Wednesday, November 4, 2015, for the Court's resolution.
- b. **Proposed Stipulation And Order Regarding Page Limits Regarding Syngenta's Motion To Dismiss.** Pursuant to paragraph 5 of Scheduling Order No. 1, the parties are continuing to meet and confer on a proposed stipulation and Order regarding page limits for Defendants' Motions to Dismiss; Plaintiffs' Oppositions; and Defendants' Replies. The parties anticipate submitting an agreed-upon order to the Court before the October 30, 2015 status conference.
- c. **Proposed Stipulation Regarding Procedure For Dismissing Certain Plaintiffs.** The parties are continuing to meet and confer on a proposed stipulation and Order regarding a procedure for dismissing certain plaintiffs. The parties anticipate submitting an agreed-upon order to the Court before the October 30, 2015 status conference.

IV. CONCLUSION

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

Date: October 27, 2015

Respectfully Submitted by:

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Date: October 27, 2015

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EXHIBIT A

STATE OF MINNESOTA
COUNTY OF HENNEPIN

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(PROPOSED)
SCHEDULING ORDER NO. 2

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

I. Master Complaint, Notice to Conform, and Motions to Dismiss. By separate orders, this Court previously ordered the Plaintiffs to file a Master Complaint on October 2, 2015, to meet and confer concerning Notices to Conform by October 9, 2015 and to file joint proposals regarding the same by October 23, 2015. On October 23, 2015, the parties filed a proposed agreed order concerning Notices to Conform. The Court entered an Order Approving Notices to Conform and established a deadline of November 19, 2015 for Plaintiffs to file Notices to Conform.

By separate order, this Court previously ordered Defendants to file their Motions to Dismiss the Master Complaints by November 9, 2015, Plaintiffs to file their Oppositions to such Motions to Dismiss by December 1, 2015, and Defendants to file their Replies to such oppositions by December 22, 2015.

The Court will hold a hearing on January 8, 2016 for oral arguments on Defendants' Motions to Dismiss Plaintiffs' Master Complaints.

II. Answer, Comparative Fault, and Additional Parties. Should one or both complaints survive the Motion to Dismiss, the parties shall meet and confer regarding a date for Defendants to answer the Master Complaints within thirty (30) days following the Court's ruling.

No later than 14 days following the filing of the Answer[s], any party asserting comparative fault must identify all persons or entities whose fault is to be compared. If any person or entity is so identified, then the party asserting comparative fault also must specify the nature of the fault which is claimed, subject to such additional identifications that a party may seek to make upon good cause shown based on facts learned during discovery.

Any motion for leave to join additional parties or to otherwise amend the pleadings must be filed by no later than 21 days following the filing of the Answer[s], subject to such joinders or amendments that a party may seek to make upon good cause shown based on facts learned during discovery.

III. Bellwether Discovery Plaintiff Selection. On October 23, 2015, the parties submitted an agreed proposed bellwether selection order, and the Court subsequently entered it. The Bellwether Selection Order is hereby incorporated by reference.

The initial discovery pool shall consist of (i) all named class representatives; and (ii) the forty (40) bellwether discovery plaintiffs named by the Court in accordance with the Bellwether Selection Order. If a plaintiff selected as a bellwether plaintiff (whether for discovery or trial) voluntarily dismisses its case, Syngenta may identify a replacement within five (5) days thereafter.

IV. Stay of Discovery. Upon entry of this Order and the Coordination Order, the stay of discovery is hereby lifted as to discovery to Defendants and to the named Class Plaintiffs.

Discovery as to all other Plaintiffs shall remain stayed; however, such stay shall be lifted as to bellwether discovery plaintiffs, once selected by the Court on December 21, 2015.

V. Written Discovery. Except as stayed above, written discovery may commence upon the entry of this Order and the entry of the Coordination Order and pursuant to the terms of both Orders. The parties shall serve written objections and responses to written discovery requests within 30 days. Parties must certify when document discovery is substantially complete for any given party. All fact written discovery must be served by March 15, 2016.

VI. Fact Depositions. Except as stayed above, parties may begin taking fact depositions upon the entry of this Order and the Coordination Order and pursuant to the terms of both Orders (assuming reasonable notice is provided, with individual scheduling to be mutually agreed). Each witness shall only be deposed once absent Order of the Court for good cause shown. All fact depositions shall close on May 2, 2016. The parties have agreed to attempt to conclude the fact depositions of all producer bellwether plaintiffs by April 1, 2016, but without waiving either side's right to conduct any fact depositions up to and including May 2, 2016 if necessary.

VII. Individual Bellwether Plaintiff Selection—Trial. The bellwether trial pool shall be comprised of four (4) producer plaintiffs and two (2) non-producer plaintiffs. On June 13, 2016, each party shall simultaneously provide to each other, at a time to be determined, a list of four (4) producer plaintiffs and two (2) non-producer plaintiffs.

Between June 13 and June 17, 2016, the parties shall meet-and-confer to attempt to reach an agreement as to which cases should serve as individual bellwether trial cases. If the parties reach agreement, the parties shall jointly submit a list of four (4) producer plaintiffs and two (2) non-producer plaintiffs to the Court for consideration on June 20, 2016.

If the parties do not agree, each Party shall propose in writing to the Court four (4) producer plaintiffs and two (2) non-producer plaintiffs to serve as individual bellwether trial cases, with the reasons stated in a brief totaling five (5) pages and filed by 4:30 p.m. on June 20, 2016. On June 30, 2016, the parties shall each submit to the Court in writing either (a) their agreement with one or more of the bellwether trial cases proposed by the other side, or (b) their grounds for opposition in a brief totaling five (5) pages.

On July 22, 2016, the Court will select four (4) cases to serve as individual bellwether trial cases, including at least one non-producer, and will rank them in the order in which each one will be tried.

VIII. Class Certification. Plaintiffs shall file their class certification motion, along with all class-related expert reports and reliance materials, by June 15, 2016. The parties shall complete discovery of plaintiffs' class-related experts by July 6, 2016. Syngenta shall file its opposition to plaintiffs' class certification motion, along with all class-related expert reports and reliance materials, by July 20, 2016. The parties shall complete discovery of Syngenta's class-related experts by August 12, 2016. Plaintiffs' reply brief shall be due August 17, 2016. After reviewing the parties' briefs and other submissions, the Court will decide whether to convene an oral argument hearing on class certification and, if so, when to schedule that hearing; however, if it does so, the Court intends to hold a hearing on class certification in September 2016.

IX. Merits Experts. Limited to the cases approved by the Court for the initial trial pool (including the named class representatives if a class is certified), plaintiffs must serve their merits (non-class-related) expert reports and reliance materials, with regards to both liability and damages issues, by September 9, 2016. The parties shall complete discovery of plaintiffs' merits experts by October 10, 2016. Syngenta shall file its merits experts and reliance materials by

November 4, 2016. The parties shall complete discovery of Syngenta's merits experts by November 23, 2016. No further expert disclosures will be allowed.

X. Dispositive and *Frye-Mack* Motions. The parties shall file their dispositive and merits-expert *Frye-Mack* motions, if any, by January 6, 2017. The parties shall file their opposition briefs, if any, by January 27, 2017. The parties shall file their reply briefs, if any, by February 13, 2017. After reviewing the parties' briefs and other submissions, the Court will decide whether to convene an oral argument hearing on summary judgment and/or *Frye-Mack* motions and, if so, when to schedule that hearing; however, if it does so, the Court intends to the Court will hold a hearing on the dispositive and *Frye-Mack* motions in February 2017.

XI. Pre-Trial Conference. The Court will hold a pre-trial conference in February 2017, with the precise date to be determined later.

XII. Trial Sequencing. After the Court decides class certification, the Court will enter an order sequencing the trials beginning in March 2017.¹ The issue of whether the first trial will be a class trial or a bellwether trial is deferred until after the Court rules on the motion for class certification.

XIII. First Bellwether Trial. The first trial will commence in March 2017, with the precise date to be determined later. Each of the four or five initial trials (including the class trial, if one occurs), shall be scheduled to occur approximately four (4) weeks following the conclusion of the previous trial. The Court intends to coordinate trial schedules with the federal MDL and other coordinated state court actions, and as such, reserves the right to move the schedule for the

¹ The Court originally indicated in its letter order dated September 28, 2015 that "I believe January through March 2017 is a reasonable target to schedule trials in the bellwether trials." Since then, Class Counsel for the Plaintiffs has indicated a desire for an even earlier trial, while individual counsel proposed an initial bellwether trial of April 3, 2017. The issue of whether the first trial ordered herein in March 2017 will be a class trial or a bellwether trial is deferred for a future date, and is to be decided only after the Court rules on the motion for class certification.

above bellwether trials to avoid simultaneous trials in two such jurisdictions during the bellwether period.

IT IS SO ORDERED

Dated: _____, 2015

JUDGE THOMAS M. SIPKINS