IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN LITIGATION	**Master File No. 2:14-MD-02591-JWL-JPO**
THIS DOCUMENT RELATES TO ALL CASES EXCEPT:	**MDL No. 2591**
Louis Dreyfus Company Grains Merchandising LLC v. Syngenta AG, et al., No: 16-2788-JWL-JPO	
Trans Coastal Supply Company, Inc. v. Syngenta) AG, et al, 2:14-cv-02637-JWL-JPO	
The Delong Co., Inc. v. Syngenta AG et al., No. 2:17-cv-02614-JWL-JPO	
Agribase International Inc. v. Syngenta AG et al., No. 2:15-cv-02279-JWL-JPO	

Report and Recommendation of Special Master Ellen Reisman Regarding Award of Common Benefit Expenses

April 19, 2019

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I. INTRODUCTION AND SUMMARY

Federal Rule of Civil Procedure 23(h) authorizes courts hearing class actions to "award . . . nontaxable costs that are authorized by law."[1] Section 7.2.1 of the Court-approved Syngenta Class Action Settlement Agreement provides that "Settlement Class Counsel and other counsel representing Class Members who performed work for the benefit of Class Members shall make Fee and Expense Applications" to be paid from the Gross Settlement Proceeds.[2]

By Orders entered on November 15, 2018, December 31, 2018, and January 4, 2019, the Court extended my appointment as Special Master and directed me to review applications for reimbursement of common benefit nontaxable expenses incurred in connection with the Syngenta litigation resolved in the Settlement Agreement and to submit a Report and Recommendation regarding such expenses.[3] This Report and Recommendation is submitted in compliance with those orders. After providing a brief overview of the Court-ordered process for submission of expense reimbursement applications and the standards articulated by the Court for permissible expense reimbursement, this Report and Recommendation details the review process by which I applied those standards. It then sets forth my recommendations regarding expense reimbursement.

The Report and Recommendation provides recommendations with respect to the law firms or groups of law firms submitting an application together ("law firm groups") that have

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[1] *See also* Fed. R. Civ. P. 54(d)(2) (nontaxable costs and attorneys' fees to be sought by motion).

[2] Settlement Agreement § 7.2.2, ECF No. 3507-02, filed Mar. 12, 2018.

[3] *See* Order Appointing Special Master, ECF No. 3812, entered Nov. 15, 2018; Notice of Hearing, ECF No. 3813, entered Nov. 15, 2018; Memorandum and Order, ECF No. 3882, entered Dec. 31, 2018 ("December 2018 Fee and Expense Order"); Order Regarding IRPA Applications and Expense Applications, ECF No. 3886, entered Jan. 4, 2019 ("January 2019 Order").

sought expense reimbursement. Attached to the Report are five exhibits, including three exhibits that provide summary data regarding reimbursement requests submitted and amounts recommended, by category and by law firm.

As of the date of the December 2018 Fee and Expense Order, applications had been made for $48,842,886.12 in expense reimbursements. As discussed below, some revised applications were made pursuant to that Order, and some applications were abandoned. Currently, the operative applications for expense reimbursements total $43,739,389.92, a net reduction of approximately $5.1 million. Additional net reductions in amounts sought totaling approximately $737,500 occurred when detailed spreadsheets were provided to me in response to my request for additional information. After review of the available data as described below, I recommend that the Court award a total of $31,297,117.70 in common benefit expense awards, to be allocated as set forth herein.

II. THE SYNGENTA CLASS ACTION SETTLEMENT AND THE COURT-ORDERED EXPENSE REIMBURSEMENT APPLICATION PROCESS

A. The Court-Approved Syngenta Class Action Settlement

In February 2018, a nationwide class action settlement was reached between (i) a class of farmers ("Producers"), certain Grain Handling Facilities, and Ethanol Production Facilities and (ii) various Syngenta entities to resolve claims arising from Syngenta's commercialization in the United States of two genetically modified corn seeds under the brand names Agrisure Viptera ("Viptera") and Agrisure Duracade ("Duracade") prior to obtaining China's approval to import corn with those traits. That settlement provides for payment of a total of $1.51 billion in Gross

Settlement Proceeds in return for dismissal with prejudice of all claims by Class Members, with no admission of liability.[4]

On April 10, 2018, Judge John Lungstrum of the United States District Court for the District of Kansas (defined in the Settlement Agreement as "the Court" or the "MDL Court"[5] and also referred to herein as the "Kansas federal court") granted preliminary approval of the settlement.[6] On November 15, 2018, after full briefing, a settlement approval hearing was held before Judge Lungstrum, at which proponents of the settlement and objectors to it were heard; at the conclusion of that hearing, Judge Lungstrum indicated that he found the settlement to be fair, reasonable, and adequate.[7] On December 7, 2018, Judge Lungstrum issued a final order and judgment which approved the settlement and incorporated the Settlement Agreement.[8]

The settlement resolved tens of thousands of claims asserted in multiple actions pending in federal and state courts. These included both federal (MDL 2591) and state (Minnesota) class actions, as well as individual lawsuits filed in MDL 2591, the United States District Court for the Southern District of Illinois (the "Illinois federal court"), Illinois state court, the Minnesota

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[4] *See* Settlement Agreement § 2.32.

[5] *Id.* § 2.18. Capitalized terms in this Report and Recommendation have the same definition as used in the Agrisure Viptera/Duracade Class Settlement Agreement ("Settlement Agreement"), unless otherwise indicated. Unless otherwise indicated, (1) all ECF No. cites herein are to documents in MDL 2591 and (2) page cites are to pagination in the original document, not ECF page number. The final terms of the Settlement Agreement were agreed among the parties on February 23, 2018 and it was executed by plaintiffs' counsel on February 24, 2018 and by Syngenta counsel (who required formal board of directors' approval) on February 26, 2018.

[6] *See* Memorandum and Order at 2, ECF No. 3531, entered Apr. 10, 2018.

[7] *See* Minute Entry Regarding Fairness Hearing, ECF No. 3811, entered Nov. 15, 2018.

[8] Memorandum and Order, ECF No. 3849, entered Dec. 7, 2018; Final Order and Judgment, ECF No. 3850, entered Dec. 7, 2018.

Fourth Judicial District Court, Hennepin County (the "Minnesota state court" and, collectively with the Court and the Illinois federal court, the "Courts"), and various other jurisdictions.[9]

B. Settlement Agreement Provisions and Other Authority Authorizing The Award of Common Benefit Fees and Nontaxable Expenses

As the Court recognized in its decision finally approving the settlement, its authority to award attorneys' fees and nontaxable expenses from the Gross Settlement Proceeds derives from several sources. First, Federal Rule of Civil Procedure 23 "provides that '[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law.' See Fed. R. Civ. P. 23(h)."[10]

Second, "[t]he Agreement here expressly contemplates an award of attorney fees and expenses to counsel who performed work for the benefit of the settlement class members."[11] Specifically, the Settlement Agreement provides that "Settlement Class Counsel and other counsel representing Class Members who performed work for the benefit of Class Members shall make Fee and Expense Applications" to the Kansas federal court, the Illinois federal court, or the Minnesota state court.[12] The Settlement Agreement further provides that the determination and award of common benefit attorneys' fees and nontaxable expenses "shall be separate from [the Court's] determination of whether to approve the Settlement," which "shall nevertheless be

[9] *See* Settlement Agreement Exhibit 1.

[10] Memorandum and Order at 24, ECF No. 3849, entered Dec. 7, 2018 (footnote omitted).

[11] *Id.*

[12] Settlement Agreement § 7.2.1.

binding on the Parties" even if the Court "denies, in whole or in part, the Fee and Expense Applications."[13]

Third, "[f]ees are also authorized under the common fund doctrine."[14] The Court noted that the Supreme Court, the U.S. Court of Appeals for the Tenth Circuit, and other authorities recognize the applicability of the common fund doctrine in class actions such as this one.[15]

C. 2018 Fee and Expense Submission Process

As part of the final approval process for the settlement, Judge Lungstrum established a process for submission of motions and petitions for common benefit attorneys' fees and expenses. The April 10, 2018 Preliminary Approval Order, ECF No. 3532, required that such motions and petitions be submitted by July 10, 2018.[16] On July 18, 2018, the Court issued an Order Regarding Attorneys Fee Submissions, ECF No. 3613. That Order required responses to filed fee petitions and motions to be filed by August 17, 2018 and reply briefs to be filed by September 17, 2018, in order to "allow sufficient time for those issues to be fully briefed and considered before the final approval hearing."[17] The Order also required "completion and

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[13] *Id.* § 7.2.2.

[14] Memorandum and Order at 24, ECF No. 3849, entered Dec. 7, 2018.

[15] *Id.* ("*See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[T]his Court has recognized consistently that a litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994) (quoting *Boeing*); *see generally* Federal Judicial Center, *Manual for Complex Litigation* §§ 14.21, 20.312 (4th ed. 2004)."). *See also* Fed. R. Civ. P. 23(h) & 2003 comment (providing for award of fees and nontaxable costs); 5 Newberg on Class Actions § 16:10 (5th ed. 2018) (citing class action cases awarding non-taxable expenses); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014).

[16] Preliminary Approval Order, ECF No. 3532 at 10, entered April 10, 2018.

[17] Order Regarding Attorney Fee Submissions at 1-2, ECF No. 3613, entered July 18, 2018.

submission of Excel spreadsheets so that certain basic fee and expense information can be presented to the Court and Special Masters in standardized summary format that will facilitate review and evaluation of hours and expense data."[18] Those Court-approved forms and any additional information counsel deemed relevant to "determining (a) what portion of the Settlement Amount should be allocated to attorney fees and expenses and (b) the appropriate allocation of that amount among plaintiffs' counsel" were required to be submitted to the Court and to the Special Master by August 3, 2018.[19] The Court-approved form for the expense information required by the July 18, 2018 Order is attached as Exhibit A. It was intended to provide the Court a high level summary, by category, of the overall expenses for which each law firm group was seeking reimbursement.

D. November 2018 Report and Recommendation

At the November 15, 2018 Settlement Approval Hearing, Judge Lungstrum found that an award of one-third of the Gross Settlement Proceeds ("Attorneys' Fee Award"), plus expenses, would be appropriate taking into account the factors articulated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), and approved in the 10th Circuit.[20] He then

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[18] *Id.* at 2.

[19] *Id.* Under the Settlement Agreement, fee and expense requests could be submitted in the Kansas federal court, the Illinois federal court, or the Minnesota state court. Settlement Agreement § 7.2.1. The Illinois federal court issued a similar order. *See* Order Regarding Attorney Fee Submissions, No. 3:15-cv-01221-DRH, ECF No. 282 (S.D. Ill. July 10, 2018). Minnesota Class Counsel distributed to counsel who had submitted fee petitions in Minnesota the Order Regarding Attorney Fee Submission as filed in the Kansas federal court. Regardless of which of the three courts they were submitted in, the fee and expense requests were considered.

[20] The term "Attorneys' Fee Award' refers to the award by Judge Lungstrum of one third of the Gross Settlement Proceeds (approximately $503.33 million) in attorneys' fees in connection with the nationwide class action settlement. *See* Hr'g Tr. dated Nov. 15, 2018; *see also id.* at 50 (discussing expenses).

appointed me as Special Master to render a Report and Recommendation on the allocation of fees, expenses, and service awards.[21] He also set a December 17, 2018 hearing before the Kansas federal court, Judge David R. Herndon of the Illinois federal court, and Judge Laurie Miller of the Minnesota state court to address allocations of attorneys' fees and requested expense reimbursement and service awards.[22]

As directed by the Court, I rendered a Special Master's Report and Recommendation Regarding Award of Attorneys' Fees, Expenses, and Service Awards on November 21, 2018 ("November 2018 R&R").[23] The November 2018 R&R concluded that "it is clear that no single event or group of plaintiffs' counsel was solely responsible for pushing this litigation to resolution."[24] Rather, "[t]he collective weight of the litigation, including both the class trials and the thousands of individual lawsuits, combined with the possibility of years of additional and expensive litigation and trials in multiple jurisdictions, all helped to pressure Syngenta to negotiate an expansive and fair settlement."[25] Based on these factual conclusions, and on caselaw under Federal Rule of Civil Procedure 23(h) recognizing that "common benefit" fees

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[21] *See* Order Appointing Special Master, ECF No. 3812, entered Nov. 15, 2018; Notice of Hearing, ECF No. 3813, entered Nov. 15, 2018.

[22] *See* Hr'g. Tr. at 5-6, 51. The participation of Judges Herndon and Miller was consistent with the requirements of the Settlement Agreement. *See* Settlement Agreement §§ 7.2.1, 7.2.2. Upon Judge Herndon's subsequent retirement, Judge Nancy J. Rosenstengel was assigned responsibility for the Syngenta litigation in the Illinois federal court.

[23] Special Master's Report and Recommendation Regarding Award of Attorneys' Fees, Expenses, and Service Awards ("November 2018 R&R"), ECF No. 3816, filed Nov. 21, 2018.

[24] *Id.* at 5.

[25] *Id.* at 6.

and expenses may extend beyond those incurred or approved by class counsel,[26] the November 2018 R&R concluded that "in this context, "common benefit" work is not limited to work approved by leadership counsel pursuant to [common benefit orders]; the circumstances of this case – and how it settled – support a more expansive definition."[27]

The November 2018 R&R did not make a final recommendation with respect to the award or allocation of expenses.[28] Rather, it recommended, among other things, that the Court "set aside the entire $48,842,866.12 requested for reimbursement of expenses, with final determinations and allocations to be made after the Special Master has reviewed supporting materials and made more specific recommendations."[29]

E. December 2018 Fee and Expense Order

After briefing of objections to the November 2018 R&R and a hearing before Judges Lungstrum, Herndon, and Miller held on December 17, 2018, the Court issued a Memorandum and Order addressing the attorneys' fee, expense, and service award motions.[30] In that Memorandum and Order the Court, in consultation with Judges Herndon and Miller and with their concurrence, "adopt[ed] the R&R in large part."[31]

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[26] *See* November 2018 R&R at 65 & n.74, *citing Gottlieb v. Barry*, 43 F.3d at 489; *see also* November 2018 R&R at 5 & n.11; Fed. R. Civ. P. 23(h) and comment on 2003 amendment (noting that in particular circumstances it may be appropriate to make an award of attorneys' fees or nontaxable costs to counsel other than class counsel whose "work produced a beneficial result for the class").

[27] November 2018 R&R at 65.

[28] *See id.* at 85.

[29] *Id.* at 5. *See also id.* § V.

[30] *See* December 2018 Fee and Expense Order, ECF No. 3882, entered Dec. 31, 2018.

[31] *Id.* at 2.

1. Definition of "Common Benefit" Extends Beyond Approved Common Benefit Order Amounts to Those That Contributed to the Settlement And the Ultimate Recovery by the Settlement Class

In particular, the Court agreed that the definition of "common benefit" hours and expenses eligible for payment from the common fund created by the settlement should extend beyond the definitions provided under the applicable Kansas and Minnesota common benefit orders to include items beyond those approved in advance by leadership under those orders.[32] Rather, "the courts will consider as common benefit work any work, either in litigating the claims or in pursuing the settlement with Syngenta, that contributed to the settlement and the ultimate recovery by the settlement class, thereby benefitting the entire settlement class."[33] Thus, "work performed for particular individual clients may still be considered common benefit work if that work provided a benefit to the entire settlement class."[34] However, "the courts do not consider work performed in recruiting clients to have inured to the common benefit of the settlement class."[35] The Court also explained that "items not included in the CBO [Common

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[32] *See* December 2018 Fee and Expense Order at 13 ("The sheer number of individual suits filed against Syngenta created enormous pressure on Syngenta, and thus the mere existence of the IRPAs and their clients contributed in a meaningful way to the ultimate resolution that benefits the entire settlement class. That contribution merits an award from the common fund. The Court finds persuasive these other reasons cited by the master in her R&R: payment of I[ndividually] R[etained] P[rivate] A[ttorney] fees from the attorney fee award is a concept reflected in the settlement agreement; such a payment is necessary to achieve the settlement's principle of providing similar recoveries to similarly-situated plaintiffs (regardless of whether they retained their own counsel); and that principle and its implementation were essential to achieving the settlement (including because mass opt-outs could have doomed the settlement otherwise)."); *id.* at 24 (allowing "all IRPAs the opportunity to recover their reasonably-incurred expenses"); *id.* at 32 & n. 11 (adopting "broader meaning" of common benefit to include "any work that benefitted the settlement class, whether or not such work was performed pursuant to any CBO").

[33] *Id.* at 32-33.

[34] *Id.* at 33.

[35] *Id.* at 33.

Benefit Order entered July 27, 2015] (such as advertising and expenses for recruiting or entertainment) generally constitute firm overhead, and items properly considered overhead will not be reimbursed as reasonable expenses."[36]

2. Directions for Further Proceedings for Common Benefit Expense Reimbursement Requests

With respect to the recommendations regarding expense reimbursement, the Court, with the concurrence of Judges Herndon and Miller, issued the following directives regarding the awarding of expense reimbursement:

> First, the Court shall award reimbursement of reasonable expenses from the settlement fund, separate from the one-third award of attorney fees.
>
> Second, the Court orders that the standards and limitations contained at pages 12 through 14 of the Court's CBO of July 27, 2015, shall apply here and govern the Court's determination of reasonable expenses that may be reimbursed from the settlement fund. Those standards set limits for travel expenses (airfare, hotel, meals, cash outlays, car rental, mileage) and other expenses (telephone charges, shipping, postage, fax and photocopy, computer research). Such limitations are typically applied by courts and by business clients, and because they were announced in the CBO at an early stage of the litigation, it is appropriate that they govern here. The Court notes (as does the special master) that items not included in the CBO (such as advertising and expenses for recruiting or entertainment) generally constitute firm overhead, and items properly considered overhead will not be reimbursed as reasonable expenses.
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> Third, the special master shall perform an additional review of expenses, and she may require the submission by applicants of supplemental documentation

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[36] *Id.* at 35. The law that client acquisition costs and law firm overhead are not reimbursable common litigation expenses had previously been clearly articulated by the Court and is well established. *See* Order Establishing Protocols For Common Benefit Work And Expenses And Establishing The Common Benefit Fee And Expense Funds ("CBO") at 18 & n. 3, ECF No. 936, filed July 27, 2015 ("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."); 5 Newberg on Class Actions § 16:10 (5th ed. 2018) ("recoverable nontaxable costs include counsel's out-of-pocket expense that would normally be charged to a fee paying client.") (citing cases); *Pigford v. Vilsack*, 89 F. Supp. 3d 25, 36 (D.D.C. 2015) (denying expense reimbursement for office supplies which "constitute ordinary administrative overhead").

> (particularly with respect to miscellaneous expenses, air travel, and meal expenses). Upon completion of that review, the master shall file a further report and recommendation concerning awards for reimbursement of expenses from the settlement fund.
>
> Fourth, the Court intends that attorneys representing individual clients on a contingent fee basis shall recover expenses only as awarded by the Court. Thus, such attorneys shall be prohibited from collecting any other expenses from their clients related to this representation under any contingent fee contract. As with fees, this will ensure that awards are reasonable and that the settlement class members recover from the settlement fund on equal terms (whether or not they retained counsel). In light of this prohibition, the Court deems it appropriate to reopen the period for applications for reimbursement of reasonable expenses. The same procedure and deadline set out above with respect to new IRPA pool fee applications shall also apply with respect to new requests for reimbursement of expenses. *See supra* Part II.C.8. [footnote omitted]
>
> Fifth and finally, any awards of reasonable expenses from the settlement fund shall be made by this Court, as presumed by the special master in the R&R. It is reasonable for a single court to award all expenses, so that the standards may be applied consistently to all expense applications, and no attorney has argued to the contrary.[37]

F. January 2019 Order Regarding Expense Submission and Review

On January 4, 2019, the Court issued an Order further implementing its December 2018 Fee and Expense Order.[38] The January 2019 Order implemented the Court's decision to reopen the period for expense applications as follows:

> Any attorney who is not included in an expense application previously submitted and who files a petition for an award or expenses on or before January 18, 2019 shall complete and submit an Excel spreadsheet in the form attached hereto as Exhibit B (an electronic copy of which will be posted in Excel form on the page for this MDL on the Court's website). Each petitioner should (a) file (through ECF) a printout of its spreadsheet in PDF form and (b) submit an electronic copy of its spreadsheet in Excel Form by email to the special master.[39]

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[37] December 2018 Fee and Expense Order at 34-36.

[38] *See* January 2019 Order.

[39] *Id.* at 3.

The Court also provided attorneys who previously had timely submitted expense applications with the opportunity to revise their applications to reduce or remove expenses "to assure conformity to the standards and limitations contained at pages 12 through 14 of the Court's CBO of July 27, 2015" as discussed in the December 2018 Fee and Expense Order.[40] It was "the Court's expectation that a revised expense application would be filed only to reduce or remove expenses that were previously included in the application."[41] Such revised applications were to be filed with the Court via ECF and submitted on or before January 18, 2019.[42]

Finally, the Court reiterated that "the special master shall perform an additional review of expenses, and she may require the submission by applicants of supplemental documentation."[43]

III. SPECIAL MASTER APPROACH, REVIEW PROCESS, AND REVIEW CRITERIA

A. Goals and Approach

I, along with a small team at Reisman Karron Greene LLP, performed the additional review of expense applications as required by the Court. Our goal in reviewing the expense applications was to assure that expenses recommended for reimbursement complied with this Court's orders, but to do so in a way that was cost-effective and practical. This approach was necessary to be fair both to settlement Class Members and to counsel whose efforts contributed to this settlement. I recognized that awards of expense reimbursement will diminish the amount

[40] *Id.* at 4.

[41] *Id.*

[42] *Id.*

[43] *Id.*

of money in the Settlement Fund available to compensate Class Members. I was also very conscious that the cost of reviewing expense submissions likewise would diminish the Settlement Fund, so judgment calls needed to be made about the level of scrutiny to be given certain expenses. As a general rule, I erred on the side of recommending allowance of expenses for which there was reasonable factual support. because I recognized the level of hard work and risk that went into achieving this settlement for the Class.

The starting point for our analysis came from this Court's orders. In particular, we looked to the standards and limitations contained at pages 12 through 14 of the Court's Common Benefit Order dated July 27, 2015.[44] These addressed expenses relating to airfare, hotels, meals, ground transportation, postage and shipping, photocopying, telephone, and other similar litigation costs. The other important directions provided by the Court that we applied to our review were that (1) advertising and expenses for client recruitment or entertainment constitute firm overhead and (2) no firm overhead costs are reimbursable as reasonable common benefit expenses.[45]

We also consulted with members of the plaintiffs' leadership in the Kansas and Minnesota proceedings who had performed their own review of expenses pursuant to Common Benefit Orders in those courts. Specifically, we had discussions with Class Counsel Patrick Stueve and Daniel Gustafson and personnel from their firms about how they had applied the standards set forth in the Court's July 27, 2015 CBO (and the Minnesota counterpart of that

[44] *See* December 2018 Fee and Expense Order at 34-36; *see also supra* § II.E.2 (quoting order and discussing the Court's rationale for applying the Common Benefit Order standards, which are typical of standards applied in such orders and by commercial litigation clients).

[45] *See* December 2018 Fee and Expense Order at 35.

order). They provided materials concerning their review of expenses submitted by firms within their groups applying these standards. Those discussions and materials informed our review. For example, we were guided by some of the decision rules that the Kansas and Minnesota leadership had used, including adopting comparable reductions for first class airfare, high meal costs, and high hotel charges. However, we applied a more expansive view of "common benefit" as set out in the Court's December 2018 Fee and Expense Order.[46]

Overall, we pragmatically applied the applicable standards to the information that we received from the law firm groups in order to make our recommendations in a cost-effective manner.

B. Special Master Review Process

Counsel seeking expense reimbursement are responsible for establishing that the claimed expenses are reimbursable. Applications for expense reimbursement "must be supported by the relevant documentary evidence to be recoverable."[47] The detail typically required is "that which paying clients find satisfactory" so that the court is able to determine if the expense is of a type

[46] In preparing their applications for awards of expense reimbursement, plaintiffs' leadership applied their own audit standards to expenses within their law firm groups prior to submission of those expenses to the courts and Special Master. Individual law firms within these groups were permitted to submit separate expense submissions for items that had been rejected by plaintiffs' leadership. To the extent those submissions were not duplicative, we considered them and applied our review criteria.

[47] 5 Newberg on Class Actions § 16:10 (5th ed. 2018). *See also, e.g., Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (denying reimbursement because "counsel … provided no documentation supporting the claimed expenses" and because absent such documentation "the Court cannot determine whether the claimed expenses are the type normally charged to a paying client" but reserving funds from the common fund for potential reimbursement and directing class counsel to "file an itemization listing the expenses by category and the total amount advanced for each category within ten days of the issuance of this order" (internal quotation marks omitted)).

that is appropriately reimbursable and reasonable in amount.[48] And, if sufficient detail is lacking, counsel typically are afforded the opportunity to provide additional substantiating detail.[49]

The review process was designed to afford law firm groups ample opportunity to provide the information required to support their claims for reimbursement. Initially, ECF filings were made[50] and/or Court-ordered forms were submitted on behalf of approximately 240 law firms. Most, but not all, of those submitting reimbursement requests used the format that was ordered by the Court in July 2018; some used their own formats and categories. The following categories of expenses were included on the Court-ordered form:

- Air Travel
- Common Benefit Assessment Fees
- Court Fees
- Expert/Consulting Fees Not Included in Common Benefit
- Ground Transportation
- Hotels
- Meals
- Mileage
- Miscellaneous
- Photocopying
- Postage
- Special Master Fees
- Transcript Fees

[48] *Dyer*, 303 F.R.D. at 334.

[49] *See id.* at 333.

[50] Because Settlement Agreement § 7.2.1 permitted fee and expense filings in the Kansas federal court, the Illinois federal court, or the Minnesota state court, some filings were made in Minnesota state court. Accordingly, as used herein, the term "ECF filing" encompasses all such court filings, including the Minnesota state court filings.

These Court-ordered forms provided a high-level summary of expenses by category with a total dollar amount for each category. ECF filings added useful context and explanations. However, more detail in a consistent format was needed to be able to undertake an efficient and meaningful review.

The Court's December 2018 Fee and Expense Order and its January 2019 Order both provided that the Special Master "may require the submission by applicants of supplemental documentation (particularly with respect to miscellaneous expenses, air travel, and meal expenses)."[51] Accordingly, beginning in late January 2019 we sent out a request for completion of a detailed spreadsheet to law firm groups that had submitted applications for an award of expenses.[52] The spreadsheet required the law firm groups to provide detailed, line by line itemization of the expenses for which they sought reimbursement and the business purpose for each such expense. This level of detail was necessary for us to undertake a review of the claimed expenses to determine whether the purposes and amounts of the expenses were in compliance with the Court's orders discussed above. It was designed to allow us to make determinations regarding, for example, the class of airfare, the purpose of a trip, whether alcohol was consumed at a meal, or whether a meeting was to recruit potential clients or to communicate with existing ones.[53]

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[51] December 2018 Fee and Expense Order at 35; January 2019 Order at 4 ¶ 7.

[52] A copy of the format of that spreadsheet and the instructions given is attached hereto as Exhibit B. *See* § III. D.1 below for a discussion of the Watts Guerra LLP associate counsel that posed some unique challenges in the collection of additional data and our follow up with them.

[53] This level of specificity is consistent with what courts and paying clients typically require to support expense reimbursement claims. *See generally* 5 Newberg on Class Actions § 16:10 (5th ed. 2018). *See also* CBO; *supra* pp. 14-15.

Significant follow up was needed on many of these spreadsheets; there were substantial variations in the quality of data provided and the extent to which law firm groups had followed the instructions for completing the spreadsheet. Follow-up letters were sent to approximately half of the law firm groups, and follow-up phone calls were had with several of them. Where possible, we sought additional information from the law firm group with respect to overall categories of expenses rather than on a line by line basis. But we also provided many firms with annotated versions of the spreadsheets that had been provided to us, noting the line items where additional information was required. Every time a law firm group asked for an extension of time to submit a spreadsheet or provide follow-up information, I granted an extension. Many law firm groups did provide additional useful information. Others did not; in those cases, I made the judgment calls using what information they had given us, which in some cases was insufficient to support a recommendation to approve particular expenses.

For each law firm group, the detailed Excel spreadsheets, the ECF filings, and any additional data provided by plaintiffs' counsel were reviewed in detail by a lawyer on my team, and all decisions as to how to handle particular expenses or types of expenses were discussed at regular team meetings to maintain a consistent methodology. More than 133 Excel spreadsheets and voluminous related ECF filings and other materials were reviewed. As Special Master, I made the judgment calls regarding the recommendation as to both types of expenses and, where necessary, specific expenses. The spreadsheets submitted for each law firm group were annotated to reflect the additional information sought and what was received, as well as the recommendations and the reasons for them.

C. Review Criteria

1. General Principles

As discussed above, law firm groups seeking expense awards were required to fill out a Court-ordered form identifying categories of expenses and amounts sought in each category, as well as a detailed Excel spreadsheet. I did not recommend rejection of any expense reimbursement requests because a law firm group's submission of information did not conform to either the Court-ordered form or our detailed spreadsheet; we analyzed the data each law firm group submitted regardless of the format. Additionally, many law firm groups incorrectly categorized some expenses on the spreadsheet (*e.g.*, putting hotel charges in the "ground transportation" category); I did not recommend rejection of any expenses on this basis.

I did, however, require that a law firm group had actually made a request for reimbursement of expenses in at least one ECF filing in order to be eligible for reimbursement.[54] If they had not done so, I recommended rejection of their expense claims.

There were a number of instances where the amount of expense reimbursement sought in the ECF filing made by the law firm group differed – sometimes significantly – from the total amounts in their Court-ordered form or their detailed spreadsheets. While some firms lowered the amount of expenses sought by several hundred thousand dollars, others submitted spreadsheets seeking multiples of the amounts contained in their ECF filings. For example, one law firm group raised its expense request from just under $150 to almost $7,000, while another

[54] This requirement was consistent with the Court's orders and with Fed. R. Civ. P. 54(d)(2), which requires a Court-filed motion to seek nontaxable costs. *See* December 2018 Fee and Expense Order at 23; January 2019 Order at 3. As discussed below in section III.D.1, some law firm groups relied on an ECF filing by Watts Guerra LLP, and I found that acceptable to meet this requirement.

doubled its initial request. Yet another law firm group in its spreadsheet increased the amount sought in its ECF filing by almost $25,000.

I decided that the ECF filing should control for purposes of the maximum amount of reimbursement sought by a law firm group, as it is a filing submitted to the Court and thus subject to Rule 11.[55] Moreover, the Court's January 2019 Order stated it was "the Court's expectation that a revised expense application would be filed only to reduce or remove expenses"[56], obviously reflecting the Court's expectation that law firm groups would scrutinize and trim their requests for expense reimbursement to comply with the Court's December 2018 Fee and Expense Order, not augment them.

Throughout the review process, I made the best determinations that I could with the data that had been provided. In some situations, where law firm groups failed to respond to our requests for additional information as to specific entries, I recommended either rejection of such entries because we were unable to determine whether they were properly reimbursable or approval only at a reduced amount. It is quite possible that I would have reached a different conclusion if the requested information had been provided. Where a law firm group indicated that an expense should be removed from its application, I did so.

As a general rule, I accepted as true the information provided by a law firm group either in its spreadsheet or in subsequent follow up; however, where the information provided lacked factual support, was inconsistent with other information provided in ECF filings, spreadsheets, or

[55] *See* Fed. R. Civ. P. 11(a)-(d).

[56] January 2019 Order at 4.

other communications, or simply was not credible, I made judgment calls. Some examples include:

- Where a law firm group specified a number of people at a meal and indicated that alcohol charges had been removed, I assumed that those representations were true in evaluating the expense;
- Where a law firm group indicated that a particular meeting was held only with existing clients (and not any potential clients), I generally accepted that statement as true unless other facts undermined that assertion;
- Where a law firm group told us that a copying charge was 10 cents per page, I accepted the total dollar amount, even if a number of pages was not provided;
- Where a law firm group told us a commercial airfare charge was for coach airfare, I generally accepted that representation except where the dollar amount was so high that it did not seem credible (in which case I recommended reduction to an appropriate amount);
- Where a law firm group provided an allocation for a private or chartered plane that it represented was equivalent to a coach airfare per traveler, I generally accepted that representation except where, given the number of people flying or the distance flown, it did not seem credible.

I generally recommended approval of court fees, filing fees, service costs (including through the Hague Convention), transcript charges, costs incurred in connection with the class trials in Kansas and Minnesota or the Mensik trial, *pro hac vice* admission fees, and Westlaw/LEXIS charges. These all seemed to me to be necessary costs of litigating.

I also generally recommended that certain types of expenses be rejected as being "overhead" – *i.e.*, part of the costs normally incurred in operating a law firm.[57] I did however

[57] *See* December 2018 Fee and Expense Order at 35 ("overhead will not be reimbursed as reasonable expenses"). I also recommended rejection of some expenses that seemed to have no relation to the litigation whatsoever, such as one law firm group that sought reimbursement for a motel room for an unnamed family that it randomly encountered and another that sought reimbursement for hotel rooms for the firm's staff following a holiday party. I recommended rejection of expenses that consisted of nothing more than a store, gas station name, or generic description (*e.g.*, "Walmart," "petty cash," or "monthly draw") and a dollar amount.

recommend acceptance of a limited number of such types of expenses where they were incurred in connection with setting up a trial site.

Examples of expenses that I considered overhead include:

- Purchasing cell phones for employees;
- Office supplies (*e.g.*, paper, envelopes, folders, ink cartridges) and equipment (*e.g.*, computers, hard drives, screens, printers, projectors);
- Kitchen supplies;
- Standard phone or internet service for the law firm;
- Maintaining websites (other than the official settlement website);
- Leases for copiers.

I recommended rejection in their entirety of those expenses that appeared to be solely for client recruitment/acquisition.[58] Such expenses included: expenses relating to correspondence or meetings with "potential clients" or "potential co-counsel"; all advertising in print media, digital media (including Facebook, Twitter, GoDaddy, Google), billboards, radio or television (including the cost of script writers, video production expenses, location scouting expenses); experts whose task was to help in identifying and/or collecting potential clients; materials used to sign up clients; mailings to potential clients; meetings with opinion leaders or large landowners in a particular area; brochures and other handouts; or expenses described as "marketing."[59]

If a particular trip appeared to be for a meeting that was solely for the purpose of recruiting clients, all expenses connected to that trip (*e.g.*, airfare, hotel, meals, ground

[58] *See* December 2018 Fee and Expense Order at 35 ("advertising and expenses for recruiting or entertainment . . . generally constitute firm overhead and . . . will not be properly reimbursed as reasonable expenses.").

[59] Contrary to assertions made by some law firm groups in court filings, I do not believe the word "marketing" can be fairly read to encompass communications with existing clients.

transportation, staffing, etc.), to the extent we could identify them, were recommended for rejection. I assumed that all advertising costs (print, broadcast, or digital media) were for the purpose of client recruitment (as lawyers typically do not use advertising to communicate with clients who have already retained them) and thus should be disallowed. Some law firm groups have argued that advertising and digital media are a means through which they can remind clients of upcoming meetings, but I rejected the notion that these should be reimbursable common benefit expenses, where, as here, I have recommended acceptance of significant photocopying, postage, and telephone charges incurred in communications with clients and where in many cases email was an available low-cost option.

Notwithstanding the instructions that we provided for completing the detailed spreadsheets (see Exhibit B hereto), some law firm groups submitted line items containing "bulk" expenses. In these situations, multiple different types of expenses were submitted together (*e.g.*, airfare, meals, hotels, meeting room costs, printing) with a single dollar amount. Often these bulk entries lacked such basic information as location, business purpose, how many meals were eaten and by whom, hotel charges per night and how many rooms were rented, airline flight trip information, class of flight and who was traveling. In these circumstances, we contacted the law firm group and asked for this information. Where it was not provided, I generally concluded that there was an insufficient record from which I could recommend approval of these bulk expenses.

2. Specific Categories of Expenses

Expert/Consulting Fees. As a general rule, I recommended approval of expenses for "experts" retained by law firm groups who were described as assisting in getting information from existing clients and/or the FSA in order to complete PFSs, respond to discovery, fill out opt

out forms from the certified litigation class, or apply for settlement benefits. While I think it is possible, perhaps likely, that some of such experts' work may have assisted in the recruitment of new clients as well, I generally accepted the law firm group's description of their work as truthful. I also generally recommended acceptance of charges for contract employees, including contract attorneys, who were described as doing similar work (*e.g.*, assisting with client PFSs or discovery or responding to telephone inquiries) or were involved in assisting at meetings reported to be with existing clients. I did not, however, recommend acceptance of requests for reimbursement of hourly rates or salaries for law firm employees who performed such tasks, believing that those costs are subsumed in attorneys' fee awards, and should not be reimbursed as expenses. Expenses for legal and damages experts and experts regarding the agricultural industry were generally recommended for acceptance as well, on the assumption that such individuals were used by the firms to further the litigation against Syngenta or the settlement effort.

Telephone Charges. Some firms simply submitted total phone charges for a particular time frame (basic carrier, long distance, cell phones, conference services) and sought reimbursement for some or all of that total amount. For example, one firm submitted a ledger of all of its phone expenses, grouped by month, for a specified period, and sought reimbursement of 90% of the charges, claiming that 90% of the firm's work in the specified period was on the Syngenta litigation. Another firm sought reimbursement for all cell phone charges for particular employees for whom it had purchased cell phones, claiming that those employees used the phones only for work purposes and only worked on the Syngenta litigation. These are but a few examples; there were many variations on this theme. I did recommend rejection of some such charges and I believe that I could have recommended rejection of all such charges as overhead

and as contrary to this Court's July 27, 2015 CBO, as incorporated in the December 2018 Fee and Expense Order which required that phone charges "be documented as individual call expenses to be compensable."[60] I recognized however that some law firm groups could face a real financial hardship where they had actually incurred legitimate expenses, but lacked the ability to document them on a call by call basis. In these cases, we sought additional information about how the firm functioned and kept financial records. Sometimes we received it and sometimes we did not. I then made judgments about what phone charges should be compensable.

Postage Charges. The Court's Common Benefit Order incorporated in the December 2018 Fee and Expense Order requires a contemporaneous postage log.[61] Many firms did not provide one; other firms attempted to do so, but it appeared that employees frequently failed to record matter charges appropriately. As with telephone charges, to the extent a log of individual postage charges was not available, we sought additional information about how the firm functioned and kept financial records, and then tried to make reasonable judgments about what postage charges should be compensable.

Mileage Charges/Car Rentals/Other Ground Transportation. Many law firm groups did not specify the origin, destination, number of miles traveled, number of days of travel, or the business purpose of such travel. In those situations, where we were reasonably able to do so, we attempted to look at other information on the spreadsheets as to the locations and purposes of the meetings to which they traveled, the location of the law firms involved, and the amount of the

[60] *See* December 2018 Fee and Expense Order at 34-36 (incorporating by reference CBO at 13-14).

[61] *See id.* (incorporating by reference CBO at 14).

expense in order to determine whether the expenses appeared reasonable and approvable. We also regularly requested that law firms provide us this information when we sent requests for additional information with respect to individual line items. However, given the significant amount of time we would have spent and the high cost of doing so for all such entries, where I could not determine additional information from context or a follow-up inquiry to the firm, I largely recommended rejection of such incomplete entries. Examples of such entries include: only the name of a car rental company and a dollar amount; only the name of a gas station with a dollar amount; a number of miles and either no description of the places traveled to or a very general one ("3 weeks driving around the Midwest"); only a generic phrase like "mileage reimbursement" without any number of miles or other description; only the name of an airport, the word "parking" and a dollar amount; only the word "cab" or "car service" or "Uber" and a dollar amount.

Air travel. As a general rule, I recommended reducing airfare charges that were for first or business class seats to a reasonable economy class charge; I also generally recommended rejection of upgrade charges. Many spreadsheet entries did not specify the class of service, whether the flight was round-trip or one-way, the origin, the destination, the number or identity of passengers, or the business purpose of the travel. There were also private or charter plane charges where it was difficult to ascertain the basis for the amount of the reimbursement sought. We typically asked the law firm groups to provide more detailed additional information. Many, but not all, did so, and when they did, I generally accepted their explanations as true. Where reasonably possible and not unduly burdensome or costly, if we lacked information, we attempted to look at other entries on the spreadsheets as to the locations and purposes of the meetings to which they traveled and the location of the law firms involved to determine whether

the airfares appeared approvable. We did some basic on-line research as to the costs of coach airfare between particular locations as additional guidance to the reasonableness of the claimed airfare. Where we could not tell, or where it would not have been cost-effective for us to wade through the spreadsheet to try to piece together the information that the law firm group failed to provide, I recommended rejection or reduction of such expenses.

D. Particularly Significant Issues Identified and Addressed

1. Full and Fair Opportunity to Perfect Expense Applications

Our process was designed to give law firm groups a fair opportunity to substantiate their claims for expense reimbursement. As noted above, we circulated spreadsheets in a standardized format requiring the submission of itemized expenses with detail sufficient to evaluate them.[62] Where the information provided in response was incomplete or otherwise still insufficient, or where the spreadsheet was not returned, we followed up with the relevant law firm group to identify and seek the missing information. And, as noted, when law firm groups requested additional time to provide the needed information, I uniformly granted an extension.[63]

This approach was particularly important in connection with the numerous firms that during the litigation were affiliated with Watts Guerra LLP and were part of its consolidated fee and expense application in August 2018, ECF No. 3686. In its revised expense application, ECF No. 3975, filed January 18, 2019, Watts Guerra LLP explained that the revised application was for Watts Guerra LLP alone, and not on behalf of Watts Guerra LLP's associate counsel who had participated in its initial submission in August 2018:

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[62] *See supra* § III.B.

[63] *Id.*

> This revised application is for Watts Guerra LLP alone. Each of Watts Guerra's associate counsel is responsible for its own expense submission, including making revisions (if necessary) to individual expense spreadsheets (if any) previously submitted by those attorneys, which spreadsheets are in the record at ECF No. 3686-3 (filed Aug. 16, 2018) (correcting ECF No. 3661-3 (filed Aug. 3, 2018)).[64]

While over 45 Watts Guerra LLP associate counsel had made ECF submissions in response to the January 4, 2019 Order, at least 80 other Watts Guerra LLP associate counsel that had expense requests included in the August 2018 Watts Guerra LLP submission, ECF No. 3686-3, did not submit any supplemental or revised expense applications by the January 18, 2019 deadline. This circumstance raised the question whether these 80 Watt Guerra LLP associate counsel: (1) intended to stand by their expense applications contained within the August 2018 Watts Guerra LLP submission, ECF No. 3686-3; or (2) intended to abandon their expense claims in light of the Court's articulation of the applicable standards in the December 2018 Fee and Expense Order and the January 2019 Order; or (3) sought to revise their expense reimbursement request.

To resolve this question, and to assure that these firms had a full and fair opportunity to pursue their expense reimbursement claims consistent with the Court's orders, we arranged for Watts Guerra LLP to send to its associate counsel a letter from the Special Master requesting that they indicate their intent in regard to their expense claims and, if they were not abandoning their expense claims, that they provide the information and spreadsheet requested by the Special Master in conformity with the January 2019 Order. The letter specified a date by which a response was required. Written and telephonic follow-up efforts were made with respect to law

[64] Revised Expense Application By Watts Guerra LLP at n.1, ECF No. 3975, filed Jan. 18. 2019.

firms that did not respond timely, and those law firms were informed that, absent a response, their expense reimbursement request would be deemed abandoned.

The exhibits to this Report and Recommendation reflect the responses and determinations with respect to the Watts Guerra LLP associate counsel. Among other things, they reflect that:

- 16 law firms that had sought expenses as part of Watts Guerra LLP's August 2018 submission, ECF No. 3686-3, but that had not already filed their own ECF petition, continued to seek expense reimbursement under 3686-3;
- 22 Watts Guerra LLP associate counsel responded to the letter from the Special Master and affirmatively acknowledged that they had abandoned their request for expense reimbursement; and
- 43 Watts Guerra LLP associate counsel did not respond to the letter from the Special Master after multiple opportunities to do so and are deemed to have abandoned their request for expense reimbursement.

The law firms that affirmatively abandoned or are deemed to have abandoned their applications are listed on Exhibit C.

2. Duplicate Claims

Our review of ECF submissions, spreadsheets, and other data submitted by law firm groups also identified potential duplicate expense item claims, which were of two types. Based on identical (or near-identical) dates, amounts, and other substantiating information, some expenses appeared to be duplicates within an individual law firm group's application. Other expenses appeared to duplicate expense claims asserted by another law firm group or another firm within a law firm group. To prevent potential double payment of expenses, we followed up with individual firms regarding the potential duplicate expense claims. In response, several firms confirmed that there was inadvertent duplication and withdrew the duplicate expense claim; in other cases, the firm provided additional information that allowed us to determine that there was no duplication.

3. Client Acquisition Versus Common Benefit Litigation Expenses

A significant issue we had to address in evaluating many of the expense reimbursement requests was whether the expense was for client recruitment and/or overhead, which are not reimbursable expenses pursuant to the Court's Order.[65] As the Court is aware, many law firm groups spent a tremendous amount of time and money traveling around the country holding meetings with corn farmers over an approximately five-year period from 2014 to 2018. Some of these meetings were primarily for the purpose of recruiting clients, as is evidenced in some of the ECF filings, expense descriptions, follow-up information provided by various law firm groups, and in the significant advertising/social media/marketing material and personnel costs associated with such meetings. It also appears that some meetings were primarily for the purpose of informing existing clients about the state of the litigation, working with them on discovery or PFSs, and later in time advising them about the settlement. Many such meetings, however, were for a dual purpose of communicating with existing clients and recruiting new ones.

Determining exactly which meetings (and the attendant airfare, mileage, rental car, meals, hotel, materials, personnel costs, etc.) served which purposes was a challenge. For this reason, our spreadsheet specifically required firms to identify whether a particular expense was in whole or in part for the recruitment of clients. Many firms did not comply with this requirement. In doing our review, we looked to a number of factors, including: how did the law firm group describe the meeting and how credible was that description; how were the expenses associated with such meeting characterized; what materials appear to have been used for the

[65] *See* December 2018 Fee and Expense Order at 35 ("The Court notes (as does the special master) that items not included in the CBO (such as advertising and expenses for recruiting or entertainment) generally constitute firm overhead, and items properly considered overhead will not be reimbursed as reasonable expenses."); *see also supra* p. 10 and n. 36.

meeting; whether the meeting was early or late in the course of the litigation; where there were multiple law firms in a law firm group, were the various firms' characterizations consistent; what statements were made in ECF filings about such events and were they consistent with other filings made at different points in time; and what responses did law firm groups provide when we asked follow-up questions about these meetings.

These sorts of expenses required me to make judgment calls. Where it was not clear from the entries whether a meeting and attendant travel costs, mailings, and other expenses involved existing clients, potential clients, or both, we generally gave law firm groups the opportunity to provide more information. Examples of these sorts of expenses include "town hall meetings," "case status meetings," bulk postage, bulk copying bills, travel (hotel, meals, airfare, mileage, rental cars), and experts. We sought and generally got at least some additional information from the law firm groups. Where a law firm group suggested a percentage (*i.e.*, the meeting was 20% for recruitment and 80% for client communication purposes) with some plausible factual basis, I generally accepted its characterization. Where I determined, based on the information that had been provided, that the expense involved both existing and potential clients but it was not reasonably possible to tell in what proportion, I recommended approval at 50% of the amount sought.

IV. RECOMMENDATIONS REGARDING REIMBURSABLE EXPENSE AWARDS

We were presented with an enormous amount of data, of varying degrees of specificity, accuracy, and compliance with the Court's Orders and our requests for additional information. As discussed above, we gave the law firm groups multiple opportunities to provide us with information in support of their claims. Where there was reasonable and credible factual support, I erred on the side of recommending approval of expenses, recognizing that record-keeping

varies from firm to firm and was probably made more difficult by the massive scope of this litigation.

Attached as Exhibit D, Summary of Expenses by Category, is a chart providing a summary, by category, of expense awards sought by all law firm groups and the amount I have recommended be awarded in each category.

Attached as Exhibit E, Expenses by Law Firm Group, is a chart setting forth, for each law firm group, the amount of expense reimbursement sought in the operative ECF filing and the amount that I have recommended be awarded.

Attached as Exhibit F is a compilation of documents that provide, for each group, a summary regarding the amount sought by that law firm group in each expense category and the amount I have recommended be awarded in each category.[66]

[66] As discussed above, it was not unusual for law firm groups to miscategorize expenses (*e.g.*, to put meal expenses in the "air travel" category). We did not attempt to correct these miscategorizations. Thus, the categories on the chart certainly contain some expenses that are in the wrong categories, but those expenses were reviewed using the relevant review criteria based on the detailed expense description.

For all the reasons set forth above, and as described in more detail in the Exhibits to this Report and Recommendation, I recommend that the Court enter an order awarding $31,297,117.70 in expenses, allocated as set forth in Exhibit E.[67]

Respectfully submitted,

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[67] I did not provide for, and recommend against, any appeal process to the Special Master, for several reasons. First, the law firm groups were asked to provide detailed spreadsheets (which had clear instructions), and, where those spreadsheets were not compliant, the law firm groups were given further opportunities to correct the information. This process gave them ample opportunity to meet their burden of establishing that their claimed expenses were properly reimbursable. Second, under Fed. R. Civ. P. 53(f)(3), (4), the Court's review of any objections to the factual findings and legal conclusions in this Report and Recommendation is *de novo*. Under these circumstances, I believe that incurring the additional expense and delay of a Special Master appeal process is not justified.