

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

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SYNGENTA CROP PROTECTION, LLC, )

Plaintiff, )

v. )

WILLOWOOD, LLC, WILLOWOOD USA, )  
LLC, WILLOWOOD AZOXYSTROBIN, )  
LLC, and WILLOWOOD LIMITED, )

Defendants. )

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Civil Action No: 1:15-CV-274

**SYNGENTA’S MOTION TO SEAL CERTAIN TRIAL EXHIBITS AND CLOSE  
THE COURTROOM DURING TESTIMONY ABOUT THOSE EXHIBITS**

Pursuant to Local Rule 5.4(f), Plaintiff Syngenta Crop Protection, LLC (“Syngenta”), by and through its attorneys, respectfully moves this Court to seal Plaintiff’s Trial Exhibits 6.a-d, 70.a, 110.a, 123.a, 140.a, 142, 148.a, 149, 150, 222, 225.a, 235, 259, 265, 269, 276 and 277, and Defendants’ Trial Exhibits 21, 22, 35, 47, 78, 88, 95-96, 98, 113, 137, 142, 157, 161-63, 209, and 211-14. These proposed trial exhibits contain highly confidential and sensitive Syngenta technical, business, and competitive information. Syngenta also requests this Court close the courtroom during any trial testimony relating to those trial exhibits, which may include testimony from Syngenta’s experts, Dr. Joseph Fortunak and Dr. Benjamin Wilner, Syngenta fact witnesses Mr. Jeff Cecil, Mr. Andrew Fisher, Dr. Alan Whitton and Dr. Rex Wichert, and Willowood’s

experts, Mr. John Jarosz and Dr. Mark Lipton. Syngenta explains the bases for its Motion in the accompanying Brief filed herewith.

Counsel for Syngenta contacted counsel for Defendants Willowood, LLC, Willowood USA, LLC, Willowood Azoxystrobin, LLC, and Willowood Ltd. (collectively, "Willowood") to determine whether Willowood is opposing this motion. The parties have conferred about this motion and will continue to do so.

WHEREFORE, for the reasons set forth herein and in the accompanying Brief, Syngenta respectfully requests that this Court grant its Motion to Seal Certain Trial Exhibits and Close the Courtroom During Testimony About Those Exhibits.

**Dated:** August 28, 2017

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document has been filed electronically with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record in this action.

This the 28 day of August, 2017.

/s/ Richard A. Coughlin  
Richard A. Coughlin

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LLC, WILLOWOOD AZOXYSTROBIN, )  
LLC, and WILLOWOOD LIMITED, )

Defendants. )

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Civil Action No: 1:15-CV-274

**SYNGENTA’S BRIEF IN SUPPORT OF ITS MOTION TO SEAL  
CERTAIN TRIAL EXHIBITS AND CLOSE THE COURTROOM  
DURING TESTIMONY ABOUT THOSE EXHIBITS**

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Syngenta submits this Brief in Support of its Motion to Seal Certain Trial Exhibits and Close the Courtroom During Testimony About Those Exhibits.

Recognizing the public interest in favor of access to judicial records, and in large part to minimize the confidentiality issues presented by highly confidential and sensitive Syngenta technical, business, and competitive information that may be presented at trial, Syngenta recently narrowed its trial exhibit list by more than half. After Syngenta narrowed its trial exhibit list, there remain a limited number of Syngenta documents on its trial exhibit list that contain highly confidential and sensitive Syngenta information. These trial exhibits can be grouped into four categories: (1) technical documents, (2) agreements, (3) financial data, and (4) corporate strategy documents.

Willowood has also placed on its trial exhibit list a large number of highly confidential and sensitive Syngenta technical documents, agreements, financial data, and corporate strategy documents. One day after Syngenta sent Willowood a list of both parties' trial exhibits that it would be moving to seal, Willowood added a number of additional Syngenta confidential corporate strategy documents to its trial exhibit list. In order to timely file this motion and avoid over-burdening this Court, and in an effort to have the confidentiality issues for these exhibits resolved before trial,<sup>1</sup> Syngenta

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<sup>1</sup> Syngenta is not moving to exclude the expert report of Willowood's damages expert, John Jarosz, and the exhibits thereto, even though they include highly confidential Syngenta financial data, because they are inadmissible hearsay. *See, e.g., Mahnke v. Wash. Metro. Area Transit Auth.*, 821 F. Supp. 2d 125, 154 (D.D.C. 2011) ("reports prepared by experts ... are hearsay and are not admissible into evidence"); *Pender v. Bank of Am. Corp.*, No. 3:05-CV-00238-GCM, Dkt. 379 (W.D.N.C. Nov. 4, 2016)



addresses herein all of Syngenta's confidential trial exhibits, and the Willowood trial exhibits that include highly confidential Syngenta technical information, agreements and financial data.<sup>2</sup> With regard to the Willowood trial exhibits that include highly confidential Syngenta corporate strategy information, Syngenta identifies herein the relevant Willowood trial exhibits for ease of future reference and for the purpose of providing notice to the public. However, given the large volume of these documents on Willowood's exhibit list<sup>3</sup>, and the unlikelihood that Willowood will be able to admit all of these exhibits at trial, Syngenta does not move at this time to seal those exhibits. Instead, Syngenta proposes below a procedure for addressing the confidentiality of those exhibits that are actually likely to be entered into evidence.

As explained below and in the Affidavit of Andrew Fisher ("Fisher Aff."), filed herewith, the public disclosure of highly confidential and sensitive Syngenta technical, business, financial, and competitive information would cause Syngenta competitive and financial harm. To protect Syngenta from suffering harm as a result of its efforts to adjudicate its patent rights, the confidential trial exhibits should be sealed, and the courtroom closed when witnesses are testifying regarding the information in the confidential trial exhibits.

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(excluding expert reports and accompanying exhibits as hearsay) (attached as Exhibit A to the Declaration of Hari Santhanam).

<sup>2</sup> Syngenta also addresses a limited set of corporate strategy documents on Willowood's exhibit list that are duplicative of exhibits on Syngenta's trial exhibit list.

<sup>3</sup> Willowood's exhibit list includes at least 50 internal Syngenta presentations that include highly confidential corporate strategy information.

## **I. STATEMENT OF THE NATURE OF THE MATTER**

The parties have identified on their respective trial exhibit lists the following potential trial exhibits that include highly confidential Syngenta technical, business, and competitive information: Plaintiff's Trial Exhibits ("PTX") 6.a-d, 70.a, 110.a, 123.a, 140.a, 142, 148.a, 149, 150, 222, 225.a, 235, 259, 265, 269, 276 and 277; and Defendants' Trial Exhibits ("DTX") 21, 22, 35, 47, 78, 88, 95-96, 98, 113, 137, 142, 157, 161-63, 209, and 211-14 (collectively, "Confidential Trial Exhibits")<sup>4</sup>.

Syngenta understands that the witnesses who may testify regarding the Confidential Trial Exhibits and the information contained therein are Syngenta's experts, Dr. Joseph Fortunak and Dr. Benjamin Wilner, Syngenta fact witnesses Mr. Jeff Cecil, Mr. Andrew Fisher, Dr. Alan Whitton, and Dr. Rex Wichert, as well as Willowood's experts, Mr. John Jarosz and Dr. Mark Lipton. The highly confidential information belonging to Syngenta contained within the Confidential Trial Exhibits is not publicly available and may result in competitive and/or financial harm if the information became part of the public record of this case.

In its pre-trial disclosures filed on June 1, 2017 (Dkt. 188), Willowood has also identified the following potential trial exhibits that include highly confidential Syngenta corporate strategy information: DTX 68-69, 72-77, 81-86, 92-94, 97, 99-102, 104-05, 107-08, 112, 127-32, 138-41, 143-45, 158-60, and 164. On Friday, August 25—a little over a week before trial—Willowood added the following highly confidential Syngenta

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<sup>4</sup> The Confidential Trial Exhibits are attached as Exhibit B to the Declaration of Hari Santhanam.

documents to its trial exhibit list (that are not duplicative of documents on Syngenta's trial exhibit list): DTX 198-208, 210, 215, 222, 225-27, 231-47, 249-51. Collectively, these exhibits are referred to herein as the "Syngenta Confidential Defendants' Exhibits." Should Willowood seek to admit any of these exhibits, Syngenta will move for the appropriate protection at that time, using the procedure outlined below.

## **II. STATEMENT OF FACTS**

### **A. Confidential Syngenta Technical Exhibits**

1. PTX 6.a-d and DTX 35 (collectively, "Confidential Syngenta Technical Exhibits") are Syngenta documents designated Attorneys Eyes Only under the Protective Order in this case because they contain highly sensitive technical and competitive information. (PTX 6.a-d.)

2. Syngenta's technical expert, Dr. Joseph Fortunak, cited to and relied upon Confidential Syngenta Technical Exhibits in formulating his opinions, and Willowood's technical expert, Dr. Mark Lipton, offered a rebuttal to Dr. Fortunak's opinions. (Santhanam Decl. ¶ 5.) Syngenta anticipates both Dr. Fortunak and Dr. Lipton will offer testimony relating to Confidential Syngenta Technical Exhibits. (*Id.*)

3. Syngenta also anticipates that its fact witness Dr. Alan Whitton, the lead named inventor on the DABCO patent-in-suit, may offer testimony regarding the Confidential Syngenta Technical Exhibits. (*Id.*)

### **B. Confidential Syngenta Agreements**

4. PTX 259, 265, and 276-277, and DTX 47, 78 (duplicative of PTX 265), 95,

96 (duplicative of PTX 259), and 157-158 (collectively, “Confidential Syngenta Agreements”), are documents designated Attorneys Eyes Only under the Protective Order in this case because they contain highly sensitive and proprietary business and competitive information. (PTX 259, 265, 276, 277; DTX 47, 78, 95, 96, 157.)

5. Syngenta’s damages expert, Dr. Benjamin Wilner, cited to and relied upon Confidential Syngenta Agreements in formulating his opinions. In responding to Dr. Wilner’s opinions and formulating his own opinions, Willowood’s damages expert, Mr. John Jarosz, also cited to and relied upon Confidential Syngenta Agreements. (Santhanam Decl. ¶ 6.) Syngenta anticipates both Dr. Wilner and Mr. Jarosz will offer testimony relating to information in the Confidential Syngenta Agreements. (*Id.*)

6. Syngenta also anticipates that its fact witnesses Mr. Andrew Fisher, the Product Lead for azoxystrobin products at Syngenta, and Dr. Rex Wichert, Customer Marketing Manager for South and East Coast Commercial Units at Syngenta, may also offer testimony regarding the Confidential Syngenta Agreements. (*Id.*)

### **C. Confidential Syngenta Financials**

7. PTX 110.a, 123.a, 140.a, 142, 148.a, and 149-150, and DTX 21, 22 (duplicative of PTX 142), 102, 113, 161-163, 209 (duplicative of PTX 150), 212 (also duplicative of PTX 150), and 213-214<sup>5</sup> (collectively, “Confidential Syngenta Financials”), are documents designated Attorneys Eyes Only under the Protective Order

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<sup>5</sup> DTX 213 and 214 are unredacted versions of PTX 123.a and 140.a. Syngenta will work with Willowood to see if the parties can agree to use the version of this financial spreadsheet that includes only the relevant products.

in this case because they contain highly sensitive and proprietary business information. (PTX 110.a, 123.a, 140.a, 142, 148.a, 149, 150; DTX 21, 22, 69, 102, 113, 161, 162, 163.)

8. Syngenta's damages expert, Dr. Wilner, cited to and relied upon Confidential Syngenta Financials in formulating his opinions. (Santhanam Decl. ¶ 7.) Certain exhibits to Dr. Wilner's report also contain summaries of the highly confidential information in the Confidential Syngenta Financials. (*Id.*) In responding to Dr. Wilner's opinions and formulating his own opinions, Willowood's damages expert, Mr. Jarosz, also cited to and relied upon Confidential Syngenta Financials, and prepared his own exhibits summarizing information in the Confidential Syngenta Financials. (*Id.*) Syngenta anticipates both Dr. Wilner and Mr. Jarosz will offer testimony, and possibly demonstrative exhibits, relating to the information in the Confidential Syngenta Financials. (*Id.*)

9. Syngenta also anticipates that its fact witnesses Mr. Fisher, Dr. Wichert, and Mr. Jeff Cecil, Head of Crop Protection Marketing at Syngenta, may also offer testimony regarding the Confidential Syngenta Financials. (*Id.*)

**D. Confidential Syngenta Strategy Exhibits**

10. PTX 70.a, 222, 225.a, 235, and 269, and DTX 88 (duplicative of PTX 222), 98 (duplicative of PTX 235), 137 (duplicative of PTX 269), and 211 (also duplicative of

PTX 269) (collectively, “Confidential Syngenta Strategy Exhibits”),<sup>6</sup> are documents designated Attorneys Eyes Only under the Protective Order in this case because they contain highly sensitive and proprietary business information. (PTX 70.a, 222, 225.a, 235, 269; DTX 88, 98, 137.)

11. Syngenta’s damages expert, Dr. Wilner, cited to and relied upon Confidential Syngenta Strategy Exhibits in formulating his damages opinions. (Santhanam Decl. ¶ 8.) In rebutting Dr. Wilner’s opinion and in formulating his own damages opinion, Willowood’s damages expert, Mr. Jarosz, also cited to and relied upon Confidential Syngenta Strategy Exhibits. (*Id.*) Syngenta anticipates Dr. Wilner and Mr. Jarosz will offer testimony relating to information in the Confidential Syngenta Strategy Exhibits. (*Id.*)

12. Syngenta also anticipates that its fact witnesses Mr. Cecil, Mr. Fisher, and Dr. Wichert may offer testimony regarding the Confidential Syngenta Strategy Exhibits. (*Id.*)

### **III. STATEMENT OF THE QUESTIONS PRESENTED**

Whether, in light of the explanations and authority provided herein and in the Affidavit of Andrew Fisher, filed herewith, Syngenta has shown the necessity of sealing the Confidential Trial Exhibits and closing the courtroom during testimony related to those exhibits in order to protect Syngenta’s highly confidential and proprietary technical, business, and competitive information.

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<sup>6</sup> In addition to the duplication between PTX and DTX noted above, PTX 70.a is a subset of pages of DTX 68, and PTX 225.a is a subset of pages of DTX 105.

#### **IV. ARGUMENT**

Syngenta publicly files this motion in advance of trial in order to give the public notice of this request and an opportunity to challenge the request. *See Virg. Dept. of State Police v. The Wash. Post*, 386 F.3d 567, 576 (4th Cir. 2004). Syngenta also provided Willowood with the list of potential Confidential Trial Exhibits, and the witnesses who may testify to those documents, in advance of filing this motion so that it would have the opportunity to respond.

##### **A. The Competing Interests Weigh in Favor of Sealing the Confidential Trial Exhibits and Limited Closing of the Courtroom.**

“When a party asks to seal judicial records, the court ‘must determine the source of the right of access with respect to each document,’ and then ‘weigh the competing interests at stake.’” (Dkt. 171 (quoting *Wash. Post*, 386 F.3d at 576).) Syngenta acknowledges that the trial exhibits and testimony will necessarily play a role in adjudicating this case, and are thus “judicial records” subject to a First Amendment right of access. *See In re Application of U.S. for an Order Pursuant to 18 U.S.C. § 2703(d)*, 707 F.3d 283, 290 (4th Cir. 2013); *Wash. Post*, 386 F.3d at 578-79; *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 252 (4th Cir. 1988).

“It is uncontested, however, that the right to inspect and copy judicial records is not absolute.” *Nixon v. Warner Comm’s, Inc.*, 435 U.S. 589, 598 (1978); *see also Rushford*, 846 F.2d at 253 (“The mere existence of a First Amendment right of access ... to a particular document does not entitle[] the press and the public to access in every case.”). Access to judicial records subject to a First Amendment right of access may be

denied if “closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *In re Wash. Post Co.*, 807 F.2d 383, 390 (4th Cir. 1986). “One exception to the public’s right of access is where such access to judicial records could provide a ‘source of business information that might harm a litigant’s competitive standing.’” *Woven Elecs. Corp. v. Advance Grp., Inc.*, No. 89-1580 and -1588, 1991 WL 54118, at \*6 (4th Cir. 1991) (explaining in *dicta* that partial sealing of trial record to prevent disclosure of trade secrets “strikes an appropriate balance between the public’s right of access to judicial records and the parties’ legitimate interest in protection of sensitive proprietary information”) (quoting *Nixon*, 435 U.S. at 598).

This matter essentially involves “a dispute between private parties involving matters that are normally private.” *Hunter v. Town of Mocksville*, 961 F. Supp. 2d 803, 807 (M.D.N.C. 2013); *see also Bayer Cropscience Inc. v. Syngenta Corp. Prot., LLC*, 979 F. Supp. 2d 653, 656-57 (M.D.N.C. 2013) (placing under seal business information “not ordinarily public” and subject to a First Amendment right of access). Weighing the public’s right of access to the judicial records Syngenta seeks to seal against Syngenta’s legitimate interest in protecting its highly confidential, sensitive, and proprietary information—disclosure of which could harm Syngenta’s competitive and financial interests—demonstrates that Confidential Trial Exhibits, and testimony related to those exhibits and the information in them, should be sealed.

### **1. Confidential Syngenta Technical Exhibits**

The Confidential Syngenta Technical Exhibits consist of PTX 6.a, which is an



internal Syngenta testing protocol, PTX 6.b-d, which are the results of a test of Willowood's azoxystrobin products using the testing protocol in PTX 6.a, and DTX 35, which is a collection of Syngenta laboratory notebooks. (Fisher Aff. ¶¶ 3-5.) The documents present in their entirety highly confidential information that Syngenta considers a trade secret, such that the documents cannot be presented in a redacted format. (*Id.*)

Were the information in the Confidential Technical Exhibits to become public, Syngenta would suffer a competitive disadvantage, particularly with regard to enforcing its patent rights. The testing protocol is used to determine whether an azoxystrobin product is manufactured in a manner that infringes Syngenta's patents. (*Id.* ¶ 3.) A competitor could use information from the testing protocol at PTX 6.a, or the results of the testing protocol at PTX 6.b-d, to determine how to avoid detection of infringement. (*Id.* ¶¶ 3-4.) Additionally, the laboratory notebooks at DTX 35 contain information about Syngenta technical processes that a competitor could use to unfairly advantage itself using Syngenta's confidential, trade-secret information. (*Id.* ¶ 6.) The interest in protecting Syngenta from the competitive harm it would suffer should the Confidential Technical Exhibits become public far outweighs the public's interest in, and right of access to, the highly confidential information in the Confidential Technical Exhibits. *See Woven Elecs.*, 1991 WL 54118, at \*6.

## **2. Confidential Syngenta Agreements**

The Confidential Syngenta Agreements consist of supply agreements between

Syngenta and third parties (PTX 259, 276, 277; DTX 47, 95, 96<sup>7</sup>, 157), a presentation summarizing Syngenta's supply agreements with third parties (DTX 158), and an email string discussing a Syngenta supply agreement (PTX 265 and DTX 78<sup>8</sup>). (Fisher Aff. ¶¶ 6-8.) All of the information in these documents is highly confidential, such that the documents cannot be presented in a redacted format. (*Id.*)

The Confidential Syngenta Agreements include the identity of Syngenta's customers, and the financial and other terms on which Syngenta supplies products to those customers. (*Id.*) Allowing the public to access the Confidential Syngenta Agreements has the potential to harm Syngenta financially and competitively. A competitor could use the information in the Confidential Syngenta agreements to target Syngenta's customers to offer products at lower prices or more favorable terms. (*Id.*) This would place Syngenta at a competitive disadvantage relative to its competitors in the marketplace. (*Id.*) Protecting Syngenta from this competitive harm weighs more heavily than the public's interest in, and right of access to, the highly confidential information in the Confidential Syngenta Agreements. *See Woven Elecs.*, 1991 WL 54118, at \*6.

### **3. Confidential Syngenta Financials**

The Confidential Syngenta Financials are spreadsheets that were produced in native format that include extensive competitive, financial and pricing data. (Fisher Aff. ¶¶ 9-14.) Specifically, PTX 110.a, 123.a, 140.a, 148.a, and 150 are Syngenta budget spreadsheets, which include Syngenta's market forecasting, sales figures, and pricing

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<sup>7</sup> DTX 96 and PTX 259 are the same document.

<sup>8</sup> DTX 78 and PTX 265 are the same document.

information. (*Id.* ¶ 9.) DTX 161 and 162 are Syngenta pricing spreadsheets for its Quadris azoxystrobin product. (*Id.* ¶ 13.) The information in PTX 142 and DTX 21, 22<sup>9</sup>, 103, 163 is competitive market intelligence regarding azoxystrobin imports, costs, and pricing structures. (*Id.* ¶¶ 10, 14.) DTX 113 contains competitive market intelligence regarding strobilurin product average price and acreage share. (*Id.* ¶ 12.) And PTX 149 contains an accounting of Syngenta's functional costs for the years 2012-2015. (*Id.* ¶ 11.) Because all of the information in these spreadsheets is confidential or highly confidential, and is presented in native spreadsheet format, these exhibits cannot be presented in redacted form. (*Id.* ¶¶ 9-14.)

Allowing the public to access the Confidential Syngenta Financials has the potential to harm Syngenta financially and competitively. For example, if a competitor had access to the Syngenta budgets at PTX 110.a, 123.a, 140.a, 148.a, and 150, they would be privy to Syngenta's highly confidential, trade secret market forecasting, pricing information, and sales data, while Syngenta would not have comparable information about its competitors. (*Id.* ¶ 9.) Similarly, a competitor could use the information in PTX 161 and 162 about Syngenta's pricing for its Quadris azoxystrobin product to advantageously price themselves in the market relative to Syngenta. (*Id.* ¶ 13.) Giving Syngenta's competitors access to Syngenta's competitive intelligence (PTX 142 and DTX 21, 22, 103, 113, 163) and internal cost structures (PTX 149), while Syngenta would not have similar information about (or from) its competitors, would also place

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<sup>9</sup> DTX 22 and PTX 142 are the same document.

Syngenta at a disadvantage. (*Id.* ¶¶ 10-12, 14.) The Confidential Syngenta Agreements, and the testimony about the information in the Confidential Syngenta Agreements, should be sealed to protect Syngenta from financial and competitive harm. *See Woven Elecs.*, 1991 WL 54118, at \*6. The public's interest in, and right of access to, the Confidential Syngenta Agreements is heavily outweighed by the interest in protecting Syngenta from this harm.

#### **4. Confidential Syngenta Strategy Exhibits**

The Confidential Syngenta Strategy Exhibits are internal Syngenta presentations that include confidential business plans, market intelligence, and pricing strategy. (Fisher Aff. ¶¶ 15-16.) Specifically, PTX 269 and DTX 137 and 211, which are all from the same Syngenta presentation, includes in its entirety Syngenta business plans, with market intelligence appearing on one page of the document. (*Id.* ¶ 15.) PTX 70.a, 222, 225.a, and 235, and DTX 88<sup>10</sup> and 98<sup>11</sup>, are Syngenta presentations that contain Syngenta business plans, as well as market intelligence and pricing strategy information. (*Id.* ¶ 16.)

The Confidential Syngenta Strategy Exhibits include Syngenta's internal business plans, competitive information, and pricing strategies. If this information were to become public, it has the potential to harm Syngenta financially and competitively. For example, if Syngenta's competitors had access to Syngenta's confidential pricing strategies, they would be able to price themselves strategically in the market to advantage themselves over Syngenta. (*Id.* ¶ 16.) Similarly, if those competitors had access to

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<sup>10</sup> DTX 88 and PTX 222 are the same document.

<sup>11</sup> DTX 98 and PTX 235 are the same document.

Syngenta's business plans and market intelligence, while Syngenta would not have access to the same information from those competitors, would place Syngenta at a competitive disadvantage in the market. (*Id.* ¶¶ 15-16.) The interest in protecting Syngenta from the financial and competitive harm it would suffer should the Confidential Syngenta Strategy Exhibits become public far outweighs the public's interest in, and right of access to, the highly confidential information in those exhibits. *See Woven Elecs.*, 1991 WL 54118, at \*6.

**B. Syngenta Has Narrowly Tailored Its Request, and Offers Proposed Procedures to Minimize Both the Information Placed Under Seal and the Impact on Trial.**

As explained above, the Confidential Trial Exhibits cannot be presented in redacted form. Syngenta undertook a close review of its trial exhibits prior to filing this motion in order to minimize the number of PTX that might be subject to Syngenta's confidentiality concerns. Syngenta also sent a list of all of the trial exhibits it expected to include in this motion to Willowood on Thursday, August 24,<sup>12</sup> to give Willowood the opportunity to narrow the number of confidentiality issues presented at trial. In response, Willowood indicated it would be serving an amended exhibit list on Friday, August 25, but rather than narrow the number of exhibits that are subject to Syngenta's confidentiality concerns, Willowood identified approximately 60 new exhibits, a significant number of which are Syngenta internal presentations containing highly confidential business, competitive, and financial information.

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<sup>12</sup> Syngenta has added one exhibit to this motion that was not included in its email to Willowood.

Because of the large number of Syngenta Confidential Defendants' Exhibits, as defined in Section I above, Syngenta proposes that Willowood identify any Syngenta Confidential Defendants' Exhibits that Willowood anticipates using in a witness examination by 7 PM two days before the examination (i.e., identify by 7 PM on Tuesday any such exhibits Willowood expects to use during witness examinations the following Thursday). This will allow Syngenta time to review the exhibit(s) and determine whether any could be presented in redacted form, or whether Syngenta will need to move to seal the exhibit(s). Syngenta expects that Willowood will make a good faith effort to identify only those exhibits it actually intends to use with a witness, to avoid unnecessary motion practice.

Syngenta also proposes both parties identify any Confidential Trial Exhibits to be used in a witness examination by 7 PM the night before the witness examination, and meet and confer at 8 PM the night before the witness examination to discuss the Confidential Trial Exhibits and the Syngenta Confidential Defendants' Exhibits and whether any measures beyond those listed in this motion will need to be taken to preserve the confidentiality of the information.

Syngenta has been cognizant of confidentiality issues as it has been considering its witness examinations. All testimony from Syngenta's fact witnesses and its technical expert about any Confidential Trial Exhibits will be grouped together, so that the courtroom need only be closed once for the direct examination of those witnesses. Syngenta will also endeavor to solicit testimony about those exhibits at the end of its

direct examinations, so as to minimize any interruption caused by closing the courtroom. Syngenta will do the same for its cross examination for Willowood's technical expert. With regard to the direct and cross examination of the damages experts, Syngenta will make every effort to group its questions regarding the Confidential Trial Exhibits together so as to minimize any disruption when seeking to close the courtroom. Prior to eliciting any testimony about Confidential Trial Exhibits that have been sealed pursuant to this motion (or any subsequent motion to seal Syngenta Confidential Defendants' Exhibits), Syngenta will notify the Court that it will be eliciting testimony regarding trial exhibit(s) that have been sealed and request that the courtroom be closed for the duration of that testimony. Syngenta respectfully requests that Willowood do the same.

## **V. CONCLUSION**

Syngenta does not seek to seal the Confidential Trial Exhibits, and close the courtroom during testimony relating to the Confidential Trial Exhibits, for any improper purpose. Syngenta's only interest is in protecting its highly confidential and sensitive information. Therefore, Syngenta respectfully requests that this Court grant its Motion to seal the Confidential Trial Exhibits, and to close the courtroom during the testimony of Syngenta's expert witnesses Dr. Fortunak and Dr. Wilner, Syngenta's fact witnesses Mr. Cecil, Mr. Fisher, Dr. Whitton, and Dr. Wichert, and Willowood's expert witnesses Dr. Lipton and Mr. Jarosz, to the extent they testify regarding the Confidential Trial Exhibits and the information therein.

**Dated:** August 28, 2017

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**CERTIFICATE OF WORD COUNT**

The undersigned hereby certifies that the foregoing document complies with the type-volume limitations of L.R. 7.3(d)(1) and contains 3,990 words, excluding those portions exempted by the rule.

This the 28 day of August, 2017.

/s/ Richard A. Coughlin  
Richard A. Coughlin

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document has been filed electronically with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record in this action.

This the 28 day of August, 2017.

/s/ Richard A. Coughlin  
Richard A. Coughlin