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12
13 IN THE UNITED STATES BANKRUPTCY COURT
14 FOR THE DISTRICT OF OREGON

15 In re
16 North Pacific Cannery & Packers, Inc.,
Hermiston Foods, LLC, and NPCP Quincy, LLC,
17 Debtors.

Case No. 19-62584-pcm11
LEAD CASE

(Jointly Administered with Case Nos.
19-33102-pcm11 and 19-33013-pcm11)

19 North Pacific Cannery & Packers, Inc.,
20 Hermiston Foods, LLC, and NPCP Quincy, LLC,
21 Plaintiffs,
22 v.
23 Syngenta Seeds LLC,
24 Defendant.

Adv. No. 20-06035-pcm
**DEFENDANT SYNGENTA SEEDS LLC'S
ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS' COMPLAINT**

25 In Answer to Plaintiffs North Pacific Cannery & Packers, Inc.'s, Hermiston Foods, LLC's,
26



1 and NPCP Quincy, LLC's (collectively "NORPAC") Complaint, Defendant Syngenta Seeds, LLC
2 ("Syngenta"), by and through its undersigned counsel, admits, denies, and alleges the following:

3
4 **ANSWER**

5 The allegations contained in the prefatory language of NORPAC's Complaint are statements
6 related to the nature of the case to which no response is required. To the extent that a response is
7 deemed necessary, Syngenta admits that it asserts a claim for lien rights in the jointly-administered
8 bankruptcy case pursuant to O.R.S. 87.755 ("Grain Producer's Lien") but denies that NORPAC is
9 entitled to any of the relief sought in the Complaint. Syngenta denies any remaining allegations in
10 the prefatory language of NORPAC's Complaint.

11 **PARTIES**

12 1. Based upon information and belief, Syngenta admits the allegations of paragraph 1 of
13 the Complaint.

14 2. Syngenta admits that it is a Delaware limited liability company. Syngenta denies
15 paragraph 2 of the Complaint to the extent that it contains other allegations of fact.

16 **JURISDICTION AND VENUE**

17 3. Syngenta admits the allegations of paragraph 3.

18 4. Syngenta admits the allegations of paragraph 4.

19 5. The allegations contained in paragraph 5 of the Complaint are statements related to the
20 nature of the case and/or are legal conclusions to which no response is required. To the extent any
21 issues raised in the Complaint or at the trial thereon are deemed to be non-core, Syngenta does not
22 consent to the Bankruptcy Court entering a final order on such issues.

23 6. Syngenta admits the allegations of paragraph 6.

1 13. Syngenta denies the allegations in paragraph 13.

2 **II. Syngenta's Claims**

3 14. Syngenta admits that it filed a Notice of Filing Extension of Grain Producer's Lien,
4 Lien No. 92047511 on September 23, 2019, and that the written instrument speaks for itself.
5 Syngenta denies all allegations in paragraph 14 that are inconsistent with the written instrument.
6

7 15. Syngenta admits that it filed a Notice of Filing Extension of Grain Producer's Lien,
8 Lien No. 92058849 on October 3, 2019, and that the written instrument speaks for itself. Syngenta
9 denies all allegations in paragraph 15 that are inconsistent with the written instrument.

10 16. Syngenta admits that it filed a Notice of Filing Extension of Grain Producer's Lien,
11 Lien No. 92058856 on October 3, 2019, and that the written instrument speaks for itself. Syngenta
12 denies all allegations in paragraph 16 that are inconsistent with the written instrument.
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14 17. Syngenta admits that it filed Proof of Claim 416 and that the proof of claim is a
15 written instrument that speaks for itself. Syngenta denies all allegations in paragraph 17 that are
16 inconsistent with the written instrument.

17 18. Syngenta admits that it filed Proof of Claim 417 and that the proof of claim is a
18 written instrument that speaks for itself. Syngenta denies all allegations in paragraph 18 that are
19 inconsistent with the written instrument.
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21 19. Syngenta admits that it filed Proof of Claim 418 and that the proof of claim is a
22 written instrument that speaks for itself. Syngenta denies all allegations in paragraph 19 that are
23 inconsistent with the written instrument.
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1 **III. The Dispute**

2 20. With regard to the allegations in paragraph 20 of the Complaint, Syngenta admits only
3 that the *Order (I) Approving Sale of Assets Free and Clear of Liens, Claims, Encumbrances, and*
4 *Interests; (II) Authorizing Assumption and Assignment of Certain Contracts and Unexpired Leases,*
5 *and (III) Granting Related Relief* filed at docket entry 496 in the main case contains numerous
6 provisions that speak for themselves in all respects. To the extent a response is required, Syngenta
7 denies all allegations contained in paragraph 20 that are inconsistent with the order.
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9 21. Syngenta is without knowledge sufficient to admit or deny the allegations in paragraph
10 21, and therefore denies same.

11 22. Syngenta admits that it received \$402,222.26 on or around February 21, 2020 and that
12 it has not received any other payment on account of its remaining secured or unsecured claims.
13 Except as expressly admitted, Syngenta denies the remaining allegations of paragraph 22.
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15 23. Syngenta denies that the payment of \$402,222.26 was made in error and denies the
16 remaining allegations of paragraph 23.

17 24. Syngenta admits that Debtors' counsel contacted counsel for Syngenta on April 16,
18 2020 to provide Syngenta with notice of the Debtors' belief that the \$485,680.16 unpaid portion of
19 Syngenta's secured claim is not secured. Except as expressly admitted, Syngenta denies the
20 allegations in paragraph 24.
21

22 25. Syngenta admits that the Debtors do not dispute the amount of Syngenta's claims.
23 Syngenta admits that the Complaint seeks to disallow Syngenta's secured claim and avoid a payment
24 of \$402,222.26 made to Syngenta, but denies that Syngenta is liable for the claims that NORPAC
25 generally alleges and further denies that NORPAC is entitled to any relief.
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1 **CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**
3 **(To Determine the Amount and Nature of Syngenta’s Claim Against Quincy;**
4 **Proof of Claim 416)**

5 26. Syngenta incorporates by reference its responses to all paragraphs of the Complaint as
6 if fully set forth herein.

7 27. Paragraph 27 of the Complaint states a legal conclusion to which no response is
8 required. Syngenta denies that NORPAC is entitled to any relief for the claims which NORPAC
9 generally alleges. Syngenta denies paragraph 27 to the extent it contains allegations of fact.

10 28. Paragraph 28 of the Complaint states a legal conclusion to which no response is
11 required. Syngenta denies that NORPAC is entitled to any relief for the claims which NORPAC
12 generally alleges. Syngenta denies paragraph 28 to the extent it contains allegations of fact.

13 29. Syngenta admits that it has an unpaid secured claim of \$485,680.16 against NORPAC,
14 but denies the remaining allegations of paragraph 29.

15 30. Syngenta admits that the Debtors do not dispute that Syngenta has a valid claim
16 against Quincy in the amount of \$485,680.16, and that the Debtors improperly allege that such claim
17 is entirely unsecured. Except as expressly admitted, Syngenta denies the allegations in paragraph 30.

18 31. Syngenta admits that its secured claim is fully secured under ORS 87.755 (the “Grain
19 Producer’s Lien”) and that the statute speaks for itself. Except as expressly admitted, Syngenta
20 denies the allegations in paragraph 31.

21 32. Syngenta admits the allegation in the first sentence of paragraph 32 that the Debtors
22 dispute the secured status of Syngenta’s unpaid secured claim in the amount of \$485,680.16. The
23 remainder of paragraph 32 states legal conclusions to which no response is required. Syngenta denies
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1 that NORPAC is entitled to any relief form the claims which NORPAC generally alleges. Except as
2 expressly admitted, Syngenta denies paragraph 32 to the extent it contains allegations of fact.

3 33. Syngenta denies the allegations of paragraph 33.

4 34. Paragraph 34 of the Complaint calls for the legal interpretation of a written statute and
5 therefore no response is required. To the extent a response is deemed necessary, the Grain
6 Producer's Lien speaks for itself. Syngenta denies that NORPAC is entitled to any relief for the
7 claims which NORPAC generally alleges. Syngenta denies paragraph 34 to the extent it contains
8 allegations of fact.
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10 35. Paragraph 35 of the Complaint calls for the legal interpretation of a written statute and
11 therefore no response is required. To the extent a response is deemed necessary, the Grain
12 Producer's Lien speaks for itself. Syngenta denies that NORPAC is entitled to any relief for the
13 claims which NORPAC generally alleges. Syngenta denies that NORPAC did not possess seed of
14 any value as of the Petition Date and further denies paragraph 35 to the extent it contains other
15 allegations of fact.
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17 36. In response to paragraph 36 of the Complaint, Syngenta admits that its secured claim
18 is fully secured under the Grain Producer's Lien and that the statute speaks for itself. Except as
19 expressly admitted, Syngenta denies the allegations in paragraph 36.
20

21 37. Paragraph 37 of the Complaint states legal conclusions to which no response is
22 required. Syngenta denies that NORPAC is entitled to any relief for the claims which NORPAC
23 generally alleges. Syngenta denies paragraph 37 to the extent it contains allegations of fact.

24 38. Syngenta denies the allegations of paragraph 38 of the Complaint and denies that
25 NORPAC is entitled to any relief.
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1 **SECOND CLAIM FOR RELIEF**
2 **(To Determine the Amount and Nature of Syngenta's Claim Against NORPAC;**
3 **Proof of Claim 415)**

4 39. Syngenta incorporates by reference its responses to all paragraphs of the Complaint as
5 if fully set forth herein.

6 40. Syngenta admits that its secured claim is fully secured under the Grain Producer's
7 Lien and that the statute speaks for itself. Except as expressly admitted, Syngenta denies the
8 allegations in paragraph 40.

9 41. Paragraph 41 of the Complaint states a legal conclusion to which no response is
10 required. Syngenta denies that NORPAC is entitled to any relief for the claims which NORPAC
11 generally alleges. Syngenta denies paragraph 41 to the extent it contains allegations of fact.

12 42. Paragraph 42 of the Complaint states a legal conclusion to which no response is
13 required. Syngenta denies that NORPAC is entitled to any relief for the claims which NORPAC
14 generally alleges. Syngenta denies paragraph 42 to the extent it contains allegations of fact.

15 43. Syngenta denies the allegations of paragraph 43 of the Complaint and denies that
16 NORPAC is entitled to any relief.

17 **THIRD CLAIM FOR RELIEF**
18 **(To Determine the Amount and Nature of Syngenta's Claim Against Hermiston; Proof of**
19 **Claim 417)**

20 44. Syngenta incorporates by reference its responses to all paragraphs of the Complaint as
21 if fully set forth herein.

22 45. Syngenta admits that its secured claim is fully secured under the Grain Producer's
23 Lien and that the statute speaks for itself. Except as expressly admitted, Syngenta denies the
24 allegations in paragraph 45.
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1 46. Paragraph 46 of the Complaint states a legal conclusion to which no response is
2 required. Syngenta denies that NORPAC is entitled to any relief for the claims which NORPAC
3 generally alleges. Syngenta denies paragraph 46 to the extent it contains allegations of fact.

4 47. Syngenta denies the allegations of paragraph 47 of the Complaint and denies that
5 NORPAC is entitled to any relief.

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7 **FOURTH CLAIM FOR RELIEF**
8 **(Avoidance of the Syngenta Overpayment Under 11 U.S.C. § 549(a))**

9 48. Syngenta incorporates by reference its responses to all paragraphs of the Complaint as
10 if fully set forth herein.

11 49. Paragraph 49 of the Complaint states a legal conclusion to which no response is
12 required. Syngenta denies that NORPAC is entitled to any relief for the claims which NORPAC
13 generally alleges. Syngenta denies paragraph 49 to the extent it contains allegations of fact.

14 50. With regard to the allegations in paragraph 50 of the Complaint, Syngenta admits
15 only that the *Order (I) Approving Sale of Assets Free and Clear of Liens, Claims, Encumbrances,*
16 *and Interests; (II) Authorizing Assumption and Assignment of Certain Contracts and Unexpired*
17 *Leases, and (III) Granting Related Relief* filed at docket entry 496 in the main case contains
18 numerous provisions that speak for themselves in all respects. To the extent a response is required,
19 Syngenta denies all allegations contained in paragraph 50 that are inconsistent with the order.

20 51. Syngenta admits that it received \$402,222.26 on or around February 21, 2020 and that
21 it has not received any other payment on account of its remaining secured or unsecured claims.
22 Syngenta is without knowledge sufficient to admit or deny the remaining allegations in paragraph 51,
23 and therefore denies same.
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1 52. Paragraph 52 of the Complaint states a legal conclusion to which no response is
2 required. Syngenta denies that NORPAC is entitled to any relief for the claims which NORPAC
3 generally alleges. Syngenta denies paragraph 52 to the extent it contains allegations of fact.

4 53. In response to paragraph 53, Syngenta admits that NORPAC's Complaint filed on
5 June 18, 2020 seeks an order avoiding the \$402,222.26 payment that was made to Syngenta on or
6 around February 21, 2020 pursuant to Syngenta's allowed secured claim and the Court's sale order,
7 but denies that NORPAC is entitled to any relief.

8
9 **FIFTH CLAIM FOR RLIEF**
10 **(Clawback of the Syngenta Overpayment Under 11 U.S.C. § 550(a)(1))**

11 54. Syngenta incorporates by reference its responses to all paragraphs of the Complaint as
12 if fully set forth herein.

13 55. Paragraph 55 of the Complaint states a legal conclusion to which no response is
14 required. Syngenta denies that NORPAC is entitled to any relief for the claims which NORPAC
15 generally alleges. Syngenta denies paragraph 55 to the extent it contains allegations of fact.

16 56. Paragraph 56 of the Complaint states a legal conclusion to which no response is
17 required. Syngenta denies that NORPAC is entitled to any relief for the claims which NORPAC
18 generally alleges. Syngenta denies paragraph 56 to the extent it contains allegations of fact.

19 57. In response to paragraph 57, Syngenta admits that NORPAC's Complaint filed on
20 June 18, 2020 seeks an order requiring Syngenta to pay the \$402,222.26 amount of the payment that
21 was made to Syngenta on or around February 21, 2020 pursuant to Syngenta's allowed secured claim
22 and the Court's sale order, but denies that NORPAC is entitled to any relief.
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1 **SIXTH CLAIM FOR RELIEF**
2 **(Claim Objection: Duplicate Claims)**

3 58. Syngenta incorporates by reference its responses to all paragraphs of the Complaint as
4 if fully set forth herein.

5 59. In response to paragraph 59, Syngenta admits that it filed identical Proofs of Claim
6 415, 416 and 417 against each Debtor, and that it is only seeking a single recovery on the
7 indebtedness asserted in its claims.

8 60. In response to paragraph 60, Syngenta admits that it has been paid \$402,222.26 of its
9 allowed secured claim and that Syngenta is entitled to payment of at least \$485,680.16 on its
10 remaining secured claim and a pro rata distribution on the \$132,690.90 general unsecured portion of
11 its claim. Syngenta denies that NORPAC is entitled to the relief sought in paragraph 60 to the extent
12 that NORPAC seeks any relief that does not provide Syngenta with payment in full on its secured
13 claim and a pro rata distribution on its unsecured claim.
14

15 **PRAYER FOR RELIEF**

16 Syngenta denies the allegations in NORPAC’s “Prayer for Relief”, including subparts 1
17 through 7, and denies that NORPAC is entitled to any relief sought therein against Syngenta.
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1 **AFFIRMATIVE DEFENSES**

2 Without assuming the burden of proof as to any matter on which NORPAC bears such
3 burden, and without waiving any of the answers set forth above, Syngenta asserts the following
4 affirmative defenses:
5

6 **FIRST AFFIRMATIVE DEFENSE**
7 **(Failure to State a Claim)**

8 NORPAC's claims are barred in whole or in part because they have failed to state a claim
9 upon which relief can be granted.

10 **SECOND AFFIRMATIVE DEFENSE**
11 **(Waiver/Estoppel)**

12 NORPAC's claims are barred in whole or in part by the doctrines of waiver and/or estoppel.

13 **THIRD AFFIRMATIVE DEFENSE**
14 **(Accord and Satisfaction)**

15 NORPAC's claims are barred in whole or in part by the doctrine of accord and satisfaction.

16 **FOURTH AFFIRMATIVE DEFENSE**
17 **(Unclean Hands)**

18 NORPAC's claims are barred in whole or in part by the doctrine of unclean hands.

19 **FIFTH AFFIRMATIVE DEFENSE**
20 **(Unjust Enrichment)**

21 NORPAC's claims are barred in whole or in part by because NORPAC retained the benefits
22 of the proceeds of the Syngenta seed without compensating Syngenta as agreed and promised.

23 **SIXTH AFFIRMATIVE DEFENSE**
24 **(Detrimental Reliance)**

25 NORPAC's claims are barred in whole or in part because Syngenta relied upon NORPAC's
26 payment or promise to pay for the Syngenta seed to Syngenta's detriment.

1 **SEVENTH AFFIRMATIVE DEFENSE**
2 **(Failure to Mitigate/Waste)**

3 NORPAC's claims are barred in whole or in part because NORPAC failed to mitigate
4 damages and/or caused waste by failing to make reasonable efforts to sell the seed that NORPAC
5 alleges was valueless and disposed of.

6 **EIGHTH AFFIRMATIVE DEFENSE**
7 **(Laches)**

8 NORPAC's claims are barred in whole or in part by the doctrine of laches.

9 **NINTH AFFIRMATIVE DEFENSE**
10 **(Res Judicata/Collateral Estoppel)**

11 NORPAC's claims are barred in whole or in part by the doctrines of res judicata and/or
12 collateral estoppel.

13 **TENTH AFFIRMATIVE DEFENSE**
14 **(Law of the Case)**

15 NORPAC's claims are barred in whole or in part by the law of the case doctrine.

16 **ELEVENTH AFFIRMATIVE DEFENSE**
17 **(Secured Claim)**

18 NORPAC's claims are barred because Syngenta is fully secured under the Grain Producer's
19 Lien.

20 **RESERVATION OF RIGHTS**

21 Syngenta reserves its rights to add additional defenses, make claims, or add additional denials
22 as further discovery and investigation may warrant. Nothing contained in this Answer and
23 Affirmative Defenses should be construed as a waiver of any such defenses, claims, or denials.

24 WHEREFORE, Syngenta prays for relief as follows:

- 25 1. The Court deny and dismiss NORPAC's claims against Syngenta with prejudice;
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- 2. That the Court find in favor of Syngenta;
- 3. That the Court declare that Syngenta’s claim under the Grain Producer’s Lien is fully secured;
- 4. That Syngenta be awarded its costs and disbursements incurred herein; and
- 5. Any further relief that the Court deems just and equitable.

DATED this 24th day of July, 2020.

SHUMAKER, LOOP & KENDRICK, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2020, the foregoing *Answer and Affirmative Defenses* was served on:
Michael Fletcher, michael.fletcher@tonkon.com;
Albert N. Kennedy, al.kennedy@tonkon.com;
Danny Newman, danny.newman@tonkon.com; and
Ava L. Schoen, ava.schoen@tonkon.com
through the Court's CM/ECF system.

/s/ David H. Conaway
David H. Conaway