IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CITY OF GREENVILLE, ILLINOIS, *et al.*	)	
	)	
Individually and on behalf of all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 10-188-JPG-PMF
	)	
SYNGENTA CROP PROTECTION, INC., and SYNGENTA AG,	)	
	)	
Defendants.	)	

PLAINTIFFS' OPPOSITION TO SYNGENTA AG's MOTION FOR RECONSIDERATION

Defendant Syngenta AG ("SAG") filed a motion to dismiss, claiming this Court does not have personal jurisdiction over it, supported only by two boilerplate affidavits devoid of factual detail. *See* Docs. 26, 27. After limited jurisdictional discovery, the parties briefed the issues thoroughly and the Court heard several hours of oral argument. *See* Docs. 112, 121, 128, 134, 184, 186, 187, 189, 199, 207, 208-215. Plaintiffs' burden was to produce *prima facie* evidence supporting jurisdiction. *See Tamburo v. Dworkin*, 601 F.3d 693, 700 (7th Cir. 2010). In determining whether plaintiffs met their burden, the Court was required to view all of the evidence in the light most favorable to plaintiffs and resolve any conflicts in the evidence in plaintiffs' favor. *See Purdue Research Found. v. Sanofi-Synthelabo,*

S.A., 338 F.3d 773, 782 (7th Cir. 2003). After reviewing the evidence and arguments, the Court found plaintiffs had made a *prima facie* case that the Court has personal jurisdiction over SAG. *See* Doc. 255 at 19.

SAG now asks the Court to reconsider its order, apparently on the ground that the Court failed to understand or appreciate SAG's earlier arguments and evidence. *See* Doc. 269. SAG would have the Court re-examine the same evidence and same cases and find – essentially – that SAG is immune from the jurisdiction of U.S. courts because it allegedly has "no employees," and thus could not possibly control its U.S. subsidiaries or purposefully direct activities to Illinois. SAG's motion is both procedurally improper and substantively meritless, and should be summarily denied.

STANDARD

The Rules do not provide for motions for reconsideration. The Seventh Circuit considers motions to reconsider to be appropriate only in very limited circumstances; namely, "to correct manifest errors of law or fact or to present newly discovered evidence." *Rothwell Cotton Co. v. Rosenthal & Co.,* 827 F.2d 246, 251 (7th Cir. 1987). "A 'manifest error' is not demonstrated by the disappointment of the losing party. It is the wholesale disregard, misapplication, or failure to recognize controlling precedent." *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (citation omitted). Motions to consider are appropriate "where the Court has patently misunderstood a party," or there has been "a controlling or significant change in the law or facts since the submission of the issue to the Court." *Bank of*

Waunakee v. Rochester Cheese Sales, Inc., 906 F.2d 1185, 1191 (7th Cir. 1990). "A district court's rulings are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure and ill-founded requests for reconsideration ... needlessly take the court's attention from current matters and visit inequity upon opponents ...who must defend their position again and again." *Cima v. WellPoint Health Networks, Inc.*, 250 F.R.D. 374, 386 (S.D. Ill. 2008) (citations omitted). Accordingly, motions for reconsideration are "not intended to routinely give litigants a second bite at the apple, but to afford relief in extraordinary circumstances." *Maus v. Greening*, 2008 WL 4279658, *2 (E.D. Wis. 2008). If a motion to reconsider presents no new facts, no new law, and no showing that the court has patently misunderstood the arguments previously presented, the motion should be summarily denied. *See Miller v. City of Plymouth*, 2010 WL 2194842 (N.D. Ind. 2010).

ARGUMENT

To prevail on its present motion, SAG must show that the Court committed a *manifest error of law or fact* in finding that plaintiffs made a *prima facie* showing that the Court has personal jurisdiction over SAG. But SAG makes no attempt to show that the Court's finding that plaintiffs made a *prima facie* showing of jurisdiction is manifest error. SAG, in fact, ignores entirely the fact that plaintiffs needed to make only a prima facie showing. SAG presents no new evidence, no new law and makes no showing that the court has patently misunderstood its earlier

arguments. The motion is procedurally improper, substantively frivolous and should be summarily denied.

Under three argument subheadings, SAG offers what is in substance one argument; namely, that no U.S. court can possibly have jurisdiction over SAG because SAG has no employees and therefore no global managers, and thus cannot possibly control its subsidiaries or direct any activity in Illinois (or anywhere else). *See*, *e.g.,* Doc. 269 at 5 ("SAG does not have any global managers or leaders, because it does not have any employees. . . . [T]hese 'global managers' are employed by other corporate entities, such as Syngenta International AG or Syngenta Crop Protection AG, not SAG.").

In support of its "no-employees, therefore no-jurisdiction" theory, SAG first claims the Court misapplied what SAG calls a "global monolith" or a "monolithic control" theory. According to SAG, the *In re Chocolate Confectionary Antitrust Litig.* court rejected that theory. *See* Doc. 269 at 2-4. Second, SAG argues (again) that the Supreme Court's "stream of commerce" decision in *J. McIntyre Machinery, Ltd. v. Nicastro,* 131 S. Ct. 2780 (2011) prevents this Court from exercising jurisdiction over it because there is no evidence that *SAG employees* directed activities at Illinois. *See* Doc. 269 at 4-5. Finally, SAG claims the Court was misled by plaintiffs' alleged misrepresentations; in particular, that SAG has global managers. *See id.* at 5-7. SAG has made all these arguments before, and the Court has considered and properly rejected them. *See* Doc. 255 at 20-22.

A. SAG misrepresents the holdings of *In re Chocolate*.

SAG argues that the Court should reconsider its ruling because the "global managers" that exercise an unusually high degree of control over the operations of Syngenta Crop Protection, Inc. ("SCPI") are technically employed not by SAG, but by its wholly-owned subsidiaries Syngenta International AG and Syngenta Crop Protection AG. *See* Doc. 269 at 2-4. According to SAG, the *In re Chocolate* court found that U.S. courts have jurisdiction over foreign parents "only where the parent *itself* controls the *daily* affairs of the U.S. subsidiary. *Id.* at 3 (emphasis in original). SAG claims that because it has no employees and SCPI is controlled by "informal business groups . . . and the global heads of Syngenta's various corporate functions," it is impossible to show that SAG *itself* controls the daily affairs of SCPI. *Id.* at 3-4. SAG, again, asks the Court to see it to be more like Nestle than Cadbury.[1]

Contrary to what SAG claims, however, the *In re Chocolate* court did not find it had no jurisdiction over the Nestle parents because they had no employees, as SAG would have the Court believe. Rather, the court found that the plaintiffs failed to describe or produce evidence showing the foreign control they alleged. *See In re Chocolate Confectionary Antitrust Litig.*, 674 F.Supp.2d 580, 606 (M.D. Pa. 2009). The *In re Chocolate* plaintiffs alleged that Nestle's Swiss parents controlled the U.S. subsidiary's pricing of chocolates "*by some combination* of Nestlé S.A. and Nestec ...

[1] SAG previously made this argument in its briefs (Doc. 134, pp. 2, 14) and at the hearing on the motion to dismiss. *See* Hr'g Tr. at 20, 86, 88-89, 93, 96-100 (July 27, 2011).

employees reporting to the Nestlé S.A.'s head of SBU's." *Id.* (emphasis and ellipsis provided by the court). But the court found that such vague allegations, unsupported by particular evidence of control, were insufficient: "Plaintiffs have not described what 'combination' of Nestec and Nestlé S.A. employees managed the SBUs, and their failure to do so precludes them from invoking the SBUs as a conduit of corporate control between Nestlé S.A. and Nestlé USA." *Id.* The court found that the evidence showed the Nestle parent corporations' interactions with their subsidiaries were "typical of any parent corporation engaged in building brand identity across national boundaries." *Id.* at 612. The court concluded that if it could exercise jurisdiction over the Nestle parents, it has jurisdiction over every foreign parent. *Id.* ("Were the court to exercise general jurisdiction over Nestlé S.A., it would effectively pave an avenue by which U.S. courts could exercise jurisdiction in any lawsuit against a foreign corporation with a domestic subsidiary *regardless of where the suit originated.*") (emphasis in original).

Here, however, the situation is very different. Plaintiffs clearly described the manner and persons through which the Syngenta companies are managed as a single company. They detailed how unincorporated global and regional divisions, acting across corporate boundaries and lines of ownership, exercised an unusual level of control over SCPI. *See* Doc. 112 at 3-33. Plaintiffs also produced an abundance of particularized evidence supporting this. *See id.* Moreover, the practices Syngenta engages in that prompted this Court to find jurisdiction are by no means common or typical of a foreign parent, as Syngenta's lawyers have

acknowledged in memos warning that "Syngenta's management structure does not follow legal structure." Doc. 121 at 2-5. SAG does not claim that if this Court exercises jurisdiction over it, it could exercise jurisdiction over every foreign parent (as the *In re Chocolate* court found with respect to Nestle); SAG complains only that several of its other subsidiaries may also be subject to the jurisdiction of U.S. courts. *See* Doc. 269 at 4.

The Court did not misunderstand SAG's contention that it has no employees and that SAG's global managers are technically employed by Syngenta International AG and Syngenta Crop Protection AG. The Court acknowledged these contentions in its opinion. *See* Doc. 255 at 8-9, 14-15. But the Court correctly disregarded SAG's purely formal arguments in light of the clear *prima facie* evidence that Syngenta itself disregards corporate formalities. *See id.* at 20-24. The Court recognized that Syngenta's global managers' cross-corporate acts should be attributed to SAG, not to their technical employers, because, among other reasons, Syngenta International AG and Syngenta Crop Protection AG have *no ownership interest in SCPI. See id.* at 21-22. The Court correctly found that these companies' employees' operational management of SCPI is reasonably understood as activity for the benefit of SAG — their common parent and their only ownership link to SCPI. *See id.*

Similarly, when SCPI employees discharge NAFTA management functions, they act as agents of SAG because SCPI has no ownership interest in SAG's Canadian and Mexican subsidiaries. The Court correctly found that "[t]hese [global

and regional] practices demonstrate that personnel technically employed by one entity actually function as if they were employed by SAG for the use of the Syngenta group of companies." Doc. 255 at 21-22.

In its *third* effort to appear like Nestle, SAG ignores the evidence showing that it shares precisely the features that the *In re Chocolate* court found decisive in finding jurisdiction over the Cadbury parents. To begin with the most basic, the *In re Chocolate* court treated Cadbury's U.S. subsidiaries' parent corporations as a "unified parent entity" because there was testimony that the two entities operate as a single indistinguishable entity. *See In re Chocolate*, 674 F.Supp.2d at 614, n.51. The court noted: "employees of the Cadbury group perceive Cadbury plc and Cadbury Holdings as a single, undifferentiated entity. The two companies share office space . . .." *Id*. at 592. The *In re Chocolate* court paid no heed to the fact that Cadbury plc - technically - had "no employees." *See id*. at 591.

Here, the evidence showed more: the principal Syngenta parent entities are not only housed in a single undifferentiated building; employees of these allegedly separate corporations do not know what companies technically employ the people who work there, do not consider it appropriate to ask about such things, and view themselves as working for a single entity, with SAG sitting atop the corporate web. *See* Doc. 112 at 4.

As the Court did here, the *In re Chocolate* court found that the fact that "Cadbury plc and Cadbury Holdings . . . conscripted employees of their subsidiaries to discharge group-wide management functions across corporate boundaries" was

compelling evidence supporting jurisdiction. *Id.* at 615. Cadbury's foreign parents, like SAG, requested the court to follow strictly their formal corporate boundaries; but the court rightly rejected the argument. *See id.* at 615, n.53 ("Cadbury plc and Cadbury Holdings's request that the court defer to corporate parameters is unpersuasive in light of record evidence that defendants themselves failed to accord those lines the same respect."). This Court carefully analyzed SAG's arguments with respect to *In re Chocolate* and properly found that Syngenta is run like Cadbury in every relevant respect. *See* Doc. 255 at 10-14.

In short, SAG simply rehashes old arguments and asks the Court's to rule differently – precisely what motions for reconsideration are not supposed to do. *See Oto*, 224 F.3d at 606. SAG "do[es] not assert that the Court misunderstood the facts, but that the Court's analysis of the facts was erroneous." *Cima*, 250 F.R.D. at 387. SAG "cites no new law, instead merely arguing that the Court erred in its reasoning." *Id.* These are "improper bas[es] on which to move for reconsideration." *Id.*

B. The Court has already considered and rejected SAG's interpretation of the Supreme Court's recent stream-of-commerce decision.

SAG claims that the Court should reconsider its ruling because it failed to take into account the decision in *J. McIntyre Machinery, Ltd. v. Nicastro,* 131 S. Ct. 2780 (2011). But the Court did take that decision into account. SAG asked the Court for leave to cite the decision in support of its motion. *See* Doc. 189. The Court denied leave because it recognized that *J. McIntyre* dealt with a direct, stream-of-commerce theory of jurisdiction, not "with the question of whether a parent-subsidiary

relationship was so controlling as to impute the subsidiary's jurisdictional contacts to the parent." Doc. 199. SAG fails to recognize that the issue here is not SAG's direct contacts with Illinois, but whether SCPI's contacts may be attributed to SAG under an agency/alter-ego theory of jurisdiction.

The Court also cited *J. McIntyre* in its jurisdictional opinion - for the same proposition SAG claims the Court failed to understand; namely, that a defendant must "purposefully avail" itself of the forum state in order to be subject to personal jurisdiction there. *See* Doc. 255 at 5. SAG's second argument, like its first, impermissibly rehashes arguments already made and rejected by the Court. Again, SAG "cite[s] no new law, instead merely arguing that the Court erred in its reasoning." This is an "improper basis on which to move for reconsideration." *Cima*, 250 F.R.D. at 387

C. SAG's factual arguments are too late and are directly contradicted by the evidence.

Lastly, SAG argues that the Court's decision is based on alleged misrepresentations by plaintiffs - in a brief plaintiffs filed more than a year ago (Doc. 112). *See* Doc. 269 at 5-7. SAG's argument is too late and factually unsupported. SAG had a full and fair opportunity to respond to any alleged misrepresentations. SAG filed a 25-page reply brief in January 2011. *See* Doc. 134. If SAG identified some genuine misrepresentation of fact, it could have sought leave to file a supplemental brief or even additional evidence at any point. It did not. In late July 2011, the court generously provided a full-day hearing, at which SAG had a full and fair opportunity to "correct" plaintiffs' alleged misrepresentations. The

Court entered its order on November 23, 2011. SAG has no excuse for raising the issue of misrepresentations after the Court has entered its order. "Reconsideration is not an appropriate forum for rehashing previously rejected arguments or arguing matters that could have been heard during the pendency of the previous motion." *Caisse Nationale de Credit Agricole v. CBI Indus.*, 90 F.3d 1264, 1270 (7th Cir. 1996).

Moreover, SAG's allegations of misrepresentations are false. SAG claims, for instance, that there is no evidence that global managers negotiate the sale of atrazine in the U.S. *See* Doc. 269 at 5-6. But the first exhibit SAG cites for this proposition clearly shows a global manager selling atrazine in the U.S. It says: "Our global atrazine management has solidified a supply agreement between Syngenta and Agan to supply 500,0000 gallons of atrazine 4L to Agan *for the US market."* Doc. 112, Ex. 176 (emphasis added); *see also* Doc. 112, Ex. 187 (showing global manager negotiating sale of SCPI's atrazine in the U.S.).

SAG also alleges that plaintiffs misrepresent the evidence regarding SCPI Board's lack of independence. *See* Doc. 269 at 6. But the evidence clearly and convincingly supports plaintiffs' claims. SCPI Board member and President Vern Hawkins' testimony shows he received unanimous written consents by email. *See* Doc. 112, Ex. 7 at 63:5-64:12. The Secretary of SCPI's Board testified that every unanimous consent form was transmitted by email. *See* Doc. 122, Ex. 5 at 119:20-120:9. Contrary to SAG's insinuation, plaintiffs never argued that these emails were sent to SCPI's Board directly by SAG's global managers. The evidence shows

clearly, however, that Syngenta's global managers pre-approved the acts taken through the unanimous written consents. *See, e.g.* Doc. 112, Ex. 346 at 2 ("supported by the SEC in Basel"); at 3 ("[t]he CAC supported the Capital Proposal"); at 4 ("supported by the Capital Committee, Global Environmental Provisions Committee, and the SEC in Basel").

CONCLUSION

None of SAG's recycled arguments is a proper basis for a motion to reconsider and none warrant reconsideration on the merits. The Court should deny SAG's motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2011, I electronically filed the above document with the Clerk of Court using the CM/ECF system, which will electronically deliver notice of the filing to all counsel of record.

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