

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

December 7, 2016

FOR THE TENTH CIRCUIT

**Elisabeth A. Shumaker
Clerk of Court**

In re: SYNGENTA AG MIR162 CORN
LITIGATION.

SYNGENTA AG; SYNGENTA CROP
PROTECTION AG; SYNGENTA
CORPORATION; SYNGENTA CROP
PROTECTION, LLC; SYNGENTA
BIOTECHNOLOGY, INC.; SYNGENTA
SEEDS, LLC,

Petitioners,

v.

NATIONWIDE CORN PRODUCERS
CLASS, MIKE DAVALT; BRADLEY
DAVALT; DAVID DAVALT; TYLER
HENDERSON FARMS PARTNERSHIP;
HADDEN FARMS, INC.; JAMES
MCKINNEY; STEVEN WENTWORTH;
WHITE BROS. PARTNERSHIP; ALAN
& LARAE PEDERSEN; CHARLES B.
LEX; R&D CHISM FARMS, INC.;
CHARLES FRICKEY; DAVID
POLIFKA; DAVID POLIFKA
REVOCABLE LIVING TRUST; FIVE
STAR FARMS; BEAVER CREEK
FARMS, INC.; D&S GRAIN & CATTLE
CO. INC.; DEMMER FARMS, INC.;
GRAFEL FARMS, LLC; BOTTOMS
FARMS PARTNERSHIP; JPPL, INC.;
NEBCO, INC.; TRIPLE BG
PARTNERSHIP; R&R FARMS, LLC;
ENSOR BROTHERS; RICHARD
OSWALD; DAVID SCHWANINGER;
DAVID HOLMBECK; MARTIN

No. 16-607

(D.C. No. 2:14-MD-2591-JWL-JPO)

(D. Kan.)

PETSKA; PATRICIA PETSKA;
VOLNEK FARMS, INC.; HAERR
GRAIN FARMS; HGF IRRIGATED;
THREE H FARMS, LLC;
KAFFENBARGER FARMS, INC.;
BIEBER FARMS; ROLLING RIDGE
RANCH, LLC; B-F JAMES & SONS,
INC.,

Respondents.

NORMAN SIGRIST, RICH D. RUSSELL;
KENNETH OSBORN; PETER V.
ANDERSON; RICHARD CRONE; PINE
HURST ACRES; BRADLEY J.
VERMEER; VJW FARM, INC.;
MICHAEL GRIES; CHARLES A.
WELSH; RON WETZ,

Plaintiffs.

ORDER

Before **BRISCOE**, **LUCERO**, and **MATHESON**, Circuit Judges.

This matter is before the court on Syngenta Defendants - Petitioners' (collectively, Syngenta) "Rule 23(f) Petition for Permission to Appeal Class Certification Order."

We grant Syngenta's opposed "Motion for Leave to File Reply in Support of Rule 23(f) Petition" and direct the clerk to file the reply brief attached to the motion, with the reply brief filed as of date the motion was filed.

We deny Plaintiffs - Respondents' request to strike Syngenta's November 2, 2016 Fed. R. App. P. 28(j) letter.

Upon careful review of the materials filed with this court and the applicable law, we deny the Rule 23(f) petition.

The decision whether to grant a Rule 23(f) petition is purely discretionary. See Fed. R. Civ. P. 23(f) (providing that “[a] court of appeals may permit an appeal from an order granting or denying class certification”); Vallario v. Vandehey, 554 F.3d 1259, 1262 (10th Cir. 2009) (noting that the discretion in the Rule 23(f) context is “‘unfettered’ and ‘akin to the discretion exercised by the Supreme Court in acting on a petition for certiorari’”) (quoting Fed. R. Civ. P. 23(f) advisory committee’s note). Syngenta has not established that the district court’s decision presents a manifest error situation, or either of the other Vallario situations: “an unresolved issue of law relating to class actions that is likely to evade end-of-case review” or “death knell.” See Vallario, 554 F.3d at 1263-64 (describing the three situations and providing the following description of a manifest error situation: “where the deficiencies of a certification order are both significant and readily ascertainable”). The district court’s rulings in the order granting class certification are well-researched and reasoned, and, if any rulings are in error, those errors can be addressed on appeal, if necessary.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Lindy Lucero Schaible
Counsel to the Clerk

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK**

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Elisabeth A. Shumaker
Clerk of Court

December 07, 2016

Chris Wolpert
Chief Deputy Clerk

Mr. Paul D Clement
Mr. Devin Allan DeBacker
Mr. Jeffrey Matthew Harris
Mr. Michael D. Jones
Mr. Nicholas T. Matich
Mr. Patrick Francis Philbin
Mr. Edwin U
Kirkland & Ellis
655 Fifteenth Street, NW
Suite 1200
Washington, DC 20005-5793

Mr. Thomas P Schult
Berkowitz Oliver
2600 Grand Boulevard, Suite 1200
Kansas City, MO 64108

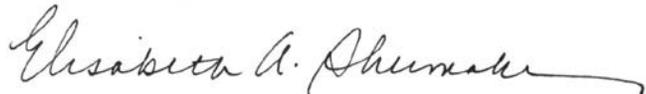
RE: 16-607, In re: Syngenta AG MIR162
Dist/Ag docket: 2:14-MD-2591-JWL-JPO

Dear Counsel:

Enclosed please find an order issued today by the court.

Please contact this office if you have questions.

Sincerely,



Elisabeth A. Shumaker
Clerk of the Court

cc: William B. Chaney
Clayton A Clark
Joseph B. Deacon
Don Manley Downing
Diogenes P. Kekatos
Scott A. Love
Martin John Phipps
Scott Ashley Powell
Patrick Joseph Stueve
Stephen A. Weiss
Bradley Wilders

EAS/na