

**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.

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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.

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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.

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**ORDER**

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

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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