



Court File No. 2613-15

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM) Friday , **THE** 20th **DAY**
)
JUSTICE RADY) **OF** January , **2023**

B E T W E E N:

DARMAR FARMS INC.

Plaintiff

and

SYNGENTA CANADA INC. and SYNGENTA AG

Defendants

O R D E R

THIS MOTION, made in writing by the Plaintiff and on consent of the Defendants for an order approving the form and content of the notice of certification, the method of dissemination of such notice, and the procedure for opting out of the action was read this day at the London Court House, located at 80 Dundas Street, London, Ontario N6A 6K1.

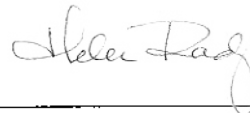
ON READING the motion materials and consent filed by the parties:

1. **THIS COURT ORDERS** that the form and content of the Notice of Certification in the forms attached hereto as **Schedule “A”** (Short Form) and **Schedule “B”** (Long Form) are hereby approved.
2. **THIS COURT ORDERS** that the Notice of Certification shall be published and disseminated in accordance with the Notice Plan attached hereto as **Schedule “C”**.
3. **THIS COURT ORDERS** that the dissemination of the Notice of Certification as provided for in the Notice Plan is the best notice practicable under the circumstances, constitutes sufficient notice to all class members entitled to notice, and satisfies the

requirements of notice pursuant to sections 17 through 22, inclusive, of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

4. **THIS COURT ORDERS** that the form and content of the Opt-Out Form, attached hereto as **Schedule “D”** is approved.

5. **THIS COURT ORDERS** that class members may exclude themselves from this action by submitting an Opt-Out Form to Class Counsel by mail, courier, or email on or before **[DATE]** (the “**Opt-Out Deadline**”).



THE HONOURABLE MADAM JUSTICE RADY

Schedule "A"

SYNGENTA CORN SEED CLASS ACTION

NOTICE OF CERTIFICATION

To all persons: All corn growers in Canada (excluding those in Quebec) who priced their corn for sale after November 18, 2013 (“Class Members”).

Class Action Lawsuit In December 2015, a class proceeding was filed against Syngenta Canada Inc. and Syngenta AG (collectively “Syngenta”) alleging that Syngenta prematurely commercialized its Viptera and Duracade corn seeds containing a genetically modified trait, namely MIR-162, prior to obtaining full import approval from China. The action alleges that subsequent to the commercialization, on November 18, 2013, China rejected North American corn imports. This class action seeks damages for all corn growers in Canada (excluding those in Quebec) who priced their corn for sale after the November 18, 2013 Chinese rejection and the resulting alleged market decline. McKenzie Lake Lawyers LLP represents the Plaintiff and Class Members.

Certification On September 29, 2021, the action was certified by the Honourable Justice Rady of the Ontario Superior Court of Justice on behalf of all Canadian corn growers (excluding those in Quebec) who priced their corn for sale after November 18, 2013. Darmar Farms Inc. was appointed as the representative plaintiff.

As part of the certification, the Court found that several disputed issues are common to all Class Members and therefore can be tried on behalf of all Class Members. These common issues include the following:

- Whether Syngenta owed a duty of care to the Class to use reasonable care in how it commercialized the genetically modified seeds;
- Whether Syngenta breached that duty of care;
- Whether any alleged failure to meet the standard of care caused a negative impact on the price of corn; and
- If any breaches are found, whether Class Members are entitled to damages.

Certification is a procedural step. There has not been any determination on the merits. The fact that the claim was certified and this notice does not mean that the Court has taken a position as to the likelihood of recovery on the part of any class member, or as to the merits of the claims or defences asserted by either side. The claims must be proven in Court. Syngenta denies these claims.

**Participation
in Class Action**

Class Members who want to participate in the class action are automatically included and need not do anything at this time. The Ontario *Class Proceedings Act* provides that no Class Member, other than the representative class member, will incur liability for legal costs if the action is dismissed. Each Class Member who does not opt out of the class action will be bound by the terms of any judgment or settlement and will not be allowed to pursue or continue an independent action with respect to these issues. If the class action is successful, Class Members may be entitled to share in the amount of any award or settlement recovered.

Opting Out

Class Members who do not wish to participate in the class action must opt out. A Class Member who opts out will not be bound by any result in the class action. If you wish to pursue or continue to pursue an individual action against Syngenta with respect to this issue, then you must opt out of the class action. If you would like to opt out of the class action, you must complete and return the opt-out form by **[DATE]**.

A copy of the opt-out form can be obtained at <https://www.mckenzielake.com/syngenta-corn/> or by contacting Class Counsel using the telephone number or e-mail address listed below.

No person may opt out a minor (person under 18 years of age) or a mentally incapable Class Member without permission of the Court after notice to The Children's Lawyer and/or the Public Guardian and Trustee, as appropriate.

A Class Member who opts out will not be entitled to participate in the class action. Their right to pursue a claim in a separate proceeding will not be affected.

Questions?

The court offices are unable to answer any questions about the matters in this Notice. If you have any questions regarding this notice or about the class action in general, information is available on Class Counsel's website at www.mckenzielake.com or by contacting Class Counsel directly, as follows:

McKenzie Lake Lawyers LLP

Toll Free Tel: 1.844.672.5666

Email: syngenta@mckenzielake.com

This Notice was approved by order of the Ontario Superior Court of Justice.

Schedule “B”

SYNGENTA CORN SEED CLASS ACTION

NOTICE OF CERTIFICATION

ARE YOU A CORN GROWER IN CANADA (OTHER THAN QUEBEC) WHO PRICED YOUR CORN FOR SALE AFTER NOVEMBER 18, 2013?

IF YES, A CLASS ACTION MAY AFFECT YOUR RIGHTS.

This is a court authorized notice.

To all persons: All corn growers in Canada (excluding those in Quebec) who priced their corn for sale after November 18, 2013 ("**Class Members**").

Class Action Lawsuit In December 2015, a class proceeding was filed against Syngenta Canada Inc. and Syngenta AG (collectively "**Syngenta**") alleging that Syngenta prematurely commercialized its Viptera and Duracade corn seeds containing a genetically modified trait, namely MIR-162, prior to obtaining full import approval from China. The action alleges that subsequent to the commercialization, on November 18, 2013, China rejected North American corn imports. This class action seeks damages for all corn growers in Canada who priced their corn for sale after the November 18, 2013 Chinese rejection and the resulting alleged market decline. McKenzie Lake Lawyers LLP represents the Plaintiff and Class Members.

Certification

On September 29, 2021, the action was certified by the Honourable Justice Rady of the Ontario Superior Court of Justice on behalf of all Canadian corn growers (excluding those in Quebec) who priced their corn for sale after November 18, 2013. Darmar Farms Inc. was appointed as the representative plaintiff.

As part of the certification, the Court found that several disputed issues are common to all Class Members and therefore can be tried on behalf of all Class Members. These common issues include the following:

- Whether Syngenta owed a duty of care to the Class to use reasonable care in how it commercialized the genetically modified seeds;
- Whether Syngenta breached that duty of care;
- Whether any alleged failure to meet the standard of care caused a negative impact on the price of corn; and
- If any breaches are found, whether the Class Members are entitled to damages.

Certification is a procedural step. There has not been any determination on the merits. The fact that the claim was certified and this notice does not mean that the Court has taken a position as to the likelihood of recovery on the part of any class member, or as to the merits of the claims or defences asserted by either side. The claims must be proven in Court. Syngenta denies these claims.

IF YOU ARE A PERSON OR CORPORATION THAT MEETS THE CLASS DEFINITION, YOU ARE A CLASS MEMBER, AND YOU HAVE TWO OPTIONS:

DO NOTHING TO STAY IN THE ACTION Class Members who want to participate in the class action are automatically included and need not do anything at this time. The Ontario *Class Proceedings Act* provides that no Class Member, other than the representative class member, will incur liability for legal costs if the action is dismissed.

Each Class Member who does not opt out of the class action will be bound by the terms of any judgment or settlement and will not be allowed to pursue or continue an independent action with respect to these issues. If the class action is successful, Class Members may be entitled to share in the amount of any award or settlement recovered.

**EXCLUDE
YOURSELF (OPT-
OUT)**

Class Members who do not wish to participate in the class action must opt out. A Class Member who opts out will not be bound by any result in the class action. If you wish to pursue or continue to pursue an individual action against Syngenta with respect to this issue, then you must opt out of the class action. If you would like to opt out of the class action, you must complete and return the opt-out form by **[DATE – 60 days after Notice Date]**.

A copy of the opt-out form can be obtained at <https://www.mckenzielake.com/syngenta-corn/or> by contacting Class Counsel using the telephone number or e-mail address listed below.

No person may opt out a minor (person under 18 years of age) or a mentally incapable Class Member without permission of the Court after notice to The Children’s Lawyer and/or the Public Guardian and Trustee, as appropriate.

A Class Member who opts out will not be entitled to participate in the class action. Their right to pursue a claim in a separate proceeding will not be affected.

FREQUENTLY ASKED QUESTIONS

1. What is a Class Action?

A class action, also known as a class proceeding, is a lawsuit which provides a method for a large group of people with common claims to join together to advance one larger claim. Class actions have the advantage of being a more efficient and cost-effective way for groups of people with common claims to gain access to the legal system and seek justice.

2. What does certification mean?

In order for an action to proceed as a class action, the Court must determine whether it is appropriate for the case to be treated as a class action. Some of the factors the Court considers are the extent to which the claims of class members are common and whether a class action is preferable to other methods (such as individual actions) of advancing the issues. The decision as to whether the class action should be certified takes place at a certification hearing and is decided by a Judge. Once certified, a representative plaintiff will advance the action on behalf of all class members. This is a procedural step, and the Court’s decision regarding certification is not a decision about the merits of the claim or any likelihood of success.

In this case, the Court has certified the class action against Syngenta on behalf of all corn growers in Canada (excluding those in Quebec) who priced their corn for sale after November 18, 2013.

3. How do I know if I am a Class Member?

The certification order will always contain a description and definition of who is a class member.

For this action, the class is defined as “All corn growers in Canada (excluding those in Quebec) who priced their corn for sale after November 18, 2013”. If you or any corporation that you own or operate fit that description, you are a class member.

4. Are Class Members notified of the certification of the class proceeding?

Yes. After the class action has been certified, the Court will authorize notice to be given to class members.

This is the notice that has been authorized by the Court in this class action.

5. What do I have to do to join a class action?

You do not have to join or sign up to become involved in a class action. If you fall within the class definition set out above as certified by the Court, you are automatically a member of this class action unless you choose to opt-out. Each class member who does not opt-out of the class action will be bound by the terms of any judgment or settlement, successful or unsuccessful, and will not be allowed to pursue or continue an independent action.

6. How do I opt-out of the Class Action?

If you would like to opt-out of this class action, you must complete and return the Opt-Out Form to Class Counsel using the contact information listed below on or before **[INSERT]**. A copy of the Opt-Out Form can be obtained at <https://www.mckenzielake.com/syngenta-corn/> or by contacting Class Counsel using the contact information listed below.

If you opt-out, you will not be bound by any result in the action and you will not receive any benefit if the action is successful.

7. If I decide that I would like to remain a Class Member, what rights am I giving up?

Each class member who does not opt-out of the class action will be bound by the terms of any judgment or settlement, successful or unsuccessful, and will not be allowed to pursue or continue an independent action. A class member who does not opt-out of the class action will not have any right to independently appeal or challenge any decision.

8. Once I decide that I would like to remain a Class Member, do I have to do anything?

No. Class Counsel will work primarily with the class representative to advance the action on behalf of all Class Members.

9. What if I do not want to participate in the class action or would like to pursue independent legal action?

You must opt-out of the class action.

10. How will Class Counsel keep me updated on the progress of this Class Action?

General information about the lawsuit will continue to be posted on Class Counsel's website at <https://www.mckenzielake.com/syngenta-corn/>

11. Where can I send any documents that I have that might be relevant to the Class Action?

Keep a copy of any documents, correspondence, records, etc. that you feel might be relevant to your individual claim. In the event that the matter is resolved favourably on behalf of class members, this documentation may be required in order to support your claim for compensation.

12. As a Class Member, do I have any responsibility to pay for any costs of the litigation?

No. Other than the representative plaintiff, class members are not liable for costs except with respect to the determination of their own individual claim.

13. As a Class Member, do I have any responsibility to pay for the legal fees of Class Counsel?

No. Class members are not responsible for the legal fees of Class Counsel.

Questions?

The court offices are unable to answer any questions about the matters in this Notice. If you have any questions regarding this notice or about the Class Action in general, information is available on Class Counsel's website at www.mckenzielake.com or by contacting Class Counsel directly, as follows:

McKenzie Lake Lawyers LLP

Toll Free Tel: 1.844.672.5666

Email: syngenta@mckenzielake.com

This Notice was approved by order of the Ontario Superior Court of Justice.

Schedule "C"

NOTICE PLAN

Further to the Litigation Plan approved by way of Order dated September 29, 2021, for the purposes of the Notice of Certification and administration of Opt-Outs, the parties agree to the following Notice Plan.

1. The Notice of Certification (the short form and long form attached hereto collectively as **Schedule “A”**) shall be disseminated in the following manner:
 - a. publishing the Short Form Notice of Certification once in the national edition of the Globe and Mail (in English);
 - b. sending the Long Form Notice of Certification directly by email to class members for whom Class Counsel has contact information;
 - c. sending the Short Form Notice of Certification (in English and French) to the following organizations for distribution to their membership and/or to be included in their respective publications:
 - i. Grain Farmer of Ontario;
 - ii. Manitoba Crop Alliance;
 - iii. Canadian Federation of Agriculture; and
 - iv. Agricultural Producers Association of Saskatchewan.

- d. posting the Long Form Notice of Certification in English and French on Class Counsel's Website (<https://www.mckenzielake.com/syngenta-corn/>); and
 - e. delivering the Long Form Notice of Certification to any person who requests a copy.
2. The Opt-Out Form (attached hereto as **Schedule "B"**) shall be available in the following manner:
 - a. available for download from Class Counsel's Website (<https://www.mckenzielake.com/syngenta-corn/>);
 - b. sent by email or regular mail along with the Notice of Certification to any person who receives the Notice of Certification directly pursuant to 1(a) or (b); and
 - c. delivering to any person who requests a copy.
3. The Press Release (attached hereto as **Schedule "C"**) shall be issued to Canada Newswire (in English and French) along with a copy of the Short Form Notice of Certification (in English and French) and the Opt-Out Form.
4. The costs of this Notice Plan shall be paid as follows:
 - a. The Defendants shall be responsible for any and all costs of this Notice Plan associated with completing the dissemination steps required in the above sub-section 1(a), sub-section 1(c), and section 3.

- b. The Plaintiff shall be responsible for any and all costs of this Notice Plan associated with completing the dissemination steps required in the above sub-section 1(b), sub-section 1(d), sub-section 1(e), and section 3 including any costs associated with administering the Opt-Outs Forms received.

Schedule “D”

OPT-OUT FORM

ONLY SUBMIT THIS FORM IF YOU **DO NOT** WANT TO PARTICIPATE IN THIS ACTION.

Instructions: Fill out and submit this form by mail, courier or email **ONLY IF YOU WISH TO BE EXCLUDED** from this class proceeding.

1. REQUESTOR IDENTIFICATION

Provide the following information about the person submitting or, if applicable, on whose behalf you are submitting, an opt-out request.

Last Name:		First Name:		Middle Initial:
Address:			Suite Number:	
City:	Province:	Postal Code:	Country:	
Phone Number:		Email Address (if available):		

2. REPRESENTATIVE IDENTIFICATION (IF SUBMITTING ON BEHALF OF A PERSON WHO IS DECEASED OR A MINOR OR FOR OTHER REASON)

If you are opting out of this class action on someone else's behalf, please provide the following personal identification information and attach a copy of your power of attorney, court order or other authorization that allows you to represent this person.

YOU ARE SUBMITTING THIS FORM ON BEHALF OF SOMEONE WHO IS:				
<input type="checkbox"/> DECEASED <input type="checkbox"/> A MINOR <input type="checkbox"/> OTHER REASON (Identify: _____)				
Representative's Last Name:		Representative's First Name:	Representative's Relationship to Requestor:	
Representative's Mailing Address:			Suite Number:	
City:	Province/State:	Postal Code/Zip Code:	Country:	
Representative's Phone Number:	Representative's Email Address:		Representative's Law Firm Name (if applicable):	

3. CORPORATION IDENTIFICATION (IF SUBMITTING ON BEHALF OF A CORPORATION)

If you are opting out of this class action on behalf of a corporation, please provide the following information and attach a copy of your current Certification of Incorporation.

YOU ARE SUBMITTING THIS FORM AS THE DIRECTOR FOR THE CORPORATION:			
Last Name:		First Name:	Name of Corporation:
Corporation Business Number:			
Corporation Registered Address:			Suite Number:
City:	Province/State:	Postal Code/Zip Code:	Country:
Corporation Phone Number:	Corporation Email Address:		Corporation Law Firm Name (if applicable):

4. I WISH TO OPT OUT

Check the box below to confirm your intention to opt out of this class action.

I wish to be excluded from the Syngenta Corn Seed class action and am opting out.

I OPT OUT

NOTE: THIS OPT OUT REQUEST WILL BE INVALID UNLESS SIGNED PERSONALLY BY THE REQUESTOR EXCEPT WHERE THE REQUESTOR IS DECEASED, A MINOR OR LEGALLY INCAPACITATED.

4. SIGNATURE

Your Signature

____/____/____
YYYY MM DD

If you wish to opt out of the class action, **your Opt-Out Form MUST be received on or before [DATE]** by mail or email by Class Counsel at the following:

McKenzie Lake Lawyers LLP
Syngenta Class Proceeding Opt-Out
1800-140 Fullarton Street
London ON N6A 5P2
Email: syngenta@mckenzielake.com

If you submit this form, you will **not** be able to receive any benefits that may be available under any future settlement or judgment. If you have questions before submitting this form, contact Class Counsel directly at the following:

McKenzie Lake Lawyers LLP
Toll Free Tel: 1.844.672.5666
Email: syngenta@mckenzielake.com

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London
Proceeding under the *Class Proceedings Act, 1992*

ORDER

McKENZIE LAKE LAWYERS ^{LLP}
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London, ON N6A 5P2

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Lawyers for the Plaintiff