

1 Anna T. Neill (State Bar No. 270858)
KENNY NACHWALTER, P.A.
2 1441 Brickell Avenue
Suite 1100
3 Miami, Florida 33131
Tel: (305) 373-1000
4 Fax: (305) 372-1861
E-mail: aneill@knpa.com

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6 ***Counsel for Plaintiffs The Kroger Co.,
Albertsons Companies, Inc., Hy-Vee
Inc., Save Mart Supermarkets, and
7 US Foods, Inc.***

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 THE KROGER CO., ALBERTSONS
COMPANIES, INC., HY-VEE, INC.,
11 SAVE MART SUPERMARKETS, and
US FOODS, INC.

Case No.

12 Plaintiffs,

13 vs.

14 AGRI STATS, INC.; CLEMENS FOOD
GROUP, LLC, THE CLEMENS
15 FAMILY CORPORATION; HORMEL
FOODS CORPORATION; SEABOARD
16 FOODS LLC; SMITHFIELD FOODS,
INC.; TRIUMPH FOODS, LLC; TYSON
17 FOODS, INC., TYSON PREPARED
FOODS, INC., AND TYSON FRESH
18 MEATS, INC.

19 Defendants.

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22 **COMPLAINT AND DEMAND FOR JURY TRIAL**
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TABLE OF CONTENTS

1

2 I. NATURE OF ACTION..... 1

3 II. JURISDICTION AND VENUE..... 3

4 III. PARTIES..... 4

5 A. Plaintiffs 4

6 B. Defendants..... 6

7 (1) Agri Stats..... 6

8 (2) Clemens..... 6

9 (3) Hormel..... 7

10 (4) Seaboard 7

11 (5) Smithfield 7

12 (6) Triumph..... 7

13 (7) Tyson..... 8

14 IV. CO-CONSPIRATORS AND AGENTS..... 8

15 V. TRADE AND COMMERCE 9

16 VI. THE IMPORTANCE OF AGRI STATS TO THE UNLAWFUL CONSPIRACY
17 ALLEGED IN THIS COMPLAINT 9

18 A. Agri Stats Markets its Collusive Scheme to Pork Producers..... 10

19 B. Agri Stats Provided Producer Defendants and Co-Conspirators With the
20 Ability to Monitor and Enforce Their Collective Restriction of the Pork
Supply, and to Discipline Co-Conspirators For Not Complying With the
Conspiracy..... 12

21 VII. THE MARKET FOR THE PRODUCTION AND SALE OF PORK WAS
22 CONDUCIVE TO CARTELIZATION 19

23 A. Pork is a Commodity Product With Inelastic Demand 19

24 B. The Producer Defendants and Co-Conspirators Controlled the Production
25 and Supply of Pork in the United States, Which Allowed the Conspiracy to
26 Succeed..... 20

27 C. The Market For the Production and Sale of Pork Was Concentrated 25

28 D. There Were Barriers to Entry in the Market For the Integrated Production
and Sale of Pork 30

E. Select Trade Associations Facilitated Collusion..... 30

1 VIII. DEFENDANTS AND CO-CONSPIRATORS IMPLEMENTED COLLUSIVE,
 2 ANTICOMPATITIVE CAPACITY AND PRODUCTION RESTRICTIONS..... 32
 3 A. Overview of the Restriction of the Pork Supply During the Conspiracy 32
 4 (1) Smithfield 35
 5 (2) Tyson 36
 6 (3) JBS/Cargill 37
 7 (4) Hormel..... 37
 8 (5) Seaboard 37
 9 (6) Triumph..... 38
 10 (7) Clemens 38
 11 B. Timeline of the Conspiracy 38
 12 IX. ABNORMAL PRICING DURING THE CONSPIRACY DEMONSTRATES
 13 THE SUCCESS OF THE CONSPIRACY 49
 14 X. THE CONSPIRACY WAS EFFECTIVE IN INCREASING THE PRICE OF PORK
 15 SOLD TO PLAINTIFFS AND OTHERS IN THE UNITED STATES 51
 16 XI. THE RESULTS OF THE DOJ’S CRIMINAL INVESTIGATION IN BROILER
 17 CHICKENS SUPPORTS AN INFERENCE OF THE EXISTENCE OF A
 18 SIMILAR CONSPIRACY IN THE PORK INDUSTRY 53
 19 XII. PLAINTIFFS’ CLAIMS ARE TIMELY 54
 20 COUNT I – ANTITRUST VIOLATION..... 58
 21 COUNT II – VIOLATION OF THE PACKERS AND STOCKYARD ACT
 22 (AGAINST ALL DEFENDANTS EXCEPT AGRI STATS)..... 61
 23
 24
 25
 26
 27
 28

1 Plaintiffs The Kroger Co., Albertsons Companies, Inc., Hy-Vee, Inc., and Save Mart
2 Supermarkets, which are supermarket chains, and US Foods, Inc., which is a food distributor
3 (collectively “Plaintiffs”) sue Defendants Agri Stats, Inc., Clemens Food Group, LLC, The
4 Clemens Family Corporation, Hormel Foods Corporation, Seaboard Foods LLC, Smithfield Foods,
5 Inc., Triumph Foods, LLC, Tyson Foods, Inc., Tyson Prepared Foods, Inc., and Tyson Fresh Meats,
6 Inc. (collectively “Defendants”) and allege as follows:

7 **I. NATURE OF ACTION**

8 1. As more fully alleged below, between at least approximately 2009 and 2018, if not
9 later, and with a lingering effect, Defendants and their co-conspirators conspired to fix, increase,
10 maintain and/or stabilize the price of pork¹ sold to Plaintiffs and others in the United States, and
11 implemented this conspiracy through anticompetitive conduct, including, without limitation,
12 coordinating among themselves to restrict the output and limit the production² of their swine herd
13 in order to reduce the domestic supply of pork.

14 2. Defendants and their co-conspirators’ anticompetitive coordination to restrict the
15 pork supply occurred in several ways.

16 3. For example, during the conspiracy, the Producer Defendants³ and co-conspirators⁴
17 – who controlled more than 80% of the pork market at times relevant to Plaintiffs’ claims – used
18 their co-conspirator Agri Stats to exchange with each other detailed, competitively-sensitive, and
19 closely guarded non-public information about their pork businesses, including benchmarking

20 ¹ For purposes of this Complaint, “pork” includes all pork products, regardless of the
21 form in which they are sold, and all products containing pig meat, whether purchased fresh or
22 frozen, including but not limited to, smoked ham, sausage, and bacon. From time to time in this
Complaint, “pork” and “swine” are used interchangeably, particularly when referring to the pork
or swine industry.

23 ² Restricting output or production, and limiting production, can mean reducing output
24 in absolute or relative terms, or maintaining or not increasing output, *i.e.*, limiting output, as much
as a firm would do so in a competitive market.

25 ³ As used in this Complaint, the phrase “Producer Defendants” means Clemens,
26 Hormel, Seaboard, Smithfield, Triumph, and Tyson as each is defined below. Agri Stats is a
Defendant, but not an Producer Defendant.

27 ⁴ As used in this Complaint, the phrase “co-conspirator” includes other pork producers
28 including without limitation, JBS as described below. The phrase “co-conspirator” also includes
other firms and individuals.

1 reports, about their respective pork prices, production, volume, costs, slaughter information,
2 capacity, sales volume, inventory levels, and plant-specific information about production lines and
3 yields (collectively “Competitively-Sensitive Information”). As explained below, Agri Stats
4 collected this information from the Producer Defendants and co-conspirators and intentionally
5 shared this information with them in detailed reports. The Producer Defendants and co-
6 conspirators knew when they provided their respective Competitively-Sensitive Information to
7 Agri Stats that it would be reported to their competitors in the private Agri Stats reports. They also
8 knew at the time that their Competitively-Sensitive Information in the Agri Stats reports were
9 deciphered by their co-Defendants and co-conspirators so that each of them would learn which
10 Competitively-Sensitive Information belonged to which Producer Defendant or co-conspirator.
11 This enabled the Producer Defendants and co-conspirators to monitor each other’s Competitively-
12 Sensitive Information and enforce the conspiracy, and effectively control domestic pork supply
13 and price.

14 4. Another example of how, during the conspiracy, Defendants and co-conspirators
15 coordinated in an anticompetitive manner to restrict the pork supply was through public statements,
16 aimed at each other, regarding the need to restrict pork production. These statements served a
17 signaling purpose and emphasized to one another that an understanding or agreement – or solidarity
18 – existed among them. By its own account, Smithfield took a leadership role in this regard.
19 Defendants and co-conspirators then furthered their conspiracy by each taking action to cut pork
20 supply or limit pork supply increases more than each otherwise would have done in a competitive
21 market. These actions would have been against each Producer Defendant and co-conspirator’s
22 business interest but for the existence of the conspiracy, which allowed for their collective action.

23 5. Plaintiffs allege that Defendants and their co-conspirators’ conspiracy is a *per se*
24 violation of Section One of the Sherman Act, 15 U.S.C. § 1 (Count I), and the Producer Defendants
25 and co-conspirators’ conduct as alleged in this Complaint violates the Packers and Stockyards Act
26 as well (Count II).

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