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KRAFT HEINZ FOODS COMPANY
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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 KRAFT HEINZ FOODS
COMPANY,

12 Plaintiff,
13

14 v.

15 AGRI STATS, INC., CLEMENS
FOOD GROUP, LLC, THE
CLEMENS FAMILY
16 CORPORATION, JBS USA FOOD
COMPANY, SEABOARD FOODS
17 LLC, SMITHFIELD FOODS, INC.,
TRIUMPH FOODS, LLC, TYSON
18 FOODS, INC., TYSON PREPARED
FOODS, INC., AND TYSON
19 FRESH MEATS, INC.,

20 Defendants.
21

Case No.

COMPLAINT

DEMAND FOR JURY TRIAL

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1 **I. NATURE OF ACTION**

2 1. Defendants are the leading suppliers of pork in an industry with
3 approximately \$20 billion in annual commerce. The United States pork industry is
4 highly concentrated, with a small number of large producers in the United States
5 controlling supply. Defendants and their co-conspirators collectively control over 80
6 percent of the wholesale pork market.

7 2. Defendants Agri Stats, Inc. (“Agri Stats”), Clemens Food Group, LLC,
8 The Clemens Family Corporation (“Clemens”), JBS USA Food Company (“JBS” or
9 “JBS USA”), Seaboard Foods LLC (“Seaboard”), Smithfield Foods, Inc.
10 (“Smithfield”), Triumph Foods, LLC (“Triumph”), Tyson Foods, Inc., Tyson
11 Prepared Foods, Inc., and Tyson Fresh Meats, Inc. (together, “Tyson”), entered into
12 a conspiracy from around 2008 or early 2009 through the present (referred to herein
13 generally as “relevant period” or the “class period”) to fix, raise, maintain, and
14 stabilize the price of pork.¹ Defendants implemented their conspiracy by agreeing
15 with their competitors to restrict output and limit production with the express
16 intended purpose and expected result of increasing and stabilizing pork prices in the
17 United States. In furtherance of the conspiracy, Defendants exchanged detailed,
18 competitively sensitive, and closely guarded non-public information about prices,
19 capacity, sales volume and demand through their co-conspirator, Defendant Agri
20 Stats.

21 3. Beginning at least as early as 2009 and continuing through the present,
22 Agri Stats began providing highly sensitive “benchmarking” reports to Defendants.
23 Benchmarking allows competitors to compare their profits or performance against
24 that of other companies. However, the Agri Stats’ reports at issue in this case are

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26 ¹ For the purposes of this complaint, pork includes all pork products, regardless of the form in
27 which they are sold, and all products containing pig meat, whether purchased fresh or frozen,
28 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.

1 unlike those of other lawful industry reports. Agri Stats gathers detailed financial and
2 production data from each of the Defendants, standardizes this information, and
3 produces customized reports and graphs for the co-conspirators. The type of
4 information available in these reports is not the type of information that competitors
5 would provide each other in a normal, competitive market. Instead, the provision of
6 this detailed information acts as the modern equivalent of the proverbial smoke-filled
7 room. Rather than meeting in a room with pen and paper, Agri Stats collected
8 Defendants' competitively sensitive supply and pricing data and intentionally shared
9 that information through detailed reports it provided to them. On a weekly and
10 monthly basis, Agri Stats provides Defendants with current and forward-looking
11 sensitive information (such as profits, costs, prices and slaughter information), and
12 regularly provides the keys to deciphering which data belongs to which producer.
13 The effect of this information exchange was to allow Defendants to coordinate their
14 anticompetitive conduct, monitor each other's production and hence control supply
15 and price.

16 4. This data exchange through Agri Stats is a classic enforcement and
17 implementation mechanism of a price-fixing scheme. First, the data is current and
18 forward-looking – which courts consistently hold has “the greatest potential for
19 generating anticompetitive effects.”² Second, information contained in Agri Stats
20 reports is specific to pork producers, including information on profits, prices, costs
21 and production levels, instead of being aggregated as industry averages, thus
22 providing transactional specificity and easy identification of specific producers.
23 Third, none of the Agri Stats information was publicly available. Agri Stats is a
24 subscription service which required the co-conspirators to pay millions of dollars
25 over the relevant period – far in excess of any other pricing and production indices.

27 ² *Todd v. Exxon Corp.*, 275 F.3d 191, 2011 (2d Cir. 2001) (Sotomayor, J.) (quoting *United States*
28 *v. Gypsum Co.*, 438 U.S. 422, 441 n.16 (1978)).

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