

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE BROILER CHICKEN ANTITRUST  
LITIGATION

This Document Relates To:

Commercial and Institutional Indirect  
Purchaser Plaintiff Actions

Case No. 1:16-cv-08637

The Honorable Thomas M. Durkin

The Honorable Jeffrey T. Gilbert

**[PUBLIC REDACTED VERSION]**

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO  
COMMERCIAL AND INSTITUTIONAL INDIRECT PURCHASER PLAINTIFFS'  
SEVENTH AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

Commercial and Institutional Indirect Purchaser Plaintiffs' ("Plaintiffs") filed their Seventh Amended and Consolidated Class Action Complaint ("Complaint") on October 23, 2020. (Dkt. 3929.) This Court ordered Defendants to file a Consolidated Answer to the Complaint by November 23, 2020. (Dkt. 3836.) Subsequently, pursuant to Defendants' Motion for an Extension (Dkt. 4046), the Court extended the deadline to answer to December 4, 2020. (Dkt. 4048.) Defendants Agri Stats, Inc. ("Agri Stats"); Case Foods, Inc., Case Farms, LLC, and Case Farms Processing, Inc. (collectively "Case"); Norman W. Fries, Inc. d/b/a Claxton Poultry Farms and a defendant erroneously sued separately as "Claxton Poultry Farms, Inc." (collectively, "Claxton"); Harrison Poultry, Inc. ("Harrison Poultry"); House of Raeford Farms, Inc. ("House of Raeford"); Foster Farms, LLC and Foster Poultry Farms (collectively, "Foster Farms"); Koch Foods Incorporated, JCG Foods of Alabama LLC, JCG Foods of Georgia LLC and Koch Meat Co., Inc. (collectively, "Koch"); Mar-Jac Poultry, Inc., Mar-Jac Poultry MS, LLC, Mar-Jac Poultry AL, LLC, Mar-Jac AL/MS, Inc., Mar-Jac Poultry, LLC and Mar-Jac Holdings, Inc. (collectively "Mar-Jac," as used in this Answer means Defendants Mar-Jac Poultry, Inc., Mar-Jac Poultry AL,

LLC, Mar-Jac Poultry MS, LLC, Mar-Jac AL/MS, Inc., Mar-Jac Poultry, LLC, and Mar-Jac Holdings, Inc. collectively, and in some contexts means at least one, but not necessarily all, of those Defendants); Mountaire Farms Inc., Mountaire Farms, LLC, and Mountaire Farms of Delaware, Inc. (collectively, “Mountaire”); O.K. Foods, Inc., O.K. Farms, Inc. and O.K. Industries, Inc. (collectively “O.K. Foods”); Perdue Farms, Inc. and Perdue Foods LLC (collectively, “Perdue”); Pilgrim’s Pride Corporation (“Pilgrim’s”); Sanderson Farms, Inc., Sanderson Farms, Inc. (Foods Division), Sanderson Farms, Inc. (Production Division), and Sanderson Farms, Inc. (Processing Division) (collectively, “Sanderson Farms”); Simmons Foods, Inc. and Simmons Prepared Foods, Inc. (collectively, “Simmons”); Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Breeders, Inc., and Tyson Poultry, Inc. (collectively, “Tyson”); Wayne Farms LLC (“Wayne Farms”) answer and set forth their affirmative defenses to Plaintiffs’ Complaint as follows.<sup>1</sup> Defendants deny each and every allegation in Plaintiffs’ Complaint except as expressly admitted below.

Plaintiffs bring this action on behalf of themselves individually and on behalf of a plaintiff class (the “Class”) consisting of all entities who purchased Broilers [Footnote 1] indirectly from a Defendant or co-conspirator in the United States during the Class Period for their own use in commercial food preparation, including institutional purchasers such as hospitals, nursing homes, and schools, at least as early as January 1, 2008, until the Present (the “Class Period”). Plaintiffs bring this action for injunctive relief under Section 1 of the Sherman Act, and for treble damages under the antitrust laws, unfair competition laws, consumer protection laws, and unjust enrichment common laws of the several States against Defendants, and demand a trial by jury.

Complaint Footnote 1: “Broilers,” as defined in ¶ 124 herein and as used in this complaint, are chickens raised for meat consumption to be slaughtered before the age of 13 weeks, and which

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<sup>1</sup> For the purposes of this Consolidated Answer, all denials and admissions are only on behalf of the Defendants who have not settled with Plaintiffs. Thus, any answers on behalf of “Defendants” do not encompass Fieldale Farms, George’s, Inc. and George’s Farms, Inc., Peco Foods, or Amick Farms. Further, to distinguish Agri Stats from other Defendants who actually produced broiler chicken, answers on behalf of “Producer Defendants” do not include Agri Stats. Further still, “Producer Defendants” refers to any Defendant family that produces broiler chicken without specifying which entity within that family produces broiler chicken, and without conceding that they all do.

may be sold in a variety of forms, including fresh or frozen, raw or cooked, whole or in parts, or as a meat ingredient in a value added product, but excluding chicken that is grown, processed, and sold according to halal, kosher, free range, or organic standards.

**ANSWER:** Defendants admit that Plaintiffs purport to bring this putative class action under the antitrust laws of the United States, but deny that Plaintiffs state a claim under those laws, have or can satisfy the requirements of Federal Rule of Civil Procedure 23, and/or that Plaintiffs are entitled to any of the requested relief. Defendants deny any remaining allegations in this Paragraph.

Complaint Footnote 1 contains Plaintiffs' explanation of a defined term used in their Complaint, to which no response is required. To the extent Footnote 1 is deemed to require a response, Defendants admit that Plaintiffs have defined "Broilers" as described in Footnote 1. Further, to the extent that Footnote 1 incorporates and re-alleges allegations contained in Paragraph 124, Defendants incorporate and re-allege their answers to each allegation contained in Paragraph 124. Defendants deny any remaining allegations in Complaint Footnote 1.

## I. NATURE OF ACTION<sup>2</sup>

1. Plaintiffs are informed and believe, and thereon allege, that in order to maintain price stability and increase profitability, beginning at least as early as January 1, 2008, Defendants and their co-conspirators conspired and combined to fix, raise, maintain, and stabilize the price of Broilers. The principal (but not exclusive) method by which Defendants implemented and executed their conspiracy was by coordinating their output and limiting production with the intent and expected result of increasing prices of Broilers in the United States. In furtherance of their conspiracy, Defendants exchanged detailed, competitively sensitive, and closely-guarded non-public information about prices, capacity, sales volume, and demand, including through third party co-conspirator Agri Stats. Plaintiffs are further informed and believe that Defendants fraudulently concealed their anticompetitive conduct from Plaintiffs and the Classes for the states set forth below in furtherance of the conspiracy, and as a result there may be other methods by which Defendants carried out their conspiracy which presently are not known to Plaintiffs. For instance, it was not publicly known until November 2016 that certain Defendants and their co-conspirators apparently manipulated and artificially inflated a widely used Broiler price index, the Georgia

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<sup>2</sup> Defendants note that this, and any other header in the Complaint is not a factual statement to which any response is required. To the extent a response is required, Defendants deny any allegations contained in Plaintiffs' headers.

Dock. Additionally, it was not publicly known until June 2020, when the Department of Justice (“DOJ”) announced the indictment of executives from Defendants Pilgrim’s Pride and Claxton, that certain Defendants and their co-conspirators apparently conspired to fix prices and rig bids for Broilers. [Footnote 2]

Complaint Footnote 2: *United States of America v. Jayson Jeffrey Penn et al.*, Crim. Action No. 20-cr-00152-PAB (D. Col. June 2, 2020), ECF No. 1.

**ANSWER:** Pursuant to the Court’s September 22, 2020 Order staying bid-rigging claims and allegations (Dkt. 3835), the parties agree that Defendants shall not answer the last sentence of this Paragraph at this time. Defendants deny the conspiracy alleged in the Complaint and deny each remaining allegation in this Paragraph.

Complaint Footnote 2 contains no factual allegations to which a response is required; however, Defendants deny that the purported case citation is accurate.

2. Broilers constitute approximately 98% of all chicken meat sold in the United States. Defendants are the leading suppliers of Broilers in an industry with over \$30 billion in annual wholesale revenue. The Broiler industry is highly concentrated, with a small number of large producers in the United States controlling supply. Defendants collectively control approximately 90% of the wholesale Broiler market. Since the 1950s, the production of Broilers has become highly industrialized and commoditized.

**ANSWER:** Defendants admit that Broilers (as that term is inaccurately defined in the Complaint)<sup>3</sup> constitute a substantial portion of all chicken meat sold in the United States, but are without information sufficient to form a belief as to the precise percentage alleged in the first sentence of this Paragraph and on this basis deny the allegations in that sentence. Defendants admit that Producer Defendants are suppliers of Broilers, but are without information sufficient to form a belief as to the precise dollar amount of annual wholesale revenue alleged in the second sentence of this Paragraph and on this basis deny the allegations in this sentence. Defendants deny

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<sup>3</sup> For purposes of their Answer only, to the extent Defendants refer to “Broilers” in their Answer, Defendants refer to Broilers as inaccurately defined in the Complaint.

the allegations in the third sentence of this Paragraph. As the term “collectively control” in the fourth sentence of this Paragraph is imprecise, Defendants are unable to form a belief as to the truth of the allegations contained in that sentence and on this basis deny the allegations in this sentence. As the term “highly industrialized and commoditized” in the fifth sentence of this Paragraph is imprecise, Defendants are unable to form a belief as to the truth of the allegations contained in that sentence and on this basis deny the allegations in this sentence. Each Defendant is without information sufficient to form a belief as to the truth of any allegations in this Paragraph that relate to other Defendants and/or third parties, and therefore each Defendant denies the allegations in this Paragraph to the extent that they relate to other Defendants and/or third parties. Defendants deny any remaining allegations in this Paragraph.

3. Historically, the Broiler industry was marked by boom and bust cycles where, in response to rising prices, producers increased production, which caused an oversupply and resulting decrease in pricing. However, that market pattern changed markedly in 2008. By their wrongful conduct as alleged in this complaint, Defendants not only materially reduced or eliminated the historical boom and bust cycle of the Broiler industry, they propped up Broiler prices during periods of rapidly falling input costs by, among other means, coordinating supply restrictions and manipulating one or more Broiler price indices.

**ANSWER:** As the terms “boom and bust cycles” and “Broiler industry” in the first sentence of this Paragraph are imprecise, Defendants are unable to form a belief as to the truth of the allegations contained in that sentence and on this basis deny the allegations in this sentence. Defendants deny the allegations in the second sentence of this Paragraph. Defendants deny the allegations in the third sentence of this Paragraph. Each Defendant is without information sufficient to form a belief as to the truth of any allegations in this Paragraph that relate to other Defendants and/or third parties, and therefore each Defendant denies the allegations in this Paragraph to the extent that they relate to other Defendants and/or third parties. Defendants deny any remaining allegations in this Paragraph.

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