

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

*IN RE BROILER CHICKEN ANTITRUST
LITIGATION*

THIS DOCUMENT RELATES TO:

End-User Consumer Plaintiffs

Case: 1:16-cv-08637

Honorable Thomas M. Durkin

**DEFENDANTS' OPPOSITION TO END-USER CONSUMER
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

PUBLIC REDACTED VERSION

TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
FACTUAL BACKGROUND.....	5
I. THE EUCP CLASS DEFINITION	5
II. THE REALITIES OF CHICKEN PRODUCTION.....	6
A. The Different Market Segments, Cuts, and Chicken Products	6
B. EUCPs Fail to Demonstrate that the Alleged Production Cuts Resulted in Less Chicken for Consumers.....	9
1. Overall Production Increased, not Decreased, during the Class Period	9
2. There were no uniform “Production Cuts”	10
3. EUCPs Offer No Causal Connection Between Alleged “Cuts” and Alleged Overcharges	12
III. EUCPS’ OVERCHARGE CLAIMS IGNORE THE REALITY OF THE COMPLEX PROCESS OF SELLING AND DISTRIBUTING CHICKEN PRODUCTS	13
A. EUCPs Ignore the Complexities in Chicken Purchasing	13
1. The Chicken Purchasing Chain is Complex and Varied.....	13
2. Chicken Pricing Mechanisms Vary Widely and Did Not Apply Uniformly Across the Sales Channels that Sold Chicken Products to EUCPs.....	15
3. Individual direct purchasers negotiated with individual Defendants for different volumes of different products	17
B. EUCPs’ Own Experts’ Modeling Shows No Overcharges to Large Portions of the EUCP Class.....	21
1. Many Direct Purchasers who sold to EUCPs incurred no overcharges....	21
2. Direct Purchasers did not uniformly pass-through any alleged overcharges to End-User Consumers	23
ARGUMENT	25
I. LEGAL STANDARD.....	25
II. EUCPS FAIL TO ESTABLISH PREDOMINANCE	27
A. Dr. Sunding’s Flawed Model Cannot Show Common Proof of Antitrust Impact.	28
1. Dr. Sunding’s Impact Analysis Violates Comcast.....	29
2. Dr. Sunding’s Impact Analysis Does Not Isolate Unlawful Conduct	31
3. Dr. Sunding’s Overcharge Model is Fundamentally Unreliable	32
4. Dr. Sunding’s Pass-Through Model is Fundamentally Unreliable	34
B. Dr. Sunding’s Damages Model Cannot Show Damages on a Class-Wide Basis ..	38

C.	EUCPs Cannot Show Predominance Or Superiority Because Of Substantive Variations In The Many State Laws Governing Their Claims	41
1.	There Are Material Variations Among The Twenty-One Jurisdictions' Antitrust Laws.....	44
2.	There Are Substantive Differences Between The Jurisdictions' Consumer Protection Laws	45
3.	Plaintiffs Compound The Problem By Bringing Unjust Enrichment Claims Under The Laws of Twenty-Four Jurisdictions	47
4.	Plaintiffs Have Failed To Demonstrate Manageability	49
III.	EUCPS' CLASS DEFINITION CONTAINS A GREAT MANY UNINJURED CONSUMERS AND IS FATALLY OVERBROAD.....	50
IV.	EUCPS FAIL TO ESTABLISH TYPICALITY AND ADEQUACY.....	55
	CONCLUSION.....	59

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Al Haj v. Pfizer Inc.</i> , 2020 WL 13330367 (N.D. Ill. Mar. 23, 2020).....	55
<i>Alioto v. Town of Lisbon</i> , 651 F.3d 715 (7th Cir. 2011)	47
<i>In re Aluminum Warehousing Antitrust Litig.</i> , __ F.R.D. __, 2020 WL 4218329 (S.D.N.Y. July 23, 2020)	27, 29, 33, 38
<i>Am. Exp. Co. v. Italian Colors Rest.</i> , 570 U.S. 228 (2013).....	26
<i>Am. Seed Co. v. Monsanto Co.</i> , 238 F.R.D. 394 (D. Del. 2006)	27
<i>In re Aqua Dots Prods. Liab. Litig.</i> , 270 F.R.D. 377 (N.D. Ill. 2010).....	48
<i>Arthur v. Microsoft Corp.</i> , 267 Neb. 586 (Neb. 2004).....	44
<i>In re Asacol Antitrust Litig.</i> , 907 F.3d 42 (1st Cir. 2018).....	27, 52, 53
<i>Blades v. Monsanto Co.</i> , 400 F.3d 562(8th Circ. 2005).....	34
<i>In re Bridgestone/Firestone Tires Prods. Liab. Litig.</i> , 288 F.3d 1012 (7th Cir. 2002)	35, 43, 45
<i>California v. Infineon Techs. AG</i> , No. C 06-4333 PJH, 2008 WL 4155665 (N.D. Cal. Sept. 5, 2008).....	27
<i>CE Design Ltd. v. King Architectural Metals, Inc.</i> , 637 F.3d 721 (7th Cir. 2011)	57
<i>Ex parte Citicorp Acceptance Co.</i> , 715 So. 2d 199 (Ala.1997)	25
<i>Clark v. Bumbo Int'l Tr.</i> , 2017 WL 3704825 (E.D. Ill. August 28, 2017)	51, 53

...

<i>Clay v. Am. Tobacco Co.,</i> 188 F.R.D. 483 (S.D. Ill. 1999)	48
<i>Clayworth v. Pfizer, Inc.,</i> 233 P.3d 1066 (Cal. 2010)	44
<i>In re Cmt. Bank of N. Va. & Guaranty Nat'l Bank of Tallahassee Second Mortg. Loan Litig.,</i> 622 F.3d 275 (3d Cir. 2010).....	45
<i>Comcast Corp. v. Behrend,</i> 569 U.S. 27 (2013).....	<i>passim</i>
<i>Commander Props. Corp. v. Beech Aircraft Corp.,</i> 164 F.R.D. 529 (D. Kan. 1995).....	48
<i>Conergy AG v. MEMC Elec. Materials, Inc.,</i> 651 F. Supp. 2d 51 (S.D.N.Y. 2009).....	44
<i>Dailey v. Groupon, Inc.,</i> 2014 WL 4379232 (N.D. Ill. Aug. 27, 2014)	39
<i>In re Dairy Farmers of Am., Inc. Cheese Antitrust Litig.,</i> 2013 WL 4506000 (N.D. Ill. Aug. 23, 2013)	57
<i>Dancel v. Groupon, Inc.,</i> 949 F.3d 999 (7th Cir. 2019)	26
<i>In re Domestic Drywall Antitrust Litig.,</i> 2017 U.S. Dist. LEXIS 135758 (E.D. Pa. Aug. 24, 2017).....	42
<i>Doster Lighting, Inc. v. E-Conolight, LLC,</i> No. 12-C-0023, 2015 WL 3776491 (E.D. Wis. June 17, 2015)	41
<i>Dvorak v. St. Clair Cty.,</i> 2018 U.S. Dist. LEXIS 10585	55
<i>In re Epipen Epinephrine Injection.,</i> No. 17-md-2785-DDC-TJJ, 2020 WL 1180550 (D. Kan. Mar. 10, 2020)	<i>passim</i>
<i>Espenscheid v. DirectSat USA, LLC,</i> 705 F.3d 770 (7th Cir. 2013)	40
<i>Exhaust Unlimited, Inc. v. Cintas Corp.,</i> 223 F.R.D. 506 (S.D. Ill. 2004)	34
<i>In re Flash Memory Antitrust Litig.,</i> No. C 07-0086 SBA, 2010 WL 2332081 (N.D. Cal. June 9, 2010)	27

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.