

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In Re Broiler Chicken Antitrust
Litigation

Case No.: 16-cv-8637

Judge Thomas Durkin

**MOTION FOR REASSIGNMENT BASED ON RELATEDNESS
PURSUANT TO LOCAL RULE 40.4**

Plaintiff Zaxby's Franchising LLC ("Plaintiff" or "Zaxby's"), in 21-cv-486, pursuant to Local Rule 40.4, respectfully moves this Court for reassignment of its case based on relatedness, and in support thereof, states as follows:

1. Zaxby's seeks for this Court to transfer the case of *Zaxby's Franchising LLC v. Tyson Foods, Inc. et al.*, 21-cv-486 (the "Zaxby's Action") pursuant to Local Rule 40.4 based on a finding of relatedness.

2. LR 40.4(c) directs that the "motion shall be filed in the lowest-numbered case of the claimed related set and noticed before the judge assigned to that case."

I. LR 40.4(c)

3. LR 40.4(c) directs the party filing the motion to attach a copy of the complaint from the case thought to be related. The Zaxby's complaint is attached hereto as Exhibit 1.

4. LR 40.4(c) provides that a "motion for reassignment based on relatedness may be filed by any party to a case," and directs the party filing the motion to: (1) set forth point of commonality of the cases in sufficient detail to indicate that the cases are related within the meaning of sections (a), and (2) indicate the extent to which the conditions required by section (b) will be met if the cases are found to be related."

II. LR 40.4(a)

5. Pursuant to LR 40.4(a), two or more civil cases may be related if, “. . . (2) the cases involve the same issues of fact or law;” or, “(3) the cases grow out of the same transaction or occurrence.”

6. The Court has already determined that a number of direct purchaser opt-out cases are related to the instant action. *See, e.g.*, 16-cv-09490, 16-cv-09421, 16-cv-08931, 16-cv-08851, 16-cv-09007, 16-cv-08737, 16-cv-09589, 16-cv-09684, 16-cv-08874, 16-cv-09912, 16-cv-09900, 17-cv-07176, 17-cv-08850, 18-cv-03471, 18-cv-00700, 18-cv-00245, 18-cv-00702, 18-cv-04000, 18-cv-04534, 18-cv-05341, 18-cv-05345, 18-cv-05351, 18-cv-05877, 18-cv-06316, 18-cv-06673, 18-cv-06693, 20-cv-1943, and 20-cv-2013.

7. The present case, those already found to be related, and the newly filed Zaxby’s Action are all related because all involve many of the same issues of fact and law and grow out of the same basic occurrence.

8. The present case and the related litigations allege claims based on the same transaction or occurrence—a conspiracy among Defendants to artificially reduce or suppress Broiler Chicken supply, fix Broiler Chicken prices, and rig bids for purchases of Broiler Chickens.

9. Moreover, while the Defendants somewhat vary from case to case, the Defendants in the complaint attached as Exhibit 1, and most of the Defendants in the present matter and related litigations are nearly identical. *See, e.g.*, Case Nos. 18-cv-700, 18-cv-702, 18-cv-4000, and 18-cv-4534.

10. The same law and authorities apply to Sherman Act claims and relate to the same core of operative fact surrounding the alleged conspiracy.

III. 40.4(b)

11. Pursuant to LR 40.4(b), this Court may reassign the Zaxby's Action if it is related to the present lawsuit under LR 40.4(a), "and each of the following criteria is met: (1) both cases are pending in this Court; (2) the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort; (3) the earlier case had not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially; and (4) the cases are susceptible of disposition in a single proceeding."

12. Aside from the Zaxby's Action, all of the aforementioned litigation including all of the cases listed in paragraph 6, are pending in the Northern District of Illinois before Judge Durkin.

13. The Court can save substantial time and effort by, among other things, coordinating discovery issues and briefing.

CONCLUSION

WHEREFORE Plaintiff Zaxby's respectfully requests that this Honorable Court grant its motion for reassignment based on relatedness pursuant to Northern District of Illinois Local Rule 40.4.

Dated: January 27, 2021

Respectfully submitted,

/s/ Lori P. Lustrin

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CERTIFICATE OF SERVICE

I, Andrew P. Bleiman, hereby certify that on January 27, 2021, I electronically filed the foregoing Motion with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Andrew P. Bleiman
Andrew P. Bleiman