

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In Re Broiler Chicken Antitrust
Litigation

Case No: 16-cv-08637

Judge Thomas Durkin
Magistrate Judge Jeffrey T. Gilbert

**PLAINTIFFS WHATABRANDS LLC AND WHATABURGER RESTAURANTS LLC
MOTION FOR REASSIGNMENT
BASED ON RELATEDNESS PURSUANT TO LOCAL RULE 40.4**

Plaintiffs Whatabrands LLC and Whataburger Restaurants LLC (“Plaintiffs”) in Case No. 21-cv-02844, by and through undersigned counsel and pursuant to Local Rule 40.4, respectfully moves this Court for reassignment of its case based on relatedness and, in support thereof, Plaintiffs state as follows:

1. Plaintiffs seek for this Court to transfer the case, *Whatabrands LLC and Whataburger Restaurants LLC v. Tyson Foods, Inc., et al.*, Case No. 21-cv-02844, based on a finding of relatedness under Local Rule 40.4.

I. Local Rule 40.4(c)

2. Local Rule 40.4(c) requires that the Motion for Reassignment “shall be filed in the lowest-numbered case of the claimed related set and noticed before the judge assigned to that case.” N.D. Ill. L.R. 40.4(c).

3. Local Rule 40.4(c) also directs the party filing the motion to attach a copy of the complaint from the case thought to be related. *Id.* Accordingly, Plaintiffs’ Complaint from Case No. 21-cv-02844 is attached hereto as **Exhibit 1**.

4. Finally, Local Rule 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 the points of commonality of the cases in sufficient detail to indicate that the cases are related within the meaning of section (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.” N.D. Ill. L.R. 40.4(c).

II. Local Rule 40.4(a)

5. Pursuant to Local Rule 40.4(a), two or more civil cases may be related if they “involve the same issues of fact or law” or “cases grow out of the same transaction or occurrence.” N.D. Ill. L.R. 40.4(a).

6. The present case, those already found to be related,¹ and Plaintiffs’ newly-filed Case No. 21-cv-02844, are all related because all involve many of the same issues of fact and law and grow out of the same basic occurrence.

7. Specifically, the present case and the related actions are each based upon Defendants’ alleged violations of federal antitrust laws, i.e., the Sherman Act, by conspiring to increase the prices of chicken sold in the United States. These actions all concern the alleged illegal agreements and restraint of trade among chicken producers and others in the industry, through which Defendants successfully implemented supra-competitive chicken prices to Plaintiffs and other purchasers throughout the United States.

8. Moreover, while there may be slight variation as to the defendants from case to case, the Defendants in Plaintiffs’ Complaint (*see* Exhibit 1) are all defendants in the present matter and related actions. Further, the Defendants named in Plaintiffs’ Complaint are comprised

¹ According to the Court’s docket (16-cv-08637), related cases currently include but are not limited to, 16-cv-08737, 16-cv-08851, 17-cv-07176, 17-cv-08850, 18-cv-00245, 18-cv-00700, 18-cv-00702, 18-cv-03471, 18-cv-05877, 18-cv-06316, 18-cv-06673, 18-cv-06693, 18-cv-07284, 18-cv-08511, 19-cv-00354, 19-cv-00390, 19-cv-00530, 19-cv-00638, 20-cv-6179, 20-cv-06201, 20-cv-06347, 20-cv-06904, 20-cv-07191, 20-cv-07205, 20-cv-07419, 20-cv-07423, 20-cv-07734, 20-cv-07831, 21-cv-00054, 21-cv-00261, 21-cv-00268, 21-cv-00486, 21-cv-00573, 21-cv-00689, 21-cv-00693, 21-cv-00781, 21-cv-00892, 21-cv-01008, 21-cv-01009, 21-cv-01170, 21-cv-01207, 21-cv-01907, and 21-cv-02693.

of defendants in the cases that were already found to be related. Plaintiffs do not seek to introduce any new defendants.

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

III. Local Rule 40.4(b)

10. Pursuant to Local Rule 40.4(b), this Court may reassign *Whatabrands LLC and Whataburger Restaurants LLC v. Tyson Foods, Inc., et al.*, Case No. 21-cv-02844, if it relates to the present lawsuit under Local Rule 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.

N.D. Ill. L.R. 40.4(b).

11. Aside from the case sought to be reassigned, all of the aforementioned litigation is pending in the Northern District of Illinois before Judge Durkin.

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

CONCLUSION

WHEREFORE, Plaintiffs Whatabrands LLC and Whataburger Restaurants LLC respectfully request that this Honorable Court grant their motion for reassignment based on relatedness pursuant to Northern District of Illinois Local Rule 40.4.

Dated: May 26, 2021

By: /s/ David B. Esau

David B. Esau
Kristin A. Gore
Garth T. Yearick
Amanda R. Jesteadt
Stephen A. Cohen
Casey R. McGowan
CARLTON FIELDS, P.A.
525 Okeechobee Boulevard, Suite 1200
West Palm Beach, Florida 33401
Tel: (561) 659-7070
Fax: (561) 659-7368
desau@carltonfields.com
kgore@carltonfields.com
gyearick@carltonfields.com
ajesteadt@carltonfields.com
scohen@carltonfields.com
cmcgowan@carltonfields.com

Roger S. Kobert
CARLTON FIELDS, P.A.
Chrysler Building
405 Lexington Avenue, 36th Floor
New York, New York 10174-3699
Tel: (212) 785-2577
Fax: (212) 785-5203
rkobert@carltonfields.com

Scott L. Menger
CARLTON FIELDS, LLP
2029 Century Park East, Suite 1200
Los Angeles, CA 90067
Tel: (310) 843-6300
Fax: (310) 843-6301
smenger@carltonfields.com

*Counsel for Plaintiffs Whatabrands LLC and
Whataburger Restaurants LLC*

CERTIFICATE OF SERVICE

The undersigned attorney, on oath, states that a copy of the foregoing pleading was served on all of the attorneys of record via the Court's electronic filing system.

By: /s/ David B. Esau
David B. Esau