

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ZAXBY'S FRANCHISING LLC,

Plaintiffs,

v.

TYSON FOODS, INC., *et al.*,

Defendants

Jury Trial Demanded

(Related to *In re Broiler Chicken Antitrust Litigation* – Case No. 1:16-cv-8637)

COMPLAINT

1. Plaintiff Zaxby's Franchising LLC ("Zaxby's") is a Georgia corporation with its principal place of business in Athens, Georgia. Zaxby's owns, operates, or alternatively is the franchisor (and trademark licensor) of, more than 500 Zaxby's branded restaurants in the United States (the "Zaxby's Branded Restaurants").¹

2. Restaurants like Zaxby's serve their proprietary chicken products in multiple locations throughout the country. To ensure consistency in taste and quality of its products across hundreds of locations, Zaxby's, like many restaurants, negotiated and contracted directly with Defendants for the production and supply of chicken for the Zaxby's Branded Restaurants, according to Zaxby's unique recipes and specifications. These negotiations and contracts governed the price and quantity at which Defendants would supply the Zaxby's Branded

¹ Pursuant to the Court's Orders in *In re Broiler Chicken Antitrust Litig.*, 1:16-cv-08637, the Direct Action Plaintiffs filed "a [C]onsolidated [C]omplaint" [ECF Nos. 3778, 3652, 3525] containing "all the allegations the Direct-Action Plaintiffs make against all Defendants" on October 23, 2020 [ECF Nos. 3924, 3922]. In an effort to promote efficiency, Zaxby's files this abbreviated pleading that incorporates by reference and adopts the allegations set forth in the Direct Action Plaintiffs' Consolidated Complaint and Demand for Jury Trial. If the Court prefers a different form or process, Zaxby's will withdraw this pleading and proceed according to the Court's direction.

Restaurants with Broilers (as that term is defined in the Consolidated Complaint).

3. Zaxby's provided Defendants with instructions regarding each step of the preparation and packaging process for its chicken products, including the recipe for Zaxby's products and specific requirements for packaging and labeling Zaxby's proprietary products.

4. The agreements entered into between Zaxby's and Defendants and co-conspirators set forth the agreed price and volume of chicken products to be sold to Zaxby's.

5. Zaxby's brings this action on its own behalf, and additionally and alternatively, as assignee of Performance Food Group, Inc. ("PFG").

6. During the conspiracy period, Zaxby's purchased hundreds of millions of dollars' worth of Broilers directly from certain Defendants and co-conspirators at artificially inflated prices throughout the Conspiracy Period. Zaxby's contracted directly with Defendants and their co-conspirators for the purchase of Broilers, negotiating the price and quantity at which Defendants would supply Zaxby's with Broilers. As such, Zaxby's has suffered antitrust injury as a result of Defendants' anticompetitive and unlawful conduct.

7. Also during the Conspiracy Period, PFG purchased Broilers on behalf of Zaxby's from Defendants and their co-conspirators. PFG has assigned its claims arising out of these purchases to Zaxby's.

8. Zaxby's was damaged by Defendants' anticompetitive and illegal conduct by paying artificially inflated prices for Broilers, and therefore has suffered antitrust injury as a result of Defendants' conduct. Zaxby's brings this action to recover the overcharges it paid for Broilers purchased during the Conspiracy Period.

9. Zaxby's brings this action for damages under the federal antitrust laws against the defendants identified below and incorporates by reference Direct Action Plaintiffs' Consolidated

Complaint and Demand for Jury Trial [ECF Nos. 3924, 3922] filed in *In re Broiler Chicken Antitrust Litigation*, 1:16-cv-08637 (N.D. Ill.) on October 23, 2020.

10. Zaxby's joins Section II of the Direct Action Plaintiffs' Consolidated Complaint and Demand for Jury Trial [ECF Nos. 3924, 3922], adding the following to specify Zaxby's causes of action and the Defendants and Co-Conspirators in Zaxby's action.

Plaintiff Name	Operative Complaint (Reference is to Sealed Version, if applicable)	Named Defendants (Not Previously Dismissed)	Named-Co-Conspirators (if any)	Causes of Action
Zaxby's Franchising LLC	TBD	Claxton; Mar-Jac; Agri Stats; Case; Foster Farms; Harrison; House of Raeford; Koch; Mountaire; O.K. Foods; Perdue; Pilgrim's Pride; Sanderson; Simmons; Tyson; Wayne	Amick; George's; Peco; Fieldale; Allen Harim; Keystone Foods; Marshall Durbin	Count I (Sherman Act Claim for all Anticompetitive Conduct).

PRAYER FOR RELIEF

WHEREFORE, Zaxby's respectfully requests that the Court:

- A. Enter joint and several judgments against Defendants in favor of Zaxby's;
- B. Award Zaxby's damages in an amount to be determined at trial to the maximum extent allowed under federal antitrust laws, and enter a joint and several judgment in favor of Zaxby's against Defendants in an amount to be trebled as provided by law;
- C. Award Zaxby's post-judgment interest as provided by law, with such interest to be awarded at the highest legal rate;
- D. Award Zaxby's attorneys' fees, litigation expenses, and costs, as provided by law;

and

E. Grant Zaxby's such other and further relief that the Court may deem just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Zaxby's demands a trial by jury on all issues so triable.

Dated: January 27, 2021

Respectfully submitted,

ZAXBY'S FRANCHISING LLC

By: /s/ Lori P. Lustrin

Robert W. Turken (*pro hac vice*)

Lori P. Lustrin (*pro hac vice*)

Scott N. Wagner (*pro hac vice*)

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