

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

JUDY JIEN, *et al.*,

Plaintiffs,

v.

PERDUE FARMS, INC., *et al.*,

Defendants.

Civil Case No. 1:19-CV-2521-SAG

* * * * *

MEMORANDUM OPINION

Plaintiffs Judy Jien, Kieo Jibidi, Elaisa Clement, Glenda Robinson, Emily Earnest, and Kevin West (collectively “Plaintiffs”), on behalf of themselves individually and on behalf of a class of former and current employees, bring suit against twenty poultry processors and several of their subsidiaries or parents (“Defendant Processors”), plus two data consulting companies (collectively “Defendants”). The Third Amended Complaint (“TAC”) alleges two violations of Section One of the Sherman Antitrust Act. ECF 590. Specifically, Plaintiffs allege: (1) a conspiracy among Defendants, except Peco Foods, Inc. (“Peco Foods”) and Agri Stats, Inc. (“Agri Stats”) to fix and depress poultry workers’ compensation; and (2) a conspiracy among all Defendants for the unlawful exchange of compensation data. *Id.* Presently pending are five motions to dismiss the TAC.¹ ECF 630, 631, 632, 638, 639. Plaintiffs filed oppositions; ECF 654, 658, 659, 660, 661; and Defendants filed replies, ECF 674, 675, 676, 678, 679. For the following reasons, Defendants’ motions will be denied, except that the motions filed by Jennie-O Turkey

¹ Mar-Jac Poultry, Inc. (“Mar-Jac GA”) also filed a motion to dismiss, ECF 636, which was subsequently mooted by this Court’s approval of Plaintiffs’ Stipulation and Notice of Dismissal with Prejudice as to Mar-Jac GA, ECF 685, 686.

Store Inc., (“Jennie-O”) and Mountaire Farms, Inc., (“Mountaire”) will be granted as to Count I only.

I. BACKGROUND

The core allegations in this case have been set forth in detail in this Court’s earlier Opinions; *see* ECF 378, 414; and will not be fully reiterated herein.² Relevant here, however, is a brief discussion of the procedural posture of this case.

Plaintiffs filed this action in August, 2019, alleging a conspiracy from January, 2009, onward to fix and depress wages of hourly workers at chicken processing plants. ECF 1; *see also* ECF 196. In their consolidated First Amended Complaint (“FAC”), Plaintiffs asserted the same claims on behalf of an expanded class of hourly and salaried workers at Defendant Processors’ poultry (not merely chicken) processing plants. *See* FAC ¶ 245. Defendants filed a series of motions to dismiss, which this Court granted in part and denied in part through a Memorandum Opinion and Order. ECF 378, 379 (“MTD Op. I”). That Opinion enumerated four holdings relevant to the resolution of the instant motions. First, the FAC provided direct evidence for its *per se* claim—namely statements by Defendants’ executives fretting about the propriety of wage discussions at secret meetings—but that the claim could only be sustained against Defendants who were explicitly linked to the evidence through attendance at such meetings. MTD Op. I at 11-14. Second, Plaintiffs’ alleged product market, defined as the poultry processing labor market, was plausible in light of those workers’ industry-specific expertise, limited education and language skills, and the fact that Defendants themselves appeared to perceive themselves as a distinct, nationwide unit. *Id.* at 23-25. Third, Plaintiffs had plausibly alleged the relevant geographic

² This Court adopts by reference its discussion of facts set forth in its earlier Opinions resolving Defendants’ previous motions to dismiss, ECF 378, 414. Relevant new factual allegations will be referenced in the discussion sections of this Opinion, *infra*.

market to be the continental United States, particularly because Defendants' arguments regarding overbreadth did not warrant dismissal. *Id.* at 21-22. Fourth, the FAC plausibly alleged anticompetitive effects in the relevant market through secret meetings, the exchange of survey data compiled by Webber, Meng, Sahl and Company, Inc. ("WMS"), and the use of Agri Stats to monitor adherence to the conspiracy. *Id.* at 25-27.

Plaintiffs subsequently filed a Second Amended Complaint ("SAC") restating its allegations against previously-dismissed Defendants, ECF 386, which Defendants sought to dismiss on multiple grounds, *see* ECF 398, 399, 400, 401. In its Memorandum Opinion and Order ("MTD Op. II"), this Court denied the motions in their entirety based in part on three key findings. ECF 414, 415. First, this Court found that under the "class certification" approach, named Plaintiffs (chicken processing workers paid hourly) had standing to pursue claims on behalf of salaried and turkey processing workers because named Plaintiffs' interests did not differ significantly from the salaried and turkey employees they sought to represent. *Id.* at 5-6. Second, this Court held that the SAC adequately stated its *per se* claim against Jennie-O, Mountaire, and Sanderson Farms Inc., ("Sanderson") by alleging that they attended at least some secret meetings, thereby linking them to direct evidence of the alleged conspiracy. *Id.* at 8-11. Third, with regards to the rule of reason claim in Count II, this Court rejected Jennie-O's argument that the SAC failed to allege anticompetitive effects against it because it operated in the Upper Midwest rather than the South. *Id.* at 12-13. In doing so, this Court explained that Jennie-O's geographic arguments were unavailing in light of its earlier determination that Plaintiffs had plausibly alleged the geographic market to extend throughout the entire continental United States. *Id.* (quoting MTD Op. I at 22-23).

In January, 2022, Plaintiffs sought and obtained leave to file a TAC. ECF 567, 589. The TAC expanded the scope of this action in four material ways. First, the TAC broadened its putative class beyond employees at poultry processing plants to also include workers at Defendant Processors’ poultry hatcheries and poultry feed mills (collectively, “poultry workers”). TAC at 9. Second, the TAC expanded the class period to extend from January, 2000 until July, 2021. *Id.* Third, the TAC named seven additional Defendants—Foster Poultry Farms (“Foster”); Case Foods, Inc.; Case Farms, LLC; O.K. Foods, Inc.; Allen Harim Foods, LLC (“Allen Harim”); Amick Farms, LLC (“Amick Farms”); and Mar-Jac GA. Fourth, the TAC added a new named Plaintiff, Kevin West. *Id.* ¶ 33. The TAC also attributed additional nomenclature and labels to various portions of the alleged conspiracy. Specifically, the annual survey administered by WMS is now referred to as the Poultry Industry Compensation Survey (hereinafter “Compensation Survey”); participants in the Compensation Survey referred to themselves as the Poultry Industry Survey Group (hereinafter, “Survey Group”). *Id.* ¶¶ 7-8, 212. The TAC alleges that the Compensation Survey and Survey Group were “governed and operated by a ‘Steering Committee’ that consisted of between three and five executives of different Defendant Processors.” *Id.* ¶ 230. Likewise, the “annual ‘off the books’ meetings” at which compensation rates were set are alleged to be called Poultry Industry Compensation Meetings (hereinafter, “Compensation Meetings”). *Id.* ¶ 11.

Five motions to dismiss are currently pending. First, several Defendants challenge Plaintiffs’ standing to pursue claims related to persons employed at Defendant Processors’ hatcheries and feed mills, ECF 630.³ Second, Foster filed a motion to dismiss for lack of personal

³ The motion to dismiss for lack of standing was filed by the following Defendants: Agri Stats, Allen Harim, Amick Farms, Butterball, LLC, Case Farms, LLC, Case Foods, Inc., Fieldale Farms Corporation (“Fieldale Farms”), Foster, Jennie-O, Keystone Foods, LLC, Koch Foods, Inc., Mar-

jurisdiction and for failure to state a claim. ECF 631. Finally, three individual defendants, Sanderson, Jennie-O, and Mountaire, filed motions challenging the sufficiency of the claims against them, ECF 632, 638, 639. This Court will address each issue relevant to these five motions in turn.

II. STANDING

A. Legal Standard

Federal Rule of Civil Procedure 12(b)(1) governs motion to dismiss for lack of standing, and therefore lack of subject matter jurisdiction. As the party asserting a court's power to adjudicate the claim or controversy before it, the plaintiff bears the burden of demonstrating that jurisdiction, in fact, exists. *Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir. 1999); *see also United States ex rel. Vuyyuru v. Jadhav*, 555 F.3d 337, 347 (4th Cir. 2009). “[W]hen a defendant raises standing as the basis for a motion under Rule 12(b)(1) to dismiss for lack of subject matter jurisdiction,” the court “may consider evidence outside the pleadings without converting the proceedings to one for summary judgment.” *White Tail Park, Inc. v. Stroube*, 413 F.3d 451, 459 (4th Cir. 2005); *see also Richmond, Fredericksburg & Potomac R.R. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991). While the plaintiff bears the burden of proving that a court has jurisdiction over the claim or controversy at issue, a Rule 12(b)(1) motion should be granted “only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law.” *Morgan Stanley v. NIRAV BABU*, 2020 WL 1331995, at *3 (D. Md. Mar. 23, 2020) (quoting *Thomas-Lawson v. Koons Ford of Baltimore, Inc.*, 2020 WL 1675990, at *3 (D. Md. Apr. 6, 2020)).

Jac GA, Mountaire, O.K. Foods, Inc., Perdue Farms, Inc. (“Perdue Farms”), Perdue Foods LLC (“Perdue Foods”), Sanderson, Tyson Foods, Inc., and Wayne Farms, LLC.

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