

**NITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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IN RE CATTLE ANTITRUST LITIGATION

Civil No. 19-1222

This Document Relates To:

*All Actions.*

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MORGAN, SHARON DAWSON-GREEN,  
KENT WINCHESTER, SHARON KILLMON,  
LISA MELEGARI, NICOLE GUTIERREZ, and  
MICHELLE OVERSEN,

Civil No. 19-1129 (JRT/HB)

Plaintiffs,

v.

JBS USA FOOD COMPANY HOLDINGS,  
CARGILL, INC., NATIONAL BEEF PACKING  
COMPANY, and TYSON FOODS, INC.,

Defendants.

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**AMENDED MEMORANDUM OPINION AND ORDER GRANTING  
DEFENDANTS' MOTIONS TO DISMISS**

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Jon B. Jacobs, **PERKINS COIE**, 700 13th Street N.W., Suite 600, Washington, District of Columbia, 20005 for Defendants Tyson Foods, Inc., and Tyson Fresh Meats, Inc.

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Plaintiffs allege that Defendants, the nation's largest meat-packers, conspired to fix and suppress the price of fed cattle in violation of federal and state antitrust laws. Defendants now move to dismiss the claims against them. Because Plaintiffs have not pleaded their direct evidence with sufficient detail and because they have not pleaded parallel conduct sufficient to support an inference of a price-fixing conspiracy, the Court

will grant Defendants’ Motions to Dismiss. The Court will also grant Plaintiffs leave to amend their Complaints.

### BACKGROUND

This case represents the consolidation of several separately filed putative class actions.<sup>1</sup> There are two sets of Plaintiffs. First, there are institutional/organizational plaintiffs (1) Ranchers Cattlemen Action Legal Fund United Stockgrowers of America (“R-CALF USA”), a Montana nonprofit public benefit corporation; and (2) Farmers Educational and Cooperative Union of America (“Farmers Union” or “NFU”), a “national federation of state Farmers Union organizations existing under the laws of the State of Texas[.]” (Civil No. 19-1222, Second Cons. Am. Compl. (“SCAC”) ¶¶ 26–27, Oct. 4, 2019, Docket No. 125.) R-CALF USA and NFU seek “declaratory and injunctive relief in a representative capacity” and “damages in their personal capacity,” because the alleged anticompetitive behavior “frustrated their respective missions . . . and diverted their resources to help their members mitigate damages and prevent further breaches of the law[.]” (*Id.* ¶ 28.)

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<sup>1</sup> The consolidated cases are all direct purchaser plaintiffs. In addition, the Court is hearing jointly the Motions to Dismiss in the as-of-yet unconsolidated case, Civil No. 19-1129 *Peterson et al. v. JBS USA Food Co. et al.*, in which the plaintiffs are indirect purchasers bringing an equitable claim under federal law and related state-law damage claims.

Second, there are individual and business plaintiffs who “each sold fed cattle directly to one or more of the” four meat-packing Defendants.<sup>2</sup> (*Id.* ¶ 36.)

Together, the four meat-packing Defendants purchase 83 percent of the slaughter-weight fed cattle in the United States. (*Id.* ¶¶ 5, 84, App’x 3.) After purchasing the cattle, Defendants process them into beef for sale to other processors, wholesalers, and retail outlets. (*Id.* ¶ 4.) Plaintiffs allege that from at least January 1, 2015 and continuing to the present day, Defendants conspired to fix and suppress the price of fed cattle in the United States. (*Id.* ¶ 1.)

This alleged conspiracy was facilitated in part by a significant shift in how Defendants purchase fed cattle. In 2005, “almost all” fed-cattle purchases were cash sales, meaning that meat packers sent agents “to feedlots and auctions” and those agents paid a “price set each day at the dollar mark where supply and demand met.” (*Id.* ¶ 79.) Over the following decade the proportion of all fed-cattle purchases made by cash sale dropped to approximately 21%. (*Id.* ¶ 80.) In 2015, more than 60% of all fed-cattle purchases were made via so-called formula contracts. (*Id.*, fig. 7)

Under formula contracts, fed-cattle producers agree to supply cattle to a packer once it reaches slaughter weight. (*Id.*) The contract price for the cattle is set by a formula that is driven by average cash-sale prices prevailing at, or just before, delivery, as reported

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<sup>2</sup> Cargill, Inc., and Cargill Meat Solutions Corp., (together “Cargill”); JBS S.A., JBS USA Food Company, Swift Beef Company, JBS Packerland, Inc. (together, “JBS” ); National Beef Packing Co., LLC; and Tyson Foods, Inc., and Tyson Fresh Meats, Inc. (together, “Tyson”).

by the USDA Agricultural Marketing Service's ("AMS") Livestock Mandatory Reporting ("LMR").<sup>3</sup> (*Id.* ¶ 81.) So, even though actual cash sales make up less than a quarter of Defendants fed-cattle purchases, the average cash-sale price affects approximately 85% of those purchases. (*Id.*)

Defendants' profits are driven by the difference between the price paid for fed cattle and the price of beef—what is known as the "meat margin." (*Id.* ¶ 83.) In November 2014, fed-cattle prices peaked at \$170 per hundredweight ("CWT").<sup>4</sup> (*Id.* ¶ 86.) Although Defendants "initially benefited from the rise" in fed-cattle prices "because wholesale beef prices rose in parallel," the meat margin eventually "fell to a low of approximately \$50 in the months leading up to 2015" which sent Defendants' "margins into the red." (*Id.* ¶ 87.)

Plaintiffs allege that Defendants engaged in a conspiracy to artificially drive down the price of fed cattle in order to maximize the meat margin. This goal was accomplished, according to Plaintiffs, by an agreement to:

(1) periodically restrain or reduce slaughter numbers so as to reduce demand for fed cattle; (2) curtail their purchases of cash cattle during these periods; (3) coordinate their procurement practices with respect to the cash cattle they did

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<sup>3</sup> The purchases made by the four Defendants "provide over 90% of reported transactions" in the AMS LMR. (SCAC ¶ 161.)

<sup>4</sup> "A hundredweight (cwt) is a unit of measurement used in certain commodities trading contracts. . . . In the United States, a hundredweight is a unit of mass equal to 100 pounds." James Chen, *Hundredweight (Cwt)*, Investopedia, <https://www.investopedia.com/terms/h/hundredweight.asp>

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