

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>IN RE CATTLE ANTITRUST LITIGATION</p> <p><i>This document relates to:</i></p> <p>ALL CASES</p>	<p>Case No. 19-cv-1222-JRT-HB</p>
<p>KENNETH PETERSON, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>JBS S.A., et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 19-cv-1129-JRT-HB</p>
<p>IN RE DPP BEEF LITIGATION</p> <p><i>This document relates to:</i></p> <p>ALL CASES</p>	<p>Case No. 20-cv-1319-JRT-HB</p>
<p>ERBERT & GERBERT'S, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CARGILL, INC., et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 20-cv-1414-JRT-HB</p>

**NATIONAL BEEF PACKING COMPANY, LLC'S
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS
THE AMENDED CLASS ACTION COMPLAINTS**

TABLE OF CONTENTS

	Page
INTRODUCTION	1
LEGAL STANDARD	2
ARGUMENT.....	3
A. Plaintiffs Have Not Pled Any “Direct Evidence” of National Beef’s Participation in a Conspiracy	3
1. Witness 1 Does Not Mention National Beef, Let Alone Tie The Company To An Alleged Conspiracy.....	5
2. Witness 2’s Statements Affirmatively Exclude National Beef from Any Anticompetitive Conduct.....	7
B. Plaintiffs Have Not Pled Any Facts Suggesting “Indirect Evidence” of National Beef’s Participation in a Conspiracy.....	8
1. Plaintiffs’ Allegations Demonstrate That National Beef Did Not Close or Idle a Plant—And Actually Expanded Capacity—During the Alleged Conspiracy Period.....	9
2. Plaintiffs’ Own Allegations Show that National Beef Did Not Reduce its Total Slaughter Volumes During the Alleged Conspiracy Period	11
3. National Beef Did Not Engage in Parallel Slaughter Reductions Nor Change Its Behavior During The Alleged Conspiracy Period	13
4. National Beef Did Not Engage in Parallel Procurement Activity.....	14
5. Plaintiffs’ Plus Factors Are Insufficient, Unspecific, And Often Inapplicable to National Beef	17
CONCLUSION	18

TABLE OF AUTHORITIES**Page****CASES**

<i>America Channel, LLC v. Time Warner Cable Inc.</i> , No. 06–2175, 2007 WL 1892227 (D. Minn. June 28, 2007)	9, 10
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	3
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007)	2, 3, 12, 15
<i>Blomkest Fertilizer, Inc. v. Potash Corp. of Sask.</i> , 203 F.3d 1028 (8th Cir. 2000) (en banc)	9
<i>Burtch v. Milberg Factors, Inc.</i> , 662 F.3d 212 (3d Cir. 2011)	4
<i>Double D Spotting Serv., Inc. v. Supervalu, Inc.</i> , 136 F.3d 554 (8th Cir. 1998)	5
<i>Hanten v. Sch. Dist. of Riverview Gardens</i> , 183 F.3d 799 (8th Cir. 1999)	2, 9
<i>In re Cattle Antitrust Litig.</i> , No. CV 19-1129 (JRT/HB), 2020 WL 5884676 (D. Minn. Sept. 29, 2020)	4, 7
<i>In re Milk Prods. Antitrust Litig.</i> , 84 F. Supp. 2d 1016 (D. Minn. 1997), <i>aff'd</i> , 195 F.3d 430 (8th Cir. 1999)	2
<i>In re Pork Antitrust Litig.</i> , No. 18-cv-1776 (JRT/HB), 2019 WL 3752497 (D. Minn. Aug. 8, 2019)	2, 15
<i>In re Pre-Filled Propane Tank Antitrust Litig.</i> , 893 F.3d 1047 (8th Cir. 2018)	2

<i>Leslie J. v. Berryhill</i> , No. 17-CV-1319 (TNL), 2018 WL 4603278 (D. Minn. Sept. 25, 2018)	6
<i>Mayor of Baltimore v. Citigroup, Inc.</i> , 709 F.3d 129 (2d Cir. 2013).....	4
<i>Podpeskar v. Makita U.S.A. Inc.</i> , 247 F. Supp. 3d 1001 (D. Minn. 2017).....	10
<i>Porous Media Corp. v. Pall Corp.</i> , 186 F.3d 1077 (8th Cir. 1999)	10
<i>Stahl v. U.S. Dep’t of Agric.</i> , 327 F.3d 697 (8th Cir. 2003)	10
OTHER AUTHORITIES	
Rule 12(b)(6)	5, 10

INTRODUCTION

Plaintiffs’ amended class action complaints (the “Amended Complaints”) rest on a supposition that this Court will not be able to pick National Beef Packing Company, LLC (“National Beef”) out of a herd of “Defendants.” Though they contend that “Defendants” participated in a multi-faceted, years-long conspiracy to reduce industry slaughter rates, suppress the prices paid for fed cattle, and raise the prices charged for boxed beef, Plaintiffs have not pled any facts, taken as true, that would constitute direct or circumstantial evidence that National Beef participated in such a conspiracy. To the contrary, the Amended Complaints concede that National Beef did not participate *at all* in the activities that provide the foundation for Plaintiffs’ claims. For example, during the alleged conspiracy period National Beef:

- Did **not** close any plant;
- Did **not** reduce its slaughter volumes in total or in parallel;
- Did **not** import cattle;
- Did **not** boycott any feedlots; and
- Did **not** participate at all, much less engage in anticompetitive activity in, the broiler chicken or pork industries.

These facts are wholly inconsistent with Plaintiffs’ conspiracy claim, and they have not pled any other facts that would—directly or indirectly—link National Beef to any anticompetitive conduct. Merely including National Beef among a group of “Defendants” that allegedly engaged in anticompetitive acts does not, and cannot, make it so. For this reason, and for the reasons set forth in Defendants’ Joint Motions to Dismiss all four



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.