

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

HOWARD B. SAMUELS, solely as chapter 7 trustee of the estates of CENTRAL GROCERS, INC., STRACK AND VAN TIL SUPER MARKET, INC. and SVT, LLC,

Plaintiffs,

v.

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

CASE NO.

CLASS ACTION COMPLAINT

Howard B. Samuels (“Plaintiff”), solely in his capacity as Chapter 7 trustee for the bankruptcy estates of Central Grocers, Inc., Strack and Van Til Super Market, Inc., and SVT, LLC (collectively, “Central Grocers”), hereby brings this action on behalf of Central Grocers and all persons and entities similarly situated, against Defendants Cargill, Inc. (“Cargill”), JBS USA Food Company Holdings (“JBS”), National Beef Packing Company (“National Beef”) and Tyson Foods, Inc. (“Tyson”) (when discussed collectively, “Defendants”) and unnamed co-conspirators. Plaintiff alleges, based on information and belief and investigation by counsel except where specifically alleged on the basis of personal knowledge, as follows:

I. NATURE OF THIS ACTION

1. This class action is brought on behalf of Central Grocers and all persons and entities who purchased beef¹ in the United States directly from one or more of the Defendants from at least January 1, 2015, until the present (the “Class Period”). Plaintiff alleges that Defendants violated Section 1 of the Sherman Act by conspiring to constrain beef supplies in the United States, thereby artificially inflating domestic beef prices paid by direct purchasers. As a direct result of Defendants’ unlawful conduct, Central Grocers and the other Class members suffered antitrust injury for which Plaintiff seeks treble damages and injunctive relief and demands a jury trial.

2. Defendants are the world’s largest meat processing and packing companies, known in the industry as “meatpackers” or “packers.” In 2018, they sold approximately 80% of the more than 25 million pounds of fresh and frozen beef supplied to the United States market.

¹ In this Complaint, “beef” means boxed and case-ready meat that has been processed from fed cattle by Defendants and other smaller, non-defendant producers. It excludes ground beef made from culled cows. “Cattle” means fed cattle before they are processed into beef and excludes culled cows. “Fed” cattle means steers and heifers raised in feedlots on a concentrated diet for the production and sale of beef.

Collectively, they controlled approximately 81–85% of the domestic cattle processed (or slaughtered) in the market throughout the Class Period. The next largest meatpacker had only a 2–3% market share.

3. Since at least the start of 2015, Defendants have exploited their market power in this highly concentrated market by conspiring to limit the supply of, and to fix the prices of, beef sold to Central Grocers and others in the U.S. wholesale market (the “Conspiracy”). The principal, but not exclusive, means Defendants have used to effectuate their Conspiracy is a concerted scheme to artificially constrain the supply of beef entering the domestic supply chain. Defendants’ collusive restriction of the beef supply has had the intended effect of artificially inflating beef prices. As a result, Central Grocers and other Class members paid higher prices than they would have paid in a competitive market.

4. Both the U.S. Department of Justice (“DOJ”) and the U.S. Department of Agriculture (“USDA”) recently launched investigations into whether Defendants unlawfully fixed beef prices in the United States. Although the DOJ has not yet publicly confirmed its investigation, news sources reported on June 4, 2020, that the Department’s Antitrust Division sent a civil investigative demand to each of the Defendants seeking information about their pricing practices. While these investigations apparently were triggered most immediately by a spike in beef prices since the COVID-19 outbreak in the U.S., this spike is only one manifestation of Defendants’ conspiracy.

5. In testimony before the Senate Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies on March 12, 2020, Secretary of Agriculture Sonny Perdue announced that the USDA had begun an investigation into suspiciously high beef prices. Secretary Perdue expressed serious concern that meatpackers were paying lower prices for live cattle without passing that cost savings to Plaintiffs and other beef purchasers. In

his words, the difference between prices for live cattle and prices for wholesale boxed beef was “historically high.”

6. The existence of a conspiracy among the Defendants was confirmed by at least one account by a confidential witness (“Witness 1”). Witness 1, who was previously employed by one of the Defendants, has confirmed that each of the Defendants expressly agreed to reduce its cattle purchase and slaughter volumes with the purpose and effect of increasing their margins. Transactional data and slaughter volume records reported by Defendants, information published by the U.S. Department of Agriculture, and Defendants’ public calls for industrywide slaughter and capacity reductions corroborate Witness 1’s account.

7. In addition to the high concentration in the wholesale beef industry, other structural characteristics of the domestic beef market also facilitate the Conspiracy. Defendants sit atop the supply and distribution chain that ultimately delivers beef to the market. Their vital role is to purchase cattle from the nation’s farmers and ranchers, slaughter and pack cattle into beef, and sell beef to Central Grocers and other Class members. Defendants’ gatekeeping role has enabled them to collusively control both upstream and downstream beef pricing throughout the Class Period.

8. Other market characteristics also serve as “plus factors” supporting the inference of collusion among Defendants during the Class Period. These characteristics include high barriers to entry, inelastic demand, and the commodity nature of beef. Collectively, these economic factors encouraged formation of the Conspiracy and continue to foster its successful operation.

9. Capitalizing on the fundamental mechanism of supply and demand operating in a beef market vulnerable to successful cartel formation and operation, Defendants illegally collaborated to reduce beef supplies in the United States. To do so, Defendants engaged in tactics

including purchasing fewer cattle than a competitive market would otherwise demand and running their processing plants at less than available capacity. These practices created surpluses in the cattle market and shortages in the wholesale beef market. These artificial conditions, in turn, drove down the prices Defendants pay for cattle and boosted the prices Defendants command for beef. The result intended and achieved by Defendants has been higher profit margins (or “meat margins”).

10. This growth of Defendants’ margins was aided by the way supply and demand operate in the beef industry. The supply of cattle is insensitive to short-term price changes because of the long lifecycle of livestock, livestock’s perishable nature, and the lack of any alternative use for livestock. Beef demand is also relatively insensitive to price fluctuations. As a result, Defendants’ margins are very responsive to changes in the aggregate volume of slaughtered cattle.

11. Defendants furthered the Conspiracy by routinely exchanging supply, pricing, and other competitively sensitive information in several ways. One method was routinely selling beef to each other. In these buyer-seller relationships, Defendants were each other’s competitors and customers, thus allowing Defendants to share information that competitive businesses would conceal from each other.

12. Another form of interaction conducive to Defendants’ collusion was frequent meetings between each other’s executives and key employees. Trade association conferences and other industry events offer convenient opportunities to exchange information, plans and strategies, and build relationships. As described throughout this Complaint, Defendants seized these opportunities to further their collusive supply restrictions.

13. By the beginning of 2015, Defendants began exploiting these favorable market conditions to launch the Conspiracy. At that time, they undertook a campaign of throttling the

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