IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

IN RE PEANUT FARMERS ANTITRUST LITIGATION	**CIVIL ACTION NO. 2:19cv00463**

ORDER

This matter is before the Court on Plaintiffs' Motion to Compel Defendant Birdsong to Produce Certain Structured Data, and accompanying memorandum in support ("Motion to Compel"), filed on May 29, 2020. ECF Nos. 157-58. Defendant Birdsong ("Birdsong") filed an opposition, ECF No. 168, and Plaintiffs filed a reply, ECF No. 172. Accordingly, the Motion is fully briefed and ready for disposition.

By way of background, Plaintiffs filed the instant class action alleging that the Defendants engaged in a multi-year conspiracy to fix the price of Runner peanuts. *See* ECF Nos. 1, 120, 148. In the instant Motion to Compel, Plaintiffs move the Court to require Birdsong to produce certain structured data. *See* ECF No. 158 at 1. Specifically, Plaintiffs seek structured data for (1) the three types of non-Runner peanuts, and (2) data that covers the time period between January 1, 2010 through December 31, 2012. *Id.* Plaintiffs argue that this data is necessary to establish a benchmark period for a "before-and-during-regression analysis" to potentially determine their damages. ECF No. 158 at 5. In opposition, Defendant argues that non-Runner peanuts were not included in the price-fixing allegations within the Complaint and accordingly, are not relevant to Plaintiffs' claim. *Id.* Additionally, Defendant argues that data for the time period that pre-dates

the beginning of the alleged conspiracy is not relevant. *Id.* Defendant contends that because the request for non-Runner peanuts and the 2010-2012 data is irrelevant, it is beyond the scope of discovery and the Motion should be denied. *Id.*

Federal Rule of Civil Procedure 26(b)(1) provides:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). "Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." *Id.* "[T]he threshold for relevance is not a high one. . . ." *Contract Materials Processing, Inc. v. Kataleuna Gmbh Catalysts*, 462 Fed. Appx. 266, 273 (4th Cir. 2012). Additionally, "[t]he district court's discretion with respect to discovery matters is broad." *Vodrey v. Golden*, 864 F.2d 28, 32 (4th Cir. 1988) (citing *Ardrey v. United Parcel Service*, 798 F.2d 679, 682 (4th Cir. 1986)). In the Fourth Circuit, courts "enjoy nearly unfettered discretion to control the timing and scope of discovery. . . ." *Ashland Facility Operations, LLC v. NLRB*, 701 F.3d 983, 994 (4th Cir. 2012) (quoting *Hinkle v. City of Clarksburg, W. Va.*, 81 F.3d 416, 426 (4th Cir. 1996)). The party resisting discovery has the burden of establishing that the production should not be required. *Doe v. Old Dominion Univ.*, 289 F. Supp. 3d 744, 749 (E.D. Va. 2018) (citing *Singletary v. Sterling Transp. Co.*, 289 F.R.D. 237, 241 (E.D. Va. 2012)).

With respect to the non-Runner peanut structured data, Plaintiffs argue that such data is relevant to establish a benchmark period in a before-and-during regression analysis, which Plaintiffs may use to estimate their damages. ECF No. 158 at 5. Birdsong argues that Plaintiffs

do not explain *how* the non-Runner peanut data will serve as a benchmark for prices for Birdsong's purchases of Runner peanuts. ECF No. 168 at 3. Birdsong does not argue that it would be overly burdensome or expensive to produce the non-Runner peanut data. Under these circumstances, Court finds that Plaintiffs have sufficiently shown that this data is relevant to potential damages calculations. Plaintiffs have explained that they can use the data related to the non-Runner peanuts to set a benchmark for which to compare the prices of the Runner Peanuts. This type of damages analysis has been utilized and is a generally accepted methodology for computing damages in an antitrust case. *See In re Polyester Staple Antitrust Litig.*, No. 3:03CV1516, 2007 U.S. Dist. LEXIS 52525, at *108 (W.D.N.C. July 19, 2007) (citing cases). Birdsong has not met its burden to demonstrate that it should not be required to produce structured data related to the non-Runner peanuts. Accordingly, Plaintiffs' Motion to Compel is **GRANTED** with respect to Plaintiffs' request for Birdsong to produce data for the non-Runner peanuts.

With respect to the structured data covering the period from January 1, 2010 through December 31, 2012, Plaintiffs again argue that such data is relevant to their damages calculation, by establishing a benchmark period to estimate overcharges and damages. Plaintiffs further contend that even though this data predates the class period, such data will demonstrate unprecedented pricing volatility, which Plaintiffs argue motivated the alleged conspiracy. ECF No. 128 at 10-11. Again, Birdsong argues that such data is not relevant, but does not argue that producing such data would be overly burdensome in any way. The Court again finds that Plaintiffs have sufficiently shown the pre-2013 structured data to be relevant, and Birdsong has not met its burden to demonstrate that it should not be required to produce the pre-2013 structured data. Accordingly, Plaintiffs' Motion to Compel is **GRANTED** with respect to Plaintiffs' request for Birdsong to produce structured data prior to 2013.

Therefore, the Court **GRANTS** Plaintiffs' Motion to Compel Production of Structured Data, ECF No. 157. Defendant must produce the structured data for (1) non-Runner peanuts, and (2) structured data for Runner and non-Runner peanuts that covers the time period between January 1, 2010 and December 31, 2012.

The Clerk is **DIRECTED** to forward a copy of this Order to all counsel of record.

It is so **ORDERED**.

Lawrence R. Leonard
United States Magistrate Judge

Norfolk, Virginia
July 24, 2020