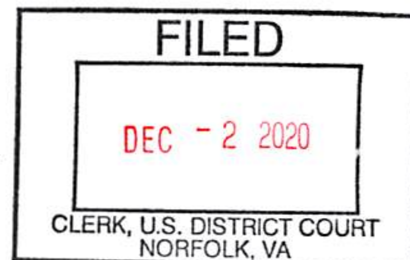

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

D&M FARMS, MARK HASTY, DUSTIN LAND, ROCKY CREEK PEANUT FARMS, LLC, DANIEL HOWELL, and, LONNIE GILBERT, individually and on behalf of all others similarly situated;

Plaintiffs,

v. **CIVIL ACTION NO. 2:19-cv-463**

BIRDSONG CORPORATION, GOLDEN PEANUT COMPANY, LLC, and OLAM PEANUT SHELLING COMPANY, INC.

Defendants.

MEMORANDUM OPINION AND ORDER

Before the Court is a Motion for Class Certification filed by Plaintiffs D&M FARMS, MARK HASTY, DUSTIN LAND, ROCKY CREEK PEANUT FARMS, LLC, DANIEL HOWELL, and LONNIE GILBERT, individually and on behalf of all others similarly situated (collectively "Plaintiffs"). ECF No. 235. The Court has also reviewed Defendants BIRDSONG CORPORATION, GOLDEN PEANUT COMPANY, LLC, and OLAM PEANUT SHELLING COMPANY, INC.'s (collectively "Defendants") Memorandum in Opposition, and Plaintiffs' Reply. ECF Nos. 259, 271. Upon review of the relevant filings, the Court finds that a hearing on Plaintiffs' Motion is not necessary and therefore denies Defendants BIRDSONG CORPORATION and OLAM PEANUT SHELLING COMPANY, INC.'s Request for Hearing. ECF No. 276. For the reasons stated herein, Plaintiffs' Motion for Class Certification is **GRANTED.**

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I. FACTUAL AND PROCEDURAL HISTORY

Plaintiffs filed their initial complaint on September 5, 2019. ECF No. 1. Since initiating the present lawsuit, Plaintiffs filed a Second Amended Class Action Complaint (the "Complaint") on May 27, 2020. ECF No. 148. Plaintiffs are a group of peanut farmers who sell raw, harvested runner peanuts to the Defendants (also known as "shellers") to be processed and sold to food companies or other manufacturers. *Id.* at 1. From approximately 2011 to 2013, "the Peanut industry experienced drastic weather-related price changes that made it difficult for Defendants [...] to manage risk and plan for production." *Id.* at 2. Since in or around January 2014, "the prices paid by shellers to Peanut farmers for Runner[] [peanuts] have remained remarkably flat and unchanged, despite significant supply disruptions" such as hurricanes. *Id.* Because of this significant difference in pricing norms within the industry, Plaintiffs accuse Defendants of "conspir[ing] and collud[ing] with one another to stabilize and depress Runner [peanut] prices." *Id.*

According to the Complaint, Defendants have used their 80–90% market share in the peanut selling industry to facilitate a price fixing conspiracy to depress the price of runner peanuts. *Id.* at 1. Plaintiffs seek a single claim for relief, on behalf of a nationwide class, under Section 1 of the Sherman Antitrust Act. *Id.* at 36. The purported class includes "[a]ll farmers who sold Runner Peanuts to Defendants or their co-conspirators in the United States from at least as early as January 1, 2014 until the present." *Id.* at 33. Specifically excluded from the purported class are any "Defendants; the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. *Id.*

Plaintiffs filed their Motion for Class Certification on September 4, 2020. ECF No. 235.

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Defendants filed a Memorandum in Opposition on September 25, 2020. ECF Nos. 257, 259. Plaintiffs filed their Reply on October 2, 2020. ECF No. 271. Accordingly, this matter is ripe for judicial determination.

II. LEGAL STANDARD

In order to certify a suit as a class action, the proponent of class certification has the burden of establishing that the conditions enumerated in Rule 23 of the Federal Rules of Civil Procedure have been met. *Windham v. American Brands, Inc.*, 565 F.2d 59, 64 n.6 (4th Cir. 1977) (en banc) *cert. denied*, 435 U.S. 968, 56 L. Ed. 2d 58, 98 S. Ct. 1605 (1978). Rule 23 provides, in pertinent part:[1]

> (a) **Prerequisites to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
>
> (b) **Class Actions Maintainable.** An action may be maintained if the prerequisites of subdivision (a) are satisfied, and in addition:
>
> ...
>
> (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

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[1] A proponent of class certification must meet all of the requirements of Rule 23(a), and satisfy one of the subsections of Rule 23(b). Plaintiffs have moved for class certification pursuant to 23(b)(3). *See* ECF No. 236.

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FED. R. CIV. P. 23. The Court must conduct a "rigorous analysis" in determining whether the requirements of Rule 23 have been met. *General Telephone Co. of the Southwest v. Falcon*, 457 U.S. 147, 161, 72 L. Ed. 2d 740, 102 S. Ct. 2364 (1982). Whether the proponent of certification has met his or her burden is left to the trial court's discretion and will be reversed only for abuse of such discretion. *Windham*, 565 F.2d at 65. In conducting its rigorous analysis of Rule 23, the Court must take a "close look at the facts relevant to the certification question and, if necessary, make specific findings on the propriety of certification." *Thorn v. Jefferson—Pilot Life Ins. Co.*, 445 F. 3d 311, 319 (4th Cir. 2004) (internal quotations omitted). "Such findings can be necessary even if the issues tend to overlap into the merits of the underlying case." *Id.*

III. DISCUSSION

In order to conduct a sufficient analysis of Plaintiffs' Motion, the Court must apply relevant facts within Plaintiffs' Complaint to Rule 23(a) and (b). Importantly, Defendants do not contest Plaintiffs' assessment of the four requirements under Rule 23(a). The Court will nonetheless quickly evaluate Plaintiffs' allegations under Rule 23(a). Defendants do, however, ardently contest the applicability of Rule 23(b)(3), arguing that common questions do not predominate because Plaintiffs are not similarly situated and cannot rely upon common evidence. The following analysis addresses the Rule 23 class action requirements in turn.

A. Rule 23 (a)

1. Numerosity

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." This Court, among others, has previously held that "classes consisting of forty or more members are considered sufficiently large to satisfy the impracticability requirement." *American Sales Company, LLC v. Pfizer, Inc.* 2017 WL 3669604, at *6 (E.D. Va. July 28, 2017);

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see, e.g., Meijer, Inc. v. Warner Chilcott Holdings Co. III., Ltd., 246 F.R.D. 293, 301 (D.D.C. 2007) (quoting *Thomas v. Christopher*, 169 F.R.D. 224, 237 (D.D.C. 1996)) (finding the numerosity requirement satisfied by a class of thirty members).

Here, Plaintiffs purport to represent "almost 12,000 farmers that are geographically dispersed across the Southern and Southeastern U.S." ECF No. 241 at 12. Defendants do not challenge Plaintiffs purported class size. Accordingly, the Court finds that the numerosity requirement is satisfied.

2. Commonality & Typicality

The commonality and typicality requirements tend to merge. While Rule 23(a)(2) requires that questions of law or fact be common to the class, Rule 23(a)(3) similarly requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." "Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-51 (2011) (quoting *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). "A common question is one that can be resolved for each class member in a single hearing, such as the question of whether an employer engaged in a pattern and practice of unlawful discrimination against a class of its employees." *Thorn*, 445 F.3d at 318. In the antitrust context, courts have generally held that an alleged conspiracy or monopoly is a common issue that will satisfy Rule 23(a)(2) as the singular question of whether defendants conspired to harm plaintiffs will likely prevail. *See, e.g., Meijer*, 246 F.R.D. at 300; *In re Wellbutrin XL Antitrust Litig.*, No. 08-2431, 2011 WL 3563385, at *4 (E.D. Pa. Aug. 11, 2011).

Meanwhile, typicality ensures that "only those plaintiffs who can advance the same factual and legal arguments may be grouped together as a class." *Brousard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 340 (4th Cir. 1998). Additionally, "typicality 'will be established by

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