UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, *Plaintiff*, v. CARGILL MEAT SOLUTIONS CORPORATION, *et al.*, *Defendants*.	Civil Action No.: 22-cv-1821

UNITED STATES' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Pursuant to Rules 15(a) and 21 of the Federal Rules of Civil Procedure and Local Rule 103.6, the United States respectfully moves this Court for leave to file an Amended Complaint.[1] Amendment of the Complaint would not prejudice the existing parties and would further the interests of justice. For these reasons, and those set forth more fully below, the Court should grant the Motion to Amend.

I. STATEMENT OF FACTS

On July 25, 2022, the United States filed a civil Complaint against Cargill Meat Solutions Corporation and Cargill, Inc. (together, "Cargill"), Wayne Farms, LLC ("Wayne"), Sanderson Farms, Inc. ("Sanderson"), Webber, Meng, Sahl and Company, Inc., d/b/a WMS & Co., Inc. ("WMS"), and WMS President G. Jonathan Meng ("Meng") (collectively, the "Existing Defendants") seeking to enjoin them from collaborating on decisions about poultry plant worker

[1] Consistent with Local Rule 103.6, a copy of the proposed Amended Complaint is attached to the Motion as Exhibit 1; a redline showing the differences between the Complaint and the proposed Amended Complaint is attached as Exhibit 2.

compensation, including through the exchange of compensation information, and thereby suppressing competition in the nationwide and local labor markets for poultry processing. ECF 1.

The Complaint alleges that their agreement to collaborate with and assist competing poultry processors in making compensation decisions, to exchange compensation information, and to facilitate this conduct through consultants is an unlawful restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. *Id.* The Complaint further alleges that the Existing Defendants participated in this conspiracy together with unnamed, but enumerated, co-conspirators, specifically certain poultry processors ("Processor Co-Conspirators 1 through 18," *see* ECF 1 at ¶ 23) and another consulting firm ("Consultant Co-Conspirator 1," *see id.* ¶ 22).[2] Although it did not identify them by name, the Complaint described these unnamed co-conspirators and their conduct in detail, including their use of WMS to facilitate collaboration and their exchanges of information with Existing Defendants Cargill, Wayne, Sanderson, and the other conspirators. The Complaint further states that the co-conspirators are labeled "with pseudonyms because the United States has an ongoing investigation into this conduct." *Id.* ¶ 8 n.2, ¶ 22 n.4.

The proposed Amended Complaint adds two of the co-conspirators, George's, Inc. and George's Foods, LLC (collectively, "George's"), as named Defendants to this action. George's has reached a settlement with the United States, which will file contemporaneously additional papers relevant to that settlement. The Amended Complaint does not otherwise contain additional causes of action or requests for relief.

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[2] The Complaint also alleged that Existing Defendants Sanderson and Wayne acted deceptively in the manner in which they compensated poultry growers in violation of Section 202(a) of the Packers and Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. § 192(a). ECF 1 at ¶¶ 208-13.

II. ARGUMENT

A. "Justice So Requires" Leave for the United States to Amend Its Complaint

The Federal Rules of Civil Procedure permit a party to amend its complaint "with the opposing party's written consent or the court's leave" and provide that the "court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). The Fourth Circuit has "often described [its] Fourth Circuit policy as one to 'liberally allow amendment,'" which "furthers a wider federal policy of—when possible—resolving cases on the merits, instead of on technicalities." *United States ex rel. Nicholson v. MedCom Carolinas, Inc.*, 42 F.4th 185, 197 (4th Cir. 2022). The Fourth Circuit has also recognized that Rule 15(a) applies to considerations of motions to amend pleadings "when the amendment seeks to add a party." *Galustian v. Peter*, 591 F.3d 724, 730 (4th Cir. 2010).

The interests of justice will be served by granting leave to amend here. The United States seeks to amend the Complaint to add George's as Defendants, which participated in the decades-long conspiracy with the Existing Defendants. George's collaborated with and assisted their competitors in making decisions about workers' wages and benefits and exchanged information about current and future compensation plans, which distorted the normal bargaining and compensation processes and artificially suppressed poultry processing workers' compensation. Further, the United States has already reached a settlement with George's.

Justice requires that this conduct end, that those harmed receive relief, and that the public be made aware of the other participants in this conduct.

B. No Factor Militating Against Leave to Amend Is Present

"[L]eave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the

amendment would be futile." *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986); *see also Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999). None of these factors is present in the United States' request.

First, allowing the proposed amendment of the United States' Complaint at this time would not cause prejudice to the opposing parties. "[T]he Fourth Circuit has very narrowly defined prejudice sufficient to overcome the liberal standard for granting amendments." *Next Generation Group, LLC v. Sylvan Learning Centers, LLC*, 2012 WL 37397 at *5 (D. Md. Jan. 5, 2012). "Whether an amendment is prejudicial will often be determined by the nature of the amendment and its timing," for example, an amendment "that raises a new legal theory that would require the gathering and analysis of facts not already considered by the defendant, and is offered shortly before or during trial." *Laber v. Harvey*, 438 F.3d 404, 427 (4th Cir. 2006) (internal quotation marks, alterations, and citation omitted). The Existing Defendants have already consented to resolving this matter through the Tunney Act proceedings (described in ECF 2, 3, 11, and 12) and do not oppose the United States' request. Like the Existing Defendants, George's has reached a proposed final judgment with the United States.

Second, the United States has acted in good faith in seeking to amend its Complaint. As the Fourth Circuit has recognized, bad faith "is a difficult term to define," but "[i]t may be outright lying, deceiving, playing unjustifiable hardball, slacking off, intentionally causing confusion, or stubbornly refusing to follow rules—you can imagine cases where a party just wants to cause chaos—or it might be something as mundane as noticing someone's mistake and saying nothing about it." *MedCom Carolinas*, 42 F.4th at 198. The United States did not wait to name George's for reasons of deception, misdirection, or any other reason suggesting bad faith. In fact, in the Complaint, the United States stated that its reason for not identifying other

conspirators by name was because its investigation into the conduct was ongoing (ECF 1 at ¶ 8 n.2, ¶ 22 n.4). At this time in its ongoing investigation, the United States has determined it is appropriate to add George's, which has reached a settlement with the United States. The United States will file contemporaneously additional papers relevant to that settlement.

Third, the proposed amendment of the United States' Complaint would not be futile. "Determining whether amendment would be futile does not involve an evaluation of the underlying merits of the case." *Kolb v. ACRA Control, Ltd.*, 21 F. Supp. 3d 515, 522 (D. Md. 2014) (internal quotation marks omitted). A proposed amendment is futile when "it is clearly insufficient or frivolous on its face." *Johnson*, 785 F.2d at 510. Through the Amended Complaint, the United States would join to this action as Defendants co-conspirators who participated in the anticompetitive conduct already described in the Complaint; such amendment would further justice and serve the public interest in prosecuting and ending the co-conspirators' anticompetitive conduct and rectifying its effects.

For the foregoing reasons, the United States respectfully requests that the Court grant the motion seeking leave to file an Amended Complaint.

Dated: May 17, 2023

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/ Kathleen Simpson Kiernan

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CERTIFICATE OF SERVICE

I, Kathleen Simpson Kiernan, hereby certify that on May 17, 2023, I caused true and correct copies of the United States' Memorandum of Law in Support of Unopposed Motion for Leave to File Amended Complaint to be served via the Court's CM/ECF system.

FOR PLAINTIFF
UNITED STATES OF AMERICA

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