

**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.: 1:22-cv-1821

**PLAINTIFF UNITED STATES' MEMORANDUM IN SUPPORT OF
MOTION FOR ENTRY OF FINAL JUDGMENTS**

The United States respectfully moves this Court to enter the proposed Final Judgment between the United States and Defendants Cargill Meat Solutions Corporation and Cargill, Inc. (together, “Cargill”), Wayne Farms, LLC (“Wayne”), and Sanderson Farms, Inc. (“Sanderson”) (the “Processor Settling Defendants”), and the proposed Final Judgment between the United States and Defendants Webber, Meng, Sahl and Co., Inc., d/b/a WMS & Company, Inc. (“WMS”) and WMS President G. Jonathan Meng (“Meng”) (the “Consultant Settling Defendants”) (collectively, the “proposed Final Judgments”) (ECF 2-2 and 3-2) (attached as Exhibits 1 and 2).

The proposed Final Judgments may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) and Response of Plaintiff United States to Public Comments on the Proposed Final Judgment (“Response to Public Comments”) filed in this matter on September 12, 2022 and May 23, 2023, respectively (ECF 37 and 54), explain why entry of the proposed Final Judgments are in the public interest.

The United States is also filing a Certificate of Compliance (attached as Exhibit 3) showing that the parties have complied with all applicable provisions of the APPA and certifying that the 60-day statutory public comment period has expired.

I. BACKGROUND

On July 25, 2022, the United States filed a civil antitrust Complaint against the Processor Settling Defendants and the Consultant Settling Defendants (collectively, the “Settling Defendants”) seeking to enjoin them from collaborating on decisions about poultry plant worker compensation, including through the exchange of compensation information, which suppressed competition in the nationwide and local labor markets for poultry processing plant workers in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint also alleges that 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) (the “PSA”).

Contemporaneously, the United States filed the proposed Final Judgments as to the Processor Settling Defendants¹ and the Consultant Settling Defendants, as well as Stipulations and Orders signed by these parties. (ECF 2 & 3.) On September 12, 2022, the United States filed a Competitive Impact Statement describing the proposed Final Judgments. (ECF 37.) The Stipulations and Orders, which were agreed to by the parties and which were entered by the Court on July 26, 2022 (ECF 11 and 12), provide that the proposed Final Judgments may be entered by the Court once the requirements of the APPA have been met.

¹ On July 22, 2022, the Processor Settling Defendants announced that a joint venture of Cargill and Wayne acquired Sanderson. The terms of the proposed Final Judgment apply to all successors of the Processor Settling Defendants.

The proposed Final Judgments prevent the Settling Defendants from conspiring to (1) assist their competitors in making compensation decisions, (2) exchange current and future, disaggregated, and identifiable compensation information, and (3) facilitate this anticompetitive agreement. Entry of the proposed Final Judgments will terminate this action as to the Settling Defendants, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgments and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. In particular, the APPA requires a 60-day period for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the proposed Final Judgments and the CIS with the Court on July 25, 2022 and September 12, 2022, respectively; published the proposed Final Judgments and CIS in the *Federal Register* on September 16, 2022 (*see* 87 Fed. Reg. 57028 (2022)); and caused a summary of the terms of the proposed Final Judgments and the CIS, along with directions for the submission of written comments, to be published in *The Washington Post* for seven days from September 15-21, 2022. The United States received five public comments during the public comment period, which has now ended.

Pursuant to 15 U.S.C. § 16(d), the United States filed a Response to Public Comments on May 23, 2023 (ECF 54). As authorized by 15 U.S.C. § 16(d) and the Court's January 30, 2023 Order (ECF 43), on May 30, 2023, the United States published in the *Federal Register* its Response to Public Comments and the location on the Antitrust Division's website at which the public comments are accessible (www.justice.gov/atr), 88 Fed. Reg. 34518 (2023).

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgments, the APPA requires the Court to determine whether the proposed Final Judgments are “in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, “shall consider”:

- (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A), (B). Section 16(e)(2) of the APPA states that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2). In its CIS and Response to Public Comments, the United States explained the meaning and the proper application of the public interest standard under the APPA to this case and now incorporates those statements by reference.

IV. ENTRY OF THE PROPOSED FINAL JUDGMENTS IS IN THE PUBLIC INTEREST

The United States alleged in its Complaint that the Settling Defendants and their co-conspirators collaborated on decisions about poultry plant worker compensation, exchanged compensation information, and facilitated such conduct through data consultants, conduct that was anticompetitive and violated Section 1 of the Sherman Act, 15 U.S.C. § 1, because it suppressed competition in the nationwide and local labor markets for poultry processing plant workers. This conspiracy distorted the competitive process, disrupted the competitive mechanism for setting

wages and benefits, and harmed a generation of poultry processing plant workers by unfairly suppressing their compensation. As explained in the CIS and the Response to Public Comments, the proposed Final Judgments are designed to eliminate the likely anticompetitive effects of this conduct by requiring the Settling Defendants to end this conduct. The public, including affected competitors and workers, has had the opportunity to comment on the proposed Final Judgments. As explained in the CIS and the Response to Public Comments, entry of the proposed Final Judgments is in the public interest.

V. CONCLUSION

For the reasons set forth in this Motion and Memorandum and in the CIS and the Response to Public Comments, the United States respectfully requests that the Court find that the proposed Final Judgments are in the public interest and enter the proposed Final Judgments.

Dated: June 2, 2023

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/ Kathleen Simpson Kiernan
Kathleen Simpson Kiernan
U.S. Department of Justice
Antitrust Division
Civil Conduct Task Force
450 Fifth Street NW, Suite 8600
Washington, DC 20530
Tel: 202-353-3100
Fax: 202-616-2441
Email: Kathleen.Kiernan@usdoj.gov

CERTIFICATE OF SERVICE

I, Kathleen Simpson Kiernan, hereby certify that on June 2, 2023, I caused true and correct copies of the Memorandum in Support of Motion for Entry of Final Judgments to be served via the Court's CM/ECF system.

Dated: June 2, 2023

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

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