

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

IN RE TURKEY ANTITRUST
LITIGATION

This Document Relates To:

*Direct Purchaser Plaintiff and Direct Action
Plaintiff Actions*

No. 1:19-cv-08318

Hon. Sunil R. Harjani

Hon. Keri L. Holleb Hotaling

**DEFENDANTS TYSON FOODS, INC.; TYSON FRESH MEAT, INC.; TYSON
PREPARED FOODS, INC.; AND THE HILLSHIRE BRANDS COMPANY'S
SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO
DIRECT PURCHASER PLAINTIFFS' MOTION FOR
A COMMON BENEFIT SET-ASIDE ORDER**

Defendants Tyson Foods, Inc.; Tyson Fresh Meat, Inc.; Tyson Prepared Foods, Inc.; and The Hillshire Brands Company (collectively, "Tyson") respectfully submit this supplemental memorandum in opposition to Direct Purchaser Plaintiffs' ("DPPs") Motion for a Common Benefit Set-Aside Order (ECF No. 1137) ("Motion") to put forth arguments unique to Tyson that provide an independent basis for denying DPP's Motion with respect to Tyson.¹ Relevant to DPPs' Motion, Tyson is uniquely situated from the other Defendants in this case in that up until two months ago,² Tyson was the only Defendant to have settled with the DPPs, with the Court having granted final approval of the settlement on February 3, 2022. (ECF No. 406.) Because Tyson's

¹ To avoid repeating Defendants' Joint Motion in Opposition to Direct Purchaser Plaintiffs' Motion for a Common Benefit Set-Aside Order ("Joint Opposition"), which Tyson joins, this motion focuses on facts and arguments specific to Tyson.

² On January 8, 2025, DPPs entered into a settlement agreement with Cargill, Incorporated and Cargill Meat Solutions Corporation. (ECF No. 1100-1.)

settlement served to release Tyson from, *inter alia*, any fees and costs beyond those in the agreed-upon settlement fund (ECF No. 262-1 ¶ 13) and because DPPs have not litigated against Tyson for years and will continue not to do so by virtue of the settlement agreement (ECF No. 262-1 ¶ 3), DPPs' motion with respect to Tyson should be denied.

BACKGROUND³

On May 3, 2021, DPPs filed with this Court a notice of settlement with Tyson. (ECF No. 251.) Tyson and DPPs executed the settlement agreement on May 14, 2021. (ECF No. 262-1.) The executed settlement agreement was the product of arm's-length negotiations, and DPPs and Co-Lead Counsel agreed that the settlement reflected "fair, reasonable and adequate compensation" for the Settlement Class. (ECF No. 262-1 at 2-3; *see also* ECF No. 261 at 7.)

The settlement agreement creates a "Settlement Fund," which the parties defined in the agreement as the dollar amount Tyson agreed to pay plus any interest accruing within the escrow account in which the Settlement Fund is maintained. (ECF No. 262-1 ¶ 1(t).) Paragraph 13 of the settlement agreement addresses "Fee Awards, Costs and Expenses, and Service Awards to DPPs." It provides as follows: "Subject to Interim Co-Lead Counsel's sole discretion as to timing, [then-]Interim Co-Lead Counsel will apply to the Court for a fee award – plus expenses and costs incurred – and service awards to the DPPs to be paid from the proceeds of the Settlement Fund. *Tyson shall have no responsibility, financial obligation, or liability for any such fees, costs, expenses, or awards beyond the Settlement Fund.*" (ECF No. 262-1 ¶ 13) (emphasis added). Additionally, in Paragraph 3 of the settlement agreement, Tyson and DPPs agreed to "cease all litigation activities against" each other. (ECF No. 262-1 ¶ 3.)

³ Tyson does not repeat background information provided in the Joint Opposition, instead providing only additional information relevant to Tyson's supplemental brief.

The Court granted preliminary approval of the settlement on May 25, 2021 (ECF No. 265) and final approval on February 3, 2022. (ECF No. 406.)

ARGUMENT

Tyson respectfully requests that the Court deny DPPs' Motion with respect to Tyson for two reasons: (1) the settlement agreement between Tyson and DPPs limits the fees that DPPs may seek from Tyson to the Settlement Fund; and (2) DPPs can make no specific showing of benefit to DAPs with respect to Tyson that justifies receiving 10% of all Tyson's future settlements.

First, Paragraph 13 of the settlement agreement makes plain that Tyson bears no additional responsibility for "any . . . fees [or] costs" DPP counsel may seek beyond the Settlement Fund. (ECF No. 262-1 ¶13.) DPPs nevertheless seek an end-run around the clear limitations of a term to which they freely agreed by asking that Tyson not only pay to them as additional fees 10% extracted from any settlement amount to which Tyson agrees to pay to the three DAPs with claims against it, but to also pay further costs associated with establishing and maintaining the new, additional escrow account the DPPs request. (*See* ECF No. 1138 at 14.) Because DPPs knowingly and voluntarily discharged Tyson from any obligation to pay for fees and costs beyond the Settlement Fund, DPPs' Motion should be denied as to Tyson.

Second, Tyson settled with DPPs nearly four years ago. (ECF No. 262-1.) That means, DPPs have "cease[d] all litigation activities against Tyson" for nearly four years and before any DAP even filed a complaint in this case. (*See* ECF No. 262-1 ¶ 3.) As such, DPPs' professed leadership in and progression of this case has not been in service of any enforcement of claims specific to Tyson for nearly two-thirds of the length of this case. Therefore, DPPs' effort to extract 10% of any of Tyson's future settlements with DAPs—which as explained in the Joint

Opposition, exceeds the normal range permitted in other cases –is not justifiable. *See In re Packaged Seafood Prods. Antitrust Litig.*, Case No. 3:15-MD-02670-DMS-MDD, 2021 WL 5326517, at *3 (S.D. Cal. Nov. 16, 2021) (“While Class Counsel’s work has indisputably advanced this litigation, they fail to show that non-parties to this action have received any specific benefit from their efforts, let alone a ‘free-ride.’”).

Having failed to make a sufficient showing of common benefit to DAPs’ claims against Tyson, DPPs should not be permitted to insert themselves into Tyson’s future settlement negotiations with DAPs, let alone exceed the limitations of their freely negotiated settlement agreement with Tyson. Accordingly, Tyson respectfully requests the Court deny DPPs’ Motion with respect to Tyson.

Dated: March 18, 2025

Respectfully submitted,

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