

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

IN RE BROILER CHICKEN ANTITRUST
LITIGATION

This Document Relates To:

All Cases

Case No. 1:16-cv-08637

The Honorable Thomas M. Durkin
The Honorable Jeffrey T. Gilbert

**DEFENDANTS' OPPOSITION TO
CLASS PLAINTIFFS' MOTION FOR ENTRY OF AN ORDER REGARDING
REMOTE DEPOSITIONS OF CERTAIN CATEGORIES OF WITNESSES**

TABLE OF CONTENTS

	Page
ARGUMENT	4
I. THE COURT SHOULD DENY PLAINTIFFS’ MOTION	4
A. Plaintiffs Have Failed to Explain Why Depositions Are Necessary Now	4
B. Requiring Remote Depositions Would Be Burdensome and Prejudicial to Defendants’ Ability to Prepare For Depositions.....	5
C. Remote Depositions Are Inappropriate For Additional Reasons	10
D. Plaintiffs’ Prejudice Argument Misstates the Record and Ignores Prejudice to Defendants and their Witnesses.....	12
II. RECOGNIZING THE HIGHLY FLUID SITUATION, REMOTE DEPOSITIONS SHOULD BE RE-EXAMINED IN SEPTEMBER	14
CONCLUSION	15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Aldridge v. Lake Cty. Sheriff’s Office</i> , 2012 WL 3023340 (N.D. Ill. July 24, 2012).....	7
<i>Baxter Int’l, Inc. v. Becton, Dickinson & Co.</i> , 2019 WL 6258490 (N.D. Ill. Nov. 22, 2019)	7
<i>C.W. by & through F.W. v. NCL (Bahamas) Ltd.</i> , 2020 WL 1492904 (S.D. Fla. Mar. 21, 2020).....	1, 8, 14
<i>Devine v. XPO Logistics Freight</i> , 2020 WL 1275087 (N.D. Ill. March 17, 2020).....	15
<i>Egan v. Resort</i> , 2018 WL 1528779 (D. Haw. Mar. 28, 2018).....	11
<i>Evans v. Griffin</i> , 932 F.3d 1043 (7th Cir. 2019)	9, 14
<i>In re Fosamax Prod. Liab. Litig.</i> , 2009 WL 539858 (S.D.N.Y. Mar. 4, 2009)	11
<i>Guillen v. Bank of Am. Corp.</i> , 2011 WL 3939690 (N.D. Cal. Aug. 31, 2011)	10
<i>Hall v. Clifton Precision</i> , 150 F.R.D. 525 (E.D. Pa. 1993).....	8
<i>Hoelt v. Richardson</i> , 2009 WL 3242067 (W.D. Wis. Oct. 2, 2009).....	10
<i>Jahr v. IU Int’l Corp.</i> , 109 F.R.D. 429 (M.D.N.C. 1986).....	10
<i>Kaseberg v. Conaco, LLC</i> , 2016 WL 8729927 (S.D. Cal. Aug. 19, 2016)	10
<i>Klein v. Transgaurd Ins. Of Am., Inc.</i> , No. 2018-CA-006742 (Mar. 31, 2020)	10
<i>Lipsey v. Walmart, Inc.</i> , 2020 WL 1322850 (N.D. Ill. March 20, 2020).....	15

<i>Quarrie v. Wells</i> , 2020 U.S. Dist. LEXIS 63710 (D.N.M. Apr. 10, 2020)	9, 11, 12
<i>Rodriguez v. Cascade Collections LLC</i> , 2020 U.S. Dist. LEXIS 68211 (D. Utah Apr. 16, 2020)	14
<i>Seaga Mfg., Inc. v. Intermatic Mfg. Ltd.</i> , 2013 WL 3672964 (N.D. Ill. July 12, 2013)	7
<i>Shockey v. Huhtahmaki, Inc.</i> , 280 F.R.D. 598 (D. Kan. 2012)	10
<i>Turley v. Clendenin</i> , 2017 WL 735581 (S.D. Ill. Feb. 24, 2017)	8
<i>United States v. Philip Morris, Inc.</i> , 312 F. Supp. 2d 27 (D.D.C. 2004)	9
Statutes	
50 U.S.C. § 4511(b)	1

“The entire world is in the midst of a pandemic.”¹ Over 5 million people worldwide have contracted COVID-19. The United States alone is approaching 2 million cases. To limit the spread of this deadly virus, virtually the entire country has been under “stay at home” orders since late March. Although these government orders are gradually being lifted in some areas, re-openings are staggered and disparate, with no near term return to “business as usual” across the country.

COVID-19 is also having an outsized and well-documented impact on the meatpacking industry, including poultry producers. As the Secretary of Agriculture explained on May 12 – the day before Class Plaintiffs’ Motion was filed – “these unprecedented times have put the supply chain to the test.”² To “ensure a continued supply of protein for Americans,” the President invoked the Defense Production Act on April 28, 2020.³ Thus, poultry producers like Defendants have joined makers of N-95 respirators and ventilators as *the only companies* whose production has been designated “essential to the national defense” against COVID-19. 50 U.S.C. § 4511(b).

Poultry producers have faced seemingly insurmountable challenges to satisfy this mandate. The safety and health of their employees is paramount. Accordingly, poultry producers have been working closely with federal, state, and local authorities to comply with applicable safety standards, requiring substantial modifications within facilities. And, beyond the challenges of safely maintaining daily operations, producers also face obstacles delivering chicken from the plant to customers. Never before has consumer demand shifted so quickly and dramatically, with reports of shortages inflaming the news cycle and government action to insure continued supply.

¹ *C.W. by & through F.W. v. NCL (Bahamas) Ltd.*, 2020 WL 1492904, at *1 (S.D. Fla. Mar. 21, 2020).

² Roll Call, “*USDA is key for food aid, but may lack speed in crisis – Perdue describes ‘quite a scramble,’*” May 18, 2020 (Ex. 1) (quoting statement of Secretary of Agriculture Sonny Perdue).

³ Executive Order on Delegating Authority Under the DPS with Respect to Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19, Apr. 28, 2020 (Ex. 2).

Nor is the legal industry immune to the challenges of COVID-19 either. As this Court is well aware, most are working from home – often sharing internet bandwidth and “office” space with older relatives, spouses, and children, while simultaneously acting as caretaker, teacher, and parent. The stay at home orders have created logistical problems for routine litigation and made contact with clients and staff much more difficult. As Chief Judge Pallmeyer recognized, this District is sensitive to these challenges, particularly with respect to requiring parties to submit to remote depositions, which are even more difficult in document-heavy cases like this one.⁴

Amidst this unprecedented upheaval, Class Plaintiffs (“Plaintiffs”) insist that at least 18 depositions of Defendants must go forward immediately. Despite admitting that they bear the initial burden of showing “good cause” (Mot. at 2-3), Plaintiffs do not explain why the witnesses they selected need to be deposed now. Their prior statements to this Court suggest there is no need to depose *these witnesses* at any point before their motions for class certification. Indeed, Plaintiffs say nothing about the identified witnesses other than to say (inaccurately) that they are “mid-level” employees and then suggest that it is Defendants’ burden to show that it would be “impossible” for the witnesses to be deposed via remote deposition. Mot. at 5. Plaintiffs have it backwards: it is their burden to establish why these depositions must be conducted remotely now. The fact that they have not even attempted to do so speaks volumes. Plaintiffs’ demand for these depositions now is particularly unpersuasive given what other work is being done in this case (*see* Dkt. 3616), including that Defendants will be producing additional large volumes of structured data and customer contracts, which imposes a “far from insignificant” burden. *See* Dkt. 3622 at 4.

⁴ *See* Seyfarth Shaw, LLP, *How the Northern District of Illinois is Coping with the COVID-19 Crisis*, YouTube (Apr. 17, 2020), <https://youtu.be/xGRMGUvXoi8>.

Beyond taking poultry producers away from essential roles in ensuring food supply, the Motion also ignores the significant burden and prejudice Defendants will suffer if they are forced to submit to remote depositions. This issue is not – as Plaintiffs suggest – one of “costs” or the mere desire to sit next to the witness at deposition. Mot. at 3, 5. Defendants and their witnesses are entitled to be prepared for their depositions – and, indeed, Defendants have an *obligation* to prepare their witnesses. Depositions of Defendants’ witnesses in this case have been document-heavy and lengthy, and preparation equally so, particularly given that Plaintiffs’ questions relate to conduct dating back decades. Extensive preparation is critical to provide the 30(b)(6) testimony Plaintiffs’ seek regarding the incredibly broad topics relating to the pricing, selling, and producing Broilers, and to prepare witnesses to testify about events that happened more than a decade ago. *See* Dkt. 3610-5 (Topics 18, 21-22).⁵ No case Plaintiffs cite supports denying Defendants the right to adequately prepare their witnesses to testify in litigation in which plaintiffs assert they are seeking “hundreds of millions of dollars (or more)” in damages. Dkt. 3593 at 7. And, with respect to the 30(b)(1) depositions, Plaintiffs ignore the substantial burdens placed upon these individuals at this time, including for some, working around-the-clock to protect the supply chain and, for all deponents, attempting to maintain their concentration and testify about critical issues from many years ago amidst the distractions imposed by preparing and testifying from home.

Plaintiffs also fail to consider that, while remote depositions may work for some situations, compelling remote depositions is unfair and unnecessary. Courts recognize that remote depositions are not well suited for long, document-heavy depositions (which these will be), or when such testimony is to be used at trial. Given the indisputably high stakes of this case, it deserves a record

⁵ Notably, Defendants have objected to the breadth of these topics and the parties have just begun the meet and confer process.

becoming of those stakes. Requiring remote depositions (and, by extension, remote preparation) during a pandemic is a poor substitute for that record. Plaintiffs' request to compel depositions at this time should be denied.

ARGUMENT

I. THE COURT SHOULD DENY PLAINTIFFS' MOTION

A. Plaintiffs Have Failed to Explain Why Depositions Are Necessary Now

The premise of Plaintiffs' entire motion is that these 18-plus remote depositions are somehow a necessary prerequisite for their class certification motions. But Plaintiffs do not explain why that is. This failure to meet their burden of explaining "why now" should be the beginning and the end of their Motion. Tellingly, Plaintiffs previously represented to this Court that they "should have sufficient time to prepare and file their motions for class certification *prior to the expiration of the DOJ stay.*" Dkt. 3204 at 4 (emphasis added). Thus, just months ago, Plaintiffs represented that they did not need these 30(b)(1) witnesses, nor did they need testimony on the 30(b)(6) topics they now seek, *each of which was then prohibited by the DOJ stay.* Their reasoning then was that "the most critical parts of the 30(b)(6)s for the class certification motions and for [their] experts are the data questions," which are the type of questions Plaintiffs and Defendants sought to "answer[] by letter." *See* Nov. 8, 2019 Hrg. Tr. at 34:8-24 (Ex. 3). Defendants have answered dozens of such letters – Perdue, Pilgrim's, and Tyson have respectively answered nearly 100, 130, and 220 questions each. *See* Declaration of Carrie C. Mahan ("Mahan Decl.") ¶ 30. Notably, Plaintiffs have not here advanced "structured data" as a basis to compel any remote deposition. Nor do they explain their about-face, and the sudden urgency of topics that they previously represented were unnecessary for class certification.

Regardless, the rush to conduct depositions now is manufactured only by the Plaintiffs and their self-selected deadline to file for class certification before the end of fact discovery. Contrary

to Plaintiffs' argument that they had to "fight" for their own deadline to file for class certification, Defendants have always agreed that deadline is up to Plaintiffs. *See* Nov. 8, 2019 Hrg. Tr. at 55:24-56:5. But as Plaintiffs frequently point out, discovery "is set to close on March 5, 2021." Dkt. 3586 at 7; *see also* May 18, 2020 Hrg. Tr. at 75:22-76:3 (Ex. 4). Defendants also now must contend with the "far from insignificant burden" of producing additional structured data and contracts. *See* Dkt. 3622 at 4. There is no reason to rush to conduct remote 30(b)(6) depositions before Defendants can provide that discovery given Plaintiffs' previous representations about its importance to their class certification motions. Just as Plaintiffs felt there was sufficient time to send Defendants back for new and burdensome rounds of data collection, review, and production, if these depositions are actually necessary, the issue can be resolved by adjusting Plaintiffs' deadline for filing motions for class certification so that there is sufficient time to take these depositions without requiring further extensions of fact discovery. *See* Dkt. 3622 at 5-6 (noting production of structured data and contracts should "be accomplished within a time frame that will permit briefing of Plaintiffs' forthcoming motions for class certification as soon as practicable under all circumstances including accommodations necessary because of the global Coronavirus (COVID-19) pandemic").

B. Requiring Remote Depositions Would Be Burdensome and Prejudicial to Defendants' Ability to Prepare for Depositions

Plaintiffs cite a variety of cases and orders permitting or recommending remote depositions. Such cases, often uncontested, are a far cry from the relief Plaintiffs seek – *compelling* Defendants and their witnesses to sit for a deposition now in a high-stakes litigation, without the ability to meet with their lawyer in person to adequately prepare, at a time where the Defendants' attention is rightfully focused on protecting the supply chain.

As recognized by the President's Executive Order, beyond challenges operating production facilities, poultry producers are facing unprecedented challenges protecting the supply chain.

Chicken purchasers cover many industry segments, including retail grocery stores (that purchase familiar cuts like boneless skinless breast placed in a tray pack for individual consumption) and food service (where distributors and restaurants purchase whole chickens, wings, and other products in large boxes to cook and sell to customers).⁶ Nearly overnight, demand from food service customers plummeted while demand at grocery stores exploded. But poultry plants and supply chains are not set up to make such a dramatic shift easily. Rather, “[p]lants are set up with lines that are dedicated to producing food service products versus retail products,” and the two often have “different kinds of packaging, food service products are often frozen and packaged in bulk compared to retail products which are packaged in obviously smaller consumer-ready packages.”⁷ Defendants, therefore, have been working hard to respond to this unprecedented change in demand by substituting popular cuts with other options and coming up with creative measures to transfer bulk packaging into something customers can use.⁸ House of Raeford Farms, Case Farms, and Mountaire have even delivered 40 pound cases of chicken to customers’ cars to solve supply chain problems.⁹ Others, like Mar-Jac, have seen a substantial drop in demand from their restaurant customer base and have had to seek out entirely new customers for their poultry.¹⁰ The recent re-opening of some restaurants has only complicated matters, with producers and

⁶ CNBC, “*The meat supply chain is broken. Here’s why shortages are likely to last during the coronavirus pandemic,*” May 7, 2020 (Ex. 5) (Customers “don’t eat the same thing in restaurants that they eat when they are going to cook for themselves.”).

⁷ AGWEEK, “*Meat shortages are not production problem but supply chain breakdown,*” May 18, 2020 (Ex. 6).

⁸ See Ex. 5; Fortune “*Boneless chicken is first to go scarce as coronavirus hits U.S. Meat Supply,*” Apr. 28, 2020 (Ex. 7).

⁹ “*Chicken Sales Schedule – House of Raeford Farms Meeting the Community Chicken Demand,*” Apr. 6, 2020 (Ex. 8); BLADENONLINE “*Another Chicken Truckload Sale Coming to Elizabethtown,*” Apr. 15, 2020 (Ex. 9); The News Herald, “*Case Farms Truckload Chicken Sale April 16,*” Apr. 16, 2020 (Ex. 10).

¹⁰ See Declaration of J. Greg Tench ¶ 4.

customers working to re-direct supply and forecast demand in extremely uncertain times. The industry upheaval has added significant pressures to already full-time jobs.

Critically, this situation prejudices Defendants' and their witnesses' ability to properly prepare for a deposition. The right – and obligation – to prepare witnesses is well recognized. With respect to 30(b)(6) testimony, Defendants are obligated to “fully prepare the witnesses who will be deposed on [their] behalf.” *Baxter Int'l, Inc. v. Becton, Dickinson & Co.*, 2019 WL 6258490, at *11 (N.D. Ill. Nov. 22, 2019). “Preparing a Rule 30(b)(6) designee may be an onerous and burdensome task,” *Seaga Mfg., Inc. v. Intermatic Mfg. Ltd.*, 2013 WL 3672964, at *2 (N.D. Ill. July 12, 2013), and the failure to fully prepare the designee causes “both parties to spend more time and money” by designating and preparing additional witnesses for deposition. *Baxter*, 2019 WL 6258490, at *11. These depositions are particularly important because they “provide[] binding answers on behalf of the organization.” *Aldridge v. Lake Cty. Sheriff's Office*, 2012 WL 3023340, at *3 (N.D. Ill. July 24, 2012).

Under these circumstances, preparing a 30(b)(6) witness or witnesses to provide binding testimony on more than a decade of Defendants' pricing, selling, and production of Broilers (in essence, Defendants' entire business), is neither reasonable nor feasible. First, the anticipated 30(b)(6) designees hold critical roles within their companies and are rightfully focused on ensuring continued operations. Requiring them to step away from these essential roles now is in itself prejudicial. Moreover, preparation for 30(b)(6) testimony places an undue burden on Defendants to gather information in response to these very broad topics and divert attention from ensuring the food supply. Requiring remote preparation for 30(b)(6) testimony raises its own issues. Current stay at home orders and travel restrictions pose significant obstacles to Defendants' ability to effectively prepare their witnesses. Preparation via phone or computer is not reasonable as such

sessions are frequently lengthy – often lasting several days – and include the review of a significant amount of documents or consultation with employees across the business to prepare a witness to testify concerning events over many years. This is challenging enough sitting in a lawyer’s conference room; the burden is magnified when witnesses and their lawyers are juggling preparation and caring for children, helping with school, dealing with pets, answering a doorbell, fixing meals, and the like. Plaintiffs’ “supporting” cases address none of these new realities. But other district courts have, explaining it is “[a]bsolutely not ... reasonable to require defense counsel to prepare the 30(b)(6) witness for a deposition” under these circumstances. *C.W.*, 2020 WL 1492904, at *1. Likewise, it is “[o]f course not ... rational to expect defense counsel to enlist assistance” from the client “to adequately prepare the corporate representative” when the entire industry is focusing on meeting its essential duties to supply chicken to the country. *Id.*

Requiring individual depositions to proceed at this time is also unreasonable and prejudicial. Like corporate representatives, individual deponents are entitled to time “to review documents ... and generally prepare for the deposition.” *Turley v. Clendenin*, 2017 WL 735581, at *2 (S.D. Ill. Feb. 24, 2017). And, the “lawyer, of course, has the right, if not the duty, to prepare a client for a deposition.” *Hall v. Clifton Precision*, 150 F.R.D. 525, 528 (E.D. Pa. 1993). As with corporate representatives, the need to prepare 30(b)(1) witnesses is even more pronounced in this case because the allegations relate to events taking place over more than a decade, and questions concern decades old documents.¹¹ *See United States v. Philip Morris, Inc.*, 312 F. Supp. 2d 27, 36-37 (D.D.C. 2004). “This preparation time is essential, because a deposition is a major event in the life of a case. Both courts and juries can, and regularly do, disregard a party’s later statements that

¹¹ *See, e.g.*, Deposition of R. Cogdill at 163:15-166:15 (appearance on 2007 list of poultry industry leaders) (Ex. 11); Deposition of S. McLaurin at 25:24-29:19 (job duties at Sanderson from 1999 to 2005) (Ex. 12); Deposition of L. Pate at 53:5-58:18 (Georgia Dock reporting responsibilities prior to 2003) (Ex. 13).

contradict earlier deposition testimony.” *Evans v. Griffin*, 932 F.3d 1043, 1048 (7th Cir. 2019). And Plaintiffs often seek to play deposition testimony to the jury at trial.

As Defendants’ supporting declarations make clear, requiring remote preparation at this time is prejudicial.¹² Many of the so-called “mid-level” employees that Plaintiffs propose (Mot. at 5) actually hold roles in senior management, including Case Foods’ Vice Chairman/CFO, Mar-Jac’s Director of Sales and Marketing and Board member, and Perdue’s Vice President, Chief Animal Care Officer & Farmer Relation Advocate. These individuals are vital to their companies’ operations and ensuring the food supply chain, and they should not be pulled from these critical roles at this time.¹³ Others are retired, former employees, including senior citizens who are unfamiliar with remote technology, and those caring for others. And, as Plaintiffs have known for over a year, another suffers severe health issues, making any preparation difficult. For all of these reasons, compelling remote preparation at this time in an expansive case is neither reasonable nor fair. *See Quarrie v. Wells*, 2020 U.S. Dist. LEXIS 63710 (D.N.M. Apr. 10, 2020) (denying request for remote depositions given “the difficulty of preparing witnesses remotely”).

Plaintiffs’ pre-COVID cases entirely miss the mark. Plaintiffs cite no case where the court ordered a deposition to occur without providing the witness’ counsel the ability to prepare the witness in the manner they deemed appropriate. Likewise, Plaintiffs’ examples where the defendant sought only that his attorney be physically present with him *at the deposition* are similarly inapposite. *See Klein v. Transgaurd Ins. Of Am., Inc*, No. 2018-CA-006742 (Mar. 31,

¹² *See* Declaration of J. Greg Tench; Declaration of Amanda Wofford; Declaration of Charles C. Murphy; Declaration of Bryan Reese; Declaration of Joe Carney; Declaration of Hans Schmidt; Declaration of Gaston Lebois; Declaration of Michael Levengood; Declaration of Vicki Bronson.

¹³ Class Plaintiffs’ purported “mid-level” limitation appears to recognize as such and that remote depositions are particularly inappropriate for more senior personnel.

2020) (Dkt. 3610-9 at 2) (the “only basis” for the motion was “to permit the physical contact” and deponent could not articulate any other prejudice).¹⁴ Defendants raise an entirely different concern and real prejudice – requiring remote depositions now would prejudice Defendants’ ability to prepare their witnesses altogether, not just their ability to defend the deposition.

C. Remote Depositions Are Inappropriate For Additional Reasons

Plaintiffs overstate the “increased willingness to *allow* remote depositions” by “courts nationwide.” Mot. at 6 (emphasis added). First, there is a critical difference between *allowing* or *recommending* remote depositions (which Plaintiffs’ cases do¹⁵) and *forcing* them upon a witness and party. Second, concerns over costs are inapposite, as the issue here is requiring depositions to proceed if it is unsafe or prohibited (rather than expensive) to travel.¹⁶

¹⁴ *Kaseberg* did not consider prejudice in the lack of preparation and explained defendants would not be prejudiced because “[d]efense counsel may be present with the witness during the deposition.” *Kaseberg v. Conaco, LLC*, 2016 WL 8729927, at *6 (S.D. Cal. Aug. 19, 2016). And, Class Plaintiffs concede *Hoelt* and *Mikola* are distinguishable as they only decide that “the desire to depose an individual in person simply to observe his or her demeanor, *without more*, does not amount to good cause.” Mot. at 3 (emphasis added). Likewise, Defendants’ opposition is not based on “the mere conclusory statement that it denies the opportunity for face-to-face confrontation.” *Jahr v. IU Int’l Corp.*, 109 F.R.D. 429, 431 (M.D.N.C. 1986).

¹⁵ *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, (Dkt. 3610-6 at 2) (“all depositions may be taken via telephone, videoconference, or other remote means”); *County of Cook v. Bank of America Corp., et. al.* (Dkt. 3610-7) (“recommend[ing] that the parties consider” remote depositions, *see* Mot. at 7).

¹⁶ *Kaseberg*, 2016 WL 8729927, at *5; *Guillen v. Bank of Am. Corp.*, Civ. 2011 WL 3939690, at *1 (N.D. Cal. Aug. 31, 2011); *Shockey v. Huhtahmaki, Inc.*, 280 F.R.D. 598, 602 (D. Kan. 2012); *Hoelt v. Richardson*, 2009 WL 3242067, at *3 (W.D. Wis. Oct. 2, 2009) ; *Jahr*, 109 F.R.D. at 431.

Plaintiffs’ other cases also are not analogous. *Hecker v. Western Tidewater Regional Jail Authority et al.*(Dkt. 3610-12) (a single individual wrongful death suit); 151st District Court (Harris County) Standing Order (a single county court judge in Texas state court ordered remote depositions in cases before him); Cook County Asbestos Court Order (Dkt. 3610-10) (requiring remote depositions of “high or higher risk” witnesses); *Bard v. Monsanto* (Dkt. 3610-11) (state court personal injury case, specifically exempting depositions of “plaintiffs, experts, and treating medical providers” from the order).

Thus, while remote depositions may be appropriate in some circumstances,¹⁷ this Court should consider “the complexity of the case, the need to present documents, the probable length of the deponents’ testimony, the possibility of technological difficulties,” in addition to the difficulty with preparation. *Quarrie*, 2020 U.S. Dist. LEXIS 63710, at *3. Under these factors, remote depositions are inappropriate where the witness “is likely to be presented with numerous documents,” and where “testimony is being preserved to trial [and] it is important to have counsel present so that the examination most closely approximates that which would occur in the courtroom.” *In re Fosamax Prod. Liab. Litig.*, 2009 WL 539858, at *2 (S.D.N.Y. Mar. 4, 2009) (citing cases rejecting video conferencing “especially concerning the review and use of documents” and “because of the importance of testimony and volume of documents”); *see Egan v. Resort*, 2018 WL 1528779, at *2 (D. Haw. Mar. 28, 2018) (“forcing video or telephonic depositions would unfairly prejudice [the party’s] case evaluation and preparation”).

Like in the recent *Quarrie* case, these factors weigh against Plaintiffs’ Motion. This litigation is extremely complex; Plaintiffs’ allege a conspiracy of 20 entities spanning more than a decade, and they seek treble damages for alleged overcharges on hundreds of billions of dollars in sales. Plaintiffs’ prior 87 depositions of Defendants have been extremely document-heavy with 2,773 exhibits introduced (some used in multiple depositions). *See Mahan Decl.* ¶ 17. Two depositions involved more than 70 exhibits each (*id.* at ¶¶ 18, 19), while three others exceeded 55 (*id.* at ¶¶ 20-22). Likewise, depositions of Defendants are full day affairs, frequently going for 9 hours or more from start to finish. *See id.* at ¶¶ 23-28.

¹⁷ For example, Defendants agreed to conduct seven indirect purchaser class representative depositions remotely because: (1) the Plaintiffs *requested* remote depositions; (2) depositions of indirect purchasers generally are quite short including some less than two hours; and (3) there are very few exhibits used, if any. *See Mahan Decl.* ¶ 35 (noting two class representative depositions lasted less than two hours and two EUCP depositions had zero exhibits).

In part due to the complexity of these depositions, there is, as in *Quarrie*, a “possibility of technological difficulties” further weighing against requiring remote depositions. 2020 U.S. Dist. LEXIS 63710, at *3. Despite Plaintiffs’ mid-brief advertisement for Veritext, Plaintiffs’ court reporter in this case, such issues have already arisen with Veritext’s platform.¹⁸ What’s more, as the Court has experienced in this case, remote participation often results in unintelligible or garbled speech, background noises, and even dropped callers. That is in part why, in no deposition has the attorney representing the witness chosen to gamble and appear remotely.

D. Plaintiffs’ Prejudice Argument Misstates the Record and Ignores Prejudice to Defendants and Their Witnesses

Plaintiffs’ argument regarding their alleged “prejudice” (Mot. at 8-10) confuses “civil justice” with unnecessary haste. Notably, the Motion ignores all of the progress made during the stay and during the COVID-related extensions. This case has not “ground to a halt.” Mot. at 1-2. The Joint Status Report (Dkt. 3616) proved as much. To begin, Defendants had scheduled 30(b)(6) depositions of their clients on certain topics before COVID-19, only to have Class Plaintiffs cancel them and move to compel instead.¹⁹ Importantly, since mid-March, the parties briefed four disputes and received the Court’s guidance on Plaintiffs’ additional discovery requests. *See* Dkt. 3532, 3560, 3578, 3593, 3563, 3571, 3582, 3610, 3622. Defendants continued to make document

¹⁸ During one deposition, Plaintiffs used Veritext’s electronic exhibit platform. The witness struggled to open documents, and occasionally, the technology itself cut out. *See, e.g.*, Deposition of A. Weststrate at 115:15-117 (Ex. 14). The parties took several breaks while issues with the technology was addressed, and the videographer had to physically step in several times and fix it himself – something that would be impossible under Plaintiffs’ proposal. *See id.* at 165:19-166:11; 216:21-217:10; 252:15-2:53:15. And that was with an *in-person* deposition.

¹⁹ Mahan Decl. ¶ 31. The limited number of Defendant depositions in 2020 also is due to Plaintiffs. They chose not to advance with depositions prior to a ruling on their motion to compel production of documents provided to the Department of Justice. *See* Jan. 17, 2020 Hrg. Tr. at 43:9-44:7 (B. Clark: “we’re not scheduling those right now”) (Ex. 15). This was a strategic decision Plaintiffs made, not an inequity foisted upon them.

and data productions prior to Plaintiffs' motion to compel, and now will produce additional years of structured data and contracts. *See* Mahan Decl. ¶ 36. Defendants also must respond to Plaintiffs' *sixth* set of document requests, which were served on March 18, 2020. *See* Dkt. 3616. Plaintiffs issued amended 30(b)(6) notices in April, and Defendants are now working with Plaintiffs to negotiate the scope of Rule 30(b)(6) testimony. *Id.* At the same time, Defendants are working to schedule and complete all depositions of class representatives in the near term. There has been significant progress in the DAP cases as well. Since mid-March, additional parties have opted out of the putative class and filed three new DAP complaints, and Defendants have already begun discovery. *Id.* The parties continue to produce and review of hundreds of thousands of documents, issue written discovery requests, and negotiate 30(b)(6) testimony of DAPs. In short, the parties continue to advance the meaningful work that can fairly and efficiently be done now.

Plaintiffs' arguments concerning prejudice ring hollow, particularly when weighed against the prejudice that Defendants and their witnesses are facing. Besides pointing to the mere passage of time, Plaintiffs cite the unfortunate death of one witness last year. Mot. at 9. But that concern is inapplicable to 30(b)(6) testimony. And, Defendants can (and will) alert Plaintiffs if they become aware of the need to perpetuate the testimony of a particular witness – just as this Court ordered them to do during the DOJ stay. *See* September 25, 2019 Hrg. Tr. at 12:2-18 (Ex. 16).

The real prejudice is on Defendants and their employees, who are essential to the continuing supply of poultry in this country and who are facing real challenges operating under the current crisis. They would likewise face prejudice by being unable to adequately prepare for deposition (whether as a corporate representative or individual) in a case of this magnitude, particularly where their testimony may be used at trial. *See Evans*, 932 F.3d at 1048. Although the Motion paints these depositions as obstacles in Plaintiffs' way, they are a "major event" in this

case and supremely important to a fair outcome. *Id.* Defendants’ right to a fair outcome and a fully developed record should not be infringed because the Plaintiffs wish to rush forward while everyone is “living in an unprecedented situation.” *C.W.*, 2020 WL 14929204, *1; *see also Rodriguez v. Cascade Collections LLC*, 2020 U.S. Dist. LEXIS 68211 (D. Utah Apr. 16, 2020) (rejecting “allegations of ‘delay tactics’” and noting the court may account for “certain circumstances such as delay, or a hopefully only once in every hundred-year pandemic such as COVID-19”).

II. RECOGNIZING THE HIGHLY FLUID SITUATION, REMOTE DEPOSITIONS SHOULD BE RE-EXAMINED IN SEPTEMBER

Given the prejudice to Defendants, and Plaintiffs’ inability to explain why these depositions are necessary for class certification, their Motion should be denied. But Defendants recognize that this situation is highly fluid and believe the question of remote depositions should be re-examined in September. If, at that time, in-person depositions remain unsafe or inadvisable, the parties and the Court should re-visit the advisability and fairness of remote depositions for certain witnesses. If the needs of the case then require that certain remote depositions take place (notwithstanding Defendants’ significant prejudice), the Court should order a protocol providing witness-by-witness accommodations as needed under the circumstances.

Plaintiffs’ current proposed protocol (Dkt. 3610-1), however, should be flatly rejected. First, it contains no procedures to protect witnesses engaged in critical business operations during the pandemic, or who have other circumstances that make a remote deposition uniquely burdensome. Plaintiffs attest that they “selected their witnesses carefully” to avoid this issue, but the fact that they seek testimony from witnesses who play a major role in the supply chain belie that assertion. If Plaintiffs want to upend routine discovery procedures and compel Defendants to sit for remote depositions, Rule 26 proportionality requires that they articulate justifications for

taking each deposition now. Two decisions from this Court have required such a showing. *See Devine v. XPO Logistics Freight*, 2020 WL 1275087, at *3 (N.D. Ill. March 17, 2020); *Lipsev v. Walmart, Inc.*, 2020 WL 1322850, *4 (N.D. Ill. March 20, 2020). As in those cases, given the President’s order establishing poultry producers as “essential to the national defense” against COVID-19, Plaintiffs should explain why a witness is necessary for their motion for class certification. Defendants should also be allowed to explain why, given current conditions, such a deposition should not proceed. Notably, the protocol Plaintiffs first provided Defendants included exceptions for “essential employees” – the version submitted does not. Mahan Decl. ¶ 34; Ex. 17.

Beyond this fundamental flaw, the proposed protocol is both underdeveloped and contains many errors in its own right, including, but not limited to:

- Plaintiffs add a 4-day notice requirement of telephone attendance at depositions. Dkt. 3610-1 at 3(b). This is inconsistent with the Deposition Protocol Order (Dkt. No. 995) and Plaintiffs have not established any need to revise this procedure.
- The video taken for potential use at trial should not “show both the witness and witness’ attorney.” Dkt. 3610-1 at 3(c).
- The type of exhibits (electronic or hard copy) should be at the preference of the witness who has to testify about those exhibits, not the “sole discretion of the noticing party.” *Id.* at 4(d).
- Plaintiffs should not be permitted to unilaterally choose the remote deposition platform. *Id.* at 3(c).
- Given the length of these depositions, any protocol should allow limiting the length of the deposition at the request of the witness or counsel, including taking the deposition over multiple days to respect challenges working (or testifying) from home.

The parties will need time to develop an equitable protocol or present proposals and argument to the Court as needed. Simply put, Plaintiffs’ proposed protocol is inappropriate for this case.

CONCLUSION

For the foregoing reasons, this Court should deny Plaintiffs’ Motion.

Dated: May 27, 2020

Respectfully submitted,

WEIL GOTSHAL & MANGES LLP

VENABLE LLP

By: /s/ Carrie C. Mahan

Carrie C. Mahan (#459802)
Christopher J. Abbott (#1014487)
2001 M Street N.W., Ste. 600
Washington, D.C. 20036
Telephone: (202) 682-7000
Facsimile: (202) 857-0940
carrie.mahan@weil.com
christopher.abbott@weil.com

By: /s/ J. Douglas Baldrige

J. Douglas Baldrige (#437678)
Lisa Jose Fales (admitted *pro hac vice*)
Danielle Foley (admitted *pro hac vice*)
Andrew Hernacki (admitted *pro hac vice*)
600 Massachusetts Avenue, NW
Washington, DC 20001
Telephone: (202) 344-4000
Facsimile: 202-344-8300
jdbaldrige@venable.com
ljfales@venable.com
drfoley@venable.com
athernacki@venable.com

Jessica L. Falk (#4763686)
767 Fifth Avenue
New York, NY 10153
Telephone: 212-310-8000
Facsimile: 212-310-8007
jessica.falk@weil.com

FALKENBERG IVES LLP

Brian G. Liegel (#119269)
1395 Brickell Avenue, Suite 1200
Miami, FL 33131
Telephone: (305) 577-3100
Facsimile: (305) 347-7159
Brian.liegel@weil.com

Kirstin B. Ives
30 N. LaSalle St., Ste 4020
Chicago, IL 60602
Telephone: (312) 566-4803
Facsimile: (312) 566-4810
kbi@ffilaw.com

BAILEY BRAUER PLLC

*Attorneys for Defendants Perdue Farms, Inc.
and Perdue Foods LLC*

Clayton E. Bailey (admitted *pro hac vice*)
8350 N. Central Expressway, Ste. 206
Dallas, TX 75206
Telephone: (214) 360-7433
Facsimile: (214) 360-7424
cbailey@baileybrauer.com

EIMER STAHL LLP

Michael L. McCluggage (#01820966)
224 South Michigan Avenue, Ste. 1100
Chicago, IL 60604
Telephone: (312) 660-7665
Facsimile: (312) 692-1718
mmccluggage@eimerstahl.com

*Attorneys for Defendant Pilgrim's Pride
Corporation and Liaison Counsel for
Defendants*

By: /s/ John W. Treece

John W. Treece (#3122889)
1135 West Montana Street
Chicago, IL 60614
Telephone: (312) 961-7808
jtreece@jwtreece.com

ROSE LAW FIRM

Amanda K. Wofford (admitted *pro hac vice*)
Bourgon Reynolds (admitted *pro hac vice*)
120 East Fourth Street
Little Rock, Arkansas 72201
Telephone: (501) 375-9131
Facsimile: (501) 375-1309
awofford@roselawfirm.com
breynolds@roselawfirm.com

Attorneys for Defendants Mountaire Farms, Inc., Mountaire Farms, LLC and Mountaire Farms of Delaware, Inc.

MAYER BROWN LLP

By: /s/ Carmine R. Zarlenga

Carmine R. Zarlenga (#90784529)
William H. Stallings (admitted *pro hac vice*)
Stephen M. Medlock (admitted *pro hac vice*)
Oral D. Pottinger (admitted *pro hac vice*)
1999 K Street N.W.
Washington, DC 20006
Telephone: (202) 263-3000
Facsimile: (202) 263-3300
czarlenga@mayerbrown.com
wstallings@mayerbrown.com
smedlock@mayerbrown.com
opottinger@mayerbrown.com

Attorneys for Defendant Foster Farms, LLC and Foster Poultry Farms, a California Corporation

NOVACK AND MACEY LLP

By: /s/ Stephen Novack

Stephen Novack
Stephen J. Siegel
Christopher S. Moore
100 North Riverside Plaza
Chicago, IL 60606
Telephone: (312) 419-6900
Facsimile: (312) 419-6928
snovack@novackmacey.com
ssiegel@novackmacey.com
cmoore@novackmacey.com

*Attorneys for Defendants Koch Foods
Incorporated, JCG Foods of Alabama LLC,
JCG Foods of Georgia LLC and Koch Meat
Co., Inc.*

VEDDER PRICE P.C.

By: /s/ Gregory G. Wrobel

Gregory G. Wrobel (#3122900)
222 N. LaSalle Street
Chicago, IL 60601
Telephone: (312) 609-7722
Facsimile: (312) 609-5005
gwrobel@vedderprice.com

JORDAN PRICE WALL GRAY JONES &
CARLTON, PLLC

Henry W. Jones, Jr. (admitted *pro hac vice*)
1951 Clark Avenue
Raleigh, NC 27605
Telephone: (919) 828-2501
Facsimile: (919) 834-8447
hjones@jordanprice.com

*Attorneys for Defendant House of Raeford
Farms, Inc.*

PROSKAUER ROSE LLP

By: /s/ Christopher E. Ondeck

Christopher E. Ondeck (admitted *pro hac
vice*)
Stephen R. Chuk (admitted *pro hac vice*)
1001 Pennsylvania Ave., NW, Ste 600 South
Washington, DC 20004
Telephone: (202) 416-6800
Facsimile: (202) 416-6899
condeck@proskauer.com
schuk@proskauer.com

Attorneys for Wayne Farms LLC

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP

By: /s/ Patrick Fitzgerald

Patrick Fitzgerald (#6307561)
Gail Lee
Peter Cheun
155 N. Wacker Drive
Chicago, IL 60606
Telephone: (312) 407-0700
Facsimile: (312) 407-0411
patrick.fitzgerald@skadden.com
gail.lee@skadden.com
peter.cheun@skadden.com

Boris Bershteyn (admitted *pro hac vice*)
Lara Flath (#6289481)
One Manhattan West
New York, NY 10001
Telephone: (212) 735-3000
Facsimile: (212) 735-2000
boris.bershteyn@skadden.com
lara.flath@skadden.com

Attorneys for Defendant Peco Foods, Inc.

KIRKLAND & ELLIS LLP

By: /s/ Daniel E. Laytin, P.C.

Daniel E. Laytin, P.C.
Christa C. Cottrell, P.C.
Stacy Pepper
300 North LaSalle Street
Chicago, IL 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
dlaytin@kirkland.com
ccottrell@kirkland.com
stacy.pepper@kirkland.com

Attorneys for Defendants Sanderson Farms, Inc., Sanderson Farms, Inc. (Foods Division), Sanderson Farms, Inc. (Processing Division), and Sanderson Farms, Inc. (Production Division)

STINSON LLP

By: /s/ William L. Greene

William L. Greene (admitted *pro hac vice*)
Peter J. Schwingler (admitted *pro hac vice*)
Kevin P. Kitchen (admitted *pro hac vice*)
50 South Sixth Street, Ste 2600
Minneapolis, MN 55402
Telephone: (612) 335-1500
william.greene@stinson.com
peter.schwingler@stinson.com
kevin.kitchen@stinson.com

J. Nicci Warr
7700 Forsyth Blvd., Suite 1100
St. Louis, MO 63105
Telephone: (314) 259-4570
nicci.warr@stinson.com

SUGAR FELSENTHAL GRAIS &
HELSINGER LLP

John C. Martin
30 N. LaSalle Street, Ste 3000
Chicago, IL 60602
Telephone: (312) 704-2172
Facsimile: (312) 372-7951
jmartin@sfgh.com

THE LAW GROUP OF NORTHWEST
ARKANSAS LLP

Gary V. Weeks (admitted *pro hac vice*)
K.C. Dupps Tucker (admitted *pro hac vice*)
Kristy E. Boehler (admitted *pro hac vice*)
1830 Shelby Lane
Fayetteville, AR 72704
Telephone: (479) 316-3760
gary.weeks@lawgroupnwa.com
kc.tucker@lawgroupnwa.com
kristy.boehler@lawgroupnwa.com

Attorneys for Defendants George's, Inc. and George's Farms, Inc.

KUTAK ROCK LLP

By: /s/ John P. Passarelli

John P. Passarelli (admitted *pro hac vice*)
James M. Sulentic (admitted *pro hac vice*)
1650 Farnam Street
Omaha, NE 68102
Telephone: (402) 346-6000
Facsimile: (402) 346-1148
john.passarelli@kutakrock.com
james.sulentic@kutakrock.com

J.R. Carroll (admitted *pro hac vice*)
Jeffrey M. Fletcher (admitted *pro hac vice*)
234 East Millsap Road, Ste 200
Fayetteville, AR 72703-4099
Telephone: (479) 973-4200
Facsimile: (479) 973-0007
jr.carroll@kutakrock.com
Jeffrey.fletcher@kuakrock.com

Kimberly M. Hare (#6323326)
One South Wacker Drive, Ste 2050
Chicago, IL 60606-4614
Telephone: (312) 602-4100
Facsimile: (312) 602-4101
kimberly.hare@kutakrock.com

*Attorneys for Defendants O.K. Foods, Inc.,
O.K. Farms, Inc., and O.K. Industries, Inc.*

EDWARD C. KONIECZNY LLC

By: /s/ Edward C. Konieczny

Edward C. Konieczny (admitted *pro hac vice*)
400 Colony Square, Ste 1501
1201 Peachtree Street, NE
Atlanta, GA 30361
Telephone: (404) 380-1430
Facsimile: (404) 382-6011
ed@koniecznylaw.com

SMITH, GAMBRELL & RUSSELL, LLP

David C. Newman (admitted *pro hac vice*)
W. Parker Sanders (admitted *pro hac vice*)
1230 Peachtree Street, N.E.
Promenade, Ste 3100
Atlanta, GA 30309
Telephone: (404) 815-3500
Facsimile: (404) 815-3509
dnewman@sgrlaw.com
psanders@sgrlaw.com

James L. Thompson
Lynch Thompson LLP
150 S. Wacker Drive, Suite 2600
Chicago, IL 60606
T: (312) 445-4623
F: (312) 896-5883
jthompson@lynchthompson.com

*Attorneys for Defendants Mar-Jac Poultry,
Inc., Mar-Jac Poultry MS, LLC, Mar-Jac
Poultry AL, LLC, Mar-Jac AL/MS, Inc., Mar-
Jac Poultry, LLC, Mar-Jac Holdings, Inc.*

VAUGHAN & MURPHY

By: /s/ Charles C. Murphy, Jr.
Charles C. Murphy, Jr. (admitted *pro hac vice*)
690 S Ponce Court NE
Atlanta, GA 30307
Telephone: (404) 667-0714
Facsimile: (404) 529-4193
cmurphy@vaughanandmurphy.com

WINSTON & STRAWN LLP

James F. Herbison
Michael P. Mayer
35 West Wacker Drive
Chicago, Illinois 60601
Telephone: (312) 558-5600
Facsimile: (312) 558-5700
jherbison@winston.com
mmayer@winston.com

*Attorneys for Defendant Norman W. Fries,
Inc. d/b/a Claxton Poultry Farms*

DYKEMA GOSSET PLLC

By: /s/ Howard B. Iwrey
Howard B. Iwrey
39577 Woodward Ave, Ste. 300
Bloomfield Hills, MI 48304
Telephone: 248-203-0526
Facsimile: 248-203-0763
hiwrey@dykema.com

Steven H. Gistenson
10 South Wacker Drive, Ste. 2300
Chicago, IL 60606
Telephone: 312-627-2267
Facsimile: 312-876-1155
sgistenson@dykema.com

Cody D. Rockey
2723 South State Street, Ste. 400
Ann Arbor, MI 48104
Telephone: 734-214-7655
Facsimile: 734-214-7696
crokey@dykema.com

Dante A. Stella
400 Renaissance Center
Detroit, MI 48243
Telephone: 313-568-6693
Facsimile: 313-568-6893
dstella@dykema.com

*Attorneys for Defendants Amick Farms,
LLC²⁰*

²⁰ Amick Farms, LLC was not named as a Defendant in the EUCP action and has entered into a Settlement Agreement with DPPs, which was Preliminarily Approved by the Court on Dec, 20, 2019 (Dkt. No. 3359, corrected on Jan. 8, 2020 (Dkt. No. 3394)).

MANDELL MENKES LLC

By: /s/ Brendan J. Healey

Brendan J. Healey
One North Franklin, Ste 3600
Chicago, IL 60606
Telephone: (312) 251-1006
Facsimile: (312) 759-2189
bhealey@mandellmenkes.com

ALSTON & BIRD LLP

B. Parker Miller (admitted *pro hac vice*)
Valarie C. Williams (admitted *pro hac vice*)
Max Marks (admitted *pro hac vice*)
1201 West Peachtree Street
Atlanta, GA 30309
Telephone: (404) 881-7000
Facsimile: (404) 881-7777
parker.miller@alston.com
valarie.williams@alston.com
nowell.berreth@alston.com
max.marks@alston.com

SMITH, GILLIAM, WILLIAMS & MILES
PA

R. Brent Hatcher, Jr. (admitted *pro hac vice*)
301 Green Street NW, Ste 200
Gainesville, GA 30501
Telephone: (770) 536-3381
Facsimile: (770) 535-9902
bhatcher@sgwmfirm.com

Attorneys for Fieldale Farms Corporation

AXINN, VELTROP & HARKRIDER LLP

By: /s/ Rachel J. Adcox

Rachel J. Adcox (#1001488)
Daniel K. Oakes (admitted *pro hac vice*)
Kenina J. Lee (admitted *pro hac vice*)
950 F Street NW, Ste 700
Telephone: (202) 912-4700
Facsimile: (202) 912-4701
radcox@axinn.com
doakes@axinn.com
klee@axinn.com

John M. Tanski (admitted *pro hac vice*)
Jarod G. Taylor (admitted *pro hac vice*)
90 State House Square
Hartford, CT 06103
Telephone: (860) 275-8100
Facsimile: (860) 275-8101
jtanski@axinn.com
jtaylor@axinn.com

Nicholas E.O. Gaglio (admitted *pro hac vice*)
114 West 47th Street
New York, NY 10036
Telephone: (212) 728-2200
Facsimile: (212) 261-5654
ngaglio@axinn.com

LIPE LYONS MURPHY NAHRSTADT &
PONTIKIS, LTD.

Jordan M. Tank
230 West Monroe, Street, Ste 2260
Chicago, IL 60606
Telephone: (312) 702-0586
Facsimile: (312) 726-2273
jmt@lipelyons.com

*Attorneys for Defendants Tyson Foods, Inc.,
Tyson Chicken, Inc., Tyson Breeders, Inc.,
Tyson Poultry, Inc.*

SHOOK HARDY & BACON LLP

By: /s/ Lynn H. Murray

Lynn H. Murray
111 S. Wacker Dr., Ste 4700
Chicago IL 60606
Telephone: (312) 704-7700
Facsimile: (312) 558-1195
lhurray@shb.com

Laurie A. Novion (admitted *pro hac vice*)
2555 Grand Blvd.
Kansas City, MO 64108
Telephone: (816) 474-6550
Facsimile: (816) 421-5547
lnovion@shb.com

CONNER & WINTERS

John R. Elrod (admitted *pro hac vice*)
Vicki Bronson (admitted *pro hac vice*)
4375 N. Vantage Drive, Ste. 405
Fayetteville, AR 72703
Telephone: (479) 582-5711
jelrod@cwlaw.com
vbronson@cwlaw.com

*Attorneys for Defendant Simmons Foods, Inc.
and Simmons Prepared Foods Inc.*

JOSEPH D. CARNEY & ASSOCIATES LLC

By: /s/ Joseph D. Carney

Joseph D. Carney (admitted *pro hac vice*)
Douglas G. Walters
Jamie Krafcik
Telephone: 440-249-0860
Facsimile: 866-270-1221
jdc@jdcarney.com
ca2@jdcarney.com
ca@jdcarney.com
case@jdcarney.com

Office Address:
139 Crocker Park Boulevard, Ste. 400
Westlake, OH 44145

Mailing Address:
1540 Peach Drive
Avon, OH 44011

MILLER SHAKMAN LEVINE &
FELDMAN LLP

Thomas M. Staunton
Daniel M. Feeney
180 North LaSalle Suite 3600
Chicago, IL 60601
Telephone: 312-263-3700
tstaunton@millershakman.com
dfeeney@millershakman.com

D.KLAR LAW

Deborah A. Klar (admitted *pro hac vice*)
Deborah A. Klar, Esq.
2934 1/2 Beverly Glen Circle, Suite 761
Bel Air, CA 90077
Telephone: 310-858-9500
dklar@dklarlaw.com

*Attorneys for Defendants Case Foods, Inc.,
Case Farms, LLC, and Case Farms
Processing, Inc.*

HOGAN LOVELLS US LLP

By: /s/ William L. Monts III

William L. Monts III (admitted *pro hac vice*)
Justin W. Bernick (admitted *pro hac vice*)
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
Telephone: (202) 637-5910
Facsimile: (202) 637-5911
william.monts@hoganlovells.com
justin.bernick@hoganlovells.com

MILLER, CANFIELD, PADDOCK, AND
STONE P.L.C.

Jacob D. Koering
225 West Washington Street, Ste 2600
Chicago, Illinois 60606
Telephone: (312) 460-4272
Facsimile: (312) 460-4201
koering@millercanfield.com

Attorneys for Defendant Agri Stats, Inc.

EVERSHEDS SUTHERLAND (US) LLP

By: /s/ Patricia A. Gorham

James R. McGibbon (admitted *pro hac vice*)
Patricia A. Gorham (admitted *pro hac vice*)
Peter M. Szeremeta (admitted *pro hac vice*)
Kaitlin A. Carreno (admitted *pro hac vice*)
999 Peachtree Street, N.E., Ste 2300
Atlanta, Georgia 30309-3996
Telephone: (404) 853-8000
Facsimile: (404) 853-8806
jimmcgibbon@eversheds-sutherland.com
patriciagorham@eversheds-sutherland.com
peterszeremeta@eversheds-sutherland.com
katilincarreno@eversheds-sutherland.com

SMITHAMUNDTSEN LLC

Clay H. Phillips
150 N. Michigan Avenue, Ste 3300
Chicago, Illinois 60601
Telephone: (312) 894-3200
Facsimile: (312) 997-1828
cphillips@salawus.com

*Attorneys for Defendants Harrison Poultry,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2020, a true and correct copy of the foregoing document was filed electronically. Notice of this filing was sent by operation of the Court's ECF electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic system.

/s/ Carrie C. Mahan
Carrie C. Mahan