IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

RON BROWN and MINKA GARMON, individually and on behalf of all others similarly situated, Plaintiffs, v. JBS USA FOOD COMPANY et al., Defendants.	Civil Action No. 1:22-cv-02946-PAB-STV Judge Philip A. Brimmer

STATEMENT OF INTEREST OF THE UNITED STATES EXPRESSING OBJECTION TO THE PROPOSED SETTLEMENTS AWAITING FINAL APPROVAL

The hardworking men and women in America's beef and pork processing plants help put food on kitchen tables across our nation each day. They deserve the benefits of vigorous competition for their labor, not paychecks diminished by collusion among their employers. This case alleges that some of the nation's largest beef and pork processors conspired to suppress pay to American workers and to undermine the bargaining and wage-setting processes on which fair labor markets depend. Allegations this serious demand more than monetary relief. In the United States' view, an appropriate resolution on behalf of these workers should include concrete and enforceable safeguards against future wage fixing.

The United States of America respectfully expresses its objection to the proposed settlements awaiting final approval by the Court to the extent they fail to secure such safeguards. For the reasons explained below, the United States urges the Court not to grant final approval of

the proposed settlements in their present forms because they fail to include *any* injunctive relief to ensure that the anticompetitive conduct alleged in Plaintiffs' Amended Complaint, ECF 260, has ceased and does not recur.[1]

The United States has begun engaging with the parties and will continue to do so in advance of the fairness hearing to discuss the issues stated herein and consider potential solutions to expediently resolve these concerns. Should its objections be resolved, the United States will promptly notify the Court. To the extent the objections have not been addressed prior to the hearing, the United States respectfully requests leave to participate in the final fairness hearing on November 13, 2026, at which time it will be prepared to propose and discuss with the Court

[1] The proposed settlement agreements addressed in this statement of interest expressing objection are as follows, listed by the Defendant (or Defendant group) and docket number: Perdue Farms, Inc., ECF 170; Seaboard Foods, LLC, ECF 205; Triumph Foods, LLC (Cooperation Agreement), ECF 205; JBS USA Food Company, ECF 322; Tyson Foods, Inc., ECF 322; American Foods Group, LLC, ECF 360; National Beef Packing Co., LLC, ECF 369; Cargill, Inc. and Cargill Meat Solutions Corp., ECF 369; Hormel Foods Corp., Rochelle Foods, LLC, and Quality Pork Processors, Inc., ECF 369; Agri Beef Co. and Washington Beef, LLC, ECF 416; Indiana Packers Corporation, ECF 416; and Greater Omaha Packing Co., Inc., ECF 456. Additionally, the United States understands that Plaintiffs have now settled with Defendants Smithfield Foods, Inc. and Smithfield Packaged Meats Corp., and with Defendant Murphy-Brown of Missouri, LLC, ECF 504, but the United States has not yet seen a copy of their proposed settlement agreements, which precludes any such settlement from being granted final approval until 90 days after the United States has received proper service thereof. 28 U.S.C. § 1715(d). The United States does not object to the settlements with Webber, Meng, Sahl and Company, Inc., ECF 207, or Agri Stats, Inc., ECF 456, as the United States has secured injunctive relief against those entities through separate litigation. *See United States v. Cargill Meat Sols. Corp.*, No. 1:22-cv-01821 (D. Md. entered June 5, 2023, ECF 60) (prohibiting Webber, Meng, Sahl and Company, Inc. from facilitating the exchange of Confidential Competitively Sensitive Information); *United States v. Agri Stats, Inc.*, No. 0:23-cv-03009 (D. Minn. entered Sept. 15, 2026, ECF 764) (enjoining the exchange of certain confidential information among processors). Additionally, Plaintiffs' settlement in the instant case includes injunctive relief against Agri Stats, Inc., ECF 456.

injunctive provisions that could effectively address the types of anticompetitive conduct in question.

INTEREST OF THE UNITED STATES

The United States enforces the federal antitrust laws, including Section 1 of the Sherman Act, 15 U.S.C. § 1, the statute on which Plaintiffs base both claims of their Amended Complaint. ECF 260, ¶¶ 431, 437. In particular, the United States has a long history of taking enforcement action to stop or prevent the anticompetitive conduct that Defendants are accused of engaging in—namely, a conspiracy to fix, depress, maintain, or stabilize the compensation paid to workers, and an agreement to exchange detailed, timely, competitively sensitive, and nonpublic information about the compensation paid to workers. *See, e.g.*, Modified Final Judgments, *United States v. Cargill Meat Sols. Corp.*, No. 1:22-cv-01821 (D. Md. entered Apr. 9, 2024), ECF 83 & 85 (prohibiting poultry processors from colluding to suppress plant worker compensation in violation of the Sherman Act, 15 U.S.C. § 1).

The United States' interests are especially acute in the class-action context. Under the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711–15, class-action defendants must notify the Attorney General of proposed settlements before they receive final approval to enable the Attorney General to "voice concerns if [he] believe[s] that the class action settlement is not in the best interest of [American] citizens." 28 U.S.C. §§ 1715(b) & (d); The Class Action Fairness Act of 2005, S. Rep. No. 109-14, at 5 (2005). Having reviewed all publicly available proposed settlements between Plaintiffs and Defendants, the United States voices the following central concern: despite Plaintiffs' plausible allegations that Defendants' conduct constitutes Sherman Act violations that "have continued to the present day," *Brown v. JBS USA Food Co.*, 773 F.

Supp. 3d 1193, 1220 (D. Colo. 2025), *none* of the proposed settlements contains *any* injunctive provision to ensure that the conduct has halted or prevent the recurrence of such conduct between red meat processor Defendants. The absence of such provisions is concerning, given that Plaintiffs have characterized Defendants' anticompetitive conduct as a continuing violation and have expressly sought injunctive relief in their Amended Complaint. ECF 260, ¶¶ 170, 388–89, 431, 437, Prayer for Relief §§ E & F. The United States has a vested interest in promoting competition and protecting American workers from anticompetitive effects, including seeking injunctive provisions that will "so far as practicable, cure the ill effects of the illegal conduct, and assure the public freedom from its continuance." *United States v. U.S. Gypsum Co.*, 340 U.S. 76, 88 (1950).

Accordingly, the United States submits this objection to the settlements with the red meat processors pursuant to the Class Action Fairness Act of 2005 and 28 U.S.C. § 517, which permits the Attorney General to direct "any officer of the Department of Justice . . . to attend to the interests of the United States in a suit pending in a court of the United States." The United States has appeared in other class actions to articulate its views on a proposed settlement. *See, e.g.*, Statement of Interest of the United States, *Nosalek v. MLS Prop. Info. Network, Inc.*, No. 1:20-cv-12244-PBS (D. Mass. filed Feb. 15, 2024), ECF 290; Order Granting the United States of America's Unopposed Motion to Intervene, *Seaman v. Duke Univ.*, No. 1:15-CV-462 (M.D.N.C. filed May 22, 2019), ECF 362 (granting motion to "intervene for the limited purpose of joining in the proposed settlement and thereby obtaining the right to enforce any injunctive relief entered by the Court against Defendant . . . in resolution of this case").

BACKGROUND

Plaintiffs initiated this putative class action on November 11, 2022. ECF 1. The operative complaint is the Amended Complaint filed on January 12, 2024. ECF 260. The Amended Complaint asserts two claims under Section 1 of the Sherman Act against Defendants: (1) their entry into "a continuing agreement, understanding, and conspiracy in restraint of trade to fix, depress, maintain, and stabilize the compensation paid to workers at their red meat processing plants in the continental United States" "[b]eginning on January 1, 2000, and continuing through the present"; and (2) their engagement in "a continuing agreement to regularly exchange detailed, timely, competitively sensitive, and non-public information about the compensation being paid or to be paid to their employees at red meat processing plants in the continental United States" "[b]eginning on January 1, 2000, and continuing through the present." *Id.* ¶¶ 431, 437. Plaintiffs alleged that Defendants' conduct constituted a continuing violation that was not shielded by the statute of limitations. *Id.* ¶¶ 388, 412. In their prayer for relief, Plaintiffs asked that the Court permanently enjoin and restrain Defendants, and anyone acting on their behalf or in concert with them, "from in any manner" (1) "continuing, maintaining, or renewing the conduct, conspiracy, or combination alleged [in the first claim], and from entering into any other conspiracy or combination having a similar purpose or effect," and (2) "continuing, maintaining, or renewing the sharing of highly sensitive competitive information concerning compensation, benefits or the hiring or recruiting of employees [as alleged in the second claim]." *Id.* at 140–41.

The Court subsequently denied Defendants' Joint Motion to Dismiss on March 26, 2025. ECF 400. In so doing, the Court held that "Plaintiffs' allegation that BIWI/PIWI[2] surveys were

[2] "BIWI" refers to the Beef Industry Wage Indexes and "PIWI" refers to the Pork Industry Wage

exchanged at least annually from 2000 to the present day is not a mere conclusion." *Brown*, 773 F. Supp. 3d at 1220. On the contrary, the Amended Complaint provides specific allegations regarding certain years during the class period, and these allegations "make plausible [P]laintiffs' allegation that the surveys were carried out annually and that they have continued to the present day, including from 2015 to 2019." *Id.* The Court also held that the continuing violation allegations allowed Plaintiffs to invoke the continuing conspiracy exception to the statute of limitations. *Id.* at 1227 ("Subsequent BIWI/PIWI surveys inflict new and accumulating injury to plaintiffs by perpetuating the conspiracy and allowing defendants to continue the suppression of plaintiffs' wages.").

Since December 7, 2022, Plaintiffs have been settling their claims with Defendants, one by one, starting with Perdue Farms, Inc. *See* ECF 65. In connection with their settlement with Webber, Meng, Sahl and Company, Inc., ECF 207, Plaintiffs obtained a detailed declaration of G. Jonathan Meng (hereinafter, the "Meng declaration"), describing his personal knowledge and recollection of Defendants' anticompetitive conduct in considerable detail. A redacted version of the Meng declaration is on the Court's docket. *See* ECF 221. The United States understands that with their recent filing of a notice of settlement with Defendants Smithfield Foods, Inc., Smithfield Packaged Meats Corp. (collectively, the "Smithfield Defendants"), and Murphy-Brown of Missouri, LLC, Plaintiffs have now settled with all Defendants. *See* ECF 504.

Importantly, none of the proposed settlements with the processor Defendants that the Department has reviewed—which are meant to resolve Plaintiffs' claims for damages *and*

Indexes. *See Brown*, 773 F. Supp. 3d at 1207.

injunctive relief—include any injunctive provisions. Nearly all the proposed settlements contain monetary provisions and non-monetary cooperation provisions. *See, e.g.*, ECF 322 at 6–7 (summarizing the settlement terms with Defendant Tyson Foods, Inc.). The proposed settlements would release each Defendant "from any and all claims arising out of or relating to 'an alleged or actual conspiracy or agreement between Defendants relating to reducing competition for the hiring and retaining of, or to fixing, depressing, restraining, exchanging information about, or otherwise reducing the Compensation paid or provided to'" the settlement class without any means of ensuring that the Defendants do not perpetuate the same or similar misconduct. *Id.* at 7 (describing the Tyson Foods release). Final approval of a proposed settlement operates as a dismissal with prejudice of "all claims made against [the Defendant in question] in the Action, including in all class action complaints asserted by the Class Plaintiffs[.]" *See, e.g.*, ECF 322-4 (Settlement Agreement between Class Plaintiffs and Defendant Tyson Foods, Inc.) at 25 (Section II(F)(8)). Moreover, a Defendant may use the settlement agreement "in any other action that may be brought against it in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, waiver, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim." *See, e.g.*, *id.* at 29 (Section II(F)(12)).

The Court set a September 29, 2026, deadline for class members to object to the proposed settlements or to opt out. The Court has scheduled a final fairness hearing on November 13, 2026, at 9:00 a.m. ECF 491.

LEGAL STANDARDS

Under Rule 23(e)(2) of the Federal Rules of Civil Procedure, a proposed class settlement may be approved only if the Court finds that the settlement is fair, reasonable, and adequate, considering, among other factors, whether "the relief provided for the class is adequate." *See In re Samsung Top-Load Washing Mach. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 997 F.3d 1077, 1087 (10th Cir. 2021) (listing Rule 23 factors). The Tenth Circuit has also articulated four complementary factors to consider in evaluating whether a proposed settlement is fair, reasonable, and adequate:

(1) whether the proposed settlement was fairly and honestly negotiated;

(2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;

(3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and

(4) the judgment of the parties that the settlement is fair and reasonable.

Rutter & Wilbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 1188 (10th Cir. 2002); *see also Tennille v. Western Union Co.*, 785 F.3d 422, 434 (10th Cir. 2015).

To remedy an antitrust violation, restore competition, and redress the anticompetitive effects, courts look for injunctive provisions that will "cure the ill effects of the illegal conduct, and assure the public freedom from its continuance." *U.S. Gypsum Co.*, 340 U.S. at 88. That means ensuring the same or similar conduct does not recur in the future. *See, e.g.*, *Nat'l Soc'y of Pro. Eng'rs v. United States*, 435 U.S. 679, 697 (1978) ("Having found the Society guilty of a violation of the Sherman Act, the District Court was empowered to fashion appropriate restraints on the Society's future activities both to avoid a recurrence of the violation and to eliminate its consequences.").

DISCUSSION

I. Adding Injunctive Relief to the Proposed Settlements Would Ensure That This Private Antitrust Enforcement Action Fulfills Congress's Design as a Supplemental Weapon Against Anticompetitive Conduct.

"Every violation of the antitrust laws is a blow to the free-enterprise system envisaged by Congress." *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 262 (1972). While the federal government is "primarily charged by Congress with the duty of protecting the public interest," Congress authorized "private-injunction action[s]" to "supplement[] Government enforcement of the antitrust laws." *United States v. Borden Co.*, 347 U.S. 514, 518 (1954); *see also Standard Oil Co.*, 405 U.S. at 262; *Pillsbury Co. v. Conboy*, 459 U.S. 248, 262–63 (1983) ("This Court has emphasized the importance of the private action as a means of furthering the policy goals of certain federal regulatory statutes, including the federal antitrust laws. . . . But private civil actions can only supplement, not supplant, the primary responsibility of Government.").

Here, Plaintiffs have sued for permanent injunctive relief against Defendants' anticompetitive conduct. ECF 260, at 140–41. They have persuaded the Court that "[t]he specific allegations make plausible [their] allegation that the [BIWI/PIWI] surveys were carried out annually and that they have continued to the present day, including from 2015 to 2019." *Brown*, 773 F. Supp. 3d at 1220. And they have obtained the 74-page Meng declaration detailing Defendants' elaborate design and implementation of the Red Meat Industry Compensation Surveys and their careful management and coordination of the Red Meat Industry Compensation Meetings. ECF 221. Against this backdrop, the proposed settlements are inadequate without injunctive provisions.

Injunctive relief plays a critical role in preventing, restraining, and deterring violations of the Sherman Act. Antitrust injunctions secured by classes in private antitrust enforcement actions are an important piece of the framework that guards against ongoing and future competitive harm. *See, e.g.*, *In re Google Play Store Antitrust Litig.*, 147 F. 4th 917, 945–46 (9th Cir. 2025), *cert. dismissed*, 146 S. Ct. 1051 (2026). Damages obtained by private plaintiffs can certainly help deter anticompetitive conduct. But the law also provides additional tools to prevent and restrain such conduct. *See, e.g.*, *In re Toys "R" Us Antitrust Litig.*, 191 F.R.D. 347, 349, 355 (E.D.N.Y. 2000) (approving a settlement that included injunctive relief as well as monetary relief and noting that the injunctive provisions "explicitly describe the type of unlawful agreements, that is, agreements by and between manufacturers and TRU to restrict the sales of toys to Warehouse Clubs in violation of antitrust laws, that are enjoined, and they subject the defendants to contempt citations if violated").

The United States respectfully requests the Court withhold final approval of the proposed settlements with the red meat processors in their present form. *See, e.g.*, *In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94-C-897, 1996 WL 167347, at *4, *6–7 (N.D. Ill. Apr. 4, 1996) (rejecting a proposed class settlement as inadequate because even though it included monetary relief that was "five times the largest settlement in any antitrust class action not preceded by a prior governmental investigation," it failed to include any "injunction or other provision eliminating the two-tiered system of pricing pharmaceutical drugs"). The United States commits to continue engaging with the parties prior to the fairness hearing to further discuss its concerns and if the Court grants the United States leave to participate in the final fairness hearing on November 13, 2026, the United States will come prepared to suggest the types of provisions

that ought to be considered, drawing on its experience with other labor antitrust cases, including the recent consent judgment obtained against defendants in the poultry processing industry. *See* Final Judgment, *United States v. Cargill Meat Sols. Corp.*, No. 1:22-cv-01821 (D. Md. entered June 5, 2023), ECF 59. These include provisions that would prohibit the Defendants: (1) from coordinating or agreeing with their competitors on the compensation paid to red meat processing workers, and (2) from exchanging competitively sensitive information with their competitors relating to compensation of red meat processing workers.

II. The Proposed Settlements Are Inadequate Under the Tenth Circuit's Four-Factor Test and Should Not Be Approved.

The United States respectfully submits that monetary relief alone, without injunctive guards against future misconduct, renders the settlements with the red meat processors inadequate and therefore not suitable for immediate approval. *See Samsung Top-Load Washing Mach. Litig.*, 997 F.3d at 1087 (explaining that under Federal Rule of Civil Procedure 23(e), the Court must consider whether "the relief provided for the class is adequate").

Given Plaintiffs' allegations that Defendants' anticompetitive conduct is continuing through the date of the filing, ECF 260, ¶¶ 431, 437, and their request for permanent injunctive relief, *id.* at 140–41, injunctive provisions of some form should be included in the settlements at issue here. Importantly, the 74-page Meng declaration goes into considerable detail about Defendants' elaborate design and implementation of their Red Meat Industry Compensation Surveys and their careful management and coordination of the Red Meat Industry Compensation Meetings, during which Defendants discussed the survey results and analyses. *See, e.g.*, ECF 221, ¶¶ 19–23, 27–53. The declaration also confirms that the worker compensation data

Defendants were collecting and sharing was highly valuable, given its currency and granularity. *See id.* ¶¶ 156–62.

As this Court acknowledged in its Order denying Defendants' Joint Motion to Dismiss, Defendants have plausibly (1) conspired to fix, depress, maintain, or stabilize the compensation paid to red meat processing workers and (2) agreed to exchange detailed, timely, competitively sensitive, and nonpublic information about the compensation paid to such workers over a period of two decades through the present day. *Brown*, 773 F. Supp. 3d at 1220. The nature and extent of Defendants' wage-fixing conspiracy and wage-information sharing, into which the Meng declaration provides a window, warrant the inclusion of injunctive provisions to ensure all anticompetitive conduct has ceased and to prevent it from recurring.[3] *See, e.g.*, *U.S. Gypsum Co.*, 340 U.S. at 88–89 (explaining that an antitrust decree "is not limited to prohibition of the proven means by which the evil was accomplished, but may range broadly through practices connected with acts actually found to be illegal").

Even if the alleged anticompetitive conduct has ended, an injunction may be used "to prevent future violations," so long as "there exists some cognizable danger of recurrent violation." *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953); *see also Nat'l Soc'y of Pro. Eng'rs*, 435 U.S. at 697. Moreover, "[i]n exercising its equitable jurisdiction, 'a federal court has broad power to restrain acts which are of the *same type or class* as unlawful acts which the court has found to have been committed or whose commission in the future unless enjoined,

[3] The Meng declaration indicates that Defendants no longer conduct Red Meat Industry Compensation Surveys, ECF 221, ¶ 153, but given that Defendants found the compensation data to be "highly valuable", *id.* ¶ 156, that testimony fails to demonstrate that the Defendants' conduct will not recur through another way to collect and share that information.

may fairly be anticipated from the defendant's conduct in the past.'" *Zenith*, 395 U.S. at 132 (citation modified). For example, a conspiracy "to dominate a great and permanent business" that "was highly organized and maintained by the levy, collection, and expenditure of enormous sums" requires "definite proof" that it has been abandoned. *Loc. 167 of Int'l Bhd. of Teamsters v. United States*, 291 U.S. 293, 297–98 (1934). Here, the Meng declaration likewise describes a highly organized conspiracy among Defendants that dominated a "great and permanent business"—namely, the red meat industry—for many years, masterminded by the Red Meat Industry Survey Group, and led by Defendants' executives. ECF 221, ¶¶ 27–28, 54–55. Injunctive provisions would ensure that Defendants have abandoned this effort and they do not restart or recreate the survey machinery in another form, with or without the assistance of an intermediary like Agri Stats, Inc. or Webber, Meng, Sahl and Company.

Under the circumstances of this case, injunctive provisions have substantial non-monetary value for class members and the public, and the Court should take that into account in assessing "whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation." *Rutter*, 314 F.3d at 1188. *Cf. O'Dowd v. Anthem, Inc.*, No. 14-cv-02787, 2019 WL 4279123, at *18 (D. Colo. Sept. 9, 2019) (holding that the injunctive relief (alignment of reimbursement methodology for a period of three years) "provides a substantial non-monetary benefit to the Settlement Class Members"). What class members are getting from the proposed settlements is valuable immediate recovery in the form of monetary compensation. But based upon the allegations in this case, there is no guarantee that, without injunctive relief, Defendants will not collude on compensation decisions or coordinate their compensation systems in the future, perpetrating new harm in the labor markets for red meat

processing workers. As such, the value of an immediate recovery does not outweigh the possibility of future relief that comes with a permanent injunction, as requested in the Amended Complaint.

CONCLUSION

For the reasons stated above, the United States asks that the Court: (1) withhold final approval of the proposed settlements as being inadequate under Rule 23(e) of the Federal Rules of Civil Procedure, and (2) instruct the parties to return with a proposal to provide injunctive relief, with input and guidance from the United States.

Dated: September 29, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 29, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will serve all counsel of record who have registered to receive notification of its filing.

/s/ Henry C. Su
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