

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF NextGen 1.7.1.1
Eastern Division**

Maplevale Farms, Inc., et al.

Plaintiff,

v.

Case No.: 1:16–cv–08637

Honorable Thomas M. Durkin

Koch Foods, Inc., et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, September 14, 2023:

MINUTE entry before the Honorable Thomas M. Durkin: The motion by certain restaurant DAPs to confirm that they have opted out of the Direct Purchaser Plaintiffs Class and are members of Track Two [6841] is granted in part and denied in part. As the Court stated in its order of July 31, 2023 granting a motion for late opt–out by another group of DAPs, the Court "is loath" to have "the unusual management structure of the case" prevent plaintiffs from pursuing their claims, which would be the consequence of denying the motion here. See R. [6729] at 3. Thus, the motion is granted to the extent that the movants are permitted late opt–out of the Class going forward. However, the Court denies the movants' request that they not be forced to participate in five settlements the Class has reached since the opt–out deadline with defendants Koch, Raeford, Simmons, OK Foods, and Mountaire. The movants should have met the required deadlines and followed the procedures set forth in Rule 23 and the Court's orders for opting out of the class. Failing that, they certainly should have provided notice confirming their opt–out status after the Court explained that this was required in its July 31 order. In granting the motion for late opt–out in the July 31 order, a significant factor was that the plaintiffs seeking late opt–out conceded that they should be bound by the Class settlements that had been reached since the opt–out deadline. Movants here do not make that concession, with regard to the five relevant Class settlements. But it is necessary for the Court to enforce the movants' participation in those settlement agreements, in accordance with Rule 23 and the Court's orders, because the movants missed the opt–out deadline. The movants are permitted late opt–out from the Class going forward, but they are bound by the settlements with defendants Koch, Raeford, Simmons, OK Foods, and Mountaire. Beyond the opt–out and settlement issues, the movants' dilatory conduct has interfered with the Class's expert's ability to prepare a damages opinion in time for trial, and apparently will necessitate that the expert prepare a revised report and/or damages calculations. Counsel for the movants (not the movants themselves) are ordered to pay the costs of the Class's expert's work associated with any such revisions. Lastly, any DAP that is not a party to this motion, or the opt–out motion decided on July 31, and has not already properly opted–out of the Class, is now a member of the Class. No further opt–outs will be permitted for any reason. Mailed notice. (kp,)

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