

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE BROILER CHICKEN ANTITRUST  
LITIGATION

No. 16 C 8637

Judge Thomas M. Durkin

**ORDER**

The deadline to opt out of the Direct Purchaser Plaintiff class (the “Class”) was April 4, 2023. Plaintiff SGA concedes that it received notice of the deadline and missed it due to attorney error. So do plaintiffs L. Hart, Inc.; R & D Marketing, LLC; Timber Lake Foods, Inc.; EMA Foods Co., LLC; and Red Bird Farms Distribution Company (together “L. Hart,” and together with SGA “Plaintiffs”). Plaintiffs realized their mistakes when the Class filed for preliminary approval a settlement with defendant Simmons. Plaintiffs accept that they are bound by the Class settlement with Simmons. *See* R. 6689 at 9; R. 6709 at 2 (“[T]he L. Hart DAPs hereby withdraw their request to opt out as a member of the Simmons settling class.”).<sup>1</sup> But Plaintiffs have filed motions for late opt out from the Class. *See* R. 6638; R. 6655.

The Court has previously denied motions for late opt-out from class settlements. *See* R. 3312; R. 4547. Here Plaintiffs do not seek late opt-out from a settlement, but from the Class going forward.

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<sup>1</sup> L. Hart is ordered to file a stipulation confirming that they are bound by the Class’s settlement with Simmons within a day of the entry of this order.

This has particular significance because, unlike the prior motions for late opt out from settlements, Plaintiffs filed their motions after the Court divided the case into two tracks. The primary reason for dividing the case was to delay litigation of what the parties and the Court refer to as the “bid-rigging claims.” These claims came to the case later than the original “supply reduction” and “Georgia Dock claims,” and the Court did not want consideration of the bid-rigging claims to delay the others.

Some parties, including the Class, decided to remain in Track One in order to obtain judgment as soon as possible on the supply reduction and Georgia Dock claims. Trial on the Class’s Track One claims is scheduled to begin September 12, 2023.

Other parties, including SGA and L. Hart, decided to join Track Two to obtain further discovery into the bid-rigging claims. The Track Two parties, including SGA and L. Hart, announced their intention to join Track Two by stipulation. *See* R. 5334. Those parties, including SGA and L. Hart, then filed a consolidated complaint identifying themselves as Track Two parties. *See* R. 5455; R. 5456. SGA in particular was also a primary drafter and signatory of the brief opposing Plaintiffs’ motion to dismiss the Track Two claims, *see* R. 5769 at 43, (which remains pending before the Court).

SGA and L. Hart have opted out of class settlements with Tyson, Keystone, Pilgrim’s, Mar-Jac, and Harrison and they are pursuing their claims against those defendants in Track Two. The remaining defendants are Koch, Perdue, Sanderson, Wayne Farms, Mountaire, Foster Farms, House of Raeford, O.K. Foods, Claxton, Case Farms, and Agri Stats. Additionally, L. Hart has stipulated that it will no longer

pursue claims against the defendants who were granted summary judgment: Agri Stats, Case, Fieldale, Foster Farms, Fries-Claxton, Perdue, and Wayne. *See* R. 6671.

Because Track One does not include bid-rigging claims, denying Plaintiffs' motions here would require them to be part of the Track One trial and would deny them the opportunity to pursue their supply reduction and Georgia Dock claims in the context of their bid-rigging claims.<sup>2</sup> This is greater than the normal consequence for failing to timely opt out of a class. The Court is loath to indirectly impose such a consequence due to the unusual management structure of the case. Denying SGA's motion would also mean that: (1) Plaintiffs' claims would be limited by the Court's recent summary judgment decision, even though SGA did not participate in the months-long briefing, or the lengthy oral argument where each side was allowed to argue; and (2) Plaintiffs' claims would be tried this September even though SGA has not been preparing for trial. Of course, as a member of the Class, Plaintiffs' responsibilities at trial would be limited. Nevertheless, denying Plaintiffs' motions at this stage of the case, and in the context of the unusual two track proceedings, would impose consequences that were not at issue when the Court previously denied motions to opt out of settlements, and are generally not at issue on motions to opt out of certified classes in other cases.

Defendants argue that allowing Plaintiffs to opt out after summary judgment has been decided "could open the door to future requests from similarly situated class members that failed to opt-out by the deadline but may now seek to evade the Court's

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<sup>2</sup> L. Hart has also dropped its Georgia Dock claims. *See* R. 6671.

summary judgment rulings against the DPP Class, creating further prejudice.” R. 6659 at 10. As an initial matter, SGA filed its motion before the summary judgment decision was entered. And L. Hart has dropped its claims against the defendants who were granted summary judgment, as well as its Georgia Dock claims. In any case, the Track Two notice and consolidated complaint limit the potential opt-outs to those plaintiffs that indicated their intent to proceed in Track Two rather than with the Class in Track One. Defendants are well aware of the parties who have stated that they are proceeding in Track Two, which occurred well before the Court issued its summary judgment decision. There is no danger here of a slippery slope or inappropriate leveraging of knowledge of the Court’s summary judgment decision.

Moreover, granting Plaintiffs’ motions will not upset the expectations of any defendant, because Plaintiffs do not seek to opt out of any pending settlement. Plaintiffs stated months ago its intent to proceed in Track Two and has been actively litigating those claims. Granting Plaintiffs’ motions for late opt out will not change Plaintiffs’ status quo with respect to any defendant. There is no surprise here.

Plaintiffs should be provided the opportunity to avoid the restrictions of Track One as they chose long ago. Therefore, Plaintiffs’ motions for late opt out from the certified Direct Purchaser Plaintiff class [6638] [6655] are granted.

ENTERED:



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Honorable Thomas M. Durkin  
United States District Judge

Dated: July 31, 2023