

II. INTRODUCTION

2.1 Plaintiff, State of Washington, by and through its Attorney General, in its law enforcement capacity and as *parens patriae* on behalf of Persons in the State of Washington, commenced an antitrust action on October 25, 2021, for an injunction, restitution, civil penalties, and other relief pursuant to Chapter 19.86 RCW, the Unfair Business Practices-Consumer Protection Act (“CPA”), against the Tyson Defendants, eighteen other broiler producers, and Agri Stats.

2.2 Plaintiff alleges price-fixing and other anticompetitive conduct by various entities, including the Tyson Defendants, in its First Amended Complaint filed in the Action (“Complaint”). The Complaint alleges that the Tyson Defendants and their co-conspirators conspired to restrain production, rig bids, manipulate price indices, and exchange highly sensitive competitive information with one another in violation of the CPA. The Complaint alleges that, through both unlawful agreements and unfair methods of competition, the Tyson Defendants and their co-conspirators fixed, raised, stabilized, and maintained prices of broiler chicken throughout the United States, including in Washington. The Tyson Defendants do not admit the allegations of the Complaint or any liability or violation of law and believe that they have valid defenses to Plaintiff’s claims and any potential claims that have been or could be asserted by Plaintiff against them.

2.3 Plaintiff and the Tyson Defendants have engaged in arms’ length negotiations and reached an agreement to settle all Plaintiff’s claims against the Tyson Defendants in the Action and to the entry of this Consent Decree (“Consent Decree”) without trial or adjudication on any issues of fact or law.

2.4 Plaintiff and the Tyson Defendants have determined that this Consent Decree and the amount of the Settlement Fund, as defined *infra*, are reasonable in light of Plaintiff’s claims, the Tyson Defendants’ defenses, the risk and expense of continuing protracted litigation, and the extent of each party’s investigation, discovery, and preparation for trial.

1 2.5 The Tyson Defendants do not admit the allegations contained in the Complaint
2 or any liability or violation of law, and believe they have valid defenses to all claims that have
3 been or could be asserted by Plaintiff against them. Notwithstanding their defenses, the
4 Tyson Defendants agree to entry of this Consent Decree to: (a) avoid the expense,
5 inconvenience, and distraction of burdensome and protracted litigation; (b) obtain the releases,
6 orders, and final judgment contemplated by this Consent Decree; and (c) put to rest and terminate
7 with finality all claims Plaintiff has or could have asserted against the Tyson Defendants that
8 relate in any way to or arise out of the allegations in the Complaint, as more particularly set forth
9 below. Neither the Complaint nor anything in this Consent Decree constitutes evidence of or
10 admission of wrongdoing by the Tyson Defendants regarding the existence or non-existence of
11 any issue, fact, liability, wrongdoing, or violation of any law alleged by the Plaintiff.

12 2.6 The Tyson Defendants recognize and state that they enter into this
13 Consent Decree voluntarily and that, other than the promises contained herein, no promises or
14 threats have been made by the Attorney General's Office or any member, officer, agent or
15 representative thereof to induce the Tyson Defendants to enter into this Consent Decree.

16 2.7 Plaintiff and the Tyson Defendants waive any right they may have to appeal from
17 this Consent Decree and from any Order adopting it, provided that no substantive changes are
18 made to the Consent Decree after it has been presented by the parties to the Court for approval.

19 2.8 Plaintiff and the Tyson Defendants acknowledge that they have not completed
20 full discovery in this matter and may hereafter discover facts different from, or in addition to,
21 those that they knew or believed to be true at the time they entered into this Consent Decree.
22 Nevertheless, Plaintiff and the Tyson Defendants agree that this Consent Decree shall be
23 effective and remain effective notwithstanding such different or additional facts, and they also
24 waive any right they may have to seek modification of this Consent Decree or any Order adopting
25 it based upon discovery of such different or additional facts.
26

1 4.2 “Illinois litigation” refers to *In re Broiler Chicken Antitrust Litigation*,
2 No. 1:16-cv-06837 (N.D. Ill.).

3 4.3 “Tyson Defendants” shall refer to Tyson Foods, Inc., Tyson Chicken, Inc.,
4 Tyson Breeders, Inc., and Tyson Poultry, Inc.

5 4.4 “Effective Date” shall mean the date this Consent Decree is entered by the Court.

6 4.5 “Person” or “Persons” shall mean, consistent with RCW 19.86.010(1), natural
7 persons, corporations, trusts, unincorporated associations, and partnerships.

8 4.6 “Plaintiff” shall mean the State of Washington (“State”), acting as *parens patriae*
9 on behalf of Persons residing in the State, and the Attorney General acting on behalf of the State.

10 4.7 “The Settlement Fund” shall be \$10,545,000 to be paid in accordance with
11 Paragraph 6.1.

12 4.8 “This Action” refers to *Washington v. Tyson, et al.*, No. 21-2-14174-5 SEA
13 (King. Cnty. Sup. Ct.).

14 V. INJUNCTION AND CERTIFICATION

15 5.1 For a period of five (5) years, the Tyson Defendants will not engage in any
16 conduct, including price-fixing, bid-rigging, market allocation, coordinating output or supply, or
17 manipulating pricing indices, with other Broiler Chicken producers in the United States with
18 respect to the sale of any Broiler Chicken products in Washington or that has an effect in
19 Washington, which constitute horizontal conduct that are *per se* violations of Section 1 of the
20 Sherman Act (which for purposes of this Action, the parties understand to be the same standard
21 as that under RCW 19.86.030).

22 5.2 The Tyson Defendants shall certify to Plaintiff within ninety (90) days of entry
23 of this Consent Decree, and recertify on or around the first, second, third, fourth, and fifth
24 anniversaries of the entry of this Consent Decree, that they have established an antitrust
25 compliance program for the purpose of compliance with federal and state antitrust laws,
26 including the Sherman Act and RCW 19.86.030. Such program shall provide relevant

1 compliance education regarding the legal standards imposed by the antitrust laws, the remedies
2 that might be applied in the event of violations, and their employees' obligations in the event
3 they observe violations of the antitrust laws.

4 5.3 Nothing in this Consent Decree shall be interpreted as limiting in any way the
5 Tyson Defendants' obligations to comply in the fullest with federal and state antitrust laws as
6 they currently exist or may be amended in the future.

7 VI. MONETARY RELIEF

8 6.1 Within thirty (30) days of the Effective Date, the Tyson Defendants shall pay to
9 the State of Washington \$10,545,000 ("Settlement Amount") by wire transfer to the State or to
10 such other recipient as Plaintiff shall designate.

11 6.2 Pursuant to RCW 19.86.080, the Attorney General shall use the funds for
12 recovery of the costs and attorneys' fees incurred in investigating this matter, future monitoring
13 and enforcement of the Consent Decree and CPA, compensation for Washington consumers
14 harmed by the conduct alleged in the Complaint, or for any other lawful purpose in the discharge
15 of the Attorney General's duties at the sole discretion of the Attorney General.

16 6.3 Plaintiff is in possession of a copy of the agreement dated February 25, 2020 (the
17 "Defendants' Agreement") entered into by certain defendants in one or more putative class
18 action or direct action lawsuits which have been consolidated for pretrial purposes in the
19 Illinois litigation. The defined terms in the Defendants' Agreement shall have the same meaning
20 when used in this Consent Decree. Both Plaintiff and the Tyson Defendants acknowledge that
21 this Consent Decree does not constitute a Qualified Settlement under the Defendants'
22 Agreement. If, however, at any time Plaintiff enters into a Qualified Settlement with any party
23 to Defendants' Agreement, then this settlement with the Tyson Defendants will be converted
24 into, deemed, and construed to be a Qualified Settlement, and the terms attached to this Consent
25 Decree as Attachment 1 shall apply. Plaintiff and the Tyson Defendants reserve all rights to
26 challenge the validity and applicability of the Defendants' Agreement at any time, for any

1 material facts known to the Tyson Defendants that are relevant to Plaintiff's
2 claims in this Action.

3 7.1.2. Producing all documents that have been produced or provided by the
4 Tyson Defendants to any party involved in federal criminal litigation, including
5 *United States v. Penn*, No. 1:2020-cr-00152-198027 (cod) (D. Colo.),
6 *United States v. Norman W. Fries, Inc. et al.*, and *United States v. McGuire, et al.*,
7 No. 21-cr-00246-DDD (D. Colo.), whether provided voluntarily or pursuant to a
8 subpoena, compulsory process, or a court or administrative order, pertaining to
9 allegations that the Tyson Defendants allegedly participated in an unlawful
10 conspiracy to suppress and eliminate competition by reaching agreements to
11 fix, raise and maintain the price of Broiler Chicken, in the United States.

12 7.1.3. Tyson agrees to respond to a reasonable number of Plaintiff's questions regarding
13 structured data and otherwise assist Plaintiff to understand structured data
14 produced by the Tyson Defendants.

15 7.1.4. Producing to Plaintiff unredacted copies of all non-privileged documents
16 produced by the Tyson Defendants in discovery or under court orders in the
17 Illinois litigation, including any future productions in that litigation.

18 7.1.5. Producing to Plaintiff unredacted copies of all transcripts of depositions taken,
19 and their exhibits, of the Tyson Defendants or their employees in the
20 Illinois litigation to the extent not already provided, including any future
21 deposition in that litigation, to the extent that the Tyson Defendants may do so in
22 compliance with the Agreed Confidentiality Order governing the Illinois
23 litigation.

24 7.1.6. Producing to Plaintiff unredacted copies of all the Tyson Defendants' written
25 discovery responses, including their Initial Disclosures, Responses to Requests
26 for Production, Interrogatories, and Requests for Admission from the

1 Illinois litigation to the extent not already provided, including any future
2 responses served in that litigation.

3 7.1.7. Using reasonable efforts to produce a reasonable number of officers or employees
4 (not including experts and not to exceed four (4) individuals) to testify at
5 trial—either in person (including remote testimony if permitted), by deposition,
6 or affidavit, as reasonably practicable—as are reasonably required by the
7 Plaintiff, provided that the Plaintiff provides notice to the Tyson Defendants of
8 its intent to call such witnesses at least sixty (60) days before trial.

9 7.1.8. Using reasonable efforts to provide affidavits on behalf of a reasonable number
10 of officers or employees (not to exceed four (4) individuals) as necessary for the
11 purpose of authenticating a reasonable number of business records produced by
12 the Tyson Defendants, where it is reasonably practicable to do so in good faith,
13 no later than sixty (60) days before trial, as reasonably required by the Plaintiff
14 for trial. In addition to the reasonable number of records that they agree to
15 authenticate, if pursuant to an agreement with the plaintiffs in the Illinois
16 litigation, the Tyson Defendants provide affidavits concerning the authenticity of
17 their business records, the Tyson Defendants also will use reasonable efforts, not
18 later than sixty (60) days before trial, as reasonably requested by the Plaintiff for
19 trial, to provide the Plaintiff with affidavits making the same statements
20 concerning the authenticity of the same records as provided to the plaintiffs in the
21 Illinois litigation.

22 7.1.9. The Tyson Defendants agree to provide the same cooperation outlined in 7.1.3 to
23 7.1.8 for its subsidiary Keystone Foods—defined as Keystone Foods LLC,
24 Equity Group Eufaula Division, LLC, Equity Group Kentucky Division, LLC,
25 and Equity Group—Georgia Division LLC, collectively—a broiler chicken
26 producer that was acquired by the Tyson Defendants in 2018 and that Plaintiff

1 has identified as co-conspirator in the Amended Complaint, but is not a named
2 Defendant in this Action.

3 7.2. The Tyson Defendants shall not oppose or object to the State's attempt to depose
4 the following former employees of the Tyson Defendants (if the State seeks to conduct such
5 depositions): Carl Pepper, Timothy Mulrenin, Steven Cullen, Gary Brian Roberts, and
6 Clay Mullins.

7 7.3. Material produced by the Tyson Defendants under this Consent Decree shall be
8 treated in accordance with any protective order in this Action. To the extent that any document
9 to be produced pursuant to this Consent Decree is subject to a protective order in the
10 Illinois litigation, such production will be subject to the provisions of the Illinois protective
11 order.

12 7.4. Plaintiff will not provide any non-public information or records to any Person,
13 political subdivision of the State, or any other party in connection with the Action, to support
14 any suit, action, complaint, arbitration, mediation, or other grievance against any of the
15 Tyson Defendants, based on, or relating in any way to, the allegations or claims of the Complaint.
16 Nothing in this Paragraph shall be construed to inhibit Plaintiff's ability to communicate with
17 other states' attorneys general, except with respect to the exchange of non-public records
18 provided by the Tyson Defendants pursuant to Paragraph 7.1.

19 7.5. Plaintiff and the Tyson Defendants shall use reasonable efforts to effectuate this
20 Consent Decree, including cooperating in seeking any court approvals.

21 **VIII. RELEASE, DISCHARGE, AND COVENANT NOT TO SUE**

22 8.1 Upon the entry of this Consent Decree by the Court, and in consideration of
23 payment of the Settlement Fund, and for other good and valuable consideration, the
24 Tyson Defendants, and all of their respective past and present, direct and indirect, wholly and
25 partially owned, parent companies, subsidiaries (including Keystone Foods LLC, Equity Group
26 Eufaula Division, LLC, Equity Group Kentucky Division, LLC, and

1 Equity Group – Georgia Division LLC), and affiliates; the predecessors, successors and assigns
2 of any of the above; and each and all of the present and former principals, partners, officers,
3 directors, supervisors, employees, representatives, insurers, attorneys, heirs, executors,
4 administrators, and assigns of each of the foregoing shall be and hereby are completely released
5 and forever discharged from any and all claims, damages, fines, penalties, liabilities, restitution,
6 expenses (including costs, attorneys’ fees, and interest), demands, actions, judgments, suits, and
7 causes of action arising from, or relating in any way in whole or in part to, the allegations or
8 claims of the Complaint and any amendments thereto, that Plaintiff, whether acting on its own
9 behalf or as *parens patriae*, ever had, now has, or hereafter can, shall, or may have.

10 8.2 Plaintiff covenants that it will not hereafter commence, assert, or solicit any
11 claims against the Tyson Defendants on behalf of the State, or any Person, state agency, or other
12 party, in any suit, action, complaint, arbitration, mediation, litigation or other grievance based
13 on, or relating to, the allegations or claims in this Action, with the exception that Plaintiff may
14 enforce this Consent Decree as provided in Section 10.3.

15 8.3 The release, discharge, and covenant not to sue set forth in Paragraphs 8.1 and
16 8.2, above, include only the claims pled in the Complaint, any amendments thereto, and any
17 claims relating to or arising from the acts, omissions, or conduct at issue in the Complaint,
18 whether expressly pled or not. The release, discharge, and covenant not to sue does not include
19 any claims solely arising out of product liability or breach of contract claims in the ordinary
20 course of business (except to the extent any alleged breach of contract arises from or relates to
21 an alleged antitrust violation), or any other claims not related to the underlying Complaint. The
22 release, discharge, and covenant not to sue does not include any claims against any Defendants
23 or co-conspirators in this Action other than the Tyson Defendants, and the related entities
24 specifically identified as releasees in Paragraph 8.1.

1 **IX. NO EFFECT IF THIS CONSENT DECREE IS NOT ENTERED**

2 9.1 In the event that this Consent Decree is not approved and entered by the Court,
3 then this Consent Decree shall be of no force or effect. The Tyson Defendants and Plaintiff
4 expressly reserve all of their rights and defenses, including, but not limited to, personal
5 jurisdiction and venue defenses, if this Consent Decree does not become final.

6 **X. ENFORCEMENT AND RETENTION OF JURISDICTION**

7 10.1 Jurisdiction is retained by this Court for five (5) years for the purpose of enabling
8 any of the parties to this Consent Decree to apply to this Court at any time for such further orders
9 and directions as may be necessary or appropriate for the interpretation, construction or
10 implementation of any of the provisions of this Consent Decree, for the enforcement of
11 compliance, and for the punishment of any violations.

12 10.2 In any contempt of court proceeding initiated to enforce this Consent Decree due
13 to a violation of its terms, Plaintiff and the Tyson Defendants may seek, and the Court shall have
14 the authority to grant, all remedies available in such a proceeding.

15 10.3 Nothing herein precludes Plaintiff from enforcing the provisions of this Consent
16 Decree, or from pursuing any law enforcement action with respect to the acts or practices of the
17 Tyson Defendants not covered by this Consent Decree or any acts or practices conducted after
18 the Effective Date.

19 10.4 Nothing in this Consent Decree shall be construed to limit or bar any other
20 governmental entity (other than Plaintiff, its officials, and state agencies) from pursuing other
21 available remedies, if any, against the Tyson Defendants.

22 10.5 Neither the existence of this Consent Decree nor anything contained herein shall
23 be deemed or construed to be an admission by the Tyson Defendants or evidence of any
24 wrongdoing or violation of law by the Tyson Defendants, or the truth of any of the claims or
25 allegations contained in the Complaint. Pursuant to Washington Rule of Evidence 408, neither
26 this Consent Decree, nor any of its terms or provisions, nor any of the negotiations, documents,

1 discussions, or proceedings connected with it, nor any other action taken to carry out this Consent
2 Decree by Plaintiff or the Tyson Defendants shall be used, directly or indirectly, referred to, or
3 offered as evidence or received in evidence, in any pending or future civil, criminal, or
4 administrative action or proceeding, except a proceeding to enforce this Consent Decree, or to
5 defend against the assertion of a released claim, or as necessary to effect Paragraph 6.3.

6 10.6 This Consent Decree shall be construed and interpreted to effectuate the intent of
7 the parties, which is to provide for a complete and final resolution of Plaintiff's claims that were
8 asserted, or could have been asserted, with respect to the Tyson Defendants as provided in this
9 Consent Decree.

10 10.7 Under no circumstances shall this Consent Decree or the names of the State of
11 Washington or the Office of the Attorney General, Antitrust Division, or any of its employees
12 or representatives be used by the Tyson Defendants' agents or employees in connection with the
13 promotion of any product or service or an endorsement or approval of the Tyson Defendants'
14 past or future practices.

15 10.8 This Consent Decree shall be governed by and interpreted according to the
16 substantive laws of the State of Washington without regard to its choice of law or conflict of
17 laws principles.

18 10.9 Plaintiff and the Tyson Defendants agree that this Consent Decree constitutes the
19 entire, complete, and integrated agreement between Plaintiff and the Tyson Defendants
20 pertaining to the settlement of the Action against the Tyson Defendants, and supersedes all prior
21 and contemporaneous undertakings of Plaintiff and the Tyson Defendants in connection
22 therewith. This Consent Decree may not be modified or amended except in writing executed by
23 Plaintiff and Tyson Defendants, and, if required by law, approved by the Court.

24 10.10 Neither Plaintiff nor the Tyson Defendants shall be considered the drafter of this
25 Consent Decree or any of its provisions for the purpose of any statute, case law or rule of
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1 interpretation of construction that would or might cause any provision to be construed against
2 the drafter of this Consent Decree.

3 10.11 Solely for the purpose of determining or securing compliance with this
4 Consent Decree, the Tyson Defendants authorize their attorneys to accept electronic service of
5 a motion by Plaintiff to enforce or interpret this Consent Decree.

6 10.12 This Consent Decree shall expire five (5) years from the date it is executed. Such
7 expiration shall in no way affect the validity of Plaintiff's release of claims against the
8 Tyson Defendants.

9 10.13 Plaintiff and the Tyson Defendants agree and represent that any persons signing
10 this Consent Decree are authorized to execute this Consent Decree on each party's respective
11 behalf.

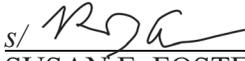
12 10.14 This Consent Decree shall be binding upon, and inure to the benefit of, the
13 successors and assigns of Plaintiff and the Tyson Defendants. Without limiting the generality of
14 the foregoing, each and every covenant and agreement made herein by Plaintiff shall be binding
15 upon all Persons it represents.

16 10.15 Except as provided herein with respect to Paragraph 6.3 and Section 8 of this
17 Consent Decree, this Consent Decree shall not benefit any third party other than the
18 Tyson Defendants, and shall not be construed to provide any rights to third parties other than the
19 Tyson Defendants. If this Consent Decree converts to a Qualified Settlement as defined by the
20 Defendants' Agreement and in accordance with the terms of Paragraph 6.3 of this Consent
21 Decree, then the other parties to the Defendants' Agreement shall be deemed third-party
22 beneficiaries of this Consent Decree.

23 **XI. APPROVAL AND ORDER**

24 This Consent Decree is approved and hereby entered pursuant to RCW 19.86.080. This
25 Action in all other respects is hereby dismissed with prejudice with respect to the
26 Tyson Defendants without award of fees, costs, or expenses to any party.

1 Agreed to, Approved for Entry, and Notice of Presentation Waived:

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4 _____
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25 *Attorneys for Defendants Tyson Foods, Inc.,*
26 *Tyson Chicken, Inc., Tyson Breeders, Inc., and*
Tyson Poultry, Inc.

1 Agreed to, Approved for Entry, and Notice of Presentation Waived:

2 Tyson Foods, Inc., Tyson Chicken, Inc.,
3 Tyson Breeders, Inc., and Tyson Poultry, Inc.

4 Jane W. Duke
Signature

5 Jane W. Duke
6 Printed Name

7 Vice President and Chief Compliance Officer
8 Title

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1 **ATTACHMENT 1**

2 If the contingency described in Paragraph 6.3 of the Consent Decree occurs, the
3 following terms shall apply and the defined terms in the Defendants' Agreement shall have the
4 same meaning when used below:

5 Plaintiff agrees that notwithstanding anything to the contrary contained in this
6 Consent Decree, Plaintiff shall reduce the dollar amount collectable from the
7 parties to the Defendants' Agreement pursuant to any Final Judgment by a
8 percentage equal to the Sharing Percentage of the Tyson Defendants, calculated
9 pursuant to Section 4 and Exhibits A and B of the Defendants' Agreement (as
10 illustrated by the Appendix to the Defendants' Agreement) as if the
11 Tyson Defendants had not settled, had been found liable on the claim, and were
12 a Sharing Party with respect to the Final Judgment. Plaintiff agrees that this
13 undertaking is also for the benefit of any defendant that is a party to the
14 Defendants' Agreement and that this undertaking may be enforced by any party
15 or all of such parties to the Defendants' Agreement as third-party beneficiaries
16 hereof. Any ambiguity in this Paragraph or Paragraph 6.3 to this Consent Decree
17 or inconsistency between this Consent Decree and the Defendants' Agreement,
18 shall be resolved in favor of the Defendants' Agreement, including, without
19 limitation, Sections 6.D.1 and 6.D.2 thereof. Plaintiff further represents and
20 warrants that it has not reached any agreement to provide any portion of the
21 Settlement Fund to any person or entity that is not explicitly identified as a
22 releaser in this Consent Decree, except for proceeds received by Plaintiff's
23 attorneys for payment of attorneys' fees.

King County Superior Court
Judicial Electronic Signature Page

Case Number: 21-2-14174-5
Case Title: STATE OF WASHINGTON vs TYSON FOODS INC ET AL
Document Title: ORDER RE CONSENT DECREE DEF TYSONS
Signed By: Aimee Sutton
Date: October 24, 2022



Judge: Aimee Sutton

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: FE7AF5938B62B0D6530B26DB6BADCEA39154E68E
Certificate effective date: 3/7/2019 12:13:53 PM
Certificate expiry date: 3/7/2024 12:13:53 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Aimee Sutton:
GLQAkAvS5hGyPIX3AFk6yQ=="