

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
OWENSBORO DIVISION

CHARLES MORRIS, MORVATT )  
ENTERPRISES, LLC, WILLIAM RICKARD, )  
SONDRA RICKARD, RICKARD FARMS, LLC, )  
ICU CHICKENS, LLC, WISHBONE )  
POULTRY, DENNIS CLAPP, JOHN )  
PINKSTON, LOI HONG, H & L FARMS, LLC, )  
DOUG BROWN, TIM VINCENT, TLC )  
POULTRY, LLC, POULTRY SPECIALTY )  
SERVICE, LLC, KEITH CRABTREE, )  
CHRISTOPHER BURCH, MIKE MURPHY, )  
MURPHY FARMS, LLC, and CALVIN )  
LEISURE )

Plaintiffs, )

Civil Action No. 4:15-cv-77-m

v. )

TYSON CHICKEN, INC., JAMES )  
GOTTSPONER, LIVE PRODUCTION )  
MANAGER, DAVID DICKEY, BROILER )  
MANAGER, DAVID MEARS, COMPLEX )  
MANAGER, NEIL BARFIELD, SERVICE )  
TECHNICIAN, and JARED SHELTON )

Defendants. )

**PLAINTIFFS' FIRST AMENDED COMPLAINT AND JURY DEMAND**

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COME NOW the Plaintiffs, Charles Morris, Morvatt Enterprises, LLC, William Rickard, Sondra Rickard, Rickard Farms, LLC, ICU Chickens, LLC, Wishbone Poultry LLC, Dennis Clapp, John Pinkston, Loi Hong, H & L Farms, LLC, Doug Brown, Tim Vincent, TLC Poultry, LLC, Poultry Specialty Service, LLC, Keith Crabtree, and Christopher Burch, Mike Murphy, Murphy Farms, LLC, and Calvin Leisure, (collectively, "Plaintiffs") by and through their

attorneys, and for their complaint against the above-named Defendants, state as follows:

### **NATURE OF THE CASE**

1. Plaintiffs bring this action based on violations of the Packers and Stockyards Act of 1921, Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, Fraud, Fraudulent Concealment, Misrepresentation, Negligence, and Punitive Damages.

### **PARTIES**

2. Plaintiff Charles Morris (hereinafter “Morris”) is an individual residing in Sebree, Webster County, Kentucky, and is the sole member of Morvatt Enterprises, LLC.

3. Plaintiff Morvatt Enterprises, LLC (hereinafter “Morvatt”) is a Kentucky Limited Liability Company with its principal place of business in Sebree, Webster County, Kentucky, and has entered into a poultry growing arrangement with Defendant , Tyson Chicken, Inc. (hereinafter “Tyson”), to grow broiler chickens (hereinafter “broilers”) in Kentucky. Morvatt also operates in Beech Grove, McLean County, Kentucky, and Onton, Webster County, Kentucky. Morvatt is one of the largest poultry growers for Tyson in Kentucky, as it owns and operates a total of fifty-two growing houses on seven separate farms. Morvatt’s farms are known as “Morvatt #1,” “Morvatt #2,” “56 North,” “56 South,” “Honeysuckle,” “Gravel Pit,” and “B.D. Luck.”

4. Plaintiffs William and Sondra Rickard (hereinafter collectively “Rickard”) are individuals residing in Sacramento, McLean County, Kentucky, and are the members of Rickard Farms, LLC, ICU Chickens, LLC and Wishbone Poultry, Inc. Rickard and their associated companies as noted herein operate chicken growing houses in Kentucky and have entered into a poultry growing arrangement with Tyson, to grow broiler chickens in Kentucky.

5. Plaintiff Rickard Farms, LLC (hereinafter “Rickard Farms”) is a Kentucky Limited Liability Company with its principal place of business in Sacramento, Mclean County,

Kentucky. Rickard Farms entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky.

6. Plaintiff ICU Chickens, LLC (hereinafter “ICU Chickens”) is a Kentucky Limited Liability Company with its principal place of business in Sacramento, Mclean County, Kentucky. ICU Chickens entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky.

7. Plaintiff Wishbone Poultry Inc., (hereinafter “Wishbone Poultry”) is a Kentucky corporation with its principal place of business in Calhoun, Mclean County, Kentucky. Wishbone Poultry entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky.

8. Plaintiff Dennis Clapp (hereinafter “Clapp”) is an individual residing in Madisonville, Hopkins County, Kentucky. Clapp entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky.

9. Plaintiff John Pinkston (hereinafter “Pinkston”) is an individual residing in Sacramento, McLean County, Kentucky. Pinkston entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky.

10. Plaintiff Loi Hong (hereinafter “Hong”) is an individual residing in Sacramento, McLean County, Kentucky. Hong entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky. Hong and his associated company, H & L Farms, LLC, operate chicken growing houses in Kentucky and have entered into a poultry growing arrangement with Tyson to grow broiler chickens in Kentucky.

11. Plaintiff H & L Farms, LLC (hereinafter “H & L”) is a Kentucky Limited Liability Company with its principal place of business in Sacramento, McLean County, Kentucky. H&L

entered into a poultry growing arrangement with Tyson to grow broiler chickens in Kentucky.

12. Plaintiff Doug Brown (hereinafter “Brown”) is an individual residing in Dawson Springs, Hopkins County, Kentucky. Brown entered into a poultry growing arrangement with Tyson to grow broiler chickens in Kentucky.

13. Plaintiff Tim Vincent (hereinafter “Vincent”) is an individual residing in Calhoun, McLean County, Kentucky. Vincent entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky. Vincent and his associated companies, TLC Poultry, LLC and Poultry Specialty Service, LLC, operate chicken growing houses in Kentucky and have entered into a poultry growing arrangement with Tyson to grow broiler chickens in Kentucky.

14. Plaintiff TLC Poultry, LLC (hereinafter “TLC”) is a Kentucky Limited Liability Company with its principal place of business in Calhoun, McLean County, Kentucky. TLC entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky.

15. Plaintiff Poultry Specialty Service, LLC (hereinafter “Poultry Specialty Service”) is a Kentucky Limited Liability Company with its principal place of business in Calhoun, McLean County, Kentucky. Poultry Specialty Service entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky.

16. Plaintiff Keith Crabtree (hereinafter “Crabtree”) is an individual residing in Calhoun, McLean County, Kentucky. Crabtree entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky.

17. Plaintiff Christopher Burch (hereinafter “Burch”) is an individual residing in Calhoun, McLean County, Kentucky. Burch entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky.

18. Plaintiff Mike Murphy (hereinafter “Murphy”) is an individual residing in Utica, Kentucky. Murphy entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky. Murphy and his associated company, Murphy Farms, LLC, operate chicken growing houses in Kentucky and have entered into a poultry growing arrangement with Tyson to grow broiler chickens in Kentucky.

19. Plaintiff, Murphy Farms, LLC, (hereinafter “Murphy Farms”) is a Kentucky Limited Liability Company with its principal place of business in Utica, Kentucky. Murphy Farms entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky.

20. Plaintiff Calvin Leisure (hereinafter “Leisure”) is an individual residing in Centertown, Kentucky. Leisure entered into a poultry growing arrangement with Defendant Tyson to grow broiler chickens in Kentucky.

21. Defendant Tyson Chicken, Inc. (hereinafter “Tyson”) is a Delaware Corporation with its principal place of business and headquarters in Springdale, Arkansas. It is authorized to do business in the Commonwealth of Kentucky.

22. Tyson operates regional “complexes,” each of which is believed to be comprised of breeding houses, a hatchery, a feed mill, trucking operations, a human consumption processing plant, and/or management offices. The complex at the core of this civil action (hereinafter “Robards Complex”) is located in Robards, Kentucky, and is unique in that it also is comprised of a dog food processing plant.

23. Tyson also operates at the Robards Complex a dog food processing facility, operating under the wholly owned subsidiary River Valley Animal Foods, Inc., which processes dog food from the remains of chickens grown by Plaintiffs in this case.

24. Defendant James Gottsponer (hereinafter “Gottsponer”), at all times relevant herein, was and is an employee of Tyson acting as Live Production Manager for Tyson at the Robards Complex, and is a resident of the Commonwealth of Kentucky.

25. Defendant David Dickey (hereinafter “Dickey”), at all times relevant herein, was and is an employee of Tyson acting as Broiler Manager for Tyson at the Robards Complex, and is a resident of the Commonwealth of Kentucky.

26. Defendant David Mears (hereinafter “Mears”), at all times relevant herein, was and is an employee of Tyson acting as Complex Manager for Tyson at the Robards Complex, and is a resident of the Commonwealth of Kentucky.

27. Defendant Neil Barfield (hereinafter “Barfield”), at all times relevant herein, was and is an employee of Tyson acting as Service Technician for Tyson at the Robards Complex, and is a resident of the Commonwealth of Kentucky.

28. Defendant Jared Shelton (hereinafter “Shelton”), at all times relevant herein, was and is an employee of Tyson at the Robards Complex, and is a resident of the Commonwealth of Kentucky.

### **JURISDICTION AND VENUE**

29. This Court has original jurisdiction under 28 U.S.C. § 1331 as this action involves violations of the federal Packers and Stockyards Act of 1921.

30. This Court has supplemental jurisdiction over pendent claims arising under Kentucky law pursuant to 28 U.S.C § 1367.

31. Venue is proper because the Plaintiffs and Defendants’ relevant facility reside in this district.

## FACTS

32. This is a case whereby Tyson, and its named employees, acted illegally and unconscionably in a manner that prevented the Plaintiffs from growing chickens in a fair and profitable manner, subjecting them to agricultural servitude, akin to the abuses subjected to sharecroppers of the 1860's.

33. Tyson is the largest poultry dealer in the United States, slaughtering and shipping for consumption millions of pounds of chicken each week.

34. Tyson operates as what is known as an "integrator." It controls each and every aspect of raising chickens, slaughtering them, and selling their meat. Tyson's various chicken meat products come from broilers—chickens genetically altered to produce so much breast meat that their bones cannot properly support their body—that are born in Tyson hatcheries, from eggs laid by Tyson hens, and remain Tyson property throughout their entire lives. The broilers are grown on feed formulated and provided by Tyson, in conditions regulated by Tyson, and treated by veterinarians hired by Tyson according to Tyson's standards and rules. They are slaughtered on the date Tyson selects, in Tyson plants, where Tyson employees evaluate the birds to determine whether they are fit for human consumption. If so, they are sold based on Tyson's pre-existing contracts. If not, here at least, Tyson still sells the chicken, as part of its dog food, processed at the same plant.

35. In this system, traditional farmers, the Plaintiffs, are known as "growers." They bare all the risk. They are responsible for building and maintaining the farms on which the broilers are cared for, relying on Tyson's representations regarding its commitment to its contractors and their future earnings to take out massive loans, typically guaranteed by the United States taxpayer, for which they are personally responsible. In return, Plaintiffs are paid based on a

“tournament system,” in which all growers whose chickens are slaughtered within a given week compete with one another. The top producing growers—as solely determined by Tyson—are paid a premium and the lower ranked growers are subjected to offsetting discounts or deductions. This ensures that Tyson’s costs are consistent, but the growers can neither predict nor control their pay.

36. Tyson leverages this system and its position as the sole integrator with whom these Plaintiffs can do business to manipulate the market, defraud Plaintiffs, and dodge its contractual obligations. Tyson induced Plaintiffs to join its operation through material representations regarding their compensation and Tyson’s institutional commitment to ensure that growers receive a reasonable return on their investment. But, in fact, as Tyson knew or should have known, it has no policy or procedures in place to protect growers. Instead, it operates its business to consistently advantage itself, to the disadvantage of the growers, regularly breaching its commitments to growers regarding the type and volume of product they will be asked to produce—undermining growers’ ability to turn a profit—and manipulating its operations so that growers can neither predict nor rely upon a specific level of income. Despite Plaintiffs regularly notifying Tyson’s managers that the company was not fulfilling its promises, Tyson made no effort to carry out its commitments.

37. Tyson unilaterally decreased the number of flocks Plaintiffs were allowed to care for and selected certain growers to receive flocks comprised of less healthy chickens. Tyson failed to provide the flocks Plaintiffs were given to care for with proper feed and veterinary care, sometimes nonetheless charging Plaintiffs for services that were not provided. Tyson also forced Plaintiffs to bring to slaughter underweight and unfit birds, but then held Plaintiffs accountable for failing to deliver more meat for human consumption, thereby reducing their compensation.



Further, Tyson condemned birds that were fit for human consumption and sold birds as part of its dog food for which Plaintiffs were never compensated. Tyson scheduled slaughters so that the tournament system pitted growers with older houses against those with newer equipment, knowingly advantaging the growers with newer houses, even though the other growers were producing efficiently and, had they been placed in a different tournament, they would have received greater compensation. And Tyson wrongfully sought to compel Plaintiffs to assume yet more debt by updating their facilities irrespective of the fact that Plaintiffs were efficiently producing for Tyson.

38. In so doing, Tyson violated the Packers and Stockyards Act, breached the terms of its agreements and its obligations of good faith and fair dealing, and committed common law fraud.

39. Tyson made specific promises to Plaintiffs to induce them into entering into contractual obligations with Tyson, on which the Plaintiffs specifically relied, which turned out to be false and which Tyson knew or should have known were false at the time the promises were made. These promises include but are not limited to the following:

- a. Tyson induced certain Plaintiffs to build and invest in “superhouses”—*i.e.*, chicken houses that measure 55’ x 500’, which is larger than the typical houses built by growers—promising that these houses were better and more efficient and would be more profitable and that Tyson would deliver 35,000 chickens per flock, which never occurred. Plaintiffs relied upon these representations when obtaining financing via their banks and/or lending institutions to build these superhouses, and as a result these superhouses never reached acceptable cash flow to justify the financial obligations incurred by the growers to build them in the first place. In

reality, upon information and belief, these superhouses are not as efficient as the houses already utilized by the growers. Tyson should have been well aware of this fact, as it tracks metrics for its houses in minute detail.

- b. Tyson represented to the growers that when developing the rankings of the growers for the tournament system, condemnation would not be counted against them in formulating the rankings. The Plaintiffs relied upon these representations as being true. In reality, condemnation was indeed charged against the Plaintiffs, to their financial detriment.
- c. Tyson falsified tickets outlining how much feed the Plaintiffs were actually given. Tyson's settlement sheets also charged Plaintiffs for feed that was never actually delivered. This resulted in Plaintiffs' financial detriment.
- d. Tyson improperly and unnecessarily delayed weighing birds which resulted in reduced compensation.
- e. Tyson falsified the numbers of birds that died at the houses of the growers in an attempt to improve the Robards Complex's statistics. This caused financial detriment to the Plaintiffs. On information and belief, this conduct was undertaken to increase the pay of Tyson's Robards Complex employees. Tyson's complexes compete with one another on various statistics, including the number of birds culled from houses. On information and belief, employees of high ranking complexes receive bonuses.
- f. Tyson represented to the Plaintiffs that they would get feed that was not refurbished, that was delivered on time, and of which had sufficient fat content in it so that the chickens would eat the feed, improve their weight, and make the

growers poultry growing arrangement with Tyson a profitable one. In reality, the feed delivered by Tyson to the growers was incessantly late; was not delivered on a consistent basis; many times it was refurbished feed which is less desirable to the chickens; and the fat content was excessive which makes the feed less desirable to the birds. None of this was told to the Plaintiffs before entering into poultry growing arrangement with Tyson. Tyson knew or should have been aware of these facts as it was their policy and practice to provide refurbished food, it tracked in detail the time of deliveries and was aware that it had no system to ensure on time deliveries.

- g. After entering into the aforesaid poultry growing arrangement with Tyson, Tyson subsequently indicated that Plaintiffs would have to expend exorbitant amounts of money to “retrofit” the chicken houses to comply with chicken house specifications that changed on a whim, with no legitimate reason for the changes. Tyson indicated these mandatory upgrades and changes in chicken house specifications leading to grower additional capital investments would be necessary before Tyson would continue to do business with the growers. Indeed, Tyson threatened to withhold chicks if Plaintiffs did not agree to make these additional expenditures. This is despite the fact that Plaintiffs had relied upon the representations of Tyson that before entering into the poultry growing arrangements with Tyson that any and all subsequent changes in chicken houses specifications would be reasonable,. In reality not only were these requested changes in specifications unreasonable, they were unreasonably expensive for the growers and in violation of United States Department of Agriculture standards

thereby causing financial harm to them. Moreover, Tyson knew that it would require such modifications, as it was Tyson's policy and practice to demand such modifications to ensure that the growers remained in debt and therefore in Tyson's service.

- h. Tyson did not apply the requirements for chicken house specifications equitably or fairly. The Plaintiffs were told before they entered into agreements with Tyson that any and all chicken house specifications would be applied across the board, and that all growers would have the same monetary obligations to assure that the specifications were achieved to Tyson's satisfaction. Plaintiffs relied on this representation because it helped ensure that they would not be encumbered with unnecessary debt. In reality, Tyson unfairly, unreasonably and arbitrarily chose and continues to choose which growers will incur the financial burden to meet these arbitrary specifications, to the financial detriment of the Plaintiffs herein. Tyson knew that its representation was false as it was Tyson's policy and practice to provide its complex discretion regarding which growers they would require to make modifications and Tyson's Robards Kentucky plant regularly exercised this discretion inconsistently.
- i. Tyson represented to the Plaintiffs that the chickens delivered pursuant to their agreements would be healthy and able to be reasonably grown to sufficient weight so as to make the venture profitable for the growers. The Plaintiffs relied upon this representation before entering into the poultry growing arrangements with Tyson. In reality, the chicks delivered to the Plaintiffs have a whole host of maladies and disease which impacts the rankings of the Plaintiffs in the tournament system, and

in turn harms them financially. Tyson knew or should have known that its representation was false as it tracks the health of the chicks and the production of growers' facilities in minute detail and thus was aware that it was providing certain growers unhealthy chicks which was harming their production.

40. Plaintiffs only agreed to join Tyson's scheme—in which growers bare all of the risk and their compensation can be manipulated by factors entirely out of their control and independent of the market—based on Tyson's representations that it would apply its system fairly and in a manner to ensure Plaintiffs a reasonable return on their investments of money, labor, and risk. Tyson's practice is to overcome growers' concerns about entering into a poultry growing arrangements with Tyson through representations regarding the company's institutional commitment to act in the growers' interests and to ensure the growers achieve certain numeric benchmarks that are indicative of particular levels of compensation.

41. Tyson made these material representations to Plaintiffs either knowing they were false or recklessly and/or without taking appropriate steps to ensure that the company would carry through on its commitments. In fact, Tyson instituted no controls to ensure that Tyson operated in the interests of growers and, instead, institutionalized a system in which the company acted only in its immediate financial interests and without regard for the consequences to growers. Tyson made the false representations to induce Plaintiffs to enter into poultry growing arrangements with Tyson and Plaintiffs did rely on those representations. And, because Tyson failed to abide by its representations, Plaintiffs were injured.

#### **Tyson's Relationship With Its Growers**

42. As with all the local growers, Plaintiffs individually entered into unconscionable adhesion growout contracts with Tyson titled Broiler Production Contract (hereinafter

“Agreement”). Pursuant to the Agreement, Tyson supplies the chicks, feed, medicine, and other necessary supplies to the grower (Plaintiffs). The growers care for the chicks for approximately 7 weeks. Growers own their farms, chicken houses and equipment, and provide labor, materials, and utilities necessary to care for the chicks. The chicken houses and equipment must originally meet Tyson’s strict requirements dealing with design plans and specifications subject to Tyson’s sole approval before a grower is accepted by Tyson. Tyson also dictates the type of veterinary care provided to the birds throughout their lives and the birds’ conditions of confinement.

43. Under the Agreement, Tyson, through complex management, is required to timely deliver as well as accurately track the delivery of grower inputs (chicks, feed, and medication) and timely remove the grown birds for processing. Tyson, through management of the complex, also is required to provide technical assistance via field technicians who regularly visit growers’ farms.

44. Upon entering into the Agreement, Tyson takes almost unrestricted power, including but not limited to, monopsony over Plaintiffs, and Plaintiffs become entangled in Tyson’s compensation scheme. Indeed, in order to enter into the Agreement, Plaintiffs were required to financially encumber their real and personal property and to convert their real property to a sole use thereby functionally depreciating said property and devaluing said property and rendering Plaintiffs as tenants totally at the mercy of Defendants. Plaintiffs’ real property has been further damaged by contaminants due to the chemicals required by the company to be used by Plaintiffs and the byproducts related to the growing of Tyson’s chickens.

45. Tyson pays growers based on a “tournament system.” In the tournament system growers, including but not limited to Plaintiffs, initially are ranked and correspondingly compensated based on an “Average Net Pound Value” at the Robards Complex. That is, Plaintiffs

are not paid based on their individual performance. Instead, Tyson uses a formula to determine the performance of all growers who brought birds to slaughter that week and depending on how they perform in light of that formula in comparison to the other growers, Tyson makes adjustment to their pay. Depending on performance on variables that factor into that formula such as “farm weight,” “farm-caused condemnation,” “livability,” “total value,” “chick value,” “feed value,” “feed conversion,” and “net pounds,” a grower will be paid vastly more or vastly less than the base pay denominator (Average Net Pound Value), per pound of broilers produced and vastly different amounts than the other growers who brought birds to slaughter that week.

46. Tyson unilaterally imposed this ranking system, which can be arbitrarily and capriciously manipulated. By ranking individual growers, including Plaintiffs, Defendants place each grower into a competitive posture against all other growers and arbitrarily penalize each less successful grower based upon criteria, some of which is never revealed, explained or discussed with Plaintiffs. which are under the total control of Defendants. While wrongfully placing Plaintiffs in competition with each other, Defendants require Plaintiffs to accept chicks which are genetically different as these chicks have varying degrees of heredities, and congenital traits such as weight gain capability, susceptibility to disease and or health issues. Furthermore, their feed is dis-similar in quantity, quality, and consistency and is often delivered inappropriately and in an untimely manner. The timing of feed delivery directly impacts feed conversion rates. Plaintiffs are further ranked against each other although they possess dissimilar facilities, equipment, and technology. Additionally, Plaintiffs receive varying degrees of technical assistance and are required to comply with management practices which are inconsistent with their fellow growers. Tyson receives the same sale price for its comparable products sold no matter the type of chicken house it was grown in, therefore the end result of said system is the imposition of an arbitrary and

capricious ranking of each Plaintiff which is designed to insure the company's ability to wrongfully control its cost of operations and maintain undue financial dominance over Plaintiffs.

47. The Agreement also places performance requirements on the grower, which include Plaintiffs. For example, a grower who settles two consecutive flocks with an "Individual Net Pound Value" of forty-hundredths of one cent or higher than the weekly variable-based-adjusted Average Net Pound Value referenced above, colloquially known as being "in the High 40," will be advised in writing that the next consecutive flock of broilers settling in the High 40 will place that grower on "Intensified Management Status."

48. If a grower, including Plaintiffs, is placed on Intensified Management Status, the Agreement provides that: (a) a meeting will be scheduled with that grower and the complex's Live Production staff to discuss specific recommendations that growers can adopt that may improve his/her performance; (b) if the complex's Live Production staff recommends in writing and that grower agrees to upgrade or invest in new equipment, he/she will be removed from Intensified Management Status immediately upon installation; (c) that grower will be removed from Intensified Management Status when two of three consecutive flocks do not settle in the High 40; (d) if, at any time while on Intensified Management Status, a grower settles in the High 40 his/her next chick placement density will be reduced by fifteen percent (15%) (with this reduction being removed if the next flock does not settle in the High 40); and (e) a grower will be subject to termination if two of three consecutive flocks of broilers settle in the High 40 while that grower is on Intensified Management Status **AND** that grower ranks in the bottom ten percent (10%) of all growers for the complex. Notwithstanding, based on the Agreement, "All settlements, records, and communications will be reviewed by the Complex Manager before the Agreement is terminated pursuant to the Performance Improvement Program." Despite these



terms being in the Agreement, the aforementioned Intensified Management Status is applied inconsistently among growers, including Plaintiffs.

49. The key variables that determine growers' scores, ranking, and ultimately their compensation under the tournament are entirely under Tyson's control and therefore subject to manipulation without detection by the growers, enabling Tyson to artificially depress a particular grower's compensation.

50. What is more, Tyson encourages this manipulation. Not only do growers compete against other growers within the same complex, but it is believed the Tyson complexes themselves compete against other complexes throughout the country. Upon information and belief, Tyson's managers and service technicians, such as the Defendants, received bonuses and other perquisites based upon the performance of their respective complexes as compared to other complexes.

51. Complex Managers, Live Production Managers, Broiler Managers and Service Technicians, such as the named Defendants, collectively dictate when chicks will be delivered to the growers' farms, including those of the Plaintiffs, how many chicks will be delivered, the quality and type of chicks that will be delivered, and when the grown birds will be removed from the growers' farms for processing.

52. The quality of the chicks provided by Tyson is influenced by a number of factors, including the age of the laying hen, breed type, sex of the chick, and the amount of time spent at the hatchery after hatching but prior to being placed on a farm. Poor chick quality causes increased mortality/decreased livability, decreased feed conversion, and increased farm-caused condemnation. Thus, chick quality significantly affects grower compensation. Tyson tracks these factors in detail. The determination of which growers receive better or worse quality chicks, are

totally within complex management's and Tyson's sole control, and with respect to Plaintiffs, as set out in detail below, have been subject to fraudulent actions.

53. Complex Managers, Live Production Managers, Broiler Managers, and Service Technicians, such as the Defendants, also collectively dictate the manner in which feed, the single most critical factor (other than water, which Tyson does not provide) in growing healthy birds is delivered to the growers' farms. This includes whether growers, including Plaintiffs receive "reclaimed feed," *i.e.*, unused, likely stale feed, collected from other growers' farms. Reclaimed feed is of a substantially decreased quality as compared to freshly milled feed, and poor feed quality results in stunted growth, malnutrition, inability to fight diseases, and high mortality, all of which significantly decrease farm profitability. These feed-delivery decisions are totally within complex management's and Tyson's sole control, and with respect to Plaintiffs, as set out in detail below, have been subject to fraudulent, deceptive, unjustly discriminatory, and negligent manipulation. Reclaimed feed is not being equitably divided among the growers. Furthermore, Tyson does not acknowledge or disclose they are providing growers with reclaimed feed.

54. Further with Tyson's and the Complex Management's sole control is the provision or withholding of necessary medications for the chicks, as well as the date on which Tyson removes the grown birds from the growers' farms for processing. These decisions affect mortality, livability, feed conversion, and farm-caused condemnation, and consequently, directly and proximately grower payout. And as set out in detail below, have been subject to fraud, deception, and negligence.

#### **Examples Of Tyson's Inducements To Growers**

55. In order to convince growers, including Plaintiffs, to join this system Tyson made material, false representations to induce growers such as Plaintiffs to enter into a poultry growing

arrangement with Tyson, particularly assurances that Tyson would not solely act to benefit its bottom line, but would take into account *all* growers needs and even absorb certain costs to ensure that growers could profit. For example, prior to entering into a poultry growing arrangement with Tyson, Plaintiff Douglas Ray Brown had a conversation with Tyson employee Steven Keys in which Keys sought to assure Brown that Tyson “take[s] care of [its] people” and thus there was no need to worry about the ways in which Tyson’s system could be used to disadvantage growers. Part of Tyson’s corporate strategy in recruiting growers is to convince the growers that Tyson’s business interests and plans align with those of the grower, so that the grower can trust and rely upon Tyson. These are representations Tyson intended growers to rely upon and Plaintiffs did rely on these representations.

56. Tyson not only sought to induce Plaintiffs to enter into a poultry growing arrangement based on representations regarding its corporate culture, but also by making specific representations regarding the amount of chickens the grower could expect to be provided and the anticipated compensation for those chickens.

57. When Plaintiff Charles Morris first entered into a poultry growing arrangement with Tyson he met with Tyson Robards Complex Manager Michael Sheets, and Robards Complex Manger David Mears who induced him to enter into a poultry growing arrangement with Tyson. In particular, Sheets and Mears represented to Morris that he would receive five and one-half flocks of birds a year and a fuel bonus throughout the duration of his arrangement. These were material representations on which Morris was expected to and did rely as they related to Morris’ ability to pay off his loans and receive a return on his investment. Further, Sheets and Mears explained that they were highlighting the fuel bonus as an example of Tyson’s philosophy to “help our farmers out,” and it was this institutional commitment to farmers that should lead a

grower like Morris to enter into a poultry growing arrangement with Tyson. Fuel is one of a grower's largest costs and that cost can vary dramatically over time both due to changes in the market and the time of year in which the grower is caring for chickens. Thus, by stating that Tyson would guarantee a fuel bonus, Tyson was seeking to convey that it would work to reduce growers' risks and ensure a certain rate of return.

58. Similarly, in seeking to induce Plaintiff Douglas Brown to build two additional "super" grow houses and enter into a poultry growing arrangement with Tyson, Tyson live production manager Steven Keys represented that Tyson would place 35,000 birds per a flock in each house. Likewise, in encouraging Plaintiffs to sign with Tyson, Tyson represented that it was seeking to have Plaintiffs grow a four pound bird that would remain with Plaintiffs for 37-38 days. Jim Gottsponer, a live production manager with Tyson recently, advised other growers Tyson was seeking to recruit, that the average pay for growers serving the Robards, Kentucky plant was \$2.47 per pound. Although Plaintiffs' ultimate compensation is determined through the tournament, because payments in the tournament are based on the number of pounds each Plaintiff delivers, representations regarding the average pay, total birds in each flock, the birds' target weight, and the time Tyson will allow the birds to spend in the growers' facilities—which is necessary to allow the birds to achieve that weight—speak to the growers' expected compensation. These were material representations on which Tyson intended and the growers did in fact rely, as they were meant to indicate Tyson would work to ensure growers received a certain level of compensation.

59. Tyson's corporate strategy, instituted from its top employees in the Robards, Kentucky plant down, was to induce Plaintiffs and other growers to enter into a poultry growing arrangement with Tyson through statements about its corporate strategy and culture and

representations regarding specific numerical measures that suggested Tyson would ensure the growers a specific level of income.

### **Examples Of Tyson's Falsehoods**

60. Tyson knew or recklessly disregarded the fact that the representations it made were false. Tyson's actual corporate strategy, policy and practices, instituted from Tyson's managers down, was not to act in the interests of growers, but to advance the company's bottom line regardless of its impact on growers, including Plaintiffs. Tyson's accepted and employed strategy is to disregard the effect a decision has on growers, implementing its corporate whim even if it undermined growers' ability to profit.

61. For example, within a year of Morris entering into a poultry growing arrangement with Tyson, Tyson discontinued the fuel bonus it had promised Morris to offset his costs and help assure Morris a certain level of income. Tyson similarly cut off a fuel bonus it had promised to Plaintiff Brown.

62. Tyson unilaterally decreased the amount of time Plaintiff were allowed to care for the birds received, reducing Plaintiffs' ability to achieve higher weights, and thereby undermining Plaintiffs' return. For several flocks, Tyson manager Ken Bartley instructed Plaintiff Dennis Clapp to reduce the target weight of his birds from the weight he had been contracted to achieve, thereby decreasing Clapp's potential compensation for those flocks.

63. On information and belief, the reduction in the birds' target weight and age is not the result of Tyson responding to changing market demands, but because Tyson had installed new equipment that allows it to add additional water weight to the birds after slaughter, for which Tyson does not have to compensate the growers and which, in fact, requires consumers to unknowingly or mistakenly pay for water instead of chicken.

64. Tyson also extended the amount of time between placing flocks with growers by four to six days, reducing the total number of chickens a grower could care for and thus his potential compensation. A Tyson employee, Jennifer Parks, informed Plaintiff Douglas Brown that Tyson made no effort to ensure that flocks were placed with growers at a consistent rate. Tyson employee Jared Shelton informed Plaintiff Keith Crabtree the same thing.

65. After this suit was filed, Tyson further extended the amount of time between flocks placed with Plaintiff Rickard.

66. Tyson also used the cover of its new pledge to produce “antibiotic free meat” to refuse to provide veterinary services to Plaintiffs. Citing its new policy, Tyson employees David Dickey, David Mears, and Jim Gottsponer refused to provide Plaintiff Dennis Clapp any medical care for his chickens, resulting in the deaths of 21,300 chickens in Clapp’s care, for which he was not compensated. Similarly, Plaintiff Calvin Leisure’s flocks have suffered considerably more deaths since Tyson has purportedly discontinued its use of prophylactic antibiotics because Tyson has not altered its other treatments for the birds or increased its efforts to ensure the birds remain healthy. There has been an across the board decrease in the livability of Plaintiffs’ flocks because Tyson is now inconsistently administering antibiotics and failing to provide the necessary staffing to ensure that all chickens are properly treated. Nonetheless, Leisure has been charged for Tyson administering antibiotics when Tyson could produce no record demonstrating that antibiotics had been provided. Other growers have received antibiotics, including prophylactic antibiotics.

67. Tyson regularly provides Plaintiffs chickens that it knows to be unhealthy or of lesser quality. As noted above, the quality of the chickens provided by Tyson is influenced by a number of factors, including the age of the laying hen, breed type, sex of the chick, and the

amount of time spent at the hatchery after hatching but prior to being placed on a farm. If chicks are not delivered on the day they are hatched, they must sit overnight in crates on the hatchery floor with no access to feed or water. The stress of sitting on the hatchery floor without feed or water significantly diminishes chick health and their subsequent performance throughout their lives on growers' farms. Determining which growers receive better or worse quality chickens is totally within complex management's and Tyson's sole control. Tyson regularly provides Plaintiffs chickens that it knows will be of lesser quality than the chicken provided to other growers against whom Plaintiffs will compete in the tournament. Plaintiffs Douglas Brown and Calvin Leisure each have multiple houses and each has received multiple flocks on the same day that are of different types of broilers, which Tyson knows will produce different amounts of meat even when cared for in the same manner and in the same conditions. Leisure has also received flocks that Tyson knows are so sickly it has preemptively prescribed antibiotics, despite Tyson's new policy to raise antibiotic free meat. Accordingly, Tyson has knowingly set up certain of Plaintiffs' houses to receive deductions under the tournament system.

68. Tyson has instructed both Plaintiffs Charles Morris and Dennis Brown that they are not allowed to cull chickens for the first seven days they are in Plaintiffs' grow houses. Culling is the process whereby growers remove chickens that will not be fit for human consumption. If growers are not allowed to cull chickens this negatively effects their scores under Tyson's tournament system as the chickens continue to consume food, but ultimately will not be able to be slaughtered for consumption, harming the grower's score for feed conversion—the amount of feed it takes to produce a useable pound of meat.

69. Tyson also fails to properly administer its feed production and delivery operation so as to provide Plaintiffs proper feed in a reasonable and responsible manner. It has allowed

Plaintiffs to run out of the feed. Plaintiff Rickard was charged for feed that was not delivered to his farm and was instead sent to the farm of Plaintiff John Pinkston, whose birds were at a different developmental stage and thus were meant to receive a different type of feed. Plaintiffs Murphy and Rickard measured the feed that they received and discovered that Tyson was charging them for feed that had never been delivered. Both Plaintiff Murphy and Plaintiff Rickard met with Tyson's management, including Ken Bartley, about these errors, but they did not notice any improvement in Tyson's practices. Plaintiff Murphy later uncovered that he was charged for the wrong amount of feed, which he reported to Tyson's dispatcher, and Plaintiff Rickard discovered that he was charged for four loads of feed that were sent to another grower. Both Plaintiffs Rickard and Plaintiff Brown also received tainted, moldy feed, which Plaintiff Rickard reported to Tyson.

70. On information and belief, when birds are shipped to the human consumption processing plant Tyson has allowed those birds to sit in the trucks without food or water, for unreasonable amounts of time thereby reducing their weight and growers' ultimate compensation.

71. When birds are eventually processed through Tyson's human consumption processing plant they are condemned without a basis. Despite requests from growers such as Plaintiff Charles Morris and assurances from Tyson supervisor David Mears that Tyson would increase the number of employees inspecting birds delivered to the plant, this has never occurred. As a result, Tyson had an insufficient number of employees to ensure the quality of all of the meat traveling through its processing line—which Tyson refuses to slow down—so employees condemned birds at random. This harms all growers, including Plaintiffs, doubly. The growers are not compensated for the weight of the condemned birds, and the number of condemned birds negatively affects their ranking in the tournament system, reducing their compensation for the



remaining birds. Tyson's own veterinarian has said that a greater number of birds are fit for human consumption.

72. Tyson nonetheless sells the condemned birds for profit, without compensating Plaintiffs. A conveyor belt carries condemned birds from Tyson's human consumption processing plant in Robards, Kentucky to Tyson's dog food processing plant in the same complex. There Tyson turns the condemned birds into dog food, for which it reaps the profits. Tyson's growers, including Plaintiffs, are never compensated for Tyson using the meat from the chickens that the growers cared for.

73. Tyson's consistent culture, practice, and policy is to disregard the interests of growers. Indeed, contrary to its representations to Plaintiffs, Tyson's true and singular focus is to externalize costs that might be borne by Tyson so that they are absorbed by the growers. It makes no effort to ensure that its system operates fairly or that growers receive a reasonable return on their investment.

74. Consistent with this, each of the facts and figures that Tyson cited to in order to demonstrate Plaintiffs' likely returns was false. Tyson never placed 35,000 birds in Plaintiff Douglas Brown's "super" houses, but at most placed around 32,000 birds. Tyson employee Jim Gottsponer admitted to Plaintiff William Rickard that the average pay to growers at the Robards, Kentucky plant is not \$2.47 per a pound, but much less. As Gottsponer explained to Plaintiff Rickard, Tyson has artificially inflated that figure by including money Tyson paid growers to fix damage Tyson caused to growers' facilities and other remuneration that could not be considered compensation for the growers' birds.

75. As Tyson employee Jim Gottsponer put it to Plaintiff William Richard, Tyson's philosophy is that "if [growers are] dumb enough to build chicken houses, let them build them" and face the consequences.

### **Tyson's Manipulation Of Mortality Sheets**

76. Beyond the false representations listed above, Defendants also mislead and manipulated Plaintiffs through their use of mortality sheets.

77. When chicks are initially delivered to a farm, a Tyson employee places in each chicken house what is known as a "mortality sheet" which lists the number of chicks placed in that chicken house, and provides blank spaces for growers to tally the number of chicks that die or are culled each day from that growing-house (for whatever reason) that might render them unacceptable to Tyson, and also lists the hen flock from which the chicks were born.

78. Each day the chickens are on the grower's farm, the grower tallies the number of them that are found dead in each growing-house, as well as the number that are culled, and pencils in those figures on the mortality sheet for that growing-house.

79. Simply put, the initial number of chicks placed on each farm less the dead/culled chicks, as well as the amount of feed used on the growers' farm during the flock growth, are utilized to calculate payout variables relevant to the tournament system, such as livability and feed conversion after the grown birds are removed from growers' farms for processing.

80. The calculations under each tournament are computed or "settled" by Tyson and are included on a settlement statement that is mailed to all the growers, including Plaintiffs, for the complex and contains a ranking of each competing grower based on the variables, *inter alia*, listed above.

81. However, only the name of the one grower receiving the settlement statement is

listed on each settlement statement, thereby concealing from the grower and the Plaintiffs information of who she/he is competing against. The competing growers' mortality sheets previously were mailed out along with their respective settlement statements and checks, but at certain times the complex discontinued the inclusion of the mortality sheets in the mailings. Upon information and belief, the aforementioned was done to conceal Tyson's fraudulent activity.

82. Further, after settlements are finalized there are growers that receive "hidden payments," which are discriminatory and/or unequally distributed. Tyson requests that growers sign a non-disclosure agreement so other growers cannot become aware of their fraudulent acts.

83. Moreover, beginning in 2014, Tyson's management at the Robards Complex ordered that, for certain growers, hatchery supervisors replace dead chickens at no cost to those growers and allow those growers to stop recording the number of dead chickens they removed from their facilities. The intent and direct effect of such scheme was to cover up Tyson's true mortality rates, which benefited Complex employees in their competition against other complexes. The Tyson management at the Robards complex were misrepresenting the accurate mortality rates thereby artificially inflating its operational efficiency as it competed with other complexes throughout the country.

84. This also adversely affected Plaintiffs' compensation. For the growers who received the benefit of this scheme, it gave the fraudulent appearance that a lower number of chicks were dying or had become unprocessable thereby leading to higher compensation. The altered mortality rates factor into, *inter alia*, livability and feed conversion variables. For those Plaintiffs who competed against the benefited growers in the tournament, it comparatively lowered compensation for Plaintiffs.

### **Tyson's Condemnation Scheme**

85. Defendants further devised and set into motion a scheme whereby they would reduce the compensation of Plaintiffs by using a "condemnation scheme", thereby increasing Tyson's profits at the expense of and to the severe detriment of Plaintiffs. Specifically Plaintiffs are charged for the birds condemned at the processing plant, even though the birds belong to Tyson, by taking the number of condemned birds and multiplying that by the average weight of the non-condemned birds and then subtracting that amount from the growers pay weight, thereby directly reducing the growers' compensation. Tyson did this regardless of the fact that birds are largely condemned because they are sickly and therefore typically weigh much less than the average non-condemned bird slaughtered for consumption. Plaintiffs are also charged again for the "farm condemned" birds even though the birds belong to Tyson and are sent to the growers with congenital defects as well as varying poultry diseases thereby reducing the growers' compensation. Finally, Defendants send the condemned birds to a rendering plant or dog food plant and Tyson receives compensation for said birds which is not shared with Plaintiffs. This scheme is based upon factors which are under the total control of Defendants and which were never properly revealed, explained or discussed with each Plaintiff. The end result of said system is the imposition of the arbitrary and capricious costs against each Plaintiff which is designed to ensure Tyson's ability to wrongfully control its cost of operations and maintain undue financial dominance over Plaintiffs.

### **Tyson's Failure To Control Disease**

86. Control of a disease is extremely important within the poultry industry.

87. Although it is believed to be Tyson's policy to dispose or destroy the infected poultry carcasses to control the spread of a disease, on several occasions the carcasses were

instead transported from the complexes in the U.S. to the Robards Complex for processing into dog food at the facility owned by Tyson's assumed name corporation, River Valley Animal Foods.

88. The Robards Complex's dog food processing plant is attached to the human consumption processing plant.

89. The Robards Complex's human consumption processing plant and dog food processing plant share a common driveway (or "port"). In order to reach the dog food processing plant, the trucks carrying the diseased carcasses travel up the same port as employees and truck drivers traveling to and from the human consumption processing plant.

90. By trucking in the diseased carcasses from other poultry complexes, Tyson exposes the Robards Complex to various diseases on a daily basis.

91. Tyson employees and trucks travel from the human consumption processing plant to growers' farms and, in doing so, subject Plaintiffs' farms to disease.

92. Due to the negligent management practices of Tyson, scores of thousands of chickens have died on Plaintiffs' farms.

93. Many of the diseased birds not dying on-farm must be culled and discarded at the human consumption processing plant.

94. As for the birds not dying on Plaintiffs' farms from the various diseases caused by Tyson's negligence, much of their meat is either rendered unusable or cost-ineffective to process for human consumption, but said meat is used in the Robards Complex dog food processing facility, thereby creating income for Tyson which is not shared with Plaintiffs.

95. Plaintiffs have realized and continue to realize significantly decreased earnings and increased costs due to the death and unsuitability of the diseased birds caused by Tyson's

negligence.

### **Tyson's Breaches, Unconscionable And Fraudulent Conduct**

96. Defendants collectively have engaged in a pattern of conduct that is unfair, unjustly discriminatory, unreasonably preferential or advantageous, unreasonably prejudicial, unreasonably disadvantageous, fraudulent, manipulative, deceptive, and negligent in order to impede and hinder Plaintiffs ability to efficiently and profitably care for broilers, and at the same time conceal their malicious and outrageous conduct by harassing and blaming Plaintiffs to maximize the appearance of the complex's performance.

97. Defendants knowingly made materially false representations, both written and oral, about future income, costs, expenses, company policies and working relationships to Plaintiffs and/or concealed related material facts and information from Plaintiffs, including but not limited to the "tournament system" and the inequities related thereto to accomplish this inducement, knowing that Plaintiffs were ignorant as to the falsity of these representations and that they would accept them as the truth and rely thereon to their detriment and proximate injury.

98. Tyson has utilized and continues to utilize its power to ensure that Plaintiffs consistently received artificially low rankings and, thus, decreased compensation.

99. During the course of their relationship, prior thereto, and continuing to the present, Defendants have materially misled Plaintiffs as to the financial prospects of growing poultry for Tyson. Tyson was aware that said profit projections were false and misleading when made and have been guilty of malice and bad faith in making said material misrepresentations.

100. During the course of their relationship and continuing to the present, Defendants have knowingly and willfully furnished to Plaintiffs substandard food for the chicks which has

resulted in a financial loss to Plaintiffs. Said actions were done knowingly and willfully and constitute bad faith on the part of said Defendants.

101. Defendants have deliberately and in bad faith taken certain wrongful actions regarding the weighing of the chickens, delivery of feed, and requiring of “updates” and modifications, which have resulted in financial loss to Plaintiffs.

102. As outlined herein, Defendants devised and implemented a scheme to defraud Plaintiffs in that they extended advantages to other competing growers which were not extended to Plaintiffs, and directly disadvantaged Plaintiffs, including providing replacement chicks to competing growers without reflecting these facts on the settlement statements for the respective competitive rounds and manipulating catch-out dates to the advantage of Plaintiffs’ competitor at Plaintiffs’ detriment.

103. Defendants made false representations of material fact, including the compensation due Plaintiffs and the performance figures utilized in calculating same. Defendants knew that the figures were false as it was Defendants who directly falsified the figures or engaged in conduct which lead to the figures being inaccurate and then covered up said conduct.

104. Defendants intended for Plaintiffs to believe their mortalities incurred, ratings, rankings, and compensation due were not what they actually were and that the payments they received were accurate.

105. Defendants then used their power to retaliate against Plaintiffs. In fact, David Dickey, Tyson Broiler Manager, has begun to use intimidating and retaliatory tactics against some of the Defendants since the initial state court action was filed in this matter. He has wrongfully entered upon the property of some of the Plaintiffs and forced them to allow him to take pictures of their property without Plaintiffs’ counsel being present. This does not happen in

the normal course of Tyson's business relationship with these Plaintiffs.

106. Plaintiffs relied on the false representations in determining the compensation due to them from Defendants under the Agreement.

107. As a direct, proximate and foreseeable cause of the fraudulent scheme as aforesaid, Plaintiffs have incurred damages in that their compensation under their Agreement has been significantly and consistently diminished.

### **Tyson's Conduct Is Likely To Harm Competition**

108. Tyson is a "live poultry dealer" within the meaning of the Packers and Stockyards Act, as its poultry is obtained in commerce, it ships or sells poultry in commerce, or poultry products from its poultry are shipped or sold in commerce and it is "engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another." 7 U.S.C. § 182(10).

109. Tyson occupies an anticompetitive position within the relevant market or markets for poultry grower services—the services provided by Plaintiffs. It has engaged in numerous acts that, individually and as a course or courses of conduct, have and are likely to harm competition. It lacks a legitimate business reason for these acts.

### ***Defining A Monopsony For Poultry Grower Services***

110. A monopsony is a condition in a geographic market in which there is one buyer for a particular product.

111. The poultry market is vertically integrated, where integrators control both the products, *i.e.*, the chickens, and the means by which to bring those products to market, *i.e.*, the feed mills, veterinary care, trucking operations, slaughterhouses, processing facilities, and sales



contracts. As a result, it is exceptionally expensive and logistically complex for new integrators to emerge and compete with existing integrators.

112. Integrators purchase growing services from poultry broiler growers. That is, they purchase the services from growers that take in integrators' birds, care for them in growers' facilities for a period and then the birds are picked by the integrator and returned to the integrator's facilities for slaughter, processing, and sale. Where there is only one poultry integrator within a geographic market to whom a poultry grower can sell his services, that integrator has a monopsony.

113. Where there are multiple poultry integrators within a geographic market, if one poultry integrator dominates or controls the geographic market for poultry grower services, that integrator has a monopsony.

114. The relevant geographic market is defined by the maximum distance that a grower's facilities can be from an integrator's facilities beyond which an integrator will not enter into a poultry growing arrangement with a grower.

115. Growers are required to purchase a number of services from integrators, such as feed and veterinary care. Integrators also ship the chicks to growers and later transport the grown chickens back to the integrator's facilities for slaughter and processing. As a result, integrators have determined that they will only enter into a poultry growing arrangement with growers within a certain radius of their facilities.

116. Typically, integrators will only enter into a poultry growing arrangement with growers who are within approximately 50 miles of the integrator's facilities.

117. Indeed, Tyson's website has stated: "Tyson Foods frequently receives inquiries from people interested in becoming a contract chicken grower. In general, to be considered you

must have existing chicken housing or property that could be used to build housing, within an approximate 50-to-60 mile radius of the feed mills that serve our poultry processing complexes. This is because of the efficiencies needed for delivering feed, chicks and providing service.”

118. However, the maximum distance a grower’s facilities can be from an integrator’s facilities can vary. Factors impacting the geographic market include those that will affect the cost of transporting birds and materials to and from the integrator, such as appropriate highways, byways, and terrain.

***A Monopsony Is Likely To Harm Competition***

119. The presence of a monopsony is likely to harm competition.

120. Without competition for the services the monopsonist is buying, the monopsonist lowers the price it is willing to pay for those services.

121. The presence of a monopsony is likely to harm competition among the providers of the services the monopsonist is purchasing. It is likely to drive certain service providers out of business. It is likely to discourage the remaining providers from diversifying, innovating, and achieving their optimal outputs in terms of quantity, quality, and variety of goods because the monopsonist is not paying those providers based on market forces and thus those providers will not respond to or seek to test the market.

122. The presence of a monopsony is also likely to harm consumers. By using its power to drive some providers out of business or to make payments that are not based on market forces, a monopsonist is likely to generate less-than-optimal outputs, which will result in higher consumer prices, reduced quality consumer goods, fewer consumer options, or all three.

123. In a vertically integrated market—even without driving any service providers out of the market or making non-market-based payments to service providers—monopsony power also allows the monopsonist to drive up consumer prices, independent of market forces. Because, in a vertically integrated market, the monopsonist is the only supplier and purchaser with whom the service provider can contract, it can unilaterally decrease the service providers’ production, or decrease the quality that reaches the market, creating scarcity that increases consumer prices.

124. Because of its anticompetitive market power, where there are increases in demand, the monopsonist need not pass along any benefits from the increased demand to the service provider, discouraging the service provider from responding to the market and working to remedy deficiencies in supply.

***Integrators Need Not Be Monopsonies To Be Anticompetitive And Be Likely To Harm Competition***

125. The market for grower services can be anticompetitive even if the integrator does not fit within the standard definition of a monopsony. Indeed, even in markets where there could be competition for poultry growing services, but a fraction, potentially less than one percent, of growers within that market will switch between integrators.

126. Integrators collude with one another, including through a database known as “Agra-Stats,” which provides information, including grower pay, broken down by each integrator’s complex.

127. This means that integrators occupying the same geographic market need not and will not compete for growers’ contracts in the manner that would occur in a properly functioning market. On information and belief, integrators construct their grower agreements based on the information provided in the “Agra-Stats” system to avoid competition for grower services.

128. On information and belief, this collusion is undertaken with the intent to harm competition for grower services.

129. Moreover, integrators set up barriers for growers to enter and exit their relationships with integrators. Integrators require unnecessary, unique modifications to a grower's facilities before they will enter into a poultry growing arrangement with a grower. Prior to entering into a poultry growing arrangement with a new grower, integrators will also require that grower to take out additional loans to fund their operation, regardless of the state of the growers' facilities or the growers' financial status. Before entering into a poultry growing arrangement with a new grower, integrators will further require that the grower "upgrade" his facilities, regardless of the state of the grower's facilities or the facilities' ability to meet the integrator's needs and compete with other growers.

130. Integrators collude with one another to establish these barriers to entry and exit. On information and belief, they work with one another to ensure that these requirements function as barriers to entry and exit, discouraging growers from moving between integrators. For instance, on information and belief, they collude to ensure that each integrator requires new growers to take out additional loans and "update" the growers' facilities before the integrator will enter into a poultry growing arrangement with that grower.

131. In this manner, integrators establish non-market forces that will keep growers from moving between integrators even where multiple integrators occupy the same geographic market.

132. On information and belief, the collusion to establish barriers to entry and exist is undertaken with intent to harm competition for grower services.

133. Thus, even within markets for grower services that have the potential to be competitive, integrators possess anticompetitive power likely to harm competition that is

analogous to the power an integrator has if it is a monopsony. This allows the integrator to manipulate the markets in the manners described above. It need not pay growers based on market forces, which is likely to drive some competitive growers from the market, discourage innovation, diversification, and optimal outputs, and is also likely to drive up consumer prices and reduce the quality of goods and consumers' options. Further, because the market is vertically integrated the integrator can unilaterally create scarcity and prevent the grower from responding to the market's demands.

***Tyson Occupies An Anticompetitive Position Vis-A-Vie Plaintiffs***

134. Tyson, including its Robards Complex, is a poultry integrator that purchases grower services.

135. Plaintiffs are sellers of grower services for poultry broilers.

136. Tyson, including its Robards Complex, colludes with other integrators, including through participating in the data sharing system "Agra-Stats" that provides, among other information, its grower pay broken down by complex.

137. Tyson, including its Robards Complex, sets up barriers for growers to enter and exit their relationship with Tyson. Prior to entering into a poultry growing arrangement with a new grower, Tyson, including its Robards Complex, demands that growers make unnecessary, unique modifications to their facilities in order to grow for Tyson. Tyson, including its Robards Complex, demands that growers take out additional loans to fund their operations, regardless of the state of the growers' facilities or the grower's financial status. Before entering into a poultry growing arrangement with a new grower, Tyson, including its Robards Complex, will further require that grower to "upgrade" his facilities, regardless of the state of the grower's facilities or the facilities' ability to meet Tyson's needs and compete with other growers.

138. Tyson's Robards Complex functions as a monopsony.

139. Plaintiffs are required to purchase a number of services from Tyson, including feed and veterinary care. Tyson also ships to Plaintiffs the chickens they will care for and later transports them back to Tyson's facilities for slaughter and processing. As a result, Tyson will only enter into a poultry growing arrangement with growers within a certain radius of its Robards Complex.

140. Some Plaintiffs live too far from any poultry integrator besides Tyson's Robards Complex to enter into a poultry growing arrangement with another integrator. At least some of these Plaintiffs have contacted the nearest alternative poultry integrator and been informed that their facilities are too far from the integrator's facilities for the integrator to enter into a poultry growing arrangement with these Plaintiffs.

141. Other Plaintiffs live within the vicinity of another poultry integrator, Perdue Farms, Inc. ("Perdue") but, throughout the period these Plaintiffs have grown for Tyson, that Perdue facility has not provided competition for grower services. Throughout most of period these Plaintiffs have grown for Tyson, that Perdue facility has refused to enter into any new poultry growing arrangements with growers. When that Perdue facility did enter into new poultry growing arrangements with growers, it entered into a small number of arrangements with growers who possessed only certain types of growing facilities. Tyson's Robards Complex, entered into significantly more poultry growing arrangements with growers who possessed all types of growing facilities. Therefore, for Plaintiffs living within the geographic market in which Perdue could compete with Tyson's Robards Complex, Tyson's Robards Complex was either the only purchaser of grower services or dominated and controlled the market for grower services. Thus, it was a monopsony within that market.

***Tyson's Conduct, Individually And As Courses Of Conduct, Has And Will Likely Harm Competition***

142. Tyson's conduct in the market or markets covered by its Robards Complex has harmed, and likely will harm competition. Indeed, each of the acts described below, both individually and as a course or courses of conduct has and likely will harm competition.

143. Tyson's acts in the market or markets covered by its Robards Complex enable and likely cause the arbitrary manipulation of prices and payments to growers and subverts normal market forces for consumers of Tyson's goods and sellers of grower services alike.

144. Tyson had no legitimate business purpose for this conduct.

145. Tyson's conduct in the market or markets covered by its Robards Complex includes:

- a. Tyson unilaterally decreased the volume of chicken meat certain Plaintiffs produced. It did so by: (i) decreasing the frequency with which Tyson provided flocks, (ii) decreasing the number of chickens in each flock, and (iii) decreasing the duration of time Plaintiffs were allowed to care for the flocks (which decreases the birds' weight). Tyson did this arbitrarily, differentiating between growers caring for the same chickens at the same time. It did this even after it represented to certain Plaintiffs that it would provide them flocks more frequently, with higher numbers of chickens, which would be allowed to remain in Plaintiffs' care for longer so that they could grow to a higher weight. After this lawsuit was filed, Tyson further reduced the frequency with which it placed chickens with certain Plaintiffs. Tyson also decreased the number of flocks certain Plaintiffs received even as it entered into a poultry growing arrangements with other growers to care for additional flocks. And Tyson reduced the weight that certain Plaintiffs' birds

were allowed to achieve even as it allowed other growers' birds to achieve Plaintiffs' original target weight and higher weights.

- b. Tyson arbitrarily condemned birds fit for human consumption. Despite assurances to certain Plaintiffs that Tyson would increase the staff of its human consumption processing plant serving the Robards Complex, who evaluate and condemn growers' birds, Tyson failed to hire the necessary employees or slow down its processing line, which resulted in employees condemning birds without determining whether they were fit for consumption.
- c. Tyson failed to provide certain Plaintiffs promised services that were needed to care for Tyson's chickens. This includes: (i) that Tyson failed to provide promised veterinary care. For example, Tyson informed certain Plaintiffs that it was implementing its decision to produce "antibiotic free meat" by declining to provide certain of Plaintiffs' flocks any medically necessary antibiotics, thereby forcing Plaintiffs to absorb larger than normal or necessary deaths among their flocks, including, in one instance, the deaths of more than 21,000 birds. Tyson did this even while providing other growers' flock antibiotics, including prophylactic antibiotics; and (ii) that Tyson failed to provide certain Plaintiffs appropriate, quality feed on a timely basis. For instance, it delivered feed to certain Plaintiffs that was of the wrong kind for the life-stage of Plaintiffs' chickens; provided feed to certain Plaintiffs that it knew or should have known was of a lesser quality than the quality of the feed it provided other growers at the same time; and failed to provide enough feed to certain Plaintiffs, preventing Plaintiffs' chickens from being fed up to the time of slaughter, reducing the birds' weight at slaughter.



- d. Tyson failed to provide certain Plaintiffs chickens of the same quality as other growers. The quality of the chickens provided to growers is influenced by a number of factors, including the age of the laying hen, breed type, sex of the chick, and the amount of time spent at the hatchery after hatching but prior to being placed on a farm. If chickens are not delivered to the growers on the day they are hatched, they must sit overnight in crates on the hatchery floor with no access to feed or water. The stress of sitting on the hatchery floor without feed or water significantly diminishes chicken health and the chicken's subsequent performance. Tyson provided certain Plaintiffs flocks of chickens that based on these factors it knew or should have known were less likely to thrive. Tyson did this at the same time it was providing other growers chickens that it knew or should have known were more likely to thrive. Tyson did this despite tracking the relevant factors to determine the quality of the chickens growers were provided and despite the fact that it caused growers who were otherwise efficiently caring for Tyson's birds to be unable to grow a successful flock.
- e. Tyson also failed to properly record certain Plaintiffs' production and costs. It charged certain Plaintiffs for feed that was never delivered and services that were never provided and under-recorded the weight of certain Plaintiffs' birds. It further failed to weigh Plaintiffs' birds upon arrival at the Robards Complex allowing the birds to sit without feed and lose weight.
- f. Tyson also threatened to force certain Plaintiffs from the market. Despite arrangements and agreements that obligated Tyson to continue to do business with Plaintiffs, and despite the fact that Plaintiffs were continuing to successfully

produce chicken for Tyson—some ranking near the top of Tyson’s tournament system—Tyson demanded that Plaintiffs immediately make upgrades and alterations to their facilities or face being denied future agreements with Tyson.

- g. Tyson also directed how Plaintiffs, are to “design” and “improve” their growing facilities. Tyson set requirements that were unnecessary for efficient production and do not reflect normal market forces.
- h. Tyson threatened to withhold chicks from certain Plaintiffs if they did not expend additional resources on their growing facilities, even though these expenditures were not required by Plaintiffs’ agreements and Plaintiffs were performing efficiently.
- i. Tyson sought to intimidate certain Plaintiffs for exercising their rights under the agreement and law. For example, after this suit was filed Tyson Broiler Manager, David Dicky, entered onto some of Plaintiffs’ property without their consent, taking photos of their facilities.

146. In light of Tyson’s anticompetitive market power, each of these acts, individually and as a course or courses of conduct, is likely to harm competition among growers and keep growers from bringing their optimal output to market.

147. Tyson’s acts, individually and as a course or courses of conduct, reduced Plaintiffs’ compensation by arbitrarily decreasing their production, increasing their costs, and/or harming their ranking in the tournament system. Plaintiffs were subject to non-market forces, which discouraged them from responding to market demands through innovation, diversification and/or adjusting the size, quality, and variety of their output. This, in turn, means that Plaintiffs were not competing with one another and other growers as they would in a competitive market

and is likely to drive growers who would otherwise be competitive from the market. It also is likely to drive up consumer prices, reduce the quality of consumer good, decrease consumer options, or all three. Indeed, Tyson's decision to reduce Plaintiffs' output without a legitimate business reason indicates that its conduct is likely to create scarcity independent of market forces.

148. Tyson's threats and demands that Plaintiffs expend unnecessary resources on their facilities are similarly likely to harm competition. These threats and demands exerted non-market forces on Plaintiffs, which keeps Plaintiffs from properly adjusting the volume, quality, and variety of their output in response to the true state of the market. This means that Plaintiffs were not competing with one another and other growers as they would in a competitive market. This is likely to drive growers who would otherwise be competitive from the market. It also means that the market was not dictating the quantity, quality, and variety of goods provided to consumers, creating scarcity that was not motivated by demand. Indeed, Tyson's stated willingness to force some of its most efficient producers from the market without a legitimate business reason demonstrates that its conduct is likely to prevent full competition among growers and keep the optimal goods from reaching consumers.

149. Because of Tyson's conduct Plaintiffs who were more efficient than other growers received less compensation.

150. Because of Tyson's conduct, certain Plaintiffs chose not to build additional houses, decreasing competition among growers and supply.

151. Because of Tyson's conduct, at least one Plaintiff left the market, decreasing competition along growers and supply.

152. Indeed, Tyson's conduct violated numerous regulations promulgated by the United States Department of Agriculture under the Packers and Stockyards Act. These regulations

prohibit acts that the Executive has established are likely to harm competition. Thus, Tyson's conduct was *per se* likely to harm competition.

153. Specifically, Tyson violated 9 C.F.R § 201.216, which establishes criteria for when an integrator can demand a grower make additional capital investments. Tyson's arbitrary demands that Plaintiffs make additional investments and improvements to their facilities violated this provision. Thus, Tyson's conduct was *per se* likely to harm competition.

154. Tyson also violated 9 C.F.R § 201.82, which required Tyson to transport chickens promptly after loading and weigh chickens immediately upon arrival at the processing plant. However, Tyson allowed Plaintiffs' flocks to sit in cages on trucks for long periods of time without feed prior to weighing, during which time the chickens would lose weight and incur additional damages. This reduced Plaintiffs' compensation under the tournament system. Thus, Tyson's conduct was *per se* likely to harm competition.

***Tyson's Tournament Payment System Is Also Likely To Harm Competition***

155. In addition to its conduct against growers, Tyson's tournament payment system, which it uses to pay growers of its Robards Complex, is also likely to harm competition and subvert normal market forces. *See* ¶ 45-46 (describing tournament system and Tyson's formula for payment under the system).

156. In the tournament payment system, Tyson, not the market, sets the formula that determines payment.

157. Based on this formula, growers who care for the same type and kind of birds, bringing them to market at the same time, receive different rates of pay per pound.

158. Moreover, growers, who produce less meat, reducing supply and thereby driving up prices, receive a lower price per a pound, despite the fact that the market indicates they should receive a higher price per a pound.

159. Yet, Tysons's costs are relatively constant. Because the tournament provides for offsetting bonuses and deductions from a pre-set level of compensation, regardless of the market or the production of the growers, Tyson typically pays the same average amount per a pound.

160. In the tournament, growers also only compete against a subset of houses. As a result, Plaintiffs were docked pay under the tournament system even if they were actually more efficient than other growers competing in the market at the same time. Growers also received bonuses even if they were not more efficient than other growers in the market.

161. Accordingly, the United States Department of Agriculture has recognized that a tournament payment system "create[s] a reasonable likelihood of competitive injury" whether or not the integrator is a monopsonist or occupies an anticompetitive position within the market. *See, e.g., Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Conduct in Violation of the Act*, 75 Fed. Reg. 35338 (2010).

162. The tournament system subjects growers to non-market forces, which discouraged them from responding to market demands through innovation, diversification and/or adjusting the size, quality, and variety of their output. This also means that growers are not competing with one another as they would in a competitive market and is likely to drive growers who would otherwise be competitive from the market. Accordingly, the tournament system is likely to drive up consumer prices, reduce the quality of consumer good, decrease consumer options, or all three.

163. Further, beyond the typical features of the tournament system that are likely to harm competition, at its Robards Complex, Tyson implemented its tournament system in a

manner that is likely to subvert the market and harm competition. Tyson compelled growers' facilities to compete against one another even if they were provided chickens of different quality and different quality services from Tyson—*e.g.*, they were provided different levels of veterinary care or quality of feed. As a result, even assuming Tyson's formula was the proper way to measure the growers' production, the tournament did not properly compensate the growers based on their efficiencies, preventing true competition among the growers and preventing them from responding to market forces.

164. Tyson also arbitrarily instructed certain Plaintiffs to take actions that it knew or should have known would harm them in the tournament system. Tyson instructed certain Plaintiffs that they were not allowed to cull chickens for the first seven days the chickens were in the growers' houses. Culling is the process whereby growers remove chickens that will not be fit for human consumption. Tyson's complexes compete with one another on certain metrics. The least number of birds culled is one of those metrics. However, if growers are not allowed to cull chickens unfit for human consumption this negatively effects their scores under Tyson's tournament system, as the chickens continue to consume food, but ultimately will not be slaughtered for consumption, harming the grower's score for feed conversion—the amount of feed it takes to produce a useable pound of meat. In this manner, Tyson arbitrarily reduced Plaintiffs' compensation. This is likely to harm competition among growers and keep them from responding to market forces for the reasons described above.

**COUNT I: VIOLATIONS OF THE FEDERAL PACKERS AND STOCKYARDS  
ACT OF 1921, AS AMENDED**

165. Plaintiffs re-allege each and every allegation as set forth above, and hereby incorporate same by reference, as if all were set forth fully herein.

166. Defendants, by the above acts and omissions, are in violation of the Packers and Stockyards Act of 1921, 7 U.S.C. § 181 *et seq.*

167. Defendants have engaged in or used unfair practices or devices in violations of 7 U.S.C. § 192(a).

168. Defendants have engaged in or used unjustly discriminatory, or deceptive practices or devices in violation of 7 U.S.C. § 192(a).

169. Defendants have made or given undue or unreasonable preferences or advantages to a person or locality or subjected a person or locality to undue or unreasonable prejudice or disadvantage in violations of 7 U.S.C. § 192(b).

170. Defendants have violated 7 U.S.C. § 192(g) by conspiring, acting in combine, agreeing, or arranging with each other or with any other person to do, or aid or abet the doing of acts and omissions made unlawful by 7 U.S.C. § 192(a) & (b).

171. Plaintiffs have been injured and damaged by this conduct. The unlawful conduct under the Packers and Stockyards Act caused Plaintiffs' injuries and damage. Plaintiffs are entitled to recover for their injuries and damages. *See* 7 U.S.C. § 209(a). Plaintiffs are also entitled to attorneys' fees and costs to pursue these claims to the full extent allowed by the law.

## **COUNT II: BREACH OF CONTRACT**

172. Plaintiffs re-allege each and every allegation as set forth above, and hereby incorporate same by reference, as if all were set forth fully herein.

173. Plaintiffs individually entered into Agreements with Tyson under which Plaintiffs are entitled to compensation based on performance variables such as grower cost, weight, feed conversion and livability.

174. In breach of the aforesaid Agreements, Defendant Tyson has not accurately

calculated Plaintiffs' bird weights, feed conversions, and livability.

175. Plaintiffs are owed the amounts they should have received had the weights, feed conversions, and livability of their chickens been accurately calculated, as noted in this Complaint.

176. Additionally, Defendant Tyson agreed to pay to Plaintiffs certain incentives, which incentives were never provided, despite Plaintiffs faithfully performing all the conditions, covenants and promises on their part to be performed.

177. Plaintiffs have incurred damages in that they have not been compensated the amounts actually due per the Agreement, constituting breach of contract.

**COUNT III: UNCONSCIONABILITY OF BROILER PRODUCTION CONTRACT**

178. Plaintiffs re-allege each and every allegation as set forth above, and hereby incorporate same by reference, as if all were set forth fully herein.

179. The Agreement as noted herein, solely drafted by Tyson with superior bargaining strength, is unconscionable and a contract of adhesion for the reasons noted in this Complaint, and for the additional reason that the terms are oppressive and require Plaintiffs to perform actions that cannot, under the tournament system arbitrarily and capriciously applied by Tyson, be reasonably satisfied.

180. Being that the Agreement is unconscionable, relevant provisions of the Agreement cannot be enforced against Plaintiffs.

**COUNT IV: BREACH OF THE IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING**

181. Plaintiffs re-allege each and every allegation as set forth above, and hereby incorporate same by reference, as if all were set forth fully herein.

182. Kentucky law implies a covenant of good faith and fair dealing in all contracts.



183. As a result of the actions of Defendants, each of them have violated the implied covenant of good faith and fair dealing contained in the agreements as against Plaintiffs herein, and as a result thereof, Plaintiffs are entitled to their damages incurred.

184. The foregoing actions were intentional, willful and wanton, and done toward Plaintiffs with sufficient fraud, malice, and oppression to warrant the imposition of punitive damages against Defendants.

**COUNT V: FRAUD**

185. Plaintiffs re-allege each and every allegation as set forth above, and hereby incorporate same by reference, as if all were set forth fully herein.

186. Defendants' fraudulent concealment of material information and material, false representations to Plaintiffs were fraudulent and were made for the purpose of deceiving Plaintiffs.

187. Defendants knew that the representations made were false and Defendants intended for Plaintiffs to rely on these false representations. Defendants intentionally, fraudulently or through gross negligence concealed material information for the purpose of deceiving Plaintiffs.

188. Plaintiffs reasonably relied on these false statements or were subjected to fraudulent concealment and were direct victims of the fraud.

189. Plaintiffs are entitled to their damages incurred.

190. The foregoing actions were intentional, willful and wanton, and done toward Plaintiffs with sufficient fraud, malice, and oppression to warrant the imposition of punitive damages against Defendants.

191. Defendants did intentionally, maliciously, willfully, and wantonly, intend to defraud Plaintiffs, by both material false misrepresentations and fraudulent concealment of material facts, and did in fact so defraud Plaintiffs. The fraudulent acts by Defendants and Plaintiffs' reliance upon Defendants' fraudulent representations were both the actual and proximate cause of injury to Plaintiffs.

192. The intentional and/or grossly negligent and fraudulent acts and omissions of Defendants and the fraud itself constitute a willful, wanton, intentional and malicious disregard for the rights of Plaintiffs, their property, both real and personal, and the rights and property, both real and personal, of the public at large who are dependent upon Defendants to maintain a basic modicum of business standards and societal morality in their dealings with poultry growers. Had Defendants conducted themselves in good faith using ordinary care and even the most basic standards of care and social mores, the injuries suffered by Plaintiffs would not have occurred. The combined effect of Defendants' total disregard for the rights of Plaintiffs, their gross negligence and their outrageously fraudulent and dishonest behavior entitles Plaintiffs to recover from Defendants herein an award of compensatory, consequential and punitive damages.

#### **COUNT VII: RATIFICATION**

193. Plaintiffs re-allege each and every allegation as set forth above, and hereby incorporate same by reference, as if all were set forth fully herein.

194. Defendants Tyson, Gottsponer, Dickey, Mears, Barfield, and Shelton were actively involved in the management, control and operation of the chicken houses owned by Plaintiffs, and were aware of the issues complained of in this Complaint, and they were aware that such issues were not being abated.

195. Defendants Tyson, Gottsponer, Dickey, Mears, Barfield, and Shelton's decision not to abate these safety issues were done with the intent to benefit Defendant Tyson's financial interests.

196. Defendants Tyson, Gottsponer, Dickey, Mears, Barfield, and Shelton's decision not to abate or rectify these issues served to ratify and condone the conduct of the Tyson employees and agents in disregarding the legal duties owed to Plaintiffs.

197. Pursuant to KRS 411.184(3), Defendants Tyson, Gottsponer, Dickey, Mears, Barfield, and Shelton's acts and omissions as described in this Complaint were tantamount to a ratification, condoning, or anticipation of the acts of any and all of Defendant Tyson's agents and employees' acts or omissions relevant to the issues complained of in this Complaint such that punitive damages may be assessed against Defendants Tyson, Gottsponer, Dickey, Mears, Barfield, and Shelton for such acts of Tyson's agents and employees.

### **DAMAGES**

198. As a direct result of the wrongful actions of Defendants, Plaintiffs have suffered monetary damages. Plaintiffs have suffered property damage, both real and personal, and other economic and non-economic losses as a result of the illegal activities engaged in by Defendants. Because the wrongful actions of Defendants are the actual, proximate and direct cause of this unfortunate circumstance, Plaintiffs are entitled to recover from Defendants herein an award of damages for their losses sustained.

199. As a result of the intentional, deliberate, and wrongful actions of Defendants, as mentioned herein, Plaintiffs were caused to suffer damages. Defendant Tyson meanwhile amassed huge sums of profits as a result of the aforesaid wrongful practices. Defendants are liable to Plaintiffs for actual damages, as well as all attorneys fees, expenses and costs herein.

200. The misrepresentations, omissions, and concealment of material facts and other wrongful acts by Defendants were intentional and deliberate acts, and were part of a willful scheme or course of conduct whereby Defendants sought to and did induce Plaintiffs, on the basis of and in reliance upon fraudulent misrepresentations and concealment. Employing said scheme Tyson amassed large sums of profits and gain. Said acts on the part of Defendants were done knowingly and intentionally and constitute intentional, willful and fraudulent conduct rendering Defendants liable for punitive, as well as actual damages. It is within the power of this Court to award punitive damages and Defendants should be assessed with punitive damages in this action in an amount sufficient to deter like conduct in the future, and to serve as an example and deter others from engaging in similar fraudulent conduct.

201. Defendants Tyson, Gottsponer, Dickey, Mears, Barfield and Shelton's acts and omissions, policies, practices, and conduct as described in this Complaint rose to the level of wanton, indifferent and/or reckless disregard for the well-being of Plaintiffs, and such conduct constituted gross negligence and gross indifference to the welfare of Plaintiffs, entitling Plaintiffs to punitive damages.

202. Defendants Tyson, Gottsponer, Dickey, Mears, Barfield, Shelton's acts and omissions, policies, practices, and conduct evidence such oppression, fraud, malice, gross negligence, gross indifference and wanton and reckless disregard for Plaintiffs as follows:

- a. Defendants Tyson, Gottsponer, Dickey, Mears, Barfield, Shelton intentionally, willfully, and wantonly elected to disregard their legal duties of good faith and fair dealing with Plaintiffs;

- b. Defendants Tyson, Gottsponer, Dickey, Mears, Barfield, and Shelton made intentional misrepresentations to Plaintiffs that Plaintiffs relied upon in good faith which caused severe financial hardship to Plaintiffs herein;
- c. Defendants Tyson, Gottsponer, Dickey, Mears, Barfield, and Shelton have demonstrated a pattern of conduct by failing to enforce their own policies and procedures, as well state laws providing for the fair and equitable treatment of Plaintiffs herein;
- d. Defendants Tyson, Gottsponer, Dickey, Mears, Barfield, and Shelton intentionally, willfully and wantonly misrepresented or failed to disclose material facts regarding the manipulation of the tournament system as outlined herein to the financial detriment of Plaintiffs.

203. Defendants Tyson, Gottsponer, Dickey, Mears, Barfield, and Shelton's acts and their omissions, policies, practices, and conduct as described in this Complaint were such that their conduct toward Plaintiffs was done with oppression, fraud or malice entitling Plaintiffs to a recovery from these Defendants for punitive damages under the dictates of K.R.S. §§ 411.130(1) and 411.145.

**JURY DEMAND**

Plaintiffs demand trial by jury on issues herein pleaded triable to a jury.

**WHEREFORE**, Plaintiffs pray as follows:

- A. For trial by jury;
- B. For judgment against Defendants, jointly and severally, in an amount that is fair and reasonable to compensate Plaintiffs for their damages;
- C. For punitive damages;

- D. For their costs herein expended;
- E. For pre and post judgment interest; and
- F. For any and all other just relief to which Plaintiffs may be entitled.

On this the 30<sup>th</sup> day of July, 2015.

Respectfully submitted,

By: /s/ John C. Whitfield  
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