IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel, W.A. DREW EDMONDSON, in his capacity as ATTORNEY GENERAL OF THE STATE OF OKLAHOMA, et al., Plaintiffs, v. TYSON FOODS, INC., et al., Defendants.	Case No. 4:05-CV-329-TCK-SAJ

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO STAY THE TIME FOR THIRD-PARTY DEFENDANTS TO ANSWER THE THIRD-PARTY COMPLAINTS

COME NOW Defendants, Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; Cobb-Vantress, Inc.; Cal-Maine Foods, Inc.; Cal-Maine Farms, Inc.; George's, Inc.; George's Farms, Inc.; Peterson Farms, Inc.; Simmons Foods, Inc.; Willow Brook Foods, Inc.; Cargill, Inc.; and Cargill Turkey Production, LLC (collectively, the "Defendants"), and, by and through their attorneys, hereby submit the following *Response in Opposition to Plaintiffs State of Oklahoma's Motion to Stay the Time for Third-Party Defendants to Answer the Third-Party Complaints Pending Resolution of the State's Motion to Stay or Sever and/or Strike or Dismiss the Claims Asserted in the Third-Party Complaints* (the "Motion to Stay") (Docket No. 248).

I. INTRODUCTION

Plaintiffs have asked this Court to halt the ongoing process of Third Party Defendants responding to the two Third Party Complaints (Docket Nos. 80 and 82) pending resolution of Plaintiffs' *Motion to Stay or Sever and/or Strike or Dismiss the Claims Asserted in the Third Party Complaints*. ("Motion to Sever") (Docket No. 247). This Court should deny the Plaintiffs' Motion to Stay because: (1) if granted, it would unnecessarily disrupt the existing deadlines set

by this Court; (2) staying the Third Party process at this juncture will impede the Parties' ability to develop an efficient and effective case management plan; and (3) a stay would be inequitable to those Third Party Defendants who have already answered the Third Party Complaint.

II. ARGUMENT AND AUTHORITIES

A. The Motion to Stay is Largely Moot as the Third Party Defendants' Answers Are Likely to be Filed by the Time this Court Rules Upon Plaintiffs' Motion to Sever.

Plaintiffs have asked this Court to stay the time for the Third Party Defendants to answer the Third Party Complaints "pending resolution" of the Motion to Sever.[1] *See* Motion to Stay at 3. As grounds for its Motion to Stay, Plaintiffs assert that if they are successful in their Motion to Sever, "there will be, at a minimum, no need for the third-party defendants to presently answer, and likely there will be no need for the third-party defendants to ever answer." Motion to Stay at ¶ 6.

For the reasons stated in *Defendants' Response in Opposition to Plaintiff's Motion to Sever and/or Dismiss the Claims Asserted in the Third Party Complaints* (Docket No. 495) and in *Cargill's Response and Objection to Plaintiff's Motion to Sever or Stay Third Party Claims* (Docket No. 494), the Plaintiffs' Motion to Sever is without merit. Additionally, and as a practical matter, as of the morning of May 1, 2006, approximately 32 Third Party Defendants

[1] Both the Motion to Stay and Motion to Sever should receive discounted consideration due to being filed in an untimely manner relative to the events at issue in such motions. The Motion to Sever was filed approximately six months after the filing of the Third Party Complaints. Similarly, Plaintiffs' Motion to Stay was filed long after the Court-sanctioned process of serving the Third Party Complaints had already commenced. Defendants have expended considerable time and resources on serving the Third Party Complaints. As a practical matter, there is no easy method to communicate with Third Party Defendants that have been served but who have not appeared, answered, or otherwise pled. Such practicalities militate in favor of continuing the ongoing Third Party Defendant process. Should this Court decide otherwise, it should require Plaintiffs to shoulder the burden of communicating the stay in answer deadline to Third Party Defendants that have not yet appeared, answered, or otherwise pled.

have answered, and 72 Third Party Defendants have requested extensions of their respective answer deadlines, and are required to answer or otherwise plead between now and May 11, 2006.

Pursuant to the Court's March 20, 2006 Order (Docket No. 234), Defendants currently must complete service on the Third Party Defendants by May 20, 2006. Allowing for the 20-day answer period provided by FED. R. CIV. P. 12(a)(1)(A), the very latest (assuming no further extensions) that Third Party Defendants would have to answer or otherwise plead would be on or about June 9, 2006. With the filing of this *Response*, Plaintiffs have until May 19, 2006 to file replies in support of their Motion to Stay and their Motion to Sever. However, even upon the filing of Plaintiffs' reply in support of the Motion to Sever, those issues may not yet be ripe for decision because the Plaintiffs have requested oral argument on the matter, *see id.* at 1, which request the Defendants have not opposed. Response to Motion to Sever, at 1. Therefore, even if the Court's schedule permits it to hear oral argument from the Parties soon after the completion of briefing on the Motion to Sever, it is still possible, even likely, that the Third Party answer process will have been completed by the time the Court rules upon the Motion to Sever.

B. Staying the Time for Third Party Defendants to Answer the Third Party Complaints is Contrary to Well-Established Judicial Procedures for Effective Case Management.

As more fully set forth in *Defendants/Third Party Plaintiffs' Motion for Miscellaneous Relief – Request for Establishment of Procedure for Entry of Case Management Order* (Docket No. 425), the Third Party Defendants are necessary to any effort to develop an effective case management plan for this litigation. As a general matter, efficient case management is enhanced by the early institution of a case management order that is comprehensive both in terms of the parties and issues to be resolved. *See* MANUAL FOR COMPLEX LITIGATION, FOURTH (2004) at § 34.21.

If the time for the Third Party Defendants to answer the Third Party Complaints is stayed pending resolution of the Motion to Sever, efforts to develop a case management plan will likely move forward with the Plaintiffs, Defendants, and only <u>some</u> of the Third Party Defendants. Therefore, this Court should deny Plaintiffs' Motion to Stay because halting the Third Party Answers will deny some Third Party Defendants a voice in developing a case management plan which will very likely be imposed upon them. Moreover, proceeding with a case management plan without all of the necessary parties is inefficient because it is likely to require significantly amended case management orders later, when all of the Third Party Defendants file their answers.

C. Staying the Time for Certain Third Party Defendants to Answer the Third Party Complaints is Inequitable To Those Third Party Defendants Who Have Already Filed an Answer.

As of the morning of May 1, 2006, thirty-two Third Party Defendants have filed Answers. Seventy-two more Third Party Defendants will be answering or otherwise pleading between now and May 11, 2006, and a total of 144 of 160 Third Party Defendants have been

served. As such, it would be inequitable to those Third Party Defendants that have, or shortly will, answer or otherwise plead, to stay the answer deadline for a subset of Third Party Defendants. Efficiency, strong case management, and fundamental fairness among the Third Party Defendants militate strongly in favor of requiring all Third Party Defendants that have been amenable to service to appear, answer, or otherwise plead, and not derailing a Third Party process this Court has sanctioned.

III. CONCLUSION

For the reasons stated herein, this Court should deny Plaintiffs' Motion to Stay.

Respectfully submitted,

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I hereby certify that on this 1st day of May, 2006, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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