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Poultry Processors Agree to Pay \$85 Million to Resolve Allegations of Wage Fixing by DOJ

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After a string of losses by the Department of Justice Antitrust Division (the "Division") in no-poach and wage fixing litigations, including a wage-fixing antitrust case in the physical therapy industry in April, the acquittal of DaVita and its chief executive for alleged no-poach agreements, and the failure by DOJ to convict poultry industry executives for price-fixing three consecutive times, the Division continues to bring enforcement actions challenging this type of conduct.

The Division's most recent enforcement action involves a consent agreement to resolve allegations that data consulting firm, Webber, Meng, Sahl and Company ("WMS"), and its president, G. Jonathan Meng, as well as three poultry processors, Cargill Inc., Cargill Meat Solutions Corporation, Sanderson Farms Inc. and Wayne Farms LLC, conspired to exchange information about wages and benefits for poultry processing plant workers in violation of Section 1 of the Sherman Act which prohibits agreements in restraint of trade.

The proposed consent decree resolves the Division's concerns and would: (1) ban WMS from providing surveys or any other services that facilitate the sharing of competitively sensitive information in any industry; (2) ban Jonathan Meng, WMS's President, from providing similar services in his individual capacity; (3) prohibit Cargill, Sanderson Farms and Wayne Farms from sharing competitively sensitive information about poultry processing plant workers' compensation; (4) require a court-appointed compliance monitor who, for the next decade, will ensure the companies compliance with the terms of the proposed decree; (5) permit the Antitrust Division to inspect the processors' facilities and interview their employees to ensure compliance with the consent decree; and (6) require the companies to commit to pay \$84.8 million, collectively, in restitution to poultry processing plant workers who were harmed by the information exchange conspiracy.



While DOJ challenged the poultry processors conduct as a civil antitrust violation, wage fixing can also be challenged as a criminal violation of the Sherman Act and carry with it significant penalties and jail time for executives. The consent reaffirms DOJ's commitment to continue challenging wage fixing and no poach agreements.

The DOJ also continues to file statements of interest in wage fixing and no poach cases. On July 15, DOJ filed a statement of interest in Curtis Markson et al v. CRST International, Inc. et al, C.D. Cal., no 5:17-cv-01261, a private antitrust lawsuit brought by truckers alleging an illegal no-poach agreement amongst several transportation companies. The DOJ's statement of interest states that no-poach agreements should be analyzed as a per se violation of the Sherman Act if the plaintiffs can prove the agreement existed.

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