

ENTERED

December 19, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARINA VENTURES LLC,

Plaintiff,

VS.

AGRI STATS, INC., *et al.*,

Defendants.

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CIVIL ACTION NO. 4:23-CV-2685

ORDER TRANSFERRING CASE

Before the Court is Defendants’ motion to transfer this case to the Northern District of Illinois. The Court has reviewed the parties’ briefing, the rest of the record in this case, the documents in related cases cited by the parties in their briefing, and the applicable law. Defendants’ motion (Dkt. 64) is **GRANTED**.

The plaintiff in this case, Carina Ventures LLC (“Carina Ventures”), alleges that the defendants—various turkey processors, a benchmarking consulting firm, and a subsidiary of the consulting firm—colluded to fix prices in the turkey industry. (Dkt. 112 at pp. 4–12). Defendants contend that this case substantially overlaps with an earlier-filed antitrust lawsuit that is pending in the Northern District of Illinois and involves allegations of price-fixing by the same turkey processors and the same benchmarking consulting firm. (Dkt. 64 at pp. 4–7). The Illinois case, styled *In re Turkey Antitrust Litigation* and assigned case number 1:19-CV-8318, is a consolidated action containing two putative class actions (case numbers 1:19-CV-8318 and 1:20-CV-2295) and three direct actions (case numbers 1:21-

CV-4131, 1:21-CV-6600, and 1:23-CV-4404). Defendants further contend that the substantial overlap between this case and *In re Turkey Antitrust Litigation* counsels transfer of this case to the Northern District of Illinois under the first-to-file doctrine. (Dkt. 64 at pp. 12–14).

The Court agrees with Defendants. “The Fifth Circuit adheres to the general rule that the court in which an action is first filed is the appropriate court to determine whether subsequently filed cases involving substantially similar issues should proceed.” *Save Power Ltd. v. Syntek Finance Corp.*, 121 F.3d 947, 950 (5th Cir. 1997). The crucial inquiry is one of “substantial overlap;” if two cases overlap on the substantive issues, the cases should be consolidated in the “jurisdiction first seized of the issues.” *Id.* (quotation marks omitted). The first-to-file rule does not require that the cases be identical. *Id.*

“In deciding if a substantial overlap exists, [the Fifth Circuit] has looked at factors such as whether ‘the core issue was the same’ or if ‘much of the proof adduced would likely be identical.’” *International Fidelity Insurance Co. v. Sweet Little Mexico Corp.*, 665 F.3d 671, 678 (5th Cir. 2011) (ellipses omitted). “Where the overlap between two suits is less than complete, the judgment is made case by case, based on such factors as the extent of overlap, the likelihood of conflict, the comparative advantage and the interest of each forum in resolving the dispute.” *Id.* (quotation marks omitted). In considering these factors, the district court must “exercise care to avoid interference with [other courts’] affairs as the concern manifestly is to avoid the waste of duplication, to avoid rulings which may

trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result.” *Id.* (quotation marks and brackets omitted).

This case substantially overlaps with *In re Turkey Antitrust Litigation*. Carina Ventures is proceeding in this case as an assignee of Sysco Corporation (“Sysco”), and all parties agree that Sysco was (and Carina Ventures is) a member of one of the putative classes whose actions were consolidated into *In re Turkey Antitrust Litigation*. (Dkt. 64 at p. 7; Dkt. 103 at p. 10). In fact, the assignment agreement between Carina Ventures and Sysco specifically refers to this case, which was one of the assets covered by the agreement, as:

(iv) an opt-out direct action to be filed in *Olean Wholesale Grocery Cooperative v. Agri Stats, Inc.*, 19-cv-8318 (N.D. Ill.) (turkey Claims); and

Dkt. 64-1 at p. 9.

Furthermore, by all indications, the core issues in the two cases are the same, and much of the proof adduced in the two cases would likely be identical.

The Court finds Carina Ventures’s attempts to distinguish this case from *In re Turkey Antitrust Litigation* unconvincing. Carina Ventures notes that: (1) it is not a party to any of the cases in *In re Turkey Antitrust Litigation*; (2) it has sued Express Markets, Inc. (“Express Markets”) and four Tyson entities (collectively “Tyson”), who either are no longer or never were parties to any of the cases in *In re Turkey Antitrust Litigation*; and (3)

its allegations of wrongdoing are more thorough—with, for example, a longer period of alleged wrongdoing and a more expansive definition of “turkey”—than the allegations made in the cases comprising *In re Turkey Antitrust Litigation*. Carina Ventures exaggerates both the scope and the effect of the differences that it highlights; the question is not whether the two actions are identical, but whether they substantially overlap. They do.

And some of the differences are not really differences. Take the additional defendants to whom Carina Ventures points. Express Markets is a subsidiary of the benchmarking consulting firm that all of the plaintiffs in all of these cases (including Carina Ventures) contend is the linchpin of the price-fixing conspiracy, and it is discussed in pleadings in *In re Turkey Antitrust Litigation*. See Northern District of Illinois case number 1:19-CV-8318 at docket entry 713, pages 12, 21, 40. For its part, Tyson actually was sued in *In re Turkey Antitrust Litigation* and simply settled some of the claims against it. In any event, “[c]omplete identity of parties is not required for dismissal or transfer of a case filed subsequently to a substantially related action.” *Save Power*, 121 F.3d at 951; *see also West Gulf Maritime Association v. ILA Deep Sea Local 24*, 751 F.2d 721, 731 n.5 (5th Cir. 1985) (cited in *Save Power*) (noting that incomplete identity of parties does not mandate that two “essentially identical” actions remain pending simultaneously where complete relief was nevertheless available in one forum and the missing parties probably could be made parties to the action in that forum).

The Court concludes that this case substantially overlaps with the consolidated *In re Turkey Antitrust Litigation* action that is pending in the Northern District of Illinois. Accordingly, Defendants' motion to transfer this case to the Northern District of Illinois (Dkt. 64) is **GRANTED**. This case is hereby **TRANSFERRED** to the United States District Court for the Northern District of Illinois, Eastern Division.

SIGNED at Houston, Texas on December 15, 2023.



GEORGE C. HANKS, JR.
UNITED STATES DISTRICT JUDGE