

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO
Judge Raymond P. Moore

Criminal Action No. 1:21-cr-00168-RM

UNITED STATES OF AMERICA,

Plaintiff,

v.

**1. NORMAN W. FRIES, INC. d/b/a CLAXTON POULTRY FARMS,
2. KOCH FOODS, INC.,**

Defendants.

**UNITED STATES' UNOPPOSED MOTION TO DISMISS THE SOLE COUNT
WITH PREJUDICE AS TO ALL DEFENDANTS**

The United States respectfully moves, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, to dismiss Count 1 of the Superseding Indictment, ECF No. 30, and Count 1 of the Indictment, ECF No. 1, with prejudice as to all Defendants in this case. In support of the Motion, the United States states as follows:

1. On May 19, 2021, a grand jury in the District of Colorado returned an indictment charging Norman W. Fries, Inc, d/b/a Claxton Poultry Farms (“Claxton Poultry”) with one count of conspiracy to restrain trade in violation of 15 U.S.C. § 1. ECF No. 1. On July 28, 2021, a grand jury in the District of Colorado returned a superseding indictment adding charges against Koch Foods, Inc. (“Koch Foods”). ECF No. 30.

2. In an effort to conserve the resources of the Court, the parties, and the

public, the United States hereby moves to dismiss Count 1—the sole count—as to Defendants Claxton Poultry and Koch Foods.

3. Although leave of court is required to dismiss charges under Fed. R. Crim. P. 48(a), courts are “generally required to grant a prosecutor’s Rule 48(a) motion to dismiss unless dismissal is clearly contrary to manifest public interest.” *United States v. Romero*, 360 F.3d 1248, 1251 (10th Cir. 2004) (quoting *United States v. Carrigan*, 778 F.2d 1454, 1463 (10th Cir. 1985) (citations and internal quotation omitted)). The requirement that the Government obtain leave of court is intended to protect criminal defendants from prosecutorial harassment and allows courts to consider the “public interest, fair administration of criminal justice, and preservation of judicial integrity.” *United States v. Strayer*, 846 F.2d 1262, 1265 (10th Cir. 1988). Dismissal of Defendants Claxton Poultry and Koch Foods is not contrary to manifest public interest; it will permit the United States to promote the fair administration of criminal justice and allow for the conservation of this Court’s time and resources.

5. Counsel for the United States has conferred with counsel for Defendants Claxton Poultry and Koch Foods, who do not oppose this motion.

Respectfully submitted this 15th day of September 2022.

By: /s/ Jill Rogowski
Jill Rogowski
Sara Clingan
Brittany McClure
Rebecca Ryan

Trial Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on this September 15, 2022, I electronically filed the foregoing **MOTION TO DISMISS** with the Clerk of Court using the CM/ECF system which will send notification of such filing to all parties of record.

By: /s/ Jill Rogowski
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Brittany McClure
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