UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	MASTER FILE NO. 12-md-02311
In Re: Wire Harness Systems	HON. MARIANNE O. BATTANI
THIS DOCUMENT RELATES TO:	14-14451
Truck and Equipment Dealership Actions	14-00107

OPINION AND ORDER GRANTING MOTION TO DISMISS TRUCK AND EQUIPMENT DEALERSHIP FIRST AMENDED CLASS ACTION COMPLAINT

Before the Court is Defendant Fujikura Automotive America LLC's (FAA) Motion to Dismiss Truck and Equipment Dealership First Amended Class Action Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6), or in the Alternative, Pursuant to Federal Rule of Civil Procedure 56 (Doc. No. 69 in 14-14451). The Court heard oral argument on October 6, 2015, and at the conclusion of the hearing took this matter under advisement. For the reasons that follow, the motion is **GRANTED**.

I. FACTUAL ALLEGATIONS

Trucks and Equipment Dealership Plaintiffs ("TED Plaintiffs") filed their Amended Complaint in May 2015, "on behalf of themselves" and all other similarly situated dealers of medium-duty (Class 4, 5, 6, & 7) trucks and "heavy-duty (Class 8) trucks,

buses, commercial vehicles (excluding automobiles, light trucks, vans, sports utility vehicles, and/or similar motor vehicles sold by automobile dealers), construction equipment, mining equipment, agricultural equipment, railway vehicles, and other similar vehicles" (collectively, "Trucks and Equipment"). (Doc. No. 64, Am. Compl. at ¶ 235). They allege that Defendants, the largest suppliers of Vehicle Wire Harness Systems ("VWHS") globally and in the United States conspired to fix prices from at least as early as January 1, 1999, until the present (Doc. No. 64 at ¶¶ 1, 2). Vehicle Wire Harness Systems act as the central nervous system of vehicles; they "direct and control electronic components, wiring, and circuit boards in a vehicle," and include "vehicle wire harnesses, speed sensor wire assemblies, vehicle electrical wiring, lead wire assemblies, cable bond, vehicle wiring connectors, vehicle wiring terminals, electronic control units, fuse boxes, relay boxes, junction blocks, high voltage wiring, and power distributors." (Id. at ¶ 3).

According to TED Plaintiffs, the alleged conspiracy targeted many Original Equipment Manufacturers ("OEMs"), including Toyota, Honda, Ford, Chrysler, Mitsubishi Motors, Subaru, Fuji Heavy Industries ("FHI"), Isuzu, and Nissan, that manufacture and sell Trucks and/or Equipment directly or through subsidiaries or affiliated companies. (Id. at ¶ 18). Many of the defendant companies under investigation in the automobile component parts cases also manufacture and sell parts for Trucks and Equipment; (id. at ¶ 17); many of the OEMs involved in the automobile WHS conspiracy also manufacture and "sell Trucks and/or Equipment directly or through subsidiaries or affiliated companies;" (id. at ¶¶ 18, 91, 230); and many of Defendants' employees responsible for negotiating the prices and terms for parts,

including Vehicle Wire Harnesses, were involved in sales to Truck and Equipment manufacturers as well as automobile manufacturers (id. at ¶¶ 95, 231).

In their amended complaint, TED Plaintiffs advance specific allegations regarding FAA, a Delaware company headquartered in Novi, Michigan. (Id. at ¶ 51). According to TED Plaintiffs, FAA "is a subsidiary of and wholly owned and/or controlled by its parent, Defendant Fujikura Ltd ("F-Co"), and "[a]t all times during the Class Period, its activities in the United States were under the control and direction of its Japanese parent." (Id.) FAA "manufactured, marketed and/or sold Vehicle Wire Harness Systems that were purchased throughout the United States, including in this district, during the Class Period." (Id. at ¶ 51). In addition, TED Plaintiffs allege that "Fujikura" (which is identified as FAA and F-Co) "sold Vehicle Wire Harness Systems for Trucks and Equipment through a joint venture entity known as AFL Automotive LP ("AFL"). AFL is a "global industry leader and full-service supplier of complete electrical distribution systems and integrated material solutions for commercial vehicles, including Class 4-8 trucks and buses." (Id. at ¶ 53).

After the Japan Fair Trade Commission investigated F-Co, it "issued Cease and Desist orders against" F-Co and others with regard to wire harnesses and related products. (Id. at ¶ 139). F-Co subsequently pleaded guilty "to participating in the conspiracy to fix prices, rig bids, and allocate supply with regard to Vehicle Wire Harness Systems, between January 2006 and February 2010," and paid a $20 million fine. (Id. at ¶ 169-171). According to TED Plaintiffs, in its plea agreement, F-Co identifies FAA as the entity through which it effectuated the conspiracy.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) allows district courts to dismiss a complaint that fails "to state a claim upon which relief can be granted." To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6), the plaintiff must show that his complaint alleges facts which, if proven, would entitle him to relief. First Am. Title Co. v. DeVaugh, 480 F.3d 438, 443 (6th Cir. 2007). "A complaint must contain either direct or inferential allegations with respect to all material elements necessary to sustain a recovery under some viable legal theory." Weiner v. Klais & Co., 108 F.3d 86, 88 (6th Cir. 1997).

In Twombly, the Supreme Court considered the pleading requirements needed to withstand a motion to dismiss relative to a section 1 Sherman Act claim. It held that the complaint must contain enough factual matter to "plausibly suggest" an agreement:

> Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. And, of course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.

550 U.S. at 556.

When reviewing a motion to dismiss, the Court "must construe the complaint in the light most favorable to the plaintiff, accept all factual allegations as true, and determine whether the complaint contains enough fact to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). Although the federal procedural rules do not require that the facts alleged in the complaint be detailed, "'a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief'

requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do.' " Twombly, 550 U.S. at 555; Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.").

Rule 12(d) provides that "[i]f, on a motion under Rule 12(b)(6). . .matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d). If the motion is converted, the court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as matter of law." Fed. R. Civ. P. 56(a). The court must view the evidence in the light most favorable to the nonmoving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970).

III. ANALYSIS

Before addressing the merits of the motion, the Court must decide which standard of review to employ. FAA submitted materials outside the pleadings, which are not referenced in the pleadings, for the Court's review, including declarations, correspondence, corporate documents, and discovery materials. Defendants' submission of materials outside the pleadings does not automatically convert the motion to one for summary judgment. Pueschel v. United States, 369 F.3d 345, 353 n. 3 (4th Cir. 2004) (citing cases). This Court has "complete discretion" as to whether to consider materials outside the pleadings. 5A Wright & Miller, Federal Practice and Procedure, § 1366 (2004). Here, the Court finds the materials provided to the Court facilitate the

disposition of the dispute because the declarations and exhibits attached to FAA's motion show that it did not manufacture, sell, or market Vehicle Wire Harness Systems, as defined in the amended complaint, for installation in Trucks and Equipment. Because the Court has considered the materials it must convert the motion to one for summary judgment.

FAA offers the declarations of Norikazu Sato, Timothy Orem, and Daniel Alexander to demonstrate that FAA did not manufacture, market or sell any Vehicle Wire Harness Systems used in Trucks and Equipment. Sato, the General Manager, Legal Section of F-Co, asserts that F-Co has never manufactured or sold any Vehicle Wire Harness Systems for any Trucks and Equipment as defined by the TED Plaintiffs, either itself of through any United States subsidiary. (Doc. No. 69, Ex. A at ¶ 14). Alexander, who is the Vice President of Sales and Marketing for FAA, confirms that FAA has never sold VWHS for installation in Trucks and Equipment. (Doc. No. 69, Ex. C). According to Orem, the Vice President of Finance and Accounting for FAA, American Fujikura Ltd., which does not manufacture or sell wire harness products (see Doc. No. 69 at Ex. B; Doc. No. 79, Ex. A.) owns FAA, and FAA has never manufactured or sold any VWHS for any of the Trucks and Equipment. (Doc. No. 69, Ex. B; Doc. No. 79, Ex. Ex. A).

In addition, the declarations contradict TED Plaintiffs' allegation in Paragraph 53 of the amended complaint that FAA sold VWHS for Trucks and Equipment through a joint venture know as AFL Automotive LP ("AFL"). (Doc. No. 64 at ¶ 53). AFL was not a joint venture with FAA; FAA did not even exist when AFL was formed. (Alexander Decl. at ¶¶ 6, 11; Ex. D and attachments). AFL was formed in 2002, four years before

FAA began operating as a business in 2006. (Id.) FAA never sold anything through AFL Automotive LP. (Id. at ¶¶ 12, 13). The declarations are supported by the joint venture formation and dissolution agreements. The declarations and documents squarely contradict Paragraph 53 of the amended complaint because they demonstrate that FAA did not begin to operate until 2006 whereas the joint venture dissolved in 2005.

TED Plaintiffs have failed to submit any evidence controverting the corporate documents or the declarations. Consequently, there is no genuine dispute as to FAA's lack of involvement in the antitrust conspiracy advanced in the amended complaint.

Lastly, the Court considers TED Plaintiffs' request for more discovery. TED Plaintiffs complain that FAA has not responded substantively to interrogatories and document requests regarding Trucks and Equipment. TED Plaintiffs believe that discovery will reveal information needed to challenge the affidavits. The Court disagrees.

TED Plaintiffs had a reasonable opportunity to confirm from transactional data and documents that FAA did not sell Vehicle Wire Harness Systems for Trucks and Equipment itself or through AFL Automotive LP. TED Plaintiffs received FAA's and F-Co.'s transactional data on March 30, 2015; yet, TED Plaintiffs have provided no evidence of sales by FAA before 2006. TED Plaintiffs have provided no evidence to show sales to Trucks and Equipment OEMs. TED Plaintiffs concede that they have received discovery from all defendants--FAA and other defendants have produced over two million pages of documents.

In sum, there has been no evidence presented to the Court challenging FAA's declarations concerning the joint venture, its history with F-Co, FAA's founding after the dissolution of the joint venture, the scope of its business, or identity of its customers. The evidence presented to the Court confirms that FAA did not manufacture or sell wire harnesses to be installed in Trucks and Equipment. (See Satu Decl. at ¶ 14; Orem Decl. at ¶ 8; Alexander Decl. at ¶¶ 20, 21). There is no basis for authorizing additional discovery.

IV. CONCLUSION

For the reasons discussed above, the Court **GRANTS** the motion to dismiss FAA.

IT IS SO ORDERED.

Date: December 30, 2015

s/Marianne O. Battani
MARIANNE O. BATTANI
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail to the non-ECF participants on December 30, 2015.

s/ Kay Doaks
Case Manager