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 Cases	HON. MARIANNE O. BATTANI
THIS DOCUMENT RELATES TO: All Truck and Equipment Dealer Actions	14-14451 14-00107

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' COLLECTIVE MOTION TO DISMISS THE TRUCK AND EQUIPMENT DEALERSHIP CLASS ACTION COMPLAINT

Before the Court is Defendants' Collective Motion to Dismiss the Truck and Equipment Dealership Class Action Complaint (Doc. No. 28). 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 in part and DENIED in part**.

I. INTRODUCTION

After the United States Judicial Panel on Multidistrict Litigation ("Judicial Panel" or "Panel") transferred actions sharing "factual questions arising out of an alleged conspiracy to inflate, fix, raise, maintain, or artificially stabilize prices of automotive wire

harness systems" to the Eastern District of Michigan, (12-md-02311, Doc. No. 2), in February 2012, the scope and extent of alleged antitrust conspiratorial conduct in the automotive component parts industry grew significantly. In June 2012, the Judicial Panel expanded MDL No. 2311 to include alleged conspiracies to fix the prices of three additional component parts, and the number of component parts has increased and additional plaintiff groups have filed complaints. In order to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve resources, the Court entered a briefing order requiring the parties to identify new authority when raising issues previously resolved by the Court. (See Doc. No. 793 in 12-2311). Consequently, to the extent that no new authority is included, the Court relies on the analysis set forth in its prior opinions resolving collective motions to dismiss complaints filed on behalf of indirect purchaser plaintiffs.

This case involves a new purported class of plaintiffs--Truck and Equipment Dealership Plaintiffs ("TED Plaintiffs"), who filed their complaint on November 21, 2014. Defendants move to dismiss the amended complaint on the ground that state claims are time barred, that TED Plaintiffs lack standing claims brought under the laws of states where no named plaintiff resides or suffered injury must be dismissed, and that various state claims must be dismissed for a variety of reasons.

II. FACTUAL BACKGROUND

Truck and Equipment Dealership 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). The Trucks and Equipment designation excludes by definition "automobiles, light trucks, vans, sport utility vehicles, and/or similar motor vehicles sold by automobile dealers (hereinafter "passenger vehicles") (Doc. No. 64 at ¶ 235).

Defendants include DENSO Corp. and DENSO International America, Inc. (collectively "DENSO"); Fujikura Automotive America LLC ("Fujikura"); Furukawa Electric Co. Ltd and American Furukawa, Inc. (collectively "Furukawa"); G.S. Electech, Inc. and G.S.W. Manufacturing, Inc. (collectively "G.S.E."); LEONI Wiring Systems, Inc. and Leonische Holding Inc. (collectively "Leoni"); Mitsubishi Electric Corporation, Mitsubishi Electric US Holdings, Inc., and Mitsubishi Electric Automotive America, Inc. (collectively "Mitsubishi Electric"); Sumitomo Electric Industries, Ltd., Sumitomo Wiring Systems, Ltd., Sumitomo Electric Wiring Systems, Inc., K&S Wiring Systems, Inc., and Sumitomo Wiring Systems (U.S.A.) Inc. (collectively "Sumitomo"); TRAM, Inc. and Tokai Rika Co., Ltd. (collectively "Tokai Rika"); and Yazaki Corporation and Yazaki North America, Inc. (collectively "Yazaki"). According to the amended complaint, DENSO, Fujikura, Furukawa, Leoni, Sumitomo, Tokai Rika, Mitsubishi, Yazaki, and G.S. Electech (collectively "Defendants") manufacture, market, and sell Vehicle Wire Harness Systems ("VWHS") throughout the United States.

The government investigation into price-fixing involving Vehicle Wire Harness Systems has grown into an investigation of an expansive, industry-wide components conspiracy, involving many different component parts, including parts sold for Trucks

and Equipment. According to TED Plaintiffs, "Many of the companies involved in the government investigations into the industry wide components price-fixing conspiracy, including the Defendants in this case, also manufacture and sell parts for Trucks and Equipment." (Doc. No. 64 at ¶ 17). Further, many of the OEMS targeted in the automotive conspiracy "manufacture and sell Trucks and/or Equipment directly or through subsidiaries or affiliated companies." (Doc. No. 64 at ¶ 18). Employees involved in negotiating prices of VWHS were involved in sales to Trucks and Equipment manufacturers as well as automobile manufacturers. (Doc. No. 64 at ¶ 95).

TED Plaintiffs advance several allegations regarding their discovery that the conspiracy was not limited to passenger vehicles.

> On March 29, 2013, the Japan Fair Trade Commission ("JFTC") issued cease and desist orders and surcharge payment orders based on violations of the Japan Antimonopoly Act against NTN Corp., NSK Ltd. and Nachi-Fujikoshi Corp., for conspiring to fix prices on "*industrial machinery bearings* and automotive bearings.

(Doc. No. 64 at ¶ 14).

> On March 19, 2014, the [European Commission] stated that it had found that SKF, Schaeffler, JTEKT Corporation, NSK Ltd., Nachi-Fujikoshi, and NTN had operated a cartel in the market for bearings sold to "car, *truck* and car part manufacturers*"* and fined all those companies (excluding JTEKT, which benefitted from immunity for having revealed the existence of a cartel to the EC) a collective EUR 953 million.

(Doc. No. 64 at ¶ 15).

> On March 31, 2015, the Department of Justice announced that Robert Bosch GmbH had agreed to plead guilty and to pay a $57.8 million criminal fine for its role in a conspiracy to fix the prices for parts, including spark plugs, oxygen sensors and starter motors 'sold to automobile *and internal combustion engine manufacturers* in the United States and elsewhere,' including parts sold to equipment manufacturer Andreas Stihl AG & Co., from at least as early as January 2000 until at least July 2011.

(Doc. No. 64 at ¶ 16).

TED Plaintiffs allege that market conditions are conducive to collusion. (Doc. No. 64 at ¶¶ 112-125). For example, "[t]he global Vehicle Wire Harness System market is dominated and controlled by large manufacturers, the top six of which are five of the Defendants, who control 69% of the global market." (Doc. No. 64 at ¶ 101). Moreover, TED Plaintiffs allege that Defendants had ample opportunities to conspire. (Id. at ¶¶ 126-127).

III. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) allows district courts to dismiss a complaint which 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).

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.").

IV. ANALYSIS

A. Are Claims Arising out of Purchases Prior to November 21, 2010 Time-Barred in Some States?

The parties disagree as to the timeliness of TED Plaintiffs' November 21, 2014, complaint. In their amended complaint, TED Plaintiffs maintain that the Japan Fair Trade Commission's ("JFTC") March 13, 2013, cease and desist order first brought a conspiracy extending beyond automobiles to their attention. (Doc. No. 64 at ¶ 225). Consequently, TED Plaintiffs assert that the statutes of limitations on the Trucks and Equipment conspiracy were tolled until March 2013 when the JFTC issued cease and desist orders and surchage payment orders for conspiring to fix prices on "industrial machinery bearings and automotive bearings." (Doc. No. 64 at ¶ 225). They assert that they timely filed their complaint because it was within one year of the order.

In contrast, Defendants assert that TED Plaintiffs had notice from February 2010, when the European Commission ("EC"), Japan Fair Trade Commission ("JFTC"), and the Department of Justice ("DOJ") raided the offices of several defendants as part of an investigation into collusion in the automotive industry. (Doc. No. 64 at ¶¶ 129, 133-145). Therefore, any claims based on purchases prior to November 21, 2010, are barred in states with four year statutes of limitation--Arizona, California, Florida, Hawaii, Illinois, Iowa, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, South Dakota, Utah, and West Virginia, as well as the

District of Columbia. Claims based on purchases made before November 21, 2011, are barred in states with three year statues of limitations--Kansas, Mississippi, South Carolina, and Tennessee.

Because the statute of limitations acts as an affirmative defense, a complaint ordinarily is sufficient even without allegations regarding the lack of affirmative defenses. (See Fed. R. Civ. P. 8(a), (c)); Jones v. Bock, 549 U.S. 199, 216 (2007). Consequently, a defendant typically does not file a Rule 12(b)(6) motion, which only considers the allegations in the complaint, to challenge a claim based upon the statute of limitations. Cataldo v. U.S. Steel Corp., 676 F.3d 542, 547 (6th Cir. 2012). Nevertheless, when the allegations in the complaint affirmatively show that the claim is time-barred, a motion to dismiss is appropriate. Jones, 549 U.S. at 215.

TED Plaintiffs seek injunctive relief under the Sherman Act, and damages based on state-law claims. The parties agree that, for the most part, the states at issue apply the discovery rule to assess when the claim accrues and statute of limitations begins to run. State law governs the statute of limitations for state claims, and tolling. Wallace v. Kato, 549 U.S. 384, 394 (2007). See In re Packaged Ice Antitrust Litig., 779 F. Supp. 2d 642, 670 (E.D. Mich. 2011) (citing In re Vitamins Antitrust Litig., No. 99-197, 2000 WL 1524912 at *3 (D.D.C. July 14, 2000) (applying discovery rule to Kansas antitrust claims); In re Linerboard Antitrust Litig., 223 F.R.D. 335, 342-344 (E. D. Penn. 2004) (applying discovery rule to Kansas, Tennessee, South Carolina, Colorado, and Indiana antitrust claims).

Under the discovery rule, a claim accrues when the plaintiffs discovered or with reasonable diligence should have discovered the facts underlying the claim.

In their amended complaint, TED Plaintiffs have included allegations relating to the federal fraudulent concealment standard. In Paragraphs 252-257, they allege that the statute of limitations did not begin to run because they did not and could not discover the claims until the public announcement by the JFTC relating to industrial bearings. (Doc. No. 64 at ¶¶ 252-257). Until that time, Defendants fraudulently concealed their wrongdoing and the claims could not have been discovered until the government announced that the investigation extended to include parts for Trucks and Equipment. (Id. at ¶¶ 258-265). The Court recognizes the federal standard is not the same as the discovery rule; however, the standards are similar. See In re Skelaxin (Metaxalone) Antitrust Litig., No. 1:12-MD-2343, 2013 WL 2181185, at *32-33 (E.D. Tenn. May 20, 2013). "Three elements must be pleaded in order to establish fraudulent concealment: (1) wrongful concealment of their actions by the defendants; (2) failure of the plaintiff to discover the operative facts that are the basis of his cause of action within the limitations period; and (3) plaintiff's due diligence until discovery of the facts." Dayco Corp. v. Goodyear Tire & Rubber Co., 523 F.2d 389, 394 (6th Cir. 1975).

Plaintiffs who delay unreasonably in investigating circumstances that should put them on notice will be foreclosed from filing, once the statute has run." Campbell v. Upjohn Co., 676 F.2d 1122, 1128 (6th Cir. 1982). The Court observes at the outset of its analysis that TED Plaintiffs' allegations regarding Defendants' acts of concealment and the nature of their conspiracy are similar to allegations the Court has found sufficient at this stage of the proceedings in the other component part cases.

Defendants nevertheless contend that several grounds support their position that the complaint is untimely and that dismissal is appropriate at this stage of the

proceedings. First, Defendants cite the publicity surrounding the conspiracy which, they assert, put the TED Plaintiffs on inquiry notice. Second, Defendants direct the Court's attention to the internal inconsistency in the amended complaint itself. The Court discusses both below.

1. Publicity

It is undisputed that publicity of the investigation into a wire harness conspiracy began in February 2010, and the publicity surrounding the antitrust investigation into automotive parts suppliers was substantial and widespread. Defendants contend that the sheer volume of the publicity shows TED Plaintiffs ignored available information that would have aroused suspicion and prompted an investigation. (See Doc. No. 28, Exs. B, D). In addition to the press coverage, Defendants named in this lawsuit pleaded guilty to antitrust activity relating to automobile wire harnesses, including Furukawa (September 29, 2011), DENSO and Yazaki (Jan, 30, 2012), G.S.E. (April 3, 2012), Fujikura (April 23, 2012), and Mitsubishi (September 26, 2013). Despite all this information in the public arena, TED Plaintiffs waited until November 2014 to file their complaint.

At issue here, is whether the disclosure of investigations involving price-fixing of automotive parts and/or subsequent guilty pleas constituted information in the public domain that members of the Trucks and Equipment class were involved; and whether discovery could have occurred through the exercise of reasonable diligence. Defendants assert that TED Plaintiffs must be charged with constructive knowledge of claims relating to price-fixing automotive wire harness systems. "The rule in this Circuit is that '[w]here events receive. . .widespread publicity, plaintiffs may be charged with

knowledge of their occurrence.' " Ball v. Union Carbide Corp., 385 F.3d 713, 722 (6th Cir. 2004) (quoting Hughes v. Vanderbilt Univ., 215 F.3d 543, 548 (6th Cir. 2000).

In this case, TED Plaintiffs admit "public comment and discussion" about the collusive conduct among suppliers of Wire Harness Systems took place. (Doc. No. 64 at ¶ 206). Moreover, within two years of the 2010 raid on automotive suppliers, dozens of complaints were filed. According to Defendants, the claims here are indistinguishable from the automotive wire harness claims, yet those plaintiffs timely filed their complaints. See e.g. LaCava Complaint filed in wire harness case on October 5, 2011, Case No. 11-14399). Moreover, Defendants inform the Court that the common definition of "automotive" encompasses all self-propelled vehicles and machines, not merely passenger automobiles (Merriam-Webster, http://www/merriam-webster.com/dictionary/automotive (last visited Sept. 10, 1015); therefore, wire harnesses used in Trucks and Equipment were implicated in February 2010 as well. Defendants conclude that the information was sufficient to excite the suspicion of TED Plaintiffs, hence, they had actual knowledge. Dayco, 523 F.2d at 394.

The Court is not persuaded that, at this juncture, there is a sufficient basis for distinguishing the allegations here from those advanced in the other wire harness component part cases, which were allowed to proceed. Although the other plaintiffs in the wire harness component part cases only sought tolling until the February 2010 public announcement, their claims involved passenger vehicles. In those cases, the Court held that fraudulent concealment tolled the statue of limitations until that time.

Here, TED Plaintiffs ask the Court to toll the statute for more than three years after the "substantial publicity" concerning the wire harness investigation. Although it is

clear that the publicity put potential plaintiffs on notice of claims against some of these Defendants involving passenger vehicles, the notice of claims involving Trucks and Equipment is not as clear cut. The Court must credit TED Plaintiffs' allegation at this stage of the proceedings, that they lacked the means to discover the conspiracy until the JFTC announced its enforcement activity in March 2013. (Doc. No. 64 at ¶ 256). The Court cannot conclude that TED Plaintiffs will be unable to establish the applicability of any state discovery rules that may apply to their state law claims. The Ball decision does not require a different result. In that case, the plaintiff brought a personal injury claim based on radiation emissions. The court concluded the claim was untimely because the government investigation of the health risks was given repeated coverage that should have alerted the plaintiff of the claim. 385 F.3d at 722. The court determined that issuance of the government's "final" report, after the coverage of the preliminary report, could not be the notice trigger because it contained no facts particularly relevant to the plaintiff. Id. at 723. Here, however, TED Plaintiffs allege that the notice that investigation had expanded beyond passenger vehicles constituted the notice trigger. Their position does not build on facts of no particular relevance to their claims.

Therefore, the Court declines to conclude that the February 2010 announcement of the raids, the subsequent investigations, and the guilty pleas relating to automobiles show that TED Plaintiffs should have been aware of their claim in February 2010. Neither the allegations in the amended complaint nor case law mandates a finding that information regarding an antitrust violation in the passenger vehicle market constitutes notice of possible violations in the Trucks and Equipment market. In Morton's Mkt., Inc.

v. Gustafson's Dairy, Inc., 198 F.3d 823, 833-34 (11th Cir. 1999) amended in part, 211 F.3d 1224 (11th Cir. 2000), the court noted that the moving party must "point to undisputed facts in the record, which demonstrate conclusively that plaintiffs had notice of their claims, and, that had they exercised reasonable diligence, they would have discovered adequate grounds for filing this antitrust lawsuit within the limitations period." Where similar violations are found to trigger notice, the cases include "widely publicized earlier investigations of exactly the same antitrust violations." Id. See In re OnStar Contract Litig., 600 F. Supp. 2d 861, 867 (E.D. Mich. 2009) (denying motion to dismiss because the plaintiff alleged that "whether or not a discovery rule can be applied under the facts of this case, and whether the various statutes of limitation should be tolled due to fraudulent concealment, are issues that should be determined on a motion for summary judgment following discovery"). Moreover, Defendants have failed to show that had TED Plaintiffs exercised reasonable diligence, they would have discovered grounds for filing the lawsuit within the limitations period.

2. Does Inconsistency in the Amended Complaint Demonstrate that t the Claims Are Untimely

In the alternative, Defendants urge the Court to find TED Plaintiffs' claims untimely in light of their own allegations regarding the investigations and guilty pleas in the passenger vehicle industry. TED Plaintiffs rely on these allegations to support their claims that Defendants conspired with respect to Trucks and Equipment, yet they now argue that very information did not put them on notice of their claims. Even if notice of one wrong does not trigger a duty to investigate other wrongs by a defendant, in this case, the wrong involved the same component part, many of the same OEMs, and

apparently, many of the same individuals employed by Defendants. These similarities undermine TED Plaintiffs' allegation that the earliest notice was March 2013, the date that the JFTC issued a public announcement about a conspiracy involving industrial bearings. According to Defendants, the amended complaint's allegations of overlap render the complaint inconsistent. TED Plaintiffs' cannot posit that their curiosity was not raised when the bulk of the allegations in the amended complaints relate to wire harnesses.

TED Plaintiffs respond that they were only able to connect the dots in hindsight. The statute of limitations inquiry is not made in light of all the connections that subsequently came to light, but at the time of the publicity. Wire harness systems involve different customers. Moreover, not all of the defendants were under investigation in the February 2010 raid. Companies not identified in the public announcement later pleaded guilty. TED Plaintiffs claim they had no idea that the conspiracy went beyond passenger vehicles until something other than a passenger vehicle was identified during a government investigation.

The Court agrees with TED Plaintiffs that the standards governing plausibility under Twombly--taking the facts in the light most favorable to a plaintiff, may give rise to a plausible inference of wrongdoing only in light of subsequent facts. Thus, the initial facts may be insufficient to put a plaintiff on inquiry notice of his claims when they first became known.

In sum, the existence of questions of fact regarding Plaintiff's diligence and possible fraudulent concealment preclude dismissal based upon Defendants' statutes of limitations argument. The Court cannot affirmatively state that the statutes of limitations

bar Plaintiff's claims based solely on the face of the pleadings. Defendants may raise their statute of limitations defense after discovery, if it is warranted.

B. Do TED Plaintiffs have Standing to Bring Claims in States Where No Plaintiff resides?

It is undisputed that TED Plaintiffs assert claims under the laws of thirty jurisdictions, but no named plaintiff resides in twenty. Defendants ask the Court to dismiss claims under the states where no named plaintiff resides: Arkansas, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, South Carolina, South Dakota, Vermont, West Virginia, and Wisconsin, as well as the District of Columbia. Defendants rely on the Court's decision in City of Richmond v. Delphi Automotive LLP, 14-00106, ECF No. 61 (E. D. Mich. Par. 30, 2015) (holding that five public entity plaintiffs did not have standing to assert claims on behalf of absent public entity class members from other states). ("Richmond Order") as support for their request.

In the other component part cases, the Court has deferred the standing issue until class certification even as it conceded that standing typically is determined at the outset of a case. The lone exception is the City of Richmond case. That case provides no basis for departing from the Court's prior rulings that the issue of standing should be deferred until after discovery because the pubic entity plaintiffs at issue in the Richmond Order differ from the TED Plaintiffs. As the Court explained, the absent class members in the City of Richmond were public entities, a fact that raised "potentially sensitive issues" given their status as municipal government entities and statutory concerns about representation. Therefore, even reading the complaint in the light most favorable

to the public entity plaintiffs, there was no basis for inferring that the public entity plaintiffs were harmed under the laws of any state other than the state in which they were located. In contrast, there are no restrictions placed on TED Plaintiffs by virtue of their status. Therefore, the Court denies dismissal on this ground.

C. Sufficiency of the Allegations of Interstate Nexus

The parties next contest the sufficiency of the allegations under the antitrust and/or consumer protection laws of states requiring a plaintiff to allege a nexus between a defendant's conduct and intrastate commerce--Mississippi, Nevada, New York, South Dakota, and West Virginia. The parties do not dispute that each of these states requires a plaintiff to allege a connection to its intrastate commerce. See Miss. Code. Ann. § 75-21-1; Nev. Rev. Stat. Ann. § 598 A.06; N.Y. Gen. Bus. Law § 340; S.D. Codified Laws § 37-1-3.1; W. Va. Code Ann. § 47-18-3; In re Cast Iron Soil Pipe and Fittings Antitrust Litig., No. 14-md-2508, 2015 WL 5166014 at 24-25 (E.D. Tenn. June 24, 2015). Nor do the parties contend that a named plaintiff resides in any of these states.

Defendants contend that the amended complaint lacks factual allegations connecting an alleged injury and some wrongful conduct that would implicate the laws of those states in which no named plaintiff resides, and those claims are not plausible. Twombly, 550 U.S. at 570. In support of their position that the allegations are sufficient, TED Plaintiffs direct the Court to Paragraphs 283, 284, and 313 of the amended complaint. In Paragraph 283 of the amended complaint, TED Plaintiffs allege:

> The anti-competitive acts were intentionally directed at the market for Vehicle Wire Harness Systems in all states allowing indirect purchasers to collect damages, as listed infra, and had a substantial and foreseeable

> effect on intrastate commerce by raising and fixing prices for Vehicle Wire Harness Systems throughout those states.

(Doc. No. 64 at ¶ 283). TED Plaintiffs further allege:

> Plaintiffs and members of the Damages Class were deprived of free and open competition in all states allowing indirect purchasers to collect damages, as listed infra, and Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Vehicle Wire Harness Systems in all states allowing indirect purchasers to collect damages, as listed infra.

(Doc. No. 64 at ¶ 284). Lastly, TED Plaintiffs allege:

> Plaintiffs and members of the Damages Classes in each of the above states have been injured in their business and property by reason of Defendants' unlawful combination, contract, conspiracy and agreement. Plaintiffs and members of the Damages Classes have paid more for Vehicle Wire Harness Systems or Trucks and Equipment containing Vehicle Wire Harness Systems than they otherwise would have paid in the absence of Defendants' unlawful conduct. This injury is of the type the antitrust laws of the above states were designed to prevent and flows from Defendants' unlawful conduct.

(Doc. No. 64 at ¶ 313).

Although the Court has found similar allegations referencing an injury occurring in all states that allow indirect purchasers to collect damages, there is a dispositive difference here. For example, the auto dealer plaintiffs' complaints that adequately pleaded the nexus requirement contained allegations that the plaintiffs displayed, sold, serviced, and advertised vehicles in the named plaintiffs' states of residence, which included the nexus states. In the end-payor plaintiffs' complaints surviving a sufficiency challenge, they alleged residency of the named plaintiffs in the nexus states. Based on those allegations, the Court inferred purchases in the states where a plaintiff resided.

Although TED Plaintiffs allege such residence/in-state purchases are not mandatory, they have provided no authority to support their position that residency and/or in-state injury allegations are optional. Moreover, in the absence of express or implied allegations of in-state residency or injury, the required connection between the named plaintiffs' claims and the nexus states are missing. There are no plaintiffs the reside or were injured in the nexus states. (Doc. No. 64 at ¶¶ 29-46). Therefore, the Court grants Defendants' request to dismiss claims under Mississippi, Nevada, New York, South Dakota, and West Virginia.

D. State Specific Issues

Defendants seek dismissal of the claim brought under the Nevada Unfair Trade Practice Act ("UTPA") on an alternate ground. The UTPA was enacted in 1975, before the Supreme Court decided in Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977), that indirect purchasers had standing to bring antitrust claims under federal law for injunctive relief, but not for money damages. In Pooler v. R.J. Reynolds Tobacco Co., No. CV00-02674, 2001 WL 403167, at *1 (Nev. Dist. Ct. Apr. 4, 2001), the state court held that an amendment to the Act made after Illinois Brick merely clarified the original legislative intent to permit any person, including a person indirectly injured, to bring a claim under the statute. The court reasoned,

> There is no legislative history to suggest that when the UTPA was originally adopted the legislature distinguished between whether the injury was direct or indirect, or intended to preclude indirectly injured persons from bringing suit. The 1999 amendment, expressly including indirectly injured parties, does no more than to respond to . . .Illinois Brick. . .by reaffirming the original legislative intent: any person injured by an alleged violation of the act may sue.

Id. The Court therefore, rejects Defendants' alternative argument.

TED Plaintiffs also allege Defendants violated the Vermont Consumer Fraud Act, Vt. Stat. Ann. tit. 9, § 2451 et seq. (2006). The Act, which prohibits "[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce," protects consumers, defined in the Act as "any person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services **not for resale** in the ordinary course of his or her trade or business but for his or her use or benefit. . . ." Vt. Stat. Ann. tit. 9, § 2451 a. (2006) (emphasis added). Consequently, under state law, a business that purchases goods for resale is not protected. New England Surfaces v. E.I. Du Pont De Nemours & Co., 460 F. Supp. 2d 153, 162 (D. Me. 2006) aff'd, 546 F.3d 1(1st Cir. 2008) decision clarified on denial of reh'g, 546 F.3d 11 (1st Cir. 2008).

Although TED Plaintiffs argue that they did not allege that they only purchased Trucks and Equipment for the purpose of resale, the Court finds, that even viewed in the light most favorable to TED Plaintiffs, there is no basis to characterize them as consumers under the Act. They allege that they "purchased, displayed, advertised, and sold Trucks and Equipment" containing VWHS. (Doc. No. 64 at ¶¶ 29-46). As Defendants correctly point out, nowhere in the amended complaint do TED Plaintiffs allege they purchased and used Trucks and Equipment. The Act does not protect them. Accordingly, the claim under the Vermont Consumer Fraud Act must be dismissed.

Lastly, Defendants argue that the unjust enrichment claims under South Carolina law must be dismissed because TED Plaintiffs merely recast their indirect purchaser claim to avoid the Illinois Brick prohibition. See United Food & Commercial Workers Local 1776 & Participating Employers Health & Welfare Fund v. Teikoku Pharma USA, Inc., 74 F. Supp. 3d 1052, 1089 (N.D. Cal. 2014).

This Court has declined to dismiss unjust enrichment claims, citing case law that the absence of a statutory remedy does not necessarily preclude an equitable remedy under common law. See In re G-fees Antitrust Litig., 584 F. Supp. 2d 26, 46 (D.D.C. 2008); In re Cardizem CD Antitrust Litig., 105 F. Supp. 2d 618, 669 (E. D. Mich. 2000) (declining to dismiss unjust enrichment claims because "courts often award equitable remedies under common law claims for unjust enrichment in circumstances where claims based upon contract or other state law violations prove unsuccessful"). Defendants have not persuaded the Court to change its position.

V. CONCLUSION

For the reasons discussed above, the Court **GRANTS in part and DENIES in part** the motion. The Court grants dismissal of the claims brought under Mississippi, Nevada, New York, South Dakota, and West Virginia for failure to allege a sufficient intrastate nexus. The Court also grants dismissal of the Vermont Consumer Fraud Act claim. The Court denies without prejudice Defendants' request to dismiss on statute of limitations grounds and standing grounds. The Court also denies Defendants' request to dismiss the unjust enrichment claim under South Carolina law,

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