UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION — MASTER FILE NO. 12-md-02311

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In Re: Air Conditioning Systems — HON. MARIANNE O. BATTANI

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THIS DOCUMENT RELATES TO:

Dealership Actions — 13-2702
End-Payor Actions — 13-2703

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REDACTED OPINION AND ORDER DENYING DEFENDANTS PANASONIC CORPORATION AND PANASONIC CORPORATION OF NORTH AMERICA'S MOTION TO DISMISS THE CONSOLIDATED AMENDED COMPLAINTS

Before the Court is Defendants Panasonic Corporation and Panasonic Corporation of North America's (collectively, "Panasonic Defendants") Motion to Dismiss the Dealership Plaintiffs' Consolidated Amended Class Action Complaint and End-Payor Plaintiffs' Consolidated Amended Class Action Complaint (Doc. No. 120 in 13-2702; Doc. No. 122 in 13-2703). The Court heard oral argument on September 13, 2017, and at the conclusion of the hearing took this matter under advisement. For the reasons that follow, the motion is **DENIED**.

I. INTRODUCTION AND FACTUAL ALLEGATIONS

Automobile Dealer Plaintiffs ("ADPs") and End-Payor Plaintiffs ("EPPs") (collectively "Indirect Purchaser Plaintiffs" or "IPPs") bring class actions against Defendants under federal and state law based on Defendants' alleged antitrust conspiracy. IPPs allege a broad conspiracy among multiple defendants to rig bids and fix prices of Air Conditioning Systems ("AC Systems"), a variety of auto parts that are used to cool the interior environments of vehicles. (Doc. No. 108 in 13-02702 at ¶ 3 ("ADP Compl."); Doc. No. 116 in 13-2703 ("EPP Compl.")). Defendants' conspiracy is alleged to have targeted both the automotive industry and consumers. Although the IPPs filed separate complaints, Panasonic Defendants challenge both complaints in their motion.

Defendants are manufacturers or suppliers of Air Conditioning Systems that are manufactured or sold in the United States. IPPs define AC Systems to include "automotive compressors, condensers, HVAC units (typically consisting of a blower motor, actuators, flaps, evaporator, heater core, and filter embedded in a plastic housing), control panels, sensors, and associated hoses and pipes." (ADP Compl. ¶ 3, EPP Compl. ¶ 3).

In addition to Panasonic Defendants, IPPs have named Mitsubishi Heavy Industries, Ltd., Mitsubishi Heavy Industries America, Inc., Mitsubishi Heavy Industries Climate Control, Inc. (collectively, "Mitsubishi"), Sanden Automotive Components Corporation, Sanden Automotive Climate Systems Corporation, Sanden International (U.S.A.) Inc. (collectively, "Sanden"), Showa Denko K.K., Showa Aluminum Corporation of America (together, "Showa Denko"), Calsonic Kansei Corporation, Calsonic Kansei

North America, Inc. (together, "Calsonic"), MAHLE Behr GmbH & Co. KG, and MAHLE Behr USA Inc. (together, "Behr") (collectively, "Defendants") as Defendants. (ADP Compl. ¶ 1; EPP Compl. ¶ 1).

Indirect Purchaser Plaintiffs include allegations about Panasonic Defendants' involvement in antitrust conspiracies, including other automotive component parts.

> On July 18, 2013, the DOJ announced that Defendant Panasonic Corporation agreed to plead guilty and to pay a $45.8 million criminal fine for its role in a conspiracy to fix prices of high intensity discharge ("HID") ballasts, switches and steering angle sensors installed in automobiles sold in the United States and elsewhere. Previously, on September 30, 2010, Defendant Panasonic Corporation pleaded guilty to a one-count Indictment and agreed to pay a $49.1 million fine for participating in a combination and conspiracy to fix the prices of refrigerant compressors sold in the United States and elsewhere.

(ADP Compl. ¶ 13, EPP Compl. ¶ 13). IPPs also allege co-defendants have pleaded guilty to conspiring to fix prices of AC Systems. Specifically, Valeo Japan Co., Ltd., Mitsubishi Heavy Industries, Ltd. and Sanden Corporation had all admitted to fixing prices of AC Systems and component parts of AC Systems.

> Valeo Japan Co., Ltd. agreed to plead guilty and pay a $13.6 million criminal fine for its role in a conspiracy to fix prices of certain Air Conditioning Systems and related components sold to Nissan North America, Inc., Suzuki Motor Corporation, and Fuji Heavy Industries Ltd., in the United States and elsewhere, from at least as early as April 2006 until at least February 2010.

(ADP Compl. ¶ 14, EPP Compl. ¶ 14). Mitsubishi Heavy Industries Ltd. "agreed to plead guilty and pay a $14.5 million criminal fine for its role in a conspiracy to fix the prices of condensers and compressors sold to General Motors LLC and Mitsubishi Motors North America, Inc., in the United States and elsewhere, from at least as early as January 2001 until at least February 2010." (ADP Compl. ¶ 15, EPP Compl. ¶ 15).

"Sanden Corporation agreed to plead guilty to a one count criminal Information and pay a $3.2 million criminal fine for its role in a conspiracy to suppress and eliminate competition in the automotive parts industry by agreeing to fix, stabilize, and maintain the prices of compressors used in automotive air conditioning systems sold to Nissan North America, Inc. in the United States and elsewhere from at least as early as August 2008 until at least April 2009." (ADP Compl. ¶ 18; EPP Compl. ¶ 18).

In addition to the specific allegation about Panasonic Defendants' guilty plea, IPPs allege that Panasonic met with Denso in 2007 relating to a single Nissan RFQ for compressors for the Infinity M Hybrid. (ADP Compl. ¶ 172; EPP Compl. ¶ 187).

The illustrative examples specific to Panasonic Defendants follow:

> In 2007, Nissan issued a [Request for Quotation ("RFQ")] to DENSO and Panasonic for compressors to be installed in the Fuga Hybrid. The Fuga Hybrid is sold in the US as the Infinity M Hybrid. Panasonic was the incumbent supplier of compressors to Nissan for the Infinity M Hybrid. At Panasonic's request, Messrs.[redacted] of DENSO and Messrs.[redacted] of Panasonic met to discuss the RFQ. The meeting was held at a hotel near Yokohama Rail Station in Japan. During the meeting, DENSO agreed to bid higher than Panasonic in order to allow Panasonic to win the business. DENSO and Panasonic also agreed on a floor at which the parties would not bid below, should Nissan invite a supplier to reduce their bid. After DENSO and Panasonic responded to the RFQ, Nissan told DENSO that it could win the business if it bid below a certain level. Because Nissan's desired bid was below the floor at which DENSO and Panasonic agreed to bid, DENSO declined to bid lower. Consistent with their agreement, Panasonic won the business.

(ADP Compl. ¶ 172; EPP Compl. ¶ 187).

IPPs also allege that from "2007 through 2009, group meetings involving AC Systems suppliers, called Nichireiko, took place. (ADP Compl. ¶ 173; EPP Compl. ¶ 188). DENSO hosted the meeting in 2007, and representatives from Panasonic, Sanden, Valeo, and Calsonic attended, discussed the market, and their companies'

negotiations with OEMs. (ADP Compl. ¶ 174; EPP Compl. ¶189). Panasonic representatives attended the 2009 meeting hosted by Calsonic as well. (ADP Compl. ¶ 175; EPP Compl. ¶190).

According to the complaints, "the US market for automobile HVAC revenue is approximately $12.5 billion." (ADP Compl. ¶ 93, EPP Compl. ¶ 107). Indirect Purchaser Plaintiffs allege that the market conditions are conducive to a conspiracy: there are high barriers to entry and inelasticity of demand. (ADP Compl. ¶¶ 103-110; EPPs' Compl. ¶¶ 116-124).

II. 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 facts to state a claim to relief that is plausible on its face." United States ex rel. Bledsoe v. Cmty. Health Sys., Inc., 501 F.3d 493, 502 (6th Cir. 2007) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007))0. 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.").

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.

III. ANALYSIS

According to Defendants, the complaints against them must be dismissed because IPPs cannot stretch their claim that Defendants conspired to fix the prices of AC Systems to include either Panasonic Defendant because neither sells AC Systems. In addition, Panasonic Defendants argue that IPPs have failed to allege Panasonic Defendants knowingly joined the conspiracy. The Court discusses each argument below.

A. AC Systems Conspiracy

The complaints include allegations regarding meetings that occurred between different groups of Defendants involving specific parts making up AC Systems, different Original Equipment Manufacturers ("OEMs") and Requests for Quotation ("RFQ"), and

time periods. (See, e.g., ADP Compl. ¶¶ 166-72; EPP Compl. ¶¶ 182-190). The parties dispute whether these allegations plausibly suggest a conspiracy involving AC Systems as a whole by the various defendant companies rather than separate conspiracies involving different combinations of defendants for different individual AC System parts. Notably, IPPs' only specific allegation involving Panasonic Defendants is limited to compressors for hybrid vehicles and only one co-Defendant.

The issue, at its core, is whether IPPs' use of the term "AC Systems" to include various components that make up the systems to cool the interior of a vehicle is overreaching. The Court finds it is not. Throughout this multidistrict litigation, the Court has held that a defendant need not manufacture an entire automotive system to meet the Twombly plausibility standard and allowed complaints to survive as to a defendant that only manufactures one necessary component of a system. A plaintiff is not required to plead the precise boundaries of a product market prior to discovery. In re Fasteners Antitrust Litig., No. 08-MD-1912, 2011 WL 3563989, at *10 (E.D. Pa. Aug. 12, 2011). Even if IPPs advance only one specific example of the conspiratorial conduct per Defendant, the question as to which parts Panasonic Defendants manufactured and for which models will be determined through discovery. See In re Auto. Parts Antitrust Litig. (Occupational Safety Systems), No. 2:12-cv-00602, 2:12-cv-00603, 50 F. Supp. 3d 869, 881 (E.D. Mich. Sept. 25, 2014) (noting that defendants had based their motion to dismiss in part on the "number of parts folded within the definition of [Occupant Safety Systems] and their lack of interchangeability, and the fact that [d]efendants may not sell all of the parts included in [Occupant Safety Systems]" and stating, "[n]evertheless, the factual allegations create 'a reasonable expectation that discovery will reveal evidence

of illegal agreement' beyond those parties that have pleaded guilty and beyond the extent admitted by [certain defendants]."

Panasonic Defendants urge the Court to extend the reasoning used to reject a request to consolidate nineteen different component parts cases in this multidistrict litigation to support dismissal here. See In re Automotive Parts Antitrust Litig. Consolidation Order, 12-md-02311, 2016 WL 8200512, at *4 (citing In re Travel Agent Comm'n Antitrust Litig., 583 F.3d 896, 907 (6th Cir. 2009)). The Court declines to do so. In rejecting the request for consolidation of nineteen different, unrelated parts, the Court observed that the complaints did not allege deals between makers of different component parts, or that the defendants in the separate parts competed for sales. That is not the circumstances alleged here. Although "the mere overlap of some of the defendants in some of the transactions is, own its own, insufficient to establish an overarching agreement," Dahl v. Bain Capital Partners, LLC, 937 F. Supp. 2d 119, 135 (D. Mass. 2013), the allegations here go beyond overlapping parties. Defendants participated in trade meetings involving the AC Systems market, in which they discussed the market generally. Further, in those meetings, they discussed the "status of their respective companies' negotiations with OEMs." (ADP Compl. ¶¶ 173-75; EPP Compl. ¶¶ 188-90).

Nevertheless, Panasonic Defendants assert that the complaints lack any basis from which to draw any inferences of a wider conspiracy. Notably, in In re Iowa Ready-Mix Concrete Antitrust Litig., 768 F. Supp. 2d 961, 975 (N.D. Iowa 2011), the court held that the plaintiffs' allegations regarding "certain bilateral agreements" were not sufficient to plausibly allege a broader conspiracy where there was "no allegation of

facts supporting the existence of an overall plan to fix prices or that each defendant had knowledge that others were involved in the conspiracy." Here, IPPs do not rely exclusively on the illustrative examples of collusive activity among Defendants or the trade meetings. They also allege admissions of guilt by some Defendants relative to AC Systems, and market conditions conducive to a price-fixing conspiracy. These allegations bolster the plausibility of the antitrust claims brought against Panasonic Defendants. In sum, the allegations advanced in the complaints do not simply reflect a series of disconnected conspiracies in the Air Conditioning Systems unrelated to the products manufactured by Panasonic Defendants.

B. Allegations that Panasonic Defendants Knowingly Joined

The parties further dispute whether the inclusion of only one specific conduct allegation in the complaints relating to Panasonic Defendants can plausibly support an inference that Panasonic Defendants made a conscious commitment to joined the broader conspiracy. IPPs have alleged not only that employees of Panasonic Defendants conspired to fix the prices of compressors, but also that employees attended automotive air conditioning industry meetings and discussed with employees of other Defendants "the status of their respective companies' negotiations with OEMS." (ADP Compl. ¶ 174; EPP Compl. ¶ 189).

There is no dispute that trade association meetings, standing alone, do not constitute plausible evidence of a conspiracy in restraint of trade. See T. Vakerics, Antitrust Basics, § 6.13 (1985). "Attendance at industry trade shows and events is presumed legitimate and is not a basis from which to infer a conspiracy." In re Graphics Processing Units Antitrust Litig., 527 F. Supp. 2d 1011, 1023 (N.D. Cal. 2007); see also

In re Citric Acid Litig., 191 F.3d 1090, 1098 (9th Cir. 1999) ("As the Supreme Court has recognized. . .trade associations often serve legitimate functions, such as providing information to industry members, conducting research to further the goals of the industry, and promoting demand for products and services.") (citing Maple Flooring Mfrs. Ass'n v. United States, 268 U.S. 563, 567 (1925); In re Hawaiian & Guamanian Cabotage Antitrust Litig., 647 F. Supp. 2d 1250, 1256-60 (W.D. Wash. 2009) (holding that allegations of information exchanges through trade associations were insufficient to plead a violation of the Sherman Act). It is further undisputed that IPPs do not allege that participants reached specific anticompetitive agreements relating to AC Systems or even any specific AC System parts at those trade meetings. The analysis does not end here, however, because IPPs include allegations about industry conditions supporting an inference that the market was susceptible to collusion. Plaintiffs here allege the following: (1) the AC Systems market has high barriers to entry, which facilitates the formation and maintenance of a cartel (ADP Compl. ¶¶ 103-07; EPP Compl. ¶¶116-121), and (2) demand for A/C Systems is inelastic because there are no close substitutes (ADP Compl. ¶¶ 108-110; EPP Compl. ¶¶ 122-24). Collectively, these conditions have created a market in which collusion is economically viable. See, e.g., In re Automotive Parts Antitrust Litig. (Fuel Injections Systems), No. 13-2203, (E.D. Mich. Sept. 8, 2015), Order at 8-9 (explaining that pleading market conditions conducive to antitrust conspiracy supported denial of motion to dismiss for failure to state a claim). Finally, IPPs allege that certain of Defendants pleaded guilty to antitrust violations involving the parts identified as making up AC Systems as well as the systems themselves. The fact that IPPs cannot pinpoint a specific moment when Panasonic

Defendants joined the conspiracy, the allegations, taken as a whole, create an inference that Panasonic Defendants did indeed join.

Panasonic Defendants are not significantly different from defendants in other component part cases that failed with similar arguments. See In re Auto Parts Antitrust Litig. (Wire Harnesses), No. 12-MD-02311, 2013 WL 2456585 at *2 (E.D. Mich. June 6, 2013). In sum, IPPs' complaints include details of international government investigations that resulted in the guilty pleas of other defendants for their part in the price-fixing and bid-rigging of AC Systems as well as the market conditions that facilitated the conspiracy. These are the type of allegations found to satisfy Twombly.

IV. CONCLUSION

For the reasons stated above, Panasonic Defendants' motion is **DENIED.**

IT IS SO ORDERED.

Date: January 16, 2018

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 January 16, 2018.

s/ Kay Doaks
Case Manager