UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

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

THIS DOCUMENT RELATES TO:

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

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OPINION AND ORDER GRANTING DEFENDANTS' JOINT MOTION TO DISMISS STATE LAW CLAIMS

Before the Court is Defendants' Joint Motion to Dismiss State Law Claims (Doc. No. 119 in 13-2702; Doc. No. 121 in 13-2703). Defendants ask the Court to dismiss Auto Dealer Plaintiffs' ("ADPs") and End-Payor Plaintiffs' ("EPPs") (collectively "Indirect Purchaser Plaintiffs" or "IPPs") unjust enrichment claims under Florida law and ADPs' antitrust claims under South Dakota law. 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 **GRANTED**.

I. INTRODUCTION AND FACTUAL ALLEGATIONS

Automobile Dealer Plaintiffs ("ADPs") and End-Payor Plaintiffs ("EPPs") bring class actions against Defendants under federal and state law based on Defendants' alleged antitrust conspiracy. IPPs aver 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. (See Second Consolidated Amended Class Action Complaint ("ADP Compl."), Doc. No. 108 in 13-02702 at ¶ 3; Consolidated Amended Class Action Complaint, ("EPP Compl.") Doc. No. 116 in 13-2703 ¶ 3). Defendants' conspiracy is alleged to have targeted both the automotive industry and consumers. Although the IPPs filed separate complaints, 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. Defendants include 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"), Panasonic Corporation, Panasonic Corporation of North America (together, "Panasonic"), MAHLE Behr GmbH & Co. KG and MAHLE Behr USA Inc. (together, "Behr") (collectively, "Defendants"). (ADP Compl. ¶ 1; EPP Compl. ¶ 1).

Indirect Purchaser Plaintiffs assert unjust enrichment claims under the laws of twenty-five states, inducing Florida. (ADP Compl. ¶¶ 271-76; EPP Compl. ¶¶ 295-300). To support their unjust enrichment claims, IPPs allege that "Defendants have been unjustly enriched by the receipt of, at a minimum, unlawfully inflated prices and unlawful profits on sales of Air Conditioning Systems." (ADP Compl. ¶ 273; EPP Compl. ¶ 297). Indirect Purchaser Plaintiffs allege that Original Equipment Manufacturers ("OEMs") purchased "Air Conditioning Systems" directly from Defendants. (ADP Compl. ¶ 98; EPP Compl. ¶ 112).

In addition, ADPs assert antitrust claims under the laws of twenty-three states in connection with the alleged conspiracy, including a claim under South Dakota law. (ADP Compl. ¶¶ 229-61). In connection with their state antitrust claims, ADPs generally plead that they "brought Vehicles containing Air Conditioning Systems manufactured by Defendants and/or their co-conspirators" and "purchased and received the aforementioned Vehicles" in those states where they have their principal place of business. (ADP Compl. ¶¶ 30-66). As a result, ADPs allege that they have been injured in their business and property. (Id. ¶¶ 229-61).

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." 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.").

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.

IV. ANALYSIS

According to Defendants, IPPs' unjust enrichment claims fail under Florida law because they do not allege that they conferred a benefit directly on Defendants as required by the Florida Supreme Court's recent decision in Kopel v. Kopel, 299 So. 3d

812 (Fla. 2017). Secondly, Defendants argue that ADPs' antitrust claims under South Dakota law do not allege an in-state injury because no named ADP is alleged to reside in or to have made purchases in South Dakota. Consequently, the intrastate nexus requirement is not met. The Court discusses the arguments below.

A. Unjust Enrichment under Florida Law

To prevail on an unjust enrichment claim under Florida law, IPPs must plead (1) a benefit conferred on a defendant by a plaintiff, (2) the defendant's appreciation of the benefit, and (3) the defendant's acceptance and retention of the benefit under circumstances that make it inequitable for him to retain it without paying the value thereof. See Fla. Power Corp. v. City of Winter Park, 887 So, 2d 1237, 1241-42 n.4 (Fla. 2004).

With respect to the first element, some courts have required that the plaintiff directly confer the benefit on the defendant. See Peoples Nat'l Bank of commerce v. First Union Nat'l Bank of Fla. N.A., 667 So. 2d 876, 879 (Fla. Dist. Ct. App. 1996). Other courts have held that the critical inquiry is "not whether the benefit is conferred directly on the defendant," but "whether the plaintiff can establish the relationship between his detriment and the defendant's benefit flow from the challenged conduct." See In re Processed Eggs Prods. Antitrust Litig., 851 F. Supp. 2d 867, 929 (E.D. Pa. 2012). In other automotive component parts cases, the Court has adopted the reasoning of the courts that "required 'some benefit' to flow to the defendant" with "no requirement that the benefit be bestowed through direct contact." See e.g. In re Auto. Parts Antitrust Litig (Fuel Senders), 29 F. Supp. 3d 982, 1017 (E. D. Mich. 2014). The issue presented here is whether the decision in Kopel v. Kopel, 229 So. 3d at 818

(holding that "to prevail on an unjust enrichment claim, the plaintiff must directly confer a benefit to the defendant"), requires a different outcome.

The lower court in Kopel, 117 So. 3d 1147, 1152 (Fla. 3d Dist. Ct. App. 2013) overruled on other grounds, 229 So. 812, found a benefit conferred on a corporate entity, as opposed to one of the corporate entity's owners was not sufficient to maintain an unjust enrichment claim against the owner because the benefit was not "direct to the litigant." Now that the Florida Supreme Court has explicitly agreed with the lower court that unjust enrichment requires that the benefit be direct, the Court must reach a different decision than it previously has. Here, any benefit conferred by IPPs was to other actors in the chain of distribution, including OEMs, not directly to Defendants as required under Florida law. (See ADP Compl. ¶ 98; EPP Compl. ¶ 112). Accordingly, IPPs have failed to meet Florida's direct benefit requirement, and their unjust enrichment claims under Florida law must be dismissed.

B. South Dakota Antitrust Claims

Next, the Court considers the merits of Defendants' South Dakota nexus argument. According to IPPs, the argument for dismissal has been raised previously by other defendants in the Auto Parts Litigation and rejected by the Court. Consequently, IPPs urge the Court to deem the motion as one for reconsideration, and ask the Court to deny it without discussion as untimely. The Court declines to do so.

Defendants persuasively distinguish the Court's prior decisions, and the Court finds their argument must be considered on the merits. According to Defendants, the pleadings do not support the existence of an intrastate nexus between Defendants' conduct and intrastate commerce.

Under South Dakota's antitrust statute, "[a] contract, combination, or conspiracy between two or more persons in restraint of trade or commerce any part of which is within this state is unlawful." S.D. Codified Laws § 37-1-3.1. The language of the statute merely requires that "some of the Defendants' conduct occurred, or the effects of which were felt, within the state. . . ." In re Processed Egg Prods., 851 F. Supp. 2d at 888. Accord In re Chocolate Confectionary Antitrust litig., 602 F. Supp. 2d 538, 581 (M.D. Pa. 2009) (citation omitted). Consequently, the Court considers whether the allegations in ADPs' complaint meet this pleading requirement.

Here, ADPs plead that they "bought Vehicles containing Air Conditioning Systems manufactured by Defendants and/or their co-conspirators" and "purchased and received the aforementioned Vehicles" in those states where Plaintiffs are located; however, ADPs do not allege that a named ADP resides in South Dakota. (See ADP Compl. ¶¶ 30-66). Based upon this omission, Defendants conclude that no inference can be drawn that ADPs were injured in South Dakota, and the South Dakota antitrust claims must be dismissed. ADPs also allege

> The Defendants and their co-conspirators participated in a combination and conspiracy to suppress and eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of, Air Conditioning Systems sold to automobile manufacturers and others in the United States. The combination and conspiracy engaged in by the Defendants and their co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of the Sherman Antitrust Act, 15 U.S.C. § 1, and state antitrust, unfair competition, consumer protection laws, and the common law of unjust enrichment.

(ADP Compl. ¶19). According to the complaint, "As a direct result of the anti-competitive and unlawful conduct alleged herein, Plaintiffs and the Classes (as

defined below) paid artificially inflated prices for Air Conditioning Systems during the Class Period and have thereby suffered antitrust injury to their business or property." (ADP Compl. ¶ 20). ADPs' first reference to South Dakota appears in the Second Claim for relief. They allege that "Defendants have entered into an unlawful agreement in restraint of trade" the effects of which were that "Air Conditioning Systems price competition was restrained, suppressed, and eliminated throughout South Dakota" and "(2) Air Conditioning Systems prices were raised, fixed, maintained, and stabilized at artificially high levels through South Dakota." (ADP Compl. ¶ 253(a)(1)-(2)). Lastly, the complaint includes the assertion that "members of the Damages Class. . .who resided in South Dakota and/or purchased Air Conditioning Systems or vehicles in South Dakota, paid supra-competitive, artificially inflated prices for Air Conditioning Systems and vehicles contains Air Conditioning Systems" in South Dakota. (ADP Compl. ¶ 253(a)(3)-(4)).

In contrast to the allegations in prior complaints, here there is no allegation regarding an auto dealer plaintiff with a principal place of business in South Dakota. Moreover, in this complaint, ADPs identify at least one named plaintiff made in-state purchases in the other twenty-two jurisdictions in which they seek damages under state antitrust laws. Accordingly, there is no basis for an inference that ADPs purchased and/or sold price-fixed products in South Dakota or that some part of the alleged injury occurred in South Dakota. Other auto dealer plaintiffs' complaints adequately pleaded the nexus requirement because they contained allegations that the plaintiffs displayed, sold, serviced, and advertised vehicles in South Dakota. (See e.g. In re Auto. Parts Antitrust Litig., 50 F. Supp. 3d 836, 857–58 (E.D. Mich. 2014). Compare In re OSB

Antitrust Litig., No. 06-826, 2007 WL 2253425, at *15–16 (E. D. Pa. Aug. 3, 2007) (dismissing indirect purchaser claims brought under the state antitrust laws of South Dakota because no end-payor plaintiff resided in those states). Under the procedural rules, allegations beyond boilerplate language must be included in a complaint to create a basis for inferring that the conspiracy had an effect on trade or commerce in South Dakota. The complaint contains no factual allegations supporting such an inferences; the references specific to South Dakota are indeed boilerplate.

IV. CONCLUSION

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

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