UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re PVC Pipe Antitrust Litigation	Case No. 1:24-cv-07639
	Hon. LaShonda A. Hunt
THIS DOCUMENT RELATES TO:	
All Actions	

DEFENDANTS WESTLAKE CORPORATION AND WESTLAKE PIPE & FITTINGS CORPORATION'S MEMORANDUM OF LAW IN SUPPORT OF THEIR OPPOSED MOTION TO DISMISS

Defendants Westlake Corporation and Westlake Pipe & Fittings Corporation ("Westlake") join and incorporate herein Sections III and IV.B and Appendices A and B of Certain Defendants' Memorandum of Law in Support of Their Opposed Motion to Dismiss. Westlake also joins Section I.B.2.c.iv-v's discussion of applicable caselaw and the portion of Section I.B.2.a.iii that explains why the Direct Purchaser Plaintiffs ("DPPs"), Non-Converter Seller Purchaser Plaintiffs ("NCSPs"), and End-User Plaintiffs (collectively, "Plaintiffs") have failed to allege a plausible conspiracy because they have grouped products with distinct functions, properties, and pricing into a single alleged conspiracy. Westlake submits this separate brief to direct the Court's attention to three fundamental defects in Plaintiffs' complaints.

First, the complaints allege a single market for PVC pipe systems, which includes all PVC municipal water pipe, all PVC municipal sewer pipe, all PVC residential and commercial plumbing pipe, and all PVC electrical conduit, plus fittings. These wildly varying products are all made with PVC but facially are not substitutes for one another. No city buying large diameter, high pressure municipal water pipe would consider substituting electrical conduit for its water system merely

because both are made of PVC. The same is true of fittings, which are facially distinct products from pipes that do not have to be sold with them. All three complaints allege this same implausible market definition and should therefore be dismissed.

Second, despite the bulk of the complaints' allegations involving communications among electric conduit converters, the complaints make only the barest reference to Westlake concerning conduit. These scant allegations do not plausibly allege that Westlake participated in a conspiracy involving PVC electrical conduit pipe and require dismissal of all claims against Westlake concerning electric conduit.

Third, Plaintiffs' Westlake-specific allegations regarding PVC fittings are also inadequate.

Fourth, the complaints allege virtually no direct communications between Westlake and the other converter defendants. Whether through direct or circumstantial evidence, a plausible allegation of agreement among defendants is required for Plaintiffs' antitrust claims to proceed and none is present on the face of the complaints.

For these and the reasons stated in the portions of the joint defense brief adopted by Westlake, Westlake requests that the Court dismiss Plaintiffs' claims against Westlake.

I. Plaintiffs' Section 1 Claim Should Be Dismissed for Failure to Plead a Plausible Market.

All three complaints should be dismissed for failure to plead a plausible market. "To establish a Section 1 claim, a plaintiff has the burden of identifying the existence of a relevant product market." *Maui Jim, Inc. v. SmartBuy Guru Enterprises*, 386 F. Supp. 3d 926, 945 (N.D. Ill. 2019) (citing *Agnew v. Nat'l Collegiate Athletic Ass'n*, 683 F.3d 328, 337 (7th Cir. 2012) and dismissing plaintiffs' Section 1 claim because "failure to plead a plausible relevant market renders dismissal appropriate"). "A relevant product market is defined by 'the reasonable interchangeability of the products and the cross-elasticity of demand for those products.'" *Maui*

Jim, 386 F. Supp. 3d at 945 (citation omitted). "The failure to allege the existence of a relevant commercial market is fatal to both types of claims, regardless of whether per se, quick-look, or rule-of-reason analysis is applied." *Reapers Hockey Association, Inc. v. Amateur Hockey Assoc., Inc.*, 412 F. Supp. 3d 941, 952 (N.D. Ill. 2019) (dismissing Section 1 and Section 2 claims for failure to define a relevant commercial market, among other failures); *see Agnew*, 683 F.3d at 337 ("It is the existence of a commercial market that implicates the Sherman Act in the first instance.").

All three complaints plead a facially implausible single market for all pipes and fittings made of PVC, regardless of whether the pipe is municipal water pipe, municipal sewer pipe, residential and commercial plumbing pipe, electrical conduit, or fittings for those disparate types of pipes. *See* NSCP Compl. ¶ 594; DPP Compl. ¶ 1; End User Compl. ¶¶ 112, 473.

Because of their different properties and applications, PVC pipes are not at all interchangeable. PVC pipes are manufactured to specific standards with incompatible uses. *See* NCSP Compl. ¶¶ 83-91. Municipal sewer pipe is "typically suited for low pressure applications," whereas municipal drinking water pipe is "engineered and tested to withstand high internal and external pressures while ensuring safety and longevity." NCSP Compl. ¶¶ 88, 84. Plumbing pipe is designed for "pressure application," but electrical conduit pipe—according to an article cited by the End-User complaint[1]—is thinner than plumbing pipe, not pressure-rated, and not as waterproof. NCSP Compl. ¶ 89; End-User Compl. ¶ 120 n.33. The various PVC pipes also have different end-user applications (municipal sewer pipe transports wastewater and municipal water pipe carries potable water, NCSP Compl. ¶¶ 84, 87; plumbing pipe is used in residential and commercial plumbing applications, while electrical conduit protects electrical wires, *id.* ¶¶ 89-90).

[1] *The Difference Between Plumbing PVC and Electrical Conduit PVC*, Ledes (Aug. 7, 2024), https://www.ledestube.com/the-difference-between-plumbing-pvc-and-electrical-conduit-pvc/.

Plaintiffs' strained effort to lump all these differing products into a single market merely because they are all made of PVC is implausible and requires dismissal. *See Agnew*, 683 F.3d at 337; *Reapers*, 412 F. Supp. 3d at 952; *Maui Jim, Inc.*, 386 F. Supp. 3d at 945-7.

II. Plaintiffs Do Not Plausibly Allege That Westlake Conspired to Fix Prices or Unlawfully Restrain Trade of PVC Electrical Conduit.

All three operative complaints lack plausible allegations that Westlake participated in a conspiracy or otherwise restrained trade of electrical conduit. Plaintiffs allege that Westlake sells electrical conduit in the United States, but tellingly: (1) DPPs and End-Users allege ***no*** conduct by Westlake involving electrical conduit; and (2) NCSPs allege only that: [redacted] *See* NCSP Compl. ¶¶ 377, 470. These scant allegations do not plausibly allege an anticompetitive agreement involving Westlake regarding electrical conduit under *Bell Atlantic Corporation et al. v. Twombly et al.*, 550 U.S. 544 (2007). *See Twombly*, 550 U.S. at 555 (explaining that a plaintiff must allege "more than labels and conclusions").

III. Plaintiffs Do Not Plausibly Allege That Westlake Conspired to Fix Prices or Unlawfully Restrain Trade of PVC Fittings.

With respect to fittings, Plaintiffs offer little more than "a formulaic recitation of the elements of a cause of action," *id.* at 555, and do not plausibly allege Westlake's participation in a fittings conspiracy. *See* DPP Compl. ¶ 213 [redacted]; NCSP Compl. ¶ 448 [redacted]; *see generally* End-User Compl. (failing to allege any Westlake conduct with respect to fittings except that it acquired a fittings manufacturer). In sum, group pleadings are insufficient, and Plaintiffs' general allegations do not suffice under *Twombly*. *See Twombly*, 550 U.S. at 556; *In re Outpatient Med. Ctr. Emp. Antitrust Litig.*, 630 F.

Supp. 3d 968, 984 (N.D. Ill. 2022) (stating that a plaintiff "must allege that each individual defendant joined the conspiracy and played some role in it") (quoting *Standard Iron Works v. ArcelorMittal*, 639 F. Supp. 2d 877, 900 (N.D. Ill. 2009)).

IV. Plaintiffs Have Not Plausibly Alleged a Section 1 Price-Fixing Claim.

A. Information Exchange Is Not Itself a Per Se Violation of the Sherman Act.

Plaintiffs purport to allege "a classic information exchange price fixing conspiracy that violates the Sherman Act." NCSP Compl. ¶ 138. "But the dissemination of price information is not itself a per se violation of the Sherman Act," and rather is subject to the rule of reason. *United States v. Citizens & So. Nat'l Bank*, 422 U.S. 86, 113 (1975); *see United States v. U.S. Gypsum Co.*, 438 U.S. 422, 441 n.16 (1978). Regardless of whether rule of reason or per se analysis is used, Plaintiffs' failure to plausibly plead an agreement between Westlake and other defendants requires dismissal under *Twombly*.

B. Plaintiffs Fail to Plausibly Allege a Price-Fixing Conspiracy.

Plaintiffs' price-fixing conspiracy claims fail per *Twombly*. They do not allege direct evidence of a conspiracy, "which would usually take the form of an admission by an employee of one of the conspirators, that officials of the defendants had met and agreed explicitly on the terms of a conspiracy to raise price." *In re Text Messaging Antitrust Litig.*, 782 F.3d 867, 871 (7th Cir. 2015). Plaintiffs instead "rest their § 1 claim on descriptions of parallel conduct" and plus factors. *Twombly*, 550 U.S. at 564. But parallel conduct and plus factor allegations are not plausible under *Twombly* when plus factors, "standing alone or considered collectively, are no more probative of an agreement than of independent self-interested conduct." *Wash. Cnty. Health Care Auth., Inc. v. Baxter Int'l Inc.*, 328 F. Supp. 3d 824, 831, 844 (N.D. Ill. 2018).

A key plus factor is "evidence of a high level of interfirm communications." *Mish Int'l Monetary Inc. v. Vega Cap. London, Ltd.*, 596 F. Supp. 3d 1076, 1094 (N.D. Ill. 2022) (quoting

Anderson News, L.L.C. v. Am. Media, Inc., 899 F.3d 87, 104 (2d Cir. 2018)) (dismissing claim against certain defendants due to lack of allegations of such communications). But Plaintiffs have pleaded virtually no direct communications between Westlake and the other converter defendants. DPPs and End-Users allege none, while NCSPs allege [redacted]. NCSP Compl. ¶ 227. Absent allegations of a high level of interfirm communications, Plaintiffs have not met their burden of plausibly alleging "that each participant . . . recognized that it was part of the greater arrangement, and it coordinated or otherwise carried out its duties as part of the broader group." *Marion Healthcare, LLC v. Becton Dickinson & Co.*, 952 F.3d 832, 842 (7th Cir. 2020).

Plaintiffs' allegations about Defendants' membership in trade associations and the PVC pipe market structure are also insufficient to nudge the price-fixing allegations from conceivable to plausible under *Twombly*. *See* Defs' Joint Mot., Sections I.B.2.c.iv-v (caselaw). And even if the exchange of information is a plus factor, "like all circumstantial evidence of conspiracy, it is not on its own demonstrative of anticompetitive behavior, even when pricing data is what is exchanged." *Omnicare, Inc. v. UnitedHealth Grp., Inc.*, 629 F.3d 697, 709 (7th Cir. 2011).

C. Plaintiffs Have Not Plausibly Alleged an Agreement to Share Information.

A plausible Section 1 claim requires allegations of an agreement between defendants. *Twombly*, 550 U.S. at 553-554. "The exchange of information . . . without an agreement is not itself a violation of the Sherman Act." *In re: Generic Pharms. Pricing Antitrust Litig.*, 2025 WL 388813, at *3 (E.D. Pa. Feb. 3, 2025). As discussed, Plaintiffs allege virtually no direct communications between Westlake and the other converter defendants. Absent allegations of how Westlake and those defendants formed an agreement to exchange information, Plaintiffs' rule of reason claim fails under *Twombly*.

V. NCSPs Have Not Plausibly Alleged Entitlement to Damages Under Federal Law.

Westlake joins Section III of the Joint Motion, which explains why NCSPs have not stated a federal claim for damages based on purported distributor involvement in the alleged conspiracy.

VI. NCSPs and End-Users Fail to State Several of Their State Law Claims.

As explained in Section IV of the Joint Motion, the NCSP and End-User Plaintiffs' state law claims rise and fall with their federal claims. Many of the claims are independently deficient under state law. Westlake joins Section IV.B of the Joint Motion and Appendices A and B of the Joint Motion identifying those state-specific deficiencies.

CONCLUSION

Westlake respectfully requests that the Court grant its motion to dismiss all three Plaintiffs' complaints in their entirety.

DATED: October 30, 2025

Respectfully submitted,

SUSMAN GODFREY L.L.P.

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MEET & CONFER CERTIFICATION

The undersigned hereby certifies that counsel for Westlake and counsel for Plaintiffs were unable to resolve the issues presented in this motion.

/s/ William R. H. Merrill
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