UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

CERTAIN DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR OPPOSED MOTION TO DISMISS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Plaintiffs seek damages on behalf of disparate PVC pipe purchasers based on a fundamentally implausible and contrived conspiracy theory. They claim that Donna Todd, the writer and editor of a long-standing industry trade publication, allegedly collected and provided common business information to PVC pipe producers, customers, and others. This is not a conspiracy under any standard, and Plaintiffs' complaints fail to satisfy *Twombly*'s basic "plausibility" requirements.

Plaintiffs spin a facially implausible story. They claim prices of PVC pipes rose sharply starting in mid-2020 because Defendants entered a multi-year price-fixing conspiracy. But Plaintiffs' own allegations establish an obvious alternative explanation: COVID-19 caused historic, widespread supply-chain shocks that reshaped the global economy. PVC pipe was no exception. Plaintiffs themselves acknowledge that COVID-19 caused prices of key PVC pipe inputs to spike, required manufacturers to close plants and production lines, and led to a construction boom that skyrocketed demand. At the same time, unprecedented weather events wreaked further havoc on the PVC pipe supply chain, including a winter storm that—according to Plaintiffs' own incorporated sources—did more damage to PVC pipe manufacturing than "even the most devastating hurricanes of the past 15-16 years, including Hurricane Katrina and Hurricane Rita."[1] Meanwhile, demand spiked as customers scrambled to buy up scarce PVC pipe in the face of severe supply shortages. Accordingly, Plaintiffs allege no more than basic economics: low supply + high demand = increased prices. That's not an antitrust conspiracy. Nor would one make sense here.

Plaintiffs have sued 24 different converters, who they allege operate as at least ten distinct competitors. These converters do not even all make the same products. Some make only

[1] Ex. 3, 3/12/21 PVC & Pipe Weekly Report ("PPWR") (cited at NCSP Compl. ¶ 251).

"municipal" pipe that carries water or sewage under roads. Others make only "plumbing" pipe that goes into homes and buildings, or only electrical conduit. Plaintiffs nonetheless allege that all these companies conspired to raise prices starting mid-2020. Notably, Plaintiffs disagree on the role of Defendants' largest customers—distributors—in the alleged conspiracy. One class of Plaintiffs claims distributors were victims, while another claims distributors conspired.

How do Plaintiffs suggest these disparate companies entered into a spontaneous, multifaceted conspiracy right when COVID-19 hit? They allege that a longstanding industry publication known as the PVC & Pipe Weekly Report ("PPWR"), published by Dow Jones subsidiary Oil Price Information Service LLC ("OPIS"), orchestrated the supposed conspiracy. But OPIS offered Defendants ***exactly the same*** services since ***at least 2017***, even though Plaintiffs do not claim prices rose until the COVID-19 pandemic in ***2020***.

OPIS's services consisted of (1) publishing weekly marketplace commentary, (2) alerting subscribers to the same public price announcements that converters sent to customers, and (3) communicating with buyers, sellers, and others in connection with the creation of OPIS's publications. OPIS provided the sort of information businesses use to compete, not conspire. And Plaintiffs have no plausible explanation why this longstanding service—rather than COVID-19, the extreme weather events, and the increased demand they allege—caused prices to rise.

Plaintiffs' complaints run over 520 pages, and they had access to thousands of emails, notes, and text messages from Donna Todd, the principal writer and editor of the PPWR. Despite this mountain of sources, Plaintiffs:

- Allege **zero** communications with or between Defendants reflecting an agreement on PVC pipe prices.
- **Fail to explain** when, how, or why, OPIS purportedly caused PVC pipe prices to rise starting in 2020, even though they allege no change in OPIS's reporting.
- Make **no connection whatsoever** between OPIS and the challenged price increases.

Plaintiffs therefore do not allege how the supposed conspiracy formed or how it led to price increases. *Twombly* requires more.

In addition to Plaintiffs' failure to plead a conspiracy, the Indirect Plaintiff Classes' (NCSPs and EUPs) pleadings fail for additional reasons. ***First***, *Illinois Brick* bars plaintiffs who did not purchase directly from supposed conspirators, such as NCSPs, from recovering federal antitrust damages. *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 746–47 (1977). NCSPs nevertheless seek to recover federal damages because (1) they allege they bought from distributors and (2) they assert in conclusory fashion that those distributors conspired with Defendants. But the Seventh Circuit has rejected this exact attempt to end-run *Illinois Brick* because a "plaintiff is not entitled to resort to frivolous accusations of conspiracy to evade the Illinois Brick rule; ***the allegation must still reach the level of baseline plausibility***." *Marion Healthcare, LLC v. Becton Dickinson & Co.*, 952 F.3d 832, 841 (7th Cir. 2020) (emphasis added). NCSPs have not plausibly alleged any conspiracy, much less one involving distributors. ***Second***, NCSPs and EUPs' state-law claims fail for additional, independent state-specific reasons.

For all these reasons, each of Plaintiffs' complaints must be dismissed in their entirety.

BACKGROUND

A. PVC Pipe Products.

Polyvinyl chloride, or "PVC," is a versatile "synthetic plastic polymer" material "used in a wide variety of products and applications," including PVC pipes and fittings (together, "PVC Pipe Products"). NCSP Compl. ¶ 78; EUP Compl. ¶ 106.[2] PVC Pipe Products are made by

[2] Throughout this brief, (1) the self-styled "Non-Converter Seller Purchaser Class Plaintiffs" Corrected Second Consolidated Class Action Complaint, Dkt. 467, is referred to as the "NCSP Compl.," (2) the End User Class Plaintiffs Consolidated Class Action Complaint, Dkt. 398, is referred to as the "EUP Compl.," and (3) the Direct Purchaser Plaintiff Class Second Consolidated Amended Class Action Complaint, Dkt. 390, is referred to as "DPP Compl." As the NCSP Complaint is the most detailed, this brief cites the allegations contained therein unless otherwise noted.

combining PVC resin with "additives" like "heat stabilizers, lubricants, and plasticizers." NCSP Compl. ¶ 78. PVC pipe manufacturers, like Defendants here, are called "converters" because they "convert" resin and other materials into PVC Pipe Products, which vary in dimensions, physical properties, and colors depending on their intended use. *Id.* ¶¶ 81–82.

B. Plaintiffs Combine Distinct Products into Their Definition of PVC Pipe Products.

Plaintiffs' "PVC Pipe Products" does not refer to a single product; rather it includes hundreds of distinct products, ranging from the water pipe sold to municipalities, to the drain, waste, and vent pipe in buildings and residences, to the electrical conduit used to safely contain electrical wiring, to the distinct fittings used to connect each type of pipe. While Plaintiffs try to sweep all of these products into one so-called "PVC Pipe Systems market," *id.* ¶ 2, even they acknowledge that these distinct categories have different characteristics, pricing, and manufacturers:

Municipal Pipe. Plaintiffs allege that municipal *water* pipe accounts "for approximately two-thirds of [all] PVC Pipe Systems sales in the United States." *Id.* ¶ 86. "PVC municipal drinking water pipe is a pressure pipe application," which means it is "engineered and tested to withstand high internal and external pressures." *Id.* ¶ 84. Municipal *sewer* pipe and fittings "use non-pressurized, gravity-driven systems" and are used to carry "wastewater to treatment plants and storm runoff to designated outlets." *Id.* ¶ 87. PVC municipal sewer pipe is "typically suited for low pressure applications"—in other words, it is not interchangeable with pressurized water pipe. *Id.* ¶ 88. Municipal pipe is priced on a "block" system, where converters price by reference to pre-defined public pricing charts ("blocks"). *Id.* ¶¶ 113–17.

Plumbing Pipe. PVC plumbing pipe is "used in residential, commercial and industrial plumbing applications," and such pipe is generally "'dual rated' for both drain-waste-vent and

pressure applications." *Id*. ¶ 89. It "offers durability, corrosion and chemical resistance, and lightweight handling." *Id*. Plumbing pipe is priced on a per-foot basis. *Id.* ¶ 112.

Electrical Conduit Pipe. PVC electrical conduit pipe insulates and protects electrical wires. *Id.* ¶¶ 90–91. These pipes are "resistant to burning, corrosion, moisture, and sunlight, making it ideal for outdoor applications." *Id.* ¶ 91. Conduit pipe is priced per "100 ft," translated into weight. *Id.* ¶ 111.

Fittings. Fittings are the "detachable pieces of PVC plastic connecting two or more pipes." *Id.* ¶ 92. Fittings are manufactured differently from PVC pipe: while PVC pipe is extruded, fittings are typically molded or fabricated. *Compare id.* ¶¶ 81–82 *with* 92–93. Fittings are also priced separately from PVC Pipe. *See, e.g.*, *id.* ¶ 232 (prices for pipes and fittings announced separately).

C. PVC Pipe Products Are Manufactured by Many Different Converters Making Different Products and Operating in Distinct Markets.

Many converters sell PVC pipe in the United States. These include the 24 different Defendant entities associated with converters, who Plaintiffs allege operate as at least 10 distinct, competing PVC pipe manufacturers.[3] Critically, not all Defendants—or all converters—produce

[3] "Defendants" includes, as named by Plaintiffs, (1) Atkore, Inc.; Atkore International, Inc.; Atkore Plastic Pipe Corp. d/b/a Heritage Plastics; Heritage Plastics, Inc.; Atkore RMCP, Inc.; Ridgeline Pipe Manufacturing; Queen City Plastics, Inc.; Allied Tube & Conduit Corporation; Rocky Mountain Colby Pipe Company a/k/a/ Cor-Tek; and Rocky Mountain Colby Plastics a/k/a RMCP, Inc. n/k/a Cor-Tek (the "Atkore Defendants"); (2) Cantex Inc.; Diamond Plastics Corporation; Prime Conduit, Inc.; Sanderson Pipe Corporation; Southern Pipe, Inc. ("the Mitsubishi/Shin-Etsu Defendants"); (3) IPEX USA LLC; Multi Fittings Corporation; Silver-Line Plastics LLC (the "IPEX Defendants"); (4) Pipelife Jet Stream, Inc.; (5) J-M Manufacturing, Inc. dba JM Eagle; (6) National Pipe and Plastics, Inc.; (7) Otter Tail Corporation (who is not a converter of PVC Pipe Products); Northern Pipe Products, Inc.; Vinyltech Corporation (the "Otter Tail Defendants"); (8) Westlake Corporation; Westlake Pipe & Fittings Corporation (the "Westlake Defendants"); (9) Charlotte Pipe & Foundry; and (10) Cresline Plastic Pipe Co., Inc. NCSP Compl. ¶¶ 37–66. For purposes of this Motion only, Defendants shall reference Plaintiffs' alleged groupings as Defendants. This Motion is made on behalf of Certain Defendants, which includes all Defendants except the Westlake Defendants, Charlotte Pipe & Foundry, Cresline Plastic Co., Inc., and certain of the alleged Atkore Defendants (Heritage Plastics, Inc.; Ridgeline Pipe Manufacturing; Queen City Plastics, Inc.; Rocky Mountain Colby Pipe Company a/k/a Cor-Tek; and Rocky Mountain Colby Plastics a/k/a RMCP, Inc. n/k/a Cor-Tek).

each category of PVC pipe. For example, Plaintiffs allege that Charlotte Pipe is [redacted] but does not produce municipal or conduit pipes. *Id.* ¶ 226; *id.* Fig. 9. In contrast, Pipelife Jet Stream, and Diamond are alleged to make only municipal pipe while Cantex, Prime Conduit, and Southern Pipe just manufacture conduit. *Id.* Fig. 9. Meanwhile, Multi Fittings Corporation, as its name suggests, only manufactures fittings. *Id.* ¶ 53.

Moreover, Defendants are not the only manufacturers of these products. The PPWR publications incorporated in Plaintiffs' complaints discuss pricing decisions made by non-defendant converters like GPK Product and Spears Manufacturing alongside Defendants.[4] These non-defendant converters were sometimes the first to announce a price change for a particular PVC Pipe Product, with Defendants ***reacting*** to that company's pricing decision. *E.g. id.* ¶ 181 [redacted] Furthermore, not all converters who manufacture pipe also manufacture fittings, and those that do also compete with non-defendant fittings manufacturers. Ex. 11, 8/25/23 PPWR (quoted at NCSP

As set forth in a separate brief to be filed today, Plaintiffs' complaints erroneously allege that Heritage Plastics, Inc.; Ridgeline Pipe Manufacturing; Queen City Plastics, Inc.; Rocky Mountain Colby Pipe Company a/k/a Cor-Tek; and Rocky Mountain Colby Plastics a/k/a RMCP, Inc. n/k/a Cor-Tek, are subsidiaries of, and/or were purchased by, Atkore Inc. That is not correct. These named defendants are either not legal entities or not owned by Atkore Inc. and thus do not fall within the Atkore Inc. family of corporate entities. In the event that the Court were to conclude that any claims against those named Defendants may be attributed or imputed to any other Atkore Defendant (Atkore Inc.; Atkore International, Inc.; Atkore Plastic Pipe Corp.; Atkore RMCP, Inc.; and/or Allied Tube & Conduit Corporation), however, Atkore Defendants submit that the arguments in this brief apply equally to those claims as well.

[4] Ex. 13, 3/22/24 PPWR ("GPK Products issued a letter raising prices by 7% on its rigid PVC fittings"); *id.* ("Spears had issued a 5% price increase on its PVC and CPVC pipe, fittings, valves, solvent cement and ancillary products") (quoted in NCSP Compl. ¶ 461(b); EUP Compl. ¶ 409).

Omitted materials from documents quoted in the complaints are subject to judicial notice and can be considered by the court on this motion to dismiss. *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 568 n.13 (2007) (explaining that on motion to dismiss district court "was entitled to take notice of the full contents of the published articles referenced in the complaint, from which the truncated quotations were drawn"); *Phillips v. Prudential Ins. Co. of Am.*, 714 F.3d 1017, 1020 (7th Cir. 2013) (courts consider "documents attached to the complaint, documents that are critical to the complaint and referred to in it, and information that is subject to proper judicial notice").

Compl. ¶ 447) (discussing competition from non-defendant plumbing fittings manufacturers "Tigre, Lesso [and] Spears").

D. PVC Pipe Products Are Allegedly Sold Through Large Distributors.

According to Plaintiffs, Defendants sell "over 70%" of their PVC through six "major distributors"—"Hajoca Corporation, Fortiline Waterworks, Ferguson Enterprises, Inc., Core & Main Inc., United Pipe & Steel Corp., and Porter Pipe & Supply Co." NCSP Compl. ¶ 13. Distributors have their own economic incentives to minimize the cost of the goods they buy, as well as to maximize the value of the PVC pipe they sell in downstream markets. *See id.* ¶¶ 523–25. Beyond distributors, some Defendants also sell directly through "internal sales force[s]," by displaying "products at trade shows," and through "advertising programs." DPP Compl. ¶ 67.

Distributors are a major problem for Plaintiffs' claims: they are alleged to be Defendants' largest customers, are putative members of the direct-purchaser class, and yet received OPIS's publications and communicated with editor Donna Todd just like Defendants. NCSP Compl. ¶¶ 13–14 (alleging six largest distributors control "over 70%" of US PVC pipe purchases); *id.* ¶ 132 (alleging distributors communicated with Todd about market conditions and provided her with copies of converters' price announcements). Plaintiffs trip over themselves trying to explain distributors' role. One putative class claims that distributors conspired, while another includes distributors as their largest putative class members. *Compare id.* ¶¶ 14, 67–74 (alleging distributors conspired with Defendants, from whom they directly purchased pipe) *with* DPP Compl. ¶ 294 (seeking to represent entities that "directly purchased" pipe).

E. Some Converters Issued Price Announcement Letters.

Some converters would send their customers pricing "letters" or "announcements." Plaintiffs make these purportedly "confidential" price announcements a central aspect of their claims, but their own allegations establish that they were not confidential at all. Rather, the

announcements did not reflect the actual prices of PVC Pipe Products and converters freely shared these letters with customers who used them to play converters off against one another.

Price Letters Did Not Reflect Actual Prices at Which Pipe Was Sold: A converter might announce a higher price, in hopes of earning more for their product, only for that increase to "fail[]" as customers negotiated converters down to even lower pricing. *See, e.g.*, NCSP Compl. ¶ 164 ¶ 392 Indeed, Plaintiffs recognize that converters even issued price-increase letters with no intention of implementing the increase at all. For example, Donna Todd viewed *Id.* ¶ 178. Other converters did not issue price letters at all. *See, e.g.*, *id.* ¶¶ 461(b), 255.

Converters Sent Price Letters to Customers: While Plaintiffs mischaracterize "price increase letters" as "confidential," but their allegations establish that converters freely shared such letters with their customers. *Id.* ¶ 7. For example, a converter publishing a —indeed, the purpose of a price announcement is to communicate to customers. *Id.* ¶ 161. The recipients included distributors—some of converter's largest customers and members of the direct-purchaser class—who received price lists and shared them with others. *E.g.*, *id.* ¶ 423 *id.* ¶ 430

Customers Used Price Letters to Negotiate Better Prices: Customers would use these letters and announcements to negotiate with other converters and seek lower prices. *Id.* ¶ 344 When one

converter did—or did not—issue a new price announcement, [redacted] *Id.* ¶ 181 [redacted] Other times a customer would tell a converter the specific price a competitor had quoted them. *E.g.*, EUP Compl. ¶ 186 [redacted]

F. OPIS Provided Its Services to PVC Pipe Product Manufacturers, Buyers, and Other Market Participants Since Before 2017.

Defendant OPIS is a subsidiary of international publisher News Corp. (and specifically of News Corp. subsidiary Dow Jones Company). *See* NCSP Compl. ¶ 505. OPIS "provides pricing and market intelligence across various industries, including the PVC Pipe Systems industry." *Id.* ¶ 121. OPIS has provided these services for decades, as Plaintiffs acknowledge, with minimal changes to its services. *See id.* ¶ 121 n.8 (citing 1997 case explaining that "[m]ost major petroleum suppliers subscribe to OPIS"). OPIS's services cover the entire petrochemical supply chain, including publications such as "Refinery Focus Daily," "Ethylene Weekly," and, as relevant here, the PVC-specific "PVC & Pipe Weekly" Report—the "PPWR."[5]

OPIS has gathered information regarding PVC Pipe Products and published the PPWR since before 2017 without meaningful changes to its offerings. *See id.* ¶ 162 (citing 1/27/17 PPWR).

[5] https://www.petrochemwire.com/wp-content/uploads/2019/03/Petrochem-8p-ebroch-IOSCO.pdf (cited at EUP Compl. ¶ 154 n.57).

1. The PPWR Consists of Short, High-Level, Directional Reports Incapable of Furthering a Price-Fixing Conspiracy.

The PPWR is generally three pages, with the first page entirely devoted to news and information on inputs to PVC pipe, such as ethylene and PVC resin made from ethylene. *Id.* ¶ 126 (alleging that reports have information on "PVC resin prices"); *e.g.*, Ex. 12, 3/15/24 PPWR (quoted at NCSP Compl. ¶ 470; EUP Compl. ¶ 402). Plaintiffs do not claim that ethylene or PVC resin played a part in any purported conspiracy.

The second and third pages of the PPWR contained information on PVC Pipe Product supply and demand. As Plaintiffs allege, the **sole data set** included in each report was aggregate "'Midpoint' price[s] for Municipal, Plumbing, and Conduit Pipes." NCSP Compl. ¶ 126.

PVC PIPE PRICES

Municipal Pipe (Blocks)	Low	High	Midpoint
3/15/2024	360	365	362.50
3/8/2024	360	365	362.50
3/1/2024	360	370	365.00
2/23/2024	360	370	365.00
Plumbing Pipe (East $/ft)	**Low**	**High**	**Midpoint**
3/15/2024	2.00	2.20	2.10
3/8/2024	2.00	2.20	2.10
3/1/2024	2.00	2.20	2.10
2/23/2024	2.00	2.20	2.10
Conduit Pipe (East $/100 ft)	**Low**	**High**	**Midpoint**
3/15/2024	370	385	377.50
3/8/2024	380	390	385.00
3/1/2024	380	390	385.00
2/23/2024	385	400	392.50

Ex. 12, 3/15/24 PPWR (quoted at NCSP Compl. ¶ 470; EUP Compl. ¶ 402). This aggregated, anonymized data was the ***only*** PVC pipe price data regularly published in the PPWR. *See* NCSP Compl. ¶ 470.

Beyond the data, the reports contained "narrative[s]," typically running several hundred words each week, with OPIS's view of market conditions. NCSP Compl. ¶ 126. Plaintiffs' selective quotations create a misleading picture of the PPWR, which regularly covered topics like:

- ***Construction outlook***, because much of the US PVC pipe supply is used for construction, the likely direction of that industry is valuable information for PVC converters. *E.g.*, Ex. 12, 3/15/24 PPWR (quoted at NCSP Compl. ¶ 470; EUP Compl. ¶ 402) (containing Dodge Construction "Momentum" reporting and commentary on US construction outlook).

- ***Natural events*** likewise impact PVC pipe supply and demand and the PPWR frequently covered ice storms, hurricanes, and floods. *E.g.*, Ex. 16, 7/12/24 PPWR (quoted at NCSP Compl. ¶ 461(g)) (explaining that converters shut down plants due to hurricane).

- ***Reporting on PVC pipe supply and demand*** including views of the markets that OPIS gathered from customers, producers, and other "market watchers." *E.g.*, Ex. 9, 10/28/22 PPWR (quoted at NCSP Compl. ¶ 335; DPP Compl. ¶ 239).

2. The PPWR Was Sourced From and Provided to Buyers and Sellers.

OPIS provided market research to "upstream and downstream players," *i.e.* converters of PVC Pipe Products and purchasers of those goods.[6] OPIS's promotional materials boast that it provided its services to "all players," including purchasers like "retailers" and "municipalities," and even "financial institutions."[7] Customers contributed to OPIS's market reporting, and PPWR narratives contained information explicitly sourced from "buyers" expressing their views on the market. *E.g.*, Ex. 14, 3/28/24 PPWR (quoted at NCSP Compl. ¶ 461(d)) ("**Buyers said** they were invoiced at the higher prices, but still felt the price hike was wishy-washy. They don't believe the converter in question is willing to walk away from business if customers demand a lower price."); Ex. 7, 2/11/22 PPWR (quoted in NCSP Compl. ¶ 344) (repeating what "**[c]ustomers reported**" about market).

[6] https://www.petrochemwire.com/wp-content/uploads/2019/03/Petrochem-8p-ebroch-IOSCO.pdf (cited at EUP Compl. ¶ 154 n.57).

[7] https://www.opis.com/wp-content/uploads/2025/06/OPIS_Overview_Brochure_2025-REV0625-PROOF1.pdf (cited at EUP Compl. ¶ 141 n.50).

Thus, while Plaintiffs allege "few if any" members of the putative classes "had access to" the PPWR, their own sources show otherwise.[8] NCSP Compl. ¶ 582. And while Plaintiffs suggest OPIS "deliberately restricted" membership to a certain kind of subscriber, *id.* ¶ 5, they do not allege that any class member—or indeed any specific entity—ever requested to subscribe and was refused. *Id.* ¶ 582.

3. OPIS Circulated Public Price Announcements to PPWR Subscribers.

Plaintiffs allege that OPIS employee Donna Todd, the editor and writer of the PPWR, would email price announcements to PPWR subscribers. DPP Compl. ¶ 72. Plaintiffs allege these emails were available to [redacted] *Id.* Todd circulated price announcements to different PPWR subscribers depending on whether the announcements pertained to municipal, plumbing, or conduit PVC pipe. *Id.* ¶¶ 241, 271 (describing plumbing- and municipal-pipe specific lists). Recipients included distributors, who were converters' largest customers and are putative members of the direct-purchaser plaintiff class. *See* NCSP Compl. ¶¶ 11, 14, 127; DPP Compl. ¶ 292. Todd regularly sourced price announcements from entities other than the issuing converter. For example, while Plaintiffs allege Todd occasionally circulated JM Eagle announcements, they never allege JM Eagle submitted those to Todd. Instead, Plaintiffs allege employees of other converters would share sheets that they received from customers. *See, e.g.*, NCSP Compl. ¶¶ 285, 373, 377.

[8] When documents incorporated into a "complaint contradict the allegations of the complaint, the document controls in a Rule 12(b)(6) motion to dismiss for failure to state a claim." *N. Indiana Gun & Outdoor Shows v. City of S. Bend*, 163 F.3d 449, 454 (7th Cir. 1998).

G. Starting Mid-2020, COVID-19, Unprecedented Winter Storms, and Other Natural Events Resulted in Higher PVC Pipe Prices.

Plaintiffs allege [redacted] and attribute this to a conspiracy. NCSP Compl. ¶ 186. But Plaintiffs acknowledge, as they must, that the start of the alleged price increases coincided with "the onset of the COVID-19 pandemic"—a structural change to many parts of the US economy, including PVC Pipe Products. *Id.* At the same time unprecedented weather events disrupted PVC Pipe Product production more than "even the most devastating hurricanes of the past 15-16 years." Ex. 3, 3/12/21 PPWR (cited at NCSP Compl. ¶ 251). And, in reaction to the shortages caused by COVID-19, distributors purchased more than they immediately needed, creating an even greater spike in demand. *See* NCSP Compl. ¶ 388. Plaintiffs try to brush these developments away as "pretextual excuse[s]," but their own allegations and incorporated documents establish their enormous impact on prices. *Id.* ¶ 155.

COVID-19: As a result of COVID-19, prices for PVC resin, the primary input for PVC Pipe Products, nearly doubled. *See id.* Fig. 21. The pandemic also raised prices for "PVC stabilizers" and additives like titanium dioxide ("Ti02"). Ex. 3, 3/12/21 PPWR (cited at NCSP Comp. ¶ 251). Converters faced "serious personnel issues due to COVID-19" and shut down plants and production lines "due to the diagnosis of COVID-19 in [their] workforce," creating "holes in their inventory." Ex. 2, 1/22/21 PPWR (quoted at NCSP Compl. ¶ 245, 289; DPP Compl. ¶ 238, 256); Ex. 1, 7/17/20 PPWR (quoted at NCSP Compl. ¶ 218; EUP Compl. ¶ 307). As with many other areas, the [redacted] cascaded through the PVC Pipe Product supply chain in 2021, 2022, and beyond. NCSP Compl. ¶ 383.

COVID-19 also drove up *demand* for PVC Pipe Products at the same time it was decreasing supply. PVC Pipe Products are widely used in construction, and the PPWR reported that by mid-2020 "housing starts [ ] skyrocketed," requiring more of the very pipe that was disappearing from

the market due to supply-chain disruptions. Ex. 1, 7/17/20 PPWR (quoted at NCSP Compl. ¶ 218; EUP Compl. ¶ 307). Demand was so high that customers were telling converters [redacted] through April 2022—which is also when Plaintiffs allege that PVC pipe prices started falling. NCSP Compl. ¶ 350; *see id.* Fig. 21. As one converter employee allegedly told Todd, the product [redacted] *Id.* ¶ 217. As much as Plaintiffs try to characterize COVID-19 as an "excuse," their own allegations and incorporated documents establish the enormous impact the COVID-19 pandemic had on PVC Pipe Product prices. *Id.* ¶ 155.

Unprecedented Weather Events: COVID-19 coincided with an unprecedented series of winter storms and other natural events that shut down PVC Pipe Product production. Most prominently, "Winter Storm Uri" struck the Gulf Coast in February 2021. *Id.* ¶ 249. Plaintiffs label this as "another excuse" for high prices, *id.*, but once again their allegations and incorporated documents tell a different story. According to a March 2021 PPWR publication:

> "The effects of Winter Storm Uri were still being felt from Corpus Christi, TX to the Mississippi River in Louisiana. **Even the most devastating hurricanes of the past 15-16 years, including Hurricane Katrina and Hurricane Rita which in 2005 hit Southeast Louisiana and East Texas, respectively, have not taken out the entirety of US Gulf chemical production the way this freezing weather did**."

Ex. 3, 3/12/21 PPWR (cited at NCSP Compl. ¶ 251). The disruptions continued in September 2021, when Hurricane Ida caused PVC resin producers to shutter plants and declare force majeure, exacerbating the "gaping hole" in production. Ex. 6, 9/17/21 PPWR (quoted at NCSP Compl. ¶ 284).

Accelerated Buying By Distributors: Finally, Plaintiffs acknowledge that distributors exacerbated these supply and demand spikes by buying more pipe to build [redacted] NCSP Compl. ¶ 388. Distributors, worried about servicing their own customers, stockpiled pipe when [redacted]

[redacted] *Id.* ¶ 383. This accelerated purchasing further spiked demand, creating an even greater gap between what the pipe converters could produce and what end-users wished to purchase. *Id.* ¶ 350.

Distributors Opposed to Lowering Prices: Plaintiffs also acknowledge that, when prices began to fall in 2022, distributors—representing 70% of purchases from Defendants—had a "pure financial self-interest" in slowing the decline because of the large inventories they had built, as "a sudden price collapse would force devastating write-downs that could imperil their financial stability." *Id.* ¶ 14. Plaintiffs allege that, consistent with this rational economic self-interest, those customers thus urged Defendants ***not*** to cut prices. *E.g. id.* ¶¶ 388, 525–26.

H. Plaintiffs Do Not Explain How OPIS's Longstanding Services Caused a Spontaneous Increase in PVC Pipe Product Prices.

PPWR operated in the same way from at least 2017 through its discontinuation in 2024, yet Plaintiffs allege three disparate time periods: (1) 2017–2020: no price increases, with disagreement among Plaintiffs on whether conspiracy had begun; (2) 2020–2022: prices increased due to alleged conspiracy; (3) 2022–2024: prices fell despite alleged ongoing conspiracy.

2017–2020: Price Competition Despite OPIS's Services: Plaintiffs claim PVC Pipe Product prices rose starting mid-2020, not because of COVID-19 and weather events, but because of an "OPIS-facilitated" conspiracy. NCSP Compl. ¶ 120. But by Plaintiffs' own admission, since at least 2017:

- **OPIS continuously published the PPWR** in the same format with the same basic information. *See id.* ¶¶ 126, 162.
- **OPIS circulated price announcements to subscribers,** including Plaintiffs, and allege no changes in the type, frequency, or recipients of these emails. *See id.* ¶ 172.
- **OPIS journalists communicated with sources**, including converters and customers, about prices. *See, e.g.*, *id.* ¶¶ 168 181.

While one of the three putative Plaintiff classes claims that Defendants have been conspiring since 2017, *see infra* at 29–30, all three allege that PVC Pipe Product prices did not meaningfully increase until 2020. NCSP Compl. ¶ 166; EUP Compl. ¶ 268; DPP Compl. ¶ 76. Before 2020, Plaintiffs allege converters would issue price-increase letters, but customers successfully rejected them. NCSP Compl. ¶ 164. Plaintiffs allege this price competition continued through mid-2020, with [redacted] results at best for converters, and no corresponding increase in PVC Pipe Product prices. *Id.* ¶¶ 193, 231; *id.* Fig. 23. The below figure, adapted from the NCSP Complaint, illustrates this disconnect. *See id.* Fig. 21.

2020–2022: Alleged Price Increases. Plaintiffs allege that this pattern changed with the onset of COVID-19 and ensuing supply-chain disruptions, which sharply increased PVC Pipe Product prices. *Id.* ¶ 186; *id.* Fig. 23. While Plaintiffs attribute these increases to an OPIS-led

conspiracy, they systematically fail to connect their alleged price increases to communications between OPIS and Defendants, which continued as in the preceding years without change.

Plumbing Price Increases Allegedly Led by Charlotte Pipe Without Communications with OPIS: This disconnect is most glaring for plumbing PVC Pipe Products. Between mid-2020 and mid-2022, when prices allegedly rose, [redacted] *See id.* ¶¶ 226, 230–34 (2020); *id.* ¶¶ 276, 282, 285 (2021); *id.* ¶¶ 337–338 (2022). But Plaintiffs specifically allege that [redacted] *Id.* ¶ 241. In other words, the entire price increase in plumbing that Plaintiffs attribute to the conspiracy was initiated by Charlotte Pipe, but Plaintiffs allege zero calls, texts, or other communications between Todd—the supposed ringleader of the conspiracy—and this market-leading company about price changes. *Id.* ¶¶ 143, 236 [redacted]

Municipal Price Increases Allegedly Led by JM Eagle Without Regular Communications with OPIS: Plaintiffs' allegations of municipal-pipe price increases are similarly disconnected from their OPIS-centric conspiracy theory. Between July 2020 and January 2021, when much of the supposedly conspiratorial price increases took place, Plaintiffs allege that [redacted] *Id.* ¶¶ 219–24. But, like Charlotte Pipe, Plaintiffs allege that [redacted] *id.* ¶ 138, [redacted] *id.* ¶ 242, and allege no specific communications between JM Eagle and OPIS at all. In 2021, other converters at times moved first to increase prices, but here too Plaintiffs

allege no communications with OPIS coordinating or enforcing a price-increase scheme. *See id.* ¶¶ 245–70. Rather, Plaintiffs allege only that Todd received or requested copies of previously circulated price announcements. *See id.* Demonstrating the lack of any OPIS-led conspiracy, in one instance, [redacted] *Id.* ¶ 260.

Conduit Price Increases Alleged Without Relation to Communications with OPIS: Likewise, Plaintiffs fail to connect specific conduit price increases with communications between Defendants and OPIS—including for ***any*** alleged conduit price increase in 2020. *See, e.g.*, *id.* ¶ 202 [redacted] *id.* ¶¶ 230, 234–35 [redacted]

2022–2024: Alleged Prices Decrease Amid Price Competition. Plaintiffs allege that starting mid-2022 the prices of PVC Pipe Products began falling. *Id.* ¶ 23, Figs. 12, 21. They allege no changes to OPIS's price-reporting services through 2024, [redacted] *Id.* ¶ 509. Rather, they allege that prices fell because of price competition among converters. In 2024, for example, competitors were [redacted] *Id.* ¶¶ 473, 524 [redacted]

LEGAL STANDARD

The Supreme Court has instructed district courts to analyze a plaintiff's antitrust complaint rigorously. "[I]t is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 558 (2007) (citations omitted).

Under *Twombly*, courts must assess whether a plaintiff's "[f]actual allegations" suffice "to raise a right to relief above the speculative level." *Id*. at 545. A complaint should be dismissed where plaintiffs failed to "nudge[ ] their claims across the line from conceivable to plausible." *Id.* at 570; *Washington Cnty. Health Care Auth., Inc. v. Baxter Int'l Inc*., 2020 WL 1666454, at *10 (N.D. Ill. Apr. 3, 2020) (allegations need "to push past the possible to the plausible"). "*Twombly* demonstrates that courts should dismiss antitrust conspiracy complaints for failure to state a claim when the allegations, taken as true, ***could just as easily reflect innocent conduct or rational self-interest***." *Marion Diagnostic Ctr., LLC v. Becton Dickinson & Co.*, 29 F.4th 337, 351 (7th Cir. 2022) (emphasis added). This is a "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To bring a claim under Section 1 of the Sherman Act, Plaintiffs must allege "the existence of an agreement … through allegations of fact." *Always Towing & Recovery, Inc. v. City of Milwaukee*, 2 F.4th 695, 703 (7th Cir. 2021). "Courts apply the plausibility requirement with added rigor in the context of complex cases: '[t]he required level of factual specificity rises with the complexity of the claim.' This is in part because of the added burdens associated with defending a complex claim." *Mountain Crest SRL, LLC v. Anheuser-Busch InBev SA/NV*, 456 F. Supp. 3d 1059, 1072 (W.D. Wis. 2020) (addressing antitrust claims) (quoting *McCauley v. City of Chicago*, 671 F.3d 611, 616–17 (7th Cir. 2011)).

ARGUMENT

I. PLAINTIFFS FAIL TO PLAUSIBLY ALLEGE A PER SE ILLEGAL PRICE-FIXING CONSPIRACY.

Under Section 1 of the Sherman Act, a plaintiff may seek to hold an alleged conspiracy unlawful under one of two standards: the per se or rule of reason standard. *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 885 (2007). A plaintiff bringing a per se claim

must allege conduct, such as price-fixing, with such "'manifestly anticompetitive' effects" that it should be condemned as unlawful without any inquiry into procompetitive benefits. *Id*. at 886.

Here, Plaintiffs claim Defendants and OPIS formed "an elaborate" per se unlawful "price-fixing Conspiracy" to raise the prices of municipal, conduit, and plumbing PVC Pipe Products. NCSP Compl. ¶ 1; DPP Compl. ¶ 11; EUP Compl. ¶ 158. But this claim fails for two reasons. ***First***, OPIS's services amount to nothing more than a procompetitive exchange of information that categorically cannot "constitute a per se violation of the Sherman Act." *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 441 n.16 (1978). ***Second***, Plaintiffs have failed to allege OPIS and the PPWR were part of a broader "agreement" to fix prices. Plaintiffs have not pled direct or circumstantial evidence sufficient to show that Defendants "had a conscious commitment to a common scheme" to fix PVC pipe prices. *Marion Diagnostic Ctr.*, 29 F.4th at 343, 349.

A. Plaintiffs' Information Exchange Allegations Do Not Suffice to State a Per Se Price-Fixing Claim.

Plaintiffs have made the PPWR and Donna Todd's contacts with Defendants the lynchpin of their case and ask the Court to consider this "information exchange" as "direct evidence" of a per se unlawful agreement. NCSP Compl. ¶ 120. But the Supreme Court has held that exchanges of information "do not constitute a per se violation of the Sherman Act" because they can "increase economic efficiency and render markets more, rather than less, competitive." *U.S. Gypsum Co.*, 438 U.S. at 441 n.16. When a plaintiff seeks to proceed on a per se theory, but its "evidence consists of mere exchanges of information," the "presumption" of anticompetitive effects "vanishes" and no per se claim may lie. *In re Baby Food Antitrust Litig.*, 166 F.3d 112, 118 (3d Cir. 1999). Lower courts regularly apply this rule to bar per se claims based on market research services, benchmarking, or other exchanges of information. *See, e.g.*, *id.*; *Todd v. Exxon Corp.*, 275 F.3d 191, 198–99 (2d Cir. 2001) (explaining that a plaintiff seeking to apply the per se standard

must show a "price-fixing agreement," and cannot rely on the mere exchange of information); *In re Loc. TV Advert. Antitrust Litig.*, 2020 WL 6557665, at *11 (N.D. Ill. Nov. 6, 2020) ("Exchange of information is not illegal per se").

This rule makes good sense. The Supreme Court has explained that "[t]he public interest is served by the ***gathering and dissemination, in the widest possible manner***, of information with respect to the production and distribution, ***cost and prices in actual sales, of market commodities***, because the making available of such information tends to stabilize trade and industry, to produce fairer price levels, and to avoid the waste which inevitably attends the unintelligent conduct of economic enterprise." *Maple Flooring Mfrs.' Ass'n v. United States,* 268 U.S. 563, 582–83 (1925); *see also U.S. Gypsum Co.*, 438 U.S. at 441 n.16 (discussing procompetitive benefits).

As explained below, Plaintiffs' complaints concede these procompetitive benefits here.

1. The PPWR Provided Standard Procompetitive Market Research to a Range of Customers at Every Level of the PVC Industry.

The PPWR is the only OPIS publication that Plaintiffs allege every Defendant (as well as customers) regularly received. *See* NCSP Compl. Fig. 13. In each PPWR, the sole regularly reported price data consisted of aggregated "High, Low, and Midpoint prices." *Id.* ¶ 126. This is precisely the sort of procompetitive benchmarking service that "[c]ourts prefer." *Todd*, 275 F.3d at 212 (explaining that even exchanges of "data broken down to subsets consisting of as few as three competitors" such that "deviations [by individual defendants] from previously announced" prices were "easily and quickly detectable" would not be per se unlawful). Likewise, the ad hoc narratives in the PPWR contain procompetitive "market research" on supply-side factors like PVC resin prices and demand-side factors like housing starts that converters can and did use to "make better informed decisions regarding their offerings." *Gibson v. Cendyn Grp., LLC*, 148 F. 4th 1069, 1084 (9th Cir. 2025) (rejecting claim that hotels' use of market-information service violated

antitrust laws); *see, e.g.*, Ex. 1, 7/17/20 PPWR (quoted at NCSP Compl. ¶ 218; EUP Compl. ¶ 307).

2. OPIS's Circulation of Public Price Increase Announcements to Subscribers Was Procompetitive.

Plaintiffs also allege that OPIS employees circulated published price announcements to subscribers. *E.g.*, NCSP Compl. ¶ 172. But as the Seventh Circuit has explained, an "industry practice of maintaining price lists and announcing price increases in advance" does not merit "an inference of price fixing." *Rsrv. Supply Corp. v. Owens-Corning Fiberglas Corp.*, 971 F.2d 37, 53 (7th Cir. 1992). To the contrary, "the public interest is served by the gathering and dissemination, in the widest possible manner, of information," including information regarding "cost and prices in actual sales." *Maple Flooring*, 268 U.S. at 582–83.

Plaintiffs seek to paint a picture of Todd circulating "confidential" price announcements to an "exclusive network of PVC Converters' senior executives and C-suite leaders," but their own allegations belie these labels. NCSP Compl. ¶ 5. Far from being [redacted] *id.* ¶ 161, who used them to [redacted] *id.* ¶ 344. Moreover, Plaintiffs acknowledge that Todd's email distributions were sent to PVC pipe ***customers***, including not just distributors, but other customers like [redacted] EUP Compl. ¶ 172; NCSP Compl. ¶ 428. These "factual allegations contained in the complaint[s] contradict" the conclusory speculation that no putative class member customers "were even aware [the PPWR] existed or had access to it," and therefore fail as a matter of law. *Oakland Police & Fire Ret. Sys. v. Mayer Brown, LLP*, 861 F.3d 644, 654 (7th Cir. 2017); NCSP Compl. ¶ 582. Todd's alleged price announcement email lists are just as notable for who they leave out—leading plumbing converter Charlotte Pipe was [redacted]

[redacted] NCSP Compl. ¶ 241 (municipal email list); *id.* ¶ 271 (plumbing email list).

3. Donna Todd's Market Research Communications with Subscribers Do Not Support a Price-Fixing Claim.

Like any reporting service, OPIS communicated with market participants to gather information needed for the PPWR. *Id.* ¶ 131 [redacted] Plaintiffs claim OPIS was at the "center" of an unlawful conspiracy, *id.* ¶ 3, and have access to thousands of its documents, but present nothing more than innocuous communications for two reasons:

First, the bulk of Todd's alleged communications were Defendants providing Todd with public price announcements. Todd might ask a converter [redacted] *Id.* ¶ 261(b); *see also, e.g.*, *id.* ¶¶ 180, 266, 269, 280, 293. Without timely access to price announcements, OPIS could not report on the current state of the market. *See Rsrv. Supply Corp.*, 971 F.2d at 53. Indeed, courts have concluded that no inference of agreement is merited even where the record was "replete with evidence that pricing information was systematically obtained and directed to high-level executives." *Blomkest Fertilizer, Inc. v. Potash Corp. of Saskatchewan*, 203 F.3d 1028, 1033–35 (8th Cir. 2000) (emphasis added) (quoting *In re Baby Food*, 166 F.3d at 118–19). Plaintiffs' allegations of complaints and discussions of market conditions between converters, customers, and Todd in furtherance of OPIS's market research services come nowhere close.

Second, Plaintiffs try to make much of allegations where some of Todd's contacts discussed their views of what other Defendants should do. *E.g.*, NCSP Compl. ¶¶ 9(d), 353 [redacted]

[redacted] *id.* ¶ 174 [redacted] But courts have long recognized that "allegations of price complaints … are insufficient to create an inference of conspiracy to fix prices." *Valley Liquors, Inc. v. Renfield Importers, Ltd.*, 822 F.2d 656, 665 (7th Cir. 1987) (rejecting inference of conspiracy where distributor defendant "complained about the prices of every other distributor"). Indeed, "a complaint from a competitor is insufficient evidence for inferring a conspiracy" because it does not "prove a 'conscious commitment to a common scheme designed to achieve an unlawful objective.'" *Proctor v. Gen. Conf. of Seventh-Day Adventists*, 651 F. Supp. 1505, 1528 (N.D. Ill. 1986) (quoting *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764 (1984)). It is no surprise that a converter's employee would complain to Todd that [redacted] *E.g.*, NCSP Compl. ¶ 192; *Valley Liquors*, 822 F.2d at 661; *Miles Distributors, Inc. v. Specialty Const. Brands, Inc.*, 417 F. Supp. 2d 1030, 1035 (N.D. Ind. 2006) ("[S]omething more than evidence of complaints about price is needed to prove illegal price fixing.").

In sum, OPIS's services allowed PVC Pipe Product converters and customers to learn about the supply, demand, and pricing of PVC Pipe Products so that they could make "better informed decisions regarding" their production, purchasers, and investment. *Gibson*, 148 F. 4th at 1084; *Maple Flooring*, 268 U.S. at 583. The exchange of information Plaintiffs have alleged is procompetitive, lawful, and categorically cannot support a per se price-fixing claim.

B. Plaintiffs Have Failed to Allege an Agreement to Fix Prices.

Because OPIS's market research services cannot amount to a per se violation of the antitrust laws, Plaintiffs claim that these services "facilitated" a broader scheme to "agree on and fix … prices" across municipal, conduit and plumbing PVC Pipe Products. NCSP Compl. ¶ 120;

Five Smiths, Inc. v. Nat'l Football League Players Ass'n, 788 F. Supp. 1042, 1047 (D. Minn. 1992) (rejecting attempt "to avoid dismissal of [plaintiffs' per se] claim" by arguing that "in addition to the mere exchange of salary information," these exchanges amounted to "some broader price-fixing scheme"). But Plaintiffs have not alleged the distinct sets of Defendants who manufacture plumbing, municipal, and conduit pipe made a "conscious commitment to a common scheme designed" to fix each type of PVC Pipe Product. *Marion Diagnostic Ctr.*, 29 F.4th at 343, 349. As laid out below, Plaintiffs have failed to plead an unlawful price-fixing agreement through either allegations of (1) direct or (2) circumstantial evidence.

1. Plaintiffs Do Not Allege Any Facts Directly Establishing an Agreement to Raise PVC Pipe Prices.

As the Seventh Circuit has explained, "direct evidence" of a conspiracy requires a smoking-gun admission of agreement, and "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.*, 630 F.3d 622, 628 (7th Cir. 2010). Direct evidence must be as explicit as a "memorandum … detailing the discussions from a meeting of a group of alleged conspirators," *Cosmetic Gallery, Inc. v. Schoeneman Corp.*, 495 F.3d 46, 52 (3d Cir. 2007), or a "recorded phone call in which" the supposed conspirators agreed. *Mayor & City Council of Baltimore, Md. v. Citigroup, Inc.*, 709 F.3d 129, 136 (2d Cir. 2013). *See* EUP Compl. ¶ 427 (conceding that "direct evidence" must be "explicit and requires no inferences").

Despite access to thousands of emails, texts, and pages of notes from OPIS's settlement, nothing in Plaintiffs' complaints remotely qualifies as "direct evidence." Plaintiffs seek to allege a complex, multi-faceted conspiracy in which distinct sets of municipal, plumbing, and conduit converters collectively decided to conspire to fix prices of each type of product. Nothing in the

complaints in any way resembles an admission by any, let alone all, Defendants of the existence of a price-fixing conspiracy. *In re Text Messaging Antitrust Litig.*, 630 F.3d at 628. Plaintiffs assert that their allegations of OPIS's services broadly qualifies as "direct evidence," NCSP Compl. ¶ 120, but the opposite is true: exchanges of information cannot serve as the basis of per se liability at all, *see supra*, and certainly does not qualify as "explicit" evidence of a conspiracy that "requires no inferences." *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 661 (7th Cir. 2002) (citation omitted).

2. Plaintiffs Do Not Circumstantially Allege an Agreement to Raise PVC Pipe Prices.

Plaintiffs cannot meet their burden with circumstantial evidence either. In particular, their circumstantial case fails on the pleadings for three reasons. ***First***, Plaintiffs' conspiracy theory is facially implausible. They have failed to plausibly allege their supposed conspiracy's formation, implementation, or scope, rendering their claim implausible as a whole. ***Second***, their pleadings fail to establish "parallel conduct" sufficient to support an inference of conspiracy because their complaints amply demonstrate an "obvious alternative explanation" for the price increases they allege: the massive upheaval the COVID-19 pandemic and unprecedented weather events caused to PVC Pipe Product supply and demand, followed by customer demand that drove up prices. *Twombly*, 550 U.S. at 555. ***Third,*** Plaintiffs have failed to allege circumstances, known as "plus factors" to distinguish conscious agreement from mere interdependence. *Id.* at 569.

a. Plaintiffs' Proposed Conspiracy Is Facially Implausible.

The touchstone of inferring an agreement from circumstantial evidence is plausibility. *Twombly*, 550 U.S. at 564. The conspiracy Plaintiffs have proposed is implausible on its face for at least the following reasons: (1) there is no explanation for how Defendants, who vigorously compete against each other, formed the elaborate conspiracy they theorize, (2) they fail to connect

the supposedly conspiratorial price increases to OPIS, the proposed mechanism through which the conspiracy allegedly functioned, and (3) they cannot plausibly explain how a conspiracy even could operate given the range of discrete products at issue and differences between Defendants. When, as here, Plaintiffs' claim of conspiracy "requires a speculative leap, not a reasonable inference," it must fail. *Alarm Detection Sys., Inc. v. Vill. of Schaumburg,* 930 F.3d 812, 828 (7th Cir. 2019).

i. *No Allegations as to Formation of Supposed Conspiracy.*

Plaintiffs' theory has a fundamental timing problem. They allege OPIS has published the PPWR, circulated price announcements, and communicated with sources since at least 2017. EUP Compl. ¶ 177; NCSP Compl. ¶¶ 147–49.[9] Yet they do not allege that PVC Pipe Product prices increased until mid-2020. *See, e.g.*, NCSP Compl. Fig. 23; EUP Compl. ¶ 268; DPP Compl. ¶ 76. Thus, Plaintiffs do not plausibly explain how "an agreement … was formed" to spontaneously abandon Defendants' prior practice of fierce competition in favor of a conspiracy. *Ryan v. Mary Immaculate Queen Ctr.*, 188 F.3d 857, 860 (7th Cir. 1999) (affirming dismissal where there was only a "bare allegation of conspiracy" because "[t]he form and scope of the conspiracy are thus almost entirely unknown").

Tellingly, while OPIS is the central element of Plaintiffs' theory, they do not allege any meaningful changes in OPIS's services between 2017 and 2024. Their own allegations establish that OPIS published the PPWR in the same format, circulated price sheets, and communicated with sources since at least 2017. *See* NCSP Compl. ¶¶ 162–66; EUP Compl. ¶ 286 [redacted] Plaintiffs do not

[9] NCSPs first allege OPIS offering its price-reporting services in 2018 but that does not contradict the other classes' allegations that OPIS offered these same services since at least 2017. DPP Compl. ¶ 74.

explain OPIS's role in how the supposed conspiracy formed in 2020, or any other plausible explanation for how Defendants supposedly switched from competition to conspiracy. Merely offering the same longstanding services cannot suffice. *See Ass'n of Am. Physicians & Surgeons, Inc. v. Am. Bd. of Med. Specialties*, 2020 WL 5642941, at *9 (N.D. Ill. Sept. 22, 2020) (dismissing where "there are no plausible factual allegations about ***how*** [supposed conspirators] entered into an arrangement" (emphasis added)); *contrast In re Rail Freight Fuel Surcharge Antitrust Litig.*, 587 F. Supp. 2d 27, 34 (D.D.C. 2008) (permitting conspiracy claim because the plaintiffs had alleged "where and when the agreement was reached" including "who initiated discussions … [and] what they proposed").

Plaintiffs' shifting and contradictory approaches to these problems are telling. In their prior complaints, NCSPs and DPPs alleged that Defendants switched from lawful competition to unlawful conspiracy in 2021 after observing a non-conspiratorial increase in prices in 2020. Dkt. 179, NCSP 1st Am. Compl. ¶ 101; Dkt. 183, DPP 1st Am. Compl. ¶ 63. In their amended complaints, Plaintiffs' theories have evolved and diverged, with each of the three putative classes taking a contradictory and implausible approach to explaining away this gap in their theory.

EUPs ignore this contradiction completely. They allege that Defendants have conspired "since September 1, 2017" and allege OPIS's continuous services from 2017–2020, despite their own admission that PVC Pipe Product prices did not rise until mid-2020. EUP Compl. ¶ 5; *id.* Fig. 8. They do not explain this change other than baldly asserting that COVID-19 gave Defendants [redacted] their conspiracy. *Id.* ¶ 286. EUPs' theory boils down to that Defendants participated in a dormant conspiracy that had no effect on prices until 2020. But it defies common sense that Defendants were lying in wait (for years) for a global pandemic to restructure the global economy.

DPPs take the opposite approach from EUPs. They include fewer allegations about OPIS between 2017 and 2020 so that their conspiracy can [redacted] in 2020. DPP Compl. ¶ 75. But they too acknowledge, as they must, that OPIS offered the same services before and after 2020. *Id.* ¶ 74 [redacted] *id.* ¶ 22 (acknowledging that OPIS had published "weekly reports" covering "PVCPs [PVC Pipe Products]" as far back as 2018). DPPs thus cannot explain how OPIS could relate to any rise or fall in PVC prices, and so their complaint too fails to offer a plausible explanation for the formation of any conspiracy.

NCSPs actually acknowledge the fatal flaw in their theory, as they claim that the supposed [redacted] NCSP Compl. ¶ 186. They offer three perfunctory explanations for how these preexisting services could spontaneously result in an effective price-fixing conspiracy, but none can save their claim.

First, NCSPs assert that Defendants were [redacted] *Id.* ¶ 177. But this is a mere label, and they lack any factual allegations of changes to OPIS's services during this time. *See Superior Offshore Int'l, Inc. v. Bristow Grp. Inc.*, 738 F. Supp. 2d 505, 512 (D. Del. 2010) (dismissing claims where plaintiffs "sets forth no factual allegations directly bearing on the formation of an agreement to fix prices during the relevant period" and rejecting attempt to rely on statement by "an unidentified 'operator' that 'everyone more or less agreed'").

Second, NCSPs allege that [redacted] NCSP Compl. ¶183. But there is no explanation as to how [redacted] could be the lynchpin to a conspiracy. Vitally, [redacted] making it implausible that the start of [redacted]

[redacted] could have led to a municipal or plumbing pipe conspiracy. *Id.* ¶¶ 182–83. Further, NCSPs do not allege how [redacted] changed any Defendants' behavior. *See id.*

Third, NCSPs claim that COVID-19 inspired Defendants to conspire because [redacted] *Id.* ¶ 186. This again amounts to a claim that Defendants were lying in wait for a global economic shock like COVID-19, which makes no sense on its face. And Plaintiffs' own allegations undercut this story: as explained further below, their pleadings and incorporated documents explain that COVID-19 ***actually*** disrupted PVC supply chains, drove up demand, and resulted in the non-conspiratorial price increases they wish to attribute to a conspiracy. *See infra* at 37. This is a far cry from situations where a supposed "invitation" to collude sufficed to establish the formation and existence of a conspiracy. *See Interstate Cir. v. United States*, 306 U.S. 208, 222 (1939) (holding letter to eight movie distributors sufficient to establish conspiracy where it "named on its face" the other distributors receiving the same letter and proposed plan that would only work if all participated).

At bottom, Plaintiffs' theories are implausible because they have not offered a coherent explanation for "how" OPIS transformed from a simple market-research service into the vehicle for a broad, multi-product conspiracy among companies that had previously competed. *Ryan*, 188 F.3d at 860; *Ass'n of Am. Physicians & Surgeons, Inc.*, 2020 WL 5642941 at *9.

ii. *Disconnect Between Allegations of Price Increases and Mechanism of Conspiracy to Increase Price.*

Plaintiffs' claims are also facially implausible because they do not explain how OPIS was involved with many of the price increases they wish to attribute to an OPIS-based conspiracy.

Plaintiffs' claim of a plumbing-pipe conspiracy best illustrates this disconnect. Plaintiffs allege that plumbing-pipe prices increased between mid-2020 and mid-2022, but during that time:

- Market-leader Charlotte Pipe was the [redacted] NCSP Compl. ¶¶ 226, 230–34 (2020); 276, 282, 285 (2021); 337–38 (2022).
- Charlotte Pipe [redacted] *Id.* Fig. 13; *id.* ¶ 138.
- Plaintiffs allege **no communications with OPIS whatsoever** related to Charlotte Pipe's leadership of these price increases.

In other words, Plaintiffs concede that the companies initiating price increases did so without any input from OPIS at all. *Id.* ¶ 3. What Plaintiffs describe are unilateral pricing decisions, not conspiracy. Plaintiffs insist that [redacted] *id.* ¶ 271, but this attribution requires precisely the kind of "speculative leap" that *Twombly* prohibits. *Alarm Detection Sys., Inc.*, 930 F.3d at 828.

The same problem infects Plaintiffs' complaints for municipal pipe as well. For municipal pipe, [redacted] NCSP Compl. ¶ 138; *id.* ¶¶ 219–24. These 2020 municipal pipe price increases are a vital part of Plaintiffs' story: municipal pipe accounts for "two-thirds" of all PVC Pipe Products sold and these alleged 2020 price increases account for much of the overall increase that Plaintiffs attribute to a conspiracy. *Id.* ¶ 86; *id.* Fig. 23. Yet Plaintiffs do not offer any plausible explanation for how OPIS's services caused these alleged price increases. *Id.* ¶¶ 219–24.

Conduit is more of the same. In August 2020, when converters allegedly [redacted] Plaintiffs do not allege how PPWR described these increases, much less any surrounding communications between OPIS and Defendants. *Id.* ¶ 202. Thus, Plaintiffs ask the Court to infer that the alleged rise in conduit

pipe prices in August 2020 was the result of an OPIS-led conspiracy, even though they lack allegations about how OPIS caused this change. Contrast this with 2017, when Plaintiffs allege that converters failed to raise conduit prices but include multiple allegations of converters' surrounding communications with Todd. *E.g.*, *id.* ¶¶ 163–64.

By systematically failing to connect the key price increases they allege to OPIS, Plaintiffs leave a hole in their OPIS-based conspiracy theories that strains credulity and "common sense." *Iqbal*, 556 U.S. at 679 (instructing "the reviewing court to draw on its judicial experience and common sense" in evaluating plausibility).

iii. *Plaintiffs' Purported Conspiracy Implausibly Sweeps Together Disparate Products and Manufacturers.*

Finally, Plaintiffs' alleged conspiracy is implausible because it sweeps together all PVC Pipe Products into "a single product market for PVC Pipe Systems, with different application categories." NCSP Compl. ¶ 594. Plaintiffs combine different products with different functions, prices, geographies, and producers yet claim that prices of all of these disparate products rose because of a common conspiracy. This too is facially implausible.

Differences in function. Plaintiffs allege a conspiracy encompassing PVC Pipe Products with vastly different functions and specifications. The purpose of municipal water pipes is to "carry municipal potable water from sources like reservoirs, lakes, or rivers to treatment facilities through water mains distributing water throughout communities," while municipal sewer pipes "transport wastewater to treatment plants and storm runoff to designated outlets." *Id.* ¶¶ 84, 87. Plumbing pipes, on the other hand, "offers durability, corrosion and chemical resistance, and lightweight handling." *Id.* ¶ 89. Meanwhile, electrical conduits are "resistant to burning, corrosion, moisture, and sunlight, making it ideal for outdoor applications." *Id.* ¶ 91.

Plaintiffs also lump together two very different types of products: PVC pipe, which is extruded, and PVC fittings, which are molded. *See* DPP Compl. ¶ 13; NCSP Compl. ¶¶ 81–82, 92. Rather than allege any facts suggesting a conspiracy with respect to fittings, Plaintiffs allege only that because the price of PVC pipe went up, the price of PVC fittings would go up as well. DPP Compl. ¶ 14. Yet they implausibly sweep Multi Fittings Corporation, who produced only fittings, into their proposed conspiracy. NCSP Compl. ¶ 53.

Critically, a consumer of PVC pipe cannot use the same pipe across these application categories—for example, a municipality that requires sewer pipe cannot substitute electrical conduit, nor can an electrician use water pipe to run wires. And this is not just a matter of preference, but different regulatory "standards," as the complaints acknowledge. *Id.* ¶ 89; *cf. CAE Inc. v. Gulfstream Aero. Corp.*, 203 F. Supp. 3d 447, 453 (D. Del. 2016) (flight simulators in different relevant markets where "FAA regulations require pilots to train on model-specific simulators").

Differences in Pricing. Different types of PVC pipe are priced in different ways; (a) municipal water and sewer pipe is priced on a pricing-grid "block" system, (b) plumbing pipe is priced on per-foot basis, and (c) electrical conduit pipe is priced on a per-pound basis. NCSP Compl. ¶¶ 110–15. At a given time, different converters may have sold conduit pipes priced at around "$169/100," municipal pipe at around "'Block 78' means $0.39/foot (78 x $0.005)," and plumbing pipe at around "$2.74/foot." DPP Compl. ¶ 2. The complaints further concede that the prices of the different segments moved differently from one another. NCSP Compl. ¶ 371 [redacted]

Differences in Geography. Plaintiffs also allege that pricing for PVC Pipe Products is set by region and category—and can differ significantly across regions—but claim a conspiracy that was national in scope. *See, e.g.*, DPP Compl. ¶ 222 [redacted] Converters could even get so specific as to vary their pricing state-by-state. NCSP Compl. ¶ 443 [redacted]

Differences in Producers. Finally, Plaintiffs implausibly allege a conspiracy among converters who make entirely distinct products. Charlotte Pipe and Cresline, for example, are alleged to make only plumbing pipe, while Pipelife Jet Stream, and Diamond are alleged to make only municipal pipe. *Id.* Fig. 9. Cantex, Prime Conduit, and Southern Pipe, on the other hand, are alleged to make only conduit pipe. *Id*. Plaintiffs allege that the PPWR discussed these products separately and even circulated price announcements only to some of those converters it believed were interested in that type of pipe. *See id.* ¶¶ 241, 271.

There is no allegation of any competition or reasonable interchangeability among municipal, plumbing, conduit, or fittings. Yet, Plaintiffs assert these companies choose to spontaneously conspire to fix the prices of these disparate products at the same time and in the same way. This multi-product conspiracy theory, on top of all of the other facial defects in Plaintiffs' theory, renders their complaints impermissibly "speculative" and implausible. *Alarm Detection Sys., Inc.*, 930 F.3d at 828; *N. Jersey Secretarial Sch., Inc. v. McKiernan*, 713 F. Supp. 577, 583 (S.D.N.Y. 1989) (holding that plaintiff's proposed market of "the business of adult vocational education … in New Jersey and Puerto Rico" improperly combined unrelated products).

* * *

The flaws are many, but the point is simple: Plaintiffs' conspiracy theory is facially implausible and "makes no practical or economic sense." *Loren Data Corp. v. GXS, Inc.*, 501 Fed. Appx. 275, 281 (4th Cir. 2012); *Washington Cnty. Health Care Auth.*, 2020 WL 1666454, at *7 (explaining that claims "should be dismissed if common economic experience" invalidates conspiracy theory). Plaintiffs ask this Court to infer a nationwide conspiracy between some longtime competitors, other companies that never cross paths, and a market-research publisher despite no explanation of its formation, no overlap between the supposed mechanism and price increases, and an implausible combination of products and converters. Their incoherent theory collapses under its own weight and cannot survive *Twombly*.

b. Plaintiffs Have Failed to Plausibly Allege a Conspiracy Because COVID-19, Weather Events, and Demand Spikes Offer an Obvious Alternative Explanation.

Beyond this facial implausibility, Plaintiffs have failed to plead the required element of "[p]arallel behavior of a sort anomalous in a competitive market" because they have alleged an "obvious alternative explanation"—the COVID-19 pandemic, weather events, and spikes in customer demand—that preclude any inference of conspiracy. *In re Text Messaging Antitrust Litig.*, 630 F.3d at 627; *Twombly*, 550 U.S. at 567.

Plaintiffs emphasize that Defendants would issue price announcements close in time to one another. *E.g.*, NCSP Compl. ¶ 17. But there is nothing surprising or "anomalous" about that: Defendants sell commodities, and as the Seventh Circuit has explained, "***parallel pricing or conduct lacks probative significance*** when the product in question is standardized or fungible." *Weit v. Cont'l Illinois Nat. Bank & Tr. Co. of Chicago*, 641 F.2d 457, 463 (7th Cir. 1981) (emphasis added). Rather than merely accept assertions that parallel conduct is probative of a conspiracy, courts must "dismiss antitrust conspiracy complaints for failure to state a claim when the allegations, taken as true, could just as easily reflect innocent conduct or rational self-interest" as

a conspiracy. *Marion Diagnostic Ctr.*, 29 F.4th at 351. There can be no inference of conspiracy from supposedly parallel conduct if "common economic experience, or … independent self-interest is an obvious alternative explanation for defendants' common behavior." *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 326 (3rd Cir. 2010).

Recently, a court dismissed similar antitrust claims alleging a conspiracy in the tire industry because "plaintiffs' own allegations make plain that 'the [COVID-19] pandemic had a global impact on the tire industry.'" *In re: Passenger Vehicle Replacement Tires Antitrust Litig.*, 767 F. Supp. 3d 681, 710 (N.D. Ohio 2025). The court gave "no weight to plaintiffs' unsupported conclusion that the price increases cannot be explained by the effects of the COVID-19 pandemic," and held that this obvious alternative explanation precluded an inference of conspiracy. *Id.* at 731. *Tires* is far from unusual; courts routinely reject antitrust claims at the motion to dismiss stage where the pleadings and incorporated documents offer an "obvious alternative explanation" that undercuts the premise of their complaint. *See, e.g.*, *D'Augusta v. Am. Petroleum Inst.*, 117 F.4th 1094, 1104 (9th Cir. 2024) ("[A]llegations of parallel conduct alone are not enough to raise an inference of an agreement when an 'obvious alternative explanation' accounts for that same conduct. The 'obvious alternative explanation' was the outbreak of the global Covid-19 pandemic.").[10]

[10] *See also, e.g.*, *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d at 326; *Citigroup*, 709 F.3d at 138 (no inference of conspiracy if it "made perfect business sense" for each defendant to engage in the challenged conduct independently); *ECB USA, Inc. v. Savencia Cheese USA, LLC*, 2025 WL 2471541, at *9 (11th Cir. Aug. 28, 2025) ("[W]e find an 'obvious alternative explanation' for Savencia Cheese's conduct…. [Defendant] could have signed the agreement for a lawful purpose: to increase profits.").

Here too, Plaintiffs' complaints and incorporated sources amply establish that "the effects of the COVID-19 pandemic" are responsible for the price increases that Plaintiffs allege. *In re Tires*, 767 F. Supp. 3d at 731. Plaintiffs' own pleadings make clear that, starting mid-2020:

- The price of PVC resin, the main input in PVC Pipe Products ***nearly doubled***. NCSP Compl. Fig. 21.
- The prices of "PVC stabilizers" and other additives that contribute to the price of PVC Pipe Products rose sharply as well. Ex. 3, 3/12/21 PPWR (cited at NCSP Comp. ¶ 251).
- Plaintiffs faced COVID-related plant shutdowns, "backlogs," and "holes in their inventory" that meant they were producing far less PVC Pipe Product than customers needed. Ex. 1, 7/17/20 PPWR (quoted at NCSP Compl. ¶ 218; EUP Compl. ¶ 307); Ex. 2, 1/22/21 PPWR (quoted at NCSP Compl. ¶ 245, 289; DPP Compl. ¶ 238, 256).
- While the supply chain suffered, demand rose as "housing starts [ ] skyrocketed" and construction-fueled demand for PVC Pipe Products further contributed to increased prices. Ex. 1, 7/17/20 PPWR (quoted at NCSP Compl. ¶ 218; EUP Compl. ¶ 307).

Plaintiffs further allege how unprecedented and highly destructive weather events exacerbated the effects of COVID-19 on PVC Pipe Products, particularly Winter Storm Uri—which the PPWR described as having a bigger impact on PVC production than "***even the most devastating hurricanes of the past 15-16 years***." Ex. 3, 3/12/21 PPWR (cited at NCSP Compl. ¶ 251). After Winter Storm Uri, [redacted] exacerbated the supply shortfall and made it difficult for converters to manufacture enough pipe to meet customer demand. NCSP Compl. ¶ 383 (quoting Ex. 10, 4/6/23 PPWR). Plaintiffs spell out the impact that these events had on PVC Pipe Product prices, alleging that customers told converters: [redacted] NCSP Compl. ¶ 350.

Beyond COVID-19 and weather events, Plaintiffs also acknowledge that the major distributors further drove up prices by buying more product to build "monster inventories." *Id.* ¶ 388. Faced with diminishing supply and the prospect of being unable to meet customers' needs, distributors built massive inventories of municipal, conduit, and plumbing pipe in 2021 and 2022.

Ex. 8, 10/14/22 PPWR (quoted at DPP Compl. ¶ 239) ("While the high inventory levels throughout the supply chain may have gotten more attention in the plumbing and conduit markets, the same situation was playing out in the municipal pipe markets. As one converter put it, distributors have a ton of inventory in their yards, across the street, and even down the road and it will take months to work it all down."). This additional spike in demand led to converters "selling pipe faster than they could make it." Ex. 4, 4/23/21 PPWR (cited at NCSP Compl. ¶ 255(a)).

The bottom line is that Plaintiffs' own allegations establishing how COVID-19, weather events, and customer demand—not any conspiracy—drove PVC Pipe Product prices higher is precisely the sort of "obvious alternative explanation" that precludes an inference of conspiracy. *Twombly*, 550 U.S. at 555. Here, as in *Tires*, Plaintiffs seek to avoid their own pleadings by asserting that COVID-19 merely "provided the industry cover" for a price-fixing conspiracy. *In re Tires*, 767 F. Supp. 3d at 710; *compare* NCSP Compl. ¶ 155 (describing COVID-19 as a "pretextual excuse"). But, also like in *Tires*, "Plaintiffs have not offered any compelling reason why the COVID-19 pandemic should not be considered a fundamental structural change and treated as an obvious alternative and lawful explanation here." 767 F. Supp. 3d at 710.

Plaintiffs also claim that any price increase must be conspiratorial because the price of PVC Pipe Products rose faster than prices of its main input, PVC resin. *E.g.*, NCSP Compl. ¶ 321. But the PPWR itself rejects Plaintiffs' argument, explaining that when converters "struggle[d] to meet demand," the "lack of resin was ***not the most pressing factor***," but rather "lack of personnel" and "difficulty in finding sufficient qualities of heat stabilizer" and other additives caused by COVID-19 and weather events. Ex. 5, 6/11/21 PPWR (cited at EUP Compl. ¶ 326; NSCP Compl. ¶ 255). Thus, it is not remotely "anomalous" or even surprising that PVC Pipe Product prices rose at an

"unprecedented" rate that diverged at times from the price of PVC resin. *In re Text Messaging Antitrust Litig.*, 630 F.3d at 627.

Finally, Plaintiffs cannot plausibly claim that prices should have ***fallen*** any faster than they did, as they allege an "obvious alternative explanation" for any price stability. *Id.*; *Twombly*, 550 U.S. at 555. Plaintiffs allege that large distributors had built up large inventories that they would need to write down if prices fell, which led them to ask converters, as a matter of "pure financial self-interest," that Defendants ***not*** cut prices. NCSP Compl. ¶¶ 14, 523–26. However, a distributor is well "within its rights to tell [a] manufacturer … if it is unhappy" with its practices, including decisions with respect to pricing. *Toys "R" Us, Inc. v. FTC*, 221 F.3d 928, 939 (7th Cir. 2000) (citing *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919)).

c. Plaintiffs Have Failed to Allege "Plus Factors" Suggesting a Conscious Agreement Among Defendants.

While the obvious alternative explanations alleged preclude Plaintiffs from establishing parallel conduct and are thus fatal to their complaints, Plaintiffs also cannot meet their burden to establish a conspiracy through circumstantial evidence because they lack "plus factors" that push the needle from lawful conscious parallelism to unlawful conspiracy. *Twombly*, 550 U.S. at 553–54. Plus factors are circumstances—beyond parallel conduct—sufficient to establish that Defendants' conduct was not the result of mere "interdependence" and falls outside of the "wide swath of rational and competitive business strategy unilaterally prompted by common perceptions of the market." *Id.* at 554.

When considering whether a plaintiff has alleged adequate "plus factors," it is ***not sufficient*** for a plaintiff to show that a "group of manufacturers engage in consciously parallel pricing" by learning about one another's pricing decisions and considering those when making their own pricing decisions—what is known as "interdependence." *Rsrv. Supply Corp.*, 971 F.2d

at 50 (quoting *E.I. du Pont de Nemours & Co. v. FTC*, 729 F.2d 128, 139 (2d Cir. 1984)). Mere "interdependence" does not address the "crucial question" of whether the conduct at issue "stem[s] from independent decision[making]" by the defendants or from an unlawful "agreement." *Twombly*, 500 U.S. at 553. Thus, Plaintiffs must allege circumstances establishing that Defendants have acted pursuant to "a conscious commitment to a common scheme" to fix prices. *Marion Diagnostic Ctr.*, 29 F.4th at 343, 349.

Twombly applied this logic, holding that those plaintiffs did not allege an unlawful conspiracy by merely pleading that the defendants took similar actions "expecting their [competitor] neighbors" to observe and "do the same thing" themselves. 550 U.S. at 568; *see also Rsrv. Supply*, 971 F.2d at 50 (explaining that courts cannot condemn mere "interdependent pricing" because "it is close to impossible to devise a judicially enforceable remedy … how does one order a firm to set its prices without regard to the likely reactions of its competitors?"). The key point is that it is both lawful and "common" for a producer to react to its competitors' decisionmaking when those competitors' decision impact that producer, as this reflects "their shared economic interests and their interdependence with respect to price and output decisions." *Twombly*, 550 U.S. at 553. That is precisely the sort of "conscious parallelism" that courts have refused to condemn as unlawful. *Mkt. Force Inc. v. Wauwatosa Realty Co.*, 906 F.2d 1167, 1172 (7th Cir. 1990) ("[E]vidence that brokers were aware of other brokers' policies … before enacting their own policy is nothing more than a restatement of conscious parallelism.").

In sum, the purpose of "plus factors" is to distinguish lawful interdependence from unlawful conscious commitment to a price-fixing scheme. Here, Plaintiffs' purported plus-factor allegations do not meet this burden, where (1) Plaintiffs do not and cannot allege Defendants took action against their independent self-interest; (2) there is no allegation of significant interfirm

communications; (3) there is no change to Defendants' alleged conduct before and during the supposed conspiracy; (4) alleged attendance at trade association meetings and trade shows, without more, does not support an inference of conspiracy; (5) the alleged market dynamics of PVC Pipe Product makes a conspiracy implausible; and (6) the law is clear that the mere fact of an ongoing government investigation does not constitute a relevant plus factor.

i. *Plaintiffs Do Not Allege Actions Against Defendants' Unilateral Interests.*

Whether Defendants took action against their "independent self-interest absent an agreement is generally considered the most important 'plus factor.'" *JSW Steel (USA) Inc. v. Nucor Corp.*, 586 F. Supp. 3d 585, 596 (S.D. Tex. 2022) (citation omitted). Here, Plaintiffs have failed to allege any such conduct against Defendants' unilateral interests. Plaintiffs allege that Defendants increased prices, but that is what any profit maximizing business seeks to do. *See In re Late Fee & Over-Limit Fee Litig.*, 528 F. Supp. 2d 953, 964 (N.D. Cal. 2007) (explaining that motive to pursue "higher prices" cannot show a plausible conspiracy because if that "were sufficient, every company in every industry could be accused of conspiracy because they all 'would have such a motive'" (citation omitted)). As one court recently explained, "a desire for profit does not itself constitute a conspiratorial motive." *In re Generic Pharms. Pricing Antitrust Litig.*, 2025 WL 388813, at *3 (E.D. Pa. Feb. 3, 2025); *accord Marion Diagnostic Ctr., LLC v. Becton, Dickinson & Co.*, 2021 WL 961728, at *4 (S.D. Ill. Mar. 15, 2021) (allegations of "rational, commercially motivated steps" insufficient). And this is particularly so where, as here, the complaints admit that supply was limited while demand was high. Every profit-maximizing company would raise prices in that scenario, without any coordination among them, just as surely as every person outside would open their umbrella when it begins raining.

Plaintiffs cannot use OPIS's services to plead any action against self-interest either. As alleged by Plaintiffs, OPIS provided basic business information that rational businesses gather from any number of sources—including but not limited to their own customers. *E.g.*, NCSP Compl. ¶ 344. *See In re Broiler Chicken Antitrust Litig.*, 702 F. Supp. 3d 635, 674 (N.D. Ill. 2023) (rejecting argument that subscribing to benchmarking service was irrational absent a conspiracy; "what is irrational is to refrain from participation in [the benchmarking service] when all your competitors are doing so"). There is "nothing inherently illegal or suspicious" about using available information to "monitor [ ] competitors' prices"—that is the very definition of interdependence. *In re Tires*, 767 F. Supp. 3d at 710 (explaining that "information-seeking about competitors is common in concentrated markets, and such behavior is consistent with conscious parallelism rather than collusion" (cleaned up)).

ii. *Plaintiffs' OPIS Allegations Do Not Make Up for Their Failure to Allege Interfirm Communications.*

Courts frequently look to whether there is "evidence of a high level of interfirm communications" as a plus factor. *Citigroup*, 709 F.3d at 136, 140 (affirming dismissal of claims with two competitor-to-competitor communications alleged). Here, despite more than five-hundred pages of allegations against 24 defendants for a purported four-year conspiracy, Plaintiffs allege just one communication between Defendants, [redacted] NCSP Compl. ¶ 227. That cannot suffice to render Plaintiffs' sweeping conspiracy theory plausible. *Washington Cnty. Health Care Auth.*, 2020 WL 1666454, at *10 n.11 (dismissing complaint that "does not even allege that the defendants met with one another").

To make up for this glaring deficit, Plaintiffs point to Defendants' interactions with OPIS, but that changes nothing.

First, the collection and publication of aggregated data and market commentary in the PPWR cannot substitute for interfirm communications. Defendants are aware of no cases holding that a publication reporting on market conditions can make up for a plaintiff's failure to allege interfirm communications. To hold otherwise would undermine the Supreme Court's rule that such information services cannot be the basis for per se liability. *U.S. Gypsum Co.*, 438 U.S. at 441 n.16. Indeed, many of Plaintiffs' allegations about Todd's communications with specific Defendant employees amount to nothing more than Todd collecting information for publication in the PPWR. *See, e.g.*, NCSP Compl. ¶ 204 [redacted] *id.* ¶ 307 (same); *id.* ¶415 (same); *see also id.* ¶ 134(h) [redacted]

Second, it is no substitute to allege that some Defendants shared price announcements with OPIS for distribution to OPIS subscribers, including other converters. *E.g.*, *id.* ¶ 123. The Seventh Circuit clearly stated that a company may lawfully announce and change prices with "regard to the likely reactions of its competitors" in mind. *Rsrv. Supply*, 971 F.2d at 50. If anything, Plaintiffs' allegations that Defendants had to "rely on third parties to confirm" information about each other's pricing "suggest the *absence*" of "*interfirm* communications." *Citigroup, Inc.*, 709 F.3d at 139.

Courts have required far more detailed inter-defendant exchanges of information, plus other allegations indicative of an unlawful agreement, before permitting price-fixing claims to proceed past a motion to dismiss. For example, in *In re Broiler Chicken Antitrust Litigation*, the plaintiffs alleged that the benchmarking service in question provided "detailed information regarding [each defendant's] production capacity, including numbers of eggs, the size of breeder flocks, and other inventory numbers, as well as financial information about each company." 290 F. Supp. 3d 772, 781 (N.D. Ill. 2017). The mere circulation of price announcements, which are

widely available to PVC Pipe Product customers and distributors alike, do not come close to resembling the detailed proprietary information alleged in *In re Broilers*. *Id.* *See also Prosterman v. Am. Airlines, Inc.*, 747 F. App'x 458, 462 (9th Cir. 2018) (affirming dismissal of price-fixing claim where defendant airlines sent fare data to third party "clearinghouse" for distribution to other defendants as insufficient to plead conspiracy under Sherman Act).

Third, none of Plaintiffs' other allegations about Todd's communications with her contacts come anywhere close to supporting an inference that Defendants entered a municipal, plumbing, conduit, and fittings PVC Pipe Product conspiracy. Plaintiffs allege that employees complained about other converters' prices and expressed views on what they should do, but as the Seventh Circuit has explained, "such complaints 'are natural'" in any industry and "allegations of price complaints … are insufficient to create an inference of conspiracy to fix prices." *Valley Liquors*, 822 F.2d at 665; *e.g.*, NCSP Compl. ¶ 192.

iii. *Plaintiffs Allege No Change in Conduct During the Supposed Conspiracy.*

Courts may look to "historically unprecedented changes" in Defendants' conduct to show that a conspiracy is plausible, but here the opposite is true. *Twombly*, 550 U.S. at 556 n.4. Plaintiffs acknowledge that OPIS had offered the same services since at least 2017, but prices did not allegedly rise until 2020. *See supra* at 29. Courts reject efforts to depict long-standing practices as reflecting a more recent conspiracy. *E.g.*, *In re Brand Name Prescription Drugs Antitrust Litig.*, 288 F.3d 1028, 1033–34 (7th Cir. 2002) (rejecting argument defendants conspired "because … the chargeback system was adopted before the alleged collusion of the manufacturers began"); *Thompson Everett, Inc. v. Nat'l Cable Advert., L.P.*, 850 F. Supp. 470, 480 (E.D. Va. 1994) (dismissing antitrust claim because contracts at issue were used before alleged conspiracy). The only change Plaintiffs allege around 2020 is that PVC Pipe Product prices increased, and that

sheds no light on whether such price increases were anything other than "the result of typical, non-conspiratorial market behavior," which is the point of the plus-factor inquiry. *Washington County*, 238 F. Supp. 3d at 842 (explaining that even "anomalous price increases" without structural shift in how defendants priced their product were not a sufficient plus factor).

iv. *Attending Trade Shows and Trade Association Participation Does Not Plausibly Suggest a Conspiracy.*

Plaintiffs spend pages of their complaints listing innocuous trade shows and trade associations that Defendants supposedly attended. DPP Compl. ¶¶ 266–74; NCSP Compl. ¶¶ 555–73. But Plaintiffs cannot plead a plausible conspiracy merely by naming a trade association and identifying a few meetings, particularly where they acknowledge the important and procompetitive role these associations serve, such as "advocacy and education regarding plastics use in pipe, conduit, and infrastructure." NCSP Compl. ¶ 563. *See Washington Cnty. Health Care Auth.*, 328 F. Supp. 3d at 840 (reasoning that allegations of "trade association membership" were "no more probative of an express agreement between the defendants than are the plaintiffs' allegations of parallel conduct").

Plaintiffs also invoke "trade shows," *e.g.*, NCSP Compl. ¶ 568, which had both producers and "customers" in attendance. DPP Compl. ¶ 67 (alleging that Westlake "display[ed] [its] products at trade shows" to reach customers). But "courts consistently reject an inference that attending trade events, without more, implies an agreement; holding otherwise would discourage legitimate market behavior, which courts are loath to do." *In re Tires*, 767 F. Supp. 3d at 712.

v. *The Market Structure of the Many PVC Pipe Products At Issue Makes a Conspiracy Implausible.*

Plaintiffs argue the "market structure" of PVC Pipe Product sales is a plus factor, conclusorily alleging that the "PVC Pipe industry is highly concentrated," demand is "inelastic," and the industry "has high barriers to entry." NCSP Compl. ¶¶ 547–54. But Plaintiffs' complaints

acknowledge numerous competitors with no role in the alleged conspiracy, who at times increased prices prior to any Defendant. *See, e.g.*, *id.* ¶ 181 [redacted] According to Plaintiffs' own sources, any of these companies is well-positioned to undercut the others, as "all it takes is one converter to kill the chances of prices moving up, even a smaller regional one," and Plaintiffs allege that is exactly what happened. Ex. 15, 5/10/24 PPWR (quoted at NCSP Compl. ¶ 480).

In all events, Plaintiffs' market structure allegations "are simply descriptions of the market, not allegations of anything that the defendants did" and thus they cannot "give rise to an inference of an unlawful agreement." *Erie Cnty., Ohio v. Morton Salt, Inc.*, 702 F.3d 860, 870 (6th Cir. 2012) (affirming dismissal despite detailed allegations of supposedly conspiratorial market structure). Market-structure allegations cannot serve to distinguish interdependence from conscious commitment to a price-fixing conspiracy, as is Plaintiffs' burden. *Rsrv. Supply Corp.*, 971 F.2d at 50 (explaining that "consciously parallel pricing of an identical product does not violate the antitrust laws" (citation omitted)).

Plaintiffs repeatedly allege that price increases at times took the form of a single "leader" raising prices first, and other converters following with similar price increases close in time. *See* NCSP Compl. ¶ 11; *e.g.*, *id.* ¶ 261 [redacted] But follow-the-leader pricing decisions are "a common reaction of firms in a concentrated market" to "their shared economic interests and their interdependence with respect to price and output decisions." *Twombly*, 550 U.S. at 553–54 (explaining that such pricing patterns are lawful and consistent with independent decisionmaking). As the Seventh Circuit has explained, a firm may lawfully "decide (individually) to copy an industry leader." *Rsrv Supply Corp.*, 971 F.2d at 53. Such "follow-the-leader" price movements merely reflect lawful

"interdependent conduct" and the basic economic fact that a company, upon seeing a leader raise prices, knows that if they and others do the same, they will profit without losing business. *Kleen Prods. LLC v. Int'l Paper*, 276 F. Supp. 3d 811, 819 (N.D. Ill. 2017); *Washington Cnty. Health Care Auth.*, 328 F. Supp. 3d at 832 ("the mere fact that Baxter and Hospira restricted their own production of IV saline solution output after learning of output reductions by the other sheds little light on the existence vel non of an unlawful agreement").

Plaintiffs further admit that converters' price increases often failed and were easily reversed, *e.g.*, NCSP Compl. ¶ 149, which undercuts any inference of conspiracy from even close-in-time price increases. *Kleen Prods. LLC v. Georgia-Pac. LLC*, 910 F.3d 927, 937–38 (7th Cir. 2018) (explaining that "not every supply-side change is equally suggestive of a conspiracy" and "[c]onduct that is easily reversed may be consistent with self-interested decision-making"); *In re Tires*, 767 F. Supp. 3d at 709 ("[B]ecause the failed attempt to raise prices in 2017 was easily reversed, it was neither irrational nor suggestive of conspiracy that certain defendants tried again in 2020—particularly in the wake of an unprecedented global inflationary event.").

vi. *Plaintiffs Cannot Rely on Other Proceedings to Save Their Claims.*

Finally, Plaintiffs mention that certain Defendants have received grand jury subpoenas related to an ongoing government investigation. DPP Compl. at 2; NCSP Comp. ¶ 16. But as this Court has explained, "[t]he mere fact that an investigation is being conducted ***says nothing*** about whether unlawful conduct has occurred. Investigations require no minimum predication or threshold of evidence to begin." *Washington Cnty. Health Care Auth.*, 328 F. Supp. 3d at 842 n.16 (emphasis added). Earlier this year, a court dismissed antitrust claims despite ongoing antitrust investigations by the DOJ, UK and European regulators. *In re Concrete & Cement Additives*

Antitrust Litig., 2025 WL 1755193, at *19 (S.D.N.Y. June 25, 2025). As that court explained, these investigations were "a non-factor":

> The mere existence of an antitrust investigation by the DOJ ***carries no weight in pleading an antitrust conspiracy claim***. It is unknown whether the investigation will result in indictments or nothing at all. Because of the grand jury's secrecy requirement, the scope of the investigation is pure speculation. It may be broader or narrower than the allegations at issue. Moreover, if the Department of Justice made a decision not to prosecute, that decision would not be binding on plaintiffs. ***The grand jury investigation is a non-factor.*** *Id.* (cleaned up and emphasis added).

* * *

Plaintiffs' implausible conspiracy theory collapses under its own weight. Plaintiffs try to paint OPIS as the lynchpin of this plot, but their own allegations establish that this is a longstanding market research service that cannot form the basis of a per se claim. And they acknowledge that the global pandemic, unprecedented weather events, and spiking customer demand impacted PVC Pipe Product supply and demand but nonetheless ask the Court to accept that it was a conspiracy—not these obvious alternative explanations—that allegedly drove up prices. It would take a "speculative leap, not a reasonable inference," to conclude from these allegations that the distinct sets of Defendants who produce municipal, plumbing, conduit, and fittings PVC Pipe Products engaged in a multi-year per se illegal price fixing conspiracy. *Twombly* requires more.

II. PLAINTIFFS HAVE NOT ALLEGED AN UNLAWFUL INFORMATION EXCHANGE UNDER THE RULE OF REASON.

In addition to their per se claim, each putative Plaintiff class also alleges an information-exchange claim under the rule of reason. DPP Compl. ¶ 305; NCSP Compl. ¶ 589; EUP Compl. ¶ 471. They contend that even absent any agreement to fix prices, Defendants violated the antitrust laws by entering into an agreement "to unlawfully exchange competitively sensitive business information, including recent, current, and future pricing information." NCSP Compl. ¶ 589. But, as with any Sherman Act Section 1 claim, Plaintiffs must prove that the alleged conduct, here the

exchange of information, was pursuant to an "agreement between Defendants, rather than rational self-interest." *Marion Diagnostic Ctr.*, 29 F.4th at 351. The "exchange of information … without an agreement is not itself a violation of the Sherman Act." *In re Generic Pharm. Pricing*, 2025 WL 388813, at *7–8 (dismissing claim).

Plaintiffs may not proceed on their information-exchange claim merely by alleging that each Defendant agreed with OPIS to submit information; rather, they must plausibly allege Defendants subscribed to OPIS's services pursuant to an agreement ***with the other Defendants***. *Marion Healthcare*, 952 F.3d at 842 (affirming dismissal for failure to "show that similarly situated members of the conspiracy coordinated … with each other"). Without a "rim," *i.e.,* allegations of an agreement between Defendants, there is no plausible inference of a conspiracy, whether hub-and-spoke or any other kind of "agreement" to exchange information. *Id.*; *In re Musical Instruments & Equip. Antitrust Litig.,* 798 F.3d 1186, 1192 n.3 (9th Cir. 2015) ("[A] rimless hub-and-spoke conspiracy is not a hub-and-spoke conspiracy at all (for what is a wheel without a rim?)").

Thus, it is not sufficient for Plaintiffs to show that any Defendant subscribed to OPIS's services. Rather, Plaintiffs must establish that each Defendant "would not have" subscribed "***without assurance that each [other Defendant]*** was abiding by" an agreement with one another to do the same. *Marion Healthcare*, 952 F.3d at 842; *accord Howard Hess Dental Lab'ys Inc. v. Dentsply Int'l, Inc.*, 602 F.3d 237, 255 (3d Cir. 2010) (affirming dismissal where plaintiffs' "complaint lacks any allegation of an agreement among the [spokes] themselves").

But Plaintiffs make no such allegation here. Instead, they just allege that Defendants, as well as distributors and other customers, subscribed to OPIS's services. *See supra* at 22. That does not satisfy their burden. "While antitrust law restricts *agreements* between competitors

regarding how to compete, it does not require a business to turn a blind eye to information simply because its competitors are also aware of that same information" or decline to "take advantage of a service because its competitors already use that service." *Gibson*, 148 F. 4th at 1084. As *Broilers* explained, when a company like OPIS offers a valuable market research product, it would be "irrational" to "refrain from participation in [the benchmarking service] when all your competitors are doing so." 702 F. Supp. 3d at 674. Courts refuse to impose antitrust liability on companies for merely participating in an information exchange pursuant to their unilateral self-interest because doing so would equate to "impos[ing] a rule that businesses cannot use the same service providers as their competitors," which would "ultimately *harm* competition, as it would take away a means by which competitors might compete." *Gibson*, 148 F. 4th at 1084. OPIS provided the sort of market research any rational business would seek: information on prices and supply of inputs like PVC resin and stabilizers; demand information like housing starts and construction outlooks; and market price information that Defendants could consider when setting their own business strategies. *See supra* at 11. It would be "irrational" for Defendants to forgo such helpful business information as a matter of unilateral self-interest. *In re Broiler Chicken Antitrust Litig.*, 702 F. Supp. 3d at 674.

Further, Plaintiffs' allegations show that Defendants did not know who provided or received information from OPIS. Plaintiffs allege that when [redacted] NCSP Compl. ¶ 11. If anything, Defendants were well aware that many of their purported co-conspirators were ***not*** submitting information to OPIS at all. For example, Plaintiffs allege that when OPIS needed to obtain information about price announcements by JM Eagle—a market leader and the largest producer of municipal PVC Pipe Products—it had to rely on ***other Defendants*** to share information about JM Eagle's pricing.

E.g., *id.* ¶¶ 373, 377, 385. These Defendants were not subscribing to OPIS's services pursuant to an agreement with JM Eagle or anyone else, but rather ***in spite of*** their knowledge that one of their leading competitors was not doing the same. Likewise, when OPIS needed information on Charlotte Pipe or Cresline price announcements, Todd sought them from distributors (their customers) rather than the companies themselves. *Id.* ¶¶ 274, 339.

The bottom line is that Plaintiffs cannot proceed on their rule of reason claim unless they have plausibly alleged that Defendants subscribed to OPIS's services pursuant to an agreement with one another. *Marion Healthcare*, 952 F.3d at 842; *Musical Instruments*, 798 F.3d at 1192 n.3. Their allegations do not plausibly suggest any unlawful agreement, but rather establish that Defendants subscribed to OPIS and provided information only in pursuit of their individual self-interest in obtaining the sort of business information that any rational competitor would seek. The Court should therefore dismiss Plaintiffs' rule of reason claims as well. *In re Generic Pharm. Pricing*, 2025 WL 388813, at *7–8.

III. NCSPS CANNOT SEEK DAMAGES FOR INDIRECT SALES UNDER *ILLINOIS BRICK*.

Under *Illinois Brick*'s "bright-line rule," indirect purchasers of a product are unable to recover damages under federal antitrust laws. *Leeder v. Nat'l Ass'n of Realtors*, 601 F. Supp. 3d 301, 308 (N.D. Ill. 2022); *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 747 (1977). The NCSP and EUP putative classes consist of indirect purchasers who allegedly purchased PVC Pipe Products from distributors, retailers, and other resellers, not Defendants themselves. NCSP Compl. ¶ 602; EUP Compl. ¶ 501. Thus, EUPs do not seek damages under the Sherman Act, but rather only "injunctive and equitable relief." EUP Comp. ¶ 512.

NCSPs, however, bring federal damages claims on the premise that the distributors from whom their putative class members purchased PVC Pipe Products supposedly conspired with

Defendants. NCSP Compl. ¶ 629. They ask the Court to refrain from applying *Illinois Brick* until it can consider "eventual findings after discovery" regarding whether distributors conspired. *Id.*

Rule 12(b)(6) does not countenance NCSPs' approach. As the Seventh Circuit has explained, a "plaintiff is not entitled to resort to frivolous accusations of conspiracy to evade the Illinois Brick rule; ***the allegation must still reach the level of baseline plausibility***." *Marion Diagnostic Ctr.*, 29 F.4th at 342 (emphasis added). The circumstances of *Marion Diagnostic* closely resemble this case. There, indirect plaintiffs tried to evade *Illinois Brick* by characterizing non-defendant distributors as conspirators. *Id.* at 343. As here, if "the distributors were not part of the alleged conspiracy, then Providers' case falls apart: no conspiracy, no direct purchaser status, no right to recover." *Id*. (quoting prior ruling in same case). But the complaint failed to allege that the distributors in question had conspired, and the Seventh Circuit affirmed dismissal of the indirect purchasers' federal damages claim. *Id.* at 343, 350.

Here too, NCSPs cannot circumvent *Illinois Brick* because they have not adequately pled that distributors conspired. Plaintiffs identify six so-called "major distributors" by name. NCSP Compl. ¶ 13. These six additional companies means that NCSP's theory requires that ***30*** different entities, who Plaintiffs concede operate as at least ***16*** distinct economic interests, all spontaneously formed conspiracies in municipal, plumbing, and conduit pipe. For all of the reasons stated above, this theory does not hold water as to Defendants, and it falls shorter still as to distributors.

Plaintiffs' allegations against the so-called "major distributors" fall into two buckets: (1) that distributors communicated with OPIS and subscribed to its services, and (2) that distributors had an incentive for higher PVC Pipe Product prices. Neither suffices.

First, NCSPs allege that distributors received PPWR publications, received circulations of price announcements from OPIS, and at times talked to Donna Todd about their views of the

market. *E.g.*, NCSP Compl. ¶¶ 127, 132, 210(b). But the exchange of information through a market-research service like OPIS alone is categorically insufficient to allege participation in a per se illegal price fixing conspiracy. *U.S. Gypsum Co.*, 438 U.S. at 441 n.16. And Plaintiffs allege nothing to suggest that distributors subscribed to PPWR or spoke with Todd for any reason other than their unilateral interest in market information, meaning they have not alleged that distributors conspired in violation of the rule of reason, either. *In re Generic Pharm. Pricing*, 2025 WL 388813, at *4–5 (holding that, where indirect plaintiffs failed to allege distributors participated in supposed conspiracy, they "remain the second purchaser in the chain of distribution and are thus prevented from recovering damages from Distributor Defendants under *Illinois Brick*").

Second, Plaintiffs allege that distributors had an incentive to [redacted] lower prices that would devalue their inventory of PVC Pipe Products. NCSP Compl. ¶¶ 335, 356, 524. But these allegations amount to nothing more than commonsense "Economics 101" observations of economic interest, which are not actionable as a matter of law. *See Amory Invs. LLC v. Utrecht-Am. Holding, Inc.*, 74 F.4th 525, 527 (7th Cir. 2023). If anything, Plaintiffs' allegations that distributors were [redacted] confirms that these companies were not conspiring. NCSP Compl. ¶¶ 15, 356; *see Toys "R" Us*, 221 F.3d at 939 (discussing right of distributor "to tell [a] manufacturer … if it is unhappy" with its practices).

In sum, NCSPs' request to postpone determination of their indirect purchaser status is not supported by Seventh Circuit law, and they have not alleged the existence of any conspiracy, let alone one involving distributors. NCSPs' claim for federal damages must be dismissed for this reason as well. *Marion Diagnostic Ctr.*, 29 F.4th at 342.

IV. INDIRECT PLAINTIFFS' STATE-LAW CLAIMS SHOULD BE DISMISSED.

A. All State-Law Claims Fail Without a Plausible Federal Antitrust Claim.

NCSPs' and EUPs' (collectively, "Indirect Plaintiffs") state-law claims should be dismissed for the reasons discussed above. The state antitrust laws they invoke follow federal law, either through harmonization statutes or by judicial interpretation.[11] Their state-law antitrust claims thus fail on the same bases as the federal antitrust claims. *See, e.g.*, *In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020). The same is true for Indirect Plaintiffs' consumer protection claims. Because the complaints "sound in antitrust," follow-on consumer protection claims rise and fall with the antitrust claims—unless "something more" is alleged to "understand why the nonactionable antitrust conduct" would support a claim under the consumer protection laws. *Id.* at 847–48. But the complaints never "explain[] (or even impl[y]) what was unfair or unconscionable" about the challenged conduct "beyond its potential to restrain competition," "which it fails to allege plausibly." *Id.* at 848. NCSP Plaintiffs further allege that Defendants violated state consumer protection laws by deceiving consumers about the integrity of their pricing models. But the only aspect of the prices that supposedly makes them deceptive, is that they were purportedly achieved through violation of the antitrust laws. Thus, if Plaintiffs' antitrust claims fail, so too must their claims under state consumer protection law. *Id.*

B. The State-Law Claims Also Fail for Independent, State-Specific Reasons.

Indirect Plaintiffs also fail to state a claim under various state laws for independent reasons.

1. *Illinois Brick* Bars Plaintiffs' Antitrust Claims in Certain States.

Illinois Brick bars Indirect Plaintiffs' federal damages claims. While some states have passed so-called *Illinois Brick* repealer statues, there are still a number of states where the *Illinois*

[11] For ease of use, the state-specific legal citations on each issue are included in Appendices A and B.

Brick rule applies, as relevant here, Montana, Colorado, New Jersey, and Maryland. Montana has not passed an *Illinois Brick* repealer statute. *See Miami Prods. & Chem. Co. v. Olin Corp.*, 546 F. Supp. 3d 223, 246 (W.D.N.Y. 2021). Thus, under Montana law, "lawsuits by indirect purchasers are barred." *In re Static Random Access Memory (SRAM) Antitrust Litig.*, 2010 WL 5094289, at *4 (N.D. Cal. Dec. 8, 2010) (holding *Illinois Brick* rule applies in Montana). Additionally, Colorado only recently passed an *Illinois Brick* repealer statute effective June 7, 2023. *See* Colo. Rev. Stat. § 6-4-115(1); *In re Amitiza Antitrust Litig.*, 2024 WL 4250224, at *16 (D. Mass. Aug. 21, 2024). Accordingly, to the extent that Indirect Plaintiffs bring claims for damages as to purchases for the period between January 1, 2021, and June 6, 2023, those claims are barred under Colorado law. Likewise, New Jersey passed an *Illinois Brick* repealer statute on August 5, 2022, and Maryland on October 1, 2017. N.J. Stat. § 56:9-12(a); *Maia v. IEW Constr. Grp.*, 313 A.3d 887, 898 (N.J. 2024); *Amitiza*, 2024 WL 4250224, at *13.

2. Certain Claims Lack Sufficient Allegations of In-State Conduct.

Indirect Plaintiffs' claims under the antitrust statutes of Arizona, Connecticut, the District of Columbia, Kansas, Maine, Maryland, Michigan, Mississippi, New Mexico, North Carolina, North Dakota, Oregon, South Dakota, Utah, West Virginia, and Wisconsin and under the consumer protection statutes of Arizona, Illinois, Nebraska, and New Hampshire fail because Plaintiffs do not allege that Defendants' allegedly unlawful conduct occurred within those states' boundaries. Plaintiffs allege, in conclusory fashion, that prices were "raised, fixed, maintained, and stabilized at artificially inflated levels" in the states at issue, *see, e.g.*, NCSP Compl. ¶ 625, and sometimes not even that. For example, in their claim that Defendants violated ***Wisconsin*** law, EUPs offer only a generic description of Defendants' conduct—one void of any details, except that it happened "in the state of ***Oregon***." EUP Compl. ¶ 632 (emphasis added). *See Miami Prods.*, 546 F. Supp. 3d at 243 (dismissing state-law antitrust claims under the laws of many of these jurisdictions where

plaintiffs merely alleged "a broad, nationwide price-fixing scheme"). Additionally, the claims under the Alabama antitrust statute fail because Alabama's statute applies only to activities that occur *solely* within the state. *Abbott Lab'ys v. Durrett*, 746 So. 2d 316, 339 (Ala. 1999) (per curiam) (holding that this statute "does not provide a cause of action for damages allegedly resulting from an agreement to control the price of goods shipped in interstate commerce").

3. Plaintiffs Failed to Provide Notice to the Attorneys General in States Where Such Notice Was Required.

The Indirect Plaintiffs' claims under the antitrust statutes of Arizona, Hawaii, Nevada, and Utah each require that plaintiffs provide notice of suit to the state attorney general. The Indirect Purchasers have not alleged that they provided such notice. *See* NCSP Compl. ¶¶ 660, 670, 689, 708; EUP Compl. ¶¶ 540–41, 562–63, 591–92, 624–25.

4. Certain State Laws Bar Plaintiffs from Pursuing a Class Action.

The Indirect Plaintiffs' claims under the laws of Alaska, Arkansas, Illinois, South Carolina, Tennessee, and Montana must be dismissed because they improperly seek relief on behalf of a putative class. In Illinois, only the state Attorney General may bring a class action asserting indirect purchaser antitrust claims. 740 Ill. Comp. Stat. 10/7(2); *In re Opana ER Antritrust Litig.*, 162 F. Supp. 3d 704, 723 (N.D. Ill. 2016) (dismissing indirect purchasers' class-action claims under Illinois's antitrust law). This same prohibition applies for antitrust-type claims brought by indirect purchasers under Illinois's consumer protection statute. *In re Flonase Antitrust Litig.,* 692 F. Supp. 2d 524, 539 (E.D. Pa. 2010) (allowing "otherwise would constitute an end run around the Illinois legislature's determination" that "indirect purchaser class action claims [be] precluded"). Likewise, courts interpreting Alaska's consumer protection statute have declined to permit plaintiffs to circumvent *Illinois Brick* by disguising their antitrust claims under a consumer protection theory. *E.g.*, *In re Dynamic Random Access Memory (Dram) Antitrust Litig.*, 516 F.

Supp. 2d 1072, 1108 (N.D. Cal. 2007). Similar bars on class action relief apply to Plaintiffs' antitrust claim under Tennessee law and their consumer protection claims under Arkansas, Montana and South Carolina law. *See* Tenn. Code § 47-25-106(c); Mont. Code § 30-14-133(1)(a); S.C. Code § 39-5-140(a). These claims must also be dismissed. *In re Lipitor Antitrust Litig.*, 336 F. Supp. 3d 395, 416 (D.N.J. 2018) (dismissing claims due to states' prohibitions on class actions).

5. Certain Consumer Protection Statutes Do Not Apply to Alleged Antitrust-Type Claims or Violations.

The Indirect Plaintiffs' consumer protection claims under the laws of Alaska, Arkansas, Colorado, Maryland, Michigan, Minnesota, New Jersey, New Mexico, Oregon, Pennsylvania, South Dakota, and Wisconsin must be dismissed because those laws do not encompass actions based on allegations of antitrust conspiracy. The consumer protection statutes at issue are specific about what alleged conduct can constitute a violation, and these statutes either do not have a section that "cover[s] antitrust violations," *In re Packaged Seafood Prods. Antitrust Litig.*, 242 F. Supp. 3d 1033, 1076 (S.D. Cal. 2017) (applying Michigan law), or they otherwise foreclose claims that are premised only on alleged "anticompetitive conduct," *Washington Cnty. Bd. of Educ. v. Mallinckrodt ARD, Inc.*, 431 F. Supp. 3d 698, 711 (D. Md. 2020) (applying Maryland law).

6. Certain Consumer Protection Statutes Require Allegations of Reliance.

The Indirect Plaintiffs must allege reliance to bring consumer protection claims under the laws of Arizona, Arkansas, California, the District of Columbia, Pennsylvania, South Dakota, and Wisconsin. But they do not and cannot claim that they relied on any representation or omission of Defendants. *See* NCSP Compl. ¶¶ 660, 663, 668, 701, 705; EUP Compl. ¶¶ 542–43, 548–52, 560, 613–14, 621. These claims must be dismissed. *See In re ZF-TRW Airbag Control Units Prods. Liab. Litig.*, 601 F. Supp. 3d 625, 771 (C.D. Cal. 2022) (applying Arizona law) (consumer protection claims must be dismissed where plaintiffs did "not adequately plead[] actual reliance").

7. Certain Consumer Protection Statutes Do Not Allow for Claims Based on Commercial Transactions or Purchases of Non-Household Goods.

Several consumer protection statutes that Indirect Plaintiffs invoke—that of the District of Columbia, Michigan, Missouri, Montana, Oregon, Pennsylvania, and Rhode Island—do not cover commercial conduct or cover only purchases of goods primarily for personal or household use. Many of the Plaintiffs here are businesses, business owners, or municipalities, *see* NCSP Compl. ¶¶ 25–32, 35; EUP Compl. ¶¶ 14–20, and thus fall outside the scope of these statutes. *German Free State of Bavaria v. Toyobo Co., Ltd.*, 480 F. Supp. 2d 958, 969 (W.D. Mich. 2007) ("[I]t would be rare indeed (if even possible) for a corporation to purchase goods for 'personal, family or household purposes.'"). And the individual Plaintiffs who bought PVC products do not allege that they bought them for personal or household use. *See* NCSP Compl. ¶¶ 33–34, 36; EUP Compl. ¶ 21; *cf. Gleike Taxi Inc v. DC Tops LLC*, 2015 WL 273682, at *6 (N.D. Ill. Jan. 20, 2015) (dismissing consumer protection claims because "[t]he transactions in this case are business, not personal"). Nor could they, as Plaintiffs allege the products at issue are used for things like carrying "municipal drinking water," NCSP Compl. ¶¶ 81–91; EUP Compl. ¶¶106–32—a far cry from personal use.

8. Certain Consumer Protection Statutes Prohibit Recovery of Damages.

Indirect Plaintiffs' consumer protection claims under the laws of California, Colorado, and Minnesota must be dismissed because Plaintiffs seek money damages. *See* NCSP Compl. ¶ 712; EUP Compl. ¶ 633 (requesting money damages and injunctive relief). The statutes at issue all limit prevailing consumer protection plaintiffs to recovering injunctive relief. Thus, any claims for money damages under these statutes must be dismissed.

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Appendix A | State-Law Antitrust Claims							
Count (NCSP Compl.)	Count (EUP Compl.)	State	Grounds for Dismissal				
			Follow Federal Law	*Illinois Brick*	Insufficient In-State Conduct	Notice to State AG	Class Actions Prohibited
3	**3**	**Alabama**	*Vandenberg v. Aramark Educ. Servs., Inc.*, 81 So. 3d 326, 333 (Ala. 2011)		*Abbott Lab'ys v. Durrett*, 746 So. 2d 316, 339 (Ala. 1999) (per curiam)		
6	**4**	**Arizona**	*Tee Time Arrangers, Inc. v. Vistoso Gold Partners, LLC*, 2008 WL 4149295, at *5 (Ariz. Ct. App. Feb. 28, 2008)		*Miami Prods. & Chem. Co. v. Olin Corp.*, 546 F. Supp. 3d 223, 243-44 (W.D.N.Y. 2021)	Ariz. Rev. Stat. § 44-1415(A); *In re Asacol Antitrust Litig.*, 2016 WL 4083333, at *14-15 (D. Mass. July 20, 2016)	
8	**6**	**California**	*Lenhoff Enters., Inc. v. United Talent Agency, Inc.*, 729 F. App'x 528, 531 (9th Cir. 2018)				
10	**8**	**Colorado**	*OmniMax Int'l, Inc. v. Anlin Indus., Inc.*, 2019 WL 2516121, at *4 (D. Colo. June 17, 2019);	To the extent Plaintiffs seek damage as to purchases for the period between January 1, 2021, and June 6, 2023. *See* Colo. Rev. Stat. § 6-4-115(1) (eff. June 7, 2023)			
12	**10**	**Connecticut**	*Dichello Distribs., Inc. v. Anheuser-Busch, LLC*, 2021 WL 4170681, at *6 (D. Conn. Sept. 14, 2021)		*Miami Prods. & Chem. Co. v. Olin Corp.*, 546 F. Supp. 3d 223, 243-44 (W.D.N.Y. 2021)		
13	**11**	**District of Columbia**	*Atl. Coast Airlines Holdings, Inc. v. Mesa Air Grp., Inc.*, 295 F. Supp. 2d 75, 87		*In re Cast Iron Soil Pipe & Fittings Antitrust Litig.*, 2015		

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			(D.D.C. 2003); D.C. Code § 28-4515		WL 5166014, at *26 (E.D. Tenn. June 24, 2015)		
13	**15**	**Florida**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020); Fla. Stat. Ann. § 542.32				
16	**14**	**Hawaii**	*Courbat v. Dahana Ranch, Inc.*, 141 P.3d 427, 435 (Haw. 2006); Haw. Rev. Stat. § 480-3			Haw. Rev. Stat. § 480-13.3(a)(1); *In re Sensipar (Cinacalcet Hydrochloride Tablets) Antitrust Litig., No. 2895,* 2022 WL 736250, at *19-20 (D. Del. Mar. 11, 2022)	
17	**15**	**Illinois**	*Gutnayer v. Cendant Corp.*, 116 F. App'x 758, 761 (7th Cir. 2004); 740 Ill. Comp. Stat. 10/11;				740 Ill. Comp. Stat. 10/7(2); *In re Opana ER Antritrust Litig.*, 162 F. Supp. 3d 704, 723 (N.D. Ill. 2016)
19	**17**	**Iowa**	*Mueller v. Wellmark, Inc.*, 861 N.W.2d 563, 567 (Iowa 2015); Iowa Code Ann. § 553.2				
20	**18**	**Kansas**	*Digital Ally, Inc. v. Taser Int'l, Inc.*, 2017 WL 131595, at *2 (D. Kan. Jan. 12, 2017), *aff'd,* 720 F. App'x 1023 (Fed. Cir. 2018); Kan. Stat. § 50-163(b)		*Jones v. Micron Tech. Inc.*, 400 F. Supp. 3d 897, 924 (N.D. Cal. 2019)		
21	**19**	**Maine**	*Davric Me. Corp. v. Rancourt*, 216 F.3d 143, 149 (1st Cir. 2000)		*Miami Prods. & Chem. Co. v. Olin Corp.*, 546 F. Supp. 3d 223, 243-44 (W.D.N.Y. 2021)		

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22	**20**	**Maryland**	*Krause Marine Towing Corp. v. Ass'n of Md. Pilots*, 44 A.3d 1043, 1053 (Md. Ct. Spec. App. 2012); Md. Code Ann., Com. Law § 11-202(a)(2)	To the extent Plaintiffs seek damage as to purchases for the period prior to October 1, 2017 *In re Amitiza Antitrust Litig.*, 2024 WL 4250224, at *13 (D. Mass. Aug. 21, 2024)	*FTC v. Amazon.com, Inc.*, 2024 WL 4448815, at *22-23 (W.D. Wash. Sept. 30, 2024)		
24	**21**	**Massachusetts**	*O'Connell v. Microsoft Corp.*, 2001 WL 893525, at *3 (Mass. Super. June 14, 2001); Mass. Gen. Laws Ann. ch. 93, § 1				
25	**22**	**Michigan**	*Little Caesar Enters., Inc. v. Smith*, 895 F. Supp. 884, 898 (E.D. Mich. 1995); Mich. Comp. Laws Ann. § 445.784		*Jones v. Micron Tech. Inc.*, 400 F. Supp. 3d 897, 924 (N.D. Cal. 2019)		
27	**24**	**Minnesota**	*Lamminen v. City of Cloquet*, 987 F. Supp. 723, 734 (D. Minn. 1997)				
28	**26**	**Mississippi**	*Futurevision Cable Sys., Inc. v. Multivision Cable TV Corp.*, 789 F. Supp. 760, 780 (S.D. Miss. 1992)		*State ex rel. Fitch v. Yazaki N. Am., Inc.*, 294 So. 3d 1178, 1188-89 (Miss. 2020)		

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30	**27**	**Montana**	*Healow v. Anesthesia Partners, Inc.*, 92 F.3d 1192 (9th Cir. 1996)	*Miami Prods. & Chem. Co. v. Olin Corp.*, 546 F. Supp. 3d 223, 246 (W.D.N.Y. 2021); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, 2010 WL 5094289, at *4 (N.D. Cal. Dec. 8, 2010)			
31	**28**	**Nebraska**	*Kanne v. Visa U.S.A. Inc.*, 723 N.W.2d 293, 297 (Neb. 2006); Neb. Rev. Stat. § 59-829				
33	**30**	**Nevada**	*Nev. Recycling & Salvage, Ltd. v. Reno Disposal Co., Inc.*, 423 P.3d 605, 607 (Nev. 2018); Nev. Rev. Stat. § 598A.050			Nev. Rev. Stat. § 598A.210(3); *In re Effexor Antitrust Litig.*, 337 F. Supp. 3d 435, 457-58 (D.N.J. 2018)	
35	**32**	**New Hampshire**	*Minuteman, LLC v. Microsoft Corp.*, 795 A.2d 833, 836 (N.H. 2002); N.H. Rev. Stat. Ann. § 356:14				
37	**34**	**New Jersey**	*Sickles v. Cabot Corp.*, 877 A.2d 267, 270–71 (N.J. Super. App. Div. 2005); N.J. Stat. Ann. § 56:9-18	To the extent Plaintiffs seek damage as to purchases for			

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				the period prior to August 5, 2022 *Miami Prods. & Chem. Co. v. Olin Corp.*, 546 F. Supp. 3d 223, 237 (W.D.N.Y. 2021)			
38	**36**	**New Mexico**	*Romero v. Philip Morris Inc.*, 242 P.3d 280, 291 (N.M. 2010) N.M. Stat. Ann. § 57-1-15		*Miami Prods. & Chem. Co. v. Olin Corp.*, 546 F. Supp. 3d 223, 243-44 (W.D.N.Y. 2021)		
40	**38**	**New York**	*Sperry v. Crompton Corp.*, 863 N.E.2d 1012, 1018 (N.Y. 2007)				
41	**39**	**North Carolina**	*Window World of Baton Rouge, LLC v. Window World, Inc.*, 2016 WL 6242945, at *5 (N.C. Super. Oct. 25, 2016)		*Miami Prods. & Chem. Co. v. Olin Corp.*, 546 F. Supp. 3d 223, 243-44 (W.D.N.Y. 2021)		
42	**40**	**North Dakota**	*In re Namenda Indirect Purchaser Antitrust Litig.*, 338 F.R.D. 527, 572 (S.D.N.Y. 2021)		*Miami Prods. & Chem. Co. v. Olin Corp.*, 546 F. Supp. 3d 223, 243-44 (W.D.N.Y. 2021)		
43	**41**	**Oregon**	*Or. Laborers-Emps. Health & Welfare Tr. Fund v. Philip Morris Inc.*, 185 F.3d 957, 963 n.4 (9th Cir. 1999); Or. Rev. Stat. § 646.715(2)		*Miami Prods. & Chem. Co. v. Olin Corp.*, 546 F. Supp. 3d 223, 243-44 (W.D.N.Y. 2021)		

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			Follow Federal Law	*Illinois Brick*	Insufficient In-State Conduct	Notice to State AG	Class Actions Prohibited
46	**44**	**Rhode Island**	*ERI Max Ent., Inc. v. Streisand*, 690 A.2d 1351, 1353 n.1 (R.I. 1997); R.I. Gen. Laws § 6-36-2(b);				
19	**46**	**South Dakota**	*Byre v. City of Chamberlain*, 362 N.W.2d 69, 74 (S.D. 1985); S.D. Codified Laws § 37-1-22		*Miami Prods. & Chem. Co. v. Olin Corp.*, 546 F. Supp. 3d 223, 243-44 (W.D.N.Y. 2021)		
51	**48**	**Tennessee**	*Bailey's, Inc. v. Windsor Am., Inc.*, 948 F.2d 1018, 1032 (6th Cir. 1991)				Tenn. Code § 47-25-106(c)
52	**49**	**Utah**	*Diaz v. Farley*, 15 F. Supp. 2d 1138, 1150 (D. Utah 1998); Utah Code Ann. § 76-10-3118		Utah Code Ann. § 76-10-3109(1)(a); *In re Effexor Antitrust Litigation*, 337 F. Supp. 3d 435, 460-61 (D.N.J. 2018)	Utah Code Ann. § 76-10-3109(9); *In re Effexor Antitrust Litig.*, 337 F. Supp. 3d 435, 457-58 (D.N.J. 2018)	
53	**50**	**Vermont**	Vt. Stat. Ann. tit. 9, § 2453a(c)				
54	**51**	**West Virginia**	*Kessel v. Monongalia Cnty. Gen. Hosp. Co.*, 648 S.E.2d 366, 379-81 (W. Va. 2007); W. Va. Code § 47-18-16		*Miami Prods. & Chem. Co. v. Olin Corp.*, 546 F. Supp. 3d 223, 243-44 (W.D.N.Y. 2021)		
55	**52**	**Wisconsin**	*Fox Valley Thoracic Surgical Associates, S.C. v. Ferrante*, 747 N.W.2d 527, 527 (Wis. App. 2008)		*Jones v. Micron Tech. Inc.*, 400 F. Supp. 3d 897, 924 (N.D. Cal. 2019)		

Appendix B | State-Law Consumer Protection Claims									
Count (NCSP Compl.)	Count (EUP Compl.)	State	Grounds for Dismissal						
			Tied to Federal Antitrust Claims	Insufficient In-State Conduct	Class Actions Prohibited	No Antitrust-Type Claims	No Allegations of Reliance	No Commercial Transactions	Damages Unavailable
4	N/A	**Alaska**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)		*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 849 (N.D. Ill. 2020)	*In re Lidoderm Antitrust Litig.*, 103 F. Supp. 3d 1155, 1163 (N.D. Cal. 2015)			
7	**N/A**	**Arizona**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)	*Thuney v. Lawyer's Title of Arizona*, 2019 WL 467653, at *6-7 (D. Ariz. Feb. 6, 2019)			*In re ZF-TRW Airbag Control Units Prods. Liab. Litig.*, 601 F. Supp. 3d 625, 771 (C.D. Cal. 2022)		
5	**5**	**Arkansas**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)		*Iron Workers Dist. Council of New England Health & Welfare Fund v. Teva Pharm. Indus. Ltd.*, 734 F. Supp. 3d 145, 163 (D. Mass. 2024)	*In re Lidoderm Antitrust Litig.*, 103 F. Supp. 3d 1155, 1167 (N.D. Cal. 2015)	*In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, 355 F. Supp. 3d 145, 153 (E.D.N.Y. 2018)		
9	7	**California**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)				*In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 2024 WL 4532937, at *49 (N.D. Cal. Oct. 15, 2024)		Cal. Bus. & Prof. Code § 17203; *Korea Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 943 (Cal. 2003)
11	**9**	**Colorado**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d			*In re Crop Protection Prods. Loyalty Prog. Antitrust*			Colo. Rev. Stat. § 6-1-113(2); *Miller v. Ford Motor Co.*, 2024

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			811, 847 (N.D. Ill. 2020)			*Litig.*, 2025 WL 315835, at *24 (M.D.N.C. Jan. 28, 2025)			WL 1344597, at *37 (E.D. Cal. Mar. 29, 2024)
14	**12**	**District of Columbia**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)				*Search v. Uber Techs., Inc.*, 128 F. Supp. 3d 222, 236 (D.D.C. 2015)	D.C. Code § 28-3905(k)(1)(A); *Ford v. Chartone, Inc.*, 908 A.2d 72, 81 (D.C. 2006)	
18	**16**	**Illinois**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)	*Avery v. State Farm Mut. Auto. Ins. Co.*, 835 N.E.2d 801, 853 (Ill. 2005); *Miller v. NextGen Healthcare, Inc.*, 2024 WL 3543433, at *14 (N.D. Ga. July 25, 2024)	*In re Flonase Antitrust Litig.*, 692 F. Supp. 2d 524, 539 (E.D. Pa. 2010)				
22	**N/A**	**Maryland**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)			*Washington Cnty. Bd. of Educ. v. Mallinckrodt ARD, Inc.*, 431 F. Supp. 3d 698, 711–12 (D. Md. 2020)			
26	**23**	**Michigan**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)			*In re Packaged Seafood Prods. Antitrust Litig.*, 242 F. Supp. 3d 1033, 1076 (S.D. Cal. 2017)		*Slobin v. Henry Ford Health Care*, 666 N.W.2d 632, 634 (Mich. 2003)	

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27	**25**	**Minnesota**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)			*In re New Motor Vehicles Can. Exp. Antitrust Litig.*, 350 F. Supp. 2d 160, 190 (D. Me. 2004)			Minn. Stat. Ann. § 325D.45; *Dennis Simmons, D.D.S., P.A. v. Mod. Aero, Inc.*, 603 N.W.2d 336, 339 (Minn. Ct. App. 1999).
29	**N/A**	**Missouri**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)					*In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, 355 F. Supp. 3d 145, 157 (E.D.N.Y. 2018)	
30	**27**	**Montana**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)		Mont. Code § 30-14-133(1)(a)			Mont. Code §§ 30-14-102(1), -133(1)(a); *Doll v. Major Muffler Centers, Inc.*, 687 P.2d 48, 52 (Mont. 1984)	
32	**29**	**Nebraska**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)	Neb. Rev. Stat. § 59-1601(2); *Nelson v. Lusterstone Surfacing Co.*, 605 N.W.2d 136, 141 (Neb. 2000)					
34	**31**	**Nevada**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d						

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			Tied to Federal Antitrust Claims	Insufficient In-State Conduct	Class Actions Prohibited	No Antitrust-Type Claims	No Allegations of Reliance	No Commercial Transactions	Damages Unavailable
			811, 847 (N.D. Ill. 2020)						
36	**33**	**New Hampshire**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)	N.H. Rev. Stat. § 358-A:2; *In re Cast Iron Soil Pipe & Fittings Antitrust Litig.*, 2015 WL 5166014, at *33 (E.D. Tenn. June 24, 2015)					
N/A	**35**	**New Jersey**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)			*Wilson v. Gen. Motors Corp.*, 190 N.J. 336, 341 (2007)			
39	**37**	**New Mexico**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)			*Gandydancer, LLC v. Rock House CGM, LLC*, 453 P.3d 434, 438 (N.M. 2019)			
44	**42**	**Oregon**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)			*In re Lidoderm Antitrust Litig.*, 103 F. Supp. 3d 1155, 1171 (N.D. Cal. 2015)		*Ave. Lofts Condominiums Owners' Ass'n v. Victaulic Co.*, 24 F. Supp. 3d 1010, 1015 (D. Or. 2014)	
45		**Pennsylvania**	*In re Humira (Adalimumab) Antitrust Litig.*,			73 Pa. Stat. § 201-2(4)	*Hunt v. U.S. Tobacco Co.*, 538 F.3d 217,	73 Pa. Stat. § 201-9.2(a); *Reed v. Chambersburg*	

Appendix B | State-Law Consumer Protection Claims									
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			465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)				222 (3d Cir. 2008)	*Area Sch. Dist.*, 951 F. Supp. 2d 706, 725 (M.D. Pa. 2013)	
47	**43**	**Rhode Island**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)					R.I. Gen. Laws § 6-13.1-5.2; *Sheet Metal Workers Loc. 441 Health & Welfare Plan v. GlaxoSmithKline, PLC*, 737 F. Supp. 2d 380, 423 (E.D. Pa. 2010)	
48	**N/A**	**South Carolina**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)		*In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 516 F. Supp. 2d 1072, 1103-04 (N.D. Cal. 2007)				
50	**47**	**South Dakota**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020)			*In re Crop Protection Prods. Loyalty Prog. Antitrust Litig.*, 2025 WL 315835, at *24 (M.D.N.C. Jan. 28, 2025)	*Rainbow Play Sys., Inc. v. Backyard Adventure, Inc.*, 2009 WL 3150984, at *7 (D.S.D. Sept. 28, 2009).		
N/A	**53**	**Wisconsin**	*In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d			*Cho v. Hyundai Motor Co., Ltd.*, 636 F. Supp. 3d 1149, 1178 (C.D. Cal. 2022)	*K & S Tool & Die Corp. v. Perfection Mach. Sales, Inc.*, 2007 WI 70, ¶ 19, 301		

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			811, 847 (N.D. Ill. 2020)				Wis. 2d 109, 121–22, 732 N.W.2d 792, 798–99 (2007)		