

**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]

**DEFENDANT J-M MANUFACTURING COMPANY, INC., DBA JM EAGLE'S
MEMORANDUM OF LAW IN SUPPORT OF ITS OPPOSED MOTION TO DISMISS**

Plaintiffs' premise is that OPIS and its lead PVC pipe editor, Donna Todd, organized Defendants into a multi-product, multi-year price-fixing conspiracy. As Certain Defendants' Motion explains, Plaintiffs cannot state a claim against any Defendant. But in particular, Plaintiffs do not specifically allege that J-M Manufacturing Company, Inc., dba JM Eagle, a market leader in municipal pipe, had *any* communications whatsoever with OPIS or Todd about its pricing. Nor do they allege any other communications plausibly suggesting JM Eagle conspired. Specifically, Plaintiffs affirmatively allege that:

- JM Eagle [REDACTED]—the supposed lynchpin of their conspiracy—[REDACTED] NCSP Compl. ¶ 138 (emphasis added).
- Todd did not receive price announcements from JM Eagle. The JM Eagle announcements that she circulated were obtained from others. *Id.* ¶¶ 373, 377, 385.
- JM Eagle did *not even receive* Todd's circulation of municipal pipe price announcements, despite JM Eagle being a market leader in municipal pipe. *Id.* ¶ 241.

The bottom line is that Plaintiffs do not and cannot allege meaningful communications between OPIS and JM Eagle, and instead their allegations establish that JM Eagle did *not* conspire. All Plaintiffs have left to allege is that (1) JM Eagle subscribed to OPIS's PPWR publication and certain price announcement emails, (2) Todd circulated public JM Eagle price announcements that she obtained *from others*, and (3) JM Eagle participated in trade associations. JM Eagle has and will face enormous costs from litigating this case despite no specific allegations of its participation in any conspiracy, and *Twombly* requires dismissal on such allegations.

What's more, Plaintiffs acknowledge that JM Eagle's pricing practices are incompatible with their conspiracy theory. They concede that "JM Eagle CEO Walter Wang personally authorizes every price determination," yet never contend that Wang communicated with OPIS or any other converter. *Id.* ¶ 110. And Plaintiffs allege that JM Eagle's price announcements were

[REDACTED]

Plaintiffs concede that JM Eagle's price announcements did not indicate JM Eagle's prices. Plaintiffs make clear this was widely understood. They allege that Donna Todd [REDACTED] [REDACTED] whose only purpose was [REDACTED] [REDACTED] *Id.* ¶ 178. Rather than set actual prices, Plaintiffs allege that JM Eagle's price announcements serve only to [REDACTED] *i.e.* send customers a signal that prices may increase, so they should buy sooner. *Id.* Regardless, [REDACTED] are classic competition and incompatible with an agreement to fix prices.

Plaintiffs' OPIS-related allegations are few and far between as to JM Eagle. Plaintiffs allege that a few individuals at JM Eagle—like those at other converters and PVC pipe customers—subscribed to OPIS's PVC & Pipe Weekly (PPWR) publication. *See id.* ¶ 127. They also allege that [REDACTED] [REDACTED] *Id.* ¶ 271. But Plaintiffs do not allege anyone from JM Eagle was on Todd's circulation list for municipal pipe, despite it being a market leader in municipal pipe. *Id.* ¶ 241 [REDACTED]

Critically, Plaintiffs do not allege that JM Eagle *provided any information to OPIS*. Plaintiffs allege *zero* specific communications between JM Eagle and Todd about pricing or anything else. To the contrary, Plaintiffs repeatedly acknowledge that when Todd circulated a JM Eagle price announcement to her subscribers, she [REDACTED] [REDACTED] DPP Compl. ¶ 91; NCSP Compl. ¶¶ 285, 373, 377; EUP Compl. ¶ 407. Indeed, Plaintiffs explicitly concede that JM Eagle employees [REDACTED] [REDACTED] NCSP Compl. ¶ 138. While Plaintiffs allege that [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] *Id.* ¶ 132(e).

Finally, beyond the innocuous allegation that JM Eagle employees at times participated in various trade associations, *e.g.*, *id.* ¶ 563, Plaintiffs allege no communications between JM Eagle and other Defendants.

ARGUMENT

I. PLAINTIFFS’ ALLEGATIONS ESTABLISH THAT JM EAGLE DID NOT CONSPIRE.

When analyzing the sufficiency of a complaint, each “Defendant’s alleged conduct must be assessed independently to ensure that [Plaintiffs] have pleaded sufficient facts regarding that Defendant.” *In re Granulated Sugar Antitrust Litig.*, 2025 WL 3012238, at *7 (D. Minn. Oct. 15, 2025) (quoting *McDonough v. Anoka Cnty.*, 799 F.3d 931, 946 (8th Cir. 2015)); *Bank of Am., N.A. v. Knight*, 725 F.3d 815, 818 (7th Cir. 2013) (“[A] complaint based on a theory of collective responsibility must be dismissed.”).

Courts routinely apply this rule in antitrust cases to dismiss individual defendants where plaintiffs have failed to allege specific facts connecting that defendant to the alleged conspiracy. Just this month, a court dismissed multiple defendants from a case where plaintiffs had alleged a price-fixing conspiracy through the exchange of information because of insufficient allegations that those specific defendants had shared “non-public, forward-looking information” or otherwise “participated in a reciprocal exchange” of information. *In re Granulated Sugar*, 2025 WL 3012238 at *7.¹ Here too, Plaintiffs lack “specific allegations against” JM Eagle plausibly

¹ See also, *e.g.*, *In re California Bail Bond Antitrust Litig.*, 511 F. Supp 3d 1031, 1048–49, 1051 (N.D. Cal. 2021) (dismissing claims against certain defendants for failure to allege specific facts regarding participation in supposed conspiracy); *In re Fresh & Process Potatoes Antitrust Litig.*, 834 F. Supp. 2d 1141, 1164–70, 1174–75 (D. Idaho 2011) (same); *In re Int. Rate Swaps Antitrust Litig.*, 261 F. Supp. 3d 430, 483–87 (S.D.N.Y. 2017) (same); *In re Capacitors Antitrust Litig.*, 106 F. Supp. 3d 1051, 1066–68, 1075 (N.D. Cal. 2015) (same).

suggesting it conspired with OPIS or anyone else, and so JM Eagle must be dismissed. *In re Pork Antitrust Litig.*, 495 F. Supp. 3d 753, 770 (D. Minn. 2020) (dismissing defendant for lack of allegations against them in particular); *Bank of Am.*, 725 F.3d at 818 (explaining that “even for allegations of conspiracy . . . it remains essential to show that [each specific defendant] joined the conspiracy and knew of its scope”).

This is the rare case where Plaintiffs have not only failed to allege sufficient facts about JM Eagle but have ***affirmatively pled*** facts that make it patently implausible JM Eagle conspired. Plaintiffs’ per se and rule of reason claims against JM Eagle should be dismissed for three reasons.

First, Plaintiffs’ affirmative allegations that JM Eagle had no meaningful communications with OPIS require dismissal. Plaintiffs allege—explicitly— (1) that JM Eagle [REDACTED] [REDACTED] NCSP Compl. ¶ 138 (emphasis added), (2) that when Todd circulated JM Eagle price lists, she did so because she [REDACTED] [REDACTED] *id.* ¶¶ 373, 377, 385, and (3) that despite JM Eagle being a market leader in municipal pipe, [REDACTED] *Id.* ¶ 241. Plaintiffs’ complaints could not be clearer that OPIS and Todd are the lynchpin of their imagined price-fixing conspiracy. *Id.* ¶ 8 (“Todd’s role transcended mere reporting—she became an integral decision-maker”); EUP Compl. ¶ 419 [REDACTED] [REDACTED] Yet, Plaintiffs have ***zero*** specific allegations of communications between JM Eagle employees and Todd, and they instead allege that [REDACTED] [REDACTED] NCSP Compl. ¶ 138. It is implausible as a matter of law that JM Eagle participated in a spontaneous, multi-year, multi-product conspiracy orchestrated by a person with whom its employees did not communicate regularly about its pricing, much less at all. *Bank of Am.*, 725 F.3d at 818; *In re Granulated Sugar*, 2025 WL 3012238 at *7, *11.

None of Plaintiffs' other allegations can make up for this deficiency. At best, they allege:

- That JM Eagle employees subscribed to the PPWR and received price announcements from Todd. But “information-seeking [about competitors] is common” and not sufficient to establish participation in a conspiracy. *In re Passenger Vehicle Replacement Tires Antitrust Litig.*, 767 F. Supp. 3d 681, 715 (N.D. Ohio 2025). That is especially so where PVC customers—Plaintiffs here—received the same information. NCSP Compl. ¶ 134.
- That Todd circulated JM Eagle price announcements she received from *other converters*. But “[a]llegations that others possessed or repeated [a defendant’s] prices, without more, do not plausibly allege agreement.” *In re Granulated Sugar*, 2025 WL 3012238 at *7.
- That JM Eagle participated in trade associations. But “trade association membership” is not “probative of an express agreement between the defendants.” *Washington Cnty. Health Care Auth., Inc. v. Baxter Int’l Inc.*, 328 F. Supp. 3d 824, 840 (N.D. Ill. 2018).

Thus, Plaintiffs seek to hold JM Eagle liable for their supposed Donna Todd-organized conspiracy without allegations that JM Eagle employees communicated with Todd or otherwise provided information about its prices to OPIS. Instead, Plaintiffs affirmatively allege that JM Eagle did not conspire because its employees did not communicate with Todd, provide pricing information, or even receive her municipal price announcements. Plaintiffs therefore cannot meet their burden to “show that [JM Eagle] joined the [supposed] conspiracy” with specific factual allegations. *Bank of Am.*, 725 F.3d at 818.

Second, beyond Plaintiffs’ dispositive admissions that JM Eagle did not have meaningful communications with OPIS, Plaintiffs’ allegations about JM Eagle’s unique pricing system confirm that it did not conspire. Plaintiffs claim “Converter Defendants used the issuance of price increase letters for PVC Pipes as the means to implement, monitor, and enforce their price fixing conspiracy.” EUP Compl. ¶ 138. But Todd herself [REDACTED]

[REDACTED]—utterly incompatible with a conspiracy based on the exchange of price announcements. NCSP Compl. ¶ 178. Plaintiffs likewise allege that JM Eagle Chairman Walter Wang “personally authorizes every price determination,” yet (despite full access to Todd’s files) they allege nothing about Wang

communicating with Todd or OPIS or any other converter. *Id.* ¶ 110; DPP Compl. ¶ 68. Plaintiffs' allegations thus establish JM Eagle's unique pricing system is incompatible with their claims.

Third, Plaintiffs' admissions and pleading failure not only doom their price-fixing theory, but also their rule-of-reason information-exchange claim. As a threshold matter, JM Eagle cannot have participated in an unlawful exchange of price information through OPIS because Plaintiffs do not allege that it ever provided information about its prices to OPIS at all. *Gibson v. Cendyn Grp., LLC*, 148 F.4th 1069, 1078 (9th Cir. 2025) (affirming dismissal of information-exchange claim because no allegation that intermediary conveyed confidential information from one submitting party to another). Here, Plaintiffs have **zero** specific allegations of JM Eagle providing OPIS with any information. Instead, they acknowledge that [REDACTED]

[REDACTED] NCSP Compl. ¶¶ 373, 377, 385. And Plaintiffs do not allege that JM Eagle (as opposed to a customer) provided those converters with that information. *See id.* Thus, Plaintiffs' rule-of-reason claims also fail as to JM Eagle.

CONCLUSION

Plaintiffs' OPIS-centric conspiracy claim makes absolutely no sense with respect to JM Eagle. Plaintiffs allege—explicitly and affirmatively—that JM Eagle did not regularly communicate with Todd, that other converters provided Todd with information about JM Eagle price announcements, and that JM Eagle did not even receive municipal pipe price announcements from Todd. Plaintiffs' complaints fail as to JM Eagle as a matter of law because they lack allegations establishing that JM Eagle conspired. Moreover, this is the rare case where Plaintiffs' detailed allegations affirmatively establish that JM Eagle could not have participated in the OPIS-centric conspiracy that they posit. JM Eagle should be dismissed on such allegations.

Dated: October 30, 2025

Respectfully submitted,

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