

**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

**OTTER TAIL CORPORATION AND VINYLTECH CORPORATION'S  
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

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## INTRODUCTION

Across thousands of pages of complaints, Plaintiffs have not alleged a single fact to justify including Otter Tail Corporation (“Otter Tail”) or Vinyltech Corporation (“Vinyltech”) as defendants. Otter Tail is the parent company of two converter subsidiaries, Defendants Vinyltech and Northern Pipe Products, Inc. (“Northern Pipe”). Otter Tail is not a PVC pipe converter, and Plaintiffs do not allege any actions by Otter Tail to suggest it participated in a conspiracy, whether through its own actions or by directing, controlling, or encouraging its subsidiaries’ actions.

Nor do any of the Complaints allege Vinyltech’s participation in a conspiracy. At most, Plaintiffs allege that Vinyltech intermittently received pricing information—conduct that courts have repeatedly held to be insufficient to infer an agreement. None of the Complaints allege enough facts to nudge their conspiracy claims from the possible to the plausible.

All claims against Otter Tail and Vinyltech must be dismissed.<sup>1</sup>

## ARGUMENT

### **I. Plaintiffs Cannot State a Claim Against Otter Tail.**

Plaintiffs’ allegations against Otter Tail as a co-conspirator are threadbare and fail to allege an agreement involving Otter Tail. Further, Plaintiffs allege no basis to impute the actions of subsidiaries to Otter Tail as the parent. Otter Tail should not be a party to this case.

#### **A. Plaintiffs Fail to Plead that Otter Tail Participated in a Conspiracy.**

Plaintiffs do not allege Otter Tail was a member of any purported conspiracy. To survive dismissal, a complaint must “allege that each individual defendant joined the conspiracy and played some role in it because, at the heart of an antitrust conspiracy is an agreement and a

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<sup>1</sup> Otter Tail and Vinyltech join Defendants’ Joint Motion to Dismiss for Failure to State a Claim (“Joint Motion”) and the arguments therein. Plaintiffs’ complaints should be dismissed as to all Defendants.

conscious decision to join it.” *In re Outpatient Med. Ctr. Emp. Antitrust Litig.*, 630 F. Supp. 3d 968, 984 (N.D. Ill. 2022) (citing *Standard Iron Works v. ArcelorMittal*, 639 F. Supp. 2d 877, 900 (N.D. Ill. 2009)). “[I]t [is] essential to show that a particular defendant joined the conspiracy and knew of its scope.” *In re Broiler Chicken Antitrust Litig.*, 290 F. Supp. 3d 772, 803 (N.D. Ill. 2017); *SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 423 (4th Cir. 2015), as amended on reh’g in part (2015) (complaint must “separately identify each defendant’s involvement in the conspiracy”).

Lumping Otter Tail in with the “Converter Defendants”<sup>2</sup> is insufficient. *In re Cattle Antitrust Litig.*, No. CV 19-1129 (JRT/HB), 2020 WL 5884676, at \*6 (D. Minn. Sept. 29, 2020) (“Without specific information regarding each Defendant, the Court has no basis to analyze which, how many, or when any of the individual Defendants may have affirmatively acted.”) (citation and internal quotation marks omitted). Plaintiffs’ reliance on “[m]ere generalizations as to” Otter Tail is insufficient to allege it participated in a conspiracy. *In re Crop Inputs Antitrust Litig.*, 749 F. Supp. 3d 992, 1007 (E.D. Mo. 2024) (citations omitted).

Plaintiffs fail to meet these pleading requirements as to Otter Tail because Plaintiffs do not allege that Otter Tail joined the alleged conspiracy or knew of its existence. Plaintiffs do not allege that Otter Tail: (1) communicated with OPIS; (2) shared with or received any information from OPIS; (2) subscribed to the OPIS PVC & Pipe Weekly Report (“PPWR”); (3) communicated with any PVC converter; or (4) raised PVC pipe prices in response to any information received from OPIS. In fact, Otter Tail is not referenced in any PPWR excerpts cited in any Complaint, and Plaintiffs concede that Otter Tail is not a PVC converter. DPP Compl. ¶ 53, Dkt. No. 390; NCSP Compl. ¶¶ 57-59, 461, Dkt. No. 467; EUP Compl. ¶¶ 79, 80, Dkt. No. 398.

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<sup>2</sup> NCSPs define “Converter Defendants” to include Otter Tail Corporation (NCSP Compl. at VI, Dkt. No. 467)—even though Otter Tail itself does not manufacture any type of PVC Pipe. NCSP Compl. ¶¶ 57-59, 461, Dkt. No. 467.

The only references to Otter Tail are benign financial statements and earnings call transcripts reporting on the performance of its converter subsidiaries and the industry in which those converters participate. *See, e.g.*, DPP Compl. ¶¶ 62, 242, 281, 291, Dkt. No. 390; NCSP Compl. ¶¶ 155, 321, 452, 453, 517, 520, 586, Dkt. No. 467; EUP Compl. ¶¶ 484, 489, 490, Dkt. No. 398. Such innocuous and legally required disclosures cannot support Otter Tail’s participation in a conspiracy. *See In re Late Fee & Over-Limit Fee Litig.*, 528 F. Supp. 2d 953, 964 (N.D. Cal. 2007), *aff’d*, 741 F.3d 1022 (9th Cir. 2014) (motive to pursue “higher prices” not sufficient to allege a plausible conspiracy (citation omitted)); *In re Generic Pharms. Pricing Antitrust Litig.*, No. 16-MD-2724, 2025 WL 388813, at \*3 (E.D. Pa. Feb. 3, 2025) (“[A] desire for profit does not itself constitute a conspiratorial motive.”).

Further, Plaintiffs’ co-labeling of parent and subsidiaries (i.e., “Northern/Ottertail” and “Vinyltech/Ottertail”) does not save their claims. *See Chamberlain Grp., Inc. v. Techtronic Indus. N. Am., Inc.*, No. 16-CV-06113, 2017 WL 4269005, at \*2 (N.D. Ill. Sept. 26, 2017) (“[L]ump[ing] together” multiple “corporate defendants” and “refer[ring] to them collectively” with one name “constitutes impermissible group pleading.”). Simply adding “Otter Tail” to converters’ names does not allege facts that can support a conspiracy claim.

#### **B. Plaintiffs Cannot Impute Their Allegations Against Subsidiaries to Otter Tail.**

Plaintiffs do not cure their pleading shortcomings by imputing liability to Otter Tail for the alleged conduct of its subsidiaries.<sup>3</sup> “It is a general principle of corporate law deeply ‘ingrained in our economic and legal systems’ that a parent corporation . . . is not liable for the acts of its subsidiaries.” *See United States v. Bestfoods*, 524 U.S. 51, 61 (1998) (citation omitted). “[P]arent

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<sup>3</sup> For the reasons stated herein as to Vinyltech and in the Joint Motion, Vinyltech and Northern Pipe should be dismissed because Plaintiffs fail to allege that either participated in a conspiracy.

corporations and their subsidiaries are ‘separate entities and the acts of one cannot be attributed to the other.’” *Teamsters Loc. Union No. 705 v. Burlington N. Santa Fe, LLC*, 741 F.3d 819, 823 n.4 (7th Cir. 2014) (citation omitted).

That a parent is not liable for its subsidiary’s conduct is subject to two narrow exceptions, neither of which applies here. *First*, unlike here, liability may attach where the parent was a direct participant in the subsidiary’s alleged conduct. *Surfside Non-Surgical Orthopedics P.A. v. Allscripts Healthcare Sols., Inc.*, No. 18 C 566, 2019 WL 2357030, at \*4 (N.D. Ill. June 4, 2019). Plaintiffs fail to plead any facts to support their claim that Otter Tail “directed, controlled, or encouraged its subsidiar[ies’] participation” in an alleged conspiracy. *Outpatient Med. Ctr. Emp. Antitrust Litig.*, 630 F. Supp. at 991 (citing *In re Pa. Title Ins. Antitrust Litig.*, 648 F. Supp. 2d 663, 689 (E.D. Pa. 2009)) (dismissing claim against parent for subsidiary conduct); *see, e.g., McCray v. Fidelity Nat'l Title Ins. Co.*, 636 F. Supp. 2d 322, 335 (D. Del. 2009) (dismissing claims “[w]ithout some averment that the corporate parent defendants directly entered into agreements”).

DPPs’ conclusory claim that Otter Tail “controls both Northern/Ottertail and Vinyltech/Ottertail generally, and with respect to the conduct in furtherance of the unlawful acts alleged in this Complaint,” DPP Compl. ¶ 53, Dkt. No. 390, fails to allege Otter Tail’s participation. A conclusory allegation of “control” of a subsidiary warrants the parent’s dismissal. *Bright v. Roadway Servs., Inc.*, 846 F. Supp. 693, 700 (N.D. Ill. 1994). Likewise, Otter Tail describing its subsidiaries’ performance is insufficient to show participation in the alleged conspiracy. *See Surfside Non-Surgical Orthopedics P.A.*, 2019 WL 2357030, at \*4-6 (parent-subsidiary consolidated financials insufficient to show parent participation in challenged conduct); *Berry v. Bryant*, No. CV 11-514, 2012 WL 12819204, at \*5 (D.N.M. Mar. 15, 2012) (“[R]eferences by a

parent corporation to the business of its subsidiary as being part of the business of the parent does not serve to erase the substantive and legal distinction between corporations.”).

*Second*, liability may be imputed to the parent through a rare finding of veil piercing. *See Judson Atkinson Candies, Inc. v. Latini-Hohberger Dhimantec*, 529 F.3d 371, 378-79 (7th Cir. 2008). Veil piercing only occurs when a two-prong test is satisfied. First, “there must be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist,” and second, “circumstances must be such that adherence to the fiction of separate corporate existence would sanction a fraud or promote injustice.” *Wachovia Sec., LLC v. Banco Panamericano, Inc.*, 674 F.3d 743, 751-52 (7th Cir. 2012) (citation and internal quotation marks omitted). Courts consider factors like “(1) the failure to maintain adequate corporate records or to comply with corporate formalities, (2) the commingling of funds or assets, (3) undercapitalization, and (4) one corporation treating the assets of another corporation as its own.” *Van Dorn Co. v. Future Chem. & Oil Corp.*, 753 F.2d 565, 570 (7th Cir. 1985).<sup>4</sup> Plaintiffs fail to allege any factors that would warrant piercing the corporate veil. *See id.* Plaintiffs cannot overcome the rule that parent corporations are not liable for subsidiaries’ wrongs and their claims as to Otter Tail fail.

## **II. Plaintiffs Do Not Allege that Vinyltech Participated in a Conspiracy.**

Plaintiffs’ claims against Vinyltech should also be dismissed because none of the Complaints alleges facts regarding an agreement involving Vinyltech. *First*, Plaintiffs do not allege parallel conduct in furtherance of a conspiracy. *In re Pork Antitrust Litig.*, No. CV 18-1776, 2019 WL 3752497, at \*8 (D. Minn. Aug. 8, 2019) (“Without specific information regarding each

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<sup>4</sup> Otter Tail is a Minnesota corporation. Minnesota courts analyze eight factors to assess veil-piercing: (1) insufficient capitalization; (2) failure to observe corporate formalities; (3) nonpayment of dividends; (4) insolvency of debtor corporation; (5) siphoning of funds by dominant shareholder; (6) nonfunctioning of other officers and directors; (7) absence of corporate records; and (8) existence of corporation as facade for individual dealings. *Thorkelson v. Publ’g House of Evangelical Lutheran Church in Am.*, 764 F. Supp. 2d 1119, 1129-30 (D. Minn. 2011) (citation omitted). Plaintiffs fail to allege these factors.

Defendant, the Court has no basis to analyze which, how many, or when any of the individual Defendants may have affirmatively acted. And that type of information is vital to pleading parallel conduct.”); *In re Commodity Exch., Inc. Silver Futures & Options Trading Litig.*, No. 11-MD-02213, 2013 WL 1100770, at \*4 (S.D.N.Y. Mar. 18, 2013) (“generalized fluctuations” that do not “connect or link these fluctuations to actions” by defendants are insufficient for parallel conduct).

Specifically, Plaintiffs fail to allege Vinyltech pricing movements that were “the same or substantially similar” to those of any other converter. *In re Concrete & Cement Additives Antitrust Litig.*, No. 24-MD-3097 (LJL), 2025 WL 1755193, at \*12 (S.D.N.Y. June 25, 2025) (citation omitted). Pricing movements “must be reasonably close in time and value” to plead parallel conduct. *In re Granulated Sugar Antitrust Litig.*, No. MDL 24-03110 (JWB/DTS), 2025 WL 3012238, at \*6 (D. Minn. Oct. 15, 2025) (citation omitted). Yet, Plaintiffs allege no Vinyltech pricing movements during the alleged conspiracy. While NCSPs allege two occasions when the PVC & Pipe Weekly Report (“PPWR”) allegedly reported that Vinyltech and Northern Pipe [REDACTED] (NCSP Compl. ¶ 461, Dkt. No. 467), no plaintiff alleges that Vinyltech *actually* raised prices. Such unsourced reporting “does not identify when or how” Vinyltech’s pricing moved and “therefore do[] not ‘nudge’ the parallel conduct claim from possibly to plausibly inferring an agreement.” *Granulated Sugar*, 2025 WL 3012238 at \*7 (citation omitted).

*Second*, allegations of information receipt do not support an agreement involving Vinyltech.<sup>5</sup> DPP Compl. ¶ 52, Dkt. No. 390; NCSP Compl. ¶¶ 59, 132, 461, Dkt. No. 467; EUP Compl. ¶ 82, Dkt. No. 398. [REDACTED]

[REDACTED] DPP Compl. ¶¶

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<sup>5</sup> See Joint Motion at Section II.

9, 52, Dkt. No. 390; NCSP Compl. ¶¶ 210, 241, 326, 373, 592, Dkt. No. 467; EUP Compl. ¶¶ 82, 83, 163, Dkt. No. 398. As the Joint Motion explains, such services do not support a claim against Vinyltech, particularly where Plaintiffs do not allege a link between information shared and Vinyltech's pricing. Plaintiffs' claim that sharing information is against self-interest (NCSP Compl. ¶ 138, Dkt. 467), is contrary to law. *See In re Broiler Chicken Antitrust Litig.*, 702 F. Supp. 3d 635, 674 (N.D. Ill. 2023) ("Greater information exchange alone does not demonstrate a conspiracy.").

Further, lumping Vinyltech in with the other "Converter Defendants"<sup>6</sup> as "a general collective bloc" does not cure Plaintiffs' pleading deficiencies as to Vinyltech. *In re Crop Inputs Antitrust Litig.*, 749 F. Supp. 3d at 1008-09; *see also Granulated Sugar*, 2025 WL 3012238 at \*7 ("Conclusory statements that lump defendants together, without factual support for each, are insufficient."); *In re Cattle Antitrust Litig.*, 2020 WL 5884676, at \*6 (allegations insufficient when "[t]hey do little to allege how the individual Defendants acted and instead resort to group pleading, arguing that the market did this or that"). None of Plaintiffs' generalized claims of actions by "Converter Defendants" suggest Vinyltech participated in a conspiracy.

Plaintiffs' attempts to lump Vinyltech in with Northern Pipe or Otter Tail likewise fail. DPP Compl. ¶¶ 51-53, 127, 265, Dkt. No. 390; NCSP Compl. ¶¶ 60, 326, 376, 535, Dkt. No. 467; EUP Compl. ¶ 83, Dkt. No. 398. For instance, NCSPs allege that [REDACTED]

[REDACTED]  
[REDACTED] NCS  
NCS  
Compl. ¶ 376, Dkt. No. 467. Plaintiffs' labels do not meet their obligations to plead specific facts.<sup>7</sup>

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<sup>6</sup> See, e.g., DPP Compl. ¶¶ 74, 110, 245, Dkt. No. 390; NCSP Compl. ¶¶ 248, 264, Dkt. No. 467.

<sup>7</sup> NCSPs allege that "Vinyltech typically took all direction on pricing . . . from Northern Pipe and Otter Tail," but offer no facts to support this claim. NCSP Compl. ¶¶ 59, 132, 458, Dkt. No. 467. In any event, Brent Hildyard worked in a different role at a separate company. DPP Compl. ¶¶ 49, 51, Dkt. No. 390.

### **III. Plaintiffs' State Law Claims Fail.**

NCSPs' and EUPs' state law claims against Otter Tail and Vinyltech should be dismissed for the same reasons as their federal claims. The state laws they invoke or otherwise follow federal law and fail on the same bases as the federal claims. *See, e.g., In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 847 (N.D. Ill. 2020); *In re Suboxone Antitrust Litig.*, No. 13-MD-2445, 2017 WL 4642285, at \*11 (E.D. Pa. Oct. 17, 2017).

### **CONCLUSION**

For the foregoing reasons and for the reasons set forth in the Joint Motion, all claims against Otter Tail and Vinyltech should be dismissed.

Dated: October 30, 2025

Respectfully submitted,

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