Southern District of California Issues State Law Motion to Dismiss Rulings in *In re Packaged Seafood Products Antitrust Litigation*

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On March 14, 2017, Judge Janis L. Sammartino entered an order granting in part and denying in part the defendants' motion to dismiss state law claims in *In re Packaged Seafood Products Antitrust Litigation*, 2017 U.S. Dist. LEXIS 37804 (S.D. Cal. Mar. 14, 2017). The court's decision addresses important and recurring issues in price-fixing cases asserting state law claims, including the requirements for pleading parent liability, the viability of a California nationwide class, the sufficiency of allegations under the laws of different states, standing under different state laws, and statutes of limitation under various state laws.

Background

Packaged Seafood Products arose from dozens of complaints filed around the county that alleged a conspiracy involving packaged seafood products. The Judicial Panel on Multidistrict Litigation consolidated the cases for pretrial purposes on December 9, 2015. The court divided the plaintiff groups into Direct Action Plaintiffs (DAPs), Direct Purchaser Plaintiffs (DPPs), Indirect Purchaser Commercial Food Preparer Plaintiffs (CFPs), and Indirect Purchaser End Payer Plaintiffs (EPPs). The United States intervened and the parties stipulated to a limited stay of discovery while motions to dismiss proceeded. On January 3, 2017, the court entered an order addressing the plaintiffs' federal claims under the Sherman Act, and on March 14 the court entered its order regarding state law claims.

The Court's Rulings

1. Parent Defendant Liability

The court determined that the allegations in most of the complaints sufficiently alleged participation in the conspiracy by corporate parents. *Id*. at *71-*90. Two of the parent defendants moved to dismiss on the grounds that the complaints failed to allege that they directly participated in the conspiracy. Although many of the plaintiffs' allegations were too general to support the allegation that the parent companies participated in the conspiracy, the court found that some allegations "plausibly demonstrate that the Parent Defendants directly conspired with their respective subsidiaries." *Id*. at *74. This included allegations regarding telephone calls between senior executives and sales personnel to announce collusive price increases, a teleconference during with the parent defendants agreed not to launch certain products, and communications whereby senior executives and sales personnel assured one another that they would not compete regarding the price of tuna to customers. Also, while recognizing that the allegations in a complaint must be directed to each defendant, the court said that at "some level of group pleading is permissible, especially were, as here, the Court is able to discern that these groups, and their actions, include the Parent Defendants." *Id*. at *76.

The court rejected the plaintiffs' attempt to assert claims against the parent defendants based on alter ego and agency theories. *Id*. at *77-*90. The court found that although the

plaintiffs had sufficiently alleged a unity of interest between the corporate parents and their subsidiaries, they failed to plausibly allege that an inequitable result would follow if the corporate veil were not pierced. *Id*. at *83-*84; *85-*86.The court also ruled that the plaintiffs' agency allegations were insufficient because they did not plead facts showing how a parent "dominated or controlled" aspects of its subsidiary's business. *Id*. at *86-*90.

2. Nationwide California Class

The court ruled that the EPPs could not bring claims under the Cartwright Act and Section 17200 on behalf of a nationwide California class. *Id*. at *90-*98. The EPPs argued that it is improper to resolve this issue on a motion to dismiss because it requires a choice-of-law analysis. The court disagreed. *Id*. at *91-*92. It applied the familiar choice-of-law factors —whether there is a conflict, the foreign state's interest, and which state's interest is most impaired—to find that allowing a nationwide class under California law would allow indirect purchasers in non-*Illinois Brick*-repealer states to sue. Since California's interest in applying its laws to residents of foreign states is "attenuated," the court dismissed the EPPs' purported Califoria nationwide class claims. *Id*. at *92-*98.

3. Twombly/Iqbal Pleading Requirements for State Law Claims

The court conducted a state-by-state analysis of whether the complaints' allegations satisfied *Twomby* and *Iqbal* for the state antitrust, consumer protection, and unjust enrichment claims that were asserted. The court ruled as follows:

a. State Antitrust Laws

The court dismissed the EPPs' antitrust claims under Arkansas and Illinois law where only Attorney General actions are allowed. *Id*. at *99-*102. It dismissed the antitrust claims under Rhode Island law that predated 2013, but ruled that the antitrust claims under Oregon's *Illinois Brick*-repealer could reach back before the statute was adopted. *Id*. at *103-*107.

b. State Consumer Protection Laws

The court addressed several recurring arguments that defendants advance in arguing that plaintiffs failed to satisfy the pleading requirements for various state law consumer protection claims. *Id*. at *107-*145.

- The court granted some motions to dismiss that argued that the plaintiffs were improperly trying to use the state's consumer protection law to bring an antitrust claim that is not covered by the law (Maine, Illinois, Maine and West Virginia), but rejected the argument as to Missouri, New Hampshire, New Mexico, Oregon and Rhode Island.

- The court rejected the defendants' argument that the plaintiffs had not pled "unconscionable conduct" as is required in some jurisdictions, such as Arkansas, the District of Columbia, New Mexico, Oregon and Utah.

- For most complaints, the court rejected the argument that the plaintiffs had not pled fraud or an unfair, unlawful or deceptive business practice as is required in states such as California, Illinois, Michigan, Minnesota and Nevada. However, it ruled that the CFPs did

not adequately allege fraud under some state's consumer protection laws, including Michigan and Minnesota.

- The court found that the CFPs' complaints did not satisfy the requirement in the District of Columbia and Missouri that the plaintiff allege a household, personal or family purpose of the purchases at issue.

- The court ruled that South Carolina's bar on class actions is procedural and not substantive, and therefore plaintiffs were not precluded from pursuing a class action in federal court that asserts South Carolina state law claims.

c. State Unjust Enrichment Claims

The court first addressed some common issues and then some state-specific issues regarding plaintiffs' unjust enrichment claims. *Id*. at *145-*161. First, the court granted the defendants' motion to dismiss the CFPs' unjust enrichment claim because they pled the claim generally rather than for specific jurisdictions. *Id*. at *145-*146. Second, the court also dismissed the EPPs' unjust enrichment claims where the state's law otherwise bars indirect-purchaser recovery. *Id*. at *146-*147. Next, the court addressed claims in states in which the defendants argued allegations of a "direct benefit" are required—which the court found depends on each state's specific law. The court ruled that the allegations were sufficient to state claims under the laws of Arizona, the District of Columbia, Kansas, Massachusetts, Michigan, North Carolina, Rhode Island, Utah and Wisconsin. The only states where the allegations of a "direct benefit" were insufficient were Florida and Maine. *Id*. at *148-*158. In the long-running debate about whether California recognizes a cause of action denominated "unjust enrichment," the court agreed with the plaintiffs that the claim they asserted should be construed as being a claim in "quasi-contract for restitution." *Id*. at *159. And the court ruled that plaintiffs' price-fixing claims sufficed to state an unjust enrichment claims under West Virginia law regardless of whether an express allegation of unconscionability is required for such a claim. *Id*. at *159-*161.

4. Standing to Prosecute State Law Claims

The court agreed with the defendants that the CFPs lacked Article III standing to bring claims under the laws of states where none of the CFPs purchased any of the seafood at issue in the case. *Id*. at *161-*162. And the court also ruled that even if the CFPs were allowed to bring state law claims in state court, that did not mean they satisfied Article III standing requirements when they asserted the same state law claims in federal court. *Id*. at *162-*168.

5. State Law Statutes of Limitation

The court had previously ruled that no plaintiff sufficiently alleged fraudulent concealment with respect to the pre-2011 Sherman Act claims. It followed that earlier ruling with respect to pre-2011 state law claims. The court rejected the plaintiffs' argument that the "continuing conspiracy" rule applies in the Ninth Circuit, but also rejected the defendants' argument that the available public information sufficed to put the plaintiffs on notice of the alleged conspiracy. The issue boiled down to whether the relevant state law "discovery" rule, rather than the Sherman Act's "injury accrual" rule, applied to plaintiffs' state law

claims for purposes of determining when the statutes of limitation began to run. The court found there was no serious disagreement that the discovery rule applies in several states. As to states where there was disagreement, the court made state-by-state determinations that are summarized in a table that appears at pages *212-*214 of the order.