

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:20-CV-01966-RM-MEH

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION LOCAL 464A, THE TRUSTEES OF WELFARE AND PENSION FUNDS OF LOCAL 464A – PENSION FUND, THE TRUSTEES OF RETIREMENT PLAN FOR OFFICERS, BUSINESS REPRESENTATIVES AND OFFICE EMPLOYEES OF LOCAL 464A, THE TRUSTEES OF LOCAL 464A FINAST FULL TIME EMPLOYEES PENSION PLAN, THE TRUSTEES OF LOCAL 464A WELFARE AND PENSION BUILDING INC., and THE TRUSTEES OF NEW YORK-NEW JERSEY AMALGAMATED PENSION PLAN FOR ACME EMPLOYEES, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

PILGRIM’S PRIDE CORPORATION, JAYSON J. PENN,
WILLIAM W. LOVETTE, and FABIO SANDRI

Defendants.

Defendants Pilgrim’s Pride Corporation and Fabio Sandri’s Motion to Dismiss Plaintiff’s Amended Class Action Complaint and Incorporated Memorandum of Law

Defendants Pilgrim’s Pride Corporation (“Pilgrim’s”) and Fabio Sandri move to dismiss Plaintiff’s Amended Class Action Complaint (“AC”) pursuant to the Private Securities Litigation Reform Act of 1995 and Fed. R. Civ. P. 8(a), 9(b) and 12(b)(6), and submit this incorporated memorandum of law in support of their motion.¹

PRELIMINARY STATEMENT

The AC suffers from a fatal flaw: It conflates antitrust violations with securities fraud.

¹ On July 13, 2021, counsel for all parties conferred telephonically regarding the issues set forth in this motion, pursuant to Civ. Practice Standard IV.N.2.a. Plaintiff did not agree to the relief sought herein and declined to file an amended complaint.

Plaintiff conclusorily asserts that because Pilgrim's did not disclose the anticompetitive conduct alleged in the AC, all of Defendants' public statements regarding the drivers of Pilgrim's performance in the broiler chicken industry must have been false or misleading. But a violation of the antitrust laws does not automatically establish securities fraud. Unlike an antitrust claim, stating a Section 10(b) claim requires a plaintiff to meet the heavy burden of pleading particularized factual allegations showing that the defendant made a materially false statement or omission in connection with the purchase or sale of securities, acted with the specific intent to deceive at the time they made each challenged statement, and that the revelation of the truth caused a cognizable loss. As set forth below, Plaintiff fails to meet this burden and its claims should be dismissed on three independent grounds.

First, the AC does not plead with particularity that each disputed statement made during the Class Period was contemporaneously false or misleading. There is a glaring disconnect between the timing of the anticompetitive conduct described by Plaintiff and that of the alleged misstatements. In the AC, Plaintiff describes anticompetitive conduct by Pilgrim's and its competitors before the Class Period (in many cases, years before)—but that is not enough to establish that Defendants' subsequent Class Period statements about the drivers of Pilgrim's quarterly earnings were misleading when made. Plaintiff nowhere explains—much less pleads the requisite particularized facts supporting—how the scheme it describes as occurring from 2012 through 2017 renders false any of Defendants' statements about Pilgrim's contemporaneous financial performance from February 2017 to June 2020.

The AC also fails to supply any of the requisite particulars—which drivers of which financial metrics were rendered false, by what amount, and when—supporting its claim that all of

Pilgrim's statements concerning its performance were false and misleading. Plaintiff makes much of Pilgrim's guilty plea to one count of conspiracy in restraint of competition from "at least as early as 2012 and continuing through at least early 2017." But the anticompetitive conduct in the plea agreement (the "Agreement") involved three contracts with a single customer that impacted \$361 million of sales. To put those figures into context, during that period, Pilgrim's had between 5,000-6,500 customers and brought in over *\$54 billion* in net sales. Misconduct affecting only one of Pilgrim's thousands of customers and less than 1% of its sales does not support Plaintiffs' unspecified, broad-brush assertion that an antitrust conspiracy constituted the "true" driver of all of the Company's financial performance during the Class Period. Similarly, Plaintiff's allegation that Defendants' statements during that time were false because the U.S. Department of Justice ("DOJ") subsequently indicted Defendant Penn, former Pilgrim's employee Roger Austin, and two former Claxton Poultry employees for antitrust violations on June 3, 2020 (the "Initial Indictment") does not save its claims. The unadjudicated allegations of anticompetitive conduct in the Initial Indictment do not demonstrate that Defendants' statements about the drivers of the Company's success were contemporaneously false or misleading; the securities laws do not require companies to characterize their conduct as illegal. And neither Pilgrim's nor any its executives had been charged with, found liable of, or pled guilty to, any wrongdoing during the Class Period.

Second, Plaintiff's scienter allegations do not come close to meeting the exacting pleading standards of the PSLRA. Because of the mismatched timing between when the challenged statements were made and the anticompetitive conduct described in the AC, Plaintiff is unable to plead with particularity that any Defendant had the requisite contemporaneous intent to deceive. Critically, Plaintiff fails to allege that the Pilgrim's executives who made the supposed

misstatements were engaged in any anticompetitive conduct—or even aware of any continuing wrongdoing—during the Class Period. The AC fails to state a claim against Mr. Sandri on this ground—there is not one allegation that Mr. Sandri had knowledge of *any* anticompetitive conduct at Pilgrim’s. Plaintiff’s generalized allegations that he *should have known* do not suffice under the PSLRA.

Third, the AC is deficient because it fails to establish loss causation, *i.e.*, a link between the “truth,” which Plaintiff claims was revealed when the DOJ announced the Initial Indictment on June 3, 2020, and the allegedly false and misleading statements. The announcement of the Initial Indictment does not relate to—let alone “correct”—any of the challenged statements. And the market was fully aware, beginning in 2016, that Pilgrim’s was the target of litigations and government investigations concerning Pilgrim’s alleged participation in an anticompetitive conspiracy, and the attendant risks that Pilgrim’s might suffer adverse consequences as a result of those proceedings. In every public filing during the Class Period, Pilgrim’s fully disclosed that there was ongoing litigation alleging that Pilgrim’s had been involved in antitrust violations.

For these reasons, and those set forth below, the AC should be dismissed with prejudice.

STATEMENT OF FACTS²

Pilgrim’s is one of the largest producers of chicken and pork products in the United States, the United Kingdom and Europe, Mexico, and approximately 110 other countries.³ Mr. Sandri has been the CEO of Pilgrim’s since June 2020; Messrs. Lovette and Penn each previously served as

² These facts are drawn from the AC, documents incorporated therein, a plea agreement that is publicly filed, and documents filed with the SEC, of which the Court may take judicial notice to establish market awareness and the fact of such filings. *See Chipman v. Aspenbio Pharma, Inc.*, 2012 WL 4069353, at *2 (D. Colo. Sept. 17, 2012).

³ *See* Ex. 1 (2019 10-K dated Feb. 21, 2020) at 1. All references to “Ex.” refer to Exhibits to the accompanying Declaration of Caroline Zalka. All citations to “¶ _” are to the AC.

CEO of Pilgrim’s from January 2011 to March 2019 and March 2019 to June 2020, respectively.

¶¶ 14-16. Pilgrim’s common stock trades on the NASDAQ under the symbol “PPC.” ¶ 13.

During the Class Period of February 9, 2017 to June 2, 2020, Pilgrim’s regularly updated investors regarding its business, its financial performance, and the drivers behind that performance in filings with the U.S. Securities and Exchange Commission (the “SEC”) and earnings calls. Pilgrim’s generally attributed its strong financial results to a variety of factors, such as its leading market position in the chicken industry, broad product portfolio, and strong customer relationships. *See, e.g.*, ¶ 142. Pilgrim’s also disclosed that its “key customer approach also promotes trust, enhances long-term relationships and strengthens [its] margin structure.” *See, e.g.*, ¶ 194. In addition, Pilgrim’s disclosed that the chicken industry was “highly competitive” and that it “primarily compete[s] with other vertically integrated chicken companies.” *See e.g.*, ¶ 124. Pilgrim’s regularly listed factors that made it competitive, including “price, product quality, product development, brand identification, breadth of product line and customer service.” *See, e.g.*, ¶ 140. Between 2012 and 2017, Pilgrim’s net sales were approximately \$54.5 billion, and Pilgrim’s served between 5,000 and 6,500 customers annually.⁴

Plaintiff alleges that virtually every disclosure that Pilgrim’s or its executives made regarding Pilgrim’s business or the Company’s results, in 13 quarterly earnings calls and 17 public filings and press releases between February 9, 2017 and April 30, 2020, was materially misleading for the same reason: The statements purportedly concealed that Pilgrim’s financial results during the Class Period were driven primarily by an “illegal bid-rigging scheme orchestrated by

⁴ *See* Ex. 2 (2012 10-K dated Feb. 15, 2013) at 4, 7; Ex. 3 (2013 10-K dated Feb. 21, 2014) at 4, 7; Ex. 4 (2014 10-K dated Feb. 12, 2015) at 2, 6; Ex. 5 (2015 10-K dated Feb. 12, 2016) at 1; Ex. 6 (2016 10-K dated Feb. 9, 2017) at 1; Ex. 7 (2017 10-K dated Feb. 16, 2018) at 1, 6.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.