

**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.

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**WILLIAM W. LOVETTE'S MOTION TO DISMISS LEAD PLAINTIFF'S  
CONSOLIDATED AMENDED CLASS ACTION COMPLAINT**

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Defendant William W. Lovette respectfully moves to dismiss the Consolidated Amended Class Action Complaint dated May 26, 2021, (ECF No. 54, the “AC”) filed by Lead Plaintiff New Mexico State Investment Council (“Plaintiff”), alleging claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”). The AC fails to state a claim against Mr. Lovette under the heightened pleading standards required by Rule 9(b) of the Federal Rules of Civil Procedure (“FRCP”) and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4 *et seq.* (“PSLRA”). As such, Mr. Lovette moves to dismiss the AC pursuant to FRCP 12(b)(6).

### **PRELIMINARY STATEMENT**

The AC is virtually devoid of allegations involving Mr. Lovette, rendering the claims against him insufficient to sustain a private cause of action under the Exchange Act. Plaintiff ignores its heightened burden to plead survivable claims against each Defendant on a stand-alone basis and instead relies on group pleading and insinuations that do not suffice. The AC against Mr. Lovette should be dismissed.<sup>1</sup>

With the allegations specific to Mr. Lovette sifted from the AC, as they must be in determining whether Plaintiff pleads a valid claim against him, the AC’s inadequacies are laid bare. To support its claims, Plaintiff tries to tie generic public statements made by Mr. Lovette to two pre-2017 conversations involving Mr. Lovette, which Plaintiff speculates related to alleged anticompetitive behavior occurring *before* the class period. In an attempt to mask this

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<sup>1</sup> On July 13, 2021, all parties telephonically met and conferred pursuant to Judge Moore’s Practice Standard IV.N.2.a to resolve the issues identified in this motion, but the parties were unable to resolve the dispute.

deficiency, Plaintiff baldly alleges that Defendants were “legally obligated” to disclose to shareholders that Pilgrim’s Pride Corporation’s (“Pilgrim’s”) increase in profitability was “driven by an unsustainable and illegal bid-rigging scheme, not by legitimate, sustainable business practices,” such as efficient operations, a broad product portfolio, and strong relationships with key customers. (AC ¶ 9 (emphasis omitted).) But Plaintiff offers *no* support for this conclusion, and such group pleading and speculation do not satisfy Plaintiff’s heavy burden to plead that Mr. Lovette *himself* committed an Exchange Act violation. Moreover, Plaintiff does not allege a single fact to suggest that any of Mr. Lovette’s affirmative statements about Pilgrim’s were actually untrue, let alone that Mr. Lovette knew of the falsity of these statements or the existence of the alleged underlying bid-rigging scheme at the time the statements were made.

Plaintiff’s entire proffer against Mr. Lovette is that: (1) he participated in two brief conversations with other alleged co-conspirators over the span of seven years and before the putative class period; (2) he left his corporate roles at Pilgrim’s *before* charges were brought against Pilgrim’s; (3) he signed routine Sarbanes-Oxley (“SOX”) certifications; and (4) he regularly sold some of his shares of Pilgrim’s stock as they vested. Without more, these allegations cannot adequately support a colorable violation of either Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, or Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(b). And the allegations do not meet the PSLRA’s heightened pleading standard, which requires Plaintiff to establish a “strong inference” of scienter as to Mr. Lovette.

To survive dismissal, Plaintiff must plead sufficient facts to support the notion that Mr. Lovette was aware of a bid-rigging scheme that rendered his generic public statements knowingly false and materially misleading to purported class member investors in Pilgrim's at the time he made the statements, including adequate pleading to show his conduct caused their losses. It fails to do so on all fronts. For these reasons, as discussed below, and for the reasons set forth in Defendants Pilgrim's Pride Corporation and Fabio Sandri's Motion to Dismiss Plaintiff's Amended Class Action Complaint and Incorporated Memorandum of Law (the "Pilgrim's Pride Motion"), ECF No. 63, which Mr. Lovette joins and adopts herein,<sup>2</sup> Plaintiff's claims against Mr. Lovette should be dismissed.

### **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

Mr. Lovette adopts the Statement of Facts and Procedural History as stated in the Pilgrim's Pride Motion. *See* ECF No. 63, at 4–9.

### **ARGUMENT**

Plaintiff fails to plead adequately that Mr. Lovette made material misrepresentations, that Plaintiff's loss was causally connected to any of Mr. Lovette's alleged misrepresentations, or that Mr. Lovette was involved in a scheme to defraud as explained in Argument Sections I, III, and IV of the Pilgrim's Pride Motion. In addition to those failures, Plaintiff fails to meet the PSLRA's tall standard for pleading that Mr. Lovette acted with the requisite scienter.

#### **I. THE PSLRA IMPOSES A HEAVY PLEADING BURDEN ON PLAINTIFF.**

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<sup>2</sup> On July 16, 2021, the Court granted Mr. Lovette's motion to incorporate by reference the Pilgrim's Pride Motion. *See* ECF No. 60.

A plaintiff alleging securities fraud must satisfy the heightened pleading requirements of FRCP 9(b) and the PSLRA. *See Smallen v. W. Union Co.*, 950 F.3d 1297, 1305 (10th Cir. 2020). FRCP 9(b) requires a party to “state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). The PSLRA requires a plaintiff to “specify each statement alleged to have been misleading [and] the reason or reasons why the statement is misleading.” 15 U.S.C. § 78u-4(b)(1). Plaintiff also must “state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.” *Id.* at § 78u-4(b)(2)(A).

In the Tenth Circuit, a plaintiff must establish that “the defendant acted with scienter, that is, with the intent to defraud or recklessness.” *In re Zagg, Inc. Sec. Litig.*, 797 F.3d 1194, 1200 (10th Cir. 2012) (emphasis omitted) (internal quotation marks and citation omitted). “Intentional misconduct is easily identified since it encompasses deliberate illegal behavior.” *City of Phila. v. Fleming Cos.*, 264 F.3d 1245, 1260 (10th Cir. 2001). Recklessness “is a particularly high standard, something closer to a state of mind approximating actual intent.” *Zagg*, 797 F.3d at 1206 (internal quotation marks and citations omitted). A court will draw a “strong inference” of scienter “only if, based on plaintiff’s allegations, ‘a reasonable person would deem the inference of scienter cogent **and at least as compelling as any opposing inference** one could draw from the facts alleged.’” *In re Level 3 Commc’ns Sec. Litig.*, 667 F.3d 1331, 1343 (10th Cir. 2012) (emphasis added) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 324 (2007)). In the context of a securities fraud case, “allegations of negligence or even gross negligence fall ‘below the high threshold for liability under Section 10(b) of the Exchange Act.’” *Smallen*, 950 F.3d at 1305 (quoting *Dronsejko v. Thornton*, 632 F.3d 658, 668 (10th Cir. 2011)).

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