NOT FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-11765
Non-Argument Calendar

OJ COMMERCE, LLC,

Plaintiff-Appellant,

versus

NATIONAL CHRISTMAS PRODUCTS, LLC,
d.b.a. National Tree Company,
NATIONAL TREE INTERMEDIARY, LLC,
NATIONAL TREE HOLDING, LLC,
JOSEPH A. PULEO,
SALVATORE PULEO, JR., et al.,

Defendants-Appellees,

NATIONAL CHRISTMAS PRODUCTS, INC.,
d.b.a. National Tree Company,

Defendant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:24-cv-60331-WPD

Before JILL PRYOR, BRANCH, and LUCK, Circuit Judges.

PER CURIAM:

OJ Commerce, LLC sued National Christmas Products, LLC and some of National Christmas's affiliates and officers under section 1 of the Sherman Antitrust Act and state law. OJ Commerce alleged that National Christmas and Amazon entered into agreements that raised the price of artificial Christmas trees sold online in the United States. The district court dismissed OJ Commerce's claims against the affiliates and officers for lack of personal jurisdiction. It also dismissed OJ Commerce's section 1 claim against National Christmas as inadequately pleaded. OJ Commerce appeals only the latter dismissal.

Like the district court, we assume without deciding that OJ Commerce sufficiently defined its market. Taking market definition as a given, we conclude that OJ Commerce plausibly alleged an actual-effects claim under section 1. We therefore reverse the dismissal of that claim and remand for further proceedings. We otherwise affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

National Christmas manufactures and sells Christmas products, including artificial Christmas trees. It sells its trees through several online retailers, including Amazon and OJ Commerce.

In March 2020, National Christmas and Amazon entered into a "minimum margin agreement" and several "product restraint agreements." In the minimum-margin agreement, National Christmas agreed to charge "online retailers other than Amazon" a "floor price"—National Christmas's wholesale price plus a "minimum margin guarantee"—and to "compensate Amazon whenever [National Christmas's] . . . products s[old] below the agreed floor price." In the product-restraint agreements, National Christmas agreed to "preclude[] non-Amazon retailers, including [OJ Commerce], from discounting" National Christmas's products.

The ostensible purpose of these agreements was to prevent retailers like OJ Commerce from matching or undercutting Amazon's retail prices for National Christmas's trees. National Christmas effectively enforced the product-restraint agreements against the non-Amazon retailers by monitoring their prices and "remov[ing] inventory" if they refused to obey its price mandates. When OJ Commerce nonetheless tried to undercut Amazon's prices for National Christmas's trees, National Christmas stopped allowing OJ Commerce to sell them.

Cut off from National Christmas's products, OJ Commerce sued National Christmas and some of its affiliates and officers for violating section 1 of the Sherman Act and state law. It alleged that the minimum-margin and product-restraint agreements were contracts in restraint of trade, and that National Christmas's "market dominance"—a share of "at least 50%"—let it impose those restraints across the relevant market: "online sales in the artificial Christmas tree product category, within the geographic scope of the United States."

OJ Commerce also alleged that the agreements had marketwide effects. In paragraphs seventy-eight and seventy-nine of the complaint, OJ Commerce pleaded that, "after the product restraint agreements were entered into," the prices for artificial trees in the relevant market "substantially increased above competitive levels by double digits." The increase was "more than 15%" for the top-selling artificial trees. In paragraph ninety-one, the complaint gave a specific figure for the "double digit[]" hike: like the price increase for top sellers, the "[m]arket-wide price increase . . . after March 2020" was "over 15%." That paragraph also alleged that, relative to market prices before the agreements were formed, the increased prices were "supra-competitive [and] artificially inflated."

And in OJ Commerce's telling, the agreements were the only explanation for the price increase. National Christmas's wholesale prices "remained unchanged" after March 2020. In fact, "the price of overall consumer goods *decreased* by 0.4%," and inflation didn't begin to surge until around a year after the agreements were formed. Beyond higher prices, the agreements allegedly "cut the consumer's buying options" and cost OJ Commerce "lost profits from lost sales."

National Christmas successfully moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). The district court accepted OJ Commerce's market definition without analyzing it[1] and "[a]ssum[ed] without deciding that 50% market share sufficiently allege[d] market power." It nevertheless determined that the complaint "fail[ed] to allege any actual effects or potential effects on competition in the market." The 15% increase for top-selling products alleged in paragraph seventy-nine could be "disregarded" because OJ Commerce did not allege that it "*occurred in the defined market*." And the allegation in paragraph seventy-eight that prices increased "market wide" by "double digits" "lack[ed] numerical specificity or any explanation of how [OJ Commerce] arrived at such figures." The district court didn't comment on paragraph ninety-one.

Concluding that the pleaded facts weren't "suggestive enough to render a [section] 1 conspiracy plausible," the district court dismissed OJ Commerce's section 1 claim against National Christmas with prejudice. It also declined to exercise supplemental jurisdiction over the state-law claims against National Christmas

[1] National Christmas concedes that any "deficiencies in [OJ Commerce]'s market definition were not raised [to the district court] as a separate ground for dismissing the [s]ection 1 claim."

and dismissed all claims against the affiliates and officers for lack of personal jurisdiction.

OJ Commerce appeals only the dismissal of its section 1 claim against National Christmas, abandoning any other challenge to the judgment. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680–81 (11th Cir. 2014).

II. STANDARD OF REVIEW

We review de novo the grant of a rule 12(b)(6) motion to dismiss for failure to state a claim. *Drummond v. S. Co. Servs., Inc.*, 177 F.4th 1076, 1086 (11th Cir. 2026). In a section 1 case, the complaint must contain "allegations plausibly suggesting (not merely consistent with) [a conspiracy or] agreement." *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1332–33 (11th Cir. 2010) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). Those allegations must "possess enough heft to show that the pleader is entitled to relief." *Id.* (citation modified). As always, we accept the well-pleaded factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Julmist v. Prime Ins. Co.*, 92 F.4th 1008, 1016 (11th Cir. 2024).

III. DISCUSSION

Section 1 of the Sherman Act prohibits "(1) conspiracies that (2) unreasonably (3) restrain interstate or foreign trade." *Quality Auto Painting Ctr. of Roselle, Inc. v. State Farm Indem. Co.*, 917 F.3d 1249, 1260 (11th Cir. 2019) (en banc); *see also* 15 U.S.C. § 1. Nearly all "[v]ertical price restraints"[2]—like the ones alleged here—"are to be judged according to the rule of reason." *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 907 (2007).

Under the rule of reason, a plaintiff bears the initial burden of pleading that the challenged restraint has an anticompetitive effect in the relevant market. *Spanish Broad. Sys. of Fla., Inc. v. Clear Channel Commc'ns, Inc.*, 376 F.3d 1065, 1071–72 (11th Cir. 2004); *Jacobs*, 626 F.3d at 1336; *see also Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018). A plaintiff may do so in two ways. It may allege "actual" anticompetitive effects in the relevant market—for instance, that the restraint raised prices in that market "above competitive levels." *Jacobs*, 626 F.3d at 1339 (quoting *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1433 (9th Cir. 1995)). Or, it may allege "potential" anticompetitive effects—that the defendant held power in the relevant market and that, given its power, the restraint threatened competition. *Levine v. Cent. Fla. Med. Affiliates, Inc.*, 72 F.3d 1538, 1551 (11th Cir. 1996); *see also Spanish Broad. Sys.*, 376 F.3d at 1071–73.

Whichever route the plaintiff takes, it must identify the relevant market in which the anticompetitive effect occurs. *Jacobs*, 626 F.3d at 1336. That is, the plaintiff must plead a market defini-

[2] Vertical restraints are "restraints imposed by agreement between firms at different levels of distribution." *In re Jan. 2021 Short Squeeze Trading Litig.*, 105 F.4th 1346, 1355 (11th Cir. 2024) (quoting *Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018)).

tion, including "both . . . geographic and product market allegations." *Id.* But a showing of "actual detrimental effects" can "obviate the need for an inquiry into market power," which is only a "surrogate for detrimental effects." *Schering-Plough Corp. v. FTC*, 402 F.3d 1056, 1065 n.13 (11th Cir. 2005) (citation modified) (quoting *FTC v. Ind. Fed'n of Dentists*, 476 U.S. 447, 460–61 (1986)), *partially abrogated on other grounds by FTC v. Actavis, Inc.*, 570 U.S. 136, 153–58 (2013).

Making the same market-definition assumption as the district court, we hold that OJ Commerce plausibly alleged an actual-effects claim under section 1. After stating geographic and product facts about the relevant market, the complaint alleged at paragraph ninety-one that National Christmas's "illegal agreements with Amazon resulted in supra-competitive, artificially inflated prices for artificial Christmas tree products, as evidenced by a [m]arket-wide price increase of over 15% after March 2020," when the agreements were formed. The complaint therefore identified a market—the market for online sales of artificial Christmas tree products in the United States. It alleged a specific price effect in that market—a "[m]arket-wide" increase of over 15%. And it alleged a competitive baseline—an increase relative to prices from before the agreements. Moreover, OJ Commerce plausibly tied the price increase to the agreements. Not only did market prices increase after the agreements were formed, but they increased even as National Christmas's wholesale prices remained flat and the overall price for consumer goods went down. These allegations carry enough heft to state a conspiracy[3] to unreasonably restrain interstate trade. *See Jacobs*, 626 F.3d at 1332–33; *Quality Auto Painting*, 917 F.3d at 1260.

The district court reached the opposite conclusion by focusing on a few of the price-effect allegations in isolation. It read paragraph seventy-eight and found the increase of "double digits" wanting in methodological and numerical specificity; it read paragraph seventy-nine and found the increase confined to top sellers. Ultimately, it faulted OJ Commerce for not pleading a specific effect that "*occurred in the defined market*." Yet it never addressed paragraph ninety-one—which alleged that the effect was both specific and marketwide. We read a complaint not in fragments, but "as a whole." *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1252 n.11 (11th Cir. 2005). Read as a whole, the complaint alleged that after the agreements were formed, prices across the relevant market rose more than 15% above the competitive market level, while costs and the general price level practically stood still.

The district court also faulted OJ Commerce for not including "any explanation of how [OJ Commerce] arrived at [its] figures." But Federal Rule of Civil Procedure 8 asks only for a short and plain statement of the claim. Fed. R. Civ. P. 8(a)(2). Of course,

[3] The district court noted that National Christmas "argue[d] in a single paragraph that [OJ Commerce] . . . failed to allege an agreement with Amazon," but declined to address that argument because it ruled on other grounds. National Christmas didn't raise that argument again on appeal, and we don't consider it.

we require a plaintiff to plead an antitrust claim by making "specific factual allegations." *Spanish Broad. Sys.*, 376 F.3d at 1073. We don't demand, however, "heightened fact pleading of [those] specifics"—just enough facts to state a plausible claim. *Twombly*, 550 U.S. at 570. That's what OJ Commerce pleaded here.

Neither the district court nor National Christmas identifies any decision requiring an antitrust plaintiff to plead any calculation methodology or market data. National Christmas points to *Spinelli v. Nat'l Football League*, 903 F.3d 185, 212 (2d Cir. 2018), and *Simpson v. Sanderson Farms, Inc.*, 744 F.3d 702, 711 & n.5 (11th Cir. 2014), but they are inapposite. The plaintiffs in both cases pleaded practically nothing supporting their claims. *Spinelli*, 903 F.3d at 212 (affirming dismissal where the plaintiffs alleged only that the "aggregate cost" of commercial licenses for NFL event photographs "ha[d] increased," without pleading an amount or causal mechanism); *Simpson*, 744 F.3d at 707 ("Although the amended complaint states . . . that [the defendant] pays depressed wages, the plaintiffs have not pled any data or facts that actually evince a decrease in wages over time. In fact, the only wage data detailed in the amended complaint are statements of the plaintiffs' own . . . wages, which increased considerably during the relevant period."); *see also id.* at 709 (explaining that the plaintiffs' failure to plausibly show injury was "not a close case"). The same isn't true of OJ Commerce.

National Christmas urges us to affirm anyway because, it says, the complaint neither adequately defined a relevant market nor pleaded market power. But National Christmas didn't even move to dismiss based on the market definition. And again, the district court didn't analyze market definition or market power. In such circumstances, assessing market definition and market power is "best left to the district court in the first instance." *Arrington v. Burger King Worldwide, Inc.*, 47 F.4th 1247, 1257 (11th Cir. 2022) (declining the defendant's "invitation" to affirm the dismissal of an antitrust complaint based on an argument not first evaluated by the district court); *cf., e.g.*, *Duty Free Americas, Inc. v. Estée Lauder Cos.*, 797 F.3d 1248, 1264 (11th Cir. 2015) ("Defining the relevant product market is a fact-intensive endeavor."). We express no view on the merits of either issue.

IV. CONCLUSION

We reverse the district court's order dismissing OJ Commerce's section 1 claim and remand for proceedings consistent with this opinion. In all other respects, we affirm the judgment.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.