

**UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT**

Nos. 24-3067, 24-3116, and 24-3146

SANDOZ, INC.; RAREGEN, LLC, n/k/a Liquidia PAH, LLC

v.

UNITED THERAPEUTICS CORP.; SMITHS MEDICAL ASD, INC.

UNITED THERAPEUTICS CORP.,
Appellant in No. 24-3067

SANDOZ, INC.,
Appellant in No. 24-3116

RAREGEN, LLC,
Appellant in No. 24-3146

On Appeal from the U.S. District Court, D.N.J.
Judge Brian R. Martinotti, No. 2:19-cv-10170

Before: RESTREPO, MCKEE, AND AMBRO, *Circuit Judges*
Argued: Nov. 12, 2025; Filed: Oct. 7, 2026

OPINION OF THE COURT

RESTREPO, *Circuit Judge*. This case involves competitive conduct between two pharmaceutical companies that manufacture and sell the brand-name and generic versions of the drug treprostinil. In 2002, United Therapeutics Corporation (“UTC”) launched an injectable form of treprostinil under the brand name Remodulin to treat pulmonary arterial hypertension, a disease that causes high blood pressure in the arteries running from the heart to the lungs. In 2017, Sandoz, Inc. received approval to market generic injectable treprostinil. Sandoz and its marketing partner RareGen, LLC (together with Sandoz, “Plaintiffs”) contend that, in connection with Sandoz’s launch of generic

treprostinil, UTC violated federal antitrust and state tort laws and breached a patent settlement agreement with Sandoz.

Because the settlement agreement does not unambiguously establish the interpretation that Sandoz advances, we will reverse the grant of summary judgment in favor of Sandoz as to liability on the breach-of-contract claim and remand with instructions that the issue of liability proceed to trial.¹ We will also reverse the grant of summary judgment in favor of UTC on the tortious interference claim and remand for the District Court to analyze the tortious interference claim separately from the antitrust claims. As UTC demonstrated procompetitive justifications for its conduct, we will affirm the dismissal of the antitrust and state tort claims against UTC. Finally, we will affirm the denial of UTC's motion to exclude Plaintiffs' damages expert.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. UTC and Smiths Cartridge Agreements

UTC is a pharmaceutical drug company that designs and manufactures the brand-name drug Remodulin for patients with pulmonary arterial hypertension. Remodulin can be administered either intravenously or subcutaneously. Subcutaneous administration requires the use of a pump and disposable cartridges. Smiths Medical ASD, Inc. ("Smiths") developed and manufactured the CADD-MS 3 pump and cartridges used to administer Remodulin subcutaneously. Smiths sold its pump and cartridges to two specialty pharmacy distributors, Accredo Health Group ("Accredo") and CVS Specialty ("CVS" and with Accredo, the "Specialty Pharmacies"), which sold the medication to patients.

In August 2015, Smiths informed the Specialty Pharmacies it was discontinuing the CADD-MS 3 pumps and that its supply of cartridges was projected to be available for at least three years. In March 2016, UTC and Smiths contracted

¹ As we reverse the District Court's summary judgment order as to liability on the breach-of-contract claim and on the tortious interference claim, we deny as moot the pretrial evidentiary challenges and damages challenges raised on appeal.

for a “life extension” for Smiths’ pumps and cartridges (the “Supply Agreement”). UTC paid Smiths \$2.5 million up front to produce 7,000 pumps and 1.6 million cartridges, and it agreed to purchase any unsold pumps after six years. Smiths agreed to supply cartridges only to the Specialty Pharmacies in the United States.

In March 2017, Smiths informed UTC that it had produced 258,450 of the 1.6 million cartridges, and there was sufficient resin to produce approximately 2.6 million cartridges. In July 2017, UTC and Smiths amended the Supply Agreement and UTC provided additional funding for Smiths’ production of 2.1 million cartridges. The amendment also obligated Smiths to use commercially reasonable efforts to amend its contract with the Specialty Pharmacies to include a requirement that the cartridges only be used with Remodulin.

B. Sandoz and Generic Treprostinil

On September 29, 2015, UTC and Sandoz, a generic drug company, entered into a settlement agreement (the “Settlement Agreement”) arising from patent litigation, which granted Sandoz a license to market treprostinil, the generic form of Remodulin, for both subcutaneous and intravenous administration. The Settlement Agreement included language obligating UTC “[n]ot to take any action directly or indirectly to prevent, delay, limit, or otherwise restrict the launch” of Sandoz’s generic treprostinil and not to cause any third party to “interfere with Sandoz’s efforts to launch” generic treprostinil. App. 2781–82, 2784.

On May 17, 2016, a Sandoz executive contacted Smiths regarding the CADD-MS 3 pump, and Smiths informed Sandoz that it was discontinuing the pump. The FDA approved Sandoz’s application for generic treprostinil in November 2017. Although the Settlement Agreement permitted Sandoz to begin marketing generic treprostinil in June 2018, it waited to launch the drug. In August 2018, Sandoz partnered with RareGen—a company created by former UTC executives—to market and sell generic treprostinil.

C. Cartridge Restrictions

In December 2018, UTC learned that Smiths had not been able to obtain contract amendments with the Specialty Pharmacies restricting its cartridges for use with Remodulin only. UTC also learned that Sandoz was preparing to launch generic treprostinil. At UTC's request, Smiths placed the cartridges on allocation status, which gave UTC approval rights over every cartridge sale by Smiths to the Specialty Pharmacies. UTC used the authority as "negotiating leverage" over the Specialty Pharmacies, App. 1494, refusing to release cartridges until they signed exclusivity agreements restricting use of the cartridges to Remodulin only. Over the next few months, the Specialty Pharmacies sent numerous emails to Smiths, expressing concerns that their supplies were dwindling and that they would be unable to service patients. These shortages created serious risks for patients, who needed continuous infusions of medication. With UTC's approval, Smiths permitted some shipments of cartridge, but warned the Pharmacies that "this [would] be the process until the amendments have been finalized." App. 6739.

On February 14, 2019, CVS agreed to sell the cartridges only to Remodulin users. On March 18, 2019, Accredo followed suit. But Smiths never countersigned the agreements. A Smiths employee later testified that Smiths was "no longer comfortable signing" and that "it was placing an unfair burden on Smiths Medical to try to dictate the supply chain flow of this, so [Smiths] didn't really want to be in the middle of that anymore." App. 1173.

In an April 8, 2019, amendment to the Supply Agreement, Smiths sold its existing and future cartridge inventory to UTC and agreed to distribute the pumps and cartridges on UTC's behalf. In April and May 2019, UTC executed agreements directly with the Specialty Pharmacies, prohibiting them from distributing the cartridges for use with generic treprostinil.

Sandoz maintains that Accredo initially assured it that cartridges would be available for use with generic treprostinil, but then in January 2019 stated that cartridges could no longer be provided for non-Remodulin use. On March 25, 2019,

lacking the cartridges for subcutaneous administration, Sandoz launched its generic treprostinil for intravenous administration only. In May 2019, RareGen contracted with a device manufacturer to produce cartridges for use with Sandoz's generic treprostinil. The FDA approved the alternative cartridge on March 26, 2021, and Sandoz launched its generic subcutaneous treprostinil in May 2021. Sandoz's generic treprostinil underperformed relative to internal forecasts, and Sandoz ultimately destroyed over \$6 million of its product.

D. Procedural History

On April 16, 2019, Sandoz and RareGen filed their complaint against UTC and Smiths, asserting federal antitrust, state antitrust, and state tort claims.² After the District Court denied Plaintiffs' motion for a preliminary injunction, Sandoz added a breach of contract claim against UTC based on the Settlement Agreement. The District Court granted summary judgment against RareGen and Sandoz as to the antitrust and state-law tort claims, dismissing RareGen from the case, and granted summary judgment in favor of Sandoz as to liability on its breach-of-contract claim. The court also denied UTC's motion to exclude the opinion of Sandoz's damages expert, Dr. Anupam Jena. After a bench trial on damages as to the breach-of-contract claim, the court awarded Sandoz \$61,643,251 in damages.

On appeal, UTC challenges the District Court's grant of summary judgment in favor of Sandoz as well as certain evidentiary rulings and aspects of the damages award. RareGen cross-appeals the District Court's grant of summary judgment in favor of UTC on the antitrust and state law claims. Sandoz adopts RareGen's arguments and additionally challenges the District Court's damages award.

II. STANDARD OF REVIEW

The District Court had jurisdiction under 15 U.S.C. § 15 and 28 U.S.C. §§ 1331, 1332, 1337. We have jurisdiction

² Prior to summary judgment, Plaintiffs and Smiths settled and the District Court dismissed all claims against Smiths with prejudice.

under 28 U.S.C. § 1291. We exercise plenary review over the District Court’s grant of summary judgment, “applying the same standard that the lower court should have applied.” *Le Pape v. Lower Merion Sch. Dist.*, 103 F.4th 966, 977 (3d Cir. 2024) (quoting *Chisolm v. McManimon*, 275 F.3d 315, 321 (3d Cir. 2001)). Summary judgment is appropriate where there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law, drawing all inferences and reviewing all facts in the light most favorable to the non-moving party. *Id.* We review a district court’s decision to exclude or admit expert testimony for abuse of discretion. *See ZF Meritor, LLC v. Eaton Corp.*, 696 F.3d 254, 268 (3d Cir. 2012).

III. BREACH OF CONTRACT

UTC argues that the District Court erred in granting partial summary judgment in favor of Sandoz as to liability on its breach-of-contract claim because the meaning of the challenged provisions in the Settlement Agreement is ambiguous. As this case involves a question of contract interpretation, summary judgment shall be granted only if the contract language is unambiguous, meaning “subject to only one reasonable interpretation.” *Mylan Inc. v. SmithKline Beecham Corp.*, 723 F.3d 413, 418 (3d Cir. 2013) (quoting *Arnold M. Diamond, Inc. v. Gulf Coast Trailing Co.*, 180 F.3d 518, 521 (3d Cir. 1999)). Whether a contract is ambiguous is an issue of law subject to plenary review. *Sumitomo Mach. Corp. of Am. v. AlliedSignal, Inc.*, 81 F.3d 328, 332 (3d Cir. 1996). “If the non-moving party presents a reasonable alternative reading of the contract, then a question of fact as to the meaning of the contract exists which can only be resolved at trial.” *Newport Assocs. Dev. Co. v. Travelers Indem. Co. of Ill.*, 162 F.3d 789, 792 (3d Cir. 1998). “Thus, the dispositive question is whether [UTC] provided a reasonable reading of the contract.” *Id.*

The Settlement Agreement is governed by New Jersey law, which requires courts to consider “‘all of the relevant evidence that will assist in determining the intent and meaning of the contract’ when making ambiguity determinations.” *Mylan*, 723 F.3d at 419 (quoting *Conway v. 287 Corp. Ctr. Assocs.*, 901 A.2d 341, 346 (N.J. 2006)). Even when a contract appears to be unambiguous on its face, “[e]vidence of the

circumstances is always admissible in aid of the interpretation” of an integrated contract. *Id.* (quoting *Sumitomo Mach. Corp.*, 81 F.3d at 332). Contracts should be read “as a whole” and “in a fair and common sense manner” that is based on “the intent of the parties, the express terms of the contract, surrounding circumstances and the underlying purpose of the contract.” *Manahawkin Convalescent v. O’Neill*, 85 A.3d 947, 958 (N.J. 2014) (citation modified). Therefore, we must consider “all relevant evidence to determine if any ambiguity exists,” and summary judgment is inappropriate “if the contested provisions fall in that gray area.” *Mylan*, 723 F.3d at 419.

Plaintiffs alleged that UTC breached the Settlement Agreement’s terms prohibiting it from impeding the launch of tadalafil. Specifically, under Section 11(b), UTC agreed “[n]ot to take any action directly or indirectly to prevent, delay, limit, or otherwise restrict the launch, manufacture, use, sale, offer for sale, importation or distribution of the Sandoz ANDA Product in or for the Territory by Sandoz and its Affiliates as permitted under the terms of this Agreement.” App. 2781–82. Under Section 15(a), UTC additionally agreed that it “shall not cause any Third Party to . . . initiate or otherwise undertake any activity in the Territory, directly or indirectly, against the . . . Sandoz ANDA Product to . . . interfere with Sandoz’s efforts to launch the Sandoz ANDA Product in the Territory as of the Effective Launch Date under the terms provided by this Agreement.” App. 2784. Plaintiffs alleged that UTC’s cartridge restrictions breached these provisions because they prevented, delayed, and limited Sandoz’s efforts to launch generic tadalafil.

In holding UTC liable for breach of contract, the District Court ruled that UTC breached Sections 11(b) and 15(a) by “locking up the existing inventory by taking title to all commercially available cartridges as Sandoz was preparing to launch its generic.” App. 93. The court held that “there is no genuine dispute UTC unambiguously promised not to ‘prevent, limit, delay, or otherwise restrict’ Sandoz’s generic launch.” App. 92. However, context complicates an isolated reading of Sections 11(b) and 15(a), which would seemingly restrict UTC from taking *any* actions that would have the effect of impeding its competitor Sandoz’s efforts to launch generic tadalafil.

First, both Sections 11(b) and 15(a) are limited by “the terms” of the Settlement Agreement, which include other provisions that UTC argues foreclose any obligation concerning the cartridges. Specifically, the Settlement Agreement’s definition of the product at issue, termed the Sandoz ANDA Product, states that it “expressly [does] not include . . . any technology associated with any UTC product(s).” App. 2776. The Settlement Agreement also provides that Sandoz’s license to make, market, sell, and distribute generic treprostinil “expressly and specifically excludes conferring any and all rights . . . to the use of any device(s), pump(s), or equipment that may be used with the Sandoz ANDA Product.” App. 2778. Finally, both parties represented and warranted that “[n]othing in this agreement shall be construed to grant any right to any Third Party proprietary technology, including . . . any other pump or delivery system for the Sandoz ANDA Product or any other form of treprostinil.” App. 2782.

Further, UTC offers an alternative reading that Sections 11(b) and 15(a) are merely “catch-all provisions aimed at reinforcing UTC’s agreement not to wield its intellectual property rights against Sandoz.” UTC Br. 28. Indeed, the surrounding context of 11(b) and 15(a)—provisions in a patent litigation settlement agreement—suggest that those provisions refer to UTC refraining from using its *intellectual property rights* to derail Sandoz’s launch and FDA approval, rather than a blanket ban on any conduct interfering with Sandoz’s launch. Section 11(a), which immediately precedes Section 11(b) and is the only other subsection in Section 11, obligates UTC not to bring suit against Sandoz for patent infringement. Section 15 is titled “Regulatory Approval,” and 15(a) also restricts UTC from “interfer[ing] with Sandoz’s efforts to obtain FDA approval” of its product. App. 2784.

We thus cannot say there is “only one reasonable interpretation” of the contract. *Mylan*, 723 F.3d at 418 (citation modified). In light of the broader context, “the contested provisions fall in that gray area” of ambiguity, and consequently, “summary judgment is improper.” *Id.* at 419. Instead, the breach-of-contract claim should proceed to trial and the “fact-finder must attempt to discover what the

contracting parties . . . intended [the disputed provisions] to mean.” *Fed Cetera, LLC v. Nat’l Credit Servs., Inc.*, 938 F.3d 466, 470 (3d Cir. 2019) (quoting *Wayne Land & Mineral Grp. LLC v. Del. River Basin Comm’n*, 894 F.3d 509, 534 (3d Cir. 2018)). Therefore, we will reverse the District Court’s grant of summary judgment as to the breach-of-contract claim.

IV. SHERMAN ACT CLAIMS

A. Forfeiture

As a preliminary matter, we hold that Sandoz properly adopted RareGen’s arguments regarding the antitrust and state law claims. In its appellate brief, Sandoz adopted the Sherman Act antitrust and state law arguments asserted in RareGen’s cross-appeal under Federal Rule of Appellate Procedure 28(i). Rule 28(i) provides that in cases involving multiple appellants or appellees, “any party may adopt by reference a part of another’s brief.” Fed. R. App. P. 28(i). UTC argues that Sandoz has forfeited the antitrust and state law claims on appeal because its “blanket statement” of incorporation does not sufficiently identify the arguments incorporated and, even if the statement were adequate, the incorporation would violate the word count. UTC Resp. Br. 40 (citation omitted).

This Circuit encourages parties to adopt “portions of already-filed briefs” under Rule 28(i) so long as the issues are “specifically and explicitly identified” and not incorporated under “general statements of adoption.” *United States v. Williams*, 974 F.3d 320, 339 n.7 (3d Cir. 2020). Otherwise, leaving the court to “scour the record” and “identify the issues to be adopted” will result in the abandonment and waiver of the unspecified issues. *United States v. Fattah*, 914 F.3d 112, 146 n.9 (3d Cir. 2019).

Sandoz’s statement of incorporation is not a general statement of adoption. Sandoz specified it adopted RareGen’s arguments related to the antitrust and state-law claims. Sandoz Br. 1 n.1 (“RareGen . . . separately appeals the summary judgment decision on the antitrust and related state-law claims. Sandoz adopts RareGen’s arguments.”) Sandoz then further detailed that it “adopts by reference the entirety of the Brief of Appellee RareGen, LLC, including specifically argument

Sections I and II, which appeal the district court’s order granting summary judgment in UTC’s favor on Plaintiffs’ antitrust and related state-law claims.” Sandoz Br. 3–4. Thus, the adopted arguments are “specifically and explicitly identified.” *Williams*, 974 F.3d at 339 n.7.

UTC also argues that Sandoz exceeded the word count in Federal Rule of Appellate Procedure 28.1(e) by incorporating RareGen’s arguments. In support, UTC cites to Federal Circuit authority holding that a party may not exceed the word limit when incorporating arguments by reference. *See Promptu Sys. Corp. v. Comcast Cable Commc’ns, LLC*, 92 F.4th 1384, 1386 (Fed. Cir. 2024) (per curiam); *Medtronic, Inc. v. Teleflex Life Scis. Ltd.*, 86 F.4th 902, 906–07 (Fed. Cir. 2023).

We have not addressed this issue precedentially, but we have rejected the related practice of a party incorporating on appeal its own briefs filed in the district court, proscribing such incorporation as “effectively nullify[ing] the page or word limits.” *Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 816 (3d Cir. 2016). In so ruling, we cited to the Tenth Circuit, *id.* & n.9 (citing *Gaines-Tabb v. ICI Explosives, USA, Inc.*, 160 F.3d 613, 623–24 (10th Cir. 1998)), which prohibits the adoption of district court filings because the practice circumvents the appellate page limitations and “unnecessarily complicate[s] the task of an appellate judge.” *Gaines-Tabb*, 160 F.3d at 624. However, the Tenth Circuit has held that adopted arguments do not count toward the word limit when a party adopts by reference arguments from a co-party’s appellate brief. *United States v. Butler*, 141 F.4th 1136, 1149 (10th Cir. 2025). The Eighth Circuit holds the same because “[p]ermitting unlimited adoption of briefs will generally not cause the problems that word limits are designed to avoid, since courts and parties already have to read and respond to the briefs being adopted.” *In re Target Corp. Customer Data Sec. Breach Litig.*, 855 F.3d 913, 916–17 (8th Cir. 2017).

We agree that the concerns that arise when adopting briefing below are not present when a party adopts a part of an appellate brief in the same case. Unlike in the former context, the federal appellate rules explicitly permit parties to adopt by reference co-parties’ arguments raised in appellate briefs, with

no indication that the arguments should count toward the word limit. And, because the relevant argument has already been raised on appeal by one party, the court must review the argument regardless of whether another party adopts it. Therefore, we join the Eighth and Tenth Circuits in holding that a party's proper adoption of arguments pursuant to Rule 28(i) does not count toward the word limits prescribed by Federal Rule of Appellate Procedure 28.1(e).³

B. The Sherman Act

Sandoz and RareGen brought claims under Sections 1 and 2 of the Sherman Act. Section 1 prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States.” 15 U.S.C. § 1. Section 1 applies only to unreasonable restraints of trade. *Race Tires Am., Inc. v. Hoosier Racing Tire Corp.*, 614 F.3d 57, 74 (3d Cir. 2010). To prevail on a Section 1 claim, a plaintiff must prove (1) concerted action by the defendants; (2) that the concerted actions produced anti-competitive effects within the relevant product and geographic markets; (3) that the concerted actions were illegal; and (4) that it was injured as a proximate result of the concerted action. *Gordon v. Lewistown Hosp.*, 423 F.3d 184, 207 (3d Cir. 2005).

³ We do not address UTC's argument that RareGen lacks antitrust standing to advance its Sherman Act claims because we affirm the District Court's dismissal of the antitrust claims. Further, even if RareGen does not have antitrust standing, UTC does not dispute that Sandoz has antitrust standing as a competitor to UTC. *Ethypharm S.A. France v. Abbott Lab'ys*, 707 F.3d 223, 233 (3d Cir. 2013) (stating that a competitor in the relevant market can establish antitrust injury). Because we hold that Sandoz validly adopted RareGen's Sherman Act arguments, those claims are properly before us. *Cf. In re Yellow Corp.*, 152 F.4th 491, 500 n.2 (3d Cir. 2025) (holding that even if appellants raising challenge lacked standing under prudential standing doctrine, the issue “would remain properly before us” where another appellant that “has standing unquestionably . . . joins in [co-appellants'] challenge to the regulations”).

Section 2 prohibits monopolization, attempts to monopolize, and conspiracies to monopolize any part of interstate commerce. 15 U.S.C. § 2. To prevail on a Section 2 claim, a plaintiff must show “(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.” *Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297, 307 (3d Cir. 2007) (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 570–71 (1966)). Both Sections require plaintiffs to allege that the defendant engaged in anticompetitive conduct and that the conduct caused the plaintiff to suffer antitrust injury. See *ZF Meritor*, 696 F.3d at 281.

The parties do not dispute that the alleged anticompetitive conduct should be evaluated through the “rule of reason” analysis, which the District Court applied below. The Supreme Court has described the rule of reason as a “three-step, burden-shifting framework,” *Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018), while advising that this framework is not a “rote checklist” and is not “an inflexible substitute for careful analysis,” *Nat’l Collegiate Athletic Ass’n v. Alston*, 594 U.S. 69, 97 (2021). First, the plaintiff must prove that “the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market.” *Am. Express*, 585 U.S. at 541. Only a restraint that, “on its face, has no purpose except stifling competition” is unreasonable per se. *Eisai, Inc. v. Sanofi Aventis U.S., LLC*, 821 F.3d 394, 402 (3d Cir. 2016) (quoting *Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 221 (3d Cir. 2011)). All other restraints are evaluated under the rule of reason. *Am. Express*, 585 U.S. at 541.

The parties and the District Court understood the alleged anticompetitive conduct to involve an “exclusive dealing arrangement,” where a buyer agrees to purchase certain goods only from a particular seller for a certain period. *ZF Meritor*, 696 F.3d at 270. Courts apply the rule of reason to exclusive dealing arrangements because they may offer economic benefits to consumers like “assuring them the availability of supply and price stability,” and therefore are not per se violations of the antitrust laws. *Eisai*, 821 F.3d at 403.

An exclusive dealing agreement will not satisfy the rule of reason only if “the ‘probable effect’ of the arrangement is to substantially lessen competition, rather than merely disadvantage rivals.” *ZF Meritor*, 696 F.3d at 271 (quoting *Tampa Elec. Co. v. Nashville Coal Co.*, 365 U.S. 320, 329 (1961)).

Here, Plaintiffs identify the challenged restraint as UTC’s 2019 agreements with Smiths and the Specialty Pharmacies. To prevail under the rule of reason’s first step, Plaintiffs must demonstrate that the restrictions resulted in “substantial foreclosure of the market for the relevant product” and had “likely or actual anticompetitive effects.” *Eisai*, 821 F.3d at 403. If Plaintiffs make this showing, the burden shifts to UTC to show a procompetitive justification. *Am. Express*, 585 U.S. at 541. If UTC demonstrates such a justification, the burden shifts back to Plaintiffs to show that “the procompetitive efficiencies could be reasonably achieved through less anticompetitive means.” *Id.* at 542; *see ZF Meritor*, 696 F.3d at 271 (noting that exclusive dealing agreements generally require an analysis of “likely or actual anticompetitive effects considered in light of any procompetitive effects”).

Even assuming Plaintiffs established substantial foreclosure of the relevant market and anticompetitive effects of the restrictions, UTC has demonstrated procompetitive objectives that justify its conduct. A valid procompetitive justification “relates directly or indirectly to the enhancement of consumer welfare.” *LePage’s Inc. v. 3M*, 324 F.3d 141, 163 (3d Cir. 2003) (en banc) (quoting *Data Gen. Corp. v. Grumman Sys. Support Corp.*, 36 F.3d 1147, 1183 (1st Cir. 1994)). “Thus, pursuit of efficiency and quality control might be legitimate competitive reasons[,] while the desire to maintain a monopoly market share or thwart the entry of competitors would not.” *Id.*

The District Court found that UTC offered “several good faith procompetitive justifications for its 2019 cartridge restriction.” App. 86. We agree that UTC proffered valid justifications for its conduct: it was concerned there would not be enough cartridges for Remodulin patients and it sought to increase output, ensure supply, and discourage free riding

through its investment in Smiths' cartridges, which would have otherwise been discontinued. *See Am. Express*, 585 U.S. at 549 (describing "expanding output" as exemplary of procompetitive conduct); *Race Tires Am.*, 614 F.3d at 76 (explaining that exclusive dealing arrangements that assure supply are often considered efficient). Smiths continued producing the CADD-MS3 cartridges and pumps because of UTC's funding commitment, which undoubtedly did increase output, ensure supply, and discourage free riding.

Plaintiffs argue these justifications are pretextual. We do not deny that UTC understood—and even desired—that the cartridge restrictions would hinder Plaintiffs' launch. Nonetheless, the record shows that UTC's procompetitive justifications are sincere, as UTC was consistently concerned about securing a cartridge supply for its own product. There is nothing pretextual about seeking to protect a procompetitive investment and also seizing the opportunity to disadvantage a competitor along the way. Indeed, we have encouraged the "competition to be an exclusive supplier" and called such competition "a vital form of rivalry." *ZF Meritor*, 696 F.3d at 270 (quoting *Race Tires Am.*, 614 F.3d at 83). And Plaintiffs themselves restricted the alternative cartridges they developed for exclusive use with Sandoz's generic treprostinil.

Finally, Plaintiffs have not established that UTC can achieve its legitimate objectives through a "viable" and "substantially less restrictive alternative" that can provide "comparable benefits" to the restraint. *United States v. Brown Univ.*, 5 F.3d 658, 679 (3d Cir. 1993). Plaintiffs propose that "UTC could have encumbered only the cartridges necessary for the procompetitive justification, or committed to purchase a specific volume of cartridges (and pre-paying Smiths) without imposing restrictions on the remainder." RareGen Br. 54. However, Plaintiffs have not demonstrated these alternatives are actually viable or provide comparable benefits to the cartridge restrictions. It is far from clear that these alternatives are "substantially less restrictive," *Brown*, 5 F.3d at 679, and "courts should not second-guess 'degrees of reasonable necessity' so that 'the lawfulness of conduct turn[s] upon judgments of degrees of efficiency.'" *Alston*, 594 U.S. at 98 (alteration in original) (quoting *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 227 (D.C. Cir. 1986)).

Accordingly, we will affirm the District Court’s dismissal of the Sherman Act claims on the basis that UTC established procompetitive justifications for the restrictive agreement and Plaintiffs failed to rebut these justifications.

V. STATE LAW CLAIMS

RareGen challenged the District Court’s entry of summary judgment against Plaintiffs’ claims of unfair and deceptive trade practices and tortious interference.⁴ Sandoz adopted RareGen’s arguments on appeal.

A. Unfair and Deceptive Trade Practices

The District Court dismissed Plaintiffs’ unfair-and-deceptive-trade-practices claim under North Carolina General Statutes § 75-1.1 because it is “based on the same conduct as their antitrust claims” and their antitrust claims failed. App. 89. Plaintiffs argue that the District Court failed to consider that the unfair-and-deceptive-trade-practices claim was not “based solely” on the antitrust claims, but also on the “conduct giving rise to the breach-of-contract claim.” RareGen Br. 56.

⁴ The District Court also dismissed Plaintiffs’ restraint-of-trade claims, but Plaintiffs failed to address them in their appellate brief. *See* RareGen Br. 56 (challenging only the “district court’s decision on Plaintiffs’ unfair trade practices and tortious interference claims”). They have thus forfeited any challenge to the dismissal of these claims. *See Montemuro v. Jim Thorpe Area Sch. Dist.*, 99 F.4th 639, 646–47 (3d Cir. 2024). Regardless, we would affirm the District Court’s dismissal because Plaintiffs’ restraint-of-trade causes of action are identical to their federal antitrust causes of action, which we have dismissed, and the state laws governing these claims mirror federal antitrust laws and are analyzed using federal antitrust jurisprudence. *Compare* App. 336–38 *with* App. 338–40; *see Kugler v. Koscot Interplanetary, Inc.*, 293 A.2d 682, 694 (N.J. Super. Ct. Ch. Div. 1972); *Sykes v. Health Network Sols., Inc.*, 2017 WL 3601347, at *6 (N.C. Super. Ct. Aug. 18, 2017), *aff’d*, 828 S.E.2d 467 (N.C. 2019).

When allegations of unfair and deceptive trade practices “describe the same conduct that is the subject of plaintiffs’ [failed] antitrust claims,” dismissal is warranted “to the extent that these allegations overlap.” *Sykes v. Health Network Sols., Inc.*, 828 S.E.2d 467, 471–72 (N.C. 2019); *see also R.J. Reynolds Tobacco Co. v. Philip Morris Inc.*, 199 F. Supp. 2d 362, 396 (M.D.N.C. 2002) (“Because Plaintiffs do not allege any facts that suggest that Defendant’s conduct is unlawful beyond the conduct that is the basis for their failed federal [antitrust] claims, Plaintiffs’ state common law and statutory [unfair trade practices] claims fail as well.”), *aff’d*, 67 F. App’x 810 (4th Cir. 2003). Here, Plaintiffs do not specify any alleged conduct distinct from the conduct underlying the antitrust claims. Moreover, “a mere breach of contract, even if intentional, is not sufficiently unfair or deceptive to sustain an action under [the UTPA,] N.C.G.S. § 75-1.1,” and Plaintiffs have not put forth the necessary “substantial aggravating circumstances” to support such an action. *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 347 (4th Cir. 1998) (alteration in original) (quoting *Branch Banking & Trust Co. v. Thompson*, 418 S.E.2d 694, 700 (N.C. Ct. App. 1992)). Accordingly, we will affirm summary judgment in favor of UTC on the unfair-and-deceptive-trade-practices claim.

B. Tortious Interference

The District Court also dismissed Plaintiffs’ tortious interference claim because it was based on the same conduct underlying the antitrust causes of action. The court recognized that “tortious interference claims can cover wrongful conduct other than antitrust activity,” yet dismissed the claim because Plaintiffs based their tortious interference claim only on UTC’s anticompetitive activity. App. 88–89. We have rejected the “premise that state tortious interference law and federal antitrust law should be read *in pari materia*.” *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 532 (3d Cir. 1998). As relevant here, a New Jersey tortious interference claim requires “[w]rongful conduct,” which encompasses actions that are malicious but otherwise lawful. *Avaya Inc., RP v. Telecom Labs, Inc.*, 838 F.3d 354, 383 (3d Cir. 2016). Thus, New Jersey tortious interference jurisprudence requires that the “line must be drawn where one competitor interferes with another’s economic advantage through conduct which is

fraudulent, dishonest, or illegal.” *Id.* (emphasis added) (quoting *Ideal Dairy Farms, Inc. v. Farmland Dairy Farms, Inc.*, 659 A.2d 904, 936 (N.J. Super. Ct. App. Div. 1995)). In other words, the fact that UTC did not violate the antitrust laws does not alone foreclose a tortious interference claim, which can still stand if UTC’s conduct is found to be malicious, fraudulent, or dishonest. Accordingly, we will reverse and remand for the District Court to consider whether the Plaintiffs can sustain their tortious interference claim independently from the merits of their antitrust claims.

VI. DAUBERT MOTION

In its summary judgment opinion, the District Court also denied UTC’s motion under *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), to exclude the testimony of Plaintiffs’ damages expert, Dr. Anupam Jena. Under Federal Rule of Evidence 702, we have distilled two major requirements governing the admission of expert testimony: (1) the expert must be “qualified to express an expert opinion” and (2) the expert opinion “must be reliable.” *In re TMI Litig.*, 193 F.3d 613, 664 (3d Cir. 1999), *amended*, 199 F.3d 158 (3d Cir. 2000). Focusing on the second requirement, UTC argues that Jena’s estimate of generic treprostinil’s performance absent UTC’s alleged breach was not sufficiently reliable. Jena’s model of a “but-for” world relied on an internal forecast prepared by RareGen in April 2019. His model used the RareGen forecast’s projected penetration rate of generic treprostinil, its projected share of generic treprostinil sales that Plaintiffs would capture, and the actual real-world price of generic treprostinil.

It is permissible for an expert to “construct a reasonable offense-free world as a yardstick for measuring what, hypothetically, would have happened ‘but for’ the defendant’s unlawful activities,” and in some circumstances, the expert may rely on others’ estimates to build that hypothetical reality. *ZF Meritor*, 696 F.3d at 292 (quoting *LePage’s*, 324 F.3d at 165). We have recognized that “‘internal projections for future growth’ often serve as legitimate bases for expert opinions.” *Id.* (quoting *LePage’s*, 324 F.3d at 165). Indeed, “experts frequently use a plaintiff’s business plan to estimate the plaintiff’s expected profits in the absence of the defendant’s

misconduct.” *Id.* This is because companies are “generally well-informed about the industries in which they operate” and incentivized “to develop accurate projections.” *Id.*

However, the expert “must explain why he relied on such estimates and must demonstrate why he believed the estimates were reliable.” *Id.* In *ZF Meritor*, we upheld the exclusion of an expert report based on internal projections where the expert “lacked critical information” about the internal model, including “who initially calculated” the projections, “the methodology used to create” the projections, and “the assumptions on which [the] price and volume estimates were based.” *Id.* at 293. UTC argues that Jena similarly “lacked critical information” about, and thus unreasonably relied on, the RareGen forecast—Jena was unaware of who created and provided the data for the forecast, why the forecast was created, or how it was used. And while the expert in *ZF Meritor* was excluded despite knowing that the forecast was presented to the board of directors, revised several times in response to the board’s concerns, and relied upon by the board in making business decisions, Jena had no knowledge of the business uses for RareGen’s forecast. *See id.* at 292.

We conclude the District Court did not abuse its discretion in admitting Jena as an expert. The court acknowledged that Jena did not know the identity or qualifications of the person who prepared the RareGen forecast and that this may weigh in favor of exclusion in certain cases. Even so, it found that Jena’s testimony was reliable because, unlike the expert in *ZF Meritor*, Jena ensured reliability by comparing the forecasted rates against a range of other sources. He reviewed thirty-three forecast models and selected the RareGen forecast because it did not account for the alleged breach, it was the most up-to-date, and it provided specific details about the projected penetration rate and share of sales. Jena testified at his deposition that, despite not recalling who specifically created the RareGen model or the creator’s qualifications, he found the model to be reliable because its forecast was “reasonable,” “in line with what one would expect,” and “at the mid-point” in comparison with other models he reviewed. He also testified that, based on his

experience, the RareGen model is the sort of analysis that would be produced in the ordinary course of business.⁵

As the District Court noted, Jena explained that the forecast provided details about the assumptions made and he validated the forecast by reviewing corroborating material. *ZF Meritor* does not require courts to exclude an expert who cannot provide the information that was lacking in *ZF Meritor*. Rather, it requires them to “perform a case-by-case inquiry to determine whether the expert’s reliance on the business plan in a given case is reasonable.” *ZF Meritor*, 696 F.3d at 292. Here, despite not knowing the particular indicia discussed in *ZF Meritor*, Jena engaged in an in-depth comparative analysis lacking in *ZF Meritor*. Therefore, the District Court did not err in ruling that Jena could “rely on the estimates of others in constructing a hypothetical reality” after concluding, in its discretion, that Plaintiffs met their burden to “explain why [Jena] relied on such estimates” and “demonstrate why he believed the estimates were reliable.” *Id.*

As the District Court did not abuse its discretion in denying UTC’s motion to exclude Jena’s testimony, we will affirm its ruling.

* * * * *

For the reasons discussed above, we will reverse the grant of summary judgment in favor of Sandoz on the breach-of-contract claim as to liability and the grant of summary judgment in favor of UTC on the tortious interference claim; affirm the dismissal of the Sherman Act claims and North

⁵ Jena’s trial testimony corroborated his report and deposition testimony. He explained that the model was reliable because there were business incentives for the model to be accurate, it was prepared closest in time to the launch of treprostinil, its creators—former UTC executives employed by RareGen—had specialized knowledge, and its forecast was in the middle when compared to other forecasts he examined. Jena dismissed concerns that the model, which was created after this litigation commenced, was altered for litigation because there were earlier versions with the same or higher generic penetration rates.

Carolina unfair and deceptive trade practices claim; affirm the denial of the *Daubert* motion against Plaintiffs' damages expert Dr. Anupam Jena; and dismiss the remaining evidentiary and damages challenges as moot. Because we will reverse the grant of Sandoz's motion for partial summary judgment on Count VII, breach of contract, as to liability, we will vacate the November 1, 2024 judgment and damages award entered in favor of Sandoz and against UTC on Count VII, and remand for further proceedings consistent with this Opinion.

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