

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MLW MEDIA LLC,

Plaintiff,

v.

WORLD WRESTLING
ENTERTAINMENT, INC.,

Defendant.

Case No. 22-cv-00179-EJD

**ORDER GRANTING WWE’S MOTION
TO DISMISS WITH LEAVE TO
AMEND AND DENYING AS MOOT
WWE’S MOTIONS FOR PROTECTIVE
ORDER AND ADMINISTRATIVE
MOTION FOR STATUS
CONFERENCE**

Re: ECF Nos. 19, 51, 57

Before the Court is Defendant World Wrestling Entertainment, Inc.’s (“WWE”) Motion to Dismiss Plaintiff MLW Media LLC’s Complaint. *See* ECF No. 19 (“Mot.”). In addition to the Motion to Dismiss, WWE has filed a Motion for Protective Order and an Administrative Motion for Status Conference Regarding Discovery Schedule. ECF Nos. 51, 57. The Court finds each of the three motions appropriate for decision without oral argument pursuant to Civil Local Rule 7-1(b). *See* ECF No. 41 (taking the Motion to Dismiss under submission). For the reasons discussed below, the Court GRANTS the Motion to Dismiss with leave to amend. The Court DENIES as moot the Motion for Protective Order and the Administrative Motion.

I. BACKGROUND

Plaintiff MLW Media LLC (“MLW”) is a professional wrestling company that is in “the business of promoting sporting events, particularly live events, programming, and digital content related to professional wrestling.” Complaint, ECF No. 1 (“Compl.”) ¶¶ 2, 13. According to

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1 MLW, it competes with WWE and non-parties All Elite Wrestling (“AEW”) and Impact Wrestling
2 (“Impact”) for distribution channels—*e.g.*, television networks, cable, and streaming services—for
3 professional wrestling content. *Id.* ¶¶ 10, 17–18. MLW describes itself as an “innovative startup,”
4 and by contrast alleges that Defendant WWE “has been in the entertainment business promoting
5 wrestling and sports entertainment for decades.” *Id.* ¶¶ 14, 30. WWE is the dominant player and
6 has used its media rights contracts with major networks and distribution channels to lock in those
7 networks to only offer WWE content and to give WWE content more favorable time slots and
8 marketing opportunities. *Id.* ¶ 27.

9 MLW alleges that WWE used its stature to harm MLW’s business prospects on at least
10 two occasions. In June 2021, upon learning of a television broadcasting deal between MLW and
11 VICE TV (“VICE”) to air MLW’s archival content, WWE’s Senior Vice President informed a
12 VICE executive that WWE’s owner wanted VICE to cease airing MLW’s content. Compl. ¶¶ 34–
13 35. As a result of this call, MLW asserts, VICE aired only a single MLW archival program and
14 stopped engaging in business negotiations about airing new MLW content. *Id.* ¶ 36. Similarly, in
15 August 2021, a different WWE executive exerted pressure on an executive of Tubi—a streaming
16 service owned by Fox Corporation—and caused Tubi to terminate an agreement with MLW. *Id.*
17 ¶¶ 7, 45. According to MLW, the terms of the agreement greatly increased MLW’s valuation,
18 strengthened its brand recognition, including among viewers of Fox television and NFL football,
19 and would have made MLW more attractive to new wrestling talent. *Id.* ¶ 41. After executing the
20 agreement with Tubi, MLW ceased talks with other potential partners and began preparing two
21 live events. *Id.* ¶¶ 42–43. But on the same day that WWE contacted Tubi about its agreement
22 with MLW, Tubi wrote to MLW and purported to terminate the agreement, despite an agreement
23 to issue a joint press release announcing the deal the very next day. *Id.* ¶¶ 44–45.

24 Based on these acts by WWE, the Complaint asserts claims for intentional interference
25 with contractual relations; intentional interference with prospective economic relations; violation
26 of Section 2 of the Sherman Antitrust Act; and violation of California’s Unfair Competition Law

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1 (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.* Compl. ¶¶ 53–81.

2 **II. LEGAL STANDARD**

3 A complaint must contain “a short and plain statement of the claim showing that the
4 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A complaint that falls short of the Rule 8(a)
5 standard may be dismissed if it fails to state a claim upon which relief can be granted. Fed. R.
6 Civ. P. 12(b)(6). To survive a Rule 12(b)(6) motion to dismiss, the factual allegations in the
7 complaint must “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
8 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is
9 facially plausible when it “allows the court to draw the reasonable inference that the defendant is
10 liable for the misconduct alleged.” *Id.* The Court “accept[s] factual allegations in the complaint
11 as true and construe[s] the pleadings in the light most favorable to the nonmoving
12 party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).
13 However, the complaint “may not simply recite the elements of a cause of action, but must contain
14 sufficient allegations of underlying facts to give fair notice and to enable the opposing party to
15 defend itself effectively.” *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014) (quoting
16 *Eclectic Props. East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014)). In
17 evaluating a Rule 12(b)(6) motion, the district court is limited to the allegations of the complaint,
18 documents incorporated into the complaint by reference, and matters which are subject to judicial
19 notice. *See Louisiana Mun. Police Emps.’ Ret. Sys. v. Wynn*, 829 F.3d 1048, 1063 (9th Cir.
20 2016) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)).

21 **III. DISCUSSION**

22 The only claim over which the Court has original subject matter jurisdiction is the alleged
23 violation of Section 2 of the Sherman Act. Compl. ¶ 15; 28 U.S.C. § 1337. The Court therefore
24 addresses MLW’s antitrust claim before the state law claims.

25 **A. Sherman Act Claim**

26 WWE argues that MLW’s Sherman Act claim should be dismissed because MLW does not

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1 plausibly allege (1) a relevant market; (2) monopoly power; or (3) antitrust injury. Mot. 4.

2 **1. Relevant Market**

3 “Antitrust law requires [an] allegation of both a product market and a geographic
4 market.” *Newcal Indus., Inc. v. Ikon Office Sol.*, 513 F.3d 1038, 1045 n.4 (9th Cir. 2008). “[T]he
5 plaintiff must allege both that a ‘relevant market’ exists and that the defendant has power within
6 that market.” *Id.* at 1044; *see also Tanaka v. Univ. of S. Cal.*, 252 F.3d 1059, 1063 (9th Cir.
7 2001) (“Failure to identify a relevant market is a proper ground for dismissing a Sherman Act
8 claim.”). Although the definition of a relevant market for antitrust purposes is typically a factual
9 inquiry, an antitrust claim may be dismissed under Rule 12(b)(6) if the plaintiff’s relevant market
10 definition is “facially unsustainable.” *Newcal*, 513 F.3d at 1045 (citing *Queen City Pizza, Inc. v.*
11 *Domino's Pizza, Inc.*, 124 F.3d 430, 436–37 (3d Cir.1997)); *see also Apple, Inc. v. Psystar*
12 *Corp.*, 586 F. Supp. 2d 1190 (N.D. Cal. 2008).

13 “The principle most fundamental to product market definition is ‘cross-elasticity of
14 demand’ for certain products or services, a measure of interchangeability or substitutability of
15 related products.” *Kaplan v. Burroughs Corp.*, 611 F.2d 286, 291–92 (9th Cir. 1979). That is, a
16 relevant product market must “encompass the product at issue as well as all economic substitutes
17 for the product.” *Newcal*, 513 F.3d at 1045. “Where the plaintiff fails to define its proposed
18 relevant market with reference to the rule of reasonable interchangeability and cross-elasticity of
19 demand, or alleges a proposed relevant market that clearly does not encompass all interchangeable
20 substitute products even when all factual inferences are granted in plaintiff’s favor, the relevant
21 market is legally insufficient and a motion to dismiss may be granted.” *Queen City Pizza*, 124
22 F.3d at 436; *see also Reilly v. Apple Inc.*, 578 F. Supp. 3d 1098, 1109 (N.D. Cal. 2022) (“[W]here
23 the plaintiff fails to define its proposed relevant market with reference to the rule of reasonable
24 interchangeability and cross-elasticity of demand, . . . the relevant market is legally insufficient.”)

25 MLW alleges that the relevant antitrust market is the “the national market for the sale of
26 broadcasting rights for professional wrestling programs to networks, cable and streaming

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1 services.” Compl. ¶ 17. WWE does not dispute the geographic market of the United States. *See*
 2 Mot. 5–7. WWE does, however, argue that MLW has not plausibly alleged facts supporting its
 3 proposed product market, particularly due to the lack of allegations about the structure of the
 4 television and streaming industries, the production of professional wrestling programming, and the
 5 unavailability of reasonably interchangeable alternatives to professional wrestling content. *Id.* at
 6 6. In response, MLW asserts that it is not required to include express allegations regarding the
 7 cross-elasticity of demand or the absence of reasonably interchangeable products, that products
 8 with potentially interchangeable substitutes can nonetheless constitute a relevant antitrust
 9 submarket, and that WWE’s arguments “at most raise[] factual issues that cannot be decided on a
 10 motion to dismiss.” Opp’n 8–9.

11 MLW’s argument that it need not “allege cross-elasticity of demand and the absence of
 12 ‘reasonably interchangeable alternatives’ to professional wrestling programming” is unavailing.
 13 Opp’n 9. It is true that there is no mandate that a plaintiff include in her complaint the exact
 14 phrases “cross-elasticity of demand” or “reasonably interchangeable alternatives”—in fact, using
 15 these phrases is neither necessary nor sufficient to survive a motion to dismiss. *See Nat’l*
 16 *Collegiate Athletic Ass’n v. Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85, 111 (1984) (“The
 17 District Court employed the correct test for determining whether college football broadcasts
 18 constitute a separate market—whether there are other products that are *reasonably substitutable*
 19 for televised NCAA football games.”) (emphasis added); *Hicks v. PGA Tour, Inc.*, 897 F.3d 1109,
 20 1120–21 (9th Cir. 2018) (affirming dismissal for failure to plead a plausible product market and
 21 noting the market “must encompass the product at issue as well as all *economic substitutes* for the
 22 product”) (emphasis added) (quoting *Newcal*, 513 F.3d at 1045); *Tanaka*, 252 F.3d at 1063
 23 (“[Plaintiff’s] conclusory assertion that the [proposed product market] is ‘unique’ and hence ‘not
 24 interchangeable with any other program in Los Angeles’ is insufficient.”). That there is no magic
 25 phrase required by the courts does not, however, relieve a plaintiff of her duty to plausibly allege
 26 the contours of the product market, which necessarily requires allegations that speak to the

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1 question of substitute products.¹

2 The Court finds that MLW has not included sufficient facts to plausibly allege a relevant
 3 antitrust product market. Regarding the proposed market, the complaint alleges only that there are
 4 four competitors in the “United States professional wrestling market”; that the “business of
 5 promoting professional wrestling as sports entertainment is fundamentally a media industry, with
 6 revenues and business valuation[s] driven largely by fees obtained from broadcasting rights
 7 deals”; and that corporations such as NBCUniversal and Fox Sports “purchase broadcasting rights
 8 in the [proposed market] for their various distribution channels such as broadcast networks, cable
 9 and satellite services, streaming networks, and film production companies.” Compl. ¶¶ 17–19.
 10 These facts, as pled, are not sufficient to provide an understanding of the characteristics of the
 11 relevant market, including the existence or lack of substitutes.² For example, there are no
 12 allegations addressing why other “sports entertainment” or “media” content for which
 13 broadcasting rights might be sold to distribution channels are not appropriate substitutes. MLW is
 14 correct that a single sport may constitute a relevant market, Opp’n 8; *see, e.g., Le v. Zuffa, LLC*,
 15 216 F. Supp. 3d 1154, 1165 (D. Nev. 2016), but there are no facts alleged in the complaint to
 16 support that legal conclusion. Additionally, the complaint uses multiple formulations to describe
 17 the proposed market, which further complicates the question of the market’s boundaries and the
 18 reasonably interchangeable products contained within. *Compare* Compl. ¶ 17 (defining as the
 19 “Relevant Market” the “national market for the sale of broadcasting rights for professional
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21 ¹ The Court notes, however, that a complaint need not identify every alleged competitor or include
 22 an extensive economic analysis of product substitutability. *See Klein v. Facebook, Inc.*, 580 F.
 23 Supp. 3d 743, 765 (N.D. Cal. 2022); *FTC v. Facebook, Inc.*, 560 F. Supp. 3d 1, 20 (D.D.C. 2021).

24 ² The same analysis applies where the proposed market is a submarket of a broader industry: a
 25 plaintiff must allege facts indicating that the products in the submarket are economically distinct
 26 from the more general market of substitutable products. *Brown Shoe*, 370 U.S. at 325
 27 (“The boundaries of such a submarket may be determined by examining such practical indicia as
 industry or public recognition of the submarket as a separate economic entity, the product’s
 peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices,
 sensitivity to price changes, and specialized vendors.”); *Olin Corp. v. FTC*, 986 F.2d 1295, 1299
 (9th Cir. 1993) (“Because every market that encompasses less than all products is, in a sense, a
 submarket, [the *Brown Shoe*] factors are relevant even in determining the primary market to be
 analyzed for antitrust purposes.”) (citation omitted).

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1 wrestling programs to networks, cable and streaming services) *with, e.g., id.* ¶ 1 (“the U.S.
 2 broadcasting market for professional wrestling”), *id.* (“media markets and wrestling talent”), *id.* ¶
 3 10 (“the U.S. wrestling market”), *id.* ¶ 46 (“major national media markets”).

4 MLW argues that the existence of reasonably interchangeable substitutes is a factual issue
 5 inappropriate for resolution on a motion to dismiss, relying on *Reveal Chat Holdco, LLC v.*
 6 *Facebook, Inc.*, 471 F. Supp. 3d 981 (N.D. Cal. 2020). That reliance is misplaced. In *Reveal Chat*
 7 *Holdco*, the court expressly noted that “Plaintiffs need to clearly define the boundaries of the
 8 market.” 471 F. Supp. 3d at 999. The court rejected defendant’s argument that the proposed data
 9 market did not “encompass all economic substitutes” as requiring a “more developed factual
 10 record” because plaintiffs’ allegations supported their arguments that specific characteristics
 11 distinguished the data products at issue from other types of data. *Id.*; *see* Plaintiffs' Corrected
 12 Memorandum of Points & Authorities in Opposition to Facebook's Motion to Dismiss the Class
 13 Action Complaint at 11, *Reveal Chat Holdco, LLC v. Facebook, Inc.*, 471 F. Supp. 3d 981 (N.D.
 14 Cal. 2020) (No. 20-cv-00363, ECF No. 43), 2020 WL 3892265 (quoting operative complaint).

15 For the reasons above, the Court finds that MLW’s allegations are insufficient to plausibly
 16 allege a relevant product market. *See hiQ Labs, Inc. v. LinkedIn Corp.*, 485 F. Supp. 3d 1137,
 17 1148 (N.D. Cal. 2020) (finding plaintiff failed to adequately allege antitrust product market
 18 because “the parameters of the [proposed relevant] market—as pled—are vague” and “it is not
 19 clear what substitutes there are for [] products such as those offered” by defendant). Accordingly,
 20 the Court GRANTS WWE’s motion to dismiss MLW’s Sherman Act claim.

21 2. Monopoly Power and Antitrust Injury

22 Although the Court dismisses the Sherman Act claim based on the insufficiency of the
 23 relevant market allegations, it notes briefly that MLW’s allegations regarding monopoly power
 24 and antitrust injury, as currently pled, are unlikely to withstand a motion to dismiss for many of
 25 the reasons outlined in WWE’s Motion. With respect to monopoly power, the Court finds
 26 particularly concerning the bare allegation that WWE “holds approximately 85% of the market,”

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1 Compl. ¶ 24, because “Plaintiff does not even allege what it is measuring.” *FTC v. Facebook,*
 2 *Inc.*, 560 F. Supp. 3d 1, 18 (D.D.C. 2021). In the paragraphs immediately prior to the market
 3 share allegation, MLW alleges facts regarding WWE’s annual revenue, the “combined average
 4 annual value of WWE’s U.S. TV rights” for certain programs, U.S. television viewership numbers
 5 for certain WWE programs, and average television viewership ratings.³ Compl. ¶¶ 21–23.
 6 Although the Court might, in some circumstances, “reasonably infer how Plaintiff arrived at its
 7 calculations—*e.g.*, by proportion of total revenue . . . Plaintiff’s allegations make it even less clear
 8 what [it] might be measuring.” *FTC v. Facebook, Inc.*, 560 F. Supp. 3d at 18. And the Court is
 9 troubled by MLW’s argument that it alleged direct evidence of monopoly power, including that
 10 “WWE has also increased prices.” Opp’n 11 (citing Compl. ¶¶ 10, 25, 52, 71–73). From the
 11 Court’s review of the complaint, including the cited paragraphs, MLW alleges only that WWE has
 12 “ke[pt] prices high,” Compl. ¶ 10, “has the ability to raise prices,” *id.* ¶ 25; *see also id.* ¶ 73,
 13 prevented “access to [content] at lower prices,” *id.* ¶ 52, and “eliminat[ed] price competition,” *id.*
 14 ¶¶ 71–72. If MLW wishes to argue that WWE has “increased” prices, it should so allege.⁴

15 MLW’s allegations regarding antitrust injury appear similarly lacking, as the harms it has
 16 alleged—*e.g.*, loss of contract revenues due to WWE’s interference—are specific to MLW, rather
 17 than to competition at large. *See, e.g.*, Compl. ¶¶ 48–51. MLW includes a single allegation that
 18 consumers would have increased access to higher quality professional wrestling entertainment
 19 content at lower prices but for WWE’s conduct, but it appends no additional facts to support this
 20 conclusion. *Id.* ¶ 52; *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1198 (9th Cir. 2012)
 21 (stating plaintiffs must, “at a minimum, sketch the outline of [antitrust injury] with allegations of
 22

23 ³ It is not clear to the Court why WWE’s market power metrics were only compared to AEW’s, as
 24 opposed to overall numbers for the proposed market. Compl. ¶¶ 21–23. Similarly, the
 25 significance of the comparison of the metrics for two or three WWE programs to one AEW
 26 program is not apparent to the Court. *Id.* ¶ 23. The latter metrics appear to compare apples to
 27 oranges, and both sets of metrics appear only to indicate the relative success of WWE and AEW,
 28 rather than WWE’s position in the overall proposed market.

⁴ MLW states that it “is a fundamental principle of supply and demand that decreased output leads
 to increased price.” Opp’n 11 n.9. This “fundamental principle” requires assumptions, such as
 constant demand, that MLW has not supported with allegations.

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1 supporting factual detail”).

2 **B. State Law Claims**

3 Because the Court dismisses the Sherman Act claim, it lacks subject matter jurisdiction
4 over MLW’s remaining claims under California law for intentional interference with contractual
5 relations, intentional interference with prospective economic relations, and violation of the UCL.
6 28 U.S.C. § 1367; *see* Compl. ¶ 15. MLW’s state law claims are therefore DISMISSED.

7 **C. Leave to Amend**

8 The Court finds that additional allegations may cure the deficiencies outlined above and in
9 WWE’s Motion. Accordingly, the Court GRANTS MLW leave to amend. Any amendment must
10 be filed within 21 days of the issuance of this order.

11 **D. Other Motions**

12 Because the Court here resolves WWE’s Motion to Dismiss, it DENIES as moot WWE’s
13 Motion for Protective Order staying discovery during the pendency of the Motion to Dismiss.
14 Likewise, because MLW’s complaint is dismissed, the Court DENIES as moot WWE’s
15 Administrative Motion for Status Conference Regarding Discovery Schedule.

16 **IV. CONCLUSION**

17 For the foregoing reasons, WWE’s Motion to Dismiss is GRANTED with LEAVE TO
18 AMEND. WWE’s Motion for Protective Order and Administrative Motion for Status Conference
19 Regarding Discovery Schedule are DENIED as moot. Discovery in this action is STAYED until
20 further Court order.

21 **IT IS SO ORDERED.**

22 Dated: February 13, 2023



EDWARD J. DAVILA
United States District Judge

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