UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DREAM BIG MEDIA INC., et al.,

Plaintiffs,

v.

ALPHABET INC., et al.,

Defendants.

Case No. 22-cv-02314-JSW

ORDER GRANTING MOTION TO DISMISS AND DENYING MOTION TO STRIKE CLASS ALLEGATIONS

Re: Dkt. Nos. 29, 30

Now before the Court for consideration are the motion to dismiss and motion strike filed by Defendants Google LLC and Alphabet Inc. (collectively, "Google"). The Court has considered the parties' papers, relevant legal authority, and the record in the case, and it finds this matter suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). For the following reasons, the Court GRANTS Google's motion to dismiss and DENIES Google's motion to strike.

BACKGROUND

Plaintiffs Dream Big Media, Getify Solutions, Inc. ("Getify"), and Sprinter Supplier LLC ("Sprinter Supplier") (collectively, "Plaintiffs") are three businesses that allegedly use Google mapping services, including application programming interfaces ("APIs"), to display or use maps or maps-related information on their websites or mobile applications. The crux of Plaintiffs' complaint is that Google unlawfully ties its Maps, Routes, and Places API services together by purportedly refusing to sell one API service unless the purchaser also agrees to purchase another Google mapping service or agrees to refrain from purchasing API services from other companies. Plaintiffs allege that this conduct, combined with Google's alleged market power, allows Google to charge higher prices for its mapping API services. Plaintiffs allege Google's actions constitute unlawful tying, bundling, exclusive dealing, and monopoly leveraging in violation of the Sherman

Act, the Clayton Act, and California's Unfair Competition Law.

Dream Big Media is a digital-advertising business that has used and paid for Google's digital-mapping APIs. (Compl. ¶ 28.) Dream Big Media has used Google Maps Route APIs to determine the distance between two zip codes. (*Id.* ¶ 29.) Plaintiffs allege that Dream Big Media could not use competing providers' digital-mapping APIs and could not mix and combine Google's digital-mapping APIs with competitors' digital-mapping services. (*Id.* ¶ 30.)

Getify developed a mobile web app called RestaurNote that allowed users to make notations about experiences related to their physical location. (*Id.* ¶ 33.) RestaurNote used credits offered by Google to utilize Google's web-based digital-mapping APIs. (*Id.* ¶¶ 35, 37.) Plaintiffs allege that after Google increased the price of its digital-mapping APIs, use of the services became "unworkable" for RestuarNote. (*Id.* ¶ 37.) Plaintiffs allege that Getify could not combine the use Google's digital-mapping APIs with APIs from other providers if any of the data interacted with Google's digital-mapping capabilities. (*Id.* ¶ 38.)

Sprinter Supplier is an e-commerce automotive parts shop that wanted to use digital-mapping APIs to help local customers find its business. (*Id.* ¶ 40.) Plaintiffs allege that Sprinter Supplier searched for providers to use as an alternative to or in combination with Google's digital-mapping APIs because of the high prices Google charged for its services. (*Id.* ¶ 41.) Plaintiffs allege, however, that because of Google's anticompetitive conduct, Sprinter Supplier could not use competing providers' digital-mapping APIs. (*Id.* ¶ 42.) As a result, Sprinter Supplier used Google's products and services, which depleted the free credits Google had offered. (*Id.*)

Plaintiffs allege that the relevant product markets are Maps APIs, Routes APIs, and Places APIs. (*Id.* ¶¶ 73-76.) Plaintiffs assert each market is "global." (*Id.*) Plaintiffs also allege that other relevant markets include "the market for internet search" and "the market for cloud computing." (*Id.* ¶ 77.) Plaintiffs allege Google engages in exclusionary tying to prohibit customers from using any competing tools. This theory is based on Google's Terms of Service for its digital-mapping API services, which state:

> (e) No Use With Non-Google Maps. To avoid quality issues and/or brand confusion, Customer will not use the Google Maps Core

> For example, Customer will not (i) display or use Places content on a non-Google map, (ii) display Street View imagery and non-Google maps on the same screen, or (iii) link a Google Map to a non-Google Maps content or a non-Google map.

(*Id.* ¶ 157.) Plaintiffs allege that the Terms of Services "prohibit developers from using *any* component of the Google Maps Core Service with mapping services provided by non-Google firms." (*Id.* ¶ 158.) Plaintiffs further allege that if a customer requests a specific digital-mapping API, Google will unilaterally add on additional digital-mapping APIs and charge the customer for those APIs. (*Id.* ¶ 164.)

The Court will address additional facts as necessary in the analysis.

ANALYSIS

A. Legal Standard Applicable to a Motion to Dismiss.

A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "[D]etailed factual allegations are not required" to survive a motion to dismiss if the complaint contains sufficient factual allegations to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007)). "Labels and conclusions[] and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 50 U.S. at 555.

When evaluating a Rule 12(b)(6) motion to dismiss, a district court accepts as true all material facts alleged in the complaint and draws all reasonable inferences in favor of the plaintiff. *Faulkner v. ADT Servs., Inc.*, 706 F.3d 1017, 1019 (9th Cir. 2013). A district court should grant leave to amend unless the court determines the pleading could not "possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

B. The Court Grants Google's Motion to Dismiss.

1. Plaintiffs Fail to Allege a Tying Claim.

Google argues Plaintiffs fail to allege a tying claim.[1] To state a valid tying claim, a

[1] Plaintiffs assert tying claims under sections 1 and 2 of the Sherman Act, and under section 3 of the Clayton Act. Google asserts, and Plaintiffs do not dispute, that if Plaintiffs fails to meet the requirements under section 1, Plaintiffs claims under the other statutes fail. *See Mozart Co v. Mercedes-Benz of N. Am., Inc.*, 833 F.2d 1342, 1352 (9th Cir. 1987) (noting that the elements for establishing a Sherman Act Section 1 claim and a Clayton Act Section 3 claim are virtually the

plaintiff must allege: "(1) that [the defendant] tied together the sale of two distinct products or services; (2) that [the defendant] possesses enough economic power in the tying product market to coerce its customers into purchasing the tied product; and (3) that the tying arrangement affects a not insubstantial volume of commerce in the tied product market." *Aerotec Int'l, Inc. v. Honeywell Int'l, Inc.*, 836 F.3d 1171, 1178 (9th Cir. 2016) (citing *Cascade Health Sols. v. PeaceHealth*, 515 F.3d 883, 913 (9th Cir. 2007)). "A tie only exists where 'the defendant improperly imposes conditions that explicitly or practically require buyers to take the second product if they want the first one.'" *Id.* (quoting 10 Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 1752b (3d ed. 2011)). Tying claims can be positive or negative, and "the common element in both situations is that a seller explicitly or implicitly imposes conditions linking the sale of a tying product with the sale of the tied product." *Id.*

The first element of tying claims requires "an agreement by a party to sell one product but only on the condition that the buyer also purchases a different (or tied) product." *N. Pac. Ry. Co. v. United States*, 356 U.S. 1, 5-6 (1958). "It is well settled that there can be no unlawful tying arrangement absent proof that there are, in fact, two separate products, the sale of one (i.e., the tying product) being conditioned upon the purchase of the other (i.e., the tied product)." *Krehl v. Baskin-Robbins Ice Cream Co.*, 664 F.2d 1348, 1352 (9th Cir. 1982). "[W]here the buyer is free to take either product by itself there is no tying problem…" *N. Pac. Ry. Co.*, 365 U.S. at 6 n.4.

Plaintiffs assert positive and negative tying claims, both of which rest on Google's Terms of Service. Plaintiffs assert that Google's Terms of Service create a tying arrangement because they prohibit customers from using any component of Google's digital-mapping API services with mapping services provided by non-Google firms. However, the Terms of Service do not condition the sale of one Google product on the purchase of second, separate Google product. Rather, the Terms of Service restrict a customers' use of certain of Google's content, *i.e.*, a customer cannot use a Google mapping service "with or near" a non-Google map. (Compl. ¶ 157.) The Terms of Service do not require that a customer purchase any Google mapping API service as a condition of

using another Google mapping API service. And Plaintiffs do not allege facts establishing that Google's mapping API services are otherwise unable to be purchased individually. Thus, Plaintiffs fail to allege a positive tying claim.

Plaintiffs also allege that the Google's practices constitute negative tying, which occurs "when the customer promises not to take the tied product from defendant's competitor." *Aerotec Int'l*, 836 F.3d at 1178 (citations omitted). Plaintiff again relies on the Terms of Service to support the alleged negative tying arrangement. The court in *Sambreel Holdings LLC v. Facebook, Inc.*, 906 F. Supp. 2d 1070 (S.D. Cal. 2012) addressed a similar situation. In that case, the plaintiff alleged that Facebook's gating campaign constituted unlawful negative tying because Facebook agreed to offer its website only to users who would agree not to use the plaintiff's services. The court found there was no viable tying claim where there were no allegations that Facebook precluded its users from maintaining Sambreel applications for use on other websites. *Id.* at 1080. In rejecting plaintiff's negative tying theory, the court explained "[Facebook] has a right to dictate the terms on which it will permit its users to take advantage of the Facebook social network" and to the extent Facebook's campaign collaterally prohibited such use, the users could choose to opt out and use other social networking sites. *Id.*

As in *Sambreel*, Google has the right to dictate the terms on which it will permit its customers to use and display its mapping services. The Terms of Service do not preclude Google customers from using a competitor's mapping services altogether, and if customers do not want restrictions on mapping API services, they can presumably use another mapping service. Thus, the Court finds that Google's restrictions on how customers of its mapping services may use or display Google's content does not create an unlawful tying arrangement.[2]

Google further argues that Plaintiffs' tying claim fails because they fail to allege coercion. To establish coercion, Plaintiffs must show that "the defendant went beyond persuasion and

[2] Plaintiffs also allege that Google unilaterally adds on its other API services and charges the customer for them. (Compl. ¶¶ 14, 164.) Because Plaintiffs fail to allege facts to support this conclusory allegation and because none of the named Plaintiffs allege that they experienced this "unilateral" add-on, this allegation is insufficient to support a tying claim. Plaintiffs also allege that Google engaged in tying through its search and Google Cloud Platform products. (*See id.* ¶

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