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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PHILIPS NORTH AMERICA LLC,

Plaintiff,

v.

ADVANCED IMAGING SERVICES,
INC., d/b/a ADVANCED IMAGING
PARTS; and WANG XIUYUAN, a/k/a
SEAN WANG,

Defendants.

ADVANCED IMAGING SERVICES,
INC., d/b/a ADVANCED IMAGING
PARTS,

Counter-Claimant,

v.

PHILIPS NORTH AMERICA LLC,

Counter-Defendant.

No. 2:21-cv-00876-JAM-AC

**ORDER DENYING PLAINTIFF'S
MOTION TO DISMISS DEFENDANTS'
COUNTERCLAIMS**

This case involves a dispute between a manufacturer of medical equipment, Philips North America LLC ("Philips" or "Plaintiff"), and a business that contracts with hospitals and clinics to repair and maintain that equipment, Advanced Imaging Services ("Advanced"). See Compl. ¶¶ 1-2, ECF No. 1. After

1 Philips updated its software to require login credentials to
2 access the equipment's systems, Advanced allegedly acquired a
3 false or unauthorized login to continue servicing this equipment.
4 Id. ¶¶ 34-41. Philips then brought this action against Advanced
5 and Sean Wang, Advanced's employee that allegedly used the false
6 login credentials (collectively "Defendants"). Advanced and Wang
7 subsequently filed counterclaims against Philips for violation of
8 the Sherman Antitrust Act, copyright misuse, and violation of
9 California's Unfair Competition Law. Defs.' Countercls., ECF No.
10 91. Philips now moves to dismiss those counterclaims. Pl.'s
11 Mot. to Dismiss Countercls. ("Mot."), ECF No. 96.¹

12
13 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

14 The parties are intimately familiar with the material facts
15 and allegations of this case. The Court does not repeat them
16 here.

17 Philips's Complaint against Advanced and Sean Wang, contained
18 seven claims: (1) violation of the Computer Fraud and Abuse Act;
19 (2) violation of California's Comprehensive Data Access and Fraud
20 Act; (3) violation of the Digital Millennium Copyright Act;
21 (4) violation of the Defend Trade Secrets Act; (5) violation of
22 California's Uniform Trade Secrets Act; (6) violation of
23 California's Unfair Trade Practices Act; and (7) Fraud. Compl.
24 Advanced and Wang moved to dismiss the first, second, fourth,
25 fifth, and seventh causes of action. Defs.' Mot. to Dismiss, ECF

26
27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled
for February 15, 2022.

1 No. 37. The Court granted this request as to the seventh claim
2 for fraud but declined to dismiss the other claims. Order
3 Granting in Part and Denying in Part Defs.' Mot. to Dismiss, ECF
4 No. 86. Thereafter, Advanced and Wang answered and asserted
5 counterclaims against Philips for (1) monopolization in violation
6 of Section 2 of the Sherman Antitrust Act; (2) attempted
7 monopolization in violation of Section 2 of the Sherman Antitrust
8 Act; (3) a claim for declaratory relief of copyright misuse; and
9 (4) violation of California's Unfair Competition Law.
10 Countercls. Philips now moves to dismiss these counterclaims.
11 Mot. Advanced and Wang opposed this motion. Defs.' Opp'n to
12 Mot. to Dismiss Countercls. ("Opp'n"), ECF No. 100. Philips
13 replied. Philips' Reply, ECF No. 101. For the reasons set forth
14 below, this motion is denied.

15
16 II. OPINION

17 A. Legal Standard

18 Dismissal is appropriate under Rule 12(b)(6) of the Federal
19 Rules of Civil Procedure when a plaintiff's allegations fail "to
20 state a claim upon which relief can be granted." Fed. R. Civ.
21 P. 12(b)(6). "To survive a motion to dismiss a complaint must
22 contain sufficient factual matter, accepted as true, to state a
23 claim for relief that is plausible on its face." Ashcroft v.
24 Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks and
25 citation omitted). While "detailed factual allegations" are
26 unnecessary, the complaint must allege more than "[t]hreadbare
27 recitals of the elements of a cause of action, supported by mere
28 conclusory statements." Id. "In sum, for a complaint to

1 survive a motion to dismiss, the non-conclusory 'factual
2 content,' and reasonable inferences from that content, must be
3 plausibly suggestive of a claim entitling the plaintiff to
4 relief." Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir.
5 2009).

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7 B. Analysis

8 1. Section 2 of the Sherman Act

9 "Section 2 of the Sherman Act prohibits monopolies,
10 attempts to form monopolies, as well as combinations and
11 conspiracies to do so." Image Tech. Servs., Inc. v. Eastman
12 Kodak Co., 125 F.3d 1195, 1202 (9th Cir. 1997) (citing 15 U.S.C.
13 § 2). "Simply possessing monopoly power and charging monopoly
14 prices does not violate § 2; rather, the statute targets the
15 willful acquisition or maintenance of that power as
16 distinguished from growth or development as a consequence of a
17 superior product, business acumen, or historic accident." Pac.
18 Bell Tel. Co. v. linkLine Commc'n., Inc., 555 U.S. 438, 447-48
19 (2009) (internal quotation marks and citation omitted).

20 "Whereas § 1 of the Sherman Act targets concerted
21 anticompetitive conduct, § 2 targets independent anticompetitive
22 conduct." FTC v. Qualcomm Inc., 969 F.3d 974, 989-90 (9th Cir.
23 2020).

24 "There are three essential elements to a successful claim
25 of Section 2 monopolization: (a) the possession of monopoly
26 power in the relevant market; (b) the willful acquisition or
27 maintenance of that power; and (c) causal 'antitrust' injury."
28 Allied Orthopedic Appliances Inc. v. Tyco Health Care Grp. LP,

1 592 F.3d 991, 998 (9th Cir. 2010) (internal quotation marks and
2 citation omitted). To state a claim for attempted
3 monopolization, the plaintiff must allege "(1) that the
4 defendant engaged in predatory or anticompetitive conduct with
5 (2) a specific intent to monopolize and (3) a dangerous
6 probability of achieving monopoly power." Kaiser Found. Health
7 Plan, Inc. v. Abbott Labs., Inc., 552 F.3d 1033, 1044 (9th Cir.
8 2009) (internal quotation marks and citation omitted).

9 a. Monopoly Power in the Relevant Market

10 "Plaintiff must plead a relevant market to state an
11 antitrust claim under the Sherman Act[.]" Hicks v. PGA Tour,
12 Inc., 897 F.3d 1109, 1120 (9th Cir. 2018). "The relevant market
13 is the field in which meaningful competition is said to exist"
14 which is generally defined in terms of product and geography.
15 Kodak, 125 F.3d at 1202. The "outer boundaries" of such a
16 market are determined by "the reasonable interchangeability of
17 use or the cross-elasticity of demand between the product itself
18 and substitutes for it." Brown Shoe Co. v. United States, 370
19 U.S. 294, 325 (1962). "As such, the relevant market must
20 include the group or groups of sellers or producers who have
21 actual or potential ability to deprive each other of significant
22 levels of business." Newcal Indus., Inc. v. Ikon Office Sol.,
23 513 F.3d 1038, 1045 (9th Cir. 2008) (internal quotation marks
24 and citation omitted).

25 What constitutes the "relevant market" is typically a
26 factual rather than legal inquiry. Id. However, "there are
27 some legal principles that govern the definition of an antitrust
28 relevant market, and a complaint may be dismissed under Rule

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