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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOSEPH DEAN,

Plaintiff,

v.

META PLATFORMS, INC.,

Defendant.

Case No. 5:25-cv-10597-NMC

DEFENDANT META PLATFORMS, INC.'S REPLY TO ITS AMENDED MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

Date: February 12, 2026
Time: 11:00 a.m. (via Zoom)
Judge: Honorable Nathanael M. Cousins

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Defendant Meta Platforms, Inc. ("Meta"), through its undersigned counsel, respectfully submits its reply to Plaintiff Joseph Dean's Opposition ("Opp.") to Meta's Amended Motion to Dismiss Plaintiff's Second Amended Complaint ("Mot."). Plaintiff's Opposition fails to cure the numerous fundamental defects in his SAC, repeatedly misstates both the law and the record, and underscores why the SAC should be dismissed with prejudice: Plaintiff fails to allege viable claims as a matter of law.

I. PLAINTIFF LACKS STANDING

A. Plaintiff Lacks Standing Because Any Alleged Injury Was Suffered by Veamcast

As established in Meta's Motion (*see* Mot. at 6-9), Plaintiff lacks standing to sue Meta in his individual capacity under Article III of the Constitution, 28 U.S.C. § 1654, or the antitrust laws. *See* Mot. 6-9. Plaintiff does not dispute that he cannot bring this suit on behalf of his corporation. *See* Opp. 1; Mot. 7. Instead, Plaintiff attempts to establish standing by claiming he is suing Meta on his own behalf and that he has suffered injury "personally, not derivatively through any corporate entity." Opp. 1.[1] To be clear, no such allegations appear in the SAC. In fact, the SAC makes clear that any purported injury was suffered by Veamcast and not by Plaintiff personally. *See* Mot. 6. Crucially, Plaintiff alleges Meta "disabled *Veamcast's* API access," "eliminated *Veamcast's* ability to compete," and "imposed restrictive policies on *Veamcast*," all of which "directly harmed … Plaintiff's business." SAC ¶¶ 22, 23, 30 (emphasis added); *see* Mot. 6.

[1] Plaintiff asserts that, in filing individually, he "did exactly what Judge Honeywell directed" in the "predecessor case" he brought on behalf of Veamcast Corp. in the Middle District of Florida in 2020. Opp. 4. This misstates the record. In that case, the magistrate judge found the complaint to be "an airing of grievances" that did not contain sufficient factual allegations "to determine whether the Court has jurisdiction … or whether Plaintiff can state a viable claim." *Veamcast Corp.v. Facebook, Inc*., No. 20-cv-2667, 2020 WL 7248226, at *1 (M.D. Fla. Nov. 19, 2020), *report and recommendation adopted*, 2020 WL 7238519 (M.D. Fla. Dec. 9, 2020). However, the magistrate judge recommended dismissal based on the more threshold issue that a company must appear through counsel in court. *Id*. The district court adopted the magistrate's recommendation and granted leave for: (i) Veamcast to obtain counsel to represent the company; and (ii) Dean to submit an amended complaint alleging only claims on behalf of himself (as opposed to Veamcast). 2020 WL 7238519, at *1-2. Neither of those things happened within the 60-day time period allotted, and the action was dismissed (without prejudice) on February 11, 2021. *See* No. 8:20-cv-2667 (M.D. Fla.), ECF Nos. 7, 12.

Plaintiff argues that he suffered personal losses of costs, expenses, and investment of time and resources. *See* Opp. 2. However, these purported losses merely derive from his ownership of Veamcast. *See Dean v. Roku, Inc.*, No. 24-cv-2383, 2025 WL 2299403, at *4 (M.D. Fla. Aug. 8, 2025) ("[A]ny personal harm Mr. Dean suffered was the indirect result of the allegedly anticompetitive conduct that directly concerns Veamcast."). To establish standing, Plaintiff "must assert more than personal economic injury resulting from a wrong to the corporation." *Shell Petroleum, N.V. v. Graves*, 709 F.2d 593, 595 (9th Cir. 1983) (holding that majority shareholder lacked standing where it was not "injured directly and independently of the corporation"); *Brown v. Dep't of Water & Power*, No. 24-cv-05152, 2024 WL 5466666, at *4 (C.D. Cal. Nov. 27, 2024) (financial injury to sole member of LLC was "derivative of [the LLC's] injury"). Because Plaintiff has failed to allege that he suffered an injury in fact, he lacks standing to sue. *See* Mot. 6-7; *Saucedo v. Goode*, No. 21-cv-08314, 2022 WL 20016823, at *2 (N.D. Cal. Aug. 15, 2022) ("Because the FAC fails to plausibly allege any injuries to [plaintiff] that are independent from the alleged harm suffered by [the corporation], the Court finds that [plaintiff] lacks standing to bring this suit.").[2]

Plaintiff attempts to avoid dismissal by making two *new* allegations regarding the Veamcast corporate entity: (i) he asserts that "Veamcast Corporation" and "Veamcast Corp." are two separate entities; and (ii) "the corporate forms were nominal shells" and Plaintiff did "the real development work" for them. Opp. 1, 3. Both are insufficient to establish standing. As a threshold matter, these allegations appear nowhere in the SAC and should not be considered by the Court. *See Wise v. MAXIMUS Fed. Servs., Inc.*, No. 18-cv-07454, 2020 WL 353462, at *7 (N.D. Cal. Jan. 21, 2020) ("The plaintiff cannot avoid dismissal by alleging new facts in an opposition to a motion to dismiss.") (citation omitted). *Schneider v. California Dep't of Corr.*, 151 F.3d 1194, 1197 n.1 (9th

[2] California district courts have resolved questions of individual capacity standing under both Rule 12(b)(1) (as a matter of Article III standing) and Rule 12(b)(6) (as a matter of prudential standing). *See, e.g., Kenney v. Wells Fargo Bank, N.A.*, 791 F. Supp. 3d 1163, 1169 (C.D. Cal. 2025) (dismissing claims for lack of Article III standing where plaintiff's claimed injuries were not distinct from LLC's injuries); *Saucedo*, 2022 WL 20016823, at *2 (dismissing claims for lack of prudential standing where plaintiff failed to allege injuries "independent from the alleged harm suffered by [the corporation]"). Regardless of how the question is framed, however, Plaintiff lacks standing to sue Meta in his individual capacity for alleged injuries to Veamcast.

Cir. 1998) ("In determining the propriety of a Rule 12(b)(6) dismissal, a court *may not* look beyond the complaint to a plaintiff's moving papers, such as a memorandum in opposition to a defendant's motion to dismiss."); *YZ Prods., Inc. v. Redbubble, Inc.*, 545 F. Supp. 3d 756, 764 (N.D. Cal. 2021) ("The Court declines to consider an allegation raised for the first time in opposition to the instant motion."). Notwithstanding, neither allegation demonstrates that Plaintiff has standing to maintain this action.

First, it is immaterial to this Motion whether Veamcast Corporation and Veamcast Corp. are "two entirely separate entities" (*see* Opp. 1); it remains the case that Plaintiff did not suffer the alleged harm. Plaintiff does not explain why the fact that there are apparently two Veamcast entities matters to the standing analysis as to Plaintiff or how it meaningfully rebuts Meta's argument that Plaintiff did not personally suffer any purported injury to warrant standing. Mot. 6.[3] Plaintiff's claims are still based on injuries allegedly suffered by the corporation or derived therefrom, as evidenced by the fact that Plaintiff previously filed suit on behalf of Veamcast Corp. *See* Mot. 6-7; supra 2-3.

Second, Plaintiff's argument that this is not a "typical shareholder-derivative" suit because Veamcast "was merely a shell with no independent financial existence" from Plaintiff does not give rise to standing. Opp. 2. This new quasi-alter-ego theory not only contradicts the allegations of the SAC and the Veamcast Complaint (both of which allege injuries to Veamcast as a corporation), but it also turns the alter ego doctrine on its head. A plaintiff typically invokes the alter ego doctrine to "claim[] that an *opposing party* is using the corporate form unjustly and in derogation of the plaintiff's interests." *Ridgway v. Phillips*, No. 18-cv-07822, 2020 WL 1288464, at *4 (N.D. Cal. Mar. 18, 2020) (emphasis added) (citation omitted) (plaintiff failed to make out a prima facie case of alter ego liability). Here, however, Plaintiff argues that the corporate form *of his own corporation* should be disregarded. Opp. 1-3. Regardless, "[t]here is a strong presumption against disregarding

[3] Based on filings with the Florida Department of State, it appears that Veamcast Corporation was incorporated in 2012 and dissolved in 2013, and that Veamcast Corp. was incorporated in 2016 and maintains an "active" status. *See* Fla. Dep't State, Division of Corporations, Search Records, https://dos.fl.gov/sunbiz/search/ (last visited Jan. 26, 2026); Mot. 2 n.3.

corporate identities and finding a person to be the alter ego of a corporation." *Ridgway*, 2020 WL 1288464, at *5 (citation omitted).[4]

B. Plaintiff Fails to Allege Antitrust Standing

As Meta established (*see* Mot. 8-9), Plaintiff has also failed to allege antitrust standing because, among other reasons, the SAC contains no factual allegations how Veamcast (let alone Plaintiff) is a competitor to Meta in any relevant market. And even if Veamcast were a competitor (which it is not), the SAC alleges (at most) only individualized harm to Veamcast, not the requisite harm to competition itself.

Individualized harm does not establish the requisite antitrust injury necessary for antitrust standing. *See City of Oakland v. Oakland Raiders*, 20 F.4th 441, 456 (9th Cir. 2021) (explaining that "antitrust injury" is "mandatory" to establish antitrust standing). Mot. 4-5. Plaintiff offers no response but instead argues he "has antitrust standing under *Associated General Contractors v. Carpenters*, 459 U.S. 519 (1983)." Opp. 3; *see also* Opp. 18. Plaintiff's reliance on *Associated General Contractors* is misplaced. There, the Supreme Court held that a labor union lacked antitrust standing because, among other reasons, it was "neither a consumer nor a competitor" in the relevant market. 459 U.S. at 539. The same is true here: aside from a conclusory assertion that Plaintiff is a "competitor" of Meta, *see* Opp. 4, Plaintiff points to nothing showing that he was a competitor in any relevant market. *See, e.g.*, *Roku, Inc.*, 2025 WL 2299403, at *5 ("That Mr. Dean made use of Roku's APIs does not make him a competitor."); *Unlockd Media, Inc. Liquidation Tr. v. Google LLC*, No. 21-cv-07250, 2025 WL 563460, at *5-6 (N.D. Cal. Feb. 20, 2025) (finding plaintiff's "conclusory allegations" were "simply insufficient to allege antitrust injury"); *Bay Area Surgical Mgmt. LLC v. Aetna Life Ins. Co.*, 166 F. Supp. 3d 988, 997 (N.D. Cal. 2015) (dismissing antitrust claims where "allegations of injury to competition are conclusory").

[4] Plaintiff cites no authority for a purported "transferability test," which he offers to further support his "individual standing" argument. Opp. 3. According to Plaintiff, because the Veamcast "corporate shells have no claim whatsoever to the intellectual property Plaintiff developed," the "injury to that intellectual property is Plaintiff's alone." *Id.* This is merely a continuation of Plaintiff's personal injury and alter ego arguments, neither of which demonstrates that he has standing. *See supra* 1-4.

Further, Plaintiff's Opposition makes clear that he asserts only individualized harm, such as "destroyed development investment, foreclosed competitive opportunity, and exclusion from the market." Opp. 4. Such allegations "fail[] to allege the requisite antitrust injury to competition that is required" under the antitrust laws. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 811 (9th Cir. 1988) (affirming dismissal of antitrust claims for failure to allege injury to competition). This is because "[h]arm to a single customer," whether Veamcast or Plaintiff, "does not … constitute harm to the competitive process that thereby harms consumers as a whole." *Dreamstime.com, LLC v. Google LLC*, 54 F.4th 1130, 1141 (9th Cir. 2022) (internal quotation marks and citation omitted) (affirming dismissal with prejudice because the "allegations have, at most, alleged that Google mistreated [Plaintiff] as a Google customer"); *see also Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1198 (9th Cir. 2012) ("[P]laintiffs must plead an injury to competition beyond the impact on the plaintiffs themselves."); *Reilly v. Apple Inc.*, 578 F. Supp. 3d 1098, 1110 (N.D. Cal. 2022) ("Plaintiff's theory of harm is that his app was rejected from the App Store notwithstanding his investment in [the app]. This theory fails to connect his supposed injury to injury to competition generally."). "It is injury to the market or to competition in general, not merely injury to individuals or individual firms that is significant." *McGlinchy*, 845 F.2d at 812. In short, "Plaintiff has no antitrust standing because antitrust law protects competition, not individual competitors"—and Dean was not even an individual competitor. *Roku, Inc.*, 2025 WL 2299403, at *5.[5]

II. PLAINTIFF'S CLAIMS ARE NOT TIMELY

Plaintiff agrees, as he must, that the applicable statute of limitations on antitrust claims is four years after the cause of action accrues. Opp. 6. Although the Complaint in this action was filed more than four years after Veamcast's API functionalities were allegedly disabled, Plaintiff argues that he "could not discover the cause [of the injury] until Meta closed his support ticket without

[5] Plaintiff argues that his prior lawsuit against Roku does not support dismissal here. *See* Opp. 5. Plaintiff took a similar approach in that case, however, as he does here: after his first lawsuit against Roku was dismissed for failure to obtain legal counsel for Veamcast, he filed a second suit against Roku on behalf of himself. *See* Mot. 4. There, the district court dismissed Plaintiff's second amended complaint with prejudice after it "determined that Mr. Dean cannot establish antitrust standing" and that "Veamcast ha[d] unsuccessfully filed prior cases asserting these same allegations." *Roku, Inc.*, 2025 WL 2299403, at *7.

resolution on September 25, 2020." Opp. 7. He thus contends that, under the "discovery rule"—where a cause of action does not accrue until the plaintiff discovers it—his complaint was filed three days before the limitations period expired. *Id.* Plaintiff's reliance on the discovery rule is misplaced. "[I]n this Circuit, accrual of antitrust claims is governed by an injury rule, not the discovery rule." *Peterson v. Sutter Med. Found.*, No. 21-cv-04908, 2022 WL 316677, at *10 (N.D. Cal. Feb. 2, 2022) (dismissing federal antitrust claim as time barred), *aff'd*, No. 23-2911, 2025 WL 1823959 (9th Cir. July 2, 2025).[6] Thus, in antitrust actions, "the plaintiff's knowledge is generally irrelevant to accrual, which is determined according to the date on which injury occurs." *Id.* (quoting *Beneficial Standard Life Ins. Co. v. Madariaga*, 851 F.2d 271, 274-75 (9th Cir. 1988)); *see also Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 188 (1997) (explaining that "injury accrual rule . . . applies in traditional antitrust cases").[7] As Meta explained, and the Opposition does not dispute, Plaintiff has admitted that the injury alleged here (the disabling of the API functionalities) occurred before the end of 2019—more than four years before Plaintiff initiated this action on September 22, 2024. *See* Mot. 9; Opp. 6-7.

The Opposition also contends that the SAC's allegations that "Meta actively concealed its anticompetitive conduct through deceptive error messages, misleading support responses, and deletion of support threads … satisfy the fraudulent concealment standard." Opp. 8. As Meta explained (Mot. 10), however, fraudulent concealment does not apply where "a plaintiff has actual or constructive knowledge of the facts giving rise to his claim." *Reveal Chat Holdco LLC v. Facebook, Inc.*, No. 20-cv-00363, 2021 WL 1615349, at *7 (N.D. Cal. Apr. 26, 2021) (dismissing antitrust claims as time barred).[8] Here, Plaintiff had knowledge of the facts giving rise to his claims

[6] The Middle District of Florida, where Plaintiff initially filed, also applies the injury rule to antitrust claims. *See Winn-Dixie Stores, Inc. v. Se. Milk, Inc.*, No. 15-cv-1143, 2019 WL 3854976, at *3 (M.D. Fla. Jan. 16, 2019) ("Under the antitrust laws, 'a cause of action accrues and the statute [of limitations] begins to run when a defendant commits an act that injures the plaintiffs' business." (quoting *Morton's Mkt., Inc. v. Gustafson's Dairy, Inc.*, 198 F.3d 823, 827 (11th Cir. 1999))).

[7] Plaintiff cites *Merck & Co. v. Reynolds*, 559 U.S. 633, 644 (2010), to support his argument that the discovery rule should apply. Opp. 6. But that case was a securities fraud class action, not an antitrust case, and is therefore not relevant to whether such a rule applies in antitrust cases.

[8] Plaintiff argues that *Reveal Chat* is distinguishable because it involved a "publicly announced" removal of API functionality. Opp. 8. But the question for statute of limitations purposes is not

by 2019, as the Veamcast Complaint makes clear. *See* Mot. 10. The doctrine of fraudulent concealment therefore does not apply.

Finally, Plaintiff fails to meaningfully rebut Meta's laches argument (Mot. 11-12), asserting only that "where claims are timely under the statute of limitations, the strong presumption is that laches is inapplicable." Opp. 9. As Meta explained, however, Plaintiff's claims are *not* timely and should be dismissed as time barred. Mot. 9-11; *supra* 4-5. And where, as here, "suit is filed outside of the analogous limitations period, courts often have presumed that laches *is* applicable." *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 836 (9th Cir. 2002) (emphasis added). Because Plaintiff has not alleged that his five-year delay in filing this action was excusable, and such delay creates a rebuttable presumption of prejudice to Meta, the laches doctrine bars Plaintiff's claims. Mot. 11-12.

III. PLAINTIFF FAILS TO ASSERT ANTITRUST CLAIMS ON THE MERITS

A. The SAC Alleges No Anti-Competitive Conduct by Meta

1. The Narrow Exception to the General Rule of No Refusal to Deal Is Inapplicable

Meta's Motion explained how Plaintiff's claims for monopolization under Section 2 of the Sherman Act and exclusive dealing under Section 3 of the Clayton Act both fail because the SAC's allegations merely amount to grievances about Meta's alleged lawful refusal to make its APIs available to Plaintiff's company Veamcast. Mot. 12-14. This is not actionable conduct under the antitrust laws because Meta is "free to choose the parties with whom [it] will deal, as well as the prices, terms, and conditions of that dealing." *Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc.*, 555 U.S. 438, 448, 457 (2009) (clarifying there is "no duty to deal under the terms and conditions [that] . . . rivals find commercially advantageous" and reversing opinion upholding denial of defendants' motion for judgment on the pleadings). Dismissal under Rule 12(b)(6) is warranted because the SAC fails to "allege specific facts to support" any theory of anticompetitive conduct. *Malheur Forest Fairness Coalition v. Iron Triangle, LLC*, No. 24-6366, 2026 WL 90235, at *12 (9th Cir.

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whether and when a public announcement was made, but when plaintiffs "had notice of their injury." *Reveal Chat*, 2021 WL 1615349, at *5.

Jan. 13, 2026) (affirming dismissal with prejudice for failure to state a monopolization and other antitrust claims).[9]

In response, Plaintiff argues that "Meta's motion mischaracterizes the legal issues" because this "case involves discriminatory termination of voluntary dealing" and attempts to invoke the *Aspen Skiing* doctrine. Opp. 9, 10 (citing *Aspen Skiing Co. v. Aspen Highlands Skiing Corp*., 472 U.S. 585 (1985)). *Aspen Skiing* is a very narrow, "limited exception to [the] general rule that there is no antitrust duty to deal," *FTC v. Qualcomm Inc.*, 969 F.3d 974, 993 (9th Cir. 2020), which the Supreme Court has subsequently characterized as "at or near the outer boundary" of antitrust liability. *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 409 (2004); *see also hiQ Labs, Inc. v. LinkedIn Corp*., 485 F. Supp. 3d 1137, 1150 (N.D. Cal. 2020) ("[T]he *Aspen Skiing* exception is very narrow, as both the Supreme Court and Ninth Circuit have made clear.").

The *Aspen Skiing* exception requires three elements: (1) the "'unilateral[] terminat[ion]" of "a voluntary and profitable course of dealing," (2) "the only conceivable rationale or purpose'" of which is "'to sacrifice short-term benefits in order to obtain higher profits in the long run from the exclusion of competition," and (3) that "the refusal to deal involves products that the defendant already sells in the existing market to other similarly situated customers." *Qualcomm*, 969 F.3d at 993-94 (internal quotation marks and citations omitted). If any one of these factors is absent, the exception is inapplicable. *Id*. at 955. The SAC's allegations make clear that none of those factors exist.

First, while Plaintiff claims that *Aspen Skiing* governs his claims because "Meta voluntarily opened its platform to developers," and "profited from the resulting ecosystem," Opp. 10, the SAC is devoid of any allegations supporting these conclusory statements. Instead, the SAC only contains a vague reference to "Meta's reported revenue for 2023: $135 billion" (SAC p. 21), with zero

[9] Although Plaintiff states that "Judge Scriven Already Found the SAC Adequately Pleaded," Opp. 5, Judge Scriven's February 25, 2025 order (ECF No. 19) addressed only whether the SAC constituted a "shotgun pleading" under Rule 8, not whether the claims survived dismissal under Rule 12(b)(6).

allegations concerning how Meta "profited" *in any way* from allegedly allowing developers access to its APIs, let alone any profit from Veamcast specifically. *Second*, there are no facts necessary to support the conclusion that Meta's alleged refusal to deal stemmed from an irrational profit sacrifice. "Absent specific factual allegations, it is speculative to assume that [Meta] gave up any short-term benefit by refusing to deal with [Plaintiff]." *hiQ Labs*, 485 F. Supp. 3d at 1151. *Third*, "there are no allegations that [Meta] refused to provide products to its competitors that were already sold in a retail market to other customers." *Reveal Chat Holdco, LLC v. Facebook, Inc.*, 471 F. Supp. 3d 981, 1102 (N.D. Cal. 2020). Plaintiff cannot rewrite his SAC with conclusory legal labels to escape the fact that "the *Aspen Skiing* exception does not apply." *Id.*

2. Plaintiff Fails to Respond to Meta's Arguments Concerning the SAC's Lack of Anticompetitive Conduct and Instead Relies on Inapposite Case Law and Other Irrelevant Information

Meta's Motion illustrated how the SAC alleged no anticompetitive conduct necessary to sustain his monopolization claim. For example, the SAC is devoid of allegations that Meta interfered with Veamcast's ability to reach users independently of Facebook, such as through other API platforms or market channels. Mot. 13. Plaintiff does not respond to this point because he cannot. This is because Plaintiff unsuccessfully attempted to assert antitrust claims against Roku for the same conduct, acknowledging that Veamcast also used Roku's APIs. *See Roku, Inc.*, 2025 WL 2299403, at *5 (dismissing Dean's complaint, the "crux" of which was "Roku restricting third-party access to its APIs"). Nor does Dean address Meta's point that the SAC is free of any allegations from which a court could even infer that Meta conditions Plaintiff's use of Meta's Facebook Graph API on him not using other APIs, of which there are many, thus defeating Plaintiff's exclusive dealing claim. Mot. 14. Further, Plaintiff effectively concedes that he failed to identify an exclusive dealing arrangement necessary to support his Section 3 claim by ignoring Meta's argument in his Opposition. *See* Mot. 14.

In sum, Plaintiff's theory of "anticompetitive harm," to the extent cognizable, is that the Veamcast app failed, which is insufficient as a matter of law because Plaintiff cannot plausibly allege the Veamcast app would not have failed absent Meta's challenged conduct. Simply

developing the Veamcast app is not enough to plausibly suggest the Veamcast app had any likelihood of successfully competing in the market if the challenged conduct had not occurred, and thus does not establish that Plaintiff "would [not] have" failed anyway and "suffered the same injur[ies]." *Lucas Auto. Eng'g, Inc. v. Bridgestone/Firestone, Inc.*, 140 F.3d 1228, 1233 (9th Cir. 1998).

The cases upon which Plaintiff attempts to rely regarding anti-competitive conduct are inapposite and readily distinguishable.[10] In Judge Brinkema's opinion finding that Google monopolized the open-web display markets for publisher ad servers and ad exchanges and unlawfully tied its publisher ad server to its ad exchange (*see* Opp. 11), the court issued its opinion following a 3-week bench trial and expressly found harm to competition. *See generally United States v. Google LLC*, 778 F. Supp. 3d 797 (E.D. Va. 2025). Moreover, the court ruled that the refusal to deal doctrine and related exceptions, which Plaintiff claims apply here, were an inappropriate framework to evaluate Google's conduct. *See id*. at 866 ("The refusal to deal doctrine in *Trinko* does not apply to Google's conduct at issue."). The case does not stand for the sweeping proposition, as Plaintiff claims, that "a platform's exclusive control over technical interfaces that competitors must use constitutes monopolization," Opp. 11, and in any event, Plaintiff still does not allege that Veamcast "must" use Facebook APIs as opposed to any other API. This is especially true given that Plaintiff unsuccessfully attempted to bring antitrust claims against Roku for the same conduct. *See Roku, Inc.*, 2025 WL 2299403, at *5 (dismissing Dean's complaint – the "crux" of which was "Roku restricting third-party access to its APIs). Plaintiff's attempted reliance on the D.C. Circuit's opinion in *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001) (*see* Opp. 10), is misplaced for the same reason: Plaintiff has no answer to the fact that Veamcast was free to use other APIs. Additionally, unlike in *Microsoft*, the SAC has no allegations about any efforts by Meta to "discredit competing developers." Opp. 10.

[10] *Broadcom Corp. v. Qualcomm, Inc.*, upon which Plaintiff attempts to rely (*see* Opp. 10), is completely inapposite because it addresses allegations of deceptive conduct by a patent holder before a standard-setting organization in the context of the commitment to license standard-essential patents on fair, reasonable, and non-discriminatory terms. 501 F.3d 297 (3d Cir. 2007).

Plaintiff devotes the remainder of his Opposition arguing he alleged anticompetitive conduct by quoting from irrelevant exhibits in the FTC's unsuccessful litigation against Meta, which Plaintiff improperly submitted through his five "notices of newly discovered evidence." Opp. 11-13. Those notices should be disregarded for the reasons set forth in Meta's objections to the first notice (ECF No. 34) and omnibus objections to the second, third, fourth, and fifth notices (ECF No. 45): among other reasons, the majority of the purported "evidence" is not "new;" the exhibits to the notices are not part of the SAC and have no apparent connection to Plaintiff's claims; and Plaintiff's notices misrepresent the law. But even if the Court were to consider Plaintiff's arguments outside the SAC, Opp. 11, all of those allegations relate to alleged conduct having nothing to do with Veamcast or Plaintiff. Plaintiff also mischaracterizes the material, repeatedly describing allegations by the FTC in its (ultimately unsuccessful) complaint and accompanying press release as "findings" by the FTC. *See* Opp. 12 ("The FTC *found* that Facebook . . . ." (citing FTC Press Release, *FTC Alleges Facebook Resorted to Illegal Buy-or-Bury Scheme to Crush Competition After String of Failed Attempts to Innovate* (Aug. 19, 2021)),[11]; *id*. ("The FTC specifically *found* that "Facebook . . . .'" (citing the FTC's complaint)).

B. Dismissal under Rule 12(b)(6) Is Required Because the SAC Alleges No Relevant Geographic Market and an Insufficient Relevant Product Market

"Failing to define a relevant market alone is fatal to an antitrust claim" because "[w]ithout a defined relevant market in terms of product or service, one cannot sensibly or seriously assess market power." *Coronavirus Rep. v. Apple, Inc.*, 85 F.4th 948, 957 (9th Cir. 2023) (affirming dismissal with prejudice). While Plaintiff argues that "[m]arket definition is a fact-intensive inquiry inappropriate for resolution on a motion to dismiss," Opp. 15, courts in the Ninth Circuit and elsewhere routinely dismiss—with prejudice—complaints such as this one that fail to sufficiently allege a relevant antitrust market. *See, e.g.*, *Coronavirus Rep.*, 85 F.4th at 957 ("Because Plaintiffs-Appellants do not meet the threshold step of defining a relevant market, we reject their antitrust claims and need not proceed further with the analysis."); *Tanaka v. Univ. of S. Cal.*, 252 F.3d 1059,

[11]https://www.ftc.gov/news-events/news/press-releases/2021/08/ftc-alleges-facebook-resorted-illegal-buy-or-bury-scheme-crush-competition-after-string-failed.

1063-64 (9th Cir. 2001) (conclusory assertions based on plaintiff's "personal preference" failed "to identify an appropriately defined product market); *In re German Auto. Mfrs. Antitrust Litig.*, 497 F. Supp. 3d 745, 759 (N.D. Cal. 2020) (dismissing SAC with prejudice where plaintiffs offered only "bare allegations" and "empirical evidence" in attempt to identify a cognizable submarket); *Person v. Google, Inc.*, No. C 06-7297, 2007 WL 1831111, at *3-5 (N.D. Cal. June 25, 2007) (dismissing *pro se* complaint), *aff'd*, 346 F. App'x. 230 (9th Cir. 2009).

Contrary to Plaintiff's unsupported assertion, "[t]he adequacy of the definition of a relevant market is largely a question of law." *Person*, 2007 WL 1831111, at *5. Indeed, as this Court has recognized, "there are some legal principles that govern the relevant market definition, and a complaint may be dismissed under Rule 12(b)(6) if that definition is facially unsustainable." *Oracle Am., Inc. v. CedarCrestone, Inc.*, 938 F. Supp. 2d 895, 902 (N.D. Cal. 2013) (Cousins, J.) (dismissing for failure to adequately plead a relevant market). One of those legal principles is that the allegations must define both (1) a relevant geographic market, and (2) a relevant product market. *See, e.g., Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1120-21 (9th Cir. 2018).[12]

1. Plaintiff Concedes He Fails to Allege a Relevant Geographic Market

Meta's motion demonstrated how the SAC asserts no geographic market, which warrants dismissal by itself. Mot. 2, 5, 15; *see, e.g., Sidibe v. Sutter Health*, 4 F. Supp. 3d 1160, 1176-77 (N.D. Cal. 2013). Plaintiff's Opposition does not respond to the lack of a geographic market because it cannot; the SAC lacks a requisite component of market definition necessary to support Plaintiff's monopolization and exclusive dealing claims.

2. Plaintiff Fails to Allege a Relevant Product Market

With respect to the product market, Plaintiff's SAC contains a single conclusory allegation that Meta operates within a "social networking services market" along with a passing reference to

[12] Plaintiff states that Meta has engaged in a "pattern of misrepresentation," Opp. 17—mostly for challenging Plaintiff's allegations in the SAC—but also for "claim[ing] Plaintiff 'has failed to design his social network' (MTD at 2)," which Plaintiff states is "perhaps the most remarkable misrepresentation" by Meta. Opp. 17. However, nowhere in Meta's Motion did Meta make any representation as to Plaintiff "design[ing]," or not, "his own social network."

the FTC's unsuccessful litigation against Meta. SAC ¶¶ 21, 11(d).[13] This is insufficient as a matter of law. *See* Mot. 15. While Plaintiff claims the "SAC further alleges specific indicia of monopoly power, including Meta's massive user base, substantial revenues, and network effects," Opp. 14, the SAC only states, with no support, that Meta (1) has "[o]ver 3 billion monthly users" in no specified geography and without reference to whether that is for Facebook, Instagram, WhatsApp, or any other product; (2) has approximately "$135 billion in revenue in 2023," again in no specified geography; (3) has "[c]ontrol over critical APIs and platform access," (4) has the "[a]bility to identify and eliminate potential competitors through API restrictions;" and (5) has a "monopoly on API permission … as well as other functions." SAC ¶ 21. None of these allegations go to market definition, which concerns consumer substitution. *Person*, 2007 WL 1831111, at *3. Furthermore, these allegations are not "specific indicia" of monopoly power; they are unsupported, conclusory allegations mostly amounting to grievances surrounding how Meta operates its own platform and manages third-party access to its own APIs.

Moreover, these allegations Plaintiff argues support his proposed market underscore another reason why the SAC must be dismissed: though using the words "social networking services market" (and, on occasion, "personal social networking services market") Plaintiff tries to support that market with reference to Meta's handling of its own business, effectively claiming that Meta has a "monopoly" over *its own APIs*. This is precisely the sort of disfavored "single-brand market" that the "Supreme Court and Ninth Circuit have only found … plausible in the context of aftermarkets" not at issue here. *Reilly*., 578 F. Supp. 3d at 1107 (dismissing claims for failure to allege a relevant market); *see also Coronavirus Rep. v. Apple Inc*., No. 21-cv-05567, 2021 WL 5936910, at *9 (N.D. Cal. Nov. 30, 2021) ("It is an understatement to say that single-brand markets are disfavored. From nearly the inception of modern antitrust law, the Supreme Court has expressed

[13] Plaintiff's proposed relevant market is also imprecise. Plaintiff's SAC claims "the social networking services market." SAC ¶ 21. In his Opposition, Plaintiff concedes that is the market alleged in the SAC but also states that the SAC "incorporate[es] the FTC's definition of the 'personal social networking' market." Opp. 14. Regardless of whether the market is considered for "social networking services" or "personal social networking services," Plaintiff's claims fail for the same reason that he inadequately defines either and both.

skepticism of single-brand markets.") (citation omitted), *aff'd*, 85 F.4th 948 (9th Cir. 2023); *Apple Inc. v. Psystar Corp.*, 586 F. Supp. 2d 1190, 1998 (N.D. Cal. 2008) (dismissing complaint and noting that "[s]ingle-brand markets are, at a minimum, extremely rare.").

Additionally, "[t]he Supreme Court has explained that the relevant [product] market for antitrust purposes is determined by the choices available to consumers." *Person*, 2007 WL 1831111, at *3, Nowhere in the SAC does Plaintiff even attempt to identify other participants besides Meta in the supposed "social networking services market" (or personal social networking services market") from the consumer perspective, let alone describe the boundaries of the market, or explain why the numerous other social networking services available to consumers should be excluded from his proposed "social networking services market" (or "personal social networking services market"). In short, "a plausible market requires alleged facts explaining why the products *included* in the market *are substitutes* for one another as well as alleged facts explaining why seemingly similar products *excluded* from the market *are not substitutes* for those in the market." *Reilly*, 578 F. Supp. 3d at 1109. Plaintiff's proposed market "lacks justification on both bases," requiring dismissal. *Id.*

3. Plaintiff Misreads the Conclusions of the D.D.C.'s *FTC* Decisions

Plaintiff's assessments of *FTC v. Facebook, Inc.*, 560 F. Supp. 3d 1 (D.D.C. 2021), and *FTC v. Meta Platforms, Inc.*, No. 20-3590, 2025 WL 3458822 (D.D.C. Dec. 2, 2025) (revising and superseding *FTC v. Meta Platforms, Inc.*, No. 20-3590, 2025 WL 3211725 (D.D.C. Nov. 18, 2025)), are incorrect.

First, Plaintiff's reliance on Judge Boasberg's dicta that other entities "*might*" have valid Sherman Act § 2 claims that were unavailable to the FTC under FTC Act § 13(b) is irrelevant. The court did not say that any such claim was valid, only that the laws did not provide the FTC a viable basis for such a claim. *See Facebook, Inc.*, 560 F. Supp. 3d at 21. With respect to other potential plaintiffs, the court noted only that the *Aspen Skiing* doctrine described above provided a "narrow-eyed needle" exception to the general principle that a monopolist may refuse to deal with competitors. *Facebook, Inc.*, 560 F. Supp. 3d at 22. A plaintiff would still have to adequately plead

a violation of Sherman Act § 2. *Id*. at 23-24 (outlining the pleading requirements for a § 2 claim). Plaintiff has failed to do so here. *See supra*, *e.g.*, Sections III.A-B.

Second, even if Plaintiff were correct that the product market in which Meta operates today is different than the product market during the "violation period" he references, Opp. at 13, that is not a cure for the deficiencies in the SAC. As previously stated, Plaintiff has failed to adequately allege *any* product market for *any* time period. *See supra*, Section III.B.2. Plaintiff has not affirmatively pled the confines of his "social networking services market" (or "personal social networking services market") beyond Meta's presence in it. Nor has Plaintiff justified the exclusion of any alternative providers, including YouTube, which Plaintiff does not address at all, and TikTok, which Plaintiff admits was available during the supposed violation period.

IV. AMENDMENT WOULD BE FUTILE

Plaintiff's Opposition does not change the conclusion that leave to amend would be futile. Mot. 16. This is Plaintiff's fourth attempt to assert a cognizable claim against Meta, and he has again failed to do so. The deficiencies in Plaintiff's claims cannot be overcome with further amendment. *See* Mot. 16; *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) (affirming denial of leave to amend where second amended complaint failed to cure deficiencies).

V. CONCLUSION

For the above reasons, Meta respectfully requests the Court dismiss this action, in its entirety, with prejudice and without leave to amend.

Dated: January 29, 2026

Respectfully submitted,

/s/ Jacob M. Heath

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