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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

ROCKET RESUME, INC., Plaintiff, v. BOLD LIMITED, BOLD LLC, BOLD HOLDINGS LLC, DOUG JACKSON, JAMIE FREUNDLICH, and HEATHER WILLIAMS, Defendants.	Case No. 5:26-cv-02852-BLF **DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** **PUBLIC REDACTED VERSION** Date: November 19, 2026 Time: 9:00 AM Place: Courtroom 1 – 5th Floor Judge: Hon. Beth Labson Freeman

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NOTICE OF MOTION AND MOTION

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 19, 2026, at 9:00 AM, or as soon thereafter as this matter may be heard, in Courtroom 1 of this Court, located on the 5th Floor, 280 South 1st Street, San Jose, California, Defendants BOLD Limited, BOLD LLC, BOLD Holdings LLC (together, "BOLD"), Douglas Jackson, James Freundlich, and Heather Williams Avior (together, the "Individual Defendants") will move the Court for an order dismissing Plaintiff's Complaint, ECF No. 1, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Defendants respectfully request an order dismissing all causes of action. This motion is based upon this notice; the memorandum of points and authorities in support thereof; the Declaration of Evan R. Kreiner ("Kreiner Decl.") and exhibits attached thereto; any reply memorandum; the pleadings in this action; and such other matters Defendants may present at or before the hearing.

STATEMENT OF RELIEF REQUESTED

Defendants respectfully request that the Court dismiss Plaintiff's Complaint in its entirety for failure to state a claim upon which relief may be granted.

MEMORANDUM OF POINTS AND AUTHORITIES

This case is a deficient effort to twist lawful conduct into an antitrust violation. BOLD has built a successful business empowering jobseekers through an advanced suite of technology products. In an intensely competitive industry, BOLD has helped millions of jobseekers create resumes, thriving due to its innovation and a multi-brand strategy that expands its reach to serve jobseekers with diverse needs. That is, BOLD has succeeded by engaging in the type of behavior that the antitrust laws encourage because it benefits consumers. And given its success, BOLD has had to take the lawful step of enforcing IP rights against competitors attempting to ride its coattails.

Rocket Resume, Inc. ("RR") is one of BOLD's copycat competitors. In 2022, certain BOLD entities sued RR in a copyright infringement lawsuit that survived summary judgment and ended in a settlement requiring [redacted]. Now unable to win market share on its own merits, RR filed this case against BOLD and certain executives. RR's Complaint, rife with misleading rhetoric of "shams" and "market dominance," fails at every step.

In Counts I and II, RR posits that BOLD has monopolized or attempted to monopolize a "Market for Online Resume-Building Platforms" by supposedly being silent about operating multiple resume builders, bidding on multiple top Google ad slots, and protecting its IP in court. These allegations, however, cannot form the basis of monopolization or attempted monopolization claims because they do not describe any anticompetitive conduct or conduct that caused RR antitrust injury. "[S]elling similar products under different brand names is not itself improper," "the assertion that consumers are not wise enough to . . . scroll down farther than the first three [Google search] entries they see, is [] not plausible," *Novation Ventures, LLC v. J.G. Wentworth Co.*, 711 F. App'x 402, 404–05 & n.9 (9th Cir. 2017) ("*Novation IV*"), and the *Noerr-Pennington* doctrine immunizes parties like BOLD who seek to protect their IP. Moreover, RR does not plausibly allege that BOLD has monopoly power (or any probability of achieving it) because its gerrymandered "Market for Online Resume-Building Platforms" excludes obvious substitutes and competitors, and RR lacks facts to suggest BOLD can maintain a durable monopoly market share.

In Count III, RR theorizes that BOLD's brands are distinct entities that conspired with one another to raise bids on Google in violation of Section 1 of the Sherman Act. In addition to other defects, that hypothesis runs headlong into RR's own allegations that BOLD's brands share common ownership, and thus cannot conspire with one another under decades-old Supreme Court precedent.

And in Count IV, RR asserts claims under California's Unfair Competition Law ("UCL") that are premised on all the same conduct as its other claims. It thus falls with the rest.

RR advances these claims against the Individual Defendants, in addition to BOLD. But it does not assert any factual allegations against them, much less requisite facts showing they directed "inherently wrongful conduct," which on its own requires dismissal of the claims against them. The Court, however, need not get that far: It should dismiss the Complaint against all Defendants.

FACTUAL BACKGROUND

I. The Parties and Resume-Building Services

BOLD is a technology company that offers jobseekers a host of cutting-edge, career-focused services. Among other solutions, BOLD provides resume builders through a "portfolio of [] brands," Compl. ¶¶ 3–6, which "allow jobseekers to customize [] resumes through easy-to-use [] interfaces," *id.* ¶ 49. RR suggests that "reputable review sites" rank alleged BOLD brands as top resume builders, with ratings from "Good" (9.4) to "Outstanding" (9.9), based on a range of attributes (in contrast to RR's conclusory description of them as "sham entities" with "identical services"). *Id.* ¶¶ 7, 96.

Resume builders are just one of many "resume-creation tools" jobseekers use to get a resume in order. *Id.* ¶ 53. "Word processing software like Microsoft Word and Google Docs" may help jobseekers create a resume from "templates" or "from scratch," *id.* ¶ 54, and jobseekers also use "AI chatbots such as ChatGPT . . . to generate resumes," *id.* ¶ 55, "mobile applications . . . that offer some resume-related" services, *id.* ¶ 58, and free "profile extraction tools" on sites like LinkedIn, *id.* ¶ 63. A source RR references suggests jobseekers view these tools as alternatives to resume builders: Some note that "Google [D]ocs has resume templates that do [] just fine" and that they have "copied and pasted" resumes from other platforms into "Google [D]ocs" for free. Reddit, https://www.reddit.com/r/LifeProTips/comments/vrimuz/lpt_dont_use_my_perfect_resume/?rdt=62326 (last visited June 17, 2026) (cited at Compl. ¶ 181 n.17) ("Reddit Post"). Others explain that "LinkedIn . . . should be enough to help set up [a] CV" and "hits all the same high points as a resume builder." *Id.*

The resume-creation industry is vast and fragmented. As a "rival[]" to BOLD states, these products occupy "a crowded category with dozens or even hundreds of options (including from gigantic companies like Canva and Indeed)," *Many Brands, One Conglomerate*, Sheets Resume Builder (Oct. 10, 2025), https://sheetsresume.com/blog/resume-builders-owned-by-bold (cited at Compl. ¶ 100 n.9) ("Sheets Article"). According to the Complaint, at least "$750 million worth of commerce" flows through the industry "annually." Compl. ¶ 2.

RR's history demonstrates the industry's dynamic nature. RR was founded in March 2019 by a single software engineer and "grew" rapidly over the next several years—with revenue increasing from $5,000 in 2019 to $11.62 million in 2023. *Id.* ¶¶ 23–25, 27. RR claims that by 2023, it captured a 9% share of the online resume-building market it advances and had achieved "a valuation exceeding $100 million." *Id.* ¶¶ 28, 30. RR's meteoric rise illustrates what it alleges: There are "low natural barriers to entry [to] building an online resume-builder." *Id.* ¶ 81.

Resume-building services have adopted varied revenue models, "rang[ing] from subscription-based services to 'freemium'" services. *Id.* ¶ 51. Some BOLD brands, for example, allow jobseekers to "build" a resume "for free" and download that resume for a low fee, "ranging from" as little as "$1.85 to $2.95." *Id.* ¶ 97 (emphasis omitted). If a jobseeker likes the service they receive, they can continue using it via a monthly subscription. *Id.* RR has "elected to employ a similar pricing strategy," *id.* ¶ 97 n.8, which it claims allows it to offer "competitive prices," *id.* ¶ 4.

II. <u>Marketing and Distributing Resume-Building Services, and the Role of Google Search</u>

RR alleges Google search is the main distribution channel for resume builders. Compl. ¶ 73. Google divides search results into several "[s]ponsored" results, which are "paid ad[s] that appear at the top or bottom" of a page, and "[o]rganic" results, which are free "listings that appear because Google's ranking algorithms determine they are most relevant." *Id.* ¶¶ 9, 71. When a user enters a search, Google "conducts a real-time auction among all advertisers who [] bid on keywords related to that search." *Id.* ¶ 72. Google then determines ad positions based on, "among other factors," (i) a bid's monetary value, and (ii) "advertising quality and search context." *Id.* ¶ 124 n.16. "Google's auction system creates a descending price structure where higher advertising positions command higher costs per click, with prices declining substantially as position rank decreases." *Id.* ¶ 124.

BOLD advertises its brands on Google search and markets them broadly. RR alleges that multiple BOLD brands sometimes bid on, and ultimately occupy, the "three top" sponsored Google "positions simultaneously." *Id.* ¶ 128. When this occurs, RR suggests, BOLD bids on the top slot for a premium ad, the costs of which it "spread[s]" by occupying more slots—achieving (based on "illustrative assumptions") a "30% discount" on advertising costs and an "82% profit margin." *Id.* ¶¶ 13, 123, 129, 132. Alleged BOLD brands have, on occasion, published articles that compare their resume builders to competing offerings, including RR. *Id.* ¶ 103. And while BOLD's website highlights several of its brands, *id.* ¶ 5, and RR alleges BOLD has "revealed itself to be the real party of interest" in other brands through user agreements, *id.* ¶ 94, RR asserts in conclusory fashion that BOLD misled customers by supposedly holding out brands "as standalone," *id.* ¶ 5.

Like BOLD, RR advertises its brands on Google and has attained the top sponsored position for certain searches. *See id.* ¶ 176 (top results for "rocket resume" search). It has also appeared at "lower positions" for "sponsored result[s]," *id.* ¶ 143—where it can achieve at least "marginal profitability," *id.* ¶ 138—and of course appears in organic results, *id.* ¶ 73. RR has supposedly tried "[o]ther potential advertising channels, such as social media" and "Microsoft Bing" but prefers to advertise on Google as it is "the most effective way to acquire customers." *Id.* ¶¶ 9 n.2, 69–70.

Google has internal policies that "ensure a fair and competitive market for search results." *Id.* ¶ 110. Google actively monitors its policies via AI and human review and enforces them by suspending accounts and more. *Id.* ¶¶ 12, 115. RR speculates, with no support, that "Google appears to have enforced" its policies against BOLD, and that BOLD evaded those enforcement efforts by "using slight variations on its domain names," changing them from ".com" to ".ai." *Id.* ¶ 116.

III. <u>BOLD's Protection of Its Intellectual Property</u>

Several companies have sought to imitate BOLD, forcing it to protect its IP rights in court.

BOLD's Litigation Against Su Jia and Mint Media. Through its brand LiveCareer, in 2014, BOLD enforced its IP rights against Su Jia and Mint Media in a pair of copyright infringement actions, *LiveCareer Ltd. v. Resume Companion LLC*, No. 3:14-cv-03336 (N.D. Cal.), and *LiveCareer Ltd. v. Mint Media, Inc.*, No. 3:14-cv-3420 (N.D. Cal.). Compl. ¶¶ 148–49. In both cases, LiveCareer attached to its complaints copies of its registered copyrights and portions of the defendants' websites that violated them. *See* Kreiner Decl. Exs. C–D. Both companies agreed to settle, with Su Jia doing so only after losing a Rule 12 motion. Compl. ¶¶ 155–56.

BOLD's Litigation Against RR. On February 18, 2022, BOLD filed a complaint against RR in this Court, alleging copyright infringement, unfair competition, and breach of contract. *Id.* ¶ 163. BOLD alleged that RR infringed copyrights in its Text Tuner Content ("TTC") database, a collection of original job descriptions registered with the U.S. Copyright Office, and scraped content from BOLD's MyPerfectResume website in violation of its Terms of Use. *Id.* ¶ 164. BOLD noted in its complaint that RR "incorporated a substantial number" of "verbatim [job] descriptions from [the] TTC" database, including "nonsensical narratives for made-up job descriptions that [BOLD] intentionally included in" that database to prove copying. Kreiner Decl. Ex. E ¶¶ 26–27, 30.

The case proceeded past the pleadings and summary judgment. This Court denied a motion by RR to stay BOLD Limited's copyright claim and dismiss BOLD LLC's contract and UCL claims, Kreiner Decl. Ex. F at 5–9, and granted a motion by RR to compel BOLD LLC's contract and UCL claims to arbitration, while the copyright claim proceeded in court, *id.* at 11–17. The Court later "issued an order granting [RR] partial summary judgment." Compl. ¶ 172; *see also* Kreiner Decl. Ex. H. While the Court granted RR summary judgment as to BOLD's "compilation theory," it left intact BOLD's "text theory," which RR did "not challenge." Kreiner Decl. Ex. G at 4:5–9.

The parties then settled, and the Court dismissed the case by stipulation and order. Kreiner Decl. Ex. I at 1 (referencing "Binding Settlement Term Sheet"). Under the Binding Settlement Term Sheet, RR agreed [redacted]. Kreiner Decl. Ex. A ¶¶ 1–2. It also agreed [redacted]. *Id.* ¶ 7(a)–(b).

BOLD's Letter To RR. On March 25, 2026, BOLD sent a letter to RR noting (and showing) that RR "use[d] Monster Resume as [its] ad headline," confusing and "mislead[ing] consumers into believing [its] services are affiliated with or endorsed by BOLD's Monster brand." Kreiner Decl. Ex. B at 1 (cited at Compl. ¶¶ 21, 176). BOLD asked RR to take corrective action, including by adjusting its ad headline, *id.*, and changing certain keyword-bidding practices, *see* Compl. ¶¶ 21, 176. RR does not allege that it changed its keyword-bidding practices due to the letter.

IV. <u>The Instant Action</u>

RR filed this action on April 2, 2026. RR advances claims under Section 2 of the Sherman Act, averring that BOLD has monopolized and/or attempted to monopolize a so-called "Market for Online Resume-Building Platforms" by simply (and allegedly) being silent about its purported brands, publishing two articles about RR's resume builder, paying a premium for the top Google search ad, and protecting its IP rights. Compl. ¶¶ 83–177, 198, 203. RR also advances a claim under Section 1 of the Sherman Act, positing that BOLD's brands may be distinct entities that conspired with one another to raise bids on Google. *Id.* ¶¶ 208–12. And it brings a UCL claim based on all the same alleged conduct. *Id.* ¶¶ 219–20. RR asserts these claims against not only BOLD but also BOLD executives: Co-Founders and CEOs Douglas Jackson and James Freundlich and former CFO Heather Williams Avior. *Id.* ¶¶ 34–36. Aside from their positions, the only factual allegations RR offers about these individuals is that Messrs. Jackson and Freundlich have an ownership stake in BOLD, *id.* ¶ 91, and Ms. Williams Avior signed a "Trademark Assignment Cover Sheet," *id.* ¶ 88.

LEGAL STANDARD & REQUEST FOR JUDICIAL NOTICE

"[A] complaint must contain sufficient factual matter . . . to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). This standard "asks for more than a sheer possibility that a defendant [] acted unlawfully"; it requires facts to push a claim across "the line between possibility and plausibility." *Id.* (citation omitted). Enforcing it is critical "in antitrust cases, where . . . discovery frequently causes substantial expenditures and gives the plaintiff the opportunity to extort large settlements even where [it] does not have much of a case." *In re DRAM Indirect Purchaser Antitrust Litig.*, 28 F.4th 42, 47 (9th Cir. 2022) (citation omitted).

While "a motion to dismiss under Rule 12(b)(6) must [ordinarily] rely solely on the contents of the pleadings," courts may rely on select materials extrinsic to them via "the incorporation-by-reference doctrine" or by "judicial notice." *Browning v. Am. Honda Motor Co.*, 549 F. Supp. 3d 996, 1003 (N.D. Cal. 2021) (Freeman, J.). RR relies on and incorporates by reference into its Complaint several internet sources—namely, the Reddit Post (*see supra* p. 3, cited at Compl. ¶ 181 n.17) and Sheets Article (*see supra* p. 3, cited at Compl. ¶ 100 n.9)—as well as the March 25, 2026 letter BOLD sent to it (Kreiner Decl. Ex. B, cited at Compl. ¶ 176), all of which the Court should consider here. *See Browning*, 549 F. Supp. 3d at 1004 ("Courts [] routinely consider the full page of a website where, as here, a portion of the page is quoted or relied on in the complaint." (cleaned up)).

The Court should also take judicial notice of a discrete set of relevant materials. The Court "may" (and should) "notice" the various "court filings" from the prior litigations referenced herein (*see* Kreiner Decl. Exs. C–I). *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006). And it should notice the Binding Settlement Term Sheet RR reached with BOLD, *see* Kreiner Decl. Ex. A, as it is "integral to [RR's] claims and its authenticity" cannot be "disputed." *Lesnik v. Eisenmann SE*, 374 F. Supp. 3d 923, 936 (N.D. Cal. 2019) (citation omitted) (noticing "settlement agreement"). The document dooms a central aspect of RR's claim, *see infra* pp. 16–17, and RR is party to it, "rais[ing] the spectre that [it] failed to incorporate [the document] by reference in the complaint" to "avoid[] . . . dismissal." *Lesnik*, 374 F. Supp. 3d at 936 (citation omitted).

ARGUMENT

Each of RR's claims should be dismissed for multiple independent reasons.

I. The Monopolization and Attempt Claims (Counts I and II) Should Be Dismissed

RR's monopolization and attempted monopolization claims fail at every step. RR must plausibly allege, among other things: (1) that BOLD has (or has a dangerous probability of achieving) monopoly power in a relevant market; (2) that BOLD willfully acquired, maintained, or attempted to acquire that power through anticompetitive conduct; and (3) "causal antitrust injury." *Somers v. Apple, Inc.*, 729 F.3d 953, 963 (9th Cir. 2013) (monopolization); *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1433 (9th Cir. 1995) (attempted monopolization). RR does not satisfy any element.

A. RR Fails to Plausibly Allege Anticompetitive Conduct or Antitrust Injury

RR theorizes that BOLD engaged in an "anticompetitive course of conduct." Compl. ¶ 187. To advance such an "overall scheme," at least one "individual action" must "rise to anticompetitive conduct" and cause it antitrust injury. *Dreamstime.com, LLC v. Google LLC*, 54 F.4th 1130, 1142 (9th Cir. 2022). A plaintiff suffers antitrust injury only if an act (1) amounts to "unlawful conduct, (2) causing an injury to the plaintiff, (3) that flows from that which makes the conduct unlawful, and (4) [] is of the type the antitrust laws were intended to prevent." *Somers*, 729 F.3d at 963 (citation omitted). Since the antitrust laws are for "protection of competition, not competitors," *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962), conduct cannot cause antitrust injury unless "it harms consumer welfare." *Rebel Oil*, 51 F.3d at 1433. No conduct RR invokes can get it past the pleadings.

1. BOLD's Alleged Omissions and Statements Are Not Actionable

RR does not plausibly allege that BOLD engaged in anticompetitive conduct through its purported silence about owning diverse brands or through purported "fake articles" about RR. *See* Compl. ¶¶ 86–107. Nor does RR plausibly allege resulting antitrust injury from that conduct.

i. The Omissions and Statements Are Not Anticompetitive Conduct

BOLD's alleged failure to advertise a stake in certain brands and statements about RR, *see* Compl. ¶¶ 77, 103, are not anticompetitive conduct. At the start, a company's mere operation of multiple brands is lawful. As the Ninth Circuit has explained, "selling similar products under different brand names is not itself improper." *Novation IV*, 711 F. App'x at 404 n.9. And a company's alleged "regist[ration]" and "advertising" of "multiple marks" are "lawful acts, . . . constitut[ing] the sort of aggressive competition and promotion that anti-trust law seeks to protect." *Drop Dead Co. v. S.C. Johnson & Son, Inc.*, 326 F.2d 87, 96 (9th Cir. 1963).

RR does not meet the strict standard to "overcome [the] presumption" that purportedly "false advertising" is inactionable because it has a "de minimis" effect on competition. *Novation Ventures, LLC v. J.G. Wentworth Co.*, 156 F. Supp. 3d 1094, 1104 (C.D. Cal. 2015) (citation omitted) ("*Novation I*"). To overcome that presumption, RR must "demonstrate . . . representations [that] were [1] clearly false, [2] clearly material, [3] clearly likely to induce reasonable reliance, [4] made to buyers without knowledge . . . , [5] continued for prolonged periods, and [6] not readily susceptible of . . . offset by rivals." *Id.* (citation omitted). RR does not describe conduct that comes close to meeting these elements, much less under the applicable "heightened pleading obligations" of Rule 9(b). *Malheur Forest Fairness Coal. v. Iron Triangle, LLC*, 164 F.4th 710, 731 (9th Cir. 2026).

<u>First</u>, RR does not identify any statements BOLD made regarding its alleged brands, let alone any "clearly false" statements, the identity of who made them, or when they were made, as Rule 9(b) requires. BOLD's "alleged failure to disclose common ownership is not a false statement," as "the absence of any statement is neither false nor a representation." *Novation Ventures, LLC v. J.G. Wentworth Co.*, 2015 WL 12765467, at *6–7 (C.D. Cal. Sept. 21, 2015) (citation omitted) (dismissing monopolization and Lanham Act claims based on alleged failure to disclose). Even if RR had identified any statements, RR alleges BOLD <u>has</u> disclosed its interests by "reveal[ing] itself" in user agreements, Compl. ¶ 94, and on its website, which shows it owns multiple brands, *id.* ¶ 5.

The supposed "fake articles" are not actionable either, as RR never explains <u>how</u> they were false—offering no "nonconclusory detail on the nature of the alleged misrepresentations" other than that BOLD purportedly "made the[m]" and they were false, which does not meet Rule 9(b). *Malheur Forest*, 164 F.4th at 731 & n.13. For example, RR alleges that BOLD "misrepresent[s] that '[RR] isn't really free,'" but never explains what, if any, of RR's services are, in fact, free. Compl. ¶ 104.

As to the <u>second</u>, <u>third</u>, and <u>fourth</u> elements, RR fails to explain how BOLD's alleged silence and statements were "clearly material" to or likely to induce reasonable reliance by users, or that users lacked knowledge. RR offers conclusory assertions that BOLD has "deceived" customers "into thinking they are [] in a competitive market" with distinct resume builders, and that "BOLD's pricing model is just how the Market works," by being silent about its alleged brands. *Id.* ¶¶ 106–07. But

RR does not offer any plausible factual allegations describing how that supposed silence could be important to customers or how customers are likely to rely on it. For example, RR does not identify any "customer[s] who arguably relied upon [BOLD's] advertising" (or lack thereof). *Reed Constr. Data Inc. v. McGraw-Hill Cos.*, 638 F. App'x 43, 45–46 (2d Cir. 2016). Nor does RR plausibly explain how BOLD's purported silence could fool customers about industry pricing when it admits that independent companies like itself follow the same pricing model as BOLD. Compl. ¶ 97 n.8.

Other allegations by RR also fail to move the needle here. For example, RR also attempts to meet its materiality and reliance burden as to BOLD's alleged omissions by surmising that "BOLD has fooled even reputable review sites . . . into believing [] its brands are different." Compl. ¶ 96. But the screenshot in its Complaint gives each brand it describes different scores based on different features. *Id.* Separately, RR tries to meet its burden as to the articles BOLD purportedly published about RR by noting those articles were styled as "objective testimonials"; yet it concedes they were published on websites that offer resume builders, which a customer could readily discern. *Id.* ¶¶ 102–03 & nn. 12–13 (citing websites). Ultimately, RR's bare contentions, grounded in speculation, are not enough. *See Tate v. Pac. Gas & Elec. Co.*, 230 F. Supp. 2d 1072, 1080 (N.D. Cal. 2002).

And as to the sixth element, RR does not allege that BOLD "deprived it of the ability to neutralize" the alleged omissions and statements "or that it was otherwise unable to do so," nor could such an allegation be plausible. *Kinderstart.com LLC v. Google, Inc.*, 2007 WL 831806, at *8 (N.D. Cal. Mar. 16, 2007). For example, RR gives no reason why it could not "push[] back on" BOLD's alleged omissions and statements by publishing an article or ads that expose the alleged common ownership of BOLD's brands, boasting in its Google blurb that it (unlike other brands) is an independent resume builder, or publishing its own articles to inform consumers about its products. *Genus Lifesciences Inc. v. Lannett Co.*, 378 F. Supp. 3d 823, 842 (N.D. Cal. 2019). In fact, it alleges that one of its competitors, Sheets Resume Builder, did precisely that. Compl. ¶ 100.

ii. The Omissions and Statements Did Not Cause Antitrust Injury

RR fails to plausibly allege that it "suffered injury . . . flowing from a reduction in competition caused by [BOLD's] alleged use of deception and false . . . statements." *Fair Isaac Corp. v. Experian Info. Sols. Inc.*, 645 F. Supp. 2d 734, 753 (D. Minn. 2009) (emphasis omitted).

First, RR's theory of injury from BOLD's supposed silence about its multi-brand strategy states no plausible harm to consumers, nor injury to RR. RR sketches a contrived causal chain in which BOLD offers brands that "lure[]" consumers "in with the promise of building a 'free' resume," leaving them "later [to] find out" they must pay "$1.85 to $2.95" to download it or more for a subscription. Compl. ¶ 97. While they "may shop elsewhere," they will likely wind up at another BOLD website with a similar pricing model and will lose the will to shop elsewhere. *Id.* ¶ 99.

RR alleges no plausible harm to consumers because its own facts suggest that BOLD's fee structure yields prices that are "fully consistent with a free, competitive market." *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1202 (9th Cir. 2012). In fact, RR suggests that BOLD's prices *are* competitive: Rather than pointing to any company that offers resume builders for a price lower than BOLD (only "$1.85 to $2.95" to download, Compl. ¶ 97) or speculating what such a product would (or should) cost, RR admits that it "employ[s] a similar pricing strategy" as BOLD, *id.* ¶ 97 & n.8, while claiming to offer "competitive prices," *id.* ¶ 4. And to the extent RR tries to suggest that BOLD's conduct has required consumers to endure lower-quality resume builders, its allegations are "wholly conclusory." *Reilly v. Apple Inc.*, 578 F. Supp. 3d 1098, 1110 (N.D. Cal. 2022); *see also AlphaCard Sys. LLC v. Fery LLC*, 2024 WL 4957185, at *4 (D.N.J. Feb. 29, 2024) (rejecting "conclusory" injury theory in case alleging defendant "maint[ained] [] multiple brands under the same, [] deceptive, umbrella"). While RR declares that BOLD offers "low-quality" services and has ceased "innovating," Compl. ¶¶ 180, 183, it never explains how BOLD has done so, much less tie those purported shortcomings to a competitive level—and at the same time it contradicts any such inference by suggesting that "reputable review sites" rate BOLD's brands highly, *id.* ¶ 96.

Even were a harm to consumers plausible (and it is not), it would create opportunity for RR, not antitrust injury. If BOLD's silence about its alleged brands led to BOLD charging higher prices, RR only "stand[s] to benefit" because it, too, could charge higher prices. *Big Bear Lodging Ass'n v. Snow Summit, Inc.*, 182 F.3d 1096, 1102 (9th Cir. 1999) (emphasis added). By the same token, if customers were dissatisfied with those brands, that would present a competitive opening for RR to advertise itself as an independent resume builder with a different fee structure.

Second, RR's theory of injury from BOLD's supposed statements equally misses the mark.

Injury stemming from "[m]ere allegations of business disparagement [is ordinarily] not the type of injur[y] to competition that the antitrust laws were designed to prevent," *Re/Max Int'l v. Realty One, Inc.*, 900 F. Supp. 132, 159 (D. Ohio 1995), since it is "essentially . . . injury [only] to a competitor," *Xerox Corp. v. Media Scis. Int'l, Inc.*, 511 F. Supp. 2d 372, 382 (S.D.N.Y. 2007). And RR "makes no attempt to explain how" BOLD's alleged statements, "even if false, threatened to or w[ere] driving [it] out of business such that [they] affected competition generally, and did not just cause [it] economic injury." *Id.* Absent a harm to competition (or even to itself), RR cannot state a claim.

2. BOLD's Alleged Ad-Bidding Conduct Is Not Actionable

RR also fails to plausibly allege that BOLD engaged in a predatory bidding or exclusive dealing scheme—nor that such conduct caused it antitrust injury. The crux of RR's claim is that, for over a decade, BOLD tricked Google into not following its own advertising policies, enabling BOLD to "raise[RR's] costs above sustainable levels while keeping BOLD's costs below sustainable thresholds," Compl. ¶ 140, and to "seize[] control of" Google search, *id.* ¶ 146. When contrasted with its allegations that Google "takes its advertising policies seriously" and "employs . . . AI and human review to detect policy violations," *id.* ¶ 115, RR's theory that BOLD has been able to circumvent Google's policies by supposedly changing domain names from ".com" to ".ai," *id.* ¶ 116, presents "unwarranted deductions of fact [and] unreasonable inferences" that "[t]he [C]ourt need not . . . accept as true," *Feitelson v. Google Inc.*, 80 F. Supp. 3d 1019, 1025 (N.D. Cal. 2015) (Freeman, J.) (citation omitted). Even so, RR does not plausibly allege the elements of a predatory-bidding scheme, nor an exclusive dealing scheme.

i. The Ad-Bidding Conduct Is Not Predatory

RR tries, but fails, to analogize BOLD's purported Google ad-bidding strategy to predatory bidding. Predatory bidding is "rarely tried, and even more rarely successful," as it is "often the very essence of competition." *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549 U.S. 312, 323 (2007) (citation omitted). To proceed, RR must "plausibly allege that (1) [BOLD] bid for [Google ads] at a loss, and (2) [BOLD] would have a dangerous probability of recouping the losses incurred in bidding up [Google ad] prices through . . . monopsony power," *Malheur Forest*, 164 F.4th at 732 (citation omitted). RR cannot satisfy these elements.

First, rather than allege that BOLD bid so much for Google ads that its resume builders were priced "below-cost," *Weyerhaeuser*, 549 U.S. at 325, RR pleads the opposite. Even accepting RR's "illustrative" figures of BOLD's costs, in following its purported strategy to "capture all three top [Google ad] positions," BOLD would achieve a "30% discount" and "82% profit margin." Compl. ¶¶ 123, 128–29, 132. This concession that BOLD "profited from" its bidding activity through reduced costs is the antithesis of predatory bidding, which dooms this claim. *Anesthesia Assocs. of Ann Arbor, PLLC v. Blue Cross Blue Shield of Mich.*, 2021 WL 4169711, at *10 (E.D. Mich. Sept. 14, 2021). RR cannot overcome this conclusion by alleging that BOLD's "short-term revenue is zero," Compl. ¶ 120, as it offers allegations explaining precisely the amount of revenue BOLD supposedly expects from customers it acquires, *see id.* ¶ 132.

Second, and independently dispositive, the Complaint does not (and cannot) plausibly allege that BOLD would wind up with monopsony power over Google, such that a predatory bidding scheme would be profitable after "competing buyers [theoretically] exit the market for purchasing" Google ads. *Weyerhaeuser*, 549 U.S. at 320–21. RR has not offered any allegations supporting this theory. Indeed, RR does not even define the contours of a market for the purchase of Google ads, as it must, much less demonstrate that BOLD has monopsony power in such a market. Regardless, RR's "conclusory" allegations that BOLD would have an "abundant opportunity to recoup" its losses once its competitors are out of the market because it supposedly has a "dominant market share" are insufficient. *Malheur Forest*, 164 F.4th at 733.

ii. The Ad-Bidding Conduct Is Not De Facto Exclusive Dealing

RR's theory that BOLD has engaged in de facto exclusive dealing is a recycled version of its predatory bidding theory that fails on its own merit. A "prerequisite to any exclusive dealing claim is an agreement to deal exclusively." *Aerotec Int'l, Inc. v. Honeywell Int'l, Inc.*, 836 F.3d 1171, 1181 (9th Cir. 2016). RR must point to an agreement, which courts assess for features like "'requirement terms . . . [,] volume or market share targets, or long-term'" commitments. *Tundra, Inc. v. Faire Wholesale, Inc.*, 2025 WL 621991, at *4 (N.D. Cal. Feb. 25, 2025) (quoting *Aerotec*, 836 F.3d at 1180–81); *see also Feitelson*, 80 F. Supp. 3d 1019 at 1030 ("[W]here exclusive or semi-exclusive contracts are short in duration[or] easily terminable . . . , they are not exclusionary . . . ." (citation omitted)). Courts recognize "de facto exclusive dealing" in only "'limited situations,'" when an agreement has "coercive provisions" that in effect require exclusivity by conditioning sales on factors like "discounts or rebates." *Tundra*, 2025 WL 621991, at *3–4 (quoting *Aerotec*, 836 F.3d at 1182).

RR does not plausibly allege the existence of an express or de facto exclusive dealing arrangement between BOLD and Google. RR does not allege "the existence of" <u>any</u> agreement, *Power Analytics Corp. v. Operation Tech., Inc.*, 2017 WL 11486807, at *12, *22 (C.D. Cal. Dec. 7, 2017), much less terms "that would support a claim of exclusivity," which alone warrants dismissal, *Tundra*, 2025 WL 621991, at *4. In fact, RR admits that Google hosts "real-time auction[s] <u>among all advertisers</u>" that "occur . . . <u>every time a user performs a search</u>." Compl. ¶ 72 (emphases added). Nor does RR offer any of the "coercive circumstances necessary to support . . . a [de facto] theory," *Tundra*, 2025 WL 621991, at *4, as the notion that BOLD could <u>coerce Google</u> into exclusively showing its ads is facially implausible. RR thus cannot base any claim on exclusive dealing.

iii. The Ad-Bidding Conduct Did Not Cause Antitrust Injury

RR also fails to plausibly allege that BOLD's ad-bidding conduct caused antitrust injury.

<u>First</u>, RR's allegations of consumer harm are insufficient largely for the reasons explained above: While RR posits that BOLD's purported widespread presence on Google search "creates an illusion of competitive choice" that leaves consumers "stuck" with BOLD's pricing model and less innovative products, Compl. ¶¶ 179–83, it never once explains whether <u>market-wide</u> prices were above, or quality was below, <u>a competitive level</u>, *see supra* p. 11.

<u>Second</u>, RR cannot establish that <u>it</u> suffered a causal antitrust injury. RR avers that BOLD's alleged bidding strategy caused it to "los[e] out on material business and opportunities to scale." Compl. ¶ 191. But its Complaint shows it has not been foreclosed, as it can still "compete for Google ad[s]"—whether the top result, or the second or third result. *Novation IV*, 711 F. App'x at 404. At the start, the Complaint itself shows RR can (and has) appear(ed) as the top sponsored slot, and RR can still appear at the very top of a Google page as a top organic result <u>for free</u>. *See* Compl. ¶¶ 71, 124 n.16, 176. So, too, can RR compete for lower positions. While RR contends that it "cannot solve [its] problem[s] by competing for [such] positions," it admits it can achieve "marginal profitability" by doing so, Compl. ¶ 138, and its assumptions (even accepted as true) show it can

achieve far more. RR assumes it converts 15% of customers that click on its Google Search listings, that each customer has an $80 "lifetime value," that the second Google ad placement would cost $7 per click (yielding 25% of clicks), and that the third Google ad placement would cost $5 per click (yielding 15% of clicks). *Id.* ¶¶ 126–28, 137. Based on those assumptions, if 100 customers click on RR's ad at the second or third position, it would cost RR $700 or $500 to gain 15 customers who, at an $80 lifetime value, would generate $1,200 in revenue, yielding profit margins of 41.6% or 58.3% respectively. Meanwhile, RR admits that it can also appear in organic search results, *id.* ¶¶ 71, 124 n.16, mitigating any purported injury from BOLD's alleged bidding strategy in light of the Ninth Circuit's observation that it is "not plausible" to suggest "consumers are not wise enough to . . . scroll down farther than the first three entries they see." *Novation IV*, 711 F. App'x at 404–05.

RR also neglects the broader advertising market. While RR describes Google as the "most effective" ad channel, Compl. ¶ 70, the Ninth Circuit is reluctant to credit narrow ad markets based on "increased effectiveness," particularly when firms "can reach [] consumers through other formats." *Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1121–23 (9th Cir. 2018). "[T]he whole advertising market [is] open to" RR and "that market [is] not Google alone." *Novation IV*, 711 F. App'x at 404. RR thus has not plausibly alleged it was injured by being foreclosed from Google ads.

What is more, nothing is stopping RR from itself engaging in multi-brand ad-bidding—especially since there are "low natural barriers" to doing so. Compl. ¶ 81. RR paints this conduct as inconsistent with certain Google policies, *id.* ¶¶ 110–11, but its own allegations show that the same company may submit separate bids for differentiated products. *Id.* ¶¶ 110, 112 & n.14. Indeed, the only plausible inference from BOLD's allegations that Google "takes its advertising policies seriously," *id.* ¶ 115, yet has permitted BOLD to advertise multiple brands, is that BOLD's alleged ad strategy is consistent with Google policies and that RR, too, could reduce its distribution costs by following suit. RR's theory of antitrust injury makes no sense and these claims should be dismissed.

3. BOLD's Litigation Activity Is Not Actionable

RR also cannot plausibly allege that BOLD's litigation activity is anticompetitive or caused it antitrust injury, and such activity is time-barred anyway. Under the *Noerr-Pennington* doctrine, firms that petition the judicial branch are "immune from statutory liability for their petitioning conduct . . . to ensure [they] enjoy the [First Amendment] right of access to the courts." *Relevant Grp., LLC v. Nourmand*, 116 F.4th 917, 927–28 (9th Cir. 2024) (citations omitted). The doctrine extends to a broad range of activity, including conduct "preliminary to the formal filing of" a case, and is subject to a "narrow 'sham litigation' exception." *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 932 & n.6, 937 (9th Cir. 2006). Where, as here, a plaintiff does not allege a repetitive "series" of as many as "twenty-nine lawsuits" (rather than as few as "four") or fraud upon a court, a plaintiff must plausibly allege that the litigation activity was "objectively baseless" because "no reasonable litigant could realistically expect success on the merits." *Relevant Grp.*, 116 F.4th at 931–32 (citations omitted). "[L]itigation will not be considered a 'sham' so long as at least one claim in the lawsuit has . . . merit." *Dentsply Int'l v. New Tech. Co.*, 1996 WL 756766, at *2 (D. Del. Dec. 19, 1996).

None of the activity RR identifies—BOLD's lawsuit against it, Compl. ¶¶ 163–75, lawsuits against Su Jia and Mint Media, *id.* ¶¶ 148–56, and the purported "threat[]" of legal action, *id.* ¶ 176—comes close to meeting this threshold, much less the "heightened pleading standard" applicable to "allegations that the sham litigation exception applies." *Easton Diamond Sports, LLC v. Monsta Athletics, LLC*, 720 F. Supp. 3d 849, 862 (C.D. Cal. 2024) (citation omitted). And, as with its other claims, RR cannot show antitrust injury flowing from this conduct, which also renders it inactionable.

BOLD's Litigation Against RR. BOLD's lawsuit against RR was not a "sham" for multiple independent reasons. First, because the case "survive[d] summary judgment . . . as a matter of law . . . [it is] not objectively baseless." *NM LLC v. Keller*, 2024 WL 4336428, at *4–5 (W.D. Wash. Sept. 27, 2024); *see also Alifax Holding SPA v. Alcor Sci. Inc.*, 2019 WL 13091790, at *12–13 (D.R.I. Mar. 26, 2019). While RR misrepresents it "defeated BOLD . . . on all substantive claims," Compl. ¶ 19, it admits this "[C]ourt issued an order granting partial summary judgment," *id.* ¶ 172 (emphasis added)—as BOLD's "text theory" remained intact. Kreiner Decl. Ex. G at 4:5–9.

Second, BOLD obtained a settlement containing [redacted]. Kreiner Decl. Ex. A ¶¶ 1, 7. The mere fact of settlement is dispositive as a matter of law because it "suggests . . . the . . . suit was not objectively baseless." *Relevant Grp.*, 116 F.4th at 932 (citation omitted). That a settlement [redacted]. As part of the settlement here, RR agreed [redacted]. Kreiner Decl. Ex. A ¶ 7 (emphasis added). Those terms vitiate any inference that the litigation was objectively baseless. [redacted].

Third, RR does not even allege that BOLD's other claims for UCL violations and breach-of-contract—which this Court compelled to arbitration, *see* Kreiner Decl. Ex. F at 11–16—were baseless. Accordingly, RR cannot proceed on its theory that the litigation against it was a sham.

BOLD's Litigation Against Su Jia and Mint Media. RR gets no further with the Su Jia and Mint Media lawsuits. That those lawsuits also yielded settlements, Compl. ¶¶ 155–56, demonstrates their objective merit. *Theme Promotions, Inc. v. News Am. Mktg. FSI*, 546 F.3d 991, 1008 (9th Cir. 2008). And RR does not plead any facts indicating the lawsuits were objectively baseless, proceeding only on the conclusory allegation that they were "meritless" and "threadbare . . . , spanning just around one page," Compl. ¶¶ 147, 150, which is "not sufficient," *PTI, Inc. v. Philip Morris Inc.*, 100 F. Supp. 2d 1179, 1193 (C.D. Cal. 2000). Even a cursory review of the complaints shows those allegations are wrong: The complaints spanned several pages and attached exhibits with BOLD's copyright applications and an image of each defendant's infringing conduct. *See* Kreiner Decl. Exs. C–D. Meanwhile, RR offers no allegations explaining how the length of BOLD's complaints reflected the validity of its claims nor, more importantly, does RR address whether the companies in fact infringed on BOLD's IP.

Even if these litigations were actionable, RR does not—and cannot—aver that it suffered any antitrust injury from them. RR alleges only that the suits resulted in BOLD acquiring those companies. But a company's acquisitions typically do not cause antitrust injury to its competitors because "by reducing the number of competitors in the market . . . [,] it has similarly benefitted the other participants in that market by reducing competition for them." *Novation I*, 156 F. Supp. 3d at 1101; *see also Pool Water Prods. v. Olin Corp.*, 258 F.3d 1024, 1036 (9th Cir. 2001) ("Increased concentration . . . in and of itself . . . does not amount to antitrust injury.").

BOLD's Letter to RR. RR's allegations about BOLD's recent letter also do not plausibly allege either objective baselessness or antitrust injury. "The existence of probable cause to institute legal proceedings precludes a finding that an antitrust defendant has engaged in sham litigation." *Pro. Real Est. Invs., Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 62 (1993). RR does not offer any allegations explaining how BOLD lacked probable cause to assert an IP claim against it: It does not allege that BOLD lacks valid registrations for the brand names in question nor that BOLD lacked a valid basis to presume that RR infringed on them. While RR centers its allegations on keyword bidding, it ignores the focus of BOLD's letter: RR's "'use[]'" of "Monster Resume" as its "ad headline," shown in a screenshot. Kreiner Decl. Ex. B at 1, 3. There can be no doubt BOLD had probable cause to send its demand letter based on that image. And even if RR could get past this hurdle, it cannot (and does not even try to) allege antitrust injury, as BOLD only sent the letter in March 2026, and RR does not even contend it changed its keyword-bidding conduct due to the letter.

RR's Claim Is Time-Barred. RR's claim is time-barred to the extent it concerns BOLD's litigation activity anyway. Antitrust damages actions are subject to a four-year limitations period, 15 U.S.C. § 15b, and requests for equitable relief are subject to the doctrine of laches, which applies the "same [] rules that animate th[at] four-year" period, *Oliver v. SD-3C LLC*, 751 F.3d 1081, 1086 (9th Cir. 2014). RR relies on cases filed in <u>2014</u> and <u>February 2022</u>—all four years prior to its April 2026 complaint here. And RR cannot "show that an[y] exception" to the statute of limitations renders its claim timely. *Ryan v. Microsoft Corp.*, 147 F. Supp. 3d 868, 880 (N.D. Cal. 2015).

While RR may try to restart the clock with the continuing violation exception, it cannot do so. Under this exception, a limitations period can restart if a plaintiff alleges a defendant committed an "overt act" that: (1) is "new and independent" and (2) "inflict[s] new and accumulating injury on the plaintiff." *Pace Indus., Inc. v. Three Phx. Co.*, 813 F.2d 234, 238 (9th Cir. 1987). RR cannot restart the limitations period with litigation activity that occurred during the pendency of BOLD's prior case against it because "the operative overt act" in antitrust cases involving alleged sham litigation "is <u>the filing of</u> the sham lawsuit." *P & M Servs., Inc. v. Gubb*, 2008 WL 4185903, at *5 (E.D. Mich. Sept. 8, 2008) (emphasis added); *see also Pace Indus.*, 813 F.2d at 237 ("[T]he initiation of judicial proceedings is the last overt act for purposes of the statute of limitations."). Nor can RR invoke BOLD's recent demand letter, as RR does not contend that it incurred any injury stemming from that letter, much less a new and accumulating one. These allegations are thus time-barred.

B. RR Does Not Plausibly Allege Monopoly Power Within Any Relevant Market

The Court should also dismiss RR's Section 2 claims because RR fails to plausibly allege that BOLD has monopoly power (or a dangerous probability of achieving it) in any relevant market. A plaintiff can establish monopoly power (or a dangerous probability of achieving it) by "(1) defin[ing] the relevant market, (2) show[ing] that the defendant owns a dominant share of that market, and (3) show[ing] that there are significant barriers to entry and [] that existing competitors lack the capacity to increase their output in the short run." *Malheur Forest*, 164 F.4th at 724 (quoting *Rebel Oil*, 51 F.3d at 1434). RR advances an implausible relevant market that its own allegations contradict, serving to underscore the insufficiency of its broader allegations of monopoly power.

On Rule 12 motions, courts draw on "judicial experience and common sense" when assessing markets and reject those "contorted to meet [a plaintiff's] litigation needs," *Hicks*, 897 F.3d at 1121–23 (citation omitted), or based on "internally contradictory" allegations, *Apple Inc. v. Psystar Corp.*, 586 F. Supp. 2d 1190, 1200 (N.D. Cal. 2008). A plaintiff must "define its . . . market" via "the rule of reasonable interchangeability and cross-elasticity of demand," *Reilly*, 578 F. Supp. 3d at 1109 (citation omitted)—i.e., explaining how "customers would switch" between products "in response to a price increase," *Spindler v. Johnson & Johnson Corp.*, 2011 WL 12557884, at *2 (N.D. Cal. Aug. 1, 2011). Products need not be "perfect substitutes" to be in the same market, *Gamboa v. Apple Inc.*, 808 F. Supp. 3d 951, 966 (N.D. Cal. 2025), but rather only "roughly equivalent . . . [in] use," *Golden Gate Pharm. Servs., Inc. v. Pfizer, Inc.*, 2010 WL 1541257, at *2 (N.D. Cal. Apr. 16, 2010).

RR's proposed market limited to online resume builders is based on contradictory allegations that doom it outright and undermine RR's whole theory of monopoly power. An "article cited" in the Complaint shows RR vastly undercounts the number of players in, and has "arbitrarily exclud[ed]" major players from, its market, *BuzzBallz, LLC v. MPL Brands NV, Inc.*, 2025 WL 2052301, at *6 & n.9 (N.D. Cal. July 22, 2025): Although the article notes that resume builders occupy "a crowded category with dozens or even hundreds of options (including from gigantic companies like Canva and Indeed)," *see* Sheets Article *supra*, RR alleges "very few" industry players, *see* Compl. ¶ 42, and never mentions those "gigantic companies." RR's market-sizing also does not add up: On one hand, RR asserts that its purported market "affect[s] over $750 million worth of commerce annually," *id.* ¶ 2, and claims "hundreds of millions of dollars" in loss, *id.* ¶ 191. On the other, it avers that it captured "approximately 9%" of the market with $11.62 million in revenue in 2023, *id.* ¶¶ 27–28, which yields a total market size of approximately $129 million. These contradictory allegations render implausible RR's conclusory allegations about its alleged market.

That RR excludes from its market <u>numerous</u> alternative resume creation tools without once explaining whether a consumer would switch to them if prices for online resume builders went up further highlights its shortcomings. RR merely touts the benefits of resume builders relative to other resume creation tools, like word processors, profile extraction tools, AI chatbots, and mobile apps. *See* Compl. ¶¶ 54–64. But while resume builders have "desirable traits and features[,] [s]uch allegations fail as a matter of law to demonstrate the absence of economic substitutability." *Ojmar US, LLC v. Sec. People, Inc.*, 2017 WL 5495912, at *2 (N.D. Cal. Nov. 16, 2017). What matters is that "consumers" use resume builders "for the same purpose[]" as tools RR excludes from its alleged market. *Stubhub, Inc. v. Golden State Warriors, LLC*, 2015 WL 6755594, at *3 (N.D. Cal. Nov. 5, 2015) (citation omitted). To give two examples, though RR excludes "[w]ord processing software like Microsoft Word and Google Docs" and free LinkedIn "profile extraction tool[s]," it recognizes that jobseekers can use them to obtain resume "template[s]" or other items they can "repurpose as a resume." Compl. ¶¶ 54, 63. And RR's sources <u>show</u> that jobseekers view these other tools as alternatives and switch between them: Jobseekers note that "Google [D]ocs has resume templates that do [] just fine," that they "copied and pasted" resumes generated from other platforms into "Google [D]ocs" for free in lieu of using a resume builder, and that "LinkedIn . . . should be enough to help set up [a] CV" and "hits all the same high points as a resume builder." Reddit Post, *supra*.

The most RR tries to muster are allegations that it satisfies the "hypothetical monopolist test." Compl. ¶¶ 65–68. A hypothetical monopolist, RR avers, "could impose a small but significant non-transitory increase in price" ("SSNIP") "without losing enough customers [so] as to become unprofitable." *Id.* ¶¶ 66–67. Courts, however, do not accept "conclusory" allegations that, like RR's, "merely restate a . . . test for market definition without [] any factual basis." *Psystar*, 586 F. Supp. 2d at 1198. RR's lone allegation that BOLD "increased [] prices . . . without a meaningful reduction in market share" does not move the needle, as it does not explain whether BOLD's price purportedly "increased relative to other products" or whether "the price change . . . was profitable"—both "necessary condition[s] for a SSNIP test." *Gamboa*, 808 F. Supp. 3d at 967.

These shortcomings only underscore RR's inability to make out any of the other ingredients it needs to establish "durable and sustaining" monopoly power. *Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898, 1028 (N.D. Cal. 2021) ("[I]t is not market share that counts, but the ability to maintain market share." (citation omitted)). RR admits "[t]here are low natural barriers to entry [to] building an online resume-builder." Compl. ¶ 81. And it offers allegations that prove up that thesis: Taking its own account as true, RR in under five years rose from a startup with $5,000 in revenue to a company with a purported valuation exceeding $100 million. Compl. ¶¶ 27–28, 30. Such allegations of low "entry barriers and [a] capacity of existing competitors to expand output" preclude any plausible inference that BOLD possesses monopoly power. *Malheur Forest Fairness Coal. v. Iron Triangle, LLC*, 699 F. Supp. 3d 1086, 1108 (D. Or. 2023) (citation omitted).

It is not surprising, then, that RR offers only conclusory, inconsistent allegations of BOLD's market share. Without supporting facts, RR simply alleges that "BOLD controls ***over 80%*** of the . . . Market." Compl. ¶ 8. Such conclusory allegations do not support a plausible monopoly share. *See, e.g.*, *FTC v. Facebook, Inc.*, 560 F. Supp. 3d 1, 18 (D.D.C. 2021) (collecting cases where "conclusory" market shares supported dismissal); *Max. Availability Ltd. v. Vision Sols., Inc.*, 2010 WL 11508470, at *3 (C.D. Cal. Dec. 16, 2010). While RR suggests BOLD has over an 80 percent market share and RR has a 9 percent market share, it does not sketch out "which firms make up the remaining" 11 percent or provide any other information describing the market's makeup. *Facebook*, 560 F. Supp. 3d at 19. RR's Complaint undermines these shares further, as described above: RR alleges it possessed a 9 percent share of a $750 million industry, despite having only $11 million in sales, admits it is easy for new competitors to emerge, and offers sources that describe a "crowded category" of up to hundreds of competitors, including "gigantic companies." *See supra* pp. 19–20. RR thus fails to allege monopoly power (or a dangerous probability of achieving it) in any market.

II. The Conspiracy to Restrain Trade Claim (Count III) Should Be Dismissed

RR's Section 1 claim is also deficient. Here, RR must plausibly allege "(1) an agreement or conspiracy, (2) resulting in an unreasonable restraint of trade, and (3) causing antitrust injury." *Hahn v. Oregon Physicians' Serv.*, 868 F.2d 1022, 1026 (9th Cir. 1988). It fails to satisfy these elements.

A. <u>The *Copperweld* Doctrine Dooms RR's Section 1 Claim</u>

RR's Section 1 claim fails at the threshold, as it cannot allege concerted action. Entities that share "economic unity"—e.g., those sharing "substantial common ownership," *Freeman v. S.D. Ass'n of Realtors*, 322 F.3d 1133, 1148 (9th Cir. 2003)—are "incapable of conspiring" under Section 1, *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 777 (1984). The core theory of RR's complaint, however, is that BOLD entities obfuscate that they "operate under shared ownership," Compl. ¶ 2, precisely the type of single economic enterprise that is incapable of conspiring. *See Bell Atl. Bus. Sys. Servs. v. Hitachi Data Sys. Corp.*, 849 F. Supp. 702, 707 (N.D. Cal. 1994) ("[S]ister subsidiaries of [a parent] cannot conspire to restrain trade."); *Calabasas Luxury Motorcars, Inc. v. Gen. Motors LLC*, 2022 WL 17348983, at *2 (C.D. Cal. Aug. 25, 2022) (similar). And because "corporations cannot conspire with their own officers," the Individual Defendants also cannot form the requisite agreement with either BOLD or each other. *Copperweld*, 467 U.S. at 769 & n.15.

B. <u>RR's Section 1 Claim Fails On the Merits</u>

RR's Section 1 theories also fail for reasons independent of the *Copperweld* doctrine.

<u>First</u>, to the extent RR bases this claim on coordinated Google ad-bidding, Compl. ¶ 211, the rule of reason applies and requires its dismissal. The *per se* rule is reserved for practices that "lack any redeeming virtue" and "appropriate only after courts have had considerable experience with" the challenged conduct. *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 886 (2007) (cleaned up). Courts, by contrast, analyze "novel . . . business practices in [] technology market[s]" under the rule of reason, *Epic Games, Inc. v. Apple Inc.*, 493 F. Supp. 3d 817, 833 (N.D. Cal. 2020), which is "the presumptive or default standard," *Cal. ex rel. Harris v. Safeway, Inc.*, 651 F.3d 1118, 1133 (9th Cir. 2011). Courts have virtually no experience with the effects of the purported conspiracy alleged here—i.e., what impact coordinated Google ad-bidding might have on the purchase price or availability of Google ads or on goods and services in any other market. Indeed, the experience they have suggests such conduct is not unlawful. *See, e.g., Novation IV*, 711 F. App'x at 404. And once the rule of reason applies, RR's claim fails because, as explained above, RR fails

to plausibly allege a relevant market in which BOLD has market power, *see supra* pp. 19–21, or that BOLD's ad-bidding conduct caused anticompetitive effects within that market, *see supra* pp. 14–15. *See Tanaka v. Univ. of S. Cal.*, 252 F.3d 1059, 1063 (9th Cir. 2001) (plaintiffs must plausibly allege conduct "produces significant anticompetitive effects within a relevant market" (citation omitted)).

Second, to the extent RR bases this claim on a "kind of price-fixing," Compl. ¶ 212, it has not alleged an agreement given the absence of facts suggesting an agreement. Specifically, RR does not allege that any of BOLD's alleged brands changed pricing structures in a similar manner at a similar time, and acknowledges that it follows the same model (even though it presumably is not conspiring on price), *id.* ¶ 97 n.8. *See In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186, 1193–94 (9th Cir. 2015) (requiring plaintiff to allege "parallel conduct" and "plus factors").

Third, RR's failure to plead antitrust injury flowing from BOLD's ad-bidding conduct, *see supra* pp. 14–15, also dooms its Section 1 claim, whether the Court evaluates it under the rule of reason or a *per se* standard. *See Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 344 (1990).

III. The UCL Claim (Count IV) Should Be Dismissed

RR's UCL claim fares no better than its others. "[T]he UCL creates three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent," *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012) (citation omitted)—and "provides only for equitable remedies," *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 839 n.2 (9th Cir. 2020) (citation omitted). RR does not allege a plausible UCL claim under any prong, fails to explain how it can be entitled to equitable relief, and lacks standing under the UCL in any event.

Unlawful Acts Prong. RR cannot "establish[] a violation of the UCL under the 'unlawful' prong" because it "fail[s] to properly allege an antitrust violation" under its predicate, the Sherman Act. *Synopsys, Inc. v. ATopTech, Inc.*, 2015 WL 4719048, at *9 (N.D. Cal. Aug. 7, 2015).

Unfair Acts Prong. RR's "unfair" acts claim fails for two independent reasons.

First, courts consistently dismiss "unfair" acts claims where, as here, *see* Compl. ¶¶ 219–20, they overlap "completely with" a deficient "claim under the [unlawful acts] prong." *Parducci v. Overland Sols., Inc.*, 399 F. Supp. 3d 969, 982 (N.D. Cal. 2019); *see also, e.g.*, *Coffee v. Google, LLC*, 2022 WL 94986, at *13 (N.D. Cal. Jan. 10, 2022) (Freeman, J.).

Second, RR does not meet the standard for pleading an "unfair" act. Competitors like RR that bring a UCL claim under the "unfair" acts prong must plausibly allege "conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws." *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1136 (9th Cir. 2014) (citation omitted). To do so, RR must point to an "'unusual' aspect" of the "conduct" about which it complains "that would make [it] something that violates the 'policy and spirit' of the antitrust laws without violating the actual laws themselves." *Synopsys*, 2015 WL 4719048, at *10. Said otherwise, RR cannot maintain a claim under the "unfair" prong of the UCL if its theory is one for which "[t]he antitrust laws are equipped to deal." *Facebook, Inc. v. BrandTotal Ltd.*, 2021 WL 2354751, at *15 (N.D. Cal. June 9, 2021). And the antitrust laws plainly cover RR's predatory bidding, exclusive dealing, and sham litigation theories.

Fraudulent Acts Prong. RR does not advance a "fraudulent acts" UCL claim. *See* Compl. ¶¶ 219–20. To the extent RR hints at such a claim, *see* Compl. ¶ 222, it does not plausibly allege any fraudulent conduct—much less with the particularity that Rule 9(b) requires. *See Parducci*, 399 F. Supp. 3d at 982; *Grant v. Pensco Tr. Co.*, 2014 WL 1471054, at *6 (N.D. Cal. Apr. 15, 2014).

Adequate Remedies Available at Law. RR's UCL claim independently fails because RR does not (and cannot) allege that it "lacks an adequate remedy at law" to recover for any alleged harm. *Sonner*, 971 F.3d at 844. Courts routinely dismiss UCL claims where, as here, a plaintiff not only "fails to plead an inadequate remedy at law," but "in fact, does the opposite by seeking both monetary damages and restitution for the same alleged conduct without alleging how the monetary damages would not fully compensate [its] loss." *Barrett v. Optimum Nutrition*, 2022 WL 2035959, at *5 (C.D. Cal. Jan. 12, 2022) (citing cases). This alone requires dismissal.

Standing. RR's UCL claim also independently fails because RR does not plausibly allege UCL standing. A plaintiff "has standing to assert a UCL claim only if he or she (1) has suffered injury in fact, and (2) has lost money or property as a result of the unfair competition." *Lorenzo v. Qualcomm Inc.*, 603 F. Supp. 2d 1291, 1303 (S.D. Cal. 2009) (citation omitted). This "test imposes a causation requirement," *id.* (citation omitted), and in cases premised upon purported antitrust violations, requires the plaintiff to "allege[] an antitrust injury," *UCAR Tech. (USA) Inc. v. Yan Li*, 2018 WL 2555429, at *7 (N.D. Cal. June 4, 2018). The same causation void that defeats RR's theory of antitrust injury thus requires dismissal of its UCL claim. *See id.* (lack of antitrust injury "alone" rendered "'unfair' competition claim [] subject to dismissal").

IV. <u>All Claims Against the Individual Defendants Should Be Dismissed</u>

Even if this case can get past the pleadings as to BOLD, the Court should dismiss the Complaint as against the Individual Defendants for two independent reasons.

<u>First</u>, RR does not offer factual allegations about the Individual Defendants that "provide [them] sufficient notice . . . as to the nature of the claims . . . against them." *Richards v. Essick*, 2022 WL 4349834, at *7 (N.D. Cal. Sept. 19, 2022) (citation omitted). RR simply "lumps" the Individual Defendants together with BOLD throughout its Complaint, or ignores them entirely, which "fails to satisfy [even basic] notice [pleading] requirement[s]." *Karkanen v. California*, 2018 WL 3820916, at *7 (N.D. Cal. Aug. 10, 2018) (citation omitted). What few factual allegations RR advances about the Individual Defendants do not spell out any claim against them: RR alleges only that they are or were BOLD executives and have residences in the United States, Compl. ¶¶ 34–36, that Messrs. Jackson and Freundlich have an ownership stake in BOLD, *id.* ¶ 91, and that Ms. Williams Avior signed a "Trademark Assignment Cover Sheet," *id.* ¶ 88. It otherwise offers only conclusory allegations about the Court's jurisdiction over them, *id.* ¶¶ 39, that they purportedly "personally directed" the conduct at issue, *id.* ¶¶ 200, 206, 216, and that Ms. Williams Avior purportedly "dr[ove]" BOLD's litigation against it, *id.* ¶ 167. RR must do more.

<u>Second</u>, to pursue antitrust claims against the Individual Defendants, RR must plausibly allege they knowingly approved or "actively participated in inherently wrongful conduct"—i.e., "*per se* unlawful" conduct. *Arcell v. Google LLC*, 2025 WL 210877, at *4 (N.D. Cal. Jan. 16, 2025) (citation omitted); *see also, e.g.*, *Murphy Tugboat Co. v. Shipowners & Merchs. Towboat Co.*, 467 F. Supp. 841, 853 (N.D. Cal. 1979). RR, however, offers no non-conclusory factual allegations indicating that the Individual Defendants knowingly approved or participated in essentially <u>any</u> alleged conduct, *see supra* p. 25, much less inherently wrongful, *per se* unlawful conduct. The claims against the Individual Defendants must be dismissed for this reason alone.

<u>CONCLUSION</u>

For these reasons, the Court should dismiss RR's Complaint.

DATED: June 18, 2026

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