

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

MiCamp Solutions, LLC v. Visa Inc.

No. 23-cv-06351-HSG (N.D. Cal. Mar. 24, 2025) · No. 23-cv-06351-HSG · Decided March 24, 2025

OPINION

MiCamp Solutions, LLC v. Visa Inc.

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 MICAMP SOLUTIONS, LLC, Case No. 23-cv-06351-HSG 8 Plaintiff, ORDER GRANTING
DEFENDANT'S

MOTION TO DISMISS, DENYING

9 v. PLAINTIFF'S EX PARTE MOTION

FOR A TEMPORARY RESTRAINING

10 VISA INC., ORDER, AND DENYING PLAINTIFF'S

MOTION TO DEFER OR DENY THE

11 Defendant. MOTION TO DISMISS 12 Re: Dkt. Nos. 46, 52, 67 13 14 Pending before the
Court are several motions, including: 15 • Defendant Visa Inc. (“Visa”)’s motion to dismiss
Plaintiff MiCamp Solutions, LLC 16 (“Plaintiff” or “MiCamp”)’s First Amended Class Action
Complaint, Dkt. No. 46 (“Mot.”), Dkt. No. 47 (“Opp”), Dkt. No. 55 (“Reply”) 17 • MiCamp’s
motion to deny or defer consideration of Visa’s motion to dismiss, Dkt.

18 No. 52

19 • MiCamp’s ex parte motion for a temporary restraining order, Dkt. No. 67 (“Ex 20 Parte
Mot.”), Dkt. No. 69 (“Ex Parte Opp.”) 21 The Court finds these matters appropriate for disposition
without oral argument and the 22 matters are deemed submitted. See Civil L.R. 7-1(b). For the
reasons discussed below, the Court 23 GRANTS Visa’s motion to dismiss, Dkt. No. 46, DENIES
MiCamp’s motion to deny or defer 24 consideration, Dkt. No. 52, and DENIES MiCamp’s ex
parte motion for a temporary restraining 25 order, Dkt. No. 67.1 26 // 27

1 I. BACKGROUND

2 MiCamp is a company “in the business of promoting electronic credit and debit card 3
processing services for merchants.” Dkt. No. 24 at 5. In March 2024, MiCamp filed the operative
4 first amended class action complaint. Dkt. No. 24 (“Compl.”). Although the complaint is 5
muddled, MiCamp appears to allege that Visa has engaged in widespread anticompetitive conduct,
6 yielding higher prices for consumers, suppressing competition, and harming various

stakeholders 7 in the credit card transaction ecosystem. MiCamp further alleges that Visa “intentionally leaked 8 certain PII [personally identifiable information] or negligently handled certain PII.” Compl. at 45. 9 MiCamp asserts five causes of action under federal law on behalf of itself and the proposed 10 nationwide class for alleged violations of Section 2 of the Sherman Act and 42 U.S.C. § 1983. 11 MiCamp also brings three causes of action under state law on behalf of itself and a proposed 12 nationwide class or subclass, alleging that Visa violated dozens of state antitrust and unfair 13 competition laws, was negligent, and breached various contracts. Visa moves to dismiss 14 MiCamp’s complaint under Federal Rule of Civil Procedure 12(b)(6). MiCamp, in turn, asks the 15 Court to deny Visa’s motion to dismiss or otherwise defer consideration of it to permit MiCamp 16 “adequate opportunity to conduct discovery.” Dkt. No. 52 at 1. 17 In March 2025, MiCamp filed an ex parte motion for a temporary restraining order, Dkt.

18 No. 67, asserting that Visa’s “predatory practices” and “anti-competitive behaviors” are 19 “damaging the Putative Class’s business reputations, goodwill, and recruitment efforts” and 20 causing “economic pressure, damages to [the proposed class’s] business reputation, and lost 21 customers.” Ex Parte Mot. at 5. The Court ordered Visa to respond. In opposition, Visa argues 22 that MiCamp cannot establish irreparable harm, cannot show a likelihood of success on the merits, 23 and that public interest and the balance of equities weigh against granting injunctive relief. See Ex 24 Parte Opp. at 2. For the reasons set forth below, the Court grants Visa’s motion to dismiss, denies 25 MiCamp’s motion for denial or delay, and denies MiCamp’s motion for a temporary restraining 26 2 MiCamp defines the relevant class as “all similarly situated United States ISOs [Independent 27 Sales Organizations] that entered into Marketing Agreements between 2004 and the present.” 1 order.

2 II. MOTION TO DISMISS

3 A. Legal Standard 4 Federal Rule of Civil Procedure 8(a) requires that a complaint contain “a short and plain 5 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A 6 defendant may move to dismiss a complaint for failing to state a claim upon which relief can be 7 granted under Rule 12(b)(6). “Dismissal under Rule 12(b)(6) is appropriate only where the 8 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” 9 *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule 10 12(b)(6) motion, a plaintiff need only plead “enough facts to state a claim to relief that is plausible 11 on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible 12 when a plaintiff pleads “factual content that allows the court to draw the reasonable inference that 13 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 14 In reviewing the plausibility of a complaint, courts “accept factual allegations in the complaint as 15 true and construe the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. 16 St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Nevertheless, courts do not 17 “accept as true allegations that are

merely conclusory, unwarranted deductions of fact, or 18 unreasonable inferences.” In *re* Gilead Scis. Secs. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) 19 (quoting *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)). 20 B. Rule 11 Duty 21 MiCamp’s complaint and opposition briefing contain several inappropriately flippant (or 22 even obviously baseless) statements. See Compl. at 16 (“They [Visa executives] also sat together 23 (likely in some sort of dungeon or lair) . . . ”); Opp. at 17 (“[They] report alleged infractions to the 24 Visa overlords . . . ”). MiCamp’s briefing and its motions also contain elementary mistakes. 25 MiCamp’s motion for a temporary restraining order, for example, alleges that “Defendants are 26 engaging in the unlawful restraint of trade in interstate commerce in violation of Section 1 of the 27 Sherman Act,” yet MiCamp’s complaint only asserts claims under Section 2 of the Sherman Act. 1 law claims,” yet MiCamp does not identify which state’s law governs the claims. Compl. at 68– 2 69. Taken together, MiCamp’s representations to the Court and the quality of its briefing fall well 3 short of the Court’s expectations for counsel. Federal Rule of Civil Procedure 11 “imposes a duty 4 on attorneys to certify by their signature that (1) they have read the pleadings or motions they file 5 and (2) the pleading or motion is ‘well-grounded in fact,’ has a colorable basis in law, and is not 6 filed for an improper purpose.” *Smith v. Ricks*, 31 F.3d 1478, 1488 (9th Cir. 1994). Attorneys’ 7 obligations under Rule 11 are clear, and the Court expects MiCamp’s attorneys to satisfy these 8 obligations in all future filings. 9 C. Discussion 10 i. Constitutional Challenges (Fifth and Sixth Causes of Action) 11 MiCamp alleges that Visa’s surcharge rules impermissibly restrict speech in violation of 12 the First Amendment and 42 U.S.C. § 1983. Compl. at 63. The Court dismisses these claims 13 without leave to amend because section 1983 only applies to state actors, and Visa plainly is not a 14 state actor under these circumstances. See *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 15 826, 835 (9th Cir. 1999). 16 “The ultimate issue in determining whether a person is subject to suit under § 1983 is the 17 same question posed in cases arising under the Fourteenth Amendment: is the alleged 18 infringement of federal rights fairly attributable to the [government]?” *Rendell-Baker v. Kohn*, 19 457 U.S. 830, 838 (1982). In assessing this question, the Supreme Court instructs that “the party 20 charged with the deprivation [of a federal right] must be a person who may fairly be said to be a 21 state actor. This may be because he is a state official, because he has acted together with or has 22 obtained significant aid from state officials, or because his conduct is otherwise chargeable to the 23 State.” *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). “The Court adopted that test 24 because ‘§ 1983 excludes from its reach merely private conduct, no matter how discriminatory or 25 wrong.’” *Sutton*, 192 F.3d at 835 (quoting *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 26 50 (1999)). The Ninth Circuit employs four tests to determine whether a private party can be 27 properly characterized as a state actor for purposes of section 1983: (1) public function, (2) joint 1 F.3d at 835–36. MiCamp concedes that Visa is a private entity but argues that it functions as a 2 state actor under each of these tests. Opp. at 15–22. 3 In general, it is “[o]nly in rare circumstances . . . [that] a private party [can] be viewed as a 4 ‘state actor’ for section 1983

purposes.” Sutton, 192 F.3d at 835 (quoting *Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir. 1992)). This is not one of those circumstances. MiCamp first argues 6 that Visa “performs a traditional public function” because “Visa has enacted a private set of laws 7 similar to that of State laws” and because Visa allegedly “has its own quasi-administrative court 8 system” that involves private actors who operate like traditional judges and police officers. Opp. 9 at 17–19. The public function test is only satisfied upon showing that the private actor performs a 10 public function that is “traditionally the exclusive prerogative of the state.” *Parks School of Bus., Inc. v. Symington*, 51 F.3d 1480, 1486 (9th Cir. 1995). Here, MiCamp does not plausibly allege 12 that Visa’s quasi-administrative enforcement system functions in a manner that is “traditionally 13 and exclusively governmental.” *Kirtley v. Rainey*, 326 F.3d 1088, 1093 (9th Cir. 2003) (internal 14 citation omitted). Specifically, MiCamp does not allege facts indicating that Visa’s contractual 15 relationships and associated enforcement mechanisms are uniquely governmental as opposed to, 16 say, typical of private commercial activity.³ See *In re Late Fee & Over-Limit Fee Litig.*, 528 F. 17 Supp. 2d 953, 960 (N.D. Cal. 2007), *aff’d*, 741 F.3d 1022 (9th Cir. 2014) (“The mere fact that 18 federal banking statutes allow the defendant banks and the plaintiffs to enter into private contracts 19 allowing for such fees does not transform the charging of those fees into state action.”). 20 Moreover, MiCamp offers only conclusory assertions regarding Visa’s alleged internal “police 21 force” and its “private laws,” which provides no basis for determining how closely these specific, 22 challenged components resemble traditional state functions.⁴ Since MiCamp has not pleaded facts 23 24 3 MiCamp’s complaint states that other companies, including Mastercard and American Express, “unilaterally define the business rules” for the broader credit card transaction ecosystem, including 25 “enforce[ing] the[] rules.” Compl. at 21. This allegation suggests that other companies routinely undertake comparable enforcement actions such that Visa’s alleged activities are not uniquely or 26 exclusively governmental. 4 Several circuits addressing corporate or private security forces have held that “the mere fact that 27 the performance of private security functions may entail the investigation of a crime does not 1 showing that Visa is a state actor under the public function test, the Court dismisses MiCamp’s 2 First Amendment claims under this theory of liability. 3 MiCamp next argues that Visa is a state actor under the joint action, governmental 4 coercion, and state nexus tests. Opp. at 19–22.5 Each of these arguments relies on the premise 5 that Visa’s corporate lobbying efforts establish some sort of joint action or nexus between Visa 6 and the state. The Ninth Circuit has squarely rejected that idea, holding that “lobbying [is] an 7 exercise of [an organization’s] lawful First Amendment right to petition the government, and that 8 is a countervailing reason against attributing [the organization’s] activity to the State.” *Single 9 Moms, Inc. v. Montana Power Co.*, 331 F.3d 743, 748 (9th Cir. 2003). Since “lobbying activities 10 [are] the typical actions of a private individual or corporation that seeks to tell lawmakers what it 11 wants or needs from government; such lobbying activities, whether an aid or a hindrance to good 12 governance, are not ‘state action’ implicating individual constitutional rights.” *Id.* at 749. 13 Accordingly, MiCamp has not

plausibly alleged that Visa is a state actor under any applicable test. 14 To sustain an action under section 1983, a plaintiff must show that the conduct complained 15 of was committed by an entity acting under color of state law. See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). MiCamp has not plausibly alleged that Visa is a state 17 actor, and it is clear that MiCamp will be unable to do so. See *Conley v. Gibson*, 355 U.S. 41, 45 18 (1957). Although “there exists a presumption under Rule 15(a) in favor of granting leave to 19 amend,” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (per 20 curiam), “[d]ismissal can be based on the lack of a cognizable legal theory or the absence of 21 sufficient facts alleged under a cognizable legal theory.” *Balistreri*, 901 F.2d at 699. Here, since 22 MiCamp’s state actor theories fail as a matter of law, the Court dismisses MiCamp’s First 23 Amendment claims without leave to amend. 24 ii. State Law Antitrust Claims (Fourth Cause of Action) 25 MiCamp alleges that Visa “entered into agreements in restraint of trade and/or engaged in 26 27 5 Although MiCamp discusses the legal elements of the governmental compulsion/coercion test, 1 anticompetitive practices” in violation of dozens of state antitrust laws. Compl. at 60. MiCamp’s 2 complaint sets out a bullet point list of these state antitrust laws. See *id.* at 61–62. The Rule 8 3 pleading standard requires more than “a formulaic recitation of the elements of a cause of action.” 4 *Twombly*, 550 U.S. at 555. Here, MiCamp has not even provided such a recitation, let alone pled 5 factual content that would allow the Court to plausibly conclude that MiCamp is entitled to relief 6 under the enumerated state statutes. “Merely listing the name and code section of other states’ . . . 7 statutes does not suffice to state a claim.” *Fukaya v. Daiso California LLC*, No. 23-CV-00099- 8 JSC, 2023 WL 3436092, at *3 (N.D. Cal. May 11, 2023) (internal citation omitted). Since the 9 complaint does not plausibly allege that Visa violated the 49 statutes cited, the Court dismisses 10 MiCamp’s state antitrust claims with leave to amend. In any amended pleading, MiCamp must 11 plead facts in support of each element of the state statutes that Visa allegedly violated. 12 iii. Negligence & Breach of Contract Claims (Seventh and Eighth Causes of Action) 13 MiCamp asserts two “state law claims,” alleging that Visa (1) was negligent and (2) 14 breached “registration agreement” contracts as well as the covenant of good faith and fair dealing. 15 Compl. at 67–72. These claims stem from Visa’s purported mishandling of PII and other sensitive 16 information, which allegedly exposed subclass members’ PII and led to “credit fraud, bank fraud, 17 and other varieties of identity fraud.” *Id.* at 69. These claims suffer from several deficiencies. 18 First, MiCamp simply states that these are “state law claims” but does not identify any statutory 19 basis for these claims. As a result, Visa lacks “fair notice of what the plaintiff’s claim is and the 20 grounds upon which it rests.” *Conley*, 355 U.S. at 47. Visa raised this shortcoming in its motion 21 to dismiss, but MiCamp declined to address it in its opposition brief. See *True Gentlemen’s Jerky, 22 Inc. v. 1K1V TGJ Holdings, LLC*, No. 21-CV-04073 SBA, 2022 WL 3370792, at *8 (N.D. Cal. 23 Aug. 16, 2022) (“[Plaintiff] does not respond to Defendants’ argument, thereby conceding the 24 merits of the motion to dismiss this claim.”); *Ramirez v. Ghilotti Bros. Inc.*, 941 F. Supp. 2d 1197, 25 1210 n.7 (N.D. Cal. 2013) (finding that plaintiff

conceded issues when he failed to respond to 26 27 1 them in his opposition brief). Second, MiCamp asserts that Visa breached “registration 2 agreement” contracts, but MiCamp does not specify the terms of these contracts, what specific 3 contractual provisions Visa violated, or the specific aspects of Visa’s conduct that breached the 4 contracts. MiCamp’s failure to substantiate its breach of contract claim with factual allegations is 5 fatal. Since MiCamp has not met the Rule 8 pleading requirements, the Court dismisses 6 MiCamp’s negligence and breach of contract claims with leave to amend. Any amended pleading 7 must (1) identify the statutory basis for MiCamp’s “state law claims,” and (2) plead sufficient 8 factual allegations to raise a plausible inference that Visa committed the alleged misconduct.^{7 9} iv. Sherman Act Claims (First, Second, and Third Causes of Action) 10 MiCamp alleges that Visa committed various “anticompetitive acts” and unlawfully 11 acquired monopoly power in violation of section 2 of the Sherman Act. Compl. at 57. MiCamp 12 specifically alleges that Visa unlawfully attempted, conspired, and succeeded in acquiring 13 monopoly power in “the market for General Purpose Debit Card Network Services.” Id. at 57–60. 14 While section 1 of the Sherman Act targets concerted anticompetitive conduct, section 2 targets 15 independent anticompetitive conduct. Fed. Trade Comm’n v. Qualcomm Inc., 969 F.3d 974, 989– 16 90 (9th Cir. 2020). The statute makes it illegal to “monopolize . . . any part of the trade or 17 commerce among the several States.” 15 U.S.C. § 2. Each of MiCamp’s section 2 claims have 18 different elements. To establish liability under section 2 for unlawful monopolization, a plaintiff 19 must show: (1) the possession of monopoly power in the relevant market; (2) the willful 20 acquisition or maintenance of that power; and (3) causal antitrust injury. Id. at 990. An attempted 21 monopolization claim under section two has three elements: “(1) specific intent to control price or 22 eliminate competition; (2) anticompetitive conduct directed at accomplishing the unlawful 23 objective; (3) and a dangerous probability of success.” *Thurman Indus., Inc. v. Pay ‘N Pak Stores, 24 Inc.*, 875 F.2d 1369, 1378 (9th Cir. 1989). And finally, “[t]o establish a conspiracy to monopolize 25 26 7 MiCamp refers to the relevant contract both as a “registration agreement” and as a “sponsorship agreement.” See Compl. at 70; Opp. at 23. MiCamp’s complaint also identifies several other 27 agreements and contracts. Any amended pleading should clearly and consistently identify the 1 claim under Section 2, plaintiffs must plead: (1) the existence of a combination or conspiracy to 2 monopolize; (2) an overt act in furtherance of the conspiracy; (3) the specific intent to 3 monopolize; and (4) causal antitrust injury.” *In re Nat’l Football League’s Sunday Ticket Antitrust 4 Litig.*, 933 F.3d 1136, 1159 (9th Cir. 2019) (internal citation and quotations omitted). Visa moves 5 to dismiss on the grounds that MiCamp fails to plead both antitrust standing and the elements of 6 its unlawful monopolizations, attempted monopolization, and conspiracy to monopolize claims. 7 Because the Court finds that MiCamp’s failure to plead antitrust standing is dispositive, the Court 8 does not reach Visa’s alternative arguments. 9 a. Antitrust Standing 10 Based on the pleadings currently before the Court, Visa argues that MiCamp lacks 11 standing to assert claims under section 2 of the Sherman Act. Mot. at 25–31. The Court agrees. 12 “Antitrust standing is distinct from Article

III standing. A plaintiff who satisfies the 13 constitutional requirement of injury in fact is not necessarily a proper party to bring a private 14 antitrust action.” *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of California*, 190 F.3d 1051, 1054 n.3 (9th Cir. 1999) (citation omitted). To establish antitrust standing, “the plaintiff must plausibly allege 16 (1) ‘the defendant’s specific unlawful conduct,’ (2) ‘some credible injury caused by the unlawful 17 conduct,’ (3) that this injury flowed ‘from that which makes defendants’ acts unlawful,’ and (4) 18 that the injury is ‘of the type the antitrust laws were intended to prevent.’” In *re German Auto. 19 Manufacturers Antitrust Litig.*, 497 F. Supp. 3d 745, 760 (N.D. Cal. 2020), *aff’d*, No. 20-17139, 2021 WL 4958987 (9th Cir. Oct. 26, 2021) (quoting *Am. Ad Mgmt., Inc.*, 190 F.3d at 1055–57). 21 The Court gives “great weight to the nature of the plaintiff’s alleged injury.” *Am. Ad Mgmt., Inc.*, 22 190 F.3d at 1055. In order to “conclude that there is antitrust standing, . . . a showing of antitrust 23 injury is necessary, [although] not always sufficient.” *Id.* (cleaned up and quotations omitted). 24 There are four requirements for antitrust injury: (1) unlawful conduct, (2) causing an injury to the 25 plaintiff, (3) that flows from that which makes the conduct unlawful, and (4) that is of the type the 26 antitrust laws were intended to prevent. *Somers v. Apple, Inc.*, 729 F.3d 953, 963 (9th Cir. 2013). 27 “With respect to the second element, a plaintiff must allege some credible injury caused by the 1 “removal of one or a few competitors need not equate with injury to competition.” *Les Shockley 2 Racing, Inc. v. Nat’l Hot Rod Ass’n*, 884 F.2d 504, 508 (9th Cir. 1989). “Only when the 3 restraining force of an agreement or other arrangement affecting trade becomes unreasonably 4 disruptive of market functions such as price setting, resource allocation, market entry, or output 5 designation is a violation of the Sherman Act threatened.” *Id.* 6 At issue here is whether MiCamp pleads sufficient facts to state a plausible antitrust injury. 7 MiCamp’s complaint identifies several injuries stemming from Visa’s alleged misconduct. 8 Specifically, MiCamp asserts that it and other “Independent Sales Organizations” suffered injuries 9 to their business and property by (1) paying “dual pricing and surcharge” fines and penalties and 10 “artificially-inflated, supra-competitive interchange fees,” (2) being unable to offer competitive 11 and lucrative pricing models, (3) incurring surcharge penalties for offering their merchants cash 12 discount processing, and (4) incurring chargebacks and unnecessary hardware implementation 13 costs. *Compl.* at 58–60. Visa argues that MiCamp fails to allege “an injury to MiCamp that is 14 traceable to conduct by Visa.” *Mot.* at 28. Put simply, Visa contends that MiCamp cannot 15 establish a sufficient connection between Visa and MiCamp’s alleged injuries. Instead, Visa 16 asserts that the relationships and contractual agreements between MiCamp and (1) merchants, (2) 17 payment processing companies, and (3) the merchants’ banks are the sources of MiCamp’s alleged 18 injuries. *Mot.* at 10–11. 19 According to MiCamp, it serves “as a middleman between the Members [banks that issue 20 credit/debit cards and banks that enable merchants to accept debit/credit card payments], the 21 Payment Processors [companies that provide electronic payment processing services], and 22 merchants.” *Compl.* at 22. As middlemen, MiCamp and other comparable companies “provide 23 various services to

merchants” and assume “almost all of the risk of loss” that payment processing 24 companies can incur, including penalties from Visa. *Id.* at 21. In exchange, MiCamp and its peers 25 receive compensation from merchants and “residual income” each month from payment 26 processing companies. *Id.* at 21–22. In *Illinois Brick v. Illinois*, the Supreme Court established 27 that “indirect purchasers” may not recover antitrust damages, holding that “only a direct purchaser 1 of the Sherman Act, not another party in the chain of manufacture or distribution.” *Kendall v. 2 Visa U.S.A., Inc.*, 518 F.3d 1042, 1049 (9th Cir. 2008) (citing *Illinois Brick v. Illinois*, 431 U.S. 3 720, 736 (1977)).⁸ See *Apple Inc. v. Pepper*, 587 U.S. 273, 280 (2019) (“[I]f manufacturer A sells 4 to retailer B, and retailer B sells to consumer C, then C may not sue A. But B may sue A if A is 5 an antitrust violator. And C may sue B if B is an antitrust violator. That is the straightforward rule 6 of *Illinois Brick*.”). The Ninth Circuit applied *Illinois Brick* in the context of an antitrust suit 7 between credit card companies and banks—also at the motion to dismiss stage—and held that 8 where plaintiffs “are the middlemen” and lack a “contractual relationship with [Visa and 9 Mastercard] directly” plaintiffs run “squarely into the *Illinois Brick* wall” and are unable to 10 establish injury. *Kendall*, 518 F.3d at 1048–50. “In sum, a bright line rule emerged from *Illinois 11 Brick*: only direct purchasers have standing . . . to seek damages for antitrust violations.” 12 *Delaware Valley Surgical Supply Inc. v. Johnson & Johnson*, 523 F.3d 1116, 1120–21 (9th Cir. 13 2008). 14 Here, as best the Court can decipher from MiCamp’s convoluted pleadings, MiCamp, 15 “[l]ike the State of Illinois in *Illinois Brick*, . . . [has] the status of indirect purchaser[.]” *Kansas v. 16 UtiliCorp United, Inc.*, 497 U.S. 199, 207 (1990). Since “[i]n the distribution chain, [MiCamp is] 17 not the immediate buyer[] from the alleged antitrust violators, . . . any antitrust claim against the 18 defendants is not for [it], but for the [merchants, banks, or payment processors] to assert.” *Id.* 19 MiCamp describes itself as a “middleman” and concedes that certain challenged fees, including 20 interchange fees, are paid to and deducted from merchants by banks. See *Compl.* at 11. It is 21 unclear how Visa’s alleged conduct has directly “caus[ed] an injury to the plaintiff,” at least as to 22 MiCamp’s injuries from fines and fees. *Somers*, 729 F.3d at 963. See *In re ATM Fee Antitrust 23 Litig.*, 686 F.3d 741, 750 (9th Cir. 2012) (finding that plaintiffs were indirect purchasers where 24 “the Bank Defendants pass on the cost of the interchange fees through the foreign ATM fees” such 25 8 The Ninth Circuit applies the indirect purchaser rule to section 2 of the Sherman Act. See 26 *Somers*, 729 F.3d at 961–62; *Stromberg v. Qualcomm Inc.*, 14 F.4th 1059, 1064 (9th Cir. 2021); *Lucas Auto. Eng’g, Inc. v. Bridgestone/Firestone, Inc.*, 140 F.3d 1228, 1233 (9th Cir. 1998) (“The 27 Supreme Court has applied the indirect purchaser rule in [Clayton Act] § 4 cases involving section 1 that plaintiffs do not “directly pay the fixed interchange fee”). MiCamp states in its opposition 2 brief that it “has been paying portions of Visa’s Interchange Fees,” *Opp.* at 27, but this assertion 3 contains no factual support and appears to contradict MiCamp’s complaint, which says that 4 “‘Interchange Fees’ are fees or rates set by Visa . . . that are paid to . . . Banks by merchants.”

6 MiCamp argues that its position resembles that of plaintiffs in *Apple Inc. v. Pepper*, 587 U.S. 273, 276 (2019). Opp. at 24. But in *Apple*, “plaintiffs purchased apps directly from Apple and therefore [were] direct purchasers,” such that “[t]here [wa]s no intermediary in the distribution chain between Apple [the alleged antitrust violator] and the consumer.” *Apple Inc.*, 587 U.S. at 10276, 281. By contrast, MiCamp does not allege any direct relationship with Visa and instead 11 seemingly enters into contractual agreements with banks and payment processors. In *Apple*, “[t]he 12 absence of an intermediary [wa]s dispositive.” *Apple Inc.*, 587 U.S. at 281. Here, the presence of 13 multiple intermediaries is equally dispositive. Moreover, MiCamp’s conclusory allegations that it 14 incurred unnecessary costs and was unable to offer competitive pricing models are devoid of 15 factual support. To adequately allege antitrust injury at the pleading stage, Plaintiff must set forth 16 sufficient factual allegations for the Court to conclude that Visa’s unlawful conduct plausibly 17 caused an injury to the plaintiff of the sort the antitrust laws are intended to prevent. See *Somers*, 18 F.3d at 963. MiCamp has not done so here. Accordingly, the Court finds that MiCamp fails 19 to plausibly allege a cognizable antitrust injury for standing purposes. 20 b. Leave to Amend 21 At this stage in the litigation, the Court cannot say that amendment would be futile as to 22 MiCamp’s Sherman Act claims. See *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en 23 9 This is not the only contradiction apparent in the pleadings. MiCamp’s original complaint 24 alleged that merchants are “the direct purchaser[s] of General Purpose Payment Card Network Services and directly pay[] the Interchange Fees associated with . . . transaction[s].” Dkt. No. 1 at 25

25. Visa noted this Illinois Brick issue in its original motion to dismiss. See Dkt. No. 15.

MiCamp’s operative complaint, however, now alleges that merchant are “the indirect purchaser[s] 26 of General Purpose Payment Card Network Services and ISOs like MiCamp pay[] the Interchange Fees associated with . . . transaction[s].” Compl. at 27. Moreover, “[i]n determining the propriety 27 of a Rule 12(b)(6) dismissal, a court may not look beyond the complaint to a plaintiff’s moving 1 banc) (“[A] district court should grant leave to amend even if no request to amend the pleading 2 was made, unless the pleading could not possibly be cured by the allegation of other facts.”) 3 (quotation omitted).¹⁰ Accordingly, the Court dismisses MiCamp’s Sherman Act claims with 4 leave to amend.

5 III. MOTION TO DEFER OR DENY CONSIDERATION

6 MiCamp asks the Court to defer or deny ruling on Visa’s motion to dismiss, arguing that it 7 should be treated as a motion for summary judgment, thereby entitling MiCamp to conduct 8 discovery. See Dkt. No. 52. The Court has not converted Visa’s motion to dismiss into a motion 9 for summary judgment. And since “respondent’s complaint is deficient under Rule 8, [it] is not 10 entitled to discovery, cabined or otherwise.” *Iqbal*, 556 U.S. at 686. Accordingly, the Court 11 denies MiCamp’s motion to defer or deny consideration.

12 IV. MOTION FOR A TEMPORARY RESTRAINING ORDER

13 MiCamp asks the Court for immediate injunctive relief in the form of a temporary 14

restraining order and, subsequently, a preliminary injunction. Dkt. No. 67. 15 A. Legal Standard
16 Under Federal Rule of Civil Procedure 65, a temporary restraining order may enjoin 17
conduct pending a hearing on a preliminary injunction. See Fed. R. Civ. P. 65(b). The standard 18
for issuing a temporary restraining order and issuing a preliminary injunction are substantially 19
identical. See *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839, n.7 (9th
20 Cir. 2001). A plaintiff seeking preliminary relief must establish: (1) that it is likely to succeed
on

21 the merits; (2) that it is likely to suffer irreparable harm in the absence of preliminary relief; (3)
22 that the balance of equities tips in its favor; and (4) that an injunction is in the public interest.
See 23 *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). Preliminary relief is “an
extraordinary 24 remedy that may only be awarded upon a clear showing that the plaintiff is
entitled to such relief.”

25 Id. at 22. A court must find that “a certain threshold showing” is made on each of the four
26 required elements. *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011). Under the Ninth
27 1 Circuit’s sliding scale approach, a preliminary injunction may issue if there are “serious
questions 2 || going to the merits” if “a hardship balance [also] tips sharply towards the
[movant],” and “so long 3 as the [movant] also shows that there is a likelihood of irreparable
injury and that the injunction is 4 in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632
F.3d 1127, 1135 (9th Cir. 2011). 5 B. Discussion 6 Since the Court dismissed MiCamp’s complaint
under Rule 12(b)(6) for failure to state a 7 claim, the Court denies MiCamp’s motion for a
temporary restraining order. MiCamp cannot 8 || demonstrate a likelihood of success on the merits
in the absence of a viable complaint. At this 9 || stage, that deficiency is fatal to MiCamp’s request
for injunctive relief. See *Van Skike v. City of 10 || Santa Rosa*, No. 22-CV-03222-JSC, 2022 WL
1987862, at *2 (N.D. Cal. June 6, 2022).

II) Vv. CONCLUSION

12 The Court GRANTS Visa’s motion to dismiss, Dkt. No. 46. The Court permits leave to 5 13
amend as to MiCamp’s Sherman Act and state law claims. MiCamp’s First Amendment claims 14
are dismissed without leave to amend. MiCamp may file an amended complaint within 21 days of
3 15 || the date of this order. The Court DENIES MiCamp’s motion to defer or deny consideration
of a 16 || Visa’s motion to dismiss, Dkt. No. 52. The Court further DENIES MiCamp’s ex parte
motion for 3 17 a temporary restraining order, Dkt. No. 67. 18 19 IT IS SO ORDERED. 20)

Dated: 3/24/2025

21 Aleperl 5 Mb.

HAYWOOD S. GILLIAM, JR. United States District Judge 23 24 25 26 27 28