IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SPORTSCASTR INC. (d/b/a PANDA INTERACTIVE), Plaintiff, v. SPORTRADAR GROUP AG, and SPORTRADAR AG, Defendants.	Case No. 2:23-cv-00472-JRG JURY TRIAL DEMANDED LEAD CASE
SPORTSCASTR INC. (d/b/a PANDA INTERACTIVE), Plaintiff, v. GENIUS SPORTS LTD., *et al.*, Defendants.	Case No. 2:23-cv-00471-JRG JURY TRIAL DEMANDED

DEFENDANTS SPORTRADAR GROUP AG'S AND SPORTRADAR AG'S MOTION TO DISMISS COUNTS V AND VI OF THE SECOND AMENDED COMPLAINT

ORAL ARGUMENT REQUESTED

Table of Contents

INTRODUCTION 1

STATEMENT OF ISSUES TO BE DECIDED 2

BACKGROUND 3

A. PANDA alleges that Sportradar sells two types of products to sportsbooks: official sports data services and "sports betting app technology" 3

B. PANDA misstates the requirements of the cited contracts to manufacture an alleged tie between the two types of products 5

C. PANDA's alleged harm or exclusion occurred in October 2020 7

D. PANDA waited until the last day possible to add antitrust claims to the SAC 8

ARGUMENT 8

I. PANDA's Antitrust Claims Are Untimely 9

II. PANDA's Tying Claims Depend Entirely on Its Alteration of the Cited Contracts 10

III. PANDA's Alleged Anticompetitive Effects Are Implausible and Lack Reasonable Diligence 12

A. PANDA fails to plausibly allege harm to competition 12

B. PANDA fails to exercise reasonable diligence with the materials it possesses 13

IV. PANDA's Alleged Relevant Markets Are Implausible 15

A. PANDA's three league-specific product market definitions fail to meet the strict standards required to allege single-product markets 15

B. PANDA's alleged geographic markets ignore major variations in state laws 17

V. PANDA Fails to Plausibly Allege Necessary Market Power or Market Shares 18

VI. PANDA's Antitrust Claims Should be Dismissed with Prejudice 20

CONCLUSION 20

[redacted]

Table of Authorities

Cases

Academy of Allergy & Asthma in Primary Care v. Quest Diagnostics, Inc.,
2022 WL 980791 (W.D. Tex. Mar. 31, 2022) 22, 23

Apani Sw., Inc. v. Coca-Cola Enters., Inc., 300 F.3d 620 (5th Cir. 2002) ..... passim

Ashcroft v. Iqbal, 556 U.S. 662 (2009) 8, 17

Atlantic Richfield Co. v. USA Petroleum Co., 495 U.S. 328 (1990) 14, 16

Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007) 8, 9, 23

Brandywine Hosp. LLC v. CVS Health Corp., 2025 WL 639334 (E.D. Pa. Feb. 26, 2025) .. 12, 13

Brantley v. NBC Univ., Inc., 675 F.3d 1192 (9th Cir. 2012) 15

BRFHH Shreveport, LLC v. Willis-Knighton Med. Ctr., 49 F.4th 520 (5th Cir. 2022) 8, 9, 16

Causey v. Sewell Cadillac–Chevrolet, Inc., 394 F.3d 285 (5th Cir. 2004) 3

Clark v. Thompson, 850 Fed. App'x 203 (5th Cir. Mar. 9, 2021) (unpublished) 9

Domed Stadium Hotel, Inc. v. Holiday Inns, Inc., 732 F.2d 480 (5th Cir. 1984) 19

FTC v. Facebook, Inc., 560 F. Supp. 3d 1 (D.D.C. 2021) 23

Hooker v. Citadel Salisbury LLC, 2022 WL 1663421 (M.D.N.C. May 25, 2022) 16

Ill. Tool Works, Inc. v. Indep. Ink, Inc., 547 U.S. 28 (2006) 14

Innova Hosp. San Antonio, Ltd. P'ship v. Blue Cross & Blue Shield of Ga.,
892 F.3d 719 (5th Cir. 2018) 7, 9

Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.,
677 F.2d 1045 (5th Cir. 1982) 11

Kansa Reins. Co., Ltd. v. Congressional Mortg. Corp., 20 F.3d 1362 (5th Cir. 1994) 9

Mathews v. Bowie Cnty., 2013 WL 5142381 (E.D. Tex. Sept. 13, 2013) 16

Moore v. El Paso Cnty., 660 F.2d 586 (5th Cir. 1981) 10

New Orleans Ass'n of Cemetery Tour Guides & Cos. v. New Orleans Archdiocesan Cemeteries, 56 F.4th 1026 (5th Cir. 2023) 17, 18, 20

PSKS, Inc. v. Leegin Creative Leather Prods., Inc., 615 F.3d 412 (5th Cir. 2010) 18, 19, 22

Pulse Network, LLC v. Visa Inc., 30 F.4th 480 (5th Cir. 2022) 14

Quadvest, L.P. v. San Jacinto River Authority, 7 F.4th 337 (5th Cir. 2021) 3, 9, 12

Roa v. City of Denison, 2018 WL 8458124 (E.D. Tex. Nov. 2, 2018), *report and recommendation adopted*, 2019 WL 1375177 (E.D. Tex. Mar. 27, 2019) 24

Rogers v. Lowe's Home Centers, Inc., 2023 WL 2815154 (E.D. Tex. Apr. 6, 2023) 23

Rotella v. Wood, 528 U.S. 549 (2000) 10

Roy B. Taylor Sales, Inc. v. Hollymatic Corp., 28 F.3d 1379 (5th Cir. 1994) 14

United Farmers Agents Ass'n, Inc. v. Farmers Ins. Exchange, 89 F.3d 233 (5th Cir. 1996). 12, 19

Unlockd Media Inc. Liquid. Trust v. Google LLC, 2025 WL 563460 (N.D. Cal. Feb. 20, 2025) 15, 16

Willow Innovations, Inc. v. Chiaro Tech., Ltd., 2024 WL 4043451 (E.D. Tex. Sept. 4, 2024) 3

Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321 (1971) 10

Statutes

15 U.S.C. § 15b 9, 10

Fed. R. Civ. P. 12(a)(4) 20

Fed. R. Civ. P. 12(f) 20

Tex. Bus. & Com. § 15.25(a) 9

Other Authorities

9 Phillip E. Areeda, Antitrust Law ¶ 1700a (1991) 11

[redacted]

INTRODUCTION

Competition inherently requires there to be winners and losers. In 2020, PANDA lost.[1] Its Second Amended Complaint ("SAC") alleges, at most, individual harm from losing its relationship with a sportsbook customer, [redacted], five years ago. Rather than respond by competing on the merits, PANDA went looking for someone to blame. First accusing Sportradar, as well as Genius, of patent infringement, PANDA then amended its complaint on the last possible day against Sportradar to add two antitrust claims. Those two causes of action (V and VI) should be dismissed for failure to state a claim for any of the following independent reasons.

Initially, PANDA's antitrust claims are untimely. PANDA's SAC admits that any alleged harm due to "tying" accrued in October 2020, more than four years before PANDA filed its antitrust claims. PANDA's antitrust claims are thus "forever barred" under applicable law.

Next, PANDA's tying claims are independently flawed because the centerpiece of the tying claims—the condition that a customer must buy one product to buy a second product—all turn on PANDA's rewriting of Sportradar contracts. The SAC quotes and cites three Sportradar contracts with two sportsbooks. But those contracts do not say what PANDA alleges and, on a motion to dismiss, the contracts' actual language controls. Contrary to PANDA's fabrications, the contracts' requirements for [redacted] from Sportradar do not require the purchase of any "sports betting app technology," a term entirely absent from the quoted contracts.

PANDA's antitrust claims again fail to state a claim because they do not plausibly allege

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[1] "PANDA" refers to Plaintiff Sportcastr, Inc. (d/b/a PANDA Interactive). "Sportradar" refers to Defendants Sportradar Group AG and Sportradar AG. "Genius" refers to Defendants Genius Sports Ltd., Genius Sports Media Ltd., Genius Sports Technologies Ltd., Genius Sports UK Ltd., Genius Sports Group Ltd., Maven Topco Ltd., Maven Midco Ltd., Maven Debtco Ltd., and Maven Bidco Ltd.

anything beyond PANDA's own losses. To ensure that antitrust laws protect competition, not individual competitors, PANDA's antitrust claims require plausible allegations of "anticompetitive effects" to the market as a whole, rather than just harms to PANDA. PANDA offers nothing beyond formulaic, conclusory assertions of higher prices and lower quality, none of which serves to transmute its individual failures into market-wide anticompetitive effects.

Next, all of PANDA's claims require it to plausibly allege both product and geographic components of each relevant market. Allegations of three individual sports league-based official data markets fail to meet the high bar for "single-product markets," which the Fifth Circuit has long viewed with extreme skepticism. That skepticism is warranted, as there is no allegation that PANDA's purported customers—sportsbooks, not downstream individual bettors—are "locked in" to any individual sports league data market. PANDA's allegations underlying its multiple geographic markets are also implausible because they fail to account for the reality that online sports betting is regulated differently by all 50 states plus other territories. PANDA implausibly assumes those variegated regulatory impediments across the nation do not exist.

Furthermore, PANDA's threadbare market power and market share allegations provide another independent ground for dismissal. PANDA fails to plead basic facts such as how it calculates any alleged market shares, how big the market is, or what units it is counting. Accordingly, its claims cannot survive with such scant market power allegations, especially in novel "markets" like the ones PANDA alleges.

Finally, dismissal should be with prejudice as any amendment would be futile given the language of the alleged contracts, time-barred nature of the claims, and prior amendments.

STATEMENT OF ISSUES TO BE DECIDED

The issues to be decided are whether the SAC's antitrust claims should be dismissed:

(1) because they are untimely;

(2) because they are implausibly based on PANDA's alterations of relevant contracts;

(3) because the allegations of anticompetitive effects are implausible;

(4) because the allegations of the relevant markets are implausible;

(5) because the allegations of market shares and market power are implausible; and

(6) with prejudice.

BACKGROUND

PANDA's SAC incorporates three agreements with two sportsbook customers previously produced in discovery by Sportradar: 1) an agreement with [redacted] with an effective date of [redacted] (Ex. A); 2) another agreement with [redacted] with an effective date of [redacted] (Ex. B); and an agreement with [redacted] with an effective date of [redacted] (Ex. C).[2] *See* SAC ¶¶ 24, 26, 92-93, 97. It is therefore appropriate for the Court to consider those agreements here and, where the SAC contradicts the quoted contract, the contract controls.[3]

A. PANDA alleges that Sportradar sells two types of products to sportsbooks: official sports data services and "sports betting app technology"

PANDA's SAC alleges that Sportradar sells two types of products to its sportsbook customers, also called operators.[4] *First*, PANDA alleges that Sportradar distributes official sports data rights from various leagues to sportsbooks for sportsbooks' online betting offerings. SAC

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[2] All exhibits are attached to the declaration of David B. Schwartz, filed contemporaneously with this motion. All page numbers are to the bates-stamped number shown on the relevant contract.

[3] Documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to the claim. *Quadvest, L.P. v. San Jacinto River Authority*, 7 F.4th 337, 345 (5th Cir. 2021); *Causey v. Sewell Cadillac–Chevrolet, Inc.*, 394 F.3d 285, 288 (5th Cir. 2004); *Willow Innovations, Inc. v. Chiaro Tech., Ltd.*, 2024 WL 4043451, at *1 (E.D. Tex. Sept. 4, 2024) (Gilstrap, J.).

[4] PANDA improperly sued the wrong Sportradar entity, as PANDA all but admits in footnote 1 of its SAC. SAC ¶ 24 n.1. Sportradar reserves all rights to raise this error in accordance with the Federal Rules of Civil Procedure and the Court's Local Rules.

[redacted]

¶¶ 20, 101. In the parlance of the actual agreements, Sportradar's sports data services related to the distribution of leagues' data are referred to as [redacted] Ex. A, [redacted]; Ex. C, [redacted][5]

Second, PANDA alleges that Sportradar sells what PANDA calls "sports betting app technology." SAC ¶¶ 103, 112. This is a phrase PANDA crafted solely for this litigation, as it does not appear in the three cited Sportradar contracts (*see* Exs. A-C), and the SAC does not quote a single independent source using that term. PANDA also offers nebulous and overbroad examples of what it alleges constitutes "sports betting app technology." PANDA claims that this technology "includes the systems, software, and applications (collectively a 'Platform')" that delivers sports data, either alone or in combination with video broadcast streams, which is then displayed and consumed by sportsbooks or other media companies. SAC ¶ 103. PANDA alleges sports betting app technology "includes the platforms and components that comprise, for example, Sportradar's Live Channel Online, Live Channel Retail, Live Channel Trading Products, emBET, Fresh Eight, and OTT Products." SAC ¶ 103; *see also* SAC ¶ 112 (same).

Sportradar's [redacted] product is the lone overlap between the alleged products comprising "sports betting app technology" in the SAC and the products actually defined in the three sportsbook agreements. The second [redacted] agreement defines [redacted] as [redacted] that a sportsbook operator shall [redacted]

[5] PANDA alleges that the official sports data that Sportradar distributes is sourced through purportedly exclusive licensing agreements with three sports leagues, the NBA, MLB, and NHL. SAC ¶ 101. Sportradar disagrees that these agreements are either exclusive or have always been exclusive during the relevant time period, but accepts the allegations as true solely for purpose of this motion. Notably, PANDA does not bring any claim for exclusive dealing or otherwise allege that the data rights agreements standing alone are somehow unlawful. *See* SAC ¶¶ 22, 323-44.

[redacted]

[redacted] Ex. B, [redacted] ([redacted]). The [redacted] agreement also uses the terms [redacted] Ex. C, [redacted] ([redacted]). Thus, the only example of a "sports betting app technology" in the three quoted contracts is the [redacted] product, usually defined as [redacted]

B. PANDA misstates the requirements of the cited contracts to manufacture an alleged tie between the two types of products

The contracts' plain language makes clear that [redacted] or [redacted] are defined to include *only* [redacted], *not* the alleged "sports betting app technology." PANDA inserts the coined term "Sportradar's sports betting app technology" where it does not exist:

> [redacted]

SAC ¶ 24 (emphasis added). The quoted contract never uses that bolded language, whether in the definition of [redacted] or anywhere else. Ex. A, [redacted] [redacted]. Whatever the requirements may be for [redacted] there is no exclusivity or forcing requirement in the [redacted] agreement that applies to "sports betting app technology."

The broader context of the quoted contracts reinforces the same point. PANDA's addition of "sports betting app technology" to the definition of [redacted] makes no sense because the single example of "sports betting app technology" that is actually in the agreements, [redacted] is

[redacted]

not defined as part of the [redacted] and is actually licensed via a separate agreement.[6] Indeed, PANDA's allegations (*see* SAC ¶¶ 24-26) never acknowledge that [redacted] is separately defined.

PANDA also selectively quotes the separate [redacted] agreement for [redacted]. PANDA alleges that this agreement [redacted] SAC ¶ 26. In fact, that snippet is from a section titled [redacted] and reads in full: [redacted] Ex. B, [redacted]. Far from a tie, this language supports the separate point that [redacted] access is not intended to be a substitute for media broadcast rights. *See* Ex. B, [redacted]. Above all, there is no requirement in either [redacted] contract that [redacted] buy [redacted] in order to buy official sports data [redacted]

The same is true for the [redacted] agreement. SAC ¶ 24 (quoting Ex. C, [redacted]). The contractual language only applies to [redacted] not [redacted] or any alleged "sports betting app technology." *See id.* And PANDA again never acknowledges the [redacted] contract's separate definitions of [redacted] and [redacted] *See id.*;

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[6] For example, [redacted] SAC ¶ 26. That later-signed agreement defines the terms [redacted] or [redacted] to describe [redacted] (Ex. B, [redacted], and never uses the term [redacted] (*see id.*). PANDA does not explain how alleged requirements for [redacted] apply to an agreement that does not use that term.

[redacted]

Ex. C, [redacted] Thus, all of PANDA's claims of a contractual "requirement" for a sportsbook to take both [redacted] and "sports betting app technology" require PANDA to add language to the sportsbook contracts that does not exist and to ignore the language that does.

Finally, both the [redacted] and [redacted] agreements allow the relevant sportsbook customer to use whatever technological platform they choose. Ex. C ([redacted]) ([redacted]); Ex. A, [redacted] ([redacted]). PANDA again ignores this language. *See* SAC ¶¶ 24-26.

C. PANDA's alleged harm or exclusion occurred in October 2020

The face of PANDA's complaint, and documents referenced by PANDA which the Court may take judicial notice of,[7] demonstrates that PANDA's alleged harms all accrued in 2020. PANDA alleges that it "[redacted]" SAC ¶ 85. PANDA alleges that "[t]his relationship, however, was terminated abruptly around the time that Sportradar obtained exclusive distribution rights for official real-time league data for the NBA and NHL." (*See, e.g.*, https://www.nba.com/news/nba-extends-u-s-betting-data-partnerships-with-sportradar-and-genius-sports-group.)" SAC ¶ 85. PANDA's cited public press release is dated October 29, 2020. Ex. D. PANDA alleges that it lost its [redacted] relationship due to Sportradar's ostensible "exclusive control over official league and betting data … to force

[7] *Innova Hosp. v. Blue Cross & Blue Shield of Ga.*, 892 F.3d 719, 726 (5th Cir. 2018).

[redacted]

[redacted] to adopt its technology, and jettison PANDA's." SAC ¶ 85. Thus, PANDA alleges that any alleged exclusion due to the alleged tie occurred "abruptly around" October 2020. There is no other allegation in the SAC of more recent harm to PANDA related to any alleged tie.

D. PANDA waited until the last day possible to add antitrust claims to the SAC

PANDA filed its original complaint in October 2023 asserting solely patent infringement (ECF 1). PANDA amended its complaint by adding a fourth asserted patent in March 2024 (ECF 17), and discovery began in April 2024 (*see* ECF 28). Sportradar made its first production in May 2024, and Sportradar produced the sportsbook operator contracts quoted in the SAC in September 2024. Schwartz Decl. ¶ 6. Yet, PANDA waited until the last day under the extant docket control order, in February 2025, to add antitrust claims. ECF 126.

ARGUMENT

In evaluating an antitrust claim under Rule 12(b)(6), "[a] complaint cannot survive a motion to dismiss by stating facts 'merely consistent with' liability." *BRFHH Shreveport, LLC v. Willis-Knighton Med. Ctr.*, 49 F.4th 520, 525 (5th Cir. 2022) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). Rather, the complaint must allege "plausible" claims that eliminate "obvious alternative explanation[s]" for the conduct at issue. *Ashcroft v. Iqbal*, 556 U.S. 662, 682 (2009) (quoting *Twombly*, 550 U.S. at 567). The court need not "accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions," *BRFHH Shreveport*, 49 F.4th at 525 (quotation marks omitted), such as when an attached exhibit contradicts an allegation, *Quadvest*, 7 F.4th at 345.

Furthermore, while pleading "on information and belief" is acceptable in some contexts, a plaintiff can only plead "on information and belief" where the information at issue is "peculiarly in the possession of an opposing party." *Clark v. Thompson*, 850 Fed. App'x 203, 209 (5th Cir. Mar. 9, 2021) (unpublished) (citing *Innova Hosp.*, 892 F.3d at 730). PANDA must

[redacted]

thus exercise reasonable diligence with the information it has and plead more than solely "information and belief." *See Clark*, 850 Fed. App'x at 209.

I. PANDA's Antitrust Claims Are Untimely

PANDA's own allegations confirm the untimeliness of its antitrust claims, and dismissal is appropriate under Rule 12(b)(6) "when a successful affirmative defense appears on the face of the pleadings." *Kansa Reins. Co., Ltd. v. Congressional Mortg. Corp.*, 20 F.3d 1362, 1366 (5th Cir. 1994). Here, PANDA's federal antitrust claim is governed by 15 U.S.C. § 15b, which states that any private action to recover a Sherman Act violation "shall be forever barred unless commenced within four years after the cause of action accrued."[8]

Under the antitrust laws, "a cause of action accrues and the statute begins to run when a defendant commits an act that injures a plaintiff's business." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971). That is, "if a plaintiff feels the adverse impact of an antitrust conspiracy on a particular date, a cause of action immediately accrues to him to recover all damages incurred by that date." *Id.* at 339. "[I]n applying a discovery accrual rule … discovery of the injury, not discovery of the other elements of a claim, is what starts the clock." *Rotella v. Wood*, 528 U.S. 549, 555 (2000). Courts may take judicial notice of dates of public documents incorporated in the complaint to determine the timeliness of a plaintiff's claims. *See, e.g.*, *Moore v. El Paso Cnty.*, 660 F.2d 586, 591 n.8 (5th Cir. 1981) (taking judicial notice of document date to hold lawsuit untimely).

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[8] Claims under the TFEAA are treated identically to federal antitrust claims. *Apani Sw., Inc. v. Coca-Cola Enters., Inc.*, 300 F.3d 620, 628 (5th Cir. 2002) ("Each provision of the [TFEAA] is modeled after a corresponding provision of federal antitrust law. As such, Texas courts are statutorily instructed to interpret the TFEAA in harmony with federal judicial interpretations of equivalent federal laws." (citations omitted)); *see* Tex. Bus. & Com. § 15.25(a) (four-year statute of limitations). Like the federal antitrust claim, the state antitrust claim does not state a claim.

[redacted]

The Fifth Circuit has long held that a tying claim may be dismissed as untimely where it is plain from the face of a complaint that the alleged tying contract was signed outside the limitations period. *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050-51 (5th Cir. 1982). In *Kaiser*, the counterclaim-plaintiff filed a complaint that "admit[ted] that the contract … that forms the basis of the present lawsuit filed in 1979 was executed on or about May 25, 1973, a date ostensibly outside the limitations period," and thus "[t]he counterclaim on its face appears to reveal the existence of an affirmative defense to it, which would make the granting of a Rule 12(b)(6) dismissal proper." *Id.* at 1051.

Here, PANDA's SAC admits that its claims accrued in October 2020, when its relationship with [redacted] was allegedly "terminated abruptly around the time that Sportradar obtained exclusive distribution rights for official real-time league data for the NBA and NHL." SAC ¶ 85. At this time, according to PANDA's allegations, Sportradar allegedly "[d]eploy[ed] anti-competitive pressure on [redacted]" by "us[ing] its exclusive control over league and betting data for the NBA and the NHL to force [redacted] to adopt its technology, and jettison PANDA's." SAC ¶ 85. Thus, by its own account, PANDA felt the alleged "adverse impact" of the alleged conduct in October 2020, more than four years before PANDA amended its complaint to file antitrust claims in February 2025. *See Kaiser*, 677 F.2d at 1050-51. Thus, PANDA's antitrust claims are "forever barred," 15 U.S.C. § 15b, and should be dismissed.

II. <u>PANDA's Tying Claims Depend Entirely on Its Alteration of the Cited Contracts</u>

As explained in Part B, above, the sole factual basis for the tying claims is PANDA's rewriting of three agreements with two sportsbook operators. *See* SAC ¶¶ 24, 26. But the plain language of those agreements controls, not PANDA's allegations. *See Quadvest*, 7 F.4th at 345. And the SAC's remaining allegations are all based on "information and belief" that "[redacted]" *E.g.*, SAC ¶¶ 25-26.

[redacted]

Tying exists when "a seller refuses to sell one product, which a buyer desires, unless the buyer also agrees to purchase a second product, which is not otherwise desired from this seller on the offered terms.'" *United Farmers Agents Ass'n, Inc. v. Farmers Ins. Exchange*, 89 F.3d 233, 235 n.2 (5th Cir. 1996) (quoting 9 Phillip E. Areeda, Antitrust Law ¶ 1700a (1991)). PANDA must therefore plausibly allege that Sportradar contractually conditions or coerces the sale of official sports data on a sportsbook operator *also* purchasing Sportradar's "sports betting app technology." *See id.* A faithful reading of the alleged agreement is required: As another district court concluded in dismissing a similar tying allegation, "[t]he text of the [document containing the supposed tie] makes clear that Plaintiff's interpretation is unsupported." *Brandywine Hosp. LLC v. CVS Health Corp.*, 2025 WL 639334, at *4 (E.D. Pa. Feb. 26, 2025).

PANDA can only allege the required "condition" by inserting its own language, "sports betting app technology," into agreements that never use that phrase. Specifically, PANDA alleges that the quoted contracts require each sportsbook operator to buy "sports betting app technology" from Sportradar in order to gain access to official league data [redacted] SAC ¶¶ 23-28. But as explained above, the quoted agreements show no such link. PANDA can only allege the existence of a tie by misstating the terms of the contract, as it does in ¶ 24 of its SAC, where PANDA mis-defines [redacted] by inserting its own term, "sports betting app technology," into that definition. By contrast, the sole mention in any of the three contracts of a so-called "sports betting app technology" product listed in the SAC, [redacted], is defined in a separate contract for [redacted] using the defined term [redacted] (Ex. B, [redacted], and a separate contractual provision for [redacted], again using the separately defined terms [redacted] or [redacted] (Ex. C, [redacted]. Because [redacted] is not subject to any of the purported contractual "forcing" provisions, which by their terms relate solely to [redacted] there is no tie

[redacted]

or coercion. *See Brandywine Hosp.*, 2025 WL 639334, at *4.

Moreover, PANDA's allegation that "sports betting app technology" includes broader, unidentified "Platforms" (SAC ¶ 112) still cannot overcome the plain language of both contracts, [redacted]. Ex. C, [redacted]; Ex. A, [redacted]. And since none of the cited contracts discuss other alleged products that PANDA claims form part of the "sports betting app technology" (*see* SAC ¶¶ 103, 112), PANDA lacks a plausible basis to assert that unidentified products are somehow subject to a tie. In sum, the antitrust claims should be dismissed because the plain language of the quoted and cited contracts demonstrates that Sportradar has not conditioned—let alone unlawfully—the purchase of sports data on the purchase of anything else.

III. PANDA's Alleged Anticompetitive Effects Are Implausible and Lack Reasonable Diligence

Assuming—contrary to the plain language of the agreements—that there is a tie in the agreements, PANDA's antitrust claims must still be dismissed because the SAC fails to plausibly plead that any alleged tie had a negative effect on competition. This is critical because a tie is often pro-competitive. *See Ill. Tool Works, Inc. v. Indep. Ink, Inc.*, 547 U.S. 28, 45 (2006). As detailed below, PANDA's failure to plausibly allege harm to competition and its failure to exercise reasonable diligence with existing information are independent bases for dismissal.

A. PANDA fails to plausibly allege harm to competition

PANDA must plead harm to competition as a whole, not merely an impact on PANDA itself. "The antitrust laws were enacted for the protection of competition, not competitors." *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 338 (1990). By definition, in a competition there will be winners and losers, and antitrust law "precludes recovery for losses resulting from competition." *Pulse Network, LLC v. Visa Inc.*, 30 F.4th 480, 488 (5th Cir. 2022)

(citation omitted). That is especially true in a tying situation, where competitors may "not lose a segment of the tied market if there are genuine alternative paths to consumers." *Roy B. Taylor Sales, Inc. v. Hollymatic Corp.*, 28 F.3d 1379, 1383 (5th Cir. 1994). Thus, a plausible allegation of harm to competition is essential. As another district court explained in dismissing antitrust claims in an online technology setting, "even drawing all reasonable inferences in [p]laintiff's favor … [p]laintiff has offered no factual support from which the Court could assume that harm to [p]aintiff is somehow tantamount to harm to this entire market." *Unlockd Media Inc. Liquid. Trust v. Google LLC*, 2025 WL 563460, at *4 (N.D. Cal. Feb. 20, 2025) (citing *Brantley v. NBC Univ., Inc.*, 675 F.3d 1192, 1198 (9th Cir. 2012) ("[P]laintiffs must plead an injury to competition beyond the impact on the plaintiffs themselves.")).

The SAC offers only formulaic and conclusory recitations of harm to competition. *See, e.g.*, SAC ¶ 121. And these insufficient assertions are undercut elsewhere: PANDA acknowledges there are numerous other providers of sports betting data, such that up to 70% of the market is served by others (SAC ¶¶ 124, 130) and that major sports leagues "continue to invest in a lot of product development" (SAC ¶ 108). PANDA therefore makes the same error as in *Unlockd Media*, relying on a theory that is "further undermined by [plaintiff's] acknowledgement that similar products *do* continue to exist in the [relevant market]." 2025 WL 563460, at *4. PANDA fails to plausibly allege how there was any harm to competition beyond the potential impact to PANDA itself, thereby failing to plausibly allege anticompetitive effects, and thus failing to plausibly state any antitrust claim. *See BRFHH Shreveport*, 49 F.4th at 525.

B. PANDA fails to exercise reasonable diligence with the materials it possesses

Even if harms to PANDA were sufficient to demonstrate anticompetitive effects—and they are not, *Atlantic Richfield*, 498 U.S. at 338—those alleged injuries are based solely on conclusory assertions demonstrating a complete lack of reasonable diligence. Courts routinely

[redacted]

dismiss antitrust claims where a plaintiff fails to exercise reasonable diligence to provide some form of plausibility to an antitrust claim beyond information and belief.[9] Yet that is all PANDA offers here. Paragraph 22 of the SAC is representative: PANDA asserts that "[u]pon information and belief, Defendants' sports betting app technology is more expensive and less efficient than others' (including Plaintiff's) technology." *See also* SAC ¶¶ 25, 92, 95, 130-31, 133. This pleading tactic is not acceptable at this stage of the case, 10 months into discovery.

With respect to one sportsbook customer, [redacted], PANDA already knows both the prices that Sportradar allegedly charges [redacted] (*see* Ex. A, [redacted] and PANDA's own prices to [redacted] (*see* SAC ¶¶ 27, 85). Yet PANDA offers zero quantitative allegations on this topic. Because PANDA has known since September 2024 (Schwartz Decl. ¶ 6) how much ostensibly "more expensive" Sportradar's product allegedly is than PANDA's own for [redacted], it is insufficient for PANDA to rely solely on allegations based on "information and belief."[10] The Court therefore cannot eliminate the "obvious alternative explanation[s]" for the alleged conduct at issue, *Iqbal*, 556 U.S. at 682, namely that PANDA's products (if any) are more expensive, not less, than Sportradar's products. Simply put, PANDA cannot premise viable

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[9] *See, e.g.*, *Unlockd Media*, 2025 WL 563460, at *6 (holding anticompetitive effect implausible when "Plaintiff fails to provide even the most basic information about this [pricing] data, such as what geographic area it included or even what kind of [data] it encompassed"); *Hooker v. Citadel Salisbury LLC*, 2022 WL 1663421, at *15 n.11 (M.D.N.C. May 25, 2022) (relying on, inter alia, *Innova Hospital* to hold that despite "extensive and significant discovery, many of Plaintiffs' allegations are based on 'information and belief'," which is "insufficient to defeat a motion to dismiss" (cleaned up)); *Mathews v. Bowie Cnty.*, 2013 WL 5142381, at *3 (E.D. Tex. Sept. 13, 2013) ("'information and belief' does not circumvent the pleader's responsibility to set forth a claim for relief which is plausible on its face").

[10] PANDA's SAC is curiously silent on whether it ever attempted to do business with [redacted], another major leading sportsbook operators. *See* SAC ¶¶ 24, 99. This silence further underscores the previous point (*see* Part III.A, above) that PANDA's complaint merely alleges harm to PANDA itself, rather than the market itself, where there are numerous sportsbook customers that PANDA simply failed to try to win business from.

claims "on information and belief" when it has all the information in its possession to allege if it actually offered a cheaper product.

IV. PANDA's Alleged Relevant Markets Are Implausible

Next, PANDA's antitrust claims fail for the independent reason that PANDA does not plausibly allege either the product or geographic boundaries of any relevant market. "[B]ecause the restriction in question is a vertical agreement, alleging a violation of the relevant sections of the Sherman Act requires [the plaintiff] to define a 'relevant market.'" *New Orleans Ass'n of Cemetery Tour Guides & Cos. v. New Orleans Archdiocesan Cemeteries*, 56 F.4th 1026, 1036 (5th Cir. 2023). "The two components of the relevant market are (1) the product market and (2) the geographic market." *Id.* at 1036-37. Here, PANDA has alleged five relevant markets—three data markets, one alternative data market, and one "sports betting app technology" market (SAC ¶¶ 101-02, 123)—but all fail to meet basic Rule 12(b)(6) plausibility requirements on both product and geographic components.

A. PANDA's three league-specific product market definitions fail to meet the strict standards required to allege single-product markets

A relevant product market must "consider the extent to which the seller's product is interchangeable in use and the degree of cross-elasticity of demand between the product itself and substitutes for it." *New Orleans Ass'n*, 56 F.4th at 1036. Dismissal is appropriate where an alleged product market does not encompass all reasonable alternatives or allege a cross-elasticity of demand. *Apani Sw.,* 300 F.3d at 628.

Ignoring this requirement, PANDA implausibly assumes that there are three individual data markets, each based around official data from a single sports league (one for the NHL, one for the NBA, and one for the MLB). SAC ¶ 105. But such single-brand product markets are

[redacted]

highly disfavored, with the Fifth Circuit consistently rejecting such tactics for decades.[11] That extreme skepticism is merited here, as PANDA fails to allege that its actual customers—sportsbooks—are "locked in" to any specific brand. Indeed, PANDA all but concedes that it cannot meet this high bar by alleging an alternative tying market encompassing *all* sports leagues (*see* SAC ¶¶ 123-125). That alternative is flawed for the reasons discussed in the next section.

PANDA's alleged customers are sportsbooks, like [redacted] or [redacted], not individual bettors. The SAC repeatedly alleges that the sportsbooks customers pay PANDA. *See, e.g.*, SAC ¶ 85 ([redacted] (emphasis added)); SAC ¶ 111 (PANDA provides its technology "to sportsbooks and other customers"). Nowhere in the SAC does PANDA allege that any of these sportsbooks are "locked in" to individual league sports. *See* SAC ¶¶ 105-08. Indeed, several of the contracts that PANDA quotes and cites [redacted] Ex. A, [redacted] ([redacted])); Ex. C, [redacted] ([redacted])). This is not a situation where the customers at issue—sportsbooks—are "'locked in' to a specific brand by the nature of the product." *PSKS, Inc.*, 615 F.3d at 418.

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[11] *E.g.*, *New Orleans Ass'n*, 56 F.4th at 1038 (affirming dismissal based on alleged product market of two cemeteries because "precedent clearly precludes [plaintiff's] attempt to define such a narrow product market"); *PSKS, Inc. v. Leegin Creative Leather Prods., Inc.*, 615 F.3d 412, 418 (5th Cir. 2010) (single-brand markets are "rare" and "limited to situations in which consumers are 'locked in' to a specific brand by the nature of the product"); *United Farmer Agents*, 89 F.3d at 236 (dismissing tying claim premised on an "alleged market [that] consists of a single brand"); *Domed Stadium Hotel, Inc. v. Holiday Inns, Inc.*, 732 F.2d 480, 488 (5th Cir. 1984) ("[A]bsent exceptional market conditions, one brand in a market of competing brands cannot constitute a relevant product market.").

Because it cannot allege that sportsbooks are "locked into" data from any individual sports league, PANDA switches gears, focusing instead on downstream "individuals" and "bettors" that are not PANDA's customers. SAC ¶¶ 105-06. This is insufficient as a matter of law because individual bets are not a product at issue; sports data to sportsbooks is. *See New Orleans Ass'n*, 56 F.4th at 1038 (dismissing because that plaintiff similarly "misunderstands the relevant inquiry"). While PANDA speculates that there are some individuals who "may not enjoy watching—and by extension wagering on—different sports or different sports leagues" (SAC ¶ 105), PANDA fails to allege how many "individuals" there "may" be, their sensitivity to price changes, and whether their preferences could plausibly lock in their upstream providers. And PANDA's allegations that different sports leagues may be more amenable to different types of bets (SAC ¶¶ 106-07) say nothing about whether a competitively significant percentage of individual bettors will switch between wagering on different types of sports leagues. As the Fifth Circuit has oft instructed, "one brand [*e.g.*, NBA, MLB, NHL] in a market of competing brands cannot constitute a relevant product market," and "the fact that a [bettor] limits its competitive activity to a single firm's products (and at only one competitive level) cannot control the definition of the relevant market." *New Orleans Ass'n*, 56 F.4th at 1038 (cleaned up). PANDA's three single-brand sports data product markets are therefore implausible.

B. PANDA's alleged geographic markets ignore major variations in state laws

In addition to implausibly defining relevant product market, the SAC fails to plausibly allege a relevant geographic market for any of the alleged relevant markets, tied or tying. The geographic market boundaries "must correspond to the commercial realities of the industry and be economically significant." *Apani Sw.*, 300 F.3d at 626 (cleaned up). In particular, a geographic product market must be sensitive to "determinants that affect the behavior of market participants" such as "regulatory constraints impeding the free flow of competing goods into the

[redacted]

area." *Id.* (dismissing complaint for failure to do so).

PANDA implausibly alleges that the relevant geographic market is either the entire U.S. (SAC ¶ 113) or each of "fifty [sic] individual U.S. state and territories" (SAC ¶ 115). These geographic market allegations, however, do not correspond to the basic commercial reality that only 33 states have legalized online sports betting. Ex. E. Yet PANDA implausibly assumes that the differences in legality nationwide "do not affect the operation of the parties' sports betting products." SAC ¶ 114. The three sportsbook contracts are to the contrary: for example, [redacted] *E.g.*, Ex. C, [redacted]. PANDA's ask that the Court to assume away the varying "regulatory constraints" on online sports betting in a third of the country is implausible on its face, as it does "not correspond to the commercial realities of the industry" where state-by-state regulation is a critical factor for both Sportradar and its customers. *See Apani Sw.*, 300 F.3d at 626.

Equally implausible is PANDA's alternative assumption that *each* U.S. state and territory forms its own relevant geographic market. SAC ¶ 115. That does not comport with common sense. How can Sportradar have market power over online sports betting in the 17 states where online sports betting is illegal? And, the other 33 states are not monolithic: according to the SAC, "in at least [nine states], sports betting is *only* legal when done online." SAC ¶ 110. PANDA offers no reason to assume that sportsbooks operate identically in these 9 states that allegedly only allow online sports wagering versus those 24 states that allow both online and offline sports gambling. Thus, the SAC fails to account for the "commercial realities" both within and between the numerous U.S. states and territories, rendering each of its geographic market definitions fatally implausible. *See Apani Sw.*, 300 F.3d at 633.

V. <u>PANDA Fails to Plausibly Allege Necessary Market Power or Market Shares</u>

All of PANDA's antitrust claims require a showing of market power. *PSKS, Inc.*, 615

[redacted]

F.3d at 418-19 ("To allege a vertical restraint claim sufficiently, a plaintiff must plausibly allege the defendant's market power."). Even assuming that PANDA has plausibly alleged the geographic and product boundaries of any of its relevant markets—which it has not—the SAC is again fatally flawed because PANDA fails to plausibly allege any type of market power or market shares in its alternative tying market.

A plaintiff alleging market power—especially in a novel market like online sports betting, where no court has previously encountered such markets—must convincingly define the market. *See, e.g.*, *Academy of Allergy & Asthma in Primary Care v. Quest Diagnostics, Inc.*, 2022 WL 980791, at *7 (W.D. Tex. Mar. 31, 2022). A plaintiff must both allege market share percentages and "indicate[] what this percentage measures." *Id.* at *8 (dismissing for failure to do so). Bare allegations of market power or shares fail to state a claim where a plaintiff "does not even allege what it is measuring." *FTC v. Facebook, Inc.*, 560 F. Supp. 3d 1, 18 (D.D.C. 2021).

PANDA offers a single market share allegation: "[o]n information and belief—whether measured by gaming revenue or consumption of official sports league data," Sportradar has a market share of "over 30% (and likely over 40%)." SAC ¶ 124. This is an implausibly threadbare allegation of market shares. Is gaming revenue measured by gross betting receipts or net, including payouts? Does it include bonuses or promotional credits? Does it include taxes imposed in this highly regulated industry? These are not hypothetical questions: [redacted] *See, e.g.*, Ex. C, [redacted]. And PANDA's alternative measure of market share, "consumption of official sports league data," fails to provide any units of measurement at all. "Without knowing the denominator, the Court cannot adequately infer market power from these market-share allegations." *Academy of Allergy & Asthma*, 2022 WL 980791, at *8. Thus, PANDA's market

[redacted]

share measures "have not nudged [PANDA's] claims across the line from conceivable to plausible," *Twombly*, 550 U.S. at 570.

VI. PANDA's Antitrust Claims Should be Dismissed with Prejudice

Finally, dismissal with prejudice is appropriate here, where PANDA's past track record demonstrates that any further amendment will not cure the myriad deficiencies. It would be futile because the language of the contracts does not plausibly reflect a tie, and PANDA's own allegations show that its antitrust claims are time-barred. *Rogers v. Lowe's Home Centers, Inc.*, 2023 WL 2815154, at *5 (E.D. Tex. Apr. 6, 2023) ("A dismissal with prejudice is appropriate when amending a complaint would be futile."). The SAC was PANDA's third bite at the apple, after months of discovery, made on the last possible day for amendment under the extant docket control order, and resulted in an SAC filled with irrelevancies.[12] A dismissal without prejudice will also only further delay this ever-shifting case. All this weighs in favor of dismissal without leave to amend. *See, e.g.*, *Roa v. City of Denison*, 2018 WL 8458124, at *2 (E.D. Tex. Nov. 2, 2018), *report and recommendation adopted*, 2019 WL 1375177 (E.D. Tex. Mar. 27, 2019).[13]

CONCLUSION

For the foregoing reasons, Sportradar respectfully request the Court dismiss, with prejudice, the Fifth and Sixth Causes of Action in PANDA's SAC.

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[12] *See, e.g.*, SAC ¶¶ 29-31 ([redacted]). Sportradar reserves the right to move to strike any remaining immaterial allegations at an appropriate time under the Federal Rules and the Local Civil Rules, which the Court may also do "on its own." Fed. R. Civ. P. 12(f).

[13] PANDA's renewed claims of patent infringement are not materially different than their past ones in earlier version of the complaint, and Sportradar incorporates by reference its past defenses to those claims. ECF 73. Sportradar will file an amended answer once this partial motion to dismiss is resolved. *See* Fed. R. Civ. P. 12(a)(4).

[redacted]

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via electronic mail this 31st day of March 2025. Any other counsel of record in the case will be served by first class mail.

/s/ *Michael C. Smith*

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I hereby certify under Local Rule CV-5(a)(7)(B) that the foregoing Motion is authorized to be filed under seal pursuant to Paragraph 16 of the Protective Order (ECF 94) because they contain Designated Material as defined in the Protective Order.

/s/ *Michael C. Smith*