

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AFFINITY CREDIT UNION, et al.,
Plaintiffs,
v.
APPLE INC.,
Defendant.

Case No. [22-cv-04174-JSW](#)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT’S
MOTION TO DISMISS PLAINTIFFS’
AMENDED CLASS ACTION
COMPLAINT**

Re: Dkt. No. 44

Now before the Court is Defendant Apple Inc.’s Motion to Dismiss Plaintiff’s Amended Class Action Complaint. The Court has considered the parties’ papers, relevant legal authority, and the record in this case, and finds the matter suitable for disposition without oral argument.¹ See N.D. Civ. L.R. 7-1(b). For the following reasons, the Court hereby GRANTS, IN PART, AND DENIES, IN PART, Defendant’s motion.

BACKGROUND

Plaintiffs Affinity Credit Union, GreenState Credit Union, and Consumers Co-Op Credit Union (collectively, “Plaintiffs”) filed a complaint against Apple, Inc. (“Apple”), alleging that Apple unlawfully monopolized the market for tap-and-pay mobile wallets for the iPhone, iPad, and Apple Watch.² (Compl. ¶ 4.)

According to Plaintiffs, Apple equips the iPhone, iPad, and Apple Watch with “Near Field Communication” or “NFC” chips. (*Id.* ¶¶ 1, 4.) Plaintiffs allege that NFC technology was

¹ The Court has also received and considered the subsequent authorities submitted by the parties. (*See* Dkt. Nos. 62, 63.)

² Plaintiffs acknowledge that the operating systems for the iPhone, iPad, and Apple Watch differ, but for ease of reference and due to overlapping core features, refer to all three mobile operating systems collectively as “iOS.” (*Id.*) The Court will do the same.

1 standardized by Sony and Phillips prior to the development of Apple’s smart mobile devices, and
2 that NFC is used in numerous non-Apple products for a wide range of applications. (*Id.* ¶¶ 35-37.)
3 As relevant here, an NFC chip enables a smart device to send a wireless signal to an NFC-enabled
4 payment terminal from close proximity, allowing a consumer to “tap” his or her mobile device
5 against the payment terminal in order to complete a transaction. (*Id.* ¶ 1.)

6 Plaintiffs allege that Apple has developed a mobile wallet, Apple Pay, which works with
7 the NFC chips in iOS devices for tap-and-pay transactions. (*Id.* ¶ 2.) Plaintiffs allege that a
8 consumer who purchases an iOS device also receives Apple Pay. (*Id.* ¶ 10.) Plaintiffs allege that
9 Apple limits access to the NFC chip in iOS devices to Apple Pay for the purpose of tap-and-pay
10 mobile wallets but enables access the NFC chip for other purposes, such as “scanning a toy to
11 connect it with a video game.” (*Id.* ¶¶ 2, 49.)

12 Non-Apple mobile devices, including those using Android OS, also use NFC technology
13 for tap-and-pay mobile wallets. (*Id.* ¶ 3.) Plaintiffs allege that manufacturers which use Android
14 OS do not restrict access to NFC technology for any purpose. (*Id.*) As a result, according to
15 Plaintiffs, Android OS consumers have their choice of multiple competing tap-and-pay wallets,
16 such as Google Pay and Samsung Pay. (*Id.*)

17 Plaintiff Affinity Credit Union and Plaintiff GreenState Credit Union allege that they are
18 Iowa-chartered credit unions, and that each issues payment cards and participates in Apple Pay.
19 (*Id.* ¶¶ 17, 18.) Plaintiff Consumers Co-Op Credit Union alleges that it is an Illinois-chartered
20 credit union, and that it too issues payment cards and participates in Apple Pay. (*Id.* ¶ 19.)
21 Plaintiffs allege that they pay supracompetitive issuer-transaction fees on purchases made with
22 Apple Pay because Apple prohibits mobile wallets other than Apple Pay from utilizing the NFC
23 chip on iOS devices. (*Id.* ¶¶ 5, 6, 17-19.)

24 **A. Product Market Allegations.**

25 Plaintiffs focus their allegations on Apple’s purported exclusionary conduct regarding tap-
26 and-pay mobile wallets. However, Plaintiffs allege that Apple abuses monopoly power in multiple
27 markets, including the market for smart phones, tablets, and smart watches.

1 **1. The Tap-and-Pay iOS Mobile Wallet Market.**

2 Plaintiffs allege a market or aftermarket for tap-and-pay mobile wallets on iOS devices.
3 (See *id.* ¶ 53.) Plaintiffs allege that other payment forms such as cash or cards are not reasonably
4 interchangeable with tap-and-pay iOS mobile wallets because tap-and-pay iOS mobile wallets are
5 faster and easier to use, as well as more sanitary. (*Id.* ¶ 54.) Plaintiffs also allege that tap-and-pay
6 iOS mobile wallets provide security advantages over traditional forms of payment due to
7 tokenization of card numbers. (*Id.* ¶ 55.) Plaintiffs allege that QR-code payment apps and tap-
8 and-pay Android OS mobile wallets are not products in the tap-and-pay iOS mobile wallets
9 market because they lack the same functionality and convenience as tap-and-pay iOS mobile
10 wallets or, in the case of tap-and-pay Android OS mobile wallets, switching costs between iOS
11 and Android OS devices are too high. (*Id.* ¶¶ 59-73.)

12 **2. The Smartphone Market.**

13 According to Plaintiffs, a smartphone is a mobile device that allows people to access the
14 internet anytime and anywhere with a cellular or wireless connection. (*Id.* ¶ 22.) Smartphones are
15 used for shopping, navigation, social media, telephone calls, and more. (*Id.*) Plaintiffs allege that
16 there is no reasonably close substitute for a smartphone because of its broad functionality and
17 mobility. (*Id.* ¶ 23.)

18 **3. The Tablet Market.**

19 Plaintiffs allege that there is a distinct product market for tablets, which they allege are
20 marketed as a “third category of device” between laptops and smartphones. (*Id.* ¶ 27.) Plaintiffs
21 allege that tablets are less mobile than smartphones but offer more mobility than laptops and can
22 be used to perform a range of productivity tasks. (*Id.* ¶¶ 28-29.)

23 **4. The Smart Watch Market.**

24 Plaintiffs allege that smart watches are wearable devices that offer apps and cellular
25 connectivity, much like smartphones. (*Id.* ¶ 31.) According to Plaintiffs, smart watches provide a
26 range of functions related to monitoring the health and fitness of the wearer. (*Id.* ¶ 32.) However,
27 Plaintiffs allege that smart watches do not replace smartphones or tablets and are typically paired
28 with another smart device. (*Id.* ¶ 33.)

B. Market Share Allegations.

Plaintiffs allege that Apple possesses a 100% monopoly in the U.S. market for tap-and-pay iOS mobile wallets. The only product available in the tap-and-pay iOS mobile wallet market is Apple Pay, a tap-and-pay iOS mobile wallet owned by Apple. (*Id.* ¶ 4.) Plaintiffs allege that Apple also possesses dominant market power in the smart device markets. Plaintiffs allege that the Apple iPhone had a 57% share of the U.S. smartphone market in 2022. (*Id.* ¶ 25.) Plaintiffs allege that Apple’s iPad had a 54% share of the U.S. tablet market in 2022. (*Id.* ¶ 30.) Finally, Plaintiffs allege that Apple’s Apple Watch currently has an approximately 46% share of the U.S. smart watch market. (*Id.* ¶ 34.)

Plaintiffs further allege that competition in the smartphone, tablet, and smart watch markets does not constrain Apple’s power in the tap-and-pay iOS mobile wallet market because of high switching costs and consumer lock-in. (*Id.* ¶ 61.) Plaintiffs also allege that Apple has monopoly power over locked-in iOS device users. (*Id.* ¶¶ 79-82.)

C. Allegations of Anticompetitive Conduct.

Plaintiffs allege that Apple harms competition by limiting access to the NFC chip in iOS mobile devices to Apple Pay and apps without payment functionality. (*Id.* ¶¶ 2, 49.) Plaintiffs allege that, although iOS device consumers never agree that they will exclusively use Apple Pay as their tap-and-pay iOS mobile wallet, iOS device consumers are nevertheless coerced to use Apple Pay by exclusion of tap-and-pay iOS mobile wallet competitors. (*Id.* ¶ 47.)

Plaintiffs allege a violation of Sections 1 and 3 of the Sherman Act, 15 U.S.C. sections 1 and 3, by tying the Apple Wallet to iOS mobile device markets. (*Id.* ¶ 151.) Plaintiffs further allege monopolization and attempted monopolization in violation of Section 2 of the Sherman Act, 15 U.S.C. section 2. (*Id.* ¶¶ 161-181.)

ANALYSIS**A. Legal Standard Applicable to a Motion to Dismiss.**

A complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “[D]etailed factual allegations are not required” to survive a motion to dismiss if the complaint contains sufficient factual allegations to

1 “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129
 2 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (citing *Bell Atl. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct.
 3 1955, 167 L.Ed.2d 929 (2007)). “Labels and conclusions[] and a formulaic recitation of the
 4 elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555.

5 When a party moves to dismiss for failure to state a claim under Rule 12(b)(6), a district
 6 court accepts as true all well-pleaded material facts and draws all reasonable inferences in favor of
 7 the plaintiff. *Faulkner v. ADT Servs., Inc.*, 706 F.3d 1017, 1019 (9th Cir. 2013). A district court
 8 should grant leave to amend unless the court determines the pleading could not “possibly be cured
 9 by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

10 **B. Plaintiffs Plausibly Allege a Relevant Product Market.**

11 Apple first argues that the amended class action complaint (the “FAC”) fails to allege a
 12 plausible product market, thereby dooming each of Plaintiffs’ Sherman Act claims. To state a
 13 claim under the Sherman Act, a plaintiff must allege that a relevant market exists and that the
 14 defendant has power within that market. *Newcal Indus., Inc. v. Ikon Office Sol.*, 513 F.3d 1038,
 15 1044 (9th Cir. 2008). The definition of a “relevant market” is typically a factual inquiry and need
 16 not be pled with specificity, but dismissal is appropriate if a fatal legal defect is apparent from the
 17 face of the complaint. *Id.* at 1045.

18 To avoid a fatal legal defect, the relevant market must be a “product market,” rather than a
 19 market whose boundaries are delineated by consumers. *Id.* (citations omitted). The market at
 20 issue must encompass the product at issue as well as all economic substitutes for the product. *Id.*
 21 The relevant market must include the group of competitors “who have [the] actual or potential
 22 ability to deprive each other of significant levels of business.” *Thurman Indus., Inc. v. Pay ‘N Pak*
 23 *Stores, Inc.*, 875 F.2d 1369, 1374 (9th Cir. 1989). To assess the outer boundaries of a product
 24 market, a court must look to whether the market, as the plaintiff defined it, includes all reasonably
 25 interchangeable products and whether there is cross-elasticity of demand between the product and
 26 its substitutes. *Olin Corp. v. FTC*, 986 F.2d 1295, 1298-99 (9th Cir. 1993). “If consumers view
 27 the products as substitutes, the products are part of the same market.” *Rebel Oil Co. v. Atlantic*
 28 *Richfield Co.*, 51 F.3d 1421, 1435 (9th Cir. 1995). A court must consider not merely “formalistic

1 distinctions” but “actual market realities.” *Ohio v. American Express Co.*, 138 S. Ct. 2274, 2285,
2 201 L. Ed. 2d 678 (2018) (quoting *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S.
3 451, 466-67, 112 S. Ct. 2072, 119 L. Ed. 2d 265 (1992)).

4 Plaintiffs allege that Apple abuses monopoly power in the tap-and-pay iOS mobile wallets
5 market, which they expressly allege to be an aftermarket. (Compl. ¶¶ 11, 74-84.) Apple argues
6 that the tap-and-pay iOS mobile wallets market is an implausible single-brand market, which
7 should be rejected because single-brand markets are disfavored. Apple contends that Plaintiffs
8 artificially narrow the antitrust relevant market by excluding other forms of payment such as cash,
9 physical credit cards, QR code-based payments, or Google Pay. Apple further argues that the tap-
10 and-pay iOS mobile wallets market cannot be an aftermarket, because Apple Pay is included in the
11 purchase of iOS devices. Plaintiffs respond that they have adequately alleged that Apple has a
12 100% monopoly of the tap-and-pay iOS mobile wallet market, and that a 100% monopoly should
13 not shield a monopolist from antitrust claims in the name of avoiding single-brand markets.
14 Plaintiffs further argue that they have alleged an aftermarket, which may be comprised of a single
15 brand, and that the inclusion of Apple Pay with the purchase of an iOS device does not preclude a
16 finding of an aftermarket because consumers must take additional steps to enable Apple Pay.

17 Single brand markets may be “extremely rare,” *Reilly v. Apple, Inc.*, 578 F. Supp. 3d 1098,
18 1107 (N.D. Cal. 2022) (quoting *Apple, Inc. v. Psystar Corp.*, 586 F. Supp. 2d 1190, 1198 (N.D.
19 Cal. 2008)), but “it is legally permissible to premise antitrust allegations on a submarket” or an
20 aftermarket. *Newcal*, 513 F.3d at 1045, 1049. An aftermarket exists “where demand for a good is
21 entirely dependent on the prior purchase of a durable good in a foremarket.” *Epic Games, Inc. v.*
22 *Apple, Inc.*, 67 F.4th 946, 976 (9th Cir. 2023). An alleged aftermarket must “bear the practical
23 indicia” of an independent product market. *Id.* at 977 (quotations omitted). An aftermarket exists
24 if: “(1) the challenged aftermarket restrictions are ‘not generally known’ when consumers make
25 their foremarket purchase; (2) ‘significant’ information costs prevent accurate life-cycle pricing;
26 (3) ‘significant’ monetary or non-monetary switching costs exist; and (4) general market-
27 definition principles regarding cross-elasticity of demand do not undermine the proposed single-
28 brand market.” *Id.*

1 Here, Plaintiffs have plausibly alleged an aftermarket for tap-and-pay iOS mobile wallets.
2 Plaintiffs allege that consumers are not privy to the tap-and-pay iOS mobile wallet constraints at
3 the time of purchase of an iOS device, and that consumers of iOS devices expect to be able to
4 obtain tap-and-pay alternatives to Apple Pay. Plaintiffs further allege that users face high
5 switching costs after purchase, and they plausibly claim that other forms of payment are not
6 reasonable substitutes for Apple Pay. *Cf. United States v. Microsoft Corp.*, 253 F.3d 34, 52 (D.C.
7 Cir. 2001) (affirming exclusion of Mac OS was not part of the antitrust relevant market because
8 Microsoft did not challenge finding of high switching costs between Windows and Mac OS).
9 Finally, Plaintiffs allege that general principles of cross-elasticity of demand are not present
10 because Apple does not permit issuers to pass on transaction fees to consumers.

11 Plaintiffs have also plausibly alleged that Apple Pay and iOS devices are separate products
12 which can give rise to the existence of an aftermarket. Apple has not met its burden to show that
13 Apple Pay and iOS devices are a single product given the allegations in the FAC. Plaintiffs have
14 alleged that demand exists for tap-and-pay iOS mobile wallets, and that the exclusion of the
15 wallets from iOS devices adversely affects competition in the antitrust relevant market. Making
16 all reasonable inferences in favor of the FAC, the Court finds that Plaintiffs have plausibly alleged
17 that Apple Pay is a separate product in a distinct product market from iOS devices.

18 Apple points to two prior decisions to demonstrate that the tap-and-pay iOS mobile wallet
19 market is implausible as a single-brand market, but those cases do not aid Apple because the
20 plaintiffs in those cases failed to plead aftermarkets. In *Reilly*, the Court dismissed antitrust claims
21 against Apple where the alleged product market was “the iOS App Distribution Market,”
22 consisting entirely of Apple’s App Store. 578 F. Supp. 3d at 1107. The Court acknowledged that
23 single-brand markets may be plausible where the plaintiff alleges an aftermarket, but the *Reilly*
24 plaintiff did not allege either an aftermarket or facts sufficient to find an aftermarket. *Id.* The
25 complaint was accordingly dismissed without prejudice. *Id.* at 1108.

26 Similarly, the plaintiff in *Apple, Inc. v. Psystar Corp.* alleged a single brand primary
27 market rather than a single brand aftermarket. 586 F. Supp. 2d at 1197. In that case, defendant
28 Psystar brought a counterclaim alleging monopolization of the “Mac OS market” due to Apple’s

1 prohibition on running Mac OS on non-Apple hardware systems. *Id.* Psystar did not allege
 2 switching costs or customer “lock in” to the Mac OS market. *Id.* The Court rejected the idea that
 3 there was a “Mac OS-compatible computer hardware systems” market because Apple
 4 contractually restricted use of Mac OS contemporaneously with device purchase. *Id.* at 1201. The
 5 court nevertheless permitted Psystar to move for leave to amend. *Id.* at 1204.

6 Plaintiffs’ allegations are sufficient to pursue a claim based on the alleged aftermarket.
 7 The Court DENIES Apple’s motion to dismiss on this basis.

8 **C. Plaintiffs Do Not State a Claim for Tying in Violation of the Sherman Act.**

9 As set forth above, Plaintiffs have plausibly alleged the existence of a tap-and-pay iOS
 10 mobile wallet market. Plaintiffs allege that Apple has unlawfully tied Apple Pay, a product in the
 11 tap-and-pay iOS mobile wallet market, with Apple mobile devices, products in the smartphone
 12 product market, tablet product market, and smart watch product market. (Compl. ¶ 151.)

13 **1. The FAC Establishes Standing for Plaintiff’s Tying Claim.**

14 To establish antitrust standing, a plaintiff must meet “the more demanding antitrust
 15 standing standard.” *Eagle v. Star-Kist Foods, Inc.*, 812 F.2d 538, 540 (9th Cir. 1987). Antitrust
 16 standing is established “on a case-by-case basis,” considering: (1) whether the nature of the
 17 plaintiff’s injury is of the type the antitrust laws were intended to prevent; (2) the directness of the
 18 injury; (3) whether the harm is speculative; (4) risk of duplicative recovery; and (5) complexity in
 19 apportioning damages. *Id.* (citing *Associated Gen. Contractors v. California State Council of*
 20 *Carpenters*, 459 U.S. 519, 538-45 (1983)) (the “*Associated General Contractors* factors”). Apple
 21 argues that, as issuers, Plaintiffs cannot show an antitrust injury and satisfy the first factor.

22 In order to allege an antitrust injury, a plaintiff must allege it participates in the same
 23 market as the allegedly anticompetitive participant, meaning that the plaintiff must be a consumer
 24 or a competitor. *Eagle*, 812 F.2d at 540 (citing *Bhan v. NME Hospitals, Inc.*, 772 F.2d 1467, 1470
 25 (9th Cir. 1985)). Where a plaintiff seeks to establish an antitrust injury in a multi-sided platform
 26 such as credit card transactions, the Court must consider the alleged anticompetitive conduct in the
 27 context of the multi-sided transaction rather than splitting the transaction into discrete parts.

28 *American Express Co.*, 138 S. Ct. at 2287. Apple argues that Plaintiffs are neither competitors nor

1 consumers of iOS devices or Apple Pay. Because Plaintiffs base their tying claim on a tie
2 between the iOS device purchase and Apple Pay, Apple argues, Plaintiffs are not affected by the
3 tie. Moreover, according to Apple, Plaintiffs cannot show that they suffered an injury as
4 participants in a multi-sided platform because they do not allege an increase in the cost of
5 transactions above a competitive level when the transactions are evaluated as a whole.

6 Plaintiffs have alleged that the tie between iOS devices and Apple Pay constrains their
7 choice of tap-and-pay iOS mobile wallets with which to participate. Plaintiffs allege that Apple
8 shields consumers from the costs of the tie by charging issuers and prohibiting issuers from
9 passing along costs. As a result, according to Plaintiffs, they have absorbed higher transaction
10 fees than they would pay in a market without a tie. Plaintiffs further allege that the transaction
11 fees are not reasonably tied to the cost of the service, and they point to allegedly arbitrary price
12 differentials between credit and debit transactions in support. (Compl. ¶ 66.) Plaintiffs plausibly
13 allege that the tie results in injury to issuers and artificially inflated transaction costs when the
14 multi-sided arrangement is considered as a whole. Therefore, Plaintiffs have plausibly alleged
15 antitrust standing.

16 **2. Plaintiffs Do Not Allege a Plausible Tie Between iOS Devices and Apple Pay.**

17 To state a claim for tying, a plaintiff must allege: “(1) that [the defendant] tied together the
18 sale of two distinct products or services; (2) that [the defendant] possesses enough economic
19 power in the tying product market to coerce its customers into purchasing the tied product; and (3)
20 that the tying arrangement affects a not insubstantial volume of commerce in the tied product
21 market.” *Aerotec Int’l, Inc. v. Honeywell Int’l, Inc.*, 836 F.3d 1171, 1178 (9th Cir. 2016) (citing
22 *Cascade Health Sols. v. PeaceHealth*, 515 F.3d 883, 913 (9th Cir. 2007)). “A tie only exists
23 where ‘the defendant improperly imposes conditions that explicitly or practically require buyers to
24 take the second product if they want the first one.’” *Id.* (quoting 10 Phillip E. Areeda & Herbert
25 Hovenkamp, *Antitrust Law* ¶ 1752b (3d ed. 2011)). Tying claims can be positive or negative, and
26 “[t]he common element in both situations is that a seller explicitly or implicitly imposes
27 conditions linking the sale of a tying product with the sale of the tied product.” *Id.* Conduct
28 toward third parties does not act as a condition of sale. *Id.*

1 Apple argues that there is no tie because iOS device consumers are not required to use
2 Apple Pay and because Apple Pay is free to consumers. The Court agrees. Purchase of Apple Pay
3 cannot be a condition of purchase of an iOS mobile device because consumers do not actually
4 purchase Apple Pay or agree to forego purchase of other tap-and-pay iOS mobile wallets. (*See*
5 Compl. ¶ 47.) The Ninth Circuit’s reasoning in *Aerotec* forecloses Plaintiffs’ argument that there
6 is nevertheless effectively an agreement between iOS device consumers and Apple that the
7 consumers will not purchase competing tap-and-pay iOS mobile wallets.

8 In *Aerotec*, the plaintiff competed with Honeywell in the repair market for Honeywell
9 APUs, which were described as small engines that provide electrical power to airplanes. 836 F.3d
10 at 1175. Honeywell dominated the APU market and the APU repair market, and Honeywell also
11 manufactured most of the replacement parts for its APUs. *Id.* at 1176. A parts shortage, parts
12 shipment delays, and a burdensome order process from Honeywell made it difficult for Aerotec to
13 cover its servicing contracts in the APU repair market. *Id.* at 1177. Aerotec alleged that the
14 shortage was part of a scheme by which Honeywell abused its monopoly over APU parts to drive
15 consumers in the repair market to Honeywell in order to obtain repairs. *Id.*

16 Aerotec alleged that Honeywell unlawfully tied together APUs and APU repair services.
17 *Id.* at 1178. However, Honeywell did not condition the initial sale of the APUs to purchasers on
18 using Honeywell services for repairs. The Ninth Circuit ruled this circumstance could not be a tie,
19 and “declin[e] to stretch the tying construct to accommodate the claim that Honeywell’s conduct
20 toward third party servicers—*i.e.*, parts delays, pricing decisions, and removal of technical data—
21 acts as an effective, or ‘de facto,’ condition on sale to airlines.” *Id.* More explicitly, the court
22 reasoned that there cannot be a tie where there is “no evidence that Honeywell explicitly or
23 implicitly ties or conditions the *sale* of APU parts to *APU owners* on a requirement that the
24 owners ‘buy and repair Honeywell’ and/or forego services from independent service providers.”
25 *Id.* at 1179 (emphasis in original).

26 *Aerotec* is directly on point. Plaintiffs essentially allege a “de facto” tie between iOS
27 devices and Apple Pay because Apple’s conduct toward third party competitors makes it
28 impossible for the competitors to compete with Apple Pay in the tap-and-pay iOS mobile wallet

1 market. As Plaintiffs acknowledge, consumers do not agree to limit their use of tap-and-pay iOS
2 mobile wallets to Apple Pay, and consumers do not pay to install or use Apple Pay. Thus,
3 Plaintiffs do not plausibly allege that Apple conditions the sale of iOS devices to iOS device
4 owners on an agreement that iOS device owners buy Apple Pay or forego purchase or use of
5 competing tap-and-pay iOS mobile wallets. The Court therefore GRANTS Apple's motion to
6 dismiss Plaintiffs' tying claim.

7 **D. Anticompetitive Harm.**

8 Apple argues that all of Plaintiffs' claims must fail because Plaintiffs do not allege
9 anticompetitive harm. Apple claims that Plaintiffs did not plausibly allege supracompetitive
10 prices, that their allegations regarding output reduction are hypothetical and conclusory, and that
11 their allegations about stifling innovation are contradicted by other allegations in the FAC.

12 Apple's arguments take issue with the interpretation of facts alleged in the FAC, rather than the
13 sufficiency of the pleadings. Plaintiffs have plausibly alleged that Apple Pay charges arbitrary and
14 inflated fees to issuers, and that competition in the tap-and-pay iOS mobile wallet market would
15 spur innovation and lead to lower prices. The Court declines to dismiss the FAC for failure to
16 plead anticompetitive harm, and it DENIES the motion to dismiss on this basis.

17 **E. Refusal to Deal.**

18 Apple lastly argues that Plaintiffs fundamentally allege a refusal to deal, and that Plaintiffs
19 do not allege the elements of a refusal-to-deal claim. Plaintiffs respond that Apple does in fact
20 deal with issuers, developers, and consumers, so Plaintiffs' claims cannot be recast as a refusal to
21 deal claim. As set forth above, the Court finds that Plaintiffs have plausibly alleged
22 monopolization and attempted monopolization under the Sherman Act, and the Court DENIES the
23 motion to dismiss on this basis.

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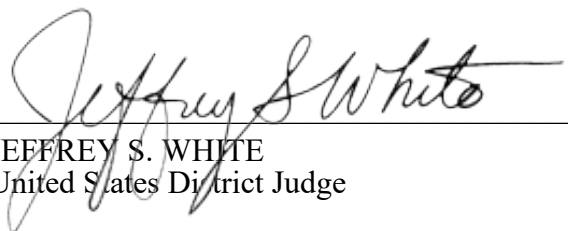
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CONCLUSION

For the foregoing reasons, the Court GRANTS, IN PART, AND DENIES, IN PART, Apple's motion to dismiss. The parties shall appear for a case management conference on December 1, 2023, at 11:00 a.m. The parties shall submit a joint case management statement by November 22, 2023.

IT IS SO ORDERED.

Dated: September 27, 2023



JEFFREY S. WHITE
United States District Judge

United States District Court
Northern District of California

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