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# [***Lloyd's Material Supply Co., Inc. v. Regal Beloit Corp.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5RDM-HSW1-F04C-T51S-00000-00&context=)

United States District Court for the Central District of California

June 27, 2017, Decided; June 27, 2017, Filed

CV 16-8027 DMG (JPRx)

**Reporter**

2017 U.S. Dist. LEXIS 215225 \*

Lloyd's Material Supply Co., Inc. & Lloyd's Equipment, Inc. v. Regal Beloit Corp.

**Core Terms**

***antitrust***, consent decree, pump, Plaintiffs', spa, Services, acquisition, motors, allegations, monopolization, electric, ***antitrust*** violation, district court, competitors, statute of limitations, cause of action, businesses, violations, judicial notice, plausibility, ***regulation***, factual allegations, motion to dismiss, leave to amend, convenience, speculative, divested, parties, rival

**Counsel:** **[\*1]**Attorneys for Plaintiff(s): Not Present.

Attorneys for Defendant(s): Not Present.

**Judges:** DOLLY M. GEE, UNITED STATES DISTRICT JUDGE.

**Opinion by:** DOLLY M. GEE

**Opinion**

CIVIL MINUTES—GENERAL

**Proceedings: IN CHAMBERS - ORDER RE DEFENDANT'S MOTION TO DISMISS OR, ALTERNATIVELY, TO TRANSFER VENUE [20]**

This matter comes before the Court upon Defendant Regal Beloit Corp.'s ("RBC") motion to dismiss Plaintiffs Lloyd's Material Supply Co., Inc. ("LMS") and Lloyd's Equipment, Inc.'s ("LE") ***antitrust*** action pursuant to [*Federal Rules of Civil Procedure 12(b)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) and [*12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) or, alternatively, to transfer venue to the United States District Court for the District of Columbia pursuant to *28 U.S.C. section 1404(a)* (the "Motion"). [Doc. # 20.] Plaintiffs filed suit in this District, raising claims in connection with RBC's alleged attempted monopolization of the domestic market for electric spa pump motors. *See* Complaint at ¶ 1 [Doc. # 1]; *see also* Complaint at ¶¶ 12, 65-96 (causes of action).

**I**.

**JUDICIAL NOTICE**

In support of its Motion, RBC seeks judicial notice of four publicly filed documents, filed in state and federal court and with the U.S. Securities and Exchange Commission ("SEC"), including the final judgment (the "Consent Decree") issued by the United States District Court for the District of Columbia**[\*2]** in *United States v. Regal Beloit Corp. & A.O. Smith Corp.*, Case No. 1:11-cv-01487-ESH. *See* RJN at 2 [Doc. # 21]. In support of its Reply, RBC seeks judicial notice of excerpts deemed relevant from another publicly filed state court document. RJN Reply at 2 [Doc. # 26].

[*Federal Rule of Evidence 201*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-11WV-00000-00&context=) permits a court to take judicial notice of matters of public record and facts not subject to reasonable dispute and "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." [*Campbell v. PricewaterhouseCoopers, LLP, 642 F.3d 820, 824 n. 3 (9th Cir. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:533J-X031-652R-82BG-00000-00&context=) (citing [*Fed. R. Evid. 201(b)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-11WV-00000-00&context=)). "Courts routinely take judicial notice of publicly available records," including documents filed in "other court proceedings." [*Foster Poultry Farms v. Alkar-Rapidpak-MP Equipment, Inc., 868 F. Supp. 2d 983, 990-91 (2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55CW-W4Y1-F04C-T13F-00000-00&context=). SEC filings are also proper subjects of judicial notice. [*Dreiling v. Am. Express Co., 458 F.3d 942, 946 n.2 (9th Cir. 2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4KN1-BH90-0038-X33B-00000-00&context=). Additionally, courts may judicially notice documents referenced in the plaintiff's complaint, pursuant to the "incorporation by reference" doctrine, or documents integral to the complaint provided that their authenticity is not in dispute. [*In re Am. Apparel, Inc. Shareholder Litigation, 855 F. Supp. 2d 1043, 1061 (C.D. Cal. 2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55B2-B2G1-F04C-T2D1-00000-00&context=).

All of the RJN exhibits are proper subjects of judicial notice, but the Court finds only the Consent Decree relevant to its resolution of the instant Motion. Further, the Consent Decree is material to the instant action, and the Complaint refers to it repeatedly. *See****[\*3]*** Complaint, *passim*. The Court therefore **GRANTS** RBC's request as to the Consent Decree only and **DENIES** the request as to the remaining records.

**II**.

**FACTUAL BACKGROUND**[[1]](#footnote-0)1

Prior to December 2010, RBC was one of three businesses that competed for the design, manufacture, and sale of electric spa pump motors, and, together with another competitor, AOS, RBC supplied more than 50% of that market. Complaint at ¶¶ 1-2. In December 2010, RBC attempted to acquire AOS's electric motor business assets, including spa pump electric motors, but the Department of Justice, ***Antitrust*** Division (the "DOJ") sued RBC and AOS to enjoin the acquisition in August 2011 on ***antitrust*** grounds. *Id.* at ¶¶ 3-4. RBC resolved the matter by agreeing to divest its assets related to electric spa pump motors to third party SNTech, Inc. ("SNTech"). *Id.* at ¶ 5.

On November 1, 2011, the United States District Court for the District of Columbia entered a final judgment (the "Consent Decree") that governed the divestiture. *Id.* at ¶ 6; Exhibit C to RJN (Consent Decree) [Doc. # 21-4]. The Consent Decree required RBC, *inter alia*, to divest its pump motor assets and sell them to SNTech. Complaint at ¶¶ 6, 45, 50. It also required RBC to**[\*4]** provide SNTech technical and engineering assistance related to spa pump motors, and raw materials and motor components used in the design, development, and manufacture of spa pump motors (assistance and materials, together, the "Transition Services"). *Id.* at ¶¶ 6, 50. The Consent Decree called for RBC and SNTech to contract for the Transition Services, and those agreements were to last no longer than six months or one year. *Id.* at ¶ 50 (technical assistance for up to one year, supply divested pump motors for up to six months, supply raw materials for up to one year); Consent Decree at IV.F-I (same).

The divestiture was to "be accomplished in such a way" that SNTech could use the assets "as part of a viable, ongoing [pump motor] business" and that RBC would be unable "unreasonably to raise [SNTech's] costs," "lower [SNTech's] efficiency," or "otherwise . . . interfere in the ability of [SNTech] to compete effectively." *Id.* at IV.K-L. The Consent Decree also precluded RBC from "tak[ing] any action that w[ould] impede in any way the operation, use, or divestiture" of the assets, or that "would jeopardize the divestitures." *Id.* at IV.D, VIII. The District Court retained jurisdiction over the Consent Decree**[\*5]** to permit any party to the judgment to enforce its compliance and punish violations. *Id.* at XII.

After the Consent Decree was entered, RBC acquired AOS's electric motor business. Complaint at ¶ 51.

Plaintiffs allege that RBC intentionally provided SNTech with "faulty raw materials and components" and that RBC failed to provide sufficient technical and engineering assistance. Complaint at ¶¶ 7, 55-57. This deceptive and anticompetitive behavior resulted in SNTech's inability to engage in the spa pump motor business, and its eventual filing for Chapter 11 bankruptcy in December 2014. *Id.* at ¶¶ 7, 58-60. The bankruptcy was later converted to a Chapter 7 filing in June 2015. *Id.* at ¶ 60. To date, SNTech is no longer actively engaged in the spa pump motor market. *Id.*

When RBC acquired AOS, Plaintiffs had to buy motors from SNTech. *Id.* at ¶ 52-53. SNTech could not sufficiently supply spa motors, and SNTech advised Plaintiffs that RBC was to blame for its inability to deliver the motors. *Id.* at ¶ 9, 58. Plaintiffs were thus forced to purchase motors manufactured by RBC or third parties. *Id.* at ¶ 59. This led to Plaintiffs receiving lesser quality pumps or the desired pumps at higher costs. ***[\*6]****Id.*; *see also id.* at ¶¶ 24-25, 27-31 (spa pump motor and motor market specifics). *Id.* at ¶ 58. Because RBC already occupies over 50% of the pump market, it has the ability and the incentive to increase prices, reduce pump quality, and reduce pump innovation overall. *Id.* at ¶ 62.

**III**.

**DISCUSSION**

**A. Motion to Transfer**

RBC asks this Court to transfer the action to the United States District Court for the District of Columbia under *28 U.S.C. section 1404(a)*, which permits transfer "[f]or the convenience of parties and witnesses" and the "interest of justice." Several factors counsel against transfer in this case. Plaintiffs' choice of forum appears to be the most convenient for the parties and nonparty witnesses, there are several California state law claims raised in the action, and RBC allegedly conducts business in California and therefore has sufficient contacts in the forum such that it would not be inconvenienced by litigation here anymore than it would be by litigating the action in the District of Columbia. *See* [*Rubio v. Monsanto Co., 181 F. Supp. 3d 746, 759 (C.D. Cal. 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5K0J-RP81-F04C-T0G3-00000-00&context=) (factors considered when deciding a motion to transfer venue); *see also* [*Lax v. Toyota Motor Corp., 65 F. Supp. 3d 772, 780 (N.D. Cal. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5CXD-C1W1-F04C-T0YM-00000-00&context=) ("The convenience of non-party witnesses is the most important convenience factor . . . .").

Further, **[\*7]**, [*Goulart v. United Airlines, Inc. No. C 94-1751 SC, 1994 U.S. Dist. LEXIS 21856, 1994 WL 544476 (N.D. Cal. Sept. 28, 1994)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:577J-MWD1-F04C-T08H-00000-00&context=), the only case on which RBC relies in its transfer request, is factually distinct from the instant case and, as an unpublished decision, is not binding on this Court. The Court will not disregard the significant factors of convenience on the sole ground that this action, unlike *Goulart*, is somewhat related to a consent decree entered into in another District, particularly when the *Goulart* Court transferred the action under a different statute than the one under which RBC moves here. *See* [*1994 U.S. Dist. LEXIS 21856, 1994 WL 544476, at \*3*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:577J-MWD1-F04C-T08H-00000-00&context=) ("[T]he relief requested by plaintiffs is inextricably intermingled with the provisions of the Consent Decree and thus venue is not proper in this court. . . . Thus, an order granting the relief requested in this action would not only interfere with the relief provided in the Consent Decree, but would also subject United to conflicting court orders."), 5 (Court did not consider defendant's request to transfer under *section 1404(a)*). Because RBC has failed to satisfy its "heavy burden of proof to justify the necessity of the transfer," the motion to transfer is [***DENIED. Commodity Futures Trading Comm. v. Savage****, 611 F.2d 270, 279 (9th Cir. 1979)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-TJY0-0039-M1NF-00000-00&context=).

**B. Motion to Dismiss**

**1. Legal Standards**

**a. Dismissal Under** [***Federal Rule of Civil Procedure 12(b)(1)***](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=)

RBC challenges the Plaintiffs' constitutional standing in this case, and lodges a facial attack**[\*8]** on this Court's subject-matter jurisdiction over the Plaintiffs' Complaint. Motion at 13; Reply at 9 n.13; [*Maya v. Centex Corp., 658 F.3d 1060, 1067 (9th Cir. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:837G-T6B1-652R-82X4-00000-00&context=) ("[L]ack of Article III standing requires dismissal for lack of subject matter jurisdiction under [*Federal Rule of Civil Procedure 12(b)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=)."). "The district court resolves a facial attack [under [*Federal Rule of Civil Procedure 12(b)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=)] as it would a motion to dismiss under [*Rule 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=): Accepting the plaintiff's allegations as true and drawing all reasonable inferences in the plaintiff's favor, the court determines whether the allegations are sufficient as a legal matter to invoke the court's jurisdiction." [*Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C2D-DYT1-F04K-V0DX-00000-00&context=).

**b. Dismissal Under** [***Federal Rule of Civil Procedure 12(b)(6)***](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=)

To survive a [*Rule 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) motion, a complaint must articulate "enough facts to state a claim to relief that is plausible on its face." [*Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NSN-8840-004C-002M-00000-00&context=). Although a pleading need not contain "detailed factual allegations," it must contain "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." [*Id. at 555*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NSN-8840-004C-002M-00000-00&context=). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." [*Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=) (internal citations omitted). "The plausibility standard is not akin to a 'probability requirement' but it asks for more than a sheer possibility that a defendant**[\*9]** has acted unlawfully" or "facts that are 'merely consistent with' a defendant's liability." *Id.* In evaluating the sufficiency of a complaint, courts must accept all factual allegations as true. *Id.* Legal conclusions, in contrast, are not entitled to the assumption of truth. *Id.*

Should a court dismiss certain claims, it must also decide whether to grant leave to amend. [*Federal Rule of Civil Procedure 15(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F103-00000-00&context=) provides that a party may amend a pleading with the court's leave, and that "[t]he court should freely give leave when justice so requires." [*Fed. R. Civ. P. 15(a)(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F103-00000-00&context=); *see also* [*Moss v. Secret Serv., 572 F.3d 962, 972 (9th Cir. 2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4WSH-SDV0-TXFX-D33F-00000-00&context=) (leave to amend should be granted with "extreme liberality"). "Leave to amend should be granted unless the district court 'determines that the pleading could not possibly be cured by the allegation of other facts.'" [*Knappenberger v. City of Phoenix, 566 F.3d 936, 942 (9th Cir. 2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4WCV-C180-TXFX-D291-00000-00&context=) (quoting [*Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YJ3-P760-0038-X0KS-00000-00&context=) (*en banc*)).

**2. Analysis**

RBC moves to dismiss LMS's complaint on three grounds: (1) lack of standing, (2) timeliness, and (3) insufficiency of the pleadings, both as a matter of law and under the governing procedural standards. Motion at 10-11. The Court turns first to the question of standing.

**a. Standing**

RBC argues that under the plain language of the Consent Decree and U.S. Supreme Court and Ninth Circuit precedent, Plaintiffs lack standing to allege violations**[\*10]** of the Consent Decree because only the parties to the Decree have such standing. Motion at 14-15 (citing [*Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 95 S. Ct. 1917, 44 L. Ed. 2d 539 (1975)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-BRX0-003B-S28N-00000-00&context=); [*Dahl, Inc. v. Roy Cooper Co., 448 F.2d 17 (9th Cir. 1971))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9F50-0039-X4C1-00000-00&context=); Reply at 9-10 (citing [*United States v. FMC Corp., 531 F.3d 813 (9th Cir. 2008))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4SVN-3S70-TXFX-D2G5-00000-00&context=). Insisting that RBC mischaracterizes their claim as being based wholly on violations of the Consent Decree, Plaintiffs counter that RBC's Consent Decree-related conduct—providing insufficient Transition Services—is but part of a larger unlawful ***antitrust*** scheme dating back to 2010. Opposition at 12 [Doc. # 24].

Although the Court agrees with RBC that Plaintiffs lack standing to bring a cause of action specifically for violations of the Consent Decree, Plaintiffs are not alleging breach. *See* [*FMC, 531 F.3d at 819*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4SVN-3S70-TXFX-D2G5-00000-00&context=) (violations of consent decrees sound in contract law). Rather, they are alleging attempted monopolization under the Sherman and Clayton Acts. It just so happens that RBC's alleged conduct may also constitute grounds to challenge RBC's compliance with the Decree. Accordingly, the Court will not dismiss the Complaint for lack of standing.

**b. Statute of Limitations**

Next, RBC challenges all of the Complaint's causes of action as time-barred. It is undisputed that the causes of action for intentional and negligent interference with prospective economic relations are subject to a two-year**[\*11]** statute of limitations, and that claims for attempted monopolization and unfair business practices are subject to a four-year statute of limitations. *See* [*Cal. Civ. Proc. Code § 339(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5J6R-DFR1-66B9-8053-00000-00&context=) (interference with prospective economic relations); [*15 U.S.C. § 15b*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GKV1-NRF4-43V6-00000-00&context=) (monopolization); [*Cal. Bus & Prof. Code § 17208*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5JFB-2YX1-DYB7-W1SS-00000-00&context=) (unfair competition). Plaintiffs filed suit on October 27, 2016.

**i. Alleged *Antitrust* and UCL Violations (4 Years)**[[2]](#footnote-1)2

A cause of action in ***antitrust*** accrues "each time a plaintiff is injured by an act of the defendant[]." [*Oliver v. SD-3C LLC, 751 F.3d 1081, 1086 (9th Cir. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C6F-WDH1-F04K-V03D-00000-00&context=) (alteration in original) (quoting [*Zenith Radio corp. v. Hazeltine Res., Inc., 401 U.S. 321, 338, 91 S. Ct. 795, 28 L. Ed. 2d 77 (1971))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DRC0-003B-S48H-00000-00&context=). The limitations period begins to run "from the commission of the act." *Id.* (quoting [*Zenith, 401 U.S. at 338*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DRC0-003B-S48H-00000-00&context=)). RBC's alleged misconduct occurred in November or December 2012.[[3]](#footnote-2)3 Thus, for alleged ***antitrust*** violations that occurred prior to October 27, 2012 to be actionable, such conduct must be subject to one of the exceptions to the statute of limitations for ***antitrust*** violations that are recognized in this Circuit.

Plaintiffs invoke both the continuing-violation and speculative-damages exceptions. "The effect of a continuing violation is to restart the statute of limitations . . . . whenever the defendant commits an overt act in furtherance" of its attempt to monopolize. [*Airweld, Inc. v. Airco, Inc., 742 F.2d 1184, 1190 (9th Cir. 1984)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-VKF0-003B-G4JW-00000-00&context=). Alternatively, a cause**[\*12]** of action under the Sherman Act may begin to accrue "after the defendant's initial violation of the ***antitrust*** law, if it is 'uncertain' or 'speculative' whether the defendant[]'[s] ***antitrust*** violation has injured the plaintiff at the time of the violation." *See* [*Oliver, 751 F.3d at 1086*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C6F-WDH1-F04K-V03D-00000-00&context=) (quoting [*AMF, Inc. v. Gen. Motors Corp., 591 F.2d 68, 72 (9th Cir. 1979))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-WDK0-0039-M4XP-00000-00&context=).

The Court rejects Plaintiffs' assertion that the continuing violation doctrine applies here. *See* Opposition at 14-15. The Complaint is devoid of any specific factual allegations of RBC's overt acts in furtherance of monopolization aside from its alleged provision of faulty and insufficient Transition Services. Additionally, RBC's acquisition of AOS itself does not implicate the continuing violation doctrine. *See* [*Complete Entm't Res. LLC v. Live Nation Entm't, Inc., No. CV 15-9814 DSF (AGRx), 2016 U.S. Dist. LEXIS 86407, 2016 WL 3457177, at \*1 (C.D. Cal. May 11, 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5K5B-MHB1-F04C-T4F9-00000-00&context=) ("It cannot be the case that if a merger leads to monopoly power then anything anticompetitive that the newfound monopolist does is a 'continuing violation' that began with the merger, allowing the merger to be challenged indefinitely under *section 2* of the Sherman Act. If that were true, the statute of limitations . . . would be written out of the law." (footnote omitted)). Accordingly, to the extent that Plaintiffs' ***antitrust*** and UCL claims are based on RBC's attempted**[\*13]** acquisition of AOS in 2010 and its actual acquisition of AOS in 2011, such conduct falls outside the statute of limitations and is therefore not actionable.

The speculative damages exception may apply, however, to save Plaintiffs' claim insofar as it relates to RBC's Technical Services-related conduct.[[4]](#footnote-3)4 Plaintiffs argue that their ***antitrust*** claims began to accrue in 2014 when SNTech filed for bankruptcy because it was only at that point that their damages became ascertainable and provable. Opposition at 14. If RBC's conduct with regard to the Technical Services qualifies as an actionable ***antitrust*** violation, which the Court addresses below, then Plaintiffs' ***antitrust***-based claims are timely. *See* [*Oliver, 751 F.3d at 1086-87*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C6F-WDH1-F04K-V03D-00000-00&context=). The Court therefore will not dismiss the ***antitrust*** and UCL claims as time barred.

**ii. Tortious Interference (2 Years)**

As for the tortious interference claims, the Opposition did not even respond to RBC's statute of limitations arguments. The Court thus deems Plaintiffs' silence as consent to dismiss those claims for untimeliness. *See* [*Stitching Pensioenfonds ABP v. Countrywide Fin. Corp., 802 F. Supp. 2d 1125, 1132 (C.D. Cal. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:8302-5PM1-652H-732V-00000-00&context=) ("[I]n most circumstances, failure to respond in an opposition brief to an argument put forward in an opening brief constitutes waiver or abandonment in regard to the uncontested**[\*14]** issue."); *see also* [*Allen v. Dollar Tree Stores, Inc., 475 F. App'x 159, 159 (9th Cir. 2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:566C-H0N1-F04K-V3C3-00000-00&context=) ("The [district] court properly dismissed [plaintiff's] . . . claims because her opposition to the motion to dismiss failed to respond to [defendant's] argument that those claims were time-barred."). Further, the only specific conduct alleged against RBC that might be actionable tortious interference—the allegedly inadequate provision of Technical Services—is time-barred because that conduct supposedly occurred approximately five years before Plaintiffs filed the Complaint. The Court therefore **GRANTS** the Motion as to these claims.

**c. Sufficiency of the *Antitrust* Allegations**

RBC presents two arguments as to the insufficiency of Plaintiffs' pleadings. First, it contends that the alleged failure to supply Transition Services to SNTech is not, as a matter of law, actionable ***antitrust*** activity. MTD at 19-24, 25-26. Thus, according to RBC, Plaintiffs' UCL claim must also fail. *Id.* at 24-25; [*LiveUniverse, Inc. v. MySpace, Inc., 304 F. App'x 554, 557 (9th Cir. 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VJ5-S1D0-TXFX-D3D4-00000-00&context=) ("Where . . . the same conduct is alleged to support both a plaintiff's federal ***antitrust*** claims and state-law unfair competition claim, a finding that the conduct is not an ***antitrust*** violation precludes a finding of unfair competition." (citing [*Carter v. Variflex, Inc., 101 F. Supp. 2d 1261 (C.D. Cal. 2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YXH-FCR0-0038-Y37Y-00000-00&context=); [*Chavez v. Whirlpool Corp., 93 Cal. App. 4th 363, 113 Cal. Rptr. 2d 175 (2001)))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:44B0-JM40-0039-4562-00000-00&context=). Second, RBC argues that Plaintiffs' theory of relief is "implausible**[\*15]** on its face." MTD at 26-28.

**i. Actionable *Antitrust* Injury**

RBC points to the U.S. Supreme Court's decisions in *Trinko*[[5]](#footnote-4)5 and *Pacific Bell*[[6]](#footnote-5)6 to argue that an entity's failure to provide support to its competitors, even in violation of a federal law or consent decree, does not amount to an ***antitrust*** violation. The Court agrees.

*Section 2* of the Sherman Act makes it unlawful to "monopolize[] or attempt to monopolize . . . any part of the trade or commerce among the several States, or with foreign nations." *15 U.S.C. § 2*.[[7]](#footnote-6)7 It has long been established that "businesses are free to choose the parties with whom they will deal, as well as the prices, terms, and conditions of that dealing." [*Pac. Bell Tel. Co. v. Linkline Commc'ns, Inc., 555 U.S. 438, 129 S. Ct. 1109, 172 L. Ed. 2d 836 (2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VPF-5H70-TXFX-11YJ-00000-00&context=) (citing [*United States v. Colgate & Co., 250 U.S. 300, 307, 39 S. Ct. 465, 63 L. Ed. 992, 1919 Dec. Comm'r Pat. 460 (1919))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5FK0-003B-H4WD-00000-00&context=). The Sherman Act generally does not impose on businesses a duty to deal with their competitors under commercial terms and conditions that the competitors would prefer. *Id.*; [*Verizon Commc'ns Inc v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 407-08, 124 S. Ct. 872, 157 L. Ed. 2d 823 (2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4BFM-T0F0-004C-001J-00000-00&context=).

An entity's right to refuse to deal "is [not] unqualified," but the Supreme Court "ha[s] been very cautious in recognizing . . . exceptions" to that right. [*Trinko, 540 U.S. at 408*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4BFM-T0F0-004C-001J-00000-00&context=). For example, businesses violate ***antitrust*** violations for their refusal to cooperate with a rival when they engage in "predatory pricing." [*Brooke Grp. Ltd. V. Brown & Williamson Tobacco Corp., 509 U.S. 209, 113 S. Ct. 2578, 125 L. Ed. 2d 168 (1993)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-XDD0-003B-R3PV-00000-00&context=). Additionally, a business' unilateral termination of a voluntary and profitable**[\*16]** deal with a rival raises red flags as to the business' anticompetitive motive. *See* [*Aspen Skiing Co. v. Aspen Highlands Skiin Corp., 472 U.S. 585, 105 S. Ct. 2847, 86 L. Ed. 2d 467 (1985)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B390-0039-N4JD-00000-00&context=). Here, Plaintiffs advance no such conduct. Rather, they contend that RBC failed, in the face of a court order, to deal fairly with rival SNTech in an effort to increase its market power and create a monopoly.

Both *Trinko* and *Pacific Bell* make clear that the Sherman Act does not recognize an ***antitrust*** claim based on such conduct. In both cases, the defendant telecommunications giant was subject to either an FCC ***regulation*** (*Trinko*) or a consent decree that imposed the same requirement of an outdated FCC ***regulation*** (*Pacific Bell*), which directed the business to deal with competitors. [*Pacific Bell, 555 U.S. at 443*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VPF-5H70-TXFX-11YJ-00000-00&context=); [*Trinko, 540 U.S. at 403-04*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4BFM-T0F0-004C-001J-00000-00&context=). The plaintiffs, competitors in the industry, filed suit alleging violations of *section 2* of the Sherman Act due to the defendants' alleged "abuse[] [of] their power in the wholesale market to prevent rival firms from competing effectively." [*Pacific Bell, 555 U.S. at 450*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VPF-5H70-TXFX-11YJ-00000-00&context=) ("The nub of the complaint in [both cases] is identical . . . ."). The Court rejected the plaintiffs' allegations in both cases because "such claims are not cognizable under the Sherman Act in the absence of an ***antitrust*** duty to deal." *Id.* Notably here, Plaintiffs do not argue that the Sherman**[\*17]** Act imposes such a duty on RBC.

Plaintiffs argue that *Trinko* is inapplicable because the Supreme Court's decision "was premised on" the ***regulatory*** nature of the telecommunications industry. Opposition at 15. To the contrary, although the Court took care to explain that "[a]ntitrust analysis must always be attuned to the particular structure and circumstances of the industry at issue," the economic context of the telecommunications industry did not force the Court's proverbial hand. [*Trinko, 540 U.S. at 411*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4BFM-T0F0-004C-001J-00000-00&context=). The Court first discussed at length its refusal-to-deal precedents and concluded that the defendant's alleged conduct did not fit within the recognized confines of an ***antitrust*** cause of action under *section 2* of the Sherman Act. *See* [*id. at 408-11*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4BFM-T0F0-004C-001J-00000-00&context=). The complex FCC ***regulations*** contributed to the Court's decision not to carve out a new exception to a business' right not to deal, but the Court's reasoning applies equally here. The Consent Decree at bar, like the ***regulation*** in *Trinko*, imposed a "brand new" sharing obligation on RBC that did not exist before. [*Id. at 410*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4BFM-T0F0-004C-001J-00000-00&context=) (quoting [*Verizon Commc'ns, Inc. v. F.C.C., 535 U.S. 467, 528, 122 S. Ct. 1646, 152 L. Ed. 2d 701 (2002))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:45TK-1JB0-004C-2001-00000-00&context=). Accordingly, like the FCC ***regulations***, the Consent Decree—not the Sherman Act—supplies the only potential source of RBC's duty to deal. *See* [*Pac. Bell, 555 U.S. at 450*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VPF-5H70-TXFX-11YJ-00000-00&context=) ("In this case, as in *Trinko*, the defendant has**[\*18]** no ***antitrust*** duty to deal with its rivals at wholesale; any such duty arises only from FCC ***regulations***, not from the Sherman Act.").

Absent a duty to deal arising from the Sherman Act, or other circumstances that bring RBC's alleged conduct into a recognizable refusal-to-deal exception, Plaintiffs have not pleaded a legally cognizable claim for ***antitrust*** liability—particularly where Plaintiffs have not cited a single case in which the court found a viable attempted monopolization claim in similar circumstances as presented here. Plaintiffs have thus failed to state a claim under the Sherman Act as a matter of law and, therefore, they may not maintain an ***antitrust*** action based on RBC's inadequate provision of Technical Services.

**ii. Plausible *Antitrust* Injury**

Assuming *arguendo* that RBC's alleged failure to deal with SNTech on terms commercially advantageous to SNTech is actionable in ***antitrust***, Plaintiffs' ***antitrust*** action also fails for lack of plausibility. "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." [*Twombly, 550 U.S. at 555*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NSN-8840-004C-002M-00000-00&context=) (citations and footnote omitted). "The need**[\*19]** at the pleading stage for allegations plausibly suggesting (not merely consistent with)" an ***antitrust*** violation "reflects the threshold requirement of [*Rule 8(a)(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YK-00000-00&context=) that the 'plain statement' possess enough heft to 'sho[w] that the pleader[s] [are] entitled to relief.'" [*Id. at 557*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NSN-8840-004C-002M-00000-00&context=) (irst alteration in original) (quoting [*Fed. R. Civ. P. 8(a)(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YK-00000-00&context=)). Plaintiffs contend that "the plausibility of [their] allegations are [sic] more suited for a motion for summary judgment." Opposition at 18. "[C]ontrary to [Plaintiffs'] assertion, causal ***antitrust*** injury is a substantive element of an ***antitrust*** claim, and the fact of [plausible] injury or damage must be alleged at the pleading stage." [*Somers v. Apple, Inc., 729 f.3d 953, 963 (9th Cir. 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:598H-7Y31-F04K-V072-00000-00&context=). Plaintiffs have failed to do so here—both with regard to RBC's provision of Technical Services and its acquisition of AOS.

It is far-fetched that any failure-to-deal conduct on RBC's part—which occurred, at the latest, in December 2012—would cause SNTech's exit from the spa pump motor industry more than two years later. What is more likely to have occurred, based on Plaintiffs' own allegations, is that SNTech, a novice company in the electric spa pump motor industry, failed to excel in an industry that Plaintiffs describe as difficult to enter**[\*20]** and compete in. *See* Complaint at ¶¶ 2 (before December 2010, the electric spa pump motor market included only three businesses, none of which were SNTech), 19 (SNTech entered the market in January 2011), 31-35 (alleging the difficulty of breaking into and succeeding in the electric spa pump motor industry due to the technology and expertise required, the substantial investment of time and money involved, and the pump-motor customer preference to buy from manufacturers with a large national presence and long-established reputation). RBC was only required to provide supplies and assistance to SNTech for a year after the Consent Decree's issuance. Even if RBC was less helpful than it could (or should) have been in providing such services, such conduct is too attenuated from SNTech's failure years later to give rise to a plausible ***antitrust*** injury. Indeed, SNTech's exit from the relevant market was more likely the result of its unfamiliarity with the spa pump motor market and its competitors' (including RBC) lawful "growth or development as a consequence of a superior product[] [and] business acumen." [*Pac. Bell, 555 U.S. at 448*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VPF-5H70-TXFX-11YJ-00000-00&context=) (quoting [*United States v. Grinnell Corp., 384 U.S. 563, 570-71, 86 S. Ct. 1698, 16 L. Ed. 2d 778 (1966))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G490-003B-S2W3-00000-00&context=).

The same reasoning applies with equal force to the plausibility of an ***antitrust* [\*21]** injury stemming from RBC's acquisition of AOS, if that acquisition were not time-barred. After all, RBC divested its spa pump assets to acquire those of AOS. The Complaint alleges that RBC was a main competitor in the industry even prior to the events of which it complains. Accordingly, RBC's familiarity with the market, its established customer base and name recognition, and technical expertise and business judgment would permit the company to excel in the pump motor industry. *See* Complaint at ¶¶ 31-35. That RBC succeeded while SNTech failed is not, in and of itself, unlawful. *See* [*Pac. Bell, 55 U.S. at 447-48*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VPF-5H70-TXFX-11YJ-00000-00&context=) ("Simply possessing monopoly power and charging of monopoly prices does not violate *[section] 2* . . . ."). Plaintiffs' theories of ***antitrust*** injury are therefore implausible. As such, Plaintiffs have failed to state a claim under the Sherman Act.

In sum, the failure to plead a cognizable theory of ***antitrust*** liability under the Sherman Act also dooms Plaintiffs' Clayton Act claim. Because Plaintiffs have failed to state a claim under the Sherman and Clayton Acts, their UCL claim also fails.

**C. Leave to Amend**

As explained, Plaintiffs have failed to state a claim under the Sherman and Clayton Acts and the UCL in connection**[\*22]** with RBC's provision of Technical Services. Nonetheless, the Court will permit Plaintiffs to file an amended complaint in accordance with the Federal Rules of Civil Procedure's liberal amendment policy.

**IV**.

**CONCLUSION**

The Court **GRANTS** RBC's Motion, with leave to amend. Plaintiffs shall file an amended pleading consistent with this Order, or notify RBC of their intent not to do so, within 21 days of the date of this Order. Failure to do so will result in the dismissal of this action in its entirety for lack of prosecution. RBC's response, if any, shall be filed within 21 days after the filing and service of Plaintiffs' amended complaint.

**IT IS SO ORDERED**.

**End of Document**

1. 1The Court takes as true all nonconclusory allegations in the Complaint and construes them in the light most favorable to Plaintiffs for purposes of ruling on the Motion. [*Ashcroft v. Iqbal, 556 U.S. 662, 664 (2009) 668-69, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=). [↑](#footnote-ref-0)
2. 2The conduct comprising the alleged ***antitrust*** violations forms the basis of the Plaintiffs' UCL claim. *See* Complaint at ¶¶ 77-80. [↑](#footnote-ref-1)
3. 3The Complaint explains that, pursuant to the November 1, 2011 Consent Decree, the Technical Services were to be provided for up to one year after RBC and SNTech entered into an agreement for those services. Complaint at ¶ 50. Thus, drawing all reasonable inferences in favor of Plaintiffs, RBC may have provided some Technical Services in November or December 2012. Arguing that RBC's ***antitrust*** behavior goes beyond its failure to provide sufficient Technical Services, Plaintiffs mention RBC's "ongoing attempts to monopolize the [electric motor spa pump market] since SNTech's bankruptcy." Opposition at 16. But neither the Complaint nor the Opposition present any factual allegations of ongoing ***antitrust*** activity. In fact, the Complaint relies exclusively on RBC's 2010 attempt to acquire AOS, its eventual acquisition of AOS subject to the Consent Decree (presumably in 2011), and its inadequate provision of Technical Services in connection with the Consent Decree. *See* Complaint at ¶¶ 3, 7, 36-41, 54-64. [↑](#footnote-ref-2)
4. 4The Court agrees with RBC's assessment of the speculative damages exception's application to RBC's attempted and eventual acquisition of AOS. *See* Reply at 11-12. The Complaint alleges that RBC entered into the Consent Decree and divested its spa motors business to preserve competition in that market and create a viable competitor to RBC. Complaint at ¶ 46. "Accordingly, if [the] Plaintiffs were unable to sue RBC immediately after the acquisition in 2011, the reason was not that [the] Plaintiffs' injury at the time was speculative. Rather, it was because RBC's acquisition of AOS did not injure [the] Plaintiffs." Reply at 12; *see also* [*Steshenko v. Gayrard, 70 F. Supp. 3d 979, 987 (N.D. Cal. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5D87-0RG1-F04C-T44B-00000-00&context=) ("'[A] plaintiff may plead herself out of court' if she 'plead[s] facts which establish that [s]he cannot prevail on h[er] . . . claim.'" (alterations in original) (quoting [*Weisbuch v. County of Los Angeles, 119 F.3d 778, 783 n.1 (9th Cir. 1997)))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RM5-DWS0-00B1-D1MV-00000-00&context=). Indeed, the Plaintiffs' theory of ***antitrust*** liability stems directly from RBC's provision of Technical Services to SNTech and SNTech's resulting failure in the spa pump motor market. Moreover, as discussed below, even if RBC's acquisition of AOS was not time barred, an ***antitrust*** injury arising from such acquisition is implausible. [↑](#footnote-ref-3)
5. 5[*Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 124 S. Ct. 872, 157 L. Ed. 2d 823 (2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4BFM-T0F0-004C-001J-00000-00&context=). [↑](#footnote-ref-4)
6. 6[*Pac. Bell Tel. Co. v. Linkline Commc'ns, Inc., 555 U.S. 438, 129 S. Ct. 1109, 172 L. Ed. 2d 836 (2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VPF-5H70-TXFX-11YJ-00000-00&context=). [↑](#footnote-ref-5)
7. 7[*Section 4*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GKX1-NRF4-44J4-00000-00&context=) of the Clayton Act permits "any person . . . injured in his business or property by reason of anything forbidden in the ***antitrust*** laws" to sue in the district court. [*15 U.S.C. § 15*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTP1-NRF4-44B7-00000-00&context=). [↑](#footnote-ref-6)