

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SYNOPSISYS, INC.,  
Plaintiff,  
v.  
ATOPTECH, INC.,  
Defendant.

No. C 13-2965 MMC

**ORDER GRANTING MOTION TO  
DISMISS COUNTERCLAIMS AND  
MOTION TO STRIKE AFFIRMATIVE  
DEFENSES**

Before the Court is the “Motion to Dismiss Defendant ATopTech’s Second Amended Counterclaims and Striking Affirmative Defenses Nos. 7, 11 and 15,” filed June 18, 2015, by plaintiff Synopsys, Inc. (“Synopsys”), pursuant to Rules 12(b)(6) and 12(f) of the Federal Rules of Civil Procedure. Defendant ATopTech, Inc. (“ATopTech”) has filed opposition, to which Synopsys has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.<sup>1</sup>

**BACKGROUND<sup>2</sup>**

ATopTech and Synopsys sell software tools for the design and testing of integrated

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<sup>1</sup>By order filed August 5, 2015, the Court found the matter appropriate for decision on the parties’ respective written submissions, vacated the hearing scheduled for August 7, 2015, and took the matter under submission.

<sup>2</sup> For purposes of the instant motion, the following facts, which are taken from ATopTech’s Second Amended Answer to Amended Complaint and Second Amended Counterclaims (“SACC”), are accepted as true and construed in the light most favorable to ATopTech, the nonmoving party. See NL Industries, Inc. v. Kaplan, 792 F. 2d 896, 898 (9th Cir. 1986).

1 circuits (“chips”). (See SACC, filed June 1, 2015 ¶ 65.) Because of the complexity of  
2 modern chip design, engineers cannot design the physical layout of a chip without the aid  
3 of what is known as “place-and-route” software. (Id. ¶ 67.) Synopsys offers a  
4 place-and-route software product, IC Compiler, which “competes directly” with ATopTech’s  
5 place-and-route software, Aprisa. (Id. ¶¶ 70, 71.) The respective shares of the producers  
6 in the place-and-route market, as estimated by a “leading industry analyst,” are as follows:  
7 Synopsys (65%), Cadence Design Systems (“Cadence”) (30%), Mentor Graphics (4%),  
8 and ATopTech (1%). (Id. ¶ 66.)<sup>3</sup>

9 “[V]erification software,” also necessary in modern chip design (see id. ¶ 76), “is  
10 used to verify the timing of the electronic signals of an integrated circuit design by testing its  
11 electrical and timing performance . . . under various operating conditions” (id. ¶ 73).  
12 Synopsys offers a verification software product called PrimeTime. (Id. ¶ 74.) Synopsys  
13 has filed with the U.S. Copyright Office certain written manuals relating to its verification  
14 software and claims copyright protection with respect to those materials. (Id. ¶ 90.)  
15 Although ATopTech does not sell verification software, its place-and-route software “must  
16 be interoperable with static timing verification software” and the “level of interoperability and  
17 compatibility between place-and-route software and static timing verification software is a  
18 critical competitive dynamic.” (Id. ¶ 80.) “[S]tatic timing verification software vendors . . .  
19 will often provide close technical cooperation to place-and-route software vendors so that  
20 the place-and-route software can work as well as possible with the static timing verification  
21 software.” (Id. ¶ 85.)

22 Extreme DA was a company that sold a verification software product called  
23 GoldTime. (Id. ¶¶ 84, 85.) Extreme DA and ATopTech jointly marketed GoldTime and  
24 Aprisa (id. ¶ 85), and customers who had installed GoldTime “often purchased Aprisa  
25 because of its level of interoperability and compatibility with GoldTime” (id.). ATopTech

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27 <sup>3</sup>ATopTech “believes its market share may be slightly higher, but . . . less than 3%.”  
28 (See id. ¶ 71.)

1 previously licensed Extreme DA's patent for GoldTime, and "worked closely with Extreme  
2 DA to assure the interoperability of Aprisa and GoldTime." (Id. ¶ 112.) In 2011, Synopsys  
3 acquired Extreme DA (id. ¶ 83), thereafter "eliminated" GoldTime from the verification  
4 market (id. ¶ 84), and "deprived ATopTech of the technical cooperation it previously  
5 enjoyed with Extreme DA" (see id. ¶ 110). Magma Design Automation ("Magma") was a  
6 company that sold a verification software product called Tekton. (See id. ¶ 84.) In 2012,  
7 Synopsys acquired Magma, and "eliminated" Tekton (see id.).

8 At present, there are three producers of verification software, Synopsys, Cadence,  
9 and CLK. (Id. ¶ 73.) The market shares of the respective producers, as estimated by the  
10 above-referenced industry analyst, are as follows: Synopsys (88%), Cadence (8%), and  
11 CLK (4%). (Id.)

12 In the SACC, ATopTech asserts eighteen affirmative defenses and the following  
13 eight counterclaims: (1) "Declaratory Judgment And Injunctive Relief Arising From  
14 Copyright Misuse"; (2) "Violation of the Clayton Act, Section 7 (15 U.S.C. § 18)"; (3)  
15 "Violation of the Sherman Act, Section 1 (15 U.S.C. § 1)"; (4) "Violation of the Sherman Act,  
16 Section 1 (15 U.S.C. § 1) and the Clayton Act, Section 3 (15 U.S.C. § 14) (Tying)"; (5)  
17 "Violation of the Sherman Act, Section 2 (Static Timing Verification Software Market)"; (6)  
18 "Violation of the Sherman Act, Section 2 (Place-and-Route Software Market)"; (7) "Violation  
19 of Business & Professions Code Sections 16720 et seq. [Cartwright Act]"; (8) "Violation of  
20 Business & Professions Code Sections 17200 et seq. [Unfair Competition Law]".

21 By the instant motion, Synopsys seeks an order dismissing all eight counterclaims  
22 for failure to state a claim, and striking the Seventh, Eleventh, and Fifteenth Affirmative  
23 Defenses as insufficiently pleaded. The Court addresses each issue in turn.

## 24 MOTION TO DISMISS

### 25 A. Legal Standard

26 Dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure can be based  
27 on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a  
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1 cognizable legal theory. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
2 1990). Rule 8(a)(2), however, “requires only ‘a short and plain statement of the claim  
3 showing that the pleader is entitled to relief.’” See Bell Atlantic Corp. v. Twombly, 550 U.S.  
4 544, 555 (2007) (quoting Fed.R.Civ.P. 8(a)(2)). Consequently, “a complaint attacked by a  
5 Rule 12(b)(6) motion to dismiss does not need detailed factual allegations.” See id.  
6 Nonetheless, “a plaintiff’s obligation to provide the grounds of his entitlement to relief  
7 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
8 cause of action will not do.” See id. (internal quotation, citation, and alteration omitted).

9 In analyzing a motion to dismiss, a district court must accept as true all material  
10 allegations in the complaint, and construe them in the light most favorable to the  
11 nonmoving party. See NL Industries, Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).  
12 “To survive a motion to dismiss, a complaint must contain sufficient factual material,  
13 accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal,  
14 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). “Factual allegations must  
15 be enough to raise a right to relief above the speculative level[.]” Twombly, 550 U.S. at  
16 555. Courts “are not bound to accept as true a legal conclusion couched as a factual  
17 allegation.” See Iqbal, 556 U.S. at 678 (internal quotation and citation omitted).

## 18 **B. Discussion**

### 19 **1. Count I: Copyright Misuse**

20 “Copyright misuse is a judicially crafted affirmative defense to copyright  
21 infringement, derived from the long-standing existence of such a defense in patent  
22 litigation.” Apple Inc. v. Psystar Corp., 658 F.3d 1150, 1157 (9th Cir. 2011). The doctrine  
23 “does not prohibit using conditions to control use of copyrighted material,” it does, however,  
24 “prevent copyright holders from using the conditions to stifle competition.” Apple Inc. v.  
25 Psystar Corp., 658 F.3d 1150, 1159 (9th Cir. 2011). The purpose of the doctrine is to  
26 “prevent[] holders of copyrights ‘from leveraging their limited monopoly [granted by the  
27 copyright] to allow them control of areas outside the monopoly.’” Id. at 1157 (9th Cir. 2011)

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1 (quoting A & M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1026 (9th Cir. 2001)). “A  
2 software licensing agreement may reasonably restrict use of the software as long as it does  
3 not prevent the development of competing products.” Id. at 1159.

4 Here, citing Alcatel USA, Inc. v. DGI Tech., Inc., 166 F.3d 772 (5th Cir. 1999),<sup>4</sup>  
5 ATopTech contends a restriction in Synopsys’ standard licensing agreement constitutes an  
6 attempt by Synopsys to leverage its copyright to control areas outside the monopoly  
7 afforded by such copyright and, consequently, constitutes copyright misuse. See id. at 794  
8 (finding copyright misuse where sole means of developing competing microprocessor card  
9 was through use of plaintiff’s software, which use was prohibited by license agreement;  
10 finding agreement “effectively prevented [defendant] from developing its product”). In  
11 particular, ATopTech alleges, “Synopsys’ ‘End-User Software License and Maintenance  
12 Agreement’ [EULA] states in Section 2.9(f) titled Restrictions: ‘You may not (and may not  
13 allow anyone else to): use a Licensed Product or its output to develop or enhance any  
14 product that competes with a Synopsys product’” (see SACC ¶ 90),<sup>5</sup> which restriction,  
15 ATopTech alleges, precludes ATopTech from developing a program that is fully  
16 interoperable with verification software, a requisite feature of a competitive product (see id.  
17 ¶¶ 80-81, 90-92).

18 As Synopsys points out, however, ATopTech’s allegations make clear that  
19 ATopTech does not need access to PrimeTime and its output reports in order to develop  
20 place-and-route software. As noted, ATopTech alleges its competing place-and-route  
21 software, Aprisa, has between a one and three percent share of the place-and-route

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23 <sup>4</sup>Synopsys also cites United States v. Microsoft, 253 F.3d 34, 64 (D.C. Cir. 2001). In  
24 Microsoft, however, there was no claim of copyright misuse and, indeed, there is no  
25 mention of copyright misuse in the opinion.

26 <sup>5</sup>In the Factual Background section of the SACC, ATopTech makes reference to  
27 Synopsys’ Milkyway Development Kit End-User License Agreement for Synopsys Licensed  
28 Software (“Milkyway Agreement”). (See SACC ¶ 90.) In Count I, however, ATopTech,  
although incorporating all prior paragraphs, sets forth allegations based solely on the EULA  
(see SACC ¶ 99-104), and in its opposition to the instant motion makes no argument  
addressing any alleged copyright misuses based on the Milkyway Agreement (see Opp’n at  
3-7).

1 market (see id. ¶ 71), and, perhaps of greater significance, that another company, Cadence  
2 Design Systems, has a competing place-and-route software product accounting for thirty  
3 percent of the place-and-route market (see id. ¶ 66). If access to PrimeTime and its output  
4 reports was, in fact, necessary for the development of competitive place-and-route  
5 software, there would be no such competing products, let alone a product capable of  
6 garnering almost a third of the market. In sum, and in contrast to the situation presented in  
7 Alcatel, the EULA does not prevent the development of competing place-and-route  
8 software and, consequently, ATopTech has failed to state a claim for copyright misuse.  
9 See Psystar, 658 F.3d at 1155, 1159 (affirming dismissal of computer manufacturer’s claim  
10 that competing computer manufacturer engaged in copyright misuse by requiring its  
11 copyrighted operating system be used exclusively on its computers; noting agreement did  
12 “not prohibit[] others from independently developing and using their own operating systems”  
13 (internal quotation and citation omitted).)

14       Synopsisys argues dismissal of the claim should be without leave to amend because  
15 ATopTech has already amended its complaint twice<sup>6</sup> and further amendment would be  
16 futile. The Court agrees. See Allen v. City of Beverly Hills, 911 F.2d 367, 373 (9th Cir.  
17 1990) (listing futility among grounds upon which amendment may be denied and noting  
18 “district court’s discretion to deny leave to amend is particularly broad where plaintiff has  
19 previously amended the complaint”) (internal quotation and citation omitted).

20       Accordingly, Count I will be dismissed without further leave to amend.

21                   **2. Count II: Clayton Act § 7**

22       Section 7 of the Clayton Act makes unlawful any acquisition where the effect thereof  
23 “may be substantially to lessen competition, or tend to create a monopoly.” 15 U.S.C. § 18.  
24 “Only those who meet the requirements for ‘antitrust standing’ may pursue a claim under  
25 the Clayton Act; and to acquire ‘antitrust standing,’ a plaintiff must adequately allege and

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27       <sup>6</sup>On May 8, 2015, at the hearing conducted on Synopsisys’ motion to dismiss  
28 ATopTech’s First Amended Counterclaims, the Court dismissed each of ATopTech’s  
counterclaims with leave to amend.

1 eventually prove ‘antitrust injury.’” Glen Holly Entm’t, Inc. v. Tektronix, Inc., 352 F.3d 367,  
2 371 (9th Cir. 2013). Antitrust injury has four elements: “(1) unlawful conduct, (2) causing  
3 an injury to the plaintiff, (3) that flows from that which makes the conduct unlawful, and (4)  
4 that is of the type the antitrust laws were intended to prevent.” Id. at 372. Antitrust injury  
5 requires pleading an injury to “competition,” not competitors. Brunswick Corp. v. Pueblo  
6 Bowl-O-Mat, Inc., 429 U.S. 477, 488 (1977). In other words, plaintiffs “must plead an injury  
7 to competition beyond the impact on the plaintiffs themselves.” See Brantley v. NBC  
8 Universal, 675 F.3d 1192, 1198 (9th Cir. 2012).

9 ATopTech contends Synopsys’ acquisitions of two companies, Extreme DA and  
10 Magma, harmed ATopTech and competition. Specifically, ATopTech alleges that  
11 Synopsys, after those acquisitions, discontinued the sale of Extreme DA’s GoldTime  
12 verification software, discontinued the sale of a Magma’s Tekton verification software, and  
13 stopped offering ATopTech the same level of technical assistance and other cooperation  
14 previously offered by Extreme DA.<sup>7</sup> (See SACC ¶¶ 84-85, 110, 112-13.) Such conduct,  
15 according to ATopTech, caused it to “lo[se] its ability to secure new customers through the  
16 Aprisa/GoldTime joint marketing effort with Extreme DA” (id. ¶ 113), created “much greater  
17 challenges” for ATopTech in “guaranteeing the interoperability of Aprisa [and] PrimeTime  
18 due to Synopsys’ refusal to share output data essential to static timing verification”  
19 (see id.), and “forc[ed] customers that had adopted Aprisa and GoldTime to switch to . . .  
20 Synopsys’s PrimeTime” (id.).

21 Synopsys argues the injuries alleged do not constitute antitrust injury, and,  
22 consequently, that ATopTech has not established standing. According to Synopsys, the  
23 alleged injuries do not flow from that which would make the acquisitions unlawful, i.e., the  
24 anticompetitive effects due to increased market power, but instead from Synopsys’ decision  
25 to discontinue GoldTime. In support of its position, Synopsys relies primarily on two cases,  
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27 <sup>7</sup>ATopTech does not allege that it previously cooperated with or received any  
28 technical assistance from Magma.

1 Lucas Auto. Eng'g, Inc. v. Bridgestone/Firestone, Inc., 140 F.3d 1228 (9th Cir. 1998) and  
2 Alberta Gas Chem., Ltd. v. E.I. Du Pont de Nemours & Co., 826 F.2d 1235 (3d Cir. 1987).

3 In Lucas, a distributor of vintage automobile tires, including Firestone brand tires,  
4 brought a § 7 action against a competitor that had acquired the exclusive right to  
5 manufacture and distribute vintage Firestone tires, thereby increasing its share of the  
6 vintage tire market from 49% to 74% and its share of the original equipment vintage tire<sup>8</sup>  
7 market to 90%. The Ninth Circuit found the plaintiff could not demonstrate “antitrust injury”  
8 and thus lacked standing to sue as a competitor, reasoning the plaintiff would have suffered  
9 the same injury had a small business, instead of a large one, acquired the right to  
10 manufacture and distribute the vintage tires. Because Lucas’s injury bore “no relationship  
11 to the size of either the acquiring company or its competitors,” it had not suffered an injury  
12 of “the type the statute was intended to forestall.” See Lucas, 130 F.3d at 1233.

13 In Alberta, a methanol producer challenged a merger between DuPont, the largest  
14 producer of methanol in the United States, and Conoco, an owner of coal reserves and a  
15 consumer of methanol. Prior to the merger, Conoco had planned to build a new plant to  
16 convert coal into methanol and, in the interim, to make large-scale purchases of methanol  
17 for resale, in order to spur demand for methanol fuel. After the acquisition, however,  
18 DuPont cancelled the plans to build a plant for methanol conversion. Alberta claimed  
19 damages for loss of sales to Conoco and loss of sales resulting from the previously  
20 anticipated increase in demand for methanol as fuel. The Court of Appeals found Alberta  
21 had failed to show antitrust injury, noting “Alberta's alleged losses were neither connected  
22 with, nor resulted from, DuPont's market power in the methanol-producing industry” and  
23 that “the same harm would have occurred had any acquirer decided to curtail Conoco's  
24 production and marketing plans.” See Alberta, 826 F.2d at 1241.

25 Synopsys argues that here, as in Lucas and Alberta, a smaller company could have

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27 <sup>8</sup>Original equipment vintage tires “bear the trademarks of tires which originally were  
28 sold on vintage cars.” Id. at 1230.



1 acquired Extreme DA and Magma, eliminated their products, and refused to cooperate with  
2 ATopTech, all without running afoul of the Clayton Act. In response, ATopTech argues  
3 Lucas and Alberta are distinguishable because, in those cases, the plaintiff failed to show  
4 that a smaller acquirer would not have undertaken the same action as did the larger  
5 acquirer, whereas here, according to ATopTech, a smaller company would not have  
6 discontinued GoldTime or Tekton because a smaller competitor in the verification software  
7 market “would not have had the market power to force customers to switch” to its own  
8 verification software (see SACC ¶ 88), and a company without its own place-and-route  
9 software, “would not have had an incentive to discontinue [GoldTime or Tekton] in order to  
10 force customers to switch to the firm’s [own] place-and-route software” (id.).

11 ATopTech’s allegation that a smaller company would lack the power or financial  
12 incentive to discontinue GoldTime is, in essence, no more than conjecture. First, there are  
13 many reasons why a consumer may choose to do business with a smaller rather than  
14 larger provider without being “forced” to do so, including but by no means limited to, the  
15 quality and price of the products, the level of service offered, and established or the  
16 potential for establishing working relationships with personnel; nor, as the SACC makes  
17 clear, is Synopsys the only company capable of producing both verification and place-and-  
18 route software. Further, as the Court of Appeals recognized in Alberta, there may be a  
19 number of different economic reasons why two acquiring companies, although not similarly  
20 situated, may come to the same business decision. See Alberta, 826 F.2d at 1241-42  
21 (finding acquiring company’s possible anticompetitive reason for termination of production  
22 after acquisition irrelevant when same harm would have occurred had there been different  
23 acquirer that did not pose anticompetitive concerns and made same decision for other  
24 reason, such as disinclination to take on additional costs of production).<sup>9</sup> In sum,

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26 <sup>9</sup>Indeed, the motivation for one company’s decision to acquire another may have  
27 nothing to do with an intent to continue the acquired company’s product, including, but  
28 again not limited to, a need to expand production facilities, a need for additional skilled  
labor or technical expertise, or an interest in increasing market share in another  
geographical area.

1 ATopTech has failed to allege antitrust injury.

2 Moreover, even assuming ATopTech had adequately alleged standing, ATopTech  
3 has failed to allege sufficient facts demonstrating how the acquisition harmed competition,  
4 as opposed to merely ATopTech. Although ATopTech alleges ATopTech's conduct  
5 "reduced competition, deprived consumers of choices, and increased prices for consumers"  
6 (SACC ¶ 117), ATopTech has not alleged any facts showing the state of the market before  
7 the challenged acquisitions, e.g., the market share attributable to Extreme DA and Magma  
8 prior to their acquisition, the market share attributable to Synopsys, Cadence, and CLK  
9 prior to such acquisitions, or whether any other place-and-route software producers used  
10 either GoldTime or Tekton. See Iqbal, 556 U.S. at 678 (holding complaint does not suffice  
11 "if it tenders 'naked assertion[s]' devoid of 'further factual enhancement'" (quoting Bell  
12 Atlantic Corp. v. Twombly, 550 U.S. 544, 557 (2007)).

13 Although the latter of the above-discussed deficiencies may be capable of  
14 amendment, any further leave to amend, given the former, would be futile.

15 Accordingly, Count II will be dismissed without leave to amend.

### 16 **3. Count III: Sherman Act § 1 (Agreement in Restraint of Trade)**

17 Section 1 of the Sherman Act prohibits "[e]very contract, combination in the form of  
18 trust or otherwise, or conspiracy, in restraint of trade among the several States." 15 U.S.C.  
19 § 1. ATopTech alleges that Section 2.9(f) of the EULA "unlawfully restrain[s] trade in the  
20 development and sale of competing place-and-route software" in violation of § 1. (See  
21 SACC ¶ 121.)<sup>10</sup> Agreements that cannot be characterized as illegal per se are analyzed  
22 under what has been termed the "Rule of Reason." Nat'l Soc. of Prof'l Engineers v. United  
23 States, 435 U.S. 679, 690-92 (1978). The parties agree Section 2.9(f) should be analyzed  
24 under the Rule of Reason.

25 To state a § 1 claim under the Rule of Reason, a plaintiff must plead "(1) a contract,

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27 <sup>10</sup>Section 2.9(f), as noted above, provides that customers using PrimeTime "may not  
28 (and may not allow anyone else to): use [PrimeTime] or its output to develop or enhance  
any product that competes with a Synopsys product." (See SACC ¶ 90.)

1 combination or conspiracy among two or more persons or distinct business entities; (2) by  
2 which the persons or entities intended to harm or restrain trade or commerce among the  
3 several States, or with foreign nations; (3) which actually injures competition.” Brantley v.  
4 NBC Universal, 675 F.3d 1192, 1197 (9th Cir. 2012). As to the third element, “the inquiry  
5 mandated by the Rule of Reason is whether the challenged agreement is one that  
6 promotes competition or one that suppresses competition,” Nat’l Soc., 435 U.S. at 691, and  
7 the competitive effect of such agreement “can only be evaluated by analyzing the facts  
8 peculiar to the business, the history of the restraint, and the reasons why it was imposed,”  
9 id. at 692.

10 ATopTech’s § 1 claim, however, as Synopsys correctly points out, fails to allege  
11 facts showing the impact of the EULA on competition,<sup>11</sup> and instead only alleges harm to  
12 ATopTech. Notably, ATopTech does not allege that other competitors need or have used  
13 access to PrimeTime or its output reports in order to develop interoperable place-and-route  
14 software, nor does such access appear necessary, where, as noted above, Synopsys’  
15 competitors have garnered approximately a third of the market without such access.

16 Citing Glen Holly, ATopTech argues it need not show Synopsys succeeded in  
17 foreclosing all competition in the place-and-route market. See Glen Holly, 352 F.3d at 378  
18 (noting “competitors may be able to prove antitrust injury before they actually are driven  
19 from the market and competition is thereby lessened”) (internal quotation and citation  
20 omitted). Glen Holly is distinguishable, however, as in that case, the plaintiff had  
21 sufficiently shown antitrust injury, whereas here, as noted above, ATopTech has not shown  
22 the EULA harms competition, and, instead, has only alleged harm to itself. See Les  
23 Shockley Racing, Inc. v. Nat’l Hot Rod Ass’n, 884 F.2d 504, 509 (9th Cir. 1989) (affirming  
24 dismissal of complaint lacking factual allegations showing the effect of agreement on price

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26 <sup>11</sup>As noted, ATopTech references both the EULA and Milkyway Agreement in the  
27 SACC’s Factual Background section. Although in Count III, in contrast to Count I,  
28 ATopTech does allege that both agreements unlawfully restrain trade (see SACC ¶ 122), in  
its opposition ATopTech makes no argument referencing the Milkyway Agreement as  
support for its § 1 claim (see Opp’n at 12-15).

1 or availability of product, availability of opportunity for entry into the market, “or any other  
2 characteristic or function of a competitive market”).<sup>12</sup>

3 Although ATopTech’s § 1 is subject to dismissal, the Court will afford ATopTech  
4 leave to amend, as the deficiencies noted above do not appear to be of the type that are  
5 incapable of amendment, see Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 701 (9th Cir.  
6 1988) (holding leave to amend “should be granted if it appears at all possible that the  
7 plaintiff can correct the defect”) (internal quotation and citation omitted), and, as the claim  
8 was asserted for the first time in the SACC, the Court has not ruled previously on the  
9 sufficiency of the allegations made in support thereof, see Allen, 911 F.2d at 373 (listing  
10 previous amendment among factors considered by court in determining whether to afford  
11 leave to amend).

12 Accordingly, Count III will be dismissed with leave to amend.

13 **4. Count IV: Sherman Act § 1 and Clayton Act § 3 (Tying)**<sup>13</sup>

14 “A tying arrangement is an agreement by a party to sell one product but only on the  
15 condition that the buyer also purchases a different (or tied) product, or at least agrees that  
16 he will not purchase that product from any other supplier.” Eastman Kodak Co. v. Image  
17 Tech. Services, Inc., 504 U.S. 451, 461 (1992) (internal quotation and citation omitted).  
18 The Supreme Court has held that “[s]uch an arrangement violates § 1 of the Sherman Act if  
19 the seller has appreciable economic power in the tying market and if the arrangement  
20 affects a substantial volume of commerce in the tied market.” See id. “The essential  
21 characteristic of an invalid tying arrangement lies in the seller’s exploitation of its control  
22 over the tying product to force the buyer into the purchase of a tied product that the buyer  
23 either did not want at all, or might have preferred to purchase elsewhere on different

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25 <sup>12</sup>In light of the above, the Court does not address herein the parties’ dispute as to  
whether PrimeTime outputs are covered by Synopsys’ copyright.

26 <sup>13</sup>Although ATopTech brings its tying claim under both § 1 of the Sherman Act and §  
27 3 of the Clayton Act, the Court need only conduct one analysis, as “the standards used by  
28 the two statutes are the same.” See Jefferson Parish Hospital District No. 2 v. Hyde, 466  
U.S. 2, 23 n.39 (1984).

1 terms.” Id. at 464 n.9 (internal quotation and citation omitted). “When such ‘forcing’ is  
2 present, competition on the merits in the market for the tied item is restrained and the  
3 Sherman Act is violated.” Id.; see also Paladin Associates, Inc. v. Montana Power Co., 328  
4 F.3d 1145, 1159 (9th Cir. 2003) (holding elements of tying claim are: “(1) that there exist  
5 two distinct products or services in different markets whose sales are tied together; (2) that  
6 the seller possesses appreciable economic power in the tying product market sufficient to  
7 coerce acceptance of the tied market; and (3) that the tying arrangement affects a not  
8 insubstantial volume of commerce in the tied product market”) (internal quotation and  
9 citation omitted). Synopsys argues that ATopTech has not alleged a tie or sufficient harm  
10 to competition.

11 In its SACC, ATopTech alleges Synopsys engages in tying by “forc[ing] customers  
12 who wish to purchase its static timing verification software PrimeTime (the tying product) to  
13 also purchase [its] place-and-route software [IC Compiler] (the tied product) from  
14 Synopsys.” (SACC ¶ 128.) ATopTech acknowledges that Synopsys offers PrimeTime and  
15 IC Compiler separately, but alleges Synopsys accomplishes the asserted “forcing” through  
16 “elimination of substantial discounts on [Synopsys’] PrimeTime and other software to any  
17 customer who purchases place-and-route software from a competitor, including  
18 ATopTech.” (See id. ¶ 95.) ATopTech further contends that “the increased price charged  
19 by Synopsys to customers that use Aprisa is punitive” (id. ¶ 96), and that such price  
20 “renders it economically unviable” for customers to purchase place-and-route software from  
21 Synopsys’ competitors (see id.). As Synopsys correctly points out, however, ATopTech’s  
22 coercion allegations lack factual support. The SACC does not include facts that would  
23 show how the alleged discounting practice was coercive, e.g., the amount of the difference  
24 between the price of PrimeTime when purchased separately and its price when purchased  
25 together with IC Compiler, or how Synopsys’ prices compare to the prices charged by  
26 competitors.

27 Moreover, ATopTech fails to allege facts tending to show competition was harmed in  
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1 the place-and-route software market. The SACC alleges only that one customer purchased  
2 both products together because it would otherwise lose the package discount. (See SACC  
3 ¶ 97.) As the Supreme Court has observed, “[i]f only a single purchaser were ‘forced’ with  
4 respect to the purchase of a tied item, the resultant impact on competition would not be  
5 sufficient to warrant the concern of antitrust law.” Jefferson Parish, 466 U.S. at 16. Here,  
6 absent any allegations as to whether other customers were coerced, what percentage of  
7 the place-and-route market has been foreclosed by Synopsys’ alleged tying, or even the  
8 relative size of the one customer, the SACC fails to allege facts showing a “substantial  
9 volume of commerce” has been affected by the challenged conduct.<sup>14</sup>

10 As ATopTech has repeated, rather than cured, the allegations previously identified  
11 by the Court as deficient, no further leave to amend is warranted. Accordingly, ATopTech’s  
12 tying counterclaim will be dismissed without further leave to amend..

13 **5. Count V: Sherman Act § 2 (Monopolization and Attempted**  
14 **Monopolization of the Verification Market)**

15 To properly state a monopolization claim under § 2 of the Sherman Act, a plaintiff  
16 must plead facts showing “(1) the possession of monopoly power in the relevant market  
17 and (2) the willful acquisition or maintenance of that power as distinguished from growth or  
18 development as a consequence of a superior product, business acumen, or historic  
19 accident.” Alaska Airlines, Inc. v. United Airlines, Inc., 948 F.2d 536, 541 (9th Cir. 1991).  
20 To state an attempted monopolization claim under § 2 of the Sherman Act, a plaintiff must  
21 plead facts showing “(1) that the defendant has engaged in predatory or anticompetitive  
22 conduct with (2) a specific intent to monopolize and (3) a dangerous probability of achieving  
23 monopoly power.” Spectrum Sports, Inc. v. McQuillan, 506 U.S. 447, 456 (1993).

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25 <sup>14</sup>In light of the above, the Court does not address herein the parties’ dispute as to  
26 whether ATopTech’s tying claim requires an allegation that the alleged discount results in  
27 prices below Synopsys’ costs. See Cascade Health Solutions v. PeaceHealth, 515 F.3d  
28 883, 915 (9th Cir. 2007) (declining to answer “the question of whether, to establish the  
coercion element of a tying claim through a bundled discount, [plaintiff] must prove that  
[defendant] priced below a relevant measure of its costs”).

1 ATopTech alleges Synopsys has an 88% market share of the verification market.  
2 (See SACC ¶ 73.) As Synopsys does not dispute it has monopoly power in that market,  
3 the first element of ATopTech’s monopolization claim is satisfied.

4 For the second element of its monopolization claim, ATopTech relies on the conduct  
5 alleged in support of Counts I through IV. Synopsys argues, inter alia, that ATopTech’s  
6 claim fails because ATopTech is not a market participant in the verification market and thus  
7 lacks antitrust standing. The Court agrees.

8 “Parties whose injuries, though flowing from that which makes the defendant’s  
9 conduct unlawful, are experienced in another market do not suffer antitrust injury.” Am. Ad  
10 Mgmt. v. GTE, 190 F.3d 1051, 1057 (9th Cir. 1999). Consequently, to state a claim for  
11 monopolization or attempted monopolization, a plaintiff must be “a participant in the same  
12 market as the alleged malefactors.” See Bhan v. NME Hospitals, Inc., 772 F.2d 1467,  
13 1470 (9th Cir. 1985). Although the term “market participant” is not limited to consumers  
14 and competitors, see Am. Ad., 190 F.3d at 1057 (noting “[t]he Supreme Court has never  
15 imposed a ‘consumer or competitor’ test”), where plaintiffs other than consumers or  
16 competitors have been found to have standing as participants in a market, those plaintiffs  
17 have regularly done business in that market. See, e.g., Atl. Richfield Co. v. USA Petroleum  
18 Co., 495 U.S. 328, 345 (recognizing “manufacturer’s own dealers” standing to sue  
19 manufacturer); Adaptive Power Solutions, LLC v. Hughes Missile Sys. Co., 141 F.3d 947  
20 (9th Cir.1998) (analyzing supplier’s antitrust injury); Illinois Corporate Travel, Inc. v.  
21 American Airlines, Inc., 806 F.2d 722, 729 (7th Cir.1986) (permitting travel agent’s claim  
22 against airline). Here, ATopTech’s alleged injuries, as described above, are far more  
23 attenuated, as ATopTech does not do business in the verification market, but, rather, solely  
24 in the place-and-route market, and, consequently, its alleged injuries are alleged to have  
25 been sustained solely in that market. Under such circumstances, ATopTech has failed to  
26 show it is a participant in the verification market and thus fails to make the requisite

1 showing for antitrust standing.<sup>15</sup>

2 Given the facts alleged, the Court finds the defect noted above is not of the type that  
3 is capable of amendment. Accordingly, Count V will be dismissed without further leave to  
4 amend.

5 **6. Count VI: Sherman Act § 2 (Monopolization and Attempted**  
6 **Monopolization of the Place-and-Route Market)**

7 ATopTech alleges Synopsys has a 65% share of the place-and-route market. (See  
8 SACC ¶ 66.) Synopsys does not dispute that it has monopoly power in the place-and-route  
9 market, and, consequently, the first element is again satisfied.

10 As to the second element, ATopTech again relies on all of its previous allegations,  
11 and in its opposition, clarifies that “[t]he anticompetitive conduct alleged here is not (as  
12 Synopsys would have it) that Synopsys has refused to provide technical specifics to  
13 competitors to assist them in creating interoperable products” (see Opp’n at 19:4-6 (internal  
14 quotation, alteration, and citation omitted)), but, instead, “Synopsys’ strategy of using its  
15 copyright for PrimeTime to block customers from sharing their own output data with rival  
16 place-and-route firms” (id. at 19:6-9 (emphasis in original)).<sup>16</sup>

17 As discussed above, ATopTech has failed to allege harm to competition based on  
18 such conduct and, consequently, the instant claim fails. See Verizon Commc’ns Inc. v. Law  
19 Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 407 (2004) (holding “possession of  
20 monopoly power will not be found unlawful unless it is accompanied by an element of  
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23 <sup>15</sup>Such failure similarly forecloses Synopsys’ attempted monopolization claim.

24 <sup>16</sup>In the SACC, ATopTech also alleges Synopsys “has used and attempted to use its  
25 assertion of copyright claims as a competitive weapon by falsely asserting to customers of  
26 ATopTech that ATopTech is engaging in unlawful conduct and that ATopTech will not be  
27 able to continue as a viable supplier of place-and-route software” (see SACC ¶ 94) and by  
28 “filing objectively baseless litigation” (see SACC ¶ 152). As Synopsys points out, however,  
said allegations lack any factual support, let alone, as to the alleged false statements, facts  
sufficient to comply with Rule 9(b) of the Federal Rules of Civil Procedure.



1 anticompetitive conduct”).<sup>17</sup>

2 As with Count III, ATopTech may be capable of successfully amending to cure the  
3 above-noted deficiencies. Accordingly, Count VI will be dismissed with leave to amend.

4 **7. Count VII: Cartwright Act**

5 ATopTech’s Cartwright Act claim is based on its tying claim, and thus fails for the  
6 reasons stated above. See Marin Cty. Bd. of Realtors, Inc. v. Palsson, 16 Cal. 3d 920, 925  
7 (1976) (holding Cartwright Act is patterned after Sherman Act).

8 Accordingly, Count VII will be dismissed without further leave to amend.

9 **8. Count VIII: Unfair Competition Law (“UCL”)**

10 The UCL prohibits “any unlawful, unfair or fraudulent business act or practice.” Cal.  
11 Bus. & Prof. Code § 17200. ATopTech’s UCL claims are based on its antitrust claims,  
12 which, ATopTech contends, establish a violation of both the “unlawful” and “unfair” prongs  
13 of the UCL.

14 “Under its ‘unlawful’ prong, the UCL borrows violations of other laws . . . and makes  
15 those unlawful practices actionable under the UCL.” Berryman v. Merit Prop. Mgmt., 152  
16 Cal. App. 4th 1544, 1554 (2007). Here, as discussed above, ATopTech has failed to  
17 properly allege an antitrust violation. Consequently, ATopTech has not established a  
18 violation of the UCL under the “unlawful” prong. See id.

19 Citing Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co., 20 Cal. 4th 163  
20 (1999), ATopTech argues that its antitrust allegations nonetheless satisfy the UCL’s “unfair”  
21 prong. See id. at 188 (holding conduct not in violation of statute may satisfy UCL’s unfair  
22 prong where conduct “violates the policy or spirit” of antitrust law and complaint does not  
23 serve as means of “plead[ing] around an absolute bar of some other provision”) (internal  
24 quotation omitted).

25 In Cel-Tech, sellers of cellular telephones brought an action against a company that

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27 <sup>17</sup>For the same reason, Synopsys’ claim for attempted monopolization of the place-  
28 and-route market likewise fails.

1 sold cellular telephones below cost to gain subscribers for its cellular services, alleging the  
2 defendant's below-cost sales violated the UCL as well as California's Unfair Practices Act,  
3 which prohibits below-cost sales when made for the purpose of injuring competition. See  
4 Cal. Bus. And Prof. Code §§ 17043, 17044. The California Supreme Court found such  
5 sales did not violate the Unfair Practices Act because the seller lacked the requisite intent,  
6 but, as to the question of whether the conduct violated the policy or spirit of the Unfair  
7 Practices Act, remanded the case for trial on the UCL cause of action, noting the California  
8 Legislature "undoubtedly did not consider below-cost sales in [the] context" of the "unusual  
9 circumstance" presented therein, namely, the defendant's "privileged status as one of two  
10 holders of a lucrative government-licensed duopoly"<sup>18</sup> that "enabled [the defendant] to  
11 subsidize massive losses . . . with . . . profits which by law were unavailable to its  
12 competitors." Id. at 188-90.

13 Here, in contrast to the situation presented in Cel-Tech, ATopTech has not pointed  
14 to any "unusual" aspect of the alleged conduct that would make that conduct something  
15 that violates the "policy and spirit" of the antitrust laws without violating the actual laws  
16 themselves. Rather, the conduct ATopTech challenges either is anticompetitive and thus  
17 simultaneously violates both the antitrust laws and their "policy and spirit," or it violates  
18 neither.

19 Accordingly, as some of the claims from which Count VIII is derived may be capable  
20 of amendment, Count VIII will be dismissed with leave to amend.

## 21 MOTION TO STRIKE

### 22 A. Legal Standard

23 A court may "strike from a pleading an insufficient defense or any redundant,  
24 immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Where an affirmative  
25 defense is challenged as insufficient, the court looks to whether the pleading is in  
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27 <sup>18</sup>At the time, the federal government licensed only two companies to provide cellular  
28 services in the area. Id. at 169.

1 conformity with Rule 8. See, Barnes v. AT&T Pension Benefit Plan–Nonbargained  
2 Program, 718 F. Supp. 2d 1167, 1170 (N.D. Cal. 2010) (holding “defense is insufficiently  
3 pled if it fails to give the plaintiff fair notice of the nature of the defense”); Iqbal, 556 U.S. at  
4 678 (holding, in context of challenge to adequacy of complaint, allegations “must contain  
5 sufficient factual material, accepted as true, to ‘state a claim to relief that is plausible on its  
6 face’” (quoting Twombly, 550 U.S. at 570)).

## 7 **B. Discussion**

8 Synopsis seeks an order striking the Seventh, Eleventh, and Fifteenth Affirmative  
9 Defenses.

### 10 **1. Seventh Affirmative Defense**

11 ATopTech’s Seventh Affirmative Defense restates ATopTech’s copyright misuse  
12 counterclaim, and, for the reasons stated above, likewise fails.

13 Accordingly, ATopTech’s Seventh Affirmative Defense will be stricken without leave  
14 to amend.

### 15 **2. Eleventh Affirmative Defense**

16 ATopTech’s Eleventh Affirmative Defense alleges Synopsis’ claims are barred by  
17 estoppel and is predicated on allegations made earlier in the SACC along with an allegation  
18 that Synopsis “authorized” the conduct on which it now bases its claims, by stating to its  
19 customers that it will permit rather than prohibit its verification software to be used in a  
20 reasonable manner to verify circuitry placed and routed by ATopTech’s place-and-route  
21 software. Synopsis seeks an order striking the Eleventh Affirmative Defense to the extent  
22 it is based on statements allegedly made to customers, noting ATopTech has not alleged  
23 reliance on any such statement. See A.C. Aukerman Co. V. R.I. Chaides Const. Co., 960  
24 F. 2d 1020, 1041 (Fed. Cir. 1992) (listing reliance on alleged misleading communication as  
25 element of equitable estoppel defense). ATopTech in its opposition has neither argued that  
26 it has alleged nor can allege such reliance.

27 Accordingly, to the extent ATopTech’s Eleventh Affirmative Defense is based on  
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1 Synopsys' alleged misrepresentations to customers, said affirmative defense will be  
2 stricken without leave to amend.

### 3 **3. Fifteenth Affirmative Defense**

4 ATopTech's Fifteenth Affirmative Defense alleges, in its entirety, that "[o]n  
5 information and belief, Synopsys' claims for relief are barred or limited in whole or in part by  
6 equitable estoppel, including laches, waiver, estoppel, implied license, and/or unclean  
7 hands." The Fifteenth Affirmative Defense is devoid of any factual support, and, contrary to  
8 ATopTech's argument, does not rely on facts alleged elsewhere in the SACC. Given such  
9 deficiency, the Fifteenth Affirmative Defense fails.<sup>19</sup>

10 Accordingly, ATopTech's Fifteenth affirmative defense will be stricken with leave to  
11 amend.

### 12 **CONCLUSION**

13 For the reasons stated above, Synopsys' motion to dismiss and strike is hereby  
14 GRANTED as follows:

15 1. To the extent the motion seeks dismissal of Counts I, II, IV, V, and VII the motion  
16 is GRANTED, and said counts are DISMISSED without leave to amend.

17 2. To the extent the motion seeks dismissal of Counts III, VI, and VIII, the motion is  
18 GRANTED, and said counts are DISMISSED with leave to amend.

19 3. To the extent the motion seeks an order striking the Seventh Affirmative Defense,  
20 the motion is GRANTED, and said affirmative defense is STRICKEN without leave to  
21 amend.

22 4. To the extent the motion seeks an order striking the portion of the Eleventh  
23 Affirmative Defense that is based on statements allegedly made to customers, the motion  
24 is GRANTED, and said portion of the affirmative defense is STRICKEN without leave to  
25 amend.

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27 <sup>19</sup>In light of the above, the Court does not address herein the parties' dispute as to  
28 the elements of an unclean hands defense.

1           5. To the extent the motion seeks an order striking the Fifteenth Affirmative Defense,  
2 the motion is GRANTED, and said affirmative defense is STRICKEN with leave to amend.

3           ATopTech shall file its Third Amended Answer and Counterclaims no later than  
4 August 28, 2015.

5           **IT IS SO ORDERED.**

6           Dated: August 7, 2015

  
MAXINE M. CHESNEY  
United States District Judge

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