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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCIE HAMILTON,
Plaintiff,
v.
JUUL LABS, INC.,
Defendant.

Case No. [20-cv-03710-EMC](#)

**SUPPLEMENTAL ORDER GRANTING
DEFENDANT’S MOTION TO DISMISS
PLAINTIFF’S CARTWRIGHT ACT
CLAIMS**

Docket No. 45

United States District Court
Northern District of California

The parties seek clarification on whether the portions of Plaintiff’s Fifth Claim for Relief under Labor Code § 432.5 predicated on the Cartwright Act remain alive. Docket No. 45 at 10. See FAC ¶¶ 143-47. California Labor Code § 432.5 provides that “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.” Cal. Lab. Code § 432.5.

In ruling on the first Motion to Dismiss, this Court found that Plaintiff’s Fifth Claim for a PAGA violation under Labor Code § 432.5 survives with Government Code § 12964.5 as the predicate. Docket No. 23 at 16. It found that the other theories on which the Fifth Claim was based (Business & Professions Code § 17200; California’s Cartwright Act; Rule 21F-17 of the Securities and Exchange Commission; and the Defend Trade Secrets Act) did not plausibly state a PAGA claim. *Id.* at 11-15. However, the parties have informed the Court that its order analyzed the plausibility of Plaintiff’s claim based on California Business & Professions Code § 16600, which is distinct from the Cartwright Act. Accordingly, the Court now analyzes Plaintiff’s Fifth

1 Claim under the provisions of the Cartwright Act, Cal Bus. & Prof. Code, § 16700 *et seq.*

2 The Cartwright Act “generally outlaws any combinations or agreements which restrain
3 trade or competition or which fix or control prices ... and declares that, with certain exceptions,
4 every trust is unlawful, against public policy and void.” *In re Cipro Cases I & II*, 61 Cal. 4th 116,
5 136, 187 Cal. Rptr. 3d 632, 644, 348 P.3d 845, 855 (2015) (internal quotation marks omitted). *See*
6 *also* Cal. Bus. & Prof. Code § 16726 (“[e]xcept as provided in this chapter, every trust is unlawful,
7 against public policy and void”). A trust is defined as “a combination of capital, skill or acts by
8 two or more persons” that is used for certain anticompetitive purposes. *See* Cal. Bus. & Prof.
9 Code § 16720. *Cf. Asahi Kasei Pharma Corp. v. CoTherix, Inc.*, 204 Cal. App. 4th 1, 8, 138 Cal.
10 Rptr. 3d 620, 626 (2012) (“[a] Cartwright Act violation requires a combination of capital, skill or
11 acts by two or more persons that seeks to achieve an anticompetitive end”) (internal quotation
12 marks omitted).

13 In order to maintain a cause of action under the Cartwright Act, the following elements
14 must be established: “(1) the formation and operation of the conspiracy; (2) illegal acts done
15 pursuant thereto; and (3) damage proximately caused by such acts.” *Kolling v. Dow Jones & Co.*,
16 137 Cal. App. 3d 709, 718, 187 Cal. Rptr. 797, 803 (1982). *Cf. Shajar Abid v. Google LLC*, No.
17 18-cv-00981-MEJ, 2018 U.S. Dist. LEXIS 93649, at *18 (N.D. Cal. June 4, 2018) (same). Some
18 California appellate courts have held that “single firm monopolization is not cognizable under the
19 Cartwright Act.” *Asahi Kasei Pharma Corp.*, 204 Cal. App. 4th at 8; *Freeman v. San Diego Ass'n*
20 *of Realtors*, 77 Cal. App. 4th 171, 200 n.32, 91 Cal. Rptr. 2d 534, 556 (1999) (“[t]he Cartwright
21 Act bans combinations but does not have any parallel to Sherman Act section 2's antimonopoly
22 provisions”). *But see Lowell v. Mother's Cake & Cookie Co.*, 79 Cal. App. 3d 13, 23, 144 Cal.
23 Rptr. 664, 671 (1978) (“[t]hough not specifically listed, monopoly is a prohibited restraint of
24 trade” under the Cartwright Act”). Monopolization means “the willful acquisition of the power to
25 control prices or exclude competition from commerce in a particular geographic area with respect
26 to a specific product.” *Lowell*, 79 Cal. App. 3d at 23 (citing *United States v. Grinnell Corp.*, 384
27 U.S. 563, 570-71, 86 S. Ct. 1698, 1704 (1966)).

28 Plaintiff brings suit solely against JLI and does not allege that it conspired with another to

1 create a trust for an anticompetitive purpose. Further, even if a single firm monopolization theory
2 is cognizable under the Cartwright Act, the FAC is devoid of any detail regarding JLI's price
3 fixing or willful exclusion of competition within a particular geographic area. *See* FAC ¶¶ 143-47.
4 It contains a simple recitation of the Cartwright Act's purpose and does not provide any detail
5 regarding the legal theory on which the Cartwright Act claim is based. *See id.* Plaintiff does not
6 describe how JLI creates an unlawful trust in restraint of trade through its conduct. The Court
7 therefore finds that Plaintiff's Cartwright Act claim is not a plausible theory on which Plaintiff's
8 Fifth Claim for relief, under Labor Code § 432.5, may rest.

9 In sum, the Court clarifies that Plaintiff's Fifth Claim is dismissed to the extent it rests on
10 the Cartwright Act. This order does not alter the Court's previous holding that Plaintiff
11 sufficiently states a claim for a PAGA violation under Labor Code §432.5 with Government Code
12 § 12964.5 as the predicate.

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14 **IT IS SO ORDERED.**

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16 Dated: April 27, 2021

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19 EDWARD M. CHEN
20 United States District Judge
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