

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 SAN FRANCISCO COMPREHENSIVE )  
4 TOURS, LLC, )  
5 Plaintiff, )  
6 vs. )  
7 TRIPADVISOR, LLC and VIATOR, INC., )  
8 Defendants. )  
9 \_\_\_\_\_)

Case No.: 2:20-cv-02117-GMN-DJA

ORDER

10 Pending before the Court is the Motion to Dismiss, (ECF No. 15), filed by Defendants  
11 Tripadvisor, LLC (“Tripadvisor”) and Viator, Inc. (“Viator”) (collectively, “Defendants”).  
12 Plaintiff San Francisco Comprehensive Tours, LLC (“Plaintiff”) filed a Response, (ECF No.  
13 16), to which Defendants filed a Reply, (ECF No. 17). For the reasons discussed below, the  
14 Court **GRANTS** Defendants’ Motion to Dismiss.

15 **I. BACKGROUND**

16 This case arises out of Defendants’ alleged anti-competitive behavior and trademark  
17 infringement in the course of offering guided tour services in San Francisco, Napa Valley, and  
18 New York City. (*See generally* Compl., ECF No. 1).

19 In 2004, Plaintiff began providing guided tour services in San Francisco. (*Id.* ¶ 51).  
20 These services are guided tours provided via some means of transport, including, but not  
21 limited to, automobiles, sport utility vehicles, vans, shuttles, limousines, trains, boats, and  
22 ferries (the “Guided Tour Services”). (*Id.* ¶ 34). In 2007, Plaintiff expanded its business to  
23 Napa Valley, and between 2010 and 2019, to New York City. (*Id.* ¶¶ 54, 58).

24 Plaintiff, at an unknown date, contracted with Tripadvisor to list its Guided Tour  
25 Services on Tripadvisor’s website. (*Id.* ¶ 90). Tripadvisor owns and operates aggregator

1 websites, which collect and display links to the websites of service providers in various  
2 markets, including the alleged markets of San Francisco, Napa Valley, and New York City. (*Id.*  
3 ¶ 66). Through its websites, Tripadvisor gives consumers the ability to purchase guided tour  
4 services within the relevant market. (*Id.* ¶ 78). Tripadvisor’s online functionality is designed in  
5 a manner to communicate to consumers that Tripadvisor is the end service provider providing  
6 those purchased guided tour services. (*Id.* ¶ 79). Tripadvisor’s websites also publish customer  
7 reviews. (*Id.* ¶ 116).

8         Tripadvisor owns multiple subsidiaries and affiliates (“Tripadvisor Entities”), one of  
9 which is Viator. (*Id.* ¶ 43). Viator owns and operates a website that advertises guided tour  
10 services, including Plaintiff’s, in San Francisco, Napa Valley, and New York City. (*Id.* ¶¶ 45–  
11 47). According to Plaintiff, Tripadvisor, through its dominance of Viator, has a market share  
12 significantly larger than 55% in the relevant San Francisco, Napa Valley, and New York City  
13 markets. (*Id.* ¶¶ 91–93). Plaintiff broadly alleges that Defendants unlawfully engaged in  
14 double-serving, charged an exorbitant commission fee to list on Defendants’ websites, used its  
15 trademarks without authorization, and falsely advertised services on their websites. (*Id.* at 7–  
16 17).

### 17         **A. Double-Serving**

18         Double-serving is a search engine optimization methodology intended to increase a  
19 website’s visibility on a search results page in search engine websites like Google, Yahoo!, and  
20 Bin. (*Id.* ¶ 24). To optimize viewability of links and defeat viewability of competing websites,  
21 a business entity and a “strawman” subsidiary both submit bids to a pay-per-click keyword  
22 auction for a particular search word or term on a search engine website. (*Id.* ¶ 124). By taking  
23 up the top results of a search result list, other providers’ websites are consequently forced to  
24 lower positions on the search result list, where it is significantly less likely a potential customer  
25 will click on those links. (*Id.* ¶ 131).

1 Plaintiff alleges that Tripadvisor, through its dominance and control of Viator, the  
2 alleged “strawman,” increased the probability in which Defendants’ websites populated above  
3 other service providers’ websites in a keyword-based search on search engine websites such as  
4 Google, Yahoo!, and Bing. (*Id.* ¶ 127). Defendants’ websites, Plaintiff alleges, are deliberately  
5 optimized by Tripadvisor to appear on search engine websites in near proximity to each other  
6 and above Plaintiff’s websites within the relevant market. (*Id.* ¶¶ 75–77). Through this  
7 methodology, Defendants purportedly obtain twice as much information regarding other  
8 Service Providers’ bids in a keyword auction, which allows Defendants to submit more  
9 competitive bids in future auctions. (*Id.* ¶ 140).

#### 10 **B. Commission Fee**

11 In exchange for displaying links to service providers’ websites, Tripadvisor charges  
12 service providers of guided tour services, like Plaintiff, a thirty-percent (30%) commission  
13 based on gross ticket sales of the service providers’ services for Tripadvisor. (*Id.* ¶ 78). When a  
14 service provider does not pay the commission, Tripadvisor publishes a statement on its website  
15 announcing that the provider’s guided tour services are “unavailable.” (*Id.* ¶ 87). The  
16 “unavailable” sign, Plaintiff alleges, leads a reasonable consumer to believe the guided tour  
17 services are generally unavailable. (*Id.*). Plaintiff alleges that it felt forced to enter into  
18 contracts with Tripadvisor as a last-ditch effort to avoid going out of business. (*Id.* ¶ 90).

#### 19 **C. Trademark Infringement**

20 Plaintiff, in 2004, began using the service mark, “SAN FRANCISCO  
21 COMPREHENSIVE SHUTTLE TOURS” in the course of its business. (*Id.* ¶ 51). As part of  
22 its business, Plaintiff developed and published a variety of marketing tools, including visual  
23 displays, designs, sales material, and other images and text that allegedly also constitute  
24 trademarks, service marks, and copyrights. (*Id.* ¶ 52). Plaintiff alleges that Tripadvisor used,  
25 without authorization or license, Plaintiff’s service marks and trade dress on Tripadvisor’s

1 websites. (*Id.* ¶¶ 97–108). Additionally, Plaintiff claims that Tripadvisor used, without  
2 authorization or license, Plaintiff’s commercial properties in San Francisco, Napa Valley, and  
3 New York City. (*Id.* ¶¶ 109–114).

#### 4 **D. False Advertising**

5 Plaintiff lastly alleges that Defendants advertise without registration through local state  
6 commissions and fail to obtain the appropriate state and local permits and licenses to operate in  
7 California and New York. (*Id.* ¶¶ 142–147).

8 On November 18, 2020, Plaintiff filed a Complaint against Defendants. (*See generally*  
9 Compl., ECF No. 1). Plaintiff asserts twenty-nine (29) causes of action, including: (1) attempt  
10 to monopolize and monopolization in violation of 15 U.S.C. § 2; (2) conspiracy in restraint of  
11 trade in violation of 15 U.S.C. § 1; (3) registered trademark infringement in violation of 15  
12 U.S.C. § 1125(a); (4) false advertising in violation of 15 U.S.C. § 1125(a); (5) registered  
13 trademark infringement under state law; (6) interference with contractual relations under state  
14 law; and (7) misappropriation of commercial properties under state law. (Compl. ¶¶ 151–373).  
15 Defendants filed the instant Motion to Dismiss on the following grounds: (1) lack of personal  
16 jurisdiction under Rule 12(b)(2) and (2) failure to state a plausible claim under Rule 12(b)(6).  
17 (*See* Defs.’ Mot. Dismiss (“MTD”), ECF No. 15).

## 18 **II. LEGAL STANDARD**

### 19 **A. Motion to Dismiss under Rule 12(b)(2)**

20 Pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, a defendant may move  
21 to dismiss for lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). Once a defendant raises  
22 the defense, the burden falls on the plaintiff to prove sufficient facts to establish that  
23 jurisdiction is proper. *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). A plaintiff  
24 can carry its burden only by presenting sufficient evidence to establish that (1) personal  
25 jurisdiction is proper under the laws of the state where it is asserted; and (2) the exercise of

1 jurisdiction does not violate the defendant’s right to due process secured by the United States  
2 Constitution. *Ziegler v. Indian River Cty.*, 64 F.3d 470, 473 (9th Cir. 1995).

3 When no federal statute governs personal jurisdiction, the district court applies the law of  
4 the forum state. *See Panavision Int’l L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998).  
5 Nevada has authorized its courts to exercise jurisdiction over persons “on any basis not  
6 inconsistent with . . . the Constitution of the United States.” NRS 14.065. Thus, the Due  
7 Process Clause of the Fourteenth Amendment is the relevant constraint on Nevada’s authority  
8 to bind a nonresident defendant to a judgment of its own courts. *World Wide Volkswagen Corp.*  
9 *v. Woodson*, 444 U.S. 286, 291, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980).

10 The Due Process Clause requires that the nonresident must have “certain minimum  
11 contacts . . . such that the maintenance of the suit does not offend ‘traditional notions of fair  
12 play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154,  
13 90 L. Ed. 95 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S. Ct. 339, 85 L. Ed. 278  
14 (1940)). To survive a motion to dismiss for lack of personal jurisdiction, a plaintiff need only  
15 make “a prima facie showing of jurisdictional facts.” *Pebble Beach Co. v. Caddy*, 453 F.3d  
16 1151, 1154 (9th Cir. 2006) (quoting *Doe v. Unocal*, 248 F.3d 915, 922 (9th Cir. 2001)). When  
17 analyzing such a 12(b)(2) motion, “the court resolves all disputed facts in favor of the  
18 plaintiff.” *Id.*

19 **B. Motion to Dismiss under Rule 12(b)(6)**

20 Dismissal is appropriate under Rule 12(b)(6) where a pleader fails to state a claim upon  
21 which relief can be granted. Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
22 555 (2007). A pleading must give fair notice of a legally cognizable claim and the grounds on  
23 which it rests, and although a court must take all factual allegations as true, legal conclusions  
24 couched as a factual allegations are insufficient. *Twombly*, 550 U.S. at 555. Accordingly, Rule  
25 12(b)(6) requires “more than labels and conclusions, and a formulaic recitation of the elements

1 of a cause of action will not do.” *Id.* “To survive a motion to dismiss, a complaint must contain  
2 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its  
3 face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A  
4 claim has facial plausibility when the plaintiff pleads factual content that allows the court to  
5 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* This  
6 standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*

7 “Generally, a district court may not consider any material beyond the pleadings in ruling  
8 on a Rule 12(b)(6) motion.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542,  
9 1555 n.19 (9th Cir. 1990). “However, material which is properly submitted as part of the  
10 complaint may be considered.” *Id.* Similarly, “documents whose contents are alleged in a  
11 complaint and whose authenticity no party questions, but which are not physically attached to  
12 the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss.” *Branch v.*  
13 *Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). On a motion to dismiss, a court may also take  
14 judicial notice of “matters of public record.” *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282  
15 (9th Cir. 1986). Otherwise, if a court considers materials outside of the pleadings, the motion  
16 to dismiss is converted into a motion for summary judgment. Fed. R. Civ. P. 12(d).

17 If the court grants a motion to dismiss for failure to state a claim, leave to amend should  
18 be granted unless it is clear that the deficiencies of the complaint cannot be cured by  
19 amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Pursuant  
20 to Rule 15(a), the court should “freely” give leave to amend “when justice so requires,” and in  
21 the absence of a reason such as “undue delay, bad faith or dilatory motive on the part of the  
22 movant, repeated failure to cure deficiencies by amendments previously allowed, undue  
23 prejudice to the opposing party by virtue of allowance of the amendment, futility of the  
24 amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

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1 **III. DISCUSSION**

2 Defendants move to dismiss Plaintiff’s Complaint on following grounds: (1) NRS  
3 86.548 bars Plaintiff from bringing suit in Nevada because it is not registered with the  
4 Secretary of State as a foreign limited-liability company;<sup>1</sup> (2) Plaintiff’s causes of action are not  
5 cognizable claims upon which relief may be granted; and (3) the Court is without personal  
6 jurisdiction over Defendants given their lack of contacts with Nevada. (MTD 1:13–2:14). If  
7 any claims survive, Defendants move to transfer all remaining claims to the District of  
8 Massachusetts pursuant to 28 U.S.C. § 1404(a). (*Id.* 2:15–16).

9 **A. Personal Jurisdiction**

10 Defendants move to dismiss Plaintiff’s Complaint for lack of personal jurisdiction. (*Id.*  
11 15:25–21:15). In its Complaint, Plaintiff asserts that the Court has personal jurisdiction over  
12 Defendants under 15 U.S.C. § 22 “because Defendants transact business in the District of  
13 Nevada and are hereby the subject of a proceeding under the antitrust laws of the United  
14 States.” (Compl. ¶ 6).

15 “To exercise personal jurisdiction over a non-resident defendant in a federal question  
16 case, the district court [must first] determine that a rule or statute potentially confers  
17 jurisdiction over the defendant and then conclude that asserting jurisdiction does not offend the  
18 principles of Fifth Amendment due process.” *Go-Video, Inc. v. Akai Elec. Co., Ltd.*, 885 F.2d  
19 1406, 1413 (9th Cir. 1989). “A statutory basis for exercising personal jurisdiction may be  
20 found in a statute providing for service of process.” *Action Embroidery Corp. v. Atl.*

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21  
22 <sup>1</sup> Defendant argues that under NRS 86.548, Plaintiff is precluded from bringing this action because Plaintiff is  
23 not registered to do business as a foreign limited-liability company in Nevada. (MTD 6:18–7:1). Defendant thus  
24 requests that the Court stay the case pending Plaintiff’s compliance with Nevada’s registration requirements  
25 under NRS 86.548. (*Id.* 6:26–27). Under Nevada law, a foreign limited-liability company must register with the  
secretary of state before doing business in Nevada. NRS 86.544(1). “Maintaining, defending or settling any  
proceeding” does not, however, constitute “business transacting” under NRS 86.544. *See* NRS 86.5483(1)(a).  
Because Plaintiff’s lawsuit serves as its only point of contact with Nevada, Plaintiff is not “transacting business”  
as defined under NRS 86.544. Plaintiff, therefore, is not required to register with the Secretary of State, and the  
case may proceed.

1 *Embroidery, Inc.*, 368 F.3d 1174, 1177 (9th Cir. 2004). Section 12 of the Clayton Act provides  
2 as follows:

3 Any suit, action, or proceeding under the antitrust laws against a corporation may  
4 be brought not only in the judicial district whereof it is an inhabitant, but also in any  
5 district wherein it may be found or transacts business; and all process in such cases  
6 may be served in the district of which it is an inhabitant, or wherever it may be  
7 found.

8 15 U.S.C. § 22. The Court begins by discussing whether it has personal jurisdiction over  
9 Tripadvisor before addressing Viator.

10 i. Defendant Tripadvisor, LLC

11 Defendants argue that the Court lacks personal jurisdiction over Tripadvisor because  
12 Section 12 of the Clayton Act does not apply to limited liability companies like Defendant  
13 Tripadvisor. (MTD 16:16–17:5). The Court agrees. Multiple district courts and the Third  
14 Circuit have strictly construed the statute and excluded limited liability companies from Section  
15 12 of the Clayton Act. *See Orange Theatre Corp. v. Rayherstz Amusement Corp.*, 139 F.2d 871,  
16 875 (3d Cir. 1944); *Thill Securities Corporation v. New York Stock Exchange*, 283 F. Supp.  
17 239, 242 (E.D. Wis. 1968); *McManus v. Tato*, 184 F. Supp. 958, 959 (S.D.N.Y. 1959); *Pacific*  
18 *Seafarers, Inc. v. Pacific Far East Line*, 48 F.R.D. 347, 349 (D.C.D.C. 1969). Similarly here,  
19 Plaintiff is not a corporation, so Section 12 of the Clayton Act does not apply to Plaintiff.  
20 (Compl. at 1) (“Plaintiff is a California limited liability company. . . .”). The Court sees no  
21 reason to depart from the other courts’ plain language reading of Section 12 of the Clayton Act.  
22 Of note, Plaintiff does not provide any persuasive caselaw in support of its liberal interpretation  
23 of Section 12. Accordingly, the Court finds that it lacks personal jurisdiction over Tripadvisor  
24 and grants Defendant’s Motion to Dismiss as to Defendant Tripadvisor.

25 ii. Defendant Viator, Inc.

Defendants additionally assert that the Court lacks personal jurisdiction over Viator  
because: (1) without sufficiently pled antitrust claims, Section 12 of the Clayton Act no longer



1 applies; (2) Defendants are not subject to general jurisdiction in Nevada; and (3) the Court  
2 lacks specific jurisdiction over Defendants. (MTD 17:6–21:15). Plaintiff concedes that if all  
3 antitrust claims are dismissed as to both Defendants, then there would be no basis for pendant  
4 personal jurisdiction over the non-antitrust claims. (Resp. to MTD at 21, n.7). Further, Plaintiff  
5 also admits that there is no general or specific jurisdiction over Defendants. (*Id.*).

6 Thus, the only applicable basis for personal jurisdiction is Section 12 of the Clayton Act.  
7 The Court accordingly discusses whether Plaintiff plausibly alleges antitrust claims to  
8 determine whether the Court has personal jurisdiction over Viator.

### 9 **B. Failure to State a Claim**

10 Plaintiff asserts two antitrust claims under the Clayton Act: (1) attempt to monopolize  
11 and monopolization in violation of 15 U.S.C. § 2; and (2) conspiracy in restraint of trade in  
12 violation of 15 U.S.C. § 1. (Compl. ¶¶ 151–211). The Court begins by discussing Plaintiff’s  
13 first claim under Section 2 before turning to the conspiracy in restraint of trade claim under  
14 Section 1.

#### 15 i. Monopolization Under 15 U.S.C. § 2, (Claims 1–6)

16 Defendants argue that Plaintiff’s antitrust claims must be dismissed because Plaintiff  
17 fails to assert an antitrust injury. (MTD 7:15–9:8). Specifically, Defendants assert that they are  
18 not competitors or consumers in the relevant market with Plaintiff, who, unlike Defendants,  
19 provide guided tour services. (*Id.*). In rebuttal, Plaintiff contends that Defendants are market  
20 participants in the relevant markets because Defendants (1) allegedly serve as the center of the  
21 marketplace for Guided Tour Services; (2) owe obligations to consumers when Defendants sell  
22 Guided Tour Services; and (3) exercise control of the relevant markets to benefit certain  
23 Service Providers. (Pl.’s Resp. to MTD 8:19–22, ECF No. 16).

24 To sufficiently allege an antitrust injury, a plaintiff must meet the following  
25 requirements: (1) unlawful conduct; (2) causing an injury to the plaintiff; (3) that flow from that

1 which makes the conduct unlawful; and (4) is the type the antitrust laws were intended to  
2 prevent. *Am. Ad Mgmt., Inc. v. Gen. Tel. Co.*, 190 F.3d 1051, 1054 (9th Cir. 1999). The Ninth  
3 Circuit includes an additional, corollary principle that “the injured party be a participant in the  
4 same market as the alleged malefactors.” *Id.* at 1057. “Parties whose injuries, though flowing  
5 from that which makes the defendant’s conduct unlawful, are experienced in another market do  
6 not suffer antitrust injury.” *Id.*

7 In *Bhan v. NME Hosps., Inc.*, 772 F.2d 1467, 1470 (9th Cir. 1985), the Ninth Circuit  
8 determined that nurse anesthetists and M.D. anesthesiologists participate in a single anesthesia  
9 services market because both professions effectively provide the same services. *Bhan*, 772 F.2d  
10 at 1471. “In analyzing whether nurse anesthetists and M.D. anesthesiologists participate in the  
11 same market, the focus is upon the reasonable interchangeability of use or the cross-elasticity of  
12 demand between the services provided by nurse anesthetists and by M.D. anesthesiologists.” *Id.*  
13 at 1470–71. Though the legal restrictions upon nurse anesthetics created a functional  
14 distinction between nurses and anesthesiologists, the Court ultimately determined that such  
15 distinction did not preclude “cross-elasticity of demand sufficient to constrain the market power  
16 of M.D. anesthesiologists and thereby to affect competition.” *Id.* at 1471.

17 In contrast, another court in this district determined that Groupon did not compete in the  
18 same market as a skydiving company because “Groupon [does not provide] services that are  
19 interchangeable with other tandem skydiving service providers as required to be part of the  
20 same market.” *Las Vegas Skydiving Adventures LLC v. Groupon, Inc.*, No. 2:18-cv-02342-  
21 APG-VCF, 2019 U.S. Dist. LEXIS 183944, at \*7 (D. Nev. Oct. 23, 2019). There, Plaintiff  
22 alleged that the relevant market consists of “businesses that sell[] the Relevant Services to  
23 residents of and visitors to southern Nevada who wish to have the experience of jumping out of  
24 an airplane while tethered to an experienced parachutist.” *Id.* at 6–7. Because Groupon sold  
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1 discount certificates but did not sell or otherwise provide skydiving services itself, the Court  
2 dismissed with prejudice the antitrust causes of action under Section 2 of the Sherman Act. *Id.*

3 Likewise, Plaintiff has not plausibly alleged that Tripadvisor provides the same,  
4 interchangeable services for guided service tours. Plaintiff defines the relevant market as  
5 providers who “engage in the business of offering guided tour services to customers via some  
6 means of transport, in whole or in part, including, but not limited to, automobiles, sport utility  
7 vehicles, vans, shuttles, limousines, trains, boats, and ferries.” (Compl. ¶¶ 34–35). Plaintiff  
8 directly provides guided tour services whereas Defendants advertise guided tour services on  
9 their websites. *Las Vegas Skydiving Adventures LLC v. Groupon, Inc.*, No. 2:18-cv-02342-  
10 APG-VCF, 2019 U.S. Dist. LEXIS 183944, at \*7 (D. Nev. Oct. 23, 2019) (“Providing discount  
11 certificates to customers seeking tandem skydiving services is different (and a separate market)  
12 from providing tandem skydiving services.”). As alleged in the Complaint, Defendants own  
13 and operate aggregator websites, which collect and display links to the websites of Service  
14 Providers. (Compl. ¶¶ 66, 45–47). Like the Court found in *Las Vegas Skydiving Adventures*  
15 *LLC*, Plaintiff has not shown that the parties in the present case provide interchangeable  
16 services.

17 Plaintiff argues that it sufficiently alleged that Defendants are competitors because  
18 Defendants provide a reasonable substitute in the relevant market for guided tour services.  
19 (Pl.’s Resp. to MTD 11:10–12). Relying on *Bhan*, Plaintiff analogizes that Defendants, like the  
20 nurse anesthetists who required a supervising attending physician to provide services, provide a  
21 reasonable substitute because they ultimately sell guided tour services. (*Id.*). However, as  
22 Defendants succinctly state, “providing an advertising outlet for a product or providing a  
23 booking service is not the same as providing a product.” (Reply 4:1–2). Unlike the nurses in  
24 *Bhan* who could ultimately provide anesthesia services, Defendants do not, and cannot, offer  
25 guided tours in the relevant market. Defendants, therefore, do not provide a reasonable

1 substitute in the relevant market. Because Plaintiff cannot demonstrate that the parties are  
2 participants in the same relevant market and further, that Plaintiff suffered an antitrust injury,  
3 Plaintiff does not have standing to bring an antitrust suit. Accordingly, the Court dismisses  
4 Plaintiff's antitrust claims, namely Claims 1–6, with prejudice.

5 ii. Conspiracy in Restraint of Trade Under 15 U.S.C. § 1 (Claims 7–9)

6 Plaintiff alleges that Defendants conspired to restrain trade and/or commerce by  
7 decreasing access to the top two search results on search engine websites and by increasing the  
8 price per click of competing service providers. (Compl. ¶¶ 202–213). Defendants move to  
9 dismiss such claims, arguing that Supreme Court precedent establishes that a parent company  
10 and wholly owned subsidiary cannot “conspire” within the meaning of Section 1 of the Clayton  
11 Act. (MTD 10:7–14).

12 “[T]he coordinated activity of a parent and its wholly owned subsidiary must be viewed  
13 as that of a single enterprise for purposes of § 1 of the Sherman Act. A parent and its wholly  
14 owned subsidiary have a complete unity of interest.” *Copperweld Corp. v. Indep. Tube Corp.*,  
15 467 U.S. 752, 771–72, 777 (1984). As listed in Defendants’ Certificate of Interested Parties,  
16 “Defendant Viator, Inc. is a wholly-owned subsidiary of Tripadvisor LLC.” (See Defs.’  
17 Certificate of Interested Parties 1:26, ECF No. 12). Defendants Tripadvisor and Viator,  
18 therefore, cannot “conspire” for purposes of Section 1 of the Sherman Act as a matter of law.  
19 The Court accordingly grants Defendant’s Motion to Dismiss as to Claims 7 through 9.

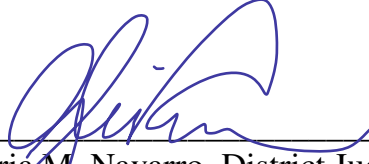
20 Because no antitrust claims remain, Section 12 of the Clayton Act does not apply, and  
21 the Court lacks personal jurisdiction over Defendant Viator. The Court accordingly grants  
22 Defendants’ Motion to Dismiss.

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1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss, (ECF No. 15), is  
3 **GRANTED.**

4 **DATED** this 24 day of September, 2021.

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8 Gloria M. Navarro, District Judge  
9 UNITED STATES DISTRICT COURT  
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