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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COMPASS, INC. AND COMPASS
WASHINGTON, LLC,

Plaintiffs,

v.

NORTHWEST MULTIPLE LISTING
SERVICE,

Defendant.

CASE NO. 2:25-cv-00766-JNW

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS

1. INTRODUCTION

This case concerns a dispute between Compass, Inc. and Compass Washington, LLC (together, “Compass”), a national real estate brokerage, and Northwest Multiple Listing Service (“NWMLS”), the dominant multiple listing service in the Seattle area. Compass alleges that NWMLS’s operating rules—which require member brokerages to list all properties on its platform before marketing them elsewhere—violate federal and state antitrust laws and constitute tortious interference with Compass’s business relationships. NWMLS maintains that the

1 challenged rules are procompetitive because they ensure all member brokerages
2 have equal access to listing information.

3 NWMLS moves to dismiss the Complaint for failure to state a claim under
4 Rule 12(b)(6). Dkt. No. 27. Having considered the briefing, the record, the relevant
5 law, and the arguments of counsel at oral argument, the Court is fully informed and
6 DENIES the motion. The Complaint states plausible claims for relief under Sections
7 1 and 2 of the Sherman Act, Washington’s Consumer Protection Act, and state
8 common law.

9 **2. BACKGROUND**

10 The following facts are drawn from the Complaint, Dkt. No. 1, and are
11 accepted as true for purposes of this order. *Lund v. Cowan*, 5 F.4th 964, 968 (9th
12 Cir. 2021).

13 Defendant NWMLS is a real estate multiple listing service that operates in
14 Washington and parts of Oregon. It is owned and operated by competing real estate
15 brokerages and their agents in Seattle. NWMLS maintains a database of residential
16 real estate listings that is, according to the Complaint, essential for brokers to
17 compete effectively in the Seattle and King County market.

18 Compass is a real estate brokerage operating nationwide, including in
19 Washington State. Until recently, Compass was on NWMLS’s board. Compass
20 alleges that “NWMLS creates rules that govern how residential real estate brokers
21 market homes and compete in the Seattle area, and it levies penalties (such as fines
22 up to \$5,000 or withholding of critical data) for any alleged violations of those
23 rules.” Dkt. No. 33 at 8 (citing complaint at ¶¶ 2, 10, 15–17, 19, 36, 56-71, 74–76,

1 89). Specifically, Compass challenges NWMLS’s Rule 2, which it alleges “forces
2 every homeowner and their broker to market their listing through NWMLS.” *Id.*
3 (citing complaint at ¶ 56). That rule states: “Members shall not promote or
4 advertise any property in any manner whatsoever . . . unless a listing for that
5 property has been delivered to NWMLS or input by the member and has not been
6 cancelled, expired, or taken temporarily off the market.” *Id.*

7 Compass’s marketing strategy operates differently from what NWMLS’s
8 rules require. Under what Compass calls its “3-Phased Price Discovery and
9 Marketing Strategy” for homeowners (“3-Phased Strategy”), the first phase—called
10 “Compass Private Exclusives”—involves marketing property exclusively to other
11 Compass agents across the country without listing the property on any MLS.
12 Compass alleges that this phase is designed to “test the market and gather
13 feedback” for the homeowner on appropriate pricing before the property is widely
14 listed. Dkt. No. 1 at 2. Compass acknowledges, however, that homes can sell during
15 this first phase without ever reaching the MLS. *Id.* at 13–14. According to the
16 Complaint, homes marketed through the 3-Phased Strategy “were associated with
17 an average 2.9% higher close price” compared to those that were not pre-marketed,
18 “received an offer on average 20% faster,” and “were on average 30% less likely to
19 experience a price drop once active on the MLS.” *Id.* at 4.

20 NWMLS informed Compass that it believed the 3-Phased Strategy violated
21 NWMLS rules. When Compass continued to offer its 3-Phased Strategy, NWMLS
22 found that Compass had violated Rule 2. As a penalty, NWMLS blocked all
23 Compass agents from receiving NWMLS’s Internet Data Exchange (“IDX”) data

1 feed for two days. Dkt. No. 1 at 26, 31. The IDX data feed is a licensed stream of
2 NWMLS member listings that brokerages use to populate their public-facing
3 websites with other members' listing information.

4 Compass sued NWMLS, alleging antitrust and tortious interference claims.¹
5 It argues that NWMLS has engaged in anticompetitive conduct by requiring its
6 members to post all listings on its platform. NWMLS argues that the challenged
7 rule is procompetitive because it ensures that all member brokerages of the listing
8 service have access to and can compete for the same listings. NWMLS moved to
9 dismiss for failure to state a claim. Dkt. No. 27; Fed. R. Civ. P. 12(b)(6).

10 3. LEGAL STANDARD.

11 The Court will grant a Rule 12(b)(6) motion if the complaint fails to allege
12 "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v.*
13 *Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the
14 plaintiff pleads factual content that allows the court to draw the reasonable
15 inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*,
16 556 U.S. 662, 678 (2009). When considering a motion to dismiss, the Court accepts
17 factual allegations pled in the complaint as true and construes them in the light
18 most favorable to the plaintiff. *Lund v. Cowan*, 5 F.4th 964, 968 (9th Cir. 2021). The
19 Court need not, however, accept "allegations that are merely conclusory,

21 ¹ Compass asserts claims under Section 1 of the Sherman Act, 15 U.S.C. § 1 (Count
22 D); Washington's Consumer Protection Act, RCW 19.86.030 (Count II); Section 2 of
23 the Sherman Act, 15 U.S.C. § 2 (Count III); RCW 19.86.020 and 19.86.040 (Count
IV); and state common-law tortious interference with contract and business
expectancy (Counts V and VI). *Id.* ¶¶ 96–145.

1 unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec.*
2 *Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (quoting *Sprewell v. Golden State*
3 *Warriors*, 266 F.3d 979, 988 (9th Cir.2001)).

4 4. DISCUSSION

5 4.1 Compass states a plausible claim under Section 1 of the Sherman 6 Act.

7 Section 1 of the Sherman Act prohibits “[e]very contract, combination in the
8 form of trust or otherwise, or conspiracy, in [undue] restraint of trade or commerce
9 among the several States.” 15 U.S.C. § 1; *Ohio v. Am. Express Co.*, 585 U.S. 529, 540
10 (2018) (“*Amex*”) (explaining restraint of trade means “undue” or “unreasonable”
11 restraint). A Section 1 claim requires “(1) an agreement, conspiracy, or combination
12 between two or more entities; (2) an unreasonable restraint of trade under either a
13 per se or rule of reason analysis; and (3) the restraint affected interstate commerce.”
14 *Am. Ad Mgmt., Inc. v. GTE Corp.*, 92 F.3d 781, 784 (1996). NWMLS challenges only
15 the second element, arguing that Compass has not plausibly alleged an
16 unreasonable restraint of trade.

17 There are two ways a restraint on trade may be found unreasonable. *Amex*,
18 585 U.S. at 540. The first is under a *per se* analysis. “A small group of restraints are
19 [deemed] unreasonable per se because they always or almost always tend to restrict
20 competition and decrease output.” *Id.* (citation modified). Under this approach, the
21 court will presume the restraint is anticompetitive without “inquiry into the
22 particular market context in which [it] [is] found.” *PLS.Com, LLC v. Nat’l Assoc. of*
23 *Realtors*, 32 F.4th 824, 833 (9th Cir. 2022) (quoting *Bd. of Regents of Univ. of Okla.*,

1 468 U.S. 85, 100 (1984)). The second is the rule of reason. If a restraint is not per se
2 unreasonable, courts conduct “a fact-specific assessment of market power and
3 market structure to assess the restraint’s actual effect on competition.” *Amex*, 585
4 U.S. at 541 (citation modified). Compass argues its claims survive under both
5 frameworks. The Court addresses each in turn.

6 **4.1.1 The Court need not resolve the *per se* question or nature of**
7 **the restraint at this stage of the case.**

8 Compass claims that NWMLS conduct constitutes a *per se* unlawful group
9 boycott. A group boycott is “a concerted attempt by a group of competitors at one
10 level to protect themselves from competition from non-group members who seek to
11 compete at that level.” *PLS.com*, 32 F.4th at 834 (quotations omitted). Per se
12 treatment typically applies only to horizontal restraints—those “imposed by
13 agreement between competitors” at the same level. *Amex*, 585 U.S. at 540–41.
14 Restraints that are vertical—those “imposed by agreement between firms at
15 different levels,” such as between a platform and its users—are generally evaluated
16 under the rule of reason. *Id.*

17 Compass contends that this case is like *PLS.Com, LLC v. National*
18 *Association of Realtors*, in which the Ninth Circuit held that the plaintiff had
19 adequately alleged a per se unlawful group boycott against an MLS industry trade
20 association and its affiliated listing services. 32 F.4th at 834–37. In *PLS.com*, a
21 group of real estate agents formed PLS, a new multiple listing service that was
22 “similar to an MLS, but that allowed sellers to choose how much information to
23 share.” *Id.* at 830. Unlike most multiple listing services (“MLSs”), PLS was not

1 affiliated with the National Association of Realtors (“NAR”).² *Id.* at 829. NAR-
2 affiliated MLSs required home sellers to list certain information about their homes.
3 *Id.* at 830. In response to PLS’s growth, NAR adopted the “Clear Cooperation
4 Policy,” which required members of NAR-affiliated MLSs who listed properties on
5 PLS to also list those properties on an MLS, with all the information required by
6 the MLS. *Id.* “Agents who did not comply faced severe penalties, including in some
7 cases several-thousand dollar fines, or suspension from, or termination of, their
8 access to the MLS.” *Id.* NAR “admitted that the purpose of the Clear Cooperation
9 Policy was to maintain the market dominance of the NAR-affiliated MLS system,
10 and specifically to exclude PLS.” *Id.* at 831.

11 The Ninth Circuit found that the Clear Cooperation Policy, as alleged,
12 “share[d] all the hallmarks of a group boycott”—“PLS’s competitors coerced its
13 suppliers (sellers’ agents) not to supply PLS with listings (or to do so only on highly
14 unfavorable terms), and they did so for the express purpose of preventing PLS, a
15 new entrant to the market after decades of little to no competition, from competing
16 with the MLSs.” *Id.* at 834–35.

17 Compass argues the same reasoning applies here because NWMLS, like the
18 NAR-affiliated MLSs in *PLS.com*, is controlled by competing brokerages who used
19 its rules to protect their market position and stifle competition at the brokerage
20 level. NWMLS responds that *PLS.com* is distinguishable for two reasons. First,
21 NWMLS argues that its operating rules are the rules of a cooperative venture,
22

23 ² To avoid confusion, the Court notes that NWMLS is not affiliated with NAR.

1 which are ordinarily evaluated under the rule of reason rather than condemned as
2 per se unlawful. *See Nw. Wholesale Stationers, Inc. v. Pac. Stationery & Printing*
3 *Co.*, 472 U.S. 284, 296 (1985). Second, NWMLS contends that Compass is a
4 brokerage, not an MLS, Dkt. No. 36 at 4, and that NWMLS thus did not target a
5 rival competitor at its own market level—the hallmark of a group boycott under
6 PLS.com.

7 The Court has reservations about whether *PLS.com*'s *per se* group boycott
8 analysis extends to this case given the meaningful factual differences identified
9 above—most notably that Compass is a member brokerage rather than a rival
10 listing service. But the Court need not resolve that question to decide this motion.
11 Whether the restraint is best understood as horizontal or vertical, and whether *per*
12 *se* or rule of reason analysis should ultimately apply, depend on factual questions
13 that the Court will not resolve at the pleading stage. *See PLS.com*, 32 F.4th at 837
14 (“[W]e leave to the district court to determine in the first instance whether it should
15 apply *per se* analysis or rule of reason analysis at later stages in this litigation”);
16 *Top Agent Network, Inc. v. Nat’l Ass’n of Realtors*, No. 20-CV-03198-VC, 2024 WL
17 3837959, at *2 (N.D. Cal. July 22, 2024) (“[I]t remains to be seen whether a *per se*
18 or rule of reason analysis should apply at later stages of this litigation”). As
19 discussed below, the Complaint survives under the rule of reason— and does so
20 even assuming the restraint is vertical—so the Court proceeds on that basis and
21 reserves the *per se* question and the nature of the restraint for resolution on a
22 developed record.

1 **4.1.2 Compass states a plausible Section 1 claim under the rule of**
2 **reason.**

3 The rule of reason is “a multi-step, burden-shifting framework that requires
4 courts to conduct a fact-specific assessment to determine a restraint’s actual effect
5 on competition.” *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 974 (9th Cir. 2023)
6 (citation modified). “A restraint violates the rule of reason if the restraint’s harm to
7 competition outweighs its procompetitive effects.” *Tanaka v. Univ. of S. Cal.*, 252
8 F.3d 1059, 1063 (9th Cir. 2001). Under the rule of reason, the plaintiff must first
9 prove that “the challenged restraint has a substantial anticompetitive effect that
10 harms consumers in the relevant market.” *PLS.Com*, 32 F.4th at 834 (quotation
11 omitted). The “threshold step” in this analysis is defining the relevant market in
12 which the alleged restraint occurs, *Tanaka*, 252 F.3d at 1063, because without a
13 defined market, “there is no way to measure the defendant’s ability to lessen or
14 destroy competition.” *Amex*, 585 U.S. at 543 (citation modified). The term “relevant
15 market” includes both a relevant product market and a relevant geographic market.
16 *Tanaka*, 252 F.3d at 1063. “Failure to identify a relevant market is a proper ground
17 for dismissing a Sherman Act claim.” *Id.*

18 Compass defines the relevant product markets as: (1) the market for “the
19 provision of multiple listing services to real estate brokers,” and (2) the market for
20 “the provision of real estate brokerage services to sellers of residential real
21 property.” Dkt. No. 1 ¶¶ 77, 78. It defines the relevant geographic markets as
22 Seattle, Washington, and King County, Washington. *Id.* ¶ 79. NWMLS challenges
23

1 neither *product market* definition but argues that the proposed *geographic markets*
2 are artificially narrow. The Court disagrees.

3 A geographic market encompasses “the area of effective competition where
4 buyers [of the relevant products] can turn for alternative sources of supply.” *Id.*
5 (citation modified). At this stage, the Court finds that the proposed geographic
6 markets are plausible.

7 For the first product market, the complaint asserts that for Seattle-area
8 brokers, “there are no meaningful multiple listing services other than NWMLS,”
9 which controls “almost 100%” of the market share. Dkt. No. 1 ¶¶ 77, 84. Taking all
10 reasonable inferences in the light most favorable to Compass, real estate agents
11 doing business in the Seattle metro or King County area would use multiple listing
12 services that cater to that area. For the second product market, the complaint
13 claims that “real estate brokerage services are local in nature because most sellers
14 prefer to work with a real estate broker who is familiar with the local market
15 conditions and [because] homeowners often desire a residential real estate broker
16 who is a member of the multiple listing service that serves the area in which they
17 are selling a home.” *Id.* ¶ 79. These allegations are enough to allege a plausible
18 geographic market at the pleading stage.

19 NWMLS counters that the alleged geographic market is implausible because
20 it conflicts with Compass’s assertion that its own 3-Phased Strategy markets homes
21 nationally, to all its agents and to “millions of buyers.” Dkt. No. 36 at 10 (quoting
22 complaint). But this argument goes to the merits of the market definition, not its
23 plausibility. That NWMLS operates more broadly than Seattle and King County, or

1 that Compass markets certain listings nationally, does not alter the Complaint's
2 core allegation that home sellers and brokers in the Seattle area would not view
3 services outside that area as reasonable substitutes. *See Tanaka*, 252 F.3d at 1063.
4 Given that the relevant consumers here are home sellers and sellers' agents,
5 NWMLS's argument about the location of buyers and buyers' agents is not
6 persuasive.

7 Moreover, the cases NWMLS cites to support its geographic market
8 argument are distinguishable. In *Tanaka v. University of Southern California*,
9 while the Ninth Circuit found the geographic market alleged was implausibly
10 narrow, the facts in that case were markedly different from the ones alleged here.
11 In *Tanaka*, the plaintiff was a collegiate soccer player seeking to transfer from the
12 University of Southern California ("USC") to the University of California Los
13 Angeles ("UCLA") without facing penalties for transferring as a collegiate athlete
14 who had already agreed to play for USC. She alleged that the relevant product
15 market was the "UCLA women's soccer program" and the relevant geographic
16 market was Los Angeles. 252 F.3d at 1063. The Ninth Circuit rejected both aspects
17 of the plaintiff's market definition. As for the geographic market, it found that the
18 plaintiff had completely "fail[ed] to allege that Los Angeles is an 'area of effective
19 competition' for student-athletes competing for positions in women's intercollegiate
20 soccer programs." *Id.* The plaintiff stated that the relevant geographic market was
21 Los Angeles because she desired to remain in Los Angeles. *Id.* But the Ninth Circuit
22 held that the plaintiff's desire to live in Los Angeles was "irrelevant to the question
23 of whether Los Angeles is an area of effective competition for the services of

1 women’s intercollegiate soccer players.” *Id.* In other words, the plaintiff attempted
2 to define the market based on her own idiosyncratic preference to live near Los
3 Angeles, rather than consumer behavior generally.

4 Here, Compass’s market definition is premised on its allegations about how
5 consumers of brokerage services actually behave, not on Compass’s own
6 preferences. Thus, Compass has plausibly alleged that Seattle and King County are
7 areas of effective competition for the services at issue, especially considering the
8 local nature of real estate markets. This conclusion is consistent with the general
9 principle that dismissal based on a complaint’s proposed market definition is
10 disfavored because a “proper market definition can be determined only after a
11 factual inquiry into the commercial realities faced by consumers.” *Gibson v. Nat’l*
12 *Ass’n of Realtors*, No. 4:23-cv-00788, 2024 WL 6821480, at *7 (W.D. Mo. Dec. 16,
13 2024) (quoting *Double D Spotting Serv., Inc. v. Supervalu, Inc.*, 136 F.3d 554, 560
14 (8th Cir. 1998)). The geographic market may need refinement after discovery, but
15 that work is for a later stage in the case.

16 **4.2 Compass alleges plausible harm to competition.**

17 Having found that Compass has plausibly alleged a relevant market, the
18 Court turns to the substance of the first step of the rule of reason—whether
19 Compass has plausibly alleged a substantial anticompetitive effect that harms
20 consumers in the relevant market. *PLS.com*, 32 F.4th at 833; *Tanaka*, 252 F.3d at
21 1063. This can be established *directly*, through evidence of “actual detrimental
22 effects on competition such as reduced output, increased prices, or decreased quality
23

1 in the relevant market,” or *indirectly*, by showing “that the defendant has market
2 power in the relevant market and that the challenged restraint harms competition.”
3 *PLS.com*, 32 F.4th at 834 (citation modified). Compass invokes both paths. Because
4 the Court has already found that Compass has plausibly alleged a relevant market,
5 and because NWMLS does not contest that it possesses market power within that
6 market, the Court evaluates whether Compass has plausibly alleged that the
7 challenged restraint harms competition.

8 To plead harm to competition under the rule of reason, “a section one
9 claimant may not merely recite the bare legal conclusion that competition has been
10 restrained unreasonably.” *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1198 (9th
11 Cir. 2012) (quoting *Les Shockley Racing, Inc. v. Nat’l Hot Rod Ass’n*, 884 F.2d 504,
12 507–08 (9th Cir.1989)). “Rather, a claimant must, at a minimum, sketch the outline
13 of [the injury to competition] with allegations of supporting factual detail.” *Id.*
14 (quoting *Les Shockley Racing, Inc.*, 884 F.2d at 507–08). Harm to the plaintiff is
15 different from harm to competition. *Id.* at 1202 (Allegations showing “only that
16 plaintiffs ha[d] been harmed as a result of the practices at issue d[id] not,
17 without more, allege a[] [plausible] injury to competition.”). Indeed, “plaintiffs must
18 plead an injury to competition beyond the impact on the plaintiffs themselves.” *Id.*
19 at 1198. That is because the antitrust laws “were enacted for ‘the protection of
20 *competition*, not *competitors*.” *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429
21 U.S. 477, 488 (1977) (quoting *Brown Shoe Co., Inc. v. United States*, 370 U.S. 294,
22 320 (1962)).

1 NWMLS argues that Compass only alleges harm to itself, not to competition.
2 The Court disagrees. While much of the complaint does focus on harm to Compass
3 and its brokers specifically, *see, e.g.*, Dkt. No. 1 ¶¶ 15, 17, 36, 68–69, 71, 75, 92,
4 Compass also alleges NWMLS’s rules prevent home sellers’ agents from using
5 marketing strategies that benefit homeowners, thereby decreasing the quality of
6 real estate brokerage services available to sellers of residential real property, *see,*
7 *e.g., id.* ¶¶ 39–41, 48–54. Compass alleges that NWMLS’s rules deprive homeowners
8 of the ability to choose how to market their properties, quash innovation, and
9 benefit incumbent traditional brokerages at the expense of innovative competitors.
10 *Id.* ¶¶ 87–94. The Ninth Circuit has recognized that decreased quality in the
11 relevant market is evidence of harm to competition. *Aya Healthcare Servs., Inc. v.*
12 *AMN Healthcare, Inc.*, 9 F.4th 1102, 1112, 1113 (9th Cir. 2021) (noting decreased
13 quality of services in the relevant market constitutes indirect harm to competition);
14 *Conklin v. Univ. of Wash. Med.*, 798 F. App’x 180, 181 (9th Cir. 2020) (Plaintiff
15 would have stated an anticompetitive effect on the market if he had shown an
16 increase in price or a decrease in the quality of the service). And as the Ninth
17 Circuit explained in *PLS.com*, conduct that prevents new or innovative competitors
18 from entering or competing in a market, leaving consumers with fewer choices and
19 lower-quality products, is the kind of harm the Sherman Act is designed to address.
20 32 F.4th at 839–40; *see also Top Agent Network*, 2024 WL 3837959, at *1–2 (finding
21 that a policy harming competition by “impeding agents’ ability to choose to post
22 listings” to a rival service adequately alleged harm to competition, not merely to a
23 competitor).

1 NWMLS raises two more arguments in support of its contention that
2 Compass has not alleged harm to competition. Neither warrants dismissal.

3 First, NWMLS argues that Compass has failed to allege harm to competition
4 because it seeks only to “free ride.” Free riding “occurs when one party to an
5 arrangement reaps benefits for which another party pays, though that transfer of
6 wealth is not part of the agreement between them.” *Rothery Storage & Van Co. v.*
7 *Atlas Van Lines, Inc.*, 792 F.2d 210, 212 (D.C.C. 1986). NWMLS explains that
8 Compass intends to free ride in this instance because it wants to reap the benefits of
9 NWMLS’s rules without abiding by them. Specifically, it wants to violate NWMLS’s
10 operating rules by withhold listing information, while simultaneously taking
11 advantage of the listing information that other, compliant brokerages provide.

12 True, there is “nothing inherently anticompetitive” about restrictions
13 imposed to prevent free riding. *Amex*, 585 U.S. at 531; *Polk Bros., Inc. v. Forest City*
14 *Enters., Inc.*, 776 F.2d 185, 190 (7th Cir. 1985) (“The Supreme Court has recognized
15 that the control of free riding is a legitimate objective of a system of distribution.”).
16 But whether NWMLS’s rules are a reasonable response to free-riding or a pretext
17 for anticompetitive coordination among other brokerages is a question fact that
18 cannot be resolved on this motion. That an agreement may have procompetitive
19 effects is not a basis for dismissal under Rule 12(b)(6) when—as here—the plaintiff
20 has plausibly alleged harm to competition. *See Tanaka*, 252 F.3d at 1063. Thus,
21 dismissal based on NWMLS’s “free ride” argument is inappropriate.

22 Finally, NWMLS argues that real estate is a two-sided market—with buyers
23 on one side and sellers on the other—and that Compass must therefore allege

1 anticompetitive effects on “both sides” of the market to establish antitrust injury.
2 According to NWMLS, Compass has failed to allege harm to buyers. NWMLS’s
3 argument invokes the framework the Supreme Court established in *Amex*, 585 U.S.
4 at 534, for two-sided transaction platforms.

5 So called two-sided transaction platforms are those that “offer[] different
6 products or services to two different groups who both depend on the platform to
7 intermediate between them” where the business “cannot make a sale to one side of
8 the platform without simultaneously making a sale to the other” side of the
9 platform. *Id.* at 534–35. For some subsets of two-sided platforms, “courts must
10 define the relevant market to ‘include both sides of the platform’ because one cannot
11 accurately assess the competitive impact of a particular practice by looking to only
12 one side of the market.” *PLS.Com*, 32 F.4th at 838 (quoting *Amex*, 585 U.S. at 544).

13 The parties have identified no binding precedent, and the Court is aware of
14 none, holding that the real estate market must be defined as a two-sided market
15 under *Amex*. The Parties dispute whether the Court must even address this issue at
16 the pleadings stage. Whether *Amex* applies to a given market definition depends on
17 the characteristics of that market, and the Ninth Circuit has held that in some
18 cases, “the court may need to wait to examine the evidence to determine whether
19 *Amex* applies.” *PLS.com*, 32 F.4th at 837. This is such a case. The Court cannot
20 conclude as a matter of law from the Complaint’s allegations alone that the real
21 estate market shares the simultaneous-transaction characteristic that drove the
22 *Amex* holding.

1 Moreover, even if *Amex* applies, NWMLS overstates its rule. *Amex* does not
2 require a plaintiff to allege harm to *both sides* of a two-sided platform. *PLS.Com*, 32
3 F.4th at 839. “All *Amex* held is that to establish that a practice is anticompetitive in
4 certain two-sided markets, the plaintiff must establish an anticompetitive practice
5 on the ‘market as a whole.’” *Id.* (quoting *Amex*, 585 U.S. at 547). While this may be
6 accomplished by showing harm to both sides of the two-sided platform, it may also
7 be accomplished by showing that harm to one side outweighs any benefit to the
8 other side, “causing anticompetitive effects on the market as a whole.” *Id.*

9 The Complaint alleges that NWMLS’s rules harm sellers and the broader
10 competitive process. Whether any benefits to buyers outweigh those harms is a
11 factual question that cannot be resolved at this stage. *See Gibson*, 2024 WL
12 6821480, at *7 (plaintiffs need not address “whether their proposed product market
13 is two-sided—including both home buyers and sellers—at the pleadings stage).

14 **4.3 Compass adequately pleads antitrust injury.**

15 NWMLS also argues that Compass has not pled antitrust injury—that is,
16 that Compass’s alleged injuries do not flow from anticompetitive conduct but
17 instead result from legitimate rule enforcement. The Court disagrees.

18 To succeed on any antitrust claim, the plaintiff must establish the claimed
19 injury flows from antitrust acts harmful to consumers. *PLS.Com*, 32 F.4th at 832.
20 The antitrust injury requirement “ensures that the harm claimed by the plaintiff
21 corresponds to the rationale for finding a violation of the antitrust laws in the first
22 place.” *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 342 (1990). “Antitrust
23

1 injury is made up of four elements: (1) unlawful conduct, (2) causing an injury to the
2 plaintiff, (3) that flows from that which makes the conduct unlawful, and (4) that is
3 of the type the antitrust laws were intended to prevent.” *Glen Holly Ent., Inc. v.*
4 *Tektronix, Inc.*, 352 F.3d 367, 372 (9th Cir. 2003) (citation modified).

5 NWMLS challenges the third element of antitrust injury, arguing that “[t]he
6 antitrust laws are only concerned with acts that harm allocative efficiency and raise
7 the price of goods above their competitive level or diminish their quality.” Dkt. No.
8 27 at 23 (quoting *Pool Water Prods. v. Olin Corp.*, 258 F.3d 1024, 1034 (9th Cir.
9 2001)). But Compass’s theory of injury is that NWMLS’s rules restrict its ability to
10 offer innovative marketing services, which in turn restricts consumer choice and
11 diminishes the quality of brokerage services available in the market. These injuries
12 flow directly from the conduct Compass alleges to be anticompetitive.

13 As the Court found above, Compass has plausibly alleged diminished quality
14 of services in at least one of the relevant markets alleged—the offering of real estate
15 brokerage services to sellers of residential real property. That is sufficient to satisfy
16 the antitrust injury requirement at the pleading stage. Accordingly, the Court
17 rejects NWMLS’s antitrust injury argument.

18 **4.4 Compass states a plausible claim under Section 2 of the Sherman** 19 **Act.**

20 Section 2 of the Sherman Act targets independent anticompetitive conduct,
21 *Fed. Trade Comm’n v. Qualcomm Inc.*, 969 F.3d 974, 989–90 (9th Cir. 2020), by
22 making it “unlawful to ‘monopolize, or attempt to monopolize, or combine or
23 conspire . . . to monopolize’ a market,” *Epic Games, Inc.*, 67 F.4th at 998 (quoting 15

1 U.S.C. § 2). Section 2 claims require: “(1) the possession of monopoly power in the
2 relevant market and (2) the willful acquisition or maintenance of that power as
3 distinguished from growth or development as a consequence of a superior product,
4 business acumen, or historic accident.” *Epic Games, Inc.*, 67 F.4th at 998 (quoting
5 *United States v. Grinnell Corp.*, 384 U.S. 563, 570–71, (1966)). “At step one, the
6 plaintiff must establish that the defendant possesses monopoly power.” *Id.* NWMLS
7 does not contest monopoly power.

8 NWMLS only challenges the second prong, arguing that Compass has not
9 alleged exclusionary conduct. “At step two, the plaintiff must show that the
10 defendant acquired or maintained its monopoly through anticompetitive
11 conduct.” *Id.* (citation modified). The Ninth Circuit has held that “[t]his
12 anticompetitive-conduct requirement is ‘essentially the same’ as the Rule of Reason
13 inquiry applicable to Section 1 claims.” *Epic Games, Inc.*, 67 F.4th at 998 (quoting
14 *Qualcomm*, 969 F.3d at 991). Accordingly, the Court finds that Compass has
15 plausibly stated anticompetitive conduct under Section 2 for the same reasons
16 Compass stated a plausible Section 1 claim under the Rule of Reason.

17 The Court rejects NWMLS’s arguments to the contrary. First, NWMLS
18 argues that its conduct cannot be exclusionary because it was simply enforcing rules
19 to which Compass agreed, and that such enforcement is economically rational
20 independent of any anticompetitive purpose. Dkt. No. 27 at 24–25. It maintains that
21 Compass must show that its conduct lacks any legitimate business justification, and
22 that “Compass comes nowhere close to meeting that standard.” *Id.* But NWMLS
23

1 cites no binding precedent for that standard, which appears inconsistent with the
2 Ninth Circuit’s legal framework for such cases.

3 NWMLS also argues that Compass’s Section 2 claim fails because NWMLS
4 has no antitrust duty to deal with Compass or any other entity. In some, “limited
5 circumstances,” a monopolist may have a duty to cooperate or deal with a rival
6 competitor, and failure to do so may run afoul of the antitrust laws. *Pac. Bell Tel.*
7 *Co. v. LinkLine Commc’ns, Inc.*, 555 U.S. 438, 448 (2009). This “refusal to deal”
8 doctrine comes into play when the plaintiff alleges that a monopolist’s refusal to
9 cooperate or deal with its *rivals* is anticompetitive. *See Aspen Skiing Co. v. Aspen*
10 *Highlands Skiing Corp.*, 472 U.S. 585, 597 (1985) (“*Aspen Skiing*”) (discussing
11 whether controller of several ski areas had an antitrust duty to cooperate with a
12 smaller, rival ski area); *United States v. Apple*, No. 24-cv-4055, 2025 WL 1829127,
13 at *12 (D. N.J. June 30, 2025) (collecting cases) (“The Court finds the refusal to deal
14 doctrine does not apply to Apple’s alleged conduct in this case because Plaintiffs do
15 not allege Apple is failing to deal with its smartphone rivals, but rather that Apple’s
16 conduct is imposing restrictions on developers and smartphone users.”).

17 Taking the complaint’s allegations in the light most favorable to Compass,
18 this case does not implicate the “refusal to deal” doctrine because Compass does not
19 allege that NWMLS is a rival multiple listing service that refuses to cooperate with
20 a competitor. Rather, it challenges the enforcement of certain NWMLS rules against
21 its member brokerages—its consumers. Accordingly, at least at this point, the
22 refusal to deal doctrine is inapposite and does not warrant dismissal.

1 **4.5 Compass alleges plausible state-law claims.**

2 NWMLS moves to dismiss Compass’s state law antitrust claims under RCW
3 19.86.030 and 19.86.040, as well as its common law tortious interference claims.
4 The state antitrust claims survive for the same reasons as the federal antitrust
5 claims because Washington’s Consumer Protection Act is “patterned after Sections
6 1 and 2 of the Sherman Antitrust Act.” *PBTM LLC v. Football Nw., LLC*, 511 F.
7 Supp. 3d 1158, 1178 (W.D. Wash. 2021) (citing *State v. Black*, 676 P.2d 963, 967
8 (Wash. 1984)).

9 Compass’s tortious interference with a contract and tortious interference with
10 a business expectancy claims also survive. Under Washington law, “[a] plaintiff
11 claiming tortious interference with a contractual relationship or business
12 expectancy must prove five elements: (1) the existence of a valid contractual
13 relationship or business expectancy; (2) that defendants had knowledge of that
14 relationship; (3) an intentional interference inducing or causing a breach or
15 termination of the relationship or expectancy; (4) that defendants interfered for an
16 improper purpose or used improper means; and (5) resultant damage.” *Tacoma Auto*
17 *Mall, Inc. v. Nissan N. Am., Inc.*, 279 P.3d 487, 498 (Wash. Ct. App. 2012) (citation
18 modified). The first and fourth elements are at issue here.

19 NWMLS argues that Compass fails to allege a business expectancy or valid
20 contract with which NWMLS interfered. But the complaint alleges both. Compass
21 alleges that it and its agents had valid contracts with each other “and with
22 homeowners in the Seattle area.” Dkt. No. 1 ¶ 135. Compass also alleges sufficient
23 facts to show business expectancy—or that “future business opportunities are a

1 reasonable expectation and not merely wishful thinking.” *Life Designs Ranch, Inc.*
2 *v. Sommer*, 364 P.3d 129, 138 (Wash. Ct. App. 2015) (citation modified); *Newton Ins.*
3 *Agency & Brokerage, Inc. v. Caledonian Ins. Grp., Inc.*, 52 P.3d 30, 33 (Wash. Ct.
4 App. 2002) (“A valid business expectancy includes any prospective contractual or
5 business relationship that would be of pecuniary value.”). The complaint asserts
6 that Compass’s 3-Phased Program was successful in Seattle, as it is elsewhere in
7 the country, and that NWMLS’s conduct precludes the program, thereby interfering
8 with Compass’s business in Seattle. From the complaint, one could reasonably infer
9 that Compass’s program would have continued to be successful and garner
10 business; thus, the expectancy alleged is more than “wishful thinking.” *Life Designs*
11 *Ranch, Inc.*, 364 P.3d at 138.

12 NWMLS also argues that Compass fails to allege that NWMLS “interfered
13 for an improper purpose or used improper means,” *Tacoma Auto Mall, Inc.*, 279
14 P.3d at 498 (quotation omitted), which is required to show unlawful interference,
15 *Pleas v. City of Seattle*, 774 P.2d 1158, 1163 (Wash. 1989) (en banc) (plaintiff must
16 establish “that the interference complained of [was] ‘wrongful’ in some way” or in
17 other words, “that [the] plaintiff had a ‘duty of non-interference.’”). A court need not,
18 however, find that a defendant acted with “ill will, spite, defamation, fraud, force, or
19 coercion in order to find improper purpose or means.” *Libera v. City of Port Angeles*,
20 316 P.3d 1064, 1068 (Wash. Ct. App. 2013).

21 NWMLS contends that the challenged interference “must” violate “a statute
22 or other regulation, or a recognized rule of common law, or an established standard
23 of trade or profession,” to constitute tortious interference. *Pleas*, 774 P.2d at 1163.

1 But even assuming NWMLS is correct, Compass has alleged that the challenged
2 conduct violates Washington and federal antitrust laws, which is sufficient to plead
3 improper purpose or means at this stage.

4 Finally, NWMLS asserts that it was simply enforcing its rules in good faith,
5 which is inherently lawful. *See Tacoma Auto Mall, Inc.*, 279 P.3d at 498
6 (“Exercising one’s legal interests in good faith is not improper interference.”). But
7 whether NWMLS in fact acted in good faith is a factual question that cannot be
8 resolved on this motion to dismiss. Thus, Compass’s state-law claims survive
9 dismissal as well.

10 5. CONCLUSION

11 Accordingly, the Court DENIES NWMLS’s motion to dismiss for failure to
12 state a claim. Dkt. No. 27. The Court’s denial of this motion, however, should not be
13 read as expressing any view on the ultimate merits of the Parties’ competing
14 theories. The question before the Court on this motion is whether the Complaint
15 states a plausible claim for relief, not whether Compass will ultimately prevail. The
16 Court holds only that, accepting the Complaint’s well-pleaded factual allegations as
17 true and drawing all reasonable inferences in Compass’s favor, the Complaint clears
18 the plausibility threshold.

19 The Court regrets the delay in ruling on this matter.

20 Dated this 19th day of March, 2026.

21 
22 Jamal N. Whitehead
23 United States District Judge