

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JEANETTE PORTILLO, ALICIA
10 COAKLEY, FREDDY BARAJAS,
11 HERIBERTO VALIENTE, DAVID
12 CONCEPCION, DANIEL KASSL, and
13 DANIEL SMITH, individually and on behalf
14 of all other similarly situated,

15 Plaintiffs,

16 v.

17 COSTAR GROUP, INC., *et al.*,

18 Defendants.

Case No. C24-229RSL

ORDER GRANTING
MOTION TO DISMISS

19 This matter comes before the Court on defendants' "Joint Motion to Dismiss" (Dkt.
20 # 91), plaintiffs' response (Dkt. # 103), the declaration of Steve W. Berman (Dkt. # 104), and
21 defendants' reply (Dkt. # 108). Having reviewed the motions, declarations, and exhibits
22 submitted by the parties,¹ as well as the record herein, the Court GRANTS defendants' motion
23 to dismiss with leave to amend within thirty (30) days.

24
25
26
27 ¹ This matter can be decided on the papers submitted. Defendants' request for oral argument is
28 DENIED.

ORDER GRANTING MOTION
TO DISMISS - 1

1 **I. Background**

2 Plaintiffs allege that competitors in the luxury hotel industry have engaged in “price
3 fixing in its modern form” by participating in an information exchange agreement administered
4 by Smith Travel Research (“STR”), which is owned by defendant CoStar Group (“CoStar”).
5 Dkt. # 1 at 4–5. Plaintiffs contend that STR’s information exchange and the defendant hotel
6 operators’ participation in that exchange amounts to a violation of Section 1 of the Sherman Act.
7
8 *Id.* Specifically, plaintiffs in their complaint allege the existence of a contract, combination, or
9 conspiracy involving STR and the defendant hotel operators that involves:
10

- 11 (1) written agreements allegedly made between the defendant hotel operators and STR
12 that explicitly establish an agreement in violation of Section 1;
13
14 (2) parallel conduct by defendant hotel operators in the form of
15 a. the defendant hotel operators’ alleged agreements with STR, and
16 b. the allegedly resulting hotel room prices charged by defendant hotel operators,
17 both of which allegedly provide independent circumstantial evidence of an agreement
18 in violation of Section 1; and
19
20 (3) a hub-and-spoke conspiracy in restraint of trade (with STR functioning as the hub
21 and the defendants as the spokes) that allegedly provides circumstantial evidence of
22 an agreement in violation of Section 1. Dkts. # 1; 103 at 13–25.
23
24

25 Plaintiffs further allege that by conspiring to raise, fix, or maintain the price of luxury
26 hotel rooms in the alleged manner, defendants caused plaintiffs to pay supra-competitive rates
27 for hotel rooms during the period covered by this putative class action. Dkt. # 1 at 74.
28

1 At issue are benchmarking reports supplied by STR to its clients and the agreements
2 defendant hotel operators allegedly entered into in order to receive STR's benchmarking reports.
3
4 According to publicly available STR materials referenced in plaintiffs' complaint, STR's
5 benchmarking reports are intended to assist clients in "comparing and analyzing your property
6 or portfolio's performance against the competition." *Id.* at 27. In order to receive STR's
7 benchmarking reports, a hotel operator must give STR information that includes (1) historical
8 room revenue data, "which consists of rooms sold (demand), total rooms available (supply) and
9 total rooms revenue"; (2) profit and loss data, "which consists of revenues and costs by hotel
10 operating department and undistributed costs centers"; and (3) future bookings data, "which
11 consists of daily totals of number of rooms sold, number of rooms available and rooms revenue
12 for the next three hundred sixty-five (365) days." *Id.* at 5; Dkt. # 104, Ex. A at 3–4. STR
13 contends that when it turns this incoming confidential data into benchmarking data that can be
14 shared with STR's clients, the confidential data is first aggregated and anonymized before being
15 shared with clients. Dkt. # 1 at 52:16. Plaintiffs, citing a confidential witness, contend it is
16 possible for STR's clients to deanonymize the identities of specific participating hotels in order
17 to associate those deanonymized hotels with benchmarking report data from STR. *Id.* at 11:12,
18 90–101. The confidential witness does not specify exactly what that deanonymized data might
19 tell someone. *Id.* at 11:12. There is no allegation in the complaint that deanonymizing the
20 identities of participating hotels reveals the actual prices charged for any individual hotel room
21 by any hotel on any given day. *Id.* There is also no allegation in the complaint that actual prices
22
23
24
25
26
27
28

1 charged for individual hotel rooms can be calculated based on the data provided by STR's
2 benchmarking reports (whether that data is anonymized or effectively deanonymized). *Id.*
3

4 Plaintiffs do contend that the data shared in STR's reports to hotel operator clients
5 includes "price information." *Id.* at 52:8. Plaintiffs state that "[t]he agreement to regularly
6 exchange detailed and non-public information about current supply and pricing suppressed
7 competition between the Defendants," and "allowed Defendant Hotel Operators to compare their
8 prices and occupancy with their competitors and to raise prices when they were lower than their
9 competitors." *Id.* at 76:10. Plaintiffs also contend that data provided by STR reports "effectively
10 reduces any strategic uncertainty that would lead competitors to naturally compete through
11 lowering prices," allowing defendant hotel operators to realize STR's promise of getting their
12 "fair share" of the market. *Id.* at 4, 33. In addition, plaintiffs contend STR's data exchange
13 mechanism acts as the essential fuel "propelling pricing algorithms towards the ultimate goal of
14 charging higher prices." *Id.* at 59:15.
15
16
17

18 Defendants contest this, stating: "Plaintiffs' allegations, which in some ways attempt to
19 mimic other recent lawsuits aimed at various forms of 'algorithmic pricing,' are misdirected at
20 STR reports—which involve neither algorithms nor pricing recommendations." Dkt. # 91 at 7.
21 According to defendants, hotel operators do not provide STR with their hotel room price
22 information in order to receive STR's "aggregated, averaged, and anonymized" benchmarking
23 reports. Dkts. # 91 at 10:19–13:9; 108 at 10:11. STR's terms and conditions do not ask for or
24 require the submission of the actual price of any individual hotel room. Dkts. # 1 at 37, n.89;
25 104 at 3–4.
26
27
28

1 II. Discussion

2 A. Pleading Standard Under Fed. R. Civ. P. 12(b)(6)

3
4 The question for the Court on a motion to dismiss is whether the facts alleged in the
5 complaint sufficiently state a “plausible” ground for relief. *Bell Atl. Corp. v. Twombly*, 550 U.S.
6 544, 570 (2007). In the context of a motion under Rule 12(b)(6), the Court must “accept factual
7 allegations in the complaint as true and construe the pleadings in the light most favorable to the
8 nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir.
9 2008) (citation omitted). The Court’s review is generally limited to the contents of the
10 complaint. *Campanelli v. Bockrath*, 100 F.3d 1476, 1479 (9th Cir. 1996). “We are not, however,
11 required to accept as true allegations that contradict exhibits attached to the Complaint or
12 matters properly subject to judicial notice, or allegations that are merely conclusory,
13 unwarranted deductions of fact, or unreasonable inferences.” *Daniels-Hall v. Nat’l Educ. Ass’n*,
14 629 F.3d 992, 998 (9th Cir. 2010).

15
16
17
18 To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege
19 “enough facts to state a claim to relief that is plausible on its face.” [] *Twombly*,
20 550 U.S. [at 570]. A plausible claim includes “factual content that allows the court
21 to draw the reasonable inference that the defendant is liable for the misconduct
22 alleged.” *U.S. v. Corinthian Colls.*, 655 F.3d 984, 991 (9th Cir. 2011) (quoting
23 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Under the pleading standards of Rule
24 8(a)(2), a party must make a “short and plain statement of the claim showing that
25 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). . . . A complaint “that
26 offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause
27 of action will not do.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).
28 Thus, “conclusory allegations of law and unwarranted inferences are insufficient
to defeat a motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir.
2004).

1
2 *Benavidez v. Cty. of San Diego*, 993 F.3d 1134, 1144–45 (9th Cir. 2021). In addition, the factual
3 allegations in a complaint “must be enough to rise above the speculative level.” *Twombly*, 550
4 U.S. 544 at 555 (2007).

5
6 In the context of a Section 1 claim, a complaint must contain “enough factual matter
7 (taken as true) to suggest that an agreement was made.” *Id.* at 556. However:

8
9 Asking for plausible grounds to infer an agreement does not impose a probability
10 requirement at the pleading stage; it simply calls for enough fact to raise a
11 reasonable expectation that discovery will reveal evidence of illegal agreement.
12 And, of course, a well-pleaded complaint may proceed even if it strikes a savvy
13 judge that actual proof of those facts is improbable, and “that a recovery is very
14 remote and unlikely.”

15 *Id.* (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). There is no heightened fact pleading
16 standard for anti-trust cases. *Id.* at 570. What is required is enough facts to show that plaintiffs
17 have “nudged their claims across the line from conceivable to plausible.” *Id.*

18 **B. Legal Standard for a Claim Under Section 1 of the Sherman Act**

19 “Section 1 of the Sherman Act prohibits ‘[e]very contract, combination in the form of
20 trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or
21 with foreign nations.’” *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser*
22 *Antitrust Litig.*, 28 F.4th 42, 46 (9th Cir. 2022) (quoting 15 U.S.C. § 1). To state a claim under
23 Section 1:
24

25 [A] plaintiff must allege facts showing “(1) a contract, combination or conspiracy
26 among two or more persons or distinct business entities; (2) by which the persons
27 or entities intended to harm or restrain trade or commerce ... ; (3) which actually
28 injures competition.” *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1047 (9th Cir.
2008). The “crucial question” prompting Section 1 liability is “whether the

1 challenged anticompetitive conduct ‘stems from [lawful] independent decision or
2 from an agreement, tacit or express.’ ” *Twombly*, 550 U.S. at 553, 127 S.Ct. 1955
3 (quoting *Theatre Enter., Inc. v. Paramount Film Distrib. Corp.*, 346 U.S. 537, 540,
74 S.Ct. 257, 98 L.Ed. 273 (1954)).

4 *Id.*

5 6 **1. Agreement as Proof of a Section 1 Violation**

7 Where competitors agree to reciprocally exchange “the most recent price charged or
8 quoted” whenever one competitor requests that information from another competitor, that is “of
9 course sufficient” to establish a combination or conspiracy in violation of Section 1. *United*
10 *States v. Container Corp. of Am.*, 393 U.S. 333, 335 (1969). In addition, “Acceptance by
11 competitors, without previous agreement, of an invitation to participate in a plan, the necessary
12 consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish
13 an unlawful conspiracy under the Sherman Act.” *PLS.Com, LLC v. Nat’l Ass’n of Realtors*, 32
14 F.4th 824, 843 (9th Cir. 2022) (quoting *Interstate Circuit, Inc. v. U.S.*, 306 U.S. 208, 227
15 (1939)).

16 17 18 19 **2. Parallel Conduct as Proof of a Section 1 Violation**

20 Allegations of a conspiracy in violation of Section 1 of the Sherman Act “often arise
21 from parallel conduct among business competitors ‘that could just as well be [lawful]
22 independent action.’” *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser*
23 *Antitrust Litig.*, 28 F.4th 42, 47 (9th Cir. 2022) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S.
24 544, 557 (2007)). As a result, “to state a plausible Section 1 claim, plaintiffs must include
25 additional factual allegations that place that parallel conduct in a context suggesting a preceding
26
27
28

1 agreement.” *Id.* These additional factual allegations that allow for the inference of an agreement
2 in violation of Section 1 are known as “plus factors.” *Id.* See also *In re Musical Instruments &*
3 *Equip. Antitrust Litig.*, 798 F.3d 1186 at 1194 (9th Cir. 2015) (stating that “plus factors are
4 economic actions and outcomes that are largely inconsistent with unilateral conduct but largely
5 consistent with explicitly coordinated action.”).

6 7 8 **3. Hub-and-Spoke Conspiracy as Proof of Section 1 Violation**

9 An agreement also may be inferred from evidence of a hub-and-spoke conspiracy, which
10 traditionally involves (1) a hub; (2) spokes; (3) “the rim of the wheel, which consists of
11 horizontal agreements among the spokes.” *In re Musical Instruments & Equip. Antitrust Litig.*,
12 798 F.3d 1186 at 1192 (9th Cir. 2015). Horizontal agreement among the spokes may be shown
13 using plus factors, but those plus factors must plausibly suggest that the spokes “entered into
14 illegal horizontal agreements” rather than merely showing that the spokes behaved in similar
15 ways out of their own self-interest. *Id.* at 1193–8.

16 17 18 **C. Plaintiffs’ “Direct Evidence” of an Agreement Is Insufficient.**

19 The Court first turns to the question of whether plaintiffs have sufficiently pled direct
20 evidence of an explicit agreement among STR and the defendant hotel operators that violates
21 Section 1. See Dkt. # 103 at 15 (plaintiffs stating that their complaint provides “explicit, direct
22 evidence” of “an agreement to exchange confidential pricing information between
23 competitors.”). In analyzing this and subsequent questions concerning the sufficiency of
24 plaintiffs’ complaint, the Court accepts the factual allegations in plaintiffs’ complaint as true and
25
26
27
28

1 will construe the pleadings on defendants’ motion to dismiss in the light most favorable to
2 plaintiffs. *Manzarek*, 519 F.3d 1025 at 1031 (9th Cir. 2008).

3
4 Plaintiffs state that “[e]ach Hotel Operator agreed to regularly share its current and
5 forward looking competitively sensitive information about their price and supply via STR with
6 the understanding that the competitors would do the same.” Dkt. # 1 at 36:16. While in general
7 the Court must accept plaintiffs’ factual allegations as true when considering a motion to
8 dismiss, the Court is not required to accept as true “allegations that contradict exhibits attached
9 to the Complaint or matters properly subject to judicial notice, or allegations that are merely
10 conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Daniels-Hall*, 629 F.3d
11 992 at 998 (9th Cir. 2010). Here, plaintiffs did not attach CoStar’s publicly available “Hotel
12 Benchmarking Product Terms and Conditions” to their complaint but did quote from and
13 provide a link to those terms and conditions, which are central to plaintiffs’ claim. Dkt. # 1 at 5,
14 n.4; 27, n.89. No party questions the authenticity of those terms and conditions. *See* Dkt. # 108
15 at 8:13. Therefore, the Court may consider CoStar’s publicly available “Hotel Benchmarking
16 Product Terms and Conditions.” *Parrino v. FHP, Inc.*, 146 F.3d 699, 705 (9th Cir. 1998), *as*
17 *amended* (July 28, 1998). *See also Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006).

18 While those terms and conditions do state that STR’s sharing of “Benchmarking Deliverables”
19 (i.e., benchmarking reports) with any hotel operator is “contingent on” that hotel operator
20 providing required data to STR, the data a hotel operator is required to share with STR under the
21 terms and conditions does not include the current prices of any individual hotel rooms. *See* Dkt.
22 # 104, Ex. A. As discussed above, the data a hotel operator is required to share may include the

1 *total* numbers of rooms sold and available *historically*; profit and loss data “which consists of
2 revenues and costs by hotel operating department and undistributed cost centers”; and “daily
3
4 *totals* of number of rooms sold, number of rooms available and rooms revenue” *over the next*
5 *365 days*. *Id.* (Emphasis added.) But the terms and conditions do not require hotel operators to
6 share “the most recent price charged or quoted” for any particular hotel room. *Container Corp.*
7 *of Am.*, 393 U.S. 333 at 335 (1969) (finding a Section 1 violation where “all that was present
8 was a request by each defendant of its competitor for information as to the most recent price
9 charged or quoted,” and where the expectation was that each defendant providing price
10 information would, reciprocally, be provided the same type of price information by
11 competitors).
12
13

14 While claims about the sharing of price information are central to plaintiffs’ complaint,
15 on careful reading the complaint does not actually allege that “the most recent price charged or
16 quoted” is required to be shared under STR’s terms and conditions. Dkt. # 1. Nor does the
17 complaint allege that the data shared with STR by hotel operators can subsequently be used by
18 STR’s benchmarking report clients to determine “the most recent price charged or quoted” for
19 any individual hotel rooms. Dkt. # 1. The complaint does allege that STR’s clients can
20 deanonymize some of the aggregated data in STR reports and potentially attribute that
21 deanonymized data to individual hotel industry competitors, but the complaint does not specify
22 what the deanonymized data might tell someone and nothing in the complaint suggests that this
23 deanonymized data would be “the most recent price charged or quoted” for any individual hotel
24 rooms. *Id.* at 11:12, 90–101. In other words, the complaint does not allege that “the most recent
25
26
27
28

1 price charged or quoted” for any hotel room was either an input from the hotel operator
2 defendants to STR or an output from STR to the hotel operator defendants in the form of STR
3 reports and their associated data (whether that data was anonymized or effectively
4 deanonymized).

6 Nevertheless, plaintiffs cite *Container Corp.* in support of their argument that “direct
7 evidence” of an agreement violating Section 1 has been sufficiently pled (*see* Dkt. #103 at
8 18:10–15), and plaintiffs repeatedly characterize the information shared by defendant hotel
9 operators under STR’s terms and conditions as being “price information,” “pricing information,”
10 or “information about current and forward-looking . . . pricing data.” *See, for example*, Dkt. # 1
11 at 4, 30, 52, 76. “Price information,” as that phrase was used in another case cited by plaintiffs,
12 means information conveying actual “wholesale and retail” prices to be charged for the product
13 at issue. *See In re Coordinated Pretrial Proc. in Petroleum Prods. Antitrust Litig.*, 906 F.2d 432,
14 445–47 (9th Cir. 1990). Considering this, *plus* the fact that STR’s terms and conditions neither
15 use the word “price” nor require the sharing of the current price of any hotel room, *and* the fact
16 that plaintiffs’ complaint does not actually allege the sharing of “the most recent price charged
17 or quoted” for any hotel room, the Court finds plaintiffs’ repeated use of phrases like “price
18 information,” “pricing information,” and “information about current and forward-looking . . .
19 pricing data” to be linguistic stretches. These linguistic stretches amount to plaintiffs offering
20 merely conclusory factual assertions, unwarranted deductions of fact, and unreasonable
21 inferences to support their charge of a conspiracy among the defendant hotel operators and STR
22 to share price information. *See* Dkt. # 104, Ex. A. *See also Daniels-Hall*, 629 F.3d 992 at 998
23
24
25
26
27
28

1 (9th Cir. 2010). Therefore, plaintiffs have insufficiently pled direct evidence of an agreement to
2 share price information that violates Section 1. *See* Dkt. # 103 at 18:10; *Daniels-Hall*, 629 F.3d
3 992 at 998 (9th Cir. 2010). *See also Honey Bum, LLC v. Fashion Nova, Inc.*, 63 F.4th 813, 822
4 (9th Cir. 2023) (stating: “Direct evidence is smoking-gun evidence that ‘establishes, without
5 requiring any inferences’ the existence of a conspiracy.”).
6

7 **D. Plaintiffs Insufficiently Plead Parallel Conduct**

8
9 Parallel conduct and “plus factors” may also be used to sufficiently plead an
10 anticompetitive scheme that violates Section 1. *In re Musical Instruments*, 798 F.3d 1186 at
11 1194, n.7 (9th Cir. 2015). Here, plaintiffs contend they have sufficiently pled parallel conduct by
12 showing in their complaint that each hotel operator “submits real-time, commercially sensitive
13 pricing and supply data to STR, and in return receives standardized data from competitors based
14 on this shared information.” Dkt. # 103 at 20:13. As already discussed, plaintiffs allege that
15 “standardized data” can be deanonymized but do not allege that deanonymizing the
16 “standardized data” in STR reports could reveal the actual price of any hotel room. *See supra*.
17 Plaintiffs also have not shown that the standard agreement between STR and hotel operators
18 involves hotel operators submitting real-time pricing data for hotel rooms (as opposed to
19 historical totals for rooms sold and available, broad revenue information, and total projected
20 room revenue based on bookings for the next 365 days). *Id.* Thus, after removing from
21 consideration plaintiffs’ insufficiently supported claim that defendants are illegally exchanging
22 price information, the Court is unable to determine what parallel conduct plaintiffs may be
23 alleging beyond plaintiffs’ contention (which the Court will accept as true at this stage) that the
24
25
26
27
28

1 defendant hotel operators were all clients of STR within the relevant time period and received,
2 in some form, STR’s benchmarking reports. Because plaintiffs do not plead that the actual price
3 of hotel rooms is either a required input from the defendant hotel operators to STR, or an output
4 from STR back to the defendant hotel operators via STR’s benchmarking reports, it is unclear to
5 the Court why the alleged parallel conduct of contracting with STR would be of any significance
6 in this matter.
7
8

9 The present case is therefore unlike *Duffy v. Yardi Systems, Inc.*, where this Court
10 recently denied a motion to dismiss in a putative class action claiming antitrust violations,
11 finding that plaintiffs had plausibly alleged parallel conduct by a group of defendant landlords.
12 758 F. Supp. 3d 1283, 1292 (W.D. Wash. 2024). In *Duffy*, plaintiffs sufficiently alleged that the
13 defendant landlords had agreed to provide “RENTmaximizer,” Yardi Systems’ algorithmic
14 pricing product, with their commercially sensitive information on apartment rental prices, in
15 exchange for which the group of defendant landlords received pricing recommendations from
16 “RENTmaximizer” that allowed them to charge supra-competitive rates. *Id.* Here, in contrast,
17 the key missing ingredient is sufficient pleading that defendants gave STR any information on
18 the actual prices of individual hotel rooms. Further heightening the contrast, STR’s
19 benchmarking reports are not an algorithmic pricing product like Yardi Systems’
20 “RENTmaximizer,” which allegedly offered price recommendations to individual clients by
21 leveraging the knowledge gained from all clients who inputted their commercially sensitive
22 price data. At most, plaintiffs here allege that STR reports are one of many inputs fed into actual
23 pricing algorithms that are used by the hotel industry to “push higher rates” (pricing algorithms
24
25
26
27
28

1 that, the Court notes, are not a direct subject of this lawsuit). Dkt. # 1 at 56–61. In other words,
2 plaintiffs, having offered insufficient facts to show defendants are exchanging real-time pricing
3 information for hotel rooms via STR reports, then tell this Court that STR reports are likely one
4 of many inputs into algorithms that “push higher rates” for luxury hotel rooms. That is too
5 attenuated and speculative a connection between STR reports and final hotel room prices to
6 justify this Court finding that defendants’ alleged parallel conduct of contracting with STR is
7 significant in a case that is allegedly about “price fixing in its modern form.” Dkt. # 1 at 4.²

10 For this same reason, the Court does not believe that plaintiffs’ “preliminary economic
11 analysis,” which purports to show that defendant hotel operators “have been able to set higher
12 prices compared to other luxury hotels,” is on its own a sufficient pleading of parallel conduct
13 relevant to this antitrust claim. While defendants dispute the validity of plaintiffs’ “preliminary
14 economic analysis” on many grounds (*see* Dkt. # 91 at 20–21, 25–27), even assuming *arguendo*
15 that plaintiffs have provided a valid economic analysis it suffers from the same speculative and
16 attenuated connection to defendants’ use of STR reports described above. This is because, as
17 plaintiffs’ complaint makes clear, STR reports are likely one of many inputs fed into actual
18 pricing algorithms used by the hotel industry to “push higher rates.” Dkt. # 1 at 56–61. This
19 creates a hypothetical connection between STR reports and final hotel prices that is too
20
21
22
23

25 ² It may also be too speculative and attenuated to sufficiently allege that an antitrust injury
26 “flows from” plaintiffs’ alleged conduct of contracting with STR, *Somers v. Apple, Inc.*, 729 F.3d 953,
27 963 (9th Cir. 2013) (quoting *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977)),
28 but this Court need not reach that issue given its finding that plaintiffs here have failed to sufficiently
plead a contract, combination, or conspiracy.

1 speculative and attenuated to sufficiently place plaintiffs’ “preliminary economic analysis” or its
2 results “in a context that raises a suggestion of a preceding agreement” to fix hotel room prices
3 using STR reports. *Twombly*, 550 U.S. 554 at 557 (2007). Therefore, plaintiffs’ have failed to
4 sufficiently plead parallel conduct through either evidence of defendants’ alleged parallel
5 agreements with STR or defendants’ alleged parallel implementation of higher prices compared
6 to other luxury hotels. Because of this, the Court need not evaluate the merits of the plus factors
7 offered by plaintiffs.
8

10 **E. Plaintiffs Insufficiently Plead a Hub-and-Spoke Conspiracy**

11
12 An anticompetitive scheme in violation of Section 1 may also be inferred from a hub-
13 and-spoke conspiracy. In support of the contention that a hub-and-spoke conspiracy has been
14 sufficiently pled here, plaintiffs quote *PLS.Com, LLC v. Nat'l Ass'n of Realtors*: “Acceptance by
15 competitors, without previous agreement, of an invitation to participate in a plan, the necessary
16 consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish
17 an unlawful conspiracy under the Sherman Act.” 32 F.4th 824 at 843 (9th Cir. 2022) (quoting
18 *Interstate Circuit, Inc. v. U.S.*, 306 U.S. 208, 227 (1939)); *see* Dkt. # 103 at 18:22–19:9. Here,
19 plaintiffs allege that public STR materials advertising its benchmarking reports constitute the
20 invitation, the defendant hotel operators’ alleged agreements with STR constitute the
21 acceptance, and the necessary consequence of the agreements and acceptances is an unlawful
22 conspiracy to fix luxury hotel prices. Setting aside the question of whether plaintiffs have
23 sufficiently shown the “rim” of this alleged hub-and-spoke conspiracy by plausibly
24 demonstrating “agreement among the spokes,” *In re Musical Instruments & Equip. Antitrust*

1 *Litig.*, 798 F.3d 1186 at 1192 (9th Cir. 2015), this attempt at showing a hub-and-spoke
2 conspiracy fails at a basic level, and for the same reason that plaintiffs’ attempt at showing
3 parallel conduct fails. On the hub-and-spoke conspiracy allegation, plaintiffs fail to sufficiently
4 show grounds for inference of an agreement between the alleged hub (STR) and the spokes
5 (defendant hotel operators) because plaintiffs have not shown that either the alleged hub or the
6 alleged spokes are receiving any hotel room pricing information from, or giving any hotel room
7 pricing information to, each other. Therefore, the Court cannot find that the hub-and-spoke
8 arrangement described by plaintiffs constitutes sufficient pleading of indirect evidence of an
9 agreement to engage in “price fixing in its modern form.” Dkt. # 1 at 4.
10
11

12
13 **F. The Court Need Not, and Does Not, Reach the Restraint of Trade or**
14 **Injury Issues**

15 Because plaintiffs have not sufficiently pled a contract, combination, or conspiracy either
16 directly or indirectly, the Court need not, and does not, reach the question of whether plaintiffs
17 have met the pleading standard for the other required elements of a Section 1 violation: intent to
18 harm or restrain trade or commerce, and actual injury.
19
20

21 **G. Plaintiffs Will Be Granted Leave to Amend**

22 Plaintiffs’ complaint offers a lengthy theory that defendants have engaged in “price fixing
23 in its modern form.” Dkt. # 1 at 4. *See also* Dkt. 89 (the Court granting the parties’ stipulated
24 motion for leave to file over-length motions and briefs). While the complaint covers a lot of
25 ground, some of it relatively complex, the complaint’s description of the alleged Section 1
26 violation by defendants ultimately fails to “rise above the speculative level,” *Twombly*, 550 U.S.
27
28

1 544 at 555 (2007), in that it fails to introduce any non-conclusory facts, warranted deductions of
2 fact, or reasonable inferences that would allow this Court to reasonably infer that actual prices of
3 individual hotel rooms are being shared with STR by the defendant hotel operators. *Daniels-*
4 *Hall*, 629 F.3d 992 at 998 (9th Cir. 2010). If actual hotel room prices are not an input to STR
5 from the defendant hotel operators, the Court struggles to understand how they could be an
6 output from STR to its hotel operator clients. Given this, the Court further struggles to see how
7 plaintiffs’ allegations that STR reports are potentially one of many data points fed into hotel
8 pricing algorithms is of any great significance in a putative class action that does not target the
9 sale, use, or operation of luxury hotel pricing algorithms. That said, the Court recognizes that the
10 theory behind the complaint is somewhat complex and might appear less speculative and
11 conclusory if conveyed differently, and with definitions that outline precisely what plaintiffs
12 mean when they deploy phrases such as “price information,” “pricing information,” and
13 “information about current and forward-looking . . . pricing data.” *See, for example* Dkt. # 1 at 4,
14 30, 52, 76. At present, as discussed above, it appears to this Court that plaintiffs’ complaint is
15 rounding up to “price information” various types of information that do not actually include
16 individual hotel room prices.

17
18
19
20
21
22 As Judge Joan B. Gottshall of the United States District Court for the Northern District of
23 Illinois recently wrote when granting a motion to dismiss with leave to amend in a similar case,
24 “[t]his is not to say that information sharing cannot be an appropriate basis for a Sherman Act
25 section 1 conspiracy case,” but that “the nature of the information exchanged is a major factor in
26 any information-sharing case.” *Segal v. Amadeus IT Grp., S.A.*, No. 24-CV-1783, 2025 WL
27
28


1 963751, at *6 (N.D. Ill. Mar. 31, 2025) (quotation marks omitted). Like Judge Gottshall, this
2 Court has been presented with “unfamiliar” information about the alleged inner-workings of the
3 hotel industry, must rely on “what the parties have told it,” and at this point finds that a Sherman
4 Act violation has been insufficiently pled. *Id.* Therefore, the Court will grant plaintiffs leave to
5 amend within 30 days if they have facts and explanations to present that can nudge this
6 complaint across the line to sufficiently pled. Any amended complaint should also take into
7 account the Ninth Circuit’s August 15, 2025 opinion in *Gibson et al. v. Cedyn Group, LLC et*
8 *al.*, No. 24-3576.

11 **III. Conclusion**

12 For all to foregoing reasons, defendants “Joint Motion to Dismiss” (Dkt. # 91) is
13 GRANTED. Plaintiffs shall be given leave to amend their complaint within 30 days as described
14 above.
15

16
17
18 IT IS SO ORDERED.

19
20
21 DATED this 29th day of August, 2025.

22
23 
24 Robert S. Lasnik
25 United States District Judge
26
27
28