SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA Dept. No. 23

Date: 10/6/2025 Hon. MICHAEL MARKMAN, Judge

VICTOR MACH and CHELSEA STEPHNEY, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

YARDI SYSTEMS, INC.; FPI MANAGEMENT, INC.; LEFEVER MATISON PROPERTY MANAGEMENT; LEGACY PARTNERS, INC.; MANCO ABBOTT, INC.; BALACIANO GROUP f/k/a CALIFORNIA HOME BUILDERS AND DEELS PROPERTIES, and DOES 1 through 50,

Defendants.

Case No. 24CV063117

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

ORDER

The court GRANTS Defendants Yardi Systems, Inc., Manco Abbott, Inc., and Balaciano Group's motion for summary judgment as to Plaintiffs' claims for horizontal and vertical price fixing in violation of the Cartwright Act (Bus. & Prof. Code, § 16700, et seq.) and for violation of the California Unfair Competition Law (Bus. & Prof. Code, § 17200, et seq.). Defendants are to prepare and, after meeting and conferring with counsel for Defendant, file a proposed judgment within ten days of this Order.

OVERVIEW

Defendants Yardi Systems, Inc. ("Yardi"), Manco Abbott, Inc. ("Manco"), and Balaciano Group seek summary judgment as to Plaintiffs' claims for horizontal and vertical price-fixing under the Cartright Act and for unfair competition. The parties agreed to conduct a first phase of discovery concerning whether and how "Yardi's software programs, including RENTmaximizer, Revenue IQ, or ServiceProvider, or other such software programs provided by

Yardi, collect and incorporate, or otherwise use, its customers' pricing data or information, including client rental rolls, to inform, train, or otherwise calculate its Revenue IQ/RENTmaximizer rental and supply recommendations to its other customers." (Joint Stipulation Re Case Schedule, 10/8/24, at p. 2.) Defendants' early summary judgment motion is based on the outcome of that first phase of discovery.

Yardi provided a copy of the source code for the application at issue, called "Revenue IQ," to Plaintiffs. It argues that the source code unequivocally establishes that a key element of each of Plaintiffs' claims is missing. Defendants argue that, at least under the theory Plaintiffs articulated in the Complaint, Plaintiffs' three claims require the sharing of competitively sensitive or otherwise confidential information concerning rental pricing with Yardi, which is then used by Yardi to generate rental price recommendations that are provided to other renters who are Yardi customers. Defendants contend the source code establishes that any shared information is not and cannot be used to calculate offer prices for other users' rental units.

According to Defendants' expert's testimony, Yardi source code for Revenue IQ reveals while renters do input information into Yardi's applications, including the Revenue IQ application at issue here (formerly known as "RENTmaximizer"), no confidential pricing information is ever shared as between Yardi users. Further, the pricing algorithm in Revenue IQ does not make any use of confidential or commercially sensitive information from other renters when setting the proposed offer price for a particular user's rental property.

What this would mean is that: (a) there is no explicit horizontal price-fixing agreement among rental property owners or managers (since Plaintiffs make no effort to establish one); (b) there is no implicit cartel or hub-and-spoke price-fixing conspiracy, since no one is sharing confidential or commercially sensitive rental price information for use in setting rents; and (c) there is no implicit or explicit vertical price-fixing agreement between rental property owners/managers and Yardi beyond a lawful software license agreement, again since no one is sharing confidential or commercially sensitive rental price information for use in setting rents.

Plaintiffs disagree. They argue that the applicable law under the Cartright Act "does not require that a pricing algorithm, such as Revenue IQ ... use competitors' information as an input." (Opp. Br. at p. 1, citing *United States v. Socony-Vacuum Oil Co.* (1940) 310 U.S. 150, 169-170.) They contend that Revenue IQ uses a customer's pricing information to make pricing recommendations for other Revenue IQ users. Specifically, prices found by "Yardi Matrix Rent Surveyors" can sometimes be incorporated into the Revenue IQ pricing algorithm either (a) to impact Revenue IQ's "30-Day Health Rule," or (b) as "comparables" that can potentially impact the rental offer price then proposed by the Revenue IQ app. (See Plaintiffs' Response to Defendants' Statement of Undisputed Fact ("UMF") Nos. 21, 24, 27-28.)

LEGAL STANDARDS

Summary Judgment and Summary Adjudication

The purpose of summary judgment is to allow the court to "cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Miller v. Fortune Commercial Corporation* (2017) 15 Cal.App.5th 214, 220, citing *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) Summary judgment is proper only when "there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c(c).)

"[T]he party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 850.) "That is because of the general principle that a party who seeks a court's action in his favor bears the burden of persuasion thereon." (*Id.*) Further, "the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Id.*) "[T]he opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Id.*) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Id.*)

"If the defendant fails to meet this initial burden, it is unnecessary to examine the plaintiff's opposing evidence; the motion must be denied." (*Orange County Water Dist. v. Sabic Innovative Plastics US, LLC* (2017) 14 Cal. App. 5th 343, 367.) "If the defendant 'carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact.'" (*Id.*) "[T]o determine whether there is a triable issue, we review the evidence submitted in connection with summary judgment, with the exception of evidence to which objections have been appropriately sustained." (*Id.* at 367-68.)

When deciding matters on summary judgment, the court considers the evidence offered in support and opposition to the motion. (Code Civ. Proc., § 437c(c).) Evidence must be admissible under the Evidence Code, and objections not raised are deemed waived. (Code Civ. Proc., § 437c(c) ("[T]he court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court ...."); § 437c(b)(5) ("Evidentiary objections not made at the hearing shall be deemed waived.").)

The trial court must "consider all inferences reasonably deducible from the evidence," and the fact that a party does not assert a specific inference "does not relieve the trial court ... from a duty to take those inferences into account." (*Maxwell v. Colburn* (1980) 105 Cal.App.3d 180, 185; *see also Duffey v. Tender Heart Home Care Agency, LLC* (2019) 31 Cal.App.5th 232,

241 at n. 6.) "The declarations in support of a motion for summary judgment should be strictly construed, while the opposing declarations should be liberally construed." (*Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 761.)

Unless explicitly addressed below, all evidentiary objections are deemed immaterial to disposition of the motion. (See Code Civ. Proc., § 437c, subd. (q).)

Cartwright Act

The court incorporates a portion of its discussion of the law concerning the Cartwright Act from its order overruling Defendants' demurrer. As the court previously observed, Plaintiffs must allege "(1) the formation and operation of the conspiracy; (2) illegal acts done pursuant thereto; and (3) damage proximately caused by such acts." (*Kolling v. Dow Jones & Co.* (1982) 137 Cal.App.3d 709, 718; *Marsh v. Anesthesia Servs. Med. Group* (2011) 200 Cal.App.4th 480, 493.)

The *per se* rule for addressing price-fixing agreements in California, horizontal and vertical, is imposed by statute, under Bus. & Prof. Code, § 16720. Horizontal price-fixing agreements – agreements between competitors to set prices – have long been subject to the *per se* rule under both federal and California antitrust law. (Bus. & Prof. Code, § 16720.) While federal law has shifted over the decades and applies a rule of reason analysis to address vertical price-fixing agreements, they are still a *per se* violation of California antitrust law. (*Mailand v. Burckle* (1978) 20 Cal.3d 367, 376-377.) Vertical price-fixing agreements are "agreements made up and down a supply chain, such as between a manufacturer and a retailer." (*Musical Instruments and Equip. Antitrust Litig.*, 798 F.3d 1186, 1191 (9th Cir. 2015).) "A hub-and-spoke conspiracy is simply a collection of vertical and horizontal agreements." (*Id.*)

On summary judgment, Defendants may establish their prima facie case by establishing the absence of a price-fixing agreement or conspiracy. (*Aguilar, supra,* 25 Cal.4th at p. 856.) Plaintiff must then point to evidence "that tends to exclude the possibility that the defendants acted independently rather than collusively." (*Id.*; see *In re Automobile Antitrust Cases I & II* (2016) 1 Cal.App.5th 127, 151-152.)

Under the UCL, a violation of the Cartright Act would constitute "unlawful" conduct for purposes of assessing whether a party engages in unfair competition. Under the "unfair" prong of the UCL, if the "unfairness" is based on the "same allegations and evidence" as Plaintiffs' antitrust claims then the UCL "unfairness" claim would "rise and fall" with the antitrust claims. (*Persian Gulf Inc. v. BP West Coast Prods. LLC*, 632 F.Supp.3d 1108, 1174-1175 (S.D. Cal. 2022).)

DISCUSSION

Plaintiffs' Price-Fixing Theories

Plaintiffs' price-fixing claims, and their derivative UCL claim, all require a price-fixing agreement of some kind. (Class Action Complaint ("CAC") at ¶¶ 97 (horizontal per se illegal

price-fixing), 103 (cartel arrangement), 112 (vertical per se illegal price-fixing.) As the court previously noted on Defendants' unsuccessful demurrer, "the allegations in the complaint align with a horizontal price-fixing arrangement based on a "hub-and-spoke" model. Residential rental property owners and managers are the spokes, and set prices using Yardi's RENTmaximizer as the hub. (See *United States v. Apple, Inc.*, 791 F.3d 290, 314-320 (2d Cir. 2015) [describing hub-and-spoke models violating antitrust law in both horizontal and vertical contexts].)"

The court also previously noted: "Plaintiffs allege that each of the manager/owner competitors has a separate agreement with Yardi pursuant to which they agree to provide rental property information to Yardi and to generally use the numbers supplied back by Yardi in order to set lease rates. They also allege that each knew or should have known that competitors in the local residential rental property market for large-size properties were also sharing data, and that the consequent recommendations concerning lease rates provided by Yardi were intended to yield the highest possible rates of return."

The CAC described the conspiratorial information-sharing that Plaintiffs expected to prove. For example, Plaintiffs alleged:

> The key inputs for RENTmaximizer's pricing algorithm are competitor rent rolls and other confidential leasing data. Specifically, RENTmaximizer automatically incorporates property managers', including Manager Defendants', confidential leasing data—e.g., rental rates, occupancy, location, unit type, and lease length—into its algorithm by extracting that information when entered into Yardi Voyager. Typically, this real-time confidential rental information automatically makes its way into Yardi Voyager directly though the paperless leasing process, or Yardi "kiosk" deployed by most property managers. Meanwhile, RENTmaximizer also incorporates market specific information on "comparative rent" from other sources, which Yardi verifies by calling competing property managers acting as "blind shoppers."

(CAC, ¶ 39.)

Plaintiffs specifically anticipating evidence of property owners and managers sharing confidential rental information for purposes of generating rent price recommendations that would be used by competitors. The CAC alleges:

> RENTmaximizer leverages Manager Defendants', and participating property managers', confidential rental information, as well as the comparative data Yardi compiles from other sources, so that the algorithm's pricing output can generate rental pricing based on the same unit type (e.g., studio, 1 bedroom, 2 bedrooms, etc.), size, location, lease length, and move in date. That is, the confidential rental data harvested from Manager Defendants, and participating property managers, is fed into RENTmaximizer, and the algorithm then calculates its

> supra-competitive pricing and supply output based on all competitors' confidential rental data. RENTmaximizer's pricing and supply outputs are thus generated on an apples-to-apples basis giving Manager Defendants confidence that the algorithm's pricing output is the "best" forward-looking, unit-specific pricing for like multifamily units and thereby eliminating the need for Manager Defendants to exchange their internal ledgers. In this way RENTmaximizer is designed to eliminate that barrier to price collusion and coordination. Or, as RENTmaximizer is marketed by Yardi to Manager Defendants: "You manage your business, we manage your pricing."

(CAC, ¶ 40.)

Plaintiffs allege a "'give to get' deal" at the heart of the antitrust conspiracy. The CAC explains:

> Manager Defendants agree to share competitively sensitive information with Yardi. It all begins with the "give to get" deal. The property managers all agreed to submit their confidential business information to Yardi RENTmaximizer with the knowledge that the system would use that data to calculate rents for their competitors. This agreement of mutual sharing and receiving competitors' information benefits the property managers and owners only if their competitors do not use the information to gain a competitive advantage, i.e., offer reduced rents to renters.

(CAC, ¶ 72.)

The Summary Judgment Record Regarding Information Sharing and Taking

After the parties' "Phase One" discovery, the evidence reflects that Yardi is gathering some price information from property owner/managers (or landlords). But there is no evidence that any owner/manager is actually agreeing to provide that information to Yardi under its software license agreement or via any potentially anti-competitive agreement. Instead, Plaintiffs describe at length the evidence indicating that Yardi gathers rental price information through the use of agents who cold-call property owners/managers pretending to be potential renters is not evidence of any conspiracy. In other words, far from giving away the information, Yardi apparently resorts to what Plaintiffs characterize as subterfuge by having Yardi's agents gather price data from landlords while pretending to be potential renters. Plaintiffs observe that the agents are told not to identify themselves as being from Yardi or as preparing a rental survey.

Plaintiffs argue that Defendants "fundamentally misunderstand, or mischaracterize, Plaintiffs' alleged restraint ... and the applicable law." (Opp. Br. at p. 10.) Plaintiffs specifically focus on Defendants' characterization of the inputs to Revenue IQ to generate price recommendations as "public." Plaintiffs are correct that the information surreptitiously

gathered by Yardi's agents can be both "public" and "commercially sensitive" at the same time. The problem for Plaintiffs is that no price information is given to Yardi by landlords under any explicit or implicit agreement for use in setting prices.

The use of agents to take price information from landlords would seem to be the exact opposite of Plaintiffs' alleged "give-to-get" scheme. The undisputed evidence is that no one is agreeing or cooperating with the sharing of commercially sensitive rental prices in order to get price recommendations. The owners/managers are not giving anything to their competitors through Yardi, and they are not getting a price recommendation that is based on pricing data provided to Yardi by their competitors. Yardi instead takes price information from some landlords surreptitiously. (See Exh. 7; Wong-Schwab Decl., ¶ 9.)

The data is used to populate either the "RentCafe Database" or the "Matrix Database," which can be drawn on to help generate rent pricing proposals. (See Hashmi Report at ¶ 34; Gaeta Decl., ¶ 31.) RentCafe can also be used by prospective renters searching for an apartment. (Yenikomshian Decl., ¶¶ 38-39.) When Revenue IQ draws on "comps" as part of its pricing recommendation, it is typically based on a user's selection of 3-5 properties per unit type. (Exhs. 6 at 80993 p. 17; 22 at p. 21474.) When a Revenue IQ user applies on of a myriad of options called a "predicted 30-day availability health rule," aggregated system data that includes "nationwide coefficients that are applied as weights to an individual property's own data" in order to manage seasonal fluctuations. (SUMF No. 14; Hashmi Report ¶ 58-59.) The rule uses nationwide trends that include many datapoints including price as a predictive tool in connection with a landlord's data to figure out the number of units likely to be available at a given property in 30 days. (Yenikomshian Decl., ¶ 100.)

Revenue IQ users enter rental price information into the system, but the evidence does not tie any of that information to the generation of rental price recommendations for other users. The evidence reflects that the owners/managers enter their own information into Revenue IQ, depending on how they have configured the application, in order to use their own information for their own purposes. For example, one of the features of Yardi's applications is for use in gathering data for the landlord about renters and about the properties they are renting (e.g., data entry for the renter's identifying information, the unit they are renting, the number of bedrooms and bathrooms for the unit, amenities in the unit, etc.).

The evidence establishes that the Revenue IQ application is not capable of using the data that the owners/managers themselves enter into the system in order to generate rental price recommendations. Again, contrary to the allegations in the Complaint, expert discovery reveals that the source code for Revenue IQ does not pull rental price information from other Yardi customers to inform any price-recommendation function in it. Further, Revenue IQ does not select or recommend comparative properties. (Yenikomshian Decl., ¶¶ 52–62.)

Lack of Evidence of Any Form of Price-Fixing Agreement

Plaintiffs have not presented evidence that Revenue IQ uses Yardi's customers' data – provided under the customers' agreements with Yardi – to inform pricing decisions for its other customers. Not even Yardi's marketing materials, boasting about the effectiveness of Revenue IQ in boosting rents, suggests that Yardi is using or otherwise sharing its customers' pricing or otherwise proprietary information to make pricing recommendations for other customers. Drawing all inferences in Plaintiffs' favor, the record lacks any evidence of the alleged unlawful "give-to-get" scheme.

Based on the evidence, there is no vertical agreement between Yardi and the property owners/managers to share commercially sensitive information among themselves in order to generate pricing recommendations. The only identified agreement by either side is a software licensing agreement between Yardi for the use of Revenue IQ. Nor is there evidence of a horizontal agreement between the property owners/managers themselves either to share confidential or commercially sensitive information or even to collectively use Revenue IQ.

Plaintiffs' Theory Re Invitation to Jointly Adopt a Common Pricing Algorithm

Plaintiffs further argue that sharing price information is not integral to their price-fixing claims. In a shift from the thrust of Plaintiffs' arguments on demurrer, Plaintiffs contend that they can prevail on summary judgment by pointing to evidence that the owner/manager defendants accepted Yardi's "invitation ... to jointly adopt a common rental pricing algorithm, i.e., RIQ, for the same purpose of beating the market." (Opp. Br. at p. 11.) They argue that would mean "the nature of RIQ's inputs are immaterial to an analysis that centers on an invitation and acceptance to jointly adopt a similar algorithm designed to avoid price competition and inflate rents at supra-competitive levels." (*Id.*)

Lack of an Anti-Competitive Agreement

Plaintiffs' effort to pivot to a different legal theory is not supported by the law. Plaintiffs' first major problem is that a hub-and-spoke conspiracy, or other per se unlawful price-fixing activity, requires some anti-competitive agreement. The court in *In re Pork Antitrust Litigation*, relied upon by Plaintiffs, describes a test used under the Sherman Act to evaluate hub-and-spoke conspiracies. (*In re Pork Antitrust Litig.,* 781 F. Supp. 3d 758, 798–99 (D. Minn. 2025).) There, by way of background, one of the multiple different classes of plaintiffs argued that pork processors had accepted an "invitation to participate in reports that targeted higher prices and lower output which would unreasonably restrain trade." (*Id.*, citing *American Column & Lumber Co. v. United States*, 257 U.S. 377, 410 (1921).) The reports included "a page at the beginning that lists which competitors participated in the report," which meant that "the Processor Defendants knew who else was participating in the alleged scheme ...." (*Id.*)

Against that background, the trial court in the *Pork Antitrust Litigation* described the Eighth Circuit's "borrowing" of "a test for establishing a hub-and-spoke agreement from the Sixth Circuit:

> (1) that there is an *overall*-unlawful plan or "common design" in existence; (2) that knowledge that others must be involved is inferable to each member because of his knowledge of the unlawful nature of the subject of the conspiracy but knowledge on the part of each member of the exact scope of the operation or the number of people involved is not required, and (3) there must be a showing of each alleged member's participation. *Impro Prods.*, 715 F.2d at 1279 (quoting *Elder-Beerman Stores Corp. v. Federated Dep't Stores, Inc.*, 459 F.2d 138, 146–147 (6th Cir. 1972)). Under this test, there must be a showing not only of an agreement between the "hub" and each of the "spokes," but also of an agreement between all of the "spokes." *See Target Corp. v. LCH Pavement Consultants, LLC*, No. 12-1912, 2013 WL 2470148, at *6 (D. Minn. June 7, 2013) (" 'The critical issue for establishing a per se violation with the hub and spoke system is how the spokes are connected to each other'; in other words, there must be a rim—a horizontal agreement—that connects the spokes.") (quoting *Total Benefits Plan. Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 436 (6th Cir. 2008)).

(*In re Pork Antitrust Litig., supra,* 781 F. Supp. 3d at pp. 798–799.)

Here, in contrast to *In re Pork Antitrust Litigation*, there is only a software license agreement between the alleged hub (Yardi) and the spokes (the owner/managers). There is no agreement, implicit or explicit, between any of the spokes. In other words, there is no rim.

The *Pork Antitrust Litigation* decision highlights another problem with Plaintiffs' claims here. That court relied on a decision on a motion to dismiss in a federal analog to the case now before this court – *Duffy v. Yardi Systems, Inc.*, 758 F.Supp.3d 1283, 1288-89 (W.D. Wash. 2024). The *Pork Antitrust Litigation* decision pointed out that in *Duffy*:

> The plaintiffs alleged that the property management software company, Yardi, agreed that the lessor defendants could use its revenue management software; that the lessor defendants agreed between and among themselves to provide their rental information to Yardi, to use Yardi's revenue management software, and to implement the recommendations generated by the software; and that there was a shared understanding that Yardi would recommend rental rates above procompetitive levels. *Id.* Relying on *Interstate Circuit [v. United States*, 306 U.S. 208 (1939)], the *Yardi* court recognized that concerted action can be demonstrated through a showing of an "acceptance of an invitation to participate in a common scheme that restrains trade," and the plaintiffs had plausibly alleged such concerted action. *Id.* at 1290-93. Other courts have also

> seemingly recognized this alternative pathway to § 1 liability. E.g., *In re RealPage, Inc., Rental Software Antitrust Litig. (No. II)*, 709 F.Supp.3d 478, 507-08 (M.D. Tenn. 2023).

(*In re Pork Antitrust Litig.*, supra, 781 F. Supp. 3d 758 at pp. 798–99.)

This court overruled Defendants' demurrer in this case on similar grounds to those in *Duffy*. Now missing on summary judgment, however, is any evidence "that the lessor defendants agreed between and among themselves to provide their rental information to Yardi." (*Id.*) The information provided to the Revenue IQ system by landlords cannot be used by the system to generate price recommendations for other landlords. And the information used by the system for purposes of "comps" is taken from landlords without any agreement, not given to Yardi under any kind of horizontal or vertical agreement.

Use of Common Software Applications and Other Forms of Information Sharing

The second major problem with Plaintiffs' attempt to pivot to a new legal theory is that adopting a common software application itself is not an antitrust violation. As the Ninth Circuit recently explained, "using a competitive advantage gained from establishing a [data collection] infrastructure that is uniquely suited to serve its customers" is not unlawful or anticompetitive." (*Dreamstime.com, LLC v. Google LLC*, 54 F.4th 1130, 1142 (9th Cir. 2022).) The trial court in the *Pork Antitrust Litigation* likewise cautioned:

> Furthermore, after cutting away the fat, the hub-and-spoke agreement ... is in many ways a basic information exchange. And the Supreme Court is clear that information exchanges are not per se unlawful. *United States v. Citizens & S. Nat'l Bank*, 422 U.S. 86, 113 (1975) ("[T]he dissemination of price information is not itself a per se violation of the Sherman Act."); *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 441 n.16 (1978) ("The exchange of price data and other information among competitors does not invariably have anticompetitive effects."). Rather, information exchanges are evaluated under the rule of reason. *Todd v. Exxon Corp.*, 275 F.3d 191, 198–99, 207 (2d Cir. 2001) (differentiating between per se and rule of reason claims).

(*In re Pork Antitrust Litig., supra*, 781 F. Supp. 3d at p. 800.) Notably, the *Todd* decision, cited in the passage from the *Pork Antitrust Litigation* above and also relied on by Plaintiffs here, involved sharing of confidential employee salary information.

The trial court in the *Pork Antitrust Litigation* further noted it had:

> dismissed a similar argument at the first round of motions to dismiss in this case. *In re Pork*, 2019 WL 3752497, at 7 n.7 ("To the extent that Plaintiffs are asserting that the use of Agri Stats alone is sufficient to allege a conspiracy, the Court disagrees. *Todd* itself explained that information sharing 'is not illegal per se, but can be found unlawful under a rule of reason analysis.' "). Indeed, "absent some agreement between competitors to restrain price, the exchange of price and other market information is generally benign conduct that facilitates efficient economic activity." *Five Smiths, Inc. v. Nat'l Football League Players Ass'n*, 788 F. Supp. 1042, 1052–53 (D. Minn. 1992). Even the United States in its Statement of Interest acknowledges that "standalone information-sharing claims are subject to a flexible rule-of-reason analysis, which requires a fact-specific inquiry in each case...." And other courts have refused to evaluate similar hub-and-spoke conspiracies as per se violations of [section] 1. E.g, *In re RealPage, supra,* 709 F.Supp.3d at pp. 519-521.)

(*Id.*; see also *In re Broiler Chicken Antitrust Litig.,* 702 F. Supp. 3d 635, 675–78 (N.D. Ill. 2023).)

Problems Re Rule of Reason and Market Power

Plaintiffs' third major problem is that their alternative theory would appear to require an analysis under the rule of reason rather than the per se rule, as suggested by the discussion in the *Pork Antitrust Litigation* passage quoted above. This is *not* a basis for the court's decision on summary judgment. But, if this court were wrong in its analysis of Plaintiffs' new theory as discussed in this decision, this would mean that the case would move forward under the rule of reason. Among other things, Plaintiffs would need to establish market power. The burden of doing so with respect to the entire market for rental properties in California, which is the market identified in the proposed class definition in the Complaint, would appear to be exceptionally difficult.

The *Gibson v. Cendyn Group, LLC* Decision

After the hearing on Defendants' motion in this case, the Ninth Circuit issued a decision in *Gibson v. Cendyn Group LLC*, 148 F.4th 1069 (9th Cir. 2025). The *Gibson* decision is useful in analyzing this case, and the parties submitted supplemental briefing about the case. The *Gibson* decision affirmed a motion to dismiss (under Fed. R. Civ. P. 12(b)(6) in a case concerning software used to make pricing recommendations for hotel rooms on the Las Vegas Strip. (*Id.* at p. 1076.) Writing for the Ninth Circuit, Judge Bea described the issue presented by that case:

> Does it violate Section 1 of the Sherman Act ("Section 1") for competing hotels each to purchase a license to use the same price-recommendation software? It would undoubtedly violate Section 1 were those competing hotels to agree

> among themselves to abide by a third party's pricing recommendations when pricing their own hotel rooms. But the question this case presents, by contrast, is whether Plaintiffs sufficiently state a Section 1 claim when they allege that the competing hotels *independently* purchased licenses for the same software, which software is alleged to have provided pricing recommendations, and which software did not share any licensing hotel's confidential information among the competing licensees.

(*Id.*)

The *Gibson* plaintiffs argued for a version of the alternate theory Plaintiffs offer here – that "the choice of several competitors to contract with the same service-provider, when followed by higher prices, is sufficient to require antitrust scrutiny," at least under the rule of reason if not under the per se rule relating to horizontal price fixing agreements (and, in California, vertical price fixing agreements). (*Id.* at p. 1077.) The Ninth Circuit rejected the argument, holding that section 1 of the Sherman Act "requires a causal link between the contested agreement and an anticompetitive restraint of trade in the relevant market," and "neither the terms nor the operation of the disputed licensing agreements imposed any such anticompetitive restraints...." (*Id.*) The court further explained that "[w]hile a hotel might adopt Cendyn's pricing recommendations at high rates because it trusts the recommendations or wants the ease of implementing the recommendations, the agreement for the provision of the recommendations itself is not a *restraint* of a hotel's ability to price its hotel-room rentals." (*Id.* at pp. 1085-1086 (emphasis in original).)

Plaintiffs argue that the Gibson decision was "truncated" and "likely would have been different had the plaintiffs alleged more." (Plaintiffs' Supp. Br. Re *Gibson*.) The same could be said for most any pleading subject to a demurrer or motion to dismiss under Rule 12(b)(6) – such motions depend on the pleadings. Of course, the court recognizes that at the summary judgment phase the focus is on the undisputed evidence, and a material dispute of fact will result in denying the motion. Additionally, the court notes that cases decided under the Sherman Act are not necessarily binding for purposes of a California Cartright Act analysis.

The core legal holding of *Gibson* nevertheless remains helpful to this court's analysis. The *Gibson* decision underscores the centrality of an alleged anticompetitive agreement of some kind – horizontal or vertical, or perhaps even based on a hub-and-spoke or cartel/trade association model.

The analysis in *Gibson* concerning an agreement to use price recommendation software is not itself a restraint of a user's ability to price its rooms is persuasive in the context of rental properties here. Using the formula the *Gibson* decision employed, one could ask, "Why don't the independent choices of [the landlords] to obtain pricing advice from the same company harm competition, as alleged here? Because here, obtaining information from the same source does not reduce the incentive to compete." (*Gibson, supra*, 148 F.4th at pp. 1083-1084.) As the *Gibson* decision reasons:

> While antitrust law restricts *agreements* between competitors regarding how to compete, it does not require a business to turn a blind eye to information simply because its competitors are also aware of that same information. Nor does it require businesses to decline to take advantage of a service because its competitors already use that service. Holding otherwise would impose a rule that businesses cannot use the same service providers as their competitors.

(*Id.* at p. 1084 (emphasis in original).)

The court in *Gibson* also explains alternative ways a hotel (or property owner in the context of this case) could cross the line. There, the software provider, Cendyn, "could provide non-binding recommendations and competing hotels could all agree to abide by those recommendations," which "would be a hub-and-spoke conspiracy...." (*Gibson, supra*, 148 F.4th at p. 1085 n.10.) But, the *Gibson* plaintiffs did not allege such an agreement.

Likewise, Plaintiffs in this case do not allege or present evidence to suggest the existence of such an agreement either. Here, the one written agreement is between the owner/managers and Yardi. As explained above, the record lacks evidence of any other potential price-fixing agreement, implicit or explicit, horizontal or vertical. Not without reason, Defendants characterize Plaintiffs' hub-and-spoke theory as "nothing more than a collection of independent, nonexclusive software licenses," which was the theory that the Ninth Circuit rejected in *Gibson.*

Plaintiffs also seek to distinguish *Gibson* by arguing that "here, the parties dispute whether RIQ uses one client's commercially sensitive rental information to make a pricing recommendation for another client. In contrast, the parties in Gibson agreed the "software [at issue] did not share any licensing hotel's confidential information among the competing licensees." (Plaintiffs' Supp. Br. Re *Gibson*.) As noted above, however, the evidence – the Revenue IQ source code itself – establishes that a client's commercially sensitive rental information *cannot* be used by the software to make a pricing recommendation for another client.

CONCLUSION

Yardi's forthright decision to produce its source code and related evidence in the initial phases of discovery was critical to answering key questions concerning the sharing and use of rental price information to generate price recommendations. There is no dispute of material fact that the Revenue IQ source code does not use competitively sensitive (or otherwise confidential) information obtained by agreement from a property owner or manager and then use that information in connection with generating rental price recommendations by other property owners or managers. In view of all the evidence in the summary judgment record, and without weighing it, Plaintiffs have not identified a viable theory of horizontal or vertical price-fixing. Plaintiffs' derivative claim under the UCL fall with the antitrust claims for the same reasons.

October 6, 2025

Michael M. Markman
Judge, Superior Court of California
Alameda County

Michael Markman / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	**FILED** Superior Court of California County of Alameda 10/06/2025 Chad Finke, Executive Officer / Clerk of the Court By: A. Scoggins Deputy
PLAINTIFF/PETITIONER: VICTOR MACH et al	
DEFENDANT/RESPONDENT: YARDI SYSTEMS, INC. et al	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 24CV063117

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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Dated: 10/06/2025

By:

A. Scoggins, Deputy Clerk

CERTIFICATE OF ELECTRONIC SERVICE
CODE OF CIVIL PROCEDURE 1010.6

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SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp **FILED** Superior Court of California County of Alameda 10/06/2025 Chad Finke, Executive Officer / Clerk of the Court By: A. Scoggins Deputy
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DEFENDANT/RESPONDENT: YARDI SYSTEMS, INC. et al	
CERTIFICATE OF MAILING	CASE NUMBER: 24CV063117

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Dated: 10/06/2025

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CERTIFICATE OF MAILING