UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE CALIFORNIA BAIL BOND ANTITRUST LITIGATION This Document Relates To: ALL ACTIONS	Case No. 19-cv-00717-JST **ORDER DENYING DEFENDANTS' MOTION TO DISMISS** Re: ECF No. 284

Before the Court is Defendants' joint motion to dismiss the third consolidated amended class action complaint ("TCAC"). ECF No. 284. The Court will deny the motion.

I. BACKGROUND

A. Factual Background

1. Agreement to the Alleged Conspiracy

Plaintiffs Shonetta Crain and Kira Monterrey bring this action against 21 members of the California bail bonds industry. TCAC, ECF No. 281-1 ¶¶ 15–35. In 2016, Crain purchased a bail bond from All-Pro Bail Bonds, Inc., to secure the release of a relative. *Id.* ¶ 36. The bond was underwritten by Defendant Bankers Insurance Company. *Id.* Also in 2016, Serna purchased a bail bond from Two Jinn, Inc., to secure her own pretrial release. *Id.* ¶ 37. The bond was underwritten by Defendant Seaview Insurance Company. *Id.* Plaintiffs allege that they paid artificially inflated prices for their respective bonds as a result of an unlawful conspiracy entered into and perpetrated by Defendants. *Id.* ¶¶ 36–37, 115–16.

For purposes of the instant motion, the Court accepts as true the following allegations. Many criminal arrestees in California have the right to post money bail for their release, and the full amount will be returned to them as long as they appear for scheduled court dates. *Id.* ¶ 2, 47–49. Arrestees who cannot afford to pay bail have the option to purchase a bail bond from the agent

of a surety, and the surety underwrites the bond. *Id.* ¶¶ 2–3. The price of the bond is determined by the premium rate offered by the surety that underwrites the bond less any rebates offered by the agent. *Id.* ¶ 3. Revenue is split between the underwriting surety and the bail agent, who receives a commission. *Id.* ¶ 50.

Premiums are expressed as a percentage of the bail amount set by the court, and that amount is determined by a county schedule based on the crime allegedly committed. *Id.* ¶ 49. To set a premium rate, a surety must file a rate application with the California Department of Insurance ("CDI"), and CDI must approve the application. *Id.* California law prohibits sureties and agents from charging more than the approved premiums, but they are permitted to charge less by offering rebates to purchasers. *Id.* ¶ 53. If a purchaser attends all court dates, the surety and agent are released of their liability for the bond, but the purchaser does not receive back any portion of the premium. *Id.* ¶ 48. If the purchaser does not attend all their court dates, the bond is theoretically forfeited to the court, but purchasers rarely "jump bail" and even when they do, courts generally release agents from their obligation to pay. *Id.* ¶ 96.

The alleged conspiracy began in 2004 in response to two related legal developments. First, in 1988, California voters passed Proposition 103, which allowed insurers to offer rebates on insurance products in order to encourage competition in insurance markets. *Id.* ¶ 5; Cal. Ins. Code § 750(d); *see Schmidt v. Found. Health*, 35 Cal. App. 4th 1702, 1711 n.4 (1995) ("[R]ebating by insurance brokers [has been] permissible since the passage of Proposition 103."). Second, in 2004, a California Superior Court decision, *Pacific Bonding Corp. v. John Garamendi*, No. GIC815786, at *3 (Cal. Super. Ct. Feb. 24, 2004), ECF No. 57-2, clarified that bail agents in California are legally permitted to offer rebates on the standard premium rates. *Id.* ¶ 111. These conditions provided strong economic incentives for sureties to compete by seeking approval of lower premium rates and discounting those rates through rebates. *Id.* ¶¶ 111–12. But, according to the TCAC, that's not what happened. Instead, Defendants interpreted the development as "an existential threat to the bail industry's profits" and colluded to prevent any such competition. *Id.* ¶ 112, 116.

The conspiracy consisted of two components that, in tandem, would artificially inflate the

price of bail bonds. First, Defendants were to maintain a "standard" premium rate of 10%. *Id.* ¶ 6. Second, Defendants were to suppress the advertisement and offering of rebates by bail agents. *Id.* Defendants American Surety Company ("ASC") and William Carmichael, president and CEO of ASC, acted as "ringleaders" of the conspiracy. *Id.* ¶ 74–76. Soon after the decision in *Pacific Bonding Corp.* was issued, "ASC communicated to its surety rivals that ASC would not seek to lower its default premium rate below 10%, and that ASC would discourage its agents from rebating or advertising rebates. ASC also exhorted its rivals to follow." *Id.* ¶ 155. In March 2005, Carmichael wrote in an article,

> 2005 will not be a year when we, as an industry, can sit passively by while competitive forces continue to encroach upon our markets. . . . Advocates argue that the market dictates that they charge and collect less than the filed rate. . . . [But] I can safely predict that if left unchecked, rampant premium discounting will result in the end of the bail bond business as we know it, to be replaced by a new model that properly reflects the proper balance of risk and reward. Simple economics dictates it. . . . I urge all of us to recognize the serious nature of the threats to our industry and work collectively to repel them. Leaving profit on the table, in the form of discounts or uncollected accounts receivable, is a fool's game.

Id. ¶ 76. In August, in an article posted to ASC's website, Carmichael wrote, "We recognize the important role a surety must play in protecting our markets. If only every competitor we have would do the same." *Id.* ¶ 115.

2. Growth of the Alleged Conspiracy

Trade associations provided various fora in which Defendants entered into and furthered the conspiracy, including the American Bail Coalition, Inc. ("ABC"), the California Bail Insurance Group ("CalBIG"), the California Bail Agents Association ("CBAA"), the Golden State Bail Agents Association ("GSBAA"), and the Surety and Fidelity Association of America ("SFAA"). *Id.* ¶ 117–64. As Carmichael wrote in a 2006 article, "Any number of local state and national gatherings of the bail industry have taken place in the past year. Each designed to provide a forum in which concerned members of our industry could gather, share ideas and plan strategies which would expand, protect, and advance our industry in their respective markets." *Id.* ¶ 146.

a. ABC

Carmichael is the Chairman of ABC. *Id.* ¶ 84. ABC's membership throughout the period

of the alleged conspiracy included at least Defendants ASC, AIA Holdings, Inc., ("AIA") members Allegheny Casualty Company ("ACC") and International Fidelity Insurance Company ("IFIC"), Bankers Insurance Company ("Bankers"), Crum & Forster Company,[1] Sun Surety ("Sun"), and Universal Fire & Casualty Insurance Company ("Universal"). *Id.* ¶ 125. Through ABC, Defendants allegedly coordinated efforts to reach common understandings as to the standard premium rates Defendants would submit for approval and as to the manner in which Defendants would monitor and enforce those understandings through the dissemination of sales statistics. *Id.* Plaintiffs allege that these discussions and agreements were made at four separate ABC meetings from 2011 to 2016, and that the sureties represented at the meetings included Defendants Accredited Surety and Casualty Company ("Accredited"), AIA, American Contractors Indemnity Company ("ACIC"), ASC, Bankers, Lexington Insurance Company ("Lexington"), and Universal. *Id.* ¶ 125–26. Non-present members, including U.S. Fire, North River, and Seneca, were allegedly apprised of these common understandings. *Id.*

ABC's Board of Directors developed an American Bail Agent Coalition ("ABAC"), the website of which describes a stated purpose "to protect the interests and prosperity of the commercial surety bail agent . . . and to strengthen the partnership between surety partners and licensed commercial bail agents." *Id.* ¶ 148. In 2017, the Vice President of ASC in a blog post wrote, "ABC [] work[ed] with a large coalition that includes California's two state associations, CBAA and GSBAA." *Id.* ¶ 150. He later wrote, "The cooperation among industry competitors at both the agency and surety level has been nothing short of inspiring." *Id.* ABC's Executive Director further observed that "[t]he bonding industry has worked hard to rectify th[e] abuse" of bail agents "cut[ting] premium rates." *Id.* ¶ 151.

b. CalBIG

CalBIG's membership throughout the period included Defendants ACIC, Accredited, ASC, Lexington, Bankers, and AIA non-Defendant member Associated Bond & Insurance

[1] Crum & Forster is not itself a Defendant, but is an underwriting company partially comprised of Defendants United States Fire & Casualty Company ("U.S. Fire"), North River Insurance Company ("North River"), and Seneca Insurance Company ("Seneca"). *See* TCAC ¶ 28.

Company. *Id.* ¶ 127. Through CalBIG, Defendants further solidified their understanding to charge the 10% standard rate and to suppress rebates. *Id.* In an e-mail authored by a representative of AIA dated July 25, 2005, members of CalBIG discussed a "Mandatory 10% Premium Concept." *Id.* ¶ 128; ECF No. 285-2 at 2. The e-mail was sent to ASC and Carmichael, as well as representatives of Lexington, Accredited, ACIC, and others. TCAC ¶ 128. On December 21, 2005, in a subsequent e-mail by Carmichael to, among others, representatives of Lexington, AIA, and Bankers, Carmichael expressed frustration towards Lexington, "If premium discounting and rebating by the agency force is not the disease affecting the California market but only a symptom, what is the disease and why hasn't Lexington voiced this concern previously . . . ?" ECF No. 285-2 at 2. Carmichael also wrote, "My joining CALBIG was not to singularly adopt a mission of achieving unity within the industry. I see that as a goal but ultimately, we should be acting for the benefit of surety insurers." *Id.* Carmichael further wrote, "I do not intend to allow our Company to be stymied in the protection of our market in California by casting ourselves as a peacemaker." *Id.*; TCAC ¶ 133.

Lexington's representative replied the next day. The representative wrote,

> Premium cutting, discounting, rebating, or whatever chosen name, is the number one problem affecting bail, not only in California, but across the nation. . . . We want a menage e trois [sic] of sorts; CBAA, CalBIG[,] and [GSBAA] in a bail bond love fest. Impractical? Maybe. Necessary? Without a doubt. We should be dancing with all the associations, pretty or not (though I have always preferred the pretty ones). We don't have to love them, or even like them for that matter, ***but we do have to dance with them.*** We are otherwise dooming this important concept to failure.

ECF No. 285-3 at 2 (emphasis in original); TCAC ¶ 139.

c. CBAA

CBAA is allegedly the "primary industry association of bail agents in California" and hosts annual conventions. *Id.* ¶ 137. It maintained information regarding premiums charged that Defendants and their agents allegedly used to detect and prevent premium discounting. *Id.* ¶ 157. A 2017 filing with CDI by Defendant Universal stated that Universal was "basing its rates for bail bonds on rate data obtained from [CBAA]." *Id.* In 2013, Defendants Accredited, AIA, ASC, Lexington, Lexon Insurance Company ("Lexon"), Sun, Financial Casualty & Surety, Inc.

("Financial"), and Williamsburg National Insurance Company ("Williamsburg"), were members of CBAA's "Bail Bond Project." *Id.* ¶ 161. The Project resulted in recommended standardized forms to be used by bail agents throughout California. *Id.* Draft forms dated 2013 state that premium fees are "typically ten percent of the amount of bond," make no reference to rebates nor provide a space to input a rebate, and include an addendum that states, "This addendum shall be attached to every Bail Bond Application and Agreement entered into in the state of California." *Id.*

During the period of the alleged conspiracy, CBAA hosted a meeting in 2011 attended by AIA, ACIC, ASC, Lexington, Accredited, FCS, and Sun Surety, and another in 2012 attended by ACIC. *Id.* ¶ 142. CBAA also operated in coordination with GSBAA, discussed in greater detail below. CBAA further "maintained information regarding premiums charged that Defendants and their agents used to detect and prevent premium discounting." *Id.* ¶ 157. A 2017 CDI filing by Defendant Universal purported to base its premium rates "on rate data obtained from [CBAA]." *Id.*

d. GSBAA

GSBAA was founded in 2004 by "competitors, [who] discovered that they had a lot in common and formed GSBAA to pursue their common interest in promoting or propagating the California Bail industry." *Id.* ¶ 135. GSBAA hosted an annual conference and quarterly telephonic meetings that allegedly allowed members to share information about the bail industry. *Id.* ¶ 136. GSBAA additionally hosted a number of meetings jointly with CBAA. *Id.* ¶¶ 141–42. This included an in-person meeting in 2009 where the two associations created a "Joint 'Rebates / Discounts' Committee" to allegedly solidify their common understanding to suppress rebating among bail agents in California. *Id.* ¶ 141. An ACIC representative attended the meeting. *Id.* ¶ 141. Additional GSBAA gatherings included seven meetings, some of which occurred as teleconferences, from 2009 to 2011, which combinations of Defendants attended. *Id.* ¶¶ 142, 145.

On March 18, 2009, the President of GSBAA, Topo Padilla, emailed a number of bail agents and copied several representatives of Lexington. He described a recent meeting with representatives of three surety companies in Las Vegas, including ACIC, Lexington, and

Accredited. ECF No. 285-4 at 3, 5; TCAC ¶ 126, 141, 143. In that e-mail, he wrote,

> When the discussions with regard to the Parole Bond and Rebates came about, the sureties had a very obvious part in the discussions. . . . [W]e can in no way create this new line of business without their say. As far as the Rebate issue, this issue is in fact something that the sureties are in control of with their filed rates. . . . So, we need to work together to come up with a solution and stance from our associations.

ECF No. 285-4 at 3 ("Padilla E-mail").

e. SFAA

Defendants' uniform behavior in seeking approval of a default premium rate of 10% allegedly also resulted from direct communication during SFAA meetings. *Id.* ¶ 117. The SFAA formed and maintained a "Bail Bond Advisory Committee" that held meetings prior to and during the period of the conspiracy. *Id.* ASC, with Carmichael as its representative, was a founding member of the Committee. *Id.* ¶ 118. Other founding members included Accredited, ACIC, AIA member IFIC, and Lexington. *Id.* A representative of Lexington served as Chair of the Committee from 2003 to 2013, a representative of Accredited served as Chair from 2013 to 2016, and Carmichael was elected to serve as Chair in 2016. *Id.* The Committee allegedly discussed and coordinated state-specific sales practices of its members, reached common understandings regarding the standard premium rates that they would submit for approval, and the Committee monitored and enforced those understandings by gathering and disseminating each member surety's sales data. *Id.* Such discussions allegedly occurred at nine meetings between 2003 and 2011. *Id.* Defendants Accredited, ACIC, ASC, ACC, IFIC, Bankers, Danielson National Insurance Company ("Danielson"), Lexington, Seneca, and Sun attended these meetings, and Defendants ACIC, Indiana Lumbermens Mutual Insurance Company ("ILM"), Lexon, North River, Seaview, U.S. Fire, Universal, and Williamsburg, were kept apprised of these understandings. *Id.*

SFAA and the Committee created and disseminated sales data through reports to Defendants summarizing data concerning premiums charged and losses incurred by each Defendant. *Id.* ¶ 121–23. Defendants were required to submit such data and incurred penalties for either failing to provide it by an annual deadline or by submitted data that contained errors. *Id*

¶ 121. The latter penalty amounted to "$25,000 for each occurrence." *Id.* Defendants allegedly used these reports to monitor deviation from the conspiracy. *Id.* The reports allegedly violated the SFAA's own antitrust guidelines, which prohibited the discussion of "any element of rates" as well as the discussion or disclosure of "information on any competitively sensitive practices, including pricing." ECF No. 285-9 at 2, TCAC ¶ 122. Some Defendants, such as Seaview, expressly stated in their rate applications that the 10% premium rate was based upon "Surety Association of America (SAA) pricing."[2] TCAC ¶ 120.

3. Maintenance of the Alleged Conspiracy

All Defendants who participated in the bail bonds market as of 2004 relied upon a 10% premium rate, and the remainder of Defendants secured approval of a 10% premium rate upon their respective entries into the market. *Id.* ¶ 7. When new Defendants entered the market and sought approval of the 10% rate, they did not justify those rates with any actuarial analyses. *Id.* ¶ 92. For example, when Defendant Financial submitted its rate application to CDI in 2004, it cited the fact that all other California sureties use the same rate and stated, "There is no actuarial justification for bail bond rates filed by any insurance company writing bail bond surety." *Id.* Financial described the various sureties' identical requests for a 10% rate as "essentially 'ME TO[O]' filings." *Id.* And when Defendant Seaview filed its rate application in 2011, it described its request as "an adoption of current bail bond rates approved for use by [Defendant] Danielson." *Id.* ¶ 279. All Defendants have maintained the 10% rate throughout the period except for ACC and IFIC, which were required by CDI in 2017 to lower premium rates across all surety lines of insurance. *Id.* ¶¶ 7, 187. Additionally, many of the sureties offered analogous "'preferred' rates of 8 or 7 percent" for particular classes of consumers such as veterans, homeowners, union members, or individuals represented by private counsel. *Id.* ¶ 92.

Similarly, Defendants nearly uniformly posted notices in their respective retail offices that represented the rates as fixed and omitted the legal possibility of negotiating rebates. *Id.* ¶ 8. Allegedly in furtherance of the conspiracy, Defendants rarely, if ever, offered rebates to

[2] SAA was the previous name of SFAA. TCAC ¶ 117–18.

customers, and none advertised them as a possibility but rather endeavored to conceal their availability. *Id.* ¶¶ 167, 177, 191–92, 207–08, 212, 221–23, 226, 236–37, 240, 250–52, 255, 262–63, 266, 273–74, 277, 285–87, 290, 298–99, 302, 310–11, 314, 321–23, 326, 332–33, 335, 337, 343–44, 346–47, 354–55, 359, 366–67, 369–70, 377–78, 381, 383, 392–93, 395–96.

Defendants allegedly addressed and discussed any deviations from the conspiracy throughout the period. *Id.* ¶ 162. For example, in 2012, members of GSBAA and CBAA, as well as representatives from Defendants such as ACIC, discussed an advertisement of bail prices that included a rebate. *Id.*; ECF No. 285-7 at 12–13. A bail agent, Chad Conley, advertised a "6% Net Bond Cost" that explained that partial rebates could "result in an overall bond cost as low as 6%." TCAC ¶ 162; ECF No. 285-7 at 12–13. Sean Cook, Board member of CBAA, forwarded the advertisement and argued in favor of a "flat 10%" for all sureties and agents in California. TCAC ¶ 163; ECF No. 285-7 at 3. Cook further wrote,

> This has been my point for several months . . . . We are hung up on the idea that [public relations] is only for the public. . . . One of the many reasons we are better is that we are a $2 billion dollar [sic] industry charging 10% for $2 hundred million in premium . . . compared to a $2 billion industry charging 6% or $120 million in premium. . . . That's huge tax revenue lost all because a DOI employee told us he thought it would hurt the consumer. Seriously? By charging 10% we are hurting the consumer? HOW exactly? It only hurts the family of the defendant that committed the crime and that's by their own choice and free will. . . . What is the[] argument though? Is the[] argument: People that commit crimes should have to pay 10% instead of 6% to get out of jail? Is that it? Too bad they shouldn't have committed the crime in the first place. Whose [sic] going to side with them? Judges, DA's [sic], Law Enforcement, Victims Rights Groups? I doubt anyone will because they have a losing argument.

ECF No. 285-7 at 3. Conley later wrote in an online post "that his efforts to provide lower prices for his bail bond clients resulted in pressure from a 'good ol boys club,' which 'came after [his] license for trying to save clients money.'" TCAC ¶ 21.

B. Procedural Background

1. Consolidated Class Action Complaint

Plaintiffs filed a class action complaint against Defendants in Alameda Superior Court on January 29, 2019. No. 19-cv-01265-JST, ECF No. 1. Defendants then removed the action to this

district. *Id.* The Court subsequently related Plaintiffs' case to a similar case brought by a different plaintiff, consolidated the cases pursuant to Fed. R. Civ. P. 42(a), and appointed interim class counsel. ECF Nos. 14, 29, 44. Plaintiffs thereafter filed a consolidated amended class action complaint, bringing claims against Defendants, as well as several bail agencies, several of the trade associations mentioned above, and another individual. Consolidated Amended Complaint ("CAC"), ECF No. 46. Plaintiffs asserted violations of Section 1 of the Sherman Act, 15 U.S.C. § 1; the Cartwright Act, Cal. Bus. & Prof. Code § 16720; and California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.* CAC ¶¶ 126–55.

Defendants moved to dismiss the CAC. ECF Nos. 56, 58. The Court held that Plaintiffs' Sherman Act claim was barred by the McCarran-Ferguson Act insofar as it alleged that Defendants conspired to seek approval of uniform maximum rates by CDI. ECF No. 91 at 12. The Court rejected Defendants' various immunity defenses and held that Plaintiffs' Sherman Act claim was not barred as to the rebating allegations and that their Cartwright Act and UCL claims were not barred as to the premium-fixing and rebating allegations. *Id.* at 12–18.

The Court further held that Plaintiffs plausibly pleaded the existence of an antitrust conspiracy for purposes of their Sherman Act and Cartwright Act claims. *Id.* at 23. The Court based this holding on Plaintiffs' allegations of (1) parallel conduct through the "filing for uniform premium rates," "refrain[ing] from offering competitive rebates," and "misrepresentation regarding Defendants' ability to offer rebates; and (2) various plus factors, including trade association meetings that offered "opportunities to exchange information or make agreements," "public statements by defendants that could be construed as 'invitations to agree,'" and "market factors that suggest the presence of price fixing, such as an unusually low loss ratio, and competition on factors other than price, such as marketing and credit terms." *Id.* at 19–23 (citations omitted). However, the Court held that Plaintiffs failed to allege sufficient facts to show that all of the sureties, bail agencies, and ABC and GSAA had "joined or participated" in the conspiracy. *Id.* at 27–28. The Court accordingly dismissed Plaintiffs' claims against these Defendants with leave to amend. *Id.* The Court denied the motion as to CBAA and the individual Defendants, including Carmichael.

2. Second Consolidated Class Action Complaint

Plaintiffs filed their Second Consolidated Class Action Complaint ("SCAC") on May 13, 2020, along with a motion to lift the stay of discovery that the Court had imposed pending resolution of the previous motions to dismiss. ECF Nos. 94, 95. The Court granted the motion on August 11, 2020. ECF No. 126. Defendants thereafter filed a joint motion to dismiss the SCAC. ECF No. 112.

The Court held that the SCAC plausibly alleged an antitrust conspiracy among the surety Defendants, but that it alleged sufficiently specific claims only against Defendants ASC and Carmichael. ECF No. 159 at 24. The Court found that the SCAC "does not include any allegations as to how or when the surety Defendants agreed to seek approval for a uniform premium rate." *Id.* at 20. The Court further found that, while Plaintiffs identified dates of conferences of trade associations that allegedly provided opportunities for collusion, the SCAC "d[id] not allege that any surety Defendant learned of or agreed to join the conspiracy at any of these meetings." *Id.* As to the bail agencies and trade associations, the Court held that Defendants failed to plead facts showing that these parties ever agreed to join the conspiracy. *Id.* at 10–12. Accordingly, the Court granted the motion as to all Defendants except for ASC and Carmichael. *Id.* at 24.

3. TCAC and the Instant Motion

Following a period of additional limited discovery, Plaintiffs filed their TCAC. ECF No. 269. In this iteration of the complaint, Plaintiffs narrow the scope of their claims, naming only the sureties and Carmichael as defendants and omitting the bail agencies, trade associations, and the other individual. *Compare* TCAC ¶¶ 15–35 *with* SCAC ¶¶ 15–46. Plaintiffs once more assert claims under the Sherman Act, TCAC ¶¶ 424–30, the Cartwright Act, *Id.* at ¶¶ 404–414, and the UCL, *Id.* ¶¶ 415–423.

On May 26, 2022, Defendants filed a joint motion to dismiss the TCAC, ECF No. 284, and various Defendants submitted individual briefs in support of the motion, ECF Nos. 287–89, 291–93, 295–98, 300. Plaintiffs filed an opposition to the motion on July 11, 2022, ECF No. 305, and Defendants filed replies, ECF Nos. 310–21. The Court held a hearing on the joint motion to

dismiss on November 3, 2022. ECF No. 326.

II. JURISDICTION

The Court has subject-matter jurisdiction pursuant to 15 U.S.C. §§ 15 and 26, and 28 U.S.C. §§ 1331, 1337, and 1367. The Court also has jurisdiction pursuant to 28 U.S.C. § 1332(d) because the amount in controversy exceeds $5,000,000, at least one member of the proposed class is diverse from at least one Defendant, and the size of the proposed class exceeds 100 persons.

III. LEGAL STANDARD

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Dismissal "is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Factual allegations need not be detailed, but facts they must be "enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft*, 556 U.S. at 678. While this standard is not "akin to a 'probability requirement' . . . it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550 U.S. at 556). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557). In determining whether a plaintiff has met the plausibility requirement, a court must "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable" to the plaintiff. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).

IV. DISCUSSION

Defendants argue that the *Noerr-Pennington* doctrine bars Plaintiffs' amended claims and

that the TCAC is otherwise insufficient to state a claim. ECF No. 284 at 9–22; *see also* ECF Nos. 287–89, 291–93, 295–98, 300.

A. The *Noerr-Pennington* Doctrine

The Court previously held that Plaintiffs' claims in the CAC were not barred by the *Noerr-Pennington* doctrine. ECF 91 at 16–18. Defendants argue that the doctrine bars Plaintiffs' claims in the TCAC because their allegations rely on communications made by Defendants in the course of Defendants' involvement in the trade associations discussed above. ECF No. 284 at 25–27. Those communications, Defendants argue, constitute petitioning activity protected by the First Amendment. *Id.* Plaintiffs argue that because the Court previously held that the doctrine does not apply such that Defendants' argument amounts to a motion for reconsideration for which Defendants did not seek leave of the Court in violation of Civil Local Rule 7-9. ECF No. 305 at 29–30. Plaintiffs further argue that even if Defendants could reassert the defense, it does not apply to Plaintiffs' claims. *Id.* at 30–33. Defendants reply that they may reassert the defense because they are challenging a new complaint. ECF No. 310 at 15–16.

As to the threshold question of whether Defendants may reassert the defense, the Court agrees with Defendants. "An amended pleading supersedes the original," *Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1547 (9th Cir. 1989), such that a motion to dismiss an amended complaint "is not a motion for reconsideration of the Court's prior order, but, rather, a new motion addressing a newly filed complaint." *Turner v. Tierney*, No. C 12-6231 MMC, 2013 WL 2156264, at *1 (N.D. Cal. May 17, 2013). Accordingly, Defendants may reassert this defense previously presented to the Court without violating Civil Local Rule 7-9.[3] *See id.*

[3] To the extent that Plaintiffs liken Local Rule 7-9 to the law of the case doctrine to argue that this doctrine, too, should preclude Plaintiffs from reasserting immunity under the *Noerr-Pennington* doctrine, ECF No. 305 at 25, the Court disagrees. "Application of the [law of the case doctrine] is discretionary," *United States v. Lummi Indian Tribe*, 235 F.3d 443, 453 (9th Cir. 2000), and a court may depart from the law of the case where "changed circumstances exist," *United States v. Alexander*, 106 F.3d 874 (9th Cir. 1997). Here, Plaintiffs claims partially rest on new factual allegations such that the TCAC presents an altered narrative from that of the CAC. The Court thus finds it necessary to revisit the question of the applicability of the defense to Plaintiffs' claims as presented in the TCAC.

Turning to the merits, "the *Noerr-Pennington* doctrine . . . places certain '[j]oint efforts to influence public officials' beyond the reach of the antitrust laws." *F.T.C. v. Ticor Title Ins. Co.*, 504 U.S. 621, 627 (1992) (citing *Mine Workers v. Pennington*, 381 U.S. 657, 670 (1965) and *E. R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 136 (1961)). While the doctrine originated in the context of claims under the Sherman Act, it applies to claims under the Cartwright Act as well. *See Blank v. Kirwan*, 39 Cal. 3d 311, 322 (1985). "Where, independent of any government action, the anticompetitive restraint results directly from private action, the restraint cannot form the basis for antitrust liability if it is 'incidental' to a *valid* effort to influence governmental action." *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 499 (1988) (emphasis added).

The *Noerr-Pennington* doctrine does not bar Plaintiffs' claims. Although Plaintiffs rely on additional facts in support of their allegations, the Court agrees with its prior characterization that "Plaintiffs do not allege that Defendants jointly lobbied the California legislature to set certain premium rates, or that they staged a misleading but lawful publicity campaign intended to obtain a legislative or regulatory result." ECF No. 91 at 17. Rather, Plaintiffs allege that Defendants acted in furtherance of a conspiracy to artificially inflate the price of bail bonds by seeking approval of identical premium rates to CDI, by suppressing the rebating practices of bail agents, and by maintaining those rates and rebate-suppression practices despite the existence of strong economic incentives to compete. TCAC ¶¶ 6, 111–12. That certain conspiratorial communications occurred amidst broader discussions that touched upon legislative advocacy efforts is insufficient to bring claims stemming from those communications within the ambit of the *Noerr-Pennington* doctrine. The Ninth Circuit made clear in *Clipper Exxpress v. Rocky Mountain Motor Tariff Bureau, Inc.*, 690 F.2d 1240, 1263 (9th Cir. 1982), that "[w]hen . . . the petitioning activity is but a larger part of the overall scheme to restrain trade, there is no overall immunity." Indeed, the *Noerr* Court itself emphasized that the immunity did not protect "combinations ordinarily characterized by an express or implied agreement or understanding that the participants will jointly give up their trade freedom, or help one another to take away the freedom of others through the use of such divides as price-fixing agreements . . . and other similar arrangements." 365 U.S. 136. And the Supreme

Court subsequently reaffirmed that "First Amendment rights may not be used as the means or pretext for achieving 'substantive evils' . . . which the legislature has the power to control. . . . If the end result is unlawful, it matters not that the means used in violation may be lawful." *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 515 (1972); *see also Pennington*, 381 U.S. at 370 n.3.

Put differently, accepting the well-pleaded facts in the complaint as true and drawing all reasonable inferences in Plaintiffs' favor, the arrangements here were not "'incidental' to a valid effort to influence government action." *Allied Tube*, 486 U.S. at 499. Rather, the efforts to influence government action were incidental to the furtherance of a legally invalid agreement. *See United States ex rel. Wilson v. Maxxam, Inc.*, No. C 06-7497 CW, 2009 WL 322934, at *1 ("Plaintiffs seek to impose liability, not for the act of 'petitioning' the government, but for specific acts committed in the course of 'petitioning' the government. This is a critical distinction. The First Amendment provides that liability generally cannot be imposed on the basis that one has exercised his or her right to petition the government. It does not provide that liability cannot be imposed for any conduct whatsoever that occurs during the course of petitioning the government.").

Defendants' argument to the contrary misunderstands the doctrine. Defendants principally rely on *Sosa v. DIRECTV, Inc.*, 437 F.3d, 925, 935 (9th Cir. 2006), for the proposition that "communications between private parties are sufficiently within the protection of the Petition Clause to trigger the *Noerr-Pennington* doctrine, so long as they are sufficiently related to petitioning activity." *See* ECF No. 284 at 25. In *Sosa*, however, the Ninth Circuit assumed the validity of the underlying petitioning activity in holding that DIRECTV's communication of settlement demands to the plaintiff prior to the commencement of litigation was protected by the doctrine. 437 F.3d at 935–39. As discussed above, however, there is no immunity in the absence of a predicate "valid effort to influence government action," *Allied Tube*, 486 U.S. at 499, that is, where the petitioning activity "is but a larger part of the overall scheme to restrain trade," *Clipper Exxpress*, 690 F.2d at 1263. Under Defendants' view of the doctrine, colluding corporations could shield themselves from antitrust liability altogether by simply labeling their efforts as legislative or

by otherwise endeavoring to codify their anticompetitive agreements. However, "the reach of the *Noerr-Pennington* doctrine is not that extensive, and the antitrust laws are not that impotent." *Id.* at 1265.[4]

The *Noerr-Pennington* doctrine thus does not apply to Plaintiffs' claims.

B. Sufficiency of the TCAC

The Court previously held that the SCAC plausibly alleged a conspiracy among the sureties and sufficed to state claims against ASC and Carmichael. ECF No. 159 at 24. As to the remaining Defendants, the Court held that Plaintiffs' allegations were not sufficiently specific to allege each Defendant's role in the alleged conspiracy. *Id.* Thus, the question now before the Court is whether the TCAC pleads sufficiently specific allegations as to each Defendant to state a claim against that Defendant, with the exception of ASC and Carmichael.

Section 1 of the Sherman Act prohibits any contract, combination, or conspiracy that constitutes an "unreasonable restraint" of trade.[5] *State Oil Co. v. Khan*, 522 U.S. 3, 10 (1997). To state a claim under Section 1, a plaintiff must plead "evidentiary facts which, if true, will prove: (1) a contract, combination or conspiracy among two or more persons or distinct business entities; (2) by which the persons or entities intended to harm or restrain trade or commerce among the several States, or with foreign nations; (3) which actually injures competition." *Kendall v. Visa USA, Inc.*, 518 F.3d 1042, 1048 (9th Cir. 2008). "The 'crucial question' prompting Section 1 liability is 'whether the challenged anticompetitive conduct stems from [lawful] independent decision or from an agreement, tacit or express.'" *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litig.*, 28 F.4th 42, 46 (9th Cir. 2022) ("*DRAM*") (quoting *Twombly*, 550 U.S. at 553).

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[4] In reply, Defendants rely on the Court's decision in *Bay Area Surgical Mgmt. LLC v. Aetna Life Ins. Co.*, 2016 WL 3880989, at *9 (N.D. Cal. Jul. 18, 2016) for the proposition that "what Plaintiffs overlook is that *Clipper Ex[x]press* applies where an antitrust conspiracy has already been established, but does not provide *Noerr* activity can establish an antitrust conspiracy in the first instance." ECF No. 310 at 18. In contrast with *Bay Area*, however, the Court has twice held that Plaintiffs plausibly alleged the existence of an antitrust conspiracy. ECF No. 91 at 23; ECF No. 159 at 24.

[5] Because the Cartwright Act was modeled after the Sherman Act, the Court's analysis addresses both statutes together under federal antitrust law. *See, e.g., County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1160 (9th Cir. 2001).

When a plaintiff alleges an antitrust conspiracy arising from parallel conduct, the plaintiff "must include additional factual allegations that place that parallel conduct in a context suggesting a preceding agreement." *Id.* at 47. Such additional allegations are termed "plus factors." *In re Musical Instruments and Equip. Antitrust Litig.*, 798 F.3d 1186, 1194 (9th Cir. 2014) ("*Musical Instruments*"). Plus factors include "economic actions and outcomes that are largely inconsistent with unilateral conduct but largely consistent with explicitly coordinated actions." *Id.* (citing *Twombly*, 550 U.S. at 557 n.4). A plaintiff's "proffered plus factors must be evaluated holistically." *DRAM*, 28 F.4th at 53. Courts further "recognize that 'circumstantial evidence is the lifeblood of antitrust law'" such that a plaintiff "bringing a claim under Section 1 often must rely on such circumstantial evidence . . . to sustain a case past the pleading stage." *Id.* (quoting *United States v. Falstaff Brewing Corp.*, 410 U.S. 526, 534 n.13 (1973)); *see Esco Corp. v. United States*, 340 F.2d 1000, 1007 (9th Cir. 1965) ("A knowing wink can mean more than words.")

Courts evaluating whether a plaintiff has plausibly alleged an antitrust conspiracy also consider that "[a] co-conspirator need not know of the existence or identity of the other members of the conspiracy or the full extent of the conspiracy." *In re High-Tech Emp. Antitrust Litig.*, 856 F. Supp. 2d 1103, 1118 (N.D. Cal. 2012) (citing *Beltz Travel Serv., Inc. v. Int'l Air Transp. Ass'n*, 620 F.2d 1360, 1366–67 (9th Cir. 1980)); *see also Beltz*, 620 F.2d at 1367 ("Participation by each conspirator in every detail in the execution of the conspiracy is unnecessary to establish liability, for each conspirator may be performing different tasks to bring about the desired result.").

The Court previously held that the CAC and SCAC alleged parallel conduct in the form of nearly uniform filing for standard premium rates, and in the form of similarly misleading representations concerning Defendants' ability to offer rebates. ECF No. 91 at 19–21; ECF No. 159 at 12–15. The Court also held that the SCAC raised a suggestion of a preceding agreement based on three sets of factors: (1) participation in trade associations that provide "opportunities to exchange information or make agreements," *see In re Static Random Access Memory (SRAM) Antitrust Litig.*, 580 F. Supp. 2d 896, 903 (N.D. Cal. 2008) ("*SRAM*"); (2) statements by Defendants that could be construed as "invitations to agree," *see In re TFT-LCD (Flat Panel) Antitrust Litig.*, 586 F. Supp. 2d 1109, 1116 (N.D. Cal. 2008) ("*TFT-LCD I*"); and (3) factors

suggesting a "market susceptible to conspiratorial price-fixing," such as high barriers to entry, high market concentration, waning demand, commodity inelasticity and homogeneity, a negligible rate of relevant technological change, identical production costs between sellers, and the ease of detecting defections from the conspiracy, *see DRAM*, 28 F.4th at 52 ("Extreme market concentration may suggest conspiracy, particularly when accompanied by other plausible plus factor allegations."); *In re Chocolate Confectionary Antitrust Litig.*, 602 F. Supp. 2d 538, 576 (M.D. Pa. 2009); *In re Titanium Dioxide Antitrust Litig.*, 959 F. Supp. 2d 799, 826–27 (D. Md. 2013) (listing high concentration, "standardized, commodity-like" products, high barriers to entry, excess capacity, and waning demand as factors that may make a market conducive to oligopolistic price fixing); *see also In re Flat Glass Antitrust Litig.*, 385 F.3d 350, 361 (3d Cir. 2004) ("*Flat Glass*"); *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 656–57 (7th Cir. 2002) ("*High Fructose Corn Syrup*"); *In re Text Messaging Antitrust Litig.*, 630 F.3d 622, 27 (7th Cir. 2010) ("*Text Messaging*") (holding that a complaint plausibly alleged a price-fixing conspiracy where it alleged "a mixture of parallel behaviors, details of industry structure, and industry practices, that facilitate collusion"). ECF 159 at 16–17 (citing SCAC ¶¶ 67–100).

The TCAC alleges both forms of parallel conduct by all Defendants, TCAC ¶¶ 6, 111–12, and alleges the presence of all of these factors as to all Defendants, but it provides numerous additional facts as to the first two sets of factors with respect to each Defendant. TCAC ¶¶ 56–101, 115–403. Defendants jointly advance several arguments as to all Defendants, ECF No. 284, and a number of Defendants challenge the sufficiency of the TCAC as to each of them specifically, ECF Nos. 287–89, 291–93, 295–98, 300. The Court takes each category of argument in turn.

1. General Arguments

Defendants argue that the TCAC lacks the requisite degree of specificity to sufficiently allege (1) an agreement, (2) how each Defendant joined and participated in the alleged conspiracy, and (3) that each Defendant joined and participated in the conspiracy.[6] ECF No. 284 at 16–25.

[6] Defendants also request that the Court take judicial notice of the pricing reports and financial statements of various Defendants. ECF No. 283. Plaintiffs do not oppose this request. ECF No.

Plaintiffs argue that, when viewed as a whole, the TCAC suffices to allege each Defendant's entry into and participation in the alleged conspiracy. ECF No. 305 at 18–23.

Defendants overstate Plaintiffs' burden. While Defendants are correct that the Court previously concluded that Plaintiffs' complaint must allege each Defendant's "role in the alleged conspiracy," *TFT-LCD I*, 586 F. Supp. 2d at 1117, Defendants' argument fails to consider the Court's previous holding that the SCAC—containing substantially fewer factual allegations than the TCAC—sufficiently alleged existence of an antitrust conspiracy between Defendants and sufficiently alleged the roles of ASC and Carmichael in that conspiracy. ECF No. 159 at 24. And while Defendants are further correct that Plaintiffs are required to plead facts demonstrating "who, did what, to whom (or with whom), where, and when," *Musical Instruments*, 798 F.3d at 1194 (quoting *Kendall*, 518 F.3d at 1048), the TCAC "need not contain detailed 'defendant by defendant allegations,'" *TFT-LCD I*, 586 F. Supp. 2d at 1117, nor is it required to contain "specific allegations of meetings or actions in furtherance of the alleged conspiracy," *In re Graphics Processing Units Antitrust Litig.*, 540 F. Supp. 2d 1085, 1095–96 (N.D. Cal. 2007); *see In re TFT-LCD (Flat Panel) Antitrust Litig.*, 599. F. Supp. 2d 1179, 1184 (N.D. Cal. 2009) ("*TFT-LCD II*") (holding that an amended complaint sufficed to state a claim where it "add[ed] detail about numerous illicit conspiratorial communications between and among defendants" and "additional information about the group and bilateral meetings by which the alleged price-fixing conspiracy was attended."). Rather, Plaintiffs must allege facts demonstrating that the parallel conduct could not "just as well be independent action." *DRAM*, 28 F.4th at 54.

Plaintiffs' complaint contains the degree of specificity required to allege antitrust claims.

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305 at 13 n.1. The Court grants judicial notice of the existence of these documents, but not for the truth or accuracy of the statements therein. *See Lee v. City of Los Angeles*, 250 F.3d 668, 689–90 (9th Cir. 2001). While the Court "can consider the *existence* of the [documents] identified by [Defendants]," the Court "may not, on the basis of these reports, draw inferences or take notice of facts that might reasonably be disputed." *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011). Defendants contend that because this information is publicly available, Defendants' alleged exchange of that information in the trade association setting cannot possibly have been conspiratorial. ECF No. 284 at 20–21. But this is precisely the type of inference that might be reasonably disputed that the Court is expressly prohibited from making. *Corinthian Colleges*, 655 at 999. "[W]hile [Defendants'] assertions with respect to the [documents] . . . may ultimately prove true, [the Court] will not decide these specific factual matters at this stage." *Id.* The Court does not rely on the contents of these documents in resolving the motion to dismiss.

In addition to the requisite parallel conduct indicative of a horizontal price-fixing conspiracy, the TCAC sufficiently pleads that Defendants' actions in seeking approval of and maintaining the standard 10% premium while suppressing rebating amounts to an "extreme action against self-interest" that the Ninth Circuit considers to be a plus factor. *DRAM*, 28 F.4th at 50 (quoting *Musical Instruments*, 798 F.3d at 1195). The TCAC demonstrates not only that the bail bonds market is susceptible to conspiratorial price-fixing, but also that Defendants' individual decisions run contrary to the strong incentives for sureties to compete by seeking approval of lower premium rates and discounting those rates through rebates. TCAC ¶¶ 6, 90–112, 172–73, 188–190, 201–02, 219–220, 234–35, 248–49, 260–61, 271–72, 283–84, 297–98, 308–09, 319–20, 331, 341, 353, 364, 376, 388–89. This is especially true considering Defendants' maintenance of this parallel conduct even after CDI required ACC and IFIC to lower their premium rate to 9%. TCAC ¶¶ 8, 187. Deliberate action contrary to what industry leaders recognize that "[s]imple economics" would otherwise "dictate[]," *id* ¶ 76, thus appears "so perilous in the absence of advance agreement that no reasonable firm would make the challenged move without such agreement," *Musical Instruments*, 798 F.3d at 1195. This plus factor applies to all Defendants.

Defendants further challenge two categories of factual support on which the TCAC relies: the exchanges of pricing information and participation in trade associations. ECF No. 284 at 20–23. As to the former, Defendants argue that the Court should not consider the exchanges because the information allegedly gathered by and disseminated to members of the SFAA Bail Bond Advisory Committee is also required to be filed with CDI and that such information prior to 2019 is publicly available. ECF No. 284 at 21. As Plaintiffs emphasize, however, Defendants fail to explain why Defendants would gather and exchange pricing data that is otherwise available publicly, and Defendants fail to address the fact that SFAA's antitrust guidelines expressly prohibit the discussion of "any element of rates" as well as the discussion or disclosure of "information on any competitively sensitive practices, including pricing." ECF No. 285-9 at 2; TCAC ¶ 122. More to the point, although Defendants are correct that conspiracy cannot be inferred from "*[g]athering information* about pricing and competition in the industry" alone, *In re Citric Acid Litig.*, 191 F.3d 1090, 1098 (9th Cir. 1999) (emphasis added), it is also true that "the

exchange of price information alone can be 'sufficient to establish combination or conspiracy,'" *SRAM*, 580 F. Supp. 2d at 902 (emphasis added) (quoting *United States v. Container Corp. of Am.*, 393 U.S. 333, 335 (1969)). The Court will thus consider this category of allegations.

As to the latter category of factual support, Defendants argue that the Court should not consider their trade association participation because allegations concerning membership in trade associations and attendance at trade association meetings in insufficient to allege conspiratorial conduct. ECF No. 284 at 21–23. Defendants rely on *Musical Instruments*, 798 F.3d at 1196, for the proposition that "mere participation in trade-organization meetings where information is exchanged, and strategies are advocated does not suggest an illegal agreement." However, Plaintiffs allege far more than mere participation. "Courts have recognized that trade association affiliations and attendance at industry events may be alleged to show that putative conspirators had the opportunity and means to develop and/or further their alleged collusive scheme." *In re Flash Memory Antitrust Litig.*, 643 F. Supp. 2d 1133 (N.D. Cal. 2009); *see In re Text Messaging Antitrust Litig.*, 630 F.3d 622, 627–29 (7th Cir. 2010) (holding that complaint plausibly alleged price-fixing conspiracy where it alleged "a mixture of parallel behaviors, details of industry structure, and industry practices, that facilitate collusion," including membership in trade associations). As discussed above, Plaintiffs allege meetings of specific trade associations on specific dates at specific locations with specific combinations of Defendants in attendance at which Defendants allegedly discussed, monitored, and furthered the conspiracy. TCAC ¶ 118, 125–36, 136, 141–42. Courts in this district have credited analogously specific allegations concerning trade association participation in evaluating the plausibility of complaints. *See, e.g.*, *TFT-LCD II*, 599 F. Supp. 2d at 1184 (considering the amended complaint's inclusion of "additional information about the group and bilateral meetings by which the alleged price-fixing conspiracy was attended."); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 738 F. Supp. 2d 1011, 1018 (N.D. Cal. 2010) (considering allegations "of group and bilateral meetings . . . some of which were attended by high-level company executives"). The Court will thus consider this category of allegations.

At bottom, Defendants' challenges to these two categories of allegations disregard the

Court's obligation to consider the sufficiency of the complaint holistically. As the Court previously recognized, ECF No. 91 at 19, "[P]laintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each. . . . [T]he character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole." *In re High-Tech Emp. Antitrust Litig.*, 856 F. Supp. 2d at 1118 (quoting *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962)); *see Flat Glass* 385 F.3d at 368 ("We echo the Seventh Circuit's admonition . . . that the 'statement of facts in the defendants' brief combines a recital of the facts favorable to the defendants with an interpretation favorable to them of the remaining evidence; and that is the character of a trial brief rather than of a brief defending a grant of summary judgment.'" (quoting *High Fructose Corn Syrup*, 295 F.3d at 655)). The Court will thus consider each set of allegations with respect to each Defendant, mindful that the TCAC additionally alleges parallel conduct and the economic plus factor discussed above as to each Defendant.

2. Defendant-Specific Allegations

While a "a single plausible plus factor allegation that weakly tips in plaintiffs' favor, without some further factual support, is not enough," *DRAM*, 28 F.4th at 53, the TCAC contains additional factual support with respect to each Defendant so as to implicate that Defendant in the conspiracy.

a. ACC, IFIC, and AIA ("AIA Defendants")

ACC and IFIC are part of the "alliance" umbrella organization AIA. *Id.* ¶ 178. Plaintiffs allege that ACC, IFIC, and AIA joined the conspiracy no later than 2004. *Id.* ¶ 182. Plaintiffs also allege that Jerry Watson, while Vice President of AIA, agreed to the conspiracy and ratified the conspiratorial conduct of ACC and IFIC. *Id.* ¶ 179. Plaintiffs point to an article he wrote on behalf of AIA, published on AIA's website, in which he explains that "[p]rice-cutting is a form of cancer" and concludes that "[t]he price-cutting sickness has reached epidemic proportions in the bail profession." *Id.* ¶ 179.

The AIA Defendants were members of ABC, which is chaired by Carmichael. *Id.* ¶ 84,

125–26. ABC's Vice President wrote in a blog post that "ABC [] work[ed] with a large coalition that includes California's two state associations, CBAA and GSBAA," and later wrote, "The cooperation among industry competitors . . . has been nothing short of inspiring." *Id.* ¶ 150. ABC's Executive director observed that "[t]he bonding industry has worked hard to rectify th[e] abuse" of bail agents "cut[ting] premium rates." *Id.* ¶ 151. AIA was listed as a "Sustaining Member Company" at ABC's annual conference in 2019. *Id.* ¶ 150.

AIA was also a member of CalBIG. *Id.* ¶ 127–28. An AIA representative wrote to members of AIA discussing a "Mandatory 10% Premium Concept." ECF No. 285-2 at 2; TCAC ¶ 128. The representative was copied on the email exchange between Carmichael and Lexington's representative in which Carmichael wrote, "My joining CalBIG was not to singularly adopt a mission of achieving unity within the industry. I see that as a goal but ultimately, we should be acting for the benefit of surety insurers." ECF No. 282-2 at 2. Lexington's representative, in reply, agreed that "[p]remium cutting, discounting, rebating, or whatever chosen name, is the number one problem affecting bail . . . . We want a menage e trois [sic] of sorts; CBAA, CalBIG[,] and [GSBAA] in a bail bond love fest. . . . We should be dancing with all the associations. . . . We don't have to love them, or even like them for that matter, but we do have to dance with them. We are otherwise dooming this important concept to failure." ECF No. 285-3 at 2; TCAC ¶ 139.

AIA was also a member of CBAA and participated in its "Bail Bond Project." TCAC ¶ 161. That project resulted in draft forms that made no reference to rebates, stated that premium fees are "typically ten percent of the amount of bond," and contained an addendum requiring it to be "attached to every Bail Bond Application and Agreement entered into in the state of California." *Id.* AIA attended a CBAA meeting on November 2, 2011. *Id.* ¶ 142.

IFIC was a member of the SFAA's Bail Bond Advisory Committee, which at all times was chaired by an alleged co-conspirator, including Carmichael beginning in 2016. *Id.* ¶ 118. The Bail Bond Advisory Committee included ACC and IFIC, and the AIA Defendants allegedly attended seven Committee meetings from 2003 to 2011 at which they allegedly discussed and coordinated the conspiracy at nine meetings between 2003 and 2011. *Id.* ¶ 185 The AIA Defendants allegedly submitted competitive data to SFAA in violation of the SFAA's own antitrust guidelines, and

SFAA and the Committee then used that data to create and disseminate reports summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. The AIA Defendants allegedly used those reports to monitor deviations from the conspiracy. TCAC ¶ 121.

The AIA Defendants argue that the TCAC does not suffice to state an antitrust claim against any of them. ECF No. 297. The Court is not persuaded. The Court is required to evaluate these specific plus factors in tandem with the economic plus factor described above against the backdrop of these three Defendants' parallel conduct in maintaining uniform premium rates and suppressing rebating practices.[7] While ACC, IFIC, and AIA are correct that the Court previously found Watson's alleged statements to be "open-ended" and therefore "insufficient to allege that he agreed to the conspiracy," ECF No. 159 at 23, the same cannot be said of these Defendants' involvement in ABC, CalBIG, CBAA, and SFAA. ABC's Vice President publicly praised the cooperation among would-be competitors that it had achieved, the CalBIG e-mails between Carmichael and Lexington's representative reflect threshold mutual understandings suggestive of an implicit agreement between group members, AIA participated in efforts to enroot the 10% premium without possibility of rebate in draft forms produced by the CBAA's Bail Bond Project, the three Defendants submitted and received competitive information to the SFAA allegedly in violation of the SFAA's own antitrust guidelines, and the three Defendants attended trade association meetings for which Plaintiffs provide dates, locations, and allegations that the three Defendants used these meetings to further the conspiracy. These allegations collectively suffice to allege the AIA Defendants' "role[s] in the alleged conspiracy." *See TFT-LCD I*, 586 F. Supp. 2d at 1117.

b. ACIC

ACIC was a member of ABC and attended four ABC meetings from 2011 to 2016 at which Defendants allegedly discussed, monitored, and furthered the conspiracy. TCAC ¶ 125–26. ACIC was a member of CalBIG and was copied in the e-mail exchange between Carmichael and Lexington, discussed in greater detail above, regarding the need to "achiev[e] unity within the

[7] IFIC lowered its premium rates across all lines of insurance as required by CDI, TCAC ¶ 187, but otherwise maintained a consistent 10% rate for the duration of the period, *id.* ¶ 7.

industry," ECF No. 285-2 at 2, and recognition that premium cutting and rebating represent "the number one problem affecting bail," ECF No. 285-3 at 2. ACIC was also a member of CBAA and attended two CBAA meetings from 2011 to 2012. ACIC was also a member of GSBAA, and GSBAA's President, Topo Padilla, referred to a meeting that ACIC attended in the Padilla E-mail. ECF No. 285-4 at 3, 5; TCAC ¶ 126, 141, 143. For the convenience of the reader, Padilla wrote, "When the discussions with regard to the Parole Bond and Rebates came about, the sureties had a very obvious part in the discussions . . . [W]e can in no way create this new line of business without their say. As far as the Rebate issue, this issue is in fact something that the sureties are in control of with their filed rates. . . . So, we need to work together to come up with a solution and stance from our associations." ECF No. 285-4 at 3. ACIC was a founding member of the SFAA's Bail Bond Advisory Committee, which at all times was chaired by an alleged co-conspirator, including Carmichael beginning in 2016. TCAC ¶ 118. ACIC attended seven Bail Bond Advisory Committee meetings from 2003 to 2011 at which Defendants allegedly entered into, monitored, and enforced the conspiracy. *Id.* ¶ 121–23, 197. ACIC also submitted competitive data to SFAA in violation of the SFAA's own antitrust guidelines, and SFAA and the Committee then used that data to create and disseminate reports summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. ACIC allegedly used those reports to monitor deviations from the conspiracy. TCAC ¶ 121.

ACIC was copied on the 2012 e-mail thread between members of GSBAA and CBAA in which they discussed Chad Conley's advertisement of a 6% net bond cost. TCAC ¶ 162; ECF No. 285-7 at 12–13. In that same thread, CSBAA Board Member Sean Cook wrote, "One of the many reasons we are better is that we are a $2 billion dollar [sic] industry charging 10% for $2 hundred million in premium . . . compared to a $2 billion industry charging 6% or $120 million in premium. . . . That's huge tax revenue lost all because a DOI employee told us he thought it would hurt the consumer. Seriously? By charging 10% we are hurting the consumer? HOW exactly? It only hurts the family of the defendant that committed the crime and that's by their own choice and free will. . . ." ECF No. 285-7 at 3. Conley later posted online "that his efforts to provide lower prices for his bail bond clients resulted in pressure from a 'good ol boys club,' which 'came after

[his] license for trying to save clients money.'" TCAC ¶ 81.

ACIC argues that the TCAC lacks the requisite degree of specificity as to its participation in the alleged conspiracy. ECF No. 289 1–3. The Court disagrees. ACIC appears to suggest that Plaintiffs need to plead the very sort of "defendant by defendant allegations" that courts in this district have concluded are not required to survive a motion to dismiss. *TFT-LCD I*, 586 F. Supp. 2d at 117. When considered alongside ACIC's parallel conduct and the economic plus factor discussed above, these facts suffice to state ACIC's "role in the alleged conspiracy," *id.*, and the TCAC therefore suffices to state a conspiracy claim against ACIC.

c. Bankers

Bankers allegedly joined the alleged conspiracy in 2004 through direct communications with other Defendants. TCAC ¶ 213–14. Bankers was a member of ABC and attended a board meeting in 2016 at which Defendants allegedly discussed, monitored, and furthered the conspiracy. TCAC ¶ 125–26, 214. Bankers was listed as a "Sustaining Member Company" at ABC's annual conference in 2019. *Id.* ¶ 150. Bankers is also a member of CalBIG and was copied on the e-mail exchange between Carmichael and Lexington's representative. ECF No. 285-2 at 2; ECF No. 285-3 at 2. Bankers is a member of the Bail Bond Advisory Committee, which at all times has been chaired by an alleged co-conspirator, including Carmichael beginning in 2016. TCAC ¶ 118. Bankers attended two Committee meetings, one in 2007 and another in 2009. *Id.* ¶ 214. Bankers allegedly submitted competitive data to SFAA in violation of the SFAA's own antitrust guidelines, and the SFAA and the Committee then used that data to create and disseminate reports to Bankers summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. Bankers allegedly used those reports to monitor deviations from the conspiracy. TCAC ¶ 121.

Bankers argues that "[m]erely attending meetings does not meet the specificity required" and that the e-mail exchange between Carmichael and Lexington's representative is insufficient to indicate agreement to a conspiracy. ECF No. 296 at 2–4. While it is true that Bankers is alleged to only have attended a single ABC meeting in 2016, it also is true that, just one year later, ABC's Vice President wrote in a blog post that "ABC [] work[ed] with a large coalition that includes California's two state associations, CBAA and GSBAA," and that "[t]he cooperation among

industry competitors . . . has been nothing short of inspiring." *Id.* ¶ 150. And ABC's Executive Director further observed that "[t]he bonding industry has worked hard to rectify th[e] abuse" of bail agents "cut[ting] premium rates." *Id.* ¶ 151. Further, the Court's consideration of Bankers' participation in SFAA's Bail Bond Advisory Committee must account for the fact that an alleged co-conspirator chaired that Committee at all times, including Carmichael beginning in 2016. These facts, accepted as true and viewed in the light most favorable to Plaintiffs, support a reasonable inference that these associations were utilized as opportunities to further the conspiracy. Considering the foregoing facts alongside Bankers' parallel conduct and the economic plus factor discussed above, the Court concludes that the TCAC alleges Bankers' "role in the alleged conspiracy," *TFT-LCD I*, 586 F. Supp. 2d at 1117, and therefore suffices to state a conspiracy claim against Bankers.

d. Accredited

Accredited allegedly entered the conspiracy at its onset in 2004. *Id.* ¶ 227. Accredited was a member of ABC and contributed $220,416 to it in 2016, and Carmichael is Chairman of ABC. *Id.* ¶ 84, 228. Accredited was also a member of CalBIG in 2005 and was copied on the e-mail between Carmichael and Lexington's representative. TCAC ¶ 128; ECF No. 285-2 at 2; ECF No. 285-3 at 2. Accredited was a member of CBAA and sent representatives to three meetings from 2006 to 2012. *Id.* ¶ 230. Accredited further participated CBAA's Bail Bond Project, which produced draft forms dated 2013 to be used by bail agents in California. *Id.* ¶ 161. The draft stated that premium rates are "typically ten percent of the amount of bond," made no reference to rebates nor provide a space to input a rebate, and included an addendum that stated, "This addendum shall be attached to every Bail Bond Application and Agreement entered into in the state of California." TCAC ¶ 161.

Accredited was also a member of GSBAA, and GSBAA's President, Padilla, referred to a meeting which Accredited attended in which the sureties "had a very obvious part in the discussions" of premium rates and rebates, stressed "that the sureties are in control of [the Rebate issue] with their files rates," and emphasized the "need to work together to come up with a solution ECF No. 285-4 at 3, 5; TCAC ¶ 126, 141, 143. Accredited was also a founding member

of the SFAA's Bail Bond Advisory Committee, sent a representative to three meetings from 2007 to 2011, a representative of Accredited served as Chair of the Committee from 2013 to 2016, and that representative was replaced by Carmichael in 2016. TCAC ¶ 118. Accredited allegedly submitted competitive data to SFAA in violation of the SFAA's own antitrust guidelines, and the SFAA and the Committee then used that data to create and disseminate reports to Accredited summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. Accredited allegedly used those reports to monitor deviations from the conspiracy. TCAC ¶ 121.

Accredited's principal argument in support of its motion to dismiss is that because its profit margins are not supracompetitive the TCAC does not plausibly plead its participation in a conspiracy. ECF No. 300 at 5-6. In making this argument, it points to Paragraphs 234 and 235 of the TCAC. *Id.* at 5. But those paragraphs refer to Accredited's *loss ratios*, not its profit margins. Plaintiffs allege that Accredited, like other Defendants, had 0% loss ratios throughout the years in question. TCAC ¶ 234. Thus, Plaintiffs allege, in a competitive market, Accredited "would have had the incentive to expand output by lowering its filed rate after incurring such small losses and particularly in light of how profitable the company perceived bail bonds to be." *Id.* ¶ 235. Because Accredited's motion does not address these allegations, its arguments about its profit rates are a red herring.[8]

Considering the foregoing facts alongside Accredited's parallel conduct and the economic plus factor discussed above, the Court concludes that the TCAC alleges Accredited's "role in the alleged conspiracy," *TFT-LCD I*, 586 F. Supp. 2d at 1117, and therefore suffices to state a conspiracy claim against Accredited.

e. Lexington

Lexington has allegedly been a member of the conspiracy since its inception in 2004. TCAC ¶ 241. Lexington sent a representative to a CBAA meeting in 2011. *Id.* ¶ 243. Lexington was a member of CalBIG and in 2005, and Lexington's representative responded to Carmichael's assertion that "premium discounting and rebating by the agency force" is "the disease affecting the

[8] It also supports its arguments with a plethora of evidence outside the allegations of the TCAC, which the Court cannot consider on a motion to dismiss.

California market" and his insistence that CalBIG collectively "act[] for the benefit of surety insurers," ECF No. 285-2 at 2, by agreeing that "[p]remium cutting, discounting, rebating, or whatever chosen name, is the number one problem affecting bail" and stating that Lexington "want[ed] a menage e trois [sic] of sorts; CBAA, CalBIG[,] and [GSBAA] in a bail bond love fest," ECF No. 285-3 at 2; TCAC ¶ 139.

Lexington was a member of CBAA's Bail Bond Project, which produced the recommended standardized forms to be used by all bail agents in California discussed above, *id.* ¶ 161, and Lexington sent a representative to a CBAA meeting in 2011. *Id.* ¶ 142.

Lexington was a member of GSBAA and was copied on the Padilla E-mail in which Padilla described the recent meeting that a Lexington representative attended where the sureties "had a very obvious part in the discussions" of premium rates and rebates, stressed "that the sureties are in control of [the Rebate issue] with their files rates," and emphasized the "need to work together to come up with a solution." ECF No. 285-4 at 3, 5; TCAC ¶ 126, 141, 143. Lexington is listed as a "Surety Resource" for GSBAA. TCAC ¶ 242.

Lexington was also represented at the inaugural meeting of the SFAA Bail Bond Advisory Committee, and its representative served as Chair of the Committee from 2003 to 2013 and was succeeded by a representative of Accredited and by and Carmichael thereafter. *Id.* ¶ 118. Lexington allegedly submitted competitive data to SFAA in violation of the SFAA's own antitrust guidelines, and the SFAA and the Committee then used that data to create and disseminate reports to summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. Lexington allegedly used those reports to monitor deviations from the conspiracy. TCAC ¶ 121.

Lexington argues that its participation in trade associations and the communications described above do not sufficiently allege Lexington's involvement in the conspiracy. ECF No. 295 at 3–5. Like many of its co-Defendants, Lexington contends that TCAC must contain the kind of detailed and direct defendant by defendant allegations that courts in this district have concluded are not necessary to survive a motion to dismiss a complaint alleging an antitrust conspiracy. *TFT-LCD I*, 586 F. Supp. 2d at 117; *In re Graphics Processing Units Antitrust Litig.*, 540 F. Supp. 2d at 1095–96. When considered alongside Lexington's parallel conduct and the

economic plus factor discussed above, the foregoing facts allege "role in the alleged conspiracy," *TFT-LCD I*, 586 F. Supp. 2d at 1117, and therefore suffice to state a conspiracy claim against Lexington.

f. Seneca, North River, U.S. Fire ("C&F Defendants")

Seneca allegedly joined the alleged conspiracy in 2004. TCAC ¶ 256. U.S. Fire joined the alleged conspiracy in 2006. *Id.* ¶ 360. North River entered the conspiracy in 2006. *Id.* ¶ 338. Seneca, and U.S. Fire are members of Crum & Forster, *id.* ¶ 256, and North River is a subsidiary of Crum & Forster, *id.* ¶ 338. Crum & Forster is a member of ABC. *Id.* ¶ 125. Accredited began transferring its book of bail business to Crum & Forster beginning March 1, 2019. *Id.* ¶ 227. North River's and U.S. Fire's respective rate applications describe themselves as "me too" filings. *Id.* ¶ 338, 362.

The C&F Defendants were allegedly kept apprised of the common understandings that underpin the conspiracy reached by members of ABC and discussed at four separate ABC meetings from 2011 to 2016. *Id.* ¶ 125–26.

Seneca is a member of the SFAA, and it sent a representative to a Bail Bond Advisory Committee meeting in 2009. *Id.* ¶ 257. North River is also a member of the SFAA. *Id.* ¶ 342. The C&F Defendants allegedly submitted competitive data to SFAA in violation of the SFAA's own antitrust guidelines, and the SFAA and the Committee then used that data to create and disseminate reports summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. The C&F Defendants allegedly used those reports to monitor deviations from the conspiracy. TCAC ¶ 121.

The C&F Defendants argue that the TCAC is deficient because mere membership in trade associations and attendance at meetings without more is insufficient to allege antitrust liability and that the complaint otherwise lacks specific allegations as to its involvement in the conspiracy. ECF No. 298 at 2–4. As discussed above, however, the TCAC pleads facts that take participation in ABC and SFAA "outside the realm of" mere involvement. *Flat Glass*, 385 F.3d at 369. Those facts, accepted as true and viewed in the light most favorable to Plaintiffs, support a reasonable inference that these associations were utilized as opportunities to further the conspiracy. And the C&F Defendants further appear to contend that the TCAC must contain the kind of detailed and

direct defendant by defendant allegations that courts in this district have concluded are not necessary to survive a motion to dismiss a complaint alleging an antitrust conspiracy. *TFT-LCD I*, 586 F. Supp. 2d at 117; *Graphics Processing Units*, 540 F. Supp. 2d at 1095–96. Considering the foregoing facts alongside the C&F Defendants' parallel conduct and the economic plus factor, the Court concludes that the TCAC alleges the C&F Defendants' "role[s] in the alleged conspiracy," *TFT-LCD I*, 586 F. Supp. 2d at 1117, and therefore suffices to state a conspiracy claim against the C&F Defendants.

g. Continental

Continental allegedly joined the alleged conspiracy in 2004. TCAC ¶ 267. Continental was a member of the SFAA and was allegedly kept apprised of the mutual understandings reached and reinforced at Bail Bond Advisory Committee meetings. *Id.* ¶ 119. Continental allegedly submitted competitive data to SFAA and the Committee in violation of the SFAA's own antitrust guidelines, and the SFAA and the Committee then used that data to create and disseminate reports summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. Continental allegedly used those reports to monitor deviations from the conspiracy. TCAC ¶ 121.

Continental argues that its participation in SFAA's Bail Bond Advisory Committee and its exchange of information with SFAA is insufficient to implicate it in the conspiracy. ECF No. 292 at 2–5. The Court disagrees. The TCAC sufficiently alleges that the Bail Bond Advisory Committee, chaired at all times by a representative of either Lexington, Accredited, or ASC, was used to further the conspiracy. Considering these facts alongside Continental's parallel conduct and the economic plus factor discussed above, the Court concludes that the TCAC alleges Continental's "role in the alleged conspiracy," *TFT-LCD I*, 586 F. Supp. 2d at 1117, and therefore suffices to state a conspiracy claim against Continental.

h. Seaview

Seaview joined the alleged conspiracy in 2011. TCAC ¶ 278–79. Seaview's rate approval application described its proposed rates as "an adoption of current bail bond rates approved for use by Danielson National Insurance Company." *Id.* ¶ 279. Seaview expressly based its pricing scheme "on [SFAA] pricing," allegedly in accordance with the implicit agreement of members of

the Bail Bond Advisory Committee. *Id.* Seaview was allegedly kept apprised of the mutual understandings reached and reinforced at Bail Bond Advisory Committee meetings. *Id.* ¶ 119. Seaview allegedly submitted competitive data to SFAA and the Committee in violation of the SFAA's own antitrust guidelines, and the SFAA and the Committee then used that data to create and disseminate reports summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. Seaview allegedly used those reports to monitor deviations from the conspiracy. TCAC ¶ 121.

Like many of its co-Defendants, Seaview contends that TCAC must contain the kind of detailed and direct defendant by defendant allegations that courts in this district have concluded are not necessary to survive a motion to dismiss a complaint alleging an antitrust conspiracy. *Compare* ECF No. 287 at 5–6 *with TFT-LCD I*, 586 F. Supp. 2d at 117, and *In re Graphics Processing Units Antitrust Litig.*, 540 F. Supp. 2d at 1095–96. When considered alongside Seaview's parallel conduct and the economic plus factor, the foregoing facts allege Seaview's "role in the alleged conspiracy," *TFT-LCD I*, 586 F. Supp. 2d at 1117, and the TCAC therefore suffices to state a conspiracy claim against Seaview.

i. Danielson

Danielson joined the alleged conspiracy in 2008. TCAC ¶ 291. In its rate approval application, Danielson stated that its premium rate was "based on [SFAA] pricing." *Id.* Danielson was a member of the Bail Bond Advisory Committee and sent a representative to three meetings from 2009 to 2011. *Id.* ¶ 292. Danielson allegedly submitted competitive data to SFAA and the Committee in violation of the SFAA's own antitrust guidelines, and the SFAA and the Committee then used that data to create and disseminate reports summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. Danielson allegedly used those reports to monitor deviations from the conspiracy. TCAC ¶ 121.

Like many of its co-Defendants, Danielson contends that TCAC must contain the kind of detailed and direct defendant by defendant allegations that courts in this district have concluded are not necessary to survive a motion to dismiss a complaint alleging an antitrust conspiracy. *Compare* ECF No. 291 at 2–4 *with TFT-LCD I*, 586 F. Supp. 2d at 117, and *In re Graphics Processing Units Antitrust Litig.*, 540 F. Supp. 2d at 1095–96. When considered alongside

Danielson's parallel conduct and the economic plus factor, the foregoing facts allege Danielson's "role in the alleged conspiracy," *TFT-LCD I*, 586 F. Supp. 2d at 1117, and the TCAC therefore suffices to state a conspiracy claim against Danielson.

j. Financial

Financial joined the alleged conspiracy in 2005. TCAC ¶ 303. In its rate approval application, Financial recognized that the bail bonds comprised "a very small niche security market," and it stated that "[t]here is no actuarial justification for bail bond rates filed by any insurance company writing bail bond surety." *Id.* Financial further stated, "New insurance company rate filings for bail bond surety . . . are essentially 'ME TO[O]' filings." *Id.* ¶ 304. Financial's application specifically referred to the 10% rates used by, among others, ACIC, Continental, ASC, Bankers, IFCIC, and AIC. *Id.* ¶ 303.

Financial was a member of the CBAA and sent a representative to a CBAA meeting in 2011. *Id.* ¶ 142. Financial participated in CBAA's Bail Bond Project, which produced the recommended standardized forms discussed above. *Id.* ¶ 161. Financial allegedly submitted competitive data to SFAA and the Committee in violation of the SFAA's own antitrust guidelines, and the SFAA and the Committee then used that data to create and disseminate reports summarizing such data. *Id.* ¶ 121–23, 306; ECF No. 285-9 at 2. Financial allegedly used those reports to monitor deviations from the conspiracy. *Id.* ¶ 121.

Financial argues that participation in these associations alone does not suffice. ECF No. 314 at 3–4. As discussed above, however, the TCAC pleads facts that take participation in CBAA and SFAA "outside the realm of" mere involvement. *Flat Glass*, 385 F.3d at 369. Those facts, accepted as true and viewed in the light most favorable to Plaintiffs, support a reasonable inference that these associations were utilized as opportunities to further the conspiracy. Considering the foregoing facts alongside Financial's parallel conduct and the economic plus factor, the Court concludes that the TCAC suffices to allege Financial's "role in the alleged conspiracy," *TFT-LCD I*, 586 F. Supp. 2d at 1117, and therefore suffices to state a conspiracy claim against Financial.

k. ILM

ILM joined the alleged conspiracy in 2005. TCAC ¶ 315. ILM is a member of the SFAA and contributed to it in 2015 and 2016. *Id.* ¶ 316. ILM was allegedly kept apprised of the mutual understandings reached and reinforced at Bail Bond Advisory Committee meetings. *Id.* ¶ 119. ILM allegedly submitted competitive data to SFAA and the Committee in violation of the SFAA's own antitrust guidelines, and the SFAA and the Committee then used that data to create and disseminate reports summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. ILM allegedly used those reports to monitor deviations from the conspiracy. TCAC 121.

ILM argues that its participation in SFAA's Bail Bond Advisory Committee alone is insufficient to implicate it in the conspiracy. ECF No. 314 at 3–4. As discussed above, however, the TCAC pleads facts that take participation in SFAA "outside the realm of" mere involvement. *Flat Glass*, 385 F.3d at 369. Considering these facts alongside ILM's parallel conduct and the economic plus factor discussed above, the Court concludes that the TCAC alleges ILM's "role in the alleged conspiracy," *TFT-LCD I*, 586 F. Supp. 2d at 1117, and therefore suffices to state a conspiracy claim against ILM.

l. Lexon

Lexon joined the alleged conspiracy in 2011. TCAC ¶ 327. In its rate application, Lexon "explicitly model[ed] its rate structurer after" those of other sureties, including Sun. *Id.* ¶ 336. Lexon was a member of CBAA and participated in its Bail Bonds Project that produced the recommended standardized forms. *Id.* ¶ 161. Lexon is a member of the SFAA. *Id.* ¶ 329. Lexon was allegedly kept apprised of the mutual understandings reached and reinforced at Bail Bond Advisory Committee meetings. *Id.* ¶ 119. Lexon allegedly submitted competitive data to SFAA and the Committee in violation of the SFAA's own antitrust guidelines, and the SFAA and the Committee then used that data to create and disseminate reports summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. Lexon allegedly used those reports to monitor deviations from the conspiracy. TCAC ¶ 121.

Lexon argues that its participation in SFAA's Bail Bond Advisory Committee alone is insufficient to implicate it in the conspiracy. ECF No. 314 at 3–4. As discussed above, however, the TCAC pleads facts that take participation in SFAA "outside the realm of" mere involvement.

Flat Glass, 385 F.3d at 369. Considering these facts alongside Lexon's parallel conduct and the economic plus factor discussed above, the Court concludes that the TCAC alleges Lexon's "role in the alleged conspiracy," *TFT-LCD I*, 586 F. Supp. 2d at 1117, and therefore suffices to state a conspiracy claim against Lexon.

m. Sun

Sun joined the alleged conspiracy in 2008. TCAC ¶ 348. Sun is a member of ABC, sent a representative to an ABC meeting in 2016, *id.* ¶ 350, and Sun was listed as a "Sustaining Member Company" at ABC's annual conference in 2019, *id.* ¶ 150. Sun was also a member of CBAA and participated in its Bail Bonds Project that produced the recommended standardized forms, *id.* ¶ 161, and Sun sent a representative to a CBAA meeting in 2011, *id.* ¶ 142. Sun sent a representative to a Bail Bond Advisory Committee meeting in 2007. *Id.* ¶ 126, 350. Sun allegedly submitted competitive data to SFAA and the Committee in violation of the SFAA's own antitrust guidelines, and the SFAA and the Committee then used that data to create and disseminate reports summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. Sun allegedly used those reports to monitor deviations from the conspiracy. TCAC ¶ 121.

Sun argues that the TCAC fails to sufficiently allege its participation in the alleged conspiracy. ECF No. 288 at 2–4. The Court disagrees. As discussed above, the TCAC pleads facts that take participation in ABC and SFAA "outside the realm of" mere involvement. *Flat Glass*, 385 F.3d at 369. Considering the foregoing facts alongside Sun's parallel conduct and the economic plus factor discussed above, the Court concludes that the TCAC alleges Sun's "role in the alleged conspiracy," *TFT-LCD I*, 586 F. Supp. 2d at 1117, and therefore suffices to state a conspiracy claim against Sun.

n. Universal

Universal entered the conspiracy in 2017. TCAC ¶ 371. Universal sent representatives to an ABC meeting in 2016. *Id.* ¶ 373. A 2017 CDI filing by universal stated that it was "basing its rates for bail bonds on rate data obtained from [CBAA]." *Id.* ¶ 157. Universal was allegedly kept apprised of the mutual understandings reached and reinforced at Bail Bond Advisory Committee meetings. *Id.* ¶ 119. Universal allegedly submitted competitive data to SFAA and the Committee

in violation of the SFAA's own antitrust guidelines, and the SFAA and the Committee then used that data to create and disseminate reports summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. Universal allegedly used those reports to monitor deviations from the conspiracy. TCAC ¶ 121.

Universal argues that the TCAC fails to sufficiently allege its participation in the alleged conspiracy. ECF No. 288 at 2–4. The Court disagrees. As discussed above, the TCAC pleads facts that take participation in ABC and SFAA "outside the realm of" mere involvement. *Flat Glass*, 385 F.3d at 369. Considering the foregoing facts alongside Universal's parallel conduct and the economic plus factor discussed above, the Court concludes that the TCAC alleges Universal's "role in the alleged conspiracy," *TFT-LCD I*, 586 F. Supp. 2d at 1117, and therefore suffices to state a conspiracy claim against Universal.

o. Williamsburg

Williamsburg joined the alleged conspiracy in 2011. TCAC ¶ 384. Williamsburg is a member of CBAA and participated in its Bail Bond Project, which produced the recommended standardized forms. *Id.* ¶ 161. Williamsburg is listed as a "Surety Resource" for GSBAA. *Id.* ¶ 386. Williamsburg is a member of SFAA's Bail Bond Advisory Committee. *Id.* ¶ 385. Williamsburg was allegedly kept apprised of the mutual understandings reached and reinforced at Bail Bond Advisory Committee meetings. *Id.* ¶ 119. Williamsburg allegedly submitted competitive data to SFAA and the Committee in violation of the SFAA's own antitrust guidelines, and the SFAA and the Committee then used that data to create and disseminate reports summarizing such data. *Id.* ¶ 121–23; ECF No. 285-9 at 2. Williamsburg allegedly used those reports to monitor deviations from the conspiracy. TCAC ¶ 121.

Williamsburg argues that its participation in CBAA and SFAA's Bail Bond Advisory Committee alone is insufficient to implicate it in the conspiracy. ECF No. 314 at 3–4. As discussed above, however, the TCAC pleads facts that take participation in CBAA and SFAA "outside the realm of" mere involvement. *Flat Glass*, 385 F.3d at 369. Considering these facts alongside Williamsburg's parallel conduct and the economic plus factor discussed above, the Court concludes that the TCAC alleges Williamsburg's "role in the alleged conspiracy," *TFT-LCD*

I, 586 F. Supp. 2d at 1117, and therefore suffices to state a conspiracy claim against Williamsburg.

CONCLUSION

Defendants' joint motion to dismiss is denied. The Court sets this case for a case management conference on December 20, 2022 at 2:00 p.m. An updated joint case management statement is due December 13, 2022.

IT IS SO ORDERED.

Dated: November 7, 2022

JON S. TIGAR
United States District Judge