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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 CIRILO UCHARIMA ALVARADO,

Case No. 3:22-cv-00249-MMD-CLB

7 Plaintiff,

ORDER

8 v.

9 WESTERN RANGE ASSOCIATION, *et*
al.,

10 Defendants.
11

12 **I. SUMMARY**

13 Plaintiff Cirilo Ucharima Alvarado, on behalf of himself and all others similarly
14 situated, alleges that Defendants Western Range Association (“WRA”) and eight
15 individual WRA member ranches¹ (collectively, “Ranch Defendants”) unlawfully
16 restrained trade in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, *et*
17 *seq.* (“Sherman Act”). (ECF No. 254 (“Third Amended Complaint” or “TAC”).) Before the
18 Court are Defendants’ motions to dismiss the TAC (ECF Nos. 262, 263, 265, 265, 266)²
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21 _____
22 ¹Ranch Defendants are Borda Land & Sheep Company, LLC, Ellison Ranching
23 Company, Faulkner Land and Livestock Company, Inc., F.I.M. Corp., Holland Ranch,
LLC, John Espil Sheep Co., Inc., Little Paris Sheep Company, LLC (“Little Ranch”), and
Need More Sheep Co., LLC.

24 ²These include WRA’s motion to dismiss (ECF No. 263); Espil, Borda, and
25 Holland’s joint motion to dismiss (ECF No. 262); F.I.M., Need More Sheep, and Faulkner’s
26 joint motion to dismiss (ECF No. 264); Ellison’s motion to dismiss (ECF No. 265); and
27 Little Ranch’s motion to dismiss (ECF No. 266). Each Ranch Defendant also joined the
28 other dismissal motions. (ECF Nos. 268, 269, 271, 274.) With leave from the Court (ECF
No. 276), Plaintiff responded to all five motions to dismiss in a single consolidated
opposition (ECF No. 277). WRA and Ranch Defendants replied (ECF Nos. 278, 279, 280,
281, 282). The Court determined that a hearing was not necessary to resolve the motions.
See LR 78-1 (“All motions may be considered and decided with or without a hearing.”).

1 and Ellison's motion to seal (ECF No. 267)³. For the reasons explained below, the Court
2 finds that Defendants are not entitled to antitrust immunity and that Plaintiff has now
3 sufficiently alleged Sherman Act claims against both WRA and Ranch Defendants. The
4 Court thus denies Defendants' motions to dismiss.

5 **II. BACKGROUND⁴**

6 Plaintiff is a Peruvian citizen who came to the United States on a temporary H-2A
7 visa to work as a sheepherder at Little Ranch in Spring Creek, Nevada, from July 2020
8 to December 2020. (ECF No. 254 at 7-8.) WRA is a non-profit association of member
9 sheep ranches located in various states in the Western United States. (*Id.* at 20-21, 37.)
10 Ranch Defendants are members of WRA and are all independent businesses based in
11 Nevada, with the exception of Faulkner, which is based in Idaho. (*Id.* at 11.) Plaintiff seeks
12 to represent a class of "all persons who worked as a sheepherder for the WRA or any of
13 the member ranches of the WRA through the H-2A visa program at any time on or after
14 June 1, 2018." (*Id.* at 61.)

15 Plaintiff filed his original complaint in June 2022, suing only WRA and alleging that
16 the association violated Section 1 of the Sherman Act, 15 U.S.C. § 1, *et seq.*, by making
17 an unlawful agreement with its members to fix sheepherder wages and horizontally
18 allocating the market for foreign sheepherders. (ECF No. 1.) The Court denied WRA's
19 motion to dismiss (ECF No. 23), finding that Plaintiff plausibly alleged an unlawful wage-
20 fixing agreement (ECF No. 43).

21 In June 2023, Plaintiff filed a first amended complaint (ECF No. 50 ("FAC")),
22 alleging essentially the same facts as the original complaint but naming eight WRA
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24 ³Ellison represents that Exhibit H has been marked as "confidential" and subject to
25 the stipulated protective order. (ECF No. 267.) However, to overcome the strong
26 presumption in favor of public access, Ellison must make particularized showings as to
27 why Exhibit H should be sealed and provide compelling reasons, supported by specific
28 factual findings, for their request. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d
1172, 1178 (9th Cir. 2006); *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir.
2010). Accordingly, the Court denies Ellison's motion without prejudice. Ellison did not file
Exhibit H under seal so denying Ellison's motion would not result in the unsealing of
Exhibit H.

⁴The following allegations are adapted from the TAC unless otherwise noted.

1 member ranches as additional defendants. (ECF No. 125 at 8.) Ranch Defendants moved
2 to dismiss the claims asserted against them in the FAC (ECF Nos. 96, 99, 109) and the
3 Court granted their motions, finding that while Plaintiff pled viable claims against WRA,
4 he failed to sufficiently allege how each individual Ranch Defendant specifically assented
5 to the purported anticompetitive agreements. (ECF No. 173.) Attempting to cure these
6 deficiencies, Plaintiff filed a second amended complaint (ECF No. 232) and then moved
7 for leave to file a third amended complaint (ECF No. 244). The Court granted that request
8 (ECF No. 253⁵) and Plaintiff filed the operative TAC (ECF No. 254).

9 In the TAC, Plaintiff retains the following core allegations, tracking previous
10 versions of the complaint, but adds new facts about Ranch Defendants. (*Id.*)

11 The H-2A visa program is an agricultural guest worker program administered by
12 the U.S. Department of Labor (“DOL”) under which temporary work visas are issued to
13 foreign workers to fill positions that employers cannot fill through the domestic labor
14 market. (*Id.* at 11-12.) DOL regulations require that employers offer domestic workers “no
15 less than the same benefits, wages, and working conditions that the employer is offering,
16 intends to offer, or will provide to H-2A workers.” (*Id.* at 12.) See 20 C.F.R. § 655.122(a).
17 DOL has implemented “special procedures” governing the wage floor for H-2A
18 shepherders. (ECF No. 254 at 12.) The regulations specifically require ranchers, and
19 the membership organizations acting on their behalf, to offer “at least the AEWR [Adverse
20 Effect Wage Rate], the prevailing hourly wage rate, the prevailing piece rate, the agreed-
21 upon collective bargaining rate, or the Federal or State minimum wage rate, in effect at
22 the time work is performed, whichever is highest,” during any pay period. (*Id.* at 12.) See
23 20 C.F.R. § 655.122(l). WRA creates job orders for domestic shepherders and files H-
24 2A applications for foreign shepherders on behalf of its members. (*Id.* at 18, 21.)

25 Plaintiff alleges that WRA and its members, including Ranch Defendants,
26 conspired and agreed to fix the wages offered to both domestic and foreign shepherders

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28 ⁵In granting leave to file the TAC, the Court also granted Defendants full
opportunity to move for dismissal of the further-amended complaint and thus denied then-
pending motions to dismiss the second amended complaint as moot. (ECF No. 253.)

1 at or near the wage floor set by DOL. (*Id.* at 5, 23, 47.) He asserts that WRA instructs its
2 members that they will all pay the minimum allowable wage for H-2A shepherders, and
3 Ranch Defendants each agree to offer and pay that wage, thereby effectively
4 “surrender[ing] their economic independence and autonomy to WRA.” (*Id.* at 23, 47.)

5 Plaintiff also alleges that WRA horizontally allocates the market for foreign H-2A
6 shepherders among its members by assigning them to ranches and not allowing them
7 to seek employment elsewhere without the consent of their current employer, and that
8 WRA members agree not to poach employees from one another. (*Id.* at 64-66.) He
9 asserts that each Ranch Defendant acquiesced to and participated in these no-transfer
10 and no-solicitation schemes, thus “conspire[ing] and agree[ing] to avoid competing for
11 labor, coercing shepherders into agreements which remove shepherders’ ability to
12 negotiate for better wages or wages commensurate with their experience, or to seek
13 employment at other ranches.” (*Id.* at 65.)

14 Plaintiff asserts violations of Section 1 of the Sherman Act based on (1) the
15 horizontal wage-fixing agreement and (2) the horizontal market allocation scheme. (*Id.* at
16 62-66.)

17 **III. DISCUSSION**

18 Defendants now move to dismiss the TAC under Fed. R. Civ. P. 12(b)(6). (ECF
19 Nos. 262, 263, 264, 265, 266.) *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)
20 (requiring a complaint to contain “enough facts to state a claim to relief that is plausible
21 on its face”); *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 811 (9th Cir. 1988) (citations
22 omitted) (“To establish a section 1 violation under the Sherman Act, a plaintiff must
23 demonstrate three elements: (1) an agreement, conspiracy, or combination among two
24 or more persons or distinct business entities; (2) which is intended to harm or
25 unreasonably restrain competition; and (3) which actually causes injury to competition,
26 beyond the impact on the claimant, within a field of commerce in which the claimant is
27 engaged (i.e., ‘antitrust injury’).”)

1 The Court first addresses WRA's motion (ECF No. 263), as many of the
2 association's arguments also bear on the viability of claims against Ranch Defendants.
3 The Court rejects WRA's new asserted bases for antitrust immunity and finds that
4 Plaintiff's allegations are sufficient to support claims against the association under either
5 a *per se* or rule of reason analysis. The Court then turns to Ranch Defendants' motions
6 (ECF Nos. 262, 264, 265, 266) and considers whether the additional facts alleged in the
7 TAC overcome the deficiencies in the FAC as to each individual member's acquiescence
8 to the anticompetitive schemes alleged.

9 **A. Antitrust Immunity**

10 The Court previously rejected WRA's antitrust immunity arguments under the
11 *Parker v. Brown* state-action immunity doctrine and the *Noerr-Pennington* lobbying
12 doctrine. (ECF No. 43 at 6-9.) WRA now argues that its activities are immune from
13 Sherman Act liability under several new theories, pointing to (1) the *Copperweld* doctrine;
14 (2) the express provisions of Section 6 of the Clayton Act; and (3) implied immunity
15 created by the H-2A regulatory protocol. (ECF No. 263 at 13-19.) None of these theories
16 are meritorious.

17 **1. Copperweld Doctrine & single entity status**

18 WRA first argues that the association and its members constitute a single entity
19 incapable of a Section 1 conspiracy under *Copperweld Corp. v. Independence Tube Co.*,
20 467 U.S. 752 (1984). (ECF No. 263 at 8-13.) But the single entity doctrine does not apply
21 here, where WRA is an organization composed of and run by competitors in the
22 sheepherding industry.

23 In *Copperweld*, the Supreme Court addressed the "narrow issue" of whether a
24 parent corporation could be guilty of conspiring with its subsidiary, concluding that
25 because "[a] parent and its wholly owned subsidiary have a complete unity of interest,"
26 their activity must be viewed as that of a single enterprise and accordingly cannot be
27 subject to Section 1 liability. 467 U.S. at 753, 71 (dismissing claims involving a parent
28 tubing steel corporation and its subsidiary manufacturer brought under the so-called

1 “intra-entity conspiracy doctrine”). The *Copperweld* court reasoned that, whereas Section
2 2 of the Sherman Act governs a single firm’s conduct in the context of monopolization,
3 Section 1 tracks the “basic distinction between concerted and independent action,”
4 reaching only unreasonable restraints of trade between separate entities and not “wholly
5 unilateral” activity. *Id.* at 753, 767-68 (citations omitted) (“[Parent-subsidary] objectives
6 are common, not disparate, and their general corporate objectives are guided or
7 determined not by two separate corporate consciousnesses, but one.”).⁶ In determining
8 that parent and subsidiary corporations were incapable of an “intra-entity conspiracy,” the
9 Supreme Court found no risk of “crippl[ing] antitrust enforcement,” noting its decision
10 would “simply eliminate treble damages from private state tort suits masquerading as
11 antitrust actions.” *Id.* at 777.

12 In *American Needle, Inc. v. National Football League*, 560 U.S. 183 (2010), the
13 Supreme Court further defined the limits of the single entity doctrine, addressing antitrust
14 claims brought by a corporation which designed and sold trademarked gear with logos of
15 athletic teams against an unincorporated association of professional football teams and
16 a corporation established by the association and its member teams. The Supreme Court
17 reaffirmed its overarching holding in *Copperweld*, but held that the *association’s* licensing
18 activities *could* constitute concerted action within the purview of Section 1. *See id.* The
19 *American Needle* Court emphasized that the relevant inquiry is “one of substance, not
20 form, which does not turn on whether the alleged parties . . . are part of a legally single
21 entity or seem like one firm or multiple firms in any metaphysical sense,” but rather on
22 whether the agreement joins together “separate economic actors pursuing separate
23 economic interests” such that it “deprives the marketplace of independent centers of
24 decisionmaking . . . and therefore of diversity of entrepreneurial interests and actual or
25 potential competition.” *Id.* at 195 (citing *Copperweld*, 467 U.S. at 769). As separately-

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27 ⁶This analysis is a logical extension of the general principle that a corporation
28 cannot conspire with its unincorporated divisions, because “a business enterprise
establishes divisions to further its own interests in the most efficient manner” and does
not “bring together economic power that was previously pursuing divergent goals,” *Id.* at
769.

1 managed businesses acting together through an unincorporated association, football
2 teams do not possess “either the unitary decisionmaking quality or the single aggregation
3 of economic power characteristic of independent action.” *Id.* at 196.

4 In the instant case, WRA is made up of a constellation of member ranches which
5 have no “unity of interest” to parallel a parent and its subsidiary. Like in *American Needle*,
6 each of WRA’s members is a “substantial, independently owned, independently managed
7 business” with a “separate corporate consciousness” and separate measures of
8 corporate success not necessarily aligned with other ranches operating in the same
9 market. *Am. Needle*, 560 U.S. at 196. It is quite clear, in other words, that Ranch
10 Defendants are *competitors*. The fact that WRA is itself a single legal body which may
11 “pursue [its member’s] common interests” (ECF No. 263 at 8) does not provide the cover
12 of a single-entity defense over a fundamentally competitive market dynamic. *Am. Needle*,
13 560 U.S. at 186 (holding that “[a]lthough the NFL respondents may be similar in some
14 sense to a single enterprise, they are not similar in the *relevant functional sense*” because
15 “[w]hile teams have common interests such as promoting the NFL brand, they are still
16 separate, profit-maximizing entities, and their interests in licensing team trademarks are
17 not necessarily aligned”) (emphasis added).

18 In essence, WRA asks the Court to find that the very existence of a unifying
19 organizational vehicle which might *enable* separate economic actors to engage in
20 anticompetitive concerted conduct also automatically immunizes that anticompetitive
21 conduct. But this conclusion would run counter to the purpose of the Sherman Act, and
22 the *Copperweld* doctrine does not protect WRA here.

23 **2. Section 6 of the Clayton Act**

24 Neither is the Court persuaded by WRA’s argument that, notwithstanding the
25 holding in *American Needle*, WRA should be treated as a single entity or otherwise
26 afforded specific immunity as a qualifying “agricultural organization, instituted for the
27 purpose of mutual help,” under Section 6 of the Clayton Act, 15 U.S.C. § 17. (ECF No.
28 263 at 8-10.) For support, WRA primarily turns to the Supreme Court’s 1962 decision

1 applying Section 6 of the Clayton Act in *Sunkist Growers, Inc. v. Winkler & Smith Citrus*
2 *Products*, 370 U.S. 19 (1962), cited briefly in *American Needle*, 560 U.S. at 193. But WRA
3 mischaracterizes the language and meaning of Section 6, as well as the implications of
4 *Sunkist* and its relevance to *American Needle*. Section 6 does not entitle Defendants to
5 a single-entity or statutory immunity defense.

6 Enacted in 1914, Section 6 of the Clayton Act specifically provides that the antitrust
7 laws may not be construed “to forbid the existence and operation of labor, agricultural, or
8 horticultural organizations, instituted for the purposes of mutual help . . . or to forbid or
9 restrain individual members of such organizations from lawfully carrying out the legitimate
10 objects thereof; nor shall such organizations, or the members thereof, be held or
11 construed to be illegal combinations or conspiracies in restraint of trade.” 15 U.S.C. § 17.
12 Section 6 thus prevents agricultural cooperatives and labor unions from being “held or
13 construed to be illegal combinations or conspiracies in restraint of trade, under the
14 antitrust laws, as they otherwise might have been.” *Maryland & Virginia Milk Producers*
15 *Ass’n v. U.S.*, 362 U.S. 458, 465 (1960) (internal quotations omitted). See also *id.* at 464
16 (noting that Congress inserted Section 6 because “[i]n the early 1900’s, when agricultural
17 cooperatives were growing in effectiveness, there was widespread concern because the
18 mere organization of farmers for mutual help was often considered to be a violation of the
19 antitrust laws”). By its plain language, however, the statute only forbids restraints on the
20 *activities* of these organizations and their members when they “*lawfully carry[] out the*
21 *legitimate objects thereof.*” 15 U.S.C. § 17 (emphasis added). “[N]either the language nor
22 the legislative history of the section indicates a congressional purpose to grant any
23 broader immunity to agricultural cooperatives” than that granted to labor unions, and the
24 Supreme Court “has held that the provisions . . . relating to labor unions do not manifest
25 a congressional purpose wholly to exempt them from the antitrust laws.” *Milk Producers*
26 *Ass’n*, 362 U.S. at 464-65 (finding Section 6 did not give an agricultural cooperative
27 unrestricted power to monopolize where otherwise prohibited by Section 2 of the
28

1 Sherman Act). Section 6 does not give “an entity full freedom to engage in predatory trade
2 practices at will.” *Id.* at 465-66.

3 Thus, the central question before the Court is whether declining to treat WRA’s
4 members as a single entity and imposing antitrust liability would “forbid or restrain [WRA’s
5 members] from lawfully carrying out . . . *legitimate objects*.” 15 U.S.C. § 17 (emphasis
6 added). Plaintiff argues that Section 6 should be narrowly construed to provide an
7 exemption only where agricultural associations act in their capacity as *producers*, i.e.
8 where “legitimate objects” encompass “activities related to the sale of products.” (ECF
9 No. 277 at 39-43.) The Court largely agrees.

10 As Plaintiff notes, Section 6 of the Clayton Act must be read in conjunction with the
11 Capper-Volstead Act, 7 U.S.C. § 291, which “sets out [Section 6] immunity in greater
12 specificity” and provides that agricultural producers “may act together in associations” to
13 “process[],” “prepare[] for market,” “handle[],” and “market[]” their products. *Sunkist*, 370
14 U.S. at 28 (quoting 7 U.S.C. § 291). WRA fails to point to any case in which a court has
15 held that Section 6 or Capper-Volstead immunity extends to labor-market restraints. On
16 the contrary, the Supreme Court has largely relied on narrower “producer” language and
17 has cautioned against overbreadth. *See, e.g., United States v. Borden Co.*, 308 U.S. 188,
18 204-05 (1939) (holding that neither Section 6 of the Clayton Act nor the Capper Volstead
19 Act granted immunity from liability under Section 1 of the Sherman Act for the combination
20 of a cooperative with others and noting that “[t]he right of these agricultural producers
21 thus to *unite in preparing for market and in marketing their products* . . . cannot be deemed
22 to authorize any combination or conspiracy with other persons in restraint of trade that
23 these producers may see fit to devise”) (emphasis added); *Milk Producers Ass’n*, 362 at
24 466-67 (citing 7 U.S.C. § 291) (emphasizing that Section 6 and the Capper-Volstead Act
25 were intended to “make it possible for farmer-producers to organize together, set
26 association policy, fix prices at which their cooperative will sell their produce, and
27 otherwise carry on like a business corporation without thereby violating the antitrust laws”
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1 but this “does not suggest a congressional desire to vest cooperatives with unrestricted
2 power to restrain trade”).

3 Here, Plaintiff’s central allegations do not relate to collective processing,
4 preparation, or marketing of products, but rather to manipulation of the labor market by
5 separately-owned competitors. WRA fails to convincingly argue that the “legitimate
6 objects” of its members engender “full freedom” to manipulate the labor market; indeed
7 that construction would risk improperly repurposing immunity statutes designed to
8 increase labor bargaining power vis-à-vis purchasers. See 15 U.S.C. § 17 (“The labor of
9 a human being is not a commodity or article of commerce”); *Milk Producers Ass’n*, 362
10 U.S. at 466-67 (purpose of the Clayton and Capper-Volstead Acts is not to “grant[] a class
11 privilege,” but to “equalize existing privileges by changing the law applicable to the
12 ordinary business corporations so the farmers can take advantage of it”). See also *Group*
13 *Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 231 (1979) (“It is well settled that
14 exemptions from the antitrust laws are to be narrowly construed.”).

15 WRA insists that the Supreme Court’s decision in *Sunkist* controls and directs the
16 application of Section 6 here. (ECF No. 263 at 6-10.) But *Sunkist* is fully consistent with
17 a narrower statutory construction. There, the Supreme Court found that three agricultural
18 organizations owned by the same citrus farmers—including Sunkist Growers, its wholly
19 owned subsidiary, and a cooperative processing association “owned and operated
20 exclusively by a number of lemon-grower associations all of which are members of
21 Sunkist Growers”—constituted a single organization.⁷ *Sunkist*, 370 U.S. at 20, 29
22 (reasoning that “the 12,000 growers here involved are in practical effect and in
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24 ⁷Notably, as relevant to the single-entity defense, the fact that the agricultural
25 organizations forming the association in *Sunkist* were owned by the *same* farmers reflects
26 a structural difference from this case. See *id.* at 29 (“There is no indication that the use of
27 separate corporations had economic significance in itself or that outsiders considered and
28 dealt with the three entities as independent organizations.”). The *Sunkist* court took issue
with reliance on arbitrary legal distinctions between entities which were not in reality
independent, as evident in their shared ownership. But those are not the circumstances
here, where WRA’s members have independent market status with clear economic
significance.

1 contemplation of the statutes one ‘organization’ or ‘association’” despite constituting
2 legally-distinct entities). The Court then found that under both Section 6 of the Clayton
3 Act and the Capper-Volstead Act, the association could not be held liable for challenged
4 activities involving “collective processing and marketing of their fruit and fruit products.”
5 *Id.* at 28. But again, processing and marketing activities are *squarely covered* by the
6 express language of the Capper-Volstead Act. See 7 U.S.C. § 291; *Milk Producers Ass’n*,
7 362 at 466-67. In other words, unlike in this action, in *Sunkist* there was no question that
8 the agricultural cooperative was advancing “legitimate objects” within the meaning of the
9 statute.⁸

10 Accordingly, the Court does not find that Section 6 of the Clayton Act bolsters
11 WRA’s single-entity defense or provides immunity from liability under the Sherman Act.

12 **3. Joint employer status & agency relationship**

13 WRA further argues it should be treated as a single entity because, “[f]or a
14 significant part of the time period alleged in the TAC, the WRA filed its H-2A applications
15 as a joint employer with, and later as an agent for, its rancher members.” (ECF No. 263
16 at 10.) WRA reasons that “[b]y definition, a joint employer constitutes one entity,” and “an
17 agent cannot conspire with its principal in violation of the antitrust laws.” (*Id.*) These
18 arguments are unavailing.

19 To start, even assuming WRA is a joint employer with Ranch Defendants under
20 relevant regulations, WRA fails to support the leap from that proposition to its conclusion
21 that the association must be considered a single entity under the separate legal regime
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25 ⁸Similarly, the *American Needle* court cited to *Sunkist* only for its early recognition
26 that, to focus only on formal legal status in determining whether entities are separate
27 “would be to impose grave legal consequences upon organizational distinctions that are
28 of *de minimis* meaning and effect to these growers who have banded together *for*
processing and marketing purposes within the purview of the Clayton and Capper-
Volstead Acts.” *Am. Needle*, 560 U.S. at 193 (quoting *Sunkist*, 370 U.S. at 29) (emphasis
added). WRA’s assertion that, by citing *Sunkist*, *American Needle* adopted a broad view
of Section 6 which controls in this action is unpersuasive.

1 created by the antitrust laws.⁹ As Plaintiff aptly notes, the test for what constitutes a “joint
2 employer”—most often relevant to the application of wage and hour laws—is distinct from
3 the test for a “single economic enterprise” under the antitrust laws. (ECF No. 277 at 13-
4 14.) *Compare* 22 C.F.R. § 655.103(b) (defining “joint employers” as “employers [that]
5 have sufficient definitional indicia of being a joint employer of a worker under the common
6 law of agency”) and *U.S. Equal Emp. Opp. Comm. v. Global Horizons, Inc.*, 915 F.3d 631,
7 638 (9th Cir. 2019) (describing the central joint employment inquiry as “the extent of
8 control that one may exercise over the details of the work of the other”), with *Am. Needle*,
9 560 U.S. at 195 (describing the single entity inquiry as whether an alleged conspiracy
10 “joins together separate decisionmakers”). Moreover, in practice it is clear that corporate
11 entities’ status as joint employers does not automatically resolve the single enterprise
12 question. *Compare, e.g., In re Jimmy John’s Overtime Litig.*, 877 F.3d 756, 769 (7th Cir.
13 2017) (observing that “plaintiffs frequently sue both their franchisee employer and the
14 franchisor for FLSA violations under a joint employer theory”), with *Arrington v. Burger*
15 *King Worldwide, Inc.*, 47 F.4th 1247 (11th Cir. 2022) (holding that a franchisor and its
16 franchisees are capable of concerted action).¹⁰

17 WRA also emphasizes that, for at least part of the time covered in the TAC, it filed
18 job orders as an authorized agent for its rancher members. (ECF No. 263 at 12-13.) See
19 20 CRF 655.131. Here, WRA points to *United States v. Gen. Elec. Co.*, 272 U.S. 476
20 (1926), a century-old case in which the Supreme Court held that an antitrust conspiracy
21 cannot exist between a principal and its agent. See *id.* at 488 (“The owner of an article
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23 ⁹WRA cites to various regulations and cases for the proposition that it is a joint
24 employer with its member ranches, but it does not cite to any case going to the impact of
this joint employer status here—indeed, the very nature of a “joint employer” relationship
implies a legally cognizable distinction between an association and its members.

25 ¹⁰WRA also points to *Llacua v. W. Range Ass’n*, 930 F.3d 1161, 1176 (10th Cir.
26 2019), where the Tenth Circuit found WRA was not sufficiently distinct from its members
27 to support RICO claims. However, the distinction between “persons” and “enterprises” in
the context of civil RICO claims does not imply that WRA must be treated as
28 indistinguishable from its members in all circumstances. Indeed, addressing Sherman Act
conspiracy claims, the *Llacua* court determined only that plaintiffs failed to adequately
allege facts supporting an agreement between member ranches and WRA, but did not
suggest that WRA is a single entity wholly immune from liability. See *id.*

1 patented or otherwise is not violating the common law or the Anti-Trust Act by seeking to
2 dispose of his articles directly to the consumer and fixing the price by which his agents
3 transfer the title from him directly to such consumer.”). But even setting aside that a
4 principal-agent relationship is not clearly apparent on the face of the TAC, *General*
5 *Electric* only supports the proposition that a principal-agent relationship establishes a
6 single entity defense when “a party challenges an agreement between a principal and its
7 agent” within the context of the agency relationship itself. See 272 U.S. at 485 (analyzing
8 terms of arrangement between patent-holding manufacturer and its sales agents to
9 determine whether they were “genuine agents”). See also, e.g., *Calculators Hawaii, Inc.*
10 *v. Brandt, Inc.*, 724 F.2d 1332, 1336 (9th Cir. 1983) (“In sum, Hallett was Brandt’s sales
11 agent and, in that capacity, was incapable of conspiring with Brandt . . .”). Here, Plaintiff
12 does not challenge a bilateral agency agreement *between* WRA and each member
13 rancher, but rather an agreement *amongst* WRA’s members, who are horizontal
14 competitors, allegedly “orchestrated by WRA.” (ECF No. 277 at 38.)

15 Accordingly, WRA is not immune from antitrust liability because of its status as a
16 joint employer with Ranch Defendants or its agency relationship with those Defendants.

17 **4. Implied immunity**

18 WRA next argues that even in the absence of express statutory immunity, there is
19 implied immunity because Plaintiff’s claims “arise from the WRA’s compliance with DOL
20 regulations” and “application of the antitrust laws is inconsistent with the H-2A Visa
21 regulatory scheme.” (ECF No. 263 at 17-19.) WRA asserts that under Supreme Court and
22 Ninth Circuit precedent, “[i]f an industry practice is heavily regulated under a federal
23 statute,” and “antitrust challenges to that practice . . . conflict with the regulatory scheme
24 that authorized it,” courts must consider that “Congress, in passing the regulatory
25 scheme, impliedly repealed the application of the antitrust laws to that practice.” (*Id.* at
26 13-14.) Plaintiff counters that implied antitrust immunity is appropriate only where there is
27 a clear and direct conflict between a specific regulatory scheme and the antitrust laws—
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1 a conflict which cannot be identified between H-2A regulations and Section 1 of the
2 Sherman Act in this case. The Court again agrees with Plaintiff.

3 “Implied antitrust immunity is not favored, and can be justified only by a convincing
4 showing of clear repugnancy between the antitrust laws and the regulatory system.”
5 *United States v. Nat’l Ass’n of Sec. Dealers, Inc.*, 422 U.S. 694, 719 (1975). Indeed, courts
6 have a “responsibility to reconcile the antitrust and regulatory statutes where feasible.” *Id.*
7 at 720 (citing *Silver v. New York Stock Exchange*, 373 U.S. 341, 356-57 (1963)). Implied
8 immunity exists “only where necessary to ensure that the regulatory scheme works, and
9 even then only to the minimum extent necessary.” *Northrop Corp. v. McDonnell Douglas*
10 *Corp.*, 705 F.2d 1030, 1056 (9th Cir. 1983). See also *Carnation Co. v. Pac. Westbound*
11 *Conference*, 383 U.S. 213, 218 (1966) (“[C]ourts cannot lightly assume that the
12 enactment of a special regulatory scheme for particular aspects of an industry was
13 intended to render the more general provisions of the antitrust laws wholly inapplicable to
14 that industry”). Regulation does not automatically “displace the antitrust laws by
15 implication.” *Nat’l Ass’n of Sec. Dealers, Inc.*, 422 U.S. at 695.

16 This case does not present one of the rare and discreet instances in which an
17 implied repeal of the Sherman Act is “necessary to make [a] (regulatory scheme) work.”
18 *Id.* at 734 (quoting *Silver*, 373 U.S. at 357). WRA insists that Plaintiff’s claims arise directly
19 “from the WRA’s compliance with DOL regulations.” (ECF No. 263 at 16.) But in rejecting
20 WRA’s previous immunity arguments, the Court essentially already found that no conflict
21 exists between the H-2A regulatory regime and application of antitrust laws here—let
22 alone the kind of “clear repugnancy” justifying implied immunity. (See ECF No. 43 at 9)
23 (“As Plaintiff argues and the Court agrees, ‘there is no government policy requiring (or
24 even permitting) applicants to collude to fix wages at the floor’—the ‘challenged restraint’
25 here—nor does the DOL actively supervise Defendant’s interactions with its members.”).
26 The same reasoning applies now.

27 Notably, the cases to which WRA turns for examples of implied antitrust immunity
28 only underscore why finding a similar exemption would be inappropriate here, as those

1 cited cases involve significantly more “pervasive” regulatory schemes. See, e.g., *Nat’l*
2 *Ass’n of Sec. Dealers*, 422 U.S. at 730-35 (finding that the Security and Exchange
3 Commission’s (“SEC”) exercise of regulatory authority over the National Association of
4 Securities Dealers was “sufficiently pervasive . . . to confer implied immunity” where the
5 statutory scheme authorized the SEC to “determine whether an association satisfies . . .
6 strict statutory requirements [,] submit for Commission approval any proposed rule
7 changes,” and “request supplementation of association rules”); *Pan Am. World Airways,*
8 *Inc. v. United States*, 371 U.S. 296 (1963) (dismissing an antitrust action against airline
9 and steamship companies because combinations between carriers were entrusted by
10 statute to the Civil Aeronautics Board, which is tasked with applying standards for the
11 “public interest”); *Brown v. Pro Football, Inc.*, 518 U.S. 231, 242 (1996) (finding a
12 professional football league’s conduct in unilaterally imposing a fixed salary fell within a
13 nonstatutory exemption where “needed to make the collective-bargaining process work,”
14 and where “[t]he labor laws give the [National Labor Relations] Board . . . primary
15 responsibility for policing the collective bargaining process”); *Gold Medal LLC v. USA*
16 *Track & Field*, 899 F.3d 712 (9th Cir. 2018) (finding that, while statute did not explicitly
17 provide antitrust immunity to USA Track & Field and United States Olympic Committees,
18 its establishment of Olympic mission authority in the Olympic Committee and national
19 governing bodies implied antitrust immunity for those entities).

20 In the instant action, Congress has not tasked a regulatory body with overseeing
21 the “public interest” in contrast to, for example, the broad oversight role of the SEC related
22 to security dealings. See *Nat’l Ass’n of Sec. Dealers*, 422 U.S. at 730-35; *Pan Am.*, 371
23 U.S. at 296. Nor does application of the antitrust laws to the wage-fixing and market
24 allocation claims here impede on the collective bargaining process or risk “duplicative and
25 inconsistent standards” or “conflicting judgments.” *Nat’l Ass’n of Sec. Dealers*, 422 U.S.
26 at 735 (“[M]aintenance of an antitrust action for activities so directly related to the SEC’s
27 responsibilities poses a substantial danger that appellees would be subjected to
28 duplicative and inconsistent standards.”); *Brown*, 518 U.S. at 242. Indeed, WRA’s

1 emphasis on “a conflicting web of rules” underlying the H-2A program obscures the
2 relatively simple distinctions at issue; Defendants do not identify any specific statute or
3 regulation that would be affected by a judgment in Plaintiff’s favor. (ECF No. 277 at 28.)

4 With regard to DOL’s promulgation of minimum wage standards, WRA cites the
5 D.C. Circuit’s decision in *Hispanic Affairs Project v. Acosta*, 901 F.3d 378 (D.C. Cir. 2018)
6 and the Tenth Circuit’s holding in *LLacua*, 930 F.3d 1161. (ECF No. 263 at 16-17.) But in
7 *Acosta*, the D.C. Circuit concluded simply that it had no basis to challenge the DOL’s
8 reasonable judgment setting a *general*/ applicable AEW wage rate floor; the case did not
9 involve specific conduct related to wage-fixing above that floor.¹¹ See 901 F.3d 378. And
10 the Court has already analyzed and distinguished *LLacua*—which did not recognize any
11 immunity from the antitrust laws but merely concluded that plaintiffs failed to allege
12 sufficient facts—in finding that Plaintiff adequately supported his claims against WRA in
13 previous complaints. (See ECF No. 43 at 14-15 (“[E]ven considered within the context of
14 a regulatory scheme that authorizes WRA to ‘coordinate with members’ to submit
15 applications and act as ‘joint employers of H-2A shepherds,’ as Defendant urges the
16 Court to do, the Court finds that Plaintiff’s allegations . . . taken together, ‘contain sufficient
17 factual matter . . . to plausibly suggest that an illegal agreement was made[.]’”).) WRA
18 also cites 20 CFR 655.210(g), which provides that “[t]he [H-2A] employer must offer,
19 advertise in its recruitment, and pay a wage rate that is at least the highest of the
20 [applicable] rates in effect,” to argue that an association filing a job order master
21 application must post a wage rate. (ECF No. 263 at 18.) But the limited requirement to
22 post a wage rate at or above the minimum does not, as WRA extrapolates, suggest
23 congressional intention to immunize all conduct related to such wage postings.

24 With regard to Plaintiff’s market allocation claims, WRA asserts that transfer
25 restrictions “are required by the H-2A regulations” and emphasizes that the labor market

26
27 ¹¹WRA also cites *Acosta* to emphasize that the DOL has determined a higher
28 general wage rate would result in fewer shepherding jobs overall. (ECF No. 263 at 16-
17.) But the agency’s exercise of its mandate to consider the viability of the program as
a whole in setting minimums is hardly irreconcilable with antitrust laws forbidding
conspiring to create what is effectively a *maximum* wage.

1 for foreign H-2A workers is “not open and unfettered.” (ECF No. 263 at 18.) Of course, it
2 is true that unlike domestic workers, H-2A workers are subject to restrictions imposed by
3 DOL. But again, it is not clear how the special procedures for visa-holder employment
4 transfers identified by WRA are “at odds” with imposition of the antitrust laws in
5 circumstances where employers impose restrictions on transfer which go significantly
6 beyond the baseline DOL requirements. See DOL’s form Approval of H-2A Temporary
7 Labor Certification (providing only that an approved application “may not be transferred
8 from one employer to another unless the employer to which it is transferred is a successor
9 in interest to the employer to which it was issued” without explicitly authorizing any further
10 limitation). Here, Plaintiff alleges that Defendants do not permit H-2A visa holders to
11 transfer between ranches unless their original ranch gives permission to do so. That
12 restriction is additional to and separable from the DOL’s basic transfer procedures.

13 In sum, the Court does not find that by authorizing a regulatory regime for H-2A
14 visas under which DOL sets a minimum AEWR rate, Congress implied a repeal of the
15 Sherman Act for the type of anticompetitive conduct alleged in this action. See *Nat’l Ass’n*
16 *of Sec. Dealers, Inc.*, 422 U.S. at 695, 735-36 (emphasizing courts’ affirmative obligation
17 to reconcile antitrust laws with regulatory schemes wherever possible). “Nothing about
18 the DOL or USCIS’s regulatory scheme would be displaced or frustrated if Plaintiff obtains
19 the relief he seeks in this action.” (ECF No. 277 at 33.)

20 **B. Per Se and Rule of Reason Standards**

21 The Court now turns to WRA’s argument that even if the H-2A regulatory context
22 does not preclude liability altogether, it mandates that Plaintiff’s claims be gauged under
23 the rule of reason rather than as *per se* violations.¹² (ECF No. 263 at 19-24.) WRA further
24 contends that under the rule of reason standard, Plaintiff has not alleged sufficient facts
25 to prove a relevant market. (*Id.*) Plaintiff counters that he has sufficiently alleged *per se*
26 violations based on the horizontal nature of the agreements in question, but maintains

27
28 ¹²Several Ranch Defendants also argue that the rule of reason should apply in
their respective motions. (See, e.g., ECF No. 262 at 20-23.)

1 that the TAC also includes adequate facts to support rule of reason claims, which he
2 pleads in the alternative. (ECF No. 277 at 43-47.)¹³ Viewing the allegations in the TAC in
3 the light most favorable to Plaintiff, the Court finds Plaintiff has adequately pled violations
4 under either theory.

5 Absent unique circumstances, the “rule of reason” [is] the prevailing standard of
6 analysis” for Section 1 claims. *Cont’l T. V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 49
7 (1977). In a rule of reason inquiry, “the factfinder weighs all of the circumstances of a
8 case in deciding whether a restrictive practice should be prohibited as imposing an
9 unreasonable restraint on competition.” *Id.* (citing *Chicago Board of Trade v. United*
10 *States*, 246 U.S. 231, 238 (1918) (“The true test of legality is whether the restraint
11 imposed is such as merely regulates and perhaps thereby promotes competition or
12 whether it is such as may suppress or even destroy competition.”)). There are, however,
13 “certain agreements or practices which because of their pernicious effect on competition
14 and lack of any redeeming virtue are conclusively presumed to be unreasonable and
15 therefore illegal without elaborate inquiry as to the precise harm they have caused or the
16 business excuse for their use.” *Northern Pac. R. Co. v. United States*, 356 U.S. 1, 5
17 (1958). “*Per se* rules of illegality” apply to such “manifestly anticompetitive” conduct in
18 place of the rule of reason. *Cont’l T. V.*, 433 U.S. at 49-50. Consistent with this foundation,
19 courts impose the *per se* analysis to restraints “that would always or almost always tend
20 to restrict competition and output,” where “the need to study an individual restraint’s
21 reasonableness in light of real market forces is eliminated.” *Leegin Creative Leather*
22 *Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 877 (2007) (quoting *Business Electronics Corp.*
23 *v. Sharp Electronics Corp.*, 485 U.S. 717, 723 (1988)).

24
25 ¹³In the TAC, Plaintiff alleges that “the fixing of wages through operation of the
26 WRA” and the “horizontal agreement between competitors not to compete for
27 sheepherder labor” are *per se* violations of the Sherman Act and also alleges, in the
28 alternative, that that Defendants’ wage-fixing and wage-suppression agreements are
illegal under either the abbreviated rule of reason “quick look” test, or under the full rule
of reason. (ECF No. 254 at 63-64, 65-66.) In his opposition, Plaintiff primarily focuses on
his *per se* allegations, but does not concede that his claims would fail under an alternate
rule of reason analysis. (ECF No. 277.)

1 In determining the appropriate standard, antitrust courts “can and do consider the
2 particular circumstances of an industry and therefore adjust their usual rules to the
3 existence, extent, and nature of regulation.” *Phonetele, Inc. v. Am. Tel. & Tel. Co.*, 664
4 F.2d 716, 740-42 (9th Cir. 1981) (modified Mar. 15, 1982) (discussing allegations of
5 “tying” AT&T customers to interconnected devices and noting history of cases permitting
6 “interposing of a substantive justification” for conduct which, “but for the regulatory setting,
7 would have been deemed *per se* illegal”) (quoting I P. Areeda & D. Turner, Antitrust Law
8 P 214b4 (1978)). See also *Leegin*, 551 U.S. at 877 (quoting *State Oil Co. v. Khan*, 522
9 U.S. 3, 10 (1997)) (noting that courts may consider “specific information about the
10 relevant business” and “the restraint’s history, nature, and effect”); *Silver*, 373 U.S. at 360-
11 61, 365; *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 900 (9th Cir. 1983).

12 Here, WRA argues that the conduct alleged does not fall under the purview of the
13 *per se* rule because “[c]ourts have much less experience in assessing antitrust claims by
14 foreign guest workers in the heavily regulated H-2A labor market” than claims arising in
15 less-regulated industries. (ECF No. 263 at 19.) See *Leegin*, 551 U.S. at 877 (“[A] *per se*
16 rule is appropriate only after courts have had considerable experience with the type of
17 restraint at issue.”). WRA further asserts that its role in “set[ting] and enforce[ing] the
18 wage rate which its rancher members must pay to their Sheepherders” is “akin to a vertical
19 price restraint in a product market, where a manufacturer forces its distributors not to sell
20 below a certain price,” which is normally subject to a rule of reason analysis. (ECF No.
21 263 at 22.) In his opposition, Plaintiff focuses primarily on the latter argument, asserting
22 that the wage-fixing and market allocation schemes alleged against all Defendants in this
23 action are *horizontal*—not vertical—and thus fall within a category of agreements normally
24 garnering a *per se* analysis, regardless of the H-2A regulatory scheme. (ECF No. 277 at
25 43-47.)

26 Starting with structure of the alleged restraints, the Court agrees with Plaintiff that
27 the wage-fixing and market-allocation restraints set out in the TAC are horizontal and not
28 vertical. See *United States v. Topco Assocs., Inc.*, 405 U.S. 596, 608 (1972) (describing

1 a “horizontal” restraint is one agreed upon “between competitors at the same level of the
2 market structure,” whereas a “vertical restraint” involves “combinations of persons at
3 different levels of the market structure, e.g., manufacturers and distributors”). As the Court
4 has already discussed in rejecting the application of WRA’s *Copperweld* doctrine defense,
5 WRA is an association composed of and led by “competitors at the same level of the
6 market structure;” Plaintiff alleges that Ranch Defendants all recruit and hire the same
7 kinds of workers, and “WRA has no independent economic character or existence.” (ECF
8 No. 277 at 44.) Because the relevant inquiry is into the nature of the *restraint itself* and
9 not to the “identity of each party who joins,” the fact that WRA does not own a ranch itself
10 and enters individual vertical contracts with Ranch Defendants does not turn an otherwise
11 horizontal agreement between competitors into a vertical one.¹⁴ See *United States v.*
12 *Apple, Inc.*, 791 F.3d 290, 297, 321-25 (2d Cir. 2015), *cert denied*, 577 U.S. 1193 (2016)
13 (holding *per se* liability appropriate for agreement amongst e-book publishers with Apple,
14 notwithstanding the fact that Apple had vertical contracts with publishers). See also *Am.*
15 *Needle*, 560 U.S. at 191; *Toys ‘R’ Us, Inc. v. F.T.C.*, 221 F.3d 928, 934-36 (7th Cir. 2000)
16 (applying *per se* test where claims were based on alleged horizontal agreement
17 coordinated by Toys ‘R’ Us among toy manufacturers through various vertical
18 agreements).

19 Courts regularly treat horizontal restraints as manifestly anticompetitive and
20 analyze them as *per se* violations. See *Apple, Inc.*, 791 F.3d at 312-14, 326 (2d Cir. 2015)
21 (“[H]orizontal’ agreements to set prices . . . are, with limited exceptions, *per se*
22 unlawful.”).¹⁵ Indeed, “[h]orizontal price-fixing conspiracies traditionally have been, and

23
24 ¹⁴WRA points to *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 899 (9th Cir. 1983),
25 where the Ninth Circuit found no horizontal agreement existed in the context of an
26 employee noncompete agreements because a departing employee does not compete at
the same market level as an employer. But in *Aydin*, there was no evidence that any
competitor of the former employer participated in the formation of the noncompete
agreement.

27 ¹⁵By contrast, vertical restraints “imposed by agreement between firms at different
28 levels of distribution”—even those which restrict prices—are more likely to have
procompetitive benefits. See *Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018); *Leegin*,
551 U.S. at 882.

1 remain, the ‘archetypal example’ of a *per se* unlawful restraint on trade.” *Id.* at 321
2 (quoting *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 647 (1980)). See also *United*
3 *States v. Socony-Vacuum Oil*, 310 U.S. 150, 223-24 (1940) (finding any conspiracy
4 “formed for the purpose and with the effect of raising, depressing, fixing, pegging, or
5 stabilizing the price of a commodity ... is illegal *per se*” regardless of the “machinery
6 employed”). In the same vein, horizontal “no-transfer” and “no-solicitation” schemes akin
7 to market division agreements are regular subjects of a *per se* analysis. See *Topco*, 405
8 U.S. at 608 (“One of the classic examples of a *per se* violation of § 1 is an agreement
9 between competitors at the same level of the market structure to allocate territories in
10 order to minimize competition.”).

11 With this in mind, the Court does not find that the H-2A regulatory environment
12 precludes Plaintiff from stating a *per se* claim, given the otherwise “archetypally”
13 anticompetitive horizontal restraints alleged. While antitrust courts do “consider the
14 particular circumstances of an industry” to occasionally allow “interposing of a substantive
15 justification” to what would otherwise constitute a *per se* claim, see *Phonetele*, 664 F.2d
16 at 742, “the argument that the *per se* rule must be rejustified for every industry that has
17 not been subject to significant antitrust litigation ignores the rationale for *per se* rules,”
18 *Arizona v. Maricopa Cnty. Med. Soc’y*, 457 U.S. 332, 351 (1982). See also *Nat’l Collegiate*
19 *Athletic Ass’n v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 100 n. 21 (1984) (“[T]he
20 likelihood that horizontal price and output restrictions are anticompetitive is generally
21 sufficient to justify application of the *per se* rule without inquiry into the special
22 characteristics of a particular industry.”).¹⁶ Horizontal restraints, including agreements
23 between competitors not to hire or solicit one another’s workers, or agreements on the
24 maximum wage to be paid to those workers, have been examined under a *per se* analysis
25 across industries. See, e.g., *Topco*, 405 U.S. at 608; *United States v. eBay, Inc.*, 968

27 ¹⁶Espil, Borda, and Holland argue that the *per se* rule does not apply unless there
28 is a “shortage of international workers.” (ECF No. 262 at 10.) But the inquiry begins with
the type of restraint—not the specific industry. (ECF No. 277 at 47.)

1 F.Supp.2d 1030, 1038-40 (N.D. Cal. 2013); *In re Animation Workers Antitrust Litig.*, 123
2 F.Supp.3d 1175, 1212 (N.D. Cal. 2015); *Doe v. Arizona Hosp. & Healthcare Ass’n*, No.
3 CV 07-1292-PHX-SRB, 2009 WL 1423378, at *2-3 (D. Ariz. Mar. 19, 2009).¹⁷ In addition,
4 there is no indication in this case that “restraints on competition are essential if the product
5 is to be available at all.” *Am. Needle*, 560 U.S. at 203 (quoting *NCAA*, 468 U.S. at 101)
6 (internal quotation marks omitted).

7 Regardless, even if the Court precludes a *per se* evaluation to account for the
8 regulatory context surrounding sheepherding, see *Llacua*, 930 F.3d 1161¹⁸, Plaintiff has
9 also adequately pled his claims under the modified “quick look” rule of reason standard
10 and/or the full rule of reason. See, e.g., *Apple*, 791 F.3d (denying dismissal where there
11 was sufficient evidence to support both *per se* claims and an alternate abbreviated rule
12 of reason analysis). Under the typical rule of reason, “the plaintiff has the initial burden to
13 prove that the challenged restraint has a substantial anticompetitive effect that harms
14 consumers in a relevant market.” See *Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018).
15 “[T]he Supreme Court has applied an abbreviated version of the rule of reason—
16 otherwise known as “quick look” review—to agreements whose anticompetitive effects
17 are easily ascertained,” even in arenas where the economic impact of an agreement is

18
19 ¹⁷WRA cites the Ninth Circuit’s discussion of the propriety of “interposing” a
20 regulatory justification in *Phonetele*, which involved the unique context of “tying” *per se*
21 claims. See *id.* But there, the Ninth Circuit made clear that although it “agree[d] with the
22 Second Circuit’s choice of a standard of reasonableness, we read *Silver* to imply that the
burden of maintaining a regulatory justification lies on the defendant.” *Id.* at 741. To the
extent remaining factual questions related to the regulatory scheme place a burden on
Defendants to interpose a justification, the Court finds dismissal at this stage is
inappropriate.

23 ¹⁸In *Llacua*, the Tenth Circuit did not explicitly comment on the *per se* vs. rule of
24 reason analysis, but did consider the H-2A regime in evaluating whether the factual
25 allegations gave rise to an inference of an agreement, stating that “[t]he regulatory overlay
26 is a critical backdrop that provides relevant economic context to the Association
27 Defendants’ and Rancher Defendants’ alleged conduct.” 930 F.3d at 1181-82 (10th Cir.
28 2019) (“For example, federal law governing the H-2A program explicitly and specifically
authorizes associations to coordinate with members to submit ‘Master Applications’ and
to act as joint employers of H-2A shepherds... so the mere process of utilizing joint
applications and acting as joint employer does not give rise to a plausible inference of an
improper agreement.”). The Court acknowledges that consideration of the H-2A scheme
may be relevant to interpreting factual allegations, but it does not extend the *Llacua*
court’s reasoning to prohibit Plaintiff’s *per se* claims.

1 “not immediately obvious.” *Apple*, 791 F.3d at 329-30 (quoting *Cal. Dental Ass’n v. FTC*,
2 526 U.S. 756, 779-80 (1999); *F.T.C. v. Indiana Fed’n of Dentists*, 476 U.S. 447, 459
3 (1986)). “This ‘quick look’ effectively relieves the plaintiff of its burden of providing a robust
4 market analysis . . . by shifting the inquiry directly to a consideration of the defendant’s
5 procompetitive justifications.” *Id.* See also *NCAA*, 468 U.S. at 101, 109 (applying modified
6 rule of reason approach after finding that the “case involves an industry [college football]
7 in which horizontal restraints on competition are essential if the product is to be available
8 at all” but emphasizing that “when there is an agreement not to compete in terms of price
9 or output, no elaborate industry analysis is required to demonstrate the anticompetitive
10 character of such an agreement”) (internal quotations omitted).

11 Here, Plaintiff has alleged horizontal restraints which have “easily ascertain[able]
12 anticompetitive effects.” See *Apple*, 791 F.3d at 329-30. The Court thus finds that “proof
13 of market” is not required under a rule of reason analysis. See *NCAA*, 468 U.S. at 109-
14 10 (“As a matter of law, the absence of proof of market power does not justify a naked
15 restriction on price or output.”). As a result, WRA’s argument that Plaintiff’s claims must
16 be dismissed because he fails to allege relevant geographic and labor markets is
17 unconvincing. Moreover, even applying the full rule of reason instead of the hybrid quick
18 look approach, “[t]here is no requirement that [the relevant market] be pled with
19 specificity.” *Newcal Indus., Inc. v. Ikon Office Sol.*, 513 F.3d 1038, 1045 (9th Cir. 2008).
20 “[S]ince the validity of the ‘relevant market’ is typically a factual element rather than a
21 legal element, alleged markets may survive scrutiny under Rule 12(b)(6) subject to factual
22 testing by summary judgment or trial.” *Id.*¹⁹

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25 ¹⁹For both of his claims, Plaintiff alleges that “the relevant geographic market . . .
26 is the United States, and the relevant market is the labor market for sheepherders in the
27 United States.” (ECF No. 254 at 66.) The Court finds that definition sufficient and more
28 than merely conclusory viewed in the context of Plaintiff’s allegations as to domestic
supply and demand for skilled sheepherder labor and considering that Plaintiff has plead
anticompetitive effects. See *PLS.Com, LLC v. Nat’l Ass’n of Realtors*, 32 F.4th 824, 838
(9th Cir. 2022) (holding that a plaintiff is “not required to define a particular market . . . for
a rule of reason claim based on evidence of the actual anticompetitive impact of the
challenged practice”).

1 Accordingly, the Court finds Plaintiff has adequately alleged anticompetitive
2 agreements under either the *per se* test or, alternatively, under the rule of reason. To the
3 extent outstanding factual questions bear on the appropriate standard, the Court need
4 not and does not reach a further determination as to the applicable rule at this stage.

5 **C. Antitrust Injury and Damages**

6 Plaintiff has also adequately alleged an antitrust injury and damages. *See, e.g.,*
7 *Sommers v. Apple*, 729 F.3d 953 (9th Cir. 2013) (requiring antitrust plaintiffs to
8 demonstrate an injury and viable measure of damages); *Dreamstime.com, LLC v. Google*
9 *LLC*, 54 F.4th 1130, 1136 (9th Cir. 2022) (“[A]n antitrust complaint need only allege
10 sufficient facts from which the court can discern the elements of an injury resulting from
11 an act forbidden by the antitrust laws.”) (internal quotations omitted).

12 WRA argues that Plaintiff fails to plead sufficient facts regarding damages and
13 improperly relies only on “speculative statements” that WRA sets sheepherder wages at
14 an artificially low level. (ECF No. 263 at 24-25.) *See Sommers*, 729 F.3d 953. But WRA
15 does not cite any authority suggesting that at the motion to dismiss stage, Plaintiff is
16 required to provide more detailed monetary estimates in order to show non-speculative
17 damages. And the use of expert analysis to prove antitrust damages is common practice.
18 *See, e.g., Nitsch v. DreamWorks Animation SKG Inc.*, 315 F.R.D. 270, 304-05 (N.D. Cal.
19 2016). WRA itself previously appeared to acknowledge that Plaintiff focuses, as a
20 measure of damages, on “the differential between the DOL wage rate and the wages paid
21 in a ‘competitive’ market.” (ECF No. 235 at 15.)

22 Defendants Espil, Holland, and Borda assert that Plaintiff lacks standing because
23 he does not specifically allege that he was himself denied a transfer between ranches
24 and thus fails to demonstrate an injury. (ECF No. 262 at 23.) But as Plaintiff notes, “[t]he
25 theory of harm is not that Plaintiff or any proposed class member lost a specific job
26 opportunity—it is that the absence of competition amongst WRA members, including
27 Ranch Defendants, caused market-wide suppression of wages.” (ECF No. 277 at 47.) It
28 is sufficient that Plaintiff alleges the wages he and other proposed class members worked

1 were lower than they would have been in the absence of an agreement among
2 Defendants. See, e.g., *Dreamstime.com*, 54 F.4th at 1136; *Le v. Zuffa, LLC*, 216
3 F.Supp.3d 1154, 1169 (D. Nev. 2016). No more is needed to show injury and damages.

4 In sum, the Court denies WRA's motion to dismiss (ECF No. 263). To the extent
5 Ranch Defendants adopt arguments which are the same or related to WRA's, the Court
6 similarly finds no basis for dismissal as to those defendants.

7 **D. Ranch Defendants**

8 The Court now turns to the claims asserted against Ranch Defendants. In their
9 respective motions to dismiss, Ranch Defendants argue that despite additional
10 opportunity discovery, Plaintiff's TAC is still unsuccessful in implicating WRA's individual
11 members in any conspiracy. (ECF Nos. 262, 264, 265, 266.) Plaintiff argues that he has
12 now provided facts supporting each Ranch Defendant's participation in the alleged
13 agreements to fix wages and restrict transfers, remedying deficiencies in the FAC. (ECF
14 No. 277 at 49-59.) The Court finds that as amended and bolstered in the TAC, Plaintiff's
15 claims against Ranch Defendants survive Rule 12(b)(6) dismissal. See *Twombly*, 550
16 U.S. at 570.

17 In its March 2024 order addressing the FAC, the Court dismissed with leave to
18 amend all claims against Ranch Defendants because, although Plaintiff successfully
19 alleged the existence of an anticompetitive agreement involving WRA, he alleged only
20 sparse facts pertaining to named member ranches and did not support their actual "assent
21 to and participation in" an agreement. (ECF No. 173 at 12-14 (citing *In re Static Random*
22 *Access Memory (SRAM) Antitrust Litig.*, 580 F. Supp. 2d 896, 904 (N.D. Cal. 2008)).) At
23 the pleading stage, an antitrust plaintiff need not allege detailed facts as to what each
24 defendant did within a purported conspiracy, and "an agreement may be implied from
25 conformity to a contemplated pattern of conduct." (ECF No. 173 at 13.) See *Moore v.*
26 *James H. Matthews & Co.*, 473 F.2d 328, 330 (9th Cir. 1972). But mere parallel conduct
27 is not enough: "[A] complaint [should] answer 'the basic questions' of 'who, did what, to
28 whom (or with whom), where, and when?" (ECF No. 173 at 13 (quoting *Kendall v. Visa*

1 *U.S.A., Inc.*, 518 F.3d 1042, 1048 (9th Cir. 2008)).) Besides naming Ranch Defendants,
2 referring to their status as WRA members, and stating that some of the ranches' principals
3 were also WRA directors, Plaintiff's FAC did not include *any* specific allegations about the
4 ranches' role in the conspiracy whatsoever. (ECF No. 173 (noting absence of foundational
5 facts, such as "who from the Ranch Defendants entered into the purported agreements
6 with WRA"); ECF No. 50.)

7 In its March 2024 order, the Court compared the reasoning in *Kendall*, 518 F.3d at
8 1048—where the Ninth Circuit reaffirmed that "membership in an association does not
9 render an association's members automatically liable for antitrust violations committed by
10 the association" —with the reasoning in *Relevant Sports, LLC v. United States Soccer*
11 *Fed'n, Inc.*, 61 F.4th 299, 303 (2d Cir. 2023)—where the Second Circuit found allegations
12 adequate to demonstrate concerted action when association members agreed to "comply
13 fully" with membership policies and thus "surrender[ed] [themselves] completely to the
14 control" of an organization. (ECF No. 173 at 12-13.) Declining to apply *Relevant*, the Court
15 noted that in the FAC, Plaintiff had not alleged that Ranch Defendants agreed to "comply
16 fully" with WRA's anticompetitive policies as a condition of their membership. (*Id.*)

17 In the further-amended TAC, however, Plaintiff has alleged new facts about Ranch
18 Defendants which adequately answer the "basic questions" — "who, did what, to whom
19 (or with whom), where, and when?" See *Kendall*, 518 F.3d at 1048.

20 As a foundational matter, Plaintiff now alleges facts suggesting that all Ranch
21 Defendants agreed to "comply fully" with WRA's policies.²⁰ See *Relevant*, 61 F.4th at 303.
22 He alleges that as "a condition of joining WRA," member ranches execute a packet of
23 application forms and "explicitly agree to comply with association policies and to cede
24 their authority to set wages and to hire workers to the Association." (ECF No. 254 at 26.)
25 Under the Application and Membership Agreement, a joining ranch "agrees to be bound
26

27 ²⁰Plaintiff alleges when each Ranch Defendant joined WRA and names the agents
28 who signed membership and job assurances. (ECF No. 254 at 27-28 (listing membership
start dates between 1984 and 2018).)

1 by the By-Laws of the Association as they now exist or may hereafter be amended.” (*Id.*)
2 The by-laws, in turn, require members to abide by WRA’s other policies; they provide that
3 members may be expelled or otherwise disciplined if they fail to comply with WRA “rules
4 and regulations,” or are “in default of any obligation to . . . the Association whether or not
5 such obligation or rule arises by virtue of membership.” (ECF Nos. 262-1 at 3; 277 at 49.)
6 The by-laws warn ranches against “disturb[ing] . . . harmony . . . of the association” in
7 conjunction with their member status. (ECF Nos. 262-1 at 3; 277.)

8 As detailed below, Plaintiff specifically alleges the existence of binding restrictions
9 on transfers/solicitation and collective wage-setting practices which require Ranch
10 Defendants to cede authority to the Association in meaningful ways that go beyond “mere
11 membership.”²¹ See *Relevant*, 61 F.4th at 303.

12 **1. No-transfer and no-solicitation allegations**

13 Plaintiff alleges a “segment[ed]” and “sequential” system by which WRA allocates
14 sheepherders, asserting that “[e]ach of the Ranch Defendants has received lists of
15 available herders” in accordance with this process, signaling their “mutual[]
16 understand[ing]” of the “centralized...rather than competitive” structure. (ECF No. 254 at
17 29-30 (describing email exchange between WRA and F.I.M. in which WRA provided a list
18 of workers and asked F.I.M. to inform the Association “which workers you will be
19 requesting” so it could “add the ones you don’t want to our list [and] send them to other
20 ranchers”); *id.* (describing WRA’s selection-process email to six ranches, including
21 Defendant Need More Sheep, “starting from the same roster of available herders but
22 removing names as those herders were selected for employment”).)

23 Plaintiff also alleges a similarly-centralized mechanism for inter-employee
24 transfers, under which WRA advises herders at all of its member ranches that they are

26 ²¹Defendant Ellison cites to *Kendall*, as well as to *Kline v. Coldwell, Banker & Co.*,
27 508 F.2d 226, 232 (9th Cir. 1974), for the proposition that distribution of a membership
28 association’s policies, procedures, or rules is not enough, and that even generic adoption
of those policies by members is also insufficient. (ECF No. 280 at 8-9.) Here, however,
Plaintiff has alleged that with membership in WRA, each Ranch Defendant delegated
particularly substantial, non-generic authority over labor practices to the association.

1 generally prohibited from leaving their current employer. (*Id.* at 31 (alleging sheepherders
2 are required to sign an employment attestation which provides that they “will be assigned
3 to a place of work (ranch)” and “that [the sheepherder] will not be able to change or
4 transfer because [the sheepherder] desire[s] to do so”). And Plaintiff alleges that WRA’s
5 longstanding official policy was to prohibit its members from soliciting one another’s
6 sheepherders, stating that “pirating labor” was enshrined as grounds for expulsion. (*Id.* at
7 35-36 (citing discussions of “pirating labor” as grounds for termination of membership at
8 WRA’s 1966 Annual Membership Meeting, attended by individuals associated with Espil
9 and Holland Ranches).)²²

10 Plaintiff Further cites evidence that WRA’s transfer and solicitation policies were
11 explicitly conveyed to, relied on, and/or enforced by all Ranch Defendants on one or more
12 occasions. (See, e.g., ECF No. 254 at 31 (June 2019 newsletter to all member ranches
13 describing transfer process); *id.* at 32 (1997 letter to all members, which at that time
14 included Defendants Ellison, Espil, Faulkner, F.I.M., and Need More Sheep, stating that
15 “any transfer of a herder must be processed by the Western Range Association,” that
16 “[m]embers have no authority to arrange for any transfers” and that violators would “be
17 subject to a fine of up to \$1,000 per violation, loss of herder, and/or termination of
18 membership”); *id.* (January 2022 communications from WRA on requirement for a current
19 employer to “agree to transfer”); *id.* at 32-33 (August 2023 communications between WRA
20 and Little Ranch regarding potential transfer and whether Little Ranch “want[ed] the
21 transfer to happen”); *id.* at 33-34 (dates on which six Ranch Defendants—Little Ranch,
22 Need More Sheep, Espil, Holland, Ellison, and Borda— mediated sheepherder allocation
23 and transfers through WRA); *id.* at 35 (1986 complaint from Espil to WRA about another
24 member soliciting its members and subsequent warning letter to that member cautioning

25
26 ²²Espil, Borda, and Holland argue that the 1966 WRA meeting did not include
27 current Ranch Defendants and involved only a “lawful measure to create a penalty for
28 those who encourage sheepherders to violate their contract,” noting that interference is a
tort. (ECF No. 262 at 13.) However, the alleged agreement to counter “pirating” plausibly
extends beyond mere interference (for example, to transfers without solicitation). And
notwithstanding its participants, the 1966 meeting is relevant primarily because it goes to
a policy which Plaintiff alleges was never rescinded.

1 the soliciting ranch that “[w]hen a member goes directly to the herder and not through the
2 Western Range Association, we look upon this as ‘pirating’... strictly against Western
3 Range Association policy”); *id.* at 36 (2022 communications between WRA and a
4 sheepherder’s former employer after his current employer, Defendant Need More Sheep,
5 complained about solicitation).²³

6 **2. Wage-fixing allegations**

7 With regard to the wage-fixing claims, the Court “has already held that Plaintiff
8 plausibly alleges that WRA orchestrates and enforces an unlawful wage-fixing agreement
9 between and amongst its members,” and the Court finds no reason to reassess that prior
10 determination. (ECF Nos. 43 at 14-15; 277 at 54.) The Court agrees with Plaintiff that the
11 TAC adequately answers the remaining question—Ranch Defendant’s acquiescence to
12 an anticompetitive scheme—through “a combination of parallel conduct and plus factors.”
13 (ECF No. 277 at 54) (citing *Honey Bum, LLC v. Fashion Nova, Inc.*, 63 F.4th 813, 822
14 (9th Cir. 2023)). *See also In re Dynamic Random Access Memory (DRAM) Indirect*
15 *Purchaser Antitrust Litig.*, 28 F.4th 42, 46 (9th Cir. 2022) (citing *Twombly*, 550 U.S. at 553
16 (parallel conduct must be placed “in a context suggesting a preceding agreement”); *In re*
17 *Musical Instruments & Equipment Antitrust Litig.*, 798 F.3d 1186, 1194 (9th Cir. 2015)
18 (“[P]lus factors are economic actions and outcomes that are largely inconsistent with
19 unilateral conduct but largely consistent with explicitly coordinated action.”).

20 As for parallel conduct, Plaintiff alleges that Ranch Defendants uniformly set
21 sheepherder wages at or near the minimum legal wage, as reflected in recent job orders
22 for domestic sheepherders and H-2A applications.²⁴ (ECF No. 254 at 47 (“Based upon a
23

24 ²³As additional circumstantial evidence, Plaintiff points to the presence of Little
25 Ranch’s principal on WRA’s Board of Directors since 2017 and participation in meetings
26 specifically about transfer issue; Borda and Holland’s ties to Little Ranch and WRA Board;
and email chains between Borda, Little Ranch, Need More Sheep, F.I.M. and Ellison.
(ECF No. 277 at 60 n. 11.)

27 ²⁴To the extent Ranch Defendants argue that WRA members are not prohibited
28 from offering higher than the minimum allowable wage and sometimes do so in the form
of bonuses (*see, e.g.*, ECF No. 281 at 3), the Court has already noted that “minor
departures from the agreed-upon wage do not defeat Plaintiff’s allegations of an unlawful

1 review of recent job orders associated with WRA H-2A Applications, the job orders to U.S
2 workers that preceded these H-2A Applications offered the same wages as the H-2A
3 Applications and therefore offered exactly the DOL H-2A wage floors for each state as a
4 fixed wage to potential U.S. workers”); 51-52 (“In a review of all 148 current sheepherder
5 job orders posted by the WRA as of 2022...only one guaranteed a wage higher than the
6 minimum.”).)

7 Plaintiff next points to plus factors including (1) action against self-interest; (2)
8 motive to conspire; (3) opportunities to collude; and (4) additional contextual factors
9 viewed in a holistic context. (ECF No. 277 at 54-59.) First and most importantly, with
10 regard to actions against self-interest, Plaintiff argues that “the uniformity of the Ranch
11 Defendants’ wage offerings makes no economic sense,” given the nature of the
12 specialized-skill market, absent collective acquiescence to an anticompetitive agreement
13 allowing WRA to coordinate and structure wages at the floor. (*Id.* at 59.) Notably, Plaintiff
14 alleges that WRA does not consult with Ranch Defendants about the wage they seek to
15 offer in its questionnaires before simply setting the wage at the floor for both domestic
16 and foreign workers and submitting job orders to that effect. (See, e.g., ECF No. 254 at
17 47-48 (alleging WRA submitted wage rates for Ellison, F.I.M., Borda, Espil, and Need
18 More Sheep in a single joint application); *id.* at 55 (similar joint application for Ellison and
19 Faulkner).) The Court finds it plausible to infer that Ranch Defendants’ willingness to defer
20 to WRA on selecting a wage when submitting job orders, as a matter of normal practice,

21
22 agreement or overall wage-fixing scheme” (ECF No. 43 at 14 (citing *Socony-Vacuum Oil*
23 *Co.*, 310 U.S. at 222). In addition, Little Ranch requests that the Court take judicial notice
24 of DOL Form ETA-790A General Instructions (ECF No. 266-11) for the purpose of
25 showing that DOL’s instructions *require* WRA to “enter the minimum wage offer in item
26 A.8b.” (ECF No. 266 at 17.) The Court finds judicial notice of these form instructions
27 appropriate. See Fed R. Evid. 201(b)(2) & (c)(2). And the Court agrees with Little Ranch
28 that with the form instructions in mind, uniform wage entries in section A.8b do not, by
themselves, indicate a wage-suppression agreement. But most fundamentally, Plaintiff
alleges parallel conduct because domestic and foreign workers at WRA member ranches
are in practice offered the same wages, excluding bonuses, and ranches do not give their
input on a wage rate at any part of the job-order process run by WRA. Plaintiff also alleges
that WRA provides, in the comment section of the ETA-790A form, that “wages *will be*
paid in accordance to the state in which the work is done,” (ECF No. 254 at 52.) The Court
finds that this is enough.

1 is dependent on the belief and understanding that WRA will apply the same low wage
2 across competitors by default, thereby obviating the need to consider the nuances of
3 competing for skilled labor. This understanding is reflected in the alleged pattern of
4 uniformity in wage offerings across almost all of WRA's dozens of members. See *Moore*,
5 473 F.2d at 330, 332.

6 With regard to an expressed common motive to conspire and opportunities to
7 collude, Plaintiff emphasizes facts which generally go to the insular nature of
8 sheepherding industry in Nevada and the overlapping relationships between Ranch
9 Defendants. (ECF No. 277 at 56-57.) He highlights, *inter alia*, discussions among WRA's
10 Board of Directors about the possibility of adopting its own wage standards distinct from
11 DOL rates (ECF No. 254 at 42-43); instances in which some Ranch Defendants have
12 "organiz[ed] against competitive threats" (*id.* at 46 (describing emails between Need More
13 Sheep and Little Ranch, forwarded to Borda, F.I.M., and Ellison, regarding the threat of
14 imported mutton and the need to "band together and....protect our industry")); and
15 occasions on which Ranch Defendants have directly communicated with one another
16 professionally and personally (*id.* at 45-46). (ECF No. 277 at 56-57.) The Court has
17 already cautioned that "participation in trade-organization meetings where information is
18 exchanged and strategies are advocated does not suggest an illegal agreement." (ECF
19 173 at 13-14 (quoting *Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d at 1196 (9th
20 Cir. 2015)).) See also, e.g., *Kendall*, 518 F.3d at 1048 (presence on a Board of directors
21 is not sufficient). The Court does not, therefore, give undue weight to circumstantial
22 motive and opportunity allegations as either "direct proof" or plus factors. Nevertheless,
23 viewed alongside allegations about WRA's binding rules and adoption of those rules by
24 Ranch Defendants, the historically close collaboration between and amongst WRA and
25 its members could be inferred to exceed "typical" trade association activity and "render
26 the allegations of knowing collusion more plausible." (ECF No. 277 at 57.) See *In re*
27 *Graphics Processing Units Antitrust Litig.*, 527 F.Supp.2d 1011, 1023-24 (N.D. Cal. 2007)
28

(dismissing claims where plaintiffs placed undue emphasis on defendants' attendance at conferences but clarifying that direct allegations of "back-room" deals are not required).

Finally, as an additional factor leading to a plausible inference of acquiescence, Plaintiff points to the allegation that WRA shared information about several ranches' wage rates before that information became public (ECF No. 254 at 56-57). (ECF No. 277 at 58.) While posting rates where that information would otherwise be publicly available in another format or at a later time does not carry significant weight on its own, it is relevant in the limited sense that it bolsters an inference that Ranch Defendants expected to participate in and benefit from WRA's practices of collectivizing and sharing a determination of wages.

3. Ranch Defendants' Arguments

With this full set of allegations in mind, Ranch Defendants' attacks on the TAC are unpersuasive or otherwise premature.

First, most Ranch Defendants argue that the TAC "misrepresent[s] the contents of documents [such as the Membership Agreement, By-Laws, and deposition testimony] it incorporates by reference." (See, e.g., ECF Nos. 262 at 2-3 (Espil, Borda, and Holland's Motion) ("[O]nce the allegations that constitute material misrepresentations are disregarded, the Complaint contains few targeted allegations as to the Ranch Defendants."); 265 at 2 (Ellison's Motion) ("Many of Plaintiff's quoted documents flatly contradict his allegations."); 266 at 3-4 (Little Ranch's Motion); 264 at 9 (F.I.M., Need More Sheep, and Faulker's Motion) ("Plaintiff has not identified a single instance in which WRA took some punitive action against a member for paying more than the minimum wage.")) It is true that no document cited by Plaintiff includes an explicit requirement to adhere to an anticompetitive scheme or to pay only the AEW. But Plaintiff does not—and need not—allege as much. Rather, Plaintiff reads the documents in conjunction with one another, making inferences in light of WRA's broad authority to terminate

1 membership and preserve harmony among member ranches.²⁵ Defendants may dispute
2 Plaintiff's inferences and accuse him of cherry-picking, but on the whole the Court does
3 not find "contradictions." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th
4 Cir. 2018). *See also In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-2420, 2014 WL
5 4955377, at *30 (N.D. Cal. Oct. 2, 2014) ("[T]he character and effect of a conspiracy are
6 not to be judged by dismembering it and viewing its separate parts, but only by looking at
7 it as a whole."). Defendants' assertions about the documents' weight and meaning largely
8 go to factual disputes not appropriate for resolution at this stage. *See Khoja.*, 899 F.3d at
9 1002 (holding that defendants may not "use the [incorporation-by-reference] doctrine to
10 insert their own version of events into the complaint to defeat otherwise cognizable
11 claims").

12 Similarly, some Ranch Defendants take issue with the age of Plaintiff's cited
13 communications and documents, many of which are several decades old. (*See, e.g.*, ECF
14 No. 265 at 16 (Ellison's Motion).) But the Court agrees with Plaintiff that these documents
15 are relevant to the extent they go to the *commencement* of an agreement that has not
16 been terminated; the Court need not weigh the strength of that evidence now. *See United*
17 *States v. Recio*, 371 F.3d 1093, 1096 (9th Cir. 2004) ("[A] conspiracy continues until there
18 is affirmative evidence of abandonment, withdrawal, disavowal, or defeat of the object of
19 the conspiracy.") (quotations omitted)).

20 Finally, Ranch Defendants argue that dismissal is appropriate because Plaintiff's
21 allegations are equally likely to be consistent with lawful conduct as they are to indicate
22 conspiracy. *See, e.g., Graphics Processing Units*, 527 F. Supp. 2d at 1023 (dismissing
23 claims when there was an "equally plausible" lawful explanation). Espil, Borda, and

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25 ²⁵Many Ranch Defendants, including Ellison, take particular issue with Plaintiff's
26 representations of the membership manual. (*See, e.g.*, ECF No. 265 at 14-15 (describing
27 the membership manual and noting it provides only a table of minimum wages with "at
28 least" caveat). The Court agrees with WRA that Plaintiff implies that the manual sets
salaries at the AEWR as a *ceiling*, which exaggerates its text. But here again, the Court
considers the manual in conjunction with other allegations about the practice of setting
identical or similar wages, standardized employment contracts, USCIS I-129 forms,
emails about the onboarding process, etc. (ECF No. 254 at 48-49.) Defendants attempt
to contest its persuasive value by overstating its centrality to the Court's prior decisions.

1 Holland assert, for example, that “the Court must consider, as an obvious alternative
2 explanation for Ranch Defendants’ behavior, that the wages paid to shepherders by
3 Ranch Defendants are attractive because they exceed wage rates in the shepherd’s
4 native countries,” and that “transfers are not only lawfully conducted according to the
5 complex regulations associated with the H-2A visa program, but are only possible
6 because of WRA.” (ECF No. 262 at 3.) (See *also* ECF Nos. 265 at 2 (Ellison’s Motion)
7 (arguing similarly that the Court must consider the equally-likely rationale that “Plaintiff’s
8 iterations show nothing more than Ellison’s voluntarily compliance with the complex
9 regulations that control shepherd employment”); 266 at 2-3 (Little Ranch’s Motion).)

10 Even acknowledging that there are plausible lawful explanations for Ranch
11 Defendants’ conduct, where setting wages at the AEWL could simply be an expected
12 economic outcome, the Court must review the allegations in the TAC in the light most
13 favorable to Plaintiff and draw all reasonable inferences in his favor. See *Manzarek v. St.*
14 *Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Doing so, the Court
15 cannot conclude that any alternative lawful inferences are straightforwardly more likely or
16 “obvious” such that dismissal is warranted.²⁶ Plaintiff is not subject to a heightened
17 pleading standard. See *Graphics Processing Units*, 527 F.Supp.2d at 1019-20
18 (discussing the requirements under *Twombly* and emphasizing that allegations of
19 conspiracy are not subject to Rule 9(b)’s more exacting pleading requirements). The
20 Court has already analyzed lawful and unlawful explanations for the agreements alleged

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25 ²⁶Some Ranch Defendants, including Espil, Borda, Holland, F.I.M., Need More
26 Sheep, and Faulkner, insist that Plaintiff obscures the lack of labor shortage when
27 considering the international, rather than solely domestic, supply of shepherders. (See,
28 e.g., ECF Nos. 281 at 11-12; 282.) But a discussion of market supply-and-demand goes
beyond the pleading requirements under *per se* analysis and, as discussed above,
Plaintiff has adequately pled the market elements of a rule of reason analysis. More
fundamentally, while Defendants across *all* industries could claim that setting low wages
is economically logical, that does not absolve them of antitrust liability.

1 on prior occasions—weighing, for example “the variance in skill and experience of
2 shepherders”—and will not rehash that analysis here.²⁷

3 In sum, Plaintiff pleads particularized facts going beyond “mere membership in an
4 association,” *Kendall*, 518 F.3d at 1048, and plausibly suggests that all Ranch Defendants
5 acquiesced to the market allocation and wage-fixing schemes, *see Relevent*, 61 F.4th at
6 307. *See also PLS.Com*, 32 F.4th at 838 (“All that [a plaintiff] must allege is that [the
7 defendant] adhered to a common scheme.”). Accordingly, the Court denies Ranch
8 Defendants’ respective motions to dismiss (ECF Nos. 262, 264, 265, 266).²⁸

9 **IV. CONCLUSION**

10 The Court notes that the parties made several arguments and cited to several
11 cases not discussed above. The Court has reviewed these arguments and cases and
12 determines that they do not warrant discussion as they do not affect the outcome of the
13 motions before the Court.

14 It is therefore ordered that Defendants’ motions to dismiss (ECF Nos. 262, 263,
15 264, 265, 266) are denied.

16 It is further ordered that Ellison Ranching Co.’s motion to seal (ECF No. 267) is
17 denied without prejudice to refiling.

18 DATED THIS 8th Day of August 2025.

19
20 

21 MIRANDA M. DU
22 CHIEF UNITED STATES DISTRICT JUDGE

23
24 ²⁷In its order addressing Plaintiff’s original complaint, the Court declined to dismiss
25 claims against WRA after finding economically plausible WRA’s argument that “uniform
26 wages at the minimum wage are precisely the expected economic outcome,” but weighing
27 Plaintiff’s countervailing arguments regarding “the variance in skill and experience of
28 shepherders, and Plaintiff’s assertion that Defendant and its members ‘had an incentive
to fix wages at that level’ to gain higher profits.” (ECF No. 43 at 14.)

²⁸Little Ranch also moves for a more definite statement. (ECF No. 266 at 22.) Such
motions “should not be granted unless the defendant literally cannot frame a responsive
pleading,” *Underwood v. O’Reilly Auto Parts, Inc.*, 671 F.Supp.3d 1180, 1188 (D. Nev.
2023) (internal citations omitted), A more definite statement is not merited here.