UNITED STATED DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LONG ISLAND ANESTHESIOLOGISTS PLLC, *Plaintiff*, v. UNITEDHEALTHCARE INSURANCE COMPANY OF NEW YORK INC., as Program Administrator, THE EMPIRE PLAN MEDICAL/SURGICAL PROGRAM and MULTIPLAN INC., *Defendants*.	Case No. 2:22-cv-04040-HG

MULTIPLAN, INC.'S REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT

REPLY MEMORANDUM OF LAW

Defendant MultiPlan, Inc. ("MultiPlan"), respectfully submits this Reply Memorandum of Law in support of its Motion to Dismiss the Complaint ("Compl.") filed by Plaintiff, Long Island Anesthesiologists PLLC ("Plaintiff" or "LIA"), pursuant to Fed. R. Civ. P. 12(b)(6),[1] as follows:

INTRODUCTION

In its Memorandum of Law in Opposition to Defendants' Motion [sic] to Dismiss,[2] Plaintiff jointly addresses the Motions to Dismiss brought by MultiPlan and its co-defendant, UnitedHealthcare Insurance Company of New York ("United").[3] At the outset, MultiPlan would note that LIA's Opposition is focused primarily on claims directed at United; indeed, MultiPlan receives minimal mention throughout the thirty-five pages containing Plaintiff's arguments. Moreover, Plaintiff fails to address the significant, dispositive points that MultiPlan asserts in its supporting Memorandum of Law—namely, that MultiPlan is not alleged to be a competitor of either Plaintiff or United; that MultiPlan is not alleged to possess or exercise market power in any properly alleged relevant market; or that MultiPlan is a party to any agreement that caused antitrust injury to Plaintiff or harm to competition. *See* MPI's Mot., at pp. 4, 6-7, 8-10.[4]

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[1] Identified herein as "MPI's Mot.," [Dkt. 30].

[2] Identified herein as "Pltff's Opp.," [Dkt. 42].

[3] United's Motion to Dismiss is identified herein as "United's Mot.," [Dk. 31].

[4] Plaintiff's attempts to introduce extraneous information from various sources to bolster its claims, *see, e.g.*, Pltff's Opp., at p. 18 & nn.11-12, p. 19 & n.13, p. 20 & nn.14-15, p. 21 & n.16, are improper and should be disregarded. *Friedl v. City of New York*, 210 F.3d 79, 83-84 (2d Cir. 2000) ("A district court errs when it . . . relies on factual allegations contained in legal briefs or memoranda . . . in a ruling on a 12(b)(6) motion to dismiss."); *Fonte v. Bd. of Managers of Continental Towers Condo.*, 848 F.2d 24, 25 (2d Cir. 1988) ("Factual allegations contained in legal briefs or memoranda are also treated as matters outside the pleadings for purposes of Rule 12(b)."); *Kenny v. Nassau Univ. Med. Ctr.*, No. 14-CV-7505 (SJF)(AKT) (E.D.N.Y. Mar. 14, 2016) (same). Accordingly, any such items upon which LIA seeks to rely should not be considered by the Court.

MultiPlan will not restate here the arguments for dismissal with prejudice that it has previously made. Suffice it to say that Plaintiff has failed to make out a cognizable, stand-alone antitrust claim against MultiPlan. Plaintiff's focus on MultiPlan from an antitrust standpoint seems to be limited to MultiPlan's role as an alleged co-conspirator with United, which Plaintiff claims to have violated the Sherman Act or the Donnelly Act. However, that claim is equally flawed and should be dismissed, notwithstanding Plaintiff's arguments to the contrary.

Furthermore, for the reasons previously given in MultiPlan's supporting Memorandum of Law, there is no unjust enrichment claim against MultiPlan because there has been no benefit bestowed on MultiPlan in this case. *See* MPI's Mot., at p. 11.

As MultiPlan previously noted, to the extent that United's original Motion to Dismiss raised arguments that applied equally to MultiPlan, MultiPlan adopted the same in its Motion to Dismiss. *See* MPI's Mot., at p. 2 n.2. Given the overlap of certain arguments raised by Plaintiff in its Opposition, *e.g.*, Section I (*Colorado River* abstention), Section II (antitrust injury); Section III (conspiracy); Section IV (Rule of Reason); and Section VI (unjust enrichment), and United's filing a Reply Memorandum addressing them, MultiPlan adopts United's arguments in that Reply Memorandum where applicable, as well.[5]

ARGUMENT

Given the plethora of "factual" statements set forth in Plaintiff's Opposition that are not contained in the Complaint and therefore must be eliminated from consideration of Defendants' Rule 12(b)(6) motions, one searches in vain among those allegations which can be considered—*i.e.*, those in the Complaint itself—to find any basis upon which to conclude that LIA has satisfied

[5] Section V of Plaintiff's Opposition deals with its Sherman Act § 2 claim, alleging that United is acting as a monopsonist. This single-firm conduct does not, taken in isolation, implicate MultiPlan.

Twombly/Iqbal by setting forth any plausible claim against MultiPlan. Plaintiff's allegations against MultiPlan fail because they do not show that MultiPlan's alleged conduct was the proximate cause of any injury claimed to have been suffered by LIA, let alone to competition in general.

Again, Plaintiff has not alleged that MultiPlan is a competitor of Plaintiff or United in any relevant product or geographic market. Accordingly, MultiPlan is factually and legally incapable of engaging in conduct that has harmed, or can harm, LIA as a competitor. Similarly, since MultiPlan has not been alleged to engage in competition with anyone else in whatever supposed market LIA seeks to establish, MultiPlan cannot be found to have caused, or be capable of causing, injury to competition in this broader sense.

Casting aside the several pages in LIA's Reply Memorandum in which Plaintiff sets forth extraneous information about MultiPlan's cost-containment activities with United and with other customers, *see* Pltff's Opp., at pp. 18-21, all of which reflect legitimate activities, and none of which support LIA's theory of a conspiracy to violate the antitrust laws in this case, one is left with a single paragraph in which Plaintiffs point specifically to MultiPlan, referencing a number of paragraphs in the Complaint. *See* Pltff's Opp., at p. 17. Those paragraphs, shorn of pejorative, non-factual elements,[6] suggest nothing more than that MultiPlan engaged in the federal independent dispute resolution (IDR) process with LIA on claims presented to it, subject to the direction of United as administrator of the Empire Plan. There is no specific allegation that United's direction, or MultiPlan's resultant activities were intended to, or in fact resulted in, an impact on competition. It is merely LIA's surmise that such was the case.

[6] Under *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), and *Ashcroft v. Iqbal*, 566 U.S. 662, 679 (2009), in assessing whether to grant a motion to dismiss, the Court is obligated to discard all conclusory, merely legal allegations.

What actually occurred, and what this Court may take as an equally plausible explanation, *see Iqbal*, 566 U.S. at 682 (quoting *Twombly*, 500 U.S. at 567), is simply that a lawful determination was made by United, as administrator of the Empire Plan, to apply the federal No Surprises Act rather than the New York Surprise Bill law, and to have MultiPlan proceed with the applicable federal IDR process. There is no conspiracy aimed at harming competition; instead, pro-consumer cost-containment was the intended outcome, which has been achieved.

Plaintiff attempts to twist this into something it is not, namely, a scheme entered into with anticompetitive animus. *See* Pltff's Opp., at p. 21. LIA points to language in the Third Circuit's decision in *Fineman v. Armstrong World Indus*., 980 F.2d 171, 214 3d Cir. 1992), a case that was tried to judgment, to suggest that a conspiracy in violation of Sherman Act Section 1 does not require the sharing of an identical anticompetitive motive, but requires only a shared commitment to a common scheme that has an anticompetitive objective. Yet, where in this case is the anticompetitive scheme, and where is it demonstrated that MultiPlan committed to it? Nowhere is it plausibly alleged that MultiPlan, whose sole interest here is fulfilling its contractual obligations for which—yes, it is seeking and entitled to be paid—is seeking to aid United in allegedly employing monopsony powers to drive out competition.[7]

LIA further contends that "MultiPlan cannot legitimately claim that it is unaware that the reimbursement rates at issue are below competitive levels; through its extensive database of reimbursement claims and pricing, it has extensive knowledge of how low the rates are below market." Pltff's Opp., at pp. 21-22. Yet, there is nothing beyond this conclusory statement (again not drawn from the Complaint), that leads down the path that Plaintiff seeks to have this Court

[7] Plaintiff also cites *Meredith Corp. v. Sesac*, 1 F. Supp. 3d 180, 213 (S.D.N.Y. 2014), to suggest that MultiPlan did not need full knowledge of United's alleged plans. Yet nothing in the Complaint points to the existence of a "plan" at all.

follow: to presume, based solely on matters not even alleged, that the reimbursements at issue are too low due to allegedly anticompetitive conduct by United, which MultiPlan has allegedly committed—consciously—to facilitate. This is simply a logical cord stretched to, and beyond, the breaking point. And again, as MultiPlan has noted in its prior submissions in this case, Plaintiff's claim that it is entitled to reimbursement rates that are set by it alone, yet as to which it has not demonstrated any legal basis to be paid, must be rejected.

This last point feeds directly into LIA's claim for unjust enrichment which, like its antitrust claim against MultiPlan, should be dismissed with prejudice. Plaintiff alleges that MultiPlan has been enriched to the extent that MultiPlan is paid fees based on the savings it is able to obtain by working to convince providers such as LIA to accept reimbursements in the form of Qualifying Payment Amounts (QPAs), which are lower than what providers arbitrarily set. There is no entitlement to such amounts, because as out-of-network (OON) providers, groups such as LIA have elected not to have their payment established by contract. As a result, any difference between what they initially seek and what they ultimately accept through the IDR process has not been "taken" from them, since they had no "right" to the initial amount to begin with. Accordingly, there is no benefit inappropriately bestowed on MultiPlan.

CONCLUSION

There is nothing within the "four corners" of the Complaint that properly alleges that MultiPlan, as a non-competitor to United and to LIA in any relevant market, however poorly alleged, has violated the Sherman Act or the Donnelly Act. There is no properly alleged conspiracy to which MultiPlan has been or is a party that would impose liability upon it for any alleged antitrust violation by United, the occurrence of which MultiPlan does not, in any event, concede. Moreover, there is no basis for a claim of unjust enrichment against MultiPlan based on Plaintiff's

allegations. And, finally, Plaintiff should not be allowed to amend its fatally flawed Complaint because there are no allegations available to it that can make out a plausible claim against MultiPlan.

Based on the foregoing, MultiPlan's original Memorandum of Law, as well as the arguments submitted separately by United, the Complaint should be dismissed with prejudice.

Dated: December 5, 2022

Respectfully submitted,

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