UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

LONG ISLAND ANESTHESIOLOGISTS PLLC,

Case No.: 2:22-cv-04040-HG

Plaintiff,

v.

UNITEDHEATLHCARE INSURANCE COMPANY OF NEW YORK INC., as Program Administrator, THE EMPIRE PLAN MEDICAL/SURGICAL PROGRAM and MULTIPLAN INC.,

Defendants.

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

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

INTRODUCTION

Nothing that LIA has set forth in its Memorandum of Law in Opposition to Defendants' Motions to Dismiss Plaintiff's Amended Complaint, filed September 9, 2024 [Dkt. 64] ("Pltf's Opp.") alters the fundamental flaws in Plaintiff's Amended Complaint ("Am. Compl."), which were pointed out in the Motions to Dismiss filed by MultiPlan and by its co-defendant, UnitedHealthcare Insurance Company of New York ("United") [Dkts. 61, 62]. First, Plaintiff has still failed to meet the "plausibility" standard of Fed. R. Civ. P. 8(a), as articulated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 566 U.S. 662 (2009). Second, Plaintiff has failed to allege a Sherman Act § 1 or § 2 violation against MultiPlan, for various reasons, thereby requiring dismissal of those claims. Third, Plaintiff

has failed to allege a Donnelly Act violation against MultiPlan, for various reasons, thereby requiring dismissal of that claim. Fourth, three of the causes of action are not even directed at MultiPlan. Accordingly, for the reasons set forth herein, in the Memoranda of Law in Support of Motions to Dismiss filed by United and MultiPlan, as well as those set forth in the Reply Memorandum being filed today by United,[1] LIA's Amended Complaint should be dismissed with prejudice.

ARGUMENT

I. *Joseph* is Dispositive and Preclusive

The decision in *Joseph et al. v. Corso et al.*, No. 902227-22, Dk. 95 (N.Y. Sup. Ct. 2023), precludes Plaintiff's antitrust claims in this case, which are predicated on an assertation that Plaintiff was harmed when the Empire Plan began applying reduced reimbursement rates under the federal No Surprises Act as opposed to New York's Surprise Bill Law. Thus, Plaintiff has no damages—and therefore no cognizable legal claim—if the Empire Plan's decision to apply the federal law was correct. And that is exactly what the *Joseph* court held. *Joseph*, No. 902227-22, Dkt. 95 at 6. This Court must give *Joseph* the same preclusive effect as it would have in state court.[2] Plaintiff's arguments that Joseph is irrelevant or does not have preclusive effect, *see* Pltf's Opp., at pp. 21-24, are simply wrong.

The *Joseph* court also found that "United cannot and does not, control the Empire Plan's coverage or reimbursement decisions." *Joseph*, No. 902227-22, Dkt. 95 at 5–6. In other words, DCS—not United—made the (correct) choice to follow the federal No Surprises Act. Thus, Plaintiff should be prevented from attempting to hold United responsible for the Empire Plan's application of federal law. MultiPlan is even further removed than United from the Empire Plan's decision-making process. As alleged, MultiPlan functions as United's contracted billing vendor for the Empire Plan. Thus, ***MultiPlan has no direct relationship or dealings with the Empire Plan***

[1] MultiPlan incorporates herein the arguments made in United's Reply Memorandum.

[2] *See, e.g.*, 28 U.S.C. § 1738; *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985).

whatsoever. It would strain all possible plausibility for Plaintiff to assert (which it has not even attempted to do) that MultiPlan controls the Empire Plan's coverage or reimbursement decisions.

In sum, *Joseph* precludes LIA from seeking to hold MultiPlan or United responsible for the Empire Plan's (correct) application of federal law. As this forms the basis of all of Plaintiff's claims, dismissal of the Amended Complaint is therefore warranted.

II. Plaintiff Has Still Failed to Make Out Its Sherman Act Claims

As previously noted, Plaintiff has not made out a plausible case in connection with any of the Counts asserted against MultiPlan. MultiPlan has not been plausibly alleged to be (1) a competitor of Plaintiff; (2) a competitor of United; or (3) an entity that possesses or exercises market power in any properly defined relevant product or geographic market. Further, outside of conclusory allegations, MultiPlan has not been shown to be a co-conspirator, or an aider or abettor of United, as the essential elements of such claims are missing. Finally, there has been no proper allegation of an *antitrust* injury caused by MultiPlan. There is no antitrust claim here, despite Plaintiff's attempt to craft one. Whatever Plaintiff's view of recent events, injury to competition attributable to MultiPlan has not been pled, nor is it discernable, let alone plausible.

In its Opposition, Plaintiff points to allegations in the Amended Complaint as to PPO network competition between MultiPlan and United as the basis for its claim that there exists a "combination" or "concerted action" between MultiPlan and United which then supports a viable Sherman Act § 1 claim. Pltf's Opp., at pp. 8-10. Those allegations miss the mark. Plaintiff's conspiracy allegations in this case do not concern PPO networks or Plaintiff's relationships with PPO clients. Plaintiff's alleged market in this case is the provision of medically necessary anesthesiology services. [*See* Am. Compl. ¶ 276]. There are no allegations that United and MultiPlan compete in that market. Likewise, at most, Plaintiff alleges that MultiPlan has contracted with United to provide certain billing support services. But a legitimate above-board business relationship does not by itself constitute an illegal Section 1 agreement, and Plaintiff

offers no factual allegations showing a "conscious commitment" to engage in unlawful conduct.[3] Further, LIA has not properly alleged that MultiPlan aided or abetted any purported antitrust violation on the part of United.[4]

LIA spends a significant portion of its Opposition attempting to point to allegations that it claims show the presence of market power in the alleged relevant product and geographic markets. Pltf's Opp., at pp. 14-17. Yet, like the Amended Complaint itself, to which the Court must confine its consideration, Plaintiff's Opposition fails to point where, in particular, MultiPlan has such market power. And again, MultiPlan and United do not compete with each other, or with LIA, in the alleged relevant geographic and product market, so any market power analysis is beside the point.

As to antitrust injury, LIA argues that the scheme in which it alleges United and MultiPlan have engaged has decreased the quality and output of anesthesia services, Pltf's Opp., at pp. 3-5, and alternatively, that the reduction of reimbursement payments is independently sufficient to constitute antitrust injury because "there is something more." *Id.* at pp. 5-8. Parsing through the tortured arguments made by Plaintiff (such as claiming that "rushed judgments" can cause antitrust injury), and again, focusing on the allegations in the Amended Complaint to which the Court must

[3] As noted previously in MultiPlan's original Memorandum of Law supporting its Motion to Dismiss, "[c]ircumstances must reveal 'a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement.'" *Anderson News*, 680 F.3d at 183 (quoting *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 764 (1984)); *Hinds Cty., Miss. v. Wachovia Bank, N.A.*, 620 F. Supp. 2d 499, 515 (S.D.N.Y. 2009) (where antitrust complaint names multiple defendants, plaintiff must "make allegations that plausibly suggest that each defendant participated in the alleged conspiracy."). "[D]efendants are entitled to know how they are alleged to have conspired, with whom, and for what purpose." *Concord Assocs., LP v. Entm't Props. Trust*, 2014 WL 1396524, at *23 (S.D.N.Y. Apr. 9, 2014), *aff'd*, 817 F.3d 46 (2d Cir. 2016). There is no plausible conspiracy alleged here.

[4] In *Stolow v. Greg Manning Auctions Inc.*, 258 F. Supp. 2d 236, 250 (S.D.N.Y.), *aff'd*, 80 F. App'x 722 (2d Cir. 2003), the court stated that to "allege aiding and abetting, a plaintiff must claim: (1) a violation of law by the primary party; (2) knowledge of the violation by the aider and abettor; and (3) 'substantial assistance' by the aider and abettor in achieving the primary violation." (citations omitted). *See also Armstrong v. McAlpin*, 699 F.2d 79, 91 (2d Cir. 1983) (same). None of those elements have been sufficiently alleged in the Amended Complaint. Therefore, there is no basis to proceed further if this is the theory which Plaintiff seeks to advance.

direct its attention in weighing the motions to dismiss, one again finds that the necessary factual claims are missing. Vague references to harm suffered by Plaintiff and other alleged providers says nothing about competition in a relevant market (whatever that market might be)—which might include thousands of anesthesiologist practitioners. Plaintiff has alleged nothing more than some anesthesia practices' dissatisfaction with reduced reimbursements offered under a single health plan for a limited category of surprise bills.

Moreover, it is impossible to discern how anything that MultiPlan is alleged to have done with respect to communicating with Plaintiff, following the federal No Surprises Act to the exclusion of the New York Surprise Bill Law can be the cause of any damages allegedly suffered by Plaintiff, let alone any injury to competition in general (assuming the existence of a relevant market which, as has been shown, has not been properly alleged).[5] And Plaintiff fails to identify a single patient who has had to pay more for anesthesia services.

Accordingly, Plaintiff's First Cause of Action against MultiPlan should be dismissed with prejudice.

III. Plaintiff Has Failed to Make Out Its Donnelly Act Claim

Insofar as Plaintiff seeks to make out a Donnelly Act claim, it must meet the same pleading requirements as are needed to establish its Sherman Act claims. *Yankees Ent. & Sports Network, LLC v. Cablevision Sys. Corp.*, 224 F. Supp. 2d 657, 678 (S.D.N.Y. 2002). Further, the Second Circuit has found that there is "no reason . . . to interpret the Donnelly Act differently than the Sherman Act with regard to antitrust standing." *Gatt Commc'ns, Inc.*, 711 F.3d at 81 (2d Cir. 2013).

Because, as demonstrated above, the Amended Complaint lacks the necessary allegations to make out viable Sherman Act claims against MultiPlan, it follows that it fails to make out

[5] Plaintiff fails to show that the Empire Plan's (correct) decision to apply the federal No Surprises Act will result in higher healthcare costs. And Plaintiff fails to connect any alleged acts of MultiPlan to the Empire Plan's decision.

comparable claims under the Donnelly Act. Accordingly, Plaintiffs' Fourth Cause of Action against MultiPlan should be dismissed with prejudice.

IV. Plaintiff's Monopsony (Second and Third Causes of Action) and Unjust Enrichment (Fifth Cause of Action) Claims Are Only Asserted Against United

It is apparent from the Amended Complaint, and as made clear by the arguments in Plaintiff's Opposition, that the Second, Third, and Fifth Causes of Action are not directed at MultiPlan. MultiPlan agrees with United's position that those claims should also be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, as well as those set forth in MultiPlan's original Memorandum of Law, United's original and Reply Memoranda of Law, and based on the inadequacies of the allegations in the Amended Complaint, MultiPlan respectfully requests that the Court grant its Rule 12(b)(6) Motion, dismissing with prejudice the Amended Complaint.

October 14, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Errol J. King, Jr., certify that on October 14, 2024, I caused the Reply Memorandum of Law in Support of Its Motion to Dismiss to be filed with Clerk of the Court and served upon all counsel of record via the Court's CM/ECF system.

Dated: October 14, 2024

/s/ Errol J. King, Jr.

Errol J. King, Jr.