UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SAINT FRANCIS HOSPITAL AND MEDICAL CENTER, INC., Plaintiff, v. HARTFORD HEALTHCARE CORPORATION, HARTFORD HOSPITAL, HARTFORD HEALTHCARE MEDICAL GROUP, INC., and INTEGRATED CARE PARTNERS, LLC, Defendants.	No. 3:22-cv-00050-AVC FEBRUARY 23, 2022

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

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Statutes

Defendants Hartford HealthCare Corporation ("HHC"), Hartford Hospital, Hartford HealthCare Medical Group, Inc. ("HHCMG"), and Integrated Care Partners, LLC ("ICP") (collectively, "Defendants" or "Hartford HealthCare") move to dismiss the Amended Complaint of Plaintiff Saint Francis Hospital and Medical Center, Inc. ("St. Francis") for failure to state a claim.[1]

PRELIMINARY STATEMENT

In this action, one hospital system asserts antitrust claims against a competing hospital system primarily based on the latter's successful recruitment of a number of high-quality physicians. Plaintiff St. Francis—one of almost ninety hospitals run by industry behemoth Trinity Health—is apparently concerned that physicians who have chosen to join Defendant Hartford HealthCare now refer many of their patients to other Hartford HealthCare physicians and healthcare providers, and not to St. Francis. St. Francis's claims lack merit and must be dismissed. First, St. Francis's alleged injuries arise not from any supposed reduction in competition, but from competition itself, and St. Francis therefore lacks standing under the antitrust laws to assert its claims. Second, St. Francis's antitrust claims fail because the antitrust laws do not give it the right to interfere with physician-employees' decisions as to where to work, even if those employment decisions allegedly harm St. Francis's business. Third, St. Francis has failed to plead sufficient facts to sustain its allegations that it was foreclosed from a relevant market, or that Hartford HealthCare's other alleged conduct constitutes an antitrust violation. For these and other reasons, St. Francis's claims should be dismissed in their entirety.

[1] Citations in the form ¶ _ reference the Amended Complaint. For purposes of this motion only, Defendants assume the truth of the factual allegations in the Amended Complaint except as otherwise noted.

In this era when the need to improve our nation's healthcare is at the forefront of societal concerns (especially during the ongoing pandemic), Hartford HealthCare, a nonprofit healthcare system, provides high-quality healthcare to patients across Connecticut. For more than a decade, Hartford HealthCare has been a leader in a movement away from an inefficient, hard-to-navigate, and inequitable system of care towards a patient-focused model centered on close clinical integration among healthcare providers. In pursuit of this goal, Hartford HealthCare has been widely recognized for building a world-class, comprehensive, and integrated healthcare-delivery system that operates throughout the state to enhance access, affordability, equity, and excellence. Its locally-owned and -operated care-delivery system includes hospitals, a network of ambulatory facilities, as well as primary and specialty care services and home-health care across the state.

Industry experts recognize that the "cultural and structural integration" that healthcare systems like Hartford HealthCare provide "serves as the cornerstone for . . . high reliability" by bringing multiple facilities and providers "together under the same leadership, with the same policies and procedures and processes" and ensuring that care is provided "in a consistent and standard approach . . . [that] promot[es] quality, safety, and the best experience possible."[2] But to achieve such integration, Hartford HealthCare must, among other things, attract highly qualified physicians—just as any other successfully integrated healthcare system must do. The need for healthcare systems to recruit the best and brightest physicians has generated a vibrant competitive market for physicians' services, but St. Francis seeks to diminish that competition by filing this lawsuit.

[2] Christina Decker & Thomas Lee, *Cultivating 'Systemness' to Create Personalized, High-Reliability Health Care*, NEJM CATALYST (May 22, 2018), https://catalyst.nejm.org/tina-freese-decker-systemness-high-reliability/.

St. Francis's Amended Complaint expresses concern that a number of qualified physicians have chosen to—by employment or otherwise—practice at Hartford HealthCare rather than St. Francis. Hartford HealthCare and other competing systems in Connecticut have indeed successfully competed to recruit some physicians to their systems who formerly practiced at St. Francis. That leaves St. Francis with a choice. One option is to compete harder to recruit and retain physicians. There is no reason it could not do so, particularly given its massive financial resources—it has higher operating margins than Hartford HealthCare,[3] and is owned by industry giant Trinity Health, a system that includes about ninety other hospitals.[4]

St. Francis, however, chose not to compete, and instead filed this lawsuit in an effort to chill Hartford HealthCare's competitive activities and limit the employment opportunities available to Connecticut's physicians, even in the wake of Trinity Health's recent employee furloughs and layoffs.[5] The antitrust laws do not, however, provide St. Francis with such an anticompetitive remedy.

Even accepting the Amended Complaint's allegations as true as required by Federal Rule of Civil Procedure 12(b)(6), St. Francis's antitrust lawsuit is legally deficient and the Amended

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[3] *See* CONN. OFFICE OF HEALTH STRATEGY, ANNUAL REPORT ON THE FINANCIAL STATUS OF CONNECTICUT'S SHORT TERM ACUTE CARE HOSPITALS FOR FISCAL YEAR 2020 at 2, 59, 77, 79, 83 (Dec. 2021), https://portal.ct.gov/-/media/OHS/HSP/FSReport_2020.pdf ("2020 CONN. HOSPITAL FINANCE REPORT").

[4] *See id.* at 113; TRINITY HEALTH, ABOUT US, https://www.trinity-health.org/about-us/ (last visited Feb. 22, 2022).

[5] *See* Matt Pilon, *As revenues plunge, St. Francis Hospital parent announces layoffs, more furloughs,* HARTFORD BUS. J. (June 30, 2020), https://www.hartfordbusiness.com/article/as-revenues-plunge-st-francis-hospital-parent-announces-layoffs-more-furloughs. Nor were St. Francis's furloughs and layoffs driven by financial necessity, as St. Francis reported $92.4 million in operating gain and $114.1 million in total gain for FY 2020—the highest of any hospital in Connecticut. *See* 2020 CONN. HOSPITAL FINANCE REPORT at 7; *see also* Ed Stannard, *'A challenging year,' but many CT hospitals offer bonuses and raises*, NEW HAVEN REGISTER (Jan. 1, 2021), https://www.nhregister.com/news/article/A-challenging-year-but-many-CT-hospitals-15839394.php (reporting that "Hartford HealthCare had no furloughs or layoffs in 2020 and hired hundreds of nurses and other staff," and that employees "will receive both bonuses and salary increases").

Complaint should be dismissed in its entirety. ***First***, St. Francis has no standing under the antitrust laws to challenge the conduct alleged in the Amended Complaint. St. Francis's injuries do not derive from a *reduction in competition*; they arise from *competition itself*. The injuries about which St. Francis complains—alleged reduced opportunities for physician referrals to St. Francis—would be the same if St. Francis had lost those physicians to any other hospital in the area, such as Yale New Haven Hospital, Manchester Memorial Hospital, Bristol Hospital, or UConn. It is well-established that a plaintiff only has standing to challenge vertical integration by its competitor where the plaintiff's injuries arise from allegedly anticompetitive effects of such integration. But here, St. Francis's claimed injuries arise solely from its inability (or affirmative decision not) to offer physicians a more attractive alternative to Hartford HealthCare. Moreover, the antitrust laws do not confer standing on a competitor like St. Francis to seek damages on the basis of conduct that may have only remotely injured it, if at all.

Second, to the extent St. Francis's claims arise from Hartford HealthCare's recruitment and direct employment of physicians, St. Francis's case fails because the antitrust laws do not restrict the freedom of employees and employers to enter into mutually beneficial employment relationships except in narrow, exceptional circumstances not adequately alleged here—where an employer hires an employee and then does not use the employee's services, evidencing no business purpose other than to deny that employee's services to a competitor. Rather, St. Francis alleges that Hartford HealthCare hired physicians to treat more patients.

Third, the Amended Complaint fails to allege facts plausibly suggesting that St. Francis was foreclosed from a substantial portion of a relevant market. A party claiming foreclosure must adequately define the relevant market, and plead facts indicating that it has been substantially foreclosed from that market. But instead of defining a market based on the range of competitive

opportunities available to it, St. Francis instead attempts to define markets limited solely to a subset of patients—those enrolled in plans offered by "commercial insurers." St. Francis does not adequately allege why other types of patients, *i.e.*, those who pay for their care with Medicaid, Medicare Advantage, or traditional Medicare, are not important as well, and why they are not adequate substitutes for commercially insured patients.

Fourth, the Amended Complaint tacks on additional claims alleging that Hartford HealthCare injured St. Francis by declining to participate in "tiered" or "narrow" insurance plans, and by negotiating an exclusive purchase contract for a robotic surgical assistant. These claims, however, lack sufficient factual allegations to state a viable antitrust claim and rely instead on bare legal conclusions.

Fifth, for similar reasons, St. Francis's state law claims must also be dismissed.

STATEMENT OF FACTS[6]

I. Healthcare Providers in Hartford

Hartford HealthCare's subsidiaries include (i) Hartford Hospital, a premier teaching hospital, tertiary care center, and regional referral center located in Hartford County that provides high-quality care in all clinical disciplines; (ii) HHCMG, a multispecialty physician group that employs approximately 750 physicians; and (iii) ICP, a physician-led, clinically integrated provider network whose mission is to assist its members in providing high-quality care at the most reasonable cost for patients, including by entering into contracts with insurers to further

[6] On a Rule 12(b)(6) motion, a district court may consider "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007); *see also* Fed. R. Evid. 201(b) (courts may take judicial notice of a fact that is "not subject to reasonable dispute because [it] (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately or readily determined from sources whose accuracy cannot reasonably be questioned").

participation in value-based reimbursement by both HHCMG and independent community-based participating providers. ¶¶ 20-21, 56.

Hartford Hospital is consistently ranked among the highest quality hospitals in the country. It recently received an "A" grade for patient safety and was the only hospital in Connecticut to be recognized as a Top Teaching Hospital by the prestigious Leapfrog Group, *see* ¶ 25,[7] and was ranked "#1 in Hartford" and "#2 in Connecticut" for Best Regional Hospitals for 2021-2022 by U.S. News & World Report, *compare* ¶ 26.[8] Healthgrades has also recognized Hartford Hospital with specialty excellence awards in multiple consecutive years for numerous specialties including cardiac, neurosciences, pulmonary, gastrointestinal, and critical care.[9]

St. Francis is owned by Trinity Health of New England Corporation, Inc. ("Trinity-NE"). ¶ 9. Trinity-NE is a subsidiary of Trinity Health, a national health system based in Livonia, Michigan that operates nearly ninety hospitals in more than twenty-five states. *See id.*[10] In addition to St. Francis, Trinity Health and Trinity-NE also own and operate three other acute care hospitals in Connecticut and an acute care hospital in nearby western Massachusetts, as well as

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[7] *See* LEAPFROG GROUP, LEAPFROG HOSPITAL SAFETY GRADE, HARTFORD HOSPITAL (Fall 2021), https://www.hospitalsafetygrade.org/h/hartford-hospital?findBy=city&city=Hartford&state_prov=CT&rPos=0&rSort=distance; LEAPFROG GROUP, TOP HOSPITALS, https://www.leapfroggroup.org/ratings-reports/top-hospitals (last visited Feb. 23, 2022).

[8] *See* U.S. NEWS & WORLD REPORT, HARTFORD HOSPITAL, https://health.usnews.com/best-hospitals/area/ct/hartford-hospital-6160003#rankings (last visited Feb. 22, 2022).

[9] HARTFORD HEALTHCARE, HARTFORD HEALTHCARE EARNS 63 AWARDS FROM HEALTHGRADES (Nov. 12, 2021), https://hartfordhospital.org/about-hh/news-center/news-detail?articleId=37007&publicid=461. Although St. Francis criticizes Hartford HealthCare for its allegedly longer patient stays because "[p]atients are . . . unable to return home as quickly as they would like," ¶ 164, any patient who has ever been pushed out of a hospital prematurely knows the value of a hospital that discharges patients when they are ready to go home, and not on an earlier date—even where that earlier date might be better financially for the hospital.

[10] *See also* TRINITY HEALTH, ABOUT US, https://www.trinity-health.org/about-us/ (last visited Feb. 22, 2022).

ambulatory and post-acute care facilities. ¶ 9. They also own a majority stake in Southern New England Health Care Organization ("SoNE"), a provider network comprising over 1,600 primary and specialty care physicians that negotiates with insurers on behalf of St. Francis's employed and affiliated physicians. ¶ 39.

St. Francis has significantly greater financial resources than Hartford HealthCare, including more cash on hand, a better bond rating, and a higher operating margin.[11] Indeed, just days before filing this lawsuit, St. Francis announced that it will spend $280 million to build a new hospital tower less than three miles from Hartford Hospital.[12] Additionally, in early 2020, St. Francis opened the $26 million Lighthouse Surgery Center on its hospital campus, which it operates as a joint venture with two physician groups.[13] In 2021, Trinity-NE expanded its urgent care offerings after acquiring a majority ownership stake in Premier Health.[14] Trinity-NE also has plans to open more than half a dozen multispecialty access centers to provide patients an array of primary and specialty care services; it has already opened the first of these locations in Rocky Hill

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[11] *See* 2020 CONN. HOSPITAL FINANCE REPORT at 82-86; *compare* FITCH RATINGS, FITCH ASSIGNS 'AA-' RATING TO TRINITY HEALTH'S SERIES 2022AB BONDS; OUTLOOK STABLE (Dec. 9, 2021), https://www.fitchratings.com/research/us-public-finance/fitch-assigns-aa-rating-to-trinity-health-series-2022ab-bonds-outlook-stable-09-12-2021, *with* FITCH RATINGS, FITCH RATES HARTFORD HEALTHCARE'S (CT) 2021A REVS 'A+'; AFFIRMS IDR; OUTLOOK STABLE (Aug. 31, 2021), https://www.fitchratings.com/research/us-public-finance/fitch-rates-hartford-healthcare-ct-2021a-revs-a-affirms-idr-outlook-stable-31-08-2021.

[12] *See* Robert Storace, *St. Francis Hospital's Burke to Oversee $280M Campus Renovation Plan*, HARTFORD BUS. J. (Dec. 13, 2021), https://www.hartfordbusiness.com/article/st-francis-hospitals-burke-to-oversee-280m-campus-renovation-plan.

[13] *See* Press Release, S/L/A/M Constr. Servs., *SLAM design-build team completes Lighthouse Surgery Center* (Jan. 15, 2022), https://www.slamcoll.com/article/17/slam-design-build-team-completes-lighthouse-surgery-center.

[14] *See* Press Release, Trinity Health, *Trinity Health Grows Urgent Care Services to Improve Access to Care* (Mar. 10, 2021), https://www.trinity-health.org/news/trinity-health-grows-urgent-care-services-to-improve-access-to-care.

and Cheshire, Connecticut and announced another planned location in Bloomfield, Connecticut as part of its "ongoing plan to expand its footprint."[15]

II. Hartford HealthCare's Integrated Care Model

Historically, healthcare providers have been reimbursed by payors under a "fee for service" model in which the provider is paid a fee for each individual healthcare service provided to a patient. Motivated in part by the passage of the Affordable Care Act in 2010, the healthcare industry has been moving away from this model, which reimburses providers based only on the quantity of care provided, to embrace value-based payment arrangements that incentivize providers to effectively coordinate care to provide lower-cost, higher-quality services to patients. *See* ¶ 40.[16] Under a value-based model, healthcare providers can perform better financially if their patients have fewer health problems and shorter hospital visits, not simply if they perform more procedures.

In furtherance of these goals, Hartford HealthCare has adopted an innovative integrated-care model marked by strong patient focus, heightened efficiency, and consistent quality, as well as treatment of patients in safer and more affordable non-hospital settings. At the center of this model is the coordinated care experience: physicians and other providers across the Hartford HealthCare network are held to a high standard of care, have access to common resources, including population health-management tools, care coordination staff, electronic medical records,

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[15] *See* Press Release, Trinity Health, *Trinity Health Of New England Opens New Rocky Hill Access Center* (Nov. 9, 2021), https://www.trinityhealthofne.org/about-us/in-the-news/trinity-health-of-new-england-opens-new-rocky-hill-access-center.

[16] FED. TRADE COMM'N & U.S. DEPT. OF JUSTICE, STATEMENT OF ANTITRUST ENFORCEMENT POLICY REGARDING ACCOUNTABLE CARE ORGANIZATIONS PARTICIPATING IN THE MEDICARE SHARED SAVINGS PROGRAM, 76 FED. REG. 67,027 (2011), https://www.govinfo.gov/content/pkg/FR-2011-10-28/pdf/2011-27944.pdf; CTRS. FOR MEDICARE & MEDICAID SERVS., VALUE-BASED PROGRAMS, https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/Value-Based-Programs.

and shared facilities, and collaborate on individual patient care and best practices. *See, e.g.*, ¶ 74. To that end, Hartford HealthCare created ICP, a physician network that provides and coordinates medical services to patients throughout Connecticut. *See* ¶ 4. Some ICP physicians are employed by Hartford HealthCare, while others remain independently employed. ¶ 73.

III. Physician Recruitment and Referrals

As the healthcare industry is transitioning to using value-based care models, the integrated healthcare system has become the most prevalent form of healthcare delivery in the United States, and physicians have increasingly sought direct employment within health systems instead of remaining in private practice.[17] This evolution has resulted in increasingly intense competition among integrated healthcare systems to recruit physicians for employment.[18] In this competitive environment, effectively recruiting physicians requires a deliberate and considerable investment of time and resources. *See* ¶¶ 91, 208, 212. This competition is even fiercer in Connecticut, where state law deliberately invigorates competition among healthcare systems for physicians by statutorily limiting non-compete restrictions for physicians to a one-year period and a fifteen-mile geographic radius. *See* Conn. Gen. Stat. § 20-14p.

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[17] *See, e.g.*, AGENCY FOR HEALTHCARE RESEARCH & QUALITY, COMPENDIUM OF HEALTH SYSTEMS (2018), https://www.ahrq.gov/chsp/data-resources/compendium-2018.html; AM. HOSP. ASS'N, TRENDWATCH CHARTBOOK at A21, A36 (2020), https://www.aha.org/system/files/media/file/2020/10/TrendwatchChartbook-2020-Appendix.pdf; Carol Kane, AM. MED. ASS'N, POLICY RESEARCH PERSPECTIVES: RECENT CHANGES IN PHYSICIAN PRACTICE ARRANGEMENTS: PRIVATE PRACTICE DROPPED TO LESS THAT 50 PERCENT OF PHYSICIANS IN 2020, https://www.ama-assn.org/system/files/2021-05/2020-prp-physician-practice-arrangements.pdf; Laura Kimmey et al., *Geographic Variation in the Consolidation of Physician Into Health Systems*, 2016-18, 40 HEALTH AFFAIRS 165 (2021); Cory Capps, David Dranove & Christopher Ody, *The Effect of Hospital Acquisitions of Physician Practices on Prices and Spending*, 59 J. HEALTH ECON. 139, 140 (2018) (cited in ¶ 186(D)).

[18] *See, e.g.*, Robert Kocher & Nikhil Sahni, *Hospitals' Race to Employ Physicians – The Logic Behind a Money-Losing Proposition*, 364 NEW ENG. J. MED. 1790, 1790-92 (2011) ("U.S. hospitals have begun responding to the implementation of health care reform by accelerating their hiring of physicians. . . . [M]any organizations are constructing what could effectively become closed, integrated health care delivery systems. Strategically, hospitals with a robust employment strategy will be well positioned to compete under various reimbursement scenarios.").

Recognizing the value that physicians provide both to patients and to an integrated healthcare system, Hartford HealthCare (like St. Francis) competes to recruit qualified physicians to treat the patients in its system. *See* ¶¶ 54-55, 68-70, 74. Utilizing coordination resources that reduce physicians' administrative workloads, *see* ¶ 74, Hartford HealthCare's integrated care system enables physicians to focus on providing better care to more patients. Hartford HealthCare also operates a network of facilities and primary and specialty care offices across Connecticut, ¶ 68, allowing physicians to practice closer to where their patients live and work. Hartford HealthCare's approach has enabled it to offer physician candidates more flexible work arrangements, ¶ 74, and opportunities to build a medical practice focused on research or clinical treatment, ¶ 71. Hartford HealthCare works with recruited physicians to avoid disruptions to staff, patient care, and patient experience. *See* ¶ 56.

In seeking to provide a comprehensive integrated healthcare network, Hartford HealthCare has sought to recruit physicians (or integrate physician practices) that address particular community needs. *See* ¶¶ 58-61. When a physician chooses to practice at Hartford HealthCare, the physician often performs a substantial portion of their services at Hartford HealthCare facilities, subject to the physician's medical judgment, patient preference, and the patient's health benefit plan. ¶ 56; *see also* ¶ 86. Because the quality, coordination, and cost-saving benefits from Hartford HealthCare's integrated care system are most effective when a patient's care remains within the system, Hartford HealthCare may in some cases encourage that. ¶¶ 75, 78, 80.

IV. Antitrust Litigation

In the Amended Complaint, Dkt. 33, St. Francis contends that Hartford HealthCare's alleged conduct—including (i) hiring more physicians (including by allegedly offering better employment terms than St. Francis); (ii) encouraging in-network referrals in certain circumstances; (iii) declining to participate in tiered or narrow networks, or to offer bundled prices;

and (iv) obtaining exclusive deals for certain medical equipment—has increased Hartford HealthCare's market power in a number of purported relevant markets, thereby enabling it to charge allegedly higher prices. *See* ¶¶ 2-6, 53-65, 68-70, 73-89, 96-111, 113-19, 121-24, 172-77, 185, 187. St. Francis further claims that Hartford HealthCare's alleged conduct injured St. Francis by preventing St. Francis from competing for physicians and referrals, and foreclosing St. Francis from treating some number of patients in those alleged markets. *See* ¶¶ 7, 66-67, 71, 90-95, 112, 120, 188-89, 199.

Hartford HealthCare moves to dismiss the Amended Complaint for failure to state a claim.

LEGAL STANDARD

To survive a Rule 12(b)(6) motion, a complaint alleging a Sherman Act violation "must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). "[A] complaint must allege facts that are not merely consistent with the conclusion that the defendant violated the law, but which actively and plausibly suggest that conclusion." *Port Dock & Stone Corp. v. Oldcastle Ne., Inc.*, 507 F.3d 117, 121 (2d Cir. 2007) (citing *Twombly*, 550 U.S. at 570); *see also Iqbal*, 556 U.S. at 678 (the factual allegations must "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged") (citations omitted). In evaluating whether a complaint contains sufficient factual allegations, courts must "tak[e] as true the factual allegations of the complaint, but giv[e] no effect to legal conclusions couched as factual allegations." *Port Dock*, 507 F.3d at 121. When the factual allegations of a pleading fail to plausibly suggest any entitlement to relief, "this basic deficiency should be exposed at the point of minimum expenditure of time and money by the parties and the court." *Twombly*, 550 U.S. at 558 (alteration omitted). This principle prevents the "potentially enormous expense of discovery" in an antitrust case such as this that lacks a proper factual and legal basis. *Id.* at 559.

ARGUMENT

I. St. Francis's Claims Should Be Dismissed for Lack of Antitrust Standing.

As a threshold matter, St. Francis's antitrust claims must be dismissed because it lacks standing under the antitrust laws to sue and recover damages for the alleged conduct of Hartford HealthCare. *See IQ Dental Supply, Inc. v. Henry Schein, Inc.*, 924 F.3d 57, 62 (2d Cir. 2019). The Second Circuit has emphasized that a court must "carefully parse[] antitrust standing in order to avoid counter-productive use of antitrust laws in ways that could harm competition rather than protecting it." *Port Dock*, 507 F.3d at 121 (internal citations omitted). "[A]ntitrust standing for a private plaintiff" has two elements: it "requires a showing of a special kind of 'antitrust injury,' as well as a showing that the plaintiff is an 'efficient enforcer' to assert a private antitrust claim." *Id.* at 121 (quoting *Assoc. Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters* ("*AGC*"), 459 U.S. 519, 537-45 (1983)); *see also Gatt Commc'ns, Inc. v. PMC Assocs.*, 711 F.3d 68, 76 (2d Cir. 2013). St. Francis fails both tests.

A. St. Francis Suffered No Antitrust Injury when Physicians Chose Employment by or to Affiliate with Hartford HealthCare Instead of St. Francis.

A private plaintiff suing under the antitrust laws must adequately allege antitrust injury, that is, "an injury attributable to the anticompetitive aspect of the practice under scrutiny." *Port Dock*, 507 F.3d at 122 (citing *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 334 (1990)). It is not enough for a plaintiff to allege that a defendant violated the antitrust laws and therefore injured the plaintiff *a fortiori*. Rather, the plaintiff must allege that it suffered the sort of injury that the antitrust laws were intended to prevent—*i.e.*, injury "that flows from that which makes defendants' acts unlawful." *IQ Dental Supply*, 924 F.3d at 63; *see Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977). A causal connection must exist between "the

anticipated anticompetitive effect of the specific practice at issue" and "the actual injury [the plaintiff] alleges." *Port Dock*, 507 F.3d at 122.

The antitrust injury requirement is particularly important where a plaintiff, like St. Francis, seeks damages for business lost to a competitor, including by challenging recruitment of employees or a "vertical" acquisition by a competitor. Vertical combinations—*i.e.*, those between parties that are not direct competitors (such as physicians and a hospital)—are frequently procompetitive, and good for consumers. As the Second Circuit has stated, even where an alleged monopolist is involved, such transactions are often undertaken "for the purpose of increasing . . . efficiency." *Id.* at 124. Although "pro-competitive or efficiency enhancing" practices "may cause serious harm to [the plaintiff], . . . this kind of harm is the essence of competition." *Atl. Richfield Co.*, 495 U.S. at 344; *see also Fla. Seed Co. v. Monsanto Co.*, 105 F.3d 1372, 1375 n.3 (11th Cir. 1997) ("The rationale for condemning a merger lies . . . not in its potential for cost savings and other efficiencies.") (quoting Phillip Areeda & Herbert Hovencamp, *Antitrust Law* ¶ 381 (rev. ed. 1995)). The antitrust laws—which "were enacted for the protection of competition, not competitors"—do not provide a remedy to plaintiffs seeking "profits they would have realized had competition been reduced." *Brunswick*, 429 U.S. at 488 (internal citations and quotations omitted); *Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104, 116 (1986) ("[C]ompetition for increased market share is not activity forbidden by the antitrust laws. It is simply . . . vigorous competition.").

Courts' long-standing concerns about the antitrust laws being used to chill competition are particularly applicable here. St. Francis claims that it was injured because it lost patient volumes as a result of physicians who previously practiced at St. Francis and other healthcare institutions moving to or affiliating with Hartford HealthCare. ¶¶ 53-95. But even if St. Francis lost patient

referrals from physicians who are now employed by Hartford HealthCare (or affiliated with ICP), those losses are no different in kind from the injury suffered by any hospital when a physician chooses to join any competitor. *See Brunswick*, 429 U.S. at 488; *SCPH Legacy Corp. v. Palmetto Health,* 2017 WL 1437329 (D.S.C. Feb. 23, 2017), *aff'd,* 724 F. App'x 275 (4th Cir. 2018); *Arnett Physician Grp., P.C. v. Greater Lafayette Health Servs., Inc.*, 382 F. Supp. 2d 1092, 1096 (N.D. Ind. 2005). In other words, St. Francis would have suffered exactly the same type of alleged losses had its physicians moved to *any* other hospital system in the area. Thus, even assuming *arguendo* that Hartford HealthCare's integrations with certain doctors or physician groups strengthened its position in the market, St. Francis's alleged injuries did not arise from that strengthened market position. Rather, St. Francis's alleged injuries are the result of the ordinary movement of physicians from one system to another. Under well-established law, that is not antitrust injury.

The decision in *SCPH Legacy Corp. v. Palmetto Health,* 2017 WL 1437329 (D.S.C. Feb. 23, 2017), is on point. In that case, the defendant hospital system acquired a majority of an orthopedic clinic's physicians from the plaintiff, a smaller hospital system. The plaintiff brought antitrust claims alleging, like St. Francis here, that the defendant's hiring of the orthopedic clinic's physicians reduced competition for orthopedic surgery services for patients who reside in the relevant markets, denying those patients the benefits of competition and injuring the plaintiff hospital's ability to compete. *Id.* at *3.

The court dismissed the complaint for lack of antitrust standing, finding that "although [the plaintiff] alleges to have suffered damages, it appears that these damages are not necessarily antitrust damages." *Id.* Despite the plaintiff's allegations that the defendant's orthopedic physician acquisitions increased the defendant's market share for orthopedic services, thereby allegedly reducing the plaintiff hospital's ability to compete, the plaintiff "would have suffered the

same injury regardless of who acquired the [orthopedic physicians]" or if the orthopedic clinic "simply removed itself and operated as an independent orthopedic service provider." *Id.* at *4.

Importantly, in dismissing the plaintiff's claims, the court in *SCPH* found that, even though the plaintiff "may have lost some of its ability to compete in the orthopedic services market when it lost the [orthopedic clinic] . . . this diminished ability to compete did not occur because of the increased size of the defendant. Therefore, [plaintiff's] injury was not the type of injury that claimed antitrust violations would be likely to cause." *Id.*

Here, the same principles defeat St. Francis's claims. St. Francis would have suffered the very same alleged injury—reduced patient referrals and decreased market share—"regardless of who acquired" the physicians listed in the Amended Complaint. *See id.* at *4. St. Francis would have received fewer patient referrals and seen its market share drop if its physicians were acquired by *any other* hospital system in the area, such as Yale New Haven Hospital, Manchester Memorial Hospital, Bristol Hospital, or UConn. *See id.* St. Francis allegedly "may have lost some of its ability to compete" when Hartford HealthCare acquired physician practices, but "this diminished ability to compete did not occur because of the increased size of" Hartford HealthCare. *Id.* Thus, the alleged "injury" to St. Francis "is not the type contemplated by a monopolization of [physician] services." *Id.*; *see also Arnett Physician Grp.*, 382 F. Supp. 2d at 1096 ("The hiring of [physicians] by [defendant hospital] . . . does not constitute anticompetitive activity and does not provide antitrust standing to [plaintiff, a competing physician group]. This hiring of doctors to be used as a 'core' of a new physicians clinic that competes directly with [plaintiff] does not amount to antitrust injury. . . . [because] antitrust laws protect competition, not competitors.").

To be sure, St. Francis's Amended Complaint includes several allegations that certain physicians joined Hartford HealthCare due to supposed "intimidation." *See, e.g.,* ¶ 62. But those

allegations are insufficient to support a claim of antitrust injury. Furthermore, they are wholly conclusory. For example, St. Francis alleges that Hartford HealthCare threatened "specialist physicians" being recruited with the loss of referrals. But St. Francis does not plead, for example, which physicians (let alone in which specialties) were supposedly "intimidated" to join Hartford HealthCare on this basis.

The Supreme Court's seminal decision in *Brunswick Corp. v. Pueblo Bowl-O-Mat* reinforces the principle that a plaintiff lacks antitrust standing where its injuries arise simply from a loss of business to a competitor, and not a reduction in competition. In *Brunswick,* the defendant bowling equipment manufacturer acquired more than two hundred bowling centers from defaulting customers. 429 U.S. at 479-81. The plaintiffs, operators of competing bowling centers, alleged that the acquisitions were unlawful due to the defendant's market dominance, and sought damages under the antitrust laws to recoup profits they would have made if those bowling centers had discontinued operations. *Id.* The Supreme Court held that the plaintiffs had not suffered antitrust injury because their injury—"the loss of income that would have accrued had the acquired centers gone bankrupt"—bore "no relationship to the size of either the acquiring company or its competitors." *Id.* at 487. The Court reasoned that, because the plaintiffs "would have suffered the identical 'loss' but no compensable injury had the acquired centers instead obtained refinancing or been purchased by 'shallow pocket' parents," their injury "was not of the type that the [antitrust laws were] intended to forestall." *Id* at 487-88.

The Second Circuit opinion in *Port Dock & Stone Corp. v. Oldcastle Northeast, Inc.* similarly supports dismissal. 507 F.3d 117. In *Port Dock*, the plaintiff, a construction aggregate distributor, claimed that the defendant, an aggregate manufacturer, had established a production monopoly by acquiring its only competitor, then used its monopoly power over aggregate supply

to gain a foothold in the downstream distribution market, subsequently refused to sell to the plaintiff, and thereby excluded the plaintiff from the distribution market. 507 F.3d at 119-21. In granting the defendant's motion to dismiss, the district court found that the plaintiff lacked antitrust standing to challenge the defendant's acquisition of its competitor because the plaintiff's alleged injury resulted not from the alleged anticompetitive effects of the merger, but rather from the defendant's vertical integration into the distribution market. *Id.* at 120-21. The Second Circuit affirmed, explaining that "[t]he danger to customers from monopolization of the [upstream] production level is the danger that the monopolist will raise prices and restrict output," but the plaintiff "did not suffer an injury from increased prices. . . . Instead, [plaintiff's] grievance is that [defendant] refused to sell to it at all." *Id.* at 123. The court explained that downstream customers terminated in the aftermath of alleged monopolization of the upstream supply level do not have standing to assert antitrust claims because "their particular injury was not caused by an exercise of the defendant's newly acquired power to raise prices. Instead, the [downstream former customer's] injury was caused by the manufacturer's decision to terminate their relationship, something the manufacturer could have just as well done without having monopoly power." *Id.*

St. Francis's own allegations acknowledge that its loss of physicians is not the result of increased market power or higher prices by Hartford HealthCare, but rather the decisions by physicians to join Hartford HealthCare instead of St. Francis. St. Francis complains that Hartford HealthCare offered physicians "highly compensated medical director positions," the ability to do jobs they preferred "whether in research or clinical practice," or the opportunity to work fewer days per week. ¶¶ 70-71, 79. Implicit in these allegations is an admission that St. Francis refused to offer physicians competitive wages or an otherwise better working environment and compete

along these dimensions. But as a matter of antitrust law, St. Francis incurs no "antitrust injury" when physicians accept positions that they preferred at a competitor of St. Francis.

Instead of rising to the challenge of competing to attract physicians to its system, St. Francis seeks to use the antitrust laws to dampen the competitive vitality of the physician labor market in Connecticut, deny physicians the freedom to choose their place of work, and extract unjust damages for business it allegedly lost to Hartford HealthCare's *procompetitive* efforts to attract physicians and patients to its own system. The Court should not countenance this misuse of the antitrust laws.

B. St. Francis Also Lacks Standing Because Its Injury Is, at Best, Remote.

Compounding its inability to show antitrust injury, St. Francis cannot establish the other requisite element of antitrust standing in this Circuit, *i.e.,* that it is "a suitable plaintiff to pursue the alleged antitrust violations and thus is an 'efficient enforcer' of the antitrust laws." *Gatt*, 711 F.3d at 76 (citing *Port Dock*, 507 F.3d at 121-22); *see also AGC*, 459 U.S. at 535 n.31 ("Harm to the antitrust plaintiff is sufficient to satisfy the constitutional standing requirement of injury in fact, but the court must make a further determination whether the plaintiff is a proper party to bring a private antitrust action."). Four factors, which need not be given equal weight, bear on whether an antitrust plaintiff is the proper party to bring the action: "(1) the directness or indirectness of the asserted injury, (2) the existence of an identifiable class of persons whose self-interest would normally motivate them to vindicate the public interest in antitrust enforcement, (3) the speculativeness of the alleged injury, and (4) the difficulty of identifying damages and apportioning them among direct and indirect victims so as to avoid duplicative recoveries." *IQ Dental Supply*, 924 F.3d at 65 (internal citations and quotations omitted).

St. Francis challenges Hartford HealthCare's attracting of physicians to its network and referral practices on the basis that these acts allegedly resulted in higher prices for insurers,

patients, and employers. *See* ¶¶ 6, 161, 172, 187, 198. St. Francis's challenge to Hartford HealthCare's purported refusal to offer bundled pricing or participate in tiered or narrow insurance networks likewise rests on conclusory allegations of higher prices, lower quality, and reduced choice that have not occurred—but if they did, would by St. Francis's own unfounded assertions affect insurers, patients, and others who are not St. Francis or parties to this litigation. *See* ¶¶ 17, 96, 198.

In other words, any alleged injuries, which Hartford HealthCare denies other than for purposes of this motion, were not suffered by St. Francis. To the extent such alleged injuries had any impact at all on St. Francis, they are highly attenuated at best. To be clear, St. Francis does not allege facts from which to infer that Hartford HealthCare has engaged in any anticompetitive conduct. Even so, St. Francis' own Amended Complaint argues that it is insurers, patients, or employers—not St. Francis—who would most directly feel the impact, if any, of anticompetitive conduct in the healthcare space. *See* ¶¶ 6, 17, 96, 161, 172, 187, 198.

By its own allegations, therefore, St. Francis's "purported injuries are at best an indirect result of the primary asserted antitrust violation," thus strongly weighing against standing. *See Gatt*, 711 F.3d at 78. Because it is other parties—if anyone—that might be injured by the type of conduct alleged, those other parties—not St. Francis—constitute an "identifiable class of persons whose self-interest would normally motivate them to vindicate the public interest in antitrust enforcement." *AGC*, 459 U.S. at 542; *see also Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 444 (2d Cir. 2005) ("[P]laintiffs have no natural economic self-interest in reducing the cost of . . . medical care to consumers.") (internal quotations omitted). St. Francis's omission from that identifiable class, as alleged by St. Francis, further supports dismissal for lack of antitrust standing.

II. St. Francis's Antitrust Claims Must Be Dismissed to the Extent that They Arise from Hartford HealthCare's Recruitment and Subsequent Employment of Physicians.

St. Francis's antitrust claims arising out of Hartford HealthCare's recruitment and direct *employment* of physicians, including physicians previously employed by St. Francis, must also be dismissed because such conduct does not amount to anticompetitive or exclusionary conduct within the meaning of the antitrust laws. A fundamental prerequisite of St. Francis's antitrust claims is an allegation and showing of anticompetitive conduct. *See Spectrum Sports, Inc. v. McQuillian*, 506 U.S. 447, 456 (1993); *Arcesium, LLC v. Advent Software, Inc.*, 2021 WL 1225446, at *4 (S.D.N.Y. Mar. 31, 2021) ("A plaintiff in an antitrust action must . . . particularize precisely what conduct they allege is anticompetitive.").[19] But the antitrust laws—whether Sections 1 or 2 of the Sherman Act or Section 7 of the Clayton Act—do not restrict the freedom of employees and employers to enter into mutually beneficial employment relationships. As a leading antitrust treatise explains, "[h]iring talent cannot generally be held exclusionary [*i.e.*, anticompetitive] even if it does weaken actual or potential rivals and strengthen a monopolist . . . [because] [t]here is a high social and personal interest in maintaining a freely functioning market for talent." 4 Phillip Areeda & Herbert Hovencamp, *Antitrust Law* § 702b (2021). Thus, to the extent that the physicians who are the subject of St. Francis's Amended Complaint were actually *hired and employed by* Hartford HealthCare, St. Francis's antitrust claims arising from Hartford HealthCare's hiring and employment of those physicians must be dismissed. It is critical to dismiss those seemingly retaliatory claims at this stage of the proceeding to avoid placing an undue (litigation) burden on those physicians' freedom to choose their own employer.

[19] Defendants challenge St. Francis's failure to allege anticompetitive conduct for purposes of the present motion, but Defendants do not concede that St. Francis has made an adequate showing of any of the other necessary elements of its antitrust claims. In any event, as described above, St. Francis's claims are precluded by its failure to plead antitrust injury.

The Second Circuit has recognized that "[a]s a general policy matter, one firm's hiring of its competitor's employees does not present a compelling case for antitrust intervention. . . . A contrary analysis might constrict the freedom of employees to reap the full benefits of their abilities by discouraging them from moving to the employer offering the highest compensation, as well as by discouraging employers from bidding on a competitor's employees." *Int'l Dist. Ctrs., Inc. v. Walsh Trucking Co.*, 812 F.2d 786, 795 n.6 (2d Cir. 1987) (internal citations and quotations omitted). Yet, in violation of this principle, St. Francis's antitrust claims are based in significant part on the decisions of physicians, including former St. Francis-employed physicians, to be employed by Hartford HealthCare. For example, St. Francis provides a list of physicians that it asserts are now "employed" by Hartford HealthCare. ¶ 54. St. Francis also complains that for one previously independent physician practice, "the majority . . . have become employees of Hartford HealthCare Medical Group." ¶ 64. Thus, St. Francis's Amended Complaint constitutes a frontal assault on the freedom of these physicians to choose their own places of work.

Likely aware of the legal precedent that prevents it from challenging physicians' decisions to switch employers, St. Francis attempts to circumvent this rule by re-characterizing physician employment decisions as Hartford HealthCare "acquiring" these physicians' practices. ¶¶ 54, 56-57. But St. Francis's allegations are clear that its damages relating to these physicians ultimately arise solely from the *change in their employment*, and not any separate conduct by Hartford HealthCare that would rise to the level of anticompetitive conduct sufficient to make out a claim under the antitrust laws. As the court found in *BRFHH Shreveport, LLC v. Willis Knighton Medical Center*, where an injury to a competitor arises from a physician's change in employment, and not the acquisition of specific assets, the injury does not give rise to a claim of anticompetitive conduct. 176 F. Supp. 3d 606, 621 (W.D. La. 2016) (plaintiff's antitrust claims arising from four

alleged acquisitions of physician practices were not actionable under the Sherman Act where the "target provider fail[ed] because [the new employer] hire[d] away its physicians but [the transactions] otherwise [did] not involve [the new employer] acquiring assets of the target provider before it fail[ed]"). St. Francis claims, for example, that it is "understood" or inevitable that a physician's change in employment will result in the movement of that physician's patients (and additional employees) to the new employer. ¶ 56. That concession shows that St. Francis does not allege that it suffered any injury from the movement of these physicians' practices that is distinct from that which St. Francis experienced by their change in employment.

Notably, St. Francis has not pled facts plausibly suggesting that Hartford HealthCare acquired specific, valuable assets of the practices of the physicians it employed who are listed in the Amended Complaint, and it even concedes that there is often "no formal purchase of a corporation" when Hartford HealthCare employs a physician. ¶ 56. Accordingly, St. Francis has not adequately pled that its injuries with respect to physicians now employed by Hartford HealthCare arise from anything more than the physicians' change in their employment.

Finally, St. Francis has not pled facts that could satisfy the one exception to the rule that changes in employment relationships cannot serve as the basis for an antitrust claim—where a plaintiff alleges so-called "predatory hiring." The "predatory hiring" exception requires a showing that "the hiring was made . . . to harm the competition *without helping*" the new employer. *Universal Analytics, Inc. v. MacNeal-Schwendler Corp.*, 914 F.2d 1256, 1258 (9th Cir. 1990) (emphasis added). In other words, the new employer must have hired the employees with no reason other than to prevent a rival from using their services—a "clear nonuse in fact" of the employees after their hiring. *Id.* While St. Francis makes a conclusory allegation in an attempt to

satisfy these requirements, *see* ¶ 71, that conclusory allegation is insufficient to sustain its burden and is wholly implausible under *Twombly*.

In fact, St. Francis's own allegations belie any claim that Hartford HealthCare hired physicians "to harm the competition without helping [itself]" or had no intention of using and benefitting from those physicians' services following their hiring. *Universal Analytics*, 914 F.2d at 1258. St. Francis claims that physicians shifted large patient volumes to Hartford HealthCare following their employment, ultimately strengthening Hartford HealthCare's revenues and business. *See, e.g.*, ¶¶ 7, 18, 57, 60, 86. That allegation confirms that Hartford HealthCare had a "clear business reason" for hiring physicians: to treat more patients. *See Total Renal Care, Inc. v. W. Nephrology & Metabolic Bone Disease, P.C.*, 2009 WL 2596493, at *12-13 (D. Colo. Aug. 21, 2009) (granting motion to dismiss claims that a healthcare provider's efforts to employ physicians at the expense of a competitor were anticompetitive because the allegations demonstrated "a clear business reason" for the employment); *see also Bio-Medical Applications Mgmt. Co. v. Dallas Nephrology Assoc.*, 1995 WL 215302, at *6 (E.D. Tex. Feb. 6, 1995) (defendant's hiring of employees from plaintiff, a competing healthcare provider, was not exclusionary conduct absent facts that the hiring was "for any purpose other than utilizing these employees to open [defendant's] own [healthcare] clinics").

St. Francis's isolated allegation that "one St. Francis physician was told that if he joined Hartford HealthCare, he could do whatever job he preferred, whether in research or clinical practice," ¶ 71, does not allow it to avoid dismissal. Offering a prospective employee attractive employment conditions hardly supports St. Francis's conclusory assertion that Hartford HealthCare's "goal was not to gain a benefit from the employment of that physician but to deny benefits to St. Francis." ¶ 71. Indeed, the previous paragraph in the Amended Complaint alleges

a reason for Hartford HealthCare's hiring of these physicians: "the hospital referrals and related hospital business that these physicians brought to Hartford HealthCare." ¶ 70.

St. Francis's Amended Complaint alleges that the physicians recruited and employed by Hartford HealthCare are some of the region's most talented and productive. ¶¶ 56-58. In the face of these and its other allegations, St. Francis cannot plausibly claim that Hartford HealthCare's employment of these physicians was done to harm the competition without helping itself. *See Midwest Radio Co. v. Forum Pub. Co.*, 942 F.2d 1294, 1297 (8th Cir. 1991) (defendant's hiring of plaintiff's employees was not anticompetitive because the employees "were in fact used by [defendant] to improve [its] performance in the market"); *BRFHH Shreveport*, 176 F. Supp. 3d at 625-26 (defendant hospital's control of physician referrals was "to treat more patients" and therefore was "competition on the merits" and not anticompetitive under the Sherman Act).

III. St. Francis's Antitrust Claims Arising from Physicians' Affiliations with Hartford HealthCare Should Be Dismissed Because St. Francis Has Not Adequately Pled Substantial Foreclosure in a Relevant Market.

St. Francis's antitrust claims arising out of physicians' decisions to accept employment or affiliate with Hartford HealthCare must also be dismissed because St. Francis has not adequately pled that this conduct resulted in it being foreclosed from a substantial portion of a plausible relevant market. Alleging a relevant market is an indispensable element of St. Francis's antitrust claims in the Amended Complaint. *See Arcesium*, 2021 WL 1225446, at *4; *see also Brown Shoe Co. v. United States*, 370 U.S 294, 324 (1962); *United States v. E. I. Du Pont De Nemours & Co.*, 353 U.S. 586, 593 (1957); *Chapman v. New York State Div. for Youth*, 546 F.3d 230, 237-38 (2d Cir. 2008); *PepsiCo, Inc. v. Coca-Cola Co.*, 315 F.3d 101, 105 (2d Cir. 2002); *Integrated Sys. & Power, Inc. v. Honeywell Int'l Inc.*, 713 F. Supp. 2d 286, 298 (S.D.N.Y. 2010). But St. Francis fails to allege a plausible relevant market. To the contrary, St. Francis merely contends that the business of physicians affiliating with Hartford HealthCare constitutes a significant percentage of

commercially insured patients in Hartford County,[20] but it does not adequately plead that patients covered by *government programs* (*e.g.*, Medicare, Medicaid) are not in the relevant market.

Defining the relevant market serves an essential function in antitrust cases where a defendant is alleged to have excluded competition. Nowhere is this more important than here, where the crux of St. Francis's claims is that Hartford HealthCare offered wages to physicians that were *very competitive*. To avoid unduly chilling such procompetitive conduct—and denying the market the benefits of aggressive competition—antitrust law permits these types of claims to survive a motion to dismiss only where the plaintiff has adequately pled that it has been foreclosed from a *substantial portion* of the *relevant market*. *See, e.g., ZF Meritor, LLC v. Eaton Corp.*, 696 F.3d 254, 286 (3d Cir. 2012) ("[F]oreclosure of 40% to 50% [of market] usually required to establish an exclusive dealing violation."). Here, St. Francis's antitrust claims are deficient because they are based on an inadequately pled, excessively narrow relevant market limited to patients paying for medical services with commercial insurance. ¶ 141.[21]

A. The Relevant Market Can Only Be Limited to Commercially Insured Patients if St. Francis Plausibly Alleges that Patients Covered by Government Programs Are Inadequate Substitutes.

Products or customers are in the same relevant market if they are "reasonabl(y) interchangeable." *See Smugglers Notch Homeowners' Ass'n v. Smugglers' Notch Mgmt. Co.*, 414

[20] *See, e.g.*, ¶ 162 (alleging St. Francis is foreclosed from receiving referrals from physicians who constitute 45-75% of the "*commercially insured* professional cardiologist services market in Hartford County" and similar shares for other specialties, when limited to commercially insured patients) (emphasis added); *see also* ¶¶ 134, 135, 138, 141 (limiting relevant markets to "commercially insured patients").

[21] Public information indicates that over 60% of hospital patients in Hartford County are covered by government programs, and St. Francis has not pled foreclosure from this significant group of patients. *See* 2020 CONN. HOSPITAL FINANCE REPORT at 96. To use a mathematical example, even if St. Francis adequately alleged foreclosure from 60% of commercially insured patients in a therapeutic area, if commercially insured patients are only 40% of the market, then St. Francis has only pled foreclosure from 24% of the market, which is insufficient. *See ZF Meritor*, 696 F.3d at 287.

F. App'x 372, 375 (2d Cir. 2011). "Where the plaintiff . . . alleges a proposed relevant market that clearly does not encompass all interchangeable substitute products even when all factual inferences are granted in plaintiff's favor, the relevant market is legally insufficient and a motion to dismiss may be granted." *Id.* (quoting *Chapman v. N.Y. State Div. for Youth*, 546 F.3d 230, 237 (2d Cir. 2008)).

St. Francis alleges that it has been foreclosed from selling its services in a relevant market limited to patients paying for such services with commercial insurance. ¶ 141. Crucially, in a case alleging anticompetitive foreclosure, the question of reasonable interchangeability must be assessed from the perspective of *the party allegedly foreclosed from the market*. *See, e.g.*, *Pro Music Rights, LLC v. Apple, Inc.*, 2020 WL 7406062, at *10 (D. Conn. Dec. 16, 2020) (dismissing antitrust claim where plaintiff failed to "provide any rationale for why the[] different markets [were] . . . not interchangeable from the perspective" of the allegedly injured sellers). The antitrust question here is therefore whether the asserted relevant market includes the reasonable alternative opportunities available to the allegedly excluded supplier (St. Francis) to provide its services. As illustrated below, the applicable precedent indicates that the relevant market in such cases should generally include *all* sales opportunities reasonably available to the allegedly foreclosed supplier, not only those customers paying with a specific form of payment, like commercial insurance.

For example, in *Little Rock Cardiology Clinic PA v. Baptist Health*, 591 F.3d 591, 594 (8th Cir. 2009), cardiologists brought a claim against a hospital and an insurance company, claiming that the defendants foreclosed them from a substantial portion of a relevant market limited to patients having commercial insurance. The district court dismissed the claim, finding the cardiologists' alleged narrow relevant market to be a "novel argument for which there is little or

no precedent," and rejecting the notion that "[h]ow a purchaser pays for a product" is determinative of the boundaries of a relevant market. 573 F. Supp. 2d 1125, 1147 (E.D. Ark. 2008). The Eighth Circuit affirmed, noting that the "trouble" with the cardiologists' alleged market "is that it analyzes . . . the *wrong side* of the transaction." 591 F.3d at 597 (emphasis added). The appeals court acknowledged that it "may be true that, from the patient's perspective, private insurance and Medicare/Medicaid are not reasonably interchangeable." *Id.* Yet the court explained that because the "lawsuit is not about the options available to patients," but rather "the options available to [the] shut-out cardiologists," the relevant market must include all payor/patient segments that "are reasonably interchangeable *from the cardiologist's perspective*." *Id.* (emphasis added). The court emphasized that "the relevant inquiry is whether there are alternative patients available to the cardiologists." *Id*. Because patients covered by government benefit programs were available to cardiologists as alternatives to serving commercially insured patients, the plaintiffs' narrow market definition failed.

Other courts have adopted the same approach, including at the pleading stage. In *Marion Health Care LLC v. Southern Illinois Healthcare*, 2013 WL 4510168 (S.D. Ill. Aug. 26, 2013), a plaintiff hospital system alleged that the defendants foreclosed it from working with patients covered by a particular insurance company. *Id.* at *2-3. Relying on *Little Rock Cardiology*, the court focused on the question "to whom can the supplier sell," concluded that government payors also belonged in the relevant market, and consequently dismissed the complaint on the pleadings. *Id.* at *10-11.

The recent decision in *Shire US v. Allergan, Inc.*, 375 F. Supp. 3d 538 (D.N.J. 2019) upholds the same principle. In *Shire*, the plaintiff argued that the defendant pharmaceutical company excluded it from a substantial portion of sales opportunities to patients insured by

Medicare Part D. Citing *Little Rock,* the court held that the plaintiff had not adequately alleged why sales to patients using other types of insurance were not reasonable substitutes for patients covered by Medicare Part D. The court dismissed the claims on the pleadings. *Id.* at 552; *see also Colonial Med. Grp., Inc. v. Catholic Healthcare W.*, 2010 WL 2108123, at *2-4 (N.D. Cal. May 25, 2010) (rejecting antitrust plaintiff's claimed relevant market limited to medical services provided to a specific class of customers); *Campfield v. State Farm Mut. Auto Ins. Co.*, 532 F.3d 1111, 1118-19 (10th Cir. 2008) (dismissing plaintiff's claims that it had been foreclosed from sales to customers covered by a particular insurer due to plaintiff's failure to plead that the specific class of customers was not substitutable with other types of customers); *Stewart v. Gogo, Inc.*, 2013 WL 1501484, at *4 (N.D. Cal. 2013) (dismissing plaintiff's claims of its foreclosure from sales to customers on certain airplanes where plaintiff did not adequately plead that sales to other types of planes were not among "the full range of selling opportunities reasonably open to" the plaintiff).

B. St. Francis Does Not Adequately Plead that Patients on Government Programs Are Inadequate Substitutes for Commercially Insured Patients.

Here, St. Francis has not adequately alleged a relevant market limited to patients covered by commercial insurance. This alleged market ignores a large portion of the sales opportunities available to St. Francis—*i.e.*, reimbursements for patients covered by government programs such as Medicare and Medicaid. As the cases described above illustrate, most courts have rejected contentions that, in a case brought by an allegedly excluded supplier, the relevant market can be limited to a specific class of customer—here, patients covered by commercial insurance. The one "unusual" circumstance where at least one court has permitted an allegedly excluded plaintiff to plead a relevant market limited to commercially insured patients is where that plaintiff plausibly alleges that patients covered by government programs are not adequate substitutes for commercially insured patients because the latter group is "critical to [the plaintiff] healthcare

provider's long-term sustainability." *See Methodist Health Servs. Corp. v. OSF Healthcare Sys.*, 2015 WL 1399229, at *6-7 (C.D. Ill. Mar. 25, 2011); *Shire*, 375 F. Supp. 3d at 551 (noting that an allegedly excluded supplier must allege that its "long-term viability [was] jeopardized" and that it "may have gone out of business" if "shut out of a particular sub-market").

St. Francis does not allege that treating patients with commercial insurance is critical to its long-term survival. Instead, St. Francis merely pleads that "Medicare and Medicaid typically pay significantly lower rates than do commercial insurers and, therefore, are not an alternative to them." ¶ 141. That is insufficient to show the existential harm necessary to satisfy this extremely narrow exception. *See* Methodist, 2015 WL 1399229, at *7. Just because two sales channels have different levels of profitability does not make them distinct markets.

Moreover, in an earlier section of its Amended Complaint (not focused on market definition), St. Francis alleges that "[t]he loss of commercially insured cases is especially impactful to St. Francis and other hospitals in the relevant markets, because like many hospitals, they depend on commercially insured cases to provide their margin. Medicare and Medicaid cases produce little, if any, margin over cost, and therefore the loss of commercially insured cases is especially harmful to the financial health and ability to compete of a hospital such as St. Francis." ¶ 92.[22] But those allegations do not plausibly describe a threat to St. Francis's "long-term

[22] St. Francis also makes other allegations to support its narrow market definition, but they are about substitutability from the perspective of the patients, and thus address the wrong question. St. Francis pleads, for example, that "[t]he relevant markets do not include services paid for by Medicare or Medicaid, because these government programs fix their fees and therefore do not compete for these services. A hospital could not increase its volume or revenue by persuading patients to sign up for Medicare or Medicaid, because enrollment in these programs is limited to the elderly, disabled or underprivileged." ¶ 141. But those allegations purport to define the market based on whether commercial insurance and government programs are substitutable *from the perspective of the patient*. This is the exact same "wrong" approach to defining a relevant market that the Eighth Circuit rejected in *Little Rock Cardiology*. *See* 591 F.3d at 597. As noted, the question in a case alleging supplier exclusion is "to whom can the supplier [here, St. Francis] sell?" *Marion Health Care*, 2013 WL 4510168, at *10-11. Just as in *Little Rock Cardiology,* St. Francis's claims are "not about the options available to patients," but rather the "options available to" it—namely, whether it has been foreclosed from a

sustainability," *Methodist*, 2015 WL 1399229, at *7; *Shire*, 375 F. Supp. 3d at 551—particularly in light of St. Francis's massive financial resources, as detailed above. Accordingly, St. Francis has not adequately pled facts that can sustain the "unusual" exception of a market limited solely to commercially insured patients. Its antitrust claims must be dismissed.[23]

IV. St. Francis's Conclusory Allegations Regarding Insurance Tiering and Exclusive Dealing Fail to State a Claim.

St. Francis further alleges that Hartford HealthCare has suppressed competition among healthcare providers in two other ways: first, by supposedly interfering with unspecified insurers' desire to offer "narrow" or "tiered" networks that include Hartford HealthCare, *see* ¶¶ 105-14; and second, by negotiating temporary exclusive deals for purchasing certain medical equipment, including the Mako robot, *see* ¶¶ 116-24. But both of these theories of wrongful conduct lack sufficient factual allegations to satisfy the *Twombly* standard. Because the Amended Complaint relies on "legal conclusions couched as factual allegations" rather than actual facts that "actively and plausibly suggest th[e] conclusion" that Hartford HealthCare violated the law, these claims must be dismissed. *Port Dock*, 507 F.3d at 121.

A. St. Francis Fails to Allege a Plausible Factual Foundation for Its Claim Regarding Tiered Insurance Plans.

St. Francis's contention that it has been harmed because Hartford HealthCare has "suppressed or impeded" payors' ability to offer narrow and tiered health plan products in Connecticut is wholly conclusory and otherwise flawed as a matter of law.

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substantial portion of sales opportunities available to it. 591 F.3d at 597. Such claims must be viewed in light of sales "options" available to St. Francis, not whether an individual patient could choose between commercial insurance and Medicare/Medicaid. *Id.*

[23] For the same reasons, cases brought by the Federal Trade Commission challenging healthcare provider mergers, based on alleged harm to patients or insurance companies, are inapposite because they are not cases brought by an allegedly excluded supplier claiming foreclosure from the market.

First, St. Francis fails to allege facts suggesting that Hartford HealthCare's alleged decision not to participate in certain tiered networks could constitute a violation of the antitrust laws. St. Francis's claim boils down to a gripe that Hartford HealthCare did not help St. Francis make its services more attractive to payors and patients, which would have occurred had Hartford HealthCare decided to participate in payors' tiered network products. But "the Sherman Act does not restrict the long-recognized right of a trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal." *Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 408 (2004) (citation and alterations omitted). The Second Circuit has long recognized that even an alleged "monopolist may engage in marketing strategies, including the sale and promotion of its own product, that benefits itself and excludes competitors without fear of antitrust reprisal." *See Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 276, 286 (2d Cir. 1979) (a firm "may generally bring its products to market whenever and however it chooses" and may benefit its own affiliates over outsiders), *cert. denied*, 444 U.S. 1093 (1980); *California Computer Prods., Inc. v. IBM Corp.*, 613 F.2d 727 (9th Cir. 1979) (alleged monopolist has no duty to help competitors survive or expand).

This case does not fall into one of the "few existing exceptions from the proposition that there is no duty to aid competitors." *Trinko*, 540 U.S. at 411; *see id.* at 409 (describing those exceptions as "at or near the outer boundary of [Section] 2 liability"). Because "[t]he complaint does not allege that [Hartford HealthCare] voluntarily engaged in a course of dealing with its rivals," the alleged facts "shed[] no light upon the motivation of its refusal to deal." *Id.* at 409. Hartford HealthCare's alleged refusal to participate in certain tiered insurance plans therefore is not actionable under the antitrust laws.

Second, regardless, the Amended Complaint lacks sufficient factual allegations to support a plausible inference that any insurers were interested in offering a tiered network, but were unable to do so because of Hartford HealthCare's supposed decision to not participate. The only facts alleged to support a claim are that certain insurers—including Aetna, Cigna, United, and Anthem—"have not offered tiered networks in Hartford County or elsewhere in Connecticut even though each of these firms offers tiered networks in many other locations nationally." ¶ 110. Setting aside the reality that many insurers do in fact offer tiered network plans in Connecticut,[24] such allegations do not contain facts plausibly suggesting that Hartford HealthCare's conduct is the reason for the alleged lack of such tiered networks—they are, at best, "merely consistent" with that inference. *See Port Dock*, 507 F.3d at 121. That is insufficient to survive a motion to dismiss. *Id.*

That certain insurers sometimes offer a kind of health plan "in many other locations nationally," ¶ 110, says nothing about how often those insurers choose to do so, the reasons why they choose to offer those plans in some places but not others, or whether they are interested in offering similar plans in Hartford. St. Francis has not alleged, because it cannot in good faith plead facts to support, a plausible basis to infer that the alleged lack of tiered networks in Connecticut is the result of anticompetitive conduct, rather than normal market forces or the independent decisions of insurers in response thereto.

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[24] Aetna, Cigna, United, Anthem, and ConnectiCare all offer tiered network plans in Connecticut. *See, e.g.*, AETNA, SELECT A PLAN, https://www.aetna.com/dsepublic/#/contentPage?page=providerSearchPlanList&site_id=dse&language=en (last visited Feb. 22, 2022); ANTHEM, CONNECTICUT FAQS, https://www.anthem.com/faqs/connecticut/doctors-hospitals-facilities/ (last visited Feb. 22, 2022); CIGNA, CIGNA TIERED BENEFITS, https://static.cigna.com/assets/chcp/resourceLibrary/medicalResourcesList/medicalClinicalHealthandWellness/medicalClinHealthWellCignaTieredBenefits.html (last visited Feb. 22, 2022); CONNECTICARE, ACCESS HEALTH CT PLANS, https://www.connecticare.com/plans/individuals-and-families/access (last visited Feb. 22, 2022); UNITED HEALTHCARE, CONNECTICUT COMMERCIAL HEALTH PLANS, https://www.uhcprovider.com/en/health-plans-by-state/connecticut-health-plans/ct-commercial-plans.html#item1493042763011 (last visited Feb. 22, 2022).

The Supreme Court's decision in *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007), is illustrative. In *Twombly*, the plaintiff observed that none of the defendant telecommunications companies competed in each other's regions, and claimed that this fact indicated that the defendants had agreed with one another not to compete. *Id.* at 564-65. The Court rejected the plaintiff's claims, noting that there were many reasons why these companies might not have entered each other's regions, and that the complaint lacked sufficient factual allegations that would suggest that an anticompetitive agreement was the "plausible" explanation, as opposed to simply one of several "conceivable" explanations. *See id.* at 566-69. Here, too, St. Francis pleads nothing that makes it plausible that insurers do not offer tiered networks in Hartford *because of* Hartford HealthCare's alleged "resist[ance]" to such plans, ¶ 96, as opposed to other business reasons and market forces that might influence those insurers' decisions regarding the types of plans to offer.

Third, St. Francis also fails to allege facts supporting a plausible inference that Hartford HealthCare has "resisted" tiered networks in a manner that could have had an actual effect on competition. St. Francis offers nothing aside from a conclusory and vague one-sentence allegation that Hartford HealthCare "required" payors to "limit or eliminate any use of tiered networks in markets in which Hartford HealthCare operates." ¶ 110. This allegation again falls far short of "contain[ing] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Concord Assocs. v. Entm't Prop. Tr.*, 817 F.3d 46, 52 (2d Cir. 2016) (citation omitted). The Amended Complaint's bare allegation that Hartford HealthCare's contracts "limit" tiered networks says nothing about when those alleged limits apply, what they require, how they operate, or whether they even have any enforcement mechanism. It is therefore insufficient to support a plausible inference that those limits could meaningfully disincentivize the major insurers from offering tiered networks (which they clearly do not, *see supra* note 24).

Fourth, St. Francis does not allege any facts supporting a plausible inference that it is harmed in any way by the alleged limitations to tiered networks caused by Hartford HealthCare. On the contrary, St. Francis asserts that it has actively promoted narrow and tiered networks and that its affiliated physician network, SoNE, has "successfully offered tiered networks to a number of area employers, as well as to larger out of area employers with limited numbers of employees in the Hartford area." ¶ 110. Accordingly, the Amended Complaint lacks a factual basis to plausibly infer that St. Francis has been thwarted from participating in tiered networks offered to Hartford area employers. *See, e.g.*, *Cinema Village Cinemart, Inc. v. Regal Entm't Grp.*, 2016 WL 5719790, at *5 (S.D.N.Y. Sept. 29, 2016) (dismissing antitrust claim where "the harm to competition alleged by [plaintiff] . . . [wa]s wholly conclusory").

B. St. Francis Fails to Allege a Plausible Factual Foundation for Its Claim Regarding Exclusive Dealing for Medical Equipment.

Equally deficient is St. Francis's attempt to plead a plausible antitrust claim based on Hartford HealthCare's alleged exclusive, long-expired supply agreement involving the Mako robot. *See Balaklaw v. Lovell*, 14 F.3d 793, 800 (2d Cir. 1994) ("Exclusive dealing is an unreasonable restraint on trade only when a significant fraction of buyers or sellers are frozen out of a market by the exclusive deal."). Once again, this claim relies on bare legal conclusions lacking any support from the facts alleged in the Amended Complaint. St. Francis fails to allege facts suggesting (1) that Hartford HealthCare's exclusive access to the Mako robot foreclosed St. Francis from competing for a meaningful number of orthopedic patients in the relevant market; (2) that Hartford HealthCare's exclusivity agreements were anticompetitive; or (3) that St. Francis was actually injured, or that it attempted to purchase a Mako robot in any given year but was prevented from doing so. The absence of these key factual allegations warrants dismissal of this claim. *See, e.g.*, *TechReserves, Inc. v. Delta Controls, Inc.*, 2014 WL 1325914, at *10 (S.D.N.Y.

Mar. 31, 2014) (dismissing antitrust claim where complaint was "bereft of facts that would alter the inference from one of . . . a lawful exclusive arrangement, to one of misconduct that raises the right to relief above the speculative level").[25]

First, the Amended Complaint lacks any factual basis to infer that St. Francis's (unpled) inability to purchase a Mako robot foreclosed it from the requisite substantial portion of any relevant market, as required by antitrust law. *See, e.g., ZF Meritor*, 696 F.3d at 287. St. Francis does not allege that any orthopedic surgeries must be performed using a Mako robot, or that St. Francis's physicians could not continue effectively treating patients using traditional methods or with alternative robotic devices once available. *See CDC Techs., Inc. v. IDEXX Labs., Inc.*, 186 F.3d 74, 80 (2d Cir. 1999) ("[I]f competitors can reach the ultimate consumers of the product by employing existing or potential alternative channels of distribution, it is unclear whether exclusive dealing arrangements . . . foreclose from competition *any* part of the relevant market.") (alteration omitted) (emphasis in original). Indeed, the Amended Complaint does not contain a single non-conclusory allegation suggesting that Hartford HealthCare's exclusive use of the Mako robot resulted in even a single patient or physician switching from St. Francis to Hartford HealthCare. At most, St. Francis alleges that the "exclusivity gave Hartford HealthCare an advantage in acquiring orthopedic physician practices and attracting orthopedic surgeons," ¶ 121, but the Amended Complaint contains no allegations regarding what number or percentage of orthopedic surgeons Hartford HealthCare employs as a result of its exclusivity. Rather than allege that St. Francis was actually unable to recruit orthopedic surgeons because it could not procure a Mako

[25] In addition to its claim regarding the Mako robot, St. Francis also vaguely alleges that Hartford HealthCare "has attempted to, and obtained, exclusives on other equipment, though the exclusives were not as significant as with regard to the Mako robot." ¶ 123. These conclusory claims lack any supporting factual allegations, warranting dismissal. *See AGC*, 459 U.S. at 526 ("It is not . . . proper to assume that the [plaintiff] can prove facts that it has not alleged or that the defendants have violated the antitrust laws in ways that have not been alleged.").

robot, St. Francis alleges that its orthopedic surgery practice has been "the highest rated" in Hartford County and "one of the top joint replacement programs in the United States," ¶ 122, utterly contradicting any suggestion that it has struggled to recruit or retain talented orthopedic surgeons. *See Dichello Distrib., Inc. v. Anheuser-Busch, LLC*, 2021 WL 4170681, at *11-12 (D. Conn. Sept. 14, 2021) (dismissing exclusive dealing claim where plaintiff failed to plead facts supporting an inference that it could not distribute similar products by other means, or that the exclusive agreement "foreclose[d] competition in a substantial share of the (market)").

Second, the Amended Complaint lacks sufficient factual allegations to overcome the "presumption that exclusive [deals] are legal under the antitrust laws" so long as "there is competition to obtain the exclusive contract." *See Cinema Village*, 2016 WL 5719790, at *5 (quoting *Spinelli v. Nat'l Football League*, 2015 WL 14433370, at *26 (S.D.N.Y. Mar. 27, 2015)); *see also Bookhouse of Stuyvesant Plaza, Inc. v. Amazon.com, Inc.*, 985 F. Supp. 2d 612, 620 (S.D.N.Y. 2013) ("[C]onsumers' inability to buy the same product from a different seller only harms that seller, and does no cognizable harm to competition as a whole."). St. Francis does not allege that it was unable to compete against Hartford HealthCare to obtain an exclusive purchasing contract for the Mako robot; instead, it vaguely alleges that Hartford HealthCare's purchase contract stipulated that "a Mako robot could not be sold to either Saint Francis or Yale for a period of time covered by Hartford's purchase agreement." ¶ 118. But the vague allegation that Hartford HealthCare negotiated for exclusivity "for a period of time," *id.*, falls well short of a plausible claim that St. Francis was prevented from competing for the ability to purchase a Mako robot, much less in a relevant market. Further, St. Francis alleges no facts whatsoever regarding Hartford HealthCare's alleged market power when it first entered the exclusive relationship in 2012, let alone facts that would support a plausible inference that Hartford HealthCare "was able to demand

this exclusivity because of its dominant market position." ¶ 119; *see ZF Meritor*, 696 F.3d at 271 (in "evaluating the legality of an exclusive dealing agreement, . . . modern antitrust law generally requires a showing of significant market power by the defendant"). On the contrary, as noted above, the Amended Complaint actually highlights the longstanding strength and success of St. Francis's orthopedic surgery practice. *See* ¶ 122.

Third, St. Francis fails to allege that it was actually injured by the exclusive arrangement. While St. Francis alleges that Hartford HealthCare's contracts contained an exclusivity clause, St. Francis never alleges that it intended or attempted to purchase a Mako robot at any time while those exclusivity clauses were in effect, but was unable to do so. Thus, St. Francis has not plausibly alleged that it would be better off, or that competition would have increased, if Hartford HealthCare did not negotiate for an exclusive purchasing arrangement for Mako robots. *See, e.g.*, *Cinema Village*, 2016 WL 5719790, at *5 (dismissing antitrust claim where "the harm to competition alleged by [plaintiff] . . . [wa]s wholly conclusory").

V. St. Francis's State Law Claims Should Be Dismissed for Similar Reasons.

St. Francis's state law claims should be dismissed based on many of the same infirmities detailed above. *First,* St. Francis's claims under the Connecticut Antitrust Act must be dismissed for the same reasons as the federal antitrust claims because Connecticut courts "follow federal precedent when [they] interpret the act," unless separate antitrust statutes or pertinent state law require otherwise. *Westport Taxi Serv., Inc. v. Westport Transit Dist.*, 664 A.2d 719, 728 (Conn. 1995). Indeed, Section 35-44b of the Act provides that in construing whether conduct is a state antitrust violation, "the courts of [Connecticut] shall be guided by interpretations given by the federal courts to federal antitrust statutes." Conn. Gen. Stat. § 35-44b.

Second, St. Francis's claim under the Connecticut Unfair Trade Practices Act ("CUTPA") should likewise be dismissed. CUTPA Section 42-110b provides that in construing whether

conduct is an unfair trade practice, "the courts of [Connecticut] shall be guided by interpretations given by the Federal Trade Commission and the federal courts." Conn. Gen. Stat. § 42-110b. As "[t]he FTC Act's prohibition of unfair competition and deceptive acts or practices . . . overlaps [with] the scope of § 1 of the Sherman Act . . . aimed at prohibiting restraint of trade," federal courts counsel "consult[ing] Sherman Act jurisprudence to determine whether [conduct] violates Section 5 of the FTC Act." *1-800 Contacts, Inc. v. FTC*, 1 F.4th 102, 114 (2d Cir. 2021). Reading CUTPA in line with federal antitrust precedent therefore requires harmonizing the aims of CUTPA with those of federal antitrust law, particularly where St. Francis's CUTPA claim sounds in antitrust and is based on the exact same allegations supporting its Sherman and Clayton Act claims.

Third, St. Francis's state law claim for tortious interference with business relationships should also be dismissed. The basic elements of a tortious interference claim under Connecticut law are: "(1) a business relationship between the plaintiff and another party; (2) the defendant's intentional interference with the business relationship while knowing of the relationship; and (3) as a result of the interference, the plaintiff suffers actual loss." *Brown v. Otake*, 138 A.3d 951, 964 (Conn. App. 2016) (internal citations omitted). Importantly, however, "not every act that disturbs a business expectancy is actionable." *Daley v. Aetna Life & Cas. Co.*, 734 A.2d 112, 135 (Conn. 1999). The plaintiff must also adequately allege that the defendant engaged in "fraud, misrepresentation, intimidation or molestation . . . or that [they] acted maliciously." *Kopperl v. Bain*, 23 F. Supp. 3d 97, 110 (D. Conn. 2014). In short, "to be actionable, the interference complained of must be tortious." *Id*. "In the absence of fraud, misrepresentation, intimidation, obstruction, molestation, or malicious acts, courts generally recognize no liability for inducing an employee not bound by an employment contract to move to a competitor. . . . This general rule

rests on the policies of encouraging full, fair, and free economic competition." *Elec. Assocs., Inc. v. Automatic Equip. Dev. Corp.*, 440 A.2d 249, 250-51 (Conn. 1981).

Here, St. Francis fails at least to adequately plead facts that satisfy the second element of tortious conduct. St. Francis does not have a valid antitrust claim—and pleads no other potentially tortious conduct. Similarly, St. Francis does not plead enough to support an inference of intimidation. As explained above, St. Francis's claims of intimidation are no more than conclusory statements, or are otherwise inadequate to constitute actionable conduct. The facts that St. Francis does allege indicate only that physicians decided to work for Hartford HealthCare because of more attractive wages or working conditions. That is not tortious interference.

Finally, in the alternative, in the event that the Court dismisses St. Francis's federal antitrust claims, it should decline to exercise supplemental jurisdiction over St. Francis's state law claims and dismiss those claims pursuant to 28 U.S.C. § 1367(c)(3). *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988) (federal courts should ordinarily dismiss state law claims if federal claims are dismissed); *Valencia ex rel. Franco v. Lee*, 316 F.3d 299, 306 (2d Cir. 2003) (abuse of discretion for district court to retain jurisdiction when federal claims are dismissed "at a relatively early stage" of the litigation); *Arcesium, LLC v. Advent Software, Inc.*, 2021 WL 1225446, at *10 (S.D.N.Y. Mar. 31, 2021) (declining to exercise supplemental jurisdiction and dismissing plaintiff's state law claims after dismissing federal antitrust claims).

CONCLUSION

For the foregoing reasons, St. Francis's Amended Complaint should be dismissed in its entirety.

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