UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

URIEL PHARMACY HEALTH AND WELFARE PLAN; and URIEL PHARMACY, INC., on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

Case No. 2:22-cv-610-LA

ADVOCATE AURORA HEALTH, INC. and AURORA HEALTH CARE, INC.

Defendants.

FRCP 26(f) DISCOVERY PLAN AND PRELIMINARY PRETRIAL CONFERENCE REPORT

Pursuant to Federal Rule of Civil Procedure 26(f), Plaintiffs' counsel hosted a call for the purpose of a Rule 26(f) conference on July 26, 2022. Defendants objected to and did not participate in the conference for the reasons stated in the email thread attached to the contemporaneously submitted Declaration of Kevin M. St. John dated August 9, 2022, ¶ 2 & Ex. 1.

Because the Federal Rules required a 26(f) conference by July 26, 2022 and requires the submittal of a conference report and discovery plan by August 9, 2022 and Defendants have objected to the process and not participated, Plaintiffs submit this plan on their own behalf.

No scheduling conference is currently scheduled.

Preliminary Statement

This putative class action asserts claims against Defendants, under both the Sherman Act and the Wisconsin's antitrust laws, for unlawful restraints of trade, monopolization, and attempted monopolization. Specifically, the Complaint alleges that Defendants have used their market power

and/or monopoly power to force anticompetitive contractual provisions on two categories of entity: (1) Network Vendors (companies, usually insurance providers such as Cigna, who negotiate with hospitals to develop insurance networks), and (2) independent physicians and physician groups.

With respect to Network Vendors, the Complaint alleges that Defendants force Network Vendors to accept in their contracts with Defendants ("Insurer/Provider Contracts") unreasonable vertical restraints that inhibit price and quality competition both between insurers and between Defendants and its competing hospitals. These restraints include (1) a requirement that any insurer wishing to include in its network any of Defendants' hospital facilities must also include all of Defendants' facilities, even if the insurer would otherwise choose not to include those facilities at the prices Defendants dictate ("all-or-nothing" provisions); (2) a requirement that if an insurer wants to include Defendants' facilities in any of their insurance plans, the insurer must include Defendants' facilities in all of the insurer's plans. (the "all plans" requirement); (3) provisions prohibiting insurers from taking any measure, including designing narrow networks or other innovative insurance products, to incentivize patients to receive care from Defendants' competitors (the "anti-steering provisions"); and (4) provisions that prohibit insurers from disclosing the prices and other terms contained in the Insurers/Provider contracts to third parties, including employers who purchase networks from the Network Vendors for their self-funded insurance plans (the "gag clauses"). The Complaint alleges that Defendants force all or nearly all Network Vendors to include these restrictions in all or nearly all of their Insurer/Provider Contracts. As detailed in the Complaint, these restrictions substantially inhibit price and quality competition and lead directly to employers with self-funded insurance plans, including Plaintiffs, paying substantially more to Defendants for healthcare than they would pay absent these restraints.

With respect to independent physicians and physician groups, the Complaint alleges that Defendants force these individuals and entities to accept other types of contractual restraints, including: (1) non-compete provisions, prohibiting physicians and physician groups from competing with Defendants in certain geographies and practice areas; (2) referral restrictions, requiring physicians and physician groups to refer an inflated number of patients to Defendants in order to keep their admitting privileges at Defendants' hospitals; and (3) other restrictions that are designed to eliminate competition from independent physicians or physician groups, or inhibit them from working with or referring patients to Defendants' competitors. The Complaint alleges that these policies—which most physicians and physician groups would not accept but for Defendants' insistence—reduce access to more affordable, high-quality care to patients throughout Defendants' service area, and thereby inflate the prices Defendants' can charge for medical services to supracompetitive levels.

Through these and other anticompetitive tactics, Plaintiffs allege that Defendants have engaged in unlawful restraints of trade, and they have either unlawfully monopolized or attempted to monopolize large portions of the region in which Defendants do business. These practices therefore violate both the Sherman Act and Wisconsin's antitrust laws.

On July 29, 2022, Defendant filed a motion to dismiss. Given the complex nature of the dispute and the potentially dispositive legal issues raised, the parties conferred on a briefing schedule for the motion outside the context of a 26(f) conference that would allow ample time for both parties to respond. The parties filed a joint motion to extend the briefing schedule, giving Plaintiffs until September 27, 2022 to respond to the motion and Defendants 45 days from the filing of the response to file a reply. On August 5, 2022, the Court granted that joint motion.

Plaintiffs anticipate that class certification proceedings will involve expert witnesses, and thus any scheduling order should enable parties time to conduct fact-based and opinion discovery relating to class certification, including time for the Court to resolve discovery disputes should they arise. Similarly, Plaintiffs anticipate that Rule 56 motions and the trial of this matter will involve expert testimony supporting claims and defenses which will be based on a complex set of the facts established by a substantial volume of business records and other facts. Accordingly, Plaintiffs acknowledge this matter is more complex that ordinary commercial civil litigation and recognize there may be a need for the scheduling order to accommodate this complexity.

Plaintiff believes the scheduling order should include two sets of deadlines for expert disclosures, one relating to class certification and another relating to the merits, but at this time, Plaintiffs takes no further position on the formal phasing of discovery.

Discovery Plan

Pursuant to Fed. R. Civ. P. 26(f)(3), Plaintiffs propose the following discovery plan.

A. Changes to requirement for disclosures under Rule 26(a).

Plaintiffs do not propose any changes to disclosures under Rule 26(a). By operation of the federal rules given defendants' appearance in this matter on June 17, 2022, initial disclosures are scheduled for August 9, 2022. Plaintiffs made their initial disclosures on this date. Plaintiffs have not received initial disclosures from Defendants.

B. Subjects on which discovery may be needed

Discovery is required on all matters relating to Plaintiffs' class action allegations and all matters related to Plaintiffs' claims, damages, and Defendants' defenses to Plaintiffs' claims.

Plaintiffs anticipate that such discovery will include, but not be limited to, (1) Defendants' contracts with Network Vendors, Third Party Administrators, or other contracts containing the

terms of Defendants' agreements with insurers, and (2) claims data, including the relevant costs of procedures, within Defendants' possession regarding medical services Defendants rendered to individuals insured by members of the putative class during the relevant period. Plaintiffs will seek this discovery, as well as other discovery, and pursuant to an appropriate protective order if agreed to by the parties and/or approved by the Court.

C. ESI Disclosure, Discovery, and Preservation

The parties have not yet met and conferred to discuss disclosure of, discovery of, and preservation of electronically stored information.

D. Issues Relating To Privilege

Plaintiffs propose that the production of privileged or work-product protected documents, ESI or information, whether inadvertent or otherwise, should not be considered a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. Plaintiffs believe it is likely that the parties will come to an agreement about issues relating to privilege that provides the maximum protection allowed by Federal Rule of Evidence 502(d) and that the parties will request the Court include the parties' agreement in an order under Federal Rules of Evidence 502.

E. Changes To Limitations On Discovery

At this time, Plaintiffs do not propose any changes to discovery limitations under the Federal Rules of Civil Procedure. Plaintiffs acknowledge that there will be discovery into the claims and defenses at issue as well as into whether Federal Rule 23's class certification requirements are satisfied. Plaintiffs acknowledge there could be third party discovery. Plaintiffs acknowledge that given the complexity of this matter and its nature as a class action, there may be need to for change to discovery limitations, including but not limited to the number of depositions

and interrogatories. Plaintiffs acknowledge that leave of Court may be requested if parties are unable to reach an agreement.

F. Other Orders The Court Should Issue Under Rules 26(c), 16(b), or 16(c)

Rule 26(c). Plaintiffs contemplate that a protective order will be necessary in this matter to, among other things, protect the confidentiality of health information that may be the subject of discovery as well as the confidentiality of documents Defendants may contend contain trade secrets or confidential business information. Plaintiffs intend to work cooperatively with Defendants to stipulate to the entry of a protective order, subject to the Court's approval.

Rule 16(b). Plaintiffs request the Court enter a Rule 16(b) scheduling order upon receipt and review of this report or after a further consultation with the parties at a scheduling conference. Plaintiffs' proposal for the required contents of a scheduling order appear in the Proposed Schedule below. In addition, Plaintiffs request that the Court include in the scheduling order:

(1) an order providing that all amendments to the pleadings and joining of additional parties may be made without leave of Court or stipulation through the date on which Plaintiffs' response to the Motion To Dismiss is due, and afterwards should be permitted by stipulation or leave of Court according to the standards contained in Fed. R. Civ. P. 15.

Proposed Schedule

Plaintiffs propose the following schedule:

EVENT	Pls. Proposed Deadline
Rule 26(a)(1)(A) initial disclosures	August 9, 2022
Response To Motion To Dismiss	Sept. 27, 2022
Amend Pleadings or Add Parties	Sept. 27, 2022, thereafter by stipulation or leave of court
Reply To Motion To Dismiss	November 11, 2022 or 45 days after response to motion, whichever is earlier
Affirmative Rule 26(a)(2) Disclosures (Class Certification only)	April 23, 2023
Rebuttal Rule 26(a)(2)(D)(ii) (Class Certification only)	May 16, 2023
Motion to Certify Class (along with all supporting materials and evidence)	June 13, 2023
Response to Motion to Certify Class (along with all supporting materials and evidence)	July 5, 2023
Reply to Response to Certify Class	July 19, 2023
Affirmative Rule 26(a)(2) Disclosures (merits)	October 18, 2023
Rebuttal Rule 26(a)(2)(D)(ii) Disclosures (merits)	November 17, 2023
Expert Report Reply to Rule 26(a)(2)(D)(ii) Disclosures (merits)	December 19, 2023
Summary Judgment/Dispositive Motions	January 19, 2024
Opposition to Summary Judgment/Dispositive Motions	February 19, 2024
Replies to Oppositions to Summary Judgment Motions	March 4, 2024
Close of Discovery	June 21, 2024
Trial	July 22, 2024

Plaintiffs currently anticipate a trial will last a minimum of three weeks if the class is certified.

Respectfully submitted this 9th day of August, 2022.

BELL GIFTOS ST. JOHN LLC

/s/ Kevin St. John
Kevin St. John, SBN 1054815
5325 Wall Street, Suite 2200
Madison, WI 53718-7980
Ph. 608.216.7990
Fax 608.216.7999
Email: kstjohn@bellgiftos.com

-and-

FAIRMARK PARTNERS, LLP
Jamie Crooks
Alexander Rose
1825 7th Street NW, #821
Washington, DC 20001
Ph: (617) 642-5569
Email: jamie@fairmarklaw.com
alexander@fairmarklaw.com