UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

TEAM SCHIERL COMPANIES and HEARTLAND FARMS, INC., on behalf of themselves and all others similarly situated, *Plaintiffs*, v. ASPIRUS, INC. and ASPIRUS NETWORK, INC., *Defendants*.	Civil Action No. 3:22-cv-00580-JDP Honorable James D. Peterson

DEFENDANTS' RESPONSE TO
PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITIES

The *Davis* and *Uriel* cases submitted as supposed supplemental authority involved different sets of allegations and arguments at the motion to dismiss stage, and the outcomes in those cases do not support Plaintiffs' bid to survive dismissal here. Although *Davis* and *Uriel* involved hospitals and allegations of an illegal tie-in, the similarities to this case end there.

First, neither of Plaintiffs' cases was predicated on the type of unprecedented "two-way tying" theory that Plaintiffs advance in this case. ECF 34 at 8, 15-19. The plaintiffs in *Davis*—a case brought under North Carolina state law—specifically identified in their complaint the hospitals that purportedly served as the tied and tying products for purposes of their "all-or nothing" contracting theory. *See, e.g.*, ECF 37-1 at 5 (identifying Mission Hospital-Ashville as the tying product). The *Uriel* plaintiffs' complaint likewise identified with specificity the alleged tying and tied products that form the basis for their claims. *See, e.g.*, ECF 37-2 at 2 (identifying a "hospital owned by defendants in Racine[,]" as among the tying hospitals alleged in the complaint). In stark contrast, here, Plaintiffs are pursuing a novel "two-way tying" theory—*i.e.*,

one in which they decline to distinguish between the tying and tied products—that they effectively concede has never before been accepted in the Seventh Circuit or, frankly, in any other court. *See* ECF 36 at 14-16. Simply put, the authorities that Plaintiffs have submitted do not address the legal defects in Plaintiffs' tying claim.

Second, the *Uriel* decision is irrelevant for purposes of Defendants' Rule 12 motion because, unlike here, the *Uriel* plaintiffs did not to assert an exclusive dealing claim. The *Uriel* decision is thus irrelevant to the crucial question of whether Plaintiffs here have alleged facts to plausibly establish the proximate causation requirement necessary for antitrust standing in connection with their exclusive dealing claim. *See* ECF 26 at 9-15; ECF 36 at 5-8. *Uriel* lends no support to Plaintiffs for this reason too.

As before, Plaintiffs continue to focus on the outcomes in other hospital antitrust cases while glossing over the specific factual and legal defects that require dismissal of their claims here. For the reasons stated in Defendants' opening and reply briefs, Plaintiffs' Complaint should be dismissed in full.

Dated: May 12, 2023

Respectfully submitted,

/s/ R. Brendan Fee

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