UNITED STATES DISTRICT COURT
FOR THE 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 Hon. James D. Peterson, U.S.D.J. Hon. Anita M. Boor, U.S.M.J. **ORAL ARGUMENT REQUESTED** **Public Redacted Version**

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO EXCLUDE OPINIONS AND TESTIMONY OF PLAINTIFFS' CLASS CERTIFICATION AND DAMAGES EXPERT DR. JEFFREY J. LEITZINGER

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INTRODUCTION

Plaintiffs attempt to simplify and sidestep the many complexities in this case by characterizing the conduct at issue as "price fixing." This is not a "price fixing" case. The joint contracting function of Aspirus Network, Inc. ("ANI") is ancillary to and supportive of ANI's broader procompetitive purpose of improving quality, lowering overall cost, and expanding access to high-quality healthcare in some of the most traditionally underserved communities in Wisconsin.[1] Plaintiffs' economist, Dr. Leitzinger, tried to engage with the complexities of the healthcare industry but ended up deploying economic tools in unreliable ways.

At the outset, Defendants moved to exclude Dr. Leitzinger's testimony under Federal Rules of Evidence 702 and 403. Dkt. 195, Motion at 1. The Opposition does not even mention, much less respond to, Defendants' arguments under Rule 403. Plaintiffs have thus waived any arguments with respect to Rule 403 and Defendants' motion can be granted on this basis alone. As for the arguments under Rule 702, the Opposition downplays the serious reliability issues with Dr. Leitzinger's opinions. Plaintiffs argues that those issues go to weight rather than admissibility, urging the Court to give a light touch during its review of Rule 702's requirements while avoiding some of the most significant admissions Dr. Leitzinger made at his deposition. These tactics do not make Dr. Leitzinger's unreliable opinions admissible.

[1] The ancillary restraints doctrine and the rule-of-reason analysis for this type of conduct is well-established. *E.g.*, *Polk Bros., Inc. v. Forest City Enters., Inc.*, 776 F.2d 185, 189 (7th Cir. 1985) (ancillary restraints are "those that are part of a larger endeavor whose success they promote" and are reviewed under the rule of reason); *see also In re Sulfuric Acid Antitrust Litig.*, 703 F.3d 1004, 1013 (7th Cir. 2012) (explaining that "[i]f the coordination is ancillary to (that is, supportive of) the legitimate business purpose of the venture," it is "a rule of reason question."). While the Court need not decide the antitrust standard now, it is inaccurate to characterize ANI's joint contracting function as "price fixing." Instead, it is part of a clinically integrated network that fosters collaboration among healthcare providers and that is consistent with the operation of similar clinically integrated networks nationwide and throughout Wisconsin. *See also* Dkt. 214, Opp. to Class Certification at 6-9 (explaining history of clinically integrated networks and how such collaborations among healthcare providers are encouraged at the federal and state level to improve healthcare).

First, Dr. Leitzinger's reworked his own yardstick standard set out in his Opening Report and that Plaintiffs repeated in their Motion for Class Certification, *i.e.*, that the yardstick comparator group he used must be unaffected by the Challenged Conduct. At his deposition, Dr. Leitzinger disclosed, for the first time, a new opinion contending that a yardstick comparator group may include entities that engage in the Challenged Conduct [redacted]

Plaintiffs ignore this methodological flip-flopping and the new methodology's failure to satisfy numerous reliability factors. Instead, they employ the predictable tactic of characterizing challenges to an expert's application of a particular methodology as going to weight, not admissibility. But that tactic no longer works after the 2023 amendments to Rule 702; Plaintiffs must show that it is "more likely than not that" each of the Rule 702 factors is satisfied. Plaintiffs' attempt to excuse the yardstick as "conservative" is likewise unavailing because conservative opinions can still be unreliable. Nor is it accurate to imply that the conduct Plaintiffs seek to measure always results in increased rates—the record here shows that the Challenged Conduct *reduces* costs. Plaintiffs elsewhere double down on Dr. Leitzinger's reliance on the testimony of one fact witness that purportedly supports his conclusion that the Challenged Conduct is [redacted] in the yardstick. But even a cursory examination of the transcript reveals that Dr. Leitzinger has taken one question and answer out of context and ignored adjacent testimony that undercuts his assumption. Dr. Leitzinger's yardstick is unreliable and crosses the line into impermissible *ipse dixit*. Fed. R. Evid. 702(a), (c), (d), 403.

Second, Dr. Leitzinger's regression model cannot be used to calculate damages because it not only relies on his faulty yardstick comparison group but because it fails to control for the most

significant drivers of price in healthcare. Irrespective of the yardstick group used, the regression model itself is flawed because it fails to account for quality and market share—two obvious alternative explanations for differences in prices identified by the Seventh Circuit in *Blue Cross & Blue Shield United of Wisconsin v. Marshfield Clinic*, 152 F.3d 588, 591, 593 (7th Cir. 1998). Plaintiffs try to brush this failing off by drawing immaterial factual differences between this case and *Marshfield Clinic* and ignoring on-point guidance from the Seventh Circuit about the importance of including factors in a regression that explain why one healthcare provider's prices may be different from another's. In healthcare, quality and market share are the "most important" and obvious factors that Dr. Leitzinger neglected to include.

Plaintiffs' responses are make-weight. They claim Defendants' experts did not specifically discuss quality and market share in their rebuttals or measure the impact of those factors on Dr. Leitzinger's regression. That flips the burden under Rule 702; Defendants' experts are not required to redesign Dr. Leitzinger's regression for him. It is also wrong as Defendants' experts opine at length on the importance of quality and market share. Plaintiffs elsewhere take liberties when they claim Dr. Leitzinger considered quality and market share "in the ways that matter." Dkt. 202, Opposition at 2 (the "Opp."). That is certainly not what Dr. Leitzinger said at his deposition, which Plaintiffs ignore. Plaintiffs also refer to statistical significance tests but those tests are limited and they do not show mathematically that Dr. Leitzinger's omission of the "most important" variables in understanding healthcare pricing was appropriate or that those variables would not affect his regression if properly included. The Seventh Circuit has made clear that when a regression model is inadmissible when it fails to include key variables. *ATA Airlines, Inc. v. Fed. Exp. Corp.*, 665 F.3d 882, 893 (7th Cir. 2011); *see also* Fed. R. Evid. 702(c), (d), 403.

Third, to test for the presence of antitrust impact, Dr. Leitzinger compares the predicted price from his regression model to actual prices. This type of comparison is highly suspect and Dr. Leitzinger has no explanation for why it is appropriate here. When tested by Professor Baker on sets of transactions known not to be impacted, the comparison returned a near [redacted] error rate. Although Plaintiffs try to undermine the placebo tests because, they claim, it is "highly simplified" and "run over an invented data set," placebo tests can properly use "invented" or simulated data and the fact that the placebo tests are simple only demonstrates how easily Dr. Leitzinger's comparison returns false positives. Dr. Leitzinger's two-step empirical comparison to measure antitrust impact should be excluded. Fed. R. Evid. 702(a), (c), (d), 403.

Fourth, Dr. Leitzinger's extrapolation exercise, which allows him to nearly double the aggregate damages claimed by Plaintiffs, is unreliable. His extrapolation of the amount and type of claims lacks any underlying data, methodology, or recognized model, and the blanket application of an overcharge percentage is based on assumptions that Dr. Leitzinger did nothing to ground in the facts of this case or his expertise. Plaintiffs believe the key to their argument is the fact that supplemental Anthem data is consistent with previously produced Anthem data. This is uninformative. It says nothing about whether the supplemental Anthem data is representative of the untold number of entities with claims under different rate structures and for patients who used different services as to which Dr. Leitzinger had no data to analyze. The extrapolation lacks both a factual and reliable basis. Fed. R. Evid. 702(b), (c), (d), 403.

These significant shortcomings with Dr. Leitzinger's opinions cannot be ignored or cast aside as something more appropriately resolved by the Court or the finder of fact at the merits phase. As this Court is aware, the Seventh Circuit recently reversed a grant of class certification and returned a case to this district with instructions for the court to "dig into" and resolve expert

issues at class certification. *Arandell Corp. v. Xcel Energy Inc.*, --- F.4th ---, No. 22-3279, 2025 WL 2218111, at *12 (7th Cir. Aug. 5, 2025). That "dig[ging]" in and close scrutiny of Dr. Leitzinger's reports and testimony exposes fatal flaws under Rules 702 and 403. This Court should exclude Dr. Leitzinger's (1) opinions and testimony based on his yardstick overcharge model, including his opinions on aggregate damages; (2) opinions and testimony with respect to classwide impact; and (3) calculations of damages based on his improper extrapolation.

ARGUMENT

At the root of Plaintiffs' Opposition is the notion that under Rule 702, so long as Dr. Leitzinger chose a methodology that is generally reliable, all other issues surrounding his particular construction and use are mere "quibbles" that go to weight and should be aired before the jury. Opp. at 1, 13, 20-24. This misconstrues Plaintiffs' burden and the Court's gatekeeper role, as recently made clear with the amendments to Rule 702. Fed. R. Evid. 702, Comm. Note to 2023 Amendment (noting that "[j]udicial gatekeeping is essential;" amendments were made to "emphasize" that courts must determine whether opinions reflect "a reliable application of the expert's basis and methodology"); *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147-49 (1999) (stating that courts must act as a "gatekeeper" to exclude evidence that does not meet the requirements of Rule 702).

The Advisory Committee on Evidence Rules explained that Rule 702 was amended to "clarify and emphasize that expert testimony may not be admitted unless the proponent demonstrates to the court that it is more likely than not that the proffered testimony meets the admissibility requirements set forth in the rule." Fed. R. Evid. 702, Comm. Note to 2023 Amendment. This clarification means that "critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology"—like those surrounding Dr. Leitzinger's opinions here—go to admissibility, not weight. *Id*. While this "does not require perfection," it

also does "not permit the expert to make claims that are unsupported by the expert's basis and methodology." *Id*. This amendment was necessary because "many courts" have incorrectly cast-off challenges to the basis of an expert's opinion or application of a methodology as going to weight. *Id*.

Plaintiffs must show that "it is more likely than not" that Dr. Leitzinger's opinions satisfy each of the four requirements in (a)-(d) of Rule 702. Fed. R. Evid. 702. It is not enough merely to show that the methodology used is "accepted in the relevant field," as Plaintiffs suggest, harkening back to the *Frye* "general acceptance" standard the Supreme Court discarded in *Daubert*. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 587 (1993); *see also* Opp. at 13 (citing *Smith v. Ford Motor Co.*, 215 F.3d 713, 718 (7th Cir. 2000)).[2] Reliable methods can be used in unreliable ways, which is precisely what Rule 702 seeks to ferret out. Dr. Leitzinger's analysis is "not automatically reliable and thus admissible under Rule 702 simply because it is based on a regression analysis," especially where "there are serious questions about the reliability

[2] Although the Committee did not specify which of the "many courts" had made "incorrect application[s] of Rules 702 and 104(a)," submissions to the Committee identified *Smith v. Ford Motor Co.*, 215 F.3d 713 (7th Cir. 2000) in particular, as a decision applying "a lenient standard that is contrary to the text of the" 2023 amendment to Rule 702. Behrens & Trask, *Federal Rule of Evidence 702: A History and Guide to the 2023 Amendments Governing Expert Evidence*, 12 TEXAS A&M LAW REV. 43, 73-74 (2024); *see also* Comment from Lawyers for Civil Justice to the Advisory Committee on Evidence Rules and its Rule 702 Subcommittee (Feb. 8, 2021), *available at* https://tinyurl.com/mrzreaj8. Specifically, the Lawyers for Civil Justice explained that "courts' incorrect determinations that an expert's factual basis and application of methodology are matters of weight rather than admissibility" stem from statements in "decisions that were not interpreting Rule 702's requirements," including the following statement from *Smith* that has been repeated throughout the caselaw, including in *Manpower, Inc. v. Insurance Co. of Pa.*: "soundness of the factual underpinnings of the expert's analysis and the correctness of the expert's conclusions based on that analysis are factual matters to be determined by the trier of fact" 732 F.3d 796, 806 (7th Cir. 2013) (quoting *Smith*, 215 F.3d at 718). Rule 702 now clarifies that a proponent must show, among other things, it is "more likely than not" that "the expert's opinion reflects a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702(d). Contrary to Plaintiffs' arguments, this Court's analysis must comport with the operative version of Rule 702 and be guided by its recent amendments and Committee Note. *Cf. Gopalratnam v. Hewlett-Packard Co.*, 877 F.3d 771, 779 (7th Cir. 2017) (referring to Rule 702 Committee Note to the 2000 amendment for guidance on how to assess the reliability of an expert's opinion).

[of his] application of the regression analysis to the facts." *AOT Holding AG v. Archer Daniels Midland Co.*, No. 19-cv-2240, 2022 WL 22393244, at *7 (C.D. Ill. Sept. 30, 2022) (citing *ATA Airlines*, 665 F.3d at 889); *see also In re Wholesale Grocery Prods. Antitrust Litig.*, 946 F.3d 995, 1002 (8th Cir. 2019) (affirming district court's exclusion of expert's use of a improperly constructed yardstick, explaining that the lower court properly "carried out its obligation to discern whether this particular methodology and reasoning, as it was being applied to these facts, passed muster.").

Defendants also moved to exclude Dr. Leitzinger's opinions under Rule 403. Dkt. 195, Opening Br. at 1; Dkt. 196, Opening Br. at 4, 9, 20, 25. As *Daubert* recognized, "[e]xpert evidence can be both powerful and quite misleading due to the difficulty in evaluating it." 509 U.S. at 595. Those concerns are paramount here, where a lay jury will be presented with complex empirical models purporting to establish causation, antitrust impact, and damages. Fed. R. Evid. 403. Dr. Leitzinger's unreliable application of his complex models creates a false impression of precision that is another, independent basis to exclude his opinions. *Daubert*, 509 U.S. at 595. Plaintiffs do not respond to and have thus waived their opposition to these arguments. *Oregon Potato Co. v. Kerry Inc.*, No. 20-cv-92, 2022 WL 136799, at *1 (W.D. Wis. Jan. 14, 2022) (Peterson, J.) (stating that "it is well-established in this circuit that a party forfeits an argument that it doesn't respond to" and granting summary judgment against unopposed issues (citing *Citizens for Appropriate Rural Roads v. Foxx*, 815 F.3d 1068, 1078 (7th Cir. 2016)); *Gallo v. Mayo Clinic Health Sys.-Franciscan Med. Ctr., Inc.*, No. 15-cv-304, 2017 WL 354291, at *4 (W.D. Wis. Jan. 24, 2017) (Peterson, J.), *aff'd*, 907 F.3d 961 (7th Cir. 2018) (affirming finding of waiver by this Court where plaintiff raised "no argument" in opposition); *see also Andersen v. City of Chicago*, 454 F. Supp.

3d 801, 807 (N.D. Ill. 2020) (excluding expert opinion where sponsoring party "did not respond" to argument in motion to exclude).

In addition, Dr. Leitzinger's opinions fail multiple prongs of Rule 702, as detailed in Defendant's Opening Brief and explained below.

I. Dr. Leitzinger's Yardstick Overcharge Regression Model Should Be Excluded

As established in, Defendants' Opening Brief, Dr. Leitzinger's yardstick overcharge regression model should be excluded because it is not "the product of reliable principles and methods," does not "reflect[] a reliable application of the principles and methods to the facts of the case," will not "help the trier of fact" decide any issue of consequence, and is unduly prejudicial. Fed. R. Evid. 702(a), (c), (d), 403; Opening Br. at 10-20. Rather than addressing those specific shortcomings, Plaintiffs respond with generalized statements about the acceptability of yardsticks and regression as econometric methodologies and by citing the use of these methodologies in other cases, constructed in different ways, by different experts, in different industries, and with other controls tailored to those industries.

What matters is what Dr. Leitzinger has done in this case. His reports and unambiguous deposition testimony show that Dr. Leitzinger improperly constructed his yardstick when measured against the standard he set out for himself. When confronted with that fact at his deposition, he announced a new, subjective standard but was unable to articulate any support for that new standard or any objective criteria against which it could be tested (and admitted that he had not tested his yardstick's compliance with that new standard). Thus, the yardstick deployed by Dr. Leitzinger is unreliable and cannot form the foundation for the overcharge regression model.

Dr. Leitzinger's regression model—for which his faulty yardstick is a critical input—is unreliable for an additional, independent reason. Dr. Leitzinger did not include variables for quality and market share, which have been identified by the Seventh Circuit as the "most

important" in comparing prices among healthcare providers. *Marshfield Clinic*, 152 F.3d at 593. His failure to account for these "obvious alternative explanations" demonstrates that his yardstick overcharge regression does not reflect a reliable application of this methodology in this case.

A. The Yardstick Is Improperly Constructed and Unreliable

Plaintiffs' first defense of Dr. Leitzinger's yardstick is that it is admissible despite being tainted by the Challenged Conduct. Opp. at 14. This argument impermissibly revises Dr. Leitzinger's opinions and misses the point of Defendants' challenge. Dr. Leitzinger's methodology for building his yardstick does not meet the requirements he set out for himself and, when challenged, he changed his approach but provided no methodology for his new, previously undisclosed opinion.

Plaintiffs do not address these inconsistencies. Dr. Leitzinger in his Opening Report explained that he set out to create a yardstick that used the experience of a group [redacted] Leitzinger Rpt. ¶ 31 (emphasis added); *see also id*. at ¶ 31 n.42 (reciting academic literature that uses this standard).[3] Plaintiffs underscored this approach in their later-filed Motion for Class Certification. Dkt. 186, Motion for Class Cert. at 21 ([redacted] (emphasis added)).

When testing Dr. Leitzinger's yardstick regression model, Defendants' expert Prof. Baker found that [redacted], an entity in the "unaffected" comparator group, had [redacted]

[3] Dr. Leitzinger's opinions are referenced herein based on two reports: Dkt. 191, Expert Report of Jeffrey J. Leitzinger, Ph.D., dated March 26, 2025 ("Leitzinger Rpt." or "Opening Report"), Dkt. 192, Rebuttal Report of Jeffrey J. Leitzinger, Ph.D., dated June 11, 2025 ("Reb. Rpt." or "Rebuttal Report").

[redacted] which is not statistically distinguishable from the [redacted] Dr. Leitzinger finds for ANI. Opening Br. at 11. Dr. Leitzinger and Plaintiffs have since tied themselves in knots trying to explain this away, ultimately creating more problems for themselves in the process.

Importantly, in his Rebuttal Report, [redacted] Leitzinger Reb. Rpt. ¶¶ 61-62. Recognizing this concession meant he could no longer claim that his yardstick was "unaffected" by the Challenged Conduct, Dr. Leitzinger offered a new opinion at his deposition that, [redacted] Dkt. 190, Deposition of Jeffrey J. Leitzinger, Ph.D ("Leitzinger Tr.") at 141:10-142:12, 144:14-145:7, 146:25-147:11, 153:14-17. This new opinion is nowhere in Dr. Leitzinger's written reports, which alone makes it improper and inadmissible. Fed. R. Civ. P. 26(a)(2)(B)(i) (requiring an expert to set forth their "complete statement of all opinions . . . and the basis and reasons for them" in their written report).

Even more problematic is the utter lack of any methodology supporting this new opinion. [redacted] Leitzinger Tr. at 153:18-154:25, 155:2-10. [redacted] *Id*. at 151:11-152:23. [redacted] *Id*. at 186:8-22, 195:22-196:12. [redacted]

[redacted] *E.g.*, Fed. R. Evid. 702, Comm. Note to 2000 Amendment (identifying as reliability factors (1) "whether the expert's technique or theory can be and has been tested," (2) "the known or potential rate of error of the technique or theory when applied," and (3) "[w]hether the expert has adequately accounted for obvious alternative explanations"); *Liebhart v. SPX Corp.*, No. 16-cv-700, 2018 WL 1583296, at *4 (W.D. Wis. Mar. 30, 2018) (Peterson, J.), *vacated and remanded on different grounds*, 917 F.3d 952 (7th Cir. 2019) (citing Committee Note to 2000 Amendment and finding expert "fundamentally unreliable" because, among other reasons, they "overlook[ed] . . . obvious explanation[s]").

Confusing matters further, Plaintiffs introduced yet another version of a yardstick methodology in their Opposition Brief when they say that a yardstick should be constructed "by comparing the prices being studied to prices in a different market in which the defendant does not transact *and/or* does not engage in the Challenged Conduct." Opp. at 6 (emphasis added). This suggests a yardstick would be appropriate so long as the defendant does not transact in the same location as the comparator group. Even Dr. Leitzinger did not offer that view in either of his expert reports or at his deposition.

These shifting approaches confirm that Dr. Leitzinger has no reliable methodology for constructing his yardstick. [redacted] Leitzinger Rpt. ¶ 31. Dr. Leitzinger's various opinions as to what constitutes an acceptable yardstick amount to a "trust me" that his yardstick is reliable. This is inadmissible *ipse dixit*. *In re Wholesale Grocery Prods. Antitrust Litig.*, 946 F.3d at 1002 (court properly excluded benchmark opinion where expert's analysis was a "house of cards" and expert "fell short" in "demonstrate[ing] the veracity of the

benchmark chosen"). And such "methodological flip-flop[ing]" and "inconsistent evaluation . . . compromises the reliability" of Dr. Leitzinger's yardstick. *In re Paraquat Prods. Liab. Litig.*, 730 F. Supp. 3d 793, 834-36 (S.D. Ill. 2024) (citing *Manpower*, 732 F.3d at 806) (excluding expert's meta analysis where expert used an "evolving set of quality criteria to determine which studies ultimately warranted inclusion in his meta-analysis" and provided "analytically inconsistent[]" explanations for the changes at his deposition).

This vacillation to a new, undisclosed and unspecified methodology confirms that Dr. Leitzinger's opinion is not "the product of reliable principles and methods," nor does it "reflect[] a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702(c), (d). Having a yardstick that cannot isolate the effect of the Challenged Conduct does not "help the trier of fact," *id*. at 702(a), and it leaves Dr. Leitzinger to connect his yardstick opinions to the case by his subjective say-so.

Plaintiffs' second tactic to argue to admit some formulation of Dr. Leitzinger's yardstick opinion (it is unclear which one), is to point out that courts have permitted yardsticks in other cases, with different experts, different methodologies, and different industries so long as they are *conservative*. Opp. at 14-15. This "no harm, no foul" exemption does not appear in Rule 702 or its commentary, and courts have recognized that a "conservative" opinion can also be unreliable. Fed. R. Evid. 702; *Orshan v. Apple Inc.*, No. 14-cv-05659, 2024 WL 4353034, at *3 (N.D. Cal. Sept. 30, 2024) (citing Rule 702 and observing that there is "no discussion of conservatism as a criterion for admissible expert opinions," and stating that "*Daubert* asks whether expert opinions are reliable and relevant, not whether they are conservative."). If "a damage model could survive *Daubert* by simply underestimating true damages, an expert could avoid having a court exclude her opinions by picking an arbitrary damage figure that is comfortably below any reasonable

amount of true damages even though such an opinion would be plainly unreliable." *Id*. (excluding expert opinion where expert tried to "rationalize . . . use of [a] faulty assumption because using the assumption supposedly underestimates true damages"); *see also R.F.M.A.S., Inc. v. So*, 748 F. Supp. 2d 244, 275-76 (S.D.N.Y. 2010) (excluding damages experts who attempted to justify models as "conservative" or approaches that are "common," explaining that "[t]he admissibility of [the expert's] testimony as to damages is not saved by either the fact that their approach to calculating damages might be appropriate in many other cases or the fact that their estimate of damages may actually understate the true extent of damage suffered by plaintiff.").

Further, Plaintiffs' contention that including providers within the yardstick group who engage in the Challenged Conduct makes the measure conservative, Opp. at 14–15, assumes that the Challenged Conduct could only raise prices, without testing whether that relationship exists. There is no basis to assume that the Challenged Conduct only moves prices in one direction. As Defendants' experts explain, the Challenged Conduct creates efficiencies that lead to lower costs. *E.g.*, Dkt. 194, Expert Report of Laurence C. Baker, Ph.D. ("Baker Rpt.") ¶¶ 35-44 ([redacted]); Dkt. 212, Expert Report of Gautam Gowrisankaran, Ph.D. ("Gowrisankaran Rpt.") ¶¶ 86, 96-106 ([redacted]); Dkt. 213, Expert Report of Gregg Meyer, M.D. ("Meyer Rpt.") ¶¶ 187, 191-93 ([redacted]). Dr. Leitzinger neither considers nor accounts for these issues and thus is improperly assuming without a factual basis that the direction of the price effect from the Challenged Conduct is only in one direction.

Plaintiffs' authorities permitting the use of yardsticks, Opp. at 15, are of no help to Dr. Leitzinger because they do not address a scenario, like here, where an expert has taken inconsistent

positions within the same lawsuit as to what methodology is being used to construct the yardstick, failed to test the sufficiency of the yardstick, cannot explain how to test compliance with his subjective standard, does not know an error rate for the yardstick, and overlooked obvious alternative explanations. Even if courts give some latitude in trying to measure damages, *id*. at 16, this does not give Plaintiffs here a pass on their obligation to show that "it is more likely than not" that each of the Rule 702 requirements are met for Dr. Leitzinger's yardstick opinion. Fed. R. Evid. 702; *R.F.M.A.S.*, 748 F. Supp. 2d at 275-76; *Orshan*, 2024 WL 4353034, at *3.

Plaintiffs' Opposition on this point is also replete with red herrings. For example, they recite the various things Dr. Leitzinger considered when constructing his yardstick. Opp. at 7, 17-18. This sidesteps the issue, which is that Dr. Leitzinger has offered shifting methodological approaches as to whether entities affected by the Challenged Conduct can be in the comparator group and, if so, to what degree. None of his other considerations address these foundational methodological questions.

Plaintiffs also insist that Dr. Leitzinger's initial yardstick construction was appropriate, arguing that "the challenged conduct was likely not widespread in the yardstick because a major statewide Network Vendor testified that it was not and antitrust authorities recommended against the conduct." Opp. at 18; *see also id*. at 7. To support his assertion about the extent of the Challenged Conduct in Wisconsin, Dr. Leitzinger relies on the answer to one question from the deposition testimony of one witness, [redacted]

[redacted] at 103:23-104:3; Leitzinger Rpt. ¶ 34 n.51. But Dr. Leitzinger ignores the testimony that follows in which [redacted] clarified this statement and [redacted]

[redacted] Dr. Leitzinger's selective reliance on a single line of testimony from one witness, without even bothering to consider that same witness's testimony even a few lines later, demonstrates an unacceptable lack of "intellectual rigor." *Kumho Tire*, 526 U.S. at 152.

While Dr. Leitzinger acknowledged in his rebuttal report that [redacted] engaged in the Challenged Conduct, [redacted][4] Nor did

[4] Plaintiffs at Opp. 18 also discuss Dr. Leitzinger's comparison of rates across ANI healthcare providers and his comparison to variation in the rates of healthcare providers at [redacted]

he test or investigate how widespread the Challenged Conduct is across the providers in his comparator group.[5] Although Plaintiffs say Dr. Leitzinger explains why he "believes" his yardstick is appropriate, Opp. at 18, the lack of a reliable basis exposes Dr. Leitzinger's belief as nothing more than *ipse dixit*. *In re Wholesale Grocery Prods. Antitrust Litig.*, 946 F.3d at 1002 (excluding benchmark where expert "fell short" in "demonstrate[ing] the veracity of the benchmark chosen"); *see also Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 137 (1997) ("Nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.").[6]

In sum, Plaintiffs have not shown "that it is more likely than not" that the requirements of Rule 702 are satisfied. Fed. R. Evid. 702 (a), (c), (d). And, the probative value of Dr. Leitzinger's yardstick is substantially outweighed by the risk of confusion of the issues and unfair prejudice to Defendants insofar as Dr. Leitzinger's shifting explanations give the false appearance of precision that is lacking. Fed. R. Evid. 403; *Daubert*, 509 U.S. at 595.

Leitzinger Rpt. ¶ 34 n.53. This comparison does not address whether any of these providers engaged in the Challenged Conduct.

[5] [redacted] Leitzinger Tr. at 214:22-215:22, 219:18-221:20 [redacted] *Id*. at 212:17-214:8.

[6] Plaintiffs go to great lengths attempting to distinguish *Loeffel Steel Prods., Inc. v. Delta Brands, Inc.*, 387 F. Supp. 2d 794, 810-17 (N.D. Ill. 2005) and *El Aguila Food Prods., Inc. v. Gruma Corp.*, 131 F. App'x 450, 453 (5th Cir. 2005) on their particular facts. Opp. at 18-19. Of course, these cases involved different experts, in different industries, using different approaches and inputs for their yardsticks. In their haste to differentiate Dr. Leitzinger's approach, Plaintiffs fail to grapple with the specific failures Defendants have identified in their Motion and detailed above.

B. Dr. Leitzinger's Yardstick Overcharge Regression Is Unreliable

Setting aside his improperly constructed yardstick, Dr. Leitzinger's regression model is unreliable because it purports to isolate price effects *caused by* the Challenged Conduct but fails to do so reliably. As Plaintiffs acknowledge, "no regression definitively proves causation; regressions provide evidence that supports inferences about causation." Opp. at 20 n.11. But the yardstick regression model on which Plaintiffs rely is unreliable in supporting any substantiated inference about causation. This is apparent from Dr. Leitzinger's failure to account for the "most important" factors for a regression model to consider in a healthcare antitrust case: quality and market share. *See Marshfield Clinic*, 152 F.3d at 593 ("The most important factors [for the regression] were the amount and quality of the Marshfield Clinic's service and its market share."). This failure strikes at the heart of the reliability inquiry because it shows Dr. Leitzinger failed to account for obvious alternative explanations in constructing his regression. Plaintiffs try to deflect on several grounds, none of which is sufficient to salvage Dr. Leitzinger's opinion.

First, Plaintiffs argue that "Defendants' critiques are unsubstantiated" and that the Defendants' "own experts never once suggested that 'market share' or 'quality' variables were necessary." Opp. at 24-28. This is backwards. It is *Plaintiffs* who bear the burden to show that their expert has a reliable opinion—not Defendants. Fed. R. Evid. 702 (stating that "the proponent" must "demonstrate[] to the court that it is more likely than not that" each of the requirements is satisfied). Regardless, Plaintiffs omit the fact that the Defendants' experts opine at length about the importance of quality and market share in evaluating the competitive dynamics of healthcare.[7] And, no matter what Defendants' experts said on the subject, Dr. Leitzinger

[7] *E.g.*, Baker Rpt. ¶ 37 ([redacted]); *id.* ¶ 32 & n. 31 ([redacted]); *id.* ¶ 125 ([redacted]

identified quality and market share as factors that could have a price effect, [redacted]. Leitzinger Tr. at 210:1-6 ([redacted]); *id*. at 164:20-22 ([redacted])

Second, Dr. Leitzinger's failure to account for quality in his regression demonstrates that he has not accounted for "obvious alternative explanations." Fed. R. Evid. 702, Committee Note to 2000 Amendments; *Liebhart*, 2018 WL 1583296, at *4. Plaintiffs' liability theory hinges on ANI being able to extract higher prices by jointly negotiating with Network Venders. Opp. at 27. In an attempt, to prove that theory, Plaintiffs must have some way to distinguish whether the price effects they identify are due to the Challenged Conduct, or from some other cause, such as ANI's superior service and quality. It is obvious that quality matters in healthcare. Higher quality providers can realize higher reimbursement rates for any number of reasons, such as an ability to obtain better outcomes for patients that lower the overall cost of care. [redacted]. Rather than address quality head on, Dr. Leitzinger ignored it.

Plaintiffs try to excuse Dr. Leitzinger's failure by distinguishing on-point authority from the Seventh Circuit's *Marshfield Clinic* decision. They argue that the yardstick regression in *Marshfield Clinic* compared average price per patient whereas Dr. Leitzinger's regression compares average price per procedure. Opp. at 26-27. To Plaintiffs, Dr. Leitzinger's per-transaction comparison eliminates the quality concern in *Marshfield Clinic* that sicker patients

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[redacted]; *see also* Meyer Rpt. ¶ 42a & n.57 ([redacted]); *id*. ¶53 ([redacted]); *see also* Gowrisankaran Rpt. ¶ 128e ([redacted]); *id*. ¶ 213 ([redacted]); *id*. ¶¶ 377-80 ([redacted]).

would use more services on average. *Id*. This is misdirection. The utilization of services is one way to assess quality (something Dr. Leitzinger does not control for), but it is not the only way. More to the point, transaction rates reflect quality because, as evident from the above fact witness testimony, quality informs the negotiation of those rates. Nor is it plausible for Plaintiffs to argue that "quality" does not affect price here when Dr. Leitzinger posited that [redacted] Leitzinger Reb. Rpt. ¶ 64.[8] Plaintiffs' distinctions do not excuse Dr. Leitzinger's failure to account for quality. Nor do they grapple with the instruction in *Marshfield Clinic* that "[a]ny nonconspiratorial factors likely to have made prices charged by Marshfield Clinic higher than the prices charged by other health-care providers *had to be taken into account* . . . to make a responsible estimate" of overcharges. 152 F.3d at 593 (emphasis added). The "quality of [ANI's] service" can and does affect the transaction rates ANI negotiates, but Dr. Leitzinger did not account for this in his regression. *Id*.

Plaintiffs resort to revisionist history in claiming that Dr. Leitzinger accounts for quality "in the ways that matter," Opp. at 2, through his other control variables and a separate difference-in-differences ("DiD") model. *Id*. at 29-31. These statements do not square with Dr. Leitzinger's testimony. [redacted] Leitzinger Tr. at 210:1-6 ([redacted]).

[redacted]

[8] At his deposition, [redacted] Leitzinger Tr. at 199:23-200:9; 204:16-205:10.

[redacted] *Id.* at 222:24-224:9. [redacted] *Id*. at 224:24-225:8. [redacted] Leitzinger Tr. at 228:4-9; Leitzinger Rebuttal Rpt. ¶ 77 ([redacted]). [redacted][9] Leitzinger Rpt. ¶ 44. The DiD model is similarly incomplete and does not fill in for quality in Dr. Leitzinger's unreliable regression.

In their Opposition, Plaintiffs repeatedly put the word quality in quotation marks as if it is some foreign concept that eludes definition or measurement. Opp. at 20, 24-26. This is not so. Defendants and their experts identified just one of many objective compendia that exist for quality and that Dr. Leitzinger testified he had no familiarity with: the Healthcare Effectiveness Data and Information Set ("HEDIS"). Opening Br. at 18. Plaintiffs play word games to suggest the HEDIS is only a measure of "health plan quality." Opp. at 31. In reality, the HEDIS metrics are about the *quality of healthcare services provided in a health plan*. Meyer Rpt. ¶ 42a n.57 (HEDIS measures "reflect the following aspects of care: effectiveness of care (preventive screenings; immunizations; treatment of heart attacks, depression, asthma), access/availability of care (access to primary health

[9] Plaintiffs also offer cherrypicked "corroborating" evidence that is neither here nor there for the reliability of the regression. Their representations are also wrong on the merits. Plaintiffs cite the depositions of [redacted] *Id.* [redacted] Dkt. 176 at 118:18-120:4. [redacted] Dkt. , Deposition of [redacted] at 135:24-136:16. Further, as Bone & Joint's [redacted] Dkt. Deposition of [redacted] at 130:5-8.

care and dentistry, timeliness of claims), satisfaction with the experience of care (surveys for adult and child care), health plan stability, use of service, cost of care, informed health care choices, and health plan descriptive information." (citations omitted)). Dr. Leitzinger and Plaintiffs do not explain why any of these quality metrics identified by Defendants and their experts could not have been incorporated into the regression.

Third, as to market share, Plaintiffs again seek to distance themselves by distinguishing the facts of *Marshfield Clinic*. Opp. at 27-28. Conspicuously absent from the Opposition is any discussion of Dr. Leitzinger's testimony on the subject. Dr. Leitzinger [redacted] Leitzinger Tr. at 164:20-22 ([redacted]). [redacted] *Id*. at 164:23-166:4. Dr. Leitzinger's omission of this second "most important" variable that would control for an obvious alternative explanation for price effects, while acknowledging that including that variable is "preferred," is yet another reason the regression is unreliable.

Fourth, Plaintiffs try to fortify the yardstick overcharge regression by saying it has a high R-squared and controls for [redacted] of pricing variation. Opp. at 23. This misrepresents what an R-squared measure means. This measure identifies how much of the variation in prices is explained by the set of variables in Dr. Leitzinger's regression. It does not measure whether the correct variables are included in the regression in the first place or confirm that the variables that are included are measured accurately. Put differently, "[a] regression may be unreliable, and therefore excludable, despite having a high R-squared, for being misspecified (including by failing to account for significant explanatory variables [like quality and market share]), among other

reasons." *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 299 F. Supp. 3d 430, 484 n.31 (S.D.N.Y. 2018) (excluding expert's model that expert tried to support by referring to high R-squared). R-squared simply cannot detect the problems Dr. Leitzinger and Plaintiffs are trying to solve. Ex. A, James H. Stock and Mark W. Watson, INTRODUCTION TO ECONOMETRICS, 237-38 (3d ed. 2015) ("Stock and Watson 2015") ("The [R-squared] and [adjusted R-squared] do NOT tell you whether . . . [t]here is omitted variable bias, or [whether] [y]ou have chosen the most appropriate set of regressors."). Similarly, claiming that the overcharge is "highly statistically significant," Opp. at 8, is likewise uninformative because statistical significance tests that omit relevant explanatory variable distort the significance of variables included in a model. *E.g.*, Ex. B, Roy J. Epstein, An Econometrics Primer for Lawyers, ANTITRUST at 31 (Summer 2011) ("Epstein 2011") ("A model that omits a relevant explanatory variable can result in estimated coefficients that are widely off the mark. That, in turn, can distort tests of statistical significance for the variables that are included."). The high R-squared number and statistical significance are thus meaningless in addressing the consequence of the absence of quality and market share controls in Dr. Leitzinger's regression. Fed. R. Evid. 702(c), (d). The misuse of the R-squared and statistical significance concepts to prop up an unreliable methodology also underscores the unfair prejudice that can result when an expert is permitted to present scientific concepts inaccurately. Fed. R. Evid. 403.

Finally, Plaintiffs repeatedly characterize the yardstick regression's failure to consider quality and market share as an issue that goes to weight, and not admissibility. Opp. at 20-24. No such categorical rule exists in the case law. The Supreme Court case Plaintiffs rely on recognizes that there is no inflexible rule that all regressions are admissible or that questions about variable selection only go to weight. *Bazemore v. Friday*, 478 U.S. 385, 400 n.10 (1986) ("There may, of

course, be some regressions so incomplete as to be inadmissible as irrelevant"). Cases from within the Seventh Circuit that Plaintiffs rely upon likewise contain no absolute prohibition on examining the reliability of how an expert constructed their regression. *Manpower*, 732 F.3d at 808-09 (explaining that regressions could be inadmissible where, for example, the analysis is based on a "subset of data that was plainly insufficient to support application of the" given regression methodology, and stating that variable selection "normally" or "ordinarily" goes to weight—not that it always does); *Moehrl v. Nat'l Ass'n of Realtors*, No. 19-cv-01610, 2023 WL 2683199, at *8 (N.D. Ill. Mar. 29, 2023) (recognizing that a yardstick may be inadmissible where the "expert has failed to perform any substantive analysis of those factors most relevant to comparability").[10]

The recent amendments to Rule 702 ended any doubt that the selection of variables in a regression is a reliability question. Fed. R. Evid. 702. The Committee Note to the 2023 amendments explains that "critical questions of the sufficiency of an expert's basis [here, the missing variables of quality and market share], and the application of the expert's methodology" go to admissibility and cannot be cast off as weight issues. The key reliability question is whether "nonconspiratorial factors likely to have made the prices charged by [Defendants] higher than the prices charged by other health-care providers [have been] taken into account." *Marshfield Clinic*, 152 F.3d at 593. Dr. Leitzinger's regression model has not done so. This Court serves as a gatekeeper to "screen" such technical evidence and exclusion is required when, as here, statistical modeling does not reflect a reliable application of the methodology to the facts. Fed R. Evid.

[10] None of Plaintiffs' authorities involved the healthcare industry. Opp. at 20-21. Each decision involved the assessment of a different regression model by other experts to different industries with variables tailored to that analysis. None of these decisions mean the Dr. Leitzinger's regression should automatically be accepted here. Moreover, several of the cases Plaintiffs cite pertain to whether the use of certain variables *in* a regression rendered it unreliable, and do not address the scenario of the "most important" variables being *omitted*. *See* Opp. at 22 and n.12 (citing *In re Allstate Corp. Secs. Litig.*, No. 16-cv-10510, 2022 WL 842737 (N.D. Ill. Jan. 10, 2022); *In re Turkey Antitrust Litig.*, No. 19-cv-8318, 2025 WL 264021 (N.D. Ill. Jan. 22, 2025); *Jordan v. Dominick's Finer Foods*, 115 F. Supp. 3d 950 (N.D. Ill. 2015)).

702(d); *ATA Airlines*, 665 F.3d at 893, 896 (holding regression was deficient where "most glaring error" was in variable selection that omitted "more plausible variables"); *see also Arandell*, 2025 WL 2218111, at *12 (stating that it is "necessary" for the district court to "dig into" and examine the expert reports that support class certification).

Dr. Leitzinger's yardstick regression model is deeply flawed. He has taken an otherwise reliable methodology and applied it to the facts of this case in an unreliable way by failing to include factors that are "most important" in the healthcare context. The regression should be excluded under Rules 702(d) and 403.

II. Dr. Leitzinger's Two-Step Method for Identifying Antitrust Impact Is Unreliable

Dr. Leitzinger's impact model should also be excluded for the independent reasons that it is contrary to well-understood economic principles and results in a near 100% error rate. Fed. R. Evid. 702(a), (c), (d); *see also* Fed. R. Evid. 403. Dr. Leitzinger's model violates a fundamental principle of economics by purporting to identify antitrust impact for specific transactions, without any justification for why doing so is appropriate in this case. Opp. at 33 ("Dr. Leitzinger's comparisons are at the individual transaction level—that is, by comparing the price for each individual service in the real versus 'but-for' worlds"). Prof. Baker, the Nobel Prize Committee, and stacks of academic papers all have explained that a regression generally cannot be used to identify such individual causal effect, and there is good reason to heed those cautions here given the complexities of healthcare. Baker Rpt. ¶¶ 61-73.

First, Plaintiffs try to recast Defendants' challenge as one to Dr Leitzinger's conclusions. Opp. at 34. For instance, Plaintiffs selectively quote the Opening Brief as challenging Dr. Leitzinger's conclusions, *i.e.*, from "misdiagnosing 'why th[e] actual price was higher than the model's predicted price.'" *Id.* But what the Opening Brief states, in full, is that there is "no way for Dr. Leitzinger to determine the specific reason as to why that actual price was higher than the

model's predicted price"—context that makes clear that Defendants' challenge is to *how* Dr. Leitzinger employs the two-step methodology, not its conclusions. Opening Br. at 23.

The problem with this comparison is best seen in Dr. Leitzinger's deposition testimony. At his deposition, he was provided with three sets of sample transactions. [redacted] Leitzinger Tr. at 256:12-268:13. As an example, [redacted] Leitzinger Tr. at 265:6-266:11. [redacted] *Id.* at 265:6-268:13. This demonstrates the unreliability of the two-step comparison to the facts of this case.

Plaintiffs' only response is to, once again, cite the high R-squared and statistical significance values. Opp. at 34-35. But, again, neither is an indicator of the *accuracy* of the regression, nor do they have any bearing on the accuracy of the comparisons between predicted and actual prices. *See* Section I.B., *supra*; *see also* Ex. A, Stock and Watson 2015 ("The [R-squared] and [adjusted R-squared] do NOT tell you whether . . . [t]he regressors are a true cause of the movement in the dependent variable"); Ex. B, Epstein 2011 at 31 ("A model that omits a relevant explanatory variable can result in estimated coefficients that are widely off the mark. That in turn, can distort tests of statistical significance for the variables that are included.").

Second, Plaintiffs try to deflect by attacking Prof. Baker's placebo tests, which reveal that Dr. Leitzinger's approach has a near [redacted] error rate. Opp. at 35-36. In his tests, Prof. Baker

shows that Dr. Leitzinger's two-step model identifies almost all class members as impacted by the Challenged Conduct in tests where the Challenged Conduct is known to be absent. Baker Rpt. ¶¶ 76-78. Plaintiffs argue that the placebo tests do not "conform to the literature on placebo tests" because they are "highly simplified" and are "run over an invented data set." Opp. at 35-36. They claim that it only makes sense to test "whether individual Class members experienced an overcharge . . . for a data set in which there is an overcharge." Opp. at 36 (emphasis omitted). This is not how placebo tests are done, as Prof. Baker explains. Baker Rpt. ¶¶ 23c, 76.

Placebo tests like the ones Prof. Baker used are a valid tool to demonstrate whether an econometric method is sound and the use of simulated or "invented" data is commonplace to test whether a model processes the data as expected. Baker Rpt. ¶¶ 23c, 76. The placebo regressions replicate Dr. Leitzinger's regression—thereby capturing the underlying problems with Dr. Leitzinger's impact approach. *Id.* ¶¶ 74-79. The point of a placebo test using random data is to show that in a controlled, synthetic environment (*i.e.*, one where a researcher can set the overcharge coefficient to be zero, or negative 20 percent) there is still enough unexplained price variation to drive findings of impact where none can exist. *Id.* ¶¶ 76 n.88, 77. Those tests show a near [redacted] error rate. *Id.* ¶¶ 74-79 & Ex. 4. Prof. Baker also ran his placebo test on data from Dr. Leitzinger's yardstick, *i.e.*, non-simulated data, which by construction has no associated overcharge. *Id.* ¶ 77. As with the simulated data, test data from Dr. Leitzinger's yardstick found that nearly [redacted] of class members were impacted by the Challenged Conduct. *Id.* ¶¶ 77-78 & Ex. 4. Prof. Baker has appropriately used placebo tests and confirmed the high error rate that renders Dr. Leitzinger's in-sample methodology unreliable in this case. *Arandell Corp.*, 2025 WL 2218111, at *12 (requiring the court to "dig into [the] debates among the experts").

Third, Plaintiffs set up a strawman that "Defendants argue that in-sample analysis, by its nature, can never be used as evidence of impact." Opp. at 32 (emphasis omitted). This is not Defendants' position. Instead, Defendants argue that Dr. Leitzinger's methodology was misapplied to the facts of the case—*i.e.*, to attempt to identify individual causal effects of Defendants' "Challenged Conduct" on the pricing of outpatient professional medical services.[11] *E.g.*, Opening Br. at 21-22 (stating that Dr. Leitzinger has not shown his two-step methodology is "reliable as used in this case").

Fourth, Plaintiffs claim that the impact of the Challenged Conduct on prices is supported by both Dr. Leitzinger's two-step method and by "record evidence that the Challenged Conduct was intended to and did inflate prices." Opp. at 37. This overstates Defendants' challenge. This motion challenges the admissibility of Dr. Leitzinger's two-step empirical method, which for the reasons stated is unreliable and should be excluded under Rules 702(a), (c), (d) and 403.

III. There Is No Reliable Methodology to Support the Extrapolation of Missing Claims Over Which Dr. Leitzinger Computes Additional Aggregate Damages

Dr. Leitzinger makes up the values for [redacted] about which he has no data. He then uses those hypothetical claims as a basis to calculate [redacted]

[11] Plaintiffs' authorities neither say that the in-sample methodology is *always* admissible, nor do they address whether the in-sample methodology is appropriate in the healthcare setting by accounting for the many complexities that go into determining the price of healthcare services. Opp. at 22-23. Instead, the cases apply different models, to different facts, using different variables, for different purposes. *E.g.*, *id.* (citing *In re Turkey Antitrust Litig.*, 2025 WL 264021, at *8 (emphasizing unique nature of turkey as a "commodity product", with "lack of competition from imports," and considering unique factors such as "dress meat cost" and the "avian influenza in 2015," and comparing the conspiracy period to a benchmark period); *In re Broiler Chicken Grower Antitrust Litig. (No. II)*, No. 20-md-02977, 2024 WL 2117359, at *30 (E.D. Okla. May 8, 2024) (analyzing impact on price of broiler chickens, a commodity product, in which pay was set in "standard form, take-it-or-leave-it contracts"); *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-md-1175, 2014 WL 7882100, at *9 (E.D.N.Y. Oct. 15, 2014) (emphasizing "the fungibility of air freight service providers"); *Le v. Zuffa, LLC*, No. 15-cv-01045, 2023 WL 5085064, at *31 (D. Nev. Aug. 9, 2023) (emphasizing that regression model used "over 200 control variables" unique to mixed martial arts, including win/loss record and how the fight ended "(e.g., submission, technical knockout, disqualification, etc.)").

[redacted] The guesswork starts with Dr. Leitzinger's estimate of how many claims may be missing, what they were for, and what their aggregate value might be. Leitzinger Rpt. ¶ 37 n.59. Dr. Leitzinger's calculation is identified in a footnote but is devoid of any academic or economic literature or econometric frameworks or models identified that supports it. This calculation is not based on sufficient facts or data and is not the product of any identified reliable principles and methods. Fed. R. Evid. 702(b), (c), (d). This alone should result in exclusion of Plaintiffs' extrapolated damages claims.

Plaintiffs do not address this core failing. Instead, they focus on Dr. Leitzinger's application of the overcharge percentage to the estimated volume and value of claims in the missing data. This too is unreliable. Plaintiffs first try to deflect questions about the broad-brush application of the overcharge percentage by claiming the results of the extrapolation are "conservative." Opp. at 3, 12, 40, 43. As addressed above, conservative outcomes are not synonymous with reliable, and this extrapolation exercise is exactly the type of unscientific guesswork that Rule 702(b), (c), and (d) are designed to reject. *R.F.M.A.S.*, 748 F. Supp. 2d at 275-76; *Orshan*, 2024 WL 4353034, at *3.

Dr. Leitzinger makes three assumptions to justify the use of his overcharge percentage, which Plaintiffs spend the bulk of their argument attempting to justify. Opp. at 40-42; Leitzinger Rpt. ¶ 38. The first assumption is that ANI negotiated a "single set of prices." Opp. at 41. This is inaccurate. There is no evidence to support the notion that ANI's rates are the same across *all* payor contracts, or that all entities for which no data are available used the *same* Network Vendor. Second, Plaintiffs claim "that existing claims data already includes substantial activity from the Network Vendors who did not produce data[.]" *Id*. To the extent this implies Dr. Leitzinger has claims data from some entities that did not produce data and/or did some sort of analysis with that

data, he does not say how much data was available or how it is representative of the data he does not have; none of this analysis is disclosed in his reports; and it is otherwise unclear what he is attempting to convey. Third, Dr. Leitzinger's merits-based assumptions about bargaining leverage with payors that he knows nothing about are not on a topic he is opining on, *see* Leitzinger Rpt. ¶ 8 (listing assignments), [redacted] Leitzinger Tr. at 278:18-24, 279:7-16, 281:1-5. Dr. Leitzinger thus has no way to sufficiently ground his assumption about bargaining dynamics of payors he knows nothing about in "the record or his expertise." *Constructora Mi Casita, S de R.L. de C.V. v. NIBCO, Inc.*, 448 F. Supp. 3d 965, 972 (N.D. Ind. 2020) (finding expert's opinions unreliable and unhelpful where the assumption was not grounded in "the record or his expertise"); *see also In re TMI Litig.*, 193 F.3d 613, 677 (3d Cir. 1999), *amended*, 199 F.3d 158 (3d Cir. 2000) (excluding expert extrapolation where assumptions were not "sufficiently grounded in sound methodology").

Next, Plaintiffs hold up the supplemental [redacted] data as vindication for the application of Dr. Leitzinger's overcharge percentage over the missing claims data. Opp. at 43. This is classic misdirection. The additional [redacted] data provides no insight into or validation of the amount or character of the [redacted] claims data that is missing. And the fact that more [redacted] data was roughly consistent with prior [redacted] data is unsurprising. This says nothing as the missing claims data are from entities other than [redacted] that paid claims under contracts with potentially different rate structures, for patients that may have needed service similar or different from those that [redacted] patients used.

Finally, Plaintiffs' preferred authorities do not provide a lifeline. The issue addressed by *In re Urethane Antitrust Litigation* was whether the plaintiffs' expert manipulated the damages model by selectively picking certain variables and time periods. Opp. at 38 (citing 768 F.3d 1245,

1251-52 (10th Cir. 2014)). The Tenth Circuit was not confronted with an extrapolation approach similar to what Dr. Leitzinger deployed here. In *Jones v. Varsity Brands, LLC*, the plaintiffs' expert grounded his extrapolation in "the conceptual model of firm optimization" and addressed criticisms that his approach failed to account for the "elasticity of demand." Opp. at 38 (citing No. 20-cv-02892, 2024 WL 967653, at *11-12 (W.D. Tenn. Mar. 6, 2024)). In sharp contrast, no economic model or similar methodological precision is used by Dr. Leitzinger to estimate the character of missing claims data or otherwise justify the application of his overcharge percentage.

Dr. Leitzinger's extrapolation is without sufficient facts and data, a reliable methodology, or application of any reliable methodology, and thus runs afoul of Rule 702(b), (c), (d), and Rule 403. The extrapolation and aggregate damages should be excluded.

CONCLUSION

For the foregoing reasons and those set forth in the Opening Brief, the Court should exclude Dr. Leitzinger's (1) opinions and testimony based on his yardstick overcharge model, including his opinions on aggregate damages; (2) opinions and testimony with respect to classwide impact; and (3) calculations of damages based on his improper extrapolation.

Dated: August 13, 2025

Respectfully submitted,

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