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

No. 3:22-cv-00580-jdp

Hon. James D. Peterson, U.S.D.J.

Hon. Anita M. Boor, U.S.M.J.

Public Redacted Version

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION

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DEFINED TERMS FROM MEMORANDUM IN SUPPORT OF CLASS CERTIFICATION (ECF NO. 186)		
Abbreviations/Terms	**Description**	**Location in ECF No. 186**
ANI	Aspirus Network, Inc.	1
ANI Providers	Aspirus Providers and Co-Conspirators, collectively	2
Anthem	Anthem Blue Cross/Blue Shield of Wisconsin, Inc.	7
Aspirus	Aspirus, Inc.	2
CIN	Clinically Integrated Network	9
Challenged Conduct	Joint price setting and exclusivity provisions	2
Class	All Payors whose funds were used to pay Defendants and/or their Co-Conspirators for in-network outpatient professional services provided in North-Central Wisconsin, during the Class Period	3
Class Period	From October 11, 2018, up to and including June 30, 2023	3
Co-Conspirators	Providers who, in the absence of Defendants' alleged scheme, would compete with Aspirus on price for outpatient professional services	2
Defendants	Aspirus and ANI	1-2
Network Vendors	Companies that assemble healthcare provider networks	2
Payors	Those who pay for the medical services consumed by members of their health insurance plans	1
Plaintiffs	Team Schierl Cos. and Heartland Farms, Inc.	1
UMR	United HealthCare Management Resources	3
United Healthcare	United HealthCare Services, Inc.	3

INTRODUCTION

Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Class Certification ("Opposition" or "Class Cert. Opp.") is remarkable for what it does not contest and therefore concedes. Plaintiffs' Class Certification Brief ("Class Cert. Br.") lays out extensive record and expert evidence, all common to the Class, capable of proving Defendants' violation of the Sherman Act and Plaintiffs' classwide injury and total damages.

That uncontroverted classwide evidence includes documents, deposition testimony, and expert opinion showing, among other things, that (1) the Challenged Conduct eliminated competition between Defendants and Co-Conspirators for inclusion in Network Vendors' contracts, Class Cert. Br. at 8-14, 18-19, 38-40; (2) Defendants and the Co-Conspirators agreed upon "financial guidelines" to be used in and to "structure" negotiations with every Network Vendor, *id.* at 10-11, 42; (3) ANI set uniform prices for all ANI Providers for each Network Vendor contract, *id.* at 9-13, 23-24, 42-43; (4) every ANI Provider was included in every Network Vendor negotiation and was bound by the prices set by ANI, *id.* at 11-13, 24; (5) the Challenged Conduct was intended to increase the ANI Providers' bargaining leverage and increase the rates they could charge, *id.* at 24, 38; (6) the prices paid by Payors for healthcare are set by the contracts ANI negotiates with Network Vendors, and the Payors and ANI Providers could not negotiate separate prices, *id.* at 10-11, 13, 15; and (7) the Challenged Conduct enabled Defendants to exercise substantial market power, *id.* at 16-17. Defendants' Opposition does not address this evidence, much less dispute it or contend that it is not common to the Class.

Instead, Defendants' factual recitation focuses on the purported procompetitive justifications for a "clinically integrated network" (or "CIN"), which ANI claims to be. Defendants also assert that the Challenged Conduct is "vital" to ANI because competition would somehow undermine the quality of care. Class Cert. Opp. at 7-13. Defendants' justifications are wrong on

the merits, and, indeed, are contradicted by substantial evidence that, among other things, ANI was not meaningfully integrated, price fixing was not necessary to achieve any purported efficiencies, and ANI's so-called "limited exclusivity" provisions were interpreted so expansively that ANI managed to eliminate meaningful price competition in North-Central Wisconsin. Class Cert. Br. at 11, 36-37. More important to class certification, however, Defendants' evidence and arguments justifying their conduct are *classwide* and therefore support class certification.

The remaining arguments in Defendants' Opposition all derive essentially from two points. First, Defendants assert that Plaintiffs (and other self-insured local businesses that are in the Class) are not "direct purchasers" because they use third-party administrators ("TPAs"), who transfer Plaintiffs' funds to Defendants and the Co-Conspirators to pay for in-network outpatient professional healthcare services. Class Cert. Opp. at 24-35. Defendants assert that the TPAs—who merely pass along Plaintiffs' funds, purchase nothing, and bear none of the overcharge—are the rightful direct purchasers. This argument is legally incorrect and has no support in the case law, and its logic would lead to absurd and unjust results if accepted by the courts. Under Defendants' proposed rule, anytime a customer used a bank to wire money to a seller, the bank would be deemed the only "purchaser" with standing to sue. That is not the law. Once the Court rejects this misguided argument, Defendants' arguments about the Class definition, numerosity, typicality, and superiority essentially fall away.

Second, Defendants rely on their *Daubert* arguments that Dr. Leitzinger's analyses should be excluded, and assert that without those analyses, Plaintiffs cannot prove impact and damages on a classwide basis. *See* Class Cert. Opp. at 36-49. These arguments are wrong on the merits. Dr. Leitzinger's methodologies are well-accepted and reliable, and Plaintiffs have ample other evidence supporting classwide impact. Defendants also offer *no evidence of their own* to rebut Plaintiffs' evidence that the Challenged Conduct—a uniformly implemented price-fixing

conspiracy affecting all Network Vendor negotiations—would have classwide impact. Indeed, while Defendants argue that healthcare negotiations are complex, they cite only one piece of irrelevant deposition testimony and a handful of generic paragraphs from their own experts' reports, which themselves cite no record evidence showing that any purported complexity would defeat a showing of classwide impact. If the Court rejects Defendants' *Daubert* challenges, Plaintiffs have uncontroverted classwide evidence capable of proving impact.

Rule 23(b)(3) "does *not* require a plaintiff seeking class certification to prove that each element of her claim is susceptible to classwide proof," *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013) (cleaned up), and the relevant inquiry is whether common questions predominate as to the case *as a whole*, not as to individual elements, *id.*; *see also Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016); *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013). Defendants' failure to contest the large number of common questions subject to classwide proof is sufficient reason to certify the proposed Class. And once the Court rejects Defendants' remaining arguments, there is no question that common questions susceptible to classwide proof predominate.

Plaintiffs respectfully request that the proposed Class be certified, that Plaintiffs be appointed as Class Representatives, and that Berger Montague PC and Fairmark Partners, LLP be appointed as Class Counsel.

ARGUMENT

I. The Class Is Properly Defined and Ascertainable.

Defendants argue that Plaintiffs "abandon[ed]" the Class definition in the Complaint and "pivot[ed]" to a new one at class certification, and that this "new" Class definition is problematic for a variety of reasons. Class Cert. Opp. at 2, 24-35. These arguments are meritless and largely rest on the same fundamental error: the mistaken claim that the proposed Class includes indirect

purchasers. It does not—Plaintiffs' proposed Class definition includes only entities that directly purchased (*i.e.*, used their funds to pay for) health care services from Defendants, whose prices were inflated by the Challenged Conduct. Those entities are direct purchasers under governing law. Once Defendants' false premise is rejected, Defendants' core objections fall away.

A. The Class Definition Provides Objective, Factual Criteria For Class Membership.

Plaintiffs originally pleaded a class consisting of "[a]ll persons or entities that purchased . . . services directly from [Defendants]." ECF No. 1 ¶ 92. That definition was legally appropriate,[1] but it also would have required potential class members to interpret the legal meaning of "direct purchaser" under *Illinois Brick Company v. Illinois*, 431 U.S. 720 (1977), to determine whether they were in the Class. The updated Class definition does this work for them by describing, in layman's terms Class members can more easily understand, how to determine whether they are direct purchasers and in the Class: whether their "funds were used to pay" Defendants and their Co-Conspirators for in-network outpatient healthcare services. Class Cert. Br. at 3. This refinement lays out criteria for entities to determine if they are in the Class based on facts in their possession, like payment records, without requiring legal interpretation.

Defendants are wrong that Plaintiffs "changed their class definition . . . precisely because they knew named Plaintiffs and most of their proposed class are not direct purchasers." Class Cert. Opp. at 32. Any entities (including the named Plaintiffs) whose "funds were used to pay" Defendants and their Co-Conspirators *are* direct purchasers under case law in this Circuit. *See infra* at 8-16. Plaintiffs simply made it easier for Class members to determine whether they are in

[1] *See*, *e.g.*, *In re Turkey Antitrust Litig.*, 2025 WL 264021, at *2 (N.D. Ill. Jan. 22, 2025) (certifying class of "[a]ll persons and entities who directly purchased [turkey] from Defendants"); *In re Lorazepam & Clorazepate Antitrust Litig.*, 202 F.R.D. 12, 23-24 (D.D.C. 2001) (citing "a litany of post-*Illinois Brick* decisions certifying" classes of entities that "directly purchased" a product or service).

the Class. Far from being "vague," Class Cert. Opp. at 2, the modified definition makes clear that entities are in the Class if they paid Defendants and/or their Co-Conspirators for outpatient services out of their own funds.

B. The Proposed Class Includes Only Direct Purchasers.

Defendants attack the Class definition in several ways, all based on the mistaken premise that the Class definition encompasses *indirect* purchasers. Class Cert. Opp. at 24-35. That premise is wrong. The proposed Class is defined to include only those entities "whose funds were used" to pay Defendants and/or their Co-Conspirators, Class Cert. Br. at 3, and under governing law—including the cases on which Defendants rely—those entities are the direct purchasers. Contrary to Defendants' assertions, entities like TPAs that simply administer the payment of someone else's money—*e.g.*, by pressing "send" on a wire transfer—are not direct purchasers, or purchasers of any kind.

Defendants do not dispute that insurance companies operating fully insured health plans are direct purchasers and members of the proposed Class.[2] Defendants' argument relates to entities with self-funded health plans, like Plaintiffs, which typically contract with TPAs to help administer their benefits plans. In self-funded health plans, "the employer pays the healthcare costs directly, usually by funding a bank account from which the [TPA] pays the claims as they are submitted by the providers." *United States v. Anthem, Inc.*, 236 F. Supp. 3d 171, 188 (D.D.C. 2017); *see also Daniels v. United Healthcare Servs., Inc.*, 74 F.4th 803, 804–05 (7th Cir. 2023) ("The School District . . . 'self-funds' the Plan. This means the School District, not an outside insurer, bears sole

[2] Defendants are wrong, however, that the class definition includes "entities that *subscribed* to fully insured health plans," like a small company who purchases an insurance plan to cover its employees' health care expenses. Class Cert. Opp. at 32 (emphasis added). For such subscribers, the insurer's funds are used to pay for health care services received by insured individuals; the subscriber pays only premiums to the insurer. For that reason, under Plaintiffs' class definition, the insurer is in the Class (as Defendants recognize), but the subscriber is not. *See infra* at 16-18.

financial responsibility for payment of Plan benefits . . . . For help with day-to-day Plan operation, the School District contracted with United HealthCare to serve as the Plan's third-party claims administrator. In that role, United HealthCare has responsibility and authority to deny or approve claims but is not financially liable for paying benefits . . . . We understand this arrangement to be common in the industry.").

Heartland, for example, which has a self-funded plan, contracted with a TPA called UMR. Class Cert. Opp. at 18. When medical bills came due, UMR transmitted funds *from Heartland's bank account* to the appropriate providers, including Defendants and Co-Conspirators. UMR never used its own funds; it simply transmitted Heartland's. *Id.*; *see also* ECF No. 215, Ex. T (UHG-Team_Schierl-00027170 at -27180 (UMR-Heartland agreement, stating [redacted]

[redacted]

[redacted]

[redacted])).[3] Likewise, the TPA Aither, used by both named Plaintiffs, made clear that it administers benefits only by paying funds from a bank account with the self-funded plan's funds. ECF No. 210 (Declaration of Laura Hirsch, June 16, 2025); *see also* Ex. 4 (AITHER00035 at -36 (Aither-Heartland agreement, stating that Heartland is [redacted]

[redacted]

[redacted]

[redacted])); Ex. 5 (AVERGENT000027

[3] Defendants assert that UMR "sends payments directly to healthcare providers," citing one of the declarations provided by UMR in this case. Class Cert Opp. at 34 (citing ECF No. 211 (Supplemental Declaration of Jay True, July 1, 2025 ¶ 9)). But as the UMR contract makes clear, it is the Plaintiffs' funds being sent to healthcare providers, and as UMR's other declaration makes clear, [redacted] ECF No. 218 (Declaration of Jay True, March 8, 2025 ¶ 3).

at -37 (Aither-Team Schierl agreement, stating that Team Schierl is [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

)).[4]

As Defendants acknowledge, both named Plaintiffs used several different TPAs during the Class period, and their payments were all processed in this same way—*i.e.*, with the TPA sending along the Plaintiffs' funds to Defendants and/or their Co-Conspirators. Class Cert. Opp. at 16-19; *see also, e.g.*, ECF No. 206 (Deposition of Marc Bouwer at 124:25 (Heartland's HR Director testifying: [redacted])); ECF No. 208 (Deposition of Candace Filtz-Meronk at 102:8-9 (Team Schierl's HR Director testifying: [redacted])); Ex. 3 (Plaintiff Heartland Farms' First Amended Responses and Objections to Interrogatory No. 22 of ANI's First Set of Interrogatories); Ex. 2 (Plaintiff Team Schierl Companies' First Amended Responses and Objections to Interrogatory No. 22 of ANI's First Set of Interrogatories).

Defendants nevertheless argue that the TPAs are the direct purchasers, even though they purchase nothing and instead just transmit Plaintiffs' money. Defendants' argument makes no more sense than deeming the mailman the "direct purchaser" whenever someone sends a check in the mail—both are merely handling someone else's transaction. It is the entity whose funds are used who bears the overcharge. The TPA, like the mailman, does not "purchase" anything from the provider or "re-sell" anything to the health plan. Indeed, such TPAs would likely not even have

[4] Exhibits are attached to the contemporaneously filed Declaration of Daniel J. Walker in Support of Plaintiffs' Reply In Support of Their Motion for Class Certification and are cited as "Ex. __".

Article III standing, as writing a larger check from their client's account causes them no cognizable harm. Under Defendants' rule, then, the party with Article III standing would lack antitrust standing, and the party with antitrust standing would lack Article III standing—and no one could ever bring the claim. Such a result would effectively immunize price-fixing conspiracies in healthcare from private enforcement—an outcome fundamentally at odds with the antitrust laws, and with *Illinois Brick* in particular.

Indeed, even the cases Defendants cite—*Blue Cross & Blue Shield United of Wisconsin v. Marshfield Clinic*, 65 F.3d 1406 (7th Cir. 1995), and *In re NorthShore Univ. HealthSystem Antitrust Litig.*, 2018 WL 2383098 (N.D. Ill. Mar. 31, 2018)—make clear that the direct purchaser is the entity whose funds are used to pay the defendant.

While *Marshfield* did not involve a TPA, it makes clear that the focus for the direct purchaser question is on whose funds were used to pay the overcharge. Blue Cross & Blue Shield United of Wisconsin ("BCBS") paid Marshfield Clinic for out-of-network services provided to its members who were Marshfield's patients. 65 F.3d at 1414. Marshfield argued that the patients, not BCBS, were the direct purchasers because they were the only ones who directly contracted with Marshfield. *Id.* The Seventh Circuit rejected the argument, focusing on whose funds paid the claim. The court explained that the patients would have been the direct purchasers "if [they] paid the entire fees" to Marshfield and then got reimbursed by BCBS. *Id.* But to allow the patients "to recover money that the patients never paid," would make no sense under the antitrust laws. *Id.*

Instead, the Seventh Circuit held that BCBS was the direct purchaser of services provided to its fully insured members, just as named Plaintiffs here are the direct purchasers of services provided to the members of their self-funded health plans. *Id.* Notably, both types of entities (commercial health insurance carriers like Blue Cross operating fully insured plans, and self-funded health plans like those of the named Plaintiffs) are in Plaintiffs' Class definition—although

the mechanics of payment are different, both such entities pay their own funds to the healthcare provider when a patient they cover receives care. The only difference is that self-funded plans use TPAs to process the claims and transfer the plan's money to the provider. But TPAs are not purchasers at all; they do not use any of their own funds to purchase outpatient healthcare services. They simply move money from Plaintiffs' bank accounts to Defendants' bank accounts, and if overcharges are paid, they are paid by the self-insured plans, not the TPAs. *Marshfield* was thus correct to focus on whose funds are used to pay the defendant's overcharges.

In re NorthShore University HealthSystem Antitrust Litigation is also consistent with the rule that the direct purchaser is the entity whose funds are used to pay the defendant. In *NorthShore*, a union health plan ("Painters Fund") alleged that NorthShore illegally overcharged for the medical services union members received. 2018 WL 2383098, at *1. The question was whether Painters Fund or its TPA was the direct purchaser. *Id.* at *5. The *NorthShore* court squarely held that what matters to the direct purchaser analysis is whose funds were used to make the payments. *Id.* at *7-8. Specifically, Painters Fund had an arrangement in which the TPA used *its own funds* to pay the hospital in the first instance, with Painters Fund later providing a reimbursement.[5] *Id.* at *8. In that scenario, because the TPA used its own funds to pay Northshore rather than being a "mere conduit of payment," the TPA was the direct purchaser. *Id.*

In reaching this holding, the court distinguished *Santa Cruz Medical Clinic v. Dominican Santa Cruz Hospital*, where—just like here—the self-funded plaintiffs "hired a third party administrator to process claims, but the bills themselves are paid *directly* to hospitals out of the

[5] Plaintiffs are not aware of, and Defendants have not identified, any TPA operating in North-Central Wisconsin that uses such an arrangement. Instead, the record contains extensive evidence that the TPAs transmit their self-funded plan clients' funds and do not use their own. *See*, *e.g.*, *supra* at 9-10 (citing evidence regarding TPAs).

revenues of [the plaintiffs]." *NorthShore*, 2018 WL 2383098, at *7 (quoting *Santa Cruz Med. Clinic*, 1994 WL 619288, at *2 (N.D. Cal. Oct. 26, 1994)) (emphasis in original). In that case, the *NorthShore* court agreed, the self-funded plans were the direct purchasers because the TPA was serving as a "mere conduit of payment." *Id.* at *8; *see also In re Xyrem (Sodium Oxybate) Antitrust Litig.*, 2024 WL 4023561, at *16 (N.D. Cal. Aug. 26, 2024) (holding that TPAs "do not have antitrust standing to sue . . . because [they] have not paid overcharges for Xyrem prescriptions and thus do not bear any risk related to the overcharges"). The fact that the TPA in *Santa Cruz* paid the hospital from the employer's funds and not from the TPA's own funds was the "key factual difference" between the cases. *In re NorthShore*, 2018 WL 2383098, at *7. Thus, while Defendants focus on who mechanically sent the payment to the defendant, that cannot be *NorthShore*'s rule because then the court's distinguishing of *Santa Cruz* would make no sense.

The *NorthShore* court's focus on whose funds were used, rather than who transmitted them, is confirmed by a subsequent opinion in the same case, which Defendants do not cite. *See* Ex. 1 (Order (ECF 1072), *In re Northshore Univ. Healthsystem Antitrust Litig.*, No. 07-cv-04446 (N.D. Ill. Apr. 9, 2019)). A new named plaintiff (Freedman) was added to the case; Freedman, who was uninsured, was injured in a car accident and then treated at NorthShore. *Id.* at 2. He sued the driver that caused the accident and obtained a settlement, with the settlement funds placed in his personal injury attorney's "Interest Only Lawyers' Trust Account ("IOLTA"). *Id.* at 4. Freedman's attorney then negotiated the hospital bill on Freedman's behalf and paid NorthShore with the funds from the IOLTA. *Id.* NorthShore argued that the personal injury attorney was the direct purchaser because he sent the payment, but the court disagreed: "[T]he NorthShore payments were *not* made out of the law firm's pocket; they were from Freedman's settlement money. So Freedman provided the *direct* payment from his own funds. (Unlike BCBS, [the attorney] actually was a mere conduit of payment.)" *Id.* at 21 (citations omitted). The two opinions in *Northshore* thus make clear that,

consistent with *Marshfield*, what matters is whose funds are being used to pay the defendant, not who sends the payment.

Courts rightly reject arguments that the transmitter of someone else's funds is the direct purchaser. For example, in *Leeder v. National Association of Realtors*, the court held that home sellers are direct purchasers of broker services, even though the fees the sellers pay to the brokers are delivered through escrow. 601 F. Supp. 3d 301, 309-310 (N.D. Ill. 2022). The court rejected the argument that "the use of an escrow account changes the analysis," holding that home sellers were the direct purchasers because the fees were paid with their money—*i.e.*, they were "deducted from the home seller's proceeds from the sale." *Id.* at 309. In fact, *Leeder* demonstrates how extreme Defendants' position is. The parties there disagreed about whether the home buyer or the home seller was the direct purchaser, but no one suggested that *the escrow company* was the direct purchaser, even though everyone's money passed through an escrow account. *Id.* at 308-11. It is equally irrational to treat TPAs as direct purchasers simply because they transfer Plaintiffs' funds to Defendants. Defendants do not cite any case holding that a payment processor like the TPAs here or the escrow company in *Leeder* is a direct purchaser.

Likewise, in the credit-card context, no one doubts that the cardholder rather than the issuer is the direct purchaser. As one district court recently explained: "[W]here a credit-card cardholder purchases a good on Amazon … , it is the Issuer (Chase) who pays the merchant (Amazon) . . . . There is no question, however, that the cardholder is the direct purchaser from Amazon, notwithstanding the fact that Chase paid for the product on the cardholder's behalf." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2024 WL 1014159, at *12 (E.D.N.Y. Mar. 8, 2024); *see also In re Mercedes-Benz Anti-Trust Litig.*, 157 F. Supp. 2d 355, 366 (D.N.J. 2001) ("A financier sells the use of its money, not the product alleged to be price-fixed.").

It is indisputable that Plaintiffs' funds were used to pay Defendants and the Co-Conspirators for in-network outpatient professional services, and that Plaintiffs' TPAs passed along Plaintiffs' own funds for payment. *See supra* at 8-10. Defendants offer no evidence to challenge these facts, and their own description of how TPAs work supports this relationship. *See* Class Cert. Opp. 15-19. Indeed, Defendants do not argue that there is any TPA that used its own funds to pay overcharges. They simply argue that any entity which passes along someone else's funds to Defendants or the Co-Conspirators is a direct purchaser. But Defendants' misreading of *NorthShore*—their contention that all that matters is which entity transmits the money to the hospital, and not whose money it is, *see id.* at 26-27—is not supported by the case law and would have absurd consequences, even beyond the TPA context. Under Defendants' view, a payroll company would be the direct purchaser of its clients' employees' labor; a bank would be the direct purchaser whenever it processes a wire transfer; and PayPal would be the direct purchaser of every good and service purchased through its platform. *Cf. NorthShore*, 2018 WL 2383098, at *8 (emphasizing that the Painters Fund TPA was not "some PayPal-like clearinghouse"); *see also In re NASDAQ Mkt.-Makers Antitrust Litig.*, 169 F.R.D. 493, 506 (S.D.N.Y. 1996) ("[A]s securities brokers are in the business of effecting transactions for the account of others, they do not constitute a distinct link in the chain of distribution." (internal quotation marks omitted)).[6]

[6] Much of the confusion about the meaning of *NorthShore* stems from a seemingly incomplete and confused record about the financial relationship between Painters Fund and its TPA. The court focused on a factual assertion by the plaintiffs that the TPA paid the Painters Fund's bills in the first instance and then seeks reimbursement, 2018 WL 2383098, at *7, but the court did not make clear whether this was complete reimbursement or in the form of some sort of separate fees. In the opinion on the motion for reconsideration, in turn, the plaintiffs appear to have presented additional facts, but these additional facts were both untimely and, from the opinion itself, still never made clear whose funds were being used to pay NorthShore's bills. *See* Ex. 1 at 8-10. Ultimately, however, the court made clear regarding Freedman's claim that the entity whose funds are used is the direct purchaser and the entity who simply transmits those funds is not. *Id.* at 21.

Further, regardless of what sort of TPAs exist in North-Central Wisconsin, at the class certification stage, the argument should focus only on whether *the named Plaintiffs* are direct purchasers, as was the focus in *NorthShore*. That is, if this Court holds that Plaintiffs are direct purchasers because their funds were used to pay Defendants, the fact that there might exist some TPAs who would nevertheless fit into the Class definition does not affect any of the issues that need to be decided at class certification. Most importantly, whether there are any TPAs in the Class that are direct purchasers because their funds were used to pay overcharges is a question that would not affect the total Class damages; that question would only affect who ultimately can claim a portion of the Class damages. As discussed below, *infra at* 19-20, the Seventh Circuit has made clear that a complete list of absent Class members is not required at the Class certification stage, and that the ultimate decision on who can claim funds can be determined with an evidentiary showing during the processing of claims after a settlement or judgment in Plaintiffs' favor.

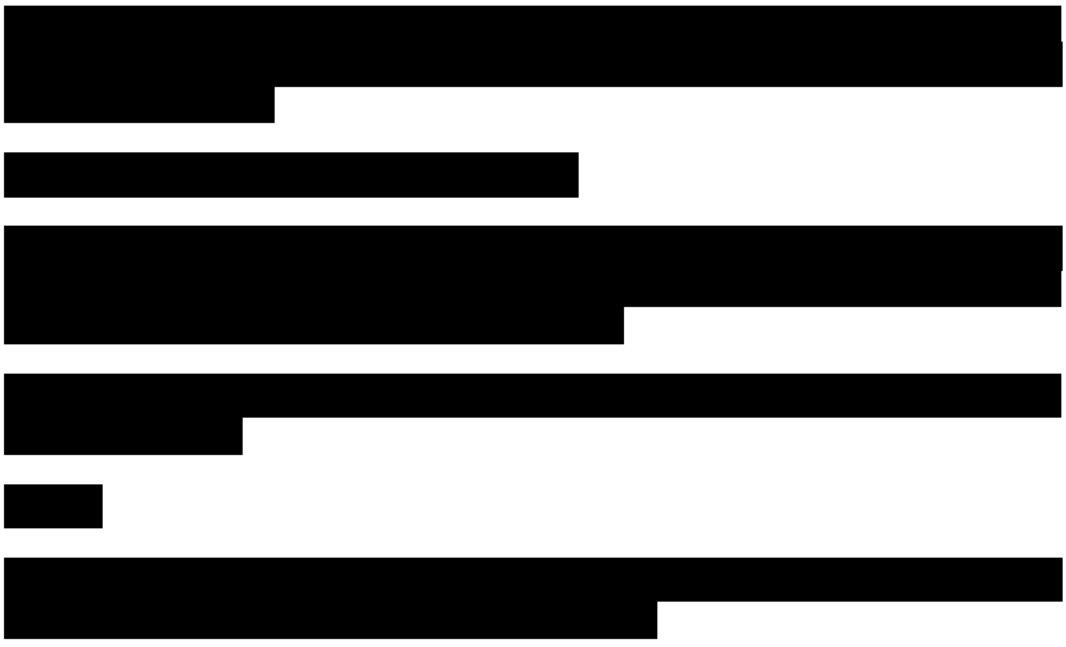
In sum, Defendants' argument fails both doctrinally and practically. The consistent principle across contexts is that direct purchaser status follows whose funds are used, not who processes the payment, because ultimately the one whose funds are used to pay the overcharge will be the one who is motivated to enforce the antitrust laws. The Class definition provides objective, administrable criteria that will allow absent Class members to determine membership from their own records.

C. The Class Definition Is Not Overbroad.

Defendants argue that the Class definition is overbroad because it supposedly includes two types of indirect purchasers: (1) self-funded health plans who use TPAs, and (2) "entities that subscribed to fully insured plans." Class Cert. Opp. at 28-31. Defendants are wrong about both. The Class definition does include the first group, but as explained above, such entities are *direct* purchasers—self-funded health plans, not their TPAs, are the direct purchasers.

The Class definition does *not* include the second group. There is no dispute that insurance companies operating fully insured plans are direct purchasers and in the Class. *Id.* at 30. Defendants claim, however, that the Class definition also encompasses these insurance companies' subscribers—*i.e.*, the fully-insured businesses who pay monthly premiums for insurance rather than paying medical bills as a self-insured organization. *Id.* This is plainly wrong on the face of the Class definition. In a fully insured plan, the *insurance company's* funds are used to pay providers; as Defendants themselves acknowledge, the insured businesses pay only "a fixed premium to the commercial health insurance carrier." Class Cert. Opp. at 14. It is the insurance company who bears the injury of the overcharge and is the Class member, as was the case in *Marshfield*. The insureds are therefore outside the Class definition.

Defendants pretend there is ambiguity about this only by misrepresenting Dr. Leitzinger's testimony. They cite a portion of his deposition testimony suggesting that fully-insured entities are included in the Class, Class Cert. Opp. at 29 (citing Leitzinger Depo. at 127:19-128:4), but they fail to disclose that just three transcript pages later, Dr. Leitzinger clarified that testimony and made clear that such entities *are not* in the Class:



[redacted]

Leitzinger Depo. at 131:13-132:23.

Defendants' contention that the class includes these indirect purchasers is thus inconsistent with both the Class definition and Dr. Leitzinger's testimony. Their "overbreadth" objection is meritless.

D. The Class Is Ascertainable Based on Objective Criteria.

Defendants gesture towards (but notably stop short of explicitly making) an argument that Plaintiffs' proposed class is not ascertainable—*i.e.*, that Plaintiffs have not proven that they can demonstrate who is in the class and who is not. *See*, *e.g.*, Class Cert. Opp. at 28-29 (relying on three ascertainability cases to argue "[v]agueness in a class definition is a problem because it means courts are unable to easily identify who will receive notice, who will share in any recovery, and who will be bound by a judgment" (internal quotation marks omitted) (citing *Mullins v. Direct Digital*, *LLC*, 795 F.3d 654 (7th Cir. 2015); *Jamie S. v. Milwaukee Pub. Schs*., 668 F.3d 481 (7th Cir. 2012); and *Rock v. Nat'l Collegiate Athletic Ass'n*, 2016 WL 1270087 (S.D. Ind. Mar. 31, 2016))).[7] But Plaintiffs' proposed Class Definition easily satisfies the Seventh Circuit's lenient

[7] As discussed below, *Mullins* rejected a vagueness argument akin to the one Defendants make now. Defendants' other two cases offer no support either. In *Jamie S.*, a case under the Individuals with Disabilities Education Act, the plaintiffs sought to certify a class that included "unidentified but potentially [IDEA] eligible students," which would require "identifying disabled students who might be eligible for special-education services [which] is a complex, highly individualized task, [that] cannot be reduced to the application of a set of simple, objective criteria." 668 F.3d at 496. Here, by contrast, Class members can be identified objectively by demonstrating that their funds were used to pay Defendants and/or Co-Conspirators for healthcare services during the Class period. The plaintiffs in *Rock* similarly sought to certify a subjectively defined class—all athletes who had been "recruited" to play NCAA football, but the plaintiffs did not define what it meant to be "recruited" and "presented no class-wide evidence to demonstrate how a student-athlete can be identified as having been 'recruited.'" 2016 WL 1270087, at *7-8. Here, the Class definition does not turn on the plaintiffs' "subjective state of mind," *id.* at *9, but rather on the objective fact of payment, and Dr. Leitzinger has demonstrated he can use class-wide evidence (*i.e.*, claims data) to identify who made those payments, LR2 ¶ 36.

ascertainability standard, because it provides a clear, objective definition of who is in and who is out; and under binding precedent, the fact that the precise identity of each Class member is not *known* at this time does not justify denying certification.

As an initial matter, this argument turns almost entirely on Defendants' flawed premise that the Class as defined includes both direct and indirect purchasers. Class Cert. Opp. at 29-30. It does not, and once this argument falls away, *supra* at 8-16, Defendants simply argue that "a proposed class definition must 'identify a particular group, harmed during a particular time frame, in a particular location, in a particular way,' and those characteristics must be based on objective criteria." Class Cert. Opp. at 29 (quoting *Mullins*, 795 F.3d at 660).

The Class definition satisfies this test: it provides objective criteria for class membership—entities whose funds were used to pay Defendants or their Co-Conspirators for a particular set of services during a particular time period. Any entity, whether self-insured or an insurer offering fully-insured plans, will be able to demonstrate they are in the Class by, for example, providing documentation that they funded accounts that paid Defendants for healthcare during the relevant time period. Further, the purchaser for any given claim is one of the fields in the claims data that Dr. Leitzinger already has and that Plaintiffs can obtain from other TPAs during the claims administration process. *See* LR2 ¶ 36 (identifying 1,948 class members via this method). Put simply, this is not a case where hundreds of thousands of consumers will need to submit affidavits swearing that they were deceived by a label—objective evidence regarding who they paid for healthcare will establish who is in the class.

To the extent Defendants argue that Plaintiffs need to identify every single class member *now*, Class Cert. Opp. at 29, that contradicts *Mullins*. The Seventh Circuit could not have been clearer that, so long as these class members are *capable* of being identified through objective criteria, the class should be certified, and the unnamed class members can then be identified later

in the case. *See*, *e.g.*, 795 F.3d at 662 ("[W]e conclude that the district court here did not abuse its discretion by deferring until later in the litigation decisions about more detailed aspects of ascertainability and the management of any claims process."); *id.* at 664 ("[A] district judge has discretion to (and we think normally should) wait and see how serious the problem [of determining who is in the class] may turn out to be after settlement or judgment, when much more may be known about available records, response rates, and other relevant factors."). Provided the class is defined "clearly and with objective criteria," class members can even be identified through an affidavit saying they made a purchase. *Id.* at 669 ("[A] district judge has discretion to allow class members to identify themselves with their own testimony and to establish mechanisms to test those affidavits as needed.").[8]

Mullins also instructed courts that even if there are potential manageability problems with a class, the court must "balance countervailing interests to decide whether a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." 795 F.3d at 658 (citing Fed. R. Civ. P. 23(b)(3)); *see also id.* (rejecting "heightened ascertainability requirement" because it "gives one factor in the balance absolute priority, with the effect of barring class actions where class treatment is often most needed: in cases involving relatively low-cost goods or services, where consumers are unlikely to have documentary proof of purchase"). Here, Plaintiffs have ample evidence that, through the Challenged Conduct, Defendants intended to, and did, raise prices on thousands of businesses in Wisconsin, Class Cert. Br. at 18-23, and that this was Defendants' intended purpose, *see e.g.*, *id.* at 19. Moreover, Plaintiffs have proved an overcharge

[8] *See also, e.g.*, *W. Loop Chiropractic & Sports Inj. Ctr., Ltd. v. N. Am. Bancard, LLC*, 2018 WL 4762333, at *10 (N.D. Ill. May 16, 2018), *report and recommendation adopted*, 2018 WL 3738281 (N.D. Ill. Aug. 7, 2018) (applying this approach); *Benson v. Newell Brands, Inc.*, 2021 WL 5321510, at *8 (N.D. Ill. 2021) (same); *Bakov v. Consol. World Travel, Inc.*, 2019 WL 1294659, at *21 (N.D. Ill. 2019) (same).

of approximately $[redacted] million through a rigorous and reliable analysis and have demonstrated how to identify the entities that paid Defendants' inflated prices. SLR ¶ 39. But despite this case's strengths, the vast majority of individual Class members do not have the means to bring their own complex, expensive multiyear antitrust case because most Class members' damages are not, standing alone, high enough to justify that expense and risk.

Defendants also drastically overstate the potential for manageability problems of the proposed Class, primarily with their direct purchaser red herring. But even if identifying Class members required a complicated process—and it should not here—the Seventh Circuit made clear that should not prevent a class from being certified and wrongdoing to go unaddressed. *See*, *e.g.*, *Suchanek v. Sturm Foods, Inc.,* 764 F.3d 750, 760 (7th Cir. 2014) (reversing denial of class certification, explaining that "a class action has to be unwieldy indeed before it can be pronounced an inferior alternative—no matter how massive the fraud or other wrongdoing that will go unpunished if class treatment is denied—to no litigation at all" (alteration and internal citation omitted)); *Mullins*, 795 F.3d at 664 (holding that when individualized actions not a feasible alternative, "refusing to certify on manageability grounds alone should be the last resort").

E. Defendants Proximately Caused Plaintiffs' Harm: The Payment of Overcharges.

Defendants are wrong to argue that the only type of plaintiff with cognizable harm in an antitrust case is one who was a party to the contract causing the plaintiff to overpay. *See* Class Cert. Opp. at 31 ("While self-funded health plans like named Plaintiffs rely on may pay to access the contracts negotiated by Network Vendors, those plans do not themselves negotiate with Defendants. Therein lies Plaintiffs' problem."). That contradicts decades of antirust jurisprudence, which allows the individual who paid the overcharge to sue the wrongdoer, regardless of formalities regarding how a defendant was able to extract the overcharge.

Most recently, the Supreme Court addressed this in *Apple v. Pepper*, where consumers who purchased iPhone apps from Apple sued the company based on a theory that the contracts between Apple *and app developers*—not between Apple and the plaintiffs—caused the price the plaintiffs paid to be higher than it would otherwise have been. 587 U.S. 273, 277 (2019). Specifically, under its contracts with independent app developers, Apple was entitled to keep for itself 30% of each app sale. *Id.* Consumers sued, alleging that "that 30 percent commission is 'pure profit' for Apple and, in a competitive environment with other retailers, 'Apple would be under considerable pressure to substantially lower its 30% profit margin.'" *Id.* (quoting complaint). The plaintiffs argued that because of that 30% commission, consumers have "paid more for their iPhone apps than they would have in a competitive market." *Id.* The Court held that the consumers had standing to sue because they paid Apple the alleged overcharge.[9] *Id.* at 281. Not once did the Court suggest that the fact that the restraint causing the consumers' overcharge was a contract to which the consumers were not a party made any difference. The "upstream" source of the overcharge was of no relevance since the consumers paid Apple directly. *Id.* at 284 ("In short, we do not understand the relevance of the upstream market structure in deciding whether a downstream consumer may sue a monopolistic retailer.").

Apple did not break new ground. Courts have long recognized that a consumer can be harmed by contractual restraints in contracts to which the consumer is not a party. In *Blue Shield of Virginia v. McCready*, for example, the Supreme Court held that a purchaser of mental health services had standing to assert a damages claim against Blue Shield stemming from collusion between Blue Shield and a psychiatric provider to exclude psychological services from the

[9] Notably, most app purchases occur via credit card. But Apple did not argue, to the Supreme Court or the courts below, that this meant that Visa or MasterCard, rather than the consumer buying the app, was the "direct purchaser." *See supra* at 14.

insurance plan's coverage—a group boycott, reflected in the insurance contract, that was designed to stamp out psychologists who competed with psychiatrists. 457 U.S. 465, 469 (1982). The plaintiff was not a party to the insurance contract containing the exclusion (it was between her employer and Blue Shield, *id.* at 468, nor was she the target of the group boycott, nor even did she pay any money to Blue Shield). Yet she was injured by Blue Shield when it refused to reimburse her as part of its scheme to hurt psychologists. That sufficed to give her standing, and the Court held her injury was proximately caused by the unlawful conduct. *Id.* at 484 ("McCready's injury flows from that which makes the defendants' acts unlawful . . . , and falls squarely within the area of congressional concern."). That she was not a party to the offending contract was irrelevant: "[W]hatever the adverse effect of Blue Shield's actions on [McCready's] employer, who purchased the plan, it is not the employer as purchaser, but its employees as subscribers, who are out of pocket as a consequence of the plan's failure to pay benefits." *Id.* at 475. There, as here, all that mattered from a standing and proximate cause perspective was who lost money because of the defendant's conduct—*i.e.*, the purchasers who are "out of pocket" due to the anticompetitive conduct.

The Seventh Circuit has been just as clear on this issue, including in the healthcare context. In *Marshfield*, Marshfield (the defendant) argued that even though Blue Cross paid it in the first instance (as insurers do when administering fully insured plans), Blue Cross did not have standing to sue because it had no contract with Marshfield. 65 F.3d at 1414 ("The Clinic seeks to head off Blue Cross's claim at the pass, arguing that since the Clinic's fee-for-service contracts are with the patients themselves—it has no contract with Blue Cross—only the patients have 'standing' . . . to complain about the alleged overcharging." (citation omitted)). The court rejected that argument. "Blue Cross paid Marshfield Clinic directly, in accordance with Blue Cross's contractual obligations to its insureds, and if it paid too much because the Clinic violated the antitrust laws

then it ought to be allowed to sue to recover these damages." *Id.* 1414-15; *see also Loeb Indus., Inc. v. Sumitomo Corp.*, 306 F.3d 469, 482 (7th Cir. 2002) ("The Supreme Court has been willing to entertain suits between plaintiffs and defendants not in privity with each other.") Thus, the Seventh Circuit, like the Supreme Court, has held that a plaintiff who pays an overcharge caused by an unlawful conspiracy has standing to bring an antitrust claim.

Plaintiffs and the Class all fit into this category—their money was used to pay Defendants for health care services at prices they allege were supracompetitive due to the Challenged Conduct. Whether or not the Challenged Conduct will be found unlawful (a question not fit for resolution now), there is no question that they have standing to pursue the claims at issue here.

Finally, Defendants rely heavily[10] on *Associated General Contractors of California, Inc. v. California State Council of Carpenters* ("*AGC*")—a case that did not involve *any purchaser at all*—to argue that Plaintiffs' harms were not proximately caused by Defendants. 459 U.S. 519 (1983). The comparison is inapt. In *AGC*, the plaintiff was a union that alleged that general contractors engaged in conduct that harmed unionized carpentry firms, which resulted in employees of those firms paying less in union dues. *Id.* at 520-21, 541 & n.46. Put differently, *AGC*, did not involve *any* kind of purchaser at all but rather an attenuated theory about how anticompetitive conduct led to reduced income for a union. By contrast, Plaintiffs allege that they paid higher prices to Defendants out of their own funds due to a price-fixing scheme Defendants do not even deny having engaged in. *See* Class Cert. Opp. at 12 (arguing that Challenged Conduct is a "vital aspect[] of the CIN that supports ANI's broader purpose"). To Plaintiffs' knowledge, no court has ever ruled that a plaintiff *who directly purchased the overpriced product or service* was not proximately harmed by a defendant's misconduct. *See*, *e.g.*, *Apple*, 587 U.S. at 279 ("[W]e

[10] *See* Class Cert. Opp. 25-27, 31-32, 35 (citing *AGC*).

have consistently stated that 'the immediate buyers from the alleged antitrust violators' may maintain a suit against the antitrust violators." (citation omitted)); *Gelboim v. Bank of Am. Corp.*, 823 F.3d 759, 772 (2d Cir. 2016) ("Generally, when consumers, because of a conspiracy, must pay prices that no longer reflect ordinary market conditions, they suffer injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful." (internal quotation marks and citation omitted)). Defendants point to no such case, and they have given this Court no reason why it should break new ground to immunize Defendants' price fixing.

II. Impact and Damages Are Capable of Being Proven on a Classwide Basis.

Plaintiffs have ample qualitative and quantitative classwide evidence capable of proving that the Challenged Conduct inflated prices above the competitive level and that all or virtually all Class members suffered injury in the form of overcharges on in-network outpatient professional services. *See* Class Cert. Br. at 8-14;17-26 (citing record and expert evidence). Dr. Leitzinger calculated aggregate Class damages using the standard methodology in antitrust class actions. *Id.* at 26-27. Defendants assert four arguments for why individual issues will purportedly predominate as to impact and damages. All of them should be rejected because they are legally incorrect and because Defendants marshal no *evidence* to support them.

More fundamentally, Defendants' arguments are classwide. Defendants assert that Plaintiffs' expert testimony is flawed, and that Plaintiffs' record evidence is otherwise insufficient to prove classwide impact. These are arguments for the jury, and if the jury agrees with Defendants, then the Plaintiffs and the entire Class will lose. There will be no individual trials for each Class member to determine who was injured because any individual trial *would involve the same evidence*, and the failure of that evidence would "not point to 'some fatal dissimilarity' among class members, but rather to a 'fatal similarity[.]'" *Black v. Occidental Petroleum Corp.*, 69 F.4th 1161, 1184 (10th Cir. 2023) (quoting *Amgen*, 568 U.S. at 470). Thus, even if Defendants were

correct that Plaintiffs' evidence will be insufficient to prove injury, *that would support a finding of predominance* under Rule 23(b)(3). *See*, *e.g.*, *In re Broiler Chicken Grower Antitrust Litig. (No. II)*, 2024 WL 2117359, at *27 (E.D. Okla. May 8, 2024) ("If accepted by a trier of fact, these arguments concerning Plaintiffs' impact showing would likely defeat Plaintiffs' claim, but they would not require individualized inquiry. They would defeat the claim with evidence common to the class.").

A. Dr. Leitzinger Calculated Damages Correctly.

Defendants argue that Dr. Leitzinger's overcharge model cannot be used to calculate Class damages because Dr. Leitzinger assumes the same volume of purchases in the "but-for world"—*i.e.*, the world without the Challenged Conduct—as the Class purchased in the actual world. Class Cert. Opp. at 37. Courts uniformly reject such arguments.

As explained in Plaintiffs' opening Motion, Class Cert. Br. at 37-44, and Plaintiffs' opposition to Defendants' *Daubert* motion, *Daubert* Opp. at 12, Dr. Leitzinger calculated damages by, first, calculating the aggregate overcharge percentage across all Class purchases, which is the difference between the actual prices paid and the prices that would have been paid but for the Challenged Conduct (the "but-for" prices). Dr. Leitzinger then multiplied this overcharge percentage by the total volume of in-network outpatient professional services purchased by the Class during the Class Period. LR1 ¶ 36.

Defendants argue that this calculation is unreliable because some purchases of in-network outpatient professional healthcare services *might* not have taken place in a world without the Challenged Conduct. Class Cert. Opp. at 38-40. Defendants essentially hypothesize that if Defendants and the Co-Conspirators did not engage in the Challenged Conduct and inflate prices, the networks might have been different because some of the Co-Conspirators might not have been part of the networks assembled by the Network Vendors. *E.g.*, *id.* at 39 (absent the Challenged

Conduct, it is "possible that any physician could have, for example, declined to remain in-network"). This is wrong as a matter of law and factually unsupported.

First, Dr. Leitzinger's damages calculation is correct. Direct purchasers are entitled to recover the "full amount of the overcharge" on purchases made at an inflated price. *Illinois Brick*, 431 U.S. at 745-46. The existence and price of *actual* purchases are held constant; overcharges are the actual unit purchases multiplied by the difference between the actual prices and the prices absent the Challenged Conduct. *See*, *e.g.*, Ex. 6 at 11 (PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION ¶ 391e1 (4th and 5th ed., 2025) (defining recoverable overcharges as "the difference between the actual price and the 'but for' price . . . times the quantity sold at the higher price.")); Ex. 7 at 234 (ABA SECTION OF ANTITRUST LAW, PROVING ANTITRUST DAMAGES: LEGAL AND ECONOMIC ISSUES 234 (2d ed. 2010) (explaining that overcharges are "[t]he difference between the price charged and the competitive price . . . multiplied by the quantity *actually purchased*") (emphasis added))).

Overcharge injury occurs the moment a purchase is made. *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481, 489 (1968); *see also, e.g.*, *In re Nexium Antitrust Litig.*, 777 F.3d 9, 27 (1st Cir. 2015). A plaintiff who proves a violation need not reconstruct the hypothetical ways the market might have differed absent a defendant's conspiracy. *See Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 263 (1946) (rejecting argument that "it is not possible to say what th[e] conditions would have been if the restraints had not been imposed"). As between a plaintiff that has proven an antitrust violation and the violator, any uncertainty as to damages is to be resolved in favor of the plaintiff. *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 563 (1931) (precluding a wrongdoer from arguing that damages "cannot be measured with

the exactness and precision that would be possible if the case, which he alone is responsible for making, were otherwise").

For this reason, courts routinely reject arguments that purchaser damages should be reduced because the volume of purchases might have been different had the defendant not broken the law.[11] For example, courts have rejected arguments that the products plaintiffs purchased would not have been available in the but-for world;[12] that plaintiffs would have purchased different products in the but-for world;[13] or that plaintiffs would have purchased less of the product in the

[11] *Howard Hess Dental Lab'ys Inc. v. Dentsply Int'l, Inc.*, 424 F.3d 363, 374 (3d Cir. 2005) (citing authority that overcharges are assessed on the quantity actually purchased); *Tawfillis v. Allergan, Inc.*, 2017 WL 3084275, at *12 (C.D Cal. June 26, 2017) (recognizing it "need not consider" what "could have affected the amount of the product purchased in the but-for world"); *Teva Pharms. USA, Inc. v. Abbott Lab'ys*, 252 F.R.D. 213, 230 (D. Del. 2008) ("Defendants also contend that, even if TRICOR® prices would have been lower in the 'but for' world, it is impossible to determine, through class-wide proof, which Plaintiffs would have continued to purchase TRICOR® rather than switching to a still lower priced generic fenofibrate or some other dyslipidemia therapy, such that class certification is precluded. Not only does this argument depend on the merits of direct purchaser plaintiffs' case but, with respect to impact, this assertion disregards the Third Circuit's statement that impact can be shown simply through proof that purchases were made at a higher price than would otherwise have pertained but for defendants' anticompetitive conduct." (footnote and citations omitted)); *In re Relafen Antitrust Litig.*, 346 F. Supp. 2d 349, 369 (D. Mass. 2004) (rejecting argument that damages should be reduced to account for purchases that would not have been made in the but-for world, noting "a substantial portion of the harm attributed to [the defendant's] conduct would go completely unredressed"); *In re Visa Check/Mastermoney Antitrust Litig.*, 192 F.R.D. 68, 85 (E.D.N.Y. 2000) (rejecting hypothetical reduced volume of transactions as "immaterial when an antitrust plaintiff proceeds on an 'overcharge theory' of damages"), *aff'd*, 280 F.3d 124 (2d Cir. 2001).

[12] *See*, *e.g.*, *In re Loestrin 24 Fe Antitrust Litig.*, 433 F. Supp. 3d 274, 304 (D.R.I. 2019) ("Defendants' first line of attack is a whopper. They assert that Plaintiffs cannot establish a viable but-for world for their [patent fraud antitrust] claim, because if the patent was procured by fraud and therefore invalid, there would have been no patented product and no one would have been injured in the but-for world. No patent, no product; no product, no purchases; no purchases, no damages, Defendants say. Voila! The problem is this argument has no basis in law and would nullify antitrust liability in any case involving [patent] fraud alongside another antitrust violation. It is untenable and ignores the reality of the anticompetitive conduct as alleged.").

[13] *See*, *e.g.*, *GlaxoSmithKline LLC v. Glenmark Pharms. Inc.*, 2017 WL 8948975, at *6 (D. Del. May 30, 2017) ("Case law certainly supports the proposition that in the but-for world, a defendant cannot argue that the sale of its own product would have been replaced by the sale of some other party's infringing product, for purposes of calculating lost profits damages."); *In re*

but-for world than they did in the actual world.[14] Indeed, to allow Defendants to avoid damages—partially or entirely—based on unsupported hypotheticals about the but-for world means that *no plaintiff* could recover for those overcharges, even though Defendants have already been paid the inflated prices. In rejecting a similar argument, one court explained that "courts and juries will not be forced down the rabbit hole of hypothetical issues antitrust violators may raise to minimize their liability." *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2002887, at *5 (E.D. Tenn. May 15, 2024).

Defendants rely heavily on this Court's Motion to Dismiss opinion. *See* Class Cert. Opp. at 37 (citing MTD Op. at 20). But that opinion does not hold, as Defendants now argue, that to prove damages, Plaintiffs need detailed proof about which providers would be in-network with which Network Vendors in the but-for world. The Court was addressing Defendants' argument regarding Plaintiffs' exclusive dealing claim that Plaintiffs purportedly had no evidence that the Defendants' contracts prevented competition. MTD Op. at 19-20. The Court held that Plaintiffs would have to come forward with evidence that in the absence of ANI's restrictive contracts, there would have been more competition. *Id.* Plaintiffs have such evidence.[15] But whether Defendants'

Elec. Books Antitrust Litig., 2014 WL 1282293, at *19 (S.D.N.Y. March 28, 2014) (rejecting argument that plaintiffs' damages offsets "based purely on conjecture about speculative happenings in the but-for world").

[14] *See, e.g.*, *In re Namenda Direct Purchaser Antitrust Litig.*, 2019 WL 6242128, at *11 (S.D.N.Y. Aug. 2, 2019) (rejecting argument that plaintiffs would have purchased less in the but-for world as "inconsistent with *Hanover Shoe*" and "therefore not an appropriate defense") (collecting cases).

[15] Although not necessary for computing damages, Plaintiffs have ample evidence that the Challenged Conduct prevented the formation of competing provider networks. For example, there is extensive evidence that Defendants routinely prevented the Co-Conspirators from joining or creating networks that would compete against ANI. *See* Class Cert. Br. at 12 (citing evidence). Similarly, [redacted]

contracts are exclusionary and foreclose competition is not at issue here. The issue is whether the price fixing caused Plaintiffs to pay more *on the purchases actually made by the Class*. The case law uniformly supports measuring damages based on actual purchases by the Class, and Defendants' cases do not say otherwise.[16]

Third, Defendants' argument is factually baseless. Defendants cite no evidence that any purchase of in-network outpatient services would have been out of network absent the price fixing conspiracy. Defendants cite general statements from Dr. Gowrisankaran's report that it is difficult to establish independent physician practices in rural areas, Class Cert. Opp. at 39 (citing GR

[redacted] *See* DR1 ¶¶ 187-190, 197-199 (discussing these and other examples); *see also* DR2 ¶¶ 159-165.

[16] Defendants rely on *In re Ready-Mixed Concrete Antitrust Litigation*, which is a *Daubert* opinion and says nothing that contradicts the precedent about the proper calculation of overcharge damages. 261 F.R.D. 154 (S.D. Ind. 2009). The court simply held that under *Daubert* the "[t]he focus, of course, must be solely on principles and methodologies, not on the conclusions that they generate," unless "an expert makes assumptions contrary to the evidence." *Id.* at 165 (internal quotation marks and citations omitted). Defendants do not show that any of Dr. Leitzinger's assumptions were contrary to any evidence. Defendants also cite this Court's opinion in *Dawson v. Great Lakes Educational Loan Services, Inc.* Class Cert. Opp. at 36. *Dawson* is not an antitrust case and says nothing about the appropriate calculation of damages in an antitrust class action. 327 F.R.D. 637 (W.D. Wis. 2018). The Court did not certify the damages portion of the class's claim because the expert put forward no methodology for calculating damages and simply said that she could do so after a determination on liability. *Id.* at 649-50. The Court certified the liability class and simply deferred the issue of class damages to a later phase. *Id.* at 650. Finally, Defendants cite *Zarinebaf v. Champion Petfoods USA, Inc.*, a deceptive advertising case, which has nothing to say about the proper methodology for calculating overcharge damages. Class Cert. Opp. at 38. There, class certification was denied because the nature of the claim—which required showing that purchasers were deceived by a product's label—would render the class action unmanageable where the context of each label, product, and customer would need to be considered for dozens of different products with different labels, formulations, and customers. 2023 WL 2561613, at *5-6 (N.D. Ill. Mar. 17, 2023). No such individualized questions of whether individual purchasers were deceived exist in this case.

§ 5.4.1), but neither Defendants' brief nor Dr. Gowrisankaran's report cites any evidence from this case showing that any ANI Provider would have gone out of network in the absence of the Challenged Conduct. Moreover, to the extent that that section of Dr. Gowrisankaran's report is an apologia for price-fixing—essentially asserting that in the absence of the ability to fix prices, some providers might go out of business—the Sherman Act "has not permitted the age-old cry of ruinous competition and competitive evils to be a defense to price-fixing conspiracies." *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 221-22 (1940). The other section of the Gowrisankaran Report cited by Defendants, Class Cert. Opp. at 39 (citing GR § 5.4.2), is not evidence that different provider networks would exist in the but-for world; it is instead a discussion of *Plaintiffs'* evidence that the Challenged Conduct prevented the Co-Conspirators from assembling competing provider networks.[17]

Defendants essentially ask this Court to disallow Plaintiffs' entire damages theory based on conjecture that some number of in-network purchases might not have been in-network in a world without price fixing. That argument is legally incorrect, factually unsupported, and should be rejected.[18]

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[17] Defendants also cite two paragraphs from Dr. Baker's report that simply assert that the but-for world might have involved different networks. Class Cert. Opp. at 39 (citing BR ¶¶ 53-54). But Dr. Baker does not cite a single document or piece of testimony from the discovery record that shows that *any* Co-Conspirator would have gone out-ot-network in the absence of the Challenged Conduct. In any event, such evidence would be irrelevant to calculating overcharge damages.

[18] Defendants appear to argue, in a footnote, that market definition is not a classwide issue, relying on *DeSlandes v. McDonald's USA, LLC*, 2021 WL 3187668 (N.D. Ill. Jul. 28, 2021). Class Cert. Opp. at 39 n.10. For starters, market definition is not an issue *at all* in a *per se* price-fixing case like this one. *See DeSlandes v. McDonald's USA, LLC*, 81 F.4th 699, 703 (7th Cir. 2023) ("Market power is not essential to antitrust claims involving naked agreements among competitors."). And with respect to the rule of reason, *DeSlandes* involved labor markets, and the "Plaintiffs . . . made no attempt to identify a relevant market" beyond arguing the "rough contours" are limited to a single restaurant franchise.2021 WL 3187668, at *12. Here, Plaintiffs have extensive classwide evidence supporting relevant markets from Dr. Dranove, *see* Class Cert. Br. at 17, and Defendants have not move to exclude it or otherwise challenged his opinions at class

B. Plaintiffs Have Reliable Classwide Evidence of Overcharge.

Defendants incorrectly argue that "Dr. Leitzinger's opinions on classwide overcharge cannot support a finding of predominance" due to purported flaws that Defendants argue render his report analysis inadmissible. *See* Class Cert. Opp. at 41-43. Each of Defendants' substantive arguments is simply a rehash of their *Daubert* arguments and can be rejected for the reasons set forth in Plaintiffs' *Daubert* Opposition. *Daubert* Opp. at 14-20.

To the extent Defendants believe that *even if* those analyses are admissible, they are still not classwide evidence capable of proving an overcharge, Defendants' brief does not explain why that would be the case. Indeed, if Dr. Leitzinger's analyses are admissible, they are common evidence capable of proving the extent of the overcharge and aggregate class damages. To the extent that Defendants ask the Court to find, on the merits, that there was no overcharge, Class Cert. Opp. at 43, that is not the role of the Court at the class certification stage, *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 824 (7th Cir. 2012);. Indeed, if Plaintiffs' methods and evidence are common to the Class and would be sufficiently reliable to sustain a jury finding

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certification. Regardless, in purchaser cases, product and geographic markets are defined objectively based on overall market demand factors, not based on each purchaser's needs. *See Brown Shoe Co. v. United States*, 370 U.S. 294, 324-328 (1962). (This is particularly true here, where Network Vendors, who are negotiating with ANI, need to form networks that are broad enough to attract a wide range of Payors.) Thus, market definition is a classwide issue. *See*, *e.g.*, *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Practices & Antitrust Litig.*, 2020 WL 1180550, at *51 (D. Kan. Mar. 10, 2020) (finding "unpersuasive" an argument that one could not "establish market power in a relevant market with common evidence"); *In re Mushroom Direct Purchaser Antitrust Litig.*, 319 F.R.D. 158, 197 (E.D. Pa. Nov. 22, 2016) ("[W]hether or not there are separate geographic markets or one geographic market, that would be a common issue." (cleaned up)); *Dial Corp. v. News Corp.*, 314 F.R.D. 108, 113 (S.D.N.Y. 2015) ("[T]he definitions of the relevant geographic and product markets; and . . . [the defendant's] market power in the relevant market" are "questions common to the class and capable of resolution through common proof."). Finally, even if Defendants ultimately dispute Plaintiffs' market definition, that is simply classwide rebuttal evidence that bolsters predominance under Rule 23. *See*, *e.g.*, *Black*, 69 F.4th at 1178-79 (holding that relevant market challenges constitute "class-wide rebuttal evidence," the resolution of which is "a matter for the jury" (citation omitted)).

on the elements of Plaintiffs' claims, then class certification should not be denied simply because Defendants argue that it is unpersuasive.[19] *See Tyson Foods*, 577 U.S. at 459 (noting that "[t]he District Court could have denied class certification on th[e] ground [that it agreed with defendants' evidence] only if it concluded that no reasonable juror could have believed" plaintiffs' evidence).

Finally, Defendants argue that the Class should not be certified because individualized damages questions will predominate. Class Cert. Opp. at 36. But "[i]t is well established that the presence of individualized questions regarding damages does not prevent certification under Rule 23(b)(3)." *Messner*, 669 F.3d at 815; *Mullins*, 795 F.3d at 671 (collecting cases). Plaintiffs provided a classwide methodology for measuring aggregate Class damages, which satisfies the requirements of Rule 23(b)(3).[20]

C. Plaintiffs Have Reliable Common Evidence of Classwide Impact.

Defendants next argue that Dr. Leitzinger's use of in-sample methodology is unreliable for showing common impact, and that without that methodology, Plaintiffs have no other classwide evidence capable of proving common impact. Class Cert. Opp. 43-49. This is wrong.

First, Defendants are wrong that Dr. Leitzinger's in-sample model is unreliable. The essence of Defendants' argument is that in-sample analysis on its own does not tell you whether an individual is injured because the results could simply be false positives. Class Cert. Opp. at 44-

[19] Common issues are those for which "the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof." *Tyson Foods*, 577 U.S. at 453 (quoting 2 NEWBERG ON CLASS ACTIONS § 4:50 (5th ed. 2012)) (alteration in original). If Dr. Leitzinger's analyses are deemed admissible, then any individual Payor could rely on the same analyses to prove impact. The analyses are thus common evidence of a common issue.

[20] Even *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013), on which Defendants rely, holds that "[c]alculations need not be exact." *Id.* at 35. *Comcast* was a monopolization case involving a multi-pronged scheme, and the plaintiffs' model could not deduct the effects of components of the scheme later deemed lawful. *Id.* at 35-37. Defendants make no such argument here.

45. As explained in Plaintiffs' *Daubert* opposition, that misunderstands how in-sample is used in antitrust cases, ignores the other evidence of classwide impact that informed Dr. Leitzinger's use of in-sample, and ignores the differences in statistical significance between Dr. Baker's purported "tests" and Dr. Leitzinger's analysis. *Daubert* Opp. at 32-38.

Second, as Defendants appear to concede, Class Cert. Opp. at 51, if Dr. Leitzinger's in-sample analysis is admissible, Plaintiffs have common evidence of classwide impact. To the extent Defendants are nevertheless asking this Court to decide the merits question of whose impact evidence is stronger, that is not the proper role of a court deciding a motion for class certification. *Messner*, 669 F.3d at 824; *see also Tyson Foods*, 577 U.S. at 459.

Third, Defendants suggest that class certification is unwarranted because healthcare negotiations are "particularly complex," and rely heavily on the Seventh Circuit's decision in *Messner*. Class Cert. Opp. at 46-47 (quoting *Messner*, 669 F.3d at 816). But the Supreme Court has made clear that antitrust defendants should not "get-out-of-court-free . . . any time that a damages calculation might be complicated." *Apple*, 587 U.S. at 286. More importantly, in *Messner*, the Seventh Circuit *reversed the denial of certification of a healthcare purchaser class*, holding that the "district court applied too stringent a standard in evaluating predominance." 669 F.3d at 818. The district court had denied certification because it found that Dr. Dranove's model, which only used claims data from one insurer, could not account for variability of price increases between different procedures. *See In re Evanston Nw. Healthcare Corp. Antitrust Litig.*, 268 F.R.D. 56, 69-72 (N.D. Ill. 2010). The Seventh Circuit adverted to complexity in healthcare negotiations but held that Dr. Dranove appropriately accounted for those complexities in his regression. 669 F.3d at 818. Further, the Seventh Circuit found that to the extent price inflation varied by procedure, Dr. Dranove's proposed model could be run at the level of the individual procedure. *Id.* at 819.

This case is less complex than *Messner*,[21] and Dr. Leitzinger's model already solves the impact problem discussed in *Messner*. First, Dr. Leitzinger does not merely propose a methodology; he implemented a classwide methodology that will be used at trial. Class Cert. Br. at 44. Dr. Leitzinger's methodology does not look at only one insurer, 669 F.3d at 819, but instead uses data from the largest Network Vendors encompassing a large percentage of the Defendants' and Co-Conspirators' commerce. LR1 ¶¶ 29, 36-37. Finally, in *Messner*, Dr. Dranove proposed, and the Seventh Circuit endorsed, a methodology that, if needed, could test price inflation at the level of the individual procedure. Dr. Leitzinger's yardstick model already does this. *See Daubert* Opp. at 17. Dr. Leitzinger does not assume that the Challenged Conduct created a uniform price increase across all procedures. Instead, his model uses the actual prices paid at the level of the individual procedure. LR1 ¶¶ 29, 31-32. Dr. Leitzinger's regression also includes a "CPT" control variable, where the "CPT" is the billing code used by healthcare providers to indicate a specific procedure. LR1 ¶ 32. That allows Dr. Leitzinger to use the regression results to directly calculate competitive prices *by procedure* for each transaction. By comparing a Class member's actual procedure prices to the competitive prices in the yardstick, Dr. Leitzinger can directly test for impact at the procedure level. Hence, Dr. Leitzinger's model already accomplishes what the Seventh Circuit endorsed in *Messner* as a classwide methodology capable of proving impact.

In any event, aside from Defendants' *Daubert* arguments, their Opposition never substantively explains why Dr. Leitzinger's analyses cannot be used to analyze the pricing of

[21] *Messner* was a monopolization case, not a price-fixing case, and "[p]rice fixing cases are generally [more] well suited for class action adjudication." 6 NEWBERG & RUBENSTEIN ON CLASS ACTIONS § 20.23 (6th ed. 2025). Moreover, *Messner* involved a class of patients, so to demonstrate impact it was necessary to show that health plans' overcharges were passed on to patients. 669 F.3d at 816. And in *Messner*, Dr. Dranove performed his regression on just one payer to demonstrate common impact, something the district court found to be a problem, *see In re Evanston Nw. Healthcare*, 268 F.R.D. at 69-72, but the Seventh Circuit did not, *Messner*, 669 F.3d at 819.

outpatient professional healthcare services in this case. Dr. Leitzinger's yardstick regression looks at prices paid for each transaction and controls for important variables that affected those prices. LR1 ¶¶ 31-35. The r-squared value associated with that regression indicates that it does so extremely well, explaining nearly 90 percent of the variation in the millions of individual claims lines Dr. Leitzinger analyzed. LR1 Ex 5 & LR2 ¶ 35. Thus, even if some Network Vendor *could* have negotiated to avoid overcharges, purchases by Payors under that Network Vendor's contract would not contribute to the overcharges calculated using that regression model. And if the price for some specific service or claim was somehow not affected by the Challenged Conduct, Dr. Leitzinger's in-sample impact analysis—which uses that same yardstick regression to analyze pricing at the level of the individual transaction—would not register that purchase as evidence of impact.

Further, even without the in-sample analysis, Plaintiffs have substantial classwide evidence capable of proving that the price fixing scheme is likely to have market-wide effects here, including that (1) ANI negotiates contracts with Network Vendors on behalf of *all* ANI Providers, which includes Defendants and all Co-Conspirators, *see* Class Cert Br. at 9, 15, 41-42; (2) ANI enters into one contract for each Network Vendor, and that contract sets uniform prices for all ANI Providers that will be charged to all Class members using that Network Vendor's contract, *id.* at 9-10, 15, 23-24, 42; (3) Defendants and the Co-Conspirators agreed on "financial guidelines" to "provide consisten[cy]" in the negotiations with Network Vendors, *id.* at 10-11, 23-24, 42; (4) ANI negotiated prices as blanket prices across large groups of procedures, *id.* at 42; LR2 ¶¶ 19 n.26; (5) once the prices were negotiated with the handful of Network Vendor contracts, Class members did not negotiate on price separately with the ANI Providers, Class Cert Br. at 24, 42-43; and (6) the Challenged Conduct increased ANI's bargaining leverage and enabled it to negotiate higher prices with the Network Vendors, *id.* at 18-20, 24. Nor have Defendants'

addressed Dr. Leitzinger's price dispersion analysis that shows that the prices charged by Defendants and the Co-Conspirators were essentially identical for the various procedures, while the prices charged by providers in the yardstick differed greatly. *See* LR1 ¶ 34 & n.53. This evidence is consistent with Dr. Leitzinger's in-sample analysis, finding empirical evidence of overcharges for 98 percent of the Class. *Id.* ¶ 56. Defendants, in turn, do not discuss this evidence, much less point to any record evidence suggesting that many Class members likely avoided paying at least one overcharge.[22]

Nor should the Court accept Defendants' effort to paint the so-called "commodity" cases as involving easier proof of impact than this case. *See* Class Cert. Opp. at 45-48. Most importantly, in such cases, the prices were typically not set by one central player (as ANI does here) but, instead, were determined in negotiations between each co-conspirator and hundreds or thousands of customers with varying levels of bargaining power. Defendants in those cases argue that even if the co-conspirators agreed to inflate prices, those inflated prices might have been bargained away in individual negotiations between the customers and co-conspirators. Yet courts routinely hold that where the starting point of negotiations is a conspiratorially inflated price, "a conspiracy could

[22] Defendants assert that "Dr. Leitzinger's impact calculation shows that at least 48 class members had zero overcharge transactions," Class Cert. Opp. at 49 n.21, but this does not mean that those Class members were not injured. As Dr. Leitzinger made clear, in-sample analysis "is conservative (maybe highly so) because it assumes that any discounts received by Payors in the actual world would also be received by Payors in the much more competitive world without the Challenged Conduct, when in fact it is likely that the discounts would be *higher* but for the Challenged Conduct." LR2 ¶ 25. Thus, the absence of a finding of an overcharge transaction for 48 Class members does not mean that those Payors suffered no injury; it simply means that the in-sample analysis does not provide empirical evidence of harm. Dr. Leitzinger's opinion is that those individuals likely paid an overcharge based on all the other evidence of common impact. LR2 ¶¶ 25-26; Leitzinger Dep. 285:17-286:8. But even if Dr. Leitzinger's in-sample analysis showed that 48 Class members are uninjured—and it does not—that finding would not bar class certification because "class certification does not require proof that every class member was injured." *Arandell Corp. v. Xcel Energy*, 2025 WL 2218111, at *10 (7th Cir. Aug. 5, 2025). The only concern is where a "great many" are uninjured, *id.*, and even Defendants do not argue that 2 percent uninjured would meet that standard.

have a class-wide impact, 'even when the market involves diversity in products, marketing, and prices.'" *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 677-78 (9th Cir. 2022) (en banc) (quoting *In re Urethane*, 768 F.3d 1245, 1255 (10th Cir. 2014)). And in those cases, courts have relied on in-sample analysis "as common evidence for all class members despite the diverse, individually negotiated mechanisms to set [commodity] prices." *In re Turkey*, 2025 WL 264021, at *10; *see also, e.g.*, *In re Broiler Chicken Antitrust Litig.*, 2022 WL 1720468, at *15 (N.D. Ill. May 27, 2022) (finding in-sample analysis useful evidence of classwide impact even though "[l]ike many product markets, the Broiler market involves individual negotiations" between co-conspirators and class members). As explained above, Defendants set prices for each procedure that were uniform for each Network Vendor contract, and the Payors could not negotiate separately with ANI Providers. This essentially eliminates the purchaser-by-purchaser question entirely.

The Seventh Circuit's recent decision in *Arandell Corporation v. Xcel Energy*, illustrates why impact is more straightforward in this case than a "commodity" price fixing case and why Defendants' arguments fall short. 2025 WL 2218111. *Arandell* involved manipulation of a nationwide index price for natural gas. *Id.* at *2. The plaintiffs' theory involved a multi-step causal chain: the defendants' manipulation of gas prices outside of Wisconsin affected a nationwide price index for natural gas, which in turn would affect the prices paid by the proposed class in Wisconsin because the prices paid by the class were purportedly based on the nationwide prices. *Id.* at *2, 4, 7-10. The defendants' experts countered with evidence showing that an inflated index price does not necessarily imply inflation of prices for the class because some class members bought gas on the "spot" market, while some had contracts priced based on the index, some had fixed price contracts, and some bought through brokers at prices that include payments for things other than gas. *Id.* at *8. These sorts of causal arguments are common in the commodity cases, where a

national index or market price is allegedly affected by the conspiracy, which in turn inflates the prices in hundreds or thousands of individually negotiated transactions by the class members. *See*, *e.g.*, *In re Turkey*, 2025 WL 264021, at *9-10, 14-15; *In re Broiler Chicken*, 2022 WL 1720468, at *5-6, 13-14 & n.10; *Kleen Prods. LLC v. Int'l Paper*, 306 F.R.D. 585, 596-97, 599-600 (N.D. Ill. 2015).

There is no such causal-chain-of-impact argument in this case. Plaintiffs do not argue that Defendants conspired to fix a national healthcare index price that then caused prices to be inflated in contracts that might (or might not) be tied to the index price. Here, the Challenged Conduct enabled one entity (ANI) to set uniform prices to be charged by all ANI Providers in each Network Vendor contract, and it otherwise prevented individualized Class member negotiations with ANI Providers. *See* Class Cert. Br. at 1, 8-14, 41-43; *see also infra* at 40. And unlike the defendants in *Arandell*, Defendants' Opposition does not offer any facts to contradict this straightforward causal story.

In short, Defendants assert that this case must be treated differently because healthcare pricing is complex, but *Messner* holds that a regression can be used as classwide evidence of impact in even more complex cases involving healthcare pricing. And Defendants' brief does not provide any factual basis that, if accepted, would show why any purported complexities might defeat a showing of classwide impact in this case. Defendants' brief offers no evidence that *any* Class member, let alone *many*, likely avoided paying even a single overcharge.

D. Plaintiffs Have Sufficient Qualitative Evidence of Classwide Impact.

Defendants next argue that if Dr. Leitzinger's in-sample model is not admissible, Plaintiffs do not have sufficient qualitative evidence of classwide impact. Class Cert. Opp. at 49-51. This is wrong.

First, to the extent that Defendants simply argue that Plaintiffs' *damages* calculation depends on Dr. Leitzinger's overcharge calculation from his yardstick regression, that is true. But that is not Plaintiffs' only proof of *impact*. Plaintiffs have ample other evidence supporting the fact that prices were inflated, including a second regression by Dr. Leitzinger (called a difference-in-differences regression), structural analyses by Dr. Dranove showing how the Challenged Conduct inflated prices, and record evidence that the Challenged Conduct was intended to, and did, inflate prices. *See* Class Cert. Br. at 18-23, 38-41.

Second, Defendants are incorrect that Dr. Leitzinger's in-sample analysis is Plaintiffs' only evidence capable of showing that all or nearly all Class members suffered impact. Nor do Plaintiffs "want the Court to take their word for it." Class Cert. Opp. at 50. As discussed above, in the Class Certification Brief, and in Plaintiffs' expert reports, there is extensive record evidence to support classwide impact from the Challenged Conduct. *See supra* at 33-37 (citing record evidence of impact); *see also* LR1 ¶¶ 45-55; LR2 ¶ 19; DR2 ¶¶ 19-20, 30-31, 34-35. Further, Plaintiffs have various "structural" market analyses performed by Dr. Dranove, DR1 ¶¶ 156-185, and he explains how the reduction in competition would inflate prices across the entire bundle of services offered by ANI because the bundle is what ANI offers to Network Vendors. *See*, *e.g.*, DR1 ¶¶ 18, 24-26, 100; DR2 ¶¶ 19-20, 30-31, 34-35, 69-73.

Defendants do not discuss any of the record evidence of classwide impact cited in Plaintiffs' Class Cert Brief, much less offer their own evidence to refute it. They instead cite a few paragraphs from the Gowrisankaran Report, Class Cert. Opp. at 51 (citing GR ¶¶ 137-143), but those paragraphs only speak in generalities about how one might assess harm in a healthcare case (and noting that Plaintiffs' experts perform econometric analyses that would be standard methods for doing so). Defendants also cite testimony from one ANI employee, in response to questions from Defendants' own counsel, explaining why he thought [redacted]. Class

Cert. Opp. at 51 (citing deposition testimony of Paul Van Den Heuvel). None of that contradicts the evidence supporting the conclusion that the Challenged Conduct has classwide effects.

In short, Dr. Leitzinger's in-sample methodology is standard and reliably applied in this case, and it is one component of Plaintiffs' evidence that any overcharges caused by the Challenged Conduct would likely affect all or nearly all Class members. The jury should be allowed to consider Dr. Leitzinger's full opinions, but there is ample classwide evidence of impact without the in-sample analysis, and Defendants offer no evidence to refute it.

III. Plaintiffs Have Ample Evidentiary Support For Class Certification.

Defendants contend that without the full set of claims data, the Class cannot be certified because Plaintiffs cannot say for certain who is in the Class and how much the Class was injured. Class Cert. Opp. at 23-24. Not so.

Plaintiffs' expert, Dr. Leitzinger, used a data set with over [redacted] million claims lines reflecting purchases of in-network outpatient professional services, representing over [redacted] of the relevant Class purchases. SLR ¶ 29. Since not every Network Vendor produced all relevant claims data, Dr. Leitzinger extrapolated from this robust data set to calculate the total amount paid by the class and the total amount of overcharges.[23] LR1 ¶¶ 29, 37; SLR ¶ 29. Dr. Leitzinger's

[23] Plaintiffs offer an alternative narrower class definition limited to Payors who appear in the Network Vendor data analyzed by Dr. Leitzinger. Mot. at 3 & n.3. Defendants assert that this is an admission of the futility of certifying the primary class. Class Cert Opp. at 24. That is not true. Alternative class definitions are used in antitrust class actions to aid the court in class definition. *See*, *e.g.*, *In re Packaged Seafood Prods. Antitrust Litig.*, 332 F.R.D. 308, 329 n.14 (S.D. Cal. 2019) ("Because the Court certifies the [plaintiffs'] preferred class, the Court will not address the merits of this alternative class."), *aff'd sub nom. Olean Wholesale Grocery*, 31 F.4th 651. This is because courts routinely hold that where there is a concern about the class definition, the remedy is to "refine the class definition rather than . . . flatly deny[] class certification." *Messner*, 669 F.3d at 825; *see also DiSalvo v. CRM US, Inc.*, 2020 WL 3047468, at *2 (W.D. Wis. June 8, 2020) (Peterson, J.) (noting that "[w]hen possible, courts should amend defective class definitions rather than deny class certification," and doing so to correct deficiencies in plaintiffs' proposed definition (citing *Suchanek*, 764 F.3d at 757). Plaintiffs offer the alternative class definition to aid the Court, if necessary.

extrapolation is reasonable, reliable, and likely conservative, for the many reasons outlined in Plaintiffs' brief in opposition to Defendants' *Daubert* motion. *See Daubert* Opp. at 38-43.

"[P]laintiffs are permitted to use estimates and analysis to calculate a reasonable approximation of their damages." *Kleen Prods. LLC v. Int'l Paper Co*., 831 F.3d 919, 929 (7th Cir. 2016); *see also Loeb Indus., Inc.*, 306 F.3d at 490 ("It is certainly acceptable through expert economic testimony to make a reasonable estimation of actual damages through probability and inferences." (citing *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 124 (1969)). For this reason, extrapolation from a partial data set is common in antitrust class actions. *See*, *e.g.*, *In re Urethane*, 768 F.3d at 1251 (permitting expert's estimate of aggregate damages in antitrust case by extrapolating overcharge estimate using "sample data from roughly 50% of class sales"); *Jones v. Varsity Brands, LLC*, 2024 WL 967653, at *11-12 (W.D. Tenn. Mar. 6, 2024) (refusing to exclude expert's estimate of aggregate overcharges in an antitrust case simply because the expert extrapolated from data of only some purchases and finding challenges to the expert's reliance on only some data to be a trial question).

Defendants criticize Dr. Leitzinger for being unable to name those Class members in the claims data that he does not have, but that too is meritless. As discussed above, *see supra* at 19-20, it is well established that a class can be certified without a definitive class list. *See*, *e.g.*, *Mullins*, 795 F.3d at 665 (approving certification of class in which identity of class members would be determined after trial, and noting a class may be certified even when "it might be *impossible* to identify some class members" (emphasis in original)). Indeed, in many large class actions, class membership is ultimately determined after a settlement or judgment in the class's favor, often using class members' own records. *See Benson*, 2021 WL 5321510, at *8 (N.D. Ill. Nov. 16, 2021) ("Identification of class members in this case can take place at the claims-administration stage through self-identification in sworn affidavits or claim forms.").

IV. A Class Action Is Superior to Thousands of Individual Actions

Defendants challenge the "superiority prong" of Rule 23, rehashing the same arguments about purportedly individualized inquiries into direct purchaser status, impact, and damages. *See* Class Cert. Opp. at 52. Those arguments should be rejected for the reasons discussed above. *Supra* at 18-21. Once those arguments are rejected, it is clear that this is a case that is best resolved through classwide treatment. When a case "involve[s] large numbers of defendants' customers who allegedly were overcharged pursuant to a common scheme," as this one does, "a class action is the superior method of litigation." *In re Ready-Mixed Concrete*, 261 F.R.D. at 173 (internal citation omitted).

Indeed, this case has already received many of the advantages of advancing as a class action, as the parties have already engaged in extensive merits and expert discovery into data and facts relevant to establishing liability and impact for the class "in one stroke." *Kleen Prods.*, 306 F.R.D. at 605 (quoting *Butler*, 727 F.3d at 801). Defendants' assert that "the size of the discovery record is irrelevant to assessing whether class action is superior." Class Cert. Opp. at 53. This is incorrect. One important consideration in the superiority analysis is whether a class action would "achieve economies of time, effort, and expense." *Amchem Prods. v. Windsor*, 521 U.S. 591, 615 (1997); *see also Suchanek*, 764 F.3d at 760 ("In this case, resolution of the merits may require costly survey evidence and expert testimony . . . . The district court might conclude on remand that the class device is superior, because no rational individual plaintiff would be willing to bear the costs of this lawsuit."); *Magee v. Portfolio Recovery Assocs., LLC*, 2015 WL 535859, at *4 (N.D. Ill. Feb. 5, 2015) (holding that a class action will "allow the individual class members to avoid the costs and hassles of bringing an individual action" (citation omitted)); *Califano v. Yamasaki*, 442 U.S. 682, 690 (1979) (noting that unnecessary duplication is "the evil that Rule 23 was designed

to prevent"). What has already occurred in the case is powerful experiential evidence of the superiority of the class action device.

Defendants also contend that there is no evidence that individual members will not be incentivized to proceed without a class action, given that some of the class members are large commercial insurers who "have the resources to proceed with litigation if they wish." Class Cert. Opp. at 53-54. This is wrong. First, the relevant consideration is not the resources of the class member, but the incentive to proceed with individual litigation, which relates to the size of potential damages. *See Tsereteli v. Residential Asset Securitization Tr. 2006-A8*, 283 F.R.D. 199, 217 (S.D.N.Y. 2012) (finding superiority even though "certain prospective class members are sophisticated investors who have the resources to bring suit on their own," because the majority of the class did not). Second, to the extent that Defendants allege that large insurance companies like United Healthcare may look forward to large recoveries, such a finding does not preclude superiority. *See Roman v. Triton Logistics, Inc.*, 2025 WL 1134191, at *10 (N.D. Ill. Apr. 16, 2025) (holding that a class action was superior "[e]ven if [class members'] claims are large enough to be worth pursuing individually"); *Kidd v. Pappas*, 2025 WL 1865983, at *18 (N.D. Ill. July 7, 2025) ("The proposition that small recoveries disincentivize individual suits does not mean the prospect of more substantial recoveries always encourages them."); 2 NEWBERG ON CLASS ACTIONS § 4.29 (4th ed. 2010) ("[The] existence of large individual claims that are sufficient for individual suits is no bar to a class when the advantages of unitary adjudication exist to determine the defendant's liability.").

Further, the fact that there are *some* class members that might have the resources to bring an individual suit does not defeat superiority given that the thousands of self-funded plans in the Class do not have claims nearly so large. *See In re Synthroid Mktg. Litig.*, 188 F.R.D. 287, 294-95 (N.D. Ill. 1999) (finding class action superior even where some of the "potential class members

are sophisticated insurance companies"). Moreover, no class member—of any size—has brought an individual suit, suggesting that there is no strong incentive to do so. *See Barnes v. Air Line Pilots Ass'n, Int'l*, 310 F.R.D. 551, 562 (N.D. Ill. 2015) (quoting Fed. R. Civ. P. 23(b)(3)(A)). And ultimately, there are "so many common issues of law and fact relating to the issue of [Defendants'] liability . . . that the superiority requirement likely poses no serious obstacle to class certification here." *Messner*, 669 F.3d at 814 n.5.

Finally, Defendants suggest that joinder would be a superior method to resolving this dispute, citing several cases where Plaintiffs' counsel litigated joinder actions after class certification was denied. Class Cert. Opp. at 55. But in each of those cases there were fewer than twenty proposed class members. Here, there are thousands of class members, such that the class is "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1); *see infra* at 45-46. "The joinder of potentially thousands of plaintiffs—or even hundreds of them—would be impracticable." *CE Design Ltd. v. Cy's Crabhouse N., Inc.*, 259 F.R.D. 135, 140 (N.D. Ill. 2009). Certification should be granted where, as here, a class action is "superior to other *available* methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3) (emphasis added).

If the Court determines that Plaintiffs have evidence capable of proving the elements of their claims on a predominantly classwide basis, then the question is whether briefing one summary judgment motion is more efficient than briefing thousands, and whether one trial regarding the same conduct causing the same type of injury is more efficient than thousands of trials. The answer is obvious that a class action is superior.

V. Numerosity and Typicality Are Satisfied

Defendants argue that the named Plaintiffs "are atypical because they are indirect purchasers." Class Cert. Opp. at 35. Plaintiffs and the Class are all direct purchasers for the reasons

explained above. *See supra* at 8-16. Plaintiffs and the Class all allege the same injuries—paying inflated rates for in-network outpatient professional healthcare services—caused by the same Challenged Conduct. *See Saltzman v. Pella Corp.*, 257 F.R.D. 471, 479 (N.D. Ill. 2009) (holding that Rule 23(a)(3)'s "liberal[]" standard for typicality is satisfied "when the representative party's claim arises from the same course of conduct that gives rise to the claims of other class members and all of the claims are based on the same legal theory").

Defendants also argue that Plaintiffs have not satisfied Rule 23's numerosity requirement because Plaintiffs' class definition "includes indirect purchasers," and once those are removed, the Class is not sufficiently numerous. Class Cert. Opp. at 54-56. This is wrong; as discussed above, all Class members are direct purchasers. Once that argument is rejected, numerosity is straightforward: there are over 1,900 members of the proposed Class. *See Chavez v. Don Stoltzner Mason Contractor, Inc.*, 272 F.R.D. 450, 454 (N.D. Ill. 2011) (holding that a class "consisting of more than forty members generally satisfies the numerosity requirement").

VI. Heartland Farms Has Adequately Represented the Interests of the Class

Defendants argue that Heartland Farms is an inadequate class representative because it [redacted]. Class Cert. Opp. at 56-57. That is wrong. Adequacy requires two showings: "(i) the class representatives must not have claims in conflict with other class members, and (ii) the class representatives and proposed class counsel must be able to litigate the case vigorously and competently on behalf of named and absent class members alike." *In re Broiler Chicken*, 2022 WL 1720468, at *3. The fact that two Class members "apparently dislike each other" is "not the sort of conflict which . . . would create a problem with adequacy of representation." *Warnell v. Ford Motor Co.*, 189 F.R.D. 383, 390 (N.D. Ill. 1999). Moreover, "[c]ourts do not deny class certification on speculative or hypothetical conflicts." *Brieger v. Tellabs, Inc.*, 245 F.R.D. 345, 355 (N.D. Ill. 2007).

There is no reason for fully insured Class members to be "unable to trust that Heartland Farms sufficiently protected their interests." Class Cert Opp. at 57. Heartland has the same legal claims and seeks the same remedy, so there are no claims in conflict as between Heartland and any of the insurance companies. Moreover, Heartland Farms has thus far prosecuted this case vigorously on behalf of all Class members, including providing substantial efforts in discovery, and now moves to certify one Class that includes both companies offering fully insured plans and self-insured entitles. *See* Class Cert. Br. at 31-32.

CONCLUSION

Plaintiffs respectfully request that the proposed Class be certified, that Plaintiffs be appointed as Class Representatives, and that Berger Montague PC and Fairmark Partners, LLP be appointed as Class Counsel.

Dated: August 13, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 13, 2025, a true and correct copy of the foregoing, with redactions for information designated as confidential, was filed with the Court via the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record. In addition, a true and correct copy of the sealed version was served upon counsel of record for Defendants via email.

Dated: August 13, 2025

/s/ Timothy W. Burns
Timothy W. Burns