UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UFCW LOCAL 1500 WELFARE FUND, Plaintiff, v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, Defendant.	Case No. 2:25-cv-05023-ENV-AYS Hon. Anne Y. Shields, USMJ
CEMENT AND CONCRETE WORKERS DC BENEFIT FUND, Plaintiff, v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, Defendant.	Case No. 1:25-cv-05571-JMA-AYS Hon. Anne Y. Shields, USMJ

JOINT INITIAL LETTER

Pursuant to Your Honor's Individual rules regarding a Joint Letter concerning the Initial Conference, the Defendant and Plaintiffs in the above-captioned matters (collectively, the "Parties") submit this joint letter in connection with the Initial Conference with the Court set for January 12, 2026. The Parties' positions on all matters contemplated by Your Honor's Appendix G are set forth separately.

I. PLAINTIFFS' POSITIONS[1]

A. NAMES OF THE CASES

- *UFCW Local 1500 Welfare Fund v. The New York & Presbyterian Hosp.*, No. 25-cv-5023 (E.D.N.Y.)

- *Cement and Concrete Workers DC Benefit Fund v. The New York & Presbyterian Hosp.*, No. 25-cv-5571 (E.D.N.Y.)

B. BASIS FOR FEDERAL JURISDICTION

Jurisdiction over these actions is conferred upon the Court under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1337(a) (antitrust), 28 U.S.C. § 1332 (diversity jurisdiction), 15 U.S.C. § 15 (antitrust damages), and 15 U.S.C. § 26 (injunctive relief).

Additionally, the *UFCW* complaint asserts that the Court has subject matter jurisdiction under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), because "this is a class action involving common questions of law or fact in which the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs; there are more than one hundred members in the proposed Class; and at least one member of the proposed Class[] is a citizen of a state different from Defendant." *UFCW* Compl. ¶ 12. To the extent Defendant The New York and Presbyterian Hospital ("NYP") raises CAFA's "home state" exception to jurisdiction under 28 U.S.C. § 1332(d)(4)(B), it "bears the burden of proving the exception applies." *Green v. Sheraton, LLC*, 2022 WL 4072475, at *1 (W.D.N.Y. June 9, 2022), *R. & R. adopted*, 2022 WL 4019320 (W.D.N.Y. Sept. 1, 2022) (internal quotation and citation omitted). Defendants seeking to invoke CAFA's home state exception "must establish by a preponderance of the evidence that at least two-thirds of the proposed plaintiff class were citizens of New York" during the class period. *Gibson v. Bartlett Dairy, Inc.*, 2022 WL 784746, at *3 (E.D.N.Y. Mar. 15, 2022). Discovery will be necessary to determine the percentage of New York citizens in the class.

C. STATEMENT CONFIRMING THAT DEFENDANT HAS BEEN SERVED AND ANSWERED

Plaintiffs have served their respective Complaints on Defendant, but Defendant has not yet answered the Complaints.

D. STATEMENT REGARDING COUNTERCLAIMS OR CROSSCLAIMS

Not applicable.

[1] Plaintiffs believe that Defendant's 8000-word statement far exceeds what is necessary, appropriate, or contemplated in Your Honor's rules, and thus, have decided to separately state their positions on all Appendix G topics for ease of reading.

E. EXPLANATION OF THE FACTS OF THE CASE AS KNOWN[2]

Plaintiffs allege that NYP has engaged in a years-long and ongoing scheme to suppress competition and artificially inflate prices for health care services.

NYP is the largest hospital system in New York City, with annual revenues of over $13 billion. It operates many of the largest and most important hospitals in the city, including facilities in many medically underserved areas where residents have few other choices for health care. Because of NYP's large size, the range of healthcare services it offers, patient demand, and the nature of the market for hospital services, it is a "must have" hospital system for the vast majority of commercial healthcare plans offering coverage in New York—*i.e.*, employers, unions, and insurers must include at least some NYP facilities in their insurance networks covering people who live and/or work in New York City. Indeed, NYP is in-network for more than 95% of commercial health plans in New York City. NYP's "must have" status gives it market power in its negotiations with insurers and other entities that build insurance networks, referred to here as "Network Vendors." Plaintiffs allege that NYP uses this market power to impose anticompetitive restraints that inflate the cost of healthcare by many millions of dollars.

The anticompetitive conduct at issue relates to "steering" and, more specifically, NYP's aggressive "anti-steering" tactics. Insured patients typically do not pay the full cost of their medical care (instead, their employer or insurance company does), so patients are often price-insensitive when choosing where to receive medical care. They also often lack reliable information about which providers offer the highest-quality care. "Steering" refers to various methods by which health plans encourage (but do not require) members to obtain medical care from lower-cost, higher-quality providers. For example, health plans or insurers might offer their members lower co-pays or co-insurance percentages to incentivize them to use higher-value providers, while still allowing them the option to use less-preferred providers. As another example, health plans and insurers may offer their employees the option to enroll in a "narrow network" health plan, which allows the employee to choose a less comprehensive insurance network—one that typically excludes the most-expensive providers—in exchange for lower premiums and cost-sharing.

Extensive research demonstrates that these and other forms of steering significantly reduce the cost of healthcare for employers, unions, insurers, and consumers. These savings result for two principal reasons. First, steering causes more insured patients to choose to obtain treatment from higher-quality, lower-cost providers, which directly reduces their health plan's expenditures, and often their own. Second, steering—and the threat of steering—places competitive pressure on higher-cost providers to lower their prices. Providers are motivated to have health plans steer towards them because of the increased patient volume that steering generates. Steering thus gives providers a powerful incentive to be as efficient as possible, maintain competitive prices, and offer high quality and innovative services.

NYP uses its market power to block employers, unions, and insurers from using steering to incentivize patients to obtain higher-value care from non-NYP facilities. NYP does so to protect itself against steering that would deprive it of patient volume, induce price competition,

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[2] "Plaintiff's explanation of the facts of the case as known to the plaintiff as of the date of the writing of the letter." Shields Ex. G ¶ 5.

and require it to lower its extremely high prices. Specifically, NYP uses its market power to force health plans and insurers, as a condition of including any NYP facilities in their insurance networks, to agree to anticompetitive "anti-steering" restraints. One such anti-steering restraint is a contractual clause known as the "All Products Clause," which requires an insurer that wishes to include NYP in any of its health plans to (1) include NYP in *all* of its health plans and (2) at the highest tier or benefit level. The All Products Clause thus simultaneously prohibits narrow networks that do not include NYP and forbids health plans and insurers from engaging in cost-saving steering by offering their members financial incentives to encourage members to obtain care from non-NYP providers.

Insurers, employers, unions, and their health plans who pay NYP for healthcare services would like to use steering to lower their healthcare costs, but NYP's restraints prevent them from doing so. For example, Plaintiffs allege that Cigna and Northwell Health—a major hospital system with lower prices and equal or higher quality than NYP—tried to develop a narrow network that excluded NYP, but NYP invoked the All Products Clause to block them from doing so. NYP's anti-steering restraints unlawfully insulate NYP from price competition and have allowed NYP to persistently charge higher prices to New York businesses, unions, local governments, insurers, and taxpayers. Indeed, the standardized price per inpatient stay at NYP is approximately 74% more expensive than at major non-NYP New York City hospitals—a massive discrepancy that would not be sustainable absent the anticompetitive conduct alleged here.

Plaintiffs are self-funded union health plans that directly pay the medical bills for services provided to their members by NYP and other medical providers.[3] They have paid more for health care services as a result of NYP's unlawful conduct. They bring this case on behalf of themselves and a proposed class of similarly situated entities. The Complaints allege that NYP's anticompetitive restraints violate the Sherman Act, 15 U.S.C. § 1, and the Donnelly Act, N.Y. Gen. Bus. Law § 340. As a result of the restraints, Plaintiffs and the members of the proposed class have paid hundreds of millions of dollars more than they would have in a competitive market without NYP's anticompetitive restraints.

Finally, Defendant uses this joint letter on case management to argue what appears to be its motion to dismiss. Plaintiffs will respond in due course, as contemplated by the rules and this Court's procedures. Due to Defendant's numerous hyperbolic misstatements of the law and the facts, however, Plaintiffs note preliminarily here that courts have repeatedly held that anti-steering restraints imposed by hospital systems, like those imposed by NYP here, are plausibly anticompetitive, including in cases prosecuted by the U.S. Department of Justice ("DOJ"). *See, e.g.*, *Sidibe v. Sutter Health*, 103 F.4th 675, 680-82 (9th Cir. 2024); *Uriel Pharmacy Health and Welfare Plan v. Advocate Aurora Health*, No. 2:22-cv-610-LA, slip op., ECF No. 31 at *5-6 (E.D. Wis. Apr. 28, 2023); *Davis v. HCA Healthcare, Inc.*, 2022 WL 4354142, at *13-14 (N.C. Sup. Ct. Sept. 19, 2022); *United States v. Charlotte-Mecklenburg Hosp. Auth.*, 248 F. Supp. 3d 720, 730 (W.D.N.C. 2017). Indeed, DOJ has initiated an investigation into the same NYP anti-

[3] Defendant repeatedly claims that Empire pays the medical bills charged to Plaintiff plans, but this is incorrect. Empire, in its capacity as a third party administrator ("TPA") facilitates the transaction between payers like Plaintiffs and hospitals like Defendant. But Plaintiffs are responsible for the entirety of any purchase of services made by their members at NYP or any other hospital.

steering practices alleged here. *See* Joseph Goldstein, *U.S. Opens Antitrust Investigation Into New York-Presbyterian*, N.Y. Times (July 28, 2025) https://www.nytimes.com/2025/07/28/nyregion/doj-ny-presbyterian-health.html (reporting that DOJ is investigating "potential unlawful agreement[s] between [NYP] and health insurance companies relating to steering restrictions and contracting conduct").

Crucially, Defendant's insert to this joint letter contains extensive discussion of facts that are not alleged in the Complaints and, as such, would not be properly before the Court on a motion to dismiss. *See Nakahata v. New York-Presbyterian Healthcare Sys., Inc.*, 723 F.3d 192, 202 (2d Cir. 2013) ("We do not consider matters outside the pleadings in deciding a motion to dismiss for failure to state a claim."). Since Defendant cannot include extraneous facts in its motion to dismiss, it is trying to do so in this joint letter. That is improper. Plaintiffs reserve all rights to move the Court to count Defendant's insert against the page limits for its motion to dismiss, and any other necessary and appropriate relief.

F. HIPAA AUTHORIZATIONS

Plaintiffs are not aware of any HIPAA authorizations that are required at this time, and do not expect that the production of individualized patient health information ("PHI") will be necessary in this case. Data concerning damages from Defendant's alleged conduct can be anonymized and/or aggregated using standard tools prior to production. To the extent PHI is produced in this action, Plaintiffs' proposed Stipulation and Order Regarding Confidential Information (which Plaintiffs have sent to Defendant, and which the parties are discussing) requires that the parties hold all PHI confidentially, and use, store, and disclose all PHI in compliance with HIPAA and the Privacy Standards set forth in 45 C.F.R. Parts 160 and 164.

G. SUBJECTS ON WHICH DISCOVERY MAY BE NEEDED (RULE 26(F)(3)(B))

Discovery is required on all matters relating to Plaintiffs' class action allegations and all matters related to Plaintiffs' claims and damages, as well as Defendant's defenses and alleged procompetitive justifications.

Plaintiffs anticipate that discovery will include, but not be limited to, (1) Defendant's contracts and communications with the insurance companies that assemble networks used by employers for health care coverage ("Network Vendors"), Third Party Administrators, and other third parties (e.g., brokers, consultants, regulators, advisers, etc.) regarding the terms of Defendant's agreements with insurers, (2) facts and circumstances regarding Defendant's provision of medical services systemwide and in its primary service area(s); (3) claims data and hospital discharge data, including the relevant costs of procedures, within Defendant's and Network Vendors' possession regarding medical services Defendant rendered to individuals insured by members of the putative class during the relevant period, and (4) Defendant's communications with and productions to federal, state, or municipal antitrust authorities regarding the terms of Defendant's agreements with insurers. Plaintiffs will seek this discovery and other discovery, in accordance with any protective orders as agreed to by the Parties and approved by the Court. As contemplated by the above, third party discovery will be required.

Defendant asserts that discovery will be required into "Plaintiffs' Medical Care reimbursement and medical records for each of the Plaintiffs' members." Although not entirely

clear, to the extent Defendant is suggesting discovery into the details of medical care provided to Plaintiffs' members—i.e., individual patients who sought care at Defendant's facilities—such as doctor's notes, information regarding specific diagnoses, or other invasive information, Defendant is wrong. This case is about the supracompetitive prices NYP extracted from Plaintiffs for their members' care, not about what individuals' doctors may have recorded about the specifics of their care. Such discovery only could be aimed at harassing and intimidating Plaintiffs' members, who are third parties to this lawsuit.

H. TIER ONE DISCOVERY

The parties can exchange at least three categories of paper discovery without the need for formal discovery requests. Although this Court's individual practices contemplate that the parties complete such discovery by "no later than 60 days of the initial conference" (Indiv. Prac. VII.B.1), the parties held their initial conference on November 19, 2025, and that deadline would be Monday, January 19, 2026. Defendant has refused to produce any discovery unless and until the Court denies a motion to dismiss that it has not yet filed. To best approximate this Court's practices, Plaintiffs propose that the parties complete Tier One Discovery within 60 days of the January 12, 2026 conference before the Court, or March 13, 2026.

First, the parties should each produce all relevant contracts, including the contracts between NYP and Network Vendors that contain the All Products Clauses and other terms at issue in this litigation, and generally dictate the terms under which NYP provides general acute care inpatient hospital services to Plaintiffs' health plan members. *UFCW* Compl. ¶¶ 26-27; *Cement Workers* Compl. ¶ 27. NYP has also made it clear that it believes Plaintiffs' contracts with their respective TPAs are relevant to this litigation; while Plaintiffs dispute these TPA agreements' relevance, they are prepared to produce these agreements during Tier One discovery.

Second, Defendant should produce all materials that NYP has produced to the Antitrust Division of the DOJ and any other enforcers that are investigating the same or similar conduct set forth in Plaintiffs' complaints.

Third, the Parties should produce organizational charts reflecting who in their organization would be likely to have relevant documents and/or give relevant testimony.

These documents will be relevant and proportional to the needs of the case. And such documents should impose minimal burden on the parties. Paper discovery in the three categories above is likely maintained in discrete locations in the ordinary course of business, and thus are viable as "go-and-get" productions that will not require the application of search terms. Plaintiffs anticipate that such discovery and the exchange of initial disclosures can be completed within 60 days.

I. JOINT STATUS LETTER

Plaintiffs request a Status Conference to follow the completion of Tier One discovery.

J. MAGISTRATE JUDGE JURISDICTION

The Parties discussed the issue of consent to the jurisdiction of the Magistrate Judge, and the Parties do not consent to the jurisdiction of the Magistrate Judge for all purposes.

K. DISCOVERY LIMITS

Plaintiffs propose to exceed the presumptive limits in the Federal Rules for discovery with respect to the number of interrogatories and depositions given: (1) the complexity of the case, (2) that nearly all relevant information regarding the intent and interpretation of the challenged restraints resides with Defendant, and (3) that substantial evidence regarding how Defendant enforces its anticompetitive restraints and their effects resides with numerous third parties, including insurers, self-funded employers, and competitors. Similar upward departures at this initial phase have been set in similar cases against hospital systems like Defendant involving similar antitrust violations. *See, e.g.*, *Estuary Transit Dist. v. Hartford Healthcare Corp.*, 3:24-cv-1051-SFR, ECF No. 71 at *10 (D. Conn. Oct. 2, 2024) (in case alleging similar anti-steering restraints and other anticompetitive conduct, Rule 26(f) report setting limits of 33 depositions per party with total deposition hours capped at 190 hours and 25 interrogatories per side); *Uriel Pharmacy Health and Welfare Plan*, 2:22-cv-610-LA, ECF No. 39 at *8 (Aug. 9, 2023) (in case alleging similar anti-steering restraints and other anti-competitive conduct, amended Rule 26(f) report setting limits of 336 hours of non-expert depositions per side with each party subject to no more than 119 hours and 60 interrogatories per side with 30 interrogatories per party).

Moreover, courts have regularly granted similar or greater upward departures in antitrust cases and other complex cases more generally. Indeed, Defendant concedes that at least 20 depositions per side are warranted (although Defendant's caveat of "no more than 7 depositions of any party or entity," which is clearly intended to restrict access to relevant witnesses at NYP, is plainly insufficient). *See, e.g.*, *In re Air Cargo Shipping Servs. Antitrust Litig.*, 931 F. Supp. 2d 458, 468 (E.D.N.Y. 2013) (36 depositions in antitrust case for plaintiffs, with authorization to take additional depositions); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2019 WL 6888488, at *n.12 (E.D.N.Y. Dec. 16, 2019) (400 depositions in antitrust case); *see also In re: Local TV Advertising Antitrust Litig.*, No. 1:18-cv-06785, ECF No. 844 at *1 (N.D. Ill. Oct. 20, 2022) (providing plaintiffs 150 7-hour depositions, or even more depositions of shorter duration, exclusive of 30(b)(6) depositions); *In re Broiler Chicken Antitrust Litig.*, 2020 WL 4349889, at *3 (N.D. Ill. July 29, 2020) (plaintiffs took 200 defendant depositions); *Trooper 1 v. N.Y. State Police*, 2025 WL 2959061, at *3 (E.D.N.Y. Oct. 17, 2025) (25 depositions); *Blue Cross and Blue Shield of Vt. v. Teva Pharm. Indus. Ltd.*, 2025 WL 1943010, at *2 (D. Vt. July 7, 2025), *R. & R. adopted*, 2025 WL 1939576 (D. Vt. July 15, 2025) (25 depositions for plaintiffs in antitrust case); *Carefirst of Md, Inc.. v. Johnson & Johnson*, No. 2:23-cv-629-JKW-LRL, ECF No. 86 at *2 (E.D. Va. May 22, 2024) (27 non-expert depositions in antitrust case); *In re Niaspan Antitrust Litig.*, No. 2:13-md-2460-TJS, ECF No. 131 at *2 (E.D. Pa. Nov. 19, 2014) (25 depositions per side in antitrust case); *Arconic Inc. v. Novelis Inc.*, 2018 WL 6732992, at *6-7 (W.D. Pa. Nov. 6, 2018) (22 depositions in patent case); *Consumer Fin. Prot. Bureau v. Navient Corp.*, 2018 WL 2088760, at *1 n.1 (M.D. Pa. May 4, 2018) (30 depositions per side in complex case); *IQVIA, Inc. v. Veeva Sys., Inc.*, 2022 WL 22895626, at *1 (D.N.J. June 28, 2022) (50 interrogatories for plaintiff in antitrust case); *In Re Nat'l Football Leagues Sunday Ticket Antitrust Litig.*, 2022 WL 1766929, at *1 (C.D. Cal. May 11, 2022) ("[M]ajor complex antitrust case … is its own justification for additional interrogatories."); *In re Lithium Ion Batteries Antitrust Litig.*, 2015 WL 1221924, at *1 (N.D. Cal. Mar. 17, 2015) (60 interrogatories per side given "complex factual and legal issues" in antitrust class action); *Winfield Food Sys. v. Hardee's Food Sys.*, 1996 U.S. Dist. LEXIS 13957, at *21 (M.D.N.C. Aug. 8, 1996) (45 interrogatories in case "involv[ing] complex antitrust and price-discrimination issues").

While Defendant has not yet produced organizational charts or other documents that will help Plaintiffs identify document custodians and deponents, it is likely that Plaintiffs will need to take discovery from individuals working in different divisions within Defendant's corporate structure. What's more, while Plaintiffs have already identified third party entities likely to possess relevant information, discovery of Defendant is likely to lead to identification of others. Rather than wait until later in discovery to grant an upward departure, Plaintiffs propose that expanding the limits now would be more efficient and enable the Parties to plan discovery accordingly. Nonetheless, Plaintiffs reserve all rights to seek additional discovery should circumstances require it.

Finally, Defendant insists below that Plaintiffs seek unlimited hours of a 30(b)(6) deposition. Plaintiffs have never suggested they want unlimited 30(b)(6) deposition hours. As with all discovery, Plaintiffs will meet their obligations to limit the discovery they seek to that which is relevant and proportional and expect to confer with Defendant regarding any noticed 30(b)(6) topics in the normal course of this case, as parties do in every case. Defendant's speculative scaremongering about unlimited depositions appears to be an attempt to prematurely restrict Plaintiffs' ability to conduct discovery in this case. Plaintiffs do not yet know on what topics they will seek a 30(b)(6) deposition, but they will be happy to confer with Defendant once those topics have been identified if Defendant has reasonable concerns. Plaintiffs accordingly submit there is no basis to restrict Plaintiffs' ability to conduct a proper 30(b)(6) deposition at this early stage.

L. DEADLINES

Plaintiffs' proposed discovery schedule, attached hereto as Exhibit 1, is in line with similar case management deadlines in antitrust cases against hospital systems like Defendant for similar antitrust violations. *See, e.g.*, *Uriel Pharmacy Health and Welfare Plan*, 2:22-cv-610-LA, ECF No. 41 at *1-2 (Aug. 16, 2023) (initial schedule in case alleging similar anti-steering conduct setting substantial completion deadline for approximately 15 months after opening of discovery and close of fact discovery for approximately 20 months after the opening of discovery); *Team Schierl Cos. v. Aspirus, Inc.*, 3:22-cv-580-jdp, ECF No. 35 at *1 (W.D. Wis. Feb. 24, 2023) (initial schedule in case alleging price fixing by clinically integrated network, tying, and other anticompetitive conduct setting close of fact discovery for approximately 11 months after opening of discovery); *Sidibe v. Sutter Health*, 3:12-cv-4854-LB, ECF No. 123, at *2-3 (N.D. Cal. Nov. 28, 2016) (initial schedule in case alleging similar anti-steering conduct setting close of non-expert discovery for approximately 13 months after opening of discovery and close of expert discovery for approximately 16 months after opening of discovery).

Moreover, Plaintiffs' proposed discovery schedule aligns with other antitrust cases in this court. *See, e.g.*, Scheduling Order, *P & L Dev., LLC v. Gerber Products Co. et al.*, No. 1:21-cv-05382-NG-AYS (E.D.N.Y. April 4, 2024) (9.5 months for substantial completion; 14 months for fact discovery; 7 months for expert discovery); *In Re: Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, No. 1:18-md-02819-NG-LB, ECF No. 77 at *1-2 (E.D.N.Y. May 7, 2018) (in antitrust class action where rolling production had already commenced, 4.5 months for substantial completion; 9 months for fact discovery).

M. STAY OF DISCOVERY

The Court should not stay discovery pending Defendant's motion to dismiss, particularly as to the limited Tier One discovery outlined above. "Discovery should not be routinely stayed simply because a motion has been filed." *K.A. v. City of N.Y.*, 2025 WL 1523998, at *1 (S.D.N.Y. May 29, 2025); *see also Kanowitz v. Broadridge Fin. Sols. Inc.*, 2014 WL 1338370, at *5-6 (E.D.N.Y. Mar. 31, 2014) (collecting cases). "Under Fed R. Civ. P. 26(c), a district court may stay discovery during the pendency of a dispositive motion for 'good cause' shown." *Hearn v. United States*, 2018 WL 1796549, at *2 (E.D.N.Y. Apr. 16, 2018). The moving party bears the burden of demonstrating that "good cause." *Morgan Art Found. Ltd. v. McKenzie*, 2020 WL 6135113, at *2 (S.D.N.Y. Oct. 18, 2020). Discovery stays are disfavored absent a strong showing. *See Y.Y.G.M., SA v. Ishay*, 2022 WL 22912055, at *1-2 (E.D.N.Y. Jan. 11, 2022) (denying stay).

Relevant factors include "(1) whether the defendant has made a strong showing that the plaintiff's claim is unmeritorious; (2) the breadth of discovery and the burden of responding to it; and (3) the risk of unfair prejudice to the party opposing the stay." *Long Island Hous. Servs., Inc. v. Nassau Cnty. Indus. Dev. Agency*, 2015 WL 7756122, at *2 (E.D.N.Y. Dec. 1, 2015) (internal citations and quotations omitted). "These factors are not exclusive, however, and in the end, an overarching consideration of the circumstances in their totality governs." *Grecia v. MasterCard, Inc.*, 2017 WL 11566955, at *2 (S.D.N.Y. Apr. 3, 2017) (internal citation omitted). Consideration of just the first two factors confirms that the limited discovery Plaintiffs seek is appropriate now, and Plaintiffs need not show undue prejudice to justify their position.

With respect to the first factor, Defendant will be unable to make "a strong showing that plaintiff[s'] claim[s] [are] unmeritorious[.]" *Long Island Hous. Servs., Inc.*, 2015 WL 7756122, at *2 (internal citations and quotations omitted). Plaintiffs allege, in detail, Defendant's anticompetitive scheme, and the Complaints reflect serious investigation of the relevant facts by sophisticated antitrust counsel. The DOJ Antitrust Division's investigation into Defendant for the same conduct buttresses the merit of the allegations. The Court certainly cannot conclude, at this stage and on this record, that Plaintiffs' antitrust claims are unmeritorious. *See Y.Y.G.M., SA*, 2022 WL 22912055, at *1-2 (denying motion to stay where the Court could not conclude that the complaint would be dismissed). As indicated above, courts have upheld antitrust claims challenging anti-steering restraints imposed by hospital systems such as those imposed by NYP. *See Charlotte-Mecklenburg Hosp. Auth.*, 248 F. Supp. 3d at 730; *Sidibe*, 103 F.4th at 680-82; *Uriel Pharmacy Health and Welfare Plan*, No. 2:22-cv-610-LA, slip op. at 5-6; *Davis*, 2022 WL 4354142, at *13-14.

With respect to the second factor, Defendant will be unable to show that carrying out the limited discovery that Plaintiffs seek in Tier One Discovery constitutes an undue burden. Such concerns typically justify a stay only where the parties have already served extensive requests for production. *See GBML LLC v. M2B Inv., Ltd.*, 2022 WL 3566549, at *3 (E.D.N.Y. Aug. 18, 2022) ("Inasmuch as discovery has not yet commenced, defendants are in no position to assess the breadth and burden of discovery that plaintiff may seek"); *Cf. Joglo Realities Inc. v. Dep't of Env't Conservation*, 2016 WL 11480895, at *3-4 (E.D.N.Y. Oct. 17, 2016) (instituting a stay on a finding that discovery was "extremely broad and burdensome" based on a set of document requests and interrogatories). Here, any such concern is premature. In the meantime, the limited discovery proposed by Plaintiffs will meaningfully advance the case. *See Long Island Hous. Servs. Inc.*, 2015 WL 7756122, at *3-4 (declining to stay discovery where discovery was already limited); *see also*

Coss v. Playtex Prods., LLC, 2009 WL 1455358, at *5 (N.D. Ill. May 21, 2009) (granting motion to stay discovery in part but ordering "limited discovery" in order to move the case forward).

In short, Plaintiffs will agree to stay fact discovery requiring application of search terms, interrogatories, or depositions, and any expert discovery. But the parties should proceed to exchange initial disclosures and the Tier One Discovery set forth above, and to negotiate an ESI Protocol and a protective order. Plaintiffs' proposal would allow the parties to hit the ground running after the Court rules on Defendant's forthcoming motion to dismiss.

N. CONSOLIDATION

As Plaintiffs stated in their November 14, 2025 letter motion, the Court should consolidate the currently filed cases. *See UFCW*, ECF No. 24 at *1-3; *Cement Workers*, ECF No. 19 at *1-3. The cases share common questions of law and fact and otherwise satisfy Rule 42(a)(2). Defendant also supports consolidation of the two actions. *See* No. 2:25-cv-5023, ECF No. 23 at *1-2. Respectfully, it is not the case that "the parties have not agreed to consolidation of the Cement Workers and UFCW cases for all purposes" (Nov. 17, 2025 text order); in fact, the parties *do* so agree. The parties disagree only about (1) whether the Court should promptly consolidate future-filed cases with this one and (2) the timing of leadership motions. Plaintiffs explained their position as to those issues in their previous Letter Motion. *See UFCW*, ECF No. 24, at *2-4.

O. DISCOVERY PROTOCOLS

The parties are in the process of negotiating a protective order and ESI protocol and have exchanged initial drafts of these documents.

P. SCHEDULE

Plaintiffs present their proposed schedule in Exhibit 1. This tracks the completed Discovery Worksheet (Appendix B to your Honor's Individual Practices) that Plaintiffs are filing alongside this joint letter, but provides additional time for expert rebuttal and reply reports. Because Plaintiffs' proposed deadlines are set forth in Exhibit 1, we do not reiterate them here. We write briefly to respond to Defendants' points (4)(i) – (v), below.

(i) First, Plaintiffs and Defendant agree that the court should consolidate the Actions, and that the cases must be consolidated on the same docket in advance of Plaintiffs filing a consolidated compliant. *See supra* § XIV.

(ii) Second, Plaintiffs do not object to the scheduling intervals that Defendant proposes for briefing the forthcoming motion to dismiss. But the Court should set a date by which "Plaintiffs shall either present a stipulation regarding, or file a motion for appointment of, interim lead class counsel," *before* Plaintiffs file the consolidated complaint, for the reasons described previously. *See UFCW*, ECF No. 24; *Cement Workers*, ECF No. 19.

(iii) Third, phased discovery (as Plaintiffs propose and to which Defendants object) is appropriate in this case because it is consistent with this Court's individual practices. In fact, the parties are not far apart in terms of scope: Plaintiffs and Defendant agree that Tier One Discovery should include Plaintiffs' agreements

with TPAs and Defendants' agreements with Network Providers.[4] Although the parties disagree about whether Tier One Discovery should include the materials Defendant turned over to the DOJ (pursuant to its parallel investigation of the same conduct at issue in this case), for the most part, the parties' disagreement is a matter of timing. Plaintiffs say that the parties should exchange Tier One Discovery now, while Defendant refuses to produce anything until after Plaintiffs defeat its motion to dismiss. But Tier One Discovery should proceed now for at least two reasons: (1) as detailed above, Defendant has not met its showing that it is entitled to a stay, and (2) it conforms to this Court's individual practices, which provide that "Tier One discovery is expected to be completed no later than 60 days [after] the initial conference."[5] As of this filing, the parties held the initial conference 51 days ago, on November 19, 2025.

(iv) Fourth, nine months is not enough time for discovery in this case. Defendant says this "should be plenty," but offers no explanation as to why.[6] In reality, even though there is only one defendant in this matter, the facts at issue are complicated and involve many players. Plaintiffs' schedule provides an appropriate amount of time for the parties to review and produce documents; assess claims of privilege and, if necessary, challenge them; and take necessary and appropriate fact depositions. Defendant's schedule, by contrast, would force Plaintiffs to rush through discovery and take depositions without the benefit of document discovery or the resolution of any privilege challenges that may arise. There is no need to rush. Providing now for adequate time to take discovery will enable discovery to proceed in a predictable and orderly manner. Plaintiffs' experience in similar matters confirms that the discovery schedule they propose is warranted. *See, e.g.*, Scheduling Order, *P & L Development, LLC*, No. 1:21-cv-05382-NG-AYS (April 4, 2024) (9.5 months for substantial completion; 14 months for fact discovery; 7 months for expert discovery); *In Re: Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, No. 1:18-md-02819-NG-LB, ECF No. 77 at *1-2 (in antitrust class action where rolling production had already commenced, 4.5 months for substantial completion; 9 months for fact discovery).

(v) Fifth, the Court should not permit Defendant to harass Plaintiffs' experts by subjecting them to multiple depositions, under the guise of "separat[ing] class and merits expert discovery." While the time for Plaintiffs to disclose experts and

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[4] It is incorrect, as Defendant states, that Plaintiffs propose that Tier One Discovery "be entirely one-sided." Plaintiffs would produce their TPA agreements as part of Tier One Discovery.

[5] Defendant argues that the documents they produced to the DOJ "do not get at the threshold issues in this case," which, according to Defendant, includes "whether a class can be certified." This is a distraction. In fact, the DOJ is investigating precisely the conduct that lies at the heart of Plaintiffs' Complaints, and the materials Defendant produced in that matter are highly likely to be relevant to this one.

[6] Somehow, Defendant estimates that discovery can be completed in nine months and yet will cost tens of millions of dollars. Both of these estimates are outlandish, although in opposite directions.

their opinions pursuant to Rule 26 has not arrived, it is likely that Plaintiffs will retain one or more experts to opine on both class and merits issues. That is a common practice in complex antitrust class actions like this one, and courts routinely order that such experts may be deposed only once. *See, e.g., Uriel Pharmacy Health and Welfare Plan,* 2:22-cv-610-LA, ECF No. 54 at *1, 6 (E.D. Wis. Jan. 9, 2024) (deferring to federal rules for expert depositions); *Team Schierl Cos.*, 3:22-cv-580-jdp, ECF No. 45, at *1, *5 (W.D. Wis. June 13, 2023) (same). Without a trace of irony, Defendant suggests that "efficiency" justifies its proposal to conduct expert discovery in this case twice rather than once. Clearly, Plaintiffs' proposal is the more efficient one. Notably, Defendant seeks to depose each expert for "at least 7 hours of deposition *per expert report*." This gives away the game: Defendant is *not* asking to depose each expert based on the content of their opinions (e.g., once on class issues and once on merits issues); but rather, once on their opening report and again on their reply report. Nothing justifies this request for two bites at the apple. Instead, such a process would only lend itself to wasteful disputes over what questioning is within the scope of each report, inconvenience the witness, and increase Plaintiffs' costs.

(vi) Sixth, Defendant claims that Plaintiffs will have nine months after the production of data to submit their expert reports, but under Plaintiffs' proposed schedule, *both* parties will submit opening expert reports on the same date, and will have equal time for rebuttal and reply reports. There is no reason why rebuttal experts should get twice as much time to prepare their reports as experts offering affirmative opinions. Plaintiffs' proposal fairly provides that opening expert reports are due 31 days after fact discovery closes, and expert rebuttal reports are due 45 days after that. Defendant's bizarre contention that Plaintiffs' experts actually have nine months to prepare their expert reports seems to start the clock based on the proposed deadline for substantial completion of document production. But the experts will not have everything they need by that date. Both parties' experts are likely to rely on deposition testimony and other evidence that emerges later in discovery. Plaintiffs' proposal provides for equal time to both Plaintiffs' and Defendant's experts to prepare their reports and is thus fair and equitable.

(vii) Seventh, the Court should permit a single, 7-hour deposition of each expert witness, for the reasons described above in point (v), and not 7 hours of deposition time for each 100 pages of expert reports, as proposed by Defendants. In the spirit of compromise, Plaintiffs propose increasing the time limit to 10 hours for the deposition of an expert whose report exceeds 100 pages (including appendices).

(viii) Eighth and ninth, the Court should set deadlines now for summary judgment briefing and trial to keep the case moving forward.

II. THE POSITION OF NEW YORK PRESBYTERIAN HOSPITAL.[7]

A. Basis for Jurisdiction.

NYP disputes UFCW's assertion of subject matter jurisdiction under the Class Action Fairness Act (CAFA). More than two-thirds of the putative class members are New York citizens, the sole defendant is a New York citizen, the alleged injuries occurred principally in New York, and no similar class action has been filed elsewhere. As such, the Court is required to "decline … jurisdiction" under CAFA. *See* 28 U.S.C. § 1332(d)(4). Moreover, each discretionary factor under 28 U.S.C. § 1332(d)(3) independently supports that same result.

Because CAFA jurisdiction is lacking (and indeed, not even invoked by *Cement Workers*), subject matter jurisdiction over plaintiffs' state law claims depends on the viability of their Sherman Act claims. NYP, therefore, reserves it right to dismiss the state law claims if the federal Sherman Act claims are dismissed.

In response, UFCW says only that "discovery will be necessary to determine the percentage of New York citizens in the class." This is incorrect. "A Court may infer the citizenship" of class members for purposes of "the citizenship requirement of a CAFA exception … by mak[ing] reasonable assumptions about the makeup of a putative class." *Green v. Sheraton, LLC*, 2022 WL 4072475, *2 (W.D.N.Y. 2022), *R&R adopted by*, 2022 WL 4019320 (W.D.N.Y. 2022); *Kurovskaya v. Project O.H.R., Inc.*, 251 F. Supp. 3d 699, 703 (S.D.N.Y. 2017) (same; collecting cases). Here, both plaintiffs are domiciled in New York, and the class consists only of "entities whose funds were used to pay Defendant for GAC Services *in New York City*." *UCFW* Cmplt. ¶ 135.

In any event, as discussed below, because supplemental jurisdiction exists so long as the Sherman Act claim remains, any jurisdictional discovery can be conducted alongside merits discovery after the motions to dismiss are decided.

B. NYP's Statement of Facts.[8]

NYP contracts with commercial *insurers* – including Empire, which administers both plaintiffs' union benefits plans – to provide hospital services to *patients* at negotiated rates. Like other health insurers, Empire exercises its independent authority to design provider networks, set benefits tiers, and negotiate reimbursement terms with participating hospitals.

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[7] NYP sought to provide the Court with an integrated joint letter with the parties' positions on each issue set forth seriatim. Plaintiffs demanded, instead, that NYP append its position to the end of this letter. In the interest of space, we have omitted sections where there is no dispute among the parties. Unless otherwise noted, for NYP's positions, all emphasis is added, capitalizations conformed without brackets, and all internal citations and quotation marks omitted.

[8] Plaintiffs claim that NYP's explanation of the facts is improper. Not so. Your Honor's Individual Rules explicitly allows for inclusion of "Defendant's position as to the facts" in this letter. Nothing limits NYP's explanation about what the "facts" are to what plaintiffs have chosen to include or omit from their Complaint. Nor is this a motion to dismiss. If NYP goes beyond permissible facts in its motion, plaintiffs can raise that issue then.

As part of that process, Empire uses industry-standard steering tools – such as tier placement and differential cost-sharing – to steer patient volume to contracted hospitals in exchange for lower reimbursement rates. These provisions reflect insurers' market power – just five insurers control over 80% of patient volume – but these provisions also allow insurers to predictably deliver that volume to hospitals, enabling NYP to offer substantial rate discounts that directly benefit the plans administered by Empire, including plans sponsored by the plaintiffs. This is core of the "managed care bargain" courts have repeatedly recognized as procompetitive.[9]

The Unions do not contract with NYP and they do not negotiate provider reimbursement terms. Their only contractual relationships are with Empire, as their chosen third-party administrator, and their own members. Any connection between NYP and the Unions runs solely through (a) Empire's independent insurer-provider contracting authority, or (b) individual members' choices when seeking medical care. The Unions are therefore twice removed from the contracting decisions they challenge.

Under the current contractual arrangements between NYP and Empire, Union members are free to use NYP – or not – based entirely on their own preferences, with no restrictions imposed by NYP, Empire, or the Court. ***This is not disputed***. The Unions' plans, thus, retain members' right to seek care at NYP, which is widely regarded as one of the highest-quality hospital systems in the world.

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[9] *Medical Ctr. at Elizabeth Place, LLC v. Premier Health Partners*, 2017 WL 3433131, *16 (S.D. Ohio 2017) (dismissing Sherman Act claims, finding managed care bargains "help ensure that patient volume at [] hospitals remains steady" and allows for "the discounted rates that the hospitals offer the insurers," which "arguably will result in lower premiums and more choices for the consumers"). Notably, courts recognize that insurers' ability to steer patient volume reflects the exercise of significant *insurer* market power, which can itself produce anticompetitive effects. Unlike, providers, who typically lack any power, each of the Big 5 insurers – through their upstream contracts with employers and members and through extensive industry consolidation – control such large shares of patient enrollment that they can unilaterally depress reimbursement rates below competitive levels, *i.e.*, they wield monopsony power. Courts have repeatedly found this insurer-driven control over patient choice distorts competition and harms providers and patients. *See*, *e.g.*, *United States v. Aetna Inc.*, 240 F. Supp. 3d 1, 42-44 (D.D.C. 2017) (insurers already operate in a highly concentrated industry in which they possess enhanced bargaining leverage that would depress provider reimbursement and harm competition); *United States v. Blue Cross Blue Shield of Mich*., 809 F. Supp. 2d 665, 674–75 (E.D. Mich. 2011) (insurers' effort to dictate reimbursement rates anticompetitive); *Saint Francis Hosp. & Med. Ctr., Inc. v. Hartford Healthcare Corp*., 655 F. Supp. 3d 52, 75–78 (D. Conn. 2023) (recognizing that insurers often occupy the central, most powerful position in tiered-network contracting and exert primary control over patient steering); *Reazin v. Blue Cross & Blue Shield of Kan., Inc.*, 899 F.2d 951, 967–72 (10th Cir. 1990) (finding that insurer possesses market power in hospital contracting); *Powderly v. Blue Cross & Blue Shield of N.C.*, 2008 WL 4129767, *1 (W.D.N.C. 2008) ("It is beyond serious dispute that a provider of health insurance services is also a buyer of health care services capable of exercising monopsony power over the market for doctors' services."); *United States v. Anthem, Inc.*, 2017 WL 527923, *1 (D.D.C. 2017) (blocking insurance company merger due to effects in an "already … highly concentrated market").

The injunction the Unions now seek would dismantle the current system and ***inflict concrete harm on their own members***. By barring insurers from using the network-design and steering provisions that make volume-based discounts possible, the requested relief would ***strip*** members of their choice, forcing them to either pay more or forego healthcare coverage. Far from expanding choice, the Unions seek to restrict it—depriving members of access to the medical providers their plans currently allow them to use.

Put simply, the Unions' claim is really about their own desire to strengthen the shackles they have placed on their members.

The Court should not be complicit in this effort. Indeed, the Supreme Court's decisions in *Illinois Brick* and *Associated General Contractors* forbid it. The Unions are indirect purchasers, far removed in the chain of distribution for healthcare services.

The Unions seek to use judicial intervention to regulate a domain that is not theirs to control. The insurers – not the Unions – are responsible for designing provider networks and negotiating provider terms. When you buy a car, you cannot tell GM what tire supplier to use, or what ancillary provisions or volume discounts can appear in the supplier contract. The design of the car – like the design of the insurer plan – is dictated by the free market, and the antitrust laws, confer exclusively on the creator of the product. The Union is not the creator of networks.

The Unions' attempt to dictate what provisions Empire can negotiate with hospitals, like NYP, directly intrudes upon Empire's independent design choices and contracting authority. Unions can ask insurers for different plans, but they cannot use the antitrust laws to force Empire (or NYP) to create a different plan more to their liking. If Empire wants to maximize the volume it steers to NYP, then the provisions the Unions challenge achieve that result and cannot be deemed anticompetitive. If Empire wants to steer volume away from NYP, then it is free to try its hand at challenging the anti-steering provisions as "anticompetitive." But just as retail customers cannot use the antitrust laws to force manufacturers to redesign their products, the Unions cannot use the antitrust laws to force changes in network design.

So too, if the Unions prefer a differently designed network, they can contract with a different insurer that offers what they seek. They do not allege that NYP is in all insurers' top tier plans.[10] Nor do they allege that they – or any class member, save one – even tried to exclude NYP from the network products the insurers offered. Certainly, plaintiffs were not prevented from doing anything they never even asked to do.

The one exception plaintiffs identify undermines their claim. Plaintiffs point to 32BJ, a union of site services workers, such as janitors and security guards. Even though well over 15% of 32BJ's members "used NYP, and they ***wanted*** NYP's facilities in their network," 32BJ did not

[10] Notably, plaintiffs now say that NYP is in-network for 95% of commercial plans. But that is not an *alleged* fact. Moreover, the fact that NYP is in-network, like most major hospitals, says nothing about whether NYP has "power" or whether plaintiffs or insurers have other choices. But even if plaintiffs were to allege (and they have not) that they cannot find the plan they want, that would speak more to concentration in the health insurance market, where five insurers control 80% of the market, than it does to NYP's (unalleged) market power in New York City's healthcare services market, which has over seventy-five participants.

care what its members wanted—32BJ wanted to save a buck.[11] *See UFCW* Cmplt. ¶ 112. So it first "attempted to steer its patients away from NYP" by imposing a ***1000% penalty*** on any member that chose to go to NYP. *Id.* ¶ 108. Members' preferences be damned.

When insurers and NYP objected, 32BJ forced the insurers to exclude NYP from the plans they offered to 32BJ. Ultimately, ***two insurers*** offered 32BJ exactly what it wanted—plans that excluded NYP, even while those insurers continued to offer their other customers more benefits, more flexibility, and greater discounts at NYP.[12]

Plaintiffs recognize this is the free market at work. But they call it an "exception." *UFCW* Cmplt. ¶ 117. Plans that reduce choice for patients, they say, are a boon to competition. But that rhetoric does not save their claims; the facts alleged defeat it. Put simply, the market worked as intended, as "32BJ was able to exclude NYP from its health plan."[13] *Id.* ¶¶ 114, 117. Patients were harmed, but 32BJ saved a buck. That is the market at play, and that is what the plaintiffs here want to stop.

But the plaintiffs offer no cause for concern. They ***concede*** that NYP does not possess significant market share in their *own* alleged market. That market includes more than seventy-five hospitals – major academic medical centers and community providers alike – including Mount Sinai, NYU Langone, Montefiore, Maimonides, Northwell, Lenox Hill, Staten Island University Hospital, New York Community Hospital, Kings County Hospital, Brooklyn Methodist, Richmond University Medical Center, White Plains Hospital, BronxCare, Elmhurst Hospital, Bellevue, Jamaica Hospital, Flushing Hospital, and many others. In such a market, no single hospital – NYP included – could plausibly wield market power.

The Unions' fallback argument – that NYP's contract terms or pricing constitute "direct evidence" of market power – is equally flawed. They allege only vertical agreements, not horizontal ones. That makes all the difference.

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[11] Unions are self-funded plans, meaning they are responsible to cover their members' medical bills. Here, the complaint alleges that 32BJ believed that, despite this obligation, it would be "fiscally irresponsible" to let patients go to NYP for care. *UFCW* Cmplt. ¶ 110.

[12] NYP also offered a third insurer, Aetna, a similar plan that excluded 32BJ, but Aetna declined the offer.

[13] Plaintiffs misleadingly suggest that 32BJ "could not even exclude NYP for all GAC Services" because even under the Empire plans "emergency care at NYP will continue to be covered the same as in-network care." *UFCW* Cmplt. ¶ 118. But that has nothing to do with the importance of NYP. *Emergency services* require treatment at the closest facility, as a matter of law. As such, unions cannot use denial of benefits to force patients to go to remote facilities. Indeed, because there is a distinct regulatory structure governing emergency services reimbursement, it is not a matter of antitrust concern. *See Verizon Commc'ns. Inc. v. Trinko,* 540 U.S. 398, 407–12 (2004) (the existence of a "regulatory structure" to address the alleged harm makes it "less plausible that the antitrust laws contemplate … additional scrutiny.").

Under the Supreme Court's seminal decision in *Amex*, neither prices nor contractual restraints constitute direct evidence of market power in a vertical case.[14] As *Amex* also makes clear, when a multi-sided network-platform market is at issue, effects on only one side of the platform cannot establish market power.[15] Indeed, the Supreme Court ***reversed*** the DOJ's trial win because evidence that Amex was the highest-priced card network in the country did not show that the challenged anti-steering provisions were anticompetitive. As the Court explained,

> "Evidence of price increase on one side of a two-sided transaction platform cannot, by itself, demonstrate an anticompetitive exercise of market power" and "***there is nothing inherently anticompetitive about [] antisteering provisions***."[16]

Here, healthcare contracting, and network design in particular, is inherently multi-sided—it involves insurers, providers, patients, and end-payors (*e.g.*, unions). Yet the Unions failed to allege a multi-sided market. This is critical because the entity situated at the center of the market is the insurer, with the capacity and power to control both provider participation and member enrollment. The Unions' theory, which seeks to isolate one side of the market from the other, is legally incomplete and cannot support antitrust liability under *Amex*.

By attempting to enjoin provisions in contracts to which they are not parties, restrict insurer network design, limit patient freedom of choice, and advance an antitrust theory that includes neither market share nor a cognizable multi-sided market, the Unions ask the Court to tip the scales in a negotiation to which the Unions are not a party.

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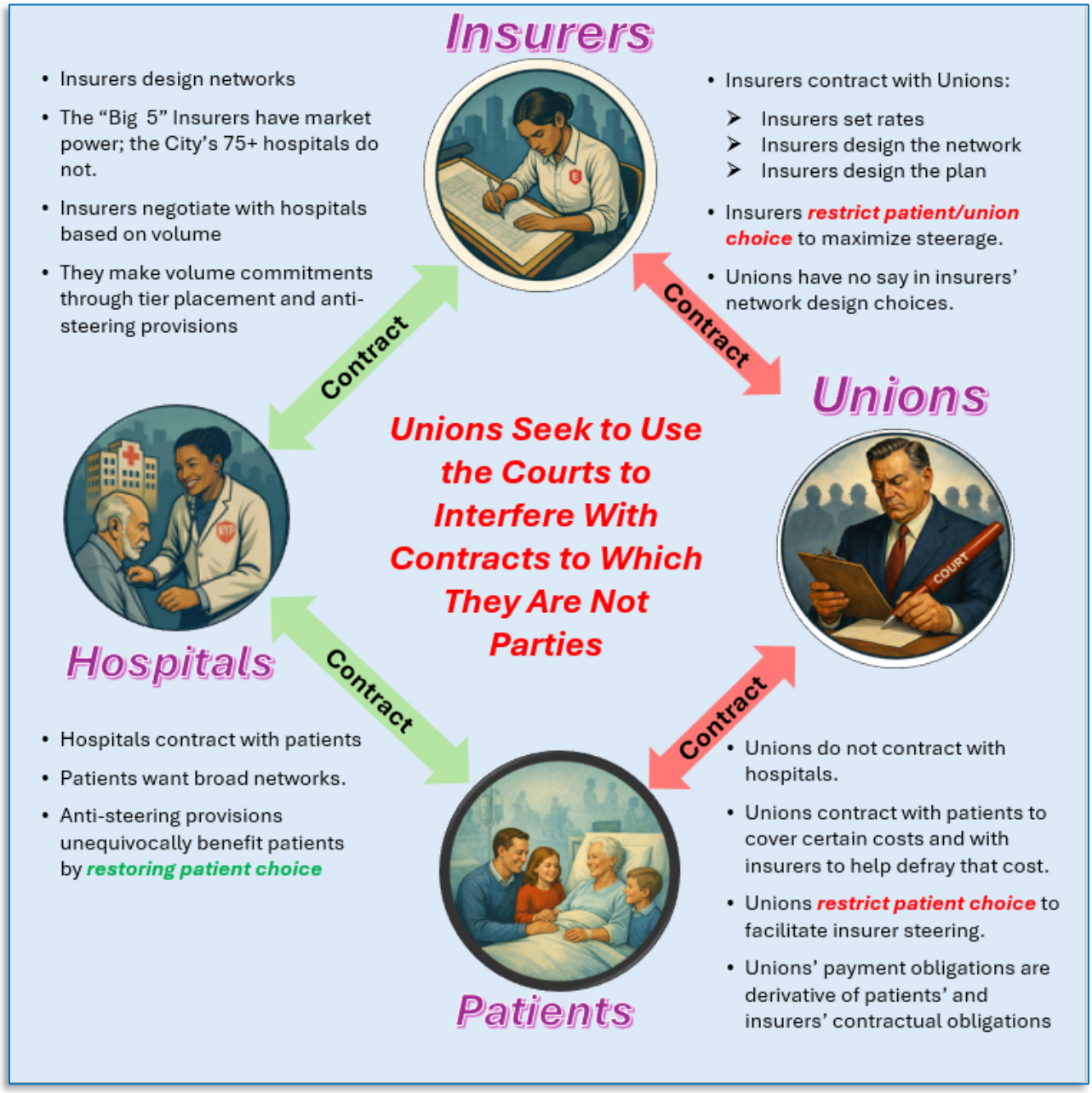
[14] *Ohio v. Am. Express Co. (Amex)*, 585 U.S. 529, 543 n.7 (2018) ("Plaintiffs argue that we need not define the relevant market in this case because they have offered actual evidence of adverse effects of competition—namely, increased merchant fees…. We disagree…. Vertical restraints are different… Vertical restraints often pose no risk to competition unless the entity imposing them has market power.").

[15] *See Id.* at 530 ("Credit-card networks are best understood as supplying only one product … that is jointly consumed by a cardholder and a merchant. Accordingly, the two-sided market for credit-card transactions should be analyzed as a whole.").

[16] *Id*. at 547, 551.

The following demonstrative illustrates this case in a nutshell.



C. Discovery Should Be Stayed.

Discovery should be stayed pending resolution of NYP's Motion to Dismiss. Courts have "considerable discretion to stay discovery pursuant to Rule 26(c)." *Palladino v. JPMorgan Chase & Co.*, 345 F.R.D. 270, 273 (E.D.N.Y. 2024).[17] Here, NYP's threshold challenge to the Unions' standing and the legal sufficiency of their claims, the costs of antitrust and class action discovery, and the lack of any cognizable prejudice favors granting a short stay of discovery.

1. NYP Has a "Strong" Likelihood of Success on the Merits of its Anticipated Motion to Dismiss.

Plaintiffs' federal and state claims lack merit for several reasons.

Plaintiffs Are Indirect Purchasers under Illinois Brick. Plaintiffs are barred from seeking damages under the Sherman Act because they are not direct purchasers under *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 746 (1977). This is a "bright line rule" that neither bends nor breaks, and is determined by the "economic substance of the transaction." *Delaware Valley Surgical Supply Inc. v. Johnson & Johnson*, 523 F.3d 1116, 1120-21 (9th Cir. 2008); *Spinner Consulting LLC v. Stone Point Cap., LLC*, 623 B.R. 671, 676 (D. Conn. 2020). The Unions say that they "directly paid" for the care provided to their members. But the question isn't whether the union "directly" reached into their pockets to cover patients' costs, but whether they contracted with NYP. They did not. *Salveson v. JP Morgan Chase & Co*., 166 F. Supp. 3d 242, 252 (E.D.N.Y. 2016) ("The Court was not obligated to credit Plaintiffs' allegation that [they] are the direct payors…, as this allegation is directly contradicted by the specific allegations.").

For the same reason, there is no merit to plaintiffs' argument that they are direct purchasers because they contract with Empire "in its capacity as a third-party administrator." Indeed, it proves the opposite. It is true that unions and other self-funded payors do not purchase "insurance" from the insurers. But this case is not about diversification of healthcare costs across patient groups. It is about who contracts with whom for services. Here, plaintiffs admit that they purchase services through the networks insurers have created, and plaintiffs just rent such services. *UFCW* Cmplt. ¶ 30 ("*insurers* will 'rent' *their* networks."); *see also id*. ¶ 56 ("for ***health insurers*** to offer provider networks which are commercially viable, whether sold as fully-insured health plans or "*rented*" to self-funded health plans, the insurers must provide a full bundle of GAC Services."). As such, plaintiffs are indirect purchasers, economically and legally downstream from the insurer.

To get around this, plaintiffs employ *slippery* language in their letter, saying that they are "responsible for the entirety of any purchase of services made by their members at NYP." *First*, they don't say *to whom* they are "responsible" for payment. That is no oversight; their contractual payment obligation is *to the insurer*. *Second*, even plaintiffs admit that the "purchase" is "made by their members," *i.e.*, the patients, not themselves. This also proves they are twice removed. *Third*, even if they were ultimately "responsible," that is not enough. *In re Northshore Univ. HealthSystem Antitrust Litig*., 2018 WL 2383098, *6 (N.D. Ill. 2018) (rejecting argument that

[17] *See also Lawson v. Rubin*, 2018 WL 4211446, *1 (E.D.N.Y. 2018) (noting that a "pending motion to dismiss" can constitute good cause for a stay of discovery); *Id*., *2 ("Defendants raise credible arguments that plaintiffs cannot demonstrate RICO standing and fail to state a RICO claim. A stay is reasonable here….").

union was a direct purchaser, even though the insurer was only "functioning as an Administrative Services Only (ASO) insurer, not paying on a fee-for-service basis.").

Plaintiffs try to fit themselves within the "cost-plus" exception, without using that term. That too is no oversight; they don't qualify for that limited exception. In *Simon v. KeySpan Corp.*, 694 F.3d 196, 202 (2d Cir. 2012), the Second Circuit explained that the "the cost-plus contract exception to the indirect purchaser bar is a narrow one that is only appropriate when the contract has removed all doubts about who bore the antitrust injury." There, because there was no fixed quantity specified under the contract, the Second Circuit held the exception did not apply. As the court explained, because the contract with the direct purchaser might have been negotiated on the basis of volume, the direct purchaser is the *sole* party with antitrust standing under Illinois Brick, notwithstanding the fact that *every single penny* was ultimately paid by the indirect purchaser. Here, too, the anti-steering provisions plaintiffs challenge are the precise volume-mechanisms insurers use to negotiate prices. Plaintiffs do not allege that they were under any fixed quantity obligations with respect to their members' purchases of services from NYP. That is fatal to their federal claim under *Illinois Brick*.[18]

Plaintiffs Lack Antitrust Standing. Independent of the Unions' federal damages claim, the Unions' injunctive relief and state law damages claims also fail because the Unions lack antitrust standing. *Associated Gen. Contractors of Cal. v. Cal. State Council of Carpenters*, 459 U.S. 519, 535 n.31 (1983); *In re Am. Express Anti-Steering Rules Antitrust Litig.*, 19 F.4th 127, 138-140 (2d Cir. 2021). The Second Circuit follows the "first-step rule," in which only "injuries that happen at the first step following the harmful behavior are considered proximately caused by that behavior." *Id.*

Here, the Union's alleged injury is derivative of the purported injuries of those in privity with NYP—the patients and insurers. Plaintiffs allege NYP "impose[s] anticompetitive provisions ***on insurers.***" *UFCW* Cmplt. ¶ 95. But as the Second Circuit has noted, ***"if there are direct victims, those victims are the [entities] to which [the defendant's] Anti-Steering Rules applied***." *In re Am. Express*, 19 F.4th at 141. P plaintiffs assert NYP has sought to "compel ***insurers and Third-Party Administrators*** … to accept various 'anti-steering' provisions," and by doing so, NYP has allegedly "overcharge[d] ***insurance companies***."[19] This is a direct admission that Plaintiffs are indirect purchasers with, at best, derivative alleged injuries. That is fatal to the Unions' standing.[20]

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[18] As noted, plaintiffs have so far refused to produce their contract with Empire, even though it is incorporated into the Complaint by reference. Plaintiffs have strategically omitted from their Complaint any reference to the price-setting mechanism in their contract. As such, the plaintiffs have not satisfied their pleading burden to cost-plus contract.

[19] This language appeared in plaintiffs' earlier draft of this letter. When NYP pointed to this admission, plaintiffs deleted it from their section. The fact that plaintiffs deleted this language is also telling since it is the gravamen of their complaint.

[20] Plaintiffs seek to "buttress[] the merit of [their] allegations" by pointing to reports of a DOJ investigation. But an inchoate DOJ investigation cannot bolster a deficient pleading. This is especially true in a vertical, unilateral conduct case, where there is no allegation of concerted

Plaintiffs Fail to Allege Market Power. There are over seventy-five hospitals in the five Boroughs of New York City—NYP only has a small sliver of this unconcentrated market. Plaintiffs do not contend otherwise. Nor do they deny that they must plausibly plead and prove market power. Instead, they say NYP's small market share is irrelevant because NYP has – in their view – high prices and has negotiated the terms they now challenge. They concede, though, that the conduct is not per se illegal, so the fact that the contracts include the challenged terms is not *ipso facto* evidence of market power. Nor do plaintiffs grapple with the fact that, in *Amex*, the Supreme Court held that such so-called "direct evidence" is unavailable in vertical restraint cases, such as this. 585 U.S. at 547.

Instead, plaintiffs seek to fill their missing market power allegations with lawyer rhetoric. "It is a 'must have' hospital system," they say, "for the vast majority of commercial healthcare plans offering coverage in New York." But "must have" is a characterization. Indeed, if it were literally true that that NYP was a "must have," plaintiffs would have pled themselves out of court because the gravamen of their complaint is that NYP is ***not*** a "must have" and there are many healthcare plans that *do not want* NYP. That is, plaintiffs' claim – that insurers *want to exclude* a "must have" hospital – is an oxymoron. In any event, no court has permitted an antitrust case that requires a showing of market power to go forward based on such flimsy characterizations about how much customers like the defendant's product, and whether that desire makes it a "must have."[21]

Nor is there merit to plaintiffs' reference to an article discussing a negotiation between Cigna and Northwell, more than 8 years ago (and long before the statute of limitations). According to the Complaint, Northwell is also a "mega-system," along with NYP, NYU, and Mount Sinai. UFCW Cmplt. ¶ 72. If NYP has market power, then Northwell does too. Northwell has extensive operations throughout the State, including four "full spectrum" GAC hospitals in New York City. *Id*. Plaintiffs allege only that Cigna was unwilling to give up volume discounts it got from NYP based on its agreement not to ***discriminate against NYP*** just to steer more volume to Northwell. But that does not prove that NYP has market power. It just means that in deciding who Cigna wanted to steer volume to, it chose to treat both alleged "mega" systems the same.

Plaintiffs Fail to Allege a Multi-Sided Market. Plaintiffs' claims also fail because they have not properly alleged a relevant market. The relevant market, as a matter of law, is a multi-sided market in which insurers sit in the middle, seeking to attract both patients/members and providers. Plaintiffs' attempt to myopically focus on providers, while excluding the patient and payor sides is error as a matter of law under *Amex*, 585 U.S. at 545-46. Notably, plaintiffs do not respond to this point.

Plaintiffs Do Not Allege a Restraint of Trade; They Allege the Opposite. The steering provisions *insurers* wield may constitute restraints of trade if unreasonable, but plaintiffs do not

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conduct. Moreover, because the DOJ is not a private party, it does not have the same standing defects as the plaintiffs. Put simply, plaintiffs must stand on their own two feet.

[21] Tellingly, the one case plaintiffs cite with a "must have" allegation also coupled it with an express allegation that the "defendants' hospitals maintain a market share between 58% and 90% in these markets." *See Uriel Pharm. Health and Welfare Plan v. Advocate Aurora Health, Inc.*, 22-cv-00610, ECF 31, (E.D. Wis. April 23, 2023).

challenge any steering restraints. They attack ***anti-***steering provisions—the antithesis of a restraint. Insurers use these terms to define benefit tiers, place providers within them, and deliver volume in exchange for preferred rates. They do not prevent insurers from placing other hospitals in the same tier as NYP. Nor are they exclusionary. As Judge Easterbrook explained, "there can be no restraint of trade without a restraint." *Sanderson v. Culligan Int'l Co.*, 415 F.3d 620, 624 (7th Cir. 2005). Plaintiffs nonetheless seek to weaponize the antitrust laws to tighten – rather than loosen – the shackles they impose on their own members, stripping patients of the choice the free market has given them. That is not procompetitive; it is anticompetitive.

Anti-Steering Provisions are Lawful, Pro-competitive Ancillary Restraints. Even if anti-steering provisions were relabeled restraints, they are classic "ancillary" restraints—integral to the volume-based negotiations insurers rely on to drive down rates. As one court explained,

> "The price at which a hospital sells its services to an insurer is often linked to the volume of patients that the insurer can be expected to direct to that hospital…. This rate-for-volume pricing is prevalent [throughout] the United States and … no court has held [it] to be *per se* illegal….
>
> [Anti-steering provisions that permit hospitals to terminate the contract] if the insurer does add other hospitals to the network, thereby diluting the expected volume, … are vertical restraints.…
>
> The only question is whether [they] were plausibly necessary to achieve a procompetitive objective…. They clearly were. [They] help ensure that patient volume … remains steady[,] [which] is the *quid pro quo* for the discounted rates … and the only real way that hospitals can protect the benefit of their bargain."[22]

Plaintiffs Have No Grounds for Injunctive Relief. No case permits an indirect purchaser to obtain injunctive relief that would disrupt contractual relationships to which it is not a party. Indeed, absent a court order, plaintiffs' effort to disrupt NYP's contractual relationships with patients and insurers would itself be a tort.

Here, plaintiffs concede that the challenged anti-steering provisions are not *per se* illegal. And because they are not *competitors* in the relevant market, they do not – and cannot – allege competitive foreclosure.

NYP's contractual counterparties – insurers and patients – are entitled to make their own independent, market-driven decisions about the terms they accept. An injunction overrides those free-market choices, rendering any regulatory control "inimical to the antitrust laws." *Atl. Richfield Co. v. USA Petroleum Co.,* 495 U.S. 328, 328 (1990).

Nor is such relief in the public interest. Plaintiffs say they want to pay less, but their method is to strip insurers and patients of their freedom of choice. Courts cannot be used to pick contractual winners and losers. Under *Ebay*'s public interest standard, injunctive relief – and hence subject matter jurisdiction – is not available. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388,

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[22] *Medical Ctr. at Elizabeth Place, LLC v. Premier Health Partners*,, 2017 WL 3433131, *12-16 (S.D. Ohio 2017).

394 (2006) (injunctive relief, even after a finding of liability on the merits depends on the "traditional four-factor framework.").

2. A Stay Is Needed Because the Burden of Discovery Will Be Extreme.

Antitrust discovery is notoriously broad, costly, and burdensome. As the Supreme Court warned, "[i]t is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 546 (2007). That is why courts often grant stays in antitrust cases pending motions to dismiss. *See In re Netflix Antitrust Litig.*, 506 F. Supp. 2d 308 (N.D. Cal. 2007); *DSM Desotech Inc. v. 3D Systems Corp.*, 2008 WL 4812440 (N.D. Ill. 2008).[23] Forcing NYP – and numerous third parties – into this discovery abyss before the Court determines whether plaintiffs even state a claim and have standing to assert it would be unjust.

Plaintiffs acknowledge that discovery will be extremely burdensome, which is why they now ***agree*** that all discovery should be stayed except for the "Tier 1" discovery. But as noted, their Tier 1 discovery proposal is entirely one sided and prejudicial to NYP. The better course of action is to wait the few months it will take to decide the Motion to Dismiss, and then commence discovery with both parties on equal footing.

Once discovery commences, there is no doubt it will be extraordinarily expensive. Given the prevalence of personally-identifiable health or HIPPA-protected information, linear review of vast document sets may be unavoidable, even where the documents have marginal relevance. As a result, even with the aid of machine learning, document discovery will likely cost ***tens of millions of dollars***.

Deposition discovery will also be extensive. Plaintiffs propose taking 50 depositions per side, which does not even include cross-noticed third-party depositions or potentially ***unlimited*** 30(b)(6) depositions. As discussed below, that is not only excessive, but it underscores why commencing discovery before resolving the motion to dismiss would be wasteful.

Most importantly, third-party discovery will be especially extensive. Plaintiffs try to portray NYP's contracting practices as unique, but the steering and tiering provisions in insurer contracts are commonplace. It reflects the way insurers do business. Third-party discovery of the "Big 5" insurers and other health systems will show this. Such discovery will also show NYP's utter lack of market power, and insurers' immense bargaining power.

The burdens are particularly magnified because this is putative class action, asserting claims of virtually all self-funded businesses and unions who have had any employees in New York City since the pandemic. Questions related to whether the named plaintiffs – and any of the other class members – ever even tried to override their insurers' network design choices, and if so,

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[23] *See also Palladino*, 345 F.R.D. at 274; *Hewlett Packard Enter. Co. v. Aqua Sys., Inc.*, 2024 WL 1159000 (E.D.N.Y. 2024); *Rodriguez v. Exxon Mobil Corp.*, 2025 WL 3013281, *3 (D. Kan. 2025); *Mitchell Int'l, Inc. v. HealthLift Pharmacy Servs., LLC*, 2022 WL 111126, *2-3 (D. Utah 2022); *Top Rank, Inc. v. Haymon*, 2015 WL 9952887 (C.D. Cal. 2015); *Nexstar Broad., Inc. v. Granite Broad. Corp.*, 2011 WL 4345432, *2 (N.D. Ind. 2011); *In re Graphics Processing Units Antitrust Litig.*, 2007 WL 2127577, *5 (N.D. Cal. 2007).

whether they were successful in negotiating a carve-out, will be critical. But such discovery will be burdensome. *Cf. Sharma v. Open Door NY Home Care Servs., Inc.*, 345 F.R.D. 565, 569 (E.D.N.Y. 2024) (staying discovery because of the burdens of class discovery).

These individual standing and class certification issues must be resolved in the beginning of discovery. The Rules require the Court to address class certification "[a]t an early practicable time." Fed. R. Civ. P. 23(c)(1)(A). Nor can this case settle until the Court determines whether plaintiffs have a right to seek injunctive relief—the very question on which subject-matter jurisdiction depends. Fundamentally, NYP disagrees that the Unions are entitled to ***any say*** in how NYP contracts or negotiates with insurers or patients. That issue may or may not be resolved by NYP's motion to dismiss. At the very least, it will substantially shape the scope of discovery. For that reason, discovery should be stayed.

3. Plaintiffs Cannot Show Unfair Prejudice Due to a Brief Discovery Stay.

Plaintiffs identify no prejudice from a short discovery stay. The challenged contractual provisions have been in place for decades. A brief pause while critical threshold legal issues are resolved will change nothing. All relevant evidence is being preserved; plaintiffs articulated no urgent need for discovery; they have not served discovery or sought preliminary injunctive relief; and briefing on the motion to dismiss can be completed expeditiously. That suffices for a stay. *Marrazzo v. Flagstar Fin., Inc.*, 2025 WL 2772813, *3 (E.D.N.Y. 2025) (collecting cases) ("Courts in this Circuit grant short stays that will be vacated upon resolution of a motion to dismiss and neither unnecessarily delay the action nor prejudice the plaintiffs thereby."); *see also Cohen v. Saraya USA, Inc.*, 2024 WL 198405, *3 (E.D.N.Y. 2024); *Palladino*, 345 F.R.D. at 275.

D. If a Stay Is Not Granted, Discovery Should Not Be Phased.

NYP believes that, once discovery commences, it should not be phased and should be fully bi-lateral. There is no limited universe of documents that will facilitate settlement, and any phasing of discovery will inevitably delay progression of the case.

Plaintiffs propose that "phase 1" discovery be entirely one-sided, with NYP producing the documents it has produced to the DOJ. That proposal – in which NYP is barred from taking affirmative discovery while plaintiffs' pore over NYP's documents – is inconsistent with the Federal Rules. *See* Fed. R. Civ. P. 26(d)(3) ("discovery by one party does not require any other party to delay its discovery").

Moreover, the DOJ production does not speak to the core threshold issues in this case, including whether plaintiffs have standing, whether this court has subject matter jurisdiction, and whether a class can be certified. Whether unions have any right – whatsoever – to interfere with the contractual negotiations between NYP and Insurers or patients, whether injunctive relief can be had, and whether the court has subject matter jurisdiction are all antecedent questions to issues of market power and anticompetitive effects and must be addressed once discovery begins. Those issues depend on named plaintiff discovery as much as it depends on NYP discovery.

Similarly, class certification issues will depend largely on discovery from plaintiffs. Because only plaintiffs know who their members are – and only third-parties insurers know who all the other self-funded employers and unions are – discovery concerning them, and their contracting practices with insurers will be required once discovery commences. In that regard,

Rule 23 requires that the Court address class certification "[a]t an early practicable time after a person sues." Fed. R. Civ. P. 23(c)(1)(A). Preventing NY from engaging in named plaintiff (and third-party discovery directed to class issues) is inconsistent with this requirement.

The only document – ***singular*** – that needs to be exchanged at this point is the contract between each plaintiff and Empire, and the contract between NYP and Empire. This is not typical discovery. This is a document plaintiffs have incorporated into their complaint, ***which NYP does not have, but intends to submit with its motion to dismiss.*** Because Plaintiffs' Empire Agreement is the foundation of their alleged standing and this Court's ***subject matter jurisdiction*** and is incorporated into the Complaint, it falls squarely within the narrow category of materials properly considered on a motion to dismiss. *Chambers v. Time Warner, Inc*, 282 F.3d 147, 153 (2d Cir. 2002) (district courts can "properly consider[] … documents plaintiffs had either in their possession or had knowledge of and upon which they relied in bringing suit").

NYP has repeatedly requested this contract. After initially agreeing to produce it, Cement Workers reneged on the agreement because the case was "assigned to Magistrate Judge Shields." UFCW has similarly refused to produce its Empire Agreement. But even now, they concede this is relevant and appropriate for Phase 1 discovery—they just refuse to make it available unless they get the entire DOJ production in exchange for it. That is not a reasonable position.

Since plaintiffs are willing to produce their Empire contract (and NYP has already said it would produce its Empire contract), the Court should limit the exchange of documents at this time to this agreement.[24]

E. Positions Relating to Discovery Limits.

Changes to Initial Disclosures (FRCP 26(f)(3)(A). NYP believes that initial disclosures should be held in abeyance until the start of formal discovery. Under NYP's proposal, Initial Disclosures would be due 14 days after resolution of NYP's anticipated motion to dismiss.

Subjects on Which Discovery is Expected (FRCP 26(f)(3)(B)). If the case proceeds to discovery, NYP anticipates that discovery will be needed on at least the following topics:

- Plaintiffs' negotiations and agreements with insurers.
- Plaintiffs' negotiations and agreements with their members.

[24] Plaintiffs' other two categories of phase 1 discovery are also unwarranted. Specifically, plaintiffs seek NYP's contracts with insurers that they have not done business with. But that goes to the ultimate merits of plaintiffs' claims on summary judgment, and can wait for the commencement of full discovery. Similarly, plaintiffs seek production of organization charts, which presupposes that this Court has subject matter jurisdiction. Such discovery should wait until the Court decides the motion to dismiss.

- Plaintiffs' Medical Care reimbursement and medical records for each of the Plaintiffs' members, showing reimbursement, type of service, and healthcare providers for all members in New York State, New Jersey, and Connecticut.[25]

- Plaintiffs' planning and strategy documents concerning healthcare benefits, including benefits design documents.

- Plaintiffs' documents concerning the control they exert over their members' healthcare choices, including all documents relating to plaintiffs' steering.

- Plaintiffs structured data concerning any relevant topic.

- Plaintiffs proof of (the alleged, but untrue) direct payment to NYP for its members' medical services, to the extent any such documents exist.

- Insurers negotiations and planning documents concerning any negotiations with any GAC hospital in New York State, New Jersey, or Connecticut concerning contracts.

- Insurer negotiation and planning documents with any Self-Funded Employer, Union, or Payor.

- Insurer documents concerning health benefit plans and network design.

- Insurer documents concerning steering.

- Insurer structured data concerning any relevant topic.

- NYP's documents concerning negotiations with insurers.

No Changes Needed to Default Deposition Limits. NYP believes it is premature to change the default deposition limit. If the Court believes additional depositions are needed, NYP suggests a cap of ***20 depositions per consolidated side***, with no more than 7 depositions of any party or entity permitted.[26] Cross-noticed third-party depositions should count as half a deposition per side,

[25] Plaintiffs' assertion that NYP's request for their members' purchases of services "is harassing and intimidating" is offensive. As an initial matter, NYP is seeking statistics and data from the Unions about what their members purchased and they reimbursed, not "doctors notes." And, who their members are, what services they purchased, and what alternative hospitals they used is information within the plaintiff union's exclusive control. In any event, any limits on such discovery can be discussed during the meet and confer process.

[26] Plaintiffs' claim that the proposed limit of seven depositions per entity is "clearly intended to restrict access to relevant witnesses." Not so. It is designed to manage burden. It is also far more generous than the default deposition limit, which limits the *cumulative* number of depositions a party can take (across all parties and third-parties) to just 10. Plaintiffs have not shown why they need more than seven witnesses. If plaintiffs discover that there are more the seven important

and each seven hours of a 30(b)(6) deposition should count as a single deposition. Twenty depositions per side is more than sufficient.

Plaintiffs' proposed deposition limit of 50 depositions per side, ***excluding virtually unlimited 30(b)(6) depositions and cross-noticed depositions*** is excessive.[27] Indeed, even the cases Plaintiffs cite, many of which involve industry-wide conspiracy allegations against numerous defendants, do not allow for such a high number of depositions. Plaintiffs have presented no information relating to the nature of this case or the parties – other than the mere fact that it is a putative class action – that would warrant such an excessive number of depositions. This is not enough to carry their burden to expand discovery at this initial stage. *Walsh v. Versa Cret Contracting Co.*, 2022 WL 17540352, *2 (E.D.N.Y. 2022) ("The party seeking … more depositions must make a particularized showing") (quoting *Scanlon v. Potter*, 2006 WL 1207748, *1 (D. Vt. 2006)); *Saeed v. TTI Consumer Power Tools, Inc.*, 348 F.R.D. 83, 86 (E.D. Mich. 2024) ("conclusory claims that the litigation is complex" does not justify modification of discovery limits.).

This is a single defendant case, with just two named plaintiffs. There are only five large insurers in New York State, and only one insurer – Empire – sitting between NYP and Plaintiffs.[28] Nor are the issues particularly complicated. Plaintiffs do not allege any "secret" conspiracy, but rather they challenge two specific contractual provisions: The first concerning insurers' decision to steer (or not steer) their members to particular hospitals, and the second concerning alleged bundling of services that NYP offers. These provisions are in centrally negotiated contracts between NYP and the five respective insurers, and most of these provisions have been essentially unchanged for decades. Little discovery will be needed on these issues. Issues relating to NYP's

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witnesses involved in the contracting process for any entity, they can always ask for more at that time.

[27] Plaintiffs only limit on 30(b)(6) depositions is that each *designee* would only testify for seven hours. But there is no limit on the number of topics or issues, or on the number of designees it may take to satisfy any such requests. So, plaintiffs' per-designee limit is effectively no limit at all.

[28] Plaintiffs rely largely on cases involving industry-wide conspiracy allegations against many defendants, not single-firm conduct essentially complaining about contracts with just five *non-party* insurers. *See In re Broiler Chicken Antitrust Litig.,* 2020 WL 4349889 (N.D. Ill. 2020) (suit against virtually the entire chicken industry, including ***22*** defendants, direct and indirect purchaser classes, and ***179*** opt-out plaintiffs); *In re Lithium Ion Batteries Antitrust Litig*., 2015 WL 1221924 (N.D. Cal. 2015) (conspiracy claims against 38 defendants); *In re Air Cargo Shipping Servs. Antitrust Litig.*, 931 F. Supp. 2d 458 (E.D.N.Y. 2013) (MDL consolidating 73 actions against 43 defendants); *In re Nat'l Football Leagues Sunday Ticket Antitrust Litig.*, 2022 WL 1766929 (C.D. Cal. 2022) (suit against 32 teams, the NFL, and DirecTV); *In re Local TV Advert. Antitrust Litig.*, 18-cv-06785, ECF 844 (N.D. Ill. 2022) (17 corporate defendants alleged to control 642 television stations); *In re Niaspan Antitrust Litig.*, 13-md-02460, ECF 44, ¶¶ 18-26 (E.D. Pa. 2014) (7 named defendants and 2 unnamed co-conspirators). *In re Payment Card Interchange Fee and Merchant Antitrust Litig.*, 2019 WL 6888488 (E.D.N.Y. 2019), is inapposite. It concerned the vast bulk of commercial transactions in America over an extended period, with a class of over twelve million merchants and 73 separate lawsuits.

(insufficiently alleged) market power also will not require much deposition testimony, since it is largely a data question and will be the subject of expert testimony.

Similarly, while there are a large number of self-insured employers and union funds none are alleged to have negotiated directly with NYP, and – with the exception of one (SEIU 32BJ), which did negotiate with its insurer to exclude itself from NYP – none are alleged to have even sought to exclude NYP or any of its facilities from their insurer contracts. As such, there won't be a need for a large number of putative class member depositions.

No Changes Needed to Interrogatory Limits, but a Deadline Should Be Set for Contention Interrogatories. NYP does not believe the interrogatory limit needs to be adjusted at this time. NYP, however, believes that the Court should set an interim deadline for the parties to respond to any initial contention interrogatories to facilitate the shape of the remaining discovery period. Specifically, the parties should be required to respond to any validly served contention interrogatories two months after substantial compliance with document discovery. These responses would then be subject to the usual obligations to supplement responses pursuant to Rule 26(e) if further discovery shows that the initial responses were, despite the good faith of the parties, incomplete or erroneous. This is consistent with the EDNY Local Rules, which do not restrict the type or timing of interrogatory practice and note that the "practice in the Eastern District is more receptive to the use of interrogatories" than the Southern District. *See Joint SDNY/EDNY Local Rules*, *Rule 33.3 Pre-2024 Comm. Note*.

F. NYP's Proposed Schedule

NYP presents its proposed schedule in Exhibit 3.[29] NYP believes that its proposed schedule is more appropriate than plaintiffs' schedule for several reasons.

The Court Should Order Consolidated Pleadings. Plaintiffs now agree that the Court should consolidate the two cases, that plaintiffs should file a Consolidated Amended Complaint, and that the response to such complaint should be deferred until after it is filed.[30]

Plaintiffs only request that the deadline for filing a consolidated complaint be deferred until after the Court rules on their anticipated — but not yet filed — motion for appointment as interim class counsel. But the motion to dismiss does not depend on whether this case proceeds as a class or not. Nor does Rule 42, concerning consolidation of cases, depend on appointment of interim counsel. As NYP has previously explained (*UFCW* ECF 23), it is premature and unnecessary to appoint interim class counsel at this time. But even if it were not, plaintiffs offer no reasons why

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[29] Though NYP believes the Exhibit 3 should govern, NYP also attaches as Exhibit 4 a completed Discovery Worksheet per Appendix B to Your Honor's Individual Practices.

[30] For reasons set forth in *UFCW* ECF 23, NYP objects to any order that automatically consolidates any future filed case. Such an order constitutes an advisory order concerning hypothetical filings. NYP is concerned that any such order would unfairly give counsel for UFCW and Cement Workers a first mover advantage that would deter counsel for other plaintiffs from offering to handle the case at lower contingency rate. Contrary to plaintiffs' contention, as the ultimate payor of such rates, NYP has standing under Fed. R. Civ. P. 23(h)(2).

they can't file a Consolidated Amended Complaint now, given that the two induvial complaints are already virtually identical. Their refusal to do so just causes unnecessary delay.

The Court Should Enter NYP's Proposed Briefing Schedule for Its Anticipated Motion to Dismiss. As set forth in *UFCW* ECF 23, NYP believes the Court should adopt a straightforward scheduling order with the following deadlines:

1. ***21 Days After Consolidation***: Plaintiffs file an Amended Consolidated Complaint.

2. ***30 Days After Filing the Amended Consolidated Complaint***: NYP shall serve, but not file, its Motion to Dismiss of no more than 35 pages.

3. ***30 Days After Motion to Dismiss***: Plaintiffs shall serve, but not file, any Opposition to NYP's Motion to Dismiss of no more than 35 pages, or an amended complaint.

4. ***25 Days After Opposition***: NYP shall serve any Reply in support of its Motion to Dismiss of no more than 20 pages, and shall file all motion papers on the docket.

The Court Should Set a Single 9-Month Fact Discovery Period. The Court should set a reasonable ***9-month*** fact discovery schedule. If discovery is stayed pending resolution of the motion to dismiss, the parties will have plenty of time to work through issues relating to the Protective Order, and can make preparations for serving and responding to discovery. That would leave a full nine months to complete document production and take depositions, which should be plenty. If that is not enough, the parties can then seek additional time if good cause exists for either a general extension or a limited carve-out from the deadline.

Plaintiffs' request for a 16 ½-month fact discovery period is the definition of overreaching. Again, this is a single defendant case, with just two named plaintiffs, litigating a couple of straight-forward contractual provisions. There is no reason why it would take 16 ½ months to discover facts relating to these issues.

The Court Should Separate Class and Merits Expert Discovery. The Court should separate class certification expert discovery from merits discovery. Plaintiffs' proposal already concedes that the Court must decide class certification issues first, and has proposed a staged schedule for class and merits motion practice. But expert reports should be similarly staged.

Plaintiff-side class certification experts in antitrust cases generally *assume* liability, with the focus of the reports, *Daubert* motions, and class briefing being on whether the Rule 23 factors, such as predominance, have been met. That is vastly different from the summary judgment phase where such assumptions are improper, and the focus is on the elements of the actual claims. It is simply unmanageable to address all these issues at once. Moreover, the Court's determination on class certification can greatly inform the scope of – and perhaps even eliminate the need for – merits expert testimony. As such, efficiency counsels in favor of separate class and merits expert discovery periods.

If the Court were to collapse all expert discovery periods into a single period, then NYP would need substantially more time to prepare responsive reports and to depose plaintiffs' experts. As set forth next, NYP believes that it should have at least 7 hours of deposition *per expert report*

to depose plaintiffs' experts given the importance of expert testimony in this case.[31] If class and merits expert discovery were compressed into a single period, it would need at least double that, so half the time could be focused on class issues and the other half focused on merits issues. This would obviate almost any savings that could be gleaned from turning the expert discovery period into a Frankenstein's Monster mishmash.

The Court Should Ensure that NYP Has Adequate Time to Prepare Rebuttal Expert Reports. NYP believes that it should have 60 days after plaintiffs serve their expert reports and all back-up data and materials the expert considered.

Under plaintiffs' proposal they will have ***nine months*** after production of the data (eight months of the fact discovery period, plus an extra 31 days) to prepare their opening expert reports. During this entire time, they get to conceal all of their expert work. NYP would then have just 45 days to prepare rebuttal reports. That is insufficient, and prejudicial.

Expert reports in antitrust cases are highly data intensive, and regressions are subject to significant manipulation. As Mark Twain has observed, the three great lies are statistics, statistics, and damned statistics. It takes time to reconstruct what plaintiffs' experts have done, run alternative variations, and find the hidden assumptions and skeletons in those reports. This is made even more difficult if there are any limits on discovering an expert's work product, including efforts to shield work through the use of consulting experts. Because NYP's experts will have to do everything from scratch, we need adequate time to ensure that the expert testimony in this case is reliable.

The Court Should Allow Adequate Expert Deposition Time. As just noted, class certification will likely heavily focus on expert testimony. Indeed, experts are typically the only witnesses that testify at class certification hearings in antitrust cases. Given this importance, and the highly technical nature of the reports and the difficulties of cross-examining witnesses on such highly technical regression and statistical analyses, NYP believes that it should have an opportunity to depose plaintiffs' experts after each report, and should have 7 hours of deposition time for each 100 pages of expert reports (including any appendices that plaintiffs' experts seek to rely upon).[32]

In their portion of the letter, plaintiffs resort to unfounded accusations that seeking adequate deposition would "harass Plaintiffs' experts." But there is no reason why plaintiffs can't make their expert economists available for additional time. These experts are *professional* witnesses compensated for their time. It is not harassing for them to do the job they are paid to do. Indeed, under the Federal Rules the party *seeking* the deposition must pay for the expert's deposition time. *See* Fed. R. Civ. P. 26(b)(4)(E) ("the court must require that the party seeking

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[31] In fact, NYP believes that even 7 hours may not be sufficient; and thus, reserves its right to seek ***two days*** of deposition testimony for any expert report that exceeds 100 pages.

[32] Plaintiffs now offer just 3 extra hours for if an expert report exceeds 100 pages. So defendants would have the same amount of time to depose an expert that submits a report that is 101 pages as an expert that submits 1,000 page report. That is not reasonable, especially if the expert report covers both class and merits issues. NYP should not have to forego thoroughly examining an expert about class issues to superficially cover merits issues, or vice versa.

discovery … pay the expert a reasonable fee for time spent in responding to discovery."). So, plaintiffs are not even out of pocket.

And, in any event, NYP's proposal is mutual. NYP will likely have the same number of experts as plaintiffs; it will also make its witnesses available for 7 hours for each 100 pages of any report it delivers; and its experts are likely to have to sit for multiple depositions because class and merits expert discovery will be split.

The Court Should Set Post-Class Certification Deadlines after a Ruling on Class Certification. NYP believes it is premature to set a schedule for merits expert discovery or summary judgment motion practice prior to resolution of Class Certification. Similarly, NYP believes it is premature to set a trial date prior to resolution of Class Certification.

G. Proposed Date for the Next Status Report and conference.

NYP disagrees that further briefing and another status conference is needed to discuss phased discovery. The parties have set forth their position in substantial detail in this letter, and any questions can be addressed at the January 12th status conference.

NYP believes that the Court should schedule the next status conference (after the January 12th Status Conference) 30 days after the earlier of (i) resolution of the motion to dismiss, or (ii) commencement of full discovery. Per Your Honor's Individual Rules, the next joint status report should be due two days (or earlier) prior to that conference.

Dated: January 7, 2026

Respectfully submitted,

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EXHIBIT 1

Exhibit 1

Proposed Initial Scheduling Order

UFCW Local 1500 Welfare Fund v. The New York & Presbyterian Hosp.,
No. 25-cv-5023 (E.D.N.Y.)
Cement and Concrete Workers DC Benefit Fund v. The New York & Presbyterian Hosp.,
No. 25-cv-5571 (E.D.N.Y.)

Event	Plaintiff Proposal	Defendant Proposal
Initial Joint Conference	January 12, 2026	See Exhibit 2
Completion of Tier I Discovery[1]	March 13, 2026 (*60 days from conference*)	See Exhibit 2
Leadership Motions Due	30 days after Court rules on pending Motions for Consolidation	See Exhibit 2
Consolidated Amended Complaint	21 days after Court rules on Leadership Motions (Time "Y")	See Exhibit 2
Motion to Dismiss	Y + 51 days	See Exhibit 2
Opposition to Motion to Dismiss	Y + 81 days	See Exhibit 2
Reply ISO Motion to Dismiss	Y + 106 days	See Exhibit 2
Decision on Motion to Dismiss (Time "T")	T+0	See Exhibit 2
Rule 26(a)(1) initial disclosures	T + 14 days	See Exhibit 2
Join New Parties or Amend Pleadings	T + 30 days	See Exhibit 2
Fact Discovery Substantial Completion	T + 6 months	See Exhibit 2
Fact Discovery Deadline	T + 14 months	See Exhibit 2
Experts: Opening Reports	T + 15 months	See Exhibit 2
Experts: Rebuttal Reports	T + 16.5 months	See Exhibit 2
Experts: Reply Reports	T + 18 months	See Exhibit 2
Expert Discovery Deadline	T + 19.5 months	See Exhibit 2
Class Cert & related *Daubert* Opening Briefs	T + 21.5 months	See Exhibit 2
Class Cert & related *Daubert* Opp'n Briefs	T + 22.5 months	See Exhibit 2
Class-related *Daubert* Replies	T + 23.5 months	See Exhibit 2
Class Cert Reply	T + 24 months	See Exhibit 2
Summary Judgment & related *Daubert* Opening Briefs[2]	T + 26.5 months	See Exhibit 2
Summary Judgment & related *Daubert* Opp'n Briefs	T + 27.5 months	See Exhibit 2

[1] *See* M.J. Shields Indiv. Practices VII.B.1 (describing "Tier One Discovery in General"); Appx. G ¶ 7.

[2] If any party files an early summary judgment or *Daubert* motion, the opposition shall be due 30 days after the opening brief and the reply shall be due 21 days after the opposition.

Event	Plaintiff Proposal	Defendant Proposal
Summary Judgment & related *Daubert* Reply Briefs	T + 28.5 months	See Exhibit 2
PTO	TBD	See Exhibit 2
Trial Date	TBD	See Exhibit 2

EXHIBIT 2

APPENDIX B

DISCOVERY PLAN WORKSHEET

Tier I Pre-Settlement Discovery
TO BE COMPLETED IN ALL CASES

Deadline for completion of Rule 26(a) initial disclosures and HIPAA-complaint records authorizations:	14 days after a decision on the motion to dismiss.
Completion date for Phase I Discovery as agreed upon by the parties: (*See paragraph 7 of joint letter requirement)*	March 13, 2026
Status conference TBD by the court: (*Generally 15 days post Tier I Discovery*)	TBD

Tier II Discovery and Motion Practice

Motion to join new parties or amend the pleadings: *(Presumptively 15 days post status conference)*	30 days after a decision on the motion to dismiss.
All fact discovery completed by: *(Presumptively 9 months after deadline for joining parties/amend the pleadings)*	14 months after a decision on the motion to dismiss.
Expert discovery completed by: *(Presumptively 3 months after close of fact discovery)*	19.5 months after a decision on the motion to dismiss.
Final date to take first step in dispositive motion practice: *(Parties are directed to consult the District Judge's individual rules regarding such motion practice. (Presumptively 30 days after close of discovery)*	26.5 months after a decision on the motion to dismiss
Joint Proposed Pretrial Order to be submitted: (*30 days after dispositive motion practice deadline*)	TBD

EXHIBIT 3

EXHIBIT 2
NYP's Proposed Schedule

Event	***Deadline***	***Incremental Time From Start of Fact Discovery***
Plaintiffs File Amended Consolidated Complaint	January 30, 2026	
Motion to Dismiss	Opening Brief: March 1, 2026 Opposition Brief: April 3, 2026 Reply Brief: April 27, 2026	
Start of Fact Discovery	Motion to Dismiss Decision ("T")	T+0
Rule 26(a)(1) Initial Disclosures	14 days after start of discovery	T+14 days
Substantial Completion of Documents Responsive to 1st RFPs	150 Days After Start of Fact Discovery	T+6 months
Response to 1st Set of Contention Interrogatories	60 Days After Substantial Completion	T+8 months
Close of Fact Discovery	9 Months After Start of Fact Discovery	T+9 months
Class Expert Discovery	Opening Reports: 30 days after discovery Rebuttal Reports: 60 After Opening Reports Reply Reports: 30 Days after Rebuttal Reports. Close of Class Expert Discovery: 60 days after Reply Reports	T+10 months T+12 months T+13 months T+15 months
Class Cert Motions/ Class Daubert Motions	Plaintiffs' Class and *Daubert* Motions: 30 Days After Expert Discovery Defendants' Oppositions and *Daubert* Motions: 60 Days Later Plaintiffs' Replies and Oppositions to Defendants' *Daubert* Motions: 60 Days Later Replies to Defendants' *Daubert* Motions: 30 Days Later	T+16 months T+18 months T+20 months T+21 months

Event	***Deadline***	***Incremental Time From Start of Fact Discovery***
Class Related Hearing	60 Days after Completion of Class-Related Briefing	T+23 months
Merits Expert Discovery	Opening Reports: 30 days after Class Certification Decision Rebuttal Reports: 60 After Opening Reports Reply Reports: 30 Days after Rebuttal Reports Close of Merits Expert Discovery: 60 days after Reply Reports	T+26 months[1] T+28 months T+29 months T+31 months
Summary Judgment	Opening Brief: 30 Days After Merits Expert Discovery Opposition Brief: 60 Days Later Reply Brief: 30 Days Later	T+32 months T+34 months T+35 months
Pre-Trial Conference	TBD	TBD
Trial	TBD	TBD

[1] This assumes two months following the class hearing for a decision on class certification.

EXHIBIT 4

APPENDIX B

DISCOVERY PLAN WORKSHEET

Tier I Pre-Settlement Discovery
TO BE COMPLETED IN ALL CASES

Deadline for completion of Rule 26(a) initial disclosures and HIPAA-complaint records authorizations:	14 days post-discovery start
Completion date for Phase I Discovery as agreed upon by the parties: (*See paragraph 7 of joint letter requirement)*	March 9, 2026
Status conference TBD by the court: (*Generally 15 days post Tier I Discovery*)	March 26, 2026

Tier II Discovery and Motion Practice

Motion to join new parties or amend the pleadings: *(Presumptively 15 days post status conference)*	April 9, 2026
All fact discovery completed by: *(Presumptively 9 months after deadline for joining parties/amend the pleadings)*	MTD Decision + 9 months
Expert discovery completed by: *(Presumptively 3 months after close of fact discovery)*	MTD Decision + 14 months
Final date to take first step in dispositive motion practice: *(Parties are directed to consult the District Judge's individual rules regarding such motion practice. (Presumptively 30 days after close of discovery)*	Class Certification Briefing + 60 days
Joint Proposed Pretrial Order to be submitted: (*30 days after dispositive motion practice deadline*)	MSJ Decision + 60 days