

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

1. SEE NOTICE ON REVERSE

2. PLEASE TYPE OR PRINT

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Case Caption: Long Island Anesthesiologists PLLC v. UnitedHealthcare Insurance Company of New York, Inc.	District Court or Agency: Eastern District New York	Judge: Hector Gonzalez
	Date the Order or Judgment Appealed from was Entered on the Docket: April 8, 2025	District Court Docket No.: 2:22-cv-04040-HG
	Date the Notice of Appeal was Filed: May 5, 2025	Is this a Cross Appeal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

<b>Attorney(s) for Appellant(s):</b> <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	Counsel's Name: Roy W. Breitenbach, Harris Beach Murtha Cullina PLLC, 333 Earle Ovington Boulevard, Suite 901, Uniondale, NY 11553; (516) 880-8378 (tel); (516) 880-8483 (fax); rbreitenbach@harrisbeachmurtha.com	Address:	Telephone No.:	Fax No.:	E-mail:

<b>Attorney(s) for Appellee(s):</b> <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant	Counsel's Name: Brian D. Boone, Alston & Bird LLP, 1120 South Tryon Street, Charlotte, NC 28203, (704) 444-1106; brian.boone@alston.com (attorney for UnitedHealthcare) Errol J. King, Jr., Phelps Dunbar LLP, 400 Convention Street, Baton Rouge, LA 70802; (225) 346-0285; errol.king@phelps.com (attorney for MultiPlan)	Address:	Telephone No.:	Fax No.:	E-mail:

Has Transcript Been Prepared? N/A	Approx. Number of Transcript Pages: N/A	Number of Exhibits Appended to Transcript: N/A	Has this matter been before this Circuit previously? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide the following: Case Name: 2d Cir. Docket No.:                      Reporter Citation: (i.e., F.3d or Fed. App.)
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**ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; (3) A COPY OF THE NOTICE OF APPEAL AND A CURRENT COPY OF THE LOWER COURT DOCKET SHEET; AND (4) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS APPEAL, INCLUDING TRANSCRIPTS OF ORDERS ISSUED FROM THE BENCH OR IN CHAMBERS.**

**ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM A LIST OF THE ISSUES PROPOSED TO BE RAISED ON APPEAL, AS WELL AS THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.**

**PART A: JURISDICTION**

1. <u>Federal Jurisdiction</u>		2. <u>Appellate Jurisdiction</u>	
<input type="checkbox"/> U.S. a party	<input type="checkbox"/> Diversity	<input checked="" type="checkbox"/> Final Decision	<input type="checkbox"/> Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b))
<input checked="" type="checkbox"/> Federal question (U.S. not a party)	<input type="checkbox"/> Other (specify): _____	<input type="checkbox"/> Interlocutory Decision Appealable As of Right	<input type="checkbox"/> Other (specify): _____

**IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.**

<b>PART B: DISTRICT COURT DISPOSITION (Check as many as apply)</b>							
<b>1. Stage of Proceedings</b> <input checked="" type="checkbox"/> Pre-trial <input type="checkbox"/> During trial <input type="checkbox"/> After trial	<b>2. Type of Judgment/Order Appealed</b> <table style="width:100%; border: none;"> <tr> <td style="width: 33%; border: none; vertical-align: top;"> <input type="checkbox"/> Default judgment  <input type="checkbox"/> Dismissal/FRCP 12(b)(1) lack of subject matter juris.  <input checked="" type="checkbox"/> Dismissal/FRCP 12(b)(6) failure to state a claim  <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint  <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) other dismissal                 </td> <td style="width: 33%; border: none; vertical-align: top;"> <input type="checkbox"/> Dismissal/other jurisdiction  <input type="checkbox"/> Dismissal/merit  <input type="checkbox"/> Judgment / Decision of the Court  <input type="checkbox"/> Summary judgment  <input type="checkbox"/> Declaratory judgment  <input type="checkbox"/> Jury verdict  <input type="checkbox"/> Judgment NOV  <input type="checkbox"/> Directed verdict  <input type="checkbox"/> Other (specify): _____                 </td> <td style="width: 33%; border: none;"></td> </tr> </table>	<input type="checkbox"/> Default judgment <input type="checkbox"/> Dismissal/FRCP 12(b)(1) lack of subject matter juris. <input checked="" type="checkbox"/> Dismissal/FRCP 12(b)(6) failure to state a claim <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) other dismissal	<input type="checkbox"/> Dismissal/other jurisdiction <input type="checkbox"/> Dismissal/merit <input type="checkbox"/> Judgment / Decision of the Court <input type="checkbox"/> Summary judgment <input type="checkbox"/> Declaratory judgment <input type="checkbox"/> Jury verdict <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Directed verdict <input type="checkbox"/> Other (specify): _____		<b>3. Relief</b> <table style="width:100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> <input checked="" type="checkbox"/> Damages:  <input checked="" type="checkbox"/> Sought: \$ <u>TBD</u>  <input type="checkbox"/> Granted: \$ _____  <input type="checkbox"/> Denied: \$ _____                 </td> <td style="width: 50%; border: none; vertical-align: top;"> <input type="checkbox"/> Injunctions:  <input type="checkbox"/> Preliminary  <input type="checkbox"/> Permanent  <input type="checkbox"/> Denied                 </td> </tr> </table>	<input checked="" type="checkbox"/> Damages: <input checked="" type="checkbox"/> Sought: \$ <u>TBD</u> <input type="checkbox"/> Granted: \$ _____ <input type="checkbox"/> Denied: \$ _____	<input type="checkbox"/> Injunctions: <input type="checkbox"/> Preliminary <input type="checkbox"/> Permanent <input type="checkbox"/> Denied
<input type="checkbox"/> Default judgment <input type="checkbox"/> Dismissal/FRCP 12(b)(1) lack of subject matter juris. <input checked="" type="checkbox"/> Dismissal/FRCP 12(b)(6) failure to state a claim <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) other dismissal	<input type="checkbox"/> Dismissal/other jurisdiction <input type="checkbox"/> Dismissal/merit <input type="checkbox"/> Judgment / Decision of the Court <input type="checkbox"/> Summary judgment <input type="checkbox"/> Declaratory judgment <input type="checkbox"/> Jury verdict <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Directed verdict <input type="checkbox"/> Other (specify): _____						
<input checked="" type="checkbox"/> Damages: <input checked="" type="checkbox"/> Sought: \$ <u>TBD</u> <input type="checkbox"/> Granted: \$ _____ <input type="checkbox"/> Denied: \$ _____	<input type="checkbox"/> Injunctions: <input type="checkbox"/> Preliminary <input type="checkbox"/> Permanent <input type="checkbox"/> Denied						

<b>PART C: NATURE OF SUIT (Check as many as apply)</b>			
<b>1. Federal Statutes</b> <input checked="" type="checkbox"/> Antitrust <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Banks/Banking <input type="checkbox"/> Civil Rights <input type="checkbox"/> Commerce <input type="checkbox"/> Energy <input type="checkbox"/> Commodities <input type="checkbox"/> Other (specify): _____	<input type="checkbox"/> Communications <input type="checkbox"/> Consumer Protection <input type="checkbox"/> Copyright <input type="checkbox"/> Patent <input type="checkbox"/> Trademark <input type="checkbox"/> Election <input type="checkbox"/> Soc. Security <input type="checkbox"/> Environmental	<input type="checkbox"/> Freedom of Information Act <input type="checkbox"/> Immigration <input type="checkbox"/> Labor <input type="checkbox"/> OSHA <input type="checkbox"/> Securities <input type="checkbox"/> Tax	<b>2. Torts</b> <input type="checkbox"/> Admiralty/ Maritime <input type="checkbox"/> Assault / Defamation <input type="checkbox"/> FELA <input type="checkbox"/> Products Liability <input checked="" type="checkbox"/> Other (Specify): _____
<b>3. Contracts</b> <input type="checkbox"/> Admiralty/ Maritime <input type="checkbox"/> Arbitration <input type="checkbox"/> Commercial <input type="checkbox"/> Employment <input type="checkbox"/> Insurance <input type="checkbox"/> Negotiable Instruments <input type="checkbox"/> Other Specify	<b>4. Prisoner Petitions</b> <input type="checkbox"/> Civil Rights <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Mandamus <input type="checkbox"/> Parole <input type="checkbox"/> Vacate Sentence <input type="checkbox"/> Other	<b>5. Other</b> <input type="checkbox"/> Hague Int'l Child Custody Conv. <input type="checkbox"/> Forfeiture/Penalty <input type="checkbox"/> Real Property <input type="checkbox"/> Treaty (specify): _____ <input type="checkbox"/> Other (specify): _____	<b>6. General</b> <input type="checkbox"/> Arbitration <input type="checkbox"/> Attorney Disqualification <input type="checkbox"/> Class Action <input type="checkbox"/> Counsel Fees <input type="checkbox"/> Shareholder Derivative <input type="checkbox"/> Transfer
<b>7. Will appeal raise constitutional issue(s)?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No  Will appeal raise a matter of first impression? <input type="checkbox"/> Yes <input type="checkbox"/> No			

1. Is any matter relative to this appeal still pending below? <input type="checkbox"/> Yes, specify: _____ <input checked="" type="checkbox"/> No			
2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:			
(A) Arises from substantially the same case or controversy as this appeal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(B) Involves an issue that is substantially similar or related to an issue in this appeal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If yes, state whether <input type="checkbox"/> "A," or <input type="checkbox"/> "B," or <input type="checkbox"/> both are applicable, and provide in the spaces below the following information on the <i>other</i> action(s):			
Case Name:	Docket No.	Citation:	Court or Agency:
Name of Appellant:			
Date: <b>May 19, 2025</b>	Signature of Counsel of Record: 		

### NOTICE TO COUNSEL

**Once you have filed your Notice of Appeal with the District Court or the Tax Court, you have only 14 days in which to complete the following important steps:**

1. Complete this Civil Appeal Pre-Argument Statement (Form C); serve it upon all parties, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Second Circuit in accordance with LR 25.1.
3. Pay the \$505 docketing fee to the United States District Court or the \$500 docketing fee to the United States Tax Court unless you are authorized to prosecute the appeal without payment.

**PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 DAYS, YOUR APPEAL WILL BE DISMISSED. SEE LOCAL RULE 12.1.**

**ADDENDUM “A”**

**Long Island Anesthesiologists PLLC v. UnitedHealthcare Insurance Company of New York, Inc.**

**Docket No. 25-1167**

**Nature of Action**

This lawsuit concerns access to high-quality anesthesia services for NY metropolitan area residents. Defendant-Appellee UnitedHealthcare Insurance Company of New York (“United”) is one of the largest healthcare payers in the NY metropolitan area and is the administrator of the Empire Plan, the health plan for over 1.2 million public-sector employees. United, with the assistance of Defendant-Appellee MultiPlan Inc. (“MPI”), has used its market power to force out-of-network anesthesia practices in the NY metropolitan area to accept dramatically lowered Empire Plan reimbursement rates for their medically necessary services. These cuts have totaled more than 80% starting January 2022.

Defendants-Appellees’ actions have had, and will continue to have, significantly adverse economic effects on the hospital-based out-of-network anesthesia providers in the NY metropolitan area, including Plaintiff-Appellant, Long Island Anesthesiologists PLLC (“LIA”). Anesthesiologists cannot choose their patients and cannot turn away patients because of their health coverage or other issues. Given the number of public employees in the NY metropolitan area, anesthesia providers are at the mercy of United. For LIA, and many other area anesthesia practices, approximately 40% of their revenue comes from the Empire Plan.

Thus, during a time of significant economic upheaval and inflation, vitally essential anesthesia providers are suffering an unsustainable and unending 80+% reimbursement cut. This has decreased, and will continue to decrease, the availability of high-quality anesthesia services in the NY metropolitan area; many providers will be forced out of business entirely, and others will be forced to significantly curtail their services and recruitment and retention of well-trained clinicians.

Given the above, LIA commenced this lawsuit in July 2022 asserting claims against United and MPI for violations of Sherman Act § 1 and the New York Donnelly Act. It also asserts claims against United for monopsony and attempted monopsony in violation of Sherman Act § 2, and unjust enrichment.

**Result Below**

By Order entered November 21, 2023, the District Court, Eastern District of New York (Gonzalez, J.) granted Defendants-Appellees’ Fed. R. Civ. P. 12(b)(6) motion to dismiss the original complaint (EDNY ECF 50).

Thereafter, the District Court, by Order entered May 15, 2024, granted LIA leave to file an amended complaint. LIA filed this amended complaint on May 28, 2024 (EDNY ECF 58). The

amended complaint asserts claims against Defendants-Appellees for violations of Sherman Act § 1 and the New York Donnelly Act. It also asserts claims against United for monopsony and attempted monopsony in violation of Sherman Act § 2, and unjust enrichment. Defendants-Appellees moved to dismiss the amended complaint in July 2024 (EDNY ECF 61, 62).

By Decision & Order entered April 7, 2025 (EDNY ECF 69), the District Court, Eastern District of New York (Gonzalez, J.), granted with prejudice Defendants-Appellees' motions to dismiss the Sherman Act and Donnelly Act claims asserted in the amended complaint by Plaintiff-Appellant. The Court also denied Plaintiff-Appellant's application for leave to serve a second amended complaint. Finally, the Court declined to exercise supplemental jurisdiction over Plaintiff-Appellant's unjust enrichment claim.

The District Court, Eastern District of New York, entered Judgment dismissing the case (with prejudice as to the Sherman Act and Donnelly Act claims and without prejudice as to the unjust enrichment claims) on April 8, 2025 (EDNY ECF 70).

Plaintiff-Appellant filed its Notice of Appeal from the Judgment on May 5, 2025 (EDNY ECF 71).

**ADDENDUM “B”**

**Long Island Anesthesiologists PLLC v. UnitedHealthcare Insurance Company of New York, Inc.**

**Docket No. 25-1167**

**List of Issues Proposed To Be Raised On Appeal**

- Whether the District Court properly found in its April 7, 2025 Order that Plaintiff-Appellant, in its amended complaint, failed to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6), with respect to its Sherman Act § 1 claim (15 U.S.C. § 1)? The standard of review is *de novo*. See *Hernandez v. United States*, 939 F.3d 191 (2d Cir. 2019).
- Whether the District Court properly found in its April 7, 2025 Order that Plaintiff-Appellant, in its amended complaint, failed to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6), with respect to its Sherman Act § 2 claims (15 U.S.C. § 2)? The standard of review is *de novo*. See *Hernandez v. United States*, 939 F.3d 191 (2d Cir. 2019).
- Whether the District Court properly found in its April 7, 2025 Order that Plaintiff-Appellant, in its amended complaint, failed to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6), with respect to its New York Donnelly Act claim (N.Y. Gen. Bus. Law § 340)? The standard of review is *de novo*. See *Hernandez v. United States*, 939 F.3d 191 (2d Cir. 2019).
- Whether the District Court properly exercised its discretion when, in its April 7, 2025 Order, it dismissed Plaintiff-Appellants’ Sherman Act and Donnelly Act claims with prejudice and without leave to replead? The standard of review is abuse of discretion. See *Kassner v. 2<sup>nd</sup> Ave. Delicatessen*, 496 F.3d 229 (2d Cir. 2007).

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
LONG ISLAND ANESTHESIOLOGISTS PLLC, , :

Plaintiff, :

vs. :

Case No. 22-cv-04040-HG

**NOTICE OF APPEAL**

UNITEDHEALTHCARE INSURANCE :  
COMPANY OF NEW YORK INC., as Program :  
Administrator, THE EMPIRE PLAN :  
MEDICAL/SURGICAL PROGRAM and :  
MULTIPLAN, INC., :

Defendants. :

----- X

**PLEASE TAKE NOTICE** that the Plaintiff, Long Island Anesthesiologists, PLLC., by its attorneys, Harris Beach Murtha Cullina PLLC, hereby appeals in accordance with Fed. R. App. P. 4 to the United States Court of Appeals for the Second Circuit, from the attached Judgment of this Court, filed April 8, 2025 (Dkt 70), and from each and every part thereof.

Dated: Uniondale, New York  
May 2, 2025

HARRIS BEACH MURTHA CULLINA,  
PLLC  
*Attorneys for Plaintiffs*

By: \_\_\_\_\_   
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**To:** [nobody@nyed.uscourts.gov](mailto:nobody@nyed.uscourts.gov)  
**Subject:** Activity in Case 2:22-cv-04040-HG Long Island Anesthesiologists PLLC v. United Healthcare Insurance Company of New York Inc. et al Electronic Index to Record on Appeal  
**Date:** Monday, May 5, 2025 10:14:11 AM

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**U.S. District Court**

**Eastern District of New York**

**Notice of Electronic Filing**

The following transaction was entered on 5/5/2025 at 10:13 AM EDT and filed on 5/5/2025

**Case Name:** Long Island Anesthesiologists PLLC v. United Healthcare Insurance Company of New York Inc. et al

**Case Number:** [2:22-cv-04040-HG](#)

**Filer:**

**WARNING: CASE CLOSED on 04/08/2025**

**Document Number:** No document attached

**Docket Text:**

**Electronic Index to Record on Appeal sent to US Court of Appeals. [71] Notice of Appeal Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (VJ)**

**2:22-cv-04040-HG Notice has been electronically mailed to:**

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**2:22-cv-04040-HG Notice will not be electronically mailed to:**

**U.S. District Court  
Eastern District of New York (Central Islip)  
CIVIL DOCKET FOR CASE #: 2:22-cv-04040-HG**

Long Island Anesthesiologists PLLC v. United Healthcare  
Insurance Company of New York Inc. et al  
Assigned to: Judge Hector Gonzalez  
Cause: 15:1 Antitrust Litigation

Date Filed: 07/11/2022  
Date Terminated: 04/08/2025  
Jury Demand: Plaintiff  
Nature of Suit: 410 Anti-Trust  
Jurisdiction: Federal Question

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V.

**Defendant**

**United Healthcare Insurance Company  
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*as Program Administrator for The  
Empire Plan Medical/Surgical program*

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Date Filed	#	Docket Text
07/11/2022	<u>1</u>	COMPLAINT against Multiplan Inc., The Empire Plan Medical/Surgical Program, United Healthcare Insurance Company of New York Inc. filing fee \$ 402, receipt number ANYEDC-15733910 Was the Disclosure Statement on Civil Cover Sheet completed -No., filed by Long Island Anesthesiologists PLLC. (Attachments: # <u>1</u> Civil Cover Sheet) (Breitenbach, Roy) Modified on 7/12/2022 (Jakubowski, Laura). (Entered: 07/11/2022)
07/11/2022	<u>2</u>	Corporate Disclosure Statement by Long Island Anesthesiologists PLLC (Breitenbach, Roy) Modified on 7/12/2022 (Jakubowski, Laura). (Entered: 07/11/2022)
07/11/2022	<u>3</u>	Proposed Summons. Re <u>1</u> Complaint, by Long Island Anesthesiologists PLLC (Breitenbach, Roy) Modified on 7/12/2022 (Jakubowski, Laura). (Entered: 07/11/2022)
07/11/2022	<u>4</u>	Proposed Summons. Re <u>1</u> Complaint, by Long Island Anesthesiologists PLLC (Breitenbach, Roy) Modified on 7/12/2022 (Jakubowski, Laura). (Entered: 07/11/2022)
07/12/2022	<u>5</u>	This attorney case opening filing has been checked for quality control. See the attachment for corrections that were made. (Jakubowski, Laura) (Entered: 07/12/2022)
07/12/2022		Case Assigned to Judge Hector Gonzalez. Please download and review the Individual Practices of the assigned Judges, located on our <a href="#">website</a> . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. (Jakubowski, Laura) (Entered: 07/12/2022)
07/12/2022	<u>6</u>	In accordance with Rule 73 of the Federal Rules of Civil Procedure and Local Rule 73.1, the parties are notified that <b>if</b> all parties consent a United States magistrate judge of this court is available to conduct all proceedings in this civil action including a (jury or nonjury) trial and to order the entry of a final judgment. Attached to the Notice is a blank copy of the consent form that should be filled out, signed and filed electronically <b>only if all</b> parties wish to consent. The form may also be accessed at the following link: <a href="http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO085.pdf">http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO085.pdf</a> . <b>You may withhold your consent without adverse substantive consequences. Do NOT return or file the consent unless all parties have signed the consent.</b> (Jakubowski, Laura) (Entered: 07/12/2022)
07/12/2022	<u>7</u>	Summons Issued as to Multiplan Inc., United Healthcare Insurance Company of New York Inc. (Jakubowski, Laura) (Entered: 07/12/2022)

07/21/2022	<u>8</u>	SCHEDULING ORDER: Counsel for all parties are directed to file on the docket a joint letter describing the case and a completed civil case management plan by <b>AUGUST 25, 2022</b> as further described in the attached mandatory requirements. Requests for adjournment of the deadline for these submissions will be considered only if made in writing and otherwise in accordance with Section I.D of the Court's Individual Practices. Ordered by Judge Hector Gonzalez on 7/21/2022. (Duffy, Matthew) (Entered: 07/21/2022)
07/25/2022	<u>9</u>	NOTICE of Appearance by Karl Geercken on behalf of United Healthcare Insurance Company of New York Inc. (aty to be noticed) (Geercken, Karl) (Entered: 07/25/2022)
07/25/2022	<u>10</u>	Corporate Disclosure Statement by United Healthcare Insurance Company of New York Inc. identifying Corporate Parent UnitedHealth Group Incorporated, Other Affiliate United HealthCare Services, Inc., Other Affiliate UHIC Holdings, Inc., Other Affiliate UnitedHealthcare Insurance Company for United Healthcare Insurance Company of New York Inc.. (Geercken, Karl) (Entered: 07/25/2022)
07/25/2022	<u>11</u>	MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by United Healthcare Insurance Company of New York Inc.. (Geercken, Karl) (Entered: 07/25/2022)
07/26/2022		Order granting MOTION <u>11</u> for Extension of Time to File Answer: Defendant United Healthcare Insurance Company of New York Inc. may have its extension to answer until September 8, 2022. The deadline for submitting the joint letter describing the case and the case management plan <u>8</u> remains the same. Ordered by Judge Hector Gonzalez on 7/26/2022. (Duffy, Matthew) (Entered: 07/26/2022)
08/02/2022	<u>12</u>	Letter MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by Multiplan Inc.. (Creed, Aimee) (Entered: 08/02/2022)
08/03/2022		ORDER granting Motion for Extension of Time to File Answer <u>12</u> . Defendant MultiPlan Inc.'s time to respond to Plaintiff's Complaint <u>1</u> is extended to September 8, 2022. The deadline for submitting the joint letter describing the case and the case management plan <u>8</u> remains the same. Ordered by Judge Hector Gonzalez on 8/3/2022. (Duffy, Matthew) (Entered: 08/03/2022)
08/17/2022	<u>13</u>	MOTION to Appear Pro Hac Vice <i>Errol King</i> Filing fee \$ 150, receipt number ANYEDC-15854993. by Multiplan Inc.. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit Certificate of Good Standing) (King, Errol) (Entered: 08/17/2022)
08/17/2022	<u>14</u>	Letter MOTION for Extension of Time to File <i>Case Management Plan (Joint)</i> by United Healthcare Insurance Company of New York Inc.. (Geercken, Karl) (Entered: 08/17/2022)
08/19/2022		ORDER granting <u>13</u> Motion for Leave to Appear <i>Pro Hac Vice</i> . Attorney Errol J. King, Jr. is granted permission to appear <i>pro hac vice</i> on behalf of Defendant MultiPlan, Inc. The attorney shall register for ECF, registration is available online at <a href="http://www.pacer.gov">www.pacer.gov</a> . Once registered, the attorney shall file a notice of appearance and ensure that he receives electronic notification of activity in this case. Ordered by Judge Hector Gonzalez on 8/19/2022. (Duffy, Matthew) (Entered: 08/19/2022)
08/19/2022		ORDER granting Motion for Extension of Time to File <i>Case Management Plan (Joint)</i> <u>14</u> . Parties' deadline to file their joint case management plan is extended to September 26, 2022. The deadline for submitting the joint letter describing the case <u>8</u> remains the same. Ordered by Judge Hector Gonzalez on 8/19/2022. (Duffy, Matthew) (Entered: 08/19/2022)
08/19/2022	<u>15</u>	NOTICE of Appearance by Errol J. King on behalf of Multiplan Inc. (notification declined or already on case) (King, Errol) (Entered: 08/19/2022)
08/25/2022	<u>16</u>	Letter <i>Joint pursuant to the Court's July 21, 2022 Order</i> by Long Island Anesthesiologists PLLC (Breitenbach, Roy) (Entered: 08/25/2022)
08/29/2022	<u>17</u>	MOTION to Appear Pro Hac Vice ( <i>Craig L. Caesar</i> ) Filing fee \$ 150, receipt number ANYEDC-15889094. by Multiplan Inc.. (Attachments: # <u>1</u> Affidavit of Craig L. Caesar in Support, # <u>2</u> Certificates of Good Standing) (Caesar, Craig) (Entered: 08/29/2022)

08/31/2022	<u>18</u>	MOTION to Appear Pro Hac Vice <i>Katherine C. Mannino</i> Filing fee \$ 150, receipt number ANYEDC-15894891. by Multiplan Inc.. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit Certificate of Good Standing) (Mannino, Katherine) (Entered: 08/31/2022)
08/31/2022	<u>19</u>	MOTION to Appear Pro Hac Vice <i>Taylor Crousillac</i> Filing fee \$ 150, receipt number ANYEDC-15895026. by Multiplan Inc.. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit Certificate of Good Standing) (Crousillac, Taylor) (Entered: 08/31/2022)
09/01/2022		ORDER granting <u>17</u> Motion for Leave to Appear Pro Hac Vice. Attorney Craig L. Caesar is granted permission to appear <i>pro hac vice</i> on behalf of Defendant MultiPlan, Inc. The attorney shall register for ECF, registration is available online at <a href="http://www.pacer.gov">www.pacer.gov</a> . Once registered, the attorney shall file a notice of appearance and ensure that he receives electronic notification of activity in this case. Ordered by Judge Hector Gonzalez on 9/1/2022. (Duffy, Matthew) (Entered: 09/01/2022)
09/02/2022		ORDER granting <u>18</u> Motion for Leave to Appear Pro Hac Vice. Attorney Katherine C. Mannino is granted permission to appear <i>pro hac vice</i> on behalf of Defendant MultiPlan, Inc. The attorney shall register for ECF, registration is available online at <a href="http://www.pacer.gov">www.pacer.gov</a> . Once registered, the attorney shall file a notice of appearance and ensure that she receives electronic notification of activity in this case. Ordered by Judge Hector Gonzalez on 9/2/2022. (Duffy, Matthew) (Entered: 09/02/2022)
09/02/2022		ORDER granting <u>19</u> Motion for Leave to Appear Pro Hac Vice. Attorney Taylor Crousillac is granted permission to appear <i>pro hac vice</i> on behalf of Defendant MultiPlan, Inc. The attorney shall register for ECF, registration is available online at <a href="http://www.pacer.gov">www.pacer.gov</a> . Once registered, the attorney shall file a notice of appearance and ensure that he receives electronic notification of activity in this case. Ordered by Judge Hector Gonzalez on 9/2/2022. (Duffy, Matthew) (Entered: 09/02/2022)
09/08/2022	<u>20</u>	Letter ( <i>Pre-Trial Conference Request</i> ) by Multiplan Inc. (Caesar, Craig) (Entered: 09/08/2022)
09/08/2022	<u>21</u>	Letter MOTION for pre motion conference <i>for Anticipated Filing of Motion to Dismiss</i> by United Healthcare Insurance Company of New York Inc.. (Geercken, Karl) (Entered: 09/08/2022)
09/12/2022		ORDER: In lieu of a pre-motion conference, see ECF Nos. <u>20</u> <u>21</u> , Defendants are permitted to file their motions to dismiss by OCTOBER 10, 2022. Plaintiff shall file its opposition to the motion by NOVEMBER 7, 2022. Defendants shall file their reply, if any, by NOVEMBER 17, 2022. Ordered by Judge Hector Gonzalez on 9/12/2022. (Duffy, Matthew) (Entered: 09/12/2022)
09/26/2022	<u>22</u>	Proposed Scheduling Order by Long Island Anesthesiologists PLLC (Hallak, Daniel) (Entered: 09/26/2022)
09/26/2022	<u>23</u>	Letter MOTION for pre motion conference <i>for Anticipated Filing of Motion to Stay Discovery</i> by United Healthcare Insurance Company of New York Inc.. (Geercken, Karl) (Entered: 09/26/2022)
10/03/2022	<u>24</u>	Letter MOTION for Leave to File Excess Pages by United Healthcare Insurance Company of New York Inc.. (Geercken, Karl) (Entered: 10/03/2022)
10/04/2022	<u>25</u>	REPLY in Opposition re <u>23</u> Letter MOTION for pre motion conference <i>for Anticipated Filing of Motion to Stay Discovery</i> filed by Long Island Anesthesiologists PLLC. (Breitenbach, Roy) (Entered: 10/04/2022)
10/05/2022	<u>26</u>	MOTION to Appear Pro Hac Vice <i>for Brian D. Boone</i> Filing fee \$ 150, receipt number ANYEDC-16009783. by United Healthcare Insurance Company of New York Inc.. (Attachments: # <u>1</u> Affidavit of Brian D. Boone, # <u>2</u> Certificates of Good Standing) (Boone, Brian) (Entered: 10/05/2022)
10/05/2022	<u>27</u>	MOTION to Appear Pro Hac Vice <i>for Emily C. McGowan</i> Filing fee \$ 150, receipt number ANYEDC-16009826. by United Healthcare Insurance Company of New York Inc.. (Attachments: # <u>1</u> Affidavit of Emily C. McGowan, # <u>2</u> Certificate of Good Standing) (McGowan, Emily) (Entered: 10/05/2022)
10/05/2022	<u>28</u>	MOTION to Appear Pro Hac Vice <i>for Jordan Elise Edwards</i> Filing fee \$ 150, receipt number ANYEDC-16009845. by United Healthcare Insurance Company of New York Inc.. (Attachments: # <u>1</u> Affidavit of Jordan Elise Edwards, # <u>2</u> Certificate of Good

		Standing) (Edwards, Jordan) (Entered: 10/05/2022)
10/05/2022	<u>29</u>	MOTION to Appear Pro Hac Vice for D. Andrew Hatchett Filing fee \$ 150, receipt number ANYEDC-16009861. by United Healthcare Insurance Company of New York Inc.. (Attachments: # <u>1</u> Affidavit D. Andrew Hatchett, # <u>2</u> Certificates of Good Standing) (Hatchett, David) (Entered: 10/05/2022)
10/07/2022		ORDER granting <u>24</u> Motion for Leave to File Excess Pages. Defendant UnitedHealthcare is granted 5 extra pages for its motion to dismiss. Ordered by Judge Hector Gonzalez on 10/7/2022. (MD) (Entered: 10/07/2022)
10/07/2022		ORDER: The Court construes Defendants' premotion conference letter <u>23</u> , as well as Plaintiffs' response <u>25</u> , as Defendants' Motion to Stay. The Court grants the motion in part and denies it in part and sets a partial discovery schedule pursuant to Rule 16. The Court will set a schedule for additional discovery later this year, after it has reviewed Defendants motions to dismiss.  Initial disclosures required by Fed. R. Civ. P. 26(a)(1) will be due by November 17, 2022; Procedures for producing Procedures Electronically Stored Information (ESI) will be discussed by December 1, 2022; Confidentiality order to be submitted for court approval by December 1, 2022.  Requests for production of documents and interrogatories will be due November 17, 2022; Response to requests for production of documents and interrogatories will be due December 18, 2022. Requests for admissions will be due December 18, 2022. Ordered by Judge Hector Gonzalez on 10/7/2022. (MD) (Entered: 10/07/2022)
10/10/2022	<u>30</u>	MOTION to Dismiss for Failure to State a Claim by Multiplan Inc.. (Attachments: # <u>1</u> Memorandum in Support) (Creed, Aimee) (Entered: 10/10/2022)
10/10/2022	<u>31</u>	MOTION to Dismiss for Failure to State a Claim by United Healthcare Insurance Company of New York Inc.. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration of Karl Geercken, # <u>3</u> Exhibit 1, # <u>4</u> Exhibit 2, # <u>5</u> Exhibit 3, # <u>6</u> Exhibit 4) (Geercken, Karl) (Entered: 10/10/2022)
10/12/2022		ORDER granting <u>26</u> Motion for Leave to Appear Pro Hac Vice. Attorney Brian D. Boone shall register for ECF, registration is available online at www.pacer.gov. Once registered, the attorney shall file a notice of appearance and ensure that he receives electronic notification of activity in this case. Also, the attorney shall ensure the \$150 admission fee be submitted to the Clerks Office via filing the event <i>Pro Hac Vice Filing Fee</i> . Ordered by Judge Hector Gonzalez on 10/12/2022. (MD) (Entered: 10/12/2022)
10/12/2022		ORDER granting <u>27</u> Motion for Leave to Appear Pro Hac Vice. Attorney Emily C. McGowan shall register for ECF, registration is available online at www.pacer.gov. Once registered, the attorney shall file a notice of appearance and ensure that she receives electronic notification of activity in this case. Also, the attorney shall ensure the \$150 admission fee be submitted to the Clerks Office via filing the event <i>Pro Hac Vice Filing Fee</i> . Ordered by Judge Hector Gonzalez on 10/12/2022. (MD) (Entered: 10/12/2022)
10/12/2022		ORDER granting <u>28</u> Motion for Leave to Appear Pro Hac Vice. Attorney Jordan Elise Edwards shall register for ECF, registration is available online at www.pacer.gov. Once registered, the attorney shall file a notice of appearance and ensure that she receives electronic notification of activity in this case. Also, the attorney shall ensure the \$150 admission fee be submitted to the Clerks Office via filing the event <i>Pro Hac Vice Filing Fee</i> . Ordered by Judge Hector Gonzalez on 10/12/2022. (MD) (Entered: 10/12/2022)
10/12/2022		ORDER granting <u>29</u> Motion for Leave to Appear Pro Hac Vice. Attorney David Andrew Hatchett shall register for ECF, registration is available online at www.pacer.gov. Once registered, the attorney shall file a notice of appearance and ensure that he receives electronic notification of activity in this case. Also, the attorney shall ensure the \$150 admission fee be submitted to the Clerks Office via filing the event <i>Pro Hac Vice Filing Fee</i> . Ordered by Judge Hector Gonzalez on 10/12/2022. (MD) (Entered: 10/12/2022)

10/14/2022	<u>32</u>	NOTICE of Appearance by Brian David Boone on behalf of United Healthcare Insurance Company of New York Inc. (notification declined or already on case) (Boone, Brian) (Entered: 10/14/2022)
10/14/2022	<u>33</u>	NOTICE of Appearance by Emily McGowan on behalf of United Healthcare Insurance Company of New York Inc. (notification declined or already on case) (McGowan, Emily) (Entered: 10/14/2022)
10/14/2022	<u>34</u>	NOTICE of Appearance by Jordan Elise Edwards on behalf of United Healthcare Insurance Company of New York Inc. (notification declined or already on case) (Edwards, Jordan) (Entered: 10/14/2022)
10/14/2022	<u>35</u>	NOTICE of Appearance by David Andrew Hatchett on behalf of United Healthcare Insurance Company of New York Inc. (notification declined or already on case) (Hatchett, David) (Entered: 10/14/2022)
10/28/2022	<u>36</u>	Letter <i>regarding Participation of Lawyers</i> by United Healthcare Insurance Company of New York Inc. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Geercken, Karl) (Entered: 10/28/2022)
11/02/2022	<u>37</u>	MOTION to Appear Pro Hac Vice <i>for Karla Doe</i> Filing fee \$ 150, receipt number ANYEDC-16098992. by United Healthcare Insurance Company of New York Inc.. (Attachments: # <u>1</u> Affidavit in Support, # <u>2</u> Certificate of Good Standing) (Doe, Karla) (Entered: 11/02/2022)
11/02/2022	<u>38</u>	Letter MOTION for Extension of Time to File Response/Reply as to <u>30</u> MOTION to Dismiss for Failure to State a Claim , <u>31</u> MOTION to Dismiss for Failure to State a Claim <i>Extension of the briefing schedule on Defendants' motion to dismiss Complaint</i> by Long Island Anesthesiologists PLLC. (Breitenbach, Roy) (Entered: 11/02/2022)
11/03/2022		ORDER granting <u>38</u> request for an extension of time to file response. The deadline for Plaintiff's opposition to Defendants' motion to dismiss is now November 14, 2022. The deadline for Defendants' reply in support of the motion is now December 5, 2022. Ordered by Judge Hector Gonzalez on 11/3/2022. (MD) (Entered: 11/03/2022)
11/03/2022		ORDER granting <u>37</u> Motion for Leave to Appear Pro Hac Vice. Attorney Karla Doe shall register for ECF, registration is available online at www.pacer.gov. Once registered, the attorney shall file a notice of appearance and ensure that she receives electronic notification of activity in this case. Also, the attorney shall ensure the \$150 admission fee be submitted to the Clerks Office via filing the event <i>Pro Hac Vice Filing Fee</i> . Ordered by Judge Hector Gonzalez on 11/3/2022. (MD) (Entered: 11/03/2022)
11/03/2022	<u>39</u>	NOTICE of Appearance by Karla M. Doe on behalf of United Healthcare Insurance Company of New York Inc. (notification declined or already on case) (Doe, Karla) (Entered: 11/03/2022)
11/09/2022	<u>40</u>	Letter MOTION for Leave to File Excess Pages <i>10 page enlargement of page limit</i> by Long Island Anesthesiologists PLLC. (Breitenbach, Roy) (Entered: 11/09/2022)
11/14/2022		ORDER granting <u>40</u> Motion for Leave to File Excess Pages. Ordered by Judge Hector Gonzalez on 11/14/2022. (MD) (Entered: 11/14/2022)
11/14/2022	<u>41</u>	DECLARATION re <u>31</u> MOTION to Dismiss for Failure to State a Claim , <u>30</u> MOTION to Dismiss for Failure to State a Claim by Long Island Anesthesiologists PLLC (Attachments: # <u>1</u> Exhibit Breitenbach Decl. Exh. 1, # <u>2</u> Exhibit Breitenbach Decl. Exh. 2, # <u>3</u> Exhibit Breitenbach Decl. Exh. 3, # <u>4</u> Exhibit Breitenbach Decl. Exh. 4, # <u>5</u> Exhibit Breitenbach Decl. Exh. 5, # <u>6</u> Exhibit Breitenbach Decl. Exh. 6, # <u>7</u> Exhibit Breitenbach Decl. Exh. 7, # <u>8</u> Exhibit Breitenbach Decl. Exh. 8, # <u>9</u> Exhibit Breitenbach Decl. Exh. 9, # <u>10</u> Exhibit Breitenbach Decl. Exh. 10, # <u>11</u> Exhibit Breitenbach Decl. Exh. 11, # <u>12</u> Exhibit Breitenbach Decl. Exh. 12, # <u>13</u> Memorandum in Opposition MOL in Opposition to Defendants' Motion to Dismiss) (Breitenbach, Roy) (Entered: 11/14/2022)
11/15/2022	<u>42</u>	MEMORANDUM in Opposition re <u>30</u> MOTION to Dismiss for Failure to State a Claim , <u>31</u> MOTION to Dismiss for Failure to State a Claim filed by Long Island Anesthesiologists PLLC. (Breitenbach, Roy) (Entered: 11/15/2022)

11/28/2022	<u>43</u>	Letter MOTION for Extension of Time to File <i>Procedures for Producing Electronically Stored Information (ESI) and Confidentiality Order (Joint)</i> by United Healthcare Insurance Company of New York Inc.. (Geercken, Karl) (Entered: 11/28/2022)
11/30/2022		ORDER granting <u>43</u> Motion for Extension of Time to File. Parties' deadline to file procedures for producing electronically stored information (ESI) and the proposed confidentiality order is extended to December 8, 2022. Ordered by Judge Hector Gonzalez on 11/30/2022. (MD) (Entered: 11/30/2022)
12/05/2022	<u>44</u>	REPLY in Support re <u>30</u> MOTION to Dismiss for Failure to State a Claim filed by Multiplan Inc.. (Creed, Aimee) (Entered: 12/05/2022)
12/05/2022	<u>45</u>	REPLY to Response to Motion re <u>31</u> MOTION to Dismiss for Failure to State a Claim filed by United Healthcare Insurance Company of New York Inc.. (Geercken, Karl) (Entered: 12/05/2022)
12/08/2022	<u>46</u>	Joint MOTION for Protective Order ( <i>Motion for entry of stipulated protective order and protocol regarding the discovery of electronically stored information</i> ) by United Healthcare Insurance Company of New York Inc.. (Attachments: # <u>1</u> Exhibit 1) the Stipulated Protective Order, # <u>2</u> Exhibit 2) ESI Protocol) (Geercken, Karl) (Entered: 12/08/2022)
12/09/2022	<u>47</u>	ORDER: The Court adopts <u>46</u> the parties' Stipulated Protective Order. Ordered by Judge Hector Gonzalez on 12/9/2022. (MD) (Entered: 12/09/2022)
07/14/2023	<u>48</u>	Letter by United Healthcare Insurance Company of New York Inc. (Attachments: # <u>1</u> Exhibit 1) copy of decision in Wayne Joseph v. Rebecca Corso) (Boone, Brian) (Entered: 07/14/2023)
09/18/2023	<u>49</u>	Letter <i>Response to July 14 Letter attaching decision in Joseph v. Corso</i> by Long Island Anesthesiologists PLLC, Mail receipt (Breitenbach, Roy) (Entered: 09/18/2023)
11/21/2023	<u>50</u>	ORDER: For the reasons set forth in the attached Order, the Court GRANTS Defendants' motions to dismiss. <i>See</i> ECF Nos. <u>30</u> , <u>31</u> . Plaintiff may file a motion seeking leave to amend its complaint, as described in the attached Order, on or before December 12, 2023, and Defendants may file a joint opposition brief by January 4, 2023. If Plaintiff does not seek leave to amend by December 12, 2023, judgment shall be entered, and the case closed. Ordered by Judge Hector Gonzalez on 11/21/2023. (ICP) (Entered: 11/21/2023)
12/07/2023	<u>51</u>	Letter MOTION for Extension of Time to File <i>Plaintiff's motion for leave to file an amended complaint</i> , by Long Island Anesthesiologists PLLC. (Breitenbach, Roy) (Entered: 12/07/2023)
12/07/2023		ORDER granting <u>51</u> Motion for Extension of Time. Plaintiff may file its motion seeking leave to amend its complaint on or before January 16, 2024, and Defendants may file a joint opposition brief on or before February 16, 2024. Ordered by Judge Hector Gonzalez on 12/7/2023. (ICP) (Entered: 12/07/2023)
01/10/2024	<u>52</u>	Letter MOTION for Extension of Time to File <i>a motion seeking leave to file an amended complaint</i> by Long Island Anesthesiologists PLLC. (Breitenbach, Roy) (Entered: 01/10/2024)
01/10/2024		ORDER granting <u>52</u> Motion for Extension of Time. Plaintiff may file its motion seeking leave to amend its complaint on or before January 26, 2024, and Defendants may file a joint opposition brief on or before February 26, 2024. No further extensions will be granted in the absence of extraordinary circumstances. Ordered by Judge Hector Gonzalez on 1/10/2024. (ICP) (Entered: 01/10/2024)
01/23/2024	<u>53</u>	MOTION for Extension of Time to Amend <u>1</u> Complaint, by Long Island Anesthesiologists PLLC. (Breitenbach, Roy) (Entered: 01/23/2024)
01/24/2024		ORDER granting <u>53</u> Motion for Extension of Time. Plaintiff may file its motion seeking leave to amend its complaint on or before February 2, 2024, and Defendants may file a joint opposition brief on or before March 4, 2024. This is Plaintiff's third extension request and Plaintiff is warned that no further extensions will be granted. Ordered by Judge Hector Gonzalez on 1/24/2024. (ICP) (Entered: 01/24/2024)

02/02/2024	<u>54</u>	MOTION for Leave to File Document <i>Notice of Motion for Leave to Amend Complaint</i> by Long Island Anesthesiologists PLLC. (Attachments: # <u>1</u> Declaration Breitenbach Declaration in support of Motion for Leave to Amend, # <u>2</u> Exhibit Exhibit 1 to RWB Declaration – LIA Proposed Amended Complaint, # <u>3</u> Exhibit Exhibit 2 to RWB Declaration – LIA Proposed Amended Complaint to Original Complaint) (Breitenbach, Roy) (Entered: 02/02/2024)
02/02/2024	<u>55</u>	MEMORANDUM in Support re <u>54</u> MOTION for Leave to File Document <i>Notice of Motion for Leave to Amend Complaint Memorandum of Law in support of Plaintiff's Motion for Leave to Serve an Amended Complaint</i> filed by Long Island Anesthesiologists PLLC. (Breitenbach, Roy) (Entered: 02/02/2024)
02/22/2024	<u>56</u>	Letter MOTION for Extension of Time to File Response/Reply as to <u>54</u> MOTION for Leave to File Document <i>Notice of Motion for Leave to Amend Complaint</i> , Letter MOTION for Leave to File Excess Pages by United Healthcare Insurance Company of New York Inc.. (Geercken, Karl) (Entered: 02/22/2024)
02/23/2024		ORDER granting <u>56</u> Motion for Extension of Time. Defendants shall file their joint opposition to Plaintiff's motion for leave to amend, <i>see</i> ECF No. <u>54</u> on or before March 18, 2024. Defendants may file a 25–page opposition. Ordered by Judge Hector Gonzalez on 2/23/2024. (ICP) (Entered: 02/23/2024)
03/18/2024	<u>57</u>	MEMORANDUM in Opposition re <u>54</u> MOTION for Leave to File Document <i>Notice of Motion for Leave to Amend Complaint (Joint)</i> filed by United Healthcare Insurance Company of New York Inc.. (Geercken, Karl) (Entered: 03/18/2024)
05/15/2024		ORDER GRANTING <u>54</u> Motion for Leave to File an Amended Complaint. The Court has reviewed Plaintiff's proposed Amended Complaint, <i>see</i> ECF No. [54–2] and its memorandum in support of its motion to amend, <i>see</i> ECF No. <u>55</u> , as well as Defendants' memorandum in opposition to Plaintiff's motion, <i>see</i> ECF No. <u>57</u> . The Second Circuit "strongly favors liberal grant of an opportunity to replead after dismissal of a complaint under Rule 12(b)(6)," <i>see Noto v. 22nd Century Grp., Inc.</i> , 35 F.4th 95, 107 (2d Cir. 2022), because of its "strong preference for resolving disputes on the merits," <i>see Williams v. Citigroup</i> , 659 F.3d 208, 213 (2d Cir. 2011). Leave to amend should be "freely given" in the absence of factors such as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party..., [and] futility of amendment." <i>Foman v. Davis</i> , 371 U.S. 178, 182 (1962). Here, Defendants argue that the Court should deny Plaintiff's motion because the proposed amendment would be futile. <i>See</i> ECF No. <u>57</u> at 6. Upon a review of the proposed amended complaint and the parties' briefs, the Court disagrees. Plaintiff has pled additional facts that may be sufficient to overcome the defects that the Court identified in its Order granting Defendants' motion to dismiss, <i>see</i> ECF No. <u>50</u> .  Plaintiff shall file and serve its amended complaint on or before May 28, 2024. Defendants shall answer or otherwise respond to the amended complaint on or before June 27, 2024. If Defendants intend to move to dismiss the Amended Complaint, they need not follow the process of filing a pre–motion letter required by Section IV.A of the Court's Individual Practices. Instead, Defendants shall file their papers in support of their motion to dismiss on or before June 27, 2024. Plaintiff shall file its opposition papers on or before July 29, 2024. Defendants' reply papers, if any, shall be filed on or before August 12, 2024. The parties are directed to review Section IV.B. of this Court's Individual Practices and to comply with the page limitations outlined therein. Ordered by Judge Hector Gonzalez on 5/15/2024. (ICP) (Entered: 05/15/2024)
05/28/2024	<u>58</u>	AMENDED COMPLAINT against Multiplan Inc., The Empire Plan Medical/Surgical Program, United Healthcare Insurance Company of New York Inc., filed by Long Island Anesthesiologists PLLC. (Breitenbach, Roy) (Entered: 05/28/2024)
06/20/2024	<u>59</u>	MOTION for Extension of Time to File Answer : <i>Joint Stipulation to Extend Deadline to Respond to Plaintiff's Amended Complaint [DE 58]</i> by United Healthcare Insurance Company of New York Inc.. (Geercken, Karl) (Entered: 06/20/2024)
06/21/2024		ORDER granting <u>59</u> Motion for Extension of Time. Defendants shall answer or otherwise respond to the amended complaint on or before July 18, 2024. If Defendants move to dismiss the Amended Complaint, Plaintiff shall file its opposition papers on or before August 19, 2024. Defendants' reply papers, if any, shall be filed on or before

		September 4, 2024. Ordered by Judge Hector Gonzalez on 6/21/2024. (ICP) (Entered: 06/21/2024)
07/18/2024	<u>60</u>	<del>MultiPlan, Inc.'s ANSWER to <u>58</u> Amended Complaint by Multiplan Inc.. (King, Errol)</del> (Entered: 07/18/2024)
07/18/2024	<u>61</u>	MOTION to Dismiss for Failure to State a Claim <i>the Amended Complaint</i> by United Healthcare Insurance Company of New York Inc.. (Attachments: # <u>1</u> Memorandum in Support) (Geercken, Karl) (Entered: 07/18/2024)
07/18/2024	<u>62</u>	MOTION to Dismiss <i>Plaintiff's Amended Complaint</i> by Multiplan Inc.. (Attachments: # <u>1</u> Memorandum in Support) (King, Errol) (Entered: 07/18/2024)
07/19/2024		ORDER: Defendant Multiplan Inc. filed its motion seeking to dismiss Plaintiff's Amended Complaint as an Answer to Plaintiff's Amended Complaint, <i>see</i> ECF No. <u>60</u> , before re-filing the same document as a motion to dismiss, <i>see</i> ECF No. <u>62</u> . The Court therefore strikes ECF No. <u>60</u> . Ordered by Judge Hector Gonzalez on 7/19/2024. (PN) (Entered: 07/19/2024)
08/13/2024	<u>63</u>	Letter MOTION for Extension of Time to File <i>Ext. of Briefing Sched. – Plaintiffs opposition deadline from 8.19.2024 to 9.9.2024 and to extend Defendants response deadline from 9.4.2024 to 10. 9, 2024</i> by Long Island Anesthesiologists PLLC. (Breitenbach, Roy) (Entered: 08/13/2024)
08/13/2024		ORDER re <u>63</u> Motion for Extension of Time to File. Plaintiff's opposition papers are due on or before September 9, 2024. Defendant's reply papers, if any, are due on or before September 30, 2024. Ordered by Judge Hector Gonzalez on 8/13/2024. (ICP) (Entered: 08/13/2024)
09/09/2024	<u>64</u>	MEMORANDUM in Opposition re <u>62</u> MOTION to Dismiss <i>Plaintiff's Amended Complaint</i> filed by Long Island Anesthesiologists PLLC. (Breitenbach, Roy) (Entered: 09/09/2024)
09/13/2024	<u>65</u>	Joint MOTION for Extension of Time to File Response/Reply <i>In Support of Their Motion to Dismiss</i> by United Healthcare Insurance Company of New York Inc.. (Geercken, Karl) (Entered: 09/13/2024)
09/13/2024		ORDER granting <u>65</u> Motion for an Extension of Time to File. Each Defendant may file its reply in support of its motion to dismiss Plaintiff's amended complaint on or before October 14, 2024. Ordered by Judge Hector Gonzalez on 9/13/2024. (ICP) (Entered: 09/13/2024)
10/14/2024	<u>66</u>	MEMORANDUM in Support re <u>62</u> MOTION to Dismiss <i>Plaintiff's Amended Complaint</i> filed by Multiplan Inc.. (King, Errol) (Entered: 10/14/2024)
10/14/2024	<u>67</u>	REPLY in Support re <u>61</u> MOTION to Dismiss for Failure to State a Claim <i>the Amended Complaint</i> filed by United Healthcare Insurance Company of New York Inc.. (Boone, Brian) (Entered: 10/14/2024)
10/29/2024	<u>68</u>	Letter <i>re: Joseph v. Corso Decision</i> by Long Island Anesthesiologists PLLC (Attachments: # <u>1</u> Exhibit Joseph v. Corso NY Opinion and Order) (Boone, Brian) (Entered: 10/29/2024)
04/07/2025	<u>69</u>	ORDER: For the reasons set forth in the accompanying Order, the Court GRANTS with prejudice Defendants' motions to dismiss Plaintiff's Sherman Act and Donnelly Act claims and declines to exercise supplemental jurisdiction over Plaintiff's unjust enrichment claim, which it dismisses without prejudice. <i>See</i> ECF No. 61-1; ECF No. 62-1. The Clerk of Court is respectfully requested to enter judgment and close this case. Ordered by Judge Hector Gonzalez on 4/7/2025. (DF) (Entered: 04/07/2025)
04/08/2025	<u>70</u>	CLERK'S JUDGMENT: hat Defendants' motions to dismiss Plaintiff's Sherman Act and Donnelly Act claims are granted with prejudice; and that the Court declines to exercise supplemental jurisdiction over Plaintiff's unjust enrichment claim, which it dismisses without prejudice. <i>See</i> ECF No. 61-1; ECF No. 62-1. Signed by Deputy Clerk, Jalitza Poveda, on behalf of Clerk of Court, Brenna B. Mahoney, on 4/8/2025. (JP) (Entered: 04/08/2025)

05/05/2025	<u>71</u>	NOTICE OF APPEAL by Long Island Anesthesiologists PLLC. Filing fee \$ 605, receipt number ANYEDC-19015428. (Attachments: # <u>1</u> Exhibit Exhibit A - Judgment) (Breitenbach, Roy) (Entered: 05/05/2025)
05/05/2025		Electronic Index to Record on Appeal sent to US Court of Appeals. <u>71</u> Notice of Appeal Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (VJ) (Entered: 05/05/2025)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

LONG ISLAND ANESTHESIOLOGISTS  
PLLC,

Plaintiff,

v.

UNITED HEALTHCARE INSURANCE  
COMPANY OF NEW YORK INC., as  
Program Administrator, THE EMPIRE PLAN  
MEDICAL/SURGICAL PROGRAM,  
MULTIPLAN INC.,

Defendants.

**MEMORANDUM & ORDER**

22-CV-04040 (HG)

**HECTOR GONZALEZ**, United States District Judge:

Defendants<sup>1</sup> have moved to dismiss Plaintiff’s complaint, which asserts antitrust and unjust enrichment claims based on allegations that Defendants are using their market power to force out-of-network anesthesia practices in the New York metropolitan area to accept dramatically lower reimbursement rates for services provided to patients insured by the Empire Plan. ECF No. 1 (Complaint). For the reasons set forth below, the Court grants Defendants’ motions to dismiss in full. *See* ECF Nos. 30 & 31 (Defendants’ Motions to Dismiss).

**FACTUAL BACKGROUND**

Plaintiff Long Island Anesthesiologists PLLC (“LIA”) is a private anesthesia services provider located in Suffolk County, New York. ECF No. 1 ¶¶ 1, 19. LIA provides anesthesia

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<sup>1</sup> Although the docket lists The Empire Plan Medical/Surgical Program as a defendant, the Court’s understanding is that Plaintiff’s intent in its case caption was to name as a defendant United Healthcare Insurance Company of New York Inc., in its role as Program Administrator of the Empire Plan Medical/Surgical Program. Additionally, Plaintiff has only served United Healthcare Insurance Company of New York Inc. and Multiplan Inc. *See* ECF Nos. 3–4. Accordingly, references in this Order to “Defendants” refer to United Healthcare Insurance Company of New York Inc. and Multiplan Inc.

services to patients at Good Samaritan Hospital Medical Center in West Islip, New York, and at other physician offices and surgery centers throughout the New York metropolitan area. *Id.* ¶¶ 1, 19, 24. LIA, like many anesthesiology practices in the New York metropolitan area, has an out-of-network relationship with most health insurance providers. *Id.* ¶¶ 36–38. Defendant UnitedHealthcare Insurance Company of New York Inc. (“United”) is a health insurer and health plan provider and a subsidiary of UnitedHealth Group Incorporated (“UHG”), a multi-national managed healthcare and insurance company and the world’s second largest healthcare company by revenue. *Id.* ¶¶ 2–3, 39–43. United is also the administrator of the Empire Plan, a health plan in which roughly 1.2 million public-sector employees in the New York metropolitan area are enrolled. *Id.* ¶¶ 2–3, 64–71. Approximately 40% of LIA’s revenue comes from the Empire Plan and LIA estimates that the Empire Plan makes up a similar share of revenue for other anesthesia groups in the New York metropolitan area. *Id.* ¶¶ 3, 78–79. Although Plaintiff’s complaint does not include specific details about Defendant MultiPlan Inc. (“MultiPlan”), MultiPlan provides billing support services to United. ECF No. 30-1 (MultiPlan Motion to Dismiss) at 2.<sup>2</sup>

According to LIA, prior to January 2022, the Empire Plan reimbursed out-of-network physicians at amounts approximating the usual, customary, and reasonable (“UCR”) rate for medical services in the geographic area in which the services were provided. ECF No. 1 ¶ 72. This practice did not change when, in March 2015, the Empire Plan began using the independent dispute resolution (“IDR”) process established by the New York Surprise Bill Law to settle reimbursement disputes between health plans and out-of-network physicians. *Id.* ¶¶ 81–90.

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<sup>2</sup> Because this fact is not alleged in the complaint, the Court is only setting it forth here to provide background on MultiPlan. It is not a necessary fact that affected the Court’s decision.

However, in January 2022, after the Federal No Surprises Act took effect,<sup>3</sup> LIA alleges that the Empire Plan decreased the rates at which it reimbursed out-of-network providers by more than 80% after determining that it was not bound by the New York Surprise Bill Law. *Id.* ¶¶ 4, 94–117.

Plaintiff alleges that after the Empire Plan determined that it was not covered by the New York Surprise Bill Law’s IDR process, MultiPlan began to communicate with LIA and other anesthesiology providers, identifying itself as working with United, in an effort to pressure providers into accepting the lower reimbursement rates offered by MultiPlan. *Id.* ¶¶ 4, 123–30. In these communications, MultiPlan allegedly demanded rapid response times and requested onerous and detailed documentation from providers related to reimbursement claims. *Id.* ¶¶ 125–33. Plaintiff alleges that these communications are designed to force anesthesia providers to abandon their challenges to the Empire Plan’s newly-decreased reimbursement rates and that the tactic has been effective because practices lack the resources to pursue challenges to the reimbursement amounts. *Id.* ¶ 132–33.

According to LIA, the lower reimbursement rates will decrease the availability of high-quality anesthesia services in the New York metropolitan area and hamper the ability of out-of-network practices to recruit and retain new talent. *Id.* ¶¶ 5, 135–37. Because of United’s size and market share, LIA alleges that its decision to lower the Empire Plan’s reimbursement rate for anesthesia services will cause a significant number of anesthesia practices to leave the relevant market by going out of business or being forced to sell their practices. *Id.* ¶¶ 7, 143–46. LIA also alleges that lower reimbursement rates will force patients with high-deductible plans or

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<sup>3</sup> According to Plaintiff, the IDR process under the Federal No Surprises Act provides for reimbursement at a substantially lower rate than the UCR. *Id.* ¶¶ 115–16.

plans with large cost-sharing requirements for out-of-network services to pay significantly more for medically necessary services. *Id.* ¶ 147.

LIA claims that United’s actions in reducing reimbursement rates and pressuring anesthesia providers to accept these lower rates are intended to force anesthesia providers out of business to the benefit of another UHG subsidiary, Optum, which, through its OptumCare business, employs physicians, including anesthesia providers. *Id.* ¶¶ 7, 46–55, 142–44. According to LIA, OptumCare employs more than 50 anesthesiologists in the New York metropolitan area. *Id.* ¶ 54.

Plaintiff asserts five causes of action. First, it alleges that United and MultiPlan have engaged in an antitrust conspiracy to restrain trade in violation of Section 1 of 15 U.S.C. § 1 (the “Sherman Act”). ECF No. 1 ¶¶ 183–87. Next, LIA asserts that United possesses monopsony<sup>4</sup> power in the relevant market, that it is willfully maintaining that power through anticompetitive conduct, and that it is leveraging that power to gain an anticompetitive advantage in the relevant market, in violation of Section 2 of the Sherman Act. *Id.* ¶¶ 188–92. Third, LIA asserts that United has engaged in predatory or anticompetitive conduct in an attempt to acquire monopsony power and that it has a dangerous probability of achieving monopsony power, in violation of Section 2 of the Sherman Act. *Id.* ¶¶ 193–97. Fourth, LIA asserts that United and MultiPlan have engaged in an antitrust conspiracy to restrain trade in violation of New York’s General Business Law §§ 340, *et seq.* (the “Donnelly Act”). *Id.* ¶¶ 198–203. Finally, LIA asserts that United and MultiPlan were unjustly enriched at LIA’s expense by receiving fees and retaining reimbursement through their improper scheme. *Id.* ¶¶ 204–09.

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<sup>4</sup> A monopsony is a market dominated by a single buyer who controls the market. *See Monopsony*, Black’s Law Dictionary (11th ed. 2019).

## **LEGAL STANDARD**

A complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).<sup>5</sup> “A claim is plausible ‘when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” *Matson v. Bd. of Educ.*, 631 F.3d 57, 63 (2d Cir. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “The purpose of a motion to dismiss for failure to state a claim under Rule 12(b)(6) is to test the legal sufficiency of [p]laintiff[s] claims for relief.” *Amadei v. Nielsen*, 348 F. Supp. 3d 145, 155 (E.D.N.Y. 2018). Although all allegations contained in a complaint are assumed to be true, this tenet is “inapplicable to legal conclusions.” *Iqbal*, 556 U.S. at 678.

## **DISCUSSION**

The Court dismisses each of Plaintiff’s claims for the reasons described more fully below. Plaintiff has not sufficiently alleged an antitrust injury. Accordingly, Plaintiff’s Sherman Act Section 1 claim alleging an antitrust conspiracy against United and MultiPlan and Plaintiff’s Sherman Act Section 2 claim against United related to allegations of monopsony power are dismissed. Plaintiff’s Sherman Act Section 1 claims against both Defendants are also dismissed because Plaintiff fails to state a plausible claim against MultiPlan. Finally, after dismissing Plaintiff’s federal claims, the Court declines to exercise supplemental jurisdiction over Plaintiff’s Donnelly Act and unjust enrichment claims.

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<sup>5</sup> Unless noted, case law quotations in this order accept all alterations and omit internal quotation marks, citations, and footnotes.

## I. Plaintiff's Sherman Act Claims Against United and MultiPlan

Plaintiff asserts three Sherman Act claims against United and one Sherman Act claim against MultiPlan. First, Plaintiff claims that United and MultiPlan engaged in an antitrust conspiracy to restrain trade in violation of Section 1 of the Sherman Act. ECF No. 1 ¶¶ 183–87. Next, Plaintiff alleges that United violated Section 2 of the Sherman Act because it possesses monopsony power that it is willfully maintaining through anticompetitive conduct. *Id.* ¶¶ 188–92. And, finally, Plaintiff alleges that United violated Section 2 of the Sherman Act because it has engaged in predatory or anticompetitive conduct in an attempt to acquire monopsony power. *Id.* ¶¶ 193–97.<sup>6</sup>

### A. Plaintiff's Sherman Act Claims Against United and MultiPlan Fail Because Plaintiff Has Not Sufficiently Alleged Antitrust Injury

In an antitrust case, a private plaintiff must have constitutional standing under Article III, as well as antitrust standing. *See Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 535 n. 31 (1983). Antitrust standing is “a threshold, pleading-stage inquiry and when a complaint by its terms fails to establish this requirement [the court] must dismiss it as a matter of law.” *Gatt Commc'ns Inc. v. PMC Assocs. L.L.C.*, 711 F.3d 68, 75 (2d

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<sup>6</sup> United also argues that Plaintiff's complaint should be dismissed or stayed under the *Colorado River* abstention doctrine and that Plaintiff's antitrust claims fail because the Empire Plan is not subject to New York's Surprise Bill Law. ECF No. 31-1 at 8–13. According to United, whether the Empire Plan is subject to New York's Surprise Bill Law or required to follow the Federal No Surprises Act is a threshold question on which the Court should abstain from ruling until the declaratory judgment action in New York Supreme Court regarding the same question is resolved. In supplemental letters submitted by the parties after the motions were briefed, the parties note that the New York Supreme Court has issued an opinion in the declaratory judgment action, which Plaintiff is appealing. ECF Nos. 48 & 49 (Supplemental Letters). However, because the Court finds that Plaintiff has not sufficiently pled antitrust injury regardless of whether the New York or Federal law controls the Empire Plan's reimbursements and because the parties have not briefed what, if any, preclusive effect they believe the New York Supreme Court's ruling has on this case, the Court does not need to reach the question of whether Plaintiff's claims fail because the Empire Plan is not subject to New York's Surprise Bill Law.

Cir. 2013). To establish antitrust standing with respect to both its Sherman Act Section 1 and Section 2 claims as a private plaintiff, LIA must do more than allege an injury causally related to unlawful conduct – it must allege plausible facts that it suffered “injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants’ acts unlawful.” *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977); *see also Bologna v. Allstate Ins. Co.*, 138 F. Supp. 2d 310, 319–20 (E.D.N.Y. 2001) (analyzing plaintiff’s Sherman Act Sections 1 and 2 claims together and dismissing both for failure to state an antitrust injury). Therefore, an injury does not constitute an “antitrust injury” unless “it is attributable to an anti-competitive aspect of the practice under scrutiny.” *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 334 (1990). This requirement stems from the principle that the antitrust laws were “enacted for the protection of competition, not competitors.” *Brown Shoe Co. v. United States*, 370 U.S. 294, 319 (1962); *see also Gatt*, 711 F.3d at 75 (“Absent such boundaries, the potent private enforcement tool that is an action for treble damages could be invoked without service to—and potentially in disservice of—the purpose of the antitrust laws: to protect competition.”).

Therefore, to survive a motion to dismiss, a “plaintiff must plead specific facts demonstrating that the defendants’ conduct injured the competitive structure of the market.” *S.O. Textiles Co. v. A & E Prod. Grp., a Div. of Carlisle Plastics, Inc.*, 18 F. Supp. 2d 232, 242–43 (E.D.N.Y. 1998). “The antitrust injury requirement obligates a plaintiff to demonstrate, as a threshold matter, that the challenged action has had an *actual* adverse effect on competition as a whole in the relevant market; to prove it has been harmed as an individual competitor will not suffice.” *Bologna* 138 F. Supp. 2d at 319 (emphasis in original).

To determine whether a plaintiff has antitrust standing, courts in the Second Circuit analyze “(1) whether the plaintiff suffered an antitrust injury, and then (2) whether any . . .

factors . . . prevent the plaintiff from being an efficient enforcer of the antitrust laws.” *Winstar Comms. LLC, v. Equity Office Properties, Inc.*, 170 F. App’x 740, 742 (2d Cir. 2006); *see also Gatt*, 711 F.3d at 76 (“[W]e require a private antitrust plaintiff plausibly to allege (a) that it suffered a special kind of antitrust injury, and (b) that it is a suitable plaintiff to pursue the alleged antitrust violations and thus is an efficient enforcer of the antitrust laws.”). To analyze whether a plaintiff has plausibly alleged an antitrust injury, courts in this Circuit “employ a three-step process for determining whether a plaintiff has sufficiently alleged antitrust injury.” *Gatt*, 711 F.3d at 76. First, a plaintiff alleging that it has been injured must “identify the practice complained of and the reasons such a practice is or might be anticompetitive. Next, [the court] identif[ies] the actual injury the plaintiff alleges[, which] requires [courts] to look at ways in which the plaintiff claims it is in a worse position as a consequence of the defendant’s conduct. Finally, [the court] compare[s] the anticompetitive effect of the specific practice at issue to the actual injury the plaintiff alleges.” *Id.*

Here, conducting the requisite analysis necessarily leads to the conclusion that Plaintiff has not sufficiently pled an antitrust injury. According to LIA, it has been injured because “United, through its role as administrator of the Empire Plan, is abusing its monopsony power to drive down the out-of-network reimbursement rate for medical [sic] necessary anesthesia services and thereby cause [sic] significant anticompetitive effects and resulting antitrust injury in the market for the delivery of anesthesia services in the New York metropolitan area.” ECF No. 42 at 9. LIA further alleges that MultiPlan assists United in its efforts by providing “substantial assistance to United to enable it to significantly reduce reimbursement rates to below competitive [levels].” *Id.* at 3–4. Plaintiff also attempts to assert injury by averring that because the Empire Plan reimbursements make up a significant portion of anesthesia practices’ business

in the New York metropolitan area, the lower reimbursement rates will decrease the availability of high-quality anesthesia services in the New York metropolitan area, force some providers out of business, force other providers to curtail their services, and hamper the ability of out-of-network practices to recruit and retain new talent. ECF No. 1 ¶¶ 5, 78, 135–37. Plaintiff alleges that the effect of United and MultiPlan’s anticompetitive behavior is to drive down the market rate for out-of-network providers to increase the share of business handled by anesthesiologists employed by OptumCare and to force providers like Plaintiff to go in-network. *Id.* ¶¶ 7, 46–55, 142–44.

**i. Plaintiff Does Not Allege Facts Sufficient to Support a Finding that Competition as a Whole in the Relevant Market was Harmed**

With respect to the relationship between the anticompetitive effect of the practice at issue and the actual injury Plaintiff alleges, even if the Court accepts that United has decision-making power over the rate at which the Empire Plan reimburses out-of-network providers, *see id.* ¶¶ 7, 46–55, 142–44, the Court finds that Plaintiff has not alleged an injury that the antitrust laws were intended to protect. Plaintiff has not done so because it has not alleged “an *actual* adverse effect on competition as a whole in the relevant market” but has merely alleged that “it has been harmed as an individual competitor[,which will not suffice].” *Bologna*, 138 F. Supp. 2d at 319 (emphasis in original).

As an initial matter, Plaintiff fails to state facts sufficient to support a finding that the consumers in the relevant market—patients—have been harmed by United and MultiPlan’s actions. *See, e.g., Balaklaw v. Lovell*, 14 F.3d 793, 798 (2d Cir. 1994) (finding that the market had remained unaltered when “[f]rom the consumers’ point of view, nothing about the market has changed”). The complaint does not credibly allege that patients have had to or necessarily will have to pay more for anesthesia services as a result of the decreased reimbursement rates.

Instead Plaintiff relies on the argument that eventually decreased reimbursement rates will drive competitors to OptumCare out of business or force them to go in-network with the Empire Plan, which will eventually allow United to drive up costs. ECF No. 1 ¶¶ 5, 135–46

However, Plaintiff has failed to allege that the lower reimbursement rates have had an actual or likely adverse effect on competition among insurers in the insurance market. Plaintiff does not assert that OptumCare or in-network providers are recouping more lucrative reimbursements under the Empire Plan for their services<sup>7</sup> or that anesthesiologists are choosing to go in-network with respect to the Empire Plan or joining OptumCare rather than remaining independent, facts that might support a finding that competition in the market for delivery of anesthesia services was being harmed. *See, e.g., Michael E. Jones, M.D., P.C. v. United Health Grp., Inc.*, No. 19-cv-7972, 2021 WL 4443142, at \*5 (S.D.N.Y. Sep. 28, 2021) (“Plaintiff has not alleged that medical providers have joined Defendants’ network because of the purported discrimination against out-of-network providers or that Defendants’ share of the health insurance market has increased since . . . the year the supposed discrimination began” therefore “there are no allegations . . . that competition in the insurance market . . . has been affected by Defendants’ actions vis-à-vis Plaintiff’s claim for reimbursement.”); *Korshin v. Benedictine Hosp.*, 34 F. Supp. 2d 133, 138 (N.D.N.Y. 1999) (finding that plaintiff had not established antitrust standing because he had “not alleged any change in the price of anesthesiology services, a decrease in quality or efficiency of care, or that the consumers of anesthesiology services, be they patients, referring physicians, or third-party payers, have less of a market choice . . . as a result of defendants’ actions”).

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<sup>7</sup> In fact, Plaintiff acknowledges that if it were to choose to go “in-network,” its reimbursement rate would likely be the same or less than it is now. ECF No. 42 at 15.

And the complaint contains no facts to support a finding that the competitive structure of the market for the delivery of anesthesia services in the New York metropolitan area has been affected by the decision of a single health insurance plan to reimburse out-of-network providers at lower rates to such an extent that providers are closing, thus decreasing the choices available to patients. *S.O. Textiles Co.*, 18 F. Supp. 2d at 242–43. Although the Court accepts as true LIA’s assertion that “in the years leading up to 2022, Empire Plan represented approximately 40% of LI Anesthesia’s revenues,” the Court cannot credit LIA’s assertion that “[u]pon information and belief,” the Empire Plan represented “similar shares of revenues for other anesthesia groups in the New York metropolitan area.” ECF No. 1 ¶¶ 78–79. “A litigant cannot merely plop ‘upon information and belief’ in front of a conclusory allegation and thereby render it non-conclusory. Those magic words will only make otherwise unsupported claims plausible when the facts are peculiarly within the possession and control of the defendant or where the belief is based on factual information that makes the inference of culpability plausible.” *Citizens United v. Schneiderman*, 882 F.3d 374, 384 (2d Cir. 2018). Information about the percentage of other anesthesia providers’ revenue that the Empire Plan represents is not information peculiarly within the possession and control of United. And, without any additional factual basis to support Plaintiff’s allegation about other anesthesia practices, the Court cannot credit Plaintiff’s conclusion that an insurance plan that covers only 1.2 million of the more than 19.5 million inhabitants of the New York metropolitan area<sup>8</sup> (roughly 6%) makes up more than 40% of revenues across the entire market for the delivery of anesthesia services. Accordingly, Plaintiff has not demonstrated that the lowered reimbursement rates under the Empire Plan are likely to drive out competition in the provider market.

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<sup>8</sup> See Census Reporter Data on New York-Newark-Jersey City, NY-NJ-PA Metro Area, available at <https://perma.cc/XBQ4-K3GL> (last visited November [X], 2023).

**ii. Lowering Reimbursement Rates to a Physician Practice is Generally Insufficient to Establish Antitrust Injury**

The parties agree that a health plan lowering reimbursement rates paid to a physician practice is generally insufficient to establish antitrust injury. *See* ECF No. 42 (LIA’s Opposition) at 13; ECF No. 45 (United’s Reply) at 3; *see also Westchester Radiological Associates P.C. v. Empire Blue Cross & Blue Shield, Inc.*, 707 F. Supp. 708, 717 (S.D.N.Y. 1989) (“The law does not prevent a buyer with market power from negotiating a good price, or from specifying what it will buy.”); *Kartell v. Blue Cross Blue Shield of Mass., Inc.*, 749 F.2d 922, 925, 929 (1st Cir. 1984) (holding that “[a]ntitrust law rarely stops the buyer of a service from trying to determine the price or characteristics of the product that will be sold” and that “a legitimate buyer is entitled to use its market power to keep prices down”). However, LIA argues that antitrust injury can be established when a defendant’s reduced reimbursements are accompanied by “something more,” such as a conspiracy or differential treatment provided to different market participants based on their relationship with the defendant. ECF No. 42 at 13–15.

According to Plaintiff, the “something more” alleged here is that United engaged in a “horizontal conspiracy” with MultiPlan to competitively hobble LIA’s practice to benefit OptumCare. *Id.* at 15. However, as discussed in Section I.B., *infra*, Plaintiff has not put forth sufficient facts to state a claim that United and MultiPlan were engaged in a conspiracy let alone a “horizontal” conspiracy, which requires an “agreement[] between two or more competitors.” *Texaco Inc. v. Dagher*, 547 U.S. 1, 2 (2006). Additionally, because the complaint does not allege that United and MultiPlan are horizontal competitors (rather, the facts as alleged in the complaint support a conclusion that they are not horizontal competitors), Plaintiff’s efforts to cite a “horizontal conspiracy” as the “something more” required to establish antitrust injury must necessarily fail. *See In re Aluminum Warehousing Antitrust Litig.*, No. 13-md-2481, 2014 WL

4277510, at \*32 (S.D.N.Y. Aug. 29, 2014) (“Plaintiffs claim to have alleged a horizontal conspiracy in restraint of trade, but they do not allege that [the defendants] are horizontal competitors. In the absence of the latter, the former cannot be correct.”).

In the absence of proof of a conspiracy or “something more,” Plaintiff’s arguments are insufficient to establish that it suffered an antitrust injury. *West Penn Allegheny Health System, Inc. v. UPMC*, 627 F.3d 85, 103 (3d Cir. 2010) (stating that if defendant had been acting alone, Plaintiff “would have little basis for challenging the reimbursement rates” because “[a] firm that has substantial power on the buy side of the market (*i.e.*, monopsony power) is generally free to bargain aggressively when negotiating the prices it will pay for goods and services.”). Accordingly, Plaintiff’s three Sherman Act claims against United and single Sherman Act claim against MultiPlan must be dismissed.

**B. Plaintiff’s Sherman Act Claim Against MultiPlan Must Also be Dismissed Because Plaintiff Does Not State a Plausible Claim Against MultiPlan**

Even if Plaintiff’s Sherman Act Section 1 claim against MultiPlan had sufficiently alleged an antitrust injury, the claim would be dismissed because Plaintiff’s complaint does not plead “factual content that allows the court to draw the reasonable inference” that MultiPlan is “liable for the misconduct alleged.” *Twombly*, 550 U.S. at 570. “To present a plausible claim, the pleading must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action.” *Jorgensen v. Cnty. of Suffolk*, 558 F. Supp. 3d 51, 60 (E.D.N.Y. 2021).

LIA’s complaint contains limited references to MultiPlan. LIA asserts that MultiPlan is helping United use its market power to force anesthesia providers to accept lower reimbursement rates by engaging in written and phone communications with providers in which MultiPlan engages in “bogus negotiations,” asserts “unrealistic deadlines,” and “bur[ies anesthesia]

practices in mountains of correspondence” related to reimbursement rates. ECF No. 1 ¶¶ 4, 140, 174–77. LIA also alleges that MultiPlan is a market participant as a payor for, or purchaser of anesthesia services “to the extent that it assists plans in terms of calculating reimbursement levels and facilitating reimbursement.” *Id.* ¶ 167. These facts are not sufficient to state a claim that MultiPlan engaged in an antitrust conspiracy.

To survive dismissal of its Sherman Act Section 1 claim against MultiPlan, LIA must allege “a combination or some form of concerted action between at least two legally distinct economic entities” that constitutes “an unreasonable restraint of trade.” *Primetime 24 Joint Venture v. NBC*, 219 F.3d 92, 103 (2d Cir. 2000). “Proof of unilateral action does not suffice,” rather, the facts alleged “must reveal a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement.” *Anderson News, LLC v. Am. Media, Inc.*, 680 F.3d 162, 183 (2d Cir. 2012). This requires allegations of “direct or circumstantial evidence that reasonably tends to prove that [Defendants] had a conscious commitment to a common scheme designed to achieve an unlawful objective.” *Id.* at 184. A complaint claiming conspiracy “must provide some factual context suggesting that the parties reached an agreement, not facts that would be merely consistent with an agreement.” *Id.*

Beyond a bare assertion that MultiPlan is working with United to force lower reimbursement rates,<sup>9</sup> the complaint contains no allegations to support a finding that MultiPlan and United had a “conscious commitment to a common scheme.” *Caithness Long Island II, LLC v. PSEG Long Island LLC*, No. 18-cv-4555, 2019 WL 6043940, at \*4 (E.D.N.Y. Sept. 30, 2019). The complaint, for example, does not assert that MultiPlan knew the reimbursement rates it sought were lower than the rates that United had previously offered, that MultiPlan believed the

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<sup>9</sup> ECF No. 1 ¶¶ 4, 134–35, 141, 175–77.

rates were below competitive levels, that MultiPlan had any role in helping United or the Empire Plan determine appropriate reimbursement rates, or that MultiPlan intended to help United drive out competition. The only plausible finding suggested by the facts alleged in the complaint is that MultiPlan contracted with United to handle direct communication with providers as part of the federal IDR process with respect to claims for reimbursement related to treatment provided to patients insured by the Empire Plan. LIA does not allege any facts suggesting that United and MultiPlan conspired or agreed to work together to restrain trade unlawfully. *Anderson News*, 680 F.3d at 183–84. Accordingly, Plaintiff’s Sherman Act Section 1 claim against MultiPlan must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.<sup>10</sup>

In its opposition brief, LIA asserts new allegations against MultiPlan, referencing MultiPlan’s Annual Report and content from its website, and raises additional assertions about the relationship between MultiPlan and United, including that MultiPlan “receives a percentage of the ‘savings’ it generates through the reduction of reimbursement rates.” ECF No. 42 at 18–20. However, it is well-settled that a complaint may not be amended by the brief in opposition to a motion to dismiss. *See, e.g., Wright v. Ernst & Young LLP*, 152 F.3d 169, 178 (2d Cir. 1998) (finding that a party may not amend its pleadings through statements made in motion papers).

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<sup>10</sup> Because “[a]llegations merely consistent with unilateral action are insufficient” to make out a violation of Section 1 of the Sherman Act, if Plaintiff fails to state a claim for a Section 1 violation against MultiPlan, its Section 1 claim against United, MultiPlan’s alleged co-conspirator, must necessarily fail. *In re Zinc Antitrust Litig.*, 155 F. Supp. 3d 337, 366 (S.D.N.Y. 2016) (dismissing plaintiffs’ claims under Section 1 of the Sherman Act because plaintiff “failed to plausibly alleged unlawful concerted action or an anticompetitive agreement”).

And, because the Court finds that Plaintiff’s Sherman Act claims against United and MultiPlan must be dismissed for failure to plead antitrust injury, and that Plaintiff’s Sherman Act Section 1 claims against United and MultiPlan must also be dismissed for failure to state a plausible claim as to MultiPlan, the Court does not need to reach the parties’ remaining arguments regarding the sufficiency of Plaintiff’s Sherman Act claims.

Accordingly, although the Court does not believe consideration of these facts would have altered its finding, the Court did not and could not consider these facts in reaching its conclusion.

## **II. Plaintiff’s Donnelly Act and Unjust Enrichment Claims**

Plaintiff also claims that United and MultiPlan engaged in an antitrust conspiracy to restrain trade in violation of the Donnelly Act and that United and MultiPlan were unjustly enriched by receiving fees and retaining reimbursement through their alleged scheme of improperly reducing LIA’s reimbursement rates. “District courts may use their discretion in deciding whether to exercise supplemental jurisdiction over state law claims after dismissing a plaintiff’s only federal claims, so long as the federal claims were not dismissed for lack of subject matter jurisdiction.” *Probiv v. PayCargo LLC*, No. 22-cv-2907, 2023 WL 159788, at \*5 (E.D.N.Y. Jan. 11, 2023); 28 U.S.C. § 1367(c)(3) (A district court “may decline to exercise supplemental jurisdiction” over a “state law claim[]” if the district court “has dismissed all claims over which it has original jurisdiction”); *see also Cangemi v. United States*, 13 F.4th 115, 134 (2d Cir. 2021). Having dismissed all of Plaintiff’s federal claims, the Court declines to exercise supplemental jurisdiction over Plaintiff’s Donnelly Act and unjust enrichment claims.<sup>11</sup>

## **III. Plaintiff May File a Motion Seeking Leave to Amend**

In the final section of Plaintiff’s brief, Plaintiff asks the Court to grant it leave to amend its complaint to cure any pleading deficiencies. ECF No. 42 at 34. The Second Circuit “strongly

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<sup>11</sup> Although the Court declines to exercise supplemental jurisdiction over Plaintiff’s Donnelly Act claims, the Court notes that the Donnelly Act “is modeled after the Sherman Act and should generally be construed in light of Federal precedent.” *Biocad JSC v. F. Hoffman-La Roche*, 942 F.3d 88, 101 (2d Cir. 2019). Accordingly, “[t]he standard for a well-pleaded Donnelly Act claim is the same as a claim under Section 1 of the Sherman Act.” *Nat’l Gear & Piston, Inc. v. Cummins Power Sys., LLC*, 861 F. Supp. 2d 344, 370 (S.D.N.Y. 2012). The Court has dismissed Plaintiff’s Sherman Act claims against MultiPlan and United because they were not well-pled, *see supra* Section I. Accordingly, Plaintiff’s Donnelly Act claims would also fail on the same grounds if the Court were to exercise supplemental jurisdiction over those claims.

favors liberal grant of an opportunity to replead after dismissal of a complaint under Rule 12(b)(6).” *Noto v. 22nd Century Grp., Inc.*, 35 F.4th 95, 107 (2d Cir. 2022); *see also Kopchik v. Town of East Fishkill*, 759 F. App’x 31, 38 (2d Cir. 2018) (“The opportunity to amend the complaint is appropriately presented *after* the district court rules on a motion to dismiss.”).

The fact that Plaintiff’s opposition brief provides no explanation about how it intends to amend its complaint is sufficient reason for the Court to deny leave to amend. *See Gregory v. ProNAi Therapeutics Inc.*, 757 F. App’x 35, 39 (2d Cir. 2018) (affirming denial of leave to amend where “plaintiffs sought leave to amend in a footnote at the end of their opposition to defendants’ motion to dismiss” and “included no proposed amendments”). However, because Plaintiff has not previously sought to amend its complaint, Plaintiff may file a motion of no more than ten (10) pages seeking leave to file an amended complaint by December 12, 2023. Any such motion should include the proposed amended complaint as an exhibit as well as a redline comparing the proposed amended complaint to the current complaint. The brief should explain why leave to amend should be granted, including a discussion of how the proposed amended complaint cures the deficiencies identified herein and in Defendants’ motions to dismiss. If Plaintiff chooses to file a motion and a proposed amended complaint, Defendants may file a joint opposition of no more than ten (10) pages on or before January 4, 2023. Unless otherwise requested by the Court, there will be no replies.

### **CONCLUSION**

For the reasons set forth above, the Court GRANTS Defendants’ motions to dismiss. *See* ECF Nos. 30 & 31. Plaintiff may file a motion seeking leave to amend its complaint, as described above, on or before December 12, 2023, and Defendants may file a joint opposition

brief by January 4, 2023. If Plaintiff does not seek leave to amend by December 12, 2023, judgment shall be entered, and the case closed.

SO ORDERED.

/s/ Hector Gonzalez  
HECTOR GONZALEZ  
United States District Judge

Dated: Brooklyn, New York  
November 21, 2023