25-1167

United States Court of Appeals For the Second Circuit

LONG ISLAND ANESTHESIOLOGISTS PLLC,

Plaintiff-Appellant,

-v-

UNITEDHEALTHCARE INSURANCE COMPANY OF NEW YORK, INC., *as Program Administrator for the Empire Plan Medical/Surgical Program*, and MULTIPLAN INC.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of New York

BRIEF FOR PLAINTIFF-APPELLANTS

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July 25, 2025

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JURISDICTIONAL STATEMENT

The United States District Court for the Eastern District of New York had subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1291 because the appeal is from the final Decision and Order of the District Court (Gonzalez, J), entered on April 7, 2025 (SA-001-031),[1] and the final Judgment of the District Court (Gonzalez, J.), dated and entered April 8, 2025 (SA-032) which disposed of all claims. The appeal is timely as Plaintiff-Appellant's Notice of Appeal was filed in the District Court on May 5, 2025 (JA-719).

As will be discussed in detail, Long Island Anesthesiologists, PLLC has standing under Article III of the United States Constitution, as well as antitrust standing, to press any of their claims. Standing is a component of federal subject-matter jurisdiction. *Carney v. Adams*, 592 U.S. 53, 58 (2020). For that reason, the district court had subject-matter jurisdiction.

[1] As used herein, SA- refers to Special Appendix, JA- refers to the Joint Appendix.

STATEMENT OF QUESTIONS PRESENTED

1. Did the District Court abuse its discretion by declining to grant Long Island Anesthesiologists PLLC an opportunity to amend its complaint?

2. Did Long Island Anesthesiologists PLLC adequately allege antitrust standing?

3. Did Long Island Anesthesiologists PLLC sufficiently allege a violation of Section 1 of the Sherman Act to survive a motion to dismiss?

4. Did Long Island Anesthesiologists PLLC sufficiently allege a violation of Section 2 of the Sherman Act to survive a motion to dismiss?

PRELIMINARY STATEMENT

Defendant UnitedHealthcare Insurance Company of New York, Inc. ("United") is one of the largest healthcare payers in the New York Metropolitan area and administrator of the Empire Plan, a health plan that covers over 1.2 million public-sector employees. With the help of Defendant Multiplan, Inc. ("MPI"), United has used its market power to force out-of-network anesthesia practices in the New York Metropolitan area to accept dramatically low reimbursement rates for medically necessary services rendered to Empire Plan patients. In addition to

setting predatory reimbursement rates, MPI and United have made it impossible to challenge or negotiate these rates.

As the result of the anticompetitive actions of United and MPI, Long Island Anesthesiologists, PLLC ("LIA") and other similarly situated independent anesthesia groups in the New York Metropolitan area have been placed in a no-win situation with no recourse: they can become in-network providers receiving the same or lower reimbursement rates than they do out-of-network, or they can stay out-of-network and face dramatic cuts to rates due to the scheming of United and MPI to slash reimbursement rates to increase their own profits. The decrease in reimbursement rates is no meager amount: United has cut rates by more than 80% for medically necessary anesthesia services. Moving in-network provides anesthesiologists in particular with no benefit to offset the low reimbursement rates because they cannot pick their patients and do not need to advertise their services. Defendants claim that this conduct constitutes the normal practice of business and is not anticompetitive. It is disingenuous to claim that this conduct is not anticompetitive when it is decreasing revenue for anesthesiology practices to unabsorbable levels, causing independent anesthesiology

practices to sell their practices to hospitals.

Moreover, "[t]he antitrust laws of the United States aim to protect *consumers* by maintaining competitive markets." *In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186, 1191 (9th Cir. 2015) (emphasis added); *see also Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters ("AGC"),* 459 U.S. 519, 530 (1983) ("Congress was primarily interested in creating an effective remedy for consumers who were forced to pay excessive prices by the giant trusts and combinations that dominated certain interstate markets."). Defendants' conduct has a negative impact on consumers insofar as it impacts their out-of-pocket costs in that those with high deductible plans or plans with large cost-sharing for out-of-network services may have to pay much more out-of-pocket for medically necessary services. No savings are being passed on to patients by defendants' conduct.

But there are more important considerations in addition to pricing, especially in the medical field. Defendants' actions are leading directly to a significant decrease in the quality of medical care and an increase in waiting times for medically necessary services and procedures. This consumer impact is the type of injury that antitrust laws were set up to

protect against.

The district court erred in concluding that no antitrust injury was alleged, and that the allegations in the amended complaint, taken as true, are insufficient to plead violations of Sections 1 and 2 of the Sherman Act. At the very least, the district court was obligated to provide LIA with an opportunity to amend its pleading. For these reasons, more fully set forth below, this Court should reverse the district court order or modify the order to allow LIA to move to amend its pleading.

STATEMENT OF THE CASE

Background

Plaintiff, Long Island Anesthesiologists PLLC ("LIA") is a private anesthesiologist-owned anesthesiology practice in West Islip, New York (JA-601). Principally, LIA provides anesthesia services to Good Samaritan Hospital Medical Center, a not-for-profit 537-bed tertiary care hospital with Level II trauma center that is part of the Catholic Health system on Long Island, in West Islip (JA-601). The hospital has some of New York's highest volume emergency services and provides a host of medical services—cardiac, labor and delivery, pediatric, neonatal, among

others—all for which LIA provides anesthesiology services (JA-602).

Generally, patients with health insurance who receive medical services like those above are enrolled in some type of health plan (JA-603). The plans contract with medical providers to create networks of participating providers (JA-603). In an in-network relationship, the health plan accepts the medical practice's clinicians as credentialed participating providers and enters a participating provider agreement, whereby the amount the provider will be reimbursed is set for covered services and the process for claims submission and payment, dispute resolution, and prior approval and pre-certification are set forth in the agreement (JA-603).

On the other hand, in out-of-network relationships there is no contractual agreement between the health plan and practice, and instead, provider reimbursement for services rendered to health plan members is dictated by the terms of health plan documents, over which the out-of-network providers have no control (JA-604).

Historically, in-network reimbursement rates have been lower than out-of-network reimbursement rates, the justification being that in-network relationships lead to increased referrals from health plan

directories and materials and receive reimbursement more quickly and easily directly from the health plans (JA-604).

Anesthesiology is a unique medical specialty in that anesthesiologists are unable to choose or turn away prospective patients (JA-602-603). They provide services to *all* patients undergoing surgical or other medical procedures at the facilities at which they work, regardless of the patient's ability to pay or health coverage (JA-603). LIA's agreements with Good Samaritan, like all other anesthesiology groups, provide that they are obligated to provide services regardless of patient health coverage or ability to pay for services rendered (JA-603). As a result, unlike other medical practitioners, anesthesiologists, including those at LIA, cannot avoid treating patients who are members of health plans that provide low reimbursement rates (JA-603). Accordingly, LIA and other anesthesia practices, who receive no benefit from an in-network relationship, generally choose to remain out of network with health plans (JA-604).

Defendant United is a subsidiary of a multi-national managed healthcare and insurance company with the largest national market share percentage, UnitedHealth Group Incorporated, which has been

referred to as a "behemoth in the healthcare industry" by the New York Attorney General (JA-604-605). United offers health benefits and insurance plans (JA-608). In the relevant market, the New York Metropolitan area, United holds a significant share of the market (JA-609). As of both January 2020 and 2022, the American Medical Association had reported United as having the largest market share of health care insurers in the New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area at 26% for all products (JA-609). Their share for point-of-service products was 66% in January 2020 (JA-609). Other studies of market share for private enrollment plans in the New York City market in 2022 reported United's share at 33.8%, with its closest competition hovering around 20% of the market (JA-610).

In addition to acting as an insurer, United acts as the administrator of the Medical/Surgical Program of the Empire Plan, part of the New York State Health Insurance Program ("NYSHIP"), which provides health coverage for public employees in New York State (JA-610-611). The Empire Plan pays for covered hospital services, physician bills, prescription drugs, and other covered medical expenses for eligible public employees and their dependents (JA-610). In addition to New York State

employees, NYSHIP's Empire Plan covers employees and dependents of state-related entities like municipalities (town, county, city, and village), school districts, and special purpose government districts (JA 610-611). As such, approximately 800 local government employers offer the Empire Plan to their employees and NYSHIP protects over 1.2 million New Yorkers as one of the largest employer-sponsored group health insurance programs in the United States (JA-611).

New York State and local government entities fund the Empire Plan, but day-to-day decisions regarding operation and the provision of benefits belong to United (JA-611). United receives an administrative service fee for its role (JA-612). United is responsible as administrator of the Empire Plan "for establishing a network of participating providers, establishing reimbursement rates, processing and paying claims from both participating and non-participating providers, and ensuring compliance with the requirements of the Empire Plan. Under the Empire Plan, [United] is reimbursed by Civil Service for the claims they process and pay." (JA-612, quoting Thomas P. DiNapoli, *Preventing Inappropriate and Excessive Costs in the New York State Health Insurance Program* (N.Y. State Comptroller Audit 2016-D-1 (May 2018))

at 4-5).

The Empire Plan has historically granted enrollees the freedom to receive coverage from both in-network and out-of-network providers to ensure public employees broad access to the physicians of their choice (JA-611). United contracts with in-network health care providers who agree to accept payments at rates established by United to furnish medical services to Empire Plan members and remits payment directly to in-network providers based on claims submitted for services provided (JA-612). For Empire Plan members who choose to receive services from out-of-network providers, United has traditionally based its payments of out-of-network provider claims on the reasonable and customary (R&C) rate for the service (JA-613). But United has significant leeway with respect to out-of-network providers to determine the appropriateness of billed codes and charges, calculate the "reasonable and customary" reimbursement rate, and decide whether and how to negotiate reductions to reimbursements (JA-613).

The Empire Plan previously reimbursed out-of-network physicians for providing covered medical services to Plan enrollees at or around the usual, customary, and reasonable ("UCR") rate for medical services in the

geographic area where the services were provided, determined using benchmarking databases, specifically the FAIR Health database (JA-614-615). When reimbursement rates were determined in this manner, covered services provided by out-of-network providers like LIA at in-network hospitals were reimbursed in full by the Empire Plan and, because the rates were UCR, the rates were market (JA-615).

These reimbursement rates were crucial to medical providers in the area given the large number of Empire Plan enrollees. Prior to 2022, the Empire Plan provided for about 40% of LIA's revenues (JA-616). Another New York metropolitan area anesthesiology practice, Long Island Anesthesia Physicians ("LIAP"), attributed 44% of its revenue to Empire Plan reimbursement in 2021 (JA-616). Similarly, New York Cardiovascular Anesthesiologists ("NYCA"), another market-area practice, attributed 19% of its practice's revenue in 2021 to services provided to Empire Plan members (JA-616).

United and MPI's Anticompetitive Scheme

Until 2022, the Empire Plan was also treated as subject to the New York Surprise Bill Law (Financial Services Law §§ 601-08, applied to the Empire Plan via Civil Service Law § 162(1)(b)(iv)) by stakeholders, meaning that out-of-network providers like LIA were prohibited from "surprise billing" patients, protecting patients from being balance billed for unexpected out-of-network costs (JA-617). Under New York's Surprise Bill Law, the Empire Plan and other health plans were required to reimburse out-of-network physicians a "reasonable amount" for covered services (Financial Services Law §§ 607(a)(3), 605(a)(1)) (JA-617). Any dispute over the reimbursement was submitted to an independent dispute resolution (IDR) entity that would review disputed bills and consider the "usual and customary cost" of services rendered, defined by the New York Surprise Bill Law as "the 80th percentile of all charges for the particular health care service performed buy a provider in the same or similar specialty and provided in the same geographical area as reported in a benchmarking database maintained by a nonprofit organization specified by the superintendent, which is not affiliated with a health care plan." 23 NYCRR §400.2(w). Accordingly, IDR entities used

the FAIR Health database to select a reasonable fee, and for most services, out-of-network physicians like LIA had a remedy if the Empire Plan failed to originally reimburse it at the UCR for medical services (JA-618).

But in 2022, LIA and any other out-of-network physicians, including LIAP, began being reimbursed by the Empire Plan *more than 80% less* than reimbursed for similar services in 2021 (JA-619). The President of NYCA stated that its reimbursement decreased by 73% in 2022 (JA-619).

It was at this point that United decided that the Empire Plan should be treated like non-governmental self-funded employee health plans, not subject to New York insurance laws or regulations (JA-620). The New York Surprise Bill Law does not apply to non-governmental self-funded employee health plans; instead, reimbursement for out-of-network procedures performed for those plans are governed by the federal No Suprises Act (JA-620; *see also* New York Public Law §§ 116-260). At the same time, Empire Plan began taking the position that it does not need to reimburse out-of-network physicians at that FAIR Health, UCR rates of reimbursement (JA-620). Because the Empire Plan

is purportedly—according to United—no longer subject to New York insurance laws and regulations or the New York Surprise Bill Law, prior avenues used to dispute unfair reimbursement rates are now closed to out-of-network providers like LIA.

Due to the position United has taken, LIA and other out-of-network providers are forced to resolve any dispute through the IDR process established under the No Surprises Act instead of the New York Surprise Bill Law—which is supposed to apply only when a "specified state law" does not apply. *See* 42 U.S.C. § 300gg-111. The federal IDR process, in addition to being fraught with implementation problems, is less favorable to out-of-network providers, focusing on the Qualifying Payment Amount ("QPA"), which is biased and determined by the health plan and is based on median in-network rates for the same service in a similar geographic area (JA-624). As explained above, in-network rates are traditionally lower than out-of-network rates. The QPA is almost always significantly less than the amount that would be determined by the FAIR Health-determined UCR amount (JA-624).

United has made an already difficult and unsatisfactory process even more difficult by claiming to also be exempt from the *federal* IDR

process (JA-624). There is no basis to claim exemption from both the state Surprise Bill Law and the No Surprises Act except to make out-of-network physician attempts at obtaining fair reimbursement more difficult (JA-625).

United then deployed MPI to deal with out-of-network providers. MPI is a horizontal competitor of United, owning and operating its own employer-provided healthcare plans, specifically, preferred provider organization (PPO) networks (JA-627). Its PPO networks compete with United and other commercial health insurance payers to secure contracts with medical providers (JA-628). More than this, MPI began in 2006 to sell "analytics" services to competitors—including Cigna, Elevance, Centene, and Humana—which reprice out-of-network health plan claims based on an agreed upon methodology (JA-629). The way the service works is that, after out-of-network care is provided and the competitor receives a reimbursement claim, they turn the claim over to MPI to apply its "analytics" which almost always results in a reimbursement rate below customary and reasonable amounts (JA-629-630). MPI is incentivized to recommend low reimbursement rates to offset the price of their services (JA-630). Almost all major health payers use MPI's

services to reprice services, resulting in universally low reimbursement rates (JA-630). MPI advertises that it generates over $15 billion in reimbursement rate reductions (JA-631). United is MPI's biggest customer, representing 30% of its revenue (JA-632).

When the No Surprises Act was introduced MPI leveraged its repricing services to competitors to help them comply with the No Surprises Act and to, again, help these large health plans reduce out-of-network reimbursement rates "using data-drive negotiation and/or reference-based pricing methodologies" (JA-635).

As stated above, MPI worked on behalf of United to give notice of the federal IDR process and negotiate with out-of-network providers (JA-625-627). In doing so, MPI gave LIA and other out-of-network providers impossible response times to negotiate or invoke the federal IDR process. In one communication, MPI responded to LIA as follows: "We are offering the Qualifying Payment Amount to resolve this for payment in response to your Open Negotiation Notice" and provided information regarding the federal IDR process. MPI demanded a response *within less than 24 hours* (JA-625). When contacted, it failed to negotiate, stating it was only permitted to offer the QPA amount (JA-625-626).

Notices from MPI became more frequent, to the point of overwhelming LIA, and began demanding shorter and shorter response times, requiring response *within 45 minutes of receipt* with detailed information regarding a justification for higher reimbursement (JA-626). These unreasonable demands in conjunction with scores of reimbursement disputes can only be characterized as bad faith, especially given that non-compliance can lead to closure of the Open Negotiation period and a loss of the right to pursue the dispute (JA-626).

MPI has sent similar correspondence to other out-of-network providers in the area, sometimes requesting response in as little as 15 minutes of receipt, and that flood of correspondence has made it impossible to keep up with while performing routine billing and collection services to the practices (JA-627). All of these actions logically stem from a campaign to get out-of-network providers like LIA to abandon their challenges to the Empire Plan's low reimbursement rate (JA-627). MPI has been successful in that campaign, with many providers deciding not to challenge the low reimbursement rates because they do not have the bandwidth to do so (JA-627). In fact, MPI's marketing materials announced a coordinated strategy to partner with health plans to manage

the No Surprises Act process with one main goal: significantly reducing reimbursement rates (JA-633).

Put simply, United, with the aid of MPI, is using its market power to drive down out-of-network reimbursement rates in the New York Metropolitan area. The goal in doing so is to drive out anesthesia providers such as LIA who compete with United's affiliated entity, OptumCare.

OptumCare provides anesthesia service in the relevant market and is attempting to expand its delivery of healthcare services, including anesthesia services, in the area (JA-606-607). OptumCare is in the business of acquiring physician and healthcare practices throughout the United States and managing them (JA-606-607). OptumCare managed practices and physicians offer anesthesiology services on Long Island and in the wider New York Metropolitan area (JA-607). The elimination of independent anesthesiology practices will thus benefit United at the expense of practices like LIA.

Impact of United and MPI's Conduct

The sudden decrease in reimbursement rates—up to 80% in LIA's case—is devastating to anesthesia providers in the New York Metropolitan area (JA-635). These providers cannot choose their patients and therefore cannot choose to avoid Empire Plan patients which, as explained earlier, make up a significant number of patients in the relevant market space, usually 44% of LIA's revenues (JA-637). As of June 2022, the revenue from the Empire Plan decreased to 11% of LIA's revenue, a reduction of practice profits by more than 80% (JA-637). They cannot recoup their losses by going in-network as, according to testimony from the Director of the Employee Benefits Division of the New York State Department of Civil Service, responsible for administration of the Empire Plan, the reimbursement rate would be the same or less than the anesthesiology practices are receiving now out-of-network (JA-636).

Other affected anesthesiology practices have described the precipitous decrease in Empire Plan reimbursement as an "unabsorbable loss" to their practice (JA-636). To put this in perspective, as of June 2022, LIAP's average reimbursement per case has declined from $6,083.00 to $873 for the same services (JA-637). The resulting impact,

in an area where there is already a shortage of quality anesthesia providers, was explained by LIAP's Chief Operating Officer, who testified that if low reimbursement rates for the Empire Plan continue, the practice would—at the very least—be forced to significantly curtail its services, require hospitals to run less operating rooms every day, and hamper its ability to recruit new talent (JA-637). In the meantime, the financial stress is causing practices like LIAP to lose talent, having lost more than 10% of its physician staff due to financial stress, and commence divestiture of its interventional pain management operation (JA-637). NYCA's President raised similar concerns, also noting that its precipitous decrease in Empire Plan reimbursement was unabsorbable. The President noted that since it lost over 12% of its overall revenue due to Empire Plan reimbursement, it has had to cut staff, eliminate sites of service, and suspend new hires (JA-639).

LIAP is the exclusive anesthesia provider to five hospitals on Long Island where there are no alternative in-network providers or, indeed, any other alternative anesthesia resources for those hospitals to turn to for staff (JA-638). Anesthesiologists are needed to perform innumerable hospital surgeries and procedures, and as a result of LIAP's inability to

service these hospitals on the reimbursement rates as they stand, there has been a shortage at these hospitals, which have had to shutter operating rooms and procedure rooms and lengthen wait times for patients as a result (JA-638). LIAP was also forced to join NYU-Langone Health and end its over 50-year history of being an independent medical practice to stay afloat in some capacity (JA-638). Similarly, NYCA has expressed the same concerns regarding the hospitals at which it contracts (JA-638-639).

The leaders of each medical practice have expressed that, if reimbursement rates for the Empire Plan continue at this depressed rate, there will be a loss of continuity of care, significant delays in the provision of care, and an increase in adverse health outcomes due to quality of care. This has a market-wide impact, not just on anesthesiology practices, but on healthcare more globally (JA-635-640).

The Current Action

LIA commenced this action on July 11, 2022 against United as program administrator of the Empire Plan and against MPI alleging five causes of action—three federal claims and two state claims (JA-13-50). First, LIA alleges that United and MPI have engaged in an antitrust

conspiracy to restrain trade in violation of Section 1 of 15 U.S.C. § 1 of the Sherman Act. Second, it alleges that United has monopsony power in the relevant market and is willfully maintaining that power through anticompetitive conduct, including . . . and is leveraging that power to gain an anticompetitive advantage in the market in violation of Section 2 of the Sherman Act. Third, LIA alleges that United has violated Section 2 of the Sherman Act by engaging in predatory or anticompetitive conduct to acquire monopsony power and it has a dangerous probability of doing so. Fourth, it asserts United and MPI had engaged in an antitrust conspiracy to restrain trade in violation of New York General Business Law §§ 340, *et seq*. Last, LIA alleged United and MPI were unjustly enriched by receiving fees and reimbursement through improper means (JA-46-49).

United and MPI moved to dismiss the original complaint (JA-52-133) and the United Stated District Court for the Eastern District of New York (Gonzalez, J.), granted the motions, holding that LIA had not sufficiently alleged an antitrust injury (JA-576-593). Specifically, the court concluded that LIA failed to allege sufficient facts to support a finding that competition as a whole in the relevant market was harmed,

or plead the "something more" in addition to low reimbursement rates sufficient to establish and antitrust injury (JA-584-588). The court also held that LIA's Section 1 Sherman Act claims failed to state a plausible claim against MPI (JA-588-590). The court thereafter declined to exercise supplemental jurisdiction over LIA's state claims (violation of New York General Business law and unjust enrichment) (JA-591). The court, however, held that LIA could file a motion seeking leave to amend its complaint (JA-591-592).

LIA filed its Amended Complaint on May 28, 2024 alleging the same five causes of action. In its Amended Complaint, LIA added significant detail to its allegations, particularly with respect to the larger market impact United and MPI's actions have had, to address the court's finding that it had not alleged facts sufficient to support a finding that competition as a whole in the relevant market was harmed, and it clarified its factual allegations to allege "something more" than low reimbursement rates as injury. LIA also significantly strengthened its allegations against MPI (*see* JA-598-660).

Defendants moved to dismiss once again (JA-661-666), and in an April 7, 2025 decision and order, the district court granted Defendants'

motions to dismiss with prejudice, declined to exercise supplemental jurisdiction over Plaintiff's state claims, dismissing them without prejudice, and denied LIA's request to amend the complaint if any deficiencies were found (JA-687-717).

The court first held that issue preclusion from a New York Supreme Court case, *Joseph v. Corso*, No. 902227-22, 2023 WL12011473 (N.Y. Sup. Ct. 2023), did not apply (JA-692-693). Next, the court concluded that LIA had not established antitrust standing because it had not alleged more than harm to competition or the type of harm that antitrust laws were intended to prevent because LIA and the other anesthesiology groups had not been excluded from the market, and that LIA had not sufficiently pleaded "something more" in addition to lowered reimbursement rates (JA-693-702).

On the merits, the court concluded that each of LIA's federal claims failed because LIA had not adequately alleged the market of competing buyers, rather than sellers, of anesthesia services; did not adequately allege an actionable conspiracy because the amended complaint lacked allegations of an unlawful agreement between horizontal competitors; and that United's actions were consistent with standard business

incentives rather than anticompetitive (JA-702-714).

LIA appeals (JA-719).

SUMMARY OF ARGUMENT

The district court was obligated to take the factual allegations in the amended complaint as true and draw all reasonable inferences in the plaintiff's favor. It failed to do so in reaching its conclusion that LIA does not have antitrust standing. The amended complaint alleges the type of harm that antitrust laws were designed to protect. LIA further plausibly alleged causes of action under both Section 1 and 2 of the Sherman Act. Accordingly, this Court should reverse the district court's holding, or at the very least, grant LIA a chance to move to amend the pleading, as is customary following a motion to dismiss.

STANDARDS OF REVIEW

This Court reviews *de novo* a district court's dismissal of a complaint under Rule 12(b)(6), "accepting all factual allegations in the complaint as true and drawing all reasonable inferences in plaintiffs' favor." *Perkins v. City of New York*, No. 22-196-CV, 2023 WL 370906, at *3 (2d Cir. 2023) quoting *Freidus v. Barclays Bank PLC*, 734 F.3d 132, 137 (2d Cir. 2013) (internal quotation marks omitted); *see Ashcroft v.*

Iqbal, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged". *Id.* at 678–79 (internal quotation marks and citation omitted, alteration in *Iqbal*). "Since this is an appeal from a judgment granting a motion to dismiss, the allegations of the amended complaint are taken as true." *Ronzani v. Sanofi S.A.*, 899 F.2d 195, 196 (2d Cir. 1990). Questions of standing are also reviewed de novo. *In re DDAVP Direct Purchaser Antitrust Litig.*, 585 F.3d 677, 688 (2d Cir. 2009).

This Court reviews "a district court's denial of leave to amend for abuse of discretion, unless the denial was based on an interpretation of law, such as futility, in which case we review the legal conclusion *de novo*." *Pyskaty v. Wide World of Cars, LLC*, 856 F.3d 216, 224 (2d Cir. 2017) (quoting *Panther Partners Inc. v. Ikanos Commc'ns, Inc.*, 681 F.3d 114, 119 (2d Cir. 2012)).

ARGUMENT

I.
THE COURT ABUSED ITS DISCRETION BY FAILING TO GRANT LIA LEAVE TO AMEND THE COMPLAINT

Rule 15(a)(2), Fed. R. Civ. P., requires that a court "freely give leave [to amend] when justice so requires." "Generally, under Rule 15, if the underlying facts or circumstances relied upon by the party seeking leave to amend may be a proper subject of relief, the party should be afforded the opportunity to test the claim on its merits." *Carey v. Salvadore*, No. 18-CV-6307-DGL-MJP, 2022 WL 903223, at *1 (W.D.N.Y. Mar. 11, 2022), *report and recommendation adopted*, No. 18-CV-6307L, 2022 WL 901602 (W.D.N.Y. Mar. 28, 2022) (internal quotation marks omitted). A "motion to amend should be denied only for such reasons as 'undue delay, bad faith, futility of the amendment, and perhaps most important, the resulting prejudice to the opposing party.' " *RSM Prod. Corp. v. Fridman*, No. 06-11512, 2008 WL 474144, at *3 (S.D.N.Y. Feb. 19, 2008) quoting *Richardson Greenshields Sec., Inc. v. Lau,* 825 F.2d 647, 653 n. 6 (2d Cir.1987); *State Teachers Retirement Bd. v. Fluor Corp.,* 654 F.2d 843, 856 (2d Cir.1981) ("Reasons for a proper denial of leave to amend include undue delay, bad faith, futility of the amendment, and perhaps most

important, the resulting prejudice to the opposing party."). "The rule in this Circuit has been to allow a party to amend its pleadings in the absence of a showing by the nonmovant of prejudice or bad faith." *Block v. First Blood Assocs.,* 988 F.2d 344, 350 (2d Cir.1993); *see also Pasternack v. Shrader*, 863 F.3d 162, 174 (2d Cir. 2017).

In determining what constitutes prejudice, courts should consider, *inter alia,* whether the amended pleading would "require the opponent to expend significant additional resources to conduct discovery and prepare for trial [or] significantly delay the resolution of the dispute." *Id.* "Mere delay, however, absent a showing of bad faith or undue prejudice, does not provide a basis for a district court to deny the right to amend." *State Teachers Retirement Bd.,* 654 F.2d at 856.

Defendants will not be prejudiced by the Court allowing LIA to amend the complaint because this case is still in its initial pleading stage and LIA need not plead any additional claims than in the First Amended Complaint, only additional factual allegations based on the same subject matter as those pleaded in its original Complaint and the Amended Complaint. *See Colwell & Salmon Commc'ns, Inc. v. ArborMed Corp.*, No. 1:10-CV-01137, 2011 WL 2516926, at *2 (N.D.N.Y. June 23, 2011); *see*

also Tiller v. Atlantic Coast Line R. Co., 323 U.S. 574, 581 (1945) (allowing an amendment where both the original Complaint and amended Complaint "related to the same general conduct, transaction and occurrence" which gave rise to the cause of action). Even where a court is doubtful that a plaintiff will be able to allege a sufficient set of facts, the proper procedure in an antitrust action is to allow the party to amend. *See Indium Corp. of Am. v. Semi-Alloys, Inc.*, 566 F. Supp. 1344, 1354 (N.D.N.Y. 1983); *see also* Wright & Miller, 5 *Federal Practice & Procedure* § 1350 at 553–54 (1969).

LIA substantially amended its complaint in response to defendants' initial motions to dismiss, adding detailed explanations of United and MPI's anticompetitive conduct and its effect on the relevant market. The deficiencies outlined in the current decision are more discrete than in the decision on the original motion to dismiss and are based upon the newly raised allegations. LIA should be allowed a chance to further amend its complaint in accordance with usual practice. Indeed, LIA offered to amend its pleading to correct any perceived deficiencies in the first instance. *see Ronzani*, 899 F.2d at 198. The court does not explain how amendment would be futile insofar as LIA was able to substantially

address the deficiencies the court identified in its first pleading, and there is no indication it would not do the same if granted another amendment.

When a motion to dismiss is granted, "the usual practice is to grant leave to amend the complaint." 2A Moore & Lucas, Moore's Federal Practice ¶ 12.14 at 12–99 (2d ed. 1989); *see Cortec Indus., Inc. v. Sum Holding, L.P.,* 949 F.2d 42, 50 (2d Cir.1991) (it is the usual practice upon granting a motion to dismiss to allow leave to replead); *see also Luce v. Edelstein,* 802 F.2d 49, 56 (2d Cir.1986) ("Complaints dismissed under Rule 9(b) are 'almost always' dismissed with leave to amend."). The court abused its discretion by failing to grant the same to LIA.

II.

LIA HAD ARTICLE III AND ANTITRUST STANDING TO ASSERT THEIR CLAIMS

An antitrust plaintiff must show both constitutional standing and antitrust standing at the pleading stage. *See In re Aluminum Warehousing Antitrust Litig.*, 833 F.3d 151, 157 (2d Cir. 2016). "Harm to the antitrust plaintiff is sufficient to satisfy the constitutional standing requirement of injury in fact, but the court must make a further determination whether the plaintiff is a proper party to bring a private

antitrust action." *AGC*, 459 U.S. at 535 n.31. "[A]ntitrust standing is a threshold, pleading-stage inquiry and when a complaint by its terms fails to establish this requirement we must dismiss it as a matter of law." *Gatt Commc'ns, Inc. v. PMC Assocs., L.L.C.*, 711 F.3d 68, 75 (2d Cir. 2013) (citation omitted).

To satisfy the antitrust standing requirement, a private antitrust plaintiff must plausibly allege that (i) it suffered an antitrust injury and (ii) it is an acceptable plaintiff to pursue the alleged antitrust violations. *See Gatt Commc'ns*, 711 F.3d at 76. In order to establish antitrust injury, the plaintiff must demonstrate that its injury is "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).

Courts employ a three-step process for determining whether a plaintiff has sufficiently alleged antitrust injury. *Gatt Commc'ns*, 711 F.3d at 76. First, the party asserting that it has been injured by an illegal anticompetitive practice must "identify[ ] the practice complained of and the reasons such a practice is or might be anticompetitive." *Port Dock & stone Corp. v. Oldcastle Northeast,* 507 F.3d 117, 122 (2d. Cir. 2007). "The

bar for such a showing is a low one." *IQ Dental Supply, Inc. v. Henry Schein, Inc.*, 924 F.3d 57, 63 (2d Cir. 2019). Next, it must identify the "actual injury the plaintiff alleges" (*Id.*) which requires the plaintiff to allege that it is in a "worse position" as a consequence of the defendant's conduct. *Brunswick Corp.,* 429 U.S. at 486. Finally, the plaintiff must demonstrate that its injury is "of the type the antitrust laws were intended to prevent and that flows from that which makes [or might make] defendants' acts unlawful." *Daniel v. Am. Bd. of Emergency Med.,* 428 F.3d 408, 438 (2d. Cir. 2005) (internal quotation marks omitted).

The district court concluded that LIA had not established antitrust standing because it had not alleged more than harm to competition or the type of harm that antitrust laws were intended to prevent because LIA and the other anesthesiology groups had not been excluded from the market, and that LIA had not sufficiently pleaded "something more" in addition to lowered reimbursement rates.

First, the district court "elided the distinction between antitrust violation and antitrust injury by placing considerable weight on appellants' [purported] failure to show harm to competition." *Gelboim v. Bank of Am. Corp.*, 823 F.3d 759, 770 (2d Cir. 2016); *see also St. Clair v.*

Citizens Financial Group, No. 08–1257, 2008 WL 4911870, at *5 (D.N.J. Nov.12, 2008) (holding that harm to the market "is not required for antitrust standing, but instead is relevant to show restraint of trade when proving the merits of an antitrust claim."). "[I]t is easy to blur the distinction between an antitrust violation and an antitrust injury, as the district court did." *Id.* This is clear from the district court's citation to the substantive antitrust violation analysis in *In re Google Digital Advert. Antitrust Litig.*, 627 F, Supp. 3d 346, 380 (S.D.N.Y. 2022).

Furthermore, LIA did allege more than "harm to a . . . group of competitors" (JA-696-697 quoting *In re Google Digital Advert. Antitrust Litig.*, 627 F, Supp. 3d at 380). Although LIA gave specific examples of other anesthesia providers affected by defendants' actions, its allegations extended to the market as a whole, clearly alleging more than harm to the anesthesiology practices in the market, but also alleged adverse effects to overall price, quality, and output of anesthesiology services. LIA alleged that anesthesiology practices were being forced to implement hiring freezes and cut staff, leading to less availability of anesthesiologists needed to perform a myriad of medically necessary services in an already depressed market, causing hospitals to have to

shutter operating rooms, causing longer wait times for patients as well as less highly skilled anesthesiologists treating them (*see* JA-637-640). LIA has also alleged that the anesthesia providers are excusive providers to hospitals in the relevant area, leading to market-wide effects (JA-638).

As LIA explained to the court below, courts have repeatedly concluded that allegations of reduced availability, reduced number of providers, and decline in quality of patient care to be sufficient to plead an antitrust injury. *See Angelico v. Lehigh Valley Hosp., Inc.*, 184 F.3d 268, 276 (3d Cir. 1999); *Reddy v. Puma*, No. 1:06CV1283ENV-KAM, 2006 WL 2711535 (S.D.N.Y. Sept. 21, 2006); *N.Y. Medscan LLC v. N.Y. Univ. Sch. of Med.*, 430 F. Supp. 2d 140, 148-49 (S.D.N.Y. 2006).

Contrary to the district court's holding, there is no requirement that a party be excluded completely from the market to show antitrust injury. The district court held that *Angelico*, *Reddy*, and *N.Y. Medscan* were distinguishable because those plaintiffs were excluded from the market and LIA and similarly situated anesthesiology practices can "still provide out-of-network anesthesia services or negotiate in-network participation" (JA-698). But both *Reddy* and *N.Y. Medscan* are not focused on exclusion from the marketplace in analyzing market-wide injury and instead are

focused on the consequences of reduced competition in the market, that being the decline in quality in the provision of health care services.

In any event, *Reddy* was not even a case showing complete exclusion from the marketplace. The plaintiff in *Reddy* alleged that defendants engaged in "exclusionary acts," but he was not excluded completely from the market. Instead, just like here, the plaintiff alleged that the impact of defendants "exclusionary acts" was to "reduce the availability and number of providers of interventional cardiac services" and cause "a demonstrable decline in the quality of patient care" in the relevant market. *Reddy*, No. 1:06CV1283ENV-KAM, 2006 WL 2711535, at *4. The court then concluded that "[i]n the medical context, courts have repeatedly found such allegations sufficient to state an antitrust injury." *Id.* Accordingly, here too the same allegations should be sufficient.

Second, the amended complaint alleges more than predatorily low reimbursement rates, just as the plaintiff did in *Presque Isle Colon & Rectal Surgery v. Highmark Health*, 391 F. Supp. 3d 485, 499 (W.D. Pa. 2019). In *Presque*, the plaintiff alleged predatorily low reimbursement rates in its original complaint, and further alleged anticompetitive

conduct in its amended complaint, including unnecessary audits, unfair steering, and inefficient procedure codes and requirements. *Id.* at 499. This was sufficient to establish antitrust injury.

The district court here concluded simply that LIA had not alleged the same facts as in *Presque*. But the facts alleged by LIA in the amended complaint similarly add "something more" to their claim of predatorily low reimbursement rates. Specifically, LIA alleged that United was also working in concert with MPI to depress the ability of independent private practices to combat the low reimbursement rates by flooding them with communications to burden the practices' ability to routinely bill and providing increasingly unreasonable response times, the shortest being a response within 15 minutes of receipt (JA-626-627). United and MPI's joint efforts to make it impossible to challenge or negotiate rates provide "something more."

Additionally, LIA and the other independent practices providing anesthesia services are different from other medical providers. They cannot react to anticompetitive conduct by altering their market behavior. Anesthesiologists cannot turn away patients or target certain clientele, they have to work with any patient that comes into their

designated hospital. United has therefore placed LIA and other similarly situated anesthesiology practices in a no-win position where, either way, they receive predatorily low reimbursement rates: stay out-of-network and face the current reimbursement rates with no recourse, or go in-network and risk the same or lower reimbursement rates with none of the marketing benefits that other providers have from in-network relationships. The amended complaint alleges that defendants' actions are designed to drive LIA and similarly situated private, independent anesthesia practices out of business, cause them to sell their practices to hospitals, or go in-network (JA-640-641). This would drive business to OptumCare, United's sister company and mirrors the "steering" allegation in *Presque*.

As an additional "something more," LIA alleged a horizontal conspiracy to suppress reimbursement payments, wherein United, through MPI, could coordinate with competitors to cause virtually all insurers to offer low reimbursement rates, eliminating competition and forcing private, independent anesthesia providers to accept the lower rates (JA-627-635). Taken as true, this allegation is, on its own, sufficient to establish "something more."

Like in *Presque*, although the central contention remains focused on allegations of predatorily low reimbursement rates, the amended complaint added substantive allegations of additional anticompetitive conduct that continues to cause adverse impacts on competition and consumers. *Presque*, 391 F.Supp.3d at 499.

All of these actions have already and will continue to result in negative impacts for competition and patients. Independent anesthesiology practices have lost substantial money as a result of defendants' predatory reimbursement rates and related practices. United's market dominance is driving independent physicians into the "Hobson's choice between absorption or going out of business." *Presque*, 391 F.Supp.3d at 500. "Thus, these allegations are enough to establish anticompetitive conduct in differentiated treatment meant to harm competition on the provider side of the market by utilizing monopsony power on the insurance side of the market." *Id.*

Further, LIA has alleged that weakening competition harms patients, subjecting them to reduction in the quantity and a degradation in the quality of medical services. This includes patients being subjected to longer wait times, care from less qualified anesthesiologists, and

possibly higher out-of-pocket costs.

As such, Plaintiff has established a showing of antitrust injury, which comports with the goals of antitrust law.

III.

LIA HAS PLAUSIBLY ALLEGED A VIOLATION OF SECTION 1 OF THE SHERMAN ACT

To plausibly allege a Section 1 Sherman Act violation, a plaintiff must allege (1) "a combination or some form of concerted action between at least two legally distinct economic entities" that (2) constituted an unreasonable restraint of trade either *per se* or under the rule of reason." *Primetime 24 Joint Venture v. NBC*, 219 F.3d 92, 103 (2d Cir. 2000).

The district court held that LIA's Section 1 claim failed to plausibly allege a conspiracy between United and MPI, concluding that MPI and United were not horizontal competitors and instead had a vertical relationship, and that there were insufficient allegations of a "meeting of minds in an unlawful arrangement" (JA-704 quoting *Anderson News, LLC v. Am. Media, Inc.*, 680 F.3d 162, 183 (2d Cir. 2012)).

"[A] complaint may . . . present circumstantial facts supporting the *inference* that a conspiracy existed." *Mayor and City Council of Balt., Md.*

v. Citigroup, Inc., 709 F.3d 129, 135-36 (2d Cir. 2013). LIA must have "only allege[d] 'enough factual matter (taken as true) to suggest that an agreement was made.'" *Starr v. Sony BMG Music Ent.*, 592 F.3d 314, 321 (2d Cir. 2010); *Compass, Inc. v. Real Estate Bd. of N.Y.*, 21-cv-2195 (AJN), 2022 WL 992628 (S.D.N.Y. Marc 31, 2022). "[A] horizontal agreement . . . may be inferred on the basis of conscious parallelism, when such interdependent conduct is accompanied by circumstantial evidence and plus factors." *Id.* (quotation omitted). "These 'plus factors' may include: a common motive to conspire, evidence that shows that the parallel acts were against the apparent individual economic self-interest of the alleged conspirators, and evidence of a high level of interfirm communications." *Id.* (quotation and footnote omitted).

Here, LIA pleaded circumstantial evidence and plus factors from which a horizontal agreement may be inferred. LIA pleaded that United and MPI directly compete in the PPO network business, which is the most common type of employer provided healthcare plan, to secure contracts from medical providers. Suppressing reimbursement rates for out-of-network anesthesiologists helps both United and MPI to dictate lower contract rates for providers. The complaint alleges that United

engaged MPI to enact a price coordination scheme to anticompetitively suppress reimbursement rates (JA-651). MPI had already embarked on a strategy to reprice out-of-network claims for health plan players at lower than customary and reasonable amounts. MPI makes a fee based on selling its price-lowering services (JA-651). The amended complaint alleges that MPI is working to have these repricing tools used by competitors to generate identical low reimbursement amounts across the board (JA-651). Indeed, the amended complaint alleges MPI approached United in 2017 about working with it to lower reimbursement rates in line with competitors, and that MPI's similar arrangement with all major competitors factored into the arrangement (JA-650). Both parties worked together to create across-the-board repricing that would force providers to have no choice but to accept lower rates.

Regardless, "antitrust jurisprudence is neither so rigid, nor so formulaic" as to require the conspiracy to be horizontal, hub-and-spoke, or another enumerated type of conspiracy. *Sitts v. Dairy Farmers of Am., Inc.*, 417 F. Supp. 3d 433, 468 (D. Vt. 2019). The key issue in a Section 1 claim is the concerted restraint of trade, no matter what configuration the conspiracy takes. *See In re Musical Instruments & Equip. Antitrust*

Litig., 798 F.3d at 1192 ("Of course, homespun metaphors for complex economic activities [such as a hub-and-spoke] go only so far. Section 1 prohibits agreements that unreasonably restrain trade, no matter the configuration they take or the labels we give them.") (footnote omitted); *see also Caribbean Broad. Sys., Ltd. v. Cable & Wireless PLC*, 148 F.3d 1080, 1087 (D.C. Cir. 1998) ("Anticompetitive conduct can come in too many different forms, and is too dependent upon context, for any court or commentator ever to have enumerated all the varieties"); *see also Am. Needle, Inc. v. Nat'l Football League*, 560 U.S. 183, 190 (2010) (explaining that what distinguishes Section 1 and Section 2 of the Sherman Act is that Section 1 covers concerted action and Section 2 covers concerted and independent action, but only if the action monopolizes or threatens monopolization, a narrower restraint of trade). "The relevant inquiry, therefore, is whether there is a "contract, combination . . ., or conspiracy" amongst "separate economic actors pursuing separate economic interests such that the agreement deprives the marketplace of independent centers of decision making, and therefore of diversity of entrepreneurial interests, and thus of actual or potential competition." *Am. Needle, Inc.*, 560 U.S. at 195.

Although horizontal conspiracies are more likely to establish a restraint of trade *per se* (*In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d at 1191 (quoting *Broadcast Music, Inc. v. CBS*, 441 U.S. 1, 19-20 (1979))), LIA also argued that the conspiracy constituted an unreasonable restraint of trade under the rule of reason.

> Under the rule of reason,
>
> > the factfinder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition. Appropriate factors to take into account include specific information about the relevant business and the restraint's history, nature, and effect. Whether the businesses involved have market power is a further, significant consideration. In its design and function the rule distinguishes between restraints with anticompetitive effect that are harmful to the consumer and restraints stimulating competition that are in the consumer's best interest.

Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 551 U.S. 877, 885-86 (2007) (citations and internal quotation marks omitted).

Many factors can be considered in determining whether parallel conduct suggests some preceding agreement. In addition to United's obvious significant market power, its history with antitrust investigations into by various governmental agencies is relevant. *See Mayor and City Council of Baltimore, Md. v. Citigroup, Inc.*, 709 F.3d 129, 137-138 (2d Cir. 2013).

UHG, United's parent company, has been subject to significant antitrust and related scrutiny in the past several years because of its size and anticompetitive conduct. *See e.g.*, *United States v. UnitedHealth Group Inc.*, 22 Civ. 00481 (D.D.C. filed Feb. 24, 2022); *U.S. Anesthesia Partners v. UnitedHealthcare Ins. Co.*, 2021CV31061 (Colo. Dist. Ct. Denver Cty. Filed Mar. 31, 2021); *U.S. Anesthesia Partners v. UnitedHealthcare Ins. Co.*, DC-2021-04103 (Tex. Dist. Ct. Mar. 31, 2021); *Fremont Emergency Servs. (Mandavia) v. UnitedHealth Group*, A-19-792978-B (Nev. 8th Dist. Ct. verdict Dec. 6, 2021) ($62.65 million jury award against UnitedHealthcare) (JA-605). In fact, on February 27, 2024 the *Wall Street Journal* reported that the "Justice Department has launched an antitrust investigation into UnitedHealth" and that "investigators ha[d] . . . been interviewing healthcare-industry

representatives in sectors where UnitedHealth competes, including doctor groups" (JA-642). Among other things, investigators asked about "relationships between the company's UnitedHealthcare insurance unit and its Optum health-services arm" and "the possible effects of the company's doctor-group acquisitions on rivals and consumers" (JA-642-643).

Meanwhile, the *New York Times* reported in April 2024 that MPI has "helped drive down payments to medical providers and drive up patients' bills, while earning billions in fees for itself and insurers." It reported the United alone reaps $1 billion in annual fees from employers from its work with MPI (JA-643-644).

The most important factor to consider is the adverse effects on consumers in the relevant market. Consumers are significantly impacted by the conspiracy between United and MPI because the quality and output of their medical services are heavily impacted by their actions. Consumers are directly affected by the weakened competition, as operating rooms shutter and wait times for medically necessary services increase. There is no industry in which quality is more important than with medical services.

The court is required to read the amended complaint with "great generosity on a motion to dismiss," *Yoder v. Orthomolecular Nutrition Inst., Inc.,* 751 F.2d 555, 558 (2 Cir.1985). Accordingly, it should not dismiss the Section 1 Sherman Act claims.

IV.

LIA HAS PLAUSIBLY ALLEGED SECTION 2 MONOPSONY CLAIMS

Monopsony power is "market power on the buy side of the market"; "monopsony is to the buy side of the market what a monopoly is to the sell side." *Weyehaeuser Co. v. Ross-Simons Hardwood Lumber Co.*, 549 U.S. 312, 320 (2007). To state a claim for monopsony under Section 2 of the Sherman Act, a plaintiff must allege (1) the possession of monopsony power in the relevant market; and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident. *See In re Tether & Bitfinex Crypto Asset Litig.*, 576 F. Supp. 3d 55, 94 (S.D.N.Y. 2021); *Telstat v. Entm't & Sports Programming Network*, 753 F. Supp. 109, 112 (S.D.N.Y. 1990). To allege an attempted monopsony, a plaintiff must plead (1) anticompetitive or exclusionary

conduct; (2) specific intent to monopolize; and (3) a 'dangerous probability' that the attempt will succeed. *See Kelco Disposal, Inc. v. Browning-Ferris Indus.*, 845 F.2d 404, 407 (2d Cir. 1988).

The District Court concluded that LIA had failed to sufficiently plead monopsonization and attempted monopsonization on the merits because both possession of monopsony power and attempted monopsonization are not unlawful without anticompetitive conduct (JA-711 citing *Mazda v. Carfax, Inc.*, No. 13-cv-1680, 2016 WL 7231941, at * 15 (S.D.N.Y. Dec. 9, 2016)), and the court determined that United's conduct was simply business activity that occurs in the normal competitive process. The district court held further that LIA's Section 2 claims failed because it had not "plausibly allege[d]" that United possessed monopsony power *in the relevant market* and were otherwise factually deficient (JA-713).

First, in reaching its conclusion that the amended complaint fails to plausibly plead anticompetitive conduct, it stated that the amended complaint did not allege that United's conduct "lacked a 'legitimate business purpose' or that it 'makes sense only because it eliminates competition'" (JA-713 citing *In re Adderall XR Antitrust Litigation*, 754

F.3d 128, 133 (2d Cir. 2014). The court improperly shifted the burden to LIA to prove that United and MPI's conduct was *not* justified by any normal business purpose, when that is a defense available to defendants, not a threshold showing for a plaintiff claiming monopsony. *Capital Imaging Assocs., P.C. v. Mohawk Valley Med. Assocs., Inc.*, 996 F.2d 537, 543 (2d Cir. 1993) ("the plaintiff satisfies its threshold burden of proof under the rule of reason, the burden shifts to the defendant to offer evidence of the pro-competitive 'redeeming virtues' of their combination.").

Nevertheless, the amended complaint did specifically plead this. LIA pleaded that United was using its market power to drive down out-of-network anesthesia reimbursement rates in the New York Metropolitan area because the impact would be to drive out private anesthesia practices to the benefit of OptumCare (JA-641). It further alleged that, from a patient standpoint, United's actions do not make sense. They are put in a significantly worse position as far as cost, wait times, and quality of care. The only plausible reason for its conduct is to decrease competition to its own benefit. *See LePage's Inc. v. 3M*, 324 F.3d 141, 163 (3d Cir. 2003) (observing that "a defendant's assertion that it

acted in furtherance of its economic interests does not constitute the type of business justification that is an acceptable defense to § 2 monopolization).

Second, LIA plausibly alleged defendant's monopsony power in the relevant market. *See In re Aluminum Warehousing Antitrust Litig.*, 95 F. Supp. 3d 419, 453 (S.D.N.Y. 2015) ("To state any claim under § 2, a plaintiff must allege plausible facts that a defendant possesses market power ... in a relevant market ...."). "Courts generally measure a market's geographic scope, the 'area of effective competition,' by determining the area in which the seller operates and where consumers can turn, as a practical matter, for supply of the relevant product." *Concord Assocs., L.P. v. Ent. Props. Tr.*, No. 12 Civ. 1667(ER), 2014 WL 1396524, at *16 (S.D.N.Y. 2014) (quotation omitted), *aff'd,* 817 F.3d 46 (2d Cir. 2016). The 'area of effective competition' is circumscribed by the distance that a Long Island resident can reasonably travel for health care service – about 30 minutes. Accordingly, the geographic area is appropriate because Long Island residents will not travel beyond the NY metropolitan area and will not participate in any broader state market. The exact contours of the geographic market are factual questions best left for summary judgment

or trial. *See Newcal Industries, Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1045 (9th Cir. 2008).

Defendants' market power in the New York Metropolitan area is well documented in the amended complaint. Depending on the health plan product involved, United's market share in New York is as high as 66% (JA-647). Its share of commercial insurers in the New York City market as of the third quarter of 2019 was 50% (JA-647). In addition to its personal market share, United is the administrator of the Empire Plan (which provides coverage for over 1.2 million public employees in New York).

Accordingly, LIA adequately alleged a Section 2 Sherman Act claim.

CONCLUSION

The district court's decision dismissing Plaintiff's complaint should be reversed or modified to allow Plaintiff the opportunity to amend its pleading.

July 25, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The foregoing brief complies with Federal Rule of Appellate Procedure 32(a)(7)(B) and Local Rule 32.1(a)(4)(A) because it is proportionately spaced, has a typeface of 14 points, and contains 9,366 words, not counting the words excepted by Federal Rule of Appellate Procedure 32(f).

July 25, 2025

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25-1167-cv

United States Court of Appeals

for the

Second Circuit

LONG ISLAND ANESTHESIOLOGISTS PLLC,

Plaintiffs-Appellant,

- v –

UNITEDHEALTHCARE INSURANCE COMPANY OF NEW YORK, INC., *AS PROGRAM ADMINISTRATOR FOR THE EMPIRE PLAN MEDICAL/SURGICAL PROGRAM*, AND MULTIPLAN INC.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SPECIAL APPENDIX

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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 for the Empire Plan Medical/Surgical Program*, and MULTIPLAN INC.,

Defendants.

MEMORANDUM & ORDER
22-CV-04040 (HG)

HECTOR GONZALEZ, United States District Judge:

I previously dismissed the complaint in this action because Plaintiff Long Island Anesthesiologists PLLC's ("LIA") had failed to allege an antitrust injury and could therefore not sustain its Sherman Act Section 1 or Section 2, 15 U.S.C. §§ 1–2 ("Section 1" and "Section 2"), claims against Defendants United Healthcare Insurance Company of New York Inc. ("United") and MultiPlan Inc. ("MultiPlan"). *See Long Island Anesthesiologists PLLC v. United Healthcare Ins. Co.*, No. 22-cv-4040, 2023 WL 8096909, at *3–6 (E.D.N.Y. Nov. 21, 2023) ("*LIA I*"). I also found that Plaintiff had failed to allege the existence of a Section 1 conspiracy because LIA failed to "allege any facts suggesting that United and MultiPlan conspired or agreed to work together to restrain trade unlawfully." *Id.* at *6–7. Having dismissed Plaintiff's federal claims, I also declined to exercise supplemental jurisdiction over Plaintiff's restraint of trade claim under New York's Donnelly Act, N.Y. Gen. Bus. Law §§ 340 *et seq.* ("Donnelly Act"), and its claim for unjust enrichment. *Id.* at *8.

Plaintiff moved for leave to file an amended complaint on February 2, 2024, *see* ECF No. 54, and I granted the motion, *see* May 15, 2024, Text Order. Plaintiff filed its Amended Complaint ("AC") on May 28, 2024. ECF No. 58. The AC asserts the same five claims as before. First, it alleges that United and MultiPlan have engaged in an antitrust conspiracy to restrain trade in violation of Section 1. AC ¶¶ 298–302. Next, LIA asserts that United possesses monopsony[1] 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. *Id.* ¶¶ 303–07. 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, also in violation of Section 2. *Id.* ¶¶ 308–12. Fourth, LIA asserts that United and MultiPlan have engaged in an antitrust conspiracy to restrain trade in violation of the Donnelly Act. *Id.* ¶¶ 313–18. Finally, LIA asserts that United was unjustly enriched by not reimbursing LIA at a reasonable rate. *Id.* ¶¶ 319–31.

Unfortunately for Plaintiff, the AC suffers from many of the same deficiencies as the original complaint. Each Defendant, unsurprisingly, has moved to dismiss the AC. *See* ECF No. 61-1 (United Mot.); ECF No. 62-1 (MultiPlan Mot.). Plaintiff filed an opposition, *see* ECF No. 64 (Plaintiff's Opp'n), and Defendants filed their replies, *see* ECF No. 66 (MultiPlan Reply); ECF No. 67 (United Reply). For the reasons set forth below, I again grant Defendants' motions to dismiss. I assume basic familiarity with the factual and procedural background of this case and write only as necessary to resolve the instant motions.

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[1] A monopsony is a market dominated by a single buyer who controls the market. *See Monopsony*, Black's Law Dictionary (12th ed. 2024).

FACTUAL BACKGROUND

I draw the following facts from the AC.[2] LIA is a private anesthesia services provider located in Suffolk County, New York. AC ¶¶ 1, 19. LIA provides anesthesia services to patients at Good Samaritan Hospital Medical Center in West Islip, New York, and at other physicians' offices and surgery centers throughout the New York metropolitan area. *Id*. ¶¶ 20, 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. 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, 39–45. Relevant to the instant action, 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, 71–76, 94. Approximately 40% of LIA's revenue comes from the Empire Plan and LIA alleges that the Empire Plan makes up a similar share of revenue for other anesthesia groups in the New York metropolitan area. *Id.* ¶¶ 3, 104–05.

According to LIA, prior to January 2022, the Empire Plan reimbursed out-of-network physicians at amounts approximating the "usual, customary, and reasonable" rate for medical services in the geographic area in which the services were provided. *Id.* ¶ 95. This practice did not change when, in March 2015, the Empire Plan began using the independent dispute

[2] I am "required to treat [Plaintiff's] factual allegations as true, drawing all reasonable inferences in favor of Plaintiff[] to the extent that the inferences are plausibly supported by allegations of fact." *In re Hain Celestial Grp., Inc. Sec. Litig.*, 20 F.4th 131, 133 (2d Cir. 2021). I therefore "recite the substance of the allegations as if they represented true facts, with the understanding that these are not findings of the [C]ourt, as [I] have no way of knowing at this stage what are the true facts." *Id.*

resolution ("IDR") process established by the New York Surprise Bill Law ("Surprise Bill Law") to settle reimbursement disputes between health plans and out-of-network physicians. *Id.* ¶¶ 107–16. However, in January 2022, after the Federal No Surprises Act ("No Suprises Act") took effect, 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 Surprise Bill Law. *Id.* ¶¶ 4, 120–29.

According to Plaintiff, MultiPlan coordinates a repricing scheme among health insurance payers to suppress payments to health care providers. *Id.* ¶ 170. MultiPlan allegedly uses analytic tools to adjust out-of-network claims, reducing reimbursement amounts to a value below what the provider originally requested. *Id.* ¶¶ 170–71. MultiPlan provides this service to all 15 of the largest health insurers in the United States. *Id.* ¶ 181. MultiPlan profits from repricing claims by charging health care payers, such as United, a fee based on the savings between a provider's original claim and the reduced amount accepted after repricing. *Id.* ¶ 172. According to LIA, because insurers know competitors are using the same repricing tools, they can reduce reimbursement rates without fear that providers and enrollees will go somewhere else. *Id.* ¶¶ 174–77.

Plaintiff alleges that after the Empire Plan determined that it was not covered by the 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, 154–59. In these communications, MultiPlan allegedly demanded rapid response times and requested onerous and detailed documentation from providers related to reimbursement claims. *Id.* ¶¶ 154–59. 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.* ¶¶ 159–61.

LIA alleges that United's decision to lower reimbursement rates for anesthesia services will decrease the availability of high-quality anesthesia services in the New York metropolitan area and hinder out-of-network practices' ability to recruit and retain new talent. *Id.* ¶¶ 5, 200–22. Due to United's size and market share, LIA claims that the lower rates will force many anesthesia practices out of the market by going out of business or being compelled to sell their practices. *Id.* ¶¶ 7, 224–28. Additionally, LIA alleges that patients with high-deductible plans or significant cost-sharing requirements for out-of-network services could face substantially higher costs for medically necessary services. *Id.* ¶ 229. LIA claims that United's actions aim to drive anesthesia providers out of business to benefit its "subsidiary," OptumCare, which employs physicians, including anesthesia providers. *Id.* ¶¶ 7, 225–27, 291–94. According to LIA, OptumCare is the largest employer of physicians in the United States and employs more than 50 anesthesiologists in the New York metropolitan area. *Id.* ¶¶ 53, 60.

LEGAL STANDARD

"Rule 8(a)(2) provides that a complaint must include a short and plain statement of the claim showing that the pleader is entitled to relief." *Mohammad v. N.Y. State Higher Educ. Servs. Corp.*, 422 F. App'x 61, 62 (2d Cir. 2011).[3] A complaint must "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 512 (2002). The Second Circuit has defined "fair notice" in this

[3] Unless otherwise indicated, when quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.

context as "that which will enable the adverse party to answer and prepare for trial . . . and identify the nature of the case." *Wynder v. McMahon*, 360 F.3d 73, 79 (2d Cir. 2004). A shotgun pleading that is neither clear nor concise goes against the fundamental principles of Rule 8. *See Digilytic Int'l FZE v. Alchemy Fin., Inc.*, No. 20-cv-4650, 2022 WL 912965, at *5 (S.D.N.Y. Mar. 29, 2022) ("Shotgun pleadings are those which incorporate by reference the previous paragraphs of allegations and merely recite the elements of each claim, leaving defendants and the court to parse out which facts apply to which claim."); *see also Litwak v. Tomko*, No. 16-cv-00446, 2018 WL 1378633, at *6 (M.D. Pa. Mar. 19, 2018) (finding that a complaint that "intermingles seemingly unrelated fact[s] and conclusory statements with claims based on a variety of legal theories" is "a shotgun pleading" that "does not comply with the mandates of Rule 8").

Additionally, 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). "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

I. Issue Preclusion

Defendants argue that Plaintiff's antitrust claims are precluded by the decision of the New York Supreme Court, Albany County, in *Joseph v. Corso*, No. 902227-22, 2023 WL

12011473 (N.Y. Sup. Ct. July 13, 2023), which addressed the applicability of the Surprise Bill Law to the Empire Plan.[4] *See* ECF No. 61-1 at 14; ECF No. 62-1 at 13. Specifically, Defendants point to the *Joseph* court's holdings that: (1) "the Surprise Bill Law is not an applicable insurance law to the Empire Plan" and (2) "United cannot and does not . . . control the Empire Plan's coverage or reimbursement decisions." 2023 WL 12011476, at *2–3; *see also* ECF No. 61-1 at 14; ECF No. 62-1 at 13. Plaintiff responds that the first *Joseph* holding is irrelevant "because the No Surprises Act merely created the opportunity upon which Defendants' unlawful scheme was able to be applied to the Empire Plan." ECF No. 64 at 27. Additionally, Plaintiff contends that the second holding from *Joseph* "related only to United's inability to control the Empire Plan's decision to follow the No Surprises Act." *Id.* at 29.

I agree with Plaintiff that the *Joseph* decision has no bearing on this case—the gravamen of which is that Defendants engaged in anticompetitive conduct in violation of the Sherman Act. Because *Joseph* considered only whether United controlled the Empire Plan's decision to follow the No Surprises Act—and did not assess United's alleged use of its administrator role to manipulate reimbursement rates—this issue was not actually litigated in *Joseph*, and collateral estoppel does not bar Plaintiff's claims. *See Heriveaux v. Lopez-Reyes*, No. 17-cv-9610, 2018 WL 3364391 (S.D.N.Y. July 10, 2018) ("[C]ollateral estoppel does not bar Plaintiff's claim because the . . . issue was not actually litigated or decided."), *aff'd*, 779 F. App'x 758 (2d Cir. 2019).

II. Plaintiff's Federal Claims

Plaintiff asserts three claims under the Sherman Act. First, Plaintiff claims that United and MultiPlan engaged in an antitrust conspiracy to restrain trade in violation of Section 1. AC

[4] The Appellate Division recently affirmed the Supreme Court's *Joseph* decision. *See Joseph v. Corso*, 221 N.Y.S.3d 279 (N.Y. App. Div. 2024).

¶¶ 298–302. Next, Plaintiff alleges that United violated Section 2 because it possesses monopsony power that it is willfully maintaining through anticompetitive conduct. *Id.* ¶¶ 303–07. And, finally, Plaintiff alleges that United violated Section 2 because it has engaged in predatory or anticompetitive conduct in an attempt to acquire monopsony power. *Id.* ¶¶ 308–12.

In attempting to remedy the deficiencies I identified in *LIA I*, Plaintiff abandons the "short and plain statement" required by Rule 8 in favor of a sprawling and unfocused pleading. However, the issue with the prior Complaint was not its length. The AC now spans 331 paragraphs but fails to include a single factual allegation that plausibly suggests United and MultiPlan conspired to restrain trade. Instead, Plaintiff devotes extensive portions of the AC to irrelevant or tangential matters. Eighteen paragraphs are devoted to detailing the size and revenues of UHG—an entity that is not even a party to this action. *See* AC ¶¶ 39–47, 62–70. Fourteen more describe OptumCare, another non-party, and its subsidiaries, most of which operate outside the alleged geographic market at issue here. *See id.* ¶¶ 48–61. Plaintiff also includes nine paragraphs summarizing media reports about UHG that bear no apparent connection to the claims at issue. *See id.* ¶¶ 235–43. Throughout, the AC intermixes sweeping allegations untethered to any identified cause of action—for example, claims that MultiPlan engages in a price coordination scheme involving "all the top 15 health insurers" in the country. AC ¶¶ 276–83. This kitchen-sink approach obscures rather than clarifies the basis for Plaintiff's claims and falls short of Rule 8's basic pleading requirements. *See Javier v. Beck*, No. 13-cv-2926, 2014 WL 3058456, at *1 (S.D.N.Y. July 3, 2014) ("The Complaint is a sprawling 287-paragraph jumble that is far from the short and plain statement prescribed by Rule 8."). This lack of clarity is not merely a pleading defect under Rule 8—it reflects a more fundamental failure to meet the plausibility standard required by Rule 12. In particular, Plaintiff's allegations

fall short of establishing antitrust standing, which is a necessary threshold in any private antitrust action.

A. Antitrust Standing

As I explained in *LIA I*, 2023 WL 8096909 at *3–4, 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 [the case] as a matter of law." *Gatt Commc'ns Inc. v. PMC Assocs. L.L.C.*, 711 F.3d 68, 75 (2d Cir. 2013). To establish antitrust standing with respect to both its 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 plausibly allege that it suffered "injury of the type the antitrust laws were intended to prevent and that flows from that which makes [D]efendants' acts unlawful." *See Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977). Therefore, an injury does not constitute an "antitrust injury" unless "it is attributable to an anti-competitive aspect of the practice under scrutiny." *See Atl. Richfield Co. v. USA Petrol. Co.*, 495 U.S. 328, 334 (1990).

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 must "identify the practice complained of and the reasons such a practice is or might be anticompetitive." *Id.* Next, the court "identif[ies] the actual injury the plaintiff alleges[, which] requires [the court] to look at ways in which the plaintiff claims it is in a worse position as a consequence of the defendant's conduct." *Id.* Finally, the court must "compare the anticompetitive effect of the specific practice at issue to the actual injury the plaintiff alleges." *Id.*

Here, I find that Plaintiff has again failed to plead an antitrust injury. According to Plaintiff, it has been injured because "United has engaged in predatory or anticompetitive conduct including, but not limited to, dramatically decreasing the reimbursement rate for anesthesia services in the relevant market to below-market and below-cost levels to drive anesthesia providers from the market." AC ¶ 309. Plaintiff also alleges that MultiPlan assists United in its efforts by "using data-driven negotiation and/or reference-based pricing methodologies" to "reduce out-of-network reimbursement rates." *Id.* ¶¶ 197–99. Plaintiff further avers that the dramatic reduction in reimbursement rates has resulted in "decreased output and quality in the market for anesthesia services in the New York metropolitan area." *Id.* ¶¶ 228, 261, 283, 286.

In *LIA I*, 2023 WL 8096909 at *5–6, I found that Plaintiff had not sufficiently alleged antitrust injury because: (1) Plaintiff did not sufficiently allege "an actual adverse effect on competition as a whole in the relevant market but ha[d] merely alleged that it ha[d] been harmed as an individual competitor" and (2) without a plausible allegation of conspiracy or "something more," a "health plan lowering reimbursement rates paid to a physician practice is generally insufficient to establish antitrust injury." As discussed further herein, while the AC attempts to address these issues identified in *LIA I* by adding allegations regarding other anesthesia service providers and communications between Defendants, those allegations, without more, are also not enough to establish antitrust standing. *See generally* AC ¶¶ 162–221.

i. Plaintiff Still Does Not Allege Antitrust Injury Based on Lowered Reimbursement Rates

In an attempt to show market-wide harm, Plaintiff now alleges that three other anesthesia providers were affected by reduced reimbursement rates—two of which appear to claim direct harm, and one of which describes broader, generalized harm to anesthesia providers. *Id.* ¶¶ 200–

21. However, "[h]arm to competition is different than harm to a . . . group of competitors, which does not necessarily constitute harm to competition." *In re Google Digital Advert. Antitrust Litig.*, 627 F. Supp. 3d 346, 380 (S.D.N.Y. 2022). And, more importantly, the harm Plaintiff alleges is not "the type the antitrust laws were intended to prevent." *Brunswick*, 429 U.S. at 489.

In the AC, LIA points to the statements of Long Island Anesthesia Partner's ("LIAP") Chief Operating Officer, in which he notes that "if low Empire Plan reimbursement levels continue unabated [LIAP] would, at the very least, be forced to significantly curtail its services and not allow its hospital clients to open all required operating rooms on any given day." AC ¶ 208. The AC alleges that the reduced Empire Plan reimbursement rates forced LIAP to withdraw from a new ambulatory surgery center, terminate both of its general surgeons, and severely limit its ability to service the five hospitals on Long Island where it is the exclusive anesthesia provider. *See id.* ¶¶ 212–13. Plaintiff also provides the example of New York Cardiovascular Anesthesiologists ("NYCA"), whose President states that the low Empire Plan reimbursement rates will force NYCA to significantly curtail its services, "preventing it from opening all required operating rooms," causing "significant delays in the provision of care", and resulting in "significant increases in adverse health outcomes." *Id.* ¶¶ 216–17. Finally, the AC recounts statements of the Chief Executive Officer of North American Partners in Anesthesia, headquartered on Long Island, in which he alleges that the reduction of reimbursement rates has exacerbated a shortage of anesthesia practitioners to the point where "[h]ospitals may not have enough anesthesia providers to support their patient population." *Id.* ¶ 221.

Plaintiff argues that these allegations are sufficient to allege antitrust injury because "courts have repeatedly found allegations regarding the reduced availability and number of providers and a decline in quality of patient care to be sufficient to state an antitrust injury."

ECF No. 64 at 10 (citing *Angelico v. Lehigh Valley Hosp., Inc.*, 184 F.3d 268, 276 (3d Cir. 1999); *Reddy v. Puma*, No. 06-cv-1283, 2006 WL 2711535, at *4–5 (S.D.N.Y. Sept. 19, 2006); *N.Y. Medscan LLC v. N.Y. Univ. Sch. of Med.*, 430 F. Supp. 2d 140, 148–49 (S.D.N.Y. 2006)). These cases, however, are easily distinguishable from the allegations here. In all of them, the plaintiffs were *excluded* from the market. *See Angleico*, 184 F.3d at 274 (concluding that "Angelico's alleged injury is of the type the antitrust laws were meant to redress" because he was "shut out of competition for anticompetitive reasons"); s*ee also Reddy*, 2006 WL 2711535, at *2 (finding antitrust injury where the harm was caused by "a pattern of exclusionary behavior," including discouraging physicians from referring patients to plaintiffs and instructing physicians "not to provide post-operative care" to plaintiffs' patients); *N.Y. Medscan*, 430 F. Supp. 2d at 144 (finding antitrust injury where the harm was due to "the termination of plaintiffs as a[n] . . . approved provider" of radiology treatments "so as to eliminate the only viable competition"). That is not the case here.

Plaintiff does not allege it has been excluded from the market. Even with reduced reimbursement rates, Plaintiff can still provide out-of-network anesthesia services or negotiate in-network participation. *See* AC ¶¶ 117–19, 203–05. Indeed, according to Plaintiff, the reason it and "similarly situated anesthesia groups" have not entered an "in-network participating provider agreement" with the Empire Plan is to "preserve the favorable out-of-network Empire Plan reimbursement rates." *Id.* ¶ 117–19. Instead of exclusion due to anticompetitive conduct, what Plaintiff actually complains of is the reduction of reimbursement rates, which has made its medical practice less profitable. *Id.* ¶¶ 120–21, 200–02. Plaintiff's alleged "market-wide impact" stems from "lowered Empire Plan reimbursement rates." *Id.* ¶ 220. However, lowering reimbursement rates to out-of-network providers is neither inherently unlawful nor

anticompetitive under the antitrust laws. *See W. Penn Allegheny Health Sys., Inc. v. UPMC*, 627 F.3d 85, 103 (3d Cir. 2010) ("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."). Therefore, even "if [Plaintiff and similarly situated anesthesia providers] were injured, it was not by reason of anything forbidden in the antitrust laws." *Brunswick*, 429 U.S. at 488. Plaintiff's allegations reflect harm to a subset of providers—not to competition itself—and stem from reimbursement practices that, even if harmful to the bottom-line of Plaintiff and the other providers it references in the AC, do not constitute antitrust violations. *See Atl. Richfield*, 495 U.S. at 334 (finding that an injury "will not qualify as antitrust injury unless it is attributable to an anti-competitive aspect of the practice under scrutiny"). As such, Plaintiff has not alleged a cognizable antitrust injury.

ii. Plaintiff Has Not Pled "Something More" in Addition to the Lowering of Reimbursement Rates

Although the Second Circuit does not appear to have decided the issue, as discussed above and in *LIA I*, both LIA and United agree that establishing antitrust injury requires "something more" than lowering reimbursement rates paid to a physician practice. *See* ECF No. 61-1 at 20; ECF No. 64 at 11–12; *see also Westchester Radiological Assocs. 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) (Breyer, J.) ("A legitimate buyer is entitled to use its market power to keep prices down.").

Plaintiff provides three examples of situations in which courts have found the existence of "something more," in addition to lowered reimbursement rates, to support a plausible inference of antitrust injury. *See* ECF No. 64 at 12. In Plaintiff's first example, the court found

that plaintiff could overcome the "natural inference that as a buyer of anesthesiology services on behalf of patients, [d]efendant has incentives to procure the best quality at the lowest price" by plausibly alleging the existence of a "Blues Conspiracy" through "amended license agreements" between BlueCross BlueShield-Michigan and other "Blues" that geographically divided markets and prevented competition among the "Blues." *Anesthesia Assocs. of Ann Arbor, PLLC v. Blue Cross Blue Shield of Mich.*, No. 20-cv-12916, ECF No. 52 at 6–31 (E.D. Mich. Sept. 28, 2022) (denying in part and granting in part leave to amend). In Plaintiff's second example, the Third Circuit found that it was plausible that paying depressed reimbursement rates unreasonably restrained trade where the complaint also alleged that a health care provider paid plaintiff depressed reimbursement rates, "not as a result of independent decision making, but pursuant to a conspiracy with [defendant], under which [defendant] insulated [the health care provider] from competition in return for [the health care provider] taking steps to hobble [plaintiff]." *W. Penn*, 627 F.3d at 103–04. Finally, in Plaintiff's third example, the court found that allegations that defendant subjected plaintiff to a series of "unnecessary audits as a means to claw-back previously disbursed reimbursements," "inefficient procedure codes and requirements" that forced plaintiff "to schedule patients for two different procedures where one would suffice," and "steer[ing] patients away from independent physicians to its own facility," taken in concert with plaintiff's alleged reimbursement reductions, constituted a plausible pleading of antitrust injury. *Presque Isle Colon & Rectal Surgery v. Highmark Health*, 391 F. Supp. 3d 485, 499–500 (W.D. Pa. 2019). Plaintiff, however, has failed to allege similar facts here.

Plaintiff argues that "[t]here are three theories that the AC puts forward to allege 'something more'" akin to the examples it provides. ECF No. 64 at 12. Those theories are:

> (1) "Defendants engaged in anticompetitive conduct by subjecting anesthesia providers to unreasonable timeframes[,] . . . refusing to negotiate in good faith on

> reimbursement pricing, and flooding anesthesia providers with large volumes of correspondence"; (2) "Defendants engaged in a horizontal conspiracy to suppress reimbursement payments"; (3) Defendants have a "scheme to drive Plaintiff and other anesthesia providers out of business, cause them to sell their practices to hospitals, or force them in-network."

Id. at 12–13. As to Plaintiff's first theory, Plaintiff's allegations that it was subject to "unreasonable timeframes" and "flood[ed]" with "large volumes of correspondence" are distinguishable from the interference with treatment decisions and patient steering in *Presque Isle*, 391 F. Supp. 3d at 499–500. Furthermore, "[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 prices it will pay for goods and services." *W. Penn*, 627 F.3d at 103 (emphasis added). Even assuming *arguendo* that MultiPlan's negotiation tactics are unethical or even unlawful, and may have caused significant financial losses to Plaintiff and its peers, "[s]uch harm . . . [is] not the type of injur[y] the antitrust laws were intended to prevent." *See Phila. Taxi Ass'n, Inc. v. Uber Techs., Inc.*, 218 F. Supp. 3d 389, 392 (E.D. Pa. 2016) (finding that plaintiffs failed to establish antitrust standing despite harm to plaintiffs' "operations, investments, and earnings" and allegations that defendant's "participation in the market [was] illegal under state and local regulations"), *aff'd*, 886 F.3d 332 (3d Cir. 2018). Plaintiff may have been injured by a violation of insurance law, or maybe even by fraud, but it does not have an *antitrust* injury.

As to Plaintiff's second and third theories, they necessarily fail because, as discussed herein, *see infra* § II.C.i, Plaintiff has not plausibly alleged a conspiracy, horizontal or otherwise, between United and MultiPlan. Therefore, "[t]here is nothing special here to take this case outside of the general rule" that a buyer is entitled to use its market power to reduce reimbursement rates. *Kartell*, 749 F.2d at 929, 932.

In sum, Plaintiff's allegations—focused on reduced reimbursement rates and generalized harm to certain providers—fail to demonstrate harm to competition or the kind of exclusionary conduct necessary to establish antitrust injury. Nor has Plaintiff plausibly alleged "something more" that would take this case outside the bounds of ordinary price negotiations. Accordingly, Plaintiff has not pled a cognizable antitrust injury.

B. Relevant Market

Although Plaintiff has not adequately alleged an antitrust injury, I nonetheless address the sufficiency of Plaintiff's alleged relevant market, as this is a separate and independent basis for dismissing Plaintiff's Sherman Act claims. "To survive a motion to dismiss, a Sherman Act claim must," in addition to plausibly alleging antitrust standing, "define a relevant market." *In re Inclusive Access Course Materials Antitrust Litig.*, 544 F. Supp. 3d 420, 432 (S.D.N.Y. 2021) (citing *Concord Assocs., L.P. v. Ent. Props. Tr.*, 817 F.3d 46, 52 (2d Cir. 2016)). "For antitrust purposes . . . [a] relevant product market consists of products that have reasonable interchangeability for the purposes for which they are produced—price, use and qualities considered." *Concord*, 817 F.3d at 52. However, in the case of a monopsony, the market is reversed. "[T]he market is not the market of competing sellers but of competing buyers. This market is comprised of buyers who are seen by sellers as being reasonably good substitutes." *Todd v. Exxon Corp.*, 275 F.3d 191, 202 (2d Cir. 2001) (Sotomayor, J.).

Plaintiff's alleged product market "reflects a failure to reverse all of the factors involved in light of the buyer-side nature of the alleged activity." *Id.* Here, Plaintiff alleges that the relevant product market is "the provision of medically necessary anesthesia services to patients." AC ¶ 244. United argues that Plaintiff's "alleged market is inconsistent with its antitrust theory" and I agree. *See* ECF No. 61-1 at 24–25. To support the interchangeability of the products in its alleged relevant market, Plaintiff alleges that only anesthesiologists with proper education,

training, and experience can provide these services, and other clinicians lack the expertise to be reasonable substitutes. *Id.* ¶¶ 249–50. However, that describes *Plaintiff's* own, seller side of the market; because Plaintiff is alleging a buyer-side conspiracy and monopsony power, "the proper focus is the commonality and interchangeability of the buyers, not the commonality or interchangeability of the sellers." *Todd*, 275 F.3d at 202. "While acknowledging that market definition is frequently a fact-intensive inquiry where courts are hesitant to grant a motion to dismiss," I nevertheless find Plaintiff's failure to describe the market of competing *buyers* of anesthesia services to be incongruent with its theory of antitrust injury. *Integrated Sys. & Power, Inc. v. Honeywell Int'l, Inc.*, 713 F. Supp. 2d 286, 298 (S.D.N.Y. 2010). As such, Plaintiff has failed to adequately allege a relevant product market, and its Sherman Act claims fail for this reason as well. *See Chapman v. N.Y. State Div. for Youth*, 546 F.3d 230, 238 (2d Cir. 2008) ("[W]here the plaintiff . . .alleges a proposed relevant market that clearly does not encompass all interchangeable substitute [buyers] . . . the relevant market is legally insufficient and a motion to dismiss may be granted.").[5]

C. Plaintiff's Conspiracy and Monopsony Claims

Having determined that Plaintiff has insufficiently alleged both antitrust standing and a relevant market, I may dismiss both the Section 1 and 2 claims on either of those bases alone. *See, e.g.*, *Apotex, Inc. v. Acorda Therapeutics, Inc.*, No. 11-cv-8803, 2013 WL 12617608, at *3 (S.D.N.Y. Feb. 7, 2013) (finding that a "plaintiff seeking relief under Sections 1 and 2 . . . must establish, as a threshold matter," that it has suffered antitrust injury), *aff'd*, 823 F.3d 51 (2d Cir. 2016); *Fifth & Fifty-Fifth Residence Club Ass'n, Inc. v. Vistana Signature Experiences, Inc.*,

[5] Because I find Plaintiff's alleged product market to be inadequate, I need not address its alleged geographic market as "[c]ourts have found that failure to adequately plead either of these markets is sufficient to justify dismissal." *TechReserves Inc. v. Delta Controls Inc.*, No. 13-cv-752, 2014 WL 1325914, at *4 (S.D.N.Y. Mar. 31, 2014).

No. 17-cv-1476, 2018 WL 11466157, at *12 (S.D.N.Y. Sept. 28, 2018) ("To state a claim under either [S]ection [1] or [2,] . . . a plaintiff must plausibly allege a relevant market."). Even so, assuming *arguendo* that Plaintiff had cleared those hurdles, its claims would still fail because it fails to adequately allege an actionable conspiracy.

i. Plaintiff's Section 1 Conspiracy Claim Against United and MultiPlan

First, I will consider Plaintiff's Section 1 conspiracy claim. To survive dismissal of its Section 1 claim, Plaintiff 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.*

In *LIA I*, I found that Plaintiff had not plausibly alleged a conspiracy between United and MultiPlan. *See* 2023 WL 8096909, at *6 ("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."). Here, even with the additional allegations in the AC, Plaintiff still fails to plausibly allege that Defendants entered into an unlawful agreement. In its AC, Plaintiff now alleges that although MultiPlan "appears to

be nothing more than a United vendor," United and MultiPlan are actually horizontal competitors because they compete directly in the Preferred Provider Organization ("PPO") network business. AC ¶¶ 162–69. According to Plaintiff, MultiPlan solicited United to employ MultiPlan's data-driven pricing methodology, a service already provided to many of United's competitor insurers, to suppress out-of-network reimbursement rates. *Id.* ¶ 279. Plaintiff alleges that in 2016, MultiPlan's Chief Revenue Officer wrote an email to United executives informing them that seven of United's top ten competitors were using MultiPlan's repricing services and that "implementing these initiatives will go a long way to bring UnitedHealth back into alignment with its primary competitor group . . . on managing out-of-network costs." *Id.* ¶ 185. United then allegedly agreed to employ MultiPlan for its repricing services. *Id.* ¶ 279. In January 2022, when the Empire Plan began following the No Surprises Act IDR process, United allegedly engaged MultiPlan to use its repricing service and negotiate reimbursement rates to "below competitive levels" for out-of-network claims on behalf of United and the Empire Plan. *Id.* ¶¶ 280–85.

Even with the benefit of my prior decision in *LIA I*, the new allegations in the AC fall well short of adequately alleging an antitrust conspiracy. First, Multiplan and United are not competitors in Plaintiff's alleged relevant antitrust market and therefore cannot have plausibly engaged in a "horizontal conspiracy." *See* ECF No. 64 at 14–16. "Horizontal conspiracies involve agreements among competitors at the same level of competition to restrain trade, such as agreements among manufacturers to fix prices for a given product and geographic market." *JLM Indus., Inc. v. Stolt-Nielsen SA*, 387 F.3d 163, 179 (2d Cir. 2004). Plaintiff contends that United and MultiPlan are horizontal competitors because they both own PPO networks and allegedly compete to contract with medical providers. AC ¶¶ 163–67. But Plaintiff defines the relevant

product market as the provision of medically necessary anesthesia services. *Id.* ¶ 244. There is no allegation—nor could there be—that United and MultiPlan compete in the provision of such services. Moreover, while Plaintiff asserts in a conclusory fashion that the two Defendants own PPOs and that their PPOs compete, the alleged conspiracy arises specifically from United's administration of the Empire Plan, in which United is alleged to have enlisted MultiPlan to reprice anesthesia claims. *See id.* ¶¶ 4, 163. Critically, neither United nor MultiPlan was acting as a PPO in this context: United was functioning as a claims administrator for the Empire Plan, and MultiPlan was merely acting as a vendor to United by providing repricing services at United's direction. *See id.* ¶¶ 79, 197–99 ("It is [the] extension of the [MultiPlan] repricing strategy to the [No Surprises Act] environment that is at work in the events underlying this lawsuit.").

Plaintiff does not allege that MultiPlan competed with United in this capacity or that it independently contracted with providers for Empire Plan claims. Instead, the AC itself describes a vertical relationship: MultiPlan is alleged to act as a vendor, providing repricing or billing support services to United. *See id.* ¶ 4 (United "enlisted [MultiPlan] to assist it in a scheme" to reduce reimbursement rates.); *see also id.* ¶ 184 (describing United as MultiPlan's "largest customer"). That both entities may operate PPOs elsewhere in the healthcare ecosystem does not convert this vertical service-provider relationship into a horizontal conspiracy. *See United States v. Aiyer*, 470 F. Supp. 3d 383, 403 (S.D.N.Y. 2020) ("A horizontal conspiracy exists when the coconspirators are competitors at the same level of the market structure rather than combinations of persons at different levels of the market structure . . . which are termed vertical restraints."), *aff'd*, 33 F.4th 97 (2d Cir. 2022). To hold otherwise would be to condemn seemingly every business relationship between large healthcare companies aimed at improving their respective

margins as potentially illegally anticompetitive. Plaintiff's failure to allege that United and Multiplan were acting as competitors in the relevant context is fatal to its horizontal conspiracy theory. *Ivoclar Vivadent, Inc. v. Ne. Dental & Med. Supplies, Inc.*, No. 04-cv-0262, 2006 WL 8455722, at *4 n.13 (W.D.N.Y. Aug. 30, 2006) ("A restraint is not horizontal because it has horizontal effects but rather because it is the product of a horizontal agreement, i.e., a restraint imposed by agreement between competitors."). As explained in *In re Aluminum Warehousing Antitrust Litigation*, "[p]laintiffs claim to have alleged a horizontal conspiracy in restraint of trade, but they do not allege that [defendants] are horizontal competitors. In the absence of the latter, the former cannot be correct." No. 13-md-2481, 2014 WL 4277510, at *32 (S.D.N.Y. Aug 29, 2014).

Second, Plaintiff still fails to allege facts suggesting a "meeting of minds in an unlawful arrangement." *Anderson News*, 680 F.3d at 183. The AC asserts that United and MultiPlan conspired to suppress reimbursement rates to drive out anesthesia providers, allegedly to benefit United's "subsidiary" healthcare provider, OptumCare. AC ¶¶ 291-94. But as the Supreme Court made clear in *Twombly*, "a bare assertion of conspiracy will not suffice" to survive a motion to dismiss. 550 U.S. at 556. First, Plaintiff's own allegations contradict the assertion that OptumCare is United's subsidiary. According to Plaintiff, "UHG divides its businesses into two main platforms: Optum and UnitedHealthcare." AC ¶ 47. UnitedHealthcare Insurance Company of New York—the named Defendant—is a subsidiary of UnitedHealthcare. *Id.* ¶¶ 11, 71. Optum, meanwhile, includes separate business segments, including Optum Health, which houses OptumCare. *Id.* ¶¶ 48–49. Plaintiff alleges that OptumCare operates physician practices, including several in the New York metropolitan area that employ anesthesiologists. *See id.* ¶ 54–60. Plaintiff repeatedly characterizes OptumCare as "United's subsidiary"—a designation

plainly inconsistent with the corporate structure alleged in the AC. *See e.g., id.* ¶¶ 225, 292. Based on that structure, United and OptumCare are at most sister companies, operating in distinct business units under UHG's broader corporate umbrella. *See Holland v. JPMorgan Chase Bank, N.A.*, No. 19-cv-00233, 2019 WL 4054834 (S.D.N.Y. Aug. 28, 2019) (finding that two sister companies "were entitled to the presumption of separateness afforded to related corporations"); *see also Karupaiyan v. CVS Health Corp.*, No. 19-cv-8814, 2021 WL 4341132, at *2 n.3 (S.D.N.Y. Sept. 23, 2021) ("Although CVS, Aetna, and AHM are all part of the same corporate family, the character of these distinct entities is highly relevant to several of [p]laintiff's claims.").

This mischaracterization is not a trivial error; it undermines the plausibility of Plaintiff's theory. The AC lacks any allegation that United and OptumCare communicated, coordinated, or otherwise shared a common objective. Absent such factual support, the theory that United conspired with MultiPlan to drive competitors out of the market for the benefit of a legally distinct sister company is not just implausible—it is wholly speculative. *Cf. In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, No. 13-md-2445, 2017 WL 4642285, at *6–7 (E.D. Pa. Oct. 17, 2017) (rejecting plaintiffs' "single economic entity" theory between defendant and a sister company where the complaint did "not contain a single factual allegation" from which the court could "reasonably infer that [defendant] exercised any control or pervasive domination over" its sister company). Again, it is worth backing up and considering the breadth of this argument. As LIA would have it, so long as an antitrust plaintiff can identify some potential benefit to some member of an alleged co-conspirator's corporate family connectable to the alleged agreement, he would plausibly allege an antitrust conspiracy. But that mix-and-match approach, which would have the practical effect of punishing affiliated

businesses for competing in different markets, would prohibit on competition grounds virtually all commercial relationships between them, an impermissible result under *Twombly*. *See* 550 U.S. at 566 ("[I]f alleging parallel decisions to resist competition were enough to imply an antitrust conspiracy, pleading a [Section] 1 violation against almost any group of competing businesses would be a sure thing.").

Furthermore, Plaintiff's factual allegations do not support the conclusion that the agreement between United and Multiplan had an unlawful objective of reducing competition. Instead, they merely suggest that United engaged Multiplan to reduce out-of-network reimbursement rates. AC ¶¶ 185, 189. As has now been discussed at length, "[t]he existence of a lawful business relationship does not plausibly suggest a separate, unlawful agreement to restrain trade." *Honeywell Int'l Inc. v. Ecoer Inc.*, No. 24-cv-1464, 2024 WL 3521591, at *7 (S.D.N.Y. July 23, 2024). None of Plaintiff's factual allegations suggests that United and MultiPlan entered into an agreement to eliminate competition in the market for anesthesia services. To the contrary, Plaintiff's allegations suggest that it was in the Defendants' independent self-interests to lower reimbursement rates. *See* AC ¶ 172 ("[MultiPlan] makes money on claims repricing by charging its health care payer customers a fee based on the difference between a healthcare providers' original claim and the amount the provider accepts following [MultiPlan]'s repricing of the claim."); *see also id.* ¶¶ 89–90 ("keeping out-of-network reimbursement rates as low as possible brings substantial financial benefits to United" because it charges a "savings fee each time it secures a discount on out-of-network provider's billed charges"). Plaintiff's factual allegations do not "tend to exclude independent self-interested conduct as an explanation for [D]efendants' parallel behavior." *Twombly*, 550 U.S. at 552. Rather, the most straightforward explanation for the agreement between United and MultiPlan,

based on the facts alleged, is that it served their common financial interests. *See 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) ("[A]n antitrust plaintiff's complaint can be dismissed where there is an obvious alternative explanation to the facts underlying the alleged conspiracy among the defendants."). More fundamentally, by Plaintiff's own explanation, it would work against the alleged co-conspirators' own economic interests to agree to try to wipe out the provision of anesthesia services. Such conduct would not just reduce their ability to aggressively reduce reimbursements to out-of-network providers; it would eliminate it altogether. And even if United could eventually try to redirect some of the anesthesia services to its sister company, MultiPlan lacks any non-speculative reason to join in such a scheme. *See Anderson News, L.L.C. v. Am. Media, Inc.*, 899 F.3d 87, 112 (2d Cir. 2018) (finding that "defendants had an unlikely motive to conspire" given that "the alleged conspiracy [was] economically implausible"). Accordingly, I find that Plaintiff's factual allegations concerning a Section 1 conspiracy are not "enough to raise a right to relief above the speculative level," *Twombly*, 550 U.S. at 555, and grant Defendants' motion to dismiss the Section 1 claim for this additional reason.

ii. Plaintiff's Monopsonization and Attempted Monopsonization Claims Against United

As discussed in the introduction to this section, because Plaintiff has not plausibly alleged antitrust injury or a relevant antitrust market, its Section 2 claims necessarily fail. *See supra* at 17–18. I nonetheless consider whether Plaintiff has adequately stated claims against United for monopsonization and attempted monopsonization under Section 2. "Monopsony power is market power on the buy side of the market. As such, a monopsony is to the buy side of the market what a monopoly is to the sell side and is sometimes colloquially called a buyer's monopoly." *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549 U.S. 312, 320

(2007). I apply the same pleading standard to a Section 2 monopsony claim that I would use for a monopoly claim. *See id.* at 322 ("The kinship between monopoly and monopsony suggests that similar legal standards should apply to claims of monopolization and to claims of monopsonization."). "In order to state a claim for monopsonization under Section 2 of the Sherman Act, a plaintiff must [allege]: (1) the possession of monopsony power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *Sitts v. Dairy Farmers of Am., Inc.*, 417 F. Supp. 3d 433, 476 (D. Vt. 2019). "With respect to this second element, the possession of [monopsony] power will not be found unlawful unless it is accompanied by an element of anticompetitive conduct." *Mazda v. Carfax, Inc.*, No. 13-cv-2680, 2016 WL 7231941, at *15 (S.D.N.Y. Dec. 9, 2016), *aff'd sub nom. Maxon Hyundai Mazda v. Carfax, Inc.*, 726 F. App'x 66 (2d Cir. 2018). "To [state] a claim for attempted monopsonization, a plaintiff must [allege]: (1) that the defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent to monopsonize and (3) a dangerous probability of achieving monopsony power." *Sitts*, 417 F. Supp. 3d at 476. "Both [monopsonization] and attempted [monopsonization] claims therefore have anticompetitive conduct as one of their elements." *Mazda*, No. 13-cv-2680, 2016 WL 7231941 at *15. Because it is essential to both claims, I address that element first.

Plaintiff alleges that United unilaterally "engaged in predatory or anticompetitive conduct." *See* AC ¶¶ 304–06, 309–11. "[S]ingle-firm activity is unlike concerted activity covered by [Section] 1, which inherently is fraught with anticompetitive risk." *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 459 (1993). Indeed, Congress treats "concerted behavior more strictly than unilateral behavior." *Am. Needle, Inc. v. NFL*, 560 U.S. 183, 190 (2010). The

purpose of distinguishing between concerted and independent action is to avoid "judicial scrutiny of routine, internal business decisions" and "chilling vigorous competition through ordinary business operations." *See id.* The Second Circuit has described anticompetitive conduct as "conduct without a legitimate business purpose that make sense only because it eliminates competition." *In re Adderall XR Antitrust Litig.*, 754 F.3d 128, 133 (2d Cir. 2014). "That definition is a narrow one, which works to ensure that exceptions to the general rule that 'businesses are free to choose the parties with whom they will deal, as well as the prices, terms, and conditions of that dealing' are 'rare.'" *Twin Bridges Waste & Recycling, LLC v. Cnty. Waste & Recycling Serv., Inc.*, No. 21-cv-263, 2021 WL 4192606, at *7 (N.D.N.Y. Sept. 14, 2021) (quoting *Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc.*, 555 U.S. 438, 448 (2009)).

Therefore, I must determine whether Plaintiff's allegations plausibly meet this narrow standard for alleging anticompetitive conduct. Plaintiff claims that United maintains monopsony power and is leveraging it by suppressing reimbursement rates to eliminate competition, which would allow it to dominate the anesthesia services market through its OptumCare sister company. AC ¶¶ 291–95, 305–306. Although Plaintiff claims that United's suppression of reimbursement rates is exclusionary, AC ¶ 305, I find that, as alleged in the AC, United's actions are consistent with standard business incentives rather than anticompetitive conduct. *See In re Adderall*, 754 F.3d at 133 ("Anticompetitive conduct is conduct without a legitimate business purpose that makes sense only because it eliminates competition").

As alleged in the AC, "keeping out-of-network reimbursement rates as low as possible brings substantial financial benefits to United" because it charges a "savings fee each time it secures a discount on out-of-network provider's billed charges." AC ¶¶ 89–90. Absent factual allegations that United is engaged in "something more than business activity that occurs in the

normal competitive process," its conduct aligns with lawful competitive behavior rather than exclusionary conduct. *See In re Google*, 627 F. Supp. 3d at 379; *see also In re Adderall*, 754 F.3d at 135 (finding plaintiff had not alleged anticompetitive conduct where plaintiff did not allege a "course of dealing suggesting a willingness to forsake short-term profits to achieve an anticompetitive end"). Furthermore, again, "[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." *W. Penn*, 627 F.3d at 103.

Plaintiff's Section 2 claims fail at the threshold because the AC does not plausibly allege that United's conduct lacked a "legitimate business purpose" or that it "makes sense only because it eliminates competition." *In re Adderall*, 754 F.3d at 133. Absent such allegations, Plaintiff has not established the essential element of anticompetitive conduct, and both Section 2 claims must be dismissed on that basis. *See Apotex Corp. v. Hospira Healthcare India Priv. Ltd.*, No. 18-cv-4903, 2020 WL 58247, at *5 (S.D.N.Y. Jan. 6, 2020) (dismissing Section 2 claims where plaintiff did not plausibly allege anticompetitive conduct).

Even assuming that Plaintiff had plausibly alleged anticompetitive conduct, the monopsony claim independently fails because Plaintiff does not plausibly allege that United possesses monopsony power in the relevant market. Plaintiff alleges that "United possesses monopsony power in the market for the reimbursement of anesthesia services in the New York metropolitan area," AC ¶ 304, but elsewhere defines the relevant product market as "the provision of medically necessary anesthesia services to patients," *see id.* ¶¶ 244–54. That inconsistency with market definition is fatal. *See Chapman*, 546 F.3d at 238.

Plaintiff's attempted monopsony claim is likewise deficient. Plaintiff merely recites the required elements—specific intent and a dangerous probability of achieving monopsony

power—without factual support. *See Spectrum Sports*, 506 U.S. at 456; *see also* AC ¶¶ 310–11 ("United undertook this conduct with the specific intent to monopsonize. United has a dangerous probability of achieving monopsony power."). While Plaintiff appears to allege that United seeks monopsony power by reducing reimbursement rates to below-cost levels to drive out anesthesia providers, AC ¶ 309, that theory is implausible: as discussed, driving providers from the market would reduce supply and potentially increase costs—an outcome contrary to United's interests as the Empire Plan's administrator. Moreover, Plaintiff offers no coherent explanation as to how this strategy would give United monopsony power over reimbursement.

To the extent Plaintiff suggests United is using monopsony power to create monopoly power for OptumCare, the allegations are equally deficient. The AC notes only that OptumCare employs "over 50 anesthesiologists," *id.* ¶ 60, without identifying the total number of providers in the market or OptumCare's share—basic facts needed to assess market power. *See Spectrum Sports*, 506 U.S. at 459 ("[D]emonstrating the dangerous probability of [monopsonization] in an attempt case also requires inquiry into the . . . defendant's economic power in that market.").

To summarize, Plaintiff's Section 2 claims rest on a speculative theory of market manipulation unsupported by concrete, plausible allegations of anticompetitive conduct, monopsony power over the relevant market, or a dangerous probability of market dominance. These deficiencies, both individually and collectively, require dismissal of Plaintiff's Section 2 monopsonization and attempted monopsonization claims.

III. Plaintiff's State Law 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[6] was unjustly enriched by receiving fees and retaining reimbursement through Defendants' alleged scheme of improperly reducing LIA's reimbursement rates. AC ¶¶ 313–30. Having dismissed all of Plaintiff's claims over which I have "original jurisdiction," I "may decline to exercise supplemental jurisdiction over" Plaintiff's pendant state law claims. *See* 28 U.S.C. § 1367(c)(3). As is well established, Section 1367 does not create "a mandatory rule to be applied inflexibly in all cases." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988). Nevertheless, "in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity— will point toward declining to exercise jurisdiction over the remaining state-law claims." *Id.*; *see also Kolari v. N. Y.-Presbyterian Hosp.*, 455 F.3d 118, 123 (2d Cir. 2006) (reversing a district court decision to retain supplemental jurisdiction over state law claims after dismissal of the federal claim, citing "the absence of a clearly articulated federal interest").

Despite the general presumption, I conclude that judicial economy calls for exercising supplemental jurisdiction over Plaintiff's Donnelly Act Claim. 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.

[6] In the original complaint, Plaintiff asserted its unjust enrichment claim against both United and MultiPlan. *See* ECF No. 1 ¶¶ 204–09. Plaintiff now asserts this claim only against United. *See* AC ¶¶ 319–30.

2012). Given my decision on Plaintiff's Section 1 claim, "it would be the height of inefficiency to defer a decision on [its Donnelly Act] claim to a state court." *Nunez v. N.Y. State Dep't of Corr. & Cmty. Supervision*, No. 14-cv-6647, 2017 WL 3475494, at *4 (S.D.N.Y. Aug. 11, 2017), *aff'd sub nom. Nunez v. Lima*, 762 F. App'x 65 (2d Cir. 2019); *accord Avery v. DiFiore*, No. 18-cv-9150, 2019 WL 3564570, at *5 (S.D.N.Y. Aug. 6, 2019). Having already determined that Plaintiff's AC failed to state a claim under Section 1, it necessarily follows that Plaintiff's Donnelly Act claim also fails and Defendants' motions to dismiss are granted. *See Biocad*, 942 F.3d at 101 ("As [plaintiff] has not stated a plausible claim for relief under the Sherman Act, its Donnelly Act claim similarly fails.").

By contrast, I decline to exercise supplemental jurisdiction over Plaintiff's unjust enrichment claim. Plaintiff's unjust enrichment claim is subject to different standards than Plaintiff's antitrust claims and must be analyzed separately. Thus, this is the "usual case" in which the balance of relevant factors "point toward declining to exercise jurisdiction." *Carnegie-Mellon Univ.*, 484 U.S. at 350 n.7.

IV. Leave to Amend

Plaintiff asks that, in the event that the Court dismisses its claims, the Court allow it another opportunity to amend. *See* ECF No. 64 at 31. Although the Second Circuit "strongly favors liberal grant of an opportunity to replead after dismissal of a complaint under Rule 12(b)(6)," the Court declines to grant Plaintiff leave to amend yet again. *See Noto v. 22nd Century Grp., Inc.*, 35 F.4th 95, 107 (2d Cir. 2022) (affirming denial of leave to amend). "A court should freely give leave when justice so requires, but it may, in its discretion, deny leave to amend for good reason, including futility, bad faith, undue delay, or undue prejudice to the opposing party." *MSP Recovery Claims, Series LLC v. Hereford Ins. Co.*, 66 F.4th 77, 90 (2d Cir. 2023) (affirming denial of leave to amend). The mere fact that Plaintiff's opposition brief

provides no explanation about how it intends to amend its complaint to address any deficiencies I have identified is sufficient reason 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"). Moreover, "[a] court may deny leave to amend where the plaintiff has already had the opportunity to amend its [c]omplaint, and there is no indication that amendment would not be futile." *Champions League, Inc. v. Woodard*, 224 F. Supp. 3d 317, 326 (S.D.N.Y. 2016). That is especially so here, where Plaintiff has already had the "benefit of a [full] ruling." *See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d 160, 190 (2d Cir. 2015). The defects in Plaintiff's antitrust claims "are substantive and arise from [Plaintiff's] own allegations, not from inadequate or inartful pleading." *Apotex*, 2020 WL 58247, at *7. Accordingly, leave to amend is denied.

CONCLUSION

For the reasons set forth above, 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. *See* ECF No. 61-1; ECF No. 62-1. The Clerk of Court is respectfully requested to enter judgment and close this case.

SO ORDERED.

/s/ Hector Gonzalez
HECTOR GONZALEZ
United States District Judge

Dated: Brooklyn, New York
April 7, 2025

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
LONG ISLAND ANESTHESIOLOGISTS PLLC,

Plaintiff,

v.

JUDGMENT
22-CV-04040 (HG)

UNITED HEALTHCARE INSURANCE COMPANY OF NEW YORK INC., as Program Administrator for the Empire Plan Medical/Surgical Program, and MULTIPLAN INC.,

Defendants.
----------X

A Memorandum and Order of the Honorable Hector Gonzalez, United States District Judge, having been filed on April 7, 2025, granting with prejudice Defendants' motions to dismiss Plaintiff's Sherman Act and Donnelly Act claims; and declining to exercise supplemental jurisdiction over Plaintiff's unjust enrichment claim, which it dismisses without prejudice, *See* ECF No. 61-1; ECF No. 62-1; it is

ORDERED and ADJUDGED that 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. *See* ECF No. 61-1; ECF No. 62-1.

Dated: Brooklyn, New York
April 8, 2025

Brenna B. Mahoney
Clerk of Court

By: */s/Jalitza Poveda*
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORKT

LONG ISLAND ANESTHESIOLOGISTS PLLC, ,	:	
Plaintiff,	:	Case No. 22-cv-04040-HG
vs.	:	
	:	**NOTICE OF APPEAL**
UNITEDHEALTHCARE INSURANCE COMPANY OF NEW YORK INC., as Program Administrator, THE EMPIRE PLAN MEDICAL/SURGICAL PROGRAM and MULTIPLAN, INC.,	:	
Defendants.	:	

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

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