

25 - 1167 - CV

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,
MULTIPLAN, INC.,
Defendants-Appellees.

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

**BRIEF FOR DEFENDANTS-APPELLEES UNITEDHEALTHCARE
INSURANCE COMPANY OF NEW YORK INC. AND MULTIPLAN, INC.**

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CORPORATE DISCLOSURE STATEMENT

UnitedHealthcare Insurance Company of New York is a wholly owned subsidiary of UnitedHealthcare Insurance Company. UnitedHealthcare Insurance Company is a wholly owned subsidiary of UHIC Holdings, Inc. UHIC Holdings, Inc. is a wholly owned subsidiary of United HealthCare Services, Inc. United HealthCare Services, Inc. is a wholly owned subsidiary of UnitedHealth Group Incorporated. UnitedHealth Group Incorporated does not have a parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

MultiPlan, Inc. d/b/a Claritev is a wholly owned subsidiary of Claritev Corporation (formerly known as MultiPlan Corporation). Two entities hold over 10% of Claritev Corporation's stock, through various subsidiary and affiliate entities: (1) Hellman & Friedman Investors; and (2) Ares Management.

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JURISDICTIONAL STATEMENT

The U.S. District Court for the Eastern District of New York had subject matter jurisdiction over this action under 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1291.¹

¹ In its jurisdictional statement, Appellant Long Island Anesthesiologists PLLC (LIA) asserts that it “has . . . antitrust standing[] to press []their claims.” LIA Br. 1. Whether LIA has established antitrust standing (or antitrust injury) is one of the legal issues presented in this appeal. Appellees UnitedHealthcare Insurance Company of New York and MultiPlan, Inc., dispute that LIA has established antitrust standing.

STATEMENT OF THE ISSUES

1. Whether the district court properly granted United and MultiPlan's motions to dismiss LIA's Second Amended Complaint as to LIA's federal and state antitrust claims.

2. Whether the district court properly exercised its discretion when it denied LIA leave to amend its complaint for a second time.

INTRODUCTION

In this appeal, LIA, a private anesthesiology practice, tries to resurrect muddled antitrust theories that are inconsistent with settled law. At bottom, LIA is upset that the Empire Plan—New York’s health plan for state employees—chose to apply the federal No Surprises Act instead of New York’s Surprise Bill Law when reimbursing for out-of-network anesthesia services. LIA claims that the Empire Plan’s decision on that score led to lower reimbursement rates. Looking for someone to blame, LIA alleged that United (a third-party administrator for the Empire Plan) encouraged the Empire Plan to make that decision, and that United separately conspired with MultiPlan (United’s vendor for certain surprise-billing services) to aggressively enforce the reduced rates. According to LIA, those actions violated federal and state antitrust laws.

LIA’s claims failed for many reasons. To start, two separate New York courts have confirmed (in a separate case that LIA filed) that the Empire Plan correctly applied the federal No Surprises Act and that United had no authority or control over the Empire Plan’s decision. Those rulings, which this Court must follow, extinguished LIA’s claims. But as the district court recognized, LIA’s antitrust claims also failed for multiple other reasons. *First*, LIA failed to allege an antitrust injury because it alleged only injury to itself, not to competition. *Second*, LIA did not allege a relevant product market that made sense given the theories it pressed.

Third, LIA did not allege facts suggesting a conspiracy between United and MultiPlan—two companies in a vertical relationship that do not compete in the alleged relevant market. *Fourth*, LIA did not plausibly allege that United had monopsony power in a properly defined market.

Those defects plagued LIA’s original complaint, but the district court granted LIA leave to amend to try to cure the deficiencies. LIA’s second amended complaint suffered from the same defects. After dismissing LIA’s complaint for a second time, the district court correctly denied LIA further leave to amend because there is no reason to believe LIA could ever plead a viable antitrust theory.

This Court should affirm.

STATEMENT OF THE CASE

I. Factual Background.

A. The New York Department of Civil Services, not United or MultiPlan, sponsors the Empire Plan and funds reimbursements under the Plan.

United is one of multiple third-party administrators for the Empire Plan—the state-sponsored health plan for New York state employees and their families. JA-0610–11; Am. Compl. ¶¶ 71, 79–80. United does not fund reimbursements under the Empire Plan; instead, the New York Department of Civil Services (DCS) sponsors and funds the Plan. JA-0610–11; Am. Compl. ¶¶ 71–76, 79; *Uddoh v. United Healthcare*, No. 16-cv-1002 (BMC) (LB), 2017 U.S. Dist. LEXIS 19415, at *8–9 (E.D.N.Y. Feb. 10, 2017) (“[B]ecause the Empire Plan is self-insured, the Department of Civil Service bears all responsibility for claims and expenses under or against it, for which it receives state funding and makes annual budget requests to the New York State Division of the Budget.”).

United contracts with MultiPlan for certain surprise-billing services. JA-0625–26; Am. Compl. ¶¶ 151–53.

B. LIA chose to be out of network for the Empire Plan so that it could capture traditionally inflated out-of-network reimbursement rates.

LIA is a private anesthesiology practice that primarily serves patients at Good Samaritan Hospital, including patients covered by the Empire Plan. JA-0601–02, 0616, 0646; Am. Compl. ¶¶ 19–24, 101, 254. Generally speaking, healthcare

providers are either “in-network” or “out-of-network” vis-à-vis a particular health plan. JA-0603; Am. Compl. ¶ 32. “In-network” providers negotiate reimbursement rates with the plan, memorialized in a contract often called a participation agreement. JA-0603–04; Am. Compl. ¶¶ 33–34, 37. “Out-of-network” providers, on the other hand, do not have a participation agreement with the plan. JA-0603–04; Am. Compl. ¶¶ 32, 36. When it comes to the Empire Plan, LIA has “traditionally chosen to remain out of network,” even if it may provide services at in-network facilities. JA-0604; Am. Compl. ¶ 38. LIA admits that it has chosen to stay out-of-network so that it can capture the Empire Plan’s traditionally inflated out-of-network reimbursement rates. JA-0618–19; Am. Compl. ¶¶ 118–19.

C. The Empire Plan follows the federal No Surprises Act because New York’s Surprise Bill Law does not apply to the Empire Plan.

The New York Surprise Bill Law (Financial Services Law §§ 601–08) took effect on March 31, 2015. N.Y. Fin. Serv. Law §§ 601–08, added by 2014 N.Y. Laws ch. 60, pt. H, § 26 (effective Mar. 31, 2015). The Surprise Bill Law prohibits out-of-network providers like LIA from directly billing patients in circumstances in which the bill qualifies as a “surprise bill.” JA-0617; Am. Compl. ¶ 109. The Surprise Bill Law protects insureds from being billed directly for healthcare services that they did not know were being performed by an out-of-network provider. *Joseph v. Corso*, 221 N.Y.S.3d 279, 285 (N.Y. App. Div. 2024). It applies to certain “emergency” services where the patient lacked an opportunity to select their

provider or received care from an out-of-network physician at an in-network facility (such as when LIA provides out-of-network anesthesiology services at an in-network facility like Good Samaritan Hospital). *See* JA-0617; Am. Compl. ¶ 109. Health plans subject to the Surprise Bill Law must reimburse out-of-network providers at a “reasonable amount.” JA-0617; Am. Compl. ¶ 110. Disputes over whether an amount is reasonable are funneled to a state-established independent dispute resolution (IDR) process. JA-0617; Am. Compl. ¶ 111. LIA alleged that the state’s IDR process generally requires payments at 80% of the usual, customary, and reasonable (UCR) rate in the FAIR Health benchmarking database. JA-0618; Am. Compl. ¶¶ 113–16.

In December 2020, Congress passed the No Surprises Act (Public Law 116-260), which took effect January 1, 2022. Pub. L. No. 116-260, div. BB, tit. I, § 102(e), 134 Stat. 1182, 2758 (2020) (effective for plan years beginning on or after Jan. 1, 2022); JA-0621; Am. Compl. ¶ 132. Like New York’s Surprise Bill Law, the No Surprises Act establishes an IDR process that governs disputes between health plans and out-of-network providers concerning reimbursement rates for qualifying “surprise” or emergency services. JA-0621–22; Am. Compl. ¶ 134. But unlike New York’s Surprise Bill Law, LIA alleged that the federal IDR process sets reimbursement rates based on the Qualifying Payment Amount (QPA), defined as the health plan’s median in-network rates for the same service in a similar

geographic area. JA-0624; Am. Compl. ¶ 144. LIA alleged that “[i]n virtually all circumstances, the QPA is significantly less than the FAIR Health-determined UCR amount.” JA-0624; Am. Compl. ¶ 145.

The federal No Surprises Act applies to all health plans unless there is a “specified state law” that governs the plan. JA-0622; Am. Compl. ¶¶ 135–38. The Empire Plan began following the federal No Surprises Act as soon as it took effect on January 1, 2022. JA-0620–21; Am. Compl. ¶¶ 124–29. LIA alleged that it and two other anesthesia providers experienced lower reimbursement rates when the Empire Plan began applying the federal No Surprises Act. JA-0635–40; Am. Compl. ¶¶ 200–21. LIA also alleged that—if this is allowed to continue—providers will have to curtail their services. JA-0636, 0638–39; Am. Compl. ¶¶ 208, 215–16. According to LIA, that possibility, combined with a pre-existing shortage of anesthesiologists, is causing hospitals to close operating rooms, delay procedures, and extend wait times. JA-0636–39; ¶¶ 207–08, 213, 215, 218.

LIA does not allege that United had actual authority or control over the Empire Plan’s decision to apply the federal No Surprises Act, which led to the alleged reduction in reimbursement rates. Nonetheless, LIA alleged that the Empire Plan decided to follow the federal law “at United’s insistence” or “at United’s behest” (JA-0599, 0620–21; Am. Compl. ¶¶ 4, 125, 130), and that the decision was “wrong.” JA-0621; Am. Compl. ¶¶ 130–31.

On March 28, 2022, three months before filing the federal action on appeal here, LIA joined other plaintiffs in a declaratory judgment action in the New York Supreme Court against the Empire Plan, DCS, the New York Department of Financial Services, and United, seeking a declaration that “at all times, the Empire Plan, and its provision of benefits and reimbursement, remain subject to New York insurance law, including the Surprise Bill Law.” *Joseph et al. v. Corso et al.*, No. 902227-22 (N.Y. Sup. Ct. Mar. 28, 2022), Dkt. 2. Many of LIA’s allegations in this case were lifted from the state-court complaint.

The New York Supreme Court ruled against LIA and other plaintiffs, holding that “the Surprise Bill Law is not an applicable insurance law to the Empire Plan.” *Joseph v. Corso*, No. 902227-22, 2023 WL 12011473 (N.Y. Sup. Ct. July 13, 2023), *aff’d* 221 N.Y.S.3d 279 (N.Y. App. Div. 2024). The Court also dismissed United from the case for a separate reason: “United cannot and does not, control the Empire Plan’s coverage or reimbursement decisions.” *Id.* The *Joseph* plaintiffs did not appeal the court’s decision to dismiss United. *See Joseph et al. v. Corso et al.*, No. CV-23-1477 (App. Div. 3d Dep’t), Dkt. 10 at 5 n.1. Instead, they appealed the court’s decision that the New York Surprise Bill Law does not apply to the Empire Plan. The Appellate Division affirmed, holding that “the plain language of [New York’s Surprise Bill Law] subjects only five specified types of ‘health care plans’ to

the state IDR process[,] and the Empire Plan is not one of them.” *Joseph*, 221 N.Y.S.3d at 283.

Accordingly, as a matter of law, it is now established that the Empire Plan—acting alone and without any control by United—correctly determined that it is subject to the federal No Surprises Act instead of New York’s Surprise Bill Law.

D. United works with MultiPlan in the federal IDR process.

After the Empire Plan began following the federal No Surprises Act for bills that LIA submitted, LIA invoked the federal IDR process under a reservation of rights. JA-0624; Am. Compl. ¶ 147. LIA then “started receiving written communications from MPI [(i.e., MultiPlan)],” which “identif[ied] itself as working with United[.]” and offered to pay the QPA to resolve billing disputes. JA-0625–26; Am. Compl. ¶ 151–53. LIA alleged that over time, it “started receiving more notices from [MultiPlan] as United[.]’s representative.” JA-0626; Am. Compl. ¶ 154. LIA complained about the volume of letters from MultiPlan, alleging that it was “impossible to keep up with the flood of correspondence and still keep up with the ability to routinely bill and collect for other anesthesia services.” JA-0627; Am. Compl. ¶ 159. LIA also alleged that some of those letters imposed rushed and unreasonable response deadlines. JA-0625–26; Am. Compl. ¶¶ 153–55.

LIA contended that those allegations establish a conspiracy between United and MultiPlan. Although LIA conceded that MultiPlan acts as a “United vendor

engaging in isolated communications with out-of-network providers” (JA-0627; Am. Compl. ¶ 162), it simultaneously claimed that MultiPlan is actually United’s competitor in other contexts unrelated to this litigation. JA-0627–28; Am. Compl. ¶¶ 162–63, 168. LIA claimed that MultiPlan “is a horizontal competitor of United because both [MultiPlan] and United own and operate Preferred Provider Organization (PPO) networks.” JA-0627; Am. Compl. ¶ 163. LIA also alleged that MultiPlan is “like United, . . . a health insurance payer.” JA-0628–29; Am. Compl. ¶ 41.² LIA also spent several paragraphs in the Amended Complaint discussing MultiPlan’s analytics services provided to health insurers, including to Cigna, Elevance, Centene, and Humana. JA-0629–31; Am. Compl. ¶¶ 170–80.

II. Procedural History.

A. The district court dismissed LIA’s original complaint but granted LIA leave to amend.

LIA filed its original complaint on July 11, 2022. JA-0013; Compl. The crux of LIA’s complaint was that United, using its alleged monopsony power, encouraged the Empire Plan to apply the federal No Surprises Act, causing it harm in the form of lowered reimbursement rates. JA-0047; Am. Compl. ¶¶ 188–92. LIA also alleged United and MultiPlan conspired to get LIA to accept low reimbursement rates. JA-

² There were numbering errors in the Amended Complaint. Although numbered paragraph 41, this fact follows paragraph 168. *See* JA-0628; Am. Compl. ¶ 168.

0048; Compl. ¶¶ 198–202. LIA asserted five claims: monopsony and attempted monopsonization against United (as an administrator for the Empire Plan); federal and state antitrust conspiracy claims against both United and MultiPlan; and unjust-enrichment claims against both defendants. *See generally* JA-0013; Compl., *passim*.

Given the numerous defects in the complaint, United and MultiPlan moved to dismiss. JA-0052, 0055. The district court agreed and dismissed LIA’s federal antitrust claims because LIA failed to allege antitrust injury or a plausible horizontal conspiracy. *See* JA-0576. The court declined to exercise supplemental jurisdiction over the state law claims but explained that LIA’s state antitrust claim would fail for the same reasons. *See* JA-0580, 0591 n.11.

In its opposition, LIA requested leave to amend its complaint but offered no explanation of how it intended to fix its pleading failures. As the district court explained, that omission alone would have been “sufficient reason” to deny leave to amend. *See* JA-0592 (“The fact that Plaintiff’s opposition brief provides no explanation about how it intends to amend its complaint is sufficient reason for the Court to deny leave to amend.”). Nonetheless, the district court exercised its discretion to give LIA another chance to cure the defects in its complaint. *See id.* at 0592, 0595–96.

B. LIA’s amended complaint failed to cure the deficiencies identified by the district court.

In its Amended Complaint, LIA reasserted the same five claims based on the same theory: United used alleged monopsony power to suppress reimbursement rates and conspired with MultiPlan. *See generally* JA-0598; Am. Compl. The main difference was that LIA added an assortment of new allegations on “irrelevant and tangential matters.” SA-008. LIA also added an allegation that two other anesthesiology practices experienced lower reimbursement rates. JA-0635–40; Am. Compl. ¶¶ 200–21. United and MultiPlan again moved to dismiss.

The district court found that the Amended Complaint suffered from many of the same flaws as the original complaint. *See* SA-001. It dismissed the antitrust claims for lack of antitrust injury, failure to define a relevant market, and failure to allege a plausible conspiracy or monopsony theory. *See id.* at 009–28. The court dismissed the state antitrust claim for the same reasons, and it declined to exercise supplemental jurisdiction over the unjust enrichment claim. *See id.* at 029–30. The district court denied LIA’s request for leave to amend its complaint finding yet again that the defects were “substantive and arise from [Plaintiff’s] own allegations, not from inadequate or inartful pleading.” *Id.* at 031 (quoting *Apotex Corp. v. Hospira Healthcare India Priv. Ltd.*, No. 18-CV-4903, 2020 WL 58247, at *7 (S.D.N.Y. Jan. 6, 2020)).

LIA now appeals the dismissal of its Amended Complaint.

SUMMARY OF THE ARGUMENT

The district court correctly dismissed LIA’s Sherman Act claims and its related state-law claims under New York’s Donnelly Act because LIA failed to allege antitrust injury. The antitrust laws are designed to safeguard competition, not individual competitors. Lowered reimbursement rates to LIA do not establish antitrust injury. And LIA failed to plead the “something more” necessary to show the sort of injury to the competitive process that the antitrust laws are concerned with.

The district court also correctly held that LIA’s antitrust claims fail for multiple other, independent reasons. First, LIA did not plausibly allege a conspiracy between United and MultiPlan under either the *per se* rule or the rule of reason. Second, LIA failed to define a relevant antitrust market to support its conspiracy and monopsony theories. Third, LIA’s monopsony claim lacked a coherent or plausible antitrust theory. The Court may affirm the district court’s dismissal based on any of those defects.

This Court can also affirm the decision below on issue-preclusion grounds. Through this lawsuit, LIA seeks to relitigate the Empire Plan’s decision to follow the federal No Surprises Act instead of New York’s Surprise Bill Law. Indeed, if the Empire Plan’s decision to follow the federal No Surprises Act was proper, LIA’s claims—each predicated on a purported conspiracy to apply that law—fail. Two

New York state courts (including a court of appeals) have held that the Empire Plan's decision to apply the federal statute was correct and that, in any event, United had no control over the decision. Those decisions foreclose LIA's claims.

Finally, regarding leave to amend, the district court showed both patience and fidelity to precedent. The court gave LIA an opportunity to cure its pleading deficiencies, and LIA failed to do so, offering no factual allegations or cogent theories that could sustain LIA's claims. The court's refusal to grant LIA yet another bite at the apple was proper and certainly not an abuse of discretion.

STANDARD OF REVIEW

This Court reviews *de novo* the district court’s dismissal of a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Fink v. Time Warner Cable*, 714 F.3d 739, 740–41 (2d Cir. 2013); *Concord Assocs., L.P. v. Ent. Props. Tr.*, 817 F.3d 46, 52 (2d Cir. 2016); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). And this Court reviews a denial of leave to amend for abuse of discretion. *Bellikoff v. Eaton Vance Corp.*, 481 F. 3d 110, 118 (2d Cir. 2007).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DISMISSED LIA’S ANTITRUST CLAIMS.

A. LIA failed to allege antitrust injury.

This Court should affirm the district court’s dismissal of LIA’s antitrust claims because LIA has not pleaded facts establishing antitrust injury.³ Federal and state “antitrust laws . . . were enacted ‘for the protection of *competition*, not

³ LIA does not appeal the dismissal of its Donnelly Act claims and did not even mention the Donnelly Act in its opening brief. *See Tripathy v. McKoy*, 103 F.4th 106, 118 (2d Cir. 2024) (“[A]n appellant forfeits any argument not raised in his opening brief.”). Regardless, as the district court recognized, LIA’s Donnelly Act claims fail for the same reasons that its Sherman Act claims fail. SA-029–30 (“The standard for a well-pleaded Donnelly Act claim is the same as a claim under Section 1 of the Sherman Act.” (quoting *Nat’l Gear & Piston, Inc. v. Cummins Power Sys., LLC*, 861 F. Supp. 2d 344, 370 (S.D.N.Y. 2012))).

competitors.’” *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977) (quoting *Brown Shoe v. United States*, 370 U.S. 294, 320 (1962)). Put another way, the antitrust laws “are not general prohibitions of all types of activity which may result in economic harm to any individual.” *Assocs. Cap. Serv. Corp. of N.J. v. Fairway Private Cars, Inc.*, 590 F. Supp. 10, 13 (E.D.N.Y. 1982) (citing *Brunswick*, 429 U.S. at 489). As even LIA concedes, to pursue an antitrust claim, a plaintiff must demonstrate that its injury is “of the type the antitrust laws were intended to prevent.” LIA Br. 31 (citing *Brunswick*, 429 U.S. at 489).

To evaluate whether a defendant’s alleged conduct caused “antitrust injury,” “it is first necessary carefully to consider the nature of [the] plaintiffs’ claim.” *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 438 (2d Cir. 2005). This is how the district court described LIA’s claims:

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.

SA-010. LIA alleged that United (with MultiPlan’s assistance) engaged in conduct that led to reduced reimbursement rates for anesthesia services. *See id.*

The district court properly determined that those allegations at most alleged harm to one or a handful of market participants but did not establish the sort of injury to the competitive process necessary to plead antitrust injury. The district court also correctly held that LIA failed to allege the necessary “something more” required to support a cognizable antitrust claim based on lowered reimbursement rates. *See* SA-013.

1. LIA’s allegations of lowered reimbursement rates did not show harm to competition.

LIA failed to allege antitrust injury because it did not allege harm to competition. “The antitrust injury requirement obligates a plaintiff to demonstrate . . . that the challenged action has had an actual adverse effect on competition as a whole in the relevant market.” *George Haug Co. v. Rolls Royce Motor Cars*, 148 F.3d 136, 139 (2d Cir. 1998). It “will not suffice” to sustain an antitrust injury if a plaintiff only “prove[s] it has been harmed as an individual competitor.” *Id.*

LIA alleged that that the Empire Plan, “at United’s insistence,” decided that it was “governed by the federal No Surprises Act” instead of New York’s Surprise Bill Law. JA-620; Am. Compl. ¶ 125. That decision, according to LIA, enabled the Empire Plan to reimburse for anesthesiology services using the lower federal QPA, rather than the UCR rate, which in turn negatively affected LIA’s revenue. JA-0619–20, 0635; Am. Compl. ¶¶ 120–24, 200–01. LIA also alleged that United’s influence

in the Empire Plan’s decision caused (1) harm to other anesthesia providers, (2) an increase in the price of anesthesia services, and (3) a reduction in the quality and output of anesthesia services. *See* JA-635–40; Am. Compl. ¶¶ 200–21. For several reasons, the district court correctly found that those allegations were insufficient.

First, “[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) (citing *Brunswick*, 429 U.S. at 488); *see also Capital Imaging Assocs., P.C. v. Mohawk Valley Med. Assocs., Inc.*, 996 F.2d 537, 543 (2d Cir. 1993) (plaintiff must show “that the challenged action has had an *actual* adverse effect on competition as a whole in the relevant market; to prove it has been harmed as an individual competitor will not suffice”). Indeed, the allegation that two other anesthesia providers also experienced lower reimbursement rates when the Empire Plan began applying the federal No Surprises Act said nothing about competition in a relevant market, which might include thousands of anesthesiologist practitioners. There was no allegation of “foreclosure of competition” in the alleged market for the provision of anesthesiology services, “and consequently, [there is] no antitrust injury.” *Balaklaw v. Lovell*, 14 F.3d 793, 799 (2d Cir. 1994); *see also Korshin v. Benedictine Hosp.*, 34 F. Supp. 2d 133, 138–39 (N.D.N.Y. 1999) (anesthesiologist did not allege antitrust injury where there were “no indications that [the plaintiff] and other

anesthesiologists [we]re excluded, or substantially limited, in the broader market for employment”).

Second, although LIA contended that the alleged anticompetitive conduct may one day increase the cost of anesthesia services, its allegations on that score were tenuous and implausible. According to LIA, United pushed for lower reimbursement rates to New York anesthesiologists in the short term as part of a grand scheme to benefit United’s sister company in the long term. LIA contends that lowering reimbursement rates and driving anesthesiologists from the market may ultimately benefit OptumCare, a company that employs roughly 50 anesthesiologists in the New York metropolitan area and is a subsidiary of United’s parent. JA-607, Am. Compl. ¶ 60. LIA alleged that OptumCare would then take over the business left by those anesthesiologists at some unspecified point in the future. And if that were to happen, LIA speculated that OptumCare could potentially raise costs for patients. *See* JA-604–07, 0640–42; Am. Compl. ¶¶ 39–61, 222–33.

Those allegations were insufficient. This Court has held “[t]o prove an *actual* adverse effect on price, a plaintiff must show just that—that prices actually increased.” *MacDermid Printing Sols. LLC v. Cortron Corp.*, 833 F.3d 172, 184 (2d Cir. 2016). It is not enough to speculate about a hypothetical chain of events that might raise prices years down the line. Yet that is all LIA offered. And even then,

LIA did not allege that OptumCare has the capacity or ability to capture business through Good Samaritan Hospital if LIA goes out of business.

Third, LIA’s conclusory allegation that there was a reduction in the quality and output of anesthesia services was also insufficient. LIA alleged no facts backing up that allegation. And as the district court recognized, LIA did not allege that it has been excluded from the market. Even with reduced reimbursement rates, LIA can and does still provide out-of-network anesthesia services or it can negotiate in-network participation. *See* JA-0618–19, 0636; Am. Compl. ¶¶ 117–19, 203–05.

LIA pushes back on the district court’s decision, claiming that the court blurred the line “between antitrust violation and antitrust injury by placing considerable weight on appellants’ . . . failure to show harm to competition.” LIA Br. 32 (quoting *Gelboim v. Bank of Am. Corp.*, 823 F.3d 759, 770 (2d Cir. 2016)). But the district court did not err in that analysis; it followed the law. The case that LIA cites for its argument, *Gelboim v. Bank of America Corp.*, involved *per se* horizontal price-fixing, which does not require separate factual allegations showing harm to competition. 823 F.3d at 765 (“[A] plaintiff alleging a *per se* antitrust violation need not separately plead harm to competition.”). That is much different from LIA’s allegations, which, as the district court found and as explained in below, did not even establish a conspiracy—let alone a horizontal one.

In any event, LIA argues that it “did allege more than ‘harm to a . . . group of competitors.’” LIA Br. 33. LIA contends that although it “gave specific examples of other anesthesia providers affected by defendants’ actions, its allegations extended to the market as a whole.” *Id.* But that is not true. LIA points to no allegations of broader harm to competition beyond those suggesting that a few other anesthesia practices also experienced lower reimbursement rates. JA-0636–40; Am. Compl. ¶¶ 207–22.

Undeterred, LIA cites to a series of other cases in which plaintiffs alleged a shortage of anesthesiologists, shuttered operating rooms, and longer patient wait times. Relying on those cases, LIA argues that “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.” LIA Br. 34 (citing *Angelico v. Lehigh Valley Hosp., Inc.*, 184 F.3d 268 (3d Cir. 1999); *Reddy v. Puma*, No. 06-cv-1283, 2006 U.S. Dist. LEXIS 67848 (S.D.N.Y. Sept. 19, 2006); and *N.Y. Medscan LLC v. N.Y. Univ. Sch. of Med.*, 430 F. Supp. 2d 140 (S.D.N.Y. 2006)). But none of those cases compares to LIA’s allegations here. All three involved plaintiffs alleging that they were excluded from the market as a *competitor*. But here, neither United nor MultiPlan is LIA’s competitor.

There are other differences. In *Reddy*, for instance, the plaintiffs alleged that a plaintiff with 35–45% market share was entirely excluded from the market. 2006

U.S. Dist. LEXIS 67848, at *12. LIA, by contrast, included no allegations about its market share and is but one anesthesia provider among hundreds or thousands. And LIA has not been excluded from the market in any way. On the contrary, LIA remains free to provide out-of-network anesthesia services or to negotiate for in-network participation. *N.Y. Medscan* is also inapposite because, there, the plaintiff alleged that the defendants suppressed competition. 430 F. Supp. 2d at 147. LIA, in contrast, failed to plead facts showing an inability to compete. Nor did it plausibly allege that even one anesthesiologist stopped practicing because of the Empire Plan's choice to follow federal law. Finally, *Angelico* did not even address the alleged exclusionary behavior's effect on the market. 184 F.3d at 276 ("Although the District Court considered Angelico's proffered evidence of an actual anticompetitive market effect, we will not address that evidence because it is appropriate that the District Court reconsider it within the legal framework we have outlined.").

LIA made the same arguments about those cases in the district court, but the district court rejected them. SA-011–12. LIA claims that the district court misread *N.Y. Medscan* and *Reddy* because those cases focused on the consequence of reduced competition rather than outright exclusion. LIA Br. at 34–35. But that is not true. In *N.Y. Medscan*, the defendant allegedly used control over a key management company to eliminate the plaintiffs, the only viable competitors. 430 F. Supp. 2d at

147. And in *Reddy*, the alleged exclusionary conduct forced the plaintiff and another provider to resign, eliminating competition. 2006 U.S. Dist. LEXIS 67848, at *12. The court determined that “defendants’ anticompetitive behavior displaced [the plaintiff and the other provider and], therefore, led to a marked decline in the overall provision of qualified services.” *Id.*

Despite LIA’s pleas to the contrary, at bottom, LIA’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 [LIA] and the other providers it references . . . do not constitute antitrust violations.” SA-013.

2. LIA did not allege the “something more” necessary to sustain an antitrust claim based on lower reimbursement rates.

“Antitrust law in the healthcare setting focuses on protecting patients from prices that are too high.” *Anesthesia Assocs. of Ann Arbor, PLLC v. Blue Cross Blue Shield of Mich.*, No. 2:20-CV-12916, 2021 U.S. Dist. LEXIS 174021, at *21 (E.D. Mich. Sept. 14, 2021) (citing *Kartell v. Blue Cross Blue Shield of Mass., Inc.*, 749 F.2d 922, 925 (1st Cir. 1984)). That a physician or anesthesiologist makes less money than before is insufficient to state an antitrust injury. *See Kartell*, 749 F.2d at 931 (“Antitrust law rarely stops the buyer of a service from trying to determine the price or characteristics of the product that will be sold.”); *Mich. State Podiatry Ass’n v. Blue Cross & Blue Shield of Mich.*, 671 F. Supp. 1139, 1152 (E.D. Mich. 1987) (an argument “that podiatrists make less money from BCBSM than previously . . . is

insufficient to state an antitrust violation”). As the district court recognized, and LIA concedes, there must be “something more.” See SA-013 (citing *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.”)).

LIA relies on *Presque Isle Colon & Rectal Surgery v. Highmark Health*, 391 F. Supp. 3d 485, 499 (W.D. Pa. 2019) for its argument that it alleged “something more.” See LIA Br. 35–36. In *Presque Isle*, the plaintiff amended its original complaint, which focused on predatorily low reimbursement rates, to add allegations of unnecessary audits, unfair steering, and inefficient procedure codes and requirements. 391 F. Supp. 3d at 495. LIA admits it did not allege those facts below. LIA Br. 36. Yet LIA accuses the district court of dismissing its claims because its allegations don’t mirror those in *Presque Isle*. *Id.*

That is wrong. The district court did not require allegations identical to those in *Presque Isle*; instead, the district court found that LIA failed to establish antitrust injury based on the facts it *did* plead. The district court described a line of cases—including *Preseque Isle* and two others—that describe the sort of allegations necessary for “courts [to find] the existence of ‘something more,’ in addition to lowered reimbursement rates, to support a plausible inference of antitrust injury.” SA-013–14 (citing *West Penn. Allegheny Health System v. UPMC*, 627 F.3d 85 (3d

Cir. 2010); *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); and *Presque Isle*, 391 F. Supp. 3d 485). The district court correctly found that LIA’s allegations did not compare. And the district court independently assessed each of LIA’s “something more” theories and found them lacking.

LIA nevertheless contends that expedited deadlines in MultiPlan’s notices amounted to “something more.” LIA Br. 36. But LIA cites no authority for the proposition that a rushed deadline to respond to a reimbursement notice qualifies as antitrust injury. In fact, the very case LIA relied on in the district court, *West Penn Allegheny Health System v. UPMC*, suggests the opposite: “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.” 627 F.3d at 103.

LIA also claims that it showed “something more” by alleging that United and MultiPlan schemed to drive LIA out of business to benefit United’s sister company, OptumCare. LIA Br. 37. But to accept that theory, the Court must accept a highly speculative and attenuated chain of events: that the Empire Plan’s decision to follow the federal No Surprises Act—a decision affecting *all* providers—was actually a calculated move (i) to reduce reimbursement rates for all New York *anesthesiologists* in the short-term (ii) for the purpose of forcing many anesthesia

providers out of business (iii) that will, after some unspecified period, benefit OptumCare if it can capture business of shuttered anesthesiology practices (iv) and that will then eventually harm patients if OptumCare later raises rates in a market with fewer competitors. JA-0604–07, 0640–42; Am. Compl. ¶¶ 39–61, 222–33. That implausible speculation is not the stuff of an antitrust claim.

Finally, LIA argues that it alleged “something more” through a supposed “horizontal conspiracy to suppress reimbursement payments, wherein United, through [MultiPlan] could coordinate with competitors.” LIA Br. 37. But as described more below, LIA fell short there too. LIA did not plausibly allege facts suggesting that United and MultiPlan compete in any relevant market, did not identify any anticompetitive agreement or meeting of the minds, and failed to define a relevant antitrust market.

The district court correctly held that LIA alleged nothing more than its own individual dissatisfaction with the reimbursement rates offered by a single health plan for a limited class of surprise bills. Because LIA failed to allege a market-wide injury to the competitive process, this Court should affirm the decision dismissing LIA’s antitrust claims for failure to plead antitrust injury.

B. The Amended Complaint was devoid of plausible factual allegations suggesting conspiracy.

This Court can affirm the district court’s ruling dismissing LIA’s Section 1 claim for an independent reason: LIA failed to plausibly allege an antitrust

conspiracy between United and MultiPlan. To survive dismissal of a Section 1 claim, a plaintiff must plausibly allege “a combination or some form of concerted action between at least two legally distinct economic entities that constitutes an unreasonable restraint of trade either per se or under the rule of reason.” *Pepsico, Inc. v. Coca-Cola Co.*, 315 F.3d 101, 109 (2d Cir. 2002). “Proof of unilateral action does not suffice”; rather the facts alleged “must reveal a unity of purpose or common design and understanding or of meeting of minds in unlawful arrangement.” *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 768 (1984). To satisfy that requirement, a plaintiff must, as a threshold matter, “allege enough facts to support the inference that a conspiracy actually existed.” *Mayor & Council of Balt. v. Citigroup, Inc.*, 709 F.3d 129, 136 (2d Cir. 2013); *see also Twombly*, 550 U.S. at 555–56 (antitrust allegations must contain “enough factual matter (taken as true) to suggest that an agreement was made”). LIA’s conspiracy allegations fell short of that standard.

1. LIA did not plausibly allege a horizontal conspiracy.

The district court correctly concluded that, for several reasons, the Amended Complaint did not allege a horizontal conspiracy. SA-018–24.

First, “[h]orizontal 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). But LIA’s allegations concerned only MultiPlan’s function as United’s contracted vendor for surprise-billing services for the Empire Plan. LIA did not allege that MultiPlan and United are horizontal competitors vis-à-vis the anesthesiology services at issue in this case. That doomed the conspiracy claim. *See id.*; *Oreck Corp. v. Whirlpool Corp.*, 579 F.2d 126, 131 (2d Cir. 1978) (“It is important to distinguish between ‘horizontal’ restraints, *i.e.* agreements between competitors at the same level of market structure, and ‘vertical’ restraints, *i.e.* combinations of persons at different levels of the market structure, such as manufacturers and distributors.”); *In re Aluminum Warehousing Antitrust Litig.*, No. 13-md-2481, 2014 WL 4277510, at *32 (S.D.N.Y. Aug 29, 2014) (“Plaintiffs claim to have alleged a horizontal conspiracy in restraint of trade, but they do not allege that [defendants] are horizontal competitors. In the absence of the latter, the former cannot be correct.”).

As it did below, LIA argues that there is a horizontal conspiracy “because both [MultiPlan] and United own and operate Preferred Provider Organization (PPO) networks.” JA-0627; Am. Compl. ¶ 163. But this case has nothing to do with PPO networks; LIA’s alleged conspiracy arises from United’s administration of the Empire Plan, for which United allegedly hired MultiPlan as a vendor. *See* SA-020 (citing Am. Compl. ¶¶ 4, 163). “Critically, neither United nor MultiPlan was acting as a PPO in this context[.]” *Id.* “That both entities may operate PPOs elsewhere in

the healthcare ecosystem does not convert this vertical service-provider relationship into a horizontal conspiracy.” *Id.* (citing *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)); *U.S. v. Topco Associates, Inc.*, 405 U.S. 596, 608 (1972) (“One of the classic examples of a per se violation [] is an agreement between competitors at the same level of the market structure Such concerted action is usually termed a ‘horizontal’ restraint, in contradistinction to combinations of persons at different levels of the market structure . . . which are termed ‘vertical’ restraints.”); *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.”).

Second, LIA failed to allege facts suggesting a “meeting of minds in an unlawful arrangement.” *Monsanto*, 465 U.S. at 768. This is critical because defendants charged with violating Sherman Act Section 1 “are entitled to know how they are alleged to have conspired, with whom, and for what purpose.” *In re SSA*

Bonds Antitrust Litig., No. 16 Civ. 3711, 2020 U.S. Dist. LEXIS 54000, at *22 (S.D.N.Y. Mar. 18, 2020).

LIA alleged that United hired MultiPlan to employ various bad-faith negotiating pressure tactics to suppress out-of-network rates and that United and MultiPlan kicked off this process with an “agreement” in 2017 that United’s out-of-network reimbursements were “too high” and needed to be “brought ‘back into alignment.’” JA-648–50; Am. Compl. ¶¶ 266–79. As an initial matter, those allegations were wholly disconnected from the Empire Plan, the federal No Surprises Act, and the New York Surprise Bill Law and “do not support the conclusion that the agreement between United and Multiplan had an unlawful objective of reducing competition.” SA-023. There were no factual allegations suggesting that United and MultiPlan agreed to eliminate competition in the market for anesthesia services. Instead, the allegations “merely suggest[ed] that United engaged Multiplan to reduce out-of-network reimbursement rates.” *Id.* (citing Am. Compl. ¶¶ 89–90, 172). “The 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); 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.”).⁴

Third, the threadbare conspiracy allegations were implausible and speculative. LIA alleged that United and MultiPlan’s “agreement” would eventually benefit OptumCare. JA-0641, 0653; Am. Compl. ¶¶ 229, 292. But OptumCare is neither a parent nor subsidiary of United and is not a defendant. JA-0606, 0641, 0653; Am. Compl. ¶¶ 47–49, 225, 292. The two entities are related only because both share the same ultimate parent. JA-0606; Am. Compl. ¶ 47. There were no factual allegations that United and OptumCare communicated, coordinated, or otherwise shared a common objective. LIA does not allege that United exercised any control over OptumCare or vice versa. As the district court correctly found, “[a]bsent 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.” SA-022 (citing *In re Suboxone*

⁴ LIA also alleged that MultiPlan provides similar services for “other health plan clients,” including Cigna, Anthem, Centene, and Humana. LIA offers no explanation as to how the MultiPlan–United relationship differs from MultiPlan’s relationship with its many other clients. Considering that MultiPlan performs similar services for its other clients, the “obvious alternative explanation to the facts underlying the alleged conspiracy” is that United and MultiPlan are engaged in normal business dealings. *Relevant Sports, LLC v. Fédération Internationale De Football Ass’n*, 551 F. Supp. 3d 120, 128 (S.D.N.Y. 2021); see *Twombly*, 550 U.S. at 567 (noting the “obvious alternative explanation” in the allegations).

(Buprenorphine Hydrochloride & Naloxone) Antitrust Litig., No. 16-cv-5073, 2017 U.S. Dist. LEXIS 171322, at *31 (E.D. Pa. Oct. 16, 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)).

The district court’s summary on this point was spot on: “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.” SA-022. This Court should not permit “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*.” *Id.* at 022–23.

2. LIA has not alleged any other type of conspiracy.

Recognizing that it did not properly allege a horizontal conspiracy, LIA argues that ““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.” LIA Br. 41 (citing *Sitts v. Dairy Farmers of Am., Inc.*, 417 F. Supp. 3d 433, 468 (D. Vt. 2019)). Thus, LIA argues that even if its conspiracy allegations do

not meet the *per se* standard applied to horizontal conspiracies, they satisfy the rule of reason. *Id.* at 43. Failing to allege a meeting of the minds dooms a conspiracy claim regardless of its label, but LIA’s conspiracy claim also fails under the rule of reason.

“Under Section 1, some restraints on trade, such as horizontal agreements to fix prices, are unlawful *per se*, while others must be evaluated under the so called ‘rule of reason.’” *MacDermid*, 833 F.3d at 181–82. At the motion-to-dismiss stage, the rule-of-reason inquiry requires the plaintiff to “identify the relevant market affected by the challenged conduct and allege an actual adverse effect on competition in the identified market.” *Id.* LIA fails to plead facts that satisfy that test.

To identify the relevant market, a plaintiff must allege a “relevant product and geographic market.” *PepsiCo*, 315 F.3d at 105. The product market must correspond with the area of effective competition, *see Concord Assocs., L.P.*, 817 F.3d at 52, and reference economic factors, including interchangeability and cross-elasticity of demand, *see City of N.Y. v. Grp. Health Inc.*, 649 F.3d 151, 155 (2d Cir. 2011). In other words, “[t]he relevant market must be defined as all products reasonably interchangeable by consumers for the same purposes” *Id.*

LIA’s Amended Complaint did not come close to meeting that standard. LIA defined the relevant product market as “the provision of medically necessary

anesthesia services to patients.” JA-0644; Am. Comp. ¶ 244. But as the district court agreed, that alleged market is inconsistent with its antitrust theory, which focuses on third-party-administration and billing services provided by United and MultiPlan. SA-016. “That inconsistency with market definition is fatal” (*id.* at 027) and alone is grounds for this Court to affirm. *Id.* at 017 (citing *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.”)); *see also Todd v. Exxon Corp.*, 275 F.3d 191, 202 (2d Cir. 2001) (Sotomayor, J.) (“[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.”).

Moreover, LIA’s allegations were insufficient to establish a harm to competition indirectly because LIA failed to plead facts showing that United and MultiPlan “possess the requisite market power and thus the capacity to inhibit competition market-wide.” *K.M.B. Warehouse Distributors, Inc. v. Walker Mfg. Co.*, 61 F.3d 123, 129 (2d Cir. 1995). Neither United nor MultiPlan participate, let alone compete, in the market for the provision of medically necessary anesthesia services so neither could possibly have market power to restrain competition in that market. *See Discon Inc. v. NYNEX Corp.*, 93 F.3d 1055, 1062 (2d Cir. 1996) (“[I]t is

axiomatic that a firm cannot monopolize a market in which it does not compete.”); *Ross v. Am. Express Co.*, 35 F. Supp. 3d 407, 455 (S.D.N.Y. 2014) (“To prevail under the rule of reason analysis, plaintiffs must show that the defendant conspirators have market power in a particular market for goods or services.”).

LIA alleged that United has market power because OptumCare owns and operates medical practices that employ anesthesiologists. JA-606–07, 641, Am. Compl. ¶¶ 48–61, 224–25. But as explained above, LIA alleged no facts, like control or coordination, to overcome “the presumption of separateness afforded to related corporations.” *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”). “Absent such control, or at least some showing that the companies were alter egos, [one sister company’s] market power cannot be attributed to [the other].” *In re Suboxone Antitr. Lit.*, 2017 U.S. Dist. LEXIS 171322, at *31–32.

Even if OptumCare’s employment of anesthesiologists were considered, LIA’s allegations did not show that OptumCare has sufficient market power to satisfy the rule of reason. LIA alleged that OptumCare employs roughly 50 anesthesiologists in the New York metropolitan area (JA-607, Am. Compl. ¶ 60) but never specifies “the total number of providers in the market or OptumCare’s share—basic facts needed to assess market power.” SA-028 (citing *Spectrum Sports, Inc. v.*

McQuillan, 506 U.S. 447, 459 (1993) (“[D]emonstrating the dangerous probability of [monopsonization] in an attempt case also requires inquiry into the . . . defendant’s economic power in that market.”)).

LIA tries to distract from those defects by “detailing the size and revenues of [UnitedHealth Group “UHG”]—an entity that is not even a party to this action”; “summarizing media reports about UHG that bear no apparent connection to the claims at issue”; and claiming “MultiPlan engages in a price coordination scheme involving ‘all the top 15 health insurers’ in the country.” SA-008; *see* LIA Br. 44–45. The district court said it best: those allegations are “irrelevant or tangential matters” and reflect a “kitchen-sink approach [that] obscures rather than clarifies the basis for Plaintiff’s claims and falls short of Rule 8’s basic pleading requirements.” SA-008.

As a final effort, LIA shifts to a focus on alleged consumer harm, arguing that when considering conspiracy allegations, “the most important factor to consider is the adverse effects on consumers in the relevant market.” LIA Br. 45. But “[w]ithout a definition of [the] market there is no way to measure [the defendants’] ability to lessen or destroy competition.” *Ohio v. Am. Express Co.*, 585 U.S. 529, 543 (2018). And even if the Court indulged LIA’s argument, the supposed harms—shuttered

operating rooms and longer wait times—fail for the reasons discussed in Section I.A. above.⁵

C. LIA does not properly allege monopsony or attempted monopsony claims.

The district court correctly dismissed LIA’s Section 2 claims for monopsony and attempted monopsony. As the Supreme Court has explained, monopsony is the “mirror image” of a monopoly—but from the “buy side of the market” instead of the “sell side.” *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549 U.S. 312, 320–21 (2007). “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.” *Id.* at 320. And because of that kinship, the same legal standards apply. *Id.* at 322.

LIA alleged that “United possesses monopsony power in the market for the reimbursement of anesthesia services in the New York metropolitan area.” JA-0654; Am. Compl. ¶ 304. But here again, United does not participate in the market for “the

⁵ Although the district court did not assess LIA’s geographic market allegations, they are similarly insufficient. LIA defined the geographic boundaries of its market by reference to patient travel. But LIA’s case was about reimbursement. The Empire Plan reimburses statewide, and out-of-state payors routinely cover services in New York. LIA offers no reason to limit the market to its local practice area. *Discon Inc. v. NYNEX Corp.*, 86 F. Supp. 2d 154, 162 (W.D.N.Y. 2000) (rejecting geographic market definition because it was “arbitrary, irrational and not supported by competent [allegations]”).

reimbursement of anesthesia services in the New York metropolitan area” as it relates to the Empire Plan. Nor is it responsible for funding the Empire Plan’s reimbursement rates; it is merely a third-party administrator. *See* JA-0610–11; Am. Compl. ¶¶ 71, 79–80. “It is axiomatic that a firm cannot monopolize a market in which it does not compete.” *Discon*, 93 F.3d at 1062.⁶

LIA’s monopsony theory also collapses under its own logic. When plaintiffs like LIA allege that prices are too low (instead of too high) they must establish a claim for predatory pricing. *See Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 340 (1990) (“Low prices benefit consumers regardless of how those prices are set, and so long as they are above predatory levels, they do not threaten competition.”); *see also Kartell*, 749 F.2d at 931 (“[T]he Congress that enacted the Sherman Act saw it as a way of protecting consumers against prices that were too *high*, not too low.”). That is because, to succeed, a predatory seller must sell its product below marginal costs for long enough “to drive competitors out of business” only to raise prices to supracompetitive levels once competition is vanquished. *Weyerhaeuser*, 549 U.S. at 318; *see also Matsushita Elec. Indus. Co. v. Zenith Radio*

⁶ LIA’s allegations concerning United’s market share “of commercial insurers” and share in other insurance products were irrelevant. *See* LIA Br. 50. Those allegations were untethered from the actual market at issue—namely, the reimbursement of anesthesia services. LIA never connected its allegations about United’s broader insurance footprint to the specific buyer-side market it claimed was being harmed.

Corp., 475 U.S. 574, 589 (1986) (“The success of any predatory scheme depends on *maintaining* monopoly power for long enough both to recoup the predator’s losses and to harvest some additional gain.” (emphasis in original)). There are no such facts here.

In any event, because LIA alleged a “monopsony” claim instead of a “monopoly” claim, the predatory theory must be reversed. The Supreme Court has held that predatory behavior by a monopsonist requires factual allegations that the defendant overpaid for the good or service—not underpaid. *Weyerhaeuser*, 549 U.S. at 323–24. Courts have consistently rejected monopsony theories on allegations resembling those here. *See, e.g., Anesthesia Assocs. of Ann Arbor*, 2021 U.S. Dist. LEXIS 174021, at *27 (dismissing an anesthesiology practice’s monopsony claim, observing that the plaintiff had mixed up the standards and inappropriately alleged that the defendant “[was] using its buying power to keep the price of inputs— anesthesia services—down” instead of overpaying to disrupt competition”).

Ignoring each of those fatal flaws, LIA argues that its monopsony claims should be revived because the district court “improperly shifted the burden to LIA to prove that United and [MultiPlan’s] conduct was not justified by any normal business purpose.” LIA Br. 48. Not so. The district court applied the correct standard: Anticompetitive conduct is “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). The district court assessed LIA’s allegations 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. *See* SA-026 (citing JA-0653–55; Am. Compl. ¶¶ 291–95, 305–06). But considering the entirety of LIA’s Amended Complaint, the district court held that “United’s actions are consistent with standard business incentives rather than anticompetitive conduct.” *Id.* LIA itself alleged that “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.” JA-613, Am. Compl. ¶¶ 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.” SA-026–27 (citing *In re Google*, 627 F. Supp. 3d at 379); *see also Apotex*, 2020 WL 58247, at *5 (dismissing Section 2 claims where plaintiff did not plausibly allege anticompetitive conduct).

LIA’s federal antitrust claims fail for multiple reasons. This Court should affirm the district court’s dismissal of those claims.

II. ISSUE PRECLUSION ALSO FORECLOSES LIA'S CLAIMS.

This Court “may, of course, affirm the district court’s judgment on any ground appearing in the record, even if the ground is different from the one relied on by the district court.” *ACEquip Ltd. v. Am. Eng’g Corp.*, 315 F.3d 151, 155 (2d Cir. 2003). Here, this Court can separately affirm the decision below because the issue-preclusion doctrine bars LIA’s claims.

In its Amended Complaint, LIA alleged that it was harmed when the Empire Plan began applying the reduced reimbursement rates under the federal No Surprises Act as opposed to New York’s Surprise Bill Law. As alleged, LIA has no damages—and thus, no claim—if the Empire Plan’s decision to apply the federal law was correct.

In a parallel state court case—a case in which LIA was a plaintiff—the New York Supreme Court rejected LIA’s argument and held that New York’s “Surprise Bill Law is not an applicable insurance law to the Empire Plan.” *Joseph v. Corso*, 2023 WL 12011473, at *3. That decision was later affirmed on appeal, with the New York Court of Appeals holding that “the Empire Plan is not required to use the IDR process of the Surprise Bill Law.” *Joseph*, 221 N.Y.S.3d at 285. Those holdings are preclusive and dispositive of LIA’s antitrust claims in this case. *See Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985); 28 U.S.C. § 1738 (state judicial proceedings “shall have the same full faith and credit in every court within

the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken.”).

The district court refused to apply issue preclusion on the grounds that this case and *Joseph* involved different legal claims. But the district court failed to appreciate that, despite the differences in the underlying claims, no antitrust liability or damages can exist in this case if DCS’s statutory interpretation was correct. Because it is now settled as a matter of New York law that the Empire Plan’s decision *was* correct, there is no longer any hook for LIA’s antitrust theory.

The *Joseph* decisions are also dispositive because the court found that DCS—*not United*—made the choice to follow the federal No Surprises Act. LIA nevertheless alleged in this case that “United, far from simply recommending action to the Empire Plan, has substantial control over the Empire Plan by setting and determining reimbursement rates, selecting in-network providers, processing and adjudicating claims, paying claims, and negotiating dispute resolutions.” JA-0651; Am. Compl. ¶ 284. The *Joseph* court found just the opposite: “United cannot and does not, control the Empire Plan’s coverage or reimbursement decisions.” *Joseph v. Corso*, 2023 WL 12011473, at *2. The plaintiffs in *Joseph* (including LIA) chose not to appeal that ruling. As a result, *Joseph* precludes LIA from seeking to hold United responsible for the Empire Plan’s (correct) application of federal law.

It does not matter that the *causes of action* were different in LIA's federal complaint; the *Joseph* decisions are preclusive and dispositive of the *issues* that LIA alleged gave rise to its antitrust claims. See *Giakoumelos v. Coughlin*, 88 F.3d 56, 59 (2d Cir. 1996) (“[T]he doctrine of collateral estoppel, or issue preclusion, applies when a litigant in a prior proceeding asserts an issue of fact or law in a subsequent proceeding and (1) the issue ‘has necessarily been decided in the prior action and is decisive of the present action,’ and (2) there has been ‘a full and fair opportunity to contest the decision now said to be controlling.’” (quoting *Schwartz v. Public Adm’r of Cnty. of Bronx*, 246 N.E.2d 725, 729 (1969))). This Court should affirm on that basis.

III. THE DISTRICT COURT PROPERLY DENIED LEAVE TO AMEND.

The district court did not abuse its discretion in denying further leave to amend. Leave to amend may be denied where the plaintiff has already had an opportunity to amend and failed to cure deficiencies or where amendment would be futile. See *Noto v. 22nd Century Grp., Inc.*, 35 F.4th 95, 107 (2d Cir. 2022); *Gregory v. ProNAi Therapeutics Inc.*, 757 F. App’x 35, 39 (2d Cir. 2018); *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d 160, 190 (2d Cir. 2015). Both are true here.

LIA had two chances to present a viable complaint, yet its underlying theory remains defective. Granting further leave to amend would serve no purpose, for LIA

has not identified any new facts or legal arguments that could cure the fundamental deficiencies identified by the district court. The futility of amendment is especially clear where, after repeated attempts, the plaintiff's basic legal framework is unchanged, and the same core allegations persist. *Parker v. Philadelphia Police Dep't.*, 2018 WL 6271647, at *2 (E.D. Pa. Nov. 30, 2018) (“As Parker has been given an opportunity to amend her claims and has essentially repeated the same allegations, the Court concludes that further attempts at amendment would be futile.”); *see also* 3 James Wm. Moore, et al., *Moore's Federal Practice* P 15.15 (3d ed. 2023) (“An amendment is futile if it merely restates the same facts as the original complaint in different terms, reasserts a claim on which the court previously ruled, fails to state a legal theory, or could not withstand a motion to dismiss.”).⁷ Although LIA believes that it “add[ed] detailed explanations of [Appellees'] anticompetitive conduct[,] and its effect on the relevant market” in response to Appellees' initial motions to dismiss (LIA Br. 29), the district court saw it differently:

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

⁷ None of the cases LIA cites involve a plaintiff being denied leave to amend after already receiving one opportunity to do so. The only technical exception is *Pasternack v. Shrader*, 863 F.3d 162, 167 (2d Cir. 2017), where the defendants consented to the plaintiff's first amendment. As a result, the decision under review in that case concerned the plaintiff's first formal request to amend. *See id.*

and MultiPlan conspired to restrain trade. Instead, Plaintiff devotes extensive portions of the AC to irrelevant or tangential matters.

SA-008.

LIA also claims that United and MultiPlan would not be prejudiced by permitting another amendment. That is false. “It would be inequitable to require Defendant(s), who already [twice have] exhaustively and successfully defended Plaintiff’s grievances, to respond to a continuous stream of attempted amendments.” *Houser v. Donahoe*, 2013 WL 6838699, at *6 (W.D. Pa. Dec. 27, 2013), *aff’d sub nom. Houser v. Postmaster General*, 573 F. App’x 141, 142 (3d Cir. 2014). Allowing LIA to perpetually replead undermines the finality and efficiency that the rules of procedure are designed to promote and would needlessly prolong this litigation to the detriment of judicial economy and the parties’ interests in resolution.

The district court gave LIA multiple opportunities to plead a viable claim, and LIA failed. The court did not abuse its discretion in declining to grant LIA a third attempt.

CONCLUSION

For the foregoing reasons, United and MultiPlan respectfully request that this Court affirm the district court’s order and opinion dismissing LIA’s Amended Complaint and declining supplemental jurisdiction over LIA’s unjust enrichment claim.

Dated: October 13, 2025

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CERTIFICATE OF COMPLIANCE

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Dated: October 13, 2025

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