September 10, 2026

VIA ECF
Hon. Brian M. Cogan
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *UFCW Local 1500 Welfare Fund v. The New York & Presbyterian Hospital*, Civil Action No. 25-cv-5023-BMC (E.D.N.Y.)

Dear Judge Cogan:

Counsel for Plaintiff UFCW Local 1500 Welfare Fund ("Plaintiff") and counsel for Defendant The New York & Presbyterian Hospital ("Defendant" or "NYP") write regarding a discovery dispute over UFCW's First Set of RFPs to NYP (defined below).

The parties met and conferred on this issue on August 27, 2026 at 11:00 am for 15 minutes[1] but were unable to resolve this dispute.

I. Plaintiff's Position

A. Defendant Should Produce Documents Responsive to Plaintiff's First Requests for Production

Pursuant to Rule III(B)(1) of the Court's Individual Practices and Local Civil Rule 37.2, Plaintiff respectfully moves for an order compelling NYP to produce documents responsive to Request Nos. 1-3 of Plaintiff's First Set of Requests for Production, served April 13, 2026 (the "RFPs"). The RFPs seek production of the DOJ investigative file concerning NYP's anti-steering conduct, NYP's own productions in the DOJ Action (defined below), and the written discovery record exchanged between NYP and DOJ in that action (together, the "DOJ File"). DOJ will shortly produce the DOJ File in the DOJ Action (if it has not already), and NYP should re-produce it here.

Background

On January 7, 2026, the parties submitted a joint letter to the Court seeking, *inter alia*, consolidation of two separate cases and prompt production of "Tier One Discovery." Case No. 2:25-cv-5023, ECF No. 28 at 11. Plaintiff took the position that Tier One Discovery should include Plaintiff's agreements with third party administrators, Defendant's agreements with health care providers, and the DOJ File. *Id.* at 6. Defendant refused to produce the DOJ File and indeed, sought

[1] On the call for Plaintiff were David Rochelson and Deborah Elman of Garwin Gerstein & Fisher LLP, Greg Asciolla and Geralyn Trujillo of DiCello Levitt and Rebecca Chang of Lieff Cabreser Heimann & Bernstein. For Defendant were Colin Kass, David Munkittrick, KaDee Ru and Vinay Kohli of Proskauer Rose LLP.

a stay of all discovery. *Id.* at 19-25. At a January 12, 2026 initial conference, Magistrate Judge Shields ruled, "I'm not going to stay discovery" and granted production of the agreements, but ruled, "I'm not going to order the DOJ file at this time." *See* Jan. 12, 2026 Tr. at 13-16 (attached hereto as Ex. A). Judge Shields memorialized this ruling through a text entry on the docket. Ex. B (Jan. 12, 2026 Scheduling Order). However, Judge Shields explicitly tied this ruling to the then-unresolved procedural posture. She also deferred to the district judge on consolidation.

Importantly, at the time, the DOJ had not yet filed a case against NYP. Less than three months later, that had changed. On March 26, 2026, DOJ filed suit against NYP based on the same anti-steering conduct at issue here. *See United States v. The New York & Presbyterian Hosp.*, No. 1:26-cv-02480 (PAE) (OTW) (S.D.N.Y.) (the "DOJ Action"). On April 13, 2026, Plaintiff served the RFPs on Defendant, along with a cover letter explaining that filing of the DOJ Action constituted a material change in circumstances. Ex. C (cover letter and RFPs). On April 28, 2026, NYP wrote to Plaintiff, explaining that it would not comply (Ex. D), and formalized that refusal in its May 13, 2026 Responses and Objections. Ex. E (RFP Responses). Defendant asserted that the requests exceeded the scope of the January 12 Scheduling Order. *Id.* at 1-2.

Since then, several further developments have occurred. On May 8, 2026, Your Honor consolidated this matter with *Cement and Concrete Workers DC Benefit Fund v. The New York and Presbyterian Hospital*, No. 1:25-cv-05571-BMC (E.D.N.Y.). Plaintiff, together with the plaintiffs in the *Cement and Concrete Workers* action, filed a Consolidated Class Action Complaint (ECF No. 41); NYP moved to dismiss it (ECF No. 43); and the United States filed a Statement of Interest addressing the sufficiency of Plaintiff's claims. Statement of Interest of the United States ("SOI") at 1, No. 1:25-cv-05571-BMC, ECF No. 47 (E.D.N.Y. July 6, 2026) (attached hereto as Ex. F). On August 6, 2026, counsel for the United States informed Plaintiff that the Court in the DOJ matter had entered a Protective Order (DOJ Action, ECF No. 48-1) and that the United States would promptly produce to Defendant's counsel the materials relating to the United States' investigation of Defendant. On August 7, 2026, counsel for Plaintiff contacted counsel for Defendant and renewed its RFPs by letter, citing this forthcoming production. Ex. G. On August 12, 2026, NYP refused again, asserting that Judge Shields' decision "remains law of the case." Ex. H. On August 28, 2026, the Court in the DOJ Action entered an amended Protective Order. ECF No. 64-1.

The parties are at an impasse, and Plaintiff accordingly brings this motion.

B. The Documents Are Discoverable Under Rule 34, and Rule 26(b)(3) Does Not Bar Production

Courts often require the production of documents produced in government investigations to civil plaintiffs where, as here, there is a substantial degree of "factual and legal overlap" and the document production will create efficiencies in the civil litigation—sometimes even before the motion to dismiss is decided. *Schneider v. Chipotle Mex. Grill, Inc.*, 2017 WL 1101799, at *4 (N.D. Cal. 2017).[2] *See, e.g.*, *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 929 F. Supp. 723, 725

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[2] During the August 27, 2026 meet and confer, NYP's counsel suggested that the RFPs are premature because the Court has yet to appoint interim class counsel. But this is just a gambit to

(S.D.N.Y. 1996) (compelling production from defendants of materials related to civil investigative demands served by DOJ in alleged price fixing case as the materials "could provide additional evidence regarding liability and damages and potential impeachment material and lead to discovery of other admissible evidence"); *Allegheny Cnty. Emps.' Ret. Sys. v. Energy Transfer LP*, 2022 WL 17339035, at *6 (E.D. Pa. 2022) (compelling production of documents produced in response to government investigation because of "substantial overlap" between investigation and civil litigation); *In re Broiler Chicken Antitrust Litig.*, 2017 WL 4417447, at *6 (N.D. Ill. 2017) (ordering production of documents produced to the Florida Attorney General for plaintiffs' review prior to resolution of motion to dismiss, in part to remedy the "informational asymmetry" between the parties early in the case); *In re Lithium Ion Batteries Antitrust Litig.*, 2013 WL 2237887, at *2 (N.D. Cal. 2013) (granting motion to compel production of documents that the defendants had produced to the DOJ in response to grand jury subpoenas even before a consolidated class complaint or motions to dismiss had been filed).

The requests are also appropriately tailored: all three requests ask for documents from the DOJ action, which covers the same anticompetitive conduct alleged in this civil case. Moreover, NYP can produce the requested documents with minimal burden: Request No. 1 asks for investigative materials (which the DOJ will presumably produce to NYP soon if it has not already done so); Request No. 2 seeks only what NYP itself already produced in the DOJ Action; and Request No. 3 seeks only the written discovery record from the DOJ Action, all of which NYP can produce with minimal incremental burden since the materials are already compiled.

Circumstances that make production of an enforcer's investigative file inappropriate do not apply here. For instance, if the government conducts an investigation and closes that investigation without filing suit, it may make sense to defer production of such a file until after a private action has survived a motion to dismiss. Here, however, the DOJ investigation led to the DOJ filing a case, and NYP did not even move to dismiss that DOJ Action. No reason to delay production of the DOJ File exists here.

NYP contends its opposition never turned on the absence of a DOJ suit, but rather on the position that this discovery does not bear on "core threshold issues." Ex. H. To the extent NYP now invokes Rule 26(b)(3), that doctrine shields only materials reflecting counsel's mental impressions, conclusions, or legal theories—not the underlying factual documents (contracts, correspondence, business records) DOJ collected, nor NYP's own document productions or the written discovery requests and responses exchanged in the DOJ Action. Even as to any genuine opinion work product embedded within DOJ's investigative file, Plaintiff's substantial need—the file goes to the core anti-steering conduct common to both actions—and inability to obtain the substantial equivalent elsewhere satisfy Rule 26(b)(3)'s undue-hardship exception.

Further, Plaintiff timely served the RFPs. Under Rule 26(d), a party may serve discovery requests as soon as 21 days after service of the complaint, and the discovery will be deemed served at the first Rule 26(f) conference. The parties held their Rule 26(f) conference on November 19, 2025—over 9 months ago. The RFPs are properly served.

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further delay the case, as NYP "oppose[s] the appointment of interim class counsel [until] after the Court rules on NYP's pending motion to dismiss." ECF 48 at 1.

C. NYP's Reliance on Judge Shields' Comment Regarding Production of the DOJ Materials Is Misplaced Because It Was Tied to Conditions That No Longer Exist

NYP's reliance on Judge Shields' comment about ordering production of the DOJ file (its "law-of-the-case" argument) is misplaced. Judge Shields' comment was not an indefinite order; she did not hold the DOJ materials irrelevant, privileged, or categorically undiscoverable. She declined to order them "at this time"—language reflecting deferral, not decision—and tied that deferral to the unresolved consolidation motion and the not-yet-filed consolidated complaint. Both contingencies have since been resolved. A scheduling deferral pegged to conditions that have since been satisfied is not a "decision" entitled to law-of-the-case protection. *See Doe v. E. Lyme Bd. of Educ.*, 962 F.3d 649, 662 (2d Cir. 2020) (doctrine applies to issues actually decided, and even then yields to "cogent and compelling reasons") (citation omitted).[3]

Additionally, cogent and compelling reasons warrant revisiting Judge Shields' January 2026 reluctance to order production of the DOJ file. Multiple material facts postdate that ruling: DOJ has filed a public civil action against NYP based on the identical conduct; a protective order now governs DOJ's production of its investigative file to NYP; DOJ has produced that file to NYP, or will do so shortly and, as discussed below, the United States has since weighed in directly on the sufficiency of Plaintiff's claims. None of these facts existed in January, and each independently undercuts any rationale for continued withholding—most obviously, that NYP will imminently hold this file, mooting any burden objection.

D. NYP's Decision Not to Move to Dismiss the DOJ Action Further Confirms the Relevance and Weight of the DOJ Materials

NYP has answered, rather than moved to dismiss, the United States' complaint in the DOJ Action—even though that complaint alleges conduct identical to the conduct challenged here. Indeed, in its recently filed Statement of Interest in this case, the United States advised the Court that "at a recent status conference in *United States v. NYP*, NYP counsel represented to the court that the arguments in the present matter would also be persuasive for disposition in *United States v. NYP* even though NYP has not moved to dismiss the United States' complaint in that case." SOI, Ex. F at 1.

NYP's choice not to test the sufficiency of the government's complaint while simultaneously arguing to this Court that indistinguishable allegations fail as a matter of law undercuts NYP's threshold-issue argument and independently confirms the materiality of the DOJ materials to the claims here. If NYP believed the anti-steering and market-power theories common to *both* cases were legally deficient, the DOJ Action presented a more straightforward vehicle to test that theory, given the absence of any standing or antitrust-injury complications of the kind NYP has raised against Plaintiff.[4] NYP's decision to answer rather than move against materially

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[3] To the extent the court considers Judge Shields's comment to amount to a stay of discovery, Plaintiff respectfully asks that the Court consider this a motion to lift the stay for limited purposes and to compel.

[4] In any event, Defendant's standing and injury arguments fail for the reasons stated in Plaintiff's opposition to the motion to dismiss. ECF No. 46 at 8-15.

identical allegations in the DOJ Action supports the plausibility of Plaintiff's parallel claims and reinforces that the discovery record developed in that action—including the very documents Plaintiff seeks here—goes to the heart of a viable claim, not a peripheral or premature one.

E. A Protective Order May Address Any Confidentiality Concern

The parties exchanged a draft Protective Order and ESI protocol in this action as early as December 2025, and a Protective Order has already been entered governing the same materials in the DOJ Action. To the extent NYP has any remaining confidentiality concern regarding the requested materials, that concern can be addressed by entry of a protective order in this action rather than by continued withholding.

Relief Requested

For the foregoing reasons, Plaintiff respectfully requests that the Court enter an order compelling NYP to produce promptly all documents responsive to Request Nos. 1-3 of Plaintiff's First Set of Requests for Production, subject to entry of a protective order in this action.

II. NYP's Position.

A. Judge Shields Rejected Discovery of the DOJ File, and Nothing Has Changed to Warrant Reconsideration of That Order.

Judge Shields's January 12, 2026 ruling rejected the Plaintiffs' request for the "DOJ file," authorizing only limited "Tier One" discovery to exchange the agreements underlying the Complaint to facilitate Motion to Dismiss briefing. Ex. A at 15-16. Now, disguised as a motion to compel, UFCW seeks reconsideration of Judge Shields's order. But with the Motion to Dismiss still pending (ECF 43), there is no reason to do so.[5] UFCW's motion rests on a misreading of Judge Shields's order. At the January 12th conference, she tied further discovery to resolution of Motion to Dismiss practice:

> "All I can tell you about discovery now is that some of it has to go forward but not all of it, ***because there is going to be a motion to dismiss*** and it is going to be protracted. I don't think this is a case where this is, you know, nine months and we're done. We may be done after a motion to dismiss, I don't know. But ***once that's decided***, then there will be a lot of work to do. So all I'm going to order at this point – I'm not going to stay discovery. I will order that the parties give over the contracts that we talked about just earlier. I'm ***not*** going to order the DOJ file at this time, and I am hopeful that the case moves quickly for the early motion practice. ***And once that happens***, then I think we can move forward, hopefully as quickly as possible." Ex. A at 15-16.

See also Jan. 12, 2026 Scheduling Order. There was no objection to that Order when it was made in January.

Now, UFCW focuses on Judge Shields's phrase, "at this time," but creatively quotes around her statements that discovery of the DOJ file would wait "for the early motion practice." UFCW presents nothing Judge Shields overlooked or got wrong. Instead, it improperly seeks "to re-litigate an issue already decided." *Azubuko v. Boston's Police Officer*, 2008 WL 2574339, *1 (E.D.N.Y. 2008). "In general, 'the standard for granting a motion for reconsideration is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked-matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.'" *Id.* (quoting *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)). Accordingly, "a court's reconsideration of an earlier order is an 'extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources.'" *Azubuko*, 2008 WL 2574339, at 1 (quoting *In re Health Mgmt. Sys., Inc. Sec. Litig.,* 113 F.Supp.2d 613, 614 (S.D.N.Y. 2000)).

At the very least, Judge Shields's ruling is law of the case, and "forecloses reconsideration of issues that were decided … during prior proceedings," *Doe v. E. Lyme Bd. of Educ.*, 962 F.3d

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[5] The fact that the motion to appoint interim class counsel, subject to dispute by multiple parties, is pending also counsels against the ordering of any discovery. The party or counsel in control of discovery, once it begins, may not be the counsel presently moving to reconsider Judge Shield's Order.

649, 661–62 (2d Cir. 2020). Law-of-the-case "'counsels a court against revisiting its prior rulings in subsequent stages of the same case absent cogent and compelling reasons such as an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.'" *Chiari v. N.Y. Racing Ass'n Inc.*, 972 F. Supp. 2d 346, 362 (E.D.N.Y. 2013) (quoting *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 547 F.3d 109, 112 n.3 (2d Cir. 2008)). Courts are "'understandably reluctant'" to revisit a ruling once made, "'especially when one judge or court is asked to consider the ruling of a different judge.'" *Chiari*, 972 F. Supp. 2d at 361 (quoting *Ali v. Mukasey*, 529 F.3d 478, 490 (2d Cir. 2008)).

NYP has raised several core, dispositive issues going to the heart of Plaintiffs' consolidated complaint, from antitrust standing (plaintiffs attack contracts they do not negotiate or sign) to the lack of market power (NYP is but one of many in the saturated world of New York City hospitals). The unions are not the proper plaintiffs to bring this action, as they are far too removed from the contracts they challenge. They are also not direct purchasers, and thus barred under *Illinois Brick*. These standing defects flow from who Plaintiffs are and cannot be cured. Thus, granting UFCW's request could involve needless, burdensome discovery. Courts often stay discovery where a Plaintiff's standing to bring an action is at issue on a motion to dismiss. *See Lawson v. Rubin*, 2018 WL 4211446, *2 (E.D.N.Y. 2018) ("Defendants raise credible arguments that plaintiffs cannot demonstrate RICO standing and fail to state a RICO claim. A stay is reasonable here where defendants' arguments suggest that at least some of the supplemental discovery may be avoided once the Court decides defendants' motion to dismiss."); *Palladino v. JP Morgan Chase & Co.*, 345 F.R.D. 270, 275 (E.D.N.Y. 2024) (staying antitrust discovery pending anticipated motion to dismiss addressing standing concerns).

Additionally, as NYP explained in its Motion to Dismiss, the contracts Plaintiffs challenge are inclusionary volume discount contracts; they exclude no one. When NYP negotiates for in-network status, the result is an open network that maximizes patient choice. It does not exclude anyone from any plan. Plaintiffs' claims would morph the antitrust laws into price regulation statutes. They are not. They are competition protection statutes. But Plaintiffs allege no adverse impact on competitors, no market power, exclusivity, tying, bundling, or rival foreclosure. In short, "They bring an exclusion case with no exclusion, a restraint case with no restraint." ECF 50 at 1.

Judge Shields's ruling was a considered determination that production of the DOJ File was inappropriate before resolution of threshold legal issues. UFCW suggests relitigating this issue because the DOJ case had not yet been filed. But the DOJ investigation was squarely before Judge Shields in January: it is what UFCW's demand for the DOJ File was about. ECF 28 at 11. The only difference now is that the government has filed suit. But Judge Shields's ruling rested on pendency of dispositive motions *in this case* and the need to resolve threshold legal issues before broad discovery, not on the status of the DOJ investigation. That procedural posture remains unchanged.

Nor is NYP's decision to answer rather than move to dismiss in the DOJ Action a reason to depart from Judge Shields's order. Her decision rested on Motion to Dismiss practice in *this* case, not any other case, and NYP's Motion to Dismiss asserts strong grounds for dismissal specific to this action, including Plaintiffs' standing. NYP's litigation strategy in a separate action—where the government, which does not have the same standing issues as a private plaintiff, seeks to invoke the antitrust laws—is irrelevant to Judge Shields's ruling on discovery sequencing in this case. UFCW also references the Protective Order in the DOJ case. While it provides a mechanism for handling confidential material in that matter, it provides no grounds to overturn Judge Shields's ruling.[6]

B. UFCW's Discovery is Improper and Overbroad.

Even setting the January ruling aside, the Requests fail on their own terms. UFCW indiscriminately seeks every document DOJ collected, every document NYP produced to the DOJ, and the entire written discovery record between NYP and DOJ. Courts have rejected those types of requests, including in the cases Plaintiff cites. In *In re Broiler Chicken Antitrust Litig.*, 2020 WL 1046784, *2 (N.D. Ill. 2020), for example, the court held that requests for documents produced to DOJ were "facially overbroad," reiterated that "reflexive production of documents previously provided to governmental entities is not appropriate," and rejected the argument that DOJ's own reference to "substantial overlap between the civil and criminal matters" established relevance, because "'relevance' under Rule 26 is a relative concept" measured against proportionality. *See also, e.g.*, *In re Outpatient Medical Ctr. Emp. Antitrust Litig.*, 2023 WL 4181198, *6-7 (N.D. Ill. 2023) (denying request for all documents produced to DOJ as "facially overbroad," explaining that "cloned discovery" is "irrelevant and immaterial unless the fact that particular documents were produced or received by a party is relevant to the subject matter of the instant case," and a requesting party "ordinarily must do their own work and request the information they seek directly."); *United States v. Anthem, Inc.*, 2024 WL 1116276, *3-4 (S.D.N.Y. 2024) (requests for "all" documents produced in another matter are "inherently overbroad"); *Bartlett v. Societe Generale de Banque au Liban SAL*, 2023 WL 8828864 (E.D.N.Y. 2023) (affirming magistrate's refusal to permit cross-use of protective-order material from a companion action).[7]

<u>Relief Requested</u>

NYP respectfully requests that the Court deny UFCW's motion to compel. Judge Shields's prior order on this issue should be preserved while the Court addresses the threshold dispositive issues raised in NYP's Motion to Dismiss, and UFCW has not demonstrated any change in law, evidence, or an error on Judge Shields's part to suggest otherwise.

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[6] UFCW's own cases follow Judge Shields's sequencing. In *In re NASDAQ Market-Makers Antitrust Litig.*, 929 F. Supp. 723 (S.D.N.Y. 1996), the motion to dismiss had already been decided (*see In re NASDAQ Mkt.-Makers Antitrust Litig.*, 894 F. Supp. 703 (S.D.N.Y. 1995)). And *Allegheny* arose after the motion to dismiss was decided. *Allegheny Cnty. Emps.' Ret. Sys. v. Energy Transfer LP*, 2022 WL 17339035, *6 (E.D. Pa. 2022).

[7] Plaintiff's reliance on *Allegheny Cnty. Emps.' Ret. Sys.*, 2022 WL 17339035, fails. That court compelled three discretely enumerated categories of documents, and held that "similarities or overlap alone are insufficient to justify a carte blanche production of all documents from the [previous] cases," the requesting party "must still make proper discovery requests, identifying the specific categories of documents sought," and "a blanket request for all other documents produced to the District Attorney is overbroad." *Id.*, at *3-4.

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The parties thank the Court for its consideration of this matter.

Respectfully submitted,

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EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UFCW LOCAL 1500 WELFARE FUND, JOAN FRASER, Plaintiff, v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, Defendant.	25-CV-5023 (ENV)(AYS) January 12, 2026 Central Islip, NY
CEMENT AND CONCRETE WORKERS DC BENEFIT FUND, Plaintiff, v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, Defendant.	25-CV-5571 (JMA)(AYS)

TRANSCRIPT OF CIVIL CAUSE FOR INITIAL CONFERENCE
BEFORE THE HONORABLE ANNE Y. SHIELDS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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MR. ROCHELSON: -- Fisher for the UFCW plaintiff.

THE COURT: Good morning.

MR. CROOKS: Good morning, your Honor. Jamie Crooks from Fairmark Partners on behalf of the Cement Workers.

THE COURT: Good morning.

MS. TRUJILLO: Good morning, your Honor. Geralyn Trujillo from DiCello Levitt on behalf of UFCW Local 1500.

MS. ELMAN: Good morning, your Honor. Deborah Elman, also from Garwin Gerstein & Fisher on behalf of UFCW.

MR. ASCIOLLA: Good morning, your Honor. Greg Asciolla, also from DiCello Levitt, on behalf of UFCW Local 1500.

THE COURT: Good morning.

MR. KASS: Good morning, your Honor. Colin Kass from Proskauer Rose on behalf of New York Presbyterian Hospital.

MR. MUNKITTRICK: David Munkittrick, also of Proskauer, on behalf of New York Presbyterian. With us is our associate, Michael Beckwith (ph). He has not filed a formal appearance on the docket yet.

THE COURT: Good morning, welcome. All

right, be seated.

This is an initial conference in these two cases. As you know, they're assigned to two different district judges right now. There's been no consolidation, and I know that's pending. It's on the docket, but that is not something that I can do. So it's pending before Judge Vitaliano and Judge Azrack, so those are their motions. I have nothing to do with that. I can't grant that. Because I can't grant that, I can't consolidate the cases. I can't do anything with respect to the filing of a consolidated amended complaint, class counsel, anything like that, or decide a motion to dismiss, which I believe the defendants want to make one. Let me hear a little bit about that.

MR. KASS: Yes, your Honor.

THE COURT: You can stay where you are. It doesn't matter. You can even sit.

MR. KASS: Great. Well, thank you. Thank you.

So this case is really about how insurance -- how hospitals negotiate contracts for healthcare insurance -- healthcare services. It negotiates with insurers. Insurers create their networks so when you go to the hospital and you need to get admitted, you have your insurance card. And your insurance card says, okay, if you go to this hospital, you are in network and you have a lower co-pay than if you go to some other hospital that's not in your network, in that insurer's network. The insurer is the one that designs their network. They decide exactly who they want to be in the network and who they want out of the network.

THE COURT: Is the insurer the same entity in both of these cases?

MR. KASS: For these particular plaintiffs, it is the same one.

THE COURT: It's Empire.

MR. KASS: It is Empire, correct.

THE COURT: Okay, go on.

MR. KASS: They both negotiated with Empire. So what Empire will do is it says, okay, I want to negotiate the best possible rate for hospital services, how do I do that? Well, the way that I do that is, I negotiate based on volume. I am a large insurer, says Empire, I have a lot of members. I can deliver a lot of volume if I put you in network. If I put you out of network and I charge my members, Empire, I charge my members a higher co-pay, they won't go to your hospital. They will only go to the hospitals where they have a low co-pay.

So that gives the insurer a tremendous

amount of power, and they use that when they negotiate with New York Presbyterian and other hospitals. They say if you want to be in the network, you're going to have to give us a lower rate, and I will give you all of this volume. That's called steering. Nobody challenges the existence of steering. Plaintiffs say that's a good thing, steering is a good thing. We say steering is just the reality. It reflects the market power of the insurer.

But we're not challenging that. We're not the plaintiff. What we do is, when we negotiate, when New York Presbyterian negotiates with the insurer, with Empire, it says okay, you have all this volume and you want the lowest rate, put me in your highest tier. Don't discriminate against me, put me in network. So don't discriminate against me versus Mt. Sinai, versus Northwell.

THE COURT: So that's a clause in your contract with Empire.

MR. KASS: With Empire, not with the plaintiffs.

THE COURT: Is there a name for that clause?

MR. KASS: We've been referring to that as an anti-steering provision. That's not really what it is. That's not what people necessarily call it.

THE COURT: Okay, but that's a clause in a contract, and I'm going to give the plaintiffs an opportunity to talk because there are a lot of facts. By the way, I'm just asking for facts so that I can get a sense of discovery. I'm not believing anybody that they're saying what the facts are, okay, just to get a sense of what's going on here. So that's a clause in a contract between Empire and New York Presbyterian.

MR. KASS: Correct. So this is the provision that plaintiffs are challenging, but the plaintiffs do not negotiate this provision. That is Empire that negotiates this provision. Empire, they may like the provision, they may not like the provision. They like it when they're negotiating the contract because when they negotiate the contract, they say, here are all the benefits I'm going to give you in exchange for this lower rate.

Once they sign on the dotted line and they say, okay, now I've negotiated, I've given you my volume, then they start to have second thoughts. They say, actually, I've given my volume -- I've decided not to discriminate among any of the hospitals in my network. Maybe if it did discriminate, I could get lower rates by steering it elsewhere, steering it away from New York Presbyterian. If they did that -- if they told us they were going to do that when they were negotiating the contract, then they wouldn't be delivering the same volume and they wouldn't get the same rate.

That's a decision that insurers, each individual insurer will make for themselves. Where do I -- if I'm the insurer, where do I want to steer the business? Do I want to steer it -- do I want to steer it equally among all of the -- all the hospitals in my network, or do I want to discriminate and create mini-networks or narrow networks, as they're sometimes referred to. That's a decision that Empire will make for itself.

The plaintiffs come in and they say no, Empire, you can't make that decision, NYP, you can't make that decision because they say that Empire is foreclosed from including in their contracts with NYP a provision that says they won't steer away from us. They say that these -- that Empire cannot deliver a provision that says all of this volume will go -- not to NYP as opposed to anywhere else. It's not an exclusive. They just won't discriminate against us. That's the essence of this case and that's the essence --

THE COURT: Let me give the plaintiffs an opportunity. I'll just hear from one of you since you all think it's the same case. Pick who wants to do the talking. Talk to me about the clause or clauses that you think are anti-competitive.

MR. CROOKS: Good morning, your Honor. Jamie Crooks on behalf of the Cement Workers plaintiffs. My friend on the other side is right that the key clause that this case is about, at least that we know of now -- one thing to know at the outset is that these contracts between New York Presbyterian and the insurance companies like Empire are sealed such that the folks who pay dollars under those contracts like our plaintiffs, unions, employers, small business, et cetera, aren't able to see these contracts.

But what we've been able to glean from public reporting, including about the Department of Justice's investigation into New York Presbyterian's contracting practices, is that they include in all of their contracts with insurers like Empire a clause that's referred to as the "all products clause," which is an anti-steering clause -- we agree with that characterization of it -- that prohibits insurers like Empire from designing networks to offer to their customers, our plaintiffs, that would save money on healthcare and provide for increased choice for employers and for ultimately patients.

So this case primarily at this juncture, in the sense that we haven't seen these contracts, but what we understand is that the all products clause is imposed on insurers over their objection in these negotiations. So we very much disagree with opposing counsel's characterization of this as a friendly bargain.

The way that this works in the negotiating room, and this is based on other cases with similar contracting clauses, some of which have been challenged by the Department of Justice for antitrust reasons, some of which by private plaintiffs sitting in the shoes that we do, the folks who ultimately pay for healthcare, is that New York Presbyterian, large hospitals like New York Presbyterian are effectively a must-have system for insurers to include in their networks. They have to include at least some of New York Presbyterian's services in their networks in order either to meet regulatory -- state regulatory requirements or just to make their plans commercially viable.

Consumers and businesses that offer insurance to their employees like choice and so yes, they do want to include New York Presbyterian in at least some of their networks. They need to from a commercial viability standpoint. So when they sit down at a negotiating table with New York Presbyterian, New York Presbyterian says, if you want to include any of our facilities or any of our physicians, which we know you need to, you have to include all of them at the rate we set, which just so you know is about on average 75% higher than the rest of the New York market for inpatient.

If you want to include any of our facilities in your network, you have to include all of our facilities at the highest level of benefit. That is, you have to make it -- you have to make our services, no matter how costly they are, look just as attractive to patients or to employers as if someone went somewhere down the street for 50% of the price. So that clause, it's inference with insurance companies' ability to offer low cost or alternative networks is the crux of our allegations here.

THE COURT: Let me focus on something. You talked about this contract being a contract you haven't seen, right?

MR. CROOKS: That's right.

THE COURT: It's a contract between New York Presbyterian and Empire, right?

MR. CROOKS: Yes.

THE COURT: I think I saw in New York Presbyterian's letter that you haven't seen this, either?

MR. KASS: I've seen the contract between New York Presbyterian and Empire.

THE COURT: Okay.

MR. KASS: But I have not seen the contract between Empire and the plaintiffs' unions, which is actually the basis of our motion to dismiss, right, because they're indirect purchasers.

THE COURT: Between Empire and the plaintiff's union. So you need that as well.

MR. KASS: That is what we need in order to respond and for purposes just for the motion to dismiss, because we believe it's incorporated into the complaint. They're claiming that they are purchasers of the product. The only way that they could possibly be purchasers is through this contract that they have with Empire, so it's incorporated into the complaint.

THE COURT: Does the plaintiff have a problem giving that contract over?

MR. CROOKS: So we disagree that it's relevant. We certainly disagree that it's inherent in the --

THE COURT: That's what I asked you.

MR. CROOKS: Of course, right. In terms of turning it over, we have offered to exchange it as part of what this Court calls tier 1 discovery.

THE COURT: Okay.

MR. CROOKS: So what we've offered on that front is, while the motion to dismiss is being briefed, et cetera, we would offer that contract -- we'll call it a TPA contract, the contract between Empire and our clients -- if they will give us, number one, the contracts that they have between Presbyterian and Empire that has the all products clause.

THE COURT: Stop.

Will you give them that?

MR. KASS: Yeah. We offered that a long time ago.

THE COURT: Okay.

MR. CROOKS: And then number two, because we know that the Department of Justice is investigating this exact conduct and the exact same contractual provision that we're interested in -- that is the crux of our case -- documents that you've already produced to the Department of Justice under whatever protective order we negotiate.

THE COURT: That's a no, right?

MR. KASS: That's a no, correct.
THE COURT: A no for now.
MR. KASS: Yes, correct.
THE COURT: For tier 1.
MR. KASS: Correct.
MR. CROOKS: And then the only other tier 1 discovery piece is organizational charts to prepare for, you know, search term discovery, more robust discovery down the road.
THE COURT: And that's going to be part of your ESI discussions? Is that what you're saying?
MR. CROOKS: We are -- we sent defendant about a month ago a draft protective order and ESI protocol, but we've also discussed as part of tier 1 discovery exchanging organizational charts in addition to the contracts that we've just been discussing.
THE COURT: Where are you on the organizational charts?
MR. KASS: We haven't had a discussion about that. They did put that request in their joint letter. I think our view is that once discovery opens, it should open, and we can then provide organizational charts at that time. So I don't think it needs to be part of tier 1 discovery. That's not the most important thing for us. I mean, the DOJ materials and

not having to produce that is the most important thing for us at this point.

THE COURT: Right, understood. All right.

On the defense side, anything other than that contract that you have or would agree to give over to the other side? I know you don't agree with the DOJ files but anything else?

MR. KASS: No. I think that -- that we think is what we need for the motion to dismiss, and we think that's the appropriate focus at this time.

THE COURT: Okay, all right. So I looked at your, I don't know, 40-page submission, which is highly unusual and not particularly helpful in terms of doing discovery at an early phase in this case. And I know that we're still at two separate cases. We're still at the stage where plaintiffs say there's going to be a consolidated amended complaint. If there's an amended complaint, then there may be a different scope of discovery. All I can tell you about discovery now is that some of it has to go forward but not all of it, because there is going to be a motion to dismiss and it is going to be protracted.

I don't think this is a case where this is, you know, nine months and we're done. We may be done after a motion to dismiss, I don't know. But once that's decided, then there will be a lot of work to do. So all I'm going to order at this point -- I'm not going to stay discovery. I will order that the parties give over the contracts that we talked about just earlier. I'm not going to order the DOJ file at this time, and I am hopeful that the case moves quickly for the early motion practice. And once that happens, then I think we can move forward, hopefully as quickly as possible.

I know that the plaintiffs put in a lot of information about, we're going to need more time, we're going to need more depositions, we're going to need more than the usual. I can't tell you that now because, again, you're saying there's going to be another complaint in the case, which we haven't seen yet. As far as I can see right now, we're focused on this one clause and these contracts, so that's all I'm going to order right now. And that's it really. In terms of consolidation, you're just going to have to wait for whatever judge decides on it.

I'm going to go off the record now.

* * * * * * *

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

ELIZABETH BARRON January 17, 2026

EXHIBIT B

From: ecf_bounces@nyed.uscourts.gov
Sent: Monday, January 12, 2026 12:14 PM
To: nobody@nyed.uscourts.gov
Subject: Activity in Case 2:25-cv-05023-ENV-AYS UFCW Local 1500 Welfare Fund v. The New York and Presbyterian Hospital Scheduling Order

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 1/12/2026 at 12:13 PM EST and filed on 1/12/2026

Case Name: UFCW Local 1500 Welfare Fund v. The New York and Presbyterian Hospital
Case Number: 2:25-cv-05023-ENV-AYS
Filer:
Document Number: No document attached

Docket Text:
SCHEDULING ORDER: As set forth on the record during the initial conference held today, Tier I discovery shall consist of the exchange of the following contracts: Plaintiff shall provide contracts between Empire and Plaintiff, and Defendant shall provide contracts between the Defendant and Empire. Tier I discovery shall be completed by March 12, 2026. So Ordered by Magistrate Judge Anne Y. Shields on 1/12/2026. (DM)

2:25-cv-05023-ENV-AYS Notice has been electronically mailed to:

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2:25-cv-05023-ENV-AYS Notice will not be electronically mailed to:

EXHIBIT C

GARWIN GERSTEIN & FISHER LLP

DICELLO LEVITT

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485 Lexington Ave., Suite 10001
New York, New York 10017

April 13, 2026

<u>Via Email</u>

Colin Kass
Proskauer Rose LLP
1001 Pennsylvania Avenue NW, Suite 600
Washington, DC 20004

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

Dear Colin:

Attached to this letter please find Plaintiff UFCW's first set of requests for production in the above matter. The requests seek investigation and discovery materials concerning the case that the Department of Justice filed on March 26, 2026, alleging conduct similar to the conduct alleged in this case. *See United States v. The N.Y. and Presbyterian Hosp.*, No. 26-cv-2480 (S.D.N.Y.), ECF No. 1 (Complaint).

At a hearing in this matter on January 12, 2026, Judge Shields stated, "I'm not going to stay discovery." Tr. of Jan. 12, 2026 Hr'g at 16:2-3. While she also noted, "I'm not going to order the DOJ file at this time" (*id.* at 5-6), she made that statement prior to the United States filing suit. Now that the DOJ has filed its complaint, circumstances have changed. Because the parties in this matter held their Rule 26(f) conference on November 19, 2025, the Requests that we are serving today are timely under Fed. R. Civ. P. 26(d). As such, your responses and objections to the Requests are due in 30 days, or on May 13, 2026. Fed. R. Civ. P. 34(b)(2)(A).

Respectfully submitted,

<u>/s/ Gregory Asciolla</u>
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<u>/s/ David Rochelson</u>
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Counsel for Plaintiff UFCW Local 1500 Welfare Fund and the Putative Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UFCW LOCAL 1500 WELFARE FUND, *on its own behalf and on behalf of all others similarly situated*, Plaintiffs, v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, Defendant.	Case No. 25-cv-05023-ENV-AYS Hon. Eric N. Vitaliano, U.S.D.J. Hon. Anne Y. Shields, U.S.M.J.

PLAINTIFF UFCW LOCAL 1500 WELFARE FUND'S
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."), Plaintiff UFCW Local 1500 Welfare Fund ("UFCW" or "Plaintiff") in the above-captioned action requests that Defendant produce for inspection and copying the Documents and Information requested herein within 30 days of service of these Requests or as otherwise required by the Court.

I. DEFINITIONS

1. The "Action" means *UFCW Local 1500 Welfare Fund v. The New York and Presbyterian Hospital*, Case No. 25-cv-05023-ENV-AYS (E.D.N.Y.).

2. "Communication" means any transmittal of information in the form of facts, ideas, inquiries, or otherwise, including any transmission of information by one or more persons and/or between two or more persons by any means, including telephone conversations, letters, memoranda, notes, electronic mail, ephemeral messages, text messages, instant messages, voicemail, audio messages, video messages, other digital transmissions, metadata, written

memoranda, and face-to-face conversations, and social media including any document memorializing or referring to the contact. A Communication is a type of Document.

3. “Defendant,” “NYP,” “You” or “Your” refers to The New York and Presbyterian Hospital and its predecessor and successor corporations, and any of its subsidiaries, divisions, affiliates, and any present and former agents, employees, partners, attorneys, representatives, and any other person or entity acting in concert with, or on behalf of, NYP.

4. “Document” is defined as synonymous with the broadest possible meaning of the term as used in Fed. R. Civ. P. 34 and includes, without limitation, ESI, Communications and recordings, or transcripts of such recordings. A draft or non-identical copy is a separate document within the meaning of this term.

5. The “DOJ Action” means *United States v. The N.Y. and Presbyterian Hospital*, Case No. 26-cv-02480 (S.D.N.Y.).

6. “Electronically stored information” or “ESI” is defined to be synonymous with the broadest possible meaning of the term “electronically stored information” as used in Fed. R. Civ. P. 26 and 34.

7. “Ephemeral Message” or “Ephemeral Messaging” means a form of digital communication whereby messages disappear or “self-destruct” after a particular period of time or can be set to do so. Ephemeral Messaging apps Include Signal, Telegram, and Snapchat.

8. The terms “Relating to” and “Concerning” shall Include within their meaning pertaining to, addressing, referring to, containing, alluding to, responding to, commenting upon, discussing, explaining, mentioning, describing, analyzing, constituting, memorializing, comprising, reporting, incorporating, confirming, listing, evidencing, exemplifying, setting forth, summarizing, constituting, or characterizing, in whole or in part, and vice versa.

9. “Request” means any one of the requests for production of documents herein.

10. “Third party” means and Includes any person or persons other than UFCW and NYP.

11. “Person” or “Persons” shall mean any natural person or any business, proprietorship, firm, partnership, corporation, association, organization, or other entity. The acts of a person shall include the acts of directors, officers, owners, members, employees, agents, attorneys or other representatives acting on the person’s behalf.

12. “Plaintiff” or “UFCW” means UFCW Local 1500 Welfare Fund and its predecessor and successor corporations, officers, directors, shareholders, and any of its parents and subsidiaries (whether direct or indirect), divisions, affiliates, and any present and former agents, employees, partners, attorneys, representatives, and any other person or entity acting or authorized to act with UFCW or on behalf of UFCW.

II. RULES OF CONSTRUCTION

1. The conjunctions “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all Documents that might otherwise be construed to be outside of its scope.

2. “All,” “any” and “each” should be understood to include and encompass “all.”

3. The terms “Include” and “Including” mean “including without limitation” and “including but not limited to” and should not be construed as limiting the Request in any way.

4. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

5. All pronouns shall be construed to refer to the masculine, feminine, or neutral gender, as in each case makes the request more inclusive.

6. The singular form of any word includes the plural and vice versa.

7. A term or word defined herein shall include both the lower- and upper-case reference to such term or word.

III. INSTRUCTIONS

1. Defendant shall produce all Documents responsive to the numbered requests below that are in Your possession, custody, and Control.

2. "Control" shall be construed as including in the possession of any person from which You have the legal right or ability to obtain Documents or information without service of legal process.

3. The terms defined above and the individual Requests are to be construed broadly to the fullest extent of their meaning in a good faith effort to comply with the Federal Rules of Civil Procedure.

4. If Your response to a Request is that no responsive Documents exist, but You know or have reason to believe that responsive Documents existed prior to inception of this litigation but have since been lost, destroyed, or are otherwise missing, You must so specifically indicate. If You contend that the Documents sought are not in Your control (as defined in Instruction No. 2, above), indicate the person(s) who has such control.

5. If a Document is in a language other than English and an English translation exists, produce both the native language version and English translation.

6. If any Document is withheld, in whole or in part, for any reason, including any claim of privilege of any kind or work-product protection, You shall provide with respect to each such Document all information required to be furnished by Fed. R. Civ. P. 26(b)(5) and any protective order, ESI protocol, or other order the Court may issue in this case. Confidentiality shall not be a basis to withhold Documents or information.

7. In the event that You object to any Request, You shall state with specificity the grounds for objecting to the Request, including the reasons, and state whether any responsive materials are being withheld on the basis of that objection.

8. In the event that You object to any Request on the ground that it is overbroad and/or unduly burdensome for any reason, You shall identify what portion of that Request You will respond to and state specifically the extent to which You have narrowed that Request for purposes of Your response.

9. In the event that You object to any Request on the ground that it is vague and/or ambiguous, identify the particular words, terms or phrases that You contend make the Request vague and/or ambiguous.

10. Unless otherwise explicitly indicated in a given Request, You are to respond to these requests for the period January 1, 2021 to the present.

11. These Requests are continuing in nature and should be supplemented, as necessary, pursuant to Fed. R. Civ. P. 26(e).

IV. REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All Documents and data produced to, submitted to, seized by, or received from the Department of Justice ("DOJ"), the FTC, or any other governmental, Congressional, administrative, regulatory or investigative body of the United States, or any state of the United States, Related to an investigation or prosecution Concerning the conduct alleged in the Complaint in this Action (ECF No. 1) or in the DOJ Action.

2. All Documents and data that You produced in the DOJ Action.

3. All written discovery that You served or received in the DOJ Action, including document requests, interrogatories, and requests for admission, and responses thereto.

EXHIBIT D

Proskauer

Proskauer Rose LLP | 1001 Pennsylvania Avenue NW Suite 600 | Washington, DC 20004

Colin Kass
202-416-6890
CKass@proskauer.com

April 28, 2026

Via Email

Gregory Asciolla
Geralyn Trujillo
DiCello Levitt LLP
485 Lexington Avenue, Suite 1001
New York, New York 10017

Deborah Elman
David Rochelson
Garwin Gerstein & Fisher LLP
88 Pine Street, Suite 2810
New York, New York 10005

Re: *United Food Workers v. NYP, 2:25-cv-05023 (E.D.N.Y)*
Improper Service of the Union's First Set of RFPs

Dear Counsel:

We write in response to your April 13, 2026 letter regarding United Food Workers' first set of Requests for Production seeking NYP's DOJ investigation materials.

On January 12, 2026, the Court issued a Scheduling Order limiting Tier I Discovery *solely* to "the exchange of the following contracts: Plaintiff shall provide contracts between Empire and Plaintiff, and Defendant shall provide contracts between the Defendant and Empire." And yet, in violation of that Order, on April 13, 2026, you sent NYP several Requests outside of the Court's parameters for Tier I Discovery.

To rationalize your decision to flout the Court's directive, you reference the Court's remark that it was "not going to stay discovery," as well as a comment that the Court was "not going to order the DOJ file at this time." Tr. at 16:2-3, 5-6. Those passing remarks – which did, in fact, *expressly* stay production of the DOJ files – do not supersede the formal Scheduling Order entered on January 12, 2026 expressly circumscribing Tier I Discovery to a narrow exchange of identified contracts with Empire. *See also id*. at 2-4, 7-8 ("So all I'm going to order at this point [is that] the parties give over the [Empire] contracts," then the case should move towards "early motion practice," and '***once*** that happens, *then* … we can move forward."). Nor does your assertion that the DOJ's subsequent complaint is a "changed circumstance" allow you to unilaterally rewrite the Court's discovery directive.

Please confirm that United Food Workers will withdraw its April 13th requests for production in accordance with the Court's Order limiting Tier I Discovery. Absent court order, Proskauer

NYP believes your Requests are improperly served and does not intend to respond to them. We are, however, available to meet and confer if you disagree.[1]

Sincerely,

/s/ *Colin Kass*

[1] NYP reserves its rights and nothing herein should be considered a waiver.

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UFCW LOCAL 1500 WELFARE FUND, Plaintiff, v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, Defendant.	Case No. 25-cv-05023-BMC-AYS Hon. Brian M. Cogan, USDJ Hon. Anne Y. Shields, USMJ

DEFENDANT NYP'S RESPONSES AND OBJECTIONS TO PLAINTIFF UFCW'S FIRST SET OF REQUESTS FOR PRODUCTION

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Local Civil Rule 26.1, The New York and Presbyterian Hospital ("NYP") hereby objects and responds to Plaintiff UFCW Local 1500 Welfare Fund's ("UFCW") First Set of Requests for Production of Documents ("the Requests") as follows:

GENERAL OBJECTIONS

NYP asserts the following General Objections ("GOs"), which are incorporated by reference into each of the Specific Responses and Objections below. These General Objections govern the scope of any responses by NYP to the Requests and are neither waived nor limited by NYP's Specific Responses and Objections. Upon request, NYP will meet and confer to discuss its General and Specific Objections, as well as its Responses and the scope of discovery hereunder.

1. ***Tier 1 Discovery.*** NYP objects to the Requests as premature and in violation of the Court's January 12, 2026 Scheduling Order, which stayed discovery other than "Tier I Discovery," limited to "the exchange of the following contracts: Plaintiff shall provide contracts between Empire and Plaintiff, and Defendant shall provide contracts between the Defendant and Empire." As the Court noted at the Initial Conference, "I will order that the parties give over the contracts

that we talked about just earlier. I'm ***not*** going to order the DOJ [to] file at this time, and I am hopeful that the case moves quickly for the early motion practice. And ***once that happens***, ***then*** I think we can move forward…." The Court explained, "If there's an amended complaint then there may be a different scope of discovery." And, "We may be done after a motion to dismiss…." As you know, an amended complaint has not yet been filed, and initial motion practice is not yet complete. Thus, consistent with the Scheduling Order, NYP will not search for or produce documents in response to these Requests at this time.

2. ***The Rules Govern.*** NYP objects to the Requests, including the Definitions and Instructions, to the extent they are inconsistent with or exceed the obligations imposed by the Federal Rules of Civil Procedure, any Local Rule, or applicable order. In response to these Requests, NYP will comply with the requirements of the Federal Rules of Civil Procedure, the Local Rules, and applicable orders of the Court.

3. ***Privilege.*** NYP objects to each Definition, Instruction, and Request to the extent that it calls for the disclosure of information protected by any privilege, doctrine, or protection, including without limitation the attorney-client privilege, the work product doctrine, common interest privilege, joint defense privilege, and any other applicable privilege or protection. Nothing contained in these responses and objections is intended to be, or in any way constitutes, a waiver of any applicable privilege or immunity. Any inadvertent production of information protected by the attorney-client privilege, prepared in anticipation of litigation or trial, or otherwise protected or immune from discovery shall not constitute a waiver of any privilege nor of any other basis for objecting to the use of such material or its subject matter. NYP expressly reserves the right to object to the use or introduction of such information.

4. ***Government Investigations and Parallel Proceedings.*** NYP objects to the Requests to the extent they seek wholesale re-production of materials exchanged with any governmental authority, or seek to import the scope, timing, or obligations of a different proceeding. NYP will not produce any document solely because it was provided to a governmental entity. NYP will not produce counsel-generated advocacy materials, including attorney work product, transmittal letters, demonstratives, or slide decks prepared for any governmental presentation, and preserves all clawback rights. NYP does not agree to any continuing supplementation obligation tethered to later DOJ productions; if DOJ productions change, the parties may meet and confer.

5. ***Objection to Definition 3.*** NYP objects to the definition of "Defendant," "NYP," "You," or "Your" on grounds of breadth, relevance, proportionality, and burden in that it includes entities that are not parties to this litigation. NYP will interpret the terms to mean the NYP entity named as a defendant in this litigation.

6. ***Objection to Definition 8.*** NYP objects to the definition of "Relating to" and "Concerning" as overly broad, unduly burdensome, disproportionate to the needs of this case, and inconsistent with Local Rule 26.3. NYP will interpret "Relating to" and "Concerning" consistent with their ordinary meaning and with L.R. 26.3.

7. ***Objection to Definition 2.*** NYP objects to the definition of "Communication" as overly broad, unduly burdensome, disproportionate to the needs of this case, and inconsistent with Local Rule 26.3. In particular, NYP objects to the inclusion of "metadata" as a standalone "Communication," as metadata is not itself a transmittal of information between persons. NYP further objects to the inclusion of "face-to-face conversations" to the extent no written or recorded memorial of such conversations exists, as NYP cannot search for or produce documents

memorializing conversations that were never reduced to any tangible form. NYP will interpret "Communication" to mean a recorded or documented transmittal of information, consistent with Fed. R. Civ. P. 34 and L.R. 26.3.

8. ***Objection to Definition 11.*** NYP objects to the definition of "Person" as overly broad, unduly burdensome, disproportionate to the needs of this case, and inconsistent with Local Rule 26.3. NYP further objects to the Definition to the extent that "the acts of a person shall include the acts of directors, officers, owners, members, employees, agents, attorneys or other representatives acting on the person's behalf." This imputation clause would improperly expand the scope of discovery to the conduct of non-party individuals and entities. NYP shall interpret "Person" to mean any natural person or any legal entity, consistent with L.R. 26.3.

9. ***Objection to Instruction 4.*** NYP objects to Instruction 4 as unduly burdensome to the extent it requires NYP to identify specific third parties who may have control over documents not in NYP's possession, custody, or control. The Federal Rules of Civil Procedure do not impose an obligation on a responding party to identify the custodians or controllers of documents that are not within its possession, custody, or control, and NYP will not undertake such an investigation absent Court order.

10. ***Objection to Instruction 8.*** NYP objects to Instruction 8 to the extent it purports to impose obligations beyond those required by Fed. R. Civ. P. 34(b)(2)(C). NYP will state whether responsive materials are being withheld on the basis of an objection, as required by the Federal Rules, but objects to any requirement that it "identify what portion" of a Request it will respond to or "state specifically the extent to which" it has narrowed a Request, to the extent such requirements exceed NYP's obligations under the Federal Rules of Civil Procedure.

11. ***Relevant Period.*** NYP objects to the Requests on grounds of relevance, burden, and proportionality to the extent they are not limited to a specific relevant period. Without limiting the foregoing, NYP objects to the Requests and Instruction 10 as overly broad, unduly burdensome, and disproportionate to the needs of this case in its request for documents "for the period January 1, 2021 to the present." Accordingly, absent Court order or further agreement of the parties, NYP will not search for or produce documents dated after September 8, 2025. Unless otherwise specified, NYP's production will be limited to the time period between January 1, 2021 and September 8, 2025 (the "Relevant Period").

12. ***Alleged Relevant Services.*** NYP objects to the Requests, including the Definitions and Instructions, to the extent they call for information relating to the provision of services other than inpatient general acute care ("GAC") services, on grounds of relevance and proportionality. In responding to these Requests, NYP will only search for and produce information relating to GAC services provided in the five boroughs of New York City (the "GAC Services").

13. ***Patient- or Treatment-Specific Information***. NYP objects to the Requests to the extent they call for information relating to specific patients, specific procedures or treatments, or specific types of procedures or treatments on the grounds of privacy, relevance, burden, and proportionality. In responding to these Requests, NYP will not search for or produce (or will redact) any patient- or treatment-specific information. NYP reserves the right to redact such information from documents that may be responsive for other reasons.

14. ***Alter Ego Discovery.*** NYP objects to the Requests to the extent they seek information about the activities of any non-party affiliate of NYP. Such information is not relevant or proportional to the merits of any claim.

15. ***ESI.*** NYP objects to the Requests to the extent they call for the production of any electronically stored information that is not reasonably accessible, or that cannot be compiled or produced without unreasonable investments in time and expense. NYP further objects to these Requests to the extent they purport to require a search beyond the scope of permissible discovery contemplated by Fed. R. Civ. P. 26(b)(2)(C).

16. ***No Admission.*** NYP's responses to the Requests shall not be construed in any way as an admission that any definition provided by Plaintiff is either factual or legally binding on NYP.

17. ***No Representation of Document's Existence.*** NYP's responses to the Requests shall not be deemed to constitute a representation or admission that any particular document or information exists or is accessible, relevant, non-privileged, or admissible in evidence, or that any statement or characterization in the Requests is accurate or complete.

18. ***General Protective Order.*** NYP will not produce any confidential information prior to entry of a suitable general protective order and objects to the Requests to the extent they call for the same.

19. ***Privacy.*** NYP objects to the Requests to the extent that they call for the production of information or documents that NYP is barred from producing by (i) any domestic or foreign privacy laws, including HIPAA; (ii) a protective order or restriction on use or dissemination in another case or governmental investigation; (iii) confidentiality agreements with, or licensing restrictions imposed by, third parties; or (iv) statute or agency rule. NYP further reserves the right to redact documents of personal, sensitive information to the extent such information is not relevant to the allegations in this Lawsuit.

20. ***Reservation of Right to Amend.*** To the extent necessary or appropriate, NYP reserves the right to supplement its Responses in accordance with Fed. R. Civ. P. 26(e), including – without limitation – by asserting additional objections.

21. ***Time, Place, Manner of Production.*** NYP objects to the Requests to the extent that they do not specify a "reasonable time, place, and manner of making the inspection." *See* Fed. R. Civ. P. 34(b). To the extent NYP makes an offer of production in these Responses, such offer of production contemplates a rolling production.

22. ***Use of Instructions and Definitions.*** NYP objects to UFCW's definitions in its Requests to the extent they are overly broad and unduly burdensome, unreasonable, and contrary to the Court's Local Rules. *See* L.R. 26.3 ("Uniform Definitions in Discovery Requests").

23. ***Short-Form Objections.*** In setting forth these General and Specific Objections, NYP uses the term "proportionality" to mean that the Request seeks information that is not "proportional to the needs of the case" under Fed. R. Civ. P. 26(b)(1). NYP uses the terms "breadth," "overbreadth," and/or "burden" to mean that (i) the Request is overly broad and/or unduly burdensome; (ii) the discovery sought is unreasonably cumulative or duplicative of other information Plaintiff has requested, NYP has offered to produce, or Plaintiff can obtain from some other source; and/or (iii) the burden or expense of the proposed discovery outweighs its likely benefit under Fed. R. Civ. P. 26(b). NYP uses the term "relevance" to mean that the discovery requested is neither relevant to any party's claim or defense under the Federal Rules of Evidence nor proportional to the needs of the case or is otherwise outside the scope of Fed. R. Civ. P. 26(b)(1). NYP uses the term "ambiguity" to mean the Request is vague and ambiguous. NYP uses the term "privilege" to mean that the discovery requested seeks information protected by the

attorney-client privilege, the work product doctrine, joint defense or common interest privileges, or any other applicable privilege or protection.

SPECIFIC RESPONSES AND OBJECTIONS

REQUEST NO. 1:

All Documents and data produced to, submitted to, seized by, or received from the Department of Justice ("DOJ"), the FTC, or any other governmental, Congressional, administrative, regulatory or investigative body of the United States, or any state of the United States, Related to an investigation or prosecution Concerning the conduct alleged in the Complaint in this Action (ECF No. 1) or in the DOJ Action.

Response to Request No. 1: NYP objects to this Request as premature and in violation of the Court's Scheduling Order. *See* GO 1. NYP further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case in that it demands production of "all Documents and data" exchanged with or obtained from multiple federal and state entities without demonstrating how those materials are relevant to any claim or defense in this Action. *See* GO 4. NYP will not produce documents solely because they were provided to a governmental entity, nor will NYP produce counsel-generated or non-ordinary-course documents. *See id.* NYP further objects to the request for documents "seized by" a governmental entity, to the extent such documents are not in NYP's custody or control. NYP will not produce confidential information absent a suitable General Protective Order. *See* GO 18.

Subject to its General and Specific Objections and without waiving them, if discovery proceeds beyond Tier I and subject to entry of an appropriate protective order, NYP will meet and confer regarding the proper scope, if any, of parallel discovery between this Action and the DOJ Action.

REQUEST NO. 2:

All Documents and data that You produced in the DOJ Action.

Response to Request No. 2: NYP objects to this Request as premature and in violation of the Court's Scheduling Order. *See* GO 1. NYP further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case in that it demands re-production of all materials produced in a separate proceeding without demonstrating how those materials are relevant to any claim or defense in this Action. *See* GO 4. NYP will not produce documents solely because they were provided to the DOJ. *See id*. NYP will not produce confidential information absent a suitable General Protective Order. *See* GO 18.

Subject to its General and Specific Objections and without waiving them, if discovery proceeds beyond Tier I and subject to entry of an appropriate protective order, NYP will meet and confer regarding the proper scope, if any, of parallel discovery between this Action and the DOJ Action.

REQUEST NO. 3:

All written discovery that You served or received in the DOJ Action, including document requests, interrogatories, and requests for admission, and responses thereto.

Response to Request No. 3: NYP objects to this Request as premature and in violation of the Court's Scheduling Order. *See* GO 1. NYP further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case in that it seeks all served and received written discovery and responses from a separate proceeding without demonstrating how those materials are relevant to any claim or defense in this Action. *See* GO 4. NYP will not produce documents solely because they were provided to the DOJ. *See id*. NYP will not produce confidential information absent a suitable General Protective Order. *See* GO 18.

Subject to its General and Specific Objections and without waiving them, if discovery proceeds beyond Tier I and subject to entry of an appropriate protective order, NYP will meet and confer regarding the proper scope, if any, of parallel discovery between this Action and the DOJ Action.

Dated: May 13, 2026

Respectfully submitted,

/s/ Colin Kass

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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2026, I caused to be served a copy of the foregoing via electronic mail.

/s/ *Colin Kass*
Colin R. Kass

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UFCW LOCAL 1500 WELFARE FUND, on behalf of itself and all others similarly situated, Plaintiff, v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, Defendant.	Case No. 25-cv-5023
CEMENT AND CONCRETE WORKERS DC BENEFIT FUND, on behalf of itself and all others similarly situated, Plaintiff, v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, Defendant.	Case No. 25-cv-5571

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INTEREST OF THE UNITED STATES

The United States submits this Statement of Interest under the authority of 28 U.S.C. § 517, which permits the Attorney General to direct any officer of the Department of Justice to attend to the interests of the United States in any case pending in a federal or state court.

The United States has filed its own lawsuit challenging similar conduct to that challenged in these cases. *See United States v. New York and Presbyterian Hospital*, Case No. 1:26-cv-02480 (S.D.N.Y 2026) ("*United States v. NYP*"). Some of NYP's arguments in the present motion bear close resemblance to those it has made in response to the United States' complaint in *United States v. NYP.* Indeed, at a recent status conference in *United States v. NYP*, NYP counsel represented to the court that the arguments in the present matter would also be persuasive for disposition in *United States v. NYP* even though NYP has not moved to dismiss the United States' complaint in that case. As a result, the United States has a specific interest in ensuring this Court does not adopt NYP's incorrect arguments.

Healthcare costs are a central source of financial strain for millions of Americans. The United States has a strong interest in ensuring that courts apply the correct legal principles when analyzing anticompetitive activity, including in the healthcare sector. The United States has challenged anticompetitive activity in this sector—including contractual restraints that are similar in their effect to the challenged restraints—under Section 1 of the Sherman Act, 15 U.S.C. § 1. *See, e.g.*, *United States v. NYP*; *United States v. OhioHealth Corp.,* Case No. 2:26-cv-207 (S.D. Ohio 2026); *United States v. Carolinas Healthcare Sys.,* Case No. 3:16-cv-00311 (W.D.N.C. 2016); *see also United States v. Blue Cross Blue Shield of Mich.*, Case No. 10-cv-14155 (E.D. Mich. 2011). In addition, the United States has filed amicus briefs and statements of interest in other cases regarding the appropriate application of Section 1 of the Sherman Act in the healthcare sector. *See, e.g.*, Statement of Interest on Behalf of the United States of America, *Marion Healthcare LLC v. S. Ill. Healthcare*, Case No. 3:12-cv-00871 (S.D. Ill. 2018); Brief for the United States and the Federal Trade Commission as Amici Curiae in Support of Petition for Rehearing, *Blue Cross and Blue Shield United of Wis. et al. v. Marshfield Clinic and Sec. Health Plan of Wis.*, Case Nos. 95-cv-1965, 95-cv-2140 (7th Cir. 1995).

Defendant, the New York and Presbyterian Hospital ("NYP"), submitted a motion to dismiss Plaintiffs' complaint, Motion to Dismiss ("MTD"), ECF 43, that does not fully and correctly state the legal standard required to establish market power. The Motion to Dismiss also incorrectly states the elements required to establish Plaintiffs' claims brought under Section 1 of the Sherman Act. Contrary to NYP's suggestion, although Plaintiffs in this case must allege anticompetitive effects, the specific anticompetitive effects that NYP references in their Motion to Dismiss—exclusionary effects and rival foreclosure—are not necessary elements of Plaintiffs' claim.

STATEMENT OF LAW AND FACTS

In their consolidated class action complaint, Plaintiffs plead that NYP has violated Section 1 of the Sherman Act. Consolidated Class Action Complaint ("Complaint"), ECF 32, at ¶ 209. Plaintiffs allege that NYP has market power in the market for inpatient general acute care ("inpatient GAC") hospital services in multiple relevant geographic markets no larger than the five boroughs of New York City. Compl. at ¶¶ 2, 138. Plaintiffs allege evidence of NYP's market power, including NYP's supracompetitive prices, size, and reputation. Compl. at ¶¶ 150–52, 165, 167–68. According to Plaintiffs' complaint, this market power has enabled NYP to impose anticompetitive contractual restraints, including forcing insurers, as a condition of including any NYP facilities in their networks, to agree to anticompetitive "all-or-nothing" and "anti-steering" terms. Compl. at ¶¶ 11, 211. These allegations place NYP's contractual restrictions squarely within the scope of enforcement under Section 1 of the Sherman Act.

To prove a violation of Section 1 of the Sherman Act, plaintiffs must establish "(1) a contract, combination, or conspiracy; (2) in restraint of trade; (3) affecting interstate commerce." *See Gamm v. Sanderson Farms, Inc.,* 944 F.3d 455, 465 (2d Cir. 2019) (quoting *Maric v. St. Agnes Hospital Corp.*, 65 F.3d 310, 313 (2d Cir. 1995)). "Restraints can be unreasonable in one of two ways." *Ohio v. Am. Express Co.*, 585 U.S. 529, 540 (2018) ("*Amex*"). Some restraints are per se unreasonable based on their inherently anticompetitive "nature and character." *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1, 64–65 (1911); *see, e.g.*, *Nat'l Collegiate Athletic Ass'n v. Alston*, 594 U.S. 69, 89 (2021). Restraints that are not per se unreasonable, such as the alleged restraints in the immediate case, are analyzed under the "rule of reason." *See U.S. Airways, Inc. v. Sabre Holdings Corp.*, 938 F.3d 43, 55 (2d. Cir. 2019); *see also Amex*, 585 U.S. at 541. When applying the rule of reason, courts must "conduct a fact-specific assessment of 'market power and market structure ... to assess the [restraint]'s actual effect' on competition." *Amex,* 585 U.S. at 541 (quoting *Copperweld Corp. v. Independence Tube Corp*., 467 U.S. 752, 768 (1984)).

When assessing restraints under the rule of reason, the key determination is "whether the challenged agreement is one that promotes competition or one that suppresses competition." *Nat'l Soc'y of Pro. Eng'rs v. United States*, 435 U.S. 679, 691 (1978). Under the rule of reason, courts consider a wide range of competitive harms, including direct evidence of "reduced output, increased prices, or decreased quality in the relevant market," as well as, under the indirect approach, "proof of market power plus some evidence that the challenged restraint harms competition." *Amex,* 585 U.S. at 541–42; *see also N. Am. Soccer League, LLC, v. United States Soccer Fed'n*, 883 F.3d 32, 42 (2d. Cir. 2018). Additional types of competitive harm include a reduction of consumer choice, *United States v. Dentsply Int'l, Inc.,* 399 F.3d 181, 194 (3d Cir.

2005), and harm to the competitive process—the "most significant" kind of anticompetitive effect. *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 107 (1984).

In this statement, the United States addresses the appropriate legal standards for assessing allegations of market power as well as NYP's arguments that Plaintiffs failed adequately to plead anticompetitive effects. The United States takes no position on NYP's other arguments.

ARGUMENT

NYP's motion to dismiss misstates and misapplies the legal standards governing Section 1 claims. Accepting NYP's assertions of the proper legal standard to assess anticompetitive restraints under Section 1 of the Sherman Act would upend longstanding legal precedent and unduly burden similarly situated plaintiffs. The Court should reject NYP's motion to dismiss Plaintiffs' claims accordingly.

I. NYP MISSTATES REQUIREMENTS TO ESTABLISH MARKET POWER UNDER SECTION 1 OF THE SHERMAN ACT

NYP's submission argues that Plaintiffs fail to demonstrate NYP's market power and that Plaintiffs do not allege "substantial or problematic market shares." MTD at 3. Yet, this assertion fails to acknowledge that market power may be shown *either* directly or indirectly. *See Amex,* 585 U.S. at 541–42. Market power may be shown directly with evidence of "specific conduct indicating the defendant's power to control prices or exclude competition." *K.M.B. Warehouse Distribs., Inc. v. Walker Mfg. Co.*, 61 F.3d 123, 129 (2d Cir. 1995) (quoting *Broadway Delivery Corp. v. United Parcel Serv.*, 651 F.2d 122, 126–27 (2d Cir. 1981), *cert. denied,* 454 U.S. 968 (1981)). In addition, market shares may be used as a proxy for market power. *Id.* While either is sufficient, Plaintiffs have pled both in the alleged relevant markets.

NYP's reliance on *Amex's* footnote 7 to undercut Plaintiffs' market power allegations is misplaced. Under the Supreme Court's logic, plaintiffs must typically define a market in a case involving vertical restraints. *See Amex*, 585 U.S. at 545 n.7. Nothing in the cited footnote precludes a showing of direct evidence of market power in the alleged market in this case. Indeed, it is wholly inapplicable as Plaintiffs have properly alleged a relevant market *and* have shown that NYP possesses market power. *See* Compl. ¶¶ 132, 138, 150.

Plaintiffs' complaint alleges significant direct evidence of NYP's market power. Plaintiffs claim that NYP is "the most expensive hospital system in New York City" and maintains "the ability to persistently and profitably charge prices above those that would be charged in a competitive market." Compl. ¶¶ 105, 150, 152. These supracompetitive prices are the result of the material bargaining power that NYP has in insurer negotiations. Compl. ¶¶ 151, 154–56. Plaintiffs also allege that NYP's market power is reflected in non-price contractual terms, including the challenged restraints. Compl. ¶¶ 153, 155, 159. Among other detrimental effects, these restrictions exclude other hospitals with prices lower than NYP from obtaining greater patient volume. Compl. ¶ 169.

The complaint similarly alleges indirect evidence of NYP's market power. Plaintiffs claim that NYP's size contributes to its substantial market power, as NYP is the largest hospital in New York City. Compl. ¶¶ 1, 165. Indeed, NYP controls "more than 30%" of the Manhattan market and "more than 25%" of the four-borough market. Compl. ¶ 165. These market shares allegedly understate NYP's competitive significance, as NYP's renown, reputation, and "perceived status" among certain segments of consumers in New York City have solidified its substantial market power in the relevant markets. Compl. ¶ 167. NYP's market power is further reinforced by the structure of the relevant markets, which Plaintiffs allege have "extremely high barriers to entry relative to other product markets." Compl. ¶ 135.

NYP claims that Plaintiffs do not "allege substantial or problematic market shares." MTD at 3. But courts have long avoided establishing threshold shares for market power and instead must also consider other aspects of market structure, including barriers to entry. *See, e.g., Broadway Delivery Corp.*, 651 F.2d at 128 (refusing to adopt market share thresholds, noting that "the true significance of market share data can be determined only after careful analysis of the particular market"); *United States v. Visa USA, Inc.*, 344 F.3d 229, 240 (2d Cir. 2003) (sustaining district court finding that MasterCard exercised market power with approximately 26% of the market). NYP's characterization of Plaintiffs' alleged shares ignores that courts must consider various other indications of market power that Plaintiffs address in their complaint.

II. NYP DISTORTS THE REQUIREMENTS FOR PROVING ANTICOMPETITIVE EFFECTS UNDER SECTION 1 OF THE SHERMAN ACT

NYP argues that Plaintiffs' failure to allege exclusionary contracts and foreclosure of rivals is fatal to their claim. MTD at 3. In doing so, NYP misstates the requirements for proving anticompetitive effects. To satisfy the elements of their alleged Section 1 claim, Plaintiffs need only show that NYP's contractual restrictions are "unreasonable restraints of trade effected by a contract, combination, or conspiracy." *Copperweld,* 467 U.S. at 768. The requisite showing of anticompetitive effects under the rule of reason is not limited to those that are exclusionary. There also are collusive effects involving a decrease or softening in the intensity of competition among rivals. *See, e.g.*, *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 893 (2007) (noting vertical minimum-resale-price agreements can violate rule of reason when facilitating cartels); *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049, 1071–72 (9th Cir. 2015) (relying on a collusive effect to find that plaintiff satisfied initial burden under the rule of reason). And "anticompetitive conduct comes in many different forms that cannot always be categorized." *Duke Energy Carolinas, LLC v. NTE Carolinas II, LLC*, 111 F.4th 337, 355 (4th Cir. 2024).

Courts analyzing the type of anti-steering restrictions Plaintiffs challenge have found many other anticompetitive effects sufficient to support a Section 1 claim. For example, the United States and the State of North Carolina brought a Section 1 action against Carolinas Healthcare System (now called Atrium Health) relating to hospital steering restrictions. In that case, the court determined that plaintiffs adequately alleged a claim based on both direct and indirect evidence of anticompetitive effects, including allegations that the provisions increased healthcare expenses, inhibited price competition, and thwarted provider efficiency and innovation. *United States v. Charlotte-Mecklenburg Hosp. Auth.,* 248 F. Supp. 3d 720, 730–33 (W.D.N.C. 2017). Other cases involving hospital steering restrictions relied on other allegations of anticompetitive effects to support a Section 1 claim. *See In re Mission Health Antitrust Litig.*, 2024 WL 759308, at *10 (W.D.N.C. Feb. 21, 2024) (holding that plaintiffs "plausibly assert[ed] that Defendants' conduct has harmed competition" and rejecting motion to dismiss in hospital steering case); *see also Uriel Pharmacy Health & Welfare Plan v. Advoc. Aurora Health, Inc.,* 2023 WL 12284689, at *3 (E.D. Wis. Apr. 28, 2023).[1] These prior decisions underscore the

[1] *Medical Center at Elizabeth Place, LLC v. Premier Health Partners* turned on plaintiff's choice to exclusively plead *per se* violations under Section 1 of the Sherman Act. 2017 WL 3433131, at *14–17, *20 (S.D. Ohio Aug. 9, 2017). The court acknowledged that the rule of reason should instead apply to the plaintiff's claims and that a finding on the competitive effects of the contractual restrictions "must be made only after considering all relevant factors under a full rule of reason analysis." *Id.* at *16–17. Thus, although its facts are distinguishable, this decision supports denying the present motion as well.

strength of Plaintiffs' claims that the contractual restrictions at issue are anticompetitive and further undercut NYP's argument that Plaintiffs' failure to allege exclusionary conduct "kills their claim." MTD at 3.

In its Motion to Dismiss, NYP selectively quotes from the Supreme Court's *Amex* decision, omitting a key portion of the quotation that reads: "there is nothing inherently anticompetitive about **Amex's** antisteering provisions." *Amex*, 585 U.S. at 551 (emphasis added). In the context of the decision, this language acknowledges that restraints that are not per se unreasonable are subject to the "rule of reason," which requires courts to engage in a "fact-specific assessment." *Id.* at 541. NYP therefore overstates the Supreme Court's finding about the anticompetitive nature of *Amex*'s steering restrictions and ignores the requisite assessment of its restraints under the rule of reason, which depends on the specific circumstances alleged. *See Bd. of Trade of City of Chicago v. United States*, 246 U.S. 231, 238 (1918). Other courts have found that anti-steering provisions are not immune from antitrust enforcement. *See Epic Games, Inc. v. Apple, Inc.,* 67 F.4th 946, 1002 (9th Cir. 2023) (emphasizing *Amex* was "not a blanket approval of anti-steering provisions").

NYP similarly misstates the role of foreclosure in a Section 1 analysis. Like exclusionary conduct, foreclosure of rivals is not a required element of Plaintiffs' Section 1 claim. NYP cites to *Roland,* an exclusive dealing case under Section 3 of the Clayton Act—not the Sherman Act—and misconstrues the included quote by omitting the court's specification of "exclusive-dealing agreement[s]" when describing the requirement that at least one significant competitor must be kept from doing business in a relevant market. *Roland Mach. Co. v. Dresser Indus., Inc*., 749 F.2d 380, 394 (7th Cir. 1984). In cases that do not allege exclusive dealing or tying, foreclosure is only one way of showing anticompetitive conduct. In *U.S. Airways,* the court dismissed arguments that the plaintiff was required to show "substantial foreclosure of the market" and "identify actual excluded competitors." *U.S. Airways, Inc. v. Sabre Holdings Corp.*, 105 F. Supp. 3d 265, 281 (S.D.N.Y. 2015), *aff'd*, 938 F.3d 43 (2d Cir. 2019). The court held that "[w]hile such factors may be indicia of an actual adverse effect on competition, they are not the only indicia. An adverse effect also may be shown by evidence of increased prices, as [plaintiff] has done." *Id.*

Plaintiffs plead that NYP's anticompetitive contract provisions have an adverse effect on competition by preventing insurers from incentivizing members to obtain lower-cost care, thereby allowing NYP to charge higher prices and preventing price competition in the market for hospital services, preventing competition on quality, and decreasing consumer choice. Compl. ¶¶ 9, 25. Despite NYP's misguided framing, Plaintiffs also plead exclusionary effects by alleging that the restrictions NYP has imposed on insurers exclude NYP's lower-priced competitors from the opportunity to negotiate for greater volume through steered arrangements such as narrow-network plans. Compl. ¶ 67.

Plaintiffs' allegations of adverse effects on competition satisfy the "unreasonable restraint of trade" requirement of Section 1 claims as described above. *Caruso Mgmt. Co. v. Int'l Council of Shopping Ctrs*., 403 F. Supp. 3d 191, 201 (S.D.N.Y 2019) (holding that "[i]n order to show an unreasonable restraint of trade... a plaintiff must identify the relevant market that is subject to the restraint and then demonstrate the restraint's adverse effects on competition in the market").

For the reasons stated above, the Court should decline to follow NYP's misstatements of law and apply the proper legal framework when analyzing Plaintiffs' claims.

Dated: July 6, 2026

Respectfully submitted,

/s/ Danielle Drory

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WORD COUNT CERTIFICATION

Pursuant to Local Rule 7.1, I hereby certify that the total number of words in this statement, excluding the caption, signature block, and word count certification is 2,801.

/s/ Danielle Drory
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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2026, I electronically filed the foregoing brief by using the CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

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EXHIBIT G

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August 7, 2026

Via Email

David A. Munkittrick
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New York, NY 10036

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

Counsel:

We write to reiterate our request that Defendant New York & Presbyterian Hospital ("NYP") promptly produce all materials related to the investigation of the conduct at issue in this case by the United States Department of Justice ("DOJ").

Yesterday, August 6, 2026, the Court in the related government action, *United States v. The New York and Presbyterian Hospital*, No. 1:26-cv-02480-PAE-OTW (SDNY), entered a protective order governing the production of confidential materials. We understand that within 10 days of that order—i.e., on August 16, 2026—the DOJ will produce to you its investigative materials.

On April 13, 2026, we served upon you a request for production of documents (the "April 13 RFPs"), asking you to produce all such materials. In the cover letter we served with the April 13 RFPs, we acknowledged Magistrate Judge Shields' statement at a January 12, 2026 hearing, declining to "order the DOJ file at this time." We explained that once the DOJ filed its case on March 26, 2026, however, circumstances had changed which warranted your prompt production of these materials. On April 28, you responded with a letter, refusing our demand. On May 13, 2026, you issued responses and objections to our April 13 RFPs, formalizing your refusal to produce these materials.

Since then, circumstances have changed further. Judge Cogan, not Magistrate Judge Shields, is now presiding over this case, and Judge Cogan has not issued a stay of discovery. The fact that the DOJ will shortly produce its investigative materials presents yet another reason that NYP can no longer withhold them. As soon as the DOJ produces its investigative materials to NYP, NYP must promptly re-produce those materials to Plaintiffs. Please inform us by no later than Wednesday, August 12, 2026 if you will continue to refuse this production so that we may move to compel.

We are available to meet and confer regarding this request.

Sincerely,

/s/ Dave Rochelson

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August 12, 2026

VIA EMAIL

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

Dear Dave:

We write in response to your letter dated August 7, 2026 demanding that the New York and Presbyterian Hospital ("NYP") produce materials from the Department of Justice's investigation. Plaintiffs' demand is not consistent with the Court's Orders in this action.

Plaintiffs demanded the Department of Justice documents in advance of the January 12 Court Conference and the Court rejected that demand until resolution of the motion to dismiss. January 12, 2026 Tr. 15:23-16:9 ("I'm not going to order the DOJ file at this time."). This decision remains law of the case and neither of the two circumstances cited in your letter present cogent or compelling circumstances to revisit it. *Doe v. E. Lyme Bd. of Educ.*, 962 F.3d 649, 662 (2d Cir. 2020) (requiring "cogent" and "compelling" reasons to revisit decisions in same litigation); *Chiari v. New York Racing Ass'n Inc.*, 972 F. Supp. 2d 346, 361–62 (E.D.N.Y. 2013).

You argue that the case was reassigned to Judge Cogan (Letter at 1), but a new judge coming on is not a reason to relitigate issues already decided. *Waverly Props., LLC v. KMG Waverly*, 2011 WL 13322667, at *1 (S.D.N.Y. 2011) (reassignment of judge "does not itself supply a persuasive basis to revisit the prior rulings in a case"); *United States v. Gerace*, 2023 WL 6892436, at *2 (W.D.N.Y. 2023) ("[A] party does not get another bite of the apple simply because a new judge is assigned.").

You also argue that the Department of Justice had not yet sued in January when your motion was denied, but that was not relevant to the Court's analysis or the parties' arguments. NYP did not rely on the absence of a Department of Justice lawsuit when resisting discovery and the Court did not reference it in its analysis. NYP instead argued that the discovery did not go to the core threshold issues in the case, which remains as true today as in January. Joint Initial Letter at 23-24.

We would be happy to discuss at your convenience, but at this time we have fully complied with our discovery obligations under the Court's Orders.

Sincerely,

/s/ *Colin Kass*