UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

MICHELLE MAZZOLA, individually and as mother of BABY DOE; GUY MAZZOLA, individually and as father of BABY DOE; AMEC, LLC; and LISA KULLER, on behalf of themselves and all others similarly situated, Plaintiffs, v. ANTHEM HEALTH PLANS, INC., CARELON BEHAVIORAL HEALTH, INC., and ELEVANCE HEALTH, INC., Defendants.	Civil Action No. 3:25-cv-01433-OAW-RAR

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY

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Defendants Anthem Health Plans, Inc., Carelon Behavioral Health, Inc., and Elevance Health, Inc. ("Defendants"), submit this reply in support of their Motion to Stay Discovery (ECF No. 25) and in response to Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Stay Discovery (ECF No. 35, the "Opposition").

ARGUMENT

I. Plaintiffs' "Law-of-the-Case" Argument is Unfounded

Plaintiffs first argue that the Motion to Stay Discovery should be denied under the doctrine of "law of the case," arguing that Judge Williams's order setting a discovery schedule in this case "rejected Defendants' repeated requests in the Rule 26(f) report to delay setting discovery deadlines until the motion to dismiss was decided." Opposition at 7. Plaintiffs are incorrect.

"The law of the case doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *DiLaura v. Power Auth. of State of N.Y.*, 982 F.2d 73, 76 (2d Cir. 1992) (internal quotation marks omitted). "The law of the case doctrine, however, is limited to issues actually determined." *New York City Dep't of Fin. v. Twin Rivers, Inc.*, No. 95 CIV. 1389 HB HBP, 1997 WL 299423, at *2 (S.D.N.Y. June 5, 1997) (citing *Ouern v. Jordon*, 440 U.S. 332, 347 n. 18 (1979)). "Questions that have not been decided do not become law of the case merely because they could have been decided." *Certain Underwriters at Lloyds of London v. Illinois Nat'l Ins. Co.*, No. 09-CV-4418 (LAP), 2017 WL 4326056, at *3 (S.D.N.Y. Aug. 31, 2017) (citation omitted).

Plaintiffs' law-of-the-case argument fails because Judge Williams never ruled on the propriety of a stay pending Defendants' Motion to Dismiss. While Plaintiffs are correct that Defendants set forth in the Rule 26(f) report their position that discovery "should be stayed" pending resolution of a then-forthcoming motion to dismiss, Defendants did not move the Court for entry of such a stay. Indeed, such a motion would have been premature because the stay

analysis requires the Court to consider the strength of the pending Motion to Dismiss, *ITT Corp. v. Travelers Cas. & Sur. Co.*, No. 3:12CV38 (RNC), 2012 WL 2944357 at *2–3 (D. Conn. July 18, 2012), and thus a Court is not in a position to pass on that question until a motion to dismiss is filed. At the time Judge Williams entered the discovery scheduling order, he had no motion for a stay of discovery before him, and Defendants had not even filed their Motion to Dismiss the Amended Complaint. Accordingly, Judge Williams's scheduling order could not constitute a ruling on the question of whether Defendants' later-filed Motion to Dismiss supports a stay of discovery. Nor does that order mention a stay of discovery, let alone a ruling on the issue. There is accordingly no ruling as to the propriety of a stay of discovery that is the law of the case.

Plaintiffs cite *McAuley v. Honey Pot Co.*, 23-CV-1986 (AT) (JW), 2023 WL 7280719 (S.D.N.Y. Nov. 3, 2023), for the proposition that a stay of discovery is barred by law of the case where the Court had previously denied a request for adjournment of the case management plan and scheduling order. Opposition at 7. But the "request" in *McAuley* was a letter motion specifically moving the Court for the requested relief, which the Court subsequently denied in a written order. *See* S.D.N.Y. Case No. 1:23-cv-01986, ECF No. 17.[1] *McAuley* is thus entirely distinguishable from this case, where Plaintiffs seek to give law-of-the-case effect to a ruling never issued on a motion never brought by Defendants.

The current posture of Defendants' Motion to Stay also belies Plaintiffs' theory that Judge Williams implicitly ruled on Defendants' position that a stay was warranted. If Judge Williams believed the issue of a stay had been conclusively decided against the Defendants, he presumably would have summarily denied the Motion to Stay on the grounds Plaintiffs now advocate. That

[1] Defendants also attach the court's order on the letter motion in *McAuley* as **Exhibit A**, and they request the Court take judicial notice of the motion and ruling. *See Kavowras v. New York Times Co.*, 328 F.3d 50, 57 (2d Cir. 2003) (holding that "[j]udicial notice may be taken of public filings").

he declined to do so and instead referred the motion for decision by a magistrate judge further establishes that Judge Williams did not intend to—and did not—rule on whether a stay of discovery is appropriate in this case.

Because "[q]uestions that have not been decided do not become law of the case," *Lloyds of London*, 2017 WL 4326056, at *3, Plaintiffs' law-of-the-case argument must be rejected.

II. The Circumstances of this Case Merit a Stay of Discovery

In their Opposition, Plaintiffs argue that discovery should not be stayed because: (1) "Plaintiffs State Meritorious Claims," Opposition 8–14; (2) "Discovery Will Not Be Unduly Burdensome," *id*. at 14–15; and (3) "Plaintiffs Will Suffer Prejudice From a Stay," *id*. at 15. Plaintiffs fail to show the relevant factors weigh against entry of a stay of discovery.

A. The Strength of Defendants' Motion Weighs in Favor of a Stay

Plaintiffs spend much of their Opposition previewing the arguments they apparently intend to make in opposing Defendants' Motion to Dismiss. Plaintiffs' arguments are flawed, however, because they are based on the assumption that Defendants must persuade the Court that the Motion to Dismiss will dispose of the entire case to merit a stay. Plaintiffs are incorrect.

1. The Applicable Standard

First, Plaintiffs' suggestion that Defendants must establish Plaintiffs claims are "frivolous or glaringly deficient" to merit a stay, Opposition at 8–9, is inconsistent with the authority establishing that "[c]ourts in this District hold that a stay of discovery is appropriate pending resolution of a potentially dispositive motion where the motion 'appear[s] to have substantial grounds' or, stated another way, 'do[es] not appear to be without foundation in law.'" *United States ex rel. Ameti v. Sikorsky Aircraft Corp.*, No. 3:14-CV-1223(VLB), 2016 WL 10490528, at *2 (D. Conn. Nov. 28, 2016) (quoting *In re Currency Conversion Fee Antitrust Litig.*, No. M21-95, 2002 WL 88278, at *1 (S.D.N.Y. Jan. 22, 2002)). While courts have acknowledged that "[t]he

district courts in this Circuit are not uniform in their analysis," those same courts recognize that the "substantial grounds" formulation is the prevailing standard. *See Conservation L. Found. v. Shell Oil Co.*, No. 3:21-CV-00933 (JAM), 2023 WL 4706815, at *3 (D. Conn. July 24, 2023) (noting that "several courts" have adopted the "substantial grounds" test while "one court" had rejected it as too lenient). And that majority approach more appropriately evaluates the "strength of the dispositive motion" that is the core inquiry in evaluating this factor. *Id*.

Second, Plaintiffs argue that a stay is not warranted unless Defendants' motion would dispose of the case in its entirety. Opposition at 9. Not so. As this Court has recognized, a stay pending resolution of a motion to dismiss "is often invoked to avoid potentially expensive and wasteful discovery during the pendency of a determination which could potentially *reshape* pending claims." *Ameti*, 2016 WL 10490528, at *1 (emphasis added); *Rivera v. Heyman*, No. 96 Civ. 4489(PKL), 1997 WL 86394, at *1 (S.D.N.Y. Feb. 27, 1997) (stay of discovery justified if motion "may significantly narrow, if not eliminate, the issues remaining in the case"). Thus, a motion that may result in dismissal of the entire action might present a *stronger* case for dismissal, but is not a prerequisite for granting a motion to stay. *See Spencer Trask Software & Info. Servs., LLC v. RPost Int'l Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002) (granting stay of discovery where defendants raised "substantial arguments for dismissal of many, if not all, of the claims asserted"). And, in any event, Defendants seek dismissal of *all* of Plaintiffs' claims, and the Motion to Dismiss is accordingly "potentially dispositive" of the entire case. *ITT Corp.*, 2012 WL 2944357, at *4 (granting stay); *contra Conservation L. Found.*, 2023 WL 4706815, at *4 (denying motion to stay where dispositive motion "address[ed] only nine of the twelve remaining claims").

2. Strength of Specific Claims

The bulk of Plaintiffs' Opposition is directed to arguing why they believe their claims will survive the Motion to Dismiss. As discussed above, this analysis is directed at the wrong standard,

which instead asks whether the Motion to Dismiss has a foundation in law, not whether the Court agrees the motion will be granted. *See Ameti*, 2016 WL 10490528, at *2. Regardless, Plaintiffs' arguments fail to undermine the strength of Defendants' Motion to Dismiss.

As an initial matter, Plaintiffs complain that Defendants did not recapitulate the grounds for the Motion to Dismiss in the Motion to Stay. Opposition at 8–9. But the best statement of the grounds for Defendants' Motion to Dismiss is the memorandum of law supporting that motion. *See id.* at *2 (reviewing memorandum of law to assess strength of motion); *BBAM Aircraft Mgmt. LP v. Babcock & Brown LLC*, No. 3:20-cv-1056 (OAW), 2022 WL 3716574, at *12 (D. Conn. Aug. 29, 2022) (evaluating strength of dispositive motion based on review of briefing). Restating Defendants' grounds for dismissal in a separate pleading does nothing to explain the strength of those arguments. As to the arguments Plaintiffs choose to address in the Opposition, they fail to establish that Defendants' substantial grounds for seeking dismissal are without foundation in law.

First, Plaintiffs contend that their state-law claims will not be preempted by ERISA as to three of the four defendants because they "arise from misconduct unrelated to the terms of the plan itself." Opposition at 10. But as Defendants explain in the Motion to Dismiss, all of Plaintiffs' claims are based on alleged misconduct related to the benefits available to Plaintiffs under their ERISA-governed insurance contract with Anthem. *See* Motion to Dismiss at 15. The cases on which Plaintiffs rely to suggest ERISA will not preempt these claims are thus all readily distinguishable. *See Guardian Flight LLC v. Aetna Life Ins. Co.*, 789 F. Supp. 3d 214, 238 (D. Conn. 2025) (claim for payment by non-contracted air ambulance provider, not a core ERISA entity); *Geller v. Cnty. Line Auto Sales, Inc.*, 86 F.3d 18, 23 (2d Cir. 1996) (non-employee not eligible for fraudulently obtained plan benefits); *Cigna Health & Life Ins. Co. v. BioHealth Lab'ys, Inc.*, No. 3:19-CV-01324 (JCH), 2025 WL 1450727, at *9 (D. Conn. May 20, 2025) (unjust

enrichment claim arose as "a dispute between a plan administrator and a medical provider, which is not a core ERISA entity" and a "relationship ERISA did not intend to govern at all").

Second, as to their fraud-based claims, Plaintiffs assert generally that they have alleged Defendants' "false statements" induced them to enroll and confer a benefit on Defendants, Opposition at 10–11, but Plaintiffs do not grapple with the specific factual deficiencies in their allegations Defendants identify in the Motion to Dismiss. Motion to Dismiss at 20–22, 23–26.

Third, Plaintiffs contend their unjust enrichment claim should survive because the Second Circuit allows pleading unjust enrichment in the alternative to a contract claim. Opposition at 11. But Plaintiffs' argument ignores that Elevance and Carelon seek dismissal for an entirely separate reason—the lack of any benefit conveyed on them as parties not in privity with Plaintiffs, Motion to Dismiss at 26–27—and as to Anthem, misreads the applicable Connecticut authorities, which *substantively* preclude the viability of an unjust enrichment claim under state law where the unjust enrichment claim itself incorporates allegations of breach of a contract, *id*. at 28.

Fourth, Plaintiffs assert they adequately allege contractual violations under state law and ERISA. Opposition at 11. But as Defendants explain in the Motion to Dismiss, Plaintiffs fail to identify any specific contractual provision or language Defendants breached, which they must do to establish either a breach of contract or entitlement to benefits under ERISA. Motion to Dismiss at 16–18, 32–34. And while Plaintiffs contend they were not required to plead exhaustion to allege claims for benefits under ERISA, Opposition at 11, caselaw says otherwise. Motion to Dismiss at 30–31; *see Neurological Surgery, P.C. v. Aetna Health, Inc.*, 511 F. Supp. 3d 267, 293 (E.D.N.Y. Jan. 4, 2021) ("Courts within the Second Circuit routinely dismiss ERISA claims . . . on a 12(b)(6) motion to dismiss where the plaintiff fails to plausibly allege exhaustion of remedies.") (internal quotation marks omitted).

Last, Plaintiffs contend their breach of fiduciary duty claim will survive because the Mazzolas allege Defendants made misstatements to them after their enrollment in an Anthem plan. Opposition at 12. But Plaintiffs ignore the crux of Defendants' argument, which is that Plaintiffs' allegation that Defendants misrepresented the availability of providers to "increase enrollment" in its plans is necessarily and by definition directed to non-participants, and thus is not undertaken in a fiduciary capacity and did not violate any fiduciary duty imposed by ERISA. Motion to Dismiss at 35–36. And Plaintiffs' arguments under the Mental Health Parity and Addiction Equity Act are based on a misreading of the cases they rely on and inapplicable regulations. *See Bushell v. UnitedHealth Grp. Inc.*, 17-cv-2021 (JPO), 2018 WL 1578167, at *5 (S.D.N.Y. Mar. 27, 2018) (finding plausible disparity based on categorical exclusion of certain treatments for behavioral health not applied to analogous medical/surgical benefits, not "disparate results"); *Gallagher v. Empire HealthChoice Assurance, Inc.*, 339 F. Supp. 3d 248, 258 (S.D.N.Y. 2018) (same); 89 FR 77586, 77653 (Sept. 23, 2024) (explaining that 29 C.F.R. § 2590.712(c)(4)(iii) requirements are applicable only to plan years beginning on or after January 1, 2026).

Plaintiff has already acknowledged the strength of Defendants' arguments by seeking to replead in the face of Defendants' motion to dismiss the original complaint. Plaintiffs' arguments do little to suggest their amended claims will fare better, and fail entirely to show that Defendants' arguments for dismissal are "without foundation in law.'" *Ameti*, 2016 WL 10490528, at *2.

3. Elevance's Jurisdictional Challenge

Plaintiffs also challenge Defendants' argument that Elevance is not subject to personal jurisdiction in Connecticut, such that subjecting Elevance to discovery would violate its due process rights. Plaintiffs contend they have adequately alleged a *prima facie* case of personal jurisdiction of Elevance and that a stay would not be warranted because Plaintiffs could seek third-party discovery of Elevance, even if Elevance is dismissed. Opposition at 13. Plaintiffs are wrong.

As to their personal jurisdiction argument, Plaintiffs assert that their allegations that Elevance owns Anthem and controls aspects of Anthem's operations is sufficient to subject Elevance to personal jurisdiction in Connecticut. But personal jurisdiction over a foreign parent is appropriate only where sufficient facts are alleged to pierce the corporate veil between parent and subsidiary. *Shanshan Shao v. Beta Pharma, Inc.*, No. 3:14-CV-1177 (CSH), 2019 WL 7882485, at *10 (D. Conn. Sept. 23, 2019). Among other facts Plaintiffs do not—and cannot—plead, Connecticut law requires a showing that the subsidiary is a "mere shell" that is "used primarily as an intermediary to perpetrate fraud or [to] promote injustice." *Deutsche Bank AG v. Sebastian Holdings*, 346 Conn. 564, 593 (2023) (alteration in original). Plaintiffs plead no such facts because none exist. Elevance is not subject to this Court's jurisdiction.

Plaintiffs also contend Elevance's argument for dismissal does not warrant a stay because they could still pursue discovery against Elevance in a third-party capacity. Opposition at 13. But the case Plaintiffs rely on to suggest that a stay is not warranted if discovery may be pursued against the defendant did not involve a jurisdictional challenge; the movant was subject to jurisdiction in the forum state. *See Covenant Imaging, LLC v. Viking Rigging & Logistics, Inc.*, No. 3:20-CV-00593 (KAD), 2020 WL 5411484, at *1 (D. Conn. Sept. 9, 2020) (movant previously dismissed for lack of personal jurisdiction re-added as defendant after venue transfer). While Plaintiffs might seek discovery from Elevance, Elevance will not be subject to discovery *in Connecticut*, and will be entitled to defend against such discovery in the forum where it is located, subject to procedural protections afforded to third parties against overly burdensome discovery.

Thus, contrary to Plaintiffs' argument, Opposition at 13, jurisdictional challenges warrant stays of discovery in this Circuit even where not all defendants seek dismissal on jurisdictional grounds. *See Ruilova v. 443 Lexington Ave, Inc.*, No. 19-CV-5205 (AJN), 2020 WL 8920699, at

*1 (S.D.N.Y. Mar. 20, 2020) (granting motion for stay of discovery brought by subset of defendants seeking dismissal for lack of personal jurisdiction); *Port Dock & Stone Corp. v. Oldcaster Ne., Inc.*, No. CV 05-4294 DRH ETB, 2006 WL 897996, at *2 (E.D.N.Y. Mar. 31, 2006) (granting motion for stay of discovery by two defendants seeking dismissal for lack of personal jurisdiction).

B. The Breadth of Plaintiffs' Discovery Weighs in Favor of a Stay

In arguing that the breadth of discovery sought does not favor a stay, Plaintiffs contend the discovery they have propounded is "targeted" and "tailored" to their case and the plans Plaintiffs enrolled in. Opposition at 14. That claim is belied by the scope of discovery Plaintiffs actually propounded, which sought discovery as to all plans Anthem offered in Connecticut over a more than seven year period, not only those in which Plaintiffs enrolled, including extensive information about compliance, regulatory communications, member communications and complaints, cost and pricing, utilization management, and profit and revenue data. Motion at 3, 6. And the vast majority of this extensive discovery Plaintiffs seek has nothing to do with Plaintiffs' individual claims and would be relevant only if a class is eventually certified in this case. Yet Plaintiffs entirely ignore the authorities recognizing that pre-certification discovery in the class context presents substantial risks of overly burdensome and unnecessary discovery that supports entry of a stay. *See, e.g.*, *DePaul v. Kimberly-Clark Corp.,* No. 3:24-CV-271 (KAD), 2025 WL 2256307, at *3 (D. Conn. Aug. 7, 2025). Defendants' motion is thus "the paradigmatic stay motion, in which a defendant seeks a stay at the beginning of the case to avoid all discovery expense" associated with claims that are subject to dismissal. *See Conservation L. Found.*, 2023 WL 4706815, at *4.

Plaintiffs also suggest that the "appropriate way" to address any concerns about the scope and burden of their requested discovery is to object, meet and confer, and engage in motion practice. Opposition at 14. But it is clear that the breadth and corresponding burden of Plaintiffs'

discovery is a relevant factor in assessing the propriety of a stay. *See ITT Corp.*, 2012 WL 2944357 at *2–3. Plaintiffs elected to serve extensive discovery knowing that Defendants intended to seek dismissal of their Amended Complaint, and they cannot now complain that the breadth of that discovery is a relevant consideration in whether to grant a stay. The breadth and burden of Plaintiffs' extensive, class-wide, pre-certification discovery, weighs in favor of a stay.

C. Lack of Prejudice to Plaintiffs Weighs in Favor of a Stay

The only prejudice Plaintiffs argue they might suffer as a result of a stay is the assertion that a stay "will make it more likely that employees responsible for [at-issue] plans and communications will have moved on and thus become outside the control of Defendants." Opposition at 15. This purported concern, however, is entirely speculative, and Plaintiffs make no effort to establish any actual or imminent risk of loss of evidence from what is unlikely to be a lengthy stay. Rather, the "suggestion of prejudice" from potential loss of witness testimony during the likely brief pendency of any stay "does not countervail" the burden and expense of Plaintiffs' discovery. *See ITT Corp.*, 2012 WL 2944357, at *3–4 (granting stay notwithstanding argument that testimony of elderly witnesses could be lost). And "[a] stay pending determination of a dispositive motion that potentially eliminates the entire action will neither substantially nor unduly delay the action, should it continue." *Spencer Trask Software*, 206 F.R.D. at 368. Plaintiffs have thus failed to establish any prejudice that would weigh against the requested stay of discovery.

For these reasons, Defendants' Motion to Stay Discovery should be granted.

Dated: February 27, 2026

Respectfully Submitted,

By: /s/ *Stefanie Cerrone*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by CM/ECF to all counsel of record on February 27, 2026.

/s/ Stefanie Cerrone
Stefanie Cerrone

Exhibit A

K&L GATES

April 26, 2023

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Via ECF

Hon. Analisa Torres, U.S.D.J.
United States District Court
for the Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *McAuley v. The Honey Pot Company, LLC*, Case No. 1:23-cv-01986

Dear Judge Torres:

On behalf of Defendant The Honey Pot, LLC ("Honey Pot"), we write to request an adjournment of the deadline to submit the proposed Case Management Plan and Scheduling Order, which is currently set for May 8, 2023. Neither party has previously requested an adjournment of this deadline.

Honey Pot's deadline to file its responsive pleading is May 19, 2023, and it is Honey Pot's position that Plaintiff's complaint should be dismissed. Honey Pot will be serving a pre-motion letter detailing its objections to Plaintiff's complaint on Plaintiff's counsel shortly. If Plaintiff does not concur with Honey Pot's objections, Honey Pot will be filing a pre-motion letter with the Court seeking permission to file a motion to dismiss by the May 19, 2023 deadline. Honey Pot requests that the deadline to submit the proposed Case Management Plan be adjourned until after the Court decides the issues to be presented by Honey Pot in the forthcoming pre-motion letter and, if Honey Pot's request to file a motion to dismiss is granted, until after the motion to dismiss is decided. Plaintiff's counsel consents to adjourn the deadline until after Honey Pot files its pre-motion letter with the Court, but Plaintiff does not consent to the longer adjournment requested by Honey Pot.

Honey Pot recognizes the Court's preferences as stated in the form Civil Case Management Plan that motions to dismiss will not stay discovery. However, Honey Pot requests an adjournment of the proposed Case Management Plan and Scheduling Order until after the Court considers Honey Pot's Motion to Dismiss because Honey Pot believes, and as will be set forth in its pre-motion letters and, if permitted, motion to dismiss, that Plaintiff lacks standing to bring the current action and, as a result, the Court lacks subject matter jurisdiction. Thus, Honey Pot requests that the Court consider the unique circumstances presented here and grant the adjournment requested by Honey Pot.

We appreciate Your Honor's attention and courtesies.

Respectfully submitted,

/s/ Loly Garcia Tor

Loly Garcia Tor

cc: All counsel of record

DENIED. By **May 8, 2023**, the parties shall file their joint letter and a proposed case management plan.

SO ORDERED.

Dated: April 28, 2023
New York, New York

ANALISA TORRES
United States District Judge