IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: ZELIS REPRICING ANTITRUST LITIGATION This Document Relates To: All Actions	Lead Action Case No.: 1:25-cv-10734-BEM *Consolidated with Case Nos.:* *1:25-CV-11092-BEM* *1:25-CV-11167-BEM* *1:25-CV-11537-BEM*

ELEVANCE HEALTH, INC.'S MOTION FOR LEAVE TO SEAL CONFIDENTIAL INFORMATION

Pursuant to Local Rule 7.2, Defendant Elevance Health, Inc ("Elevance Health") respectfully moves this Court for Leave to File Under Seal four exhibits attached to the Declaration of Scott Hicks in support of Elevance Health's forthcoming Motion to Compel Arbitration and Stay Action. As set forth in the accompanying Memorandum, which is incorporated herein by reference, the exhibits attached to Mr. Hick's Declaration include (1) a highly confidential agreement between Elevance Health's subsidiary Anthem Blue Cross of California and American Specialty Health ("ASH") Plans of California, Inc., and American Specialty Health Group, Inc., dba ASHG Administrators, which contains financial and competitively sensitive information that, if disclosed, would lead Elevance Health's subsidiary to suffer severe economic harm, (2) provider services agreements between Plaintiff Danny Bachoua Chiropractic, APC ("DBC") and ASH that Plaintiff's counsel is currently reviewing for potentially sensitive, confidential information. To safeguard the confidentiality interests of Elevance Health and its subsidiary as well as the potential confidentiality interests of Plaintiff DBC and third-party ASH should they wish their agreements to remain sealed during this litigation, Elevance Health respectfully asks that the Court grant this Motion and impound the sealed documents until further order of this Court.

LOCAL RULE 7.1(a)(2) CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), undersigned counsel hereby certifies that counsel for Elevance Health conferred with counsel for DBC via telephone on August 11, 2025 and attempted in good faith to resolve or narrow the issues presented in this motion, and Counsel for DBC informed undersigned counsel that they are unable to take a position on this motion pending review of the agreements Elevance Health seeks to impound.

Dated: August 11, 2025

Respectfully submitted,

By: /s/ *Maria Durant*

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Counsel for Defendant Elevance Health, Inc.

CERTIFICATE OF SERVICE

I, Olga Fleysh attorney for the Defendants listed below, certify that, on August 11, 2025, I caused a copy of the foregoing motion and memorandum and exhibits in support thereof to be served, via ECF, on all counsel of record.

/s/ Olga Fleysh
Olga Fleysh

Counsel for Defendant Elevance Health, Inc.

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IN RE: ZELIS REPRICING ANTITRUST LITIGATION This Document Relates To: All Actions	Lead Action Case No.: 1:25-cv-10734-BEM *Consolidated with Case Nos.:* *1:25-CV-11092-BEM* *1:25-CV-11167-BEM* *1:25-CV-11537-BEM*

MEMORANDUM OF LAW IN SUPPORT OF ELEVANCE HEALTH, INC.'S MOTION TO SEAL CONFIDENTIAL INFORMATION

Defendant Elevance Health, Inc. ("Elevance Health") hereby moves that this Court to seal four exhibits attached to the Declaration of Scott Hicks in support of Elevance Health's forthcoming Motion to Compel Arbitration and Stay Action on grounds that the exhibits include (1) highly confidential and competitively sensitive information of Elevance Health's subsidiary and (2) provider service agreements executed by Plaintiff Danny Bachoua Chiropractic, APC ("DBC") that Plaintiff's counsel is currently reviewing for potentially sensitive, confidential information that it may wish this Court to seal.

INTRODUCTION

On March 28, 2025, DBC, along with other Plaintiffs, filed its initial complaint against Elevance Health and other payor Defendants in this action. DBC gave no prior notice to Elevance Health that it planned to file a complaint against Elevance Health and payor Defendants. On June 11, 2025, DBC joined an amended consolidated Complaint against the same Defendants, which is now the operative Complaint in this case. *See* Dkt. No. 39. DBC and other Plaintiffs filed this lawsuit on behalf of themselves and a purported class of similarly situated parties with the Court, asserting violations of § 1 of the Sherman Act. *See id.* DBC and other Plaintiffs have named as a

defendant Elevance Health, which is the ultimate parent company of Anthem Blue Cross of California ("Anthem Blue Cross"), the entity that administers Blue Cross-branded health plans in California.

Elevance Health now brings a motion to compel arbitration of DBC's claims pursuant to a handful of arbitration provisions in the following contracts: the provider services agreements between (1) American Specialty Health ("ASH") Plans of California, Inc. and DBC (Ex. 1); (2) American Specialty Health Networks of California, Inc., and DBC (Ex. 2); and (3) the vendor agreement between Anthem Blue Cross and ASH (Ex. 4). Elevance Health must attach these agreements—and their signature pages (Ex. 3)—in order to provide the Court sufficient evidence of the authenticity and relevant terms of the arbitration agreements justifying their Motion to Compel Arbitration and Stay Action..

Exhibits 4 contains Anthem Blue Cross's competitively sensitive reimbursement arrangements, financial terms, and pricing as well as third-party ASH's competitively sensitive information. If the contents of this contract were to be made public, including to competitors and other providers with whom Anthem Blue Cross and ASH negotiate, Anthem Blue Cross and ASH would suffer substantial harm to their competitive position. Elevance Health, Anthem Blue Cross of California's parent company, respectfully requests that the court seal Exhibit 4. Lead counsel for Plaintiffs stated during a meet and confer that they were unable to provide a position on the Motion to Seal and are attempting to reach Plaintiff Bachoua's personal counsel to determine if they deem the provider services agreements sufficiently confidential and desires them to be filed under seal. Moreover, Exhibits 1-2 have been marked "confidential" by ASH, so Elevance Health is also filing those Exhibits under seal to give opposing counsel an opportunity to respond.

LEGAL STANDARDS

While "[t]he common law presumes a right of public access to judicial records[,]" *Siedle v. Putnam Investments, Inc.*, 147 F.3d 7, 9 (1st Cir. 1998), it is widely recognized that this right is "not unfettered," *id.* at 10; *see Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) ("It is uncontested, however, that the right to inspect and copy judicial records is not absolute."); *In re Gitto Glob. Corp.*, 422 F.3d 1, 6 (1st Cir. 2005) ("[T]he right of access is not absolute."). Significant "countervailing interests" can "overwhelm the usual presumption and defeat access." *Siedle*, 147 F.3d at 10.

The party seeking to file a document under seal bears the burden of persuasion. *See Dahl v. Bain Cap. Partners, LLC*, 891 F. Supp. 2d 221, 224 (D. Mass. 2012). When a party moves to seal documents or objects to their unsealing, a court must "carefully balance the competing interests that are at stake in the particular case." *Siedle*, 147 F.3d at 10; *see Dahl*, 891 F. Supp. 2d at 224. This balance must be struck "in light of the relevant facts and circumstances of the particular case." *F.T.C. v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 410–11 (1st Cir. 1987) (quoting *Nixon*, 435 U.S. at 599) (internal quotation marks omitted). For example, in exercise of their discretion, courts have abrogated the right of public access when needed to prevent the manipulation of judicial records "to gratify private spite or promote public scandal," or to inhibit their records from becoming "reservoirs of libelous statements for press consumption or . . . sources of business information that might harm a litigant's competitive standing." *In re Gitto Global Corp.*, 422 F.3d at 6 (quoting *Nixon*, 435 U.S. at 598) (internal quotation marks omitted) (emphasis added). Courts have long recognized that public access may be denied to prevent competitive harm that could result from the disclosure of confidential business information. *See, e.g.*, *Nixon*, 435 U.S. at 598 ("[C]ourts have refused to permit their files to serve as sources of

business information that might harm a litigant's competitive standing." (citation modified)); *Glass Dimensions, Inc. v. State St. Corp.*, No. 10-10588, 2013 WL 6280085, at *1 (D. Mass. Dec. 2, 2013) ("Defendants . . . have a legitimate and significant interest in protecting the sensitive business information in the spreadsheet and in protecting the redacted information in the various documents. Maintaining the spreadsheet under seal and continuing the redaction of the foregoing information will avoid the serious competitive injury that dissemination would more than likely entail." (citation omitted)).

ARGUMENT

Elevance Health's interest in preventing the severe economic harm to Anthem Blue Cross that would result from the public disclosure of its confidential business information substantially outweighs any right to public access to these specific and detailed contracts. Hicks Decl. ¶ 10. Elevance Health has a strong interest in preventing the disclosure of confidential business information that could cause severe competitive harm if disclosed. Moreover, the agreement contains sensitive information of nonparties, who, as nonparties, deserve even higher protection. *See United States v. Kravetz*, 706 F.3d 47, 62 (1st Cir. 2013). The Court therefore should seal Exhibits 1–4[1].

I. In this Instance, the Weight of the Public's Right to Access to These Documents Is Low.

The main subject of Elevance's Motion to Compel Arbitration ("MTCA") of DBC's claims are the arbitration provisions in the provider services and vendor agreements, as well as a few other auxiliary provisions of those agreements that further shed light on the interpretation of the

[1] The signature pages have no independent basis for sealing, but rather are part-and-parcel of the provider services agreements. To the extent the provider services agreements are sealed in full, the signature pages should receive the same treatment.

arbitration provisions. *See* MTCA at 2–3. These provisions are spelled out in the Memorandum to the Motion to Compel Arbitration. The remaining terms and conditions of the agreements are not central to the motion and are therefore irrelevant. When, as here, irrelevant information is attached as an exhibit, the public's right to access judicial documents is low. *See Alto v. Sun Pharm. Indus., Inc.*, No. 19-cv-9758, 2021 WL 4480952, at *1 (S.D.N.Y. Sep. 30, 2021); *New York v. Egon Zehnder Int'l, Inc.*, No. 21-cv-6883, 2022 WL 4072853, at *1 (S.D.N.Y. Sep. 2, 2022); *see also Standard Fin. Mgmt. Corp.*, 830 F.2d at 408; *Cullem v. Ziev*, No. 16-12324, 2021 WL 517202, at *2 (D. Mass. Feb. 10, 2021). This is particularly true where the motion contains a statement of the same facts that are otherwise contained in a commercially sensitive document. *See Egon Zehnder*, 2022 WL 4072853, at *1.

II. Elevance Health's Countervailing Interests in Protecting Its Commercially Sensitive Information Outweigh the Public's Right of Access.

Elevance Health has an "[i]mportant countervailing interest" in preventing the disclosure of its subsidiary's confidential business information. *Siedle*, 147 F.3d at 10. Specifically, Elevance Health seeks protection of its subsidiary's (1) reimbursement arrangements, financial terms and pricing, and (2) third party information. Hicks Decl. ¶ 10.

A. Reimbursement Arrangements and Pricing

Reimbursement arrangements between a payor and its network of providers and are extremely competitively sensitive. For example, Exhibit E to the vendor agreement contains the rates that Anthem Blue Cross pays for access to ASH's provider network. Hicks Decl. Ex. 4 at Ex. E. "Courts have repeatedly protected from disclosure financial data showing pricing . . . where it could place movants at a competitive disadvantage." *Amgen Inc. v. Amneal Pharms. LLC*, No. 16-853, 2021 WL 4133516, at *3 (D. Del. Sep. 10, 2021), *vacated in part on other grounds*, 2021 WL 4843959 (D. Del. Oct. 18, 2021). Indeed, "[a] firm's 'confidential pricing information is routinely

given trade secret protection' because its disclosure can put the firm at a competitive disadvantage when competing with other firms for clients.'" *Ark. Tchr. Ret. Sys. v. State St. Bank & Tr. Co.*, 523 F. Supp. 3d 181, 195 (quoting *EMC Corp. v. Pure Storage, Inc.*, No. 13-12789, 2016 WL 7826662, at *6 (D. Mass. Aug. 19, 2016)); *see also In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) (finding that the district court abused its discretion in refusing to seal "pricing terms"). Sealing on this basis is necessary because "[d]isclosure of [pricing information] would provide competitors . . . with access to confidential and proprietary data from which they could deduce profit margins and adjust their marketing and pricing strategies to weaken the Movant's competitive position in the marketplace." *Amgen Inc.*, 2021 WL 4133516, at *3.

Importantly, this information does not lose its sensitive nature simply due to age. "[T]he mere passage of time does not automatically render [confidential] information stale." *Jim Hawk Trucker-Trailers of Sioux Falls, Inc. v. Crossroads Trailer Sales & Serv., Inc.*, 655 F. Supp. 3d 825, 845 (D.S.D. 2023) (citation omitted). So long as the information provides "any value" to the party seeking protection, unsealing is inappropriate. *Allstate Ins. Co. v. Fougere*, 581 F. Supp. 3d 307, 319 (D. Mass. 2022), *aff'd*, 79 F.4th 172 (1st Cir. 2023).

Anthem Blue Cross's vendor agreement includes financial and other terms and conditions. Hicks Decl. ¶ 10. For example, the vendor agreement between Anthem Blue Cross and ASH contains terms such as co-pays and "maximum visits per year." Hicks Decl. Ex. 4 at Ex. E-2. Uniquely negotiated contractual terms are exactly "the kind of information that is commonly protected from public exposure." *Roy v. FedEx Ground Package Sys., Inc.*, No. 17-cv-30116, 2023 WL 4186291, at *4 (D. Mass. June 26, 2023) (citation omitted). Anthem Blue Cross would suffer substantial competitive disadvantages in negotiating with other vendors or providers on this term if its agreements were disclosed. Similarly, if Anthem Blue Cross's competitors were to learn of

these terms, it could lose its competitive advantage in how it competes with and creates its provider networks.

The agreement also sets forth insurance and indemnification terms. Hicks Decl. Ex. 4 § 10.1. These terms provide Anthem Blue Cross with protection in the event of certain damages related to member injuries and liabilities. Accordingly, Anthem Blue Cross might want a larger provider that services more members to maintain more insurance than a small practice with only a few members. If this information were disclosed, providers and their networks could demand that Anthem Blue Cross lower its insurance levels to that of a smaller distributor, thereby reducing the amount of protection that Anthem Blue Cross has with respect to each provider or provider network.

Anthem Blue Cross's vendor agreement contains a wide array of uniquely negotiated terms that warrant protection to prevent each counter-party from seeking to renegotiate the agreements to Anthem Blue Cross and ASH's detriment.

B. Third-Party Confidential Information

Moreover, ASH is a third-party that contracts with providers and payors and is not before this court to protect its confidential and proprietary information contained in the vendor contract with Anthem Blue Cross, Hicks Decl. Ex. 4, or any similar confidential and proprietary information that may be contained in the provider services agreements with DBC, Hicks Decl. Exs. 1, 2. "Privacy rights of participants and third parties are among those interests which, in appropriate cases, can limit the presumptive right of access to judicial records." *Kravetz*, 706 F.3d at 62 (quoting *Standard Fin. Mgmt. Corp.*, 830 F.2d at 411); *see United States ex rel. Wenzel v. Pfizer, Inc.*, 881 F. Supp. 2d 217, 221 (D. Mass. 2012) (articulating this standard in a *qui tam* action). "Third-party privacy interests, in particular, have been referred to as a 'venerable common

law exception to the presumption of access,' and 'weigh heavily in a court's balancing equation.'" *Kravetz*, 706 F.3d at 62 (quoting *United States v. Amodeo*, 71 F.3d 1044, 1050–51 (2d Cir. 1995)). ASH's contracts with providers are marked "Confidential" and reflect negotiated arrangements with the providers in their network, which could put it at a competitive disadvantage if revealed to other providers or competitors. Given this heightened sense of protection, Elevance Health asks the Court both to seal confidential information relevant to third-party ASH in its vendor contract with Anthem Blue Cross as well as potential confidential information in ASH's provider services agreements with DBC that DBC's counsel may wish to keep sealed.

CONCLUSION

For the foregoing reasons, Elevance Health respectfully asks the Court to seal Exhibits 1–4 to the Declaration of Scott Hicks filed in support of its Motion to Compel Arbitration of Danny Bachoua Chiropractic, APC's claims.

Dated: August 11, 2025

Respectfully submitted,

By: /s/ *Maria Durant*

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CERTIFICATE OF SERVICE

I, Olga Fleysh attorney for the Defendants listed below, certify that, on August 11, 2025, I caused a copy of the foregoing motion and memorandum and exhibits in support thereof to be served, via ECF, on all counsel of record.

/s/ Olga Fleysh
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Counsel for Defendant Elevance Health, Inc.