UNITED STATES DISTRICT COURT
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*

AETNA INC.'S REPLY IN FUTHER SUPPORT OF ITS MOTION TO COMPEL ARBITRATION

I. Introduction

As explained in Aetna's Motion to Compel Arbitration, ECF No. 102 ("Mot."), Plaintiff Dr. Dennis C. Ayer, DDS, LLC ("Ayer") is bound to arbitrate his claims against Aetna because his claims "arise out of or relate to" his Dental Provider Agreement with Aetna, and he agreed to arbitrate any such "controversy or claim" via "binding arbitration." *See* ECF No. 103-1, Mot. Ex. A § 8.3. Dr. Ayer's Opposition, ECF No. 127 ("Opp.") attempts to avoid this straightforward result by ignoring sections of the contract that explicitly discuss Aetna's and Dr. Ayer's responsibilities as to Out of Network Services, by ignoring his own allegations that relate to the ability to seek additional payment from patients (as provided under the contract), and by misstating governing case law regarding arbitration. The Court should reject Dr. Ayer's attempt to avoid his obligations under the contract he signed, and should compel Dr. Ayer to arbitrate his claims against Aetna and stay his claims while arbitration proceeds.

II. Argument

"The [FAA] requires courts to enforce private arbitration agreements . . . . The FAA treats these agreements as 'contract[s], and courts must enforce arbitration contracts according to their

terms.'" *Barbosa v. Midland Credit Mgmt., Inc.*, 981 F.3d 82, 87 (1st Cir. 2020) (citation omitted). While the court reviews a motion to compel pursuant to the summary judgment standard, *Marks 3 Zet-Ernst Marks GmBh & Co. KG v. Presstek, Inc.*, 455 F.3d 7, 14 (1st Cir. 2006), there is no genuine issue of material fact, and all requirements for mandating arbitration under the FAA have been met. There is (1) "a valid agreement to arbitrate," (2) Aetna may "invoke the arbitration clause," (3) Dr. Ayer "is bound by that clause," and (4) Dr. Ayer's claims "come[] within the clause's scope." *Biller v. S-H OpCo Greenwich Bay Manor, LLC*, 961 F.3d 502, 508 (1st Cir. 2020) (quoting *Dialysis Access Ctr., LLC v. RMS Lifeline, Inc.*, 638 F.3d 367, 375 (1st Cir. 2011)). Dr. Ayer does not contest the first two elements, Opp. at 3-4, and accordingly concedes these points. *See Kelly v. Riverside Partners, LLC*, 964 F.3d 107, 116 (1st Cir. 2020). Dr. Ayer only challenges the latter two elements, arguing that (1) his claims are outside the scope of the arbitration clause, and (2) that he did not agree to arbitrate his claims. Both arguments fail.

A. Dr. Ayer's Claims Fall Within the Scope of the Agreement

Dr. Ayer appears to acknowledge, as he must, that the arbitration clause in his contract with Aetna applies to any claims related to "Aetna's payments for in-network services" and "in-network claims, or individuals covered by or enrolled in a Plan (Members) for Covered Services." Opp. at 4. But Dr. Ayer suggests that his claims are not covered by the arbitration clause because they relate to Aetna's alleged underpayment for *out-of-network* services.

In so doing, Dr. Ayer ignores multiple portions of the agreement that govern Aetna's and Dr. Ayer's responsibilities as to out-of-network services. For instance, under Section 4.3.1, Dr. Ayer agreed in certain circumstances to "extend discounts on services that are not Covered Services." Aetna and Dr. Ayer further agreed that Dr. Ayer could in certain circumstances

voluntarily "apply the negotiated rate for such services." ECF No. 103-1. Mot. Ex. A § 4.3.1.[1] That is, the contract includes multiple provisions relating to the payment terms for out-of-network services. In addition, as Dr. Ayer acknowledges, Section 4.3.1 of the agreement also governs Dr. Ayer's ability to bill Aetna's members directly for "services that are not Covered," providing that Dr. Ayer may bill members for such services so long as "(i) the Member's Plan provides and/or Company confirms that the specific services are not Covered Services; (ii) the Member was advised in writing prior to services being rendered that the specific services may not be Covered Services; and (iii) the Member agreed in writing to pay for such services after being so advised." *Id.* Thus, the contract explicitly defines the process by which Dr. Ayer can seek additional payment for OON services if he was not satisfied with the amount that Aetna paid.

At its core, Dr. Ayer's claimed injury in this case is that he was underpaid by Aetna and other providers for OON services and was unwilling to recuperate that underpayment by billing members directly. *See* ECF No. 39, Amended Consolidated Complaint ("ACC") ¶¶ 6, 115, 197-99. There can be no doubt that such a claim "aris[es] out of ***or relat[es] to***" his Agreement. ECF No. 103-1. Mot. Ex. A § 8.3. Regardless, even if there was some ambiguity (there is not), "[t]he Supreme Court [has] made clear that where an agreement to arbitrate some issues exists, and there is a dispute over the scope of the arbitration agreement, the law requires that those matters be presumed to be arbitrable 'unless it is clear that the arbitration clause has not included them.'" *Bosse v. N.Y. Life Ins. Co.*, 992 F.3d 20, 31 (1st Cir. 2021) (citation omitted).

Dr. Ayer argues that § 4.3.1 of his Agreement is not relevant because that section "refers to a practice known as balance billing, where a Provider bills a patient for OON healthcare services

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[1] Section 2 of the Primary Dentist Compensation Schedule attached to Dr. Ayer's Agreement, Mot. Ex. A at 26, and the fee schedule attached to Dr. Ayer's opposition, ECF No. 127-2 at 6, contain similar language.

that are not covered by their insurance provider," and his claim does not relate to "whether or how Ayer may balance bill his patients." Opp. at 5. This retelling ignores Dr. Ayer's own allegations that are pivotal to bringing his claim. In particular, the complaint acknowledges, as it must, that "the Provider also had the option of recouping the balance for OON services from the patient (so-called 'balance billing')." ACC ¶ 115. If Dr. Ayer did recoup any alleged underpayment, there could be no injury and therefore no claim. Indeed, as discussed in Defendants' motion to dismiss, courts have repeatedly dismissed on standing grounds very similar antitrust claims brought by providers, finding that the providers' asserted injuries are derivative—including because the providers could seek unpaid portions by balance-billing their patients. ECF No. 97 at 16-17 (collecting cases). In an attempt to avoid such a result in this case, Dr. Ayer made a number of allegations suggesting that "Providers don't feel they have the option to go after patients for the full amount." ACC ¶ 345. Those allegations run directly into the language of Dr. Ayer's agreement, where he explicitly agreed to advise Aetna's members that the specific OON services may not be covered, and to ensure that the member "agreed in writing to pay for such services after being so advised." Mot. Ex. A § 4.3.1. While these allegations are not sufficient to support antitrust standing, they demonstrate that Dr. Ayer's claims do relate to "whether or how Ayer may balance bill his patients," Opp. at 5, and therefore "arise out of or relate to" his Agreement.

Dr. Ayer's arguments regarding the scope of the FAA largely mirror his arguments regarding the scope of the Agreement itself. Opp. At 5-7 (arguing that the claims "do not arise out of or relate to" his agreement, as required by the FAA). For the same reasons stated above, those arguments fail. Dr. Ayer's citation to the out-of-circuit *Davitashvili* case is inapposite. In *Davitashvili*, the court held that Grubhub's arbitration agreement did not encompass the plaintiffs' claims because the agreement concerned plaintiffs' use of *Grubhub's* platform, while the

plaintiffs' claims were about use of *other* platforms. *See Davitashvili v. Grubhub Inc.*, 131 F.4th 109, 119 (2d Cir. 2025). The plaintiffs' antitrust claims were "based solely on purchases made directly from restaurants or from non-defendant meal-delivery platforms," and "specifically exclude[d] any purchases made" through Grubhub. *Davitashvili v. Grubhub Inc.*, 2023 WL 2537777, at *10 (S.D.N.Y. Mar. 16, 2023). Here, Dr. Ayer complains about *Aetna's* reimbursement for OON claims and his alleged unwillingness to charge customers when he was not satisfied with the amount of that reimbursement. Dr. Ayer's signed Agreement explicitly relates to Aetna's reimbursement for OON claims and Dr. Ayer's ability to charge patients directly if he is not satisfied with that reimbursement. Accordingly, his claims fall within the scope of the agreement and of arbitration under the FAA.

B. Dr. Ayer is Contractually Bound to Arbitrate his Claims

Largely repeating his arguments addressed above, Dr. Ayer also argues that he did not agree to arbitrate claims related to OON services. Opp. at 8. Under Kansas law[2], the "interpretation of a written contract is a question of law." *Jones v. Reliable Sec. Incorporation, Inc.*, 29 Kan. App. 2d 617, 626 (2001). Dr. Ayer does not allege, nor can he, that he did not sign the Dental Provider Agreement with Aetna. Instead, Dr. Ayer attempts to re-write the terms of the contract and argues that "there is no connection whatsoever between Aetna's network agreement and Ayer's OON antitrust claims." Opp. at 8. But "[a] party who signs a written contract is bound by its provisions regardless of the failure to read or understand the terms, unless the contract was entered into through fraud, undue influence, or mutual mistake." *Albers v. Nelson*, 248 Kan. 575, 579 (1991). Dr. Ayer does not contend fraud, undue influence, or mutual mistake affected his

[2] Dr. Ayer agrees that Kansas law governs interpretation of the contract. Opp. at 8.

contract with Aetna. Nor can Dr. Ayer avoid arbitrating what amounts to a claims payment dispute, merely by casting that claim as one sounding in antitrust law.

Dr. Ayer's argument about what a "reasonable person would think" is inapplicable. "A contract . . . is not ambiguous simply because the parties disagree about its meaning." *Andra v. Lean P. Peebler Revocable Tr.*, 2012 WL 4937465, *3 (Kan. Ct. App. 2012). And "[w]here a [] contract is not ambiguous, the courts will not make another contract for the parties but will enforce the contract as written." *Jones v. Reliable Sec. Incorporation, Inc.*, 29 Kan. App. 2d at 627. As discussed above, there is no ambiguity in the arbitration clause, or in the terms of the Agreement. However, even if the court were to embrace this reasonable person standard, Dr. Ayer admits that "a reasonable person would be expressing, at most, an intent to agree to arbitrate disputes ***connected in some way*** to the network agreement." Opp. at 8. Dr. Ayer's claims that he was underpaid by Aetna for OON services and was unwilling to recuperate that underpayment by billing members are certainly "connected in some way" to his agreement that includes multiple provisions relating to out-of-network services and the process by which Dr. Ayer can seek additional payment from members for OON services if he was not satisfied with the amount that Aetna paid. And "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration[.]" *Bosse*, 992 F.3d at 31 (citations omitted). The court should compel arbitration.

III. Conclusion

For the foregoing reasons, the Court should compel Dr. Ayer to arbitrate his claims against Aetna and stay his action against Aetna until any arbitration has been completed.

Dated: October 20, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 20th day of October, 2025, the foregoing was filed with the Court's electronic filing system, which will send electronic notice of this filing to all counsel of record.

/s/ Katherine Trefz
Katherine Trefz