UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: ZELIS REPRICING ANTITRUST LITIGATION This Document Relates To: All Actions	**REQUEST FOR ORAL ARGUMENT** 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* Leave to file granted on October 7, 2025

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT HUMANA INC.'S MOTION TO DISMISS PLAINTIFFS' AMENDED AND CONSOLIDATED CLASS ACTION COMPLAINT

Plaintiffs' Opposition (Dkt. 130 ("Opp.")) failed to engage with the core issue in Humana's Motion (Dkt. 99): it's implausible that Humana joined the alleged conspiracy. Plaintiffs' Opposition provides no response at all to the fatal defect that Plaintiffs failed to allege when Humana joined their alleged conspiracy nor even whether that unidentified date predates when Humana began exiting commercial insurance. Moreover, Plaintiffs offer no reason to believe Humana's use of Zelis resulted from a conspiracy with competitors, rather than being a legitimate unilateral business decision.

Instead, the Opposition focuses on irrelevant legal issues and improperly raises new allegations that are not in the Complaint and in any event are insufficient to render Humana's participation in the alleged conspiracy plausible. First, Plaintiffs' Opposition focuses on whether Humana's exit constituted withdrawal—rather than on whether Humana plausibly joined a conspiracy in the first place—and attacks the allegations in Plaintiffs' own Complaint. Second, notwithstanding the many reasons Plaintiffs' own Complaint provides why it would be in Humana's unilateral interest to use Zelis, Plaintiffs' Opposition invents a second conspiracy involving Availity and Zelis and attempts to elevate allegations that past courts have found to be innocuous by drawing unsupported inferences.

Plaintiffs' claims against Humana should thus be dismissed with prejudice.

I. Plaintiffs' Withdrawal Arguments Are Irrelevant Because Humana Never Joined the Alleged Conspiracy.

Plaintiffs' own Complaint pleads that Humana "ceased issuing health insurance plans as of the end of 2024." Compl. ¶ 37. Plaintiffs argue that Humana's exit from commercial insurance does not meet the standard for withdrawal (Opp. at 1–3), but this is irrelevant: the issue is that it "makes no economic sense" that Humana joined a conspiracy in the first place in light of its impending exit from that business. *Hu Honua Bioenergy, LLC v. Hawaiian Elec. Indus., Inc.*, 2018

WL 491780 at *15 (D. Haw. Jan. 19, 2018) (alleged conspiracy "makes no economic sense" when defendant was exiting the market at issue) (cleaned up). The Court should reject Plaintiffs' attempt to nitpick the exact date and scope of the exit that Plaintiffs themselves alleged by now claiming that "until the first half of 2025, Humana had not exited from selling 'Employer Group' commercial healthcare products" and that Humana "continues to provide such insurance." Opp. at 2; *see In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 533 F.3d 1, 6 n.3 (1st Cir. 2008) (holding that plaintiffs are bound to the allegations in their complaint). And doubly so when Plaintiffs' gymnastics include trying to construe the sentence "[n]o other Humana health plan offerings are materially affected"—in the middle of an annual report section titled "Employer Group Commercial Medical Products Business Exit"—to mean that Humana never exited. Opp. at 2; Kay Decl., Ex. 1 (Dkt. 100-1) at 72.

But even if it were (counterfactually) true Humana had not yet completed its exit, that does not change the implausibility of Humana having earlier entered a complex conspiracy in a business it was planning to exit. All payors have a legitimate unilateral business interest in reducing provider costs; that a payor used a tool that may have saved it money thus cannot support a conspiracy. *White v. R.M. Packer Co.*, 635 F.3d 571, 575–86 (1st Cir. 2011) (no conspiracy if conduct is consistent with unilateral legitimate business interests). Plaintiffs argue "a lone OON payer enters at its own peril into a repricing agreement with Zelis" because subscribers "would migrate to other, higher-paying PPO networks." Dkt. 129 at 24. But when a payor like Humana has no future in the business, this logic breaks down: whether out-of-network providers will be willing to see its patients in the future (where it has exited) is of no consequence. Humana Mot. at 3.

The Court should exercise particular care in implying the alleged hub-and-spoke conspiracy, which is based not on direct interactions between competitors, but rather a perfectly

lawful vertical agreement between Humana and a service provider with which it does not compete. *Gibson v. Cendyn Grp.*, 148 F.4th 1069, 1084 (9th Cir. 2025) (affirming dismissal of an algorithmic price fixing complaint while rejecting the notion that knowingly using the same software as a competitor inherently constitutes anticompetitive conduct). Knowledge that some competitors also use the same service is insufficient to find a conspiracy, because antitrust law "does not require a business to turn a blind eye to information simply because its competitors are also aware of that same information." *Id.* There is nothing more quintessentially in a company's unilateral self-interest than trying to save money as it exits a business. *See In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186, 1195 (9th Cir. 2015) (explaining that only "extreme action against self-interest . . . may suggest prior agreement . . . where individual action would be so perilous in the absence of advance agreement that no reasonable firm would make the challenged move without such an agreement"). With no 'rim' agreement connecting Humana to the other Commercial Payer Defendants, Plaintiffs' alleged hub-and-spoke conspiracy fails as a matter of law. *See In re Nexium (Esomeprazole) Antitrust Litig.*, 842 F.3d 34, 56–57 (1st Cir. 2016).

II. Plaintiffs' Improperly Raised Allegations Fail to Make the Alleged Conspiracy Plausible.

Lacking any response to Humana's Motion grounded in the Complaint, Plaintiffs now attempt to raise new, unpled allegations: (1) that Humana's participation in the alleged conspiracy is supported by Humana's alleged financial interest in a completely separate company, Availity, because it "facilitates supervision of Zelis and of the conduct of the conspiracy" and even "deters cheating and secret price discounts"; and (2) that Defendants "exchange[d] with each other and Zelis their confidential claims payments pricing practices." Opp. at 3–4. These allegations appear nowhere in the Complaint and must be disregarded. *See Glaros v. Perse*, 628 F.2d 679, 681 (1st Cir. 1980) ("[W]e must disregard these additional allegations, because in reviewing the dismissal of a complaint, our focus is necessarily limited to the allegations contained in the complaint

itself."); *Gordon-Johnson v. Clinical & Support Options, Inc.*, 766 F. Supp. 3d 319, 327 (D. Mass. 2025) ("[Plaintiff] may not now use her opposition brief to add new facts that she failed to plead in her Complaint."). Nor can these allegations be inferred from the cited allegations.

First, Plaintiffs' cited allegations describe Availity as "an electronic clearinghouse that specializes in Web-based, real-time healthcare transactions." *See* Compl. ¶¶ 232–35. As noted in Humana's Motion, Plaintiffs' exhibit, which merely references not having to log into multiple systems, contradicts the Complaint's conclusory allegation of a "symbiotic relationship, which includes confidential information sharing and most likely profit-sharing" between Zelis and Availity. Humana Motion at 5; Compl. ¶ 235. But, more fundamentally, Plaintiffs do not and could not allege anything about Availity providing one payor with claims information for other payors, which would be a necessary condition to infer the "supervision" that Plaintiffs now argue.

Second, Plaintiffs' assertion of confidential information sharing is similarly unsupported by allegations that two Zelis executives previously worked at Humana and that Humana is a member of a trade association with other Defendants. Compl. ¶¶ 82, 289. Employees routinely leave one company for another without sharing confidential information. *Credit Bureau Servs., Inc. v. Experian Info. Sols., Inc.*, 2013 WL 3337676, at *8 (C.D. Cal. 2013) (granting motion to dismiss Section 1 complaint that "merely names executives" that changed jobs). In fact, they are duty-bound to protect confidential information. *See e.g.*, *Koch Acton, Inc. v. Koller*, 2024 WL 1093001 at *10 (D. Mass. Mar. 13, 2024) ("The duty of loyalty [limits] a former employee's ability to use the employer's trade secrets or confidential information."). Similarly, employees cannot share a new employer's confidential information with an old one, which would violate the duty of loyalty to the current employer. *See e.g.*, *Cashman Dredging & Marine Contracting Co., LLC v. Belesimo*, 759 F. Supp. 3d 120, 149 (D. Mass. 2024) ("Employees who occupy positions of trust

and confidence, such as officers, directors, executives, or partners, owe a duty of loyalty to their employer and must protect the employer's interests[,]" including the "duty to maintain confidential information"). And belonging to the same trade association as a competitor does not render conspiracy plausible; Defendants are highly-regulated entities with many legitimate topics for discussion. *Bell Atl. v. Twombly*, 550 U.S. 544, 567 n.12 (2007).

Plaintiffs cite *Kraft Foods Global, Inc. v. United Egg Producers, Inc.* in support, but that case only serves to highlight the allegations missing here. 2023 WL 6065308 (N.D. Ill. Sep. 18, 2023). That court recognized that "[w]hen it comes to trade associations, guilt by association isn't a thing." *Id.* at *13. Rather, the court focused on:

- a relentless series of communications from the United Egg Producers ("UEP") to induce its members to restrict supply beginning with an express call to coordination, *id.* at *7 ("The increased egg production . . . will likely create a period of supply exceeding demand . . . . WORKING TOGETHER WE CAN CHANGE THIS!"),
- through to specifically reporting which companies were participating in supply restriction, *id.* at *12 ("UEP reported that companies [representing] 80% of the industry were committed to the Certified Program. The newsletter went on to list companies that had completed audits with passing grades that year.") (cleaned up), and
- finally to defendants' executives participating directly in deciding to recommend the supply restriction policies. *Id.* ("They sat on committees that ultimately developed, approved, and executed the conspiracy's price-fixing initiatives.").

Comparable allegations are absent here.

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Humana respectfully requests the Complaint be dismissed with prejudice.

Dated: October 20, 2025

Respectfully submitted,

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