**UNITED STATES DISTRICT COURT**
**DISTRICT OF MASSACHUSETTS**

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

**DEFENDANTS' REPLY IN SUPPORT OF THEIR JOINT MOTION TO DISMISS THE AMENDED AND CONSOLIDATED CLASS ACTION COMPLAINT**

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## INTRODUCTION

Plaintiffs' Opposition fails to rebut Defendants' multiple, independent arguments for dismissal. Rather than point to well-pleaded allegations establishing a "conspiracy" to fix OON payment amounts, the Opposition misstates the Complaint's allegations, attempts to deflect where key factual allegations are missing, and ignores binding precedent.

*First*, Plaintiffs' conspiracy allegations fail. Plaintiffs do not distinguish their horizontal conspiracy theory from the horizontal theory rejected in *In re MultiPlan Health Insurance Provider Litigation*, 2025 WL 1567835 (N.D. Ill. June 3, 2025) ("*MultiPlan*"). As in *MultiPlan*, Plaintiffs do not (and cannot) allege that Zelis (through the PPO or supplemental network services that it offers) pays any claims on an OON basis such that Zelis competes with the MCOs in the alleged market at issue. Plaintiffs' hub-and-spoke conspiracy theory is likewise fatally flawed—they allege no facts showing an agreement among the MCOs at the "rim" of the alleged conspiracy. And although the *MultiPlan* court allowed a hub-and-spoke claim to survive, it only did so by expressly rejecting *In re Nexium (Esomeprazole) Antitrust Litigation* ("*Nexium*"), which is binding here and requires dismissal. 842 F.3d 34, 56-57 (1st Cir. 2016). Despite Defendants' reliance on *Nexium*, Plaintiffs ignore it because they cannot meet its standard.

*Second*, the Opposition confirms that Plaintiffs lack Article III standing. The Complaint does not allege that any specific Defendant used Zelis to reprice a specific plaintiff's claim, as First Circuit precedent requires to establish standing. And Plaintiffs' alleged injury is too indirect: any alleged injury *derives from providers' choices* to accept or decline the offer Zelis presents.

*Third*, the Opposition does not establish that Plaintiffs' alleged injury—*lower* healthcare costs to MCOs and consumers from *lower* OON reimbursement—constitutes "antitrust injury," because they have not plausibly alleged reduced output of healthcare services.

*Fourth*, the Opposition confirms that Plaintiffs have not pleaded a relevant antitrust market.

Plaintiffs ask the Court to focus on *how* healthcare services are sold and purchased, but the method or amount of payment does not define the relevant market. Plaintiffs also fail to dispel the facial implausibility of the nationwide geographic market they have alleged.

At base, Plaintiffs simply complain that multiple MCOs use a common vendor. But as the Ninth Circuit recently held in dismissing a similar antitrust claim, the law does not require a competitor to decline to use a service because its competitors already do. *Gibson v. Cendyn Grp., LLC*, 148 F.4th 1069, 1084 (9th Cir. 2025). The Complaint should be dismissed with prejudice.

## ARGUMENT

### I. PLAINTIFFS FAIL TO PLAUSIBLY ALLEGE A CONSPIRACY

***No Plausible Horizontal Conspiracy.*** Plaintiffs' contention that Zelis and the MCOs are horizontal competitors fails because the Complaint does not plausibly allege that Zelis pays OON claims through the PPO or supplemental network services it offers. Plaintiffs try to overcome this by asserting that "Defendants acknowledge that Zelis operates PPOs" that "cover OON services." Opp'n 18. Not so. As the Motion explained, Zelis contracts with providers to form PPO or supplemental networks which it then leases to customers—*i.e.*, payors who decide whether to use those networks and who actually pay the claims. Mot. 9.

There is thus no meaningful distinction between Plaintiffs' allegations here and those that were insufficient in *MultiPlan* to support a horizontal conspiracy. As in *MultiPlan*, it is not enough to allege that Zelis and MCOs compete in the context of creating and selling PPO networks. *MultiPlan*, 2025 WL 1567835, at *12-13. Plaintiffs must allege that Zelis and MCOs compete in Plaintiffs' asserted market for OON reimbursement, and they have not done so. *Id.*[1]

[1] Plaintiffs also rely on dicta from two inapposite cases, neither involving a horizontal conspiracy, to further argue that Zelis is a "potential competitor[]" of the MCOs. Opp'n 18-19 (citing *Fraser v. Major League Soccer, LLC*, 284 F.3d 47 (1st Cir. 2002) (court did not reach the question whether defendant's operators and investors were competitors

***No Plausible Hub-and-Spoke Conspiracy.*** Plaintiffs also fail to plead a hub-and-spoke conspiracy to fix OON reimbursement rates because they fail to plausibly allege a "rim" agreement among the MCOs that allegedly use Zelis's repricing services. The First Circuit was clear in *Nexium* that, even if Plaintiffs adequately allege the "spokes" of a wheel, the absence of a "rim" means there can be no hub-and-spoke conspiracy. 842 F.3d at 56-57. *Nexium* is the critical distinction between this case and *MultiPlan*, which is an Illinois district court case and declined to follow *Nexium*. Yet Plaintiffs ignore *Nexium* altogether and fail to point to any factual allegations showing that the MCOs agreed with each other to use Zelis's repricing services to fix OON rates.

No direct evidence of a conspiracy. Plaintiffs concede that their only allegation of "direct evidence" is MCOs' bilateral service agreements with Zelis. Opp'n 26. But Zelis is not an MCO, and those agreements cannot establish a "rim" agreement among MCOs. *MultiPlan*, 2025 WL 1567835, at *14.[2]

No unlawful parallel conduct. Plaintiffs' alleged "circumstantial evidence" fares no better. Plaintiffs do not dispute that the Complaint fails to allege (1) when each Defendant began using Zelis's services; (2) which particular Zelis tool(s) each Defendant used (much less according to what parameters); (3) any Defendant's particular acceptance rate of Zelis's rate recommendations; or (4) parallel rates or price movements. Opp'n 21-23. Plaintiffs instead cite a string of Complaint paragraphs containing conclusory assertions that, at most, suggest conscious parallelism that does not violate Section 1. Opp'n 21 (repeatedly citing, *e.g.*, an allegation that Zelis has over 770 payor customers as evidence of parallel conduct); *Gibson*, 148 F.4th at 1083.

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in Section 2 case); *Am. Steel Erectors v. Loc. Union No. 7, Int'l Ass'n of Bridge, Structural, Ornamental & Reinforcing Iron Workers*, 815 F.3d 43 (1st Cir. 2016) (group boycott case finding no horizontal conspiracy)).

[2] Plaintiffs' reliance on *American Steel Erectors* reflects a fundamental misunderstanding—if not misrepresentation—of First Circuit law. Opp'n 26. Although the court noted that Section 1 liability *could potentially* extend to vertical relationships that "intersect with or give rise to an unlawful horizontal relationship" in the context of a group boycott case, the court held that *there was no horizontal conspiracy*. *Am. Steel Erectors*, 815 F.3d at 64.

Plaintiffs assert that additional factual allegations are "unnecessary" because of *MultiPlan*. Opp'n 21-23. But in *MultiPlan*, the court only said that such allegations were unnecessary where "competitors agree to abide by a third-party algorithm." 2025 WL 1567835, at *15. There is no such allegation here. Finally, Plaintiffs' assertion that they need not allege that Defendants began using Zelis in close temporal proximity is also mistaken, because Plaintiffs again ignore binding First Circuit precedent requiring allegations establishing "the general contours of *when* an agreement was made"—allegations absent here. *See Evergreen Partnering Grp., Inc. v. Pactiv Corp.*, 720 F.3d 33, 46 (1st Cir. 2013) (emphasis added); Mot. 27.

No actions against self interest. Plaintiffs assert that, absent an agreement, MCOs using Zelis's repricing tools would lose subscribers because the MCOs failed to adequately pay OON claims. Opp'n 24-25. This defies common sense and is contradicted by Plaintiffs' own allegations.

First, consumers and employers choose health plans based on, among other things, premiums and costs. Mot. 6-7, 30. A plan with high OON costs would be more expensive to subscribers and would expect to lose subscribers on that basis. MCOs are thus each incentivized—*consistent with* self interest—to reduce their costs, including payments to OON providers, thereby allowing them to reduce the premiums they charge. The benefits to MCOs of reducing OON costs undermine the plausibility of Plaintiffs' claim that Defendants have engaged in a conspiracy to do so—an analysis the Court must undertake at this stage. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 566 (2007) ("no reason to infer that the companies had agreed among themselves to do what was only natural"); *cf.* Opp'n 25 (claiming Defendants' motives irrelevant to motion to dismiss).

Second, Plaintiffs allege that patients are unaware of OON payment levels and are insulated from balance billing. *E.g.*, Compl. ¶¶ 191, 195, 337. Plaintiffs cannot have it both ways—alleging for purposes of antitrust standing that patients are not injured by underpayment of OON services,

but then alleging for purposes of this argument that low OON reimbursements would cause patients to leave a health plan. If patients are unaware of OON payment levels, then the amounts plans pay to OON providers could not be a reason for patients to leave a health plan.

Plaintiffs' allegation that sharing confidential information with Zelis is against each MCO's self interest also fails. Companies routinely share confidential information with their vendors. *See In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 329-30 (3d Cir. 2010). As the Ninth Circuit confirmed, the mere fact that a competitor uses the same vendor does not transform the procompetitive conduct into something anticompetitive. *See Gibson*, 148 F.4th at 1084. Plaintiffs' reliance on *MultiPlan* does not salvage this allegation, Opp'n 25, because the Opposition does not grapple with the notable differences Defendants identified in the allegations there. *See* Mot. 33-34 (noting *MultiPlan* complaint alleged specific communications between MultiPlan and an MCO defendant from which the MCO defendant could plausibly glean how others calculated OON rates).

No plausible allegations of any other plus factor. The Opposition confirms that the Complaint fails to plead any facts showing that Zelis disclosed any MCO's confidential information to a competitor. Plaintiffs instead rely on generalized allegations of insurers submitting their own pricing information to Zelis, Opp'n 27 (citing Compl. ¶ 214), and that "Commercial Payers shared and continue to share confidential, proprietary, and CSI directly with each other," Opp'n 27 (citing Compl. ¶ 229), none of which are entitled to any weight without factual support. *E.g.*, *United States ex rel. Duxbury v. Ortho Biotech Prods., L.P.*, 579 F.3d 13, 28 (1st Cir. 2009). Plaintiffs further argue that confidential information is somehow shared between MCOs through Availity, but that ignores Plaintiffs' own allegations that Availity facilitates communication between MCOs and providers—not among MCOs. *See* Opp'n 28; Compl. ¶¶ 233-35. Plaintiffs' assertion that "network benchmarking data" includes non-public

pricing data is also unsupported by the Complaint; Plaintiffs do not (and cannot) allege that *incorporation* of "Internal Client Data" and "Third Party Data" *into a benchmark* equates to *sharing* one MCO's *confidential* data with any other MCO. *Cf.* Opp'n 28.

Plaintiffs' suggestion that MCO employees' attendance at conferences or "mere participation" in certain trade associations constitutes a "connection" sufficient to establish a "rim" is out of step with First Circuit precedent. *See Evergreen Partnering Grp., Inc. v. Pactiv Corp.*, 832 F.3d 1, 14 (1st Cir. 2016); *Nexium*, 842 F.3d at 56; *cf.* Opp'n 30-32. Plaintiffs allege no communications, at these events or otherwise, between MCOs regarding OON reimbursement or use of Zelis to fix prices. *See* Opp'n 31 (citing Compl. ¶ 230 & n.247).

Finally, Plaintiffs' assertions that their inconsistent allegations of Zelis's market share (0.5% alleged in *MultiPlan* versus as much as 82.2% alleged here) reflect "[a]dditional research" and Zelis's purported "substantial growth" do not withstand scrutiny. *See* Opp'n 37. Plaintiffs provide no details about this purported "research" or Zelis's "substantial growth." Nor do Plaintiffs recount any efforts to amend their filings in *MultiPlan* upon learning this "new" information, or reconcile how or why Defendants could use two separate, competing services. *Id.* Plaintiffs should be estopped from simultaneously disavowing their statements in the *MultiPlan* litigation and relying on the substance of that court's decision. *See, e.g.*, Mot. 35-36.

## II. PLAINTIFFS LACK BOTH ARTICLE III AND ANTITRUST STANDING

***Standing Must Be Shown Plaintiff-by-Plaintiff and Claim-By-Claim; Plaintiffs Do Not Plead It.*** Plaintiffs point to no allegation that a specific Defendant used Zelis to reprice a specific plaintiff's claim resulting in below-market payment. Compl. ¶¶ 25-29, 39. Plaintiffs assert without support that "this level of granular detail is not required," Opp'n 6, but First Circuit precedent holds the opposite. *Hochendoner v. Genzyme Corp.*, 823 F.3d 724, 731, 733 (1st Cir. 2016) (requiring non-conclusory allegations that link "each particular plaintiff" to "each particular

claim" to establish standing); *accord Pagán v. Calderón*, 448 F.3d 16, 27 (1st Cir. 2006).[3]

The Opposition confirms the point. It identifies *one* claim: an Elevance/Anthem repricing of PIMG's October 30, 2022 services, allegedly "discounting . . . over 88%." Opp'n 7 (citing Compl. ¶ 334). That is the only plaintiff-, MCO-, and amount-specific example in the Complaint, Compl. ¶¶ 25-29, 39, and it does not even specify whether PIMG accepted the offered rate, the final payment amount, or other relevant detail. This one deficient example does not satisfy the First Circuit's requirement for pleading Article III standing.

***Plaintiffs Do Not Suffer Injury by Receiving a "Repricing" Offer, and They Are Not Efficient Enforcers.*** Plaintiffs say they are injured "at the moment of receipt of repricing-based underpayment," Opp'n 10, but cite no case to support their theory of injury.[4] The Complaint, meanwhile, describes Zelis offers as *conditional*, presenting terms a provider may accept (with conditions) or decline while pursuing other avenues (negotiation or balance-billing where permitted by law). *See* Compl. ¶¶ 365-69.

As a result, Plaintiffs cannot satisfy either the causation or directness requirements under the Supreme Court's antitrust standing analysis in *AGC*, 459 U.S. 519 (1983). The alleged harm depends on intervening *provider choices* and, if balance-billed, on *patient payment*—making any harm indirect and derivative. *See Pac. Recovery Sols. v. Cigna Behav. Health, Inc.*, 2021 WL 1176677, at *12 (N.D. Cal. Mar. 29, 2021) (dismissing providers' claim for reimbursement of

[3] Plaintiffs argue that *Hochendoner* only applied this standard because it was a "personal injury" case with "alleged different injuries and causal chains from toxic exposure." Opp'n 7. That is incorrect. *Pagan*, for example, applied the same standard in a 42 U.S.C. § 1983 case alleging constitutional violations. 448 F.3d at 25, 27.

[4] None of Plaintiffs' authorities treats a conditional repricing as an Article III injury or supplies standing pursuant to *Associated Gen. Contractors of Cal. v. Cal. State Council of Carpenters*, 459 U.S. 519 (1983) ("*AGC*"). Opp'n 7 (citing *N. Jackson Pharmacy, Inc. v. Express Scripts Inc.*, 345 F. Supp. 2d 1279, 1295 (N.D. Ala. 2004) (pre-*Twombly* case sustaining conspiracy allegations that defendants "conspired to keep the prices . . . below market-rate levels" without Article III injury or *AGC* analysis); *In re Remicade Antitrust Litig.*, 345 F. Supp. 3d 566, 580 (E.D. Pa. 2018) (no *AGC* analysis; not an OON provider case); *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, 74 F. Supp. 3d 581, 596 n.10 (S.D.N.Y. 2015) (plaintiffs' efficient-enforcer status not challenged; not an OON provider case)).

OON services as too remote); *Pac. Recovery Sols. v. United Behav. Health*, 481 F. Supp. 3d 1011, 1022 (N.D. Cal. 2020) (same); *In re WellPoint, Inc. Out-of-Network UCR Rates Litig.*, 903 F. Supp. 2d 880, 900-03 (C.D. Cal. 2012) (same). Plaintiffs' reliance on *MultiPlan* is misplaced. There, the court credited allegations that providers had no choice but to accept MultiPlan's offers and forgo balance-billing. 2025 WL 1567835, at *4-5. Here, the Complaint alleges instead that Zelis presents *conditional* terms that a provider can accept or decline; if declined, the provider may negotiate or balance-bill. Compl. ¶¶ 115, 365-69. The Complaint also admits that providers often choose not to balance-bill for business reasons. *E.g.*, *id.* ¶ 345.[5] Provider preference is not a legal constraint attributable to Defendants. Plaintiffs thus do not allege injury that "flows from that which makes the defendants' acts unlawful." *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977).

## III. PLAINTIFFS DO NOT ALLEGE ANTITRUST INJURY

MCOs' independent decisions to obtain repricing recommendations from the same source, when doing so results in lower prices, does not amount to the requisite "antitrust injury." *Sterling Merch., Inc. v. Nestle, S.A.*, 656 F.3d 112, 121 (1st Cir. 2011) (measuring injury to competition by "a *reduction in output* and an *increase in prices*"). Plaintiffs' claim that antitrust injury is generally not resolved at the pleading stage is simply incorrect. *Compare* Opp'n 12 *with* PHILIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW ¶ 337 (5th ed. 2022) ("the antitrust injury requirement often enables antitrust courts to dispose of more claims at an early stage of litigation by simply examining the logic of the plaintiff's theory of injury").[6]

[5] Plaintiffs cite an alleged "90 percent" acceptance rate for ERS rates, *id.* ¶ 333, but that statistic is not tied to any named Plaintiff or Defendant—and, on Plaintiffs' own allegations, reflects provider *choice*, not compulsion.

[6] For support, Plaintiffs cite *Brader v. Allegheny General Hospital*, an out-of-circuit pre-*Twombly* case where a plaintiff physician alleged that defendants prevented plaintiff *and others* from practicing their medical specialty by an exclusive contract. 64 F.3d 869, 875-76 (3d Cir. 1995). No such market-wide exclusion is alleged here.

Plaintiffs also argue that the Complaint alleges that Plaintiffs have been deprived of "independent centers of decision making" with respect to payment of OON claims. Opp'n 14-15. But for any given out-of-network claim, there is only one decision maker—the patient's MCO applying the plan terms selected by the plan sponsor—and that MCO or plan sponsor is the source of payment (except for the patient's cost share and balance bill). And of course, in any instance where Plaintiffs choose to balance bill their patients, that decision is not even final, as the patient is the ultimate decision-maker and payor.

## IV. PLAINTIFFS FAIL TO PLEAD A RELEVANT ANTITRUST MARKET

***No Relevant Product Market.*** Plaintiffs do not (and cannot) dispute that their proposed market combines services that are not reasonably interchangeable. Nor do they dispute that "cluster" markets—like the one alleged here—are cognizable only where competitive dynamics are the same across the clustered services. Mot. 38. Plaintiffs assert that the services they seek to cluster "are subject to the same or reasonably similar competitive conditions," including selection by MCOs and "how they are priced." Opp'n 34. But Plaintiffs plead no facts showing that, *e.g.*, teeth cleaning, brain surgery, and emergency care face similar competitive conditions.[7] Without such well-pleaded facts, Plaintiffs cannot show that the competitive dynamics affecting the services they seek to cluster are the same, and their antitrust claims accordingly fail.

Plaintiffs' argument that defining a services market around the method or amount of payment for healthcare services is "appropriate" because this is "a *per se* price-fixing matter," Opp'n 34, also falls short. Plaintiffs cite *nothing* to support their notion that market definition varies depending on the antitrust violation alleged.[8] Plaintiffs also incorrectly assert that it is

[7] In fact, they concede at least one example to the contrary—that competitive conditions differ for "specialized care from eminent out-of-state practitioners or medical centers." Opp'n 36.

[8] Accordingly, Plaintiffs' attempts to distinguish *Little Rock Cardiology Clinic PA v. Baptist Health*, 591 F.3d 591 (8th Cir. 2009) and *Stop & Shop Supermarket Co. v. Blue Cross & Blue Shield of R.I.*, 373 F.3d 57 (1st Cir. 2004) on

"inappropriate" to include in-network transactions when defining a relevant market for OON healthcare services. *Id.* Services are reasonably interchangeable where, as here, even though "there might be some degree of preference for . . . one [service] over the other, either would work effectively." *See Mylan Pharms. Inc. v. Warner Chilcott Pub. Ltd.*, 838 F.3d 421, 436-37 (3d Cir. 2016). Each specific in-network and OON service is reasonably interchangeable—as relevant to antitrust analysis, the only difference may be the reimbursement rate.

***No Relevant Geographic Market.*** Plaintiffs fail to dispel the implausibility of their alleged nationwide geographic market. Indeed, Plaintiffs concede that providers "often" treat patients in geographic proximity to where they live or work. Opp'n 36. That is critical, because markets are defined based on the area in which a seller can turn to find alternative buyers. *See E. Food Servs., Inc. v. Pontifical Cath. Univ. Servs. Ass'n*, 357 F.3d 1, 6 (1st Cir. 2004).[9] A recent opinion denying class certification is instructive. In *In re Delta Dental Antitrust Litigation*, the court rejected a nationwide market because the "availability of substitute buyers" depends on the extent to which members of *local* communities are covered by other insurers or able and willing to pay out of pocket. 2025 WL 2696575, at *13-14 (N.D. Ill. Sept. 22, 2025). The same analysis applies here.

## CONCLUSION

For the reasons stated above, the Complaint should be dismissed with prejudice.

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the grounds that those were exclusive-dealing cases, Opp'n 34 & n.12, fall flat. Plaintiffs attempt to further distinguish *Little Rock* because it "considered only differing *sources* of payment," Opp'n 34, but dismissal was warranted in that case because there was no plausible allegation that providers could serve only patients covered by private insurance. *Little Rock*, 591 F.3d at 596-98. Dismissal is warranted here for essentially the same reason: the Complaint does not plausibly show that providers can serve only patients covered by private insurance for which they are OON.

[9] Plaintiffs attempt to distinguish *Eastern Food Services* as an exclusive-dealing action subject to the rule of reason, Opp'n 36 n.13, but market definitions do not vary based on theory of harm.

Dated: October 20, 2025

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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/ *Matthew L. McGinnis*
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