UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: ZELIS REPRICING ANTITRUST LITIGATION This Document Relates To: All Associated Cases	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 5-page Sur-Reply Granted on October 6, 2025 (ECF Dkt. 137)

PLAINTIFFS' SUR-REPLY IN SUPPORT OF OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS THE AMENDED AND CONSOLIDATED CLASS ACTION COMPLAINT

I. INTRODUCTION

In granting Defendants' Motion for leave to file a reply memorandum in support of their motion to dismiss ("Reply") this Court stated: "Reply and sur-reply briefs shall [1] not be redundant of earlier briefs filed and [2] address[] only matters raised which were not reasonably foreseeable." Order at ECF 137 (filed on October 6, 2025). Defendants did neither. Their Reply largely recycles the same grounds and the same cornerstone authorities for the same propositions that their opening memorandum advanced. For that reason, the Court should disregard repetitive sections and confine any analysis to the minimal new material raised in the Opposition which was not reasonably foreseeable. Regardless, the Reply provides no additional reason to dismiss Plaintiffs' Complaint, and as discussed herein, repeatedly and brazenly mischaracterizes Plaintiffs' allegations. For the reasons stated herein and in Plaintiffs' Opposition, Defendants' Motion should be denied.

II. ARGUMENT

A. Plaintiffs Have Plausibly Pled a Conspiracy.

Defendants describe Plaintiffs' citation of the First Circuit's *American Steel Erectors v. Local Union No. 7, Int'l Ass'n of Bridge, Structural, Ornamental & Reinforcing Iron Workers,* 815 F.3d 43 (1st Cir. 2016) ("*Am. Steel*") and *Fraser v. Major League Soccer, LLC,* 284 F. 3d 47 (1st Cir. 2002) decisions concerning how "potential competitors" might be subject to Section 1 liability, as "inapposite" "dicta." Reply at 2-3, n.1. But Defendants do not actually contest either the applicability of Section 1 to "potential competitors" or that Zelis is a horizontal, "potential competitor" to other MCOs, and provide no contrary authority. Opp. at 13, 18.

Defendants also criticize Plaintiffs' citation of *Am. Steel*. See Reply at 2-3, nn.1, 2. But, in that case, the First Circuit included under its *per se* analysis the "exten[sion] [of] horizontal competition

for purposes of Section 1 liability to 'vertical relationships' that 'intersect with or give rise to an unlawful horizontal relationship.'" Opp. at 19 (quoting *Am. Steel*, 815 F.3d at 64). Based on Plaintiffs' allegations showing how Zelis obtaining competitively sensitive information from managed care organizations can in turn benefit its PPO business (CAC at ¶205), Plaintiffs' citation of *Am. Steel* in the Opp. cannot be considered a "misrepresentation." Reply at 3, n.2.

Contrary to Defendants' arguments in the Reply, Plaintiffs also have plausibly pled a hub-and-spoke conspiracy, including the so-called "rim." Defendants falsely claim Plaintiffs ignore *In re Nexium (Esomeprazole) Antitrust Litig*, 842 F.3d 34, 56-57 (1st Cir. 2016) ("*Nexium*"), and fail to allege a "rim agreement." Reply at 1, 3. *Nexium*, however, does not require allegations of an *explicit* "'rim' agreement," but merely "enough circumstantial evidence [so-called Plus Factors] to find a 'tacit agreement' among" the payers that constitutes the "rim." *Nexium* at 56-57 (quoting *Interstate Circuit v. U.S.*, 306 U.S. 265 (1942) and comparing *Dickson v. Microsoft Corp.*, 309 F. 3d 193, 203 (4th Cir. 2012) which was "a 'rimless wheel conspiracy'…where the defendants have no connection with one another . . . ."). Plaintiffs here have robustly alleged such Plus Factors suggesting the conspiracy, including "connection[s]" between the MCO Defendants in the form of meetings between them at Zelis annual meetings relating to Zelis services, MCO Defendants' common ownership of Availity, and Defendants holding communications-enabling positions at AHIP. Together, these allegations plainly satisfy *Nexium* and *Interstate Circuit* and support, at the very least, a tacit agreement which forms the "rim" of a hub-and-spoke conspiracy. *See* CAC ¶¶ 208, 230, 234, 235, 284, 288, 289, 293.

In terms of information sharing, Defendants argue that "[c]ompanies routinely share confidential information with their vendors," citing *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 330 (3d Cir. 2010). Reply at 5. However, the Third Circuit was careful to note that, in that

case and unlike here, "there are no allegations that any insurer ever horizontally disclosed to its competitors the details of its vertical agreement with a broker." *Id.* at 329; c*ompare United States v. Gypsum Co.*, 438 U.S. 422, 458-459 (1978) ("exchanges of price information . . . must remain subject to close scrutiny under the Sherman Act."). Here, the MCO Defendants, knowing Zelis's repricing would work only if a critical mass of MCOs adopted it, encouraged each other to utilize Zelis. *See* CAC ¶¶ 12, 74, 230-231, 285, 288, 293.

Defendants also raise *Gibson v. Cendyn,* 148 F.4th 1069, 1084 (9th Cir. 2025), an opinion authored after the filing of Plaintiffs' Opposition, for the argument that use of "the same vendor does not" automatically equate to "something anticompetitive." Reply at 5. However, in *Gibson,* the Court recounted that plaintiffs' "Count 1," their first hub-and-spoke Section 1 antitrust claim, was "abandoned" on appeal (*id.* at 1079), and the *Gibson* plaintiffs' second antitrust claim lacked the "rim" necessary to turn a series of purely vertical agreements into a viable Section 1 claim (*id.* at 1088). As the *Gibson* court stated, "…Plaintiffs do not contest the district court's finding that they failed to allege facts from which such an agreement among Hotel Defendants could be inferred." *Id.* at 1083. In short, the new *Gibson* opinion represents nothing more than what has already been stated herein: Plaintiffs must allege at least enough facts to *infer* an agreement, and in this case, they have done so.

B. Plaintiffs Plausibly Allege Both Standing and Antitrust Harm.

Defendants merely recycle their arguments, under the rubric of *Hochendoner v. Genzyme Corp*., 823 F.3d 724 (1st Cir. 2016), that this case should require a "plaintiff-by-plaintiff and claim-by-claim" show of harm. Allegations similar to Plaintiffs' have been found to support Article III and antitrust standing, even for antitrust matters reliant on *Hochendoner*. *Compare In re Lantus Direct Purchaser Antitrust Litig.*, 512 F. Supp. 3d 106, 121 (D. Mass. 2020) *with* Opp. at 7 (CAC

¶¶ 25-29).

With respect to the Defendants' characterization of the repricing "offers as *conditional,*" antitrust law need not tolerate such a Hobson's choice. Reply at 7, 8. As discussed in *Sitts v. Dairy Farmers of Am., Inc*., antitrust injury is satisfied when a "'seller faces a Hobson's choice: he can sell into the rigged market and take the depressed price, or he can refuse to sell at all'". 276 F. Supp. 3d 195, 208 at n. 5 (D. Vt. 2017) (quoting *Dyer v. Conoco, Inc*., 1995 WL 103233, at *5 (5th Cir. Feb. 21, 1995)). This is the case here.

In terms of antitrust injury, Defendants' citation to *Sterling Merch., Inc. v. Nestle, S.A.,* 656 F.3d 112, 121 (1st Cir. 2011) for the point that injuries to competition are measured "by 'a reduction in output and an increase in prices'" is inapposite. *Zelis* is an oligopsony case, or a buyers' cartel, which measures harm based on a reduction in available sources for payment or a decrease in payment levels. *See* Opp. at 12-16. "'Our cases have recognized that sellers to a monopsony or oligopsony can establish antitrust injury'" *Sitts*, 276 F. Supp. 3d at 208, n.5.

C. Plaintiffs Plausibly Plead A Relevant Antitrust Market.

When defining a relevant market based on how or at what levels OON Providers are paid, the District Court in *Methodist Health Servs. Corp. v. OSF Healthcare Sys.,* 2016 WL 5817176, at *9 (C.D. Ill. Mar. 20, 2016), a market foreclosure matter, rejected *Little Rock Cardiology*, cited by Defendants in their Reply, characterizing it as "easily distinguished" as "the opinion nowhere mentions allegations that government payers reimburse at substantially different rates than commercial payers." A relevant market can be established based on how Providers are paid or their payment levels, whether in a market foreclosure matter or in a price-fixing matter. *See also In re MultiPlan,* 2025 WL 1567835, at *12; *Steward Health Care Syst., LLC v. Blue Cross & Blue Shield of Rhode Island,* 997 F. Supp. 2d 142, 162 (D.R.I. 2014). Plaintiffs' allegations in that

regard here establish a relevant market.

The Reply also cites *In re Delta Dental Antitrust Litig.*, 2025 WL 2696575, at *13-*14 (N.D. Ill. Sept. 22, 2025), for its recent rejection of plaintiffs' proposed nationwide geographic market in that matter. Reply at 10. But the *Delta Dental* opinion was made at the class certification stage and did not challenge the plaintiffs' pleadings on a motion to dismiss. *Id*. In fact, the *Delta Dental* court expressly noted that it denied this same challenge to the relevant market on a motion to dismiss, as it was unable to make such a determination "*in the absence of a factual record." Id.* at *14 (emphasis in original). Only after considering a "substantial evidentiary record" developed "over five years" after the motion to dismiss ruling was issued was the court able to "conclude that plaintiffs' proposed geographic market does not "correspond to the commercial realities of the industry[.]" *Id., quoting Brown Shoe Co. v. United States*, 370 U.S. 294, 336 (1962). Further, *In re Delta Dental* concerns a class of providers defined by their agreement to perform services in defendants' network. *In re Delta Dental*, 2025 WL 2696575, at *1 (emphasis added). In contrast to the *Delta Dental* in-network providers, the out-of-network Providers at issue here are not concerned with in-network reimbursement rates because their claims are necessarily outside of any agreement with Defendants. *Id.* at *15. Accordingly, a nationwide market can be plausibly alleged notwithstanding *Delta Dental*.

CONCLUSION

For the reasons set forth above, Defendants' motion to dismiss this action should be denied in its entirety. Should the Court instead decide to grant the motion in whole or in part, Plaintiffs ask that it do so without prejudice, so as to allow Plaintiffs to amend the CAC.

Dated: October 27, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard M. Paul III, attorney for the Plaintiffs, certify that, on October 27, 2025, I caused a copy of the foregoing to be served, via ECF, on all counsel of record.

/s/ Richard M. Paul III