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*

PLAINTIFFS' SUR-REPLY IN OPPOSITION TO DEFENDANT UNITEDHEALTH GROUP, INC.'S MOTION TO COMPEL ARBITRATION

I. INTRODUCTION

The crux of United's Reply is a rehash of the delegation clause argument presented in its opening brief. *Compare* Reply 1-4 *with* Brief 2-5, 14-15. Consequently, United continues to misunderstand a straightforward issue: whether a court may compel arbitration of a dispute where the FAA does not empower it to do so. Of course, the answer to that question is no, so the Court should deny United's motion. United continues to insist that because its Arbitration Clauses state that the FAA "applies," the Court must enforce its delegation clauses. But that argument is contrary to the FAA's text. Section 2 of the FAA only makes arbitration agreements enforceable to the extent that they mandate arbitration of disputes "arising out of" the contract containing the arbitration agreement, and the Supreme Court has made clear that a court's authority to stay litigation and compel arbitration is limited to arbitration agreements covered by the terms of Section 2—even where there is a delegation clause. Accordingly, whether United's use of its infinite Arbitration Clauses falls within the scope of Section 2's "arising out of" requirement should be the beginning—and end—of the Court's inquiry here. Because the answer to that question is no, Plaintiffs respectfully request that the Court deny United's motion.

II. ARGUMENT

A. The Delegation Clauses Are Unenforceable Because Courts Have No Power to Enforce Arbitration Agreements That Are Outside the Scope of the FAA.

In *New Prime Inc. v. Oliveira*, the Supreme Court held that courts, rather than arbitrators, must be the ones to determine whether an arbitration agreement is excluded from FAA coverage—even where there is a delegation clause. 586 U.S. 105, 110-111 (2019). United attempts to distinguish *Oliveira* by arguing that the plaintiffs there invoked Section 1's residual clause. Reply at 4. United, however, fails to confront the Court's rationale, which was based on the FAA's "sequencing": the antecedent scope provisions in Sections 1 and 2 limit a court's enforcement powers under Sections

3 and 4. *See* 586 U.S. at 110-111. As *Abbas v. Truist Bank* recognized, that rationale compels the same result when the challenge is to Section 2's "arising out of" requirement:

> [Sections] 3 and 4 of the Act often require a court to stay litigation and compel arbitration 'accord[ing to] the terms' of the parties' agreement. But this authority doesn't extend to *all* private contracts, no matter how emphatically they may express a preference for arbitration." *New Prime Inc. v. Oliveira*, 586 U.S. 105, 110, 139 S.Ct. 532, 202 L.Ed.2d 536 (2019) (emphasis in original). Indeed, "antecedent statutory provisions," including Section 2, "limit the scope of the court's powers under §§ 3 and 4." *Id.* That is, "[w]hile a court's authority under the [FAA] to compel arbitration may be considerable, it isn't unconditional." *Id.* Rather, "the terms of § 2 limit the FAA's enforcement mandate to agreements to arbitrate controversies that 'arise out of' the parties' contractual relationship." *Viking River Cruises, Inc.*, 596 U.S. at 652 n.4, 142 S.Ct. 1906.

774 F. Supp. 3d 929, 943–44 (M.D. Tenn. 2025). And because a delegation clause is "'merely a specialized type of arbitration agreement,' … the same reasoning applie[s]" to United's delegation clauses. *See Singh v. Uber Techs. Inc.*, 939 F.3d 210, 215 (3d Cir. 2019) (quoting *Oliveira*, 586 U.S. at 112); David Horton, *Accidental Arbitration*, 102 Wash. U. L. Rev. 1381, 1430 (2025) (under *Oliveira*, "arbitrators cannot rule on 'whether the contract itself falls within or beyond the boundaries of ... [section] 2'" and "the first step in the [court's] analysis is to decide whether a claim 'aris[es] out of' the container contract within the meaning of section 2."). Accordingly, unless United can satisfy Section 2's "arising out of" requirement—which it cannot—the Court should deny United's motion.

B. United's Arguments That It Can Satisfy the "Arising Out of" Requirement Fail.

United's belated arguments on this dispositive issue are unavailing. Reply at 5-6. First, United attempts to dodge the "arising out of" requirement by arguing that because its Arbitration Clauses apply to "any and all" disputes, the Court must enforce them "according to their terms" pursuant to *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68 (2010). However, that argument is foreclosed by the later-decided *Viking River Cruises, Inc. v. Moriana*, which clarified that "the terms of § 2 limit the FAA's enforcement mandate to agreements to arbitrate controversies that

'arise out of' the parties' contractual relationship." 596 U.S. 639, 652 n.4 (2022). As a last resort, United argues (without citing any authority) that Plaintiffs' claims arise out of their Network Participation Agreements because the Complaint references "in-network" payments, so Plaintiffs have put the Network Participation Agreements "at issue." But that is not the test the Supreme Court identified in *Viking River Cruises.* Rather, it is whether there is a "causal relationship" between the underlying contract and the legal claims. 596 U.S. at 652 n.4; *Davitashvili v. Grubhub Inc.*, 131 F.4th 109, 119 (2d Cir. 2025).[1] Plaintiffs' Opposition conclusively demonstrated that there is no such causal relationship here, Opp. 8-9, and United has not argued otherwise.[2] Because the FAA's enforcement mandate is limited to "agreements to arbitrate controversies that … were 'caus[ed] by the parties' [contractual] relationship,"[3] United's failure to do so is fatal to its motion.[4]

C. United Relies on Inapposite and Unpersuasive Delegation Clause Authority.

To avoid this conclusion, United summons a host of inapposite authority. Reply at 1-2, 5. United's lead case, *Toth v. Everly Well, Inc.*, 118 F.4th 403, 410 (1st Cir. 2024), stands only for the proposition that a court has a "straightforward task" when presented with a "valid and *enforceable*"

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[1] United's observations would apply equally to the plaintiffs' antitrust claims in *Davitashvili*, where Grubhub allegedly induced restaurants to refrain from selling meals at prices lower than those on Grubhub's platform. 131 F.4th at 113. This was insufficient to establish a causal relationship there, and the Court should reach the same conclusion here.

[2] Instead, United attempts to distinguish *Davitashvili*. But Grubhub was obviously a party to its own arbitration agreement. *Id.* at 119. And unlike the *Davitashvili* plaintiffs, which had to exclude any purchases from Grubhub to ensure that their antitrust claims did not arise from their Grubhub contract, *Davitashvili v. Grubhub Inc.*, 2023 WL 2537777, at *10 (S.D.N.Y. Mar. 16, 2023), Plaintiffs had no need to do so here. Plaintiffs have no claims arising from their Network Participation Agreements because their antitrust claims pertain only to out-of-network payments. This only serves to underscore United's failure to satisfy the "arising out of" requirement.

[3] *Davitshvili*, 131 F.4th at 119 (quoting *Viking River Cruises*, 596 U.S. at 652 n.4).

[4] United cites several cases for the proposition that some courts have enforced "any and all" arbitration clauses. Reply at 6 n.1. All are distinguishable because none involved a challenge to the limits of the FAA's enforcement mandate based on Section 2's "arising out of" requirement, and none applied the *Viking River Cruises* "causal relationship" test.

delegation clause. *Id.* (emphasis added). Here, United's delegation clauses are not enforceable because they exceed the limits of Section 2's enforcement authority. United also misdirects the Court to *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019). In *Schein*, the Supreme Court held that a court may not disregard a delegation clause on the basis that "the [movant's] argument that the *arbitration agreement* applies to the particular dispute is 'wholly groundless.'" *Id.* at 65 (emphasis added). Unlike in *Schein*, there is no dispute here that United's Arbitration Clauses purport to apply to any dispute under the sun. Rather, the question is whether United's use of its infinite Arbitration Clauses goes beyond the scope of the FAA's enforcement mandate. In other words, *Schein* applies when there is a *contractual* challenge to the scope of the arbitration agreement, and *Oliveira* applies when there is a *statutory* challenge to the scope of the FAA. Horton, 102 Wash. U. L. Rev. at 1429-30.[5] Accordingly, United is relying on the wrong case.

While certain plaintiffs' delegation clauses were enforced in *Davitashvili*, that holding is plainly at odds with the controlling principle recognized by all three panel members: "'The phrase "arising out of" [in Section 2 of the FAA] establishes a nexus limitation on which disputes are subject to the FAA,' beyond which the FAA 'will not apply to any attempts to send that dispute to arbitration.'" 131 F.4th at 125 (Pérez, J. concurring). However, the plaintiffs had failed to devote more than a footnote to their delegation clause challenge, so the court did not have the benefit of any briefing on this issue. *Id.* at 118-119. This is a nascent but lucid body of case law, and its development shows courts iteratively discovering the full range of consequences where Section 2's "arising out of" requirement is not satisfied. But the throughline is clear: "federal courts have no power to compel arbitration" in such cases. *Abbas*, 774 F. Supp. 3d at 944; *Davitashvili*, 131

[5] Because *Christian v. Uber Techs., Inc*., applied *Schein* rather than *Oliveira* in its delegation clause analysis, it was wrongly decided. *See* 775 F. Supp. 3d 272, 281 (D.D.C. 2025).

F.4th at 124 (Pérez, J. concurring); *Revitch v. DIRECTV, LLC*, 977 F.3d 713, 723–24 (9th Cir. 2020) (O'Scannlain, J., concurring). The logical endpoint, therefore, is that a delegation clause cannot alter this result because a delegation clause is enforceable only if it appears in an arbitration agreement that "falls within the field [of Section] 2." *See Oliveira*, 586 U.S. at 112. The Court should not hesitate to reach that conclusion here.

D. Plaintiffs Challenged the Pre-Arbitration Dispute Resolution Procedure.

In a last-ditch attempt to delay this litigation, United argues that Plaintiffs did not challenge the pre-dispute resolution procedure in the Network Participation Agreements, which it now characterizes as a "mediation procedure." Reply at 10. First, there is no "mediation procedure," so United's authority is irrelevant. *Compare* Ayer Decl., Ex. A at 9; Zappola Decl., Ex. A at 8; PIMG Decl., Ex. A at 11; *with RGOI ASC, Ltd. v. Gen. Elec. Co.*, 2019 WL 1992436, at *3 (D. Mass. May 6, 2019) ("unresolved disputes will be submitted to mediation"). Second, the pre-dispute resolution procedure is part-and-parcel of the Arbitration Provisions, United Br. at 19, so all of Plaintiffs' challenges applied to it. Because United has only moved to compel under the FAA, the Court also lacks power to compel compliance with this procedure, for the reasons discussed above.

E. In the Alternative, Any Stay Should Be Limited to Claims Against United.

Should the Court grant United's motion, any stay should be limited to claims between Plaintiffs Ayer, PIMG and Scaccia, and Defendant United. *See, e.g.*, *Peterson v. Binnacle Cap. Servs. LLC*, 364 F. Supp. 3d 108, 118 (D. Mass. 2019) (staying only claims against one defendant); *In re Amitiza Antitrust Litig*., No. 21-cv-11057-MJJ, 2025 WL 671555, at *5 (D. Mass. Jan. 27, 2025) (staying claims of only one plaintiff). United has not argued otherwise. Reply at 10.

III. CONCLUSION

For the foregoing reasons, and those stated in Plaintiffs' Opposition brief, the Court should deny United's motion to compel arbitration.

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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