

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

<p>IN RE: ZELIS REPRICING ANTITRUST LITIGATION</p> <p>This Document Relates To:</p> <p>All Associated Cases</p>	<p>Lead Action Case No.: 1:25-cv-10734-BEM</p> <p><i>Consolidated with Case Nos.:</i> <i>1:25-CV-11092-BEM</i> <i>1:25-CV-11167-BEM</i> <i>1:25-CV-11537-BEM</i></p>
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**PLAINTIFFS' SUR-REPLY IN FURTHER RESPONSE TO DEFENDANT  
HUMANA'S MOTION TO DISMISS THE AMENDED AND  
CONSOLIDATED CLASS ACTION COMPLAINT**

**I. There are No Allegations or Evidence that Humana Lacked an Incentive to Join the Conspiracy Because it “Planned to Exit” a Portion of its Commercial Health Insurance Business<sup>1</sup>**

Humana realizes that the underpinning for its motion to dismiss, that “it stopped offering the commercial health insurance products at issue in this case” is false and has collapsed.<sup>2</sup> It now parries with a brand-new proposition that whether it has exited the market doesn’t matter; what matters is it was “*planning to exit*” for some unknown, unspecified period of time and somehow that makes its participation in the conspiracy since 2016 implausible. (Reply at 2.) This desperate pivot is nonsensical and contrary to the factual allegations in the Complaint. Nowhere is there a scintilla of evidence or allegation as to whether, when, or why Humana might have considered or planned to exit the market during any portion of the Class Period or how that might show it never participated in the conspiracy at all. In other words, Humana’s alternative, *ipse dixit* explanation is implausible (if not impossible) because it is contrary to both the factual allegations in the Complaint and Humana’s own admission that it’s alleged determination to exit concerned only one aspect of its insurance business in 2023. As Humana put it, “No other Humana health plan offerings are materially affected. The company remains committed to the long-term growth of its core Insurance lines of business...”<sup>3</sup> Humana’s net earnings for 2024 alone were \$5.242 billion

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<sup>1</sup> Despite this Court’s admonition that “Reply and sur-reply briefs shall not be redundant of earlier briefs filed and addresses only matters raised which were not reasonably foreseeable” (ECF No. 141), Humana has raised new matters it could have raised before and also repeats arguments raised in its initial motion. Plaintiffs will address these arguments in the three pages allotted, and to the extent Humana has raised issues also relevant to the reply to the joint motion to dismiss, will rely on Plaintiffs’ surreply rather than repeating them here.

<sup>2</sup> The most recent Humana Form10-Q for the quarterly period ended June 30, 2025 continues to show that it sells commercial healthcare insurance. See Humana Inc. (2025) Form 10-Q at p.30 <https://humana.gcs-web.com/static-files/14ee4b04-c6cd-4316-a769-801dbcd92d8b> (last visited Oct. 23, 2025)

<sup>3</sup> Kay Decl. Ex. 1, to Humana’s Br. at 72.

(CAC ¶38). Whether Humana, for nine years, believed it had “no future in the business” will be a hotly contested factual issue of intent, if Humana decides to pursue this defense.<sup>4</sup>

## **II. The Complaint Alleges Plausible and Sufficient Facts as to Humana’s Participation in the Conspiracy**

Any new defense that Humana would have no reason to join the conspiracy because it saw no future in the business is also contradicted by numerous allegations in the Complaint of Humana’s participation in and communications facilitating the conspiracy. These allegations render Humana’s “unilateral business interest” argument a factual issue to resolve later. Humana has been a commercial health insurer throughout the Class Period and continues to provide such insurance. ECF No. 39 (“CAC”), at ¶¶ 37, 39, 235, 239, 288. The Complaint does not merely allege that Humana unilaterally used the same software as its competitors. Humana agreed to share confidential claims data with Zelis which data it knew would be used across the board by competitors to reprice and lower OON payments to Providers. It agreed to use Zelis’ price-reducing algorithm knowing that the MCO Defendants would do the same. CAC at ¶¶ 296, 298, 60. As of 2024, Humana was one of the top 5 national health plans listed by Zelis as using its platform. *Id.* at ¶¶ 111, 238-39, 242. Humana agreed to delegate its price-setting authority to Zelis as a repricer. *Id.* at ¶¶ 363, 366. Humana used Zelis’ downward repricing. *Id.* at ¶¶ 333, 358.

Humana had direct interactions with its co-defendants and has a financial interest along with several other MCO Defendants in Availity, a Zelis partner. In March 2024, Zelis entered into a “strategic alliance” with Availity, the nation’s largest real-time health information network, and Availity works in partnership with co-defendants Aetna, Cigna, Humana, United Healthcare

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<sup>4</sup> *Hu Honua Bionergy, LL v. Hawaiian Electric Industries, Inc.*, 2018 WL 491780 (D. Haw., Jan. 19, 2018) is distinguishable. In what was actually a breach of contract case, the complaint alleged that one defendant decided to sell its plant and exit the market one year prior to the date of the alleged conspiracy to terminate plaintiffs’ contract.

(“UNH”), and others. CAC at ¶¶ 8, 15, 232-33, 235. Availity was founded in 2001 by Humana and Blue Cross Blue Shield of Florida and remains a significant shareholder in and part of Availity’s investor base. It is actively involved in the operations of Availity along with Blue Cross, UNH and HCSC (Blue Cross) to date, which includes confidential information sharing and presumably profit sharing with Zelis and Availity. These owners of Availity “have a vested interest in the company’s success.” CAC at ¶¶ 234-35. It is a reasonable and plausible inference that this co-conspirator ownership in the Availity/Zelis relationship facilitates supervision of Zelis and of the conduct of the conspiracy. What is implausible is that Humana created and operated Availity while seeing no future in the insurance market during the entire Class Period.

Contrary to Humana’s claim, the allegations sustained in *Kraft Foods Global, Inc. v. United Egg Producer, Inc.*, 2023 WL 6065308, \*12 (N.D. Ill. Sept. 8, 2023) are relevant here. Although the egg producers’ supply restriction communications were not the type alleged in this case, similar joint communications (the sharing of confidential data and joint use of the Zelis algorithm, which are the high-tech version of old fashioned explicit pricing communications)<sup>5</sup>, close business relationships and membership in the trade association AHIP, taken together, combine to provide plausible evidence of the mode of executing the conspiracy’s price fixing initiatives.<sup>6</sup>

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<sup>5</sup> The CAC’s allegations detailing Defendants’ exchange of their confidential claims payments pricing practices include ¶¶ 8, 198, 205-08, 224, 229, 213-30, 296-98.

<sup>6</sup> Humana’s case support for its claim that this Court should disregard the allegations regarding high level Zelis executives who were previously executives in Humana’s Insurance segment are inapposite. In *Credit Bureau Servs. Inc., v. Experian Info. Sols., Inc.*, 2013 WL 333776 (C.D. Cal. 2013), the court did not reject the relevance of such evidence but just found that it would not be enough given its finding that the complaint failed to even describe what the agreement was, who participated in it or any other allegations of coordinated conduct. And Humana’s (non-antitrust) cases (Reply at 4) standing for the unremarkable premise that a former employee is “duty bound” to protect confidential information instead sounds like the proverbial priest denying fathering a child (“it was improper so I never would have done it”) highlight the obvious nature of the wrongdoing alleged here-Defendants’ illegal sharing of proprietary data to facilitate a price fixing agreement required violating any code of confidentiality.

Dated: October 27, 2025

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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