

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: ZELIS REPRICING ANTITRUST
LITIGATION

Lead Action Case No.: 1:25-cv-10734-BEM

This Document Relates To:

Consolidated with Case Nos.:

All Associated Cases

1:25-CV-11092-BEM

1:25-CV-11167-BEM

1:25-cv-11537-BEM

**DEFENDANT UNITEDHEALTH GROUP INC.'S REPLY IN SUPPORT OF ITS
MOTION TO COMPEL ARBITRATION**

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I. INTRODUCTION

Plaintiffs' Opposition confuses the very straightforward issues presented by United's Motion, but none of their arguments ultimately refutes that their claims should be arbitrated. Importantly, Plaintiffs do not dispute the core facts: Plaintiffs entered into contracts with United ("Provider Agreements"), which expressly adopt the Federal Arbitration Act ("FAA"), in which they agreed to arbitrate "any" and/or "all" disputes ("Arbitration Agreements").

Attempting to muddy the waters, Plaintiffs' Opposition focuses on circular, meritless arguments about the *scope* of the Arbitration Agreements that misconstrue the analysis this Court must conduct. Plaintiffs argue their claims do not "arise out of" the Provider Agreements and thus the Arbitration Agreements are unenforceable because of their breadth. But such questions were clearly and unmistakably delegated *to the arbitrator*. That ends the inquiry. *See Toth v. Everly Well, Inc.*, 118 F.4th 403, 410 (1st Cir. 2024) (court has a "straightforward task when presented with a 'delegation clause'"). Even if this Court were to decide these threshold arbitrability questions (it should not), arbitration is required. Courts routinely uphold similar arbitration agreements; Plaintiffs' claims plainly arise under the Provider Agreements; and there is nothing surprising or unexpected about compelling arbitration of Plaintiffs' claims here.

Plaintiffs' claims should thus be compelled to arbitration and this proceeding stayed.

II. ARGUMENT

A. The Parties Delegated Questions of Arbitrability to the Arbitrator

Plaintiffs' Opposition gets the inquiry about arbitrability backwards. Plaintiffs primarily challenge the Arbitration Agreements as a whole—contending they are overbroad, "infinite," and unconscionable—and only in the last few pages do they address delegation. But it is black letter law in this Circuit that delegation is a threshold issue. As the First Circuit explained: when "parties form a valid and enforceable delegation agreement, the FAA compels courts to send the entire

action to arbitration. The party opposing arbitration can then only challenge the formation of the contract or the specific validity of the delegation provision.” *Toth*, 118 F.4th at 410 (cleaned up); *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019) (when there is “clear and unmistakable” evidence delegating “questions of arbitrability” to an arbitrator, the court “possesses no power to decide [such] issue[s]” and must compel arbitration).

Here, it is undisputed that each Plaintiff entered into a Provider Agreement with United. Plaintiffs do not challenge the formation of the Provider Agreements (nor could they), nor that the Provider Agreements expressly adopt the FAA and affect interstate commerce. *See* Decl. of Rachel S. Brass (Dkt. 106-1), Ex. A, Art. 7; *Id.* Ex. B, at 3; *Id.* Ex. C at 2; Mot. 11–12. The Provider Agreements are therefore subject to the FAA and Plaintiffs’ arguments to the contrary are merely delegated issues in disguise, as described below. That means the Court must turn to the delegation provisions. *Toth*, 118 F.4th 414. Here, all three Provider Agreements delegate arbitrability to the arbitrator, and Plaintiffs’ halfhearted challenges to that delegation fail.

1. Each Provider Agreement Contains a Delegation Clause

Ayer. *Ayer*’s Agreement contains a robust delegation clause. Brass Decl., Ex. A, Art. 7 (“any disputes about [*Ayer*’s] and “[*United*’s] business relationship” including “*all questions of arbitrability*, the validity, *scope* or termination of this Agreement” shall be submitted to “binding arbitration”) (emphases added); *compare Bossé v. New York Life Ins. Co.*, 992 F.3d 20, 29 (1st Cir. 2021); *Micheaux v. Am. Credit Acceptance*, 2025 WL 1042453, at *10 (D. Kan. Apr. 8, 2025).

It also incorporates the AAA Rules. *See* Mot. 15. The First Circuit has made “clear that incorporation of the AAA arbitration rules constitutes clear and unmistakable evidence of the parties’ intent to delegate arbitrability issues to the arbitrator.” *Bossé*, 992 F.3d at 29. Plaintiffs do not dispute that the AAA Rules delegate arbitrability to the arbitrator. Rather, Plaintiffs argue there is no incorporation because the Agreement “merely state[s]” arbitration “will be conducted

in accordance with” the AAA rules, and such language is “insufficient” to constitute incorporation. Opp. 19 n.23 (emphasis added). But courts uniformly hold that this precise language constitutes clear and unmistakable evidence of delegation. *Bossé*, 992 F.3d at 29 (“in accordance with”); *Toth*, 118 F.4th at 414; *Torgerson v. LLC Int’l*, 2023 WL 1396479, at *5 (D. Kan. Jan. 31, 2023).

PIMG. The PIMG Agreement likewise states that “binding arbitration” will be conducted “in accordance with” the AAA Rules. Brass Decl., Ex. B at 3. Plaintiffs’ argument that this does not constitute incorporation fails no better here. *See Bossé*, 992 F.3d at 29; Brass Decl. Ex. D at 7 (“in accordance with”) (collecting California authority). And Plaintiffs’ reliance on *Ajamian v. CantorCO2e, L.P.*, 203 Cal. App. 4th 771 (2012), is misplaced, as there, the employer retained “sole discretion” to decide whether AAA rules *or* rules of “any other” ADR organization applied, and the court thus found no incorporation. *Id.* at 791. There is no such clause here.

Scaccia. Scaccia’s Arbitration Agreement also contains a robust delegation clause. Brass Decl., Ex. C at 2 (“any and all disputes between” the parties, including about “the existence, validity, *scope* or termination of this Agreement or any term thereof, and *all question of arbitrability*” shall be submitted to “binding arbitration”) (emphases added); *compare Ackies v. Scopely, Inc.*, 2022 WL 214541, at *8 (D.N.J. Jan. 25, 2022). Plaintiffs argue in a conclusory fashion that this delegation clause is not “clearly identifiable” (Opp. at 18–19), citing *Morgan v. Sanford Brown Inst.*, 225 N.J. 289 (2016), but that case is completely inapposite. *See id.* at 306 (agreement stated disputes “shall be resolved pursuant to this *paragraph*” but “the *paragraph* does not explain that an arbitrator will decide whether the parties agreed to arbitrate” or that “arbitration is a substitute for bringing a claim before a court or jury”) (emphases in original).

In addition, Scaccia’s Agreement incorporates the AAA Rules. Brass Decl., Ex. C at 2. (“arbitrators will use the AAA ... Rules”). Plaintiffs argue the “*will use*” language is insufficient,

citing one inapposite case. Opp. 19 n.23 (citing *Ames v. Premier Surgical Ctr. LLC*, 2016 WL 3525246, at *1 (N.J. Super. Ct. June 29, 2016) (no discussion of incorporation language; only AAA rules quoted are “Commercial Mediation Rules”)). But courts have repeatedly found similar language sufficient. *E.g.*, *Cinner v. Experian Info. Sol. Inc.*, 2025 WL 2267693, at *8 (D.N.J. Aug. 8, 2025) (collecting cases); *Restuccia v. H&R Block Tax Servs., LLC*, 2021 WL 4658734, at *1 (D. Mass. Oct. 7, 2021) (arbitration “pursuant to” AAA Rules); *Fischer v. Kelly Servs. Global, LLC*, 2024 WL 382181, at *11 (S.D. Cal. Jan. 31, 2024) (AAA Rules “will apply”).

2. Plaintiffs’ Challenges to the Delegation Clauses Fail

Plaintiffs raise two challenges to the delegation clauses. First, they argue the delegation clauses are “unenforceable” because the FAA “does not apply.” Opp. 17–18. But that ignores the express terms of the contracts. *Supra* Section II.A.1. And the three cases Plaintiffs cite are irrelevant. Both *New Prime Inc. v. Oliveira*, 586 U.S. 105, 108 (2019) and *Singh v. Uber Tech., Inc.*, 939 F.3d 210, 214 (3d Cir. 2019), held that a court should first determine whether an FAA Section 1 exclusion applies before compelling arbitration, but Plaintiffs do not invoke Section 1 (nor could they, as it applies to “contracts of employment” for railroad workers and others engaged in interstate commerce). Likewise, *Abbas v. Truist Bank*, 774 F. Supp. 3d 929, 937 (M.D. Tenn. 2025), addressed the *scope* of an arbitration agreement; unlike here, it did not involve a delegation clause.

Second, Plaintiffs argue in one conclusory sentence that the delegation clauses are unconscionable, stating only that their unconscionability argument for the Arbitration Agreements as a whole (addressed *infra*) “is also applicable” to the delegation clauses. *See* Opp. 20 (referring to Sec. IV.B.2.). This is insufficient. An unconscionability challenge must be “specific to the delegation provision.” *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 73 (2010). Plaintiffs’ challenges are only to the Arbitration Agreements as a whole, but they raise no challenges to

delegation. That is fatal to this argument. *Toth*, 118 F.4th at 416 (challenges to “dispute-resolution section of the User Agreement” do not “make the delegation provision itself unfair or somehow restrict *Toth*’s ability to challenge the validity of the arbitration agreement before an arbitrator.”).

B. Plaintiffs’ Arguments About the Scope of Arbitrability Are Meritless

1. Plaintiffs’ “Arising Out Of” Arguments Fail

Plaintiffs contend that their antitrust claims do not “arise out of” the Provider Agreements, and thus the Arbitration Agreements are “beyond the scope of the FAA” and “unenforceable.” Opp. 7. As an initial matter, whether the claims “arise out of” the Provider Agreements is an issue regarding the scope of the Arbitration Agreements and is not for the Court to decide. *Henry Schein, Inc.*, 586 U.S. at 65; *see also Christian v. Uber Tech., Inc.*, 775 F. Supp. 3d 272, 281 (D.D.C. 2025) (“*Henry* makes it clear that the Court has no power to determine whether a claim is arbitrable, or ‘arises out of’ the underlying contract, where, as here, there is a delegation clause.”). Plaintiffs’ lead case, *Davitashavili v. Grubhub Inc.*, 131 F.4th 109 (2d Cir. 2025), cited over a dozen times, proves this very point. There, the plaintiff sued three defendants. Two defendants (Uber and Postmates) had arbitration agreements that delegated arbitrability issues to the arbitrator. *Id.* at 118. Those claims were compelled to arbitration and the court did not analyze whether they “arose under” the parties’ agreements. *Id.* By contrast, one defendant (Grubhub) had an arbitration agreement that expressly delegated arbitrability issues *to the court*. *Id.* (“issues related to the scope, validity, and enforceability of this Arbitration Agreement are *for the court to decide*”) (emphasis added). The court thus analyzed whether those claims arose under the arbitration agreement. *Id.* at 120. Plaintiffs’ other lead cases did not involve delegation clauses at all and are therefore irrelevant. *McFarlane v. Altice USA, Inc.*, 524 F. Supp. 3d 264 (S.D.N.Y. 2001) (cited 17 times); *Calderon v. Sixt Rent a Car, LLC*, 5 F.4th 1204 (11th Cir. 2021); *Revitch v. DirecTV, LLC*, 977 F.3d 713 (9th Cir. 2020); *Wexler v. AT&T Corp.*, 211 F. Supp. 3d 500 (E.D.N.Y. 2016).

Plaintiffs’ lead argument about “arising out of” fails.

In any event, the claims *do* arise out of the Provider Agreements. For one, the Arbitration Agreements apply to “any” and/or “all” disputes between the parties. *Supra* Section II.A.1. That, too, is enough to reject Plaintiffs’ “arising out of” argument. *See Rent-A-Center*, 561 U.S. at 67 (courts must enforce contracts “according to their terms.”)¹

Regardless, there is a clear nexus between Plaintiffs’ claims and the Provider Agreements. They argue that because their claims concern *out-of-network* payments, and the Provider Agreements concern *in-network* payments, that the Provider Agreements are irrelevant. Opp. 8–9. But that distinction ignores how dependent their own claims are on comparing out-of-network and in-network fees. The Complaint references “in-network” over 40 times and alleges defendants suppressed out-of-network payments “so that they match or come close to in-network payment levels” (Compl. ¶ 300), among many other allegations about in-network rates. *E.g., id.* ¶¶ 3, 46, 94–96, 133–136; 298–303. In other words, Plaintiffs put the Provider Agreements (containing the Arbitration Agreements) directly at issue by alleging their in-network payment levels set a purported bar for out-of-network rates. In addition, to determine which claims and services are *in-network* (and by extension, which are *out-of-network*), one must interpret and apply the Provider

¹ Courts routinely enforce provisions with similar language. *See, e.g., Mey v. DIRECTV, LLC*, 971 F.3d 284, 292–94 (4th Cir. 2020) (“all disputes and claims” not “limited to disputes or claims arising out of or relating to the underlying contract or the provision of [the] service”); *PaineWebber Inc. v. Bybyk*, 81 F.3d 1193, 1199 (2d Cir. 1996) (upholding order compelling arbitration where agreement stated “any and all” controversies were to be determined by arbitration); *Pabon v. HOB Digital LLC*, 2025 WL 2254008, at *3 (E.D.N.Y. Aug. 7, 2025) (“no reasonable person would read an arbitration clause reaching ‘all disputes and claims,’ ... to cover only the narrower subcategory of dispute ... [plaintiff] posits”); *Cloney’s Pharm., Inc. v. Wellpartner, Inc.*, 2024 WL 4349291, at *10–11 (S.D.N.Y. Sept. 30, 2024) (“[a]ny dispute, claim or controversy”); *Haasbroek v. Princess Cruise Lines, Ltd.*, 286 F. Supp. 3d 1352, 1360 n.8 (S.D. Fla. 2017) (similar); *Gould v. Hyundai Mot. Co.*, 2025 WL 26806, at *5, *13 (C.D. Cal. Jan. 3, 2025) (similar); *Mitchell v. Corelogic, Inc.*, 424 F. Supp. 3d 815, 819 (C.D. Cal. 2019) (similar); Brass Decl. Ex. D (similar).

Agreements.

Plaintiffs cite *Davitashvili* and *Calderon* to argue their antitrust claims do not arise out of the Provider Agreements, but those cases are easily distinguishable. There were no delegation clauses in either (*supra* Section II.B.1), and the defendants were not parties to the applicable contract. *See Davitashvili v. Grubhub Inc.*, 2023 WL 2537777, at *10 (S.D.N.Y. Mar. 16, 2023) (plaintiffs’ antitrust claims were “based solely on purchases made directly from restaurants or from non-defendant meal-delivery platforms,” and “specifically exclude[d] any purchases made” through Grubhub, thus did not arise under Grubhub’s contract); *Calderon*, 5 F.4th at 1207 (plaintiff “used Orbitz.com to book a rental car from Sixt” and agreed to Orbitz’s arbitration provision, but his claims against Sixt did not “aris[e] out of” his contract with *Orbitz*”).

2. Plaintiffs’ Arguments Attacking the Arbitration Agreements Fail

Plaintiffs’ unenforceability arguments are also unavailing. These issues are delegated to the arbitrator and need not be resolved here. *Toth*, 118 F.4th 414. They also fail on the merits.

First, Plaintiffs argue that the Arbitration Agreements are unenforceable because “the parties did not form an agreement to arbitrate antitrust claims” and “there is no connection whatsoever” between the Arbitration Agreements and the antitrust claims. *Opp.* 11, 12. This is a rehash of Plaintiffs’ “arising out of” argument and fails for the same reasons. *Supra* Section II.B.1. Moreover, the parties expressly agreed to arbitrate “any” and/or “all disputes.” *Mot.* 7–11. Courts routinely compel arbitration under similar agreements. *Supra* Section II.B.1, n.1.

Plaintiffs’ reliance on *Wexler v. AT&T Corp.*, 211 F. Supp. 3d 500 (E.D.N.Y. 2016), is misplaced. There, plaintiff signed a wireless agreement, covering “all disputes and claims” with Mobility and its “affiliates.” *Id.* at 501. Years later, the plaintiff received harassing calls and texts from AT&T and filed a class action against AT&T for violating the TCPA. *Id.* As a Mobility affiliate, AT&T moved to compel arbitration under the Mobility agreement. *Id.* Because there

was no delegation clause, the court analyzed whether a “reasonable person would think” agreeing to the Mobility’s agreement required arbitration of claims against AT&T. *Id.* at 504. In the absence of a “connection” between the claims and the agreement, the court denied the motion. *Id.* at 503, 505. By contrast, here, there is a delegation clause (*supra* Section II.A.1), and the dispute is “connected” to the Arbitration Agreements as they are both about payment for Plaintiffs’ services. *Supra* Section II.B.1.

Second, Plaintiffs argue the “infinite” scope of the Arbitration Agreements renders them unconscionable. *Opp.* 13–15. But refusing to enforce an arbitration provision as overbroad would run headfirst into the FAA and Supreme Court case law. *Rent-A-Center*, 561 U.S. at 67. In arguing otherwise, Plaintiffs rely primarily on *McFarlane*. *Opp.* 15. Yet *McFarlane* bears no resemblance to this case. There, plaintiffs were “current or former employees of Altice whose personal identifying information ... was stolen in” a data breach. 524 F. Supp. 3d at 268. Plaintiffs sued Altice for failing to take adequate measures to protect their data, and Altice moved to compel arbitration. *Id.* In declining to enforce the arbitration provision, the court explained that, “[s]ignificantly, Altice does so not based on an arbitration provision contained in any *employment* agreements with these Plaintiffs, but based on arbitration provisions contained in the” agreements they signed to become “*subscribers* of Altice’s cable services,” and thus there was no “nexus whatsoever” between them. *Id.*; *see also id.* at 273, 276 (emphases added). By contrast, there is a delegation clause here (*supra* Section II.A.1), and the nexus is clear. *Supra* Section II.B.1.

Finally, Plaintiffs argue the Provider Agreements are unconscionable “contracts of adhesion,” *Opp.* 15 n.18, but that does not make a contract unenforceable. *See, e.g., Baltazar v. Forever 21, Inc.*, 62 Cal. 4th 1237, 1245-46 (2016); *Rudbart v. N. Jersey Dist. Water Supply Comm’n*, 127 N.J. 344, 356 (1992); *Ed Bozarth Chevrolet, Inc. v. Black*, 32 Kan. App. 2d 874, 886

(2003).

C. Plaintiffs’ Remaining Arguments Are Meritless

1. *Discover Bank* Does Not Apply to PIMG’s Class Waiver

Plaintiffs next argue that the class-action waiver in PIMG’s Arbitration Agreement is unconscionable under *Discover Bank v. Superior Court*, 26 Cal. 4th 148 (2005), Opp. 15–16, based on the false premise that the FAA does not apply here—but it does. *Supra* Section II.A. It is undisputed that if the FAA applies, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), disposes of Plaintiffs’ argument. *Id.* at 346–48 (FAA preempts California rule on class action waivers). In any event, conscionability is also delegated to the arbitrator, *JPay, Inc. v. Kobel*, 904 F.3d 923, 936, 941 (11th Cir. 2018), and Plaintiffs’ conclusory assertions are insufficient to render the provision unconscionable. *See Arguelles-Romero v. Superior Court*, 184 Cal. App. 4th 825, 844 (2010).

2. Scaccia’s Arbitration Agreement Survives Termination

Plaintiffs argue Scaccia’s Arbitration Agreement is unenforceable because he terminated his Provider Agreement in 2021. Opp. 17. But that ignores the explicit survival clause, which states “[t]his provision will survive any termination of this Agreement.” Brass Decl., Ex. C at 3. Where a contract is terminated but the arbitration provision survives, it remains effective. *Bossé*, 992 F. 3d at 29 (“The survival clause reinforces the parties’ intent that issues of arbitrability be decided by an arbitrator even after that Agreement was terminated.”); *see also Mun. Energy Agency of Miss. v. Big Rivers Elec. Corp.*, 804 F. 2d 338, 343 (5th Cir. 1986). *In re Miller’s Estate*, 90 N.J. 210, 218 (1982), which involves neither arbitration nor a survival clause, does not move that needle, as it stands only for the general proposition that perpetual contracts are disfavored.

D. A Stay Pending Arbitration Is Required

Because this “lawsuit involves an arbitrable dispute,” and United “requests a stay pending

arbitration,” the FAA “compels the court to stay the proceeding.” *Smith v. Spizzirri*, 601 U.S. 472, 478 (2024); Mot. 19–20; 9 U.S.C. § 3 (court “shall on application of one of the parties stay the trial of the action”). Arbitrable Plaintiffs do not dispute that if any of their claims are compelled to arbitration, their claims should be stayed. Opp. 20.

E. Plaintiffs Do Not Address the Pre-Dispute Mediation Requirement

As United explained in its Motion, Plaintiffs agreed to pre-dispute resolution procedures in their Provider Agreements, which are a condition precedent to initiating any legal action. Mot. 18–19. Plaintiffs failed to respond. Mediation provisions are not governed by the FAA regardless. This Court should thus order Plaintiffs to comply with these provisions and stay their claims in the interim. *See RGOI ASC, Ltd. v. Gen. Elec. Co.*, 2019 WL 1992436, at *3 (D. Mass. May 6, 2019).

III. CONCLUSION

For these reasons, United respectfully requests that the Court grant its Motion, and compel Arbitrable Plaintiffs’ claims to arbitration rather than ruling on the merits of those claims, and stay this case pending that arbitration.

Dated: October 20, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2025, I electronically filed the foregoing document with the Clerk of the Court using the Court's CM/ECF system, which will send notice of the filing to counsel of record.

/s/ Allison M. O'Neil _____

Allison M. O'Neil