

**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:	<i>Consolidated with Case Nos.:</i>
All Actions	1:25-cv-11092-BEM 1:25-cv-11167-BEM 1:25-cv-11537-BEM

**PLAINTIFFS’ LIMITED OBJECTION TO
ORDER OF MAGISTRATE JUDGE (DKT. 337)**

Pursuant to Rule 72(a),¹ Plaintiffs respectfully submit this limited objection to the Order of Magistrate Judge Boal issued September 21, 2026 (Dkt. 337, the “Order”), granting in part Defendants’ Motion to Compel (Dkt. 298) and compelling production of “Billing, Collection, And Balance-Billing Data.” Order at 1-2. The Order deemed all such data relevant because “[a]s recognized in Judge Murphy’s [Dismissal Order], Plaintiffs’ own balance billing allegations could be read to contradict Plaintiffs’ theory of damages.” *Id.* (citing the Court’s order denying Defendants’ motions to dismiss, Dkt. 185 (the “Dismissal Order” or “D.O.”) at 10-11).

That finding is contrary to law for two independent reasons. First, the pages of the Dismissal Order on which the Order relies analyze only causation and directness; the Dismissal Order nowhere refers to a “theory of damages.” *See* D.O. at 10-11. Second, in a Sherman Act Section 1 case, the injury is the allegedly anticompetitive charge at the time of the transaction between Plaintiffs and Defendants, here, the Out-Of-Network (“OON”) claim reimbursement payments to Plaintiffs that Defendants’ conspiracy suppressed. In accord with Supreme Court and other antitrust precedent, the Second Amended and Consolidated Class Action Complaint (Dkt. 273, “SAC”) alleges antitrust injury only when the transaction occurred. Nowhere does the SAC

¹ References to “Rule #” are to the Federal Rules of Civil Procedure unless otherwise stated.

allege that Plaintiffs recouped, or could recoup, their damages by balance-billing patients; as a matter of antitrust law, they could not.

In an antitrust case, Defendants are not entitled to a setoff for whatever amounts Plaintiffs may have billed or collected from patients, and Plaintiffs cannot recoup through balance billing the damages caused by Defendants, any more than an overcharged buyer's resale of its purchases to its own customers reduces any defendant's liability. *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481, 494 (1968). Plaintiffs respectfully request that the Court sustain this Objection and set aside the portion of the Order compelling all downstream billing, collection, and balance-billing data, leaving undisturbed the balance-billing materials that Plaintiffs agreed to produce before Defendants filed their Motion to Compel.

BACKGROUND

Defendants moved to compel, among other things, documents regarding “balance billing, patient billing, and other sources of OON payment.” Dkt. 298 (the “Motion to Compel”) at 6 (ECF p. 10 of 44). Defendants asserted that “Plaintiffs allege that balance-billing challenges prevented providers from recovering unpaid balances from patients,” yet Plaintiffs “refuse to provide any discovery to allow Defendants to test that allegation.” *Id.* at 2 (ECF p. 6 of 44). Defendants argued that balance-billing documents are “relevant to class certification” and to “the appropriate method for measuring damages,” *id.* at 3 (ECF p. 7 of 44) (citing SAC ¶¶ 382–384), and that they are “entitled to discovery testing whether those issues can, in fact, be resolved with common proof” or whether “individualized issues concerning balance billing [...] predominate.” *Id.*

Plaintiffs opposed the Motion to Compel as to downstream billing, collection, and balance-billing records. Dkt. 308. As Plaintiffs explained, “[w]hether Plaintiffs later collected some, all, or none of the balance from patients or other sources” as a matter of Supreme Court and other antitrust

precedent “has no bearing on whether Defendants’ alleged conspiracy caused antitrust injury when it suppressed the reimbursement rate in the first instance,” and the discovery sought was “grossly disproportionate to the needs of this case.” *Id.* at 6 (ECF p. 11 of 33). Plaintiffs “also have already agreed to produce documents setting forth Zelis’s balance-billing prohibitions, as well as internal communications related to their allegations concerning balance billing in the Consolidated Complaints.” *Id.* at 6-7 (ECF pp. 11-12 of 33).

After a hearing, the Order found that “Billing, Collection, And Balance-Billing Data . . . is relevant in this case” because “[a]s recognized in Judge Murphy’s [Dismissal Order], Plaintiffs’ own balance billing allegations could be read to contradict Plaintiffs’ theory of damages, and the order also relied on Plaintiffs’ allegations that they are prohibited from balance billing. Docket No. 185 at 10-11. Defendants are entitled to test those allegations and theories.” Order at 1-2 (emphasis added).

The Dismissal Order, however, addressed causation and directness of injury, not damages. The Court reasoned that Plaintiffs’ balance-billing allegations satisfied the causation requirement because Plaintiffs “have alleged both that they cannot negotiate the repriced claims and that they are prohibited from balance-billing patients,” and that although allegations cited by Defendants “could be read to contradict the allegations that providers cannot negotiate the claims or balance-bill patients, on a motion to dismiss, the Court must draw all reasonable inferences in Plaintiffs’ favor.” D.O. at 10-11. The Dismissal Order nowhere refers to a “theory of damages.” Order at 2. The citations to balance billing in the SAC illustrated the power Defendants exercised in the market; they did not have, and could not have as a matter of antitrust law, any bearing on Plaintiffs’ damages.

LEGAL STANDARDS

A “district judge may, given a timely appeal, set aside [an] order [of a magistrate judge] if it ‘is clearly erroneous or is contrary to law.’” *PowerShare, Inc. v. Syntel, Inc.*, 597 F.3d 10, 14 (1st Cir. 2010) (quoting Fed. R. Civ. P. 72(a)). Under the “clearly erroneous” standard, the district judge must “accept the magistrate judge’s findings of fact and the conclusions drawn from them ‘unless, after scrutinizing the entire record, [the court] form[s] a strong, unyielding belief that a mistake has been made.’” *Khath v. Midland Funding, LLC*, 334 F. Supp. 3d 499, 506 (D. Mass. 2018) (quoting *Phinney v. Wentworth Douglas Hosp.*, 199 F.3d 1, 4 (1st Cir. 1999)).

Pure questions of law are reviewed *de novo* (*id.*, citing *PowerShare*, 597 F.3d at 15) while mixed questions of law and fact are reviewed on a “sliding scale” in that “[t]he more fact intensive the question, the more deferential the level of review,” and “the more law intensive the question, the less deferential the level of review.” *Id.* (quoting *In re IDC Clambakes, Inc.*, 727 F.3d 58, 64 (1st Cir. 2013)).

ARGUMENT

I. THE DISMISSAL ORDER ADDRESSED CAUSATION AND DIRECTNESS, NOT DAMAGES.

The Order’s relevance finding rests on the premise that the Dismissal Order “recognized” that “Plaintiffs’ own balance billing allegations could be read to contradict Plaintiffs’ theory of damages.” Order at 1-2. But the pages the Order cites, D.O. at 10-11, appear in the Dismissal Order’s “Causation and Directness” analysis, which concerns whether Defendants’ alleged conduct was a material, direct cause of an injury of the type the antitrust laws were intended to prevent. That section addresses the causation of Plaintiffs’ alleged injury, not the measurement of damages, and the Dismissal Order nowhere refers to Plaintiffs’ “theory of damages.”

What the Court actually held is that Plaintiffs adequately pleaded causation. The Court acknowledged that Defendants “contend” that “various allegations in the Complaint . . . demonstrate that the repriced claims are merely conditional [. . .] and that the providers voluntarily choose not to balance-bill patients,” but concluded that those allegations, at most, “could be read to contradict the allegations that providers cannot negotiate the claims or balance-bill patients.” D.O. at 11. That is a pleading-stage ruling on the sufficiency of Plaintiffs’ causation allegations, not a recognition that balance billing bears on damages.

Defendants are of course entitled to test the allegation on which the Dismissal Order relied for causation: that Plaintiffs “are prohibited from balance-billing patients.” D.O. at 10-11; Order at 1-2. That is why Plaintiffs agreed, before Defendants filed the Motion to Compel, to produce documents setting forth Zelis’s balance-billing prohibitions and related internal communications. Dkt. 308 at 6-7 (ECF pp. 11-12 of 33). What Defendants are not entitled to is discovery into patients’ bills and collection records on the theory that they contradict Plaintiffs’ damages, because balance billing cannot, as a matter of law, affect Plaintiffs’ damages.

II. BALANCE BILLING CANNOT AFFECT PLAINTIFFS’ ANTITRUST INJURY OR DAMAGES.

In a Sherman Act Section 1 case, damages flow from the anticompetitive charges at the time of the transactions between the plaintiffs and the defendants. Injury occurs, and damages are measured, at that transaction. They are not measured by anything that happens downstream of that transaction. Here, as the Court acknowledged, Plaintiffs allege that they “have been injured by being forced to accept OON claim reimbursements far below that which would have occurred in a competitive market,” D.O. at 12, and the SAC seeks damages on exactly that basis: Plaintiffs and the Class “received lower payments for performing OON healthcare services than they would have been paid in the absence of Defendants’ illegal contract, combination, or conspiracy.” SAC ¶ 337.

The SAC nowhere alleges that Plaintiffs recouped, or could recoup, those damages by balance-billing patients, and as a matter of antitrust law they could not. Defendants are not entitled to a setoff, and Plaintiffs cannot recover from their patients the damages caused by Defendants, any more than an overcharged buyer's resale of its purchases to its own customers reduces the defendant's liability. *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481, 494 (1968) (a defendant may not reduce its liability by showing the overcharged party later shifted the loss elsewhere); *In re Nexium Antitrust Litig.*, 777 F.3d 9, 27 (1st Cir. 2015) ("if a class member is overcharged, there is an injury" whether or not that injury is later offset); *In re Delta/AirTran Baggage Fee Antitrust Litig.*, 317 F.R.D. 675, 684, 686–87 (N.D. Ga. 2016) (rejecting attempt to offset an already-incurred overcharge through subsequent third-party reimbursement). Whether Plaintiffs balance-billed their patients, and whether those patients paid some, all, or none of the balance, has no bearing on the fact or amount of the injury inflicted at the time of Plaintiffs' transactions with Defendants, or the damages flowing from that injury.

The Order's holding that detailed billing, collection, and balance-billing data is relevant, rather than only the balance-billing materials Plaintiffs already agreed to produce relating to the allegations in the SAC, was therefore clearly erroneous and contrary to law.²

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court sustain this Objection and set aside the portion of the Order requiring production of all "Billing, Collection, And Balance-Billing Data," Order at 1-2

Dated: October 5, 2026

Richard M. Paul III, *pro hac vice*

Respectfully submitted,

/s/ Jason S. Hartley
Jason S. Hartley, *pro hac vice*

Mary Jane Fait, *pro hac vice*
Haley Hawn, *pro hac vice*
PAUL LLP
600 Broadway Blvd., Suite 600
Kansas City, Missouri 64105
Telephone: (816) 984-8100
Rick@PaulLLP.com
MaryJane@PaulLLP.com
Haley@PaulLLP.com

Plaintiffs' Interim Co-lead Counsel

Amanda F. Lawrence
SCOTT+SCOTT ATTORNEYS AT LAW LLP
156 South Main Street
P.O. Box 192
Colchester, CT 06415
Telephone: (860) 531-2606
alawrence@scott-scott.com

Patrick Coughlin
Fatima Brizuela
SCOTT+SCOTT ATTORNEYS AT LAW LLP
600 West Broadway, Suite 3300
San Diego, CA 92101
Telephone: (619) 798-5308
pcoughlin@scott-scott.com
fbrizuela@scott-scott.com

John Landay
LANDAY ROBERTS LLP
600 West Broadway, Suite 700
San Diego, California 92101
Telephone: (619) 648-4811
jlanday@landayroberts.com

Daniel J. Mogin
MOGIN LAW LLP
4225 Executive Square, Suite 600
La Jolla, CA 92037
Telephone: (619) 687-6611
dmogin@moginlawllp.com

Daniel R. Karon
KARON LLC
631 W. St. Clair Ave.

Jason M. Lindner, *pro hac vice forthcoming*
Maureen Forsyth (BBO No. 642390)
Kenneth Frost, *pro hac vice*
HARTLEY LLP
101 W. Broadway, Ste 820
San Diego, CA 92101
Telephone: (619) 400-5822
hartley@hartleyllp.com
lindner@hartleyllp.com

Plaintiffs' Interim Co-lead Counsel

Katrina Carroll
Kyle A. Shamberg
CARROLL SHAMBERG LLC
111 W. Washington Street
Suite 1240
Chicago, IL 60602
Telephone: 872-215-6205
katrina@csclassactions.com
kyle@csclassactions.com

Adam J. Zapala
Elizabeth T. Castillo
Christian S. Ruano
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road
Burlingame, CA 94010
Telephone: (650) 697-6000
azapala@cpmlegal.com
ecastillo@cpmlegal.com
cruano@cpmlegal.com

David M. Cialkowski, *pro hac vice*
Ian F. McFarland, *pro hac vice*
ZIMMERMAN REED LLP
1100 IDS Center
80 S. 8th St.
Minneapolis, MN 55402
(612) 341-0400
david.cialkowski@zimmreed.com
ian.mcfarland@zimmreed.com

Garrett D. Blanchfield
Brant D. Penney
Roberta A. Yard

Cleveland, OH 44113
Telephone: (216) 622-1851
dkaron@karonllc.com

C. Andrew Dirksen (BBO No. 568773)
CERA LLP
529 Main St., Suite P200
Boston, MA 02129
Telephone: (857) 453-6555
cdirksen@cerallp.com

**REINHARDT WENDORF &
BLANCHFIELD**

80 South 8th Street, Suite 900
Minneapolis, MN 55402
Telephone: (651) 287-2100
g.blanchfield@rwblawfirm.com
b.penney@rwblawfirm.com
r.yard@rwblawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of October 2026, I caused a copy of the foregoing to be served, via ECF, on all counsel of record.

/s/ C. Andrew Dirksen