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' OPPOSITION TO DEFENDANT AETNA INC.'S MOTION TO DISMISS THE SECOND AMENDED AND CONSOLIDATED CLASS ACTION COMPLAINT

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INTRODUCTION

This Court previously found, in denying the first Motion to Dismiss in this matter, that Plaintiffs presented plausible allegations that the Zelis Defendants compete on a horizontal basis with Commercial Payers, including Aetna. *See* ECF 185 at 13-14. The Court likewise upheld that the direct and circumstantial allegations plausibly support a hub-and-spoke conspiracy. *See id.* at 14-17. Now, Defendant Aetna Inc. ("Aetna") seeks a second bite at the apple, challenging the same basic conspiracy allegations even though the Second Amended and Consolidated Class Action Complaint ("SAC") makes no real substantive change to the relevant facts or claims. Instead, the changes made to the prior complaint were naming as defendants the subsidiaries of certain Defendants, replacing a named Plaintiff, correcting typos, and refining language regarding the Payer Defendants. Notably, while the amendments concerned all Defendants, only Aetna chose to ignore the Court's prior denial of the Motions to Dismiss and make the same arguments the Court previously denied.

Aetna identifies only a handful of edited words as the basis for its renewed motion. These edits merely clarify existing allegations; none of them withdraws or weakens an allegation this Court found plausible, and none justifies putting Plaintiffs and the Court through another motion to dismiss. Specifically, the amendments that conceivably touch Aetna were as follows: In Paragraph 8, Plaintiffs inserted the phrase "one or more" before "Commercial Payers" in the two sentences describing the purchase of, and payment for, Zelis's repricing services. SAC ¶ 8. In Paragraph 12, Plaintiffs corrected the number of Zelis payer clients quoted in the complaint from "over 770" to "over 750." SAC ¶ 12. In Paragraph 14, Plaintiffs added "including, but not limited to," clarifying that the conspiracy's tools are not limited to Zelis's ERS and RBP services. SAC ¶ 14. In Paragraph 35, Plaintiffs added Meritain Health, Inc. ("Meritain") as a defendant and revised the collective

reference to "Aetna" to encompass both entities. SAC ¶ 35. In Paragraph 42, Plaintiffs removed the word "repricing" from the phrase "OON repricing agreements," added the words "or delivered," and conformed the sentence's conjunctions. SAC ¶ 42. In Paragraph 114, Plaintiffs added the word "multiple" before "Commercial Payers." SAC ¶ 114. And in Paragraph 193, Plaintiffs deleted the phrase "all or nearly all." SAC ¶ 193. Every other paragraph of the SAC that Aetna cites is unchanged from the prior complaint except for its numbering. *See* Memorandum of Law in Support of Defendant Aetna's Motion To Dismiss ("Def. Br."), ECF 284, at 4-5, 8-10, 12-14 (citing, *e.g.*, SAC ¶¶ 45, 54, 60, 78, 86, 93-95, 202, 236, 238, 291). If Aetna believed the Court's March 30 Order was wrong, its remedy was a motion for reconsideration. It filed none. Instead, it waited for a non-substantive amendment and refiled the same arguments the Court already rejected.

Aetna's motion rests on the premise that Plaintiffs amended because Aetna did not use Zelis repricing services. *See* Def. Br. at 1, 12. That premise is unsupported; Plaintiffs have not conducted discovery on that representation, which appears counter to the facts, to boot. Aetna asks the Court to accept the unsworn representations of its counsel, representations that Aetna refused to confirm when Plaintiffs offered it the chance, and Aetna has identified no evidence in support of them. *See* Hartley Decl. Ex. 3 (June 29, 2026 Letter).

Nor did the amendments change Plaintiffs' theory of the case. As before, Aetna is alleged to have entered into one or more OON agreements with Zelis, a horizontal competitor; to have issued or delivered OON payments at below-competitive levels; to have shared proprietary, confidential, and competitively-sensitive information with horizontal competitors; and to have surrendered its independent pricing authority to a third party. SAC ¶ 42. As a Commercial Payer, Aetna remains obligated to pay Providers for OON healthcare services and pays at the repriced amount. SAC ¶¶

35, 158, 185, 365. And Aetna's subsidiary Meritain, by Aetna's counsel's own account, "uses Zelis's ERS and/or RBP products on a subset of its claims." Hartley Decl. Ex.1 (Apr. 27, 2026 Trefz Letter at 1). Other allegations concerning Aetna remain unchanged, including its membership in AHIP, its partnership with Availity, and the allegation that each Defendant operated through its subsidiaries, affiliates, and agents as a single unified entity. SAC ¶¶ 54, 238, 291. As the Court recognized by denying the first Motion to Dismiss, Plaintiffs are entitled to test these allegations in discovery. Accordingly, Aetna's Motion should be denied.

Plaintiffs should be entitled to, and may separately request, a sanction against Aetna to compensate for their time in opposing this frivolous Motion.

PROCEDURAL SUMMARY

Plaintiffs filed their Amended and Consolidated Class Action Complaint on June 11, 2025. *See* ECF 39. The Court upheld the plausibility of Plaintiffs' claims without exception. *See* ECF 185. Most allegations remain unchanged in the SAC and should not be analyzed again by this Court or re-litigated in the context of this Motion. Defendant Aetna's primary argument, that it did not use Zelis's repricing tools, was already considered and rejected by this Court, and Aetna's current motion is an improper attempt to relitigate it. Aetna never moved for reconsideration of the March 30 order denying is motion to dismiss (the "Order"). *See* ECF 185. A renewed motion to dismiss is not a substitute: where, as here, the amendments are non-substantive, the Court's prior rulings are the law of the case and Aetna's recycled arguments should be rejected out of hand.

Aetna is a properly and plausibly alleged member of the conspiracy for the following additional reasons: (1) Plaintiffs do not limit participation in the Zelis Conspiracy to the use of, or entry into agreements relating to only Zelis's ERS or RBP repricing services (SAC ¶¶ 8, 14, 132, 326, 354); (2) Aetna pays Providers for performance of OON healthcare services and is

incentivized to reduce payments to those Providers (SAC ¶¶ 8, 35, 158); accordingly, it directed or, at minimum, benefitted from the direct use of Zelis repricing by its subsidiary, Meritain Health, Inc. (SAC ¶ 35; Hartley Decl. Ex. 1 (Apr. 27, 2026 Trefz Letter at 1)); (3) Defendant Aetna does not deny communicating with other horizontal Defendants, attending Zelis annual client conferences, or meeting with other non-Zelis Commercial Payers (*compare* ECF 285 *with* SAC ¶¶ 1, 7, 8, 207, 211, 232-234, 287-290, 296); (4) Plaintiffs' information-sharing allegations remain unchanged (*compare* SAC ¶¶ 207-234 *with* CAC ¶¶ 204-231); (5) Plaintiffs' circumstantial allegations in the SAC concerning, for example, Defendant Aetna's membership with AHIP or its partnership with Availity remain the same as in the CAC, and the Court's analysis should remain unchanged (*compare* SAC ¶¶ 238, 291 *with* CAC ¶¶ 235, 288; Order at 15 & n.12); and (6) Aetna surrendered its independent pricing authority to a third party, Zelis (SAC ¶¶ 42, 55, 137-138; CAC ¶ 42).

APPLICABLE LEGAL STANDARD

Because Aetna's Rule 12(b)(1) motion asserts a facial challenge, the same standard of review applies to Aetna's motion under Rule 12(b)(1) and 12(b)(6). *Murphy v. U.S.*, 45 F.3d 520, 522 (1st Cir. 1995). A facial challenge must stand or fall on the face of the pleading itself; the unsworn representations of Aetna's counsel about facts outside the SAC are neither allegations nor evidence, and they play no role in the Court's analysis. To meet this standard, the complaint must state a claim that is plausible on its face. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This means that "[f]actual allegations must be enough to raise a right to relief above the speculative level[.]" *Id.* at 555. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 556). The Supreme Court has admonished

that "in antitrust cases, where the proof is largely in the hands of the alleged conspirators, dismissals prior to giving the plaintiff ample opportunity for discovery should be granted very sparingly." *Hospital Bldg. Co. v. Trustees of Rex Hosp.*, 425 U.S. 738, 747 (1976).

ARGUMENT

I. PLAINTIFFS' ALLEGATIONS PLAUSIBLY ESTABLISH AETNA'S PARTICIPATION IN THE ALLEGED CONSPIRACY

A. The SAC Makes No Substantive Change to the Complaint

Defendant Aetna reveals the basis for its renewed motion: "as amended, Plaintiffs' use of 'or more' means that the Complaint on its face can be read to allege that only one Commercial Payer Defendant used Zelis repricing tools – which would not, of course, amount to a horizontal agreement at all." ECF 284 at 7 (emphasis in original). Aetna gets this wrong for at least three reasons.

First, it reads a three-word phrase in isolation and ignores the rest of Paragraph 8, which alleges that "Zelis obtains confidential claims, pricing, and contractual data from Commercial Payers, and has developed or acquired technologies, methodologies, and other tools for the calculation and communication of repriced claims to OON Providers," and that the sharing of such exceptionally sensitive business information "was key to having near-complete industry buy-in." SAC ¶ 8. There exists no qualifying language here that could possibly exclude Aetna.

Second, Aetna's premise fails as a matter of law. A horizontal conspiracy does not require every spoke to perform the same act: a "classic 'hub-and-spoke' conspiracy" is one "in which a central core of conspirators recruits separate groups of co-conspirators to carry out the various functions of the illegal enterprise." *United States v. Chandler*, 388 F. 3d 796, 807 (11th Cir. 2004). And when a single, non-Zelis Commercial Payer enters into a repricing agreement with Zelis, it is entering into an agreement with a horizontal competitor. *See* Order at 14.

Third, Aetna's narrow reading is contradicted by the SAC itself, which alleges that "Aetna, Cigna, Elevance, Humana, UnitedHealth, and other PPO insurers have each entered into one or more OON agreements with Zelis," SAC ¶ 42, that Zelis provides "repricing" services "for multiple Commercial Payers," SAC ¶ 114, and that Zelis counts "approximately 770 health insurers, including the nation's 'top 5' national health insurers, among its repricing customers," SAC ¶ 245. The mere addition of "one or more" in Paragraph 8 does not lead to the dramatic result Aetna concocts.

In any event, a renewed motion to dismiss is an improper vehicle for the relief Aetna seeks. The proper vehicle for Aetna's disagreement with the March 30 Order would have been a motion for reconsideration, which requires a showing of manifest error of law or newly discovered evidence. Aetna filed no such motion, and it could not: the Order's plausibility determinations rest on allegations that remain in the SAC verbatim, and Aetna identifies no error in them, only its continued disagreement. Using a non-substantive amendment as the occasion to refile rejected arguments is an end run around both the law of the case and the standard for reconsideration. *See, e.g., Pepper v. United States,* 562 U.S. 476, 506 (2011) ("[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case"); *Flibotte v. Pennsylvania Truck Lines, Inc*., 131 F.3d 21, 25 (1st Cir. 1997) (departure from the law of the case is only appropriate where prior holding was "clearly erroneous and would work a manifest injustice.") The Motion should be denied on this basis alone.

B. Aetna Does Not Deny That It Entered into Agreements With Zelis, Delivered OON Payments Below Competitive Rates, and Shared Confidential Claims Information

Aetna's narrow Motion does not challenge any of the allegations, previously sustained by this Court on the first motion to dismiss, that "Aetna, Cigna, Elevance, Humana, UnitedHealth, and

other PPO insurers have each entered into one or more OON agreements with Zelis, issued or delivered one or more OON payments to Providers performing out-of-network healthcare services at payment levels below competitive amounts, shared proprietary, confidential, competitively-sensitive information regarding claims, pricing, and contractual information with horizontal competitors, surrendered its pricing authority to a third party, and/or otherwise participated in the conspiracy, committed or omitted acts, and/or made statements in furtherance of, and is a member of, the Zelis Conspiracy." SAC ¶ 42. The only edits to that paragraph in the SAC removed the word "repricing," added the words "or delivered," and conformed the conjunctions. *Compare* SAC ¶ 42 *with* CAC ¶ 42. Even if the Court were to set aside every other allegation in the SAC, Paragraph 42, together with Paragraph 8, suffices: Paragraph 8 alleges that "Zelis agreed to share data with one or more horizontally-positioned, competitor repricers," and Paragraph 314, unchanged from CAC ¶ 311 other than its numbering, alleges that "Commercial Payers had insight into the repricing efforts of at least one of Zelis's repricing rivals through the Commercial Payers' relationships with Zelis," SAC ¶ 314 & n.318; CAC ¶ 311 & n.313.[1]

Aetna's statement, "[n]or do Plaintiffs' allegations that 'Aetna' is a member of AHIP, without more, support an inference of an illegal agreement" (Def. Br. at 10), concerns only SAC ¶ 291, which relates to opportunities to conspire between or among non-Zelis Commercial Payer AHIP members. This has nothing to do with the allegations that Aetna entered into an illegal repricing agreement with Zelis, which already passed judicial scrutiny on the first Motion to Dismiss.

[1] The Def, Br. mentions the word "agree" (or its derivations) approximately 16 times. *See* Def. Br. at 2, 3, 4, 5, 7, 9, 10. It mentions the word "contract" (or its derivations) approximately 3 times. *See id.* at 2, 10. Despite discussing agreements and contracts on nearly every page of its supporting memorandum, in no place does Defendant Aetna challenge any allegation that Aetna entered into agreements with any of the Zelis Defendants. This failure is dispositive.

In an April 27, 2026 letter, counsel for Aetna represented that "Aetna has not entered into any agreements regarding the use of Zelis's ERS or RBP products at any time." Hartley Decl. Ex. 1 (Apr. 27, 2026 Trefz Letter). That representation is narrower than what Aetna suggests in its second motion to dismiss: it is limited to Zelis's ERS and RBP products, while the SAC's tool allegations are expressly "not limited to" those services, SAC ¶ 14, and the SAC alleges OON agreements with Zelis without regard to any particular tool, SAC ¶ 42. Before Aetna filed this Motion, Plaintiffs explained (and the complaint made clear) that their claims are not limited to the use of those two repricing products. Letter from J. Hartley to K. Trefz, June 29, 2026, attached to Hartley Decl. as Ex. 3.

In fact, Plaintiffs invited Aetna to confirm that it "never shared confidential claims information with Zelis and/or any of the other Defendants and never had access to such information from Zelis and/or any of the other Defendants when repricing out-of-network claims," but Aetna conspicuously declined to do so. Letter from J. Hartley to K. Trefz, June 29, 2026, attached to Hartley Decl. as Ex. 3. Aetna was told that, absent such a representation, "discovery needs to proceed." *Id.*

The Court previously reached the determinations that "Plaintiffs have plausibly alleged that Zelis competes with third-party payors in the market for OON services" and that "the Court finds the allegations as to a horizontal conspiracy sufficient at this stage" based on the same substantive allegations made in the SAC. Order at 14 (footnote omitted). Those determinations are now the law of the case, and have not been re-challenged by any Defendant, including Aetna. Aetna's Motion never actually disputes its entry into agreements with Zelis, including with respect to repricing-related agreements. By omitting any challenge to the allegations that it contracts with

Zelis for repricing, Aetna concedes the point, which is fatal to its motion under the established law of this case.

C. Aetna Benefits from Its Subsidiary's Direct Use of Zelis Repricing Services

As a Payer, Aetna participates in the Zelis Conspiracy in another way. The SAC alleges that "the Commercial Payer pays the Provider at the repriced amount." SAC ¶ 365. Aetna is such a Commercial Payer. SAC ¶ 35; *see also id.* ¶ 158. In other words, Aetna, as a Commercial Payer, pays Providers for OON healthcare services. Accordingly, so long as Aetna acts as the Payer, it benefits from the Zelis repricing tools used by intervening entities like TPAs, including its subsidiary Meritain, whom Aetna's counsel concedes used Zelis's ERS and/or RBP products. Hartley Decl. Ex. 1 (Apr. 27, 2026 Trefz Letter at 1). The SAC also alleges that each Defendant "through any and all of its respective subsidiaries, affiliates, and/or agents, operated as a single unified entity," SAC ¶ 54, and that Zelis acted as an agent for the Commercial Payers in repricing OON claims, SAC ¶ 55. Moreover, Commercial Payers play a direct role in decreasing OON payments in an effort to force Providers to in-network arrangements, which allegations were sustained by the Court. Order, ECF 184, at 10 ("The claims are founded, at least in part, on allegations that Defendants suppressed OON payments 'so that they match or come close to in-network payment levels.'"). See SAC ¶¶ 93, 152, 154, 155, 157, 159, 184, 193, 198, 275, 282. Meritain's admitted use of Zelis repricing tools facilitates that part of the conspiracy to force more Providers to in-network arrangements with Aetna, benefitting Aetna by lowering its OON costs for its traditional insurance business while increasing the number of Providers, increasing the number of Providers listed in its network directories, and allowing Aetna to charge its members more expensive premiums.. SAC ¶ 343. Whether Defendant Aetna Inc. explicitly directs Meritain or is merely the beneficiary of Meritain-implemented, Zelis-based repricing, by law, Defendant

Aetna Inc. "uses" Zelis repricing. *See Amyndas Pharms., S.A.*, 48 F.4th at 41; *Oakwood Lab'ys LLC v. Thanoo,* 999 F.3d 892, 909 (3d Cir. 2021). Through such direction and benefit, Plaintiffs plausibly allege that Aetna uses Zelis repricing tools. As the Court already recognized, the allegations support a cause of action against Aetna. *See* Order at 14-17.[2]

D. Defendants Need Not Engage in The Same Conduct to Support a Section 1 Violation; Plaintiffs Need Not Assign Specific Conduct to Specific Defendants

In a retread of the arguments from the first motion to dismiss, Aetna argues that dismissal is warranted because Plaintiffs fail to allege "that all defendants engaged in the same conduct." Def. Br. at 7. In support, Defendant Aetna cites *Carbone v. Brown University,* 621 F. Supp. 3d 878, 887 (N.D. Ill. 2022); Order, ECF 185 at 20 for its observation "that plaintiffs were not required to make 'specific allegations with respect to seven of the defendants' because the plaintiffs had plausibly alleged that '***all*** the defendants engage in non-need-blind admissions decisions,' . . . ." Def. Br. at 7. Ignoring that nothing in the SAC justifies revisiting this argument, this case does not diminish, but strongly supports, Plaintiffs here. As repeatedly alleged by Plaintiffs, this matter concerns "the Commercial Payers' [which includes Aetna] collusive decision to delegate pricing responsibility to Zelis." SAC ¶¶ 35, 55. *See also id.* at ¶¶ 7, 13, 16, 137, 138, 140, 203, 204, 208, 240, 365, 366, 369. Aetna omits the next paragraph in *Carbone*, which rejects the need to allege that all Defendants engaged in the same conduct. *See Carbone,* 621 F. Supp. 3d. at 887-888.

Although the "568 Exemption" discussed in *Carbone* is not at issue in *Zelis*, there is no requirement that conspiring co-defendants engage in the same specific conduct. *See, e.g., Chandler,* 388 F. 3d at 807. For example, one Commercial Payer can enter into an agreement with

[2] *See also* SAC ¶ 185 ("There is no dispute that Commercial Payers have a legal obligation to pay for the Providers' delivery of OON healthcare services"); ¶¶ 188, 198, 283 (alleging that Commercial Payers purchase and pay for OON healthcare services and are financially motivated to minimize payments to OON Providers.

Zelis and become the sole (direct) "user" of "Zelis's repricing tools" (Def. Br. at 7 (citing SAC ¶ 8)), while all other Commercial Payers agree with that contracting Commercial Payer to base their respective OON payments on the contracting Commercial Payer's OON payment levels, as determined by Zelis. A section 1 conspiracy can thus be determined to be plausible even when there is just a single, direct "user" of Zelis's repricing tools.

The guiding principle is the plausibility of the alleged conspiracy, not uniformity: "there is no requirement that allegations pertaining to one defendant mirror those against other defendants in terms of specific conduct or 'quantity' of alleged 'bad acts.' Indeed, a defendant need not be accused of having engaged in all activities alleged to have advanced the conspiracy." *Sage Chemical, Inc. v. Supernus Pharms., Inc.*, No. 22-1302-CJB, 2024 WL 2260331, at *6 (D. Del. May 9, 2024) (internal quotations and citation omitted). *See also In re Turkey Antitrust Litig.,* 642 F. Supp. 3d 711, 723 (N.D. Ill. 2022) ("[C]ourts in this district have not required such uniformity to allege parallel conduct'" and "'[i]t is well settled . . . that the law does not require every defendant to participate in the conspiracy by identical means . . . .'" (citations omitted). In short, a conspiracy can be plausible even when Defendants' conduct differs; thus Aetna's assertion, that Plaintiffs' "one or more" language interferes with plausibility, fails.

Further, because the SAC alleges agreements with or information sharing between non-Zelis Commercial Payer Defendants and the Zelis Defendants (*see, e.g.*, SAC ¶¶ 1, 7, 8, 42, 201, 202, 207, 208, 212, 215, 222, 231, 238, 295, 301), Aetna's lack of use argument is impotent.

Aetna asserts that plaintiffs' allegations "fail[] 'to identify the involvement of particular defendants in the alleged conspiracy' because they did not identify which of the Auction Defendants' traders 'participated in the alleged conversations or, more broadly, the conspiracy.'" Def. Br. at 8 (quoting *City of Pontiac Police & Fire Ret. Sys. v. BNP Paribas Sec. Corp.,* 92 F. 4th

381, 396 (2d Cir. 2024)). But there, the Second Circuit held that "[b]ecause Plaintiffs **fail to allege** parallel conduct with respect to the alleged auction conspiracy, they cannot demonstrate an agreement to conspire based on indirect evidence irrespective of their plus factors." *City of Pontiac,* 92 F. 4th at 401 (emphasis added). This determination is directly at odds with the Court's determination as to the plausibility and existence of Plaintiffs' parallel conduct allegations in this matter. *See* Order at 15 ("Plaintiffs have identified both parallel conduct and a number of 'plus factors' to suggest that there is more than 'conscious parallelism' at work here."). Further, Plaintiffs' direct allegations concerning entry into agreements or sharing CSI with a horizontally-positioned competitor differentiate this case from *City of Pontiac. See, e.g., In re Mexican Gov't Bonds Antitrust Litig.*, No. 18-CV-2830 (HPO), 2025 WL 104099, at *3 & n.7, *7 & n.13 (S.D.N.Y. Jan. 15, 2025) (finding *City of Pontiac* distinguishable where chatroom excerpts demonstrated price fixing agreements.)

Aetna also cites *Hinds County, Miss. v. Wachovia Bank N.A.*, 700 F. Supp. 2d 378, 394-98 (S.D.N.Y. Mar. 25, 2010). *See* Def. Br. at 6-7, 9. Defendant implies that this decision stands for the need to "consider[] allegations specific to each defendant in evaluating whether plaintiffs stated a Section 1 claim against each[.]" *Id.* at 9. But Aetna omitted what the decision actually held:

> The Second Circuit rejected the defendants' argument that *Twombly* requires a plaintiff to identify the specific time, place or person related to each antitrust conspiracy allegation . . . . Instead, the Circuit Court reiterated the language and reasoning of *Twombly*: "Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of illegal agreement."

Hinds County, 700 F. Supp. 2d at 394 (citations omitted). *See also id.* at 395 ("Plaintiffs need not necessarily provide any particular details about conduct undertaken by [one of the named defendant banks] in furtherance of the conspiracy.").

E. In Addition to the Explicit Allegations, Plaintiffs May Also Reasonably Infer Aetna's Use of Zelis Repricing Tools

Without citation, Aetna argues that "Zelis's general statement that the 'top 5 national health plans' use its 'platform' does not plausibly support an inference that Aetna uses Zelis's repricing tools," asserting that Plaintiffs are entitled "at most" to "an inference that the 'top 5 national health plans' use Zelis," but not necessarily its repricing services. Def. Br. at 8-9. This ignores the long-settled law that "on a motion to dismiss, the Court must draw all reasonable inferences in Plaintiffs' favor. *See Lawrence Gen. Hosp. v. Cont'l Cas. Co.*, 90 F. 4th 593, 598 (1st Cir. 2024)." Order at 11, 16 n. 14.

Plaintiffs' allegations concerning Zelis's "top 5 national health plans" statement are sufficient at this stage. First, there is no indication within the press release that use of or access to Zelis's platform is inapplicable to repricing services. Zelis' "'platform serves more than 750 payers, including the top 5 national health plans, BCBS insurers, regional health plans, TPAs and self-insured employers . . . .'" *Id.*; SAC ¶ 78 & n.84. Second, other non-conclusory allegations tie Zelis's platform to repricing: Zelis counts "approximately 770 health insurers, including the nation's 'top 5' national health insurers, **among its repricing customers**," SAC ¶ 245 (emphasis added), and "[i]f a Commercial Payer is not using Zelis's repricing services, it would appear to be among the few who are not," SAC ¶ 243. The inference that access to Zelis's platform includes access to its repricing services is reasonable.

In any event, the Court found that "[i]t is a reasonable inference at this stage that Commercial Payer Defendants [which is to say, all of the named, non-Zelis Defendants, including Aetna] were part of those 500 payors . . . ." *Id.* at 16 n.13. Plaintiffs are entitled to explore this further in

discovery. This determination is the law of the case, and there is no reason to relitigate it in the context of Plaintiffs' non-substantive amendment. *See, e.g., Pepper*, 562 U.S. at 506; *Flibotte*, 131 F. 3d at 25. Regardless, it is highly likely that Aetna, one of the largest insurance companies in the United States (*see* SAC ¶ 242 (listing CVS Health (Aetna) among the nation's largest health insurance companies by market share and revenue)), is part of the "over 500," "over 750," or "over 770" Commercial Payers who are clients or customers of Zelis. SAC ¶¶ 12, 77, 78, 99, 114 n.131, 139, 177, 180, 201 n.216, 203 n.217, 208, 241, 242, 243, 245, 273, 309, 352, 353. It remains reasonable to infer that Aetna is a Zelis repricing customer.

F. Circumstantial Evidence Allows for Plausible Inclusion of Aetna in the Alleged Conspiracy

Circumstantial evidence, previously determined to support plausibility, further supports the allegation that Aetna is a member of the conspiracy. *See* Order at 16 ("At this stage, taken as a whole, these allegations are sufficient to infer plausibly an agreement to fix prices, rather than just independent parallel behavior."). Not only is Aetna a "member[] of AHIP (formerly, America's Health Insurance Plans)," but "AHIP represents that it plays an important role in bringing together member companies and facilitating dialogues to advocate on shared interests,'" which includes "controlling costs, and, correspondingly, minimizing OON payments to Providers." SAC ¶ 291 & n.303; CAC ¶ 288. Aetna argues that the conduct at issue is "'mere participation' in a trade organization . . . ." Def. Br. at 10. Not so. AHIP boasts that it provides the opportunity to discuss "shared interests," of which controlling costs ranks high on AHIP's members' respective lists, and its promotion that it "facilitat[es] dialogues" supports the plausibility of Plaintiffs' opportunity-to-collude allegations. SAC ¶ 291, CAC ¶ 288. Deciding to become a member of AHIP means deciding to take advantage of AHIP's efforts to have competitor-payers meet to discuss "shared interests," like minimizing OON payments. *Id.*

Further, Plaintiffs' allegations concerning Aetna's "partnership" should suffice for plausibility, especially when analyzed in the context of AHIP's "facilitate[d] dialogues." Such a collective and holistic approach is consistent with that previously taken by the Court. *See* Order at 21. For example, the complaints alleged, "Availity 'works in partnership with several major insurance companies in order to provide its clients with secure data exchange capabilities across multiple networks. These partners include defendants Aetna, Cigna, Humana, and United Healthcare.'" *Id.* at ¶ 238; CAC ¶ 235. Moreover, using Availity allows for cross-network "data exchange," which facilitates the exchange of CSI with competitors. *Id.*

G. Other Allegations and Indications Support Inclusion of Aetna Among Conspiring Defendants

1. Meeting with Competing Commercial Payers to Discuss Zelis's Services

Aetna is also quiet with respect to its participation in Zelis's annual client conferences, including, but not limited to, meeting with competitors through Zelis and/or its "B2B advisor," DeSantis Breindel. SAC ¶ 233. Even if Aetna never used any Zelis repricing tool, it remains plausible to conclude that Aetna participated in the conspiracy by meeting, communicating with, or sharing CSI with competitors. Plaintiffs allege that these competitor "spokes" met to discuss Zelis services during Zelis's annual client conferences. SAC ¶¶ 211, 233, 287-289, 296. The SAC alleges that "'[d]uring Zelis's annual client conference, [DeSantis Breindel] filmed dozens of [Zelis's] clients sharing stories about their experience with Zelis . . .'" *Id.* at ¶ 296. Given that Zelis counts the nation's "top 5" national health insurers and hundreds of other payers among its clients, SAC ¶¶ 12, 78, 242-245, and that the conferences were designed for existing and potential health insurer clients to share their experiences and referrals, SAC ¶¶ 211, 233, it is reasonable to infer that Aetna's personnel stood among those "dozens." Supporting plausibility, the filming of these

communications was specifically directed toward Zelis obtaining additional business. *See, e.g., id.* at ¶ 233 (sharing "'what [Zelis] can do for other people that are thinking about using them'").

II. PLAINTIFFS PLAUSIBLY ALLEGE AETNA'S AND MERITAIN'S DISTINCT PARTICIPATION IN THE ZELIS CONSPIRACY

Aetna's secondary argument, that "Plaintiffs have lumped together Aetna and its subsidiary, Meritain, without pleading specific factual allegations sufficient to permit the inference that Aetna entered into the conspiracy," is also unavailing. Def. Br. at 11. As Aetna states: "For 'plaintiffs to aver sufficient facts to state a claim against a parent corporation they must aver facts sufficient to infer either direct involvement or some reason to pierce the corporate veil.'" *Id.* at 11 (quoting *McCray v. Fid. Nat'l Title Ins. Co.*, 636 F. Supp. 2d 322, 334 (D. Del. 2009), *aff'd*, 682 F.3d 229 (3d Cir. 2012)). Although Defendant claims that "Plaintiffs do neither here" (Def. Br. at 11), Section I of this Opposition establishes otherwise. Aetna has been sufficiently alleged as participating directly in the conspiracy. Plaintiffs sufficiently allege "Aetna's 'direct and independent participation in the alleged conspiracy.'" Def. Br. at 11 (quoting *In re Pa. Title Ins. Antitrust Litig.*, 648 F. Supp. 2d 663, 668, 688 (E.D. Pa. 2009)). "Conflation" has nothing to do with it.

As part of this argument, Aetna starts with the kind of misleading inference that pervades its entire Motion: "Plaintiffs amended their complaint after learning that Aetna did not use Zelis repricing services but that Meritain Health, Inc. did." Def. Br. at 12 (citing ECF 246, at 6; ECF 271 at 6-7) (emphasis added). But Plaintiffs learned nothing of the sort. Plaintiffs elected to amend their complaint for a variety of reasons, including, but not limited to, defense counsel's unsolicited disclosure that Meritain used and entered into repricing agreements with Zelis, in accordance with, in defense counsel's words, the "core conduct underlying Plaintiffs' theory of liability." Hartley Decl. at Ex. 1 (April 27, 2026 Trefz Letter at 2). Simply because Plaintiffs amended to add Meritain

as an additional Defendant does not mean that Plaintiffs suddenly agree with Aetna's arguments made in either of its motions to dismiss that it did not participate in the conspiracy. Defense counsel represented that "Meritain . . . uses Zelis's ERS and/or RBP products on a subset of its claims." *Id.* at 1. As Aetna also engaged in the conspiracy, "[c]ombining two entities in such circumstances" certainly ***can*** "be countenanced." Def. Br. at 12.[3]

Maintaining its fundamental misunderstanding, Aetna insists that "Plaintiffs do not allege any basis to disregard Aetna's and Meritain Health, Inc.'s separate corporate forms to impose liability on Aetna." Def. Br. at 13. But Plaintiffs need not "disregard" either entity's corporate form. Plaintiffs have plausibly established each entity's participation in the Zelis Conspiracy in each entity's own right and capacity. The reference to "Aetna" reflects their corporate relatedness, but Aetna and Meritain are each in this matter for their own, independent (although similar and similarly effective) reasons and function as a Payer and TPA.[4]

III. PLAINTIFFS PLAUSIBLY ESTABLISH TRACEABILITY FOR PURPOSES OF ARTICLE III STANDING

Defendant Aetna sets up a false dichotomy, asserting: "Either the SAC is alleging that Aetna or Meritain Health, Inc. engaged in the alleged conduct attributed to "Aetna" . . . ; or the SAC is alleging that both engaged in all conduct, which Plaintiffs lack a factual basis to allege." Def. Br. at 12 (emphases in original). Plaintiffs have more than sufficiently alleged a "factual basis" for both Aetna's and Meritain's respective participation in the Zelis Conspiracy. Meritain's use of Zelis's ERS and/or RBP products on a subset of its claims is confirmed by Aetna's own counsel. Hartley Decl. Ex. __ (Apr. 27, 2026 Trefz Letter at 1). And Aetna is alleged to have entered into one or more OON agreements with Zelis, (which the Court already determined was a plausible horizontal competitor), to have shared competitively sensitive information with horizontal competitors, and to have surrendered its pricing authority to a third party. SAC ¶ 42. To the extent that either or both did more than that, Plaintiffs are under no obligation to specify or assign such conduct at this stage of the litigation, so long as the allegations remain (as previously determined) plausible.

[4] In the event the Court agrees with Defendant that the corporate veil must be pierced (a position that Plaintiffs do not believe necessary), Plaintiffs have already argued that there is no actual separation as between Aetna and Meritain and "Meritain is not independent of Aetna." ECF 246 at 6 & n.2.

Aetna makes the same no-use argument within three different contexts: first as to "[p]articipation," next as to "[c]onflation," and in this third section as to "[t]raceability." In Section III, Aetna argues that Plaintiffs cannot establish "traceability" as they "have dropped any allegations that Aetna used the 'Zelis repricing tools' that caused the 'harms' of which they complain." Def. Br. at 14 (citations omitted). This is simply untrue. And because the challenge is facial, the Court's assessment of traceability rests on the face of the SAC, not on the unsworn representations of Aetna's counsel. This traceability argument was rejected by this Court in March, and the Court should reject it again for the reasons stated in Plaintiffs' prior opposition, *see* ECF 129 at 6-8, and in the Order, *see* ECF 185 at 8-9, as well as the additional reasons explained below. Notably, no amendment in the SAC touched the standing of any Plaintiff.

Plaintiffs allege that Plaintiff-Providers perform OON Healthcare Services, which they then send to Commercial Payers for payment. Instead of paying at a competitive price, the Commercial Payers (of which Aetna is one) send the Provider-submitted claims (often without the Providers' permission or even knowledge) to a repricer for repricing. *See* SAC at ¶¶ 16, 312. Upon either obtaining repriced amounts directly from repricers (or by applying payment levels obtained from other Commercial Payers who directly interacted with repricers), repricers on behalf of Commercial Payers or the Commercial Payers themselves send less-than-competitive-payments to OON Providers. *See id.* at ¶¶ 25-30. Whether Providers cash the payments at below-market levels or abstain from cashing, they are harmed. *See id*. at ¶ 370. By deciding to abdicate their respective pricing responsibilities to a repricer, Commercial Payers, including Aetna, use a repricer to pay at non-competitive payment levels. *See id.* at ¶¶ 137-138. As Providers experience economic harm, they can be remedied through monetary compensation, making their harm redressable under *Spokeo*. *See, e.g., id.* at ¶¶ 17, 23, 25-30, 204, 339, 350, 351.

In the case of Aetna, to the extent that Meritain, as a TPA, enters into repricing agreements with Zelis and uses Zelis's repricing services, Meritain uses Zelis to generate repriced OON payments. So long as Aetna is ultimately responsible for making the payment - even if that payment was ostensibly "negotiated" or "serviced" by the TPA - Aetna underpays, and thereby causes harm to, the Provider by way of Meritain-implemented, Zelis-determined repriced payment amounts. An intermediary TPA does not foreclose traceability of harm so long as Aetna remains the obligated payer; it is just another layer through which the underpayment is serviced.

Aetna again tries to make more out of the amendment than is reasonable. It asserts that Plaintiffs' allegations that Defendants could participate in the conspiracy without necessarily using Zelis's repricing tools means that all is lost from a traceability standpoint. Def. Br. at 13-14. Not only is this incorrect, but the analysis is completely impertinent to Aetna's circumstances. By benefitting from its wholly-owned subsidiary's use of Zelis repricing services, Aetna also uses Zelis's repricing tools. As the ultimate payer, notwithstanding an intermediary TPA, Aetna paid Plaintiffs based on "'repriced payments for OON services in amounts below competitive rates,'" thus inflicting harm "fairly traceable" to Aetna. Def. Br. at 14 (quoting ECF 129 at 6-8 & n.5). *See also* Hartley Decl. Ex. 2 (June 18, 2026 Trefz Letter at 1) (showing "Aetna transmit[ting] payment through Zelis").

Aetna asserts that "'[i]n a multi-defendant case, a putative class representative must allege that he or she has been injured by the conduct of each defendant to establish standing.'" Def. Br. at 13 (citing *Plumbers' Union Loc. No. 12 Pension Fund v. Nomura Asset Acceptance Corp.*, 632 F. 3d 762, 769 n.6 (1st Cir. 2011)). In that securities fraud matter, the First Circuit determined that "the claims related to the six trusts from which the named plaintiffs never purchased securities were properly dismissed . . . ." *Plumbers' Union*, 632 F. 3d at 771. However, in an antitrust matter

brought "under section 1 of the Sherman Act," the court observed that, "by contrast, each of the named end-payor plaintiffs has claims against each of the defendants based on their alleged overpayments for Nexium. The End-Payors have therefore made out their Article III 'requisite of an ordinary case or controversy [of] an injury to the plaintiff traceable to the defendant.'" *In re Nexium (Esomeprazole) Antitrust Litig.*, 968 F. Supp. 2d 367, 405 (D. Mass. 2013) (citations omitted). As a conspiracy matter, this holding is self-evident and especially applicable here when all Non-Zelis Defendants are substituting their independent pricing judgment for that of a repricer.

Aetna benefits from its subsidiary's use of Zelis repricing tools, which harms OON Providers by paying at collusively suppressed levels. SAC ¶¶ 8, 314 & n.318; Hartley Decl. Ex. 2 (June 18, 2026 Trefz Letter at 1) (acknowledging PIMG payments received from Aetna). Plaintiffs have alleged a continuing conspiracy. *See* SAC ¶¶ 9, 232, 304, 310, 388, 389, 396, 397. Plaintiffs plausibly alleged Aetna's participation in a conspiracy, which harmed Plaintiffs "fairly traceable" from the Provider to the repricer to the subsidiary, and to Aetna.

CONCLUSION

For the reasons set forth above, Aetna's motion to dismiss the Second Amended and Consolidated Class Action Complaint should be denied in its entirety. The impropriety of a renewed motion on unchanged allegations is compounded by Aetna's request for dismissal with prejudice: nothing warrants terminating these claims on the pleadings.

Dated: August 31, 2026

Respectfully submitted,

/s/ *Jason S. Hartley*

Richard M. Paul III, *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

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, *pro hac forthcoming*
Fatima Brizuela, *pro hac forthcoming*
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 (*pro hac vice forthcoming*)
LANDAY ROBERTS LLP
600 West Broadway, Suite 700
San Diego, California 92101
Telephone: (619) 648-4811
jlanday@landayroberts.com

Daniel J. Mogin (*pro hac vice forthcoming*)
MOGIN LAW LLP

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

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 (245748)
Elizabeth T. Castillo (280502)
Christian S. Ruano (352012)
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 application forthcoming*)
Ian F. McFarland
(*pro hac vice application forthcoming*)
ZIMMERMAN REED LLP

4225 Executive Square, Suite 600
La Jolla, CA 92037
Telephone: (619) 687-6611
dmogin@moginlawllp.com

Daniel R. Karon (*pro hac vice forthcoming*)
KARON LLC
631 W. St. Clair Ave.
Cleveland, OH 44113
Telephone: (216) 622-1851
dkaron@karonllc.com

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

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
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, Jason S. Hartley, attorney for the Plaintiffs, certify that, on August 31, 2026, I caused a copy of the foregoing to be served, via ECF, on all counsel of record.

/s/ Jason S. Hartley

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*

DECLARATION OF JASON HARTLEY IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT AETNA INC.'S MOTION TO DISMISS THE SECOND AMENDED AND CONSOLIDATED CLASS ACTION COMPLAINT

I, Jason Hartley, declare:

1. I am an attorney licensed in the State of California and am one of Plaintiffs' counsel in the above-captioned action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently to them. I make this Declaration in support of Plaintiffs' Opposition to Defendants' Motion To Dismiss The Second Amended and Consolidated Class Action Complaint. I make this declaration pursuant to 28 U.S.C. § 1746.

2. Attached hereto as Exhibit 1 is a true and correct copy of Kathrine A. Trefz's April 27, 2026 letter addressed to me, Jason S. Hartley.

3. Attached hereto as Exhibit 2 is a true and correct copy of Kathrine A. Trefz's June 18, 2026 letter addressed to me, Jason S. Hartley.

4. Attached hereto as Exhibit 3 is a true and correct copy of the June 29, 2026 letter I sent to Ms. Trefz.

I declare under penalty of perjury under the laws of the United Staes that the foregoing is true and correct. Executed on August 31, 2026 at San Diego, California.

Jason Hartley

Dated: August 31, 2026

Respectfully submitted,

Richard M. Paul III, *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

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, *pro hac forthcoming*
Fatima Brizuela, *pro hac forthcoming*
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 (*pro hac vice forthcoming*)
LANDAY ROBERTS LLP
600 West Broadway, Suite 700
San Diego, California 92101
Telephone: (619) 648-4811
jlanday@landayroberts.com

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

Daniel R. Karon (*pro hac vice forthcoming*)

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

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 (245748)
Elizabeth T. Castillo (280502)
Christian S. Ruano (352012)
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 application forthcoming*)
Ian F. McFarland
(*pro hac vice application forthcoming*)
ZIMMERMAN REED LLP
1100 IDS Center
80 S. 8th St.
Minneapolis, MN 55402
(612) 341-0400

KARON LLC
St. Clair Ave.
nd, OH 44113
ɔne: (216) 622-1851
dkaron@karonllc.com

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

david.cialkowski@zimmreed.com
ian.mcfarland@zimmreed.com

Garrett D. Blanchfield
Brant D. Penney
Roberta A. Yard
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, Jason S. Hartley, attorney for the Plaintiffs, certify that, on August 31, 2026, I caused a copy of the foregoing to be served, via ECF, on all counsel of record.

/s/ Jason S. Hartley

EXHIBIT 1

LAW OFFICES
WILLIAMS & CONNOLLY LLP®
680 MAINE AVENUE SW
WASHINGTON, DC 20024
(202) 434-5000
WWW.WC.COM

KATHERINE A. TREFZ
(202) 434-5038
ktrefz@wc.com

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

April 27, 2026

Via Email

Jason S. Hartley
Hartley LLP
101 W. Broadway, Suite 820
San Diego, CA 92101

Re: *In re: Zelis Repricing Antitrust Litigation*, 1:25-cv-10734-BEM (D. Mass.)

Dear Counsel:

I write on behalf of Defendant Aetna Inc. to follow up on our prior discussions and correspondence regarding Aetna Inc.'s inclusion as a named defendant in the above-referenced action.

The Amended Consolidated Complaint alleges that "Commercial Payers" conspired to suppress out-of-network benefits by contracting to "reprice" claims using Zelis's Established Reimbursement Solution ("ERS") and Reference Based Pricing ("RBP") solutions since at least 2016. *See* Am. Compl. ¶¶ 39, 111-131, ECF No. 39. As the Court recognized in its opinion on Defendants' motion to dismiss, Plaintiffs' allegations regarding the use of these tools are the "focus" of Plaintiffs' theory of liability, *i.e.*, that Aetna Inc. and "other Commercial Payer Defendants ***agreed to, and did, use Zelis's repricing tools*** and share confidential claims data to suppress OON payments to providers." Mot. to Dismiss Op. at 21 (emphasis added) (citing Am. Compl. ¶¶ 1, 8, 198, 203-235, 238-239, 242, 246-248, 292, 296-298, 327, 330, 336, 363, 366), ECF No. 185.

As noted in our July 2025 discussion and my letter dated August 6, 2025, our initial investigation indicated that Aetna Inc. has not "used the Zelis ERS or RBP programs to reprice any claims." We have since undertaken further investigation into this issue. Based on that investigation, we have confirmed that, to the best of our knowledge, Aetna Inc. has not used—nor has it entered into any agreements regarding the use of—Zelis's ERS or RBP products at any time.

We have also inquired as to whether any Aetna affiliates have used—or entered into any agreements regarding the use of—Zelis's ERS or RBP products. We are aware of only one example: Meritain Health, Inc., which uses Zelis's ERS and/or RBP products on a subset of its claims. Meritain Health, Inc. is an independent subsidiary of Aetna Inc.

In short, Aetna Inc. did not engage in the core conduct underlying Plaintiffs' theory of liability. We suspect that Plaintiffs lack a good-faith basis for their allegations to the contrary (and, to date, Plaintiffs have failed to provide one notwithstanding our inquiries). Accordingly, we request that, by May 18, 2026, Plaintiffs either (1) identify their basis for maintaining their claim against Aetna Inc. or (2) voluntarily dismiss Aetna Inc. from this action. Otherwise, Aetna Inc. will consider all available options to protect its interests. We hope that will be unnecessary.

If Plaintiffs would like to discuss this issue by phone, we are available to do so, but request that any such conversation occur no later than May 11, 2026. We look forward to your prompt response.

Sincerely,

Katie Trefz

cc: Rick Paul
Mary Jane Fait
Kenneth Frost

EXHIBIT 2

LAW OFFICES
WILLIAMS & CONNOLLY LLP®
680 MAINE AVENUE SW
WASHINGTON, DC 20024
(202) 434-5000
WWW.WC.COM

KATHERINE A. TREFZ
(202) 434-5038
ktrefz@wc.com

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

June 18, 2026

Via Email

Jason S. Hartley
Hartley LLP
101 W. Broadway, Suite 820
San Diego, CA 92101

Re: *In re: Zelis Repricing Antitrust Litigation*, 1:25-cv-10734-BEM (D. Mass.)

Dear Counsel:

I write on behalf of Defendant Aetna Inc. to follow up on our prior discussions and correspondence regarding Aetna Inc.'s inclusion as a named defendant in the above-referenced action.

We have repeatedly informed Plaintiffs that there is no good-faith basis to maintain their claims against Aetna Inc. because Aetna Inc. did not engage in the conduct underlying Plaintiffs' theory of liability—that is, repricing claims through Zelis's Established Reimbursement Solution ("ERS") and Reference Based Pricing ("RBP") products. On our recent meet and confer, you represented to us that Plaintiffs had information showing Zelis was in fact involved in repricing claims for Aetna Inc., and you agreed to provide that information.

On May 20, 2026, you provided us a portion of a document that you characterized as showing Zelis's involvement with pricing of Aetna claims. The document shows no such thing. As your client is no doubt aware, Zelis provides payment processing services to providers that "[c]onsolidate" the "electronic payments and remittance[s]" that they receive from various "payers in[to] a single platform." *See Zelis Payments Network for providers,* Zelis, https://www.zelis.com/providers/provider-payments-2/. The document you provided clearly relates to such payment processing—it shows only that ***your client*** and Zelis have a relationship by which ***your client*** contracted to have Aetna Inc. transmit payment through Zelis—not that ***Aetna Inc.*** used Zelis's repricing services. Nevertheless, in an effort to put this issue to bed, we have investigated a sample of claims submitted to Aetna by Pacific Inpatient Medical Group Inc in the time frame identified in the document and confirmed with our client that ***Zelis was not involved in the pricing of the claims in any way***.

In short, this document does not provide a good-faith basis to allege that "Aetna . . . entered into one or more OON repricing agreements with Zelis, issued one or more OON payments to Providers performing out-of-network healthcare services at payment levels below competitive amounts, and participated in the conspiracy, committed or omitted acts, and/or made statements in furtherance of, and is a member of, the Zelis Conspiracy." Am. Compl. ¶ 39, ECF No. 39. And it certainly provides no basis to allege that Aetna Inc. conspired to suppress out-of-network benefits by contracting to "reprice" claims using Zelis's ERS or RBP solutions since at least 2016. *See* Am. Compl. ¶¶ 39, 111-131.

Indeed, despite the allegations above, your letter now admits that Plaintiffs "do not yet know the extent of repricing products or services provided by Zelis" and that the document you included simply "demonstrates ***some relationship*** between Aetna and Zelis ***that we need to explore in discovery***." Even putting aside the fact that the document demonstrates only that your client—not Aetna—has "some relationship" with Zelis, that type of "fishing expedition is forbidden by Rule 11." *See, e.g.*, *In re Initial Pub. Offering Sec. Litig.*, 241 F. Supp. 2d 281, 326 n.46 (S.D.N.Y. 2003). By alleging that Aetna Inc. "entered into one or more OON repricing agreements with Zelis" and that Aetna Inc. "participated in the conspiracy, committed or omitted acts, and/or made statements in furtherance of, and is a member of, the Zelis Conspiracy," Am. Compl. ¶ 39, you specifically certified to the Court that "to the best of [your] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . the factual contentions have evidentiary support," Fed. R. Civ. P. 11(b).[1] While Rule 11 allows some leeway for allegations requiring discovery, the attorney must "specifically so identif[y]" that such allegations "will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11(b)(3). There is no such identification of such claims here, nor could there be. And the document you provided provides no basis to conclude that discovery into such allegations "will likely have evidentiary support." As discussed above, had you made any inquiry with your client regarding the document at issue, you would have learned that this document only shows that ***your client*** has "some relationship" with Zelis as a ***payment processer***—not, as you suggest, that Aetna Inc. and Zelis have any relationship regarding "repricing services" or "delegated [] pricing roles and responsibilities to Zelis" as the Complaint alleges. Am. Compl. ¶¶ 111-137.

Perhaps recognizing the lack of support for any repricing-based claim, your letter appears to pivot exclusively to an allegation of information sharing. You state that the letter provides an "example of claims submitted to Aetna that were paid by Zelis" and that "Zelis's role as the paying entity for Aetna claims, demonstrated by the attached payment records, suggests that commercially sensitive payment rates and other pricing information was shared by Aetna with Zelis." But again,

[1] And even if Plaintiffs had made a reasonable pre-filing inquiry, Rule 11 imposes a "continuing duty" on counsel, so Plaintiffs "cannot ignore" subsequent "facts [that] come to their attention . . . indicat[ing] their earlier reliance was misplaced." *See, e.g.*, *Arkansas Tchr. Ret. Sys. v. State St. Bank & Tr. Co.,* 512 F. Supp. 3d 196, 247 (D. Mass. 2020) (citation omitted).

the document shows only that you client agreed to use Zelis's payment processing for payments from Aetna—it cannot support any information-sharing allegations.

Accordingly, we demand that, by July 2, 2026, Plaintiffs voluntarily dismiss Aetna Inc. from this action. Otherwise, Aetna Inc. will consider all available options to protect its interests under the Federal Rules of Civil Procedure, including seeking sanctions and other appropriate relief under Rule 11 or pursuing summary judgment under Rule 56. We hope that will be unnecessary.

Sincerely,

Katie Trefz

cc: Rick Paul
Mary Jane Fait
Kenneth Frost

EXHIBIT 3

HARTLEY LLP

Jason Hartley
hartley@hartleyllp.com
www.Hartleyllp.com

101 West Broadway, Suite 820
San Diego, CA 92101
Phone: (619) 400-5822
Fax: (619) 400-5832

June 29, 2026

VIA EMAIL

Katie Trefz
Williams & Connolly LLP
680 Maine Avenue SW
Washington, DC 20024
ktrefz@wc.com

Re: *In re: Zelis Repricing Antitrust Litigation, 1:25-cv-10734-BEM (D. Mass.)*

Counsel:

We received your letter dated June 18, 2026, again asserting that Plaintiffs have no good faith basis to continue their claims against Aetna even though the allegations have survived the heightened scrutiny applied to antitrust complaints at the motion to dismiss stage. We are willing to have a constructive discussion with you about our allegations against Aetna, but in both this letter and your prior letter, you continue to take a very narrow view of Plaintiffs' Complaint that precludes us from drawing any meaningful conclusions from your letter.

To start, you lead with the assertion that Plaintiffs lack a good faith basis to name Aetna as a defendant because Aetna did not engage in "repricing claims through Zelis's Established Reimbursement Solution ("ERS") and Reference Based Pricing ("RBP") products." But as we have repeatedly communicated, our claims are not limited to the use of these two repricing products, so your repeated denials of exposure based on these grounds do little to move the needle.

Second, noticeably absent from your letter is a simple statement that would move the needle: ***Aetna never shared confidential claims information with Zelis and/or any of the other Defendants and never had access to such information from Zelis and/or any of the other Defendants when repricing out-of-network claims.*** If, as officers of the Court, you make that representation, we have something to discuss. If not, discovery needs to proceed. In the same vein, your suggestion that Plaintiffs are somehow "pivoting" to the exchange of confidential information is frankly hard to square with the allegations in our Complaint. This view that information sharing is not a central part of our case makes it exceedingly difficult to take your denials of Aetna's involvement in this conspiracy seriously.

Third, in a footnote, you reference counsel's continuing duty to not ignore subsequent facts that come to light. Other than the unverified statements in your letter, no additional facts have come to our attention because you have not produced any documents and we have no sworn testimony. The

evidence we do have is Zelis' public statements saying it works with the top 5 insurers, which plainly includes Aetna. We will, of course, continue to evaluate our allegations against actual evidence produced in the case.

Lastly, the fact that our client agreed to accept Aetna's retention of Zelis to handle payment processing doesn't detract from the fact that Aetna appears to have delegated payment negotiations and responsibilities to Zelis.

If you believe that the actual evidence on any of these points will support your position, we are happy to agree to front-load discovery on these issues. We are also open to exploring other options by which Aetna can provide evidence to rebut these points or otherwise negotiate an exit. But as it stands, your unverified statements that take a narrow, word-smithing view of our allegations do not provide a sufficient basis for us to dismiss Aetna. We remain willing to discuss this issue with you further.

Very truly yours,

Jason Hartley