

EXHIBIT A

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

IN RE: ZELIS REPRICING ANTITRUST
LITIGATION

This Document Relates to:
All Actions

)
) Lead Action Civil Action 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
)

**DEFENDANTS' RESPONSE TO PLAINTIFFS' LIMITED
OBJECTION TO THE SEPTEMBER 21, 2026 ORDER ON
DEFENDANTS' MOTION TO COMPEL**

INTRODUCTION

Plaintiffs ask this Court to set aside the portion of Magistrate Judge Boal’s ruling compelling Plaintiffs to produce “Billing, Collection, [a]nd Balance-Billing Data.” Order on Defs.’ Mot. to Compel, ECF 337 (“Order”) at 1–2. Plaintiffs, however, fall well short of meeting the bar for such relief. They identify no clear error or misapplication of law in Judge Boal’s Order, as an objecting party must do to set aside a non-dispositive order. *See* Fed. R. Civ. P. 72(a).

Nor could they. Judge Boal’s Order was spot-on: as Judge Boal observed, the Court’s motion-to-dismiss order recognized that Plaintiffs’ own balance-billing allegations could be read to “contradict [their] theory of damages” and, separately, that Judge Murphy relied on Plaintiffs’ allegation that they were prohibited from balance billing to find that Plaintiffs stated a claim. Order at 2. As the Court’s analysis explains, Plaintiffs’ ability to balance bill bears directly on whether Defendants’ alleged conduct caused Plaintiffs’ asserted injury. The discovery that Judge Boal ordered Plaintiffs to provide will allow Defendants to test Plaintiffs’ allegation that they are unable to recover unpaid balances from patients.

Plaintiffs try to confuse the matter by arguing that Judge Boal’s sole basis for compelling discovery into their balance billing practices was based on a “legal” theory of damages that the motion-to-dismiss order did not address. As an initial matter, Plaintiffs’ complaint that Judge Boal refers to Plaintiffs’ “theory of damages,” while the motion-to-dismiss order refers to “causation” and “injury,” is a semantic distinction without a difference. Whatever the label, it is clear, as Judge Boal found, that the motion-to-dismiss order recognizes that Plaintiffs’ balance billing allegations are relevant and must be tested in discovery. Further, Plaintiffs’ argument ignores how Judge Boal’s Order actually works. Judge Murphy’s discussion was *additional* support for Judge Boal’s ruling; it was not the sole basis for it. Judge Boal’s independent “careful review and consideration of the parties’ submissions, as well as the arguments made at the September 14, 2026 hearing”

strongly support her conclusion that the discovery Defendants seek is relevant. Order at 1–2. Plaintiffs’ disagreement with that conclusion is not clear error.

Plaintiffs fare no better when they try to relitigate the same Downstream-Discovery Objection that Judge Boal already considered and rejected. *See* Order at 1–2 (concluding that Defendants had “sufficiently shown that this information is relevant in this case”). Judge Boal’s decision here is precisely the type of discovery judgment committed to the magistrate judge’s discretion and reviewed for clear error. And nothing in Plaintiffs’ Objection rises to the level of clear error. At most, Plaintiffs raise (legally incorrect) merits arguments that Judge Boal already considered and properly determined are not a basis for refusing discovery necessary to test Plaintiffs’ balance billing allegations. Plaintiffs’ Objection should be overruled.

LEGAL STANDARD

Magistrate judges play a “pivotal role . . . in overseeing the conduct of . . . complex pretrial discovery,” and their discovery rulings are entitled to substantial deference. *Ferring Pharms. Inc. v. Braintree Lab’ys, Inc.*, 168 F. Supp. 3d 355, 358 (D. Mass. 2016). A district judge may set aside such a ruling only if it “is clearly erroneous or is contrary to law.” Fed. R. Civ. P. 72(a); *see PowerShare, Inc. v. Syntel, Inc.*, 597 F.3d 10, 14 (1st Cir. 2010). The court must accept the magistrate judge’s factual findings and the conclusions drawn from them unless, after reviewing the record, it forms a “strong, unyielding belief that a mistake has been made.” *Green v. Cosby*, 160 F. Supp. 3d 431, 433 (D. Mass. 2016) (quotation marks and citation omitted).

Only pure questions of law are reviewed *de novo*. *Ferring*, 168 F. Supp. 3d at 359; *see also PowerShare*, 597 F.3d at 15. Mixed questions fall on a “sliding scale,” under which “the more fact intensive the question, the more deferential the level of review.” *Ferring*, 168 F. Supp. 3d at 359 (quoting *In re IDC Clambakes, Inc.*, 727 F.3d 58, 64 (1st Cir. 2013)). A discovery ruling such as Judge Boal’s is a case-specific, fact-intensive determination entitled to substantial

deference and reviewed for clear error. *See Silva v. Faria*, 2024 WL 3011221, at *2 (D. Mass. June 14, 2024) (overruling Plaintiffs’ objections where magistrate judge engaged in a “practical and careful resolution of the issues, recognizing the positions of the parties and considering the information presented at the hearing on the motions”); *Ferring*, 168 F. Supp. 3d at 362–63 (affirming relevance determination as “not contrary to law, particularly given the substantial deference due to magistrate judge rulings on heavily fact-intensive questions”).

ARGUMENT

I. PLAINTIFFS DO NOT AND CANNOT SHOW THAT JUDGE BOAL’S RULING WAS CLEARLY ERRONEOUS.

Plaintiffs contend that Judge Boal misread the Court’s motion-to-dismiss order because that order discussed balance billing in connection with causation and directness rather than under a separate damages analysis. Objection at 4–5. That argument fails for two reasons.

First, even Plaintiffs’ reading confirms the relevance of the ordered discovery. Plaintiffs concede (Objection at 3) that the Court considered their alleged inability to balance bill in determining whether Plaintiffs adequately alleged that Defendants’ conduct directly caused their injuries. Motion to Dismiss Order, ECF 185 at 10–11. The Court also expressly recognized that other allegations in the Complaint “could be read to contradict” that premise, resolving the tension in Plaintiffs’ favor only because the case was at the pleading stage. *Id.* at 11. That same disputed factual issue is now properly the subject of discovery.

Second, Plaintiffs wrongly treat the motion-to-dismiss order as both the source and the outer limit of Judge Boal’s relevance determination. It was neither. Judge Boal decided the permissible scope of discovery under Rule 26 on the record before *her*, which included the parties’ extensive briefing and arguments at the September 14 hearing. “After careful review and consideration” of that record, Judge Boal found that Defendants had “sufficiently shown that this

information is relevant in this case.” Order at 1. Judge Murphy’s recognition of the tension in Plaintiffs’ balance-billing allegations reinforced Judge Boal’s ruling; it did not define its boundaries. *Id.* at 1–2. At most, Plaintiffs play a game of semantics between the overlapping antitrust concepts of “damages,” “injury,” and “causation.” *E.g., RSA Media, Inc. v. AK Media Grp., Inc.*, 260 F.3d 10, 14 (1st Cir. 2001) (discussing all three concepts for purposes of antitrust standing). That falls far short of the “strong, unyielding belief that a mistake has been made” required to disturb Judge Boal’s ruling. *Ferring*, 168 F. Supp. 3d at 359 (quotation marks and citation omitted).

II. PLAINTIFFS’ RECYCLED DOWNSTREAM-DISCOVERY ARGUMENT LIKEWISE FAILS TO JUSTIFY MODIFICATION.

Plaintiffs’ second argument repeats, almost verbatim, the Downstream-Discovery Objection Judge Boal already considered and rejected. In opposing Defendants’ motion to compel, Plaintiffs relied on *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481, 494 (1968), *In re Nexium Antitrust Litigation*, 777 F.3d 9, 27 (1st Cir. 2015), and related authorities to argue that downstream patient billing and collections are categorically irrelevant because subsequent recovery cannot offset an antitrust injury. Pls.’ Opp., ECF 308 at 5–11. Their Objection reprises the same argument and identical authorities. Objection at 5–6. But Plaintiffs identify no authority that Judge Boal overlooked or misapplied; instead, they simply insist she should have agreed with them. That is a disagreement with the result, not error, clear or otherwise.

Plaintiffs also miss the gating issue that discovery into their balance billing practices presents. As Defendants have explained, the requested discovery tests whether Plaintiffs in fact could and did bill, collect, adjust, discount, or write off patient balances notwithstanding their allegations that they were prohibited from or otherwise unable to do so; whether the alleged prohibition operated in practice; whether Plaintiffs in fact balance bill patients for Zelis-priced and

other OON claims; whether the challenged conduct caused the asserted injury; and whether those issues can be resolved through common proof. Defs.’ Mot. to Compel, ECF 298 at 8–13. Those questions go to whether Plaintiffs suffered the injury they allege at all and are logically antecedent to any attempt to offset an otherwise established antitrust injury. Plaintiffs cannot plead that balance billing was prohibited or impractical, rely on that allegation to survive dismissal, and then invoke a damages doctrine to shield the facts from discovery.

Judge Boal weighed the parties’ competing positions on a full record and found Defendants’ showing sufficient to overcome Plaintiffs’ categorical relevance objection. Order at 1–2. Plaintiffs may disagree with that assessment, but Rule 72(a) does not permit the Court to substitute Plaintiffs’ preferred relevance determination for the magistrate judge’s reasoned exercise of discretion.

CONCLUSION

For the foregoing reasons, the Court should overrule Plaintiffs’ Objection.

Dated: October 7, 2026

Respectfully submitted,

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