UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: ZELIS REPRICING ANTITRUST LITIGATION

This Document Relates To:

All Actions

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

AETNA INC.'S REPLY
IN FURTHER SUPPORT OF ITS MOTION TO DISMISS

INTRODUCTION

Faced with the prospect of a Rule 11 motion related to their false allegations that Aetna Inc. uses the Zelis repricing services at issue in this case, Plaintiffs edited their Second Amended Consolidated Class Action Complaint ("SACCAC") to remove any such allegations. *See* ECF No. 271-6 at 1 (representing Plaintiffs did not believe there were any remaining "allegations that Aetna specifically used Zelis's repricing tools ERS or RBP"). The SACCAC thus no longer alleges that Aetna Inc. "agreed to, and did use, Zelis's repricing tools," *i.e.*, the "parallel conduct between the Commercial Payer Defendants" that underlies Plaintiffs' conspiracy claims. Mot. To Dismiss Op., ECF No. 185 ("Op.") at 15, 20-21. Now, faced with the logical result of that amendment—dismissal of their claims against Aetna Inc.—Plaintiffs' opposition, ECF No. 297 ("Opp'n"), attempts to walk back that amendment by claiming it was not "substantive" and relying on assertions that are absent from their complaint. As Aetna Inc. explained in its motion to dismiss brief, ECF No. 284 ("MTD"), the claims against Aetna Inc. fail as a matter of law because the SACCAC does not plausibly allege Aetna Inc. participated in an antitrust conspiracy.

ARGUMENT

I. Plaintiffs Fail To Plausibly Allege Aetna Inc.'s Participation in a Conspiracy

"[A]n adequate complaint must provide fair notice to the defendants," Op. at 20 (citation omitted), and "each defendant is entitled to know how he is alleged to have conspired, with whom and for what purpose." *In re Zinc Antitrust Litig.*, 155 F. Supp. 3d 337, 384 (S.D.N.Y. 2016). In resolving the prior motion to dismiss, this Court held that Plaintiffs satisfied their burden through allegations that ***all*** Commercial Payer Defendants used Zelis's repricing tools. Op. at 15, 20-21. But Plaintiffs amended those allegations and now only claim that "***one or more***" of the Commercial Payer Defendants use Zelis's repricing tools. 2d Am. & Consol. Class Action Compl., ECF. No. 273 ("SACCAC") ¶ 8 (emphasis added).

Plaintiffs (at 3) resist the logical conclusion of their amendment, claiming Aetna Inc.'s motion should be "rejected out of hand" based on the law of the case doctrine. That argument is baseless for multiple reasons. First, Plaintiffs' amendment undermined the very basis of the Court's prior decision. Thus, Aetna Inc.'s motion does not "recycle[] arguments," *contra* Opp'n at 3, but is based on changes Plaintiffs made to "expressly avoid[] alleging that Aetna Inc. used any of the out-of-network repricing tools that underlie their lawsuit," MTD at 4-5 (citing SACCAC ¶¶ 8, 42, 114, 193). Regardless, "[i]nterlocutory orders, including denials of motions to dismiss, remain open to trial court reconsideration, and do not constitute the law of the case." *Pérez-Ruiz v. Crespo-Guillén*, 25 F.3d 40, 42 (1st Cir. 1994) (collecting authorities). Plaintiffs' cited cases (at 6) do not suggest otherwise, and neither addressed a motion to dismiss an amended complaint.

Plaintiffs (at 10) argue that they need not allege Defendants all engaged in the same conduct to support Section 1 liability. While that may be true as to *liability*, at the pleading stage, Plaintiffs must still put each Defendant on notice as to the particular conduct they are alleged to have engaged in. The Court previously held that the Complaint satisfied this requirement by alleging that ***all*** Commercial Payer Defendants used Zelis's repricing tools. Op. at 15; *see also id.* at 20-21. But Plaintiffs have removed their prior (false) allegations that all Defendants engaged in that same conduct, and therefore must specify "how" Aetna Inc. is "alleged" to have "conspired." *In re Zinc Antitrust Litig.*, 155 F. Supp. 3d at 384; *see* MTD at 6-8.

Plaintiffs highlight (at 5) that they did not add any "qualifying language" that "exclude[s] Aetna" from their allegations that "Zelis obtains confidential claims, pricing, and contractual data from Commercial Payers." Opp'n at 5 (quoting SACCAC ¶ 8). But the SACCAC does not specify which "Commercial Payers" Zelis "obtains" information from, and Plaintiffs certainly have not alleged that Aetna Inc. itself shares such confidential claims data. Plaintiffs also cannot explain why Aetna Inc. would agree to share confidential claims information to allegedly be used in Zelis's repricing tools if it wasn't using those tools. *See* MTD at 2, 9-10. Such a theory is not plausible and, in any event, is directly contradicted by the SACCAC, which alleges that Payers only "agree to share their claims, payment, repricing, and/or contractual data with Zelis ***in return for*** the Commercial Payer to be able to use Zelis's repricing algorithms, tools, and/or methodologies to suppress payments for OON healthcare services." SACCAC ¶ 202 (emphasis added).

Bizarrely, Plaintiffs suggest that, just "[a]s before," Aetna Inc. is "alleged to have entered into one or more OON agreements with Zelis." Opp'n at 2 (citing SACCAC ¶ 42). That is false. Plaintiffs amended Paragraph 42 by deleting "and" and replacing it with "and/or" such that this paragraph no longer alleges that ***all*** the defendants took each of the actions listed. *See* ECF No. 245-2 ¶ 42 (redline).[1] As amended, Paragraph 42 can literally be read to say that "Aetna" (either Meritain Health, Inc or Aetna Inc.) only "otherwise participated in the conspiracy," whatever that means. And Plaintiffs likewise adjusted their other allegations to be disjunctive to avoid alleging that Aetna Inc. actually used any of Zelis's out-of-network repricing tools. *See* MTD at 4-5.

Plaintiffs also argue (at 9-10) Aetna Inc. participates in the alleged conspiracy because it benefits from its subsidiary's use of Zelis repricing. But Plaintiffs' suggestion (at 10) that Aetna Inc. thus "uses" Zelis repricing rests on cases interpreting the Defend Trade Secrets Act, which give that term an "expansive interpretation" "specifically in the context of trade secret misappropriation." *See, e.g.*, *Oakwood Lab'ys LLC v. Thanoo*, 999 F.3d 892, 909-10 (3d Cir. 2021). These inapposite cases cannot salvage Plaintiffs' allegations, as Plaintiffs' arguments in their brief that Aetna Inc. is the ultimate Payer, that Meritain is a TPA, or that Meritain, as opposed to "Aetna," uses Zelis's repricing tools are nowhere in their Complaint.

---

[1] Plaintiffs misleadingly suggest (at 2, 7) that this merely "conformed the sentence's conjunctions."

II. Conflating Aetna Inc. and Meritain Health, Inc. Cannot Support Aetna Inc.'s Liability

Plaintiffs' claims against Aetna Inc. should also be dismissed because Plaintiffs have not alleged facts sufficient to infer Aetna Inc.'s direct involvement or a reason to pierce the corporate veil. Plaintiffs have not alleged Aetna Inc.'s direct involvement because every single allegation in the Complaint that uses the term "Aetna" lumps together Aetna Inc. and Meritain Health, Inc. *See* MTD at 11-12. Plaintiffs have not alleged anywhere in the Complaint that Meritain used Zelis repricing tools while Aetna Inc. indirectly benefitted, that Aetna Inc. directs Meritain's use of Zelis repricing tools, or that Aetna Inc. uses Zelis repricing tools (as they now argue). Since "[t]he complaint may not be amended by the briefs in opposition to a motion to dismiss," Plaintiffs' assertions in their opposition cannot remedy the SACCAC's deficiencies. *McLaughlin v. Cambridge Sch. Comm.*, 753 F. Supp. 3d 75, 78 n.3 (D. Mass. 2024) (citation omitted). Plaintiffs (at 17 n.4) suggest the Court can pierce the corporate veil because they "argued that there is no actual separation as between Aetna and Meritain" when seeking leave to amend, but this again belies the fact that Plaintiffs did not plead any allegation supporting that argument. The allegations Plaintiffs ***do*** identify—that each Defendant acted as a "single entity" through its subsidiaries and that each Defendant's subsidiaries acted as its agents, SACCAC ¶¶ 54-55—are "[c]onclusory" and cannot justify "piercings of the corporate veil." *Azima DLI, LLC v. I-Care Reliability, Inc.*, 2019 WL 917124, at *2 (D. Mass. Feb. 25, 2019).

III. Plaintiffs' Injuries Are Not Traceable to Aetna Inc.

Plaintiffs' allegations also cannot satisfy Article III's traceability requirement. *See* MTD at 13-14. Plaintiffs' opposition (at 18) confirms that the only Article III injury at issue here is the "economic harm" Plaintiffs allegedly experience from receiving payments for their services at "non-competitive payment levels" due to Payers "us[ing] a repricer." But the SACCAC ***does not***

allege that ***Aetna Inc.*** uses Zelis's repricing tools. It alleges only that "***one or more*** Commercial Payers agreed to purchase repricing services from Zelis." SACCAC ¶ 8 (emphases added).

Plaintiffs (at 18) claim the Court already "rejected" Aetna Inc.'s "traceability argument." Not so. The Court previously concluded that, because Plaintiffs alleged "a ***single type of conduct*** and resultant harm," Plaintiffs did not need to "plead facts showing" that each "specific Defendant actually used Zelis to reprice ***a specific claim from a specific Plaintiff***" to establish standing. Op. at 8-9 (emphases added). But Plaintiffs no longer allege a single type of conduct, that all "Defendants used Zelis repricing tools." Op. at 9. Instead, Plaintiffs allege only that "***one or more***" did, SACCAC ¶ 8 (emphasis added), which is plainly insufficient, *see* MTD at 14.

Plaintiffs then resort to mischaracterizing their allegations. Plaintiffs (at 20) claim "all Non-Zelis Defendants are substituting their independent pricing judgment for that of a repricer," but fail to cite any allegations to that effect. To support this argument, Plaintiffs (at 18) even appear to suggest Aetna Inc. itself uses the "Zelis repricing tools" at issue in this litigation, despite acknowledging (at 3, 8) that they amended the SACCAC after Aetna Inc. repeatedly informed Plaintiffs that it does not use "Zelis's ERS and RBP products." *See also* MTD at 3-5.

Lastly, Plaintiffs suggest that, "to the extent that Meritain, as a TPA, enters into repricing agreements and uses Zelis's repricing services," Plaintiffs' harm would still be traceable to Aetna Inc. "[s]o long as Aetna is ultimately responsible for making the payment." Opp'n at 19. But none of this is in the SACCAC. And even if Plaintiffs amended their complaint once again to add such allegations, this gambit would still fail because it relies on "layer[s]" of inferences. Opp'n at 19.

CONCLUSION

For the reasons stated above, the Second Amended and Consolidated Class Action Complaint should be dismissed as to Aetna Inc. with prejudice.

Dated: September 8, 2026

Respectfully submitted,

/s/ *Katherine Trefz*

George A. Borden (#552302)
Jonathan B. Pitt (*pro hac vice*)
Katherine Trefz (*pro hac vice*)
Suzanne Salgado (*pro hac vice*)
Tom Ryan (*pro hac vice*)
Williams and Connolly LLP
680 Maine Ave SW
Washington, DC 20024
Telephone: (202) 434-5000
gborden@wc.com

CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of September, 2026, the foregoing was filed with the Court's electronic filing system, which will send electronic notice of this filing to all counsel of record.

/s/ Katherine Trefz