UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: ZELIS REPRICING ANTITRUST LITIGATION *This Document Related 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 **ORAL ARGUMENT REQUESTED** Leave to File Excess Pages Granted on August 28, 2026

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS

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INTRODUCTION

Defendants ask the Court to compel the wholesale production of documents and data that fall outside the scope of permissible discovery in a price-fixing case and are necessarily disproportionate to the needs of this case. Defendants have not articulated any legally cognizable basis for the production of this information, including downstream billing and collection data that courts have long held irrelevant to antitrust liability and damages. Throughout months of meet-and-confer correspondence, Plaintiffs have offered category-specific compromises; agreed to produce financial-performance data, repricing communications, and OON-claims data central to this case; and narrowed the parties' disputes to a discrete set of requests implicating a downstream-discovery objection, an in-network-discovery objection, and a handful of request-specific relevance and proportionality objections. *See* Declaration of Jason Hartley ("Hartley Decl.") Ex. A (Pls. Aug. 4, 2026 Ltr. to Defs. ("Pls. Aug. 4 Ltr."); Ex. B (Pls. Aug. 17, 2026 Ltr. to Defs. ("Aug. 17 Ltr."); Ex. C (Pls. Aug. 19, 2026 Ltr. to Defs. ("Pls. Aug. 19 Ltr."); Ex. D (Pls. Aug. 24, 2026 Ltr. to Defs. ("Pls. Aug. 24 Ltr."); Ex. E (Pls. Aug. 28 Ltr. to Defs. ("Pls. Aug. 28 Ltr.").

Defendants' motion recasts that record as intransigence. It is not. The discovery Defendants seek in Sections I, II, III (in part), and IV of their motion is either (a) downstream, patient-level billing, collection, and financial information and data that courts have repeatedly held irrelevant to a price-fixing claim because antitrust injury is measured at the moment of underpayment (or overpayment) and is not offset by a plaintiff's subsequent ability (or inability) to recoup that shortfall from another source, *see Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481, 494 (1968); *In re Nexium Antitrust Litig.*, 777 F.3d 9, 27 (1st Cir. 2015); *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 262 n.14 (1972); or (b) in-network pricing and participation discovery that is unnecessary because Plaintiffs' antitrust claims require only proof of the "rough contours" of a

relevant market (*see Ohio v. Am. Express Co.*, 585 U.S. 529, 544 n.7 (2018)), and because the "practical indicia" relevant to any under-inclusive-market argument lie in Defendants' own files, public statements and market-wide data, not Plaintiffs' anecdotal billing records, *see In re MultiPlan Health Ins. Provider Litig.*, 789 F. Supp. 3d 614, 634 (N.D. Ill. 2025). If nothing else, proportionality concerns far outweigh production of this information, which will dramatically increase the volume of discovery and complicate issues for the parties and the Court.

Defendants' remaining requests—for Plaintiffs' tax returns, individual compensation records, health benefit plans, and non-Zelis repricing—seek information that is either cumulative of discovery Plaintiffs have agreed to produce or relevant only to theories (unclean hands, *in pari delicto*) that are not cognizable defenses to a *per se* antitrust claim. *See Roma Constr. Co. v. aRusso*, 96 F.3d 566, 581–82 (1st Cir. 1996) (Lynch, J., concurring); Hartley Decl., Ex. I (*In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637 (N.D. Ill.), Aug. 25, 2023 Mot. in Limine Hr'g Tr. at 82:5–84:8, Doc. 6819).

Plaintiffs have offered compromise proposals to the Defendants just to move the case forward but there is a limit to improper discovery. Defendants' own motion concedes that three days before its filing on August 28, 2026, Plaintiffs agreed to produce documents responsive to the billed-charges category that is the subject of Section IV of Defendants' motion, and that the parties were still clarifying the scope of that production as of Defendants' August 29, 2026 letter. Mot. at 6 n.3 (citing Ex. 11, Pls' Aug. 28, 2026 Ltr.; Ex. 12, Defs' Aug. 29, 2026 Ltr.). Plaintiffs respectfully submit that Defendants' motion to compel should be denied with respect to the RFPs addressed below and, to the extent any narrow disputes remain about the scope of Plaintiffs' existing commitments, order the parties to complete their meet-and-confer, rather than order their production.

FACTUAL BACKGROUND

On May 5, 2026, Defendants served their First Set of Requests for Production to Plaintiffs, which contained 75 wide ranging Requests—more than twice the number served by Plaintiffs—that sought discovery on nearly every facet of Plaintiffs' healthcare practices. On June 25, 2026, Plaintiffs served Defendants with their Objections and Responses this discovery. McGinnis Decl, Ex. 2. Plaintiffs agreed to produce documents in response to all or part of 32 Requests. *Id.* Because they are not relevant to Plaintiffs' claims or Defendants' legally cognizable defenses, Plaintiffs objected to Requests seeking downstream information relating to Plaintiffs' balance billing, patient billing, and other sources of revenue; in-network healthcare services; charge-setting documents; certain financial documents; and employer-sponsored health plans.

Less than fifteen minutes before the parties were scheduled to meet and confer about them on July 17, Defendants sent Plaintiffs a letter not only seeking each of the aforementioned categories of documents, but also approximately 60 specifically identified Requests, *without offering any compromise*. McGinnis Decl., Ex. 3, 13. Despite the short notice, Plaintiffs met and conferred with Defendants and agreed to respond more fully by letter. Hartley Decl., ¶ 11.

On August 4, Plaintiffs sent Defendants a letter citing voluminous case law explaining why they intended to stand on their objections to producing downstream information about their business operations that are not at issue in this case (discussed above), as well as detailed information about the specific categories of documents Plaintiffs intended to withhold. Hartley Decl. Ex. A. Nevertheless, Plaintiffs compromised with respect to several RFP-specific issues identified by Defendants and also agreed to produce documents in response to all or part of eight additional Requests. *Id.* (RFP Nos. 5, 16, 53, 31, 40, 50, 60, 61).

On August 13, a little more than an hour before the parties were scheduled to meet and confer, Defendants sent Plaintiffs a letter stating that Defendants believed the parties were at impasse with

respect to the five categorical objections and requesting that Plaintiffs identify any compromises they were prepared to offer—again without offering any compromises of their own—and seeking to enforce a number of additional specific Requests. McGinnis Decl., Exs. 5, 13. Despite the short notice, Plaintiffs met and conferred with Defendants and agreed to respond more fully by letter. Hartley Decl., ¶ 12.

On August 17, Plaintiffs sent Defendants a letter offering further compromises on the categorical disputes, including with respect to balance billing (RFP No. 16), in-network discovery (RFP Nos. 42, 44, 47, and 52), and Plaintiffs' financial performance (RFP Nos. 4, 29–30, 32-33, 35--38, 42, 44, 47, and 64). Hartley Decl. Ex. B. On August 19, Plaintiffs sent Defendants an additional letter offering further compromises with respect to additional RFPs identified by Defendants, including with respect to RFP Nos. 10, 24, 45, 46, 65, and 66. Hartley Decl., Ex. C.

On August 21, Defendants sent Plaintiffs a letter rejecting Plaintiffs' offers of compromise with respect to the balance billing and in-network discovery categories, identifying an additional categorical dispute related to *MultiPlan* documents, and requesting further information about Plaintiffs' positions with respect to the financial performance category and several specific RFPs. McGinnis Decl., Ex. 8.

On August 24, Plaintiffs sent Defendants a letter providing further information about their proposed compromises, namely, agreeing to produce documents regarding Zelis's balance-billing prohibitions; Plaintiffs' balance-billing allegations (RFP No. 16) and financial performance (RFP Nos. 29–30, 33, 35, 37-38); in-network discovery in response to RFP Nos. 42, 44, 47, and 52, even though Defendants had rejected Plaintiffs' offer of compromise; and documents in response to Request No. 51. Hartley Decl. Ex. D. On August 26, Defendants sent Plaintiffs a letter that resolved

several RFP-specific issues but stated Defendants would seek Court resolution of each categorical issue in spite of Plaintiffs' efforts to compromise. McGinnis Decl., Ex. 10.

On August 28, in an effort to further compromise and narrow the disputes before the Court, Plaintiffs sent Defendants a letter agreeing to produce Plaintiffs' charge-setting documents in response to RFP Nos. 17–20 and 22 and agreeing that the parties were at impasse with respect to the remainder of the Requests. Hartley Decl. Ex. E. On August 31, Defendants filed the instant motion to compel.

LEGAL STANDARD

In order to be discoverable, the requested information must be "relevant to a[] party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Whether discovery is proportional to the needs of the case depends on, among other things, "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of discovery in resolving the issues, and whether the expense of the proposed discovery outweighs its likely benefit." *Id.* "[T]he party seeking an order compelling discovery responses over the opponent's objection bears the initial burden of showing that the discovery requested is relevant." *Torres v. Johnson & Johnson*, No. 3:18-10566-MGM, 2018 WL 4054904, at *2 (D. Mass. Aug. 24, 2018) (citation omitted).

ARGUMENT

I. The Court Should Deny Defendants' Request for Balance Billing and Plaintiff Billing Because It Is Counter to Settled Antitrust Jurisprudence.

A. Balance Billing Documents Are Impermissible Downstream Discovery

It is settled law that a private antitrust plaintiff's injury crystallizes when it receives an artificially suppressed price—full stop. *See Hanover Shoe*, 392 U.S. at 494 (a defendant may not reduce its liability by showing the overcharged party later shifted the loss elsewhere); *Hawaii v.*

Standard Oil Co., 405 U.S. at 262 n.14 (courts do not look beyond an established overcharge to determine whether the plaintiff later recouped some portion of it); *In re Nexium Antitrust Litig.*, 777 F.3d at 27 ("if a class member is overcharged, there is an injury" whether or not that injury is later offset). Whether Plaintiffs later collected some, all, or none of the balance from patients or other sources therefore has no bearing on whether Defendants' alleged conspiracy caused antitrust injury when it suppressed the reimbursement rate in the first instance. *See 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).

Defendants' far-reaching discovery requests for Plaintiffs' balance-billing and patient billing records offends this fundamental antitrust principle. Defendants' impermissibly broad discovery includes "amounts billed to or collected from patients;" "patient responsibility amounts"; "balance billing, patient billing, collections, and other sources of payment"; and "Plaintiffs' ability to recover from patients or other sources." *See* MTC at 8-9 (citing App. A). This discovery should not be permitted because it is irrelevant to Plaintiffs' claims and any valid defenses and is also grossly disproportionate to the needs of this case, particularly in light of the discovery Plaintiffs are already producing on these topics.

Defendants' primary rationale for seeking this discovery is that they need to test Plaintiffs' factual allegation that Zelis prohibited providers from balance-billing patients as a condition of payment. But whether it was a condition of payment or not, the balance-billing issue is between Plaintiffs and their patients and is irrelevant to Plaintiffs' injury or any defense in this case. 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. *See* Hartley Decl., Ex. E at 3 (RFP 16). This is more than what Defendants are legally entitled to regarding downstream issues.

Defendants' motion, moreover, is not limited to Zelis's balance-billing prohibitions. It seeks additional discovery into balance billing generally—including on claims that were *not* subject to Zelis' repricing—as well as other forms of patient billing and payment. None of Defendants' arguments regarding the relevance of balance billing justify the production of these materials.

Standing. Balance-billing documents are not relevant to Plaintiffs' standing either. Courts have repeatedly held that providers who were underpaid by a cartel of insurers have standing, notwithstanding that their underpayment injuries may have been passed on to others. *See, e.g.*, *Acad. of Allergy & Asthma in Primary Care v. Amerigroup Tennessee, Inc.*, 155 F.4th 795, 814 (6th Cir. 2025); *Omnicare, Inc. v. UnitedHealth Grp., Inc.*, 524 F. Supp. 2d 1031, 1043 (N.D. Ill. 2007). When evaluating a plaintiff's standing to sue cartel members for monetary damages under federal antitrust law, what matters is whether the plaintiff directly purchased from (or sold to) the cartel at fixed prices. *See Apple Inc. v. Pepper*, 587 U.S. 273, 282 (2019) (confirming "bright line" rule that federal antitrust law confers standing on the parties directly dealing with the antitrust violator).

Here, there is no question that Plaintiffs are direct sellers to the third-party Defendant payors who comprise the alleged cartel. The only Federal Courts of Appeal to have considered the issue have made clear that healthcare providers sell healthcare services *directly* to insurance companies—even where, as here, such services are rendered on an OON basis—and thus have standing. *See Acad. of Allergy & Asthma*, 155 F.4th at 814; *cf. Blue Cross & Blue Shield United of Wisconsin v. Marshfield Clinic*, 65 F.3d 1406, 1414 (7th Cir. 1995) (insurers pay clinics directly for OON services and therefore have standing to sue clinic for antitrust violations). The fact that providers may balance-bill patients in the context of OON services does not alter that analysis. *See*

Blue Cross & Blue Shield United of Wisconsin v. Marshfield Clinic, 881 F. Supp. 1309, 1318 (W.D. Wis. 1994) (noting "[t]here is nothing . . . to suggest" that direct purchaser relationship "depend[s] on the absence of balance billing").

Injury, Causation, and Damages. Defendants' request for materials beyond Zelis repricing are doubly irrelevant because Plaintiffs are only pursuing damages on claims that were repriced by Zelis. *See* Pl. 2d Am. Consol. Compl ("SAC"), ECF No. 273, ¶374. As the Supreme Court has long held, there is no "pass through" defense to a federal antitrust claim. Plaintiffs are entitled to recover the full extent of any damages caused by a price-fixing cartel—regardless of any ability to "pass[] on" injuries to a downstream party, or to mitigate losses by recouping payment from a collateral source—the so-called "collateral source rule." *Hanover Shoe,* 392 U.S. at 489-94; *Atl. Seaboard Corp. v. Fed. Power Comm'n*, 404 F.2d 1268, 1273 n.17 (D.C. Cir. 1968) (noting *Hanover Shoe* rule parallels the "collateral source" doctrine from tort law).[1] Accordingly, Federal Courts of Appeals have held that a Plaintiffs' ability to recoup losses from a downstream or collateral source neither negates their antitrust injury, nor undermines causation, nor reduces the damages to which they are entitled. *In re Nexium Antitrust Litig.*, 777 F.3d at 27 ("[A]ntitrust injury occurs the moment the purchaser incurs an overcharge, whether or not that injury is later offset."); *Acad. of Allergy & Asthma*, 155 F.4th at 814 (providers who were underpaid due to horizontal conspiracy

[1] The related collateral source doctrine holds that "that benefits received by the plaintiff from a source collateral to the defendant may not be used to reduce that defendant's liability for damages." *Lussier v. Runyon*, 50 F.3d 1103, 1107 (1st Cir. 1995). *Hanover Shoe* relied on, and should be understood as a variant of, this common law principle. *See* 392 U.S. at 490 n.8 (noting "[t]he general tendency of the law . . . is not to go beyond the first step"); *Blue Cross & Blue Shield of New Jersey, Inc. v. Philip Morris, Inc.*, 138 F. Supp. 2d 357, 361 (E.D.N.Y. 2001) (comparing *Hanover Shoe* to the collateral source rule). Both *Hanover Shoe* and its common law relative "rest[] on the belief that the wrongdoer should be made to pay—the better to deter like conduct—whether or not the victim has providently supplied another source of compensation." *Carter v. Berger*, 777 F.2d 1173, 1175 (7th Cir. 1985).

suffered direct injury, proximately caused by the conspiracy, and were entitled to recover the full amount of the underpayment).[2] For these reasons, courts overwhelmingly conclude that downstream documents and data are irrelevant in a price-fixing case and not a proper subject of discovery. *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, 2016 WL 6897809, at *1 (D. Mass. Sept. 19, 2016); *In Re Air Cargo Shipping Servs., Antitrust Litig.*, 2010 WL 4916723, at *2 (collecting cases); *In re Delta/AirTran Baggage Fee Antitrust Litig.*, 317 F.R.D. at 684, 686–87 (mitigation, offset, and reimbursement defenses also barred by *Hanover Shoe*).[3]

Actions Against Self Interest and Procompetitive Justifications. Defendants also argue that discovery about balance billing is relevant to "why Defendants independently valued Zelis's repricing services" because "[t]hose services often reduce members' exposure to balance bills." MTC at 10. This argument does not withstand scrutiny. Plainly, none of the evidence of the reasons these Defendant payors decided to start using Zelis's services over a decade ago—including its protections against balance billing—are in the Plaintiffs' possession. Moreover, Defendants misunderstand the "actions against self-interest" plus factor, which considers whether it would

[2] *See also In re Nexium (Esomeprazole) Antitrust Litig.*, 296 F.R.D. 47, 56, 58 (D. Mass. 2013) (applying this rule in the context of defense barred by *Hanover Shoe*). The Court's ensuing discussion of uninjured class members is inapplicable here because the "rebates" and "discounts" were received from the defendants, rather than downstream customers. *See id.* at 59.

[3] Defendants attempt to distinguish these cases on the ground that none involved materials that plaintiffs made relevant through their pleadings. However, the only allegations that Plaintiffs pleaded with respect to balance billing relate to facts that the Supreme Court has relied on in refusing to create exceptions to *Hanover Shoe* and *Illinois Brick*. *Compare* SAC ¶ 345 ("Even if there is no such prohibition by contract or by governmental regulation, a patient's injury depends on whether the provider is willing or able to force the patient to pay the remainder" and "[g]oing after a patient means the Provider suffers additional injury as far as the lost time value of money") *with Kansas v. UtiliCorp United, Inc.*, 497 U.S. 199, 210-11 (1990) ("Even if, at some point, a utility can pass on 100 percent of its costs to its customers, various factors may delay the passing-on process…. During any period in which a utility's costs rise before it may adjust its rates, the utility will bear the costs in the form of lower earnings."). Plaintiffs have agreed to produce documents related to those allegations in response to RFP No. 16.

have been economically rational for an individual Defendant payor to reduce its payments for OON services under competitive conditions (meaning outside the conspiracy period). *See* SAC ¶¶ 293-94. The discovery Defendants seek—which asks whether Plaintiffs were balance billing while the conspiracy was in effect—has no probative value as to this question.

Class Certification. Finally, Defendants argue that discovery into balance billing is relevant to class certification because "balance-billing practices may vary by provider, payor, plan, claim type, state law, patient agreement, and whether a particular repricing communication included or enforced a no-balance-billing term." MTC at 11. Again, what any Plaintiff does downstream, after it was injured by the Defendants' anticompetitive conduct, is entirely irrelevant.

B. Patient Billing and Other Sources of Payment Is Likewise Impermissible Discovery.

Defendants also seek other forms of patient billing and payment, such as co-insurance. *See, e.g.* RFP Nos. 4, 8, 10-13, 21, 28, 32, 36, 45, 48–49). In their meet and confer correspondence, Defendants originally took the position that these "multiple sources of payment" are also relevant to injury, causation, and damages. *See* McGinnis Decl., Ex. 3. However, Defendants have failed to make any legal argument in support of the relevance of these requests in their motion. Even if they had, their argument would fail because, like the pass-on issue discussed above, the fact that Plaintiffs may have partially recouped some of their losses from a collateral source is irrelevant. The point of *Hanover Shoe* and its progeny is that an antitrust plaintiff has standing to recover fully from a cartel with which it directly transacts *regardless* of whether it may "recoup[] its loss in some other way," by passing-on the damage or by collecting it from a collateral source. *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251, 262 n.14 (1972) (whether the State of Hawaii's injury as a consumer—in the form of overcharges—was partially offset by higher state taxes paid by the seller was irrelevant).

A federal court recently addressed a similar argument in the financial aid price-fixing case, in which plaintiffs alleged a scheme by universities to fix the amount of need-based financial aid they offer students. *Corzo v. Brown Univ.*, 2025 WL 2753400, at *6-7 (N.D. Ill. 2025). The defendants there attempted to challenge the plaintiffs' injury analysis on the basis that many students could and did obtain other forms of financial aid (such a merit-based aid) that lowered their effective tuition costs. *Id*. at *6. But the court held that these collateral sources of aid were irrelevant to this analysis. The plaintiffs had alleged a conspiracy to limit "one category" of aid to students, and "whether an individual student, or even every student" could "obtain[] additional funds from sources other than need-based financial aid from a university" was "beside the point." *Id.* at *7. The same logic applies here: Plaintiffs allege that Defendants' cartel fixes the prices that *insurers* pay for healthcare services. The fact that Plaintiffs and the class of providers may partially recoup some of their losses from sources such as co-insurance is "beside the point." *See id*. The Court should therefore deny Defendants' motion to compel production of discovery related to other forms of patient billing and payment in response to these requests.

Accordingly, the Court should conclude that the balance billing discovery that Plaintiffs have agreed to produce—documents setting forth Zelis's balance billing prohibitions and internal communications related to their allegations concerning balance billing—is sufficient to resolve the relevant issues. The Court should deny Defendants' motion to compel further balance-billing discovery and discovery related to other forms of patient billing and payment.

II. The Court Should Deny Defendants' Motion to Compel Production of Additional In-Network Discovery.

Defendants argue that Plaintiffs should be required to produce extensive discovery regarding INN services. *See, e.g.*, RFP Nos. 8 (structured data for INN services), 17-18 (all billed charges for INN services and all documents referencing the same), 19 (all documents relating to the amount

of payment plaintiffs expect to receive for INN services), 48 (all communications with any payor on a number of INN topics). Defendants' primary justification is that this discovery is necessary for testing the relevant market as "being limited to OON services only." MTC at 13. But disputing the relevant market does not give Defendants carte blanche to expand discovery far beyond what is relevant and proportionate for this issue. Including the irrelevant and highly disproportional INN discovery would dramatically and needlessly increase the size of this case. Most of Plaintiffs' services are provided through some INN agreement and the ratio is dramatic. For example, Plaintiff PIMG's ratio for its recent payments was roughly 88% INN and 12% OON. Another Plaintiff, Ayer's is roughly 90% INN and 10% OON. Hartley Decl. ¶ 13. PIMG averages 27,000 claims a month, including both INN and OON. *Id.* Accordingly, an order requiring PIMG to produce its INN claims for the entire relevant time period could require the collection, privilege review, and production of millions of additional claims—not to mention all of the additional documents "referencing" those claims that Defendants also seek. When compared with the total corpus of documents the Defendants propose is appropriate, the difference is even more stark.[4] The burden and consequences of including INN discovery make it dramatically disproportional, particularly given the INN-related documents Plaintiffs have nonetheless already agreed to produce (in response to RFPs 42, 43, 47, 52, as described below).

Relevant Market. To begin with, in its denial of Defendants' motion to dismiss, the Court noted only that Defendants had raised fair concerns regarding the "scope and type of services covered by the plaintiffs' alleged nationwide market for out-of-network healthcare services"—it did not suggest that there were any fair concerns about OON services as a market separate from INN

[4] The billion-dollar Defendants' total document corpus before searching and production is only 347,674 for Humana and 614,952 for Aetna, each with tens of thousands of employees. The other Defendants have not yet disclosed the size of their document corpora. Hartley Decl. ¶15.

services. *See* MTD Order at 18. This is unsurprising because the INN/OON distinction was created by Defendants themselves, and Defendants regard them as separate markets outside this litigation. *See* SAC ¶¶ 160, 163, 169-71. After all, Defendants underpay their OON claims precisely because they are not bound by preset rates like INN claims are. Accordingly, this discovery dispute has little importance to resolving the issues in this litigation. *See* Fed. R. Civ. P. 26(b)(1).

Moreover, the primary theory of this case is a *per se* unlawful horizontal price-fixing conspiracy. *See* MTD Order at 13-15 (horizontal conspiracy sufficiently pled); *id.* at 14-16 (hub-and-spoke conspiracy sufficiently pled); *see also Stop & Shop Supermarket Co. v. Blue Cross & Blue Shield of R.I.*, 373 F.3d 57, 61 (1st Cir. 2004) (horizontal price fixing conspiracies are subject to *per se* treatment); *United States v. Apple, Inc.*, 791 F.3d 290, 325 (2d Cir. 2015) (hub-and-spoke price fixing conspiracies are subject to *per se* treatment); *see also In re MultiPlan Health Ins. Provider Litig.*, 789 F. Supp. 3d 614, 629, 644 (N.D. Ill. 2025) (substantially similar legal theory subject to *per se* treatment). In *per se* cases, the relevant market need not be established beyond its rough contours, obviating the need to rigorously demonstrate market power in a relevant market. *See F.T.C. v. Superior Ct. Trial Laws. Ass'n*, 493 U.S. 411, 430 (1990) ("The per se rules avoid the necessity for an incredibly complicated and prolonged economic investigation . . ."); *Ohio v. Am. Express Co.*, 585 U.S. 529, 543 n.7 (2018); *United States v. Teva Pharms. USA, Inc.*, 2022 WL 7578988, at *3 (E.D. Pa. Oct. 13, 2022) (explaining that the burden defining a relevant market in *per se* cases as "less stringent," "diminished," and "requiring only demonstration of the 'rough contours of a relevant market.'" (collecting cases)). While Plaintiffs have alleged a rule of reason theory in the alternative, even in a rule-of-reason case, Defendants' market power can be shown directly—through evidence that they reduced prices below competitive levels for an extended period—without rigorously defining a market. *See Republic Tobacco Co. v. N. Atl. Trading Co.*,

381 F.3d 717, 737 (7th Cir. 2004); *see also Corzo v. Brown Univ.*, 2026 WL 91424, at *9 (N.D. Ill. 2026) (noting even in a rule of reason case, a plaintiff need only "define at least the rough contours of a relevant market"). Discovery on this issue from a handful of small Plaintiffs will be useless to providing even these rough contours of a multi-billion-dollar market.

Even if the Court requires a rigorously defined market, Plaintiffs will demonstrate that INN and OON services are not economic substitutes through the "practical indicia" relied on by courts—an inherently market-wide, expert-driven inquiry relying on comprehensive data held by Defendants and third parties, not an individual Plaintiff's records, which would necessarily be merely anecdotal. *See, e.g.*, *In re MultiPlan Health Ins. Provider Litig.*, 789 F. Supp. 3d 614, 633-34 (N.D. Ill. 2025) (discussing payors' health plans, public statements, and pricing); *see also United States v. Bertelsmann SE & Co. KGaA*, 646 F. Supp. 3d 1, 34 (D.D.C. 2022) (applying cross-elasticity of supply analysis).

Courts in this district and elsewhere therefore consistently deny motions to compel plaintiffs' production of materials that are outside the relevant market, due to their limited relevance and because they are cumulative and unnecessary. *In re Asacol Antitrust Litig.*, 2017 WL 11476172, at *3-4 (D. Mass. 2017) (denying motion because requested materials were "cumulative of information more easily available from other sources" and "would not provide much other than anecdotal evidence"); *In re Loc. TV Advert. Antitrust Litig.*, 2023 WL 1863046, at *5 (N.D. Ill. Feb. 9, 2023) (denying defendants' motion to compel discovery into other services that "may be adequate substitutes" because the request "would significantly expand the scope of discovery" and defendants "have their own sales data . . . so they surely can extrapolate substitutability from this data."); *see also In re Aggrenox Antitrust Litig.*, 199 F. Supp. 3d 662, 663, 669 (D. Conn. 2016) (denying motion to compel "expansive discovery of data relating to . . . the broader market").

Simply put, Defendants do not need the extensive additional discovery they seek from Plaintiffs to make arguments regarding the relevant market, because Defendants are the largest participants in the very markets alleged by Plaintiffs and already possess most of the information they claim to need from Plaintiffs. For instance, Defendants maintain detailed claims data, in far greater quantities than Plaintiffs' possess, from which to assess the substitutability of different services. Accordingly, the extensive INN discovery Defendants seek from Plaintiffs is not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1).

In their meet and confer correspondence, Defendants' lead argument for the relevance of these materials was to obtain Plaintiffs' views on the substitutability of OON and INN services and how they view these services as distinct or related. *See* McGinnis Decl., Ex. 3. However uncompelling that rationale was, in an effort to compromise, Plaintiffs agreed to produce documents on these topics in response to RFP Nos. 42 (consideration of whether or not to contract with any payor), 44 (analyses of financial impact of participating INN or remaining OON), 47 (benefits and disadvantages of participating INN), and 52 (market analyses comparing INN and OON). *See* Hartley Decl., Ex. B, D. In *Asacol*, a court in this district concluded that a substantially similar compromise was reasonable. *In re Asacol Antitrust Litig.*, 2017 WL 11476172, at *4 (ordering production of policies or other documents setting forth plaintiffs' views on substitutability).[5] The Court should reach the same conclusion here.

[5] Defendants' reliance on *In re Loestrin 24 Fe Antitrust Litig.*, 2017 WL 1491911 (D.R.I. Mar. 15, 2017) is misplaced. There, the defendants only sought "a targeted set of qualitative documents" and expressly "d[id] not seek data sets reflecting Plaintiffs' purchases or sales of these products, conceding that nationwide data sets are more readily available and are sufficient to satisfy their need for market data." *Id.* at *2. Plaintiffs' compromise position is far closer to what the court ordered there than the unlimited in-network discovery sought by Defendants here.

Alleged Restraint. Defendants contend that Plaintiffs placed INN rates "at issue" by alleging that Zelis's repricing tool suppresses OON payments by "unfairly us[ing] in-network rates." MTC at 14. This argument misses the mark. Zelis—not any Plaintiff—is the party in possession of discovery on the inputs used by its repricing tool.

Damages. Defendants argue that "Plaintiffs' INN rates are … necessary to test whether repriced amounts in fact matched INN levels" because Plaintiffs have alleged that Defendants suppressed OON payments so they would "match or come close to in-network payment levels." MTC at 15. However, this argument confuses the issues and misstates Plaintiffs' allegations. Plaintiffs' damages are not dependent on in-network rates—Plaintiffs seek "underpayment" damages, which are the difference between the cartel-suppressed prices actually paid and the competitive prices that would have been paid absent the conspiracy. *See* SAC ¶ 404; *In re Processed Egg Prods. Antitrust Litig.*, 881 F.3d 262, 276 (3d Cir. 2018). While Plaintiffs have alleged that Defendants' conspiracy was driven by a motivation to suppress OON payments to bring them in line with INN payments, discovery on the payor-Defendants' motive is plainly in their own possession. *See* SAC ¶¶ 174, 283. And Defendants know their own INN payments, making their demand of this cumulative information from Plaintiffs burdensome and disproportionate.

Injury and Causation. Defendants argue that Plaintiffs also placed INN rates at issue by alleging that Defendants denied them "a proper, competitive dynamic" to "decid[e] whether to opt to go in-network or remain OON," and made "in-network participation artificially more attractive to Providers." MTC at 15. As discussed above, however, Plaintiffs have already agreed to produce any documents responsive to these topics in response to RFPs 42 (consideration of whether or not to contract with any payor), 44 (analyses of financial impact of participating INN or remaining

OON), 47 (benefits and disadvantages of participating INN), and 52 (market analyses comparing INN and OON). This argument does not provide any basis for the extensive additional in-network discovery Defendants seek.

Class Certification. Defendants' argument on this issue is underdeveloped to the point it should be deemed waived. *Bobbett v. City of Portsmouth*, 2018 WL 1542325, at *3 (D.N.H. Mar. 29, 2018) (issues discussed in a perfunctory manner without "developed argumentation" are waived). Defendants offer no authority in support of their argument that a plaintiff's conduct in a separate market is relevant to the class certification analysis, and courts regularly conclude that the issues Defendants have identified are not sufficient to defeat class certification even when they occur *within* the relevant market. *See, e.g.*, *In re Pork Antitrust Litig.*, 665 F. Supp. 3d 967, 998 (D. Minn. 2023) ("[D]isparities in the circumstances surrounding the proposed class representatives' purchases, such as different purchasing mechanisms, negotiating abilities, and geographic reach … do not defeat class certification.").

Finally, certain RFPs Defendants seek to compel have nothing to do with any of these justifications. *See, e.g.*, RFP Nos. 6 (contracts with facilities), 7 (payments from facilities), 11-12 (polices related to OON services), 60 (treatment of patients at INN facilities).

Accordingly, the Court should conclude that Plaintiffs have agreed to provide discovery that is proportionate for this issue and deny Defendants' motion to compel further INN discovery.

III. The Court Should Deny Defendants' Motion to Compel Further Production of Financial Performance Discovery Because Plaintiffs Have Already Agreed to Produce Sufficient Documents.

Plaintiffs have already agreed to produce substantial financial performance discovery, including in response to RFP Nos. 4 (revenue reports and revenue cycle reports), 29 (presentations regarding financial performance), 30 (financial statements), 32 (policies regarding recognition of

revenue from payors), 33 (profit and loss statements), 35 (documents sufficient to show the itemized costs of maintain the provider's practice), 36 (documents sufficient to show debt, discounts, or write offs, excluding discounts and write offs related to patient billing)), 37 (applications for financial support), 38 (documents discussing the reasons for any decrease in financial performance), and 64 (documents related to claimed injury and damages). *See* Hartley Decl., Ex. B. As Defendants are aware, this is far beyond what the court ordered produced in *Multiplan*. *Compare* Hartley Decl., Ex. G at 19 (*Multiplan* defendants' motion to compel), *with* Hartley Decl., Ex. H (granting *Multiplan* motion to compel as to RFP 24 (financial statements), 25 (revenue and revenue cycle management reports), and 60 (documents discussing the reasons for any decrease in financial performance), and denying as to RFP 7-8 (contracts with facilities and documents sufficient to show any payments from facilities), 27 (policies regarding revenue recognition), and 28 (profit and loss statements)). The Court should decline to compel production of the further financial performance discovery sought by Defendants for the reasons discussed below.

Relevant Market. Defendants do not explain how any of the additional requests they seek to enforce are relevant to testing the relevant market, and Plaintiffs have already agreed to produce the financial performance documents they contended were relevant to that issue in their meet and confer correspondence. *See* Hartley Decl., Ex. B (agreeing to produce documents responsive to RFPs 42, 44, and 47).

Plaintiffs' Alleged Financial Harm. As a threshold matter, financial harm as an anticompetitive effect is not relevant to Plaintiffs' *per se* claims. *See, e.g.*, *Mooney v. AXA Advisors, L.L.C.*, 19 F. Supp. 3d 486, 498 (S.D.N.Y. 2014) ("[T]he law regards practices that are per se illegal as so unwaveringly noxious to competition that their anticompetitive effect is presumed."). And while

this issue may be relevant to the rule of reason theory Plaintiffs have alleged in the alternative, RFP Nos. 31 (tax returns) and 34 (salary and compensation documents) seek information that is subject to heightened protections, and which is not necessary in light of the substantial financial performance discovery Plaintiffs have already agreed to produce. *See Fine v. Sovereign Bank*, 2010 WL 11575636, at *2 (D. Mass. Oct. 15, 2010) ("Tax records are generally protected from discovery unless the court finds that they are relevant to the action and that there is a 'compelling need for the returns because the information contained therein is not otherwise readily obtainable.'"); *Wheeler v. Blackbear Two, LLC*, 2012 WL 5989423, at *3 (M.D. Fla. Nov. 30, 2012) (compensation information in non-party employees' personnel files need not be produced when "the information can be obtained from other, less intrusive sources"). Moreover, some of the Plaintiffs are disregarded legal entities, so the tax records Defendants seek would actually be individuals' records containing highly sensitive and confidential personally identifiable information. Hartley Decl. ¶ 14 (Plaintiffs Ayer, Bachoua, Scaccia and Chelsea Foot are disregarded entities).

Third-Party Revenue Cycle Management and Patient Accounting. As discussed above, Plaintiffs have already agreed to produce revenue reports and revenue cycle reports in response to RFP No. 4. Nonetheless unsatisfied, Defendants also seek any contracts Plaintiffs have with third parties that provide those reports so that they can "identify which entity controlled those functions, the services involved, and the sources and custodians of relevant records." MTC at 17. However, these justifications are "collateral to the relevant issues," and in such circumstances, courts require the party seeking the discovery to "provide an 'adequate factual basis' to justify the discovery." *Haroun v. ThoughtWorks, Inc.*, 2020 WL 6828490, at *1 (S.D.N.Y. Oct. 7, 2020). Defendants have not done so here.

Defendants also seek to enforce the portions of RFP Nos. 32 and 36 that seek Plaintiffs' policies and procedures relating to recognition of patient revenue, and the amounts discounted or written off. Plaintiffs have objected to the patient billing portions of these RFPs for reasons explained in Section I. Plaintiffs only add here that these RFPs are not as narrowly tailored as Defendants suggest. They do not merely seek materials relating to how the balance billing prohibition operated in practice—they seek responsive materials related to any form of patient revenue and write-offs, including co-insurance, which are irrelevant for the reasons discussed in Section I's Patient Billing paragraph. In *MultiPlan*, the court declined to compel production of similar policies regarding recognition of revenue, as discussed above.

Accordingly, the Court should decline to compel Plaintiffs to produce further financial performance discovery.

IV. The Court Should Deny Defendants' Motion to Compel Further Production of Charge-Setting Discovery Because Plaintiffs Have Already Agreed to Produce Sufficient Documents.

As reflected in Plaintiffs' meet and confer correspondence, Plaintiffs have already agreed to produce fee schedules and chargemasters for OON services, as well as methodologies, and comparator materials showing how their billed charges were established and evaluated, in response to RFP Nos. 17-20, and 22, without waiving their objections. *See* Hartley Decl., Ex. E. While Plaintiffs have objected to producing related materials concerning INN services and patient billing, Plaintiffs understand the Court's resolution of those categorical objections issues will likely apply to these RFPs as well. That said, Defendants' proffered reasons for seeking these materials—procompetitive justifications, damages, and class certification—do not provide a basis for requiring production of these related materials. Accordingly, the Court should decline to compel Plaintiffs to produce further charge-settling discovery.

V. The Court Should Deny Defendants' Motion to Compel Production of Employer-Sponsored Health Plans Because Unclean Hands Is Not a Defense.

Defendants seek documents relating to the health benefit plans that Plaintiffs offer their own employees, including "[a]ll correspondence with the Payors that provide health insurance or administer health benefits for Your employees concerning Zelis [and] determination of allowed amounts or reimbursement limits for OON Healthcare Goods or Services…." *See* MTC at 21, RFP No. 26-27. Defendants originally justified these requests in part on the ground that they are relevant to Defendants' "affirmative defenses." McGinnis Decl., Ex. 3. In meet and confer correspondence, Plaintiffs explained that unclean hands is not a legally cognizable defense to Plaintiffs' antitrust claims. Hartley Decl., Ex. A (citing *Roma Const. Co. v. aRusso*, 96 F.3d 566, 581–82 (1st Cir. 1996) (Lynch, J. concurring) (collecting cases)). Defendants now appear to have abandoned that argument. Defendants' remaining arguments are merely attempts to sneak these objectionable materials in through the backdoor.

Causation. Defendants argue that "[e]vidence showing that plan sponsors independently selected OON benefit terms … is relevant both to whether the challenged payment levels resulted from the alleged conspiracy or independent plan sponsor decisions." MTC at 22. But a party's "intervening conduct does not sever the chain of causation where that [party's] conduct was a foreseeable consequence of the original antitrust violation." *In re Amitiza Antitrust Litig.*, 2025 WL 4036635, at *42 (D. Mass. Oct. 29, 2025); *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 393 (7th Cir. 2018) (quotation omitted). An employer's selection of a health plan that permits the use of Zelis's services is not unforeseeable or a cause of independent origin—the employer must choose from options offered by Defendants' cartel without any knowledge of the cartel's existence or that the selected product would further a conspiracy. And, once again, all the relevant evidence needed to develop this legally spurious theory is already in Defendants' possession.

Class Certification. Defendants argue that information concerning Plaintiffs' employer-sponsored health plans will provide discovery into whether OON payment parameters and cost-containment tools operate uniformly or instead depend on individualized plan design and administration, which they contend bears on commonality, predominance, and class-wide damages. This argument is misguided because it rests on a mistaken legal premise. Whether Zelis's repricing tools operated uniformly does not matter because "the Sherman Antitrust Act does not outlaw only perfect conspiracies to restrain trade." *United States v. Beaver*, 515 F.3d 730, 739 (7th Cir. 2008). "If competitors agree to abide by a third-party algorithm that guarantees a below market price, it would not matter if every price the algorithm recommended differed for each competitor based on each of the competitor's preferred settings." *In re MultiPlan Health Ins. Provider Litig.*, 789 F. Supp. 3d 614, 638 (N.D. Ill. 2025). Accordingly, Plaintiffs do not need to prove that Zelis's repricing tools operated uniformly to show commonality, predominance, or class-wide damages under Rule 23. *See In re Currency Conversion Fee Antitrust Litig.*, 264 F.R.D. 100, 114 (S.D.N.Y. 2010) (applying *Beaver* at class certification); *In re Nexium Antitrust Litig.*, 777 F.3d at 21 ([T]he Supreme Court in *Amgen* and the circuits in other cases have made clear that the need for some individualized determinations at the … damages stage does not defeat class certification."). In any event, the evidence relevant to demonstrating how Zelis's repricing tools work is in Defendants' possession.

Relevant Market. Defendants argue that these materials are relevant to "market definition" because "Plaintiffs' own decisions as plan sponsors (including what OON payment terms, cost-containment tools, and repricing methodologies they selected or rejected)" will "show[] how OON payment terms are actually selected and administered in practice." MTC at 21. However, Defendants provide no authority in support of this argument, and it has no relationship to the

market-wide "practical indicia" (rather than Plaintiffs' anecdotal evidence) that courts use to define the relevant market. *See supra* Sec. II.

In *MultiPlan*, the court declined to compel production of these materials, and the Court should do the same here. *See* Hartley Decl., Ex. H (denying Topic F).

VI. The Court Should Deny Defendants' Motion to Compel Discovery Concerning Other Repricers as Irrelevant.

Defendants ask the Court to compel production of documents related to Plaintiffs' interactions with MultiPlan and other repricers in response to RFP Nos. 10, 24, 27, 45–46, 50, 64, and 66. MTC at 22. However, this case is about OON claims repriced by Zelis, *see, e.g.*, SAC ¶ 374, and any interactions Plaintiffs may have had with MultiPlan are not probative of any of the issues Defendants have identified in support of their argument that those materials should be produced.

Relevant Market. Defendants contend that the requested discovery will illuminate Zelis's market share versus MultiPlan's. However, any interactions that the six Plaintiffs in this case have had with MultiPlan will be woefully insufficient to shed any light on MultiPlan's market share, if any. *See In re Asacol Antitrust Litig.*, 2017 WL 11476172, at *3 (limited materials in plaintiffs' possession "will not assist the defendants in proving market share 'in any meaningful way' and would not 'provide much other than anecdotal evidence.'").

Causation and Damages. Defendants argue that if Plaintiffs experienced similar outcomes on OON claims repriced through MultiPlan, that could show that Plaintiffs' injury was not caused by the Zelis conspiracy or that Plaintiffs did not suffer any damages. MTC at 23-24. This is absurd. In essence, Defendants seek to use conduct *that has been alleged to constitute a parallel price-fixing conspiracy* to exculpate themselves from the conspiracy at bar. Defendants have offered no legal authority in support of this unprecedented and specious argument, and Plaintiffs are aware of none. Instead, these issues must be evaluated by comparing the prices during the time period

"contaminated" by the alleged conspiracy (often called the "conduct period" or the "conspiracy period") to prices during a "benchmark period," when there was no alleged conspiracy. *See, e.g.*, *In re Pork Antitrust Litig.*, 665 F. Supp. 3d 967, 990-91 (D. Minn. 2023). It also contradicts common sense: if Defendants' apples were price-fixed, it doesn't matter if their tomatoes were too.

Class Certification. Defendants argue that "variation among repricers, methodologies, payors, payment amounts, and provider responses may bear on whether Plaintiffs can prove injury, causation, and damages through common evidence." MTC at 24. This is also nonsensical. Plaintiffs' class definition is limited to OON claims that were repriced by Zelis. SAC ¶ 374. Accordingly, any variation between Zelis and MultiPlan is irrelevant (just as Zelis repricing is irrelevant and not an issue in the *Multiplan* case).

The Court should therefore deny Defendants' motion to compel production of these materials.

VII. The Court Should Deny Defendants' Motion to Compel Discovery Responsive to RFP Nos. 59 and 74.

Finally, Defendants seek to enforce RFP No. 59 and a portion of RFP No. 74. MTC at 24. RFP No. 59 seeks "[a]ll Documents pertaining to Your consideration of whether to cease or limit treating particular patients based on their Payor's OON Reimbursement Rates, *including all Documents in which you discuss or threaten such cessation or limitation*." *See* MTC, App'x G (emphasis added). Defendants contend that this Request is relevant to testing Plaintiffs' allegation that "if a payor offers 'too-low, noncompetitive rates' for OON services, 'providers will stop accepting patients who utilize that payor.'" MTC at 24-25. However, Plaintiffs have already agreed to produce documents in response to RFP No. 62, which seeks documents on precisely this issue: "All Documents relating to any consideration of or decision to cease providing OON Healthcare Goods or Services to patients associated with a particular Payor." McGinnis Decl., Ex. 2. The only difference between the two RFPs appears to be that RFP No. 59 seeks additional documents

investigating whether Plaintiffs engaged in patient abandonment. *See, e.g.*, *George v. Sonoma Cnty. Sheriff's Dep't*, 732 F. Supp. 2d 922, 945-46 (N.D. Cal. 2010) (discussing patient abandonment claims). But as discussed above, unclean hands is not a valid defense to an antitrust claim, *see supra* Sec. V, and courts have held that similar attempts to put the plaintiffs on trial constitute an irrelevant "sideshow" that is "unnecessary for this case." *See* Hartley Decl., Ex I. Doc. 1895-2 (Aug. 25, 2023 Mot. in Limine Hr'g Tr., *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637 (N.D. Ill.), Doc. 6819 at 82:5-83:4.

Defendants contend that the billing-related disciplinary matters sought by RFP No. 74 are relevant to whether Plaintiffs' claimed damages resulted from the conspiracy or from fraudulent billing issues. MTC at 25. If Defendants are accusing Plaintiffs of fraudulent billing, they should be required to present some factual basis for that defense before being permitted to pursue discovery on it. *See Lemanik, S.A. v. McKinley Allsopp, Inc.*, 125 F.R.D. 602, 610 (S.D.N.Y. 1989) (denying defendant's requests for discovery related to plaintiff's alleged bad acts, where the requests related to "blanket assertion of boilerplate defenses without factual basis which the 1983 amendments to Rules 11 and 26 were intended to discourage").

Accordingly, the Court should decline to compel Plaintiffs to produce discovery in response to RFP Nos 59 and 74.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' Motion.

Dated: September 8, 2026

Respectfully submitted,

/s/*Jason S. Hartley*

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CERTIFICATE OF SERVICE

I, Jason S. Hartley, attorney for the Plaintiffs, certify that, on September 8, 2026, I caused a copy of the foregoing to be served, via ECF, on all counsel of record.

/s/ Jason S. Hartley
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.:* *:2 -CV- 2-BEM* *:2 -CV- -BEM* *:2 -CV- -BEM*

DECLARATION OF JASON S. HARTLEY IN SUPPORT OF PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS

DECLARATION OF JASON S. HARTLEY

I, Jason S. Hartley, hereby declare and state as follows:

1. I am a partner at the law firm of Hartley LLP. I am an attorney in good standing in the State of California, and I am admitted to practice *pro hac vice* in this Court. I am co-lead counsel for the Plaintiffs in the above-captioned matter. I have prepared this declaration upon my personal knowledge and review of available documentation.

2. Attached hereto as **E hi it A** is a true and correct copy of Plaintiffs' August 4, 2026 letter to Defendants.

3. Attached hereto as **E hi it B** is a is a true and correct copy of Plaintiffs' August 17, 2026 letter to Defendants.

4. Attached hereto as **E hi it C** is a is a true and correct copy of Plaintiffs' August 19, 2026 letter to Defendants.

5. Attached hereto as **E hi it D** is a true and correct copy of Plaintiffs' August 24, 2026 letter to Defendants.

6. Attached hereto as **E hi it E** is a true and correct copy of Plaintiffs' August 28, 2026 letter to Defendants.

7. Attached hereto as **E hi it F** is a true and correct copy of Plaintiffs' First Set of Requests for Production of Documents.

8. Attached hereto as **E hi it G** is a true and correct copy of Defendants' Motion to Compel Production of Documents, filed in *In re MultiPlan Health Insurance Provider Litigation*, Case No. 1:24-cv-6795, MDL No. 3121 (N.D. Ill.), at docket number 648.

9. Attached hereto as **E hi it H** is a true and correct copy of the Court's Order granting in part and denying in part Defendants' Motion to Compel Production of Documents, filed

in *In re MultiPlan Health Insurance Provider Litigation*, Case No. 1:24-cv-6795, MDL No. 3121 (N.D. Ill.), at docket number 662.

10. Attached hereto as **E hi it I** is a true and correct copy of the Transcript of Proceedings – Motions in Limine, filed in *In re Broiler Chicken Antitrust Litigation*, Case No. 16 C 8637 (N.D. Ill. Aug. 25, 2023), at docket number 6819.

11. On July 17—less than fifteen minutes before the parties were scheduled to meet and confer—Defendants sent Plaintiffs the letter attached as Exhibit 3 to the Declaration of Matthew L. McGinnis ("McGinnis Decl."). Despite the short notice, Plaintiffs met and conferred with Defendants and agreed to respond more fully by letter.

12. On August 13, a little more than an hour before the parties were scheduled to meet and confer, Defendants sent Plaintiffs the letter attached as Exhibit 6 to the McGinnis Declaration. Despite the short notice, Plaintiffs met and conferred with Defendants and agreed to respond more fully by letter.

13. Most of Plaintiffs' services are provided through some INN agreement and the ratio is dramatic. For example, Plaintiff PIMG's ratio for its recent payments was roughly 88% INN and 12% OON. Another Plaintiff, Ayer's is roughly 90% INN and 10% OON. PIMG averages 27,000 claims a month, including both INN and OON. Accordingly, an order requiring PIMG to produce its INN claims for the entire relevant time period could require the collection, privilege review, and production of millions of additional claims—not to mention all of the additional documents "referencing" those claims that Defendants also seek.

14. Some of the Plaintiffs are disregarded legal entities, so the tax records Defendants seek would actually be individuals' records containing highly sensitive and confidential personally

identifiable information. These Plaintiffs are Dennis C. Ayer, DDS, LLC, Danny Bouchoua Chiropractic, APC, and Frank J. Scaccia, M.D., F.A.C.S., L.L.C.

15. Each of the Defendants' total document corpus is only [6xx,xxx] for Aetna (with tens of thousands of employees; [NUMBER] for Elevance (with almost 100,000 employees); [NUMBER] for Cigna (with tens of thousands of employees); [NUMBER] for UnitedHealth (with hundreds of thousands of employees).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 8th day of September, 2026.

Jason S. Hartley

CERTIFICATE OF SERVICE

I, Jason S. Hartley, attorney for the Plaintiffs, certify that, on September 8, 2026, I caused a copy of the foregoing to be served, via ECF, on all counsel of record.

s/ Jason S. Hartley
Jason S. Hartley

EXHIBIT A

ZIMMERMAN | REED

August 4, 2026

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RE: *In re: Zelis Repricing Antitrust Litig.*, Lead Civ. Action No. 1:25-cv-10734 (D. Mass.)

Dear Counsel:

We write in response to Defendants' July 17, 2026, letter regarding Plaintiffs' Responses and Objections to Defendants' First Set of Requests for Production. Defendants raised several issues. We address each in turn.

Plaintiffs' Downstream Discovery Objection

As Defendants noted, Plaintiffs have objected to producing documents related to balance billing, patient billing, and other sources of payment for OON healthcare services on the grounds that such downstream discovery is not relevant to any claims or legally cognizable defenses. Defendants contend that such discovery is "relevant to injury, causation, damages, and the economic realities of the challenged conduct" because

> [p]roviders may receive payment from multiple sources, including health plans and patients, and Plaintiffs' ability—or alleged inability—to bill patients directly goes to whether Plaintiffs were underpaid at all, whether they recovered some or all of the amounts they now claim were unpaid, and whether the challenged conduct caused the injury Plaintiffs assert.

Chen ltr. (July 17, 2026), at 2. Defendants' position, however, is contrary to longstanding principles of antitrust law. Antitrust injury occurs at the moment of payment, and in a price-fixing conspiracy, the amount of damages is established by the amount of the overcharge, or in this case, underpayment. *See In re Nexium Antitrust Litig.*, 777 F.3d 9, 27 (1st Cir. 2015); *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 262 n. 14 (1972); *see also In re Beef Indus. Antitrust Litig.*, 600 F.2d 1148, 1159 (5th Cir. 1979) (applying these principles to monopsony price fixing case). Consequently, defendants to a price-fixing case brought by direct plaintiffs are not entitled to assert a "passing-on" defense. *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481, 494 (1968). For the same reason, mitigation, offset, and reimbursement do not affect the ultimate measure of damages in horizontal price-fixing cases. *In re Delta/AirTran Baggage Fee Antitrust Litig.*, 317 F.R.D. 675, 684, 686 (N.D. Ga. 2016) (collecting cases). Because of these rules, courts overwhelmingly conclude that downstream data is irrelevant in a price fixing case and not a proper subject of discovery. *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. MDL 14-2503-DJC,

2016 WL 6897809, at *1 (D. Mass. Sept. 19, 2016); *In Re Air Cargo Shipping Servs., Antitrust Litig.*, 2010 WL 4916723, at *2 (collecting cases).

Defendants' proffered grounds for seeking downstream discovery—to investigate whether Plaintiffs were underpaid at all, whether they recovered some or all of the amounts they now claim were unpaid, and whether the challenged conduct caused the injury Plaintiffs assert—are all irrelevant and improper subjects of discovery under the authority discussed above. Accordingly, Plaintiffs intend to stand on their downstream discovery objection and will not produce the objectionable materials requested by RFP Nos. 5, 8, 10–16, 20–21, 28, 32, 36, 45, 48–49, and 67.

Plaintiffs' In-Network Discovery Objection

Defendants also take issue with Plaintiffs' objection to producing documents related to in-network services. Specifically, Defendants contend that Plaintiffs' objection is improper because "Defendants dispute that the relevant product market is limited to OON healthcare services, and Defendants are entitled to test Plaintiffs' market-definition allegations through discovery." Chen ltr. (July 17, 2026), at 2. As a threshold matter, the Court has upheld both of Plaintiffs' *per se* theories. *See* ECF No. 185, at 13-15 (horizontal conspiracy sufficiently pled); *id.* at 14-16 (hub-and-spoke conspiracy sufficiently pled); *see also Stop & Shop Supermarket Co. v. Blue Cross & Blue Shield of R.I.*, 373 F.3d 57, 61 (1st Cir. 2004) (horizontal price fixing conspiracies are subject to *per se* treatment); *United States v. Apple, Inc.*, 791 F.3d 290, 325 (2d Cir. 2015) (hub-and-spoke price fixing conspiracies are subject to *per se* treatment); *see also In re MultiPlan Health Ins. Provider Litig.*, 789 F. Supp. 3d 614, 629, 644 (N.D. Ill. 2025) (substantially similar legal theory subject to *per se* treatment). And a relevant market need not be "precisely define[d]" for a horizontal price fixing claim. *Ohio v. Am. Express Co.*, 585 U.S. 529, 544 n.7 (2018); *United States v. Teva Pharms. USA, Inc.*, No. CR 20-200, 2022 WL 7578988, at *3 (E.D. Pa. Oct. 13, 2022) (explaining that the burden defining a relevant market in *per se* cases as "less stringent," "diminished," and "requiring only demonstration of the 'rough contours of a relevant market.'" (collecting cases)). This rule is particularly applicable here where the price fixing conspiracy is alleged to have been effectuated through repricing products that self-define the relevant market. *See United States v. Teva Pharms. USA, Inc.*, No. CR 20-200, 2022 WL 7578988, at *3 (E.D. Pa. Oct. 13, 2022) ("To some extent, of course, a horizontal agreement tends to define the relevant market, for it tends to show that the parties to it are at least potential competitors. If they were not, there would be no point to such an agreement. Thus its very existence supports an inference that it would have an effect in a relevant market."). Accordingly, the discovery sought by Defendants is not relevant to the market definition requirements of Plaintiffs' *per se* claims.

But putting this issue aside, the in-network discovery sought by Defendants is not relevant to testing Plaintiffs' market definition allegations. As the *MultiPlan* court recognized, the "practical indicia" relevant to analyzing Defendants' under-inclusivity argument relate to information in Defendants' own possession. *See In re MultiPlan Health Ins. Provider Litig.*, 789 F. Supp. 3d 614, 634 (N.D. Ill. 2025) (discussing third-party payors' health plans, public statements, and pricing); *see also* FAC ¶ 166 ("As noted by Aetna, 'Out-of-network rates are higher: An out-of-network doctor sets the rate to charge you. It's usually higher than the amount your Aetna plan "recognizes" or "allows."'"). Similarly, a court in this district has explained that discovery from individual

plaintiffs—as opposed to market-wide data—is "insufficien[t] … for purposes of establishing the relevant market." *In re Asacol Antitrust Litig.*, No. CV 15-12730-DJC, 2017 WL 11476172, at *3 (D. Mass. Jan. 3, 2017). Consistent with this rationale, courts in this circuit have refused to require plaintiffs to provide discovery related to products that are outside the relevant market. *Asacol Antitrust Litig.*, 2017 WL 11476172, at *3; *In re K-Dur Antitrust Litig.*, No. CIV.A. 01-1652 (JAG), 2007 WL 5302308, at *15 (D.N.J. Jan. 2, 2007). Plaintiffs therefore intend to stand on their in-network discovery objection and will not produce the objectionable materials requested by RFP Nos. 2, 6–7, 11–13, 19, 21–25, 27–28, 41–42, 44, 46–49, 52, and 59–61.

Plaintiffs' Financial Performance

Defendants next take issue with Plaintiffs' objections to producing documents concerning their financial performance. Defendants contend that this information is relevant to "market definition," "damages," and "competitive effects." Chen ltr. (July 17, 2026), at 3. Plaintiffs are not persuaded by Defendants' argument with respect to market definition. As discussed above, courts in this circuit have held that discovery from individual plaintiffs—as opposed to market-wide data—is "insufficien[t] … for purposes of establishing the relevant market." *In re Asacol Antitrust Litig.*, No. CV 15-12730-DJC, 2017 WL 11476172, at *3 (D. Mass. Jan. 3, 2017). Plaintiffs also do not agree that this discovery is relevant to damages or competitive effects. Chen ltr. (July 17, 2026), at 3. As discussed above, damages in this case will be established by the amount of the underpayment, and information concerning Plaintiffs' financial performance is irrelevant downstream discovery. *See In re Auto. Refinishing Paint Antitrust Litig.*, 2006 WL 1479819, at *8 (E.D. Pa. May 26, 2006) ("[W]e will deny Defendants' request that we depart from the long-held practice of proscribing discovery of downstream data and financial information."); *In re Plasma-Derivative Protein Therapies Antitrust Litig.*, No. 09 C 7666, 2012 WL 1533221, at *2 (N.D. Ill. Apr. 27, 2012) (plaintiffs' financial data irrelevant to the issue of whether defendants conspired to fix prices). Accordingly, Plaintiffs intend to stand on their objections to producing the financial performance documents in response to RFP Nos. 28–38, 42, 44, 47, 59, and 61.

Plaintiffs' Billed Charges

Defendants raise two issues related to their requests for documents related to Plaintiffs' billed charges. First, Defendants appear to suggest that Plaintiffs have not agreed to produce the documents that provide the basis for their damages. *See* Chen ltr. (July 17, 2026), at 3 ("Plaintiffs' own complaint alleges that 'the damages at issue here are represented by at least part, if not all, of the difference between the amounts originally invoiced and the amounts paid at the repriced level.'"). This is incorrect. Plaintiffs have agreed to produce the claims they submitted to payors (i.e., the amounts originally invoiced) and the payments received from payors and payments received in response to those claims (i.e., the amounts paid at the repriced level). *See, e.g.*, RFP 3. Defendants go on to argue that Plaintiffs should be required to produce not just the amounts they billed to payors, but also "documents showing how those charges were set, reviewed, or modified." Chen ltr. (July 17, 2026), at 3. In Defendants' view, these documents are relevant to assessing whether Plaintiffs' billed charges reflect "inflated charges that Defendants had independent, procompetitive reasons to address through OON cost-management solutions." *Id.* Plaintiffs do not agree. As the *Multiplan* court recognized, Defendants' procompetitive justifications are irrelevant

to Plaintiffs' *per se* claims: "Price-fixing agreements between competitors cannot be justified *at all*, let alone by the argument that currently-fixed prices are more 'reasonable.'" *In re MultiPlan Health Ins. Provider Litig.*, 789 F. Supp. 3d 614, 629 (N.D. Ill. 2025). Accordingly, Plaintiffs intend to stand on their objections to producing documents showing how their charges were set, reviewed, or modified in response to RFP Nos. 17–20, 22, 40, and 50.

Plaintiffs' Employee Sponsored Health Plans

Finally, Defendants sought to enforce their requests for plainly irrelevant documents related to Plaintiffs' employee sponsored health plans. Defendants contend that such documents are relevant to "the plausibility of Plaintiffs' conspiracy allegations, the relevant market, [and] the purported effects of the challenged conduct." Chen ltr. (July 17, 2026), at 4. Plaintiffs are not persuaded by Defendants' arguments concerning the relevant market and anticompetitive effects for reasons previously discussed, and Plaintiffs fail to see how Plaintiffs' employee sponsored health plans have any relevance whatsoever to the plausibility of the conspiracy alleged against Defendants. Defendants also contend that the requested materials are relevant because "repricing methodologies [Plaintiffs] selected, requested, accepted, or rejected" are relevant to their "affirmative defenses." *See* Chen ltr. (July 17, 2026), at 4. However, unclean hands and *in pari delicto* are not defenses to an antitrust claim, so those defenses are not legally cognizable. *Roma Const. Co. v. aRusso*, 96 F.3d 566, 581–82 (1st Cir. 1996) (Lynch, J. concurring) (collecting cases). Accordingly, Plaintiffs intend to stand on their objections to producing documents responsive to RFP Nos. 26 and 27.

RFP-Specific Issues

In addition to the overarching issues above, Defendants also asked Plaintiffs to address certain RFP-specific issues. Plaintiffs address those issues below.

- **RFP 2:** Defendants noted that this Request seeks "[a]ll final and/or executed contracts" between Plaintiffs and any Defendant, but Plaintiffs responded that they will produce "responsive repricing communications" and that Plaintiffs also objected on relevance to the extent the RFP seeks "network contracts." Defendants asked Plaintiffs to confirm whether the in-network discovery objection is the full extent of Plaintiffs' relevance objection. Plaintiffs can confirm that the in-network discovery objection is the primary relevance objection. Plaintiffs will produce any repricing communications with Defendants labelled as "agreements" or "contracts," although Plaintiffs dispute that characterization of those documents. To the extent that Defendants believe there are any other contracts with Defendants related to OON healthcare services responsive to this Request, Plaintiffs are willing to meet and confer.

- **RFP 4:** Defendants asked Plaintiffs to clarify "(1) what Plaintiffs mean when they respond that they 'will produce responsive claims for OON Healthcare Services submitted by Plaintiffs to Payors' and (2) what, if anything, Plaintiffs intend to withhold from production for this Request." With respect to subpart (1), Plaintiffs mean that they will produce claims or bills for OON healthcare services submitted to Payors by Plaintiffs, including any

revenue reports or revenue cycle management reports related to the same, to the extent they exist and are located pursuant to a reasonable search. To the extent that Plaintiffs locate any other responsive documents related to efforts to obtain payments from Payors for OON healthcare services pursuant to a reasonable search, Plaintiffs will also produce those documents. With respect to subpart (2), Plaintiffs intend to withhold from production any documents regarding efforts to obtain payments from patients and any materials protected by attorney client privilege or other protection.

- **RFP 5:** Defendants explained that they are willing to narrow this Request to documents sufficient to show "the topics and substance of any meetings, whether internal or external, regarding pricing and payment for OON Healthcare Goods or Services." Subject to and without waiving their objections, Plaintiffs are willing to produce documents sufficient to show the topics and substance of any meetings, whether internal or external, regarding pricing and payment for OON healthcare services with respect to payors.

- **RFP 6:** Defendants contend that contracts with facilities are relevant "to the extent they show payments that Plaintiffs received from facilities where Plaintiffs rendered OON services or to the extent they challenge Plaintiffs' alleged relevant market definition." For the reasons discussed above in connection with Plaintiffs' downstream discovery objections, Plaintiffs do agree that any payments Plaintiffs received from facilities are relevant to damages or related issues. And for the reasons discussed in connection with Plaintiffs' in-network discovery objection, Plaintiffs do not see how contracts with facilities are relevant to market definition.

- **RFP 10:** Defendants explained that this Request seeks "[a]ll contracts" pertaining to the billing of payors or patients for OON healthcare services, but Plaintiffs respond that they will produce 'repricing communications.'" Defendants asked Plaintiffs to confirm that they "will produce contracts in response to this Request, including contracts with payors, patients, or any third parties retained to assist with payor or patient billing." As with RFP 2, Plaintiffs will produce any repricing communications with payors labelled as "agreements" or "contracts," although Plaintiffs dispute that characterization of those documents. To the extent that Defendants believe there are any other contracts with payors related to billing for OON healthcare services responsive to this Request, Plaintiffs are willing to meet and confer. For the reasons discussed above in connection with Plaintiffs' downstream discovery objection, Plaintiffs will not produce contracts with patients or contracts with third parties retained to assist with patient billing. Plaintiffs also do not see the relevance of contracts with third parties retained to assist with payor billing. Please provide the specific relevance of that portion of the Request.

- **RFPs 13, 14:** Defendants asked Plaintiffs to "[c]larify what, if anything, Plaintiffs intend to withhold from production." With respect to RFP 13, Plaintiffs intend to withhold from production any otherwise responsive documents related to discounts, premiums, deductibles, co-payments, co-insurance, patient medical debt, balance billing, or the terms or conditions of any network contracts with a payor, as well as any documents protected

attorney-client privilege or work product. With respect to RFP 14, Plaintiffs intend to withhold from production any otherwise responsive documents related to balance billing and medical debt, as well as any documents protected attorney-client privilege or work product.

- **RFP 15:** Defendants asked Plaintiffs to "[c]onfirm whether Plaintiffs are standing on their objections as to part (a) and as to part (b) insofar as it seeks legal complaints filed against patients." Plaintiffs confirm that Defendants' understanding is correct as to both subparts (a) and (b).

- **RFP 16, 53, 64:** Defendants wrote that these Requests seek "[a]ll documents" relating to the referenced allegations—"not just materials that were 'referenced, cited, quoted, paraphrased, or summarized' in the complaint" and asked Plaintiffs to clarify what, if anything, Plaintiffs intend to withhold from production.

    - **RFP 16:** Pursuant to Plaintiffs' downstream discovery objection, Plaintiffs intend to withhold ordinary course documents related to balance billing, as well as any materials protected by attorney-client privilege or the work product doctrine. To the extent that Plaintiffs' investigation identifies ordinary course documents related to Plaintiffs' allegation concerning balance billing prohibitions, Plaintiffs are willing to produce those documents, without waiving their objections.

    - **RFP 53:** As indicated by Plaintiffs' objection that the Request seeks information that will be subject to expert reports or testimony, Plaintiffs believe that the primary source of support for this contention will be expert testimony. To the extent that a response identifies ordinary course documents related to Plaintiffs' contention that "the market for "OON healthcare services as sold by out-of-network Providers and as purchased by Commercial Payers is a separate, standalone market," Plaintiffs are willing to produce those documents as well.

    - **RFP 64:** Plaintiffs intend to withhold ordinary course documents on the requested topics for the reasons discussed above in connection with Plaintiffs' objection to producing financial performance documents, as well as any materials protected by attorney-client privilege or the work product doctrine.

- **RFP 17:** Defendants asked Plaintiffs to "[c]larify what, if anything, Plaintiffs intend to withhold from production" and to "[c]onfirm that Plaintiffs agree to produce full fee schedules and chargemasters for each year of the relevant time period." As reflected by Plaintiffs' objections, Plaintiffs intend to withhold any otherwise responsive documents related to in-network services and patient billing. Plaintiffs also do not intend to produce their full fee schedules and chargemasters. Plaintiffs have agreed to produce documents sufficient to show their submitted charges to payors for OON healthcare services; Plaintiffs' full fee schedules and chargemasters are not relevant to their *per se* claims.

- **RFP 23:** Defendants asked Plaintiffs to confirm that they "agree to produce responsive, non-privileged materials in response to each of subparts (a) through (f)." Plaintiffs can confirm that they agree to produce responsive documents related to OON network healthcare services in response to each subpart, to the extent they exist and are located pursuant to a reasonable search. Plaintiffs intend to withhold any otherwise responsive documents that relate to in-network healthcare services. Plaintiffs believe that certain subparts or portions thereof may only relate to in-network healthcare services, such as subpart (c) '[y]our attempts to negotiate with any Payor concerning … fee schedules" and subpart (e) "whether you should contract with or continue to contract with any Payor."

- **RFP 24:** Defendants wrote that "Plaintiffs respond that they will produce 'repricing communications,' but this Request seeks contracts" and asked Plaintiffs to "[c]onfirm that Plaintiffs will produce contracts in response to this Request." Pursuant to Plaintiffs' in-network discovery objections, Plaintiffs intend to withhold any otherwise responsive contracts related to in-network healthcare services, such as network contracts. As with RFP 2, Plaintiffs will produce any repricing communications with Defendants labelled as "agreements" or "contracts," although Plaintiffs dispute that characterization of those documents. To the extent that Defendants believe there are any other contracts with payors related to OON healthcare services responsive to this Request, Plaintiffs are willing to meet and confer.

- **RFP 26:** Defendants explained that they "are willing to narrow the scope of this Request to contracts with non-Defendant payors, subject to confirmation that any contracts or related materials with Defendant payors are in their possession, custody, and control." For the reasons discussed above in connection with Plaintiffs' objections to producing employer sponsored health plans, Plaintiffs intend to stand on their objections to producing documents in response to this Request.

- **RFP 31:** Defendants asked Plaintiffs to "[c]onfirm that [they] will provide taxpayer identification number (TINs)." During the parties' meet and confer, Defendants explained that TINs are the primary method payors use to locate providers in their records. Plaintiffs accept that explanation and confirm that they will provide their taxpayer identification numbers, without waiving their objection that this information is not relevant to any claim or legally cognizable defense. Plaintiffs intend to stand on their objections with respect to the balance of the Request.

    - **PIMG:** 26-1129616
    - **Bachoua:** 46-2839667
    - **Scaccia:** 22-3627 371
    - **Chelsea Foot and Ankle:** 20-3660650

- **Missing Peace:** 81-0907301
- **Ayer:** 47-4418400

- **RFP 40:** Defendants explained that "[t]his Request relates to whether Plaintiffs compared the OON reimbursement rates paid by Defendants, which is directly relevant to whether there was a price-fixing conspiracy." Plaintiffs do not agree that the requested documents have much, if any, probative value in this case, where the price fixing conspiracy is alleged to have been effectuated through repricing technologies that contain knowable inputs and outputs. However, subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged documents related to OON healthcare services, to the extent they exist and are located pursuant to a reasonable search.

- **RFP 41:** Defendants asked Plaintiffs to "[c]onfirm what, if anything, Plaintiffs intend to withhold from production" and wrote that "[d]ocuments relating to 'Payors' repricing of OON Healthcare Services' are not the same as documents concerning Plaintiffs' attempted negotiations regarding reimbursement rates." Pursuant to their in-network discovery objection, Plaintiffs intend to withhold from production any otherwise responsive documents concerning negotiations regarding in-network reimbursement rates. Plaintiffs will produce non-privileged documents concerning attempted negotiations regarding repriced payments for OON healthcare services, to the extent they exist and are located pursuant to a reasonable search.

- **RFP 45:** Defendants explained that "[t]his Request seeks '[a]ll contracts or other Documents reflecting agreements,' but Plaintiffs respond that they will produce 'repricing communications.'" Defendants asked Plaintiffs to "[c]onfirm that Plaintiffs will produce contracts in response to this Request, and clarify what, if anything, Plaintiffs intend to withhold from production." As with RFPs 2 and 10, Plaintiffs will produce any repricing communications with Zelis and payors labelled as "agreements" or "contracts," although Plaintiffs dispute that characterization of those documents. To the extent that Defendants believe there are any other contracts with Zelis or payors regarding payments terms or conditions for OON healthcare services responsive to this Request, Plaintiffs are willing to meet and confer. For the reasons discussed above in connection with Plaintiffs' downstream discovery objection, Plaintiffs will not produce contracts with patients on these topics.

- **RFP 46:** Defendants wrote that "[t]his Request seeks '[a]ll correspondence, drafts, or other Documents reflecting Communications or negotiations,' but Plaintiffs respon[d] that they will produce documents 'reflecting communications and negotiations.'" Defendants asked Plaintiffs to "[c]larify what, if anything, Plaintiffs intend to withhold from production." Pursuant to their in-network discovery objection, Plaintiffs intend to withhold from production any otherwise responsive documents related to in-network healthcare services, such as negotiations concerning network contracts. As with RFPs 2, 10, and 46, Plaintiffs will produce any correspondence, drafts, or other documents reflecting communications or negotiations concerning repricing communications related to OON healthcare services that

are labelled as "agreements" or "contracts," although Plaintiffs dispute that characterization of those documents. To the extent that Defendants believe there are any other documents related to OON healthcare services responsive to this Request, Plaintiffs are willing to meet and confer.

- **RFP 48:** Defendants wrote that "[t]his Request is not limited to OON Healthcare Services" and asked Plaintiffs to "[c]larify what, if anything, Plaintiffs intend to withhold from production." Pursuant to their in-network discovery objection, Plaintiffs intend to withhold from production any otherwise responsive communications related to in-network healthcare services.

- **RFP 49:** Defendants wrote that "[t]his Request is not limited to OON Healthcare Services" and asked Plaintiffs to "[c]larify what, if anything, Plaintiffs intend to withhold from production." Pursuant to their in-network discovery objection, Plaintiffs intend to withhold from production any otherwise responsive documents related to in-network healthcare services, as well as any materials protected by attorney client privilege or other protection.

- **RFP 50:** Defendants wrote that "[d]ocuments discussing or comparing the reimbursement rates paid by Payors is directly relevant to Plaintiffs' allegations that Defendants have used Zelis to fix the prices for OON reimbursements." Plaintiffs do not agree that those documents have much, if any, probative value in this case, where the price fixing conspiracy is alleged to have been effectuated through repricing technologies that contain knowable inputs and outputs. However, subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged documents related to OON healthcare services, to the extent they exist and are located pursuant to a reasonable search.

- **RFP 51:** Defendants wrote that "[t]his Request is directly relevant to Plaintiffs' alleged antitrust market." Plaintiffs do not agree that this Request is relevant to the diminished market definition requirement of Plaintiffs' *per se* claims, where Plaintiffs need only demonstrate the rough contours of the market and the price fixing conspiracy is alleged to have been effectuated through repricing technologies that self-define the relevant market.

- **RFP 52:** Defendants asked Plaintiffs to "[c]larify what, if anything, Plaintiffs intend to withhold from production." For the reasons discussed above in connection with Plaintiffs' in-network discovery objection, Plaintiffs intend to withhold from production otherwise responsive analyses on these topics that relate to in-network healthcare services, as well as any materials protected by attorney client privilege or other protection.

- **RFPs 54, 56, 57, 62, 63:** Defendants asked Plaintiffs to "[c]onfirm that Plaintiffs do not intend to withhold any documents responsive to these Requests on the basis of their asserted objections."

    - **RFP 54:** Confirmed, with the exception of the attorney client privilege and work product objection.

- **RFP 56:** Confirmed, with the exception of the attorney client privilege and work product objection.

- **RFP 57:** Confirmed, with the exception of the attorney client privilege and work product objection.

- **RFP 62:** Confirmed, with the exception of the attorney client privilege and work product objection.

- **RFP 55:** Defendants asked Plaintiffs to "[c]onfirm that Plaintiffs will produce documents sufficient to identify all claims that Plaintiffs allege were underpaid due to the challenged conduct." Plaintiffs confirm that they will produce all such documents within their possession, custody, or control that are located pursuant to a reasonable search.

- **RFP 59:** Defendants asked Plaintiffs to "articulate the specific bases for Plaintiffs' objections" and contend that "[t]his Request is relevant to, amongst other things, the existence and effectiveness of the alleged conspiracy" because "if Plaintiffs considered declining to treat patients associated with certain payors based on those payors' OON reimbursement rates—but did not do so for others—that evidence would bear directly on Plaintiffs' allegation that Defendants successfully fixed OON reimbursement rates across the alleged conspiracy." Plaintiffs do not agree because the price fixing conspiracy in this case is alleged to have been effectuated through repricing technologies that contain knowable inputs and outputs. Accordingly, Plaintiffs' subjective evaluations are not probative of the effectiveness of the conspiracy.

- **RFP 60:** Defendants wrote that "[t]his Request seeks information that bears on Plaintiffs' alleged market definition, so any materials that show Plaintiffs' strategies for recruiting or retaining OON patients are relevant." Plaintiffs do not agree that this Request is relevant to the diminished market definition requirement of Plaintiffs' *per se* claims, where Plaintiffs need only demonstrate the rough contours of the market and the price fixing conspiracy is alleged to have been effectuated through repricing products that self-define the relevant market. However, because this Request pertains to the market for OON healthcare services, Plaintiffs are willing to produce documents sufficient to show Plaintiffs' strategies, if any, for recruiting or retaining OON patients, without waiving their objections, to the extent such documents exist and are located pursuant to a reasonable search.

- **RFP 61:** Defendants wrote that "[t]his Request seeks information that is relevant to, amongst others, Plaintiffs' allegations that, absent the challenged conduct, providers would not accept patients from the one or few insurance companies that used Zelis's repricing services." Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged documents in response to this Request, to the extent they exist and are located pursuant to a reasonable search.

- **RFP 65:** Defendants wrote that they "willing to meet and confer regarding the scope of this Request" and asked Plaintiffs to confirm, in the first instance, whether they "are willing to disclose which Plaintiffs have been required to submit Certificate of Need filings." Plaintiffs do not see the relevance of this Request and believe it is most likely objectionable for the reasons discussed in connection with Plaintiffs' objections to producing documents related to their financial performance. If Defendants believe this Request is relevant to a different issue, Plaintiffs are willing to meet and confer.

- **RFPs 66, 67, 72, 73, 74:** Defendants asked Plaintiffs to "articulate the specific bases for Plaintiffs' relevance objections."

    - **RFP 66:** The relevance of Plaintiffs' participation at any medical-related trade shows is not apparent to Plaintiffs. Please provide Defendants' view of the relevance of this Request.

    - **RFP 67:** This request appears to relate to defenses related to Defendants' purported pro-competitive justifications or an unclean hands defense, neither of which are legally cognizable defenses to Plaintiffs' *per se* claims.

    - **RFP 72:** This request seeks materials protected by attorney-client privilege, the work product doctrine, and the common interest doctrine.

    - **RFP 73:** This request seeks materials protected by attorney-client privilege, the work product doctrine, and the common interest doctrine.

    - **RFP 74:** This request appears to relate to defenses related to Defendants' purported pro-competitive justifications or an unclean hands defense, neither of which are legally cognizable defenses to Plaintiffs' *per se* claims.

- **RFPs 69, 70:** Defendants asked Plaintiffs to "[c]larify whether [they] intend to withhold responsive, non-privileged documents that they have already publicly discussed in filings or oral argument before the Court." These documents are protected from disclosure by the attorney client privilege and/or attorney work product and will not be produced.

Data Fields and Data Dictionaries

Plaintiffs are investigating whether additional data fields identified in Attachment A to Defendants' First Set of RFPs to Plaintiffs are available in their systems and whether the non-PIMG Plaintiffs possess a data dictionary. Plaintiffs anticipate being able to provide a substantive update next week. Defendants wrote that "Plaintiffs' disclosed data fields appear generally devoid of information concerning balance billing" and asked whether Plaintiffs withheld fields related to balance billing. Plaintiffs did not do so. To the contrary, Plaintiffs' data field disclosures contain the fields related to balance billing and patient billing that Plaintiffs have identified to-date. *See*, *e.g.*, AYER_000001

("Aging Report" tab); BACHOUA_000001 ("Paid by Pat" field); PIMG_000002 ("Transactions (CC)" tab, "Patient Paymts & Refunds" field); SCACCIA_000001 ("Aged Account Ledger – Detail" tab). Where a Plaintiff did not track patient billing in their billing system, but did so in a manually populated spreadsheet, Plaintiffs adopted a generous construction of "structured data" and produced the fields in those spreadsheets. *See* CHELSEAFOOT_000001 ("Patient Billing Spreadsheet" tab); MISSINGPEACE_000001 ("Concur Review Spreadsheet" tab). To the extent Plaintiffs' investigation identifies any additional fields related to balance billing or patient billing, Plaintiffs will disclose those fields.

Plaintiffs' investigation is ongoing. Plaintiffs reserve all rights.

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EXHIBIT B

ZIMMERMAN | REED

August 17, 2026

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RE: *In re: Zelis Repricing Antitrust Litig.*, Lead Civ. Action No. 1:25-cv-10734 (D. Mass.)

Dear Counsel:

We write in response to Defendants' August 13, 2026 letter and August 15, 2026 email. In that correspondence, Defendants explained that they believed that the parties are at impasse with respect to five categories of materials and asked Plaintiffs to confirm whether Plaintiffs will stand on their objections, and if not, to identify what compromise Plaintiffs are prepared to offer. Plaintiffs provide their positions on each of the categories below.

Balance billing, patient billing, and other sources of payment for OON healthcare services (RFP Nos. 4, 5, 8, 10–17, 20–21, 28, 32, 36, 45, 48–49, and 67).

Plaintiffs intend to stand on their objections to producing this category of materials in response to RFP Nos. 4, 5, 8, 15, 17, 20–21, 28, 32, 36, 45, 48–49, and 67. With respect to the RFPs related to balance billing, Plaintiffs will do so for the reasons stated in their August 4, 2026 letter regarding downstream discovery. With respect to the RFPs related to other forms of patient billing and other sources of payment, Plaintiffs will also stand on their general relevance objection. Plaintiffs do not see the relevance of these RFPs, and Defendants have only offered conclusory statements as to their relevance.

Plaintiffs are prepared to offer a compromise with respect to RFP No. 16. As discussed in Plaintiffs' August 4, 2026 letter, Plaintiffs are willing to produce ordinary course documents related to Plaintiffs' allegation concerning balance billing prohibitions, without waiving their objections. In addition, to the extent that Plaintiffs' investigation identifies internal communications discussing the three topics identified in RFP No. 16, Plaintiffs are willing to produce those documents, without waiving their objections.

One other RFP in this category requires further discussion:

- RFP No. 48 does not appear to pertain to this category of materials, and Plaintiffs address it below in connection with the in-network discovery category.

Plaintiffs agree that the parties are at impasse with respect to RFP Nos. 4, 5, 8, 15, 17, 20–21, 28, 32, 36, 45, 48–49, and 67, to the extent they pertain to this category of materials.

In-network discovery (RFP Nos. 2, 6–8, 11–13, 17, 19, 21–25, 27–29, 40–42, 44, 46–49, 52, and 59–60).

For the reasons stated in their August 4, 2026 letter, Plaintiffs intend to stand on their objections to producing this category of materials in response to RFP Nos. 2, 6–8, 11–13, 17, 19, 21–25, 27–28, 40–41, 46, 48-49, and 60. In addition to the relevance objection discussed in that letter, Plaintiffs believe that many of these RFPs are not proportional to the needs of the case, in light of the Rule 26(b) factors, including the parties' relative access to relevant information, the parties' resources, and the unimportance of this issue to the litigation. *See, e.g.*, RFP No. 2 (network contracts with Defendants); RFP No. 8 (structured data for in-network healthcare services); RFP No. 17 (all billed charges for in-network healthcare services); RFP No. 19 (all documents relating to the amount of payment that plaintiffs expected to receive in exchange for in-network healthcare services); RFP No. 25 (in-network rates and fee schedules); RFP No. 27 (all correspondence with payors regarding Zelis and other topics related employee health insurance); RFP No. 48 (all documents and communications with payors regarding a number of in-network topics); RFP No. 49 (all documents reflecting complaints regarding in-network reimbursement rates and network contracts).

Plaintiffs are prepared to offer a compromise with respect to RFP Nos. 42, 44, 47, and 52. In Defendants' July 17 letter, they explained that in-network discovery is relevant to showing how Plaintiffs evaluate and compare what Defendants contend are reasonable substitutes, such as in-network healthcare services, and ordinary course documents showing how providers view these services as distinct or interrelated. Accordingly, if Defendants do not pursue the other In-Network RFPs above, to the extent that Plaintiffs' investigation identifies ordinary course documents discussing the topics identified in RFP Nos. 42, 44, 47, and 52, Plaintiffs are willing to produce those documents, without waiving their objections.

Three RFPs in this category require further discussion:

- RFP No. 29 does not appear to implicate this category of materials, and Plaintiffs address it below in connection with the financial performance category.
- RFP No. 59 does not appear to pertain to this category of materials, and Plaintiffs have already agreed to produce documents responsive to RFP No. 62, which is broader than this RFP. To the extent that Defendants believe there are any categories of responsive documents encompassed by RFP No. 59 that are not captured by RFP No. 62, Plaintiffs are willing to meet and confer.
- With respect to RFP No. 60, to the extent that Plaintiffs' investigation identifies documents responsive to the portion of the RFP seeking "sales plans for recruitment or retention of OON patients," Plaintiffs are willing to produce those documents, without waiving their objections.

Plaintiffs agree that the parties are at impasse with respect to RFP Nos. 2, 6–8, 11–13, 17, 19, 21–25, 27–28, 40–41, 46, 48-49, and 60 (in part), to the extent they pertain to this category of materials.

Plaintiffs' financial performance (RFP Nos. 4, 28–38, 42, 44, 47, 59, and 64).

Plaintiffs are willing to produce financial performance materials in response to RFP Nos. 4, 29–30, 32-33, 35-38, 42, 44, 47, and 64, subject to Plaintiffs' positions on other overlapping RFPs, without waiving their objections, to the extent they exist and are located pursuant to a reasonable search.

Several RFPs in this category require further discussion:

- With respect to RFP No. 4, Plaintiffs have agreed to produce revenue reports or revenue cycle management reports for OON healthcare services. While Plaintiffs have objected to producing documents regarding "efforts to obtain payments from patients," Plaintiffs do not view that objection as relating to Plaintiffs' financial performance.
- With respect to RFP No. 28, Plaintiffs do not agree that any contracts with third parties for revenue cycle management functions are relevant to their financial performance, particularly when Plaintiffs have agreed to produce financial performance documents in response to RFP Nos. 29-30, 33, and 35-38. Accordingly, Plaintiffs intend to stand on their objection to producing documents in response to this RFP.
- With respect to RFP No. 31, Plaintiffs do not agree that their federal and state tax returns are relevant or probative, particularly when Plaintiffs have agreed to produce financial performance documents in response to RFP Nos. 29-30, 33, and 35-38.
- With respect to RFP No. 32, Plaintiffs are willing to produce documents sufficient to identify the amount recognized/written off for each year due to actual or expected payment/non-payment by Payors. Plaintiffs intend to stand on their objections with respect to the remainder of this RFP, as discussed above in connection with the balance billing and patient billing category of materials.
- With respect to RFP No. 34, Plaintiffs do not agree that their compensation documents are relevant or probative, particularly when Plaintiffs have agreed to produce financial performance documents in response to RFP Nos. 29-30, 33, and 35-38.
- With respect to RFP No. 36, Plaintiffs intend to stand on their objection to producing documents related to any discounts and write offs related to balance billing or patient billing, for the reasons discussed above in connection with that category. Plaintiffs are willing to produce documents responsive to the remainder of the request, without waiving their objections.
- As discussed above in connection with the in-network category of materials, Plaintiffs have proposed a compromise with respect to RFP Nos. 42, 44, and 47.
- With respect to RFP No. 59, as discussed above, Plaintiffs have already agreed to produce documents responsive to RFP No. 62, which is broader than this RFP. To the extent that Defendants believe there are any categories of responsive documents encompassed by RFP No. 59 that are not captured by RFP No. 62, Plaintiffs are willing to meet and confer.

Accordingly, Plaintiffs believe the parties may only be at impasse with respect to RFP Nos. 28, 31, 32 (in part), 34, 36 (in part), and 59, to the extent they pertain to this category of materials.

Plaintiffs' charge-setting documents.

For the reasons stated in their August 4, 2026 letter, Plaintiffs intend to stand on their objections to producing this category of materials in response to RFP Nos. 17–20, 22, and 40. Plaintiffs therefore agree that the parties are at impasse with respect to these RFPs.

Plaintiffs' Employee Sponsored Health Plans.

For the reasons stated in their August 4, 2026 letter, Plaintiffs intend to stand on their objections to producing this category of materials in response to RFP Nos. 26 and 27. Plaintiffs therefore agree that the parties are at impasses with respect to these RFPs.

Plaintiffs' investigation is ongoing. Plaintiffs reserve all rights.

Best regards,

ZIMMERMAN REED LLP

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cc: Jason S. Hartley
Richard M. Paul III
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EXHIBIT C

ZIMMERMAN | REED

August 19, 2026

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RE: *In re: Zelis Repricing Antitrust Litig.*, Lead Civ. Action No. 1:25-cv-10734 (D. Mass.)

Dear Counsel:

We write in response to RFP-specific issues Defendants raised in their August 13, 2026 letter and the parties' August 13 meet and confer. In Defendants' August 15, 2026 email, Defendants asked Plaintiffs to provide written responses to those issues. Plaintiffs do so below.[1]

RFP No. 10. This RFP seeks "[a]ll contracts" pertaining to the billing of payors or patients for OON healthcare services. Plaintiffs responded that they will produce "any repricing communications with payors labelled as 'agreements' or 'contracts.'" In their August 13 letter, Defendants explained that this Request seeks not only documents labelled as agreements or contracts but also the contracts themselves and asked Plaintiffs to explain what they mean by "repricing communications." During the parties meet and confer, Plaintiffs explained that, by "repricing communications," they meant the documents sent by Zelis to Plaintiffs that contain the "Total Billed Amount" and the "Repriced Amount," with a signature line for the provider, and that those are the primary responsive documents of which Plaintiffs are aware. Plaintiffs then asked Defendants to clarify what additional documents related to OON healthcare services are sought by this RFP.

Defendants explained that this RFP (and RFP Nos. 24, 45, and 46) would also seek agreements with Zelis to avoid repricing (which are similar to a single case agreement), communications with Zelis reflecting negotiations or agreements regarding repricing, communications directly with insurers reflecting negotiations or agreements regarding repricing, OON rate agreements, and similar documents with Multiplan and other repricing services. Defendants then asked if Plaintiffs would agree to produce such documents. Plaintiffs do not agree that the requested documents related to Multiplan and other repricing services are relevant. However, Plaintiffs confirm that, subject to and without waiving their objections, Plaintiffs agree to produce agreements with Zelis to avoid repricing (which are similar to a single case agreement), communications with Zelis reflecting negotiations or agreements regarding repricing, communications directly with insurers reflecting negotiations or agreements regarding repricing, and OON rate agreements, to the extent they exist and are located pursuant to a reasonable search. To the extent responsive documents have not been described above, please clarify.

[1] The following discussion of RFP Nos. 10, 24, 45, and 46, sets aside Plaintiffs' in-network discovery objection and downstream discovery objection, which the parties are addressing separately.

RFP No. 24. This RFP seeks "[a]ll contracts or other Documents reflecting agreements" with "Zelis or any other Repricing Services, any Payor, or patients." Plaintiffs responded that they will produce "any repricing communications with Zelis and payors labelled as 'agreements' or 'contracts.'" In their August 13 letter, Defendants explained that this RFP seeks (1) not only documents labelled as agreements or contracts, but also the contracts themselves; (2) documents "reflecting agreements," which necessarily includes communications regarding bill negotiations and not only repricing communications; and (3) not only documents related to Zelis, but other repricing services. During the August 13 meet and confer, the parties agreed that the issues Defendants identified with respect to this RFP are the same as those discussed above in connection with RFP No. 10. As with RFP No. 10, Plaintiffs do not agree that the requested documents related to Multiplan and other repricing services are relevant. However, Plaintiffs confirm that, subject to and without waiving their objections, Plaintiffs agree to produce agreements with Zelis to avoid repricing (which are similar to a single case agreement), communications with Zelis reflecting negotiations or agreements regarding repricing, communications directly with insurers reflecting negotiations or agreements regarding repricing, and OON rate agreements, to the extent they exist and are located pursuant to a reasonable search.

RFP No. 45. This RFP seeks "[a]ll contracts or other Documents reflecting agreements" with "Zelis or any other Repricing Services, any Payor, or patients." Plaintiffs responded that they will produce "any repricing communications with Zelis and payors labelled as 'agreements' or 'contracts.'" In their August 13 letter, Defendants explained that this RFP also seeks documents "reflecting agreements," which includes communications regarding bill negotiations, and it is not limited to Zelis, so it seeks documents related to Multiplan and other repricing services.

During the August 13 meet and confer, the parties agreed that the issues Defendants identified with respect to this RFP are the same as those discussed above in connection with RFP No. 10. As with RFP Nos. 10 and 24, Plaintiffs do not agree that the requested documents related to Multiplan and other repricing services are relevant. However, Plaintiffs confirm that, subject to and without waiving their objections, Plaintiffs agree to produce agreements with Zelis to avoid repricing (which are similar to a single case agreement), communications with Zelis reflecting negotiations or agreements regarding repricing, communications directly with insurers reflecting negotiations or agreements regarding repricing, and OON rate agreements, to the extent they exist and are located pursuant to a reasonable search.

RFP No. 46. This RFP seeks "[a]ll correspondence, drafts, or other Documents reflecting Communications or negotiations." Plaintiffs responded that they will produce "any correspondence, drafts, or other documents reflecting communications or negotiations concerning repricing communications related to OON healthcare services that are labelled as 'agreements' or 'contracts.'" In their August 13 letter, Defendants explained that this RFP seeks not only documents reflecting communications or negotiations concerning documents "labelled as 'agreements' or 'contracts'" but also documents concerning the contracts themselves, as well as communications regarding bill negotiations and not just repricing communications.

During the August 13 meet and confer, the parties agreed that the issues Defendants identified with respect to this RFP are the same as those discussed above in connection with RFP No. 10. As with

RFP Nos. 10, 24, and 45, Plaintiffs do not agree that the requested documents related to Multiplan and other repricing services are relevant. However, Plaintiffs confirm that, subject to and without waiving their objections, Plaintiffs agree to produce agreements with Zelis to avoid repricing (which are similar to a single case agreement), communications with Zelis reflecting negotiations or agreements regarding repricing, communications directly with insurers reflecting negotiations or agreements regarding repricing, and OON rate agreements, to the extent they exist and are located pursuant to a reasonable search.

RFP No. 50. In their August 13 letter, Defendants wrote that they "understand that Plaintiffs are now willing to produce "responsive, non-privileged documents related to OON healthcare services" and asked Plaintiffs to clarify what, if anything Plaintiffs intend to withhold from production. During the August 13 meet and confer, Plaintiffs explained that this RFP is broader than OON healthcare services, so they would intend to withhold documents related to in-network healthcare services.

RFPs 54, 56, 57, 62. In their August 13 letter, Defendants asked Plaintiffs to confirm that any and all documents that Plaintiffs withhold on the basis of attorney-client privilege, work-product doctrine, and/or common-interest privilege will be included on Plaintiffs' privilege logs. During the August 13 meet and confer, Plaintiffs confirmed that they will comply with their obligations under the ESI Protocol with respect to the logging of privileged documents.

RFP No. 65. In their August 13 letter, Defendants wrote that the requested Certificate of Need materials are relevant to "regulatory barriers to entry and expansion in healthcare markets," as well as "market power and the existence of the alleged conspiracy" because "Plaintiffs themselves allege that high barriers to entry support their conspiracy theory." Chen ltr. (Aug. 13, 2026), at 3-4 (citing Second Am. Compl. ¶¶ 271, 275–278). In the context of a different plus factor, this relevance argument was rejected by the court in *Broilers* because "Plaintiffs aren't on trial" and it "is a sideshow and unnecessary for this case." *See* Doc. 1895-2 (Aug. 25, 2023 Mot. in Limine Hr'g Tr., *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637 (N.D. Ill.), Doc. 6819) at 82:5-84:8. Nonetheless, in an effort to compromise and minimize the Court's burden, Plaintiffs are willing to produce documents responsive this RFP, subject to and without waiving Plaintiffs' objections, to the extent such documents exist and are located pursuant to a reasonable search.

RFP No. 66. In their August 13 letter, Defendants wrote that documents relating to Plaintiffs' participation in trade associations may be relevant to communications among Plaintiffs and other providers regarding Plaintiffs' allegations of concerted action, reimbursement rates, payors (including Defendants), market conditions, or damages. During the parties' August 13, meet and confer, Plaintiffs explained that they had already agreed to produce documents sufficient to show the topics and substance of any external meetings regarding pricing and payment for OON healthcare services with respect to payors in response to RFP No. 5,[2] and Plaintiffs did not see the relevance of documents related to their membership or participation in medical-related trade associations. Defendants responded that those materials are relevant because Plaintiffs have alleged that Defendants participation in trade associations supports the plausibility of the

[2] *See* McFarland ltr. (Aug. 6, 2026), at 5 (subject to and without waiving Plaintiffs' objections).

conspiracy. This argument was rejected by the court in *Broilers* because "Plaintiffs aren't on trial" and it "is a sideshow and unnecessary for this case." *See* Doc. 1895-2 (Aug. 25, 2023 Mot. in Limine Hr'g Tr., *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637 (N.D. Ill.), Doc. 6819 at 82:5-84:8. Nonetheless, in an effort to compromise and minimize the Court's burden, Plaintiffs are willing to produce documents responsive this RFP, subject to and without waiving Plaintiffs' objections, to the extent such documents exist and are located pursuant to a reasonable search.

RFP No. 69, 70. In their July 17 letter, Defendants asked Plaintiffs to clarify whether they "intend to withhold responsive, non-privileged documents that they have already publicly discussed in filings or oral argument before the Court." In their August 4 letter, Plaintiffs responded that "[t]hese documents are protected from disclosure by the attorney client privilege and/or attorney work product and will not be produced." In their August 13 letter, Defendants asked Plaintiffs to explain the basis for their privilege assertions and confirm whether Plaintiffs contend that all responsive documents are privileged. Plaintiffs respond that the materials sought by this RFP are comprised of investigatory materials drafted in anticipation of litigation, which reflect counsel's opinions and legal theories, as well as communications with Plaintiffs, and that all such materials privileged or protected work product.

In their August 13 letter, Defendants also wrote that "[t]o the extent Plaintiffs withhold any responsive documents from production on the basis of attorney-client privilege, work-product doctrine, and/or common-interest privilege, confirm that Plaintiffs will include those documents on their privilege logs." Plaintiffs respond that they will comply with their obligations under the ESI protocol with respect to the logging of privileged or work product documents sought by this RFP.

RFP Nos. 72, 73. In their July 17 letter, Defendants asked Plaintiffs to "articulate the specific bases for Plaintiffs' relevance objections." Plaintiffs responded that "[t]his request seeks materials protected by attorney-client privilege, the work product doctrine, and the common interest doctrine." In their August 13 letter, Defendants wrote that "an assertion of privilege is not a relevance objection" and asked Plaintiffs to "[e]xplain the basis for Plaintiffs' relevance objection." In definition No. 20 of Defendants RFPs, Defendants defined "Plaintiffs," "You," and "Your" to include "any counsel acting on [Plaintiffs'] behalf." Accordingly, these RFPs seek a large volume of irrelevant materials, including discovery-on-discovery and case management and scheduling matters.

Defendants also asked Plaintiffs to confirm whether they contend that all responsive documents are privileged. If Defendants agree that these RFPs should be construed as limited to communications from Plaintiffs themselves (as opposed to including communications from Plaintiffs' counsel), Plaintiffs believe that is true based on the current state of their investigation.

Defendants also wrote that that "[t]o the extent Plaintiffs withhold any responsive documents from production on the basis of attorney-client privilege, work-product doctrine, and/or common-interest privilege, confirm that Plaintiffs will include those documents on their privilege logs." Plaintiffs respond that they will comply with their obligations under the ESI protocol with respect to the logging of privileged or work product documents sought by this RFP.

Plaintiffs' investigation is ongoing. Plaintiffs reserve all rights.

Best regards,

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EXHIBIT D

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August 24, 2026

Via Email

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Re: ***In re: Zelis Repricing Antitrust Litigation,*** **No. 1:25-cv-10734-BEM (D. Mass) – Plaintiffs' Response to August 21, 2026 Chen Letter**

Dear Counsel:

We write in response to your August 21, 2026 letter. Defendants wrote that they understand the parties are at impasse with respect to six categories of documents, and asked Plaintiffs to confirm whether they agree.

Balance billing, patient billing, and other sources of payment for OON healthcare services (RFP Nos. 4–5, 8, 10–17, 20–21, 28, 32, 36, 45, 48–49, and 67): Plaintiffs agree that the parties are impasse with respect to this category, subject to the compromise Plaintiffs have offered with respect to RFP No. 16.

In-network discovery (RFP Nos. 2, 6–8, 11–14, 17, 19, 21–25, 27–29, 40–42, 44, 46–50, 52, and 60): Plaintiffs agree that the parties are at impasse with respect to this category, subject to the discussion of RFP Nos. 42, 44, 47, 52 below.

Plaintiffs' financial performance (RFP Nos. 28–29, 31–38, 42, 44, 47, and 52): Plaintiffs disagree that the parties are at impasse with respect to RFP Nos. 29–30, 33, 35, 37–38, 42, 44, 47, as reflected in their August 17 letter. Plaintiffs agree that the parties are at impasse with respect to RFP Nos. 28, 31, 32 (in part), 34, 36 (in part). RFP No. 52 was not identified in Defendants' August 13 letter, and Plaintiffs will agree to produce documents in response to it, as discussed below.

Plaintiffs' charge-setting documents (RFP Nos. 17–20, 22, and 40): Plaintiffs agree that the parties are at impasse with respect to this category.

Plaintiffs' employer-sponsored health plans (RFP Nos. 26 and 27): Plaintiffs agree that the parties are at impasse with respect to this category.

Repricing services other than Zelis (RFP Nos. 10, 24, and 45–46): Plaintiffs agree that the parties are at impasse with respect to this category.

Plaintiffs' "Downstream Discovery Objection"

RFP No. 16. In their August 17 letter, Plaintiffs explained that they were "prepared to offer a compromise" with respect to RFP No. 16 and agreed to produce ordinary-course documents related to Plaintiffs' allegation concerning balance billing prohibitions, as well as any internal communications that "discuss the three topics identified" in the Request. In their August 21 letter, Defendants stated that "RFP No. 16 seeks discovery regarding Plaintiffs' balance-billing allegations more generally; it does not limit the discovery to balance billing prohibitions" and asked Plaintiffs to "[c]onfirm that Plaintiffs will produce all non-privileged, ordinary-course documents responsive to this Request, including documents relating to Plaintiffs' allegations regarding balance billing generally, and not only

documents concerning alleged balance-billing prohibitions." Defendants' request is broader than the compromise position Plaintiffs have offered with respect to this RFP. As reflected in Plaintiffs' August 17 letter, Plaintiffs will agree to produce (1) ordinary-course documents related to Plaintiffs' allegation concerning balance billing prohibitions; and (2) internal communications that discuss the three topics identified in RFP No. 16. To the extent that Defendants are requesting that Plaintiffs produce documents related to any actual balance billing, Plaintiffs do not agree to do so.

RFP No. 48: In their August 17 letter, Plaintiffs state that this Request "does not appear to pertain" to balance billing. In their August 21 letter, Defendants wrote that "this Request would capture communications regarding balance billing to the extent such communications discuss reimbursement rates, patient cost-sharing, discounts, or contract terms, including any provisions restricting Plaintiffs from billing patients for amounts not paid by a payor." As discussed above in connection with RFP No. 16, Plaintiffs will agree to produce ordinary-course documents related to Plaintiffs' allegation concerning balance billing prohibitions, which would encompass "any provisions restricting Plaintiffs from billing patients for amounts not paid by a payor." Plaintiffs agree that the parties are at impasse with respect to the remainder of the topics Defendants identified in their August 21 letter with respect to this RFP.

Plaintiffs' "In-Network Discovery Objection"

RFP Nos. 42, 44, 47, 52. In their August 17 letter, Plaintiffs stated that they were "prepared to offer a compromise" and produce ordinary-course documents discussing the topics identified in RFP Nos. 42, 44, 47, and 52," if Defendants agreed not to pursue the other in-network RFPs. In their August 21 letter, Defendants rejected Plaintiffs' offer of compromise. Nonetheless, in an effort to compromise and minimize the number of disputes before the Court, Plaintiffs will still agree to produce ordinary-course documents discussing the topics identified in RFP Nos. 42, 44, 47, and 52, without waiving their objections. Accordingly, Plaintiffs do not agree that the parties are at impasse with respect to those RFPs.

RFP No. 50: Plaintiffs agree that the parties are at impasse with respect to this RFP to the extent it pertains to in-network healthcare services.

Plaintiffs' Financial Performance

RFP Nos. 29–30, 33, 35, 37–38. In their August 17 letter, Plaintiffs explained that they "are willing to produce financial performance documents" in response to RFP Nos. 29–30, 33, 35, 37–38, without waiving their objections. In their August 21 letter, Defendants complained that this "position appears inconsistent with Plaintiffs' August 4 letter" and asked Plaintiffs to "[c]onfirm whether Plaintiffs will produce all responsive, non-privileged financial-performance documents responsive to RFP Nos. 29–30, 33, 35, and 37–38, or whether Plaintiffs intend to withhold any responsive materials on the basis of their previously asserted objections." Plaintiffs agreed to produce documents in response to those RFPs in an effort to compromise and minimize the number of disputes before the Court. Plaintiffs intend to produce all responsive materials, to the extent they exist, and do not intend to withhold any responsive documents on the basis of previously asserted objections, aside from privilege. Plaintiffs therefore do not agree that the parties are at impasse with respect to these RFPs.

RFP No. 32. In their August 17 letter, Plaintiffs agreed to produce "documents sufficient to identify the amount recognized/written off for each year due to actual or expected payment/non-payment by Payors" in response to this Request. In their August 21 letter, Defendants wrote that "this Request also seeks Plaintiffs' 'policies and procedures relating to recognition of revenue from various sources of payment (e.g., Payors, patients, etc.).'" Plaintiffs do not see the relevance of any policies related to recognition of revenue from patients, and as explained in Plaintiffs' August 17 letter, Plaintiffs intend to stand on their objections with respect to that portion of this RFP for the reasons they have discussed in connection with the balance billing and patient billing categories of materials. Plaintiffs therefore believe that the parties are at impasse with respect to that portion of RFP No. 32.

RFP-Specific Issues

In addition to the categorical issues discussed above, Defendants asked Plaintiffs to discuss several RFP-specific issues. Plaintiffs do so below.

RFP No. 10. This Request seeks "[a]ll contracts" pertaining to the billing of payors or patients for OON healthcare services. In their August 4 letter, Plaintiffs responded that they will produce "any repricing communications with payors labelled as 'agreements' or 'contracts.'" In their August 13 letter, Defendants explained that this Request seeks not only documents labelled as agreements or contracts but also the contracts themselves and, in the parties' August 13 meet and confer, identified several categories of contracts sought by this Request. In their August 19 letter, Plaintiffs agreed to produce agreements with Zelis to avoid repricing (which are similar to a single case agreement), communications with Zelis reflecting negotiations or agreements regarding repricing, communications directly with insurers reflecting negotiations or agreements regarding repricing, and OON rate agreements, to the extent they exist and are located pursuant to a reasonable search. In their August 21 letter, Defendants explained that "this Request seeks '[a]ll contracts' pertaining to the billing of payors or patients for OON healthcare services, including contracts with 'Payors, patients, and persons or entities who refer or recruit patients with coverage for OON Healthcare Goods or Services'" and asked Plaintiffs to "[c]onfirm that Plaintiffs will produce contracts responsive to this Request, including agreements with insurers and other payors." Plaintiffs agree to produce such contracts with insurers, other payors, and entities who refer or recruit patients with coverage for OON Healthcare Goods or Service, to the extent they exist and are located pursuant to a reasonable search. Plaintiffs do not agree to produce contracts with patients in response to this RFP. Finally, Defendants stated in their August 21 letter that "Defendants understand the Parties to be at an impasse on the relevance of materials related to MultiPlan and other repricing services." Plaintiffs agree.

RFP Nos. 24.[1] Defendants stated in their August 21 letter that "Defendants understand the Parties to be at an impasse on the relevance of materials related to MultiPlan and other repricing services." Plaintiffs agree.

RFP Nos. 27, 50, 64, 66. In their August 21 letter, Defendants asked Plaintiffs to confirm whether they will produce responsive, non-privileged materials concerning MultiPlan and other repricing services in response to RFP Nos. 27, 50, 64, and 66. Plaintiffs intend to stand on their objections to producing such

[1] The following discussion of RFP Nos. 24, 45, and 46 omits discussion of issues that overlap with the above discussion of RFP 10.

materials in response to these RFPs and understand that likely means the parties are at impasse with respect to these RFPs.

RFP No. 45. In their August 21 letter, Defendants asked Plaintiffs to confirm that they will produce all contracts responsive to this Request, including agreements with other payors and patients, and documents reflecting such agreements. As with RFP No. 10, Plaintiffs will agree to produce any contracts with payors relating to OON healthcare services, to the extent they exist and are located pursuant to a reasonable search. However, Plaintiffs intend to stand on their objection to producing any network contracts and contracts with patients for the reasons previously discussed in connection with the in-network discovery and balance billing categories of materials. Plaintiffs understand this likely means that the parties are at impasse with respect to those portions of this request. Defendants also stated that "Defendants understand the Parties to be at an impasse on the relevance of materials related to MultiPlan and other repricing services." Plaintiffs agree.

RFP No. 46. In their August 21 letter, Defendants stated that "Defendants understand the Parties to be at an impasse on the relevance of materials related to MultiPlan and other repricing services." Plaintiffs agree.

RFP No. 51: In their August 17 letter, Defendants stated that this Request seeks materials that are relevant to Plaintiffs' alleged antitrust market. In their August 21 letter, Defendants asked Plaintiffs to confirm whether they will agree Plaintiffs will produce responsive, non-privileged materials in response to this Request. In an effort to compromise and minimize the Court's burden, Plaintiffs are willing to produce documents responsive this RFP, subject to and without waiving Plaintiffs' objections, to the extent such documents exist and are located pursuant to a reasonable search.

RFP Nos. 59 and 62. In their August 19 letter, Plaintiffs explained that they have agreed to produce documents responsive to RFP No. 62, which is broader than RFP 59 and asked Defendants to clarify what categories of documents they are seeking with respect to RFP No. 59 that are not captured by RFP No. 62. In their August 21 letter, Defendants requested that Plaintiffs "confirm that Plaintiffs' production in response to RFP No. 62 will include documents in which Plaintiffs discuss or threaten ceasing, limiting, or otherwise restricting treatment or OON Healthcare Goods or Services for patients associated with a particular payor based on that payor's OON reimbursement rates or alleged underpayments." Upon further reflection, Plaintiffs believe that those materials would pertain to Defendants' unclean hands defense and are not probative of any relevant issue in light of Plaintiffs' agreement to produce documents in response to RFP No. 62. Plaintiffs will therefore stand on their objections to producing documents in response to RFP No. 59. Plaintiffs understand that this will likely mean that the parties are at impasse with respect to RFP No. 59.

RFP Nos. 69, 70. In their July 17 letter, Defendants asked Plaintiffs to clarify whether they "intend to withhold responsive, non-privileged documents that they have already publicly discussed in filings or oral argument before the Court." In their August 4 letter Plaintiffs responded that "[t]hese documents are protected from disclosure by the attorney client privilege and/or attorney work product and will not be produced. In their August 13 letter, Defendants asked Plaintiffs to explain the basis for their privilege assertions and to confirm whether Plaintiffs contend that all responsive documents are privileged. In their August 19 letter, Plaintiffs responded that "the materials sought by this RFP are comprised of investigatory materials drafted in anticipation of litigation, which reflect counsel's

opinions and legal theories, as well as communications with Plaintiffs, and that all such materials [are] privileged or protected work product." In their August 21 letter, Defendants asked Plaintiffs to "[c]onfirm that Plaintiffs' position is that all materials sought by these Requests are privileged or subject to the work-product doctrine." Plaintiffs so confirm.

RFP Nos. 72, 73. In their July 17 letter, Defendants asked Plaintiffs to "articulate the specific bases for Plaintiffs' relevance objections" to these Requests. In their August 4 letter, Plaintiffs responded that "[t]his request seeks materials protected by attorney-client privilege, the work product doctrine, and the common interest doctrine." In their August 13 letter, Defendants stated that "an assertion of privilege is not a relevance objection," and asked Plaintiffs to (1) explain the basis for their relevance objection or, in the alternative, confirm that Plaintiffs withdraw their relevance objection; and (2) confirm whether Plaintiffs contend that all responsive documents are privileged. In their August 19 letter, Plaintiffs responded that Definition No. 20 in Defendants' First Set of RFPs defines "Plaintiffs," "You," and "Your" to include "any counsel acting on [Plaintiffs'] behalf," and, accordingly, the Requests seek "a large volume of irrelevant materials, including discovery-on-discovery and case management and scheduling matters." Plaintiffs further explained that, if Defendants agree that these RFPs should be construed as limited to communications from Plaintiffs themselves (as opposed to including communications from Plaintiffs' counsel), Plaintiffs believe that all responsive documents are privileged based on the current state of their investigation. In their August 21 letter, Defendants asked Plaintiffs to "[c]onfirm that Plaintiffs' position is that all documents responsive to these Requests, including any communications between or among the provider-Plaintiffs themselves, are privileged and, if not, those communications will be produced." Plaintiffs do not believe that there are any communications between or among the provider-patients themselves that are responsive to these RFPs. In the unlikely event that Plaintiffs' investigation locates any non-privileged communications from the provider-plaintiffs that are responsive to these RFPs, Plaintiffs agree to produce them.

RFP No. 74. This Request seeks "any actual, proposed or threatened disciplinary action against You or any provider in Your practice, including but not limited to (a) any fines or penalties paid by Your practice related to the provision of Healthcare Goods or Services and/or (b) the loss or suspension of any license for any Provider in Your practice." In their July 17 letter, Defendants asked Plaintiffs to "articulate the specific bases for Plaintiffs' relevance objections" to this Request. In their August 4 letter, Plaintiffs responded that this Request "appears to relate to defenses related to Defendants' purported pro-competitive justifications or an unclean hands defense, neither of which are legally cognizable defenses to Plaintiffs' *per se* claims." In their August 21 letter, Defendants responded that the requested "materials relevant to Defendants' procompetitive justifications are relevant to the rule-of-reason analysis." Plaintiffs do not agree that "any actual, proposed, or threatened disciplinary action" against Plaintiffs is relevant to Defendants' procompetitive justifications. Accordingly, Plaintiffs intend to stand on their objections with respect to this Request. Plaintiffs understand that likely means the parties are at impasse with respect to this Request.

Data Fields and Data Dictionaries

Defendants asked for a substantive update regarding their data fields. In correspondence, Defendants have asked Plaintiffs to confirm whether each Plaintiff has any data fields or data systems relevant to the categories identified in Attachment A to Defendants' First Set of RFPs that were not disclosed in Plaintiffs' July 6

disclosures. During the parties' July 17 meet and confer, Defendants also stated that they believed each Plaintiff should at least be able to produce a field for the claim number. Plaintiffs provide the following update.

PIMG. Plaintiff PIMG confirms that there are no data fields or data systems relevant to the categories identified in Attachment A to Defendants' First Set of RFPs that were not disclosed in Plaintiffs' July 6 disclosures.

Chelsea Foot and Ankle. Plaintiff Chelsea Foot and Ankle confirms that there are no data systems relevant to the categories identified in Attachment A to Defendants' First Set of RFPs that were not disclosed in Plaintiffs' July 6 disclosures. Plaintiff Chelsea Foot and Ankle has identified additional data fields, which are reflected in the attached production of sample data produced herewith as CHELSEAFOOT_000002. Plaintiffs are producing this sample data subject to and without waiving the objections stated in Plaintiffs' Objections and Responses to Defendants' First Set of RFPs and the correspondence that followed. Plaintiffs have designated this production of sample data as Highly Confidential – Outside Counsel Only, pursuant to the HIPPA-Qualified Protective Order.

Ayer. Plaintiff Ayer confirms that there are no data systems relevant to the categories identified in Attachment A to Defendants' First Set of RFPs that were not disclosed in Plaintiffs' July 6 disclosures. Plaintiff Ayer has confirmed that a field for the claim number is not tracked in its Dentrix billing system. Plaintiff Ayer has not identified additional data fields, though our investigation is ongoing. Sample data for Plaintiff Ayer is attached herewith as AYER_000002. Plaintiffs are producing this sample data subject to and without waiving the objections stated in Plaintiffs' Objections and Responses to Defendants' First Set of RFPs and subsequent correspondence. Plaintiffs have designated this production of sample data as Highly Confidential – Outside Counsel Only, pursuant to the HIPPA-Qualified Protective Order.

Scaccia. Plaintiff Scaccia confirms that there are no data systems relevant to the categories identified in Attachment A to Defendants' First Set of RFPs that were not disclosed in Plaintiffs' July 6 disclosures. Plaintiff Scaccia has confirmed that a field for the claim number is not tracked in its Advantx billing system. Plaintiff Scaccia has not identified additional data fields, though our investigation is ongoing.

Bachoua. Plaintiff Bachoua confirms that there are no data systems relevant to the categories identified in Attachment A to Defendants' First Set of RFPs that were not disclosed in Plaintiffs' July 6 disclosures. Plaintiff Bachoua has not identified additional data fields, though our investigation is ongoing.

Plaintiff Missing Peace. Plaintiff Missing Peace confirms that there are no data systems relevant to the categories identified in Attachment A to Defendants' First Set of RFPs that were not disclosed in Plaintiffs' July 6 disclosures. Plaintiff Missing Peace has not identified additional data fields, though our investigation is ongoing.

Data dictionaries. Plaintiffs' investigation has not located data dictionaries for Plaintiffs Chelsea Foot and Ankle, Ayer, Scaccia, Bachoua, or Missing Peace.

Plaintiffs' investigation is ongoing. Plaintiffs reserve all rights.

Sincerely,

Rick Paul

CC: Plaintiffs' Counsel of Record

EXHIBIT E

PAUL LLP
TRIAL ATTORNEYS

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ttorney

T 816.984.8104
F 816.984.8101

aley PaulLLP.com

August 28, 2026

Via Email

zelis.joint.defense.group@ropesgray.com

Re: ***In re: Zelis Repricing Antitrust Litigation,*** **No. 1:25-cv-10734-BEM (D. Mass) – Plaintiffs Responses Defendants August 26, 2026 Letter**

Counsel:

We write in response to your August 26, 2026 letter. Defendants wrote that they understand that the parties are at impasse with respect to six categories of material:

> Balance billing, patient billing, and other sources of payment for OON healthcare services (RFP Nos. 4–5, 8, 10–15, 17, 20–21, 28, 32, 36, 45, 48–49, and 67)
>
> In-network discovery (RFP Nos. 6–8, 11–14, 17, 19, 21–24, 27–29, 40–41, 46, 48–50, and 60);
>
> Plaintiffs' financial performance (RFP Nos. 28, 31–32, 34, and 36).
>
> Plaintiffs' billed charges (RFP Nos. 17–20 and 22).
>
> Plaintiffs' employer-sponsored health plans (RFP Nos. 26 and 27); and
>
> Repricing services other than Zelis (RFP Nos. 10, 24, 27, 45–46, 50, 64, and 66).

Defendants asked Plaintiffs to continue to assess whether further compromise is possible to narrow the disputes before the Court. Defendants also asked Plaintiffs to provide additional information about compromises Plaintiffs have previously provided and to respond to certain compromises Defendants now propose.

Plaintiffs' Billed Charges (RFP Nos. 17–20 and 22).

Plaintiffs previously explained that they intended to stand on their objections to producing materials in response to these Requests. In an effort to compromise and narrow the disputes before the Court, however, Plaintiffs are now willing to produce materials responsive to these Requests, subject to their in-network discovery and downstream discovery objections, and without waiving their relevance objections. In other words, Plaintiffs agree to produce the following documents:

> **RFP No. 17:** For each year, Plaintiffs' fee schedules for out-of-network healthcare services, chargemasters for out-of-network healthcare services, and billed charges to payors for out-of-network healthcare services, to the extent such documents exist and are located pursuant to a reasonable search.
>
> **RFP No. 18:** Documents that reference Plaintiffs' fee schedules for out-of-network healthcare services, chargemasters for out-of-network healthcare services, and billed charges to payors for out-of-network healthcare services in connection with any payors Reimbursement Rate for out-of-network healthcare services, to the extent such documents exist and are located pursuant to a reasonable search.
>
> **RFP No. 19:** All documents reflecting, referring to, or relating to the amount of payment that Plaintiffs expect or expected to receive from payors in exchange for out-of-network healthcare services rendered, to the extent such documents exist and are located pursuant to a reasonable search.

RFP No. 20: All documents reflecting any analysis of Plaintiffs' fee schedules for out-of-network healthcare services, chargemasters for out-of-network healthcare services, and billed charges to payors for out-of-network healthcare services, to the extent such documents exist and are located pursuant to a reasonable search.

RFP No. 22: All Documents pertaining to the development, use, or distribution of any pricing benchmarking reports, surveys, analyses, or databases, whether developed internally or externally, pertaining to assessment of Plaintiffs' fee schedules for out-of-network healthcare services, chargemaster rates for out-of-network healthcare services, and billed charges to payors for out-of-network healthcare services, and payors' reimbursement rates for out-of-network healthcare services, to the extent such documents exist and are located pursuant to a reasonable search.

Plaintiffs intend to withhold any otherwise responsive documents related to in-network healthcare services and balance billing or patient billing. Plaintiffs understand, however, that the Court's resolution of those issues will also resolve those objections as they pertain to these Requests.

Plaintiffs' "Downstream Discovery Objection"

RFP No. 16. In their August 17 letter, Plaintiffs explained that they were "prepared to offer a compromise" with respect to RFP No. 16 and agreed to produce ordinary-course documents related to Plaintiffs' allegation concerning balance billing prohibitions, as well as any internal communications that "discuss the three topics identified" in the Request. In their August 21 letter, Defendants stated that "RFP No. 16 seeks discovery regarding Plaintiffs' balance-billing allegations more generally; it does not limit the discovery to balance billing prohibitions" and asked Plaintiffs to "[c]onfirm that Plaintiffs will produce all non-privileged, ordinary-course documents responsive to this Request, including documents relating to Plaintiffs' allegations regarding balance billing generally, and not only documents concerning alleged balance-billing prohibitions." In their August 24 letter, Plaintiffs explained that Defendants' request is broader than the compromise position Plaintiffs have offered with respect to this RFP. Plaintiffs further explained that they "will agree to produce (1) ordinary-course documents related to Plaintiffs' allegation concerning balance billing prohibitions; and (2) internal communications that discuss the three topics identified in RFP No. 16" and [t]o the extent that Defendants are requesting that Plaintiffs produce documents related to any actual balance billing, Plaintiffs do not agree to do so." In their August 26 letter, Defendants asked Plaintiffs to "clarify whether Plaintiffs' compromise includes internal communications that undermine their balance-billing allegations, including any communications showing that Plaintiffs understood they could balance bill patients notwithstanding the alleged prohibitions." Plaintiffs confirm that it does and that they will produce such documents, to the extent such documents exist and are located pursuant to a reasonable search.

RFP No. 45. In their August 26 letter, Defendants wrote that they agree that the Parties are at an impasse with respect to the portion of RFP No. 45 that seeks materials related to MultiPlan and other repricing services and balance billing and will seek resolution from the Court. Plaintiffs share this understanding.

Plaintiffs' "In-Network Discovery Objection"

RFP Nos. 42, 44, 47, 52. In their August 17 letter, Plaintiffs stated that they were "prepared to offer a compromise" and produce ordinary-course documents discussing the topics identified in RFP Nos. 42, 44, 47, and 52," if Defendants agreed not to pursue the other in-network RFPs. In their August 21 letter, Defendants rejected Plaintiffs' offer of compromise. In their August 24 letter, Plaintiffs explained that, in an effort to compromise and minimize the number of disputes before the Court, they will nonetheless still

agree to produce ordinary-course documents discussing the topics identified in RFP Nos. 42, 44, 47, and 52, without waiving their objections. In their August 26, letter Defendants asked Plaintiffs to "[c]larify what, if anything, Plaintiffs intend to withhold from production." Plaintiffs do not intend to withhold any responsive, non-privileged materials from their productions in response to these Requests.

RFP Nos. 2, 25. In their August 17 letter, Plaintiffs stated that they further objected to providing certain INN discovery based on the parties' relative access to information, including with respect to RFP Nos. 2, 8, 17, 19, 25, 27, 48, and 49.[1] In their August 26 letter, Defendants proposed a compromise with respect to two of those Requests: RFP Nos. 2 and 10. As to RFP No. 2, Defendants explained that they "are willing to narrow the Request to exclude executed contracts in Defendants' possession, provided Plaintiffs agree that those contracts in Defendants' possession are complete and accurate and can be entered into the record subject to the Court's Protective Order (Dkt. 253) without evidentiary, admissibility, or confidentiality objections, and further agree to provide any executed contract that Defendants believe exists but cannot reasonably identify" As to RFP No. 25, Defendants explained that they are "are willing to narrow the Request to exclude Defendants' data reflecting rates accepted from Defendants, provided that Plaintiffs stipulate to its accuracy, agree to supplement where a rate was not accepted as payment in full, and produce responsive information for non-Defendant payors." Plaintiffs are unable to accept Defendants proposal for a few reasons. First, Plaintiffs' primary objection to producing these materials is relevance, so they cannot agree to waive evidentiary and admissibility objections. Second, Plaintiffs cannot agree to stipulate as to authenticity without first seeing the documents. Third, Plaintiffs do not understand Defendants' position that there may be network contracts that Defendants believe exist but cannot reasonably identify.

Plaintiffs' Financial Performance

RFP Nos. 29–30, 33, 35, 37–38. In their August 17 letter, Plaintiffs explained that they "are willing to produce financial performance documents" in response to RFP Nos. 29–30, 33, 35, 37–38, without waiving their objections. In their August 21 letter, Defendants stated that this "position appears inconsistent with Plaintiffs' August 4 letter" and asked Plaintiffs to "[c]onfirm whether Plaintiffs will produce all responsive, non-privileged financial-performance documents responsive to RFP Nos. 29–30, 33, 35, and 37–38, or whether Plaintiffs intend to withhold any responsive materials on the basis of their previously asserted objections. In their August 24 letter, Plaintiffs explained that they had agreed to produce documents in response to those RFPs in an effort to compromise and minimize the number of disputes before the Court. Plaintiffs further explained that they intend to produce all responsive materials, to the extent they exist, and do not intend to withhold any responsive documents on the basis of previously asserted objections, aside from privilege. In their August 26 letter, Defendants stated that they accept Plaintiffs' proposal as to these Requests. Plaintiffs therefore understand that the parties are not at impasse with respect to these Requests.

RFP No. 32. In their August 26 letter, Defendants explained that they understand the Parties to be at an impasse regarding Plaintiffs' refusal to produce documents concerning revenue recognition and write-offs relating to patient payments and non-payments in response to this Request and will seek resolution from the Court. Plaintiffs share this understanding.

Other Re uests

[1] In their August 26 letter, Defendants contended that Plaintiffs did not assert that objection their June 25, 2026 Response and Objections as to RFPs Nos. 8, 17, 19, and 49. Plaintiffs disagree. Plaintiffs asserted this objection as General Objection No. 7, and each response was made "[s]ubject to and without waiving the foregoing General and Specific Objections."

RFP 51: In their August 17 letter, Defendants stated that this Request seeks materials that are relevant to Plaintiffs alleged antitrust market. In their August 21 letter, Defendants asked Plaintiffs to confirm whether they will agree Plaintiffs will produce responsive, non-privileged materials in response to this Request. In their August 24 letter, Plaintiffs explained that, in an effort to compromise and minimize the Court's burden, Plaintiffs are willing to produce documents responsive this RFP, subject to and without waiving Plaintiffs' objections, to the extent such documents exist and are located pursuant to a reasonable search. In their August 26 letter, Defendants stated that they accepted Plaintiffs' proposal as to this Request. Plaintiffs therefore understand that the parties are not at impasse with respect to this Request.

RFP Nos. 59 and 62. In their August 26 letter, Defendants explained that they "accept Plaintiffs' proposal as to RFP No. 62 but reserve all rights, including the right to seek appropriate relief from the Court, should subsequent discovery reveal that Plaintiffs' privilege representations are inaccurate or incomplete." Plaintiffs therefore understand that the parties are not at impasse with respect to RFP No. 62. With respect to RFP No. 59, Defendants stated that they agree that the Parties are at an impasse and will seek resolution from the Court. Plaintiffs share this understanding.

RFP Nos. 69, 70. In their August 26 letter, Defendants explained that they "accept Plaintiffs' representation but reserve all rights, including the right to seek appropriate relief from the Court, should subsequent discovery reveal that Plaintiffs' representation is inaccurate or incomplete." Plaintiffs therefore understand that the parties are not at impasse with respect to these Requests.

RFP Nos. 72, 73. In their August 26 letter, Defendants explained that they "accept Plaintiffs' representation but reserve all rights, including the right to seek appropriate relief from the Court should subsequent discovery reveal that Plaintiffs' representation is inaccurate or incomplete." Plaintiffs therefore understand that the parties are not at impasse with respect to these Requests.

RFP 74. In their August 26 letter, Defendants explained that they "agree that the Parties are at an impasse as to RFP No. 74 and will seek resolution from the Court." Plaintiffs share this understanding.

Plaintiffs' investigation is ongoing. Plaintiffs reserve all rights.

Sincerely,

Haley Hawn

EXHIBIT F

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.:* *:2 -CV- 2-BEM* *:2 -CV- -BEM* *:2 -CV- -BEM*

PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO NON-ZELIS DEFENDANTS

Under Fed. R. Civ. P. 34, Plaintiffs Pacific Inpatient Medical Group, Inc.; Frank Scaccia, M.D., F.A.C.S., L.L.C.; Dennis C. Ayer, DDS, LLC; James Paul Allen DDS d/b/a/ Allen Dental; and Danny Bachoua Chiropractic, APC ("Plaintiffs") hereby request that Defendants Aetna, Inc.; The Cigna Group; Elevance Health, Inc.; Humana, Inc.; and UnitedHealth Group, Inc. (collectively, the "Non-Zelis Defendants") produce the documents, electronically stored information, and things requested herein within 30 days following the date of service of these Requests.

DEFINITIONS

Solely for the purpose of these Requests, the following definitions shall apply, without regard to capitalization:

1. **"835 files"** and **"837 files"** are defined by the Health Insurance Portability and Accountability Act's (HIPAA) electronic transaction standards, specifically under the ASC X12 835 transaction set and ASC X12 837 transaction set, respectively.

2. **"Agreement"** means any meeting of the minds between two or more Persons or entities, including but not limited to, arrangements, bargains, collaborations, combinations, commitments, written and oral contracts, covenants, gentlemen's agreements, guarantees, joint

ventures, pacts, promises, understandings, and undertakings, including all versions, modifications, statements of work, amendments, attachments, exhibits, and appendices. This definition includes all network access agreements and statements of work, exhibits, addendums, and side letters to network access agreements. This definition also includes all single case agreements, expedited single case agreements, and global agreements. For the avoidance of doubt, if a statement of work, amendment, attachment, exhibit, or appendix is responsive, the entire Agreement must be produced.

3. **"AHIP"** or **"America's Health Insurance Plans"** is a national trade organization of health insurance companies or Payers in America including commercial, Medicare, and Medicaid.

4. **"All"** includes the collective and the singular and means each, any, and every.

5. **"Any"** means one or more.

6. "**Availity**" is a healthcare technology company and platform used by Providers and Payers to process billing and patient information and is a strategic partner of Zelis.

7. **"Balance Billing"** means any process by which a Provider seeks additional compensation from a Patient for any portion of its total billed charges above the allowed amount paid by the Payer.

8. **"Claim"** means any request by a Provider to any Payer for coverage of or compensation for services provided by the Provider.

9. **"Claims, Payment, and Contractual Information Data Fields"** is a subset of the "Data Fields" or "Structured Data Fields," described above, which refer to those Data Fields found within one or more of Defendants' or other Non-Parties' databases or data tables that are associated with, relate to, link to, concern, and/or apply to the identification, assignment, maintenance, processing, handling, exchange, pricing, repricing, calculation, determination, modification,

editing, updating, adjustment, deletion, distribution, communication, appeals, negotiation, location, or relationship-related information concerning claims, payment, and contractual information, whether in whole or in part.

10. **"Communication"** means the transmittal of information in the form of facts, ideas, inquiries, or otherwise.

11. **"Concerning"** means referring to, describing, evidencing, or constituting.

12. **"Data Fields"** or "**Structured Data Fields**" means field headings or field names associated with, related to, and/or linked to underlying data or information as maintained in one or more databases or in one or more data tables by Defendants or other Non-Parties, within which information possibly germane to this matter is maintained, organized, uploaded, downloaded, deleted, or otherwise managed, whether in whole or in part.

13. The term **"Document"** or **"Documents"** is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and shall be construed in its broadest sense. A draft or nonidentical copy is a separate document within the meaning of this term.

14. **"Electronic Information Exchange Infrastructure"** or **"x12"** refers to the set or sets of technologies, protocols, methodologies, analytics, software, hardware, access/restriction/denial keys or methods, assigned personnel, features, capabilities, drawbacks, disadvantages, and advantages concerning the capture, load, identification, analysis, organization, culling, editing, updating, processing, layering, deletion, distribution, communication, exchange, reporting, summarizing, and management, whether in whole or in part, of electronic information, including, but not limited to, the X12 transaction network, ASC X12, X12 transaction sets, Electronic Data Interchange(s) ('EDI' or 'EDIs') and related environments, Application Programming Interface(s) ('API' or 'APIs') and related environments, electronic portals, developer portals, electronic

receptors, or electronic receptacles, sandbox environments, inbound connectivity capabilities, outbound connectivity capabilities, and other aspects or technological applications, whether or not integrated, that perform, allow for, enable, or assist with the exchange of information, as applied here, including, but not limited to, out-of-network transactions, episodes, diagnoses, procedures, treatments, claims, pricing, repricing, and contractual information.

15. **"Healthcare Services"** means any type of medical care, treatment, medicine, or procedure provided to a Patient, including, for example, all forms of curative, palliative, preventative, surgical, in-patient, out-patient, nursing, dental, mental, chiropractic, and substance abuse care.

16. **"Non-Zelis Defendants"** refers to the Defendant health insurance companies and their related companies, subsidiaries and affiliates: Aetna, Inc., ("Aetna"), The Cigna Group ("Cigna"), Elevance Health, Inc. ("Elevance"), Humana, Inc. ("Humana"), and UnitedHealth Group, Inc. ("United").

17. **"Or"** and **"and"** should be construed as to require the broadest possible response. If, for example, a request calls for information about "A or B" or "A and B," You should produce all information about A and all information about B, as well as all information about A and B collectively. In other words, "or" and "and" should be read as and/or.

18. **"OON Services"** or **"Out-of-Network Services"** or **"OON Healthcare Services"** or **"Out-of-Network Healthcare Services"** refers to Healthcare Services provided to a Patient where the Provider is not entitled to a fixed, pre-negotiated contractual payment rate for those Healthcare Services from the Payer.

19. **"OON Payer Market"** is a market involving private, commercial insurers and other types of private Payers, including managed care organizations, third party administrators, self-

funded entities, and self-insured entities. In the OON Payer Market, OON Healthcare Services are sold by OON Providers and purchased by Payers, including those available for purchase by health insurance companies, managed care organizations, third-party administrators, self-funded plans, and self-insured entities. *See* Dkt. 39 at ¶¶ 149-72.

20. **"OON Repricing Services"** means any product or service that reprices, negotiates, or renegotiates the payment to a Provider for OON Services.

21. **"PPO"** means preferred provider organization.

22. **"Parties"** includes the terms "plaintiff" and "defendant" as well as a party's full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

23. **"Patient"** means any individual who received Healthcare Services from a Provider.

24. **"Payer"** means any third-party entity, organization, or person that adjudicates or sets process for Healthcare Services utilized by Patients, including each Defendant.

25. **"Payment Harmonization Index**" is the industry benchmarking study commissioned by Zelis and conducted by the Aite-Novarica Group (now Datos Insights).

26. **"Person"** means as any natural person or any business, legal, or governmental entity or association.

27. **"Pricing for OON Services"** means a Payer's process for determining, adjudicating, setting, or negotiating the allowed amount or actual payment paid to a Provider for providing OON Services.

28. **"Provider(s)"** means a professional, employee, practice, entity, or institution that performs Healthcare Services on behalf of Patients. When "Out-of-Network" or "OON" precedes

"Provider(s)," the combination of terms means one or more Providers performing Healthcare Services on an out-of-network (or outside of a governing contractual relationship) basis.

29. **"Relevant Conduct"** means any of the conduct alleged in Plaintiffs' Consolidated Amended Class Action Complaint (Dkt. 39) including, but not limited to, by way of inexhaustive example: (1) the negotiation(s) of any Agreements concerning any OON Repricing Services; (2) the pricing of any OON Services; (3) communications with any Defendant or with Providers, Sponsors, Subscribers, investors, Creditors, or Members concerning OON Repricing Services or Pricing for OON Services; (4) communications with any regulatory authority or governmental agency or division concerning any actual or potential investigation into the Pricing for OON Services; (5) the exchange of and agreements related to the exchange of competitive, commercially sensitive, contractual, proprietary, or otherwise confidential information; and (6) payment for OON Healthcare Services.

30. **"Repricer"** means a third-party entity, including Zelis, that uses proprietary databases, methodologies, tools, and information-sharing technologies to determine and communicate adjusted OON payment amounts, which are then often paid by Payers.

31. **"Sample"** when used with reference to Structured Data shall mean at least 100 lines of data. With respect to Structured Data showing Data Fields, "Sample" shall consist of at least 50 lines of data for Out-of-Network Services claims.

32. **"Sponsor"** shall mean the Person, governmental organization, or retirement fund that establishes or maintains a health insurance plan for its members or employees and their dependents.

33. **"Structured Data"** refers to any electronic data that resides in a fixed field within a record or file with data organized in columns/rows in a predefined format, such as data stored in Oracle, SQL, or any other relational database or healthcare claims database.

34. **"Subscriber"** means individuals, corporations, partnerships, limited partnerships, unions, unincorporated associations, trade associations, state or local governments, and all other governmental and non-governmental entities that purchase health care coverage from a Payer on either a fully insured or administrative services only basis.

35. **"You"** and **"Your"** mean the responding Defendant, including its subsidiaries, Affiliates, divisions, predecessors, successors, Representatives, parents, any organization or entity that such Defendant manages or controls, as well as any current or former officers, directors, or Employees.

36. **"Zelis"** means Zelis Healthcare, LLC; Zelis Claims Integrity, LLC; and Zelis Network Solutions, LLC; (collectively, "Zelis" or the "Zelis Defendants") in addition to more than a dozen other Zelis-related legal entities that have engaged in the Relevant Conduct but whose structures and roles not publicly distinguishable. "Zelis" also means all of its partners, corporate parents, subsidiaries, or affiliates, including, but not limited to: Stratose®, Pay-Pal Solutions, Truvan, EthiCare, Strenuus, Maverest Dental Network, NetMinder, Redcard, Saphire Digital, PayerCompass, PaySpan, Medxoom,.

37. The full text of definitions and rules of construction set forth in Local Rule 26.5 are incorporated by reference.

INSTRUCTIONS

Solely for the purpose of these Requests, the following instructions shall apply:

1. Under Fed. R. Civ. P. 26(e), these Requests are continuing in nature so that, if You, or any of Your directors, officers, Employees, agents, or representatives or any other person acting on Your behalf, subsequently discover or obtain possession, custody, or control of any Document or ESI previously requested or required to be produced, You shall make such Documents or ESI available within seven (7) days of discovery or obtaining possession. Similarly, any information or Document provided in response to these Requests that is later found to be incorrect, or to have become incomplete or incorrect because of changed circumstances, should be completed or corrected by means of a supplemental response.

2. In producing Documents, furnish all Documents or things in Your possession, custody, or control, regardless of the physical location of the Documents, or whether such Documents or other materials are possessed directly by You.

3. With respect to any Document maintained or stored electronically, please harvest it in a manner that maintains the integrity and readability of all data, including all metadata.

4. If You refuse to answer a Request, in whole or part, for any reason, including, but not limited to, any claim of privilege, clearly describe the asserted privilege or other grounds for refusing to answer with respect to the Request. If any form of privilege, whether based on statute or otherwise, is claimed as a ground for not responding to a Request, or any part thereof, set forth in complete detail each and every fact and legal basis on which the privilege is asserted , including sufficient facts for the Court to make a full determination as to whether the claim of privilege is valid. Produce any purportedly privileged Document containing non-privileged material with only the purportedly privileged portion redacted. With respect to a Document to which a privilege is

being claimed, provide the following information at a minimum: (1) date; (2) author; (3) names of any persons who received copies, if any; (4) title; (5) type of Document or tangible thing; and (6) a description of the subject matter sufficient to determine whether the privilege is properly invoked (without revealing privileged information).

5. Produce all Documents in the same order as they are kept or maintained by You in the ordinary course of Your business. For any Document that has been removed from a file for purposes of producing the Document in response to these Requests, identify the file from which the Document was removed.

6. Produce all Documents not otherwise responsive to these Requests that mention, discuss, refer to, or explain any responsive Document that is, or are attached to a responsive Document, including routing slips, transmittal memoranda, letters, cover sheets, comments, evaluation, or similar materials.

7. Documents attached to each other should not be separated, including, but not limited to, hard-copy versions of Documents attached to hard-copy printouts of e-mails produced pursuant to these Requests.

8. If any information called for by any Request herein is withheld because You claim that such information is protected from discovery by the attorney work-product doctrine or by any privilege or protection from disclosure, provide a description of the basis of the claimed privilege or protection.

9. If a Document once existed and has subsequently been lost, destroyed, or is otherwise missing, please provide sufficient information to identify the Document and state the details concerning its loss.

10. If a responsive Document has been lost or destroyed, please identify, by the author, date, and subject matter of the lost or destroyed Document, as well as its current location. If the Document is no longer in existence, in addition to providing the information indicated above, state on whose instructions the Document was destroyed or otherwise disposed of, and the date and manner of the disposal.

11. All Requests included herein are subject to any ESI protocol, agreement, or Order in this Litigation; if the Request calls for non-electronically stored information, please produce all Documents that exist only in hardcopy in an electronic format such as a *.PDF format or equivalent.

12. The Relevant period for each Request is January 1, 2014, through the present (the "Relevant Period"), unless otherwise specifically indicated, and shall include all documents and information that relate to such period, even though prepared or published outside of the Relevant Period. If information prepared before the Relevant Period is necessary for a correct or complete understanding of any answer covered by a Request, You must include that information for the earlier or subsequent periods as well.

13. Samples of Structured Data shall be produced in one or multiple electronic files and in one of the following machine-readable formats: CSV, delimited flat text, or Microsoft Excel.

14. You are requested to produce documentation corresponding to and sufficient to understand all Samples of Structured Data, including but not limited to (a) code/lookup tables for any fields provided that may contain coded (character) data; (b) column/field descriptions for each field provided; (c) identification of the field or set of fields which uniquely identifies a claim; and (d) data dictionaries. If data fields are provided in different tables, you are requested to provide ID variables in each table to merge tables together.

REQUESTS FOR PRODUCTION

I. Corporate Organization, Identity, and Relationships

REQUEST NO. 1: All Documents and Communications concerning Your corporate structure and that of all of Your affiliates, subsidiaries, or related entities that use, subscribe to, purchase, or otherwise benefit from Zelis' OON Repricing Services.

RESPONSE:

REQUEST NO. 2: Organizational charts and/or other documents sufficient to identify each of Your departments, divisions, business units, project groups, assigned personnel, or other organizational units (however labeled or referred to), and all personnel, involved in any Relevant Conduct, along with its or their positions, titles, roles, responsibilities, and the periods of time those positions, titles, roles, or responsibilities were held.

RESPONSE:

REQUEST NO. 3: Your audited and unaudited financial statements, forecasts, profit and loss statements, earnings, costs, and expenses for each year, whether in draft or final form.

RESPONSE:

REQUEST NO. 4: All documents and communications concerning communications with investors and creditors, earnings call transcripts, and presentations and discussions at healthcare, technology, investor, creditor, or health insurance conferences concerning OON Repricing Services, OON Services, the pricing of OON Services, or competition among Payers.

RESPONSE:

REQUEST NO. 5: All documents and communications relating to employee reviews, evaluations, promotion materials, bonuses, performance incentives, and compensation rates, whether in draft or final form, regarding promotions, commissions, bonuses or compensation associated with repricing of OON Claims.

RESPONSE:

REQUEST NO. 6: All documents and communications concerning, reflecting, or containing information about efforts considered or taken in order to, in whole or in part, hide, conceal, downplay, modify, move or relocate, substitute, supplant, delete, or destroy evidence indicating or suggesting (a) that two or more Payers communicated about OON Repricing Services, or otherwise communicated about suppressing payments for OON Services; or (b) that Zelis and one or more Payers communicated about using OON Repricing Services or otherwise communicated about suppressing payments for OON Services.

RESPONSE:

II. Structured Data

REQUEST NO. 7: Samples of Structured Data sufficient to show all Data Fields for each paid Claim for OON Services within the Relevant Period at the most granular level that such Structured Data is kept, including at the claim or line level.

RESPONSE:

REQUEST NO. 8: Documentation sufficient to understand all produced Structured Data, including but not limited to (a) code/lookup tables for any fields provided that may contain coded (character) data; (b) column/field descriptions for each field provided; (c) identification of the

containing database(s), the field or set of field(s) which uniquely identifies a claim; (d) links or references between database(s), field(s), and documents; and (e) database, field, and/or data dictionaries, glossaries, keys, maps, or guides. If data fields are provided in different databases or tables, provide ID Variables (or other means or ways) in each database or table to merge databases or tables together. Data information and formatting should be consistent, including the physical and virtual location of the data, where data warehouses and standards have changed over time, and the identity of the directors, officers, employees, agents, and consultants assigned to data management responsibilities. If formatting or data field names have changed over the Relevant Period, responses should include information detailing (a) when such change(s) occurred; (b) the state before and after the change(s); and (c) how to map and access database(s), field name(s), and the underlying data across physical and virtual locations and data files.

RESPONSE:

III. "Repricing" Services, Tools, Technologies, Methodologies, and Algorithms

REQUEST NO. 9: All documents and communication concerning Zelis' OON Repricing Services, tools, technologies, methodologies, formulas, algorithms, systems, or other processes, including, but not limited to, any aspect of Your Pricing for OON Services generally, Your policies, procedures, and guidelines; factors or information You considered consider, used, use, proposed, or propose in setting, negotiating, reviewing, appealing, or approving prices; Your training materials; benchmarks or performance metrics You considered, consider, used, use, proposed, or propose; budgeting and spending related to claims processing; loss adjustment expenses; and the development, evaluation, testing, or approval of any models, formulas, calculations, methodologies, or algorithms You considered, consider, used, use, proposed or propose for Pricing of OON Services.

RESPONSE:

REQUEST NO. 10: Documents and communications sufficient to show data sets, capabilities, features, pricing, or contractual information used in the compilation, marketing, promotion, advertisement, calculation, deployment, application, or modification of the respective service concerning Zelis' OON Repricing Services including but not limited to:

a. "Established Reimbursement Schedule" or "Established Reimbursement Solution®" ("ERS");
b. Referenced Based Pricing" ("RBP");
c. "Zelis Open Access Pricing®;"
d. "Zelis Price Map;"
e. "Zelis Intelligent Pricing Platform" ("ZIPP");
f. "Network 360®;" and
g. "QuickReprice."

RESPONSE:

REQUEST NO. 11: All documents and communications regarding insurance claim files, such as 837 files or EDIs, and Electronic Remittance Advice (ERA) forms, such as 835 files, for OON claims priced, in whole or in part, using Zelis' OON Repricing Services.

RESPONSE:

IV. Information Sharing

REQUEST NO. 12: All documents and communications related to meetings, whether scheduled, planned, or occurring on-line, over-the-telephone (mobile or landline), over fax/facsimile, over or

through email, over or through text/SMS, over or through WhatsApp, over or through corporate communications technologies, over or through any other analog or electronic communications device, software, hardware, or technology/technologies or in person, between or among current or former officers, directors, employees, or agents of two or more of the following entities: Zelis, DeSantis Breindel, any Defendant, any Payer, any Repricer, Availity, and/or AHIP concerning in any way OON claims, payments, or contractual information. Documents and communications sought here include, but are not limited to, Zelis's client conference notes or transcripts, audio recordings, video recordings, audio/visual recordings, film, indicia of deletion, destruction, or relocation of those recordings or film, attendance lists or confirmations, invitee lists or confirmations, committee designations, travel documents, hotel receipts, restaurant receipts, bar receipts, scorecards, photographs, reservations or receipts relating to golfing, skiing, boating, fishing, or other events or excursions.

RESPONSE:

REQUEST NO. 13: All documents related to Zelis' "Payments Harmonization Index," including, but not limited to, any and all such "Payments Harmonization Index" documents concerning any quantitative survey on which it is/was based, any reports generated or otherwise created by or in relation to it, and any documents that the Payment Harmonization Index relies on, considers, analyzes, or uses from or derived from any other non-Zelis entities.

RESPONSE:

REQUEST NO. 14: All documents and communications related to any form of user groups or user advisory groups (i.e., any group formed for the purpose of providing feedback, advice, or

comment) for any of Zelis' OON Repricing Services, including, but not limited to, any meeting invitations, room or table assignments, agendas, minutes, notes, transcripts (however generated), presentations, slides, or audio or video recordings from such user groups or user advisory groups.

RESPONSE:

REQUEST NO. 15: All documents and communications regarding information Non-Zelis Defendants provide or are required to provide Zelis or that Zelis is required to provide Payers in connection with Payers' use of Zelis' OON Repricing Services, including, but not limited to, any claims, payment, or contractual-related information, the public disclosure of any such information, the frequency with which the information is provided from one or more Payers to Zelis, and/or the frequency with which the information is provided from Zelis to one or more Payers.

RESPONSE:

V. Communications and Agreements with Payers

REQUEST NO. 16: All documents and communications with or concerning any Plaintiff or Provider, including, but not limited to, the pricing, repricing, negotiation, re-negotiation, appeal, or denial of any Claim submitted by any Plaintiff or Provider seeking payment with respect to performing OON Services.

RESPONSE:

REQUEST NO. 17: All documents and communications related to any agreement or draft agreement, including any agreement itself, as well as any offer, proposal, draft, pitch, discussion, or negotiation of any agreement or draft agreement, including any amendments, statements of work, exhibits, or side letters to such agreements, including, but no limited to, agreements

concerning the exchange or delivery of Claims, payment, pricing, or contractual information, as well as agreements to pay Zelis a commission or other compensation based in any way on the savings from Zelis's OON Repricing Services, any disclosures of such commissions or agreements, and any reports or summaries of such paid commissions or incentives.

RESPONSE:

REQUEST NO. 18: All documents and communications related to Balance Billing with respect to OON Services, including, but not limited to: the actual or projected ability of Providers to Balance Bill Patients; estimates, projections, or analyses regarding the frequency of such billing and the rate at which Patients pay Balance Billed amounts; any practical, legal, or contractual limitations or prohibitions on Balance Billing; and any efforts by You to prevent Balance Billing in connection with OON Claims.

RESPONSE:

REQUEST NO. 19: All documents and communications related to any Provider no longer agreeing to treat Patients on an OON basis or accept Patients' OON insurance benefits (or the threat or possibility thereof), including:

a. the Provider's stated, inferred, likely, or assumed reasons for no longer agreeing to treat Patients on an OON basis or accept their OON insurance benefits;

b. the actual or anticipated impact on Patient access to care, network adequacy, or member satisfaction; and

c. any internal assessment, analysis, or response by You regarding such Provider conduct or its consequences.

RESPONSE:

VI. Market and Competitive Conditions

REQUEST NO. 20: All documents and communications concerning any analysis of any Payers' Pricing for OON Services (including, without limitation, Yours) or pricing in the OON Payer Market generally, including, but not limited to: (a) actual, estimated, or projected changes in prices for OON Services over any period of time; (b) the relationship (if any) between prices for OON Services and prices for Healthcare Services paid by Medicare, Medicaid, or Tricare; (c) Providers' actual or anticipated reactions to particular Prices for OON Services or changes in prices for OON Services; (d) the ability, possibility, or past experience of Providers switching to providing other types of, or fewer, Healthcare Services in response to a change in prices for OON Services; and (e) analyses of price elasticity or cross-price elasticity between prices for OON Services and prices for other types of Healthcare Services.

RESPONSE:

REQUEST NO. 21: All documents, charts, presentations, analysis, studies, or reports sufficient to show Your market share in the OON Payer Market and the geographic scope of the services You offer related to this litigation, including any documents analyzing or reflecting the market share, competitive position, or market presence of those You consider to be competitors.

RESPONSE:

VII. Regulatory, Litigation, and Investigations

REQUEST NO. 22: All documents and communications concerning Zelis' OON Repricing Services, or OON Claims Pricing generally, that You have provided to any governmental entity, including materials submitted in response to formal or informal investigative requests by any committee, subcommittee, or member of the United States House of Representatives, United States

Senate, or any state legislative body, committee or legislator; any federal or state regulatory or investigative entity (such as the United States Department of Labor, Federal Trade Commission, or U.S. Department of Justice), a civil investigative demand, or a grand jury subpoena. This request includes any proffer materials and presentations, and any white papers submitted to any governmental entity.

RESPONSE:

REQUEST NO. 23: Documents sufficient to show Your policies and practices with respect to the retention and destruction of documents that were in effect at any time during the Relevant Period, including Your policies and practices with respect to the retention and destruction of data on Your employees' mobile devices.

RESPONSE:

REQUEST NO. 24: All non-privileged documents and communications related to internal or external inquiry or investigation requested by You (regardless of characterization such as non-adjudicative, cooperating, preliminary, informal, formal, complete, incomplete, open, closed, or final) where such inquiry or investigation concerned or concerns: (a) the policies, guidelines, procedures, or training materials concerning interaction with a competitor, whether or not an inquiry, investigation, or litigation was or is in effect; (b) any actual, potential, or suspected violation of the policies, guidelines, procedures, or training materials concerning interaction with a competitor with respect to OON Pricing, (c) this Litigation, (d) the relationship(s) between Zelis and Payers (including, but not limited to, You); (e) the relationship(s) between You and other Payers; and (f) the use of OON Repricing Services by You or any Payer.

RESPONSE:

VIII. Transparency in Coverage ("TIC") Rule

REQUEST NO. 25: All documents and communications concerning, reflecting, or containing information about Your compliance with the Transparency in Coverage ("TIC") Rule including, but not limited to, (a) Your interest in or ability to using the TIC Rule to help suppress payments for OON Healthcare Services; (b) how Your information disclosures, including, but not limited to, disclosures relating to OON claims, payments, and contractual information, made to Zelis, made by Zelis to Payers (including, but not limited to, You), made by Zelis to the public, made by Payers (including, but not limited to, You) to the public, or made by one Payer (including, but not limited to, You) to one or more other Payers (including, but not limited to, You), differ or exceed that as required by the TIC Rule.

RESPONSE:

IX. Claims Processing

REQUEST NO. 26: All documents and communications related to transaction information transmitted via any used or applied transaction technologies or transaction networks, including, but not limited to, the Electronic Information Exchange Infrastructure (or Electronic Data Interchange), for repriced claims for OON Services, including, without limitation, why or whether a Payer paid a claim or service line differently from the amount billed by the Provider.

RESPONSE:

X. Financial Documents

REQUEST NO. 27: Documents sufficient to show Your charges and spending on costs related to the use of each of Zelis' OON Repricing or other types of services performed by Zelis, including but not limited to: (a) the amount of money that You charged to each of Your Subscribers on a monthly, quarterly, and annual basis or any other form of fee charged to a Subscriber in exchange for setting, adjudicating, or negotiating prices for OON Services that are lower than billed charges for those OON Services; (b) the amount of money that You paid Zelis on a monthly, quarterly, and annual basis for Zelis' OON Repricing Services separated by service; (c) the amount of money that You paid Zelis on a monthly, quarterly, and annual basis for the use of any of Zelis' PPO networks; (d) any efforts by You or any other Payer to reduce or alter the amounts owed to Zelis, and the basis thereof; (e) access to any other Payor's claim information that is not Yours.

RESPONSE:

XI. Market and Competitive Conditions

REQUEST NO. 28: All documents and communications concerning, reflecting, or containing information about any threats, analysis, indications, suggestions, suspicions, rumors, conclusions, or considerations, whether made by You, Zelis, or any Payer, that Zelis had the power, information, capability, or resources to compete against You or other Payers as a PPO.

RESPONSE:

XII. Use of OON Repricing Services and Methods

REQUEST NO. 29: All documents and communications related to any Payer's use, consideration, or analysis of Zelis' OON Repricing Services, including:

a) any Payer's consideration, discussion, or analysis of the benefits, strengths, weaknesses, detriments, or concerns associated with using any of Zelis' OON Repricing Services or entering into an Agreement with Zelis to use any of Zelis' OON Repricing Services;

b) any pricing rules, methodologies, or procedures used by any Payer that utilizes any of Zelis' OON Repricing Services, including preference forms, any pricing or operational overrides, caps, benchmarks, elected percentiles, rules for the treatment of claims where Zelis' OON Repricing Services cannot achieve a specified target price for an OON Service, or rules for how claims are priced;

c) the underpayments or alleged savings generated by any Payer utilizing Zelis' OON Repricing Services, including any explanation of how those underpayments or alleged savings are calculated;

d) proposed or actual changes that Zelis suggested or advocated to any Payer, including, but not limited to, You, concerning how that Payer implemented or used any of Zelis' OON Repricing Services, including, but not limited to, caps, benchmarks, elected percentiles, and/or negotiation parameters;

e) any Payers' consideration, analysis, rejection, approval, or adoption of any change to how they implement or utilize any of Zelis' OON Repricing Services and the reasons for such a change;

f) any Payer's consideration or analysis of actually or potentially discontinuing, pausing, curtailing, or terminating the use of any of Zelis' OON Repricing Services;

g) any deviations or divergences from the prices that any of Zelis' OON Repricing Services set for an OON Service and the amount that a Payer paid to a Provider for

the OON Service, including the frequency of such deviations or divergences and the reasons for such deviations or divergences;

h) any group or meeting of two or more Payers to discuss their implementation of any of Zelis' OON Repricing Services or potential changes to any of Zelis' OON Repricing Services;

i) any consideration, analysis, study or discussion of any other Payer's use of Zelis' OON Repricing Services; and

j) internal discussions and communications regarding reports, market intelligence, and information about other Payers, including competitors, provided by Zelis and including any efforts by Zelis or You to de-anonymize this information.

k) the inclusion, substitution, exploitation, benchmarking, benefits provided from, analyses provided from, or consideration of the use of Zelis's OON Repricing technologies, services, products, schedules, tools, or methodologies by, within, or in relation to repricing provided by one or more rival Repricers or rival repricing services or products.

RESPONSE:

XIII. Information Sharing

REQUEST NO. 30: All documents and communications concerning the means, methods, or policies for setting the amounts for pricing of OON Services by or for any Payer other than You, including any effort by You to determine such information.

RESPONSE:

REQUEST NO. 31: All documents and communications related to the following aspects of any of Zelis' OON Repricing Services (including but not limited to RBP, ERS, QuickReprice, Payment Harmonization Index, etc.):

a) the data sources utilized by Zelis' OON Repricing Services, including whether that data is anonymized, whether that data is publicly available, the most granular level at which the respective OON Repricing Service displays data to users, and recency of the data that the respective OON Repricing Service displays to users;

b) the actual and claimed capabilities of each respective OON Repricing Service;

c) marketing materials for each respective OON Repricing Service;

d) meetings between Zelis and any Payer (including, but not limited to, You) concerning the use or potential use of any respective OON Repricing Service, including, but not limited to, any presentations, summaries, notes, and discussions concerning those meetings;

e) meetings between You and any other Payer concerning the use or potential use of any respective OON Repricing Service, including, but not limited to, any presentations, summaries, notes, transcripts, audio recordings, video recordings, audio/visual recordings, film, indicia of deletion, destruction, or relocation of those recordings or film, and discussions concerning those meetings;

f) implementation and implementation-related guidance for the respective OON Repricing Service; and

g) agreements concerning the use of the respective OON Repricing Service.

RESPONSE:

XIV. Customer Disclosures and Representations

REQUEST NO. 32: All disclosures, Health Plan information, and summary plan descriptions for Your health insurance coverage or administrative services, whether offered on a fully-insured basis or administrative services only basis, relating to: (a) Your use of any product or service provided by Zelis to price OON Services; (b) any fees charged by You to a Subscriber or Patient in exchange for setting, adjudicating, negotiating, or paying prices for OON Services that are lower than billed charges for those OON Services; and (c) for each Health Plan, including, but not limited to, any and all PPOs offered by You, any and all U.S. states, districts, and territories where such plans were offered, along with any changes in the locations of where such offerings were made available to consumers, patients, employers, and/or subscribers during the Relevant Period.

RESPONSE:

REQUEST NO. 33: All documents and communications regarding any reprimand, termination of employment, fine, suspension, disciplinary or other action taken by You towards any of Your Employees for violation or suspected violation of any of Your policies concerning interaction with a competitor.

RESPONSE:

Dated: May 26, 2026

Respectfully submitted,

/s/ Jason S. Hartley

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of May 2026, I electronically transmitted Plaintiffs' First Set of Requests for Production of Documents to the Non-Zelis Defendants to the following counsel of record:

Dated: May 26, 2026

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EXHIBIT G

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: MULTIPLAN HEALTH INSURANCE PROVIDER LITIGATION	Case No. 1:24-cv-6795 MDL No. 3121
This Document Relates To:	Hon. Matthew F. Kennelly
ALL ACTIONS	

DEFENDANTS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS

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INTRODUCTION

In opposing Defendants' motions to dismiss, Plaintiffs[1] repeatedly claimed that Defendants' arguments for dismissal should be rejected because there were many "factual disputes" that "show[ed] there are ample grounds for discovery." DAP Opposition to Defendants' Motion to Dismiss, ECF 351 ("DAP Opp.") at 6; *see also* Putative Class Pls.' Opposition to Defendants' Motion to Dismiss, ECF 352 ("Put. Class Opp.") at 19-20 (noting dispute regarding characterization of "direct evidence" of a conspiracy). The Court largely agreed, finding that Plaintiffs' allegations—assumed to be true at the pleading stage—were sufficient to allow the case forward, where the parties could test the various claims and defenses in discovery. *See, e.g.*, Opinion and Order on Defendants' Motion to Dismiss, ECF 428 ("MTD Order") at 26. Plaintiffs have since sought a staggering volume of discovery from Defendants—and Defendants have agreed to and are in the process of producing an enormous amount of such materials. Yet Plaintiffs continue to view discovery as largely a one-way street, taking the position that discovery from *their* files is largely not relevant to the claims and defenses at issue in this litigation. Indeed, despite months of negotiations and significant narrowing of Defendants' requests, Plaintiffs refuse to produce materials necessary to test the allegations in their complaints, including as to the very purported factual disputes *they* relied upon in opposing Defendants' motions to dismiss and what they themselves have demanded of Defendants (including, for example, by refusing to apply the same relevant time period).

Plaintiffs refuse to search for and produce materials that relate to critical issues bearing on Plaintiffs' claims: among other things, the plausibility of a conspiracy at all, antitrust injury,

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[1] Unless otherwise noted, "Plaintiffs" refers collectively to the Putative Class Plaintiffs and bellwether DAPs; where their respective positions differ, this motion refers to the "Putative Class Plaintiffs" and "DAPs" separately, as appropriate.

market definition, competitive effects/consumer harm, damages, and Defendants' affirmative defenses, including the statute of limitations and Plaintiffs' failure to mitigate. Over a more than four-month meet-and-confer process, Defendants have narrowed the Requests and proposed adjustments and limitations in light of reasonable explanations of burden. Yet Plaintiffs continue to object, relying largely on baseless relevance or unsupported burden objections reflecting a refusal to meaningfully participate in important aspects of discovery.

Defendants submit that Plaintiffs resist this discovery because it will fundamentally undermine their claims and the many spurious allegations in their complaints. Plaintiffs have no interest in producing evidence that (1) illustrates their practice of gouging out-of-network ("OON") patients and their employers/health plans with exorbitant OON bills and (2) supports the real-world truth that MultiPlan's services provide a critical competitive option in this area and *further* competition, ultimately protecting patients and playing a key role in creating a fair and more transparent OON pricing and healthcare system. But that is the role of discovery: Plaintiffs get to seek evidence from Defendants, and Defendants, in turn, get to seek evidence from Plaintiffs, so that the Court ultimately has the full set of facts before it, not just pleading-stage assertions it must assume to be true (however wrong in fact) or an incomplete and misleading record.

Although several other issues remain open and unresolved, Defendants move to compel production of seven critical areas of document discovery, as set forth below.

First, DAPs refuse to produce documents regarding the very health plan entities that they allege conspired with one another, and damaged the DAPs, through their use of MultiPlan's services. Instead, each DAP states it will produce documents concerning *only* the entities it strategically chose to name as defendants, which would drastically limit vital discovery. For example, of the thirteen DAPs who named only MultiPlan (including the multi-state hospital

systems Adventist Health System and CHS), this means not searching for or producing *any* documents or data about the seventeen other Defendants in this proceeding (the alleged co-conspirators), and in fact not searching for or producing documents or data about any of the 700+ managed care organizations and other payors alleged to be part of the "cartel" that caused their claimed damages. Discovery from DAPs on the full set of entities alleged to be part of DAPs' conspiracy is necessary to explore the timing, scope, size, and plausibility of the alleged conspiracy; Defendants' affirmative defenses (including statute of limitations); and of course, Plaintiffs' own damages claims.

Second, DAPs refuse to produce documents regarding patient billing, insisting that these materials are irrelevant. But such materials, which the Putative Class Plaintiffs have agreed to produce, including documents related to balance-billing, are highly probative evidence relevant to both competitive effects and consumer welfare/harm, as well as to showing why MultiPlan's competitive offerings (along with patient protections) exist and are independently attractive to payors. Indeed, a large body of law holds that providers lack antitrust injury where it is possible for them to balance bill patients. The Court noted that the "critical difference" between those cases and this one was that Plaintiffs had *alleged* that they were unable to balance bill patients, which was sufficient to survive a motion to dismiss. MTD Order at 10. But DAPs now argue, contrary to the case law and this Court's order, that these materials are irrelevant, foreclosing Defendants' ability to test Plaintiffs' allegations and show that they can, and do, freely balance bill.

Third, DAPs say this case is "about" OON services and, on that basis, refuse discovery regarding in-network ("INN") services and other means of payment, including self-pay. But this, too, goes directly to what DAPs argued (and the Court held) is a factual dispute about the contours of the relevant product market necessitating discovery. DAPs' allegations do not *limit* discovery

to DAPs' alleged narrow product market; they *require* discovery so that the contours of the alleged product market, through discovery of reasonable substitutes for OON services, can be proved or disproved. And, again, Putative Class Plaintiffs notably have agreed to produce discovery regarding this topic.

Fourth, Plaintiffs refuse to produce various ordinary-course financial documents, which go to issues including market definition, the plausibility of the alleged conspiracy, competitive effects, and damages. These documents are also directly implicated by Plaintiffs' allegations about their financial condition. Plaintiffs' theories rely heavily on their alleged reactions to the financial realities of the market, and this discovery is necessary to test those theories.

Fifth, Plaintiffs refuse to produce documents regarding how their billed charges are set, even though Plaintiffs contend that their billed charges (or FAIR Health benchmarks predicated on billed charges) are appropriate baselines from which to assess injury and damages. Discovery into how those billed charges are determined is necessary to evaluate, among other things, whether Plaintiffs would have been paid based on billed charges but-for the alleged conspiracy, or whether those charges are unreasonably inflated, gouging patients and payors such that payor-Defendants each had independent non-conspiratorial reasons for rejecting ever-ratcheting billed charges benchmarks and using MultiPlan's alternative cost-based OON recommendations.

Sixth, despite serving over a dozen subpoenas on third-party insurance brokers seeking materials and analyses sent to health plans, Plaintiffs refuse to produce their own documents relating to the health benefit plans that they offer their own employees. These materials are relevant to testing various allegations related to market definition, payment terms, billing conditions, and who ultimately determines payment parameters and approach for OON charges, including which tools (*e.g.*, OON cost containment tools) they use, request, and opt in/out of.

Seventh, while the Putative Class Plaintiffs agreed to do so, DAPs refuse to produce materials from 2013-2015, which they claim are irrelevant, despite the fact that they requested such materials from Defendants and argued that a "look-back" to the period prior to the alleged conspiracy is broadly necessary in antitrust cases to understand the pre-existing market dynamics. Defendants agreed to a two-year look-back period, and DAPs cannot refuse to produce discovery regarding market dynamics for the same time period, from DAPs' perspective.

* * *

Accordingly, Defendants request that the Court compel Plaintiffs to produce discovery of materials regarding (1) the health plan entities that Plaintiffs allege to be part of a conspiracy; (2) patient billing; (3) INN services and other substitutes for OON services; (4) financial performance; (5) billed charges; (6) employer-sponsored health plans; and (7) from January 1, 2013 through the present (the "Relevant Time Period"). The following table sets forth the plaintiff groups and requests at issue in each of these arguments.

Category of Requested Materials	Defendants' Third Set of Requests for Production – Request No.	Plaintiff(s) Subject to Mot. to Compel
Health Plan Entities and Defendants	Definition No. 7; Definition No. 10; Request Nos. 6, 10, 12, 13, 18-21, 25, 27, 34-37, 38-39, 45-47, 51, 54-56, 64, 67	DAPs[2]

[2] Excluding, for Request Nos. 12-13, 18-19, 51, 54-55, Adventist Health System Sunbelt Healthcare Corporation; Ascension Health; CHS/Community Health Systems, Inc.; Emergency Physician Services of New York, P.C.; Emergency Services of Oklahoma, P.C.; Southeastern Emergency Physicians, LLC; Texas Health Resources; Texas Medicine Resources, LLP; and The Methodist Hospital d/b/a Houston Methodist Hospital ("V&E DAPs"), given they agreed to produce materials responsive to these requests without limitation to Defendants named in their short-form complaints, and subject to providing pertinent search terms and custodians, which V&E DAPs have yet to do. Excluding, for Request No. 54-56, Bergen Surgical Specialists, PA; New Hampshire Detox and Rehab LLC dba Avenues Recovery Center At Dublin; AMS Pro Group LLC dba Wish Recovery; Avenue Recovery Center of Bucks LLC; LNA Realty Inc. dba Luxe Recovery; Sadeghi Center for Plastic Surgery; American Surgical Arts, P.C.; Kentuckiana Detox & Rehab Center LLC dba Avenues Recovery Center at Louisville; Tarzana Recovery Center;

Category of Requested Materials	Defendants' Third Set of Requests for Production – Request No.	Plaintiff(s) Subject to Mot. to Compel
Patient billing	6, 9, 11, 12,[3] 45-46, 51, 64	DAPs[4]
In-network services and other substitutes for OON services	6-7, 9-12, 14-16, 18-19, 21-23, 27, 29, 31, 33-35, 37-39, 41-43, 45-47, 50-52, 54-56, 57-58, 60, 67, 69	DAPs[5]
Financial performance	7-8, 24-25, 27-28, 60	All[6]
Billed charges	15-17	All
Employer-sponsored health plans	20, 21	All
Relevant Time Period	From January 1, 2013 through the present; all Requests	DAPs

Wellness Medical Services of Manhattan; The Meadowglade, LLC; Adventist Healthcare, Inc.; Cogent Healthcare of North Carolina, P.C.; Cogent Healthcare of Texas, P.A.; Hospitalist Medicine Physicians of New Mexico - Clovis, LLC; Hospitalist Medicine Physicians of Texas - Houston, PLLC; Sandusky Anesthesia LLC; Sound Physicians Emergency Medicine of South Carolina, LLC; Sound Physicians of Illinois LLC; South Sound Inpatient Physicians, PLLC; Tennessee Interventional and Imaging Associates PLLC; and Elite Surgical Specialists PC ("GNS DAPs"), given they agreed to search for and produce responsive, non-privileged materials in their possession, custody or control. Excluding, for Request Nos. 6, 45, 46, and 67, Center for Orthopaedics Care & Spine, LLC ("Center DAP"), given they agreed to produce responsive, non-privileged materials to the extent they exist, subject to agreement on search terms.

[3] Request No. 12 seeks structured data including, among other things, data fields related to amounts billed and collected from a patient (as well as fields relating to whether the facility at which the services were provided were in-network with the patient's Health Plan Entity, and whether or not provided in an emergency setting, which may implicate No Surprises Act-based billing).

[4] Both the V&E DAPs and GNS DAPs indicated they do not intend to withhold documents responsive to Request No. 9 based on their patient billing objections; however, they are standing on other objections raised to this Request.

[5] Excluding, for Request No. 18, V&E DAPs, given they confirmed they do not intend to withhold any responsive documents (subject to negotiations regarding search terms and custodians), and, for parts (a), (b), (c), and (d) of Request No. 18, Advanced Spinal Care & Associates LLC d/b/a The Advanced Spine Center, LLC, and Heritage Surgical Group, LLC ("McKool DAPs"), given they agreed to produce non-privileged materials responsive to these portions of the request, to the extent they exist (also subject to an agreement on search terms and custodians).

[6] Excluding, for Request No. 25, Center DAP, and the GNS DAPs, given they agreed to produce , non-privileged materials responsive to these requests.

LEGAL STANDARD

In ruling on motions to compel discovery under Rule 37(a), "courts have consistently adopted a liberal interpretation of the discovery rules." *Charvat v. Valente*, 82 F. Supp. 3d 713, 716 (N.D. Ill. 2015). Plaintiffs have no basis to withhold plainly relevant materials that are in their possession, custody or control. *See SR Int'l Bus. Ins. Co. v. World Trade Ctr. Props., Ltd.*, No. 02 C 8133, 2003 WL 145419, at *3 (N.D. Ill. Jan. 21, 2003) (Kennelly, J.) (citing *Oppenheimer Fund Inc. v. Sanders*, 437 U.S. 340, 351 (1978)).

When objecting to burden, a party must make a "specific showing of what that burden is." *Green Light Nat'l, LLC v. Kent*, No. 17 C 6370, 2018 WL 11436766, at *3 (N.D. Ill. July 27, 2018). Failure to demonstrate burden also bears on the question of proportionality. *See Craigville Tel. Co. v. T-Mobile USA, Inc.*, No. 19 CV 7190, 2022 WL 1499908, at *2 (N.D. Ill. May 12, 2022) (overruling burden objections where party did not provide "any detail about the nature or scope of the asserted burden, which provides the Court with no context from which to determine whether the alleged burden is undue or disproportional for purposes of th[e] case.").

ARGUMENT

A. DAPs Should Be Compelled to Produce Discovery Regarding All Defendants and Health Plan Entities

Discovery regarding the Defendants and Health Plan Entities that are allegedly involved in DAPs' alleged conspiracy is clearly relevant. *See* Ex. 1, Defs.' Third Set of Requests for Production (the "Request(s)") at Definition Nos. 7, 10; *see also, e.g.*, Request Nos. 18-21.[7] But DAPs re-define "Health Plan Entities" and "Defendants" as used in Defendants' Requests to mean that each DAP would only have to produce materials relating to the particular entities they chose

[7] *See also,* Ex. 1 at Request Nos. 6, 10, 12, 13, 25, 27, 34-37, 38-39, 45-47, 51, 54-56, 64, 67.

to name as defendants in their own short-form complaints—such that each DAP would only produce materials as to a few Defendants, or in some instances, *just MultiPlan*—and no alleged co-conspirator payors at all.[8]

DAPs allege a conspiracy involving hundreds of Health Plan Entities, plus MultiPlan, *see, e.g.*, Consolidated Master Direct Action Pls' Compl., ECF 182 ("DAPC"), ¶¶ 7, 18-19. Despite the breadth of DAPs' claims, Defendants' Requests are limited. Defendants do not seek *all* communications with *any* Health Plan Entity; rather, Defendants ask that Plaintiffs produce clearly relevant materials, such as contracts pertaining to billing Health Plan Entities for OON services (Request No. 6), contracts and documents reflecting agreements between DAPs and any Health Plan Entity regarding financial arrangements, payment responsibility, payment terms or conditions for OON services (Request No. 10), and communications and documents related to the use of consultants regarding Reimbursement Rates that providers receive from Health Plan Entities; DAPs' relationships with Health Plan Entities; attempts to negotiate with Health Plan Entities; whether they should contract with any Health Plan Entity; and Plaintiffs' perceptions regarding Health Plan Entities' business practices (Request No. 18).

DAPs' limitation to producing materials only as to the specific Health Plan Entity they elected to sue (if they named any payor defendant at all) would bar Defendants' access to these relevant materials. *First*, arbitrarily limiting the Health Plan Entities for which Defendants may obtain discovery will hinder Defendants' ability to test DAPs' extremely broad alleged conspiracy, which each DAP contends implicates hundreds of co-conspirators. *Second*, fulsome discovery as

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[8] *See, e.g.*, Ex. 2, Bergen Surgical Specialists' Resps. and Objs. to Defs' Third Set of Requests for Production; Ex. 3, CHS/Community Health Systems' Resps. and Objs. to Defs' Third Set of Requests for Production. These are substantively representative of all DAPs' responses. *See also* Ex. 4, Putative Class Pls.' Resps. and Objs. to Defs' Third Set of Requests for Production.

to all Health Plan Entities *alleged by Plaintiffs* to be part of the alleged conspiracy is relevant to proving affirmative defenses (including but not limited to statute of limitations). *Finally*, receiving requested materials relating to all Health Plan Entities implicated in the alleged conspiracy—such as contracts with the Health Plan Entities that provide or administer health benefits for DAPs' own employees, and related correspondence that also concerns MultiPlan, allowed amounts, reimbursement limits, or "shared savings" opportunities for OON Healthcare Goods and Services, *see* Ex. 1 at Request Nos. 20-21—will allow Defendants to assess and refute DAPs' damages claims—which seek *joint and several* liability, *not* limited to only the specific Defendant(s) a particular DAP elected to sue.

For example, by limiting productions in response to Request No. 34 to only materials about the Defendants named in their respective short-form complaints, DAPs functionally offer to produce only communications related to attempted negotiations regarding reimbursement rates between them and a subset or single one of the entities they claim are involved in the alleged conspiracy in their lawsuit. As another example, Request No. 55 seeks documents discussing or otherwise relating to Defendants' uses of MultiPlan's services or products. And because certain DAPs name only MultiPlan, these DAPs functionally offer to produce only communications related to *MultiPlan*'s use of MultiPlan's products or services and, thus, otherwise refuse produce documents related to any alleged co-conspirator's use, which are plainly relevant and proportional to the case DAPs each elected to pursue.[9]

DAPs' arguments for withholding these documents are meritless. First, DAPs' objection

[9] V&E DAPs agreed to produce documents responsive to Request Nos. 54 and 55, but maintain their objections as to the definition of Health Plan Entities and Defendants for all other applicable Requests. All other DAPs maintain their objection to these requests, refusing to construe "Defendants" as including any defendant other than those each DAP sued.

to this discovery is based largely on burden assertions that they must, but do not, substantiate. *See e.g.*, *Craigville*, 2022 WL 1499908, at *2 (overruling burden objections where the producing party failed to provide "detail about the nature or scope of the asserted burden," and thus no context "from which to determine whether the alleged burden is undue or disproportional for purposes of th[e] case."). And even if the Requests were burdensome, DAPs' burden arguments cannot be dissociated from the question of proportionality. Because Defendants' requests for materials relating to the alleged conspirators are central to resolving the issues in this case, the (unstated) burden remains proportional to the needs of the case and is not undue. *See, e.g.*, *Life Spine, Inc. v. Aegis Spine, Inc.*, No. 19 CV 7092, 2021 WL 5415155, at *5 (N.D. Ill. Nov. 19, 2021). DAPs allege a far-reaching conspiracy naming both Defendants and co-conspirators, and now Defendants have a right to discovery of materials regarding those allegedly involved in the conspiracy. *See, e.g.*, Ex. 1 at Request No. 18.

Next, DAPs attempt to justify their limited definition of Health Plan Entities by suggesting that the limitation would effectively "mirror" the bounds of certain Defendants' productions to certain DAPs—some of which are producing materials regarding only the healthcare providers who sued them. But DAPs have no need for these Defendants' communications with every other health care provider they interact with (indeed, DAPs did not seek to compel such materials). The pertinent comparison for DAPs' "mirroring" argument is that Defendants *are* producing communications with and about their alleged co-conspirators. Yet DAPs refuse to produce materials relating to these entities, thus withholding highly relevant materials.[10]

[10] *See, e.g.*, Ex. 1 at Request No. 27 (Plaintiffs' revenue recognition policies and documents showing annual write-offs due to payment or non-payment by Health Plan Entities); Request No. 34 (communications showing attempted negotiations between Plaintiffs and Health Plan Entities regarding Reimbursement Rates).

DAPs may not refuse discovery pertaining to the full scope of DAPs' alleged conspiracy and their damages claims.[11] The Court should compel DAPs to produce materials relating to Health Plan Entities and Defendants for each applicable Request, as defined in the Requests.

B. DAPs Should Be Compelled to Produce Patient Billing Discovery

While Putative Class Plaintiffs have agreed to produce discovery related to "balance billing"—a practice in which providers seek payment from their patients for the balance of OON charges not covered by a patient's health plan—DAPs generally refuse to do so. These materials are plainly relevant, as DAPs' own complaint illustrates. *See* DAPC ¶¶ 206-07, 338-41, 525, 556-57, 720. To survive dismissal on the pleadings, DAPs argued that, as a factual matter, Plaintiffs are *unable* to balance bill patients, and thus can only obtain whatever reimbursement Defendants allegedly decide to pay. *See* DAP Opp. at 33-35. The DAPs put it succinctly in Paragraph 340 of their complaint, ECF 182:

> That is why providers do not balance bill patients for the difference between the payments received from a payor for out-of-network goods and services and the provider's billed charges. They are prohibited by law and/or the Cartel itself from doing so. Thus, as Leif Murphy, the President and CEO of TeamHealth, explained in an April 19, 2019 email: "We don't balance bill[.]"

In denying Defendants' motion, the Court expressly relied on Plaintiffs' allegations that they simply *could not* and *do not* balance bill, concluding that alleged balance billing constraints were a "critical difference" setting the providers in this case apart from other cases where courts

[11] DAPs recently made a "compromise" offer that (1) would have limited each DAPs' structured data productions to claims pertaining to the Defendants each DAP sued (and thus, it seems, no claims data at all for DAPs who sued MultiPlan only) conditioned on an agreement to not contest any analysis concerning such data on the grounds that it is so limited; and (2) offered to produce documents relating to Defendants (but not all Health Plan Entities) as to a handful of Requests in exchange for Defendants foregoing all other discovery related to the alleged co-conspirators. Defendants declined, as this proposal blocks plainly discoverable information and inhibits Defendants' ability to engage in important expert analyses.

concluded providers lacked antitrust standing.[12]

Now that we are past the stage where the Court must accept DAPs' allegations as true, Defendants intend to show the Court that DAPs' allegations that "providers do not balance bill patients for the difference between the payments received from a payor for out-of-network goods and services and the provider's billed charges" and "don't balance bill" are just not true.

To that end, Defendants requested a targeted set of materials from DAPs about the sources of payment to providers for their healthcare goods and services—including instances in which patients pay directly either up-front or for the difference between what their insurer paid on the member's behalf and the billed charge. For example, Defendants seek contracts with patients pertaining to billing for OON goods and services and agreements with entities who bill or recruit patients for OON services (Request No. 6); manuals, policies, and procedures relating to balance billing (Request No. 11); and any balance bills and notices sent to patients for claims that DAPs allege were underpaid due to the alleged conspiracy (Request No. 51). DAPs refuse to produce these and other materials related to balance billing. In doing so, DAPs have taken the remarkable position that balance-billing evidence is irrelevant. This is wrong for at least three reasons.

First, to prove antitrust standing (as they must), DAPs must show that they were directly harmed by Defendants' allegedly too-low reimbursement rates for OON services. If the record, however, shows that DAPs were able to balance-bill their patients to obtain their *full* billed charges directly from patients (instead of from Defendants), DAPs will be unable to show the kind of injury necessary to establish antitrust standing. MTD Order at 11.

[12] MTD Order at 10 ("[T]he providers allege that when MultiPlan negotiates on behalf of payors, it conditions payments on a provider's agreement to not 'balance bill patients for the unpaid portions of their claims.' . . . This is a critical difference from the cases the defendants cite—the providers in this case allege they *cannot* seek the remaining balance from patients if they accept a third-party payor's payments through MultiPlan.") (citing DAPC ¶ 339).

Second, DAPs' balance-billing practices—which can be financially devastating for patients—are a critical component of the healthcare competitive landscape underlying this litigation. It is highly probative evidence relevant to both consumer welfare/competitive harm and to Defendants' ability to show why payors *independently* choose MultiPlan's services, thus undercutting DAPs' spurious allegations of an agreement among hundreds of payors (whoever used MultiPlan's services, for any period of time) to form a "cartel." This is so because certain of MultiPlan's services expressly provide protection for patients: for instance, for MultiPlan's financial negotiation services, following a provider's reimbursement appeal, should the provider and MultiPlan's negotiators agree on a price for a particular OON charge, the provider is prohibited from billing patients for the "balance." DAPs' documents related to OON balance billing will help the factfinder understand why MultiPlan's competitive offering exists and why it is independently attractive to payors who seek to protect their members from such practices.

Third, according to DAPs, "balance billing" evidence is impermissible "downstream discovery" into whether DAPs were able to "pass on" their losses to patients. Not so. Unlike traditional manufacturing "pass on" cases, providers in health care markets often *directly* receive payments from several different sources for their services, including from balance billing—often pursuant to agreements between patients and providers, and patients and payors.[13] Thus, providers are routinely *directly* reimbursed by *both* patients and Defendant-payors. This is an entirely different question from whether DAPs simply "pass on" an overcharge to a downstream purchaser,

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[13] *See* MultiPlan Reply in Support of Mot. to Dismiss, ECF 388, at 4-5 (arguing balance billing is not a "'pass through' defense," but a "threshold standing issue regarding the nature of Plaintiffs' claimed injury.").

and one that does not implicate *Illinois Brick* or *Hanover Shoe*.[14]

None of the cases cited by DAPs during the meet-and-confer process suggest otherwise. For instance, *In re Delta Dental Antitrust Litigation* involved non-party subpoenas to several banks seeking information on plaintiffs' PPP, SBA, and other COVID-19-related loans—it had nothing to do with balance billing in healthcare markets. No. 1:19-cv-06734, ECF No. 475, at 3-4 (N.D. Ill. 2023). And DAPs' remaining cases all involved true "downstream" discovery not sought here. *See In re Plasma-Derivative Protein Therapies Antitrust Litig.*, No. 09 C 7666, 2012 WL 1533221, at *1 (N.D. Ill. Apr. 27, 2012) (objecting to production because the request "pertains to 'downstream information,'" "reflecting a purchaser's use or sale of a product *after* the purchase" (emphasis added)); *In re Broiler Chicken Antitrust Litig.*, No. 1:16-CV-08637, 2018 WL 999899, at *1 (N.D. Ill. Feb. 21, 2018) (dispute concerning direct purchasers' "downstream sales and market information," including "interactions with customers"); *In re Vitamins Antitrust Litig.*, 198 F.R.D. 296, 298 (D.D.C. 2000) (seeking individualized downstream data regarding the direct purchasers' individualized "use, manufacture, sale, marketing, distribution, or supply of vitamins or vitamin-containing products").[15]

Moreover, DAPs also allege state antitrust law claims, for which discovery is not limited by *Hanover Shoe* and *Illinois Brick*. *See California v. ARC Am. Corp.*, 490 U.S. 93, 103 (1989).[16]

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[14] Indeed, the Court did not conclude that Defendants' balance billing arguments were "legally irrelevant" under this line of cases, declining to adopt DAPs' argument in opposition to Defendants' motion to dismiss. *See* DAP Opp. at 33.

[15] In any event, even cases cited by DAPs acknowledge that "there is no absolute rule barring downstream discovery in private antitrust cases," *Broiler Chicken*, 2018 WL 999899, at *2, and that "*Hanover Shoe* and its progeny do not render irrelevant [downstream discovery] because defendants are not seeking discovery of this data in order to assert a pass-on defense," *Vitamins*, 198 F.R.D. at 299.

[16] In that vein, several states that have repealed *Illinois Brick*'s direct purchaser rule permit a pass-on defense to state antitrust claims. *See, e.g.*, *In re Surescripts Antitrust Litig.*, No. 19 C 6627, 2024 WL 1195571, at *11 (N.D. Ill. Mar. 20, 2024) (permitting discovery "relevant to a pass-on

DAPs also assert non-antitrust claims that are not subject to the *Hanover Shoe* or *Illinois Brick* holdings at all. *See*, *e.g.*, *In re Flonase Antitrust Litig.*, 692 F. Supp. 2d 524, 545 (E.D. Pa. 2010) (finding Massachusetts state law does not bar indirect purchaser standing under its consumer protection act). DAPs cannot refuse discovery on balance billing with respect to DAPs' state law claims, regardless of DAPs' (incorrect) arguments relating to their federal antitrust claim.

DAPs' "compromise" offer to produce evidence of balance billing only where a MultiPlan OON "repricing" service first set the amount offered for reimbursement is insufficient. DAPs' proposed limitation would omit documents showing that providers successfully balance-billed patients for OON claims reimbursed without use of any MultiPlan products or services for some or all of the at-issue claims. These documents are also relevant to at least one of Defendants' procompetitive justifications, mentioned above, that payors' use of MultiPlan results in reduced healthcare expenses for patients.

For these reasons, DAPs cannot refuse discovery of documents regarding balance billing, including documents responsive to Request Nos. 6, 9, 11, 12, 45-46, 51, and 64 concerning instances in which DAPs may have balance billed patients for claims, including claims not the subject of a pricing recommendation from MultiPlan.

C. DAPs Should Be Compelled to Produce Discovery Regarding Substitutes for OON Services, Including INN Services and Self-Pay

The parties have a fundamental dispute as to whether the relevant product market here is (as Plaintiffs contend) limited to medical services provided on an OON basis, or whether (as Defendants contend) the relevant market also includes services provided on an INN or other basis.

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defense, which Michigan law permits"); *In re Niaspin Antitrust Litig.*, 464 F. Supp. 3d 678, 710-11 (E.D. Pa. 2020) (explaining that court compelled production of downstream discovery after finding that pass-on defense "relates to the calculation of damages"); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2012 WL 6709621 (N.D. Cal. Dec. 26, 2012) (pass-on defense permitted under the laws of California, New York, Michigan, Illinois, and Minnesota).

DAPs argued at the pleading stage that Defendants' position is "precisely the sort of disputed factual criticism that is improper to adjudicate on a motion to dismiss." DAP Opp. at 27-28; *see also* Put. Class Opp. at 39 ("Defendants' factual disagreement with Plaintiffs' market allegations . . . is not a basis for dismissal on the pleadings."). And the Court referred to Defendants' contentions about "the scope and type of services covered by the plaintiffs' alleged nationwide market for [OON] healthcare services" as "fair concerns," though premature at the pleadings stage. *See* MTD Order at 26. ("To be clear, the Court is not finding that the defendants' critiques of the relevant market are baseless . . . the bulk of these criticisms amount to factually disputing the plaintiffs' allegations, which are disputes the Court may not resolve at this stage of review."). Yet DAPs now refuse to produce documents related to their INN and self-pay arrangements because, they say, this case is "about" OON reimbursements. But their say-so does not limit discovery, particularly where, as here, the scope of the relevant antitrust market is contested. *See, e.g.*, *Kleen Prods. LLC v. Packaging Corp. of Am.*, No. 10C5711, 2013 WL 120240, at *9 (N.D. Ill. Jan. 9, 2013) ("[C]ourts generally take an expansive view of discovery in antitrust cases.").

Now that this case is past the motion-to-dismiss stage, neither Defendants (nor the Court) are required to accept DAPs' allegations about the relevant market. Rather, DAPs are required to produce discovery bearing on whether their own assertions are true. As this Court highlighted in its ruling on the Motion to Dismiss, DAPs *must* define an appropriate antitrust market to prove their antitrust claims, and discovery is needed to test their allegations. *See* MTD Order at 16 (citing *Agnew v. Nat'l Collegiate Athletic Ass'n*, 683 F.3d 328, 337 (7th Cir. 2012)) ("The 'entire point' of [antitrust law] is 'to protect competition in the commercial arena.'"); *see also id.* at 337 ("'[W]ithout a commercial market, the goals of [antitrust law] have no place.'"); *American Needle v. New Orleans*, No. 04 C 7806, 2012 WL 4327610, at *2 (N.D. Ill. Sept. 21, 2012) (granting

motion to compel "discovery [that] may aid in defining the relevant markets.").

Defendants offered to forego certain Requests seeking INN materials if, in exchange, DAPs agreed to produce INN materials responsive to certain other Requests[17] seeking ordinary-course documents, correspondence, and structured data. The compromise Requests seek, for example, manuals, policies, procedures related to balance billing, fee collections, and discounts offered to patients (Request No. 11); executed contracts governing the relationship between a DAP and any Health Plan Entity, or documents sufficient to show the Provider Networks in which they participated and the time period of that participation, as well as the different payment arrangements that a DAP accepted for Healthcare Goods or Services (Request No. 19). But DAPs rejected this compromise, refusing plainly relevant discovery—despite telling the Court at the motion-to-dismiss stage that disputes over the relevant market should be submitted to fact discovery.

DAPs' materials reflecting their own assessments of interchangeability (or lack thereof) between services offered to patients for payment through commercial health insurance or via other means, including self-pay, are relevant to the alleged antitrust market. If DAPs search for and produce only documents related to OON services (even if they produce some documents that also incidentally mention INN services), Defendants will be denied pertinent discovery showing (among other things): (1) substitution between OON services and services, such as INN and self-pay; (2) practical indicia of the contours of the relevant market (*i.e.*, ordinary-course discussions of how healthcare providers view these services as distinct or interrelated); (3) provider behavior

[17] Specifically, Defendants proposed, subject to agreement on appropriate search terms and custodians, if DAPs agreed to produce in-network or self-pay documents responsive to Request Nos. 11-19, 27-28, 33-35, 38-43, 47, 50-52, 54-55, 57-59, 63, 67, and 69, Defendants would withdraw their Requests for documents solely related to those services that are responsive to the balance of requests where Plaintiffs asserted an in-network relevance objection (while maintaining that all Requests seeking such information are proper).

that would occur in the "but-for" world; (4) competitive alternatives to accepting repriced OON payments; and (5) the plausibility of an alleged conspiracy solely focused on OON claims.

By objecting to Defendants' requests as irrelevant, Plaintiffs contradict their own position that "the factual criticisms Defendants raise[d]" as to the relevant market "are exactly the sort of factual disputes that should be resolved at summary judgment or trial 'on a case-by-case basis, focusing on the particular facts disclosed by the record.'" DAP Opp. at 28 (citing *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 467 (1992)). DAPs should be compelled to follow through and produce this discovery in response to Request Nos. 6-7, 9-12, 14-16, 18-19, 21-23, 27, 29, 31, 33-35, 37-39, 41-43, 45-47, 50-52, 54-56, 57-58, 60, 67, 69.

D. Plaintiffs Should Be Compelled to Produce Discovery Regarding Their Financial Performance

Discovery regarding Plaintiffs' financial performance is relevant for at least five reasons, and the Requests at issue (Request Nos. 7-8, 24-25, 27-28, and 60) seek ordinary-course financial materials that impose a minimal burden on Plaintiffs.

First, discovery regarding Plaintiffs' financial performance is relevant to testing and rebutting Plaintiffs' product market allegations, including their claim that "[OON] services are not reasonably interchangeable with" and should not include "[INN] services due to their substantially different rates." *See* MTD Order at 25; *see also* DAP Opp. at 27-28 (arguing that whether INN services are included in the relevant market was "precisely the sort of disputed factual criticism that is improper to adjudicate on a motion to dismiss."); *see also* Put. Class Pls. Opp. at 39.

Indeed, Plaintiffs' interchangeability theory can be tested by empirical data concerning Plaintiffs' responses to alleged pricing and reimbursement differentials between OON and INN services—information that is reflected in Plaintiffs' own financial and utilization data. Discovery of Plaintiffs' revenue and collections data (including claims volume, payor mix, and margins for

OON *and* INN services by service line and measured over time) is important to assess whether OON and INN payment sources are substitutable for Plaintiffs (and whether they have practical alternatives in lieu of continuing to provide services to payors using MultiPlan). Information about both OON and INN financial performance is relevant to evaluating whether Plaintiffs modify contracting behavior or experience differences in claim volume and profitability between OON and INN channels when rates priced by MultiPlan and/or payors change—*i.e.,* the very indicia Plaintiffs place at issue. Targeted financial discovery is therefore warranted to develop the factual record on interchangeability and the rate-differential theory on which Plaintiffs' market definition depends. *In re Urethane Antitrust Litig.,* No. 04-1616-JWL, 2011 WL 1327988, at *5 (D. Kan. Apr. 5, 2011) (holding discovery into antitrust plaintiff's financials is relevant to show defendants did not engage in anticompetitive conduct).

Defendants' Request Nos. 7-8, 24-25, 27-28, and 60 are narrowly tailored to discover relevant evidence on these issues. Request No. 24 seeks financial statements and balance sheets, including line-item details for all revenue, expenses, and owner distributions. Request Nos. 7-8 seek documents sufficient to show any payment or remuneration Plaintiffs received from facilities where Plaintiffs rendered OON services and agreements related to those services (which supplements revenue information sought through Request No. 24). Request No. 25 seeks revenue and revenue cycle management reports and similar documents regarding Plaintiffs' obtaining payments from patients or Health Plan Entities for OON services. Request No. 27 seeks policies and other ordinary-course documents relating to revenue recognition. Request No. 28 seeks documents sufficient to show Plaintiffs' monthly profits, losses, gross income, and net income as a whole and broken out by INN and OON services. And Request No. 60 seeks documents discussing the reasons for any decrease, if any, in Plaintiffs' financial or operational performance.

Second, Plaintiffs' financial information is relevant to Defendants' argument that Plaintiffs' alleged conspiracy is not economically plausible because it relies on the premise that providers would have refused to treat patients whose payors used MultiPlan absent a conspiracy among those payors and MultiPlan. *See, e.g.,* CCAC ¶ 242; DAPC ¶ 303. Data showing the revenues (Request Nos. 7-8, 24-25, 27), costs (Request No. 24), expenses (Request No. 60), and volumes and margins (Request No. 28) associated with treating MultiPlan-"repriced" patients, and Plaintiffs' available alternatives, including INN reimbursement and other payor sources, is relevant to testing whether Plaintiffs' "but-for" world makes economic sense. If these ordinary-course financials show that providers still had strong economic incentives to treat patients other than on an OON basis (e.g., because the services remained profitable or helped cover fixed costs, or represented material volume they could not readily replace), that would render Plaintiffs' alleged refusal-to-deal premise implausible and undermine the inference of an alleged conspiracy.[18]

Third, Plaintiffs allege that Defendants' conduct is unlawful under the rule of reason, *see* CCAC ¶ 340; DAPC ¶ 514, which requires Plaintiffs to prove harm to competition—typically through evidence of substantial anticompetitive effects that manifest as harm to consumers. *See Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018). In a monopsony case, that showing cannot rest on the fact of lower reimbursement alone; Plaintiffs must prove that alleged suppression of OON reimbursement translated into competitive harm, such as reduced output. *See Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549 U.S. 312, 323–25 (2007). Plaintiffs' financial performance and related utilization data is therefore relevant to test whether the challenged conduct (1) actually caused any such effects *that Plaintiffs themselves allege* (*e.g.*, whether and when

[18] Furthermore, these same financial metrics will show whether providers can and do substitute between OON and INN channels in response to rate differentials. *See* MTD Order at 25.

Plaintiffs reduced service lines, capacity, staffing, hours, or investment, or exited particular markets; or whether and when they had to accept reduced revenues in order to maintain these service lines), *see, e.g.*, DAPC ¶¶ 103, 522, 587, 590, 593, and (2) whether any such changes correlate with and are attributable to MultiPlan priced rates rather than other economic factors (e.g., payor mix, labor costs, utilization trends, or contracting choices).

Even if Plaintiffs could make that showing—and they cannot—the burden then shifts to Defendants to substantiate procompetitive justifications. *See Ohio*, 585 U.S. at 541-42. Plaintiffs' financial information bears on Defendants' burden and to test Plaintiffs' likely responses. For example, Plaintiffs' revenues, costs, margins, and bad-debt/write-offs (Request Nos. 24-25, 27, 60) are directly relevant to whether MultiPlan's offerings constrain unilateral full billed charges, reduce disputes and administrative costs, increase price predictability, and lower total costs borne by plans and consumers while maintaining access to care. *See In re Urethane Antitrust Litig.*, No. 04-MD-1616-JWL, 2010 WL 10876331, at *4-6 (D. Kan. Jan 20, 2010) (finding that, even under *Hanover Shoe*, financial data "is relevant to determining whether a non-collusive explanation exists for defendants' conduct").

Fourth, Plaintiffs' financial information is relevant to assessing damages in connection with providers' decisions to treat OON members.[19] Simply comparing a plan's reimbursement

[19] During the meet-and-confer process, DAPs cited *In re Delta Dental Antitrust Litigation* for the proposition that Plaintiffs can refuse financial information discovery because an alleged conspiracy to depress payments does not require Plaintiffs "to prove that the alleged price-fixing has any specific impact on their individual bottom lines." No. 1:19-cv-06734, ECF No. 475, at 4-5 (N.D. Ill. 2023). Aside from ignoring Defendants' market-definition and other non-damages related arguments, Plaintiffs misconstrue the *In re Delta Dental* order, ignoring that those plaintiffs had, in fact, already agreed to produce financial information. *Id.* at 1-2. Moreover, the limited nature of the *Delta Dental* ruling concerned plaintiffs' motion for a protective order regarding subpoenas to *non-party* banks seeking *additional* financial information related to COVID-19 era loans that were served after the substantial completion of discovery. *Id.* at 7-8.

rate to a provider's billed charges or to a hypothesized "but-for" rate does not capture the relevant economics where many provider costs are fixed or semi-fixed. Instead, the relevant question is the incremental profitability of treating additional OON patients (Request No. 28). Financial (and utilization) data is relevant to determining whether providers would have experienced unused capacity absent OON patients (*e.g.*, empty beds, available staff time, or underutilized facilities), or whether treating those OON patients generated a positive contribution margin even at the challenged rates (Request Nos. 7-8, 24-25, 27). Plaintiffs' financial performance data is directly relevant to evaluating damages.[20]

Fifth, DAPs' complaint puts facts relating to their financial performance squarely at issue by repeatedly discussing their financial condition in connection with the alleged conduct. *See, e.g.,* DAPC ¶ 582 (alleging MultiPlan's recommended reimbursement amounts "are known to be unprofitable for providers and, if sustained, can drive providers out of business"); *id.* ¶ 587 (alleging cuts to physician salaries and benefits), ¶ 668. In lieu of agreeing to produce ordinary-course materials about their financial performance, some DAPs recently indicated they may rescind their request for certain lost profit damages to avoid this discovery. That does not obviate the numerous other allegations throughout their complaint, nor Defendants' affirmative defenses, which provide ample grounds for this discovery.

Finally, Defendants' financial performance requests are proportional and not burdensome. The Requests seek ordinary-course financial records that most, if not all, businesses routinely

[20] Plaintiffs' financial data (in conjunction with utilization data) is also integral to testing whether MultiPlan's pricing practices affected patient volume and capacity utilization in ways that offset or mitigated any alleged underpayment—*e.g.*, if the challenged practices facilitated incremental OON utilization that would otherwise have been lost (or priced out) at non-MultiPlan amounts then providers may have experienced reduced or no net economic harm for some services, time periods, or facilities.

maintain and can readily export from accounting systems. *See, e.g.*, *Exec. Mgmt. Servs., Inc. v. Fifth Third Bank*, No. 1:13-cv-00582-WTL-MJD, 2014 WL 4680900, at *3 (S.D. Ind. Sept. 22, 2014) (no undue burden to produce plaintiffs' financial statements as they "should be on file and readily accessible"). Indeed, Plaintiffs' own correspondence largely does not assert burden, focusing instead on relevance, and no Plaintiff has substantiated its objections as to why the requested discovery would be unduly burdensome.

Accordingly, the Court should compel Plaintiffs to produce documents responsive to Request Nos. 7-8, 24-25, 27-28, and 60.[21]

E. Plaintiffs Should Be Compelled to Produce Discovery Related to How They Set Billed Charges

Plaintiffs likewise cannot refuse to produce materials relating to their billed charges, including materials reflecting how those prices are determined and assessed (Request Nos. 15-17). These materials are highly relevant to, among other things, (1) Plaintiffs' alleged injury and damages; (2) whether MultiPlan solutions served payor-Defendants' independent self-interests, undercutting Plaintiffs' conspiracy allegations; and (3) MultiPlan's procompetitive benefits.

DAPs seek damages based on "underpayments" of their billed charges. *See* DAPC ¶ 113 (calculating "underpayment" based on billed amount); *id.* ¶ 424. Similarly, Putative Class Plaintiffs have indicated that they may use FAIR Health benchmarks—which are based on provider billed charges—to calculate damages. *See e.g.* Consolidated Class Action Complaint, ECF No. 172 ("CCAC"), ¶¶ 15, 106-110; DAPC ¶ 217 & n.12. Plaintiffs cannot seek many billions of dollars in damages based on billed charges while providing no document discovery into

[21] Following the January 28 meet and confer, Defendants' asked the McKool DAPs for their position on Requests No. 24-25 by February 11, but as of the date of this filing have not received a response and are interpreting that to mean they refuse to produce responsive documents.

how those charges are set, and how Plaintiffs view them in the ordinary course of business.

Plaintiffs have generally agreed to provide "chargemaster" documents listing their billed charges—but that is only part of the story. A chargemaster is just a list of charges for a provider's services. Defendants need discovery into where those charges came from, which is relevant to whether those charges are a fair price that any Defendant would have agreed to reimburse but for the alleged conspiracy. If, for example, Plaintiffs pulled their charges out of thin air, inflated them arbitrarily every year, or otherwise set them without reference to Plaintiffs' actual costs or other market-based factors, that would be probative of whether Defendants—or any of their competitors—would have agreed to pay those charges (or FAIR Health benchmarks based on those charges) for all services in the "but-for" world, and whether Defendants had independent, non-conspiratorial incentives to turn to MultiPlan's cost-based pricing recommendation services. Further, discovery may reveal that Plaintiffs set their billed charges without any expectation that those charges will be paid in full; instead, Plaintiffs set inflated charges as a starting point for negotiations with payors and patients. If Plaintiffs, as market participants, do not expect anyone to pay their billed charges, that is probative of whether Defendants would ever have paid those charges in the "but-for" world or prices based on FAIR Health benchmarks, which depend on those billed charges. *See* DAPC ¶¶ 660, 756, 783.

The methodology (or lack thereof) behind Plaintiffs' billed charges is also relevant to the procompetitive benefits of MultiPlan's OON solutions and whether Defendants acted in their own self-interest when adopting those solutions. MultiPlan's OON solutions are not the product of an industry-wide, anticompetitive conspiracy. Rather, discovery will show that MultiPlan solutions were a procompetitive, independently rational response to skyrocketing OON provider charges, untethered to actual costs or other competitive market factors, that have gouged patients and payors

alike—and that Plaintiffs know this very well. Discovery into how Plaintiffs set their billed charges—including whether they are tethered to actual costs or other competitive market factors—is a key part of this case.

Defendants' Request Nos. 15-17 are narrowly tailored to discovery of relevant evidence on these issues. Request No. 15 seeks documents related to third-party sources used to establish, review, or modify billed charges. Request No. 16 seeks documents relating to (among other things) the process for establishing or reviewing billed charges. And Request No. 17 seeks documents pertaining to internal or external analyses of billed charges.

Plaintiffs' burden and proportionality objections are vague and unsupported and should be overruled. *See, e.g.*, *Deal Genius, LLC v. O2COOL, LLC*, 682 F. Supp. 3d 727, 733 (N.D. Ill. 2023) ("Responding parties must . . . supply hard information substantiating claimed burdens.").[22] During the parties' extensive meet-and-confer process, none of the DAPs or Putative Class Plaintiffs made any individualized showing as to why Defendants' Requests are unduly burdensome and disproportionate as to them. The V&E DAPs all assert that responding to Request Nos. 15-17 would require at least some of them to designate an unspecified number of additional document custodians. But, to the extent that designating additional custodians would be a burden, it is not an *undue* burden where, as here, those custodians are necessary for the responding party

[22] *See also Baxter Int'l, Inc. v. AXA Versicherung*, 320 F.R.D. 158, 166 (N.D. Ill. 2017) (compelling document production where objector "has not provided the Court with estimates of, for example, how many documents it needs to review, how many people would need to be involved in the review process, how long it would take to review the documents, and how much money it would cost to complete the review"); *Donnelly v. NCO Fin. Sys., Inc.*, 263 F.R.D. 500, 503-04 (N.D. Ill. 2009) (granting motion to compel when document production was estimated to require "several hundred hours to compile" because the likely benefit nevertheless outweighed the expected burden and expense); *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 351, 360 (N.D. Ill. 2005) ("In order to demonstrate undue burden, the plaintiffs must provide affirmative proof in the form of affidavits or record evidence.").

to search for and produce highly relevant documents. Nor is adding custodians disproportionate to the needs of a large, complex antitrust case like this one—particularly on a core issue like this one. *See, e.g.*, *In re Outpatient Med. Ctr. Emp. Antitrust Litig.*, No. 21 C 305, 2023 WL 4181198, at *11-12 (N.D. Ill. June 26, 2023) (granting motion to compel eleven custodians, in addition to the initial twelve). The remaining Plaintiffs do not assert that responding to Request Nos. 15-17 would require designating any additional custodians. Nor have they offered any explanation as to why these Requests are unduly burdensome or disproportionate, other than their position that the materials are irrelevant.

Implicitly conceding that the requested discovery is relevant, certain Plaintiffs offered to provide written answers to interrogatories explaining at a high level how their billed charges are set. While these interrogatory responses are themselves relevant (just as are ordinary-course documents), they are not sufficient. *See, e.g.*, *Full Circle Villagebrook GP, LLC v. Protech 2004-D, LLC*, No. 20 C 7713, 2022 WL 2339947, at *7 (N.D. Ill. June 29, 2022) (granting motion to compel and rejecting argument that interrogatory answers would reasonably substitute document production). Interrogatory responses are no substitute for contemporaneous, ordinary-course documents showing in detail how billed charges were set; how the methodology and process may have changed over time; and Plaintiffs' view of those billed charges in real time, outside the context of litigation. The interrogatory responses that Plaintiffs have provided to date confirm this. For example, one Plaintiff admits in its response that it "does not recall" who consulted on its billed charges and does not specify how charges were set, other than to say it was an "informal process" involving "a review of information from other facilities." Another vaguely states that it "generally" determines billed charges based on an unspecified "Medicare multiplier" and also consults, to an unknown extent, another industry benchmark. Defendants need (and Rule 26

supports production of) contemporaneous, ordinary-course documents to understand Plaintiffs' billed charges and how Plaintiffs viewed those charges at the time.

Defendants respectfully request that the Court compel all Plaintiffs to search for and produce documents responsive to Request for Production Nos. 15-17.[23]

F. Plaintiffs Should Be Compelled to Produce Discovery Regarding Plaintiffs' Employer-Sponsored Health Plans

Request Nos. 20 and 21 seek documents relating to the health benefit plans that DAPs offer their employees. DAPs refuse[24] to search for and produce materials responsive to these Requests on relevance grounds. However, the choices that DAPs make structuring their own employee health plans—including what payment terms, billing conditions, and settings they select, and which tools (*e.g.*, OON cost containment tools) they request, or opt in to or out of—are relevant to, among other things, the plausibility of Plaintiffs' conspiracy allegations, the relevant market, the purported effects of the alleged conspiracy, and Defendants' affirmative defenses.

DAPs contend that Defendants conspired by rescinding their independent pricing discretion for OON claims and delegating pricing decisions to MultiPlan. DAPC ¶¶ 297, 301. Defendants must be allowed to adequately test the plausibility of those allegations through DAPs own documents, including by showing that plan sponsors—like DAPs—have options for how INN and OON claims will be priced and have the discretion to choose whether to use Data iSight for

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[23] Defendants and Putative Class Plaintiffs have been engaged in meet-and-confer discussions about Request Nos. 15-17 up to the filing of this motion. Defendants believed the parties reached an agreement resolving this particular dispute, but when they sought confirmation about certain types of documents they believe fall within the scope of that agreement, Putative Class Plaintiffs would not agree. Defendants intend to engage further in hopes of resolving this issue as to the Putative Class Plaintiffs, and if successful, Defendants will advise the Court.

[24] Although certain DAPs have agreed to produce responsive materials to the extent identified in the materials they have agreed to review, they have refused to designate custodians or use search terms aimed at eliciting materials responsive to these Requests—which of course renders this "compromise" empty.

pricing those claims. That health plans offer such optionality and that plan sponsors choose to take advantage of those various options tends to undercut any allegation that Defendants agreed on price or that Defendants acted—or even could have acted—uniformly in pricing OON claims.

In addition, to prevail on their claims, DAPs must establish that the alleged conspiracy proximately caused them injury. *Supreme Auto Transp., LLC v. Arcelor Mittal USA, Inc.*, 902 F.3d 735, 743 (7th Cir. 2018). DAPs specifically assert that there is no "other proximate or intervening cause of the DAPs' losses due to MultiPlan's underpayments." DAPC ¶ 677. Evidence that plan sponsors (rather than Defendants) requested, sought out, and/or elected the categories of claims that could be "repriced" using MultiPlan's services tends to undercut DAPs' allegations that an agreement among Defendants proximately caused the alleged price effects. Along similar lines, this information is relevant to evaluating the procompetitive effects of the challenged conduct, including efforts undertaken to manage member healthcare costs. Evidence that plan sponsors are seeking solutions to manage OON reimbursement costs when organizing their employees' benefits is also relevant to assessing the "but-for" world—in particular, it tests Plaintiffs' allegations that OON reimbursements would be *higher* in the "but-for" world.

In addition, these Requests are relevant to Defendants' affirmative defenses. For one thing, DAPs have advanced a fraudulent concealment theory, alleging that they could not have known of their claims before 2021. *See* DAPC ¶ 721. But if DAPs' documents concerning their own health plan offerings reveal that they knew about and understood the role of MultiPlan's services in pricing OON claims prior to 2021, that would undermine their fraudulent concealment theory.

Tellingly, DAPs seek substantially similar discovery through more than a dozen recently-issued subpoenas. For instance, from numerous insurance brokers, DAPs seek discovery related to reports provided to plan sponsors, plan sponsor inquiries about OON services, and switching of

plans based on OON services. *See, e.g.*, Ex. 5 (Subpoena to Hub International Limited). If these plan sponsor materials in the possession of third parties are relevant, similar materials in DAPs' own possession, relating to their own health plans, are certainly relevant and proportional.

Because Request Nos. 20 and 21 seek documents relevant both to testing DAPs' antitrust theories and to Defendants' affirmative defenses, DAPs should be required to search for and produce non-privileged documents responsive to these Requests.

G. DAPs Should Be Compelled to Produce Discovery for January 1, 2013 to January 1, 2015

Finally, DAPs even refuse to produce documents in the alleged "pre-conspiracy" period from January 1, 2013 to January 1, 2015, *see* DAPC ¶ 730, despite demanding that *Defendants* produce documents from that period.[25] *See* Requests at Definition No. 22.

DAPs previously argued that a pre-conspiracy "look-back" period was necessary to understand the market dynamics preceding the alleged conduct, and insisted that Defendants produce materials from that period. Plfs' Br. re. Structured Data, ECF 494, at 1-2. Having gotten their request as to Defendants' productions, DAPs now refuse to produce any of *their* documents from that same period.

DAPs' ordinary-course materials predating 2015 are relevant to—and probative of—several key issues. For example, DAPs allege that OON reimbursement rates dropped after 2015 due to the alleged conspiracy between and among MultiPlan and its payor customers. Defendants must be able to test that allegation in discovery, including by examining DAPs' own contemporaneous documents. If, for example, DAPs' documents show decreasing reimbursements *prior* to the start of the alleged conspiracy in 2015, that would call into question

[25] Certain Defendants that were not contracted with MultiPlan as of 2015 agreed to search for and produce documents from the later of (a) January 1, 2013 or (b) two years before they first entered into a contract with MultiPlan.

whether any DAP was impacted by the alleged conspiracy as opposed to other pre-existing market forces and whether the alleged conspiracy existed at all. As another example, pre-2015 documents may demonstrate the procompetitive benefits that MultiPlan's products and services offer, such as cost reduction for consumers. DAPs successfully argued that pre-2015 materials were relevant to their claims—and Defendants must be allowed comparable materials for their defenses.

DAPs resist this time period on the grounds that DAPs "have differing relevancy, proportionality, and undue burden concerns." This unsupported assertion cannot overcome the clear relevance of pre-2015 documents.

The Court should order DAPs to adhere to the same relevant time period as for Defendants: starting the later of January 1, 2013 or the earliest time thereafter for which each DAP has documents.[26]

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court grant Defendants' motion and compel Plaintiffs to produce materials responsive to Defendants' Requests as set forth above.

[26] Certain DAPs have taken the position that Defendants may not seek pre-2015 documents because the Requests defined the Relevant Time Period as "the time period January 1, 2015 to present, *unless otherwise specified or agreed, or unless the Court determines that a different relevant time period applies*[.]" (emphasis added). The definition in the Requests explicitly contemplates that the parties may reach an agreement on a different Relevant Time Period or that the Court would later order a different time period (as was the case with respect to Defendants' productions). Requests at Definition No. 22. After Defendants agreed to extend the discovery period to 2013—two years before the start of the alleged conspiracy in 2015—Defendants accordingly requested that DAPs agree to the same period of January 1, 2013 to the present.

Dated: February 13, 2026

Respectfully submitted,

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EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: MULTIPLAN HEALTH INSURANCE PROVIDER LITIGATION	Case No. 1:24-cv-06795 MDL No. 3121
This Document Relates To: 1:24-cv-07177 1:24-cv-06802 ALL DIRECT ACTION CASES	Hon. Matthew F. Kennelly

DEFENDANTS' THIRD SET OF REQUESTS FOR PRODUCTION TO PLAINTIFFS

Pursuant to Federal Rules of Procedure 26 and 34, Defendants hereby request that Plaintiffs respond to the following Third Set of Requests for Production of Documents ("Requests") within thirty (30) days from the date of service hereof. These Requests are to be answered in accordance with the following Definitions and Instructions.

DEFINITIONS

1. "Action" refers to the above-captioned multidistrict litigation and each action assigned to that proceeding for coordinated or consolidated pretrial proceedings.

2. "Any," "all," and "each" mean "each and all."

3. "CCAC" means the Consolidated Class Action Complaint filed on November 18, 2024 in the above-captioned matter (ECF No. 172), and any subsequently-filed amended version of that complaint.

4. "Claim" means a bill submitted to a patient or a claim for reimbursement submitted to a Health Plan Entity for goods or services provided during a Patient Encounter.

5. "Communication" means the transmittal of information, including but not limited to any

conversation, meeting, discussion, letter, memorandum, email message, website posting, note, or other transmittal of information, and includes any document which refers to, reflects, transcribes, memorializes, or records any such Communication.

6. "Complaints" means the CCAC, the Master DAP Complaint, and any Short Form Complaint.

7. "Defendants" means any defendant named in the CCAC or named in the Master DAP Complaint and at least one Short Form Complaint as of the date of these Requests.

8. "Document" is coextensive with the meanings of the terms "document" and "electronically stored information" ("ESI") in Rule 34 of the Federal Rules of Civil Procedure, and case law interpreting Rule 34.

9. "Healthcare Goods or Services" means a product or service provided by healthcare providers. It includes what is referenced in the CCAC and Master DAP Complaints as "out-of-network goods and services."

10. "Health Plan Entity" refers to an MCO, third-party administrator, benefit plan or plan administrator, or Government Program.

11. "Including" or "includes" means including without limitation.

12. "Government Program" means any program administered or coordinated by a government entity that includes coverage for Healthcare Goods or Services, including but not limited to Medicaid, Medicare, and Medicare Advantage.

13. "Managed Care Organization" or "MCO" means an entity that insures or administers health insurance plans, administrative services plans (or ASO plans), and any other mechanism for healthcare care financing that is sold and/or offered directly or through

employers or groups to individuals or groups, including fully-insured plans, self-funded plans, preferred provider organization ("PPO") plans, exclusive provider organization ("EPO") plans, health maintenance organization ("HMO") plans, and point of service ("POS") plans.

14. "Master DAP Complaint" means the Consolidated Master Direct Action Plaintiff Complaint filed on December 2, 2024 in the above-captioned matter (ECF No. 182), and any subsequently-filed amended version of that Complaint.

15. "OON" means out of network.

16. "Patient Encounter" means the provision of Healthcare Goods or Services to an individual patient on a specific date of service for which one or more Healthcare Goods or Services was billed or charged.

17. "Plaintiffs," "You," and "Your" mean all named plaintiffs in the CCAC, the Master DAP Complaint, and any plaintiff that has filed a Short Form Complaint. This includes any counsel, consultant, or agent acting on any such plaintiff's behalf.

18. "Premium" means a specified amount of payment required by a Payer to provide benefits to members enrolled in a health plan.

19. "Provider Network" means a group or collection of healthcare providers who have each agreed to provide Healthcare Goods or Services to individuals enrolled in a health plan.

20. "Reimbursement Rate" means the rates (or the allowed amounts) approved or allowed by any Health Plan Entity for Healthcare Goods or Services.

21. The terms "Relate," "Refer," "Reflect," "Concern," and "Pertain" mean discussing, evidencing, mentioning, memorializing, describing, constituting, containing, analyzing,

studying, reporting on, commenting on, recommending, concerning, reflecting, summarizing, referring to, pertaining to, supporting, refuting, and/or purporting to evidence, mention, memorialize, describe, constitute, contain, concern, reflect, summarize, refer to, support, refute, and/or in any way be relevant, in whole or in part.

22. The relevant time period for these requests, and the term "Relevant Time Period," refers to the time period January 1, 2015 to present, unless otherwise specified or agreed, or unless the Court determines that a different relevant time period applies, in which case the relevant time period for these requests will be the Court-determined time period.

23. "Self-Pay" means individuals who pay for Healthcare Goods or Services entirely with their own funds.

24. "Structured Data" means data that are stored in a structured format, such as relational database management systems (e.g., SQL, Oracle, DB2, Microsoft SQL), NoSQL or non-relational databases (e.g., Redis, Amazon DynamoDB, Casandra, Scylla, HBase).

25. The use of a singular form of any word includes the plural and vice versa.

INSTRUCTIONS

1. Responses to these Requests shall include all Documents and information that relate, in whole or in part, to the Relevant Time Period even if they were dated, prepared, generated, created, edited, revised, or received prior to the Relevant Time Period. This time period shall be subject to any agreements between the parties or orders of the Court establishing different applicable dates for purposes of discovery in this matter.

2. If, in responding to these Requests, You claim that any Request, Definition or Instruction is ambiguous, do not use such claim as a basis for refusing to respond, but rather set

forth as part of the response the language You claim is ambiguous and the interpretation of the language that You have used to respond to the Request.

3. If, in responding to these Requests, You object to any part of a Request, each part of said Request shall be treated separately. If an objection is made to one subpart, the remaining subpart(s) shall be responded to. If an objection is made on the basis that the Request or subpart thereof calls for information which is beyond the scope of discovery, the Request or subpart thereof shall be responded to, to the extent that it is not objectionable.

4. All Documents and information produced in response to these Requests, and any assertions of privilege that are made, shall be consistent with the Case Management Order Nos. 11 (Order Regarding Production of Electronically Stored Information and Paper Documents, ECF No. 241), and 12 (HIPAA-Qualified Protective Order, ECF No. 242).

REQUESTS FOR PRODUCTION

REQUEST NO. 6

Contracts with any person or entity pertaining to billing of Health Plan Entities or patients (including Self-Pay patients) for OON Healthcare Goods and Services, including contracts with Health Plan Entities, patients, and persons or entities who refer or recruit patients with coverage for OON Healthcare Goods and Services.

REQUEST NO. 7

All agreements in effect at any point during the Relevant Time Period between Your practice and the facilities where the services for your Claims for OON Healthcare Goods and Services were rendered.

REQUEST NO. 8

Documents sufficient to show any payment or remuneration Your practice received from facilities where the services for your Claims for OON Healthcare Goods and Services were rendered during the Relevant Time Period.

REQUEST NO. 9

Documents sufficient to show the standard Documents, assignments, paperwork, policies, or disclosures that Your practice or any facility at which You practice provides to patients concerning Your OON Healthcare Goods or Services, including but not limited to documents relating to insurance coverage, disclosure of pricing, financial responsibility for services, or patient financing.

REQUEST NO. 10

All contracts or other Documents reflecting agreements (including any modifications, amendments, or attachments thereto) that Your practice has entered into with MultiPlan or and any other "OON Repricing Service" (as Plaintiffs have defined that phrase), any Health Plan Entity, or patients, regarding financing arrangements, responsibility for payment, or payment terms or conditions for OON Healthcare Goods or Services, including, for example, single case agreements.

REQUEST NO. 11

Copies of all office manuals, policies, and procedures relating to disclosure of pricing; billing; collection of fees for OON Healthcare Goods and Services; balance billing; financial assistance for patients; and prompt pay discounts or any other types of discounts that are offered to out-of-network patients.

REQUEST NO. 12

Structured Data for the fields of data requested in Defendants' First Set of Requests for Production, Request No. 3 and the additional fields listed below, for each claim for OON Services and In-Network Services, with dates of service from January 1, 2012 to the present at the most granular level that such Structured Data is kept, including at the claim or line level:

(a) Whether the service was provided in an emergency or non-emergency setting;

(b) Whether the facility at which the service was provided was in-network with the patient's Health Plan Entity.

REQUEST NO. 13

Documents sufficient to interpret and understand any Structured Data produced by Plaintiffs, including but not limited to data dictionaries, look-up tables, system manuals, and explanations of acronyms used in the Structured Data. To the extent that such information has changed over time during the time period covered by the structured data production, provide information identifying which versions apply to each individual item of information produced in response to Request No. 3 of Defendants' First Set of Requests for Production.

REQUEST NO. 14

For each year during the relevant time period, your chargemaster(s), billed charges (to the extent different from your chargemaster), and other Documents sufficient to show: (a) all Healthcare

Goods or Services provided by You practice and the accompanying CPT or HCPCS codes; (b) the list prices or submitted charges for all Healthcare Goods or Services provided by You, including any changes during the relevant time period; and any other fees charged to OON patients in addition to those for specific medical services, whether styled as concierge fees, administrative cost fees, access fees, or the like.

REQUEST NO. 15

All Documents and Communications related to the use of consultants, benchmarking reports, surveys, databases, or other third-party data sources to establish, review, or modify billed charges and/or chargemasters.

REQUEST NO. 16

All Documents and Communications relating to the process (a) for establishing or reviewing billed charges and/or Chargemasters, and any changes thereto, and (b) for determining or confirming patient copay, coinsurance, authorization or preauthorization, in force insurance, or insurance fee caps.

REQUEST NO. 17

All Documents pertaining to the development, use, or distribution of any pricing benchmarking reports, surveys, analyses, or databases, whether developed internally or externally, pertaining to assessment of Chargemaster rates, billed charges, or Reimbursement Rates, including contracts with the providers of any such reports, surveys, or databases.

REQUEST NO. 18

All Communications and Documents related to the use of consultants regarding: (a) the Reimbursement Rates providers (including but not limited to Your practice) receive from Health Plan Entities; (b) Your relationships with Health Plan Entities; (c) Your attempts to negotiate with any Health Plan Entity concerning Reimbursement Rates or fee schedules; (d) complaints You made to or about any Health Plan Entity; (e) whether you should contract with or continue to contract with any Health Plan Entity; or (f) Your impressions and beliefs regarding any Health Plan Entity's business practices—including but not limited to all agreements with such consultants and Documents sufficient to show the fees paid to such consultants.

REQUEST NO. 19

Final and/or executed contracts between or governing the relationship between You and any Health Plan Entity or, for each year during the relevant time period, documents sufficient to show: (a) the Provider Networks You have participated in; (b) the period of time You participated in those Provider Networks; and (c) the different payment arrangements that You have accepted for Healthcare Goods or Services.

REQUEST NO. 20

All contracts with the Health Plan Entities for the health benefit plan(s) you offer to Your employees, summary plan descriptions, and summaries of benefits for Your health benefit plan(s).

REQUEST NO. 21

All correspondence with the Health Plan Entities that provide health insurance or administer health benefits for Your employees concerning MultiPlan, determination of allowed amounts or reimbursement limits for OON Healthcare Goods (including Documents showing how such limits were selected) and Services provided to Your employees, "OON Repricing Services" (as plaintiffs have defined that phrase), or "shared savings" opportunities relating to OON Healthcare Goods and Services.

REQUEST NO. 22

All Documents relating to any Certificate of Need filing or approval (or similar regulatory evaluation of the potential impact of Your practice on health care costs or competition) relating to Your practice.

REQUEST NO. 23

All presentations by or to Your practice's owners, lenders, investors (including affiliated private equity investors), or board concerning Your practice's actual or projected financial performance or strategic plans.

REQUEST NO. 24

Your practice's financial statements and balance sheets, including the financial statement line-item detail for all revenue, expenses, and owner distributions, for each month during the relevant time period.

REQUEST NO. 25

All revenue reports, revenue cycle management reports, or similar documents from the Relevant Time Period regarding Your obtaining payments from patients or Heath Plan Entities for OON Healthcare Goods or Services, including but not limited to reports or similar documents that specifically describe or reflect the use or non-use of MultiPlan's products or services in connection with Your obtaining payments from patients or Heath Plan Entities for OON Healthcare Goods and Services.

REQUEST NO. 26

Your practice's federal and state tax returns for each calendar year during the relevant time period, including documents sufficient to show any taxpayer identification numbers You used and the facilities where the services for your Claims for OON Healthcare Goods and Services were rendered.

REQUEST NO. 27

Your practice's policies and procedures relating to recognition of revenue from various sources of payment (e.g. Health Plan Entities, patients, etc.), and documents sufficient to identify the amount recognized/written off for each year of the relevant time period due to actual or expected payment/non-payment by patients and Health Plan Entities.

REQUEST NO. 28

Documents sufficient to show Your practice's monthly (or the shortest period for which they are regularly prepared) profits, losses, gross income, and net income during the relevant time period, for Your practice as a whole and broken out by in-network and out-of-network services.

REQUEST NO. 29

Documents sufficient to show compensation (salary, benefits, bonuses, and other incentives), expense reimbursement, owner distribution, and/or other payments made by You and/or Your practice and/or paid to You, other Providers in Your practice, and other employees or office staff employed by Your practice, including the breakdown by person and category of payment (salary, benefits, bonuses, other incentives, expense reimbursement, owner distribution), for each year during the relevant time period.

REQUEST NO. 30

For each year during the relevant time period, Documents sufficient to show the itemized costs of maintaining Your practice, including but not limited to: (a) the maintenance of equipment, technology, or tools used in Your practice and the cost of acquiring or leasing such equipment, technology, or tools; and (b) the costs of rent, utilities, supplies, billing, training of staff, malpractice insurance, sanitation, and records maintenance systems; and any other documents showing Your practice's cost of care per patient or cost of care per service line.

REQUEST NO. 31

For each year during the relevant time period, Documents sufficient to show Your debt, discounts, or write-offs, by category, including but not limited to any business bankruptcy filings.

REQUEST NO. 32

Documents sufficient to show: (a) any applications for support, financial relief, paycheck protection, loans, or loan forgiveness sought by You and/or Your practice; (b) the relief or support received; and (c) the entity that provided the relief or support.

REQUEST NO. 33

All Documents pertaining to any comparisons of the Reimbursement Rates paid by any Defendant and those paid by any other Defendant or Health Plan Entity for any Healthcare Good or Service, including: (a) Your Communications concerning those comparisons; and (b) any analysis, study,

or discussion of the reasons for the difference in Reimbursement Rates shown in such a comparison.

REQUEST NO. 34

All Documents and Communications showing attempted negotiations, whether successful or not, between You and any Health Plan Entity (including but not limited to any of the Defendants) regarding Reimbursement Rates.

REQUEST NO. 35

All Documents related to Your consideration of whether or not to contract with any Health Plan Entity or Provider Network (including but not limited to any of Defendants)—regardless of whether those discussions resulted in You contracting with that Health Plan Entity or Provider Network —and any correspondence, drafts, or other Documents reflecting any such consideration.

REQUEST NO. 36

All Communications between You or any of Your agents, including billing agents, and Defendants regarding payment or reimbursement for OON Healthcare Goods and Services.

REQUEST NO. 37

All contracts, including any modifications, amendments, or attachments thereto, You have entered into with any person or entity utilized by Your practice for Your revenue cycle management functions, billing of patients or Health Plan Entities, or collections activity (including placement of liens).

REQUEST NO. 38

All contracts, including any modifications, amendments, or attachments thereto, You have entered into with any Defendant, and any correspondence, drafts, or other Documents reflecting Communications or negotiations related to such contracts.

REQUEST NO. 39

All Documents identifying, listing, tracking, or otherwise analyzing the actual or potential financial impact on Your practice of participating in a Health Plan Entity's Provider Network, or of remaining (or becoming) an OON provider.

REQUEST NO. 40

All Documents discussing the benefits or disadvantages to You from participating in any Provider Network or contracting with any Health Plan Entity, including all Communications with any consultant or person hired to analyze the effects (positive, neutral, or negative) of participating in any Provider Network or contracting with any MCO.

REQUEST NO. 41

All Communications with any Health Plan Entity regarding Reimbursement Rates, discounts, Premiums, deductibles, co-payments, co-insurance, or the terms or conditions of any contract with a Defendant.

REQUEST NO. 42

All Documents reflecting any complaints, appeals, criticisms, objections, or grievances regarding the Reimbursement Rates or other contractual terms with any Health Plan Entity, or regarding the appropriate categorization of claim adjustments as Contractual Obligation (CO) versus Patient Responsibility (PR).

REQUEST NO. 43

All Documents discussing or comparing the Reimbursement Rates paid by Health Plan Entities for Healthcare Goods or Services, whether using MultiPlan, any other "OON Repricing Service" (as Plaintiffs have defined that phrase), or no OON Repricing Service, including but not limited to Documents discussing or comparing the Reimbursement Rates that You have accepted as payment for Healthcare Goods or Services and documents referencing any pros and cons or assessment of OON benefits of OON Repricing Services, including but not limited to those offered by MultiPlan.

REQUEST NO. 44

All Documents relating to Your participation in any medical-related trade associations (including but not limited to state medical associations and the American Medical Association), including Documents related to attendance (in-person, telephonic, or otherwise) at any meeting or conference with representatives of such a trade association; minutes of meetings in which Defendants, other Health Plan Entities, or Reimbursement Rates were discussed; membership on any advisory board, board of directors, committee, or other leadership structure affiliated with such a trade association; and/or the provision of Your Reimbursement Rates, revenue, net income (profit), payer sources, or other non-public data or information to such a trade association.

REQUEST NO. 45

All Communications with any government agency (including but not limited to departments of insurance, insurance commissioners, and state Attorneys General), the American Medical Association, state or local medical associations, or other professional organizations regarding Reimbursement Rates, market conditions, competition, discounts, Premiums, deductibles, co-payments, co-insurance, patient medical debt, balance billing, or the terms or conditions of any contract with a Health Plan Entity, including but not limited to all Documents reflecting any complaints, appeals, criticisms, objections, or grievances regarding the Reimbursement Rates or other contractual terms offered by any Health Plan Entity.

REQUEST NO. 46

All Documents reflecting Your participation in any advocacy efforts relating to how any Health Plan Entity (including, but not limited to, any Defendant) operates its business or relating to any

legislation intended or likely to affect any Health Plan Entity's business, including but not limited to advocacy efforts relating to OON reimbursement, balance billing, or medical debt.

REQUEST NO. 47

All Documents and Communications in which You have asserted that You believed one or more Defendants were paying below-market rates for Healthcare Goods or Services or were engaged in a scheme to fix or depress Reimbursement Rates.

REQUEST NO. 48

All Documents pertaining to Your consideration of whether to cease or limit treating members of any Health Plan Entity based on that Health Plan Entity's OON Reimbursement Rates, including all Documents in which you discuss or threaten such cessation or limitation.

REQUEST NO. 49

All Documents and Communications relating to Your sales strategies, sales forecasts, and sales plans for recruitment or retention of OON patients, or treatment of patients at any facilities at which Your practice is OON but the facility is in-network.

REQUEST NO. 50

All Documents and Communications concerning the relationship between Reimbursement Rates and patient volume.

REQUEST NO. 51

Documents sufficient to identify all Claims that You allege were underpaid due to the alleged conspiracy between Defendants, and for each such Claim, all Documents regarding actions You took with respect to those Claims, including any appeals, balance bills and notices sent to patients, and communications with MultiPlan or the Health Plan Entity to whom the Claim was submitted.

REQUEST NO. 52

Reports, charts, summaries or similar documents regarding independent dispute resolution (IDR) submissions by Your practice under the No Surprises Act, and the arbitration award (if any) associated with each such submission.

REQUEST NO. 53

All documents relating to any consideration of or decision to cease providing OON Healthcare Goods and Services to patients associated with a particular Health Plan Entity, or to reduce or forego spending on improving care or offering charitable care because of underpayments by Health Plan Entities for OON Healthcare Goods and Services.

REQUEST NO. 54

All Documents related to the alleged conspiracy between Defendants regarding MultiPlan, including but not limited to Defendants' alleged knowledge of other Health Plan Entities' use of MultiPlan's services and Communications regarding any data sent to MultiPlan and any documents regarding the "abrasion" allegations set forth in the Complaints.

REQUEST NO. 55

All Documents discussing or otherwise relating to Defendants' alleged uses of MultiPlan's services or products, including but not limited to MultiPlan's Data iSight tool, negotiation services, or provider networks.

REQUEST NO. 56

All Communications with third parties, including Your patients, any government or regulatory body, or the media, regarding Defendants' use of MultiPlan's services or the subject matter of the allegations of the Complaints.

REQUEST NO. 57

Documents sufficient to show the geographic areas in which You promote or market Your Healthcare Goods or Services, including but is not limited to Documents sufficient to show where and for what locations You have placed advertisements for your services, or your patient service area(s).

REQUEST NO. 58

Documents related to any market analysis done by or for You, including but not limited to analyses of competitors; anticipated pool and mix of patients (including by coverage status, e.g. in-network vs. OON); or revenue/profitability assessments based on Health Plan Entity, type of insurance product, or patient's network status.

REQUEST NO. 59

All Documents related to Plaintiffs' contention that the market for payments made by commercial healthcare insurance companies for OON healthcare services is a separate, standalone market.

REQUEST NO. 60

All Documents discussing the reasons for any decrease in your practice's financial or operational performance over the Relevant Time Period, including but not limited to the effect of COVID-19, changes in consumer demand, or the conduct of any Health Plan Entity.

REQUEST NO. 61

All Documents concerning when You discovered that You had been harmed by any of the Defendants' allegedly illegal conduct.

REQUEST NO. 62

All Documents discussing any link between OON reimbursement and any decision whether Your practice would provide new services and/or acquire new equipment or technology, or cease to provide certain services and/or relinquish any equipment or technology.

REQUEST NO. 63

To the extent not requested elsewhere, all Documents relating to Your claimed injury and damages from the conduct alleged in the Complaints. This includes, but is not limited to, the DAPs' allegations that:

- "some DAPs will no longer be able to provide services on an out-of-network basis given the financial constraints—and some, especially in already underserved rural areas, may go out of business altogether" (Master DAP Complaint ¶ 46);
- "As a result of these payment rate cuts, staffing agencies have been forced to cut physician salaries and benefits due to the low prices set for out-of-network goods and services set by the MultiPlan Cartel." (*Id.* ¶ 587);
- "due to massive underpayments that the TeamHealth DAPs were receiving from United for out-of-network goods and services, TeamHealth had made cuts to compensation and benefits for physicians and advanced practice clinicians." (*Id.* ¶ 668).

REQUEST NO. 64

A copy of any legal complaint filed (a) against by You against any patient or Health Plan Entity pertaining to alleged non-payment or underpayment for OON Healthcare Goods or Services, or (b) by You against any patient or Health Plan Entity pertaining to payment for OON Healthcare Goods or Services.

REQUEST NO. 65

All Documents quoted, copied, excerpted, or otherwise referenced in Your Complaint or Rule 26(a) disclosures, or on which You have relied in support of Your allegations and claims.[1]

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[1] For the CCAC, this Request includes but is not limited to the materials cited or referenced in paragraphs 77, 81, 88, 96, 107, 108, 112, 113, 125, 137, 138, 149, 164, 166, 167, 168, 170, 187, 188, 190, 191, 192, 202, 203, 204, 205, 206, 207, 209, 210, 211, 216, 222, 231, 232, 235, 236, 237, 238, 239, 253, 256, 257, 286, 287, 288, 289, 290, 307, and 315. For the Master DAP Complaint, this Request includes but is not limited to the materials cited or referenced in paragraphs 13, 23, 26, 28, 111, 112, 118, 119, 122, 123. 124, 129, 156, 162, 169, 170, 171, 172, 173, 174, 175, 176, 178, 180, 183, 184, 185, 186, 187, 188, 189, 190, 192, 193, 194, 195, 197, 198, 199, 200, 201, 203, 204, 205, 206, 207, 208, 209, 210, 211, 213, 214, 215, 216, 218, 219, 220, 221, 223, 224, 225, 226, 227, 228, 229, 230, 232, 233, 236, 238, 241, 242, 243, 245, 246, 249, 250, 264, 266, 268, 269, 271, 272, 274, 281, 292, 294, 299, 304, 307, 309, 312, 316, 325,

REQUEST NO. 66

All Documents you receive in response to any subpoena served in connection with this Action.

REQUEST NO. 67

All Communications between You and any other Plaintiff relating to any Defendant or other Health Plan Entity that You contend is a co-conspirator with any Defendant.

REQUEST NO. 68

All Communications concerning this Action, or any pending or potential antitrust, unfair competition, or unjust enrichment claims against any Defendant.

REQUEST NO. 69

All Documents related to any actual, proposed or threatened disciplinary action against You or any provider in Your practice, including but not limited to (a) any fines or penalties paid by Your practice related to the provision of Healthcare Goods or Services and/or (b) the loss or suspension of any license or other license for any Provider in Your practice.

REQUEST NO. 70

All documents upon which You intend to rely to support Your claims.

[signature page follows]

340, 343, 361, 362, 363, 364, 378, 384, 395, 433, 434, 435, 441, 443, 444, 445, 447, 449, 451, 468, 471, 474, 502, 529, 538, 539, 541, 565, 566, 575, 577, 578, 579, 584, 585, 586, 589, 625, 626, 629, 653, 655, 656, 668, 669, 670, 672, 679, 682, 696, 711, and 717.

Dated: June 24, 2025

Respectfully submitted,

/s/ Sadik Huseny

Sadik Huseny (*pro hac vice*)
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Telephone: (737) 910-7300
sadik.huseny@lw.com

Defendants' Coordinating Counsel

CERTIFICATE OF SERVICE

I, Sadik Huseny, hereby certify that on this 24th day of June, 2025, a true and correct copy of the foregoing was served via email on Plaintiffs' Coordinating Counsel and Interim Co-Lead Class Counsel.

<u>/s/ Sadik Huseny</u>
Sadik Huseny

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE MULTIPLAN HEALTH INSURANCE PROVIDER LITIGATION This document relates to: *Holdin s et al v M ltiplan nc* , 1:24-cv-10943	Case No. 1:24-cv-06795 MDL No. 3121 Hon. Matthew F. Kennelly

DIRECT ACTION PLAINTIFF BERGEN SURGICAL SPECIALISTS' RESPONSES AND OBJECTIONS TO DEFENDANTS' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

The Direct Action Plaintiff Bergen Surgical Specialists ("Plaintiff") hereby provides these Responses and Objections to Defendants' Third Set of Requests for Production ("Requests" and, each individually, "Request"), as follows:

PRELIMINARY STATEMENT

1. Plaintiff provides this preliminary statement to address issues that pervade all or nearly all of Defendants' Requests.

2. Plaintiff's investigation and discovery are ongoing as to all matters referred to in these Objections and Responses to Defendants' Requests. These Responses herein are based upon information and documents that have been collected and reviewed to date for the purpose of responding to these Requests, and they are not prepared from the personal knowledge of any single individual. Plaintiff reserves the right to supplement, revise, correct, or clarify its responses and objections in the event that additional documents or information become available, and as discovery and this litigation proceed. Upon request by the requesting party, Plaintiff is willing to meet and confer through counsel regarding its objections and responses to these Requests.

3. Plaintiffs objects to the Requests, and to the Definitions and Instructions included with this set of Requests, to the extent that they seek documents or information that: (a) are in Defendants' possession, custody, or control; (b) are equally or more readily available from sources

other than Plaintiff; (c) can be obtained from other sources that are more convenient, less burdensome, and/or less expensive than requiring Plaintiff to provide the information or documents; (d) are not reasonably accessible to Plaintiff; and/or (e) are publicly available to Defendants. Plaintiff, however, will not withhold otherwise responsive, non-privileged documents solely because information is publicly available or equally available from Defendants.

OBJECTIONS TO DEFINITIONS

4. Plaintiff objects to Definition No. 1 ("Action") to the extent it purports to impose obligations on Plaintiff to produce documents beyond those in the possession, custody, or control of the above-named Plaintiff, or to the extent it purports to require production of documents relating to the Consolidated Class Action Complaint ("CCAC") or any action not asserted by Plaintiff. Plaintiff For purposes of its Responses, Plaintiff interprets "Action" to refer only to the above-captioned multidistrict litigation as it pertains to the Master DAP Complaint and the Plaintiff's individual actions and allegations.

5. Plaintiff objects to the Definition of "Claim" (Definition No. 4) to the extent it purports to include "a bill submitted to a patient," which implicates information that is irrelevant to the claims and defenses of the Plaintiff and constitutes an improper attempt to pursue a pass-on defense and discovery concerning collateral sources of payment. Plaintiff further objects to this definition to the extent it purports to include in-network claims, which fall outside the scope of the alleged conspiracy. However, Plaintiff does not object to producing documents reflecting actual collections (if any) from patients on claims that were processed through MultiPlan, to the extent such documents exist and are relevant. For purposes of its Responses, Plaintiff will construe "Claim" to mean a claim for payment submitted to a Health Plan Entity for OON Healthcare Goods or Services.

6. Plaintiff objects to the definition of "Communication" (Definition No. 5) to the extent it purports to include undocumented "conversations" that are not contained within Documents and, therefore, are not reasonably susceptible to collection. This definition is overbroad, unduly burdensome, and not proportional to the needs of the case.

7. Plaintiff objects to the Definition of "Complaints" (Definition No. 6) to the extent it purports to ask the Plaintiff about the Consolidated Class Action Complaint or any other Direct Action Plaintiff's Short Form Complaint.

8. Plaintiff objects to the Definition of "Defendants" (Definition No. 7) as overly broad and unduly burdensome to the extent it seeks to include entities Plaintiff has dismissed or with whom Plaintiff has settled, or entities not named as Defendants in any operative Short Form Complaint ("SFC") filed by Plaintiff. For purposes of its Responses, Plaintiff will consider "Defendants" to mean only the specific party Defendants against whom Plaintiff has asserted claims in an SFC, to the extent Plaintiff has not dismissed or settled with such Defendant, and will respond on that basis.

9. Plaintiff objects to Definition No. 9 ("Healthcare Goods or Services") as overly broad with regard to the term "product." Plaintiff will respond to the RFPs based on the following definition for "Healthcare Goods and Services": "any type of medical care, treatment, medicine, or procedure provided to a Patient, including, for example, all forms of curative, palliative, preventative, surgical, in-patient, out-patient, nursing, mental, and substance abuse care." *ee* Plaintiffs' First Set of RFPs, Definition No. 7 at 3.

10. Plaintiff objects to Definition 10 ("Health Plan Entity") to the extent it purports to include government programs such as Medicare, Medicaid, and TRICARE. Discovery concerning such programs is overbroad, irrelevant, and not proportional to the needs of the case. The relevant market in this litigation involves commercial third-party payors, not government-administered plans that operate under separate statutory and regulatory frameworks. Accordingly, Plaintiff will not interpret "Health Plan Entity" to include government programs such as Medicare, Medicaid, or TRICARE for purposes of its Responses.

11. Plaintiff objects to Definition No. 12 ("Government Program") as seeking information that is not relevant to the claims and defenses in this litigation. The relevant market, as defined in the Master DAP Complaint and sustained by the Court's Order on Defendants' motions to dismiss (ECF 428), is the market for OON services purchased by commercial third-

party payors. Government programs like Medicare and Medicaid operate under entirely different statutory and regulatory frameworks, have different fee schedules, and are not reasonably interchangeable with commercial payors. Discovery concerning Government Programs is therefore irrelevant and not proportional to the needs of the case.

12. Plaintiff objects to Definition No. 13 ("Managed Care Organization" or "MCO") as overly broad to the extent it purports to include health plans that do not offer or cover out-of-network benefits. Health plans that do not pay for out-of-network services fall outside the relevant market and are not relevant to the claims or defenses in this litigation. For purposes of its Responses, Plaintiff will interpret "Managed Care Organization" or "MCO" to refer only to entities that administer or insure plans that include out-of-network benefits.

13. Plaintiff objects to Definition No. 14 ("Master DAP Complaint") to the extent it purports to include future versions of the complaint that have not yet been filed. This definition is overly broad and improperly imposes an ongoing obligation to produce documents in response to hypothetical amendments. Plaintiff is willing to meet and confer regarding any discovery that may be appropriate following the filing of an amended Master DAP Complaint, but object to any requirement to anticipate or respond to unfiled pleadings.

14. Plaintiff objects to Definition No. 16 ("Patient Encounter") as overly broad to the extent it purports to include in-network services or services provided under government programs such as Medicare, Medicaid, or TRICARE. Such services fall outside the scope of the alleged conspiracy and the relevant market, which involves payment for out-of-network services by commercial third-party payors. For purposes of its Responses, Plaintiff will interpret "Patient Encounter" to refer only to encounters involving the provision of OON Healthcare Goods or Services paid or submitted for payment to a commercial Health Plan Entity.

15. Plaintiff objects to Definition No. 17 ("Plaintiffs," "You" and "Your") on the grounds that it is overly broad, vague, and seeks to extend the Requests beyond the above-named Plaintiff. Plaintiff objects to this Definition and any Requests to the extent that they purport to impose obligations upon Plaintiff to produce documents that are not under Plaintiff's legal control,

and/or are not relevant to this litigation. Plaintiff further objects to the definition to the extent it purports to include counsel or legal representatives, which risks intrusion into privileged matters and is not proportional to the needs of the case. For purposes of its Responses, Plaintiff considers "Plaintiff" and "You" to mean the above-named Plaintiff and its employees involved in OON healthcare services provided by Plaintiff from January 1, 2015 to the present, and respond on that basis.

16. Plaintiff objects to Definition No. 18 ("Premium") as irrelevant, overbroad, and not proportional to the needs of the case to the extent it seeks discovery concerning the separate market in which health plans sell insurance coverage to subscribers. The Court expressly rejected the argument that there is a two-sided market in its Order on Defendants' motions to dismiss (ECF 428 at 18–19), and held that the relevant market is the market for payment of OON Healthcare Goods and Services. Accordingly, Plaintiff will not interpret "Premium" to encompass subscriber-side pricing or plan design decisions unrelated to the payment of OON claims.

17. Plaintiff objects to Definition No. 19 ("Provider Network") as irrelevant, overbroad, and not proportional to the needs of the case to the extent it seeks discovery concerning the separate market for in-network goods and services. The claims and defenses in this litigation are limited to the market for OON Healthcare Goods and Services, and discovery concerning participation in or terms of in-network contracting falls outside the scope of the alleged conspiracy.

18. Plaintiff objects to Definition No. 20 ("Reimbursement Rate") as overbroad, irrelevant, and not proportional to the needs of the case to the extent it purports to include payment for in-network services or for services paid under government healthcare programs such as Medicare, Medicaid, or TRICARE. Such payments fall outside the relevant market and are not relevant to the claims or defenses in this litigation.

19. Plaintiff objects to Definition No. 23 ("Self-Pay") as irrelevant and not proportional to the needs of the case because payments made entirely out-of-pocket by patients without submission to or interaction with a Health Plan Entity do not relate to the payment of OON Healthcare Goods and Services and fall outside the scope of the claims and defenses in this

litigation.

OBJECTIONS TO INSTRUCTIONS

20. Plaintiff objects to Defendants' Instructions to the extent they seek to impose obligations beyond those required by the Federal Rules of Civil Procedure or the operative Case Management Orders. Plaintiff will respond based on information within its possession, custody, or control after reasonable inquiry, in accordance with those Rules and Case Management Orders.

21. Plaintiff objects to Instruction No. 1 (regarding documents and information that "relate, in whole or in part, to the Relevant Time Period even if they were dated, prepared, generated, created, edited, revised, or received prior to" January 1, 2015) as vague, unworkable, and not proportional to the needs of the case. This Instruction improperly suggests that documents created well outside the Relevant Time Period—such as emails or policies from decades earlier—must be reviewed and produced merely because they may describe practices that continued into the Relevant Time Period. Notwithstanding the foregoing objection, Plaintiff is willing to meet and confer to discuss a reasonable and workable standard for searching for documents that continued in force during the Relevant Time Period and, to the extent that an otherwise responsive document is located in the course of Plaintiff's search for Documents that pre-dated January 1, 2015, Plaintiff will not withhold the document solely on the basis of this objection.

22. Plaintiff reserves the right to supplement, amend, or clarify any of these objections as discovery progresses and as the procedural posture of the case evolves, including in light of any subsequent rulings or agreements regarding the scope and structure of discovery.

SPECIFIC RESPONSES AND OBJECTIONS

Request .

> Contracts with any person or entity pertaining to billing of Health Plan Entities or patients (including Self-Pay patients) for OON Healthcare Goods and Services, including contracts with Health Plan Entities, patients, and persons or entities who refer or recruit patients with coverage for OON Healthcare Goods and Services.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request is overbroad and unduly burdensome because it seeks documents related to billing for Self-Pay patients, who are not part of the relevant market and are unrelated to the claims or defenses in this action. The Request also seeks documents concerning Health Plan Entities that are not named as Defendants or otherwise alleged to be co-conspirators in this action. Plaintiff objects to this Request on the grounds that it conflates multiple categories of documents, including contracts with billing vendors and contracts with Health Plan Entities, which are separate in subject matter, purpose, and relevance. As written, the Request would also improperly extend to documents such as individual patient intake or consent forms acknowledging a provider's billing practices— documents that are not relevant to the claims or defenses and are not proportionate to the needs of the case.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *llinois ric* , healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for their out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse themselves for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff objects to the phrase "including contracts with Health Plan Entities, patients, and persons or entities who refer or recruit patients with coverage for OON Healthcare Goods and Services" as vague and ambiguous. For example, the term "recruit" is undefined, speculative, and unclear in scope. It also appears unrelated to the Request's prefatory clause concerning contracts "pertaining to billing" and is not tied to any alleged misconduct or theory of liability in the case.

Plaintiff objects to this Request to the extent it seeks documents not within its possession, custody, or control, including contracts maintained by third-party vendors, facilities, or other billing intermediaries.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks documents and/or information that is equally, if not more, readily available to Defendants than to Plaintiff, including, but not limited to, contracts with Health Plan Entities or their agents. Plaintiff objects to this Request to the extent it seeks contracts with non-defendant Health Plan Entities that contain sensitive, confidential, and proprietary business information. Disclosure of such information is inappropriate where the entities at issue are non-parties and where the Request makes no showing of relevance to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it is duplicative of other Requests, including, without limitation, Requests No. 19 & 20.

Notwithstanding the foregoing objections, Plaintiff will produce responsive contracts with third-party billing services pertaining to billing for OON Healthcare Goods and Services to Health Plan Entities at issue in this case or patients. Plaintiff is willing to meet and confer regarding its objections related to the remainder of this Request.

Request 7.

> All agreements in effect at any point during the Relevant Time Period between Your practice and the facilities where the services for your Claims for OON Healthcare Goods and Services were rendered.

Response to Request 7.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks "all agreements" between Plaintiff and any facility where OON services were rendered, without limitation to agreements that relate to billing or payment of claims or agreements relating to claims involved in this action. The Request sweeps in operational, administrative, lease, referral, or staffing agreements that are irrelevant and disproportionate to the needs of the case.

Plaintiff objects to this Request to the extent it seeks documents not within its possession,

custody, or control, including agreements maintained by independently operated facilities over which Plaintiff does not exercise control.

Plaintiff objects to this Request to the extent it seeks agreements with non-parties that contain sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request .

> Documents sufficient to show any payment or remuneration Your practice received from facilities where the services for your Claims for OON Healthcare Goods and Services were rendered during the Relevant Time Period.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks all documents reflecting any payment or remuneration from facilities where OON services were rendered, regardless of whether such payments relate to the provision of OON Healthcare Goods and Services or to any issue in dispute in this case. The Request sweeps in financial arrangements that are wholly unrelated to Defendants, the challenged conduct, or the claims and defenses in this action.

Plaintiff objects to this Request as vague and ambiguous, including as to what constitutes "remuneration." The term is undefined and may be interpreted to include a broad and indeterminate range of financial or non-financial benefits. Without further definition, the scope of what is sought is unclear and renders compliance unduly burdensome.

Plaintiff objects to this Request to the extent it seeks documents not within its possession, custody, or control, including documents maintained by independently operated facilities.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent that

it seeks documents and/or information that is equally, if not more, readily available to Defendants than to Plaintiff.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business or protected health information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it requires the creation of new documents, compilations, or analyses that do not exist in the ordinary course of business.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request 9.

> Documents sufficient to show the standard Documents, assignments, paperwork, policies, or disclosures that Your practice or any facility at which You practice provides to patients concerning Your OON Healthcare Goods or Services, including but not limited to documents relating to insurance coverage, disclosure of pricing, financial responsibility for services, or patient financing.

Response to Request 9.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks a wide array of materials regardless of whether such documents bear on the claims or defenses in this case or relate to the alleged conduct of Defendants. By way of example, it seeks paperwork from facilities where OON services were rendered, regardless of whether such payments relate to the provision of OON Healthcare Goods and Services involved in this action.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services.

Plaintiff objects to this Request to the extent it seeks documents not within its possession, custody, or control, including documents maintained or distributed by independently operated facilities.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent that it seeks documents and/or information that is equally, if not more, readily available to Defendants than to Plaintiff.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business or protected health information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce standard paperwork, policies, or contracts provided to patients concerning OON Healthcare Goods or Services relating to insurance coverage, disclosure of pricing, financial responsibility for services, or patient financing during the relevant time period. Plaintiff does not intend to produce documents solely related to in-network services. Plaintiff is willing to meet and confer regarding the remainder of this Request.

Request .

> All contracts or other Documents reflecting agreements (including any modifications, amendments, or attachments thereto) that Your practice has entered into with MultiPlan or and any other "OON Repricing Service" (as Plaintiffs have defined that phrase), any Health Plan Entity, or patients, regarding financing arrangements, responsibility for payment, or payment terms or conditions for OON Healthcare Goods or Services, including, for example, single case agreements.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request improperly aggregates distinct categories of agreements—contracts with Health Plan Entities, patients, and OON Repricing Services—into a single demand, despite the fact that each

category raises different factual, legal, and logistical considerations. The Request also seeks all agreements regardless of whether they relate to the conduct, parties, claims, or alleged harm at issue in this action, and is not limited to agreements concerning the challenged pricing practices.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the Request to the extent it seeks documents not within its possession, custody, or control, including agreements maintained by third parties or facilities.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks agreements or other documents that are in Defendants' possession, custody, or control and more readily obtainable by Defendants. In particular, Plaintiff objects to this Request to the extent it seeks documents such as single case agreements or other individual repricing agreements. Requiring Plaintiff to collect and produce every individual case agreement would impose a burden disproportionate to the needs of the case.

Plaintiff objects to this Request to the extent it seeks agreements with non-parties that contain sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff object to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce final, written contracts and agreements in its possession, custody, or control with any Defendant named in Plaintiff's operative short-form complaint regarding the payment of OON Healthcare Goods or Services. Plaintiff is willing to meet and confer regarding the remainder of this Request.

Request .

> Copies of all office manuals, policies, and procedures relating to disclosure of pricing; billing; collection of fees for OON Healthcare Goods and Services; balance billing; financial assistance for patients; and prompt pay discounts or any other types of discounts that are offered to out-of-network patients.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request is overbroad because it seeks documents relating to all OON Healthcare Goods and Services, without limitation to the claims at issue in this litigation. As drafted, it would encompass materials concerning OON services provided to patients insured by non-party Health Plan Entities, or in contexts unrelated to the challenged conduct. It further seeks internal or administrative materials that may have no bearing on the claims or defenses in this action.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *llinois ric* , healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for their out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse themselves for losses caused by the MultiPlan

Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including materials maintained by third-party facilities where services were rendered, or internal policies of entities unaffiliated with Plaintiff.

Plaintiff objects to this Request to the extent it seeks documents that contain sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff object to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged office manuals, policies, and procedures relating to disclosure of pricing, billing, including balance billing, financial assistance, discounts, and collection of fees for OON Healthcare Goods and Services, to the extent such documents exist.

Request .

> Structured Data for the fields of data requested in Defendants' First Set of Requests for Production, Request No. 3 and the additional fields listed below, for each claim for OON Services and In-Network Services, with dates of service from January 1, 2012 to the present at the most granular level that such Structured Data is kept, including at the claim or line level:
>
> (a) Whether the service was provided in an emergency or non-emergency setting;
>
> (b) Whether the facility at which the service was provided was in-network with the patient's Health Plan Entity.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks detailed structured data covering both out-of-network and in-network services. This litigation concerns the payment of OON Healthcare Goods and Services, and requiring structured data on in-network services would impose burdens that outweigh any marginal

relevance. The Request also incorporates by reference Request No. 3 from Defendants' First Set of Requests for Production, to which Plaintiff has already responded and objected; those responses and objections are incorporated herein by reference.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the extent the Request seeks documents or data not within its possession, custody, or control, including data held by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks data or other documents that are in Defendants' possession, custody, or control and more readily obtainable by Defendants. The best source of information on whether the price of any claim OON Goods and Services was set by MultiPlan is Defendants' Structured Data. The Plaintiff's Structured Data does not contain any information on whether the price of a claim for OON Goods and Services was set by MultiPlan that MultiPlan and Defendants' Structured Data does not show and, in many cases, the Plaintiff's Structured Data does not show whether the price was set by MultiPlan (due to the practices used by Defendants in communicating about MultiPlan's role).

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business or protected health information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks data fields that are not maintained in the ordinary course of business or stored in a structured, extractable format. For example, whether a service was rendered in an emergency setting or whether a facility was in-network may not be recorded in any discrete field. Plaintiff objects to the Request to the extent it compels them to create new documents or analyses.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged structured

data in its possession, custody, or control for OON Healthcare Goods and Services claims submitted to any defendants named in Plaintiff's operative short-form complaint, to the extent such data exists, and will meet and confer regarding the scope, relevance, and proportionality of such production. Plaintiff does not intend to produce data solely related to in-network services; however, Plaintiff is willing to meet and confer regarding the remainder of the Request.

Request .

> Documents sufficient to interpret and understand any Structured Data produced by Plaintiffs, including but not limited to data dictionaries, look-up tables, system manuals, and explanations of acronyms used in the Structured Data. To the extent that such information has changed over time during the time period covered by the structured data production, provide information identifying which versions apply to each individual item of information produced in response to Request No. 3 of Defendants' First Set of Requests for Production.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The best source of information on whether the price of any claim for OON Goods and Services was set by MultiPlan is Defendants' Structured Data. The Plaintiff's Structured Data does not contain any information on whether the price of a claim for OON Goods and Services was set by MultiPlan that MultiPlan and Defendants' Structured Data does not show and, in many cases, the Plaintiff's Structured Data does not show whether the price was set by MultiPlan (due to the practices used by Defendants in communicating about MultiPlan's role).

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including explanatory materials maintained by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks data or other documents that are in Defendants' possession, custody, or control.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent that it seeks documents and/or information that is equally, if not more, readily available to Defendants than to Plaintiff.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business or protected health information not relevant to the claims or defenses in this action.

Plaintiff objects to the extent the Request seeks explanatory documentation that does not exist in the ordinary course of business, or that would require new analysis or compilation to create.

Notwithstanding the foregoing objections, Plaintiff will produce Documents related to understanding Structured Data actually produced in response to Defendants' Requests, such as data dictionaries, look-up tables, system manuals, and explanations of acronyms, to the extent such documents exist and have not already been produced. Plaintiff is willing to meet and confer regarding the remainder of the Request.

Request 4.

> For each year during the relevant time period, your chargemaster(s), billed charges (to the extent different from your chargemaster), and other Documents sufficient to show: (a) all Healthcare Goods or Services provided by You practice and the accompanying CPT or HCPCS codes; (b) the list prices or submitted charges for all Healthcare Goods or Services provided by You, including any changes during the relevant time period; and any other fees charged to OON patients in addition to those for specific medical services, whether styled as concierge fees, administrative cost fees, access fees, or the like.

Response to Request 4.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request as drafted is overbroad in that it seeks all historical versions of billed charges, pricing changes, CPT/HCPCS coding details, and documents concerning ancillary fees for every Healthcare Good or Service provided over an extended multi-year period, including healthcare claims not relevant to this action. This would require retrieval and review of voluminous and immaterial records, particularly where data formats or charge structures changed over time.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets,

such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff specifically objects that the list prices and chargemaster prices for its out-of-network services are not relevant to the claims and defenses in the litigation. Price-fixing agreements among purchasers cannot be justified based on the argument that sellers' prices were unreasonable or that the conspiracy was necessary to stabilize the prices the purchasers paid. Thus, discovery into the list prices and chargemasters for out-of-network goods and services is not relevant to the claims and defenses in the litigation and is not proportionate to the needs of the case

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *llinois ric* , healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for their out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse themselves for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including pricing documents created or maintained by third-party facilities or billing vendors.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks data or other documents that are in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it is duplicative of other Requests, including,

without limitation, Request No. 12.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control sufficient to show billed charges for OON Healthcare Goods and Services during the relevant time period, to the extent such documents exist and have not already been produced. Plaintiff is willing to meet and confer regarding this Request.

Request 5.

> All Documents and Communications related to the use of consultants, benchmarking reports, surveys, databases, or other third-party data sources to establish, review, or modify billed charges and/or chargemasters.

Response to Request 5.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request broadly seeks all documents and communications concerning any consultant, survey, report, or database ever used to inform or evaluate billed charges or chargemaster rates, regardless of whether it relates to any healthcare claims in this action. It is not limited to documents relevant to the claims or defenses in this case, and would require a burdensome search of communications and business records spanning years, including materials that may have had no actual impact on pricing decisions.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff specifically objects that the list prices and chargemaster prices for its out-of-network services are not relevant to the claims and defenses in the litigation. Price-fixing agreements among purchasers cannot be justified based on the argument that sellers' prices were unreasonable or that the conspiracy was necessary to stabilize the prices the purchasers paid. Thus,

discovery into the list prices and chargemasters for out-of-network goods and services is not relevant to the claims and defenses in the litigation and is not proportionate to the needs of the case.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including pricing documents created or maintained by external vendors, consultants, or benchmarking services

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request .

> All Documents and Communications relating to the process (a) for establishing or reviewing billed charges and/or Chargemasters, and any changes thereto, and (b) for determining or confirming patient copay, coinsurance, authorization or preauthorization, in force insurance, or insurance fee caps.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request broadly seeks all documents and communications regarding both (a) pricing methodology for billed charges and chargemasters and (b) patient-specific benefits administration functions, such as verifying coverage, confirming copayments, or determining preauthorization requirements. These are distinct processes involving different systems, teams, and time periods. As drafted, the Request is overbroad and would require a burdensome review of administrative,

operational, and possibly clinical documentation that exceeds the needs of this litigation.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff specifically objects that the list prices and chargemaster prices for its out-of-network services are not relevant to the claims and defenses in the litigation. Price-fixing agreements among purchasers cannot be justified based on the argument that sellers' prices were unreasonable or that the conspiracy was necessary to stabilize the prices the purchasers paid. Thus, discovery into the list prices and chargemasters for out-of-network goods and services is not relevant to the claims and defenses in the litigation and is not proportionate to the needs of the case.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including pricing documents created or maintained by third-party facilities or billing vendors.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request on the grounds that documents related to the process for determining or confirming patient copay, coinsurance, authorization or preauthorization, in force insurance, or insurance fee caps are not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff objects to this Request to the extent it is duplicative of other Requests, including, without limitation, Request No. 11.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request 7.

> All Documents pertaining to the development, use, or distribution of any pricing benchmarking reports, surveys, analyses, or databases, whether developed internally or externally, pertaining to assessment of Chargemaster rates, billed charges, or Reimbursement Rates, including contracts with the providers of any such reports, surveys, or databases.

Response to Request 7.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks all documents concerning the development, use, or distribution of any benchmarking report, survey, or database relating to Chargemaster rates, billed charges, or reimbursement, and is not reasonably tailored to any issue in dispute and would require extensive review of internal materials, third-party resources, and contractual documents over a multi-year period.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff specifically objects that the list prices and chargemaster prices for its out-of-network services are not relevant to the claims and defenses in the litigation. Price-fixing agreements among purchasers cannot be justified based on the argument that sellers' prices were unreasonable or that the conspiracy was necessary to stabilize the prices the purchasers paid. Thus, discovery into the list prices and chargemasters for out-of-network goods and services is not

relevant to the claims and defenses in the litigation and is not proportionate to the needs of the case.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including proprietary materials developed by external consultants, vendors, or data services, or documents created and retained by affiliated facilities.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks data or other documents that are in Defendants' possession, custody, or control and more readily obtainable by Defendants, including, for example, external "pricing benchmarking reports."

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff further objects to this Request as overbroad and repetitive of other Requests, including, for example, Requests 15, 16, and 18, which seek overlapping categories of documents relating to pricing inputs, reimbursement rate evaluation, and use of third-party consultants. To the extent those Requests are more specific and appropriately framed, Plaintiff responds separately therein.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request .

> All Communications and Documents related to the use of consultants regarding: (a) the Reimbursement Rates providers (including but not limited to Your practice) receive from Health Plan Entities; (b) Your relationships with Health Plan Entities; (c) Your attempts to negotiate with any Health Plan Entity concerning Reimbursement Rates or fee schedules; (d)

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complaints You made to or about any Health Plan Entity; (e) whether you should contract with or continue to contract with any Health Plan Entity; or (f) Your impressions and beliefs regarding any Health Plan Entity's business practices—including but not limited to all agreements with such consultants and Documents sufficient to show the fees paid to such consultants.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request is overbroad on its face, seeking all documents and communications with consultants relating to a wide range of topics, including internal deliberations, strategic decision-making, and subjective "impressions and beliefs" about Health Plan Entities, including those unrelated to this action. The Request sweeps in materials that are not reasonably connected to any disputed issue in this litigation.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the Request as vague and ambiguous, including as to the phrases "business practices" and "relationships with Health Plan Entities," which are undefined and susceptible to multiple interpretations. The inclusion of subjective concepts such as "impressions and beliefs" further compounds the ambiguity and invites speculation as to what documents may be responsive.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including materials prepared by third-party consultants, data vendors, or affiliated providers that are not retained or accessible by Plaintiff.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks documents or communications that are already in Defendants' possession, custody, or

control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control related to the use of consultants regarding OON reimbursement rates, relationships, negotiations, or complaints concerning Health Plan Entities, to the extent such documents exist. Plaintiff does not intend to produce documents solely related to in-network services or non-relevant consultant engagements, to the extent those documents exist. Plaintiff is willing to meet and confer regarding this Request.

Request 9.

> Final and/or executed contracts between or governing the relationship between You and any Health Plan Entity or, for each year during the relevant time period, documents sufficient to show: (a) the Provider Networks You have participated in; (b) the period of time You participated in those Provider Networks; and (c) the different payment arrangements that You have accepted for Healthcare Goods or Services.

Response to Request 9.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks all contracts and "payment arrangements" and is not limited to contracts relevant to Health Plan Entities identified in any pleading. The burden associated with collecting and reviewing all such contractual materials—many of which may be obsolete, duplicative, or unrelated to the claims in this case—outweighs any likely benefit of production.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets,

such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects further to the extent the Request seeks documents not within its possession, custody, or control, including contracts administered through third-party networks.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks information that is already in Defendants' possession, custody, or control and more readily obtainable by Defendants, including, for example, contracts with Health Plan Entity Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it is duplicative of other Requests, including, without limitation, Request No. 6.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged, final, written contracts in its possession, custody, or control, if any, with Health Plan Entities governing OON Healthcare Goods and Services, and documents sufficient to show OON payment arrangements, during the relevant time period, to the extent such documents exists. Plaintiff does not intend to produce documents solely related to in-network services, to the extent those documents exist. Plaintiff is willing to meet and confer regarding this Request.

Request .

> All contracts with the Health Plan Entities for the health benefit plan(s) you offer to Your employees, summary plan descriptions, and summaries of benefits for Your health benefit plan(s).

Response to Request .

Plaintiff objects to this Request on the grounds of relevance. The Request seeks internal employer health benefit documents for coverage offered to Plaintiff's employees. Such documents are not relevant to any claim or defense in this action. The structure and terms of employee benefit plans offered by provider entities do not bear on the challenged conduct alleged in any pleading, which do not concern providers' internal benefits operations. In addition, because "legal counsel"

is included in the definition of "You," this Request impermissibly seeks documents concerning health plans maintained by law firms representing Plaintiff—entities that are not parties to this litigation and whose benefit arrangements have no relevance to any claim or defense in this action.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including plan documents administered by third-party brokers, insurers, or benefits administrators to whom Plaintiff may delegate HR or plan administration functions.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks contracts that are already in Defendants' possession, custody, or control and more readily obtainable by Defendants, including, for example, contracts with Health Plan Entity Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it is duplicative of other Requests, including, without limitation, Request No. 6.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request .

> All correspondence with the Health Plan Entities that provide health insurance or administer health benefits for Your employees concerning MultiPlan, determination of allowed amounts or reimbursement limits for OON Healthcare Goods (including Documents showing how such limits were selected) and Services provided to Your employees, "OON Repricing

> Services" (as plaintiffs have defined that phrase), or "shared savings" opportunities relating to OON Healthcare Goods and Services.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks internal employee benefits correspondence between Plaintiff and its own insurers or plan administrators concerning MultiPlan, reimbursement limits, or "shared savings" programs. Such documents are not relevant to any claim or defense in this action. The employee benefit plans offered by provider entities do not bear on the challenged conduct alleged in any pleading, which do not concern providers' internal benefits operations.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including plan documents administered by third-party brokers, insurers, or benefits administrators to whom Plaintiff may delegate HR or plan administration functions.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks correspondence that is already in Defendants' possession, custody, or control and more readily obtainable by Defendants, including, for example, correspondence with Health Plan Entity Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent that it seeks documents and/or information that is equally, if not more, readily available to Defendants than to Plaintiff.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request .

> All Documents relating to any Certificate of Need filing or approval (or similar regulatory evaluation of the potential impact of Your practice on

health care costs or competition) relating to Your practice.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks documents relating to state-level regulatory filings or approvals which are not relevant to any claim or defense in this action. It is overbroad and unduly burdensome, particularly given the multi-year scope of the case and the potentially voluminous regulatory submissions involved.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including filings submitted by or retained by third-party consultants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request .

> All presentations by or to Your practice's owners, lenders, investors (including affiliated private equity investors), or board concerning Your practice's actual or projected financial performance or strategic plans.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks internal presentations concerning financial performance or strategic planning, directed to owners, lenders, or investors, including private equity sponsors. These materials are not relevant to any claim or defense in this action and would include, for example, financial

information unrelated to out-of-network claims or healthcare claims involved in this litigation.

Plaintiff objects to this Request as overbroad, irrelevant, and not disproportionate to the needs of the case because it seeks information concerning presentations to owners, lenders, and investors concerning financial performance and strategic plans that are unrelated to out-of-network goods and services. Moreover, to the extent that Defendants seek this information to show that Plaintiff have collateral sources of revenue or funding through investors, lenders, or private equity ownership, they are not relevant to the claims and defenses in the litigation.

Plaintiff objects to this Request as vague and ambiguous, including as to what constitutes a "presentation." The term is undefined and may encompass a wide and indeterminate range of documents—such as informal conversations, formal slide decks, internal memos, meeting agendas, financial reports, or email summaries—making the scope of the Request unclear and unduly burdensome to assess or implement.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including materials prepared by or retained exclusively by investors, lenders, or consultants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request 4.

> Your practice's financial statements and balance sheets, including the financial statement line-item detail for all revenue, expenses, and owner distributions, for each month during the relevant time period.

Response to Request 4.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks comprehensive monthly financial statements and detailed line-item accounting for all revenue, expenses, and owner distributions, much of which (including, for example owner distributions) is not relevant to any claim or defense in this action. No claim or defense depends on the internal financial operations, profitability, or ownership distributions of the provider entities asserting claims. The Request is also unduly burdensome. Monthly financials spanning more than a decade, particularly with line-item detail, would encompass thousands of pages of granular data, much of which is immaterial and duplicative.

Plaintiff objects to this Request as overbroad, irrelevant, and not disproportionate to the needs of the case because it seeks information concerning owners that is unrelated to out-of-network goods and services. Moreover, to the extent that Defendants seek this information to show that Plaintiff have collateral sources of revenue or funding through investors, lenders, or private equity ownership, they are not relevant to the claims and defenses in the litigation.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it requires the creation of new documents, compilations, or analyses that do not exist in the ordinary course of business.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request 5.

> All revenue reports, revenue cycle management reports, or similar documents from the Relevant Time Period regarding Your obtaining payments from patients or Heath [sic] Plan Entities for OON Healthcare Goods or Services, including but not limited to reports or similar documents that specifically describe or reflect the use or non-use of MultiPlan's products or services in connection with Your obtaining payments from patients or Heath [sic] Plan Entities for OON Healthcare Goods and

Services.

Response to Request 5.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality The Request seeks all "revenue reports," "revenue cycle management reports," and "similar documents" concerning payments received from patients or Health Plan Entities for OON services, including claims that were not priced by MultiPlan and regardless of whether the materials relate to the healthcare claims at issue in the litigation.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request to the extent it seeks documents not within its possession, custody, or control, including contracts maintained by third-party vendors, facilities, or other billing intermediaries.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks information that is in Defendants' possession, custody, or control and more readily obtainable by Defendants, including, for example, information on the payment of claims by Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents related to payments from patients or Health Plan Entities for OON Healthcare Goods or Services,

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including reports that specifically describe or reflect the use or non-use of MultiPlan's products. However, Plaintiff does not understand what Defendants mean by "revenue reports, revenue cycle management reports, or similar documents." To the extent Defendants are seeking documents different from the categories of documents Plaintiff has agreed to produce, Plaintiff is willing to meet and confer regarding the scope of this Request.

Request .

> Your practice's federal and state tax returns for each calendar year during the relevant time period, including documents sufficient to show any taxpayer identification numbers You used and the facilities where the services for your Claims for OON Healthcare Goods and Services were rendered.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks highly sensitive federal and state tax returns spanning multiple years, as well as information regarding facilities and revenue unrelated to the claims at issue.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation. Plaintiff' tax returns are not relevant to the existence and effect of the MultiPlan Cartel. Moreover, this information is disproportionate to the needs of the case because Plaintiff has already provided or will provide its tax identification numbers to Defendants in connection with plaintiff fact sheets.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including information maintained by third-party facilities.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks information that is in Defendants' possession, custody, or control and more readily obtainable by Defendants, for example, taxpayer identification numbers provided to Defendants in the course of healthcare claims adjudication.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Notwithstanding the foregoing objections, Plaintiff has already produced its taxpayer

identification number. Plaintiff does not intend to produce tax returns. Plaintiff is willing to meet and confer with Defendants regarding this Request.

Request 7.

> Your practice's policies and procedures relating to recognition of revenue from various sources of payment (e.g. Health Plan Entities, patients, etc.), and documents sufficient to identify the amount recognized/written off for each year of the relevant time period due to actual or expected payment/non-payment by patients and Health Plan Entities.

Response to Request 7.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks internal accounting policies and financial data concerning revenue recognition and write-offs relating to various payors, including those who are not involved or named in this Action and without regard to whether underlying claims involved OON services or conduct challenged in this litigation.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *llinois ric*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for their out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that

Plaintiff supposedly could have used to reimburse themselves for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including financial or billing records maintained by external accounting or billing vendors.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control sufficient to show policies and procedures relating to recognition of revenue for OON claims, to the extent such documents exist. Plaintiff is willing to meet and confer with Defendants regarding the remaining aspects of the Requests to determine whether the parties can resolve Plaintiff's objections such that Plaintiff may produce documents in its possession, custody, or control.

Request .

> Documents sufficient to show Your practice's monthly (or the shortest period for which they are regularly prepared) profits, losses, gross income, and net income during the relevant time period, for Your practice as a whole and broken out by in-network and out-of-network services.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks financial information unrelated to the claims or defenses in this litigation, including, for example, financials relating to in-network services or even financials unrelated to healthcare claims.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result

of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for their out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse themselves for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including financial or billing records maintained by external accounting or billing vendors.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks data or materials that are not maintained in the ordinary course of business. For example, many Plaintiff do not categorize profit and loss data by payer network status, and such breakdowns may not exist in a form that can be readily extracted or reconstructed without significant effort.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request 9.

> Documents sufficient to show compensation (salary, benefits, bonuses, and other incentives), expense reimbursement, owner distribution, and/or other payments made by You and/or Your practice and/or paid to You, other Providers in Your practice, and other employees or office staff employed by Your practice, including the breakdown by person and category of payment (salary, benefits, bonuses, other incentives, expense reimbursement, owner distribution), for each year during the relevant time period.

Response to Request 9.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks comprehensive financial information broken down by person and category when much of this information (including, for example owner compensation or staff benefits) is not relevant to any claim or defense in this action. No claim or defense depends on the internal financial operations, profitability, or ownership distributions of the providers asserting claims. Plaintiff also objects to the portion of the Request seeking a "breakdown by person and category of payment" as overbroad, intrusive, and disproportionate to the needs of the case. Personnel-level compensation data implicates significant privacy and confidentiality concerns, especially with respect to non-owner employees or support staff who have no connection to the claims at issue. Individual-level breakdowns serve no discernible relevance and would impose undue burden in both collection and redaction. Similarly, collecting individualized annual compensation and ownership distribution data across multiple practice entities, for multiple individuals, broken down by "person and category of payment" over a period exceeding a decade would impose significant effort and raise serious confidentiality concerns without advancing any claim or defense in the case.

Plaintiff objects to the Request as vague and ambiguous, including with respect to the term "other incentives," which is undefined and could encompass a wide and indeterminate range of payments.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including financial or billing records maintained by external accounting or billing vendors.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff objects to this Request to the extent it seeks data or materials that are not maintained in the ordinary course of business.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request .

> For each year during the relevant time period, Documents sufficient to show the itemized costs of maintaining Your practice, including but not limited to: (a) the maintenance of equipment, technology, or tools used in Your practice and the cost of acquiring or leasing such equipment, technology, or tools; and (b) the costs of rent, utilities, supplies, billing, training of staff, malpractice insurance, sanitation, and records maintenance systems; and any other documents showing Your practice's cost of care per patient or cost of care per service line.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks annual itemized cost data associated with the full operation of Plaintiff' practices—including facilities, equipment, personnel training, and other overhead expenses. Such operating costs have no bearing on any claim or defense in this litigation. Plaintiff also object to the Request to the extent it seeks disaggregated cost information by service line or patient, which may not be recorded or maintained in a discrete, retrievable format.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including financial or billing records maintained by external accounting, billing vendors, or third-party facilities.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks data or materials that are not maintained in the ordinary course of business, including, for example, disaggregated cost information by service line or patient.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request .

> For each year during the relevant time period, Documents sufficient to show Your debt, discounts, or write-offs, by category, including but not limited to any business bankruptcy filings.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks documents concerning Plaintiff's debt obligations, discount practices, write-offs, and even bankruptcy filings, much or all of which has no connection to any claim or defense in this action. Plaintiff objects to the Request in particular to the extent it seeks information disaggregated by category and year, which may not be maintained in that form in the ordinary course of business. Identifying and categorizing such information retrospectively would require considerable effort and impose significant burden with little or no corresponding evidentiary value and may require the creation of custom documents.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by external accountants, lenders, or legal counsel.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff objects to this Request to the extent it seeks data or materials that are not maintained in the ordinary course of business.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request .

> Documents sufficient to show: (a) any applications for support, financial relief, paycheck protection, loans, or loan forgiveness sought by You and/or Your practice; (b) the relief or support received; and (c) the entity that provided the relief or support.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks information concerning government assistance, financial support, or private or public loan applications made by Plaintiff—information with no discernible relationship to any claim or defense in this case.

Plaintiff objects to the Request as vague and ambiguous, including with respect to the scope of "support" or "relief," which may encompass a broad and undefined category of transactions, and the lack of any limitation regarding to whom "applications" are made.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by external accountants, lenders, or other third parties.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its

possession, custody, or control.

Request .

> All Documents pertaining to any comparisons of the Reimbursement Rates paid by any Defendant and those paid by any other Defendant or Health Plan Entity for any Healthcare Good or Service, including: (a) Your Communications concerning those comparisons; and (b) any analysis, study, or discussion of the reasons for the difference in Reimbursement Rates shown in such a comparison.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks documents concerning internal or third-party comparisons of reimbursement rates paid by Defendants and non-Defendant health plans, regardless of whether such comparisons relate to OON Healthcare Goods and Services, involve the use of MultiPlan, or implicate any claim or defense in this action.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the term "comparisons" as vague and ambiguous, including as to whether it refers to informal observations, anecdotal communications, formal analyses, or statistical evaluations. As written, the Request is unclear as to what would constitute a responsive document.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors, accountants, or other third parties.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control pertaining to comparisons of OON reimbursement rates paid by Defendants or other Health Plan Entities, to the extent such documents exist and are reasonably accessible. Plaintiff does not intend to produce non-privileged documents solely related to in-network services. Plaintiff is willing to meet and confer regarding the remainder of this Request.

Request 4.

> All Documents and Communications showing attempted negotiations, whether successful or not, between You and any Health Plan Entity (including but not limited to any of the Defendants) regarding Reimbursement Rates.

Response to Request 4.

Plaintiff objects to this Request on the grounds of relevance and proportionality. The Request seeks all documents and communications concerning any attempted negotiations with any Health Plan Entity over rates, whether or not such negotiations pertained to out-of-network services, involved any Defendant, or bear on the claims or defenses in this litigation. The Request is not limited in time, scope, or subject matter and is disproportionate to the needs of the case.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors, accountants, or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks information that is in Defendants' possession, custody, or control.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent that it seeks documents and/or information that is equally, if not more, readily available to Defendants than to Plaintiff.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control showing attempted negotiations, whether successful or not, regarding OON reimbursement rates with any defendant named in Plaintiff's operative short form complaint, to the extent such documents exist. Plaintiff does not intend to produce non-privileged documents solely related to in-network services. Plaintiff is willing to meet and confer regarding the remainder of this Request.

Request 5.

> All Documents related to Your consideration of whether or not to contract with any Health Plan Entity or Provider Network (including but not limited to any of Defendants)—regardless of whether those discussions resulted in You contracting with that Health Plan Entity or Provider Network—and any correspondence, drafts, or other Documents reflecting any such consideration.

Response to Request 5.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks documents reflecting any consideration—however informal or preliminary—of whether to contract with any Health Plan Entity or Provider Network, regardless of whether such consideration involved Defendants or any agreement relevant to the alleged conduct in this litigation. The Request is overbroad and seeks information not tied to any claim or defense.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks information that is in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control related to OON contracting decisions with the defendants named in Plaintiff's operative short form complaint, to the extent such documents exist. Plaintiff does not intend to produce non-privileged documents solely related to in-network services. Plaintiff is willing to meet and confer regarding the remainder of this Request.

Request .

> All Communications between You or any of Your agents, including billing agents, and Defendants regarding payment or reimbursement for OON Healthcare Goods and Services.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality.

The Request seeks all communications between Plaintiff (or its agents) and Defendants concerning payment of out-of-network healthcare claims, without limitation to those healthcare claims that are alleged to have been affected by the conduct at issue in this case. To the extent the Request seeks communications related to OON claims not repriced or processed through MultiPlan, or otherwise unrelated to the alleged conspiracy, it is overbroad and disproportionate to the needs of the case

Plaintiff objects to the Request as vague and ambiguous, including in its reference to communications "between You or any of Your agents, including billing agents, and Defendants." It is unclear whether the Request seeks only direct communications with Defendants or also encompasses internal communications between Plaintiff and its agents or third-party vendors concerning payment issues generally, which would greatly expand the scope and burden of the Request without enhancing its relevance.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff objects to this Request to the extent it seeks documents or communications exchanged via a web-based portal hosted or operated by a Defendant, which are not readily collectible and producible by providers.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged, non-portal-based, written communications any defendant named in Plaintiff's operative short-form complaint regarding payment for OON Healthcare Goods and Services in its possession, custody, or control. Plaintiff is willing to meet and confer with Defendants regarding the remaining aspects of the Requests to determine whether the parties can resolve Plaintiff's objections such that

Plaintiff selected as bellwethers may produce documents in its possession, custody, or control.

Request 7.

> All contracts, including any modifications, amendments, or attachments thereto, You have entered into with any person or entity utilized by Your practice for Your revenue cycle management functions, billing of patients or Health Plan Entities, or collections activity (including placement of liens).

Response to Request 7.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks all contracts with third-party vendors or entities involved in Plaintiff's revenue cycle management, billing, or collections processes, regardless of whether such contracts have any connection to the claims or defenses at issue. Agreements with vendors retained for general administrative support, software services, or unrelated collections activity do not bear on the alleged conspiracy.

Plaintiff objects to the Request as vague and ambiguous, including as to the scope of the term "utilized by Your practice." It is unclear whether the Request is limited to entities with which Plaintiff has active contractual relationships or also includes historical, non-operational, or informal engagements.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its

possession, custody, or control.

Request .

> All contracts, including any modifications, amendments, or attachments thereto, You have entered into with any Defendant, and any correspondence, drafts, or other Documents reflecting Communications or negotiations related to such contracts.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks all contracts—regardless of subject matter—entered into between Plaintiff and any Defendant, including modifications, amendments, attachments, drafts, correspondence, and negotiation-related documents. This breadth includes, for example, in-network contracts that do not involve or relate to out-of-network claims or conduct implicated in this action.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by counsel or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks information that is in Defendants' possession, custody, or control and more readily obtainable by Defendants. In particular, Plaintiff objects to this Request to the extent it seeks documents such as single case agreement or other individual repricing agreements. Requiring Plaintiff to collect and produce every individual case agreement would impose a burden disproportionate to the needs of the case.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control related to OON contracts with any defendant named in Plaintiff's operative short form complaint, to the extent such documents exist. Plaintiff does not intend to produce non-privileged documents solely related to in-network services. Plaintiff is willing to meet and confer regarding the remainder of this Request.

Request 9.

> All Documents identifying, listing, tracking, or otherwise analyzing the actual or potential financial impact on Your practice of participating in a Health Plan Entity's Provider Network, or of remaining (or becoming) an OON provider.

Response to Request 9.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks materials related to any payor regardless of whether the payor is named or implicated in this action.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-

client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff objects to this Request to the extent it requires the creation of new documents, compilations, or analyses that do not exist in the ordinary course of business.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control related to the financial impact of Plaintiff's OON participation with any defendant named in Plaintiff's operative short form complaint, to the extent such documents exist. Plaintiff does not intend to produce non-privileged documents solely related to in-network services. Plaintiff is willing to meet and confer regarding the remainder of this Request.

Request 4 .

> All Documents discussing the benefits or disadvantages to You from participating in any Provider Network or contracting with any Health Plan Entity, including all Communications with any consultant or person hired to analyze the effects (positive, neutral, or negative) of participating in any Provider Network or contracting with any MCO.

Response to Request 4 .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks materials related to any payor or provider network regardless of whether the payor or provider network is named or implicated in this action.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary

business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control related to the benefits or disadvantages of ONN participation with any defendant named in Plaintiff's operative short form complaint, to the extent such documents exist. Plaintiff does not intend to produce non-privileged documents solely related to in-network services. Plaintiff is willing to meet and confer regarding the remainder of this Request.

Request 4 .

> All Communications with any Health Plan Entity regarding Reimbursement Rates, discounts, Premiums, deductibles, co-payments, co-insurance, or the terms or conditions of any contract with a Defendant.

Response to Request 4 .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks materials related to any payor regardless of whether the payor is named or implicated in this action. The Request also seeks materials related to information that is not relevant to any claim or defense in this litigation. For example, communications concerning premiums, co-pays, deductibles, or co-insurance relate to the structure of patient cost-sharing or plan design, not the setting or suppression of out-of-network payments to providers. Discovery into such topics would impose a burden disproportionate to any conceivable benefit and would divert attention from the actual issues in dispute.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to

healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks communications that are in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Notwithstanding the foregoing objections, Plaintiff will produce communications with any defendant named in Plaintiff's operative short form complaint, regarding reimbursement rates, discounts, or contract terms for OON Healthcare Goods and Services within its possession, custody, or control, to the extent such communications exist. Plaintiff is willing to meet and confer regarding the remainder of this Request.

Request 4 .

> All Documents reflecting any complaints, appeals, criticisms, objections, or grievances regarding the Reimbursement Rates or other contractual terms with any Health Plan Entity, or regarding the appropriate categorization of claim adjustments as Contractual Obligation (CO) versus Patient Responsibility (PR).

Response to Request 4 .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks broad categories of communications and documents—including internal or informal expressions of dissatisfaction—regarding reimbursement rates, contract terms, or administrative categorizations of claim adjustments. The Request seeks materials related to any payor regardless of whether the payor is named or implicated in this action. Day-to-day disputes or complaints about payment allocation, categorization, or administrative coding from payors unrelated to this action do not bear any claim or defense in this action.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation

and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *llinois ric* , healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for their out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse themselves for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff objects that the Request is vague and ambiguous, particularly with respect to the phrases "complaints," "criticisms," or "grievances," and what level of formality or content is required. The Request is also vague as to whom such complaints, appeals, criticisms, objections, or grievances must have been made rendering it unclear. The Request is also ambiguous in its reference to "Contractual Obligation (CO)" and "Patient Responsibility (PR)," which are capitalized but undefined terms.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks documents that are in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary

business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control related complaints, appeals, or grievances regarding ONN reimbursement rates or contract terms concerning any defendant named in Plaintiff's short-form complaint, to the extent such documents exist. Plaintiff is willing to meet and confer regarding the remainder of this Request.

Request 4 .

> All Documents discussing or comparing the Reimbursement Rates paid by Health Plan Entities for Healthcare Goods or Services, whether using MultiPlan, any other "OON Repricing Service" (as Plaintiffs have defined that phrase), or no OON Repricing Service, including but not limited to Documents discussing or comparing the Reimbursement Rates that You have accepted as payment for Healthcare Goods or Services and documents referencing any pros and cons or assessment of OON benefits of OON Repricing Services, including but not limited to those offered by MultiPlan.

Response to Request 4 .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks an expansive and undefined category of documents encompassing internal or external discussions, assessments, or comparisons of reimbursement rates across all Health Plan Entities—including those that are not involved in this action.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *llinois ric* , healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for their out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed

in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse themselves for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks documents that are in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control, discussing or comparing OON reimbursement rates and OON repricing services with respect to any defendant named in Plaintiff's operative short-form complaint, to the extent such documents exist. Plaintiff is willing to meet and confer regarding the remainder of this Request.

Request 44.

> All Documents relating to Your participation in any medical-related trade associations (including but not limited to state medical associations and the American Medical Association), including Documents related to attendance (in-person, telephonic, or otherwise) at any meeting or conference with representatives of such a trade association; minutes of meetings in which Defendants, other Health Plan Entities, or Reimbursement Rates were discussed; membership on any advisory board, board of directors, committee, or other leadership structure affiliated with such a trade association; and/or the provision of Your Reimbursement Rates, revenue, net income (profit), payer sources, or other non-public data or information to such a trade association.

Response to Request 44.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks an expansive array of documents related to every aspect of Plaintiff's participation in professional or medical trade associations, including attendance records, minutes, internal leadership roles, and financial data potentially shared in aggregate with such associations. The mere fact that a DAP provider participated in a trade organization does not render its participation or communications therein relevant to any claim or defense in this action. The Request is not limited to communications with Defendants, discussions of MultiPlan, or any other nexus to the alleged conduct at issue in this litigation. The Request would require time-consuming review of records unrelated to the Defendants' conduct, implicating issues of privacy and professional association. This Request assumes that because Defendants' meetings regarding the pricing of OON Healthcare Goods and Services are relevant to the claims and defenses in this litigation, Plaintiff's meetings must be relevant as well. That is not the case. Discovery sought from defendants is not automatically relevant when sought from plaintiffs in antitrust cases.

Plaintiff objects to this Request to the extent that it seeks mirrored discovery concerning Plaintiff's supposed involvement in any medical-related trade associations. Such mirrored discovery is irrelevant to the claims and defenses in the litigation. There is no allegation that Plaintiff colluded to use a common methodology to set billed charges for out-of-network services."

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including materials maintained by third-party trade associations or professional groups.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its

possession, custody, or control.

Request 45.

> All Communications with any government agency (including but not limited to departments of insurance, insurance commissioners, and state Attorneys General), the American Medical Association, state or local medical associations, or other professional organizations regarding Reimbursement Rates, market conditions, competition, discounts, Premiums, deductibles, copayments, co-insurance, patient medical debt, balance billing, or the terms or conditions of any contract with a Health Plan Entity, including but not limited to all Documents reflecting any complaints, appeals, criticisms, objections, or grievances regarding the Reimbursement Rates or other contractual terms offered by any Health Plan Entity.

Response to Request 45.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks a sweeping and ill-defined universe of communications with not only government agencies, but also trade and professional associations, concerning a wide range of policy and contractual topics—many of which are not at issue in this litigation. The inclusion of subject matters such as premiums, deductibles, copayments, patient medical debt, balance billing, and generalized "market conditions" extends well beyond the core allegations in this case, which concern whether Defendants engaged in a conspiracy to suppress out-of-network reimbursement rates. The Request is not tailored to communications involving any Defendant or any Health Plan Entity alleged to have participated in the alleged conspiracy. It instead seeks all communications involving any Health Plan Entity, including those with no role in this litigation. As a result, it encompasses irrelevant and collateral regulatory or policy advocacy efforts, such as those relating to legislative reform, public health matters, or general reimbursement practices, none of which are tied to the factual or legal issues in dispute. The Request also seeks documents relating to advocacy efforts unrelated to OON Healthcare Goods and Services, and therefore unrelated to the claims in this case.

Plaintiff objects to this Request to the extent that it seeks mirrored discovery concerning Plaintiff's communications with a wide array of entities, including medical associations and government agencies. Such mirrored discovery is irrelevant to the claims and defenses in the

litigation. There is no allegation that Plaintiff colluded to use a common methodology to set billed charges for out-of-network services."

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged communications within its possession, custody, or control between Plaintiff and any government agency, the American Medical Association, state or local medical associations, or other professional organizations regarding Reimbursement Rates for OON Healthcare Goods and Services. Plaintiff is willing to meet and confer with Defendants regarding the remaining aspects of the Requests.

Request 4 .

> All Documents reflecting Your participation in any advocacy efforts relating to how any Health Plan Entity (including, but not limited to, any Defendant) operates its business or relating to any legislation intended or likely to affect any Health Plan Entity's business, including but not limited to advocacy efforts relating to OON reimbursement, balance billing, or medical debt.

Response to Request 4 .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks documents reflecting general advocacy efforts—whether legislative, regulatory, or public-facing—relating to how any Health Plan Entity, regardless of whether it is involved in this action, conducts its business or how legislation might affect them, including but not limited to broad healthcare policy areas. These topics may not bear on any claim or defense in this action. Further, the Request would encompass, for example, generic lobbying or participation in trade associations, amicus efforts, position statements, or meetings with lawmakers or regulators concerning systemic or national health policy, including those with no bearing on the specific

pricing practices or market conduct challenged in this action. The burden of identifying, reviewing, and producing all such documents over a potentially multi-year period far outweighs any speculative relevance. The Request also seeks documents relating to advocacy efforts unrelated to OON Healthcare Goods and Services, and therefore unrelated to the claims in this case.

Plaintiff objects to this Request as vague and ambiguous, including in its use of undefined terms such as "advocacy efforts," which is not limited to any particular type of activity, audience, or forum and could encompass a broad and indeterminate range of conduct, from formal lobbying to informal public commentary.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, such as those held by third-party lobbying firms, trade associations, or policy advocacy organizations in which a DAP may have participated.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents within its possession, custody, or control reflecting participation in advocacy efforts regarding Reimbursement Rates for OON Healthcare Goods and Services concerning any defendant named in Plaintiff's short-form complaint. Plaintiff is willing to meet and confer with Defendants regarding the remaining aspects of the Request.

Request 47.

> All Documents and Communications in which You have asserted that You believed one or more Defendants were paying below-market rates for Healthcare Goods or Services or were engaged in a scheme to fix or depress Reimbursement Rates.

Response to Request 47.

Plaintiff objects to this Request on the grounds of scope, and proportionality. The Request

is not limited by audience, formality, or context, and thus seeks any statement—formal or informal, internal or external, private or public—in which a DAP may have subjectively "asserted" that a Defendant's payments were below market or indicative of a "scheme." The Request would require a burdensome and speculative review of potentially years of correspondence and notes to identify offhand remarks, commentary, or complaints. The Request is also not limited to healthcare claims at issue in this litigation and would include, for example, claims that were not priced by any MultiPlan product.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks documents or communications that are already in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business or protected health information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents within its possession, custody, or control in which Plaintiff asserted that one or more Defendants were paying below-market reimbursement rates for OON Healthcare Goods and Services or were engaged in a scheme to fix or depress reimbursement rates for OON Healthcare Goods and

Services. Plaintiff does not intend to produce documents related solely to in-network rates. Plaintiff is willing to meet and confer with Defendants regarding this Request.

Request 4 .

> All Documents pertaining to Your consideration of whether to cease or limit treating members of any Health Plan Entity based on that Health Plan Entity's OON Reimbursement Rates, including all Documents in which you discuss or threaten such cessation or limitation.

Response to Request 4 .

Plaintiff objects to this Request on the grounds of scope and proportionality. The Request requires the identification of all internal and external documents merely "pertaining to consideration" of whether to cease or limit treatment of members of any Health Plan Entity—regardless of whether any such consideration was substantive, implemented, or tied to the alleged conduct at issue.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks documents or communications that are already in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business or protected health information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents within its possession, custody, or control in which Plaintiff considered whether to cease or limit treating any member of any Health Plan Entity based on that Health Plan Entity's OON Reimbursement Rates, to the extent such documents exist. Plaintiff is willing to meet and confer with Defendants regarding the remaining aspects of this Request.

Request 49.

> All Documents and Communications relating to Your sales strategies, sales forecasts, and sales plans for recruitment or retention of OON patients, or treatment of patients at any facilities at which Your practice is OON but the facility is in-network.

Response to Request 49.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks business materials not plausibly related to any claim or defense in this litigation, which do not involve marketing or patient acquisition practices.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects that the Request is vague and ambiguous. It does not define "sales strategies" or "sales plans" in the context of a medical practice, where patient acquisition is often incidental to treatment, not structured as a commercial sales operation. The reference to "recruitment or retention of OON patients" is unclear and could improperly be construed to include patient care policies, website content, or scheduling protocols.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks documents or communications that are already in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business or protected health information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-

client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request 5 .

> All Documents and Communications concerning the relationship between Reimbursement Rates and patient volume.

Response to Request 5 .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks all documents and communications concerning an ill-defined and inherently multifactorial relationship between Reimbursement Rates and patient volume, without limitation as to audience, facility, or context. The Request seeks speculative or tangential information not material to the claims or defenses in this case.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as vague and ambiguous. The phrase "relationship between Reimbursement Rates and patient volume" is undefined and could encompass a wide array of concepts, and fails to clarify whether it seeks quantitative analyses, anecdotal assessments, or subjective observations. The lack of specificity renders the Request difficult to interpret and overly burdensome to apply.

Plaintiff objects to the extent the Request seeks documents not within its possession,

custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request 5 .

> Documents sufficient to identify all Claims that You allege were underpaid due to the alleged conspiracy between Defendants, and for each such Claim, all Documents regarding actions You took with respect to those Claims, including any appeals, balance bills and notices sent to patients, and communications with MultiPlan or the Health Plan Entity to whom the Claim was submitted.

Response to Request 5 .

Plaintiff objects to this Request on the grounds of vagueness, scope, and proportionality. The Request seeks "all Documents regarding actions" taken with respect to any allegedly underpaid claim, without limitation. The term "actions" is vague and undefined, and the Request as framed could encompass a broad range of operational, financial, and legal communications that extend well beyond what is relevant to the alleged conspiracy or any claim or defense in this case. The burden of identifying, collecting, and producing such documents across all potentially affected claims—over a multi-year period and across multiple systems—is not proportional to the needs of the case.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets

in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *llinois ric* , healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for their out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse themselves for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks documents or communications that are already in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control sufficient to identify claims alleged to be underpaid due to the alleged conspiracy and documents regarding actions taken with respect to such claims after Defendants provide Plaintiff with the necessary claims data identifying the MultiPlan priced claims for OON Healthcare Goods and Services. Plaintiff is willing to meet and confer with Defendants regarding this Request.

Request 5 .

> Reports, charts, summaries or similar documents regarding independent dispute resolution (IDR) submissions by Your practice under the No Surprises Act, and the arbitration award (if any) associated with each such submission.

Response to Request 5 .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks reports, summaries, or similar documents concerning IDR submissions under the No Surprises Act, including arbitration outcomes, without regard to whether such submissions relate to the Defendants, the alleged conspiracy, or the claims at issue in this case.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks documents or communications that are already in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request 5 .

> All documents relating to any consideration of or decision to cease providing OON Healthcare Goods and Services to patients associated with a particular Health Plan Entity, or to reduce or forego spending on improving care or offering charitable care because of underpayments by Health Plan Entities for OON Healthcare Goods and Services.

Response to Request 5 .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request is overbroad and seeks documents without regard to whether they involve healthcare claims with a connection to this action. It is not limited to decisions related to Defendants or Health Plan Entities alleged to have participated in the purported conspiracy.

Plaintiff objects to this Request as vague and ambiguous, including as to the terms "consideration," "decision," "reducing or foregoing spending," and "improving care," all of which are undefined and inherently subjective. The Request fails to specify whether it targets formal business decisions, internal communications, high-level strategy, or informal commentary, and thereby imposes an undue burden in attempting to identify responsive documents.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, or proprietary business information not relevant to any claim or defense in this action, including internal deliberations on budget allocations or strategic planning decisions unrelated to Defendants' conduct.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control related to any consideration of a decision to cease providing OON Healthcare Goods and Services to patients associated with a particular Health Plan Entity or

to reduce or forgo spending on improving care or offering charitable care because of underpayments by Health Plan Entities for OON Healthcare Goods and Services, to the extent such documents exist.

Request 54.

> All Documents related to the alleged conspiracy between Defendants regarding MultiPlan, including but not limited to Defendants' alleged knowledge of other Health Plan Entities' use of MultiPlan's services and Communications regarding any data sent to MultiPlan and any documents regarding the "abrasion" allegations set forth in the Complaints.

Response to Request 54.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks all documents relating to the alleged conspiracy among Defendants regarding MultiPlan, including topics that are more appropriately directed to Defendants themselves—such as their own knowledge of other Health Plan Entities' use of MultiPlan's services. It further seeks information concerning Health Plan Entities that are not parties to this action and whose conduct is not at issue. Plaintiff is not positioned to testify or produce documents regarding Defendants' internal knowledge, intent, or conduct.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks documents or communications that are already in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control related to the conspiracy between Defendants regarding MultiPlan, including documents regarding Defendants' knowledge of other Health Plan Entities' use of MultiPlan, communications regarding data sent to MultiPlan, and documents regarding "abrasion" allegations, to the extent such document exist.

Request 55.

> All Documents discussing or otherwise relating to Defendants' alleged uses of MultiPlan's services or products, including but not limited to MultiPlan's Data iSight tool, negotiation services, or provider networks.

Response to Request 55.

Plaintiff objects to this Request on the grounds of scope and proportionality. The Request broadly seeks "all documents discussing or otherwise relating to Defendants' alleged uses" of MultiPlan's services or products, without any limitation to the specific conduct at issue in this litigation. This includes provider networks provided by MultiPlan, which may not have any bearing on the claims or defenses in this action.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it

seeks documents or communications that are already in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control discussing or related to Defendants' alleged uses of MultiPlan's services or products, including Data iSight, negotiation services, or provider networks, to the extent such documents exist.

Request 5 .

> All Communications with third parties, including Your patients, any government or regulatory body, or the media, regarding Defendants' use of MultiPlan's services or the subject matter of the allegations of the Complaints.

Response to Request 5 .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks "all Communications with third parties… regarding Defendants' use of MultiPlan's services or the subject matter of the allegations of the Complaints," which is facially overbroad and not reasonably tailored to any claim or defense in this action. As framed, the Request would encompass a potentially enormous volume of internal and external communications—formal or informal, directly or tangentially related to the litigation—regardless of their relevance, custodial source, or connection to Plaintiff's claims. Identifying and collecting all communications with undefined categories of "third parties," particularly over an extended period and without a clear nexus to the alleged conspiracy, would be highly burdensome and disproportionate to any potential relevance.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets

in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the Request as vague and ambiguous. The phrase "subject matter of the allegations of the Complaints" lacks specificity and could be construed to include any communication referencing reimbursement, pricing, patient billing, or other routine topics far removed from the alleged collusion among Defendants. This ambiguity renders the Request impermissibly vague under the applicable discovery standards.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks documents or communications that are already in Defendants' possession, custody, or control and more readily obtainable by Defendants

Plaintiff objects to the extent the Request seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged communications with third parties regarding Defendants' use of MultiPlan's services, to the extent such communications exist.

Request 57.

> Documents sufficient to show the geographic areas in which You promote or market Your Healthcare Goods or Services, including but is not limited to Documents sufficient to show where and for what locations You have placed advertisements for your services, or your patient service area(s).

Response to Request 57.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks documents concerning marketing, advertising, and "patient service areas." The geographic scope of Plaintiff's marketing efforts is not relevant to the alleged conspiracy or to any

claim or defense asserted in the litigation. Nor does the mere location of advertising or promotion reasonably bear on pricing or competitive dynamics in the alleged relevant market.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as vague and ambiguous, including with respect to the term "promote or market," which is undefined and may encompass informal or routine communications, website content, or educational materials unrelated to commercial intent. The term "patient service area(s)" is likewise undefined and unclear in scope, and its relevance to the out-of-network claims at issue is uncertain.

Plaintiff objects to this Request to the extent it seeks documents not within its possession, custody, or control, including advertising or marketing content placed or managed by third-party agencies, digital vendors, or other third parties.

Plaintiff objects to this Request to the extent it requires the creation of new documents, compilations, or analyses that do not exist in the ordinary course of business.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control sufficient to show the geographic areas in which Plaintiff promotes or markets its Healthcare Goods or Services, including but not limited to documents sufficient to show where and for what locations Plaintiff has placed advertisements for its services, or its patient service area(s), to the extent such documents exist.

Request 5 .

> Documents related to any market analysis done by or for You, including but not limited to analyses of competitors; anticipated pool and mix of patients (including by coverage status, e.g. in-network vs. OON); or revenue/profitability assessments based on Health Plan Entity, type of insurance product, or patient's network status.

Response to Request 5 .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks "any market analysis," including broad categories such as competitor assessments, patient mix, and revenue/profitability projections, regardless of whether such materials relate to the claims or defenses in this case. Many such analyses—if they exist—may pertain to services, geographies, or lines of business unrelated to out-of-network payment, the alleged conspiracy, or any Health Plan Entity named as a Defendant.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *llinois ric* , healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for their out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse themselves for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff objects to the Request as vague and ambiguous, including with respect to the terms "anticipated pool and mix of patients," "type of insurance product," and "market analysis." These terms are undefined, open-ended, and invite speculation as to the kinds of documents or data encompassed.

Plaintiff objects to this Request to the extent it seeks documents not within its possession, custody, or control, including analyses prepared by third parties.

Plaintiff objects to this Request to the extent it seeks premature expert discovery.

Plaintiff objects to the Request to the extent it seeks confidential, commercially sensitive, or proprietary information, including internal strategic planning or financial projections.

Plaintiff objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

Plaintiff objects to this Request to the extent it requires the creation of new documents, compilations, or analyses that do not exist in the ordinary course of business.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request 59.

> All Documents related to Plaintiffs' contention that the market for payments made by commercial healthcare insurance companies for OON healthcare services is a separate, standalone market.

Response to Request 59.

Plaintiff objects that the Request improperly seeks premature contention discovery. Questions about how Plaintiffs define the relevant market, and the evidentiary basis for that definition, are properly addressed through expert discovery and Rule 26 disclosures.

Plaintiff objects to the Request as vague and ambiguous. It is unclear what constitutes a "document related to" a market definition theory, particularly where Plaintiffs' market allegations are legal and economic characterizations pleaded in the operative complaint and will be further developed through expert discovery.

Plaintiff objects to this Request to the extent it seeks premature expert discovery.

Plaintiff also objects to the extent the Request seeks materials protected by the attorney-client privilege, work product doctrine, common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control related to Plaintiff's contention that the market for payments for OON healthcare services is a relevant market, to the extent such documents exist.

Request .

> All Documents discussing the reasons for any decrease in your practice's financial or operational performance over the Relevant Time Period, including but not limited to the effect of COVID-19, changes in consumer demand, or the conduct of any Health Plan Entity.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks documents discussing any decrease in Plaintiff's financial or operational performance, regardless of whether such decrease has any connection to the claims or defenses in this action. The Request also lacks a limiting principle: it seeks documents regarding virtually any negative business development over a decade or more, including general market trends, macroeconomic shifts, or the impact of COVID-19—all of which are far afield from the alleged conspiracy. The inclusion of examples such as "the effect of COVID-19" and "changes in consumer demand" confirms that the Request seeks information unrelated to the alleged antitrust conspiracy, and invites a broad and burdensome inquiry into general business operations, market conditions, and external events with no plausible connection to the issues in dispute. The Request also seeks documents relating to Health Plan Entities that are not parties to this litigation or otherwise implicated in Plaintiffs' claims.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets,

such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to the Request as vague and ambiguous, particularly with respect to the term "operational performance," which is undefined and susceptible to numerous interpretations. Without clarity, it is unclear what categories of documents this Request is intended to encompass.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request to the extent it seeks documents that contain sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks premature expert discovery.

Plaintiff also objects to the extent the Request seeks materials protected by the attorney-client privilege, work product doctrine, common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request .

> All Documents concerning when You discovered that You had been harmed by any of the Defendants' allegedly illegal conduct.

Response to Request .

Plaintiff objects to this Request as to vagueness, scope, and proportionality. The Request fails to define what constitutes a "document concerning" discovery of harm and appears to seek any record that may, even indirectly or inferentially, relate to a Plaintiff's awareness of the alleged conduct or its impact. Such breadth risks encompassing a vast and indeterminate range of materials.

Plaintiff objects to the extent the Request seeks documents not within its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks documents that are in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business or protected health information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks premature expert discovery.

Plaintiff also objects to the extent the Request seeks materials protected by the attorney-client privilege, work product doctrine, common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control concerning when Plaintiff discovered harm from Defendants' illegal conduct alleged in the Complaint that Plaintiff understood was caused by an agreement among Defendants to underpay healthcare providers for out-of-network services, to the extent such documents exist. Plaintiff is willing to meet and confer regarding the remainder of this Request.

Request .

> All Documents discussing any link between OON reimbursement and any decision whether Your practice would provide new services and/or acquire new equipment or technology, or cease to provide certain services and/or relinquish any equipment or technology.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks documents discussing any link between OON reimbursement and decisions concerning the addition or cessation of services or equipment, but the existence of a financial impact from allegedly suppressed reimbursement rates does not render every strategic business decision relevant or discoverable.

Plaintiff objects to the extent the Request seeks documents not within its possession,

custody, or control, including documents maintained by billing vendors, outside consultants, or other third parties.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks data or other documents that are in Defendants' possession, custody, or control and more readily obtainable by Defendants.

Plaintiff objects to this Request to the extent it seeks documents that contain sensitive, confidential, and proprietary business information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks premature expert discovery.

Plaintiff also objects to the extent the Request seeks materials protected by the attorney-client privilege, work product doctrine, common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control responsive to this Request, to the extent such documents exist.

Request .

> To the extent not requested elsewhere, all Documents relating to Your claimed injury and damages from the conduct alleged in the Complaints. This includes, but is not limited to, the Plaintiff' allegations that:
>
> • "some Plaintiff will no longer be able to provide services on an out-of-network basis given the financial constraints—and some, especially in already underserved rural areas, may go out of business altogether" (Master DAP Complaint ¶ 46);
>
> • "As a result of these payment rate cuts, staffing agencies have been forced to cut physician salaries and benefits due to the low prices set for out-of-network goods and services set by the MultiPlan Cartel." (Id. ¶ 587);
>
> • "due to massive underpayments that the TeamHealth Plaintiff were receiving from United for out-of-network goods and services, TeamHealth had made cuts to compensation and benefits for physicians and advanced practice clinicians." (Id. ¶ 668).

Response to Request .

Plaintiff objects to the extent the Request seeks documents that are not in its possession, custody, or control, including documents maintained by billing vendors or other third parties.

Plaintiff objects to this Request to the extent it seeks premature expert discovery.

Plaintiff also objects to the extent the Request seeks materials protected by the attorney-client privilege, work product doctrine, common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control responsive to this Request, to the extent such documents exist.

Request 4.

> A copy of any legal complaint filed (a) against by You against any patient or Health Plan Entity pertaining to alleged non-payment or underpayment for OON Healthcare Goods or Services, or (b) by You against any patient or Health Plan Entity pertaining to payment for OON Healthcare Goods or Services.

Response to Request 4.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks documents related to Health Plan Entities that are not Defendants or alleged co-conspirators in this case. Discovery concerning claims or disputes involving third-party plans outside the scope of the alleged conspiracy is not proportional to the needs of the case.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *llinois ric* , healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for their out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed

in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse themselves for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff objects to this Request as vague and ambiguous. The Request is facially ambiguous in its phrasing—specifically the clause "against by You against"—and it is unclear whether it seeks only complaints filed by Plaintiff, or also those filed against them. To the extent the Request seeks complaints filed by or against any DAP with respect to payment disputes for out-of-network Healthcare Goods or Services, it is overbroad and not tailored to the claims or defenses in this action, which do not turn on the outcome of individualized claim litigation.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks data or other documents that are in Defendants' possession, custody, or control and more readily obtainable by Defendants. This Request seeks documents that are publicly available or equally accessible to Defendants without burdening Plaintiff to collect and produce copies.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business or protected health information not relevant to the claims or defenses in this action.

Plaintiff also objects to the extent the Request seeks materials protected by the attorney-client privilege, work product doctrine, common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request 5.

> All Documents quoted, copied, excerpted, or otherwise referenced in Your Complaint or Rule 26(a) disclosures, or on which You have relied in support of Your allegations and claims.
>
> [fn1]: For the CCAC, this Request includes but is not limited to the materials cited or referenced in paragraphs 77, 81, 88, 96, 107, 108, 112, 113, 125, 137, 138, 149, 164, 166, 167, 168, 170, 187, 188, 190, 191, 192,

202, 203, 204, 205, 206, 207, 209, 210, 211, 216, 222, 231, 232, 235, 236, 237, 238, 239, 253, 256, 257, 286, 287, 288, 289, 290, 307, and 315. For the Master DAP Complaint, this Request includes but is not limited to the materials cited or referenced in paragraphs 13, 23, 26, 28, 111, 112, 118, 119, 122, 123. 124, 129, 156, 162, 169, 170, 171, 172, 173, 174, 175, 176, 178, 180, 183, 184, 185, 186, 187, 188, 189, 190, 192, 193, 194, 195, 197, 198, 199, 200, 201, 203, 204, 205, 206, 207, 208, 209, 210, 211, 213, 214, 215, 216, 218, 219, 220, 221, 223, 224, 225, 226, 227, 228, 229, 230, 232, 233, 236, 238, 241, 242, 243, 245, 246, 249, 250, 264, 266, 268, 269, 271, 272, 274, 281, 292, 294, 299, 304, 307, 309, 312, 316, 325, 340, 343, 361, 362, 363, 364, 378, 384, 395, 433, 434, 435, 441, 443, 444, 445, 447, 449, 451, 468, 471, 474, 502, 529, 538, 539, 541, 565, 566, 575, 577, 578, 579, 584, 585, 586, 589, 625, 626, 629, 653, 655, 656, 668, 669, 670, 672, 679, 682, 696, 711, and 717.

Response to Request 5.

Plaintiff objects to this Request to the extent it seeks documents related to the Consolidated Class Action Complaint, which was not filed by Plaintiff and does not represent its claims, allegations, or theories of liability.

Plaintiff objects to this Request to the extent it seeks premature expert discovery.

Plaintiff also objects to the extent the Request seeks materials protected by the attorney-client privilege, work product doctrine, common interest doctrine, or any other applicable protection or immunity.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control responsive to this Request, to the extent such documents exist.

Request .

All Documents you receive in response to any subpoena served in connection with this Action.

Response to Request .

Plaintiff will produce documents received in response to any subpoena served in this Action consistent with its obligations under any stipulation jointly entered into by all Parties.

Request 7.

All Communications between You and any other Plaintiff relating to any Defendant or other Health Plan Entity that You contend is a co-conspirator with any Defendant.

Response to Request 7.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request broadly seeks "all Communications" with "any other Plaintiff" about "any Defendant or other Health Plan Entity" alleged to be a co-conspirator, without regard to subject matter or relevance to any specific claim or defense. It is not limited to communications concerning the alleged conspiracy or anticompetitive conduct at issue.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *llinois ric* , healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for their out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse themselves for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff objects to this Request on the grounds of duplication and burden, to the extent it seeks data or other documents that are in Defendants' possession, custody, or control and more readily obtainable by Defendants. This Request seeks documents that are publicly available or equally accessible to Defendants without burdening Plaintiff to collect and produce copies.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary

business or protected health information not relevant to the claims or defenses in this action.

Plaintiff also objects to the extent the Request seeks materials protected by the attorney-client privilege, work product doctrine, common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request .

> All Communications concerning this Action, or any pending or potential antitrust, unfair competition, or unjust enrichment claims against any Defendant.

Response to Request .

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks "all Communications" concerning (i) this Action and (ii) any "pending or potential" antitrust, unfair competition, or unjust enrichment claims against "any Defendant," regardless of subject matter, relevance to the alleged conspiracy, or nexus to the claims or defenses in this case. The Request is not limited to communications bearing on the conduct alleged in the complaints or involving the alleged conspiracy.

Plaintiff objects on grounds of vagueness and ambiguity, including as to the terms "concerning this Action" and "potential" claims, which could encompass speculative or informal commentary, privileged discussions, or communications unrelated to the claims or defenses at issue.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business or protected health information not relevant to the claims or defenses in this action.

Plaintiff objects to this Request to the extent it seeks premature expert discovery.

Plaintiff also objects to the extent the Request seeks materials protected by the attorney-

client privilege, work product doctrine, common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request 9.

> All Documents related to any actual, proposed or threatened disciplinary action against You or any provider in Your practice, including but not limited to (a) any fines or penalties paid by Your practice related to the provision of Healthcare Goods or Services and/or (b) the loss or suspension of any license or other license for any Provider in Your practice.

Response to Request 9.

Plaintiff objects to this Request on the grounds of relevance, scope, and proportionality. The Request seeks "all Documents" concerning any actual, proposed, or threatened disciplinary action involving any provider in Plaintiff' practices—regardless of whether such action bears any relation to the claims or defenses in this case. The Request is facially overbroad, intrusive, and untethered to the alleged conspiracy or the conduct of any Defendant. There is no allegation in the pleadings that any Plaintiff's ability to provide healthcare services—or its compliance with licensure or regulatory standards—is at issue. This Request appears intended to elicit irrelevant or prejudicial character-type evidence unrelated to the alleged conspiracy. The Request improperly seeks information whose sole purpose appears to be to portray Plaintiff in a negative light, rather than to develop facts material to the legal issues in dispute.

Plaintiff objects to this Request to the extent it seeks sensitive, confidential, and proprietary business or protected health information not relevant to the claims or defenses in this action.

Plaintiff also objects to the extent the Request seeks materials protected by the attorney-client privilege, work product doctrine, common interest doctrine, or any other applicable protection or immunity.

Plaintiff does not intend to produce documents in response to this Request as written. Plaintiff is willing to meet and confer with Defendants regarding this Request to determine whether the parties can resolve Plaintiff's objections, such that Plaintiff may produce documents in its possession, custody, or control.

Request 7 .

All documents upon which You intend to rely to support Your claims.

Response to Request 7 .

Plaintiff objects to this Request on the grounds that it is premature. No discovery schedule, expert disclosure deadline, or evidentiary identification protocol has yet been established. To the extent this Request seeks trial exhibits or materials subject to Rule 26(a)(3) or Rule 26(e) supplementation, Plaintiff will comply with its obligations under the Federal Rules of Civil Procedure and any subsequent case management order governing disclosures of documents they intend to rely upon at trial or in motion practice.

Plaintiff objects to this Request as overly broad and to the extent that it seeks the production of attorney work product analyzing facts and law that may be utilized to by Plaintiff to prosecute this litigation. Plaintiff also object to this Request to the extent that it seeks to impose an ongoing duty to produce documents after the close of fact discovery.

Plaintiff objects to this Request to the extent it seeks premature expert discovery.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control responsive to this Request.

Dated: November 17, 2025

ARNALL GOLDEN GREGORY LLP

/s/ Matthe M avin
Matthew M. Lavin

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CERTIFICATE OF SERVICE

I hereby certify that today, November 17, 2025, I caused a copy of the foregoing to be served via electronic mail upon Defendants' Liaison Counsel.

/s/ Matthe M avin
Matthew M. Lavin

EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: MULTIPLAN HEALTH INSURANCE PROVIDER LITIGATION This document relates to: *CHS/Community Health Systems, Inc. v. MultiPlan, Inc.*, 1:24-cv-06804	Case No. 1:24-cv-06795 MDL No. 3121 Hon. Matthew F. Kennelly

COMMUNITY HEALTH SYSTEMS, INC.'S
RESPONSES AND OBJECTIONS TO DEFENDANTS' THIRD SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiff Community Health Systems, Inc. ("Plaintiff") hereby responds to Defendants' Third Set of Requests for Production ("Requests" and, each individually, "Request"), as follows:

PRELIMINARY STATEMENT

1. Plaintiff provides this preliminary statement to address issues that pervade all or nearly all of Defendants' requests for production.

2. Plaintiff's investigation and discovery is ongoing as to all matters referred to in these Objections and Responses to Defendants' Requests. Plaintiff's Responses are based upon information and documents that have been collected and reviewed to date for the purpose of responding to these Requests, and they are not prepared from the personal knowledge of any single individual. Plaintiff reserves the right to supplement, revise, correct, or clarify its responses and objections in the event that additional documents become available, and as discovery and this litigation proceed. Upon request by the requesting party, Plaintiff is willing to meet and confer through counsel regarding its objections and responses to these Requests.

3. Plaintiff objects to the Requests, and to the Definitions and Instructions included with this set of Requests, to the extent that they seek documents or information that: (a) are in Defendants' possession, custody, or control; (b) are equally or more readily available from sources other than Plaintiff; (c) can be obtained from other sources that are more convenient, less burdensome, and/or less expensive than requiring Plaintiff to provide the information or documents; (d) are not reasonably accessible to Plaintiff; and/or (e) are publicly available to Defendants.

ADDITIONAL STATEMENT REGARDING SCOPE OF DISCOVERY

Plaintiff believes that the proper scope of discovery in this case is out-of-network billing and reimbursement practices for claims submitted to commercial payors. Discovery concerning in-network services, government programs, or other markets is irrelevant and not proportional to the needs of the case. However, Plaintiff is willing to meet and confer regarding issues of relevance, scope, and proportionality, and is prepared to discuss burden, custodian, and search term issues relating to Defendants' Third Set of Requests for Production.

OBJECTIONS TO DEFINITIONS

1. Plaintiff objects to the Definition of "Complaints" to the extent it purports to ask the Plaintiff about the Consolidated Class Action Complaint ("CCAC") or any complaint not filed by Plaintiff or not representing its claims, allegations, or theories of liability.

2. Plaintiff objects to Definition of "Plaintiffs," "You," and "Your" on the grounds that it is overly broad, vague, and seeks to extend the Requests beyond the above-named Plaintiff. Plaintiff further objects to these Definitions and Requests to the extent that they purport to impose obligations upon Plaintiff to produce documents in the possession, custody, or control of third parties that are not under Plaintiff's legal control, and/or are not relevant to this litigation. For purposes of its Responses, Plaintiff considers "Plaintiff," "You," and "Your" to mean the above-

named Plaintiff and its employees involved in OON healthcare services provided by Plaintiff from January 1, 2015 to the present, and responds on that basis. Plaintiff further objects to the definition of "Plaintiffs," "You," and "Your" to the extent that they seek documents and electronically stored information in the possession of Plaintiff's outside counsel. The production of such information, even if relevant to the claims and defenses and not privileged, is not proportional to the needs of the case. Further, Plaintiff objects to the definition of "Plaintiffs," "You," and "Your" to the extent that they purport to seek documents and electronically stored information from entities not named as bellwether plaintiffs. Plaintiff will produce documents and electronically stored information from its agreed-upon or court-ordered custodians and non-custodial sources only and not from entities or persons that are outside of its possession, custody, or control, except as ordered in paragraph 4 of Case Management Order 20, ECF No. 567.

3. Plaintiff objects to the Definition of "Action" to the extent it seeks to impose obligations on Plaintiff to produce documents beyond those in the possession, custody, or control of the above-named Plaintiff, or to the extent it purports to require production of documents relating to the CCAC or any action not asserted by Plaintiff. Plaintiff further objects to the extent the definition purports to require production of documents regarding new versions of any complaint that have not yet been filed. Plaintiff is willing to meet and confer about producing additional discovery, if any, that may be needed after an amendment to any complaint or the filing of any new complaint, but it is premature and improper to impose an ongoing document production obligation that would continue without limitation after the substantial completion of document discovery.

4. Plaintiff objects to the Definition of "Claim" to the extent it purports to include "a bill submitted to a patient." This definition seeks information that is irrelevant to the claims and

defenses in this action and constitutes an improper attempt to conduct discovery into a disfavored pass-on defense. Plaintiff's position is that balance billing is an inappropriate pass-on defense. However, Plaintiff does not object to producing documents reflecting actual collections (if any) from patients on claims that were processed through MultiPlan, to the extent such documents exist and are relevant. For purposes of its Responses, Plaintiff will construe "Claim" to mean a claim for reimbursement submitted to a Health Plan Entity for out-of-network ("OON") Healthcare Goods or Services.

5. Plaintiff objects to the Definition of "Defendants" as overly broad, vague, and unduly burdensome to the extent it seeks to include entities Plaintiff has dismissed or with whom Plaintiff has settled, or entities not named as Defendants in any operative Short Form Complaint ("SFC") filed by Plaintiff. For purposes of its Responses, Plaintiff will consider "Defendants" to mean only the specific party Defendants against whom Plaintiff has asserted claims in an SFC, to the extent Plaintiff has not dismissed or settled with such Defendant, and will respond on that basis.

6. Plaintiff objects to the Definition of "Healthcare Goods or Services" as overly broad with respect to the term "product." Plaintiff will respond to the Requests based on the following definition: "any type of medical care, treatment, medicine, or procedure provided to a Patient, including, for example, all forms of curative, palliative, preventative, surgical, in-patient, out-patient, nursing, mental, and substance abuse care." *See* Plaintiffs' First Set of RFPs, Definition No. 7 at 3.

7. Plaintiff objects to the Definition of "Government Program" as seeking information that is not relevant to any party's claims or defenses and is not proportional to the needs of the case. The relevant market, as defined in the operative complaint and sustained by the Court, is the

market for OON services purchased by commercial third-party payors. Government programs such as Medicare, Medicaid, and TriCare operate under distinct statutory frameworks and are not reasonably interchangeable with commercial payors. Discovery concerning Government Programs is therefore irrelevant.

8. Plaintiff objects to the Definition of "Health Plan Entity" as overbroad, irrelevant, and not proportional to the needs of the case to the extent it attempts to bring into the scope of discovery government programs (including Medicare, Medicaid, TriCare), or entities not alleged to be co-conspirators or Defendants in this action. Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

9. Plaintiff objects to the Definition of "Managed Care Organization" as overly broad to the extent that it includes health plans that do not cover out-of-network services.

10. Plaintiff objects to the Definition of "Patient Encounter" as overbroad to the extent that it includes in-network services and services for government plans.

11. Plaintiff objects to the Definition of "Premium" as irrelevant, overbroad, and not proportional to the needs of the case to the extent that Defendants are seeking discovery concerning the "separate market" in which health plans sell coverage to subscribers. The district court rejected the argument that there is a two-sided market in its motion to dismiss opinion.

12. Plaintiff objects to the Definition of "Provider Network" as irrelevant, overbroad, and not proportional to the needs of the case because it purports to seek discovery concerning the separate market for in-network goods and services.

13. Plaintiff objects to the Definition of "Reimbursement Rate" as overbroad, irrelevant, and not proportional to the needs of the case to the extent that it seeks information on reimbursements for in-network goods and services and reimbursements from government plans.

14. Plaintiff objects to the Definition of "Relevant Time Period" as overbroad, irrelevant, and not proportional to the needs of the case to the extent it seeks documents to the "present." Plaintiff will interpret the Relevant Time Period to be January 1, 2015 through the date of collection.

15. Plaintiff objects to the Definition of "Self-Pay" as irrelevant and not proportional to the needs of the case because it does not relate to out-of-network reimbursement practices.

OBJECTIONS TO INSTRUCTIONS

1. Plaintiff objects to Defendants' Instructions to the extent they seek to impose obligations beyond those required by the Federal Rules of Civil Procedure or the operative Case Management Orders. Plaintiff will respond based on information within its possession, custody, or control after reasonable inquiry, in accordance with those Rules and Case Management Orders.

2. Plaintiff objects to Instruction No. 1 (regarding documents and information that are "dated, prepared, generated, created, edited, revised, or received prior to" January 1, 2015) as disproportionate to the claims and imposing unduly burdensome obligations beyond those required by Fed. R. Civ. P. 26(e) and retention policies applicable to Plaintiff. The instruction is unworkable, as it would require production of documents that merely "relate" to the relevant time period, regardless of when created. For example, an email sent in 2000 describing a business

practice that is still occurring in the relevant time period would be swept in. Notwithstanding the foregoing objection, to the extent that an otherwise responsive document is located in the course of Plaintiff's search for Documents that pre-date January 1, 2015, Plaintiff will not withhold the document solely on the basis of this objection.

3. Plaintiff objects to Instructions No. 2 (regarding objections as to ambiguity) and No. 3 (objections to subparts of Requests) to the extent they purport to impose obligations beyond those required by Fed. R. Civ. P. 26(e) and do not comport with the Court's Orders regarding the scope and structure of discovery.

4. Plaintiff objects to any Instruction to the extent it seeks to require the production of documents not within Plaintiff's possession, custody, or control, including documents maintained by independent third parties, facilities, vendors, or affiliates.

5. Plaintiff objects to any Instruction to the extent it seeks to require the creation of new documents, compilations, or analyses that do not exist in the ordinary course of business.

6. Plaintiff objects to any Instruction to the extent it seeks to require the production of documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, or any other applicable protection or immunity.

7. Plaintiff reserves the right to supplement, amend, or clarify any of these objections as discovery progresses and as the procedural posture of the case evolves, including in light of any subsequent rulings or agreements regarding the scope and structure of discovery.

SPECIFIC RESPONSES AND OBJECTIONS

DOCUMENT REQUEST NO. 6:

Contracts with any person or entity pertaining to billing of Health Plan Entities or patients (including Self-Pay patients) for OON Healthcare Goods and Services, including contracts with Health Plan Entities, patients, and persons or entities who refer or recruit patients with coverage for OON Healthcare Goods and Services.

Response to RFP No. 6:

Plaintiff objects to this Request as overly broad, not relevant to the claims and defenses in this litigation, and disproportionate to the needs of the case to the extent it seeks contracts related to billing for Self-Pay patients and with persons/entities who merely refer or recruit patients. Plaintiff also objects to the phrase "persons or entities who refer or recruit patients with coverage for OON Healthcare Goods and Services," as the term "recruit" is undefined and unclear in scope. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Subject to and without waiving the foregoing specific objections, Plaintiff is not aware of any contracts in its possession, custody, or control with third-party billing services pertaining to billing for OON Healthcare Goods and Services and therefore has no responsive documents to produce.

DOCUMENT REQUEST NO. 7:

All agreements in effect at any point during the Relevant Time Period between Your practice and the facilities where the services for your Claims for OON Healthcare Goods and Services were rendered.

Response to RFP No. 7:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks documents unrelated to the provision of OON Healthcare Goods and Services. Plaintiff further objects that agreements with facilities are not relevant to the claims or defenses in this case, which concern reimbursement practices for OON services, not facility-physician agreements.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result

of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 8:

Documents sufficient to show any payment or remuneration Your practice received from facilities where the services for your Claims for OON Healthcare Goods and Services were rendered during the Relevant Time Period.

Response to RFP No. 8:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks documents unrelated to the provision of OON Healthcare Goods and Services. Plaintiff further objects that payments from facilities are not relevant to the claims or defenses in this case, which concern reimbursement practices for OON services, not facility-physician payments.

Plaintiff objects to the use of the term "remuneration" as vague and ambiguous. The term is undefined, lacks contextual clarity, and may be interpreted to include a broad and indeterminate range of financial or non-financial benefits.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 9:

Documents sufficient to show the standard Documents, assignments, paperwork, policies, or disclosures that Your practice or any facility at which You practice provides to patients concerning Your OON Healthcare Goods or Services, including but not limited to documents relating to insurance coverage, disclosure of pricing, financial responsibility for services, or patient financing.

Response to RFP No. 9:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks documents solely related to in-network services. Plaintiff also objects to the phrase "standard Documents, assignments, paperwork, policies, or disclosures," as the term "standard" is undefined and unclear in scope.

Plaintiff objects to the use of the phrase "assignments" as irrelevant to the claims and defenses in this litigation. Plaintiff does not purport to bring claims on behalf of patients. Rather,

it asserts that the MultiPlan Cartel agreed to suppress the allowed amount set for out-of-network goods and services, which caused Defendants to undercompensate them for those goods and services. As a result, assignments are not relevant to the claims and defenses in the litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control sufficient to show the typical forms, policies, or disclosures provided to patients concerning OON Healthcare Goods or Services, including those relating to insurance coverage, pricing disclosure, financial responsibility, or patient financing, during the relevant time period. Plaintiff does not intend to produce non-privileged documents solely related to in-network services. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 10:

All contracts or other Documents reflecting agreements (including any modifications, amendments, or attachments thereto) that Your practice has entered into with MultiPlan or and any other "OON Repricing Service" (as Plaintiffs have defined that phrase), any Health Plan Entity, or patients, regarding financing arrangements, responsibility for payment, or

payment terms or conditions for OON Healthcare Goods or Services, including, for example, single case agreements.

Response to RFP No. 10:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks all agreements regardless of whether they relate to the conduct, parties, claims, or alleged harm at issue in this action, including contracts solely related to in-network services. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or that are equally or more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly

could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Plaintiff objects to this Request to the extent that it calls for the production of single case agreements as disproportionate to the needs of the case. Plaintiff generally did not utilize single case agreements with respect to out-of-network services and locating the relatively small number of single case agreements that may relate to out-of-network services would require an extensive search of multiple custodians and systems.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged, final, written contracts and agreements in its possession, custody, or control with any Defendant named in Plaintiff's operative short-form complaint regarding reimbursement of OON services during the relevant time period. Plaintiff does not intend to produce non-privileged contracts solely related to in-network services or unrelated payment arrangements. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 11:

Copies of all office manuals, policies, and procedures relating to disclosure of pricing; billing; collection of fees for OON Healthcare Goods and Services; balance billing; financial assistance for patients; and prompt pay discounts or any other types of discounts that are offered to out-of-network patients.

Response to RFP No. 11:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation, including to the extent it seeks documents solely related to in-network services. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly

could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged copies of office manuals, policies, and procedures in its possession, custody, or control relating to the disclosure of pricing, billing, collection of fees, balance billing, financial assistance, and discounts offered to OON patients, during the relevant time period, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 12:

Structured Data for the fields of data requested in Defendants' First Set of Requests for Production, Request No. 3 and the additional fields listed below, for each claim for OON Services and In-Network Services, with dates of service from January 1, 2012 to the present at the most granular level that such Structured Data is kept, including at the claim or line level:

(a) Whether the service was provided in an emergency or non-emergency setting;

(b) Whether the facility at which the service was provided was in-network with the patient's Health Plan Entity.

Response to RFP No. 12:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding in-network services. The Request also incorporates by reference Request No. 3 from Defendants' First Set of Requests for Production, to which Plaintiff has already responded and objected; those responses and objections are incorporated herein by reference. Plaintiff further objects to the extent the Request seeks data not maintained in the ordinary course of business, requires Plaintiff to create new data compilations or create custom logic to manipulate data sources solely for purposes of this

litigation, or seeks information outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of structured data, if any, to the defendants named in Plaintiff's operative short-form complaint.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged structured data in its possession, custody, or control for OON claims submitted to the insurance-payor defendants named in Plaintiff's operative short-form complaint, to the extent such data exists and is reasonably accessible, and will meet and confer regarding the scope, relevance, and proportionality of such production. Plaintiff does not intend to produce data solely related to in-network services, but Plaintiff is prepared to discuss an appropriate methodology for sampling its in-network data. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 13:

Documents sufficient to interpret and understand any Structured Data produced by Plaintiffs, including but not limited to data dictionaries, look-up tables, system manuals, and explanations of acronyms used in the Structured Data. To the extent that such information has changed over time during the time period covered by the structured data production, provide information identifying which versions apply to each individual item of information produced in response to Request No. 3 of Defendants' First Set of Requests for Production.

Response to RFP No. 13:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation, including to the extent it seeks documents related to data not

relevant to this litigation. The Request also incorporates by reference Request No. 3 from Defendants' First Set of Requests for Production, to which Plaintiff has already responded and objected; those responses and objections are incorporated herein by reference. Plaintiff further objects to the extent the Request seeks documents not maintained in the ordinary course of business or requires Plaintiff to create new documents, as well as to the extent it seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged data dictionaries, look-up tables, and explanatory materials in its possession, custody, or control necessary to interpret any structured data actually produced in response to the Requests, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 14:

For each year during the relevant time period, your chargemaster(s), billed charges (to the extent different from your chargemaster), and other Documents sufficient to show: (a) all Healthcare Goods or Services provided by You practice and the accompanying CPT or HCPCS codes; (b) the list prices or submitted charges for all Healthcare Goods or Services provided by You, including any changes during the relevant time period; and any other fees charged to OON patients in addition to those for specific medical services, whether styled as concierge fees, administrative cost fees, access fees, or the like.

Response to RFP No. 14:

Plaintiff objects to this Request as irrelevant, overbroad, and unduly burdensome to the extent it seeks information regarding in-network services, general list prices, or how Plaintiff set prices, which are not relevant to the claims or defenses in this litigation. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff specifically objects that the list prices and chargemaster prices for its out-of-network services are not relevant to the claims and defenses in the litigation. Price-fixing agreements among purchasers cannot be justified based on the argument that sellers' prices were unreasonable or that the conspiracy was necessary to stabilize the prices the purchasers paid. Thus, discovery into the list prices and chargemasters for out-of-network goods and services is not relevant to the claims and defenses in the litigation and is not proportionate to the needs of the case.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control sufficient to show billed charges for OON Healthcare Goods and Services during the relevant time period, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce documents solely related to in-network services.

DOCUMENT REQUEST NO. 15:

All Documents and Communications related to the use of consultants, benchmarking reports, surveys, databases, or other third-party data sources to establish, review, or modify billed charges and/or chargemasters.

Response to RFP No. 15:

Plaintiff objects to this Request as irrelevant, overbroad, and unduly burdensome to the extent it seeks information regarding in-network services and how Plaintiff set its charges, which is not relevant to the claims or defenses in this litigation. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff specifically objects that the list prices and chargemaster prices for its out-of-network services are not relevant to the claims and defenses in the litigation. Price-fixing agreements among purchasers cannot be justified based on the argument that sellers' prices were unreasonable or that the conspiracy was necessary to stabilize the prices the purchasers paid. Thus, discovery into the list prices and chargemasters for out-of-network goods and services is not relevant to the claims and defenses in the litigation and is not proportionate to the needs of the case.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets

that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 16:

All Documents and Communications relating to the process (a) for establishing or reviewing billed charges and/or Chargemasters, and any changes thereto, and (b) for determining or confirming patient copay, coinsurance, authorization or preauthorization, in force insurance, or insurance fee caps.

Response to RFP No. 16:

Plaintiff objects to this Request as irrelevant, overbroad, and unduly burdensome to the extent it seeks information regarding how Plaintiff set its charges or in-network services, which are not relevant to the claims or defenses in this litigation. Plaintiff further objects to this Request as irrelevant, overbroad, and unduly burdensome to the extent it seeks information regarding patient copays, coinsurance, authorization or preauthorization, in force, insurance, and insurance fee caps, which are not relevant to the claims or defenses in this litigation.

Plaintiff specifically objects that the list prices and chargemaster prices for its out-of-network services are not relevant to the claims and defenses in the litigation. Price-fixing agreements among purchasers cannot be justified based on the argument that sellers' prices were

unreasonable or that the conspiracy was necessary to stabilize the prices the purchasers paid. Thus, discovery into the list prices and chargemasters for out-of-network goods and services is not relevant to the claims and defenses in the litigation and is not proportionate to the needs of the case.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 17:

All Documents pertaining to the development, use, or distribution of any pricing benchmarking reports, surveys, analyses, or databases, whether developed internally or externally, pertaining to assessment of Chargemaster rates, billed charges, or Reimbursement Rates, including contracts with the providers of any such reports, surveys, or databases.

Response to RFP No. 17:

Plaintiff objects to this Request as irrelevant, overbroad, and unduly burdensome to the extent it seeks information regarding how Plaintiff set its charges, which is not relevant to the

claims or defenses in this litigation. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff specifically objects that the list prices and chargemaster prices for its out-of-network services are not relevant to the claims and defenses in the litigation. Price-fixing agreements among purchasers cannot be justified based on the argument that sellers' prices were unreasonable or that the conspiracy was necessary to stabilize the prices the purchasers paid. Thus, discovery into the list prices and chargemasters for out-of-network goods and services is not relevant to the claims and defenses in the litigation and is not proportionate to the needs of the case.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff also objects to this Request to the extent that it seeks mirrored discovery concerning Plaintiff's supposed use of benchmarking, consultants, or pricing analytics tools. Such mirrored discovery is irrelevant to the claims and defenses in the litigation.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 18:

All Communications and Documents related to the use of consultants regarding: (a) the Reimbursement Rates providers (including but not limited to Your practice) receive from Health Plan Entities; (b) Your relationships with Health Plan Entities; (c) Your attempts to negotiate with any Health Plan Entity concerning Reimbursement Rates or fee schedules; (d) complaints You made to or about any Health Plan Entity; (e) whether you should contract with or continue to contract with any Health Plan Entity; or (f) Your impressions and beliefs regarding any Health Plan Entity's business practices—including but not limited to all agreements with such consultants and Documents sufficient to show the fees paid to such consultants.

Response to RFP No. 18:

Plaintiff objects to this Request as irrelevant, overbroad, and unduly burdensome to the extent it seeks information regarding in-network negotiations, consultant compensation, or Plaintiff's general business practices, which are not relevant to the claims or defenses in this litigation. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties. Plaintiff also objects that the phrases "relationships with Health Plan Entities" and "business practices" are vague and ambiguous with respect to the nature and scope of requested information.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff also objects to this Request to the extent that it seeks mirrored discovery concerning Plaintiff's supposed use of benchmarking, consultants, or pricing analytics tools. Such mirrored discovery is irrelevant to the claims and defenses in the litigation.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control related to the use of consultants regarding OON reimbursement rates, relationships, negotiations, or complaints concerning Health Plan Entities, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce documents solely related to in-network services or irrelevant consultant engagements.

DOCUMENT REQUEST NO. 19:

Final and/or executed contracts between or governing the relationship between You and any Health Plan Entity or, for each year during the relevant time period, documents sufficient to show: (a) the Provider Networks You have participated in; (b) the period of time You participated in those Provider Networks; and (c) the different payment arrangements that You have accepted for Healthcare Goods or Services.

Response to RFP No. 19:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding in-network participation or payment arrangements, which are not at issue. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged, final, written contracts in its possession, custody, or control with Health Plan Entities governing OON Healthcare Goods and Services, and documents sufficient to show OON payment arrangements, during the relevant time period, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and

proportionality of the remainder of this Request, but does not intend to produce documents solely related to in-network services or participation.

All contracts with the Health Plan Entities for the health benefit plan(s) you offer to Your employees, summary plan descriptions, and summaries of benefits for Your health benefit plan(s).

Response to RFP No. 20:

Plaintiff objects to this Request as irrelevant, overbroad, and unduly burdensome to the extent it seeks information regarding employee health benefit plans, which are not relevant to the claims or defenses in this litigation. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff specifically objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case because it seeks information regarding Plaintiff's participation in the separate market for the purchase of insurance coverage. Thus, this Request does not focus on third-party payors' purchases of healthcare goods and services.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 21:

All correspondence with the Health Plan Entities that provide health insurance or administer health benefits for Your employees concerning MultiPlan, determination of allowed amounts or reimbursement limits for OON Healthcare Goods (including Documents showing how such limits were selected) and Services provided to Your employees, "OON Repricing Services" (as plaintiffs have defined that phrase), or "shared savings" opportunities relating to OON Healthcare Goods and Services.

Response to RFP No. 21:

Plaintiff objects to this Request as irrelevant, overbroad, and unduly burdensome to the extent it seeks information regarding employee health benefits or internal plan administration, which are not relevant to the claims or defenses in this litigation.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff specifically objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case because it seeks information regarding Plaintiff's participation in the separate market for the purchase of insurance coverage. Thus, this Request does not focus on third-party payors' purchases of healthcare goods and services.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored

information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 22:

All Documents relating to any Certificate of Need filing or approval (or similar regulatory evaluation of the potential impact of Your practice on health care costs or competition) relating to Your practice.

Response to RFP No. 22:

Plaintiff objects to this Request as irrelevant, overbroad, and unduly burdensome to the extent it seeks information regarding certificate of need filings or regulatory approvals, which are not relevant to the claims or defenses in this litigation.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff specifically objects to this Request as irrelevant to the claims and defenses in the litigation and not proportionate to the needs of the case because this Request seeks information concerning the separate market for the recruitment of patients and information concerning billed charges and list prices. This case is about a cartel that suppressed payments for out-of-network services by lowering the allowed amount set for those services, not the recruitment of patients or the charges billed by providers.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 23:

All presentations by or to Your practice's owners, lenders, investors (including affiliated private equity investors), or board concerning Your practice's actual or projected financial performance or strategic plans.

Response to RFP No. 23:

Plaintiff objects to this Request as irrelevant, overbroad, and unduly burdensome to the extent it seeks information regarding financial performance or strategic plans, which are not relevant to the claims or defenses in this litigation.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as overbroad, irrelevant, and not proportional to the needs of the case because it seeks information concerning presentations to owners, lenders, and investors concerning financial performance and strategic plans that are unrelated to out-of-network goods and services. Moreover, to the extent that Defendants seek this information to show that Plaintiff

has collateral sources of revenue or funding through investors, lenders, or private equity ownership, they are not relevant to the claims and defenses in the litigation.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 24:

Your practice's financial statements and balance sheets, including the financial statement line-item detail for all revenue, expenses, and owner distributions, for each month during the relevant time period.

Response to RFP No. 24:

Plaintiff objects to this Request as irrelevant, overbroad, and unduly burdensome to the extent it seeks information regarding general financial statements and balance sheets, which are not relevant to the claims or defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Notwithstanding the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 25:

All revenue reports, revenue cycle management reports, or similar documents from the Relevant Time Period regarding Your obtaining payments from patients or Heath Plan Entities for OON Healthcare Goods or Services, including but not limited to reports or similar documents that specifically describe or reflect the use or non-use of MultiPlan's products or services in connection with Your obtaining payments from patients or Heath Plan Entities for OON Healthcare Goods and Services.

Response to RFP No. 25:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks documents concerning payments from patients or entities other than Defendants, or documents not maintained in the ordinary course of business. Plaintiff further objects to the extent the Request seeks documents reflecting the "use or non-use" of MultiPlan, as Plaintiff is not always informed of such use. Additionally, Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly

could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Subject to and without waiving the foregoing specific objections, Plaintiff is willing to meet and confer to clarify the scope of this Request and to ascertain the specific categories of documents, if any, that Defendants are requesting, in order to determine whether responsive, non-privileged documents in Plaintiff's possession, custody, or control can be reasonably identified and produced.

DOCUMENT REQUEST NO. 26:

Your practice's federal and state tax returns for each calendar year during the relevant time period, including documents sufficient to show any taxpayer identification numbers You used and the facilities where the services for your Claims for OON Healthcare Goods and Services were rendered.

Response to RFP No. 26:

Plaintiff objects to this Request as irrelevant, overbroad, and unduly burdensome to the extent it seeks tax returns, which are not relevant to the claims or defenses in this litigation. Plaintiff further objects to the extent the Request seeks information already provided in other discovery responses.

Plaintiff further objects to this Request as not relevant to the claims and defenses in the litigation. Plaintiff's tax returns are not relevant to the existence and effect of the MultiPlan Cartel. Moreover, this information is disproportionate to the needs of the case because Plaintiff has already provided it to Defendants in connection with its plaintiff fact sheet.

Plaintiff further objects to the production of its tax returns as not relevant to the claims and defenses in the litigation. Plaintiff's antitrust injury is not based upon loss or profit, and does not depend upon whether or not Plaintiff subsequently passed the underpayment on to others. While Plaintiff claims that Defendants depressed reimbursement rates for out-of-network goods and

services requires it to prove measurable damages, it does not require Plaintiff to prove that the alleged price-fixing had any specific impact on its individual bottom line. Accordingly, information concerning the financial condition, revenue, profits, and losses from Plaintiff's operations is irrelevant because the antitrust laws do not require that those seeking to enforce them have any particular financial condition.

Notwithstanding the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce tax returns. However, Plaintiff has already produced its tax identification number(s) to Defendants.

DOCUMENT REQUEST NO. 27:

Your practice's policies and procedures relating to recognition of revenue from various sources of payment (e.g. Health Plan Entities, patients, etc.), and documents sufficient to identify the amount recognized/written off for each year of the relevant time period due to actual or expected payment/non-payment by patients and Health Plan Entities.

Response to RFP No. 27:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding in-network services or general financial write-offs.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff further objects to the production of its information concerning its financial condition, profits, revenue, or sources of income that are unrelated to the compensation it received from commercial payors for out-of-network services as not relevant to the claims and defenses in the litigation. Plaintiff's antitrust injury is not based upon loss or profit, and does not depend upon whether or not Plaintiff subsequently passed the underpayment on to others. While Plaintiff claims that defendants depressed reimbursement rates for out-of-network goods and services requires it to prove measurable damages, it does not require Plaintiff to prove that the alleged price-fixing had any specific impact on its individual bottom line. Accordingly, information concerning the financial condition, revenue, profits, and losses from Plaintiff's operations is irrelevant because the antitrust laws do not require that those seeking to enforce them have any particular financial condition.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 28:

Documents sufficient to show Your practice's monthly (or the shortest period for which they are regularly prepared) profits, losses, gross income, and net income during the relevant time period, for Your practice as a whole and broken out by in-network and out-of-network services.

Response to RFP No. 28:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding in-network services or Plaintiff's general financial performance.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff further objects to the production of its information concerning its financial condition, profits, revenue, or sources of income that are unrelated to the compensation it received from commercial payors for out-of-network services as not relevant to the claims and defenses in

the litigation. Plaintiff's antitrust injury is not based upon loss or profit, and does not depend upon whether or not Plaintiff subsequently passed the underpayment on to others. While Plaintiff claims that defendants depressed reimbursement rates for out-of-network goods and services requires it to prove measurable damages, it does not require Plaintiff to prove that the alleged price-fixing had any specific impact on its individual bottom line. Accordingly, information concerning the financial condition, revenue, profits, and losses from Plaintiff's operations is irrelevant because the antitrust laws do not require that those seeking to enforce them have any particular financial condition.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 29:

Documents sufficient to show compensation (salary, benefits, bonuses, and other incentives), expense reimbursement, owner distribution, and/or other payments made by You and/or Your practice and/or paid to You, other Providers in Your practice, and other employees or office staff employed by Your practice, including the breakdown by person and category of payment (salary, benefits, bonuses, other incentives, expense reimbursement, owner distribution), for each year during the relevant time period.

Response to RFP No. 29:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding compensation and owner distributions. Plaintiff further objects to the extent it seeks a "breakdown by person and category of payment." Personnel-level compensation data implicates significant privacy and confidentiality concerns, especially for non-owner employees or support staff. Plaintiff further objects to the extent the Request seeks individualized annual compensation and ownership distribution data, as this information is not relevant and would impose undue burden in both

collection and redaction. Further, Plaintiff objects to the extent the Request seeks information that is proprietary or confidential, the production of which would cause competitive harm and is not necessary or relevant to any claim or defense.

Plaintiff further objects to the production of its information concerning its financial condition, profits, revenue, or sources of income that are unrelated to the compensation it received from commercial payors for out-of-network services as not relevant to the claims and defenses in the litigation. Plaintiff's antitrust injury is not based upon loss or profit, and does not depend upon whether or not Plaintiff subsequently passed the underpayment on to others. While Plaintiff claims that defendants depressed reimbursement rates for out-of-network goods and services requires it to prove measurable damages, it does not require Plaintiff to prove that the alleged price-fixing had any specific impact on its individual bottom line. Accordingly, information concerning the financial condition, revenue, profits, and losses from Plaintiff's operations is irrelevant because the antitrust laws do not require that those seeking to enforce them have any particular financial condition.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 30:

For each year during the relevant time period, Documents sufficient to show the itemized costs of maintaining Your practice, including but not limited to: (a) the maintenance of equipment, technology, or tools used in Your practice and the cost of acquiring or leasing such equipment, technology, or tools; and (b) the costs of rent, utilities, supplies, billing, training of staff, malpractice insurance, sanitation, and records maintenance systems; and any other documents showing Your practice's cost of care per patient or cost of care per service line.

Response to RFP No. 30:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding itemized costs of maintaining the practice. Further, Plaintiff objects to the extent the Request seeks information that is proprietary, confidential, or constitutes trade secrets, the production of which would cause competitive harm and is not necessary or relevant to any claim or defense.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff further objects to the production of its information concerning its financial condition, profits, revenue, or sources of income that are unrelated to the compensation it received from commercial payors for out-of-network services as not relevant to the claims and defenses in the litigation. Plaintiff's antitrust injury is not based upon loss or profit, and does not depend upon whether or not Plaintiff subsequently passed the underpayment on to others. While Plaintiff claims that defendants depressed reimbursement rates for out-of-network goods and services requires it to prove measurable damages, it does not require Plaintiff to prove that the alleged price-fixing had any specific impact on its individual bottom line. Accordingly, information concerning the

financial condition, revenue, profits, and losses from Plaintiff's operations is irrelevant because the antitrust laws do not require that those seeking to enforce them have any particular financial condition.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 31:

For each year during the relevant time period, Documents sufficient to show Your debt, discounts, or write-offs, by category, including but not limited to any business bankruptcy filings.

Response to RFP No. 31:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding Plaintiff's debt, discounts, or write-offs. Further, Plaintiff objects to the extent the Request seeks information that is proprietary, confidential, or constitutes trade secrets, the production of which would cause competitive harm and is not necessary or relevant to any claim or defense.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff further objects to the production of its information concerning its financial condition, profits, revenue, or sources of income that are unrelated to the compensation it received from commercial payors for out-of-network services as not relevant to the claims and defenses in

the litigation. Plaintiff's antitrust injury is not based upon loss or profit, and does not depend upon whether or not Plaintiff subsequently passed the underpayment on to others. While Plaintiff claims that defendants depressed reimbursement rates for out-of-network goods and services requires it to prove measurable damages, it does not require Plaintiff to prove that the alleged price-fixing had any specific impact on its individual bottom line. Accordingly, information concerning the financial condition, revenue, profits, and losses from Plaintiff's operations is irrelevant because the antitrust laws do not require that those seeking to enforce them have any particular financial condition.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 32:

Documents sufficient to show: (a) any applications for support, financial relief, paycheck protection, loans, or loan forgiveness sought by You and/or Your practice; (b) the relief or support received; and (c) the entity that provided the relief or support.

Response to RFP No. 32:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding Plaintiff's applications for financial relief. The financial relief sought or received by Plaintiff, whether in the form of loans, grants, or other support, has no bearing on alleged collusion among Defendants regarding OON claims payments. Additionally, Plaintiff objects to the extent the Request seeks

documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff further objects to the production of its information concerning its financial condition, profits, revenue, or sources of income that are unrelated to the compensation it received from commercial payors for out-of-network services as not relevant to the claims and defenses in the litigation. Plaintiff's antitrust injury is not based upon loss or profit, and does not depend upon whether or not Plaintiff subsequently passed the underpayment on to others. While Plaintiff claims that defendants depressed reimbursement rates for out-of-network goods and services requires it to prove measurable damages, it does not require Plaintiff to prove that the alleged price-fixing had any specific impact on its individual bottom line. Accordingly, information concerning the financial condition, revenue, profits, and losses from Plaintiff's operations is irrelevant because the antitrust laws do not require that those seeking to enforce them have any particular financial condition.

Further, Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation because Plaintiffs' supposed receipt of funds under the CARES Act has nothing to do with the market-wide depression of prices paid for out-of-network goods and services.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 33:

All Documents pertaining to any comparisons of the Reimbursement Rates paid by any Defendant and those paid by any other Defendant or Health Plan Entity for any Healthcare Good or Service, including: (a) Your Communications concerning those comparisons; and (b) any analysis, study, or discussion of the reasons for the difference in Reimbursement Rates shown in such a comparison.

Response to RFP No. 33:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding comparisons of in-network Reimbursement Rates. Additionally, Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets,

such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation. This Request presupposes that differences or comparisons between Defendants' reimbursement rates for out-of-network goods and services are relevant to the existence of the MultiPlan Cartel. They are not. As the district court noted, "it would not matter if every price the algorithm recommended differed for each competitor based on each of the competitor's preferred settings." *In re MultiPlan Health Ins. Provider Litig.*, 789 F. Supp. 3d 614, 638 (N.D. Ill. 2025).

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control pertaining to comparisons of OON reimbursement rates paid by Defendants or other Health Plan Entities, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and

proportionality of the remainder of this Request, but does not intend to produce documents solely related to in-network comparisons.

DOCUMENT REQUEST NO. 34:

All Documents and Communications showing attempted negotiations, whether successful or not, between You and any Health Plan Entity (including but not limited to any of the Defendants) regarding Reimbursement Rates.

Response to RFP No. 34:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding in-network negotiations. Additionally, Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control showing attempted negotiations regarding OON reimbursement rates with the defendants named in Plaintiff's operative short form complaint, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce documents solely related to in-network negotiations.

DOCUMENT REQUEST NO. 35:

All Documents related to Your consideration of whether or not to contract with any Health Plan Entity or Provider Network (including but not limited to any of Defendants)—regardless of whether those discussions resulted in You contracting with that Health Plan Entity or Provider Network —and any correspondence, drafts, or other Documents reflecting any such consideration.

Response to RFP No. 35:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding in-network contracting decisions. Additionally, Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets,

such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control related to OON contracting decisions with the defendants named in Plaintiffs' operative short-form complaint, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce documents solely related to in-network contracting.

DOCUMENT REQUEST NO. 36:

All Communications between You or any of Your agents, including billing agents, and Defendants regarding payment or reimbursement for OON Healthcare Goods and Services.

Response to RFP No. 36:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks all communications unrelated to OON claims reimbursement.

Plaintiff also objects to this Request as overbroad and ambiguous because it relies on the undefined term "agent," which is susceptible to multiple meanings. Plaintiff will define the phrase "agent" to mean a consultant retained by Plaintiff for the purpose of assisting Plaintiff with out-of-network billing to one or more of the defendants named in Plaintiffs' operative short-form complaint.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control reflecting communications with the Defendants named in Plaintiff's operative short-form complaint regarding payment or reimbursement for OON Healthcare Goods and Services, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 37:

All contracts, including any modifications, amendments, or attachments thereto, You have entered into with any person or entity utilized by Your practice for Your revenue cycle management functions, billing of patients or Health Plan Entities, or collections activity (including placement of liens).

Response to RFP No. 37:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding in-network or unrelated contracts.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 38:

All contracts, including any modifications, amendments, or attachments thereto, You have entered into with any Defendant, and any correspondence, drafts, or other Documents reflecting Communications or negotiations related to such contracts.

Response to RFP No. 38:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding in-network or unrelated contracts. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties. Plaintiff also objects to this Request as vague and unduly burdensome to the extent it could be construed to require production of all forms of acceptance or acquiescence to repricing offers, rather than only formal contracts. Additionally, Plaintiff objects to this Request to the extent that it seeks information already called for in Defendants' Request for Production No. 2.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff also objects to this Request as not relevant to the claims and defenses and not proportionate to the needs of the case because the contents of Plaintiff's contracts for in-network services are not relevant to an alleged conspiracy to underpay doctors and hospitals for out-of-network services. Even assuming that such contracts were relevant, they are already in the possession, custody, or control of Defendants.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request.

DOCUMENT REQUEST NO. 39:

All Documents identifying, listing, tracking, or otherwise analyzing the actual or potential financial impact on Your practice of participating in a Health Plan Entity's Provider Network, or of remaining (or becoming) an OON provider.

Response to RFP No. 39:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding in-network participation or general financial impact. Plaintiff further objects to this Request as vague and ambiguous because the phrase "otherwise analyzing the actual or potential financial impact" is not defined and could refer to a range of different concepts, making it unclear what information is being sought. Additionally, Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint.

Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control analyzing the financial impact of OON participation with any defendant named in Plaintiff's operative short-form complaint, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce documents solely related to in-network participation or unrelated financial analyses.

DOCUMENT REQUEST NO. 40:

All Documents discussing the benefits or disadvantages to You from participating in any Provider Network or contracting with any Health Plan Entity, including all Communications with any consultant or person hired to analyze the effects (positive, neutral, or negative) of participating in any Provider Network or contracting with any MCO.

Response to RFP No. 40:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding in-network participation or general business strategy. Additionally, Plaintiff objects to the extent this Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets,

such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control discussing the benefits or disadvantages of OON participation with any of the defendants named in Plaintiff's operative short-form complaint, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce documents solely related to in-network participation or unrelated business strategy.

DOCUMENT REQUEST NO. 41:

All Communications with any Health Plan Entity regarding Reimbursement Rates, discounts, Premiums, deductibles, co-payments, co-insurance, or the terms or conditions of any contract with a Defendant.

Response to RFP No. 41:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks communications regarding in-network services.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Plaintiff further objects to this Request to the extent that it seeks discovery concerning deductibles, co-payments, and co-insurance obligations which are not relevant to the claims and defenses in the litigation because the MultiPlan Cartel is not alleged to have affected deductibles, co-payments, or co-insurance obligations.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged communications in its possession, custody, or control with any defendant named in Plaintiff's operative short-form complaint regarding OON reimbursement rates, discounts, or contract terms,

to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce documents solely related to in-network communications.

DOCUMENT REQUEST NO. 42:

All Documents reflecting any complaints, appeals, criticisms, objections, or grievances regarding the Reimbursement Rates or other contractual terms with any Health Plan Entity, or regarding the appropriate categorization of claim adjustments as Contractual Obligation (CO) versus Patient Responsibility (PR).

Response to RFP No. 42:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks in-network or unrelated complaints. Additionally, Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently

passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control reflecting complaints, appeals, or grievances regarding OON reimbursement rates or contractual terms concerning any defendant named in Plaintiff's operative short-form complaint, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce documents solely related to in-network or unrelated complaints.

DOCUMENT REQUEST NO. 43:

All Documents discussing or comparing the Reimbursement Rates paid by Health Plan Entities for Healthcare Goods or Services, whether using MultiPlan, any other "OON Repricing Service" (as Plaintiffs have defined that phrase), or no OON Repricing Service, including but not limited to Documents discussing or comparing the Reimbursement Rates that You have accepted as payment for Healthcare Goods or Services and documents referencing any pros and cons or assessment of OON benefits of OON Repricing Services, including but not limited to those offered by MultiPlan.

Response to RFP No. 43:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks in-network or unrelated information. Additionally, Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control discussing or comparing OON reimbursement rates and OON repricing services with respect to any defendant named in Plaintiff's operative short-form complaint, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce documents solely related to in-network or unrelated information.

DOCUMENT REQUEST NO. 44:

All Documents relating to Your participation in any medical-related trade associations (including but not limited to state medical associations and the American Medical Association), including Documents related to attendance (in-person, telephonic, or otherwise) at any meeting or conference with representatives of such a trade association; minutes of meetings in which Defendants, other Health Plan Entities, or Reimbursement Rates were discussed; membership on any advisory board, board of directors, committee, or other leadership structure affiliated with such a trade association; and/or the provision of Your Reimbursement Rates, revenue, net income (profit), payer sources, or other non-public data or information to such a trade association.

Response to RFP No. 44:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding participation in trade associations. Additionally, Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff also objects to this Request to the extent that it seeks mirrored discovery concerning Plaintiff's supposed involvement in trade association meetings and exchange of non-public information at those trade association meetings. Such mirrored discovery is irrelevant to the claims and defenses in the litigation.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 45:

All Communications with any government agency (including but not limited to departments of insurance, insurance commissioners, and state Attorneys General), the American Medical Association, state or local medical associations, or other professional organizations regarding Reimbursement Rates, market conditions, competition, discounts, Premiums, deductibles, co-payments, co-insurance, patient medical debt, balance billing, or the terms or conditions of any contract with a Health Plan Entity, including but not limited to all Documents reflecting any complaints, appeals, criticisms, objections, or grievances

regarding the Reimbursement Rates or other contractual terms offered by any Health Plan Entity.

Response to RFP No. 45:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding communications with government agencies or associations about general market conditions.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff also objects to this Request because it is not proportionate to the needs of the case because Defendants can obtain sufficient discovery on relevant topics contained in lobbying or government advocacy materials by other means. The First Amendment protects the freedom to associate with others for the common advancement of political beliefs and ideas and the right to petition the government for redress of grievances. Compelled disclosures of such materials would have a chilling effect upon, and therefore infringe, the exercise of these fundamental rights. As a result, Defendants should obtain relevant information concerning the issues discussed in this Request (if any) from materials that do not implicate these First Amendment concerns.

Further, Plaintiff objects to this Request as not proportionate to the needs of the case to the extent that Defendants seek documents or electronically stored information in the possession of Plaintiff's outside counsel. By way of background, in the regular course of business, Plaintiff retains managed care and healthcare counsel to assist with routine regulatory filings and related

regulatory matters. It would not be proportionate to the needs of the case for Plaintiff to obtain documents from such outside counsel for purposes of this litigation when relevant and non-privileged information responsive to this Request can be more readily obtained from other sources.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request.

DOCUMENT REQUEST NO. 46:

All Documents reflecting Your participation in any advocacy efforts relating to how any Health Plan Entity (including, but not limited to, any Defendant) operates its business or relating to any legislation intended or likely to affect any Health Plan Entity's business, including but not limited to advocacy efforts relating to OON reimbursement, balance billing, or medical debt.

Response to RFP No. 46:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding advocacy efforts unrelated to OON reimbursement. Additionally, Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff also objects to this Request because it is not proportionate to the needs of the case because Defendants can obtain sufficient discovery on relevant topics contained in lobbying or government advocacy materials by other means. The First Amendment protects the freedom to

associate with others for the common advancement of political beliefs and ideas and the right to petition the government for redress of grievances. Compelled disclosures of such materials would have a chilling effect upon, and therefore infringe, the exercise of these fundamental rights. As a result, Defendants should obtain relevant information concerning the issues discussed in this Request (if any) from materials that do not implicate these First Amendment concerns.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, and will produce non-privileged documents related to advocacy efforts concerning OON reimbursement concerning the defendants named in the short-form complaint that were created, sent, received, or modified before August 9, 2023, but does not intend to produce non-privileged documents related to other topics.

DOCUMENT REQUEST NO. 47:

All Documents and Communications in which You have asserted that You believed one or more Defendants were paying below-market rates for Healthcare Goods or Services or were engaged in a scheme to fix or depress Reimbursement Rates.

Response to RFP No. 47:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding in-network services.

Plaintiff also objects to this Request because it is not proportionate to the needs of the case because Defendants can obtain sufficient discovery on relevant topics contained in lobbying or government advocacy materials by other means. The First Amendment protects the freedom to associate with others for the common advancement of political beliefs and ideas and the right to petition the government for redress of grievances. Compelled disclosures of such materials would have a chilling effect upon, and therefore infringe, the exercise of these fundamental rights. As a result, Defendants should obtain relevant information concerning the issues discussed in this Request (if any) from materials that do not implicate these First Amendment concerns.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control in which Plaintiff asserted that Defendants were paying below-market rates for OON Healthcare Goods or Services or were engaged in a scheme to fix or depress OON reimbursement rates, to the extent such documents exist and are reasonably

accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce documents solely related to in-network or unrelated assertions.

DOCUMENT REQUEST NO. 48:

All Documents pertaining to Your consideration of whether to cease or limit treating members of any Health Plan Entity based on that Health Plan Entity's OON Reimbursement Rates, including all Documents in which you discuss or threaten such cessation or limitation.

Response to RFP No. 48:

Plaintiff objects to this Request as vague, overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information relating to the "consideration" of decisions on treatment issues.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control pertaining to consideration of ceasing or limiting treatment of members of any Health Plan Entity based on OON reimbursement rates, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 49:

All Documents and Communications relating to Your sales strategies, sales forecasts, and sales plans for recruitment or retention of OON patients, or treatment of patients at any facilities at which Your practice is OON but the facility is in-network.

Response to RFP No. 49:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding sales strategies or patient recruitment.

Plaintiff specifically objects to this Request as irrelevant to the claims and defenses in the litigation and not proportionate to the needs of the case because this Request seeks information concerning the separate market for the recruitment of patients and information concerning billed charges and list prices. This case is about a cartel that suppressed payments for out-of-network services by lowering the allowed amount set for those services, not the recruitment of patients or the charges billed by providers.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff also objects to this Request as not relevant to the claims and defenses in the litigation. In a buyers' cartel case, the relevant market is the market in which buyers purchase services from the plaintiffs.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 50:

All Documents and Communications concerning the relationship between Reimbursement Rates and patient volume.

Response to RFP No. 50:

Plaintiff objects to this Request as vague and ambiguous because the phrase "relationship between Reimbursement Rates and patient volume" is not defined and could refer to a range of different concepts, making it unclear what information is being sought. Plaintiff further objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information relating to in-network services. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 51:

Documents sufficient to identify all Claims that You allege were underpaid due to the alleged conspiracy between Defendants, and for each such Claim, all Documents regarding actions You took with respect to those Claims, including any appeals, balance bills and notices sent to patients, and communications with MultiPlan or the Health Plan Entity to whom the Claim was submitted.

Response to RFP No. 51:

Plaintiff objects to this Request as vague and ambiguous because the phrase "actions You took" is not defined and could refer to a range of different concepts, making it unclear what information is being sought. Plaintiff further objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information relating to all underpaid claims and in-network services. Additionally, Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets

that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control sufficient to identify claims alleged to be underpaid due to the alleged conspiracy, and documents regarding actions taken with respect to such claims, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 52:

Reports, charts, summaries or similar documents regarding independent dispute resolution (IDR) submissions by Your practice under the No Surprises Act, and the arbitration award (if any) associated with each such submission.

Response to RFP No. 52:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information not related to OON IDR. Additionally, Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Notwithstanding the foregoing specific objections, and without conceding that IDRs are an offset to damages, Plaintiff objects to this Request to the extent that it attempts to seek premature discovery concerning offsets to damages. Plaintiff is prepared to produce documents related to

potential offsets to damages, if necessary, after a jury verdict and in advance of any briefing concerning remittitur or offsets to a damages award.

DOCUMENT REQUEST NO. 53:

All documents relating to any consideration of or decision to cease providing OON Healthcare Goods and Services to patients associated with a particular Health Plan Entity, or to reduce or forego spending on improving care or offering charitable care because of underpayments by Health Plan Entities for OON Healthcare Goods and Services.

Response to RFP No. 53:

Plaintiff objects to this Request as vague and ambiguous because the phrases "consideration," "decision," "reducing or foregoing spending," and "improving care," are not defined and could refer to a range of different concepts, making it unclear what information is being sought. Plaintiff further objects to this Request on the grounds that it does not specify whether it seeks formal decisions, internal or external communications, strategy, or informal commentary, thereby imposing an undue burden in attempting to identify responsive documents. Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties. Additionally, Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information relating to in-network services.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control relating to consideration or decisions to cease providing OON Healthcare Goods and Services, or to reduce or forego spending on care or charitable care due to underpayments for OON services, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce documents solely related to in-network or unrelated decisions.

DOCUMENT REQUEST NO. 54:

All Documents related to the alleged conspiracy between Defendants regarding MultiPlan, including but not limited to Defendants' alleged knowledge of other Health Plan Entities' use of MultiPlan's services and Communications regarding any data sent to MultiPlan and any documents regarding the "abrasion" allegations set forth in the Complaints.

Response to RFP No. 54:

Plaintiff objects to this Request as vague and ambiguous because the phrase "any data sent to MultiPlan" is not defined and could refer to a range of different types of data, making it unclear what information is being sought. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties. Additionally, Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information relating to in-network services.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets

that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control related to the conspiracy between Defendants regarding MultiPlan, including documents regarding Defendants' knowledge of other Health Plan Entities' use of MultiPlan, communications regarding data sent to MultiPlan, and documents regarding "abrasion" allegations, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 55:

All Documents discussing or otherwise relating to Defendants' alleged uses of MultiPlan's services or products, including but not limited to MultiPlan's Data iSight tool, negotiation services, or provider networks.

Response to RFP No. 55:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information relating to in-network services. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control discussing or relating to Defendants' alleged uses of MultiPlan's services or products, including Data iSight, negotiation services, or provider networks, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 56:

All Communications with third parties, including Your patients, any government or regulatory body, or the media, regarding Defendants' use of MultiPlan's services or the subject matter of the allegations of the Complaints.

Response to RFP No. 56:

Plaintiff objects to this Request as vague and ambiguous because the phrase "subject matter of the allegations of the Complaints" is not defined and could refer to a range of different types of topics, making it unclear what information is being sought. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties. Additionally, Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information relating to all communications with patients related to care or in-network services.

Plaintiff also objects to this Request because it is not proportionate to the needs of the case because Defendants can obtain sufficient discovery on relevant topics contained in lobbying or government advocacy materials by other means. The First Amendment protects the freedom to associate with others for the common advancement of political beliefs and ideas and the right to petition the government for redress of grievances. Compelled disclosures of such materials would have a chilling effect upon, and therefore infringe, the exercise of these fundamental rights. As a result, Defendants should obtain relevant information concerning the issues discussed in this Request (if any) from materials that do not implicate these First Amendment concerns.

Plaintiff further objects to this Request as not proportionate to the needs of the case to the extent that it seeks documents and electronically stored information that are solely in the possession of Plaintiff's outside counsel and that was created, sent, modified, or received after the filing of Plaintiff's complaint.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged communications with third parties regarding Defendants' use of MultiPlan's services, to the extent

such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 57:

Documents sufficient to show the geographic areas in which You promote or market Your Healthcare Goods or Services, including but is not limited to Documents sufficient to show where and for what locations You have placed advertisements for your services, or your patient service area(s).

Response to RFP No. 57:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding in-network or unrelated marketing.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff further objects to this Request as not relevant to the claims and defenses because the relevant geographic market in a buyers' cartel case is not defined by where a particular seller sells a good or service but the areas in which the buyers purchase particular goods and services.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control sufficient to show the geographic areas in which OON Healthcare Goods or Services are promoted or marketed, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 58:

Documents related to any market analysis done by or for You, including but not limited to analyses of competitors; anticipated pool and mix of patients (including by coverage status, e.g. in-network vs. OON); or revenue/profitability assessments based on Health Plan Entity, type of insurance product, or patient's network status.

Response to RFP No. 58:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding Plaintiff's market analyses, competitor analyses, or patient mix. Plaintiff further objects to this Request as vague and ambiguous because the phrase "anticipated pool and mix of patients" is not defined and could refer to a range of different types of topics, making it unclear what information is being sought.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff also objects to this Request to the extent that it calls for the premature and non-mutual disclosure of expert reports or interim expert work product in violation of the Court's Case Management Orders.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to

the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 59:

All Documents related to Plaintiffs' contention that the market for payments made by commercial healthcare insurance companies for OON healthcare services is a separate, standalone market.

Response to RFP No. 59:

Plaintiff objects to this Request as vague and ambiguous because the phrase "standalone market" is not defined and could refer to a range of different types of topics, making it unclear what information is being sought. Plaintiff further objects to the extent the Request seeks documents protected by the attorney-client privilege or attorney work product. Additionally, Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information relating to in-network services.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Plaintiff also objects to this Request to the extent that it calls for the premature and non-mutual disclosure of expert reports or interim expert work product in violation of the Court's Case Management Orders.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control related to Plaintiff's contention that the market for payments for OON healthcare services is a relevant market, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 60:

All Documents discussing the reasons for any decrease in your practice's financial or operational performance over the Relevant Time Period, including but not limited to the effect of COVID-19, changes in consumer demand, or the conduct of any Health Plan Entity.

Response to RFP No. 60:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding Plaintiff's general financial or operational performance.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently

passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Plaintiff further objects to the production of its information concerning its financial condition, profits, revenue, or sources of income that are unrelated to the compensation it received from commercial payors for out-of-network services as not relevant to the claims and defenses in the litigation. Plaintiff's antitrust injury is not based upon loss or profit, and does not depend upon whether or not Plaintiff subsequently passed the underpayment on to others. While Plaintiff claims that defendants depressed reimbursement rates for out-of-network goods and services requires it to prove measurable damages, it does not require Plaintiff to prove that the alleged price-fixing had any specific impact on its individual bottom line. Accordingly, information concerning the financial condition, revenue, profits, and losses from Plaintiff's operations is irrelevant because the antitrust laws do not require that those seeking to enforce them have any particular financial condition.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 61:

All Documents concerning when You discovered that You had been harmed by any of the Defendants' allegedly illegal conduct.

Response to RFP No. 61:

Plaintiff objects to this Request as vague and ambiguous because the phrase "illegal conduct" is not defined and could refer to a range of different types of topics, making it unclear

what information is being sought. Additionally, Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks all documents related to any illegal conduct by Defendants, including conduct not related to OON reimbursement.

Plaintiff further objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Plaintiff also objects to this Request to the extent that it calls for the premature and non-mutual disclosure of expert reports or interim expert work product in violation of the Court's Case Management Orders.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control concerning when Plaintiff discovered harm from Defendants' illegal conduct alleged in the Complaint that Plaintiff understood was caused by an agreement among Defendants to underpay healthcare providers for out-of-network services, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 62:

All Documents discussing any link between OON reimbursement and any decision whether Your practice would provide new services and/or acquire new equipment or technology, or cease to provide certain services and/or relinquish any equipment or technology.

Response to RFP No. 62:

Plaintiff objects to this Request as vague and ambiguous because the phrases "link" and "any decision" are not defined and could refer to a range of different types of topics, making it unclear what information is being sought. Further, Plaintiff objects to this Request as overbroad,

unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks all documents remotely related to OON reimbursement but not related to conduct by Defendants, including in-network services. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Notwithstanding the foregoing objections, Plaintiff will produce non-privileged documents in its possession, custody, or control discussing the effects of Defendants' OON reimbursement and decisions to provide or cease services or acquire or relinquish equipment or technology, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 63:

To the extent not requested elsewhere, all Documents relating to Your claimed injury and damages from the conduct alleged in the Complaints. This includes, but is not limited to, the DAPs' allegations that:

- **"some DAPs will no longer be able to provide services on an out-of-network basis given the financial constraints—and some, especially in already underserved rural areas, may go out of business altogether" (Master DAP Complaint ¶ 46);**
- **"As a result of these payment rate cuts, staffing agencies have been forced to cut physician salaries and benefits due to the low prices set for out-of-network goods and services set by the MultiPlan Cartel." (Id. ¶ 587);**
- **"due to massive underpayments that the TeamHealth DAPs were receiving from United for out-of-network goods and services, TeamHealth had made cuts to compensation and benefits for physicians and advanced practice clinicians." (Id. ¶ 668).**

Response to RFP No. 63:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information relating to all documents related to harm suffered by Defendant's conduct unrelated to OON reimbursement. Plaintiff

further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff further objects to this Request to the extent that it takes allegations out of context and asks Plaintiff to provide documents that support fragments of sentences.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Plaintiff also objects to this Request to the extent that it calls for the premature and non-mutual disclosure of expert reports or interim expert work product in violation of the Court's Case Management Orders.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control relating to injury and damages from the Defendants' conduct, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 64:

A copy of any legal complaint filed (a) against by You against any patient or Health Plan Entity pertaining to alleged non-payment or underpayment for OON Healthcare Goods or Services, or (b) by You against any patient or Health Plan Entity pertaining to payment for OON Healthcare Goods or Services.

Response to RFP No. 64:

Plaintiff objects to this Request as vague and ambiguous because the phrase "against by You against" is not defined and could refer to a range of different types of topics, making it unclear what information is being sought. Plaintiff further objects to the extent the Request seeks documents protected by the attorney-client privilege or attorney work product. Plaintiff further

objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties. Additionally, Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information not related to the OON reimbursement disputes at issue in this Litigation.

Plaintiff objects because the phrase "against by You against" is ungrammatical and requires revision before Plaintiff can understand what Defendants are requesting.

Plaintiff objects to this Request as irrelevant to the extent that Defendants assume that evidence of collateral sources of revenue is relevant to the injury that Plaintiff suffered as a result of the MultiPlan Cartel. Under *Illinois Brick*, healthcare providers are directly harmed by the MultiPlan Cartel when they are underpaid for its out-of-network services via the MultiPlan Cartel suppressing the allowed amount for an out-of-network claim. Healthcare providers are injured to the full extent of this underpayment regardless of whether the healthcare provider subsequently passes on the effect of the cartel in a separate transaction or is otherwise reimbursed in a separate transaction. Thus, discovery into separate transactions or funding sources that Plaintiff supposedly could have used to reimburse itself for losses caused by the MultiPlan Cartel are not relevant to the claims and defenses in the litigation.

Notwithstanding the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of this Request.

DOCUMENT REQUEST NO. 65:

All Documents quoted, copied, excerpted, or otherwise referenced in Your Complaint or Rule 26(a) disclosures, or on which You have relied in support of Your allegations and claims.[1]

[1] For the CCAC, this Request includes but is not limited to the materials cited or referenced in paragraphs 77, 81, 88, 96, 107, 108, 112, 113, 125, 137, 138, 149, 164, 166, 167, 168, 170, 187, 188, 190, 191, 192, 202, 203, 204, 205, 206,

Response to RFP No. 65:

Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff further objects to this Request as not proportionate to the needs of the case to the extent that it seeks documents and electronically stored information that are solely in the possession of Plaintiff's outside counsel.

Notwithstanding the foregoing specific objections, Plaintiff will produce non-privileged documents in its possession, custody, or control that are quoted, copied, excerpted, or otherwise referenced in the current, operative versions of Plaintiff's Complaint and/or Rule 26(a) disclosures, or on which Plaintiff has relied on in support of its allegations and claims, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 66:

All Documents you receive in response to any subpoena served in connection with this Action.

Response to RFP No. 66:

Plaintiff objects to this Request as unnecessary and duplicative of paragraph 5 of Case Management Order No. 16 (ECF No. 440).

207, 209, 210, 211, 216, 222, 231, 232, 235, 236, 237, 238, 239, 253, 256, 257, 286, 287, 288, 289, 290, 307, and 315. For the Master DAP Complaint, this Request includes but is not limited to the materials cited or referenced in paragraphs 13, 23, 26, 28, 111, 112, 118, 119, 122, 123. 124, 129, 156, 162, 169, 170, 171, 172, 173, 174, 175, 176, 178, 180, 183, 184, 185, 186, 187, 188, 189, 190, 192, 193, 194, 195, 197, 198, 199, 200, 201, 203, 204, 205, 206, 207, 208, 209, 210, 211, 213, 214, 215, 216, 218, 219, 220, 221, 223, 224, 225, 226, 227, 228, 229, 230, 232, 233, 236, 238, 241, 242, 243, 245, 246, 249, 250, 264, 266, 268, 269, 271, 272, 274, 281, 292, 294, 299, 304, 307, 309, 312, 316, 325, 340, 343, 361, 362, 363, 364, 378, 384, 395, 433, 434, 435, 441, 443, 444, 445, 447, 449, 451, 468, 471, 474, 502, 529, 538, 539, 541, 565, 566, 575, 577, 578, 579, 584, 585, 586, 589, 625, 626, 629, 653, 655, 656, 668, 669, 670, 672, 679, 682, 696, 711, and 717.

DOCUMENT REQUEST NO. 67:

All Communications between You and any other Plaintiff relating to any Defendant or other Health Plan Entity that You contend is a co-conspirator with any Defendant.

Response to RFP No. 67:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information not related to OON reimbursement or the subject matter at issue in this Litigation. Plaintiff further objects to the extent the Request seeks documents protected by the attorney-client privilege, attorney work product, or common interest doctrine. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request as not relevant to the claims and defenses in the litigation and not proportionate to the needs of the case to the extent that it seeks information about markets that are separate from the market for purchasing out-of-network goods and services or the markets in which commercial third-party-payors purchase medical goods and services. Separate markets, such as the market for the sale of insurance coverage or the market for recruiting patients to healthcare facilities, are not relevant to the claims and defenses in this litigation.

Plaintiff further objects to the definition of "Health Plan Entity" as overbroad, seeking irrelevant information, and not proportional to the needs of the case to the extent that the use of this term is meant to require the production of documents and electronically stored information regarding health plans that are not named as defendants in Plaintiff's Short Form Complaint. Unless otherwise agreed, Plaintiff will limit its production of documents and electronically stored information to information that relates to the defendants named in Plaintiff's operative short-form complaint.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce responsive, non-privileged communications dated prior to August 9, 2023 in its possession, custody, or control between Plaintiff and any named plaintiff in the operative Consolidated Amended Class Action Complaint or any DAP discovery bellwether plaintiff's short-form complaint, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 68:

All Communications concerning this Action, or any pending or potential antitrust, unfair competition, or unjust enrichment claims against any Defendant.

Response to RFP No. 68:

Plaintiff objects to this Request as vague and ambiguous because the phrase "pending or potential" is not defined and could refer to a range of different types of topics, making it unclear what information is being sought. Plaintiff further objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties. Additionally, Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information not related to OON reimbursement or the subject matter at issue in this Litigation.

Plaintiff further objects to this Request as not proportionate to the needs of the case to the extent that it seeks documents and electronically stored information that are solely in the possession of Plaintiff's outside counsel. Plaintiff further objects to the production of

communications dated, sent, or received on or after August 9, 2023 as not proportional to the needs of the case.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Notwithstanding the foregoing specific objections, Plaintiff will produce, for the period prior to August 9, 2023, non-privileged communications in its possession, custody, or control concerning this Action or any pending or potential antitrust, unfair competition, or unjust enrichment claims against any Defendant, to the extent such documents exist and are reasonably accessible. Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request.

DOCUMENT REQUEST NO. 69:

All Documents related to any actual, proposed or threatened disciplinary action against You or any provider in Your practice, including but not limited to (a) any fines or penalties paid by Your practice related to the provision of Healthcare Goods or Services and/or (b) the loss or suspension of any license or other license for any Provider in Your practice.

Response to RFP No. 69:

Plaintiff objects to this Request as overbroad, unduly burdensome, and not relevant to the claims or defenses in this litigation to the extent it seeks information regarding in-network services or unrelated disciplinary actions, as such information does not pertain to the OON reimbursement issues or the specific subject matter at issue in this Litigation. Plaintiff further objects to the extent the Request seeks documents protected by the attorney-client privilege or attorney work product. Additionally, Plaintiff objects to the extent the Request seeks documents outside Plaintiff's possession, custody, or control, or equally/more readily available from Defendants or third parties.

Plaintiff objects to this Request to the extent that it seeks the production of information that is privileged or immune from production under the attorney-client privilege, attorney work product doctrine, or any other applicable legal or evidentiary privilege.

Based on the foregoing specific objections, Plaintiff is willing to meet and confer regarding the relevance and proportionality of the remainder of this Request, but does not intend to produce non-privileged documents to this Request as it is currently written.

DOCUMENT REQUEST NO. 70:

All documents upon which You intend to rely to support Your claims.

Response to RFP No. 70:

Plaintiff objects to this Request as overly broad and to the extent that it seeks the production of attorney work product analyzing facts and law that may be utilized by Plaintiff to prosecute this litigation. Plaintiff also objects to this Request to the extent that it seeks to impose an ongoing duty to produce documents after the close of fact discovery.

Plaintiff objects to this Request to the extent that it seeks the premature disclosure and identification of materials to be identified under Fed. R. Civ. P. 26(a)(3)(A)(iii).

Notwithstanding the foregoing specific objections, Plaintiff is willing to meet and confer regarding the breadth of this Request and appropriate limitations on Plaintiff's search for responsive materials.

[signature page follows]

Dated: November 7, 2025

VINSON & ELKINS LLP

/s/ Stephen M. Medlock

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that today, November 7, 2025, I caused a copy of the foregoing to be served via electronic mail upon Defendants' Liaison Counsel.

/s/ Stephen M. Medlock
Stephen M. Medlock

EXHIBIT 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: MULTIPLAN HEALTH INSURANCE PROVIDER LITIGATION	Case No. 1:24-cv-06795 MDL No. 3121
This Document Relates To: 1:24-cv-07177 1:24-cv-06802	Hon. Matthew F. Kennelly

PLAINTIFFS CURTIS F. ROBINSON, M.D., INC.'S AND ADVANCED ORTHOPEDIC CENTER, INC.'S RESPONSES AND OBJECTIONS TO DEFENDANTS' THIRD SET OF REQUESTS FOR PRODUCTION

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiffs Curtis F. Robinson, M.D., Inc., and Advanced Orthopedic Center, Inc. ("Plaintiffs"), by and through their attorneys, provide the following responses and objections to Defendants' Third Set of Requests for Production to Plaintiffs.

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

Plaintiffs' responses are based on information and documents currently available to Plaintiffs, and Plaintiffs' investigation is ongoing. Further investigation and discovery may supply additional facts. Plaintiffs further state in accordance with Rule 34(b)(2)(C) that Plaintiffs have not yet completed their review and analysis of documents responsive to these Requests. Thus, the responses below are given without prejudice to Plaintiffs' right to later supplement or amend with additional information. Plaintiffs reserve the right to supplement and amend the responses and objections to these Requests, if necessary, to assert additional responses and objections that arise from further investigation.

Plaintiffs object to each Definition, Instruction, and Request to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under the Federal Rules of Civil Procedure, the Civil Local Rules, and any Orders of the Court.

Plaintiffs object generally to all Definitions, Instructions, and Requests to the extent they seek the production of documents or information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection under the law.

Plaintiffs object to the definition of "Complaints" to the extent it purports to ask Plaintiffs about the Master Direct Action Plaintiff ("DAP") Complaint or any Short Form Complaint.

Plaintiffs object to the definition of "Plaintiffs," "You," and "Your" as overly broad, vague, and unduly burdensome to the extent that it purports to extend the Request to include any DAPs or plaintiffs that have filed Short Form Complaints. Plaintiffs further object to this definition to the extent that it purports to impose obligations upon Plaintiffs to produce documents in the possession, custody or control of third parties that are not under Plaintiffs' legal control, and/or are not relevant to this litigation. For purposes of its responses, Plaintiffs consider "Plaintiff," "You," and "Your" to mean the above-named Plaintiffs and their employees from January 1, 2015, to the present, and respond on that basis.

Plaintiffs object to the definitions of "Managed Care Organization," "Reimbursement Rate," and "Health Plan Entity"—which do not appear in the Consolidated Class Action Complaint—as vague, ambiguous, and overbroad. Plaintiffs will interpret "Reimbursement Rate" to mean the amount paid by any Insurer Defendant or other third-party payor to Plaintiffs or other providers for OON Healthcare Goods and Services. Plaintiffs will interpret "Health Plan Entities" and "Managed Care Organization[s]" to mean any Insurer Defendant or other third-party payor that purchases OON Healthcare Goods and Services from Plaintiffs or other providers.

Plaintiffs object to the definition of "communication" to the extent such definition includes privileged attorney-client communications, attorney work product, or material otherwise subject to any other privilege or protection. To the extent any Request seeks privileged or protected information, Plaintiffs will not produce such information.

Plaintiffs object to Instruction No. 1 as unduly burdensome to the extent it requests any materials "dated, prepared, generated, created, edited, revised, or received prior to" the start of the relevant time period Defendants assert in the Requests (January 1, 2015).

Plaintiffs object generally to the extent any Request purports to require Plaintiffs to create any documents that do not exist; seeks information already in Defendants' possession, custody, or control; seeks information in the public domain; or seeks information that is not in Plaintiffs' possession, custody, or control.

Plaintiffs generally object to the extent any Request seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information.

Subject to and without waiving any of the Objections contained herein, Plaintiffs are willing to meet and confer to discuss all Requests.

RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION

REQUEST NO. 6: Contracts with any person or entity pertaining to billing of Health Plan Entities or patients (including Self-Pay patients) for OON Healthcare Goods and Services, including contracts with Health Plan Entities, patients, and persons or entities who refer or recruit patients with coverage for OON Healthcare Goods and Services.

RESPONSE: Plaintiffs object to this Request as vague, overbroad, unduly burdensome, and not proportional to the needs of the case because it seeks all contracts with "any person or

entity pertaining to billing . . . for OON Healthcare Goods and Services." As written, this Request could encompass a wide swath of documents with no apparent connection to this litigation (*e.g.*, contracts between Plaintiffs and their payment processing companies). Plaintiffs further object on the basis of vagueness as to the phrase "persons or entities who refer or recruit patients with coverage for OON Healthcare Goods and Services."

Plaintiffs also object to this Request on the basis that it seeks information that is irrelevant to any claim or valid defense in this litigation. This case concerns an alleged horizontal price-fixing conspiracy in the market for OON Healthcare Goods and Services for purchase directly by third-party payors. In seeking contracts governing the sale of healthcare goods or services directly to Self-Pay patients—transactions not at issue in this case and which do not occur in the relevant antitrust market—the Request extends to irrelevant matters. Moreover, federal antitrust law does not permit the assertion of a "pass-on" defense against plaintiffs who, like Plaintiffs here, have been directly harmed by an alleged price-fixing cartel through the payment or receipt of fixed price. *See Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481 (1968). Accordingly, evidence concerning any efforts by Plaintiffs to mitigate (or "pass on") the damages they suffered as a direct result of the alleged cartel by passing them on to other parties (including patients via balance billing) is not discoverable. *See, e.g.*, *In re Turkey Antitrust Litig.*, 2021 WL 6428398, at *3–4 (N.D. Ill. Dec. 16, 2021) (denying motion to compel downstream discovery); *In re Broiler Chicken Antitrust Litig.*, 2018 WL 3398141, at *1 (N.D. Ill. July 12, 2018) (granting protective order to preclude downstream discovery).

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 7: All agreements in effect at any point during the Relevant Time Period between Your practice and the facilities where the services for your Claims for OON Healthcare Goods and Services were rendered.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define the term "facilities." Plaintiffs also object to this Request because agreements between Plaintiffs and the facilities where they render OON healthcare services have no bearing on any claim or valid defense in this litigation, so the Request extends to irrelevant matter. Plaintiffs also object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case because it seeks "[a]ll agreements" concerning the subject of the Request.

Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

REQUEST NO. 8: Documents sufficient to show any payment or remuneration Your practice received from facilities where the services for your Claims for OON Healthcare Goods and Services were rendered during the Relevant Time Period.

RESPONSE: Plaintiffs objects to this Request as vague and ambiguous because it does not define the term "facilities." Plaintiffs also object on the basis of relevance, including because the Request seeks documents concerning payments not made in connection with the alleged cartel, as well as non-discoverable evidence that Plaintiffs may have mitigated their damages by passing them onto "facilities," as no pass-on defense is permitted here.

Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

REQUEST NO. 9: Documents sufficient to show the standard Documents, assignments, paperwork, policies, or disclosures that Your practice or any facility at which You practice provides

to patients concerning Your OON Healthcare Goods or Services, including but not limited to documents relating to insurance coverage, disclosure of pricing, financial responsibility for services, or patient financing.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define the terms "standard," "paperwork," "policies," "disclosures," "insurance coverage," "financial responsibility for services," or "patient financing." Plaintiffs further object to this Request as overly broad because, as written, it extends to documents that have no conceivable relationship to this litigation (*e.g.*, disclosures concerning the risks associated with particular medical procedures). Plaintiffs further object to this Request on the basis of relevance, including because it seeks evidence concerning transactions with Self-Pay patients, which are not subject to the alleged cartel, and Plaintiffs' attempts to mitigate or pass-on damages caused by the alleged cartel to patients, as no pass-on defense is permitted here.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 10: All contracts or other Documents reflecting agreements (including any modifications, amendments, or attachments thereto) that Your practice has entered into with MultiPlan or and any other "OON Repricing Service" (as Plaintiffs have defined that phrase), any Health Plan Entity, or patients, regarding financing arrangements, responsibility for payment, or payment terms or conditions for OON Healthcare Goods or Services, including, for example, single case agreements.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define the terms "financing arrangements," "responsibility for payment," "payment terms or

conditions," or "single case agreements." Plaintiffs further object to this Request as unduly burdensome because it seeks contracts already within Defendant's possession. Plaintiffs also object to this Request on the basis of overbreadth, burden, and proportionality because any relevant information in the requested contracts concerning the compensation Plaintiffs received for OON Goods and Services from members of the alleged cartel is reflected in structured data requests, *e.g.*, Request Nos. 3 and 12. Plaintiffs further object to this Request on the basis of overbreadth, burden, and proportionality because it seeks "[a]ll contracts" concerning the subject matter of the Request, as well as "[a]ll . . . Documents *reflecting* [any such] agreements."

Additionally, Plaintiffs object on the basis of relevance, burden, and proportionality to the extent this Request seeks documents concerning in-network agreements (*e.g.*, Plaintiffs' contracts with "Health Plan Entities") because this case concerns payments made by Defendants and co-conspirators on OON claims which are not governed by any contract. Plaintiffs further object to this Request because it seeks information that is not relevant to any claim or valid defense in this case to the extent it seeks documents regarding (a) transactions with Self-Pay patients, which are not subject to the alleged cartel, and (b) Plaintiffs' efforts to mitigate or pass on damages caused by the alleged cartel to any other party, including patients (via balance billing), as no pass-on defense is permitted here.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 11: Copies of all office manuals, policies, and procedures relating to disclosure of pricing; billing; collection of fees for OON Healthcare Goods and Services; balance

billing; financial assistance for patients; and prompt pay discounts or any other types of discounts that are offered to out-of-network patients.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define the terms or phrases "financial assistance" or "prompt pay discounts." Plaintiffs further object to this Request on the basis of burden, relevance, and proportionality because, as written, the Request extends to documents that have no conceivable relationship to this litigation, including documents concerning, for example, "financial assistance" available from third parties.

Additionally, Plaintiffs object to this Request on the basis that it seeks information that is not relevant to any claim or valid defense in this case, including documents concerning (a) transactions with Self-Pay patients, which are not subject to the alleged cartel, and (b) documents concerning Plaintiffs' mitigation or pass through of damages caused by the alleged cartel to any other party, including patients (via balance billing), as no pass-on defense is permitted here.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 12: Structured Data for the fields of data requested in Defendants' First Set of Requests for Production, Request No. 3 and the additional fields listed below, for each claim for OON Services and In-Network Services, with dates of service from January 1, 2012 to the present at the most granular level that such Structured Data is kept, including at the claim or line level:

(a) Whether the service was provided in an emergency or non-emergency setting;

(b) Whether the facility at which the service was provided was in-network with the patient's Health Plan Entity.

RESPONSE: Plaintiffs object to this Request to the extent it seeks information that is not relevant to any claim or valid defense in this case, including data concerning (a) transactions with Self-Pay patients, which are not subject to the alleged cartel, and (b) Plaintiffs' mitigation or pass-through of damages caused by the alleged cartel to any other party, including patients (via balance billing), as no pass-on defense is permitted here. Plaintiffs specifically object to the following requested fields as seeking irrelevant information: "the amount You collected from the patient;" "any amount for which the patient was responsible that You did not collect;" "whether any amount of the billed charges was submitted to a third-party agency for collection;" "whether you had an assignment of benefits from the patient and, if so, to whom the assignment was made;" "notes fields or other codes relating to interactions with the patient concerning patient responsibility;" "Any fields relating to independent dispute resolution under the No Surprises Act or state law equivalent;" and "Any fields relating to any appeal, attempt to appeal, request for reconsideration, dispute, or otherwise pursue additional reimbursement for the claim."

Plaintiffs further object to this Request as unduly burdensome and not proportional to the needs of the case, including because it seeks information already in Defendants' possession, custody, or control. Indeed, all of the relevant claims and payment data in this case is in the possession, custody, control of MultiPlan and the other Defendants. Accordingly, the best source of structured data concerning payments made to Plaintiffs pursuant to the alleged cartel is Defendants' Structured Data. Plaintiffs also object to this Request on the basis of undue burden and proportionality to the extent it requires Plaintiffs to provide, generate, or create any documents that do not exist; seeks information not in Plaintiffs' possession, custody, or control; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information.

Plaintiffs further object to this Request because it seeks sensitive, personally identifiable information that is not relevant to the claims or defenses in this litigation, including, without limitation, the following data captured by the following fields: "Patient name;" "Patient residential address;" "Patient Date of Birth;" "Patient Gender;" and "Medicare" and "Medicaid ID[s]."

Additionally, Plaintiffs object to this Request to the extent that it seeks information about the medical necessity or propriety of particular Healthcare Goods or Services provided during individual Patient Encounters that is not relevant to the claims or defenses in this litigation including, without limitation, the following fields or subparts thereof: "Patient name;" "Patient Gender;" "Patient Date of Birth (or, if unavailable, Patient Age);" "admission/discharge date(s);" "Name and address of the facility where the Patient Encounter occurred;" "description of the Healthcare Goods or Services;" "any remark/adjustment codes;" and "Any fields relating to any appeal, attempt to appeal, request for reconsideration, dispute, or otherwise pursue additional reimbursement for the claim."

Plaintiffs also object to the phrase "the facility at which the service was provided was in-network" as vague and ambiguous.

Additionally, Plaintiffs object to this Request on the basis that they have already identified all available Structured Data fields to Defendants.

Subject to and without waiving the foregoing Objections, Plaintiffs are willing to meet and confer with Defendants regarding the relevance, proportionality, and scope of this Request ahead of the Parties' August 18, 2025 Joint Status Report, which will discuss scope, format, and Structured Data production in this case. Subject to these further discussions, Plaintiffs will produce Structured Data in response to this Request.

REQUEST NO. 13: Documents sufficient to interpret and understand any Structured Data produced by Plaintiffs, including but not limited to data dictionaries, look-up tables, system manuals, and explanations of acronyms used in the Structured Data. To the extent that such information has changed over time during the time period covered by the structured data production, provide information identifying which versions apply to each individual item of information produced in response to Request No. 3 of Defendants' First Set of Requests for Production.

RESPONSE: Plaintiffs object to this Request as unduly burdensome to the extent it purports to require Plaintiffs to provide, generate, or create any documents that do not exist; seeks information not in Plaintiffs' possession, custody, or control; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 14: For each year during the relevant time period, your chargemaster(s), billed charges (to the extent different from your chargemaster), and other Documents sufficient to show: (a) all Healthcare Goods or Services provided by Your practice and the accompanying CPT or HCPCS codes; (b) the list prices or submitted charges for all Healthcare Goods or Services provided by You, including any changes during the relevant time period; and any other fees charged to OON patients in addition to those for specific medical services, whether styled as concierge fees, administrative cost fees, access fees, or the like.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define "list prices," "submitted charges," "concierge fees," "administrative cost fees," or "access fees." Plaintiffs also object to this Request on the basis of burden and proportionality to the extent it requires Plaintiffs to provide, generate, or create any documents that do not exist, or seeks information already within the possession of MultiPlan or the other Defendants, including, for example, Plaintiffs' submitted charges for OON claims repriced by MultiPlan. Plaintiffs further object to this Request as duplicative of other requests—including because it seeks Plaintiffs' submitted charge amounts, as well as the CPT or HCPCS codes for services provided by Plaintiffs, information which is sought by Defendants' structured data requests (*e.g.*, Request Nos. 3 and 12).

Additionally, Plaintiffs object to this Request on the basis that it seeks information regarding charge amounts and list prices that is not relevant to any clam or valid defense at issue in this litigation. As Defendants concede, even absent the alleged price-fixing conspiracy, the amounts that third-party payors would pay for OON Goods and Services would not be based on the amounts charged by individual providers but rather based upon payors' aggregated market-wide charge data (which payors use to generate "usual, customary and reasonable" rates) or other benchmarks (like Medicare reimbursement rates). *See* Memo. by Defs. in support of Mot. to Dismiss for Failure to State a Claim ("Defs. Motion to Dismiss"), ECF No. 283 at 6-7 ("MCOs have historically insured or administered plans that use benchmarks to determine OON reimbursements."). Accordingly, two Class Plaintiffs' charge amounts are irrelevant to the determination of competitive prices, damages, or any other issue in dispute as part of this litigation.

Moreover, Plaintiffs object to this Request as seeking information that is not relevant to any claim or valid defense including (a) information regarding whether the alleged cartel results in more reasonable prices, inquiry into which is not permissible under federal antitrust law, and

(b) information regarding Plaintiffs' efforts to mitigate or pass on damages caused by the cartel to other parties, including patients, in the form of "fees," as a pass-on defense is not permitted here.

Subject to and without waiving the foregoing Objections, and with the understanding that Plaintiffs' investigation is ongoing, Plaintiffs are willing to meet and confer regarding this Request.

REQUEST NO. 15: All Documents and Communications related to the use of consultants, benchmarking reports, surveys, databases, or other third-party data sources to establish, review, or modify billed charges and/or chargemasters.

RESPONSE: Plaintiffs further object to this Request to the extent it seeks information that is not relevant to any claim or valid defense in this litigation, including information regarding whether the alleged cartel results in more reasonable prices or may have been designed to combat perceived misconduct by providers, inquiry into which is not permissible. "Price-fixing agreements between competitors cannot be justified at all, let alone by the argument that currently-fixed prices are more 'reasonable.'" Memo. Op. on Mot. to Dismiss, ECF No. 428 at 14 (citing *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 647 (1980)). Moreover, as Defendants concede, even absent the alleged cartel, Payors would not set OON payment amounts based on specific providers' charge amounts, but rather market-wide data and benchmarks. Therefore, Plaintiffs' charge amounts—and any information regarding how they are determined—have no bearing on the calculation of competitive prices, damages, or any other claim or defense in this litigation.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 16: All Documents and Communications relating to the process (a) for establishing or reviewing billed charges and/or Chargemasters, and any changes thereto, and (b)

for determining or confirming patient copay, coinsurance, authorization or preauthorization, in force insurance, or insurance fee caps.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define the terms or phrases "chargemaster," "in force insurance," "insurance fee caps," "authorization," or "preauthorization." Plaintiffs object that this request is overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Documents and Communications" concerning the subject of the Request.

Plaintiffs further object to this Request to the extent it is seeks information that is not relevant to any claim or valid defense in this litigation, including information concerning (a) whether the alleged cartel results in more reasonable prices, (b) whether the cartel may have been designed to combat perceived provider misconduct, and (c) any efforts by Plaintiffs to pass on damages caused by the cartel to patients. Moreover, as Defendants concede, even absent the alleged cartel, Payors would not set OON payment amounts based on specific providers' charge amounts, but rather market-wide data and benchmarks. Therefore, Plaintiffs' charge amounts—and any information regarding the process by which they are determined—have no bearing on the calculation of competitive prices, damages, or any other claim or valid defense in this litigation.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 17: All Documents pertaining to the development, use, or distribution of any pricing benchmarking reports, surveys, analyses, or databases, whether developed internally or externally, pertaining to assessment of Chargemaster rates, billed charges, or Reimbursement Rates, including contracts with the providers of any such reports, surveys, or databases.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define the terms or phrases "benchmarking reports" or "chargemaster." Plaintiffs object that this request is overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Documents and Communications" concerning the subject of the Request.

Plaintiffs further object to this Request to the extent it is seeks information that is not relevant to any claim or valid defense in this litigation, including information concerning (a) whether the alleged cartel results in more reasonable prices, (b) whether the cartel may have been designed to combat perceived provider misconduct, and (c) any efforts by Plaintiffs to pass on damages caused by the cartel to patients. Moreover, as Defendants concede, even absent the alleged cartel, Payors would not set OON payment amounts based on specific providers' charge amounts, but rather market-wide data and benchmarks. Therefore, Plaintiffs' charge amounts—and any information regarding the process by which they are determined—have no bearing on the calculation of competitive prices, damages, or any other claim or valid defense in this litigation.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 18: All Communications and Documents related to the use of consultants regarding: (a) the Reimbursement Rates providers (including but not limited to Your practice) receive from Health Plan Entities; (b) Your relationships with Health Plan Entities; (c) Your attempts to negotiate with any Health Plan Entity concerning Reimbursement Rates or fee schedules; (d) complaints You made to or about any Health Plan Entity; (e) whether you should contract with or continue to contract with any Health Plan Entity; or (f) Your impressions and beliefs regarding any Health Plan Entity's business practices—including but not limited to all

agreements with such consultants and Documents sufficient to show the fees paid to such consultants.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define the terms or phrases "consultants," "benchmarking reports," "relationships," or "chargemaster." Plaintiffs object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case, including because it seeks "[a]ll Documents and Communications" concerning the subject of the Request. Plaintiffs further object to this Request on the basis of relevance and proportionality, as the Request, to the extent Plaintiffs can even understand it, extends to a number of topics that have no bearing on any claims at issue or any valid defense in this litigation, including complaints (even those expressed only internally) Plaintiffs made to or about any Health Plan Entity, regardless of the subject matter of such complaints; and any "impressions and beliefs regarding any Health Plan Entity's business practices."

Additionally, Plaintiffs object on the basis of relevance, burden, and proportionality to the extent this Request seeks documents concerning in-network agreements (*e.g.*, Plaintiffs' contracts with "Health Plan Entities") because this case concerns payments made by Defendants and co-conspirators on OON claims which are not governed by any contract.

Subject to and without waiving the foregoing Objections, and with the understanding that Plaintiffs' investigation is ongoing, Plaintiffs are willing to meet and confer to discuss this Request.

REQUEST NO. 19: Final and/or executed contracts between or governing the relationship between You and any Health Plan Entity or, for each year during the relevant time period, documents sufficient to show: (a) the Provider Networks You have participated in; (b) the period

of time You participated in those Provider Networks; and (c) the different payment arrangements that You have accepted for Healthcare Goods or Services.

RESPONSE: Plaintiffs object to this Request on the basis of burden, proportionality, and relevance because it seeks Document pertaining to the provision and payment for in-network services, as this case concerns payments made to providers for OON (*i.e.*, "non-contract") Healthcare Goods and Services. Plaintiffs further object to the Request on the basis of relevance, burden, and proportionality to the extent it seeks contracts with non-parties and documents already within the possession, custody, and control of Defendants and because the phrase "governing the relationship" is vague and ambiguous. Plaintiffs further object to this Request to the extent it seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 20: All contracts with the Health Plan Entities for the health benefit plan(s) you offer to Your employees, summary plan descriptions, and summaries of benefits for Your health benefit plan(s).

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define the phrase "health benefit plan(s)." Plaintiffs further object to this Request because Plaintiffs' contracts with Health Plan Entities to offer their employees' benefits have no bearing on the claims or valid defenses at issue in this litigation, which concerns whether Defendants engage in a price-fixing conspiracy to suppress payments to providers on OON claims.

Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

<u>REQUEST NO. 21</u>: All correspondence with the Health Plan Entities that provide health insurance or administer health benefits for Your employees concerning MultiPlan, determination of allowed amounts or reimbursement limits for OON Healthcare Goods (including Documents showing how such limits were selected) and Services provided to Your employees, "OON Repricing Services" (as plaintiffs have defined that phrase), or "shared savings" opportunities relating to OON Healthcare Goods and Services.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define the phrases "health benefit plan(s)" or "'shared savings' opportunities." Plaintiffs further object to this Request on the basis of relevance and proportionality. Any correspondence between Plaintiffs and payors concerning Plaintiffs' employee benefits have no bearing on the claims or valid defenses at issue, which concerns whether Defendants are engage in a price-fixing conspiracy to suppress payments to providers on OON claims. Plaintiffs further object to this Request to the extent it seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information.

Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

<u>REQUEST NO. 22</u>: All Documents relating to any Certificate of Need filing or approval (or similar regulatory evaluation of the potential impact of Your practice on health care costs or competition) relating to Your practice.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define the phrase "Certificate of Need filing or approval." Plaintiffs object to this Request on the

basis that it is overly broad, unduly burdensome, and seeks documents that are irrelevant to the claims or any valid defense in this litigation. Plaintiffs' regulatory filings—particularly those related to "regulatory evaluation of the potential impact of Your practice on health care costs or competition"—are wholly irrelevant to the underlying claims and any valid defenses. Plaintiffs further object to the extent this Request seeks Documents that are protected by attorney-client or work-product privilege. Plaintiffs further object to this Request to the extent it seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information.

Subject to and without waiving the foregoing Objections, and with the understanding that Plaintiffs' investigation is ongoing, Plaintiffs are willing to meet and confer to discuss this Request.

REQUEST NO. 23: All presentations by or to Your practice's owners, lenders, investors (including affiliated private equity investors), or board concerning Your practice's actual or projected financial performance or strategic plans.

RESPONSE: Plaintiffs object on the basis that this Request is overly broad, unduly burdensome, and seeks documents that are irrelevant to the claims or any valid defense in this litigation. Plaintiffs' financial performance and strategic plans are irrelevant to the litigation, including because Plaintiffs do not allege lost profits or other revenue or income-based measures of damages, but rather seek underpayment damages relative to competitive prices for OON services (*i.e.*, the prices that would have been paid absent the alleged cartel). Moreover, Plaintiffs object to the terms "affiliated private equity investors," "actual or projected financial performance," and "strategic plans" as vague and ambiguous.

Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

REQUEST NO. 24: Your practice's financial statements and balance sheets, including the financial statement line-item detail for all revenue, expenses, and owner distributions, for each month during the relevant time period.

RESPONSE: Plaintiffs object on the basis that this Request is overly broad, unduly burdensome, and seeks documents that are irrelevant to the claims or any valid defense in this litigation. Plaintiffs' financial performance is wholly irrelevant to the instant litigation. The impact of the alleged conspiracy on Plaintiffs' financial performance is likewise irrelevant. Plaintiffs do not allege lost profits or other revenue or income-based measures of damages: Plaintiffs seek damages based on the difference between the artificially suppressed payment amounts they actually received, and the payments they would have received but for the conspiracy. Revenue and expenditures are irrelevant to this calculation. Moreover, Plaintiffs object to the terms "financial statement line-item detail" and "owner distributions" are vague and ambiguous.

Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

REQUEST NO. 25: All revenue reports, revenue cycle management reports, or similar documents from the Relevant Time Period regarding Your obtaining payments from patients or Heath Plan Entities for OON Healthcare Goods or Services, including but not limited to reports or similar documents that specifically describe or reflect the use or non-use of MultiPlan's products or services in connection with Your obtaining payments from patients or Heath Plan Entities for OON Healthcare Goods and Services.

RESPONSE: Plaintiffs object to this Request as vague, ambiguous, and overbroad as to the phrases "revenue cycle management reports," "regarding Your obtaining payments," and "reflect the use or *non-use* of MultiPlan's products or services" (emphasis added). Plaintiffs also

object to this Request as unduly burdensome to the extent it purports to require Plaintiffs to provide, generate, or create any documents that do not exist; seeks information already in Defendants' possession, custody, or control; seeks information not in Plaintiffs' possession, custody, or control; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information. The best source of information on whether the payments made to Plaintiffs on any claims for OON Goods and Services that was set by MultiPlan is Defendants' structured data.

Plaintiffs additionally object to this Request to the extent it seeks information concerning Plaintiffs' mitigation or pass through of damages caused by the alleged cartel to any other party, including patients (via balance billing), as not relevant to any claim or valid defense in this case.

Plaintiffs further object on the basis of overbreadth, burden, and relevance because Plaintiffs' overall revenues are wholly irrelevant to the instant litigation, including because Plaintiffs do not allege lost profits or other revenue or income-based measures of damages, but rather seek damages based on the difference between the artificially suppressed payment amounts they actually received, and the payment amounts they would have received but for the conspiracy. Revenue is irrelevant to this calculation.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 26: Your practice's federal and state tax returns for each calendar year during the relevant time period, including documents sufficient to show any taxpayer identification numbers You used and the facilities where the services for your Claims for OON Healthcare Goods and Services were rendered.

RESPONSE: Plaintiffs object that this request is overly broad, unduly burdensome, not proportional to the needs of the case, and seeks documents that are not relevant to Plaintiffs' claims or any valid defenses. Although tax returns may be relevant where a party "put[s] the level and sources of [their] income at issue," *Poulos v. Naas Foods, Inc.*, 959 F.2d 69, 75 (7th Cir. 1992), Plaintiffs' income is irrelevant here. Plaintiffs do not allege lost profits or other revenue or income-based measures of damages: Plaintiffs seek damages based on the difference between the artificially suppressed payment amounts they actually received and the payments they would have received but for the conspiracy. Income is irrelevant to this calculation. Defendants also may not argue "that currently fixed-prices" are somehow "reasonable" or "justified" by pointing to Plaintiffs' tax returns. Memo. Op. on Mot. to Dismiss, ECF No. 428 at 14.

The production of income tax records is burdensome, and there are significant public policy reasons courts hesitate to require disclosure. *See Johnson v. Soo Line R.R. Co.*, 2019 WL 4037963, at *2 (N.D. Ill. Aug. 27, 2019) ("A litigant's compelled production of income tax returns is indeed burdensome. Our tax reporting and collection system depends heavily on taxpayers' reporting their income themselves, under an assumption that their tax returns will not ordinarily be turned over to third parties, at least not easily."). The burden here is particularly great—Defendants seek nearly a decade of tax returns—and these records are irrelevant to this litigation. Accordingly, this Request is not proportional to the needs of the case.

Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

REQUEST NO. 27: Your practice's policies and procedures relating to recognition of revenue from various sources of payment (e.g. Health Plan Entities, patients, etc.), and documents

sufficient to identify the amount recognized/written off for each year of the relevant time period due to actual or expected payment/non-payment by patients and Health Plan Entities.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous as to the undefined phrases "recognition," "amount recognized," and "recognized/written off." Plaintiffs also object on the basis that this Request seeks documents that are irrelevant to any claim or valid defense in this litigation. Plaintiffs' policies for revenue "recognition" and the amount of revenue "recognized" or "written off" each year are wholly irrelevant to the instant litigation. Nor do Plaintiffs allege lost profits or other revenue or income-based measures of damages; they seek damages based on the difference between the artificially suppressed payment amounts they actually received and the payments they would have received but for the conspiracy. Plaintiffs' overall revenues are irrelevant to this calculation. Plaintiffs further object to this Request on the basis that it is overly broad, unduly burdensome, not proportional, and seeks documents that are irrelevant to the claims or any valid defense in this litigation, including document pertaining to Self-Pay patients. Plaintiffs also object to this Request to the extent it seeks information concerning Plaintiffs' mitigation or pass through of damages caused by the alleged cartel to any other party, including patients (via balance billing), as no pass-on defense is available here.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 28: Documents sufficient to show Your practice's monthly (or the shortest period for which they are regularly prepared) profits, losses, gross income, and net income during the relevant time period, for Your practice as a whole and broken out by in-network and out-of-network services.

RESPONSE: Plaintiffs object that this request is overly broad, unduly burdensome, not proportional to the needs of the case, and seeks documents that are not relevant to Plaintiffs' claims or any valid defenses. Plaintiffs also object to this Request as unduly burdensome to the extent it purports to require Plaintiffs to provide, generate, or create any documents that do not exist; seeks information not in Plaintiffs' possession, custody, or control; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information.

Plaintiffs' financial performance is wholly irrelevant to the instant litigation. The impact of the alleged conspiracy on Plaintiffs' financial performance is likewise irrelevant. Plaintiffs do not allege lost profits or other revenue or income-based measures of damages: Plaintiffs seek damages based on the difference between the artificially suppressed payment amounts they actually received, and the payments they would have received but for the conspiracy. Revenue and expenditures are irrelevant to this calculation. Defendants also may not argue "that currently fixed-prices" are somehow "reasonable" or "justified" by pointing to Plaintiffs' financial performance. Memo. Op. on Mot. to Dismiss, ECF No. 428 at 14. "[A] competitor price-fixing agreement cannot be justified, period—price fixing is illegal *per se*." *Id.* at 15 (citing *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 647 (1980)).

Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

REQUEST NO. 29: Documents sufficient to show compensation (salary, benefits, bonuses, and other incentives), expense reimbursement, owner distribution, and/or other payments made by You and/or Your practice and/or paid to You, other Providers in Your practice, and other employees or office staff employed by Your practice, including the breakdown by person and

category of payment (salary, benefits, bonuses, other incentives, expense reimbursement, owner distribution), for each year during the relevant time period.

RESPONSE: Plaintiffs object to this Request on the basis that it is overly broad, unduly burdensome, and seeks documents that are irrelevant to any claims or valid defenses in this litigation. Compensation and related payments made to Plaintiffs or employees in Plaintiffs' practices are irrelevant to this litigation, including because Plaintiffs do not allege lost profits; they seek damages based on the difference between the artificially suppressed payment amounts they actually received and the payments they would have received absent the alleged conspiracy. Plaintiffs' employee compensation amounts and other costs are irrelevant to this calculation. Plaintiffs further object to the terms "other incentives," "expense reimbursement," "owner distribution," and "breakdown" as vague and ambiguous.

Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

REQUEST NO. 30: For each year during the relevant time period, Documents sufficient to show the itemized costs of maintaining Your practice, including but not limited to: (a) the maintenance of equipment, technology, or tools used in Your practice and the cost of acquiring or leasing such equipment, technology, or tools; and (b) the costs of rent, utilities, supplies, billing, training of staff, malpractice insurance, sanitation, and records maintenance systems; and any other documents showing Your practice's cost of care per patient or cost of care per service line.

RESPONSE: Plaintiffs object to this Request on the basis that it is overly broad, unduly burdensome, and seeks documents that are irrelevant to the claims or any valid defense in this litigation. Plaintiffs' costs are irrelevant to this litigation. Plaintiffs do not allege lost profits; they seek damages based on the difference between the artificially suppressed payment amounts they

actually received and the payments they would have received absent the alleged conspiracy. Overhead and other costs are irrelevant to this calculation.

Plaintiffs further object to the terms "maintaining Your practice," "cost of care per patient," and "cost of care per service line" as vague and ambiguous.

Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

REQUEST NO. 31: For each year during the relevant time period, Documents sufficient to show Your debt, discounts, or write-offs, by category, including but not limited to any business bankruptcy filings.

RESPONSE: Plaintiffs object that this Request is vague and ambiguous as to the terms "Your debt," "discounts," "write-offs," and "business bankruptcy filings." Plaintiffs further object on the basis that this Request is overly broad, unduly burdensome, and seeks documents that are irrelevant to the claims or any valid defense in this litigation. Plaintiffs' financial situation is irrelevant to this litigation. Plaintiffs do not allege lost profits or other revenue or income-based measures of damages; they seek damages based on the difference between the artificially suppressed payment amounts they actually received and the payments they would have received absent the alleged conspiracy. Plaintiffs' financial circumstances are irrelevant to this calculation.

Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

REQUEST NO. 32: Documents sufficient to show: (a) any applications for support, financial relief, paycheck protection, loans, or loan forgiveness sought by You and/or Your practice; (b) the relief or support received; and (c) the entity that provided the relief or support.

RESPONSE: Plaintiffs object that this Request is vague and ambiguous as to the terms "support," "financial relief," and "paycheck protection." Plaintiffs further object on the basis that this Request is overly broad, unduly burdensome, and seeks documents that are irrelevant to the claims or any valid defense in this litigation. Plaintiffs' financial situation is irrelevant to this litigation, including because Plaintiffs do not allege lost profits or other revenue or income-based measures of damages; they allege damages based on the difference between the artificially suppressed payment amounts they actually received and the payments they would have received but for the conspiracy. The presence or absence of financial hardship (and any relief Plaintiffs sought therefrom) is irrelevant to this calculation.

Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

REQUEST NO. 33: All Documents pertaining to any comparisons of the Reimbursement Rates paid by any Defendant and those paid by any other Defendant or Health Plan Entity for any Healthcare Good or Service, including: (a) Your Communications concerning those comparisons; and (b) any analysis, study, or discussion of the reasons for the difference in Reimbursement Rates shown in such a comparison.

RESPONSE: Plaintiffs object to this Request on the basis of overbreadth, burden, proportionality, and relevance to the extent it seeks Document pertaining to the provision and payment for in-network services, as this case concerns payments made to providers for OON Healthcare Goods and Services. Plaintiffs also object to the term "comparisons" as vague and ambiguous.

Plaintiffs further object to this Request to the extent it seeks information concerning whether payments made by Defendants or other Health Plan Entities for OON Healthcare Goods or Services are somehow "reasonable."

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 34: All Documents and Communications showing attempted negotiations, whether successful or not, between You and any Health Plan Entity (including but not limited to any of the Defendants) regarding Reimbursement Rates.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define the phrase "attempted negotiations." Plaintiffs object to this Request on the basis of overbreadth, burden, proportionality, and relevance because it seek "[a]ll Documents and Communications" that are the subject of the Request. Additionally, Plaintiffs object on the basis of relevance and proportionality to the extent this Request seeks documents concerning in-network payments because this case concerns payments made by Defendants and co-conspirators on OON claims.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 35: All Documents related to Your consideration of whether or not to contract with any Health Plan Entity or Provider Network (including but not limited to any of Defendants)—regardless of whether those discussions resulted in You contracting with that Health

Plan Entity or Provider Network—and any correspondence, drafts, or other Documents reflecting any such consideration.

RESPONSE: Plaintiffs object to this Request on the basis of overbreadth, burden, proportionality, and relevance because it seeks "[a]ll Documents and Communications" that are the subject of the Request. Additionally, Plaintiffs object on the basis of relevance and proportionality to the extent this Request seeks documents concerning in-network services because this case concerns payments made by Defendants and co-conspirators on OON claims. Plaintiffs also object to the term "consideration" as vague and ambiguous.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 36: All Communications between You or any of Your agents, including billing agents, and Defendants regarding payment or reimbursement for OON Healthcare Goods and Services.

RESPONSE: Plaintiffs object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case. Plaintiffs object to this Request as overly broad to the extent it seeks "[a]ll Communications . . . regarding payment or reimbursement for OON Healthcare Goods and Services." As written, this Request would encompass many communications irrelevant to this litigation. Plaintiffs further object to this Request as unduly burdensome to the extent that it seeks information already in Defendants' possession, custody, or control, or that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information. Because the Communications sought are between Plaintiffs and Defendants, there is no reason Defendants

should not already have access to all the requested Communications. Plaintiffs further object to the term "agents" as vague and ambiguous.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 37: All contracts, including any modifications, amendments, or attachments thereto, You have entered into with any person or entity utilized by Your practice for Your revenue cycle management functions, billing of patients or Health Plan Entities, or collections activity (including placement of liens).

RESPONSE: Plaintiffs object to this Request on the grounds that is vague, overly broad, and unduly burdensome. Plaintiffs object to this request as vague and ambiguous because it does not define the terms or phrases "revenue cycle management functions" or "collections activity." This Request is overly broad and not proportional to the needs of this case because it seeks "[a]ll contracts" subject to the Request, which, as written, could encompass a wide swath of documents with no apparent connection to any of the issues in this litigation (*e.g.*, contracts with payment processing companies). Plaintiffs also object that this Request is unduly burdensome and not proportional to the needs of the case to the extent it seeks contracts with payors or other entities that are not part of the alleged conspiracy.

Plaintiffs object to this Request on the basis of overbreadth, burden, proportionality, and relevance to the extent it seeks Document pertaining to patients who Self-Pay. Moreover, Plaintiffs object to this Request to the extent it seeks information concerning Plaintiffs' mitigation or pass through of damages caused by the alleged cartel to any other party, including patients (via balance billing), as not relevant to any claim or valid defense in this case.

Subject to and without waiving the foregoing Objections, and with the understanding that Plaintiffs' investigation is ongoing, Plaintiffs are willing to meet and confer to discuss this Request.

REQUEST NO. 38: All contracts, including any modifications, amendments, or attachments thereto, You have entered into with any Defendant, and any correspondence, drafts, or other Documents reflecting Communications or negotiations related to such contracts.

RESPONSE: Plaintiffs object to this Request as unduly burdensome and not proportional to the needs of the case because it seeks information already in Defendants' possession, custody, or control. Because the contracts sought are between Plaintiffs and Defendants, there is no reason Defendants should not already have access to all the requested contracts. Plaintiffs object to this Request on the basis that it is overly broad, unduly burdensome, and not proportional to the needs of the case to the extent is seeks any and all "Documents reflecting Communications or negotiations related to such contracts" as well.

Additionally, Plaintiffs object on the basis of relevance, burden, and proportionality to the extent this Request seeks documents concerning in-network agreements (*e.g.*, Plaintiffs' contracts with "Health Plan Entities"). This case concerns payments made by Defendants and co-conspirators on OON claims which are not governed by any contract.

Subject to and without waiving the foregoing Objections, and with the understanding that Plaintiffs' investigation is ongoing, Plaintiffs are willing to meet and confer to discuss a reasonable scope for production of documents in response to this Request.

REQUEST NO. 39: All Documents identifying, listing, tracking, or otherwise analyzing the actual or potential financial impact on Your practice of participating in a Health Plan Entity's Provider Network, or of remaining (or becoming) an OON provider.

RESPONSE: Plaintiffs object on the basis of relevance, proportionality, and burden because this Request seeks documents concerning in-network services whereas this case concerns payments made by Defendants and co-conspirators on OON claims. Plaintiffs further object to the term "otherwise analyzing" as vague and ambiguous.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 40: All Documents discussing the benefits or disadvantages to You from participating in any Provider Network or contracting with any Health Plan Entity, including all Communications with any consultant or person hired to analyze the effects (positive, neutral, or negative) of participating in any Provider Network or contracting with any MCO.

RESPONSE: Plaintiffs object on the basis of relevance, proportionality, and burden because this Request seeks documents concerning in-network services whereas this case concerns payments made by Defendants and co-conspirators on OON claims. Plaintiffs also object to this Request on the basis of relevance to the extent Defendants seek information concerning whether payments for OON Healthcare Goods or Services are somehow "reasonable" in comparison to in-network payments. Plaintiffs further object to the phrase "analyze the effects" as vague and ambiguous.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 41: All Communications with any Health Plan Entity regarding Reimbursement Rates, discounts, Premiums, deductibles, co-payments, co-insurance, or the terms or conditions of any contract with a Defendant.

RESPONSE: Plaintiffs object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case. Plaintiffs object to this Request as overly broad to the extent it seeks "[a]ll Communications with any Health Plan Entity regarding" several different topics, including several with no connection to this litigation. In particular, "Premiums" and "deductibles" are unrelated to the compensation a provider receives from a Health Plan Entity and are irrelevant to this litigation. Plaintiffs further object on the basis of relevance, proportionality, and burden to the extent this Request seeks documents concerning in-network agreements because this case concerns payments made by Defendants and co-conspirators on OON claims, which are not governed by contract.

Plaintiffs further object to this Request as unduly burdensome to the extent that it seeks information already in Defendants' possession, custody, or control, or that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information. Because the Communications sought are between Plaintiffs and Defendants, there is no reason Defendants should not already have access to all the requested Communications.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 42: All Documents reflecting any complaints, appeals, criticisms, objections, or grievances regarding the Reimbursement Rates or other contractual terms with any

Health Plan Entity, or regarding the appropriate categorization of claim adjustments as Contractual Obligation (CO) versus Patient Responsibility (PR).

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define the terms or phrases, "appropriate categorization of claim adjustments," "complaints," "appeals," "criticisms," "objections," and "grievances." The undefined terms "complaints," "appeals," "criticisms," "objections," and "grievances" could conceivably refer to a very broad swathe of documents.

Plaintiffs object on the basis of relevance, proportionality, and burden to the extent this Request seeks documents concerning in-network services because this case concerns payments made by Defendants and co-conspirators on OON claims.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 43: All Documents discussing or comparing the Reimbursement Rates paid by Health Plan Entities for Healthcare Goods or Services, whether using MultiPlan, any other "OON Repricing Service" (as Plaintiffs have defined that phrase), or no OON Repricing Service, including but not limited to Documents discussing or comparing the Reimbursement Rates that You have accepted as payment for Healthcare Goods or Services and documents referencing any pros and cons or assessment of OON benefits of OON Repricing Services, including but not limited to those offered by MultiPlan.

RESPONSE: Plaintiffs object on the basis of relevance, proportionality, and burden to the extent this Request seeks documents concerning in-network services because this case concerns payments made by Defendants and co-conspirators on OON claims. Plaintiffs further object to this

Request on relevance grounds to the extent it seeks information concerning whether payments for OON Healthcare Goods or Services are somehow "reasonable" in comparison to in-network payments; inquiry into whether fixed prices are reasonable is impermissible under federal antitrust law.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 44: All Documents relating to Your participation in any medical-related trade associations (including but not limited to state medical associations and the American Medical Association), including Documents related to attendance (in-person, telephonic, or otherwise) at any meeting or conference with representatives of such a trade association; minutes of meetings in which Defendants, other Health Plan Entities, or Reimbursement Rates were discussed; membership on any advisory board, board of directors, committee, or other leadership structure affiliated with such a trade association; and/or the provision of Your Reimbursement Rates, revenue, net income (profit), payer sources, or other non-public data or information to such a trade association.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous because it does not define the phrase "medical-related trade associations" and "representative of such a trade association." Plaintiffs further object that this Request seeks documents that are irrelevant to the claims or any valid defenses in this litigation. Plaintiffs' participation in any trade associations is irrelevant to an alleged conspiracy orchestrated by MultiPlan concerning payment for OON Healthcare Goods or Services. Accordingly, this Request is unduly burdensome and not

proportional to the needs of the case. Plaintiffs further object to this Request to the extent it seeks "[a]ll Documents" subject to this request.

Subject to and without waiving the foregoing Objections, and with the understanding that Plaintiffs' investigation is ongoing, Plaintiffs are willing to meet and confer to discuss this Request.

REQUEST NO. 45: All Communications with any government agency (including but not limited to departments of insurance, insurance commissioners, and state Attorneys General), the American Medical Association, state or local medical associations, or other professional organizations regarding Reimbursement Rates, market conditions, competition, discounts, Premiums, deductibles, co- payments, co-insurance, patient medical debt, balance billing, or the terms or conditions of any contract with a Health Plan Entity, including but not limited to all Documents reflecting any complaints, appeals, criticisms, objections, or grievances regarding the Reimbursement Rates or other contractual terms offered by any Health Plan Entity.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous as to the undefined terms or phrases "professional organizations," "market conditions," "competition," "discounts," "complaints," "appeals," "criticisms," "objections," and "grievances." Plaintiffs further object that this Request seeks documents that are irrelevant to the claims or any valid defenses in this litigation. Plaintiffs' communications with these entities are irrelevant to an alleged conspiracy orchestrated by MultiPlan concerning payment for OON Healthcare Goods or Services. Moreover, the Request seeks Communications on a broad array of subjects with no apparent connection to this litigation (*e.g.*, "Premiums," "deductibles," and "patient medical debt").

Plaintiffs further object on the basis of relevance, proportionality, and burden to the extent this Request seeks communications concerning in-network services because this case concerns payments made by Defendants and co-conspirators on OON claims.

Subject to and without waiving the foregoing Objections, and with the understanding that Plaintiffs' investigation is ongoing, Plaintiffs are willing to meet and confer to discuss this Request.

REQUEST NO. 46: All Documents reflecting Your participation in any advocacy efforts relating to how any Health Plan Entity (including, but not limited to, any Defendant) operates its business or relating to any legislation intended or likely to affect any Health Plan Entity's business, including but not limited to advocacy efforts relating to OON reimbursement, balance billing, or medical debt.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous as to the undefined phrase "advocacy efforts." Plaintiffs further object on vagueness, breadth, burden, and relevance grounds because the phrase "any legislation . . . likely to affect any Health Plan Entity's business" could encompass a broad swathe of irrelevant legislation (*e.g.*, legislation changing general corporate tax rates). Plaintiffs further object that Plaintiffs' advocacy efforts are irrelevant to an alleged conspiracy orchestrated by MultiPlan concerning payment for OON Healthcare Goods or Services. Accordingly, this Request is unduly burdensome and not proportional to the needs of the case.

Subject to and without waiving the foregoing Objections, and with the understanding that Plaintiffs' investigation is ongoing, Plaintiffs are willing to meet and confer to discuss this Request.

REQUEST NO. 47: All Documents and Communications in which You have asserted that You believed one or more Defendants were paying below-market rates for Healthcare Goods or Services or were engaged in a scheme to fix or depress Reimbursement Rates.

RESPONSE: Plaintiffs object that this Request is overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Documents and Communications" concerning the subject of the Request. Plaintiffs object that this Request is

overly broad, unduly burdensome, and not proportional to the needs of the case to the extent that it seeks documents unrelated to the alleged conspiracy. Plaintiffs further object to the term "below-market rates" as vague and ambiguous.

Plaintiffs further object on the basis of relevance, proportionality, and burden to the extent this Request seeks documents concerning in-network services because this case concerns payments made by Defendants and co-conspirators on OON claims.

Plaintiffs further object to this Request to the extent it seeks documents and communications subject to attorney client or other privileges.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 48: All Documents pertaining to Your consideration of whether to cease or limit treating members of any Health Plan Entity based on that Health Plan Entity's OON Reimbursement Rates, including all Documents in which you discuss or threaten such cessation or limitation.

RESPONSE: Plaintiffs object that this Request is overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Documents" concerning the subject of the Request. Plaintiffs object to this Request as vague and ambiguous as to the undefined phrase "cease or limit treating members." Plaintiffs further object to the terms "discuss or threaten" as vague and ambiguous.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 49: All Documents and Communications relating to Your sales strategies, sales forecasts, and sales plans for recruitment or retention of OON patients, or treatment of patients at any facilities at which Your practice is OON but the facility is in-network.

RESPONSE: Plaintiffs object that this Request is vague and ambiguous because it fails to define the phrases "sales strategies," "sales forecasts," "sales plans," and "recruitment or retention of OON patients." Plaintiffs object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Documents and Communications" concerning the subject of the Request. Plaintiffs further object that this Request seeks Documents that are irrelevant to the claims at issue or any valid defense: Plaintiffs' "recruitment or retention of OON patients" has no bearing on the alleged price-fixing conspiracy.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 50: All Documents and Communications concerning the relationship between Reimbursement Rates and patient volume.

RESPONSE: Plaintiffs object that this Request is vague and ambiguous because it fails to define the phrase "patient volume." Plaintiffs object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Documents and Communications" concerning the subject of the Request. Plaintiffs further object on the basis of relevance because "the relationship between Reimbursement Rates and patient volume" has no bearing on the claims or any valid defenses in this action.

Plaintiffs object to this Request as unduly burdensome to the extent it purports to require Plaintiffs to provide, generate, or create any documents that do not exist; seeks information already

in Defendants' possession, custody, or control; seeks information not in Plaintiffs' possession, custody, or control; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 51: Documents sufficient to identify all Claims that You allege were underpaid due to the alleged conspiracy between Defendants, and for each such Claim, all Documents regarding actions You took with respect to those Claims, including any appeals, balance bills and notices sent to patients, and communications with MultiPlan or the Health Plan Entity to whom the Claim was submitted.

RESPONSE: Plaintiffs object to this Request as unduly burdensome to the extent it purports to require Plaintiffs to provide, generate, or create any documents that do not exist; seeks information already in Defendants' possession, custody, or control; seeks information not in Plaintiffs' possession, custody, or control; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information. The best source of information on whether the payment made to Plaintiffs on any claim for OON Goods and Services was set by MultiPlan is Defendants' data.

Plaintiffs additionally object to this Request to the extent it seeks information concerning Plaintiffs' mitigation or pass through of damages caused by the alleged cartel to any other party, including patients (via balance billing), as such information is not relevant to any claim or valid defense in this case given that the Insurer Defendants and other cartel members purchase OON Healthcare Goods and Services directly from Plaintiffs and other providers. *See, e.g.*, *In re Turkey*

Antitrust Litig., 2021 WL 6428398, at *3–4 (N.D. Ill. Dec. 16, 2021) (denying motion to compel downstream discovery); *In re Broiler Chicken Antitrust Litig.*, 2018 WL 3398141, at *1 (N.D. Ill. July 12, 2018) (granting protective order to preclude downstream discovery). Accordingly, reports or similar documents concerning payments made by patients or payors other than Defendants are irrelevant to the claims or defenses in this matter.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 52: Reports, charts, summaries or similar documents regarding independent dispute resolution (IDR) submissions by Your practice under the No Surprises Act, and the arbitration award (if any) associated with each such submission.

RESPONSE: Plaintiffs object to this Request as irrelevant to the extent it seeks documents involving payors or other entities that are not part of the alleged conspiracy. Plaintiffs further object to this Request as unduly burdensome to the extent it purports to require Plaintiffs to provide, generate, or create any documents that do not exist or seeks information already in Defendants' possession, custody, or control—as should be the case for any arbitration involving any Defendant. Plaintiffs additionally object to this Request to the extent it seeks information concerning Plaintiffs' mitigation or pass through of damages caused by the alleged cartel to any other party as not relevant to any claim or valid defense. Plaintiffs further object to this Request to the extent it seeks information that is privileged.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 53: All documents relating to any consideration of or decision to cease providing OON Healthcare Goods and Services to patients associated with a particular Health Plan Entity, or to reduce or forego spending on improving care or offering charitable care because of underpayments by Health Plan Entities for OON Healthcare Goods and Services.

RESPONSE: Plaintiffs object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Documents" concerning the subject of the Request. Plaintiffs further object on the basis of relevance to the extent this Request seeks information about any decision "to reduce or forego spending on improving care or offering charitable care." The impact of the alleged conspiracy on Plaintiffs' "spending on improving care or offering charitable care" or on Plaintiffs' financial circumstances more generally is irrelevant to the conspiracy. Plaintiffs do not allege lost profits or other revenue or income-based measures of damages: Plaintiffs seek damages based on the difference between the artificially suppressed payment amounts they actually received and the payments they would have received but for the conspiracy. Plaintiffs' financial situation is irrelevant to this calculation.

Subject to and without waiving the foregoing Objections, and with the understanding that Plaintiffs' investigation is ongoing, Plaintiffs are willing to meet and confer to discuss this Request.

REQUEST NO. 54: All Documents related to the alleged conspiracy between Defendants regarding MultiPlan, including but not limited to Defendants' alleged knowledge of other Health Plan Entities' use of MultiPlan's services and Communications regarding any data sent to MultiPlan and any documents regarding the "abrasion" allegations set forth in the Complaints.

RESPONSE: Plaintiffs object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Documents" concerning the subject of the Request. Plaintiffs object to this Request as unduly burdensome to the extent it

purports to require Plaintiffs to provide, generate, or create any documents that do not exist; seeks information already in Defendants' possession, custody, or control; seeks information not in Plaintiffs' possession, custody, or control; seeks information that is already available in the public domain; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information. Plaintiffs further object to this Request to the extent it seeks documents and communications subject to attorney client or other privileges. Plaintiffs further object to the Request as premature because Plaintiffs' investigation of the facts relevant to the subject matter of this action remains ongoing, and Plaintiffs' claims continue to be developed through discovery.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 55: All Documents discussing or otherwise relating to Defendants' alleged uses of MultiPlan's services or products, including but not limited to MultiPlan's Data iSight tool, negotiation services, or provider networks.

RESPONSE: Plaintiffs object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Documents" concerning the subject of the Request. Plaintiffs object to this Request as unduly burdensome to the extent it purports to require Plaintiffs to provide, generate, or create any documents that do not exist; seeks information already in Defendants' possession, custody, or control; seeks information that is not in Plaintiffs' possession, custody, or control; seeks information that is already available in the public domain; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information. Plaintiffs

further object to this Request to the extent it seeks documents and communications subject to attorney client or other privileges. Plaintiffs further object to the Request as premature because Plaintiffs' investigation of the facts relevant to the subject matter of this action remains ongoing, and Plaintiffs' claims continue to be developed through discovery.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 56: All Communications with third parties, including Your patients, any government or regulatory body, or the media, regarding Defendants' use of MultiPlan's services or the subject matter of the allegations of the Complaints.

RESPONSE: Plaintiffs object that this Request is overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Communications" concerning the subject of the Request. Plaintiffs object to this Request as unduly burdensome to the extent it purports to require Plaintiffs to provide, generate, or create any documents that do not exist; seeks information not in Plaintiffs' possession, custody, or control; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information.. Plaintiffs object to the term "the media" as vague and undefined. Plaintiffs further object to this Request to the extent it seeks documents and communications subject to attorney client or other privileges.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 57: Documents sufficient to show the geographic areas in which You promote or market Your Healthcare Goods or Services, including but is not limited to Documents sufficient to show where and for what locations You have placed advertisements for your services, or your patient service area(s).

RESPONSE: Plaintiffs object to this Request as vague and ambiguous as to the undefined terms or phrases "promote," "market," or "patient service area(s)." Plaintiffs object to this Request as unduly burdensome to the extent it purports to require Plaintiffs to provide, generate, or create any documents that do not exist; seeks information not in Plaintiffs' possession, custody, or control; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information. Plaintiffs also object to this Request on relevance grounds, as the relevant antitrust market here is not based on where Plaintiffs' patients may reside (and see Plaintiffs' advertisements) but rather the geographic area in which the third-party payors that cover those patients' claims operate for purposes of OON claims coverage.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 58: Documents related to any market analysis done by or for You, including but not limited to analyses of competitors; anticipated pool and mix of patients (including by coverage status, e.g. in-network vs. OON); or revenue/profitability assessments based on Health Plan Entity, type of insurance product, or patient's network status.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous as to the undefined phrases "market analysis," "analyses of competitors," "anticipated pool and mix of patients," and "revenue/profitability assessments." Plaintiffs further object on the basis that this Request is overly

broad, unduly burdensome, and seeks documents that are irrelevant to the claims or any valid defense in this litigation. Discovery concerning Plaintiffs' "revenue/profitability assessments" or other strategic planning or analysis is neither relevant nor proportional to the needs of the instant litigation—particularly as it relates to in-network services.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 59: All Documents related to Plaintiffs' contention that the market for payments made by commercial healthcare insurance companies for OON healthcare services is a separate, standalone market.

RESPONSE: Plaintiffs object that this Request is overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Documents" concerning the subject of the Request. Plaintiffs object to this Request as unduly burdensome to the extent it purports to require Plaintiffs to provide, generate, or create any documents that do not exist; seeks information already in Defendants' possession, custody, or control; seeks information not in Plaintiffs' possession, custody, or control; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information. Plaintiffs also object to this Request to the extent it seeks documents and communications subject to attorney client or other privileges. Plaintiffs further object to this Request to the extent it prematurely seeks information that will be the subject of expert discovery.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 60: All Documents discussing the reasons for any decrease in your practice's financial or operational performance over the Relevant Time Period, including but not limited to the effect of COVID-19, changes in consumer demand, or the conduct of any Health Plan Entity.

RESPONSE: Plaintiffs object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Documents" concerning the subject of the Request. Plaintiffs also object to this Request as unduly burdensome to the extent it purports to require Plaintiffs to provide, generate, or create any documents that do not exist; seeks information not in Plaintiffs' possession, custody, or control; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information. Plaintiffs also object to this Request because it seeks information regarding their financial or operational performance that is wholly irrelevant to the instant litigation, including because Plaintiffs do not allege lost profits or other revenue or income-based measures of damages, but rather seek underpayment damages based on the difference between the artificially suppressed payment amounts they actually received and the payments they would have received absent the alleged conspiracy. Plaintiffs' overall financial performance is irrelevant to this calculation.

Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

REQUEST NO. 61: All Documents concerning when You discovered that You had been harmed by any of the Defendants' allegedly illegal conduct.

RESPONSE: Plaintiffs object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Documents" concerning the

subject of the Request. Plaintiffs object to this request on relevance grounds, as the timing of Plaintiffs' discovery of any harm they may have suffered as a result of the alleged cartel has no bearing on any claim or defense in this action. Plaintiffs further object to this Request as unduly burdensome to the extent it purports to require Plaintiffs to provide, generate, or create any documents that do not exist; seeks documents already in Defendants' possession, custody, or control; seeks information not in Plaintiffs' possession, custody, or control; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring Plaintiffs to provide the information. Plaintiffs further object to this Request to the extent it seeks documents and communications subject to attorney client or other privileges.

Subject to and without waiving the foregoing Objections, and with the understanding that Plaintiffs' investigation is ongoing, Plaintiffs have already produced documents sufficient to show that they were harmed by the alleged cartel but are willing to meet and confer to discuss this Request.

REQUEST NO. 62: All Documents discussing any link between OON reimbursement and any decision whether Your practice would provide new services and/or acquire new equipment or technology, or cease to provide certain services and/or relinquish any equipment or technology.

RESPONSE: Plaintiffs object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks "[a]ll Documents" concerning the subject of the Request. Plaintiffs further object on the basis of relevance because this Request seeks documents with no bearing on the claims or defenses at issue in this litigation, which concerns an alleged price-fixing agreement to suppress compensation for OON healthcare services.

Subject to and without waiving the foregoing Objections, and with the understanding that Plaintiffs' investigation is ongoing, Plaintiffs are willing to meet and confer to discuss this Request.

REQUEST NO. 63: To the extent not requested elsewhere, all Documents relating to Your claimed injury and damages from the conduct alleged in the Complaints. This includes, but is not limited to, the DAPs' allegations that:

- "some DAPs will no longer be able to provide services on an out-of-network basis given the financial constraints—and some, especially in already underserved rural areas, may go out of business altogether" (Master DAP Complaint ¶ 46);
- "As a result of these payment rate cuts, staffing agencies have been forced to cut physician salaries and benefits due to the low prices set for out-of-network goods and services set by the MultiPlan Cartel." (Id. ¶ 587);
- "due to massive underpayments that the TeamHealth DAPs were receiving from United for out-of-network goods and services, TeamHealth had made cuts to compensation and benefits for physicians and advanced practice clinicians." (Id. ¶ 668).

RESPONSE: Plaintiffs object to this Request because it seeks documents pertaining to the DAPs' complaints that are not relevant to claims or defenses in Plaintiffs' action, and which are not in the possession, custody, or control of Plaintiffs. Plaintiffs will not search for or produce documents in response to this Request on the basis of the foregoing Objections.

REQUEST NO. 64: A copy of any legal complaint filed (a) against by You against any patient or Health Plan Entity pertaining to alleged non-payment or underpayment for OON Healthcare Goods or Services, or (b) by You against any patient or Health Plan Entity pertaining to payment for OON Healthcare Goods or Services.

RESPONSE: Plaintiffs object to this Request because the phrase "legal complaint" is vague and ambiguous. Plaintiffs object on the basis of burden and relevance to the extent this Request seeks complaints already in the possession, custody, or control of Defendants, or in the

public domain. Plaintiffs object on the basis of burden and relevance to the extent this Request seeks complaints involving payors or other entities that are not part of the alleged conspiracy. Plaintiffs also object on the basis of burden and relevance to the extent this Request seeks legal complaints that address conduct separate and unrelated to the alleged antitrust conspiracy. Plaintiffs further object to this Request on the basis of overbreadth, relevance, burden, and proportionality to the extent it seeks complaints pertaining to patients who Self-Pay.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 65: All Documents quoted, copied, excerpted, or otherwise referenced in Your Complaint or Rule 26(a) disclosures, or on which You have relied in support of Your allegations and claims.

RESPONSE: Plaintiffs object to this Request as unduly burdensome to the extent it seeks information already in Defendants' possession, custody, or control. Plaintiffs further object to this Request to the extent it seeks documents and communications subject to attorney client or other applicable privileges or protections. Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 66: All Documents you receive in response to any subpoena served in connection with this Action.

RESPONSE: Plaintiffs will produce non-party Documents received in accordance with the ESI Protocol entered in this matter. *See* ESI Protocol, ECF No. 240 at 33. Plaintiffs object to this Request to the extent it purports to impose greater obligations than those in the ESI Protocol.

REQUEST NO. 67: All Communications between You and any other Plaintiff relating to any Defendant or other Health Plan Entity that You contend is a co-conspirator with any Defendant.

RESPONSE: Plaintiffs object to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it requests "[a]ll Communications" without limitation. On its face, this scope would capture communications whose subject matter was unrelated to the litigation so long as they were "relating to any Defendant or other Health Plan Entity that You contend is a co-conspirator." Plaintiffs further object to this Request to the extent it seeks documents and communications subject to attorney client or other privileges or protections.

Subject to and without waiving the foregoing Objections, and with the understanding that Plaintiffs' investigation is ongoing, Plaintiffs are willing to meet and confer to discuss this Request.

REQUEST NO. 68: All Communications concerning this Action, or any pending or potential antitrust, unfair competition, or unjust enrichment claims against any Defendant.

RESPONSE: Plaintiffs object to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it requests "[a]ll Communications concerning this Action," without limitation. Plaintiffs further object on relevance, breadth, and burden grounds to the extent this Request seeks communications concerning "any pending or potential antitrust, unfair competition, or unjust enrichment claims against any Defendant." On its face, this Request would include communications regarding unrelated litigation whose only overlap involves a

shared Defendant. Plaintiffs further object to this Request to the extent it seeks documents and communications subject to attorney-client or other applicable privileges or protections.

Subject to and without waiving the foregoing Objections, and with the understanding that Plaintiffs' investigation is ongoing, Plaintiffs are willing to meet and confer to discuss this Request.

REQUEST NO. 69: All Documents related to any actual, proposed or threatened disciplinary action against You or any provider in Your practice, including but not limited to (a) any fines or penalties paid by Your practice related to the provision of Healthcare Goods or Services and/or (b) the loss or suspension of any license or other license for any Provider in Your practice.

RESPONSE: Plaintiffs object to this Request as vague and ambiguous with respect to the undefined terms or phrases "disciplinary action" and "license." Plaintiffs object on the basis that this Request is overly broad, unduly burdensome, and seeks documents that are irrelevant and not proportional to the needs of the case. Medical disciplinary proceedings have no bearing on the issues in this litigation.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

REQUEST NO. 70: All documents upon which You intend to rely to support Your claims.

RESPONSE: Plaintiffs object to this Request on the basis of burden and proportionality to the extent it purports to require Plaintiffs to provide, generate, or create any documents that do not exist; seeks information already in Defendants' possession, custody, or control; seeks information not in Plaintiffs' possession, custody, or control; or seeks information that can be obtained from a source more convenient, less burdensome, and/or less expensive than requiring

Plaintiffs to provide the information. Plaintiffs further object to this Request to the extent it seeks documents and communications subject to attorney client or other protections and privileges. Plaintiffs further object to the Request as premature because Plaintiffs' investigation of the facts relevant to the subject matter of this action remains ongoing and Plaintiffs' claims continue to be developed through discovery. Plaintiffs also object to this Request to the extent it prematurely seeks information that will be the subject of expert discovery.

Subject to and without waiving the foregoing objections and following a meet and confer regarding a reasonable scope of production, Plaintiffs will produce responsive, non-privileged documents to the extent they can be located after a reasonably diligent search.

Dated: July 24, 2025

/s/ *Natasha J. Fernández-Silber*
Natasha J. Fernández-Silber

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Interim Co-Lead Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that, on July 24, 2025, I caused a true and correct copy of the foregoing document to be served via email on Defendants' Liaison Counsel and Plaintiffs' Coordinating Counsel.

/s/ Natasha J. Fernández-Silber
Natasha J. Fernández-Silber

EXHIBIT 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re MULTIPLAN HEALTH INSURANCE PROVIDER LITIGATION	Case No. 1:24-cv-06795
	MDL No. 3121
This Document Relates To: ALL ACTIONS	Hon. Matthew F. Kennelly

NOTICE OF SUBPOENA TO HUB INTERNATIONAL LIMITED

Pursuant to Rule 45(a)(4) of the Federal Rules of Civil Procedure, notice is hereby given that Plaintiffs will serve the attached subpoena for the production of documents on **HUB International Limited**.

Dated: January 23, 2026

/s/ Christopher A. Seeger
Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road 6th Fl.
Ridgefield Park, NJ 07660
Tel.: (973) 639-9100
Fax: (973) 679-8656
seeger@seegerweiss.com

Plaintiffs' Coordinating Counsel

/s/ Shawn J. Rabin
Shawn J. Rabin (*pro hac vice*)
SUSMAN GODFREY LLP
One Manhattan West, 50th Floor
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Tel.: (212) 336-8330
srabin@susmangodfrey.com

Interim Class Liaison Counsel

CERTIFICATE OF SERVICE

I hereby certify that, on January 23, 2026, a true and correct copy of the foregoing Notice of Subpoena to HUB International Limited was served via electronic mail on all counsel of record.

/s/ Christopher A. Seeger
Christopher A. Seeger

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

In re MultiPlan Health Insurance Provider Litigation

Plaintiff

v.

Defendant

Civil Action No. 1:24-cv-06795

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: HUB International Limited
ILLINOIS CORPORATION SERVICE C, 801 ADLAI STEVENSON DRIVE, SPRINGFIELD, IL 62703-4261

(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A

Place:	Date and Time:
Seeger Weiss LLP 55 Challenger Road, 6th Fl., Ridgefield Park, NJ 07660 or Mutually Agreed Upon Location	02/23/2026 9:00 am

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/23/2026

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Jennifer Scullion

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiffs , who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 1:24-cv-06795

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

ATTACHMENT A

ATTACHMENT A

DEFINITIONS

1. "Communication" means the oral or written transmittal of any kind of information (in the form of facts, ideas, opinions, inquiries or otherwise) by any means, including but not limited to face-to-face, email, facsimiles, telephonic, video or other virtual meeting, correspondence, message, or other written, electronic, or oral transmission, or exchange of information in any form.

2. "Document" means all "documents or electronically stored information" within the meaning of Fed. R. Civ. P. 34(a)(1)(A) and Case Management Order No. 11 (Dkt. 241), and shall be construed in its broadest sense.

3. "Healthcare Goods and Services" means any type of medical care, treatment, medicine, or procedure provided to a Patient, including, for example, all forms of curative, palliative, preventative, surgical, in-patient, out-patient, nursing, mental, and substance abuse care.

4. "MultiPlan" means Claritev Corporation f/k/a MultiPlan, Inc. and all of its partners, corporate parents, subsidiaries, or affiliates, including, but not limited to, MultiPlan Corp.; Viant, Inc.; National Care Network, LP; National Care Network, LLC; Private Healthcare Systems, Inc.; Viant Payment Systems, Inc.; HSTechnology Solutions, Inc.; Benefits Science LLC; Beech Street Corporation; Texas True Choice, Inc.; Medical Audit & Review Solutions, Inc.; Integrated Health Plan, Inc.; Savant Management Concepts, Inc.; i/mx Technologies, Inc.; HMA, Inc.; Medical Management Services, Inc.; Rural Arizona Network, Inc.; Health Management Network, Inc.; and Associates for Health Care, Inc.

5. "OON Repricing Services" means any product or service that reprices, negotiates, or renegotiates the cost of OON Services. Examples of OON Repricing Services include, but are not limited to, Data iSight, Viant, MARS, Pro Pricer, HST, and Zelis.

6. "Out-of-Network Services" or "OON Services" refers to Healthcare Goods and Services provided to a Patient where the Provider of those goods and services is not a part of the network of Providers that have agreed to accept a pre-negotiated in-network reimbursement rate for those goods and services from the Payor whose health insurance plan provides coverage to the Patient.

7. "Patient" means any individual who receives Healthcare Goods and Services from a Provider.

8. "Payor" means any third-party entity, organization, or person that adjudicates or sets prices for Healthcare Goods and Services utilized by Patients covered by Health Plans.

9. "Provider" means any entity that provides healthcare or medical goods and services to Patients, including, but not limited to, hospitals, hospital groups, physician and clinician groups, ambulatory surgical centers, free-standing emergency departments, nursing groups, physicians' offices, mental and psychological healthcare providers, and substance abuse disorder treatment centers.

10. "Relevant Payors" means Aetna, Meritan Health, Blue Cross Blue Shield of Massachusetts, Blue Cross Blue Shield of Michigan, Blue Cross Blue Shield of Minnesota, CareFirst, Cigna, Elevance (f/k/a Anthem), Healthcare Service Corporation ("HCSC"), Highmark Health, Horizon Blue Cross Blue Shield of New Jersey, Kaiser Foundation Health Plan, UnitedHealthcare, and UMR.

11. "You" means HUB International Limited and all of its partners, corporate parents, subsidiaries, or affiliates.

INSTRUCTIONS

1. Unless otherwise specified, these Requests seek Documents and information relating to the time period from January 1, 2015 through the present (the "Relevant Time Period").

2. You shall produce all Documents as they are kept in the usual course of business.

3. You must produce the entire Document, including all attachments, enclosures, cover letters, memoranda, and appendices. Documents not otherwise responsive to the Requests are to be produced if such Documents are attached to, or enclosed with, any Document that is responsive. Examples of such Documents include email attachments, routing slips, transmittal memoranda or letters, comments, evaluations, or similar Documents. In the case of email attachments, if either the email or any attachment is responsive, produce the email and all corresponding attachments. Documents attached to each other shall not be separated.

REQUESTS FOR PRODUCTION

REQUEST NO. 1: All reports, presentations, or analyses concerning any Relevant Payor's total cost of care for OON Services, cost containment for OON services, net effective discounts for OON Services, medical savings for OON Services, or discounts for OON Services.

REQUEST NO. 2: All reports, presentations, or analyses that You provided to or prepared for one or more of Your largest 50 health plan sponsor clients by membership discussing, comparing, or analyzing any Relevant Payor's out-of-network cost containment, net effective discounts for OON Services, medical savings for OON Services, or discounts for OON Services.

REQUEST NO. 3: All reports, presentations, or analyses concerning the competitiveness, ranking, sufficiency, or insufficiency of any Relevant Payor's out-of-network cost containment, net effective discounts for OON Services, medical savings for OON Services, or discounts for OON Services.

REQUEST NO. 4: All reports, presentations, or analyses concerning actual or proposed changes by any Relevant Payor to OON Repricing Services, OON repricing, pricing methodologies for OON Services, discount structures for OON Services, conversion factors for OON Services, margin factors for OON Services, override percentages for OON Services, or any

other parameters intended to (a) reduce costs for OON Services or (b) achieve alignment on pricing for OON Services with any other Relevant Payor.

REQUEST NO. 5: All Communications between You and MultiPlan concerning any Relevant Payor's prices for OON Services or use of OON Repricing Services.

REQUEST NO. 6: All reports, presentations, or analyses concerning, with respect to any Relevant Payor, potential or actual client dissatisfaction, loss of clients, market share impacts, or competitive disadvantages related to prices for OON services or any Relevant Payor's use of OON Repricing Services.

REQUEST NO. 7: All reports, presentations, or analyses concerning Your benchmarking of, or comparisons between, two or more Relevant Payors' prices, costs, or payments for OON Services, OON repricing methods, OON cost containment programs.

REQUEST NO. 8: All reports, presentations, or analyses concerning the actual or proposed use by any one or more Relevant Payor of MultiPlan, Data iSight, Viant, MARS, or other OON Repricing Services.

REQUEST NO. 9: All market intelligence reports, analyses, industry benchmarking data, or white papers that You provided to any Relevant Payor concerning prices for OON Services, OON Repricing Services, reference-based pricing, MultiPlan, Data iSight, Viant, MARS, or OON Services cost management programs.

REQUEST NO. 10: Any analyses, reports, or presentations concerning MultiPlan's OON Repricing Services, including Data iSight, Viant, MARS, and negotiation services products.

REQUEST NO. 11: Documents sufficient to show whether Your 50 largest health plan sponsor clients by membership received or requested reports, presentations, or information regarding any Relevant Payor's OON cost containment, OON medical savings, OON discounts,

OON repricing programs, or regarding how OON utilization and discounts affected a Relevant Payor's net effective discount.

REQUEST NO. 12: Documents discussing whether any of your 50 largest health plan sponsor clients by membership:

a. Considered switching or did switch from or to any Relevant Payor based, in whole or in part, on OON reimbursements, OON cost containment, OON savings, OON discounts, OON repricing programs, or net effective discount for OON services; or

b. Bargained for, demanded, or requested revisions to any Relevant Payor's proposed health plan design with respect to OON services.

REQUEST NO. 13: Reports, analyses, and presentations that You provided to or prepared for any of your 50 largest health plan sponsor clients by membership comparing any of MultiPlan's PPO networks, including the PHCS Network, HealthEOS, HealthEOS Plus, Beech Street Network, AMN/HMN/RAN Network, MultiPlan Network, IHP Network, and ValuePoint, with any Relevant Payor.

REQUEST NO. 14: Reports, analyses, and presentations sufficient to show comparisons of MultiPlan's OON Repricing Services, including Data iSight, Viant, and negotiation services, to other repricing or reference-based pricing products, such as Zelis, ELAP, and Naviguard.

REQUEST NO. 15: All reports, presentations, and analyses concerning media coverage, press inquiries, or any governmental, regulatory, or law-enforcement inquiries or investigations relating to of MultiPlan's OON Repricing Services, including but not limited to talking points, FAQs, risk assessments, or reputational-impact analyses.

REQUEST NO. 16: Reports, presentations, or analyses sufficient to show whether and how OON reimbursement rates, discounts, and utilization are considered in, or affect, the setting

of ASO fees or the total cost of coverage for Your 50 largest health plan sponsor clients by membership.

ATTACHMENT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: MULTIPLAN HEALTH INSURANCE PROVIDER LITIGATION	Case No. 1:24-cv-06795 MDL No. 3121
This Document Relates To:	Hon. Matthew F. Kennelly
ALL ACTIONS	

CASE MANAGEMENT ORDER NO. 12 -
HIPAA-QUALIFIED PROTECTIVE ORDER

This HIPAA-Qualified Protective Order is entered into pursuant to the parties' joint letter brief (ECF 209) and the Court's ruling regarding same (ECF 238).

1. **APPLICABILITY OF THE PROTECTIVE ORDER.** This HIPAA-Qualified Protective Order (hereinafter "Order") shall govern the handling of all materials produced in the course of discovery, including documents, data, depositions, deposition exhibits, and written discovery (this information hereinafter referred to as "Discovery Material"). This Order shall apply to any named Party to this action, any third party that receives a subpoena for testimony or documents, and any person or entity that obtains access to Confidential Material subject to this Order. All references to "Party," "Receiving Party," "Producing Party" or "Designating Party" throughout this Order are intended to include non-parties. This Order is subject to the Local Rules of this District and the Federal Rules of Civil Procedure on matters of procedure and calculation of time periods.

2. **OTHER DEFINITIONS**

a. **Action**: the above-captioned action (this Action) includes all cases that are transferred, reassigned, or direct-filed into MDL No. 3121.

b. **Confidential Material:** Any information designated as "Confidential" or "Highly Confidential – Outside Counsel Only" pursuant to this Order.

c. **Party**: any party to this Action.

d. **Non-Party**: any individual, corporation, association, or other natural person or entity that is not a Party to this Action.

e. **Receiving Party**: a Party or Non-Party that receives Discovery Material from a Producing Party.

f. **Producing Party**: a Party or Non-Party that produces Discovery Material in this Action.

g. **Designating Party**: a Party or Non-Party that designates information or items that it or another Party or Non-Party produces in disclosures or in responses to discovery or provides in the form of deposition testimony as Confidential Material. The Designating Party bears the burden of establishing good cause for the protection of all such information or items.

h. **Challenging Party**: a Party that elects to initiate a challenge to a Designating Party's confidentiality designation.

3. **DESIGNATION OF DISCOVERY MATERIAL AS "CONFIDENTIAL" OR "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY".** Any Producing Party may designate Discovery Material as "Confidential" or "Highly Confidential – Outside Counsel Only" under the terms of this Order if the Producing Party in good faith reasonably believes that such Discovery Material meets the criteria set forth below. For the avoidance of doubt, a Party may designate information that it produces, as well as information produced by other Parties or Non-Parties that contain that Party's confidential information, as "Confidential" or "Highly

Confidential – Outside Counsel Only."

a. **Discovery Material Which May be Designated "Confidential."** Any party or non-party may designate documents as CONFIDENTIAL if they contain:

(i) Information required to be kept confidential by law or by agreement with a third party;

(ii) Trade Secrets, research, design, technical/manufacturing, financial/planning, and/or marketing/commercial information: Documents and/or information which consists of trade secrets or other proprietary business information that are not generally known or readily ascertainable by the public (including competitors), are competitively sensitive, and public availability of these documents could affect business operations and/or market share;

(iii) Records relating to individuals' medical treatment/Protected Health Information/personally identifiable information. Nothing herein shall be construed to suggest that the names of witnesses, potential witnesses, deponents, subpoenaed parties or persons with potentially relevant information can be designated "CONFIDENTIAL"; however, personally identifiable information, including Social Security numbers, home addresses, and home phone numbers may be so designated.

Confidential Material shall not include any information that is or was at any time in the public domain as a result of publication not in violation of this

Order.

b. A Producing Party may designate as "Highly Confidential – Outside Counsel Only" any information described in subparagraph (a) that it reasonably and in good faith believes contains highly sensitive current trade secrets or other current highly sensitive confidential information, and that disclosure to another party or third party, even if limited to the universe of individuals authorized to receive information marked "Confidential" under this Order, would result in specific demonstrable competitive harm to, or cause material harm to the legitimate business interests of, the Producing Party.

4. **PERSONS AUTHORIZED TO RECEIVE CONFIDENTIAL MATERIAL.**

a. Information designated as "Confidential" may be disclosed only to the following "Qualified Persons":

(i) **The Court and its personnel**, including attorneys, employees, judges, magistrates, secretaries, special masters, stenographic reporters, staff, transcribers and all other personnel necessary to assist the Court in its function, the jury, and any appellate court or other court (and their respective personnel) before which the Parties appear in this Action;

(ii) **Mediators or other third party neutrals** engaged or consulted in settlement of all or part of this Action, and staff assisting them with such efforts only after such persons or entities have completed the certification contained in Attachment A;

(iii) **Court reporters and recorders**, including stenographers, and videographers retained to record testimony taken in this Action;

(iv) **Outside counsel for the Parties**, and such counsel's employees who have responsibility for the preparation and trial of the Action;

(v) **In-house counsel for the Parties**, and such in-house counsel's employees who have responsibility for the preparation and trial of the Action;

(vi) **Parties and employees of a Party** to this Order but only to the extent that counsel determines in good faith that the specifically named individual Party's or employee's assistance or testimony is necessary to the conduct of the litigation, and only after such persons or entities have completed the certification contained in Attachment A;

(vii) **Litigation support services**, including outside copying services, court reporters, videographers, stenographers or companies engaged in the business of supporting computerized or electronic litigation discovery or trial preparation, retained by a Party or its counsel, and only after such persons or entities have completed the certification contained in Attachment A;

(viii) **Any individual expert, consultant, or expert consulting firm** retained by counsel of record in connection with this Action to the extent necessary for the individual expert, consultant, investigator, or expert consulting firm to prepare a written opinion, to prepare to

testify, or to assist counsel of record in the prosecution or defense of this Action, provided, however, that: (i) the disclosure shall be made only to an individual expert, or to members, partners, employees or agents of an expert consulting firm as the expert consulting firm shall designate as the persons who will undertake the engagement on behalf of the expert consulting firm (the "Designated Expert Personnel"); (ii) the individual expert or Designated Expert Personnel use the information solely in connection with this Action; (iii) the individual and/or a representative of each expert consulting firm sign the written acknowledgment and agreement to be bound attached as Exhibit A on behalf of any Designated Expert Personnel associated with that firm; and (iv) absent notice and consent of the opposing Party(ies) or on application to and order of the Court, the individual expert is not a current employee, consultant, independent contractor, or any other type of affiliate of the Defendants;

(ix) **Authors or recipients,** any person who (A) created, authored, sent, received or reviewed such Confidential Material; or (B) is or was a custodian of the Confidential Material;

(x) **Witnesses at depositions** or who are noticed for depositions to whom disclosure is in good faith reasonably necessary to conduct the Action, with the limitations that witnesses shall not retain a copy of documents containing Confidential Material. Witnesses noticed for depositions who are shown Confidential Material in advance of

their deposition must agree to be bound by the provisions of the Order by signing a copy of Exhibit A prior to being shown Confidential Material. Witnesses at depositions must either sign a copy of Exhibit A or, if they refuse, receive an admonition that he or she will be subject to sanction, including contempt, for violating the terms of the Protective Order. Regardless of whether any deponent signs the attached Exhibit A, this Order will apply to any deponent who is shown or examined about Confidential Discovery Material, and the deponent cannot take any exhibits with them or reveal any information the learned from the confidential materials shown to them;

(xi) **Mock jurors or focus group participants** who have agreed to be bound by the provisions of the Order by signing a copy of Exhibit A;

(xii) **Auditors and insurers of the Parties** only after such persons or entities have completed the certification contained in Attachment A; and

(xiii) **Any other person by consent** as may be designated by written agreement by the Producing Party or by order of this Court.

b. Information designated as "Highly Confidential – Outside Counsel Only" may be disclosed only to the categories of "Qualified Persons" in paragraph 4(a)(i)-(iv) and (vii)-(xiii).

5. **MARKING OF CONFIDENTIAL MATERIAL.** The designation of a document

as "Confidential" or "Highly Confidential – Outside Counsel Only" shall occur only if the designating party makes a good faith determination, individually as to each designated document, that the document contains Confidential Material and otherwise meets the criteria for such designation as defined in this Order**.**

a. **Marking of Documents.** A party or non-party may designate a document as Confidential or Highly Confidential – Outside Counsel Only for protection under this Order by placing or affixing those words on the document and on all copies in a manner that will not interfere with the legibility of the document. To the extent a document is produced in a form in which affixing the words "Confidential" or "Highly Confidential – Outside Counsel Only" on the document is not practicable, including documents produced in native format, the producing party or third-party may designate the document as such by including the confidentiality designation in the file name and on a slip sheet placeholder. As used in this Order, "copies" includes electronic images, duplicates, extracts, summaries, or descriptions that contain the Confidential Material. The markings "Confidential" or "Highly Confidential – Outside Counsel Only" shall be applied prior to or at the time that the documents are produced or disclosed. Applying these markings to a document does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order.

b. **Depositions.** Deposition testimony is protected by this Order if designated as "Confidential" or "Highly Confidential – Outside Counsel Only" by

denominating by page and line those portions of the deposition which are to be considered "Confidential" or "Highly Confidential – Outside Counsel Only" within 30 days of receiving the final transcript and exhibits and so informing all parties in writing of the designation. Until the 30-day period has passed, the deposition transcript in its entirety must be treated as if it were designated "Highly Confidential – Outside Counsel Only" under the terms of this Order. This 30-day period may be extended by agreement of the Parties.

c. **Non-Written Materials.** Any non-text Confidential Material (e.g., videotape, audio tape, etc.) may be designated as such by labeling the outside of such material as "Confidential" or "Highly Confidential – Outside Attorneys Only."

d. In the event a Receiving Party generates any "hard copy" transcription or printout from any such designated non-written materials, the person who generates such "hard copy" transcription or printout shall take reasonable steps to maintain the confidentiality of such materials and properly identify and stamp each page of such material as "Confidential" or "Highly Confidential – Outside Attorneys Only" consistent with the original designation by the Producing Party.

6. **DISCLOSURE OF CONFIDENTIAL MATERIAL.** A failure to designate Discovery Material as Confidential Material does not, standing alone, waive the right to so designate the Discovery Material. The Producing Party must provide prompt written notice upon discovery of the disclosure, and contemporaneous or subsequent production of replacement

documents with the appropriate designation, with the effect that such Confidential Material will be subject to the protections of this Order. The Receiving Party shall exercise good faith efforts to ensure that copies made of Confidential Material produced to it, and copies made by others who obtained such Confidential Material directly or indirectly from the Receiving Party, include the appropriate confidentiality legend, to the same extent as if that the Confidential Material has been marked with the appropriate confidentiality legend by the Producing Party. No party shall be found to have violated this Order for failing to maintain the confidentiality of material during a time when that material has not been designated Confidential Material.

7. **PRODUCTION OF PRIVILEGED MATERIAL.**

a. Pursuant to Federal Rule of Civil Procedure 26, and Federal Rule of Evidence 502(d) and (e), the parties agree that the production or disclosure, whether inadvertent or otherwise, of any information in connection with the pending litigation that is covered by the attorney-client privilege or work-product protection (including common interest and joint defense), or any other privilege, shall not constitute a waiver of such privilege or protection in this litigation or in any other federal or state proceeding. Instead, the Producing Party shall be entitled to assert such privilege or protection, request the return of any produced material or information on the grounds of privilege or work product protection by identifying it and stating the basis for withholding such material or information from production, and the information and its subject matter shall be treated as if there has been no such disclosure.

b. Nothing in this paragraph is intended to or shall serve to limit a Party's

right to conduct a review of any material or information for relevance, responsiveness, and/or segregation of privileged and/or protected information before production, subject to subsection (c) below.

c. **Assertion of a Clawback:** In the event that a Producing Party or non-party discovers that it produced documents that it believes to be protected, it shall promptly provide written notice of the claim of privilege or protection to the Receiving Party, or to both Plaintiffs and Defendants if the Producing Party is a non-party, sufficiently identifying the protected documents (a "Clawback Notice"). The Clawback Notice must be as specific as possible in identifying the basis for the privilege claimed, and must include at least the information required by Fed. R. Civ. P. 26(b)(5)(A)(ii). Any document that is the subject of a Clawback Notice shall be included on a privilege log as required by the procedures agreed to in Case Management Order # regarding Production of Electronically Stored Information and Paper Documents. The Parties shall make reasonable efforts to provide any Clawback Notice no later than 7 days before the deposition of a witness who received, drafted, or sent a protected documents. If a document is clawed back during a deposition, the Parties will meet and confer regarding whether the deposition needs to be continued after the resolution of any privilege challenge concerning the clawed-back document. The parties also agree to meet and confer in advance of trial to ensure that any disputes concerning clawbacks are resolved sufficiently in advance of trial.

d. **Reproduction:** As soon as practicable or within a reasonable time after providing the Clawback Notice, the Producing Party or non-party shall provide: (i) if only a portion of the document contains privileged or protected material, a new copy of the document utilizing the same Bates number(s) as the original, that has been redacted to protect the privileged or protected materials; or (ii) if the entire document is privileged or protected, a slip sheet identifying the same Bates number(s) as the original, noting that the document has been withheld.

e. **Clawback Process:** Upon notification from the Producing Party that information is, in good faith, covered by the attorney-client privilege or work product protection, the Receiving Party will, within 14 days of notification: (a) return the information and all copies of the information in its possession; (b) delete any electronic versions from any data source or any database it maintains; (c) retrieve all electronic and paper copies provided to any non-parties, including experts; and (d) sequester any notes that reveal the substance of the protected information. The Receiving Party will promptly confirm in writing to the Producing Party that these steps will be taken. In the event that the Receiving Party disagrees that the information requested back is privileged, the Receiving Party may retain a single copy of the disputed information for the sole purpose of resolving the dispute. The Receiving Party and the Producing Party shall attempt in good faith to resolve the dispute informally. If the Receiving Party and the Producing Party cannot resolve the dispute informally, either Party may

seek appropriate relief from the Court. The party disputing the assertion of privilege may not file or submit the disputed document for *in camera* review absent agreement of the Producing Party or express authorization from the Court. The Producing Party must preserve the information pending resolution of the privilege challenge and, in the event the Court concludes that the information is not protected from disclosure, promptly provide the Receiving Party with a replacement production.

8. **PROTECTED HEALTH INFORMATION**

(a) Definitions

(i) "HIPAA" is defined herein as the Health Insurance Portability and Accountability Act of 1996, codified primarily at Sections 18, 26, and 42 of the United States Code,

(ii) "Privacy Standards" is defined herein as the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. §§ 160 and 164.

(iii) For the purposes of this Order, "Protected Health Information" shall have the same scope and definition as set forth in 45 C.F.R. §§ 160.103 and 164.501.

(iv) For purposes of this Order, "Covered Entity" or "Covered Entities" shall have the same scope and definition as set forth in 45 C.F.R. § 160.103.

(v) "Business Associate" or "Business Associates" shall have the same scope and definition as set forth in 45 C.F.R. § 160.103.

(b) This Court authorizes all Covered Entities and Business Associates (whether Parties or Non-Parties) who are served with a subpoena or discovery request in this Action to disclose Protected Health Information in response to such request or subpoena. This Order is intended to authorize such disclosures pursuant to 45 C.F.R. § 164.512(e) of the Privacy Regulations issued pursuant to HIPAA.

(c) Pursuant to 45 C.F.R. § 164.512(e)(1)(v), the Parties agree and the Court orders that this Order is a Qualified Protective Order and all Parties and their attorneys are:

(1) Prohibited from using or disclosing Protected Health Information for any purpose other than this Action for which the Protected Health Information was requested, including any appeal thereof; and

(2) Required to return to the Covered Entity/Business Associate or to destroy the Protected Health Information (including all copies made) at the end of the litigation (*see supra* ¶ 20).

(d) The Parties and their attorneys of record are hereby authorized to receive, subpoena, and transmit Protected Health Information pertaining to this Action to the extent and subject to the conditions outlined herein.

(e) All Covered Entities and Business Associates are hereby authorized to disclose Protected Health Information pertaining to the litigation to attorneys representing the Parties in this Action.

(f) The Parties and their attorneys shall be permitted to use or disclose Protected Health Information for purposes of prosecuting or defending this

Action including any appeals. This includes, but is not necessarily limited to, disclosure to their attorneys, experts, consultants, witnesses, the Court, court personnel, court reporters, copy services, trial consultants, and other entities or persons involved in the litigation process (including without limitation, data governance, technology, forensics and discovery vendors). However, the Parties shall not file Protected Health Information with the Court, unless: (a) the Protected Health Information has been redacted to remove any individually identifiable information, or (b) the Court has permitted the Protected Health Information to be filed under seal.

(g) Prior to disclosing Protected Health Information to persons involved in this Action, counsel shall provide each such person with a copy of this Order and inform each such person that such disclosed Protected Health Information may not be used or disclosed for any purpose other than this Action and must be returned or destroyed at the conclusion of this Action. Counsel shall take all other reasonable steps to ensure that persons receiving such Protected Health Information do not use or disclose such information for any purpose other than this Action.

(h) Within 60 days after the conclusion of the Action including appeals, the parties, their attorneys, and any person or entity in possession of any Protected Health Information received from counsel shall destroy any and all copies of the Protected Health Information, except that counsel are not required to secure the return or destruction of any Protected Health Information filed under seal with the Court.

(i) This Order does not control or limit the use of Protected Health Information that comes into the possession of the Parties or their attorneys other than through formal discovery requests, subpoenas, depositions, court orders or other lawful process pursuant to this Action.

(j) Nothing in this Order is intended to indicate or suggest that Protected Health Information is in fact relevant to this Action. Further, this Order does not limit any Party's ability to challenge a request for Protected Health Information on the basis of relevance, burden, breadth, applicable law, or any other reasonable objection.

9. **MATERIALS PREPARED BASED UPON CONFIDENTIAL MATERIAL.** Any notes, lists, memoranda, indices, compilations, or other materials prepared or based on an examination of Confidential Material, that quote from or paraphrase Confidential Material with such specificity that the Confidential Material can be identified shall be accorded the same status of confidentiality as the underlying Confidential Material from which they are made, and to the extent those materials are disclosed to other Parties or non-parties, or produced or filed in this matter, shall be designated with the appropriate confidentiality legend, and shall be subject to all of the terms of this Protective Order.

10. **NOTICE TO NON-PARTIES.** Whenever a Party seeks discovery by subpoena or any other means from a non-party to this action, a copy of this Order shall accompany the subpoena or other means to allow the non-party to designate material as Confidential Material and obtain the protections provided in this Order.

11. **GOOD-FAITH BELIEF.** For purposes of this Order, the Designating Party bears the burden of establishing the appropriate designation of Confidential Material. The designation

of any Discovery Material as "Confidential" or "Highly Confidential – Outside Counsel Only" pursuant to this Order shall constitute the verification by the Designating Party and its counsel that the material constitutes "Confidential" or "Highly Confidential – Outside Counsel Only" material as defined above.

12. **EXECUTING THE NON-DISCLOSURE AGREEMENT.** Where the Qualified Person is a firm or an individual employed by or otherwise associated with a firm retained by one or more parties for the purposes of acting as an expert witness, consulting expert, litigation support services provider, mediation services provider, or provider of other professional services related to the Action, execution of Exhibit A by a single designated representative of such firm, expressly made on behalf of such firm, shall suffice to comply with this paragraph. Copies of the executed Exhibit A shall be retained by counsel disclosing Confidential Material to such person. Copies of executed Exhibit As shall not be available to any other Party except by agreement or on a court order.

13. **CHALLENGING CONFIDENTIALITY DESIGNATIONS.** The designation of any material or document as Confidential Material is subject to challenge by any Party. The burden to demonstrate that a document has been properly designated as Confidential or Highly Confidential – Outside Counsel Only shall at all times remain on the Party or non-party that has designated the document. The following procedure shall apply to any such challenge.

a. **Meet and Confer.** A party challenging the designation of Confidential Material must do so in good faith by identifying to the Designating Party or non-party the documents at issue by Bates number, and explaining the basis for its belief that the confidentiality designation was not proper. The Designating Party or non-party shall respond to any request under this

paragraph within 10 days and, if no change in designation is offered, to explain the basis for the designation, provided, however, that, with respect to any documents produced 30 days or less before a deposition at which some of those documents may reasonably be used, the ten day period may be shortened at the request of a Challenging Party to a reasonable period of time not longer than 3 days. The Parties shall meet and confer in good faith to attempt to resolve the dispute without resort to Court intervention.

b. If the Challenging Party and the Designating Party cannot resolve their dispute through meet and confer discussions, the Challenging Party may move the Court for an order modifying or removing such designation. The Designating Party bears the burden of establishing that the Discovery Material is entitled to protection. Any material so designated shall remain protected, and shall be subject to all restrictions on its disclosure and use set forth in this Order until one of the following occurs: (1) the Designating Party withdraws such designation in writing; or (2) the Court rules that the challenged material should be re-designated. In either event, the Designating Party shall reproduce copies of the re-designated material with the appropriate confidentiality designations within 14 days.

14. **SUBPOENA FOR CONFIDENTIAL MATERIAL.** If any Party has obtained Confidential Material under the terms of this Order and receives a request to produce such Confidential Material by subpoena or other compulsory process commanding the production of such Confidential Material, such Party shall notify the Designating Party in writing, no later than 7 days after receiving the subpoena or order, and shall include in such notice the date set for the

production of such subpoenaed information and a copy of the subpoena or court order. The Designating Party shall respond to the Party receiving the subpoena within 21 calendar days of receiving written notice of any intent to seek a protective order. During this time period, the Party or person receiving the subpoena shall inform the person seeking the protected discovery material that such information is subject to this Order. If the Designating Party informs the Party served with the subpoena that it has filed a motion seeking a protective order from the court where the subpoena or order issued, the Party served with the subpoena or court order shall not produce any information designated in this action as "Confidential" or "Highly Confidential – Outside Counsel Only" until (i) a determination by that court is made, or (ii) the Party has obtained the Designating Party's permission. No production or other disclosure of protected information pursuant to the subpoena or other process shall occur until one of the above two actions has occurred. The purpose of imposing these duties is to alert the interested persons to the existence of this Order and to afford the designating party or non-party in this case an opportunity to try to protect its Confidential Material. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

15. **USE OF DISCOVERY MATERIAL.** Confidential Material shall be used solely for purposes of prosecuting, defending or attempting to resolve this Action, whether for proceedings in the MDL Court or in any other court following remand or other transfer of any individual case from the MDL Court, including any appeal. For the avoidance of doubt, nothing in this Order shall prevent or restrict a Producing Party from disclosing or using its own Discovery Material for any purpose.

16. **EXCLUSION OF INDIVIDUALS FROM DEPOSITIONS.** Counsel shall have the right to exclude any person who is not authorized by this Order to receive documents or information designated as Confidential Material from any deposition where testimony regarding Confidential Materials or the use of Confidential Material that the person is not authorized to receive is likely to arise.

17. **SECURITY OF CONFIDENTIAL MATERIAL.** Any person in possession of another Party's Confidential Material shall exercise the same care with regard to the storage, custody, or use of Confidential Material as they would apply to their own material of the same or comparable sensitivity. Receiving Parties must take reasonable precautions to protect Confidential Material from loss, misuse and unauthorized access, disclosure, alteration and destruction, including but not limited to:

a. Confidential Material in electronic format shall be maintained in a secure litigation support site(s) that applies standard industry practices regarding data security, including but not limited to application of access control rights to those persons entitled to access Confidential Material under this Order;

b. To whatever extent the software tracks user access, an audit trail of use and access to litigation support site(s), to the extent the litigation support software tracks user access, shall be maintained while this Action, including any appeals, is pending;

c. Any Confidential Material downloaded from the litigation support site(s) in electronic format shall be stored only on device(s) (e.g. laptop, tablet,

smartphone, thumb drive, portable hard drive) that are password protected and/or encrypted with access limited to persons entitled to access Confidential Material under this Order. If the user is unable to password protect and/or encrypt the device, then the Confidential Material shall be password protected and/or encrypted at the file level;

d. Receiving Parties must take reasonable steps to prevent Confidential Material in paper format from being disclosed to persons not entitled to access Confidential Material under this Order;

e. Summaries of Confidential Material, including any lists, memoranda, indices or compilations prepared or based on an examination of Confidential Material, that quote from or paraphrase Confidential Material in a manner that enables it to be identified shall be accorded the same status of confidentiality as the underlying Confidential Material; and

f. If the Receiving Party learns at any time that the Confidential Material has been retrieved or viewed by unauthorized parties, it will immediately notify the Producing Party and take all reasonable measures to retrieve the improperly disclosed materials. The parties will then promptly meet and confer to discuss what additional steps, if any, need to be taken including for example investigation of the effects of the breach; actions to remediate the effects of the breach, and further assurances to prevent future breaches. The Receiving Party agrees to cooperate with the Producing Party or law enforcement in investigating any such security incident.

g. For purposes of clarity, nothing in this Order shall prevent a Party from transmitting paper documents containing Confidential Material via U.S. Mail or a delivery service for the purpose of a deposition, deposition preparation, trial/hearing preparation, witness interviews, mediation, or mock jury/jury research exercises provided that the Party takes reasonable steps to maintain the confidentiality of the Confidential Material. Similarly, nothing in this Order shall prevent a Party's outside counsel from carrying a binder or binders of documents containing Confidential Material or information derived from Confidential Material when traveling provided that such outside counsel takes reasonable steps to maintain the confidentiality of the Confidential Material.

18. **LARGE LANGUAGE MODELS / GENERATIVE AI TOOLS.** Absent notice to and permission from the Producing Party, any Qualified Person authorized to have access to Confidential Material under the terms of this Order shall not use or employ any application, service, or analytical software that will transfer, transmit, send, or allow any external access to that Confidential Material (in whole or in part) unless such application, service, or analytical software is fully containerized (i.e., does not transmit any information to any public system or network for the purpose of analysis, use, or the generation of text outputs in response to queries, has the ability to track all information in the system (including access), and does not otherwise allow access to Confidential Material by persons other than Qualified Persons as authorized by Paragraph 4 above). For the avoidance of doubt, this restriction expressly applies to the use of non-containerized advanced large language models, "generative" AI tools, and other advanced AI systems, including, but not limited to, OpenAI GPT, ChatGPT3/4 et seq., Google

Gemini, Meta LLAMA, MidJourney, DALL-E, and Stable Diffusion, but this provision does not limit the use of services leveraging the technology underlying these generative AI tools in a fully containerized environment, including, but not limited to, Harvey, Relativity aiR, DISCO Cecelia, Everlaw AI Assistant, Lexis+ AI, Epiq AIDA, Lighthouse AI, and Westlaw Co-Counsel. For purposes of clarity, "fully containerized," as used in this Order, means an AI tool that does not share the substance of a prompt or documents reviewed for training of Large Language Models or use the substance of a prompt or documents reviewed in any other matter or inquiry other than this Action.

19. **FILING CONFIDENTIAL MATERIAL.** This Order does not, by itself, authorize the filing of any document under seal. Given the complexity of these cases coupled with the scope of the anticipated production(s), the requirements set forth in Local Rule 26.2, along with the Court's Standing Order governing the filing of Confidential Documents, are waived. When a party wishes to file Confidential Material with the Court, the following procedures shall be observed

a. The filing Party shall provisionally file the entire filing under seal and cause an unredacted copy of the filling to be served upon all parties (and any relevant non-party or party that has settled if the Confidential Information was produced by a non-party or settled-party) and shall specifically notify the individual party, non-party, or settled-party that the filing contains its Confidential Information (including, to the extent not readily apparent, information sufficient to identify the location of such Confidential Information within the filing).

b. Within 10 days of the initial filing, the Producing Party(ies) may file a

motion to seal, including a proposed redacted version of the filing as an exhibit thereto. Opposition(s) to a motion to seal may be filed 5 business days after the filing of the motion to seal. If no motion to seal is filed within 10 days, or if the Court denies the motion(s) to seal, the filing Party shall file an unredacted version of the initial filing. If the motion to seal is granted, the filing Party shall publicly file a redacted version of the initial filing.

c. The Producing Party may request more than 10 days to file a motion to seal for particularly voluminous filings such as summary judgment or class certification filings or for other good cause

d. If the filing Party is also the Designating Party, then the motion to seal shall be filed contemporaneously with the filing.

20. **IMPROPER DISCLOSURE OF CONFIDENTIAL MATERIAL.** Disclosure of Confidential Material other than in accordance with the terms of this Order may subject a Party to such sanctions and remedies as the Court may deem appropriate.

21. **FINAL TERMINATION.**

a. **Order Continues in Force**. Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

b. Within 60 days after termination of the Action, including, for example, a voluntary dismissal or an exhaustion of any and all appeals, all Confidential Material, including any copies, excerpts and summaries thereof, and provide written confirmation of destruction, shall be returned to the

Producing Party or destroyed with certification of destruction provided to the Producing Party to the extent practicable[1] unless: (1) the document has been offered into evidence or filed with the Court, without restriction as to disclosure, unless the document contains Personal Information, in which case the document shall be returned to the Producing Party or destroyed pursuant to this paragraph; or (2) the Confidential Material is included in an e-mail or an attachment to an e-mail or contained in deposition transcripts or drafts or final expert reports, unless the Confidential Material includes Personal Information, in which case the document containing the Confidential Material shall be returned to the producing party or destroyed. Any Confidential Material that is retained pursuant to (1) or (2) shall not be accessed or used for any purpose other than this litigation.

c. **Retention of Work Product and one set of Filed Documents**. Notwithstanding the above requirements to return or destroy documents, counsel may retain (1) attorney work product, including an index that refers or relates to designated Confidential Material, and (2) all documents filed with the Court including those filed under seal. Any retained Confidential Material shall continue to be protected under this Order and shall not be accessed or used for any purpose other than this litigation. Attorneys may use their work product in subsequent litigation, provided they do not

[1] If the Receiving Party chooses to destroy documents containing Confidential Material, the Receiving Party shall confirm the fact of destruction. The Receiving Party shall not be required to locate, isolate, and return emails (including attachments to emails) that may include Confidential Material, or Confidential Material contained in deposition transcripts or drafts or final expert reports.

disclose or use Confidential Material.

22. **PROTECTIVE ORDER REMAINS IN FORCE.** This Order shall remain in force and effect until modified, superseded, or terminated by consent of the Parties or by order of the Court made upon reasonable written notice. Unless otherwise ordered or agreed upon by the Parties, this Order shall survive the termination of this Action. The Court retains jurisdiction even after termination of this Action to enforce this Order and to make such amendments, modifications, deletions and additions to this Order as the Court may from time to time deem appropriate.

23. **MODIFYING THIS ORDER.** Nothing in this Order shall be construed to prohibit the Parties from seeking to modify any provision of this Order or seeking other relief from the Court. Nor shall anything in this Order or any Party's compliance herewith be construed as a waiver of any Party's rights under applicable law.

24. **NO GREATER PROTECTION OF SPECIFIC DOCUMENTS.** Except on privilege grounds not addressed by this Order, no Party or non-party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the Party or non-party moves for an order providing such special protection.

25. **USE OF CONFIDENTIAL MATERIAL AT TRIAL OR HEARING.** Nothing in this Order shall be construed to affect the use of any document, material, or information at any trial or hearing provided that the parties avoid the unnecessary disclosure of Confidential Material. A Party that intends to present Confidential Material at a hearing or trial shall first bring that issue to the Producing Party's or non-party's attention so that they may meet and confer regarding the same. If the parties are unable to reach agreement regarding the proposed disclosure at a trial or hearing, the party proposing the use may raise the issue with the Court. The Court may thereafter

make such orders as are necessary to govern the use of such documents or information at a hearing or trial.

26. **NO PRIOR JUDICIAL DETERMINATION.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any document or material designated Confidential Material by counsel or the parties is admissible as evidence for any purpose in this litigation or any other proceeding, or is entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

27. **PERSONS BOUND.** This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms or by execution of Attachment A.

SO ORDERED

Dated: 1/5/2025

Hon. Matthew F. Kennelly
U.S. District Court for the Northern District of Illinois.

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: MULTIPLAN HEALTH INSURANCE PROVIDER LITIGATION	Case No. 1:24-cv-06795 MDL No. 3121
This Document Relates To:	Hon. Matthew F. Kennelly
ALL ACTIONS	

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____ [print or type full name], of _____ [print or type full address], have read and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of Illinois (the "MDL Court") on [insert date] in the case of In re: Multiplan Health Insurance Provider Litigation (MDL 3121). I, personally, and _____ [company name], on whose behalf I am authorized to execute this acknowledgement [if applicable] agree to comply with and to be bound by all the terms of this Stipulated HIPAA-Qualified Protective Order. In compliance with this Order, I will not disclose in any manner any information or item that is subject to this Stipulated HIPAA-Qualified Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the MDL Court for the purpose of enforcing the terms of this Stipulated HIPAA-Qualified Protective Order, even if such enforcement proceedings occur after termination of this action.

I declare under penalty of perjury that the foregoing is true and correct. Signed this ___ day of _____, 202__ , at _____ [insert city and state where sworn and signed].

Signature: _____

ATTACHMENT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: MULTIPLAN HEALTH INSURANCE PROVIDER LITIGATION	Case No. 1:24-cv-06795 MDL No. 3121
This Document Relates To:	Hon. Matthew F. Kennelly
ALL ACTIONS	

CASE MANAGEMENT ORDER NO. 11 -
ORDER REGARDING PRODUCTION OF
ELECTRONICALLY STORED INFORMATION AND PAPER DOCUMENTS

This Order Regarding Production of Electronically Stored Information and Paper Documents ("ESI Protocol Order") is entered into pursuant to the parties' joint letter brief (ECF 210) and the Court's ruling regarding same (ECF 238).

This ESI Protocol Order shall govern the Parties and the Non-Parties in the above-captioned case whether they currently are involved or become so in the future, and any related actions that may later be consolidated with this multi-district litigation (collectively, the "Litigation").

Nothing in this ESI Protocol shall be construed to affect the admissibility of discoverable information. Pursuant to the terms of this ESI Protocol, information regarding search processes and electronically stored information ("ESI") practices may be disclosed, but compliance with this ESI Protocol does not constitute a waiver, by any Party, of any objection to the production of particular ESI as irrelevant, undiscoverable, inadmissible, unduly burdensome or not reasonably accessible, or privileged, nor does it constitute a waiver of any right to discovery by any Party. For the avoidance of doubt, a Party's compliance with this ESI Protocol will not be interpreted to

require disclosure of information potentially protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege.

I. GENERAL PROVISIONS

A. Applicability: This ESI Protocol Order will govern the review and production of ESI and paper documents.

B. Federal Rules: Except as may be set forth herein, this ESI Protocol does not alter or affect the applicability of the Federal Rules of Civil Procedure or the Local Rules for the Northern District of Illinois (the "Local Rules" or, when referencing a particular rule, a "Local Rule").

C. Deadlines: References to schedules and deadlines in this ESI Protocol Order shall comply with Federal Rule of Civil Procedure 6 with respect to computing deadlines.

D. ESI Liaisons:

1. **Designation:** Class Plaintiffs, the Direct Action Plaintiffs Executive Committee ("DAP Plaintiffs"), and each Defendant agrees to designate ESI Liaisons within 7 days after entry of this ESI Protocol Order. Any Party is free to change its designated ESI Liaison by providing written notice to the other Parties.

2. **Duties of ESI Liaison**: Each ESI Liaison will be prepared to promptly participate in meet and confer processes in a good faith effort to resolve any e-discovery disputes or ESI issues that may arise (or designate another person as primarily responsible) and have access to personnel knowledgeable about the Party's electronic systems and capabilities in order to, as appropriate, answer pertinent questions. The Parties will rely

on the liaisons, as needed, to confer about ESI and to try to resolve technical disputes without Court intervention.

E. Definitions:

1. Class Plaintiffs, DAP Plaintiffs, and Defendants are referred to as the "Parties" solely for the purposes of this ESI Protocol Order.

2. "Plaintiffs" as used herein shall mean the individual plaintiffs named in the operative complaints filed by Class and DAP Plaintiffs, and such Plaintiffs' counsel.

3. "Defendants" as used herein shall mean the Defendants named in the operative complaints filed by Class and DAP Plaintiffs, and such Defendants' counsel.

4. "Non-Parties" as used herein shall mean other individuals or entities who may produce electronically stored information and paper documents in this Litigation, who will be subject to the terms of this ESI Protocol Order to the same extent as the Parties.

F. Confidential Information and Preservation: For the avoidance of doubt, nothing herein shall contradict the Parties' rights and obligations with respect to any information designated as Confidential or Highly Confidential under any order entered by the Court in the Litigation or confidentiality stipulation entered into by the Parties.

II. GENERAL PRODUCTION FORMAT PROTOCOLS

A. The Parties agree to produce documents in the formats described below. A producing or requesting party may seek to use a different format for a targeted set

of documents if the agreed format is not reasonably technically feasible to produce or review, in which case the parties shall promptly meet and confer with respect to such request and shall submit the issue for resolution by the Court only if they are unable to resolve the dispute through the meet and confer process. To the extent practicable, any alternative formats proposed should not materially degrade the searchability and useability of ESI or other materials.

B. **TIFFs:** Except for structured data and specified file types addressed in "Production of Native Items" below, production images will be provided as black and white (except as provided below), single-page Group IV TIFFs of at least 300 DPI resolution with corresponding multi-page text and necessary load files. Each image will have a file name that is the unique Bates number of that image. Each image shall be branded according to the Bates number and any confidentiality designation. Original document orientation should be maintained to the extent reasonably practicable and technologically possible for a producing Party's vendor (i.e., portrait to portrait and landscape to landscape). Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, (1) to the extent reasonably practicable, also be imaged so that this information is captured on the produced image file, and (2) if such imaging is not reasonably practicable, be produced in native format. Documents that are difficult to render in TIFF may be produced in their native format with a placeholder TIFF image stating the Bates number of the file and the wording "Document Produced Natively" (along with any appropriate confidentiality designation), unless such documents contain redactions, in which case the documents will be produced in

TIFF format. Documents that are difficult to render in TIFF that require redaction may be produced with redactions applied in the native file, so long as the redactions are applied using an appropriate native redaction tool, such as "Blackout" or "BlackBar." A producing Party retains the option to produce ESI in alternative formats if so agreed by the requesting Party or Parties, which may include native format or a combination of native and TIFF formats.

C. **Text Files:** Each ESI item produced under this ESI Protocol Order shall be accompanied by a text file as set out below. All text files shall be provided as a single document level text file for each item, not one text file per page. Each text file shall be named with the Bates number of the first page of the corresponding production item. Text files shall contain any hidden content, tracked changes, edits, comments, notes, and other similar information of the ESI item to the extent technically feasible.

1. OCR: A producing Party may make paper documents available for inspection and copying/scanning in accordance with Fed. R. Civ. P. 34 or, additionally or alternatively, scan and OCR paper documents if it chooses. Where OCR is used, the Parties will take all reasonable steps to generate accurate OCR. The Parties acknowledge that, due to poor quality of the originals, not all documents lend themselves to the generation of accurate OCR. In such instances, or in the event that a producing Party does not choose to use OCR at all, the producing Party will either (a) make the paper documents available for inspection and copying in accordance with Fed. R. Civ. P. 34, or (b) identify in the load file that the file is not OCR.

2. ESI: Emails and other ESI will be accompanied by extracted text taken from the electronic file itself, where available.

D. Production of Native Items: The Parties agree that ESI shall generally be produced as TIFFs with an accompanying load file, which will contain the ESI data points listed in Appendix 1 hereto. The exceptions to this rule shall be: (a) documents for which the metadata or other information readily identifiable for the producing party indicates the document contains hidden content, embedded comments, or tracked changes (e.g., a Microsoft Word document with "bubble" comments and/or different color tracked changes), (b) spreadsheet-application files (e.g., Microsoft Excel), (c) presentations (e.g., Microsoft PowerPoint), (d) source code, (e) multimedia audio/visual files, such as voice and video recordings (e.g., .wav, .mpeg, and .avi), and (f) any other native file types that cannot be rendered as readable image files. These categories of ESI shall be produced in native format.

1. In addition to producing the above file types in native format, the producing Party shall produce a single-page, Bates-numbered TIFF slip sheet indicating that a native item was produced with the wording "Document Produced Natively," along with extracted text where available and with the applicable data points listed in Appendix 1. The corresponding load file shall include NativeFileLink information for each native file that is produced.

2. The Parties agree to meet and confer prior to producing native file types other than a-e above, in which case the producing Party shall disclose the

file type to and meet and confer with the requesting Party on a reasonably useable production format.

3. The Parties agree to meet and confer to the extent that there is potentially relevant structured data that resides in a fixed field within a record or file, or stored in a structured format, such as databases/data application files (such as Oracle, SQL, Access, SAP) or data sets, to determine the best reasonable form of production of usable data.

4. Through the pendency of the Litigation, the producing Party shall exercise reasonable, good faith efforts to maintain all preserved and produced native files in a manner that does not materially alter or modify the file or the metadata.

E. **Requests for Other Native Files:** Other than as specifically set forth above or in this paragraph, a producing Party need not produce documents in native format. If a Party would like a particular document produced in native format and this ESI Protocol Order does not require the production of that document in its native format, the Party making such a request shall explain by identifying by Bates number(s) the specific document(s) at issue and explaining the reason for its request that the document(s) be produced in its native format, as to which request the parties shall meet and confer in good faith and shall submit to the Court for resolution only if the parties have been unable to resolve any dispute through the meet and confer process, with the Party seeking production in native format bearing the burden to demonstrate why it needs the native format. Any native files that are produced pursuant to this paragraph should be produced with a link in the

NativeFile field, along with all extracted text and applicable metadata fields set forth in Appendix 1. .

F. Instant Messages/Text Messages and Mobile Data: To the extent the Parties' reach agreement concerning the relevance, proportionality, collection, and production of instant messages/text messages (e.g., Microsoft Teams, Slack) and/or data contained on mobile devices such as smartphones and tablet computers, or such materials are compelled to be produced in this Litigation, the Parties shall meet and confer prior to such production to determine the best production format for such ESI.

G. Bates Numbering:

1. All images must be assigned a Bates number that must always: (1) be unique across the entire document production, (2) maintain a constant prefix and length (e.g., ten-digits and 0-padded) across the entire production, (3) contain no special characters or embedded spaces, except hyphens or underscores, (4) be sequential within a given document, and (5) identify the producing Party. To the extent reasonably practicable, the Bates number must also maintain consistent numbering across a family of documents.
2. If a Bates number or set of Bates numbers is skipped in a production, the producing Party will so note in a cover letter or production log accompanying the production.
3. To the greatest extent practicable, the producing Party will brand all TIFF images at a location that does not obliterate or obscure any part of the

underlying images. If Bates number branding obliterates or obscures any part of an underlying image, upon request of the requesting Party, the producing Party shall re-produce the affected ESI items with the branding in a different location that does not obliterate or obscure the underlying images.

H. **Parent-Child Relationships:** Parent-child relationships (the association between an attachment and its parent document) that have been maintained in the ordinary course of business should be preserved to the extent reasonably practicable. For example, if a Party is producing a hard copy printout of an e-mail with its attachments, the attachments should be processed in order behind the e-mail to the extent reasonably practicable. The family of documents should also be identified using a family ID number or other unique identifying number, such as the beginning Bates number of the parent document.

I. **Load Files:** All production items will be provided with a delimited data file or "load file," which will include both an image cross-reference load file (e.g., an Opticon file), as well as a metadata (.dat) file with the metadata fields identified in Appendix 1 on the document level to the extent available. The load file must reference each TIFF in the corresponding production. The total number of documents referenced in a production's data load file should match the total number of designated document breaks in the Image Load files in the production. Load files shall not vary in format or structure within a production, or from one production to another.

J. **Color:** Any document produced as a native file shall be produced as it was regularly

utilized and, to the extent applicable, in color. Other documents or ESI containing color generally need not be produced in color in the first instance. However, if the original color is necessary to understand the meaning or content of the document, a producing Party may opt to produce the documents in color in the first instance or the requesting party may request in writing that the producing Party produce that document or ESI item (identified by Bates number) in its original color. If the producing party does not promptly agree to produce the requested document or item in color, the parties shall promptly meet and confer in good faith before submitting any dispute to the Court. The production of any documents and/or ESI in color shall be made in single-page JPEG format (300 DPI). All requirements for productions stated in this ESI Protocol regarding productions in TIFF or native format apply to any productions of documents and/or ESI in color made in such an alternative format.

K. **Confidentiality Designations:** If a particular document or ESI item qualifies for confidential treatment pursuant to the terms of any protective order entered by the Court in the Litigation or confidentiality stipulation entered into by the Parties, the designation shall be branded on the document's image at a location that, where applicable, does not obliterate or obscure any part of the underlying images. This designation also should be included in the appropriate data field in the load file. Failure to comply with the procedures set forth in this ESI Protocol Order shall not waive any protection or confidential treatment. If confidentiality designation branding obliterates or obscures any part of an underlying image, upon request of the receiving Party, the producing Party shall re-produce the

affected ESI items with the branding in a different location that does not obliterate or obscure the underlying images.

L. **Production Media & Protocol:** A producing Party may produce document images, load files and metadata on USB drives, external hard drives, or other mutually agreeable media ("Production Media"). Production sets may also be transferred via secure FTP or encrypted web-hosted transfer. Any requesting Party that is reasonably unable to resolve any technical issues with the electronic production method used for a particular production may request that a producing Party provide a copy of that production using Production Media, as described below.

1. All Production Media will be encrypted, and the producing Party will provide a decryption key to the requesting Party in a communication separate from the production itself. Each piece of Production Media will be assigned a production number or other unique identifying label corresponding to the date of the production of documents on the Production Media, as well as the sequence of the material in that production. For example, if the production comprises document images on three external hard drives, the producing Party may label each hard drive in the following manner: "[PARTY] Production March 1, 2025-001," "[PARTY] Production March 1, 2025-002," and "[PARTY] Production March 1, 2025-003." Where the Production Media used is an external hard drive (with standard PC compatible interface) or USB drive, such

production media must be sent no slower than overnight delivery via FedEx, UPS, USPS, or private courier.

2. Each item of Production Media (or, in the case of productions made via FTP link or other secure online transfer, each production transmittal letter) shall include (1) the producing Party's name; (2) text referencing that it was produced in this Litigation, (3) the production date, and (4) the Bates number range of the materials contained on such production media item.

3. Any replacement Production Media will cross-reference the original Production Media and clearly identify that it is a replacement and cross-reference the Bates number range that is being replaced. Each Party shall designate the appropriate physical address for productions that are produced on Production Media. However produced, a producing Party shall provide clear instructions for accessing the production, including any necessary passwords or encryption keys.

M. Materials Collected for or Produced in Other Litigation or Investigations: To the extent that a producing Party intends to satisfy a request for production by producing materials collected or produced in a case consolidated into this Litigation (e.g., *Adventist Health System Sunbelt Healthcare Corporation v. MultiPlan, Inc.*, 1:23-cv-07031 (S.D.N.Y.)) or in a different litigation or investigation, at the time the producing Party discloses its search methodology it shall disclose in writing (a) the fact that the producing Party intends to use such materials to satisfy certain request(s) for production, (b) the case caption or information necessary to identify the entity conducting the investigation, and (c)

information sufficient to show how materials were collected and culled for actual or potential production in the prior matter (e.g., requests for production, custodial and non-custodial sources searched, search terms or methods used, and time periods applied to collection or culling), as well as any logs or discovery responses describing materials withheld or redacted on any basis, including privilege. A requesting Party retains the right to challenge the sufficiency of any production not subject to the ESI, search, and privilege methodology agreed to under this Protocol. If a requesting party raises such a challenge, the requesting and producing Parties shall promptly meet and confer in a good faith effort to resolve any dispute and shall submit the matter to the Court for resolution only if they are not able to reach resolution through the meet and confer process.

III. PAPER DOCUMENT PRODUCTION PROTOCOL

A. **Coding Fields:** The following information shall be produced in the load file accompanying production of paper documents: (a) BegBates, (b) EndBates, (c) BegAttach, (d) EndAttach, (e) AttachRange, (f) Page Count, (g) Custodian, (h) Confidentiality, (i) Redacted, and (j) Text Path. Additionally, all paper documents will be produced with a coding field named "Paper Document" marked with a "Y."

B. **Unitization of Paper Documents:** The Parties shall use reasonable best efforts to ensure that paper documents, including those in files and binders, are logically unitized for production. When scanning paper documents for production, distinct documents shall not be merged into a single record and single documents shall not be split into multiple records to the greatest extent possible. The Parties will utilize

best efforts to ensure that paper documents are produced in consecutive Bates stamp order.

IV. ESI METADATA FORMAT AND PROCESSING ISSUES

A. **Excluded Files:** ESI productions may be de-NISTed using the industry standard list of such files maintained in the National Software Reference Library by the National Institute of Standards & Technology as it exists at the time of de-NISTing. Other file types and forms of data that may be excluded are described in IV.F, and additional file types may be added to the list of excluded files by further written agreement of the Parties.

B. **Metadata Fields and Processing:**

1. **Date and Time/Time Zone:** No Party shall modify the date or time as contained in any original ESI, except, to the extent reasonably practicable, ESI items shall be processed using a consistent time zone (e.g., CST), and the time zone used shall be disclosed to the requesting Party.

2. **Auto Date/Time Stamps or Other Automatically Updating Fields:** To the extent reasonably practicable, ESI items shall be processed so to preserve the date/time shown in the document as it was last saved, rather than the date of collection or processing.

3. If a producing Party believes the above provision(s) are not reasonably practicable for some portion of its production, it shall inform the requesting party/parties and promptly meet and confer in a good faith effort to resolve any dispute. The parties may submit any such dispute to

the Court for resolution only if they have been unable to reach resolution through the meet and confer process.

4. Except as otherwise set forth in this ESI Protocol Order, ESI files shall be produced with at least each of the data fields set forth in Appendix 1 that can reasonably be extracted from a document.

5. The Parties are not obligated to manually populate any of the fields in Appendix 1 if such fields cannot reasonably be extracted from the document using an automated process, with the exception of the following fields: (a) BegBates, (b) EndBates, (c) BegAttach, (d) EndAttach, (e) all Custodians of the document, (f) Confidentiality, (g) Redacted (Y/N), and (h) NativeFile fields, which should be populated, when applicable, regardless of whether the fields can be populated pursuant to an automated process.

C. Redaction:

1. The Parties agree that, for any ESI items for which this ESI Protocol otherwise permits production in TIFF format, redactions may be made in TIFF format, with each redaction clearly indicated. Any metadata fields reasonably available and which can be disclosed without disclosing privileged information shall be provided. The producing party may, alternatively, produce the item as a redacted native file in accordance with the following paragraph.

2. If the items redacted and partially withheld from production would otherwise be required to be produced as native files under this ESI

Protocol, then they should be produced as native files with redactions to the extent possible using a native redaction tool, such as "Blackout" or "BlackBar,"

3. If an item otherwise required to be produced as a native file under this ESI Protocol must be withheld, then, to the extent reasonably practicable, the entire ESI item must be produced in TIFF format, including all unprivileged pages, hidden fields, and other information that may not print when opened as last saved by the custodian or end user. For PowerPoint-type presentation decks, this shall include, but is not limited to, any speaker notes. For Excel-type spreadsheets, this shall include, but is not limited to, hidden rows and columns, all cell values, annotations, and notes. The producing Party shall also make reasonable efforts to ensure that any spreadsheets produced only as TIFF images due to redaction are formatted so as to be legible. For example, column widths should be formatted so that the values in the column will display rather than "##########."

4. If audio/visual or other media files require "redaction," the parties shall promptly meet and confer concerning the format of production and privilege assertions. If the parties are unable to reach agreement through meet and confer discussions, they may seek resolution from the Court.

D. Email Collection and Processing:

1. **Email Threading:** The Parties may use email threading to avoid review and production of duplicative information contained within an existing

email thread in another document being reviewed and produced, but under no circumstances will email thread suppression (a) eliminate the ability of a requesting Party to identify every custodian who had a copy of a produced document or sent or received an email, or (b) remove from a production any unique branches and/or attachments contained within an email thread. Parties may request unthreaded copies of particular documents in advance of depositions, which will not be denied absent good cause.

2. **Email Domains:** A producing Party may exclude from their ESI search process uniquely identifiable categories of documents (i.e., emails from domains typically associated with junk email, such as non-industry retailer advertising, non-industry newsletters, or alerts from non-industry sources) provided that it discloses domain names excluded under this section prior to conducting review and production and promptly meets and confers in good faith with respect to any proposal to exclude one or more domain names. The Parties may submit any dispute over the exclusion of a domain name to the Court for resolution only if the Parties have been unable to reach resolution through the meet and confer process.

E. **Rolling Productions:** The Parties agree to produce documents in phases on a rolling basis consistent with the Court's orders relating to scheduling.

F. **De-duplication:** A producing Party may de-duplicate files in a method that does not result in the responsive documents with unique content being withheld from production. Removal of near-duplicate documents shall not occur without first

conferring in good faith with the requesting party and reaching an agreement as to scope and methodology. Unless otherwise agreed by the Parties, the following requirements apply to all document de-duplication by a producing Party:

1. All BCC recipients whose names would have been included in the BCC metadata field, to the extent such metadata exists, but are excluded because of de-duplication, must be identified in the BCC metadata field specified in Appendix 1 to the extent such metadata exists. In the event of rolling productions of documents or ESI items, the producing Party will, as needed, supplement the load files with updated CustodianOther information, as well as BCC information to the extent such metadata exists. Duplicate custodian information may be provided by a metadata "overlay" and will be provided by a producing Party after the Party has substantially completed its production of ESI.
2. Duplicate electronic documents shall be identified by MD5 or SHA-1 hash values for binary file content. All electronic documents bearing an identical value are a duplicate group. The producing Party may produce only one document or native file for duplicate ESI documents within the duplicate group to the extent practicable. The producing Party is not obligated to extract or produce entirely duplicate ESI documents.
3. Duplicate messaging files shall be identified by MD5 or SHA-1 hash values for the email family, which includes the parent and email attachments.

4. If a producing party intends to use a de-duplication that does not comply with the above provisions, it shall so inform the requesting party(ies) of the fact and nature of the intended alternative method, after which the parties shall promptly meet and confer in a good faith effort to resolve any disputes about such proposal. The parties may submit any dispute on this issue to the Court for resolution only if they have been unable to reach resolution through the meet and confer process.

G. Zero-byte Files, Duplicative, and Otherwise Extraneous Data: The Parties may filter out the following files and data:

1. Zero-byte files—stand-alone files identified as zero-bytes in size—that do not contain responsive file links or file names. If the requesting Party in good faith believes that a zero-byte file was withheld from production and contains information responsive to a request for production, the requesting Party may request that the producing Party produce the zero-byte file. The requesting Party may provide a Bates number to the producing Party of any document that suggests a zero-byte file was withheld from production and contains information responsive to a request for production. If a producing Party proposes to apply filters to identify zero-byte files and limit documents and ESI that is collected for processing and review, the producing Party shall advise the requesting Party and the Parties shall meet and confer regarding such filters prior to review and production;

2. Backup data files that are maintained in the normal course of business for purposes of disaster recovery, including (but not limited to) backup tapes,

disks, SAN, and other forms of media, provided, however, that nothing in this provision shall preclude a requesting party from seeking (through meet and confer and application to the Court) to require a producing party to review and produce materials from such backup data files to the extent the requesting party contends such review and production is appropriate and proportional to the case given the anticipated contents of the backup data files and the content of other files the producing party is collecting and reviewing;

3. On-line access data such as temporary internet files, history files, cache files, and cookies;

4. operating system files and executable files, except for any source code used as part of a pricing methodology for out-of-network goods and services; and

5. Structural files not material to individual file contents (e.g., .CSS, .XSL, .XML, .DTD, etc.).

H. **Microsoft "Auto" Feature:** To the extent reasonably practicable and technologically possible for a producing Party's vendor, Microsoft Excel (.xls) and Microsoft PowerPoint (.ppt) documents should be analyzed for the "auto" features, where documents have an automatically updated date and time in the document, file names, file paths, or similar information that when processed would be inaccurate for how the document was used in the ordinary course of business. If "auto date," "auto file name," "auto file path," or similar features are identified, the produced document shall be branded with the words "Auto Date,"

"Auto File Name," or "Auto File Path" formula used or similar words that describe the "auto" feature, to the extent reasonably practicable.

I. **Hidden Text:** To the extent reasonably practicable, ESI items shall be processed in a manner that preserves hidden columns or rows, hidden text, worksheets, speaker notes, tracked changes, and comments. The Parties shall use reasonable efforts to ensure that, at the time of production, all hidden columns or rows, hidden text, worksheets, speaker notes, tracked changes, and comments are visible on the face of the TIFF image(s), unless redacted in accordance with this ESI Protocol.

J. **Embedded Objects, Spreadsheets and Hyperlinked Files:** Objects embedded in documents (e.g. in Word or Excel documents) shall, when reasonably practical and able to be extracted on a systematic basis utilizing the company's existing software capabilities, be extracted and produced as separate documents and treated like attachments to the document. The Parties agree that other nonrelevant embedded objects including, but not limited to, logos, icons, and footers, may be culled from a document set and need not be produced as separate documents by a producing Party (i.e. such embedded objects will be produced within the document itself, rather than as separate attachments). Hyperlinked files (other than hyperlinks to external websites not within the possession, custody, or control of the producing party) shall be produced as child documents to the parent containing the hyperlink, when reasonably practical utilizing the company's or vendor's existing software capabilities. The Parties will meet and confer in a good faith effort to identify a reasonable and proportional process of addressing

hyperlink files stored in a collaborative work environment (e.g., MS SharePoint or Google Drive) that are linked to any email or other document.

K. **Compressed Files:** Compression file types (i.e., .CAB, .GZ, .TAR, .z, and .ZIP) shall be decompressed in a reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible compression resulting in individual folders and/or files.

L. **Password-Protected, Encrypted, or Proprietary-Software Files:** With respect to any ESI items that are password-protected or encrypted, the producing Party will take reasonable steps to disable the protection so that the documents can be reviewed and produced if appropriate. In the event that encrypted or password-protected documents, which are reasonably likely to be responsive to a document request, remain for a particular custodian after such reasonable efforts have been made, the Parties shall meet and confer regarding the next steps, if any, with respect to such ESI. ESI that cannot be reviewed because proprietary software is necessary to view the ESI will, to the extent identified, be disclosed to a requesting Party, and the Parties shall meet and confer regarding the next steps, if any, with respect to such ESI. The parties are not required to provide information on passwords obtained or the manner with which password-protected or encrypted files were made accessible. Where the producing Party no longer possesses the software required to read or decipher files otherwise subject to production, it is under no obligation to obtain such software and provide it to the requesting Party, provided, however, that, if the requesting Party attempts to obtain such software, the producing Party shall cooperate with the requesting Party to the extent

reasonably necessary to identify the software, its licensor, and any technical information or permissions needed for the requesting Party to read or decipher the files.

M. Corrupted or Technical Issue Documents: If a document being produced (i.e., it is otherwise in a responsive family) cannot be processed (e.g., it is corrupt or protected by an unavailable password), a single-page, Bates-stamped image slip sheet stating "File Could Not Be Processed" or similar wording will be provided and a meta-data field for "Technical Issue" shall be populated..

V. PARAMETERS FOR COLLECTING DOCUMENTS

A. Document Custodians and Custodial Data Sources: Within 30 days of the producing Party's service of its objections and responses in which it agrees to produce documents, the producing Party must disclose in writing an initial list of its own proposed document custodians ("Document Custodians") and custodial sources (e.g., personal computers, laptop computers, email, calendars, mobile devices, shared network storage or folders, structured data systems, etc.). If a requesting Party contends that additional Custodians or custodial sources should be added, then the Parties shall meet and confer in good faith and, in the event the parties are unable to reach agreement, the requesting Party may seek relief from the Court.

B. Non-Custodial Sources: The Parties agree to meet and confer, within 30 days of the producing Party's service of its objections and responses in which it agrees to produce documents, regarding any "Non-Custodial" document sources that the producing Party believes, based on its investigation to date, may reasonably be

likely to contain unique responsive information. For the avoidance of doubt, "Non-Custodial" document sources include departmental files, shared drives, multi-user messaging platforms (or "chat" platforms), such as Slack or Microsoft Teams; cloud storage accounts; online repositories, social media accounts of the Party, intranets, and databases. The Parties shall meet and the parties shall meet and confer regarding how the producing Party's objections and proposed limitations to the scope of discovery would change the Non-Custodial document sources from which the producing Party will collect and produce Documents. If a requesting Party contends that additional Non-Custodial document source(s) should be added, then the Parties shall meet and confer in good faith and, in the event the parties are unable to reach agreement, the requesting Party may seek relief from the Court.

C. As a general matter, the means of and parameters for culling ESI set forth in this section apply to Non-Custodial ESI as well as to Custodial ESI. If a producing Party seeks to utilize other culling technologies for Non-Custodial ESI, it must so inform the requesting Party(ies) before implementing such technology, after which the Parties shall promptly meet and confer in a good faith effort to resolve any disputes on such issue. The Parties may seek resolution of any such dispute by the Court only if they have been unable to reach resolution through the meet and confer process.

D. **Mobile Device ESI:** For Document Custodians agreed on by the Parties or ordered by the Court, a producing Party will take reasonable steps to identify whether any responsive and non-duplicative ESI items in the possession, custody,

or control of the Party are located on any mobile devices, including cellphones and tablets, used by any of those Custodians. If non-duplicative responsive ESI items are located on such a mobile device by any of those Custodians, then the producing Party shall collect those ESI items in a manner that preserves the content and metadata associated with those items. To the extent reasonably possible, materials collected pursuant to this subparagraph shall be produced as image files with related searchable text, metadata and bibliographic information. If necessary to determine the identities of email, text message, app-based message, or IM senders or recipients, the producing Party will provide a table of names or contact lists from custodians. Nothing in this subparagraph shall be construed as a determination on the appropriateness of mobile device discovery or any objections to mobile device discovery.

E. Search Methods:

1. Search Methodology Disclosure:

a. The Parties agree to meet and confer, within 30 days of the producing Party's service of its objections and responses in which it agrees to produce documents, regarding (i) potential use and identification of search terms, tools, or techniques, (ii) use of technology assisted review or artificial intelligence ("TAR/AI") in whole or part to cull any corpus of materials, and (iii) all parameters for scoping the review and production efforts (e.g., application of date ranges, custodians, non-custodial sources, etc.).

2. Technology Assisted Review Negotiation Process:

a. The Parties will meet and confer regarding the use of TAR/AI to cull any corpus of materials, alone or in combination with some other methodology. By no later than 45 days after service of responses and objections to the initial sets of requests for production, the Parties will: (a) submit a TAR/AI Protocol to the Court or (b) submit one letter briefs of no more than 5 pages total for Plaintiffs and one letter brief of no more than 5 pages total for Defendants concerning any disputes as to the TAR/AI Protocol.

3. Search Term Negotiation Process:

a. Before a producing Party uses search terms, the producing Party shall describe in writing to the requesting Party or Parties the search protocol the producing Party intends to use and shall include: (a) the search methodology criteria to be used to identify the universe of documents to which search terms will be applied (e.g., custodians, non-custodial sources, and date ranges), (b) proposed search terms to be applied, subject to revision based on, for example, meet and confer of the Parties, and (c) any use of TAR/AI. At the time the producing Party discloses its proposed search terms, it shall disclose in writing the requests for production (if any) for which the producing Party will not use search terms to identify materials responsive to that request.

c. At the time the producing Party discloses its proposed search terms, it shall also disclose in writing the document review software and version number that is being used to run those search terms (e.g., Relativity 10.4), the stop/noise words for that search software, and the search language syntax used by that software.

d. At the time that the producing Party discloses its search terms, the producing Party shall explain in writing how it will identify and review materials that do not have a sufficient amount of searchable text or are otherwise not suited to identification using text-based searches, including, for example, video files, audio files, and structured data.

e. Within 30 days of receiving the producing Party's proposed search terms, the requesting Parties will provide any proposed revisions and additions to the producing Party's search terms. For purposes of this paragraph, the DAP EC and Class Counsel shall cooperate to provide a single set of proposed revisions and additions to a Defendant producing Party and the Defendants shall cooperate to provide a single set of proposed revisions and additions to a Plaintiff producing Party, with the understanding that there may be a set of global search terms and sets of individualized search terms.

f. Within 30 days of receipt of the receiving Parties' proposed revisions and additions to the producing Party's search terms, the producing Party shall provide: (a) any objections to the receiving

Parties' proposed revisions including information sufficient to support its objections to the proposed revisions and additions, and (b) a hit report for each objected to revision or addition to the search terms showing the number of hits, hits with families, unique hits for that search relative to the total number of hits, and unique hits for all search terms under discussion between the producing Party and the liaison for the receiving Parties.

g. After exchanging proposed search terms, proposed revisions/additions, and any objections to proposed revisions/objections, the Parties shall promptly meet and confer in good faith to try to resolve any disputes as to the search terms to be applied to the producing Party's materials. Any unresolved differences shall promptly be brought to the Court's attention.

h. The Parties agree that the requesting Parties may propose additional search terms to be used by a producing Party at any time prior to the close of fact discovery. For purposes of this paragraph, the DAP EC and Class Counsel shall cooperate to provide a single set of proposed revisions and additions to a Defendant producing Party and the Defendants shall cooperate to provide a single set of proposed revisions and additions to a Plaintiff producing Party. Any unresolved differences concerning later proposed search terms shall promptly be brought to the Court's attention.

4. **Otherwise Known Responsive Information:** A producing Party's use of a search methodology does not relieve it of the duty to produce information that it becomes aware of that is responsive to the agreed-upon or Court-ordered scope of a request for production, even if that information was not captured in the producing Party's document collection, review, or production.

5. **Reservation of Rights:** By agreeing to the use of a particular search methodology, the requesting Party does not waive objections that the search methodology was not implemented in a proper, effective, or good faith manner.

VI. CLAIMS OF PRIVILEGE AND REDACTIONS

A. **Production of Privilege Logs:** If a Party withholds a document (fully or in redacted form) otherwise discoverable by claiming that it is privileged, that Party shall produce a privilege log consistent with Rule 26(b)(5)(A) of the Federal Rules of Civil Procedure and any applicable local rule or procedure, except as otherwise described below. The privilege log must be detailed enough to enable other Parties to assess the applicability of the privilege asserted and should include for each withheld document (1) the sender, recipient, and each individual copied or blind copied on the document, including names and email addresses, (2) the date the document was created and last modified, (3) the file name or email subject, as applicable, (4) the document extension (e.g., .msg, .pptx, etc.), (5) the Bates number or Control Number of the document, and (6) the reason that the privilege or protection is being asserted for the particular document. Unless the

person's email address is logged, the privilege log should identify all persons that are authors, senders, and/or recipients of any documents being withheld (fully or in redacted form) under any claim of privilege or protection, and denote (through a marking such as an asterisk or on a separate list) which individuals identified on the log are attorneys and what Party each such attorney represents. The privilege log shall be produced in XLS or XLSX format. To the extent possible, available file metadata may be used to complete the fields in the privilege log.

B. **Logging of Threads.** Parties shall log all emails in a thread that are under a claim of privilege; provided, however, that a party is not required to log lesser-included (i.e., earlier-in-time) emails in that thread so long as the topmost (i.e., latest-in-time) email is logged, and any un-logged lesser-included email (1) is subject to an independent claim of privilege, (2) involves the same participants as the topmost logged email (meaning that the lesser-contained email does not reflect senders or recipients that are not also reflected on the topmost email in the thread), and (3) concerns the same subject matter as the topmost logged email (such that the description of the topmost logged email is sufficient to demonstrate the privilege applicable to the lesser-included, unlogged email).

1. **Email Chains:** If there is more than one unique branch of an email thread, each branch will be individually logged if independently responsive and claimed to be privileged or otherwise protected from discovery.

2. For the avoidance of doubt, if any lesser-included email in a thread (or any attachment thereto) is not independently privileged, the topmost email thread must be redacted rather than withheld.

3. Nothing in this Order precludes a Party from separately logging all lesser-included emails in a thread, or from requesting that the producing Party separately log lesser-included emails in particular threads.

4. In the event of a dispute over a Party's assertion of privilege over unlogged emails, the parties shall promptly meet and confer in good faith before submitting any dispute to the Court.

C. **Exclusions from Logging Potentially Privileged Documents:** The following categories of Documents need not be reflected in a Producing Party's privilege log, unless good cause exists to require that a Party do so or the Parties otherwise agree:

1. Any communications exclusively between a producing Party and its outside counsel, an agent of outside counsel other than the Party, any non-testifying experts in connection with this Litigation, or with respect to information protected by Fed. R. Civ. P. 26(b)(4), testifying experts in connection with this Litigation.

2. Communications after the filing of the initial complaint in this Litigation, exclusively between a producing Party and its corporate in-house and/or outside counsel regarding this Litigation.

E. **Documents Redacted for Privilege:** The producing Party will undertake reasonable efforts to make limited, line-by-line redactions of privileged or work product information and redacted documents will be noted as such in the Privilege Log. Redacted documents need not be logged in the first instance, so long as (a) for emails, the names of the sender and all recipients of the email are not redacted,

(b) for non-email documents, the redaction is noted on the face of the document and in a redaction metadata field, (c) the producing Party includes a metadata field (PrivRedacted) indicating that the document was redacted on the basis of privilege, so that the receiving Party can readily identify the universe of documents containing privilege redactions, if the basis for the privilege is apparent from the unredacted portion of the document. For the avoidance of doubt, no party shall be permitted to make wholesale redaction to documents, such as email bodies, to avoid the requirements imposed by this Order that privileged materials be adequately logged.

E. **Personally Identifiable Information ("PII") Redactions:** A producing Party may redact personally identifiable information (e.g., patient names or Social Security Numbers related to medical bills, procedures, or claims) provided that it is (a) irrelevant and (b) the producing Party notifies and meets and confers with the requesting Party prior to applying such redactions. If a producing Party wishes to redact highly sensitive, irrelevant information, it shall notify the requesting Party. The producing and requesting Parties shall promptly meet and confer in a good faith effort to resolve any dispute and shall submit the matter to the Court for resolution only if they are not able to reach resolution through the meet and confer process.

F. **Redaction and Withholding for Relevance Not Permitted:** Except pursuant to the Parties' agreement or, if agreement cannot be reached, through Court resolution, a producing Party may not redact information on the ground that it is irrelevant, nor may a producing Party withhold a member of a document family on such grounds.

VII. NON-PARTY DOCUMENT REQUESTS

A. **Non-Party Document Subpoenas:** All non-Party document subpoenas shall be served on all counsel of record in compliance with Federal Rule of Civil Procedure 45. Service via email on a designated service list shall constitute compliance with Federal Rule of Civil Procedure 45.

B. **Non-Party Document Productions:** The recipient of a non-Party document production shall serve a copy of that document production on all counsel of record within seven (7) days of receiving the document production. Service of documents or a file transfer link via email on a designated service list shall constitute compliance with this paragraph.

C. **Informing Non-Parties of This Order:** The Parties agree to provide a copy of this Order with any document subpoena served in this Litigation.

VIII. MISCELLANEOUS PROVISIONS

A. **Service of Discovery Requests and Disclosures:** All discovery requests and discovery-related disclosures may be served via email on a Party's ESI Liaison with copies to coordinating counsel and leadership counsel for all Plaintiffs and Defendants.

B. **Inaccessible ESI:** If a producing Party asserts that certain categories of ESI that are reasonably likely to contain responsive information are inaccessible or otherwise unnecessary under the circumstances, or if the requesting Party asserts that, following production, certain ESI is not reasonably usable, the Parties shall promptly meet and confer in good faith to try to resolve such issues. The Parties

may submit such issues to the Court for resolution only if they have been unable to reach resolution through the meet and confer process.

C. **Deleted, Destroyed, or Overwritten Materials:** If a producing Party has reason to believe that ESI, paper documents, or other materials that are reasonably likely to contain information responsive to the agreed-upon or court-ordered scope of a receiving Party's requests for production have been destroyed, deleted, or overwritten either intentionally or unintentionally, the producing Party shall disclose all pertinent facts concerning the deleted, destroyed, or overwritten ESI or hard-copy documents, including the type of data at issue, the information it may have contained, the identification of the person responsible for deleting, destroying, or overwriting it, and when that information was deleted, destroyed, or overwritten.

D. **Limitations.** Nothing in this ESI Protocol Order establishes any agreement as to either the temporal or subject matter scope of discovery or as to the relevance or admissibility of any Document or ESI. Nothing in this ESI Protocol Order shall be interpreted to require information protected by the attorney-client privilege, work product doctrine, or any other reasonably applicable privilege or immunity. The Parties do not waive any objections as to the production, discoverability, admissibility, or confidentiality of Documents and ESI.

D. **Variations or Modifications:** Variations from this ESI Protocol Order may be required. Any practice or procedure set forth herein may be varied by agreement of all affected Plaintiffs and all affected Defendants, which will be confirmed in writing. In the event a producing Party determines that a variation or modification

is appropriate or necessary to facilitate the timely and economical production of documents or ESI, including with respect to any applicable deadlines, the producing Party will notify the requesting Party of the variation or modification. Upon request by the requesting Party, those Parties will promptly meet and confer in good faith to address any issues in a reasonable and timely manner prior to seeking Court intervention.

E. **Best Efforts Compliance and Disputes.** The parties agree to use their best efforts to comply with and resolve any differences concerning compliance with any provisions of this ESI Protocol Order. If a producing Party cannot comply in a particular circumstance with this ESI Protocol Order, such party shall promptly inform the requesting Party in writing why compliance with the ESI Protocol Order is not reasonable or feasible. No party may seek relief from the Court concerning compliance or non-compliance with the ESI Protocol Order until it has met and conferred with the other party in a good faith effort to resolve or narrow the area of disagreement.

SO ORDERED.

Dated: 1/5/2025

Hon. Matthew F. Kennelly

Appendix 1: ESI Metadata and Coding Fields

Field Name[1]	Populated For *(Email, Edoc, Calendar, Contact, Cellphone, or All)*	Field Description
BegBates	All	Beginning Bates number as stamped on the production image.
EndBates	All	Ending Bates number as stamped on the production image.
BegAttach	All	First production Bates number of the first document of the family.
EndAttach	All	Last production Bates number of the last document of the family.
Custodian	All	Custodian name (ex. John Doe).
CustodianOther or CustodianAll	All	All custodians who were in possession of a de-duplicated document besides the individual identified in the "Custodian" field.
LogicalPath	All ESI Items	The directory structure of the original file(s). Any container name is included in the path.
Hash Value	All	The MD5 or SHA-1 hash value.
NativeFile	All	Native File Link.
Email Thread ID	Email	Unique identification number that permits threading of email conversations. For instance, unique MS Outlook identification number ("PR_CONVERSATION_INDEX") is 22 bytes in length, followed by zero or more child blocks each 5 bytes in length, that facilitates use of email threading.
Thread Index	Email	Message header identifier, distinct from "PR_ Conversation_ Index", that permits threading of Email chains in review software.
Email Subject	Email	Subject line of email.
DateSent	Email	Date email was sent.
DateMod	Email, Edoc	Date the document was modified
TimeSent	Email	Time email was sent.

[1] Field Names can vary from system to system and even between different versions of systems. Thus, Parties are to be guided by these Field Names and Descriptions when identifying the metadata fields to be produced for a given document pursuant to this ESI Protocol Order.

Field Name[1]	Populated For *(Email, Edoc, Calendar, Contact, Cellphone, or All)*	Field Description
TimeZoneUsed	All	Time zone used to process data during document collection and processing.
ReceiveTime	Email	Time email was received.
To	Email	All recipients that were included on the "To" line of the email.
From	Email	The name and email address of the sender of the email.
CC	Email	All recipients that were included on the "CC" line of the email.
BCC	Email	All recipients that were included on the "BCC" line of the email.
DateCreated	Edoc	Date the document was created.
TimeCreated	Edoc	Time the document was created.
FileName	Email, Edoc	File name of the edoc or email.
DocType	Email, Edoc	Single choice field that indicates the file is an email, edoc, attachment or hard copy.
Title	Edoc	Any value populated in the Title field of the document properties.
Subject	Edoc	Any value populated in the Subject field of the document properties.
Author	Edoc	Any value populated in the Author field of the document properties.
DocExt	All	File extension of the document.
TextPath	All	Relative path to the document level text file.
Redacted	All	"Yes" indicator that the document is redacted. Otherwise, leave blank.
PrivRedacted	All	"Yes" indicator that the document is redacted on the basis of privilege. Otherwise, leave blank.
Paper	All	"Y" if document is scanned from hard copy in connection with the collection and production of documents in this matter.
Confidentiality	All	Indicates any designation under a protective order entered by the Court in the Litigation or a confidentiality stipulation entered into by the Parties.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: MULTIPLAN HEALTH INSURANCE PROVIDER LITIGATION	Case No. 1:24-cv-6795 MDL No. 3121
This Document Relates To:	Hon. Matthew F. Kennelly
ALL ACTIONS	

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS

1. Defendants' Motion to Compel, Dkt. ___, is **GRANTED**. Plaintiffs are therefore directed to complete production of documents responsive to Defendants' Third Set of Requests for Production, as to any request that any Plaintiff had not originally agreed to produce documents, for all of the Requests set forth below:

Category of Requested Materials	Defendants' Third Set of Requests for Production – Request No.	Plaintiff(s) Subject to Mot. to Compel
Health Plan Entities and Defendants	Definition No. 7; Definition No. 10; Request Nos. 6, 10, 12, 13, 18-21, 25, 27, 34-37, 38-39, 45-47, 51, 54-56, 64, 67	DAPs[1]

[1] Excluding, for Request Nos. 12-13, 18-19, 51, 54-55, Adventist Health System Sunbelt Healthcare Corporation; Ascension Health; CHS/Community Health Systems, Inc.; Emergency Physician Services of New York, P.C.; Emergency Services of Oklahoma, P.C.; Southeastern Emergency Physicians, LLC; Texas Health Resources; Texas Medicine Resources, LLP; and The Methodist Hospital d/b/a Houston Methodist Hospital ("V&E DAPs"), subject to V&E DAPs providing pertinent search terms and custodians. Excluding, for Request Nos. 54-56, Bergen Surgical Specialists, PA; New Hampshire Detox and Rehab LLC dba Avenues Recovery Center At Dublin; AMS Pro Group LLC dba Wish Recovery; Avenue Recovery Center of Bucks LLC; LNA Realty Inc. dba Luxe Recovery; Sadeghi Center for Plastic Surgery; American Surgical Arts, P.C.; Kentuckiana Detox & Rehab Center LLC dba Avenues Recovery Center at Louisville; Tarzana Recovery Center; Wellness Medical Services of Manhattan; The Meadowglade, LLC; Adventist Healthcare, Inc.; Cogent Healthcare of North Carolina, P.C.; Cogent Healthcare of Texas, P.A.; Hospitalist Medicine Physicians of New Mexico - Clovis, LLC; Hospitalist Medicine Physicians of

Category of Requested Materials	Defendants' Third Set of Requests for Production – Request No.	Plaintiff(s) Subject to Mot. to Compel
Patient billing	6, 9, 11, 12, 45-46, 51, 64	DAPs
In-network services and other substitutes for OON services	6-7, 9-12, 14-16, 18-19, 21-23, 27, 29, 31, 33-35, 37-39, 41-43, 45-47, 50-52, 54-56, 57-58, 60, 67, 69	DAPs[2]
Financial performance	7-8, 24-25, 27-28, 60	All[3]
Billed charges	15-17	All
Employer-sponsored health plans	20, 21	All
Relevant Time Period	From January 1, 2013 through the present; all Requests	DAPs

2. Plaintiffs shall remain subject to any and all discovery Orders entered by the Court and subject to all deadlines set forth therein, other than as amended or otherwise set by the Court.

Texas - Houston, PLLC; Sandusky Anesthesia LLC; Sound Physicians Emergency Medicine of South Carolina, LLC; Sound Physicians of Illinois LLC; South Sound Inpatient Physicians, PLLC; Tennessee Interventional and Imaging Associates PLLC; and Elite Surgical Specialists PC ("GNS DAPs"), given they have already agreed with Defendants to search for and produce responsive, non-privileged materials in their possession, custody or control. Excluding, for Request Nos. 6, 45, 46, and 67, Center for Orthopaedics Care & Spine, LLC ("Center DAP"), given they agreed to produce responsive, non-privileged materials to the extent they exist, subject to agreement on pertinent search terms.

[2] Excluding, for Request No. 18, V&E DAPs, given they confirmed they do not intend to withhold any responsive documents (subject to negotiations regarding search terms and custodians), and, for parts (a), (b), (c), and (d) of Request No. 18, Advanced Spinal Care & Associates LLC d/b/a The Advanced Spine Center, LLC, and Heritage Surgical Group, LLC ("McKool DAPs"), given they agreed to produce non-privileged materials responsive to these portions of the request, to the extent they exist and subject to an agreement on search terms and custodians.

[3] Excluding, for Request No. 25, Center DAP, and the GNS DAPs, given they agreed to produce non-privileged materials responsive to these requests.

SO ORDERED this ____ day of _____, 2026.

Honorable Matthew F. Kennelly
United States District Judge

EXHIBIT H

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.8 (rev. 1.8.5)
Eastern Division

Multiplan Health Insurance Provider Litigation, et al.

Plaintiff,

v.

Case No.: 1:24−cv−06795
Honorable Matthew F. Kennelly

Multiplan, Inc., et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, March 2, 2026:

MINUTE entry before the Honorable Matthew F. Kennelly: In person status hearing held on 2/27/2026. Rulings made as follows. (1) With regard to privilege logging (Joint Status Report Item IV.F) the Court adopts the compromise proposal agreed to by the defendants and the DAP plaintiffs and overrules the class plaintiffs' alternative proposal. (2) With regard to the structured data Rule 30(b)(6) deposition (JSR item IV.H) the Court declines plaintiffs' request to preemptively bar certain objections or types of objections. (3) The appointment of a mediator is deferred. (4) Plaintiff's motion to compel a reasonable search [647] is granted with regard to centralized travel and expense records and referred to the Special Master with regard to text messages. (5) The motion to strike the current unclean hands affirmative defenses [646] is granted on the basis of insufficient pleading and particularity for the reasons stated at the hearing. Any motion to file an amend defense must be filed by 3/20/2026. (6) Oral ruling made on defendants' motion to compel [648] as follows: (a) The motion is denied as to topics A, F, and G; (b) As to topic D the motion is granted as to RFPs 24; 25; and 60 and denied as to RFPs 7; 8; 27; and 28. (c) Topics B, C, E, are referred to the Special Master. (7) The case is set for a further in−person status hearing on 4/9/2026 at 10:30 a.m. A joint status report is to be filed on 4/2/2026. (8) The Court advises that counsel and members of the public who cannot attend the 4/9/2026 hearing but wish to listen may do so via telephone by calling 650−479−3207, access code 2305−915−8729. No person listening by telephone will be permitted to speak; the call−in option is for listening only. An in−person appearance will be required for any attorney or other person who wishes to be heard. Anyone calling to listen is directed to mute themselves. The Court reserves the right to disconnect the telephone if callers do not mute themselves. Mailed notice. (mma,)

generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

EXHIBIT I

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE BROILER CHICKEN ANTITRUST LITIGATION	Docket No. 16 C 8637
THIS DOCUMENT RELATES TO: ALL TRACK 1 CASES	Chicago, Illinois August 25, 2023 10:10 a.m.

TRANSCRIPT OF PROCEEDINGS - Motions in Limine
BEFORE THE HONORABLE THOMAS M. DURKIN

APPEARANCES:

For Plaintiff Maplevale Farms and Company:
MR. W. JOSEPH BRUCKNER
MR. BRIAN D. CLARK
MR. STEPHEN M. OWEN
MS. ARIELLE S. WAGNER
Lockridge Grindal Nauen P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, Minnesota 55401-2159

MS. JILL M. MANNING
MR. BOBBY POUYA
Pearson Warshaw, LLP
15165 Ventura Boulevard, Suite 400
Sherman Oaks, California 91403

(Direct Purchaser Plaintiffs)

For Plaintiff Associated Wholesale Grocers, Inc.:
MR. DANIEL D. OWEN
Polsinelli
900 West 48th Place, Suite 900
Kansas City, Missouri 64112

Court Reporter:
ELIA E. CARRIÓN, CSR, RPR, CRR, CRC
Official Court Reporter
United States District Court
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APPEARANCES (Continued:)

For the Publix Plaintiffs:	MR. PHILLIP F. CRAMER Sperling & Slater, P.C. 55 West Monroe Street, 32nd Floor Chicago, Illinois 60603
For Affiliated Foods Plaintiffs:	MR. ROBERT N. KAPLAN Kaplan Fox & Kilsheimer LLP 850 Third Avenue, 14th Floor New York, New York 10022
For Affiliated Foods Plaintiff:	MR. ERIC R. LIFVENDAHL L&G Law Group LLP 175 West Jackson Boulevard, Suite 950 Chicago, Illinois 60604
For Plaintiff The Kroger Co.:	MR. DOUGLAS H. PATTON Kenny Nachwalter, P.A. 1441 Brickell Avenue, Suite 1100, Miami, Florida 33131
For Plaintiff Winn-Dixie:	MR. PATRICK J. AHERN Ahern and Associates, P.C. 8 South Michigan Avenue, Suite 3600 Chicago, Illinois 60603
For the Koch Foods Defendants:	MR. STEPHEN NOVACK MR. STEPHEN J. SIEGEL MS. ELIZABETH WOLICKI MR. JOSHUA L. LIEBMAN MS. JULIE JOHNSTON-AHLEN Armstrong Teasdale LLP 100 North Riverside Plaza, Suite 1500 Chicago, Illinois 60606-1501
For Defendant Sanderson Farms:	MR. CHRISTOPHER E. ONDECK Proskauer Rose LLP 1001 Pennsylvania Ave, N.W. Suite 600 South Washington, D.C. 20004-2533

APPEARANCES: (Continued)

For Defendant Sanderson Farms:
MR. KYLE A. CASAZZA
MR. SHAWN S. LEDINGHAM, JR.
MS. SIMONA WEIL
Proskauer Rose LLP
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Los Angeles, CA 90067

For Defendant House of Raeford, Inc.:
MR. GREGORY G. WROBEL
MR. ERIC HYLA
Vedder Price
222 North LaSalle Street, Suite 2600
Chicago, Illinois 60601

MR. HENRY W. JONES, JR.
Jordan Price Law Offices
1951 Clark Avenue
Raleigh, North Carolina 27605

(Proceedings heard in open court.)

THE COURT: All right. Let's call the case.

THE CLERK: The next case before us is Case No. 16 CV 8637, In re: Broiler Chicken Antitrust Litigation.

THE COURT: All right. Let's have the attorneys who are going to be -- expect to be speaking today state their names. Anyone who wants their attendance reflected, contact liaison counsel and that counsel should notify my court reporter so their names are on the transcript.

All right. For plaintiffs.

MR. CLARK: Your Honor, Brian Clark, Lockridge Grindal Nauen, for direct purchaser plaintiffs.

THE COURT: Okay.

COURT REPORTER: I can't hear you.

THE COURT: Okay. Yeah, so the protocol's clear, you can either come up to the podium and speak into the mic. Or you can stay seated, as far as I'm concerned, for the introductions. Just make sure you speak into a mic because -- off the record.

(Off-the-record discussion.)

THE COURT: Back on the record.

MS. MANNING: Good morning, Your Honor. Jill Manning of Pearson Warshaw for the direct purchaser plaintiffs.

THE COURT: Hang on.

(Pause in the proceedings.)

MR. BRUCKNER: Good morning, Your Honor. Joseph Bruckner from the law firm Lockridge Grindal Nauen for the direct purchaser plaintiffs.

THE COURT: Okay.

MR. D. OWEN: Good morning, Your Honor. Dan Owen from the Polsinelli firm in Kansas City. I'll be representing Associated Wholesale Grocers and presenting arguments on plaintiffs' motion in limine No. 4, defense motion in limine No. 10, which are mirror images of each other dealing with other crimes and wrongs.

THE COURT: Right. Okay.

MR. POUYA: Good morning, Your Honor. Bobby Pouya, Pearson and Warshaw for the direct purchaser plaintiffs.

THE COURT: Okay. Good morning. Your Honor, Jill Manning of Pearson Warshaw for the direct purchaser plaintiffs.

MR. S. OWEN: Good morning, Your Honor. Stephen Owen from Lockridge Grindal Nauen for the direct purchaser plaintiffs.

MR. CRAMER: Good morning, Your Honor. Phil Cramer for the Publix plaintiffs from Sperling & Slater.

MR. KAPLAN: Good morning, Your Honor. Robert Kaplan, Kaplan Fox & Kilsheimer, for the Affiliated Foods plaintiffs.

MR. PATTON: Good morning, Your Honor.

Douglas Patton with the firm of Kenny Nachwalter on behalf of the Kroger plaintiffs.

THE COURT: Okay. And for defendants.

MS. JOHNSTON-AHLEN: Good morning, Your Honor. Julie Johnston-Ahlen on behalf of the Koch defendants.

MR. NOVACK: Good morning, Judge. I'm Steve Novack, also on behalf of Koch Foods, only if Your Honor permits me to argue motion in limine 35. It's not on your list, but if there's time and if you permit me, I would like to address it.

THE COURT: What is 35?

MR. NOVACK: 35 is to bar the September 2, 2016, email and related testimony. The email was between two Koch Foods --

THE COURT: I told you this -- I told you this would be coming eventually, that one?

MR. NOVACK: That's the one.

THE COURT: Yeah. Okay, I'll let you argue it.

MR. NOVACK: Thank you.

MS. WEIL: Good morning, Your Honor. Simona Weil from Proskauer Rose on behalf of defendant Sanderson Farms. And I'm here to argue defendants' MIL No. 28, which also did not appear on your list, but in hopes that you allow me to argue that this morning -- or this afternoon.

THE COURT: Sure.

MS. WEIL: Thank you.

THE COURT: Thank you.

MR. ONDECK: Good morning, Your Honor. Chris Ondeck from Proskauer Rose appearing for defendant Sanderson Farms.

THE COURT: Okay.

MR. CASAZZA: Good morning, Your Honor. Kyle Casazza from Sanderson Farms -- from Proskauer Rose, also for Sanderson Farms.

MR. WROBEL: Good morning, Your Honor. Gregory Wrobel, W-R-O-B-E-L, Vedder Price Chicago, on behalf of House of Raeford Farms, Inc.

THE COURT: Great. Okay, thank you all.

Okay. I am prepared to rule on some of these motions. If any of them are ones that someone has prepared to argue, stop me and at least I'll know you want to argue it and I'll give you what's a tentative ruling and you can try and talk me out of it.

Okay. Let's start first with the plaintiffs.

No. 12, motion for an order permitting admission of certain documents without a sponsoring witness. That's denied. You need to follow the Rules of Evidence. If you can reach stipulations, great. If the case is unnecessarily lengthy because you couldn't reach an agreement as to admission of documents where authenticity is really not an issue, I can't force a stipulation. All I can do is appeal to your good senses and not to waste the jury's time. But Rules

of Evidence apply whether it's a big document case or a small document case. So 12 is denied.

The motions 15 through 19 by plaintiffs, was anyone going to argue that? I'm prepared to rule on it.

Okay. They're all denied. The substantive criticisms of plaintiffs' experts opinions, assuming plaintiff expert opinions come into evidence as they are in the -- as they are in the reports, these are all substantive criticisms of their opinions. Whether the criticisms are valid as a matter -- is really a matter for cross-examination.

And it's difficult for me without having studied these reports in the detail you all have and without having deposed these experts, which of course I have not, I'll listen to the direct testimony of the plaintiffs' experts. If I feel that some of the opinions upon cross-examination are not -- wouldn't have survived the *Daubert* challenge beyond -- which in effect is a motion to reconsider the *Daubert* rulings I've made, I'll consider a motion to strike testimony.

I doubt there's anything any expert's going to say that is so inflammatory that a motion to strike and asking the jury to disregard it would be something they couldn't do. But I looked over the motion and the response and this all appeared to be garden variety -- in my opinion, garden variety criticisms of opinions that is best left for cross-examination.

So motions 15 through 19, plaintiffs' motions, are denied. Let me make sure I have this.

(Pause in the proceedings.)

THE COURT: I may have misspoken when I said plaintiffs' experts. I meant defense experts. But this is relating to Cooper.

Schwartzkopf is off the table now, correct?

MR. POUYA: Correct.

THE COURT: Okay.

COURT REPORTER: I don't know who said that.

MR. POUYA: Bobby Pouya.

THE COURT: Okay. Thank you.

But the criticisms of Cooper, Johnson, Levinsohn are all denied. You can renew them after they've given direct testimony if you think there's a basis for it. But 15 through 19 are denied. And, as I said, I misspoke. These should be defense expert opinions that I referred to.

All right. No. 20, anybody going to be arguing that?

Okay. That's denied. Motion to exclude reference to the size of the plaintiffs. It's relevance -- relevant to the market context and it's not prejudicial. No one's going to be surprised at the -- most people will know as a matter of common sense the size of the plaintiffs as an industry -- or as an entity. So that's denied.

And then the -- No. 21, motion to exclude undisclosed

evidence, that's denied unless it actually happens. Seems like there's a lot of speculation that there's going to be things brought up that one side or the other doesn't know. 21's denied. If there's a use of evidence that was not part of a disclosure earlier, there's no Bates stamp on it or wasn't turned over, I'll hear the argument at that time on whether or not it's still fair game to use it or whether it should have been disclosed prior to its use.

Okay. I have a number of other defense motions where I didn't intend to hear argument unless you wanted to make it.

No. 12, this is defendant's 12, anyone expecting to argue that one?

Okay. That's granted. That's the motion to exclude current government investigations relating to defendants or the protein industry. That's simply not relevant, and that's granted.

No. 13, anybody arguing that one; defense 13? Okay.

It's a motion to exclude statement by government officials concerning alleged anticompetitive conduct in the broiler industry. That ruling's reserved. I'm not going to make a blanket ruling on that. If, in fact, there is going to be evidence, statements by government officials, flag it with me before you raise it, don't put it in opening, and if you are going to use it, bring that to my attention. And I'm reserving ruling on it so I put it in context of the case

itself. I'll have heard your openings by then, I'll probably have heard from a few witnesses, and I'll have a better opportunity to rule on this if, in fact, you're going to raise it.

And I'll stop right there for a minute. It occurred to me that many of these motions by defense to keep documents out may relate to documents the plaintiffs no longer intend to offer. I don't know. And I'll have questions to go through here to see whether plaintiffs are still offering it. But many of them relate to entities that are either out on summary judgment -- out on summary judgment or have settled.

It doesn't mean the documents aren't coming in, but I'm wondering if you're still intent on raising and offering a number of these exhibits that have been the subject of defendants' motions in limine?

Can anyone speak on behalf of the plaintiffs to that?

MR. POUYA: Bobby Pouya, Your Honor.

THE COURT: Yeah, have a seat.

MR. POUYA: Bobby Pouya, Your Honor.

We did withdraw one relating to motion in limine No. 29, so that is the one we've withdrawn and resolved because we didn't intend to use it pursuant -- pursuant to a settlement.

THE COURT: Okay. That's the Rabobank report about Mountaire?

MR. POUYA: Correct.

THE COURT: Okay, so that's out. You're not going to offer the document so there's no reason to -- the motion to exclude it is moot, correct?

MR. POUYA: Correct.

THE COURT: Okay. Thank you. Any of the others? Understanding you may -- you probably have a universe of documents that's huge that you are at least potentially going to offer. As in any case, as you get into the case and over the next couple intense weeks, you're probably going to be saying, we don't need this, we do need this. And there may be a number of documents you're simply not going to offer.

I'm just trying to see if there's any you've made a definitive decision not to use in light of settlements that were the subject of motions in limine.

MR. POUYA: We are cognizant of that, but that is the only one at this time.

THE COURT: Fine. Okay, thank you.

Okay. No. 14, that's the motion to exclude argument. Is anyone going to argue 14?

Okay. Motion to exclude argument that the production of halal, Kosher, free-range, or organic chicken furthered the conspiracy. I'm reserving on that. It -- if defendants use production of nonbroiler chicken as a defense, then plaintiffs can address it. If you're going to say your production went

down because you started manufacturing specialty types of chicken, that opens the door to plaintiffs talking about this. Of course. I don't think plaintiffs can bring it up affirmatively, though, since you excluded it from the definition of broilers.

The original complaint, of which many of you have opted out of, but which is still here on behalf of the class at this trial, your definition of broilers does not include those specialty types of chicken.

Did plaintiffs intend to use this affirmatively or is this simply something you're going to raise if defendants raise it as a reason their production went down?

MR. POUYA: Bobby Pouya, Your Honor.

It's -- it's the latter.

THE COURT: Okay.

MR. POUYA: We didn't intend to raise it affirmatively, but we -- we did want to reserve the -- the right to respond, which you've reserved.

THE COURT: All right. Well, this is -- I'll make it a more definitive ruling. If defendants raise it in their -- in their case as a basis for why production of broiler chicken went down, you're free to get into this too. It just makes sense. So the motion to exclude the argument is denied if defendants open the door.

15, anyone going to argue that one?

MR. AHERN: Your Honor, I'm prepared to argue it on behalf of the plaintiffs.

THE COURT: Okay. Well, come on down.

All right. This is a defense motion. Did anyone want to argue this on behalf of the defendant? Come on up if you do. You'll have to speak into the mic. Sorry about all this.

MR. LIEBMAN: Good morning, Your Honor. Josh Liebman on behalf of the defendants.

THE COURT: Okay. It's your motion to exclude argument that participation in industry organizations and events is evidence of conspiracy.

Briefly, is there anything you want to add to your written motion?

MR. LIEBMAN: Well, Your Honor, there's really not much to add to the written motion, Your Honor. I mean, defendants seek an order precluding argument, testimony, or evidence --

THE COURT: Slow down. Okay.

MR. LIEBMAN: -- that participation in industry organizations or events alone is sufficient to establish liability.

THE COURT: Let me stop you right there. Of course it's not. But the plaintiffs' case is more than that. Many of the defense motions were, you can't argue this is evidence

of a conspiracy because you said in your summary judgment ruling that a defendant was out if that's all they -- if that's all there was, all plaintiffs had. And I agree with you; if the only evidence plaintiffs were going to offer is that your clients went to industry meetings, I'd probably direct a verdict at the end of the plaintiffs' case. But of course their case is bigger, and by itself, that may not be evidence of a conspiracy. But when you couple it with other pieces of evidence, the economic evidence, other noneconomic evidence, they have a case that at least can go to the jury, or at least we can start the trial at anyway. I'm not going to preview any rulings on motions at the close of the plaintiffs' case.

And so I think the point you're making is a good one, mere presence in an industry meeting or participation in industry organizations -- in industry organizations, it by itself is not evidence of a conspiracy. It's routine business practice, I expect your clients will say or we'll hear evidence of it. But when coupled with other evidence, it could be evidence of a conspiracy.

And that -- what I was going to do is deny this motion. Plaintiffs have to address your participation in industry and trade association meetings. And they're free to do so. And then you can, what I expect through witnesses, talk about how it was benign or a common practice within the

industry. But to argue it's not evidence of a conspiracy is not -- that's your closing argument if that's all they come up with.

MR. LIEBMAN: Yeah. Your Honor, we agree that they should be allowed to introduce evidence of defendants participating in industry events and joining trade groups. However, what we're seeking is a ruling that prohibits them from arguing that that conduct alone is sufficient to establish the conspiracy.

THE COURT: Okay. Come on over. State your name, please.

And stay up here, if you can, because I may have more questions.

MR. AHERN: Patrick Ahern on behalf of the Winn-Dixie plaintiffs.

THE COURT: Are you going to argue that participation in an industry meeting or event, some trade association meeting is by itself evidence of a conspiracy?

MR. AHERN: We are not.

THE COURT: Okay. There -- I think that is sufficient. The motion's denied.

And is there anything else we need to address on this subject?

MR. AHERN: No, Your Honor.

MR. LIEBMAN: No, Your Honor.

THE COURT: Okay. Thank you both.

Okay. 16, motion to exclude evidence of defendants' use of publicly available data.

Anyone intending to argue that one?

Okay. This is denied. I'm not sure why the defendants think that evidence that defendants analyzed publicly available data is likely to confuse the jury. To the extent it's true that you used publicly available data, you'll have to educate the jury why that is again something that's benign and common in the industry and not by itself evidence of a conspiracy.

As I said, I think the plaintiffs' case is likely a mosaic. There's no real smoking gun. They're going to introduce a variety of -- from what I understand, they're going to introduce a variety of pieces of evidence that in and of themselves, any one individually considered would not by itself be evidence of a conspiracy. If they introduce an array of evidence that by itself any one particular piece may not be evidence of a conspiracy, they're free to argue that the combined weight of those pieces is evidence of a conspiracy. And so 16 is denied for that reason. It's publicly available data. You can explain why there's a good reason to use it that has nothing to do with acting against your self-interest.

Okay. 17, motion to exclude evidence of corporate

antitrust compliance policies.

Anyone going to argue that?

All right. That's relevant. The motion's denied, but only the trial -- the corporate antitrust policies of the three defendants on trial. I don't want to hear about Tyson's or Pilgrim's corporate policy -- not I don't want to hear. I'm not going to allow you to put in evidence of other antitrust compliance policies other than of the three defendants on trial. So that's denied.

Motion to -- 18, anybody going to argue that one?

All right. The motion to exclude testimony that particular conduct is illegal or immoral. This motion doesn't reference any witness or subject matter, and it's denied. You're free to make arguments -- or make objections during trial if someone goes over the edge and argues something is immoral. That's not really something we judge in a courtroom. That's done in a church or a temple. It's not in a courtroom. But if the arguments are over the top, object, and I'll rule on it in the context of the argument and the trial. But as a general matter, that motion is denied.

Motion to exclude evidence of corrective measures.

Anyone going to argue that one? That's 19, defendant 19.

Okay. It's denied. I agree with plaintiffs' argument that if defendants were to testify it was their

practice to make public statements about supply cuts, then plaintiff should be permitted to introduce evidence that they did not make such statements after the filing of the complaint. Likewise, if defendants were to present evidence regarding their regular practice of attending industry events, plaintiff should be able to introduce evidence that those practices changed after the filing of the complaint.

Those aren't subsequent remedial measures under 407, as I understand it. But defendants have to open the door to postsuit conduct. In other words, if defendants were going to get up and testify what we do, this is routine, it's fair game on cross to say that routine stopped after the lawsuit was filed.

If that's the case and that cross takes place, defendants can say, of course we stopped doing it; they sued us for it. We didn't think there was anything wrong with it, but they sued us for it, and to avoid being sued or to avoid, you know, being criticized in a courtroom for it, we stopped doing it. I'll allow that explanation. But defendants have to open the door to get there.

I want -- if the plaintiffs intend to cross defendants about changes in their conduct postsuit, don't raise it in opening and raise it with me before you do that cross, and I'll give you a ruling on whether the defendants have opened the door to that. But defendants are on fair

notice of what I will consider opening the door. So that motion's denied, subject to the caveats I've just explained.

No. 20, anybody going to argue that one, defendant's 20?

Okay. This is the motion to prohibit general reference to defendants or the industry. That's denied in part. This is done by way of objection. It's a conspiracy case, so collective reverence is usually appropriate. But if there is a question that talks in general terms about the industry and you think it is unfair to the three defendants on trial to have a witness give generalized testimony to an industry that had some -- what did we have, 19 defendants when it started? -- make your objection and I may direct the witness to answer as it relates to the three defendants on trial.

So that's something to be done contemporaneously at trial. And the jury will be instructed at the close of the case that liability has to be analyzed and assessed individually anyway. They're going to get that instruction. So it's denied in part. And make your objections in the course of the trial.

No. 21, anybody going to argue that one?

Okay. This is the motion to exclude any evidence or arguments about alleged consumer harm or higher prices paid by consumers, such as ordinary citizens, including the jurors,

who purchased chicken from stores or restaurants.

Well, of course you can't appeal to jurors' emotions. There should be no argument that you, members of the jury, paid higher for your -- higher prices for your chicken sandwich at Chick-fil-A because of these defendants. You can't argue that, of course. It's the Golden Rule prohibition. You all know it and don't make such an argument.

But higher consumer prices for chicken is a fact of this case, it's part of the economic evidence in this case, and that won't be excluded. But don't appeal to the jurors' individual pocketbooks in any argument or in the form of a question. So that's denied in part. But the fact of higher prices of course can come in as evidence.

No. 22, anyone going to argue that one?

Okay. This is the motion to prohibit use of the term price-fixing. That's denied. Price-fixing is not an inherently prejudicial term. And the case -- the theory of plaintiffs is that supply was restricted to raise prices. That's a form of price-fixing. Whether it's true or not is for a jury to decide, but the use of the term is not so inherently prejudicial that it can't be used. So 22 is denied.

No. 23, was anyone going to argue that?

MR. ONDECK: Your Honor, Chris Ondeck for the defendants.

If the Court's inclined to deny it, we would ask to be heard.

THE COURT: No, I'm inclined to grant it.

MR. ONDECK: Thank you.

THE COURT: This is a motion to exclude photos of chicken production and references to factory farming and big chicken. This case isn't about chicken production conditions, so photos aren't relevant or necessary. It also doesn't seem -- there doesn't seem to be a reason to refer to defendants as factories or big -- big chicken.

But plaintiffs are going to be given some leeway to explain the industry, which often involves photos and diagrams. Make sure you clear any prejudicial photographs with defendants, and if defendants object to it, show them to me and I'll find out. People aren't going to be surprised to see pictures of chickens in a case like this, but we don't need to have a slaughterhouse which might offend some jurors and be overly prejudicial, because this is not about production of chicken -- not about the chicken production conditions.

So the motion's granted with the caveat that plaintiffs, and defendants, undoubtedly are going to use some photographs or diagrams that portray the actual chicken itself, or the eggs. But anything prejudicial that -- show it to the other side, and if you think it's unduly prejudicial

and you can't agree, bring it to my attention.

Okay. 24, was anyone going to argue that one?

This is the motion to prohibit reference to net worth, private jets, and political affiliations. There's been a stipulation no mention of politics. Generally wealth is irrelevant so -- certainly, there's going to be economic evidence, I assume, brought in about the defendants in some form, but no undue emphasis on individual wealth of owners or officers of a defendant.

But plaintiffs can explain in connection with how defendants' executives communicated with each other that they may have -- it may have taken place at a resort or a private -- some type of private residence or private club and how they got there. I'll give some leeway to the plaintiffs on how the -- how the traveling took place or whether communications may have taken place in a private jet, for instance.

I don't know the particulars of the evidence at this time. But in general, most of this is irrelevant. If you think you're going to raise something about -- that might appeal to the pecuniary prejudice of a juror, raise that with me before you do it so that we don't have to deal with that in a contemporaneous objection.

You know better than I do what that evidence is. And if it's something that you in your good sense know would

likely be used to dirty up defendants, raise it with me first. Don't make me have to ask a jury to disregard something that they just heard. So motion's denied in part and granted in part consistent with my oral comments right now.

No. 25 relates to a Mr. Kostner. Is -- is he being called as a witness?

MR. CLARK: Your Honor, he is being called, but plaintiffs have discussed this and we are willing to not reference the testimony that's at issue on 25.

THE COURT: Okay. Then this motion to prohibit references to the issues in -- described in the motions is granted by agreement, correct?

MR. CLARK: By agreement, yes.

THE COURT: Okay. Very good.

COURT REPORTER: Brian Clark?

MR. CLARK: Brian Clark.

COURT REPORTER: Thank you.

THE COURT: Okay. No. 26 and 27 were either mooted or stipulated.

No. 28, I think you wanted to argue. Okay, we'll get to that.

No. 29 is now out.

No. 30, was anyone going to argue that one? And is it still your intent to put in the June 27, 2011, Saywell email?

MR. CLARK: Yes, Your Honor. Brian Clark.

THE COURT: All right. That motion to exclude is denied. Mountaire was not granted summary judgment, but they settled. There's no basis to exclude an email that presumably was authored by a Mountaire employee.

That's correct, right, it was emailed by a Mountaire employee?

MR. CLARK: Yes, Your Honor.

THE COURT: Yeah, that motion's denied. There's no reason that document can't come in.

And I'll say this about all these rulings: They -- they're not meaningless in the sense that they are -- don't carry any force. But any motion in limine -- and I think I put this on my Web page, and I'll renew it right now -- any motion in limine where I've either granted or denied it and you think that circumstances have changed during the trial that make that ruling obsolete or something that you think I ought to reconsider, you're free to do so.

It's -- you're all freely seeking motions to reconsider my summary judgment ruling; you can do the same on motions in limine. And probably even more so because that deals with the dynamics of a trial that change every day. And if you think there is something about a ruling where I may now have a better understanding of the evidence than -- in the middle of trial than I do right now, that's very common. And

you're free to renew a request to either put something in or keep something out that may be inconsistent with the ruling I made today. So I'm not saying what we're doing today is meaningless, these are the rulings, but if you feel you have good reason to ask me to revisit it, I won't be offended if you do.

All right. No. 31, this is the motion to exclude Bloomberg articles about Joe Grendys.

Any argument going to be heard on that one?

Okay. That's denied. Statement of Koch employees to the media are admissible as admissions. Statements about the industry generally have some relevance and defendants are free to call the speakers to further explain their comments. The comparison to similar comments by Fieldale is not a good one, as the Fieldale ruling was simply that those types of general industry comments were not by themselves evidence of being in a conspiracy.

But just like some of the previous rulings, these are relevant comments and could simply be part of a larger mosaic of evidence the plaintiffs will be allowed to present. So No. 31 is denied.

32, was anyone going to argue that one?

MR. NOVACK: Judge, if you're about --

COURT REPORTER: Name, please.

THE COURT: Oh, yeah.

MR. NOVACK: Apologize. Steve Novack for Koch Foods. And I didn't say the firm. If we were here before August 1st -- April 1st, I would say Novack and Macey.

THE COURT: That's what I thought it was.

MR. NOVACK: We're now -- now the Chicago office of Armstrong Teasdale.

THE COURT: Oh, okay. I was wondering what happened to Novack and Macey. All right. Go ahead, sir.

MR. NOVACK: We're still really the same.

Judge, on this one, the evidence that plaintiffs have signaled they're going to try to put in relate to exchange of two reports, a bottom-line report, Agri Stats with Amick, and a Bank of America. Both of those reports go to profitability. Neither of them, neither of them gives any information about the individual production or production plans of any other producer. So we think that, yes, was there an exchange? Yes, but it was of something that's totally irrelevant to the conspiracy alleged in this case, which is all about production reduction.

THE COURT: Okay. Anyone want to respond on behalf of plaintiffs? And please state your name.

MS. WAGNER: Yep. Arielle Wagner at Lockridge Grindal Nauen for DPPs.

So we think these should be deferred until trial. This should be resolved in context. But the reports

themselves are not conspiratorial. Their exchange is probative of the conspiracy. They are relevant and they should be allowed in.

THE COURT: All right. I'm going to deny the motion. You can revisit it later at the trial if you wish, but I -- the sharing of Agri Stats and Bank of America reports may not itself be evidence of a conspiracy and may not contain production data, as Mr. Novack said, but plaintiffs ought to be allowed to introduce it with other evidence. It -- it reflects communications between competitors.

Now, maybe it's benign, maybe it's perfectly legal, maybe it's routine and part of an industry practice, but communications between competitors, sharing Agri Stats and Bank of America reports I believe at least goes in some -- in some way to the evidentiary weight that can be attached to an argument that plaintiffs have that there was a free exchange of production information.

I know this wasn't production information. It's a profitability report and a Bank of America report. But this type of exchange, I think again, can be argued. I think excluding it is unnecessary. I don't view it -- either of it as being so prejudicial that its probative -- its prejudicial impact is -- outweighs its probative value. It's got minimal probative value, but it shows communications.

Mr. Novack, maybe I'm -- if I'm misapprehending the

nature of what this is, I'll be happy to defer on this, but I'm giving you my preliminary ruling.

MR. NOVACK: I hear you, but, Judge, acknowledging that it doesn't relate to production --

THE COURT: Right.

MR. NOVACK: -- I think answers the issue, because the jury's going to sit there and think, well, wait a minute, if this evidence is coming in, it must be relevant; it must go to the conspiracy being alleged. It's so easy for them to confuse it. Why else would they be hearing about these communications? They're not hearing about communications where they were talking about the weather. It must be because it's relevant. And it's not relevant. These -- these producers are permitted to talk to each other about anything in the world, as long as it's not conspiratorial about reducing competition. There's nothing in here about reducing competition.

THE COURT: Well, and that'll be your opening statement, that communications are routine between defendants and that they don't necessarily implicate a production conspiracy. I'll -- since I -- I don't have these reports in front of me, I'll defer, but I'm giving you what my view is.

MR. NOVACK: I hear you.

THE COURT: Don't raise it in opening, but when it's time to introduce it, I will hear this argument again. But

I'm telling you what I think on -- in general on this case. There's going to be a lot of communications, and whether you consider them benign and plaintiffs don't is something that you can argue before the jury. But I'll defer No. 32.

MR. NOVACK: I greatly appreciate the deferral. Thank you.

THE COURT: Okay.

MS. WAGNER: Understood.

THE COURT: Okay. All right.

All right. 33, anyone going to argue that one? Is Kaminsky going to be called as a witness?

MR. CLARK: Yes, Your Honor, he'll be called live -- Brian Clark -- in plaintiffs' case-in-chief.

THE COURT: As an adverse witness?

MR. CLARK: Yes.

THE COURT: Okay. All right. I'm going to deny the motion. This article was attached to the Koch email. Kaminsky can be questioned about it and he can explain the meaning of it if the parties so choose. But 33 is denied.

34 is the motion to exclude the August 24, 2011, emails and related testimony regarding increasing their Urner Barry index.

Anyone going to argue that one?

Okay. That motion's granted. These emails seem pretty far afield. It's granted without prejudice to

plaintiffs renewing a request for admission later in the case. But plaintiffs in general should not be allowed to prove a price index manipulation with Urner Barry. That's not what this is about. Georgia Dock's already out, and I'm granting 34.

35, I know Mr. Novack wanted to argue this one. Might as well do it now.

This is the motion to exclude "I told you this would be coming eventually."

And I assume someone on the plaintiffs' side is prepared to argue for its admission.

Okay, Mr. Novack, proceed.

MR. NOVACK: Thank you, Judge.

The email does not say, "I knew this was coming." The email starts with three important words: "I told you." So what's relevant about this email? What did he tell Mr. Buckert? That's the issue. There's only two people that were involved in that conversation. Both of them have put in sworn evidence that nothing, and I mean zero, was said about antitrust activity, zero was said about an antitrust lawsuit, or expecting an antitrust lawsuit.

These are two guys at a company that as it was getting bigger, more and more lawsuits were being filed, and they're exchanging to each other, now the industry is really profitable. This is 2016, four years after the alleged

conspiracy. The industry is profitable and they're saying, you know what, the industry's getting profitable, we're getting bigger, we're getting profitable. There's going to be more of these lawsuits. That's what the conversation was.

In that -- in that context, this -- this -- and this email, if it were interpreted the way the plaintiffs want, the plaintiffs are saying this is a confession. They might as well have said, I hereby confess with my Miranda warnings and everything else. That's not what happened here. It's not what happened in the conversations and not what happened in an email -- in an email about the conversations. That's all the email was about, was conversations.

And, Judge, it doesn't even make any sense that conspirators would be saying, well, we know we're going to get sued, but let's keep going. That's just not -- it's not even common sense.

THE COURT: Well, this was Grendys and Buckert, right?

MR. NOVACK: Buckert, that's right.

THE COURT: Buckert. Are they both being called as witnesses?

MR. NOVACK: They -- we're told that Mr. Grendys is going to be called in plaintiffs' case. If he's not, we will call him. We don't know about Buckert. If he's not called, we will call him.

THE COURT: So they're both going to be there to explain this?

MR. NOVACK: They -- they will be, Judge, that's for sure. But this is one of those documents, when you balance under 403, 403 talks about, yeah, there might be some relevance, but what's the prejudice? And when explained in context, even if it's explained beautifully by these two witnesses, and beautifully maybe even by me in closing, they've got this document maybe in the jury room and they say that, well, wait a minute, plaintiff said that's a confession. Well, that's the end of this issue. I don't want to hear -- I don't want to think about any other evidence. That's what this document is going to be used for. They market PX1 for a reason. We know it's the first thing they're going to talk about.

THE COURT: Did -- were they both deposed?

MR. NOVACK: They were both deposed. Mr. Grendys was not asked about this document.

MR. CLARK: Well, let me --

MR. NOVACK: I'm sorry; I misstated that. Mr. Grendys was asked about that document at his deposition. We objected on the grounds that it was work product. Your Honor later ruled that it was not. And they never -- and we said -- and it was understood that if the objection was overruled, they'd redepose Mr. Grendys. They -- they chose

not to.

THE COURT: And how about Buckert?

MR. NOVACK: Buckert was deposed about it.

THE COURT: What did he say?

MR. NOVACK: He said just what I said; they had conversations. It was about the multiple lawsuits and the expectations there would be multiple more lawsuits as they got bigger. And Mr. Grendys put this in a declaration that was offered and -- and part of the summary judgment proceedings.

THE COURT: And what -- this was a September 2, 2016, email, correct?

MR. NOVACK: That's correct.

THE COURT: All right. What was the date of the filing of the complaint?

MR. NOVACK: The same day.

THE COURT: Okay.

MR. NOVACK: It was an email in the morning. This was a knee-jerk reaction relating to the conversation.

THE COURT: It followed the filing of the lawsuit?

MR. NOVACK: It did.

THE COURT: All right. I'll hear from plaintiffs.

MR. CLARK: Your Honor, the interpretation of a CEO saying he knew within a couple of hours of a lawsuit being filed about alleging an antitrust conspiracy that he knew that would be coming eventually, that is a core issue on what he

meant when he said that that the jury is meant to resolve.

Under 401 and 402, this goes to the core of the very issue at trial whether there was an antitrust conspiracy. Koch clearly has some alternative explanations it wants to offer. We did try to examine Mr. Grendys about this document, but before, he had many months to think about what it could have meant. And later, then we did depose Mr. Buckert. We waited to ask Mr. Grendys about this till trial.

It's what he wrote. It's, frankly, almost an excited utterance. It's the same day he received news of this. And his first reaction to one of his senior vice presidents is: "I told you this would be coming eventually." Of course it's prejudicial. That's why we're going to use it. But that's not unduly prejudicial under 403.

So we think there's -- there's really no question it's relevant and there's no question it's unduly prejudicial. This is an antitrust case. This is a CEO receiving notice of an antitrust case and telling a senior executive contemporaneously, "I told you this would be coming eventually." We think that goes to the jury.

THE COURT: All right. Go ahead. If you have a brief rebuttal, but very brief.

MR. NOVACK: Okay. If there's any suggestion that they were looking for this lawsuit and they had some -- somebody out scouting the court filings, this came from a big

law firm cold-call seeking the business of defending the case. Nobody from Koch went out and looked for this lawsuit. We get an email from a big law firm, Mark Kaminsky sends it to Joe, and Joe says, "Holy smokes, this is what kind of thing we were just talking about. And says to Lance: I told you this was coming. But the "this," what's the "this"? Only those two know what the "this" was. There were only two people at that conversation. That "this" was about lawsuits in general. And they never spoke about antitrust. There's no words that Joe Grendys put in this email that said anything at all about antitrust activity.

THE COURT: Okay. Well, I'm not the fact finder. The jury's going to have to decide this. The motion's denied. The timing is just too close to the filing of the lawsuit. If they want to get up and say, this was the email from Morgan Lewis trying to get their business, they can say it. If they want to say this was something about we're a big company and we're getting sued all the time, they can say it. But the timing is such that a jury ought to be able to decide whether that's what it was or something innocuous or it's something that relates to prior conversations saying, we're going to get sued for what we're doing.

I -- yeah, I think you both will have plenty to argue on this, and I'm -- the fact that both are going to be testifying about this is part of the reason for my ruling. So

No. 35, defense 35, is denied.

MR. NOVACK: Thank you for hearing me, sir.

THE COURT: Defense 36, was anyone going to argue that?

MR. WROBEL: Your Honor --

COURT REPORTER: I can't hear you.

THE COURT: Well, come on up. I was going to reserve on this. There's some 50 documents described that you want to keep out, at least that's how plaintiffs characterize it. I didn't add them up. But I'm assuming the -- plaintiffs were -- were the plaintiffs going to be using any of these documents in their opening statement?

MR. CLARK: Likely some of them.

THE COURT: Then you're going to have to isolate the ones that you intend to use. I'm not going to go through rulings on motions in limine on 50 documents without having a better understanding of the case. If there are any of the ones that are in this motion that you intend to use in opening statements or in one of your first couple witnesses where you need a ruling, bring it to my attention, you can file a separate brief filing saying these are the ones we're going to use.

Meet and confer with defense counsel for House of Raeford, or I'll call it Raeford, see if they object to those. And if you do, bring it to my attention if it's your intent to

use them in opening, and we'll discuss it at the final pretrial conference. But it's got to be a subset of the 50. I'm assuming you're not using everything up front.

MR. CLARK: I think that's correct, Your Honor.

THE COURT: Okay. Very good.

Okay. No. 37, the motion to exclude Harrison board minutes.

Are plaintiffs intending to offer these?

MR. CLARK: Your Honor, Brian Clark.

I don't think we've made a final decision on that. You're right, though. Harrison is not a party at the trial.

THE COURT: Right. And so my -- as I read this, I thought, are we fighting about something you're not going -- are we disputing something that you're not going to be using. If -- I'll defer on 37. If you are going to use it, talk to the other side, see if they object to it. Presumably they do since they moved to exclude it. And if you can't reach a resolution, bring it to my attention before you use it at trial.

It seems on all of these, we'll get to this in a minute, the mere fact that it's a party that's no longer in the case, a communication with them doesn't mean they can't be offered. There may be evidentiary basis to put it in, but Harrison board minutes, they're likely business records, but I don't know if you're going to call a Harrison witness to lay a

business record foundation and see if you're really going to use it before we get too deep into it. So that'll be deferred.

Okay. I've gone through many of the ones that I think I wanted to dispose of more quickly. Let's get right to the -- let's do plaintiffs' No. 2. It's the motion to exclude evidence of procompetitive justifications for defendants' conduct. Plaintiffs point out in their reply that defendants do not dispute that evidence of procompetitive effects are benefits of the alleged restraint is admissible in a per se antitrust case. But defendants point out they're not seeking to introduce evidence for the purpose of proving the alleged conspiracy was necessary to maintain profitable business -- businesses. Rather, they deny the existence of the alleged conspiracy entirely, including any participation in it.

I'm -- I'd like to hear argument on this. So this is plaintiffs' motion, so you may proceed first.

MS. MANNING: Thank you, Your Honor. Jill Manning of Pearson Warshaw on behalf of the direct purchaser plaintiffs.

In this case, Your Honor, the defendants may seek to make arguments that -- and introduce evidence that the unlawful conduct was necessary in order to keep a profitable business or that had procompetitive or other good effects.

Now --

THE COURT: Those are two distinct things though.

MS. MANNING: They are; they are.

THE COURT: Focus on them separately, if you could.

MS. MANNING: They are two distinct things. So in a per se antitrust case, procompetitive effects and benefits are not part of the analysis. Now, defendants have agreed they're not going to introduce any evidence of procompetitive effects or benefits, and that's why we asked for the stipulation. So I think the distinction is -- under their analysis is what type of evidence is evidence of procompetitive effects or justifications.

Now, if defendants intend to admit evidence that its production cuts had good results, that would create a risk of jury confusion. And the ABA section has a -- has a model jury instruction stating that good intent is not a defense of a per se Sherman Act claim.

THE COURT: Good intent for their company or for the industry in general? I don't think -- I think they've agreed they're not going to argue we cut these -- we cut production to help the public or to help -- to help the public.

MS. MANNING: Let me give you an example, Your Honor.

THE COURT: Okay.

MS. MANNING: So in -- so Koch Foods issued a press release in 2008 regarding its 3 percent production cut and it stated: "We view this as a move that supports the industry and demonstrates our obligation as one of the leading broiler

production companies in the United States to address the lackluster markets relative to the unprecedented increases in commodity cost inputs."

Now, we think that this is evidence of a good result for the industry.

THE COURT: You want to keep that out?

MS. MANNING: Not the production cut, no, but the justification.

THE COURT: Okay.

MS. MANNING: Because a defendant can't argue -- and relatedly, a defendant can't -- we know we're going to hear from Koch that they had significant financial concerns. And poverty is not an excuse for an illegal restraint of trade.

If the Court looks at the *In re Sulfuric Acid* case, 743 F.Supp. 2d 827, An unforgiving market offers no excuse for violating antitrust laws. In writing the Sherman Act, Congress did not permit the age-old cry of ruinous competition and competitive evils to be a defense of price-fixing conspiracies.

That evidence, Your Honor, could -- the jury could be -- could be swayed by that type of evidence, Your Honor, and it's simply not appropriate as a defense to a per se antitrust case.

THE COURT: All right. Response.

(Pause in the proceedings.)

THE COURT: Okay.

MS. JOHNSTON-AHLEN: I think the --

COURT REPORTER: Name, please.

MS. JOHNSTON-AHLEN: Oh, sorry. Julie Johnston-Ahlen, Armstrong Teasdale, on behalf of the Koch defendants.

I think the problem with this motion in limine, first off, it's constantly changing. They mention in the motion in limine two examples of the evidence that they wanted to keep out. Neither of those examples had anything to do with Koch's 2008 announcement. So that's news to me.

I think the -- the distinction here is that, for example, in the three cases they cited, in those cases, there was an agreement. That wasn't a question in those cases. There was an agreement, there was a rule, or there was an agreement that everyone conceded was the agreement. And the question was, does that agreement violate the antitrust laws? Here, the main question is, was there an agreement? And we need to be able to argue from our evidence that the actions that we took were independent and not part of an agreement.

And the two things that they mention in their motion, the two pieces of evidence, the first one is a statement in Koch's summary judgment motion. They -- now, they -- they put it in their motion in limine as a quote, but it's not a quote.

It doesn't appear anywhere in Koch's motion in support -- or memorandum in support of its motion for summary judgment.

Koch says specifically that Koch's cuts that they implemated -- implemented in 2008 gave them $10 million in positive cash flow. And the reason why is because corn prices were very high. Koch was out liquidity, and so when Koch cut production, it saved -- by reducing breeder hens, it saved money by not having to buy corn to feed those birds. Koch was desperate. It didn't think it was gonna have enough money to buy corn to feed the birds that it needed to feed so that it didn't have a, you know, animal rights crisis.

So -- so that has nothing to do with Koch saying, yeah, there was a conspiracy, but we did this for a good reason. Koch's saying no, there wasn't a conspiracy; this was independent action we took to try to save ourselves in 2008 and we need to be able to explain how we did that and what the result was.

And the second example that they give is a similar example with Mountaire. Mountaire says something to the effect of, we reduced our bird size because at the time of the crisis in 2008 it was not profitable to make a 9-pound bird. We had to reduce the bird size because corn was so expensive that we -- you know, it just wasn't feasible to do it. It was in their own independent best business judgment.

And -- and this is a key point in the case. And the

reason why they bring this motion is not for the reason that they -- that they say they are. And that -- you can see that from the two examples that they give. They are trying to keep out critical evidence that the defendants need to put in to show that they were acting independently and not as part of a conspiracy.

THE COURT: All right. Last word.

MS. MANNING: Your Honor, we -- we understand that the defendants are going to seek to admit evidence that their production cuts were in their unilateral self-interest and did not result from an anticompetitive agreement. And we think that it would be -- but we think that some of the evidence strays a little bit too far into the area of procompetitive benefits or justifications, so I think it's -- I think it's appropriate to grant the motion and say that evidence of procompetitive effects and justifications are not admissible, but that the Court would rule on specific pieces of evidence given the -- specific evidence that they're going to seek to introduce, which again we don't know exactly what that is, and then based on the context in which they attempt to introduce it, Your Honor.

MS. JOHNSTON-AHLEN: If I --

THE COURT: Well, the -- briefly. I think I'm ready to rule.

MS. JOHNSTON-AHLEN: Yeah, I mean, there's -- I'm not

aware of anything that any defendant raised on summary judgment that would fall under what they're talking about. This is just a not necessary motion in limine.

THE COURT: Well, procompetitive justifications for antitrust violations are -- are not a legal defense to an antitrust violation. That's a statement of law. I'm going to deny the motion, but if there is something -- defendants have to be able to talk about why they took certain actions. They were going out of business, there's a plant that they had to close because of labor issues, corn prices, whatever the justification is, and they cut production because it was in their own economic self-interest, not because they were engaged in a conspiracy with other producers. They're allowed to do that. They have to do that.

If you think there is something in a document they raise that somehow raises the issue to the jury that the actions could have been taken for the greater good of consumers in general, ask for a limiting instruction and I'll -- if you don't ask for it, you won't get it, but ask for it at that moment and work on the language with defense. I think they basically agree with you, but you differ on whether certain pieces of evidence implicate this rule of law that procompetitive justifications are not proper.

Ask for a limiting instruction at the time such a document is offered, and I'll consider reading it to the jury.

And we can even put it in final instructions. These are things you all have to remember. But I'll include it in final instructions, because there's nothing wrong -- that's not an incorrect statement of the law and makes clear to the jury what -- what the proper actions of a defendant can be and what is not allowed.

Okay. Any questions on that?

MS. MANNING: Thank you, Your Honor.

THE COURT: So the motion's denied with the proviso that an instruction can be raised, if necessary.

MS. MANNING: Thank you.

MS. JOHNSTON-AHLEN: Thank you.

THE COURT: Okay. Thank you.

All right. No. 3, motion in limine to exclude references to the Court's summary judgment order or dismissal of any party.

Is anyone going to argue that?

Okay. That's granted. Neither side is permitted to try to exploit the fact that certain defendants have been dismissed or settled. You -- my ruling shouldn't come in in front of the jury at all.

Mr. Novack.

MR. NOVACK: Yes. I just want to make sure this -- that we get a clarification on this. We agree, we absolutely agree nobody should mention summary judgment, dismissal,

Court's rulings, or the like. But we certainly should be permitted to be able to, say, cross-examine an expert who keeps the nonconspirators who are not being accused of conspiracy in this trial, they won't be accused of conspiracy in their analysis of whether there was an industrywide conspiracy.

THE COURT: We'll get to that -- we'll get to that in defendant's No. 1.

MR. NOVACK: Okay.

THE COURT: I recognize that's a key issue in this case, and we're going to get to that. This is the discrete issue of mentioning the summary judgment order or dismissal of any party, which is the summary judgment order. That is not something to be brought to the jury.

MR. NOVACK: Thank you.

THE COURT: So that motion's granted as to plaintiff's No. 3.

Plaintiff's No. 4, introduction of other bad acts.

Was anyone going to argue that one? Okay.

MR. D. OWEN: Yes, Your Honor. Dan Owen for Associated Wholesale Grocers, a direct action plaintiff.

Sir, we just seek a straightforward application of Federal Rule of Evidence 404(b)(2). We completely agree with defendants that other bad acts like, for example, Pilgrim's guilty plea that they fixed prices with competitors of broiler

chickens, that that can't be used to show anyone's propensity to do that.

THE COURT: Can be or cannot?

MR. D. OWEN: It cannot be used --

THE COURT: Yeah, okay.

MR. D. OWEN: -- for anyone's propensity to do that. However -- and that's 404(b)(1).

404(b)(2) lists a series of permitted uses. It's not an exclusive list, but it includes motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

And I want to focus the Court on the facts of the case, the very important core facts of how this conspiracy got started and why 404(b)(2) evidence might be relevant, depending on how it all comes in, but certainly might be relevant and, therefore, shouldn't be excluded.

This conspiracy got started by Pilgrim's and on June the 2nd I stood in the well of the Court here and went through some of the evidence. I won't belabor it. But Pilgrim's made statements in January of 2008 that the rest of the market is going to have to pick up a fair share. They come back in May of 2008 and say, only about a third of the industry stepped up to the plate and made production cuts and we believe additional cutbacks will be necessary. This is how the conspiracy got started.

Now, the defendants will quite -- may well say that this is innocent; this is innocuous; this doesn't show anything; it doesn't show that they had the motive and the intent that they were making a plan. And our enjoinder to that is, oh, yes, it -- oh, yes, there is something that shows that. Pilgrim's has already shown that they have a motive to fix prices in the broiler chicken market involving the same commodity, during the same period of time, with the same competitors. And that shows their motive, it shows their intent, and so on and so forth.

And I -- there's -- there are a number of Pilgrim's pieces of evidence that I could go on that that is our -- our basic point, that we need to be able to show that this was not an accident, that when -- when Pilgrim's called upon its competitors to cut, it did so with a motive and intent as part of a plan and not simply in an accidental way.

THE COURT: All right.

MR. D. OWEN: So that's the core of our -- that's the core of our --

THE COURT: Couple questions.

MR. D. OWEN: Yes.

THE COURT: A big focus of the motion relates to bid-rigging. Is there any evidence the three defendants in this case were involved in bid-rigging that you have? Now, maybe you're developing it, maybe you're going to put it in

Track 2, but is there any -- as to other defendants -- but is there any evidence that these three defendants on trial were engaged in bid-rigging?

MR. D. OWEN: No, I am not -- that's nothing we intend to put in. However, Pilgrim's, although they are -- they've settled out, they are still a coconspirator, even though they settled out, and they're the most important coconspirator because they're the ones that got it going in January of 2008, according to our theory of the case.

THE COURT: Are you offering bid-rigging evidence at all?

MR. D. OWEN: Absolutely not. I mean --

(Indiscernible crosstalk.)

THE COURT: Not as to these defendants -- let me finish.

Not as to these defendants or as to any of the coconspirators in this case?

MR. D. OWEN: Well, when Pilgrim's pled guilty to what was called "bid-rigging" and "price-fixing" with the -- again, with the same conspirators or in the same period of time involving the same commodity, when they pled guilty to that, it was both bid-rigging and price-fixing. And it involved a motive; it involved the intent; it involved a plan to have communications.

And so we're not trying a bid-rigging case here.

We're not trying to prove anybody rigged bids, but we are trying to prove that the major conspirator co- -- Pilgrim's had motive, intent, plan, preparation, and the other 404(2) items.

THE COURT: Did they plead guilty? I haven't seen the plea -- the plea agreement's somewhere in the thousands of documents in this case. I haven't looked at it in a while.

Did they plead guilty to anything related to the core complaint in this case of supply reduction?

MR. D. OWEN: They pled guilty to two things: bid-rigging and price-fixing.

THE COURT: Was the price-fixing relating to the bid-rigging, or was it related to price-fixing in the sense I used earlier where prices are manipulated because of the manipulation of production?

MR. D. OWEN: I can't answer that other than to, you know, refer the Court to the face of the plea agreement.

THE COURT: I'm assuming it didn't, because if it did, that would be front and center in this case, because you've got a major producer pleading guilty to the conduct you're alleging in this case is improper.

MR. D. OWEN: I understand what the Court's getting at. They didn't plead guilty to supply restrictions.

THE COURT: Okay.

MR. D. OWEN: No question. I understand what you're

getting at. And we couldn't bring it in for that evidence -- that purpose anyway to say, look, you have a propensity to restrict supply.

THE COURT: What are you trying to bring in, then? What is -- I don't need a --

MR. D. OWEN: Sure.

THE COURT: -- lengthy, but what is it you want to bring in that -- well, let me break it down even further. Is there anything you're bringing on Pilgrim's that reflects communications with these three defendants on supply reduction?

MR. D. OWEN: Well, Pilgrim's did have communications with some of these defendants. But the question is -- our purpose in bringing it in is to show that Pilgrim's led this entire conspiracy; they got it going; they encouraged others; they policed it. That's our intention.

Now, when we do that, the defendants, if they're good lawyers, and they are, are going to say, you're wrong, Pilgrim's was not leading a conspiracy; they were just speaking in their own self-interest. You're wrong, Pilgrim's may have said they were encouraging others or -- at one point Pilgrim's said they had a quote, plan, end quote, to restrict the supply of chicken and thereby raise the price. And the defendants are going to say, well, that really wasn't the plan.

We think that the Pilgrim's guilty plea that they fixed the price of chicken using the same commodity, same period of time, and same coconspirators is extremely relevant, and that it's not unfairly prejudicial.

THE COURT: To be clear, you want to -- I thought you weren't going to offer a guilty plea of Pilgrim's. You're going to put that in?

MR. D. OWEN: I think the guilty plea for Pilgrim's should come in, at least -- at least it should not be excluded. And I will point out that --

THE COURT: What's the difference?

MR. D. OWEN: What's that?

THE COURT: What's the difference? Should come in, should not be excluded? We're talking the same thing, right?

MR. D. OWEN: It should not be excluded at this point. It may -- the Court may want to see how the evidence comes in, the way the defendants respond to our allegations about Pilgrim's.

THE COURT: All right. Anyone arguing on behalf of the defense?

And, sir, you can stay up here because I may have questions, so you might as well just stand at the other podium or, you know, both stay up here. Thank you.

MR. ONDECK: Chris Ondeck from Proskauer for the defense.

This is propensity evidence. It's barred by 404(b)(1). To the extent that there's a test in the Seventh Circuit, it's set forth clearly in the case *United States v. Gomez* (2014), which was an *en banc* holding. And the Court there spoke to this directly. And the cite on that is --

THE COURT: I'm familiar with *Gomez*. Every judge in this courthouse is.

MR. ONDECK: Thank you, Your Honor.

I was just going to say it for the record, but I think on 763 F.3d 856, the Seventh Circuit said there: To resolve this inherent tension in the rule, we have cautioned that it's not enough for the proponent of the other act evidence simply to point to a purpose in the permitted list -- permitted is in quotes -- and assert that the other act evidence is relevant to it. Rule 404(b) is not just concerned with the ultimate conclusion, but also with the chain of reasoning that supports the nonpropensity purpose for admitting the evidence.

Your Honor, we've looked at the plaintiffs' briefs and we've sought to determine what the explanation would be in the list of possible permitted purposes: motive, opportunity, intent. We just heard -- even heard accident. We cannot determine what the purported purpose of the plaintiffs would be other than a recitation in their briefs of the permitted purposes.

The other thing we'd note, Your Honor, is I believe all those briefs were written when Pilgrim's was still going to be a defendant in this trial. And the briefs in many instances, or at least one I can think of, say the plaintiffs need this to prove their case against Pilgrim's, and then they say, and the other defendants generally. Pilgrim's has settled; they're not here. That's the big development. The prejudice to the defendants, particularly to the three defendants at trial, would be extreme, irreparable.

So, Your Honor, I can speak further on it, but that's -- that's the core of our argument.

THE COURT: Okay. Well, plaintiffs didn't put a *Gomez* analysis in their motion, and I didn't see the *Gomez* case cited in your motion. And that's fine. But that's the law in this circuit as to admissibility of 404(b) evidence. The jury's not going to hear about anybody pleading guilty. That is overwhelmingly prejudicial. We turn a civil case into a criminal case, or the specter and scent of a criminal case by adding a guilty plea in.

If there are facts that -- if I even allow anything in about what Pilgrim's admitted to, it would have to be sanitized so that it was not in the context of a guilty plea. It might be an admission. But I'm not even sure that's going to get there because there's no 404(b) analysis.

The motion in limine to permit introduction of other

bad acts, which I read the motion as talking about bid-rigging, not about anything that -- well, I read it about bid-rigging, which I think has nothing to do with this case. That is denied. You can't put in bid-rigging evidence in this case. That's why we bifurcated these cases.

If there's something about supply reduction admissions by Pilgrim's or initiation of a conspiracy involving supply reduction, I'll hear it on 404(b) if -- you can renew your motion using the proper test in the Seventh Circuit under *Gomez*, but under no circumstances should anybody in this case ever mention a thing about a criminal guilty plea by Pilgrim's in this case in front of the jury. I don't think I could be clearer about that. I agree completely with defense, that's -- it's impermissible and will not be allowed.

So the motion to permit introduction of other bad acts is denied without prejudice. You want to renew it when I've got a better feel for the case and it relates to supply reduction, not bid-rigging, I'll hear what you want to put in then. And if you do it, it's only going to be in the context of some way where the -- if I allow it, it won't be in a manner in which it's part of an admission in a factual basis of a guilty plea.

Okay.

MR. D. OWEN: Thank you, Your Honor.

THE COURT: Thank you all.

All right. We have time, I think, for a few more. Let's see. Yeah.

All right. The next one is No. 5. I may have tipped my hand on this one. This is the motion to permit adverse inferences from Fifth Amendment dep answers.

Was anyone going to argue on behalf of the plaintiffs?

MR. BRUCKNER: Yes, sir. Joe Bruckner for the direct purchaser plaintiffs.

Your Honor, we're here today seeking a ruling allowing us to seek an adverse inference from certain witnesses' refusal to testify on their invocation of the Fifth Amendment. This is --

THE COURT: So I understand -- and I'm sorry to interrupt, but I do it all the time, so --

MR. BRUCKNER: Not at all.

THE COURT: None of the people who took the Fifth work for any of the defendants, correct?

MR. BRUCKNER: I'm sorry; for -- work for these three defendants?

THE COURT: Yeah.

MR. BRUCKNER: That's correct, they're all affiliated with Pilgrim's.

THE COURT: Right, Pilgrim's, and one of them I think was a case when he took the Fifth, but he was at Pilgrim's

before, or one of the other defendants.

MR. BRUCKNER: Correct.

THE COURT: So they're all Pilgrim's employees.

MR. BRUCKNER: Yes.

THE COURT: Okay, go ahead.

MR. BRUCKNER: Your Honor, this motion -- our motion No. 5 is a mirror image, essentially, of the defendant's motion No. 11. We're seeking the chance to make the necessary showing so that we can ask Your Honor to allow the inference. And the defendants want to cut this off right now.

So the five witnesses, as I mentioned, they were all affiliated with Pilgrim's at some point. They were Roger Austin, Jayson Penn, William Lovette, Timothy Stiller, and Thomas Lane. Now, of course, this motion is within the Court's broad discretion and they need to be decided case by case, depending on whether the inference is trustworthy under all the circumstances.

I first want to clarify a misconception. These witnesses' refusal to testify in our case was related to this conspiracy, not to the bid-rigging conspiracy and not to the bid-rigging criminal charges.

And I'll make a couple of points in that regard. Number one, all of our questions were related to this case, not to bid-rigging or not to what was going on in the criminal case.

THE COURT: They were under active investigation in the criminal bid-rigging case at the time they were questioned, correct?

MR. BRUCKNER: No, that's not correct, Your Honor.

THE COURT: Oh.

MR. BRUCKNER: At the time, especially Penn, Lovette, and Austin, by the time they testified in our case and took the Fifth to every substantive question we asked, the criminal charges either had been dropped or they had been acquitted. So the whole basis upon which defendants say they invoked the Fifth Amendment in this case, that is the pendency of the criminal charges, that's not the fact, it's just not true, and -- and therefore, that rationale for not allowing the inference, it doesn't hold water in this case.

THE COURT: Well, was there a statement by the Department of Justice they were no longer under investigation for bid-rigging? Any competent criminal attorney is going to tell their client to take the Fifth on anything, whether they got acquitted or not, unless they have a letter of immunity or statutory immunity. There's no competent criminal lawyer that would ever tell their client anything differently.

MR. BRUCKNER: Okay. I -- I don't know the answer to that, Your Honor, I confess. And maybe one of my colleagues do.

THE COURT: Sure.

MR. BRUCKNER: But as I say, they had been either acquitted or those charges had been dropped at that time. And other witnesses in the same situation did not invoke the Fifth. Either they testified, or in the case of Mr. Arrendale from Fieldale, although he initially testified and invoked the Fifth, he later withdrew that invocation. So they didn't have to, but they chose to. And -- and that's their right. But we ought not to be punished as a result by a ruling now precluding us from even making the showing that we ought to be allowed the inference.

THE COURT: Are any of these witnesses going to be called?

MR. BRUCKNER: Yeah, they're on our list, Your Honor.

THE COURT: Okay.

MR. BRUCKNER: All five of them are on our list.

THE COURT: Would they be called for any reason other than to establish they took the Fifth during the deposition?

MR. BRUCKNER: I suspect their testimony isn't gonna be any different than it was before, but that's -- that's why we put them on our list.

THE COURT: Okay.

MR. BRUCKNER: And we will make the showing. We'll show that there was a conspiracy; we'll show that there -- Pilgrim's was a ringleader of the conspiracy; we'll show their close affiliation with Pilgrim's. In the case of Mr. Penn and

Mr. Lovette, they were the CEO of Pilgrim's, and you can't get any more central to a company than that. We'll show that Pilgrim's was in a conspiracy with these three defendants that are remaining at trial.

I also want to point out, Your Honor, we didn't get interested in these witnesses just because they invoked the Fifth Amendment. We had been -- we have seen them as central and key since the outset of the case. We quoted -- we cited Mr. Lovette in our first complaint in the case. And they were -- we had them become document custodians; they were targets of possibility of depositions; we sought depositions in the case. So they were central to the activities that we say are core to the conspiracy in this case.

And as I say, Lovette and Penn were both CEOs. These were high-level production decisions that were made by Pilgrim's, a coconspirator. That is, do we increase production? Do we cut production? Do we slaughter breeder hens early? Do we break eggs? What are our competitors going to do? This isn't handled by some regional sales manager somewhere. These questions were all core to the conspiracy in this case.

THE COURT: So I'm clear -- and I'll hear defense argument in a minute -- but so I'm clear, the questions, though, when they exercised their Fifth Amendment privilege were undifferentiated. They exercised it as to bid-rigging

and they exercised it as to supply reduction, correct?

MR. BRUCKNER: Correct.

THE COURT: They didn't selectively say, I'm not going to talk about bid-rigging, but I will talk about supply reduction or vice versa?

MR. BRUCKNER: Correct?

THE COURT: Or they didn't say, I'm not going to talk about supply reduction, but I'll talk about bid-rigging since I've been acquitted?

MR. BRUCKNER: Correct. As to any substantive question, they took the Fifth.

THE COURT: All the way through, other than their name.

MR. BRUCKNER: On things like, you know, is this email dated January 1 of something, they'd answer that, they answered their name. Some of them answered as to what their title and position was, others did not.

THE COURT: Okay.

MR. BRUCKNER: But for any substantive question, they took the Fifth.

THE COURT: Fair enough. Okay.

Defense argument, then we'll take -- I'll rule and then we'll take our break --

MR. BRUCKNER: Okay.

THE COURT: -- because the prisoner's here.

Odd we're talking about the Fifth Amendment when -- in that context.

Go ahead.

MR. ONDECK: Your Honor, Chris Ondeck for the defendants.

So, Your Honor, our argument, and we said in our briefs, is this isn't a close call in that the potential ramifications to the -- to the three defendants who will be at trial will be severe if these invocations were let in.

We'd note that we think the Court already addressed this in the summary judgment order. Your Honor just mentioned it as to Case. On page 48 of the summary judgment order, we had read and are instructed by the sentence, The plaintiffs argue that an adverse inference should be drawn against Case based on Lovette, one of these five employees that Your Honor just mentioned, invoking the Fifth Amendment at his deposition and refusing to answer questions about his work for Case. But Lovette clearly refused to testify because he was criminally investigated --

THE COURT: Slow down. Slow down, please.

MR. ONDECK: Pardon me, Your Honor, because I'm reading. I apologize.

He was being criminally investigated on charges of bid-rigging for his work at Pilgrim's, concluding that criminal case was only tangentially related to the allegations

in this case. It is not a basis for an adverse inference against Case.

Your Honor, that was true as to Case. It's even more true for an adverse inference against the three defendants who will be in trial who did not employ these people. The big development here is Pilgrim's has settled. That's -- that's the big change. The prejudice therefore would be so extreme that it would be irreparable, and -- and we need to make sure -- we need to make our record on that.

And, Your Honor, the *State Farm v. Abrams* case, one of the cases we cited in this district in 2000, notes there needs to be some showing of a relationship of loyalty to the party against whom the adverse inference would be made. And there isn't any. Pilgrim's took a plea; these witnesses did not. And certainly, they have no relationship of loyalty to these three parties.

THE COURT: Okay. All right. I don't need a reply, unless you have something brief you want to raise.

MR. BRUCKNER: No, Your Honor.

THE COURT: Okay. The motion's granted. Both the motion -- defense motion 11 to prohibit the mentioning before this jury or the receipt of an adverse inference from Pilgrim's employees who took the Fifth. That should not be in front of this jury. And No. 5, the motion to permit -- plaintiff's 5, motion to permit adverse inferences for

Fifth Amendment dep answers is denied.

I'm not going to permit it. Pilgrim's is not on trial. It would be very unfair to the three defendant companies for an adverse inference to be raised in the very, I think, unique circumstance of a company that has settled and is not in this case, having employees take the Fifth, when I believe, as I did in the summary judgment opinion, they took the Fifth in large part because of bid-rigging, not because of supply reduction.

There have been dozens and dozens of people that have talked about supply reduction in depositions in this case. No one felt the need to exercise the Fifth Amendment privilege related to that because the criminal investigation that the Department of Justice was engaged in related to bid-rigging.

And in retrospect, I probably shouldn't have stayed discovery in this case, but I did. But now that I've known what happened, we should have been doing this trial two years ago rather than the stay that occurred because of the criminal investigation. That's water under the bridge.

Just as I said there'll be no introduction of a criminal plea by Pilgrim's in the previous motion, there will be no introduction of the taking of the Fifth by these witnesses. If you intend to call them as witnesses in this case, you're going to have to raise it with me and we'll see, but I'm not sure I'll -- I'd even allow them to testify.

No one's taking the Fifth in front of this jury, as far as I'm concerned. It's -- the prejudicial impact far outweighs any probative value, and an adverse inference against these three defendants would be uncalled for because of the implications of a Fifth Amendment privilege by Pilgrim's employees. So that's the ruling.

We will break now. I have another matter, and we'll break till, let's say, 12:45. We'll come back at that time. Thank you all.

If you wouldn't mind, you can stay in the courtroom, but please be quiet. Or I'll give you a couple of minutes to leave so that it won't interrupt the next proceeding. Thank you.

(A recess was had from 11:34 a.m. to 12:48 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE BROILER CHICKEN ANTITRUST LITIGATION,	
	Docket No. 16 C 8637
THIS DOCUMENT RELATES TO: ALL TRACK 1 CASES	Chicago, Illinois August 25, 2023 12:48 p.m.

TRANSCRIPT OF PROCEEDINGS - Motions in Limine
BEFORE THE HONORABLE THOMAS M. DURKIN

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THE COURT: All right. I wanted to apologize to people on Webex. Apparently you were not able to hear very clearly the proceedings this morning, so hopefully it's fixed. I apologize for that.

In ruling on plaintiffs' motions 15 through 19, I said that I misspoke when I addressed the substantive criticism of plaintiffs' experts. And I corrected myself and said I should have referenced defendants' experts, but I should have stuck with what I originally said.

My reference to plaintiffs' experts was correct because plaintiffs' motions seek to exclude the aspects of defendants' expert opinions that criticize plaintiffs' experts. So I was right the first time when I found that defendants' expert opinions are all substantive criticisms of plaintiffs' experts, and that any fault plaintiffs find with those criticisms is for cross-examination and not a reason to grant plaintiffs' motion to exclude the aspects of defendants' experts opinions, which plaintiffs raised in their motions 15 through 19. So that should clarify my reasons for denying plaintiffs' motions 15 through 19.

Defendants' 10, which I granted, to keep out the -- well, actually plaintiffs' 4 I had granted to keep out the bid-rigging evidence. The flip side of that is defendants' 10, so defendants' 10 is granted to keep out bid-rigging, just as plaintiffs' 4 to admit bid-rigging was denied.

Plaintiffs' 5, to put in the -- to seek an adverse inference from the invocation of the Fifth Amendment privilege by certain witnesses, I had denied allowing plaintiffs to permit that adverse inference to be drawn and to put that evidence in. The mirror image of that is defendants' 11, which is to keep that out. Defendants' 11 is granted.

All right. Plaintiffs' 7 is a motion to preclude reference to how plaintiffs or lawyers became involved -- how plaintiffs became involved in the lawsuit.

Did anyone expect argument on that?

Counsel, you did?

MS. WOLICKI: It depends on how you're going to rule on it.

THE COURT: I intend to -- well, what's the -- if you want to -- my preliminary view is to deny this motion if --

MS. WOLICKI: Okay. Then I will sit back down. Thank you.

THE COURT: Well, plaintiffs' counsel may want to hear otherwise on this.

MR. BRUCKNER: It would be a mirror image of counsel's statement. If you're going to deny it, I would like to argue it.

THE COURT: Go ahead.

MR. BRUCKNER: Joel Bruckner for the Direct Purchaser Plaintiffs.

The motion seeks to exclude references to how the plaintiffs or the lawyers became involved in the litigation. There's actually a tail end of motion *in limine* No. 6 that is subsumed by this one. Two of the three points in motion No. 6 were resolved by stipulation. The remaining one in 6 is covered by 7, so that would wrap that up.

Anyway, there's only two conceivable grounds to allow this. One is relevance. Two is credibility. We take the position that the information is entirely irrelevant how the plaintiffs or their lawyers came to be involved in the litigation.

The main issues in the case are did the plaintiffs buy broilers directly from the defendants? That's a yes or a no. Did the defendants violate the antitrust laws or not? If they did, were the plaintiffs injured, and if they were, in what amount? And how a plaintiff or how a lawyer came to this litigation has no bearing on that.

It also doesn't have any bearing on the plaintiffs' credibility. There's -- that information is not going to show whether they're biased or untrustworthy. And it's important to note the defendants deposed the class representatives years ago, and if there was any basis to show that how they came to this litigation had any impact on their credibility, you can bet that it would have been featured front and center in the defendants' briefs, yet, they are entirely silent on it.

So we see that there is no bearing on the plaintiffs' credibility whatsoever.

THE COURT: Well, your clients are the class reps, correct?

MR. BRUCKNER: Correct.

THE COURT: We also have a variety of other plaintiffs.

MR. BRUCKNER: That's true, all of whom also have been deposed. And, again, there's -- and the defendants' brief is absolutely mum on how this impacts their credibility. And if there had been anything in those depositions, as I say, you can bet your bottom dollar we would have seen it in those briefs.

And we also think it's just unfairly prejudicial. It's going to send the jury down a rabbit hole that they ought not to. It's going to have them focus on things other than the central issues in the case.

THE COURT: Response.

MS. WOLICKI: Sure. As we set forth in our papers, there are cases that show that it's relevant for personal knowledge, credibility, motivations, and filing suit, so I won't reiterate the points that we made in our papers. But in addition, the timing and circumstances under which plaintiffs became involved with their attorneys is also relevant for defendant's statute of limitation defense.

THE COURT REPORTER: Name, please?

MS. WOLICKI: Elizabeth Wolicki for the Koch defendants.

THE COURT: All right. You're calling plaintiffs to say they believed they were injured. I know in an antitrust case when the point of the conspiracy is to hide the conduct of defendants, it's unusual for a plaintiff to independently go out and do it absent attorneys.

But I'll let them explain that. They can explain. If defendants want to cross the plaintiffs about how it is they got involved in this lawsuit, they're free to say I was cheated and I didn't know it. And until these lawyers came to me and asked whether I'd join the lawsuit, I didn't even know. So it's both ways.

The motion is denied, but you're opening the door if you want to get into the how they got involved in the lawsuit to the secret nature of -- necessarily of an antitrust conspiracy and how they didn't even know they were taken advantage of. So that's the ruling on that.

Thank you.

MS. WOLICKI: Thank you, Your Honor.

MR. BRUCKNER: Thank you, Your Honor.

THE COURT: Okay. No. 9 it is stipulated to. And I haven't gone over the ones that have been stipulated to. I am working off the stipulations you had, so the next one that is

not is No. 9.

Was anyone going to argue that one? Otherwise, I'm prepared to rule.

Okay. This is the motion to preclude argument that plaintiffs had a duty to mitigate.

There is no duty to mitigate. I don't think plaintiffs' product preferences or product demands, they're not related to damages, but product preference and demands could be related to market conditions.

I don't know how the product preferences of plaintiffs are prejudicial. Some plaintiffs wanted small birds. Some wanted other types of cuts of chicken. I don't see how that turns the evidence into a blame-the-victim type situation. What a customer orders is really part of the story of the case.

So I agree with the defendants that the plaintiffs are somewhat vague in what particularly they want to keep out. You need to -- the defense needs to stay away from a failure to mitigate, but if this is about what the product preferences are, that's not prejudicial and it's relevant. If there's something that turns into, by cross-examination, something the defense or the plaintiffs, rather, believe is a blame-the-victim type of argument, make your motion, and I'll hear it in the context of an -- overall context of a trial.

So that's denied in part. Can't raise an argument

about a failure to -- a failure to mitigate, but you can certainly bring up product preferences and demands. So it's denied in part, No. 9.

Numbers -- plaintiff 10, which is the motion to preclude references to plaintiffs' business and marketing practices. I had asked for argument on this. Are the parties prepared to argue it?

Okay. I'll hear first -- it's plaintiffs' motion, so you can go first.

MR. PATTON: Good afternoon, Your Honor. Douglas Patton with the DAPs.

I appreciate actually being able to address this because I think the parties are talking past each other a little bit in their papers.

Defendants' position in their papers, which they've clarified, is they want to show that plaintiffs' use of reporting services, trade associations, attendance at social events equals normal business practice, or proves normal business practices. Essentially defendants want to draw a parallel between plaintiffs' normal practices or behavior with their behavior with Agri Stats trade associations and social events.

One thing about Nielsen's. If the Court doesn't know, Nielsen's is the company that does the TV ratings. They -- it used to be you'd go into a supermarket and you see

price checkers, and they're checking prices. It's public information. Now it's electronic. Nielsen collects the information at a point of sale. It publishes the information. It's average. If you want to know what a loaf of bread costs in America on a given day, you go to Nielsen data.

The problem is here, and this is why I think we were talking past each other, the defendants fundamentally misconstrue what plaintiffs expect to do at trial with Agri Stats and with trade associations.

To be clear, it's not the conduct of Agri Stats. It's not that they issued reports. And as Your Honor pointed out earlier, it's the conduct of the defendants and what they did with those reports. It's that these reports provided an opportunity.

It's the same with trade associations. It's not that plaintiffs attended trade associations. It's what the defendants did, their conduct at these trade associations and their conduct at these fishing events or junkets, as Your Honor has referred to them.

There is no evidence that I'm aware of or the defendants have pointed out that the plaintiffs went further and engaged in illicit conduct or traded Nielsen reports or communicated pricing and production. And so that's essentially the disconnect and the 401 problem that the defendants have here.

Presenting evidence of plaintiffs' ordinary conduct is irrelevant to defendants' illegitimate conduct, which -- or conduct arising out of these activities that we challenge.

Certainly they're predicate facts, the fact that defendants attended -- you know, received Agri Stat reports or attended, but we link it up to their conduct. Defendants don't link it up.

And so, stated differently, the defendants are entitled to dispute that they participated in trade associations, engaged in questionable conduct; but when they step out of those facts and start -- out of that factual arena and they start to reach over and try to get plaintiff -- facts about plaintiffs' ordinary participation, they're introducing evidence that doesn't have a tendency to make their conduct more or less probable, and that's the 401 problem.

If I could take two seconds, I think Judge Gilbert got it right back in 2017 with respect to trade associations. We -- plaintiffs had agreed to produce protein-related trade associations but defendants wanted more, and what Judge Gilbert said is DPPs have not alleged that defendants' mere participation in a trade association, including communication with competitors at trade association meetings, shows defendant conspired to fix prices. Instead, DPPs alleged trade --

THE COURT: Slow down a little if you're reading.

MR. PATTON: DPPs' claims do not turn on the fact that defendants were members of and participated in a trade association but rather on what defendants did through their participation in trade associations. Of course, it would not be a defense to allege illegal conduct on behalf of plaintiffs in this case to say that the DPPs engaged in that conduct. This Court thus finds DPPs' participation in trade associations is only marginally relevant to the claims and defenses in this case if it's relevant at all.

Very briefly, Your Honor, I think there's a 403 problem, too. There's two parts to it.

This creating the plaintiffs did it and so it's okay that we did it, it's really -- it creates a superficial distortion of the facts in this case. And it will -- it's designed to confuse the jury. It's designed to get the jury thinking or maybe the client, you know, is this okay, is that okay? It's designed to shift the focus to the plaintiffs' activity -- activities.

And to rectify that, that's the other 403 problem, is we're going to get into a sideshow and we're going to waste time and we're going to waste time on our clock, which is we're going to have to show the difference between Nielsen and the commercially sensitive information that Agri Stats provided, how the trade associations are different. We're going to waste jurors' time. This case should not be about

putting plaintiffs on trial.

Unless Your Honor has any questions, I would submit that this case should be about the defendants' conduct and not irrelevant and prejudicial information regarding plaintiffs' conduct.

Thank you.

THE COURT: All right.

Defense?

MR. WROBEL: Good afternoon, Your Honor. Gregory Wrobel for the defendants.

You've touched on this subject already with defense MIL 15, so I'm not sure how much more argument is needed. I think the comments there, although I don't have a transcript, had to do with a mosaic of evidence that may be used for a variety of purposes at trial. I think this is another circumstance where the same reasoning applies.

The defendants are entitled to submit evidence that sales reporting services used by the plaintiffs or participation in trade organizations and related social events are normal business activities, not in and of themselves evidence of an antitrust violation. Mr. Patton said that they always link it up to specific unlawful conduct, but that's simply not the case.

Their allegations and their evidence includes, you know, mere phone calls with no context as to what they're

about or about attendance at an event with no evidence about what was discussed or contrary evidence to their allegations.

So I think the context of the fact that companies on both sides of this market engage in this type of activity and that it's part of normal business behavior is something the jury is entitled to hear and consider.

The suggestion that it's not relevant, you know, I think is put to bed by those comments. The notion that it's a distortion of the facts or confusing to the jury and therefore prejudicial under Rule 403 I think is a misnomer. The jury can certainly apply common sense to understand why the evidence is being submitted, and the defendants are entitled to explain why it's being submitted.

The ruling by the magistrate judge I think, if anything, shows that there is some relevance to this information.

THE COURT: I think you said "if any."

MR. WROBEL: I understand. It really wasn't his call. He was --

THE COURT: I understand.

MR. WROBEL: -- ruling on a discovery issue. It's for you to decide.

But I don't think that it's been resolved by anything that the magistrate judge ruled on earlier in the case. You know, the case law has all been fully explained in the briefs.

I could certainly touch on it, but I'm not sure that there's a need to. There's certainly courts that have held in very similar cases that this type of evidence is admissible by the defendants and has been used at trial.

THE COURT: All right. Well, I don't see the relevance. Plaintiffs are going to put in the defendants engaged -- are members of trade associations and submit the sales reporting services. And plaintiffs want to mention -- or I'm sorry -- defendants want to mention plaintiffs do the same thing.

Plaintiffs aren't on trial. They're not accused of anything. If their membership in these organizations is improper, then they should get sued, but that's not the suit I have.

I will, though, consider an instruction that participation in such organizations is not per se illegal. I think that's fair because it's true. There's nothing -- and that takes it out of the realm of the "we did it and if we're accused of doing it, plaintiffs did it, so there's nothing wrong with it."

That's an argument that shouldn't be made. But if you want an instruction that mere participation in a trade association or utilization of sales reporting services is not per se illegal, I'll give it to you because I think that's one fair way to handle this issue.

But I do agree getting into what the plaintiffs do and why they're in it is -- with an entirely different group of trade organizations is a sideshow and unnecessary for this case.

Were you going to add something, sir?

MR. CASAZZA: Yes, Your Honor.

THE COURT: Go ahead.

MR. CASAZZA: Kyle Casazza from Proskauer Rose for Sanderson. May I be heard, please?

THE COURT: Yeah.

MR. CASAZZA: Thank you, Your Honor.

We anticipate that plaintiffs will be repeatedly arguing to the jury that defendants' membership in these organizations and that the Agri Stats reporting service was unusual, and we would ask that to the extent they suggest that there was anything unusual about either trade organization membership or benchmarking services that, Your Honor, that that would then open the door to presentation of evidence that other large companies, including, but not limited to, the DAPs participate in trade organizations and engage in exchanges of confidential information through benchmarking services.

THE COURT: No, I'm not going to allow that. You can get that instruction. You have experts that can talk about what is standard in the industry. If they're experienced in the chicken industry, they can talk about it.

You can cross-examine plaintiffs' expert. Maybe they've already given you bad answers in deps, but you can cross-examine them about whether something is unusual or not. But we are opening up a completely different can of worms to allow you to get into what plaintiffs are involved in.

It's different sets of trade associations. I don't know what the motivations are for the plaintiffs to be involved in those. It's a false comparison, I believe.

So you can get that instruction, and the instruction is it's not per se illegal. I'm not going to say it's not -- you know, it's not per se unusual.

That's a factual argument you can make through witness testimony, but I think the instruction balances the concerns defendants have and the concerns plaintiff have. And you can craft an instruction for my approval, and at an appropriate time during the trial, I'll read it.

MR. CASAZZA: Thank you, Your Honor.

THE COURT: Okay. Thank you all.

MR. WROBEL: Thank you, Your Honor.

And thank you.

THE COURT: Okay.

All right. The next one is plaintiffs' 11. Did anyone intend to argue that one? It goes with defendants' 8.

MR. KAPLAN: Robert Kaplan for the Affiliated Food plaintiffs.

THE COURT: Yes, sir.

MR. KAPLAN: And on behalf of the plaintiffs.

So this has morphed into something that wasn't intended. Defendants say plaintiffs, in their opposition page 33, are not entitled to an order that would deprive defendants of the ability to introduce evidence of nonparallel behavior and lack of plus factors.

We're not trying to do that. That's not what this motion is about. We're not trying to preclude their evidence.

This motion in part was prompted by this joint -- this JSA, joint sharing agreements, defendants have, and all we want is what's already provided by the law, joint and several liability that if they're found to be part of a conspiracy, they're joint and severally liable for the whole -- for all the damages. There's no proportional fault. They can't say I pay less of it than you do or something like that. That's all that is intended. But in their opposition brief, they've turned it into something else, but we're not trying to preclude their evidence.

THE COURT: I think they admitted --

MR. KAPLAN: They do.

THE COURT: -- the unremarkable fact that there's joint and several liability --

MR. KAPLAN: Right.

THE COURT: -- on these claims, and there's no set --

if there's setoff, it's away from the jury and frankly away from me.

MR. KAPLAN: Right.

THE COURT: That's unrelated to anything I'm going to adjudicate and anything the jury adjudicates.

I thought that was all you were looking for, and I thought defense agreed to that. Is there more out there?

MR. WROBEL: So, Your Honor, Greg Wrobel again for the defendants. And there will be another argument related on D 8, but maybe you want to hear that together because they're mirror images to some extent.

I think there is more because, you know, the premise of joint and several liability is that there's a single conspiracy. And the plaintiffs, until they were really forced to acknowledge a position during the summary judgment argument in response to your own direct question have been very noncommittal about that. And they said that there were conspiracy periods in 2008 and '9 and again in '11 and '12.

The nature of the conduct at issue here is that it's highly circumstantial. It has to do with parallel conduct regarding internal business decisions over production and dealing with operational concerns, financial concerns, which can break out quite differently for individual defendants during those two time periods, and they did.

So it's not a foregone conclusion that the evidence

in this case will show that there was a single conspiracy during some entire time period, given the plaintiffs' acknowledgment that they and their experts have cabined, you know, the illegal conduct and the consequences of it into discrete time periods means that joint and several liability would not necessarily apply over those time periods. And we're entitled to put in evidence to show that participation did not occur in one or both time periods for any defendant at the trial.

THE COURT: Well, if a jury -- if they were instructed to make this finding and they found that there were two conspiracies, periods, not one, then if a -- they would have to be asked whether or not a defendant -- they'd have to be asked several questions: One is, is there one conspiracy or two; and if there are two, was one of the -- was each defendant in both conspiracies or just one? That would make a difference on damages.

MR. WROBEL: Yes, we agree.

THE COURT: And plaintiffs may argue this was a single conspiracy over 2008 to 2012 or later that involved two discrete production reductions, supply reductions. And -- or but they can argue that those supply reductions took place in the middle of a broad conspiracy period.

It may very well be the jury has to decide whether or not there's a single or a two-phase conspiracy. I never said

it in the summary judgment ruling. I never made a ruling that there were two conspiracies or one. And if -- if the evidence is such that you believe there is -- if defense believes there's a basis for the jury to have to decide there being two conspiracies and that your client, if a member of any of them, wasn't until -- was just in the first one or just in the second one, that can be handled by a special interrogatory to the jury.

It would make a huge difference on damages if it turned out that there were two conspiracies and your client was only in one of them. If it's one conspiracy, it doesn't matter when you got in or when you get out unless you have an affirmative statement to withdraw from the conspiracy, which I don't think anybody has. But you join a conspiracy that runs for five years and you join in the last year, you're on the hook for the first four years is my reading of the law.

If you disagree, I'm happy to argue about that, but I go back I guess to what defense -- or what plaintiffs' counsel said, this is just a motion to preclude argument or evidence of limited liability or proportional damages. There are no proportional damages in this, but limited liability if there are two conspiracies may, in fact, be true.

MR. WROBEL: That's the danger we're concerned about, Your Honor, is that they're going to try to use, you know, any *in limine* motion that's been granted here to preclude evidence

that we believe we're entitled to submit to show that there were distinct conduct periods that they've presented evidence on, we will, and that the jury is entitled to consider those separately.

THE COURT: I don't view my ruling on this motion to prevent you from doing that. You're free to try and prove up that the scope of the alleged conspiracy is not as great as plaintiffs say it is, the time period is not as great as they say, or that the fact of a single conspiracy is not true.

You can push back on any of those with both argument and evidence. And if, in fact, there's evidence to support a special verdict form, an interrogatory to break out two conspiracies, I'll allow it. If -- it's really no harm to the plaintiffs because if your argument is it's a one continuous conspiracy which members joined at various times; or if there is evidence, I said there likely is not, but if there's evidence of an actual withdrawal from a conspiracy, which is more than just not taking action, you have to affirmatively withdraw from a conspiracy, and if there's evidence to support any of those things, we'll cover that in our final instructions and an interrogatory to the jury. If the evidence shows a single conspiracy, the plaintiffs aren't harmed.

MR. WROBEL: Your Honor, there's --

THE COURT: Oh, right. Okay.

MR. WROBEL: -- complementary argument on the defense MIL. Would you like to hear that?

MR. KAPLAN: Was Your Honor ruling on this motion?

THE COURT: I am. I ruled that there should be no argument about limited liability or proportional damages, but it doesn't preclude argument that -- the jury shouldn't hear about joint and several liability or anything like that. Those are legal concepts. All I'm saying is if there's evidence to support multiple conspiracies, the jury will be instructed on that, and if -- and they'll also be allowed to comment on whether or not these defendants were in it, whether it was a single or multiple or double conspiracy or whatever number you're going to go off with, and the jury can decide whether each defendant was a member of multiple conspiracies, if that's what they find, or of the single conspiracy, if that's what they find.

That's all I'm ruling on here, but there may be more. Might as well get to defendants' 8 while we're on the same subject.

Is there any question about that? I hope -- on all these, I hope I'm clear enough and haven't muddied the waters worse than when we started.

MR. KAPLAN: Just --

THE COURT: Go ahead.

MR. KAPLAN: -- the first time the defendants made

this argument of multiple conspiracies was in their opposition to this motion after seven years, so --

THE COURT: Well, seven years, but they've taken a lot of depositions and we're down to three defendants, and they can push back against your evidence.

MR. KAPLAN: I understand.

THE COURT: I'm not going to give an instruction not supported by the evidence. We're not going to just -- if there's nothing to suggest anything other than a single conspiracy, there won't be such an instruction.

But I'm not precluding it right now until we've heard the evidence.

MR. KAPLAN: Thank you, Your Honor.

THE COURT: Okay. Defense counsel wanted to argue about 8.

This is defendants' 8.

MS. JOHNSTON-AHLEN: Yes, defendants' 8. Julie Johnston-Ahlen on behalf of the Koch defendants.

This motion seeks to exclude basically two categories of evidence.

The first category is evidence that is not related to production, so things like broiler pricing, salaries, wages, grower compensation, breeder slaughter facility competition, influencing Urner Barry, and discussions regarding, for example, allocation of customers.

All of these things are irrelevant to production reduction. None of these things tend to show that an agreement to reduce production is more or less likely, and all of them would confuse the jury.

For example, if they bring in things and they have several exhibits that talk about pricing, you know, this isn't -- I understand what you said about a price-fixing conspiracy, but it's not a price-fixing conspiracy in the sense that there are allegations that defendants communicated and set particular prices. It's really about production reduction, and those will tend to confuse the jury, and they're highly prejudicial to the defendants.

The other bucket has to do with the time frame, and you've touched a little bit on the time frame, including with the one that was just argued.

But if you look at plaintiffs' exhibit list, they provided us with an amended exhibit list after Your Honor's summary judgment order came out, and about 43 percent of the materials on there are outside the '9, '10 -- I'm sorry, '8, '9, '11, '12 time frame. Many of them have to do with communications regarding things like egg sets, attendance at trade association events. Even if those things might be relevant during the '8, '9, '11, '12 timeframe, they aren't --

THE COURT: I'd include '10, by the way.

MS. JOHNSTON-AHLEN: Okay. '10.

THE COURT: I think it's --

MS. JOHNSTON-AHLEN: I hear you. Okay. So 2008 to 2012.

THE COURT: Right.

MS. JOHNSTON-AHLEN: They're not relevant when it happened in 2015, and in particular, some of these things are both things, right? They talk about, you know, 20 -- they talk about 2015 and there are things that don't even have anything to do with production reduction. And that has to --

THE COURT: I thought the tail end of the time period, the after 2012, dealt more with damages and that the conduct relating to concerted production cuts, where parties conspired to reduce production, really stopped when the actual production cuts stopped, which the economic evidence suggests is the end of 2012 or during 2012.

I know there's evidence after that, but I thought that all related primarily to damages caused by the conduct from 2008 to 2012.

MS. JOHNSTON-AHLEN: Well, that's not what -- in our opinion, that's not what's on their exhibit list. I mean, they have, you know, hundreds of documents on their exhibit list that talk about things like egg sets in 2016, whether somebody is going to a trade association meeting in 2015 or 2016, breeder hen reduction in 2015 and 2016, and those are highly prejudicial, and they certainly will confuse the jury.

Any of those types of things should, if they're otherwise admissible, should focus on the 2008 to 2012 time frame, and that's it. And --

THE COURT: Well --

MS. JOHNSTON-AHLEN: -- like I said, it's not just a couple of documents. It's hundreds of documents.

THE COURT: -- it's prejudicial or irrelevant?

MS. JOHNSTON-AHLEN: It's irrelevant. It's irrelevant. It should be out under 401 and 402, but if it's not, if they have some argument where they could convince you that it's marginally relevant, it definitely should be out under 403.

THE COURT: Because there will be evidence of all those things for the time period '08 to 2012 --

MS. JOHNSTON-AHLEN: Yep.

THE COURT: -- egg set destruction, breeder hen -- well, egg set destruction, meetings, communications, the opportunity to communicate, I assume there's plenty of that coming in already from 2008 to 2012.

I'll hear from plaintiffs on this.

MR. POUYA: Yeah, there is a ton of that coming in from '08 to '12, but this is a very short motion that has incredibly broad implications, potential implications for what can come in as evidence.

Now, I just want to be clear. Plaintiffs aren't

trying to expand the scope of the case, and we're certainly not arguing or don't intend to argue that the 2015/2016 breeder reductions are part of the conspiracy to be tried. But defendants' motion goes way broader than that in seeking to exclude all evidence before 2008 and after 2012, regardless of the purpose of the context in which it comes in.

Conspiracies don't happen in a vacuum. The significance of defendants' conspiratorial acts cannot be viewed or understood unless it is based on examinations of the facts that happened before or after. I'll point the Court to the chart on the first page of the summary judgment order which was the foundation of the case. Those supply reductions that we saw in '08 and '09 and 2011 and 2012 are relevant in context of supply increasing over time.

THE COURT: Of course. I mean, if -- the supply reductions in '08, '09 and 2011 and '12 don't make sense unless you put it in the context of what was going on before '08, what was going on after 2012.

I don't think that's what you're arguing against. That's economic evidence, it's graphs, showing that there was an anomaly for those two periods of time. You're free to put in the evidence that precedes it and follows it to put the evidence that's at issue in context.

And you're not opposing that, are you?

MS. JOHNSTON-AHLEN: I mean, I think it would be on a

case-by-case basis, but we understand that their experts are going to talk about things like a benchmark period. But, you know, I think the fact that they have -- 43 percent of the things on their exhibit list fall outside the time frame, more like probably 37 percent if I include 2010, and a lot of those things are clearly things like the issues with the breeder hens, like trade associations.

There are probably over a hundred trade association type materials after 2012 that they have on their exhibit list, and the fact that they didn't take them off their exhibit list signals to us that, for example, in opening statement, they might mention some of these things. And at the very least, I think they should have to bring it to the Court, you know, make us aware of it, bring it to the Court, clear it with us and the Court before they're allowed to put in that sort of evidence after 2012.

THE COURT: Any problem with that?

MR. POUYA: It should be on a case-by-case basis, but --

THE COURT: Right.

MR. POUYA: -- read literally, that's not what their motion says. Their motion says all of this should be excluded, for instance, in 2007, when Pilgrim's and Tyson tried to cut unilaterally and they weren't able to do so. That's important context.

What happened after 2012 in terms of the record profits that the defendants were making are relevant. We heard earlier today about a communication in September of 2016 involving Mr. Grendys. That would be excluded by this motion.

This has incredibly broad implications, Your Honor. It should be denied and ruled on in context of the specific evidence that comes in and as it relates to the issues that are to be tried. To make some blanket ruling right now and exclude this evidence would be extremely problematic.

THE COURT: Well, of course I can't make a blanket ruling right now on defendants' 8. You have -- might be 37 percent of your exhibits now dealing with periods before 2008 and after 2012. I did rule earlier that a statement by Koch that's in 2016 can come in, and so I think maybe the motion was written broadly. The response was -- and that's fine. I'm happy to see a one-page motion in this case.

But I think you're both right. I think there is going to be material, both before and after the critical time period, that is irrelevant or overly prejudicial, but there's certainly going to be evidence before and after that period that's relevant. I can't rule on it in a vacuum.

If there is evidence beyond anything we deal with particularly today or at the final pretrial conference that you wish to use in your opening statement, talk to defense counsel and raise it with me and we'll talk about it during a

break during jury selection. I'll know even more about the case then than I do now.

If it's something you can save and you're not going to use it in opening and you might have a stronger argument to make when I know more about the case, as much hopefully closer to what you all know about the case, you might get a better ruling on both sides.

Your motion is very broad.

Your objection is it's too broad.

I'll rule on it in context. But in general, my statement stands. Most of the evidence should be bracketed in that time period, but there's certainly pieces of evidence outside that time period that I'll rule as admissible. You're going to have to bring it up with me and explain why it's important.

I don't understand trade association meetings after 2012, what their relevance is unless you have some evidence beyond just the fact of a meeting to suggest there was exchange of information after that. You would have to show me why.

But certainly the unsuccessful coupling of a couple of producers where they cut production and they got killed in the market because no one else cut it, that's certainly going to be relevant as to why you needed a larger group of defendants to combine.

So these are a couple of examples that you've raised and a couple of preliminary rulings I'll give you, but with those in mind, maybe you can cut down what you intend to use and narrow the ones that are objected to by defense and come back to me with those. Certainly come back to me if you intend to use it in opening.

MR. POUYA: Will do so, Your Honor. Thank you.

THE COURT: All right.

Anything?

MS. JOHNSTON-AHLEN: Thank you.

THE COURT: Thank you. So 8 is, I guess, denied in part, and we'll -- without my redoing what I've just said, we'll come back to it on a document-by-document basis when it's necessary. That's defense 8.

Plaintiffs' 11, I've given you a ruling on that.

The next one is -- 12 I've ruled on.

The next one is 13 about public signalling, and I asked for argument on that. So this is plaintiffs' motion to exclude testimony and argument that the law requires public signalling, and I'll hear first from plaintiff.

MR. CRAMER: Thank you, Your Honor. Phil Cramer for the Publix plaintiffs. I think I could make my argument in about 30 seconds.

THE COURT: Okay.

MR. CRAMER: I think the narrow motion, we talked

about this last motion, defendants' 8, as being broad. Plaintiffs' motion 13 is very narrow, and my read of defendants' response is that they agree. So I think as to the narrow motion that we've brought, I think both parties agree it should be granted.

As for the description in the defendants' response of a very broad motion, I think you can read our reply and see that plaintiffs agree that that broad motion should be denied.

So here we have a case where defendants intend to present argument and testimony as to what the law says or at least provide -- get very up close to that line, and we just think that the jury should be instructed that the security laws do not immunize or justify violations of the antitrust law, nor do they require any of the four different types of statements that the defendants' own expert agrees.

THE COURT: Okay.

Defense.

MR. CASAZZA: Your Honor, plaintiffs want the jury to improperly infer that Sanderson and the other publicly traded producers having earnings calls and answering analyst questions during those calls was part of this alleged conspiracy.

Sanderson needs to be permitted to explain that earnings calls are customary for large publicly-traded companies. So evidence of the securities laws and the

regulatory environment in which Sanderson and all of the other public defendants operate would show that those statements were all made in those companies' unilateral self-interest.

In *Kleen Products*, the Court denied this same motion by many of these same plaintiffs' lawyers as to Huber.

THE COURT: Were those motions that the law requires public -- requires these public statements or that custom provides for it?

MR. CASAZZA: Somewhere in between, Your Honor.

THE COURT: Okay.

MR. CASAZZA: So it is not the case -- so, for example, the plaintiffs have seized on this notion and this straw man that law requires earnings calls. The law does not literally require earnings calls, but any publicly traded company that is trying to sell its stock to any large number of people has them.

THE COURT: Of course.

MR. CASAZZA: But the laws and regulations stringently disclose what can be said on those things and what must be said and disseminated to the public at large. This is all of regulation FD, how it must be disseminated and that it's done oftentimes on these earnings calls and in response to questions from analysts so that material information is disseminated to the public uniformly and simultaneously.

THE COURT: Are you going to say that -- is anyone on

your side, either an expert or fact witness, going to say we made these public statements in earnings calls or through any type of other public disclosure because the law required us to do it?

MR. CASAZZA: There may be some public statements that we were required to discuss.

THE COURT: Okay.

MR. CASAZZA: So we will not be arguing, as plaintiffs claim, that the securities laws immunize an antitrust violation or that the securities laws are an affirmative defense to anything that they're alleging.

THE COURT: Well --

MR. CASAZZA: I think these companies were obligated to disclose material facts about the operations of their business, which would at many times include production plans, demand, industry-wide demand, and forward-looking projections for those companies.

THE COURT: Well, there ought to be an agreement on what the law required you to do versus what custom forced you to do because of the custom. And I don't know the security laws and I can't tell you what the law required, and I don't want dueling experts telling the jury what the law required. You ought to reach a stipulation on what the law required you to do.

If it's custom, your experts can come up and talk

about the fact that we -- that public companies have to put out earnings statements. If they don't, they are in the vast -- they're in the distinct minority of public companies and they can't survive that way. They can't sell stock. They can't get shareholders to -- people who want to be shareholders if there's an information vacuum from the company.

Your experts can talk about what the custom is. But you shouldn't be getting up and saying the law required us to do something unless the law really did. And that's -- certainly there's nothing about -- whether it immunizes you from antitrust liability or not probably isn't something we ought to be talking about to the jury. It's just a matter of stipulate to what the law requires. If some of the conduct that you're accused of engaging in that the plaintiffs think was signalling was something you were required to do, that stipulation ought to cover it.

If there's other conduct that they claim is signalling that you say maybe the law didn't require it, but common sense did, your experts can talk about that. I'm not going to prohibit you from putting out what a public company traditionally does.

That's how I feel on this. How do you want to handle this? Can you reach a stipulation on what the law actually required? You got both -- you both have experts who are --

and I read it in the motion, people who are expert in the security disclosure laws or in the disclosure laws for public companies.

MR. CRAMER: Your Honor, I think that would solve the problem here, and we sent a stipulation to defendants a week ago. So if they just send us a redline, we can certainly agree on something or hopefully agree on something.

THE COURT: Yeah. And then I'll let your experts talk about what is custom.

MR. CASAZZA: And, Your Honor, with the Court's guidance, I'm confident that we can work in good faith with the plaintiffs to reach an acceptable stipulation on this.

THE COURT: All right. Who is public on this case?

MR. CASAZZA: Of the defendants who will be present at trial --

THE COURT: Yes.

MR. CASAZZA: -- just Sanderson Farms during -- and Sanderson Farms is public up through roughly 2021.

THE COURT: And then they were bought by Cargill.

MR. CASAZZA: Pilgrim's and Tyson are now out.

THE COURT: Okay. Koch and Raeford are privately owned, correct?

MR. CASAZZA: Correct.

THE COURT: And then Sanderson, isn't is part of Cargill now or --

MR. CASAZZA: Cargill is a part owner of the combined company Wayne-Sanderson Farms.

THE COURT: Okay. But during the time period here, they were a publicly traded company?

MR. CASAZZA: Yes.

THE COURT: Okay. All right. Well, why don't you work on that stipulation, and I've told you what I'll allow your experts to talk about.

MR. CASAZZA: And, Your Honor, just one point of clarification on the stipulation.

THE COURT: Yes.

MR. CASAZZA: We anticipate that would likely be folded into a jury instruction?

THE COURT: It could be in a jury instruction, and if you -- on any of these if you want a real-time limiting instruction to the jury, propose it if it's at the appropriate time. In a two-month trial or whatever amount of time you're going to take on this, having this come in without a contemporaneous limiting instruction is often meaningless for a jury. They need to know what something means or why it's being admitted for a particular purpose at the time it occurs, and I'd prefer to do it when it makes sense for the jury, and then, of course, later we can wrap it into some jury instructions too.

Okay. So the motion to exclude testimony or argument

the law requires public signalling is granted in part and denied in part, consistent with the oral ruling I just made.

MR. CRAMER: Thank you, Your Honor.

MR. CASAZZA: Thank you, Your Honor.

THE COURT: Thank you.

Okay. I believe, unless I've missed any, that covers all of plaintiffs' motions. Is there others?

MR. POUYA: Bobby Pouya, Your Honor.

I don't believe the Court has ruled on our motion *in limine* 6. It was mostly resolved through stipulation, but --

THE COURT: Oh, I'm sorry. My notes say stipulated, but I'm going to have to go back to -- what is not stipulated to?

MR. POUYA: So it's related to 7. Our motion *in limine* No. 6, this is at docket 6771.

THE COURT: Oh, the fee arrangements.

MR. POUYA: Correct.

THE COURT: Yeah. I thought you stipulated to it, that -- I'm assuming a stipulation that it's off limits, but what -- what's out there still?

MR. POUYA: The last sentence of the stipulation says, "The stipulation does not resolve or address plaintiffs' request to exclude references to the time and circumstances under which the plaintiffs retained their attorneys."

I think it is related to 7, but I just wanted the

record to be clear on that.

THE COURT: Sure. Well, I've -- that really covers 7, which I've ruled on. I've said that they can raise it with your clients, and your clients can return fire if it's raised. So that's been ruled on.

Anything else from plaintiffs' arguments? Sounds like not. Then that resolves the plaintiffs' motions *in limine*.

Defendants' motions *in limine*. All right. Defendants' 1, which is the motion to exclude the direct action plaintiff experts.

Let's hear from defense first.

And make sure you give your name each time you're up here for the court reporter, please.

MR. CASAZZA: Kyle Casazza from Proskauer Rose for Sanderson Farms, arguing defense motion *in limine* No. 1.

Your Honor, we appreciate being allowed to file a reply brief on this one. These are not garden-variety criticisms of the plaintiffs' expert witnesses, and I'll start with the DAPs liability experts and why, in light of an irreparable fit problem, they should not be allowed in front of the jury or be part of any mosaic of evidence against the defendants.

Dr. Frankel, an economist, and Professor Elhauge, a law professor, both purported to engage in economic analysis

about all of the original defendants' conduct, all of the defendants who had originally been named in the complaints as alleged co-conspirators. Both liability experts reached the same conclusions for all of those producers.

For the six producers who got out on summary judgment, the producers who settled, and the three producers actually going to trial, both of those liability experts reached indistinguishable results across those companies. For each producer, those 14 who are in and the six who got out, Frankel and Elhauge opined that each of those producer's production decisions could only be explained by a conspiracy.

Your Honor, those opinions no longer fit the facts of the case because the Court has ruled that six of those producers were not part of the alleged conspiracy.

Dr. Frankel's margin analysis, his -- you may remember this from the *Daubert* briefing -- the cuts against self-interest, those are now loaded with false positives.

From 2008 through 2012, more than a quarter of what Dr. Frankel identified as a cut against self-interest, those cuts were made by the six producers who got out on summary judgment, including more than 35 percent of the live weight reductions during that time period that Dr. Frankel contends was consistent with a supply reduction conspiracy.

Following summary judgment, all of those cuts against interest for those six other producers, those are now all

false positives.

Dr. Frankel's margin analysis also has a time frame problem. Nearly 8 percent of the cuts against self-interest he identified happened after 2012 when we just discussed a moment ago that this trial will not be involving alleged anticompetitive conduct by the defendants following 2012 or alleged supply reductions after 2012. So those are now false positives too.

In his reply report, Dr. Frankel addressed false positives for the cuts before 2008 and for producers who had never been parties to the case. But he has no such excuse here. The data from 2008 through 2016 was always available for all of the producers who had been named as defendants through 2016.

THE COURT: I understand the argument.

Who is arguing this for the DAPs?

MR. CRAMER: Your Honor, Phil Cramer for --

THE COURT: Come on up if you can.

I gave -- stuff happens during a trial, you all know this, where -- in briefing where summary judgment claims are taken out of the case, defendants are taken out of the case, experts' reports are prepared well before the summary judgment briefing. Rulings are made, and I've done it in court, you've all had it happen to you probably in other trials, where the shape of the case changes after summary judgment rulings.

And in this case because of that, I gave the plaintiffs an opportunity to amend their reports to take into account the ruling on summary judgment. The landscape changed. It doesn't mean the experts can't testify, but they may have to say something different than what they said originally when the case was in a different posture.

The class plaintiffs took advantage of that. Dr. Carter provided a revised report, and he was deposed.

How long was he deposed, by the way? I think I gave a time limit on that.

MR. CASAZZA: The better part of seven hours.

THE COURT: Did I give seven hours?

MR. CASAZZA: Oh, sorry. How long ago? You're asking hours or days?

THE COURT: He deposed a second time when he prepared a revised report, correct?

MR. CASAZZA: Yes, Your Honor.

THE COURT: How long was that? I thought there was a time limit I put in.

MR. CASAZZA: Approximately seven hours --

UNIDENTIFIED SPEAKER: No, it was less than that.

THE COURT: I thought it was three.

UNIDENTIFIED SPEAKER: About four hours.

MR. CASAZZA: My apologies.

About four hours.

THE COURT: Four hours, okay. All right.

So my question, I'm sure it seemed longer for everyone, but my question for the direct action plaintiffs is why didn't you do that with Frankel, McClave, Elhauge, and Lamb?

MR. CRAMER: I think there's several reasons, but the first and foremost reason is this is an issue of subtraction, not addition, and there are no new --

THE COURT: Who does the subtraction, you, or is it plainly obvious to defendants what that subtraction is?

MR. CRAMER: I think it is. And, you know, I'm reminded of what Your Honor's procedures are for *Daubert*, where you say that as the case gets closer to trial, there are frequently many opinions that will no longer be offered at trial. And that's the case -- and I would appreciate the ability to go through and walk you through the why here because, you know, we did get this 15-page reply, and this is obviously an important motion, and Your Honor's question deserves a full response, which we want to provide.

THE COURT: All right. I'll give you that opportunity. This is an important issue. If I bar your experts, you don't have much of a case.

MR. CRAMER: That is more than a few of us.

THE COURT: But I'll let defense continue with their argument, but I wanted that question answered, but you'll get

to it in your response.

Go ahead.

MR. CASAZZA: And, Your Honor, counsel for plaintiffs referred to this as being an issue of subtraction, not addition, and it's more nuanced than that with respect to the damages experts.

But as to the liability experts, it's not as simple as that at all because now we have an instance where their liability experts' supposedly economic methodology can't distinguish between the six producers who the Court ruled were not in the alleged conspiracy and the 14 producers for whom the Court ruled the case can go forward.

The DAPs and Dr. Frankel and, Your Honor, notwithstanding whatever plaintiffs' counsel says at oral argument, it's simply no substitute for a supplemental report and getting to depose their experts. They can't now recast what Dr. Frankel's cuts against self-interest are supposed to mean.

We clean asked Dr. Frankel at his deposition if there is no conspiracy at all between '08 and 2019, would you expect there to be any cuts against self-interest? And Dr. Frankel testified, I would expect there to be few, if any.

So, Your Honor, his methodology as to the six producers who got out on the case is identifying numerous cuts against self-interest during that time period, and the logical

inference is he found out before using his methodology that those cuts could only be explained by conspiracy.

And what we're missing from Dr. Frankel and from Professor Elhauge is an explanation about why their methodologies shouldn't be disregarded in light of all of those false positives.

Dr. Elhauge's opinions don't reliably distinguish between the producers who are in and the producers who are out. *Daubert* requires that. Not distinguishing between the 14 who are in and the six who got out, Dr. Elhauge opines, and this was quoting from his report, quote, defendants took actions that would have been against their own economic self-interest absent a collective supply restriction agreement.

That's from his report at page 11.

And, again, he doesn't distinguish between the 14 and the six when he opines that the defendants shared competitively sensitive information with each other, in a manner -- his words again -- that would have would not have been in their economic self-interest absent a collective supply restriction agreement. That's from his report at 12.

Professor Elhauge ultimately concludes, quoting, from his analysis, that the economic evidence is far more consistent with the alleged supply restriction agreement because the observed facts cannot reasonably be explained by

defendants' independent economic incentives. That's paragraph 98 of his report.

His conclusion, according to him, quote, is based on a holistic analysis of all the evidence.

Well, Your Honor, that holistic analysis is now discredited because it captures producers and relies on evidence from producers who were not part of the alleged conspiracy. His supposedly holistic analysis also includes other things, like Georgia Dock, that are no longer part of the case. But because Elhauge could not distinguish between the producers who are in and the producers who are now out, his opinion would not be helpful to the jury in fairly deciding whose conduct was consistent with a conspiracy.

Their opinions, Frankel's and Elhauge's, would not be helpful because those false positives following holistic document reviews that were supposed to eliminate false positives demonstrate that there's really no reliable economic analysis taking place by either of these supposed liability experts. Both experts defended their methodologies and conclusions by claiming they reviewed lots of company documents, and they are surely eager to give their spin on those company documents to the jury. That's the subject of defendant's MIL 2. We'll get there later this afternoon.

But it should now be clear that there is no reliable economic analysis going on. Those experts' supposedly

economic analyses show that the producers who are in acted no differently than the producers who got out.

Dr. Frankel and Dr. Elhauge are now both also left with a glaring hole in their conspiracy theory. Neither has explained why the six major producers who made up more than 20 percent of the industry and included top 10 producers like Wayne and a top 5 producer like Perdue did not fill any void left by the other producers supposedly engaging in a supply reduction conspiracy.

Professor Elhauge explicitly opined that the broiler producers who are alleged to have participated in the supply restriction conspiracy, who at the time included the big producers like Wayne Farms, Perdue, and Foster Farms, he opined they could have readily expanded their output, and that's from his reply, paragraph 141.

They said over and over again in their reports that barriers to entry made this conspiracy possible and that the existing producers could have filled gaps if they were not in a conspiracy. It would be unfair to let them explain how this different conspiracy, where these six other producers are not part of it, would have worked for the first time on the witness stand.

THE COURT: Yeah, it's not unfair for them to explain it. It's unfair for them to explain it without you having gotten a report and deposing them.

MR. CASAZZA: Exactly, Your Honor.

THE COURT: All right.

MR. CASAZZA: And very quickly, both also repeatedly opined that the supply reduction went years past 2012, that their supposedly economic methodologies also identified the same 2015 and 2016 conduct the Court has rejected and we talked about earlier as being part of the supply reduction conspiracy further demonstrates that their opinions are not reliable economic analysis and that they're unhelpful to the jury.

Very quickly, they also both opine that Agri Stats --

THE COURT: Well, you don't have to talk more quickly, but I've read your motion, so -- I'm not being facetious, but it's not fair to the court reporter.

I don't need anybody to speed up talking because they fear they're not getting out what they want to say, but I have read the motion.

MR. CASAZZA: Thank you, Your Honor.

Both opined that -- not just that Agri Stats reports made the conspiracy possible but that Agri Stats, EMI, and Rabobank employees facilitated the conspiracy. In light of the Court's ruling, we would respectfully ask that at the very least they not be allowed to say that at trial.

Moving on to the damages experts, while the DAPs are not a class, McClave and Lamb have the same fit problem that

McClave had in *Comcast*; and that's at trial, a plaintiffs' damages must be consistent with the liability case, particularly with respect to the alleged anticompetitive effects of any violation.

THE COURT: *Comcast*, though, dealt with different theories of liability. This is the same theory of liability, correct?

MR. CASAZZA: It isn't, Your Honor. Their -- McClave's and Lamb's damages opinions track a theory where 20 producers conspired for roughly a decade, and this case now involves a theory where 14 producers conspired at some point or points between 2008 and 2012.

And the DPPs knew they had this problem, and they supplemented. The DAPs did not. And at this late stage, less than barely three weeks from trial, these damages opinions should be excluded. What's not disputed, there's no dispute that the Court's summary judgment ruling narrowed the case. There's no dispute that Dr. Carter supplemented. There's no dispute that neither McClave nor Lamb did anything, and there's no dispute, DAPs concede this in their papers, that their damages amounts are now different and seemingly lower, but they won't say what those damages are.

THE COURT: Have you gotten any disclosure? They say it's a matter of subtracting. The report covered many defendants at a broad period of time. All you have to do is

subtract out the periods that are now at issue.

Have they given you any indication what that is?

MR. CASAZZA: They haven't, Your Honor, and that only goes to the second part of their damages experts' problem. The first part is that to arrive at a dollar damages figure, their experts calculated single overcharge estimate percentages. So, for example, estimating that the overcharges for all of the defendants were 7 percent over what they would have been had there not been a conspiracy.

To calculate those percentages, McClave and Lamb used data from all of the originally named defendants, including the six defendants who are no longer in the case. So that overcharge percentage was calculated using sales by producers who are now no longer part of this conspiracy. And by combining the 14 producers and the six producers who got out, those analyses can't tell us whether that estimated overcharge comes mostly from the six who got out, whether it comes mostly from the 14 remaining, or some combination.

The analysis that yielded the estimated overcharge percentages no longer fit the facts of the case to be tried. And even before you multiply the percentage on sales, to get that percentage, they also included sales that are now years after the alleged conspiracy period.

Again, the DPPs recognize this. Dr. Carter fixed both of these discrete corrections. Table 5 of his

supplemental report, he walks through what happens when you make this first correction to take out the transactions by producers who are no longer in the conspiracy, and he goes through the second step, what happens if you take out the sales that are years after the alleged conspiracy ended, the percentage is different. It changes. That's not disputed.

McClave and Lamb have not done this work. This is not addition that defendants' lawyers or their experts can do on their own. This requires changing substantial numbers of the inputs into their regression models that came up with the overcharge estimate percentage in the first place. That first flaw should be fatal to their opinion, but then compounding things, that percentage needs to be multiplied by something to calculate dollar damages, and that's where they make the second mistake.

The McClave DAPs have at least admitted that that number should now be lower and that it should only be multiplied by sales to the DAPs by the defendants who are still alleged to have been part of the conspiracy, so taking the percentage and multiplying it by the 14 who are in instead of by the 20 who were originally in.

Again, their percentage is wrong and would need to be recalculated. That work hasn't been done. We haven't asked their experts about that. But the DAPs concede that the

number is now lower and that it's different. They won't tell us what it is.

AWG, who retained Dr. Lamb, they were conspicuously silent in the opposition. They won't say what they're doing.

The case law is clear that the defendants shouldn't have to guess on any of this. The DAPs should have fixed their numbers, should have told us what those new numbers are, should have given us the chance to depose their experts before trial, and should have given our experts a chance to respond in writing.

We're now barely three weeks from trial, and it's too late to start all of that now. And that's why the Court gave them the opportunity to do this more than a month ago. The DAPs took a chance. They kept their damages high, and they were successful in extracting a number of settlements. But they shouldn't be rewarded for failing to timely and fairly disclose their basis for asking a jury for billions of dollars.

So, Your Honor, in sum, all four of the DAPs' experts should be excluded. Their opinions no longer fit the facts of the case. Their testimony would not be helpful to the jury, and allowing new expert discovery this close to trial would only punish the three remaining defendants for work that the DAPs and their experts should have done a month ago, and for all we know, may well have done and made the strategic choice

to not disclose it.

THE COURT: All right. Your colleague slipped you a note. Did you read it and cover what you were going to cover?

MR. CASAZZA: I did, Your Honor.

THE COURT: All right. No, I'm serious. You can't do two things at once, but I want to make sure you made your full argument.

Okay. I'll hear from plaintiffs.

MR. CRAMER: Thank you, Your Honor. And, again, it's Phil Cramer of Sperling & Slater for the Publix plaintiffs.

And if I could, I have a PowerPoint to walk through. If we could turn that computer on.

THE COURT: Sure.

MR. CASAZZA: And do we have a copy of that deck?

(Off the record.)

MR. CRAMER: If I can approach, I have hard copies for the Court as well.

THE COURT: And defense has it?

MR. CRAMER: Yes.

THE COURT: Thank you.

MR. CRAMER: Thank you, Your Honor.

THE COURT: Okay. I think we're set.

Go ahead.

MR. CRAMER: Thank you, Your Honor. The reason for the PowerPoint and for this argument is, as Your Honor

explained, this is an important motion, and it takes a little bit to explain. And so that's what I would like to do this afternoon.

Defendants filed a reply, and in that reply, they say we have five problems, and I want to go through each of those supposed problems. But I also think the reply is important for what it did not address.

You heard defense counsel talk about Dr. McClave's use of industry data. We cited four cases, including one involving Dr. McClave, in which his use of industrywide data, as opposed to specific firm data, was upheld. We also cited economic literature that supported the use of industrywide data; again, no response.

We also cited secondary sources explaining lingering effects and why we would expect there to be damages through 2019; again, no response.

Instead, we have characterizations of our experts' opinions that when you go and look at the actual citations used say something very different. The cuts against self-interest, for example, these aren't false positives. These are economic evidence.

So I want to walk through why we did not amend and why we did not need to amend.

Let's start in the beginning. Our complaint, the complaint Your Honor asked us to file as DAPs, talked about

some producers having conspired. And Dr. Frankel in his original report two years ago never said that all producers would need to conspire. He talked about how chicken is a commodity and, therefore, it affects price throughout the market.

Here we're talking about 74 percent of the market. There's no material difference between 74 percent and 94 percent of the market, nor have defendants in their experts ever questioned that.

This is consistent with Seventh Circuit case law. The Seventh Circuit has pointed out that when a cartel cuts output, it affects the entire market.

And this is where I think we really need to concentrate. What did Dr. Frankel say? Well, we can look at his report and look at the very summary where he says that the collusive supply reduction were concentrated in an initial phase in 2008 and 2009 and then a second phase from 2011 to 2012. Those periods of collusive supply reduction affected output and, therefore, price in subsequent years.

I really don't know how much more our opinions can fit the case than there were these two phases of supply reductions, and it was those phases, according to Dr. Frankel in his report two years ago, that affected output in subsequent years.

Let's look at damages. What did Dr. McClave study?

Again, two years ago, he looked at the cuts in 2008 and 2009 and 2011 and 2012, and what did that conduct, in terms of his regression model, yield as an overcharge estimate. And he divided it up further by saying the supply reductions in 2011 and 2012 resulted in an increase in overcharges in the second part of the damage period, i.e., through 2019.

But, you know, we don't need to take my experts' word for it or our position for it. Let's look at what Joe Sanderson said at his deposition. He talked about the events of 2011 and testified, this continued way, way past 2013. When asked, well, when did production finally start to return to normal? He says it was really 2018 before you saw significant new production.

And was that because of 2015 or 2016 conduct?

No. According to Joe Sanderson, it was all because of what happened in 2011.

Respectfully, if Joe Sanderson can testify as to the lingering effects of what happened in 2011, so can our experts. And those experts' opinions fit the facts, according to -- as my colleagues on defense table like to say.

Let's break it down, each issue. First, the Georgia Dock. I thought in the reply brief that they have conceded that we've done everything right by the Georgia Dock. We disaggregated damages from the very beginning. Dr. McClave said this is what the supply restraint campaign did on

damages, and this is what the Georgia Dock manipulation did on damages. Dr. Lamb for AWG did the same thing two years ago.

But there seems to be a use of what Dr. Carter has done against my clients. Well, Dr. Carter supplemented, so why didn't your clients? Why didn't we supplement? And that was Your Honor's question.

Well, recall that defendants' experts criticized Dr. Carter because he did not isolate overcharges resulting from the alleged Georgia Dock manipulation. This is Dr. Johnson report criticizing Dr. Carter.

Dr. Carter then explains in his supplemental report. In his previous reports, he did not distinguish price impacts from Georgia Dock separate from other aspects, and so he was asked to do so. And according to his report, counsel asked him to recalculate estimated damages suffered by DPPs during a shortened time period, December 2'8 through March 2014. And why did he choose that time period? Well, let's read on. It says because the Georgia Dock manipulation started at the end of May of 2014 and therefore could not show any effects until June of 2014.

So Dr. Carter supplemented to remove that piece of the case that Your Honor dismissed, but Dr. McClave, from the very beginning, had already done that work, and he had separated out Georgia Dock; likewise, Dr. Lamb had done the same thing.

So to the extent Your Honor asked -- or defense counsel posed *Comcast*, and Your Honor asked, well, isn't it the same theory, well, the Georgia Dock theory had always been disaggregated by the DAP experts in this case. So there is no *Comcast* issue.

Let's talk about the dismissed defendants.

As Dr. Carter testified in his supplemental deposition, he does not view those defendants as had been exonerated by this Court. In fact, this Court in the summary judgment opinion found the economic evidence relatively strong against those defendants. It was our failure to show noneconomic evidence of communications to evince an agreement that was the basis for this Court's dismissal of those six defendants, not the economic analysis.

And I think that's important. Because when we talk about our experts' liability analysis, let's take Dr. Frankel's cuts against self-interest, these aren't false positives. These are true positives. These cuts were against self-interest. And if they want to criticize that on cross-examination of why did you find these defendants or these producers had cut against self-interest, they can explore that ground, but there's no new opinion that needs to be supplemented here.

Dr. Frankel stands by his economic analysis, which, again, this Court credited. In fact, this Court in about --

recall that Dr. Frankel was challenged in *Daubert* for this very analysis, this very methodology. And this Court in the summary judgment opinion upheld that methodology and said that this kill cut analysis is cut against self-interest, was methodologically sound.

That's not a basis now to deny Dr. Frankel the ability to testify. It may be fodder for cross-examination, but it's not a basis to make those opinions inadmissible.

Look, are we going to offer that testimony as plaintiffs? No. Again, that's subtraction. We won't offer evidence that these dismissed defendants should be held liable. We're not trying a case against them.

THE COURT: Have you told defendants that? Other than right now?

MR. CRAMER: Yes. Yes.

In that meet-and-confer, I think we told you just that, that we weren't seeking to try a case against dismissed defendants. Absolutely.

THE COURT: All right. Go ahead.

MR. CRAMER: So in terms of the dismissed defendants, again, it's not new opinions. We just don't present defendant -- opinions against those dismissed defendants.

Let's talk about damages from those dismissed defendants. Defense counsel is correct. We originally calculated damages for each defendant. And under the

Seventh Circuit, under the umbrella theory of damages, we can actually recover them. We can recover for purchases against the dismissed defendants against those defendants that were part of the cartel.

But as I told defense counsel, what, three weeks, a month ago when you asked, we're not seeking those damages. Now I'm stuck with the position where sort of I'm being punished -- you know, no good deed goes unpunished, right? Because I'm not seeking those damages, I need to supplement my report.

Respectfully, defendants know what our damages are. It's you take the total damages against all defendants that we had provided two years ago. You subtract the amount of damages that we disclosed in -- with Dr. McClave's original report for those defendants that have been dismissed. X minus Y equals Z. And if there's any issue there that they have difficulty computing that, I'm happy to provide that information to them and can do so quickly if that's -- if they have any difficulty.

The case law that they cite in their reply brief doesn't say that we need to make new disclosures from information that has been in their possession for two years. And, in fact, the Seventh Circuit says that we don't need to replicate every word that an expert must say on the stand. We just need to convey the substance of the expert's opinion, and

we've done that.

So that's damages against dismissed defendants.

Let's go to the next argument, which is, well, Dr. McClave and Dr. Lamb's damage model draws data in from all producers in the industry. Well, that sounds like a cross-examination question of the -- of the propriety of doing so, and that's what four different courts have all but held, including one in which Dr. McClave was at issue, and the court rejected the argument that firm-specific data was necessarily more appropriate than industrywide data.

And why is that? In a commodity like chicken, not one particular defendant can set the price. And that was the point of why they needed the cartel, and that's the point of the economic analysis to use all defendants' data. And the economic literature supports that.

Again, these cases in this economic literature cited in our response has no reply in what defendants filed late Wednesday. So that answers that issue.

So with respect to dismissed defendants, we explained from a liability perspective why it's not a issue and from a damages perspective why it's either simple arithmetic or the propriety of using all the data.

The next piece of the reply talked about Agri Stats, and this is where we really do need to do checking the claims versus the citations.

To start, we fully acknowledge this Court dismissed Agri Stats as a defendant, but that doesn't mean that all of the sudden Agri Stats becomes, you know, he who should not be named. It remains just like any other mechanism that could be used by the defendants in furtherance of their conspiracy.

Urner Barry, USDA, all of these other entities that the defendants used, Your Honor ruled that, you know, the USDA public knowledge is fair game in response to defendants' motion 16.

Let's look at what they claim Dr. Frankel says about Agri Stats. They cite to paragraph 60. And they claim that Dr. Frankel, quote, testified Agri Stats and EMI played a role in carrying out the purported conspiracy.

What they leave out is this is part of a paragraph listing a dozen different mechanisms, including trade associations, joint ventures, recreational activities, Rabobank, industry conferences. It is as if the defendants would argue, well, the Internet service provider that the defendants used to exchange e-mails, well, that's not a defendant, fine, but we can't argue because it's not a defendant that they used the ISP to send e-mails to each other. Same principle here.

The other quotation -- or the other citation defendants make in their reply is that Dr. Frankel devotes entire sections of his report to, quote, the vital role of

Agri Stats and EMI employees in carrying out and monitoring the alleged conspiracy.

I urge the Court to look at Sections 4.6 and 4.7. That is not an accurate characterization. In fact, what Dr. Frankel is doing in those two sections is showing how statements by Agri Stats and EMI is corroboration for his economic analysis of what is in a producer's unilateral interest, as opposed to their collective interest. And he uses that evidence not against Agri Stats or EMI but against the producers to show why their cuts were not in their individual self-interest.

So while we have no claim against Agri Stats in this trial, it doesn't mean that our experts cannot utter the word Agri Stats when it's relevant to their opinions against these three defendants and their co-conspirators.

All right. Last piece unless --

THE COURT: No, I agree with you on that. Agri Stats is out of the case as a defendant. Their conduct is -- you know, their role in the case as a mechanism for communication, if necessary, if that's how the plaintiffs are going to argue it, or deanonymizing of their reports if a defendant here engaged in it or -- these are all things that can be brought out.

Agri Stats is out of the case as a defendant. Their role in the conspiracy is not something that is barred no more

than necessarily defendants that have been settled. They're not out of the case. Even the defendants I've granted summary judgment on, the conduct is very possibly relevant to showing a conspiracy. It doesn't mean, though, that -- the mere fact they're out by way of settlement or summary judgment doesn't mean that e-mails and conversations don't exist. They're there, and they can be put in.

So I'm -- I've got other issues with this motion, but the fact of one of your experts talking about the role Agri Stats plays isn't a basis to exclude the testimony.

Go ahead.

MR. CRAMER: Thank you, Your Honor. And this is my last section, which is the 2015/2016 conduct.

Of course, this Court held that there was insufficient evidence with respect to any claim for the 2015/2016 conduct to go to the jury. And the Court further explained that to the extent there was a conspiracy that went on during that period, it was unsuccessful.

What the Court did not hold, and I think Your Honor referenced this earlier today, was that the effects of the 2008 to 2012 cuts stopped in '15 or '17 or any period of time. And that's the evidence that we will present at trial, not that there was ongoing conspiratorial conduct in 2015 and 2016, but there were ongoing damages, and that is what our experts have measured.

That's what we said in our complaint. We talked about a first round in 2008 to 2009 and a subsequent round in 2011 to 2012.

That's what Dr. Frankel talks about, initial phase of 2008 to 2009 and a second phase in 2011 to 2012.

Sometimes the words we use are purposeful, and I think that's the case when defendants submitted this original motion. They said Dr. Frankel concluded the conspiracy began no later than 2008, causing significant supply reductions until 2019. That is an accurate and true statement, and that statement fits these facts that we intend to try before this jury.

THE COURT: That supply reductions continued to 2019?

MR. CRAMER: No, causing significant, right? The conspiracy began in 2008 causing significant supply reductions until 2019, right? This is the "but for," right? You're looking for the lingering effects, and that's what was measured by Dr. Frankel and what was measured in damages by Dr. McClave.

THE COURT: I thought the chart showed supply reductions through 2012 and you were going to argue damages occurred after that period, which is reasonable, that damages don't occur at the time you reduce supply. But I thought the charts that the experts used and that we used in our summary judgment opinion showed that supply reductions -- well,

certainly there was no decrease in supply. I suppose there's an argument that it would have been higher but for, but go ahead.

MR. CRAMER: No, no, and I want to make sure we're talking about the same thing because I think we are, that there were supply reductions in 2011 and 2012.

THE COURT: All right.

MR. CRAMER: And that those caused damages through 2019.

THE COURT: Or whenever the experts say the damages were caused.

MR. CRAMER: Yes. And that's -- and here all plaintiff damages -- all plaintiff experts agree. Dr. McClave says that. And importantly we talked about the, you know, supplemental report from Dr. Carter.

Dr. Carter agrees with our experts that damages continued until 2019. While they have decided to cut them off as of May of 2014, that's not because Dr. Carter doesn't think damages continue, which leads me to the point --

THE COURT: Why did he cut them off? That would appear to be in his clients' -- against their self-interest to cut it off in 2014 unless he believed they didn't extend. Why would he artificially cut it off if there was no reason to?

MR. CRAMER: Yeah. And that gets back to a point that I did not make very well, which was when Your Honor

dismissed the Georgia Dock theory of this case, counsel for the DPPs said to Dr. Carter, we need to isolate -- we can't -- we can't contaminate our damages with any type of Georgia Dock manipulation. And because Georgia Dock manipulation started at the end of May of 2014, Dr. Carter stopped his damages. It wasn't because they didn't keep incurring damages. It was because you had a *Comcast* issue and needed to make sure that Dr. Carter's calculations weren't infected by any type of Georgia Dock manipulation.

But remember, Dr. McClave and Dr. Lamb had done that two years previously. They had taken out Georgia Dock and said here are the damages from supply, and here are damages from Georgia Dock.

THE COURT: Okay.

MR. CRAMER: So I think that's a critical point here.

THE COURT: All right.

MR. CRAMER: And so we believe that there's really nothing to supplement, as even Dr. Carter agrees with our experts that damages continued until 2019. And like I said, this is not a make-believe economic expert thinking of lingering damages. It's supported not only by the economic literature but also by Joe Sanderson's own testimony.

THE COURT: All right.

Brief reply.

MR. CASAZZA: Your Honor, instead of expert reports,

we have after-the-fact lawyer argument about what their experts would say and how they would explain how the case is now different following the Court's summary judgment ruling, and those just aren't a substitute for actual reports and depositions.

This is not an industrywide data case, and the cases cited on this industrywide data and the use of industrywide data in regression analyses are not on point here.

McClave and Lamb used individual data for the defendants who were in the case at the time. Their experts have not explained why the 20 they picked before are appropriate for the 14 who are left now.

Counsel said that sounds like a question for cross-examination. Indeed it does. But it's not a question that we have had the chance to ever ask their expert because we haven't had to -- had the opportunity to depose them on this inexplicable choice to not --

THE COURT: Well, I don't want to cut you off, but you're going to get that opportunity.

I'm not going to bar these experts at this time. You're going to provide a supplement -- you are going to provide a supplement that will set forth in detail anything they're going to say that's different than what's in their original report, whether it goes to damages, theories of liability, anything different.

And I'll give defendants an opportunity to take four-hour depositions of Frankel, McClave, Elhauge, and Lamb. You've got three weeks to do it. You don't have to do it while we're picking a jury, but you're going to have to do it before openings.

Disclosure is important for experts. I don't think that -- I understand the arguments the plaintiffs are making, that you don't need to change the reports. I've heard enough today about things that -- where plaintiffs believe defendants can posit what they would say. That's not how it works with experts. They have to know what they're going to say and have a chance to depose them.

You'll get that opportunity. If the -- I don't necessarily think you need the report. You can do an attorney letter that your clients have the -- the experts, rather, have adopted. You can prepare what it is, if you want, or they can prepare a revised report. Otherwise, a disclosure letter that you provide that the experts have adopted so that we're not fighting about "I never said that."

And you need to do that no later than September 5th; and the deps will be taken, if you provide that earlier, you can schedule the dep right after it happens. You need to make them available. They don't have to be face to face. You can do it over the phone or by Zoom. But you need to make them available for depositions.

Any of them that are not deposed before we start our trial, we start openings, which will be on September 18th, will be barred. Okay.

Any questions?

MR. CRAMER: Just one clarification question. These reports, like Dr. Frankel or Dr. Elhauge's, are hundreds and hundreds of pages. Is this a letter of --

THE COURT: What's different.

MR. CRAMER: -- what's different, what will they be subtracting?

THE COURT: Yeah, what's different on damages, what's different on theory of liability, what's different because there's defendants that have been taken out of the case. Make sure they adopt it.

I'm not requiring these busy experts to go off and prepare a lengthy revised report. Dr. Carter did apparently, but I'm not requiring it here. But whatever your disclosure letter is has to be adopted by them so that they don't, in a deposition, say "I never said that." Make sure they review it before you send it to defense counsel. Make them available. I wouldn't recommend you wait until the week we're picking a jury to have them deposed. The sooner you can -- you said a couple of times I can just tell them right away what we're going to do. If you do that quickly, then you can schedule the deposition quickly.

But that's the rule; and if it's not done by opening statements, they're not coming in.

MR. CASAZZA: Your Honor, will defendants' experts be permitted to respond in writing to plaintiffs' experts so that defendants' experts are in a position where they can fairly offer their criticisms of plaintiffs' experts at trial?

THE COURT: You can, but since we're not getting into a defense case until sometime around Halloween, you will have the opportunity, once that has been disclosed before openings, to -- we'll do the same thing.

MR. CASAZZA: And those written disclosures will not be due until after openings and after we depose the plaintiffs' experts, correct?

THE COURT: Yeah, we'll talk about schedule for that.

MR. CASAZZA: Great.

THE COURT: I hate to keep multiplying the litigation in this case, but I think -- and it's not a criticism. The case -- the fabric of the case changed somewhat when the summary judgment opinion was issued.

So experts have to review that and tell us if they're going to say anything different in light of that; and if they are, defense needs to know what it is and they have a chance to depose them.

And, similarly, if your experts are going to change what they say based on what the plaintiffs' experts have said

and a revision, you're going to have to make a similar disclosure, and they get the opportunity to depose them, too, if they choose to do so. But that's not as urgent timewise as it is for the plaintiff ones because I assume you're going to be talking about what they say in your opening statements.

MR. CRAMER: Yes, Your Honor.

THE COURT: Okay.

MR. CRAMER: One more question, if you would.

THE COURT: Yeah.

MR. CRAMER: For example, when we're able to depose defendants' experts, I assume the scope of that deposition should just be on changes to the reports.

THE COURT: Absolutely, for both.

MR. CRAMER: Yeah.

THE COURT: For yours and for your experts when they're deposed.

Any questions on this?

MR. CRAMER: No, Your Honor.

MR. CASAZZA: No, Your Honor.

THE COURT: Judge Gilbert handles this usually, but I think this is the best way to take care of this issue.

So the motion to exclude the DAP experts is denied with the conditions I set forth a moment ago.

Okay. Off the record.

(Discussion held off the record.)

THE COURT: All right. Next is defendants' motion -- defendants' 2, motion to exclude other DAP experts' impermissible opinions.

Who is going to argue that?

Okay.

And maybe I should clarify my comments from the last hearing, which weren't -- which may have been -- I don't want to say misconstrued. Maybe I misspoke.

There's economic evidence and noneconomic evidence. There's plus-factor evidence and economic evidence. What I meant when you've quoted me from my comments at the last hearing was I don't want experts putting their spin on what someone meant in an e-mail. I don't think anyone is arguing against that, are they?

MR. CRAMER: No, Your Honor. I mean, I think we're -- you know, the experts have their economic analysis informed by the factual record.

THE COURT: They could inform it by the factual record, but they can't, of course, comment on credibility. But they -- noneconomic evidence is still something that can inform economic evidence, and it's not a straight, clean bar between the two. And I think that's where the dispute on this motion comes from.

It can't be that an economic expert comes in and renders an opinion that is simply based -- completely based

on -- solely based on economic data. There may be opinions they render that are based on other pieces of evidence that are not strictly numbers. But they can't -- maybe I'm getting in trouble again with the same lack of precision on how I'm describing this.

But I think this is all based on my plus factors comment. They shouldn't interpret the meaning of documentary evidence. That's all I meant by my comments last time.

Your motion is that DAP experts shouldn't provide opinions about meanings or what someone meant by an e-mail.

Do you intend to have your experts do that?

MR. CRAMER: I'm not sure how they could see within the minds of the authors of the document.

THE COURT: Of course not.

MR. CRAMER: I think they could say that, you know, our economic analysis shows that action A would be against their unilateral self-interest; and if there's a document that is either consistent with that or contrary to that, it doesn't mean that that testimony that the expert has provided is somehow speaking to that document or that witness's credibility. It's the adversarial system.

THE COURT: Yeah. I don't know how, other than those broad rules, I can rule in the abstract on this. Are there particular parts of expert opinions -- because obviously there's hundreds of pages of expert opinions. They all -- any

expert who provides something that lengthy often throws in their report analysis of noneconomic evidence that they view as something that they can comment on.

I'm not sure that's what's going to be elicited in the direct examination of these experts, and perhaps it's more important that we deal with this issue if there is a particular question or a narrative that the expert starts on about why they think something is true, or why they think something is not true, to handle this on a -- on the basis -- on an objection as that testimony is being offered contemporaneously, or the objection is contemporaneous to it.

It's very hard in the abstract to figure out -- you know, as a broad matter, experts shouldn't talk about what's in someone's mind, what they meant by an e-mail. But, I mean, that's as far as it goes. Are you asking for more of a restriction than that?

MR. CASAZZA: We're asking for more guidance, Your Honor. We were hoping to front this issue because we've seen this with plaintiffs' experts before, particularly their liability experts, where they're never doing much more than just quoting selective experts of the plaintiffs' lawyers' favorite e-mails, and we're concerned about having them do that in front of the jury.

Your Honor, this is what was motivating plaintiffs' motion *in limine* 12 to get documents in without a sponsoring

witness. What they want to do at trial is have their experts narrate their favorite defendant documents to the jury to tell a tale of conspiracy that is going to be contradicted by every fact witness who testifies at trial.

So we're really just trying to get as much in the way of guide rails in the way of that in advance so that we're not having to object to everything they're trying to do with their liability experts at trial.

THE COURT: Fair enough.

Are you going to be doing that?

MR. CRAMER: It depends on what "that" is.

THE COURT: Yeah, of course.

MR. CRAMER: You know, and just --

THE COURT: But what that is is having a mouthpiece up here who summarizes a series of e-mails and puts their spin on what they mean.

MR. CRAMER: And I think Your Honor's comment at the status conference about the mouthpiece was well taken by both sides. But what I -- you know, I think Your Honor's rules for *Daubert* motions where you say, you know, tell me the actual opinion, tell me the statement, is helpful here because we're talking about abstracts.

And what I did is I took one of the defendants' responses to actually motion *in limine* No. 13 that we spoke about earlier, and I took their statements in this motion and,

you know, I created this little goose-gander chart, and we just need the same rules of the road to apply to both sides. And I think in *Daubert*, Your Honor considered, for example, Professor Elhauge, and there was an accusation against him of making legal conclusions. And Your Honor said, no, that's not legal conclusions.

And then they attacked Dr. Frankel, for example, for his cuts against self-interest for actually going to the documents to say, okay, I found something that looks like a cut against self-interest. Let me check the documents and see, and Your Honor lauded him for doing that approach.

So, yes, will there be expert testimony that involves the context in which their economic opinions are provided? Absolutely. Are they just a summary witness up there to, you know, regurgitate the opening statement? Of course not.

THE COURT: Yeah, I don't know what more I can tell you on this, quite frankly. You'll make your objections as they come up.

There's one side where it's dry economic evidence, clearly admissible. There's another side where it's just taking a bunch of e-mails and saying this is what I think this means. That's the other end of the spectrum, which is clearly improper, which includes legal opinions and conclusions or comments on credibility.

There's a middle ground that I'm just going to have

to examine when the witness comes on.

If there's more guidance you need, you're going to have to given me more particulars of a part of an expert report that you think is objectionable, and you can't do that until you check with plaintiffs and make sure they're going to offer that opinion because there's too many opinions in these expert reports for me to go through them without you challenging parts of it and having plaintiffs say, yeah, we're still putting it in. If you do that and you come back to me, I'm happy to look at it.

MR. CASAZZA: And, Your Honor, just to be clear on that last point, I want to be perfectly clear that we'll be allowed to, at these depositions of their four experts, delineate what opinions they plan on offering at trial?

THE COURT: That's the whole point of it.

MR. CASAZZA: Okay.

THE COURT: Yeah.

MR. CASAZZA: Perfect.

THE COURT: Yeah. The landscape's changed. Plaintiffs say the report hasn't changed much, and if it has, you ought to be intuitive -- intuitively know what the change is. That's not how it works. You've got to be told, and you get to test that in a deposition; make sure there's nothing new, or whatever is new, you know what it is. So you can ask all that.

MR. CASAZZA: Okay.

THE COURT: Okay. Is there any question on -- I don't want to have to have conference calls in the middle of these depositions. Is there any question on what I've ordered for the four DAP experts?

MR. CRAMER: I don't think so, Your Honor. I'm a little concerned about the very last comment about, okay, Dr. Frankel, are you still going to offer opinion X, and he says yes. There's been no change there, so then do you get a bunch of questions --

THE COURT: No. If he says I'm offering the same opinion unchanged, then you know.

MR. CRAMER: Right.

THE COURT: Then you can cross-examine him about why he didn't change it in light of the fact that some of these defendants, for one reason or another, aren't something he should have considered. That puts these defense -- or the plaintiff experts in a bit of a box, but you're going to -- you can save that for trial if you want.

You want to know what exactly they're going to say, if something is changed or if something is unchanged.

MR. CASAZZA: And we also want to be sure, Your Honor, that we can cross-examine them at trial on opinions they've previously offered insofar as those opinions that they previously offered called the reliability of their

current opinions into question.

THE COURT: Yeah.

MR. CASAZZA: Okay.

THE COURT: Yeah. That's -- when you change an opinion, you have to explain why. And if -- so yes.

Okay. All right. Thank you.

MR. CASAZZA: Thank you, Your Honor.

MR. CRAMER: Thank you, Your Honor.

THE COURT: 3 and 4, defendants' 3 and 4. 3 is the motion to exclude communications between dismissed and remaining defendants, and 4 is the motion to exclude communication between or among dismissed defendants.

I'll hear argument on that briefly, but the preview is this is very hard to make blanket rulings on this. It's -- I believe it's a bit difficult to make a blanket ruling on this today, but I'll hear from defendants on your argument.

I think 3 and 4 go together, in essence.

MR. SIEGEL: Thank you, Your Honor. Stephen Siegel of Armstrong Teasdale for the Koch defendants.

The ruling we're asking of you on this is not necessarily to bar all communications involving dismissed defendants but the offering of communications between dismissed defendants and remaining defendants offered to prove conspiracy. And that's something that we believe you can rule today and should rule today.

There are -- and there's a need to do it. There are 40 or so dismissed defendant witnesses still on the plaintiffs' list, including five that are will calls. There are, according to their brief in opposition to our motion, there are, quote, hundreds of documents involving dismissed defendants that they're planning to offer.

So it's the purpose to prove conspiracy that's irrelevant, and it also does not meet 403.

The communications with the dismissed defendants are irrelevant because they don't tend to show and, in fact, they cannot show an agreement by or with a remaining defendant to suppress production. There's also evidence going to be in here about 14 remaining defendants, including the three trial defendants, and that's enough for the jury to keep track of to add in evidence about communications with seven dismissed defendants, would confuse jurors, unfairly prejudice the remaining defendants, and particularly the trial defendants, by suggesting an industrywide conspiracy, waste time and cause undue delay.

All of these dangers, it's our view, substantially outweigh any argued relevance, and that's the basis of our motion. You can rule that for the purpose of proving up a conspiracy, there's no need, basis, or any probative value to and there is extreme and unfair prejudice from trying to prove it through the dismissed defendants' communications. Those

can't prove it, and they can only confuse the jury, and that's our -- that's our -- the basis for our motion.

THE COURT: Isn't that routine though? A conspiracy that -- I'll put it in the criminal context, which I'm more familiar with, a multi-defendant conspiracy, ten defendants, eight of them plead out. That doesn't make the communications between the eight that have pled out among themselves or the eight that have pled out with the remaining two defendants going to trial irrelevant or inadmissible.

If it's a conspiracy, it needs to be proven up, and it may involve defendants that have settled or somehow have been removed from the case.

MR. SIEGEL: Respectfully, I must not have argued well because that's -- I don't think that's apt. I haven't explained my position well because our position is it's the dismissed defendants' communications, not the settled defendants' communications.

THE COURT: Okay.

MR. SIEGEL: It's the dismissed defendants' communications that can't be used to prove up a conspiracy that it's been held and it's decided they didn't participate in. And that's --

THE COURT: Okay. Yeah, I apologize. I misunderstood your argument. I'm in -- a criminal analysis was not an apt example.

Okay. Thank you. I understand your argument.

Response.

MS. MANNING: Jill Manning of Pearson Warshaw.

I think Your Honor's comments are still well taken.

First, the motion is overbroad. They ask the Court to rule on unidentified evidence whose only shared characteristic is that a dismissed defendant is involved. They haven't identified these documents that they contend should be excluded.

THE COURT: Do you list documents on your exhibit list that fall in that category?

MS. MANNING: Absolutely we do, yes.

THE COURT: All right.

MS. MANNING: And determinations about whether this specific evidence should come in should be made during trial, so the questions about the foundation, the relevance, the potential prejudice may be decided in a proper context.

We're not going to use these documents to show that the dismissed defendants were part of a conspiracy, Your Honor. We're going to use them against the remaining defendants, and in that situation, the documents are absolutely relevant.

Evidence of communications by or between dismissed defendants and remaining defendants are relevant to determine whether those remaining defendants are liable, and indeed the

Court's summary judgment order referred to these types of documents.

For example, the order at page 38 referred to the fishing trip that included representatives of Sanderson, Perdue, Mountaire, and Pilgrim's with Perdue, a dismissed defendant, taking notes about what Sanderson shared with its co-conspirators during that fishing trip. That is clearly relevant to Sanderson's liability.

THE COURT: Is Joe Sanderson testifying, by the way?

MS. MANNING: He's on our witness list, Your Honor.

THE COURT: Okay. Is he still president of Sanderson? I --

MS. MANNING: I believe he'll be testifying by deposition video.

UNIDENTIFIED SPEAKER: That's correct, Your Honor.

THE COURT: Okay. By deposition video.

MS. MANNING: I understand the defendants are not making him available as a live witness, and they can correct me if I'm wrong.

UNIDENTIFIED SPEAKER: May I speak on that?

MR. SIEGEL: You may.

UNIDENTIFIED SPEAKER: Your Honor, not to get into his personal health issues, but because --

THE COURT: Well, don't get into them. That's fine. If there's a health issue that prevents him from being here as

an in-court witness and the plaintiffs aren't challenging that, then that makes him unavailable.

UNIDENTIFIED SPEAKER: And I didn't want to not speak to that issue when it was raised. Yes, Your Honor.

THE COURT: That's fine.

Go ahead. I interrupted.

MS. MANNING: Oh, no, that's fine.

And in addition to that document, which is on our trial exhibit list, and that Your Honor referred to in denying summary judgment against Sanderson, there's also a House of Raeford document where House of Raeford shared pricing information with Case in November of 2009. Case is also a dismissed defendant.

We would propose, Your Honor, that those documents are relevant to whether the remaining defendants are liable for the conspiracy.

THE COURT: Okay.

Mr. Siegel, last word.

MR. SIEGEL: Yeah, just a few things.

I think I heard them agree that they shouldn't be offering this evidence for proof of conspiracy, so I think we agree on that. And there's a need for --

MS. MANNING: Against the dismissed defendants, Counsel.

MR. SIEGEL: And there's a need for a ruling, given

the volume here of documents and of witnesses who they've listed to give guidance so that they know the guardrails and we don't have to deal with this each and every day at trial. There's a need for guidance on that. So that's the request for the ruling.

In terms of the fact that you cited some of this evidence in your summary judgment ruling, that, of course, didn't consider anything to do with Rule 403 and the fact that, you know, this evidence could be confusing to the jury and be unfairly prejudicial with, you know, we would argue very limited, if any, probative value.

MS. MANNING: Your Honor, I don't think it would be confusing. In fact, both parties have offered a jury instruction that identifies other entities about which the jurors will hear evidence.

We have both modified the jury instruction to identify entities that are not defendants in the case, and that would be the dismissed defendants, as well as entities that we allege are co-conspirators, and that would identify the settled defendants. So I don't think that there is going to be juror confusion.

THE COURT: Well, if it's a communication by one of these defendants, it's an admission. It's separately admissible as an admission, not a co-conspirator statement. If one of the three defendants on trial made a statement or in

some way was in receipt of an e-mail, which would -- whether they responded to it or not, I don't know, but direct communications with these defendants with anyone, whether it's a dismissed defendant or a settled defendant, is likely relevant. I don't see why those wouldn't come in.

If there's something about a particular document that has absolutely no evidentiary value, you know, I can hear argument on it at that point. But the mere fact that defendants are out, either by way of dismissal or settlement, if they had communications with the three defendants going on trial, the three defendants have to answer to that. And those documents, at least on a broad, high level, are coming in.

You can certainly argue if there's particular ones -- and, again, I'm dealing in the abstract here -- well, hang on one second. Go ahead and --

(Counsel conferring.)

THE COURT: You could certainly argue about the particular relevance of a particular document, but you're asking -- one, these weren't identified in the motion with any particularity -- I don't believe they were, as I recall -- and I can't make a ruling on particular documents without having it in front of me. But I don't view the -- just because the defendants have been -- certain parties to the communications with your clients have been dismissed or settled out, that doesn't per se mean those documents don't come in.

I'll hear separate relevance arguments. I'm not going to make a blanket ruling today on either communications between dismissed and remaining defendants or communications between and among dismissed defendants.

If they are co-conspirator statements in furtherance of a conspiracy that the plaintiffs allege your clients were part of, they can use those to prove up the conspiracy.

MR. SIEGEL: Would Your Honor consider -- I hear you, respecting your ruling, but want to address --

THE COURT: Well, you disagree with it, but that's all right.

MR. SIEGEL: But would Your Honor consider a ruling that a one-way communication from a dismissed defendant who could not be a co-conspirator --

THE COURT: Yeah.

MR. SIEGEL: -- that that cannot be offered for proof of conspiracy?

THE COURT: Well, it depends on what your client said in response to it. You said it's a one-way communication. But if a -- I don't want to start speculating about ways that such an e-mail, if they exist, could be relevant, but I can in my own mind think of a few ways.

If there's particular documents -- I mean, I'm assuming there is going to be a lot of cutting of exhibits based on rulings today and based on just the natural process

of going forward, getting ready for trial. The list rarely expands. It usually contracts. And it will contract further when we talk about how long I'm going to allow you to try the case.

But when that happens, Mr. Siegel, you may find some of the exhibits you're worried about aren't going to be offered anyway. There's probably limited utility to a one-way communication to somebody at the defense table which is never respond to by a dismissed defendant. It's probably somewhat lower on the relevance tag than other -- than certainly any document from a dismissed defendant where you have a response from the defendant -- or from a dismissed defendant where you have a response from one of the trial defendants.

Then those are admissions by the trial defendants, and it's certainly likely more relevant, depending on the content of it.

So at the lowest level, I think you're right, Mr. Siegel. A one-way communication with no response by your client may have limited utility, and there might be a good relevance objection to that. But I need to see them, and I need to see if they're really going to offer them. The fact that I'm viewing it as not likely being relevant is probably the same view of the plaintiffs.

You've got a limited attention span of the jury, and if you want to waste it on communications that don't further

your conspiracy argument, you've got the burden of proof and you're going to lose their attention.

You all know that. So I assume you're going to offer nothing but really relevant, helpful-to-your-case documents, and those will likely not include one-way communications where there's no response.

MS. MANNING: Absolutely, Your Honor. And that's why it's tough to talk about this in the abstract without reference to specific documents. We agree.

THE COURT: Well, I'm denying 3 and 4 without prejudice to renewing your objection to particular documents. But broadly speaking, the mere fact that a defendant settled out or dismissed out doesn't make their communications inadmissible.

MR. SIEGEL: Do you mind if I just say one word about 4?

THE COURT: Go ahead.

MR. SIEGEL: And that is that it seeks to bar evidence of communications between dismissed defendants.

THE COURT: Between dismissed defendants?

MR. SIEGEL: Yes. Not involving the remaining defendants, but between the dismissed defendants.

THE COURT: If you --

MR. SIEGEL: That --

THE COURT: Yeah, I understand the point.

Are there such documents, or do you even know at this point?

MS. MANNING: They haven't cited any examples, Your Honor, and they argued in opposition to our motion *in limine* No. 2 that the motion should be denied because we didn't cite any examples.

THE COURT: All right. Well --

MS. MANNING: The example I would given you again is the Perdue document that I just referenced, an internal Perdue memorandum that discusses what Perdue and other producers learned during a fishing trip.

THE COURT: Including some of the trial defendants on that fishing trip?

MS. MANNING: That's correct, Your Honor. It includes Sanderson, correct.

THE COURT: Well, that's a specific document. If you're going to offer it, tell defendants.

If you object to it, provide me the document and the context and how it's going to be authenticated, or if there's any authentication issue, how it's going to be sponsored, and I'll rule on it at the appropriate time.

If you're going to use it in opening, pepper me with these things before openings. If you're not going to use it in opening, you'll get a more informed ruling from me, which is probably to the benefit of both sides because I'll have a

better feel for the case.

MS. MANNING: Thank you, Your Honor.

THE COURT: That's the only way I can do that, I think.

So I understand your position, and now plaintiffs do, and they may cut back on their exhibits to focus on ones that are unquestionably relevant.

Okay. Thank you. So 3 and 4 are denied without prejudice.

Okay. I think the next one is defendant 5. I don't think I've dealt with that yet. That's the motion to exclude argument that dismissed defendants were part or facilitated the conspiracy.

I think there was a stipulation the plaintiffs offered on this?

MS. MANNING: We tried, Your Honor. We offered a stipulation. We're not intending to offer any evidence that a party dismissed by the Court's summary judgment order is a conspirator, a co-conspirator, absent conspirator, and defendants did not agree to stipulate.

THE COURT: Is there a part of the stipulation you found objectionable?

MR. SIEGEL: Well, I think what it doesn't go to is the fulsomeness of our concern, which is that there'd be argument or characterization of them as potential

conspirators, co-conspirators, all references in argument or the offering of evidence to suggest that they joined, they facilitated, that they were, they were potential, any and all of that, they should just be referred to neutrally as, you know, other major producers, and that's it.

And I just didn't think the stipulation went far enough. It's -- it seems a clear and simple issue. They've been found not to conspire. There shouldn't be anything, in argument or evidence, offered to suggest otherwise.

THE COURT: Well, I agree with that. Work on the stipulation to address the concerns of defendant because I don't think you're -- I think the fight is over --

MS. MANNING: I agree, Your Honor. And that's why we offered the stipulation, and they didn't criticize it or offer an alternative stipulation. They just said no.

THE COURT: All right. Well, I understand from others, there's some redlines going back and forth on stipulations. Do the same on this.

MS. MANNING: Fair enough, Your Honor. We will.

THE COURT: And if at some point you can't reach agreement, tell me what the difference is, and I'll resolve it.

Okay. So 5 is granted pursuant to a stipulation that's going to look a lot like what's been offered but maybe changed somewhat a bit to accommodate defenses' objections.

But 5 is granted. Okay.

MR. SIEGEL: Thank you, Your Honor.

THE COURT: 6 is the motion to exclude argument that Rabobank facilitated the conspiracy.

Unless there's -- I'm not sure. Do we need argument on this? Does anyone want argument?

I may have said I needed it, but I really don't, if that was on the e-mail. I'm going to grant this. The stipulation here seems sufficient that plaintiffs proposed.

Did defendants accept the stipulation?

MS. MANNING: No, they didn't. So I don't know if they want to argue in favor of their motion, but we stipulated that we will not present argument or evidence that Rabobank was part of any conspiracy. Defendants responded -- well, I'll let them speak.

THE COURT: Sure. Okay.

MS. MANNING: They're here.

MR. LIEBMAN: Good afternoon, Your Honor. Josh Liebman on behalf of defendants.

Your Honor, in this motion, we seek a ruling that plaintiffs may not offer evidence or argument that Rabobank facilitated, aided, or acted as a conduit for the alleged conspiracy.

The stipulation does not quite go far enough. In their response to our motion, plaintiffs argue that this --

that our motion really seeks to bar any evidence from Rabobank or regarding Rabobank, and that's not what we're seeking to do.

We're just seeking a ruling that is consistent with the Court's prior ruling, consistent with the Seventh Circuit's ruling that Rabobank did not facilitate, aid, or act as a conduit for any alleged conspiracy.

THE COURT: All right.

Response?

MS. MANNING: We're not planning to argue that they facilitated or aided a conspiracy, but we shouldn't be barred from not mentioning Rabobank at all. We should be --

THE COURT: You shouldn't be either.

MS. MANNING: Okay.

THE COURT: Rabobank evidence comes in.

MS. MANNING: Okay. As long as we're clear.

THE COURT: Yeah, the Rabobank evidence can come in, but they're not a conspirator. They're not a facilitator. They're out of the case.

You ought to be able to introduce -- there's a proposed stipulation that went in. I suggest you both work on that. If there's particular language you can't agree upon, bring it to my attention. But exchange a redline if there's still changes, but, you know, Rabobank is not out of the case, but they're not facilitators or co-conspirators by any means.

So that's -- can't change the world. The world included Rabobank evidence.

MR. LIEBMAN: Understood, Your Honor. I think we're all on the same page. We just need to finalize the language, it sounds like.

THE COURT: Sure. That would be great. So I'm going to grant No. 6 subject to the stipulation hopefully you can agree upon.

If you can't, so be it. I can't force stipulations, but I can suggest language I'd find acceptable . So if you reach that loggerhead, bring it to my attention.

MR. LIEBMAN: Thank you, Your Honor.

THE COURT: Thank you.

Okay. No. 7 is -- these are all defendants' motions -- is a motion to exclude argument that Agri Stats facilitated the conspiracy and to exclude evidence of sharing of Agri Stats's reports.

Plaintiff agree to not call Agri Stats a co-conspirator, but does anyone want argument on this? It looks like -- okay. Agri Stats reports and defendants' use or misuse of those reports is still relevant, but they're not -- I dismissed them. They're not a co-conspirator.

So it's very similar to Rabobank. The evidence can come in, but be careful what you call them because I found they were not conspirators. You can't call them a

co-conspirator.

MS. MANNING: We're not planning to, Your Honor.

THE COURT: Okay. So No. 7 is denied to the extent that Agri Stats reports and the information about Agri Stats can't come in, but it's granted to the extent that you can't call them a co-conspirator. Okay.

MS. MANNING: Thank you, Your Honor.

THE COURT: No. 8 is related to plaintiff's 11. I think I dealt with that.

MR. POUYA: Your Honor, you heard argument on that already today.

THE COURT: Pardon me?

MR. POUYA: Bobby Pouya. We argued that earlier today.

THE COURT: Yeah, I'm just looking at plaintiffs' 11 to remind myself that we argued that, and that's great. So defendants' 11 I granted --

MR. POUYA: Your Honor --

THE COURT: -- if I got my notes correct. Hang on.

I'm sorry. Defendant 8. And let me check with plaintiffs' 11, correct?

MR. POUYA: Your Honor, I believe plaintiffs -- defendants' 8 was denied. Plaintiffs' 11 was granted.

THE COURT: That's correct.

Parties agree on that?

MS. JOHNSTON-AHLEN: No. I just want to clarify, I think --

THE COURT: Yeah, come on up to the mic, please.

MS. JOHNSTON-AHLEN: Julie Johnson-Ahlen on behalf of the Koch defendants.

THE COURT: Yeah.

MS. JOHNSTON-AHLEN: I think you said it was denied in part, for example, if something outside the time frame or otherwise, they have to let us know ahead of time. They can't just use it in opening. They have to preview it ahead of time so that the Court can make an individualized ruling.

THE COURT: Correct. All right.

All right. Any other clarification needed on defendants' 8?

MR. POUYA: No, Your Honor.

THE COURT: Okay. Next one is I believe the last one possibly. Well, the last two, I think is 28, defendants' 28 and defendants' -- and I think that's the last one.

Are there others besides defendants' 28 that I have not addressed?

MR. POUYA: Bobby Pouya, Your Honor.

I don't have any others. That's the last one on my list as well.

THE COURT: How about defendants, other than 28?

MR. CASAZZA: We believe 27 is covered by

stipulation. I'm just confirming that.

THE COURT: Yeah, I have not gone -- you can talk among yourselves, but I have considered a number of these that I haven't addressed where you've said they're either moot or have been covered by stipulation in e-mails you addressed to the Court on your status reports.

MR. CASAZZA: And, Your Honor, in another stipulation that we filed in connection with the phone records, motion 9 is deferred and doesn't need a ruling today.

THE COURT: I thought it was mooted, but I thought you reached some kind of an agreement on the phone records and that a witness was going to sponsor them.

MR. CASAZZA: Correct. It's moot subject to the potential right to renew, depending on what the ostensible sponsor of the record says at her deposition.

THE COURT: Okay. Fair enough.

All right. 28, does anyone want to argue that?

MS. WEIL: Yes, Your Honor.

THE COURT: All right. Proceed.

MS. WEIL: Simona Weil on behalf of defendant Sanderson Farms.

Your Honor, this motion has two parts to it. The first is an internal Simmons e-mail circulating an online article which purports to quote Mountaire's former president.

The second part relates to Plaintiff's Exhibit 1010,

which is a compilation of various articles about the agricultural industry produced by Agri Stats that includes that same article from the Simmons e-mail.

Both these documents should be excluded. Plaintiffs have not provided any foundational evidence or a sponsoring witness for these. There's no authenticity.

Additionally, former president of Mountaire, a Mr. Paul Downs, testified at his deposition that this statement isn't accurate and therefore should be excluded.

THE COURT: All right. This was a panel discussion as I understand it, correct? Where there was -- and maybe I have my -- it wouldn't surprise me if I'm mistaken on the contents of one of these motions, but wasn't there a panel discussion where it was unclear what a statement -- who a statement was attributed to?

MS. WEIL: I believe that is subject to a separate motion *in limine*.

THE COURT: That's what I was afraid of. Okay.

All right. Well, go ahead. I'll hear the response.

MR. S. OWEN: Good afternoon, Your Honor. This is Steve Owen of the direct purchaser plaintiffs.

As a threshold matter, I would say that the challenge to this document speaks to the specific admissibility of a specific document, which is an argument and a topic that's better deferred until trial where there's proper context to

rule on this specific document.

Accordingly, I would encourage the Court to defer ruling on the specific admissibility of this document until trial.

THE COURT: Well, I thought this -- I thought this was a blog post, and the Mountaire's president, Paul Downs, stated higher prices depend on less supply, and Mountaire recently abandoned plans to increase capacity by 3 percent to 5 percent this year.

How would you prove up that -- how would you prove up this blog post? Who was the author of it?

MR. S. OWEN: So Paul Downs recalled in his deposition to being interviewed in 2011 and that that interview led to this -- this blog post or article or however you want to refer to it as.

THE COURT: You have a witness that actually is the poster of the blog?

MR. S. OWEN: We don't have a witness for the blog post or the article.

THE COURT: Is Downs being called as a witness?

MR. S. OWEN: He is on our witness list, correct.

THE COURT: All right. Well, it would seem, without someone who can sponsor the blog post, the person who posted it, you're going to have a foundation issue.

You know, you can use this to cross Downs, I suppose,

and you can refresh his memory with it. You can cross him with it. You can get him to admit or deny it. But I think without a person who could lay the foundation, you're going to have trouble putting this in independently without having Downs himself testify.

You know, you're asking me to defer ruling. I'm telling you up front that you're going to have trouble getting this in without Downs himself either acknowledging the statement. If he disavows it, then you're stuck. If he admits to it, then you've got what you want.

But to put it in independently, you need foundation, and I don't think you have a -- if you can't identify the person who ran the blog site, I don't know how you're going to put this in. Maybe there's a creative way to do it, but I can't think of it right now.

So I'll grant the motion to exclude the online article subject to you attempting to prove it up through some foundational way or the -- what you want is the content what this guy said, what Mr. Downs said. If you call him as a witness and he acknowledges what he said here, then you've gotten what you need. But absent that, the blog post itself, I don't see how you can lay a foundation for it.

MR. S. OWEN: Okay. Thank you, Your Honor.

THE COURT: All right.

Anything else?

MS. WEIL: Thank you, Your Honor.

THE COURT: Okay. That's -- 28 is granted without prejudice.

Any other motions on plaintiff or defense side? I think I've covered it all.

Okay. I hear no comments, so I'm assuming I've covered everything.

Okay. I've got in the status reports something, which I'm trying to figure out what you meant, about an enormous number of plaintiffs that the defendants may be requiring to come in and testify.

Maybe you can explain what's going on. Mr. Clark, or whoever is going to do this, can explain what's going on with this issue. And I'm not sure I can help you on much, but I would like to understand the issue because it seems like it affects how many people are going to be in the courtroom.

MR. LIFVENDAHL: Eric Lifvendahl on behalf of the DAPs.

So, Judge, we are trying to work out a stipulation regarding certain elementary facts on some of the DAPs, where they're located, who they are, what kind of company they are, et cetera, as well as that they purchased from defendants over the given time period.

We're not making much headway on that stipulation, which then means we've got to call 53 DAPs. So we'll have 53

additional corporate representatives that we weren't planning on, either all being in the room at the same time or over a given number of days, so you have that logistical aspect of it.

THE COURT: Why do they need to be in the room? I understand they have a right to be in the room. They're a corporate representative for one of the many plaintiffs; but as a practical matter, you could run 50 people in and probably do this in a day if you need to. I don't know why you -- it's required and defendants will explain why in a minute, but I don't know logistically you necessarily need them in the room.

MR. LIFVENDAHL: Understood.

THE COURT: Okay.

MR. LEDINGHAM: And, Your Honor, on the --

THE COURT: State your name, please.

MR. LEDINGHAM: Oh, sorry.

Shawn Ledingham on behalf of Sanderson.

The issue, Your Honor -- and we're working very well with the DPPs on trying to reach similar stipulations. The problem is we have 50 companies that chose to opt out from the class, and we have three remaining defendants.

There are many of the DAPs that don't have a business relationship with the defendants. And so we can't stipulate to things that we don't have personal knowledge of. There are some DPP representatives, for example, that sold to Koch but

not Sanderson or House of Raeford and not Sanderson.

THE COURT: You know all those things though, don't you?

MR. LEDINGHAM: Well, and so what we do, we've cooperated with the DPPs, for example, to ask them if they want us to stipulate to a fact, provide us the backup so that we can confirm it and stipulate to it and move things along. We've made the same request of the DAPs, and we haven't yet received any information.

These negotiations are ongoing, and maybe the DAPs are intending to provide that information. So far we've only received it from the DPPs. But our concern is we can't stipulate to things that our clients don't have personal knowledge of. And we're not trying to hold things up.

THE COURT: I'm confused. Don't your clients know who their customers are?

MR. LEDINGHAM: Right. We do. But if the plaintiffs are going to ask us for a stipulation, I believe the burden is on plaintiffs to give us the evidence that shows that.

THE COURT: What is the stipulated facts that are attempted? What are the facts attempted to be stipulated to?

MR. LEDINGHAM: I think the real hangup that counsel is referring to is that individual DAPs sold chicken to defendants.

UNIDENTIFIED SPEAKER: Purchased.

MR. LEDINGHAM: Oh, I'm sorry. I apologize. I got my transaction backwards. That the DAPs purchased chicken from defendants.

And counsel has handed me -- so the language, it's two paragraphs. And this sort of trickles through a lot of the other paragraphs, but during the relevant time period, all of the aforementioned plaintiffs, both class plaintiffs and direct action plaintiffs, purchased chicken as a regular part of their business. And during the relevant time period, all of the aforementioned plaintiffs, both class plaintiffs and direct action plaintiffs, or the assignees of the direct purchasers directly purchased chicken from one or more of the defendants and the alleged co-conspirators.

As I mentioned, we're working with the DPPs. I don't want to get ahead of my skis here because I haven't yet conferred with my colleagues about this. I think we're going to be able to reach an agreement on some language for this for the DPPs.

But for the DAPs, our position is if they want us to stipulate to a fact, like the DPPs, they should provide us the background so that we're not using our time at trial digging through the record and trying to come to this information ourselves.

THE COURT: What is the requirement for the regular purchases, a word of art or is there something important about

that in the case?

MR. LEDINGHAM: No. If that's a concern, we can change regularly conducted business or regularly purchase. That's not the concern. What they're telling us is if you tell me and you have a deposition and your DAP witness says between 2007 and 2019, I purchased chicken from Koch, from Sanderson, and from House of Raeford, they're saying that's not good enough, we need structured data because we're not going to go look for it.

THE COURT: Okay.

Yeah. Go ahead.

MS. JOHNSTON-AHLEN: Julie Johnston-Ahlen on behalf of the Koch defendants.

I think it's a little bit more nuanced than that. First off, there are, you know, 50-some DAPs. Some of them have assignors. We don't know offhand who those assignors are, so we need help with that. We don't want to have to go through a bunch of materials, a mountain of materials in this case, and try to piece that together ourselves.

The other thing is sometimes it's not quite that simple, right, because if there's a DAP -- and I can only speak to Koch. I'm not sure about the data for some of the other defendants. But if there is a DAP that potentially purchased from Koch, it's not just -- it's not as easy as going to our structured data necessarily and looking for that

because if, for example, they took delivery through Sysco or U.S. Foods or some distributor, our data shows the distributor purchasing that chicken typically and not necessarily the DAP.

So we don't have an easy way to just go to our structured data and verify that. I mean, we'd have to figure out if they had a contract during a really specific time period. So it's not so easy to figure out for 54 DAPs and their assignors.

THE COURT: Don't your experts attribute damages from each of the prospective individual plaintiffs to the three defendants on trial?

MR. LIFVENDAHL: Not just our experts but their experts identified purchases made by all of the DAPs as well.

THE COURT: Okay.

MR. CASAZZA: But, Your Honor, this is another reason why we need updated expert reports from the DAPs damages experts because this isn't a calculation that they've set forth with citations. We don't know, for example, how they're calculating how much chicken Winn-Dixie bought from Sanderson Farms.

THE COURT: But that doesn't relate to the stipulation. The fact of chicken being bought by Winn-Dixie is what you need for the stipulation, not how much. That's what the expert is going to do, and what the cost -- the respective price difference is.

I -- well, I can't force stipulations. I can't believe this is going to be an issue, and I can't believe we're going to waste a jury's time with 50 witnesses. We shouldn't have 50 corporate representatives in the courtroom. If they want to come to court, they'll be sitting in the overflow courtroom. They're not going to be in here.

MR. LIFVENDAHL: Understood.

THE COURT: Unless you want to shuttle them in because it's necessary for them to testify. But I can't force stipulations, but this does not seem like a fight that anybody should have on this case.

MR. LEDINGHAM: We agree, Your Honor. It's not that we don't want to stipulate to this information. It's really a question of who does the legwork of sort of gathering this information.

I think everyone agrees the information exists someplace.

THE COURT: Okay.

MR. LEDINGHAM: And our position is that the party who is asking for it to meet an element of their claims should go get the information. And we'll take a look at it and we'll stipulate, as the DPPs have done.

THE COURT: Well, the case has changed now where there's more plaintiff attorneys now than defense attorneys. That wasn't the case 12 months ago.

Recognizing the disparity in lawyer power, the defendants should probably take -- or the plaintiffs should probably take a little more of a laboring oar on this, but I'm not going to mandate it. I'm just suggesting it. You've got -- your resources now are likely as much if not greater than the defendants because there's just fewer defendants in the case.

MR. LIFVENDAHL: Judge, we didn't think this would be an issue. We hope it won't be an issue.

THE COURT: Okay. Do your best. I'll hope you reach an agreement; if you don't, come back to me, and I'll be more direct.

MR. LIFVENDAHL: Very well. Thank you, Judge.

THE COURT: Thank you.

Okay. I haven't gone through and studied how we're going to change the number of challenges, if at all, or the trial time at all, but I'll look through your status reports.

We have a final pretrial conference set for September 7th, and we'll keep that going for the full day. If it carries over, it might carry over to the 8th if we have to, if there's more materials to cover.

Typically what I cover at a final pretrial conference is courtroom procedures, how I pick a jury, how I deal with particular issues, ministerial issues in the courtroom.

I am going to allow interim statements in this case.

I've allowed it in criminal cases. I allow them in lengthy civil cases. I allow them in criminal cases as long as the defendant agrees. If they object, I'm not going to become a Lone Ranger to be reversed on something like that; but in civil cases, I'm confident I have the ability to order interim statements.

What I do in interim statements, and you can -- I'm just saving you a little time from the final pretrial conference -- is I'll give each side a set amount of time per week, usually no more than 15 minutes, maybe a half an hour, each side for the week, and you get to use it any way you want. You can't interrupt a witness with an interim statement, but when a witness is done, defendant may get up and say, Judge, I'd like to make an interim statement. It might last a minute. It might last all 30 minutes if that's what I give you. I haven't decided yet. The other side keeps the time. So nobody's going to go over. And then you can address the jury and say what you think the evidence has shown or what's coming up in the case.

I tried to police this to make sure it was more closer to an opening statement than a closing argument. I found that to be impossible. So the only objectionable thing you can do is something that would be objectionable during closing argument. But juries find it enormously helpful to hear what's going on in the case, rather than just hear

witness after witness and not know what it means.

The other side that may not have planned on an interim statement can say, Judge, I'd like to make one too once they're done. I just finished a lengthy criminal case this spring, lasted almost three months, and the interim statements included PowerPoints they were so well planned out.

So you can do it any way you want, but I'm going to allow it in this case. If you don't use all the time in one week, it expires, so you start your new clock the following week.

Be careful on Thursdays because we're not having court on Friday. If there's a witness that is not completed when we break on a Thursday and you have unexpired time, it's gone because you can't interrupt a witness's testimony with interim statements. It's got to be when a witness finishes. So watch out for Thursdays.

And if you have a witness you think is going to run two or three days that starts on a Tuesday, you may be out of luck, or you're going to have to do something before that witness starts. But I am going to allow them in this case because I think they're important and it will help the jury's comprehension.

I allow juror questions in civil cases. And the way we do it is this: I tell the jurors up front that I don't expect that you're going to have any questions and that the

lawyers will ask every question possible; but if you do have questions, the way to do it is put them in writing, hand them to me. I'll have a law clerk or a courtroom deputy or someone take them.

We'll all go to sidebar, just putting on the headphones. The sidebars here are by headphones. You don't come up to the actual side of the bench. There will be headphones at your tables, and we will -- I'll read the question to you. I'll see if there's any objection to it by either side. If there is, I'll rule on the objection, and if the question is deemed proper, I'll allow the lawyer who has the witness on the stand to ask the question.

If they don't want to ask the question but I've deemed it admissible, the other side can ask it. If neither side wants to touch but I still deem it a proper question, I'll ask it. It hasn't gotten to that point yet, but that's the triage we'll work on.

You can amend the question and put it in proper form. Sometimes the questions aren't very articulate, but you understand the point. You can ask prefatory questions to get to the question. You can ask follow-up questions based on the answer to the question that the juror asked.

It's not meant to be a recap of everything a witness said on direct, but put the question in context, and you can -- you don't have to read it verbatim especially if it's

not worded too articulately.

And then I allow additional cross on that question by the other side; and then when that's done, I'll ask the jury do you have any questions at all based on that limited area of examination.

Jurors have found this enormously helpful because they get to participate, and it's really helpful for you because you may think you have an issue nailed and it turns out from the question, you weren't even close. And, you know, rather than just rely upon frowns and smiles of jurors on whether you're getting to them and getting your arguments across, you'll see what they're thinking through the questions. The savvy lawyers look and see who is handing the piece of paper up, and they remember it so they know what was on that particular juror's mind. You're going to have all 12 of them in the box. You're not going to have to be looking out in the jury -- out in the benches. All 12 jurors will be in the box, and it's a good practice.

I have an instruction that we'll provide you that deals with this issue in the preliminary instructions I give to the jury, so it describes the process I just -- the procedure I just spoke about. But it's a good practice, and I allow it in civil cases all the time.

Okay. Off the record.

(Proceedings concluded.)

CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Elia E. Carrión *28th day of August, 2023*

Elia E. Carrión *Date*
Official Court Reporter

/s/ Kelly M. Fitzgerald *28th day of August, 2023*

Kelly M. Fitzgerald *Date*
Official Court Reporter