UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UFCW LOCAL 1500 WELFARE FUND, on behalf of itself and all others similarly situated,

Plaintiff,

v.

THE NEW YORK AND PRESBYTERIAN HOSPITAL,

Defendant.

Case No. CV 25-5023

CEMENT AND CONCRETE WORKERS DC BENEFIT FUND,
on its own behalf and on behalf of others similarly situated,

Plaintiff,

v.

THE NEW YORK AND PRESBYTERIAN HOSPITAL,

Defendant.

Case No. CV 25-5571

NOTICE OF PLAINTIFFS CEMENT AND CONCRETE WORKERS DC BENEFIT FUND AND POINTERS, CLEANERS AND CAULKERS LOCAL 1 WELFARE FUND'S MOTION TO APPOINT FAIRMARK PARTNERS LLP, SUSMAN GODFREY LLP, AND FARELLA BRAUN + MARTEL LLP AS INTERIM CO-LEAD CLASS COUNSEL

PLEASE TAKE NOTICE that, on this 26th day of June, 2026, Plaintiffs Cement and Concrete Workers DC Benefit Fund and Pointers, Cleaners and Caulkers Local 1 Welfare Fund ("Plaintiffs") hereby move before the Honorable Brian M. Cogan U.S.D.J. at the United States District Court for the Eastern District of New York for an order appointing Fairmark Partners LLP, Susman Godfrey LLP, and Farella Braun + Martel LLP as Interim Co-Lead Class Counsel pursuant to Federal Rule of Civil Procedure 23(g)(3).

PLEASE TAKE FURTHER NOTICE that in support of this motion, Plaintiffs will rely on the accompanying Memorandum of Law and Declarations of Jamie Crooks and Christopher C. Wheeler.

Dated: June 26, 2026

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS CEMENT AND CONCRETE WORKERS DC BENEFIT FUND AND POINTERS, CLEANERS AND CAULKERS LOCAL 1 WELFARE FUND'S MOTION TO APPOINT FAIRMARK PARTNERS LLP, SUSMAN GODFREY LLP, AND FARELLA BRAUN + MARTEL LLP AS INTERIM CO-LEAD CLASS COUNSEL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

I. INTRODUCTION

Plaintiffs Cement and Concrete Workers DC Benefit Fund ("CCWDC Welfare Fund") and Pointers, Cleaners & Caulkers Local 1 Welfare Fund ("PCC Local 1 Welfare Fund") respectfully move for the appointment of Fairmark Partners, LLP ("Fairmark"), Susman Godfrey LLP ("Susman"), and Farella Braun + Martel LLP ("Farella") as Interim Co-Lead Class Counsel (the "Proposed Co-Leads") for the putative class of healthcare purchasers.

This lawsuit is the product of years of investigation by Fairmark, together at times with the Proposed Co-Leads, into anticompetitive conduct by Defendant The New York and Presbyterian Hospital ("NYP"). It should be litigated by a team that includes the firm that made this case possible through a three-year investigation (Fairmark), the firm that is widely known as one of the top antitrust firms in the nation and that has worked the longest with Fairmark to develop this case (Susman), and the firm that has successfully litigated the most significant hospital contracting practices antitrust class action in history (Farella).

All of the Proposed Co-Leads are actively involved in litigating cases in New York, including in E.D.N.Y. Together, the lawyers working on this matter have the most case-specific knowledge, the most hospital antitrust experience, and ample broader antitrust experience. The Proposed Co-Leads and their supporting counsel[1] include multiple veteran trial lawyers, a former DOJ antitrust lawyer, union lawyers, and multiple appellate specialists, including three former Supreme Court clerks and three other circuit court clerks.

Fairmark began investigating NYP's anticompetitive contracting in June 2022. *See* Declaration of Jamie Crooks ("Crooks Decl.") ¶ 3. Over the following three years, Fairmark's investigation gathered information from various sources, developed a highly complex pricing and market-power analysis using a variety of datasets, and engaged a leading hospital economics expert who has already spent substantial time supporting Plaintiffs in this case. That early

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[1] The Proposed Co-Leads would also be supported by Co-Counsel Keller Rohrback LLP ("Keller"), another nationally known class action firm, and union counsel Hach Rose Schirripa & Rehns LLP ("HRS&R"), which has a close relationship with the Plaintiff Union health plans, as well as extensive trial experience in New York courts.

groundwork paid off: Fairmark was the first to file a lawsuit challenging NYP's wrongdoing—before public reporting revealed the U.S. Department of Justice's ("DOJ") investigation; almost two months before counsel for UFCW Local 1500 Welfare Fund ("Alternative Slate") filed a similar follow-on complaint raising largely the same allegations; and eight months before DOJ filed suit. Moreover, Fairmark and Susman have, since 2023, worked to develop the liability and damages theories in this case. Crooks Decl. ¶ 7. The Proposed Class will only continue to benefit from the deep knowledge and resources that the Proposed Co-Leads gained through their early and extensive work.

The Proposed Co-Leads also bring unmatched experience in hospital antitrust litigation, having litigated many of the landmark hospital antitrust cases of the last decade. Farella's Chris Wheeler, a leading member of the team in this case, helped achieve an all-cash settlement of $575,000,000 in *UFCW & Employers Benefit Trust v. Sutter Health*, No. CGC-14-538451 (Cal. Super. Ct. filed April 7, 2014) ("*Sutter*")—the first successful, and still most significant, hospital contracting practices antitrust class action. Fairmark, meanwhile, has one of the most prolific hospital-antitrust practices in the country, with pending cases against HCA Healthcare in North Carolina, Hartford HealthCare in Connecticut, and Advocate Aurora Health in Wisconsin, all of which challenge contracting practices that are the same or similar to those at issue in this case and which are currently approaching class certification proceedings.

Beyond the healthcare industry, the Proposed Co-Leads have extensive experience with complex antitrust litigation more generally. In the last decade alone, Susman has been appointed lead or co-lead counsel in no fewer than 20 antitrust class actions, resulting in nearly $4 billion in recoveries for the classes. *See, e.g.*, *Moehrl v. National Assoc. of Realtors*, No. 19-cv-01610 (N.D. Ill.) (securing over $900 million as co-lead counsel in antitrust class action against the country's largest real estate service companies and the NAR). In this Court, Susman served in 2013 as co-lead counsel in a price-fixing class action against Chinese manufacturers that conspired to inflate the price and restrict the supply of Vitamin C exported to the United States. *In re Vitamin C Antitrust Litig.*, No. 06-md-1738 (E.D.N.Y.) ("Vitamin C"). In the first verdict ever to hold

Chinese companies liable under U.S. antitrust law, the jury's $54.1 million award was trebled to $162.3 million.[2] Fairmark, in a case in which the court appointed it Co-Lead Class Counsel, this year secured final approval of a $303 million antitrust settlement on behalf of NCAA Division I coaches—a dollar figure that amounted to more than 100% of estimated single damages. *Ray v. Nat'l Collegiate Athletic Ass'n.*, No. 1:23-cv-00425 (E.D. Cal).

The Proposed Co-Leads were the first to investigate the misconduct alleged here; were the first to file a detailed complaint that included significant non-public information; and have unmatched hospital antitrust, trial, and appellate experience. This unique combination of expertise will permit the Proposed Co-Leads to aggressively and quickly push this case to trial—and they look forward to doing so. Accordingly, the Court should appoint the Proposed Co-Leads as Interim Co-Lead Class Counsel.

II. BACKGROUND

After discovering, through its own analysis of hospital prices in the New York Metropolitan Area the extent to which NYP's high prices were outliers in New York City, Fairmark began its investigation of NYP in June 2022. Crooks Decl. ¶ 3. Over the next three years, Fairmark expended over 575 hours of work and thousands of dollars gathering relevant information, including gathering pricing data and conducting its own market power and pricing analysis, and working with a highly regarded economics expert to develop the original complaint in this case. *Id.* Almost all of the information Fairmark collected was information not readily available to the public. *Id.* ¶¶ 4–5. Beginning in 2023, Fairmark also worked with Susman in refining the legal theories applicable to these facts. *Id.* ¶ 7.

On July 25, 2025, Fairmark and HRS&R filed a complaint on behalf of the Cement and Concrete Workers DC Benefit Fund and a Proposed Class of healthcare payors against NYP in the Southern District of New York. *See* Complaint, *Cement and Concrete Workers DC Benefit Fund v. New York and Presbyterian Hosp.*, No. 25-cv-6140 (S.D.N.Y. July 25, 2025), Dkt. No. 1

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2 The Second Circuit ultimately reversed the judgment on international comity grounds. *In Re: Vitamin C Antitrust Litig.*, 8 F.4th 136, 160–62 (2d Cir. 2021).

("CCWDC Complaint"). The CCWDC Complaint alleged that NYP leverages its market power and unlawful contract restrictions to prevent New York health plans and insurers from incentivizing patients to use higher-value healthcare services offered by NYP's competitors. *See id.* at 1. As an example, the CCWDC Complaint cited an "anti-steering restraint" that NYP imposes known as the "All Products Clause," "which requires an insurer that wishes to include NYP in *any* of its health plans to include NYP in *all* of its health plans, at the highest tier or benefit level—regardless of cost or quality." *Id.* ¶ 8. Notably, Fairmark and HRS&R filed the CCWDC Complaint before there was any public reporting of the DOJ investigation into NYP. *See* Joseph Goldstein, *U.S. Opens Antitrust Investigation Into NewYork-Presbyterian*, N.Y. Times (July 28, 2025), *available at* t.ly/QNtRt.

Almost two months later, and after public reporting that DOJ was investigating NYP, the Alternative Slate filed a follow-on class action complaint (the "UFCW Complaint") against NYP in the Eastern District of New York. *See UFCW Local 1500 Welfare Fund v. New York and Presbyterian Hosp.*, No. 25-cv-05023, Dkt. No. 1 (E.D.N.Y. Sept. 8, 2025) ("UFCW Dkt."). The allegations in the UFCW Complaint largely tracked the allegations in the CCWDC Complaint. *See, e.g.*, UFCW Complaint ¶ 97 ("Central to NYP's anticompetitive scheme is its coercive imposition of the 'All Products Clause' into all contracts it enters with insurers."). In fact, in several instances, the structure and order of allegations in the UFCW Complaint, including the ordering and structure of sentences within paragraphs, closely mirrors that of the CCWDC Complaint. *Compare, e.g.*, CCWDC Complaint ¶ 4 *with* UFCW Complaint ¶ 35 (discussing steering), CCWDC Complaint ¶ 21 *with* UFCW Complaint ¶ 24 (background on the hospital/insurance market), *and* CCWDC Complaint ¶ 72 *with* UFCW Complaint ¶ 100 (discussing NYP's pricing data). Moreover, the additional analysis and investigative work that Fairmark did over three years to prepare this case on behalf of the CCWDC Welfare Fund is evident in the differences between the two complaints. The CCWDC Complaint, for example, includes detailed price comparisons across procedure codes and hospitals demonstrating NYP's high prices and anticompetitive effects that were identified only from Fairmark's extensive data analysis. *See* CCWDC Complaint ¶¶ 66, 71, 97-102, 109-10, 112; *see also* Crooks Decl. ¶ 5. The UFCW Complaint contains no apparently comparable analysis.

After the Alternative Slate filed the UFCW Complaint in this district, given that one of the two cases was likely to be transferred, Fairmark and HRS&R voluntarily dismissed the CCWDC Complaint and re-filed it in E.D.N.Y. to promote judicial efficiency. *Cement and Concrete Workers DC Benefit Fund v. New York and Presbyterian Hosp.*, No. 25-cv-05571 (E.D.N.Y. Oct. 3, 2025), Dkt. No. 1 ("CCWDC Dkt."). As expected, NYP moved to consolidate shortly thereafter. *Id.*, CCWDC Dkt. No. 18; *see also* UFCW Dkt. No. 23.

On March 26, 2026—eight months after Fairmark filed the CCWDC Complaint—the DOJ brought its own lawsuit against NYP based on the same allegations pled in the CCWDC Complaint, *i.e.*, that "NYP's contracts with health insurance companies unlawfully deny patients the choice of insurance plans that prioritize NYP's lower-cost competitors." *See* Complaint, *United States v. New York and Presbyterian Hosp.*, No. 26-cv-02480 (S.D.N.Y. Mar. 26, 2026), Dkt. No. 1.

On June 3, 2026, this Court adopted Magistrate Judge Shields' recommendation and consolidated the CCWDC and UFCW actions. CCWDC Dkt. No. 30; UFCW Dkt. No. 34. With the Consolidated Class Action Complaint now on file, CCWDC Dkt. No. 32, the time has come to appoint interim class counsel. The Proposed Co-Leads—who investigated, initiated, and have driven this litigation from the start, and who have the experience and resources to successfully litigate it going forward—are the best choice for the Proposed Class.

III. LEGAL STANDARD

Rule 23(g) authorizes courts to designate interim class counsel before determining whether to certify the class, *see* Fed. R. Civ. P. 23(g)(3), as a key organizational tool to facilitate "efficiency and economy without jeopardizing fairness to the parties." Manual for Complex Litig. (Fourth) ("Manual") § 10.221 (2004); *see also generally*, *id.* §§ 10.224 (relevant factors for appointing designated counsel), 21.272 (approaches to selecting counsel). The "designation of interim [class] counsel clarifies responsibility for protecting the interests of the class during precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement." *Id.* § 21.11.

Because interim class counsel is responsible for acting on behalf of the class throughout the entire litigation, the Court must appoint counsel who are qualified to represent the class fairly and adequately through trial, if necessary. *See* Fed. R. Civ. P. 23(g)(4). To that end, Rule 23(g) identifies four factors the Court should consider in appointing class counsel, which also apply to interim appointments: (i) the work counsel has done to identify or investigate the claims; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to the representation. Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv). The determination "is based on an analysis of class counsel's qualifications and experience in general (including in representing classes and in similar lawsuits) as well as a fact-specific analysis of the conduct of counsel in the lawsuit in which a class is to be certified and the resources counsel will commit to representing the class." *Huer Huang v. Shanghai City Corp*., 459 F. Supp. 3d 580, 596 (S.D.N.Y. 2020).

IV. THE COURT SHOULD APPOINT THE PROPOSED CO-LEADS AS INTERIM CO-LEAD CLASS COUNSEL

The governing four factors for the appointment of interim lead class counsel, laid out immediately above, each support the Proposed Co-Leads' appointment here over the Alternative Slate. First, the Proposed Co-Leads began investigating the conduct at issue years before counsel for UFCW filed its follow-on complaint. Second, the Proposed Co-Leads' and their Co-Counsel's collective experience in handling class actions and other complex litigation is unparalleled, resulting in billions of dollars in recoveries across dozens of cases for which they have served as lead counsel. Third, the Proposed Co-Leads are particularly well-versed in the applicable laws at issue, having prosecuted and led nearly every major hospital antitrust matter. Fourth, the Proposed Co-Leads and Co-Counsel (Keller and HRS&R) include large national firms that have litigated massive, complex class actions before and possess ample resources to devote the necessary manpower that this case requires.

A. Factor 1: The Proposed Co-Leads have been investigating NYP's anticompetitive conduct since 2022.

The first Rule 23(g) factor—"the work counsel has done to identify or investigate the claims"—uniquely favors the Proposed Co-Leads and distinguishes them from the Alternative Slate. *See Buonasera v. Honest Co., Inc.*, 318 F.R.D. 17, 18 (S.D.N.Y. 2016) (first factor satisfied where "Proposed Interim Counsel . . . 'conducted the first and . . . the most exhaustive investigation'" into the issues of the case); *In re Mun. Derivatives Antitrust Litig*., 252 F.R.D. 184, 186 (S.D.N.Y. 2008) (appointing firms as interim lead counsel where the firms "filed the first complaints in this case, and the subsequent complaints filed . . . [we]re substantially similar to those initial filings," and where the first-filing firms "expended substantially more effort and resources and obtained more substantial and more valuable and reliable information" in their investigation).

As outlined above and in the declaration of Fairmark partner Jamie Crooks, the CCWDC Complaint—which provides the basis for the UFCW Complaint and the Consolidated Class Action Complaint—resulted from three years of intensive investigation, and over 575 hours of work, by Fairmark. Crooks Decl. ¶ 3. Attorneys from Susman have supported the investigation since 2023, working closely with Fairmark to develop the case theory and build the allegations in the original complaint. *Id.* ¶ 7.

By contrast, given the extent to which the UFCW Complaint tracks the CCWDC Complaint and lacks new analysis, it appears the Alternative Slate did little independent investigative work before filing their follow-on complaint, instead benefitting from the substantial groundwork laid by the Proposed Co-Leads. Moreover, the Alternative Slate filed their Complaint only after learning that DOJ was investigating NYP for the same conduct the CCWDC Complaint had earlier laid out. The Proposed Co-Leads, by contrast, developed this case independently using their expertise and interest in remedying the harms these firms have spent years investigating (and have fought to mitigate in several other hospital antitrust actions). *See* Crooks Decl. ¶¶ 10–15 (detailing Fairmark's ongoing work in three other hospital antitrust actions).

This factor favors the Proposed Co-Leads.

B. Factors 2 and 3: The Proposed Co-Leads have extensive experience litigating complex antitrust class actions, particularly hospital antitrust cases, and have extensive knowledge and experience regarding the law and facts that apply to NYP's conduct.

The Proposed Co-Leads would bring together market-leading firms and seasoned attorneys whose deep experience in antitrust litigation—especially hospital antitrust litigation—makes them ideally suited to prosecute the "types of claims asserted in th[is] action." Fed. R. Civ. P. 23(g)(1)(A)(ii).

Having been at the forefront of most of the landmark hospital antitrust cases around the country, Crooks Decl. ¶¶ 9–15, 17–19; Wheeler Decl. ¶¶ 3–15, the Proposed Co-Leads have a uniquely extensive "knowledge of the applicable law"—*i.e.*, the specific antitrust claims and defenses relevant to the challenged conduct, factual analyses of conduct within the relevant market (inpatient general acute hospital services), and dynamics specific to the healthcare industry—and are intimately familiar with all these issues. *See* Fed. R. Civ. P. 23(g)(1)(A)(iii); *see also Breakwater Trading LLC v. JPMorgan Chase & Co*., 2020 WL 5992344, at *3 (S.D.N.Y. Oct. 9, 2020) (appointing interim lead counsel that had "significantly more experience with the specific . . . context in which these matters arise, and consequently greater familiarity with the legal issues and defenses most likely to prove central"); *Scher v. Cohen Fashion Optical, LLC*, 2026 WL 71884, at *3 (E.D.N.Y. Jan. 9, 2026) ("Proposed Interim Co-Counsel's experience is vast. Indeed, Proposed Interim Co-Counsel have unparalleled knowledge and expertise [and each] appears to have deep knowledge not only of class action law and procedure, but also of substantive law.") (cleaned up).

The Proposed Co-Leads also have uniquely extensive knowledge and experience with the substantial third-party discovery required in a hospital antitrust case like this. Crooks Decl. ¶¶ 10, 12–13; Wheeler Decl. ¶¶ 8, 10–12. Specifically, the expert and damages work in these cases requires collecting, cleaning, and analyzing tens of millions of lines of claims data from third-party insurance companies. Through their discovery work in numerous other hospital antitrust cases, the Proposed Co-Leads have built the expertise, know-how, and relationships to effectively gather and analyze that data on behalf of the class. Crooks Decl. ¶¶ 10, 12–13; Wheeler Decl. ¶¶ 8, 12.

Nearly every landmark hospital antitrust case over the past decade has involved members of the Proposed Co-Leads. *See Sutter*, No. CGC-14-538451 (Cal. Super. Ct.) (final judgment in 2021); *Davis v. HCA Healthcare and Mission Health Sys.*, No. 21-cv-03276 (N.C. Super.) (class certification pending); *Brown v. Hartford Healthcare Corp.*, No. HHD-CV22-6152239-S (Conn. Super. Ct.) (class certification briefing forthcoming); *Uriel Pharm. Health & Welfare Plan v. Advocate Aurora Health, Inc.*, No. 22-cv-00610 (E.D. Wis.) (class certification briefing ongoing).

The lawyers from the Proposed Co-Lead firms have the experience and knowledge needed to litigate this case effectively and efficiently, and are the best choice to represent the interests of the Proposed Class, as reflected in the brief summary of their qualifications below.

a) Fairmark Partners, LLP

Fairmark was founded in 2021 with the primary purpose of bringing impactful antitrust class actions to target anticompetitive conduct that raises healthcare costs for consumers, businesses, and local governments. Fairmark also litigates labor-side antitrust, consumer protection, and civil rights cases, and has—in its short lifespan—done so with remarkable success. *See, e.g.*, *Settlement Ok'd in ex-volunteer coaches' class-action suit vs. NCAA*, ESPN (May 13, 2026) (noting final approval of $303 million settlement on behalf of formerly unpaid workers by NCAA Division 1 schools), *available at* t.ly/T7PN0; Emily Flitter, *New Suit Uses Data to Back Racial Bias Claims Against State Farm*, N.Y. Times (Dec. 14, 2022) (describing Fairmark's leadership in "first of its kind [lawsuit] to use company-specific data to highlight racial bias"), *available at* t.ly/eLfNa; Meryl Kornfield, *Judge rules DOGE's cuts to humanities grants were unconstitutional*, Wash. Post (May 8, 2026) ("A federal judge said more than $100 million in cuts to NEH grants were discriminatory, ruling in a case that revealed the inner workings of DOGE."), *available at* t.ly/PBsMJ.

But first and foremost Fairmark is a leader in hospital antitrust litigation, and its experience in that field is extensive—and, as here, has spawned follow-on litigation in nearly every case it has filed.

In 2021, Fairmark filed a class action lawsuit on behalf of patients in North Carolina state court challenging anticompetitive anti-steering provisions, similar to those at issue here, imposed by HCA Healthcare, the largest for-profit hospital system in the United States. *See* Complaint, *Davis v. HCA Healthcare and Mission Health Sys.*, No. 21-cv-03276 (N.C. Super. Aug. 10, 2021). That suit generated a follow-on suit in federal court brought by one of the firms in the Alternative Slate. *See* Complaint, *In re Mission Health Antitrust Litigation*, No. 22-cv-00114 (W.D.N.C. June 3, 2022).[3]

In early 2022, Fairmark filed a similar action on behalf of patients in Connecticut state court challenging all-or-nothing contracting and anti-steering provisions, again similar to those at issue here, imposed on payers by Hartford HealthCare. *See* Complaint, *Brown et al. v. Hartford Healthcare Corp. et al.*, No. X03-HHD-CV22-6152239-S (Conn. Super. Ct. Feb. 14, 2022). That case too spawned a follow-on lawsuit in federal court after Fairmark successfully defeated, in full, a motion to dismiss by the hospital defendant. *See id.*, 2023 WL 7150051, at *1 (Oct. 26, 2023) (denying motion to dismiss); Complaint, *Estuary Transit District et al. v. Hartford Healthcare Corp.*, No. 24-cv-1051 (D. Conn. June 14, 2024).

Later in 2022, Fairmark filed another class action lawsuit on behalf of direct purchasers in Wisconsin challenging the same types of anticompetitive contract provisions imposed by Advocate Aurora Health. *Uriel Pharm. Health & Welfare Plan v. Advocate Aurora Health, Inc.*, No. 22-cv-0610 (E.D. Wis. May 24, 2022). After that case survived a motion to dismiss, *see* 2023 WL 12284689 (Apr. 28, 2023), a follow-on indirect purchaser case was filed, *see* Complaint, *Shaw v. Advocate Aurora Health Inc.*, No. 24-cv-00157 (E.D. Wis. Feb. 5, 2024).

HCA, *Hartford HealthCare*, and *Advocate Aurora* all remain pending and are preparing for class certification, with Fairmark playing a leading role in that briefing and argument, as it will at the summary judgment and trial stages. Through these cases, Fairmark has developed deep and

[3] Amy Gu, *Q2 2022: Antitrust Enforcement Actions Flourish Against Healthcare Consolidation and Anticompetitive Contracting*, The Source on Healthcare Price & Competition (June 14, 2022) ("Following *Davis v. HCA and Mission Health*, a class action lawsuit filed in North Carolina state court last August, a very similar second lawsuit was filed this month against the health system by the city of Brevard, North Carolina.").

broad experience successfully managing and addressing the exact types of discovery, factual, and legal issues that will likely arise in this case. Crooks Decl. ¶¶ 10, 14–15.

While smaller than many class action firms, Fairmark has been able to achieve this success—hundreds of millions in recoveries with several other major class antitrust cases pending that it initiated—due to its talented roster of litigators:

Jamie Crooks, Fairmark's Managing Partner and lead on this case, founded the firm in 2021 after clerking for Associate Justice Anthony Kennedy and spending years at leading defense firm O'Melveny & Myers, LLP. In the five years he's been a plaintiffs' attorney, the cases he's led have generated more than $400 million for the classes he's represented. Chambers USA describes him as "an up-and-coming practitioner with particular expertise in robustly bringing anticompetitive conduct claims on behalf of plaintiffs," and he regularly appears at conferences discussing the negative impacts of consolidation in healthcare. He also consults with federal and state antitrust enforcers about complex and novel antitrust and consumer protection issues. He has appeared as a panelist at the ABA Antitrust Section Spring Meeting, has briefed multiple cases in the Supreme Court and nearly every federal court of appeals, and has argued in state and federal appellate courts around the country.

Michael Lieberman is an experienced litigator whose practice focuses on antitrust and healthcare litigation. He served as co-lead counsel in *Ray v. NCAA*, a certified antitrust class action that resulted in the NCAA paying $303 million to former college sports coaches—one of the largest recoveries ever in a Sherman Act case filed on behalf of workers seeking lost wages. Throughout his career, Mr. Lieberman has developed and pursued novel legal issues and theories on behalf of his clients. He is currently a member of the lead counsel slate in two first-of-their-kind actions alleging securities-law violations by crypto companies and their investors, and he is currently litigating three ERISA cases he developed that commentators have noted "could transform how health benefits are administered." Mr. Lieberman was previously a partner at Kirkland & Ellis LLP and an associate at Bancroft PLLC, where he focused on Supreme Court and appellate litigation, including briefing ten Supreme Court merits cases and many more appellate matters across the country. He previously served as an Attorney-Adviser in the Office of the Legal Adviser at the U.S. Department of State, where he provided advice on a wide range of domestic and international legal issues arising in the course of the Department's work.

Amanda Vaughn is an experienced trial lawyer who has tried, as lead or co-lead counsel, over 20 cases to verdict in courts across the country. Her practice at Fairmark includes healthcare antitrust litigation and working with government enforcers on antitrust issues. In addition, she currently co-leads a first-of-its kind lawsuit alleging algorithmic racial bias in the processing of homeowners insurance claims. Ms. Vaughn previously spent over eight years as a Trial Attorney in the Public Integrity Section and Fraud Section of DOJ and as an Assistant United States Attorney in the Public Corruption & Civil Rights Section of the U.S. Attorney's Office for the District of Columbia where she led investigative and trial teams in high-profile corruption and corporate fraud cases, including against a sitting United State Senator and a presidential advisor, and coordinated with other government agencies in parallel investigations and prosecutions. For her work at DOJ, Ms. Vaughn has been recognized with Assistant Attorney General awards, an FBI Service award, and U.S. Attorney awards.

b) Susman Godfrey

Susman is the nation's preeminent litigation boutique and the go-to firm for the highest-stakes trials in the country, with particular expertise and a proven track record in complex antitrust litigation and healthcare cases. In addition to the firm's success in *Vitamin C*, Susman has recovered over $1.2 billion for the class as co-lead counsel in the *In re Automotive Parts Antitrust Litigation*, No. 12-md-02311 (E.D. Mich.), a complex series of antitrust cases brought against dozens of automobile suppliers who engaged in price-fixing and bid-rigging in the multi-billion-dollar automotive parts industry; over $900 million as co-lead counsel in *Moehrl v. National Ass'n of Realtors (NAR)*, No. 19-cv-01610 (N.D. Ill.), an antitrust class action against the country's largest real estate service companies and the NAR; and over $168 million as co-lead counsel in the *In re Animation Workers Antitrust Litigation*, 14-cv-04062-LHK (N.D. Cal.), an antitrust action on behalf of a class of animation industry employees against Disney, Pixar, Lucas Films, DreamWorks, and Sony. Susman also recently tried a rule of reason case to verdict against the NFL, resulting in the largest antitrust jury award in history. *In re NFL's "Sunday Ticket" Antitrust Litig.*, Case No. 15-ml-02668 (C.D. Cal.).[4]

The Susman partners presently working on this matter include Jacob Buchdahl, Steven Sklaver, and Mark Musico—all of whom have extensive antitrust and class action experience and regularly take the country's highest-stakes cases through trial.

Jacob Buchdahl is one of the nation's top trial lawyers. A Fellow of the American College of Trial Lawyers, Buchdahl has represented both plaintiffs and defendants in bet-the-company cases and regularly wins. In 2026, Mr. Buchdahl was named Benchmark Litigation's Commercial Litigator of the Year for his role securing a landmark $1.6 billion judgment for BML Properties in a long-running fraud case against China Construction America. In the healthcare arena, Mr. Buchdahl successfully represented Memorial Sloan Kettering in a confidential arbitration against one of the world's largest pharmaceutical companies alleging breach of a licensing agreement. Before joining Susman Godfrey, Mr. Buchdahl was a federal prosecutor in the Public Corruption Unit of the United States Attorney's Office for the Southern District of New York.

Steven Sklaver has secured substantial class action victories for both plaintiffs and defendants. In the antitrust arena, Sklaver and a team of Susman Godfrey lawyers run the massive *In re Automotive Parts Antitrust Litigation* MDL, in which the firm serves as co-lead counsel for a class of consumer plaintiffs in multidistrict price-fixing cases—the largest price-fixing cartel ever brought to light—where settlements have exceeded $620 million to date. Mr. Sklaver was also the lead day-to-day lawyer for the class in *White v. NCAA*, No. 06-cv-00999 (C.D. Cal.), a certified antitrust class action that resulted in the NCAA paying $218 million for student-athlete benefits and enacting sweeping legislative reforms. For his antitrust work, Mr. Sklaver received the Outstanding Antitrust Litigation Achievement award from the American Antitrust Institute.

[4] The verdict has been overturned by the trial judge pursuant to Fed. R. Civ. P. 50, but with a recognition that plaintiffs had presented evidence sufficient "to support a reasonable jury's finding of an unreasonable restraint of trade at each step of the rule of reason." Order Granting Defs. Motion for Judgment as a Matter of Law at 12, ECF. No. 1513 (Aug. 1, 2024). The case is currently on appeal.

Beyond antitrust, Mr. Sklaver served as lead counsel in a certified insurance class action in the Southern District of New York that the court described as "the best settlement pound for pound for the class that I've ever seen" and "quite extraordinary." *37 Besen Parkway, LLC v. John Hancock Life Insurance Co.*, No. 15-cv-9924 (PGG), Dkt. No. 164 at 20:10 (S.D.N.Y. Mar. 18, 2019).

Mark Musico, a former clerk to Justice Ruth Bader Ginsburg, is now recognized as a leading commercial litigator. He is currently a member of the lead counsel slate in one of the largest antitrust cases in the country, brought on behalf of a proposed class of direct iPhone purchasers based on Apple's anticompetitive efforts to lock consumers into the iPhone ecosystem. *In re Apple Inc. Smartphone Antitrust Litig.*, No. 24-md-3113 (D.N.J.). Previously, Mr. Musico secured a $307.5 million settlement for a class of elderly insureds against AXA Equitable, after winning certification of the first-ever nationwide class asserting misrepresentation claims under N.Y. Ins. Law § 4226. *In re AXA Equitable Life Ins. Co. COI Litig.*, No. 16-CV-740 (JMF), 2020 WL 4694172 (S.D.N.Y. Aug. 13, 2020). He has also won several victories for prominent hedge fund, Saba Capital, including two recent wins at the Second Circuit on issues of first impression under the Investment Company Act. Mr. Musico has been recognized for his successes by *Chambers*, *Lawdragon*, and the *National Law Journal*.

c) Farella Braun + Martel

Farella is a leading San Francisco firm that serves national and international clients. Founded in 1962, and with a litigation practice that includes approximately 70 attorneys, Farella has litigated on behalf of leading corporations, including Google, Apple, Dell, Visa, Tesla, Chevron, Adobe, and Monsanto (now Bayer), and Toyota. In 2026, Vault named Farella the Best Mid-Sized Law Firm in Northern California.

Farella litigated the *Sutter* hospital contracting practices antitrust class action for over five and one-half years (including an interlocutory appeal), achieving a landmark settlement. Wheeler Decl. ¶¶ 6–7, 9. Working alongside the California Attorney General and co-counsel, Farella represented a certified class of direct purchasers challenging the anticompetitive contracting practices of a dominant hospital system. Wheeler Decl. ¶ 3. *Sutter* was a model for this case, which also challenges the anti-steering contracting practices of a dominant hospital system on behalf of a class of direct purchasers. Accordingly, this case likely will involve similar types of evidence, expert analyses, and legal issues. *See* Wheeler Decl. ¶¶ 5, 11–12.

The *Sutter* settlement received national acclaim.[5] Xavier Becerra, California's attorney general, lauded this "first-in-the-nation settlement," totaling $575 million, as "one of the largest actions against anti-competitive conduct in the health care marketplace across the country." Katie Thomas, *Sutter Health to Pay $575 Million to Settle Antitrust Lawsuit*, N.Y. Times (Dec. 20, 2019), t.ly/tyg6q. The settlement also included sweeping injunctive relief, overseen by a court-appointed monitor for 10 years, that enjoined the alleged anticompetitive conduct at the heart of the litigation: Sutter's alleged restrictions on the ability of health plans to steer patients away from higher cost providers and towards providers that offer better prices and/or better quality. Wheeler Decl. ¶ 5. That is the same anticompetitive conduct alleged here. Farella co-lead partner **Christopher Wheeler** was one of the lead attorneys on *Sutter* and invested over 10,000 hours successfully litigating the case, more than any other attorney representing the class. *See* Wheeler Decl. ¶ 10. The many "lessons learned" by Mr. Wheeler—who has since been retained by state attorneys general across the nation in healthcare antitrust matters relating to hospital systems—and Farella in successfully litigating *Sutter* over the course of more than five and a half years would benefit the class in this case. Mr. Wheeler received the American Antitrust Institute's

[5] *See*, *e.g.*, Jenny Gold, *Sutter Health will pay $575 million and adopt pricing changes to settle antitrust case*, *L.A. Times*, Dec. 21, 2019 ("The settlement is expected to have nationwide implications for how hospital systems negotiate prices with insurers…. [The settlement] 'is strong guidance that the kinds of behavior Sutter engaged in are not going to be allowed going forward… This really opens the door for attorneys general in other states to begin examining their own health systems for similar behaviors.'"); Reed Abelson, *High Medical Bills Are at Center of Hospital Group's Trial*, *N.Y. Times*, Oct. 3, 2019, at 4 ("If Sutter is forced to change how it negotiates with insurers, 'it could have a chilling effect on these practices nationwide.'"); Rob Waters, *California's Sutter Health Settlement: What States Can Learn About Protecting Residents from the Effects of Health Care Provider Consolidation*, Milbank Memorial Fund, Sept. 23, 2020, at 9 ("There have been lots of efforts to try to curb aggressive pricing and aggressive market consolidation in different places. But this is really the first time where we've actually seen success getting a system to cease and desist.").

Outstanding Antitrust Litigation Achievement in Private Law Practice award for his work on *Sutter*. Beyond health care, Wheeler has litigated antitrust matters in the technology, real estate, entertainment, automotive, and steel rebar industries. He is Editor-in-Chief of the leading California antitrust treatise, and a past chair of the Antitrust and Business Regulation Section of the Bar Association of San Francisco.

Alexis Loeb is a trial lawyer whose litigation practice has a particular focus on antitrust, drawing on her eleven years of experience at the Department of Justice, where she worked for the Antitrust and Criminal Divisions and rose to become a Deputy Chief in the U.S. Attorney's Office for the District of Columbia. At DOJ, Ms. Loeb investigated and tried antitrust, fraud, and other cases, argued Ninth Circuit appeals, supervised numerous trial teams, and was a leader of the largest investigation in DOJ history. She received an Assistant Attorney General award for successfully trying several Sherman Act cases as a Trial Attorney for the DOJ Antitrust Division.

Since returning to private practice in late 2024, Ms. Loeb has co-first chaired a trial for a Fortune 50 company and represents a plaintiff software provider in bet-the-company antitrust litigation against SAP, among other experience. Ms. Loeb began her legal career clerking for the Honorable Denise Cote of the Southern District of New York and representing both plaintiffs and defendants in antitrust and other matters for Boies, Schiller & Flexner LLP.

d) The Proposed Co-Leads' Co-Counsel Add Significant Additional Experience and Resources from which the Proposed Class will Benefit.

In addition to the Proposed Co-Leads' depth of experience and expertise, the Proposed Class will further benefit from the depth of experience and expertise of additional Co-Counsel from Keller and HRS&R.

Keller Rohrback is a large national firm representing plaintiffs in large-scale, complex cases involving corporate wrongdoing, and has recovered over $94.9 billion for its clients to date. Courts across the country have appointed Keller Rohrback attorneys to leadership positions in numerous class cases, including antitrust cases. *See, e.g.*, *In re Facebook, Inc., Consumer Priv. User Profile Litig.*, No. 18-md-02843 (N.D. Cal.) (co-lead counsel in suit resulting in the largest civil privacy class action settlement in the United States); *In re 23andMe, Inc. Customer Data Security Breach Litig.*, No. 23-md-03098, (N.D. Cal.) (co-lead counsel); *In Re Juul Labs, Inc., Mktg., Sales Pracs., and Prods. Liab. Litig.*, 19-md-02913 (N.D. Cal.) (co-lead counsel); *James, et al. v. PacifiCorp, et al.*, No. 20CV33885 (Or. Cir. Ct., Multnomah Cnty.) (co-lead counsel in first wildfire class action to ever go to verdict); *In re TikTok, Inc., Minor Privacy Litigation*, No. 25-ml-03144 (C.D. Cal.) ("*In re TikTok*") (co-lead counsel); *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, No. 17-md-02785 (D. Kan.) (co-lead counsel in antitrust suit) *In Re: Delta Dental Antitrust Litigation*, No. 2019-CV-6734 (N.D. Ill.) (plaintiffs' committees); *Fleischman v. Albany Medical Center*, No. 06-CV-0765 (N.D.N.Y.) (co-lead counsel in antitrust suit).

Keller Rohrback lead partner **Will Dreher** is a former clerk for U.S. Supreme Court Justice Elena Kagan and a former federal prosecutor with significant federal trial experience. He is currently serving as interim co-lead counsel in the nationwide copyright infringement class action against Apple, *Hendrix v. Apple Inc.*, No. 25-cv-07558 (N.D. Cal.). Since joining the firm, Mr. Dreher has served as co-lead trial counsel in a public nuisance and negligence suit brought by a state attorney general's office against the e-cigarette manufacturer Juul Labs, Inc., and as lead trial counsel in a wildfire-related damages trial that resulted in a $56 million verdict. Mr. Dreher previously served as an Assistant U.S. Attorney in Seattle, where he was appointed the District's Civil Rights Coordinator and was detailed for three years to investigate and prosecute cases arising out of the January 6, 2021 breach of the United States Capitol Building. He previously litigated energy, environmental, and appellate matters at Jenner & Block LLP, and has taught appellate practice as an affiliate professor at the University of Washington School of Law.

Hach Rose Schirripa & Rehns, LLP ("HRS&R"), headquartered in New York, has established itself as a leading representative of health and welfare trust funds. HRS&R is currently representing lead plaintiff Teamsters 671 Health Service & Insurance Plan in federal court in *Estuary Transit District v. Hartford Healthcare Corporation*, No. 22-cv-00050 (D. Conn.), a case alleging monopolization and restraint of trade claims against a dominant hospital system, making

HRS&R uniquely qualified to litigate similar claims here. HRS&R has also represented named plaintiffs and class members in a number of actions alleging anticompetitive schemes to delay generic entry of pharmaceutical drugs, including Lipitor, Thalomid, Revlimid, Suboxone, Opana ER, Lidoderm, Loestrin24, Aggrenox, Solodyn and Pomalyst. The firm has served as co-lead counsel or as a member of the executive committee in many of these cases. The firm also represents a Taft-Hartley welfare fund in *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, MDL No. 2724 (E.D. Pa.), a price-fixing class action involving dozens of defendants. Hundreds of millions of dollars have already been secured in multiple settlements, and the case is still proceeding.

Frank R. Schirripa, Managing Partner and founder of HRS&R, focuses his practice on representing Taft-Hartley pension and benefit funds that have been damaged as the result of securities fraud or corporate malfeasance. Throughout his career, Mr. Schirripa has specialized in handling highly complex multi-party litigation in federal and state courts throughout the United States. He has served as a lead, co-lead or in a representative capacity across a full spectrum of industries and has represented the rights of consumers, shareholders and investors in high profile and precedent-setting class action litigation. Mr. Schirripa's expertise as a class action litigator has been recognized by his colleagues as a *New York Super Lawyer* in Securities and Class Action Litigation. Courts praise his skills and diligence. Judge Kaplan described his work in *In re Bank of New York Mellon Corp. FOREX Transaction Litigation*, MDL No. 2335 (S.D.N.Y. Sept. 24, 2015) as follows: "This really was an extraordinary case in which plaintiffs' counsel performed, at no small risk, an extraordinary service. . . . This was an outrageous wrong committed by the Bank of New York Mellon, and plaintiffs' counsel deserve a world of credit for taking it on, for running the risk, for financing it and doing a great job." In *In re SPX Corp. Securities Litigation*, 3:04-CV-99 (W.D.N.C.), the Court commended class counsel for its "skill, perseverance[,] . . . diligent advocacy" and "aggressive representation" of the class, noting that class counsel is among the "leading attorneys in the country in the area of class actions" and is "extremely competent" and "very experienced."

e) The Proposed Co-Leads and their Co-Counsel Have a Long History of Successful Collaboration.

The Proposed Co-Leads and co-counsel will effectively and efficiently work together to promote the best interests of the class. The longstanding professional and personal relationships between the partners on this case, and their demonstrated history of frictionless and successful collaboration, are highly unusual for any leadership slate:

- Susman and Keller's lead partner Will Dreher currently serve as interim co-lead counsel in the AI-related copyright consolidated class action *Hendrix v. Apple Inc.*, No. 25-cv-07558 (N.D. Cal.).
- Farella's Alexis Loeb, Fairmark's Amanda Vaughn, and Will Dreher worked together as AUSAs for years. Ms. Loeb and Mr. Dreher worked on multiple January 6-related prosecutions, including as co-trial counsel in *United States v. Worrell*, No. 21-cr-00292 (D.D.C.).
- Fairmark lead partner Jamie Crooks and Farella co-lead partner Chris Wheeler have consulted on hospital contracting antitrust matters for years since Farella helped achieve the landmark settlement in *Sutter*.
- Susman co-lead partner Mark Musico, Jamie Crooks, and Will Dreher clerked together at the U.S. Supreme Court, and Fairmark's Mike Lieberman, Amanda Vaughn, and Will Dreher were law school classmates who have frequently collaborated.
- Fairmark, including Jamie Crooks and Michael Lieberman, and Susman, including Steven Sklaver, are currently serving as co-lead counsel in two first-of-their-kind securities actions, both of which have survived motions to dismiss, against the largest venture capital firms in the cryptocurrency space. *Houghton v. Leshner*, No. 22-cv-7781 (N.D. Cal.); *Samuels v. Lido DAO*, No. 23-cv-06492 (N.D. Cal.).

The second and third factors favor the Proposed Co-Leads.

C. <u>Factor 4: The Proposed Co-Leads can and will devote significant time and resources to this litigation.</u>

Across their firms, the Proposed Co-Leads and their Co-Counsel employ over 400 lawyers worldwide, with four offices in New York City. They have the resources and are prepared to sustain this case through trial, including by retaining a nationally renowned healthcare economist and other leading experts to establish class certification, liability, and damages; employing state-of-the-art e-discovery experts, vendors, and platforms to examine voluminous documents and data; and investing millions of dollars and tens of thousands of hours over the long haul, as they have done in prior cases, time and again.

The Proposed Co-Leads, moreover, have extensive experience working with and cooperatively alongside government investigators to efficiently prosecute cases. Susman's Jacob Buchdahl, Farella's Alexis Loeb, Fairmark's Amanda Vaughn, and Keller's Will Dreher each served as Assistant United States Attorneys and/or DOJ Trial Attorneys and bring significant government and jury trial experience, including experience coordinating parallel investigations and prosecutions across government agencies. And Fairmark is currently serving as outside counsel to a state attorney general on an unrelated healthcare antitrust matter. The Proposed Co-Leads have been actively monitoring the DOJ's lawsuit, including by attending the recent scheduling conference in that matter. They are prepared to move forward expeditiously to align the schedule in this case with the DOJ action in order to enable more efficient coordination with the DOJ and between the two cases.

The fourth factor, too, favors the Proposed Co-Leads.

V. CONCLUSION

The Proposed Co-Leads investigated and developed this case, filed the first complaint about the conduct at issue, have successfully litigated the most significant hospital contracting practices antitrust class action in history, and include top antitrust firms nationally. With their extensive local experience, unmatched hospital antitrust experience, and multiple veteran trial and appellate lawyers, the Proposed Co-Leads are uniquely positioned to aggressively and quickly push this case forward to trial. For these reasons, Plaintiffs respectfully request that the Court appoint the Proposed Co-Leads as Interim Co-Lead Counsel for the Proposed Class of healthcare purchasers.

Dated: June 26, 2026

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WORD COUNT CERTIFICATION

Pursuant to Local Rule 7.1(c), I hereby certify that the total number of words in this memorandum, excluding the caption, table of contents, table of authorities, signature block, and word count certification is 7,645.

/s/ Mark Musico
Mark Musico

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Mark Musico
Mark Musico

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UFCW LOCAL 1500 WELFARE FUND, on behalf of itself and all others similarly situated, Plaintiff, v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, Defendant.	CV 25-5023
CEMENT AND CONCRETE WORKERS DC BENEFIT FUND, et al. on its own behalf and on behalf of others similarly situated, Plaintiff, v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, Defendant.	CV 25-5571 Hon. Brian M. Cogan

DECLARATION OF JAMIE CROOKS IN SUPPORT OF PLAINTIFFS CEMENT AND CONCRETE WORKERS DC BENEFIT FUND AND POINTERS, CLEANERS AND CAULKERS LOCAL 1 WELFARE FUND'S MOTION TO APPOINT FAIRMARK PARTNERS LLP, SUSMAN GODFREY LLP, AND FARELLA BRAUN + MARTEL LLP AS INTERIM CO-LEAD CLASS COUNSEL

I, Jamie Crooks, declare as follows:

1. I am the Managing Partner and founder of the law firm Fairmark Partners, LLP ("Fairmark"), attorneys for Cement and Concrete Workers DC Benefit Fund ("CCWDC Welfare Fund") and Pointers, Cleaners, & Caulkers Local 1 Welfare Fund ("PCC Local 1 Welfare Fund") (collectively, "Plaintiffs"). I have personal knowledge of the statements below and, if called as a witness, I could and would give competent testimony as to the following facts.

2. I submit this declaration in support of Plaintiffs' Motion to Appoint Fairmark, Susman Godfrey LLP ("Susman"), and Farella Braun + Martel LLP ("Farella") as Interim Co-Lead Class Counsel. This declaration provides background on Fairmark's extensive, multi-year investigation into The New York and Presbyterian Hospital's ("NYP") anticompetitive conduct, which culminated in my firm initially filing this lawsuit on July 25, 2025. *See* Complaint, *Cement and Concrete Workers DC Benefit Fund v. New York and Presbyterian Hosp.*, No. 25-cv-6140 (S.D.N.Y.) ("the CCWDC Complaint"). I also provide information regarding Fairmark's extensive work across the hospital industry challenging anticompetitive hospital contracting practices like that alleged here.

<u>Fairmark's Investigation of NYP</u>

3. After identifying NYP's outlier, high prices through data analysis, Fairmark first began its investigation into NYP's anticompetitive conduct four years ago, in June 2022. Over the following three years, a team of six Fairmark attorneys and researchers and its in-house data scientist spent over 575 hours investigating the antitrust violations alleged in the CCWDC Complaint and the subsequent Consolidated Class Action Complaint.[1]

[1] This declaration describes the general nature, scope, and extent of Fairmark's pre-filing investigation for purposes of the Rule 23(g) interim-counsel analysis. It does not disclose, and is not intended to waive protections over, any material protected by attorney-client privilege, attorney

4. This investigation was difficult and time-intensive, both because NYP's contracts with Network Vendors are not publicly available and were not available to Fairmark (and signatories are prohibited from discussing the confidential terms of those contracts), and because gathering data relating to healthcare pricing and hospital system market power is complex. As part of its investigation, Fairmark gathered information relating to NYP's market power, contracting practices, and those practices' effect on prices and insurance plans.

5. At the time Fairmark began its investigation, the federal Price Transparency Rule, 45 C.F.R. Part 180—a series of regulations HHS promulgated in 2020 requiring the disclosure in analyzable form of hospital prices—had only recently gone into effect, and many hospitals did not fully comply with the law. Thus, Fairmark's full-time claims data analyst, working with our attorneys, had to procure pricing data from multiple sources to determine how NYP's prices and market share compare to those of its competitors. Even after hospitals began complying with the Price Transparency Rule, they generally provided data that was not readily usable, requiring our in-house claims data analyst to spend hours translating the raw data files into pricing and market share data that could meaningfully be analyzed. All told, Fairmark's claims data analyst spent well over 100 hours creating the analyses of pricing, patient flow, and market position contained in the CCWDC Complaint. These analyses were not publicly available and were only possible due to the unique expertise Fairmark's team brought to this matter. With these analyses, Fairmark was able to support the CCWDC complaint not only with qualitative and anecdotal evidence of NYP's conduct and its effects, but also with quantitative empirical analyses. *See, e.g.*, CCWDC Complaint ¶¶ 66,

work-product, consulting-expert work, or any other material containing or referring to counsel's mental impressions, legal theories, investigative files, communications, notes, analyses, or non-testifying expert materials. *See, e.g.*, *Dover v. Brit. Airways, PLC (UK)*, No. 12-cv-5567, 2014 WL 5090021, at *2 (E.D.N.Y. Oct. 9, 2014) (pre-filing economic analysis cited in complaint not discoverable where plaintiffs were not relying on it to prove the merits).

71, 97-102, 109-10, 112 (paragraphs containing results from Fairmark's pre-complaint investigation).

6. In addition, long before filing the complaint, Fairmark engaged one of the preeminent healthcare economics experts in the country, and a supporting team of economists from a premier economic consulting firm, to consult in connection with preparation of the complaint. This expert worked with my team both in analyzing the pricing and market share data we had compiled and in understanding how NYP's contracting practices (as we understood them to operate) were likely impeding competition and contributing to NYP's exorbitantly high prices. To date, Fairmark has spent thousands of dollars on pre-filing economic expert work alone, as well as several thousand dollars more on purchasing proprietary data sources to bolster this analysis. This pre-suit economic analysis contributed significantly to the strength of the complaint's allegations and to the case's antitrust and economic theories. This expert and consulting firm will continue to support the Proposed Co-Leads throughout the case.

7. Fairmark began working with Proposed Co-Lead Susman Godfrey in the fall of 2023 regarding the legal theories that may be applicable to NYP's conduct. Fairmark also began working with Proposed Co-Counsel Hach Rose Schirripa & Rehns LLP, a New York firm specializing in representing unions, in 2024 to examine how the prices and conduct Fairmark's investigation had uncovered affected union health benefit plans.

8. Fairmark ultimately filed a complaint on behalf of the CCWDC Welfare Fund on July 25, 2025. Fairmark filed on behalf of the CCWDC Welfare Fund before the United States Department of Justice's ("DOJ") investigation into NYP was public, over six weeks before the counsel for the UFCW Local 1500 Welfare Fund (the "Alternative Slate") filed a follow-on action (which was filed only after public reporting indicated DOJ was investigating), and nine months

before DOJ filed its own case.

<u>Fairmark's Leadership in Antitrust Enforcement of Hospitals' Anticompetitive Conduct</u>

9. Fairmark's investigation of NYP and representation of Plaintiffs in this case is representative of its extensive experience in and dedication to antitrust enforcement in the healthcare industry and, in particular, to enforcement against large hospital systems engaged in conduct like that alleged here. Indeed, antitrust enforcement of this kind is Fairmark's primary practice area, and, over many years, it has gained experience prosecuting these cases that is unmatched by any other firm in the country.

10. All told, Fairmark's attorneys, non-attorney investigators, data scientist, and paralegals have spent 31,000 hours in three highly similar hospital-contracting-practices antitrust class actions against dominant hospital systems. These cases involve the same or similar antitrust liability, damages, class, empirical, and third-party discovery issues that will be at the center of this case.

11. ***HCA Healthcare Antitrust Litigation (North Carolina).*** In 2021, Fairmark filed suit on behalf of patients in North Carolina state court challenging anti-steering provisions imposed by Mission Health System. *See* Complaint, *Davis v. HCA Healthcare and Mission Health Sys.*, No. 21-cv-03276 (N.C. Super. Ct. Aug. 10, 2021). It was the first lawsuit brought by private plaintiffs challenging such provisions since the *Sutter* litigation, and it spawned a follow-on suit in federal court brought by members of the Alternative Slate. *See* Complaint, *In re Mission Health Antitrust Litigation*, No. 22-cv-00114 (W.D.N.C. June 3, 2022). The *Davis* case survived multiple motions to dismiss and an early summary judgment motion, all of which I argued. I defended the deposition of Plaintiffs' economic expert, and my colleague Amanda Vaughn took the deposition of defendants' rebuttal expert. Fact and expert discovery in the *Davis* case is now closed, and the parties

completed class certification and *Daubert* briefing this spring. Next month, Ms. Vaughn and I will argue those motions before the court.

12. ***Hartford HealthCare (Connecticut).*** In 2022, Fairmark filed on behalf of patients in Connecticut state court challenging all-or-nothing contracting and anti-steering provisions, similar to those at issue here, imposed on payers by Hartford HealthCare. *See* Complaint, *Brown et al. v. Hartford HealthCare Corp. et al.*, No. X03-HHD-CV22-6152239-S (Conn. Super. Ct. Feb. 14, 2022). Fairmark's case survived in full a motion to strike (Connecticut's equivalent to a motion to dismiss under Fed. R. Civ. P. 12(b)(6)) brought by the defendant hospital system, which I argued before the court in 2023. After we prevailed on that dispositive motion, a follow-on lawsuit was filed in federal court. *See* Complaint, *Estuary Transit District et al. v. Hartford Healthcare Corp.*, No. 24-cv-1051 (D. Conn. June 14, 2024). My team and I litigated several discovery motions and worked closely on and took multiple depositions of payers and co-conspirators on factual issues similar to those likely to be relevant in this matter. My team also managed the months-long process of data collection from multiple national and regional payers for analysis by Plaintiffs' experts. Fact discovery in the case has now closed, and expert reports and accompanying briefing are ongoing. Class certification briefing will be completed this fall.

13. ***Advocate Aurora Health (Wisconsin).*** Fairmark filed another suit on behalf of payers in 2022 in the Eastern District of Wisconsin, again challenging anticompetitive contract provisions, like those at issue here, imposed by Advocate Aurora Health, Inc. *See* Complaint, *Uriel Pharm. Health & Welfare Plan v. Advocate Aurora Health, Inc.*, No. 22-C-0610 (E.D. Wis. May 24, 2022). The defendant hospital in that case moved to dismiss, and that motion was denied in full. After that ruling, Fairmark's suit again spawned a follow-on lawsuit that pursued the same legal theories on behalf of indirect purchasers. *See* Complaint, *Shaw et al. v. Advocate Aurora Health*

Inc., et al., No. 24-cv-157 (E.D Wis. Feb. 5, 2024). My team and I took approximately 16 depositions of Advocate Aurora employees (including its head of managed care and its payer negotiations lead), payers, and competitors, addressing facts and information likely to be similar to those relevant in this case. I also deposed the defendants' economic expert on antitrust liability. Moreover, as in Hartford HealthCare, Fairmark managed the complicated process of gathering and cleaning millions of lines of health claims data for economic analysis, from many of the same payers it has worked with in other cases. Fact and expert discovery in the case is now closed, and we have filed our opening brief for class certification and a motion to exclude one of the defendants' economic experts.

14. The theories of antitrust liability in *HCA*, *Hartford HealthCare*, and *Advocate Aurora*—all of which survived motions to dismiss (and, in *HCA*, a motion for summary judgment)—are highly similar to those likely to be at issue in this case. Like plaintiffs in Fairmark's other cases, the Plaintiffs here challenge all-or-nothing, all-products, anti-steering, and anti-tiering contracting practices of a dominant hospital system. As such, I expect that the same types of arguments and evidence that are central in Fairmark's other cases—such as the provider-insurer contracts, the testimony of the managed care contracting personnel who negotiated those contracts, and the claims data needed from large insurance companies to define the relevant market and prove damages—also will be central in this case. I also expect that the same expert issues, such as the relevant geographic markets, the hospital system's market power, hospital prices, and the anticompetitive effects of the hospital system's contracting practices, will be litigated in this case.

15. Indeed, in its motion to dismiss, NYP has already made the same types of arguments challenging the complaint that the defendants in *HCA*, *Hartford HealthCare*, and *Advocate Aurora* made, including that plaintiffs lack standing and are not "efficient enforcers," ECF No. 41 at 1-3,

and that the challenged restraints are not plausibly exclusionary and do not foreclose competition, *id*. at 3. When the defendants in Fairmark's other cases raised these same issues, regarding the same challenged restraints, Fairmark briefed, argued, and prevailed on them.

16. Finally, I highlight that the *Sutter* litigation, led by Proposed Co-Lead Farella partner Chris Wheeler, was the first to demonstrate the anticompetitive impact and effects of dominant hospital systems imposing on payers contractual provisions and requirements that restrict competition. And it was the first to demonstrate how market participants could successfully challenge those restraints to lower healthcare costs in the United States. Fairmark has built the nation's leading hospital antitrust practice using the lessons learned from the model set by the plaintiffs in *Sutter*.

Fairmark's Additional Work Within its Healthcare Antitrust Practice

17. In addition to its primary work challenging the contracting provisions like those at issue here, Fairmark has extensive experience supporting antitrust enforcement within the healthcare industry in other matters as well.

18. Fairmark has become a go-to firm for those seeking to support antitrust enforcement as *amici* in several cases challenging mergers and anticompetitive conduct by large hospital systems. *See, e.g.,* Dkt. 40, *Sidibe et al. v. Sutter Health*, No. 22-15634 (9th Cir. filed Oct. 11, 2022) (supporting plaintiffs in case alleging anticompetitive conduct similar to that alleged by Plaintiffs against NYP here); Dkt. 86, *Fed. Trade Comm'n v. Hackensack Meridian Health Inc.*, No. 21-2603 (3d Cir. filed Nov. 5, 2021) (supporting FTC in challenge of merger of two hospitals). Fairmark's experience addressing hospital consolidation and related market power issues will benefit the class here.

19. In addition, Fairmark is working with a state attorney general on a confidential

investigation involving healthcare antitrust matters. And Fairmark has periodically consulted with the division of the Federal Trade Commission's Bureau of Competition that oversees hospital mergers. I expect Fairmark's past and ongoing work with government enforcers will position it well to engage in any required coordination with DOJ in its parallel case against NYP.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed on June 26, 2026 in New York, New York.

By: /s/ Jamie Crooks
Jamie Crooks

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UFCW LOCAL 1500 WELFARE FUND, on behalf of itself and all others similarly situated, Plaintiff, v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, Defendant.	CV 25-5023
CEMENT AND CONCRETE WORKERS DC BENEFIT FUND, et al. on its own behalf and on behalf of others similarly situated, Plaintiff, v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, Defendant.	CV 25-5571 Hon. Brian M. Cogan

DECLARATION OF CHRISTOPHER C. WHEELER IN SUPPORT OF PLAINTIFFS CEMENT AND CONCRETE WORKERS DC BENEFIT FUND AND POINTERS, CLEANERS AND CAULKERS LOCAL 1 WELFARE FUND'S MOTION TO APPOINT FAIRMARK PARTNERS LLP, SUSMAN GODFREY LLP, AND FARELLA BRAUN + MARTEL LLP AS INTERIM CO-LEAD CLASS COUNSEL

I, Christopher C. Wheeler, declare as follows:

1. I am a partner at the law firm of Farella Braun + Martel LLP ("Farella"), attorneys for Pointers, Cleaners, & Caulkers Local 1 Welfare Fund ("PCC Local 1 Welfare Fund"). I have personal knowledge of the statements below and, if called as a witness, I could and would give competent testimony as to the following facts.

2. I submit this declaration in support of Plaintiffs Cement and Concrete Workers DC Welfare Fund and PCC Local 1 Welfare Fund's Motion to Appoint Fairmark Partners, LLP ("Fairmark"), Susman Godfrey LLP ("Susman"), and Farella as Interim Co-Lead Class Counsel (the "Proposed Co-Leads") to provide background regarding my over 10,000 hours of experience litigating the antitrust class action *UFCW & Employers Benefit Trust v Sutter Health et al.*, No. CGC-14-538451 (Cal. Super. Ct. filed April 7, 2014) ("*Sutter*"). *Sutter* was the first successful hospital contracting practices antitrust class action against a dominant hospital system, and it serves as a model for cases like this one. And *Sutter* remains the most significant hospital contracting case to date—resulting in a $575,000,000 all-cash settlement and sweeping injunctive relief. I believe my hard-won experience over more than five and one-half years of litigating *Sutter* (including an interlocutory appeal) will benefit the class in this matter.

A. *Sutter*

3. Farella represented the UFCW and Employers Benefit Trust ("UEBT") in *Sutter*—a hospital contracting practices antitrust class action against the Sutter Health hospital system—for over seven years, from preparation of the complaint and its filing in April 2014 through final judgment in August 2021.[1] Sutter is a dominant hospital system in Northern California. Farella

[1] While class counsel actively litigated *Sutter* for about five and one-half years (including an interlocutory appeal), post-settlement proceedings continued for another almost two years, in part due to the COVID-19 pandemic, until entry of final judgment in August 2021.

and its co-counsel represented a class of direct purchasers, including employers, union trusts, and government entities, challenging Sutter's anti-steering contracting practices. The Office of the California Attorney General joined the case in March 2018.

4. At the time *Sutter* was filed in April 2014, to my knowledge, no plaintiff, including any government enforcer, had ever established antitrust liability based on a hospital system's contracting practices.[2]

5. The theory of antitrust liability in *Sutter* was essentially the same as in this case. As in *Sutter*, the direct purchasers in this case challenge the anti-steering contracting practices of a dominant hospital system. As such, I expect that the same types of evidence that were central in *Sutter*, such as the provider-insurer contracts and the testimony of the managed care contracting personnel who negotiated those contracts, also will be central in this case. I also expect that the same expert issues that arose in *Sutter* will be litigated in this case, including the relevant geographic markets, the hospital system's market power, hospital prices, and the anticompetitive effects of the hospital system's anti-steering provisions. Indeed, in the Answer that The New York and Presbyterian Hospital ("NYP") filed in the United States Department of Justice's action against it (*United States v. The New York and Presbyterian Hosp.*, No. 1:26-cv-02480, Dkt. 22 (S.D.N.Y. filed Mar. 26, 2026), NYP makes many of the same types of arguments that Sutter made, including that: NYP "lacks market power" (*id.* at 20); its anti-steering restrictions are "industry-standard" (*id*. at 1); steerage is not effective (*id*. at 16); its anti-steering restrictions are

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[2] At the time Farella and its co-counsel filed *Sutter*, a related federal indirect purchaser action against Sutter—*Sidibe v. Sutter Health*, No. 3:12-cv-04854 (N.D. Cal. Sept. 17, 2012)—had twice been dismissed and was facing a third dismissal motion. Following a defense verdict at trial in early 2022 and subsequent reversal by the Ninth Circuit (*see Sidibe v. Sutter Health*, 103 F.4th 675 (9th Cir. 2024)), I understand that *Sidibe* settled for $228.5 million in March 2025. *See* Pls' Mot. for Final Approval of Class Settlement, Dkt. No. 1761 (Sept. 26, 2025). Farella did not litigate *Sidibe*.

procompetitive and necessary for "volume discounts" (*id*. at 6-7, 15); efforts to reduce healthcare costs would "reduce patient choice" (*id*. at 11) and "penalize patients" (*id*. at 17); insurers—and not the dominant hospital system—are to blame for high healthcare costs (*id*. at 12), and the requested relief would benefit them (*id*. at 11); "Centers of Excellence" are misleading (*id*. at 29); and the challenged provisions "are necessary to cover NYP's high costs of case" (*id*. at 59).

6. Following five and one-half years of litigation and the selection of a jury, plaintiffs achieved a landmark settlement in *Sutter.* Sutter agreed to an all-cash settlement of $575,000,000, representing approximately 60% of the damages Plaintiffs would have sought at trial. In addition, the settlement included sweeping injunctive relief, overseen by a court-appointed monitor for 10 years, that enjoined the alleged anticompetitive conduct at the heart of the litigation: Sutter's alleged restrictions on the ability of health plans to steer patients away from higher cost providers and towards providers that offer better prices and/or better quality—the same anticompetitive conduct that is alleged here. In light of this successful result on behalf of the class, class counsel in *Sutter*, including Farella, were awarded $152.4 million in attorneys' fees.

7. The settlement in *Sutter*, like the case itself, received national attention. *See*, *e.g.*, Jenny Gold, *Sutter Health will pay $575 million and adopt pricing changes to settle antitrust case*, *L.A. Times*, Dec. 21, 2019 ("The settlement is expected to have nationwide implications for how hospital systems negotiate prices with insurers…. [The settlement] 'is strong guidance that the kinds of behavior Sutter engaged in are not going to be allowed going forward… This really opens the door for attorneys general in other states to begin examining their own health systems for similar behaviors.'" (quoting Jamie King)); Reed Abelson, *High Medical Bills Are at Center of Hospital Group's Trial*, *N.Y. Times*, Oct. 3, 2019, at 4 ("If Sutter is forced to change how it negotiates with insurers, 'it could have a chilling effect on these practices nationwide.'"); Rob

Waters, *California's Sutter Health Settlement: What States Can Learn About Protecting Residents from the Effects of Health Care Provider Consolidation*, Milbank Memorial Fund, Sept. 23, 2020, at 9 ("There have been lots of efforts to try to curb aggressive pricing and aggressive market consolidation in different places. But this is really the first time where we've actually seen success getting a system to cease and desist").

8. *Sutter* was a heavily litigated antitrust class action from which I gained extraordinary experience directly relevant to this case. The parties produced nearly 17 million pages of documents and took many dozens of depositions. Plaintiffs' experts and counsel navigated the challenges associated with processing and/or analyzing more than 870 million observations of claims data subpoenaed from five different health plans. The case was litigated through several summary judgment or summary adjudication motions and many expert-exclusion motions and motions *in limine*, and plaintiffs had fully prepared their case for trial before the case settled after jury selection.

9. Farella deployed its significant resources to successfully litigate the case. The firm invested many thousands of hours of Farella attorney time. *See* Decl. of Christopher C. Wheeler in Supp. of Pls' Counsel's Joint Mot. for Att'ys Fees, Costs, and Service Award ("Wheeler *Sutter* Fee Declaration"), ¶ 330 & Ex. 16, *UFCW & Emps. Benefit Tr. v. Sutter Health*, No. CGC-14-538451 (Cal. Super. Ct. Mar. 29, 2021). Farella also invested approximately $4.4 million in expert and other costs, which the firm recovered following the Court's approval of the settlement.

10. I was the lead Farella partner and one of the lead plaintiffs' lawyers in *Sutter*. I joined the case months before the complaint was filed and, over the next seven and one-half years, I worked on essentially every aspect of this case, including: preparation of the complaint; responding to Sutter's motion to dismiss; an interlocutory appeal; party and nonparty fact

discovery; expert discovery; class certification; summary adjudication/judgment motions; a mock jury exercise; settlement negotiations; trial preparation; and post-settlement approval proceedings. *See generally* Wheeler *Sutter* Fee Declaration. My total *Sutter* investment exceeded 10,000 hours—more than any other plaintiff attorney in the case.[3]

11. Over the course of these more than 10,000 hours, I developed a deep knowledge of the healthcare industry, hospital contracting practices, and healthcare antitrust law. I also learned how to effectively and efficiently litigate a hospital contracting practices antitrust class action.

12. I expect that many of the "lessons learned" litigating *Sutter* are applicable to this matter. More than that, I expect that my experience in *Sutter* will allow the Proposed Co-Leads to streamline and efficiently litigate this case in ways that would not be possible without that experience.

- I managed offensive discovery. I deposed numerous Sutter witnesses, including Sutter's chief contracting officer, who I deposed for over 50 hours over the course of at least nine days. I expect this experience would be helpful in identifying the key witnesses and obtaining the key testimony and documents in this matter.
- I deposed Sutter's market-power expert witness and I worked closely with, and defended depositions of, both UEBT's class and damages expert, Dr. Jeffrey Leitzinger, and UEBT's liability expert, Dr. Gregory Vistnes, one of the leading healthcare economists in the nation. I expect this experience would be relevant to class and merits expert work in this matter.
- I drafted many of the legal briefs and litigated many of the healthcare antitrust and class certification legal issues that I expect will be litigated in this matter.

[3] Plaintiffs' motion for attorneys' fees did not include all of my time on *Sutter*.

- I prepared party and nonparty witnesses to testify at trial, and I also prepared to cross-examine Sutter witnesses at trial. I expect this experience would be relevant to trial preparation in this matter.
- I participated in mediation and settlement negotiations spanning approximately a year. I expect this experience would be relevant to any settlement negotiations in this matter.
- I helped coordinate the work of the five co-counsel firms and the Office of the California Attorney General in litigating against the over 60 outside counsel representing Sutter. I expect this experience would be relevant to coordinating the work of co-counsel in this matter, including in creating and managing co-counsel teams for particular areas of the case.

13. I believe that all of this experience in *Sutter* would benefit the class in this matter.

B. My healthcare antitrust practice and representation of state attorneys general subsequent to *Sutter*

14. Since *Sutter*, my practice has focused on antitrust, particularly in the healthcare industry, and I have been retained by state attorneys general across the nation in connection with healthcare antitrust matters, including both merger and conduct matters. While most of these matters are confidential, one is not.

15. I was retained by the Office of the Rhode Island Attorney General to lead the antitrust investigation of the proposed merger of the two largest hospital systems in Rhode Island. The transacting parties abandoned the proposed transaction after the Rhode Island Attorney General issued its administrative decision denying the merger. I spoke regarding this transaction on a panel regarding “Modern Approaches to Analyzing Hospital Mergers” at the annual meeting of the American Bar Association’s Antitrust Law Section Health Care & Pharmaceuticals

Committee.

16. Through this post-*Sutter* work, I have continued to hone my healthcare antitrust expertise and to develop my knowledge of the healthcare industry in different geographies across the nation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed on June 26, 2026 in Emerald Isle, North Carolina.

By:/s/ Christopher C. Wheeler
Christopher C. Wheeler