UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

URIEL PHARMACY HEALTH AND WELFARE PLAN; AND URIEL PHARMACY, INC., on their own behalf and on behalf of all others similarly situated, Plaintiffs, VS. ADVOCATE AURORA HEALTH, INC. and AURORA HEALTH CARE, INC., Defendants.	Case No. 2:22-cv-00610

DEFENDANTS' MOTION TO FILE DOCUMENTS UNDER RESTRICTED ACCESS AND RESPONSE TO PLAINTIFFS' OBJECTIONS AND MOTIONS TO FILE UNDER RESTRICTED ACCESS

Defendants Advocate Aurora Health, Inc. and Aurora Health Care, Inc. ("Defendants") hereby move pursuant to General L.R. 79(d)(7) to file certain documents identified herein under restricted access and respond to Plaintiffs' Objections and Motion to File Under Restricted Access (ECF No. 210) and their separately-filed (but identically named) Objections and Motion to File Under Restricted Access (ECF No. 215):

I. Defendants concur with Plaintiffs that the following documents do not need to remain under restricted access.

Defendants agree that the following documents may be made available on the public docket:

- Exhibit No. 6 to Memorandum in Support of Plaintiffs' Motion to Exclude Opinions Offered by Mr. Jonathan Orszag ("Plaintiffs' *Daubert* Memorandum") (ECF No. 212-6) [Stipulation of Designated 30(b)(6) Testimony dated October 31, 2025]

This document was not one that Plaintiffs identified to Defendants when the parties met and conferred under General L.R. 79(d).

II. Access to the following categories of documents should be restricted to the Court

and counsel for the parties given the sensitive nature of antitrust class actions.

As Defendants explained in their Memorandum in Support of Defendants' Motion to File Under Restricted Access, (22-cv-610, ECF No. 206; 24-cv-157, ECF No. 104), "the antitrust context presents its own particular challenges for courts weighing the public release of information." *Methodist Health Servs. Corp. v. OSF Healthcare Sys.*, No. 13-cv-1054, 2016 WL 5817176, at *18 (C.D. Ill. Sept. 30, 2016), *aff'd*, 859 F.3d 408 (7th Cir. 2017). This is because discovery "in antitrust litigation, by its broad nature, requires the production of sensitive information regarding business strategy, financials, and operations." *Id.* (citing *AlliedSignal, Inc. v. B.F. Goodrich Co.*, 183 F.3d 568, 577 (7th Cir. 1999)). Such information often must be shielded from public view, including to eliminate the risk of pricing information being "used by other parties as 'the basis of effective collusion' in future negotiations," and to avoid giving "an unfair advantage" to parties in such negotiations. *Id.* (quoting *Ball Mem'l Hosp., Inc.*, 784 F.2d at 1346). This antitrust litigation is no different.

Given this context, Defendants ask that the Court overrule Plaintiffs' objections and keep the documents to which Plaintiffs have objected to under restricted access. Defendants do not rely on the Protective Order designations alone. As explained in greater detail below, the documents to which Plaintiffs have objected to contain sensitive information that should remain accessible only to the Court and counsel for the parties—including discussions of negotiated reimbursement rates, contract terms, and confidential business and strategic analyses—at least to the extent such information does not influence or underpin the Court's decision. To the extent such information forms the basis of the Court's forthcoming decisions, Defendants ask that the Court adopt the procedure set forth in Defendants' Memorandum in Support of Defendants' Motion to File Under Restricted Access, (22-cv-610, ECF No. 206; 24-cv-157, ECF No. 104).

A. Excerpts from deposition transcripts of Defendants' witnesses and confidential documents produced by Defendants

Defendants ask that the following documents remain under restricted access:

1. Exhibits from Plaintiffs' Objections and Motion to File Under Restricted Access Exhibits to *Daubert* Papers (ECF No. 210)

- Exhibit No. 9 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-9);
- Exhibit No. 10 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-10);
- Exhibit No. 11 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-11);
- Exhibit No. 17 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-17);
- Exhibit No. 19 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-19); and
- Exhibit No. 20 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-20).

2. Exhibits from Plaintiffs' Objections and Motion to File Under Restricted Access Exhibits to Class Certification Papers (ECF No. 215)

- Exhibit No. 8 to Memorandum in Support of Plaintiffs' Motion for Class Certification ("Plaintiffs' Memorandum for Class Certification") (ECF No. 218-9);
- Exhibit No. 9 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-10);
- Exhibit No. 10 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-11);
- Exhibit No. 11 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-12);
- Exhibit No. 13 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-14);
- Exhibit No. 15 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-16);
- Exhibit No. 18 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-19);

- Exhibit No. 19 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-20);
- Exhibit No. 20 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-21);
- Exhibit No. 21 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-22);
- Exhibit No. 25 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-26);
- Exhibit No. 30 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-31);
- Exhibit No. 34 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-35);
- Exhibit No. 36 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-37);
- Exhibit No. 37 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-38);
- Exhibit No. 38 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-39);
- Exhibit No. 39 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-40);
- Exhibit No. 40 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-41);
- Exhibit No. 41 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-42);
- Exhibit No. 42 to Plaintiffs' Memorandum for Class Certification (ECF No.

218-43);

- Exhibit No. 43 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-44);
- Exhibit No. 44 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-45);
- Exhibit No. 48 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-49);
- Exhibit No. 49 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-50);
- Exhibit No. 50 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-51);
- Exhibit No. 51 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-52);
- Exhibit No. 52 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-53);
- Exhibit No. 53 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-54);
- Exhibit No. 54 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-55);
- Exhibit No. 56 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-57);
- Exhibit No. 58 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-59);
- Exhibit No. 59 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-60);

- Exhibit No. 60 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-61);
- Exhibit No. 61 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-62);
- Exhibit No. 62 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-63);
- Exhibit No. 63 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-64);
- Exhibit No. 64 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-65);
- Exhibit No. 65 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-66);
- Exhibit No. 66 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-67);
- Exhibit No. 67 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-68);
- Exhibit No. 68 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-69);
- Exhibit No. 70 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-71);
- Exhibit No. 74 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-75);
- Exhibit No. 87 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-88);
- Exhibit No. 88 to Plaintiffs' Memorandum for Class Certification (ECF No.

218-89); and

- Exhibit No. 90 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-91).

These documents are deposition transcript excerpts of Defendants' witnesses or internal, confidential documents produced by Defendants. The excerpts and documents contain sensitive information regarding Defendants' business practices, market analyses, proprietary business intelligence, operations, and other information that is kept confidential and not regularly shared. Public disclosure of this information would cause Defendants harm because it would disclose Defendants' internal analyses relating to Defendants' competitors and third parties with whom Defendants contract, thereby giving such parties a competitive advantage. Good cause exists to restrict access to this information. *See Patriot Universal Holdings, LLC v. Formax, Inc.*, 24 F. Supp. 3d 802, 808 (E.D. Wis. 2014) (granting motion to seal where "the materials contained therein [were] confidential business records"); *see also Wisconsin Alumni Rsch. Found. v. Apple, Inc.*, No. 14-CV-062-WMC, 2015 WL 6453837, at *2 (W.D. Wis. Oct. 26, 2015) (granting motion to seal "manufacturing agreements" with third parties and others as well as "related documents" where such documents are not disclosed or otherwise made public); *SmithKline Beecham Corp. v. Pentech Pharm., Inc.*, 261 F. Supp. 2d 1002, 1008 (N.D. Ill. 2003) (holding that information about terms and conditions of contracts "that might give other firms an unearned competitive advantage" is legitimately confidential information that competitors should not have); *Methodist Health*, 2016 WL 5817176, at *18 ("Specific to the healthcare industry, the Seventh Circuit has acknowledged that the release of provider-payer rate negotiations could result in an unfair advantage to providers.") (citing *Ball Mem'l Hosp., Inc. v. Mut. Hosp. Ins., Inc.*, 784 F.2d 1325, 1345 (7th Cir. 1986)).

B. Documents provided in response to a civil investigative demand

Defendants ask that the following documents remain under restricted access:

1. Exhibits from Plaintiffs' Objections and Motion to File Under Restricted Access Exhibits to Class Certification Papers (Dkt. No. 215)

- Exhibit No. 14 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-15);
- Exhibit No. 57 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-58); and
- Exhibit No. 85 to Plaintiffs' Motion for Class Certification (ECF No. 218-86).

These materials reflect the strong confidentiality interests that attach to submissions made in response to a civil investigative demand. Companies also have legitimate privacy interests in protecting non-public correspondence with the governmental agencies that regulate them. *See Bracco Diagnostics, Inc. v. Amersham Health Inc.*, Civ. A. No. 03-6025, 2007 WL 2085350, at *4 (D.N.J. July 17, 2007); *cf. Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1039 (7th Cir. 1998) (affirming withholding of documents related to Antitrust Division investigation in response to FOIA request because "[p]ublic disclosure of information could result in . . . revelation of the scope and nature of the Government's investigation"). And sealing is appropriate where the disclosure of regulatory correspondence would cause a company to face significant competitive injury in the marketplace. *See id.* at *5.

C. Documents produced by third-party consultants retained by Defendants

Defendants ask that the following documents remain under restricted access:

1. Exhibits from Plaintiffs' Objections and Motion to File Under Restricted Access Exhibits to Class Certification Papers (Dkt. No. 215)

- Exhibit No. 7 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-8);
- Exhibit No. 12 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-13);
- Exhibit No. 75 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-76);
- Exhibit No. 76 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-77);

and

- Exhibit No. 77 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-78).

These materials should remain filed under restricted access for the same reasons as the documents in II.A above and II.D below. Specifically, these documents contain sensitive information regarding Defendants' business practices, market analyses, proprietary business intelligence, and other information that is kept confidential or not regularly shared publicly and was kept confidential by the third-party consultants it was shared with. Public disclosure of this information would cause Defendants harm because it would disclose Defendants' internal analyses relating to Defendants' competitors and third parties with whom Defendants contract, thereby giving such parties a competitive advantage. Good cause exists to restrict access to this information. *See Patriot Universal Holdings, LLC v. Formax, Inc.*, 24 F. Supp. 3d 802, 808 (E.D. Wis. 2014) (granting motion to seal where "the materials contained therein [were] confidential business records"); *see also Wisconsin Alumni Rsch. Found. v. Apple, Inc.*, No. 14-CV-062-WMC, 2015 WL 6453837, at *2 (W.D. Wis. Oct. 26, 2015) (granting motion to seal "manufacturing agreements" with third parties and others as well as "related documents" where such documents are not disclosed or otherwise made public); *SmithKline Beecham Corp. v. Pentech Pharm., Inc.*, 261 F. Supp. 2d 1002, 1008 (N.D. Ill. 2003) (holding that information about terms and conditions of contracts "that might give other firms an unearned competitive advantage" is legitimately confidential information that competitors should not have); *Methodist Health Servs. Corp. v. OSF Healthcare Sys.*, 2016 WL 5817176, at *18 ("Specific to the healthcare industry, the Seventh Circuit has acknowledged that the release of provider-payer rate negotiations could result in an unfair advantage to providers.") (citing *Ball Mem'l Hosp., Inc. v. Mut. Hosp. Ins., Inc.*, 784 F.2d 1325, 1345 (7th Cir. 1986)).

On June 22, 2026, Huron's counsel provided Defendants with the following statement in support of keeping Exhibits 7, 12, and 75-76 under restricted access: "Huron is a third

party in this litigation. It produced materials pursuant to a subpoena with the expectation that those materials would be kept confidential under the protective order issued in this case. The materials at issue, including Exhibits 7 (Huron _068646-49); 12 (Huron_054337-47), 75-76 (Huron _068476-482; Huron _ 080281-351) to Plaintiffs' Motion for Class Certification in case 22cv610 and Exhibits F (Huron_109376) S (Huron_080281) and U (Huron_068646) to Plaintiffs' Motion for Class Certification in Case 24cv157, contain strategic planning documents that Huron developed for Aurora using Aurora's confidential information that reflect, among other things, Aurora's sensitive internal strategic deliberations, competitive positioning, and forward looking business plans. Huron held this information in strict confidence even within the organization and requests the continued sealing of those materials in these cases."

On June 23, 2026, Milliman's counsel provided Defendants with the Declaration of Milliman, Inc.'s Simon Moody in support of keeping Exhibit 77 under restricted access. A true and correct copy of Mr. Moody's Declaration is attached as **Exhibit 1.**

D. Deposition transcripts and other documents that third parties designated confidential under the Protective Orders

The following transcripts and other documents should be filed under restricted access in accordance with the Protective Orders in these cases (No. 22-cv-610, ECF No. 66, and No. 24-cv-157, ECF No. 25), because they were designated confidential by the third-party subpoena recipients who testified or produced documents in reliance on the Protective Orders:

1. Exhibits from Plaintiffs' Objections and Motion to File Under Restricted Access Exhibits to *Daubert* Papers (ECF No. 210)

- Exhibit No. 12 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-12);
- Exhibit No. 13 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-13);
- Exhibit No. 14 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-14); and

- Exhibit No. 18 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-18).

2. Exhibits from Plaintiffs' Objections and Motion to File Under Restricted Access Exhibits to Class Certification Papers (Dkt. No. 215)

- Exhibit No. 16 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-17);
- Exhibit No. 17 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-18);
- Exhibit No. 22 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-23);
- Exhibit No. 23 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-24);
- Exhibit No. 28 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-29);
- Exhibit No. 29 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-30);
- Exhibit No. 31 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-32);
- Exhibit No. 32 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-33);
- Exhibit No. 33 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-34);
- Exhibit No. 35 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-35);
- Exhibit No. 45 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-46);

- Exhibit No. 46 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-47);
- Exhibit No. 47 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-48);
- Exhibit No. 72 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-73);
- Exhibit No. 73 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-74);
- Exhibit No. 78 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-79);
- Exhibit No. 79 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-80);
- Exhibit No. 80 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-81);
- Exhibit No. 83 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-84);
- Exhibit No. 86 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-87); and
- Exhibit No. 89 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-90).

Plaintiffs do not object to the continued sealing of any of the third-party materials listed in this Section II.D; to the contrary, Plaintiffs have affirmatively stated their support for maintaining these materials under restricted access. *See* ECF No. 210 (Chart B); ECF No. 215 (Chart B). For all third-party materials listed above, the corresponding third party's counsel has requested that any reference to the third party's information be redacted and

treated consistent with its designation under the Protective Order. Further, it is Defendants' understanding that each third party is aware of its obligation under General Local Rule 79(d)(3) to provide "sufficient factual basis demonstrating good cause sufficient to seal the documents" as the party that designated the information under the Protective Orders.

The third-party materials listed above generally contain references to, and discussions of, confidential business information such as sensitive, non-public, contracting terms and details of contract negotiations. The release of such confidential business information may cause unnecessary harm to third parties as "public disclosure of the information would effectively afford other [medical providers] an unearned competitive advantage—unearned because the issue of public disclosure arises from the adventitious circumstances of the [documents] having become caught up in litigation and as a result having become filed in court." *Formax Inc.*, 2014 WL 792086, at *3 (citation omitted). Defendants support the continued sealing of these materials.

E. Expert reports, deposition transcripts, briefs, and declarations

Defendants ask that the following documents remain under restricted access:

1. Exhibits from Plaintiffs' Objections and Motion to File Under Restricted Access Exhibits to *Daubert* Papers (ECF No. 210)

- Exhibit No. 1 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-1);
- Exhibit No. 2 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-2);
- Exhibit No. 3 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-3);
- Exhibit No. 4 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-4);
- Exhibit No. 5 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-5);
- Exhibit No. 8 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-8); and
- Exhibit No. 16 to Plaintiffs' *Daubert* Memorandum (ECF No. 212-16).

2. Exhibits from Plaintiffs' Objections and Motion to File Under Restricted Access Exhibits to Class Certification Papers (ECF No. 215)

- Exhibit No. 1 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-2);
- Exhibit No. 2 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-3);
- Exhibit No. 3 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-4);
- Exhibit No. 4 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-5);
- Exhibit No. 5 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-6); and
- Exhibit No. 6 to Plaintiffs' Memorandum for Class Certification (ECF No. 218-7).

These expert reports and deposition transcripts relate to Defendants' contract terms with third parties, business practices, market analyses, proprietary business intelligence, financials, and other information Defendants keep confidential and do not regularly share. In addition, the reports and transcripts contain information deemed confidential by third parties that relate to these third parties' contract terms, business practices, market analyses, proprietary business intelligence, and other information these third parties keep confidential or do not regularly share. The same reasons set forth earlier, *see supra* §§ II.A-D, support that this information be restricted, particularly in the context of this antitrust class action. *See also Formax Inc.*, 2014 WL 792086, at *4 ("Documents containing highly sensitive pricing information, sales figures, sales dollar amounts, profit and loss data, and other financial records not normally made known to the public may be properly filed under seal."); *Grove US LLC v. Sany Am. Inc.*, No. 13-C-677, 2019 WL 969814, at *9 (E.D. Wis. Feb. 28, 2019) ("The sealed exhibits and filings in this case reference confidential, non-public, proprietary,

and competitive information regarding the parties' business operations. This information is worthy of confidentiality under Federal Rule of Civil Procedure 26(c)(1)(G).").

F. References to these documents in briefs and trial plan

For the reasons set forth above, *see supra* §§ II.A-E, Defendants request that Plaintiffs' Proposed Trial Plan (ECF No. 218-1), as well as the unredacted versions of Plaintiffs' *Daubert* Memorandum (ECF No. 212) and Class Certification Memorandum (ECF No. 218), remain under restricted access, as these filings reference the documents described above and disclose the confidential information contained therein.

Additionally, Defendants have reviewed the publicly filed redacted versions of these briefs submitted by Plaintiffs. In a good-faith effort to ensure that only information meeting the applicable standard for restricting access is redacted, Defendants have prepared alternative versions of Plaintiffs' briefs containing more limited redactions.

A version of Plaintiffs' *Daubert* Memorandum (ECF No. 212) containing more limited redactions is attached hereto as **Exhibit 2**.

A version of Plaintiffs' Class Certification Memorandum (ECF No. 218) containing more limited redactions is attached hereto as **Exhibit 3**.

III. Proposed procedure to address documents that may form the basis of the Court's forthcoming decisions

As Defendants stated in their Motion to Restrict, information "that does not 'influence or underpin' a judicial decision need not be made public," but defendants understand that materials that ultimately "form[] the basis of … the [Court]'s resolution'" may later need to be filed in the public record. *Strasser v. City of Milwaukee*, No. 14-CV-1456, 2017 WL 10544079, at *1 (E.D. Wis. Feb. 25, 2017) (quoting *Baxter Int'l, Inc. v. Abbott Lab'ys*, 297 F.3d 544, 545, 548 (7th Cir. 2002)); *but see Baxter Int'l*, 297 F.3d at 545 (even materials that "underpin the judicial decision" may remained sealed or restricted if "they meet the definition of trade secrets or other categories of bona fide long-term confidentiality").

For purposes of judicial economy and to avoid burdening the Court, Defendants suggest the same process outlined in their Motion to Restrict for creating public versions of documents: when the Court issues its decision on Plaintiffs' pending *Daubert* and Class Certification motions, Defendants ask that they be permitted fourteen days to prepare and propose public versions of documents that would disclose information that underpins the Court's decision and is not subject to a countervailing interest requiring long-term confidentiality.

IV. General Local Rule 79(d)(4) certification

Defendants certify under General Local Rule 79(d)(4) that they met and conferred with Plaintiffs in a good faith attempt to limit the scope of the documents and materials subject to this request.

CONCLUSION

Defendants respectfully request that the Court enter an order overruling Plaintiffs' objections and permitting access to the documents identified above to remain restricted to the Court and counsel for the parties. Defendants also respectfully request that they be permitted fourteen days after the Court issues its decision on the pending motions to prepare any necessary public versions of documents such that those portions essential to the Court's decision are disclosed.

Date: June 23, 2026

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

URIEL PHARMACY HEALTH AND WELFARE PLAN; AND URIEL PHARMACY, INC., on their own behalf and on behalf of all others similarly situated, Plaintiffs, VS. ADVOCATE AURORA HEALTH, INC. and AURORA HEALTH CARE, INC., Defendants.	Case No. 2:22-cv-00610
PATRICK SHAW, DEBRA SHAW, and HALEY SHAW, on their own behalf and on behalf of all others similarly situated, Plaintiffs, VS. ADVOCATE AURORA HEALTH, INC., and AURORA HEALTH CARE, INC., Defendants.	Case No. 2:24-cv-00157

DECLARATION OF MILLIMAN, INC.'S SIMON MOODY IN SUPPORT OF DEFENDANTS' ADVOCATE AURORA HEALTH, INC. AND AURORA HEALTH CARE, INC. MOTION TO MAINTAIN CERTAIN FILES UNDER RESTRICTED ACCESS

I, Simon Moody, declare, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct.

1. I am a Principal & Consulting Actuary for non-party Milliman, Inc. ("Milliman"). I am over the age of 18 and make this declaration based on personal knowledge.

2. Milliman is not a party to the litigation referenced in the above case caption. Milliman agreed to produce documents in response to Plaintiffs' subpoena and did so with the understanding that the documents would remain confidential, consistent with the confidentiality designations assigned to the produced documents.

3. Defendants Advocate Aurora Health, Inc. and Aurora Health Care, Inc. were Milliman's clients; those entities now operate under a single entity known as "Advocate Health" (collectively, the "Advocate Aurora Entities"), which entity remains a Milliman client. In the course of Milliman's consulting relationship with the Advocate Aurora Entities, Milliman obtained materials that the Advocate Aurora Entities maintain are confidential. These materials were relied upon in the creation of what was filed in Case No. 22-cv-610 as Exhibit 77 to Plaintiffs' Motion for Class Certification, MILLIMAN00001-039.

4. Such materials include sensitive information about the Advocate Aurora Entities' business strategy, financials, and operations, among other proprietary topics. In particular, MILLIMAN00001-039 contains detailed rate proposals and reimbursement analyses for use in the Advocate Aurora Entities' contract negotiations with a major health insurer, including pricing data, proposed reimbursement rates and methodologies. As a part of the materials making up MILLIMAN00001-039, Milliman prepared reimbursement analyses. Public disclosure of MILLIMAN00001-039 could reveal to the Advocate Aurora Entities' contracting counterparts – and their competitors – specific negotiation strategies and competitive assessments, which the Advocate Aurora Entities have kept confidential.

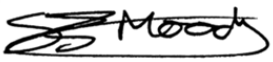
5. Milliman holds client materials of this nature in strict confidence, consistent with its client service agreements and the Actuarial Standards of Practice.

6. Engagement agreements that Milliman has executed with the Advocate Aurora Entities acknowledge the confidentiality of materials exchanged among one another, as well as the parties' agreement to protect the confidentiality of those materials.

7. Milliman's ability to perform its consulting services depends, in part, on obtaining access to clients' confidential information, and many clients – including the Advocate Aurora Entities – provide such information to Milliman on the condition that it will be kept confidential.

8. Milliman takes steps to protect client information within its organization, including through access controls and information barriers designed to prevent unauthorized disclosure of client information.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: June 19, 2026. */s/* 

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

URIEL PHARMACY HEALTH AND WELFARE PLAN; URIEL PHARMACY, INC.; HOMETOWN PHARMACY; AND HOMETOWN PHARMACY HEALTH and WELFARE BENEFITS PLAN, on their own behalf and on behalf of all others similarly situated, Plaintiffs, v. ADVOCATE AURORA HEALTH, INC. and AURORA HEALTH CARE, INC., Defendants.	Case No. 2:22-cv-610 **FILED UNDER SEAL**

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO EXCLUDE OPINIONS OFFERED BY MR. JONATHAN ORSZAG

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I. INTRODUCTION

For nearly two decades, Defendants Advocate Aurora Health, Inc., and Aurora Health Care, Inc. (collectively "AAH"), imposed anticompetitive contractual restraints on Wisconsin health plans (the "Challenged Conduct" or the "All Plans" provision). Plaintiffs are two employers, Uriel Pharmacy and Hometown Pharmacy, that offer health benefits to their employees through self-funded plans. They allege that AAH's restraints enabled its Wisconsin hospital system ("AAH-Wisconsin") to charge supracompetitive prices to Wisconsin employers, unions, insurers, and patients.

Plaintiffs retained expert economist Dr. Jeffrey Leitzinger to quantify the resulting harms, which take the form of overcharges to insurers and health plans whose members received care from AAH-Wisconsin. Dr. Leitzinger designed a multivariate regression model that compares AAH-Wisconsin's prices to those of AAH's hospital system in Illinois ("AAH-Illinois")—a similar system under the same corporate ownership that does not engage in the Challenged Conduct—while controlling for other factors that might affect their prices. Based on his regression model and the discovery record, Dr. Leitzinger concludes that AAH's anticompetitive conduct inflated its Wisconsin prices by [redacted]%. Dr. Leitzinger also ran a second regression comparing AAH-Wisconsin's prices to those of the most comparable hospital system in Eastern Wisconsin (Ascension) and found similar results.

AAH does not deny that it imposed the challenged restraints on Wisconsin health plans and does not offer its own competing overcharge model. Instead, it retained Mr. Jonathan Orszag merely to criticize Dr. Leitzinger's regression model, seeking to deprive Plaintiffs of their damages expert and avoid accountability on the merits. Orszag's critiques are uniformly unpersuasive, as Plaintiffs will show at later stages of this case. But certain of Orszag's opinions are so untethered from the facts, the data, and accepted methodologies that they fail to satisfy even the liberal

standards for admission under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Under *Daubert*, courts play a gatekeeping role, and "the key to the gate is … the soundness and care with which the expert arrived at [his] opinion." *Schultz v. Akzo Nobel Paints, LLC*, 721 F.3d 426, 431 (7th Cir. 2013). Here, as he has done repeatedly throughout his career—courts have excluded five of his opinions in just the past five years[1]—Orszag failed to exercise the required level of care.

First, Orszag claims that Dr. Leitzinger failed to account for the supposed fact that AAH-Wisconsin's prices were higher than AAH-Illinois's in the early 2000s, before the Challenged Conduct began. Even setting aside that any price differences 25 years ago would say little about prices today, this opinion is inadmissible on two independent grounds. The data Orszag relies on is not reliable. Instead of doing any empirical study of early 2000s prices at AAH-Wisconsin or Advocate (as AAH-Illinois was then known), Orszag uses unrelated statistics he found in an old slide deck. He did no work to ensure those statistics were reliable: he did not read the underlying studies, could not answer basic questions about their methodologies, [redacted] Even taken at face value, moreover, the data say nothing about AAH or Advocate prices, or even hospital prices more [redacted] There is "simply too great an analytical gap," *GE v. Joiner*, 522 U.S. 136, 146 (1997), between a high-

[1] *Skillz Platform Inc. v. Papaya Gaming, Ltd.*, 2026 WL 395430, at *2-*4 (S.D.N.Y. Feb. 12, 2026); *Applied Med. Res. Corp. v. Medtronic, Inc.*, 2025 WL 4052504, at *7 (C.D. Cal. Apr. 11, 2025); *Jones v. Varsity Brands, LLC*, 2024 WL 457173, at *2-*4 (W.D. Tenn. Feb. 6, 2024); *In re: EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, 2022 WL 226130, at *11 (D. Kan. Jan. 26, 2022); *Academy of Allergy & Asthma in Primary Care v. Superior Healthplan, Inc.*, No. SA-17-CA-1122-FB, ECF 280 at 1-2 (Mar. 30, 2021); *see also In re Elec. Books Antitrust Litig.*, 2014 WL 1282298, at *14-*20 (S.D.N.Y. Mar. 28, 2014).

level statistic about employer healthcare spending across two broad regions and Orszag's conclusions about two specific hospital systems' prices. Orszag never even addressed that gap, let alone bridged it.

Second, Orszag contends that Dr. Leitzinger's model produces "false positive" results when applied to three "placebo" hospital systems. This opinion is inadmissible because Orszag skipped three foundational steps for a valid placebo test. A "placebo" test without a placebo is meaningless, but Orszag never even checked whether the hospitals he used were valid placebos. In fact, the record shows they were not: one engaged in the Challenged Conduct and the other two were likely subject to its "umbrella effects." Orszag also acknowledged that a valid placebo test requires the placebo hospitals to be sufficiently comparable to AAH-Illinois, and he identified several metrics an economist should compare before using a placebo. Remarkably, however, Orszag did not consider *any* of those metrics for *any* of his placebo hospitals. His failure to do so makes it impossible to know whether his results show anything meaningful or are simply the consequence of applying a model to hospitals it was never designed to analyze. Lastly, Orszag did not have sufficient data. Instead of gathering his own data, Orszag used Dr. Leitzinger's—but Dr. Leitzinger collected data from the largest payors in Eastern Wisconsin and Northern Illinois, not the Western Wisconsin and Minnesota markets where Orszag's placebo hospitals operate.

Third, Orszag purports to run a "before" and "after" test using a "difference-in-differences" (DID) model, which he says [redacted] Once again, however, Orszag failed to verify the predicates for his methodology. Orszag admitted at his deposition that a DID analysis is valid only if it satisfies the "parallel trends" condition, but his report contains no parallel trends analysis—and when Dr. Leitzinger replicated the test Orszag claimed at his deposition to have run, parallel trends were

violated. Orszag's shifting explanations, the inconsistency between his testimony and his report, and the statistical realities reveal the unreliability of his test. In addition, Orszag improperly assumed that the "All Plans" provision's effect on prices [redacted]

That assumption is not just unverified; it directly contradicts the record evidence and accepted economic principles. His "after" period was not an "after" period at all, stripping his test of any meaning.

Orszag's carelessness manifests throughout his entire report. While many of Orszag's shortcomings go to the weight of his opinions rather than their admissibility, the opinions discussed in this motion are so unreliable, and characterized by such lack of rigor, that they should be excluded in their entirety.

II. BACKGROUND

A. Factual and Procedural History

Plaintiffs filed their complaint on May 24, 2022, alleging that AAH abused its market dominance to engage in anticompetitive conduct and overcharge Class members (self-funded employer health plans and commercial insurers) for healthcare services. The principal restraint at issue is the "All Plans" restraint, which blocked the mechanisms through which price competition normally takes place in this industry. The "All Plans" provision [redacted] It also [redacted] AAH's wrongful conduct reduced competition and allowed it to charge supracompetitive

prices for [redacted]

Plaintiffs disclosed reports from three experts. Dr. David Dranove[2] performs structural econometric analyses and opines that [redacted] in the Eastern Wisconsin market. Ex. 2, Expert Report of David Dranove, Ph.D. (Nov. 21, 2025) ("DR1") ¶ 28. Dr. Patrick Romano[3] opines that the quality of care provided by AAH-Wisconsin was similar to the quality of care provided by AAH-Illinois, [redacted]. Ex. 3, Expert Report of Dr. Patrick S. Romano, M.D., M.P.H. (Nov. 21, 2025) ("RR1") ¶ 105. He further opines that the "All Plans" language was "[redacted]." Dr. Jeffrey Leitzinger[4] performs a statistical

[2] Dr. Dranove is the Walter J. McNerney Distinguished Professor of Health Industry Management and Professor of Management and Strategy at the Kellogg School of Management at Northwestern University, where he also serves as Faculty Director of Ph.D. Programs. Ex. 2, DR1 ¶ 1. He specializes in industrial organization and healthcare markets, with over 100 published research articles and eight books, including the textbook *Economics of Strategy* used by leading business schools worldwide. *Id.* ¶ 3. In 2022, Dr. Dranove received the Victor Fuchs Award for Lifetime Contributions to the Field of Health Economics, and in 2024, he was elected to the National Academy of Medicine for his contributions to understanding healthcare market dynamics. *Id.* ¶ 6. Dr. Dranove has three decades of experience in economic analysis for litigation and regulatory actions, including testifying for the U.S. Department of Justice in its lawsuit to block the Anthem-Cigna merger. *Id.* ¶ 4.

[3] Dr. Romano is a Professor of Medicine and Pediatrics at the University of California Davis (UC Davis) School of Medicine. Ex. 3, RR1 ¶¶ 1, 3. He has authored over 240 peer-reviewed publications, 15 book chapters, and over 80 other publications on a wide range of healthcare issues, with a particular focus on health care quality measures and comparing health system performance. *Id.* ¶ 2. As a result of his expertise in healthcare quality evaluation, he leads several applied research projects on health care quality, serves in numerous consulting and technical assistance roles, and has held advisory positions with several organizations. *Id.* ¶¶ 2-6. He has extensive experience evaluating the quality implications of hospital mergers and other anticompetitive conduct, both in the litigation context and on a consulting basis. *Id.* ¶ 10.

[4] Dr. Leitzinger is the founder and Managing Director of Econ One Research, Inc., an economic research and consulting firm. Ex. 4, LR1 ¶ 1. He holds doctoral degree in economics from the University of California, Los Angeles. *Id.* During his 45-year professional career, antitrust

regression analysis of millions of insurance claims and concludes that the Challenged Conduct raised AAH-Wisconsin's prices by [redacted] percent. Ex. 4, Expert Report of Jeffrey J. Leitzinger, Ph.D. (Nov. 21, 2025) ("LR1") ¶ 9 & Ex. 4. Because the opinions at issue in this motion all relate to Dr. Leitzinger's analysis, a more detailed description of his work is provided here.

To measure overcharges, Dr. Leitzinger used a "yardstick" regression that compares AAH-Wisconsin's prices to the prices charged for the same services during the same time period by two comparator (or "yardstick") providers. His primary yardstick is AAH's own hospital system in Illinois; his second yardstick is the Ascension hospital system in Wisconsin. Ex. 4, LR1 ¶¶ 26-45. Dr. Leitzinger's regression model includes several control variables designed to isolate the effects of the Challenged Conduct on AAH-Wisconsin's prices. Ex. 4, LR1 ¶ 26; *see id.* ¶¶ 36-37 (listing 15 such variables). For example, Dr. Leitzinger controls for demographic characteristics in the service area, the type of facility where a service was provided, labor costs, provider concentration, and Network Vendors' market shares. *Id.* ¶¶ 36-37. Dr. Leitzinger also explains that his selection of AAH-Illinois as his yardstick automatically controlled for the many factors that AAH-Wisconsin and AAH-Illinois already had in common:

> I had the fortuitous circumstance of two hospital systems, AAH Wisconsin (the system that engaged in the Challenged Conduct) and AAH Illinois (which did not do so), both serving large metropolitan areas (Milwaukee and Chicago) about 90 miles apart, both of which have teaching hospitals with large full service facilities, and both were in the same corporate family. Testimony and other evidence indicates that they both provided the same kind and quality of healthcare…. From an overcharge estimation standpoint, the situation was ideal…. Much of what might normally have required multiple external control variables was dealt with simply by using AAH IL for the control experience.

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economics has been the principal focus of his work, including frequent analysis of damages and impact in both individual and class action antitrust litigation. *Id.* ¶ 2. Dr. Leitzinger has testified as an expert economist in state and federal courts, before regulatory commissions, and in international treaty arbitrations, and has previously analyzed anticompetitive conduct in numerous cases involving healthcare markets, including as the testifying expert in the similar *UEBT v. Sutter* case. *Id.*

Ex. 5, Rebuttal Report of Jeffrey J. Leitzinger, Ph.D. (Mar. 23, 2026) ("LR2") ¶¶ 82-83.

With respect to hospital quality specifically, Dr. Leitzinger accounted for quality through his selection of AAH-Illinois—a hospital system of similar quality to AAH-Wisconsin—as the yardstick. Specifically, Dr. Leitzinger noted [redacted].

Dr. Leitzinger's analysis finds that the Challenged Conduct allowed AAH to overcharge Class members in Eastern Wisconsin by [redacted]%. Ex. 4, LR1 ¶ 40. His results were statistically significant at the 99 percent confidence level and "consistent with Plaintiffs' claims about overcharges stemming from the Challenged Conduct." *Id.*[5]

Dr. Leitzinger's second yardstick analysis used Ascension as the yardstick. *Id.* ¶ 45. As with AAH-Illinois, Dr. Leitzinger selected Ascension as an appropriate yardstick because it shared "several common factors" with AAH-Wisconsin. Specifically, he determined that Ascension [redacted]

[5] Orszag contends that Dr. Leitzinger used the wrong data field when analyzing one Network Vendor's Illinois data. *See* Ex. 5, LR2 ¶ 7. Dr. Leitzinger does not find Orszag's position persuasive, *see id.* ¶ 14, but shows that even when using Orszag's preferred data treatment, his regression model shows substantial overcharges that are statistically significant at the 99 percent confidence level, *id.* ¶ 7.

[redacted] Ex. 5, LR2 ¶ 91. These common factors allowed him to apply the same model to a different hospital system without "the need for additional control variables that would have been needed" if he used other, less similar hospitals. *Id.* The Ascension regression corroborated the results of Dr. Leitzinger's primary regression, showing a substantial overcharge that is statistically significant at the 99 percent confidence level. Ex. 4, LR1 at Ex. 6, ¶ 40.

B. Orszag's Opinions

AAH proffered the opinion of Mr. Jonathan Orszag, tasking him with critiquing Dr. Dranove and Dr. Leitzinger. *See* Ex. 1, Expert Report of Jonathan Orszag ("Ex. 1, OR1") ¶ 9 ("I have been asked by counsel for AAH to evaluate from an economic perspective the expert reports of Dr. Dranove and Dr. Leitzinger."). As relevant to this motion, Orszag opines that Dr. Leitzinger's yardstick regression [redacted] Orszag's critiques are unpersuasive, as Dr. Leitzinger fully details in his Rebuttal Report, and as Plaintiffs will show at trial. *See* Ex. 5, LR2 ¶¶ 5-134; *see also, e.g.*, *Manpower, Inc. v. Ins. Co. of Pa.*, 732 F.3d 796, 808 (7th Cir. 2013) ("[A]rguments about how the selection of data inputs affect the merits of the conclusions produced by an accepted methodology should normally be left to the jury."). Three of Orszag's opinions, however, fail to meet even the liberal standards for admissibility and should be excluded entirely.

First, Orszag opines [redacted] Ex. 1, OR1 ¶ 84. Orszag's opinion [redacted]

[redacted] Orszag never explained why he could draw reliable inferences about those two systems' prices from high-level studies of overall healthcare spending in broadly defined regions that do not even correspond to those systems' service areas.

Second, Orszag opines that Dr. Leitzinger's regression model [redacted] Ex. 1, OR1 ¶ 97, 99. In contrast to Dr. Leitzinger's detailed explanation of why it was appropriate to use the Ascension system as a corroborating yardstick, *see supra*, Orszag's report [redacted] and did not analyze whether he had sufficient data to run the tests at all.

Third, Orszag purports to run a "difference-in-differences" ("DID") test comparing "before" and "after" periods. He claims [redacted] Ex. 1, OR1 ¶ 12. Orszag's report, however, does not discuss whether the required preconditions for a DID analysis were satisfied, including [redacted] The record evidence, in fact, shows otherwise.

III. ARGUMENT

Under the Federal Rules of Evidence and *Daubert*, a district court must make a preliminary determination that an expert's testimony is reliable. *ATA Airlines, Inc. v. Fed. Exp. Corp.*, 665 F.3d 882, 896 (7th Cir. 2011). While the threshold for admissibility is not particularly high, courts must ensure that the expert's "testimony is based on sufficient facts or data" and "reflects a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702. Although this "places the judge in the role of gatekeeper for expert testimony, the key to the gate is not the ultimate correctness of the expert's conclusions." *Schultz*, 721 F.3d at 431. Instead, the "key to the gate" is "the soundness and care with which the expert arrived at her opinion." *Id.* AAH, as the party proffering Orszag's testimony, "bears the burden of demonstrating that the [his] testimony satisfies the [*Daubert*] standard by a preponderance of the evidence." *Krik v. Exxon Mobil Corp.*, 870 F.3d 669, 673 (7th Cir. 2017).

These standards apply regardless of whether an expert is offering affirmative testimony or only rebutting another party's expert. Even as to rebuttal experts, defendants "do[] not have the right … to call an expert economist to present opinions unless those opinions are the product of the expert's rigorous application of economic methods." *In re Elec. Books*, 2014 WL 1282298, at *20; *see also, e.g.*, *Funderburk v. S.C. Elec. & Gas Co.*, 395 F. Supp. 3d 695, 716 (D.S.C. 2019) ("[A] rebuttal expert is still subject to the scrutiny of *Daubert* and must offer both relevant and reliable opinions."). Even rebuttal experts must "employ[] in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999).

A. Orszag's Opinion About Historical Price Differences Between AAH-Wisconsin and Advocate Is Unreliable.

An expert opinion passes muster only if the expert "consulted reliable sources and provided reasoned explanations connecting the source material to his conclusions." *Lees v. Carthage Coll.*, 714 F.3d 516, 524 n.3 (7th Cir. 2013); *Weir v. Crown Equip. Corp.*, 217 F.3d 453, 465 (7th Cir. 2000) ("For testimony based on reports to be admissible, the reports themselves must be reliable sources of information."). Experts must "connect the dots" from the studies to their ultimate conclusions, *C.W. v. Textron, Inc.*, 807 F.3d 827, 837 (7th Cir. 2015), and may not offer opinions that are "connected to existing data only by the *ipse dixit* of the expert." *Joiner*, 522 U.S. at 146; *see also Wasson v. Peabody Coal Co.*, 542 F.3d 1172 (7th Cir. 2008). In *Joiner*, for instance, an expert was excluded because he extrapolated from animal studies to a conclusion about cancer in humans without explaining how or why it was scientifically valid to make that inferential leap. *Joiner*, 522 U.S. at 144-46.

Orszag has been excluded before for making such unexplained inferential leaps. In *Applied Medical*, for example, Orszag opined about the percent of the market that Medtronic's conduct foreclosed. 2025 WL 4052504, at *7. Orszag's conclusions relied critically on a "figure from a Medtronic's Quarterly Business Review slide deck," but the court held that he had no basis to extrapolate from the figure on the slide deck to his foreclosure analysis. Because he "provide[d] no explanation for the methodology used" to conclude that the figure was relevant, and instead offered only his "*ipse dixit* conclusion," the court found "Orszag's foreclosure figure fundamentally unreliable." *Id.* Similarly, in *In re Elec. Books*, certain of Orszag's opinions were excluded because instead of "undertak[ing] an examination of [the] market and perform[ing] a study, … [h]e simply took a single, general remark about Amazon's goals from an Amazon executive and extrapolated from that." 2014 WL 1282298, at *17.

1. Orszag Fails To Connect His Sources To His Conclusion.

AAH cannot satisfy its burden to show that Orszag's opinion about historical price differences between AAH-Wisconsin and Advocate satisfies *Daubert*'s requirements. Orszag seeks to offer an opinion comparing AAH-Wisconsin's prices to Advocate's prices in the early 2000s. Unlike Dr. Leitzinger, *see* Ex. 4, LR1 ¶ 32, he did not use claims data from those hospitals. Nor did he use data on hospital prices from third-party entities like RAND, as Prof. Dranove did, *see* Ex. 2, DR1 ¶¶ 152-54. Instead, Orszag's opinion is based on a handful of statistics plucked from a slide deck, which in turn come from two studies of employer healthcare spending conducted in the early 2000s, [redacted]. *See* Ex. 7, AAHEDWI01645637 at 662-63, 665. Even setting aside that those studies are unreliable, *see infra* Part I.B, they do not measure what Orszag needed them to measure: [redacted];[6] [redacted] *See* Ex. 5, LR2 ¶¶ 17-20 ([redacted]"); *see id.* ¶ 19 (noting that employer healthcare spending is driven by factors unrelated to provider prices, including "the amount of services consumed, … the frequency and seriousness of health problems, the plan coverage terms, and a host of items beyond health care service charges.").

Orszag never explained how or why he could extrapolate from slides describing studies of overall employer healthcare spending in broadly defined geographic regions to a conclusion about the prices of two specific hospital systems. He did no statistical work to bridge the gap. He simply

[6] The slides refer to "PEPY" or "PMPM" costs, which refer to "per-employee per-year" cost or "per-member per-month" costs, respectively.

cited the slide deck and asserted his conclusion, never "connect[ing] the dots between the … studies … and the opinions that he offered." *Textron*, 807 F.3d at 832; *see* Ex. 1, OR1 ¶ 84. "This is a *Joiner* problem," *Textron*, 807 F.3d at 832, as there is far "too great an analytical gap between" what these slides say and the conclusion Orszag draws from them, *Joiner*, 522 U.S. at 146.

It is no wonder Orszag failed to provide an explanation: [redacted] Ex. 8, Deposition of Jonathan Orszag ("Orszag Tr.") at 99:16-17 ("[redacted]"); *id.* at 115:3-5 ("[redacted]"); *id.* at 117:22-24 ("[redacted]"). Orszag thus [redacted]:

- [redacted]." *Id.* at 105:11-14.
- "[redacted]." *Id.* at 116:6-7.
- "[redacted] *Id.* at 101:18-19.
- [redacted] *Id.* at 102:2-4.
- [redacted] *Id.* at 102:21-24.
- [redacted] *Id.* at 109:11-15.
- [redacted] *Id.* at 108:17-20.

- [redacted] *Id.* at 119:12-16.
- [redacted] *Id.* at 115:8-9.
- [redacted] *Id.* at 110:6-7.
- [redacted] *Id.* at 110:17-18.
- [redacted] *Id.* at 120:17-19.
- [redacted] *Id.* at 118:21-23.
- [redacted] *Id.* at 115:13-15.
- [redacted] *Id.* at 118:15-18.

Without any of this basic knowledge, Orszag could not reliably draw inferences from the studies to his conclusions about AAH-Wisconsin's and Advocate's historical prices. For example, Orszag admitted that he had [redacted] *Id.* at 114:6-10 ("[redacted]"); *see also id.* at 113:2-7 ("[redacted]"); *id.* at 116:20-22 ("[redacted]."). Drawing inferences with [redacted] is precisely what *Joiner* prohibits, and a conclusion "connected to existing data only by the *ipse dixit* of the expert" is not admissible expert testimony. *Joiner*, 522 U.S. at 146;

see also Autotech Tech. Ltd. P'ship v. Automationdirect.com, 471 F.3d 745, 749 (7th Cir. 2006) (excluding expert who opined on a software program without examining the program).

Orszag has been excluded on nearly identical grounds before. In *Applied Medical*, Orszag sought to opine on the percentage of the market the defendant's conduct foreclosed. 2025 WL 4052504, at *7. Like here, he eschewed rigorous analysis of foreclosure in favor of using a figure he found on the defendant's "slide deck." *Id.* And like here, Orszag "provide[d] no explanation for the methodology used to reach the conclusion" that the figure on the slide deck—which, like the figures on the slide deck here, measured something other than what Orszag needed it to measure—could be reliably used to estimate market foreclosure. *Id.* Because he failed to connect the dots from the slide deck to the opinion he offered, Orszag's "methodology-free conclusion" was excluded. *Id.*; *see also In re Elec. Books*, 2014 WL 1282298, at *17 ("Orszag therefore has no basis for the central assumption in his string of assumptions."). The same result is warranted here.

2. Orszag's Opinion Is Not Based On Reliable Sources.

The massive "analytical gap" between the statistics on the slides and Orszag's opinions is enough to warrant exclusion. *Joiner*, 522 U.S. at 146. But Orszag's opinion fails for the independent reason that the two underlying studies are not reliable sources even as to what they purport to measure. AAH and Orszag have effectively conceded as much.

First, AAH itself [redacted]. Expert opinions are inadmissible if they rely on studies "riddled with design flaws" and the expert does not do even the "minimal amount of identifying or controlling for error." *Gilbert v. Lands' End, Inc.*, 158 F.4th 839, 850 (7th Cir. 2025). The Mercer Study fits that description precisely—[redacted] Ex. 9,

AAHEDWI01501491 at 491, "[redacted]" Ex. 10, AAHEDWI01587785 at 788, used a "[redacted]" *id.*, and fails to reflect that "[redacted]" for employer healthcare costs, *id.* at 787. AAH's own documents referred to the study's headline findings—the very figures Orszag now relies on for his opinion in this case—as [redacted]" Ex. 11, AAHEDWI00311317 an "[redacted]," Ex. 10, AAHEDWI01587785 at 786, and a "[redacted]" *id.* at 787. AAH cannot satisfy its burden to show [redacted].

Second, Orszag's deposition made clear that [redacted] Expert opinions that so uncritically rely on dubious sources are inadmissible. In *Fail-Safe, LLC v. A.O. Smith Corp.*, 744 F. Supp.2d 870 (E.D. Wis. 2010), for example, an expert's opinion was excluded because it was founded on a statistic he "adopt[ed] wholesale from a single, undated … PowerPoint slide" that he did not scrutinize. *Id.* at 887. The court deemed his use of that data "extremely suspect, as was [his] scrutiny of that data." *Id.* Orszag's blind reliance on statistics from slide decks is just as suspect, and just as inadmissible. While econometric experts are free to consult a variety of sources in forming their opinions, a reliable analysis would not rest *exclusively* on two unexamined, non-econometric analyses that do not even purport to measure hospital prices. Accordingly, Orszag's opinion fails Rule 703's reliability requirement. *See Smith v. Ford Motor Co.*, 215 F.3d 713, 718 (7th Cir. 2000) ("[T]he district court functions as a gatekeeper whose role is to keep experts within

their proper scope, lest apparently scientific testimony carry more weight with the jury than it deserves.").

* * *

Finally, the absurdity of Orszag's overall position warrants emphasis. Orszag claims, on the one hand, that he can reliably opine about [redacted], including one that [redacted]." Yet while swearing to the reliability of his own "methodology-free conclusion," *Applied Med.*, 2025 WL 4052504, at *7, Orszag claims that Dr. Leitzinger's multivariate regression model—which analyzes millions of lines of actual claims data from AAH-Wisconsin and AAH-Illinois, controls for numerous important variables, and is so statistically robust that it explains 93% of the variation in prices—cannot reliably compare AAH-Wisconsin's and AAH-Illinois's prices. That is simply not credible. An expert who holds his own work to no standard while demanding impossible standards of others is not offering reliable analysis—he is offering advocacy, and advocacy dressed up as expertise is precisely what Rule 702 exists to exclude.

B. Orszag's Opinion About "False Positives" is Unreliable.

Even when an expert uses an accepted methodology, he must demonstrate that the conditions that make the methodology work are actually present. Fed. R. Evid. 702(d) (expert opinion must "reflect[] a reliable application of the principles and methods to the facts of the case"); *Krik*, 870 F.3d at 674 ("[A] trial judge must make a preliminary assessment that the testimony's underlying reasoning or methodology is … properly applied to the facts at issue."). Here, Orszag's purported "placebo test" is inadmissible because he failed to evaluate, much less demonstrate, that the preconditions for a valid placebo test were satisfied. A placebo test that is

run without first confirming the conditions that give its results meaning is not a reliable application of the method.

A placebo test is an econometric technique used to check whether a regression model is working correctly. The idea is that a regression model should usually find no overcharge when applied to a group of "placebo" hospitals known to be unaffected by any of the Challenged Conduct. Ex. 5, LR2 ¶ 73 (citing P.J. Gertler, et al., *Impact Evaluation in Practice*, World Bank Group and Inter-American Development Bank (2d ed. 2016) at 332). If a sufficient number of placebo tests show overcharges at appropriate placebo hospitals, that may be a reason the model's results are due less weight. But this test only works if the right kinds of hospitals are chosen as the placebos. Specifically, the placebo hospitals must be ones where you would genuinely expect no overcharge to appear—ones that (1) were not affected by the Challenged Conduct and (2) are similar enough to the hospitals in the original analysis that the model's existing controls are sufficient to account for any pricing differences between them. *See* A.C. Eggers, et al., *Placebo tests for causal inference*, American Journal of Political Science 68(3) (2024), at 1106 to 1121. If those conditions are not met, a finding of an "overcharge" at the placebo hospital proves nothing—it may simply reflect that an invalid placebo hospital was chosen, not that the model is wrong. *Id.*; *see also* Ex. 5, LR2 ¶¶ 74-75.

Orszag committed three fundamental errors in purporting to run a placebo test: (1) he ignored record evidence that his placebo hospitals were engaged in or affected by the Challenged Conduct; (2) he failed to consider, let alone show, that his placebo hospitals were sufficiently comparable to AAH-Illinois for the placebo test to be valid; and (3) he failed to ensure that he had sufficient data about his placebo hospitals.

First, Orszag failed to ensure that his placebo hospitals were not "[redacted]." Ex. 5, LR2 ¶ 75. As Dr. Leitzinger explains, if the placebo hospitals are engaged in or affected by the Challenged Conduct, "any positive result would not be a 'false' one" but rather an accurate detection of the presence of Challenged Conduct. *Id.* Orszag acknowledged as much: [redacted].[7] Ex. 1, OR1 ¶ 97 n.145. In short, a placebo test without an actual placebo is meaningless.

Despite relying on record evidence to exclude three hospitals as placebos because they were not free of the Challenged Conduct or were subject to "umbrella effects" from such conduct, Orszag ignored record evidence that the three hospitals he chose suffered from the same defects. As to [redacted], Network Vendors testified that [redacted] *See* Ex. 5, LR2 ¶¶ 94-96. Ex. 12, [redacted]); Ex. 13, Deposition of Eric Stotlar (Cigna) ("Stotlar Tr.") at 166:3-168:6 [redacted]); *see also* Ex. 14, [redacted], yet Orszag's report reflects no awareness of it—he either failed to review this evidence or chose

[7] "Umbrella effects arise when anticompetitive restraints imposed by a dominant market actor diminish the incentives for other market participants to lower their own prices, thereby interfering with the competitive forces that would normally drive price reductions. As a result, prices across the market are likely to remain elevated under the 'umbrella' of the antitrust violator." Ex. 4, LR1 ¶ 43 n.71; *see also Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 675 (9th Cir. 2022) (en banc) ("[Umbrella effects] refers to an economic observation that when many suppliers engage in a conspiracy to raise prices, non-conspirators may raise their prices to supra-competitive levels.").

to ignore it. Orszag's omission is even more glaring given that [redacted] *See* Ex. 1, OR1 ¶¶ 65 n.97, 97 n.145. Orszag also admitted that he did not "[redacted]" with [redacted] Ex. 8, Orszag Tr. at 164:10-166:20. Because Orszag cannot show that Mayo was a valid placebo, his "placebo" results for [redacted] have no value.

A similar problem taints Orszag's selection of [redacted] and [redacted], which both operate substantially within [redacted] service area—meaning that their prices are likely impacted by the umbrella effects of [redacted]. Ex. 5, LR2 ¶¶ 97-98. [redacted] also has facilities within the service area of Aspirus, another hospital system that Orszag acknowledges was alleged to engage in similar conduct. *See* Ex. 5, LR2 ¶ 97; Ex. 1, OR1 ¶ 97 n. 145. But while Orszag rejected the [redacted] as a placebo because of the potential for umbrella effects, *see* Ex. 1, OR1 ¶ 97 n.145, he included [redacted] and [redacted] even though they faced the same problem. He never explained why umbrella effects disqualified [redacted] but not two hospitals operating in [redacted] and [redacted] backyard. Because these two "placebo" hospitals' prices may have been affected by conduct like that alleged here, Orszag cannot show that they are valid placebos either.

Second, Orszag failed to ensure that his placebo hospitals were sufficiently comparable to AAH-Illinois. As Dr. Leitzinger explains, "a placebo test is informative only if the yardstick group and the placebo group are sufficiently comparable such that, when the challenged conduct is absent, the estimated effect should be zero." Ex. 5, LR2 ¶ 75; *see also* American Bar Association (ABA) Section of Antitrust Law, *Proving Antitrust Damages: Legal and Economic Issues* (3d. ed. 2017), at 93 ("The yardstick employed must be comparable."). Without that assurance, a positive result "does not demonstrate that the model is producing a false positive," but may show only that "the comparator is not a proper yardstick." Ex. 5, LR2 ¶ 75.

Orszag agreed with this point, testifying that a [redacted] than AAH-Illinois. Ex. 8, Orszag Tr. at 170:24-175:14. Orszag made the same point in the similar *Sidibe v. Sutter Health* case, where he stated that "[c]omparisons across hospitals that vary significantly in size and sophistication likely reveal price differences that have nothing to do with the challenged conduct." Ex. 15, Corrected Expert Report Declaration of Dr. Robert T. Willig[8] In Support of Defs.' Opp. to Class Cert., *Sidibe v. Sutter Health* ("Sutter Report"), No. 12-cv-4854 (N.D. Cal. Nov. 8, 2018), at ¶ 197. Orszag thus acknowledged here that before choosing a hospital as a placebo, an economist should consider [redacted] *Id.* at 173:3-9.

Orszag failed to follow his own standard. [redacted] Ex. 1, OR1 ¶ 97. [redacted] *See* Ex. 8, Orszag Tr. at 173:3-9. [redacted]" Ex. 5, LR2 ¶ 80. As Orszag himself acknowledged in *Sutter*, the results may reflect "price differences that have nothing to do with the challenged conduct." Ex. 15, Sutter Report, at ¶ 197;

[8] In *Sidibe*, Dr. Willig fell ill after submitting his report. Orszag then took over as the defense expert and expressly adopted Dr. Willig's opinions.

see Brown v. Burlington N. Santa Fe Ry. Co., 765 F.3d 765, 773 (7th Cir. 2014) (testimony unreliable where expert "deviated from his own stated" methodology).

Orszag's fly-by-night selection of placebos stands in stark contrast to Dr. Leitzinger's selection of [redacted] as a corroborating hospital for his analysis. As described *supra*, Dr. Leitzinger did not select [redacted] until he analyzed its characteristics and concluded that it was similar to the AAH systems on numerous relevant dimensions: [redacted] Ex. 4, LR1 ¶ 43; Ex. 5, LR2 ¶ 91. Orszag did not conduct any analysis of this kind—he neither employed any analytically rigorous method to ensure these hospitals were sufficiently comparable to AAH-Illinois "nor explained why he hadn't." *Zenith Elecs. Corp. v. WH-TV Broad. Corp.*, 395 F.3d 416, 419 (7th Cir. 2005). He simply cannot say whether this fundamental precondition to a placebo test is satisfied.

Faced with this contradiction, Orszag tried to backtrack. He suddenly claimed he did not need to analyze comparability because he was [redacted] Ex. 8, Orszag Tr. 177:24-178:2. But that argument is circular. The whole point of a placebo test is to check whether the model finds an overcharge *where no overcharge should exist*. As the literature makes clear and as Orszag had admitted only moments earlier (and years earlier in the *Sutter* case), a placebo test can do that only if the placebo hospital is comparable enough to the original hospitals that the model would be expected to show no overcharge. Orszag skipped that step entirely, which means his placebo test cannot tell the difference between a flaw in Dr. Leitzinger's model and a flaw in his own choice of hospitals. *See, e.g.*, Eggers, *supra*, at 1108 (explaining that the "placebo analysis

[must] mirror[] the original research design closely enough to reproduce a possible violation of the core assumptions").

Nor can Orszag escape by arguing that Dr. Leitzinger's model should have automatically controlled for any differences between the placebo hospitals and AAH-Illinois. Dr. Leitzinger designed his model specifically to compare AAH-Wisconsin and AAH-Illinois—two hospital systems in the same corporate family, serving comparable metropolitan areas, with similar quality and size. Ex. 5, LR2 ¶ 82. Because those two hospital systems were so similar, Dr. Leitzinger did not need to build in explicit controls for many characteristics they already shared. Ex. 5, LR2 ¶¶ 75, 79-83, 85-89; *see supra*. When Orszag swapped in [redacted] for AAH-Wisconsin, those commonalities disappeared. His "placebo" test then lumped all of those uncontrolled differences into the "overcharge" figure, making it impossible to know whether the "positive" results reveal anything about Dr. Leitzinger's model or are simply the predictable consequence of applying that model to hospitals it was never designed to analyze. *See* Ex. 5, LR2 ¶¶ 80, 86-88.

Third, Orszag failed to ensure that he had sufficient data to run the placebo tests. *See* Fed. R. Evid. 702(b) (expert testimony must be "based on sufficient facts or data"). Courts reject expert opinions for failing to ensure that the data used is "appropriately representative of the larger entity or population being measured." *Allgood v. Gen. Motors Corp.*, 2006 WL 2669337, at *11 (S.D. Ind. Sept. 18, 2006); *see also, e.g.*, *ATA Airlines*, 665 F.3d at 895 (finding expert unreliable where model used sample that was "less representative of the population being sampled"); *Farmer v. DirectSat USA, LLC*, 2013 WL 1195651, at *6-7 (N.D. Ill. Mar. 22, 2013) (excluding testimony where expert "conducts no analysis to … demonstrate the appropriateness of extrapolating results" from a limited data set). Orszag himself acknowledged that "[redacted]

[redacted] Orszag Tr. 89:23-25; *see id.* at 90:1-2 ("[redacted]").

Orszag made no effort to satisfy his own standard. Instead of collecting any data of his own, he relied exclusively on Dr. Leitzinger's data. *See* Orszag Tr. at 183:24 ("[redacted]"). That shortcut created a major problem: Dr. Leitzinger collected data from the largest Network Vendors in Eastern Wisconsin and Northern Illinois (AAH-Wisconsin's and AAH-Illinois's service areas), but Orszag's placebo hospitals operate almost entirely elsewhere—[redacted] *See* Ex. 1, OR1 ¶ 97; *see* Ex. 8, Orszag Tr. 178:7-8 ("[T]hey are significantly outside of Eastern Wisconsin."). Orszag thus had no data from the many Network Vendors with a substantial presence in the service areas for [redacted] but not in Eastern Wisconsin. For example, [redacted] not have a significant presence in Eastern Wisconsin but is a very substantial payor to [redacted], accounting for [redacted] Ex. 16, Expert Reply Report of David Dranove, Ph.D ("DR2") at ¶ 136 n.206. Yet at his deposition, [redacted] *See* Ex. 8, Orszag Tr. at 181:8-182:4 [redacted]).[9]

[redacted], Orszag failed to investigate this issue. Despite testifying [redacted], Ex. 8, Orszag Tr. at 90:1-2, [redacted] *see* Ex. 8, Orszag Tr. at 179:17-180:25. [redacted]

[9] Other payors with a substantial presence in Western Wisconsin and not in the dataset Orszag used include Group Health Cooperative of Eau Claire, Group Health Cooperative of South Central Wisconsin, and Dean Health.

[redacted] *see id.* at 181:1-7, [redacted]. He thus had no basis to conclude that the data he used for his placebo hospitals was representative of anything. [redacted] An expert who [redacted] cannot satisfy Rule 702's requirement that his testimony be "based on sufficient facts or data," Fed. R. Evid. 702(b), or that it reflects data "appropriately representative of the larger entity or population being measured," *Allgood*, 2006 WL 2669337, at *11.

C. Orszag's "Difference-in-Differences" Opinion is Unreliable.

Orszag also misapplied another methodology, once again failing to ensure that necessary predicates were satisfied. Orszag purports to "[redacted]" Ex. 1, OR1 ¶¶ 103, 109. He uses AAH-Illinois as his control group. *Id.* ¶ 110. The idea behind Orszag's DID model is to study whether AAH-Wisconsin's rates decreased relative to AAH-Illinois's rates after the "All Plans" provision was removed. [redacted] Ex. 1, OR1 ¶ 102.

For a DID test to be valid in this context, two conditions must be satisfied—and neither was satisfied here.

First, a DID analysis is valid only if it satisfies the "parallel trends" condition. As both experts agree, and the literature reflects, one of the "foundational condition[s] for the causal validity of a DID model is that outside of the treatment period, price trends for the treatment and

control groups should be similar." Ex. 5, LR2 ¶ 36 (citing Joshua Angrist, *Mostly Harmless Econometrics: An Empiricist's Companion*, Princeton University Press (2009), at 218-220). If the treatment and control groups were not moving in parallel prior to the treatment period, "the DID results are likely biased." Ex. 5, LR2 ¶ 37. [redacted] Orszag Tr. at 364:1-25.

Orszag's DID failed to satisfy this foundational condition, and he did not have his story straight. Orszag's report [redacted]. *See* Ex. 5, LR2 ¶ 38. He claimed at his deposition that [redacted] Orszag Tr. at 368:12-19. That was not true: [redacted]. *See* Ex. 5, LR2 ¶ 38. [redacted] Ex. 8, Orszag Tr. at 365:6-9.[10] [redacted] *See* Ex. 5, LR2 ¶ 39. [redacted] *Id.*; *see id.* ¶¶ 40-43. Because

[10] Orszag testified that he [redacted] *See* Ex. 8, Orszag Tr. at 365:8-12 [redacted] He did not cite any authority for the proposition that the parallel-trends test can be validly manipulated in this way, and the academic literature is to the contrary. *See* Ex. 5, LR2 ¶ 42 ("[T]he literature discussing these tests states that researchers should be comparing the trends for a period that is long enough to show underlying trends, as far back as possible." (citing sources)).

this foundational requirement for a DID test was violated, and in any event because Orszag failed to satisfy his burden to show that it was satisfied, this opinion must be excluded.

Second, Orszag's DID rests on the incorrect assumption that [redacted] Indeed, Orszag admitted at his deposition that [redacted]

Orszag did not provide any evidence to support this critical predicate for his DID analysis—he just assumed it was true. His willingness to assume convenient facts without evidentiary support is not new. In *In re Electronic Books*, 2014 WL 1282298, Orszag's opinion was excluded because he assumed a specific useful life for Amazon's Kindle devices with "no evidence" to support that figure—and when a different assumption was substituted, his entire damages offset calculation "would be wiped out." *Id.* at *18. Similarly, in *Jones v. Varsity Brands*, 2024 WL 457173, a court excluded Orszag's opinions because instead of "apply[ing] any economic modeling, regression, statistical, or econometric analysis," he simply asserted facts without support. *Id.* at *4. Here, Orszag's assumption that the All Plans provisions' price effects had fully disappeared by 2022 is precisely that kind of unsupported assertion.

Not only does Orszag's analysis rest entirely on an unexamined assumption, but the assumption was untrue, contradicted by record evidence and economic realities. [redacted] Ex. 1, OR1 ¶ 112. As AAH admitted in amended interrogatory responses filed on February 27,

2026, [redacted] *See* Ex. 16, DR2 ¶ 196 n.311. More important, removing the All Plans provision does not itself affect prices; prices would not change until after a new round of price negotiations outside the shadow of the All Plans provision. Orszag claims that [redacted] but the evidence shows otherwise. Orszag states that [redacted] Ex. 1, OR1 ¶ 113 n.155, but in reality, [redacted] Ex. 16, DR2 ¶ 197 & n.316. [redacted] *Id.* (quoting Ex. 17, AAHEDWI02143440 at 442). [redacted]

Orszag's assumption [redacted] also fails to account for basic market dynamics. [redacted] the "All Plans" provision [redacted] *See* Ex. 5, LR2 ¶ 34; Ex. 2, DR1 ¶ 194 n. 348. [redacted] and more time still "for Network Vendors to use the leverage from selective contracting to negotiate prices for new networks or renegotiate existing contracts."

Ex. 2, DR1 ¶ 194 n. 348; *see also id.* (detailing "economic research show[ing] that anticompetitive conduct can result in lingering price effects that can last for years.").

The record evidence bears this out: AAH and Network Vendor executives testified that building a new network can take at least one or two years. *See* Ex. 13, Stotlar Tr. (Cigna) at 40:13-23; Ex. 18, Deposition of Paul Maxwell (Humana) at 37:3-17; Ex. 19, Deposition of Titus Muzi (AAH) at 33:10-34:9. [redacted]

Orszag's decision to treat [redacted]—made without investigating whether the competitive price effects had fully materialized or confronting the record evidence saying otherwise—renders his DID analysis unreliable. A "before" and "after" test without an "after" period offers nothing of value.

IV. CONCLUSION

Defendants do "not have the right … to call an expert economist to present opinions unless those opinions are the product of the expert's rigorous application of economic methods." *In re Elec. Books Antitrust Litig.*, 2014 WL 1282298, at *20. The opinions highlighted in this motion are not the product of a rigorous economics, but of unexamined assumptions and unwarranted shortcuts. Plaintiffs' motion should be granted.

Dated: June 2, 2026

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 2, 2026, a true and correct copy of the foregoing, with redactions for information designated as confidential, was filed with the Court via the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record. In addition, a true and correct copy of the sealed version was served upon counsel of record for AAH via email.

Dated: June 2, 2026

/s/ Michael Lieberman
Michael Lieberman

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

URIEL PHARMACY HEALTH AND WELFARE PLAN; URIEL PHARMACY, INC.; HOMETOWN PHARMACY; AND HOMETOWN PHARMACY HEALTH and WELFARE BENEFITS PLAN, on their own behalf and on behalf of all others similarly situated, Plaintiffs, v. ADVOCATE AURORA HEALTH, INC. and AURORA HEALTH CARE, INC., Defendants.	Case No. 2:22-cv-610 **FILED UNDER SEAL**

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION

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I. INTRODUCTION

Uriel Pharmacy Health and Welfare Plan, Uriel Pharmacy, Inc. (together, "Uriel"), Hometown Pharmacy, and Hometown Pharmacy Health and Welfare Benefits Plan (together, "Hometown", and collectively with Uriel, "Plaintiffs") respectfully move under Federal Rule of Civil Procedure 23 for certification of the following "Class:"

> All entities that purchased in-network Healthcare Services directly from Advocate Aurora Health, Inc. or Aurora Health Care, Inc. ("AAH") providers in Eastern Wisconsin at any time during the period from May 24, 2018 up to and including December 31, 2022 (the "Class Period"), to the extent such purchases were made pursuant to contracts between AAH and any of the following Network Vendors: Anthem/Blue Cross Blue Shield of Wisconsin, United Healthcare, Cigna Healthcare, Humana Inc., Wisconsin Physicians Services, Health Payment Systems, and/or Trilogy Health Solutions.[1] Excluded from the Class are AAH, and their officers, directors, management, employees, subsidiaries, or affiliates, judicial officers and their personnel, and all federal governmental entities.[2]

Defendant AAH operates the most hospitals and the most hospital beds of any health system in Eastern Wisconsin. It abused that market dominance, however, to engage in anticompetitive conduct and overcharge Class members (self-funded employer health plans and commercial insurers) for Healthcare Services. AAH used its market power to force Network Vendors (entities that contract with healthcare providers to create insurance networks for Class members) to accept an anticompetitive restraint called the "All Plans" provision (also referred to

[1] "Healthcare Services" are inpatient and outpatient facility claims (for use of a facility) and claims for professional services (for treatment by a healthcare professional). "Eastern Wisconsin" comprises the following Health Service Areas: Appleton, Brookfield, Burlington, Chilton, Cudahy, Elkhorn, Fond Du Lac, Fort Atkinson, Green Bay, Hartford, Kenosha, Kewaunee, Manitowoc, Marinette, Menomonee Falls, Milwaukee, Neenah, Oconomowoc, Oconto Falls, Oshkosh, Plymouth, Port Washington, Racine, Shawano, Sheboygan, Sturgeon Bay, Two Rivers, Watertown, Waukesha, West Allis, and West Bend. Ex. 3, Dranove Rpt. ("DR1") ¶11 n.7 (defining Eastern Wisconsin). All Exs. are attached to the accompanying Wallin Declaration.

[2] The Class definition is narrower than the definition in the complaint (2d Am. Compl., ECF 46, ¶231) and includes an end date for the Class Period. Such revisions are permitted. *See Abbott v. Lockheed Martin Corp.*, 725 F.3d 803, 814 (7th Cir. 2013); *Gaertner v. Commemorative Brands, Inc.*, 2026 WL 248292, at *3 (S.D. Ill. Jan. 30, 2026) (certifying class where "[b]oth sides acknowledge that the proposed class definition differs from" the definition in the complaint).

as the "Challenged Conduct"). The All Plans provision blocked the mechanisms through which price competition would otherwise take place. It required Network Vendors to include *all* AAH providers in *all* their provider networks if they wanted to include *any* AAH provider in *any* network. It also prohibited "steering" and "tiering" programs aimed at incentivizing patients to seek less expensive care from AAH's competitors. [redacted]

AAH's wrongful conduct reduced competition and allowed it to charge supracompetitive prices for years—[redacted]. Ex. 10, Lenz 30(b)(6) Dep. (AAH) 21:2-27:21 (citing Ex. 85, AAHEDWI00630685-732 at 689). That the Challenged Conduct inflated AAH's prices is clear, and will be proven with common evidence, including multiple benchmarks, economic analyses, and documents and testimony from market participants, [redacted] Ex. 53, AAHEDWI00082436 at 438. AAH's unlawful conduct caused all or virtually all Class members ("Payors"[3]) to be overcharged. The evidence at trial will focus on AAH's antitrust violation and will be entirely or primarily common and Class-wide. Class certification should be granted.

II. FACTUAL BACKGROUND

The key facts are summarized below. All are common to the Class and will be proven with Class-wide evidence. Additional Class-wide evidence supporting Plaintiffs' claims is set forth in

[3] "Payors" include (1) commercial health insurers that offer coverage for fully-insured plans, and (2) self-funded Plan Sponsors that pay claims on behalf of their members, typically employees and their families. "Plan Sponsors" are entities that establish and manage health insurance plans for groups, such as employers that offer health insurance plans to their employees and unions that offer plans to their members. Plaintiffs are Plan Sponsors and self-funded Payors for Healthcare Services. Ex. 3, DR1 ¶9 & n.1.

Plaintiffs' expert reports (Exs. 1-6), is incorporated by reference, and can be supplied to the Court.

A. Competition in the Health Insurance Industry

Many businesses, local governments, and unions provide health insurance plans to their employees and members, acting as "Plan Sponsors." Some sponsor "fully insured" plans, whereby they pay premiums to a commercial insurance company, which then pays healthcare providers. *See* Ex. 3, DR1 ¶50. Others sponsor "self-funded" plans, whereby they pay providers and bear the insurance risk themselves. *Id.* Commercial insurance companies who pay bills for fully insured plans and self-funded employers who pay bills themselves are "Payors," because they pay healthcare providers for covered Healthcare Services. *Id.* ¶52.

The prices that Plaintiffs and Class members (Payors) pay for medical services are determined in negotiations between healthcare providers and Network Vendors,[4] which are entities that negotiate with providers and assemble "insurance networks"—networks of healthcare providers that have agreed to provide services at negotiated prices. *Id.* ¶¶9 n.1, 44. An "in-network provider" has agreed to provide services at prices negotiated with the Network Vendor. Ex. 1, Leitzinger Rpt. ("LR1") ¶¶13-14, 16. Plan Sponsors can select a Network Vendor's network with the Plan Sponsor's desired price and non-price characteristics. Ex. 3, DR1 ¶49.

Some networks are "broad" with many providers; others are "narrow" with fewer. *Id.* ¶44. Network breadth reflects a tradeoff between access and cost: broader networks usually provide access to more providers across multiple categories—such as primary care physicians, specialists, and hospitals—while narrow networks offer fewer options but lower prices. *Id.* ¶45. Patients have

[4] Some entities function as both Network Vendors and Payors: a commercial health insurer, like Anthem, acts as a Network Vendor and a Payor when offering fully-insured plans. Entities may act as Network Vendors without acting as Payors: Anthem acts as a Network Vendor but not a Payor when contracting with providers to create an insurance network for self-funded Payors. Ex. 3, DR1 ¶9 & n.1

financial incentives to use in-network providers, so providers will get more patient volume if they are selected as an in-network provider. *Id*. ¶¶46, 62.

Price competition in healthcare occurs through a process known as "selective contracting," whereby healthcare providers compete on price for inclusion and placement within provider networks. *Id*. ¶¶17, 54, 68, 74. Selective contracting increases competition at three stages of competition within the healthcare insurance market. At **stage 1**, providers compete on price for network inclusion and placement (*i.e.*, which "tier" they will be on, which impacts the level of patient cost sharing).[5] At **stage 2**, Network Vendors compete to sell insurance networks to Plan Sponsors and their members, which seek networks offering (a) a wide enough variety of providers, (b) in every specialty, (c) close to where their members live and work, (d) at affordable costs. At **stage 3**, providers compete for patient volume, with patients choosing providers based on factors such as cost sharing (which depends on whether the provider is in-network and in what tier), convenience, location, and prior experience. *Id*. ¶¶55-56, 61-69.

A Network Vendor's willingness to agree to higher prices in stage 1 depends on whether excluding that provider would make the network less attractive to Plan Sponsors and their members in stage 2. *Id.* ¶¶64, 69. Conversely, a provider's willingness to offer lower prices to a Network Vendor in stage 1 depends on how much patient volume the provider would lose if it were not included in the Network Vendor's network or if it were steered away from. *Id.* ¶¶68, 78-82.

Because Network Vendors represent large numbers of prospective patients, they typically

[5] Courts have found that, because the prices Payors pay to healthcare providers are negotiated between Network Vendors and providers in stage 1, "antitrust analysis focuses on the first stage." *Saint Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke's Health Sys., Ltd.*, 778 F.3d 775, 784 n.10 (9th Cir. 2015) (citation omitted). But as described herein, AAH's All Plans provision interfered with stages 2 and 3 as well, thus worsening the harm inflicted by the Challenged Conduct.

negotiate discounted prices from healthcare providers in exchange for the increased patient volume for being in-network. *Id.* ¶76; LR1 ¶13. Network Vendors also use narrow networks and "steering" or "tiering" to encourage providers to lower their prices. DR1 ¶77. With **narrow networks**, a provider can obtain more volume because the network includes fewer competing providers. *Id.* ¶¶62, 78-80. With **steering**, Network Vendors use financial incentives or informational tools to encourage patients to obtain care from specific providers at lower prices. *Id.* ¶¶47, 188 & nn.326, 327. One method of steering is through **tiered** networks, which rank providers by price and quality: providers ranked higher have lower patient cost sharing, incentivizing patients to choose them. *Id.* ¶48. As with narrow networks, providers are incentivized to offer lower prices in exchange for placement in a higher tier to obtain more patients. *Id.* ¶¶81-82. Even when Network Vendors do not implement such programs, the credible threat of doing so helps keep prices down. Ex. 4, Dranove Rebuttal ("DR2") ¶21. For example, a high-priced provider may lower its prices to prevent a Network Vendor from implementing a steering program that would disfavor it. DR1 ¶¶193-96.

B. AAH's Imposition of the All Plans Provision Suppressed Price Competition

The All Plans provision restricted selective contracting, decreased price competition, and allowed AAH to impose inflated prices on Plaintiffs and the proposed Class. The All Plans provision is similar to, but even more onerous than, the restraints at issue in antitrust litigation involving Sutter Health, a health system in California. *See* Ex. 3, DR1 ¶198 & n.359. In that litigation, in which the State of California also pursued antitrust claims, classes were certified in state and federal cases, leading to eve-of-trial settlements of $575 million and $228.5 million, respectively, along with injunctive relief requiring the removal of the challenged restraints.[6]

[6] *See Sidibe v. Sutter Health*, 2020 WL 4368221 (N.D. Cal. July 30, 2020) (certifying damages class); *Sidibe v. Sutter Health*, 333 F.R.D. 463, 475 (N.D. Cal. 2019) (certifying injunctive-relief

[redacted]. Ex. 3, DR1 ¶¶34, 40, 169-74, Tables 2, 7-9. [redacted] Ex. 11, AAHEDWI00756315-58 at 318; Ex. 12, HURON_054337-47 at 341; Ex. 75, HURON_068476-82 at 78. AAH used its dominance to force the All Plans provision on Network Vendors and thereby suppress competition.

[redacted]: [redacted] Ex. 13, AAHEDWI00450873-98 at 882; Ex. 48, Klein 30(b)(6) Dep. (AAH) 15:5-10 [redacted] Ex. 48, Klein 30(b)(6) Dep. (AAH) 39:10-19, 40:6-42:4. [redacted]. 41:7-42:4. [redacted] *Id.* 40:3-43:6, 52:23-53:8. [redacted] Ex. 3, DR1 ¶84. [redacted]

class); Ex. 26, Order Granting in Part Motion To Strike, Granting Class Certification, and Setting Case Management Conference, *UEBT v. Sutter Health*, No. CGC-14-538451 (Sup. Ct. Cal. Aug. 14, 2017) ("*UEBT v. Sutter* Class Order"); Ex. 55, Press Release, Cal. Dep't of Justice, *Attorney General Bonta Announces Final Approval of $575 Million Settlement with Sutter Health Resolving Allegations of Anti-Competitive Practices* (Aug. 27, 2021), at 2 ("Sutter will no longer have free rein to engage in anticompetitive practices that force patients to pay more for health services."); *Sidibe v. Sutter Health*, No. 12-CV-04854, ECF 1763 (N.D. Cal. Nov. 6, 2025) (granting final approval of $228.5 million settlement).

[redacted] Ex. 15, AAHEDWI00658806-07 at 806.

The All Plans provision impeded selective contracting, suppressed competition among providers and Network Vendors, and increased prices and limited provider choices at each stage of market competition. *See* Ex. 3, DR1 ¶¶58, 184-86.

Stripping Network Vendors of bargaining leverage (Stage 1). [redacted][8] [redacted] AAH had no incentive to offer competitive rates, creating "upward rather than downward pricing pressure." *Id.* ¶203. The All Plans provision also suppressed competitive incentives among AAH's rivals by raising the AAH prices against which any price competition occurred and limiting or eliminating the competitive benefits of reducing prices (the "umbrella" effect). *Id.* ¶¶196, 203. One Network Vendor confirmed this impact of the restrictions, noting [redacted]

[7] Ex. 3, DR1 ¶85 (citing Ex. 14, AAHEDWI00621359-63 at 360; Ex. 15, AAHEDWI00658806-07 at 806; Ex. 13, AAHEDWI00450873-98 at 882; Ex. 48, Klein 30(b)(6) Dep. (AAH) 33:19-34:9; Ex. 57, AAHEDWI00630735-72 at 751-52, 754; Ex. 22, Lathers 30(b)(6) Dep. (Anthem-BCBS) 332:15-333:4; Ex. 86, Beck 30(b)(6) Dep. (UnitedHealthcare) 272:12-273:9); Ex. 3, DR1, Tables F.8, F.9.

[8] Ex. 3, DR1 ¶¶193-95 [redacted] (citing Ex. 22, Lathers 30(b)(6) Dep. (Anthem-BCBS) 50:16-53:21; Ex. 62, AAHEDWI01188952; Ex. 79, AURORA00011858-63 at 862; Ex. 24, Ott 30(b)(6) Dep. (WPS) 83:1-21; Ex. 19, AAHEDWI00007080-85 at 080; Ex. 87, Skogsbergh Dep. (AAH) 241:24-243:14, 286:9-16; Ex. 61, AAHEDWI00983339-64; Ex. 88, Anderson Dep. (AAH) 90:25-90:14, 139:5-23; Ex. 54, AAHEDWI00127810-18 at 810).

[redacted] this was not possible "in southeast Wisconsin because of [the All Plans] contractual provision." Ex. 22, Lathers 30(b)(6) Dep. (Anthem-BCBS) 50:16-53:21, 335:15-336:12.

Foreclosing competition among networks (Stage 2). [redacted] Ex. 3, DR1 ¶¶197-99. [redacted] *Id.* ¶199. As Dr. Dranove explains, this component of the All Plans provision makes it even "more anticompetitive than" the restraints in the *Sutter Health* litigation (where he was also an expert): [redacted] *Id.* ¶198 (emphasis in original).

[redacted][9] [redacted]

[9] Ex. 3, DR1 ¶¶190-92 [redacted] iting, *inter alia,* Ex. 87, Skogsbergh Dep. (AAH) 101:3-12; Ex. 48, Klein 30(b)(6) Dep. (AAH) 52:23-53:8; Ex. 62, AAHEDWI01188952 at 952; Ex. 71, Alliance_UrielPharm_00001585 at 585; Ex. 63, AAHEDWI01373683-84 at 683; Ex. 67, AAHEDWI02574179-21 at 184; Ex. 89, Turk 30(b)(6) Dep. (BCBS-IL) 26:2-10, 33:13-21, 89:19-90:2, 93:19-94:6; Ex. 88, Anderson Dep. (AAH) 98:11-24, 139:5-23).

[redacted][10] [redacted]

[redacted][11] [redacted]

[redacted][12]

C. AAH Had Power to Charge Supracompetitive Prices

Common evidence will show that AAH had substantial market power vis-à-vis Network Vendors that compete for commercial plan sponsors in Eastern Wisconsin. DR1 §VI. [redacted]

[redacted] (Ex. 11, AAHEDWI00756315-58 at 318); [redacted]

[10] Ex. 3, DR1 ¶¶188-89. Anthem, a Network Vendor, determined a site of service policy would "violate the contract with Aurora." Ex. 16, BCBSWI_AAH_00022781-82 at 781-82; Ex. 22, Lathers 30(b)(6) Dep. (Anthem-BCBS) 137:7-138:16 [redacted] (discussing Ex. 17, BCBSWI_AAH_00024689-91 at 690); *see also* Ex. 72, BCBSWI_AAH_00024854-55 at 854; Ex. 73, BCBSWI_AAH_00025759-60 at 759-60. [redacted] Ex. 18, AAHEDWI00299219-20 at 219; Ex. 19, AAHEDWI00007080-85 at 083. [redacted] Ex. 20, AAHEDWI00095705-07 at 707; Ex. 21, AAHEDWI00023436-42 at 436-47.

[11] Ex. 22, Lathers 30(b)(6) Dep. (Anthem-BCBS) 128:13-131:2 [redacted] Ex. 23, UHG-Uriel-00000494-95 [redacted] Ex. 24, Ott 30(b)(6) Dep. (Wisconsin Physician Services ("WPS")) 55:4-22, 60:11-16 [redacted]

[12] *E.g.*, Ex. 56, Klein Dep. (AAH) 49:13-50:7 [redacted] x. 21, AAHEDWI00023436-42 at 437, 436 [redacted]

[redacted] (Ex. 7, HURON_068646-49 at 648 [redacted]); [redacted] (Ex. 8, AAHEDWI00597913-27 at 916); [redacted] (Ex. 25, AAHEDWI00598196 at 196). [redacted] Ex. 9, Klein Dep. (AAH) 287:21-288:7.

[redacted] Ex. 3, DR1 ¶¶136-37, 176. **Anthem** testified it could not remove AAH from all its products and remain commercially viable because "employers wouldn't want to only offer insurance plans that don't include Aurora" and agreed that "Aurora is the most dominant system in southeastern Wisconsin" due to "the size and magnitude of the health system."[13] **Common Ground** "viewed [AAH] as a necessary provider" and identified AAH contract termination as its number one network risk.[14] [redacted][15] [redacted][16] **WPS** understood excluding AAH would be "detrimental" [redacted][17] [redacted]

[13] Ex. 22, Lathers 30(b)(6) Dep. (Anthem-BCBS) 323:4-324:20; 316:24–318:1.

[14] Ex. 27, Jackson 30(b)(6) Dep. (Common Ground) 77:18-78:1, 62:16-63:12.

[15] Ex. 28, Maxwell 30(b)(6) Dep. (Humana) 56:21-57:9, 57:22-58:2; Ex. 29, HUMANA019081 at slide 4 (AAH contract termination is the "biggest risk"); Ex. 31, HUMANA019080 at slide 4 (same).

[16] Ex. 32, UHG-Uriel-00000368 at slide 14; *see* Ex. 33, UHG-Uriel-00020038-46 at 038-40 (similar).

[17] Ex. 24, Ott 30(b)(6) Dep. (WPS) 200:13-201:8.

[redacted] Ex. 3, DR1 ¶¶139, 175 (citing, *inter alia*, Ex. 66, AAHEDWI02574124-62 at 125; Ex. 68, AAHEDWI02602381-422 at 385; Ex. 76, HURON_080281-351 at 304; Ex. 70, AAHEDWI02613840-61 at 854-56). [redacted] *Id.* ¶139 (citing Ex. 66, AAHEDWI02574124-162 at 125, 138; Ex. 74, Blomeyer Dep. (AAH) 136:4-141:10)). [redacted] *Id.* ¶137. Three other systems (Ascension, Bellin, ProHealth) testified that they were unable to impose restraints similar to All Plans because they lacked AAH's "leverage." *Id.* ¶147.[18]

Dr. Dranove conducted structural analyses evaluating AAH's importance to patients, Plan Sponsors, and Network Vendors, analyzing both "willingness to pay"—a well-established concept in health economics that evaluates how much worse off patients would be if they could no longer receive care from a given health system—and patient volumes. Ex. 3, DR1 §VI(E)-(F). Dr. Dranove found that AAH is by far the most powerful health system in Eastern Wisconsin and that its high share of patient volume indicates that Network Vendors would face significant challenges if they lacked all AAH providers in all their networks. *Id.*

[redacted] Ex. 3, DR1 ¶¶142-46.[19] [redacted]

[18] [redacted] Ex. 3, DR1 ¶138 (citing Exs. 49, 51, 90).

[19] [redacted] Ex. 30, AAHEDWI00573956-57 at 956; *see also* Ex. 34,

[redacted][20] [redacted] DR1 ¶149 (citing evidence).

D. The Challenged Conduct Caused Higher Prices

Class-wide evidence—including AAH's admissions—shows that the Challenged Conduct caused inflated prices, [redacted] (Ex. 40, AAHEDWI00435658-69 at 667 [redacted] (Ex. 41, AAHEDWI00025038-40 at 038-39 [redacted] (Ex. 53, AAHEDWI00082436-40 at 438 [redacted]), [redacted] (Ex. 42, AAHEDWI00868418-20 at 418 [redacted]

AAHEDWI00573958-64 at 959 (similar). **Anthem** repeatedly sought removal of the language. Ex. 22, Lathers 30(b)(6) Dep. (Anthem-BCBS) 351:10-352:4. Anthem viewed the provision as "problematic, punitive, or limit[ing] care choices for consumers," Ex. 35, BCBSWI_AAH_00025938-39 at 938, [redacted] Ex. 36, AAHEDWI00158954-60 at 956. [redacted] Ex. 37, AAHEDWI00573949-50 at 949. [redacted] Ex. 38, AAHEDWI00008411-14 at 411-12. [redacted] Ex. 3, DR1 Table F.9; Ex. 39, AAHEDWI00152452-63 at 459; Ex. 40, AAHEDWI00435658-69 at 659. **WPS** alleged in a counterclaim against AAH in 2006 that the provision was an illegal restraint "imposed on all Network Vendors." Ex. 3, DR1 ¶146 (citing Ex. 81, WPS's Answer to Amended Compl., Amended Counterclaims, and Reply to Counter-Counterclaims, ¶¶18, 69, 71). WPS sought removal "multiple times over the years" but could not get the All Plans provision removed until 2023. Ex. 24, Ott 30(b)(6) Dep. (WPS) 191:20-192:8.

[20] Ex. 3, DR1 ¶¶147-48 [redacted] (citing, *inter alia*, Ex. 82, Squier Dep. (Ascension) 122:8-123:17; Ex. 83, Wedin 30(b)(6) Dep. (Bellin) 68:21-69:9, 75:25-76:13, 93:24-94:7; Ex. 84, Bacon 30(b)(6) Dep. (ProHealth) 240:1-241:11, 262:9-263:23; Ex. 22, Lathers 30(b)(6) Dep. (Anthem-BCBS) 343:14-344:6, 349:14-350:5; Ex. 24, Ott 30(b)(6) Dep. (WPS) 192:16-25).

[redacted] (Ex. 65, AAHEDWI02010094-96 at 95), and [redacted] (Ex. 43, AAHEDWI00083070-74 at 072 [redacted]).[21] [redacted] [22] [redacted] Ex. 3, DR1 ¶¶156-57; LR1 ¶23.[23] [redacted] Ex. 3, DR1 ¶151. [redacted] Ex. 44, AAHEDWI00450947-69 at 961. [redacted] [24] [redacted] Ex. 1, LR1 ¶20 & n.25 (citing Ex. 64, AAHEDWI01378772-03 at 772, 776), [redacted] Ex. 11, AAHEDWI00756315-58 at 318.

AAH was the highest priced system in Wisconsin for both inpatient and outpatient services.

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[21] *See* Ex. 3, DR1 ¶155; Ex. 1, LR1 ¶21 (citing evidence of AAH's high prices); Ex. 4, DR2 ¶74 & n.104 (citing, *inter alia*, Ex. 60, AAHEDWI00947831-41 at 838).

[22] Ex. 52, AAHEDWI00082402-04 at 404.

[23] *E.g.*, Ex. 45, CG_0063481 at 482 (AAH was "a more expensive provider"); Ex. 22, Lathers 30(b)(6) Dep. (Anthem-BCBS) 77:22-24 ("Aurora had a higher reimbursement rate in southeast Wisconsin compared to their peers."); Ex. 46, Spencer 30(b)(6) Dep. (Froedtert) 266:14-268:3 [redacted] Ex. 47, UHG-Uriel-00006550, slide 2 [redacted] Ex. 80, Uriel-Sub0002739-50 at 745 [redacted].

[24] Ex. 3, DR1 ¶158 (citing Ex. 78, ProHealth_Uriel_0007534-36 at 534); Ex. 1, LR1 ¶20 (citing Ex. 77, MILLIMAN_00001-39 at 011; Ex. 78, ProHealth_Uriel_0007534-36 at 534).

Ex. 1, LR1 ¶25. For 2020-22, each of AAH's Wisconsin hospitals was in the highest-priced 10% of all hospitals nationwide, and AAH's hospital in Kenosha was the fourth highest-priced hospital in the country. Ex. 3, DR1 ¶¶152-54. In 2021, commercial healthcare prices in the Milwaukee and Racine metropolitan areas—AAH strongholds—were almost 50% higher than national median prices. Ex. 1, LR1 ¶24. Dr. Dranove confirmed that AAH's high prices are not attributable to alternative cost or demand factors. Ex. 3, DR1 ¶¶160-63.

Finally, as discussed further below, Plaintiffs' expert economist Dr. Leitzinger—as he did in the *Sutter* litigation—conducted econometric analysis, which showed in this case that the Challenged Conduct raised prices substantially, [redacted] and that all or virtually all Class members were overcharged. *Infra* §III.B.5.b; Ex. 1, LR1 ¶¶9, 40 & at Ex. 4.

III. ARGUMENT

A. Standard for Class Certification

Class actions play an important role in antitrust enforcement. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343-44 (1979); *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 262-66 (1972). At class certification, "[t]he district court's task [is] to determine if the plaintiffs[] presented a scenario in which judicial efficiency would be served by allowing their claims to proceed en masse through the medium of a class action rather than through individual litigation." *Chi. Teachers Union, Local No. 1 v. Bd. of Educ. of Chi.*, 797 F.3d 426, 433 (7th Cir. 2015). Plaintiffs must demonstrate numerosity, typicality, commonality, and adequacy of representation under Rule 23(a) and, here, the Rule 23(b)(3) requirements of predominance and superiority. *Kleen Prods. LLC v. Int'l Paper Co.*, 831 F.3d 919, 922-23 (7th Cir. 2016). The Court's determination of whether Plaintiffs have met these prerequisites requires a "rigorous analysis" that may "entail some overlap with the merits of the plaintiff's underlying claim." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011).

However, "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage. Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied" and only by a preponderance of evidence.[25]

B. Plaintiffs Satisfy the Requirements of Rule 23(a) and 23(b)(3)

1. Rule 23(a)(1)'s Numerosity Requirement is Met

Proposed classes of "more than forty members generally satisf[y] the numerosity requirement." *Chavez v. Don Stoltzner Mason Contractor, Inc.*, 272 F.R.D. 450, 454 (N.D. Ill. 2011). There are at least 6,809 Class members. Ex. 1, LR1 ¶9(a) & at Ex. 3. Rule 23(a)(1) is met.

2. Rule 23(a)(2)'s Commonality Requirement is Satisfied

Rule 23(a)(2) asks whether class members' claims "depend upon a common contention that is capable of classwide resolution." *Bell v. PNC Bank, Nat. Ass'n*, 800 F.3d 360, 374 (7th Cir. 2015). Commonality requires only "a single common question of law or fact." *Id.* In antitrust cases, "'antitrust liability alone constitutes a common question that will resolve an issue that is central to the validity of each class member's claim in one stroke.'" *Moehrl v. Nat'l Ass'n of Realtors*, 2023 WL 2683199, at *11 (N.D. Ill. Mar. 29, 2023) (citation omitted).

There are numerous common questions, including whether: (1) AAH engaged in the Challenged Conduct; (2) the Challenged Conduct was an unreasonable restraint of trade; (3) AAH had market power and used it to impose and maintain the Challenged Conduct; (4) the Challenged Conduct had anticompetitive effects that outweigh any cognizable procompetitive benefits; (5) antitrust impact (i.e., an overcharge) to the Class can be proven with common evidence; and (6)

[25] *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013); *see also Messner*, 669 F.3d at 811 ("the court should not turn the class certification proceedings into a dress rehearsal for the trial on the merits").

aggregate Class-wide damages can be reliably measured. *See* Proposed Trial Plan (filed herewith).

3. Rule 23(a)(3)'s Typicality Requirement is Met

Rule 23(a)(3) is satisfied if "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Under Rule 23(a)(3)'s "liberal[]" standard, typicality is satisfied "when the representative party's claim arises from the same course of conduct that gives rise to the claims of other class members and all of the claims are based on the same legal theory." *Saltzman v. Pella Corp.*, 257 F.R.D. 471, 479 (N.D. Ill. 2009), *aff'd*, 606 F.3d 391 (7th Cir. 2010). "In the antitrust context, typicality 'will be established by plaintiffs and all class members alleging the same antitrust violation by the defendants.'"[26] Plaintiffs and the Class all claim an overcharge injury from the same Challenged Conduct. Ex. 1, LR1 ¶¶9.c, 55, 64. Typicality is met.

4. Rule 23(a)(4)'s Adequacy Requirement is Met

Adequacy requires: "(i) the class representatives must not have claims in conflict with other class members, and (ii) the class representatives and proposed class counsel must be able to litigate the case vigorously and competently on behalf of named and absent class members alike." *In re Broiler Chicken Antitrust Litig.*, 2022 WL 1720468, at *3 (N.D. Ill. May 27, 2022). Those requirements are satisfied here. First, Plaintiffs' interests are fully aligned with those of the Class in proving that AAH violated the antitrust laws and thereby overcharged them for Healthcare Services. Here, "because *Hanover Shoe* sets the amount of the overcharge as plaintiffs' damages, all of the class members have the same financial incentive for purposes of the litigation—*i.e.* proving that they were overcharged and recovering damages based on that overcharge."[27]

[26] *Moehrl*, 2023 WL 2683199, at *12; *see In re Ready-Mixed Concrete Antitrust Litig.*, 261 F.R.D. 154, 168 (S.D. Ind. 2009) ("factual differences in date, size, manner, or conditions of purchase, the type of purchaser, or other concerns do not make named plaintiffs atypical") (citation omitted).

[27] *In re K-Dur Antitrust Litig.*, 686 F.3d 197, 223 (3d Cir. 2012) (citing *Hanover Shoe v. United Shoe Mach. Corp.*, 392 U.S. 481 (1968)). *See Ramirez v. Palisades Collection LLC*, 2007 WL

Plaintiffs have demonstrated that they will litigate vigorously on behalf of the proposed Class. In the more than four years of this litigation, they have conducted extensive work on behalf of the Class, including giving deposition testimony and producing documents. *See* Wallin Decl. ¶¶1, 4.

Second, Plaintiffs retained skilled counsel with experience prosecuting antitrust and class action litigation. Proposed Co-Lead Counsel Fairmark Partners, LLP (https://fairmarklaw.com/) and Berger Montague PC (https://bergermontague.com/) are experienced counsel in antitrust class actions and have diligently and zealously represented the interests of the Class. They have committed tens of thousands of hours and considerable resources, taking dozens of depositions, engaging in years of discovery, collecting and reviewing hundreds of thousands of documents, briefing dispositive and discovery motions, and engaging economic experts, among many other tasks. *Id*. ¶¶1-3. Adequacy is met.

5. Rule 23(b)(3)'s Predominance Requirement is Met

Predominance is "readily met" in cases alleging violation of the antitrust laws. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 815 (7th Cir. 2012). "Predominance is satisfied when 'common questions represent a significant aspect of a case and ... can be resolved for all members of a class in a single adjudication.'" *Kleen Prods.*, 831 F.3d at 925 (quoting *Messner*, 669 F.3d at 815). "[C]ourts routinely have found that common questions predominate where the case claims the existence of a widespread or uniform practice." *Ross v. Gossett*, 33 F.4th 433, 439 (7th Cir. 2022).

Rule 23(b)(3) "does *not* require a plaintiff seeking class certification to prove that each element of her claim is susceptible to classwide proof." *Amgen*, 568 U.S. at 469 (cleaned up;

4335293, at *6 (N.D. Ill. Dec. 5, 2007) (plaintiff adequate where "she and putative class members have suffered the same injury as a result of the same conduct"); *Alexander v. Q.T.S. Corp.*, 1999 WL 573358, at *8 (N.D. Ill. July 30, 1999) (same).

emphasis in original); *Kleen Prods.*, 831 F.3d at 922. The inquiry is whether common questions predominate as to the case *as a whole*, not as to individual elements. *Id*; *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016); *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013). "Common issues predominate if they have a direct impact on every class member's effort to establish liability, and if that impact is more substantial than the impact of individualized issues in resolving the claims." *Doster Lighting, Inc. v. E-Conolight, LLC*, 2015 WL 3776491, at *8 (E.D. Wis. June 17, 2015). Individualized issues do not defeat predominance unless they "overwhelm common ones." *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 276 (2014); *see Tyson Foods*, 577 U.S. at 453 (common issues may predominate "even though other important matters will have to be tried separately") (citation omitted).

Plaintiffs need not prove that the common "questions will be answered, on the merits, in favor of the class," *Amgen*, 568 U.S. at 459, but simply that the common questions are "*capable* of" class-wide resolution. *Messner*, 669 F.3d at 818 (citation omitted) (emphasis in original). *See also Bell*, 800 F.3d at 377 (plaintiffs not required to demonstrate that they "will ultimately prevail on the merits" of common questions); *Broiler Chicken*, 2022 WL 1720468, at *7 (whether the "evidence is sufficient to survive summary judgment or to demonstrate liability at trial is not at issue" at class certification).

Here, common questions are abundant and predominate over any individual questions.

a. <u>Plaintiffs Will Prove AAH's Violation With Common Evidence</u>

Plaintiffs allege that the Challenged Conduct violated Sections 1 and 2 of the Sherman Act. "To allege a valid claim under § 1 of The Sherman Act, a plaintiff must prove that (1) defendants had a contract, combination, or conspiracy; (2) the conspiracy impacted the market; and (3) it was injured." *Fond Du Lac Bumper Exch., Inc. v. Jui Li Enter. Co.*, 2016 WL 3579953, at *6 (E.D. Wis. June 24, 2016). Plaintiffs' Section 1 claim is subject to Rule of Reason analysis, whereby a

"plaintiff carries the burden of showing that an agreement or contract has an anticompetitive effect on a given market within a given geographic area" and "that the defendant has market power ... without which the defendant could not cause anticompetitive effects on market pricing."[28]

Plaintiffs' proof of AAH's antitrust violation is entirely common to the Class. *E.g.*, *supra* §II.B; Ex. 3, DR1 ¶¶83-85. For example, the All Plans provision is documented in form contracts with [redacted], under which all Class members made purchases, and testimonial evidence describes the All Plans provision as [redacted] *Supra* §II.B; Ex. 3, DR1 ¶85; *cf. Sidibe*, 333 F.R.D. at 492 ("common questions will predominate with respect to the alleged antitrust violations"); *UEBT v. Sutter* Class Order at 14 (finding predominance where "[t]here is evidence that Network Vendors (and consequently, their self-funded payor members) were subject to the same or substantially similar restrictive contract provisions with Sutter, which consequently inhibited price competition in the marketplace.").

Likewise, whether AAH had substantial market power is a common question, to be addressed through common evidence. Plaintiffs' proof of AAH's market power is all common to the Class and includes both direct evidence of anticompetitive effects and indirect evidence of market definition and market share. *See Toys "R" Us, Inc. v. F.T.C.*, 221 F.3d 928, 937 (7th Cir. 2000) (both forms of evidence can be used to prove market power).

[28] *Agnew v. NCAA*, 683 F.3d 328, 335 (7th Cir. 2012). Section 2 similarly requires "(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power[.]" *U.S. v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966). Attempted monopolization under Section 2 requires "(1) specific intent to achieve monopoly power in a relevant market; (2) predatory or anticompetitive conduct directed to accomplishing this purpose; and (3) a dangerous probability that the attempt at monopolization will succeed." ECF 31, Decision and Order at 10 (citing *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 854 (7th Cir. 2011)). "Monopoly power" is "synonymous in most respects" and "sometimes used interchangeably" with market power, though "'monopoly power' generally denotes some higher threshold of market power[.]" *DSM Desotech Inc. v. 3D Sys. Corp.*, 2009 WL 174989, at *7 (N.D. Ill. Jan. 26, 2009). Monopoly power can be proven with the same evidence as market power. *See In re Dairy Farmers of Am., Inc. Cheese Antitrust Litig.*, 767 F. Supp. 2d 880, 902 (N.D. Ill. 2011).

Plaintiffs' direct evidence includes Class-wide expert analysis showing that AAH charged prices [redacted] higher than it would have absent the Challenged Conduct, and that the All Plans provision harmed competition. Ex. 1, LR1 §§V, VI; Ex. 3, DR1 ¶¶152-63, 184-99; Ex. 4, DR2 §VI. Plaintiffs also have documentary and testimonial evidence that AAH was able to impose and enforce the All Plans provision [redacted]. Ex. 3, DR1 ¶89, §VI(A)-(C) (citing evidence); *supra* §§II.B-C; *Fortner Enters., Inc. v. U.S. Steel Corp.*, 394 U.S. 495, 504 (1969) (direct evidence includes the power to "impose other burdensome terms ... with respect to any appreciable number of buyers within the market"); *Toys "R" Us*, 221 F.3d at 937 (same). Dr. Dranove's market analyses confirm AAH's importance to patients, Plan Sponsors, and Network Vendors, proof of AAH's market power. Ex. 3, DR1 §VI(E)-(F).

Plaintiffs also will prove AAH's market power indirectly, with Class-wide evidence. This market evidence is, by definition, market-wide, and thus common across the Class. *See* Ex. 3, DR1 §§V, VI; Ex. 4, DR2 §IV; *supra* §II.C (citing evidence). Dr. Dranove, a preeminent healthcare economist, found that "the healthcare services that AAH offers to Network Vendors in Eastern Wisconsin is a well-defined antitrust market for this matter. This market includes as market participants AAH and other providers of competing healthcare services in Eastern Wisconsin." Ex. 3, DR1 ¶100 & §V.C-D. That this is a well-defined antitrust relevant market is undisputed and supported by overwhelming evidence, all common to the Class, including Dr. Dranove's application of the Hypothetical Monopolist Test from the U.S. Department of Justice and Federal Trade Commission's "Merger Guidelines," and business documents and testimony from AAH and other market participants. *Id.* ¶¶101-29.[29] Dr. Dranove also opines, again based

[29] Application of the Hypothetical Monopolist Test is a well-recognized way to define a relevant antitrust market. *See, e.g.*, *Corzo v. Brown Univ.*, 2026 WL 91424, at *10-11 (N.D. Ill. Jan. 12, 2026) (denying defendants' relevant market summary judgment motion).

on entirely Class-wide evidence and methodology, that "this market encompasses narrower well-defined antitrust markets (submarkets): inpatient GAC [general acute care] services offered to Network Vendors in Eastern Wisconsin; outpatient services offered to Network Vendors in Eastern Wisconsin; and physician specialty services offered to Network Vendors in Eastern Wisconsin." Ex. 3, DR1 ¶100.

As Dr. Dranove opined, AAH had sufficiently large shares of patient volume, above 30%, in these well-defined relevant antitrust markets to give it substantial market power, DR1 ¶¶166-74, and other evidence supports it, such as (a) AAH's importance in the market, which allowed AAH to impose the All Plans provision [redacted] (*id.* ¶¶134-46, 175-76[30]; *supra* §II.C), (b) [redacted] (Ex. 3, DR1 ¶¶147-49), and (c) that AAH's prices and Eastern Wisconsin prices are high as compared to other pricing benchmarks (*id.* ¶¶150-63), and significant barriers exist to providers' entry and expansion in the Healthcare Services market in Eastern Wisconsin (*id.* ¶¶177-83). *See also, e.g.*, Ex. 4, DR2 §IV; *Toys "R" Us*, 221 F.3d at 937 (defendant had market power with a 20% share because "[i]t was remarkably successful" in imposing contractual restraints on "the 10 major toy manufacturers" comprising 40% of the toy market).

Common evidence in the form of Class-wide expert analysis and evidence "can be used to define the relevant product market[s]"[31] and to prove AAH's market power. Even if AAH could

[30] Dr. Dranove showed empirically that willingness to pay for AAH, "measured by evaluating how much worse off patients would be if they could no longer receive care from a given health system" was much higher than AAH's competitors. *Id.* ¶164; *see also id.* ¶¶165-76.

[31] *In re Turkey Antitrust Litig.*, 2025 WL 264021, at *26-27 (N.D. Ill. Jan. 22, 2025); *In re Automatic Card Shufflers Litig.*, 2026 WL 892509, at *21 (N.D. Ill. Mar. 31, 2026) ("[Q]uestions of market definition ... are classwide issues.").

show it lacked market power, this would not defeat predominance because its evidence is also common. *See Amgen*, 568 U.S. at 470 (alleged "failure of proof as to an element" of plaintiffs' claim is a "fatal similarity" supporting certification). The same is true of AAH's purported procompetitive justifications for the All Plans provision, [redacted].[32]

Plaintiffs also have overwhelming Class-wide evidence of anticompetitive effects: (a) Dr. Leitzinger's analysis of overcharges caused by the All Plans provision, (b) Dr. Dranove's opinion and explanation of how the All Plans provision undermines price competition, (c) Dr. Romano's opinion that [redacted] and (d) extensive record evidence consistent with these findings. Ex. 1, LR1 §V, ¶¶19-25; Ex. 3, DR1 §§III(D), VI(D)-(E), VII; Ex. 5, Romano Rpt. ¶17[33]; *supra* §II.

Courts have repeatedly found in cases such as this that common issues predominate as to violation, holding that the question of antitrust violation "relates solely to Defendants' conduct, and as such proof for these issues will not vary among class members."[34]

b. Class-Wide Impact Can Be Proven With Common Evidence

Plaintiffs' common evidence also can prove Class-wide impact in the form of overcharge

[32] *E.g.*, Ex. 85, AAHEDWI00630685-732 at 697 [redacted]

[33] Dr. Romano also opined that "'All Plans' contract provisions are not necessary to achieve or maintain clinical integration that benefits patients and communities." Ex. 5, Romano Rpt. ¶17.

[34] *In re Potash Antitrust Litig.*, 159 F.R.D. 682, 694 (D. Minn. 1995); *see also Messner*, 669 F.3d at 815-16 ("common questions clearly predominate in regard to whether [defendant] violated federal antitrust law"); *Kleen Prods., LLC v. Int'l Paper*, 306 F.R.D. 585, 593-94 (N.D. Ill. 2015), *aff'd*, 831 F.3d 919 (similar); *Fond Du Lac*, 2016 WL 3579953, at *6 (similar); *Panache Broad. of Pa., Inc. v. Richardson Elecs., Ltd.*, 1999 WL 342392, at *5 (N.D. Ill. May 14, 1999), *mod. on other grounds*, 2001 WL 290408 (N.D. Ill. Mar. 22, 2001) (Where the "bulk of Plaintiffs' allegations pertained to conduct under [certain] agreements" and the alleged "conduct arose out of the ... agreements" then "questions regarding Defendants' conduct are common.").

injury, a prototypical form of antitrust injury.[35] A plaintiff suffers antitrust injury from even a single overcharge.[36] Plaintiffs "do not need to prove that every ... purchase by a class member during the class period was affected by the conspiracy. A class member has a claim if *any* purchase during the class period was affected by the conspiracy." Class-wide impact does *not* require that each and every class member has been injured; classes often include class members who turn out to be uninjured.[37]

Plaintiffs' burden at class certification is "not to prove the element of antitrust impact." *Messner*, 669 F.3d at 818 (internal quotation and citation omitted). Rather, Plaintiffs need to "demonstrate that the element of antitrust impact ***is capable of proof at trial through evidence that is common to the class rather than individual to its members***." *Id.* (citations omitted) (emphasis added); *see Turkey*, 2025 WL 264021, at *2 ("'all that is necessary to show predominance'" is for plaintiffs to demonstrate "that it is possible to use common evidence that, if believed, would show that all or nearly all class members suffered antitrust injury") (quoting *Messner*, 669 F.3d at 818). Plaintiffs readily meet this standard with their overwhelming record and expert evidence, all common to the Class, that AAH engaged in unlawful conduct that caused prices to be substantially inflated—[redacted]—and that all or virtually all Class members paid higher prices as a result. In addition, unlike other antitrust cases,

[35] *See Hanover Shoe*, 392 U.S. at 494.

[36] *See, e.g.*, *id.*; *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 114 n.9 (1969) ("Zenith's burden of proving the fact of damage under s 4 of the Clayton Act is satisfied by its proof of some damage flowing from the unlawful conspiracy; inquiry beyond this minimum point goes only to the amount and not the fact of damage.").

[37] *E.g.*, *Kleen Prods.*, 831 F.3d at 927; *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 757 (7th Cir. 2014); *Kohen v. Pac. Inv. Mgmt. Co.*, 571 F.3d 672, 677 (7th Cir. 2009); *Pella Corp. v. Saltzman*, 606 F.3d 391, 394 (7th Cir. 2010) (affirming class certification despite potential uninjured class members); *Olean Wholesale Grocery Coop. v. Bumble Bee Foods LLC*, 31 F.4th 651, 668-69 (9th Cir. 2022) (en banc) (court need not decide on class certification whether the class includes a *de minimis* number of uninjured class members); *Automatic Card Shufflers*, 2026 WL 892509, at *22 (similar) (citing *Kohen* 571 F.3d at 677; *Messner,* 669 F.3d at 823-24).

here prices were *not* individually negotiated by Class members; instead, AAH negotiated prices with a small number of Network Vendors on behalf of all Class members (Ex. 1, LR1 ¶¶49-50, 52), eliminating the individual variation that defendants often argue can defeat predominance.

i. Plaintiffs' Common Evidence Includes Evidence of High Prices and the Nature of the Market

Plaintiffs' common record and economic evidence shows that AAH's prices were inflated because of the All Plans provision, and that the Class was overcharged. Dr. Dranove opined that the Challenged Conduct reduced competition and caused prices to be higher. Ex. 3, DR1 §§III.D, IV, VII. Both Dr. Dranove and Dr. Leitzinger analyzed record evidence and third-party analyses showing that AAH's rates were significantly inflated market-wide. *Infra* §II.D; Ex. 1, LR1 §§V.A, VI; Ex. 2, Leitzinger Rebuttal ("LR2"), §VIII; Ex. 3, DR1 §§ VI.D, VII.

Dr. Dranove and Dr. Leitzinger also found that the nature of the Challenged Conduct and the nature of the market showed that the inflated prices would be widespread and unavoidable. Ex. 1, LR1 §VIII; Ex. 2, LR2 §VIII; Ex. 3, DR1 §§VI.D, VII. [redacted] Ex. 3, DR1 ¶¶83-85. Prices paid to AAH providers in Eastern Wisconsin by all Class members were dictated by a relatively small number of AAH-Network Vendor agreements. Ex. 1, LR1 ¶¶49-50, 52. [redacted] *Id.* ¶¶49-54. [redacted] *Id.* ¶¶50, 55 & at Table 2. Accordingly, there was little or no room for Class members to avoid overcharges. *Id.* ¶¶49-55.

This sort of structural market analysis is widely recognized evidence of class-wide impact. *See*, *e.g.*, *Kleen Prods.*, 831 F.3d at 927 (the structure of the market is a common issue that can

support a finding of class-wide impact).[38] Indeed, an analysis that "prices generally move together over time," such that if defendants were able to "artificially inflate prices, this ... would have resulted in all or nearly all class members paying a higher price," is itself "sufficient to show that antitrust impact can be proven on a class-wide basis." *Fond Du Lac*, 2016 WL 3579953, at *8.

ii. Plaintiffs' Robust, Class-Wide Quantitative Evidence

Dr. Leitzinger also reliably employed a robust two-step regression analysis that further demonstrates Class-wide injury. Ex. 1, LR1, §VIII.C; Ex. 2, LR2, §VIII. Courts have found that such an analysis is "broadly accepted" and supports a finding that common issues predominate with respect to antitrust injury.[39] This common quantitative evidence is capable of proving "first, that class members paid artificially inflated prices and, second, that 'this price inflation occurred to substantially all class members.'"[40] Predominance is met because the question is fundamentally Class-wide: a jury either finds common impact or not. *Olean*, 31 F.4th at 681 ("If the jury found [plaintiffs' model] reliable, then [plaintiffs] would have succeeded in showing antitrust impact on a class-wide basis, an element of their antitrust claim."); *Black v. Occidental Petrol. Corp.*, 69 F.4th 1161, 1184 (10th Cir. 2023) ("[A] failure of proof on the element of antitrust impact would end the litigation for all.").

Regression analysis is a "commonly accepted mechanism" for proving class-wide impact. *Fond Du Lac*, 2016 WL 3579953, at *9; *see Kleen Prods.*, 306 F.R.D. at 602 (regression analysis

[38] *See also In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 656 (7th Cir. 2002) (crediting expert opinion that market structure was conducive to cartelization and common impact); *In re Blood Reagents Antitrust Litig.*, 2015 WL 6123211, at *31 (E.D. Pa. Oct. 19, 2015) ("Many courts have accepted market-structure analyses in finding predominance with respect to antitrust impact."); *In re CRT Antitrust Litig.*, 308 F.R.D. 606, 627 (N.D. Cal. 2015) (similar).

[39] *E.g.*, *In re Broiler Chicken Growers Antitrust Litig. (No. II)*, 2024 WL 2117359, at *29 (E.D. Okla. May 8, 2024) ("*Broiler Chicken (No. II)*"); *Turkey*, 2025 WL 264021, at *17 (similar); *In re Restasis Antitrust Litig.*, 335 F.R.D. 1, 15 (E.D.N.Y. 2020) (similar); *Castro v. Sanofi Pasteur Inc.*, 134 F. Supp. 3d 820, 847-48 (D.N.J. 2015) (similar).

[40] *Restasis*, 335 F.R.D. at 15 (citation omitted).

"is common in antitrust cases, where the plaintiffs use it to show that an alleged 'conspiracy' has a statistically significant impact on the dependent variable—usually price.") (citing Daniel L. Rubinfeld, *Reference Guide on Multiple Regression,* in REFERENCE MANUAL ON STATISTICAL EVIDENCE 305-07 (3d ed. 2011)).[41] A regression can reliably control for variables that might have affected prices, isolate the effect of the Challenged Conduct, and determine whether and to what extent prices were inflated due to the Challenged Conduct. Ex. 1, LR1 ¶26; *see, e.g.*, *Fond Du Lac*, 2016 WL 3579953, at *9 (noting regression analysis is capable of "eliminat[ing] factors other than anti-competitive conduct that could have affected the price [at issue] in order to discover whether there was a correlation between the alleged anti-competitive conduct and price ... and then [use that] model to measure the estimated overcharge that all or nearly all class members paid."). "[T]he Seventh Circuit has recognized that courts afford wide 'latitude to experts employing regression analysis, a proven statistical methodology used in a wide variety of contexts.'"[42]

a) <u>Step 1: The Challenged Conduct Inflated Prices</u>

Dr. Leitzinger employed a standard "yardstick" regression analysis to measure the effect of the Challenged Conduct on prices paid by the Class by comparing those prices (the "treatment group") to prices not affected by the Challenged Conduct (the "control group"). Ex. 1, LR1 ¶28. Like regressions generally, yardstick analyses are widely accepted.[43] After controlling for other market supply and demand factors that could affect pricing, the yardstick comparison allows for the estimation of the prices the Class would have been paid absent the Challenged Conduct. *Id.*

Dr. Leitzinger's primary model compares AAH's prices in Eastern Wisconsin (all

[41] *See also Paper Sys. Inc. v. Mitsubishi Corp.*, 193 F.R.D. 601, 615 (E.D. Wis. 2000).

[42] *Turkey*, 2025 WL 264021, at *19 (quoting *Manpower, Inc. v. Ins. Co. of Pa.*, 732 F.3d 796, 808 (7th Cir. 2013)) (cleaned up)). *See Broiler Chicken*, 2022 WL 1720468, at *10 ("Regression analysis is a widely accepted method").

[43] The "'yardstick approach is a well-established methodology' in antitrust actions." *Moehrl*, 2023 WL 2683199, at *8 (citation omitted); *17 (yardstick challenge does not defeat certification).

negotiated subject to the All Plans Provision) against AAH's prices in Illinois (the yardstick, where AAH operates a similar health system that did not use an All Plans Provision). The model found that the Challenged Conduct inflated prices [redacted] over the Class Period for AAH's Healthcare Services. Ex. 1, LR1 ¶40 & at Ex. 4. His overcharge finding is statistically significant at the 99% level—the highest level of statistical confidence—and his model has an adjusted r-squared of 0.93, meaning that it is so well-specified that it explains 93% of the variation in prices between AAH-Wisconsin and AAH-Illinois. *Id.* ¶¶40, 61. Dr. Leitzinger found that his results were supported by comparisons to AAH's own internal assessments of its rates in Illinois and Wisconsin, and an assessment of [redacted] rates for providers in Eastern Wisconsin from an AAH-hired consultant. *Id.* ¶¶41-42. [redacted] *Id.* Finally, Dr. Leitzinger performed a second yardstick regression analysis that compared the rates of AAH and Ascension, which Dr. Leitzinger identified as the most comparable Wisconsin system by size, geographic overlap, and Network Vendor relationships, and which did not use All Plans provisions. *Id.* ¶¶43-44. Using this second benchmark, Dr. Leitzinger found a [redacted] overcharge, which is directionally consistent with the primary model and (as expected) [redacted]. *Id.* ¶45. AAH's disagreement with the variables Dr. Leitzinger used in his regression (which yielded results confirmed by record evidence) lack merit (Ex. 2, LR2 §V) but regardless provide no basis to deny class certification.[44]

[44] *E.g.*, *Bazemore v. Friday*, 478 U.S. 385, 400 (1986) ("Normally, failure to include variables will affect the analysis' probativeness, not its admissibility.") (Brennan, J., concurring in part); *Manpower*, 732 F.3d at 808 (similar); *Fond Du Lac Bumper Exch., Inc. v. Jui Li Enter. Co.*, 2016 WL 756568, at *3 (E.D. Wis. Feb. 26, 2016) ("economist need not account for every possible variable in order for a regression analysis to be admissible"); *Turkey*, 2025 WL 264021, at *17 (similar); *Broiler Chicken*, 2022 WL 1720468, at *10 (similar).

b) Step 2: There was Class-wide price inflation

Dr. Leitzinger employed a widely used statistical methodology called "in sample prediction" to test whether there was widespread impact, which found empirical evidence that ***98 percent*** of Class members paid a price in excess of the predicted but-for price on at least one (typically more) transaction. Ex. 1, LR1 ¶60. This methodology "is the type of market-wide economic analysis [that] has been accepted by many courts to show predominance as to antitrust impact." *Turkey*, 2025 WL 264021, at *9 (citation omitted).[45] Dr. Leitzinger's robust findings confirm Class-wide impact even when the model incorporates various potential adjustments to Dr. Leitzinger's methodology that were baselessly suggested by AAH's expert. *See* LR2 §§II, V, VIII; Memo. In Supp. of Pls.' Mot. To Exclude Opinions Offered By Mr. Jonathan Orszag.

Documentary evidence about market structure and the uniformity of AAH's conduct is additional compelling proof of Class-wide impact. Class members did not individually negotiate prices. Instead, AAH negotiated prices with a small number of Network Vendors on behalf of all Class members (Ex. 1, LR1 ¶¶49-50, 52), [redacted][46] Here, with just a handful of contracts setting prices for all Class members, the case for Class-wide impact is even clearer.

[45] *Broiler Chicken*, 2022 WL 1720468, at *10, *13 (common impact where "97.1% of customers paid an actual price that exceeded the but-for price at least once"); *Olean*, 31 F.4th at 676-82; *Broiler Chicken (No. II)*, 2024 WL 2117359, at *30; *Le v. Zuffa, LLC*, 2023 WL 5085064 (D. Nev. Aug. 9, 2023); *In re Pkg. Seafood Prods. Antitrust Litig.*, 332 F.R.D. 308, 328 (S.D. Cal. 2019); *In re Capacitors Antitrust Litig.*, 2018 WL 5980139, at *7-9 (N.D. Cal. Nov. 14, 2018).

[46] Indeed, courts have held that "regression analysis can be an appropriate tool to demonstrate class-wide impact even when the market involved diversity in products, marketing, and prices" and "even when prices are individually negotiated" by each class member—even where the class members included "nearly every entity in the United States that serves chicken." *Broiler Chicken*, 2022 WL 1720468, at *12, *15; *see Turkey*, 2025 WL 264021, at *9-10, *14-15.

c. Aggregate Damages Are Provable Through Common Evidence

The predominance requirement is satisfied where aggregate Class damages can be reliably measured using Class-wide evidence and methodology. *Kleen Prods.*, 831 F.3d at 928-29. Reasonable damages estimates are sufficient "where the theory of harm is that the entire market price of a product was inflated as a result." *Kleen Prods.*, 306 F.R.D. at 605, *aff'd*, 831 F.3d 919.[47]

Dr. Leitzinger's damages calculations satisfy Rule 23(b)(3). He calculated aggregate damages by applying the [redacted] overcharge from his primary regression model to the Class member payments during the Class Period. Ex. 1, LR1 ¶¶46-48. Courts routinely find common issues predominate based on similar calculations. *E.g.*, *In re Dealer Mgmt. Sys. Antitrust Litig.*, 2024 WL 3509668, at *15 (N.D. Ill. July 22, 2024) ("courts handling antitrust class actions routinely endorse the practice of using regression models to ... measure damages on a classwide basis.") (collecting cases); *Turkey*, 2025 WL 264021, at *25 (same); *UEBT v. Sutter* Class Order at 25-30 (common issues predominate as to damages calculated by Dr. Leitzinger's regression analysis).

6. Rule 23(b)(3)'s Superiority Requirement is Met

Rule 23(b)(3)'s final requirement is superiority—*i.e.*, that a class action be "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Given "the breadth of most antitrust classes" and "the significant cost" of litigating antitrust cases, the "superiority requirement is easily met in most antitrust cases." 6 Newberg & Rubenstein on Class Actions §20:54 (6th ed. 2025). Non-exclusive superiority factors to consider

[47] *See Bigelow v. RKO Radio Pictures*, 327 U.S. 251, 264-65 (1946) ("jury may make a just and reasonable estimate of the damage based on relevant data, and render its verdict accordingly"); *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 563-64 (1931) (similar); *Eastman Kodak Co. v. S. Photo Materials Co.*, 273 U.S. 359, 379 (1927) ("defendant whose wrongful conduct has rendered difficult the ascertainment of the precise damages suffered by the plaintiff, is not entitled to complain that they cannot be measured with the same exactness and precision as would otherwise be possible"); *Spray-Rite Serv. Corp. v. Monsanto Co.*, 684 F.2d 1226, 1243 (7th Cir. 1982) (similar; citing cases).

are: (1) "the class members' interests in individually controlling the prosecution or defense of separate actions"; (2) "the extent and nature of any litigation concerning the controversy already begun by or against class members"; (3) "the desirability or undesirability of concentrating the litigation of the claims in the particular forum"; and (4) "the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3). Generally, a class action is superior "to try[ing] thousands of separate cases alleging the same misconduct using the same proof." *Bruzek v. Husky Oil Operations Ltd.*, 520 F. Supp. 3d 1079, 1099 (W.D. Wis. 2021). Here, the Class presents identical legal and factual questions about AAH's contracts, market power, and the anticompetitive effects of the All Plans provision. The best method for adjudicating the identical claims of thousands of Class members, with numerous common questions, is through a single class action case.[48]

Superiority is also satisfied because, while Class members suffered meaningful harm, individual damages are generally insufficient to support the large costs of antitrust litigation on an individual basis.[49] There is no other pending litigation challenging the All Plans Provision on behalf of Class members, enabling this case to efficiently resolve all eligible claims. And the Eastern District of Wisconsin is the appropriate forum for all Class members to bring this litigation, as the Challenged Conduct was centered here, Network Vendor contracts were negotiated here, and affected providers and patients are here.

IV. CONCLUSION

Plaintiffs respectfully request that the Court certify the proposed Class and appoint the proposed Class Representatives and Class Counsel.

[48] *See Messner*, 669 F.3d at 815 n.5 (finding it unnecessary to rule on superiority: "[t]here are so many common issues of law and fact relating to the issue of Northshore's liability, however, that the superiority requirement likely poses no serious obstacle to class certification here").

[49] *See Butler*, 727 F.3d at 801 ("[T]he more claimants there are, the more likely a class action is to yield substantial economies in litigation.").

Dated: June 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 2, 2026, a true and correct copy of the foregoing, with redactions for information designated as confidential, was filed with the Court via the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record. In addition, a true and correct copy of the sealed version was served upon counsel of record for AAH via email.

Dated: June 2, 2026

/s/ David F. Sorensen
David F. Sorensen