

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: ZELIS REPRICING ANTITRUST LITIGATION This Document Relates To: All Associated Cases	Lead Action Case No.: 1:25-cv-10734-BEM <i>Consolidated with Case Nos.:</i> <i>1:25-CV-11092-BEM</i> <i>1:25-CV-11167-BEM</i> <i>1:25-CV-11537-BEM</i>
---	---

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO COMPEL DISCOVERY FROM DEFENDANTS**

I. INTRODUCTION

Plaintiffs move to compel the proper time period for Defendants' production of structured data from Defendants Zelis Healthcare, LLC, Zelis Claims Integrity, LLC, and Zelis Network Solutions, LL (together, "Zelis"), Aetna, Inc , (herein, "Aetna"), The Cigna Group (herein, "Cigna"), Elevance Health, Inc., formerly Anthem, Inc., (herein, "Elevance"), Humana Inc. ("Humana"), and UnitedHealth Group, Inc. (herein, "United").

Defendants dispute both the start date and the end date of structured data production. Plaintiffs have requested structured data from January 1, 2012 to the present. This time period is necessary to allow experts to benchmark repriced amounts during the Class Period, which begins June 13, 2016. Defendants propose a start date of January 1, 2014, ending on August 31, 2025. That would deprive Plaintiffs' experts of the multi-year pre-period they need to benchmark repriced amounts during the Class Period, which begins June 13, 2016. Plaintiffs seek an order compelling structured data beginning January 1, 2013, together with aggregate data for 2012,

running through the present.¹

II. BACKGROUND AND PROCEDURAL HISTORY

Plaintiffs filed their Amended and Consolidated Class Action Complaint on June 11, 2025. [ECF No. 39](#). On March 30, 2026, the Court denied Defendants’ motion to dismiss and sustained the plausibility of Plaintiffs’ claims without exception. [ECF No. 185](#). Plaintiffs filed the SAC on August 3, 2026. [ECF No. 273](#). The SAC alleges that Zelis and the Commercial Payer Defendants conspired to suppress payments to OON healthcare providers, and defines a Class Period of “June 13, 2016 to the present.” SAC ¶ 374.

The Complaint places the period before the Class Period at the heart of the case. It alleges that Commercial Payers previously based OON payment on the FAIR Health database until FAIR Health’s exclusive-use settlement terms “expired in 2015 or 2016,” and that Zelis was ready: on June 13, 2016, the very day the Class Period begins, Zelis announced its rebranding and marketed its repricing services to the payers departing FAIR Health. SAC ¶¶ 11-12, 77. The SAC further alleges a continuing violation, with each new act to further or preserve the conspiracy restarting the limitations period. *Id.* ¶ 310.

On May 26, 2026, Plaintiffs served their First Set of Requests for Production (“RFPs”) for unstructured documents on all Defendants, which included a set to Non-Zelis Defendants and a set to Zelis Defendants. Instruction No. 12 defines the Relevant Period:

“The Relevant period for each Request is January 1, 2014, through the present . . . and shall include all documents and information that relate to such period, even though prepared or published outside of the Relevant Period. If information prepared before the Relevant Period is necessary for a correct or complete understanding of any answer covered by a Request, You must include

¹ On September 17, 2026, Plaintiffs offered this exact timeline as a compromise in the interest of reaching resolution. Defendants rejected it as “disproportionate to the needs of the case” without identifying a single burden.

that information for the earlier or subsequent periods as well.”²

Declaration of Haley Hawn in Support of Motion to Compel (“Hawn Decl.”) Ex. A (First RFPs, Instruction No. 12). Plaintiffs also served requests for structured claims data and underlying databases (the “Structured Data Requests”), with a Relevant Period of January 1, 2012 through the present.

On June 25, 2026, Defendants served responses and objections. Each Defendant unilaterally intended to shorten the Relevant Period. Aetna stated it “will produce data and/or documents relating to the time period from January 1, 2016 to present.” Hawn Decl. Ex. B (Aetna RFP Responses, Objections to Definitions and Instructions No. 19). Cigna, United and Zelis said the same. Hawn Decl. Exs. C, D, and E (Cigna RFP Responses, Objection to Instructions No. 7; United RFP Responses, Objections to Definitions and Instructions No. 19; Zelis RFP Responses, General Objection 34). Humana went further, stating it “will interpret the Relevant Period as the time period from January 1, 2016 to December 31, 2024, when Humana’s commercial business ended.” Hawn Decl. Ex. F (Humana RFP Responses, General Objection 8). Elevance went further still, unilaterally “defin[ing]” the Relevant Period to run “from January 1, 2018, to the present.” Hawn Decl. Ex. G (Elevance RFP Responses, Objections to Definitions and Instructions No. 28).

As to structured data, Defendants initially proposed producing data only from January 1, 2015 through August 31, 2025. On September 16, 2026, they offered, “[i]n the interest of compromise,” to begin with January 1, 2014, while deferring any post-August 2025 data until “later in the case.” Hawn Decl. Ex. H (Email chain containing Sept. 16, 2026 Masselink Email). Plaintiffs responded on September 17, 2026, explaining that a January 2014 start is “wholly

² The RFPs were served separately on the Zelis Defendants and the Non-Zelis Defendants, but both contained the same Instruction 12.

inadequate” because the case “is expected to involve extensive data analysis and econometric modeling by various experts,” and that where a pre-period is used to benchmark such analyses, “it is generally preferred to have five years of continuous data outside of the proposed damage period.” *Id.* (Sept. 17, 2026 Hawn Email). Plaintiffs offered a reasonable compromise: detailed structured data beginning January 1, 2013, together with 2012 aggregate data sufficient to show average allowable dollar amounts used by the producing entity to pay providers for claims grouped by CPT code, geographic region, and provider type. *Id.* On September 18, 2026, Defendants refused, stating only: “Defendants are unable to agree to Plaintiffs’ proposal, which is disproportionate to the needs of the case.” *Id.* (Sept. 18, 2026 Masselink Email). Zelis did not challenge the relevance of the dates of data requested, nor provided any information about any potential burden and offered no explanation of the supposed disproportion. The parties reported the impasse to the Court as directed. See [ECF No. 323](#).

III. LOCAL RULE 37.1 STATEMENT OF CONSULTATION.

Plaintiffs first raised the issues presented herein to each Defendant in separate letter correspondence nearly a month ago on August 31, 2026, and requested a meet-and-confer by September 4. Hawn Decl., Exhibit I. Zelis however, claimed that Plaintiffs request for a meet-and-confer “within four days after that letter was sent is both unreasonable and infeasible” and did not respond until ten days later on September 10. The parties met and conferred on September 18 via Zoom conference for approximately one hour. Hawn Decl. at ¶ 11. Ms. Sandra Masselink appeared for Zelis, and Ms. Haley Hawn and Ms. Maureen Forsyth appeared for Plaintiffs. *Id.* During the conferral, the parties discussed the relevant time period for document production, Zelis’ general objections, including that to the definition of “Zelis” in Plaintiffs’ RFPs. *Id.* The parties also discussed, at length, Zelis’ relevance objections, and the additional issues raised in Plaintiffs’

August 31 letter. *Id.* During the meet and confer, Ms. Masselink reiterated that Zelis is unwilling to move on timeframe. *Id.* Following the meet and confer, Plaintiffs sent a summary letter, containing a detailed recap of Plaintiffs’ conferral efforts. Plaintiffs similarly met and conferred on the issues raised in Plaintiffs’ August 31 letters with Defendants Elevance (September 15 and September 21), Humana (September 16), United (September 18)³, Aetna (September 8, 10), and Cigna (September 16), and further emails confirmed Defendants’ position on the time period for production of structured data. Hawn Decl. at ¶ 12 and Exhibit H. As Plaintiffs could not reach agreement with Defendants regarding the time period for structured data before the deadline set by this Court to bring a motion to compel regarding structured data issues ([ECF No. 323](#)), this motion is necessary.

IV. LEGAL STANDARD

Rule 26(b)(1) permits discovery of “any nonprivileged matter that is relevant to any party’s claims or defenses and proportional to the needs of the case.” [Fed. R. Civ. P. 26\(b\)\(1\)](#). The provision is to be accorded a broad and liberal treatment, *Hickman v. Taylor*, [329 U.S. 495, 507](#) (1947), consistent with the Rules’ premise that cases be decided on “mutual knowledge of all the relevant facts,” *id.*, and relevance under the Rule is construed broadly. *Oppenheimer Fund, Inc. v. Sanders*, [437 U.S. 340, 351](#) (1978). In this District, “relevancy must be broadly construed . . . such that information is discoverable if there is any possibility it might be relevant to the subject matter of the action.” *Viscito v. Nat’l Plan. Corp.*, No. 3:18-cv-30132-MGM, [2019 WL 5318228](#), at *1 (D. Mass. Oct. 21, 2019) (quoting *Cherkaoui v. City of Quincy*, No. 14-cv-10571-LTS, [2015 WL 4504937](#), at *1 (D. Mass. July 23, 2015) and *E.E.O.C. v. Electro-Term, Inc.*, [167 F.R.D. 344, 346](#)

³ Plaintiffs understand that United, unlike its co-Defendants, does not have a “strong” objection to a 2014 start date for custodial documents but did not agree to such.

(D. Mass. 1996)). An “evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.” [Fed. R. Civ. P. 37\(a\)\(4\)](#).

V. ARGUMENT

A. Defendants Must Produce Structured Claims Data Beginning January 1, 2013, Together With Aggregate Data for 2012.

1. Reliable Benchmarking Requires a Multi-Year Pre-Period of Data.

This case is expected to involve extensive data analysis and econometric modeling by various experts. Plaintiffs’ damages case will compare the amounts Defendants paid for OON claims during the Class Period against a reliable, pre-conduct baseline, and Plaintiffs’ class certification showing will rest on common-impact analysis of the same kind. Analyses of that sort generally require five years of continuous data outside of the proposed damage period, which is the ordinary course in antitrust cases. For example, in *Kleen Prods. LLC v. Packaging Corp. of Am.*, No. 10 C 5711, [2013 WL 120240](#) at *9 (N.D. Ill. Jan. 9, 2013), the court granted purchasers transactional and related economic data reaching five years before the alleged conspiracy began, holding that “the larger window of economic data (as opposed to conduct documents) is warranted in order to provide an accurate economic picture,” and considering cases allowing discovery seven years and even twenty-five years prior to the relevant period. Plaintiffs have already compromised their request by specifying a pre-period that is less than five years. Data spanning 2012 through 2016 captures both the benchmark regime and the transition the SAC challenges; data beginning in 2014 or 2015, as Defendants propose, captures neither.

Defendants’ own proposals concede the point by their movement. Having first proposed January 1, 2015, Defendants moved to January 1, 2014 only “[i]n the interest of compromise.” Hawn Decl. Ex. H (Sept. 16, 2026 Masselink Email). A January 1, 2014 start yields fewer than thirty months of pre-Class Period data; a January 1, 2015 start yields roughly seventeen. Neither

provides the continuous multi-year baseline that econometric benchmarking seeks. Plaintiffs' proposal is modest by comparison: detailed data from January 1, 2013, reaching three and one-half years before the Class Period begins, plus, for 2012, aggregate data sufficient to show average allowable dollar amounts used by the producing entity to pay providers for claims grouped by CPT code, geographic region, and provider type. Hawn Decl. Ex. H (Sept. 17, 2026 Hawn Email). The 2012 aggregates are the least burdensome way to anchor the baseline in the data Defendants already maintain.

Defendants rejected that compromise as “disproportionate to the needs of the case” without explaining why. Hawn Decl. Ex. H (Sept. 18, 2026 Masselink Email). Proportionality is assessed on the factors Rule 26(b)(1) identifies, including the importance of the discovery in resolving the issues and the parties' relative access to the information. Fed. R. Civ. P. 26(b)(1). Here, structured claims data are the record on which damages and impact will be litigated and on which Plaintiffs' experts will rely in disclosing the “facts or data” underlying their opinions, Fed. R. Civ. P. 26(a)(2)(B). Defendants alone hold that data. Defendants' conclusory statement is not a proportionality showing, and the Court should order production consistent with Plaintiffs' September 17 further compromise proposal. Notably, Defendants never claimed or showed any disproportionate *burden* in producing the additional year of structured data. Data production does not involve the kind of collection and review efforts that unstructured documents do. Defendants never challenged the relevance of Plaintiffs' requests, either. The Court should order Defendants to produce the one additional pre-period year of structured data Plaintiffs requested.

2. The August 31, 2025 Cutoff is Equally Unsustainable.

Defendants purport to end their structured data production on August 31, 2025, revisiting post-August 2025 data only “later in the case.” Hawn Decl. Ex. H (Sept. 16, 2026 Masselink

Email). The Class Period runs “to the present,” SAC ¶ 374, and the SAC alleges a continuing violation renewed by each new act to further or preserve the conspiracy, *id.* ¶ 310. The most recent data are therefore not peripheral; they show the conspiracy’s present operation, and they are the data on which experts and any certification motion will depend. Courts order transaction data covering periods after a conspiracy’s alleged end where the claims continue; the D.D.C. did exactly that in the *Rail Freight Fuel Surcharge* litigation, compelling 2009 transaction data where the alleged conspiracy period closed on December 31, 2008 to consider the “lingering effects” of the conspiracy-period pricing. *In re Rail Freight Fuel Surcharge Antitrust Litig.* (No. II), MDL No. 2925, Misc. Action No. 20-00008, [2021 WL 1909777](#) at *20 (D.D.C. May 12, 2021).

Defendants have already agreed to produce unstructured documents through the present, except for Humana who proposes production through December 31, 2024, when its commercial business purportedly ended. There is no reason to unilaterally terminate the scope of structured data almost a year earlier and, again, Defendants have not, and cannot, claim a disproportionate burden in producing these data. The Court should accordingly order structured data production through the present, beginning January 1, 2013, together with aggregate data for 2012.

VI. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs’ Motion and order that: (1) Defendants produce structured claims data and underlying databases for the period beginning January 1, 2013 through the present, together with aggregate data for 2012 sufficient to show average allowable dollar amounts used by the producing entity to pay providers for claims grouped by CPT code, geographic region, and provider type; (2) Plaintiffs be granted such further relief as the Court deems just and appropriate.

Dated: September 25, 2026

Respectfully submitted,

Richard M. Paul III, *pro hac vice*
Mary Jane Fait, *pro hac vice*
Haley Hawn, *pro hac vice*
PAUL LLP
600 Broadway Blvd., Suite 600
Kansas City, Missouri 64105
Telephone: (816) 984-8100
Rick@PaulLLP.com
MaryJane@PaulLLP.com
Haley@PaulLLP.com

Amanda F. Lawrence
SCOTT+SCOTT ATTORNEYS AT LAW LLP
156 South Main Street
P.O. Box 192
Colchester, CT 06415
Telephone: (860) 531-2606
alawrence@scott-scott.com

Patrick Coughlin, *pro hac forthcoming*
Fatima Brizuela, *pro hac forthcoming*
SCOTT+SCOTT ATTORNEYS AT LAW LLP
600 West Broadway, Suite 3300
San Diego, CA 92101
Telephone: (619) 798-5308
pcoughlin@scott-scott.com
fbrizuela@scott-scott.com

John Landay (*pro hac vice forthcoming*)
LANDAY ROBERTS LLP
600 West Broadway, Suite 700
San Diego, California 92101
Telephone: (619) 648-4811
jlanday@landayroberts.com

Daniel J. Mogin (*pro hac vice forthcoming*)
MOGIN LAW LLP
4225 Executive Square, Suite 600
La Jolla, CA 92037
Telephone: (619) 687-6611

/s/ Jason S. Hartley
Jason S. Hartley, *pro hac vice*
Jason M. Lindner, *pro hac vice forthcoming*
Maureen Forsyth (BBO No. 642390)
Kenneth Frost, *pro hac vice forthcoming*
HARTLEY LLP
101 W. Broadway, Ste 820
San Diego, CA 92101
Telephone: (619) 400-5822
hartley@hartleyllp.com
lindner@hartleyllp.com

Katrina Carroll
Kyle A. Shamberg
CARROLL SHAMBERG LLC
111 W. Washington Street
Suite 1240
Chicago, IL 60602
Telephone: 872-215-6205
katrina@csclassactions.com
kyle@csclassactions.com

Adam J. Zapala (245748)
Elizabeth T. Castillo (280502)
Christian S. Ruano (352012)
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road
Burlingame, CA 94010
Telephone: (650) 697-6000
azapala@cpmlegal.com
ecastillo@cpmlegal.com
cruano@cpmlegal.com

David M. Cialkowski
(*pro hac vice application forthcoming*)
Ian F. McFarland
(*pro hac vice application forthcoming*)
ZIMMERMAN REED LLP
1100 IDS Center
80 S. 8th St.
Minneapolis, MN 55402

dmogin@moginlawllp.com

Daniel R. Karon (*pro hac vice forthcoming*)

KARON LLC

631 W. St. Clair Ave.

Cleveland, OH 44113

Telephone: (216) 622-1851

dkaron@karonllc.com

C. Andrew Dirksen (BBO No. 568773)

CERA LLP

529 Main St., Suite P200

Boston, MA 02129

Telephone: (857) 453-6555

cdirksen@cerallp.com

(612) 341-0400

david.cialkowski@zimmreed.com

ian.mcfarland@zimmreed.com

Garrett D. Blanchfield

Brant D. Penney

Roberta A. Yard

**REINHARDT WENDORF &
BLANCHFIELD**

80 South 8th Street, Suite 900

Minneapolis, MN 55402

Telephone: (651) 287-2100

g.blanchfield@rwblawfirm.com

b.penney@rwblawfirm.com

r.yard@rwblawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of September, 2026, the foregoing was filed with the Court's electronic filing system, which will send electronic notice of this filing to all counsel of record.

s/Jason S. Hartley

Jason S. Hartley