UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: GOODRX AND PHARMACY BENEFIT MANAGER ANTITRUST LITIGATION (NO. II) This Document Applies To: ALL CASES	Civil No. 1:25-md-03148-MSM-AEM MDL No. 3148 Hon. Mary S. McElroy

PLAINTIFFS' OMNIBUS RESPONSE TO DEFENDANTS' MOTIONS TO DISMISS PLAINTIFFS' AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

REDACTED

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TABLE OF TERMS & ABBREVIATIONS

ABBREVIATION	DEFINITION
Caremark Mot.	Caremark Defendants' Motion to Compel Arbitration and to Dismiss, ECF No. 126
Cigna Mot.	The Cigna Group's Motion to Dismiss Plaintiffs' Amended Consolidated Complaint, ECF No. 128
Clawback fee	Fee that GoodRx charges the pharmacy for a transaction
Complaint	First Amended Consolidated Class Action Complaint
Contracted Rates	Drug prices set pursuant to contract, typically as part of formulas involving average wholesale price (AWP) and the PBM Defendants
Defendants	GoodRx and the PBM Defendants
Express Scripts Mot.	Express Scripts, Inc. and Express Scripts Holding Co.'s Motion to Dismiss Amended Consolidated Complaint, ECF No. 130
GoodRx	Defendants GoodRx, Inc. and GoodRx Holdings, Inc.
GoodRx Information-Exchange Network	The PBMs that share their competitively sensitive information with GoodRx in connection with its discount card business.
ISP	GoodRx's Integrated Savings Program
ISP Agreements	Agreements between GoodRx and the PBM Defendants, including, but not limited to, the Caremark Cost Saver Program Services Agreement between GoodRx and CVS Caremark, the Integrated Savings Program Service Agreement between GoodRx and Express Scripts, the GoodRx Services Agreement between GoodRx and MedImpact, and the RxNXT Discount Network Services Agreement between GoodRx and Navitus
ISP Rate	The algorithmically determined lowest reimbursement rate contracted by any PBM in the GoodRx Information-Exchange Network.
Joint Mot.	Defendants' Motion to Dismiss Plaintiffs' Amended Consolidated Complaint, ECF No. 127
Leveraged PBM	The PBM whose Contracted Rate is used for a transaction.
MAC	Maximum Allowable Cost
MedImpact Mot.	Defendant MedImpact Healthcare Systems, Inc.'s Motion to Dismiss or Compel Plaintiffs to Arbitration, ECF No. 132

ABBREVIATION	DEFINITION
Navitus Mot.	Defendant Navitus Health Solutions, LLC's Motion to (1) Compel Arbitration and (2) Dismiss Plaintiffs' Amended Consolidated Complaint, ECF No. 131
Network Pharmacy Services Market	Input market for services, including reimbursement rates for prescription drugs, purchased by PBMs from pharmacies. Network pharmacies dispense and sell prescription drugs to insured customers. PBMs pay pharmacies for these drugs on behalf of their TPP clients and the TPPs' insured members.
PBM Defendants	CVS Caremark; Express Scripts, Inc.; MedImpact Healthcare Systems, Inc.; and Navitus Health Solutions, LLC
PBMs	Pharmacy Benefit Managers
Primary PBM	The PBM that the TPP hired to administer pharmacy benefits.
PSAO	Pharmacy Services Administrative Organization
Reference prices	Input factors used in formulas to calculate the pharmacy reimbursement for a particular prescription.
TPPs	Third-party payors of prescription drugs, i.e., commercial health insurers, employers, and labor organizations
U&C	Usual and Customary

I. INTRODUCTION

This is a straightforward price-fixing case, despite Defendants' best efforts to obfuscate and complicate it. Defendants are four major PBMs and a discount card aggregator. Prior to the conspiracy, they all competed for prescription drug transactions. Through the ISP Scheme, they all agreed to stop competing with each other, and instead allowed the ISP to fix prices for them. The result: reimbursement rates offered to independent pharmacies (Plaintiffs) went down, and fees paid by Plaintiffs went up. Competition between the PBM Defendants for pharmacies to be in their networks was harmed. Now, in every generic prescription drug transaction in which the ISP automatically supplies the price, independent pharmacies pay additional fees and receive reduced reimbursement rates. Instead of receiving the contracted-for reimbursement rate, the pharmacy automatically receives the *lowest* reimbursement rate of *any* PBM in the GoodRx Information-Exchange Network. Instead of paying fees to GoodRx only on transactions where a patient presents a GoodRx discount code, pharmacies pay GoodRx fees for every such ISP transaction that is shared with the PBM Defendants.

Contrary to Defendants' suggestion, this is an agreement to fix prices automatically at the point of sale, in violation of Section 1 of the Sherman Antitrust Act. The conduct at issue does not merely involve the exchange of competitive information, but rather automated algorithmic and targeted lowering of reimbursements to Plaintiffs every time the ISP Rate is lower than the co-pay of a PBM Defendant's insured. GoodRx and the PBM Defendants profit. Independent pharmacies suffer. That was the point. As GoodRx publicly admitted, the ISP Scheme was "painful" for independent pharmacies. For the pharmacies, already struggling in a competitive, low-margin marketplace, the ISP posed an existential threat. For the Defendants, it was an illegal opportunity to add to their already bountiful profits. This conduct is *per se* unlawful. If the Court reaches the

issue, Defendants' conduct also violates the rule of reason standard. Defendants' attempts to avoid these basic facts or point to the purported benefits of their price-fixing do not change the reality that the Complaint plausibly alleges that the ISP Scheme fixed prices and harmed competition.

Defendants also offer a grab bag of miscellaneous arguments, such as challenging the standing of particular named Plaintiffs or opposing jurisdiction over particular Defendants.[1] None of those arguments fares any better, as explained in more detail below. In any event, none affect whether the core of this case will move forward; that depends solely on the analysis of Plaintiffs' antitrust claim.

II. FACTUAL BACKGROUND

A. PBMs are powerful middlemen that wield enormous power over independent pharmacies

Plaintiffs are independent pharmacies who are at the mercy of the collective market power of the PBM Defendants. The PBM Defendants control nearly two-thirds of all prescription claims processed in the United States, and they control pharmacies' access to more than 87% of patients with insurance. FAC ¶¶ 69, 101-102. In light of the PBM Defendants' market share and their control of patients' access to prescription drugs, independent pharmacies are forced to accept the

[1] Because of the overlap in many arguments asserted by Defendants in both their joint motion and their individual motions, Plaintiffs submit this omnibus opposition to Caremark Defendants' Motion to Compel Arbitration and to Dismiss (Caremark Mot.), ECF No. 126; Defendants' Motion to Dismiss Plaintiffs' Amended Consolidated Complaint (Joint Mot.), ECF No. 127; The Cigna Group's Motion to Dismiss Plaintiffs' Amended Consolidated Complaint (Cigna Mot.), ECF No. 128; Express Scripts, Inc. and Express Scripts Holding Co.'s Motion to Dismiss Amended Consolidated Complaint (Express Scripts Mot.), ECF No. 130; Defendant Navitus Health Solutions, LLC's Motion to (1) Compel Arbitration and (2) Dismiss Plaintiffs' Amended Consolidated Complaint (Navitus Mot.), ECF No. 131; Defendant MedImpact Healthcare Systems, Inc.'s Motion to Dismiss or Compel Plaintiffs to Arbitration (MedImpact Mot.), ECF No. 132, which collectively span 168 pages. Plaintiffs incorporate by reference the arguments in their remaining briefs, which focus on responding to the arbitration arguments raised by Caremark, Navitus, and MedImpact.

onerous and anticompetitive terms offered by the PBM Defendants to stay in business. *Id*. ¶¶ 28, 69, 102. Defendants' ISP Scheme abuses this power to artificially fix and suppress the amounts independent pharmacies receive in exchange for dispensing prescription drugs, while also extracting increased fees from the pharmacy.[2] *Id*. ¶¶ 156, 178-79, 184-85, 264. Through the ISP Scheme, the PBM Defendants have imposed significant anticompetitive harm on independent pharmacies, many of which have had to close. *Id*. ¶ 216.[3]

PBMs (including the PBM Defendants) play a central role in the complex pharmaceutical distribution chain. They administer pharmacy benefits on behalf of third-party payors ("TPPs")—i.e., commercial health insurers, employers, and labor organizations—that provide prescription drug benefits to their members. TPPs rely on PBMs to provide a number of services including: (1) forming networks of retail pharmacies where TPPs' members can fill their prescriptions; (2) negotiating contracts with pharmacies that dictate the amounts that the PBM will pay pharmacies for dispensing those drugs to their members; (3) processing or "adjudicating" claims for reimbursement each time a pharmacy fills a prescription (something TPPs cannot do themselves); and (4) negotiating rebates and discounts with pharmaceutical manufacturers. FAC ¶¶ 76-77. While there are roughly sixty-six PBMs in the United States, only a few of them have the technology and infrastructure required to handle claims adjudication, which is one of the most critical services that PBMs provide to their TPP clients. *Id.* ¶¶ 99-100.

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[2] Broadly defined, and as described in more detail in this brief and in the Complaint, the ISP is an information exchange and price-setting algorithm that replaces the pricing and reimbursement structure that the Plaintiff pharmacies and PBM Defendants agreed to with the pricing and reimbursements imposed by GoodRx and the PBM Defendants—to the benefit of Defendants and to the detriment of Plaintiffs. *See, e.g.*, FAC ¶¶ 2, 6-7, 11-17; *infra* § II.D.

[3] Defendants assert that the ISP Scheme benefits *consumers* by lowering the price that consumers pay on individual drug transactions. *See, e.g.*, Joint Mot. 44; Express Scripts Mot. 11. As discussed below, this assertion is both legally irrelevant and factually unsupported given the significant harms and financial stress pharmacies have suffered in recent years. *See infra* § IV.C.2.b.

Because of this dynamic and after decades of consolidation, the PBM industry is highly concentrated and dominated by only a few firms. The three largest PBMs—Caremark, Express Scripts, and OptumRx, two of whom are Defendants in this case—manage almost 80% of all prescription claims in the United States, with Caremark accounting for 34%, Express Scripts for 23%, and OptumRx for 22%. *Id.* ¶¶ 101-02. Navitus and MedImpact are also significant players in the PBM space, and the four PBM Defendants collectively control 64% of all prescriptions filled each year. *Id.*; *see also id.* ¶¶ 20-21, 55, 294. As a result, PBMs wield enormous power over both patients' access to drugs and the amounts that are paid to pharmacies for dispensing those drugs.

To attract and retain TPP clients, PBMs build expansive retail pharmacy networks by contracting with pharmacies directly or with Pharmacy Services Administrative Organizations ("PSAOs"), which negotiate on the pharmacies' behalf. *Id.* ¶¶ 79, 85-86. PBM contracts dictate the amounts that pharmacies purportedly receive for dispensing prescriptions. *Id.* ¶ 89. These rates are not specific dollar amounts but instead are a set of formulas called "reference prices," most typically the Maximum Allowable Cost ("MAC") plus a dispensing fee. *Id.* ¶¶ 89-92, 95. PBMs set their own MAC prices at their own discretion. *Id.* ¶¶ 96-97.

PBMs control the vast majority of revenues that are paid to pharmacies for dispensing drugs. *Id.* ¶ 83 (alleging that in 2023, 85% of all prescription drug spending was paid by TPPs rather than patients). When an independent pharmacy fills a prescription for an insured patient, the dispensing pharmacy typically collects only a small portion of the drug's total cost from the patient. *Id.* ¶ 80. For the rest of the drug's cost, the pharmacy sends a reimbursement claim to a PBM which facilitates the TPP's payment of the remaining balance of the pharmacy's reimbursement rate. *Id.* ¶ 81. Since most prescription drug costs are paid through or by TPPs rather than directly by patients, pharmacies rely on insured transactions adjudicated by PBMs to stay in business. *Id.* ¶ 83.

Because patients can use their insurance benefits only at in-network pharmacies, inclusion in the networks of large PBMs—including the PBM Defendants—can be an existential matter for pharmacies, with independent pharmacies being particularly vulnerable. *Id.* ¶ 85, 110-13. Losing access to even one major PBM—and the vast number of insured individuals it represents—could result in financial devastation. *Id.* ¶¶ 110, 113. As the result of the PBM Defendants' market power, independent pharmacies are faced with the Hobson's choice of accepting the PBM Defendants' terms or losing at least 64% of all prescription drug transactions. *Id*. ¶¶ 28, 102.

Almost all large PBMs are vertically integrated with other segments of the pharmaceutical distribution chain, including with mail order or retail pharmacy chains which compete with independent pharmacies. *Id*. ¶¶ 104, 110. PBMs therefore have the incentive to impose low reimbursement rates and onerous fees on independent pharmacies. *Id.* ¶¶ 105-06, 110.

B. The emergence of prescription discount programs

The early precursors to today's discount card programs were direct-pay "savings clubs" created by pharmacies in the 1990s. *Id.* ¶ 125. These savings clubs were designed to help *uninsured* customers cope with high drug prices by providing discounts from a pharmacy's usual and customary ("U&C") prices. *Id*. In the early 2000s, PBMs launched their own "discount cards" to compete with pharmacy savings clubs. *Id.* ¶ 128. At first, only larger pharmacies accepted PBM discount cards because they made little to no money on the transactions. *Id.* ¶ 129. Eventually, PBMs began requiring in-network pharmacies to accept their discount cards. *Id.* PBMs and TPPs were behind lawsuits that eventually eliminated these discount clubs. *Id.* ¶ 131. These lawsuits claimed that discounts offered to club members could be treated as the pharmacies' U&C prices and thus could be factored into the reimbursement rate calculations under the PBMs' agreements with the pharmacies. *Id.* By 2016, such litigation had largely eliminated pharmacy savings clubs, leaving PBMs as the only providers of discount cards. *Id.*

C. GoodRx enters the market but realizes that it cannot survive alone

Defendant GoodRx was founded in 2011 as an "aggregator" of PBM discount card programs. *Id.* ¶ 132. Whereas discount cards sponsored by a single PBM provided only the discounts offered by that PBM, GoodRx aggregated pricing data from multiple PBMs so consumers could access the lowest price to customers who did not use insurance. *Id.* Patients who used a GoodRx discount paid the entire cost out-of-pocket at the discounted rate. *Id.* ¶ 133. Every time a pharmacy accepted the GoodRx discount card, the pharmacy paid a discount card fee to the PBM whose price was "leveraged." *Id.* ¶ 138. The PBM would then share this fee with GoodRx. *Id.* In fact, most of GoodRx's revenue comes from fees generated from "consumer transactions at brick-and-mortar pharmacies." *Id.* ¶ 139.

GoodRx's business depended on large numbers of pharmacies voluntarily accepting the GoodRx discount card. *Id.* ¶ 146. But pharmacies often lost money on GoodRx discount card transactions after paying the required fees to the leveraged PBMs. *Id.* Initially, they were willing to absorb these losses to bring more customers into their stores, but this goodwill was premised on the proportion of drug sales using the GoodRx discount card being relatively low and users of the GoodRx discount card being mostly uninsured patients who otherwise may not have purchased any medicines at all. *Id.* ¶ 147. But then insured patients began using the GoodRx discount card. *Id.* ¶¶ 145-46. Insured patients found that GoodRx's direct-pay prices were often lower than the co-pays set by PBMs, especially if they had high-deductible plans. *Id.* ¶ 145. Thus, after large numbers of insured patients began using GoodRx, the benefit for pharmacies evaporated. Instead of bringing in new customers through the door, pharmacies lost money on sales that they would have made anyway through regular insurance transactions, causing many pharmacies to opt out from accepting the GoodRx discount card altogether. *Id.* ¶¶ 147-48. This phenomenon reached a tipping point in 2022, when Kroger, which accounted for a huge share of GoodRx's business,

announced it would no longer accept the GoodRx discount card. *Id.* Kroger's decision had a "material adverse impact" on GoodRx's revenue and stock value. *Id.* It became increasingly clear to GoodRx that its discount card business model might no longer be viable long-term as long as pharmacies could voluntarily choose not to accept its discount card. *Id.* ¶ 152.

Importantly, through its discount card program, GoodRx continued to have access to the PBMs' (including the PBM Defendants') competitively sensitive pricing information, including the "reimbursement rates that individual PBMs have contracted to with the pharmacies for generic prescription drugs," as part of the "GoodRx Information-Exchange Network" *Id*. ¶¶ 7-8. Those PBMs control roughly 95% of all pharmacy reimbursement claims. *Id* ¶ 8. In 2023, prescription drug spending reached $722.5 billion. *Id*. ¶ 83. Approximately 85% of that amount, ***over $614 billion,*** was paid by insurers and other TPPs. *Id*.

Even though its traditional discount card business was faltering, GoodRx continued to be in the unique position of having access to a treasure trove of highly confidential PBM pricing information that controlled pricing on ***hundreds of billions of dollars*** in prescription drug transactions annually. GoodRx thus developed a new scheme to prop up its business by leveraging the GoodRx Information-Exchange Network and forcing pharmacies to use GoodRx, no matter how damaging it was to the pharmacies' business.

D. GoodRx creates the Integrated Savings Program and brings the PBMs on board

In 2021, GoodRx hatched the ISP Scheme. *Id.* ¶¶ 153-55. In furtherance of the ISP Scheme, GoodRx acquired a technology platform called RxNXT, which enabled GoodRx to rapidly exchange claims data and reimbursement rates—confidential and competitively sensitive information—with PBMs. *Id.* ¶¶ 89, 154. Next, GoodRx solicited PBMs to join the ISP Scheme and leveraged its longtime relationships with PBMs to induce them to do so. *Id.* ¶¶ 245-58, 292.

Between December 2021 and October 2023, GoodRx entered into ISP agreements with Express Scripts, Caremark, Navitus, and MedImpact. *Id.* ¶¶ 161-68. Under each of these agreements, each PBM Defendant integrated GoodRx's ISP technology into their in-house pharmacy benefit plans, directly integrated their competitively sensitive information into the GoodRx Information-Exchange Network and, via GoodRx, allowed each PBM to charge prices based on other PBMs' Contracted Rates. *Id.* ¶¶ 154-56; *see also id*. at iv (defining the "ISP Rate" as "[t]he algorithmically determined lowest reimbursement rate contracted by any PBM in the GoodRx Information-Exchange Network").

Each ISP Agreement (1) represented a fundamental change in the way that each Defendant operated in the prescription drug market, and (2) would have been against the economic self-interest of any individual PBM Defendant unless it knew that its main PBM competitors would also participate in the ISP Scheme. *Id.* ¶¶ 161, 176, 285. That the ISP Agreements were announced publicly further supports the notion that each PBM Defendant knew its competitors were participating in the ISP Scheme. *Id.* ¶ 161.

The PBM Defendants joined the ISP Scheme to reduce, or even eliminate, the reimbursement they provided to pharmacies and to increase the fees they charged. *Id.* ¶ 176. In every prescription drug transaction subject to the ISP Scheme, ***the PBM pays nothing to the pharmacy***. *Id*. ¶¶ 179, 269. In other words, where the ISP Rate is lower than an insured's co-pay, the insured pays the pharmacy the lower ISP Rate directly, and the pharmacy does not receive any additional payment on the transaction. Absent the ISP Scheme, the pharmacy would instead receive (1) the higher co-pay amount, plus (2) the balance of the reimbursement from the PBM based on rates set by contract with the pharmacies. *Id*. ¶¶ 80-81, 89-90, 178-79, 264. Despite Defendants' apparent confusion, Plaintiffs clearly allege how the ISP Scheme dramatically changes the

payment the pharmacy receives in exchange for dispensing a generic drug, because the pharmacy (1) receives a suppressed co-pay from the consumer (because the pharmacy collects only the ISP Rate, which is always smaller than the otherwise applicable co-pay), and (2) does not receive the balance of the Contracted Rate that would be owed by the PBM Defendants but for the ISP Scheme. *Id.* ¶¶ 89-90, 178-79, 264, 269. This is true even if the reimbursement rates themselves have not changed; what has changed is *which* rate is applied: under the ISP Scheme the *lowest* rate from *any* PBM Defendant applies instead of the rate the pharmacy contracted to receive from each specific PBM.

Prior to the ISP Scheme, an insured customer could decide whether to use the GoodRx rate, and the pharmacy could choose whether to accept that amount. *Id.* ¶ 263. But the ISP was designed to apply automatically to insurance transactions entirely out of a patient's view. *Id.* ¶ 179. Under the ISP, GoodRx utilized "price comparison technology"—a pricing algorithm and database—so that each PBM's plan members wouldn't "have to do this comparison [of out-of-pocket prescription prices] themselves." *Id.* ¶¶ 155, 179. As a result of this integration, every time a pharmacy filled a generic drug prescription for an *insured* customer whose PBM participated in the ISP, the ISP platform would automatically compare the insured's co-pay with the prices of one of the PBM's dozens of competitors. *Id.* ¶ 179. The price applied to the transaction (the "ISP Rate") would be based on the lowest rate that *any* PBM in the GoodRx Information-Exchange Network had contracted for the drug, so long as it was lower than the patient's co-pay. *Id.* ¶¶ 156-58. To make matters worse for the pharmacy, a GoodRx discount card fee (a clawback fee) would be applied to each ISP transaction. *Id.* ¶ 156.

The rates set by the ISP Scheme were based on the competitively sensitive information provided to GoodRx by the PBM Defendants and their PBM competitors. *Id.* ¶¶ 159-60. GoodRx

anticipated that 500-600 million prescriptions would be subject to the ISP annually, up from 100 million under its discount card program. *Id.* ¶¶ 29, 157, 185.[4] For each of these transactions, pharmacies would be paid prices far lower than they would have received absent the ISP and would not have been forced to pay additional clawback fees. *Id.* ¶¶ 156, 185. Thus, instead of outbidding each other to compete for pharmacies to be in their respective networks, the PBM Defendants agreed to (1) share real-time competitively sensitive information, including pricing data with one another using GoodRx as a conduit, and (2) always apply the *lowest* rate of any PBM in the GoodRx Information-Exchange Network. *Id.* ¶ 159. In other words, the PBM Defendants jointly delegated their pricing decisions to the GoodRx ISP, specifically to fix a single (lowest) price, disrupting what would otherwise be a competitive process. *Id.* ¶¶ 182, 213.

Given these characteristics, ISP Scheme was not a "mere[] automat[ion]" of the traditional GoodRx discount program.[5] *See* Joint Mot. 8. That "automation" involves each PBM Defendant agreeing to charge the same price (the *lowest* negotiated by any PBM) for *insured* transactions. And that "automation" removed any ability for pharmacies to avoid the application of the ISP Scheme. In other words, the ISP Scheme replaces a voluntary agreement between pharmacies and consumers to use a discount program with price-fixing forced upon independent pharmacies.

E. The ISP Scheme's anticompetitive effects

The ISP Scheme was a naked horizontal price-fixing scheme, and its anticompetitive effects disproportionately harmed independent pharmacies and benefited Defendants. First, it

[4] The PBM Defendants collectively handle 4.1 billion to 4.4 billion of the total 6.3 billion prescription claims filled each year. FAC ¶ 276.

[5] Defendants also assert that Plaintiffs "concede" that it is "perfectly lawful" for GoodRx to run its traditional discount card program. Joint Mot. 8. This assertion is irrelevant and misstates Plaintiffs' allegations. The Complaint merely clarifies the scope of Plaintiffs' claims in this action by stating that "[t]his action does not challenge GoodRx's traditional discount card business." FAC ¶ 141. Plaintiffs do not concede that the traditional discount card program is lawful.

eliminated pharmacies' ability to opt out of transacting with GoodRx—that is, the ISP Rate would be automatically applied as part of an insured's health plan benefit if it was lower than the insured's co-pay. *Id.* ¶ 157. Under their agreements with the PBM Defendants, independent pharmacies must fill the generic drug prescriptions of patients who present their insurance cards at the pharmacy counter, and each of those transactions are subject to the ISP Scheme. *Id*. ¶ 186.[6]

Second, it enabled the PBM Defendants to artificially suppress reimbursements that pharmacies receive for dispensing generic drugs. *Id.* ¶¶ 156, 205-15. Instead of receiving the amount they were contractually entitled to receive from the PBM responsible for processing the claim on behalf of the consumers' drug plan (some combination of a co-pay and PBM payment), pharmacies receive a *lower* amount that was set by a *different* PBM. And because the PBM Defendants avoided paying *any* reimbursement to pharmacies on insurance transactions that were converted to ISP transactions, those transactions became more profitable for Defendants at the expense of independent pharmacies. *Id.* ¶¶ 183, 185, 190, 192, 194, 196. Had transactions subject to the ISP Scheme been processed through ordinary insurance reimbursement mechanisms, the PBM Defendants would have made additional payments to independent pharmacies. *Id.* ¶¶ 178, 185, 208.

Third, the ISP Scheme empowered GoodRx to collect fees on more prescription claims than it could under the original GoodRx discount card program. *Id.* ¶¶ 179, 184, 203. Rather than paying fees to GoodRx only on transactions where a patient presented a GoodRx discount code, the ISP Scheme imposed GoodRx fees on independent pharmacies (without their consent) for

[6] Nowhere do the contracts between PSAOs and PBMs contemplate that a significant volume of insurance transactions would be automatically converted into GoodRx ISP transactions in which the pharmacy would (1) receive only the lowest price of *any* PBM in the GoodRx Information-Exchange Network and (2) be charged additional fees. *Id*. ¶ 187, 190; *see also id.* ¶¶ 191-99.

every transaction with one of the PBM Defendants' insured customers where the ISP Rate was lower than the insured's co-pay. *Id*. ¶ 203.

The ISP Scheme resulted in substantial reductions in the revenue of independent pharmacies, further contributing to their continued financial distress and decline. *Id.* ¶¶ 216-23. GoodRx's own President of Rx Marketplace, Aaron Crittenden, admitted publicly that the "ISP ha[d] been *painful* for independent pharmacies." *Id*. ¶ 29 (emphasis added). In the wake of the ISP Scheme, many independent pharmacies were forced to close. *Id*. ¶ 216.

III. LEGAL STANDARD

A. The pleading standard under Rule 12(b)

To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6), a pleading must contain sufficient factual matter to state a claim for relief that is actionable as a matter of law and "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible if, after accepting as true all non-conclusory factual allegations, the court can draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ocasio-Hernández v. Fortuño-Burset*, 640 F.3d 1, 12 (1st Cir. 2011). A court may not disregard properly pled factual allegations in the complaint even if actual proof of those facts is improbable. *Id.* Rather, the court's inquiry must focus on the reasonableness of the inference of liability that the plaintiff is asking the court to draw. *Id.* at 13.

The same standard applies to Defendants' motion to dismiss for lack of standing under Rule12(b)(1). *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 110 F.4th 295, 307 (1st Cir. 2024). Accordingly, Plaintiffs "'need not definitively prove [their] injury or disprove [Defendants'] defenses' but need only 'plausibly plead on the face of [their] complaint' facts supporting standing." *Id.* (quoting *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 637 (2023)).

B. Stating a claim under Section 1 of the Sherman Act

To state a claim for violation of Section 1 of the Sherman Act, plaintiffs must "plausibly allege: '(1) the existence of a contract, combination or conspiracy; (2) that the agreement unreasonably restrained trade...and (3) that the restraint affected interstate commerce.'" *Bock v. Sloane*, 675 F. Supp. 3d 176, 183 (D. Mass. 2023) (quoting *Dahl v. Bain Cap. Partners, LLC*, 937 F. Supp. 2d 119, 134 (D. Mass. 2013)), *aff'd*, No. 23-1492, 2023 WL 11815655 (1st Cir. Nov. 13, 2023).[7]

1. Contract, combination, or conspiracy

The first element of a Section 1 claim requires the plaintiff to allege some sort of concerted action—a contract, combination, or conspiracy. *Am. Needle, Inc. v. Nat'l Football League*, 560 U.S. 183, 186 (2010). Congress defined concerted action broadly because such action "deprives the marketplace of...independent centers of decisionmaking" and thus "inherently is fraught with anticompetitive risk." *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 768-69 (1984). Concerted action need not be established by formal agreement. *Am. Tobacco Co. v. United States*, 328 U.S. 781, 809 (1946). "A tacit agreement...in which only the conspirators' actions, and not any express communications, indicate the existence of an agreement" is enough. *White v. R.M. Packer Co.*, 635 F.3d 571, 576 (1st Cir. 2011); *see also Twombly*, 550 U.S. at 553. Indeed, "even a wink and a nod" may suffice. *Kleen Prods. LLC v. Georgia-Pac. LLC*, 910 F.3d 927, 936 (7th Cir. 2018). Accordingly, concerted action includes, among other things, "express *or implied* agreement[s] or understanding[s] that the participants will jointly give up their trade freedom." *E.R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 136 (1961) (emphasis added).

[7] Here, only the first two elements are at issue because Defendants do not challenge Plaintiffs' allegation that the conduct at issue affected interstate commerce.

2. Unreasonable restraint of trade

To satisfy the second element of a Section 1 claim, the plaintiff must allege that the concerted action unreasonably restrains trade. *Am. Needle*, 560 U.S. at 186. Plaintiffs may do so by alleging facts sufficient to demonstrate that the concerted action "involve[s] either restrictions that are per se illegal or restraints of trade that fail scrutiny under the rule of reason." *Euromodas, Inc. v. Zanella, Ltd.*, 368 F.3d 11, 16 (1st Cir. 2004); *see also MJ's Mkt., Inc. v. Jushi Holdings, Inc.*, 766 F. Supp. 3d 197, 216 (D. Mass. 2025). When a complaint plausibly alleges a restraint of trade that is either *per se* illegal or unreasonable under the rule of reason (or both), courts need not determine, at the pleading stage, which analytical lens ultimately will apply. *See, e.g.*, *In re Dexilant (Dexlansoprazole) Antitrust Litig.*, No. 25-cv-02785, 2026 WL 323124, at *14 (N.D. Cal. Feb. 6, 2026) ("because Plaintiffs. . . may seek to prove their [] claim under either the *per se* rule or the rule of reason, the Court does not need to decide now which rule applies"); *In re High-Tech Emps. Antitrust Litig.*, 856 F. Supp. 2d 1103, 1122 (N.D. Cal. 2012) (upholding claim under *per se* standard and holding it was therefore unnecessary to address rule of reason at the pleading stage).

A horizontal price-fixing agreement is *per se* illegal. *See, e.g., New England Carpenters Health Benefits Fund v. McKesson Corp.*, 573 F. Supp. 2d 431, 434 (D. Mass. 2008) ("[H]orizontal price-fixing agreements among competitors have specifically been viewed as 'per se' violations of Section 1 of the Sherman Act...because the courts have had enough experience with them to know that they 'always or almost always tend to restrict competition and decrease output.'" (quoting *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 886 (2007))).

Allegations that concerted action unreasonably restrains trade under the rule of reason requires, at the pleading stage, a plaintiff to plausibly allege (either directly or indirectly) that the concerted conduct had anticompetitive effects. *Vázquez-Ramos v. Triple-S Salud, Inc.*, 55 F.4th 286, 299 (1st Cir. 2022) (alterations in original).

IV. ARGUMENT

A. Defendants cannot use their motion to dismiss to rewrite the Complaint's allegations

As an initial matter, Defendants ignore crucial aspects of the Complaint's allegations, including that: (i) Defendants formed the ISP Scheme to impose the lowest amount that pharmacies are paid for generic drugs, as opposed to the competitive prices that had been negotiated; (ii) the ISP Scheme fixed a single price that pharmacies would receive (i.e., the lowest price that any PBM had independently negotiated with the pharmacies); (iii) pharmacies had no choice but to dispense generic prescriptions at the low prices imposed by the ISP Scheme, whereas prior to the ISP, they had the *option to reject* the GoodRx discount card; and (iv) the ISP Scheme harmed competition among the PBM Defendants who would otherwise compete for pharmacies to be in their networks by offering them competitive reimbursement. They also sidestep the allegation that the ISP applies the lowest rates *of their PBM competitors.*

Instead of addressing these allegations, Defendants repeatedly ask the Court to adopt their own facts and mischaracterizations. For instance, they characterize the ISP as merely incorporating the GoodRx discount program into their insurance benefit while ignoring that the PBM Defendants abandoned their own independent pricing decisions in favor of delegating them to the ISP. Joint Mot. 27-28. They contend that the ISP Agreements lack evidence of a conspiracy when the Complaint clearly alleges that the *implementation* of those agreements caused competitive harm. Joint Mot. 24-26.

The Court should reject Defendants' attempt to replace the Complaint's allegations with alternative facts. *Evergreen Partnering Grp., Inc. v. Pactiv Corp.* 720 F.3d 33, 45 (1st Cir. 2013) ("The question at the pleading stage is not whether there is a plausible alternative to the plaintiff's theory; the question is whether there are sufficient factual allegations to make the complaint's

claim plausible.") (quoting *Anderson News, L.L.C. v. Am. Media, Inc.*, 680 F.3d 162, 189-90 (2d Cir. 2012)); *Lee v. Conagra Brands, Inc.*, 958 F.3d 70, 76 (1st Cir. 2020) ("At this stage, our analysis begins and ends with the allegations in the complaint."). Instead, the Court must draw all reasonable inferences in the Plaintiffs' favor. *Evergreen Partnering Grp.*, 720 F.3d at 45.

B. Plaintiffs sufficiently allege a *per se* illegal horizontal conspiracy

Plaintiffs plausibly allege that a conspiracy among PBM competitors, facilitated by the GoodRx ISP, suppressed reimbursements paid to independent pharmacies below competitive levels. Plaintiffs can allege an antitrust conspiracy with direct evidence, circumstantial evidence, or a combination of the two. *Evergreen Partnering Grp.*, 720 F.3d at 43. Sufficiently detailed allegations of direct evidence of an antitrust conspiracy survive the plausibility requirement. *Lease Am. Org. Inc. v. Rowe Int'l Corp.*, No. 13-40015, 2014 WL 1330928, at *2 (D. Mass. Mar. 31, 2024). Plaintiffs allege both. *See* FAC ¶¶ 224-58. In this case, the Complaint alleges both direct evidence and ample circumstantial evidence from which a horizontal conspiracy can be inferred. FAC ¶¶ 224-92.

Defendants counter these allegations by distorting Plaintiffs' allegations and the law. The Court should reject their arguments for the following three reasons. *First*, the Court should reject Defendants' narrow interpretation of Section 1 as applying only to express agreements among competitors to engage in the same conduct at the same time. Joint Mot. 16-21. For instance, Defendants contend that Plaintiffs failed to plead parallel conduct because the PBM Defendants "entered into separate, distinct agreements" at different times and did not engage in communications reflecting an agreement. Joint Mot. 17, 20. That is not the law. "It is elementary that an unlawful conspiracy may be and often is formed without simultaneous action or agreement on the part of the conspirators." *In re MultiPlan Health Ins. Provider Litig.*, 789 F. Supp. 3d 614, 637 (N.D. Ill. 2025) (quoting *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 227 (1939)).

Relatedly, Defendants' characterization of the ISP Scheme as merely a series of vertical arrangements ignores Plaintiffs' allegations that the PBM Defendants delegated their reimbursement rate decisions to the GoodRx ISP—and thereby restrained competition among horizontal PBM competitors to provide competitive reimbursements to pharmacies in exchange for those pharmacies dispensing drugs to patients. Joint Mot. 17-18; FAC ¶¶ 158-60, 214-15. In other words, each PBM Defendant permitted the price paid to the pharmacy for dispensing drugs for that PBM Defendant's customers to be determined by *a different PBM*. In practice, each PBM Defendant agreed with the others to use the lowest of each other's reimbursement rates, which they facilitated through GoodRx.

Section 1 prohibits conspiracies in which competitors act in concert to delegate pricing authority to a third party, which "deprives the marketplace of independent centers of decisionmaking." *Am. Needle*, 560 U.S. at 195 (citation omitted). Such agreements are just as unlawful as direct agreements among competitors:

> Just as the antitrust laws do not allow competitors to exchange competitive sensitive information directly in an effort to stabilize or control industry pricing, they also prohibit using an intermediary to facilitate the exchange of confidential business information. Let's just change the terms of the hypothetical slightly to understand why. Everywhere the word 'algorithm' appears, please just insert the words 'a guy named Bob.' Is it ok for a guy named Bob to collect confidential price strategy information from all the participants in a market, and then tell everybody how they should price? If it isn't ok for a guy named Bob to do it, then it probably isn't ok for an algorithm to do it either.[8]

[8] *In re RealPage, Inc. Rental Software Antitrust Litig. (No. II)*, 709 F. Supp. 3d 478, 512 (M.D. Tenn. 2023) (quoting Former FTC Chair Maureen K. Ohlhausen, *Should We Fear the Things That Go Beep in the Night? Some Initial Thoughts on the Intersection of Antitrust Law and Algorithmic Pricing*, FTC at 10 (May 23, 2017), https://www.ftc.gov/system/files/documents/public_statements/1220893/ohlhausen_-_concurrences_5-23-17.pdf).

See also In re Zelis Repricing Antitrust Litig., No. 25-10734, 2026 WL 867668, at *2, *6, *8 (D. Mass. Mar. 30, 2026) (horizontal competitors' delegation of pricing authority to third party supported claims for conspiracy); *MultiPlan*, 789 F. Supp. 3d at 643 (plaintiffs plausibly alleged horizontal agreement where defendants delegated "rate calculations to MultiPlan's algorithm"); *Duffy v. Yardi Sys., Inc.*, 758 F. Supp. 3d 1283, 1292 (W.D. Wash. 2024) ("Plaintiffs plausibly allege that the lessor defendants engaged in parallel conduct by…delegating their pricing decisions [to third party]").

Indeed, the particular facts of this case call for the application of the *per se* standard because here, the PBM Defendants delegated their pricing authority to the GoodRx ISP by allowing it to *automatically* apply the lowest available reimbursement rates if they were lower than an insured's cost, whereas other cases alleging algorithmic price fixing involved only price *recommendations*. *See, e.g.*, *MultiPlan*, 789 F. Supp. 3d at 638; FAC ¶¶ 13, 28, 163, 242. [redacted] FAC ¶¶ 190-99. Thus, Plaintiffs' allegations that Defendants exerted their "power to fix price[s]" through the ISP Scheme call for the application of the *per se* standard. *Duffy*, 758 F. Supp. 3d at 1296-97.

Second, Defendants contend that GoodRx "is not a competitor of the PBM Defendants" because it "do[es] not offer the same services in the marketplace" or because GoodRx "merely aggregates various cash prices for drugs at local pharmacies." Joint Mot. 30-31. These contentions sidestep Plaintiffs' allegation that prior to the ISP, competition existed between GoodRx and PBM Defendants for *prescription drug transactions*. FAC ¶¶ 4, 28, 137, 139, 150. GoodRx itself acknowledges that consumers "can use a GoodRx discount *instead of [their] prescription insurance*…if the cost is lower." FAC ¶ 137 (emphasis added). This competition exists separately

from the competition between PBMs for pharmacies to be in their networks. *Compare* FAC ¶¶ 137, 149-152, *with* ¶ 296. That GoodRx and the PBM Defendants competed for prescription drug transactions explains (in part) their motivation for implementing the ISP Scheme—to stop competing for drug transactions. *See infra* § IV.B.3.b. At this stage of the litigation, these allegations must be read as true. *Zelis Repricing*, 2026 WL 867668, at *7 (holding that, where defendants challenged plaintiffs' assertion that third-party aggregator competed with conspirators, "[a]t the pleading stage, the Court must credit Plaintiffs' allegations").[9]

Third, Defendants argue that the ISP benefits consumers. Joint Mot. 2, 25-26, 38-39; Express Scripts Mot. 3, 11-12. That is not a legally cognizable defense to a cartel aimed at fixing the prices of inputs. Cost savings do not justify price fixing by buyer cartels. *See Zelis Repricing*, 2026 WL 867668, at *6; *see also W. Penn Allegheny Health Sys., Inc. v. UPMC*, 627 F.3d 85, 105 (3d Cir. 2010) ("[E]very precedent in the field makes clear that the interaction of competitive forces, not price-rigging [by buyers], is what will benefit consumers."); *Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979, 988 (9th Cir. 2000) (rejecting notion that "conspiracy to depress prices would…benefit" consumers); *Deslandes v. McDonald's USA, LLC*, 81 F.4th 699, 703 (7th Cir. 2023) (rejecting argument that "treats benefits to consumers…as justifying detriments to workers (monopsony pricing)" as "not right"). In fact, *Zelis Repricing* rejected this exact argument—that the defendants' actions "resulted in lowered prices for patients." 2026 WL 867668,

[9] Defendants' authorities are inapposite. *Ohio v. Am. Express Co.*, 585 U.S. 529, 540-41 (2018), addressed anti-steering provisions as vertical restraints, not price-fixing by horizontal competitors. *K&F Rest. Holdings, Ltd. v. Rouse* held that plaintiffs' monopolization claims against a food service provider and certain individual developers failed because defendants were "not competitors at the same level of any market alleged." No. 16-293, 2018 WL 3553422, at *9-10 (M.D. La. July 24, 2018). But here the Complaint alleges that PBM Defendants are themselves horizontal competitors, and that they competed for generic drug transactions with GoodRx prior to the ISP. FAC ¶ 262.

at *6. Despite the defendants' contention that patients paid lower prices, the court found that the plaintiffs' allegations that they were "injured by being forced to accept OON claim reimbursements far below that which would have occurred in a competitive market" were sufficient to allege a price-fixing agreement. *Id.* That is precisely what Plaintiffs have alleged in this case—pharmacies were injured by being forced to accept ISP Rates. FAC ¶¶ 181, 185, 209-11. Thus, Defendants cannot credibly argue that their monopsonistic ISP Scheme is a "procompetitive program" that "saves consumers money at the pharmacy counter" when those cost savings come at the expense of independent pharmacies. Joint Mot. 2; FAC ¶¶ 177, 216. It is difficult to fathom how conduct that contributes to pharmacies going out of business is a benefit to consumers. *See supra* § II.E.

1. The Complaint alleges direct evidence of an agreement

Direct evidence can take many forms, including explicit agreements to commit to a common scheme, *see Lease Am. Org.*, 2014 WL 1330928, at *2 (allegations "more than make out a plausible claim of direct evidence of an illegal agreement"), or statements from the co-conspirators, *see Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 765 (1984) ("there was substantial *direct* evidence of agreements to maintain prices") (emphasis original). In this case, the express terms, conditions, and mechanisms for the adoption, enforcement, and implementation of Defendants' anticompetitive agreement were set forth in excruciating detail. [redacted] *See* FAC, ¶¶ 224-39; Joint Mot. Ex. A [redacted] Joint Mot. Ex. B [redacted] Joint Mot. Ex. D

[redacted] Joint Mot. Ex. F [redacted]

Second, Plaintiffs allege that the ISP Agreements expressly facilitated the delegation of price decision making from the PBM Defendants to a common third party—GoodRx—which amassed competitively sensitive prices from the PBM Defendants and their competitors. FAC ¶¶ 258, 260. *MultiPlan*, 789 F. Supp. 3d at 643; *Duffy*, 758 F. Supp. 3d at 1293. The ISP not only selected the lowest prices of any rival PBM, it applied them automatically if they were lower than patients' out-of-pocket costs.

Third, the Complaint points to public statements showing each Defendant's agreement to participate in the ISP Scheme, including how the ISP was designed to function. FAC ¶¶ 240-58. Each PBM Defendant issued a joint press release with GoodRx explaining that whenever a PBM's member filled a prescription for a generic medication, the ISP would "automatically compare their benefit and the GoodRx price and then deliver the lowest one." FAC ¶¶ 242-43.

Defendants nevertheless argue that each PBM Defendant entered an individual, vertical agreement with GoodRx. They further contend Plaintiffs do not allege specific direct communications among the PBM Defendants reflecting an agreement to coordinate their pricing negotiations with pharmacies, to enter into the ISP contracts, or to agree on pharmacy reimbursement rates. Joint Mot. 17-18. But direct evidence does not require contractual or other confessions of a conspiracy. *See Monsanto Co.*, 465 U.S. at 765; *Lease Am. Org.*, 2014 WL 1330928, at *2. An agreement to provide and access reimbursement prices through a common intermediary and have them automatically apply to drug transactions constitutes concerted action,

regardless of labels. In fact, "a price-fixing combination…is illegal per se under the Sherman Act" even where each competitor "acted independently of the others, negotiated only with the [common party], desired the agreement regardless of the action that might be taken by any of the others… and had no discussions with any of the others" when the evidence reflects that the competitors eventually "became familiar with [the] purpose and scope" of independent agreements. *United States v. Masonite Corp.*, 316 U.S. 265, 274-75 (1942); *see also MultiPlan*, 789 F. Supp. 3d at 642-43 (analyzing allegations under *Masonite* framework). The question is not what the ISP Agreements say, but rather, what the ISP Scheme does. *Masonite*, 316 U.S. at 280 ("[T]he result must turn not on the skill with which counsel has manipulated the concepts of 'sale' and 'agency' but on the significance of the business practices in terms of restraint of trade").[10]

The PBM Defendants, through their ISP Agreements with GoodRx, received access to the reimbursement pricing of dozens of PBMs in the GoodRx Information-Exchange Network and allowed the ISP to select and automatically apply the lowest price of any PBM to their insureds' drug transactions. They each knew that their PBM rivals were accessing the same information. FAC ¶¶ 161-68, 225-26, 229, 234, 236, 239, 242. Thus, no additional communications among the PBM Defendants "reflecting an agreement to coordinate their pricing negotiations with pharmacies" or to "agree on pharmacy reimbursement rates" were necessary. Joint Mot. 17. Public announcements—and the agreements themselves—made clear how the ISP Scheme operated. These are allegations of direct evidence of a conspiracy. *InterVest, Inc. v. Bloomberg, L.P.*, 340

[10] Defendants rely on *Dickson v. Microsoft Corp.*, where plaintiffs alleged that defendants engaged in a set of "separate" licensing agreements with the alleged "hub," and had no other connection with each other. 309 F.3d 193, 199, 203 (4th Cir. 2002). That case is not analogous to this case, nor others like it, where plaintiffs allege that defendants were connected by their decision to share competitively sensitive information through a common third party and delegate pricing authority thereto. *See e.g.*, *Zelis Repricing*, 2026 WL 867668 at *8; *Multiplan*, 789 F. Supp. 3d at 640.

F.3d 144, 163 (3d Cir. 2003) (listing examples of direct evidence including "a public resolution by a professional association recommending that its members withdraw their affiliation with an insurer").

[redacted] is irrelevant. Express Scripts Mot. 11. The price was fixed on every ISP transaction. [redacted] *Cf. RealPage*, 709 F. Supp. 3d at 534-35 (upholding complaint alleging defendants adopted pricing "recommendations" where those recommendations were implemented "80 to 90% of the time").

Express Scripts also argues that [redacted] Express Scripts Mot. 13 (asserting "wide distribution" of publicly available data does not raise the prospect of competitive harm because it is "decidedly procompetitive."); *see also* Joint Mot. 24-26. This contradicts Plaintiffs' well-pled facts that the GoodRx ISP Rates and Information-Exchange Network consist of PBMs' Contracted Rates with pharmacies. Those rates are competitively sensitive and based on proprietary MAC prices, which PBMs set at their own discretion. FAC ¶¶ 88-98. Even if consumers can view "curated" prices on the GoodRx website, consumers cannot access the thousands of prices of dozens of PBMs that the ISP provides to the PBM Defendants in its Information-Exchange Network through its RxNXT technology platform, let alone the ISP's price comparison technology, which algorithmically determines the lowest reimbursement rate contracted by any PBM in the Network. FAC ¶¶ 13, 154, 178-82, 241-42, 246, 270-77. Defendants' argument also fails to account for the allegation that the ISP's information exchange is a delegation of price decision making from the PBM

Defendants to the ISP, as discussed above. These allegations may not be substituted for Defendants' counternarrative at the pleading stage. *Evergreen Partnering Grp.*, 720 F.3d at 45.[11]

2. The Complaint adequately alleges an agreement under the "invitation and acceptance" analysis

"Acceptance by competitors, without previous agreement, of an invitation to participate in a plan, the necessary consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish an unlawful conspiracy under the Sherman Act." *Interstate Circuit*, 306 U.S. at 227; *see PLS.Com, LLC v. Nat'l Assoc. of Realtors*, 32 F.4th 824, 843 (9th Cir. 2022) (applying "invitation and acceptance" analysis). Defendants focus on only one type of circumstantial evidence—parallel conduct and plus factors—but ignore Plaintiffs' allegations that Defendants, "knowing the concerted action was contemplated and invited," adhered "to the scheme and participated in it." *Interstate Circuit*, 306 U.S. at 227; FAC ¶¶ 161-71. This analysis is particularly applicable to conspiracies facilitated by a third party, as is the case here. *Duffy*, 758 F. Supp. 3d at 1292.

a) GoodRx invited the PBM Defendants to engage in the ISP Scheme

Plaintiffs allege that GoodRx acquired a technology platform, RxNXT LLC, to enable it to rapidly exchange claims data and reimbursement rates and thereby implement "price comparison technology"—a pricing algorithm and database that could be integrated with PBMs' internal claims processing platforms. FAC ¶¶ 154-55. It then announced a new B2B2C (business-to-business-to-consumer) vertical. Notably, Defendants make no mention of, and therefore do not

[11] Express Scripts' cases stand only for the basic point that the exchange or distribution of publicly available data does not give rise to an unlawful conspiracy. Express Scripts Mot. 13. They are inapposite to Plaintiffs' allegations alleging that Defendants exchange commercially sensitive information through the GoodRx Information-Exchange Network.

dispute, the existence of this technology platform that is central to the exchange of the confidential and commercially sensitive information at issue in this case.

GoodRx then invited the PBM Defendants to join the ISP Scheme, starting with Navitus. FAC ¶¶ 161-62. It next entered its second ISP Agreement with the nation's largest PBM, Express Scripts, a deal which GoodRx's co-founder highlighted in a public announcement. FAC ¶¶ 163-66. Over the next year, GoodRx also entered agreements with Caremark and MedImpact, and highlighted in public disclosures these PBMs covered over 60% of eligible U.S. lives. FAC ¶¶ 167-69. GoodRx further incentivized PBMs to participate in the agreement by offering to share profits [redacted]. FAC ¶ 171.

b) The PBM Defendants accepted GoodRx's offer to join the ISP Scheme

Plaintiffs further allege that the PBM Defendants accepted GoodRx's invitation to act in concert: they each signed up for the ISP knowing that the ISP would apply the lowest reimbursement rate to a generic drug transaction if it was lower than an insured's co-pay. They also knew that pharmacies would be subjected to the ISP automatically with no ability to opt out or reject its pricing. *E.g.*, FAC ¶¶ 161-62, 164-65. Each ISP Agreement was publicly announced, so every PBM Defendant knew its competitors had also joined by entering into ISP Agreements. The very act of signing and announcing these contracts signaled a clear commitment to the ISP Scheme. *RealPage*, 709 F. Supp. 3d at 507-08; *Duffy*, 758 F. Supp. 3d at 1290-3; *In re Nexium (Esomeprazole) Antitrust Litig.*, 42 F. Supp. 3d 231, 255 (D. Mass. 2014) (entry into "intrinsic[ally] interdependen[t]" agreements sufficient to infer "evidence of agreement or connection" because "defendants would not have undertaken their common action without reasonable assurances that all would act in concert"). After signing their ISP Agreements, the PBM Defendants implemented

the ISP Scheme. FAC ¶¶ 19-22, 159, 176. It is immaterial that the PBM Defendants joined the ISP Scheme at different times.

3. The Complaint adequately alleges circumstantial evidence of a conspiracy

In addition to direct evidence of an agreement, Plaintiffs also allege circumstantial evidence of concerted conduct in the form of parallel conduct and multiple plus factors. In evaluating parallel conduct and plus factors, a court views a complaint holistically rather than "dismembering it and viewing its separate parts" in isolation. *Cont'l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962).

a) Plaintiffs sufficiently allege parallel conduct

Parallel conduct involves any "parallel behavior that would probably not result from chance, coincidence, independent responses to common stimuli, or mere interdependence unaided by an advance understanding among the parties." *Twombly*, 550 U.S. at 556 n.4. "Parallel conduct between the co-conspirators may consist of parallel adoption of certain policies or parallel pricing changes." *RealPage*, 709 F. Supp. 3d at 501.

Plaintiffs allege that through the ISP Scheme, the PBM Defendants suppressed the amount paid and increased the fees charged to independent pharmacies for filling prescriptions for insured members. FAC ¶ 260. They acted in concert by each executing an ISP Agreement, and in doing so, delegated decision-making to the GoodRx ISP, which automatically imposed the lowest reimbursement rate of any PBM in its database instead of the Contracted Rate that was determined independently by each PBM Defendant. *Id.* ¶¶ 261-64. Further, they did so by partnering with GoodRx, their competition for prescription drug transactions. *Id.* ¶ 262. Absent a conspiracy with GoodRx, PBMs would not agree to use a program offered by a horizontal competitor for prescription drug claim reimbursements. *Id.* ¶ 266. Plaintiffs further allege that, in joining the ISP,

Defendants' desire to share drug prescription transactions with GoodRx represents a fundamental change, which tends to exclude the possibility of independent action. *Id.* ¶ 76; *In re Domestic Airline Travel Antitrust Litig.*, 221 F. Supp. 3d 46, 69 (D.D.C. 2016) (defendants' publicly announced restrictions on growing capacity represented a "marked change" and tended to "exclude the possibility of independent action"); *see also RealPage*, 709 F. Supp. 3d at 507 (entering information-sharing agreements and changing pricing strategy was parallel conduct sufficient at the pleading stage).

Defendants' denials of parallel conduct are unpersuasive. They contend that parallel conduct, "by its nature," demands temporal proximity, which is lacking here because the ISP Agreements were executed at different times. Joint Mot. 20. That is not the law. "[C]oncurrent adoption of a price-fixing scheme is not required to prove parallel conduct." *MultiPlan*, 789 F. Supp. 3d at 637; *see Interstate Circuit*, 306 U.S. at 227 ("It is elementary that an unlawful conspiracy may be and often is formed without simultaneous action or agreement on the part of the conspirators."); *RealPage*, 709 F. Supp. 3d at 505 (recognizing that "temporal proximity of the parallel conduct is only one factor" in alleging parallel conduct); *In re Broiler Chicken Antitrust Litig.*, 290 F. Supp. 3d 772, 791 (N.D. Ill. 2017) ("the Supreme Court has long held that simultaneous action is not a requirement to demonstrate parallel conduct").[12] The specifics of when each Defendant joined the ISP do not affect Plaintiffs' allegations that, by separately agreeing to delegate pricing to GoodRx, the PBM Defendants engaged in parallel conduct. *Nexium*, 42 F. Supp. 3d at 231 (holding that "no evidence of [] communication among the [defendants] is necessary to

[12] To the extent certain courts have required temporal proximity in the alleged parallel conduct in order for plaintiffs to state a claim, such claims involved allegations of parallel price increases—not, as here, acceptance of an invitation to join an ongoing conspiracy. *See In re Generic Pharm. Pricing Antitrust Litig.*, 338 F. Supp. 3d 404, 441 & n.209 (E.D. Pa. 2018) (collecting cases).

form a Sherman Act conspiracy, nor is it even necessary for the agreements to have occurred close in time").

Defendants' cases do not support their position. In *Gibson v. Cendyn Group, LLC*, unlike here, the plaintiffs did not allege that the defendants shared confidential information. 148 F.4th 1069, 1083 n.8 (9th Cir. 2025). Similarly, in *Park Irmat Drug Corp. v. Express Scripts Holding Co*., the court did "not hold that actions taken within six months of each other can never constitute parallel conduct," but only that the plaintiff's alleged conduct—namely, the defendants' independent terminations of the plaintiff from their pharmacy networks—was "executed under dissimilar circumstances and separated by six months." 911 F.3d 505, 516-17 (8th Cir. 2018). As for *In re Musical Instruments & Equipment Antitrust Litigation*, there the court found only that "slow adoption [over several years] of similar policies [did] not raise the specter of collusion" where all manufacturer defendants dealt with the same "important customer [Guitar Center]," which "demand[ed] similar terms from each," making their "similar response to this market pressure [] a hallmark of independent parallel conduct—not collusion." 798 F.3d 1186, 1195-96 (9th Cir. 2015). That case is not analogous here—Plaintiffs do not allege that GoodRx used pressure to demand similar terms from each PBM Defendant (or even that it *could have* pressured them). Here, what is relevant are not the "similar terms" of the ISP Agreements, but what the ISP does, which is make reimbursement pricing decisions on behalf of the PBM Defendants.

Defendants also contend that Plaintiffs fail to allege a "mechanism for achieving parallel pricing" because the "PBM Defendants have not changed their contracted pricing with their network pharmacies to align with one another." Joint Mot. 21. This argument skirts Plaintiffs' allegation that the ISP algorithm sets the price for a generic prescription at the lowest ISP Rate *regardless* of any Contracted Rates the PBM Defendants had negotiated with the pharmacies. In

other words, it replaces the competitive price that should have been paid to the pharmacy with a rate that is price fixed by the ISP. FAC ¶¶ 178-85.

Defendants also argue there is no parallel conduct because the PBM Defendants pay nothing to the pharmacy when the ISP Rate is applied. Joint Mot. 21. This argument strains credulity. The fact that Defendants' buyers' cartel resulted in payments of zero and the imposition of fees to pharmacies does not absolve their parallel behavior to allow the ISP to fix prices for them. Their motivation for entering the Scheme was to avoid paying any reimbursement and instead impose costs on the very pharmacies for which they were supposed to compete. FAC ¶ 269. Defendants' actions are the essence of *per se* anticompetitive conduct by a monopsony cartel.

b) Plaintiffs adequately allege plus factors

Plaintiffs support their allegations with "evidence pointing toward [a] conspiracy, sometimes referred to as 'plus factors.'" *White*, 635 F.3d at 577 (internal citation omitted). Plus factor evidence, combined with parallel conduct, "tend[s] to rule out the possibility that the defendants were acting independently." *Steward Health Care Sys., LLC v. Blue Cross & Blue Shield of R.I.*, 311 F. Supp. 3d 468, 494 (D.R.I. 2018) (quoting *Twombly*, 550 U.S. at 554). Plaintiffs allege (i) Defendants' motives to conspire, (ii) access to competitors' pricing information, (iii) standardization of reimbursement rates, (iv) actions against self-interest, and (v) industry-related plus factors which render the market susceptible to collusion. FAC ¶¶ 268-92.

At this stage, Plaintiffs need not produce evidence of plus factors. In fact, this Circuit is "wary of placing too much significance on the presence or absence of 'plus factors,' at the pleadings stage." *Evergreen Partnering Grp.*, 720 F.3d at 46-47; *In re Loestrin 24 Fe Antitrust Litig.*, 814 F.3d 538, 549 (1st Cir. 2016). In addition, plus factors must be evaluated as a whole. *Steward Health Care Sys.*, 311 F. Supp. 3d at 495 (citing *Cont'l Ore*, 370 U.S. at 698-99); *MultiPlan*, 789 F. Supp. 3d at 642. To the extent the Court finds any one factor less persuasive than

others, such issues may go "to the weight of the plaintiffs' evidence," but, at the motion to dismiss stage, are "not a basis to find the plaintiffs' allegations implausible." *Carbone v. Brown Univ.*, 621 F. Supp. 3d 878, 886 (N.D. Ill. 2022). In any event, Plaintiffs sufficiently allege plus factors to support circumstantial evidence of a horizontal conspiracy for the reasons set forth below.

(1) Motives to conspire.

A common motive to conspire is a recognized plus factor. *Mosaic Health, Inc. v. Sanofi-Aventis U.S., LLC*, 156 F.4th 68, 83-84 (2d Cir. 2025); *RealPage*, 709 F. Supp.3d at 502. Here, Plaintiffs allege that GoodRx and the PBM Defendants held "distinct, complementary motives" to implement and join the ISP. FAC ¶¶ 268-69. For GoodRx, the incentive was to eliminate pharmacies' ability to opt out of transacting with it. FAC ¶¶ 157, 268. As set forth in the Complaint, an increasing number of pharmacies, including Kroger, opted out of accepting the GoodRx discount card because they lost money on GoodRx transactions, especially transactions for insured customers who used discount cards to purchase prescriptions instead of their insurance. FAC ¶¶ 144-46, 148, 268. Because GoodRx did not control "the prescription prices it offered through its platform," it could not lure more patients by offering lower prices. FAC ¶ 268. The ISP allowed GoodRx to increase the number of prescriptions it processed "at the expense of pharmacies" because pharmacies affiliated with a PBM Defendant were contractually obligated to fill prescriptions of the PBM's insured members, including those priced by the GoodRx ISP. FAC ¶¶ 157, 268.

The PBMs were motivated to join the ISP because every time insured individuals chose a GoodRx discount card, the PBMs "lost out on fees and other payouts" they would have received from adjudicating insured transactions. FAC ¶ 269. The ISP brought the PBM Defendants into the GoodRx ecosystem, providing them with a revenue stream through fees paid by pharmacies for ISP transactions while also allowing them to avoid reimbursing pharmacies for ISP transactions

altogether. FAC ¶ 269. In addition, the ISP eliminated the need for the PBM Defendants to *compete with each other*. Instead of offering competitive reimbursement rates to pharmacies, the ISP imposed the lowest rates available from their competitors. FAC ¶ 159. Smaller PBMs could take advantage of lower rates secured by larger players while "larger PBMs could take advantage of lower rates from other PBMs." FAC ¶¶ 20-21, 146-47, 157-58, 268-69.

Defendants' contention that Plaintiffs set forth "irreconcilable" motives mischaracterizes their allegations. *See* Joint Mot. 22. Plaintiffs allege that GoodRx on the one hand, and the PBM Defendants on the other, did not want to continue losing prescription drug transactions *to each other*. Nothing about their alleged motives is contradictory. Nor do Plaintiffs allege that GoodRx was "failing," as Defendants claim. *See* Joint Mot. 22. To the extent Plaintiffs allege different motives for different conspirators, "[a]ntitrust law has never required identical motives among conspirators when their independent reasons for joining together lead to collusive action." *See United States v. Apple, Inc.*, 791 F.3d 290, 300-02, 317 (2d Cir. 2015) (citation omitted).

Similarly, Defendants' argument that Plaintiffs advance only a "generic" motive that both "GoodRx and the PBM Defendants had complementary motives to achieve profits" ignores facts in the Complaint. *See* Joint Mot. 23. The Complaint does much more than contend that Defendants wanted to "make more money." *In re Propranolol Antitrust Litig.*, 249 F. Supp. 3d 712, 719 (S.D.N.Y. 2017). It describes specific business reasons as to why all conspirators had "a rational economic motive to enter into the type of conspiracy alleged by Plaintiffs." *Persian Gulf Inc. v. BP W. Coast Prods. LLC*, 632 F. Supp. 3d 1108, 1134 (S.D. Cal. 2022); FAC ¶¶ 146-47, 157-58, 268-69 (describing the strategic rationale and justification for why both GoodRx and the PBMs entered into the ISP Agreements). Courts recognize similar pecuniary motives for conspirators to join a conspiracy. *See Mosaic Health*, 156 F.4th at 84 (2d Cir. 2025) (plaintiffs "alleged sufficient

facts suggesting that [d]efendants had a common motive to conspire" by eliminating discounted drug sales, which would "increase[] their profits"); *Barry's Cut Rate Stores Inc. v. Visa, Inc.*, No. 05-MD-1720, 2019 WL 7584728, at *32 (E.D.N.Y. Nov. 20, 2019) ("A [m]otive to conspire may be inferred where the parallel action taken [by defendants] had the effect of creating a likelihood of increased profits") (alterations included) (quotation omitted); *Commonwealth of Ky. ex rel. Coleman v. RealPage, Inc.*, No. 2:25-cv-93, ECF No. 129 at *14 (E.D. Ky. Feb. 2, 2025) (plaintiff stated claim based on exchange of competitively sensitive information, which was "driven by Defendants' common motive of making as much money as possible").

Defendants' authorities fail to rebut Plaintiffs' allegations as to Defendants' motives to conspire. *See* Joint Mot. 23. First, *Musical Instruments* is inapposite because the defendant manufacturers' motive to "increase profits by raising prices" was insufficient to change the fact that the plaintiffs failed to plead a horizontal conspiracy; the complaint showed that a downstream retailer used its market power to pressure each manufacturer to accept certain minimum advertised pricing policies, and each did so out of individual self-interest. 798 F.3d at 1194-95, 1198. Similarly, *Citigroup* is inapplicable because the plaintiffs' allegations of a "motive to conspire" related "almost exclusively to Defendants' joint motivation to conspire to *support* the market" for auction rate securities through actions like "support bids," even though the alleged violation was an "*en masse* flight from a collapsing market in which they had significant downside exposure." *Mayor & City Council of Baltimore, Md. v. Citigroup, Inc.*, 709 F.3d 129, 138-39 (2d Cir. 2013). Defendants also cite *White*, which is a summary judgment case in which the court held that profit motive *alone* does not create a triable issue of fact as to the existence of a conspiracy—particularly where, as in that case, the plaintiffs' own expert stated that the defendants' pricing behaviors were ambiguous. 635 F.3d at 581-82. In addition, one of Defendants' cases *supports* Plaintiffs' motive

to conspire. *See Quality Auto Painting Ctr. of Roselle, Inc. v. State Farm Indemnity Co.*, 917 F.3d 1249, 1263 n.14 (11th Cir. 2019). There, the court found that the "presence of a common motive, namely desire to maximize profits" was more "properly invoked in contexts where the motive is unique and specific to the alleged conspirators," which is exactly what Plaintiffs have done here when describing the specific reasons for why GoodRx and the PBM Defendants entered into the ISP. FAC ¶¶ 157-58, 268-69.

(2) Access to competitors' pricing information.

"It is well-settled that the exchange of pricing information among competitors is indicative of anticompetitive agreement." *Zelis Repricing*, 2026 WL 867668, at *8 n.15 (quoting *In re Broiler Chicken Antitrust Litig.*, No. 16-cv-8637, 2025 WL 461407, at *4 (N.D. Ill. Feb. 11, 2025)); *In re Delta Dental Antitrust Litig.*, 484 F. Supp. 3d 627, 632 (N.D. Ill. 2020) (defendants shared pricing information "to determine, in concert, the lowest and most punitive rates of reimbursement that dental providers will accept" (cleaned up)). The same is true when competitors exchange information through an intermediary. *Duffy*, 758 F. Supp. 3d at 1293; *RealPage*, 709 F. Supp. 3d at 510; *MultiPlan*, 789 F. Supp. 3d at 641-42 ("'role as a go-between'"). Here, Plaintiffs allege that the ISP Scheme gave the PBM Defendants access to competitively sensitive Contracted Rates from dozens of PBMs, determined using MAC prices—the "most commonly" used pharmacy reimbursement rate reference prices. FAC ¶¶ 90-92, 96-98. The ISP's price comparison technology then uses these confidential rates to determine prices on behalf of the PBM Defendants. FAC ¶ 272. The ISP integrates this data into the PBM Defendants' claims processing systems, so when an insured patient affiliated with a PBM Defendant presents their insurance card to the pharmacy, the ISP technology finds the lowest rate of any PBM and automatically applies it to the transaction if it is lower than the patient's out-of-pocket cost. FAC ¶¶ 19, 159, 272-73.

This analysis does not change because the ISP Agreements (a) contain provisions preventing the PBM [redacted] *See* Joint Mot. 25-26. The question is not what the agreements state, but what the ISP Scheme *does*. *Masonite*, 316 U.S. at 276-77. The ISP provides the PBM Defendants with access to more than a dozen PBMs' prescription drug pricing and *applies the lowest rate automatically* to their transactions. FAC ¶¶ 270, 272. In other words, a *competitor PBM's price* is applied to an ISP transaction instead of the Contracted Rate negotiated by the PBM Defendant. FAC ¶¶ 179, 272. Any prohibition in the ISP Agreements against receiving another PBM's "drug pricing reimbursement rates" is meaningless. Further, the ISP gives the PBM Defendants "invaluable information about their competitors' deals with pharmacies: they know when a competitor has contracted for a lower price than they have every time the ISP converts an insurance transaction to an ISP transaction." FAC ¶ 273. The PBM Defendants would not have access to this valuable information but for the ISP Scheme.

Defendants cite certain ISP contract provisions that do not refute Plaintiffs' allegations as Defendants contend, and some are ambiguous, which reinforces the need to consider Plaintiffs' other well-pled allegations. Indeed, some indicate that the PBM Defendants' pricing collected by GoodRx is confidential. *See, e.g.*, Joint Mot. Ex. A [redacted] Joint Mot. Ex. D [redacted]

see also Joint Mot. Ex. A [redacted]

Other provisions seem to *confirm* Plaintiffs' characterization that the ISP allows the PBM Defendants to access the "rates and discounts" offered by their PBM competitors. FAC ¶ 272; *see* Joint Mot. Ex. B [redacted] Joint Mot. Ex. F [redacted]

The ISP Agreements explicitly require GoodRx to, among other things, provide [redacted] *See, e.g.*, Joint Mot. Ex. A [redacted] Joint Mot. Ex. B [redacted] Joint Mot. Ex. D [redacted]

[redacted] Ex. F

[redacted]

Importantly, Defendants *do not dispute* that the PBM Defendants provide their confidential pricing information to GoodRx through the GoodRx Information-Exchange Network (i.e., through the GoodRx traditional discount program), rather than pursuant to the terms of the ISP Agreements themselves. *See* FAC ¶¶ 7-8, 156-60. Instead, Defendants myopically focus only on the terms of the ISP Agreements and look the other way when confronted with allegations explaining what the ISP Scheme actually does.

Where contractual provisions are ambiguous, dismissal is not appropriate at the pleading stage. *See Evergreen Partnering Grp.*, 720 F.3d at 45 ("It is not for the court to decide, at the pleading stage, which inferences are more plausible than other competing inferences..."); *Geter v. Galardi S. Enters., Inc.*, 43 F. Supp. 3d 1322, 1328-29 (S.D. Fla. 2014). Irrespective of the Defendants' ISP Agreements, Plaintiffs' claims are plausible based on the Defendants' public statements describing the ISP. *See* FAC ¶¶ 178-82, 240-58. This includes a statement from GoodRx's President of Rx Marketplace who described the program as "painful for independent pharmacies." FAC ¶ 258. Defendants ignore these allegations.[13]

[13] Defendants also point out that the Complaint characterizes an acronym ("MAC") incorrectly. Joint Mot. 24-25. This acronym was contained in a blog post cited by Plaintiffs. FAC ¶¶ 98, 188, 276. As an initial matter, Defendants have not moved for judicial notice of the relevant report, *see* Joint Mot. Ex. G, nor is it "essential to evaluating the sufficiency of the Complaint." *Kader v. Serepta Therapeutics, Inc.*, No. 1:14-cv-14318, 2016 WL 1337256, at *10 (D. Mass. Apr. 5, 2016) ("Although these exhibits may have provided helpful context, they are not properly before the Court, nor are they essential to evaluating the sufficiency of the Complaint."). However, even if the Court considers these materials, to the extent "MAC" refers to "Monthly Active Consumers," and not "Maximum Allowable Cost," the error does not refute, and Defendants do not even contest, Plaintiffs' ultimate contention that "MAC" prices are competitively sensitive and incorporated into Defendants' Contracted Rates. FAC ¶¶ 88-98, 271. Moreover, the report cited by Defendants states: "GDRX would also benefit from the incremental consumer and fill that GDRX otherwise wouldn't

Defendants' remaining argument—that information exchanges can be procompetitive and thus should be assessed under the rule of reason—is meritless. The exchange of competitively sensitive information "among competitors is indicative of anticompetitive agreement." *Broiler Chicken*, 2025 WL 461407, at *4; *see Brown v. JBS USA Food Co.*, 773 F. Supp. 3d 1193, 1223 (D. Colo. 2025); *Todd v. Exxon Corp.*, 275 F.3d 191, 198 (2d Cir. 2001) ("Information exchange is an example of a facilitating practice that can help support an inference of a price-fixing agreement."). Moreover, as set forth above, Defendants' "procompetitive justification" for the ISP Scheme (lower prices for consumers) is not a cognizable justification for a buyer-side conspiracy. *Zelis Repricing*, 2026 WL 867668, at *6. In a buyers' cartel case like this one, conferring a so-called benefit to consumers in a different market does "not qualif[y] as a defense under the antitrust laws." *Law v. Nat'l Collegiate Athletic Ass'n*, 134 F. 3d 1010, 1022-23 (10th Cir. 1998) ("[C]ost-cutting by itself is not a valid procompetitive justification" because "[i]f it were, any group of competing buyers could agree on maximum prices" and "rob[] the suppliers of the normal fruits of their enterprises.").

(3) Standardization of reimbursement rates.

The Complaint alleges that the result of the ISP was to artificially standardize and suppress the prices paid to pharmacies for prescription drugs to extract and inflate fees charged to pharmacists. FAC ¶¶ 281-82; *see Multiplan*, 789 F. Supp. 3d at 643 (algorithm can "align" third-party payors' rates); *Duffy*, 758 F. Supp. 3d at 1293 (same outside vendor "can program its algorithm to set industry-wide pricing"). This phenomenon was observable by pharmacies as their

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have captured, which would increase MAC count." Joint Mot. Ex. G at 20. This is consistent with GoodRx's alleged motive to conspire. FAC ¶¶ 157, 268.

overall reimbursements from the PBM Defendants declined. FAC ¶¶ 29, 32-33, 210-11. This would not have occurred in a competitive market. FAC ¶ 279.

Defendants argue that the "ISPs" do not "set" prices for any product [redacted] Joint Mot. 27. That argument impermissibly contravenes Plaintiffs' allegations. There is only one ISP, not multiple ISPs, and the ISP *does* set reimbursement prices for ISP transactions. Plaintiffs allege, and Defendants' contracts confirm, that the ISP sets independent pharmacies' reimbursement rate at the lowest Contracted Rate negotiated by any PBM in the GoodRx network. FAC ¶¶ 6, 13, 32, 159, 210-111; *see, e.g.*, Joint Mot. Ex. B [redacted] Plaintiffs also allege that the ISP eliminates any motivation for PBM Defendants to compete to attract pharmacies into their networks by offering higher reimbursement rates. FAC ¶ 280. Just as in *MultiPlan*, where each TPP knew MultiPlan could align rates "without the risk" of losing subscribing healthcare providers because other third-party payors agreed to "delegate rate calculations to MultiPlan's algorithm," the ISP aligns rates without the risk that pharmacies will leave the PBM Defendants' networks. FAC ¶¶ 280-82; *MultiPlan*, 789 F. Supp. 3d at 643, *see also Duffy*, 758 F. Supp. 3d at 1293-94 (allegations "amply suggest" that lessor defendants used exchange of data to "calculate the supracompetitive rental rate each participant would utilize").

(4) Actions against self-interest.

Plaintiffs also support an inference of an agreement with allegations that the challenged conduct would have been economically irrational absent the conspiracy. *Duffy*, 758 F. Supp. 3d at 1292-93; *see Zelis Repricing*, 2026 WL 867668 at *8; *MultiPlan*, 789 F. Supp. 3d at 640;. Here, Plaintiffs allege three specific categories of such conduct.

First, it would be against each PBM Defendant's unilateral self-interest to pay below market reimbursement rates to pharmacies because doing so would cause pharmacies to defect from their networks. FAC ¶ 284. Second, sharing competitively sensitive Contracted Rates through a common third party so other PBMs could utilize their lowest rates would be irrational unless their rivals were doing the same. *Id.* ¶ 285. Third, but for the ISP, it would be economically irrational for a PBM Defendant to allow its members' prescriptions to be handed over to a rival PBM for adjudication and lose out on fees from those transactions. *Id.* ¶ 286. Here, the ISP Scheme benefits all parties involved in the transaction because they share the fees extracted from the pharmacy. *Id.* ¶¶ 286, 273. Absent the ISP Scheme, a rational PBM would exercise independent discretion over reimbursement rates to compete for pharmacies and adjudicate its own prescription drug transactions. *See RealPage*, 709 F. Supp. 3d at 510.

Defendants counter that the ISP does not "hand over" transactions to competing PBMs, and the ISP is in the self-interest of PBM Defendants because they make "PBMs more competitive when bidding for TPP business." Joint Mot. 27-28. First, Defendants' argument that the ISP does not delegate transactions to GoodRx to be adjudicated by other PBMs is contrary to the Complaint, which alleges that the Leveraged PBM adjudicates the ISP transaction. FAC ¶¶ 10, 15, 31, 271. This appears to be consistent with provisions of the ISP Agreements. *See, e.g.*, Joint Mot. Ex. B [redacted] Joint Mot. Ex. D [redacted] Second, Defendants' argument that the ISP Scheme reduces costs to the PBMs' clients and benefits consumers—even if true, which should

not be assumed at the pleading stage—is legally flawed. And, as explained above, conferring a benefit to consumers in a different market does "not qualif[y] as a defense under the antitrust laws." *Law v. Nat'l Collegiate Athletic Ass'n*, 134 F. 3d at 1022-23.

(5) Industry-related plus factors.

Courts recognize that certain markets have structural factors which render them "susceptible to collusion." *In re Pork Antitrust Litig.*, 781 F. Supp. 3d 758, 796 (D. Minn. 2025). Here, Plaintiffs allege (1) high barriers to entry in the PBM industry; (2) high exit barriers for pharmacies in the Network Pharmacy Services Market, given pharmacies' reliance on prescriptions from insured patients; (3) high market concentration for PBM services; (4) the fungibility of claims submitted by pharmacies to PBMs for reimbursement; and (5) opportunities for the members of the ISP Scheme to collude. FAC ¶¶ 287-92. Each of these plus factors, when paired with plausible allegations of parallel conduct, support an inference of conspiracy. *See MultiPlan*, 789 F. Supp. 3d at 642; *Pork*, 781 F. Supp. 3d at 818-19.

Defendants argue that Plaintiffs' market structure allegations are "neutral facts that do not indicate a conspiracy." Joint Mot. 28. Yet, when read in conjunction with the detailed facts throughout the Complaint, these market structure allegations are "additional factual enhancements tending to exclude the possibility that defendants acted independently." *Pork*, 781 F. Supp. 3d at 818; *see RealPage*, 709 F. Supp. 3d at 509-12; *MultiPlan*, 789 F. Supp. 3d at 642; *In re Titanium Dioxide Antitrust Litig.*, 959 F. Supp. 2d 799, 822 (D. Md. 2013).

(6) High barriers to entry.

High barriers to entry "make an industry more conducive to collusion." *Generic Pharm. Pricing*, 338 F. Supp. 3d at 448 (citations omitted). Plaintiffs allege that "state and federal regulatory requirements," "the costs associated with developing pharmacy networks," and the level of technology which enables PBMs to "electronically adjudicate millions of pharmacy

reimbursement claims each day" make it difficult for new PBMs to enter the market. FAC ¶ 288. Defendants point to the fact that there are 66 PBMs in the United States, Joint Mot. 28, but Plaintiffs allege that most are benefit consultants that "contract with larger PBMs to perform claims adjudication on their behalf," FAC ¶¶ 99-100.

Similarly, Defendants' argument that entry barriers do not "indicate anything beyond" a market which may be susceptible to conscious parallelism is without merit and contradicted by caselaw recognizing that high entry barriers generate conditions that are conducive to price fixing. Joint Mot. 28. Such "market circumstances that make an agreement possible are relevant when considering whether the plaintiffs otherwise plausibly allege an agreement." *MultiPlan*, 789 F. Supp. 3d at 642; *see also In re Turkey Antitrust Litig.*, 642 F. Supp. 3d 711, 727 (N.D. Ill. 2022). To refute this, Defendants cite a single inapposite case. *See White*, 635 F.3d at 580, 582 (at the summary judgment stage, high entry barriers did not themselves establish evidence of an agreement where plaintiffs' evidence did not exclude the possibility of independent conduct). Last, Defendants' argument that Plaintiffs "do not plead particular facts indicating the ease or difficulty of entry" is wrong. Joint Mot. 28. Plaintiffs explain how technological barriers to real-time claim adjudication make effective entry into the market difficult. FAC ¶¶ 99-100, 288.

(7) Drug reimbursements are fungible.

Courts recognize that the fungibility of products or services is a plus factor which may support the inference of a conspiracy, as the uniformity of such relevant products helps facilitate collusion. *See Titanium Dioxide*, 959 F. Supp. 2d at 826. "Claims submitted by pharmacies to PBMs for reimbursement from insurers are fungible" because "[a]ll claims are submitted using uniform billing codes." FAC ¶ 291. Defendants contend that reimbursement rates for drug claims are submitted by different pharmacies across different insurers and health plans. Joint Mot. 29 (citing FAC ¶¶ 88-97). Defendants again mischaracterize facts alleged in the Complaint, which

explain that PBM reimbursement rates are set forth in agreements with participating pharmacies. FAC ¶¶ 88-97. They also fail to grapple with Plaintiffs' allegation that claims for generic drug reimbursement are fungible because they employ *uniform* billing codes. Indeed, it is this very uniformity that enables GoodRx to aggregate generic drug prices across PBMs and apply them to ISP transactions in furtherance of the conspiracy. *See* FAC ¶¶ 132-34, 142, 291. Finally, Defendants' contention that Plaintiffs' allegations regarding the uniformity of pharmacies' claims "are not enough to survive dismissal," Joint Mot. 29, is an attempt to evaluate this plus factor in isolation—a "legally flawed" approach, *RealPage*, 709 F. Supp. 3d at 510 (citing *Cont'l Ore*, 370 U.S. at 698-99). Of course, one industry plus factor, on its own, does not establish a conspiracy. But fungibility of prescription drug claims must be viewed holistically with other industry plus factors indicating that the PBM Services Market is "susceptible to conspiratorial price-fixing." *See In re Cal. Bail Bond Antitrust Litig.*, 511 F. Supp. 3d 1031, 1046-47 (N.D. Cal. 2021) (citation omitted).

(8) Opportunities to collude.

"[R]egular opportunities to collude" can support a plausible inference of the "formation and communication" of a conspiracy. *Broiler Chicken*, 290 F. Supp. 3d at 788. Defendants again present this plus factor as if it were Plaintiffs' sole allegation of conspiracy, arguing that Plaintiffs allege only "generalized conclusions that Defendants had 'opportunities to collude.'" Joint Mot. 29-30. But the Complaint spells out a detailed conspiracy and further alleges that PBM Defendants had "ample opportunity to meet and collude" through the PBM trade association, which holds "meetings, business forums, and policy forums." FAC ¶ 292. Plaintiffs also allege that several GoodRx board members previously held leadership positions at Defendant PBMs, which created "ready opportunities among [the] executives for explicit agreements to collude." *Id*. These opportunities to interact, while not themselves illegal, help "facilitate[] price fixing that would be

difficult for the authorities to detect." *In re Text Messaging Antitrust Litig.*, 630 F.3d 622, 628 (7th Cir. 2010); *see also RealPage*, 709 F. Supp. 3d at 511; *Evergreen Partnering Grp.*, 720 F.3d at 49-50; *In re High-Tech Emps. Antitrust Litig.*, 856 F. Supp. 2d at 1118.

Defendants' cases found participation in trade organizations "alone" insufficient to support inference of conspiracy, but they are inapplicable because Plaintiffs allege far more than an opportunity to collude. *See Musical Instruments*, 798 F.3d at 1196-97 (defendants' "mere participation" in trade-organization meetings did not suggest an illegal agreement where plaintiffs' only alleged conduct "could just as well be independent action" (citation omitted)); *In re Graphics Processing Units Antitrust Litig.*, 527 F. Supp. 2d 1011, 1023-24 (N.D. Cal. 2007) (dismissing conspiracy claims where plaintiffs pled only that defendants had the "opportunity" to fix prices); *In re Chocolate Confectionary Antitrust Litig.*, 801 F.3d 383, 409 (3d Cir. 2015) (finding—at summary judgment—that evidence that executives were "in the same place at the same time" did not create a reasonable inference of concerted activity); *Jones v. Micron Tech. Inc.*, 400 F. Supp. 3d 897, 917-18 (N.D. Cal. 2019) (holding that alleged participation in trade associations only provided "an opportunity" to collude).

Ultimately, Plaintiffs sufficiently allege plus factors, when combined with parallel conduct, to make Defendants' conspiracy plausible. The Court can deny Defendants' motion to dismiss on this basis alone.

C. Plaintiffs' claims are well-pled under the rule of reason

Even if a *per se* claim did not exist, Plaintiffs have properly pled their claims under the rule of reason.

Courts "apply a burden-shifting framework to determine whether a restraint violates the rule of reason." *Vázquez-Ramos*, 55 F.4th at 299 (citing *Am. Express*, 585 U.S. at541). This framework proceeds in three steps: "[f[irst, the plaintiff must prove that the challenged restraint

has a substantial anticompetitive effect that harms consumers in the relevant market. Then, the burden shifts to the defendant to demonstrate a procompetitive rationale for the restraint. Finally, the burden shifts back to the plaintiff to establish that the procompetitive efficiencies could be reasonably achieved through less anticompetitive means," *id.*, or that "on balance, the restraint's harms outweigh its benefits," *United States v. Am. Airlines Grp. Inc.*, 121 F.4th 209, 220 (1st Cir. 2024). The First Circuit has stressed that "[i]mportantly, applying this framework usually requires some fairly detailed facts, the ascertainment of which is often beyond the scope of a Rule 12(b)(6) inquiry." *Vázquez-Ramos*, 55 F.4th at 299. At this stage, a plaintiff need only plausibly allege "some degree of anticompetitive effects." *RealPage*, 709 F. Supp. 3d at 521.

To establish anticompetitive effects, the plaintiff may rely on either direct evidence establishing "actual detrimental effects [on competition]," such as "reduced output, increased prices, or decreased quality," or indirect evidence of "market power plus some evidence" that the challenged restraint is likely to lead to anticompetitive effects. *Am. Express*, 585 U.S. at 542 (alteration in original) (citations omitted); *see also United States v. Am. Airlines Grp. Inc.*, 675 F. Supp. 3d 65, 110 (D. Mass. 2023) (showing of anticompetitive effect "can be made with direct proof of actual harm to the competitive process—including, though plainly not limited to, evidence that price has increased—or by indirect proof that such harm is likely to arise from the restraint" (citation omitted)), *aff'd*, 121 F.4th 209 (1st Cir. 2024). "[T]hough this step can require an evaluation of market power, it need not always involve such an assessment." *Am. Airlines Grp.*, 675 F. Supp. 3d at 110.

Plaintiffs allege anticompetitive effects: lower payments to pharmacies (and the imposition of additional fees) as a result of the ISP Scheme. Nothing more is needed to state a claim under the rule of reason. None of Defendants' arguments change that, and there is no need for analysis

of the specific relevant market, alleged procompetitive effects, or the establishment of Defendants' market share.

1. Plaintiffs allege anticompetitive effects: that Defendants' conduct lowered the amounts paid to pharmacies

In a monopsony case, anticompetitive effects often take the form of reduced payments by a dominant purchaser or group of purchasers. *See Zelis Repricing*, 2026 WL 867668, at *6 (antitrust injury occurs where "anticompetitive behavior has forced sellers to accept lowered prices"); *Sitts v. Dairy Farmers of Am., Inc.*, 276 F. Supp. 3d 195, 208 (D. Ct. 2017) ("Where, as here, suppliers to an alleged monopsonist are paid depressed prices and the monopsonist, as a result, reaps the benefits… the suppliers may plausibly allege antitrust injury."). That is precisely what Plaintiffs allege here. Absent the ISP Scheme, PBMs and pharmacies negotiated prices based on competitive dynamics. FAC ¶¶ 30-31; 85-86. Under the ISP Scheme, however, the pharmacy no longer received the price it negotiated with the PBM that represents the patient's insurance provider. FAC ¶¶ 14, 29-31, 147. Instead, the pharmacy receives a lower price, specifically the lowest amount negotiated by *any* PBM. *Id*. In other words, pharmacies have been "forced to accept… claim reimbursements far below that which would have occurred in a competitive market." *Zelis Repricing*, 2026 WL 867668, at *6. And where there had previously been multiple potential reimbursement rates to a given pharmacy for a particular drug, the ISP ignores those rates and imposes a price-fixed reimbursement rate regardless of which PBM Defendant the transaction was initially routed through. FAC ¶ 264. On top of that, pharmacies are forced to pay additional fees to the PBMs and GoodRx. *Id.* ¶¶ 22, 156, 176. This basic operation of the ISP Scheme—and its impact on price—is clearly alleged in the Complaint. Defendants largely ignore (and do not dispute) these well-pled facts, which are alone sufficient to allege a restraint of trade causing anticompetitive effects.

Defendants instead focus exclusively on the exchange of information (which they say is not anticompetitive). Even if this case were only about the exchange of information (which it is not), Plaintiffs' allegations on this topic would still be sufficient under the rule of reason. *See Todd*, 275 F.3d at 198 (an information sharing agreement also "can be found unlawful under a rule of reason analysis"); *In re Brand Name Prescription Drugs Antitrust Litig.*, 288 F.3d 1028, 1033 (7th Cir. 2002) (citing authority "for prohibiting as a violation of the Sherman Act ... an agreement that facilitates collusive activity…—for example, ... a system of exchanging price information"). Providing competitive information to a common third-party price-setting agency can suffice—and does here—to state a claim. *See, e.g., Pork*, 781 F. Supp. 3d at 869 ("Courts have recognized that information exchanges with certain features have the potential to generate anticompetitive effects."). But here, Plaintiffs also allege that Defendants (1) agreed to use the reimbursement rates of other PBM Defendants, (2) applied those rates even if they were lower than the ones the PBM negotiated with the pharmacy, and (3) price fixed the reimbursement rates provided to a given pharmacy.

The Complaint contradicts Defendants' contention that they are merely exchanging public information; it alleges that Defendants are using nonpublic rate information (through the ISP) to determine the prices they will impose on pharmacies and avoid paying the competitive, market-based Contracted Rates. FAC ¶ 159. *See*, *e.g.*, *Zelis Repricing*, 2026 WL 867668, at *6, *8 (delegation of pricing authority to third party supported antitrust claim). These facts differentiate this case from those cited by Defendants, which involve nothing more than the exchange of public information. *See* Joint Mot. 39 n.16 (citing cases about the exchange of public information); *compare Maple Flooring Mfrs.' Ass'n v. United States*, 268 U.S. 563, 573 (1925) (no Section 1 violation where, *inter alia*, "[t]he statistics gathered by the defendant association [we]re given

wide publicity"); *with Todd*, 275 F.3d at 213 (holding that the "nature of the information exchanged" weighed against granting a motion to dismiss, where, *inter alia*, that information "was not disclosed to the public nor to the employees whose salaries were the subject of the exchange"). One of Defendants' authorities even distinguishes the exchange of information from an agreement to charge prices set by a third party based on that data—the situation in this case. *In re Passenger Vehicle Replacement Tires Antitrust Litig.*, 767 F. Supp. 3d 681, 716 (N.D. Ohio 2025).

Thus, regardless of whether the Court utilizes the "direct" or "indirect" framework, Plaintiffs have sufficient alleged anticompetitive effects and met their burden under the rule of reason.

2. Defendants' challenges to Plaintiffs' direct evidence are baseless

a) Defendants' market-wide effects argument misstates the law and ignores the factual allegations

Defendants also challenge Plaintiffs' showing of direct evidence of anticompetitive effects by asserting that the Complaint fails to allege "market-wide" anticompetitive effects. Joint Mot. 40. This argument is wrong for three reasons.

First, Defendants reiterate their argument, unsupported by any caselaw, that pharmacies cannot be harmed by the ISP Scheme because, when a transaction is subject to the ISP Scheme, the PBM Defendant pays the pharmacy zero. *Id*. at 37. But that is exactly the point: the pharmacy receives a lower total amount (from the consumer only) under the ISP Scheme than it otherwise would have received (from both the consumer and the PBM). The harm is the reduced total payment the pharmacy receives (and increased fees), regardless of where that payment comes from.

Second, Defendants claim that to allege "market-wide" anticompetitive effects, Plaintiffs must claim that prices paid to pharmacies were lower across "the entire market" than they would

have been absent the ISP Scheme. Joint Mot. 41. Thus, according to Defendants, Plaintiffs needed to allege anticompetitive impact on *all* generic drug transactions, as opposed to just those where the ISP Scheme harmed independent pharmacies. *Id.* 40-41. This argument is divorced from the Complaint's allegations. The Complaint alleges harm to competition in the input market for Network Pharmacy Services and suppression of reimbursement rates to independent pharmacies subject to the ISP Scheme. FAC ¶¶ 29, 36, 160, 293, 296-302. Every single transaction subject to an ISP Rate caused competitive harm to the pharmacy. Defendants' position leads to an absurd result: that companies with market power could conspire to fix the prices of a subset of transactions in a given "market" and escape antitrust liability simply because they did not fix all the prices. Defendants' authorities do not support them. One case they cite (in which a motion for summary judgment was denied) noted a rule—that injury to an *individual* plaintiff is not enough to show harm to competition in a market—that is inapt here, and then found that the plaintiffs had indeed "produced sufficient evidence that [Defendant's] conduct could have resulted in higher consumer prices" across the relevant market. *In re Suboxone Antitrust Litig.*, 622 F. Supp. 3d 22, 48-49 (E.D. Pa. 2022). The other—a 1998 district court case—simply uses the term "market-wide anticompetitive effects" without any elaboration, and does nothing to support Defendants' position. But here, Plaintiffs allege injury to *all* pharmacies that transacted with the PBM Defendants, which control 64% of all prescriptions filled each year. FAC ¶¶ 19, 55. At the pleading stage, that is sufficient to allege direct evidence of anticompetitive effects. *Don Copeland v. Energizer Holdings, Inc.*, 716 F. Supp. 3d 749, 766 (N.D. Cal. 2024).

Third, Defendants claim that Plaintiffs must allege that contracted reimbursement rates or GoodRx prices generally changed due to the ISP Scheme. Joint Mot. 43. There is no reason why Plaintiffs need to allege such facts. Plaintiffs allege that the ISP Scheme resulted in pharmacies

receiving a lower amount, causing them the type of injury that is cognizable under the antitrust laws. *Zelis Repricing*, 2026 WL 867668, at *6. There is no meaningful difference between a pharmacy receiving less money because another PBM's price is used (what the ISP Scheme does) or because prices generally decreased. In both instances, the pharmacy receives less than it had would have received but for the anticompetitive conduct. To the extent that insurance or GoodRx reimbursement rates decreased *generally* as a result of the ISP Scheme, that would be an *additional* source of injury and damages, but it is not required for Plaintiffs to state a claim. Defendants also argue that Plaintiffs must have pled "how many transactions" were affected by the ISP Scheme market-wide, but cite no cases requiring such proof at the pleading stage.[14]

Lastly, Defendants attack the inferences Plaintiffs draw from two charts included in the Complaint. Joint Mot. 41-43. Defendants spend pages on these charts, arguing both that the charts "in fact are indecipherable" but also that the charts somehow undermine Plaintiffs' remaining allegations. *See id*. Plaintiffs do not rely on the charts (which are referenced in one paragraph in the Complaint) to carry their burden of alleging anticompetitive effects; the undisputed purpose and effect of the ISP Scheme is to reduce the payment pharmacies (not just OneroRx) receive. Defendants' nit-picking of the charts is therefore ultimately irrelevant to whether Plaintiffs have stated a claim. Their critiques are also baseless. The charts in question show that payment amounts fell as Express Scripts [redacted] and Caremark [redacted] FAC ¶¶ 166-67, 210. Defendants' inferences about how quickly those price declines followed the implementation of the agreements are at odds with the pleading standard, which requires drawing inferences in Plaintiffs' favor, not Defendants'. Defendants' argument that the

[14] Such information is irrelevant to the named Plaintiffs' standing and would be almost impossible to plead in any antitrust case where the total volume of sales affected by the defendants' conduct is known to the defendants, but not the plaintiffs, before discovery.

charts are too vague to serve as concrete proof of anticompetitive effects is similarly inconsistent with the pleading standard.

b) Any purported procompetitive benefits are an issue for the jury, not a Rule 12 motion, and Defendants have failed to assert any cognizable procompetitive benefits

Next, Defendants challenge Plaintiffs' direct evidence of anticompetitive effects by asserting that the ISP Scheme had procompetitive benefits. Joint Mot. 38-39. These arguments have no place in a Rule 12 inquiry and, even if they did, should be rejected on the merits.

The existence of procompetitive benefits is a factual question rarely susceptible to resolution on the pleadings. *See In re Amazon.com, Inc. eBook Antitrust Litig.*, 2023 WL 6006525, at *18 (S.D.N.Y. July 31, 2023), *R&R adopted*, 2024 WL 918030 (S.D.N.Y. Mar. 2, 2024) ("Whether the [challenged] provisions actually had procompetitive effects, as Amazon contends… is not an inquiry for resolution at the pleading stage."). Even if an antitrust defendant points to valid procompetitive effects, a plaintiff may still prevail by showing that those benefits could have been achieved through less restrictive means *or* that the anticompetitive effects outweigh the procompetitive benefits. *Am. Airlines Grp.*, 121 F.4th at 220. These highly fact-intensive questions cannot be resolved on the pleadings. *See PLS.Com*, 32 F.4th at 839(explaining that "whether the alleged procompetitive benefits of [the challenged restraint] outweigh its alleged anticompetitive effects is a factual question that the district court cannot resolve on the pleadings"); *Vázquez-Ramos*, 55 F.4th at 299 (same). In this case, the quantification of the anticompetitive harms suffered by pharmacies and any purported benefits are inherently factual inquiries, as is the balancing of harms and benefits. The same is true of whether the alleged benefits (lower consumer payments) could have been achieved by alternative means, such as lowering insured consumers'

co-payment amounts *without* lowering the amount the pharmacy receives.[15] These issues cannot be resolved on a motion to dismiss. And because the Court must "afford all inferences in the plaintiffs' favor" on a Rule 12 motion, it cannot conclude that procompetitive benefits would outweigh anticompetitive effects—rather, the possibility the challenged restraint "has a procompetitive effect" must be considered "at subsequent stages in this litigation." *Vázquez-Ramos*, 55 F.4th at 300.

Even if an assessment of procompetitive benefits were permissible at the pleading stage, Defendants have not identified any procompetitive benefits that are (1) legally cognizable and (2) make it *implausible* that Plaintiffs could meet their burden under the rule of reason. Defendants' primary alleged benefit is that, when the ISP Scheme applies, patients pay less than they otherwise would. But that alleged consumer benefit would occur outside of the relevant market, which is focused on the competition among PBMs to secure network contracts with pharmacies. *See infra* § IV.C.4; *Zelis Repricing*, 2026 WL 867668, at *6 (rejecting the argument that "lowered prices for patients" is inconsistent with a finding of antitrust injury, in the context of a monopsony claim); *Martinson v. Nat'l Collegiate Athletic Ass'n*, 804 F. Supp. 3d 1109, 1129 (D. Nev. 2025) ("construing the harm to student-athletes as a benefit to consumers does not justify the antitrust harm in the relevant labor market"); *Telecor Commc'ns, Inc. v. Sw. Bell Tel. Co.*, 305 F.3d 1124, 1134 (10th Cir. 2002) (rejecting a "monopsony defendant's argument that injury to sellers without injury to end-users is not cognizable antitrust injury"). In other words, Plaintiffs' claims do not depend on proof of harm to consumers. The competitive harm at issue is the harm to *independent*

[15] PBMs and insurers likely elected not to pursue this path because it would result in them and insurers paying a higher share of the drug cost.

pharmacies. *See, e.g.*, FAC ¶¶ 335, 337. And the amounts consumers pay cannot serve as a justification for the additional fees that the ISP Scheme extracts from independent pharmacies.

The assertion that the ISP Scheme has benefits that outweigh its harms is also dubious in light of Plaintiffs' allegations of substantial financial harm to pharmacies coupled with massive closures of independent pharmacies in recent years, resulting in increasing "pharmacy deserts" where consumers cannot access pharmacy services. Indeed, the ISP Scheme has forced many additional independent pharmacies to close. FAC ¶¶ 109-119, 218-220. Consumers are unlikely to benefit overall from a scheme that imperils their ability to obtain necessary medications.

In short, because Defendants' asserted procompetitive benefits are outside the scope of a Rule 12 motion and not legally cognizable, they cannot provide a basis for dismissing the FAC.

3. Defendants' challenges to Plaintiffs' indirect evidence are likewise baseless

Defendants' only challenge to whether Plaintiffs have alleged indirect evidence of anticompetitive effects is their argument that Plaintiffs have not alleged market power because, they claim, the PBM Defendants lack sufficient market share. The Court should reject this argument for multiple reasons.

First, as an initial matter, establishing anticompetitive effects under the rule of reason does not necessarily require proof of market power. *Am. Airlines Grp. Inc.*, 675 F. Supp. 3d at 111 ("[N]ot every case within the reach of the rule of reason is a candidate for plenary market examination.") (citation omitted). Thus, while the first step of the rule of reason "can require an evaluation of market power, it need not always involve such an assessment." *Id*. at 110. Here, the nature of the ISP Scheme itself, which results in pharmacies receiving a *lower* amount than the *competitively negotiated* amount, creates a plausible inference of anticompetitive effects. It is thus not necessary to conduct a detailed market analysis to determine whether the ISP Scheme had the

potential to cause anticompetitive effects. And to the extent Plaintiffs are required to demonstrate some degree of market power, the same allegations would serve as direct evidence. *See Todd*, 275 F.3d at 206 ("If a plaintiff can show that a defendant's conduct exerted an actual adverse effect on competition, this is a strong indicator of market power.").

Second, a plaintiff could also provide "circumstantial evidence of market power." *Coastal Fuels of P.R., Inc. v. Caribbean Petroleum Corp.*, 79 F.3d 182, 196-97 (1st Cir. 1996). And the First Circuit has not "limited the circumstantial evidence that can be used to support" a claim of market power to a showing of market share. *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 573 F. Supp. 3d 459, 470 (D. Mass. 2021); *see also Sitts*, 417 F. Supp. 3d at 477-78 (discussing factors to be considered in addition to market share). And the consideration of this evidence generally raises "questions of fact that must be decided by a jury, not the court." *Sitts*, 417 F. Supp. 3d at 478.

Plaintiffs have alleged ample facts demonstrating Defendants' market power directly and indirectly. Plaintiffs allege that the PBM Defendants have been able to impose contracts on pharmacies that (1) lower the amount the pharmacies receive and (2) require the pharmacies to pay additional fees. They could not do so without possessing market power. The PBM Defendants also act as intermediaries between pharmacies and the demand that is essential for pharmacies' operations: access to patients covered by insurance. FAC ¶ 295. Because pharmacies cannot afford to forego sales of prescription drugs where the consumer uses an insurance benefit, pharmacies cannot realistically avoid dealing with PBMs, being in their networks, or being subject to their contractual terms. Other evidence of market power includes PBMs imposing PBM-established MAC prices on pharmacies and high barriers to entry. FAC ¶¶ 95-98, 183, 288. Each of these factors plausibly alleges PBMs' power over pharmacies, and the "potential for genuine adverse

effects on competition" resulting from the ISP Scheme. *RealPage*, 709 F. Supp. 3d at 526 (discussing the purpose of a market power inquiry).

Third, even if Plaintiffs were required to demonstrate market power through allegations of the PBM Defendants' market share, they have done so. The PBM Defendants collectively account for 64% of all prescription drug claims, which is more than sufficient to serve as evidence of market power. *See* FAC ¶ 294; *Sitts*, 417 F. Supp. 3d at 477 ("market share in the range of 50% is evidence of monopsony power and a party may have [monopsony] power in a particular market, even though its market share is less than 50%." (citation omitted)). The PBM Defendants would have significant market share even if purely cash transactions (those where no PBM is involved) are included in the market. And importantly, when a pharmacy fills a prescription, it cannot choose which PBM is initially responsible for processing that transaction; the claim is automatically routed to the PBM hired by the patient's insurance provider. FAC ¶ 31. The PBM Defendants' market share thus understates their market power.

Defendants' argument that the PBM Defendants lack market share is nonsensical. Instead of focusing on PBM Defendants' share of the relevant market, Defendants manufacture statistics about something very different: the share of all prescription drug transactions affected by the ISP Scheme. Joint Mot. 40-41.[16] As an initial matter, there is no reason to credit Defendants' manufactured statistics. The allegation that GoodRx itself processes 2.5% of claims—which Defendants focus on—says nothing about the percentage of claims processed by the PBM Defendants through the ISP Scheme.[17] *See* FAC ¶ 53. But even if the ISP Scheme only determined

[16] Defendants' arguments are also internally contradictory. Defendants argue that ISP transactions do not result in a "claim," Joint Mot. 45-46, but in the very next paragraph credit Plaintiffs' allegations that "GoodRx processes 2.5% of all prescription drug *claims*," *id.* 46 (emphasis added).

[17] Plaintiffs note that Exhibit G to Defendants' motion states that the "GDRX discount[] prices are cheaper than co-pays *over the half the time* by more than half the amount." Joint Mot. Ex. G 20

the price for a relatively low percentage of all prescription drug transactions, that would not speak to the relevant question of whether the PBM Defendants have sufficient market share (and thus market power) to control prices. It only shows that they exercised that power, through the ISP Scheme, on certain transactions. None of Defendants' cases suggest that the Court should focus on the share of transactions impacted in the relevant market, as opposed to the share of the market controlled by Defendants. *See Grappone, Inc. v. Subaru of New England, Inc.*, 858 F.2d 792, 797 (1st Cir. 1988) (discussing the defendant's "miniscule" share of a market consisting of "sales of all autos or of imports"); *Flovac, Inc. v. Airvac, Inc.*, 817 F.3d 849, 854 (1st Cir. 2016) (holding generally that single digit market share is insufficient); *E. Food Servs., Inc. v. Pontifical Cath. Univ. Servs. Ass'n*, 357 F.3d 1, 7 (1st Cir. 2004) (similar).

Finally, Defendants argue that GoodRx cannot have market power because it does not operate in the Network Pharmacy Services Market. Joint Mot. 45. But the relevant question is whether the members of the scheme collectively had market power, and Defendants cite no case holding that *each* defendant must have market power for a Section 1 claim. *See Pork*, 781 F. Supp. 3d at 868 (focusing on whether the defendants "collectively" had market power). Here, GoodRx implemented the ISP Scheme with the PBM Defendants, who collectively have market power, and it is common for price-setting agencies that do not sell the good or service at issue to be included within a price-fixing conspiracy. *See id.* at 832-34, 872 (denying summary judgment motion by benchmarking company that "played a central role in the anti[t]rust violations alleged under the per se and rule of reason theories").

(emphasis added). Thus, Exhibit G suggests that the ISP Scheme may have very significantly impacted pricing on nearly ***2 billion generic drug transactions*** annually, or around 30% of all prescription transactions. Further, GoodRx's admission that the ISP Scheme "was painful" for independent pharmacies, FAC ¶ 202, is entirely inconsistent with any assertion that the ISP Scheme did not have significant market impact.

Notably, because Plaintiffs have sufficiently alleged that Defendants had market power, to allege anticompetitive effects indirectly under the rule of reason, Plaintiffs need only provide "some evidence" that the ISP Scheme could have harmed competition. *Am. Express*, 585 U.S. at 542. In addressing indirect evidence of anticompetitive effects, Defendants do not seriously dispute that Plaintiffs have alleged at least "some evidence" of the potential for the ISP Scheme to have anticompetitive effects.

4. Plaintiffs allege a relevant market, although it is not necessary

Defendants argue that Plaintiffs must establish a specific relevant market to proceed with a rule of reason claim, and that Plaintiffs have failed to do so. Defendants are wrong on both counts.

First, a plaintiff need not plead a relevant market with specificity under the rule of reason. When "horizontal restraints involve agreements between competitors not to compete in some way, [the U.S. Supreme Court has] concluded that it did not need to precisely define the relevant market to conclude that these agreements were anticompetitive." *Id.* at 543 n.7 (citing *FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 460-61 (1986); *see also MJ's Mkt.*, 766 F. Supp. 3d at 215 ("At the motion to dismiss stage, [the] question is 'only' whether the complaint 'alleges facts that plausibly delineate a relevant market.'") (quoting *Vázquez-Ramos*, 55 F. 4th at 297-98). And because market definition is a "'deeply fact-intensive inquiry, courts hesitate to grant motions to dismiss for failure to plead a relevant product market.'" *Steward Health Care Sys., LLC v. Blue Cross & Blue Shield of R.I.*, 997 F. Supp. 2d 142, 160-61 (D.R.I. 2014)(quoting *Todd*, 275 F.3d at 199-200); *see also MJ's Mkt.*, 766 F. Supp. 3d at 215 (motion to dismiss for failure to define a relevant market generally will not be granted "unless it is apparent from the face of the complaint that the alleged market suffers a fatal legal defect") (quoting *Volkswagen Grp. of Am., Inc. v. Smartcar, Inc.*, No. 21-cv-04895-JST, 2024 WL 4312217, at *7 (N.D. Cal. Sep. 25, 2024)). Nor is

defining a relevant market required for establishing market power. *Am. Airlines Grp. Inc.*, 675 F. Supp. 3d at 110-11.

A requirement that a relevant market be precisely defined at the pleading stage is particularly misplaced in this case. "The goal in defining the relevant market is to identify the market participants and competitive pressures that restrain an individual firm's ability to raise prices or restrict output." *Geneva Pharm. Tech. Corp. v. Barr Labs. Inc.*, 386 F.3d 485, 496 (2d Cir. 2004). The allegations of anticompetitive effects and market power discussed above demonstrate that other products did not "restrain" Defendants' ability to control prices; the ISP Scheme itself imposed unilaterally set prices and fees on independent pharmacies. There is thus no need for a detailed relevant market analysis to determine whether Defendants could have controlled prices.

Second, Plaintiffs sufficiently allege a relevant market. FAC ¶¶ 296-301. "A relevant market includes both (1) the product market and (2) the geographic area involved." *Steward Health Care Sys.*, 997 F. Supp. 2d at 160 (citing *Lee v. Life Ins. Co. of N. Am.*, 829 F. Supp. 529, 539 (D.R.I. 1993), *aff'd*, 23 F.3d 14 (1st Cir. 1994)). It "is comprised of the 'commodities reasonably interchangeable by consumers for the same purposes.'" *MultiPlan*, 789 F. Supp. 3d at 630 (quoting *Sharif Pharm., Inc. v. Prime Therapeutics, LLC*, 950 F.3d 911, 916-17 (7th Cir. 2020)).

Here, Plaintiffs plead that the Network Pharmacy Services Market is the relevant product market.[18] FAC ¶ 296. In this input market, network pharmacies dispense and sell prescription drugs to insured customers. *Id.* ¶ 299. PBMs pay for those drugs on behalf of their TPP clients and the TPPs' insured members. *Id.* These services are a necessary input to the services that PBMs provide

[18] Defendants do not challenge Plaintiffs' allegation that the relevant geographic market is the United States. FAC ¶ 297.

to their TPP clients. FAC ¶¶ 18, 300. TPPs hire PBMs to administer and manage their prescription drug plan benefits, negotiate pricing discounts with pharmacies, and create networks of pharmacies where the TPP's insured members can fill their prescriptions. FAC ¶¶ 77-81, 296. From the pharmacies' perspective as sellers, pharmacies need to be in the networks of PBMs so they can dispense drugs to insured customers, which is an essential source of pharmacy revenue. *Id.*; FAC ¶¶ 76-81. Thus, the relevant market is the Network Pharmacy Services Market consisting of services that PBMs purchase from pharmacies, which include (a) access to in-network pharmacies where insured members may fill their prescriptions using their insurance, (b) dispensing services, and (c) the sale of the prescription drugs themselves. The prices for Network Pharmacy Services are the reimbursement rates that PBMs pay to pharmacies for the drugs they dispense as determined by the contracts between the PBM and in-network pharmacies. FAC ¶¶ 296, 301. This "input" market matches supply (dispensing pharmacies) to the demand that exists in the "output" market (PBM services provided to TPPs). *Id.* ¶¶ 298-99.

Moreover, the Network Pharmacy Services Market is the market that has been corrupted by the ISP Scheme and where its anticompetitive effects occurred. *Id.* ¶ 297. In the absence of the ISP Scheme, PBMs would compete to attract pharmacies to be in their networks by offering them competitive reimbursement rates. *Id.* ¶¶ 18, 85-86. Thus, if a PBM priced its reimbursement rates too low, pharmacies would leave the PBM's network. A PBM that is unable to attract pharmacies to its network will risk losing clients. *Id.* ¶ 86. The ISP Scheme lessened competition within this market by replacing Contracted Prices with the prices set by the ISP, which imposed the lowest price of any PBM.

In sum, Plaintiffs have properly alleged the contours of the market impacted by this unlawful conduct, including what the services are (Network Pharmacy Services purchased by

PBMs on behalf of TPPs and insured members), who provides them (pharmacies), and who uses and pays for them (PBMs). An analogous relevant market involving monopsony price fixing of healthcare services was accepted by the court in *MultiPlan*. 789 F. Supp. 3d at 630. There, plaintiffs defined the relevant market as "out-of-network healthcare services for purchase by third-party commercial payers." *Id.* Here, PBMs stand in the shoes of third-party commercial payers (TPPs) to purchase the services of pharmacies.

Defendants incorrectly contend that Plaintiffs' market is too narrow and excludes interchangeable substitutes, namely, drugs sold in what they refer to as "cash-pay" transactions, including discount card transactions, where the consumer's purchase is not routed through their PBM or insurance.[19] Joint Mot. 35-36. This argument is nonsensical. "A relevant product market consists of products that have reasonable interchangeability for the purposes for which they are produced—price, use and qualities considered." *Saint Francis Hosp. & Med. Ctr., Inc. v. Hartford Healthcare Corp.*, 655 F. Supp. 3d 52, 83 (D. Conn. 2023) (citation omitted). Here, the purpose of Network Pharmacy Services is to allow PBMs to offer pharmacy networks to their TPP clients. A PBM would struggle to serve and compete in the output market for PBM services if it could not provide networks of pharmacies to its TPP clients. FAC ¶ 298. By contending that true "cash-pay" drug purchases should be included in this market, Defendants misleadingly place the focus on whether *consumers* could switch their methods of paying for a prescription drug (e.g., switching from paying with their insurance to paying purely with cash). But the relevant question here is

[19] Under the ISP Scheme, a consumer pays for a drug without the pharmacy receiving anything from the consumers' PBM or insurance. The claim is still routed through and processed by the consumers' PBM (which then routes the claim through the GoodRx ISP),and is included in the relevant market as it stems from the provision of Network Pharmacy Services. This is distinct from a "true cash" or "cash-pay" transactions—which are outside the relevant market—where the consumer's insurance or PBM is not involved.

whether *PBMs* as buyers and *pharmacies* as sellers have reasonably interchangeable substitutes for Network Pharmacy Services, not whether prescriptions can be paid for by other means by consumers. The interchangeability between pure cash transactions and insurance transactions from the consumer's perspective is wholly irrelevant in this case—a case which alleges monopsony price fixing by PBM Defendants who are the *buyers* of Network Pharmacy Services from Plaintiffs.

From the perspective of PBMs, prescriptions dispensed in "cash-pay markets" are not reasonably interchangeable with Network Pharmacy Services, which are tied directly to PBMs' need to serve TPPs. *See* FAC ¶ 296-97. PBMs would not "switch" to "cash-pay" transactions because doing so would require PBMs to abandon their business model of negotiating with pharmacies to be in their networks and leave their TPP clients and their insured members without the option of paying for drugs with insurance. PBMs would also lose out on the fees and other payouts they get from adjudicating insurance claims. *See, e.g.*, FAC ¶ 82.

In addition, pharmacies themselves have no reasonable economic substitutes for their contracts with PBMs and the resulting insurance transactions. *Id.* ¶ 299. Pharmacies would lose a large volume of customers if they abandoned insurance transactions and dispensed drugs only in "cash-pay" transactions. The Complaint plainly alleges that independent pharmacies depend on the revenues from insurance transactions. *Id.* ¶ 183. That is why nearly all independent pharmacies are in one or more of the PBM Defendants' pharmacy networks. *Id.* ¶ 294. Given that "the PBM Defendants control 64% of the PBM Services Market (and thus approximately 64% of all prescriptions filled each year)…pharmacies cannot realistically refuse to do business with all of them. Put differently, the PBM Defendants control a choke point for any pharmacy seeking to gain

access to payors and patients." *Id.* ¶ 19.[20] This is significant because in buyer-side conspiracy cases, courts assess the alternatives available to *sellers* when assessing the relevant market, rather than solely focusing on the options available to buyers. *Todd*, 275 F.3d at 201-02 (oil and petrochemical companies that were buyers of employment services were the relevant market); *Lifewatch Servs. Inc. v. Highmark Inc.*, 902 F.3d 323, 339-40 (3d Cir. 2018) (upholding relevant market defined as the purchase of medical device outpatient cardiac monitors sold to insurers, which were alleged to be "gatekeepers controlling patient purchases in the market"). Indeed, because the PBM Defendants control purchases in the market *as buyers*, Plaintiffs *as sellers* have no economic substitutes, much less reasonable ones, for the sale of prescription drugs that are part of the Network Pharmacy Services at issue in this litigation. Thus, regardless of whether the Court analyzes the relevant market from the perspective of the PBMs or the pharmacies, Plaintiffs have sufficiently alleged a relevant market.

Relatedly, the price-setter for a true (non-ISP) "cash" transaction—where no insurance card is presented by the consumer—is the pharmacy, not the PBM. By contrast, the price-setting mechanism for insurance transactions are the *PBM contracts* with the pharmacies. That difference is important because this case is about competition between PBMs to have pharmacies join their networks through the setting of competitive reimbursement rates, and how the ISP Scheme has impaired that competition. True cash-paying consumers are not competing with PBMs for the

[20] Even crediting Defendants' argument that the relevant market includes prescriptions filled through cash transactions, the uncontested Complaint allegation that the PBM Defendants control 64% of *all* prescription drug transactions sufficiently alleges the requisite market power in the market apparently advanced by Defendants.

relevant input (pharmacies joining PBM networks) or output (providing services to insurers) and thus do not operate in the same relevant market (or submarket).[21]

Defendants' cases fall flat. For instance, they cite *George R. Whitten, Jr., Inc. v. Paddock Pool Builders, Inc.* for the notion that market definition is set by the substitutability from the perspective of the consumer in a "supply-side price-fixing" case. Joint Mot. 35 (citing 508 F.2d 547, 551 (1st Cir. 1974)). But *Whitten* has nothing to do with monopsony price fixing. It is a case brought by a competitor against another competitor alleging that the defendant and its franchised dealers unlawfully conspired to persuade customers to use its proprietary specifications that only defendant could meet before competitive bidding took place. *Whitten*, 508 F.2d at 555. The relevant market was determined from the perspective of the purchaser of the product. *Id.* at 551. Here, the purchasers of Network Pharmacy Services are PBMs. *See also MultiPlan*, 789 F. Supp. 3d at 632-35 (holding that plaintiffs plausibly alleged a nationwide market for out-of-network services). Nor is this a case where the Plaintiffs are attempting to limit the market to the "practice complained of," as it could be if Plaintiffs had defined the market by reference to the operation of the ISP Scheme, services for a single company's pharmacy networks, or a single brand. Defendants rely on inapposite authorities where the plaintiffs' proposed markets failed for those reasons. *See Lee*, 829 F. Supp. at 541 (rejecting proposed market limited to one of many different available insurance plans), *aff'd*, 23 F.3d 14 (1st Cir. 1994); *Yagoozon, Inc. v. Kids Fly Safe*, No. CA 14-040, 2014 WL 3109797, at *1, 10 (D.R.I. July 8, 2014) (rejecting single brand market (a specific brand of child restraint) where complaint alleged other restraints were "interchangeable"); *Adidas*

[21] Plaintiffs separately allege that GoodRx and the PBM Defendants previously competed for consumer transactions. FAC ¶¶ 137, 150, 262. The market for consumer transactions is wholly separate from the market for Network Pharmacy Services, which is the relevant market alleged by Plaintiffs. Competition for consumer transactions helps explain Defendants' motivation for forming the ISP Scheme (*see supra* Section IV.B.3.b).

Am., Inc. v. NCAA, 64 F. Supp. 2d 1097, 1102-03 (D. Kan. 1999) (proposed market confined to sponsorship by the NCAA, but not any other athletic organization); *In re Harley-Davidson Aftermarket Parts Mktg., Sales Pracs. & Antitrust Litig.*, 151 F.4th 922, 933-34 (7th Cir. 2025) (rejecting a single brand market where, unlike Network Pharmacy Services, that market did not have any "peculiar characteristics and uses").

The other cases Defendants cite for soundbites (without meaningful discussion) are similarly inapposite. In *Newcal*, the Ninth Circuit reversed the dismissal of a complaint on relevant market grounds, particularly in light of the standards to be applied on a Rule 12(b)(6) motion. *Newcal Indus., Inc. v. Ikon Off. Sol.*, 513 F.3d 1038, 1051 (9th Cir. 2008). In *American Express*, the issue was whether the market was two-sided, not whether it was properly defined. 585 U.S. at 546. And *Stop & Shop* addressed the sufficiency of the evidence after summary judgment and trial, not the sufficiency of the pleadings. *Stop & Shop Supermarket Co. v. Blue Cross & Blue Shield of R.I.*, 373 F.3d 57, 69 (1st Cir. 2004). In cases where a motion to dismiss was granted, the bases for the courts' decisions are not relevant here. *See, e.g.*, *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 437 (6th Cir. 2008) (plaintiff did not identify the boundaries of the market).[22]

In any event, whether the market includes "cash" transactions is irrelevant for any inquiry the Court must undertake at this stage of the case, especially here where Plaintiffs have plausibly alleged that the ISP Scheme resulted in anticompetitive effects. To the extent that a broader market exists that includes *any* means of paying for prescription drugs—a doubtful proposition—it is still

[22] *See also E. Food Servs.*, 357 F.3d at 3 (failure to plead a geographic market; relevant product market not at issue); *Chapman v. N.Y. State Div. for Youth*, 546 F.3d 230, 238 (2d Cir. 2008) (the plaintiffs offered no "theoretically reasonable explanation" for their product market, which is not the case here); *Queen City Pizza, Inc. v. Domino's Pizza, Inc.*, 124 F.3d 430, 438 (3d Cir. 1997) (rejecting single brand market of ingredients approved for use in Domino's pizza stores).

proper to allege the existence of a submarket if it is "economically distinct from the general product market." *See Newcal,* 513 F.3d at 1045. And the Complaint more than sufficiently alleges that Network Pharmacy Services are economically distinct from "cash-pay" drug transactions.

D. Plaintiffs have standing to seek injunctive relief

Defendants seek the premature adjudication of Plaintiffs' claim for injunctive relief based on their mischaracterization of Plaintiffs' allegations and application of the wrong legal standard.

A motion to dismiss is typically not an appropriate vehicle to challenge a claim for injunctive relief. *See, e.g.*, *Simplivity Corp. v. Springpath, Inc.*, No. 4:15-cv-13345, 2016 WL 5388951, at *19 (D. Mass. July 15, 2016) ("[S]o long as any portion of [plaintiff's] underlying claim survives, [defendant's] motion [to dismiss] is an improper procedural vehicle for dismissal of [plaintiff's] request for an injunction."). If the plaintiff's complaint "makes out a basis for at least some relief for each count," it does not "matter that certain types of requested relief arguably do not have a factual basis." *Bureau of Consumer Fin. Prot. v. Citizens Bank, N.A.*, 504 F. Supp. 3d 39, 60 (D.R.I. 2020) (citing Fed. R. Civ. P. 8(a)).

Even if the Court were to consider Defendants' challenges, it should reject them. Section 16 of the Clayton Act authorizes injunctive relief against "threatened loss or damage" resulting from antitrust violations. 15 U.S.C. § 26. Plaintiffs "need only demonstrate a significant threat of injury from an impending violation of the antitrust laws or from a contemporary violation likely to continue or recur." *B-S Steel of Kan., Inc. v. Tex. Indus., Inc.*, 439 F.3d 653, 667 (10th. Cir. 2006) (quoting *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 395 U.S. 100, 130 (1969)). Plaintiffs do just that, alleging that absent injunctive relief, they "face the prospect of GoodRx reimposing the ISP Scheme on all pharmacies," a risk that is heightened because Defendants appear to have

stopped their conduct only because of this litigation and still maintain that the ISP Scheme is procompetitive.[23] FAC ¶ 175.

Contrary to Defendants' contention, Plaintiffs do not allege that Defendants' anticompetitive conduct—or the effects of that conduct—stopped in July 2025. It is unclear whether all independent pharmacies have, in fact, been opted out of the ISP Scheme and the extent to which they have joined Community Link. *See, e.g.*, ¶ 43. Community Link also incorporates GoodRx's Integrated Programs, the same programs used through the ISP Scheme to the detriment of Plaintiffs and Class Members. *Id*. ¶ 174. And "PBM-affiliated pharmacies will continue to participate in the anticompetitive ISP Scheme" and capture additional business from independent pharmacies because PBM-affiliated pharmacies are better equipped to withstand ISP pricing, which merely shifts profits to the PBM Defendants from their affiliated pharmacies. *See id*. ¶¶ 34, 173-74, 205. PBM-affiliated pharmacies are also incentivized to withstand suppressed pricing to gain additional market share while independent pharmacies continue to close their doors. *Id*.; *see also id*. ¶¶ 104-16. These are the types of threatened injury that Section 16 of the Clayton Act was designed to address. Thus, while Defendants purport to have ended the ISP Scheme in its original form, it is premature to fully assess whether illegal conduct or harm continues.

These well-pled factual allegations belie Defendants' suggestion that Plaintiffs' claims are founded only on past harm and speculation. *See* Joint Mot. 53. Defendants' argument that Plaintiffs' allegations are "speculative" because Plaintiffs do not yet know the "full impact" of Defendants' scheme is similarly unpersuasive. *Id*. Discovery is necessary for Plaintiffs to calculate

[23] Shortly after the JPML established this MDL (and apparently in direct response to this litigation), on June 9, 2025, GoodRx announced that it was launching a new program that it called "Community Link," in which pharmacies could choose to directly contract with GoodRx and participate in its Integrated Programs. FAC ¶¶ 172, 175.

damages and ascertain the full ongoing economic impact of the ISP Scheme; that does not render Plaintiffs' allegations speculative. The Court should deny the request to dismiss Plaintiffs' injunctive relief claims.

E. The organizational Plaintiffs have standing to pursue their claims

1. The associational plaintiffs—PARD and NCPA—have Article III standing to seek injunctive relief

Plaintiffs National Community Pharmacists Association ("NCPA") and Philadelphia Association of Retail Druggists ("PARD") are nonprofit organizations who, on behalf of their independent community pharmacy members, seek to enjoin Defendants' ongoing ISP Scheme. FAC ¶¶ 46-52. As associations that serve, protect, and promote the interests of their independent pharmacy members, NCPA and PARD are well positioned to draw upon "preexisting reservoir[s] of expertise" to effectively represent their members. *Camel Hair & Cashmere Inst. of Am., Inc. v. Associated Dry Goods Corp*., 799 F.2d 6, 11 (1st Cir. 1986). Together with the other named plaintiffs, NCPA and PARD seek to represent an Injunctive Relief Class.[24] They *do not* seek to represent a Damages Class. FAC ¶¶ 306-07.

An association may bring suit on behalf of its members when: (a) its members otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members of the lawsuit. *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977); *see also Warth v. Seldin*, 422 U.S. 490, 511 (1975). Even a single member "suffering immediate or threatened injury" will do. *Playboy Enters. Inc., v. Pub. Serv. Comm'n of Puerto Rico*, 906 F.2d 25, 34 (1st Cir. 1990) (quoting *Warth*, 422 U.S. at 511).

[24] Defendants do not contest the Article III standing of the other named Plaintiffs.

Defendants argue that PARD fails to meet the first two *Hunt* factors, and that both NCPA and PARD fail to meet the third *Hunt* factor. Defendants are wrong on all counts.

a) PARD sufficiently identifies its injured members to satisfy *Hunt*'s first factor

Defendants contend that PARD's claims should be dismissed because PARD has not identified any of its injured member pharmacies *by name* in the complaint.[25] But *Hunt* does not require an association to identify its injured members by name. *See, e.g.*, *Disability Rights Wis., Inc. v. Walworth Cnty. Bd. of Supervisors*, 522 F.3d 796 (7th Cir. 2008) (association did not identify any member with standing to sue or even allege the existence of such); *Am. All. for Equal Rights v. Fearless Fund Mgmt. LLC*, 103 F.4th 765, 772-773 (11th Cir. 2024); *Advocates for Highway & Auto Safety v. Fed. Motor Carrier Safety Admin.*, 41 F.4th 586, 594 (D.D.C. 2022); *Speech First, Inc. v. Shrum*, 92 F.4th 947, 951 (10th Cir. 2024).

Defendants claim that *Hunt* requires *naming* a specific member. Joint Mot. 49 (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009); *Draper v. Healey*, 827 F.3d 1, 3 (1st Cir. 2016). Neither case stands for that proposition, as other courts have held. *See Am. All. for Equal Rights v. Pritzker*, No. 3:24-cv-03299, 2025 WL 2229995, at *3, 4 (C.D. Ill. Aug. 5, 2025) (the "*identification* requirement has not been universally interpreted as a *naming* requirement"); *Fearless*, 103 F.4th at 773 (courts do not "impose[] a requirement that an organizational plaintiff identify affected members by their legal names.").

PARD alleges "a close nexus between the organization and its members and an allegation of injury to its members as a result of the action." *Doe v. Stincer*, 175 F.3d 879, 884-885 (11th Cir.

[25] Joint Mot. 49-50; MedImpact Mot. 34 n.26; Navitus Mot. 13. In discussing the first *Hunt* prong, Defendants, without any authority or reasoning, state that NCPA does not have standing because its members that are also named Plaintiffs each lack antitrust standing. Antitrust standing is addressed *supra* at § IV.E.1.c.2.

1999) (citation omitted). PARD is an association of community pharmacies concentrated in southeast Pennsylvania, a region of the state from which PARD's members are locatable and identifiable. FAC ¶¶ 47, 52. Indeed, MedImpact purports to identify PARD members for the Court. *See* MedImpact Mot. 35-36 nn.28-30. Plaintiffs describe the ISP Scheme and how it harmed independent pharmacies, including PARD's members. FAC ¶¶ 47, 51-52, 153-171. PARD sufficiently alleges that its members suffered injury and are identifiable.

b) PARD satisfies the second *Hunt* factor

Defendants argue that PARD does not satisfy *Hunt*'s second prong because PARD does "not make any factual allegations about what PARD's purpose is, and whether it is consistent with its participation in the lawsuit." Joint Mot. 50. This is not true. PARD and its members' interests in this litigation are germane to its purpose to advocate for and protect the business and interests of its independent pharmacy members. FAC ¶¶ 47-48, 51-52.

c) Both NCPA and PARD satisfy the third *Hunt* factor

MedImpact argues that neither NCPA nor PARD can meet the third *Hunt* factor because their individual members must participate in this action so the Court can determine which members contracted with MedImpact. *See* MedImpact Mot. 34-35.

MedImpact misrepresents the facts and the law. Plaintiffs allege that the PBM Defendants all joined the ISP and integrated it into their in-house pharmacy benefit plans. FAC ¶¶ 153-168. The ISP Scheme impacts *all* independent pharmacies, whether or not they directly contract with MedImpact, and all were harmed by the ISP Scheme by paying additional transaction fees for each claim processed in connection with the ISP and receiving less money in reimbursements for the drugs each pharmacy dispensed. *See supra* § II.D-E; FAC ¶¶ 176-77, 183-185, 200, 203-210, 303-304, 320, 332-337, 340, 342, 346.

MedImpact is jointly and severally liable for its co-conspirators' actions, as well as its own, in furtherance of the conspiracy—meaning every ISP transaction, regardless of which PBM was involved in a particular transaction. *See Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 646 (1981). Thus, there is no need to disentangle which pharmacies contracted with MedImpact to give NCPA and PARD associational standing to sue MedImpact.

Further, the law does not require the participation of an association's members to adjudicate prospective injunctive relief, which is all that NCPA and PARD seek here. *See* FAC ¶¶ 49, 51, 307, 341-42, 346; *Pharmaceutical Care Mgmt. Ass'n v. Rowe*, 429 F.3d 294, 307 (1st Cir. 2005).

2. The "Organization Plaintiffs"[26] have antitrust standing

The Organization Plaintiffs are corporations or nonprofit organizations that each own and operate three or more independent pharmacies. FAC ¶¶ 41-45.

To determine whether particular plaintiffs are suitable enforcers of the antitrust laws as to have antitrust standing, courts typically consider: "(1) the directness or indirectness of the asserted injury; (2) the existence of an identifiable class of persons whose self-interest would normally motivate them to vindicate the public interest in antitrust enforcement; (3) the speculativeness of the alleged injury; and (4) the difficulty of identifying damages and apportioning them amongst direct and indirect victims so as to avoid duplicative recoveries." *Aventis Env't Sci. USA LP v. Scotts Co.*, 383 F. Supp. 2d 488, 497 (S.D.N.Y. 2005). Defendants argue that the Organization Plaintiffs cannot meet the first factor, because they cannot show they were directly injured, and that the proper plaintiffs are the Organization Plaintiffs' "subsidiaries." Joint Mot. 50-51. Defendants' argument is without merit.

[26] Defendants define Northern Arizona Pharmacy, OneroRx, AHF, and P4H as the "Organization Plaintiffs." Joint Mot. 49.

A plaintiff has standing to assert antitrust claims on behalf of other entities where the evidence demonstrates that the entities were acting as a single enterprise and shared a complete unity of interests. *Aventis*, 383 F. Supp. 2d at 500 (plaintiff had standing to assert claims for violations of the Sherman Act on behalf of its parent and affiliate). "[T]he Supreme Court has held that 'the coordinated activity of a parent and its wholly owned subsidiary must be viewed as that of a single enterprise for purposes of § 1 of the Sherman Act." *In re Vitamins Antitrust Litig.*, No. 99-197, 2001 WL 755852, at *3 (D.D.C. June 7, 2001) (plaintiffs had antitrust standing to pursue antitrust claims where parent and its wholly owned subsidiary were a single enterprise). "Where the parent exercises continuing supervision and intervention in the subsidiaries' affairs, the subsidiaries activities are attributable to the parent for [antitrust] purposes." *Chrysler Corp. v. Gen. Motors Corp.*, 589 F. Supp. 1182, 1200 (D.D.C. 1984); *see also Farmland Dairies, Inc. v. N.Y. Farm Bureau, Inc.*, No. 87-cv-1622, 1996 WL 191971, at *5 (N.D.N.Y. Apr. 15, 1996) (drawing all inferences in favor of plaintiff, court found a genuine issue of material fact whether owner of subsidiary suffered direct economic injury as a result of the alleged antitrust violations).

Each Organization Plaintiff alleges that it operates as a single enterprise with its pharmacies. *See* FAC ¶ 41 (Northern Arizona Pharmacy and its three locations are all part of the same legal entity, with each individual pharmacy operating as a DBA); ¶ 43 (OneroRx and its wholly owned subsidiaries function as a single enterprise); ¶ 44 (AHF and its pharmacy locations are all part of the same legal entity, and the pharmacy and staff of each are employees of AHF); ¶ 45 (P4H's pharmacies are also part of the same legal entity, and the pharmacists and staff at each are employees of P4H). Further, the Organization Plaintiffs all allege that they suffered economic injury as a direct result of Defendants' conspiracy. *Id.* At this phase of the case, the Court must accept as true all material allegations of the Complaint and draw reasonable inferences in Plaintiffs'

favor. *Pennell v. City of San Jose*, 485 U.S. 1, 7 (1988). These allegations are more than sufficient to raise the plausible inference that Plaintiffs are sufficiently motivated "to vindicate the public interest in antitrust enforcement". *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 542 (1983).

Defendants' cited cases do not support finding that the Organization Plaintiffs lack antitrust standing. *See Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816, 820-21 (7th Cir. 2015) (partial summary judgment on Motorola's antitrust claims proper because (1) its purchases of price-fixed LCD panels were made and paid for by Motorola's foreign subsidiaries and delivered to the subsidiaries outside the U.S. and (2) Motorola conceded it and its subsidiaries did not operate as single enterprise); *G.K.A. Beverage Corp. v. Honickman*, 55 F.3d 762, 766 (2d Cir. 1995) (plaintiff distributors lacked antitrust standing because they were simply parties to a contract with the entity that was actually harmed by defendants' conspiracy); *Info. Res., Inc. v. The Dun & Bradstreet Corp.*, 127 F. Supp. 2d 411, 413-15 (S.D.N.Y. 2000) (summary judgment for foreign subsidiaries' purchases because plaintiff's injuries were derivative of those of its foreign subsidiaries; plaintiff did not argue there was unity of interest or a single enterprise with its foreign subsidiaries). By contrast, here, the Organization Plaintiffs do allege they operate as a single enterprise, and none of them operate outside the U.S.

MedImpact makes a slightly different argument—one based on contractual privity and contractual enforceability with it.[27] MedImpact argues that any Plaintiffs who are not bound by a MedCare agreement with MedImpact are, therefore, too remote to be efficient enforcers of the antitrust laws. *See* MedImpact Mot. 27. This argument has no support in law. First, a plaintiff's

[27] MedImpact alone does not limit its antitrust standing argument to the Organization Plaintiffs. It specifically includes Keaveny Drug and SDDDC, too. *See* MedImpact Mot. 27.

antitrust standing has nothing to do with whether it is bound by an arbitration clause. Second, contractual privity is not required for antitrust standing; indeed, courts often find indirect purchasers of price-fixed goods to have antitrust standing. *See, e.g.*, *In re Auto. Parts Antitrust Litig.*, 50 F. Supp. 3d 836, 854-55 (E.D. Mich. 2014) (indirect purchasers of automobiles containing price-fixed components had antitrust standing); *see also infra* § IV.F (addressing MedImpact's other arguments that also erroneously focus on contractual privity).

F. Star Discount and pharmacies outside the MedImpact network have Article III standing

MedImpact argues that Star Discount and other pharmacies who have not contracted with MedImpact lack Article III standing for their claims against MedImpact. *See* MedImpact Mot. 28, 33-34. MedImpact argues that only contracted pharmacies can suffer concrete harm because they are the only ones not getting the benefit of their Contracted Rates with MedImpact. *See e.g.*, *id.* at 1, 4, 6-7, 9, 13, 27-28, 31, 33. This argument rests on the incorrect premise that only pharmacies with direct reimbursement relationships with MedImpact can be injured by MedImpact's conduct.

Standing requires a plaintiff to show an injury in fact that is fairly traceable to the defendant's conduct and likely to be redressed by the requested relief. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). MedImpact's argument on all three prongs focuses on the single, narrow contention that pharmacies outside its network were not deprived of the benefit of a Contracted Rate with MedImpact (because none existed).

MedImpact's argument ignores the foundational point that federal antitrust law imposes joint and several liability on co-conspirators. *See, e.g.*, *Tex. Indus.*, 451 U.S. at 646; *see also Paper Sys. Inc. v. Nippon Paper Indus. Co.*, 281 F.3d 629, 632 (7th Cir. 2002) (holding "each member of a conspiracy is liable for all damages caused by the conspiracy's entire output."). That means

that any pharmacy who was injured by the ISP Scheme in a transaction involving any Defendant has a cause of action against all Defendants for its entire injury. *Id.*

Even if this case involved only separate vertical conspiracies between GoodRx and each PBM Defendant separately, MedImpact's argument would fail because privity "is not required in antitrust cases." *In re W. Liquid Asphalt Cases*, 487 F.2d 191, 197 (9th Cir. 1973). Plaintiffs allege that the ISP Scheme corrupts competition between PBMs for network pharmacy services. But for the ISP Scheme, MedImpact and the other PBM Defendants "would have to compete for pharmacies to join their pharmacy networks, including by offering to pay pharmacies sufficiently high rates of reimbursement for generic drugs (which account for over 90% of all prescriptions), and to compete on those rates with rival PBMs." FAC ¶ 17.

These allegations and legal principles defeat MedImpact's argument on each of the three prongs of Article III standing. First, joint and several liability matters here, which is likely why MedImpact ignores it. Star Discount did have ISP transactions directly with GoodRx and other PBM Defendants. Second, even assuming a lack of joint and several liability, MedImpact participated in the ISP Scheme, thereby contributing to the erosion of competition that has lowered the reimbursement rates for all pharmacies.

This means that Star Discount and pharmacies outside MedImpact's network all suffered concrete economic injury. That injury is traceable to MedImpact, even if other PBMs and GoodRx also contributed to that injury.[28] And an injunction would alleviate the injury to at least some

[28] For example, *Beaudoin v. Baker*, 530 F. Supp. 3d 169, 175 (D. Mass. 2021), reiterates the basic traceability standard, but does not require plaintiffs to isolate a defendant as the exclusive cause of injury. Likewise, *In re Pharmaceutical Indus. Average Wholesale Price Litig.*, 263 F. Supp. 2d 172, 194 (D. Mass. 2003), which was not an antitrust conspiracy case, addressed pleading deficiencies where plaintiffs failed to link particular products to particular defendants. By contrast, Plaintiffs allege MedImpact's participation in the challenged ISP Scheme, and its role in implementing the practices that harm pharmacies.

degree, which is all that redressability requires.[29] *See, e.g.*, *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) (stating that "a plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury" and "need not show that a favorable decision will relieve his *every* injury"). It is also difficult to envision a scenario in which the Court would enjoin MedImpact but not also enjoin GoodRx or the other PBM Defendants, meaning that an injunction against MedImpact would not be limited to stopping the conduct of MedImpact alone.

G. The Court has subject matter jurisdiction over P4H

Defendants argue that the Court lacks subject matter jurisdiction over Plaintiff P4H because it was added directly to the FAC, and not first "an individual underlying complaint that was subsequently transferred to this Court and consolidated in this MDL". Joint Mot. 47. The Court should reject this argument as it has nothing to do with subject matter jurisdiction.

Section 1407 is a procedural venue-transfer statute, not a jurisdictional statute. *See* 28 U.S.C. § 1407(a) (permitting the J.P.M.L. to "transfer[]" actions for coordinated or consolidated pretrial proceedings); *In re Philips Recalled CPAP, Bi-Level PAP, & Mech. Ventilator Prods. Litig.*, 781 F. Supp. 3d 353, 369 (W.D. Pa. 2025) ("Section 1407 is not a subject-matter or personal jurisdiction statute."). Federal courts have subject matter jurisdiction over federal antitrust claims as well as class actions such as this one. *See* 28 U.S.C. §§ 1331, 1332(d), 1337(a). Defendants do not argue otherwise. Thus, the Court has subject matter jurisdiction.

MDLs exist to streamline pretrial proceedings. Here, the consolidated complaint is the "legally operative master complaint in these MDL Proceedings and supersedes all previously filed complaints in this MDL, rendering them of no legal effect." *See* ECF No. 79 at 4; *see also id.*

[29] MedImpact does not challenge the redressability of *damages* claims against it. In any event, it is simply wrong that Star Discount and out-of-network pharmacies cannot establish that MedImpact has caused them quantifiable economic injury for the reasons stated above.

(Court "expect[ed] to require the filing of a consolidated complaint… to *avoid and reduce duplicative filings*") (quoting ECF No. 5 at ¶ VI.3) (emphasis added). This is consistent with common MDL practice, particularly in class actions.[30] *See* Manual for Complex Litigation § 20.132 (4th ed. 2004) (discussing difference between consolidated complaint "being used as a device simply to facilitate ease of the docket's administration, or whether the filing in the transferee district constitutes the inception of a new 'case or controversy' in that district, thereby *superseding and rendering moot the pending separate actions* that had been transferred to that district for pretrial proceedings" (emphasis added)).

The direct addition of P4H to the Complaint is consistent with the Court's orders and the pragmatic, efficient management of this MDL. Defendants' contention that P4H needed to file a separate action and then move to consolidate it with the MDL would result in P4H's temporary lack of participation in the operative Complaint and delay as it worked through the process of filing an individual complaint and then a future amendment to the Complaint to add it as a named Plaintiff. Defendants' preferred, convoluted procedure defies common sense and is contrary to the Court's goal to "avoid and reduce duplicative filings." *See* ECF No. 5 at ¶ VI.3.

[30] Courts routinely employ master or consolidated complaints to streamline the litigation of large numbers of similar claims. *See Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 413 n.3 (2015) (recognizing that parties may elect to file a "master complaint" and a corresponding "consolidated answer," which supersede prior individual pleadings); *see also In re Refrigerant Compressors Antitrust Litig.*, 731 F.3d 586, 590-91 (6th Cir. 2013) (explaining that MDL courts commonly require a master complaint reflecting the allegations of many plaintiffs to manage the "paper" burden of transferred cases); Fed. R. Civ. P. 16.1(b)(3)(A) Advisory Committee Note (2025) ("Decisions regarding whether to use master pleadings can have significant implications in MDL proceedings, as the Supreme Court noted in *Gelboim v. Bank of America Corp.*, 574 U.S. 405, 413 n.3 (2015).").

Defendants' reliance on *Lexecon* and P4H's residence is a red herring.[31] Defendants do not dispute that personal jurisdiction and venue would be proper if P4H had filed an underlying individual action directly in the District of Rhode Island—as another named Plaintiff, SDDDC LLC, previously did—regardless of its residence.[32] *See* FAC ¶¶ 72-74 (showing personal jurisdiction and venue proper under Section 12 of the Clayton Act, 15 U.S.C. § 22). Defendants' invocation of remand to separate districts for the various named Plaintiffs is unlikely and premature because it depends upon the Court denying class certification and the individual named Plaintiffs trying their claims separately. If there is a certified class, the case must be tried in a single district. *See Juris v. Inamed Corp.*, 685 F.3d 1294, 1312, 1340 (11th Cir. 2012) (members of certified class treated as parties for purposes of preclusion such that adjudication on the merits binds all class members and bars relitigation of claims arising from same operative facts). It is premature to address remand issues under *Lexecon*. Any remand for trial will depend on a variety of issues that have yet to be determined. These issues include, for instance, whether the Parties waive their rights

[31] Defendants do not cite *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), but do refer to the proposition it stands for: that MDL cases should generally be remanded to their transferor courts for trial.

[32] Defendants cite *Society Insurance*, which dealt with the addition of plaintiffs "where venue and personal jurisdiction would not otherwise be proper in the transferee district"—which is not the case here. *In re Soc'y Ins. Co. Covid-19 Bus. Interruption Prot. Ins. Litig.*, No. 20-C-5965, 2021 WL 3290962, at *6 (N.D. Ill. Aug. 1, 2021). Defendants' other authorities are also distinguishable. *Philips* was a mass tort case that acknowledged the difference between administrative master complaints and legally operative master complaints and was dealing with untethered third-party contribution claims. *See* 781 F. Supp. 3d at 374-80. *Gearshift* included a consolidated complaint that "was intended as an 'administrative summary'". *In re FCA US LLC Monostable Elec. Gearshift Litig.*, No. 16-md-02744, 2017 WL 6402992, at *1 (E.D. Mich. Mar. 21, 2017). *Zofran* involved a court-ordered process to file short-form complaints, as is common in mass tort MDLs. *In re Zofran (Ondansetron) Prods. Liab. Litig.*, No. 1:15-md-2657, 2017 WL 1458193, at *6 (D. Mass. Apr. 24, 2017).

under *Lexecon*, which Parties remain in the case for trial, where the claims by and against those Parties were filed, and the Court's class certification decision.[33]

H. Cigna's motion fails both substantively and procedurally

The Court should deny Cigna's motion to dismiss, which relies on ignoring the well-pled facts in the Complaint and twisting irrelevant doctrines beyond recognition.

1. Plaintiffs plausibly allege Cigna's participation in the ISP Scheme

Cigna argues that it is not a party to the written ISP Agreements and is a party only to the Express Scripts pharmacy provider agreements, which it contends "are not the basis of any substantive allegation." Cigna Mot. 9 n.2. This argument defeats the other PBM Defendants' arbitration arguments (as explained in Plaintiffs' arbitration briefs) because if Plaintiffs' antitrust claims challenging the ISP Scheme have nothing to do with the provider agreements, then their claims are outside the scope of those agreements' arbitration provisions. But it does not exonerate Cigna on the merits, because Plaintiffs' *antitrust claims* do not arise out of their provider agreements—they arise out of Defendants' price-fixing conspiracy.

Cigna's argument that Plaintiffs have only "naked conclusions…devoid of any factual allegations" supporting Cigna's involvement in the Express Scripts ISP is frivolous. *See* Cigna Mot. 10. **Cigna itself *admitted* its involvement in the ISP.** *See* FAC ¶¶ 229-30 (both Cigna and Express Scripts publicly announced "Price Assure" program, which is the GoodRx ISP). Cigna's argument that its participation in the ISP Scheme would be economically irrational cannot override its own public admissions at the pleading stage. Cigna Mot. 10 (describing allegations as "Cigna conspir[ing] against itself"). Further, Cigna is vertically integrated, can subsidize its own

[33] *See* Manual for Complex Litigation § 20.132 (noting parties may consent to trial in transferee court).

pharmacies, and will benefit from the continued elimination of independent pharmacies. FAC ¶¶ 104, 220, 223.

Those allegations are sufficient to plausibly connect Cigna to the ISP Scheme, particularly because under Fed. R. Civ. P. 12(b)(1)—just as it would under Fed. R. Civ. P. 12(b)(6)—the Court "must credit the plaintiff's well-pleaded factual allegations…, draw all reasonable inferences from them in her favor, and dispose of the challenge accordingly." *Valentin v. Hosp. Bella Vista*, 254 F.3d 358, 363 (1st Cir. 2001). If they are not enough, however, Plaintiffs also plausibly allege that Cigna itself participates in the Express Scripts PBM business. Plaintiffs allege that *Cigna* operates a nationwide pharmacy benefit management business. FAC ¶ 63. Indeed, Cigna itself points out that it is a party to the pharmacy provider agreements. *See* Cigna Mot. 9 n.2. Plaintiffs further allege that Cigna is responsible for company policies in the PBM space, operates segments that perform PBM functions involved in the ISP, and was directly involved in negotiations with GoodRx. *See* FAC ¶¶ 63-66.

At a minimum, courts enjoy "broad authority to order discovery…in order to determine its own jurisdiction. *Valentin*, 254 F.3d at 363-64 (collecting cases). If the Court finds Plaintiffs' allegations regarding Cigna's involvement insufficient (Plaintiffs of course submit it should not), then the Court should order jurisdictional discovery regarding the sufficiency of Plaintiffs' claims rather than dismissing them.

2. Plaintiffs have not engaged in claim splitting

Claim splitting is a doctrine that prohibits plaintiffs from bringing separate lawsuits based on different legal theories arising from the same facts. The doctrine exists to protect defendants from facing multiple actions. *See Fernandes v. Quarry Hills Assocs., L.P.*, No. 09-11912, 2010 WL 5439785, at *10 (D. Mass. Dec. 28, 2010) (emphasizing rule against claim splitting "protect[s] the defendant from the necessity of litigating similar claims in separate actions"). This is a "narrow

doctrine against splitting a cause of action," and it does not apply when plaintiffs seek to join litigations together. *Woolf v. Precision Techs. LLC*, 749 F. Supp. 3d 411, 421 (W.D.N.Y. 2024).

Cigna cites no authority suggesting that the procedural posture of this MDL involves claim splitting. Its argument is premised on the idea that this MDL does not exist. And its argument ignores the fact that one of the named Plaintiffs (SDDDC LLC) filed its complaint *in the District of Rhode Island*. *See* Cigna Mot. 8 (stating that the named Plaintiffs filed their original complaints only in the Central District of California and the District of Arizona). Importantly, if there is a certified class, the case will be tried in a single district. Preclusion principles (which, incidentally, are also the basis of the rule against claim splitting)[34] will allow nothing else. *See Reppert v. Marvin Lumber & Cedar Co.*, 359 F.3d 53, 56-57 (1st Cir. 2004) (discussing how *res judicata* applies to class actions and opining that the court's actions bind absent class members in any subsequent litigation). It is premature to address *Lexecon* remand issues for the reasons stated above, which also have nothing to do with claim splitting. *See supra* § IV.G (explaining why it is premature to address *Lexecon* issues).

As is common in MDLs, the Court ordered the filing of a consolidated complaint "to avoid and reduce duplicative filings," and it subsequently confirmed that it would be the "legally operative master complaint" that "supersede[d] all previously filed complaints, rendering them of no legal effect." *See* ECF No. 79 at 2, 4; *see supra* § IV.G (discussing procedural history). Cigna's argument requires the underlying individual complaints to be the legally operative complaints, but that is contrary to the Court's orders and the pragmatic, efficient management of this MDL. *See*

[34] *See Woolf*, 749 F. Supp. 3d at 421 ("Claim splitting 'is best understood as a species of the genus *res judicata*, and it thus derives its conceptual force from the principle that the public interest demands that a party not be heard a second time on a cause of action or an issue which he has already had an opportunity to litigate.'" (citation omitted)).

Manual for Complex Litigation § 20.132 (4th ed. 2004) (differentiating between consolidated complaints that serve as administrative devices and those that "constitute[] the inception of a new 'case or controversy' in that district, thereby superseding and rendering moot the pending separate actions"); *In re Refrigerant Compressors Antitrust Litig.*, 731 F.3d 586, 590 (6th Cir. 2013) (similar). Plaintiffs did not need to amend the individual complaints to name Cigna as a Defendant.

3. This Court has subject matter jurisdiction over claims against Cigna in the MDL

As with claim splitting, Cigna again invokes a doctrine—subject matter jurisdiction—that has nothing to do with its arguments. Section 1407 is a procedural venue-transfer statute, not a jurisdictional statute. *See* 28 U.S.C. § 1407(a); *Philips*, 781 F. Supp. 3d at 369-70. Federal courts have subject matter jurisdiction over federal antitrust claims as well as class actions such as this one. *See* 28 U.S.C. §§ 1331, 1332(d), 1337(a). Cigna does not challenge any of those.

Cigna argues that the direct filing of claims against Cigna is improper because there is not a local rule "providing for direct-filed cases in the transferee court". Cigna Mot. 7. But this argument proves too much. A local rule cannot confer subject matter jurisdiction, and so Cigna's argument is not jurisdictional. *See Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992) (confirming that "federal courts, in adopting rules" are "not free to extend or restrict" jurisdiction conferred by a statute, Article III, or the Constitution).

Further, Plaintiffs' addition of Cigna to the MDL was procedurally proper, consistent with the Court's orders, and legally sound. *See Refrigerant Compressors*, 731 F.3d at 591-92 (treating consolidated complaint as legally operative and noting that if the consolidated complaint did not supersede the underlying pleadings, it would pose significant challenges in the event the parties added new parties to the litigation); *In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 19-md-02913, 2020 WL 1487301, at *1 (N.D. Cal. Mar. 27, 2020) (new defendants

named for first time in consolidated complaint); *In re Takata Airbag Prods. Liab. Litig.*, 524 F. Supp. 3d 1266, 1275-76 (S.D. Fla. 2021) (dismissing claims against newly named defendants only for lack of *personal jurisdiction*; because there was no transferor court for remand, personal jurisdiction had to be established in MDL court where claims against them were filed). The idea that Plaintiffs needed to amend individual complaints that are "of no legal effect," *see* ECF No. 79 at 4, defies common sense. Cigna's preferred procedure would introduce delay and is contrary to the Court's goal to "avoid and reduce duplicative filings." *See id.* at 2.

V. CONCLUSION

Defendants implemented the ISP Scheme. This allowed them to reduce their reimbursements paid to pharmacies for prescription drugs and to charge pharmacies additional fees. Defendants profited. Plaintiffs suffered. This concerted activity gives rise to a plausible claim for Defendants' violation of Section 1 of the Sherman Act. Defendants' arguments mischaracterize the facts and the law and should be rejected. Defendants' remaining arguments about narrow, ancillary issues also fail, as explained in detail above. For these reasons, Defendants' motions to dismiss should be denied in their entirety. If, however, the Court grants the motions in any part, then Plaintiffs respectfully request leave to amend to address any issues identified by the Court. *See* Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave when justice so requires."); *Glassman v. Computervision Corp.*, 90 F.3d 617, 622 (1st Cir. 1996) (noting limited reasons justifying denial of leave to amend).

VI. HEARING REQUEST

Plaintiffs join in Defendants' requests for oral argument pursuant to Local Rule 7(c). Plaintiffs respectfully request the same amount of time as Defendants receive. Plaintiffs respectfully suggest that the times proposed by Defendants are excessive, as Defendants propose

at least 4 hours and 20 minutes of arguments just for themselves (Cigna and Express Scripts request oral argument but do not make a specific time proposal), which would result in a hearing lasting at least 8 hours and 40 minutes.

Plaintiffs believe that one hour total per side for the motions to dismiss and one hour total per side for the motions to compel arbitration would be sufficient.

Dated: April 27, 2026

Respectfully submitted,

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