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UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NEW YORK

MOSAIC HEALTH, INC., individually and on behalf of  
all those similarly situated,

Plaintiffs,

vs.

SANOFI-AVENTIS U.S., LLC, ELI LILLY AND  
COMPANY, LILLY USA, LLC, NOVO NORDISK  
INC., and ASTRAZENECA PHARMACEUTICALS  
LP,

Defendants.

**COMPLAINT**

**Jury Trial Demanded**

Plaintiff Mosaic Health, Inc., on behalf of itself and all those similarly situated, by its  
counsel alleges as follows:

**INTRODUCTION**

1. This case challenges coordination by four drug companies to boost their profits at  
the expense of the safety-net hospitals and clinics that care for patients who have nowhere else to  
turn. Those four drug companies—defendants here—should directly compete with each other.  
Yet, instead of competing for business, they worked together to boost their profits by  
coordinating to retract a long-standing discount for safety-net hospitals and clinics. That  
coordination allowed each defendant to individually avoid competitive pressure and prevent  
individual market share losses, while restricting safety-net hospitals’ abilities to deliver robust

and affordable healthcare options to patients. That horizontal agreement was a *per se* violation of state and federal antitrust laws. This antitrust class action seeks injunctive and compensatory relief for the safety-net hospitals and clinics harmed by the drug companies' anti-competitive agreement.

2. The defendants here are four drug companies that dominate three key markets for diabetes treatments. They are: Sanofi-Aventis U.S., LLC (Sanofi); Eli Lilly and Company and Lilly USA, LLC (together, Eli Lilly); Novo Nordisk Inc. (Novo Nordisk); and AstraZeneca Pharmaceuticals LP (AstraZeneca) (collectively, Defendants). They dominate the lucrative diabetes markets for: (i) rapid-acting analog insulins; (ii) long-acting analog insulins; and (iii) incretin mimetics. These markets account for billions of dollars of annual U.S. sales for Defendants and, as such, are among the most important drug markets for the Defendants. At the time their conspiracy began, Defendants faced no significant competition, apart from one another, in these multi-billion dollar markets.

3. The discount that Defendants conspired to limit was a special discount offered to safety-net hospitals and clinics, which purchase drugs filled by their patients at retail pharmacies. The discount is calculated by a mathematical formula codified at Section 340B of the Public Health Service Act, 42 U.S.C. § 256b and is known as the 340B Drug Discount. For at least a decade, drug companies offered the 340B Drug Discount to safety-net hospitals and clinics, not only for on-site use but also for purchase and distribution by retail pharmacies. Those pharmacies, typically called contract pharmacies (Contract Pharmacies), have contracts with safety-net providers, which allows the providers to purchase drugs on their own accounts, discounted with the 340B Drug Discount, to be delivered to and dispensed by the Contract Pharmacies. Drug companies, including Defendants, have argued that their provision of 340B

Drug Discounts at Contract Pharmacies is voluntary, not mandated by law. But, for at least a decade, nearly all pharmaceutical companies, including Defendants, had offered safety-net providers drugs at 340B Drug Discounts for dispensing at Contract Pharmacies (Contract Pharmacy 340B Drug Discounts). And, with all pharmaceutical competitors regularly offering Contract Pharmacy 340B Drug Discounts, patients benefitted, because safety-net hospitals and clinics have been able to use savings from those discounts to expand healthcare services and lower healthcare costs for patients.

4. But Defendants, in coordination with one other, departed from that industry-wide practice beginning in the summer of 2020. After a decade of providing Contract Pharmacy 340B Drug Discounts to safety-net providers through their Contract Pharmacies, Defendants—and Defendants alone among hundreds of leading pharmaceutical companies—suddenly, and in coordination with one another, ceased the practice of offering Contract Pharmacy 340B Drug Discounts. So, while nearly every pharmaceutical company in the country continued to offer Contract Pharmacy 340B Drug Discounts, Defendants, competitors with one another primarily as to the lucrative diabetes medications described above, coordinated an historically unprecedented change in 340B pricing practices nearly simultaneously.

5. Those harmed by those actions are safety-net hospitals and clinics, which provide healthcare services to low-income and underserved patients, funded in significant part through savings from 340B Drug Discounts. The named plaintiff here is Mosaic Health, Inc. (Mosaic Health) a federally qualified health center (FQHC) comprised of 22 safety-net clinics: Charlotte School Based Health Center; Clinton Family Health; Edison Tech Community Health Center; Freddie Thomas Health Center; Genesee Health service; John James Audubon Health Center; Martin Luther King Jr. Health Center; Mosaic Health Rushville; Mosaic Health Mount Morris;

Mosaic Health Lyons; Mosaic Health Utica; Mosaic Health Utica Dental; Mosaic Health Ilion; Newark Internal Medicine; Riedman Health Center; Unity Dental at St. Mary's; Unity Dental at Ridgeway; Unity Family Medicine at Orchard Street; Unity Family Medicine at St. Mary's; Wolcott Primary Care; Women's Center at Clinton Family; and Women's Center at Rochester General Hospital. Each of these clinics is a covered entity participating in the 340B Drug Discount Program with contracts with retail pharmacies. For years, these clinics have obtained Contract Pharmacy 340B Drug Discounts from nearly all drug companies, including Defendants, and have been able to use the resulting savings to expand healthcare options for patients in their communities.

6. Defendants' conspiracy began in the summer of 2020. Through mid-summer, Defendants had spent millions collectively lobbying the federal government (in efforts not challenged here) to limit 340B Drug Discounts with respect to diabetes medicines. A long-running lobbying campaign by drug companies had sought (i) to limit the level of hospital participation in the 340B Program, (ii) to limit which patients could qualify for 340B Drug Discounts, (iii) to require that all discounts be passed through to patients at the point of sale, and/or (iv) to restrict the availability of Contract Pharmacy 340B Drug Discounts. But Defendants' lobbying efforts failed. That failure became evident on July 24, 2020, when President Trump issued Executive Order 13937 addressing the 340B Drug Discount in the context of insulin medication and injectable epinephrine. The executive order did little to accomplish any of Defendants' goals. As soon as it became clear that Defendants' collective lobbying efforts had failed, Defendants turned to another plan focused on just the last of those goals—collusively eliminating or limiting Contract Pharmacy 340B Drug Discounts for their drugs, most significantly including their drugs dominating rapid-acting analog insulin, long-

acting analog insulin, and incretin mimetic sales. Indeed, on July 24, 2020, the very same day that the executive order was issued, the first defendant, AstraZeneca, revealed its intention to restrict Contract Pharmacy 340B Drug Discounts.

7. The other Defendants executed similar plans in short order. While Defendants' Plan A (lobbying the federal government to restrict 340B Drug Discounts) may have been perfectly legal and legitimate, their Plan B (agreeing among themselves to restrict Contract Pharmacy 340B Drug Discounts) was not. The plan worked only with buy-in from each of the other Defendants. If any Defendant had acted alone, it would have risked losing significant market share in the lucrative markets for diabetes treatments; and, over time, safety-net providers could have purchased drugs from that Defendant's competitors to access Contract Pharmacy 340B Drug Discounts to maximize healthcare services and to lower costs for patients. But, by acting together, Defendants safeguarded themselves against competition in the lucrative diabetes medication markets. Defendants' conspiracy has succeeded in raising prices, by eliminating Contract Pharmacy 340B Drug Discounts, while protecting their market position from competition from one another.

8. That conspiracy is doing immense damage to plaintiff and other safety-net hospitals and clinics, and, consequently, to the healthcare options available to the patients they serve. Congress gave safety-net hospitals and clinics "access to [340B Drug Discounts] . . . to enable these entities to stretch scarce Federal resources as far as possible, reaching more eligible patients and providing more comprehensive services." H.R. Rep. No. 102-384(II), at 12 (1992). Defendants' conspiracy is having the opposite effect—limiting the ability of safety-net hospitals and clinics to reach more patients and provide more healthcare services by causing significant financial shortfalls for plaintiff and other safety-net hospitals and clinics alike. The savings that

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