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March 17, 2022

VIA ECF

Hon. Susan Richard Nelson
Sr. United States District Judge
United States District Court
316 North Robert Street
St. Paul, MN 55101

Re: *GS Labs, LLC v. Medica Insurance Company*, No. 21-cv-2400 (SRN/TNL) (D. Minn.)

Dear Judge Nelson:

We write on behalf of Medica Insurance Company to address new authority that bears on pending motions in the above case. As GS Labs notes, *see* ECF 44, the U.S. District Court for the District of Connecticut recently held that section 3202(a) of the CARES Act does not create an implied private right of action. It thus dismissed a CARES Act claim materially identical to the claim GS Labs asserts here. *See* ECF 44-1 (Order, *Murphy Med. Assocs., LLC v. Cigna Health & Life Ins. Co.*, No. 3:20-cv-01675 (D. Conn. Mar. 11, 2022)). The court held (1) nothing "in the text or structure of the CARES Act . . . suggests that Congress intended to afford [laboratories] with a privately enforceable remedy"; (2) silence on the issue in the legislative record confirmed Congress "'manifested no intent to provide a private right of action,'"; and (3) the contention that, without a private right of action, the statute was "'worthless'" amounted to a "policy" argument that failed to provide "an indication that Congress intended to create" a private remedy, as required by modern Supreme Court precedent. *Id*. at 4-10 (citations omitted).

GS Labs submitted a notice of this adverse authority. *See* ECF 44. But rather than confine itself to notifying the Court, GS Labs made four arguments as to why the opinion "is not persuasive." Local Rule 7.1(i) prohibits unsolicited memoranda of law such as this. To the extent the Court considers GS Labs' arguments, Medica requests leave to respond as follows.

- First, GS Labs argues that "*Murphy Medical* does not address and analyze each of the four *Cort* factors." But precedent dictates that where a court

"[f]ind[s] no indication in either the text . . . or the structure of the [statute] that Congress intended to imply a private cause of action," it "need not look further." *Syngenta Seeds, Inc. v. Bunge N. Am., Inc.*, 773 F.3d 58, 63 (8th Cir. 2014) (citing *Alexander v. Sandoval*, 532 U.S. 275, 288-291 (2001). As the *Murphy Medical* court correctly held, there is nothing "in the text or structure of the CARES Act which suggests that Congress intended to afford [laboratories] with a privately enforceable remedy." ECF 44-1 at 8.

- GS Labs contends that the "plaintiff[s] in *Murphy Medical* failed to identify 'anything in the text or structure of the CARES Act'" supporting a private right of action, whereas "GS Labs has identified in extensive detail why the text and structure of the CARES Act" support a private right of action. But the plaintiffs in *Murphy Medical* pointed to the same portion of the statute stating that insurers "shall reimburse" providers, making effectively the same argument GS Labs has advanced here. *See* ECF 41-1 at 8.

- GS Labs contends that, in contrast to its own papers, the *Murphy Medical* plaintiffs did not point to "facts" in the legislative record or elsewhere supporting a private right of action. Setting aside that GS Labs has itself conceded the "lack of any discussion on private causes of action" in the legislative history of the CARES Act, and has raised arguments like those advanced by the *Murphy Medical* plaintiffs, ECF 39 at 23-26, GS Labs does not explain how "facts" can alter the statutory analysis here. GS Labs also claims that the *Murphy Medical* court "impl[ied]" that additional facts could have led to a different result. But the portion of the opinion GS Labs cites *denied* the plaintiffs leave to amend, noting only they did not "propose additional factual allegations" to justify granting leave. ECF 44-1 at 11 n.6.

- GS Labs suggests that the *Murphy Medical* court rested its holding on the assumption that federal agencies may enforce the CARES Act. Not so. Just as Medica has explained, *see* ECF 42 at 6, the court held the contention "that the legislation is 'worthless' if there is not an implied right of action for medical providers . . . . may provide a good policy reason to create a private right of action, [but] it does not provide an indication that Congress intended to create such a right." ECF 44-1 at 9 (citing *Sandoval*, 532 U.S. at 286-87).

We thank the Court for its attention to this matter.

Respectfully,

/s/ Jamie R. Kurtz
Jamie R. Kurtz