UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GUARDIAN FLIGHT, LLC, Plaintiff, v. AETNA HEALTH, INC., and MEDICAL EVALUATORS OF TEXAS ASO, LLC, Defendants.	§ § § § § § § § § §	CIVIL ACTION NO. 4:22-cv-03805 Hon. Alfred H. Bennett

CONSOLIDATED WITH

REACH AIR MEDICAL SERVICES LLC, CALSTAR AIR MEDICAL SERVICES, LLC and GUARDIAN FLIGHT, LLC, Plaintiffs, v. KAISER FOUNDATION HEALTH PLAN INC., and MEDICAL EVALUATORS OF TEXAS ASO, LLC, Defendants.	§ § § § § § § § § §	CIVIL ACTION NO. 4:22-cv-03979

GUARDIAN FLIGHT, LLC'S RESPONSE
IN OPPOSITION TO AETNA HEALTH, INC'S
MOTION TO DISMISS PLAINTIFF'S ORIGINAL COMPLAINT AS MOOT

Plaintiff Guardian Flight, LLC ("Guardian") opposes Defendant Aetna Health, Inc's ("Aetna") Motion to Dismiss Plaintiff's Original Complaint as Moot ("Motion"). Guardian would respectfully show the Court as follows:

INTRODUCTION

Aetna has already made this argument once, and failed. The day before oral argument on Aetna's ***other*** motion to dismiss, Aetna made a desperate, eleventh-hour attempt to settle this case

without Guardian's consent, notifying this Court that because it had offered to pay a "relatively small amount," Guardian's claim was "for all intents and purposes, resolved." Unsurprisingly, it was not.

This Court correctly rejected Aetna's argument then, and it should do so now. The Supreme Court and this Circuit have held that a defendant seeking to render a case moot through voluntary action bears a heavy burden to show that the allegedly wrongful conduct could not reasonably be expected to recur. Aetna has failed to meet this burden; in fact, it has not even attempted to do so. But more to the point, what Aetna attempts here runs contrary to well-settled law and lacks any legal basis. Aetna has provided no case law—nor could Guardian locate any—stating that a defendant may render a case moot by offering relief that the plaintiff has not requested. Finally, this case falls squarely within the narrow mootness exception for disputes capable of repetition, yet evading review. Aetna seeks to completely avoid judicial review for any misconduct in the IDR process by paying off the individual underlying claim. If it is allowed to do so here, it will be free to continue misrepresenting its QPA, picking off IDR challenges by rendering them moot as they arise.

This motion is not an attempt "to conserve the parties' and Court's resources," as Aetna claims. It is part of Aetna's kitchen-sink approach—including a 12(b)(6) motion to dismiss, a motion for protection from discovery, and boilerplate, meritless discovery responses—to avoiding any judicial review or discovery into Aetna's illegal conduct under the No Surprises Act. This Court should recognize Aetna's motion for the gamesmanship it is and deny it.

BACKGROUND

Aetna moved to dismiss this case under Fed. R. Civ. P. 12(b)(6) on December 9, 2022. Oral argument on Aetna's motion was set for April 21, 2023. The day before the hearing, Aetna filed a letter with this Court, claiming that because it had offered to pay Guardian "the entire

disputed amount of $24,776.67 without any admission of liability," Guardian's claim was, "for all intents and purposes, resolved." Doc. 36. Guardian responded the same day, noting that the Complaint seeks only declaratory and equitable relief—not damages—and that even if Aetna's attempted payment would moot the claim, an exception to mootness would apply. At oral argument, this Court denied Aetna's request after confirming with Guardian that Aetna's offer "is rejected and does not resolve the case to [Guardian's] satisfaction." Doc. 40 at 9:16-17. When Aetna's counsel requested permission to file a motion to "fully brief the issues," the Court stated that it would "deny it on the record," as it had "heard from [Guardian's] counsel that they do not accept your offer," and that the Court would not "compel them to take it." *Id.* at 10: 1-3. Aetna insisted on briefing the issue, promising to "submit authorities as to why [this case is] an advisory opinion." *Id.* at 10:12-13. Aetna has failed to deliver.

LEGAL STANDARD

"Federal Rule of Civil Procedure 12(b)(1) governs challenges to a court's subject matter jurisdiction." *Dalio Holdings I, LLC v. WCW Houston Properties, LLC*, No. 4:18-CV-1882, 2020 WL 13413072, at *1 (S.D. Tex. Oct. 5, 2020). "A district court may find a lack of subject matter jurisdiction on either: '(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.'" *Id.* (citing *Wilson v. Houston Cmty. Coll. Sys.*, 955 F.3d 490, 494-95 (5th Cir. 2020). "[A] court analyzing mootness in the early stages of litigation need only ask whether the plaintiff's requested relief is so implausible that it may be disregarded on the question of jurisdiction." *Dierlam v. Trump*, 977 F.3d 471, 477 (5th Cir. 2020)(citation omitted).

The party responding to the 12(b)(1) motion normally bears the burden of proving that subject-matter jurisdiction exists. *Wilson v. Houston Cmty. Coll. Sys.*, 955 F.3d 490, 494–95 (5th Cir. 2020). That said, a different standard is appropriate when a defendant attempts to render a

case moot through voluntary action. The Supreme Court and this Circuit place the burden on the defendant, finding that a "stringent standard is appropriate when considering voluntary cessations of [defendant's] violations because it 'protects plaintiffs from defendants who seek to evade sanction by predictable protestations of repentance and reform.'" *Envtl. Conservation Org. v. City of Dallas*, 529 F.3d 519, 527 (5th Cir. 2008) (citing *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 66 (1987); *see also Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 66 (1987) (quoting *United States v. W.T. Grant Co.,* 345 U.S. 629, 633 (1953) ("In seeking to have a case dismissed as moot, [] the defendant's burden 'is a heavy one.'")). Under this standard, "[t]he defendant must demonstrate that it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Carr v. Alta Verde Indus., Inc.*, 931 F.2d 1055, 1062 (5th Cir. 1991) (internal quotation omitted).

"Ultimately, a motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle plaintiff to relief." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (citing *Home Builders Ass'n of Miss., Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998).

ARGUMENT AND AUTHORITIES

I. Aetna's unaccepted payment does not moot this dispute.

Aetna's attempt to render this dispute moot should be denied, as it has no basis in law or fact. The Fifth Circuit places a heavy burden on defendants claiming that a dispute is moot based on voluntary action—one that Aetna has not met. Further, Aetna declares this lawsuit moot when it has not tendered relief for any of the injury suffered by Guardian, instead offering monetary damages where Guardian seeks none. That is not the law. Finally, this dispute is capable of

repetition, yet evading review, as Aetna would be able to completely avoid judicial review of its misconduct if it is allowed to moot cases by paying off the underlying claim.

A. Aetna offers no evidence that its wrongful behavior could not reasonably be expected to recur.

The Fifth Circuit's standard "for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 325 (5th Cir. 2009), aff'd sub nom. *Sossamon v. Tex.*, 563 U.S. 277 (2011) (internal quotations omitted) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Services (TOC), Inc.*, 528 U.S. 167 (2000)). "This is a heavy burden, which must be born [sic] by the party asserting mootness." *Id.*

Aetna does not even attempt to meet its burden. Guardian seeks relief on several grounds, including that Aetna "misrepresented the facts by submitting a purported QPA that was not properly calculated under federal law." *Compl.* ¶ 35. In its motion to dismiss, Aetna does not promise to change its conduct, explain how it is calculating its QPA correctly, or how the incorrect QPA calculation could not reasonably be expected to recur. Rather than promise that its conduct will not continue, Aetna "expressly denies any liability." Ex. A May 5, 2023 Letter from K. Strahan to A. Schramek. Aetna's motion to dismiss must be denied for this reason alone.

B. Aetna has failed to tender relief for any of the injury suffered by Guardian.

Aetna's motion to dismiss suffers from another fatal flaw: Guardian seeks declaratory and injunctive relief—not money. Yet it is Aetna's position that Guardian's "declaratory-relief claims themselves are mooted by Aetna's payment." Doc. 46 at 10. This position, unsupported by the law, should be rejected, and Aetna's motion denied.

To begin, Aetna does not cite (nor could Guardian locate) any case law suggesting that claims for declaratory or injunctive relief can be mooted through a defendant's unsolicited tender of monetary payment.[1] In fact, the overwhelming weight of courts hold otherwise.

This Circuit has held that "a suit may become moot only as to a particular form of relief." *Wilson v. Birnberg*, 667 F.3d 591, 595 (5th Cir. 2012). Thus, courts analyze the question of mootness "separately on the issues of money damages and the propriety of equitable relief." *Henschen v. City of Houston*, 959 F.2d 584, 587 (5th Cir. 1992). It is also well-settled that "[a]n incomplete offer of judgment—that is, one that does not offer to meet the plaintiff's full demand for relief—does not render the plaintiff's claims moot." *Payne v. Progressive Fin. Services, Inc.*,

[1] In each of the cited cases by Aetna, Dkt. 46 at 6 n. 6, where there were claims for relief other than monetary damages, the court maintained jurisdiction over those claims after payment was tendered. *See Perez v. Ohio Bell Tel. Co*., 655 F. App'x 404 (6th Cir. 2016) (request for money damages was satisfied by the grant of requested relief to employees, but maintaining jurisdiction over claim for injunctive relief); *Christian Coal of Fla., Inc. v. United States*, 662 F.3d 1182 (11th Cir. 2011) (issuance of tax refund satisfied the taxpayer's claim for monetary relief, but separately analyzing requests for declaratory and injunctive relief, the Declaratory Judgment Act and Anti-Injunction Act as applied to federal tax matters prevented judicial review of the claims of these types of relief.); *Pakovich v. Verizon LTD Plan*, 653 F.3d 488 (7th Cir. 2011) (plaintiff's "benefit claim became moot when the plan paid it in full, but [the court] retained equitable jurisdiction to adjudicate the plaintiff's [claims for other relief.]"); *Silk v. Metro. Life Ins. Co*., 310 F. App'x 138 (9th Cir. 2009) (payment of "own occupation" benefits mooted plaintiff's claim for those benefits, but plaintiff's claim for other benefits were not mooted by this payment.); *Wilkins v. U.S. Dep't of Treasury*, 2023 WL 2482974, at *3 (W.D. Va. Mar. 13, 2023) (plaintiff's claims for specific tax refunds were mooted by payment of those tax refunds, but claims for other tax refunds were not mooted by this payment because "[w]here only a portion of a case has been mooted by subsequent events, the court loses jurisdiction [only] over that portion."); *Young v. Reliance Standard Life Ins. Co*., 2022 WL 1105752 (W.D. Tex. Apr. 13, 2022) (declaratory and injunctive relief sought alongside a claim for benefits were mooted by declaration of defendant to cease the challenged conduct of offsetting the benefits); *Kuntze v. Josh Enterprises, Inc*., 365 F. Supp. 3d 630 (E.D. Va. 2019) (payment tendered to plaintiffs for unpaid wages could not moot plaintiffs' claims for those wages because court could not be certain without further discovery that the payment constituted "complete relief"); *Price v. Berman's Auto., Inc*., 2016 WL 1089417 (D. Md. Mar. 21, 2016) (check for amount sought as money damages could moot the claim for those damages but could not moot plaintiff's fraud claim because it would be possible for the plaintiff to receive further relief as a result of the litigation); *Leyse v. Lifetime Entm't Servs., LLC*, 2016 WL 1253607 (S.D.N.Y. Mar. 17, 2016) (defendant furnishing "full relief" to the plaintiff by payment of the amount sought in the complaint could moot claims for money damages of that amount).

748 F.3d 605, 607 (5th Cir. 2014) (citing *Hrivnak v. NCO Portfolio Mgmt., Inc.*, 719 F.3d 564, 567–70 (6th Cir. 2013); *Zinni v. ER Solutions, Inc.*, 692 F.3d 1162, 1167-68 (11th Cir. 2012); *Gates v. Towery*, 430 F.3d 429, 431 (7th Cir. 2005). "When a defendant does not offer the full relief requested, the plaintiff maintains a personal stake in the outcome of the action, the court is capable of granting effectual relief outside the terms of the offer, and a live controversy remains." *Id.* The Supreme Court has recognized that declaratory relief is distinct from damages in that it seeks to modify the ***behavior*** of the defendant. In *Hewitt v. Helms*, the Court observed that with declaratory judgments, "[t]he real value of the judicial pronouncement—what makes it a proper judicial resolution of a 'case or controversy' rather than an advisory opinion—is in the settling of some dispute ***which affects the behavior of the defendant towards the plaintiff.***" 482 U.S. 755, 761 (1987) (emphasis in original).

In this Circuit, "[d]efendant-induced mootness is viewed with caution because 'there exists some cognizable danger of recurrent violation' where 'a defendant ... follows one adjudicated violation with others.'" *Fontenot v. McCraw*, 777 F.3d 741, 747 (5th Cir. 2015) (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633-634 (1953)). "[E]ven when the primary relief sought is no longer available, being able to imagine an alternative form of relief is all that's required to keep a case alive." *Dierlam*, 977 F.3d 471 at 476-77 (internal quotations omitted). "So '[a]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.'" *Id.* at 477 (citing *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307-08 (2012)). Only if an intervening event renders the court unable to grant the litigant "***any effectual relief whatever***" is the case is moot. *Id.* at 476 (emphasis added).

Other courts examining circumstances where defendants argued mootness based on voluntary action have distinguished between types of relief offered. For example, in *Johansen v.*

Liberty Mut. Grp., Inc., the court found that the defendant's "effort to moot [plaintiff's] claims fails if only because [it] has not shown that it has provided all of the relief sought by [plaintiff] in his Complaint and there remains relief that can be granted by this Court." No. 1:15-CV-12920-ADB, 2016 WL 7173753, at *4 (D. Mass. Dec. 8, 2016)). Not even going so far as to analyze each element of relief sought by plaintiff, the court looked only at "the injunctive relief requested by Plaintiff and that offered by [defendant] [was] enough to establish that [defendant] ha[d] not provided all of the relief sought by Plaintiff." *Id.* at *4. The court compared the broad injunction sought by plaintiff against the "narrow injunction offered by [defendant],"concluding that "it is clear that [Plaintiff] has not received all of the relief he seeks, and therefore his claims are not moot."

In *Radha Geismann, M.D., P.C. v. ZocDoc, Inc.*, the Second Circuit found that an offer of judgment for maximum statutory damages plus reasonable attorney's fees and an injunction preventing the defendant from committing the alleged violations ***still*** did not moot the plaintiff's claims for damages and injunctive relief because the plaintiff rejected the offer. As the court held, the plaintiff had "not been compensated in satisfaction of its claim, which would require, at a minimum, its acceptance of a valid offer." 850 F.3d 507, 510 (2d Cir. 2017).

Aetna argues that "the intervening circumstance that deprives the Court of subject-matter jurisdiction is Aetna's payment of $36,568.47, which represents the difference between the amount Aetna (and the member) has already paid ($31,965.53) and the amount Guardian Flight sought as complete relief when it first billed Aetna for the air-ambulance transport ($68,534.00)." Doc. 46 at 6.

Aetna's attempt to equate a federal lawsuit with an initial bill for payment should be rejected. But more to the point, Aetna deliberately mischaracterizes the nature of the dispute.

Guardian is not seeking damages—it is asking for injunctive and declaratory relief. Guardian is not asking to litigate the merits of the appropriate amount of payment for the IDR award, but whether Aetna obtained the award through improper means. Complete relief, as Guardian explained to this Court, would require Aetna to make a judicial admission that it misrepresented its QPA, that accordingly the award it received was obtained through undue means, and that the award should therefore be vacated. *See* Doc. 40 at 7:12-25 . Aetna does not offer ***any*** of the relief that Guardian seeks. On the other hand, this Court can grant Guardian relief by issuing declaratory relief in its favor. For relief, Guardian asks that the Court vacate the arbitration award at issue and order a rehearing. *Compl.* ¶ 41. Guardian also asks that this Court

> declare that: 1) Aetna made a misrepresentation of fact to MET when it submitted what it represented was its QPA for the claim; 2) Aetna procured the IDR award at issue through misrepresentations and undue means; and 3) by applying an illegal presumption in favors of the QPA, the reviewer at MET revealed evident partiality, committed prejudicial misbehavior, and exceeded its powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Id. The declaratory relief that Guardian seeks has multiple uses. Under the NSA, an IDR entity can consider any further information related to an offer and submitted by a party. 42 U.S.C. § 300gg-112(b)(5)(B)(ii). A court's declaratory judgment that Aetna misrepresented its QPA would be relevant to an IDR entity's determination, and would be valuable to Guardian in this and future IDR proceedings.[2]

Aetna's logic—that it can unscramble the egg by offering a monetary payment at this time—is merely wishful thinking. Certainly, Aetna could have avoided this lawsuit had it not

[2] Guardian notes that Aetna's contention that the disputed amount is capped at billed charges is wrong. Guardian's IDR offers, which in general represent the billed charge, encompass a number of factors, including the cost to Guardian. Given that Aetna has forced Guardian to go through the IDR process and file a lawsuit in federal court, the costs associated with the claim have indisputably risen.

misrepresented its QPA to MET and secured an award by undue means. But it did not do so, forcing Guardian to sue for rehearing and declaratory relief. This Court has a live controversy in front of it, and Aetna's motion to dismiss should be denied.

C. This dispute can repeat, yet evade review.

Aetna's argument that the capable-of-evading-review exception does not apply essentially boils down to this dispute not being "an exceptional circumstance." Doc. 46 at 11. But if the mootness exception does not apply here, it does not apply anywhere.

This case meets both elements of the exception. Should this case be dismissed as moot, the parties will not have engaged in discovery or litigated on the merits. Aetna would be free to continue misrepresenting its QPA, thereby securing IDR awards through undue means. Any time that Guardian—or any other healthcare provider—could mount a good-faith, supportable challenge to an award, Aetna could simply agree to pay the difference for the underlying claim, modifying its behavior subsequently to better avoid detection. Since the filing of this lawsuit, Guardian has lost several IDR disputes against Aetna, a number of them involving improbably low QPAs. This is not only a case that ***can*** repeat—it ***will***, unless this Court allows the parties to litigate on the merits.

II. Guardian's acceptance is material.

Aetna contends that Guardian's acceptance of Aetna's payment is "immaterial." Doc. 46 at 8. Aetna's citation to an out-of-circuit district court opinion, *Demmler v. ACH Food Companies, Inc.,* does not help its case.

Demmler interprets the Supreme Court's holding in *Campbell-Ewald Co. v. Gomez*. No. 15-13556-LTS, 2016 WL 4703875 (D. Mass. June 9, 2016). In *Campbell-Ewald*, the Supreme Court determined that unaccepted settlement offers do not moot a plaintiff's claims. *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153 (2016), as revised (Feb. 9, 2016). *Campbell-Ewald* left open

the possibility that actual payment of "complete relief," meaning the full amount of damages sought by and available to the plaintiff, may moot a plaintiff's claim. Subsequent decisions have held that where the tender of the payment is rejected, the claim is not mooted.

For example, in *Ung v. Universal Acceptance Corp.*, the court recognized that the defendant was trying to "shoehorn its case through *Campbell-Ewald*'s 'back door" by delivering a certified check to the plaintiff's counsel. 190 F. Supp. 3d 855, 860 (D. Minn. 2016). The court held that the delivery of the check did not moot the plaintiff's claims because he rejected the tendered check: "[H]aving rejected the tender, the parties remain adverse and, hence, retain the same stake in the litigation they had at the outset." *Id.* (internal quotations omitted) ("there is no principled difference between a plaintiff rejecting a tender of payment and an offer of payment").

Further, the *Demmler* court relied on facts not present here. In particular, the court considered that the plaintiff "does not seek the issuance of judgment for the plaintiff," which was a "hypothetical on which *Campbell-Ewald* reserved." 2016 WL 4703875, at *4. Here, Guardian seeks a judgment for declaratory and equitable relief against Aetna, and has rejected Aetna's attempt to settle this case. *See* Ex. B, May 22, 2023 Letter from A. Schramek to K. Strahan ("Guardian does not accept your settlement offer and will not be cashing the check you sent."). This Court already correctly decided once that it would not "compel" Guardian to take Aetna's offer. Doc. 40 at 10:3. It should do so again here.

III. Aetna seeks to permanently evade judicial review.

As this Court recognized at the 12(b)(6) motion to dismiss hearing, Aetna's mootness argument lacks merit. Aetna insists on making it nevertheless because it desperately wishes to avoid shedding any light on its IDR practices. This Court previously ruled that discovery into Aetna may go forward. Doc. 28 at 19: 19-22. Yet Aetna ignored this Court's ruling and refuses to participate in discovery. In practice, Aetna has stonewalled every step of the way, including by

asserting boilerplate, groundless objections to discovery, as well as this meritless mootness argument. *See* Exs. C; D; Doc. 48 at 11 ("A stay of discovery pending resolution of a motion to dismiss is particularly appropriate, whereas here, there are serious doubts over whether the Court has jurisdiction to decide the dispute.").

This Court should not allow Aetna's stalling tactics to continue. The NSA explicitly provides for judicial review; Aetna wishes there were none. This case involves a live, justiciable controversy on the legality of Aetna's conduct under the NSA, and Aetna's motion to dismiss should be denied.

CONCLUSION

For all these reasons, Guardian respectfully requests that Aetna's Motion to Dismiss Plaintiff's Original Complaint as Moot be denied.

Dated: May 30, 2023

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

/s/ Adam T. Schramek
Adam T. Schramek, Lead Counsel
Texas Bar No. 24033045
Federal ID: 431403
98 San Jacinto Boulevard
Suite 1100
Austin, TX 78701-4255
Telephone: (512) 474-5201
Facsimile: (512) 536-4598
adam.schramek@nortonrosefulbright.com

Abraham Chang
Texas Bar No. 24102827
Federal ID: 3831625
Dewey J. Gonsoulin III
Texas Bar No. 24131337
Federal ID: 3805035
1301 McKinney, Suite 5100
Houston, TX 77010-3095
Telephone: (713) 651-5151
Facsimile: (713) 651-5246
abraham.chang@nortonrosefulbright.com
dewey.gonsoulin@nortonrosefulbright.com

Attorneys for Guardian Flight, LLC

CERTIFICATE OF SERVICE

I certify that on May 30, 2023, a true and correct copy of the foregoing was served via the Court's ECF system on all counsel of record.

/s/ Adam T. Schramek
Adam T. Schramek

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GUARDIAN FLIGHT, LLC, Plaintiff, v. AETNA HEALTH, INC., and MEDICAL EVALUATORS OF TEXAS ASO, LLC, Defendants.	§	CIVIL ACTION NO. 4:22-cv-03805 Hon. Alfred H. Bennett

CONSOLIDATED WITH

REACH AIR MEDICAL SERVICES LLC, CALSTAR AIR MEDICAL SERVICES, LLC and GUARDIAN FLIGHT, LLC, Plaintiffs, v. KAISER FOUNDATION HEALTH PLAN INC., and MEDICAL EVALUATORS OF TEXAS ASO, LLC, Defendants.	§	CIVIL ACTION NO. 4:22-cv-03979

DECLARATION OF ADAM T. SCHRAMEK

1. My name is Adam T. Schramek. I am an attorney duly licensed by the State Bar of Texas to practice law in the state of Texas. I am also admitted to practice before the United States Supreme Court, the Fifth Circuit Court of Appeals, and all four federal district courts in Texas. I am a partner with Norton Rose Fulbright US LLP, which is representing Plaintiff Guardian Flight LLC ("Guardian") in the above captioned proceeding.

2. I attest that Exhibit A is a true and correct copy of the May 5, 2023 letter from M. Katherine Strahan to Adam T. Schramek.

3. I attest that Exhibit B is true and correct copy of the May 22, 2023 letter from Adam T. Schramek to M. Katherine Strahan.

4. I attest that Exhibit C is a true and correct copy of Aetna's objections and responses to Guardian's April 3, 2023 interrogatories.

5. I attest that Exhibit D is a true and correct copy of Aetna's objections and responses to Guardian's April 3, 2023 requests for production.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 30, 2023 *_/s/Adam T. Schramek_*

Adam T. Schramek

EXHIBIT A

HUNTON
ANDREWS KURTH

HUNTON ANDREWS KURTH LLP
600 TRAVIS, SUITE 4200
HOUSTON, TEXAS 77002-2929

TEL 713 • 220 • 4200
FAX 713 • 220 • 4285

KATHY STRAHAN
DIRECT DIAL 713 • 220 • 4125
EMAIL kstrahan@HuntonAK.com

May 5, 2023

Via Overnight Delivery

Guardian Flight LLC
c/o Adam T. Schramek
Norton Rose Fulbright US LLP
98 San Jacinto Boulevard, Suite 1100
Austin, TX 78701-4255

Re: Civil Action No. 4:22-cv-03805; *Guardian Flight, LLC v. Aetna Health Inc., et al*; In the United States District Court for the Southern District of Texas

Dear Adam:

Enclosed please find check no. 1142194, in the amount of $36,568.47, which represents Aetna's payment of the full balance of Guardian Flight, LLC's billed charges for the medical claim that is the subject of DISP-32032 and the above-referenced lawsuit, after Aetna's prior payment of $31,958.06 and the Member's co-insurance responsibility of $7.47 are applied.

Aetna makes this payment to avoid further litigation expenses and without waiver of any defenses or admission of any liability. In fact, Aetna expressly denies any liability.

Please note that the check is void after 90 days.

If you have any questions, please let me know.

Very truly yours,

M. Katherine Strahan

Enclosure(s)

Check No. 1142194

Hunton Andrews Kurth LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074
804 • 788 • 8200

68-2
510

Date: May 5, 2023

Pay: Thirty-six thousand five hundred sixty-eight and 47/100********** $ ***36,568.47***

Truist
Richmond, VA

Void After 90 Days

PAY TO THE ORDER OF:
Guardian Flight LLC
PO Box 199
West Plains, MO 65775-0199

⑈00114219⑈ ⑆051000020⑆ 0014580946⑈

Payee: Guardian Flight LLC
Vendor ID: 113226

Check #: 1142194
Check Date: 05/05/23

Invoice #	Reference #	Inv Date	Narrative	Invoice Amount	Discount Amount	Withheld Amount	Amount Paid
INV050423RS		05/04/23	Plaintiff's alleged damages in Guardian Flight, LLC v. Aetna Health Inc., et al; Civil Action No. 4:22-cv-03805.	36,568.47			36,568.47
					Check Total:		$36,568.47

EXHIBIT B

NORTON ROSE FULBRIGHT

May 22, 2023

By E-mail

Norton Rose Fulbright US LLP
98 San Jacinto Boulevard, Suite 1100
Austin, Texas 78701-4255
United States of America

Direct line +1 512 536 5232
adam.schramek@nortonrosefulbright.com

Tel +1 512 474 5201
Fax +1 512 536 4598

M. Katherine Strahan
Hunton Andrews Kurth
600 Travis Suite 4200
Houston, Texas 770002

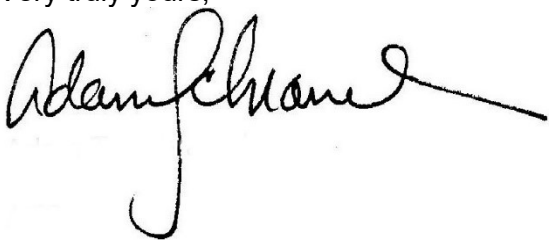
Re: Case No. 4:22-cv-03805; *Guardian Flight, LLC v. Aetna Health Inc.*, *et al*; In the United States District Court for the Southern District of Texas.

Dear Katherine:

I write on behalf of Plaintiff Guardian Flight, LLC in the above captioned matter in response to your letter of May 5, 2023.

Guardian does not accept your settlement offer and will not be cashing the check you sent. As I explained on the record at the recent hearing, Plaintiff is not seeking any damages or payments in this lawsuit. Guardian only seeks equitable and declaratory relief relating to Aetna's conduct and representations during the Independent Dispute Resolution process.

Very truly yours,



Adam T. Schramek

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GUARDIAN FLIGHT, LLC, Plaintiff, VS. AETNA HEALTH INC., *et al.* Defendants.	§ § § § § § § § §	Civil Action No. 4:22-cv-03805

AETNA HEALTH INC.'S OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: Plaintiff Guardian Flight, LLC by and through its attorneys of record, Adam T. Schramek, Norton Rose Fulbright US LLP, 98 San Jacinto Boulevard, Suite 1100, Austin, TX 78701, and Abraham Chang and Dewey J. Gonsoulin III, Norton Rose Fulbright US LLP, 1301 McKinney, Suite 5100, Houston, TX 77010.

Subject to its motion for a protective order, Defendant Aetna Health Inc. ("Aetna") [1] hereby serves these objections to Plaintiff Guardian Flight, LLC's First Set of Interrogatories to Defendant Aetna Health, Inc.

[1] Guardian Flight's complaint names "Aetna Health, Inc." as a defendant. The correct Aetna entity that administered the health plan at issue is Aetna Life Insurance Company.

Respectfully submitted,

By: _____

JOHN B. SHELY
Texas State Bar No.18215300
jshely@HuntonAK.com
Attorney-in-Charge
M. KATHERINE STRAHAN
Texas State Bar No. 24013584
kstrahan@HuntonAK.com
DAVID HUGHES
Texas State Bar No. 24101941
DHughes@huntonAK.com
HUNTON ANDREWS KURTH LLP
600 Travis, Suite 4200
Houston, Texas 77002
Telephone: (713) 220-4200
Facsimile: (713) 220-4285

Attorneys for Defendant
Aetna Health Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2023, a true and correct copy of the foregoing was served by email on all counsel of record.

_____
M. Katherine Strahan

OBJECTIONS AND ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1:

Explain in detail and with reference to the agreements you produce in response to RFP No. 4 Your calculation of (1) each QPA You contend applies to the IDR Dispute, and (2) each QPA You claim You shared with Plaintiff.

OBJECTION:

Aetna objects to this interrogatory as improper, as the documents and information Guardian Flight seeks are not discoverable in IDR proceedings. The Court has already ruled that Guardian Flight is not entitled to the position statement Aetna sent MET. This interrogatory is simply an end-run around that order. Indeed, the interrogatory concerns RFP No. 4, which concerns "the transport at issue [in this case]" and seeks information concerning how Aetna calculated its QPA. As explained, the Department of Labor's implementation guidelines expressly state: "[P]lans and issuers are not obligated to demonstrate that a QPA was calculated in accordance with the requirements of 26 CFR 54.9816-6T(c), 29 CFR 2590.716-6(c), and 45 CFR 149.140(c) unless required to do so by an applicable regulator." DEP'T OF LABOR, *FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementations Part 55*, pg. 16, available at https://perma.cc/B7L7-QEKM.

Moreover, the Code of Federal Regulations already dictates the scope of information to which a provider such as Guardian Flight is entitled. *See* 45 C.F.R. § 149.140(d)(2). As Exhibit 1 to Aetna's motion to dismiss demonstrates, Aetna sent Guardian Flight this very information. *Compare id., with* Dkt. 12-1. Guardian Flight is not entitled to additional information simply because it believes—without any basis—that Aetna's QPA calculation contained a misrepresentation.

Aetna further objects to this discovery request as overbroad and disproportional to the needs of this case, including requiring "expl[anations] in detail." It is also ambiguous regarding the phrase, "with reference to the agreements."

Aetna also objects to this request as seeking confidential proprietary information, including trade-secret information. In addition, this request seeks the confidential information of Guardian Flight's competitors, which Aetna is contractually prohibited from disclosing.

INTERROGATORY NO. 2:

Explain in detail and with reference to the documents you produce in response to RFP Nos. 1 and 2, each step taken to calculate QPAs for air ambulance claims.

OBJECTION:

Aetna objects to this interrogatory as improper, as the documents and information Guardian Flight seeks are not discoverable in IDR proceedings. The Court has already ruled that Guardian Flight is not entitled to the position statement Aetna sent MET. This interrogatory is simply an end-run around that order. Indeed, the interrogatory concerns RFP Nos. 1 and 2, the latter of which asks for documents "sufficient for a person knowledgeable about QPA regulations to replicate Aetna's calculation of the QPA for the transport at issue in this proceeding." Now this interrogatory literally asks Aetna to explain each step taken to calculate its QPA. As explained, the DOL's implementation guidelines expressly state: "[P]lans and issuers are not obligated to demonstrate that a QPA was calculated in accordance with the requirements of 26 CFR 54.9816-6T(c), 29 CFR 2590.716-6(c), and 45 CFR 149.140(c) unless required to do so by an applicable regulator." DEP'T OF LABOR, *FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementations Part 55*, pg. 16, available at https://perma.cc/B7L7-QEKM.

Moreover, the Code of Federal Regulations already dictates the scope of information to which a provider such as Guardian Flight is entitled. *See* 45 C.F.R. § 149.140(d)(2). As Exhibit 1 to Aetna's motion to dismiss demonstrates, Aetna sent Guardian Flight this very information. *Compare id., with* Dkt. 12-1. Guardian Flight is not entitled to additional information simply because it believes—without any basis—that Aetna's QPA calculation contained a misrepresentation.

Aetna also objects to this request as vague and nonsensical as worded through its reference to Requests for Production Numbers 1 and 2.

Aetna also objects to this discovery request as overbroad, unduly burdensome, and disproportional to the needs of this case, which concerns a single IDR award.

Aetna further objects to this discovery request as it seeks information that is irrelevant.

Aetna objects to this discovery request, as it seeks confidential proprietary information that is Aetna's trade-secret information.

INTERROGATORY NO. 3:

For each Person with whom You have contracted rates for air ambulance transport services in Nebraska, list the total number of claims they submitted to You for air ambulance transport services since January 1, 2021.

OBJECTION:

Aetna objects to this interrogatory as improper, as the documents and information Guardian Flight seeks are not discoverable in IDR proceedings. The Court has already ruled that Guardian Flight is not entitled to the position statement Aetna sent MET. This interrogatory is simply an end-run around that order. As explained, the DOL's implementation guidelines expressly state: "[P]lans and issuers are not obligated to demonstrate that a QPA was calculated in accordance with the requirements of 26 CFR 54.9816-6T(c), 29 CFR 2590.716-6(c), and 45 CFR 149.140(c) unless required to do so by an applicable regulator." DEP'T OF LABOR, *FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementations Part 55*, pg. 16, available at https://perma.cc/B7L7-QEKM.

Aetna further objects to this request as overbroad and seeking irrelevant information.

Aetna also objects to this request to the extent it seeks confidential and proprietary information, and to the extent it seeks the confidential and proprietary information of third-parties (including any competitors of Guardian Flight) that Aetna is contractually prohibited from disclosing.

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GUARDIAN FLIGHT, LLC,	§	
	§	
Plaintiff,	§	
VS.	§	Civil Action No. 4:22-cv-03805
	§	
AETNA HEALTH INC., *et al.*	§	
	§	
Defendants.	§	

AETNA HEALTH INC.'S OBJECTIONS TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION

TO: Plaintiff Guardian Flight, LLC by and through its attorneys of record, Adam T. Schramek, Norton Rose Fulbright US LLP, 98 San Jacinto Boulevard, Suite 1100, Austin, TX 78701, and Abraham Chang and Dewey J. Gonsoulin III, Norton Rose Fulbright US LLP, 1301 McKinney, Suite 5100, Houston, TX 77010.

Subject to its motion for a protective order, Defendant Aetna Health Inc. ("Aetna")[1] hereby serves these objections to Plaintiff Guardian Flight, LLC's First Requests for Production to Aetna.

[1] Guardian Flight's complaint names "Aetna Health, Inc." as a defendant. The correct Aetna entity that administered the health plan at issue is Aetna Life Insurance Company.

Respectfully submitted,

By: _____

JOHN B. SHELY
Texas State Bar No.18215300
jshely@HuntonAK.com
Attorney-in-Charge
M. KATHERINE STRAHAN
Texas State Bar No. 24013584
kstrahan@HuntonAK.com
DAVID HUGHES
Texas State Bar No. 24101941
DHughes@huntonAK.com
HUNTON ANDREWS KURTH LLP
600 Travis, Suite 4200
Houston, Texas 77002
Telephone: (713) 220-4200
Facsimile: (713) 220-4285

Attorneys for Defendant
Aetna Health Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2023, a true and correct copy of the foregoing was served by email on all counsel of record.

_____
M. Katherine Strahan

OBJECTIONS AND RESPONSES TO
PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Documents and Communications sufficient to show Aetna's policy or practice for the initial amount it pays to out-of-network air ambulance providers for transports provided to patients with Aetna health insurance or a health plan administered by Aetna.

OBJECTION:

Aetna objects to this request as improper, as the documents and information Guardian Flight seeks are not discoverable in IDR proceedings. Indeed, the Department of Labor's ("DOL") implementation guidelines expressly state: "[P]lans and issuers are not obligated to demonstrate that a QPA was calculated in accordance with the requirements of 26 CFR 54.9816-6T(c), 29 CFR 2590.716-6(c), and 45 CFR 149.140(c) unless required to do so by an applicable regulator." DEP'T OF LABOR, *FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementations Part 55*, pg. 16, available at https://perma.cc/B7L7-QEKM.

Moreover, the Code of Federal Regulations already dictates the scope of information to which a provider such as Guardian Flight is entitled. *See* 45 C.F.R. § 149.140(d)(2). As Exhibit 1 to Aetna's motion to dismiss demonstrates, Aetna sent Guardian Flight this very information. *Compare id., with* Dkt. 12-1.

Through this request, Guardian Flight seeks to usurp the authority Congress has delegated to the Departments (HHS, DOT, and DOL) and impermissibly asks for information concerning Aetna's QPA calculation. Ironically, Guardian Flight's counsel has expressly acknowledged the confidential nature of IDR submissions, as well as the fact that parties to an IDR arbitration are not entitled to discover materials submitted by the other party in support of its offer in one of the "related" proceedings in the Middle District of Florida. *See Med-Trans Corp., v. Capital Health Plan, Inc., et al.*, Case No. 3:22-cv-01077-TJC-JBT (M.D. Fla. 2023), Docket Entry 52 (Plaintiffs' Opposed Motion to Partially Redact Telephonic Preliminary Pretrial Conference Transcript) and Docket Entry 52-1 (Declaration of Adam T. Schramek).

Aetna objects to this request as overbroad (as it is not limited in scope or circumstances), unduly burdensome, and disproportional to the needs of this case. The request further appears to request information regarding countless health plans that are not at issue. Accordingly, it also seeks irrelevant information.

The Court already determined at the parties' initial scheduling conference that Guardian Flight is not entitled to the position statement Aetna sent to MET. This request is simply an end-run around that order.

Additionally, "sufficient to show" is vague and ambiguous.

Aetna also objects to this request as seeking confidential proprietary information, including Aetna's trade-secret information. In the "related" case in the Middle District of Florida, Guardian Flight's counsel expressly argued information used for or in the operation of a business that provides the business an advantage or an opportunity to obtain an advantage is trade-secret information. *See id.* The information sought by this request unquestionably satisfies that definition.

Aetna further objects to the phrase "policy or practice for the initial amount it pays" as vague and ambiguous in this context and to the extent it assumes facts not in evidence.

Aetna further objects to this request to the extent it seeks the confidential health information of third parties protected from disclosure by state and federal law.

REQUEST FOR PRODUCTION NO. 2:

Documents and Communications sufficient to show how Aetna calculates QPAs for out of network air ambulance claims. The documents produced should be sufficient for a person knowledgeable about QPA regulations to be able to replicate Aetna's calculation of the QPA for the transport at issue in this proceeding.

OBJECTION:

Aetna objects to this request as improper, as the documents and information Guardian Flight seeks are not discoverable in IDR proceedings. The Court has already ruled that Guardian Flight is not entitled to the position statement Aetna sent MET. This request is simply an end-run around that order. Indeed, the request literally asks for documents "sufficient for a person knowledgeable about QPA regulations to replicate Aetna's calculation of the QPA for the transport at issue in this proceeding."

Moreover, the Code of Federal Regulations already dictates the scope of information to which a provider such as Guardian Flight is entitled. *See* 45 C.F.R. § 149.140(d)(2). As Exhibit 1 to Aetna's motion to dismiss demonstrates, Aetna sent Guardian Flight this very information. *Compare id., with* Dkt. 12-1.

Aetna further objects to this request as overbroad, unduly burdensome, and disproportional to the needs of this case.

Aetna also objects to this request as seeking confidential and proprietary information, including Aetna's trade-secret information, and to the extent it seeks the confidential and proprietary information of third-parties (including any competitors of Guardian Flight) that Aetna is contractually prohibited from disclosing.

Additionally, "sufficient to show," including the associated "instruction," is vague and ambiguous.

REQUEST FOR PRODUCTION NO. 3:

Documents and Communications relating to the IDR Dispute or IDR Determination, other than what was submitted to or exchanged with MET. This request includes what is commonly referred to as a claim file, including all Explanation of Benefits or Payments that were created for the transport at issue in this proceeding.

OBJECTION:

Aetna objects to this request as improper, as the documents and information Guardian Flight seeks are not discoverable in IDR proceedings. The Court has already ruled that Guardian Flight is not entitled to the position statement Aetna sent MET. This request is simply an end-run around that order.

Moreover, the Code of Federal Regulations already dictates the scope of information to which a provider such as Guardian Flight is entitled. *See* 45 C.F.R. § 149.140(d)(2). As Exhibit 1 to Aetna's motion to dismiss demonstrates, Aetna sent Guardian Flight this very information. *Compare id., with* Dkt. 12-1.

Aetna further objects to this request as overbroad, unduly burdensome, and disproportional to the needs of this case. "Documents and Communications relating to the IDR Dispute or Determination" exceed the needs of this case, which concerns a single IDR award. Additionally, the request is not reasonably tailored to the issues in dispute.

Aetna objects to this request to the extent that, due to its overbreadth, it seeks privileged information, including information protected from discovery by the attorney-client privilege and/or the work-product doctrine, and/or Aetna's confidential and proprietary information and/or any confidential and proprietary information of third parties.

Aetna also objects to the assumptions regarding "claim files," as that term is vague and undefined in this context.

Further, Aetna objects to the request as the information sought is equally available to Guardian Flight. Indeed, Aetna has already produced the Explanation of Benefits before Guardian Flight initiated the open-negotiation period and, again, as an exhibit to one of its filings in this case.

Aetna further objects to this request to the extent it seeks the confidential health information of third parties protected from disclosure by state and federal law.

REQUEST FOR PRODUCTION NO. 4:

For the transport at issue in the IDR Dispute, produce the Documents, including network agreements and data sources, You used to calculate (1) each QPA You contend applies to the IDR Dispute and (2) each QPA You listed on the Explanation of Benefits or Payments.

OBJECTION:

Aetna objects to this request as improper, as the documents and information Guardian Flight seeks are not discoverable in IDR proceedings. The Court has already ruled that Guardian Flight is not entitled to the position statement Aetna sent MET. This request is simply an end-run around that order. Indeed, the request concerns "the transport at issue" and seeks information concerning how Aetna calculated its QPA.

Moreover, the Code of Federal Regulations already dictates the scope of information to which a provider such as Guardian Flight is entitled. *See* 45 C.F.R. § 149.140(d)(2). As Exhibit 1 to Aetna's motion to dismiss demonstrates, Aetna sent Guardian Flight this very information. *Compare id., with* Dkt. 12-1.

Aetna further objects to this request as overbroad and disproportionate to the needs of the case in requesting "all agreements and data sources." Additionally, the request is not reasonably tailored to the issues in dispute.

Aetna also objects to this request as seeking confidential proprietary information, including trade-secret information. In addition, this request seeks the confidential information of Guardian Flight's competitors, which Aetna is contractually prohibited from disclosing.

REQUEST FOR PRODUCTION NO. 5:

Documents and Communications relating to the "error that led to an incorrect QPA payment" as stated in the May 27, 2022 letter from Melissa Driscoll to Thomas Cook, attached hereto as Exhibit "A."

OBJECTION:

Aetna objects to this request as improper, as the documents and information Guardian Flight seeks are not discoverable in IDR proceedings. The Court has already ruled that Guardian Flight is not entitled to the position statement Aetna sent MET. This request is simply an end-run around that order.

Moreover, the Code of Federal Regulations already dictates the scope of information to which a provider such as Guardian Flight is entitled. *See* 45 C.F.R. § 149.140(d)(2). As Exhibit 1 to Aetna's motion to dismiss demonstrates, Aetna sent Guardian Flight this very information. *Compare id., with* Dkt. 12-1.

Aetna further objects to this request as seeking information that is irrelevant. Additionally, the term "[d]ocuments and [c]ommunications relating to" is vague and overbroad and disproportionate to the needs of the case, which concerns unrelated services.

Aetna objects to this request to the extent that, due to its overbreadth, it seeks privileged information, including information protected from discovery by the attorney-client privilege and/or the work-product doctrine, and/or Aetna's confidential and proprietary information and/or any confidential and proprietary information of third parties and/or the confidential medical information of third parties protected from disclosure by state and federal law.

REQUEST FOR PRODUCTION NO. 6:

Network contracts for each Person identified in Interrogatory No. 3 who has submitted zero claims for air ambulance transport services since January 1, 2021.

OBJECTION:

Aetna objects to this request as improper, as the documents and information Guardian Flight seeks are not discoverable in IDR proceedings. The Court has already ruled that Guardian Flight is not entitled to the position statement Aetna sent MET. This request is simply an end-run around that order. Indeed, the request seeks network contracts used to calculate the QPA in this case.

Moreover, the Code of Federal Regulations already dictates the scope of information to which a provider such as Guardian Flight is entitled. *See* 45 C.F.R. § 149.140(d)(2). As Exhibit 1 to Aetna's motion to dismiss demonstrates, Aetna sent Guardian Flight this very information. *Compare id., with* Dkt. 12-1.

Aetna also objects to this request to the extent it assumes facts not in evidence and because it is vague and confusing.

Aetna further objects to this request as overbroad and seeking irrelevant information.

Aetna also objects to this request as seeking confidential and proprietary information, and to the extent it seeks the confidential and proprietary information of third-parties (including any competitors of Guardian Flight) that Aetna is contractually prohibited from disclosing.

REQUEST FOR PRODUCTION NO. 7:

Documents and Communications relating to any Aetna decision or policy to contract with non-air ambulance providers for air ambulance transport services, such as the underlying fees schedules or contracted reimbursement rates set forth in the attached Exhibit "B."

OBJECTION:

Aetna objects to this request as improper, as the documents and information Guardian Flight seeks are not discoverable in IDR proceedings. The Court has already ruled that Guardian Flight is not entitled to the position statement Aetna sent MET. This request is simply an end-run around that order.

Moreover, the Code of Federal Regulations already dictates the scope of information to which a provider such as Guardian Flight is entitled. *See* 45 C.F.R. § 149.140(d)(2). As Exhibit 1 to Aetna's motion to dismiss demonstrates, Aetna sent Guardian Flight this very information. *Compare id., with* Dkt. 12-1.

Aetna also objects to the request as seeking irrelevant information and as assuming facts not in evidence, including that Aetna contracts with non-air ambulance providers *for* air ambulance services, and as relying on misinformation regarding Exhibit B.

Aetna objects to this request as overbroad, unduly burdensome, and disproportional to the needs of this case.

Aetna further objects to the phrase "decision or policy" as vague and ambiguous in this context. Indeed, the entire request is vague and ambiguous, as it seeks "[d]ocuments and [c]ommunications relating to any Aetna decision or policy to contract with non-air ambulance providers for air ambulance transport services[.]" As written, it's not clear what Guardian Flight means.

Aetna objects to this request to the extent that, due to its overbreadth, it seeks privileged information, including information protected from discovery by the attorney-client privilege and/or the work-product doctrine, and/or Aetna's confidential and proprietary information and/or any confidential and proprietary information of third parties.