UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

COMMUNITY INSURANCE COMPANY d/b/a ANTHEM BLUE CROSS AND BLUE SHIELD, Plaintiff, v. HALOMD, LLC et al., Defendants.	1:25-cv-00388-MWM

PLAINTIFF'S MOTION FOR LEAVE TO FILE RESPONSE TO DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

On April 13, 2026, Defendants[1] filed a Motion for Leave to File Notice of Supplemental Authority ("Motion," at ECF No. 52), which included Defendants' Notice of Supplemental Authority ("Notice" at ECF No. 52-1) and the Memorandum Opinion and Order from the case of *Anthem Blue Cross Life and Health Insurance Company, et al. v. HaloMD LLC, et al.,* No. 8:25-cv-01467-KES (C.D. Cal. Apr. 9, 2026) (the "California Decision") (ECF No. 52-2). If the Court grant Defendants' Motion, Anthem respectfully requests that the Court grant Anthem leave to file a response to the Notice. A copy of Anthem's proposed response is attached as **Exhibit A**.

This district frequently permits parties to file responses to notices of supplemental authority. *See e.g.*, *Miller v. A2 Healthcare, L.L.C.*, No. 1:05-cv-607, 2007 U.S. Dist. LEXIS 106559, at *3 (S.D. Ohio Jan. 12, 2007) (explaining "district courts in the Sixth Circuit frequently permit" parties to file responses to notices of supplemental authority); *Kennedy v. Lady Jane's Haircuts for Men Holding Co., LLC*, No. 1:23cv493, 2024 U.S. Dist. LEXIS 173554, at *2 (S.D. Ohio Sep. 25, 2024) (considering response to notice of supplemental authority); *McPheeters v.*

[1] Capitalized terms have the same meaning provided in Anthem's Memorandum of Law in Opposition to Defendants' Motions to Dismiss ("Opp." at ECF No. 47).

United Servs. Auto. Ass'n, 549 F. Supp. 3d 737, 740 (S.D. Ohio 2021) (same); *Kondash v. Kia Motors Am., Inc.*, No. 1:15-cv-506, 2019 U.S. Dist. LEXIS 226510, at *6 (S.D. Ohio Dec. 16, 2019) (same). Relatedly, the Southern District "has routinely found good cause to exist to permit a party to file a sur-reply to address an issue raised for the first time in a reply brief." *Geiger v. Pfizer, Inc.*, 271 F.R.D. 577, 580 (S.D. Ohio 2010) (citation omitted).

As explained in Anthem's response to the Notice, the California Decision is on appeal and suffers from at least three critical errors: it (1) contradicts controlling Supreme Court precedent regarding the standard of review for determining the scope of the NSA's Judicial Review Provision, (2) violates basic canons of statutory construction, and (3) ignores that like the statute, the NSA regulations state that the NSA's Judicial Review Provision applies only to IDRE payment determinations. *See* **Ex. A**. If the Court grants Defendants' Motion but denies Anthem leave to file a response, Anthem will have no opportunity to raise these critical errors to the Court. Accordingly, if the Court grants Defendants' Motion, Anthem requests that the Court grant leave to file the attached short response to the Notice explaining why the Court should decline to follow the erroneous California Decision. *Kennedy*, 2024 U.S. Dist. LEXIS 173554, at *2; *McPheeters*, 549 F. Supp. 3d at 740; *Kondash* 2019 U.S. Dist. LEXIS 226510, at *6; *Miller*, 2007 U.S. Dist. LEXIS 106559, at *3; *see Geiger*, 271 F.R.D. at 580.

For the foregoing reasons, Anthem respectfully requests that if the Court grants Defendants' Motion, that the Court grant Anthem leave to file the attached Response to Defendants' Notice of Supplemental Authority and for any other relief the Court deems appropriate.

Dated: April 15, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2026, I filed a copy of the foregoing document with the Court's e-filing system, which will serve electronic notification of the filing onto all counsel of record.

/s/ Jason T. Mayer

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PLAINTIFF'S RESPONSE TO DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

The court in *Anthem Blue Cross Life and Health Insurance Company, et al. v. HaloMD LLC, et al.,* No. 8:25-cv-01467-KES (C.D. Cal. Apr. 9, 2026) (the "California Action") dismissed the California Action without leave to amend based on its erroneous finding that the NSA's Judicial Review Provision applies to both IDRE payment determinations and eligibility decisions.[1] *See California Action* at ECF No. 135 (the "Decision"). The Decision was immediately appealed. *Id.* at ECF No. 137. This Court should decline to follow it, as it rests on at least three critical errors.

First, the Decision disregards controlling Supreme Court precedent regarding the standard of review. Per the Supreme Court, courts must (1) presume that Congress intended to preserve judicial review unless there is clear and convincing statutory language to the contrary, (2) resolve all ambiguities in favor of judicial review, and (3) interpret any limitation on judicial review narrowly. Opp. at 21-22 (citations omitted). The Decision does the opposite. It acknowledges that the text of the NSA's Judicial Review Provision solely applies to the IDRE's determination "under subparagraph (A)," which states that the IDRE will select one party's offer as the payment

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determination. Decision at 11. But it nonetheless held that the Judicial Review Provision implicitly extends to eligibility decisions because it claimed that per the NSA's regulations, "an IDRE's payment determination necessarily includes a determination of eligibility." *See id.* at 16, 18.

Second, the Decision violates basic canons of statutory construction. Courts "must presume that Congress 'says in a statute what it means and means in a statute what it says.'" *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (citation omitted). Nothing in the NSA suggests that IDREs would decide eligibility, much less clearly and convincingly forecloses judicial review of a fraudulent scheme involving thousands of knowingly ineligible disputes. *See* Opp. at 22-23. Yet the Decision erroneously reads provisions from the NSA's regulations into the Judicial Review Provision. *See* Decision at 11 ("It makes no difference whether the directive to first determine eligibility is in the NSA's text or the implementing regulations."). "If Congress wanted the jurisdictional bar to encompass decisions specified . . . by regulation," it "could easily have said so." *Kucana v. Holder*, 558 U.S. 223, 248 (2010). Indeed, Congress has done so in other statutes. *E.g.*, 5 U.S.C. § 805 ("No determination, finding, action, or omission under this chapter shall be subject to judicial review."); 38 U.S.C. § 511 ("The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of [veteran] benefits. . . the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court[.]"). But with the NSA, Congress narrowly applied the Judicial Review Provision only to the IDRE's payment determination. Opp. at 22-23.

Third, the Decision ignores that the NSA regulations authorizing IDREs to evaluate eligibility (1) distinguish between payment determinations and eligibility decisions, and (2) state that the NSA's Judicial Review Provision applies only to payment determinations, not eligibility decisions. Opp. at 22-23 (discussing 45 C.F.R. § 149.510(c)(4)(vii)).

Dated: April 15, 2026

Respectfully Submitted,

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