

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ZING HEALTH, INC., ZING HEALTH
MICHIGAN, INC., AND ZING HEALTH
CONSOLIDATOR, INC.,

Plaintiffs,

v.

DEPARTMENT OF HEALTH AND
HUMAN SERVICES et al.,

Defendants.

Case No. 1:24-cv-00855 (RBW)

**PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT**

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Plaintiffs Zing Health, Inc. (“Zing”), Zing Health of Michigan, Inc. (“Zing Michigan”), and Zing Health Consolidator, Inc. (“ZHC,” collectively, “Zing Health” or “Plaintiffs”), submit the following Opposition to the Motion to Dismiss the Amended Complaint filed by Defendants Department of Health and Human Services (“HHS”), the Centers for Medicare & Medicaid Services, Xavier Becerra in his official capacity as Secretary of HHS, and Chiquita Brooks-LaSure in her official capacity as Administrator of CMS (together, “Defendants” or “CMS”).

INTRODUCTION

This litigation continues because, after refusing to correct its obvious unlawful action that had complex and industry-wide ramifications until two courts made it, the agency said “whoopsie” and hastily offered a half-baked remedy to get the courts off its back that solved the technicalities of its unlawful action without addressing the devastating harms it caused Zing Health alone. Based on its unlawful action, CMS intentionally and aggressively singled out Zing Health for uniquely severe punishment that harmed its reputation and competitive position as well as jeopardized its ability to serve low-income beneficiaries who depend on its care. And now that Zing Health challenges CMS’s attempt to fix one unlawful action with another arbitrary and discriminatory one, the agency again seeks to dodge responsibility by mischaracterizing Zing Health’s claims and throwing up pat procedural arguments to short-circuit this lawsuit or provide meaningful relief to Zing Health available under the APA. CMS’s approach is disturbing and wrong, and the Court should not let the agency get away with it.

CMS boldly moves to dismiss Zing Health’s Amended Complaint for want of jurisdiction based on the theory that it already did enough to remediate Zing Health’s injuries. But its bare recalculation of its unlawful rating and rescission of its prior adverse actions taken based on that unlawful action did not fix Zing Health’s problem or the massive and unique harms that CMS’s

actions caused. CMS broadly published Zing's flawed 2024 Star Ratings, which adversely impacted Zing Health by making the contract less attractive to beneficiaries during the 2024 enrollment period. That is because beneficiaries choose plans with higher ratings, and CMS's flawed Star Ratings were intended to and in fact drove Zing's beneficiaries away. CMS further publicly sanctioned and announced its intent to terminate Zing's contract based on the flawed Star Ratings. And based on its faulty rating, CMS further allowed enrolled beneficiaries to *disenroll* from Zing's plan after the erroneous termination notice. Zing was further prohibited from advertising and enrolling new beneficiaries for seven months, thereby depriving Zing Health of the opportunity to grow its membership and related revenue and harming its competitive position in the market. These actions have further adversely impacted ZHC's ability to provide services to beneficiaries under its other MA contract, Zing Michigan.

These are cognizable and redressable injuries that can be remediated through this litigation. Zing Health's APA claims are in no way moot and its declaratory judgment claim also presents a very live controversy. CMS just seeks to dodge this hard reality by arguing Zing Health lacks standing because it cannot obtain money damages. But Zing Health does not seek money damages; it simply seeks effective and meaningful equitable relief that is available and to which it is entitled under the APA. CMS cannot avoid that conclusion simply because the relief that Zing Health seeks through this lawsuit may only remedy some but not all of its varied injuries.

The Court should deny CMS's motion to dismiss.

BACKGROUND

Zing is a Medicare Advantage ("MA") health plan. ECF No. 18, Amended Complaint ("Cmplt.") ¶ 1. It is dedicated to improving health outcomes for underserved, minority

beneficiaries by providing \$0 premiums and deductibles, low maximum out-of-pocket costs, and Part D gap coverage. *Id.* ¶ 8. In fact, 83% of the Medicare beneficiaries enrolled across all of Zing Health’s MA-PD plans are Black or Hispanic, and between 65% and 75% of beneficiaries receive low-income subsidies for the Medicare Part D coverage. *Id.* ¶ 7. Zing’s parent organization, ZHC, maintains several MA-PD contracts through Zing and other entities. *Id.* ¶ 10. For example, Zing Michigan operates contract H4624 and has the same geographic footprint and coverage as Zing. *Id.* Thus, Zing and Zing Michigan share the same administrative and capital burdens overseen and operated by ZHC. *Id.*

As part of the MA Program, MA plans contract with CMS to provide healthcare to beneficiaries. *Id.* ¶¶ 11, 59–60. CMS provides MA plans with Star Ratings based on health and drug plan quality and performance measures. *Id.* ¶ 68. The Star Ratings are based on a five-star scale, with 1 star being the lowest rating and 5 stars being the highest. *Id.* ¶ 69. Star Ratings are used by Medicare beneficiaries when choosing to enroll in an MA Plan to compare health plans based on quality. *Id.* ¶ 72. The Star Ratings also impact the amount of additional funds CMS will pay to each MA Plan, including quality bonus payments. *Id.* ¶¶ 75–76. MA plans that consistently receive Star Ratings below 3 stars may be terminated from the MA program altogether. *Id.* ¶ 78. Thus, the Star Ratings have tremendous value to and impact on MA plans to provide quality care and benefits to their members, compete in the marketplace, receive compensation, and even remain eligible to participate in the MA program. *Id.* ¶ 82. Their entire point is to reward and drive members to highly-rated plans and punish, deter members from, and cancel poor performing plans.

In 2020, CMS promulgated regulations that revised its Star Ratings methodology to include “guardrails” that provide stability and predictability for MA-PD plans by reducing the

fluctuation in the cut points used to calculate annual Star Ratings. *See* 42 C.F.R. §§ 422.162, 422.166(a)(2), 423.182 & 423.186(a)(2). The regulation required CMS to use actual plan performance data and cut points in developing Star Ratings. *Cmplt.* ¶ 107. But in calculating MA plans' 2024 Star Ratings, CMS applied an entirely different methodology that was not subject to any formal notice and comment rulemaking and directly contradicted its own regulation. *Id.* ¶¶ 110–31. Instead of using *actual* plan performance data from 2023 to calculate the 2024 cut points in accordance with the established guardrails for Star Ratings, CMS recalculated the 2023 cut points, creating *simulated* cut points, in violation of its own regulation. *Id.* ¶¶ 120–22.

The result was catastrophic. Zing's 2024 Star Ratings dropped dramatically, and made its contract less attractive to beneficiaries selecting plans during the 2024 enrollment period. *Id.* ¶¶ 146–48. CMS also relied on the flawed ratings to *terminate* Zing's contract effective December 31, 2024. *Id.* ¶¶ 149. The termination threatened the ability of Zing's current members to access its coverage and maintain their relationships with physicians and other providers. *Id.* ¶¶ 150–56. It also deprived other similarly situated, vulnerable Medicare beneficiaries of the opportunity to choose Zing's MA-PD plan for all of 2024, and further deprived Zing Health of millions of dollars in revenue. *Id.* Zing was the *only* MA plan to have its contract terminated based on CMS's erroneous 2024 Star Ratings. *Id.* ¶ 162.

Additionally, CMS further sanctioned Zing by suspending all of its marketing activities and prohibiting it from enrolling new members. *Id.* ¶ 157. The sanctions also permitted current beneficiaries to *disenroll* from the plan. In just over six months, Zing lost over 1,000 beneficiaries. CMS's sanctions took effect immediately and remained in place without any expiration date. By publicly signaling that Zing's care and services were of lower quality,

CMS's termination and sanctions severely harmed Zing Health's reputation, goodwill, and competitive position – they were intended to do just that and they did. *Id.* ¶ 26.

Because of the disruption caused by Zing's improper 2024 Star Ratings and resulting sanctions and termination, ZHC and Zing Michigan also suffered harms to their operations. *Id.* ¶ 163. These harms included derailing a contract negotiation with a national pharmacy benefit manager firm, which would have provided improved drug prices for beneficiaries. *Id.* ¶¶ 22–23. CMS's termination notice also seriously jeopardized Zing Health's recapitalization efforts, and ultimately increased its costs of capital. *Id.* ¶ 24. And although it eventually obtained the necessary capital, its long-term costs of accessing that capital significantly increased because of CMS's public termination notice and sanctions. *Id.* ¶ 25. CMS's disruptions to Zing Health also adversely impacted Zing Michigan and its ability to provide quality care and services under its contract. *Id.*

After CMS refused to address its ratings errors and unlawful actions, Zing and other MA plans brought suit against CMS to challenge CMS's 2024 Star Ratings under the APA.¹ Following summary judgment briefing, two judges in this District held that CMS violated the APA by using simulated cut points because “the text of the regulation leaves only one reasonable interpretation,” that is, CMS must use “the *actual* cut points.” *SCAN Health Plan*, ECF No. 33 at 9 & 13; *see id.* at 13 n.5; *see also Elevance Health, Inc. v. Becerra*, ECF No. 30 at 39 (holding CMS's calculation of the 2024 Star Ratings with simulated cut point data “was contrary to the agency's own regulations and thus contrary to law and arbitrary and capricious”). Accordingly,

¹ *SCAN Health Plan v. Dep't of Health & Human Servs.*, Civ. A. No. 23-3910 (CJN) (D.D.C. 2024); *Elevance Health, Inc. v. Becerra*, Civ. A. No. 23-3902 (RDM) (D.D.C. 2024).

the Court set aside the erroneously calculated 2024 Star Ratings for the plaintiff MA plans and ordered CMS to recalculate them in compliance with the plain text of its own regulation. *Id.*

Following those decisions, CMS issued a Memorandum to MA plans on June 13, 2024, announcing its intention to recalculate the 2024 Star Ratings. *Cmplt.*, Ex. 3.² CMS also sent Zing a separate notification rescinding its termination and sanctions on June 25, 2024.³ CMS later posted the recalculated 2024 Star Ratings on its Medicare Plan Finder on July 2, 2024. *Mot.* at 12. But neither the Memorandum nor retraction notice addressed the harms caused by CMS's termination and sanctions. The Memorandum and notice of retraction made no mention of the lost beneficiaries who chose to disenroll from the plan because of Zing's impending (and erroneous) termination or were precluded from enrolling for over six months. *Id.* Nor did CMS address the resulting harms to Zing Health's reputation and goodwill caused by the agency's unlawful action. *Id.* Thus, CMS acted arbitrarily and discriminatorily by providing remediation that only addressed harms to some plans and not others (Zing Health).

Accordingly, Zing Health filed its Amended Complaint on July 11, 2024. *See Cmplt.* Zing Health asserted claims under the APA, seeking equitable and declaratory relief. In Count I, Zing Health challenges CMS's calculation of the 2024 Star Ratings. *Id.* ¶¶ 167–176. In Count II, Zing Health alleges CMS violated the APA in issuing the Memorandum. It alleges that CMS failed to treat all plans equally and on the same competitive field given it offered limited relief that arbitrarily benefited some MA plans to the exclusion of others, like Zing. *Id.* ¶¶ 177–190.

² In their Motion to Dismiss, Defendants' assert that "Zing's contract H7330 received Part D summary Star Ratings of 2.5 . . . for contract yea[r] 2024." *Mot.* at 9. That is incorrect, and only shows CMS's continued refusal to accept responsibility for its misconduct.

³ CMS, *Notice of Retraction of Termination and Intermediate Sanctions* (June 25, 2024), <https://www.cms.gov/files/document/zingtermination-sanctionretraction06252024.pdf>.

For Count III, Zing Health seeks a declaration that CMS's adoption and implementation of the Memorandum were arbitrary and capricious. *Id.* ¶¶ 191–195.

In addition to declaratory relief, Zing Health seeks remedial action from CMS. It requests CMS engage in outreach to current enrollees and those that disenrolled following CMS's unlawful conduct, and take corrective actions to ensure Zing Health is not competitively disadvantaged, including treating Zing Michigan's H4624 contract as a new plan for the 2025 contract year.⁴

STANDARD

CMS's motion is governed by a familiar standard. A motion to dismiss under Rule 12(b)(1) should be denied when a plaintiff establishes the court has jurisdiction by a preponderance of the evidence. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). When scrutinizing the plaintiff's allegations, the Court can consider material outside of the pleadings, *Jerome Stevens Pharms., Inc. v. FDA*, 402 F.3d 124, 1253 (D.C. Cir. 2005), but “must accept as true all of the factual allegations in the complaint and draw all reasonable inferences in favor of the plaintiff,” as long as they are not “unsupported by the facts alleged or legal conclusions that are cast as factual allegations,” *Ellis v. Holy Comforter Saint Cyprian Cmty. Action Grp.*, 153 F. Supp. 3d 338, 341 (D.D.C. 2016). Applying this standard here, the Court should deny CMS's motion.

⁴ During the time between the *SCAN* and *Elevance Health* decisions, and the filing of the Amended Complaint, CMS would not confirm whether it would appeal those decisions (despite Zing Health's numerous inquiries). Accordingly, Zing Health maintained Count I as a prophylactic measure. Because CMS's appeal deadline for *SCAN* and *Elevance Health* have now expired without it taking any appeal, which would have been obviously unsuccessful, Plaintiffs withdraw Count I of the Amended Complaint without prejudice, *see* Fed. R. Civ. P. 41(a)(1)(A)(i) & (a)(1)(B).

ARGUMENT

I. Zing Health Has Standing To Challenge CMS’s Arbitrary And Capricious Actions.

A. Plaintiffs Have Suffered An Injury In Fact.

CMS first argues that Plaintiffs lack standing to challenge the Memorandum because they have not suffered an injury in fact. Mot. at 19–22. CMS is wrong. To establish Article III standing, Zing Health must show it has suffered an injury that is fairly traceable to CMS’s conduct and redressable. *Lujan*, 504 U.S. at 590. The injury alleged must be “concrete and particularized,” as well as “actual or imminent.” *Zaidan v. Trump*, 317 F. Supp. 3d 8, 18 (D.D.C. 2018). Those injuries include economic harms, *Magruder v. Cap. One, Nat’l Ass’n*, 540 F. Supp. 3d 1, 7 (D.D.C. 2021) (recognizing economic and intangible harms confer standing), as well as harms to reputation and goodwill, *see Foretich v. United States*, 351 F.3d 1198, 1211 (D.C. Cir. 2003) (finding “injury to reputation can constitute a cognizable injury sufficient for Article III standing”).⁵ That is especially so for “reputational injur[ies]” that “deriv[e] directly from an unexpired and unretracted government action.” *Foretich*, 351 F.3d at 1213; *Rtskhiladze v. Mueller*, 110 F.4th 273, 277 (D.C. Cir. 2024).

Here, Zing Health alleged that it suffered “actual,” “concrete,” and “particularized” injuries in fact because of CMS’s unlawful conduct. *Zaidan*, 317 F. Supp. 3d at 18. First, Zing was uniquely harmed by CMS’s erroneous termination and sanctions. *See* Cmplt. ¶¶ 161–64. For more than six months, the “intermediate sanctions” levied against Zing prohibited all marketing to and enrolling of beneficiaries and even permitted over 1,000 current enrollees to

⁵ *See also Parsons v. U.S. Dep’t of Justice*, 801 F.3d 701, 711 (6th Cir. 2015) (“Reputational injury, on the other hand, is sufficient to establish an injury in fact.”); *Nat’l Collegiate Athletic Ass’n v. Governor of New Jersey*, 730 F.3d 208, 220 (3d Cir. 2013) (“As a matter of law, reputational harm is a cognizable injury in fact.”); *Gully v. Nat’l Credit Union Admin. Bd.*, 341 F.3d 155, 161 (2d Cir. 2003) (“The Supreme Court has long recognized that an injury to reputation will satisfy the injury element of standing.”) (collecting cases).

disenroll from Zing's plan. *Id.* ¶ 117 n.9. Thus, while simultaneously battling the stigma of its unlawful Star Ratings, Zing could not contact current and potential beneficiaries, develop marketing and advertise its benefits to potential enrollees, or distribute any promotional materials whatsoever. *Id.* Moreover, over 1,000 current enrollees disenrolled from the Zing plan before the annual enrollment period. *See* 42 CFR § 422.62(b)(5) (permitting beneficiaries to disenroll from an MA Plan "that has been sanctioned"). As such, Zing Health suffered irreparable harms to its reputation and business as a direct result of CMS's conduct – those harms reverberate today.

Second, Zing Health's reputation has been and continues to be harmed by the limited relief the agency arbitrarily and discriminatorily afforded certain plans. *Cmplt.* ¶¶ 144–66. Zing Health continues to suffer serious harm to its competitive position and reputation. *Id.* ¶ 164. These harms are not "speculative" or "abstract"; Zing has expended "substantial resources" and time to address the reputational damage caused by the agency's erroneous termination and associated sanctions. *Zaidan*, 317 F. Supp. 3d at 18. It is the only MA plan that has had to do so. *Cmplt.* ¶ 162.

Rather than redress Zing Health's reputational harms, the Memorandum – which remains "unexpired and unretracted" – has compounded them. *Foretich*, 351 F.3d at 1213. CMS chose solely to address its unlawful actions by recalculating the 2024 Star Ratings. *See Cmplt.*, Ex. 3. But CMS failed to address the reputational and business harms caused by its flawed ratings, sanctions, and termination. Zing Health's reputational harms are far more profound than merely having the wrong Star Ratings issued, as other MA plans experienced. CMS's public termination and sanctions were a scarlet letter for Zing Health – it intentionally made Zing's contract "less attractive to Medicare beneficiaries selecting a plan," *id.* ¶ 148, provided current

enrollees over six months to withdraw and go elsewhere, and even prohibited it from contacting or enrolling beneficiaries, *id.* ¶ 21. And CMS’s public sanctioning of Zing tanked negotiations between Zing Health and a national pharmacy benefit management firm and increased the costs of financing. *Id.* ¶¶ 24–25. These injuries readily “satisfy” Article III standing. *Zaidan*, 317 F. Supp. 3d at 18.

To avoid that conclusion, CMS argues Zing Health’s reputational harms and request for relief are just defamation claims barred by sovereign immunity. Mot. at 25–26. It is right that its actions were also defamatory, but CMS fundamentally mistakes Zing Health’s claims, which appropriately challenge its arbitrary and capricious Memorandum and seek relief under the APA for those harms to Zing Health. Cmplt. ¶¶ 177–90.

B. Plaintiffs’ Injuries Are Redressable.

CMS next argues that it cannot redress Plaintiffs’ injuries because “CMS already provided relief” by recalculating Zing’s Star Ratings. Mot at 24. Hardly. Redressability requires a substantial likelihood “the requested relief will redress the alleged injury.” *Lujan*, 504 U.S. at 595. To satisfy that requirement, a “favorable decision by the judiciary need not fully relieve” a plaintiff’s “every injury” – it just needs to at least “effectuate a partial remedy.” *Massachusetts v. EPA*, 549 U.S. 497, 525 (2007); *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 801 (2021).

Here, Zing Health’s injuries are plainly redressable. As Zing Health seeks in its Amended Complaint, CMS should conduct targeted outreach to inform Zing Health’s target population, including former beneficiaries, that CMS erroneously calculated Zing’s 2024 Star Ratings, resulting in its mistakenly-planned termination and onerous “intermediate sanctions.” Cmplt. at 31–32. That limited outreach would partially redress Zing’s loss of beneficiaries, its

inability to market, and six-plus months of no enrollment, which are unique and serious harms it alone suffered. That is all relief available under the APA.

CMS nevertheless contends that its posting of the recalculated Star Ratings on its website has already redressed Zing Health's injuries. Mot. at 13. That is not true. Zing serves low-income, underserved beneficiaries who are not scouring the government's Medicare Plan Finder for recalculated Star Ratings and belated termination reversals. Cmplt. ¶¶ 7–10. New beneficiaries made their enrollment decisions based on the available, unlawful and false Star Ratings, and over 1,000 current beneficiaries made disenrollment decisions based on Zing's then-impending and improper termination. *See id.* ¶ 117 n.9; 42 CFR 422.62(b)(5).

CMS further argues that third-party announcements regarding the *SCAN* and *Elevance* decisions have redressed Zing Health's injuries. Mot. at 24–25. They have not. Those articles do not discuss Zing or its distinct injuries caused by CMS.⁶ Nor can one expect beneficiaries to know that articles about *SCAN* and *Elevance* may also apply to completely different MA plans. This is why government-driven outreach to Zing Health's target population would best redress its injuries. Cmplt. at 31–32; *see Meese v. Keene*, 481 U.S. 465, 476 (1987); *Parsons v. U.S. Dep't of Justice*, 801 F.3d at 716 (recognizing value of “partial redress” when ordering basic

⁶ *See* Anna Wilde Mathews, *Medicare Will Recalculate Quality Ratings of Medicare Advantage Plans*, Wall St. J., June 14, 2024, <https://www.wsj.com/health/healthcare/medicare-will-recalculate-quality-ratings-of-medicare-advantage-plans-eebee409>; Susan Morse, *CMS Is Recalculating 2024 Medicare Advantage Star Ratings*, Healthcare Fin. News, June 14, 2024, <https://www.healthcarefinancenews.com/news/cms-recalculating-2024-medicare-advantage-star-ratings>; Nona Tepper, *Elevance, Aetna Among Insurers to Benefit from Higher Star Ratings*, Modern Healthcare, June 17, 2024, <https://www.modernhealthcare.com/medicare/2024-medicare-advantage-star-ratings-elevance-aetna-scan>.

relief); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000) (same).

The government's reliance on *Penthouse Int'l, Ltd. v. Meese*, 939 F.2d 1001 (D.C. Cir. 1991), is similarly misplaced. Mot. at 27. There, Penthouse sought the rescission of a governmental letter identifying it as a company that distributed pornography. 939 F.2d at 1014. But the government had already rescinded that letter, and as such, the Court held the claim was no longer redressable because Penthouse had already "obtained the equitable relief it was seeking." *Id.* at 1018. But here, Zing Health asserts claims for unredressed injuries. See Cmpl't. ¶¶ 167–95. Zing Health's reputational and competitive harms in the MA market, which were compounded by Zing's inability to market or enroll new beneficiaries for over six months, are "tangible, concrete effect[s]" that remain "susceptible to judicial correction" through the targeted outreach Zing Health requests. *Penthouse Int'l*, 939 F.2d at 1019; *McBryde v. Comm. to Rev. Cir. Council Conduct & Disability Orders*, 264 F.3d 52, 57 (D.C. Cir. 2001).

The government also argues that Zing Health seeks money damages that are not recoverable under the APA. Mot. at 28–29. Not so. The targeted and particular outreach that Zing Health seeks is not monetary at all. Nor is its request to reclassify Zing Michigan's H4624 contract. At most, it seeks "restitution" that is properly recoverable for APA claims. *Steele v. United States*, 200 F. Supp. 3d 217, 222 (D.D.C. 2016). As this Court explained in *Steele*, the APA waives the government's sovereign immunity when a plaintiff seeks restitution or some other form of equitable relief rather than compensatory relief to "substitute for a suffered loss." *Id.* at 219 & 222. Here, Zing Health seeks only to restore that to "which it was entitled from the beginning" – that is, a fair, competitive fighting chance as an MA plan, with the ability to

advertise to and enroll new members throughout the entire 2024 calendar year. *Id.* at 222. The APA thus does not prohibit Zing Health’s requested relief here. *Id.*⁷

II. Zing Health’s Request For Declaratory Relief Seeks Resolution Of A Live Controversy.

CMS further argues that Zing Health’s declaratory judgment claim is moot “because CMS has already granted Zing full relief,” and thus no live controversy remains. Mot. at 22–23. But once again, CMS conflates Zing Health’s reputational injuries stemming from the Memorandum with those caused by erroneously calculating Zing’s 2024 Star Ratings.

Although CMS recalculated Zing’s 2024 Star Ratings and rescinded its termination, those actions do nothing to remedy Zing Health’s reputational harms. *See supra* at Section I. The Memorandum announced an arbitrary approach only partially remedying the harm inflicted by the agency’s conduct because it did nothing to address the unique injuries inflicted against Zing, as the sole MA plan that CMS terminated and sanctioned. CMS’s arbitrary and capricious decision to adopt the Memorandum and refuse to redress the enrollment and reputational harms Zing Health suffered remains “a substantial controversy” of “sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *RDP Techs., Inc. v. Cambi AS*, 800 F. Supp. 2d 127, 136 (D.D.C. 2011) (citing *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007)). Accordingly, the Court should deny CMS’s motion on this ground, too.

CONCLUSION

The Court should deny Defendants’ motion to dismiss.

⁷ This is a far cry from *Dep’t of Army v. Blue Fox Inc.*, 525 U.S. 255 (1999), on which the government relies. Mot. at 30. There, a party sought a lien from the government for funds withheld from a subcontractor. 525 U.S. at 260–61. But here, Zing Health does not seek a lien or other money damages from CMS.

Dated: October 25, 2024



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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2024, I electronically filed the foregoing document and the accompanying exhibits with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Paul Werner
Paul Werner