IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ZING HEALTH, INC.
225 W. Washington Street, Suite 450
Chicago, Illinois 60606;

ZING HEALTH MICHIGAN, INC.
225 W. Washington Street, Suite 450
Chicago, Illinois 60606; and

ZING HEALTH CONSOLIDATOR, INC.
225 W. Washington Street, Suite 450
Chicago, Illinois 60606

Plaintiffs,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201;

CENTERS FOR MEDICARE & MEDICAID SERVICES
7500 Security Boulevard
Baltimore, MD 21244;

ROBERT F. KENNEDY, J.R., in his official capacity as Secretary of the United States Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.,
Washington, D.C., 20201; and

MEHMET OZ, in his official capacity as Administrator, Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244,

Defendants.

Case No. 1:25-cv-4147

COMPLAINT

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 Complaint against Defendants Department of Health and Human Services ("HHS"), the Centers for Medicare & Medicaid Services, Robert F. Kennedy, Jr., in his official capacity as Secretary of HHS, and Mehmet Oz, in his official capacity as Administrator of CMS (collectively, "Defendants" or "CMS"), and allege as follows:

INTRODUCTION

1. This is a case in which CMS has added insult to injury by applying its regulations in a flagrantly unlawful manner and then, once two courts rightly rejected that move, responding with limited corrective action that again unlawfully failed to redress the massive and ongoing harm its earlier unlawful action caused Plaintiffs, whose situation is quite unique and remains significantly harmed by CMS's actions as the only Medicare Advantage plan that was terminated for 2024 and reinstated no less than 6 months after that inappropriate termination.

2. Zing initially brought this action to challenge a serious error that CMS made in calculating Zing's 2024 Star Ratings, which, if uncorrected, would have caused Zing to be unfairly terminated from participating in the Medicare Advantage program, thereby precluding it from continuing to serve low-income minority and disadvantaged beneficiaries and undermining its mission of addressing inadequacies in the healthcare system as well as suffering substantial, ongoing, and irreparable harms.

3. CMS's refusal to comply with its own regulations were a disturbing, if textbook, example of unreasonable agency decision-making that was arbitrary, capricious, and contrary to law.

4. CMS erroneously calculated 2024 Star Ratings by applying an "implied" methodology that was never the subject of any proper rulemaking.

5. That new methodology improperly reduced Zing's 2024 Star Ratings, which directly contradicted the entire purpose of the regulation that CMS misapplied, which is to stabilize Star Ratings and thereby reduce wild, year-over-year ratings swings through use of explicit "guardrails." All told, CMS's unlawful conduct toward Zing has substantially and irreparably harmed Zing Health as well.

6. Indeed, despite Zing highlighting the erroneous calculations, the significant impact it would have on Zing's Medicare Advantage plan, Zing Health and its mission, and the significant progress the company was making in its Star Ratings, CMS willfully chose to terminate Zing's contract and impose intermediate sanctions prohibiting the plan from marketing to and enrolling beneficiaries.

7. Zing Health was founded in 2019 by physician entrepreneurs and a healthcare executive with the mission to address healthcare disparities among communities across the Nation.

8. Zing Health offers two of only seven available chronic condition special needs MA-PD HMO plans with Cook County Hospital System that provide important healthcare services to underserved beneficiaries, of whom 75% receive low-income subsidies, with $0 premiums and deductibles, low maximum out-of-pocket costs, and Part D coverage gap coverage.

9. Zing Health maintains several MA-PD contracts, including Zing Michigan's H4624 contract, which also provide quality healthcare to underserved communities. Zing

Michigan has the same geographic footprint and coverage as Zing, meaning they share the same administrative and risk-based capital burdens.

10. MA-PD plans, like Zing and Zing Michigan, receive annual Star Ratings from CMS based on "health and drug plan quality and performance measures." Medicare beneficiaries use plans' Star Ratings to evaluate and compare plans' quality performance when they shop for a Medicare Advantage plan. Such ratings are intended to be true reflections of a plan's quality. As such, Star Ratings are an important indicator that shoppers rely on in comparing and selecting among plans.

11. CMS also relies on the Star Ratings to determine MA-PD plans' eligibility to receive quality bonus payments and rebates that fund additional benefits for plans' Medicare members.

12. CMS must calculate the Star Ratings based on a clear and unambiguous methodology that includes the calculation of measure-specific "cut points."

13. But in calculating the 2024 Star Ratings for Zing, CMS applied an entirely different and new methodology that was not subject to any formal notice and comment rulemaking, and that directly contradicted the plain text of its own regulation.

14. When Zing confronted the agency about its use of recalculated data, CMS merely asserted it did not agree with Zing and doggedly refused to abide by its own regulation in the face of obvious and widespread harms its unlawful approach would have on plans and beneficiaries.

15. The result was unsurprising – and catastrophic. Zing's 2024 Part D Star Rating remained low, and became the third and last data point used by CMS to immediately prohibit Zing from marketing and enrolling beneficiaries into its MA-PD plans and *terminate* Zing's

contract from the Medicare Advantage program effective December 31, 2024, threatening Zing current members' continued access to comprehensive healthcare coverage and continuity in their relationships with their physicians and other care providers, depriving other similarly situated, very vulnerable Medicare beneficiaries of the opportunity to choose Zing as their desired plan option for 2024, and rendering Zing Health ineligible for millions of dollars in revenue.

16. Besides depriving Zing of critical revenue from participating in the Medicare Advantage program, CMS's sanctions prohibited Zing from marketing and enrolling members effective January 12, 2024. That foreclosed new enrollments into Zing's MA-PD plans for the remainder of 2024.

17. Because of the disruption caused by Zing's flawed 2024 Star Ratings, ZHC suffered harms that impacted its ability to maintain services for Zing Michigan's contract.

18. Among other harms, a national pharmacy benefit manager ("PBM") firm terminated negotiations with Zing Health because of CMS's adverse actions. The negotiation was intended to improve drug pricing, which is critical to Zing Health's ability to offer best in class drug pricing to Medicare members therefore reducing barriers to care and improving health outcomes.

19. Of note, CMS's termination notice was provided to Zing during a recapitalization of the enterprise that would enable it to sustainably operate for years to come. Zing Health notified CMS that the potential termination could endanger Zing Health's ability to continue serving vulnerable Medicare beneficiaries across all its markets.

20. Though Zing Health was ultimately able to obtain capital, CMS's termination based on its flawed, unlawful Star Ratings calculations nearly caused the enterprise to lose

financing, and the capital that was finally obtained came at a much greater long-term financial cost to Zing Health.

21. CMS's imposition of sanctions further discouraged health insurance agents and brokers from promoting to or enrolling beneficiaries with other Zing Health plans.

22. Only after two courts in this District held that CMS's actions were arbitrary and capricious in violation in the Administrative Procedure Act did the agency change course.[1]

23. In response to those decisions, CMS recalculated the 2024 Star Ratings and permitted MA plans with increases in their quality bonus payments or rebate percentages to resubmit their contract bids for 2025.

24. However, CMS failed to correct the improper termination and sanctions decisions of Zing's MA-PD plans.

25. CMS issued a notice of retraction to Zing Health *six months* after it imposed the initial termination and sanctions based on its flawed, unlawful Star Ratings calculation and *months* after existing members believed they would no longer have access to the plan for 2025.

26. This limited relief is, in short, too little too late. It does nothing to address the marketing and enrollment sanctions that CMS applied to Zing, which rendered the terminated MA-PD plans commercially unviable and therefore caused substantial and irreparable harms to Zing Health as a result of its unlawful conduct.

27. Nor does CMS's supposed remedy address the operational disruptions and resulting impacts on Zing Health's value as a result of CMS's arbitrary and capricious actions taken against Zing Health. And in no way does CMS's supposed solution address the unique and

[1] *SCAN Health Plan v. Dep't of Health & Human Servs.*, Civ. A. No. 23-3910, 2024 WL 2815789 (D.D.C. June 3, 2024); *Elevance Health, Inc. v. Becerra*, 736 F. Supp. 3d 1 (D.D.C. 2024).

irreparable harms that Zing has suffered from being the only plan that, because of CMS's unlawful actions, had a termination imposed and belatedly rescinded.

28. CMS's improper termination and sanctions against Zing have been reported publicly on CMS's website and its Medicare Plan Finder tool as well as nationally in publications and are naturally imputed to Zing Health, causing irreparable harm to Zing Health's reputation, goodwill, and competitive position.

29. Indeed, despite CMS's stated goal to "ensur[ing] all American can achieve their highest level of health" and "support[ing] health care providers, plans, and other organizations who ensure individuals and families receive the highest quality of care," terminating Zing's contract and sanctioning it – and effectively making the plan not viable – as well as irreparably harming Zing Health's reputation, goodwill and operations in the process, are clearly inconsistent with CMS's alleged strategic focus on quality of and access to healthcare.

30. CMS's termination and sanctions eliminated a critically needed MA-PD plan option for 2024 that was specifically tailored to meet the unique health needs of high risk, low income beneficiaries.

31. CMS's failure to adhere to its articulated methodology to calculate Zing's Star Ratings constitutes an unexplained and unreasonable departure from its own regulation, which carries dire consequences for Zing Health and other Medicare Advantage plans.

32. CMS's summary retraction of its termination and sanctions decisions were premised on an arbitrary and capricious calculation of the 2024 Star Ratings that were set aside under Section 706 of the APA.

33. CMS should further be directed to ensure that Zing Health is not competitively disadvantaged as a result of CMS's improper termination and sanctions decisions including, but

not limited to, denoting that Zing Health's contract has never been terminated or sanctioned on CMS's Medicare Plan Finder.

34. Fundamentally, CMS must be ordered to take all actions necessary to ensure that Zing Health is not competitively disadvantaged as a result of CMS's erroneous termination and sanctions decisions premised on its unlawful Star Ratings calculations.

35. To prevent Zing Health from suffering additional and ongoing irreparable harm from CMS's improper termination and sanctions decisions, the Court should expedite the resolution of this matter on the merits.

PARTIES

36. Plaintiff Zing Health Consolidator, Inc. is the parent organization of Zing Health, Inc., and Zing Health of Michigan, Inc.

37. Plaintiff Zing Health, Inc. is a for-profit corporation incorporated in Illinois, duly licensed as a health maintenance organization in Illinois, and with its principal place of business in Chicago, Illinois.

38. Plaintiff Zing Health of Michigan, Inc. is a for-profit corporation incorporated in Michigan, duly licensed as a health maintenance organization in Michigan and Illinois, and with its principal place of business in Chicago, Illinois.

39. Defendant HHS is the department of the federal government ultimately responsible for the federal Medicare and Medicaid programs.

40. HHS has delegated its authority to administer the Medicare and Medicaid programs to CMS. *See* 66 Fed. Reg. 35,437 (July 5, 2001).

41. Defendant CMS is a federal agency within HHS with the primary oversight responsibility for the Medicare program and the federal portion of the Medicaid program. It was created by the Reorganization Act of March 9, 1977. *See id.*

42. Defendant Robert F. Kennedy Jr. is named in his official capacity as the Secretary of HHS. *See* 42 C.F.R. § 405.1136(d)(1).

43. Defendant Mehmet Oz is named in his official capacity as Administrator of CMS. The CMS Administrator is responsible for the administration of the Medicare program, including the Star Ratings for Medicare Advantage plans.

JURISDICTION & VENUE

44. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 because this action arises under the APA, 5 U.S.C. §§ 701 *et seq.*, and 42 U.S.C. §§ 1395 *et seq.*

45. Venue is proper in this Court under 28 U.S.C. § 1391(e) because this is an action against officers and agencies of the United States and a substantial part of the events giving rise to Plaintiffs' claims occurred in this District.

46. The Complaint is timely under 28 U.S.C. § 2401(a).

REGULATORY AND FACTUAL BACKGROUND

The Medicare Program And Star Ratings

47. The Medicare program, authorized under Title XVIII of the Social Security Act ("SSA"), is a federal program that provides health insurance benefits for Americans aged 65 years and older and certain sick and disabled persons. *See* 42 U.S.C. §§ 1395 *et seq.*

48. CMS is the federal agency responsible for administering the Medicare program.

49. As part of its strategic plan, CMS announced its commitment to "ensur[ing] all Americans can achieve their highest level of health" and "support[ing] health care providers,

plans, and other organizations who ensure individuals and families receive the highest quality of care."[2]

50. Individuals enrolled in Medicare may elect to receive their benefits under Part C of the Medicare program, commonly referred to as the "Medicare Advantage" program, as an alternative to original Medicare.

51. Under Part C, CMS contracts with private insurance payors, commonly known as Medicare Advantage Plans ("MA Plans"), to provide and arrange for Medicare-covered benefits for Medicare beneficiaries who enroll in their benefit plan. *See* 42 C.F.R. pt. 422.

52. Most MA Plans also provide Medicare Part D prescription drug coverage. *See* 42 C.F.R. § 422.4(c).

53. MA Plans that offer Part D coverage are referred to as MA-PD plans. *See* 42 C.F.R. pt. 423.

54. Besides arranging and paying for Medicare-covered benefits of Medicare beneficiaries, MA Plans typically provide supplemental benefits as well as lower co-payments and other cost sharing, which further reduce the cost of covered services for beneficiaries.

55. The Medicare Advantage program is intended to shift the financial risk of providing health care to beneficiaries from the federal government to the privately run MA Plans in exchange for a per-member per-month payment.

56. MA Plans that are better at keeping their members healthy, by effectively managing their care and providing important related services, receive higher ratings, and overall, perform better in the marketplace. *See generally* 42 C.F.R. § 422.160.

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[2] *See CMS Strategic Plan*, CTRS. FOR MEDICARE & MEDICAID SERVS., https://www.cms.gov/priorities/health-equity/minority-health/equity-programs/framework (last visited on Nov. 25, 2025).

57. By providing additional benefits beyond those covered by Medicare, MA Plans compete with original Medicare and with one another to convince beneficiaries to select their plan.

58. CMS intended the Medicare Advantage program to be "competitive" which would "level the playing field between all options available to Medicare beneficiaries."[3]

59. In an effort to encourage MA Plans to offer high quality plans and to assist Medicare beneficiaries in selecting a competitive Part C plan, CMS studies and surveys MA Plans for quality, compliance, and other metrics to develop numerical ratings for each MA Plan contract ("Star Ratings").

60. The Star Ratings are based on a five-star scale, with 1 star being the lowest rating and 5 stars being the highest. *See* 42 C.F.R. § 422.162(b); 42 C.F.R. §§ 422.166(b)(2)(ii) & (h)(1)(ii).

61. MA Plans that also provide Part D coverage receive a separate Part D Star Rating. *See* 42 C.F.R. § 422.162(b)(1).

62. The Star Ratings are designed to be "a true reflection of [the] plan's quality" and must be based on data that is "complete, accurate, reliable, and valid." 83 Fed. Reg. 16,440, 16,520–16,521 (Apr. 16, 2018).

63. Star Ratings information is widely available to Medicare beneficiaries to consider when choosing to enroll in an MA Plan. These measures are particularly important, as they allow beneficiaries to compare health plans based on quality.

[3] *See Conference Report on Medicare Modernization Act of 2003* at 563, available at https://www.congress.gov/108/crpt/hrpt391/CRPT-108hrpt391.pdf (last visited Nov. 25, 2025).

64. CMS prominently and publicly displays Star Ratings in its online and print resources on available MA Plans as required under the SSA. *See* 42 U.S.C. § 1395w–21(d)(4)(D).

65. Indeed, through the online Medicare Plan Finder tool, CMS displays MA Plans in highest to lowest Star Ratings order to prospective members, with the express purpose of guiding beneficiaries to higher-rated plans first.

66. The Star Ratings also impact the amount of funds CMS will pay to each MA Plan.

67. Under Section 1853(o) of the SSA, CMS allocates quality payment bonuses to MA Plans based on their Star Ratings and awards additional funds to MA Plans rated at or above 4 stars. *See* 42 U.S.C. § 1395w–23(o).

68. MA Plans use these bonuses, which are often in the tens, if not hundreds of millions of dollars, to provide additional benefits and services to improve care to their members.

69. Conversely, MA Plans that consistently receive Star Ratings below 3 stars may be terminated from the Medicare Advantage program altogether. *See* 42 C.F.R. § 422.510(a)(4)(xi); 42 C.F.R. § 423.509(a)(4)(x).

70. Before being terminated from the Medicare Advantage program, CMS must provide the MA Plan with notice and an opportunity to develop and implement a corrective action plan. 42 U.S.C. § 1395w-27(h).

71. When CMS may terminate an MA Plan's contract for low Star Ratings, it may also impose intermediate sanctions to bar marketing and prevent the MA Plan from enrolling additional beneficiaries into the plan. *See* 42 C.F.R. § 422.752(b); 42 C.F.R. § 423.752(b).

72. As CMS has recognized, termination and sanctions are "severe consequences" given the substantial investments MA Plans must make to participate and operate in the Medicare business as well as the reputational and market harms that may result.[4]

73. 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 continue to participate in the Medicare Advantage program.

Calculation Of Star Ratings Generally

74. To calculate Star Ratings, CMS must use clear and unambiguous calculations established in its regulations. *See* 42 C.F.R. § 422.162(b); 42 C.F.R. § 422.166(h); 42 C.F.R. § 423.182(b); 42 C.F.R. § 423.186(h).

75. Star Ratings for MA Plans are based on a calculation of numerous performance measures designed to assess member services and care, including but not limited to preventative health services, management of long-term conditions, member experiences with the health plan, member complaints, and customer service. *See Medicare 2024 Part C & D Star Ratings Technical Notes* at 30–111, CENTERS FOR MEDICARE AND MEDICAID SERVICES, https://www.cms.gov/files/document/2024technotes20230929.pdf [hereinafter 2024 Technical Notes].

76. CMS annually publishes these measures and the specifications that it uses to develop its Star Ratings. MA Plans (including Zing and Zing Michigan) use them to target areas

[4] *See United Healthcare Ins. Co.*, Hearing Officer Docket No. 2011 C/D App 1-10 (2011), at 14, *available at* https://www.cms.gov/regulations-and-guidance/review-boards/medicare-advantage-prescription-drug-plan-decisions/downloads/2011_cd_app_01_through_10.pdf (last visited Nov. 25, 2025).

of improvement and investment to ensure they are maximizing their care and services for beneficiaries, and in turn, earn higher Star Ratings.

77. Any changes to the Star Ratings calculations can have serious, and sometimes catastrophic, impacts on MA Plans.

78. When MA Plans' Star Ratings decrease, MA Plans may be disqualified from receiving quality bonus payments and can even be removed from the Medicare Advantage program altogether, resulting in devastating financial and coverage consequences for MA Plans and beneficiaries.

79. Therefore, in developing each MA Plan's Star Ratings, CMS must treat each MA Plan "fairly and equally," judging them only on matters that are "under the control of the health or drug plan," in a system that will "minimize unintended consequences" adopted through a "process of developing [a ratings methodology that] is transparent and allows for multi-stakeholder input." 83 Fed. Reg. at 16,521.

80. CMS calculates Star Ratings based on a rigid methodology – set forth in its own regulations – that focuses on "health and drug plan quality and performance measures." 42 C.F.R. § 422.166; 2024 Technical Notes at 11 & 30–111.

81. Measures used to calculate Star Ratings can be grouped into two categories: those from the Consumer Assessment of Healthcare Providers and Systems surveys ("CAHPS"), and those from "non-CAHPS" sources. 2024 Technical Notes, at 11 & 30–111.

82. CAHPS measures relate to member experience with healthcare providers, services, and plans deriving data from "surveys that ask consumers and patients to evaluate the interpersonal aspects of health care." 42 C.F.R. § 422.162(a). In other words, they measure the member experience.

83. Non-CAHPS measures derive data from sources other than CAHPS surveys. *See* 2024 Technical Notes, at 14. Non-CAHPS measures consist of data from, among other sources, the Healthcare Effectiveness Data and Information Set[5] and CMS's Part C and D reporting requirements. *Id.* at 18–19.

84. Each CAHPS and non-CAHPs measure is given a numeric score. *Id.* at 14.

85. The agency then determines the "cut point" for each measure – that is, the range of scores that correspond with particular Star Ratings and separates one Star Rating from the Star Rating above or below it.[6]

86. The statistical method used to calculate the cut points differs for CAHPS and non-CAHPS measures. *Id.* at 18–19.

87. CAHPS measures employ a relative distribution and significance testing method,[7] while non-CAHPS measures are subject to a clustering sampling method. *Id.* at 18–19.

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[5] The Healthcare Effectiveness Data and Information Set ("HEDIS") is a tool used by more than 90 percent of U.S. health plans to measure performance on important dimensions of care and service. More than 190 million people are enrolled in health plans that report quality results using HEDIS. *See* Healthcare Effectiveness Data and Information Set (HEDIS), available at https://odphp.health.gov/healthypeople/objectives-and-data/data-sources-and-methods/data-sources/healthcare-effectiveness-data-and-information-set-hedis (last visited Nov. 25, 2025).

[6] For instance, the 2023 cut points for measure C11 (Controlling Blood Pressure) – which is measured as a percentage – were the following: below 39% for 1 Star, between 39% and 62% for 2 Stars, between 62% and 75% for 3 Stars, between 75% and 83% for 4 Stars, and above 83% for 5 Stars. *See* Medicare 2023 Part C & D Star Ratings Technical Notes, at 45–47.

[7] Clustering sampling is defined by CMS as a "variety of techniques used to partition data into distinct groups such that the observations within a group are as similar as possible to each other, and as dissimilar as possible to observations in any other group." 42 C.F.R. § 422.162(a). Clustering of the measure-specific scores means "that gaps that exist within the distribution of the scores are identified to create groups (clusters) that are then used to identify the four cut points resulting in the creation of five levels (one for each Star Rating), such that the scores in the same Star Rating level are as similar as possible and the scores in different Star Rating levels are as different as possible." *Id.*

88. Together, the CAHPS and non-CAHPS measure scores and cut points are combined to develop each MA Plan's Star Ratings.

CMS Adopts Guardrail Requirements As Part Of The Star Ratings Methodology

89. On June 2, 2020, CMS promulgated a final rule establishing a new methodology for the calculation of Star Ratings. *See* 85 Fed. Reg. 33,796 (June 2, 2020). The timeline for implementation of the new methodology was delayed because of the COVID-19 pandemic.

90. The final rule modified the methodology for non-CAHPS measures in two critical ways.

91. *First*, the final rule explained that, starting in 2024, the Tukey outlier deletion method would be used in developing the cut points for non-CAHPS measures. *See* 42 C.F.R. § 422.166(a)(2).

92. Tukey outlier deletion is a "standard statistical methodology for removing outliers, to increase the stability and predictability of the star measure cut points." 85 Fed. Reg. at 33,798.

93. *Second*, and most importantly, the final rule implemented "guardrails" to restrict upward and downward movement of a measure's cut points from one year to the next. *Id.*

94. A guardrail is defined by CMS as "a bidirectional cap that restricts both upward and downward movement of a measure threshold-specific cut point for the current year's measure-level Star Ratings as compared to the prior year's measure-threshold-specific cut point." 42 C.F.R. § 422.162(a).

95. Specifically, the guardrail prevents each measure's cut points from fluctuating more than 5% (upward or downward) from that of the previous year, thereby promoting stability in Star Ratings year over year. *See generally* 85 Fed. Reg. 33,796–33,911.

96. CMS thus adopted the guardrail requirement to provide stability and predictability from year-to-year. *See generally id.*

97. According to the regulation, CMS is supposed to "add a guardrail so that the measure-threshold-specific cut points for non-CAHPS measures do not increase or decrease more than the value of the cap from 1 year to the next." *See* 42 C.F.R. § 422.166(a)(2)(i).

98. CMS must rely on the actual measure cut points from the prior year's Star Ratings to determine and calculate the measure cut points for the current year's Star Ratings based on the application of the appropriate guardrails to each measure for the purpose of mitigating the shift in measure cut points that can occur from 1 year to the next. *Id.*

99. Under the final rule, therefore, to calculate the 2024 Star Ratings cut points, CMS is required to remove Tukey outliers from its methodology and then apply the guardrail caps for each measure's cut points compared to the actual 2023 cut points. *See id.*

100. Doing so is supposed to prevent the 2024 cut points from deviating more than 5% from the 2023 cut points, thereby bringing stability to the calculations and process for MA Plans and Star Ratings. *Id.*

CMS's Arbitrary Rejection Of Its Own Methodology To Develop The 2024 Star Ratings Caused Zing To Receive A Lower Star Rating

101. As a new MA-PD plan, Zing struggled to receive high Star Ratings, receiving a 2.5 Stars for Part D in 2022 and 2023.

102. As previously noted, due to the COVID-19 pandemic, CMS delayed implementing the Tukey outer fence outlier methodology for two years until 2023, when it was supposed to use that methodology to establish the 2024 Star Ratings. *See* 87 Fed. Reg. 33,776 (June 2, 2020).

103. Thus, 2023 was the first time that CMS implemented the Tukey outer fence outlier methodology along with the application of the guardrail requirement, when it established its 2024 Star Ratings. *See id.*

104. Zing's 2024 Part D Star Ratings came in at 2.5 Stars – far lower than its expected 3 Star Rating.

105. CMS may terminate an MA Plan contract when the Plan does not comply with the regulatory requirements of the Medicare Advantage program, including if a plan achieves less than a 3-Star rating on Part C or Part D for three years in a row. *See* 42 C.F.R. §§ 422.510(a)(4)(xi), 423.509(a)(4)(x).

106. Because of Zing's 2024 Part D Star Rating, Zing received three consecutive Part D Star Ratings below the 3-Star threshold.

107. Accordingly, CMS initiated termination of Zing's contract on December 27, 2023. *See* Exhibit ("Ex.") 1.

108. Zing's H7330 contract with CMS was terminated as of January 1, 2024 and beneficiaries could no longer enroll with Zing for health care. *Id.*

109. In addition, CMS imposed intermediate sanctions on Zing, effective January 12, 2024. *Id.* at 5.

110. These intermediate sanctions consisted of "the suspension of enrollment of Medicare beneficiaries" with Zing. *Id.* at 1.

111. CMS also imposed a "suspension of all marketing activities to Medicare beneficiaries" by Zing. *Id.*

112. Zing was required to "revise" all its communication materials, including call center scripts, verification scripts, website information, guidance given to contractors, and any

written communication with beneficiaries "to reflect that Zing Health is not accepting enrollments or marketing to enrollees." Ex. 2, at 5.

113. Zing Health's status on Medicare Plan Finder was changed to "a sanction status" and Zing Health was required to deny any enrollment applications it received. Ex. 3, at 1.

114. The termination and sanctions were publicly reported and disclosed across the United States in major publications, trade journals, and websites.[8]

115. Moreover, CMS ordered Zing Health to notify health insurance agents and brokers, who serve as an intermediary between consumers and MA Plans, of this sanction.

116. Zing Health was further required to instruct these brokers not to promote or enroll beneficiaries with Zing's H7330 contract.

117. Not only did this CMS action harm Zing's H7330 contract, it also discouraged brokers from promoting or enrolling beneficiaries with other Zing Health's products.

118. Zing timely reached out to CMS relating to its miscalculation of its 2024 Star Ratings.

119. In response to Zing's challenge, CMS insisted it had properly used rerun simulated 2023 cut points data in which Tukey outliers had been removed. *See* Ex. 4, CMS Letter to Zing on Jan. 26, 2024.

[8] *See, e.g.*, Ex. 1, CMS, *Notice of Termination and Intermediate Sanctions (Suspension of Enrollment and Marketing) for Medicare Advantage-Prescription Drug Contract Number: H7330* (Dec. 27, 2023); Jakob Emerson, *CMS to terminate Illinois insurer's Medicare Advantage drug plan following low stars*, Becker's Payer Issues (Jan. 8, 2024), *available at* https://www.beckerspayer.com/payer/cms-terminates-illinois-insurers-medicare-advantage-drug-plan-following-low-star-ratings.html.

120. The results were just as dire as expected: Zing's 2024 Part D Star Rating was significantly lower than expected as a direct result of CMS's failure to properly apply its own regulation.

121. Had CMS followed the regulation as codified, Zing's Part D Star Rating would have been 3 stars – which would have precluded CMS from terminating Zing's contract or imposing intermediate sanctions.

122. Shortly after CMS terminated and imposed sanctions on Zing, other MA Plans sued CMS in this District under the Administrative Procedure Act ("APA") to address the exact same violation at issue here: CMS's flawed approach to calculating the 2024 Star Ratings.[9]

123. In decisions issued weeks apart, 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 v. Dep't of Health & Human Servs., et al.*, Case No. 23-cv-3910, 2024 WL 2815789, at *6–7 (D.D.C. June 3, 2024); *see also Elevance Health, Inc. et al. v. Becerra et al*., 736 F. Supp. 3d 1, 25 (D.D.C. 2024) (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.").

124. In each case, both judges ordered the 2024 Star Ratings for the plaintiff MA Plans to be set aside and recalculated by CMS in compliance with its regulation. *Id.*

125. In response, on June 13, 2024, CMS issued a memorandum announcing its intention to recalculate the 2024 Star Ratings for 2025 Quality Bonus Payment purposes ("CMS

[9] *SCAN Health Plan v. Dep't of Health & Human Servs.*, Civ. A. No. 23-3910, 2024 WL 2815789 (D.D.C. June 3, 2024); *Elevance Health, Inc. v. Becerra*, 736 F. Supp. 3d 1 (D.D.C. 2024).

Memorandum"). *See* Ex. 5. However, the CMS Memorandum did not commit to vacating past terminations, sanctions, or any other decisions made in reliance on the unlawful Star Ratings methodology imposed on MA Plans.

126. Rather, CMS only committed to allowing MA plans with increases in their QBP determinations after the recalculation of the 2024 Star Ratings to resubmit their bids for 2025. *Id.*

127. The CMS Memorandum thereby afforded only limited relief to certain plans to address certain problems and in doing so failed to address the full extent of damages caused by its unlawful actions in a fair and competitively neutral way.

128. Only two weeks later, on June 25, 2024, did Zing received a notice of retraction from CMS ("Notice of Retraction"). *See* Ex. 6.

129. In its Notice of Retraction, CMS summarily stated "Zing Health no longer meets the threshold for a termination or intermediate sanction." *See id.*

130. CMS did not address the six months of intermediate sanctions imposed on Zing or the consequence of its termination from the MA Program.

131. For six months, Zing was forced to represent to beneficiaries that "Zing Health is not accepting enrollments." Ex. 2, at 4.

132. In fact, Zing was required to deny any enrollment applications it received. *See* Ex. 3, at 1.

133. CMS did not provide any further relief – or even address – the loss of beneficiaries to other plans as a result of CMS's flawed Star Ratings, harms to reputation, goodwill, and the market position of impaired MA Plans, or the extensive financial harms caused by its unlawful conduct.

CMS's Unlawful Conduct Has Harmed – And Continues To Harm – Zing Health

134. CMS's improper imposition of termination and sanctions caused, and continues to cause, severe and irreparable harm to Zing Health.

135. By improperly calculating 2024 Star Ratings, Defendants published and relied upon fundamentally flawed Part D and overall Star Ratings for Zing of 2.5 stars and in turn, initiated termination and sanctions decisions.

136. The impact of Defendants' actions are serious and substantial and have irreparably harmed Zing Health in many ways.

137. CMS's issuance of a flawed 2024 Part D Star Rating made Zing's contract eligible for termination.

138. CMS did in fact notify Zing Health that it was terminating Zing's contract effective December 31, 2024, which caused Zing to cease operations and discontinue serving low socioeconomic and minority beneficiaries.

139. Terminating Zing's contract, as well as suspending Zing's marketing and enrollment with intermediate sanctions, has adversely impacted – and will continue to impact – a vulnerable, high-needs population of beneficiaries by making access to comprehensive healthcare benefits and care even more challenging for them.

140. Indeed, Zing Health offers *two of only seven* available C-SNP MA-PD HMO plans within the Cook County Hospital System that specifically target low-income beneficiaries through $0 premiums and deductible, low maximum out of pocket costs, and Part D gap coverage.

141. Zing Health has also invested heavily in benefits relating to social determinants of health ("SDoH"), including monthly allowances toward healthy foods and/or utilities, in-home

support services, and unlimited transportation to dialysis centers – all of which were threatened to be discontinued because of CMS's actions.

142. Accordingly, as a result of CMS's termination and marketing and enrollment sanctions, all of which derive from its flawed Star Ratings methodology, beneficiaries were unable to enroll with Zing to access such care. They were forced to choose alternative plans that lack the prioritization of critical member benefits that Zing Health provides.

143. These actions run counter to CMS's stated strategic plan, which is dedicated to ensuring Americans "receive the highest quality of care."

144. Indeed, as a result of CMS's arbitrary and capricious conduct, existing members whose current coverage they have entrusted to Zing Health lost that coverage.

145. Moreover, other similarly situated Medicare beneficiaries who are not current Zing Health members forwent even having Zing as a choice, threatening their ability to achieve access to healthcare, with harmful and devastating consequences to their health and well-being.

146. CMS's termination and marketing and enrollment sanctions, all of which derive from its flawed Star Ratings methodology, have irreparably harmed Zing Health.

147. Because CMS issued improper sanctions and terminated Zing's contract, it was prohibited from enrolling new beneficiaries in its MA-PD plans for the remainder of 2024, thereby depriving Zing Health of millions of dollars in revenue.

148. CMS's contract termination and sanctions decisions have seriously undermined and irreparably harmed Zing's competitive position, reputation, and goodwill with beneficiaries and other market participants.

149. Zing was the only MA-PD plan that was terminated from and subsequently reinstated to the Medicare Advantage Program because of its erroneously-calculated Star Rating.

150. Yet, for a period of six months, Zing was unable to accept enrollment applications from new beneficiaries and was required to affirmatively communicate to enrollees that it was not able to accept "enrollments or marketing." Ex. 2.

151. Its status on Medicare Plan Finder further communicated to existing and potential beneficiaries that Zing Health was subject to sanctions. *See* Ex. 3.

152. Moreover, because of the adverse effects upon Zing's contract, Zing Health has suffered substantial and ongoing disruptions that have impacted its ability to maintain services to other contracts, including the Zing Michigan contract (H4624).

153. Indeed, Zing Health has been forced to expend substantial resources and time to address the irreparable harms and fallout directly caused by CMS's unlawful actions, suffered tremendous harm to its competitive position and reputation, worked to repair shattered investor confidence, and suffered losses and harms that well exceed $200 million –which has disrupted Zing Health's operations and ability to remain a going concern.

154. Zing Health has tried to resolve the parties' dispute informally to no avail. *See* Ex. 4. Even after its actions were deemed unlawful, CMS failed and refused to come to grips with the consequences of its unlawful action and address the full scope of the harms it caused Zing Health.

155. Left with no other option, Zing Health turns to this Court to require Defendants to take remedial action to level the competitive playing field and rectify the harm caused by their unlawful actions.

COUNT I
(Violation Of 5 U.S.C. § 706(2)(A) – Against All Defendants)

156. Plaintiffs reallege and incorporate Paragraphs 1 through 155 as if fully set forth herein.

157. CMS made termination and sanctions decisions based on an erroneous and flawed methodology that has been found arbitrary and capricious.

158. CMS's decisions to impose termination and sanctions based on arbitrary and capricious Star Ratings calculations are final agency actions made reviewable by 5 U.S.C. § 706(2). *See Bennett v. Spear*, 520 U.S. 154, 178 (1997); *N. Am.'s Bldg. Trades Unions v. Dep't of Def.*, 783 F. Supp. 3d 290, 308 (D.D.C. 2025).

159. Zing Health is adversely affected and aggrieved by CMS's imposition of termination and sanctions based on flawed 2024 Star Ratings.

160. CMS's Notice of Retraction fails to acknowledge or address the months-long harm inflicted upon Zing Health.

161. An actual controversy has arisen and exists between Zing Health and Defendants regarding the erroneous imposition of termination and sanctions.

162. The Notice of Retraction affords only limited redress for the harms caused by its arbitrary and capricious calculations of 2024 Star Ratings by summarily retracting the termination and sanctions decisions.

163. But Defendants fail to address the other harmful effects stemming from its unlawful termination and sanction decisions that harmed Plaintiffs.

164. And in failing to do so, Defendants fail to treat all plans equally and on the same competitive playing field.

165. Plaintiffs are adversely affected and aggrieved by Defendants' miscalculation of the 2024 Star Ratings and resulting termination and sanctions decisions for Zing Health.

166. Defendants' Notice of Retraction failed to sufficiently remedy the harms its erroneous Star Ratings caused to Plaintiffs, specifically Zing Health's termination and sanctions decisions.

167. As a result, Defendants' decision is arbitrary, capricious, and otherwise not in accordance with the law in violation of 5 U.S.C. § 706(2)(A).

168. Plaintiffs have suffered and will continue to suffer irreparable harm as a result of Defendants' violations of 5 U.S.C. § 706(2)(A).

169. Plaintiffs are entitled to declaratory relief to remedy Defendants' unlawful conduct, as well as all other relief as set forth in its Prayer for Relief. *See* 5 U.S.C. § 705; 28 U.S.C. § 2201.

COUNT II
Declaratory Judgment

170. Plaintiffs reallege and incorporate Paragraphs 1 through 155 as if fully set forth herein.

171. CMS's decisions to impose termination and sanctions based on arbitrary and capricious Star Ratings calculations are final agency actions made reviewable by 5 U.S.C. § 706(2).

172. Plaintiffs are adversely affected and aggrieved by the erroneous imposition of termination and sanctions based on erroneously calculated Star Ratings.

173. An actual controversy has arisen and exists between Zing Health and Defendants regarding Defendants' decision to use these erroneous Star Ratings to make termination and sanctions decisions.

174. Zing Health requests a declaration from this Court under 28 U.S.C. § 2201 that Defendants' calculation is arbitrary and capricious and that Defendants' decision to terminate and impose sanctions upon Zing's contract is arbitrary and capricious.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court remand this matter to the agency to further redress the reputational harm suffered by Zing Health. Additionally, Zing Health requests the Court to:

1. Adopt an expedited schedule to resolve the merits of this Complaint;

2. Declare that:

- Defendants' decision to terminate and impose intermediate sanctions upon Zing's contract was arbitrary and capricious in relying on erroneously calculated Star Ratings.

3. Require remedial action by Defendants to:

- Issue a public statement of its erroneous termination and sanctions decisions, to be posted both on the CMS website, and in one or more newspapers of general circulation in each community or county located in the service area of Zing's improperly terminated contract;

- Engage in specific outreach to then enrollees of Zing's improperly terminated contract, and those who disenrolled with an effective date of January 1, 2024 through to the release of CMS's Notice of Retraction;

- Take all actions necessary to ensure that Zing Health is not competitively disadvantaged as a result of CMS's improper termination and sanctions decisions including, but not limited to, denoting that Zing Health's contract has never been terminated or sanctioned on CMS's MA Plan Finder; and

4. Award Zing Health its reasonable attorney's fees and costs, as permitted by law; and

5. Grant such other further relief as this Court deems just and proper.

Dated: November 26, 2025

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2025, 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