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January 12, 2026

Hon. Brian R. Martinotti, U.S. District Judge
United States District Court
District of New Jersey
MLK Jr. Federal Bldg. & U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

Re: ***Rowe Plastic Surgery of NJ LLC v. Aetna Life Insurance Company*, No.: 2:25-cv-15053-BRM-MAH**

Dear Judge Martinotti:

This firm represents Defendant, Aetna Life Insurance Company ("Aetna"), in the above-referenced matter. Pursuant to Your Honor's Individual Rules and Procedures, please accept this letter respectfully requesting a pre-motion conference to address Aetna's proposed motion to dismiss the Amended Complaint (ECF No. 17) pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Plaintiff originally filed this action seeking to enforce four Independent Dispute Resolution ("IDR") awards by way of (i) confirmation under Section 9 of the Federal Arbitration Act ("FAA"), and (ii) violation of the No Surprises Act ("NSA"). (ECF No. 1). Following Your Honor's opinion in *Modern Orthopaedics of NJ v. Premera Blue Cross,* No. 25-01087 (BRM), 2025 WL 3063648, *9-11 (D.N.J. Nov. 3, 2025), rejecting these counts, and the growing number of opinions adopting its reasoning both within and outside of this District,[1] Plaintiff pivoted. Tacitly conceding the viability of its prior claims, Plaintiff filed the Amended Complaint, which seeks *the same relief* as the original Complaint—judicial enforcement of the IDR award[2]—under two new causes of action: (1) unjust enrichment, and (2) ERISA. Plaintiff mistakenly believes its new claims have life because "[*Modern Orthopaedics*] indicated that the proper remedy for a

[1] *See, e.g.*, *Freeman Pain Institute P.A. v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-02507 (SRC), 2025 WL 3268289, *7 (D.N.J. Nov. 24, 2025) (Chesler, J.); *Mitchell F. Reiter MD PC, v. Horizon Blue Cross Blue Shield Of New Jersey,* No. 25-12526 (WJM), 2025 WL 3514300 (D.N.J. Dec. 8, 2025) (Martini, J.); *Worldwide Aircraft Services, Inc. v. United Healthcare*, No. 24-2527 (TPB)(LSG), 2025 WL 3312169, at *2 (M.D. Fla. Nov. 28, 2025); *T.V. Seshan M.D., P.C., v. Blue Cross Blue Shield Association*, No. 25-cv-1255 (CS), 2025 WL 3496382 (S.D.N.Y. Dec. 5, 2025); *Worldwide Aircraft Servs. Inc. v. Freedom Life Ins. Co. of Am.*, No. 25-cv-01158 (WFJ)(AEP), 2025 WL 3551397 (M.D. Fla. Dec. 11, 2025); *Specialtycare Inc., et al. v. Aetna, Inc.*, No. 25-cv-224, 2025 WL 3719227 (M.D. Pa. Dec. 23, 2025).

[2] Plaintiff's Amended Complaint narrows the scope the dispute to just one of the four IDR awards included in the original Complaint.

medical provider to recover unpaid IDR determinations issued against an insurance carrier is in fact unjust enrichment." (Am. Compl., ¶ 38). Plaintiff woefully misunderstands and misinterprets *Modern Orthopaedics* and, as a result, both its claims fail as a matter of law for at least two reasons.

First, the Court lacks subject matter jurisdiction over Plaintiff's NSA IDR enforcement litigation that has simply been restyled through unjust enrichment and ERISA claims. It is well-established in this District and elsewhere that Plaintiff lacks subject matter jurisdiction to enforce the IDR process created by the NSA. *See Modern Orthopaedics*, 2025 WL 3063648, at *8 ("[T]he NSA does not contain any language creating a cause of action or right to have the IDR award confirmed by a Court."). Indeed, the NSA established "a clear administrative enforcement scheme, specifying the *exclusive* process for resolving out-of-network payment disputes." *Freeman Pain Institute P.A.*, 2025 WL 3268289, at *7 (emphasis in original). Plaintiff misconstrues the Court's dicta that the NSA "does not displace traditional state-law remedies like unjust enrichment," *Modern Orthopaedics*, 2025 WL 3063648, at *12, as an invitation to judicially enforce an IDR determination through an unjust enrichment claim. In doing so, Plaintiff blatantly ignores (as it must to keep its litigation afloat) the context surrounding the statement—the Court was responding to the plaintiff's argument that it did not have a remedy to enforce IDR determinations (a contention Plaintiff will likely make here if it cannot pursue its unjust enrichment claim). *Id.*

Correcting the plaintiff's "misreading of the statute," *id.*, the Court explained, the NSA was enacted to "protect[] patients by relieving them of liability to pay for [their emergency medical procedures] beyond their ordinary in-network insurance payments." *Id.* at *3 (citing 42 U.S.C. § 300gg-111(c)(1)(A)). Having removed patients from the equation, the NSA provides insurers and providers with the IDR process, "an ***alternative***, streamlined route to determine the amount owed between the parties." *Id.* at *12 (emphasis added). But the "[t]he IDR is an ***opt-in process***;" *id.* (emphasis added), which means providers, like Plaintiff, can choose this fast-track path to a payment dispute resolution and its exclusive administrative enforcement scheme, or not. *See id.*; *Freeman Pain Institute P.A.*, 2025 WL 3268289, at *7. To that end, the NSA "*does not displace traditional state-law remedies like unjust enrichment*," *Modern Orthopaedics*, 2025 WL 3063648, at *12 (emphasis added), to the extent a provider chooses *not* to opt-in to the IDR process and those state-law remedies are viable. Instead, a provider can attempt to challenge a non-IDR award, out-of-network payment by a third-party administrator or health plan in court under state law causes of action.

But that is not what Plaintiff seeks to do here. Plaintiff has elected to avail itself of the aspects of Congress's "streamlined approach," that it likes—a fast-track, baseball style arbitration without reference to actual market rates of payment for similar services—and to ignore the aspects it does not like—the NSA's exclusive administrative enforcement scheme. *See id.* at *9-11. Plaintiff's Amended Complaint, the allegations of which are derived solely from the NSA, outwardly asks the Court to eradicate the NSA's exclusive administrative enforcement scheme and allow Plaintiff to enforce the IDR award by way of an unjust enrichment claim. Precisely what the NSA forbids. *See* 42 U.S.C. § 300gg-111(c)(5)(E) (a "determination of a certified IDR entity…shall not be subject to judicial review, except [to vacate for misconduct under] section 10(a) of [the FAA.]"). "The Court cannot interpret language forbidding judicial review except to

vacate an award to mean forbidding judicial review except to vacate *or enforce* an award." *Modern Orthopaedics*, 2025 WL 3063648, at *12.[3] Nor can Plaintiff "use state common law to circumvent the absence of a private right of action." *Umland v. Planco Fin. Servs., Inc.*, 542 F.3d 59, 66 (3d Cir. 2008); *see Astra USA, Inc. v. Santa Clara Cnty., Cal.*, 563 U.S. 110, 118 (2011) (allowing parties to dress up otherwise prohibited statutory claims in state law garb "would render[] meaningless" Congress's decision to forgo judicial enforcement).

Plaintiff's ERISA claim fares no better. Plaintiff purports to be standing in the patient's shoes as its assignee. But here, the patient, protected under the NSA, has suffered no injury in fact. Indeed, "[t]he NSA shields the beneficiaries [the patients] from liability for any out-of-network coverage costs, so the beneficiaries have not suffered—and could not suffer—any concrete injury" from the insurer's alleged underpayment of "medical bills within the scope of the NSA." *Guardian Flight, L.L.C. v. Health Care Service Corporation*, 140 F.4th 271, 278 (5th Cir. 2025).[4]

Second, and in addition to these jurisdictional defects, neither of Plaintiff's new causes of action state claims upon which relief can be granted. ERISA preempts any unjust enrichment claim that could be asserted. *See, e.g.*, *Plastic Surgery Center, P.A. v. Aetna Life Insurance Company*, 967 F.3d 218, 240-41 (3d Cir. 2020). And Plaintiff fails to state an ERISA benefits claim because the Amended Complaint fails to (and cannot) "identify—or allege the existence of" any plan term that Aetna purportedly breached by failing to pay an IDR award through a process outside of the plan terms and obtained through a separate statutory scheme. *Univ. Spine Ctr. v. Cigna Health & Life Ins. Co*., No. 17-cv-13596 (KM), 2018 WL 4144684, at *3 (D.N.J. Aug. 29, 2018).

For the foregoing reasons, Aetna respectfully requests a pre-motion conference to discuss its motion to dismiss Plaintiff's Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Respectfully,

/s/ Adam J. Petitt
Adam J. Petitt

cc: All Counsel of Record (*via ECF*)

[3] *See also Freeman Pain Institute P.A.*, 2025 WL 3268289, at *7 ("Allowing providers to bypass the administrative scheme and seek judicial confirmation or enforcement would displace the administrative review, audit, and penalty mechanisms that the NSA expressly gives to the HHS, an outcome that would contradict the scheme Congress enacted.").

[4] The Plan at issue also contains an anti-assignment clause, which forecloses Plaintiff from asserting ERISA claims. *See, e.g.*, *SAMRA Plastic & Reconstructive Surgery v. Aetna Life Ins. Co.*, No. CV 23-23424 (MAS), 2024 WL 4136549, at *2 (D.N.J. Sept. 10, 2024).