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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD, Plaintiff, v. CIGNA HEALTH AND LIFE INSURANCE COMPANY, Defendant.	Civil Action No. 25-00498-SRU *Document electronically filed*

MOTION BY DEFENDANT CIGNA HEALTH AND LIFE INSURANCE COMPANY TO DISMISS PLAINTIFF RICHARD AGAG, MD'S COMPLAINT

PLEASE TAKE NOTICE that Defendant Cigna Health and Life Insurance Company ("Cigna") respectfully moves before the Honorable Stefan R. Underhill, U.S.D.J., in the United States District Court for the District of Connecticut, 915 Lafayette Boulevard, Suite 411, Bridgeport, Connecticut 06604, for an Order pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure dismissing Plaintiff Richard Agag, MD's ("Plaintiff") Complaint (ECF No. 1).

PLEASE TAKE FURTHER NOTICE that in support of its Motion, Cigna shall rely upon the Memorandum of Law submitted concurrently herewith.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is submitted for the Court's consideration.

PLEASE TAKE FURTHER NOTICE that oral argument is requested.

Dated: September 26, 2025
Newark, New Jersey

Respectfully submitted,

s/ Caroline E. Oks

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RICHARD AGAG, MD, Plaintiff, v. CIGNA HEALTH AND LIFE INSURANCE COMPANY, Defendant.	Civil Action No. 25-498-SRU *Document electronically filed*

DEFENDANT CIGNA HEALTH AND LIFE INSURANCE COMPANY'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF RICHARD AGAG, MD'S COMPLAINT

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Defendant Cigna Health and Life Insurance Company ("Cigna") respectfully submits this memorandum of law in support of its Motion to Dismiss Plaintiff Richard Agag, MD's ("Plaintiff") Complaint (ECF No. 1) seeking confirmation of Independent Dispute Resolution ("IDR") awards issued under the No Surprises Act, 42 U.S.C. § 300gg-111 *et seq.* (the "NSA"), pursuant to § 9 of the Federal Arbitration Act (the "FAA"), 9 U.S.C. § 9, and alleging Cigna's violation of the NSA.

PRELIMINARY STATEMENT

Plaintiff is a medical provider who alleges that he rendered healthcare services to two different patients whom Plaintiff claims were insured under separate health benefit plans administered by Cigna. Because Plaintiff claims that he did not have a contract with those plans (*i.e.*, that he was "out-of-network"), Plaintiff maintains he initiated IDR proceedings under the NSA and obtained awards in the amount of $142,567.99. Through this action, Plaintiff seeks both judicial confirmation of the IDR awards under § 9 of the FAA, and damages for an alleged violation of the NSA. The Court should dismiss the Complaint for several reasons.

First, the NSA does not provide a private right of action to seek judicial confirmation of IDR determinations under § 9 of the FAA. Congress did not incorporate § 9 of the FAA into the NSA. Nor did Congress grant any other right to obtain judicial confirmation of IDR determinations. Instead, the NSA sets forth a robust administrative oversight and enforcement scheme, and the United States Department of Health and Human Services ("HHS") along with other federal agencies, have established processes to police alleged NSA violations. Plaintiff's attempt to obtain judicial intervention under 9 U.S.C. § 9 is improper. Therefore, Count One, which seeks "Relief in Accordance with 9 U.S. Code § 9," fails as a matter of law because such "cause of action" is not available.

The NSA also does not authorize a cause of action for a private party to enforce an alleged substantive violation of the statute. Plaintiff therefore has no right to file an action and obtain civil

remedies against Cigna for an alleged substantive violation of the NSA. Here again, the NSA provides for administrative remedies, not judicial relief. Accordingly, because Plaintiff has no right of action to obtain relief for an alleged NSA violation, Plaintiff's second cause of action for "violation of the federal No Suprises Act" also must fail.

The Complaint here is not novel. A growing number of courts, including the Fifth Circuit and several district courts, have rejected similar actions because Congress did not authorize a private right of action under the NSA. Accordingly, neither count of Plaintiff's Complaint states a valid cause of action upon which relief may be granted.

Second, even assuming the NSA authorizes Plaintiff a right to petition for judicial confirmation of an IDR award, and even assuming § 9 of the FAA applies, Plaintiff is out-of-time to seek confirmation of at least one IDR determination. Under § 9 of the FAA, a party has one year from the date an award is made to apply for an order confirming that award. Plaintiff alleges that he obtained an IDR award under DISP-878778 on March 6, 2024. But Plaintiff did not file his Complaint until March 27, 2025. So more than one year elapsed from the date of the IDR determination and the date Plaintiff filed this action. Accordingly, even when accepting the allegations made in the Complaint as true, Plaintiff is time barred from obtaining an order to confirm DISP-878778.

For all these reasons, and as set forth more fully below, the Court must dismiss Plaintiff's Complaint in its entirety.

BACKGROUND

A. The Federal No Surprises Act

Congress enacted the NSA to protect health care patients from "surprise medical bills" incurred when they receive certain emergency medical services from an out-of-network health care provider or non-emergent medical services from an out-of-network provider at an in-network health care facility. Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182, 2758–2890 (2020), *codified at* 42 U.S.C. § 300gg-111 *et seq.* When an insured patient receives medical care under such circumstances, the NSA: (1) limits the amount the patient owes for the medical care, and (2) removes the patient from any billing disputes between the payer and provider. To resolve those disputes, the NSA created a separate non-judicial resolution process without further patient liability.

1. The NSA Bans Surprise Medical Bills and Limits Patients' Financial Responsibilities

The NSA prohibits a medical provider that is out-of-network with an insured patient's group health plan or health insurance issuer (collectively, "payer") from balance billing or otherwise holding the patient liable for the cost of the unanticipated out-of-network care beyond that patient's in-network cost sharing responsibility, *e.g.*, deductible, copayment, or coinsurance. *See* 42 U.S.C. §§ 300gg-131, 300gg-132. If a provider bills a patient beyond the patient's in-network cost sharing, "the provider shall reimburse the [patient] for the full amount paid by the [patient] in excess of the in-network cost-sharing amount for the treatment or services involved, plus interest, at an interest rate determined by the [HHS] Secretary." 42 U.S.C. § 300gg-139(b).

2. Open Negotiations and the IDR Process

The NSA further established a non-judicial dispute resolution process when a provider and payer cannot agree on payment for the medical care rendered by the out-of-network provider to the protected patient. Under the NSA, the out-of-network provider must first submit the claim directly to the insureds' health plan. 42 U.S.C. § 300gg-111(b)(1)(C)–(D). Within thirty (30) days of receipt, the payer must render an initial payment or issue a notice of denial to the provider. *Id.* at § 300gg-111(a)(1)(C)(iv)(I). When an out-of-network provider is dissatisfied with the payment, if any, it received from a payer, the provider may attempt to negotiate with the payer on an agreed-upon payment rate for the relevant services. *See id.* at § 300gg-111(c)(1). If open negotiations fail and the negotiation period is exhausted, the provider or the payer may initiate the IDR process. *Id.* at § 300gg-111(c)(1)(B). Under the IDR process, the parties select, or HHS appoints, a certified IDR Entity ("CIDRE") to resolve the dispute and make a payment determination. *Id.* at §§ 300gg-111(c)(4)(F), (c)(5).

The IDR process resembles "baseball-style" arbitration. Under "baseball-style" arbitration, the provider and payer each submit a final offer, and the IDR entity must select one of the two proposed amounts. *E. Coast Advanced Plastic Surgery, LLC v. Cigna Health & Life Ins. Co.*, Nos. 25-cv-00255 (PAE) & 25-cv-01686 (PAE), 2025 U.S. Dist. LEXIS 157911, at *17 (S.D.N.Y. Aug. 14, 2025). The IDR entity must decide the arbitration and notice the parties of its decision within thirty days from the date of its IDR selection. 42 U.S.C. § 300gg-111(c)(5)(B)(i); 45 C.F.R. § 149.510(c)(4)(ii). In the absence of a fraudulent claim or evidence of a misrepresentation of facts to the CIDRE, an IDR award is "binding" on the parties, 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I), and payment of the award "shall be made . . . not later than 30 days after the date on which such determination is made," *id.* at § 300gg-111(c)(6).

3. Limited Judicial Review

Congress explicitly confined judicial review of IDR determinations under the NSA. The statute provides that an IDR determination "shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a)" of the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II).

Section 10(a) governs judicial review of applications to vacate an arbitral award under the FAA. 9 U.S.C.§ 10(a). Under § 10(a), a party may file an application to vacate an arbitration award in "the United States court in and for the district wherein the award was made," based on circumstances as set forth in § 10(a)(1)–(4). 9 U.S.C. § 10(a)(1)–(4).

Section 9 of the FAA governs applications to confirm an arbitral award. 9 U.S.C. § 9. Unlike its incorporation of § 10(a), the NSA does not incorporate § 9 of the FAA. Nor does the NSA authorize any other procedure for judicial review and enforcement of an IDR determination. *See generally* 42 U.S.C. § 300gg-111 *et seq.* The NSA also does not permit private parties to recover damages for alleged substantive violations of the statute itself. *See id.*

4. Administrative Agency Oversight and Enforcement Authority

Congress vested HHS with oversight and enforcement authority over the IDR process. Regarding oversight, the NSA directs HHS to establish the IDR process, oversee the certification and decertification of CIDREs, publicize certain information regarding the IDR process, establish and collect administrative fees for managing the IDR process, and permits HHS discretion to "modify any deadline or other timing requirement . . . in cases of extenuating circumstances[.]" 42 U.S.C. §§ 300gg-111(c)(9); *see also id.* at § 300gg-111(c)(1)(B), (c)(2)(A), (c)(3), (c)(4), (c)(7), (c)(8).

Regarding enforcement, the NSA specifies that HHS may enforce payer and provider non-compliance with the statute's provisions. 42 U.S.C. § 300gg-22(b)(2) (providing for HHS

enforcement against payers for NSA non-compliance); *id.* at § 300gg-134 (providing for HHS enforcement against providers for NSA non-compliance); *see also* 45 C.F.R. § 150.301 *et seq.* (governing the imposition of civil monetary penalties against payers).

Under the NSA, HHS may impose per day civil monetary penalties on payers for violations of the statute. *See* 42 U.S.C. § 300gg-22(b)(2). The regulatory and enforcement schemes under the NSA further set forth an administrative review and fair hearing process for payers to challenge the imposition of monetary penalties, *id.* at § 300gg-22(b)(2)(D), and HHS may refer the failure of a payer to pay a monetary penalty to the Attorney General to recover the penalty through judicial enforcement, *id.* at § 300gg-22(b)(2)(F), among other administrative remedies.

The Centers for Medicare & Medicaid Services ("CMS"), an agency within HHS, along with other federal agencies, "oversee the IDR process through complaint reviews and market conduct examinations." *See* Gov't Accountability Off., GAO-24-106335, Private Health Insurance: Roll Out of Independent Dispute Resolution Process for Out-of-Network Claims Has Been Challenging, https://www.gao.gov/assets/870/864587.pdf, at 34–35 (Dec. 2023) ("GAO-24-106335"). Providers may submit complaints against payers to CMS for review and potential enforcement. For providers "who believe an entity is not complying with the federal IDR process, or . . . want to report a violation of the protections of the No Surprises Act," CMS maintains an online portal through which providers may submit complaints regarding the IDR process. *See* Providers: Submit a Billing Complaint, CMS, https://www.cms.gov/nosurprises/policies-and-resources/providers-submit-a-billing-complaint (last visited Sept. 26, 2025); No Surprises Complaint Form, CMS, https://nsa-idr.cms.gov/providercomplaints/s/ (last visited Sept. 26, 2025). If a payer fails to timely issue payment on an IDR award, CMS "would require the issuer to pay the provider the determined award amount." GAO-24-106335, at 35.

B. Plaintiff Commenced This Action Against Cigna To Confirm The IDR Award[1]

Plaintiff is a "medical provider specializing in plastic and reconstructive surgery." (Complaint, ECF No. 1 (the "Compl.") ¶ 5.) Plaintiff alleges that he rendered healthcare services to separate patients, M.L. and M.P. As to patient M.L., Plaintiff alleges that he performed surgical treatment on April 14, 2023 at Backus Hospital in Norwich, Connecticut. (*Id.* ¶ 13.) As to patient M.P., Plaintiff alleges that he performed surgical treatment on January 22, 2022 at Saint Mary's Hospital, located in Waterbury, Connecticut. (*Id.* ¶ 24.) Plaintiff alleges that both patients were beneficiaries of health benefit plans administered by Cigna (*id.* ¶ 6), and that he did not have a network contract with either plan (*id.* ¶ 7). Because Plaintiff was "out-of-network" with those plans at the time of service and because the services were "rendered emergently/inadvertently," Plaintiff claims those services "are subject to reimbursement pursuant to the NSA." (*Id.* ¶ 8.) Plaintiff alleges that for each patient, he initiated the IDR process under the NSA to dispute alleged underpayments received from Cigna. (*Id.* ¶¶ 16–17, 27–28, 37–38, 47–48, 57–58.)

According to documentation attached to the Complaint, two CIDREs found Plaintiff the prevailing party in five separate IDR proceedings. (*Id.*, Exs. A–E.) As to patient M.L., Plaintiff alleges that on March 6, 2024, Federal Hearings and Appeals Services, Inc., found Plaintiff the prevailing party under IDR dispute number DISP-878778 and awarded Plaintiff a total of $97,500.00. (*Id.* ¶ 19, Ex. A.) As to patient M.P., Plaintiff alleges that ProPeer Resources, LLC found Plaintiff the prevailing party under IDR dispute numbers DISP-2001877, DISP-2001876, DISP-2001874, and DISP-2001871. (*Id.* ¶ 30, Ex. B; ¶ 40, Ex. C; ¶ 50, Ex. D; ¶ 60, Ex. E.). Across both patients, Plaintiff claims he received a total of $142,567.99 in awards. (*Id.* ¶¶ 19, 30, 40, 50,

[1] Cigna accepts the truth of the allegations in the Complaint only for purposes of this memorandum of law but does not admit the accuracy of those allegations and reserves all rights, privileges, and defenses in this matter.

60.) Plaintiff alleges that Cigna failed to pay the IDR awards within 30 days of each IDR determination. (*Id.* ¶¶ 22, 33, 43, 53, 63.)

Plaintiff filed this two-count complaint on March 27, 2025.[2] At Count One, "Plaintiff Seeks Relief In Accordance With 9 U.S. Code § 9" seeking an order confirming the five IDR awards. (*Id.*, Count One.) At Count Two, Plaintiff alleges Cigna's non-compliance with the NSA and brings a cause of action for "Violation of the Federal No Surprises Act Regarding the Non-Payment of Awards." (*Id.*, Count Two.) Plaintiff demands judgment not only directing Cigna's reimbursement, but also "attorney's fees, interest, and costs of suit." (*Id.*, Claim for Relief.)

For the reasons that follow, the Court should dismiss Plaintiff's Complaint.

LEGAL STANDARDS

A. Rule 12(b)(1)

"A case is properly dismissed for lack of subject matter jurisdiction under [Federal Rule of Civil Procedure] 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). The plaintiff bears the burden of establishing by a preponderance of the evidence that the court has subject matter jurisdiction over the claims. *Id.*

"Federal courts 'have only the power that is authorized by Article III of the Constitution *and* the statutes enacted by Congress pursuant thereto.'" *Guthrie v. Rainbow Fencing Inc.*, 113 F.4th 300, 304 (2d Cir. 2024) (emphasis in original) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986)). Accordingly, subject matter jurisdiction is "limited by both

[2] Plaintiff brings this action in the form of a complaint, but the confirmation of an arbitration award should be initiated as a summary proceeding. *See Stafford v. IBM*, 78 F.4th 62, 67 (2023). By moving to dismiss this complaint, Cigna does not concede the propriety of Plaintiff's action nor does it waive any rights it would have had Plaintiff proceeded properly.

statute—[courts] have only the jurisdiction granted to [them] by Congress—and by Article III of the United States Constitution . . . ." *Id.* (citing *In re Auction Houses Antitrust Litig.*, 42 F. App'x 511, 515 (2d Cir. 2002)). Federal courts, therefore, have an "independent obligation" to satisfy themselves of subject matter jurisdiction. *Stafford*, 78 F.4th at 68 (quoting *Melito v. Experian Mktg. Sols., Inc.*, 923 F.3d 85, 92 (2d Cir. 2019)). If subject matter jurisdiction is lacking "at any time," courts "must dismiss the action." Fed. R. Civ. P. 12(h)(3).

"When considering a motion to dismiss pursuant to Rule 12(b)(1), the court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of plaintiff." *Sweet v. Sheahan*, 235 F.3d 80, 83 (2d Cir. 2000); *see also NRDC v. Johnson*, 461 F.3d 164, 171 (2d Cir. 2006) (quoting *Sweet*, 235 F.3d at 83). The Court may also, however, resolve disputed jurisdictional fact issues "by referring to evidence outside of the pleadings, such as affidavits, and if necessary, hold an evidentiary hearing." *Karlen ex rel. J.K. v. Westport Bd. of Educ.*, 638 F. Supp. 2d 293, 298 (D. Conn. 2009) (citing *Zappia Middle E. Constr. Co. v. Emirate of Abu Dhabi*, 215 F.3d 247, 253 (2d Cir. 2000)).

B. Rule 12(b)(6)

The federal rules require that a complaint contain a "short and plan statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). A claim that fails "to state a claim upon which relief can be granted" will be dismissed. *Id.* at 12(b)(6). In reviewing a complaint under Rule 12(b)(6), a court applies a "plausibility standard" guided by "[t]wo working principles." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). *First*, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*; *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and

a formulaic recitation of the elements of a cause of action will not do[.]") (alteration in original) (citations omitted). *Second*, "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679. Thus, the complaint must contain "factual amplification . . . to render a claim plausible." *Arista Records LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010) (quoting *Turkmen v. Ashcroft*, 589 F.3d 542, 546 (2d Cir. 2009)).

When reviewing a complaint under Rule 12(b)(6), the court takes all factual allegations as true. *Iqbal*, 556 U.S. at 678. The court also views the allegations in the light most favorable to the plaintiff and draws all inferences in the plaintiff's favor. *Cohen v. S.A.C. Trading Corp.*, 711 F.3d 353, 359 (2d Cir. 2013); *see also York v. Ass'n of the Bar of N.Y.C.*, 286 F.3d 122, 125 (2d Cir. 2002) ("On a motion to dismiss for failure to state a claim, we construe the complaint in the light most favorable to the plaintiff, accepting the complaint's allegations as true.").

A court considering a motion to dismiss under Rule 12(b)(6) limits its review "to the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the complaint by reference." *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 191 (2d Cir. 2007). A court may also consider "matters of which judicial notice may be taken" and "documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit." *Brass v. Am. Film Techs., Inc.*, 987 F.2d 142, 150 (2d Cir. 1992); *Patrowicz v. Transamerica HomeFirst, Inc.*, 359 F. Supp. 2d 140, 144 (D. Conn. 2005).

ARGUMENT

I. COUNTS I AND II MUST BE DISMISSED BECAUSE THE NSA DOES NOT PROVIDE PLAINTIFF A PRIVATE RIGHT OF ACTION TO SUE CIGNA IN FEDERAL COURT

Plaintiff brings suit against Cigna for its alleged failure to timely pay certain IDR awards under the NSA. At Count I, Plaintiff seeks confirmation of the IDR determinations issued under the NSA pursuant to § 9 of the FAA. At Count II, Plaintiff alleges Cigna violated the NSA when it allegedly failed to timely remit payment of those determinations. Plaintiff demands judgment against Cigna and seeks relief in the form of an order directing payment of the IDR determinations, along with attorney's fees, interest, and costs of suit. But Plaintiff asks this Court to create causes of action that Congress did not. And without an authorized cause of action under the NSA, Plaintiff cannot establish subject matter jurisdiction in this Court. Thus, because Plaintiff cannot state a claim upon which relief can be granted, the Court should dismiss its Complaint.

"[C]reating a cause of action is a legislative endeavor." *Egbert v. Boule*, 596 U.S. 482, 491 (2022). Because "[l]ike substantive federal law itself, private rights of action to enforce federal law must be created by Congress." *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). Statutes provide a private cause of action *only if* Congress shows the intent to create a right and remedy through "clear and unambiguous terms." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 290 (2002); *see also Cenzon-DeCarlo v. Mount Sinai Hosp.*, 626 F.3d 695, 697 (2d Cir. 2010) (holding federal statutes only create a private right of action where explicitly stated, or where there is "explicit evidence of Congressional intent" (citing *Sandoval*, 532 U.S. at 286–87)). A private right of action may be provided "either expressly or, more rarely, by implication." *Republic of Iraq v. ABB AG*, 768 F.3d 145, 170 (2d Cir. 2014), *cert. denied*, 576 U.S. 1028 (2015). But "[w]hen Congress has not explicitly provided a private right of action, however, 'the presumption [is] that Congress did not intend one.'" *Owusu-Boateng v. U.S. Citizenship & Immigr. Servs.*, No. 3:22-cv-00812

(OAW), 2025 U.S. Dist. LEXIS 47799, at *13 (D. Conn. Mar. 17, 2025) (quoting *Bellikoff v. Eaton Vance Corp.*, 481 F.3d 110, 116 (2d Cir. 2007)). Plaintiff, as the party seeking to imply a right of action, bears the burden of showing Congress intended to make one available. *See Suter v. Artist M.*, 503 U.S. 347, 363 (1992).

Here, the NSA contains neither an express nor implied private right of action for Plaintiff to seek confirmation of the IDR determinations before this Court under § 9 of the FAA, must less convert them into a judgment. Nor does the NSA provide an express or implied private right of action to enforce alleged violations of the statute itself, and recover damages for substantiated violations. To the contrary, Congress explicitly *limited* judicial review to circumstances not applicable here. Instead, Congress granted HHS and other administrative agencies enforcement authority and oversight of the NSA.

The Fifth Circuit—the only circuit level court to address this issue—held unequivocally that "the NSA contains no private right of action," and affirmed dismissal of a similar action to the ones brought here seeking confirmation and enforcement of IDR determinations. *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 274 (5th Cir. 2025) ("*Guardian Flight*"). Several district courts, including two recent decisions within the Second Circuit, have also concluded that the NSA contains no private right of action to confirm an IDR determination or enforce a statutory violation. Without "a cause of action under the applicable statute," Plaintiff cannot bring a case before this Court.[3] *Am. Psychiatric Ass'n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 359 (2d Cir.

[3] In *Badgerow v. Walters*, the Supreme Court held that Section 9 of the FAA does not create independent federal question jurisdiction. 596 U.S. 1, 8 (2022) (noting that a petitioner seeking to confirm an arbitral award "must identify a grant of jurisdiction, apart from Section [9 and] 10 itself, conferring 'access to a federal forum.'") (quoting *Vaden v. Discover Bank*, 556 U. S. 49, 59 (2009)). This Circuit has confirmed that the FAA requires an independent jurisdictional basis for federal courts to entertain petitions under the FAA. *See, e.g.*, *Stafford*, 78 F.4th at 68 (noting that

2016).

A. Plaintiff Has No *Express* Right of Action Under the NSA to Confirm or Enforce an IDR Determination Under the FAA or the NSA

Plaintiff seeks confirmation of the IDR determinations under § 9 of the FAA, and enforcement of Cigna's alleged violation of the NSA for failure to pay those determinations. But the NSA supports neither cause of action. Congress did not incorporate § 9 of the FAA into the NSA. Nor did Congress authorize any other form of judicial enforcement over IDR determinations. And Plaintiff has not cited any provision of the NSA authorizing this action. So by its plain text, the NSA does not expressly authorize Plaintiff to bring an action in federal district court to confirm an IDR determination or to seek enforcement for an alleged violation of the NSA for failure to timely pay an award. Nor did Congress enact any other provision in the NSA to do so.

To start, there can be no dispute that Congress did not incorporate § 9 of the FAA into the NSA. Thus, "[t]he text of the statute contains no explicit provision for a private right of action" for a party to confirm or enforce an IDR determination. *Republic of Iraq*, 768 F.3d at 170. To confirm the an IDR determination under § 9 of the FAA, Plaintiff requires this Court to read § 9 into the NSA. But permitting a party to enforce an IDR determination under § 9 is contrary to the "fundamental principle of statutory interpretation that absent provision[s] cannot be supplied by the courts." *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (internal quotations marks and citation omitted); *see also McQuiggin v. Perkins*, 569 U.S. 383, 403 (2013) (noting that courts are "duty bound to enforce [a statute], not amend it").

Thus, "the NSA's plain text bars this suit." *Guardian Flight*, 140 F.4th at 276; *see also E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *48 (holding that "[t]he statutory text thus

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the FAA provisions authorizing an application to confirm an IDR award "do not themselves support federal jurisdiction" (quoting *Badgerow*, 596 U.S. at 9–10).

forecloses of a private right of action to enforce IDR determinations"); *Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:25-cv-00167 (MSS), 2025 U.S. Dist. LEXIS 155594, at *5–6 (M.D. Fla. Aug. 12, 2025) (same); *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-cv-00054 (HG), 2025 U.S. Dist. LEXIS 129998, at *5 (E.D.N.Y. July 2, 2025) (same).[4] Therefore, Plaintiff cannot claim an express right of action under the NSA to confirm an IDR determination under § 9 of the FAA, as it attempts to do in Count I. Nor can Plaintiff claim any provision of the NSA provides a right to privately enforce an alleged substantive violation of the NSA as alleged in Count II. *See Sullivan v. Stroop*, 496 U.S. 478, 482 (1990) ("If the statute is clear and unambiguous that is the end of the matter, for the court . . . must give effect to the unambiguously expressed intent of Congress.") (internal quotation marks omitted).

B. The NSA Does Not Provide an *Implied* Right of Action to Confirm or Enforce an IDR Determination Under the FAA or the NSA

Plaintiff also cannot establish that Congress, "through clear and unambiguous terms," created new implied enforceable rights under the NSA. *Gonzaga Univ.*, 536 U.S. at 290. Much to the contrary, the text, structure, and context of the NSA unequivocally evince Congress's intent *not* to create a new right to seek judicial confirmation of IDR determinations or enforcement of alleged NSA violations in federal district court. And Plaintiff cannot meet its burden to prove otherwise.

"Implied rights of action are 'disfavored,'" when not expressly created by statute. *Peterson*

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[4] Even *Guardian Flight v. Aetna*—the lone, unpublished decision that found an *implied* right of action to enforce an IDR award—held that "[t]he NSA does not . . . expressly create a private right of action to enforce [IDR award] payment requirements." *Guardian Flight LLC v. Aetna Life Ins. Co.*, No. 3:24-cv-00680 (MPS), 2025 U.S. Dist. LEXIS 91676, at *17 (D. Conn. May 14, 2025) ("*Guardian Flight v. Aetna*").

v. Bank Markazi, 121 F.4th 983, 1003 (2d Cir. 2024) (quoting *Moya v. U.S. Dep't of Homeland Sec.*, 975 F.3d 120, 128 (2d Cir. 2020)). Because no provision of the NSA explicitly provides a private right of action to confirm an IDR determination, this court must "begin with the presumption that Congress did not intend one." *Bellikoff*, 481 F.3d at 116. A federal court may not infer a private right of action except "when there is explicit evidence of Congressional intent[.]" *Cenzon-DeCarol*, 626 F.3d at 697. "When analyzing whether a statute implies a private right of action, [the] 'interpretive inquiry begins with the text and structure of the statute and ends once it has become clear that Congress did not provide a cause of action.'" *Moya*, 975 F.3d at 128 (quoting *Sandoval*, 532 U.S. at 288 n.7). "In considering whether a statute confers an implied private right of action, 'the judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy.'" *Republic of Iraq*, 768 F.3d at 170 (quoting *Sandoval*, 532 U.S. at 286). "Statutory intent on this latter point is determinative," because "[w]ithout it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute." *Sandoval*, 532 U.S. at 286–87. Accordingly, "the text and structure of the statute" must "yield a clear manifestation of congressional intent to create a private cause of action before a court can find such a right to be implied." *Lopez v. Jet Blue Airways*, 662 F.3d 593, 596 (2d Cir. 2011).

The Second Circuit has recognized that *Sandoval* "strictly curtailed the authority of the courts to recognize implied rights of action[.]" *Lopez*, 662 F.3d at 596; *see also Republic of Iraq*, 768 F.3d at 170 (noting that "the Supreme Court has come to view the implication of private remedies in regulatory statutes with increasing disfavor." (quoting *Hallwood Realty Partners, L.P. v. Gotham Partners, L.P.*, 286 F.3d 613, 618 (2d Cir. 2002)). Since *Sandoval*, the Second Circuit has therefore repeatedly declined to create implied private causes of action when Congress did not

expressly grant that right. *See, e.g.*, *Murphy Med. Assocs., LLC v. Yale Univ.*, 120 F.4th 1107, 1112 (2d Cir. 2024) (affirming district court dismissal because the applicable provisions at issue in the Families First Coronavirus Response Act, and the Coronavirus Aid, Relief, and Economic Security Act do not provide express or implied private rights of action); *Republic of Iraq*, 768 F.3d at 171 (affirming district court's dismissal because Foreign Corrupt Practices Act does not provide a private right of action); *Lopez*, 662 F.3d at 597–98 (affirming district court's dismissal because the Air Carrier Access Act does not provide a private right of action); *Bellikoff*, 481 F.3d at 114 (affirming district court's dismissal because applicable provisions of the Investment Company Act at issue do not provide implied private rights of action); *George v. NYC Dep't of City Planning*, 436 F.3d 102, 103 (2d Cir. 2006) (affirming district court's dismissal that the Coastal Zone Management Act does not provide a private right of action).[5]

And though one court in this district created a new, implied right of action to enforce an IDR determination, its unpublished decision interpreted a separate provision of the NSA governing reimbursement of air ambulance services not applicable here, acknowledged that it did not fully consider administrative enforcement provisions of the NSA, was made prior to, and without the benefit of, the Fifth Circuit's decision, and reached a conclusion different from every other court that has fully considered the issue. *See E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *46 (noting that "all but one court to consider the question have held that there is no private right of action under the NSA to enforce IDR awards").

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[5] *See also McArthur v. C-Town Super Mkt.*, No. 3:21-cv-00972 (SRU), 2022 U.S. Dist. LEXIS 134050, at *10 (D. Conn. July 28, 2022) (finding no private right of action under 15 U.S.C. § 45); *Schlosser v. Droughn*, No. 3:19-cv-01445 (SRU), 2021 U.S. Dist. LEXIS 178379, at *23 (D. Conn. Sep. 20, 2021) (finding no private right of action under 42 U.S.C. § 2000d-2 or U.S.C. § 2000d-7); *Cogdell v. Cogdell*, No. 3:17-cv-00795 (SRU), 2018 U.S. Dist. LEXIS 18304, at *5–6 (D. Conn. Feb. 5, 2018) (finding no private right of action under 42 U.S.C. § 408).

1. The Text of the NSA Does Not Explicitly Evince Clear Congressional Intent to Create a Private Right of Action to Enforce an IDR Determination

As set forth in Section I.A, *supra*, Congress explicitly confined the right to seek judicial review under the NSA to actions to vacate an IDR award under the circumstances set forth under § 10(a) of the FAA. And despite explicitly referencing § 10(a) of the FAA, Congress conspicuously did not incorporate § 9. Because Congress incorporated only § 10(a) of the FAA into the NSA (and not § 9), and because Congress explicitly limited the right to obtain judicial relief only to actions brought under § 10(a)—the text is clear that an action to confirm or enforce an arbitration award "shall not be subject to judicial review." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II); *see also Guardian Flight*, 140 F.4th at 276 (noting that "Congress chose not to incorporate § 9 [of the FAA] into the NSA," but rather "incorporated only parts of § 10").

First, under settled principles of statutory construction, the choice to incorporate § 10(a) of the FAA but not § 9, reflects Congress's intent *not* to allow private lawsuits seeking to confirm IDR awards, because the inclusion of one section of a statute, § 10(a), implies the exclusion of another, § 9. *See Esteras v. United States*, 145 S. Ct. 2031, 2040 (2025) (noting that under the "well-established canon of statutory interpretation: '*expressio unius est exclusio alterius*'" the "'expressing of one item of an associated group or services excludes another left unmentioned'") (quoting *Chevron U. S. A. Inc. v. Echazabal*, 536 U.S. 73, 80 (2002)); *see also Azar v. Allina Health Servs.*, 587 U.S. 566, 576–77 (2019) (holding that where "[i]n the Medicare Act, Congress expressly borrowed one of the [Administrative Procedure Act's ("APA")] exemptions . . . by cross-referencing it" but did not cross-reference another of the APA's exemptions, "Congress's choice to include a cross-reference to one but not the other of the APA's neighboring exemptions *strongly suggests* it acted 'intentionally and purposefully in the disparate' decisions") (emphasis added) (citation omitted). Such an "omission cannot be viewed as accidental or inconsequential."

City & Cty. of S.F. v. EPA, 145 S. Ct. 704, 717 (2025). Instead, this Court should treat Congress's choice to include § 10(a) but omit § 9 of the FAA as intentional and deliberate. Thus, "Congress's explicit provision of a private right of action to enforce one section of a statute," here, the right to seek judicial vacatur of IDR awards under 9 U.S.C. § 10(a), "suggests that omission of any explicit private right to enforce [under § 9] was intentional." *Bellikoff*, 481 F.3d at 116 (quoting *Olmsted*, *Pruco Life Ins. Co.*, 283 F.3d 429, 433 (2d Cir. 2002)). When viewed through this lens, the "natural implication is that Congress did not intend courts" to review actions to confirm an IDR award. *Esteras*, 145 S. Ct. at 2034.

As explained by the Fifth Circuit, Congress is familiar with how to incorporate § 9 of the FAA into a statute to create a private right of action, and has done so before. *See Guardian Flight*, 140 F.4th at 276 (citing 5 U.S.C. § 580(c) ("A final award is binding on the parties to the arbitration proceeding, and may be enforced pursuant to sections 9 through 13 of" the FAA)). "So, Congress knew how to create a private right of action in the NSA—and has done so elsewhere—but declined to do so." *Id.* (citing cases). "Obviously, then, when Congress wished to provide" a mechanism for judicial review, "it knew how to do so and did so expressly." *Touche Ross v. Redington*, 442 U.S. 560, 571–72 (1979), 442 U.S. at; *see also Rotkiske*, 589 U.S. at 14 ("A textual judicial supplementation is particularly inappropriate when, as here, Congress has shown that it knows know to adopt the omitted language or provision."). Indeed, "[w]hen Congress omits from a statute a provision found in similar statutes, the omission is typically thought deliberate." *Turtle Island Restoration Network v. Evans*, 284 F.3d 1282, 1296 (Fed. Cir. 2002) (citing *I.N.S. v. Phinpathya*, 464 U.S. 183, 190 (1984)); *see also Howard Univ. Hosp. v. D.C. Dep't of Empl. Servs.*, 952 A.2d 168, 174 (D.C. 2008) ("Where a statute, with reference to one subject, contains a given provision, the omission of such [a] provision from a similar statute concerning a related subject . . . is

significant to show [that] a different intention existed." (quoting *Smith v. D.C. Dep't of Emp. Servs.*, 548 A.2d 95, 100 n.13 (D.C. 2008)).

Second, confirmation that Congress did not intend to imply a private right of action can be derived from the text itself. Under the NSA, an IDR award "*shall not be subject to judicial review*," except in an action brought under § 10(a)(1)–(4) of the FAA, which authorizes courts to *vacate* an arbitral award, and is thus not applicable here. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II) (emphasis added). Thus, the statute explicitly directs that a court may not exercise judicial review over IDR awards *except* in an action brought to vacate an IDR determination under § 10(a) of the FAA. Not only did Congress decline to incorporate § 9 of the FAA into the NSA, it also explicitly *limited* judicial review to actions brought under § 10(a) of the FAA. Congress therefore closed the door to any right of action under the NSA beyond an action to vacate an arbitration award under § 10(a) of the FAA. *Cf. Patchak v. Zinke*, 583 U.S. 244, 254 (2018) (noting that "congressional grant of jurisdiction is a *prerequisite* to the exercise of judicial power") (emphasis in original). Thus, by the NSA's plain text, Congress granted district courts jurisdiction to review petitions to *vacate* IDR awards under § 10(a); Congress did not grant district courts jurisdiction to review petitions to *confirm* IDR awards under § 9, or otherwise enforce IDR awards.

2. The Structure and Context of the NSA Confirm Congress's Choice to Omit a Private Right of Action

The choice not to create a private right of action to confirm or enforce an IDR award further comports with the larger structure of the NSA and, more broadly, of the Public Health Services Act ("PHSA"), 42 U.S.C. § 300gg *et seq.*, which the NSA amends. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 320 (2014) (explaining the "fundamental cannon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme") (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133

(2000)). Instead, the structure of the NSA shows that Congress granted HHS authority to enforce IDR determinations and, in doing so, precluded others, including district courts, from dueling authority to review and enforce the statute. *See Sandoval*, 532 U.S. at 290 ("The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.").

Under the NSA, Congress vested HHS and other agencies with enforcement authority and regulatory oversight over the IDR process. HHS accepts provider complaints, including those that concern alleged late- and non-payment of IDR awards, and performs complaint-based audits to enforce the NSA's provisions. *See* 42 U.S.C. §§ 300gg-111(a)(2), 300gg-134(b)(3). Congress further empowered HHS to impose per day monetary civil penalties for failure to comply with the NSA. *See* 42 U.S.C. § 300gg-22(b)(2); 45 C.F.R. § 150-301 *et seq.* (subjecting payers under CMS's enforcement authority to the imposition of civil monetary penalties for failure to comply with PHSA requirements); *see also Guardian Flight*, 140 F.4th at 276. HHS has acted on that authority by soliciting provider complaints and compelling payers to pay IDR awards where appropriate. GAO-24-106335, at 35. Providers who believe a payer is not complying with the federal IDR process or want to report a violation of the NSA may submit complaints to HSS through a dedicated online portal.

The robust administrative enforcement scheme applicable to the NSA further sets forth administrative review and fair hearing processes for payers to challenge the imposition of monetary penalties for violations of the law. *See* 42 U.S.C. § 300gg-22(b)(2)(D). And, HHS may also refer disobedient payers that fail to remit a monetary penalty to the Attorney General for recovery through judicial enforcement. *See id.* at § 300gg-22(b)(2)(F).

The existence of a detailed administrative remedy is strong evidence that Congress

intended it to be the exclusive remedy. *N.Y. Inst. of Dietetics v. Great Lakes Higher Educ. Corp.*, No. 94-cv-04858 (LLS), 1995 U.S. Dist. LEXIS 13692, at *9 (S.D.N.Y. Sept. 19, 1995) ("Congress's delegation of extensive enforcement power to the Secretary supports a finding that the administrative remedy is exclusive."). Several courts have reached a similar result under the NSA. *See generally Guardian Flight, 140 F.4th at 275*; *Jeffrey Farkas, M.D.*, 2025 U.S. Dist. LEXIS 129998, at *5; *FHMC LLC v. Blue Cross & Blue Shield of Ariz. Inc.*, No. 23-cv-00876 (PHX), 2024 U.S. Dist. LEXIS 62018, at *3 (D. Ariz. Apr. 3, 2024); *Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, at 1087 (M.D. Fla. 2023), *appeal dismissed*, 2024 U.S. App. LEXIS 17493 (11th Cir. May 30, 2024); *Los Robles Emergency Physicians Med. Grp. v. Stanford-Franz*, No. 2:23-cv-09487 (DSF), 2024 U.S. Dist. LEXIS 23971, at *4 (C.D. Cal. Feb. 8, 2024). Plaintiff alleges that Cigna violated the NSA, "[b]ut 'the fact that a federal statute has [allegedly] been violated and some person [allegedly] harmed does not automatically give rise to a private cause of action in favor of that person.'" *Cogdel*, 2018 U.S. Dist. LEXIS 18304, at *5 (quoting *Touche Ross & Co.*, 42 U.S. at 568). Where, as here, a statute provides administrative remedies and enforcement, there is a presumption that Congress did not intend to create a private right of action, but rather provided precisely the remedies it considered appropriate. *See Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 253 (2009) ("[W]e have placed *primary emphasis* on the nature and extent of [a] statute's remedial scheme.").

By delegating authority to enforce a payer's failure to pay an IDR determination to HSS, Congress showed its intent not to create an implicit private enforcement scheme. "This inference from the NSA's broader structure, then, is plain," that "[t]he NSA's structure conveys Congress's policy choice to enforce the statute through administrative penalties, not a private right of action." *Guardian Flight*, 140 F.4th at 277; *see also FHMC LLC*, 2024 U.S. Dist. LEXIS 62018, at *9 ("An

implied right of action" under the NSA "is incongruous with such a detailed statutory scheme, in which judicial review is limited to specific instances."). Accordingly, "[t]he availability of these alternative mechanisms to enforce the [NSA] strongly suggests that Congress did not intend to imply a superfluous private right of action." *Moya*, 975 F.3d at 128.

3. The FAA Does Not Apply Here Because There is No Agreement Between the Parties to Arbitrate the Dispute

Section 9 of the FAA also does not fit within the structure of the NSA because there is no underlying arbitration agreement between Plaintiff and Cigna, and the parties did not agree to have the IDR award entered by a judgment of this Court. Section 9 of the FAA reads, in part:

> If the parties *in their agreement* have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made.

9 U.S.C. § 9 (emphasis added).

By its plain text, § 9 is limited to an "agreement" between the parties. 9 U.S.C. § 9. A district court cannot confirm an arbitration award if the party seeking confirmation fails to make a colorable showing of a valid agreement to arbitrate. *Schnabel v. Trilegiant Corp.*, 697 F.3d 110, 118 (2d. Cir. 2012); *see also Robinson v. Macy's Inc.*, 772 F. Supp. 3d 253, 259–60 (D. Conn. 2025) (holding the "threshold question" is "whether the parties have indeed agreed to arbitrate") (quoting *Schnabel*, 697 F.3d at 118); 9 U.S.C. § 13 (requiring a party seeking an order confirming an arbitration award to file, among other things, the agreement and the award).

Here, there is no allegation that there is an agreement between the parties. To the contrary, Plaintiff claims that it "does not have a network contract" with Cigna (Compl. ¶ 7), or an

underlying arbitration agreement, (*id.* ¶ 68). Nor is a contract created by the existence of an IDR determination pursuant to the NSA. And importing § 9 into the NSA would render superfluous the requirement under § 13(a) that a party seeking an order confirming an award file the arbitration agreement along with its motion—which Plaintiff did not and cannot do here. 9 U.S.C. § 13(a); *see Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (stating that the "canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme"). Thus, § 9 of the FAA plainly does not fit within the pre-existing structure of the NSA and cannot be used to enforce the arbitration award here. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 328 (2015) (instructing that an implied right of action is unavailable when, among other things, the "nature of [the statutory] text" is "judicially unadministrable"); *see also E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *47 (applying *Armstrong* to the NSA).

C. The Overwhelming Majority of Courts to Consider This Issue Have Held The NSA Does Not Create a Right of Action to Confirm or Enforce an IDR Determination

In *Guardian Flight*, the Fifth Circuit held unequivocally that the NSA "provides no private right of action," and upheld dismissal of various claims brought by two providers against a health care payer for failing to timely pay an IDR award issued under the NSA. 140 F.4th at 273–74. The court determined that by its plain text, the NSA provides no express or implied right of action that would permit private parties to enforce alleged violations of the law. *Id.* at 275.

More recently, district courts have benefitted from the Fifth Circuit's decision that "under the NSA's plain text and structure," Congress did not create a private right to confirm or enforce an IDR award. *Id.* at 277 n.5. Several district courts, including courts within the Second Circuit, have overwhelmingly held that the NSA does not create a private right of action to seek judicial confirmation of an IDR award under § 9 of the FAA. *See E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *46 (concluding that "[t]he statutory text . . . forecloses of a private right of

action to enforce IDR determinations") (citing cases); *Worldwide Aircraft*, 2025 U.S. Dist. LEXIS 155594, at *5–6 (holding the NSA "does not authorize this Court to confirm or enforce the IDR awards"); *Jeffrey Farkas, M.D.*, 2025 U.S. Dist. LEXIS 129998, at *5 (concluding that the court lacked subject-matter jurisdiction because "the NSA contains no express right of action to enforce or confirm an IDR award, nor does it contain an implied private right of action to do the same." (cleaned up)); *Med-Trans Corp.*, 700 F. Supp. 3d at 1087 (same); *FHMC LLC*, 2024 U.S. Dist. LEXIS 62018, at *9 ("An implied right of action is incongruous with such a detailed statutory scheme, in which judicial review is limited to specific instances."); *Los Robles*, 2024 U.S. Dist. LEXIS 23971, at *4 (concluding that "the No Surprises Act fails to provide a private right of action"); *see also Haller v. United States HHS*, 2024 U.S. App. LEXIS 1477, at *2 n.1 (2d Cir. Jan. 23, 2024) (finding that the district court correctly determined that the existence of a common-law cause of action against patients did not mean that providers had a private right under the NSA to recover against payers).

Most recently, the Southern District of New York held that the NSA "supplies an administrative remedy for NSA violations—the IDR process—which is itself, by statute, subject to oversight and enforcement by [HHS]." *E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *47–48. In looking to the plain text of the NSA, *East Coast* continued that "beyond providing an alternative remedy, the statute expressly provides that IDR processes 'shall not be subject to judicial review' . . . thus foreclose[ing] of a private right of action to enforce IDR determinations." *Id.* at *48 (quoting 29 U.S.C. § 1185e(b)(5)(E)(i)(II)).

Faced with the same question, the Eastern District of New York also concluded that it lacked subject-matter jurisdiction to confirm an arbitral award issued under the NSA pursuant § 9 of the FAA because "[t]he NSA plainly does not provide for the confirmation of awards[.]" *Farkas,*

M.D., 2025 U.S. Dist. LEXIS 129998, at *3. Accordingly, *Farkas M.D.* held that "'the NSA contains no express right of action to *enforce* or *confirm* an IDR award,' nor does it contain an implied private right of action to do the same." *Id.* at *13–14 (quoting *Guardian Flight*, 140 F.4th at 275 (emphasis in the original)). "[B]y seeking confirmation here, [Plaintiff] asks the Court to impermissibly invent a cause of action to confirm an award under the NSA" which "[i]t may not do[.]" *Id.* at *14.

The sole outlier is *Guardian Flight v. Aetna*, which stands alone as the *only* court to have found an implied private right of action under the NSA to enforce an IDR award.[6] Respectfully, Cigna submits that this Court should not follow the reasoning of the unpublished and nonbinding *Guardian Flight v. Aetna* decision for several reasons.

First, the court held that "the NSA contains strong, mandatory language regarding health plans' and insurers' payment obligations and the 'binding' effect of IDR awards," and that "such mandatory text 'often reflects congressional intent to create both a right *and* a remedy' for the individuals to whom payment is due." *See* 2025 U.S. Dist. LEXIS 91676, at *20 (quoting *Maine Cmty. Health Options v. United States*, 590 U.S. 296, 324 (2020)). But, for the reasons stated *supra*

[6] Plaintiff cites two cases for support that federal courts have found authority to confirm arbitration awards issued pursuant to the NSA under § 9 of the FAA. (Compl. ¶ 69.) But neither case supports Plaintiff's position on the legal arguments raised here. In both *GPS of N.J. M.D. v. Horizon Blue Cross & Blue Shield* and *Worldwide Aircraft Services, Inc. v. Worldwide Insurance Services, LLC* the courts in unpublished decisions denied petitions to vacate IDR awards and, when doing so, perfunctorily granted motions to confirm the awards. *See GPS of N.J. M.D. v. Horizon Blue Cross & Blue Shield*, No. 22-06614 (KM), 2023 U.S. Dist. LEXIS 159460 (D.N.J. Sept. 8, 2023); *Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:24-cv-00840 (TPB), 2024 U.S. Dist. LEXIS 167943 (M.D. Fla. Sept. 18, 2024). But none of the parties to those cases contested the court's subject matter jurisdiction to confirm an IDR award, nor do the opinions suggest the courts otherwise considered the issue. In fact, in a later case involving the same parties as *Worldwide Aircraft Services. Inc. v. Worldwide Insurance Services, LLC*, the court found that it "lack[ed] subject matter jurisdiction to confirm or enforce an IDR award under the No Surprises Act" when the issue was affirmatively raised in the second action. *See Worldwide Aircraft Servs. Inc.*, 2025 U.S. Dist. LEXIS 155594, at *6.

in Section I.B, *Guardian Flight v. Aetna* misreads the framework of the NSA as enacted by Congress. The "strong, mandatory text" of the NSA is insufficient to establish a private right of action; rather, reviewing the "text of the whole statute" reveals no intention for the "binding" effect of IDR determinations to create a right of action to confirm or enforce IDR awards. *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405, 414 (2017) (citation omitted).

Moreover, the court's isolated reading of the provision that IDR awards shall be "binding upon the parties involved," as evincing an implied right disregards the interpretive principle that provisions of a statute should be read harmoniously. *See Biden v. Texas*, 597 U.S. 785, 827 (2022) (describing the harmonious-reading canon). Rather, subparagraph (I) of 42 U.S.C. § 300gg-111(c)(5)(E)(i) must be interpreted alongside subparagraph (II) so as to read the parallel provisions in unity. Because subparagraph (II) limits judicial review to vacatur actions under § 10(a) of the FAA, subparagraph (I) cannot be read to *imply* jurisdiction of this court to confirm an IDR award under § 9 when its sister provision explicitly forbids it. And neither provision extends judicial review to an action to enforce or confirm an IDR determination under § 9 of the FAA.

To the extent Congress wanted to create a private right of action to confirm or enforce an IDR determination, it could have written the statute differently, either by expressly incorporating § 9 of the FAA into 42 U.S.C. § 300gg-111(c)(5)(E)(i), or by not enacting text that explicitly limits the jurisdiction of this court. *See Guardian Flight*, 140 F.4th at 276 (citing statutes where Congress create a private right of action to enforce an arbitration award under § 9 of the FAA). Instead, the better reading of the statute shows Congress's deliberate choice to enact a bifurcated regulatory scheme that authorizes enforcement of "binding" IDR awards to HHS and other administrative agencies tasked with implementation and oversight of the NSA, and authorizes judicial review over more complex, fact-determinative actions to vacate IDR awards using the framework set forth

under § 10(a) of the FAA. Not only does the alternate reading of the NSA fail to show an implied right "though clear and unambiguous terms," *Gonzaga Univ.*, 536 U.S. at 290, in fact "the NSA's text and structure point in the opposite direction," *Guardian Flight*, 140 F.4th at 275.

Second, *Guardian Flight v. Aetna* did not interpret 42 U.S.C. § 300gg-111, which is the section of the NSA applicable here. Instead, the court interpreted 42 U.S.C. § 300gg-112, which governs reimbursement for air ambulance services. 2025 U.S. Dist. LEXIS 91676, at *5–7. And while similarities exist between the two sections of the NSA, the court acknowledged that certain HHS oversight and auditing functions contained in 42 U.S.C. § 300gg-111 are not found in § 300gg-112.[7] *See id.* at 23 n.7.

Third, the court acknowledged that it did not fully consider the administrative enforcement mechanisms enacted under the NSA.[8] So the court's concern that IDR awards would be rendered "meaningless" without a judicial remedy was made without review of 42 U.S.C. § 300gg-22(b)(2), which extends enforcement authority of the NSA to HHS and, among other remedies, "empower[s] HHS to assess penalties against insurers for failure to comply with the NSA." *Guardian Flight*, 140 F.4th at 227 (citing 42 U.S.C. § 300gg-22(b)(2)(A) *and* 45 C.F.R. § 150.301 *et seq*.). Thus, as explained *supra*, Section I.B.2, providers are not left without a remedy if an award is unpaid. *Cf. Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at *21–22. These built-in administrative enforcement mechanisms show that an IDR award is not "meaningless" or "effectively unenforceable," and that Congress's drafting does not lead to an absurd result.[9] *Guardian Flight*

[7] The court carefully qualified its finding that the NSA uses "rights-creating language," and was made solely "with respect to air ambulance providers." 2025 U.S. Dist. LEXIS 91676, at *17.

[8] The court "declined to consider" whether 42 U.S.C. § 300gg-22 provides a mechanism to enforce timely payment of IDR awards under the NSA because the parties did not address § 300gg-22 in their briefs. 2025 U.S. Dist. LEXIS 91676, at *21 n.7.

[9] In dicta, *Guardian Flight v. Aetna* suggested that "it is unlikely that any such enforcement scheme [under 42 U.S.C. § 300gg-22] could police insurers' and health plans' compliance with each IDR

v. Aetna, 2025 U.S. Dist. LEXIS 91676, at *21–22. With full consideration of the administrative enforcement scheme, and the benefit of the Fifth Circuit's reasoning, the court may have found an implied right of action unavailable. *See Armstrong*, 575 U.S. at 328 ("[T]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.") (citation modified).

Fourth and lastly, the court overlooked the requirement that to find an implied right of action, Congress must intend to create not only a private right but also a private remedy. *See Republic of Iraq*, 768 F.3d at 170; *see also Sandoval*, 532 U.S. at 286. According to the court, because payers' payment obligations are "binding," "such mandatory text 'often reflects congressional intent to create both a right *and a remedy*' for the individuals to whom payment is due.'" *Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at *20 (quoting *Maine Cmty.*, 590 U.S. at 324) (emphasis in the original). But, again, the court discounted the carefully crafted administrative remedial and enforcement scheme Congress put in place. Moreover, and with a view toward Congress's express *limitation* on judicial review within the same provision, the NSA fails to show "explicit evidence of Congressional intent" to create a judicial remedy. *Cenzon-DeCarol*, 626 F.3d at 697.

In sum, *Guardian Flight v. Aetna* stands alone[10] in its conclusion that the text of the NSA

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determination." 2025 U.S. Dist. LEXIS 91676, at *21 n.6. But "the wisdom of Congress's policy choice is beyond [the court's] judicial ken." *Guardian Flight*, 140 F.4th at 277. Moreover, the court's elevation of policy considerations such as HHS's supervisory capabilities conflicts with *Sandoval*'s instruction that courts may not create a cause of action without determinative textual support "no matter how desirable that might be as a policy matter[.]" *Sandoval*, 532 U.S. at 286–87. And courts may not "circumvent Congress's exclusion of private enforcement," by "invoking [their] equitable powers." *Armstrong*, 575 U.S. at 327.

[10] The courts in *Guardian Flight*, *E. Coast Advanced*, *and Jeffrey Farkas, M.D.*, all declined to adopt the *Guardian Flight v. Aetna* holding. *See Guardian Flight*, 140 F.4th at 277 n.5; *E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *46–47; *Jeffrey Farkas, M.D.*, 2025 U.S. Dist. LEXIS 129998, at *14.

demonstrates in "clear and unambiguous terms" that Congress intended to authorize an implied private right of action. *Gonzaga Univ.*, 536 U.S. at 290. The court's expansive interpretation of the NSA to find an implied private right of action is further contrary to the general principle adopted in this Circuit that "implied rights of actions are disfavored." *Moya*, 975 F.3d at 128; *see also Olmstead*, 283 F.3d at 432 ("A court . . . cannot ordinarily conclude that Congress intended to create a right of action when none was explicitly provided.").

As explained *infra*, the NSA bars any "judicial review" of IDR awards other than the vacatur provisions of 9 U.S.C. § 10(a); omits any terms authorizing a private action to confirm or enforce an IDR award, such as through 9 U.S.C. § 9; and establishes an administrative scheme to enforce a payer's failure to pay an IDR award. In sum, because the NSA does not provide for a right of action to seek judicial confirmation of an arbitration award under § 9 of the FAA or enforcement of the NSA itself, the Court should deny the Complaint in its entirety.

II. PLAINTIFF IS TIME BARRED FROM SEEKING CONFIRMATION OF AT LEAST ONE DETERMINATION

Even assuming Plaintiff could obtain judicial confirmation of an IDR determination under § 9 of the FAA—which it cannot—Plaintiff is barred from obtaining judicial confirmation of the IDR determination for patient M.L. because the Complaint is untimely. Section 9 of the FAA sets a clear deadline to petition for confirmation of an arbitration award—within one year after the award is made. *See* 9 U.S.C. § 9. But Plaintiff did not file this action within one year from the date when the CIDRE decided the underlying IDR proceeding for services provided to patient M.L., which was March 6, 2024. (Compl. ¶ 19.)

Under § 9 of the FAA, "at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award," upon proper notice. 9 U.S.C. § 9. The Second Circuit has held that "section 9 of the FAA imposes a one-year

statute of limitations on the filing of a motion to confirm an arbitration award under the FAA." *Photopaint Techs., LLC v. Smartlens Corp.*, 335 F.3d 152, 158 (2d Cir. 2003).

At Paragraphs 13 to 23 of the Complaint, Plaintiff sets forth allegations concerning surgical services rendered to Patient M.L., and the IDR process it initiated to challenge Cigna's reimbursement for those services under the NSA. (Compl. ¶¶ 13–23.) Specifically, at Paragraph 19, Plaintiff alleges that

> [o]n March 6, 2024, the CIDRE, Federal Hearings and Appeals Service, Inc., ruled in Plaintiff's favor under Arbitration Dispute DISP-878778, awarding Plaintiff a total of $97,500.00 for CPT Code 19364. See Exhibit A, attached hereto.

(Compl. ¶ 19.)

Plaintiff also attached the alleged IDR determination issued by Federal Hearings and Appeals Services, Inc. for dispute reference number DISP-878778. (Compl., Ex. A.) The IDR determination provides that the 90-day cooling off period under the NSA begins on March 6, 2024, the date of the award. (ECF No. 1-1.) When accepting the allegations in the Complaint as true, Plaintiff therefore claims that the CIDRE made its award for DISP-878778 on March 6, 2024. Under § 9 of the FAA, Plaintiff had until March 5, 2025 to apply for an order confirming the IDR determination. Plaintiff did not commence this action, however, until March 27, 2025. (ECF No. 1.) Plaintiff therefore did not apply "for an order confirming the award" "within one year after the award [was] made." 9 U.S.C. § 9. Plaintiff is therefore time barred from obtaining confirmation of DISP-878778.

Plaintiff alleges, however, that because Cigna had 30 days to pay the IDR award, "the *effective* date of the arbitration award is April 5, 2024," thereby resuscitating its otherwise untimely action. (Compl. ¶ 20 (emphasis in the original).) Not so. Plaintiff's proposed interpretation of § 9 fails for at least two reasons.

First, Plaintiff asks this court to re-write the unambiguous text of § 9 to make confirmation timely here. But § 9 is clear: a party may obtain judicial confirmation of an arbitration award upon application "within one year after the award is *made*," not when the award is *effective* (emphasis added). 9 U.S.C. § 9. Plaintiff impermissibly seeks to amend § 9 by striking "made" from the statute and inserting "effective." But Plaintiff's amendment to § 9 would not "apply faithfully the law Congress has written[.]" *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017). Rather, when interpreting a statute, a court's "role is to apply the law, not rewrite it[.]" *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 63 (2024); *see also Sobell v. United States*, 407 F.2d 180, 183 (2d Cir. 1969) (Moore, J., concurring) (noting that "[t]he proper function of the courts is to apply the law as enacted – not rewrite it"). "The place to make new legislation, or address unwanted consequences of old legislation, lies in Congress." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654–55 (2020). Here, and by Plaintiff's own account, the CIDRE *made* the IDR determination on March 6, 2024. (Compl. ¶ 19.) Accordingly, under the plain text of § 9, Plaintiff had until March 5, 2025 to apply for confirmation of the award. Plaintiff did not file this action by that date.

Second, even if this Court could disregard the clear temporal limitation of § 9, Plaintiff cites no support under the NSA or FAA for its argument that an IDR determination is not *effective* until 30 days after it is *made*. Under the NSA, the CIDRE must notice the parties of its IDR determination within 30 days of its selection. 42 U.S.C. § 300gg-111(c)(5)(A). The non-prevailing party then has "30 days after the date on which such *determination is made*" to pay the IDR award. *Id.* at 300gg-111(c)(6) (emphasis added). Thus, when reading the NSA and FAA together, the date on which the IDR determination is *made* starts the clock for purposes of setting the deadline for payment under the NSA and the statute of limitations under the FAA. Nothing in the NSA suggests

an IDR determination is "effective" on any other date. Moreover, Plaintiff's illogical interpretation also clashes with the "timing of payment" provision of the NSA. Under the route suggested by Plaintiff, the date the IDR becomes effective and the date when payment is due would be the same date. Such a revision would render the "timing of payment" provision superfluous or inoperative. *See id.* And Plaintiff's reading further calls into question the effective date of an IDR award when payment is made before 30 days elapses.

Under § 9 of the FAA, the clock started ticking for purposes of the statute of limitations on the date the IDR determination was made. When accepting Plaintiff's allegations as true, the CIDRE made its determination of DISP-878778 on March 6, 2024. Because Plaintiff did not commence this action by March 5, 2025, Plaintiff is barred from obtaining an order confirming that award. Thus, even assuming the FAA applies—which it does not—Plaintiff cannot obtain confirmation of DISP-878778 related to reimbursement for surgical services allegedly provided to patient M.L.

CONCLUSION

For the foregoing reasons, Cigna respectfully requests the Court to dismiss Plaintiff's Complaint in its entirety and with prejudice.

Dated: September 26, 2025
Newark, New Jersey

s/ Caroline E. Oks

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ORAL ARGUMENT REQUESTED

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