

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

RICHARD AGAG, MD,

Plaintiff,

v.

CIGNA HEALTH AND LIFE INSURANCE
COMPANY,

Defendant.

Civil Action No. 25-498-SRU

Document electronically filed

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant Cigna Health and Life Insurance Company (“Cigna”) respectfully files this Notice of Supplemental Authority to bring to the Court’s attention recent decisions relevant to issues raised in Cigna’s Motion to Dismiss and Plaintiff Richard Agag, MD’s Cross-Motions to Confirm and for Summary Judgment and decided after briefing concluded on Cigna’s Motion and the Cross-Motions. (ECF Nos. 25, 33, 36, 39).

In several newly issued decisions courts have dismissed claims brought by out-of-network healthcare providers against healthcare payers under the No Surprises Act (“NSA”), 42 U.S.C. § 300gg-111 *et seq.*, concluding that the NSA did not create an express or implied private right of action to confirm or enforce an Independent Dispute Resolution (“IDR”) determination.

Among those decisions, a court within this District dismissed a petition to confirm an IDR determination for lack of subject matter jurisdiction similarly concluding that the NSA does not create an express or implied private right of action to confirm or enforce an IDR determination. *See generally Axis Neuromonitoring, LLC v. Aetna Inc.*, 3:25-cv-01048 (SVN), 2026 U.S. Dist. LEXIS 61210 (D. Conn. Mar. 20, 2026), at *12, 15 (Nagala, J.). In particular, Judge Nagala found

(1) the NSA “provides for alternative enforcement mechanisms, suggesting Congress chose agency enforcement, not litigation, as the tool for enforcing IDR awards”; and (2) Section 9 of the Federal Arbitration Act, 9 U.S.C. § 9, is further inapplicable because, among other reasons, the parties lacked a contractual agreement to arbitrate. *Id.* at *10–11, *15.

Copies of the following decisions are attached as indicated:

- (1) *GuardION Med., LLC v. MedCost Benefit Servs., LLC*, No. 5:25-cv-223 (MTT), 2026 U.S. Dist. LEXIS 14888 (M.D. Ga. Jan. 27, 2026), attached hereto as **Exhibit 1**;
- (2) *Advanced Monitoring Servs. Holdings, LLC v. Usable HMO, Inc.*, No. 4:25-cv-00854-KGB, 2026 U.S. Dist. LEXIS 17737 (E.D. Ark. Jan. 28, 2026), attached hereto as **Exhibit 2**;
- (3) *SpecialtyCare, Inc. v. Meritain Health, Inc.*, No. 25-198-MN, 2026 U.S. Dist. LEXIS 26722 (D. Del. Feb. 9, 2026), *R. & R. adopted*, *SpecialtyCare Inc. v. Meritain Health, Inc.*, No. 25-198 (MN), 2026 U.S. Dist. LEXIS 55009 (D. Del. Mar. 17, 2026), attached hereto as **Exhibit 3**;
- (4) *Worldwide Aircraft Servs., Inc. v. United Healthcare*, Case No. 8:25-cv-01225-SDM, 2026 U.S. Dist. LEXIS 29847 (M.D. Fla. Feb. 13, 2026), attached hereto as **Exhibit 4**;
- (5) *SpecialtyCare, Inc. v. MedCost, LLC*, C.A. No. 2025-0011-DH, 2026 Del. Ch. LEXIS 110 (Del. Ch. Feb. 16, 2026), attached hereto as **Exhibit 5**;
- (6) *SpecialtyCare, Inc. v. UMR, Inc.*, 2026 U.S. Dist. LEXIS 34914, C.A. No. 24-1396-RGA, (D. Del. Feb. 20, 2026), attached hereto as **Exhibit 6**;
- (7) *SpecialtyCare, Inc. v. Cigna Healthcare Inc.*, C.A. No. 24-1378-RGA, 2026 U.S. Dist. LEXIS 34911, (D. Del. Feb. 20, 2026), *R. & R. adopted*, *SpecialtyCare, Inc. v. Cigna Healthcare, Inc.*, C.A. No. 24-1378-RGA, 2026 U.S. Dist. LEXIS 65340 (D. Del. Mar. 26, 2026), attached hereto as **Exhibit 7**;
- (8) *Axis Neuromonitoring, LLC v. Aetna Inc.*, No. 3:25-cv-01048 (SVN), 2026 U.S. Dist. LEXIS 61210 (D. Conn. Mar. 20, 2026), attached hereto as **Exhibit 8**;
- (9) *T.V. Seshan, M.D., P.C. v. Aetna, Inc.*, No. 25-CV-2938 (JGLC), 2026 U.S. Dist. LEXIS 71883 (S.D.N.Y. Mar. 30, 2026), attached hereto as **Exhibit 9**;
- (10) *Neuroshield Network Se., LLC v. Phx. Adm’rs, LLC*, No. 1:25-cv-01277, 2026 U.S. Dist. LEXIS 67059 (N.D. Ohio Mar. 30, 2026), attached hereto as **Exhibit 10**; and

- (11) *Jeffrey Farkas, M.D., LLC v. 1199SEIU Nat'l Benefit Fund*, No. 1:25-cv-0057-MKB-JRC, 2026 U.S. Dist. LEXIS 71613 (E.D.N.Y. Apr. 1, 2026), attached hereto as **Exhibit 11**.

In addition to the above-referenced cases, courts have further determined the NSA does not provide a private right of action in other circumstances:

- (12) *Oaks v. Columbus Radiology Corp.*, No. 1:25-cv-93, 2026 U.S. Dist. LEXIS 63380, (S.D. Ohio Mar. 25, 2026), attached hereto as **Exhibit 12**; and
- (13) *Conn. Gen. Life Ins. Co. v. E. Coast Advanced Plastic Surgery, LLC*, No. 25-CV-1686 (PAE), 2026 U.S. Dist. LEXIS 38843 (S.D.N.Y. Feb. 24, 2026), attached hereto as **Exhibit 13**.

FBT GIBBONS LLP

Dated: April 3, 2026
Newark, New Jersey

s/ Caroline E. Oks
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EXHIBIT 1

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As of: April 3, 2026 7:47 PM Z

Guardion Med., LLC v. MedCost Ben. Servs., LLC

United States District Court for the Middle District of Georgia, Macon Division

January 27, 2026, Decided; January 27, 2026, Filed

CIVIL ACTION NO. 5:25-cv-223 (MTT)

Reporter

2026 U.S. Dist. LEXIS 14888 *; 2026 LX 20689; 2026 WL 205961

GUARDION MEDICAL, LLC, Plaintiff, v.
MEDCOST BENEFIT SERVICES, LLC,¹
Defendant.

Counsel: [*1] For GUARDION MEDICAL LLC,
Plaintiff: AARON MIGUEL GALLARDO, LEAD
ATTORNEY, ATLANTA, GA; JENNIFER
LEIGH LINIADO, PARAMUS, NJ.

For MEDCOST BENEFITS SERVICES,
Defendant: AARON MIGUEL GALLARDO,
ATLANTA, GA.

Judges: MARC T. TREADWELL, UNITED
STATES DISTRICT JUDGE.

Opinion by: MARC T. TREADWELL

Opinion

ORDER

Plaintiff, GuardION Medical, LLC, provides medically necessary services to patients insured under health plans administered by Defendant, MedCost Benefit Services, LLC.² ECF 1 ¶ 11.

¹ The complaint identifies Defendant as "Medcost Benefits Services" rather than "MedCost Benefit Services, LLC." Compare ECF 1 with ECF 11.

² At the motion to dismiss stage, "all well-pleaded facts are accepted as true, and the reasonable inferences therefrom are construed in the light most favorable to the plaintiff." *FindWhat Inv. Grp. v. FindWhat.com.*, 658 F.3d 1282, 1296 (11th Cir. 2011) (quoting *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1261 (11th Cir. 2006))

Defendant underpaid Plaintiff for these services, so Plaintiff sought relief via the administrative process set forth in the *No Surprises Act*, 42 U.S.C. § 300gg-111, for resolving such disputes. *Id.* ¶¶ 13-18. That process resulted in Independent Dispute Resolution ("IDR") awards issued against Defendant. *Id.* But Defendant has not complied with the IDR awards' payment obligations. *Id.* ¶¶ 19, 20. Consequently, Plaintiff petitions the Court to confirm the IDR awards under the *Federal Arbitration Act ("FAA")*, 9 U.S.C. § 9. *Id.* ¶¶ 21-25; ECF 3. Defendant moves to dismiss, arguing the No Surprises Act does not confer a private right of action to confirm an IDR award under the FAA. ECF 11; ECF 12 at 5-9.

This Court is not the first to address the question, and the majority of courts to have done so have held the No Surprises Act [*2] does not confer a private right of action to confirm an IDR award under the FAA. *See e.g., E. Coast Advanced Plastic Surgery, LLC v. CIGNA Health & Life Ins. Co.*, 2025 U.S. Dist. LEXIS 157911, 2025 WL 2371537, at *17 (S.D.N.Y. Aug. 14, 2025) (collecting cases). In addition to *East Coast Advanced Plastic Surgery*, 2025 U.S. Dist. LEXIS 157911, 2025 WL 2371537, at *17, the Court finds particularly persuasive the decisions by the United States Court of Appeals for the Fifth Circuit, *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 275-77 (5th Cir. 2025), *cert. denied*, 2026 U.S. LEXIS 397, 2026 WL 79855 (U.S. Jan. 12, 2026), and by the United States District Court of the District of New Jersey, *Modern Orthopaedics of NJ v. Premera Blue Cross*, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *9-14 (D.N.J. Nov.

2026 U.S. Dist. LEXIS 14888, *2

[3, 2025](#)). For the reasons stated in those decisions, the Court concludes there is no private right of action under the No Surprises Act to enforce IDR awards.³

Nor does the FAA independently confer jurisdiction to enforce the IDR awards here. "[A]rbitration, at least under the FAA assumes an agreement or contract to arbitrate." See [Med-Trans Corp. v. Cap. Health Plan, Inc., 700 F. Supp. 3d 1076, 1083 \(M.D. Fla. 2023\)](#) (citation modified), *aff'd sub nom. Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc., 160 F.4th 1110 (11th Cir. 2025)*. Plaintiff does not allege, nor does it argue, that it reached an agreement to arbitrate with Defendant. See ECF 1, 14.

Plaintiff argues equitable principles such as unjust enrichment and restitution provide a viable remedy even if there is no private right of action to enforce an IDR award under the No Surprises Act. ECF 14 at 17-19. But Plaintiff's complaint nowhere mentions unjust enrichment or restitution, and Plaintiff has not properly requested leave to amend the complaint. ECF 1; ECF 14 at 16-19; see [Newton v. Duke Energy Fla., LLC, 895 F.3d 1270, 1277 \(11th Cir. 2018\)](#) ("[w]here a request for leave to file an amended complaint [*3] simply is imbedded within an opposition memorandum, the issue has not been raised properly." (quoting [Rosenberg v. Gould, 554 F.3d 962, 967 \(11th Cir. 2009\)](#))).⁴

Accordingly, the Defendant's motion to dismiss (ECF 11) is **GRANTED**. Plaintiff's Petition to Confirm Arbitration Award (ECF 3) is **DENIED**.

³Defendant also argues the IDR process does not apply to third-party administrators like Defendant. ECF 12 at 9-11. The Court does not reach Defendant's second argument for dismissal because the Court agrees it lacks jurisdiction to enforce an IDR award.

⁴Nor is it readily apparent how Plaintiff's arguments concerning vacatur and modification under the FAA have any bearing on Defendant's argument that the Court lacks subject matter jurisdiction in this case. See ECF 14 at 3-5. To be clear, the Court is not modifying or vacating Plaintiff's IDR awards by dismissing this case for lack of jurisdiction.

This case is **DISMISSED** without prejudice for lack of subject matter jurisdiction.

SO ORDERED, this 27th day of January, 2026.

/s/ Marc T. Treadwell

MARC T. TREADWELL, JUDGE

UNITED STATES DISTRICT COURT

JUDGMENT

Pursuant to this Court's Order dated January 27, 2026, and for the reasons stated therein, JUDGMENT is hereby entered dismissing this case. Plaintiff shall recover nothing of Defendant.

This 27th day of January, 2026.

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EXHIBIT 2

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As of: April 3, 2026 7:47 PM Z

[Advanced Monitoring Servs. Holdings, LLC v. Usable HMO, Inc.](#)

United States District Court for the Eastern District of Arkansas, Central Division

January 28, 2026, Decided; January 28, 2026, Filed

Case No. 4:25-cv-00854-KGB

Reporter

2026 U.S. Dist. LEXIS 17737 *; 2026 LX 80581

ADVANCED MONITORING SERVICES
HOLDINGS, LLC, PETITIONER v. USABLE
HMO, INC., RESPONDENT

Counsel: [*1] For Advanced Monitoring Services Holdings LLC, Plaintiff: Kathryn Loyd Wilson, LEAD ATTORNEY, Lion Legal Services, North Little Rock, AR.

Judges: Kristine G. Baker, Chief United States District Judge.

Opinion by: Kristine G. Baker

Opinion

ORDER

Before the Court is petitioner Advanced Monitoring Services Holdings, LLC's ("AMSH") complaint and petition to confirm arbitration award (Dkt. No. 1). Respondent Usable HMO, Inc. ("Usable") has not filed a response either to the complaint or to the notice of motion to confirm arbitration award and entry of judgment (Dkt. Nos. 1; 3), and the time for doing so has passed.

On December 29, 2025, the Court entered an Order to show cause (Dkt. No. 5). The Court noted that the [No Surprises Act, 42 U.S.C. §§ 300gg-111, et seq.](#) contemplates judicial review of an Independent Dispute Resolution ("IDR") process in very particular circumstances, which do not appear to be at issue here based on the record before the Court (Dkt. No. 5, at 1-2). See [Drs. Ellis, Rohas, Ross &](#)

[Debs, Inc v. UMR, Inc., Case No. 24-cv-20428, 2025 U.S. Dist. LEXIS 42045, 2025 WL 742761, at *3 \(S.D. Fla. Mar. 9, 2025\), appeal dismissed, No. 25-11110-HH, 2025 U.S. App. LEXIS 16562, 2025 WL 1835950 \(11th Cir. June 13, 2025\); see also Guardian Flight LLC v. Health Care Serv. Corp., 735 F. Supp. 3d 742, 750 \(N.D. Tex. 2024\)](#) ("[A]lthough Congress borrowed from § 10 of the FAA, [Congress] notably did not incorporate the FAA provision that enables parties to confirm arbitration awards [§ 9], which further indicates that Congress did not intend to create a private cause of action under the NSA."), *aff'd* [*2] *sub nom. Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271 (5th Cir. 2025); [Bishop v. Blue Shield of Cal. Life & Health Ins. Co., No. CV 25-1350 PA \(KESX\), 2025 U.S. Dist. LEXIS 33799, 2025 WL 603693, at *2 \(C.D. Cal. Feb. 24, 2025\)](#) (determining that defendant had failed to meet its burden of showing that federal question jurisdiction existed because "Defendant cite[d] no authority to suggest, and the Court [found] no basis on which to conclude, that the No Surprises Act grants exclusive jurisdiction to federal courts or that it provides the sole remedy for Plaintiff's alleged injury."). The Court notified AMSH that it had 21 days to show cause why the case should not be dismissed for lack of jurisdiction (*Id.*, at 3). AMSH has not responded to the Order to show cause, and the time for doing so has passed. Accordingly, the Court dismisses this case without prejudice for lack of subject-matter jurisdiction.

It is so ordered this 28th day of January, 2026.

/s/ Kristine G. Baker

Kristine G. Baker

Chief United States District Judge

JUDGMENT

Pursuant to the Order filed on this date, it is considered, ordered, and adjudged that petitioner Advanced Monitoring Services Holdings, LLC's complaint and petition to confirm arbitration award and entry of judgment are dismissed without prejudice (Dkt. No. 1). The relief sought is denied.

It is so adjudged this 28th day of January, 2026.

/s/ Kristine G. Baker

Kristine G. Baker

Chief United States District Judge

EXHIBIT 3



Positive

As of: April 3, 2026 7:48 PM Z

SpecialtyCare Inc. v. Meritain Health, Inc.

United States District Court for the District of Delaware

February 9, 2026, Decided; February 9, 2026, Filed

C.A. No. 25-198-MN

Reporter

2026 U.S. Dist. LEXIS 26722 *; 2026 LX 24857; 2026 WL 353259

SPECIALTYCARE INC., REMOTE NEUROMONITORING PHYSICIANS, PC, and SENTIENT PHYSICIANS, PC, Plaintiffs, v. MERITAIN HEALTH, INC., Defendant.

Subsequent History: Adopted by, Objection overruled by, Dismissed by, Stay denied by, As moot [Specialtycare Inc. v. Meritain Health, Inc., 2026 U.S. Dist. LEXIS 55009 \(Mar. 17, 2026\)](#)

Counsel: [*1] For SpecialtyCare, Inc., Remote Neuromonitoring Physicians, PC, Sentient Physicians, PC, Plaintiffs: Jeffrey J. Lyons, LEAD ATTORNEY, Baker & Hostetler, Wilmington, DE; Michael Edward Neminski, Baker & Hostetler LLP, Wilmington, DE.

For Meritain Health, Inc., Defendant: Joelle Eileen Polesky, Stradley Ronon Stevens & Young, LLP, Wilmington, DE.

Judges: Laura D. Hatcher, United States Magistrate Judge.

Opinion by: Laura D. Hatcher

Opinion**REPORT AND RECOMMENDATION**

Plaintiffs SpecialtyCare Inc., Remote Neuromonitoring Physicians, PC, and Sentient Physicians, PC (collectively, "Plaintiffs") bring this action to confirm Independent Dispute Resolution (IDR) awards under the [No Surprises Act \(NSA\)](#), 42

[U.S.C. §§ 300gg-111 et. seq.](#) (D.I. 15). Defendant Meritain Health, Inc. ("Meritain") has moved to dismiss Plaintiffs' First Amended Complaint for failure to state a claim under [Rule 12\(b\)\(6\) of the Federal Rules of Civil Procedure](#) (D.I. 19), and it also moves to stay this action pending resolution of the motion to dismiss (D.I. 25). These motions were referred to me on October 8, 2025. (D.I. 34). For the following reasons, I recommend granting Meritain's motion to dismiss and denying as moot Meritain's motion to stay.

I. BACKGROUND

Congress enacted the NSA "to protect patients from surprise medical bills incurred when they receive [*2] emergency medical services from out-of-network healthcare providers." *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 273 (5th Cir. 2025) (citing [42 U.S.C. §§ 300gg-111, 300gg-112](#)); see also generally [Avraham Plastic Surgery LLC v. Aetna, Inc., No. 25-784 \(OEM\) \(SDE\), 2025 U.S. Dist. LEXIS 267839, 2025 WL 3779084, at *1-2 \(E.D.N.Y. Dec. 30, 2025\)](#) (describing the NSA). "The NSA achieves this by, *inter alia*, relieving patients from financial liability for surprise bills and creating an . . . IDR process for billing disputes between providers and insurers." *Guardian*, 140 F.4th at 273 (citing [42 U.S.C. § 300gg-111\(c\)\(1\)–\(5\)](#)). Under the IDR process, "the provider and insurer first try to agree on a price for the services." *Id.* (citing [42 U.S.C. § 300gg-111\(c\)\(1\)\(A\)](#)). If the negotiation fails, the provider or payor may initiate IDR proceedings

before a certified IDR entity selected by either the parties or the Department of Health and Human Services (HHS). *Id.* (citing [42 U.S.C. § 300gg-111\(c\)\(1\)\(B\)](#) and [42 U.S.C. § 300gg-111\(c\)\(4\)](#)). The IDR entity determines the amount the payor owes the provider. *Id.* (citing [42 U.S.C. § 300gg-111\(c\)\(5\)](#)). In the "absence of a fraudulent claim or evidence of a misrepresentation of facts" to the IDR entity, the IDR award "shall be binding upon the parties involved," and payment of the award "shall be made . . . not later than 30 days after the date on which such determination is made." *Id.* at 274 (citing [42 U.S.C. § 300gg-112\(b\)\(5\)\(D\)](#)).

The NSA also provides that an IDR award "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 Federal Arbitration Act (FAA). *Id.* (quoting [42 U.S.C. §§ 300gg-112\(b\)\(5\)\(D\)](#), [300gg-111\(c\)\(5\)\(E\)](#)). Those provisions authorize [*3] a court to vacate an arbitral award:

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Id. at 275 n.2 (citing [9 U.S.C. § 10\(a\)\(1\)–\(4\)](#)). "HHS has the authority to enforce provider and payor non-compliance with the NSA's provisions." *Id.* at 274 (citing [42 U.S.C. § 300gg-22\(b\)\(2\)\(A\)](#) (providing for HHS enforcement against some

payors for NSA non-compliance); [42 U.S.C. § 300gg-134\(b\)](#) (providing for HHS enforcement against providers for NSA non-compliance)).

Plaintiffs initiated multiple IDR processes under the NSA to resolve their payment disputes with Meritain. (D.I. 15 ¶ 18). After Plaintiffs obtained various IDR awards, however, they assert that "Meritain has consistently failed to remit payment pursuant to the IDR entity's determinations, [*4] resulting in \$240,244 in unpaid and past due claims." (*Id.* ¶¶ 18-20). Accordingly, on January 3, 2025, Plaintiffs sued Meritain in the Court of Chancery of the State of Delaware. (D.I. 1-1, Ex. A, *SpecialtyCare Inc., Remote Neuromonitoring Physicians, PC, and Sentient Physicians, PC v. Meritain, Health, Inc.*, C.A. No. 2025-0013-JTL). On February 18, 2025, Meritain filed a Notice of Removal to this Court. (D.I. 1). On April 1, 2025, Meritain filed an Answer with Affirmative Defenses. (D.I. 6). The Court entered a Scheduling Order on May 27, 2025. (DI 11). On June 23, 2025, by agreement of the parties (D.I. 14), Plaintiffs filed a First Amended Complaint. (D.I. 15).

The First Amended Complaint contains two counts to confirm Plaintiffs' IDR awards under the [Delaware Revised Uniform Arbitration Act, 10 Del. C. § 5702\(c\)](#) (Count 1) and Section 9 of the FAA, [9 U.S.C. § 9](#), (Count II). (*Id.*) In addition, the First Amended Complaint contains state law causes of action for account stated (Count III), quantum meruit (Count IV), and unjust enrichment (Count V). (*Id.*) Meritain moves to dismiss Plaintiffs' First Amended Complaint for failure to state a claim (D.I. 19) and seeks to stay this action pending resolution of the motion to dismiss (D.I. 25).

II. LEGAL STANDARD

In reviewing a motion [*5] filed under [Rule 12\(b\)\(6\)](#), the Court must "accept all factual allegations as true [and] construe the complaint in the light most favorable to the plaintiff." [Phillips v. Cnty. Of Allegheny, 515 F.3d 224, 233 \(3d Cir. 2008\)](#) (internal quotations omitted). A [Rule](#)

[12\(b\)\(6\)](#) motion may be granted only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the complainant, a court concludes that those allegations "could not raise a claim of entitlement to relief." *Bell Atl. of the nature of and grounds for the claim*. [Twombly](#), [550 U.S. at 555](#). The complaint must contain facts sufficient to show that a claim has "substantive plausibility." [Johnson v. City of Shelby](#), [574 U.S. 10, 12, 135 S. Ct. 346, 190 L. Ed. 2d 309 \(2014\)](#) (per curiam). While this plausibility standard requires more of the complaint than allegations supporting the mere possibility that the defendant is liable as alleged, plausibility should not be taken to mean probability. [Twombly](#), [550 U.S. at 545](#). A claim is facially plausible, and the standard is satisfied, when the claim's factual allegations, accepted as true, allow the court to reasonably infer that the defendant is liable as alleged. [Ashcroft v. Iqbal](#), [556 U.S. 662, 1948 \(2009\)](#).

III. DISCUSSION

Meritain seeks dismissal on three grounds. First, Meritain contends that Plaintiffs' claims are barred because the NSA contains no private right of action. Second, Meritain contends [*6] that Plaintiffs' may not assert state law claims to circumvent the absence of a private right of action in the NSA. Last, Meritain contends that Plaintiffs' state law claims fail as a matter of Delaware law.

A. Whether the NSA Creates a Private Right of Action

Meritain argues that the NSA creates neither an express nor an implied private right of action (D.I. 20 at 10-14), while Plaintiffs maintain that the NSA permits judicial enforcement of IDR awards (D.I. 27 at 3-9).¹I agree with Meritain.

Although the Court of Appeals for the Third Circuit has not yet opined on this issue, nearly every court that has considered it—including the Court of Appeals for the Fifth Circuit and multiple district courts within the Third Circuit—has favored Meritain's view and declined to find that the NSA creates either an express or implied private right of action. *See, e.g., Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, [140 F.4th 271, 277 \(5th Cir. 2025\)](#) ("The NSA's structure conveys Congress's policy choice to enforce the statute through administrative penalties, not a private right of action."); [Mitchell F. Reiter MD PC v. Horizon Blue Cross Blue Shield of New Jersey](#), [No. 25-12526 \(WJM\)](#), [2025 U.S. Dist. LEXIS 253333](#), [2025 WL 3514300](#), [at *5 \(D.N.J. Dec. 8, 2025\)](#) (noting "substantial majority of federal court decisions across the country that have examined this issue and declined to recognize an implied right of action under the NSA") (internal citation [*7] and quotation marks omitted); [Specialtycare Inc. v. Aetna, Inc.](#), [No. 25-224](#), [2025 U.S. Dist. LEXIS 264619](#), [2025 WL 3719227](#), [at *1 \(M.D. Pa. Dec. 23, 2025\)](#) (no private right of action under NSA); [Interventional Pain Mgmt. v. Horizon Blue Cross Blue Shield of New Jersey](#), [No. 25-12032 \(SRC\)](#), [2025 U.S. Dist. LEXIS 253755](#), [2025 WL 3470569](#), [at *4 \(D.N.J. Dec. 3, 2025\)](#) (same); [Mod. Orthopaedics of NJ v. Premera Blue Cross](#), [No. 25-01087 \(BRM\) \(JSA\)](#), [2025 U.S. Dist. LEXIS 215824](#), [2025 WL 3063648](#), [at *3 \(D.N.J. Nov. 3, 2025\)](#) (same), *accord* [T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Ass'n](#), [No. 25-1255 \(CS\)](#), [2025 U.S. Dist. LEXIS 252293](#), [2025 WL 3496382](#), [at *3 \(S.D.N.Y. Dec. 5, 2025\)](#) (same); [Worldwide Aircraft Servs. Inc. v. United Healthcare](#), [No. 24-2527-TPB-LSG](#), [2025 U.S. Dist. LEXIS 233132](#), [2025 WL 3312169](#), [at *2 \(M.D. Fla. Nov. 28, 2025\)](#) (same); [E. Coast Advanced Plastic Surgery, LLC v. CIGNA Health & Life Ins. Co.](#), [No. 25-1686 \(PAE\)](#), [2025 U.S. Dist. LEXIS 157911](#), [2025 WL 2371537](#),

review, except in a case described in any of paragraphs (1) through (4) of section 10(a)" FAA. [42 U.S.C. §§ 300gg-112\(b\)\(5\)\(D\)](#), [300gg-111\(c\)\(5\)\(E\)](#). Meritain contends, and Plaintiffs do not dispute, that this case does not fall within any of the statutory exceptions. (D.I. 20 at 12).

¹The NSA provides that an IDR award is automatically "binding upon the parties involved" and thus "shall not be subject to judicial

[at *17 \(S.D.N.Y. Aug. 14, 2025\)](#) ("The statutory text [of the NSA] thus forecloses of a private right of action to enforce IDR determinations."); [Jeffrey Farkas, MD., LLC v. Horizon Blue Cross Blue Shield of New Jersey, 790 F. Supp. 3d 129, 137 \(E.D.N.Y. 2025\)](#) ("[B]y seeking confirmation here, Plaintiff asks the Court to impermissibly invent a cause of action to confirm an award under the NSA. It may not do so").²

The only court to have held otherwise—the District of Connecticut in *Guardian Flight LLC v. Aetna Life Ins. Co.*—stands alone. [789 F. Supp. 3d 214, 229 \(D. Conn. 2025\)](#). Plaintiffs nevertheless urge me to adopt *Aetna Life*, claiming that in one other case in the Third Circuit—*GPS of New Jersey MD., P.C. v. Horizon Blue Cross & Blue Shield—the court applied a similar approach as in Guardian Flight, pre-Guardian Flight*. (D.I. 27 at 5-8). The *GPS* court, however, did not substantively analyze the broader applicability of the FAA to the NSA. [GPS, No. 22-6614 \(KM\) \(JBC\), 2023 U.S. Dist. LEXIS 159460, 2023 WL 5815821, at *2 \(D.N.J. Sept. 8, 2023\)](#). And other courts that have considered *GPS* have noted both its distinguishing procedural features and that the *GPS* court "simply had no need to grapple with the broader applicability of the FAA to the NSA." [Med-Trans Corp. v. Cap. Health Plan, Inc., 700 F. Supp. 3d 1076, 1084 \(M.D. Fla. 2023\)](#), *aff'd sub nom. Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc., 160 F.4th 1110 (11th Cir. 2025)*; *see also T.V. Seshan MD, 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *6 ("[T]he procedural posture of *GPS* . . . is different from this case. In *GPS*, the court confirmed [*8] an IDR award after denying a petition to vacate the award. The Court found that judicial review of the award was permitted in that instance because review was requested pursuant to [FAA § 10\(a\)](#), which was incorporated into the NSA. Although the court briefly noted that the NSA's language that awards are to be 'final and binding'*

implicitly gives federal courts authority to confirm awards and compel compliance, the *GPS* court did not grapple with any of the other arguments raised here as to why [§ 9](#) is inapplicable.") (internal citations omitted); [Reiter, 2025 U.S. Dist. LEXIS 253333, 2025 WL 3514300, at *5](#) ("In *GPS* . . . the court concluded that because [§ 9](#) language (an award 'must' be confirmed absent vacatur, modification, or correction) implicitly permits courts to compel compliance, likewise, the 'final and binding' language of NSA gives court authority to confirm IDR award. However, the FAA makes the *confirmation* of arbitration awards (except in limited circumstances) mandatory; in contrast, the NSA makes the IDR *determinations* binding, not the confirmation of those awards."). Accordingly, *GPS* does not overcome the overwhelming weight of authority rejecting *Aetna Life*.

In sum, I join the majority in finding the NSA does not create a private right of action for the [*9] reasons articulated in the Fifth Circuit's decision in *Guardian Flight*. Accordingly, I recommend dismissing Counts I and II of Plaintiffs' First Amended Complaint.

B. Whether the NSA Bars Plaintiffs' State Common Law Claims

Meritain argues that Plaintiffs may not 'use state common law to circumvent the absence of a private right of action' under a federal statute," citing [Umland v. PLANCO Fin. Servs., Inc., 542 F.3d 59 \(3d Cir. 2008\)](#) and [Astra USA, Inc. v. Santa Clara Cnty., Cal., 563 U.S. 110, 131 S. Ct. 1342, 179 L. Ed. 2d 457 \(2011\)](#). (D.I. 20 at 15). Plaintiffs characterize *Umland* and *Astra* as "wholly irrelevant." (D.I. 27 at 9-10). I agree with Meritain.

I begin with *Umland*. There, the Third Circuit dismissed an employee-plaintiff's state law breach of contract claims on two grounds. As to those claims that accrued during the 2000-2003 time period regarding being improperly classified as an independent contractor, the court determined that

²The Supreme Court recently denied a petition for certiorari to review the Fifth Circuit's decision. [No. 25-441, 2026 U.S. LEXIS 397, 2026 WL 79855 \(U.S. Jan. 12, 2026\)](#).

the state law claims were preempted by IRS regulations because their application would interfere with the IRS's administrative scheme for resolving such disputes. *Umland*, 352 F.3d at 65. With respect to the later claims that accrued after the plaintiff's reclassification as an employee, in 2004-2005, however, plaintiff brought two breach of contract actions under the *Federal Insurance Contributions Act (FICA)*, 26 U.S.C. § 3111. *Id.* With respect to these claims, the Third Circuit did not engage in a preemption [*10] analysis, but rather determined that FICA does not create a private right of action. *Id.* at 67.

The court reasoned: "[I]f we were to read FICA's provisions into every employment contract, we would contradict Congress's decision not to include expressly a private right of action and our belief that Congress did not intend to imply a private right of action either." *Id.* Noting that plaintiffs breach of contract claim "at root allege[s] FICA violations," the court affirmed the district court's dismissal of the breach of contract claim.³*Id.*

Turning to *Astra*, the Supreme Court rejected medical facility plaintiffs' attempt to assert a breach of contract claim against pharmaceutical manufacturer defendants for breach of a Pharmaceutical Pricing Agreement (PPA) between the defendants and HHS when the PPA incorporated the requirements of Section 340B of the Public Health Services Act, and Section 340B itself did not provide a private right of action. *Astra*, 563 U.S. at 113. Plaintiffs alleged that defendants were unlawfully overcharging their health care facilities in violation of the PPA and sought to enforce it as third-party beneficiaries. *Id.* Specifically, plaintiffs' complaint alleged "the manufacturers charged more than the § 340B ceiling price, not that they violated any

³The plaintiff also alleged an unjust enrichment claim, in which plaintiff claimed that defendant unjustly enriched itself by wrongfully withholding from plaintiff more than defendant owed in employee FICA taxes. *Id.* at 67-69. The Third Circuit held that the unjust enrichment claim was preempted by 26 U.S.C. § 7422(a) which restricts tax-refund lawsuits. *Id.*

independent [*11] substantive obligation arising only from the PPAs" and acknowledged that "§ 340B is the source of the contractual term allegedly breached." *Id.* at 118-19. But the Supreme Court rejected plaintiffs' attempt to assert a breach of contract claim that was "in substance one and the same" as a suit to enforce Section 340B directly. *Id.* at 114. Recognizing that "any private right of action for violating a federal statute . . . must ultimately rest on congressional intent to provide a private remedy," *Id.* at 117, (citation omitted), the Supreme Court explained:

A third-party suit to enforce [the contract] . . . is in essence a suit to enforce the statute itself. The absence of a private right to enforce the statutory ceiling-price obligations would be rendered meaningless if [drug purchasers] could overcome that obstacle by suing to enforce the contract's ceiling-price obligations instead. The statutory and contractual obligations, in short, are one and the same.

Id. at 118. The Supreme Court further explained that the absence of a private right of action to enforce the statute "would be rendered meaningless" if a plaintiff could simply sue to enforce the contract instead. *Id.*

Umland and *Astra* illustrate why Plaintiffs' state law claims are foreclosed, as they are [*12] presented here. The gravamen of Plaintiffs' First Amended Complaint, and their sole theory of wrongdoing, is that Meritain has failed to pay \$240,244 in IDR awards to Plaintiffs in violation of the NSA. (D.I. 15).⁴ Their state law claims are "one

⁴Plaintiffs aver that "Meritain is violating the No Surprises Act . . . and engaging in bad faith claims settlement practices" (D.I. 15 ¶ 1), that "[t]he IDR awards at issue were rendered in accordance with the NSA, and are, therefore, binding upon SpecialtyCare and Meritain" (*Id.* ¶ 19), and that "Meritain knows that it is statutorily required to pay IDR awards within thirty days" but that it has not invested "in the compliance systems and personnel needed to meet their obligations under federal law" because it "profit[s] from lack of compliance and violation of the mandatory payment obligations." (*Id.* ¶ 30). These paragraphs were incorporated in each of Plaintiffs' claims. (*Id.* ¶¶ 32, 40, 46, 58, 72). Plaintiffs further plead as part of

and the same" as their claims under the FAA and Delaware Revised Uniform Arbitration Act to enforce the IDR awards. [Astra](#), 563 U.S. at 114, 118; [Umland](#), 542 F.3d at 67 (dismissing state law claim that "at root" alleged violation of federal statute). Plaintiffs do not allege that Meritain violated any substantive obligation that arises independent of the NSA. [Astra](#), 563 U.S. at 113. Although account stated, quantum meruit, and unjust enrichment require proof of certain elements specific to those claims, "the ultimate goal of the plaintiffs' claim here is to enforce the federal statute." [Bauer v. Elrich](#), 8 F.4th 291, 300, 300 n.6 (4th Cir. 2021) (citing [Astra](#) to bar state law claim that effectively sought enforcement of federal statute that lacked private right of action). And if Plaintiffs were permitted to do so, "state common law would govern whether and how a federal statute may be enforced, irrespective of Congressional intent." [Id.](#) at 299.

Plaintiffs' attempts to distinguish [Astra](#) and [Umland](#) do not carry the day. As for [Astra](#), Plaintiffs argue that while Section 340B of the Public Health Service Act provided for "exclusive [*13] federal enforcement," the NSA does not. (D.I. 27 at 10). But the Fifth Circuit in [Guardian Flight](#) reasoned that Congress intended the NSA's administrative remedies to be exclusive:

The NSA expressly bars judicial review of IDR awards except as to the specific provisions borrowed from the FAA . . . Congress could have done otherwise. Section 9 of the FAA empowers courts to confirm or enforce arbitration awards, see [9 U.S.C. § 9](#), but

their quantum meruit and unjust enrichment claims that, "[t]he dispute over the value of the benefits received was resolved in accordance with the IDR procedures set forth in the NSA," that "Meritain was obligated to make payment within 30 days of the IDR awards being issued," but has "has failed and refused to pay the amounts owed on the IDR awards within thirty days as required by the NSA." (*Id.* ¶¶ 67-68, 81-82). And in their Prayer for Relief, Plaintiffs seek, "[a]n Order enforcing all the IDR Awards not paid within thirty days as required by federal law in an amount not less than \$240,244" and "[e]quitable relief requiring Meritain comply with the NSA by paying all future IDR awards within 30 days." (*Id.* at 16).

Congress chose not to incorporate [§ 9](#) into the NSA. It incorporated only parts of [§ 10](#). . . . Instead, Congress took a different tack: it empowered HHS to assess penalties against insurers for failure to comply with the NSA. See [42 U.S.C. § 300gg-22\(b\)\(2\)\(A\)](#); [45 C.F.R. § 150.301 et seq.](#) The Centers for Medicare and Medicaid Services (CMS), an agency within HHS, has acted on that authority by soliciting provider complaints and compelling payors to pay IDR awards where appropriate. CMS maintains an online portal through which providers may submit complaints regarding the IDR process. See No Surprises Complaint Form, CMS, <https://perma.cc/HHD2-8HW7>. The inference from the NSA's broader structure, then, is plain. The "express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others." [Alexander v. Sandoval](#), 532 U.S. 275, 290, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001); [Sigmon](#), 110 F.3d at 1206 (holding the "existence [*14] of [an] administrative scheme of enforcement is strong evidence that Congress intended the administrative remedy to be exclusive" (quotations omitted)). The 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.

Plaintiffs attempt to distinguish [Umland](#) because it "involved an express preemption clause in the Internal Revenue Code and a sweeping federal tax scheme," neither of which exist here. True, but Plaintiffs ignore that preemption was only part of the court's analysis—the remainder of the claims were assessed, as here, on whether a private right of action exists. In addition to [Umland](#) and [Astra](#), other courts have dismissed state law claims on non-preemption grounds when those claims sought to enforce a federal statute with no private right of action. See [Mankodi v. Trump Marina Assocs., LLC](#), 525 F. App'x 161, 166 (3d Cir. 2013) (dismissing breach of contract claim because "it

attempts to assert a claim based on a violation of the CCA, which does not provide a private right of action" and although plaintiff "attempts to frame this claim as a common law breach of contract . . . , his complaint evidences that he is really alleging a violation of the CCA"); [Bauer, 8 F.4th at 299](#) ("The essence of the plaintiffs' [*15] claim, and their sole theory of wrongdoing, is that the County defendants' implementation of the EARP violated Section 1621, which does not authorize private enforcement. The plaintiffs cannot use the procedural mechanism of Maryland taxpayer standing to bring a claim that is 'one and the same' as a purported enforcement action brought directly under Section 1621.") (citing [Astra, 563 U.S. at 114, 118](#)); [Acevado v. Citibank, N.A., No. 10-8030 PGG, 2012 U.S. Dist. LEXIS 40242, 2012 WL 996902, at *10 \(S.D.N.Y. Mar. 23, 2012\)](#) ("Because Plaintiffs' breach of contract claim relies entirely on incorporating the requirements of a statute with no private right of action [for damages] . . . Plaintiffs' claim . . . is precisely the form of 'artful pleading' . . . that state courts have identified as making an impermissible end run around statutes with no private right of action.") (internal quotation marks and citation omitted); cf. [Real Time Med. Sys., Inc. v. PointClickCare Techs., Inc., 131 F.4th 205, 228 \(4th Cir. 2025\)](#) (permitting state unfair competition claim to proceed when premised in part on federal statute that lacked private right of action, reasoning that "it is acceptable to use a violation of a federal statute as evidence supporting a state law claim—but not to advance a state claim that is merely a shell for an otherwise-unavailable federal claim").

I do not reach the question as to whether Plaintiffs' state law claims are preempted.⁵ Under [*16]

⁵ Meritain references preemption only in a cursory footnote in its Opening Brief (D.I. 20 at 15 n.5), does not address which type of preemption allegedly applies, and sidesteps discussing the doctrine in its Reply Brief (D.I. 29 at 7, "The Court need not engage with Plaintiffs' lengthy preemption analysis because their state claims are barred for a simpler reason: Plaintiffs cannot use state law to 'recover for violations of a federal statute that creates no private cause of action and, in fact, expressly restricts its enforcement to the federal government.'" (citation omitted)). Thus, I am not persuaded that

[Guardian Flight](#), [Umland](#), and [Astra](#), I conclude that Plaintiffs may not circumvent Congress's omission of a private right of action in the NSA by seeking to enforce a federal right under a state law theory. [Astra, 563 U.S. at 113-14](#).

Accordingly, I recommend dismissing Counts III, IV, and V of Plaintiffs' First Amended Complaint.⁶

Meritain has actually placed preemption before the Court. Such passing references as Meritain makes here suggest the argument has been forfeited. See [Higgins v. Bayada Home Health Care Inc., 62 F.4th 755, 763 \(3d Cir. 2023\)](#) (explaining that party forfeited argument when it "makes only a passing reference to the [statute] in her opening brief and mentions it only once in her reply brief"); [Gavrieli Brands LLC v. Soto Massini \(USA\) Corp., No. 18-462 \(MN\), 2020 U.S. Dist. LEXIS 50649, 2020 WL 1443215, at *5 \(D. Del. Mar. 24, 2020\)](#) (collecting cases disfavoring arguments made in footnotes). Even if not forfeited, Meritain has not met its burden at this stage to establish preemption given the lack of meaningful analysis. See [Insolvency Servs. Grp., Inc. v. Comcast Cable Commc 'ns, LLC, No. 20-1499-LPS, 2021 U.S. Dist. LEXIS 188087, 2021 WL 4477000, at *2 \(D. Del. Sept. 30, 2021\)](#) ("As a threshold matter, preemption is an affirmative defense that Defendant bears the burden to prove. To prevail on a [Rule 12\(b\)\(6\)](#) motion to dismiss based on an affirmative defense, . . . a defendant must show that the defense is apparent on the face of the complaint.") (internal quotation marks omitted). Accordingly, I do not reach preemption.

⁶ In response to Meritain's position that Plaintiffs' state law claims are barred, Plaintiffs confine their response to distinguishing Meritain's cited authority and arguing that the state law claims are not preempted. (D.I. 27 at 9-12). For completeness, however, I nevertheless note two recent decisions not cited by either party that are helpful to understand why Plaintiffs' state law claims to enforce IDR awards are barred—[Kennedy v. UnitedHealth Grp. Inc.](#) from the Southern District of New York and [Mod. Orthopaedics of NJ v. Premera Blue Cross](#) from the District of New Jersey. In [Kennedy v. UnitedHealth Grp. Inc.](#), the Southern District of New York analyzed whether state law claims for breach of contract and unjust enrichment between a provider and an insurer embedded federal issues so as to give rise to federal question jurisdiction. [No. 25-432 \(PAE\), 2025 U.S. Dist. LEXIS 117870, 2025 WL 1725147, at *8 \(S.D.N.Y. June 20, 2025\)](#). The provider plaintiff asserted that the insurer defendant unlawfully denied the provider compensation for certain emergency medical services he had rendered to members of the defendant's health plans. [2025 U.S. Dist. LEXIS 117870, \[WL\] at *1](#). Critically, the plaintiff chose to bring state law claims *rather than* seek redress under the IDR process or the NSA. In declining to exercise subject matter jurisdiction, the court rejected the defendant's argument that the NSA "supplant[ed] state-law remedies for medical providers," noting that defendant "has not identified any authority holding that the NSA bars medical providers from bringing state-law claims against the patient's insurer." *Id.* Similarly, in [Mod. Orthopaedics of NJ v. Premera Blue Cross](#), the District of New

2026 U.S. Dist. LEXIS 26722, *16

C. Whether Plaintiffs Have Stated Claims Under Delaware Law

Meritain contends that Plaintiffs' state law claims fail as a matter of Delaware law. (D.I. 20 at 16-17). Because I recommend dismissing Plaintiffs' account stated, quantum meruit, and unjust enrichment claims for other reasons, I do not reach the question as to whether these claims have been sufficiently plead under Delaware law.

Order for Objections Filed Under [Fed. R. Civ. P. 72](#)," dated March 7, 2022, a copy of which can be found on the Court's website.

Dated: February 9, 2026

/s/ Laura D. Hatcher

Laura D. Hatcher

United States Magistrate Judge

IV. CONCLUSION

For the reasons set forth above, I recommend granting Meritain's motion to dismiss. Because I recommend dismissing Meritain's First Amended Complaint, I recommend denying as moot Meritain's motion to stay.

This Report and Recommendation is filed pursuant to [28 U.S.C. § 636\(b\)\(1\)\(B\)](#), [\(C\)](#), [Federal Rule of Civil Procedure 72\(b\)\(1\)](#), and [D. Del. LR 72.1](#). Any objections to the Report and Recommendation shall be filed within fourteen days and limited [*17] to ten pages. Any response shall be filed within fourteen days thereafter and limited to ten pages. The failure of a party to object to legal conclusions may result in the loss of the right to *de novo* review in the District Court.

The parties are directed to the Court's "Standing

Jersey in the context of preemption rejected the plaintiff's argument that the NSA *requires* providers to "avail itself of the NSA's IDR process and procedures to secure payment." [No. 25-01087 \(BRM\) \(JSA\)](#), 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *11 (D.N.J. Nov. 3, 2025). 2025 U.S. Dist. LEXIS 215824, [WL] at *12. Relying on *Kennedy*, the court explained that, "[the IDR is an opt-in process, it provides an *alternative*, streamlined route to determine the amount owed between the parties—it does not displace traditional state-law remedies like unjust enrichment." (emphasis added). I do not read *Kennedy* and [Mod. Orthopaedics](#) as greenlighting Plaintiffs' state law claims. Rather, unlike the plaintiff in *Kennedy*, Plaintiffs here do not seek redress under state law untethered from any IDR awards obtained under the NSA. Instead, Plaintiffs' First Amended Complaint wields state law claims to obtain payment of the IDR awards themselves. This is an impermissible use of state law to enforce a federal statute that lacks a private right of action.

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EXHIBIT 4

A Neutral
As of: April 3, 2026 7:48 PM Z

Worldwide Aircraft Servs. v. United Healthcare

United States District Court for the Middle District of Florida, Tampa Division

February 13, 2026, Decided; February 13, 2026, Filed

CASE NO. 8:25-cv-01225-SDM-SPH

Reporter

2026 U.S. Dist. LEXIS 29847 *; 2026 LX 35588; 2026 WL 406818

WORLDWIDE AIRCRAFT SERVICES, INC.,
Petitioner, v. UNITED HEALTHCARE,
Respondent.

Subsequent History: Sanctions disallowed by,
Request denied by [Worldwide Aircraft Servs., Inc. v. United Healthcare, 2026 U.S. Dist. LEXIS 41062 \(Feb. 27, 2026\)](#)

Counsel: [*1] For Worldwide Aircraft Services, Inc., also known as, Jet ICU, Plaintiff: Michael John Brannigan, LEAD ATTORNEY, Law Office of Michael Brannigan, Tampa, FL.

For United Healthcare, Defendant: Irene Bassel Frick, LEAD ATTORNEY, Akerman LLP - Tampa, Tampa, FL; Allison Paige Gallagher, Akerman LLP, Orlando, FL; Neema Monfared, Akerman LLP, Tampa, FL.

Judges: STEVEN D. MERRYDAY, UNITED STATES DISTRICT JUDGE.

Opinion by: STEVEN D. MERRYDAY

Opinion

ORDER

In 2024, Worldwide Aircraft Services, Inc., requested Independent Dispute Resolution (IDR) under the No Surprises Act and obtained an award of \$21,572.25 against United Healthcare. (Doc. 1-2). [42 U.S.C. §§ 300gg-111\(c\)\(2\)\(A\), 300gg-112\(b\)\(1\)\(B\)](#). The petitioner moves (Doc. 1) to

confirm the award against the respondent, who moves (Doc. 16) to dismiss the petition for lack of subject-matter jurisdiction. No response appears.

An earlier action brought by the same petitioner against the same respondent and requesting confirmation of an IDR award granted under the same statute was dismissed for lack of subject-matter jurisdiction. [Worldwide Aircraft Servs. Inc. v. United Healthcare, No. 8:24-CV-2527-TPB-LSG, 2025 U.S. Dist. LEXIS 233132, 2025 WL 3312169 \(M.D. Fla. Nov. 28, 2025\)](#). Another action brought by the same petitioner against a different insurance company was dismissed for the same reason. [Worldwide Aircraft Servs., Inc. v. Freedom Life Ins. Co. of Am., No. 8:25-cv-01158-WFJ-AEP, 2025 U.S. Dist. LEXIS 256246, 2025 WL 3551397 \(M.D. Fla. Dec. 11, 2025\)](#).

The motion to dismiss is **GRANTED** and the action is **DISMISSED WITH PREJUDICE** [*2] because, as held in the other two actions, "the NSA's IDR provisions do not give rise to a federal cause of action and . . . IDR awards are not enforceable under the FAA." [Worldwide, 2025 U.S. Dist. LEXIS 233132, 2025 WL 3312169, at *2](#). The petitioner cites no fact distinguishing the present action and cites no authority challenging the earlier holdings. Accordingly, no later than **FEBRUARY 27, 2026**, in a paper no longer than seven pages, the plaintiff must **SHOW CAUSE** why a sanction should not issue under [Rule 11\(c\)\(3\), Federal Rules of Civil Procedure](#), for presenting a claim not "warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." [Rule](#)

11(b)(2), Federal Rules of Civil Procedure. The clerk must **ADMINISTRATIVELY CLOSE** the case.

ORDERED in Tampa, Florida, on February 13, 2026.

/s/ Steven D. Merryday

STEVEN D. MERRYDAY

UNITED STATES DISTRICT JUDGE

EXHIBIT 5

No Shepard's Signal™
As of: April 3, 2026 7:49 PM Z

SpecialtyCare, Inc. v. MedCost, LLC

Court of Chancery of Delaware

December 2, 2025, Submitted; February 16, 2026, Decided

C.A. No. 2025-0011-DH

Reporter

2026 Del. Ch. LEXIS 110 *; 2026 LX 49015; 2026 WL 432302

SPECIALTYCARE, INC.; REMOTE
NEUROMONITORING PHYSICIANS, PC; and
SENTIENT PHYSICIANS, PC, Plaintiff, v.
MEDCOST, LLC, Defendant.

Notice: THIS OPINION HAS NOT BEEN
RELEASED FOR PUBLICATION. UNTIL
RELEASED, IT IS SUBJECT TO REVISION OR
WITHDRAWAL.

LexisNexis® Headnotes

Healthcare Law > ... > Insurance
Coverage > Health Insurance > Patient
Obligations

HN1 [down arrow] **Health Insurance, Patient Obligations**

The Federal No Surprises Act limits the amount an insured patient will pay for emergency services furnished by an out-of-network provider. The Act also limits how much an insured party pays for certain non-emergency services furnished by an out-of-network provider at an in-network facility.

Healthcare Law > ... > Insurance
Coverage > Health Insurance > Patient
Obligations

HN2 [down arrow] **Health Insurance, Patient Obligations**

In situations where an insured person incurs emergency medical costs out of network (OON) , the Federal No Surprises Act crafted a procedure for the healthcare provider and insurer to allocate costs. Initially, insurance plans and issuers may pay the OON provider whatever amount they prefer. If the healthcare provider wishes to contest the insurer's initial payment, the provider initiates open negotiations within thirty days of the payment. [42 U.S.C.S. 300gg-111\(c\)\(1\)\(A\)](#). Where the open negotiations period fails to resolve the payment dispute, either party can initiate the Independent Dispute Resolution Process (IDR), a "baseball-style" resolution process where a third-party referee (IDR Entity) determines the amount owed by the plan. [42 U.S.C.S. 300gg-111\(c\)\(1\)\(B\)](#). Either the parties or the Department of Health and Human Services selects the IDR entity. [42 U.S.C.S. 300gg-111\(c\)\(4\)](#).

Civil Procedure > ... > Alternative Dispute
Resolution > Arbitration > Arbitrability
Business & Corporate
Compliance > Alternative Dispute
Resolution > Arbitration > Arbitrability

Business & Corporate
Compliance > Alternative Dispute
Resolution > Validity of ADR Methods
Civil Procedure > Pretrial Matters > Alternative
Dispute Resolution > Validity of ADR Methods

HN3 [down arrow] **Arbitration, Arbitrability**

"Baseball-style" arbitration refers to the arbitration process employed by Major League Baseball. In that proceeding, the team and player each submit a proposed salary figure to a panel of arbitrators. The arbitration panel chooses the player's or team's proposal and is not free to select a figure not suggested by one of the sides.

Healthcare Law > ... > Insurance
 Coverage > Health Insurance > Patient
 Obligations

Insurance Law > Claim, Contract & Practice
 Issues > Arbitration


[HN4](#)  **Health Insurance, Patient Obligations**

During the Independent Dispute Resolution Process (IDR) process, each party submits an offer for what is owed and any additional information requested by a third-party referee (IDR Entity). Then, the IDR Entity selects one of the offers following consideration of numerous statutorily prescribed considerations. *No Surprises Act*, [42 U.S.C.S. 300gg-111\(c\)\(5\)\(A\)](#), [\(C\)\(i\)-\(ii\)](#). The IDR Entity's determination is binding on the parties in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim. [42 U.S.C.S. 300gg-111\(c\)\(5\)\(E\)\(i\)\(I\)](#).

Civil Procedure > Pretrial Matters > Alternative
 Dispute Resolution > Judicial Review
 Business & Corporate
 Compliance > Alternative Dispute
 Resolution > Judicial Review


Insurance Law > Claim, Contract & Practice
 Issues > Arbitration

Healthcare Law > ... > Insurance
 Coverage > Health Insurance > Patient
 Obligations

[HN5](#)  **Alternative Dispute Resolution, Judicial Review**


The No Surprises Act provides that the determination shall not be subject to judicial review except for the circumstances described in the *Federal Arbitration Act*, [9 U.S.C.S. 10\(a\)\(1\)-\(4\)](#). [42 U.S.C.S. 300gg-111\(c\)\(5\)\(E\)\(i\)\(II\)](#).

Business & Corporate
 Compliance > ... > Arbitration > Federal
 Arbitration Act > Scope
 Civil Procedure > ... > Arbitration > Federal
 Arbitration Act > Scope

[HN6](#)  **Arbitration, Federal Arbitration Act**

The No Surprises Act includes an administrative accountability mechanism for situations of misconduct not contemplated by the *Federal Arbitration Act*, [9 U.S.C.S. 10](#). The Secretaries of Health and Human Services, Labor, and Treasury may submit reports to Congress regarding plans that engage in a pattern or practice of routine denial, low payment, or down-coding of claims, with "recommendations on ways to discourage such a pattern or practice." [42 U.S.C.S. 300gg-111\(c\)\(5\)\(E\)\(iv\)](#).


Civil Procedure > Pretrial Matters > Alternative
 Dispute Resolution > Judicial Review
 Business & Corporate
 Compliance > Alternative Dispute
 Resolution > Judicial Review

[HN7](#)  **Alternative Dispute Resolution, Judicial Review**

While the No Surprises Act limits judicial review to cases involving misconduct, parties subject to an arbitrator's decision under the Federal Arbitration Act may seek judicial confirmation or review. [9 U.S.C.S. 9](#) permits any court of competent jurisdiction to enter an order confirming a valid


arbitration award unless the award is vacated, modified or corrected as prescribed in [9 U.S.C.S. 10](#) and [9 U.S.C.S. 11](#) of this title. The Federal Arbitration Act contemplates that the prevailing party in arbitration can obtain a court order confirming the award, unless a party seeks to alter or vacate the arbitrator's decision, in which case the parties properly proceed under [9 U.S.C.S. 10](#) (vacating an award on grounds of misconduct) or [9 U.S.C.S. 11](#) (modifying or correcting an award on grounds of mistake, miscalculation, or overbreadth).

Civil Procedure > Pretrial Matters > Alternative Dispute Resolution > Judicial Review
Business & Corporate
Compliance > Alternative Dispute Resolution > Judicial Review

[HN8](#)  **Alternative Dispute Resolution, Judicial Review**


The Federal Arbitration Act permits parties to designate the reviewing court, with the United States court in and for the district within which such award was made functioning as the default venue absent express stipulation. [9 U.S.C.S. 9](#). For parties seeking vacatur of the arbitrator's decision under [9 U.S.C.S. 10](#), however, the United States court in and for the district wherein the award was made has exclusive jurisdiction. When a party seeks judicial review or confirmation in Delaware state court, however, the Court of Chancery is vested with exclusive jurisdiction. [10 Del. C. § 5702\(c\)](#).

Civil Procedure > Pretrial Matters > Alternative Dispute Resolution > Judicial Review
Business & Corporate
Compliance > Alternative Dispute Resolution > Judicial Review

[HN9](#)  **Alternative Dispute Resolution, Judicial Review**

The [Delaware Uniform Arbitration Act, 10 Del. C. § 5701 et seq.](#), provides comparable jurisdiction for a court to modify, confirm, or vacate an award. The Delaware Court of Chancery has exclusive jurisdiction for judicial review of Delaware Uniform Arbitration Act arbitrations absent express agreement of the parties. [10 Del. C. § 5702\(a\)](#). The requirements for confirmation of an arbitrator's decision largely mimic the Federal Arbitration Act, where a party need only make its application to the reviewing court within one year of the arbitrator's decision. [10 Del. C. § 5713](#). The non-prevailing party in a Delaware Uniform Arbitration Act action may seek vacatur of the award on the same grounds established within the Federal Arbitration Act. The Delaware Uniform Arbitration Act modification or correction statute also largely parallels the Federal Arbitration Act's, although the Delaware Uniform Arbitration Act imposes a ninety-day time limit to seek such amendment.

Civil Procedure > Pretrial Matters > Alternative Dispute Resolution > Judicial Review
Business & Corporate
Compliance > Alternative Dispute Resolution > Judicial Review

[HN10](#)  **Alternative Dispute Resolution, Judicial Review**

The Court of Chancery possesses jurisdiction to confirm and review arbitration awards under the Federal Arbitration Act, provided the parties agreed to jurisdiction within Delaware. [Delaware Uniform Arbitration Act, 10 Del. C. § 5701, 10 Del. C. § 5702](#).

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Civil
Procedure > ... > Pleadings > Complaints > Requirements for Complaint

[HN11](#) [↓] Motions to Dismiss, Failure to State Claim

When reviewing a motion to dismiss under [Del. Ch. Ct. R. 12\(b\)\(6\)](#), Delaware courts accept all well pleaded factual allegations as true, accept even vague allegations as well pleaded if they give the opposing party notice of the claim, and draw all reasonable inferences in favor of the non-moving party. The governing pleading standard in Delaware to survive a motion to dismiss is reasonable conceivability. The reasonable conceivability standard grants a plaintiff all reasonable inferences that logically flow from the face of the complaint but does not obligate the court to accept every strained interpretation of the plaintiff's allegations. The court will ignore conclusory allegations that lack specific supporting factual allegations. Dismissal is appropriate where the nonmoving party would not be entitled to recover under any reasonably conceivable set of circumstances.

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions

Governments > Courts > Authority to Adjudicate

[HN12](#) [↓] Subject Matter Jurisdiction, Jurisdiction Over Actions

Subject matter jurisdiction is crucial, and the court of chancery must ensure it exists, even if it must raise the issue sua sponte.

Business & Corporate
 Compliance > ... > Arbitration > Federal Arbitration Act > Arbitration Agreements
 Civil Procedure > ... > Arbitration > Federal Arbitration Act > Arbitration Agreements

Healthcare Law > ... > Insurance Coverage > Health Insurance > Patient

Obligations

Insurance Law > Claim, Contract & Practice Issues > Arbitration

[HN13](#) [↓] Federal Arbitration Act, Arbitration Agreements

Independent Dispute Resolution proceedings under the [Federal No Surprises Act, 42 U.S.C.S. 300gg-111 et seq.](#), are not arbitrations because an agreement to arbitrate must arise out of a contract. [Section 2](#) comprises the primary substantive provision of the [Federal Arbitration Act, 9 U.S.C.S. 2](#).

Civil Procedure > ... > Alternative Dispute Resolution > Arbitration > Arbitrability
 Business & Corporate
 Compliance > Alternative Dispute Resolution > Arbitration > Arbitrability

Business & Corporate
 Compliance > ... > Arbitration > Federal Arbitration Act > Arbitration Agreements
 Civil Procedure > ... > Arbitration > Federal Arbitration Act > Arbitration Agreements

Business & Corporate
 Compliance > Contracts > Contract Conditions & Provisions > Arbitration Clauses
 Contracts Law > Contract Conditions & Provisions > Arbitration Clauses

Business & Corporate
 Compliance > Alternative Dispute Resolution > Validity of ADR Methods
 Civil Procedure > Pretrial Matters > Alternative Dispute Resolution > Validity of ADR Methods

[HN14](#) [↓] Arbitration, Arbitrability

A contract envelops the ensuing arbitration proceeding by both providing (1) the gravamen subject to arbitration and (2) the agreement to arbitrate itself. The Supreme Court has maintained

the fundamental principle that arbitration is a matter of contract and consequently places arbitration agreements on an equal footing with other contracts. Parties may specify the scope of agreements to arbitrate, including the matters subject to arbitration, the rules by which arbitration is conducted, and the parties bound by the arbitration agreement.

Civil Procedure > ... > Alternative Dispute Resolution > Arbitration > Arbitrability
Business & Corporate
Compliance > Alternative Dispute Resolution > Arbitration > Arbitrability

Business & Corporate
Compliance > ... > Arbitration > Federal Arbitration Act > Arbitration Agreements
Civil Procedure > ... > Arbitration > Federal Arbitration Act > Arbitration Agreements

[HN15](#) **Arbitration, Arbitrability**

Delaware law buttresses the requirement that an agreement to arbitrate must exist for such arbitration to be enforceable. Because the obligation or right to contract is contractual, the starting point of any analysis of whether a dispute is arbitrable must be the parties' contract to arbitrate. The supreme court's threshold requirement is determining whether an arbitration agreement exists in the first place. As in the Federal Arbitration Act, the Delaware Uniform Arbitration Act requires a written agreement to submit to arbitration for an enforceable obligation under the Act to exist. [10 Del. C. § 5701](#). The statute's text conditions the Court of Chancery's jurisdiction to enforce an arbitrator's decision on the existence of such agreement.

Civil Procedure > ... > Alternative Dispute Resolution > Arbitration > Arbitrability
Business & Corporate
Compliance > Alternative Dispute

Resolution > Arbitration > Arbitrability

Business & Corporate
Compliance > ... > Arbitration > Federal Arbitration Act > Arbitration Agreements
Civil Procedure > ... > Arbitration > Federal Arbitration Act > Arbitration Agreements

[HN16](#) **Arbitration, Arbitrability**

As both the Federal Arbitration Act and Delaware Uniform Arbitration Act evidence, a written agreement to arbitrate is a necessary condition for an arbitration to exist, and the respective grants of jurisdiction to review arbitration decisions in state and federal statutory schemes rely on a written agreement.

Civil Procedure > Pretrial Matters > Alternative Dispute Resolution > Judicial Review
Business & Corporate
Compliance > Alternative Dispute Resolution > Judicial Review

Insurance Law > Claim, Contract & Practice Issues > Arbitration

Healthcare Law > ... > Insurance
Coverage > Health Insurance > Patient Obligations

[HN17](#) **Alternative Dispute Resolution, Judicial Review**

The No Surprises Act does state that a determination of a certified Independent Dispute Resolution entity shall be binding upon the parties involved, but follows such language by noting that the determination shall not be subject to judicial review, except where the [Federal Arbitration Act, 9 U.S.C.S.10\(a\)\(1\)-\(4\)](#), applies. The mere presence of the term "binding" cannot give rise to an entire arbitration scheme subject to judicial review when the plain text of the statute rebuts such reading.

Governments > Legislation > Interpretation

[HN18](#) [↓] **Legislation, Interpretation**

Both Federal and Delaware law dictate that the court must read statutes as a whole and not interpret provisions to create internal contradictions. Each part or section of a statute should be read in light of every other part or section to produce a harmonious whole. The provisions of a text should be interpreted in a way that renders them compatible, not contradictory. There can be no justification for needlessly rendering provisions in conflict if they can be interpreted harmoniously. This is the "Harmonious-Reading Canon." Avoid interpreting a provision in a way that would render other provisions of the Act superfluous or unnecessary.

Governments > Legislation > Interpretation

Governments > Legislation > Statutory Remedies & Rights

[HN19](#) [↓] **Legislation, Interpretation**

Both Federal and Delaware canons of statutory interpretation disfavor finding implied private rights of action in comprehensive schemes.

Governments > Legislation > Interpretation

Governments > Legislation > Statutory Remedies & Rights

[HN20](#) [↓] **Legislation, Interpretation**

Congress must create private rights of action to enforce federal law. Without an express private right of action within a statute, 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. Statutory intent is determinative on this point.

Governments > Legislation > Interpretation

[HN21](#) [↓] **Legislation, Interpretation**

The court examines statutory text to discern whether it unambiguously confers an enforceable right upon the statute's beneficiaries. The inquiry for statutory intent 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.

Governments > Legislation > Statutory Remedies & Rights

[HN22](#) [↓] **Legislation, Statutory Remedies & Rights**

Delaware has historically followed the Supreme Court's lead in determining whether a statute gives rise to an implied private right of action. For several years, the Delaware Supreme Court adopted the multi-factor test articulated in *Cort v. Ash*: the language and focus of the statute, the legislative history, and its underlying purposes. Delaware courts have identified the second *Cort* factor, statutory intent, as usually dispositive under contemporary analysis.

Governments > Legislation > Statutory Remedies & Rights

[HN23](#) [↓] **Legislation, Statutory Remedies & Rights**

In *Cort v. Ash*, the Supreme Court enumerated four factors: whether the plaintiff was one of the class for whose especial benefit the statute was enacted; whether there is any indication of legislative intent, explicit or implicit, either to create such remedy or to deny one; whether it is consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff; and whether the cause of action is one traditionally relegated to

state law so that it would be inappropriate to infer a cause of action based solely on federal law. Delaware has consolidated this analysis into three factors.

Governments > Legislation > Interpretation

[HN24](#) [↓] **Legislation, Interpretation**

Sandoval's inquiry begins and ends with the text and structure of the Statute.

Governments > Legislation > Interpretation

Governments > Legislation > Statutory Remedies & Rights

[HN25](#) [↓] **Legislation, Interpretation**

The presence of an explicit remedy in a statute's text confirms that Congress did not intend to impliedly create a distinct remedy.

Governments > Legislation > Interpretation

[HN26](#) [↓] **Legislation, Interpretation**

Where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it.

Governments > Legislation > Interpretation

[HN27](#) [↓] **Legislation, Interpretation**

The judiciary may not fashion new remedies that might upset carefully considered legislative programs where Congress has enacted a comprehensive legislative scheme including an integrated system of procedures for enforcement.

Healthcare Law > ... > Insurance

Coverage > Health Insurance > Patient Obligations

Insurance Law > Claim, Contract & Practice Issues > Arbitration

[HN28](#) [↓] **Health Insurance, Patient Obligations**

The No Surprises Act states that Independent Dispute Resolution (IDR) determinations shall be binding, [42 U.S.C.S. 300gg-111\(c\)\(5\)\(E\)\(i\)\(I\)](#), and requires payment within thirty days. [42 U.S.C.S. 300gg-112\(b\)\(6\)](#).

Civil Procedure > ... > Alternative Dispute Resolution > Arbitration > Arbitrability Business & Corporate Compliance > Alternative Dispute Resolution > Arbitration > Arbitrability

[HN29](#) [↓] **Arbitration, Arbitrability**

The Court of Chancery lacks jurisdiction to enforce a third-party dispute resolution outside the arbitration context. [Delaware Uniform Arbitration Act, 10 Del. C. § 5702\(a\)](#).

Governments > Legislation > Statutory Remedies & Rights

[HN30](#) [↓] **Legislation, Statutory Remedies & Rights**

An implied right of action is incongruous with such a detailed statutory scheme, in which judicial review is limited to specific instances.

Business & Corporate Compliance > ... > Arbitration > Federal Arbitration Act > Arbitration Agreements Civil Procedure > ... > Arbitration > Federal Arbitration Act > Arbitration Agreements

Insurance Law > Claim, Contract & Practice

Issues > Arbitration

Healthcare Law > ... > Insurance
Coverage > Health Insurance > Patient
Obligations

Business & Corporate
Compliance > ... > Arbitration > Federal
Arbitration Act > Scope
Civil Procedure > ... > Arbitration > Federal
Arbitration Act > Scope

[HN31](#) [↓] **Federal Arbitration Act, Arbitration Agreements**

The *Federal No Surprises Act (NSA)*, [42 U.S.C.S. 300gg-111 et seq.](#), contains a regulatory enforcement mechanism, which means that Congress considered how to redress violations of the text's requirement. Furthermore, the NSA incorporates a remedy ([Federal Arbitration Act, 9 U.S.C.S. 10](#)) to the exclusion of others.

Contracts Law > Standards of
Performance > Creditors & Debtors
Business & Corporate
Compliance > Contracts > Standards of
Performance > Creditors & Debtors

[HN32](#) [↓] **Standards of Performance, Creditors & Debtors**

To establish a claim for account stated, a plaintiff must allege and prove three essential elements: an account existed between the parties; the defendant stated or admitted to owing a specific sum on account to the plaintiff; and the defendant made this admission after the original account or debt was created. When a party brings a claim for account stated, it can only recover by showing both the account and an unqualified assent of defendant to its correctness. The complaint must provide facts that the defendant stated or admitted to owing a specific sum on the account to the plaintiff. Account stated is a legal theory where one party's stating of the account comprises consideration for

the promise to pay, thereby creating a new contract changing the character of the original debt.

Contracts Law > Standards of
Performance > Creditors & Debtors
Business & Corporate
Compliance > Contracts > Standards of
Performance > Creditors & Debtors

[HN33](#) [↓] **Standards of Performance, Creditors & Debtors**

Delaware law contemplates an express agreement subsequent to the creation of the debt stating that the debtor owes a certain sum. In addition to a subsequent agreement, a plaintiff must provide facts that the defendant stated or admitted to owing a specific sum on the account to the plaintiff.

Business & Corporate
Compliance > Contracts > Types of
Contracts > Quasi Contracts
Contracts Law > Types of Contracts > Quasi
Contracts

Contracts Law > Remedies > Equitable
Relief > Quantum Meruit

[HN34](#) [↓] **Types of Contracts, Quasi Contracts**

Both quantum meruit and unjust enrichment require one party to confer a benefit to another. A party may recover under a theory of quantum meruit where the party performed the services with the expectation that the recipient would pay for them and the recipient should have known that the party expected to be paid. A claim lies for unjust enrichment where the claimant pleads an enrichment, an impoverishment, a relation between the enrichment and impoverishment, the absence of justification, and the absence of a remedy provided by law.

Business & Corporate
 Compliance > Contracts > Types of
 Contracts > Quasi Contracts
 Contracts Law > Types of Contracts > Quasi
 Contracts

Contracts Law > Remedies > Equitable
 Relief > Quantum Meruit

Contracts Law > Remedies > Restitution

[HN35](#) [📄] **Types of Contracts, Quasi Contracts**

Quantum meruit is a principle of restitution arising from a cause of action in quasi-contract, whereas unjust enrichment is a cause of action usually but not always equitable, based on an unjustified enrichment of one party and resulting impoverishment of another party, in the absence of a remedy at law.

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Judges: HUME, IV, M.

Opinion by: HUME, IV

Opinion

REPORT

HUME, IV, M.

Today, the Court addresses a narrow question of first impression in Delaware: whether the *Federal*

No Surprises Act contains an implied private right of action to enforce awards determined under the Internal Dispute Resolution Process.¹ While Plaintiff seeks enforcement of the awards by appeal to the Court of Chancery's exclusive jurisdiction to enforce arbitration agreements, the statutory dispute resolution process differs from arbitration as defined in the Federal Arbitration and Delaware Uniform Arbitration Acts. Moreover, under the principles of statutory interpretation promulgated by the U.S. Supreme Court in *Alexander v. Sandoval*² and in keeping with several District Court decisions interpreting the No Surprises Act, this Court declines to create a private [*2] right of action. These counts are dismissed. The Court further dismisses Plaintiff's three alternative causes of action for failure to state a claim under [Court of Chancery Rule 12\(b\)\(6\)](#).

I. BACKGROUND³

Plaintiffs SpecialtyCare, Inc., Remote Neuromonitoring Physicians, PC, and Sentient Physicians, PC initiated this action against Defendant MedCost, LLC. The facts are drawn from the Verified Complaint and are taken to be true for the purposes of this Motion to Dismiss.

¹ See [42 U.S.C. §§ 300gg-111 et seq.](#)

² [532 U.S. 275, 286, 121 S. Ct. 1511, 149 L. Ed. 2d 517 \(2001\)](#). As discussed *infra*, Delaware courts have long followed federal precedent in determining whether a private right of action exists. See, e.g., [Mann v. Oppenheimer & Co., 517 A.2d 1056, 1064 \(Del. 1986\)](#).

³ Unless otherwise noted, pleadings are cited by reference to items docketed in C.A. No. 2025-0011-DH ("D.I."). At the time of this ruling, only the draft transcript has been prepared and citations to it refer to the rough copy of the transcript ("Draft Tr."), D.I. 30. Citations in the form of "Compl." refer to Plaintiff's Verified Complaint, D.I. 1. Citations in the form of "DOB" refer to Defendant's Brief in Support of Motion to Dismiss, D.I. 13. Citations in the form of "PAB" refer to Plaintiff's Answering Brief in Opposition to Defendant's Motion to Dismiss, D.I. 20. Citations in the form of "DRB" refer to Defendant's Reply Brief in Support of Motion to Dismiss, D.I. 22. Here, "Supreme Court" refers to the U.S. Supreme Court rather than the Delaware Supreme Court.

A. Content and Structure of the No Surprises Act

In late 2020, the President signed into law the No Surprises Act ("NSA" or "Act") to defray consumer costs arising from "unexpected out-of-network medical bills."⁴ [HNI](#)[↑] The Act limits "the amount an insured patient will pay for emergency services furnished by an out-of-network provider." [Texas Med. Ass'n v. U.S. Dep't of Health & Hum. Servs.](#), 654 F. Supp. 3d 575, 580 (E.D. Tex. 2023). The Act also limits how much an insured party pays for "certain non-emergency services furnished by an out-of-network provider at an in-network facility." [Texas Med. Ass'n v. U.S. Dep't of Health & Hum. Servs.](#), 110 F.4th 762, 767 (5th Cir. 2024) (quoting [Texas Med. Ass'n](#), 654 F. Supp. 3d at 580). The Act went into effect on January 2, 2022.⁵ In situations where an insured person incurs emergency medical costs out of network ("OON")⁶, the NSA crafted a procedure for the healthcare provider and insurer to allocate costs. Initially, insurance [*3] plans and issuers may pay the OON provider whatever amount they prefer.⁷ [HN2](#)[↑] If the healthcare provider wishes to contest the insurer's initial payment, the provider "initiate[s] open negotiations" within thirty days of the payment. [42 U.S.C. § 300gg-111\(c\)\(1\)\(A\)](#). Where the open negotiations period fails to resolve the payment dispute, either party can initiate the Independent Dispute Resolution Process ("IDR"), a "baseball-style"⁸ resolution process where a third-

party referee ("IDR Entity") determines the amount owed by the plan.⁹ *Id.*, [§ 300gg-111\(c\)\(1\)\(B\)](#). Either the parties or the Department of Health and Human Services selects the IDR entity. [42 U.S.C. § 300gg-111\(c\)\(4\)](#); [Guardian Flight, L.L.C. v. Health Care Serv. Corp.](#), 140 F.4th 271, 273 (5th Cir. 2025) (discussing the NSA's structure).

[HN4](#)[↑] During the IDR process, each party submits an offer for what is owed and any additional information requested by the IDR Entity. Then, the IDR Entity selects one of the offers following consideration of numerous statutorily prescribed considerations. [42 U.S.C. §§ 300gg-111\(c\)\(5\)\(A\)](#), [\(C\)\(i\)-\(ii\)](#). The IDR Entity's determination is binding on the parties "in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved [*4] regarding such claim[.]" *Id.* [§ 300gg-111\(c\)\(5\)\(E\)\(i\)\(I\)](#).

1. The IDR statute incorporates one provision of the [Federal Arbitration Act](#) for judicial review of IDR entity's decision in cases of fraud, mistake, or corruption.

[HN5](#)[↑] The NSA provides that the determination "shall not be subject to judicial review" except for the circumstances described in [9 U.S.C. Section 10\(a\)\(1\)-\(4\)](#). [42 U.S.C. § 300gg-111\(c\)\(5\)\(E\)\(i\)\(II\)](#). [Section 10](#) is a provision of the Federal Arbitration Act ("FAA"), which provides in relevant part:

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to

⁴ *The No Surprises Act at a Glance: Protecting Consumers Against Unexpected Medical Bills*, CTRS. FOR MEDICARE & MEDICAID SERVS. (Jan. 2025), <https://www.cms.gov/files/document/nsa-at-a-glance.pdf>.

⁵ Compl. ¶ 9.

⁶ An example of this is when an emergent patient is airlifted to a medical facility by an OON medical transport helicopter.

⁷ Compl. ¶ 10. Although the NSA applies both to insurance plans and issuers, the opinion refers just to "plans" for ease of reading.

⁸ [HN3](#)[↑] "Baseball-style" arbitration refers to the arbitration process employed by Major League Baseball. In that proceeding, the team and player each submit a proposed salary figure to a panel of arbitrators. The arbitration panel chooses the player's or team's

proposal and is not free to select a figure not suggested by one of the sides. *See Salary Arbitration and Arbitration Eligibility*, MLB.COM <https://www.mlb.com/glossary/transactions/salary-arbitration> (last visited Feb. 16, 2026).

⁹ The Complaint incorrectly refers to the IDR Entity as a "third-party arbitrator." ¶ 10. As I explain *infra*, the IDR Entity is not an arbitrator but a distinct third-party resolution process unique to the NSA's statutory framework.

the arbitration--

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Thus, the NSA incorporates one discrete [*5] provision of the FAA so that Courts may reverse the IDR Entity's determination in situations of exceptional misconduct.

[HN6](#)^[↑] The NSA includes an administrative accountability mechanism for situations of misconduct not contemplated by [9 U.S.C. Section 10](#). The Secretaries of Health and Human Services ("HHS"), Labor, and Treasury may submit reports to Congress regarding plans that engage in "a pattern or practice of routine denial, low payment, or down-coding of claims," with "recommendations on ways to discourage such a pattern or practice." [42 U.S.C. § 300gg-111\(c\)\(5\)\(E\)\(iv\)](#).

2. The Federal and [Delaware Uniform Arbitration Acts](#) provide causes of action for enforcement of arbitration decisions.

[HN7](#)^[↑] While the NSA limits judicial review to cases involving misconduct, parties subject to an arbitrator's decision under the FAA may seek judicial confirmation or review. [9 U.S.C. Section 9](#)

permits any court of competent jurisdiction to enter an order confirming a valid arbitration award "unless the award is vacated, modified or corrected as prescribed in [section 10](#) and [11](#) of this title."¹⁰ The FAA contemplates that the prevailing party in arbitration can obtain a Court order confirming the award, unless a party seeks to alter or vacate the arbitrator's decision, in which case the parties properly proceed under [Section 10](#) (vacating [*6] an award on grounds of misconduct) or [Section 11](#) ("modifying or correcting an award" on grounds of mistake, miscalculation, or overbreadth).

[HN9](#)^[↑] The Delaware Uniform Arbitration Act ("DUAA")¹¹ provides comparable jurisdiction for a court to modify, confirm, or vacate an award. The Delaware Court of Chancery has exclusive jurisdiction for judicial review of DUAA arbitrations absent express agreement of the parties. See [10 Del. C. § 5702\(a\)](#). The requirements for confirmation of an arbitrator's decision largely mimics the FAA, where a party need only make its application to the reviewing court within one year of the arbitrator's decision. *Id.* [§ 5713](#). The non-prevailing party in a DUAA action may seek vacatur of the award on the same grounds established within the FAA. Compare [10 Del. C. § 5714\(a\)\(1\)-\(5\)](#), with [9 U.S.C. § 10\(a\)\(1\)-\(5\)](#). The DUAA modification or correction statute also largely parallels the FAA's, although the DUAA imposes a ninety-day time limit to seek such amendment. Compare [10 Del. C. § 5715\(a\)\(1\)-\(3\)](#),

¹⁰ [HN8](#)^[↑] The FAA permits parties to designate the reviewing court, with the "United States court in and for the district within which such award was made" functioning as the default venue absent express stipulation. [9 U.S.C. § 9](#). For parties seeking vacatur of the arbitrator's decision under [Section 10 of the FAA](#), however, "the United States court in and for the district wherein the award was made" has exclusive jurisdiction. When a party seeks judicial review or confirmation in Delaware state court, however, the Court of Chancery is vested with exclusive jurisdiction. See [10 Del. C. § 5702\(c\)](#).

¹¹ [HN10](#)^[↑] [10 Del. C. § 5701 et seq.](#) The Court of Chancery possesses jurisdiction to confirm and review arbitration awards under the FAA, provided the parties agreed to jurisdiction within Delaware. *Id.* [§ 5702](#).

with [9 U.S.C. § 11\(a\)-\(c\)](#).

Regardless of whether an arbitration proceeds under the FAA or the DUAA, the relevant statutes provide an express cause of action for any arbitrating party to confirm, vacate, or modify the award.

B. SpecialtyCare and MedCost engaged in numerous IDR processes to resolve payment [*7] disputes.

SpecialtyCare, Inc. ("SpecialtyCare") is a Delaware corporation with its principal place of business in Brentwood, Tennessee. SpecialtyCare is a health care provider of intraoperative neuromonitoring throughout the United States.¹² SpecialtyCare claims that it "insures and administers health insurance products and benefit plans."¹³ SpecialtyCare has two affiliate entities: Remote Neuromonitoring Physicians, PC ("Remote Neuromonitoring"), a Pennsylvania entity, and Sentient Physicians, PC ("Sentient Physicians"), an Illinois entity, both with their principal place of business in Brentwood, Tennessee.¹⁴ MedCost, LLC ("MedCost"), is a Delaware LLC with its principal place of business in Winston-Salem,

¹² Compl. ¶ 3.

¹³ *Id.*, ¶ 4. MedCost argues in its briefing that it is not a licensed insurer but a "standalone preferred provider network" that contracts with providers to "provide network access to insurers and third-party health plan administrators . . ." DOB, at 3. MedCost explains that it is not listed among Insurance Companies on North Carolina's administrative database. See North Carolina Dep't of Ins., *Listing of Insurance Companies and Other Regulated Entities*, [tps://www.ncdoi.gov/insurance-industry/financial-analysis/listinginsurance-companies-and-other-regulated-entities](https://www.ncdoi.gov/insurance-industry/financial-analysis/listinginsurance-companies-and-other-regulated-entities); DOB, at 3 n.2. While I can properly take judicial notice of publicly available facts not subject to reasonable dispute, I decline to resolve the parties' dispute whether MedCost is or is not a Group Health plan subject to the NSA's IDR proceedings and limit the factual scope of my analysis to the pleadings. Cf. *In re General Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 171 (Del. 2006) (affirming the Trial Court's decision to take judicial notice of stockholder vote totals memorialized in an SEC Form 10-Q because it was not subject to reasonable dispute); [D.R.E. 201](#).

¹⁴ *Id.*, ¶ 3.

North Carolina.¹⁵

Following the NSA's implementation, SpecialtyCare engaged in multiple IDR determinations with MedCost.¹⁶ Following such determinations, MedCost owes \$198,871 to SpecialtyCare that remains unpaid.¹⁷ SpecialtyCare further claims that it continues to engage in transactions with MedCost, and that it expects further IDR determinations, which may increase the debt owed.¹⁸

SpecialtyCare claims that [*8] MedCost initially makes low payments when OON claims are submitted, in the hope that SpecialtyCare will neglect to pursue the NSA's resolution process, thereby limiting MedCost's overall liability.¹⁹ Even where SpecialtyCare does seek IDR resolution for the disputed claims and the IDR entity determines the award, MedCost delays payment past the thirty-day statutory deadline.²⁰

C. SpecialtyCare files suit before this Court to confirm the awards or obtain alternate relief.

Following MedCost's failure to remit payment for the IDR determinations, SpecialtyCare brought suit in this Court on January 3, 2025, alleging five counts.²¹ SpecialtyCare brings two counts seeking confirmation of the IDR awards under [DUAA Section 5702](#) and [FAA Section 9](#).²² In addition to this order, SpecialtyCare looks to obtain pre-and

¹⁵ *Id.*, ¶ 4.

¹⁶ *Id.*, ¶¶ 13, 16.

¹⁷ *Id.*, ¶ 15. SpecialtyCare submitted a chart identifying all unpaid IDR awards between the parties. See *id.*, Ex. A.

¹⁸ *Id.*, ¶¶ 20-21.

¹⁹ *Id.*, ¶¶ 22-23.

²⁰ *Id.*, ¶ 24.

²¹ See *id.*

²² *Id.*, ¶¶ 27-40.

post-judgment interest on the balance of unpaid awards under [28 U.S.C. § 1961](#). In the alternative, SpecialtyCare seeks relief on three grounds: first, under the theory of an account stated,²³ second, on grounds of quantum meruit,²⁴ and third, on grounds of unjust enrichment.²⁵

MedCost filed a Motion to Dismiss for failure to state a claim on May 28, 2025.²⁶ The matter was reassigned to me on October 8, 2025,²⁷ and I heard argument [*9] on the Motion to Dismiss on December 2, 2025.²⁸ I initially took the matter under advisement and now recommend granting MedCost's Motion to Dismiss for the reasons articulated below.

II. ANALYSIS

The standard for a motion to dismiss is well-settled. [HNII](#)^[↑] When reviewing a motion to dismiss under [Court of Chancery Rule 12\(b\)\(6\)](#), Delaware courts "(1) accept all well pleaded factual allegations as true, (2) accept even vague allegations as well pleaded if they give the opposing party notice of the claim, [and] (3) draw all reasonable inferences in favor of the non-moving party." [Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC, 27 A.3d 531, 535 \(Del. 2011\)](#) (internal citations omitted). "[T]he governing pleading standard in Delaware to survive a motion to dismiss is reasonable conceivability." [Id. at 537](#) (internal citations omitted). The reasonable conceivability standard grants a plaintiff "all reasonable inferences that logically flow from the face of the complaint" but does not obligate the Court "to accept every strained interpretation of the

[plaintiff's] allegations." [In re General Motors \(Hughes\) S'holder Litig., 897 A.2d 162, 168 \(Del. 2006\)](#) (quoting [Malpiede v. Townson, 780 A.2d 1075, 1083 \(Del. 2001\)](#)). The Court will "ignore conclusory allegations that lack specific supporting factual allegations." [FMLS Holding Co. v. Integris Bioservices, LLC, 2023 Del. Ch. LEXIS 573, 2023 WL 7297238, at *5 \(Del. Ch. Oct. 30, 2023\)](#) (quoting [Ramunno v. Cawley, 705 A.2d 1029, 1034 \(Del. 1998\)](#)). Dismissal is appropriate where "the [nonmoving party] would not be entitled to recover under any reasonably conceivable [*10] set of circumstances." [Aecom v. SCCI Nat'l Holdings, Inc., 2023 Del. Ch. LEXIS 377, 2023 WL 6294985, at *6 \(Del. Ch. Sep. 27, 2023\)](#) (quoting [Central Mortg. Co., 27 A.3d at 535](#)).

A. The NSA provides neither an express nor implied private right of action to confirm IDR Entity Awards. Thus, SpecialtyCare's Counts I and II to confirm the awards is dismissed.

I first turn to whether MedCost possesses proper grounds to seek enforcement of the IDR before this Court. While the briefings attend to whether an implied private right of action arises under the NSA, I must first consider whether the Court of Chancery has subject matter jurisdiction. SpecialtyCare brought two counts for enforcement of the IDR determination under [FAA Section 9](#) and [DUAA Section 5702](#) respectively, which contain essential jurisdictional elements. While I hold that this Court lacks subject matter jurisdiction, I hold in the alternative that SpecialtyCare failed to state a claim because the NSA does not give rise to an implied private right of action.

1. The parties lack an arbitration agreement. Thus, the Court lacks subject matter jurisdiction over SpecialtyCare's motion to confirm the IDR Entity's Order.

The threshold question is whether an IDR proceeding is an arbitration subject to this Court's

²³ *Id.*, ¶¶ 41-52.

²⁴ *Id.*, ¶¶ 53-66.

²⁵ *Id.*, ¶¶ 67-80.

²⁶ D.I. 13.

²⁷ D.I. 24.

²⁸ D.I. 30.

confirmation under [10 Del. C. § 5702\(c\)](#). If an IDR proceeding materially differs from an arbitration, then I cannot [*11] confirm the award under the FAA's [Section 9](#) authority or the comparable [DUAA Section 5713](#). Because an IDR proceeding is not an arbitration, I dismiss Counts I and II for want of subject matter jurisdiction.

[HN12](#)^[↑] While MedCost stylizes its Motion to Dismiss as failure to state a claim under [Court of Chancery Rule 12\(b\)\(6\)](#), subject matter jurisdiction is "crucial," and [the Court] must "ensure it exists, even if it must raise the issue *sua sponte*." [Critchfield v. Engfer, 2016 Del. Ch. LEXIS 74, 2016 WL 2755933, at *1 \(Del. Ch. May 9, 2016\)](#) (quoting [Appoquinimink Educ. Assoc. v. Appoquinimink Sch. District, 2003 Del. Ch. LEXIS 32, 2003 WL 1794963, at *3 \(Del. Ch. Mar. 31, 2003\)](#), corrected (Apr. 17, 2003), *aff'd*, 844 A.2d 991 (Del. 2004); [Ct. Ch. R. 12\(h\)\(1\)](#) ("A party may assert a defense under [Rule 12\(b\)\(1\)](#) motion filed at any time, or the Court may raise the defense on its own initiative").

A brief look at the history of the FAA reveals that [HN13](#)^[↑] IDR proceedings are not arbitrations because an agreement to arbitrate must arise out of a contract. [Section 2](#) comprises the "primary substantive provision of the Act," [Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24, 103 S. Ct. 927, 74 L. Ed. 2d 765 \(1983\)](#), and provides in relevant part:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. [9 U.S.C. § 2](#) (emphasis added).

Notably, a contract envelops the ensuing [*12] arbitration proceeding by both providing (1) the gravamen subject to arbitration and (2) the

agreement to arbitrate itself. [HN14](#)^[↑] The Supreme Court has maintained the "fundamental principle that arbitration is a matter of contract, [Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 67, 130 S. Ct. 2772, 177 L. Ed. 2d 403 \(2010\)](#) and consequently "place[s] arbitration agreements on an equal footing with other contracts," [Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 443, 126 S. Ct. 1204, 163 L. Ed. 2d 1038 \(2006\)](#). Parties may specify the scope of agreements to arbitrate, including (1) the matters subject to arbitration, (2) the rules by which arbitration is conducted, and (3) the parties bound by the arbitration agreement. See [AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 344, 131 S. Ct. 1740, 179 L. Ed. 2d 742 \(2011\)](#) (first citing [Mitsubishi Motors Corp. v. Soler Chrysler Plymouth, Inc., 473 U.S. 614, 628, 105 S. Ct. 3346, 87 L. Ed. 2d 444 \(1985\)](#), then [Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Junior Univ., 489 U.S. 468, 479, 109 S. Ct. 1248, 103 L. Ed. 2d 488 \(1989\)](#), and finally [Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662, 681-82, 130 S. Ct. 1758, 176 L. Ed. 2d 605 \(2010\)](#)).

[HN15](#)^[↑] Delaware law buttresses the requirement that an agreement to arbitrate must exist for such arbitration to be enforceable. See [SBC Interactive, Inc. v. Corp. Media P'rs, 1997 Del. Ch. LEXIS 180, 1997 WL 81008, at *2 \(Del. Ch. 1997\)](#) ("Because the obligation or right to contract is contractual, the starting point of any analysis of whether a dispute is arbitrable must be the parties' contract to arbitrate."); [Gandhi-Kapoor v. Hone Cap. LLC, 307 A.3d 328, 356 \(Del. Ch. 2023\)](#) (underscoring the Supreme Court's threshold requirement of "determin[ing] whether an arbitration agreement exists in the first place.") (citing [Henry Schein, Inc. v. Archer & White Sales, Inc., 586 U.S. 63, 139 S. Ct. 524, 202 L. Ed. 2d 480 \(2019\)](#)). As in the FAA, the DUAA requires "a written agreement to submit to arbitration" for an enforceable obligation under the Act to exist. [10 Del. C. § 5701](#). The statute's text conditions the [*13] Court of Chancery's jurisdiction to enforce an arbitrator's decision on the existence of such agreement. See *id.*

Both Federal and Delaware law emphasizes the contractual nature of an arbitration agreement and the requirement of a contract for any arbitration proceeding to exist. Here, however, SpecialtyCare has failed to plead the existence of a written agreement between itself and MedCost. Other courts considering the question of judicial review of the NSA's IDR process have admitted the absence of such agreement. See, e.g., *Guardian Flight LLC v. Aetna Life Ins. Co.*, 789 F. Supp. 3d 214, 227, (D. Conn. 2025).²⁹ Instead, SpecialtyCare points to the statutory structure of the NSA, which provides for an IDR process that allocates costs between the insurer and the healthcare provider. While the NSA provides for third-party dispute resolution between the parties, "arbitration" is not a mere colloquialism in the DUAA's grant of jurisdiction to the Court of Chancery over arbitration awards. *HN16*^[↑] As both the FAA and DUAA evidence, a written agreement to arbitrate is a necessary condition for an arbitration to exist, and the respective grants of jurisdiction to review arbitration decisions in state and federal statutory schemes rely on a written agreement, which the parties lack [*14] in this case.

SpecialtyCare relies on two district court decisions outside the NSA context for the proposition that the Court has authority to confirm a "final and binding award."³⁰ In *New Jersey Bldg. Laborers' Statewide Benefit Funds v. Newark Bd. of Education*, the defendant launched a collateral attack on the validity of an arbitration for lack of an extant arbitration agreement. *New Jersey Building*, 2013 U.S. Dist. LEXIS 131088, 2013 WL 5180433, at *2 (D.N.J. Sep. 13, 2013). The Court affirmed its power to confirm the award because the parties signed a Collective Bargaining Agreement, which permitted Trustees to "collect delinquent funds

through arbitration," and the agreement designated a "permanent arbitrator to hear and determine collection disputes. 2013 U.S. Dist. LEXIS 131088, [WL] at *3. The District of New Jersey further confirmed that language in an agreement "indicat[ing] the award will be final and binding implicitly permits Federal court intervention to compel compliance." *Id.* (citing *Teamsters-Employer Loc. No. 945 Pension Fund v. Acme Sanitation Corp.*, 963 F. Supp. 340, 347 (D.N.J. 1997)).

SpecialtyCare puts the cart before the horse in relying on *New Jersey Building*. While the Court rearticulated the principle that an agreement to arbitrate need not explicitly include language agreeing that "a judgment of the court shall be interested upon the award made pursuant to arbitration," the Court did not waive [*15] the requirement of an arbitration agreement in the first place. 2013 U.S. Dist. LEXIS 131088, 2013 WL 5180433, at *3 (citing 9 U.S.C. § 9). Unlike in *New Jersey Building*, SpecialtyCare and MedCost neither bargained for nor signed an agreement submitting to binding arbitration. No agreement exists for the Court to find implied "authority to confirm the award." 2013 U.S. Dist. LEXIS 131088, [WL] at *3.

SpecialtyCare fares no better under its second source of authority, *Cheminova A/S v. Griffin, L.L.C.* 182 F. Supp. 2d 68 (D.D.C. 2002). There, the parties entered into binding arbitration under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"),³¹ which incorporated the rules of the Federal Mediation and Conciliation Service ("FMCS").³² *FMCS Section 37(c)* states that the relevant parties "shall be deemed to have consented that judgment upon the arbitration award may be entered" either in federal or state court. 29 C.F.R. pt. 1440, App. § 37(c). FIFRA permits registrants under the statute to engage in "binding arbitration

²⁹ I refer to this case as *Aetna* throughout the opinion. Although other cited cases include *Aetna* as a party, I will refer to them in short form differently.

³⁰ PAB, at 10 (citing *GPS of N.J. M.D. P.C. v. Horizon Blue Cross & Blue Shield*, 2023 U.S. Dist. LEXIS 159460, 2023 WL 5815821, at *10 (D.N.J. Sep. 8, 2023)).

³¹ 7 U.S.C. § 136, et seq.

³² 7 U.S.C. § 136a(c)(1)(F)(iii)

proceedings," even though no private contract to arbitrate exists. [7 U.S.C. § 136a\(c\)\(1\)\(F\)\(iii\)](#). FIFRA further provides that the arbitrator's decisions are "final and conclusive." *Id. Cheminova* holds that the terms "binding" and "final and conclusive" in an arbitration scheme denotes that "an award will be enforceable in court." [182 F. Supp. 2d at 73](#); see [Lander Co. v. MMP Investments, Inc., 107 F.3d 476, 480 \(7th Cir. 1997\)](#) ("To agree to binding arbitration is to agree that if your opponent [*16] wins the arbitration he can obtain judicial relief if you refuse to comply with the arbitrator's award.").

While FIFRA departs from a traditional arbitration scheme because the statute's text, not a contract, gives rise to arbitration, FIFRA and the NSA materially differ, and SpecialtyCare cannot rely on [Cheminova](#). First, FIFRA provides for "arbitration," rather than a generic third-party dispute resolution scheme. Second, FIFRA explicitly incorporated FMCS rules, which give rise to judicial review or confirmation of the arbitrator's award. Third, the statute employed the terms "binding" and "final and conclusive" regarding the arbitrator's decision under FIFRA. The NSA does state that "[a] determination of a certified IDR entity . . . shall be binding upon the parties involved," but follows such language by noting that the determination "shall not be subject to judicial review," except where [FAA Section 10\(a\)\(1\)-\(4\)](#) applies. [HN17](#) [↑] The mere presence of the term "binding" cannot give rise to an entire arbitration scheme subject to judicial review when the plain text of the statute rebuts such reading.³³ *But see GPS of N.J., 2023*

³³ [HN18](#) [↑] Both Federal and Delaware law dictate that the Court must read statutes as a whole and not interpret provisions to create internal contradictions. See [Coastal Barge Corp. v. Coastal Zone Indus., 492 A.2d 1242, 1245 \(Del. 1985\)](#) ("[E]ach part or section [of a statute] should be read in light of every other part or section to produce an harmonious whole."); [Maracich v. Spears, 570 U.S. 48, 68, 133 S. Ct. 2191, 186 L. Ed. 2d 275 \(2012\)](#) ("The provisions of a text should be interpreted in a way that renders them compatible, not contradictory. [T]here can be no justification for needlessly rendering provisions in conflict if they can be interpreted harmoniously.") (citing ANTONIN SCALIA & BRYAN A.

[U.S. Dist. LEXIS 159460, 2023 WL 5815821, at *10](#) (interpreting the presence of the "binding" language in the NSA to indicate that "the decision is to be 'final and [*17] binding,' and gives the court the authority to confirm the award.").³⁴

Given the absence of a written agreement between the parties to arbitrate, the IDR process is not an arbitration and consequently the Court of Chancery lacks jurisdiction under [10 Del. C. § 5102](#) to confirm the IDR entity's award.³⁵

2. The NSA fails to provide a private right of action for confirmation of IDR awards.

SpecialtyCare contends that the NSA impliedly incorporates [Section 9 of the FAA](#), which provides a cause of action to the prevailing party in an arbitration to seek a judgment confirming the arbitrator's award. The text and structure of the NSA does not favor SpecialtyCare's reading. [HN19](#) [↑] Both Federal and Delaware canons of statutory interpretation disfavor finding implied private rights of action in comprehensive schemes. Such canons as applied to the NSA instruct the Court to reject SpecialtyCare's argument.

a. Statutory intent determines the existence of an implied private right of action.

[HN20](#) [↑] Congress must create private rights of action to "enforce federal law." [Alexander v.](#)

GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 180 (2012)). This is the "Harmonious-Reading Canon." See [William N. Eskridge, Jr. & Philip P. Frickey, Foreword: Law as Equilibrium, 108 HARV. L. REV. 26, 98 \(1994\)](#) ("Avoid interpreting a provision in a way that would render other provisions of the Act superfluous or unnecessary.") (internal citations omitted).

³⁴ I express my respectful disagreement with *G.P.S.*'s construction of the NSA *infra*.

³⁵ Even if [FAA Section 9](#) were to apply here, which it does not, the Court of Chancery would lack jurisdiction because the federal statute provides that default jurisdiction lies with the appropriate federal district court.

Sandoval, 532 U.S. 275, 286, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001) (citing *Touche Ross & Co. v. Redington*, 442 U.S. 560, 578, 99 S. Ct. 2479, 61 L. Ed. 2d 82 (1979)). Without an express private right of action within a statute, "the judicial task is to interpret the statute Congress has passed to determine whether it displays [*18] an intent to create not just a private right but also a private remedy." *Sandoval*, 532 U.S. at 286 (citing *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 15, 100 S. Ct. 242, 62 L. Ed. 2d 146 (1979)). "Statutory intent is determinative" on this point. *Sandoval*, 532 U.S. at 286.

HN21^[↑] The Court examines statutory text to discern whether it "unambiguously confer[s] an enforceable right upon the [statute's] beneficiaries." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 281, 122 S. Ct. 2268, 153 L. Ed. 2d 309 (2002) (quoting *Suter v. Artist M.*, 503 U.S. 347, 363, 112 S. Ct. 1360, 118 L. Ed. 2d 1 (1992)). The inquiry for statutory intent "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." *Sandoval*, 532 U.S. at 288 n.7 (citing *Northwest Airlines, Inc. v. Transp. Workers*, 451 U.S. 77, 94 n.31, 101 S. Ct. 1571, 67 L. Ed. 2d 750 (1981)).

HN22^[↑] Delaware has historically followed the Supreme Courts's lead in determining whether a statute gives rise to an implied private right of action. For several years, the Delaware Supreme Court adopted the multi-factor test articulated in *Cort v. Ash*.³⁶ See *Mann v. Oppenheimer & Co.*, 517 A.2d 1056, 1064 (Del. 1986) (reciting three

Cort factors: "the language and focus of the statute, the legislative history, and [its] underlying purposes.") (internal citations omitted). Following the decision in *Sandoval*, Delaware courts have identified the second *Cort* factor, statutory intent, as "usually dispositive under contemporary analysis." *Reylek v. Albence*, 2023 Del. Super. LEXIS 958, 2023 WL 8850074, at *4 (Del. Super. Dec. 21, 2023).³⁷

In *Sandoval*, the Supreme Court held that Title VI of the Civil Rights Act lacked an implied private right of action to enforce regulations promulgated [*19] under *Section 602*. 532 U.S. at 293. There, plaintiffs sued the Alabama Department of Public Safety for violation of Title VI for adopting a policy administering driver's license examinations only in English. *Id.* at 278. The DOJ adopted a regulation "forbidding [Department of Transportation] funding recipients to 'utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin . . .'" *Id.* (quoting 28 C.F.R. § 42.104(b)(2) (2000) (effectuating the antidiscrimination provision of *Title VI, Section 601*)). While *Section 601* prohibited discrimination on the basis of race or nationality, and *Section 602* permitted the DOJ to promulgate regulations, Title VI lacked a provision providing a private right of action for violation of

³⁷The Delaware Supreme Court has not yet explicitly adopted the *Sandoval* standard, but lower courts have predicted such adoption to be likely. See *Rays Plumbing & Heating Serv. Inc. v. Stover Homes, L.L.C.*, 2011 Del. Super. LEXIS 345, 2011 WL 3329384, at *2 (Del. Super. July 26, 2011) ("Delaware has not adopted the [*Sandoval*] standard yet; however, a Delaware Court of Chancery decision found that the Delaware Supreme Court will likely embrace the newer federal standard at the first opportunity because State law in this area has traditionally tracked Federal law.") (citing *O'Neill v. Town of Middletown*, 2006 Del. Ch. LEXIS 10, 2006 WL 20507, at *19 (Del. Ch. Jan. 18, 2006)). In *O'Neill*, Vice Chancellor Noble focused on the second *Cort* factor following the *Sandoval* decision, noting that "the Court should also address the United States Supreme Court's current implied private right of action doctrine because Delaware courts have historically hewn closely to the analyses of the United States Supreme Court in this context." 2006 Del. Ch. LEXIS 10, 2006 WL 20507, at *19 (citing *Lock v. Schreppler*, 426 A.2d 856, 864 (Del. Super. 1981) (superseded by statute)).

³⁶422 U.S. 66, 95 S. Ct. 2080, 45 L. Ed. 2d 26 (1975). **HN23**^[↑] In *Cort*, the Supreme Court enumerated four factors: (1) whether the plaintiff was "one of the class for whose especial benefit the statute was enacted"; (2) whether there is "any indication of legislative intent, explicit or implicit, either to create such remedy or to deny one"; (3) whether it is "consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff"; and (4) whether the cause of action is one "traditionally relegated to state law . . . so that it would be inappropriate to infer a cause of action based solely on federal law." *Id.* at 78 (internal citations omitted). Delaware has consolidated this analysis into three factors. See *supra*.

such regulations. *Sandoval*, 532 U.S. at 278-79. Instead, *Section 602* provided an alternative means of enforcement—permitting agencies to "terminat[e] funding to the 'particular program, or part thereof,' that has violated the regulation" *Id.* at 289 (quoting 42 U.S.C. § 2000d-1).

[HN24](#)^[↑] *Sandoval*'s inquiry begins and ends "with the text and structure of [the Statute]." *Section 602* lacked the required "rights-creating" language that would permit the Court to infer a private right of action. See, e.g., *Cannon v. Univ. of Chicago*, 441 U.S. 677, 690 n.13, 99 S. Ct. 1946, 60 L. Ed. 2d 560 (1979) ("Not surprisingly, the right-or duty-creating language [*20] of the statute has generally been the most accurate indicator of the propriety of implication of a cause of action."). Instead, *Section 602* conferred power on the DOJ to promulgate regulations enacting *Section 601*'s anti-discrimination regime. See *Sandoval*, 532 U.S. at 289 ("Far from displaying congressional intent to create new rights, § 602 limits agencies to 'effectuat[ing]' rights already created by § 601.") (emphasis added).

Further, the Court disfavored implying a private right of action where the parties benefiting from the statute are "twice removed" from the statute's focus. *Id.* For example, *Section 601* seeks to benefit persons subject to discrimination on the basis of race or national origin. *Section 602*, however, speaks to a federal agency's authority to effectuate regulations that implement *Section 601*. Such attenuation is highly probative of Congress's intent to not provide an implied private right of action. Cf. *Cannon*, 441 U.S. at 690-91 (buttressing its finding of an implied private right of action where the statute "expressly identifie[d] the class Congress intended to benefit").

[HN25](#)^[↑] Finally, the presence of an explicit remedy in a statute's text confirms that Congress did not intend to impliedly create a distinct remedy. *Section 602* permits the government to enforce its regulations by removing [*21] funding where a program violates Title VI. *Sandoval*, 532 U.S. at

290 (noting that "these elaborate restrictions on agency enforcement . . . tend to contradict a congressional intent to create privately enforceable rights . . ."). Yet another fundamental canon of statutory construction states that [HN26](#)^[↑] "where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." *Transamerica Mortg. Advisors, Inc. (TAMA) v. Lewis*, 444 U.S. 11, 19, 100 S. Ct. 242, 62 L. Ed. 2d 146 (1979); accord *Middlesex Cty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 19-20, 101 S. Ct. 2615, 69 L. Ed. 2d 435 (1981) (foreclosing an express *Section 1983* remedy where the relevant federal statute's "remedial devices" were sufficiently comprehensive, indicating Congress's intent to preclude other, applicable remedies). Moreover, as an exercise of this Court's prudence, [HN27](#)^[↑] "[t]he judiciary may not . . . fashion new remedies that might upset carefully considered legislative programs" where Congress has "enacted a comprehensive legislative scheme including an integrated system of procedures for enforcement." *Northwest Airlines, Inc. v. Transport Workers Union of Am., AFL-CIO*, 451 U.S. 77, 97, 101 S. Ct. 1571, 67 L. Ed. 2d 750 (1981).

Fortuitously, several federal District Courts have ruled on the very legal question presented by SpecialtyCare.³⁸ Regrettably, such opinions are divided. One line of decisions hews closely to the strict textualism of *Sandoval*, declining to find an implied private right of action in the NSA. The other line reprises a more capacious [*22] approach to the statute, identifying rights-creating language within the NSA and permitting an implied private right of action. In accordance with principles of Federal and Delaware statutory interpretation, I adopt the former approach.

MedCost relies on a recent decision out of the Middle District of Florida, rejecting any implied private right of action under the NSA. *Med-Trans*

³⁸The parties did not identify, and I am unaware of any state courts that have issued decisions on the matter.

Corp. v. Capital Health Plan, Inc., 700 F. Supp. 3d 1076, 1082 (M.D. Fla. 2023). There, the Court rejected two theories: (1) that the NSA incorporated the FAA's procedural rules, and (2) that the FAA presumptively applies to the NSA's IDR process. See *id.* at 1082-84. *Med-Trans* rejects the first theory because the NSA incorporated only [Section 10 of the FAA](#). Applying the "cardinal canon" that "courts presume that a legislature says in a statute what it means and means in a statute what it says there," the Court concluded that inclusion of one provision of the FAA to the exclusion of all others meant that the provisions of the FAA permitting a party to challenge an award do not apply under the NSA. *Id.* at 1083 (citing *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 969 (11th Cir. 2016)). As for the second theory, *Med-Trans* rejected that the FAA "presumptively" applied to NSA IDR determinations because IDR is not an arbitration. See *id.* at 1083-84 (noting that the FAA requires an agreement, i.e., contract, to arbitrate); see also *supra* § II.A.1. [*23]

One year following the *Med-Trans* decision, the Northern District of Texas adopted a similar rationale in declining to find an implied private right of action in the NSA. *Guardian Flight LLC v. Health Care Serv. Corp.*, 735 F. Supp. 3d 742 (N.D. Tex. 2024), *aff'd*, 140 F.4th 271 (5th Cir. 2025). *Guardian Flight LLC* relied on *Sandoval*'s logic in noting that the NSA lacks language "establishing that Congress intended to create a remedy for out-of-network providers." *Id.* at 750 (stating a *Sandoval* remedy denotes a "procedural cause of action, not the substantive remedy.") (emphasis in original) (citing *Diagnostic Affiliates of Ne. Houston, LLC v. Aetna, Inc.*, 654 F. Supp. 3d 595, 610 (S.D. Tex. 2023)).³⁹ Not only does the

³⁹ *Guardian Flight* rejected two arguments that the NSA created rights (and impliedly a remedy). [HN28](#) [↑] The NSA states that IDR determinations "shall be binding," [42 U.S.C. § 300gg-111\(c\)\(5\)\(E\)\(i\)\(I\)](#), and requires payment within thirty days, *id.* § [300gg-112\(b\)\(6\)](#). "[W]hen read together, [these provisions] do not suggest that Congress intended to create a procedural mechanism for providers to convert IDR awards to final judgments." *Guardian Flight LLC*, 735 F. Supp. 3d at 751.

NSA decline to incorporate [FAA Section 9](#), but it also lacks "any fee-shifting provisions or any other language suggesting that Congress intended to confer a private cause of action to healthcare providers." *Guardian Flight LLC*, 735 F. Supp. 3d at 750.⁴⁰

In the Fifth Circuit's affirmance of the District Court decision, the court noted the heavy burden placed upon plaintiffs to "overcome [the] presumption" that Congress "did not intend to create any private cause of action." 140 F.4th at 275 (citing *Sigmon v. Southwest Airlines Co.*, 110 F.3d 1200, 1205 (5th Cir. 1997)). The Circuit Court disclaimed any distinction between judicial enforcement of an IDR award and judicial review of such an award. 140 F.4th at 275 ("The term 'judicial review' is broad [*24] enough to include a court's order to enforce an IDR award."); see *Concrete Pipe & Products of California v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 611, 113 S. Ct. 2264, 124 L. Ed. 2d 539 (1993) (interpreting an ERISA provision that "provides for judicial review of the arbitrator's decision by an action in the district court to enforce, vacate or modify the award.").

SpecialtyCare relies on two decisions arriving at the opposite conclusion. The most substantive is *Guardian Flight LLC v. Aetna Life Insurance Co.*, 789 F. Supp. 3d 214 (D. Conn. 2025).⁴¹ There, the Court rejected the argument that the NSA's failure to incorporate [FAA Section 9](#) proscribes judicial

⁴⁰ *Guardian Flight* juxtaposes the NSA with Title IX of the Civil Rights Act, which the Supreme Court determined to include an implied private right of action. 735 F. Supp. 3d at 750; see *Cannon v. Univ. of Chicago*, 441 U.S. 677, 99 S. Ct. 1946, 60 L. Ed. 2d 560 (1979). *Cannon* relied on Title IX's attorneys' fee-shifting provisions to infer the existence of a private right of action, thereby holding the statute's text indicated that Congress's intent to create a private cause of action. See *id.* at 699-700. The NSA lacks such language. Moreover, *Sandoval*'s rigid skepticism departs from the more pliable *Cort v. Ash* factor-based approach. See Anthony J. Bellia Jr., *Justice Scalia, Implied Rights of Action, and Historical Practice*, 92 *NOTRE DAME L. REV.* 2077, 2086-87 (2017).

⁴¹ See PAB, 9-15.

review. Instead, because IDR determinations are automatically binding and trigger immediate payment obligations, "there is no reason for the NSA to reference" [Section 9. *Id. at 227*](#).⁴²

Aetna further reads the NSA's proscription on judicial review as only barring vacatur of an IDR determination for reasons not enumerated within [FAA Section 10\(a\)](#). [Id. at 227](#) ("Courts cannot vacate or entertain collateral attacks on these awards—even those that would fall within the FAA's narrow scope of review."). But, per *Aetna*, the NSA's binding language and Timing of Payment provisions do comprise clear rights-creating language, which in turn reflects "congressional intent to create both a right *and a remedy*' for the individuals to whom payment is due." [Id. at 228](#) (emphasis in original) (citing [Maine Cmty. Health Options v. United States, 590 U.S. 296, 324, 140 S. Ct. 1308, 206 L. Ed. 2d 764 \(2020\)](#)). Pursuant [*25] to this logic, *Aetna* interprets the NSA to permit judicial action to enforce the awards (confirming their "binding" nature) and to proscribe judicial interference with their finality, excepting the [FAA Section 10\(a\)](#) context.

Finally, *Aetna* contends that failure to permit an implied private right of action would "render IDR awards meaningless" and create "strange asymmetries." [789 F. Supp. 3d at 228](#). After all, a court could intervene only in cases of fraud or corruption. *Aetna* suggests that absent a private right of action, legitimate awards lack the artillery support of judicial enforcement, but courts can easily intervene to invalidate them. Even though *Aetna* acknowledges the ability of agencies to intervene under the NSA's text, "[these] statutory provisions . . . do not empower agencies to enforce

individual IDR awards or to hold health plans and insurers accountable for untimely payments. [Id. at 229](#).

SpecialtyCare also relies on [GPS of New Jersey M.D. PC v. Horizon Blue Cross & Blue Shield, 2023 U.S. Dist. LEXIS 159460, 2023 WL 5815821 \(D.N.J. Sep. 8, 2023\)](#).⁴³ There, the Court heard cross motions to vacate and to confirm the IDR determination. Notably, the *GPS* Court did not consider whether the IDR process differs from arbitration. See [2023 U.S. Dist. LEXIS 159460, \[WL\] at *10](#) ("[U]nless the arbitration award is vacated pursuant to [\[FAA\] Section 10](#) or modified or corrected under [Section 11](#) . . . the award 'must' be confirmed.") [*26] (quoting [9 U.S.C. § 9](#)). After concluding that defendants did not meet the [FAA Section 10\(a\)](#) standard to vacate the IDR determination, *GPS* held that the court "must" confirm the award, relying on the "final and binding" rationale for court intervention. [2023 U.S. Dist. LEXIS 159460, \[WL\] at *10](#) (quoting [New Jersey Buildings Laborers' Statewide Benefit Funds v. Newark Bd. of Education, 2013 U.S. Dist. LEXIS 131088, 2013 WL 5180433, at *3 \(D.N.J. 1997\)](#) ("language [in [9 U.S.C. § 9](#)] that indicates the award will be final and binding implicitly permits Federal court intervention to compel compliance.")).

Plaintiff cannot both argue that (1) IDR determinations are self-enforcing, unlike arbitrations, and thus have no need for [Section 9](#)'s confirmation provisions (*Aetna*), and (2) the Court "must" confirm the determination because it is final and binding (*GPS*). See [T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Assoc., 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382](#) (rejecting a comparable argument where the plaintiff relied on both *GPS* and *Aetna*); see also [Med-Trans Corp., 700 F. Supp. 3d at 1084](#) (stating that *GPS* "had no need to grapple with the broader applicability of the FAA to the NSA" because the parties assumed [Section 9](#)'s applicability).

⁴² Even if I were to adopt *Aetna*'s logic, the law would still compel me to dismiss this case for want of subject matter jurisdiction. *Aetna* distinguishes arbitrations and the IDR process with great care. See [789 F. Supp. 3d at 227](#). [HN29](#) [↑] As explained *supra*, this Court lacks jurisdiction to enforce a third-party dispute resolution outside the arbitration context. See [10 Del. C. § 5702\(a\)](#).

⁴³ See PAB, 10.

Not only is Plaintiff's position contradictory, but even taken in the alternative, the NSA's text vitiates neither argument. [HN30](#)^[↑] Under a line of precedent stretching from *Cannon* to *Sandoval*, "An implied right of action is incongruous with such a detailed statutory scheme, in which judicial review is limited to specific instances." [FHMC LLC v. Blue Cross and Blue Shield of Arizona Inc.](#), 2024 U.S. Dist. LEXIS 62018, 2024 WL 1461989, at *3 (*D. Ariz. Apr. 4, 2024*). An alternate [*27] enforcement scheme exists under the NSA and federal agencies appear prepared to act under the statute. See, e.g., Ellen Montz, Department of Health & Human Services: Centers for Medicare & Medicaid Services (Feb. 23, 2022), <https://www.cms.gov/files/document/caa-enforcement-letters-arizona.pdf> ("CMS will enforce the outcome of the federal independent dispute resolution process for such cases in Arizona."). As in *Sandoval*, [HN31](#)^[↑] the statute contains a regulatory enforcement mechanism, which means that Congress considered how to redress violations of the text's requirement. Furthermore, the NSA incorporates a remedy ([FAA Section 10](#)) to the exclusion of others. SpecialtyCare's argument that failure to recognize an implied private right of action would result in the NSA's unenforceability fails for one simple reason: Congress included remedial provisions. SpecialtyCare's dissatisfaction with the statutory scheme cannot compel the Court to craft an additional remedy by judicial fiat. Accordingly, I must dismiss Counts I and II.

B. SpecialtyCare's causes of action in the alternative to the NSA fail to state a claim.

Pleading in the alternative to its NSA claims, SpecialtyCare brings a bundle of legal and equitable claims: [*28] Account Stated (Count III), Quantum Meruit (Count IV), and Unjust Enrichment (Count V). Having rejected the NSA claims, I must now turn to Counts III—V to determine whether SpecialtyCare's pleading overcomes MedCost's 12(b)(6) challenge. It does not and Counts III—V are dismissed.

1. Delaware disfavors Accounts Stated Claims and no such account exists between the parties. Count III is dismissed.

[HN32](#)^[↑] To establish a claim for account stated, a plaintiff must allege and prove three essential elements: (1) an account existed between the parties; (2) the defendant stated or admitted to owing a specific sum on account to the plaintiff; and (3) the defendant made this admission after the original account or debt was created. [Sparebank 1 SR-Bank ASA v. Wilhelm Maass GmbH](#), 2019 Del. Super. LEXIS 568, 2019 WL 6033950, at *6 (*Del. Super. Nov. 5, 2019*). When a party brings a claim for account stated, it can only recover by showing both the account and an unqualified assent of defendant to its correctness. [Shea v. Kerr](#), 17 Del. 198, 1 Penne. 198, 40 A. 241 (*Del. Super. 1898*); see [Sparebank](#), 2019 Del. Super. LEXIS 568, 2019 WL 6033950, at *7 ("[The] complaint must provide facts that the defendant stated or admitted to owing a specific sum on the account to the plaintiff.") (internal citations omitted). Account stated is a legal theory where one party's "stating" of the account comprises consideration for the promise to pay, thereby creating a new contract [*29] "chang[ing] the character of the original debt." [Baliezewski v. Putzcus](#), 33 Del. 137, 3 W.W. Harr. 137, 132 A.217, 218 (*Del. Super. 1926*) (citing [Chambers v. Fennemore's Adm'r](#), 4 Del. 368, 371, 4 Harr. 368 (*Del. Super. 1846*)).

SpecialtyCare's pleading for account stated does not state a claim. Notably, the pleading fails to plausibly allege that MedCost admitted to owing any debt to SpecialtyCare. SpecialtyCare infers such an account by the fact that it "rendered OON services and items" to MedCost's members and that MedCost was "obligated to provide coverage for" SpecialtyCare's services.⁴⁴ SpecialtyCare further avers that MedCost's "knowledge, acceptance, and retention" of such benefits conferred comprises

⁴⁴ Compl., ¶¶ 42, 44.

acknowledgment of a debt owed.⁴⁵ Finally, SpecialtyCare references the NSA procedure of (1) submitting claims to MedCost and (2) entering into the IDR determination, which ultimately comprises the account.

The pleaded facts and context of the NSA contradict SpecialtyCare's theories. First, even if MedCost accepted and received a benefit from SpecialtyCare's services, such allegations do not adequately plead the existence of an account. [HN33](#)^[↑] Our law contemplates an express agreement "subsequent to the creation of the debt" stating that the debtor owes a certain sum. *See Chrysler Corp. v. Airtemp Corp.*, 426 A.2d 845, 849 (Del. Super. 1980). In addition to a subsequent agreement, SpecialtyCare must "provide facts that the [*30] defendant stated or admitted to owing a specific sum on the account to the plaintiff." *Citibank (South Dakota) N.A. v. Santiago*, 2012 Del. C.P. LEXIS 89, 2012 WL 592873, at *2 (Del. C.P. Feb. 23, 2012). The pleadings lack any allegation of the existence of a subsequent agreement or MedCost's admission of a debt owed.

Second, the NSA context specifically rebuts the possibility of an account stated claim. The NSA redressed problems arising from OON claims. Because this dispute arises from the previous IDR determination, SpecialtyCare does not operate within MedCost's preferred provider network and that no account existed between the parties.⁴⁶

Because SpecialtyCare has failed to reasonably plead the elements of an account stated claim,

⁴⁵ *Id.*, ¶¶ 48, 50.

⁴⁶ *See* Compl. ¶ 8; DOB, at 13. The NSA operates in the context where no contractual relationship existed between the insurer and medical provider. It is difficult to conceive how the NSA could apply in a context that gives rise to an account stated claim. While MedCost argues that it was never involved in the IDR proceedings, its support from this claim lies beyond the complaint and incorporated exhibits and thus cannot be considered at the Motion to Dismiss stage. *See* DOB, 13. That said, I decline to hold that participation in an IDR proceeding constitutes adequate pleading of "agreement" or "acknowledgement" of a debt sufficient for an account stated claim.

Count III is dismissed.

2. Because MedCost as an insurer received no benefit from SpecialtyCare's services, the claims for quantum meruit and unjust enrichment are dismissed.

Both of SpecialtyCare's equitable claims, quantum meruit and unjust enrichment, require one party to confer a benefit to another. [HN34](#)^[↑] A party may recover under a theory of quantum meruit where (1) "the party performed the services with the expectation that the recipient would pay for them"; and (2) "the recipient should have known that the party expected to be paid." *Endowment Rsch. Gp., LLC v. Wildcat Venture P'rs, LLC*, 2021 Del. Ch. LEXIS 42, 2021 WL 841049, at *13 (Del. Ch. Mar. 5, 2021). A claim lies for unjust enrichment [*31] where the claimant pleads "(1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment and impoverishment, (4) the absence of justification, and (5) the absence of a remedy provided by law." *Id.* (citing *Nemec v. Shrader*, 991 A.2d 1120, 1130 (Del. 2010)).⁴⁷

The parties' briefs focus on whether "providing services to an insured . . . benefit[s] the insurer in a way that sustains a quasi-contract claim."⁴⁸ MedCost relies on a series of cases holding that an insurer does not receive a benefit where services are "rendered to an insured, because those services aren't directed to or for the benefit of the insurer."

⁴⁷ While the briefing refers to the two causes of action as quasi-contract claims, they are distinct. [HN35](#)^[↑] Quantum meruit is "a principle of restitution arising from a cause of action in quasi-contract," whereas unjust enrichment is a cause of action "usually but not always equitable, based on an unjustified enrichment of one party and resulting impoverishment of another party, in the absence of a remedy at law." *Hynansky v. 1492 Hosp. Gp.*, 2007 Del. Super. LEXIS 235, 2007 WL 2319191, at *2 (Del. Super. Aug. 15, 2007) (citing *Jackson Nat'l Life Ins. Co. v. Kennedy*, 741 A.2d 377, 393 (Del. Ch. 1999)).

⁴⁸ DOB, 15. MedCost also argued that SpecialtyCare provided services to MBS, not MedCost. Such argument relies on facts beyond the pleadings, and I decline to entertain this line of argument at the Motion to Dismiss stage. *See* PAB, 20.

[Angelina Emergency Med. Assocs. PA v. Health Care Serv. Corp.](#), 506 F. Supp. 3d 425, 432 (N.D. Tex. 2020); see, e.g., [Plastic Surgery Ctr., P.A. v. Cigna Health & Life Ins. Co.](#), 2019 U.S. Dist. LEXIS 72174, 2019 WL 1916205, at *8 (D.N.J. Apr. 30, 2019) ("District courts have consistently dismissed unjust enrichment claims under substantially similar circumstances, reasoning that, if anything, the benefit is derived *solely by the insured party.*") (emphasis added).

In response, SpecialtyCare cites a recent line of cases holding that an unjust enrichment claim may lie against an insurer because "the benefit conferred . . . is not the provision of the healthcare service *per se*, but rather the discharge of the obligation." [Plastic Surgery Ctr., P.A. v. Aetna Life Ins. Co.](#), 967 F.3d 218, 240 (3d Cir. 2020); see [Medwell, LLC v. Cigna Corp.](#), 2021 U.S. Dist. LEXIS 96292, 2021 WL 2010582, at *4-5 (D.N.J. May 19 2021) (applying *Plastic Surgery*).

Neither party briefed Delaware law on whether an insurer receives a benefit when the insured [*32] is provided health care services, likely because no Delaware case is squarely on point. Thus, I am forced to look at authority outside of Delaware to consider its persuasiveness. I first note that *Plastic Surgery's* permissiveness in permitting quasi-contract claims against insurers in this context appears to be the minority rule. See, e.g., [Abira Med. Lab'ys LLC v. Blue Cross Blue Shield of Ariz. Inc.](#), 2025 U.S. Dist. LEXIS 63848, 2025 WL 1000739, at *9 (D. Ariz. Apr. 3, 2025) (collecting cases declining to recognize a benefit conferred to an insurer because of a discharged obligation to pay medical expenses). Moreover, *Plastic Surgery*, (1) applied New Jersey Law, (2) involved special duties imposed on the insured, and (3) reckoned with ERISA preemption. I decline to depart from the majority rule to hold that payment of an insured's medical expenses confers a benefit on an insurer, especially where a comprehensive federal statutory program creates a procedure with prescribed remedies in this specific context.

Because SpecialtyCare failed to plead that MedCost received an "enrichment" by virtue of insured parties receiving out of network medical coverage (unjust enrichment) or that MedCost should have known that SpecialtyCare would bear the costs of these services (quantum meruit), Counts IV and V are dismissed. Given [*33] the novel, undeveloped legal theories at issue here, however, I dismiss these counts without prejudice.⁴⁹

III. CONCLUSION

Counts I and II are DISMISSED with prejudice because this Court lacks subject matter jurisdiction and, in the alternative, SpecialtyCare has failed to state a claim for this Court's confirmation or enforcement of IDR proceedings. Count III is DISMISSED with prejudice because SpecialtyCare failed to state a claim for account stated. Counts IV and V are DISMISSED without prejudice. This is my final report, and exceptions may be filed under [Court of Chancery Rule 144](#).

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⁴⁹Plaintiff may well wish to bring these claims with targeted pleading and more developed briefing sufficient to advance an issue of first impression in Delaware.

EXHIBIT 6



Positive

As of: April 3, 2026 7:49 PM Z

Specialtycare, Inc. v. Umr, Inc.

United States District Court for the District of Delaware

February 20, 2026, Decided; February 20, 2026, Filed

C.A. No. 24-1396-RGA

Reporter

2026 U.S. Dist. LEXIS 34914 *; 2026 LX 39054

SPECIALTYCARE, INC., REMOTE NEUROMONITORING PHYSICIANS, PC, and SENTIENT PHYSICIANS, PC, Plaintiffs, v. UMR, INC., Defendant.

Subsequent History: Adopted by, Objection overruled by, Dismissed by, in part, Dismissed by, Without prejudice, in part [Specialtycare, Inc. v. Umr, Inc., 2026 U.S. Dist. LEXIS 65325 \(Mar. 26, 2026\)](#)

Counsel: [*1] For SpecialtyCare, Inc., Remote Neuromonitoring Physicians, PC, Sentient Physicians, PC, Plaintiffs: Stephen J. Kraftschik, LEAD ATTORNEY, Polsinelli PC, Wilmington, DE; Joshua D. Arters, Kevin T. Elkins, PRO HAC VICE.

For UMR, Inc., Defendant: Joelle Eileen Polesky, Stradley Ronon Stevens & Young, LLP, Wilmington, DE.

Judges: Eleanor G. Tennyson, UNITED STATES MAGISTRATE JUDGE.

Opinion by: Eleanor G. Tennyson

Opinion**REPORT AND RECOMMENDATION**

Presently before the Court is the motion of Defendant UMR, Inc. ("Defendant" or "UMR") to dismiss all counts of the Complaint. (D.I. 16). For the reasons set forth below, the Court recommends

that UMR's motion be GRANTED.

I. BACKGROUND

The No Surprises Act is a federal law designed to protect individuals from the cost of healthcare services rendered by unexpected out-of-network providers. See [42 U.S.C. § 300gg-111 et seq.](#) In particular, where an individual patient unknowingly receives care from an out-of-network provider in certain emergency or non-emergency situations, the No Surprises Act prohibits that provider from billing the patient the difference between the in-network coverage amount and the provider's out-of-network charges.¹ *Id.* §§ [300gg-111\(a\)](#) & [300gg-111\(b\)](#). The patient is not required to pay the excess charges, and the provider [*2] must instead seek further payment from the patient's health insurance company. *Id.* §§ [300gg-111\(a\)](#) & [300gg-111\(b\)](#). Under the No Surprises Act, the out-of-network provider can dispute the amounts paid by the insurer through an independent dispute resolution ("IDR") process, whereby the parties submit their proposals for the proper payment amount to a neutral entity. *Id.* § [300gg-111\(c\)](#). From the proposals, the neutral entity selects the amount that the out-of-network provider is to be paid. *Id.* § [300gg-111\(c\)\(5\)](#). The IDR determination is final and binding, and payment of the amount therein must be made within thirty days. *Id.* §§ [300gg-111\(c\)\(5\)\(E\)\(i\)\(I\)](#) & [300gg-111\(c\)\(6\)](#). This case arises from UMR's alleged failure to pay certain

¹This practice is referred to as "balance billing."

amounts due under IDR determinations rendered under the No Surprises Act.

Plaintiffs SpecialtyCare, Inc., Remote Neuromonitoring Physicians, PC and Sentient Physicians, PC (collectively, "Plaintiffs" or "SpecialtyCare") are healthcare providers operating in the United States. (D.I. 1 ¶ 3). According to the Complaint, SpecialtyCare provided out-of-network services to UMR members or patients who receive their health insurance from self-funded plans under the Employee Retirement Income Security Act ("ERISA") for whom UMR provides administrative services (collectively, "UMR members or insureds"). (*Id.* ¶¶ 3, 13). [*3] SpecialtyCare billed UMR directly for the out-of-network healthcare services provided to UMR members and insureds, but UMR either failed to pay or paid less than the full billed amount. (*Id.* ¶¶ 13, 14 & 16; *see also* D.I. 1, Ex. A).

Pursuant to the No Surprises Act, the parties proceeded to negotiate payment. (D.I. 1 ¶ 16). After the parties failed to reach an agreement within the statutory negotiation period, SpecialtyCare initiated IDR proceedings. (*Id.*). According to the Complaint, SpecialtyCare obtained 300 IDR determinations in its favor, amounting to a combined \$256,427 in unpaid fees. (D.I. 1, Ex. A). Despite the statutory mandate that the IDR determinations "shall be binding" and that payment "shall be made" to the healthcare provider within thirty days, UMR "consistently failed to make timely payment." (D.I. 1 ¶ 23). SpecialtyCare "diligently followed-up with UMR through multiple avenues," but UMR has not paid the amounts due under the IDR decisions. (*Id.* ¶¶ 24-27).

On December 20, 2024, SpecialtyCare filed this case against UMR, asserting claims for confirmation of arbitration awards, non-payment of arbitration awards, improper denial of benefits, open account, bad faith and [*4] unjust enrichment. (D.I. 1). On August 29, 2025, UMR filed the present motion to dismiss under *Federal*

Rule of Civil Procedure 12(b)(6), arguing that the claims for confirmation of arbitration award under the Federal Arbitration Act ("FAA") (Count I), non-payment of IDR determinations in violation of the No Surprises Act (Count II) and implied right of action under the No Surprises Act (Count III) should be dismissed because there is no private right of action under the statute. (D.I. 16 & 17). UMR also seeks dismissal of SpecialtyCare's ERISA claim (Count IV) and the state-law open account (Count V), bad faith (Count VI) and unjust enrichment (Count VII) claims. Briefing was complete on October 17, 2025. (D.I. 19 & 21).

II. LEGAL STANDARD

In ruling on a motion to dismiss under *Rule 12(b)(6)*, the Court must accept all well-pleaded factual allegations in the complaint as true and view them in the light most favorable to the plaintiff. *See Mayer v. Belichick*, 605 F.3d 223, 229 (3d Cir. 2010); *see also Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 232-33 (3d Cir. 2008). The Court is not, however, required to accept as true bald assertions, unsupported conclusions or unwarranted inferences. *See Mason v. Del. (J.P. Court), C.A. No. 15-1191-LPS*, 2018 U.S. Dist. LEXIS 157607, 2018 WL 4404067, at *3 (D. Del. Sept. 17, 2018); *see also Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997). Dismissal under *Rule 12(b)(6)* is only appropriate if a complaint does not contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)); *see [*5] also Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). This plausibility standard obligates a plaintiff to provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555. Instead, the pleadings must provide sufficient factual allegations to allow the Court to "draw the reasonable inference that the defendant is

liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997) (cleaned up).

III. DISCUSSION

UMR seeks to dismiss the claims of confirmation of arbitration award under the FAA (Count I), non-payment of IDR determination in violation of the No Surprises Act (Count II) and the implied right of action under the No Surprises Act (Count III) on the basis that there is no private right of action under the statute. (D.I. 17 at 8-13; D.I. 21 at 1-5). UMR also seeks dismissal of the ERISA claim (Count IV) based on a lack of standing and dismissal of the state-law claims (Counts V, VI and VII) as preempted by the No Surprises Act and for failure to state a claim. (D.I. 17 at 13-18; D.I. 21 at 6-10). The Court begins with the claims under the FAA and No Surprises Act.

A. Count [*6] I (Petition to Confirm Arbitration Awards Under Section 9 of FAA)

In Count I, SpecialtyCare seeks to invoke Section 9 of the FAA to confirm various IDR determinations made under the No Surprises Act. (D.I. 1 ¶¶ 33-37). UMR argues that Count I should be dismissed because the No Surprises Act does not permit federal courts to confirm IDR determinations under Section 9 of the FAA. (See D.I. 17 at 8-13; D.I. 21 at 1-5). Relying upon several district court decisions, SpecialtyCare insists that the No Surprises Act does, in fact, permit federal courts to confirm IDR determinations under this section of the FAA. (D.I. 19 at 4-6 (citing *Guardian Flight LLC v. Aetna Life Ins. Co.*, 789 F. Supp. 3d 214 (D. Conn. 2025) and *GPS of New Jersey M.D. P.C. v. Horizon Blue Cross & Blue Shield, No. CV 22-6614 (KM) (JBC)*, 2023 U.S. Dist. LEXIS 159460, 2023 WL 5815821 (D.N.J. Sept. 8, 2023)). The Court

agrees with UMR.

Two provisions of the FAA are relevant to judicial action on arbitral awards. First, Section 9 of the FAA "empowers courts to confirm or enforce arbitration awards." *Guardian Flight, LLC v. Health Care Serv. Corp.*, 140 F.4th 271, 276 (5th Cir. 2025); see also 9 U.S.C. § 9. Second, Section 10 of the FAA "allows a court to vacate an arbitral award" in limited instances, such as where the award was procured by corruption, fraud or undue means. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011); 9 U.S.C. § 10; see also 9 U.S.C. § 11 (providing grounds to modify or correct arbitration awards). Neither side here seeks vacatur of the relevant IDR determinations under Section 10. Instead, SpecialtyCare seeks a court order enforcing the IDR determinations pursuant to Section 9, and the question is whether the No Surprises [*7] Act permits such relief under Section 9 of the FAA.

The No Surprises Act provides that IDR determinations "shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of Title 9." 42 U.S.C. § 300gg-111(c)(5)(E). In other words, the No Surprises Act expressly prohibits judicial review of IDR determinations except where vacatur is sought pursuant to Section 10 of the FAA. In the Court's view, Congress's decision to incorporate only Section 10 of the FAA into the No Surprises Act "indicates that Congress deliberately left out" Section 9. See *Sperling v. Hoffmann-La Roche, Inc.*, 24 F.3d 463, 470 (3d Cir. 1994). Addressing this precise issue last year, the Fifth Circuit noted the same thing — the inclusion of Section 10 but omission of Section 9 in the No Surprises Act was a meaningful difference intended to have consequence. See *Guardian Flight*, 140 F.4th at 276 ("Section 9 of the FAA empowers courts to confirm or enforce arbitration awards, but Congress chose not to incorporate § 9 into the NSA. It incorporated only parts of § 10. By contrast, in other statutes, Congress *has* incorporated § 9 to

create a private right of action. *See* [5 U.S.C. § 580\(c\)](#). So, Congress knew how to create a private right of action in the [No Surprises Act] - and has done so elsewhere — but declined to do so." (cleaned up)). The No Surprises Act does not contemplate enforcement of IDR determinations through Section 9 of the FAA.

The Court is unpersuaded by the authority cited by SpecialtyCare. [*8] (D.I. 19 at 4-6). As to *Guardian Flight v. Aetna Life Insurance* ("Aetna"), the District of Connecticut concluded that IDR determinations under the No Surprises Act could be enforced by the courts. [789 F. Supp. 3d 214, 225-29 \(D. Conn. 2025\)](#). But the court did not find an enforcement mechanism through Section 9 of the FAA. *Id.* at 227 ("No judicial 'confirmation' is required for [IDR determinations] to become 'binding.' There is thus no reason for the [No Surprises Act] to reference § 9 of the FAA."). Instead, in reaching its conclusion, the *Aetna* court reasoned that, without judicial confirmation, "IDR determinations would be effectively unenforceable." *Id.* at 228. But that rationale ignores the enforcement mechanisms expressly provided by the No Surprises Act. *See, e.g.,* [42 U.S.C. § 300gg-22](#); *see also* [Mod. Orthopaedics of NJ v. Premera Blue Cross, No. 2:25-CV-01087 \(BRM\) \(JSA\), 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *9-10 \(D.N.J. Nov. 3, 2025\)](#); *see also* *Guardian Flight*, 140 F.4th at 277 (summarizing administrative remedies offered by No Surprises Act to enforce IDR determinations).² And as to *GPS*, SpecialtyCare ignores the actual basis for jurisdiction in that case. (D.I. 19 at 5 & 9-11). Although the *GPS* court did enforce the IDR determination, the court "only had jurisdiction to confirm the award because the [plaintiff] attempted

to vacate" the IDR determination under Section 10 of the FAA, thereby permitting "judicial review" under the No Surprises Act. [Mod. Orthopaedics, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *13](#) (distinguishing *GPS*); *see also* [SpecialtyCare Inc. v. Meritain Health, Inc., C.A. No. 25-198-MN, 2026 U.S. Dist. LEXIS 26722, 2026 WL 353259, at *4 \(D. Del. Feb. 9, 2026\)](#) (same); [T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Ass'n, No. 25-CV-1255 \(CS\), 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *6 \(S.D.N.Y. Dec. 5, 2025\)](#) (same); [*9] [Drs. Ellis, Rohas, Ross & Debs, Inc v. UMR, Inc., No. 24-CV-20428, 2025 U.S. Dist. LEXIS 42045, 2025 WL 742761, at *3 n.2 \(S.D. Fla. Mar. 9, 2025\)](#) (same); [Med-Trans Corp. v. Cap. Health Plan, Inc., 700 F. Supp. 3d 1076, 1083-084 \(M.D. Fla. 2023\)](#) (same). Here, neither side seeks vacatur of the IDR determinations pursuant to Section 10 of the FAA and, as such, *GPS* is inapplicable.

Ultimately, the Court agrees with the many other district courts that have concluded IDR determinations under the No Surprises Act cannot be enforced pursuant to Section 9 of the FAA.³ The

² Acknowledging the "conflict" between its decision and the Fifth Circuit's, the District of Connecticut has recently noted that "[i]t is possible I would have reached a different conclusion" had [42 U.S.C. § 300gg-22](#) been briefed. *See* [Guardian Flight LLC v. Aetna Life Ins. Co., No. 3:24-cv-00680-MPS, 789 F. Supp. 3d 214](#). Notably, no federal court has followed the District of Connecticut in finding jurisdiction to enforce IDR determinations where no party seeks vacatur.

³ [Specialtycare Inc. v. Aetna, Inc., No. 1:25-CV-224, 2025 U.S. Dist. LEXIS 264619, 2025 WL 3719227, at *2-3 \(M.D. Pa. Dec. 23, 2025\)](#); [N. Jersey Neurosurgical Assocs. PA. v. Horizon Blue Cross Blue Shield of N.J., No. 25-12593 \(SDW\) \(MAH\), 2025 U.S. Dist. LEXIS 261572, at *1-2 \(D.N.J. Dec. 18, 2025\)](#); [Neuromon Pros. LLC v. Aetna Life Ins. Co., No. 25-1701 \(SDW\) \(JSA\), 2025 U.S. Dist. LEXIS 261584 \(D.N.J. Dec. 18, 2025\)](#); [Savalia v. Blue Shield of Cal. Life & Health Ins. Co., No. 8:25-cv-02031, 2025 U.S. Dist. LEXIS 261150, at *16 \(C.D. Cal. Dec. 16, 2025\)](#); [Mitchell F. Reiter MD PC v. Horizon Blue Cross Blue Shield of New Jersey, No. 2:25-CV-12526 \(WJM\), 2025 U.S. Dist. LEXIS 253333, 2025 WL 3514300, at *3-5 \(D.N.J. Dec. 8, 2025\)](#); [T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *4-7](#); [Spiel, Md., PA v. Horizon Blue Cross Blue Shield of New Jersey, No. CV 25-14769 \(SRC\), 2025 U.S. Dist. LEXIS 234536, 2025 WL 3459719, at *4-6 \(D.N.J. Dec. 2, 2025\)](#); [Tamagnini v. Horizon Blue Cross Blue Shield of New Jersey, No. CV 25-02022 \(SRC\), 2025 U.S. Dist. LEXIS 234534, 2025 WL 3459708, at *4-6 \(D.N.J. Dec. 2, 2025\)](#); [Complete Med. Wellness LLC v. Horizon Blue Cross Blue Shield of New Jersey, No. CV 25-04177 \(SRC\), 2025 U.S. Dist. LEXIS 233638, 2025 WL 3443620, at *4-6 \(D.N.J. Dec. 1, 2025\)](#); [Garden State Pain Mgmt. v. Horizon Blue Cross Blue Shield of New Jersey, No. CV 25-05679 \(SRC\), 2025 U.S. Dist. LEXIS 233633, 2025 WL 3443243, at *4-6 \(D.N.J. Dec. 1, 2025\)](#); [Ne. Neurosurgical Assocs. v. Horizon Blue Cross](#)

Court therefore recommends that Count I be dismissed.

B. Count II (Action for Non-Payment Under the No Surprises Act) and Count III (Implied Right of Action Under the No Surprises Act)

Counts II and III seek payment of amounts due under the IDR determinations and are premised solely on violations of the No Surprises Act. (D.I. 1 ¶¶ 38-47). UMR argues that Counts II and III must be dismissed because the statute creates neither an express nor implied private right of action. (D.I. 17 at 8-13; D.I. 21 at 1-5). The Court agrees.

As an initial matter, there is no express private right of action to confirm IDR determinations under the No Surprises Act. *See Guardian Flight, 140 F.4th at 275* ("[T]he NSA contains no express right of action to enforce or confirm an IDR award."). SpecialtyCare does not contend otherwise. (D.I. 19 at 6-14). Instead, SpecialtyCare appears to argue that the No Surprises [*10] Act creates an implied private right of action based on its provision that IDR determinations "shall be binding upon the parties involved." (*Id.* at 6-8 (quoting [42 U.S.C. § 300gg-111\(c\)\(5\)\(E\)\(i\)\(I\)](#) and relying upon [Maine Cmty. Health Options v. United States, 590 U.S. 296, 140 S. Ct. 1308, 206 L. Ed. 2d 764 \(2020\)](#))).

In determining whether a private right of action exists under a federal statute, courts in the Third Circuit evaluate "(1) whether Congress intended to create a personal right in the plaintiff; and (2)

whether Congress intended to create a personal remedy for that plaintiff." [McGovern v. City of Philadelphia, 554 F.3d 114, 116 \(3d Cir. 2009\)](#) (citing [Alexander v. Sandoval, 532 U.S. 275, 286, 121 S. Ct. 1511, 149 L. Ed. 2d 517 \(2001\)](#) and [Three Rivers Ctr. v. Hous. Auth. of the City of Pittsburgh, 382 F.3d 412, 421 \(3d Cir. 2004\)](#)). A plaintiff must demonstrate both elements are satisfied for a court to conclude that a federal statute creates an implied private right of action. [McGovern, 554 F.3d at 116](#).

As to the first prong, the Court concludes that the "shall be binding" and "shall be made" language of the No Surprises Act creates a personal right for SpecialtyCare. *See Mod. Orthopaedics, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *8-9* ("There is no plausible argument that Congress intended to allow insurers like [defendant] to simply ignore the 'binding' outcomes of the IDR. [Plaintiff] has a right to be paid. The question is whether the Court may properly enforce this right." (citation omitted)).

As to the second prong, however, the "robust system of administrative enforcement" provided by the No Surprises Act creates a "strong presumption" [*11] that Congress did not intend to create a personal remedy for SpecialtyCare. *See id.* at *9; *see also Wisniewski v. Rodale, Inc., 510 F.3d 294, 305 (3d Cir. 2007)*. Indeed, Congress empowered the Department of Health and Human Services ("HHS") - not the courts — to "assess penalties against insurers for failure to comply" with the statute. *Guardian Flight, 140 F.4th at 277* (discussing [42 U.S.C. § 300gg-22\(b\)\(2\)\(A\)](#)); *see also Mod. Orthopaedics, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *9-10* ("[T]he primary enforcement authority for the [No Surprises Act] lies with *state* administrative agencies. . . . However, in the event a State is unable, or unwilling, to enforce compliance with any part of the [No Surprises Act], the HHS may assume primary responsibility for enforcing the [No Surprises Act]."). That the No Surprises Act provides for state and HHS enforcement — while

[Blue Shield of New Jersey, No. CV 25-06288 \(SRC\), 2025 U.S. Dist. LEXIS 231385, 2025 WL 3282210, at *4-6 \(D.N.J. Nov. 25, 2025\)](#); [Freeman Pain Inst. P.A. v. Horizon Blue Cross Blue Shield of New Jersey, No. CV 25-02507 \(SRC\), 2025 U.S. Dist. LEXIS 230402, 2025 WL 3268289, at *4-6 \(D.N.J. Nov. 24, 2025\)](#); [Phi Health, LLC v. Keating Auto Grp. Emp. Ben. Plan Tr., No. 4:24-cv-2832, 2025 WL 3618198, at *3-4 \(S.D. Tex. Nov. 4, 2025\)](#), report and recommendation adopted sub nom. [Phi Health, LLC v. Entrust, LLC, No. CV H-24-2832, 2025 WL 3617339 \(S.D. Tex. Dec. 11, 2025\)](#); [Mod. Orthopaedics, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *5-7](#); [Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of New Jersey, 790 F. Supp. 3d 129, 136-38 \(E.D.N.Y. 2025\)](#).

expressly prohibiting judicial review beyond petitions to vacate IDR determinations — demonstrates that SpecialtyCare has no personal remedy under the statute. *See Guardian Flight, 140 F.4th at 276* ("We will not find an implied right of action where Congress expressly forecloses it.").

Although the Third Circuit has not ruled on this particular issue, the Fifth Circuit has in the recent *Guardian Flight* decision. There, the plaintiff healthcare providers sued the defendant insurer for failure to timely pay IDR determination awards pursuant to the [*12] No Surprises Act, similarly asserting claims under the statute (and ERISA). *See Guardian Flight LLC v. Health Care Serv. Corp., 735 F. Supp. 3d 742, 748 (N.D. Tex. 2024)*. The district court dismissed all of plaintiffs' claims. *Id. at 755*. On appeal, the Fifth Circuit affirmed the dismissal, finding that the No Surprises Act does not provide an express or implied private right of action to confirm IDR determinations. *Guardian Flight, 140 F.4th at 274-77*.⁴ This Court ultimately finds persuasive and agrees with the Fifth Circuit and the vast majority of district courts that the No Surprises Act does not permit judicial enforcement of IDR determinations.⁵

⁴The Supreme Court recently denied certiorari. *See No. 25-441, 223 L. Ed. 2d 509, 2026 WL 79855 (U.S. Jan. 12, 2026)*.

⁵*See Guardian Flight, 140 F.4th at 274-77; Meritain Health, 2026 U.S. Dist. LEXIS 26722, 2026 WL 353259, at *3-4; SpecialtyCare, 2025 U.S. Dist. LEXIS 264619, 2025 WL 3719227, at *2-3; N. Jersey Neurosurgical Assocs., 2025 U.S. Dist. LEXIS 261572, at *1-2; Neuromon, 2025 U.S. Dist. LEXIS 261584; Savalia, 2025 U.S. Dist. LEXIS 261150, at *16; Worldwide Aircraft Servs. Inc. v. Freedom Life Ins. Co. of Am., No. 8:25-cv-01158-WFJ-AEP, 2025 U.S. Dist. LEXIS 256246, 2025 WL 3551397, at *2-3 (M.D. Fla. Dec. 11, 2025); Reiter, 2025 U.S. Dist. LEXIS 253333, 2025 WL 3514300, at *3-5; T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *7-9; Spiel, 2025 U.S. Dist. LEXIS 234536, 2025 WL 3459719, at *6-8; Tamagnini, 2025 U.S. Dist. LEXIS 234534, 2025 WL 3459708, at *6-7; Complete Med. Wellness, 2025 U.S. Dist. LEXIS 233638, 2025 WL 3443620, at *6-8; Garden State Pain Mgmt., 2025 U.S. Dist. LEXIS 233633, 2025 WL 3443243, at *6-8; Worldwide Aircraft, 2025 U.S. Dist. LEXIS 233132, 2025 WL 3312169, at *1-2; Ne. Neurosurgical Assocs., 2025 U.S. Dist. LEXIS 231385, 2025 WL 3282210, at *6-8; Freeman, 2025 U.S. Dist. LEXIS 230402, 2025 WL 3268289, at *6-8; Phi Health, 2025 WL 3618198, at *2-3; Mod. Orthopaedics, 2025 U.S. Dist. LEXIS*

The Court is not persuaded by the cases SpecialtyCare relies on. (D.I. 19 at 8-11). As discussed above in Section III.A, *GPS* involved a (permissible) petition to vacate an IDR determination under Section 10 of the FAA, whereas *Aetna* ignored the available non-judicial enforcement mechanisms under the No Surprises Act. Although *Aetna* found that judicial enforcement of IDR determinations was permitted by the No Surprises Act, *Aetna* apparently "stands alone." *Meritain Health, 2026 U.S. Dist. LEXIS 26722, 2026 WL 353259, at *4*; *see also Guardian Flight, 140 F.4th at 276 n.5* (Fifth Circuit disagreeing with *Aetna* based on the "plain text and structure" of the No Surprises Act). In *Maine Community Health Options v. United States, 590 U.S. 296, 140 S. Ct. 1308, 206 L. Ed. 2d 764 (2020)*, the statute at issue (Risk Corridors program of the Affordable Care Act) did not provide a similar enforcement mechanism [*13] for a plaintiff or include the same prohibition of judicial review as the No Surprises Act. *Id. at 309-11*. And in *Cheminova A/S v. Griffin L.L.C., 182 F. Supp. 2d 68 (D.D.C. 2002)*, the court applied (without analyzing) already existing arbitration law to find arbitration awards under the Federal Insecticide Fungicide and Rodenticide Act judicially enforceable. *See id. at 73-77*; *see also Worldwide Aircraft Servs. Inc. v. United Healthcare, No. 8:24-CV-2527-TPB-LSG, 2025 U.S. Dist. LEXIS 233132, 2025 WL 3312169, at *2 (M.D. Fla. Nov. 28, 2025)* (distinguishing *Cheminova*); *Med-Trans Corp., 700 F. Supp. 3d at 1084* (same). These cases are either not on point or contrary to the many others that have found no private right of action exists under the No Surprises Act.

The overwhelming weight of authority to address this issue has concluded that out-of-network providers cannot turn to the courts to enforce IDR determinations rendered under the No Surprises Act. Even if SpecialtyCare would prefer a different mechanism, "the wisdom of Congress's policy

*215824, 2025 WL 3063648, at *7-14; Farkas, 790 F. Supp. 3d at 136-38.*

choice is beyond our judicial ken." *Guardian Flight*, 140 F.4th at 277. Because the No Surprises Act does not create an express or implied private right of action to enforce IDR determinations, the Court recommends that Counts II and III be dismissed.

C. Count IV (Improper Denial of Benefits Under ERISA)

In Count IV, SpecialtyCare alleges that it has been assigned the right to benefits (and payments) by UMR's members and insureds and, as such, the amounts due under the IDR [*14] determinations are owed to SpecialtyCare as an ERISA beneficiary. (D.I. 1 ¶¶ 48-56). UMR argues that SpecialtyCare's ERISA claim should be dismissed for lack of Article III standing because the plan beneficiaries who assigned their claims to SpecialtyCare (*id.* ¶ 14) did not suffer any concrete injury. (D.I. 17 at 13-15; D.I. 21 at 6-7). Relying on *Aetna*, SpecialtyCare argues that untimely payment of IDR determinations constitutes a legally cognizable "concrete injury." (D.I. 19 at 14-16 (quoting *Aetna*, 789 F. Supp. 3d at 231-32)). The Court ultimately agrees with UMR that SpecialtyCare lacks standing to sue under ERISA for failure to pay the amounts due under the IDR determinations.

Healthcare providers "may obtain standing to sue" under ERISA "by assignment from a plan participant." *CardioNet, Inc. v. Cigna Health Corp.*, 751 F.3d 165, 176 n.10 (3d Cir. 2014); *N. Jersey Brain & Spine Ctr. v. Aetna, Inc.*, 801 F.3d 369, 372 (3d Cir. 2015). But the plan participants must have suffered a concrete injury for the provider to have standing as assignee. See *Guardian Flight*, 140 F.4th at 278; see also *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 773 (2000), 120 S. Ct. 1858, 146 L. Ed. 2d 836 ("[T]he assignee of a claim has standing to assert the injury in fact suffered by the assignor."); *CardioNet*, 751 F.3d at 178 ("It is a basic principle of assignment law that an assignee's

rights derive from the assignor."). By design, the No Surprises Act shields plan participants from the out-of-network costs that are the subject [*15] of this lawsuit; in other words, the outcome of this dispute will not affect the plan participants in any way. See *Mod. Orthopaedics*, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *8-9 ("The [No Surprises Act] protects patients by relieving them of liability to pay for the procedure beyond their ordinary in-network insurance payments and instead has the provider and the insurer negotiate or dispute the proper payment among themselves."). The plan participants have no real interest in the outcome of this case.

Because the plan participants lack a "concrete stake in this lawsuit," even as a purported assignee, SpecialtyCare similarly lacks the Article III standing necessary to bring an ERISA claim. See *Guardian Flight*, 140 F.4th at 278 ("[B]ecause the beneficiaries would lack Article III standing if they brought an ERISA claim on their own, Providers lack standing to bring a derivative ERISA claim as their assignees."); see also *Thole v. U. S. Bank N.A.*, 590 U.S. 538, 541, 140 S. Ct. 1615, 207 L. Ed. 2d 85 (2020) ("If Thole and Smith were to *lose* this lawsuit, they would still receive the exact same monthly benefits that they are already slated to receive, not a penny less. If Thole and Smith were to *win* this lawsuit, they would still receive the exact same monthly benefits that they are already slated to receive, not a penny more. . . . Because the plaintiffs themselves have no [*16] concrete stake in the lawsuit, they lack Article III standing."). None of the cases cited by SpecialtyCare compel a different result. (See D.I. 19 at 14-16). Even if SpecialtyCare had plausibly alleged that it received assignment of member benefits, such an assignment would not confer Article III standing to sue an insurer for failure to pay amounts due under the IDR determinations. See *Guardian Flight*, 140 F.4th at 278. The Court therefore recommends that the ERISA claim (Count IV) be dismissed.

D. Count V (Open Account), Count VI (Bad

Faith) and Count VII (Unjust Enrichment)

In Counts V, VI and VII, SpecialtyCare asserts several causes of action arising under Delaware law. (D.I. 1 ¶¶ 57-77). Because SpecialtyCare and UMR are both Delaware corporations (*id.* ¶¶ 8-9), jurisdiction over the state law claims cannot be based on diversity jurisdiction. See *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 419 (3d Cir. 2010) ("Complete diversity requires that, in cases with multiple plaintiffs or multiple defendants, no plaintiff be a citizen of the same state as any defendant."); see also 28 U.S.C. §§ 1332(a)(1) & 1332(c)(1). Recognizing this, SpecialtyCare alleges that this Court has jurisdiction over the state law claims based on supplemental jurisdiction under 28 U.S.C. § 1367(a). (D.I. 1 ¶ 10).

Supplemental jurisdiction permits federal courts to adjudicate [*17] claims that would otherwise lack federal subject matter jurisdiction. Specifically, a district court having original jurisdiction in a civil action may exercise such supplemental jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III." 28 U.S.C. § 1367(a). A district court may decline to exercise supplemental jurisdiction over claims for several reasons, including where "the district court has dismissed all claims over which it has original jurisdiction." *Id.* § 1367(c)(3); see also *Figueroa v. Buccaneer Hotel Inc.*, 188 F.3d 172, 181, 41 V.I. 502 (3d Cir. 1999).

As set forth above, the Court recommends dismissal of all of SpecialtyCare's federal claims. In such a situation, the exercise of supplemental jurisdiction is not automatic; instead, the Court has discretion to decide whether to exercise such jurisdiction over the state law claims. SpecialtyCare has not raised — and the Court has not identified — any considerations of judicial economy, convenience or fairness to the parties that would justify such exercise. *Borough of W. Mifflin v. Lancaster*, 45 F.3d 780, 788 (3d Cir. 1995)

("[W]here the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendent state [*18] claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so."). This case is in its infancy; without the federal claims, the state law claims should be dismissed. See *Humana, Inc. v. St. Jude Med., LLC, C.A. No. 20-1032-SB*, 2020 U.S. Dist. LEXIS 231796, 2020 WL 7264161, at *4 (D. Del. Oct. 12, 2020) (Bibas, J., sitting by designation) (after dismissing federal claims, declining to exercise supplemental jurisdiction "[b]ecause this case has just begun [and] there is no good reason to keep the state claims in federal court"). The Court thus recommends that Counts V-VII be dismissed.

IV. CONCLUSION

For the foregoing reasons, the Court recommends that UMR's motion to dismiss (D.I. 16) be GRANTED.

This Report and Recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B), *Federal Rule of Civil Procedure 72(b)(1)* and District of Delaware Local Rule 72.1. Any objections to the Report and Recommendation shall be limited to ten (10) pages and filed within fourteen (14) days after being served with a copy of this Report and Recommendation. See *Fed. R. Civ. P. 72(b)(2)*. Any responses to the objections shall be limited to ten (10) pages and filed within fourteen (14) days after the objections. The failure of a party to object to legal conclusions may result in the loss of the right to *de novo* review in the District Court. See *Sincavage v. Barnhart*, 171 F. App'x 924, 925 n.1 (3d Cir. 2006); *Henderson v. Carlson*, 812 F.2d 874, 878-79 (3d Cir. 1987).

The parties are directed to the court's [*19] "Standing Order for Objections Filed Under *Fed. R. Civ. P. 72*," dated March 7, 2022, a copy of which is available on the court's website,

2026 U.S. Dist. LEXIS 34914, *19

<https://www.ded.uscourts.gov>.

Dated: February 20, 2026

/s/ Eleanor G. Tennyson

UNITED STATES MAGISTRATE JUDGE

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EXHIBIT 7



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As of: April 3, 2026 7:50 PM Z

Specialtycare, Inc. v. CIGNA Healthcare, Inc.

United States District Court for the District of Delaware

February 20, 2026, Decided; February 20, 2026, Filed

C.A. No. 24-1378-RGA

Reporter

2026 U.S. Dist. LEXIS 34911 *; 2026 LX 65572

SPECIALTYCARE, INC., REMOTE NEUROMONITORING PHYSICIANS, PC, and SENTIENT PHYSICIANS, PC, Plaintiffs, v. CIGNA HEALTHCARE, INC., Defendant.

Subsequent History: Adopted by, Objection overruled by, Dismissed by, in part, Dismissed by, Without prejudice, in part [Specialtycare, Inc. v. CIGNA Healthcare, Inc., 2026 U.S. Dist. LEXIS 65340 \(Mar. 26, 2026\)](#)

Counsel: [*1] For SpecialtyCare, Inc., Remote Neuromonitoring Physicians, PC, Sentient Physicians, PC, Plaintiffs: Stephen J. Kraftschik, LEAD ATTORNEY, Polsinelli PC, Wilmington, DE; Joshua D. Arters, Kevin T. Elkins, PRO HAC VICE.

For CIGNA Healthcare, Inc., Defendant: Christopher Viceconte, LEAD ATTORNEY, Jennifer M. Rutter, FBT Gibbons LLP, Wilmington, DE; Caroline E. Oks, PRO HAC VICE.

Judges: Eleanor G. Tennyson, UNITED STATES MAGISTRATE JUDGE.

Opinion by: Eleanor G. Tennyson

Opinion

REPORT AND RECOMMENDATION

Presently before the Court is the motion of Defendant CIGNA Healthcare, Inc. ("Defendant"

or "Cigna") to dismiss all counts of the Complaint. (D.I. 15). For the reasons set forth below, the Court recommends that Cigna's motion be GRANTED.

I. BACKGROUND

The No Surprises Act is a federal law designed to protect individuals from the cost of healthcare services rendered by unexpected out-of-network providers. *See 42 U.S.C. § 300gg-111 et seq.* In particular, where an individual patient unknowingly receives care from an out-of-network provider in certain emergency or non-emergency situations, the No Surprises Act prohibits that provider from billing the patient the difference between the in-network coverage amount and the provider's out-of-network charges. [*2]¹ *Id.* §§ [300gg-111\(a\)](#) & [300gg-111\(b\)](#). The patient is not required to pay the excess charges, and the provider must instead seek further payment from the patient's health insurance company. *Id.* §§ [300gg-111\(a\)](#) & [300gg-111\(b\)](#). Under the No Surprises Act, the out-of-network provider can dispute the amounts paid by the insurer through an independent dispute resolution ("IDR") process, whereby the parties submit their proposals for the proper payment amount to a neutral entity. *Id.* § [300gg-111\(c\)](#). From the proposals, the neutral entity selects the amount that the out-of-network provider is to be paid. *Id.* § [300gg-111\(c\)\(5\)](#). The IDR determination is final and binding, and payment of the amount therein must be made within thirty days. *Id.* §§ [300gg-](#)

¹ This practice is referred to as "balance billing."

[111\(c\)\(5\)\(E\)\(i\)\(I\)](#) & [300gg-111\(c\)\(6\)](#). This case arises from Cigna's alleged failure to pay certain amounts due under IDR determinations rendered under the No Surprises Act.

Plaintiffs SpecialtyCare, Inc., Remote Neuromonitoring Physicians, PC and Sentient Physicians, PC (collectively, "Plaintiffs" or "SpecialtyCare") are healthcare providers operating in the United States. (D.I. 1 ¶ 3). According to the Complaint, SpecialtyCare provided out-of-network services to Cigna members or patients who receive their health insurance from self-funded plans under the Employee Retirement Income Security Act ("ERISA") for whom Cigna provides [*3] administrative services (collectively, "Cigna members or insureds"). (*Id.* ¶¶ 3, 13). SpecialtyCare billed Cigna directly for the out-of-network healthcare services provided to Cigna members and insureds, but Cigna either failed to pay or paid less than the full billed amount. (*Id.* ¶¶ 13, 14 & 16; *see also* D.I. 1, Ex. A).

Pursuant to the No Surprises Act, the parties proceeded to negotiate payment. (D.I. 1 ¶ 16). After the parties failed to reach an agreement within the statutory negotiation period, SpecialtyCare initiated IDR proceedings. (*Id.*). According to the Complaint, SpecialtyCare obtained 789 IDR determinations in its favor, amounting to a combined \$1,360,403 in unpaid fees. (D.I. 1, Ex. A). Despite the statutory mandate that the IDR determinations "shall be binding" and that payment "shall be made" to the healthcare provider within thirty days, Cigna "consistently failed to make timely payment." (D.I. 1 ¶ 23). SpecialtyCare "diligently followed-up with Cigna through multiple avenues," but Cigna has not paid the amounts due under the IDR decisions. (*Id.* ¶¶ 24-27).

On December 16, 2024, SpecialtyCare filed this case against Cigna, asserting claims for confirmation of arbitration [*4] awards, non-payment of arbitration awards, improper denial of benefits, open account, bad faith and unjust

enrichment. (D.I. 1). On March 24, 2025, Cigna filed the present motion to dismiss under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#), arguing that the claims for confirmation of arbitration award under the Federal Arbitration Act ("FAA") (Count I), non-payment of IDR determinations in violation of the No Surprises Act (Count II) and implied right of action under the No Surprises Act (Count III) should be dismissed because there is no private right of action under the statute. (*See* D.I. 15 & 16). Cigna also seeks dismissal of SpecialtyCare's ERISA claim (Count IV) and the state-law open account (Count V), bad faith (Count VI) and unjust enrichment (Count VII) claims. Briefing was complete on May 5, 2025. (D.I. 18 & 19).

II. LEGAL STANDARD

In ruling on a motion to dismiss under [Rule 12\(b\)\(6\)](#), the Court must accept all well-pleaded factual allegations in the complaint as true and view them in the light most favorable to the plaintiff. *See Mayer v. Belichick*, 605 F.3d 223, 229 (3d Cir. 2010); *see also Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 232-33 (3d Cir. 2008). The Court is not, however, required to accept as true bald assertions, unsupported conclusions or unwarranted inferences. *See Mason v. Del. (J.P. Court), C.A. No. 15-1191-LPS*, 2018 U.S. Dist. LEXIS 157607, 2018 WL 4404067, at *3 (D. Del. Sept. 17, 2018); *see also Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997). Dismissal under [Rule 12\(b\)\(6\)](#) is only appropriate if a complaint does not contain "sufficient factual matter, [*5] accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)); *see also Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). This plausibility standard obligates a plaintiff to provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555. Instead, the pleadings must provide

sufficient factual allegations to allow the Court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997) (cleaned up).

III. DISCUSSION

Cigna seeks to dismiss the claims of confirmation of arbitration award under the FAA (Count I), non-payment of IDR determination in violation of the No Surprises Act (Count II) and the implied right of action under the No Surprises Act (Count III) on the basis that there is no private right of action under the statute. (D.I. 16 at 3-12; D.I. 19 at 1-5). Cigna also seeks dismissal of the ERISA claim (Count IV) for lack of standing and failure to state a claim, as well as dismissal of the state-law claims (Counts V, VI and VII) as preempted by ERISA and for failure to state a claim. [*6] (D.I. 16 at 12-20; D.I. 19 at 5-10). The Court begins with the claims under the FAA and No Surprises Act.

A. Count I (Petition to Confirm Arbitration Awards Under Section 9 of FAA)

In Count I, SpecialtyCare seeks to invoke Section 9 of the FAA to confirm various IDR determinations made under the No Surprises Act. (D.I. 1 ¶¶ 33-37). Cigna argues that Count I should be dismissed because the No Surprises Act does not permit federal courts to confirm IDR determinations under Section 9 of the FAA. (See D.I. 16 at 3-7; D.I. 19 at 1-4). Relying upon two district court decisions, SpecialtyCare insists that the No Surprises Act does, in fact, permit federal courts to confirm IDR determinations under this section of the FAA. (D.I. 18 at 4-8 (citing *GPS of New Jersey M.D. P.C. v. Horizon Blue Cross & Blue Shield, No. CV 22-6614 (KM) (JBC)*, 2023 U.S. Dist. LEXIS 159460, 2023 WL 5815821 (D.N.J. Sept. 8, 2023) and *Cheminova*

A/S v. Griffin L.L.C., 182 F. Supp. 2d 68 (D.D.C. 2002)). The Court agrees with Cigna.

Two provisions of the FAA are relevant to judicial action on arbitral awards. First, Section 9 of the FAA "empowers courts to confirm or enforce arbitration awards." *Guardian Flight, LLC v. Health Care Serv. Corp.*, 140 F.4th 271, 276 (5th Cir. 2025); see also 9 U.S.C. § 9. Second, Section 10 of the FAA "allows a court to vacate an arbitral award" in limited instances, such as where the award was procured by corruption, fraud or undue means. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011); 9 U.S.C. § 10; see also 9 U.S.C. § 11 (providing grounds to modify or correct arbitration awards). Neither side here seeks vacatur of the relevant IDR determinations under *Section 10*. Instead, SpecialtyCare [*7] seeks a court order enforcing the IDR determinations pursuant to *Section 9*, and the question is whether the No Surprises Act permits such relief under Section 9 of the FAA.

The No Surprises Act provides that IDR determinations "shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of Title 9." 42 U.S.C. § 300gg-111(c)(5)(E). In other words, the No Surprises Act expressly prohibits judicial review of IDR determinations except where vacatur is sought pursuant to Section 10 of the FAA. In the Court's view, Congress's decision to incorporate only Section 10 of the FAA into the No Surprises Act "indicates that Congress deliberately left out" *Section 9*. See *Sperling v. Hoffmann-La Roche, Inc.*, 24 F.3d 463, 470 (3d Cir. 1994). Addressing this precise issue last year, the Fifth Circuit noted the same thing — the inclusion of *Section 10* but omission of *Section 9* in the No Surprises Act was a meaningful difference intended to have consequence. See *Guardian Flight*, 140 F.4th at 276 ("Section 9 of the FAA empowers courts to confirm or enforce arbitration awards, but Congress chose not to incorporate § 9 into the NSA. It incorporated only parts of § 10. By contrast, in

other statutes, Congress *has* incorporated [§ 9](#) to create a private right of action. See [5 U.S.C. § 580\(c\)](#). So, Congress knew how to create a private right of action in the [No Surprises Act] - and has done so elsewhere — but declined to do so." (cleaned up)). The No Surprises Act does not contemplate [*8] enforcement of IDR determinations through Section 9 of the FAA.

SpecialtyCare argues that confirmation of IDR determinations constitutes "judicial enforcement" as opposed to prohibited "judicial review" under the No Surprises Act. (See D.I. 18 at 4-5). That is a "distinction without difference." *Guardian Flight, 140 F.4th at 275* (rejecting identical argument because "[t]he term 'judicial review' is broad enough to include a court's order to enforce an IDR award"). And SpecialtyCare's reliance on *GPS* ignores the actual basis for jurisdiction in that case. (D.I. 18 at 5-6). Although the *GPS* court did enforce the IDR determination, the court "only had jurisdiction to confirm the award because the [plaintiff] attempted to vacate" the IDR determination under Section 10 of the FAA, thereby permitting "judicial review" under the No Surprises Act. *Mod. Orthopaedics of NJ v. Premiera Blue Cross, No. 2:25-CV-01087 (BRM) (JSA), 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *13 (D.N.J. Nov. 3, 2025)* (distinguishing *GPS*); see also *SpecialtyCare Inc. v. Meritain Health, Inc., C.A. No. 25-198-MN, 2026 U.S. Dist. LEXIS 26722, 2026 WL 353259, at *4 (D. Del. Feb. 9, 2026)* (same); *T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Ass'n, No. 25-CV-1255 (CS), 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *6 (S.D.N.Y. Dec. 5, 2025)* (same); *Drs. Ellis, Rohas, Ross & Debs, Inc v. UMR, Inc., No. 24-CV-20428, 2025 U.S. Dist. LEXIS 42045, 2025 WL 742761, at *3 n.2 (S.D. Fla. Mar. 9, 2025)* (same); *Med-Trans Corp. v. Cap. Health Plan, Inc., 700 F. Supp. 3d 1076, 1083-084 (M.D. Fla. 2023)* (same). Here, neither side seeks vacatur of the IDR determinations pursuant to Section 10 of the FAA

and, as such, *GPS* is inapplicable.²

Ultimately, the Court agrees with the many other district courts that have concluded IDR determinations under the No Surprises Act cannot be enforced pursuant to Section 9 of the FAA.³ The

² Similarly, SpecialtyCare's reliance on *Cheminova* is unavailing because that case involved a different statute (Federal Insecticide Fungicide and Rodenticide Act), and the court never analyzed whether Section 9 of the FAA could be used to enforce the arbitration awards contemplated by the statute. *Cheminova, 182 F. Supp. 2d at 73-77*. Instead, the court applied already existing arbitration law without specifically addressing the applicability of certain provisions of the FAA. See *id.*; see also *Worldwide Aircraft Servs. Inc. v. United Healthcare, No. 8:24-CV-2527-TPB-LSG, 2025 U.S. Dist. LEXIS 233132, 2025 WL 3312169, at *2 (M.D. Fla. Nov. 28, 2025)* (distinguishing *Cheminova*); *Med-Trans Corp., 700 F. Supp. 3d at 1084* (same).

³ *Specialtycare Inc. v. Aetna, Inc., No. 1:25-CV-224, 2025 U.S. Dist. LEXIS 264619, 2025 WL 3719227, at *2-3 (M.D. Pa. Dec. 23, 2025)*; *N. Jersey Neurosurgical Assocs. PA. v. Horizon Blue Cross Blue Shield of N.J., No. 25-12593 (SDW) (MAH), 2025 U.S. Dist. LEXIS 261572, at *1-2 (D.N.J. Dec. 18, 2025)*; *Neuromon Pros. LLC v. Aetna Life Ins. Co., No. 25-1701 (SDW) (JSA), 2025 U.S. Dist. LEXIS 261584 (D.N.J. Dec. 18, 2025)*; *Savalia v. Blue Shield of Cal. Life & Health Ins. Co., No. 8:25-cv-02031, 2025 U.S. Dist. LEXIS 261150, at *16 (C.D. Cal. Dec. 16, 2025)*; *Mitchell F. Reiter MD PC v. Horizon Blue Cross Blue Shield of New Jersey, No. 2:25-CV-12526 (WJM), 2025 U.S. Dist. LEXIS 253333, 2025 WL 3514300, at *3-5 (D.N.J. Dec. 8, 2025)*; *T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *4-7*; *Spiel, Md., PA v. Horizon Blue Cross Blue Shield of New Jersey, No. CV 25-14769 (SRC), 2025 U.S. Dist. LEXIS 234536, 2025 WL 3459719, at *4-6 (D.N.J. Dec. 2, 2025)*; *Tamagnini v. Horizon Blue Cross Blue Shield of New Jersey, No. CV 25-02022 (SRC), 2025 U.S. Dist. LEXIS 234534, 2025 WL 3459708, at *4-6 (D.N.J. Dec. 2, 2025)*; *Complete Med. Wellness LLC v. Horizon Blue Cross Blue Shield of New Jersey, No. CV 25-04177 (SRC), 2025 U.S. Dist. LEXIS 233638, 2025 WL 3443620, at *4-6 (D.N.J. Dec. 1, 2025)*; *Garden State Pain Mgmt. v. Horizon Blue Cross Blue Shield of New Jersey, No. CV 25-05679 (SRC), 2025 U.S. Dist. LEXIS 233633, 2025 WL 3443243, at *4-6 (D.N.J. Dec. 1, 2025)*; *Ne. Neurosurgical Assocs. v. Horizon Blue Cross Blue Shield of New Jersey, No. CV 25-06288 (SRC), 2025 U.S. Dist. LEXIS 231385, 2025 WL 3282210, at *4-6 (D.N.J. Nov. 25, 2025)*; *Freeman Pain Inst. P.A. v. Horizon Blue Cross Blue Shield of New Jersey, No. CV 25-02507 (SRC), 2025 U.S. Dist. LEXIS 230402, 2025 WL 3268289, at *4-6 (D.N.J. Nov. 24, 2025)*; *Phi Health, LLC v. Keating Auto Grp. Emp. Ben. Plan Tr., No. 4:24-cv-2832, 2025 WL 3618198, at *3-4 (S.D. Tex. Nov. 4, 2025)*, report and recommendation [*9] adopted sub nom. *Phi Health, LLC v. Entrust, LLC, No. CV H-24-2832, 2025 WL 3617339 (S.D. Tex. Dec. 11, 2025)*; *Mod. Orthopaedics, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *5-7*; *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross*

Court therefore recommends that Count I be dismissed.

B. Count II (Action for Non-Payment Under the No Surprises Act) and Count III (Implied Right of Action Under the No Surprises Act)

Counts II and III seek payment of amounts due under the IDR determinations and are premised solely on violations of the No Surprises Act. (D.I. 1 ¶¶ 38-47). Cigna argues that Counts II and III must be dismissed because the statute creates neither an express nor implied private right of action. (D.I. 16 at 8-12; D.I. 19 at 4-5). The Court agrees.

As an initial matter, there is no express private right of action to confirm IDR determinations under the No Surprises Act. See *Guardian Flight*, 140 F.4th at 275 ("[T]he NSA contains no express right of action to enforce or confirm an IDR award."). SpecialtyCare does not contend otherwise. (D.I. 18 at 9-12). Instead, SpecialtyCare appears to argue that the No Surprises Act creates an implied private right of action based on its provision that IDR determinations "shall be binding" and that payments pursuant to IDR determinations "shall be made" within thirty days. (*Id.* (quoting 42 U.S.C. §§ 300gg-111(c)(5)(E)(i)(I) & 300gg-112(b)(6) and relying upon Maine Cmty. Health Options v. United States, 590 U.S. 296, 301, 140 S. Ct. 1308, 206 L. Ed. 2d 764 (2020))).

In determining whether a private right of action exists under a federal statute, courts in the Third Circuit evaluate "(1) whether [*10] Congress intended to create a personal right in the plaintiff; and (2) whether Congress intended to create a personal remedy for that plaintiff." McGovern v. City of Philadelphia, 554 F.3d 114, 116 (3d Cir. 2009) (citing Alexander v. Sandoval, 532 U.S. 275, 286, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001) and Three Rivers Ctr. v. Hous. Auth. of the City of Pittsburgh, 382 F.3d 412, 421 (3d Cir. 2004)). A

plaintiff must demonstrate both elements are satisfied for a court to conclude that a federal statute creates an implied private right of action. McGovern, 554 F.3d at 116.

As to the first prong, the Court concludes that the "shall be binding" and "shall be made" language of the No Surprises Act creates a personal right for SpecialtyCare. See Mod. Orthopaedics, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *8-9 ("There is no plausible argument that Congress intended to allow insurers like [defendant] to simply ignore the 'binding' outcomes of the IDR. [Plaintiff] has a right to be paid. The question is whether the Court may properly enforce this right." (citation omitted)).

As to the second prong, however, the "robust system of administrative enforcement" provided by the No Surprises Act creates a "strong presumption" that Congress did not intend to create a personal remedy for SpecialtyCare. See *id.* at *9; see also Wisniewski v. Rodale, Inc., 510 F.3d 294, 305 (3d Cir. 2007). Indeed, Congress empowered the Department of Health and Human Services ("HHS") - not the courts — to "assess penalties against insurers for failure to comply" with the statute. *Guardian Flight*, 140 F.4th at 277 (discussing 42 U.S.C. § 300gg-22(b)(2)(A)); see also Mod. Orthopaedics, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *9-10 ("[T]he [*11] primary enforcement authority for the [No Surprises Act] lies with *state* administrative agencies. . . . However, in the event a State is unable, or unwilling, to enforce compliance with any part of the [No Surprises Act], the HHS may assume primary responsibility for enforcing the [No Surprises Act]."). That the No Surprises Act provides for state and HHS enforcement — while expressly prohibiting judicial review beyond petitions to vacate IDR determinations — demonstrates that SpecialtyCare has no personal remedy under the statute.⁴ See *Guardian Flight*,

Blue Shield of New Jersey, 790 F. Supp. 3d 129, 136-38 (E.D.N.Y. 2025).

⁴ SpecialtyCare's reliance on Maine Community Health Options v. United States, 590 U.S. 296, 140 S. Ct. 1308, 206 L. Ed. 2d 764

140 F.4th at 276 ("We will not find an implied right of action where Congress expressly forecloses it.").

Although the Third Circuit has not ruled on this particular issue, the Fifth Circuit has in the recent *Guardian Flight* decision. There, the plaintiff healthcare providers sued the defendant insurer for failure to timely pay IDR determination awards pursuant to the No Surprises Act, similarly asserting claims under the statute (and ERISA). See *Guardian Flight LLC v. Health Care Serv. Corp.*, 735 F. Supp. 3d 742, 748 (N.D. Tex. 2024). The district court dismissed all of plaintiffs' claims. *Id.* at 755. On appeal, the Fifth Circuit affirmed the dismissal, finding that the No Surprises Act does not provide an express or implied private right of action to confirm [*12] IDR determinations. *Guardian Flight*, 140 F.4th at 274-77.⁵ This Court ultimately finds persuasive and agrees with the Fifth Circuit and the vast majority of district courts that the No Surprises Act does not permit judicial enforcement of IDR determinations.⁶

(2020), is misplaced. (See D.I. 18 at 10). There, the statute at issue (Risk Corridors program of the Affordable Care Act) did not provide a similar enforcement mechanism for a plaintiff or include the same prohibition of judicial review. *Maine*, 590 U.S. at 309-11.

⁵ The Supreme Court recently denied certiorari. See *No. 25-441*, 223 L. Ed. 2d 509, 2026 WL 79855 (U.S. Jan. 12, 2026).

⁶ See *Guardian Flight*, 140 F.4th at 274-77; *Meritain Health*, 2026 U.S. Dist. LEXIS 26722, 2026 WL 353259, at *3-4; *Specialtycare*, 2025 U.S. Dist. LEXIS 264619, 2025 WL 3719227, at *2-3; *N. Jersey Neurosurgical Assocs.*, 2025 U.S. Dist. LEXIS 261572, at *1-2; *Neuromon*, 2025 U.S. Dist. LEXIS 261584; *Savalia*, 2025 U.S. Dist. LEXIS 261150, at *16; *Worldwide Aircraft Servs. Inc. v. Freedom Life Ins. Co. of Am.*, No. 8:25-cv-01158-WFJ-AEP, 2025 U.S. Dist. LEXIS 256246, 2025 WL 3551397, at *2-3 (M.D. Fla. Dec. 11, 2025); *Reiter*, 2025 U.S. Dist. LEXIS 253333, 2025 WL 3514300, at *3-5; *T.V. Seshan*, 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *7-9; *Spiel*, 2025 U.S. Dist. LEXIS 234536, 2025 WL 3459719, at *6-8; *Tamagnini*, 2025 U.S. Dist. LEXIS 234534, 2025 WL 3459708, at *6-7; *Complete Med. Wellness*, 2025 U.S. Dist. LEXIS 233638, 2025 WL 3443620, at *6-8; *Garden State Pain Mgmt.*, 2025 U.S. Dist. LEXIS 233633, 2025 WL 3443243, at *6-8; *Worldwide Aircraft*, 2025 U.S. Dist. LEXIS 233132, 2025 WL 3312169, at *1-2; *Ne. Neurosurgical Assocs.*, 2025 U.S. Dist. LEXIS 231385, 2025 WL 3282210, at *6-8; *Freeman*, 2025 U.S. Dist. LEXIS 230402, 2025 WL 3268289, at *6-8; *Phi Health*, 2025 WL 3618198, at *2-3; *Mod. Orthopaedics*, 2025 U.S. Dist. LEXIS

The Court is aware that at least one district court has found that IDR determinations under the No Surprises Act can be enforced through the courts. See *Guardian Flight LLC v. Aetna Life Ins. Co.*, 789 F. Supp. 3d 214 (D. Conn. 2025) ("Aetna"). In reaching that conclusion, the Aetna court reasoned that, without judicial confirmation, "IDR determinations would be effectively unenforceable." *Id.* at 228. But that rationale ignores the enforcement mechanisms expressly provided by the No Surprises Act. See, e.g., 42 U.S.C. § 300gg-22; see also *Mod. Orthopaedics*, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *9-10; see also *Guardian Flight*, 140 F.4th at 277 (summarizing administrative remedies offered by No Surprises Act to enforce IDR determinations).⁷ Moreover, Aetna apparently "stands alone." *Meritain Health*, 2026 U.S. Dist. LEXIS 26722, 2026 WL 353259, at *4; see also *Guardian Flight*, 140 F.4th at 276 n.5 (Fifth Circuit disagreeing with Aetna based on the "plain text and structure" of the No Surprises Act).

The overwhelming weight of authority to address this issue has concluded that out-of-network providers cannot turn to the courts to enforce IDR determinations rendered under the No Surprises Act. Even if SpecialtyCare would prefer a different mechanism, "the wisdom [*13] of Congress's policy choice is beyond our judicial ken." *Guardian Flight*, 140 F.4th at 277. Because the No Surprises Act does not create an express or implied private right of action to enforce IDR determinations, the Court recommends that Counts II and III be dismissed.

215824, 2025 WL 3063648, at *7-14; *Farkas*, 790 F. Supp. 3d at 136-38.

⁷ Acknowledging the "conflict" between its decision and the Fifth Circuit's, the District of Connecticut has recently noted that "[i]t is possible I would have reached a different conclusion" had 42 U.S.C. § 300gg-22 been briefed. See *Guardian Flight LLC v. Aetna Life Ins. Co.*, No. 3:24-cv-00680-MPS, 789 F. Supp. 3d 214. Notably, no federal court has followed the District of Connecticut in finding jurisdiction to enforce IDR determinations where no party seeks vacatur.

C. Count IV (Improper Denial of Benefits Under ERISA)

In Count IV, SpecialtyCare alleges that it has been assigned the right to benefits (and payments) by Cigna's members and insureds and, as such, the amounts due under the IDR determinations are owed to SpecialtyCare as an ERISA beneficiary. (D.I. 1 ¶¶ 48-56). Cigna argues that SpecialtyCare's ERISA claim should be dismissed because the Complaint fails to plausibly allege that SpecialtyCare was assigned benefits under the plans and that, even if plausibly alleged, SpecialtyCare does not have derivative standing because the plan beneficiaries did not suffer any concrete injury. (D.I. 16 at 12-16; D.I. 19 at 5-7). In SpecialtyCare's view, the Complaint contains sufficient factual allegations that benefits were assigned to SpecialtyCare and that Cigna's non-payment "give[s] rise to a wrongful denial of benefits claim" under ERISA. (D.I. 18 at 12-16). The Court ultimately agrees with Cigna that SpecialtyCare [*14] lacks standing to sue under ERISA for failure to pay the amounts due under the IDR determinations.

Healthcare providers "may obtain standing to sue" under ERISA "by assignment from a plan participant." CardioNet, Inc. v. Cigna Health Corp., 751 F.3d 165, 176 n.10 (3d Cir. 2014); N. Jersey Brain & Spine Ctr. v. Aetna, Inc., 801 F.3d 369, 372 (3d Cir. 2015). But the plan participants must have suffered a concrete injury for the provider to have standing as assignee. See Guardian Flight, 140 F.4th at 278; see also Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens, 529 U.S. 765, 773 (2000), 120 S. Ct. 1858, 146 L. Ed. 2d 836 ("[T]he assignee of a claim has standing to assert the injury in fact suffered by the assignor."); CardioNet, 751 F.3d at 178 ("It is a basic principle of assignment law that an assignee's rights derive from the assignor."). By design, the No Surprises Act shields plan participants from the out-of-network costs that are the subject of this lawsuit; in other words, the outcome of this dispute

will not affect the plan participants in any way. See Mod. Orthopaedics, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *8-9 ("The [No Surprises Act] protects patients by relieving them of liability to pay for the procedure beyond their ordinary in-network insurance payments and instead has the provider and the insurer negotiate or dispute the proper payment among themselves."). The plan participants have no real interest in the outcome of this case.

Because the plan participants lack a "concrete stake in this lawsuit," even as a purported assignee, SpecialtyCare similarly [*15] lacks the Article III standing necessary to bring an ERISA claim. See Guardian Flight, 140 F.4th at 278 ("[B]ecause the beneficiaries would lack Article III standing if they brought an ERISA claim on their own, Providers lack standing to bring a derivative ERISA claim as their assignees."); see also Thole v. U. S. Bank N.A., 590 U.S. 538, 541, 140 S. Ct. 1615, 207 L. Ed. 2d 85 (2020) ("If Thole and Smith were to *lose* this lawsuit, they would still receive the exact same monthly benefits that they are already slated to receive, not a penny less. If Thole and Smith were to *win* this lawsuit, they would still receive the exact same monthly benefits that they are already slated to receive, not a penny more. . . . Because the plaintiffs themselves have no concrete stake in the lawsuit, they lack Article III standing."). None of the cases cited by SpecialtyCare compel a different result. (See D.I. 18 at 12-16). Even if SpecialtyCare had plausibly alleged that it received assignment of member benefits, such an assignment would not confer Article III standing to sue an insurer for failure to pay amounts due under the IDR determinations. See Guardian Flight, 140 F.4th at 278. The Court therefore recommends that the ERISA claim (Count IV) be dismissed.

D. Count V (Open Account), Count VI (Bad Faith) and Count VII (Unjust Enrichment)

In Counts V, VI and VII, SpecialtyCare asserts [*16] several causes of action arising under

2026 U.S. Dist. LEXIS 34911, *16

Delaware law. (D.I. 1 ¶¶ 57-77). Because SpecialtyCare and Cigna are both Delaware corporations (*id.* ¶¶ 8-9), jurisdiction over the state law claims cannot be based on diversity jurisdiction. See *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 419 (3d Cir. 2010) ("Complete diversity requires that, in cases with multiple plaintiffs or multiple defendants, no plaintiff be a citizen of the same state as any defendant."); see also 28 U.S.C. §§ 1332(a)(1) & 1332(c)(1). Recognizing this, SpecialtyCare alleges that this Court has jurisdiction over the state law claims based on supplemental jurisdiction under 28 U.S.C. § 1367(a). (D.I. 1 ¶ 10).

Supplemental jurisdiction permits federal courts to adjudicate claims that would otherwise lack federal subject matter jurisdiction. Specifically, a district court having original jurisdiction in a civil action may exercise such supplemental jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III." 28 U.S.C. § 1367(a). A district court may decline to exercise supplemental jurisdiction over claims for several reasons, including where "the district court has dismissed all claims over which it has original jurisdiction." *Id.* § 1367(c)(3); see also [*17] *Figueroa v. Buccaneer Hotel Inc.*, 188 F.3d 172, 181, 41 V.I. 502 (3d Cir. 1999).

As set forth above, the Court recommends dismissal of all of SpecialtyCare's federal claims. In such a situation, the exercise of supplemental jurisdiction is not automatic; instead, the Court has discretion to decide whether to exercise such jurisdiction over the state law claims. SpecialtyCare has not raised — and the Court has not identified — any considerations of judicial economy, convenience or fairness to the parties that would justify such exercise. *Borough of W. Mifflin v. Lancaster*, 45 F.3d 780, 788 (3d Cir. 1995) ("[W]here the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendent state claims unless considerations of judicial

economy, convenience, and fairness to the parties provide an affirmative justification for doing so."). This case is in its infancy; without the federal claims, the state law claims should be dismissed. See *Humana, Inc. v. St. Jude Med., LLC, C.A. No. 20-1032-SB*, 2020 U.S. Dist. LEXIS 231796, 2020 WL 7264161, at *4 (D. Del. Oct. 12, 2020) (Bibas, J., sitting by designation) (after dismissing federal claims, declining to exercise supplemental jurisdiction "[b]ecause this case has just begun [and] there is no good reason to keep the state claims in federal court"). The Court thus recommends that Counts V-VII be dismissed.

IV. CONCLUSION

For the foregoing reasons, [*18] the Court recommends that Cigna's motion to dismiss (D.I. 15) be GRANTED.

This Report and Recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B), *Federal Rule of Civil Procedure 72(b)(1)* and District of Delaware Local Rule 72.1. Any objections to the Report and Recommendation shall be limited to ten (10) pages and filed within fourteen (14) days after being served with a copy of this Report and Recommendation. See *Fed. R. Civ. P. 72(b)(2)*. Any responses to the objections shall be limited to ten (10) pages and filed within fourteen (14) days after the objections. The failure of a party to object to legal conclusions may result in the loss of the right to *de novo* review in the District Court. See *Sincavage v. Barnhart*, 171 F. App'x 924, 925 n.1 (3d Cir. 2006); *Henderson v. Carlson*, 812 F.2d 874, 878-79 (3d Cir. 1987).

The parties are directed to the court's "Standing Order for Objections Filed Under *Fed. R. Civ. P. 72*," dated March 7, 2022, a copy of which is available on the court's website, <https://www.ded.uscourts.gov>.

Dated: February 20, 2026

/s/ Eleanor G. Tennyson

2026 U.S. Dist. LEXIS 34911, *18

UNITED STATES MAGISTRATE JUDGE

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EXHIBIT 8



Cited

As of: April 3, 2026 7:50 PM Z

[Axis Neuromonitoring, LLC v. Aetna Inc.](#)

United States District Court for the District of Connecticut

March 20, 2026, Decided; March 20, 2026, Filed

3:25-CV-01048 (SVN)

Reporter

2026 U.S. Dist. LEXIS 61210 *; 2026 LX 156375; __ F.Supp.3d __; 2026 WL 795260

AXIS NEUROMONITORING, LLC, Petitioner, v. AETNA INC., KELSEY SEYBOLD MEDICAL GROUP, PLLC, Respondents.

Counsel: [*1] For Aetna Inc., Kelsey Seybold Medical Group, PLLC, Respondents: Adam J. Pettitt, LEAD ATTORNEY, Robinson&Cole LLP, Stamford, CT USA; Scott T. Garosshen, LEAD ATTORNEY, Robinson & Cole LLP, Hartford, CT USA.

Judges: SARALA V. NAGALA, UNITED STATES DISTRICT JUDGE.

Opinion by: SARALA V. NAGALA

Opinion

ORDER DISMISSING PETITION TO CONFIRM

Sarala V. Nagala, United States District Judge.

Petitioner Axis Neuromonitoring, LLC ("Axis") petitions this Court to confirm an Independent Dispute Resolution ("IDR") award issued pursuant to the federal No Surprises Act ("NSA"). Axis alleges that Respondents Kelsey Seybold Medical Group, PLLC ("Kelsey") and Aetna Inc. ("Aetna") owe a payment to Axis pursuant to the IDR award, and asks the Court to issue an order compelling Respondents to pay pursuant to Section 9 of the Federal Arbitration Act ("FAA"). See Compl. & Pet., ECF No. 1. Kelsey and Aetna oppose the

petition to confirm, arguing that Axis has no standing to bring the petition and, in any event, that there exists no right of action to confirm an IDR award under § 9 of the FAA. See Aetna Opp. to Pet., ECF No. 15; Kelsey Opp. to Pet., ECF No. 46. Aetna further opposes the petition on the grounds that it is not a proper party to the IDR award. ECF No. 15 at 8. Kelsey, for its part, asserts [*2] that this Court lacks personal jurisdiction to issue an order compelling payment. ECF No. 46 at 4-6. For the reasons described below, the petition is DISMISSED for lack of subject matter jurisdiction.

I. FACTUAL BACKGROUND

A. The NSA

In 2020, Congress passed the NSA "to address the issue of patients facing unexpected—and often exceedingly large—medical bills after they received treatment from out-of-network providers." Neurological Surgery Prac. of Long Island, PLLC v. United States Dep't of Health & Hum. Servs., 145 F.4th 212, 219 (2d Cir. 2025). The NSA prohibits out-of-network providers from directly billing insured patients for certain services. *Id.* Instead, the provider is required to request payment from the patient's healthcare plan, which in turn determines how much it is willing to pay for the provider's services. *Id.* "If the provider and healthcare plan cannot agree on a reimbursement amount, the Act provides for an IDR process in which a private third-party arbitrator . . . selects between amounts submitted by the parties." *Id.* The NSA directs the Secretaries of Labor, Treasury, and

the Department of Health and Human Services to "certify" independent entities with "sufficient medical, legal, and other expertise" to serve as IDR entities. See [42 U.S.C. § 300gg-111\(c\)\(4\)\(A\)](#); [T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Ass'n, No. 25-CV-1255 \(CS\), 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *3 \(S.D.N.Y. Dec. 5, 2025\)](#) ("T.V. Seshan").

In the absence of fraud or misrepresentation [*3] of facts in the IDR process, the IDR decision is "binding upon the parties involved." [42 U.S.C. § 300gg-111\(c\)\(5\)\(E\)](#). A health care plan must pay any compensation ordered in the IDR award within 30 days of the decision. [Neurological Surgery Prac. of Long Island, PLLC, 145 F.4th at 220](#) (citing [Neurological Surgery Prac. of Long Island, PLLC v. United States Dep't of Health & Hum. Servs.](#), 682 F. Supp. 3d 249, 255 (E.D.N.Y. 2023)).

IDR awards are "not . . . subject to judicial review, except in a case described in any of [paragraphs \(1\) through \(4\) of section 10\(a\)](#)" of the FAA. See [id. at 219](#); [42 U.S.C. § 300gg-111\(c\)\(5\)\(E\)](#). [Section 10\(a\) of the FAA](#), in turn, provides for vacatur of arbitration awards by district courts in four limited circumstances involving fraud by the parties, bias or misconduct on the part of the arbitrators, or awards that are not legally valid because the arbitrators exceeded their powers or "so imperfectly executed them" that a final award was not made. [9 U.S.C.A. § 10\(a\)](#).

B. The IDR Award and Axis's Petition

Axis is a medical provider that provides intraoperative monitoring services. ECF No. 1 ¶ 2. After rendering these services, Axis submits claims for reimbursement to insurance companies. *Id.* ¶ 12. Here, Axis alleges that Aetna and Kelsey have underpaid it for unspecified services rendered. *Id.* ¶ 13. In an effort to resolve the payment dispute without litigation, Axis attempted to engage in an open negotiation process under the NSA, but Aetna and Kelsey either failed to participate or provide the additional payment to which [*4] Axis believed it was entitled. *Id.* ¶¶ 14-15. Axis alleges that it

prevailed against Aetna and Kelsey in an IDR process, and attaches an IDR award in support of its petition. *Id.* ¶¶ 16-17; ECF No. 1-1 at 1-3.

According to the IDR award attached to the Petition, the IDR entity Federal Hearings and Appeals Services, Inc. reviewed a dispute between "Crystal Carpenter CNIM" and Kelsey Seybold Medical Group, PLLC, and "determined that Crystal Carpenter CNIM is the prevailing party." ECF No. 1-1 at 1. The IDR entity further determined that "the out-of-network payment amount of \$8,800.00 offered by Crystal Carpenter CNIM is the appropriate out-of-network rate for the item or service . . . under this dispute." *Id.* In its petition, Axis does not allege the connection, if any, between Crystal Carpenter CNIM and itself. Nor does it explain why it has chosen to name Aetna as a respondent where Aetna is not named in the IDR award.

Following the issuance of the IDR award, Axis took steps to facilitate Aetna and Kelsey's payment of the outstanding amount, including sending formal demand letters, making direct outreach through phone calls, emails, and provider portals, and filing regulatory complaints [*5] with the Centers for Medicare & Medicaid Services. ECF No. 1 ¶ 19. Despite these efforts, Aetna and Kelsey have not provided payment. *Id.* ¶ 20. Axis thus filed the instant complaint and petition, asserting one cause of action under [9 U.S.C. § 9](#) entitled "Confirmation of Arbitration Award." *Id.* ¶¶ 21-25. Axis claims jurisdiction is proper in federal court "as this action is brought pursuant to several federal statutes, including the [NSA], and pursuant to [9 U.S.C. § 9](#) regarding confirmation of arbitration awards." *Id.* ¶ 9. Axis claims that it is entitled, among other things, to an entry of judgment against Kelsey and Aetna for "all unpaid amounts." *Id.* at 5-6.

Aetna and Kelsey oppose the petition, asserting that dismissal is warranted because Axis does not have standing to enforce the award since it is not named therein and, in any event, the NSA does not allow

petitions to confirm IDR awards under [9 U.S.C. § 9](#). Aetna Opp. to Pet., ECF No. 15 at 8-13; Kelsey Opp. to Pet., ECF No. 46 at 11-18. Aetna further argues that it was not a party to the arbitration and thus is not a proper party to these confirmation proceedings. ECF No. 15 at 8-9. Kelsey, for its part, asserts that it is not subject to personal jurisdiction in [*6] Connecticut. ECF No. 46 at 9-11.

Respondents did not move to dismiss the petition on the basis of lack of subject matter jurisdiction. The Court raised the issue of subject matter jurisdiction *sua sponte* in advance of oral argument, given that the Court has an independent obligation to satisfy itself of jurisdiction. *See* Order, ECF No. 52 (citing [Stafford v. Int'l Bus. Machines Corp.](#), [78 F.4th 62, 68 \(2d Cir. 2023\)](#)). At oral argument, Respondents appeared to suggest that they did not raise a defense of lack of subject matter jurisdiction because Petitioner would simply be able to refile in state court if the federal court were to dismiss the complaint on that basis. *See* Tr., ECF No. 54 at 9.

II. LEGAL STANDARD

The Federal Rules of Civil Procedure provide that, if the Court determines at any time that it lacks subject matter jurisdiction, it must dismiss the action. [Fed. R. Civ. P. 12\(h\)\(3\)](#). In order for this Court to exercise subject matter jurisdiction, either (1) the plaintiff must set forth a colorable claim arising under the U.S. Constitution or a federal statute, thus invoking this Court's federal question jurisdiction under [28 U.S.C. § 1331](#); or (2) there must be complete diversity of citizenship between the plaintiff and the defendant and the amount in controversy must exceed \$75,000 under [*7] [28 U.S.C. § 1332](#). *See* [DaSilva v. Kinsho Int'l Corp.](#), [229 F.3d 358, 363 \(2d Cir. 2000\)](#).

Subject matter jurisdiction can never be forfeited or waived. [Stafford](#), [78 F.4th at 68](#) (citing [Arbaugh v. Y&H Corp.](#), [546 U.S. 500, 514, 126 S. Ct. 1235, 163 L. Ed. 2d 1097 \(2006\)](#) and [Melito v. Experian](#)

[Mktg. Sols., Inc.](#), [923 F.3d 85, 92 \(2d Cir. 2019\)](#)). Where a district court lacks the statutory or constitutional power to adjudicate a case, dismissal for lack of subject matter jurisdiction is appropriate. [Makarova v. United States](#), [201 F.3d 110, 113 \(2d Cir. 2000\)](#).

Because the Court finds it lacks subject matter jurisdiction, it need not delve into the applicable legal standards relevant to Respondents' other arguments regarding whether Axis, and Aetna are proper parties to the IDR proceedings or to this dispute and whether the Court has personal jurisdiction over Kelsey. To the extent Respondents present their arguments about the applicability of [§ 9](#) as motions to dismiss for failure to state a claim, the Court likewise does not reach them.

III. DISCUSSION

A. Subject Matter Jurisdiction

The Court concludes that it lacks subject matter jurisdiction over the petition. As the amount in controversy is under \$8,800 and is thus undisputedly insufficient to support the exercise of diversity jurisdiction, *see* [28 U.S.C. § 1332\(a\)](#), the Court has subject matter jurisdiction only if the petition raises a federal question. Axis asserts that subject matter jurisdiction arises under "several federal statutes, including the *No Surprises Act* . . . [*8] . . . and [9 U.S.C. § 9](#)." *See* ECF No. 1 ¶ 9. The Court disagrees.

"Applications to confirm, vacate, or modify arbitral awards [under the FAA] . . . 'do not themselves support federal jurisdiction.'" [Stafford](#), [78 F.4th at 68](#) (citing [Badgerow v. Walters](#), [596 U.S. 1, 8, 142 S. Ct. 1310, 212 L. Ed. 2d 355 \(2022\)](#)); [Trs. of New York State Nurses Ass'n Pension Plan v. White Oak Glob. Advisors, LLC](#), [102 F.4th 572, 596 \(2d Cir. 2024\)](#) ("*White Oak*") (An "action to enforce an arbitration contract through confirmation of its resulting award ordinarily does not arise under federal law."); *see also* [Badgerow](#), [596 U.S. at 18](#) (recognizing that the application to confirm the

arbitration award "concerns the contractual rights provided in the arbitration agreement, generally governed by state law," which "typically belong[] in state courts"). In *Badgerow*, the U.S. Supreme Court held that applications to confirm arbitration awards under *Section 9 of the FAA* are not subject to the "look-through" approach to federal jurisdiction, where a federal court determines its jurisdiction by examining whether the underlying substantive controversy arises under federal law. *Badgerow*, 596 U.S. at 10-12. Rather, for petitions to confirm arbitration awards brought under *§ 9 of the FAA*, a "jurisdictional basis independent of the FAA must appear on 'the face of the application itself.'" *White Oak*, 102 F.4th at 584 (quoting *Badgerow*, 596 U.S. at 9); see also *Badgerow*, 596 U.S. at 9 (jurisdiction over a petition exists only if the "face of the application" shows that "federal law (beyond *Section 9* or *10* [of the FAA] itself) entitles the [*9] applicant to relief"). In short, the Court may not examine the "underlying substantive dispute" to locate a "federal hook." *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of New Jersey*, 790 F. Supp. 3d 129, 133 (E.D.N.Y. 2025) ("*Farkas*").

White Oak applied *Badgerow*'s prohibition on using the look-through jurisdictional approach in a case involving a petition to confirm an arbitration award obtained by a pension plan against its investment manager. The underlying claims in that arbitration alleged violations of the *Employee Retirement Income Security Act ("ERISA")*, but the Second Circuit recognized the underlying claims could not form the basis of federal jurisdiction over the petition to confirm the award, as that would violate *Badgerow*. See *White Oak*, 102 F.4th at 594-95. *White Oak* also recognized that "an action to enforce an arbitration contract through confirmation of its resulting award ordinarily does not arise under federal law," *id.* at 596, but concluded that the *particular* arbitration agreement between the pension plan and the investment manager presented an exception to that general rule because ERISA, a federal law, "itself create[d] a cause of action to confirm an arbitration award

under the specific circumstances" of that case. *Id.* at 595, 597, 605.

Importantly, both *Badgerow* and *White Oak* examined *contractual* agreements to arbitrate. So the Court must first assess how these cases apply to the present petition, if at all. [*10]

I. Lack of an Agreement to Arbitrate

As explained in *Farkas*, *Badgerow* and the Second Circuit's jurisdictional finding in *White Oak* do not squarely map onto motions to enforce IDR awards issued under the NSA because both *Badgerow* and *White Oak* involved petitions to confirm arbitral awards that were issued pursuant to contractual agreements to arbitrate. See *Farkas*, 790 F. Supp. 3d at 135-36; *Badgerow*, 596 U.S. at 5. Here, by contrast, the IDR award arises from a statutory framework providing that the medical entity may submit the billing dispute to IDR, rather than from any agreement or contract between the parties to arbitrate their dispute. See *Neurological Surgery Prac. of Long Island, PLLC*, 145 F.4th at 219; 42 U.S.C. § 300gg-111(c)(1)(B) (noting that, if open negotiations fail to determine the amount of a payment, the provider may "initiate the independent dispute resolution process under *paragraph (2)*"). In *White Oak*, the Second Circuit did not reach the question of whether a contract governed exclusively by federal law would alone be sufficient to establish jurisdiction, since it "locate[d] federal jurisdiction on the narrower grounds" that ERISA itself contemplates enforcement of a petition to confirm an arbitral award. *White Oak*, 102 F.4th at 600, *id.* at 600 n.10. So it remains an open question whether a contract governed by federal law would alone be sufficient to support jurisdiction. But here, as there is no agreement [*11] between the parties *at all*, the Court cannot find a source of jurisdiction grounded in any "federal contractual rights," in any event. See *Farkas*, 790 F. Supp. 3d at 136.

2. Cause of Action

Setting aside the issue of lack of a contract, [White Oak](#) also held that "for jurisdiction to be proper, the petition to confirm must state a cause of action contained within ERISA or another federal statute" that "contemplates enforcement of a petition to confirm an arbitral award." [White Oak, 102 F.4th at 600](#); see also [Farkas, 790 F. Supp. 3d at 136](#). Thus, the Court examines whether the petition here does so.

The petition alleges only one cause of action under [Section 9](#). Under [Badgerow](#), the Court cannot "look through" the petition to the underlying statute (here, the NSA) to locate a jurisdictional hook. See [Badgerow, 596 U.S. at 11](#); see also [Mod. Orthopaedics of Nj. v. Premera Blue Cross, No. 2:25-CV-1087 \(BRM\) \(JSA\), 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *7 \(D. N.J. Nov. 3, 2025\)](#) ("[L]ooking through the claim to enforce an arbitration award and determining jurisdiction on the basis of the arbitration is the very type of 'look through' jurisdiction the Supreme Court rejected in [Badgerow](#)"). But to the extent [White Oak](#) suggests the need for an inquiry into whether the petition to confirm "states a cause of action contained within ERISA or another federal statute" that contemplates enforcement of a petition to confirm an arbitral award, [White Oak, 102 F.4th at 600](#), the Court addresses the parties' arguments concerning [*12] whether the NSA creates an express or implicit private right of action enforceable through the present petition (or any anticipated amended petition that might allege a standalone NSA claim). See [Farkas, 790 F. Supp. 3d at 136-37](#). It concludes the NSA contains neither.

a. No Express Private Right of Action

First, the Court concludes there is no express private right of action in the NSA.

The NSA explicitly states that an IDR award "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\(c\)\(5\)\(E\)](#)); see [Farkas, 790 F. Supp. 3d at 136](#) (quoting [Guardian Flight L.L.C. v. Health Care Serv. Corp., 140 F.4th 271, 274 \(5th Cir. 2025\)](#) ("[Guardian Flight](#)"). [Section 10\(a\)](#) governs *vacatur*, not confirmation, of arbitration awards. Any reference to [§ 9](#), which governs confirmation of arbitration awards, is conspicuously missing. Thus, the NSA clearly does not contemplate an express private right of action to enforce or confirm an IDR award. See [Farkas, 790 F. Supp. 3d at 138](#) (quoting [Guardian Flight, 140 F.4th at 275](#) ("The NSA expressly *bars* judicial review of IDR awards *except* as to the specific provisions borrowed from the FAA") (emphases in original)); see also, e.g., [SpecialtyCare Inc. v. Aetna, Inc., No. 1:25-CV-224, 2025 U.S. Dist. LEXIS 264619, 2025 WL 3719227, at *2 \(M.D. Pa. Dec. 23, 2025\)](#) (recognizing that "the NSA does not create an explicit cause of action to enforce IDR awards").

And this Court sees little reason to find that Congress intended to create a [§ 9](#) exception to the NSA's general prohibition on judicial review, because [*13] "when Congress has sought to incorporate [§ 9](#), it has done so explicitly." [T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *6](#) (quoting, for example, [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 title 9](#).")); see also [Med-Trans Corp. v. Cap. Health Plan, Inc., 700 F. Supp. 3d 1076, 1084 \(M.D. Fla. 2023\)](#) ("Interpretation of statutes is guided by the text. Neither the NSA nor the FAA says that the FAA bears on the NSA outside the four explicitly incorporated paragraphs. The Court will not assume otherwise."), *aff'd sub nom.* [Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc., 160 F.4th 1110 \(11th Cir. 2025\)](#); [Mitchell F. Reiter Md. PC v. Horizon Blue Cross Blue Shield of N.J., No. 2:25-CV-12526 \(WJM\), 2025 U.S. Dist. LEXIS 253333, 2025 WL 3514300, at *45 \(D.N.J. Dec. 8, 2025\)](#); [SpecialtyCare, Inc. v. UMR, Inc., No. 24-1396-RGA, 2026 U.S. Dist. LEXIS 34914, 2026 WL 483233, at *3 \(D. Del. Feb. 20, 2026\)](#) ("The No Surprises Act does not contemplate enforcement of

IDR determinations through [Section 9 of the FAA](#)"); [Mod. Orthopaedics of NJ., 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *5](#).

Accordingly, there is no explicit private right of action in the NSA.

b. No Implied Private Right of Action

Nor does the NSA create an implied private right of action.

Where a statute contains no express private right of action, courts presume that Congress did not intend to create one. [Bellikoff v. Eaton Vance Corp., 481 F.3d 110, 116 \(2d Cir. 2007\)](#); see [Olmsted v. Pruco Life Ins. Co. of New Jersey, 283 F.3d 429, 432 \(2d Cir. 2002\)](#) (a court "cannot ordinarily conclude that Congress intended to create a right of action when none was explicitly provided"). This "strong" presumption "places a heavy burden on the [petitioner] to demonstrate otherwise." See [Touche Ross & Co. v. Redington, 442 U.S. 560, 571, 99 S. Ct. 2479, 61 L. Ed. 2d 82 \(1979\)](#) ("[I]mplying a private right of action on the basis of congressional silence is a hazardous enterprise, at best.").

To determine whether a federal [*14] statute creates an implied right of action, courts consider whether the statute displays "an intent to create not just a private right but also a private remedy." [T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382 at *7](#) (quoting [Republic of Iraq v. ABB AG, 768 F.3d 145, 170 \(2d Cir. 2014\)](#)). First, the court considers "whether the statute uses 'rights-creating' language, meaning language that focus[es] on . . . the individuals protected rather than the person regulated." [Murphy Med. Assocs., LLC v. Yale Univ., 120 F.4th 1107, 1112 \(2d Cir. 2024\)](#) (internal quotation marks omitted) (quoting [Alexander v. Sandoval, 532 U.S. 275, 288-89, 121 S. Ct. 1511, 149 L. Ed. 2d 517 \(2001\)](#)). Next, the court considers "whether the statute's methods of enforcement 'manifest an intent to create a private remedy,' as opposed to 'empower[ing] agencies to enforce their regulations.'" *Id.* (quoting [Alexander, 532 U.S. at 289](#)). "Generally, '[t]he express

provision of one method of enforcing a substantive rule,' such as through an agency proceeding, 'suggests that Congress intended to preclude others,' like a private cause of action." *Id.* (quoting [Alexander, 532 U.S. at 290](#)).

As to the first factor, the Court acknowledges that the NSA "uses 'rights-creating' language," suggestive of an implied right of action. See [Murphy Med. Assocs., LLC, 120 F.4th at 1112](#). Specifically, it provides that IDR awards are automatically "binding upon the parties involved." [42 U.S.C. § 300gg-111\(c\)\(5\)\(E\)](#). It also explicitly names the medical provider as "the beneficiary of the non-prevailing party's payment obligations," [*15] indicating a statutory focus on the protected medical provider. See [T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *7](#) (citing [Guardian Flight LLC v. Aetna Life Ins. Co., 789 F. Supp. 3d 214, 226 \(D. Conn. 2025\)](#) ("Aetna")).

Nevertheless, the remainder of the statute, including its provision of alternative methods of enforcement, evinces Congressional intent *not* to create a judicial remedy. First, the legislative decision to permit petitions brought under [§ 10\(a\) of the FAA](#), but not [§ 9](#), suggests that Congress did not intend for federal courts to become involved with the enforcement of IDR awards—as compared to *vacatur* of them. See, e.g., [SpecialtyCare, Inc., 2026 U.S. Dist. LEXIS 34914, 2025 WL 3719227, at *2](#) ("Congress made a clear choice to allow parties the opportunity to vacate IDR awards per [Section 10 of the FAA](#), but not to confirm them under [Section 9](#). As other courts have found, this is convincing evidence Congress did not wish to create a private remedy to enforce an IDR award.") (citing [Guardian Flight, 140 F.4th at 276-77](#), and [Mod. Orthopaedics, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *9](#)); [Russello v. United States, 464 U.S. 16, 23, 104 S. Ct. 296, 78 L. Ed. 2d 17 \(1983\)](#) (noting that "Congress acts intentionally and purposely in the disparate inclusion or exclusion" of statutory language).

Second, the statute provides for alternative enforcement mechanisms, suggesting Congress chose agency enforcement, not litigation, as the tool for enforcing IDR awards. *T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *8* (citing *Alexander, 532 U.S. at 290*). Specifically, the NSA instructs federal agencies to exercise oversight over the IDR process, provides for state oversight over insurers, [*16] and includes a mechanism by which the Department of Health and Human Services may assess penalties against insurers for failure to comply with IDR awards. See *Guardian Flight, 140 F.4th at 277* (citing *42 U.S.C. § 300gg-22(b)(2)(A)*); *Mod. Orthopaedics of NJ, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *9-12* (describing administrative remedies under the statute); *T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *8* ([T]he mere presence of agency enforcement creates a strong presumption against implied private rights of action") (internal quotation omitted).

The Court thus concludes, as have most courts to consider the issue, that the NSA does not create an implied right of action. See, e.g., *Guardian Flight, 140 F.4th at 276* ("We will not find an implied right of action where Congress expressly forecloses it."); *Connecticut Gen. Life Ins. Co. v. East Coast Advanced Plastic Surgery, LLC, No. 25 Civ. 1686 (PAE) (PAE), 2026 U.S. Dist. LEXIS 38843, 2026 WL 518442, at *7 (S.D.N.Y. Feb. 24, 2026)* (citing *E. Coast Advanced Plastic Surgery, LLC v. CIGNA Health & Life Ins. Co., No. 25-CV-1686 (PAE), 2025 U.S. Dist. LEXIS 157911, 2025 WL 2371537, at *17 (S.D.N.Y. Aug. 14, 2025)*) (stating it "join[ed] the substantial majority of courts to consider the issue" in finding that "the NSA does not contain an express or implied right of action"); *Mod. Orthopaedics of NJ, 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *8 (D. N.J. Nov. 3, 2025)*; *Mitchell F. Reiter Md. PC, 2025 U.S. Dist. LEXIS 253333, 2025 WL 3514300, at *4-5* (collecting cases); *T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *8*; *Farkas, 790 F. Supp. 3d at 136-37*; *Ne. Neurosurgical Assocs. v. Horizon Blue Cross Blue Shield of New*

*Jersey, No. CV 25-06288 (SRC), 2025 U.S. Dist. LEXIS 231385, 2025 WL 3282210, at *6 (D.N.J. Nov. 25, 2025)* ("[The NSA's] bar on judicial review strongly suggests Congress did not insert a private right of action into the statute.")

Axis argues that Chief Judge Shea's decision in *Aetna* supports a contrary view that should guide the Court here. In *Aetna*, Judge Shea found that the NSA created a private cause of action to enforce IDR awards, in part because the statutory administrative remedies raised by [*17] the parties were insufficient to hold insurers accountable for untimely payments. *789 F. Supp. 3d at 227-28*. This Court—along with the vast majority of district courts to consider the issue—respectfully disagrees with *Aetna* to the extent it holds that the NSA, as a whole, implies a direct private right of action, for the reasons explained above. And although Axis posits that failure to confirm binding IDR awards would lead to an "enforcement gap," leaving providers without recourse when insurers do not pay in accordance with IDR awards, see ECF No. 48 at 8-9 (citing *Aetna, 789 F. Supp. 3d at 228*), Congress has created an administrative agency enforcement mechanism to serve that very purpose. See, e.g., *Guardian Flight, 104 F.4th at 277* ("Congress took a different tack: it empowered [the Department of Health and Human Services] to assess penalties against insurers for failure to comply with the NSA."); *T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *6*. This Court will not imply a statutory remedy absent evidence Congress intended to create one. See *Conboy v. AT & T Corp., 241 F.3d 242, 253 (2d Cir. 2001)* ("[W]hen legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies.") (quoting *National R.R. Passenger Corp. v. National Ass'n of R.R. Passengers, 414 U.S. 453, 458, 94 S. Ct. 690, 38 L. Ed. 2d 646 (1974)*).

Further, as Judge Shea explained in a later decision in the *Aetna* case, there are important distinctions [*18] between *Aetna* and the Fifth

Circuit's *Guardian Flight* ruling with respect to the arguments made by the parties regarding available administrative remedies:

[T]he Fifth Circuit relied in significant part on [42 U.S.C. Section 300gg-22](#) in finding statutory evidence that Congress had opted to provide for a 'general administrative remedy,' rather than a private cause of action to enforce payment of IDR awards. As I expressly noted in my opinion, however, '[t]he parties did not address [42 U.S.C. Section 300gg-22](#) in their briefs,' and so 'I decline[d] to consider whether this provision provides a method of enforcing [the] substantive rule in the NSA['s Timing of Payment provision.' It is possible I would have reached a different conclusion had that issue been briefed, but it [was not] -- which diminishes the 'conflict' between my opinion and that of the Fifth Circuit.

Order, [Guardian Flight LLC v. Aetna Life Ins. Co., No. 24-CV-0680 \(MPS\), ECF No. 295, 789 F. Supp. 3d 214](#) (internal citations omitted); see [T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, 2025 WL 3496382, at *8 n.4](#) ("[T]he Fifth Circuit relied on [42 U.S.C. § 300gg-22](#) in finding statutory evidence that Congress opted to provide an administrative remedy rather than a private cause of action."). The parties in *Aetna*, on the other hand, did not brief the issue of alternative enforcement mechanisms, so Judge Shea did not have that issue before him to consider.

The Court [*19] acknowledges that in very limited instances, courts have enforced IDR awards issued pursuant to the NSA under [§ 9](#). See [Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC, No. 8:24-CV-840 \(TPB\) \(CPT\), 2024 U.S. Dist. LEXIS 167943, 2024 WL 4226799, at *4 \(M.D. Fla. Sept. 18, 2024\)](#); [GPS of New Jersey M.D. P.C. v. Horizon Blue Cross & Blue Shield, No. CV 22-6614 \(KM\) \(JBC\), 2023 U.S. Dist. LEXIS 159460, 2023 WL 5815821, at *10 \(D.N.J. Sept. 8, 2023\)](#) ("*GPS*"). But, as other courts have acknowledged, the parties in these cases *assumed* [§ 9](#) could operate

to enforce IDR awards, thereby waiving any question as to its inapplicability. See [Worldwide Aircraft Servs. Inc., 2024 U.S. Dist. LEXIS 167943, 2024 WL 4226799, at *4](#) (confirming an award because the parties "assumed the FAA applied in full"); [Med-Trans Corp., 700 F. Supp. 3d at 1084](#) (noting that the *GPS* court "simply had no need to grapple with the broader applicability of the FAA to the NSA" because parties assumed [FAA § 9](#) applied to IDR awards). And in *GPS*, the district court may have had jurisdiction to rule on a cross-petition to confirm the award because the original petition requested vacatur under [§ 10\(a\)](#)—an area where district courts have unequivocal authority under the NSA. See [Mod. Orthopaedics of N.J., 2025 U.S. Dist. LEXIS 215824, 2025 WL 3063648, at *13](#) (analyzing [GPS, 2023 U.S. Dist. LEXIS 159460, 2023 WL 5815821, at *7](#)). Such cases therefore have little persuasive value here, where the question of whether the NSA contains a private right of action is squarely presented and addressed by the parties. And, in any event, this Court respectfully disagrees with the decision to assume the FAA's applicability to IDR awards, when the question presented is jurisdictional in nature.

For these reasons, the Court concludes that the petition [*20] here does not "state a cause of action contained within ERISA or another federal statute." [White Oak, 102 F.4th at 600](#).

Thus, the Court concludes it lacks subject matter jurisdiction over the petition in this case.¹

IV. CONCLUSION

For the reasons described herein, Axis's petition to

¹ At oral argument, Petitioner's counsel requested leave to amend if the Court dismissed the present petition, stating that Petitioner would allege a cause of action under the NSA directly. See Tr., ECF No. 54 at 31-32, 43-44. Because the Court has concluded that the NSA does not contain a private right of action, any such amendment would be futile. See [Cuoco v. Moritsugu, 222 F.3d 99, 112 \(2d Cir. 2000\)](#) (noting that leave to amend need not be granted where the problems with the allegations are substantive, and repleading will not cure them).

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confirm the IDR award, ECF No. 1, is DISMISSED. The Court lacks subject matter jurisdiction over the petition and therefore dismisses it without prejudice.

Because the Court does not have subject matter jurisdiction to hear this dispute, it need not reach the parties' dispute regarding whether Axis, Kelsey, and Aetna are the proper parties to this lawsuit. Even if the IDR award had explicitly named Axis and Aetna and the Court unequivocally possessed personal jurisdiction over Kelsey, the Court still would not have the power to grant Axis the relief it seeks.

The Clerk is directed to close this case.

SO ORDERED at Hartford, Connecticut, [*21]
this 20th day of March, 2026.

/s/ Sarala V. Nagala

SARALA V. NAGALA

UNITED STATES DISTRICT JUDGE

EXHIBIT 9

No Shepard's Signal™
As of: April 3, 2026 7:51 PM Z

T.V. Seshan, M.D., P.C. v. Aetna, Inc.

United States District Court for the Southern District of New York

March 30, 2026, Decided; March 30, 2026, Filed

25-CV-2938 (JGLC)

Reporter

2026 U.S. Dist. LEXIS 71883 *; 2026 LX 146972

T.V. SESHAN, M.D., P.C., Plaintiff, -against-
AETNA, INC., Defendant.

Counsel: [*1] For T.V. Seshan, M.D., P.C.,
Plaintiff: Debra A. Clifford, Gottlieb & Greenspan,
LLC, Fair Lawn, NJ.

For Aetna, Inc., Defendant: Adam Joseph Petitt,
LEAD ATTORNEY, Robinson&Cole LLP,
Managed Care, Stamford, CT.

Judges: JESSICA G. L. CLARKE, United States
District Judge.

Opinion by: JESSICA G. L. CLARKE

Opinion

OPINION AND ORDER

JESSICA G. L. CLARKE, United States District
Judge:

The No Surprises Act ("NSA") changed the trajectory of medical billing in the United States. In protecting patients from qualified surprise medical bills, the Act shifted the cost of certain out-of-network services onto health care providers and insurers. Before the Court today is whether Congress intended to create a privately enforceable remedy to accompany the NSA's dispute resolution mechanism. In this case, like so many others around the country, a health care provider took care of a patient insured by a private company without a network contract. When the provider and insurer

could not work out a fair cost-sharing agreement, they went to an arbitration-like forum to determine who should pay what. The health care provider won, and the insurer was directed to pay an award. But a 30-day statutory period passed, and the health insurer did [*2] not pay. Now, two-and-a-half years after Plaintiff provided its services, the insurer—here, Aetna—has only paid approximately 1% of what it owes. This case addresses what remedies, if any, parties to Independent Dispute Resolution ("IDR") have to enforce the award rendered therein. Ultimately, the Court finds that the NSA denies Plaintiff a remedy in federal court and dismisses the case.

BACKGROUND

Congress passed the No Surprises Act to prevent health care providers from sending patients surprise medical bills, often numbering in the tens of thousands of dollars, for out-of-network care they unknowingly received. "These unexpected medical bills can result in financial ruin," Congress recognized. H.R. Rep. No. 116-615, pt 1., at 52 (2020). The NSA was designed to protect privately insured patients from these unexpected costs by prohibiting "balance billing" in certain circumstances. See [42 U.S.C. §§ 300gg-131 to 132, 135](#). It requires insurers to cover emergency services at out-of-network facilities without prior authorization and certain out-of-network services at in-network facilities, and in turn, incentivizes this coverage by benchmarking rates comparable to those charged by in-network providers subject to an existing [*3] contract. [42 U.S.C. §§ 300gg-](#)

[111\(a\)\(1\)](#), (b)(1); *see also id.* § 300gg-111(a)(3)(E). In so doing, the Act set out accomplishing twin aims: protecting patients from unexpected, financially ruinous medical bills, and curtailing the rising costs of out-of-network treatment. *See* Letter from Frank Pallone and Patty Murray to Departments of Health and Human Services, Treasury, and Labor, at 1 (Oct. 20, 2021), <https://www.help.senate.gov/imo/media/doc/Pallone%20Murray%20No%20Surprises%20Act%20IFR%20Comment%20Ltr%2010.20.212.pdf>; *see also* NSA, *Pub. L. No. 116-260, 134 Stat. 2859-60 (2020)* (requiring study of the NSA's impact on "overall health care costs" and "on premiums and out-of-pocket costs").

Because the NSA shifts the cost of some out-of-network care away from patients, it created a system for health care providers and private insurers to determine fair cost sharing. After providing a qualified out-of-network service for an insured patient, the health care provider sends a bill for the cost of the medical service to the applicable insurer. The insurer responds with an initial payment or notice of denial of payment. *See* [42 U.S.C. § 300gg-131\(b\)\(1\)\(C\)](#). The provider may then, within 30 days, initiate open negotiations to seek a more desirable costsharing arrangement for the service or item. *Id.* § 300gg-111(c)(1)(A). Where negotiations [*4] are unsuccessful after 30 days, either party may initiate the IDR process to resolve the dispute. *Id.* § 300gg-111(c)(1)(B). The IDR process is "'baseball-style' arbitration," wherein each party submits a payment offer with supporting information, and the "IDR entity" chooses between the two offers. *Id.* § 300gg-111(c)(5)(A)-(B); H.R. Rep. No. 116-615, pt 1., at 56-57 (2020). Only certified IDR entities may determine the dispute, and the factors they may consider are carefully prescribed by the NSA and its implementing regulations. *See* [42 U.S.C. § 300gg-111\(c\)\(5\)\(C\)-\(D\)](#).

A team of neurologists brings this action under Section 9 of the Federal Arbitration Act ("FAA") and the No Surprises Act to confirm an IDR award

against health insurance company Aetna. ECF No. 1 ("Compl.") ¶¶ 5, 7, 24, 30. On September 21, 2023, Dr. Melissa Balbuena-Root provided neuromonitoring services during a surgical procedure at White Plains Hospital. *Id.* ¶ 6. No network contract governed the required payment. *Id.* ¶ 10. Plaintiff submitted a Health Insurance Claim Form to Defendant for \$11,132 to cover the cost of its services, but Defendant only paid \$107. *Id.* ¶¶ 8-9. Plaintiff disputed that payment determination and, following failed negotiations, initiated "arbitration." *Id.* ¶¶ 13-14. An "arbitrator" ruled in Plaintiff's favor and [*5] awarded Plaintiff \$9,178 for its services. *Id.* ¶16. However, Defendant never paid, and Plaintiff brought suit. *See id.* ¶¶ 19-21.

Plaintiff brings two alternative claims in this action. First, Plaintiff seeks an order confirming the award against Defendant under [9 U.S.C. § 9](#) ("Section 9 of the FAA"). *Id.* ¶¶ 23-28. Second, Plaintiff brings a claim under the NSA, claiming that Defendant, by failing to make the ordered payment within 30 days, violated the Act. *Id.* ¶¶ 29-36. Plaintiff seeks an order directing Defendant to pay the outstanding \$9,071, plus attorneys' fees and costs for the instant action. *Id.* at 6. The parties dispute whether the NSA contains a private right of action and whether Plaintiff can seek relief under Section 9 of the FAA. *See* ECF No. 13 ("MCA"); ECF No. 14 ("Opp. to MCA"). Defendant also contends Plaintiff brought this action against the wrong party. Opp. to MCA at 6-7. The facts are largely undisputed in this case, leaving it ripe for the Court's determination.

DISCUSSION

The following discussion proceeds in three parts. First, the Court analyzes whether the No Surprises Act contains an implied right of action that would enable Plaintiff to bring the present case and finds that it does not. Second, the Court determines [*6] that Plaintiff similarly cannot obtain relief under Section 9 of the FAA, because the NSA forecloses

that claim. And third, the Court concludes that the parties' remaining arguments are moot in light of its prior determinations.

At the outset, the Court notes that it properly has subject matter jurisdiction in this matter—an issue that the Court asked the parties to brief. *See* ECF No. 9. Where a

complaint "is so drawn as to seek recovery directly under the Constitution or laws of the United States," the district court must entertain the suit unless the federal claim "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous."

Chenkin v. 808 Columbus LLC, 368 F. App'x 162, 163 (2d Cir. 2010) (quoting *Bell v. Hood*, 327 U.S. 678, 681-83 (1946)). Here, even though the Court finds that the NSA does not contain a private right of action, for the reasons stated below, the genuine question under the federal laws renders jurisdiction appropriate. *See id.* To the extent the Court lacks subject matter jurisdiction over the FAA claim alone, *see* *Badgerow v. Walters*, 142 S. Ct. 1310 (2022), supplemental jurisdiction over this claim is clearly appropriate. *See* 28 U.S.C. § 1367(a); *Shahriar v. Smith & Wollensky Rest. Grp., Inc.*, 659 F.3d 234, 245 (2d Cir. 2011) (finding supplemental jurisdiction where the claims at issue "derive from a common nucleus of operative fact"). And [*7] indeed, no party disputes the Court's jurisdiction here.

I. The No Surprises Act Does Not Contain Private Right of Action

The Court finds that the No Surprises Act does not provide any basis for a federal court to confirm an IDR award. The NSA does not expressly create a private right of action, and neither the Second Circuit nor the Supreme Court has examined whether it creates an implied private right of action. Thus, the Court conducts its own analysis of the

statute. The Court's task here is interpret the NSA "to determine whether it displays an intent to create not just a private right but also a private remedy." *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001) (citations omitted). Statutory intent alone is "determinative," and courts are directed to "begin (and . . . end) our search for Congress's intent with the text and structure" of the Act. *Id. at 286, 288*; *see also* *J.S. v. New York State Dep't of Corr. & Cmty. Supervision*, 76 F.4th 32, 38 (2d Cir. 2023) ("When interpreting a statute, we begin by giving effect to the text's plain meaning, which . . . 'draws on the specific context in which that language is used, and the broader context of the statute as a whole.'" (quoting *Jingrong v. Chinese Anti-Cult World All. Inc.*, 16 F.4th 47, 57 (2d Cir. 2021))). Although statutory interpretation "always begins with the plain language of the statute," *Grajales v. Comm'r of Internal Revenue*, 47 F.4th 58, 62 (2d Cir. 2022) (citation omitted), the Court may use cannons of statutory [*8] construction to "supplement[] and narrow[] the possible meaning of ambiguous text," *Nat. Res. Def. Council, Inc. v. Muszynski*, 268 F.3d 91, 98 (2d Cir. 2001). If, after this analysis, the text remains ambiguous, the Court may then turn to legislative history and other interpretive aids to resolve the ambiguity. *Id. at 98*; *see also* *Milner v. Dep't of Navy*, 562 U.S. 562, 572 (2011) ("[C]lear evidence of congressional intent may illuminate ambiguous text.").

Here, the Court's analysis begins and ends with the statutory text, because it finds that the text unambiguously forecloses a private right of action to enforce an IDR award. Much of the instant dispute turns on the following provision:

A determination of a certified IDR entity under subparagraph (A) □

(I) shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim; and

(II) shall not be subject to judicial review,

except in a case described in any of paragraphs (1) through (4) of section 10(a) of Title 9.

42 U.S.C. § 300gg-111(c)(5)(E)(i).

Congress's statement that IDR determinations "shall not be subject to judicial review" provides a clear directive that there is no private right of action under the NSA. The provision's circumscribed exceptions bolster that conclusion. The negative-implication canon, which advises that the "express [*9] mention of one thing excludes all others," is instructive here. Georges v. United Nations, 834 F.3d 88, 93 (2d Cir. 2016) (cleaned up). The NSA explicitly incorporates the bases for vacatur under the FAA as the only avenues for judicial review. See 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II) (barring judicial review "except in a case described in any of paragraphs (1) through (4) of section 10(a) of Title 9"); 9 U.S.C. § 10(a) (enumerating the incorporated bases for vacatur, including where the award was procured by corruption or fraud, there is evidence that an arbitrator was partial or corrupt, or the arbitrators committed procedural "misconduct"). In incorporating only one section of the FAA and thus providing only one type of judicial review, Congress manifested an intent to preclude actions to confirm IDR awards.

Plaintiff argues that, by rendering IDR awards "binding," Congress intended to create "an implicit judicial enforcement mechanism." MCA at 8. It reasons that any other interpretation would render IDR awards "meaningless." *Id.* at 9 (quoting Guardian Flight LLC v. Aetna Life Ins. Co., 789 F. Supp. 3d 214, 228 (D. Conn. 2025)). The Court disagrees. The requirement that IDR awards are "binding" is qualified by the immediately following prohibition on "judicial review." 42 U.S.C. § 300gg-111(c)(5)(E)(i). This proximity demonstrates that the two provisions must be understood together—that, although the awards are binding, judicial review is not what renders [*10] them so. See Fischer v. United States, 603 U.S. 480, 487

(2024) ("[A] word is 'given more precise content by the neighboring words with which it is associated.'" (quoting United States v. Williams, 553 U.S. 285, 294 (2008))).

Two further observations reinforce this interpretation of "binding." First, the statutory scheme is structured around enforcement that takes place almost exclusively outside of federal courts. The Act authorizes states and, if necessary, HHS to assume enforcement authority of the NSA. See 42 U.S.C. § 300gg-22(a); see also, e.g., *id.* § 300gg-111(a)(2)(A)(i) (permitting states to audit insurers regarding the determination and application of the benchmark cost metric); *id.* § 300gg-111(a)(3)(H)(i), (iii) (displacing the benchmark cost metric where states have legislated a specified amount for a service); *id.* § 300gg-111(a)(3)(K)(i), (iii) (displacing the negotiation and IDR process in states that have legislated an amount for out-of-network services). The NSA's enforcement provisions explicitly empower HHS to assess penalties against insurers for failing to comply with the NSA. *Id.* § 300gg-22(b). Parties who would like to appeal an assessment may do so in front of an administrative law judge, whose decision is final unless the HHS Secretary modifies or vacates it. *Id.* § 300gg-22(b)(2)(D). And the only recourse for federal court review, aside from the previously discussed vacatur provisions, is by [*11] the Attorney General when an entity has failed to pay its penalty. *Id.* § 300gg-22(b)(2)(F)(i).

Second, the "shall pay" language throughout the NSA creates the obligation that is necessary for state or administrative enforcement, and the award's "binding" nature is best understood in this context. The NSA includes language throughout that insurers must pay IDR awards. For example, near the outset, the statute requires that "the [insurance] plan or coverage . . . shall pay a total plan or coverage payment directly . . . to such provider furnishing such items and services" *Id.* § 300gg-111(b)(1)(D) (emphasis added); see also *id.* § 300gg-111(a)(1)(C)(iv)(II) (requiring that the insurer "shall cover" out-of-network emergency

services by making "payment directly to" the provider after IDR). The timing requirements for payments also include "shall pay" language. *See id.* § 300gg-111(c)(6) (requiring that "[t]he total plan or coverage payment required . . . shall be made . . . not later than 30 days after the date on which such determination is made."). "Unlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement." *Maine Cmty. Health Options v. United States*, 590 U.S. 296, 310 (2020) (quoting *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171 (2016)). These requirements on insurers evince a clear statutory intent for the IDR payments to be "binding" where, [*12] as here, the balance of payment owed flows from the insurer to the provider. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I).

Under the NSA, HHS is empowered to level civil penalties against insurers who violate their obligation to pay under the statute. HHS can fine insurers who fail to pay their IDR awards \$100 every day for each failure to pay until compliance is rendered. *See id.* § 300gg-22(b)(2)(C)(i)-(ii). In determining the appropriate penalty, HHS can consider whether an entity has repeatedly failed to pay its awards. *See id.* (considering an insurer's "previous record of compliance"). In this case, if HHS levied the maximum fine for failure to pay for over three months, Defendant would owe more money to HHS than it currently owes to Plaintiff. There is no cap to the overall civil penalty that may be assessed per violation, so HHS can wield its enforcement power to great effect when a debtor party fails to pay.

Ultimately, HHS's enforcement powers under the NSA make sense of the mandatory payment language in the Act. For an administratively enforceable right to exist, it must be required in the relevant sections of the Act. *See id.* § 300gg-22(b)(2)(A) ("[A]ny non-Federal governmental plan . . . that fails to meet a provision of this part or part D . . . is subject [*13] to a civil money penalty under this subsection."). In context, then, the "shall pay" and "binding" language serves to create an

obligation that HHS may enforce.

That this obligation exists here, however, does not translate into a private cause of action. "The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others." *Sandoval*, 532 U.S. at 290 (citations omitted). When faced with a similar enforcement scheme, the Second Circuit found that delegated authority for HHS to impose penalties "clearly" reflected a congressional intent not to create a private cause of action. *See Meadows v. United Servs., Inc.*, 963 F.3d 240, 244 (2d Cir. 2020) (discussing the Health Insurance Portability and Accountability Act, or "HIPAA"). Here, the Court finds that congressional authorization for HHS to levy broad penalties, along with the clear language generally prohibiting judicial review, manifests the same intent to preclude a private remedy. *See Lopez v. Jet Blue Airways*, 662 F.3d 593, 597 (2d Cir. 2011) ("[The] right [to sue] should not be implied because the statute provides an administrative enforcement scheme designed to vindicate fully the rights of disabled passengers.").

In finding that the statutory text resolves this question, the Court ends its inquiry without reaching legislative [*14] intent or the views of the agency tasked with administering the NSA. Accordingly, this Court joins the substantial majority of courts who have found that the NSA does not contain an implied private right of action. *See, e.g., Guardian Flight, LLC v. Health Care Serv. Corp.*, 140 F.4th 271 (5th Cir. 2025), *T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Ass'n*, No. 25-CV-1255 (CS), 2025 WL 3496382 (S.D.N.Y. Dec. 5, 2025); *E. Coast Advanced Plastic Surgery, LLC v. Cigna Health & Life Ins. Co.*, 25-CV-1686 (PAE), 2025 WL 2371537 (S.D.N.Y. Aug. 14, 2025), appeal filed, No. 25-2204 (2d Cir. Sept. 12, 2025); *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of New Jersey*, 790 F. Supp. 3d 129 (E.D.N.Y. 2025); *Mitchell F. Reiter MD PC v. Horizon Blue Cross Blue Shield of New Jersey*, No. 25-CV-12526 (WJM), 2025 WL 3514300 (D.N.J. Dec. 8, 2025).

Although the Court is sympathetic to Plaintiff's lack of a more immediate remedy, "it is not the province of the courts to rewrite a statute for policy reasons, for only the Congress has the constitutional authority and the institutional ability to accommodate fully the varied permutations of competing policy interests." [*SoundExchange, Inc. v. Sirius XM Radio Inc.*, 796 F. Supp. 3d 1, 14 \(S.D.N.Y. 2025\)](#), appeal filed, No. 25-2150 (2d Cir. Sept. 5, 2025) (quoting [*Recording Indus. Ass'n of Am., Inc. v. Verizon Internet Servs., Inc.*, 351 F.3d 1229, 1238 \(D.C. Cir. 2003\)](#)) (cleaned up). As such, the Court instead applies the plain text of the statute and finds that no private right exists here.

II. There Is No Action to Confirm IDR Awards Under the FAA

For many of the reasons outlined above, federal courts also may not enforce IDR awards under Section 9 of the FAA. That IDR awards are "binding" does not mean that Congress contemplated judicial review to confirm these awards. Indeed, the plain language of the statute, as discussed above, makes clear that judicial review is limited only to vacating IDR awards. An action to confirm an IDR award is not mentioned in the statute.

Three further [*15] reasons demonstrate that IDR awards are not enforceable under the FAA. At the most basic level, Congress chose not to incorporate the word "arbitration" into the NSA. Neither "arbitrate" nor "arbitration" appears in the statute, even though Congress contemplated IDR as a procedure analogous to arbitration. See, e.g., H.R. Rep. No. 116-615, pt 1., at 56-57 (2020) (discussing the IDR process as "'baseball-style arbitration'" with an "arbitrator"). In a comparable statutory scheme, Congress made a different choice. The Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") permits parties in a dispute to elect "binding arbitration" upon failure of a 90-day negotiation period. See [7 U.S.C. § 136a\(c\)\(1\)\(F\)\(iii\)](#). Unlike the NSA, FIFRA

explicitly refers to its dispute resolution mechanism as "arbitration" and incorporates the procedures and rules of the American Arbitration Association, enmeshing its dispute resolution with the broader arbitral mechanism of the FAA. See *id.*; [*SRM Chem. Co. v. Fed. Mediation & Conciliation Serv.*, 355 F. Supp. 2d 373, 375 \(D.D.C. 2005\)](#). Courts have interpreted arbitral awards under that statute accordingly, largely making them enforceable under the FAA. See, e.g., [*Non-Dietary Exposure Task Force v. Tagros Chems. India, Ltd.*, 309 F.R.D. 66, 68 \(D.D.C. 2015\)](#); [*Spray Drift Task Force v. Burlington Bio-Med. Corp.*, 429 F. Supp. 2d 49, 50 \(D.D.C. 2006\)](#); [*Cheminova A/S v. Griffin, LLC*, 182 F. Supp. 2d 68, 73 \(D.D.C. 2002\)](#). In contrast, Congress's decision to create "independent dispute resolution" in the NSA reflects a choice to distance the IDR mechanism from arbitration. See [42 U.S.C. § 300gg-111\(c\)\(2\)\(A\)](#). By [*16] distinguishing IDR from arbitration, the Court gives meaning to this choice. See [*Diaz-Roa v. Hermes L., P.C.*, 757 F. Supp. 3d 498, 534 \(S.D.N.Y. 2024\)](#) ("Congress' word choice must be considered intentional." (citing [*United States v. Naftalin*, 441 U.S. 768, 773 \(1979\)](#); [*Natofsky v. City of New York*, 921 F.3d 337, 348 \(2d Cir. 2019\)](#))).

Second, there is a fundamental incompatibility between IDR, a unilateral right created by federal statute, and traditional arbitration, which stems from contract. See [*Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 67 \(2010\)](#) ("The FAA reflects the fundamental principle that arbitration is a matter of contract."). Section 9 of the FAA provides, 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, . . . then . . . 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.

[9 U.S.C. § 9](#) (emphasis added). As this language makes clear, "an [arbitration] award has legal force only because the parties have elsewhere promised to be bound by it." *Trs. of N.Y. State Nurses Assoc. Pension Plan v. White Oak Global Advisors, LLC*, 102 F.4th 572, 596 (2d Cir. 2024). The presumption of a written contract appears throughout the FAA. See, e.g., [9 U.S.C. § 2](#) (governing the validity of "an agreement in writing to submit to arbitration"); *id.* § 4 (governing the "failure, neglect, or refusal of another [*17] to arbitrate under a written agreement for arbitration"); see also *Blue Cross Blue Shield Ass'n*, 2025 WL 3496382, at *5 ("From this language, it is clear that § 9, like the FAA as a whole, contemplates a written arbitration agreement between the parties."). This presumption is further underscored by the Supreme Court's recent decision in *Badgerow v. Walters*, which relies on the fact that arbitration awards are based in contract law, and thus have a home in state court, to limit federal question jurisdiction under Section 9. *142 S. Ct. at 1321-22*. In this way, Section 9 is about holding the parties to their prior agreement. "[B]inding" IDR, on the other hand, is a unilateral right that either party may exercise under the appropriate conditions. [42 U.S.C. § 300gg-111\(c\)\(1\)\(B\)](#) ("In the case of open negotiations . . . that do not result in a determination of an amount of payment for such item or service . . . , the provider or facility (as applicable) or group health plan or health insurance issuer . . . that was party to such negotiations may . . . initiate the independent dispute resolution process . . ."). As set out in the statute, IDR arises in the absence of any agreement between the parties, both in negotiations about the service at issue and in the prior step of lacking an in-network contract covering cost sharing more [*18] broadly. The fundamental basis on which Section 9 rests, then, is wholly absent from the NSA, which makes clear that IDR awards are enforceable only to the extent and in the manner that the statute has dictated.

Third, because of these differences, it makes sense that Congress saw fit to *explicitly* incorporate

certain portions of the FAA into the NSA. See *id.* § 300gg-111(c)(5)(E)(i)(II) (incorporating [9 U.S.C. § 10\(a\)\(1\)-\(4\)](#)). The explicit incorporation of Section 10 of the FAA suggests, in turn, that Congress consciously declined to incorporate Section 9. Cf. *Russello v. United States*, 464 U.S. 16, 23 (1983) (cleaned up) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."). Elsewhere, as the Fifth Circuit noted, Congress has explicitly incorporated Section 9, even where it also incorporated Section 10. *Guardian Flight*, 140 F.4th at 276 (citing [5 U.S.C. § 580\(c\)](#)). It would make little sense to omit Section 9, which incorporates Sections 10 and 11 by reference, and incorporate Section 10 when the intent is that they should both be incorporated. See [9 U.S.C. § 9](#) ("[T]hereupon 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."). These factors demonstrate that Congress did not [*19] intend for "binding" IDR awards to be confirmed, and thus made enforceable, under the FAA.

Plaintiff disputes this point, arguing that Congress only explicitly incorporated Section 10 and not Section 9 because traditional arbitration has no "force and effect until converted to a judicial order," whereas IDR awards are "binding" as soon as they are issued. MCA at 9-10. The Court rejects this argument. As Defendant notes, that IDR awards are meant to be "binding" does not distinguish them from arbitration awards. See Opp. to MCA at 13-14. In fact, many arbitration awards are rendered pursuant to a contract that states they will be "binding." See, e.g., *Seneca Nation of Indians v. New York*, 988 F.3d 618, 622-23 (2d Cir. 2021) ("The Compact specifies that the arbitral award would be 'final, binding and non-appealable.'"); *Kallen v. Dist. 1199, Nat. Union of Hosp. & Health Care Emp., RWDSU, AFL-CIO*, 574 F.2d 723, 726 (2d Cir. 1978) ("[T]he collective bargaining agreement . . . provides[] that 'the award

of an arbitrator hereunder shall be final, conclusive and binding . . ."). Plaintiff offers no basis for the Court to find that arbitral and IDR awards have different legal effect when issued, citing only to inapposite case law about the standard that courts must follow on a motion under Section 9 of the FAA. *See* ECF No. 17 ("Reply") at 4-5. Accordingly, the Court likewise rejects Plaintiff's request [*20] to confirm its IDR award.

III. Arguments About Proper Party Are Moot

Lastly, Defendant argues that Plaintiff has improperly sued "Aetna, Inc.," instead of "Aetna Life Insurance Company," and that the Court should dismiss Plaintiff's petition on that basis. *Opp. to MCA* at 6-7. Because the Court has already determined that dismissal is warranted here, it declines to consider Defendant's arguments about proper party.

CONCLUSION

For the foregoing reasons, the Court dismisses Plaintiff's petition to confirm the IDR award under the NSA and the FAA. The Clerk of Court is respectfully directed to terminate ECF No. 13 and close the case.

Dated: March 30, 2026

White Plains, New York

SO ORDERED.

/s/ Jessica G. L. Clarke

JESSICA G. L. CLARKE

United States District Judge

EXHIBIT 10

No Shepard's Signal™
As of: April 3, 2026 7:51 PM Z

Neuroshield Network SE, LLC v. Phx. Adm'rs, LLC

United States District Court for the Northern District of Ohio, Eastern Division

March 30, 2026, Decided; March 30, 2026, Filed

CASE NO.: 1:25-cv-01277

Reporter

2026 U.S. Dist. LEXIS 67059 *; 2026 LX 195657; 2026 WL 863869

NEUROSHIELD NETWORK SE, LLC, Petitioner,
v. PHOENIX ADMINISTRATORS, LLC (d/b/a
Performance Health), Respondent.

Counsel: [*1]

For NeuroShield Network SE, LLC, Petitioner: J.
Mark Trimble, Rohrbacher Trimble & Zimmerman
- Toledo, Toledo, OH.

For Phoenix Administrators, LLC, doing business
as, Performance Health, Respondent: David
Stewart Nichol, Roderick Linton Belfance, Akron,
OH.

Judges: BRIDGET MEEHAN BRENNAN,
UNITED STATES DISTRICT JUDGE.

Opinion by: BRIDGET MEEHAN BRENNAN

Opinion

MEMORANDUM OPINION AND ORDER

Before the Court is Respondent Phoenix Administrators, LLC's ("Performance Health") Motion to Dismiss. (Doc. 10.) Petitioner NeuroShield Network SE, LLC ("NeuroShield") opposed the motion (Doc. 15), and Respondent replied (Doc. 16). Briefing crystallized the dispute. The parties acknowledge that the sole issue is whether the No Surprises Act creates an implied cause of action to enforce awards pursuant to [§ 9 of the Federal Arbitration Act](#). Because it does not, Performance Health's Motion to Dismiss is GRANTED for lack of subject matter jurisdiction.

I. FACTUAL ALLEGATIONS

NeuroShield provides medically necessary intraoperative monitoring services. (Doc. 1 at ¶¶ 2, 11.)¹ For ease and consistency, briefing citations reflect the electronically stamped CM/ECF document and PageID# rather than any internal pagination. Petition citations are to the internal paragraph notations.

Performance Health's insureds have received such services, but Performance Health has not fully reimbursed NeuroShield. (*Id.* at ¶¶ 11-13.)

As a result, NeuroShield engaged in the negotiation process mandated [*2]

by the No Surprises Act. (*Id.* at ¶ 14.) Performance Health did not fully engage in the process, and it did not provide appropriate adjustments. (*Id.* at ¶ 15.) NeuroShield initiated the No Surprises Act's Independent Dispute Resolution ("IDR") process. (*Id.*) This process resolved in NeuroShield's favor with a four-part award totaling approximately \$15,400. (*Id.* at ¶¶ 16-18; Doc. 1-2, IDR award.)

Performance Health has not remitted payment consistent with the award. (Doc. 1 at ¶¶ 18, 20.) NeuroShield has attempted to compel Performance Health's compliance. (*Id.* ¶ at 19.) It sent demand letters, initiated phone calls and emails, and filed regulatory complaints with the Centers for Medicare & Medicaid Services

("CMS").² NeuroShield's allegations do not include the timing of these efforts, whether there has been a response from CMS, or the expected timing of any response.

(*Id.*)

II. PROCEDURAL HISTORY NeuroShield's Complaint and Petition to Confirm Arbitration Award and Entry of Judgment seeks enforcement of the IDR award pursuant to [9 U.S.C. § 9](#). (*Id.* at

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¶¶ 21-25.) No other cause of action is alleged. NeuroShield seeks, among other things, an order confirming the award and a judgment in its favor for "all unpaid amounts." (*Id.* at 5.)

Performance Health moves for dismissal pursuant to [Rules 12\(b\)\(1\)](#) and [12\(b\)\(6\) of the Federal Rules of Civil Procedure](#), arguing primarily that the Court lacks subject matter jurisdiction. [*3] (Doc. 10.) NeuroShield takes the opposite position. (Doc. 15.)

III. LEGAL STANDARD "Federal courts are courts of limited jurisdiction." [Kokkonen v. Guardian Life Ins. Co. of Am.](#), 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994); [Johnson v. Johnson](#), 157 F.4th 813, 817 (6th Cir. 2025) ("Congress has the right to restrict the lower federal courts' jurisdiction . . . if Congress does not confer jurisdiction on the lower federal courts, then they cannot hear the case, even if it falls within . . . Article III.")

"[Fed. R. Civ. P. 12\(b\)\(1\)](#) provides for the dismissal of an action for lack of subject matter jurisdiction." [Cartwright v. Garner](#), 751 F.3d 752, 759 (6th Cir. 2014). Challenges to subject matter jurisdiction can "challenge the sufficiency of the pleading itself (facial attack) or the factual existence of subject matter jurisdiction (factual attack)." *Id.* (citing [United States v. Ritchie](#), 15 F.3d 592, 598 (6th Cir. 1994), cert. denied, 513 U.S. 868, 115 S. Ct. 188, 130 L. Ed. 2d 121 (1994)). Courts reviewing facial attacks to subject matter jurisdiction presume all well pleaded allegations are true and draw all reasonable inferences in the plaintiff's favor. [Johnson](#), 157 F.4th at 817. Factual attacks open the door for district courts to evaluate evidence outside of the pleadings to resolve whether it has authority to hear the case. [Nichols v. Muskingum Coll.](#), 318 F.3d 674, 677 (6th Cir. 2003). When a [Rule 12\(b\)\(1\)](#) motion is presented, the plaintiff has the burden of proving subject matter jurisdiction. [Davis v. United States](#), 499 F.3d 590, 594 (6th Cir. 2007). Neither party argues this Court must go beyond the pleadings to resolve the pending motion, and the Court agrees.

IV. ANALYSIS [*4]

A. The No Surprises Act In December 2020, Congress passed the No Surprises Act ("NSA") "to

address the issue of patients facing unexpected—and often exceedingly large—medical bills" largely related to emergency services or treatment from out-of-network providers. [Neurological Surgery Prac. of Long Island, PLLC v. United States Dep't of Health & Hum. Servs.](#), 145 F.4th 212, 219 (2d Cir. 2025); [Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.](#), 160 F.4th 1110, 1115 (11th Cir. 2025); 42 U.S.C. §§ 300gg-111, 300gg-112. Providers can no longer bill patients directly for these "surprise medical bills." 42 U.S.C. § 300gg-111; [Guardian Flight, L.L.C. v. Health Care Serv. Corp.](#), 140 F.4th 271, 273 (5th Cir. 2025), cert. denied, 2026 WL 79855, 223 L. Ed. 2d 509, 2026 U.S. LEXIS 397 (U.S. 2026). Instead, billing disputes are resolved between the providers and insurers through a specified IDR process. *Id.* The process begins with a negotiation. 42 U.S.C. § 300gg-111(c)(1)(A). If the provider and insurer cannot negotiate an agreed price for services, either party may initiate formal IDR proceedings within a specified number of days. *Id.* at § 300gg-111(c)(1)(B). Once IDR is requested, a certified independent dispute resolution entity ("CIDRE") is identified to resolve the dispute.³ The Secretaries of Labor, Treasury, and the Department of Health identify experts with "sufficient medical, legal, and other expertise" to review and resolve these disputes. 42 U.S.C. § 300gg-111(c)(4)(A)(i). *Id.* at § 300gg-111(c)(4). The CIDRE receives offers, one from the provider and one from the insurer, and determines which offer will be awarded. *Id.* at § 300gg-111(c)(5). The CIDRE's determination of which offer to accept is guided by a list of factors, including "the qualifying payment amount" for comparable items or services in the same region. *Id.* at § 300gg-111(a)(3)(E).

"In the absence of a fraudulent claim or evidence of a misrepresentation [*5] of facts to the CIDRE, the IDR award shall be binding on the parties involved, and payment of the award shall be made . . . not later than 30 days after the date on which such determination is made." [Guardian Flight](#), 140 F.4th at 274 (quotations and citations omitted). "HHS has the authority to enforce provider and payor non-compliance with the NSA's provisions." *Id.* (citing 42 U.S.C. § 300gg-22(b)(2)(A)).

IDR awards "shall not be subject to judicial review, except in a case described in any of [paragraphs \(1\) through \(4\) of section 10\(a\) of \[T\]itle 9" of the](#)

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Federal Arbitration Act, 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Section 10(a) states that a federal court may vacate an arbitration award:

- (1) [W]here the award was procured by corruption, fraud, or undue means;
- (2) [W]here there was evident partiality or corruption in the arbitrators, or either of them;
- (3) [W]here the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) [W]here the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a)(1)-(4).

B. Implied Right of Action An implied right of action "is an increasingly rare creature, [*6] one that requires [courts] to infer that Congress created a private *right* and provided for a private *remedy*, all without taking the conventional route of doing so expressly." *Ohlendorf v. United Food & Com. Workers Int'l Union, Local 876*, 883 F.3d 636, 640 (6th Cir. 2018) (emphasis in original), *cert. denied*, 586 U.S. 869, 139 S. Ct. 198, 202 L. Ed. 2d 123 (2018). An implied right of action must be supported by statutory language. *Alexander v. Sandoval*, 532 U.S. 275, 291, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001). This is not to say that it must be expressly stated, that would be an express cause of action, but the language chosen by Congress must still convey an intent to create an implied right of private action in "clear and unambiguous" terms. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 290, 122 S. Ct. 2268, 153 L. Ed. 2d 309 (2002). Whether Congress clearly and unambiguously created an implied right of action focuses on the statute's "rights-creating language." *Ohlendorf*, 883 F.3d at 641. Meaning, does the statute create person-specific rights. "Statutes that ban conduct but do not identify specific beneficiaries do not suffice." *Id.*; *Sandoval*, 532 U.S. at 289; *Gonzaga*, 536 U.S. at 286 ("[W]here the text and structure of a statute provide no indication that Congress intends to create new individual rights, there is no basis for a private suit, whether under S§ 1983 or any other implied right of action.").

Ohlendorf helpfully provides examples of statutes with "rights-creating language." 883 F.3d at 641.

"A statute that says '[n]o person in the United States shall . . . be subjected to discrimination' [*7] on the basis of race creates an individual right to be free from race discrimination." *Id.* (citation omitted) (emphasis in opinion). The right is stated—to be free from discrimination. The beneficiary is clear—all persons. Thus, an implied right of action was stated in "clear and unambiguous" terms. *Gonzaga*, 536 U.S. at 290. *Ohlendorf* also laid out examples of statutory language that did not identify beneficiaries sufficient to state a clear intent to create a private cause of action. 883 F.3d at 641. In *Gonzaga*, the statute prohibited "the funding of 'any educational agency or institution which has a policy or practice of permitting the release of educational records' [which] create[d] no rights at all, even though [students] might benefit from the statute and might have an interest in enforcing it." *Id.* (quoting *Gonzaga*, 536 U.S. at 287-88). Similarly impermissible were statutes directing or approving state or agency action. *Id.* ("Nor a statute that requires state governments to 'substantially comply' with federal requirements to receive [certain] federal funds Nor a statute that requires the federal government to 'approve any [state Medicaid] plan which fulfills . . . [the] conditions specified.'" (first quoting *Blessing v. Freestone*, 520 U.S. 329, 344, 117 S. Ct. 1353, 137 L. Ed. 2d 569 (1997); and then quoting *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 331, 135 S. Ct. 1378, 191 L. Ed. 2d 471 (2015))).

The NSA expressly [*8] states that "group health plans and insurers 'shall . . . pay' the IDR-determined amount . . . and that the determination 'shall be binding on the parties.'" (Doc. 15 at 114) (quoting 42 U.S.C. §§ 300gg-112(b)(6), 300gg-111(c)(5)(E)(i)); see also *T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Ass'n*, No. 25-CV-1255, 2025 WL 3496382, 2025 U.S. Dist. LEXIS 252293, at *23 (S.D.N.Y. Dec. 5, 2025); *Axis Neuromonitoring, LLC v. Aetna Inc., et al.*, No. 25-CV-01048, 2026 WL 795260, 2026 U.S. Dist. LEXIS 61210, at *3 (D. Conn. Mar. 20, 2026). It also identifies "the medical provider as 'the beneficiary of the non-prevailing party's payment obligations,'" indicating a statutory focus on the person protected—the medical provider. *Axis Neuromonitoring*, 2026 U.S. Dist. LEXIS 61210, at *14-15 (quoting *T.V. Seshan*, 2025 U.S. Dist. LEXIS

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252293, at *23 (citing 42 U.S.C. § 300gg-111(c)(6))).⁴ Performance Health suggests the NSA does not apply here, a point NeuroShield disputes. Because it is not properly before this Court, meaning Performance Health has not sought to vacate the IDR award for any of the reasons specified in § 10 or correct it pursuant to § 11, the Court takes no position.

But the Court's analysis must go further. Congress "says in a statute what it means and means in a statute what it says there." Connecticut Nat. Bank v. Germain, 503 U.S. 249, 254, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992). When Congress incorporates certain provisions of existing law into a new law, courts should view that as intentional. Ohlendorf, 883 F.3d at 642. Indeed, "[courts] should respect [Congress's] ability to decide when, and when not, to create private rights of action." *Id.*

Section 9 of the Federal Arbitration Act provides as follows:

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to 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

9 U.S.C. § 9. Central to § 9 is that "private agreements to arbitrate are enforced [*9] according to their terms." Volt Info. Scis. Inc. v. Bd. of Trs. of Leland Stanford Junior Univ., 489 U.S. 468, 479, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989). The NSA does not reference § 9, perhaps because it could be inapplicable in most instances contemplated by the NSA. Out-of-network providers generally do not have contractual relationships with the insured. See AMISUB (SFH), Inc. v. Cigna Health & Life Ins. Co., 142 F.4th 403, 405 (6th Cir. 2025) ("When a healthcare provider has contracted with an insurer to set the prices the insurer and its members will pay, that provider is considered in-network.").

More pertinent here is that § 9 was enacted before the NSA. See 9 U.S.C. § 9 (enacted in 1925); No Surprises Act, Pub. L. No. 116-260, 134 Stat. 1182, 2758 (2020). So was § 10. 9 U.S.C. § 10.

Congress's decision to incorporate only certain provisions of § 10, namely allowing only for vacatur in limited instances and making no reference to § 9, must be viewed as intentional. Ohlendorf, 883 F.3d at 642. This limitation on judicial review cuts against reading the NSA to

permit an implied right of action to enforce IDR awards. T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, at *25 (citing Mod. Orthopaedics of NJ v. Premera Blue Cross, No. 25-CV-1087, 2025 WL 3063648, 2025 U.S. Dist. LEXIS 215824, at *34 (D.N.J. Nov. 3, 2025)).

In addressing the incorporation, or lack thereof, of existing provisions of the FAA into the NSA, the Fifth Circuit stated:

We will not find an implied right of action where Congress expressly forecloses it. Congress could have done otherwise. Section 9 of the FAA empowers courts to confirm or enforce arbitration awards, but Congress chose not to incorporate § 9 into the NSA. It incorporated only parts of § 10. By contrast, [*10]

in other statutes, Congress has incorporated § 9 to create a private right of action. So, Congress knew how to create a private right of action in the NSA—and has done so elsewhere—but declined to do so.

Guardian Flight, 140 F.4th at 276 (citations omitted) (emphasis in original).

Notwithstanding, NeuroShield argues it has no true mechanism to pursue IDR awards, leading to an absurd result that weighs in favor of recognizing an implied right of action. (Doc. 15 at 117, 126-27.) NeuroShield's argument is more about preferred methods of enforcement rather than no enforcement mechanism at all. Nonetheless, while courts have reached different conclusions on this point, the vast majority have found the NSA's enforcement mechanisms reveal a clear intent to preclude an implied right of action.

"Were the NSA to create a right without an apparent remedy, that itself is strong evidence that Congress intended judicial enforcement." Mod. Orthopaedics of NJ, 2025 U.S. Dist. LEXIS 215824, at *24 (citing Maine Cmty. Health Options v. United States, 590 U.S. 296, 324, 140 S. Ct. 1308, 206 L. Ed. 2d 764 (2020)). But the "express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others." Guardian Flight, 140 F.4th at 277 (quoting Sandoval, 532 U.S. at 290); see also Ohlendorf, 883 F.3d at 643 (noting available means of enforcing the statute included filing a complaint with the National Labor Relations Board).

As spelled out in Guardian [*11] Flight, the NSA authorizes "HHS to assess penalties against insurers for failure to comply with the NSA." 140 F.4th at 277 (citing 42 U.S.C. §

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[300gg-22\(b\)\(2\)\(A\)](#); [45 C.F.R. § 150.301, et seq.](#)). CMS, "an agency within HHS, has acted on that authority by soliciting provider complaints and compelling payors to pay IDR awards where appropriate." *Id.*; see also [T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, at *27](#); [Savalia v. Blue Shield of Cal. Life & Health Ins. Co., No. 25-cv-02031, 2025 U.S. Dist. LEXIS 261150, at *15 \(C.D. Cal. Dec. 16, 2025\)](#); [Axis Neuromonitoring, 2026 U.S. Dist. LEXIS 61210, at *16-17](#).

NeuroShield relies heavily on the district court decision in [Guardian Flight LLC v. Aetna Life Ins. Co., 789 F. Supp. 3d 214 \(D. Conn. 2025\)](#) ("*Aetna*"). To be sure, the court concluded, in part, that the absence of meaningful enforcement mechanisms created "strange asymmetries" where fraud, for example, could lead to judicial relief but judicial relief was unavailable to a party seeking enforcement of the award. *Id. at 228*. But, in a later decision in the same case, the authoring jurist acknowledged he may have reached a different decision had the parties briefed the administrative remedies set forth in [42 U.S.C. § 300gg-22](#). [Axis Neuromonitoring, 2026 U.S. Dist. LEXIS 61210, at * 18](#).

[Guardian Flight](#) is the only circuit court decision addressing whether the NSA created an implied right of action. *140 F.4th at 277*. The Fifth Circuit rejected the argument. *Id.* A vast majority of district courts have done the same. See [T.V. Seshan, 2025 U.S. Dist. LEXIS 252293, at *28](#); [Mod. Orthopaedics of NJ, 2025 U.S. Dist. LEXIS 215824, at *23-25](#); [Savalia, 2025 U.S. Dist. LEXIS 261150, at *14](#); [Axis Neuromonitoring, 2026 U.S. Dist. LEXIS 61210, at *12](#); [FHMC LLC v. Blue Cross & Blue Shield of Ariz. Inc., No. CV-23-876, 2024 WL 1461989, 2024 U.S. Dist. LEXIS 62018, at *9 \(D. Ariz. Apr. 4, 2024\)](#); [E. Coast Adv. Plastic Surgery, LLC v. CIGNA Health & Life Ins. Co., No. 25-cv-255, 2025 WL 2371537, 2025 U.S. Dist. LEXIS 157911, at *48 \(S.D.N.Y. Aug. 14, 2025\)](#).

While some other courts have enforced IDR awards, it is notable that the parties in those matters assumed—and waived challenges to—§ 9's applicability. See [Axis Neuromonitoring, 2026 U.S. Dist. LEXIS 61210, at *19](#) (collecting [*12] cases). Such an example is [GPS of New Jersey M.D. v. Horizon Blue Cross & Blue Shield, No. 22-66142023 WL 5815821, 2023 U.S. Dist. LEXIS 159460 \(D.N.J. Sept. 8, 2023\)](#) ("*GPS*"), another

case on which NeuroShield relies. *GPS* is distinguishable because the court did not engage in the more extensive analysis of the FAA's broader applicability to the NSA. [2023 U.S. Dist. LEXIS 159460](#). Indeed, there was no challenge to § 9's applicability at all. *Id.* That is not the case here. Performance Health challenges the application of § 9. And the Court has found that the NSA did not create an implied right of action that would permit NeuroShield to commence a suit to enforce its IDR award pursuant to § 9.

For the reasons stated, this Court is persuaded by the decisions in *Guardian Flight* and the similarly decided district court decisions, all of which are in line with the Sixth Circuit's holding in *Ohlendorf*. Congress has spoken, and judicial action is limited.

C. Leave to Amend Complaint [Rule 15\(a\)](#)

indicates that leave to file an amended complaint should be "freely" granted "when justice so requires." [FED. R. CIV. P. 15\(a\)\(2\)](#). "A request for leave to amend 'almost as an aside . . . in a memorandum in opposition to the defendant's motion to dismiss is . . . not a motion to amend.'" [La. Sch. Emps.' Ret. Sys. v. Ernst & Young, LLP, 622 F.3d 471, 486 \(6th Cir. 2010\)](#) (quoting [Begala v. PNC Bank, Ohio, N.A., 214 F.3d 776, 784 \(6th Cir. 2000\)](#)), cert. denied, 531 U.S. 1145, 121 S. Ct. 1082, 148 L. Ed. 2d 958 (2001)).

Notwithstanding, leave to amend can be permitted when an opposition states some basis for amendment. But "[a] court [*13] need not grant leave to amend . . . where amendment would be 'futile.'" [Miller v. Calhoun Cnty., 408 F.3d 803, 817 \(6th Cir. 2005\)](#) (citing [Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 \(1962\)](#)). Whether a proposed amendment is "futile" is governed by the standard applicable to a [Rule 12\(b\)\(6\)](#) motion to dismiss. *Id.* A court is within its discretion to refuse amendment and dismiss the complaint if it "concludes that the pleading as amended could not withstand a motion to dismiss." [Martin v. Associated Truck Lines, Inc., 801 F.2d 246, 248 \(6th Cir. 1986\)](#); see also [Hoover v. Langston Equipment Assoc., Inc., 958 F.2d 742, 745-46 \(6th Cir. 1992\)](#).

As explained here, amendment would be futile because the NSA confers no implied cause of action permitting enforcement of IDR awards. Amending to add a different party would not lead

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to a different conclusion. And while there is a suggestion that NeuroShield could or is contemplating a separate unjust enrichment claim (Doc. 15 at 124-26), the Court would still lack jurisdiction. While the parties may be diverse, the amount in controversy requirement cannot be met. (See Doc. 1-2 (award total was \$15,400); Doc. 2-3 (proposed order unpaid amount of \$15,048.31).)

V. CONCLUSIONFor the reasons stated herein, the Court lacks subject matter jurisdiction. Phoenix Administrators, LLC's Motion to Dismiss (Doc. 10) is GRANTED, and NeuroShield Network SE, LLC's Petition is DISMISSED.

IT IS SO ORDERED.

Date: March 30, 2026

/s/ Bridget Meehan Brennan

BRIDGET MEEHAN [*14]

BRENNAN

UNITED STATES DISTRICT JUDGE

JUDGMENT ENTRYFor the reasons stated in the contemporaneously filed Memorandum and Opinion, the Respondent's Motion to Dismiss pursuant to [Rule 12\(b\)\(1\) of the Federal Rules of Civil Procedure](#) (Doc. 10) is GRANTED. The Petition (Doc. 1) is DISMISSED, and this matter is CLOSED.

IT IS SO ORDERED.

Date: March 30, 2026

/s/ Bridget Meehan Brennan

BRIDGET MEEHAN BRENNAN

UNITED STATES DISTRICT JUDGE

EXHIBIT 11

No Shepard's Signal™
As of: April 3, 2026 7:51 PM Z

Jeffrey Farkas, M.D., LLC v. 1199Seiu Nat'l Ben. Fund

United States District Court for the Eastern District of New York

April 1, 2026, Decided; April 1, 2026, Filed

25-CV-57 (MKB)

Reporter

2026 U.S. Dist. LEXIS 71613 *; 2026 LX 135897

JEFFREY FARKAS, M.D., LLC, Plaintiff, v.
1199SEIU NATIONAL BENEFIT FUND,
Defendant.

Counsel: [*1] For Jeffrey Farkas, M.D., LLC,
Plaintiff: Debra A. Clifford, Gottlieb & Greenspan ,
LLC, Fair Lawn, NJ.

For 1199SEIU National Benefit Fund, Defendant:
Elizabeth Chesler, LEAD ATTORNEY, New York,
NY.

Judges: MARGO K. BRODIE, United States
District Judge.

Opinion by: MARGO K. BRODIE

Opinion

MEMORANDUM & ORDER

MARGO K. BRODIE, United States District
Judge:

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Plaintiff Jeffrey Farkas, M.D., LLC commenced this action on January [*2] 3, 2025 against Defendant 1199 SEIU Benefit Fund pursuant to the [No Surprises Act, 29 U.S.C. § 1185 et seq.](#) ("NSA") and the [Federal Arbitration Act, 9 U.S.C § 9](#) ("FAA"), to confirm an independent dispute resolution ("IDR") award ("IDR Award"), (Compl., Docket Entry No. 1), rendered on January 29, 2024, (*id.* ¶ 16). Plaintiff also seeks attorneys' fees and

costs. (*Id.* at 6.)

Defendant moved to dismiss the Complaint for lack of standing and failure to state a claim; Plaintiff opposed the motion and cross moved to confirm the IDR Award; and Defendant filed a cross-motion to vacate the IDR Award.¹ For the reasons discussed below, the Court grants Defendant's motion to dismiss this case and denies Plaintiff's cross-motion to confirm the IDR Award.

I. Background

Plaintiff is a medical practice with its principal place of business in the state of New Jersey and is "comprised of a team of neurologists who specialize in acute treatment following strokes, brain aneurysms, carotid disease, and vascular problems of the brain, spine, and neck." (Compl. ¶¶ 1, 5.)

Defendant is a "non-profit organization and multi-employer trust fund established in accordance with Section 186(c) of the Labor Management Relations Act of 1947 and an 'employee welfare benefit plan' as that term is defined in [Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 et seq.](#) ('ERISA')." (Aff. of Shelley Chun ("Chun Aff."))

¹ (Def.'s Not. of Mot. to Dismiss ("Def.'s Mot."), Docket Entry No. 18; Def.'s Mem. in Supp. of Def.'s Mot. ("Def.'s Mem."), Docket Entry No. 20; Pl.'s Not. of Cross-Mot. to Confirm Arb. Award ("Pl.'s Cross-Mot."), Docket Entry No. 21; Pl.'s Mem. in Opp'n to Def.'s Mot. and in Supp. of Pl.'s Cross-Mot. ("Pl.'s Opp'n"), Docket Entry No. 23; Def.'s Not. of Cross-Mot. to Vacate IDR Determination ("Def.'s Cross-Mot."), Docket Entry No. 26; Def.'s Reply in Supp. of Def.'s Mot., in Opp'n to Pl.'s Cross-Mot., and in Supp. of Def.'s Cross-Mot. ("Def.'s Reply"), Docket Entry No. 28; Pl.'s Reply in Supp. of Pl.'s Cross-Mot. and in Opp'n to Def.'s Cross-Mot. ("Pl.'s Reply"), Docket Entry No. 31; Def.'s Reply in Further Supp. of Def.'s Cross-Mot. ("Def.'s Cross-Mot. Reply"), Docket Entry No. 32.)

¶ [*3] 3, Docket Entry No. 27.)

On March 8, 2023, Plaintiff performed surgery on a "[p]atient [who] was the beneficiary of a health plan issued or administrated by Defendant" (the "Patient"). (Compl. ¶ 6-7.) According to Plaintiff, it is an out-of-network provider and "does not have a network contract with Defendant that would determine or limit payment for Plaintiff's treatment of Defendant's beneficiaries."² (*Id.* ¶ 10.) After treating the Patient, Plaintiff submitted a claim form to Defendant seeking payment for six different claims. (Chun Aff. ¶ 11.) At issue in this case is Plaintiff's claim for CPT codes 36226-LT³ for which Plaintiff billed Defendant \$37,760.⁴ (*Id.* ¶ 28; see Claim Form; Explanation of Payment.) Defendant denied CPT-code 36266-LT, (Chun Aff. ¶ 14), and Plaintiff initiated an IDR Process to dispute this denial. (*Id.* ¶ 25.) Plaintiff argues that the NSA governs payment for the services billed under 36226-LT because "the services were rendered 'emergently/inadvertently.'" (Compl. ¶ 11.)

a. Overview of the NSA

Congress enacted the NSA as part of the

Consolidated Appropriations Act of 2021 to protect patients against surprise medical bills for emergency services [*4] rendered by out-of-network providers in an emergency department.⁵ *Pub. L. No. 116-260, div. BB, tit. 1, 134 Stat. 1182, 2758-2890 (2020)*; [42 U.S.C. §§ 300gg-111](#), 300gg-131, 300gg-132; H.R. Rep. 116-615, at 67 (2020) (outlining the goals of the house bill preceding the NSA as including "end[ing] surprise medical billing"); see [Neurological Surgery Prac. of Long Island, PLLC v. United States Dep't of Health & Hum. Servs. \(Neurological Surgery Prac.\)](#), [145 F.4th 212, 219 \(2d Cir. 2025\)](#) ("Congress passed the [NSA] to address the issue of patients facing unexpected — and often exceedingly large — medical bills after they received treatment from out-of-network providers."); *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, [140 F.4th 271, 273 \(5th Cir. 2025\)](#) ("Congress enacted the NSA in 2022 to protect patients from surprise medical bills incurred when they receive emergency medical services from out-of-network healthcare providers.").

The NSA applies to "items or services . . . for which benefits are provided under the plan." [42 U.S.C. § 300gg-132\(a\)](#); see *Requirements Related to Surprise Billing; Part I*, [86 Fed. Reg. 36,872, 36,891 \(July 13, 2021\)](#) (explaining that NSA protections are not universal and do not extend to *non-covered* items or services). Insurers, including group health plans, that provide benefits for services in emergency departments must cover the following emergency services: (1) "medical screening examinations . . . to evaluate [an] emergency medical condition," (2) "further medical examination and treatment . . . to stabilize the patient." and (3) post-stabilization services.⁶ [42](#)

² "Out-of-network providers are those who have not entered contracts for payment with the insureds' health plans." *Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs.* 110 F.4th 762, 768 (5th Cir. 2024).

³ "CPT is a uniform coding system consisting of descriptive terms and identifying codes used primarily to identify medical services and procedures furnished by physicians and other health care professionals for which they bill public or private health insurance programs." CTRS. FOR MEDICARE & MEDICAID SERVS, Healthcare Common Procedure Coding System (HCPCS), <https://www.cms.gov/medicare/coding-billing/healthcare-common-procedure-system/> (last visited Mar. 31, 2026).

⁴ Plaintiff submitted a medical bill to Defendant "for a diagnostic procedure that involves placing a catheter into the carotid artery and performing imaging." (Compl. ¶ 8.) "Plaintiff sought reimbursement in the amount of \$153,840 for its services provided during this surgery," (Chun Aff. ¶ 12; see Claim Form, annexed to Chun Aff. as Ex. A, Docket Entry No. 27-1; Explanation of Payment, annexed to Chun Aff. as Ex. B, Docket Entry No. 27-2), and submitted six different claims for the services, (Chun Aff. ¶ 11). Plaintiff "initiated open negotiation on each of the six claim lines in the [] Claim Form." (*Id.* ¶ 20.) After open negotiation, Plaintiff initiated four different IDR processes. (*Id.* ¶ 23; see Compl. ¶ 13.) Defendant paid Plaintiff the full amount directed by the certified IDR entity for two of these claims, (Chun Aff. ¶¶ 24, 27), but challenged the eligibility of two of the claims "on the grounds that the claim[s] [were] denied and thus not eligible for IDR," (*id.* ¶¶ 25, 28-30.) The certified IDR entity denied Plaintiff's request as to one of the challenged claims because it was ineligible and Plaintiff did not challenge the denial. (*Id.* ¶ 26.) However, the certified IDR entity "direct[ed] [Defendant] to proceed with the IDR process on the remaining claim [36226-LT] instead of closing the dispute as ineligible." (*Id.* ¶ 34.)

⁵ The No Surprises Act is codified as parallel amendments to three federal statutes with some variations. See 26 U.S.C. § 9816(c) (amending the Internal Revenue Code); 29 U.S.C. § 1185e (amending ERISA); 42 U.S.C. § 300gg-111 (amending the Public Health Service Act); *Tex. Med. Ass'n*, 110 F.4th at 768 (explaining that the No Surprises Act "provisions occur in triplicate in the United States Code[] because the NSA amended three statutes"). The Court cites to the Public Health Services Act.

⁶ A group health plan is an employee welfare benefit plan to the extent that the plan provides medical care . . . to employees or their dependents . . . directly or through insurance, reimbursement, or otherwise." 29 U.S.C. § 1191b; see also *Ass'n of Air Med. Servs. v. U.S. Dep't of Health & Hum.*

[U.S.C. § 300gg-111\(C\)](#). They must also cover nonemergency services performed [*5] by out-of-network providers at an in-network facility and limit the patient's cost-sharing to the in-network amount. [42 U.S. Code § 300gg-132\(a\)](#). Insurers are to "cover" the specified emergency and nonemergency services based on in-network cost-sharing requirements and "without regard to any other term or condition of such coverage, (other than exclusion or coordination of benefits . . .)" [42 U.S.C. § 300gg-111\(a\)\(1\)\(D\)](#); see [Tex. Med. Ass'n v. United States Dep't of Health & Hum. Servs., 110 F.4th 762, 767 \(5th Cir. 2024\)](#) ("The No Surprises Act is intended to protect patients from 'surprise' medical bills by 'limit[ing] the amount an insured patient will pay for emergency services furnished by an out-of-network provider.' (alteration in original) (quoting [Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs., 654 F. Supp. 3d 575, 580 \(E.D. Tex. 2023\)](#))); [Ass'n of Air Med. Servs. v. U.S. Dep't of Health & Hum. Servs., No. 21-CV-3031, 2023 WL 5094881, at *1 \(D.D.C. Aug. 9, 2023\)](#) ("The [NSA] obligates group health plans and issuers to apply the same cost-sharing levels to out-of-network and in-network emergency services"). Out-of network providers are prohibited from "balance billing"⁷ patients or holding them liable for more than they would have been required to pay under their insurer's cost-sharing requirement for the same services in-network. [42 U.S.C. § 300gg-132\(a\)](#); [Air Med. Servs., 2023 WL 5094881, at *1](#) (explaining that the NSA "prevents emergency service providers from holding a patient liable for the balance of a bill"); [Kennedy v. UnitedHealth Grp. Inc., 25-CV-432, 2025 WL 1725147, at *8 \(S.D.N.Y. June 20, 2025\)](#) (quoting [Air Med. Servs., 2023 WL 5094881, at *1](#)).

Servs., No. 21-CV-3031, 2023 WL 5094881, at *4 (D.D.C. Aug. 9, 2023) (defining "group health plan" for the No Surprises Act as "an employee welfare plan that provides medical care for employees and their depending" (citing 42 U.S.C. § 300gg-91(a)(1))).

7 "Balance billing occurs when a patient is held financially liable for the difference between a provider's billed charge and the allowed amount under a health plan." H.R. Rep. 116 615, at 48 (2020).

i. Process for payments and resolution of payment-related [*6] disputes between providers and insurers

The NSA "sets deadlines for various steps in the [IDR] process." [Neurological Surgery Prac., 145 F.4th at 219](#); see [Air Med. Servs., 2023 WL 5094881, at *3](#) ("Congress enacted the [NSA] . . . to end 'surprise billing' for patients and to remove them from the middle of payment disputes between the patient's group health plan or issuer and providers." (citation omitted)); see also H.R. Rep. 116-615, at 55 (2020) (stating that "any surprise billing solution must comprehensively protect consumers by taking the consumer out of the middle of surprise billing disputes" (internal quotation marks omitted)). The process requires the provider to bill the insurer directly for NSA-covered services and the insurer to respond with an "initial payment" or "notice of denial of payment" within thirty days and after determining whether services are covered under the insured's plan. See [Neurological Surgery Prac., 145 F.4th at 219](#) ("[U]pon receiving a request for payment from a provider, the patient's health care plan determines whether and in what amount it will pay for the services" (quoting [Neurological Surgery Prac. of Long Island, PLLC v. U.S. Dep't of Health & Hum. Servs. \(Neurological Surgery Prac. II\), 682 F. Supp. 3d 249, 255 \(E.D.N.Y. 2023\)](#))).

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"If there is a dispute between the healthcare plan and the provider regarding the proper compensation amount," the parties enter a thirty-day open negotiations period beginning the date the provider receives an initial payment or a notice of denial of payment. *Neurological Surgery Prac.*, 145 F.4th at 219 (citation omitted). If open negotiations fail, the provider or insurer may initiate the IDR process within four days of the end of the thirty-day negotiations period by submitting [*8] a written notice of IDR initiation to the other party and to the Secretary of Labor. 42 U.S.C.A. § 300gg-111(c)(1)(B); *Guardian Flight LLC v. Health Care Serv. Corp.*, 735 F. Supp. 3d 742, 747 (N.D. Tex. 2024) (noting that "the [NSA] establishes a dispute resolution system for when healthcare providers and insurers dispute surprise medical bills"), *aff'd sub nom. Guardian Flight, L.L.C.*, 140 F.4th 271 (5th Cir. 2025). The notice of IDR initiation must include, among other things, the preferred certified IDR entity, an "[a]ttestation that the items and services under dispute are qualified IDR items or services," and a Qualifying Payment Amount. 45 CFR § 149.510 (b)(2)(iii) (The Qualifying Payment Amount is "a heavily regulated rate that reflects the 'median of the contracted rates recognized by the plan or issuer . . . for the same or a similar item or service' offered in the same insurance market and geographic area." *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th at 273-74 (citing 42 U.S.C. §§ 300gg-111(a)(3)(E)(i)); *see Air Med. Servs.*, 2023 WL 5094881, at *3 ("The [Qualifying Payment Amount] is essentially the median rate the insurer would have paid for emergency care if it

had been provided by an in-network provider or facility."). "[E]ither the parties or the Department of Health and Human Services . . . selects a certified [IDR] entity . . . to referee."⁸ *Guardian Flight, L.L.C.*, 140 F.4th at 273 (citing 42 U.S.C. § 300gg-111(c)(4)).

"The parties must submit their compensation proposals within [ten] days of selecting a [certified] IDR entity, and the [certified] [*9] IDR entity must then render a decision choosing one of the proposals within [thirty] days." *Neurological Surgery Prac.*, 145 F.4th at 219 (citing 42 U.S.C. § 300gg-111(c)(5)(A) and (B)). The provider and the insurer each offer a payment amount with supporting information, and the certified IDR entity selects one of the two offers considering the Qualifying Payment Amount and other factors specified in the NSA. 42 U.S.C. § 300gg-111(c)(5)(A)-(C); *Spiel, MD, PA v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-CV-14769, 2025 WL 3459719, at *3 (D.N.J. Dec. 2, 2025) ("The arbitration process is 'baseball-style,' meaning that the provider and insurer each submit a final offer, and the [certified] IDR entity must select one of the two proposed amounts" (internal quotations and citations omitted)); *see also Worldwide Aircraft Servs., Inc. v. Cigna Health & Life Ins. Co.*, No. 25-CV-2393, 2026 WL 234015, at *3 n.4 (M.D. Fla. Jan. 29, 2026) ("The [c]ourt notes that the IDR process at issue here does not require in-person hearings or the filing of briefs" (citing 42 U.S.C. § 300gg-111(c)(5)(A)). The certified IDR entity's final written decision is binding and "shall not be subject to judicial review" unless it meets one of four bases for vacating arbitration awards under section 10(a) of Title 9 of the FAA. 42 U.S.C. § 300gg111(c)(5)(E)(i)(II); *see Neurological Surgery Prac.*, 145 F.4th at 219 ("That decision is binding on the parties 'in the absence of a fraudulent claim

⁸ Certified IDR entities are IDR entities which "meet the standards described in 45 CFR § 149.510]. 45 CFR § 149.510 (e)(1); *see also* 45 C.F.R. § 149.510 (e)-(i)(2) (requiring a certified IDR entity to be independent and free of conflicts of interest, possess relevant expertise in health care billing and reimbursement, maintain the capacity to adjudicate disputes and comply with applicable timelines, and comply with federal oversight, reporting, recordkeeping, and fee requirements).

or evidence of misrepresentation of facts presented' and is subject to limited judicial review under the [FAA]." (quoting [42 U.S.C. § 300gg-111\(c\)\(5\)\(E\)](#))).

Under FAA Section 10(a), "[a]n arbitral award may be vacated '(1) where the award was procured by corruption, fraud, [*10] or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.'" [Flintlock Constr. Servs., LLC v. Arch Specialty Ins. Co., No. 24-791, 2025 WL 573425, at *2 \(2d Cir. Feb. 21, 2025\)](#) (quoting [9 U.S.C. § 10\(a\)](#)); see [E. Coast Advanced Plastic Surgery, LLC v. Cigna Health & Life Ins. Co., No. 25-CV-1686, 2025 WL 2371537, at *17 \(S.D.N.Y. Aug. 14, 2025\)](#) ("[T]he NSA provides that an IDR [A]ward is automatically 'binding upon the parties involved' and thus '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]" (quoting [29 U.S.C. § 1185e\(b\)\(5\)\(E\)](#))), cert. denied sub nom., [Conn. Gen. Life Ins. Co. v. E. Coast Advanced Plastic Surgery, LLC, No. 25-CV-1686, 2025 WL 3154472 \(S.D.N.Y. Nov. 12, 2025\)](#), appeal docketed, No. 22-2204 (2d Cir. Sep. 15, 2025). The insurer "must pay any additional compensation ordered by the [certified IDR entity] to the provider within 30 days of the decision." [Neurological Surgery Prac., 2145 F.4th at 219](#) (citing [Neurological Surgery, 682 F. Supp. 3d at 255](#)).

ii. Agency implementation and oversight

"[T]he United States Department of Health and

Human Services, Department of the Treasury, Department of Labor, and the Secretaries of those agencies ("the Government Departments") . . . are charged [*11] with implementing and administering [the NSA]." *Id.* at *1. The NSA directs the Government Departments to "establish by regulation" one IDR process and to "establish a process to certify (including to recertify) [IDR] entities." *Id.* at *2 (quoting [42 U.S.C. § 300gg-111\(c\)\(4\)\(A\)](#)). The Government Departments promulgated regulations that include a process for the Departments of Labor and Health and Human Services to "receive and resolve complaints" from "any individual, or their authorized representative" that an insurer "may be failing to meet" the NSA requirements. [29 C.F.R. § 2590.716-7](#) (mandating development of a complaint process for the [NSA] violations by insurers). The NSA similarly allows for state and agency enforcement of provider's adherence to cost sharing and balance billing provisions. See [42 U.S.C. § 300gg-111\(a\)\(2\)\(B\)](#) (directing development of a process for participants and beneficiaries under a group health plan or group health insurance to submit complaints of violations of NSA's balance billing prohibitions and for the Secretary of Labor to coordinate investigation and enforcement). In addition, the NSA directs the Departments to develop rulemaking to audit insurers' compliance with requirements related to the Qualifying Payment Amount and annually issue to Congress [*12] "a report on the number of plans and issuers." [42 U.S.C. § 300gg-111\(a\)\(2\)\(A\)](#).

b. Plaintiff's IDR process

Plaintiff requested \$37,760 for CPT code 36226-LT, (Def.'s Mem. 9; see Explanation of Payment), and Defendant denied the claim explaining that it "exceeded, [was] noncovered, invalid, bundled, excluded, or unnecessary based on current/history claims for same provider/DOS." (Def.'s Mem. 9 n.17; see Explanation of Payment.) After Defendant failed to pay the medical bill for 36226-LT, Plaintiff initiated the negotiation period as required

by NSA. (Compl. ¶ 13.) When Defendant failed to make payment, Plaintiff initiated the IDR process.⁹ (*Id.* ¶ 14.) "Plaintiff submitted a final offer of \$32,000 while Defendant submitted [] a final offer of \$2,127.87." (*Id.* ¶ 15.) On January 29, 2024, a certified IDR entity ruled in Plaintiff's favor and awarded Plaintiff \$32,000. (*Id.* ¶ 16.) Defendant failed to make the payment within the thirty-day deadline, and to date, has not made a payment. (*Id.* ¶ 18.) Plaintiff requests that the Court confirm the IDR Award and order Defendant to pay Plaintiff \$32,000. (Compl. 6.)

Defendant argues that the Court lacks jurisdiction because Plaintiff's request arises from a medical claim that Defendant [*13] denied since the claim was not covered by Defendant's plan, (Def.'s Mem. 1-2, 9 n.17), and the NSA does not provide Plaintiff with standing to sue for a denied claim, (*id.* at 11-14.) Defendant argues that the NSA does not incorporate Section 9 of the FAA which provides for confirming arbitration awards. Defendant also requests that the Court vacate the IDR Award, (*see generally* Def.'s Cross-Mot. Reply), and Plaintiff argues that the Court should confirm the IDR Award and further argues that the request to vacate the IDR Award is untimely. (Pl.'s Reply 9-11.)

II. Discussion

a. Standards of review

i. 12(b)(1)

A district court may dismiss an action for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure when the court "lacks the statutory or constitutional power to adjudicate it." *AMTAX Holdings 227, LLC v. CohnReznick LLP*, 136 F.4th 32, 37 (2d Cir.

2025) (quoting *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000)); *Citizens United to Protect Our Neighborhoods v. Vill. of Chestnut Ridge, N.Y.*, 98 F.4th 386, 391 (2d Cir. 2024) (quoting *Conn. Parents Union v. Russell-Tucker*, 8 F.4th 167, 172 (2d Cir. 2021)); *Brokamp v. James*, 66 F.4th 374, 386 (2d Cir. 2023) (quoting *Cortlandt St. Recovery Corp. v. Hellas Telecomms., S.à.r.l.*, 790 F.3d 411, 416-17 (2d Cir. 2015)), *cert. denied*, 144 S. Ct. 1095 (2024); *Green v. Dep't of Educ. of City of New York*, 16 F.4th 1070, 1075 (2d Cir. 2021) (quoting *Makarova*, 201 F.3d at 113). Courts must "accept the complaint's material allegations as true, and . . . draw all reasonable inferences in the plaintiffs' favor," *Sunvestment Energy Grp. NY 64 LLC v. Nat'l Grid USA Servs. Co.*, 116 F.4th 106, 113 (2d Cir. 2024) (quoting *Raymond Loubier Irrevocable Tr. v. Loubier*, 858 F.3d 719, 725 (2d Cir. 2017)), but "[w]here jurisdictional facts are placed in dispute, the court has the power and obligation to decide issues of fact by reference to evidence outside the pleadings," *Talarico Bros. Bldg. Corp. v. Union Carbide Corp.*, 73 F.4th 126, 136 (2d Cir. 2023) (quoting *APWU v. Potter*, 343 F.3d 619, 627 (2d Cir. 2003)); *Harty v. W. Point Realty, Inc.*, 28 F.4th 435, 441 (2d Cir. 2022) ("It is only where 'jurisdictional facts are placed [*14] in dispute' that the court has the 'obligation to decide issues of fact by reference to evidence outside the pleadings, such as affidavits.'" (first quoting *Tandon v. Captain's Cove Marina of Bridgeport, Inc.*, 752 F.3d 239, 243 (2d Cir. 2014); and then citing *LeBlanc v. Cleveland*, 198 F.3d 353, 356 (2d Cir. 1999))); *see Iacovo v. Magguilli, No. 24-CV-4372, 2025 WL 1135471, at *3 (E.D.N.Y. Apr. 17, 2025)* ("In resolving a motion to dismiss under Rule 12(b)(1), the district court must take all uncontroverted facts in the complaint . . . as true, and draw all reasonable inferences in favor of the party asserting jurisdiction." (quoting *Tandon*, 752 F.3d at 243)). Ultimately, "the party asserting subject matter jurisdiction 'has the burden of proving by a preponderance of the evidence that it exists.'" *Tandon*, 752 F.3d at 243 (quoting *Makarova*, 201

⁹ The Court notes that Plaintiff attached as Exhibit A the IDR determination for the IDR dispute which applies to 36226-RT. (Claim Form; Chun Aff. ¶ 10.) Plaintiff has otherwise made clear that it is seeking relief for the determination made in the IDR regarding code 36226-LT.

[F.3d at 113](#)); *AMTAX Holdings*, 136 F.4th at 37 ("A plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists." (quoting [Makarova](#), 201 F.3d at 113)).

ii. Article III standing

"The Constitution limits federal courts to deciding 'Cases' and 'Controversies.'" [Bost v. Illinois State Bd. of Elections](#), 607 U.S. ---, ---, 146 S. Ct. 513, 523 (2026) (Barrett, J., concurring) (quoting [U.S. Const. art. III, § 2](#)); [FEC v. Ted Cruz for Senate](#), 596 U.S. 289, 295 (2022) (quoting same). "'Standing to sue is a doctrine' that 'limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong.'" [Liberian Cmty. Ass'n of Conn. v. Lamont](#), 970 F.3d 174, 183-84 (2d Cir. 2020) (quoting [Spokeo, Inc. v. Robins](#), 578 U.S. 330, 338 (2016)); see also [Packer ex rel. 1-800-Flowers.Com, Inc. v. Raging Cap. Mgmt., LLC](#), 105 F.4th 46, 51 (2d Cir. 2024) ("Article III of the Constitution requires that plaintiffs establish standing to sue in federal court."). "To establish constitutional standing, 'a plaintiff must show (i) that he or she suffered [*15] an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief.'" [DirecTV, LLC v. Nexstar Media Grp., Inc.](#), 162 F.4th 295, 306 (2d Cir. 2025) (quoting [TransUnion LLC v. Ramirez](#), 594 U.S. 413, 423 (2021); [Packer](#), 105 F.4th at 51 (quoting [TransUnion LLC](#), 594 U.S. at 423) (same); [Saba Cap. Cef Opportunities I, Ltd. Nuveen Floating Rate Income Fund](#), 88 F.4th 103, 110 (2d Cir. 2023) (quoting [Thole](#), 590 U.S. at 540) (same); [Liu v. Democratic Nat'l Comm., No. 21-3021](#), 2022 WL 4372587, at *1 (2d Cir. Sep. 22, 2022) (quoting [TransUnion LLC](#), 594 U.S. at 423) (same); [Calcano v. Swarovski N.A. Ltd.](#), 36 F.4th 68, 74 (2d Cir. 2022) (quoting [TransUnion LLC](#), 594 U.S. at 423) (same); [Maddox v. Bank of N.Y. Mellon Trust Co., N.A.](#), 19 F.4th 58, 62 (2d Cir. 2021) (quoting [Strubel v. Comenity](#)

[Bank](#), 842 F.3d 181, 187 (2d Cir. 2016)) (same). "An injury in fact must be 'particularized,' and it must be 'concrete.'" [Harty](#), 28 F.4th at 442 (quoting [Spokeo, Inc.](#), 578 U.S. at 340).

"[S]tanding is required for subject matter jurisdiction." [James v. Willis, No. 21-501](#), 2022 WL 481812, at *1 (2d Cir. Feb. 17, 2022) (summary order) (citing [Strubel](#), 842 F.3d at 187). "If plaintiffs lack Article III standing, a court has no subject[-]matter jurisdiction to hear their claim." [Karkare on behalf of JN v. Int'l Assoc. of Bridge, Structural, Ornamental & Reinforcing Iron Workers Local 580](#), 140 F.4th 60, 64 (2d Cir. 2025) (alteration in original) (quoting [Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.](#), 433 F.3d 181, 198 (2d Cir. 2005)); [Bohnak v. Marsh & McLennan Cos.](#), 79 F.4th 276, 282-83 (2d Cir. 2023) (quoting same); see also [Citizens United to Protect Our Neighborhoods](#), 98 F.4th at 391 ("A district court properly dismisses an action for lack of subject-matter jurisdiction under Rule 12(b)(1) 'if the court lacks the statutory or constitutional power to adjudicate it, such as when the plaintiff[s] lack[] constitutional standing to bring the action.'" (alterations in original) (quoting [Conn. Parents Union v. Russell-Tucker](#), 8 F.4th 167, 172 (2d Cir. 2021))). "Before deciding any case on the merits, a district court must determine that it has subject matter jurisdiction over the matter. Therefore, for a case to proceed, the party invoking federal jurisdiction must plausibly plead that it has standing to sue." [*16] [Humphrey v. Syracuse Police Dep't](#), 758 F. App'x 205, 205-06 (2d Cir. 2019) (first citing [United States v. Bond](#), 762 F.3d 255, 263 (2d Cir. 2014); and then citing [Carter v. HealthPort Techs., LLC](#), 822 F.3d 47, 55 (2d Cir. 2016)); see [Ashcroft v. Iqbal](#), 556 U.S. 662, 679 (2009) (Assessing plausibility is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense."); [Calcano](#), 36 F.4th at 74 ("Although we generally accept the truth of a plaintiff's allegations at the motion to dismiss stage, the plaintiff still 'bears the burden of alleging facts that affirmatively and plausibly

suggest that [the plaintiff] has standing to sue." (alternation in original) (quoting Cortlandt St. Recovery Corp., 790 F.3d at 417)); Pan v. Whitaker, 351 F. Supp. 3d 246, 249-50 (E.D.N.Y. 2019) ("[F]ederal courts have a continuing and independent duty to ensure that they possess subject matter jurisdiction, and must dismiss a case when they find subject matter jurisdiction lacking."). The court "need not credit 'a legal conclusion couched as a factual allegation' or a 'naked assertion devoid of further factual enhancement,'" but must instead "refer to a complaint's 'factual context' to discern whether to accept 'a complaint's conclusory statements.'" Calcano, 36 F.4th at 75 (first quoting Ashcroft, 556 U.S. at 678; and then quoting Amidax Trading Grp. v. S.W.I.F.T. SCRL, 671 F.3d 140, 146 (2d Cir. 2011)).

iii. Motion to confirm arbitration award

When a motion to confirm an arbitration award is accompanied by a record, "the petition and accompanying record should [be] treated as akin to a motion for summary judgment based on the movant's [*17] submissions." D.H. Blair & Co. v. Gottdiener, 462 F.3d 95, 109 (2d Cir. 2005). "The role of a district court in reviewing an arbitration award is narrowly limited and arbitration panel determinations are generally accorded great deference under the Federal Arbitration Act." Kellner v. Amazon, No. 22-CV-734, 2023 WL 2230288, at *1 (2d Cir. Feb. 27, 2023) (quoting Kolel Beth Yechiel Mechill of Tartikov, Inc. v. YLL Irrevocable Tr., 729 F.3d 99, 103 (2d Cir. 2013)); see also Andes Petro. Ecuador Ltd. v. Occidental Expl. and Prod. Co., No. 21-CV-3039, 2023 WL 4004686, at *2 (2d Cir. June 15, 2023) (quoting Porzig v. Dresdner, Kleinwort, Benson, N. Am. LLC, 497 F.3d 133, 138 (2d Cir. 2007)).

"[C]onfirmation of an arbitration award is 'a summary proceeding that merely makes what is already a final arbitration award a judgment of the court,' and the court 'must grant' the award 'unless

the award is vacated, modified, or corrected.'" D.H. Blair & Co., 462 F.3d at 110 (first quoting Florasynth, Inc. v. Pickholz, 750 F.2d 171, 176 (2d Cir. 1984); and then quoting 9 U.S.C. § 9); see also Trs. of Mason Tenders Dist. Council Welfare Fund, Pension Fund, Annuity Fund, & Training Program Fund v. A.J.S. Project Mgmt., Inc., No. 19-CV-711, 2020 WL 6546212, at *2 (S.D.N.Y. Nov. 6, 2020) (quoting D.H. Blair & Co., 462 F.3d at 109). "The arbitrator's rationale for an award need not be explained, . . . [o]nly 'a barely colorable justification for the outcome reached' by the arbitrators is necessary to confirm the award." D.H. Blair & Co., 462 F.3d at 110 (first quoting Barbier v. Shearson Lehman Hutton, Inc., 948 F.2d 117, 121 (2d Cir. 1991); then quoting Landy Michaels Realty Corp. v. Loc. 32B-32J, Serv. Emps. Int'l Union, 954 F.2d 794, 797 (2d Cir. 1992)). Accordingly, "courts 'play only a limited role when asked to review the decision of an arbitrator.'" Tully Constr. Co. v. Canam Steel Corp., 684 F. App'x 24, 26 (2d Cir. 2017) (quoting United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 36 (1987)). "The award should be confirmed 'if a ground for the arbitrator's decision can be inferred from the facts of the case.'" Smarter Tools Inc. v. Chongqing SENCI Imp. & Exp. Trade Co., 57 F.4th 372, 379 (2d Cir. 2023) (quoting D.H. Blair & Co., 462 F.3d at 110).

iv. Subject-matter jurisdiction under the FAA

The FAA does not provide a standalone basis for subject-matter jurisdiction, instead, there must be an "independent jurisdictional basis to resolve the matter." [*18] Badgerow v. Walters, 596 U.S. 1, 4, (2022); see Tanjutco v. N.Y. Life Sec. LLC, No. 24-2666, 2025 WL 3526470, at *2 (2d Cir. Dec. 9, 2025) ("[T]he FAA's 'authorization of a petition does not itself create jurisdiction, and a federal court must have 'an independent jurisdictional basis to resolve the matter' (quoting Badgerow, 596 U.S. at 4)); Malkin v. Shasha as co-Tr. of Violet Shuker Shasha Tr., No. 21-2675, 2023 WL 3012381, at *1 (2d Cir. Apr. 20, 2023) ("Because

the FAA does not itself establish federal jurisdiction, a federal court may review such petitions only if it has 'an independent jurisdictional basis to resolve the matter'" (quoting *Badgerow*, 596 U.S. at 4)). Where a party seeks to confirm an arbitration award pursuant to Section 9 of the FAA, the petition must invoke diversity or subject matter jurisdiction. *Badgerow*, 596 U.S. at 9; see *Green v. Bank of Am. Merrill Lynch, No. 24-CV-2550, 2025 WL 1378193, at *2 (2d Cir. May 13, 2025)* ("Where, as here, a Section 9 or 10 petition raise[s] claims between non-diverse parties . . . the petition [does] not [belong in] federal court" (internal citations omitted)); *Trs. of N.Y. State Nurses Ass'n Pension Plan v. White Oak Glob. Advisors, LLC, 102 F.4th 572, 594 (2d Cir. 2024)* ("Absent diversity of citizenship between the parties, jurisdiction over a petition exists only if the 'face of the application' shows that 'federal law (beyond Section 9 or 10 itself) entitles the applicant to relief'" (quoting *Badgerow*, 596 U.S. at 9)).¹⁰

b. Plaintiff lacks standing to enforce the IDR Award

Defendant argues that the Court should dismiss this case for lack of standing since "Plaintiff lacks Article III standing because there is no financial injury, nor any injury to any other legally [*19] protected interest, as the NSA does not apply to the underlying medical claim line at issue." (Def.'s Mem. 11.) First, Defendant argues that "[u]nless and until Plaintiff establishes a threshold right to be reimbursed by [Defendant], there cannot be a cognizable injury arising from the [Defendant]'s

non-payment of the IDR determination as to the purported value of the claim line." (Def.'s Reply 8.) Second, Defendant argues that "the NSA explicitly limits the scope of items and services eligible for IDR, and in doing so excludes items and services that are the subject of an adverse benefit determination," and "[n]othing in the NSA vests [c]ertified IDR entities with authority to override a health plan's coverage determination and compel payment where that plan has determined that none is owed." (*Id.*) Third, Defendant argues that the Court should dismiss this case because "the NSA does not . . . incorporate the FAA as a mechanism for enforcing its IDR determination." (Def.'s Mem. 15.)

Plaintiff argues that "Defendant's standing arguments . . . are without merit," and "go[] to the heart of a motion to vacate, not a motion to dismiss for lack of standing." (Pl.'s Opp'n 6-7.) First, Plaintiff [*20] argues that because Defendant has refused to pay the \$32,000 issued by the certified IDR entity and Plaintiff has "alleged sufficient facts to demonstrate that Defendant has withheld money to which Plaintiff is entitled, Plaintiff has established an injury-in-fact sufficient for Article III standing." (Pl.'s Opp'n 7-8.) Second, Plaintiff argues that the certified IDR entity was tasked with determining whether 36226-LT was eligible for an IDR, Defendant did not object to the IDR process, fully participated in the process and therefore, "Plaintiff has a legally binding arbitration award in its favor." (*Id.* at 8.) Finally, Plaintiff argues that the award issued by the certified IDR entity is enforceable under Section 9 of the FAA because the NSA provides an implied right to enforce IDR Awards. (*Id.* at 9.)

When interpreting a statute, courts first turn to the plain meaning of the statute and presume that a legislature says what it means in the statute. *Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992)*; see *New York v. Mountain Tobacco Co., 942 F.3d 536, 546 (2d Cir. 2019)* ("The plain meaning [of a statute] is best discerned by 'looking to the statutory scheme as a whole and placing the

¹⁰ On March 30, 2026, the Supreme Court heard oral argument in *Jules v. Andre Balazs Properties*, No. 25-83. The Supreme Court is considering whether a district court that had jurisdiction over a claim when the lawsuit was initially filed, stayed the case and sent it to arbitration, can later confirm or vacate an arbitration award even if there is no other basis for federal court jurisdiction at the later stage. In the underlying decision, *Jules v. Andre Balazs Props.*, No. 23-1253, 2025 WL 1201914, at *2 (2d Cir. Apr. 25, 2025), cert. granted, 146 S. Ct. 878, 223 (2025), the Second Circuit concluded that "the district court retained jurisdiction following its stay pending arbitration to confirm the resulting award." *Id.* The Second Circuit relied on a line of cases that provide that a "court with the power to stay the action under § 3 [of the FAA] has the further power to confirm any ensuing arbitration award." *Id.* (quoting *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 202). Unlike in *Jules*, the Court does not have jurisdiction over Plaintiff's claim.

particular provision within the context of that statute." (quoting *Saks v. Franklin Covey Co.*, 316 F.3d 337, 345 (2d Cir. 2003)); *Mary Jo C. v. N.Y. State & Local Ret. Sys.*, 707 F.3d 144, 155 (2d Cir. 2013) (stating that statutory analysis begins with a "review [of] the [*21] statutory text, considering . . . the placement and purpose of [the] words in the statutory scheme" (quoting *United States v. Aguilar*, 585 F.3d 652, 657 (2d Cir. 2009))), cert. dismissed, 569 U.S. 1040 (2013); *Estate of Pew v. Cardarelli*, 527 F.3d 25, 30 (2d Cir. 2008) ("We first look to the statute's plain meaning; if the language is unambiguous, we will not look farther."); *Green v. City of N.Y.*, 465 F.3d 65, 78 (2d Cir. 2006) ("Statutory analysis begins with the text and its plain meaning, if it has one. Only if an attempt to discern the plain meaning fails because the statute is ambiguous, do we resort to canons of construction. If both the plain language and the canons of construction fail to resolve the ambiguity, we turn to the legislative history." (internal citations omitted)); *Lee v. Bankers Trust Co.*, 166 F.3d 540, 544 (2d Cir. 1999) ("It is axiomatic that the plain meaning of a statute controls its interpretation, and that judicial review must end at the statute's unambiguous terms. Legislative history and other tools of interpretation may be relied upon only if the terms of the statute are ambiguous." (internal citations omitted)). "[O]nly those plaintiffs who have been concretely harmed by a defendant's statutory violation may sue that private defendant over that violation in federal court." *TransUnion LLC*, 594 U.S. at 427 (emphasis omitted); *Cao v. Wedding in Paris LLC*, 727 F. Supp. 3d 239, 295 (E.D.N.Y. 2024) (quoting *Id.*).

The NSA's opening provision on balance billing for non-emergency services performed by [*22] out-of-network providers states that its provisions apply to "items or services . . . for which benefits are provided under the plan." See 42 U.S.C. § 300gg-132; see also *Requirements Related to Surprise Billing; Part I*, 86 Fed. Reg. 36,872, 36,891 (July 13, 2021) (explaining that NSA protections are not universal and do not extend to non-covered items or services); U.S. Dep't of Labor, Emp. Benefits Sec.

Admin., *How the No Surprises Act Can Protect You* (2022), <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/publications/avoid-surprise-healthcare-expenses> (last visited Mar. 31, 2026) ("The [NSA] does not cover every unexpected or high medical bill. For example, you can still be billed for services and treatments that are *not covered* by your plan.").

i. Plaintiff has no standing under the NSA to challenge the denied claim

Plaintiff has not alleged that it suffered an injury sufficient to establish standing under the NSA because the injury Plaintiff alleges arises from a denied claim. Defendant denied CPT code 36226-LT explaining that the claim "exceeded, [was] noncovered, invalid, bundled, excluded, or unnecessary based on current/history claims for same provider/DOS." (Def.'s Mem. 9 n.17; see Explanation of Payment.)

In support of its argument that it has standing under [*23] the NSA to confirm the IDR Award, Plaintiff relies on guidance from the Centers for Medicare and Medicaid Services to argue that the certified IDR entity was tasked with "determin[ing] whether the [f]ederal IDR [p]rocess is applicable." (Pl.'s Opp'n 8 (first alteration in original) (quoting Federal IDR Process Guidance for Certified IDR Entities).) However, the NSA provides that it applies to "items or services . . . for which benefits are provided under the plan." See 42 U.S.C. § 300gg-132. Further, Federal IDR Process Guidance for Certified IDR Entities, the guidance that Plaintiff relies on, provides that a "notice of denial of payment is not the same as a denial of coverage as the result of an adverse benefit determination" [as defined in 29 CFR 2560.503-1].¹¹ (Federal IDR

¹¹ See 29 C.F.R. § 2560.503-1(m)(4) (defining adverse benefit determination as "any of the following: a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit resulting from

Process Guidance for Certified IDR Entities 4 n.3); and that "[an] adverse benefit determination, if disputed, must be disputed through a plan's or issuer's claims and appeals process, not through the Federal IDR process." *Id.*; see also *Requirements Related to Surprise Billing; Part I, 86 Fed. Reg. 36,872, 36,901-02 (July 13, 2021)* (stating that a coverage denial constituting an adverse benefit determination under the NSA "be disputed through the plan[] or issuer's claims and appeals process"); Federal Independent Dispute Resolution Guidance [*24] for Disputing Parties 4 n.2 ("[A] denial of coverage as the result of an adverse benefit determination must be disputed through a plan[] or issuer's claims and appeals process, not through the Federal IDR Process") (citing *86 Fed. Reg. at 36,901-02*)).

Because the NSA applies to "items or services . . . for which benefits are provided under the plan," see [42 U.S.C. § 300gg-132](#), it does not apply to claims that are denied because they are not covered under the plan. Where a plaintiff is challenging the denial of a claim, federal guidance clarifies that the plaintiff is to "dispute[] the denial through [Defendant's] claims and appeals process not the IDR process. See *Requirements Related to Surprise Billing; Part I, 86 Fed. Reg. 36,872, 36,901-02 (July 13, 2021)* (stating that a coverage denial constituting an adverse benefit determination under the NSA "be disputed through the plan[] or issuer's claims and appeals process.")

Plaintiff seeks to challenge the denied claim under CPT code 36226-LT and must do so through the Defendant's internal system. See *Requirements Related to Surprise Billing; Part I, 86 Fed. Reg. 36,872, 36,901-02 (July 13, 2021)* (stating that a coverage denial constituting an adverse benefit determination under the NSA "be disputed through the plan[] or issuer's claims and appeals process.") Under the NSA, Plaintiff lacks standing to challenge a denied medical claim; therefore, the

the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.")

Court lacks subject matter jurisdiction [*25] to confirm the IDR Award pursuant to the NSA as requested by Plaintiff. See [Harty v. W. Point Realty, Inc., 28 F.4th 435 \(2d Cir. 2022\)](#) (affirming dismissal for lack of standing where plaintiff alleged statutory violations but failed to plead any concrete injury); [Maddox v. Bank of N.Y. Mellon Tr. Co., N.A., 19 F.4th 58 \(2d Cir. 2021\)](#) (affirming dismissal for lack of standing where plaintiffs alleged statutory violations but did not allege monetary loss or adverse financial consequences).

The Court therefore denies Plaintiff's request to confirm the award under the NSA because Plaintiff lacks standing and the Court therefore has no jurisdiction to adjudicate Plaintiff's request.

ii. Plaintiff lacks standing under the FAA to enforce the IDR Award

Defendant argues that the Court should also dismiss Plaintiff's motion for lack of jurisdiction because Plaintiff seeks relief pursuant to Section 9 of the FAA but the "NSA does *not* incorporate the FAA's procedures for enforcing an IDR determination." (Def.'s Mem. 14-15.)

Plaintiff argues that the IDR Award issued by the certified IDR entity is enforceable under Section 9 of the FAA because the NSA provides an implied right to enforce IDR Awards.¹² (Pl.'s Opp'n 9.)

¹² Plaintiff argues that the court in *GPS of N.J. M.D., P.C. v. Horizon Blue Cross & Blue Shield*, 22-CV-6614, 2023 WL 5815821, at *1 (D.N.J. Sep. 8, 2023) held that "federal courts have jurisdiction to confirm NSA awards pursuant to the FAA" and the Court should confirm the IDR award. (Pl.'s Opp'n. 9-11.) In *GPS*, the court denied the plaintiff's motion to vacate an IDR Award and granted the defendant's cross-motion to confirm the IDR award. The *GPS* court concluded that "[plaintiff] ha[d] not met its burden of proving that the arbitration award at issue should be vacated. Accordingly, [the court] "confirm[ed] the arbitration award." *GPS*, 2023 WL 5815821 at *10. The parties in *GPS* did not request that the court consider whether the NSA incorporated Section 9 of the FAA and the *GPS* court's analysis focused on sections 10(a)(3) and (4) of the FAA, both of which Congress expressly incorporated into the NSA. As a district court in New Jersey recently explained, "the Petitioner in [*GPS*] was not petitioning the [c]ourt to confirm the IDR [A]ward — it was petitioning the court to vacate the award granted to the Respondent." *Mod. Orthopaedics of N.J. v. Premera Blue Cross*, No. 2:25-CV-01087, 2025 WL 3063648, at *13 (D.N.J. Nov. 3, 2025). In this case, the *GPS* court's reasoning does not apply, as the parties disagree as to whether the NSA incorporates section 9 of the FAA unlike in *GPS* where the parties did not contest whether the NSA incorporated sections 10(a)(3) and (4) of the FAA. In addition, recent district court cases have concluded that courts lack jurisdiction to confirm IDR Awards because the NSA does not incorporate Section 9 of the FAA. See *Spiel, Md, Pa. v. Horizon Blue Cross*

1. The FAA does not independently confer jurisdiction

The FAA "does not itself create jurisdiction." See [Badgerow v. Walters](#), 596 U.S. 1, 4 (2022) (holding that the FAA [*26] does not independently confer jurisdiction and there must be an "independent jurisdictional basis to resolve the matter" in cases involving Sections 9 and 10 of the FAA); [Malkin](#), 2023 WL 3012381 ("Because the FAA does not itself establish federal jurisdiction, a federal court may review such petitions only if it has 'an independent jurisdictional basis to resolve the matter'" (quoting [Badgerow](#), 596 U.S. at 4)). Where a party seeks to confirm an arbitration award pursuant to Section 9 of the FAA, a court "may look only to the application actually submitted to it in assessing its jurisdiction." [Badgerow](#), 596 U.S. at 5; see [Green](#), 2025 WL 1378193, at *2 (affirming the district court's holding that the plaintiff failed to allege "that federal law (beyond Section 9 or 10 itself) entitle[d] [the plaintiff] to relief" and holding that "[w]here, as here, a Section 9 or 10 petition raise[s] claims between non-diverse parties involving state law, the petition belongs in state, not federal court" (internal citations omitted)); see also [Trs. of the N.Y. State Nurses Asso'n Pension Plan](#), 102 F.4th at 596 ("Subject matter jurisdiction over a petition to confirm an award turns on the law governing the contractual rights created by the arbitration agreement.").

The Court lacks jurisdiction pursuant to Section 9 of the FAA to confirm the IDR Award because the FAA does not independently confer jurisdiction. See [Molecular Dynamics, Ltd. v. Spectrum Dynamics Med. Ltd.](#), 143 F.4th 70, 86 (2d Cir.

Blue Shield Of N.J., No. 25-CV-14769, 2025 WL 3459719, at *4 (D.N.J. Dec. 2, 2025) (finding that the court lacks jurisdiction to confirm an IDR Award "because the IDR process is not an arbitration" and dismissing Plaintiff's claims under Section 9 of the FAA); [Complete Medical Wellness LLC v. Horizon Blue Cross Blue Shield Of N.J.](#), No. CV 25-04177, 2025 WL 3443620, at *4 (D.N.J. Dec. 1, 2025) (same); [Garden State Pain Management v. Horizon Blue Cross Blue Shield Of N.J.](#), No. 25-CV-05679, 2025 WL 3443243, at *4 (D.N.J. Dec. 1, 2025) (same); [Northeast Neurosurgical Assocs., v. Horizon Blue Cross Blue Shield Of N.J.](#), No. 25-CV-06288, 2025 WL3282210, at *4 (D.N.J. Nov. 25, 2025) (same); [Freeman Pain Inst. P.A. v. Horizon Blue Cross Blue Shield of N.J.](#), No. 25- CV-02507, 2025 WL 3268289, at *4 (D.N.J. Nov. 24, 2025) (same).

2025) (finding that the FAA "'bestows [*27] no federal jurisdiction but rather requires for access to a federal forum an independent jurisdictional basis over the parties' dispute'" (quoting [Landau v. Eisenberg](#), 922 F.3d 495, 497 (2d Cir. 2019))); [Broumand v. Joseph](#), 522 F. Supp. 3d 8, 19 (S.D.N.Y. 2021) (The FAA "bestows no federal jurisdiction but rather requires for access to a federal forum an independent jurisdictional basis over the parties' dispute" (quoting [Washington Nat'l Ins. Co. v. OBEX Grp. LLC](#), 958 F.3d 126, 133 (2d Cir. 2020))).

Accordingly, the Court has no jurisdiction pursuant to Section 9 of the FAA to confirm the IDR Award.

2. Congress did not incorporate Section 9 of the FAA into the NSA

Section 9 of the FAA empowers courts to confirm an arbitration award. See [T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc.](#), 592 F.3d 329, 338 n.6 (2d Cir. 2010) (noting that Section 9 "articulat[es] the district court's power to confirm arbitration awards"); [Elwell v. Raymond James Fin. Servs., Inc.](#), 686 F. Supp. 3d 281, 287 (S.D.N.Y. 2023) ("Section[] 9 . . . of FAA empower[s] a federal court to confirm . . . an arbitration award.") A court is only required to find "a barely colorable justification for the outcome reached" by the arbitrators to confirm an award. [Jock v. Sterling Jewelers Inc.](#), 646 F.3d 113, 122 (2d Cir. 2011) (quoting [ReliaStar Life Ins. Co. of N.Y. v. EMC Nat'l Life Co.](#), 564 F.3d 81, 86 (2d Cir. 2009)); see also [D.H. Blair & Co.](#), 462 F.3d at 110. "The arbitrator's rationale for an award need not be explained, and the award should be confirmed if a ground for the arbitrator's decision can be inferred from the facts of the case." [D.H. Blair & Co.](#), 462 F.3d at 110 (internal quotation marks omitted).

As discussed above, Section 9 of the FAA provides for confirming an IDR Award but does not independently confer jurisdiction on the Court. See *Supra* II.b. Thus, a party seeking

confirmation [*28] of an IDR Award must separately allege jurisdiction. (*Id.*) Moreover, Congress did not incorporate Section 9 of the FAA into the NSA and the Court therefore cannot confirm the IDR Award pursuant to NSA. See *T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Ass'n, No. 25-CV-499, 2025 WL 3496382, at *6 (S.D.N.Y. Dec. 5, 2025)* (noting that Congress did not incorporate Section 9 of the FAA into the NSA); *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of N.J., 790 F. Supp. 3d 129, 138 (E.D.N.Y. 2025)* ("Congress chose not to incorporate [Section] 9 into the NSA. It incorporated only parts of [Section] 10." (quoting *Guardian Flight, L.L.C., 140 F.4th 271, 276 (5th Cir. 2025)*)); *Mod. Orthopaedics of N.J. v. Premera Blue Cross, No. 2:25-CV-01087, 2025 WL 3063648, at *7 (D.N.J. Nov. 3, 2025)* ("[D]espite being a federal law, Section 9 bestows no federal jurisdiction and instead the plaintiff requires an independent jurisdictional basis on the face of the complaint." (internal quotations and citation omitted)).

The NSA does not incorporate Section 9 of the FAA, so the Court cannot confirm the IDR Award pursuant to NSA and because the FAA does not confer jurisdiction, the Court also cannot affirm the IDR Award pursuant to Section 9 of the FAA.

3. The NSA does not include an implied private right of action that incorporates Section 9 of the FAA

Defendant argues first, that "[t]here is no evidence of Congressional intent to create a private right of enforcement" regarding the NSA. (Def.'s Reply 15.) Second, Defendant argues that "the Supreme Court has expressly stated that courts cannot do what Plaintiff asks of this [C]ourt — find an implied remedy because of vague concerns that the remedies that Congress [*29] *did* provide for are somehow insufficient." (*Id.*) Third, Defendant argues that "Congress specifically addressed judicial review of IDR determinations, and in doing

so excluded private enforcement." (*Id.* at 17.) Finally, Defendant argues that analyzing the *Cort v. Ash, 422 U.S. 66 (1975)*, factors lead to the conclusion that Congress did not intend to provide a private right of action. Defendant argues that the first *Cort* factor — whether the plaintiff is a member of the class for whose special benefit the statute was created — weighs in its favor because "the statute *expressly limits the availability of judicial review to only those circumstances where vacating an arbitration award might be appropriate.*" (Def.'s Mem. 22.) Defendant argues that "this alone is sufficient to foreclose any argument that a private cause of action can be found by implication," (*id.*), and there is no indication in the NSA that Congress intended providers to benefit from it, (*id.* at 22-23.) As to the second factor — whether there is an indication of an implicit or explicit legislative intent to create or deny a private remedy — Defendant argues it weighs in its favor because "Congress clearly considered the appropriate enforcement mechanism, [*30] as the NSA *explicitly directs* the [Department of Labor] (which regulates ERISA plans such as [Defendant's]) to "identify patterns of [] violations" under the law, conduct investigations, and take retrospective and prospective measures to correct violations, as well as to develop a process to receive complaints relating to alleged violations.¹³ (*Id.* (citing *29 U.S.C. § 1152(a)*)).

Plaintiff argues first, that the IDR Award "issued by the certified IDR entity is enforceable under Section 9 of the FAA" because "the NSA provides an implied right to enforce IDR Awards." (Pl.'s Opp'n 9.) Second, Plaintiff argues that "the factors set forth in *Cort v. Ash*¹⁴. . . lead to the conclusion that the NSA contains an implicit private right of action." (*Id.* at 17.) Third, Plaintiff argues that the

¹³ Defendant did not address the last two *Cort* factors: whether "it is consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff" and whether "the cause of action is one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law." *Cort v. Ash*, 422 U.S. 66, 78 (1975).

¹⁴ Plaintiff does not analyze each *Cort* factor separately. (See generally Pl.'s Opp'n; Pl.'s Reply)

"NSA benefits patients, providers, *and* insurers." (*Id.*) In support, Plaintiff contends that NSA benefits patients by protecting them from balance billing, providers by ensuring prompt and fair payment of awards and insurers "by having claims paid at a reasonable rate." (*Id.* at 18.) Fourth, Plaintiff contends that the NSA states that an IDR Award "shall be binding upon the parties involved" and this indicates congressional intent of a right and [*31] remedy because it "carries an implicit judicial enforcement mechanism." (*Id.* at 9, 12.)

"[P]rivate rights of action to enforce federal law must be created by Congress." *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001); *see also* *Cenzon-DeCarlo v. Mount Sinai Hosp.*, 626 F.3d 695, 697 (2d Cir. 2010) ("Federal courts have inferred private rights of action, but only when there is explicit evidence of Congressional intent."); *Duplan v. City of N.Y.*, 888 F.3d 612, 621 (2d Cir. 2018) (finding that the Supreme Court "has increasingly discouraged the recognition of implied rights of actions without a clear indication of congressional intent"); *Bellikoff v. Eaton Vance Corp.*, 481 F.3d 110, 116 (2d Cir. 2007) (finding that where there is no express private right of action, courts "begin with the presumption that Congress did not intend one"); *see also* *Moya v. U.S. Dep't of Homeland Sec.*, 975 F.3d 120, 128 (2d Cir. 2020) ("[I]mplied rights of action are disfavored."); *Olmsted v. Pruco Life Ins. Co.*, 283 F.3d 429, 432 (2d Cir. 2002) ("A court . . . cannot ordinarily conclude that Congress intended to create a right of action when none was explicitly provided."); *Zito v. NYC Office of Payroll Admin.*, No. 11-CV-2779, 2011 WL 5420054, at *3 (S.D.N.Y. Nov. 9, 2011) ("A private right of action will not be implied without 'explicit evidence of Congressional intent.'" (quoting *Cenzon-DeCarlo*, 626 F.3d at 697.)) "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." *Sandoval*, 532 U.S. at 286. The "statutory intent . . . [of the remedy] is determinative." *Id.*; *see also* *Republic of Iraq v. ABB AG*, 768 F.3d 145, 170 (2d Cir. 2014)

(noting that courts [*32] look to the "texture and structure of the statute for congressional intent").

A court can only find an implied cause of action where "the underlying statute can be interpreted to disclose the intent to create one." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta*, 552 U.S. 148, 164 (2008). A court must ascertain whether the statute "'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.) In *Cort v. Ash*, the Supreme Court outlined a four-factor test to guide a court's analysis of congressional intent. *Cort v. Ash*, 422 U.S. 66 (1975). *Cort* asks the court to consider:

First, is the plaintiff one of the class for whose especial benefit the statute was enacted — that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?

Id. at 78 (citations omitted).

Based on the *Cort* factors, the Court finds [*33] that Congress did not intend to create an implied right of action for the NSA. The first factor — whether the plaintiff is a member of the class for whose special benefit the statute was created — weighs against Plaintiff because Plaintiff is not a member of a class for whose special benefit Congress created the NSA. *See* *California v. Sierra Club*, 451 U.S. 287, 294 (1981) (finding that this *Cort* factor "is not simply who would benefit from the Act, but whether Congress intended to confer federal rights upon those beneficiaries.) "[R]ecognition of any private right of action for violating a federal statute . . . 'must ultimately rest

on congressional intent to provide a private remedy." *Astra USA, Inc. v. Santa Clara Cnty., Cal.*, 563 U.S. 110, 117 (2011) (quoting *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1102, (1991)). The existence of an implied cause of action turns on whether there is "a clear manifestation of congressional intent to create" an implied cause of action. *Lopez v. Jet Blue Airways*, 662 F.3d 593, 596 (2d Cir. 2011); see *Johnson v. JPMorgan Chase Bank, N.A.*, 488 F. Supp. 3d 144, 157 (S.D.N.Y. 2020) ("Such a 'clear manifestation' exists where the statute's text and structure show an intention to create a federal right through rights-creating language, an intention to create a private remedy, and consistency of a private remedy with the statutory scheme." (citing *Republic of Iraq*, 768 F.3d at 170)).

Plaintiff argues that the NSA includes rights-granting language that applies to providers like Plaintiff by [*34] "mandat[ing] prompt and fair payment of binding awards through the IDR process." (Pl.'s Opp'n 17-18.) To find an implied cause of action, the NSA would also have to include legislative intent for Plaintiff to redeem a remedy through the courts. However, there is no language in the NSA that provides a remedy for Plaintiff challenging a denied claim. See *Koppel v. 4987 Corp.*, 167 F.3d 125, 135 (2d Cir. 1999) ("Generally the determination of whether an implied private right of action lies under a statute 'must ultimately rest on congressional intent to provide a private remedy'" (quoting *Virginia Bankshares, Inc.* 501 U.S. at 1102)); *New York City Health & Hosps. Corp. v. WellCare of N.Y., Inc.*, 801 F. Supp. 2d 126, 134 (S.D.N.Y. 2011) ("[R]ecognition of any private right of action for violating a federal statute' . . . 'must ultimately rest on congressional intent to provide a private remedy'" (quoting *Astra USA, Inc.* 563 U.S. at 117)); see also *Guardian Flight LLC*, 735 F. Supp. 3d at 749 (holding that Congress did not intend to include an implied private right of action and explaining that "[t]here is no language in the NSA establishing that Congress intended to create a remedy for out-of-network providers."). The NSA

does not include congressional intent to provide a right and remedy to providers, therefore this factor weighs in Defendant's favor.

The second *Cort* factor — whether there is an indication of an implicit or explicit legislative intent to [*35] create or deny a private remedy — weighs against Plaintiff because Congress has provided an administrative scheme¹⁵ as the appropriate remedy for providers like Plaintiff seeking to resolve their disputes with insurers. See *Mod. Orthopaedics*, 2025 WL 3063648, at *9 (finding that the "inclusion of administrative enforcement negates any implied right of action"); see also *supra* Section I.a.2 (outlining the NSA's administrative enforcement scheme). In light of this administrative scheme, the second *Cort* factor weighs against finding an implied cause of action. Further, the plain text of the NSA reveals no legislative intent for a cause of action for providers like Plaintiff. Rather, Congress has created an administrative scheme and in light of the extensive administrative scheme, this Court cannot invent a cause of action. See *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 328-29 (2015) ("The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others" (quoting *Sandoval*, 532 U.S. at 290)); see also *Lindsay*, 581 F.3d at 52 ("If Congress has manifested no intent to provide a private right of action, we cannot create one"); *Neurological Surgery, P.C. v. Oxford Health Plans (NY), Inc.*, No. 18-CV-560, 2020 WL 13931876, at *9 (E.D.N.Y. Oct. 30, 2020) ("Where a statute fails to specify a private cause of action, there is a presumption that Congress did not intend to create such a right"); see also *FHMC LLC v. Blue Cross*

15 Plaintiff analogizes this case to *Cheminova A/S v. Griffin L.L.C.* (Pl.'s Opp'n 17.) In *Cheminova A/S*, the court found that the administrative remedy provided in the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") did not supplant or preclude judicial enforcement of the statute. See 182 F. Supp. 2d 68, 73-74 (D.D.C. 2002). The *Cheminova A/S* court found it necessary to imply a cause of action to further the goals of the statute. *Id.* However, this reasoning does not apply to this case because as established in this section, there is no legislative intent for an implied cause of action in the NSA. Unlike FIFRA, which does not include an administrative remedy such as agency enforcement or a dispute resolution process, the NSA provides administrative remedies to achieve its goals. Unlike the NSA, FIFRA expressly incorporated a set of preexisting arbitration procedures and provided for judicial confirmation. (*Id.* at 79.)

& Blue Shield of Ariz. Inc., No. 23-CV-876, 2024 WL 1461989, at *3 (D. Ariz. Apr. 4, 2024) ("An implied [*36] right of action is incongruous with [the NSA], in which judicial review is limited to specific instances"); Axis Neuromonitoring, LLC, Petitioner, v. Aetna Inc., Kelsey Seybold Medical Group, Pllc, Respondents., No. 25-CV-1048, 2026 WL 795260, at *5 (D. Conn. Mar. 20, 2026) (holding that "the NSA [did not] create an implied private right of action"); Conn. Gen. Life Ins. Co. v. E. Coast Advanced Plastic Surgery, LLC, No. 25-CV-1686, 2026 WL 518442, at *7 (S.D.N.Y. Feb. 24, 2026) (affirming the court's previous finding in an earlier motion to dismiss in which the court "[join[ed] the substantial majority of courts to consider the issue" and found that "the NSA does not contain an express or implied right of action.").

The first two *Cort* factors fail to reveal any congressional intent to create a private right of action, and the Court therefore declines to consider the final two factors. See Alaji Salahuddin v. Alaji, 232 F.3d 305, 309 (2d Cir. 2000) ("[W]hen analysis of the first two *Cort* factors fails to reveal any congressional intent to create a private right of action, the final two factors need not be reached.").

In summary, Plaintiff lacks standing to confirm the IDR Award under the NSA because NSA does not expressly or impliedly incorporate Section 9 of the FAA; the FAA does not confer jurisdiction on the Court, therefore the Court lacks jurisdiction to confirm the IDR Award.

c. Defendant's motion to vacate the IDR award and Plaintiff's cross-motions to confirm the IDR Award

Defendant argues, [*37] first, that the Court should vacate the IDR Award issued by the certified IDR entity because the certified IDR entity exceeded its statutory scope in granting the award by issuing a payment for a denied claim and the certified IDR entity has no authority to do so. (Def.'s Reply 22-23; Def.'s Cross-Mot. Reply 5-6.) Second, Defendant argues that the Court should also vacate

the IDR Award because it was "procured by fraud or undue means" as "Plaintiff only procured its favorable IDR determination . . . by falsely attesting that the underlying denied claim line was eligible for IDR."¹⁶ (Def.'s Cross-Mot. Reply 7, 9; Def.'s Reply 24-25.) Finally, Defendant argues that it timely moved to vacate the IDR Award because "Congress did not incorporate [the FAA's statute of limitations] into the NSA." (Def.'s Cross-Mot. Reply 1.)

Plaintiff seeks confirmation of the IDR Award and argues, first, that "pursuant to Section 9 of the FAA, a party to an arbitration may commence a summary action in court for confirmation of the award, and 'the court *must* grant such an order unless the award is vacated, modified, or corrected as prescribed [by the FAA].'" (Pl.'s Opp'n 19-20 (alteration in original) (quoting 9 U.S.C. § 9.) Second, Plaintiff [*38] argues that Defendant's cross-motion to vacate the IDR Award "is [u]ntimely under the FAA[s] [statute of limitations]." (Pl.'s Reply 9.) Third, Plaintiff argues that Defendant does not meet its "[h]igh [b]urden to [v]acate the [a]ward." (*Id.* at 11.)

The NSA "incorporates [Section 10] the FAA's provisions allowing for the vacatur of arbitration awards." Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc., No. 24 10135, 2025 WL 3222820, at *4 (11th Cir. Nov. 19, 2025); see Guardian Flight, L.L.C., 140 F.4th 613, 618 (5th Cir. 2025) ("[T]he NSA incorporates Federal Arbitration Act ("FAA") provisions that allow courts to vacate awards only for specific reasons"). "Under the FAA, courts may vacate an arbitrator's decision 'only in very unusual circumstances.'" Oxford Health Plans LLC v. Sutter, 569 U.S. 564, 568 (2013) (internal quotation marks omitted). "The party seeking to vacate the award bears the

¹⁶ Because the Court dismisses the complaint for lack of jurisdiction, the Court declines to address the merits of the motion to vacate — that Plaintiff received the IDR Award by fraud or undue means. See Molecular Dynamics, Ltd. v. Spectrum Dynamics Med. Ltd., 143 F.4th 70, 80-81 (2d Cir. 2025) (affirming a district court's dismissal of a petition to vacate a foreign arbitral award for lack of subject matter jurisdiction and not addressing any merits or substantive vacatur arguments because the jurisdictional defect precluded reaching those issues).

heavy burden of demonstrating sufficient grounds for vacatur." [Circle Indus. USA, Inc. v. Parke Const. Grp., Inc.](#), 183 F.3d 105, 109 (2d Cir. 1999).

While the NSA incorporates Section 10 of the FAA, it does not incorporate Section 9 of the FAA as discussed above *supra* II.ii. See [T.V. Seshan M.D., P.C.](#), 2025 WL 3496382, at *6 (noting that Congress did not incorporate Section 9 of the FAA into the NSA); [Jeffrey Farkas, M.D., LLC](#), 790 F. Supp. 3d at 138 ("Congress chose not to incorporate [Section] 9 into the NSA. It incorporated only parts of [Section] 10." (quoting [Guardian Flight, L.L.C.](#), 140 F.4th 271, 276 (5th Cir. 2025))). As the Court discussed *supra* Section II.b, the NSA does not incorporate Section 9 of the FAA. Accordingly, the Court cannot confirm the IDR Award pursuant to the NSA, the FAA does not separately provide jurisdiction, and Plaintiff has not otherwise established the Court's [*39] jurisdiction to enforce the IDR Award. See [Spiel, Md, Pa.](#), 2025 WL 3459719, at *4 (finding that the court lacked jurisdiction to confirm the IDR award and dismissing the plaintiff's claims under Section 9 of the FAA); [Worldwide Aircraft Servs. Inc. v. Freedom Life Ins. Co. of Am.](#), No. 25-CV-1158, 2025 WL 3551397, at *3 (M.D. Fla. Dec. 11, 2025) ("[T]his [c]ourt lacks subject matter jurisdiction to enforce or confirm an IDR award under the NSA" because "the NSA does not create a private cause of action to enforce IDR awards under § 9 of the FAA.").

In addition, the NSA does not incorporate Section 12, the FAA's procedural rules for vacating an award and these rules therefore do not apply to Defendant's cross-motion to vacate. See [Med-Trans Corp. v. Cap. Health Plan, Inc.](#), 700 F. Supp. 3d 1076, 1083 (M.D. Fla. 2023) (holding that "[t]he FAA's procedural requirements for vacating an award, such as 9 U.S.C. § 12's requirement of a motion filed within three months, are not incorporated [into the NSA]"), *aff'd sub nom.*, [Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.](#), 160 F.4th 1110 (11th Cir. 2025). Because the NSA does not incorporate the FAA's

procedural rules, including those regarding a statute of limitations and the NSA does not include a statute of limitations for vacating an IDR Award, the default statute of limitations of 28 U.S.C. § 1658(a) applies. See [Jones v. R.R. Donnelley & Sons Co.](#), 541 U.S. 369, 371(2004) (explaining that Congress "enacted a catchall [four]-year statute of limitations for actions arising under federal statutes enacted after December 1, 1990"); [Spira v. J.P. Morgan Chase & Co.](#), 466 F. App'x 20, 23 n.3 (2d Cir. 2012) (noting that Section 1658's "four-year limitations period applies to all [*40] civil actions arising under statutes enacted after December 1, 1990 . . . except as otherwise indicated"); [Gupte v. Uber Technologies, Inc.](#), No. 24-CV-02037, 2025 WL 904741, at *5 (D. Conn. Mar. 24, 2025) (holding that "[t]hrough [the applicable] statute itself does not contain a statute of limitations, [it is] subject to the four-year catch-all statute of limitations in 28 U.S.C. § 1658(a)"), *report and recommendation adopted*, No. 24-CV-02037, 2025 WL 1144763 (D. Conn. Apr. 18, 2025).

The certified IDR entity issued the IDR in Plaintiff's favor for 36226-LT on January 29, 2024. (Compl. ¶ 16.) Defendant filed its cross-motion to vacate on July 9, 2025, (Def.'s Cross-Mot.), within Section 1658(a)'s catch-all four-year statute of limitations period. Therefore, Defendant's motion was timely. See [Vega-Ruiz v. Northwell Health](#), 992 F.3d 61, 64 (2d Cir. 2021) ("[Section 1658 provides a] 'uniform federal statute of limitations' that applies when a federal statute fails to set its own limitations period" (quoting [Jones](#), 541 U.S. at 380)); [Gupte](#), 2025 WL 904741, at *5 (applying Section 1658(a)'s four-year catch-all statute of limitations where the relevant federal statute did not contain its own limitations period).

As set forth *supra* in section II.b.ii, the NSA does not expressly or implicitly incorporate section 9 of the FAA, and the FAA confers no independent jurisdiction. Therefore, the Court lacks jurisdiction and cannot enforce the IDR Award. Because Plaintiff lacks standing to bring an NSA claim for Defendant's denial of 36226-LT, [*41] the Court

declines to address the merits of the motion to vacate. See *Molecular Dynamics, Ltd.*, 143 F.4th at 70 (affirming a district court's dismissal of a petition to vacate a foreign arbitral award for lack of subject matter jurisdiction and not addressing any merits or substantive vacatur arguments because the jurisdictional defect precluded reaching those issues); *Westmoreland Capital Corp. v. Findlay*, 100 F.3d 263, 269 (2d Cir. 1996) (affirming dismissal for lack of subject matter jurisdiction and stating that because jurisdiction was lacking, the court did not evaluate the district court's alternative merits rulings).

III. Conclusion

For the reasons discussed above, the Court grants Defendant's motion to dismiss this case and denies Plaintiff's cross-motion to confirm the IDR Award.

Dated: April 1, 2026

Brooklyn, New York

SO ORDERED:

/s/ MKB

MARGO K. BRODIE

United States District Judge

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EXHIBIT 12

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Oaks v. Columbus Radiology Corp.

United States District Court for the Southern District of Ohio, Western Division

March 25, 2026, Filed

Case No. 1:25-cv-93

Reporter

2026 U.S. Dist. LEXIS 63380 *; 2026 LX 160136; 2026 WL 820947

LINDSEY OAKS, et al., Plaintiffs, v.
COLUMBUS RADIOLOGY CORP, et al.,
Defendants.

Counsel: [*1] For Lindsey Oaks, Individually & on behalf of all others similarly situated, Gerald Jefferies, Individually & on behalf of all others similarly situated, Constance Quigley, Individually & on behalf of all others similarly situated, Emil Merolla, Individually & on behalf of all others similarly situated, Cynthia Merolla, Individually & on behalf of all others similarly situated, Plaintiffs: Charles David Ewing, LEAD ATTORNEY, Ewing & Willis PLLC, Louisville, KY; Michael Dillon O'Neill, LEAD ATTORNEY, Cincinnati, OH; William Morris Bristol, LEAD ATTORNEY, Gary F. Franke Co., L.P.A., Cincinnati, OH; Gary Francis Franke, Gary F. Franke CO., L.P.A., Cincinnati, OH.

For Columbus Radiology Corp, Defendant: Gerald L Maatman, Jr, Jennifer A Riley, LEAD ATTORNEYS, PRO HAC VICE, Duane Morris LLP, Chicago, IL; Gregory S Slotnick, Nathan Berkebile, PRO HAC VICE, Duane Morris LLP, New York, NY; Shannon Noelle, PRO HAC VICE, Kathryn Regina Brown, Duane Morris LLP, Philadelphia, PA.

For Frost-Arnett Company, Defendant: Matthew Lawrence Schrader, LEAD ATTORNEY, Reminger Co., L.P.A., Reminger Co., L.P.A., Columbus, OH.

Judges: MATTHEW W. McFARLAND, UNITED STATES DISTRICT JUDGE.

Opinion by: MATTHEW W. McFARLAND

Opinion

ORDER AND OPINION [*2]

This matter is before the Court on Defendant Columbus Radiology Corporation's Motion to Dismiss Plaintiff's Complaint (Doc. 13). Plaintiff filed a Response in Opposition (Doc. 14), and Defendant filed a Reply in Support (Doc. 15). Thus, this matter is ripe for the Court's review. For the following reasons, the Court **GRANTS IN PART** Defendant's Motion to Dismiss (Doc. 13).

ALLEGED FACTS

I. The Parties

Plaintiffs Lindsey Oaks, Gerald Jeffries, Constance Quigley, Emil Merolla, and Cynthia Merolla (collectively, "Named Plaintiffs") received care at Ohio hospitals and healthcare centers where Defendant Columbus Radiology Corporation ("CRC") provides radiological services. (Compl., Doc. 1, ¶¶ 4-9.) Defendant Frost-Arnett Company ("Frost-Arnett") provides debt collection and revenue cycle services to CRC. (*Id.* at ¶¶ 10, 13.) CRC entered into Provider Agreements with Health Insuring Corporations

("HICs") that operate in Ohio. (Compl., Doc. 1, ¶

17.) The Provider Agreements contain a "hold harmless" provision per [Ohio Revised Code § 1751.13\(C\)\(2\)](#). This provision states, in relevant part:

"[Provider/Health Care Facility] agrees that in no event, including but not limited to nonpayment by the health insuring corporation [...], shall [*3] [Provider/Health Care Facility] bill, charge, collect a deposit from, seek remuneration or reimbursement from, or have any recourse against, a subscriber, enrollee, person to whom health care services have been provided, or person acting on behalf of the covered enrollee, for health care services provided pursuant to this agreement. This does not prohibit [Provider/Health Care Facility] from collecting co-insurance, deductibles, or copayments as specifically provided in the evidence of coverage, or fees for uncovered health care services delivered on a fee-for-service basis to persons referenced above, nor from any recourse against the health insuring corporation or its successor."

(*Id.* at ¶ 18.) Named Plaintiffs allege that Defendants CRC and Frost-Arnett "systematically failed and/or refused to submit claims for medical treatment" to patients' HICs and instead billed the patients directly, in violation of the Provider Agreements, [O.R.C. §§ 1751.60, 3902.51](#), and [26 U.S.C. § 9816](#). (*Id.* at ¶ 19.)

II Allegations of the Named Plaintiffs

Plaintiff Oaks specifically alleges that, in 2023, she suffered injuries in a motor vehicle accident and received treatment, including an MRI scan of her spine, at Mercy Health - West Hospital [*4] in Cincinnati, Ohio. (Compl., Doc. 1, ¶¶ 20-21.) When she arrived at the hospital, she informed the registration clerk that she had health insurance coverage through Anthem BCBS, an HIC, and alleges that she provided all relevant information necessary to submit claims for coverage to that HIC, including plan name, claim address, group

number, and policy number. (*Id.* at ¶ 23; *see also* Oaks Intake Form, Exhibit 3, Doc. 1-4.) Mercy Health - West then forwarded that information to CRC, who performed the MRI at the hospital. (*Id.* at ¶¶ 24-25.) However, Plaintiff Oaks alleges that, in the following months, CRC sent numerous bills seeking payment directly from her; these payments were neither co-payments nor deductibles. (*Id.* at ¶ 26.) Specifically, CRC mailed requests for payment on October 18, 2023, November 27, 2023, January 6, 2024, and February 16, 2024. (*Id.* at ¶ 27; *see also* Oaks Mail, Exhibit 4, Doc. 1-5.) And, CRC emailed Plaintiff Oaks to request payment on November 10, 2023, November 29, 2023, and December 6, 2023. (*Id.* at ¶ 28; *see also* Oaks Email, Exhibit 5, Doc. 1-6.) Furthermore, CRC texted Plaintiff Oaks on December 6, 2023, to seek payment directly from her. (*Id.* at ¶ 29; [*5] *see also* Oaks CRC Text, Exhibit 6, Doc. 1-7.)

After these payment requests, CRC then turned the matter to Frost-Arnett, who sought payment directly from Plaintiff Oaks via text message on thirty separate occasions between January and December 2024. (Compl., Doc. 1, ¶¶ 30-31; *see also* Oaks Frost-Arnett Text, Exhibit 7, Doc. 1-8.) Frost-Arnett also called Plaintiff Oaks to seek direct payment starting June 5, 2024, through the filing of the Complaint. (*Id.* at ¶ 32; *see also* Oaks Frost-Arnett Telephone Record, Exhibit 8, Doc. 1-9.) Plaintiff Oaks alleges that Defendants have failed and refused to submit her medical claims to Anthem BCBS, her HIC. (*Id.* at ¶ 33.)

Plaintiff Jefferies experienced a similar set of circumstances with Defendants. (Compl., Doc. 1, ¶¶ 34-44.) After suffering injuries, he sought treatment at Mercy Health - Clermont Hospital and informed the registration clerk of his health insurance coverage through Medical Mutual. (*Id.* at ¶¶ 34-37.) He received radiological services at the hospital from CRC, and his itemized medical bills confirm these services along with his insurance coverage through his HIC. (*Id.* at ¶¶ 38-39; *see also* Jefferies Medical Bills, Exhibit 9, Doc. [*6] 1-10.) In the months that followed, CRC sought payment

for these services directly from Plaintiff Jefferies; when he did not pay, CRC directed Frost-Arnett to seek payment from him. (*Id.* at ¶¶ 41-42; *see also* Jefferies' CRC Request, Exhibit 10, Doc. 1-11; CRC Authorization to Frost-Arnett, Exhibit 11, Doc. 1-12; Jefferies' Frost-Arnett Request, Exhibit 12, Doc. 1-13.) Plaintiff Jefferies thus alleges that Defendants failed and refused to submit his medical claims to his HIC. (*Id.* at ¶ 44.)

Plaintiff Quigley similarly received treatment at a hospital where CRC provided her with radiological services. (Compl., Doc. 1, ¶¶ 45-46, 49.) She, too, informed the registration clerk of her health insurance coverage through Anthem BCBS. (*Id.* at ¶¶ 47-48.) And, again, itemized medical bills confirm her treatment from CRC along with her insurance coverage through her HIC. (*Id.* at ¶ 50; *see also* Quigley Medical Bills, Exhibit 13, Doc. 1-14.) But, just as with the other Named Plaintiffs, Plaintiff Quigley received a request for payment directly from CRC. (*Id.* at ¶ 52; Quigley CRC Request for Payment #1, Exhibit 14, Doc. 1-15.) In response to this request, Plaintiff Quigley directed her legal counsel [*7] to contact CRC, who advised CRC that Plaintiff Quigley had health insurance and provided CRC with a copy of that insurance card. (*Id.* at ¶ 53; *see also* Quigley's Counsel Letter, Exhibit 15, Doc. 1-16.) Despite this correspondence, CRC sent another letter seeking payment directly from Plaintiff Quigley for the medical services it provided. (*Id.* at ¶ 54; *see also* Quigley CRC Request for Payment #2, Exhibit 16, Doc. 1-17.)

Plaintiff E. Merolla's allegations are similar, yet the circumstances differ slightly from those of the other Named Plaintiffs. (*See* Compl., Doc. 1, ¶¶ 55-66.) Plaintiff E. Merolla received treatment at Southwest General Hospital in Cuyahoga County, Ohio in 2023. (*Id.* at ¶ 55.) He provided the registration clerk with his health insurance information through Medicare and Mutual of Omaha Medicare Supplement. (*Id.* at ¶ 57.) He then received radiological services from CRC while at the hospital; an itemized explanation of benefits

("EOB") confirms this treatment and lists his health insurance coverage through his HIC. (*Id.* at ¶¶ 58-59; *see also* E. Merolla Explanation of Benefits, Exhibit 17, Doc. 1-18.) CRC then sent Plaintiff E. Merolla correspondence seeking payment for [*8] the medical treatment directly. (*Id.* ¶ 61.) However, unlike the other Named Plaintiffs, Plaintiff E. Merolla paid the medical bill in full. (*Id.* at 62; *see also* E. Merolla Payment Confirmation, Exhibit 18, Doc. 1-19.) In the months that followed, though, Plaintiff E. Merolla realized that CRC had unlawfully billed him; so, he attempted to request a refund of his payment by contacting CRC, filing complaints with the Ohio Attorney General's Office, and the Centers for Medicare & Medicaid Services. (*Id.* at ¶ 63.)

In response to the refund request, CRC advised Plaintiff E. Merolla that he would receive a refund of the \$200.00 he paid them. (Compl., Doc. 1, ¶ 64; *see also* E. Merolla CRC Refund Confirmation, Exhibit 19, Doc. 1-20.) Then, Novitas Solutions, an entity acting on behalf of the Centers for Medicare & Medicaid Services, sent a written correspondence to CRC, stating that "you collected \$200.00 more than was due from Emil Merolla," and reminding CRC of potential civil penalties, administrative sanctions, and criminal penalties for this violation. (*Id.* at ¶ 65; *see also* Novitas Letter, Exhibit 20, Doc. 1-21.) Despite this, CRC failed to refund Plaintiff E. Merolla's payment. (*Id.* [*9] at ¶ 66.)

Plaintiff C. Merolla's allegations differ slightly from the other Named Plaintiffs as well. (Compl., Doc. 1, ¶¶ 67-74.) She also received treatment from CRC at Southwest General Hospital, where she notified the registration clerk of her health insurance coverage through Medicare and Cigna Medicare Supplement. (*Id.* at ¶¶ 67-69.) Her itemized EOB confirms her treatment and her health insurance coverage through her HIC. (*Id.* at ¶ 71; C. Merolla Explanation of Benefits, Exhibit 21, Doc. 1-22.) The EOB, dated October 15, 2024, indicates that CRC sought payment from the HIC, and the HIC made payment to CRC at the

reimbursement rate; the remaining "patient responsibility" was \$0.00. (*Id.* at ¶ 73; *see also* C. Merolla Explanation of Benefits, Exhibit 21, Doc. 1-22.) Nevertheless, CRC sought payment directly from Plaintiff C. Merolla on October 31, 2024, despite the fact that her HIC had paid CRC in full. (*Id.* at ¶ 74.)

Named Plaintiffs thus allege that Defendants have intentionally refused, failed, and avoided submitting claims to patients' HIC in an effort to increase profits and force patients to pay more for medical services than would otherwise be paid by the HICs. (Compl., Doc. [*10] 1, ¶ 76.) This was done in violation of federal and Ohio law, as well as the Provider Agreements between CRC and the HICs. (*Id.* at ¶ 77.) Named Plaintiffs bring these allegations on behalf of themselves and others similarly situated. (*See id., generally.*) They define their proposed Class as all Ohio citizens who have received or will receive services from CRC, in a medical facility that contracts with the patients' HIC, who were or will be subjected to attempts to collect, or collection, by CRC and Frost-Arnett of any amount other than co-payments or deductibles as required by the patients' health insurance contracts. (*Id.* at ¶ 79.)

PROCEDURAL POSTURE

Named Plaintiffs brought this action against Defendants on February 14, 2025, on behalf of themselves and others similarly situated. (Compl., Doc. 1.) The Complaint contains six claims arising under either Ohio common law or federal statute. (*Id.*) The claims are: (1) tortious interference against both Defendants; (2) breach of third party beneficiary contract against CRC; (3) violation of the [Fair Debt Collection Practices Act \("FDCPA"\)](#), [15 U.S.C. § 1692, et seq.](#), against Frost-Arnett; (4) fraud against both Defendants; (5) conversion against both Defendants; and (6) unjust enrichment against both Defendants. [*11] (*Id.* at ¶¶ 89-119.) On May 6, 2025, Frost-Arnett filed its Answer to Plaintiff's Complaint (Doc. 12), while CRC filed a

Motion to Dismiss Plaintiff's Complaint (Doc. 13). The Motion has been fully briefed (*see* Docs. 14, 15) and is now ripe for the Court's review.

LEGAL STANDARD

Under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#), a motion to dismiss for failure to state a claim tests a plaintiff's cause of action as stated in a complaint. [Golden v. City of Columbus](#), [404 F.3d 950, 958 \(6th Cir. 2005\)](#); [Fed. R. Civ. P. 12\(b\)\(6\)](#). A claim for relief must be "plausible on its face." [Bell Atl. Corp. v. Twombly](#), [550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 \(2007\)](#). Courts accept all factual allegations as true and construe them in the light most favorable to the plaintiff. [Doe v. Baum](#), [903 F.3d 575, 581 \(6th Cir. 2018\)](#). That said, courts are not bound to do the same for a complaint's legal conclusions. [Twombly](#), [550 U.S. at 555](#). And, when a complaint contains sufficient facts to satisfy the elements of an affirmative defense put forth by a defendant, courts may grant dismissal on that basis. [Est. of Barney v. PNC Bank, Nat. Ass'n](#), [714 F.3d 920, 926 \(6th Cir. 2013\)](#).

Meanwhile, [Rule 9\(b\)](#) requires a higher standard for a plaintiff who alleges fraud in the complaint. [Fed. R. Civ. P. 9\(b\)](#). In alleging fraud, a plaintiff must state "with particularity the circumstances constituting fraud." [Michaels Bldg. Co. v. Ameritrust Co., N.A.](#), [848 F.2d 674, 679 \(6th Cir. 1988\)](#). This higher standard, however, "does not require omniscience," but rather "requires that the circumstances of the fraud be pled with enough specificity to put defendants on notice as to [*12] the nature of the claim." [Id. at 680](#). This is especially true when "there has been no discovery," and the facts underlying the claims of fraud "are within the defendant's control." *Id.*

ANALYSIS

I. CRC's Oral Argument Request

Before beginning its analysis, the Court must first address the need for oral argument. In its Motion, CRC requested oral argument, pursuant to the Local Rules of this Court. (Motion, Doc. 13, Pg. ID 183; *see also S.D. Ohio Civ. R. 7.1(b)(2)*.) Local Rule 7.1(b)(2) provides for oral argument when it is "deemed to be essential to the fair resolution of the case because of its public importance or the complexity of the factual or legal issues presented." *S.D. Ohio Civ. R. 7.1(b)(2)*. However, whether to grant a request for oral argument "is left to the sound discretion of the trial court." *Ohio ex rel. Dann v. Citibank (South Dakota), N.A., No., 2008 U.S. Dist. LEXIS 52172, 2008 WL 1990363, at *6 (S.D. Ohio May 1, 2008)*. Having reviewed the briefing and issues presented by the parties, the Court does not find that the case presents factual or legal issues of significant complexity or public importance. *Id.* Accordingly, oral argument is not essential here, and CRC's request is denied.

II. Materials Incorporated into Defendant's Motion

In its Motion, CRC attached the Declaration of Bebe Valencia, a client relations partner who works with CRC, along with accompanying exhibits that show [*13] CRC's billing and insurance summaries for the Named Plaintiffs. (*See Valencia Decl., Doc. 13-2; Exhibits, Docs. 13-3-13-14.*) Named Plaintiffs object to the use of these documents as they fall outside of the pleadings. (Response, Doc. 14, Pg. ID 246.) Accordingly, as a preliminary matter, the Court must determine whether it can consider these external documents in ruling on CRC's Motion. After this determination, the Court will proceed to the merits of the Motion.

Generally, as Named Plaintiffs point out, a court can only consider the materials which are properly before it when deciding on a motion to dismiss. (Response, Doc. 14, Pg. ID 246-47; *see also Diei v. Boyd, 116 F.4th 637, 643 (6th Cir. 2024)*). "[A] *Rule 12(b)(6)* motion should be decided solely on the complaint." *Diei, 116 F.4th at 643*. But, there is

an exception to this general rule: a court may review "exhibits attached to defendant's motion to dismiss so long as they are referred to in the Complaint and are central to the claims contained therein." *Id.* (cleaned up). When determining whether the documents are central to the Complaint's claims, "it must also be clear that there exists no material disputed issues of fact regarding the relevance of the documents." *Id. at 644* (quotation omitted). Further, "a district [*14] court should not rely on documents at the motion-to-dismiss stage if their authenticity is disputed." *Moyer v. Gov't Emps. Ins. Co., 114 F.4th 563, 568 (6th Cir. 2024)*.

CRC asserts that the materials it presents with its Motion are "referenced in and essential to the Complaint." (Motion Memo, Doc. 13-1, Pg. ID 194.) As CRC argues, Named Plaintiffs "squarely reference and put at issue CRC's billing for their medical services rendered and the insurance information that they provided to the clients CRC services," and so, CRC's billing and insurance summaries are central to the claims. (*Id.*) Further, CRC states that the authenticity of these summaries cannot be disputed because they are "kept in the regular course of business and reflect contemporaneous transcripts of the information received from the hospital system." (*Id.*) Named Plaintiffs, however, disagree. (Response, Doc. 14, Pg. ID 246-47.) First, Named Plaintiffs point out that Valencia is not an employee of CRC but instead works in a third-party "customer service" role at another company that is not identified in her declaration. (*Id.* at Pg. ID 247.) In other words, CRC "is relying on the declaration of a third-party witness" whom they have not deposed. (*Id.*) And, regarding the authenticity of [*15] the records, Named Plaintiffs argue that the declaration fails to articulate how Valencia, who is not a CRC employee, "could be a custodian or otherwise qualified to testify relative to the creation and accuracy of the attached records." (*Id.*) CRC responds by stating that Named Plaintiffs do not dispute that the declaration and accompanying exhibits are referenced in and central to its claims.

(Reply, Doc. 15, Pg. ID 261.) Instead, they only focus on Valencia's lack of employment with CRC as evidence of her inability to authenticate the documents. (*Id.*) And, to this end, CRC points out that Named Plaintiffs have not cited any case law to support the contention that a non-employee cannot authenticate business records. (*Id.*)

Nevertheless, whether the Court can consider these documents is a threshold matter, and the Court may only examine the declaration and exhibits if they are referred to in the Complaint and central to the claims. See [Diei, 116 F.4th at 643](#). Accordingly, the Court conducts its own analysis. The exhibits show the "insurance history" and "account charges" in CRC's system from each Named Plaintiff. (Exhibits to Motion, Docs. 13-3 - 13-14.) The Court agrees that CRC's records of insurance history [*16] and account charges are integral to Named Plaintiffs' claims that CRC ignored their insurance and charged them directly. However, the Court does not agree that these documents are referred to anywhere in the Complaint. While the Complaint indicates that the hospitals "forwarded [...] HIC information," to CRC and that CRC "utilized demographic information provided by" the Named Plaintiffs to send them medical bills, neither of these statements directly reference the account and insurance summaries that CRC attempts to attach to its Motion. And, regarding the declaration, the Named Plaintiffs are correct to question the authenticity of it. Valencia, in referring to the exhibits, states that the Named Plaintiffs provided auto insurance policies, or failed to provide a policy, and did not provide health insurance policies to CRC, which is why they, and not their HICs, were billed. (See Valencia Decl., Doc. 13-2.) But, these are "statements beyond authentication, including factual allegations directly contrary to certain complaint allegations." [Hacker v. ArcelorMittal Tubular Prods. USA LLC, No. 1:24-CV-341, 2025 U.S. Dist. LEXIS 55848, 2025 WL 918482, at *3 \(N.D. Ohio Mar. 25, 2025\)](#) (citing [Wysocki v. Int'l Bus. Mach. Corp., 607 F.3d 1102, 1104 \(6th Cir. 2010\)](#)). Accordingly, the Court cannot consider them at this stage of litigation. *Id.*

Thus, the Court will not consider either the declaration [*17] or attached exhibits as it analyzes CRC's Motion to Dismiss.

III. Merits of Defendant's Motion

Defendant's Motion outlines four claim categories: (1) general violation of [Ohio Revised Code § 1751.60](#); (2) claims of conversion and unjust enrichment; (3) claims of tortious interference and breach of third-party beneficiary contract; and (4) a claim of common-law fraud. (Motion Memo, Doc. 13-1, Pg. ID 195-202.) Accordingly, the Court's analysis will address each category in turn.

a. State and Federal Statutory Basis for Claims

While Named Plaintiffs do not bring a claim based on [section 1751.60](#), they agree with CRC's contention that their claims against CRC implicate the statute. (Response, Doc. 14, Pg. ID 249.) To this end, CRC points out that Ohio courts have interpreted claims sounding in [section 1751.60](#) violations by utilizing "the enforcement mechanism built into the statute rather than interpreting such claims through separate common law causes of action." (Motion Memo, Doc. 13-1, Pg. ID 195 (citing [King v. ProMedica Health Sys., Inc., 129 Ohio St. 3d 596, 2011- Ohio 4200, 955 N.E.2d 348, 350 \(Ohio 2011\)](#))). So, according to CRC, Plaintiffs' five causes of action against CRC "all come down to whether they have plausibly pled all the elements necessary to show a violation" of [section 1751.60](#). (*Id.* at Pg. ID 196.) [Section 1751.60](#) provides that no health care provider that contracts [*18] with an HIC can seek compensation for covered services from an HIC's enrollees or subscribers; nor is any enrollee or subscriber liable to a provider for the cost of any covered service. [O.R.C. §§ 1751.60\(A\), \(B\)](#).

CRC contends that Ohio courts hold that providers are prohibited from seeking compensation only in instances where: "(1) there is a contract between

the health provider and insurer; (2) that the patient has put the provider on notice of; (3) which covers the services rendered; and (4) the health care provider has actually collected medical costs for the services rendered from the patient in question." (Motion Memo, Doc. 13-1, Pg. ID 196-97 (collecting cases).) As four of the five Named Plaintiffs alleged that CRC did not actually collect medical costs from them, CRC states that [section 1751.60](#) does not provide relief for them; thus, CRC argues that these four Named Plaintiffs have failed to plausibly allege a claim. (*Id.* at Pg. ID 197.) And, regarding Plaintiff E. Merolla, CRC relies on Valencia's declaration and the exhibits to show that he failed to provide insurance information to CRC as required by the second element, which also warrants dismissal of his claims. (*Id.* at Pg. ID 198-99.) Accordingly, CRC states [*19] that all of Named Plaintiffs' claims against it should be dismissed as Named Plaintiffs cannot show that CRC violated [section 1751.60](#). Before analyzing the Response, though, the Court first notes that CRC's contention about E. Merolla improperly relies on statements in the Valencia declaration; the Court will not consider these statements and instead finds that the Complaint alleged that E. Merolla, and all Named Plaintiffs, provided their health insurance information as required. (*See* Compl., Doc. 1, ¶¶ 23-24, 37, 40, 48, 51, 57, 60, 69, 72.) And, the Court notes that CRC does not dispute any other element of a [section 1751.60](#) claim for any of the remaining Named Plaintiffs. The discussion thus centers on whether Named Plaintiffs need to allege that they paid their medical bills to CRC.

In response, Named Plaintiffs argue that CRC has misstated case law regarding claims under [section 1751.60](#). (Response, Doc. 14, Pg. ID 249.) According to Named Plaintiffs, the Sixth Circuit has held that the statute's prohibition on seeking compensation applies when "a health-care services contract is in place between a provider and a health-insuring corporation and the provider seeks payment from a health-insuring corporation's insured." (*Id.* [*20] (quoting [Raymond, et al. v.](#)

[Avectus Healthcare, et al.](#), 859 F.3d 381, 384 (6th Cir. 2017)).) Indeed, the "plain language of the statute prohibits [healthcare providers] from seeking compensation from the enrollees or subscribers." (*Id.* (quoting [Jackson v. Pro. Radiology, et al.](#), 864 F.3d 463 (6th Cir. 2017)).) Thus, Named Plaintiffs argue that the Complaint does plausibly state claims that show a violation of [section 1751.60](#). (*Id.*)

In its Reply, though, CRC distinguishes the cases Named Plaintiffs present. (Reply, Doc. 15, Pg. ID 260-61.) First, CRC states that [Raymond](#) involved a healthcare provider placing a hold on tort settlement funds, where the Sixth Circuit decided that such a hold constituted a collection of medical costs from the plaintiffs. (*Id.* (citing [Raymond](#), 859 F.3d at 382).) And, [Jackson](#) is similarly distinguishable because the plaintiff in that case informed the medical provider of her insurance and made payments to the provider, which four of the five Named Plaintiffs did not do. (*Id.* (citing [Jackson](#), 864 F.3d at 465).) The Court agrees that these cases are not quite on point, but finds still that each reiterates that [section 1751.60](#) requires only the healthcare provider to "seek compensation," and not that the patient need actually pay the medical bill; both cases are silent on a requirement that the plaintiff have actually paid the bills. *See* [Raymond](#), 859 F.3d at 386 ("The Ohio Supreme Court has narrowly interpreted [Ohio Revised Code § 1751.60](#) [*21] to apply only when a health-care services contract is in place between a provider and a health-insuring corporation and the provider seeks payment from a health-insuring corporations' insured," which is "precisely what [defendants] sought to do in this case.") (cleaned up); [Jackson](#), 864 F.3d at 467 ("the plain language of [Ohio Rev. Code § 1751.60\(A\)](#) directly prohibits this type of direct billing" and if the provider "sought payment directly from [plaintiff] for medical benefits [...] this is a direct violation of [Ohio Rev. Code § 1751.60\(A\)](#)").

Meanwhile, the case that CRC cites to support its contention that the Named Plaintiffs need to have

paid the medical bills for their claims to survive is inapposite. See Carter v. Children's Emergency Sews. Inc., No 28454, 2020-Ohio-509, 2020 WL 748201, at *4 (Ohio App. Ct. Feb. 14, 2020). *Carter*, which was an appellate review of summary judgment, first found that "there was no evidence that [the provider] sought to collect money from any of the plaintiffs." 2020-Ohio-509, 2020 WL 748201, at *5. The court further held that "[d]amages is an essential element of the plaintiffs' R.C. § 1751.60 claims." 2020-Ohio-509, 2020 WL 748201, at *4. The court found that, "[a]ssuming that the defendants did violate the statute, the plaintiffs could only prevail if they showed that they suffered compensable harm." *Id.* Yet, none of the plaintiffs could point to compensable damages, such as impact to their credit score, which was fatal to their claims at the summary judgment stage. 2020-Ohio-509, [WL] at *5. But, again, the case is silent as to a requirement that the plaintiffs need to have paid the medical bills; rather, the case merely states that, [*22] to survive summary judgment, no genuine issue of material fact can exist as to whether the plaintiffs suffered compensable damages from the defendants' violation of the statute. *Id.* Here, though, at the motion-to-dismiss stage, the parties have not engaged in discovery to ascertain whether a dispute of material fact exists as to compensable damages caused by CRC's alleged conduct. And, in the Complaint, Named Plaintiffs allege that they indeed suffered damages because of this conduct. (Compl., Doc. 1, ¶¶ 76, 93, 98, 109, 112.) Viewing these allegations as true, along with the claims that they provided their insurance information and CRC still sought payment from them directly, the Court finds that Named Plaintiffs have plausibly alleged violations of section 1751.60.

Additionally, Named Plaintiffs point out that the Complaint alleges violations of the Federal No Surprises Act, 26 U.S.C. § 9816, a claim which CRC failed to address in its Motion. (Response, Doc. 14, Pg. ID 250; see also Compl., Doc. 1, ¶¶ 19, 75, 82.) CRC, though, is correct that the No Surprises Act does not create a private right of

action, nor does the Ohio No Surprises Act, Ohio Revised Code § 3902.51, which is also mentioned in the Complaint (see Compl., Doc. 1, ¶¶ 19, 75, 82). (Reply, Doc. 15, Pg. ID 263.) Rather, CRC [*23] notes that it interpreted Named Plaintiff's Complaint and concluded that "each of the five claims against it sound in alleged violations of Section 1751.60," leading it to rely on that code section in addressing the various claims. (*Id.*)

Nevertheless, CRC contends that Named Plaintiffs cannot claim surprise that CRC sent them medical bills when they failed to provide "adequate health insurance information." (*Id.* at Pg. ID 264.) However, the Court points out that this assertion relies on statements only found in the Valencia Declaration, which the Court has already determined cannot be considered at this stage of litigation. Similarly, CRC states that Named Plaintiffs attempt to place the burden on the healthcare providers to obtain the requisite health insurance information, which neither the state nor federal No Surprises Act supports, as the Named Plaintiffs should provide that information. (*Id.*) Yet, again, this claim relies on the Valencia Declaration's assertion that Named Plaintiffs failed to provide CRC with their health insurance information; meanwhile, the Complaint alleges that Named Plaintiffs did provide their health insurance information to CRC. (See Compl., Doc. 1, ¶¶ 23-24, 37, 40, [*24] 48, 51, 57, 60, 69, 72.) Accordingly, to the extent that the Named Plaintiffs attempt to assert a private right of action under either of the No Surprises Act, the Court agrees that those acts do not provide such a right. However, to the extent that CRC argues for dismissal of the common-law claims that sound in these acts using statements made in the Valencia Declaration, the Court declines to accept these arguments, as the declaration is not properly before the Court at this time. Thus, Named Plaintiffs plausibly assert claims grounded in these state and federal statutes.

b. Derivative Causes of Action

Having established that Named Plaintiffs have stated claims that are supported by Ohio and federal statutes, the Court's analysis moves on to the individual causes of action against CRC: (1) tortious interference, (2) breach of third-party beneficiary contract, (3) common-law fraud, (4) conversion, and (5) unjust enrichment. As mentioned above, CRC divides these claims into three subcategories, which the Court will analyze in turn.

i. Conversion and Unjust Enrichment (Counts 5 and 6)

CRC argues that Named Plaintiffs' claims for conversion and unjust enrichment must be dismissed because [*25] they "did not sustain any injury and because CRC properly billed them for the medical services provided." (Motion Memo, Doc. 13-1, Pg. ID 199.) Regarding conversion, CRC states that Ohio courts define the cause of action as "the wrongful exercise of dominion over property to the exclusion of the rights of the owner or the withholding of the property from the owner's possession under a claim inconsistent with the owner's rights." (*Id.* (quoting *Bunta v. Superior VacuPress, L.L.C.*, 171 Ohio St. 3d 464, 2022-Ohio 4363, 218 N.E.3d 838, 844-45 (Ohio 2022))).) To that end, CRC asserts that, since four of the Named Plaintiffs failed to pay any medical bills to CRC, their property has not been converted; and for Plaintiff E. Merolla, because he did not provide CRC with the proper insurance information, CRC had no choice but to bill him. (*Id.*) Named Plaintiffs fail to address this argument, a deficiency CRC notes in its Reply. (*See* Doc. 15, Pg. ID 266.) As a result, the Court finds that Named Plaintiffs have abandoned their conversion claim; dismissal of this claim is thus proper. *See Scott v. State of Tenn.*, 878 F.2d 382 (6th Cir. 1989) ("[I]f a plaintiff fails to respond or to otherwise oppose a defendant's motion, then the district court may deem the plaintiff to have waived opposition to the motion."); *Moody v. CitiMortgage, Inc.*, 32 F. Supp. 3d 869, 875 (W.D. Mich. 2014) (dismissing

claims on motion from defendants [*26] where plaintiff failed to respond to the motion).

On the unjust enrichment claim, CRC states that Named Plaintiffs must demonstrate: "(1) a benefit was conferred upon the recipient; (2) the recipient had knowledge of the benefit; and (3) circumstances render it unjust or inequitable to permit the recipient to retain the benefit without compensating the party who conferred the benefit." (Motion Memo, Doc. 13-1, Pg. ID 199 (quoting *Parmatown Spinal & Rehab. Ctr., Inc. v. Lewis, et al.*, No. 81996, 2003-Ohio-5069, 2003 WL 22208786 (Ohio App. Ct. Sept. 25, 2003))).) Again, as with the conversion claim, CRC contends that because Named Plaintiffs either failed to allege that they paid anything to CRC or failed to provide proper insurance information to CRC, their unjust enrichment claim should be dismissed. (*Id.* at Pg. ID 200.) However, in response, Named Plaintiffs argue that Ohio courts have illustrated "class entitlement to a return of funds unlawfully obtained and withheld by CRC." (Response, Doc. 14, Pg. ID 253.) Looking at the elements of the claim, Named Plaintiffs point out that the Complaint clearly alleges that "CRC has unlawfully retained money from plaintiffs and putative class members in violation of statutory law and applicable health insuring agreements." (*Id.* at Pg. ID 253-54.)

CRC's Reply, though, argues [*27] that Named Plaintiffs have offered only "conclusory statements" in response to its Motion. (Reply, Doc. 15, Pg. ID 266.) According to CRC, such statements are "insufficient as a matter of law to survive a motion to dismiss," adding that *Carter* requires plaintiffs to plausibly allege that they actually paid medical costs to the provider to sustain a cause of action. (*Id.* at Pg. ID 266-67 (citing *Carter, 2020-Ohio-509, 2020 WL 748201, at *4*)).) However, the Court finds this argument unpersuasive for two reasons. First, as noted above, the *Carter* holding does not require that plaintiffs have actually paid medical bills for a *Section 1751.60* claim, but instead that plaintiffs suffered compensable damages. And, at this point, Named

Plaintiffs have alleged that they suffered compensable damages; specifically, Plaintiff E. Merolla paid his bill, discovered such payment was incorrect, and has not received a refund from CRC. (Compl., Doc. 1, ¶¶ 62-66, 76, 93, 98, 109, 112, 116-19.) Second, the Complaint does more than make conclusory statements; it specifically alleges conduct that, taken as true, constitutes a violation of [Section 1751.60](#), and, consequently, unjust enrichment on the part of CRC for Plaintiff E. Merolla and putative class members who wrongfully paid [*28] medical bills and have not received a refund. (See Compl., Doc. 1, ¶¶ 117-79.)

ii. Tortious Interference and Breach of Third-Party Beneficiary Contract (Counts 1 and 2)

CRC next argues that Named Plaintiffs' tortious interference and breach of third-party beneficiary claims fail. (Motion Memo, Doc. 13-1, Pg. ID 200.) For a tortious interference claim, CRC states that Named Plaintiffs must show: (1) a business relationship or contract; (2) the wrongdoer's knowledge of the relationship or contract; (3) the wrongdoer's intentional and improper action taken to prevent a contract formation, procure a contractual breach, or terminate a business relationship; (4) a lack of privilege; and (5) resulting damages. (*Id.* (citing [Brookeside Ambulance, Inc. v. Walker Ambulance Serv., 112 Ohio App. 3d 150, 678 N.E.2d 248, 252 \(Ohio App. Ct. 1996\)](#))). CRC asserts, however, that the Complaint fails to plead a specific contractual relationship with their insurers, CRC's knowledge of those contracts, any way that CRC caused the Plaintiffs or their insurers to break that contract, or any resulting damages. (*Id.*) In their Response, Plaintiffs fail to address CRC's arguments against their tortious interference claim. (See Response, Doc. 14, Pg. ID 254-56.) Accordingly, this claim is dismissed. See *Scott v. State of Tenn., 878 F.2d at 382*; [Moody v. CitiMortgage, Inc., 32 F. Supp. 3d at 875](#).

Regarding the breach [*29] of third-party

beneficiary contract claim, CRC states that Named Plaintiffs "would also have to plead compensable damages (which they cannot) and facts showing that they were intended beneficiaries under the applicable provider agreements, as demonstrated by the terms of the agreement." (Motion Memo, Doc. 13-1, Pg. ID 200 (citing [Huff v. FirstEnergy Corp., 130 Ohio St. 3d 196, 2011- Ohio 5083, 957 N.E.2d 3, 7 \(Ohio 2011\)](#))). But, according to CRC, Named Plaintiffs fail to identify any specific agreements between their HICs and CRC covering the services rendered, and do not allege that the agreements disclosed them specifically as beneficiaries. (*Id.* at Pg. ID 200-01.)

In response. Named Plaintiffs reiterate that the Complaint alleges they are third-party beneficiaries of health-insuring contracts between CRC and their HICs. (Response, Doc. 14, Pg. ID 254.) These contracts between CRC and the HICs constitute an agreement that CRC will provide medical services to Named Plaintiffs at a specific rate agreed upon between the parties. (*Id.*) While Named Plaintiffs acknowledge that they have not provided those contracts to the Court, they point out that [Ohio Revised Code §§ 1751.60\(a\)-\(e\)](#) and [1751.13\(C\)\(2\)](#) require that every health insurer/health provider contract contain a "hold harmless" provision. (*Id.* at Pg. ID 254-55.) This [*30] provision, which must be restated verbatim in these contracts, states that the provider "agrees that in no event [...] shall [provider] bill, charge, collect a deposit from, seek remuneration or reimbursement from, or have any recourse against, a subscriber, enrollee, person to whom health care services have been provided, or person acting on behalf of the covered enrollee, for health care services provided pursuant to the agreement." (*Id.* at Pg. ID 255 (quoting [O.R.C. § 1751.13\(C\)\(2\)](#))). Thus, since this statutory language is mandatory in every contract between an HIC and a health care provider, any contract that CRC had with Named Plaintiffs' HICs contained that provision. (*Id.* at Pg. ID 256.) And, every time CRC sought payment directly from a plaintiff, there was a breach of that contract to which the plaintiff was a third-party beneficiary. (*Id.*)

CRC, in its Reply, argues that Named Plaintiffs have still failed to address cognizable damages and have not shown that it knew Plaintiffs were third-party beneficiaries of such contracts "absent Plaintiffs disclosing coverage at the time of services rendered." (Reply, Doc. 15, Pg. ID 267.) Yet, the Court is not convinced by this argument. First, as discussed, [*31] Named Plaintiffs did allege that they suffered damages. (See Compl., Doc. 1, ¶¶ 62-66, 76, 93, 98, 109, 112, 116-19.) And, CRC's contention that it was unaware of Named Plaintiffs' status as third-party beneficiaries to its contracts with HICs hinges on the Valencia declaration's assertion that Named Plaintiffs failed to disclose their insurance coverage at the time they received treatment. In actuality, Named Plaintiffs allege in their Complaint that they did, in fact, provide their insurance coverage information to the health care facility, who in turn, sent that to CRC. (See Compl., Doc. 1, ¶¶ 23-24, 37, 40, 48, 51, 57, 60, 69, 72.) Examining the Complaint and viewing these factual allegations as true, Named Plaintiffs have plausibly alleged each element of a breach of third-party beneficiary contract claim. (See Compl., Doc. 1, ¶¶ 95-98.) Dismissal of this claim is not warranted.

iii. Common-Law Fraud (Count 4)

Finally, CRC argues for dismissal of the common-law fraud cause of action. (Motion Memo, Doc. 13-1, Pg. ID 201.) CRC states that this claim fails for three separate reasons. (*Id.*) First, the Complaint does not allege the six required elements of a prima facie fraud claim: [*32] (1) a representation, or where there is a duty to disclose, concealment of a fact, (2) which is material to the transaction at hand, (3) made falsely, with knowledge of its falsity, or with such utter disregard as to whether it is true or false that knowledge may be inferred, (4) with the intent of misleading another into relying upon it, (5) justifiable reliance on the representation or concealment, and (6) an injury proximately caused by that reliance. (*Id.* (citing *Lasmer Indus., Inc. v. AM Gen., LLC*, 741 F. Supp. 2d 829, 839-40

(*S.D. Ohio 2010*)).) CRC claims that the Complaint does not allege any false statements it made or that CRC knew any statements it made were false or misleading; rather, CRC maintains that it relied on the insurance information Named Plaintiffs provided. (*Id.*) And, CRC reiterates that Plaintiffs have not alleged any injury or justifiable reliance resulting from fraud. (*Id.*)

In their Response, Named Plaintiffs point out that the Ohio Supreme Court has held that "a representation which will serve as the basis for an action in common-law fraud is not confined to spoken or written words but may encompass conduct that amounts to an assertion not in accordance with the truth." (Response, Doc. 14, Pg. ID 257-58 (citing *Russ v. TRW Inc.*, 59 Ohio St.3d 42, 570 N.E.2d 1076 (1991))).) CRC replies that this [*33] Response merely "invite[s] the Court to parse through exhibits to the Complaint," to find that its conduct was systematic in defrauding Ohio patients. (Reply, Doc. 15, Pg. ID 268.) Reviewing the Complaint, though, the Court finds that Named Plaintiffs allege the elements of a common-law fraud claim, noting that the statement in question was CRC's actions taken to collect payment for its medical services and failure to seek those payments from the HICs. (See Compl., Doc. 1, ¶¶ 104-12.) These actions caused Named Plaintiffs, including Plaintiff E. Merolla, to believe they needed to pay those bills; as a result, Named Plaintiffs who paid bills unnecessarily suffered damages and have not been refunded. (*Id.* at ¶¶ 55-66, 104-12.) Accordingly, the Court finds that the Complaint alleges the elements of common-law fraud.

However, the analysis does not end here. CRC also argues for dismissal on the basis that the Complaint fails to allege fraud with particularity, as required by *Federal Rule of Civil Procedure 9(b)*. (Motion Memo, Doc. 13-1, Pg. ID 202.) Specifically, CRC states that Named Plaintiffs "fail to allege any systemic billing practice on the part of CRC affecting" them and the proposed class members, or "put CRC on sufficient [*34] notice of its alleged misconduct." (*Id.*) Named Plaintiffs disagree,

stating that the factual allegations in the Complaint, and the exhibits attached, "amply illustrate that CRC's conduct was systematic in defrauding Ohio patients resulting in the payment of money not owed." (Response, Doc. 14, Pg. ID 257.) The Complaint indeed specifically alleges that, "[Defendants] have intentionally and systematically refused, failed, and/or avoided submitting claims to patients' health insuring corporations in an effort to increase profits and force patients, including plaintiffs, to pay more for medical services than would otherwise be paid by the patients' HIC." (See Compl., Doc.1, ¶ 76.) And, despite CRC's contention that this Response asks the Court to "parse through exhibits," the Response cites specifically to Exhibit 23 of the Complaint, which provides the formal complaints to the Ohio Attorney General submitted by fifteen different patients regarding CRC's allegedly fraudulent billing practices that induced them to improperly pay CRC for medical bills. (See Ohio Attorney General Complaint, Exhibit 23, Doc. 1-24.)

The Court finds that, given the allegations and attached exhibits, the Complaint [*35] alleges fraud with particularity sufficient to meet [Rule 9\(b\)](#)'s requirements and overcome CRC's Motion. To this point, the Sixth Circuit has made clear that [Rule 9\(b\)](#) "requires that the plaintiff specify the who, what, when, where, and how of the alleged fraud." [Greer v. Strange Honey Farm, LLC, 114 F.4th 605, 614 \(6th Cir. 2024\)](#) (quoting [Sanderson v. HCA-The Healthcare Co., 447 F.3d 873, 877 \(6th Cir. 2006\)](#)). "More specifically, the complaint must (1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." [Id. at Pg. ID 615](#) (quoting [New London Tobacco Mkt., Inc. v. Ky. Fuel Corp., 44 F.4th 393, 411 \(6th Cir. 2022\)](#)) (cleaned up). And, the complaint "must describe the fraudulent scheme and resulting injury." [Id.](#) (quoting [New London Tobacco, 44 F.4th at 411](#)) (cleaned up). In other words, the allegations must put the defendant on notice as to the nature of the claim. [Id.](#) Here, the

Complaint describes CRC's billing practices that allegedly violate Ohio law and cause patients, including Named Plaintiffs, to believe they owe CRC money that they, in fact, do not owe. (Compl., Doc. 1, ¶¶ 76-78, 104-12.) And, the Complaint lists the dates and manner by which CRC, through its agents, requested payments from the Named Plaintiffs, along with the descriptions of patients' similar experiences through the Ohio Attorney General complaints. ([*36] [Id.](#) at ¶¶ 27-29, 40-42, 51-54, 61-66, 74; see also Ohio Attorney General Complaints, Ex. 23, Doc. 1-24.) Thus, Named Plaintiffs have alleged with the requisite specificity a claim for common-law fraud.

Yet, CRC still argues that the fraud claim must be dismissed because it "overlaps with the tortious interference claim," and "[c]laims for tortious interference with contract in the form of a false representation cannot be converted into a claim for fraud where the alleged false representation was simply the means used to achieve the interference." (Motion Memo, Doc. 13-1, Pg. ID 202 (quoting [Lasmer Indus., 741 F. Supp. 2d at 839-40](#)) (cleaned up)).) But, the Court finds that this argument misstates the holding in [Lasmer](#). In [Lasmer](#), the plaintiff's tortious interference claim was time-barred; so, the plaintiff attempted to convert the tortious interference claim to a fraud claim. [741 F. Supp. 2d at 838](#). However, the court found that the claim was not "grounded in fraud," as the plaintiff argued, because "the alleged false misrepresentation was simply the means used to achieve the interference," not an element of the claim. [Id.](#) In fact, the court even noted that the plaintiff "has also asserted a fraud claim [...] which is not barred by that [statute of] limitations [*37] provision." [Id.](#) That fraud claim was then dismissed for failure to plead with particularity. [Id. at 839-40](#). Thus, CRC's argument is unconvincing. The dismissal of the tortious interference claim has no bearing on the fraud claim, which shall proceed.

c. Class Treatment

Finally, CRC asserts that Named Plaintiffs "seek to advance an impermissible fail-safe class to which they would not be class members." (Motion Memo, Doc. 13-1, Pg. ID 202.) Accordingly, CRC calls for their class allegations to be dismissed or stricken. (*Id.*) In support of this argument, CRC states that the proposed class would require "mini-trials" of the Court to determine whether an individual should properly be considered a class member. (*Id.*) CRC points to [Kissling v. Ohio Cas. Ins. Co., No. 5:10-CV-22, 2010 U.S. Dist. LEXIS 48271, 2010 WL 1978862 \(E.D. Ky. May 14, 2010\)](#), where the court dismissed a complaint's class allegations because the class definition "require[d] a determination on the merits before a member can be identified." (*Id.*; [2010 U.S. Dist. LEXIS 48271, 2010 WL 1978862, at *2.](#)) Specifically, the proposed class included any insured plaintiffs who, within the past five years, suffered a loss covered by their policy with the defendant, provided defendant notice of the loss, and proof of claim, and who received a claim payment but not the 12% interest on the settlement, and defendant [*38] did not attempt to settle their claim within 30 days of notice and proof. [Kissling, 2010 U.S. Dist. LEXIS 48271, 2010 WL1978862, at *1.](#) The court found that such a class would require a "mini-hearing" on whether: (1) the putative class member provided notice and proof of the claim as required under the terms of the policy; (2) the defendant failed to make a good-faith attempt to settle the claim within 30 days; and (3) the defendant failed to pay the interest. [2010 U.S. Dist. LEXIS 48271, \[WL\] at *2.](#) In short, the court dismissed the class allegations because "class membership [was] also determinative of liability," and "such a fail-safe class is prohibited." *Id.*

Examining the class definition here, though, the Court does not find that the class is a fail-safe class. (*See* Compl., Doc. 1, ¶ 79.) The class includes Ohio citizens who received services from CRC, in a medical facility that contracts with their HIC, and who were then subject to attempts to collect or actual collection of medical bills from CRC or Frost-Arnett, not including deductibles or co-

payments. (*Id.*) This definition, though, does not encompass all the elements of a violation of [Ohio Revised Code § 1751.60](#). Unlike in [Kissling](#), a patient who is found to be a class member is not also automatically successful on the claims, as that class member has still [*39] not shown that CRC had the insurance information, or that the class member suffered damages as a result of the attempted collection. Thus, the Court does not find that Named Plaintiffs' proposed class is a fail-safe class that warrants dismissal of the class allegations at this stage.

CONCLUSION

Accordingly, the Court **ORDERS** the following:

1. Defendant CRC's Motion to Dismiss (Doc. 13) is **GRANTED IN PART AND DENIED IN PART**;
2. Plaintiffs' claims for conversion and tortious interference are **DISMISSED**; and
3. Plaintiffs' remaining claims **SHALL PROCEED**.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

By: /s/ Matthew W. McFarland

JUDGE MATTHEW W. McFARLAND

EXHIBIT 13

A Neutral
As of: April 3, 2026 7:52 PM Z

Conn. Gen. Life Ins. Co. v. East Coast Advanced Plastic Surgery, LLC

United States District Court for the Southern District of New York

February 24, 2026, Decided; February 24, 2026, Filed

25 Civ. 1686 (PAE)

Reporter

2026 U.S. Dist. LEXIS 38843 *; 2026 LX 54354; 2026 WL 518442

CONNECTICUT GENERAL LIFE INSURANCE CO. et al., Plaintiffs, -v- EAST COAST ADVANCED PLASTIC SURGERY, LLC, Defendant.

WELFARE BENEFITS PLAN, RED HAT, INC. WELFARE BENEFITS AND HEALTH FSA PLAN, Counter Defendants: Richard W. Nicholson, Jr, McDermott Will & Schulte LLP, New York, NY.

Prior History: [E. Coast Advanced Plastic Surgery, LLC v. CIGNA Health & Life Ins. Co., 2025 U.S. Dist. LEXIS 157911, 2025 WL 2371537 \(Aug. 14, 2025\)](#)

For EMBECTA CORP. GROUP HEALTH AND BENEFIT PLAN, Counter Defendant: [*2] James D. Herschlein, Arnold & Porter Kaye Scholer LLP, New York, NY.

Counsel: [*1] For Connecticut General Life Insurance Company, Cigna Health and Life Insurance Company, Plaintiffs: Edward T. Kang, LEAD ATTORNEY, Alston & Bird LLP- DC, Washington, DC; Edward Tae Kang, LEAD ATTORNEY, Alston & Bird LLP, The Atlantic Building, Washington, DC; Chelsea Cosillos, Fabiola Vega, Joshua B. Simon, Richard W. Nicholson, Jr, Warren Haskel, McDermott Will & Schulte LLP, New York, NY; Ryan Patrick Martin-Patterson, Alston & Bird LLP, Washington, DC.

For Cigna Health and Life Insurance Company, Connecticut General Life Insurance Company, Counter Defendants: Edward T. Kang, LEAD ATTORNEY, Alston & Bird LLP-DC, Washington, DC; Edward Tae Kang, LEAD ATTORNEY, Alston & Bird LLP, The Atlantic Building, Washington, DC; Chelsea Cosillos, Fabiola Vega, Joshua B. Simon, Richard W. Nicholson, Jr, Warren Haskel, McDermott Will & Schulte LLP, New York, NY; Ryan Patrick Martin-Patterson, Alston & Bird LLP, Washington, DC.

For EAST COAST ADVANCED PLASTIC SURGERY, LLC, Defendant: Bradley D Simon, Elizabeth Wolstein, Samuel Lucien Butt, LEAD ATTORNEYS, David J Goldsmith, New York, NY; Michael Bryan Wolk, Law Offices of Michael B. Wolk, P.C., New York, NY.

Judges: PAUL A. ENGELMAYER, United States District Judge.

Opinion by: PAUL A. ENGELMAYER

Opinion

For EAST COAST ADVANCED PLASTIC SURGERY, LLC, Counter Claimant: Bradley D Simon, Elizabeth Wolstein, Samuel Lucien Butt, LEAD ATTORNEYS, David J Goldsmith, New York, NY; Michael Bryan Wolk, Law Offices of Michael B. Wolk, P.C., New York, NY.

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

For STRUCTURAL GROUP, INC. HEALTH &

This decision resolves a motion to dismiss a counterclaim brought in an insurance fraud dispute.

On October 9, 2024, plaintiffs Connecticut General Life Insurance Company and Cigna Health and Life Insurance Company (collectively, "Cigna"), a health insurer and claims administrator, brought this case against East Coast Advanced Plastic Surgery ("ECAPS"), an out-of-network health care provider. Cigna centrally claimed that ECAPS engaged in fraudulent billing practices that resulted in Cigna overpaying for certain ECAPS services provided to patients [*3] (the "Cigna patients") enrolled in Cigna-insured health plans and self-funded employer health plans ("SFPs"). ECAPS countersued, alleging that Cigna failed to pay what it owed for those services. On August 24, 2025, the Court resolved parallel motions to dismiss, sustaining most of Cigna's claims and dismissing ECAPS' claims under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#).

On September 3, 2025, ECAPS answered Cigna's Complaint, and brought a counterclaim under the [No Surprises Act \("NSA"\), 29 U.S.C. § 1185e](#), against Cigna, more than 25 named SFPs, and "John Doe Cigna Self-Funded Plans 1-2000" (together, the "counterclaim defendants"). It alleges that the counterclaim defendants violated the NSA by failing to pay ECAPS for services that ECAPS provided to Cigna patients, and by demanding that ECAPS engage in balance billing—a prohibited practice in which providers charge patients more than their cost-sharing amount. The counterclaim seeks: (1) a judgment declaring that the counterclaim defendants violated the NSA's statutory payment mandate and balance billing prohibition; (2) a permanent injunction prohibiting the counterclaim defendants from violating those statutory provisions; and (3) reimbursement of the amounts that the counterclaim defendants purportedly owed [*4] ECAPS for the services provided to Cigna patients.

Currently before the Court are motions to dismiss the counterclaim by Cigna and two SFP counterclaim defendants. For the reasons that follow, the Court grants the motions.

I. Background¹

A. The Parties

ECAPS is a New Jersey based medical practice that specializes in post-mastectomy breast reconstruction surgery. Dkt. 68 ("Answer") ¶ 23.

Connecticut General Life Insurance Company, and its wholly owned subsidiary Cigna Health and Life Insurance Company, are health insurance companies with principal places of business in Connecticut. *Id.* ¶¶ 13-14. Salient here, they offer employee health claim administration services to commercial employers and their employees in New York, New Jersey, and other states. *Id.*

Structural Group, Inc. Health & Welfare Benefits Plan ("Structural Group") and Red Hat, Inc. Welfare Benefits and Health FSA Plan ("Red Hat") are two of many SFPs for which Cigna serves as the claims administrator. *Id.* ¶ 15.

B. Factual Background to the Counterclaim

The Court incorporates by reference the factual background in its earlier decision, Dkt. 58 ("MTD Decision"), which describes Cigna's responsibilities as claims administrator [*5] and fiduciary for members who subscribe to its plans; the nature of out-of-network health providers; the practice of fee forgiving; the agreement governing the relationship between ECAPS and Cigna; and the alleged breaches of that agreement. MTD Decision at 3-11. The Court here recaps background salient to the

¹ The Court draws the facts in this decision principally from Cigna's Complaint, Dkt. 1 ("Compl."); ECAPS' Answer, Dkt. 68 ("Answer"); documents incorporated into or integral to those filings; and, as background, the Court's August 14, 2025 Opinion resolving the earlier motions to dismiss, Dkt. 58 ("MTD Decision"). For purposes of resolving the motion to dismiss the counterclaim, the Court accepts all factual allegations in the Answer as true, drawing all reasonable inferences in ECAPS' favor. See [Koch v. Christie's Int'l PLC, 699 F.3d 141, 145 \(2d Cir. 2012\)](#). The facts recited here focus on those relevant to the counterclaim.

counterclaim and summarizes the Answer's additional allegations.

1. The MPI Agreement

On May 15, 2012, ECAPS entered into a written agreement (the "MPI Agreement") with MultiPlan, Inc., a health insurance intermediary that connects out-of-network medical providers such as ECAPS with claims administrators such as Cigna. *Id.* at 3, 6. The agreement stated, in sum, that ECAPS would provide medical services to participants and beneficiaries covered by Cigna-administered plans, and that, in exchange, Cigna would pay ECAPS a rate of 85% of ECAPS' billed charges. *Id.* at 6-7. ECAPS was to submit its claims for payment directly to Cigna within 180 days of rendering healthcare services. *Id.* at 7. The MPI Agreement stated that ECAPS was not required to bill or collect from a Cigna plan member until ECAPS received an explanation of benefits ("EOB") from Cigna stating patients' cost-sharing [*6] amounts. *Id.* at 10.

2. Alleged Violations by the Counterclaim Defendants

Since January 1, 2022, ECAPS has provided its specialized breast reconstruction services to hundreds of Cigna patients. Answer ¶ 43. Consistent with the MPI Agreement, ECAPS and its doctors have routinely submitted their claims for payment for such services to Cigna. *Id.* ¶ 44. ECAPS alleges that Cigna, acting on behalf of the SFPs, violated the terms of that agreement—and of the NSA—in at least three ways.

First, Cigna allegedly failed to provide ECAPS with the information necessary for ECAPS to determine the amount owed by Cigna patients. *Id.* ¶ 45. ECAPS, as an out-of-network provider, was not party to any Cigna SFPs; it thus relied on Cigna to provide cost-sharing information for its patients. *Id.* But Cigna often refused to provide ECAPS with such information, or provided EOBs that were

inaccurate. *Id.* ¶¶ 45-46. For example, Cigna provided EOBs that falsely stated that a particular discount was applied that resulted in a patient not owing any cost-sharing amount, or that were inconsistent with the EOBs it provided to the SFPs. *Id.* ¶¶ 46-47. ECAPS nevertheless managed, in many cases, to independently ascertain accurate [*7] cost-sharing amounts, which it then collected from patients. *Id.* ¶ 48.

Second, Cigna allegedly failed to timely pay ECAPS the 85% contract rate due under the MPI Agreement. *Id.* ¶ 49. In some instances, Cigna paid nothing to ECAPS for services provided to Cigna patients. *Id.* ¶ 75. In others, Cigna paid a small fraction of the amount it owed. *Id.* ECAPS has filed numerous appeals with Cigna in an effort to obtain such payments. *Id.* ¶ 50.²

Third, Cigna allegedly forced ECAPS to engage in balance billing, a practice in which an out-of-network provider bills patients more than their cost-sharing amount. *Id.* ¶¶ 5-6. On April 14, 2023, Cigna sent a letter to ECAPS on behalf of the SFPs. *Id.* ¶ 52; *see* Dkt. 68-1 ("Payment Letter"). Cigna stated that it had reviewed ECAPS' billing and collection records and found that "ECAPS does not consistently bill Cigna customers their full, out-of-network cost share responsibility."³ Payment Letter at 2. It stated that this "is a violation of the terms of our Cigna customer benefit plan agreements and renders your charges not covered." *Id.* Cigna directed ECAPS to refund Cigna \$8,564,795.58—the damages it calculated for claims submitted by ECAPS between January [*8] 1, 2019 and March 24, 2023. *Id.* at 3. It also advised that ECAPS' future claims would be denied "until we can verify

² In the process of filing these appeals, ECAPS learned that many of Cigna's underpayments were the result of Cigna applying false discounts to ECAPS' claims for treatments provided to Cigna patients. Answer ¶ 50.

³ This practice is known as fee forgiving. It occurs when an out-of-network provider waives, reduces, or fails to attempt to collect the required cost-sharing amount from a patient. MTD Decision at 5. It drives up medical costs by diminishing the patient's incentive to seek in-network providers. *Id.*

that the affected customers have paid their applicable cost share and balance amounts per their benefit agreement." *Id.* at 4.

In response to the Payment Letter, ECAPS disputed Cigna's claim that ECAPS had failed to collect cost-sharing amounts from patients. Answer ¶ 59. ECAPS also stated that the letter improperly demanded that ECAPS engage in balance billing by collecting from patients the difference between the amount billed by ECAPS and the lesser amount paid by Cigna. *Id.*⁴

ECAPS continued to provide medical treatments to Cigna patients and to submit claims to Cigna. *Id.* ¶ 60. After April 23, 2023, however, Cigna ceased payments to ECAPS for such services. *Id.*

3. The Counterclaim

The counterclaim alleges two violations of the NSA.

First, it alleges that the counterclaim defendants violated the NSA's payment mandate, which provides that where, as here, an out-of-network provider such as ECAPS delivers non-emergency healthcare services to a patient at a participating facility, the health plan "shall pay a total plan or coverage payment directly . . . to such provider [*9] furnishing such items and services to such participant or beneficiary." [29 U.S.C. § 1185e\(b\)\(1\)\(D\)](#).⁵ Such payment is "equal to the amount by which the out-of-network rate . . . exceeds the cost-sharing amount imposed under the plan or coverage." *Id.* It must be made or denied "not later than 30 calendar days after the bill for such items or services is transmitted" by the provider. *Id.* [§ 1185e\(b\)\(1\)\(C\)](#). ECAPS claims that

⁴The Answer also alleges that, contrary to the suggestion in the Payment Letter, ECAPS, as an out-of-network provider, was not bound by the terms of the Cigna SFPs, including the payment conditions stated in those agreements. Answer ¶¶ 53, 56, 58.

⁵As alleged, this statutory provision imposes an express obligation on "the plan"—here, the SFPs—but Cigna is also obligated by virtue of its role as the SFPs' agent and fiduciary. Answer ¶ 68.

the counterclaim defendants failed to pay the contractually agreed-upon rate of 85%, and to do so within 30 days of ECAPS submitting its claims to Cigna. Answer ¶ 74.

Second, the counterclaim alleges that the counterclaim defendants violated the NSA's prohibition on balance billing, which provides that a group health plan "shall not impose on such participant or beneficiary a cost-sharing requirement for such items and services so furnished that is greater than the cost-sharing requirement that would apply under such plan . . . had such items or services been furnished by a participating provider." [29 U.S.C. § 1185e\(b\)\(1\)\(A\)](#). In other words, where Cigna patients receive treatments at participating healthcare facilities by out-of-network providers such as ECAPS, those patients cannot be made to pay more for such services than if they had [*10] received them from in-network providers. ECAPS claims that Cigna, in requiring that ECAPS collect the "full, out-of-network cost share," Payment Letter at 3, from Cigna patients in order to receive Cigna's payment for such services, demanded that ECAPS engage in balance billing, in violation of the NSA. Answer ¶¶ 79-81, 84.

C. Relevant Procedural History

On October 9, 2024, Cigna initiated this action. Dkt. 1 ("Compl."). Cigna centrally claimed that ECAPS engaged in fraudulent billing practices that resulted in Cigna overpaying by more than \$8 million for certain ECAPS services. It brought claims under the Employee Retirement Income Security Act of 1974 ("ERISA"), [29 U.S.C. § 1132\(a\)\(3\)](#), the Declaratory Judgment Act ("DJA"), [28 U.S.C. § 2201\(a\)](#), and various state laws.

On October 10, 2024, ECAPS countersued (the "ECAPS Action"). No. 25 Civ. 255 at Dkt. 1 ("ECAPS' Complaint" or the "EC"). It claimed that Cigna failed to pay what it owed for certain services provided to Cigna patients. Salient here, ECAPS brought a claim under the NSA, seeking a

declaratory judgment that would, *inter alia*, (1) enforce an independent dispute resolution ("IDR") determination awarding ECAPS \$3 million against Cigna, and (2) declare Cigna violated the NSA's payment mandate. *Id.* at 55.

On August 14, 2025, the Court resolved parallel motions [*11] to dismiss in both actions. Dkt. 58. The Court largely denied ECAPS' motion to dismiss Cigna's Complaint under *Federal Rules of Civil Procedure 12(b)(1)* and *12(b)(6)*.⁶*Id.* at 18-28. The Court granted Cigna's motion to dismiss ECAPS' Complaint. *Id.* at 28-36. As to the NSA claim, the Court declined "to recognize an implied right of action within the NSA," consistent with "the substantial majority of courts to consider the issue." *Id.* at 35. The Court dismissed the ECAPS Action. *Id.* at 41. On September 11, 2025, ECAPS appealed the MTD Decision's dismissal of ECAPS' Complaint. Dkt. 51.

On September 3, 2025, ECAPS filed its Answer in this action, bringing the counterclaim against Cigna and the SFPs for violating the NSA. Dkt. 68 ("Answer"). The counterclaim seeks "equitable relief" in the form of reimbursement for the services provided to Cigna patients and an injunction prohibiting future statutory violations by the counterclaim defendants. *Id.* at 43-44.

On October 8, 2025, Cigna moved to dismiss the counterclaim. Dkt. 79 ("Mot.").⁷ On October 21

⁶The Court granted ECAPS' motion to dismiss only as to state-law claims that Cigna did not defend in its opposition papers, and as to the Declaratory Judgment Act claim, because such does not provide an independent cause of action. MTD Decision at 27-28.

On August 27, 2025, ECAPS moved for certification of an interlocutory appeal of the MTD Decision's holding that the Court has subject matter jurisdiction over Cigna's claims. Dkt. 64. On November 12, 2025, the Court denied that motion. Dkt. 98.

⁷On October 10, 2025, the Court issued an amend-or-oppose order, directing ECAPS to file any amended counterclaims by October 29, 2025 or, in the alternative, to serve any opposition to the motion to dismiss by the same date. Dkt. 80. On October 16, 2025, ECAPS filed a letter seeking clarification as to whether the deadline to file amended counterclaims applied to substitutions of the John Doe counterclaim defendants with named health plans. Dkt. 81. On

and October 23, 2025, Structural Group and Red Hat, respectively, also moved to dismiss. Dkts. 85, 90.⁸ On October 29, 2025, ECAPS opposed these motions. Dkts. 93 ("Opp'n"), 94, 96. On November 12, [*12] 2025, Cigna replied, Dkt. 99 ("Reply"), as did Structural Group and Red Hat, Dkt. 100. On December 8, 2025, with leave of the Court, ECAPS filed a sur-reply. Dkt. 107 ("Sur-Reply").

II. Legal Standard

To survive a motion to dismiss under *Rule 12(b)(6)*, a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). A complaint is properly dismissed where "the allegations in a complaint, however true, could not raise a claim of entitlement to relief." *Twombly*, 550 U.S. at 558. For the purpose of resolving a motion to dismiss, the Court must assume all well-pled facts to be true, drawing all reasonable inferences in favor of the plaintiff. *Koch v. Christie's Int'l PLC*, 699 F.3d 141, 145 (2d Cir. 2012). That tenet, however, "is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678. A pleading that offers only "labels and conclusions" or "a formulaic recitation of the elements of a cause of

October 24, 2025, the Court stayed the deadline for ECAPS to add more health plan defendants and for counterclaim defendants other than Cigna to respond to the counterclaim. Dkt. 92. It found that a stay would save time and resources because, in the event that the Court were to grant Cigna's motion to dismiss, it would have "spared the many counterclaim defendants the time and expense of separately responding to ECAPS's counterclaim," and spared ECAPS the "resource-intensive step[]" of conducting discovery as to the identities of dozens of SFPs not named in the Answer. *Id.* at 2.

⁸The SFPs' motions to dismiss stated that Structural Group and Red Hat "join[] Cigna's motion to dismiss ECAPS' Counterclaim for the reasons set forth in Cigna's memorandum of law." Dkt. 86 at 2; Dkt. 91 at 2. Accordingly, the Court's analysis focuses on Cigna's motion.

action will not do." Twombly, 550 U.S. at 555. These same standards apply to motions to dismiss counterclaims. Town & Country Linen Corp. v. Ingenious Designs LLC, No. 18 Civ. 5075, 2020 U.S. Dist. LEXIS 111610, 2020 WL 3472597, at *4 (S.D.N.Y. June 25, 2020).

III. Discussion

Cigna makes two arguments for dismissal of the counterclaim. First, Cigna argues that the [*13] counterclaim is barred by *res judicata*. Mot. at 1. Second, it argues that the counterclaim is improper because the NSA does not create a private right of action. *Id.* The Court considers each in turn.

A. Whether the Counterclaim Is Barred by *Res Judicata*

A party moving to dismiss under Rule 12(b)(6) on *res judicata* grounds must show that "(1) the previous action involved an adjudication on the merits; (2) the previous action involved the plaintiffs or those in privity with them; [and] (3) the claims asserted in the subsequent action were, or could have been, raised in the prior action." Monahan v. N.Y. C. Dep't of Corr., 214 F.3d 275, 285 (2d Cir. 2000) (citation omitted).

Cigna argues that *res judicata* bars the counterclaim because: (1) the MTD Decision, which dismissed ECAPS' Complaint without prejudice, was an adjudication on the merits; (2) ECAPS, the counterclaim plaintiff, was the plaintiff in the prior action against Cigna; and (3) the counterclaim was raised in the prior action insofar as it is based on Cigna's alleged failure to pay ECAPS, and could have been raised in the prior action insofar as it relates to Cigna's alleged demand that ECAPS engage in balance billing. Mot. at 6-7. ECAPS counters that *res judicata* does not apply because a Rule 12(b)(6) dismissal without [*14] prejudice does not constitute an adjudication on the merits. Opp'n at 11.

ECAPS is correct. The MTD Decision granted Cigna's motion to dismiss ECAPS' Complaint in its entirety and stated that such "dismissal is without prejudice." MTD Decision at 41. "It is well established that a dismissal without prejudice has no *res judicata* effect on a subsequent claim." Camarano v. Irvin, 98 F.3d 44, 47 (2d Cir. 1996) (cleaned up); see also Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497, 505, 121 S. Ct. 1021, 149 L. Ed. 2d 32 (2001) ("The primary meaning of 'dismissal without prejudice' . . . is dismissal without barring the plaintiff from returning later, to the same court, with the same underlying claim."). Accordingly, the first requirement is not satisfied, and *res judicata* does not bar the counterclaim.

Cigna makes two arguments to the contrary. Neither is availing.

First, Cigna argues that the Court's statement—that the EC's dismissal was without prejudice—"seemed to have applied to the dismissal of state-law claims," over which the Court declined to exercise supplemental jurisdiction, not the other claims in ECAPS' Complaint. Reply at 2. But the Court expressly stated in the MTD Decision: "Each dismissal is without prejudice." MTD Decision at 41 (emphasis added). Cigna fails to explain how this decretal language could be read to [*15] apply only to the EC's state-law claims.

Second, Cigna argues that, because ECAPS appealed the MTD Decision instead of seeking leave to amend the EC, the dismissal without prejudice became one with prejudice, such that *res judicata* applies. Reply at 2-3. Cigna cites four out-of-circuit cases holding that, where a prior action was dismissed without prejudice and the plaintiff declined an opportunity to amend the complaint, an appeal of that dismissal converts it to a dismissal with prejudice. See Pie Dev., L.L.C. v. Pie Carrier Holdings, Inc., 128 F.4th 657 (5th Cir. 2025); Save Bull Trout v. Williams, 51 F.4th 1101 (9th Cir. 2022); Smith v. Sec'y of Veterans Affs., 808 F. App'x 852 (11th Cir. 2020); Duffner v. City of St. Peters, 930 F.3d 973 (8th Cir. 2019). Those cases

do not bind this Court. In any event, they do not support treating the earlier dismissal without prejudice as a final adjudication on the merits.

A dismissal without prejudice is distinct from a grant of leave to amend.⁹ In the Second Circuit, the terms "with prejudice" or "without prejudice" refer to determinations "as to the *res judicata* effect of a dismissal." *Elfenbein v. Gulf & W Indus., Inc.*, 590 F.2d 445, 449 (2d Cir. 1978) (cleaned up), *abrogated by* *Espinoza ex rel. JPMorgan Chase & Co. v. Dimon*, 797 F.3d 229 (2d Cir. 2015). "These terms are not substitutes for clear indications as to whether repleading will be allowed." *Id.* Where a district court seeks to give plaintiffs an opportunity to amend their complaint, its order must "clearly grant[] leave to replead." *Id.* at 450.

In the MTD Decision, [*16] the Court dismissed the EC without prejudice but did not grant ECAPS leave to amend. This case is therefore afield from the out-of-circuit cases on which Cigna relies, in which plaintiffs were expressly granted leave to amend but instead opted to appeal the dismissal of their claims. *See, e.g.*, *Pie Dev.*, 128 F.4th at 660 (district court dismissed claims without prejudice and ordered plaintiff to serve amended complaint within 30 days of order; plaintiff "declined the opportunity to amend its complaint and instead appealed"); *Smith v. Wilkie*, 2019 U.S. Dist. LEXIS 252810, 2019 WL 13440555, at *1 (M.D. Fla. July 25, 2019) (district court dismissed claims without prejudice and "permitted Plaintiff to file an amended complaint" but plaintiff "instead appealed"), *aff'd sub nom. Smith v. Secy of Veterans Affs.*, 808 F. App'x 852 (11th Cir. 2020); *Save Bull*

⁹In addition, a final judgment for *res judicata* purposes is distinct from a final judgment for the purposes of appeal. *See* *Rinieri v. News Syndicate Co.*, 385 F.2d 818, 821 (2d Cir. 1967) ("Although a dismissal without prejudice permits a new action . . . without regard to *res judicata* principles, the order of dismissal, nevertheless, is a final order from which an appeal lies." (cleaned up)). Accordingly, Cigna's argument—that "by taking the appeal and forgoing amendment, ECAPS has agreed the Court's judgment was a final judgment and preclusion should apply," Reply at n.2—is without merit.

Trout, 51 F.4th at 1105 (district court dismissed claims but granted plaintiff "leave to amend"; plaintiff "declined" and "then appealed").¹⁰ Those courts were concerned that the efficiency goals of *res judicata* would be undermined if a plaintiff could "(1) decline the opportunity to amend their complaint; (2) appeal; (3) if appeal is lost, get another shot at amending the complaint because the district court order was without prejudice; and (4) appeal yet again." *Pie Dev.*, 128 F.4th at 663. That concern does not apply here, because ECAPS did not pass up an opportunity to amend.

[*17] Accordingly, the MTD Decision did not constitute a final adjudication on the merits. *Res judicata* does not bar the Court from considering the counterclaim. *See, e.g.*, *Maurice Silvera, Inc. v. Nat'l Ctr. for Empl. of the Disabled, No. 2 Civ. 6223, 2003 U.S. Dist. LEXIS 1755, 2003 WL 262508, at *2 (S.D.N.Y. Feb. 6, 2003)* (no *res judicata* bar where prior *Rule 12* dismissal was without prejudice); *Deitrick v. Cibolo Cap. Partners I, LLC, No. 17 Civ. 4165, 2018 U.S. Dist. LEXIS 53271, 2018 WL 1603869, at *5 (S.D.N.Y. Mar. 28, 2018)* (similar); *Gashi v. Cnty. of Westchester, No. 2 Civ. 6934, 2005 U.S. Dist. LEXIS 1215, 2005 WL 195517, at *7 (S.D.N.Y. Jan. 27, 2005)* (similar).

B. Whether the NSA Permits Claims for Equitable Relief

Cigna argues that the counterclaim should be dismissed because, as this Court held in the MTD Decision, the NSA does not give rise to a private right of action. Mot. at 8 (citing MTD Decision at 34-36). It does not matter, Cigna argues, that the Answer seeks equitable relief, because there is no "free-floating private right of action in equity for a non-existent statutory right of action." *Id.* at 9.

¹⁰*Duffner* is distinguishable from this case for a different reason: it was decided under Missouri law, which bars the refiling of claims dismissed without prejudice unless based on new factual allegations. Sur-Reply at 2 n.1 (citing *Duffner*, 930 F.3d at 976).

ECAPS counters that its counterclaim seeks "traditional equitable relief," and that "the absence of an express or implied private right of action does not preclude a plaintiff from asserting a claim for equitable relief for violation of the statute." Opp'n at 13, 24.

Cigna is correct.

"[T]he question of what remedies are available under a statute that provides a private right of action is 'analytically distinct' from the issue of whether such a right exists in the first place." Franklin v. Gwinnett Cnty. Pub. Schs., 503 U.S. 60, 65-66, 112 S. Ct. 1028, 117 L. Ed. 2d 208 (1992) (quoting Davis v. Passman, 442 U.S. 228, 239, 99 S. Ct. 2264, 60 L. Ed. 2d 846 (1979)). Thus, in assessing a claim brought under a federal statute, the Court must engage in a two-step analysis. The Court first [*18] must determine whether the statute creates a private right of action. Only if that question is answered in the affirmative does the Court reach the second step, which requires it to assess the available remedies for violations of that right.

The counterclaim fails at the first step. The Court has already found, joining the substantial majority of courts to consider the issue, that the NSA does not contain an express or implied right of action. MTD Decision at 34-36 (collecting cases). The Court based this conclusion on the NSA's provision of an administrative remedy—the IDR process—for statutory violations related to nonpayment or underpayment by health plans to providers. MTD Decision at 35. That the NSA "provided an alternative method" of enforcement suggested "that Congress intended to preclude others." *Id.* (quoting Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 328, 135 S. Ct. 1378, 191 L. Ed. 2d 471 (2015)). The Court also noted the NSA's provision that the IDR process "shall not be subject to judicial review." *Id.* at 35-36 (quoting 29 U.S.C. § 1185e(b)(5)(E)(i)(II)). Accordingly, the Court declined to recognize an implied right of action within the NSA. *Id.*

In defending the counterclaim, ECAPS does not contest the Court's finding that there is no private right of action. Instead, ECAPS makes three arguments [*19] based on the equitable nature of the relief sought by the counterclaim and the Court's equitable authority.

First, ECAPS states that it seeks "traditional equitable relief." Opp'n at 16. But because the NSA does not contain a private right of action, the nature of the relief ECAPS seeks is irrelevant. Bowen v. Massachusetts, 487 U.S. 879, 108 S. Ct. 2722, 101 L. Ed. 2d 749 (1988)—which ECAPS argues "controls the question presented here," Opp'n at 17—is not to the contrary. In Bowen, the "broad" language of the relevant statute stated that "[a] person suffering legal wrong because of agency action . . . is entitled to judicial review thereof," and that an action "seeking relief other than money damages . . . shall not be dismissed . . . on the ground that it is against the United States." *Id.* at 892 (quoting 5 U.S.C. § 702). The first-step question—whether the statute provided a right of action—was thus undisputed, enabling the Court to reach the second-step question of whether the funds sought by plaintiff constituted equitable relief. *Id.* at 900. Here, in contrast, there is no right of action under the NSA, so the Court has no occasion to consider the nature of the relief sought or whether it is proper under that statute.

Second, ECAPS argues that "the NSA does not strip district courts of their equitable [*20] jurisdiction to award relief' for statutory violations. Opp'n at 21. It relies on cases holding that courts are presumed to retain all their inherent equitable powers unless such powers are restricted by express statutory language. *Id.* (collecting cases). These cases, however, all considered the extent of courts' equitable powers under statutes that created rights of action. *See, e.g., Liu v. Sec. & Exch. Comm'n.*, 591 U.S. 71, 75, 140 S. Ct. 1936, 207 L. Ed. 2d 401 (2020) (considering, under statute empowering Securities and Exchange Commission to bring actions for equitable relief, "what falls under the umbrella of 'equitable relief'"); United States v.

Sasso, 215 F.3d 283, 289 (2d Cir. 2000) (considering, under statute providing "[a]ny person injured in his business or property . . . may sue," 18 U.S.C. § 1964(c), whether contribution order "is within the equity power of the court"); Mitchell v. Robert DeMario Jewelry, Inc., 361 U.S. 288, 289, 80 S. Ct. 332, 4 L. Ed. 2d 323 (1960) (considering, under statute permitting "action[s] brought by the Secretary of Labor," whether reimbursement of lost wages is within court's equitable jurisdiction). They thus do not—contrary to ECAPS' suggestion—stand for the proposition that, in the absence of a right of action, plaintiffs can sue for statutory violations so long as they seek only equitable relief. Such an exception would flout the precept that "private rights of action to enforce federal law [*21] must be created by Congress." Alexander v. Sandoval, 532 U.S. 275, 286, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001).¹¹

Third, ECAPS relies on Armstrong v. Exceptional Child Center, Inc. in arguing that the absence of an express or implied private right of action does not foreclose equitable relief. Opp'n at 21-25. But that case arose in the unique context of suits to prevent unlawful governmental action. Armstrong considered whether plaintiffs lacking a private right of action could proceed "in equity" in a suit to "enjoin unconstitutional actions by state and federal officers." 575 U.S. at 327. Although the Court found equitable relief unavailable in that case based on the relevant statutory language, it recognized the general "power of federal courts of equity to enjoin unlawful executive action," which follows from "a

¹¹ ECAPS also misreads precedent in arguing that a plaintiff may sue in equity provided that:

"(i) the claim seeks traditional equitable relief., (ii) there is no adequate remedy at law; and

(iii) Congress has not" restricted the Court's equitable jurisdiction. Opp'n at 15 (quoting Sasso, 215 F.3d at 289). That quote does not appear in Sasso. And the question whether there is an adequate remedy at law goes to the availability of equitable relief, not the existence of a right of action. See SCM Corp. v. Xerox Corp., 507 F.2d 358, 363 (2d Cir. 1974) ("[I]t is basic that equitable relief will not be granted where an adequate remedy at law exists.").

long history of judicial review of illegal executive action." *Id.* The Second Circuit has applied Armstrong "[w]hen a private plaintiff claims that a federal law protects it from state regulation." UnitedHealthcare of N.Y., Inc. v. Lacewell, 967 F.3d 82, 90 (2d Cir. 2020). "In such circumstances, a plaintiff does not ask equity to create a remedy not authorized by the underlying law," but rather "invokes equity preemptively to assert a defense that would be available to it in a state or local enforcement action." Friends of the E. Hampton Airport, Inc. v. Town of E. Hampton, 841 F.3d 133, 144 (2d Cir. 2016).

That line of cases, however, does not support [*22] suits, like this, against a private defendant.¹² And the two cases ECAPS cites applying Armstrong arose in the context of suits to enjoin governmental action. See, e.g., Cellco P'ship v. City of Rochester, 623 F. Supp. 3d 184, 192-93 (W.D.N.Y. 2022) (suit against city for violating federal law in enacting local regulations); Cayuga Nation v. N.Y. State Gaming Comm'n, No. 24 Civ. 537, 2025 U.S. Dist. LEXIS 145718, 2025 WL 2161290, at *4 (N.D.N.Y. July 30, 2025) (suit against state commission for alleged violation of federal law). Those cases recognized what ECAPS overlooks—that "a court may not make use of its equitable jurisdiction to allow a plaintiff to obtain relief from a federal court any time that it alleges that a defendant violated a federal statute." Cayuga Nation, 2025 U.S. Dist. LEXIS 145718, 2025 WL 2161290, at *5 (cleaned up).

Lacking a statutory right of action, ECAPS's bid for equitable relief fails. Accordingly, the Court dismisses the counterclaim. See, e.g., T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Ass'n, No. 25 Civ. 1255, 2025 U.S. Dist. LEXIS 252293, 2025 WL

¹² Armstrong does not support the availability of equitable relief here for another reason: Congress, in enacting the IDR process, created an administrative remedy for NSA violations. See Armstrong, 575 U.S. at 328 (provision of remedy for statutory violations signaled intent to foreclose equitable relief because "express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others" (quoting Sandoval, 532 U.S. at 290)).

[3496382, at *9 \(S.D.N.Y. Dec. 5, 2025\)](#) (dismissing out-of-network health provider's NSA claim because "plaintiff has no private right of action under the NSA"); [Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield, 790 F. Supp. 3d 129, 137 \(E.D.N.Y. 2025\)](#) (same); [Guardian Flight, L.L.C. v. Health Care Serv. Corp., 140 F.4th 271, 275-77 \(5th Cir. 2025\)](#) (same), *cert. denied*, [No. 25-441, 223 L. Ed. 2d 509, 2026 WL 79855 \(U.S. Jan. 12, 2026\)](#); [FHMC LLC v. Blue Cross & Blue Shield of Ariz. Inc., 2024 U.S. Dist. LEXIS 62018, 2024 WL 1461989, at *3 \(D. Ariz. Apr. 4, 2024\)](#) (same).

CONCLUSION

For the reasons stated above, the Court [*23] grants the motion to dismiss ECAPS' counterclaim. The Clerk of Court is respectfully directed to terminate the motions pending at dockets 78, 85, and 90.

SO ORDERED.

/s/ Paul A. Engelmayer

PAUL A. ENGELMAYER

United States District Judge

Dated: February 24, 2026

New York, New York