

ORDER. Pending before the Court is plaintiffs' request to supplement its damages disclosures to reflect ongoing, post-Complaint violations, and defendants' request to preclude such supplementation. Plaintiffs assert that defendants have failed to pay, or to timely pay, additional IDR awards that issued since the filing of the Complaint; plaintiffs contend that these are "continuing violations" that fall within the scope of the No Surprises Act ("NSA") claims as initially pleaded, and they propose to supplement their damages disclosure until 30 days before trial. Pl. Br., ECF 261. Defendants, however, appear to contend that each alleged post-Complaint late/non-payment is a new claim that is outside the scope of the pleadings and therefore not pertinent to this litigation. Aetna Br., ECF 260; Cigna Br., ECF 262. Aetna further argues that the rolling disclosures are prejudicial because (a) each claim is unique and requires additional discovery and investigation into the underlying circumstances, and (b) defendants' experts would not be able to evaluate or opine on claims disclosed after the May/June expert deadlines. Aetna previously sought to strike damages disclosures in this case based on the theory that a plaintiff may only announce post-Complaint violations via an amended pleading, rather than via a damages disclosure. See 207 Motion to Strike. However, without ruling on the merits of that theory, Judge Shea denied the motion for procedural reasons and instructed that "[t]o the extent that this motion embodies a dispute about the adequacy or timeliness of the disclosures of damages or legal theories in Plaintiffs' submission, the parties should address these concerns with Judge Vatti." ECF 225. Accordingly, substantive questions concerning the scope of the claims for trial must be left for another day, and the sole dispute to be presently decided is whether to preclude plaintiffs from supplementing their damages disclosures for discovery purposes. That dispute boils down to two questions. First, are ongoing post-Complaint violations sufficiently relevant that they can be disclosed and explored during the pretrial phase? The answer is yes, based on clear and adequate notice to the defendants in the operative Consolidated Amended Complaint

dated June 13, 2024 -- see ECF 109 at 25 and 39, and (a), (b), and (g) in the prayer for relief -- that plaintiffs are seeking recovery for ongoing late/non-payments in violation of the NSA, as well as prospective equitable relief (although defendants' motion to dismiss the equitable claims is currently pending). See, e.g., *Acosta v. Care at Home LLC*, No. 3:18-cv-711 (AWT), 2019 WL 13125755, at *2 (D. Conn. July 3, 2019) (Richardson, M.J.) (finding allegations of ongoing FLSA violations and request for injunction were sufficient to justify discovery of related materials up to date of discovery order). Given those allegations, defendants cannot claim any unfair surprise that plaintiffs seek to supplement their damages disclosures to include alleged continuing violations of the NSA. Second, should the Court impose a cutoff that allows defendants sufficient time to investigate newly disclosed items and prepare their defenses? The answer again is yes. While it is unclear what discovery defendants could possibly seek from plaintiffs to illuminate why defendants may have failed to pay a particular IDR award within the statutorily mandated 30 days, and although defendants failed to provide any specifics as to what such discovery might entail, the Court recognizes that defendants may need time to investigate internally why newly disclosed awards were not paid or were untimely paid. However, the Court is not persuaded that any cutoff should precede the close of discovery, given the "liberal policy favoring a merit-based resolution of the entire controversy between the parties," *Witkowich v. Gonzales*, 541 F. Supp. 2d 572, 590 (S.D.N.Y. 2008), and the likelihood that dispositive motions might postpone the trial. In this Court's view, requiring plaintiffs to periodically institute new lawsuits to address on-going violations is an inefficient use of judicial resources. Accordingly, plaintiffs' request to extend the damages disclosure deadline is GRANTED as follows. Plaintiffs may supplement their damages disclosure no later than 60 days before trial to identify IDR awards issued no later than 120 days before trial. Any such disclosures that comply with these time limitations shall be deemed adequate and timely for discovery purposes. This supplementation

shall be done on a rolling basis, at least once every 90 days until the deadline, to provide defendants a fair opportunity to conduct internal investigation. The Court does not intend to reopen discovery for that purpose. Relatedly, plaintiffs' request to compel responses to ROGs 5A and 7C and RFPs 26A and 24C, which are contention interrogatories and document requests seeking defendants' justification for unpaid awards with supporting documents, is GRANTED IN PART. Defendants shall comply with these discovery requests only as to late/unpaid awards that were identified in plaintiffs' damages disclosures as of April 15, 2025; that compliance is due by May 31, 2025, which coincides with the first expert disclosure. This cutoff should at least partially alleviate the timing and burden concerns raised in defendants' letter briefs. To clarify and reiterate, these discovery rulings are without prejudice to raising substantive arguments in an appropriate motion to the trial judge at an appropriate time concerning the proper scope of claims for trial, undue prejudice, or the admissibility of evidence. So Ordered. Signed by Judge S. Dave Vatti on 5/8/2025. (Nichols, J.) (Entered: 05/08/2025). Modified on 5/9/2025 to make correction. (Bociek, A). (Entered: 05/08/2025)