

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GUARDIAN FLIGHT LLC, et al.,

Plaintiffs,

v.

**AETNA LIFE INSURANCE
COMPANY et al.,**

Defendants.

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Civil Action No. 3:24-cv-00680-MPS

PLAINTIFFS’ MOTION TO DISMISS DEFENDANT AETNA’S COUNTERCLAIM

Plaintiffs Guardian Flight, LLC (“Guardian Flight”), REACH Air Medical Services, LLC (“REACH”), CALSTAR Air Medical Services, LLC (“CALSTAR”), Med-Trans Corporation (“Med-Trans”), Air Evac EMS, Inc. (“Air Evac”), and AirMed International LLC (“AirMed”) (collectively “Plaintiffs”) file this Motion to Dismiss Aetna’s Counterclaim, Document 278, and would respectfully show the Court as follows:

INTRODUCTION

Everyone knows that the best defense is a good offense. Hence, Aetna is attempting to assert a counterclaim against Plaintiffs for what it labels an “unbundling scheme.” But Aetna has no players to put on the field. Its counterclaim is groundless and suffers from numerous fatal defects that require dismissal.

An air ambulance bill typically has at least two line-item charges: one for the base rate and one for mileage. For each charge, an insurer like Aetna pays out-of-network providers like Plaintiffs the amount it decides to “allow.” Beginning in 2022, the federal government *required* all air ambulance providers to file separate Independent Dispute Resolution (“IDR”) proceedings for each line-item payment dispute. Because base rates and mileage charges are separate line items, they required two IDR proceedings. Aetna alleges that when this requirement was vacated

by a federal court in late 2023, thus making it optional to file separate line-item disputes or a “batched” disputes for base rate and mileage payments, Plaintiffs’ decision to continue filing line-item disputes somehow became a violation of the Connecticut Unfair Trade Practices Act (“CUTPA”). Aetna’s counterclaim is groundless and cannot survive even minimal scrutiny.

To begin, CUTPA does not apply to Plaintiffs because, unlike Aetna, Plaintiffs are not citizens of Connecticut, do not have their offices there, and the complained-of conduct did not occur there. Aetna attempts to improperly expand CUTPA’s geographic reach, contrary to Connecticut’s own choice-of-law principles, which dictate that Connecticut law is inapplicable. Even if it applied, CUTPA contains an express exception for permitted conduct in a regulated area such as IDR proceedings. The submission of separate IDR proceedings for base rate and mileage disputes is not only permitted, but as mentioned above, was required by federal law for at least a year. Even if Connecticut law applies and Aetna’s claim is not subject to CUTPA’s exception, Aetna fails to plausibly allege that Plaintiffs’ conduct either violates public policy, is immoral, unethical, oppressive, or unscrupulous, or that it resulted in substantial injury, as required by CUTPA. Finally, Aetna’s counterclaim is preempted by the Airline Deregulation Act (“ADA”) because it relates to Plaintiffs’ rates and services. For these reasons, Aetna’s CUTPA claim must be dismissed.

LEGAL STANDARD

To survive dismissal under FED. R. CIV. P. 12(b)(6), a plaintiff must plead sufficient factual allegations “to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (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 (2009). The Court must “accept all well-pleaded factual allegations in the complaint as true,” *Lynch v. City of New York*, 952 F.3d 67, 74–75 (2d

Cir. 2020) (internal quotations omitted), but is permitted to “disregard legal conclusions.” *Red Fort Capital, Inc v. Guardhouse Productions LLC*, 397 F. Supp. 3d 456, 465 (S.D.N.Y. 2019). Under this standard, a pleading that “offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” *Ashcroft v. Iqbal*, 556 U.S. at 678 (2009) (quoting *Twombly*, 550 U.S. at 555). “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* While a court “must ‘accept all allegations in the complaint as true and draw all inferences in the non-moving party’s favor,’” *U.S. ex rel. Siegel v. Roche Diagnostics Corp.*, 988 F. Supp. 2d 341, 343 (E.D.N.Y. 2013), “threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice,” and must be dismissed. *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010).

ARGUMENTS & AUTHORITIES

I. The historical and regulatory backdrop of submissions of air ambulance payment disputes to IDR.

The No Surprises Act (“NSA”) created a dispute resolution process for payment disputes between insurers and providers for out-of-network emergency services, including air ambulance transports. *See* 42 U.S.C. § 300gg-111(c) (applicable to emergency services provided in hospital emergency departments and free-standing emergency departments); 42 U.S.C. § 300gg-112(b) (applicable to air ambulance services but with numerous cross-references to, and incorporation of, the hospital provisions). Under the NSA, the Secretaries of Health and Humans Services, Labor and Treasury (collectively the “Secretaries”) are required to “establish by regulation one independent dispute resolution process” under which, “in the case of air ambulance services . . . a certified IDR entity . . . determines . . . the amount of payment under the plan or coverage for such services furnished by such provider.” 42 U.S.C. § 300gg-112(b)(2)(A).

The NSA further provides direction on “batching” multiple services into one IDR proceeding and handling “bundled” payments in a proceeding. With respect to batching, the NSA directs the Secretaries to “specify criteria under which *multiple qualified IDR dispute items* and services are permitted to be considered jointly as part of a single determination by an entity” 42 U.S.C. 300gg111(c)(3)(A) (emphasis added).¹ The NSA then outlines four requirements that must be met in order to batch items and services:

- (i) such items and services to be included in such determination are furnished by the *same provider* or facility;
- (ii) payment for such items and services is required to be made by the *same group health plan* or health insurance issuer;
- (iii) such items and services are *related to the treatment of a similar condition*; and
- (iv) such items and services were *furnished during the 30 day period* following the date on which the first item or service included with respect to such determination was furnished

Id. (emphasis added).

In addition to batching payment disputes for services provided to the same health plan within a 30-day period, the NSA also addresses bundled payments. It states that “in the case of items and services which are included by a provider or facility as part of a bundled payment, such items and services included in such bundled payment may be part of a single determination under this subsection.” *Id.* at § 300gg111(c)(3)(B). A bundled payment is one where a provider “bills for multiple items or services *under a single service code*[.]” See Technical Assistance for Certified IDR Entities (August 2022), page 9, available at <https://www.cms.gov/files/document/TA-certified-independent-dispute-resolution-entities->

¹ The air ambulance part of the NSA, 42 U.S.C. 300gg-112(b)(3), incorporates by reference the batching and bundling sections of the hospital part of the NSA, 42 U.S.C. 300gg-111(c)(3)(A).

[August-2022.pdf](#) (“August Guidance”) (emphasis added). Plaintiffs do not bundle their services into a single service code. Instead, as noted above, every air ambulance transport bill contains at least two line-item charges, one for the base rate and one for mileage, and Aetna likewise pays for each charge separately.² *See* Doc. 278 at ¶ 51.

Pursuant to these statutory directives, the Secretaries established an IDR program. The IDR program is jointly regulated by the Departments of Health and Human Services, Treasury and Labor (the “Departments”) and is administered by the Centers for Medicare and Medicaid Services (“CMS”). The Departments issued numerous rules and regulations concerning how payment disputes are submitted. *See, e.g.*, “Requirements Related to Surprise Billing, Part II,” 45 CFR Parts 147 and 149 (86 Fed. Reg. 55,980)³; “Requirements Related to Surprise Billing: Final Rules,” 45 CFR Part 149 (87 Fed. Reg. 52,618); “Federal Independent Dispute Resolution Process Administrative Fee and Certified IDR Entity Fee Ranges,” 45 CFR Part 149 (88 Fed. Reg. 88,494). Additional rules have been proposed but not yet enacted. *See* “Federal IDR Process Operations Proposed Rule,” 45 CFR Part 149 (88 Fed. Reg. 75,744).⁴

Payment disputes are initiated through an online portal. Providers have three options for initiating a dispute: “**Single Line Item – Not Bundled**,” “**Single Line Item – Bundled**,” or “**Batched Items or Services**.” *See* Notice of Independent Dispute Resolution (IDR) Initiation

² Aetna confusingly uses the term “unbundling” when referencing the submission of the base rate and mileage charge in separate IDR proceedings. NSA bundling rules are irrelevant to Aetna’s Counterclaim, which concerns Plaintiffs not batching two different service codes in a single IDR proceeding once that process became available.

³ Identical regulations were issued by each of the three Departments. For purposes of this brief, only citations to the regulations issued by Health and Human Services are cited.

⁴ These various rules and regulations are available on the No Surprises Act section of the Centers for Medicare and Medicaid Services website, available at <https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets>.

Web Form at p. 13, section 4.1 (“Line Item Information”), available at <https://www.cms.gov/files/document/idr-notice-initiation-job-aid.pdf>. Notably, IDR entities charge higher fees for batched disputes. *See List of certified independent dispute resolution entities*, available at <https://www.cms.gov/nosurprises/help-resolve-payment-disputes/certified-idre-list>. For example, in 2024, IDR entity ProPeer Resources charged \$640 for “single determinations” and \$1,170 for batched disputes involving two “line items.” *Id.*

On August 18, 2022, the Departments issued “technical guidance” to IDR entities that addressed batching. It stated that “multiple qualified IDR items or services” may only be “batched” together if, among other things, the services were “billed under the *same service code*” such that they are an “identical item or service.” August Guidance at p. 2 (emphasis added). The Departments later clarified that the August Guidance required air ambulance providers to file a separate IDR proceeding for each line-item where the allowed was being challenged. This meant that a challenge to both the base rate and mileage amount allowed by insurers required two IDR proceedings. *See Texas Medical Ass’n v. U.S. Dept. of Health and Human Servs.*, 2023 WL 5489028 at *4, *14 (E.D. Tex. August 24, 2023) (hereinafter “*TMA III*”).

On September 30, 2021, the Departments issued an interim final rule implementing the IDR process. *See* 86 Fed. Reg. 55,980 (Oct. 7, 2021) (“2021 Interim Rule”). While providing more detail, the interim rule applied the same line-item batching logic as the August Guidance. It stated that items or services could be batched together if:

(C) The qualified IDR items and services are the same or similar items and services. The qualified IDR items and services are *considered to be the same or similar items or services if* each is *billed under the same service code*, or a comparable

code under a different procedural code system, such as . . . ***Healthcare Common Procedure Coding System (HCPCS)***.⁵

Texas Medical Ass’n v. U.S. Dept. of Health and Human Servs., 2023 WL 4977746 at * 12 (E.D. Tex. Aug. 3, 2023) (quoting 45 C.F.R. § 149.510(c)(3)(i)(C)) (hereinafter “*TMA II*”). The effect of the August Guidance and 2021 Interim Rule was that every IDR proceeding, whether it be a single determination dispute or a batched dispute, would be limited to a single service/HCPCS code (*i.e.* a single line-item on the bill). Hence, if both the base rate and mileage payments were being disputed, it would always require two IDR proceedings.

This batching rule was challenged in two federal court lawsuits. Nearly a year later, in August 2023, both the August Guidance and 2021 Interim Rule on batching were set aside. *See TMA II*, 2023 WL 4977746 at *12 (vacating interim rule as not having gone through the notice-and-comment process); *TMA III*, 2023 WL 5489028 at * 15 (setting aside the August Guidance). In response to the court’s ruling, the Departments issued new batching guidance in December 2023. *See* Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties (available at <https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf>) (“December Guidance”).

In the December Guidance, the Departments state that services may be batched if “the ***certified IDR entity determines*** that the qualified IDR items or services are related to the treatment of a similar condition.” *Id.* at p. 21 (emphasis added). In other words, each of the thirteen IDR entities would now make their own batching determinations. And with respect to air ambulance services, the guidance continued:

⁵ Air ambulance services are billed under HCPCS codes. There are base and mileage HCPCS codes for rotor wing transports (A0431 – base and A0436- mileage) and for fixed wing transports (A0430 – base and A0435 mileage).

As a result of the *TMA III* order, air ambulance services for a single air ambulance transport, including an *air ambulance mileage code and base rate code, may be submitted as a batched dispute*, so long as all provisions of the batching regulations are satisfied, in accordance with guidance. *Nothing* in the FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63 or the *TMA III* opinion and order *precludes an air ambulance mileage code or base rate code from being submitted separately as a single dispute*.

Id. at p. 22 (emphasis added). In other words, the Departments’ official policy statement is that base and mileage rates may be batched together at the higher batched fee or they may be submitted separately as single disputes at the lower single determination fee.

The Departments unquestionably prefer air ambulance base and mileage payment disputes to be submitted in separate IDR proceedings rather than batched, a position they defended in Court as promoting better uniformity. *TMA III* at *14. It is against this highly regulated backdrop that Aetna now claims that CUTPA *compels* Plaintiffs to submit mileage and base rate payment disputes as batched disputes and *precludes* them from submitting them in separate proceedings.

II. Connecticut law and CUTPA are inapplicable to Plaintiffs.

Connecticut law, and more specifically CUTPA, is inapplicable to Plaintiffs. CUTPA’s plain language is “directed at unfair competition taking place ‘in this state.’” *Victor G. Reiling Associates and Design Innovation, Inc. v. Fisher-Price, Inc.*, 406 F. Supp. 2d 175, 200 (D. Conn. 2005). Despite this, courts have held that “CUTPA does not require that a violation actually occur in Connecticut, *if* the violation ‘is tied to a form of trade or commerce intimately associated with Connecticut,’ *or if*, where Connecticut choice of law principles are applicable, those principles dictate application of Connecticut law.” *Id.* (citing *Uniroyal Chem. Co. v. Drexel Che. Co.*, 931 F. Supp. 132, 140 (D. Conn. 1996) (emphasis added)). Aetna’s allegations do not meet either of these tests; therefore, the counterclaim should be dismissed.

A. Plaintiffs’ alleged conduct is not tied to trade or commerce intimately associated with Connecticut.

None of the complained of conduct occurred within Connecticut, and therefore any CUTPA violation is not tied to a form of trade or commerce intimately associated with Connecticut.

Aetna attempts to tie Plaintiffs to Connecticut by alleging that the unfair trade practices are “with Connecticut patients, Connecticut health plans and Connecticut-based IDR proceedings.” Doc. 278 at ¶ 6. That is not enough for CUTPA to apply. To begin, Plaintiffs are neither Connecticut companies nor do they maintain their principal places of business in Connecticut. *See id.* at ¶¶ 33–38 (alleging the incorporation state and principal place of business for each Plaintiff). Indeed, there is no allegation that Plaintiffs maintain any place of business in Connecticut. Focusing on Plaintiffs’ alleged misconduct, the allegations are limited to their “unbundling scheme,” *id.* at 14 ¶ 54, and “charg[ing] exorbitant prices for their alleged services.” *Id.* at 14 ¶ 55. Nowhere does Aetna allege that these acts took place in Connecticut (as they do not).

Similarly deficient from Aetna’s pleading is any explanation of how the alleged IDR submission process involves “Connecticut patients.” As this Court noted, the NSA has removed patients from the equation with respect to air ambulance billing and payment disputes. *See* Doc. 264 at 2. Thus, Plaintiffs’ alleged misconduct, which is limited to the IDR submission process and the amount it charges for transports, has no effect on Connecticut patients.

Aetna likewise provides no explanation of what a “Connecticut-based IDR proceeding” is. Notably, there is no allegation that any of the thirteen IDR entities currently accepting claims and making payment decisions are located in Connecticut. *See List of certified independent dispute resolution entities*, available at <https://www.cms.gov/nosurprises/help-resolve-payment-disputes/certified-idre-list>. And IDR proceedings are completely electronic, with submissions

going through a CMS online portal. See “Notice of Initiation,” available at <https://nsa-idr.cms.gov/paymentdisputes/s/>. There is simply no meaningful connection between Plaintiffs and Connecticut other than the fact that Aetna resides there.⁶ At best, Aetna’s allegations only result in harm being felt in Connecticut. As the courts in *Sec. Systems, Inc. v. Alder Holdings, LLC*, 421 F. Supp. 3d 1186 (D. Utah 2019) and *Reiling* explain, that is insufficient.

In *Security Systems*, the court dismissed Plaintiff’s CUTPA claim at the motion to dismiss stage because the allegations of misconduct did not occur within the State of Connecticut or to Connecticut customers. 421 F. Supp. 3d at 1191. The court further explained, relying on *Reiling*, that to establish CUTPA’s applicability “much more Connecticut connection was required” and that *a plaintiff* “merely being headquartered, incorporated or feeling harm [in Connecticut]” is not enough. *Id.* Similarly, in *Reiling*, the court also found CUTPA inapplicable because the *allegedly unfair practices all took place where the defendant was located*. 406 F. Supp. 2d at 200 (emphasis added). The *Reiling* court also reasoned that the products that “allegedly misappropriated plaintiffs’ concepts were *marketed and sold in stores nationwide and on the Internet*, not just in Connecticut.” *Id.* (emphasis added).

Here, Aetna’s allegations are parallel to the conduct at issue in *Security Systems* and *Reiling*. Taken as true, Plaintiffs alleged “scheme” to submit base rate and mileage payment disputes in separate IDR proceedings and to charge exorbitant prices occurs where Plaintiffs are located and make billing and IDR decisions. There is no allegation that any of this happened in Connecticut (because it did not). Similarly, just like the products at issue in *Reiling* were sold

⁶ Notably, Plaintiffs filed this lawsuit in Texas, the principal place of business for many of them. It was Aetna who caused the case to be transferred to its home jurisdiction over which Connecticut law unquestionably applies.

nationwide, the IDR awards at issue in this proceeding against Aetna concern air ambulance transports that occurred nationwide.

As an example, Plaintiff Med-Trans is alleged to be a North-Dakota corporation with its principal place of business in Texas. Even if an IDR proceeding involves a Connecticut patient and a Connecticut health plan (which would be rare), the alleged misconduct still occurs in Texas. It is only the effects of the alleged misconduct that are potentially felt in Connecticut. That is not enough under *Security Systems* and *Reiling*. For these reasons, CUTPA is inapplicable because Plaintiffs' alleged conduct is not tied to trade or commerce that is intimately associated with Connecticut, and Aetna's claim should be dismissed.

B. Connecticut's choice of law principles disfavor applying Connecticut law.

Connecticut's choice of law rules⁷ likewise dictate that Connecticut law does not apply to Plaintiffs, further supporting the dismissal of Aetna's CUTPA claims. Connecticut courts apply the "most significant relationship test" to determine which forum's law applies. *Reiling*, 406 F. Supp. 2d at 200. Under that test, the relevant factors considered are "(1) the place where the injury occurred; (2) the place where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (4) the place where the relationship, if any, between the parties is centered." *Id.*

Here, all of the factors weigh against applying Connecticut law. Under Aetna's theory, the "injury" is "manipulating the IDR process" (by filing two line-item payment disputes) "to continue inflating payments and driving profits." Doc. 278 at ¶ 50. But if the scheme is to "inflate payments" for air ambulance transports, then the injury is typically not Aetna's at all and occurs

⁷ "A federal court sitting in diversity applies the choice-of-law rules of the forum state." *Maryland Cas. Co. v. Continental Cas. Co.*, 332 F.3d 145, 151 (2d Cir. 2003).

across the country in every state. That is because Aetna mostly administers self-funded employer health plans, and it does so for companies across the country. *See* “Self insurance plans,” available at <https://www.aetna.com/employers-organizations/self-insurance-plans.html>. That means that the companies themselves, not Aetna, pay the additional amounts owed from the alleged “inflated” IDR awards. Hence, the place of “injury” is the location of every employer group across the country (likely all 50 states). Fully insured groups are a much smaller part of Aetna’s business, and a part of it the company wants to further shrink.⁸ While Aetna also complains of increased administrative fees and IDR charges, Doc. 278 at ¶ 54, nowhere does it allege that it, as opposed to its self-funded customers, pay these amounts.

With respect to the remaining factors, the conduct causing the alleged injury clearly did not occur in Connecticut, where none of the Plaintiffs are located. *See, e.g., Reiling*, 406 F. Supp. 2d at 200 (“the allegedly unfair practices...all took place in or from New York, where Fisher-Price is located.”); *Security Systems*, 421 F. Supp. 3d at 1191 (“Plaintiff has not, however, alleged that any unfair activity or misconduct occurred within the State of Connecticut or to its Connecticut customers.”). With respect to the third factor, only Aetna is incorporated and maintains a principal place of business in Connecticut, meaning the factor weighs against it. Doc. 278 at ¶¶ 39-41; *see Reiling*, 406 F. Supp. 175 at 200 (finding the third factor did not weigh in favor of applying Connecticut law where only the plaintiffs were Connecticut entities). Lastly, there is no state where the Parties’ relationship is centered. Plaintiffs transport Aetna patients across the country and submit payment disputes to IDR entities scattered across the country.

⁸ At the end of 2024, Aetna reported 14.2 million self-funded employer plans, an increase over the prior year. *See* “CVS plans to let Aetna fully insured group enrollment shrink,” available at <https://www.benefitspro.com/2024/11/07/cvs-plans-to-let-aetna-fully-insured-group-enrollment-shrink/>.

Western Dermatology v. Vital Works, Inc is instructive. There, the court affirmed the lower court's findings that CUTPA was inapplicable despite the defendant being headquartered in Connecticut and the relevant contract being drafted in Connecticut because the services rendered to the plaintiff were outside of Connecticut. *Western Dermatology v. Vital Works*, 146 Conn. App. 169, 200, 208 (Conn. App. 2013). Here, Aetna's allegations tying Plaintiffs to Connecticut do not come close to the facts in *Western Dermatology*. In short, the only connection to Connecticut is that Aetna resides there and allegedly feels some harm there. That is not enough to establish CUTPA's applicability. If it were, then CUTPA's plain language that it only applies to trade or commerce "in this state" would be rendered meaningless. *See* Conn. Gen. Stat. § 42-110a. Moreover, if CUTPA applies to Plaintiffs based on these threadbare facts, then every insurance company in the nation could make the same argument, leading to inconsistent standards of conduct in a federally regulated program.² For these reasons, Connecticut law does not apply to Plaintiffs and Aetna's CUTPA claim should be dismissed.

III. CUTPA's exception applies because the Departments expressly allow and prefer base and mileage disputes to be submitted as separate line-item disputes.

CUTPA's exception applies to Plaintiffs' alleged conduct. As explained above, the Departments required Plaintiffs for over a year to submit base rate and mileage disputes in separate IDR proceedings. It took federal litigation to compel the Departments to allow the choice of filing the two line items as a batched dispute, which requires payment of a higher IDR batching fee. Defendant Aetna now asserts that CUTPA compels Plaintiffs to batch all base rate and mileage disputes. But CUTPA anticipates this potential misuse of the statute by providing a broad

² Aetna's CUTPA claim is far different from Plaintiffs' claim, which is based on Aetna's violation of the NSA. Here, Aetna is attempting to impose liability based on a practice *expressly permitted* by the NSA and its implementing rules.

exemption of permitted actions in regulated programs like the federal IDR program. In particular, CUTPA expressly excepts “[t]ransactions or actions otherwise *permitted under law* as administered by any *regulatory board or officer* acting under *statutory authority* of the state or *of the United States*.” Conn. Gen. Stat. Ann. § 42-110c (emphasis added). Here, three federal agencies (HHS, Treasury and Labor) have created the rules for the federal IDR program and unquestionably *permit* an IDR proceeding for each line-item payment dispute. Indeed, they have tried mightily to mandate it.¹⁰

When assessing the applicability of CUTPA’s exception, courts apply a two-part analysis. First, a court must identify the “transactions or actions” at issue by determining “the broader pattern of activity by the defendant, not the specific allegations of misconduct.” *Garcia v. Fry*, 186 F. Supp. 3d 228, 234 (D. Conn. 2016). Second, a court must determine whether the transactions or actions are authorized or permitted under law. *See id.* Notably, the CUTPA exemption does not require that the activity at issue be specifically directed or required “but only that the actions *be permitted and be subject to regulation* by a regulatory board or officer.” *Id.* (internal quotations omitted) (emphasis added); *see also Connelly v. Housing Authority of City of New Haven*, 213 Conn. 354, 361 (Conn. 1990) (holding that “the continued leasing or renting of subsidized apartments to low income tenants” which is regulated by the Department of Housing and Urban Development was excepted from CUTPA’s applicability).

Here, Aetna has alleged that Plaintiffs are engaged in a scheme to “submit disputes for the base rate and mileage rate in two separate submissions, even though they can be submitted

¹⁰ Notably, Aetna attempts to hold Plaintiffs liable for their alleged “unbundling scheme” only from October 2023 onwards, after the August Guidance was vacated. *See* Doc. 278 at 13 ¶ 51. As noted above, the subsequent December Guidance made it clear that while the Departments could not compel it, air ambulance companies could continue filing single disputes for single charges.

together.” Doc. 278 at ¶ 51. It is the submission of a single dispute per HCPCS code that is the “transaction or actions” at issue. And as explained above, that action is permitted (and even encouraged) by the Departments. Aetna does not make a single allegation that submitting separate payment disputes for base rates and mileage rates is prohibited by the NSA. Aetna’s counterclaim is an improper attempt at rulemaking through tort liability. If it is unhappy with how the IDR program is being administered by the Departments, Aetna should sue the Departments, not Plaintiffs. *See* Doc. 278 at ¶ 24 (Aetna noting in its affirmative defenses that the IDR process is “federally-regulated”). Its CUTPA counterclaim is groundless and should be dismissed.

IV. Aetna has failed to state a claim under CUTPA.

Lastly, Aetna has failed to state a claim under CUTPA because Aetna has not alleged that filing base rate and mileage disputes separately, as once mandated by federal law and now permitted (and encouraged) by the Departments, is unfair or deceptive. To state a claim under CUTPA, a plaintiff must show that “(1) the defendant engaged in unfair or deceptive acts or practices in the conduct of any trade or commerce;...and (2) [it] has suffered an ascertainable loss of money or property as a result of the defendant’s acts or practices.” *Artie’s auto Body, Inc. v. Hartford Fire Ins. Co.*, 287 Conn. 208, 217 (Conn. 2008). The Connecticut Supreme Court has adopted the FTC’s cigarette rule to determine whether a practice violates CUTPA. *See American Car Rental, Inc. v. Commissioner of Consumer Protection*, 273 Conn. 296, 305 (Conn. 2005). The criteria set out in that rule ask:

(1) [W]hether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers, [competitors or other businesspersons]

Id. at 305–306. Aetna merely states in a conclusory fashion that Plaintiff’s alleged practices offend “public policy, is immoral, unethical, oppressive, and unscrupulous, and has caused substantial injury to Aetna, consumers and business that is not outweighed by the countervailing benefits and could not have been avoided.” Doc. 278 at ¶ 60. But that is not enough. *See Priority Sales Mgmt., Inc. v. Carla's Pasta, Inc.*, 2011 WL 3819748, at *3 (D. Conn. Aug. 26, 2011) (“Courts have held that ‘merely stating that the defendant’s conduct violates public policy or is unfair and/or deceptive is not sufficient to sustain a CUTPA claim.’”) (citation omitted). Applying the cigarette rule, Aetna’s allegations, taken as true, do not amount to deceptive or unfair practices.

A. Filing separate IDR proceedings for base rate and mileage disputes does not offend public policy and is not immoral, unethical, oppressive or unscrupulous.

First, Plaintiffs’ alleged “unbundling scheme” of filing a single IDR payment dispute for each charge being contested does not offend public policy and is not immoral, unethical, oppressive, or unscrupulous. As discussed above, commencing separate IDR proceedings for base rate and mileage disputes was previously required by the Departments and is certainly permitted by them. *Compare* August Guidance (requiring base rate and mileage disputes to be separately filed in two different IDR proceedings) *with* December Guidance (allowing base rate and mileage disputes to be batched into one IDR proceeding or submitted separately in two proceedings). While no longer required, single charge submissions are still permissible and even preferred by the Departments. Aetna is unable to point to any statute or common law “public policy” that single charge IDR submissions violates. And aside from its conclusory statement provides no basis that the federal government’s rules on how IDR proceedings can be submitted are immoral, unethical, oppressive, or unscrupulous. For this Court to allow Aetna’s CUTPA claim to proceed, it would have to conclude that the federal government’s original rule itself *violated public policy* and embodied an *unfair trade practice* under Connecticut law. This is nonsense.

In *Personal Financial Services, Inc. v. General Motors Acceptance Corporation*, a court in this district considered whether a CUTPA claim was stated where the defendant failed to disclose that it derived a financial benefit by holding security deposits in connection with an automobile lease. 169 F. Supp. 2d 49, 54 (D. Conn. 2001). The court answered that question in the negative and reasoned that the federal Consumer Leasing Act set out required disclosures for terms of certain leases of personal property, and that it did not “require any disclosure of interest or other financial benefits earned as a result of the holding of security deposits.” *Id.* at 55. The facts in *Personal Financial Services* are akin to Aetna’s allegations. The NSA and its implementing regulations permit single-charge IDR submissions. *See also Arch Ins. Co. v. Centerplan Constr. Co., LLC*, 2018 WL 6519063, at *18 (D. Conn. Dec. 11, 2018) (“the Court finds that Defendants have failed to alleged conduct...which could be reasonably interpreted as ‘immoral, unethical, oppressive, or unscrupulous.’ Defendants have not set forth how [Plaintiff’s] alleged activities were offensive to public policy, or even which public policy the alleged actions offend. This is fatal to Defendants’ CUTPA claim.”).

Aetna cannot credibly argue that a permissible practice in a highly regulated federal program, particularly a practice that was previously mandatory for the entire industry, offends public policy or is somehow immoral or unethical. The Departments spent over a year in litigation defending the merits of its policy of requiring separate IDR proceedings for base rate and mileage disputes. Aetna’s allegations are little more than legal conclusions masquerading as facts. *See also Riverview E. Windsor, LLC v. CWC Capital LLC*, 2012 WL 90152, at *8 (D. Conn. Jan. 10, 2012) (“These are not allegations of fact but conclusory statements, which will not save a complaint from dismissal. In the absence of factual allegations showing that the conditions were

illegal, the complaints fail to adequately plead a claim on which relief can be granted.”). For these reasons, Aetna has not stated a claim under CUTPA.

B. Filing separate IDR proceedings for base rate and mileage disputes does not cause substantial injury to Aetna.

Aetna’s allegations are not sufficient to plausibly establish that filing separate IDR proceedings for base rate and mileage causes substantial injury. “To plead that an action caused ‘substantial injury,’ in satisfaction of the third prong, [a plaintiff] must show that the injury was substantial, that it was not outweighed by ‘any countervailing benefits to consumers or competition that it produces’; and that it is an injury...[that] ‘could not have [been] reasonably avoided.’” *Edwards v. North American Power and Gas, LLC*, 120 F. Supp. 3d 132, 144 (D. Conn. 2015) (quoting *A–G Foods, Inc. v. Pepperidge Farm, Inc.*, 216 Conn. 200, 216 (Conn. 1990)).

Here, Aetna’s alleged injury is payment of an additional “non-refundable administrative fee” to participate in the IDR process, expanding “significant time and resources” in IDR, and the IDR entity fee it must pay when it loses. Doc. 278 at pp. 13-14. This is hardly a substantial injury in a heavily regulated process. All of these alleged injuries could be reasonably avoided if Aetna were to simply start paying claims at a fair price instead of forcing Plaintiffs to turn to IDR time and time again. *See* Doc. 109 at ¶ 42. Moreover, as noted above, the IDR entity fee for bundled claims (Aetna’s preferred type of proceeding) is higher than for single charge disputes. In reality, Aetna’s “injury” is entirely manufactured and of its own doing. Aetna’s claim should be dismissed.

V. Aetna’s CUTPA claim is preempted by the Airline Deregulation Act.

Merits aside, Aetna’s CUTPA claim is also preempted by the Airline Deregulation Act (“ADA”). “A fundamental principle of the Constitution is that Congress has the power to preempt state law.” *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372 (2000). Pursuant to the

Supremacy Clause, state law that conflicts with federal law has no effect. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). In 1978, Congress deregulated the airline industry by enacting the ADA. The statute contains a broad, express preemption provision that states:

Except as provided in this subsection, a State ... may not ***enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier*** that may provide air transportation under this subpart.

49 U.S.C. § 41713(b)(1) (emphasis added). A primary purpose of this provision was to “ensure that the States would not undo federal deregulation with regulation of their own.” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992). “In place of stifling federal and state price, route, and service regulation, Congress granted the Department of Transportation (DOT) authority to police ‘unfair or deceptive practice[s] or ... unfair method[s] of competition,’ 49 U.S.C. § 41712(a), terms that have a long federal history in statutes such as Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.” *Ferrell v. Air Evac EMS, Inc.*, 900 F.3d 602, 604 (8th Circ. 2018). As the United States Supreme Court has ruled, consumer fraud and deceptive practices statutes fall within the class of preempted state laws. *See American Airlines, Inc. v. Wolens*, 513 U.S. 219, 227 (1995) (holding that the ADA preempted plaintiffs’ claim under the Illinois consumer fraud statute). Similarly, state common law claims that embody “binding standards of conduct” are preempted. *See Nw., Inc. v. Ginsberg*, 572 U.S. 273, 282 (2014) (dismissing as preempted a class action claim that Northwest Airlines violated its duty of good faith and fair dealing when it revoked their membership in its frequent flyer program).

The ADA likewise applies to air ambulance transports.¹¹ In the *Ferrell* case, one of the Plaintiffs in this lawsuit (Air-Evac) was sued by a patient asserting damages under the Arkansas

¹¹ The ADA defines the term “air carrier” as “a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.” 49 U.S.C. § 40102(a)(2). This includes air ambulance companies. *See, e.g., Schneberger v. Air Evac EMS, Inc.*, 2017 WL

Deceptive Trade Practices Act “for concealing or omitting disclosure of its price until it completes air-ambulance transport.” 900 F.3d at 604. The Eighth Circuit had no trouble concluding that the claim, which sought to impose a “statutory price disclosure,” “obviously relates to Air Evac’s price and service.” *Id.* at 606. It likewise rejected plaintiff Ferrell’s argument that ADA decisions should not apply to air ambulance companies, noting that air-ambulance operators are air carriers subject to DOT oversight. *Id.*; *see also Morales*, 504 U.S. at 387-88, 390-911 (noting DOT’s oversight authority is sufficient to protect consumers).

“[W]hen the statute’s language is plain,” the court’s “inquiry into preemption both begins and ends with the language of the statute itself.” *Ferrell*, 900 F.3d at 606-07 (quoting *EagleMed LLC v. Cox*, 868 F.3d 893, 903 (10th Cir. 2017)). Courts “may not refuse to apply ADA preemption merely because [they] do not believe it would be sound public policy to enforce the statute Congress enacted.” *Ferrell*, 900 F.3d at 607. The *Ferrell* court likewise dismissed the claim that the air ambulance company “attempts to gouge patients with its exorbitant charges” and thus should be denied any restitutionary remedy for the transport at issue. *Id.* at 607. In doing so, it noted:

Determining whether Air-Evac lacks the “clean hands” necessary to obtain equitable relief such as restitution under Arkansas law because it “attempts to gouge patients with its exorbitant charges” would require determining whether Air Evac’s pricing practices are “unconscientious or unjust.” It is hard to imagine a state law claim more at odds with the congressional intent “[t]o ensure that the States would not undo federal deregulation with regulation of their own.”

Id. (internal citations omitted).

Here, Aetna’s CUTPA claim clearly relates to Plaintiffs’ prices and services. Aetna is attempting to use state law to assert “binding standards of conduct” on Plaintiffs that the United

1026012 at *2 (W.D. Ok. 2017) (noting that courts have all but uniformly held that air ambulance providers are “air carriers” under the ADA).

States explained in *Ginsberg* are preempted. *See Ginsburg*, 572 U.S. at 282. In particular, Aetna wants to use state law to determine the way Plaintiffs file their IDR disputes and recover payments in the IDR process. Indeed, Aetna’s entire premise is that Plaintiffs’ decision to continue filing IDR proceedings for each billed charge (as they were required to do for over a year) is a decision “driven by *strategic profiteering*,” Doc. 278 at ¶ 54 (emphasis added). Aetna also alleges that Plaintiffs “charge exorbitant prices.” *Id.* at ¶ 55.

Aetna’s state unfair trade practices claim clearly “relates” to Plaintiffs’ prices and services and is preempted. Just like the plaintiff in *Ferrell* attempted to impose a price disclosure obligation, Aetna seeks to impose limits on the way Plaintiffs participate in IDR. Plaintiffs’ IDR offers are the “price” it seeks in IDR, and whether that price is submitted in one proceeding or two is Plaintiffs’ decision to make and not for a State, or Aetna, to regulate. *See Stout v. Med-Trans Corporation*, 313 F. Supp. 3d 1289, 1296 (N.D. Fla. 2018) (holding that “Plaintiffs’ claims for unjust enrichment, breach of the implied covenant of good faith and fair dealing, and breach of implied-in-fact contract [based on Defendants’ billing practices] directly relate to the price of Defendants’ air carrier services.”). If Aetna does not like line-item disputes in air ambulance IDR proceedings, it can file a complaint with the Departments who expressly allow and previously required it.

CONCLUSION

Plaintiffs respectfully request that the Court grant Plaintiffs’ Motion and dismiss Aetna’s counterclaim with prejudice.

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PULLMAN & COMLEY LLC

/s/ Timothy G. Ronan

Timothy G. Ronan
850 Main Street
P.O. Box 7006
Bridgeport, CT 06601-7006
T: 203.330.2000
F: 203.576.8888

NORTON ROSE FULBRIGHT US LLP

/s/ Adam T. Schramek

Adam T. Schramek (*pro hac vice*)
Texas Bar No. 24033045
D. Conn No. phv207863
98 San Jacinto Boulevard
Suite 1100
Austin, TX 78701-4255
Telephone: (512) 474-5201
Facsimile: (512) 536-4598
adam.schramek@nortonrosefulbright.com

Abraham Chang (*pro hac vice*)

Texas Bar No. 24102827
D. Conn No. phv208562
Dewey J. Gonsoulin III (*pro hac vice*)
Texas Bar No. 24131337
D. Conn No. phv207862
1550 Lamar Street
Suite 2000
Houston, Texas 77010
Telephone: (713) 651-5151
Facsimile: (713) 651 5246
abraham.chang@nortonrosefulbright.com
dewey.gonsoulin@nortonrosefulbright.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on July 2, 2025, a true and correct copy of the foregoing was served electronically on all counsel of record.

Adam T. Schramek

Adam T. Schramek