

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

OCTOBER 20, 2025

**AETNA'S RESPONSE AND MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFFS' MOTION TO DISMISS AETNA'S AMENDED COUNTERCLAIM**

John B. Shely
Admitted Pro Hac Vice
Texas State Bar No. 18215300
M. Katherine Strahan
Admitted Pro Hac Vice
Texas State Bar No. 24013584
Jessica N. Wahl
Admitted Pro Hac Vice
Texas State Bar No. 24102618
Hicks Thomas LLP
700 Louisiana St, Suite 2300
Houston, Texas 77002

Kevin P. Daly (ct30380)
Adam J. Petitt (ct32021)
Robinson & Cole LLP
One State Street
Harford, CT 06103
Tel. No.: (860) 2221-8200
Fax No.: (860) 2221-8299

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Defendants Aetna Health Inc., Aetna Life Insurance Co., and Aetna Health and Life Insurance Co. (collectively “Aetna”) responds in opposition to Plaintiffs’ Motion to Dismiss Aetna’s Amended Counterclaims (“Motion”), as set forth below and respectfully show as follows.

I. INTRODUCTION

Plaintiffs sued Aetna seeking, *inter alia*, state-law remedies, including punitive damages, over certain allegedly late-paid IDR awards. Aetna moved to dismiss Plaintiffs’ state-law claims on the ground they are preempted by the No Surprises Act (NSA) because CMS regulates payment of IDR awards under the NSA. Plaintiffs maintained that their state-law claims are ***not*** preempted by the NSA, and this Court agreed with Plaintiffs in denying Aetna’s Motion to Dismiss. Now, incredibly, when Aetna seeks to recover overpayments on alleged late-paid awards that Plaintiffs put into issue, Plaintiffs argue that Aetna’s state-law claims ***are*** preempted—in direct contradiction to Plaintiffs’ prior arguments and this Court’s prior ruling. Plaintiffs cannot have it both ways.

Plaintiffs have engaged in a calculated scheme to manipulate the federal IDR process by submitting false and misleading information to secure payments from Aetna not otherwise due. Although Plaintiffs attempt to cloak their fraudulent and deceptive conduct in the protections of a federal framework, as explained more fully herein, there is no conflict between Aetna’s state-law counterclaims and federal law under this Court’s prior analysis. Indeed, fraudulent claims are not binding under the NSA, and the NSA does not address Plaintiffs’ pattern of misconduct in this context. Thus, under this Court’s prior holding, Aetna’s counterclaims are not preempted.¹

Nor does the Airline Deregulation Act (ADA) preempt Aetna’s claims as Plaintiffs urge. Aetna is not attempting to regulate Plaintiffs’ pricing or service operations, but to hold them

¹ Aetna makes this argument without waiver of or prejudice to its position that Plaintiffs’ state law claims are preempted. As described more fully herein, Aetna continues to maintain that while Plaintiffs’ state-law claims are preempted, Aetna’s state-law claims are not.

accountable for fraudulent conduct resulting in payments to which they are not entitled. The fact that preventing fraud may have an indirect effect on Plaintiffs' revenues does not transform these claims into a regulation of prices. Long-standing precedent confirms that state laws of general applicability, such as those prohibiting fraud and misrepresentation, are not preempted simply because they may incidentally affect what an airline collects.

Finally, Plaintiffs' remaining arguments regarding the purported insufficiency of Aetna's pleading are nothing more than factual disputes and disagreements about the reasonable inferences to be drawn from the allegations. Such issues cannot be resolved on a Rule 12(b)(6) motion. Further, to the extent Plaintiffs challenge the remedies that Aetna seeks rather than the causes of action it asserts, those contentions are likewise premature and do not warrant dismissal at the pleading stage. Plaintiffs' Motion must be denied.

II. ARGUMENT

A. Rule 12(b)(6) Does Not Permit Plaintiffs' New Alleged Facts in the Motion

As an initial matter, Plaintiffs' Motion is riddled with its own new factual allegations extrinsic to Aetna's Counterclaim, which are improper and must be disregarded in deciding the Motion to Dismiss. *See M.E.S., Inc. v. Snell*, 712 F.3d 666, 671 (2d Cir. 2013) (explaining that a court cannot consider allegations outside of the pleadings when deciding a motion under Rule 12(b)(6)); *Orozco v. Fresh Direct, LLC*, No. 15-CV-8226 (VEC), 2016 WL 5416510, at *1 n.1 (S.D.N.Y. Sept. 27, 2016) ("[T]he Court applies the legal standard provided by Rule 12(b)(6), assumes the well-pled factual allegations of the Complaint to be true, and excludes facts extrinsic to the Complaint introduced in Defendants' motion."); *see also JPMorgan Chase Bank, Nat'l Ass'n v. Argus Info. & Advisory Servs. Inc.*, 765 F. Supp. 3d 367, 375 (D. Del. 2025) ("But on a motion to dismiss, I cannot consider these factual allegations lobbed from outside the pleadings.").

For example, Plaintiffs allege the following “facts” in their Motion that are neither supported by—nor, more importantly—contained within Aetna’s Counterclaim:

1. “These detailed, plan-specific facts and elections are known to Aetna, not Plaintiffs.” Dkt. 294 at 22.
2. “[T]he ‘complexity of making eligibility determinations’ has resulted in long delays in payment determinations.” *Id.*
3. “A recent CMS report reveals that this number is lower than the industry average.” *Id.*
4. “Between April 15, 2022 when the IDR portal opened, and July 31, 2025, over 24% of all IDR initiations, more than 600,000 claims, were determined to be ineligible.” *Id.* at 22-23.
5. “Recognizing the current difficulty in determining eligibility, CMS last week issued a report explaining the steps it has taken and plans to take in the future to ‘enhance and modernize the IDR portal’ and ‘enhance the data used to determine dispute eligibility,’ with the goal of ‘eliminat[ing] ineligible disputes and transform[ing] the IDR experience for both payers and providers.’” *Id.* at 23.
6. Quoting (unsupported) testimony: “... [Aircrafts] are highly maintained. We upgrade the avionics. All of our aircraft have crash-resistant fuel cells. All of them have auto-pilot. They are designed—they also are in the process of transitioning them all to these polycarbonate ballistic-resistant windshields that are designed to help reduce the risks associated with bird strikes. They don’t eliminate it, but they do reduce it.” *Id.* at 25.
7. Quoting (unsupported) testimony: “[A] lot [has] been invested in these aircraft to take them even beyond where they were when they were initially acquired, and we continue to maintain that kind of approach to having that aircraft where they are truly mission capable and able to perform in the environments that we are deploying them in.” *Id.*
8. Quoting (unsupported) testimony: “So you will see at times people use the number 70 percent, which is – includes government contracts that include Indian – which includes what I will call predictable pricing that’s billed under our commercial insurance, which is different—commercial insurance category, which is different than commercial health eligible for IDR. Not all commercial health is IDR eligible.” *Id.* at 27.
9. Quoting (unsupported) testimony: “It’s probably ranged between 50 to 60 percent.” *Id.*
10. Quoting (unsupported) testimony: “It could be 60 percent today.” *Id.*
11. These and similar allegations in Plaintiffs’ Motion were not pleaded by Aetna in the Counterclaim (and are not supported by competent evidence).

Plaintiffs rely on *Rodriguez v. City of New York*, 623 F. Supp. 3d 225 (S.D.N.Y. 2022), to support their inclusion of deposition testimony in the Motion. However, the court in *Rodriguez* considered a *habeas* petition and court decision because they were “integral” to the complaint, which “reference[d] and relie[d] on the decision and quote[d] large portions of it.” *Id.* at 235 n.3. Here, by contrast, Aetna’s Counterclaim pleads facts based on knowledge derived from the record to state a plausible claim. Thus, Plaintiffs cannot rely on their newly-introduced alleged “facts” as a basis to dismiss the Counterclaim under Rule 12(b)(6). *See M.E.S., Inc.*, 712 F.3d at 671. The Court should disregard all references in the Motion to matters outside the pleadings and decide the Motion solely on the allegations contained within the Counterclaim.

B. Aetna’s Claims Survive NSA Preemption

1. Under the Court’s ruling that Plaintiffs’ state-law claims are not preempted, Aetna’s state-law claims are also not preempted

Aetna moved to dismiss (and still contends) Plaintiffs’ state-law claims arising out of the timing of payment of IDR awards because they are preempted by the NSA and/or ERISA. The NSA provides the regulatory framework for out-of-network providers, such as Plaintiffs, and payers, such as Aetna, to resolve any disputes over the payment of health plan benefits (subject to the NSA) for air ambulance services. *See, e.g.*, Dkt. 122 at 21-25. Further, CMS is charged with the regulation of those NSA processes, including enforcing the payment of IDR awards—the subject of Plaintiffs’ claims against Aetna. That said, this Court held that neither the NSA nor ERISA preempts Plaintiffs’ state-law claims. *See* Dkt. 264 at 30. Plaintiffs have not shown—and cannot show—how Aetna’s state-law claims are preempted under that same ruling.

Aetna is asserting defenses and counterclaims based on Plaintiffs’ own wrongful conduct resulting in payments that are not due to Plaintiffs but instead are owed back to the benefit plans. Notably, NSA § 300gg-111(c)(5)(E)(i)(I) expressly provides that an IDR decision “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*” (emphasis added). That is, an IDR decision is **not** binding when the underlying claim is fraudulent or there is evidence of misrepresentation of facts presented to the IDR entity.

Aetna is certainly entitled to defend Plaintiffs’ allegations regarding the alleged late payments at issue based on this provision: if the IDR decision is not binding in the first place, Aetna has not wrongfully withheld payment. When Aetna ***paid*** false and ineligible claims that Plaintiffs nevertheless contend were paid late, not only did Aetna **not** wrongfully withhold money due to Plaintiffs under the NSA, but also **Plaintiffs are wrongfully withholding money** that Aetna paid on behalf of the plans. Aetna is entitled to recover that money—including other damages, such as fees paid in the IDR process—under state law.

More specifically, Aetna’s Counterclaim alleges that Plaintiffs have not simply submitted good faith IDR disputes for resolution through the NSA process but have used the process as a vehicle to engage in a pattern of misconduct. Plaintiffs have attempted to skew IDR outcomes to collect health plan payments to which they are not entitled, by, *inter alia*, misrepresenting their network status with payors and the relative quality and purported exceptionality of their services (based on information reflected in the IDR awards themselves—which is otherwise a blinded submission). Plaintiffs have done so to induce self-selected IDR entities to issue awards in their favor, resulting in payments on those IDR awards to be made by Aetna. Further, Plaintiffs have systematically submitted ineligible disputes (which are not even subject to the NSA), resulting in payments of ineligible claims upon which Plaintiffs sue for unfair practices because they were late.

When understood against this backdrop, Aetna’s claims are not preempted by the NSA under this Court’s rationale (set forth in its ruling on Aetna’s Motion to Dismiss), because

“imposing state law remedies” for Plaintiffs’ submission of fraudulent claims would “not create any obstacles to the NSA’s purpose or objectives,” as fraudulent claims or claims based on misrepresentations of fact are not binding under the NSA as a matter of law, and the regulations do not address recovering overpayments for such claims.² Dkt. 264 at 30; *see* NSA § 300gg-111(c)(5)(E)(i)(I). Nor are ineligible claims subject to the NSA in the first place. Indeed, these state law remedies “could help to ensure parties ... refrain from engaging in unfair settlement practices” through false and eligible claims submission to the IDR process under the NSA. Dkt. 264 at p. 30.³ Moreover, the NSA was never intended to provide a remedy for the type of fraudulent scheme undertaken by Plaintiffs.⁴ Accordingly, because the Court has ruled that Plaintiffs’ state-law claims are not preempted, Aetna’s state-law counterclaims are also not preempted.

2. Plaintiffs’ argument regarding the FAA is incorrect

Plaintiffs incorrectly suggest that Aetna’s counterclaims should have been brought as petitions to vacate under the Federal Arbitration Act (FAA). Plaintiffs’ argument misapprehends the nature of Aetna’s claims.

Vacatur under the FAA is a remedy for “bad faith” during a *particular* arbitration proceeding, “such as bribery, undisclosed bias of an arbitrator, or willfully destroying or withholding evidence.” *Guardian Flight, L.L.C. v. Med. Evaluators of Texas ASO, L.L.C.*, 140 F.4th 613, 621 (5th Cir. 2025). Here, however, Aetna’s state-law claims seek recovery for

² Respectfully, by contrast, CMS does regulate and enforce the timing and payment of IDR awards, which is why Aetna contends that Plaintiffs’ state-law claims are preempted. *See, e.g.*, 42 U.S.C. § 300gg-22(b)(2)(A).

³ Plaintiffs do not allege field preemption, of course, as that would also require dismissal of their own state law claims.

⁴ Plaintiffs’ suggestion that Aetna’s “remedy” lies in a CMS document or help-desk guidance only underscores the inadequacy of any administrative recourse for this conduct. That informal guidance—phrased in terms of what IDR entities “should” consider—confers no enforceable rights and leaves remedial discretion entirely to those same entities that processed the fraudulent submissions.

Plaintiffs’ **systemic** misconduct, obscured within thousands of IDR proceedings. Without access to Plaintiffs’ underlying communications, attestations, and submissions protected by the NSA, Aetna lacks the insight necessary to pinpoint all the awards that should be vacated. Nonetheless, based on the findings of certain awards repeatedly reflecting false information submitted by Plaintiffs, Aetna’s injury arises not from any one award, but from Plaintiffs’ **pattern of deception** in the IDR process—false attestations, misrepresentations of eligibility, and other practices that corrupted the integrity of the IDR mechanism as a whole and put strain on the entire system.

In short, Aetna brings its counterclaims to recover **damages** incurred due to that pattern of deception, including fees and awards paid. Aetna does so within this Court’s prior rulings.

C. The ADA Does Not Preempt Aetna’s State Law Claims.

Plaintiffs’ ADA preemption theory also fails. The ADA seeks to promote “efficiency, innovation, and low prices” through “maximum reliance on competitive market forces and on actual and potential competition.” 49 U.S.C. §§ 40101(a)(6), (12)(A). The ADA’s central purpose is to “allow those aspects of air transportation to be set by market forces.” *Nw., Inc. v. Ginsberg*, 572 U.S. 273, 283 (2014). Aetna’s counterclaims, which seek to hold Plaintiffs to basic standards of honesty—requiring that they not commit fraud, make misrepresentations during the IDR process, or engage in deceptive trade practices when doing business with Aetna—do not somehow interfere with these market forces.

Contrary to Plaintiffs’ arguments, Aetna’s counterclaims do not seek to regulate or restrain any rate of payment, routes, or services, nor do they seek to impose any binding statewide standard governing what Plaintiffs may charge or how they may operate. Rather, Aetna pleads state-law counterclaims under generally applicable law, targeting Plaintiffs’ deceptive and fraudulent conduct in an administrative process, and seeking relief for harms caused by misrepresentations, false attestations, and manipulation of eligibility determinations. That is not price regulation; it is

fraud remediation. Accordingly, because Aetna’s claims do not “relate to” prices, routes, or services and do not impose a binding standard of conduct, Aetna’s claims are not preempted by the ADA.

For ADA preemption to apply, Plaintiffs must satisfy two elements—and they have not met either. Specifically, they must show: (1) the existence of a state law or claim that seeks to enact or enforce a law, regulation, or other provision having the force and effect of law, and (2) that such law or claim “relates to a price, route, or service of an air carrier.” 49 U.S.C. § 41713(b)(1).⁵ Since Plaintiffs’ arguments focus primarily on the second element, Aetna addresses that element first.

1. Aetna’s counterclaims do not “relate to” regulation of “prices, routes, or services”

Under the ADA’s preemption provision, a state “may not enact or enforce a law, regulation, or other provision having the force and effect of law *related to price* ... of an air carrier that may provide air transportation.” 49 U.S.C. § 41713(b)(1) (emphasis added).⁶ Plaintiffs contend that applying state consumer fraud and deceptive practices laws to fraudulent representations and deceptive practices in the IDR process constitutes “enforc[ing] law[s] related to price” of Plaintiffs’ air ambulance transports, and so is preempted by the ADA. *See* Dkt. 294 at 9 n.5 (relying on *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995)). Not so. The Supreme Court has recognized that “some state actions may affect airline fares in too tenuous, remote, or peripheral a manner to have pre-emptive effect.” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 390 (1992). This is one such case.

⁵ Aetna does not dispute Plaintiffs’ contention that they fall within the statutory definition of “air carriers.” Dkt 294 at 9.

⁶ Plaintiffs contest only price preemption, not service or route preemption.

Plaintiffs' argument is that Aetna's state-law counterclaims "relate to" Plaintiffs' prices and services because Aetna seeks to "limit the way Plaintiffs participate in IDR proceedings," and Plaintiffs' IDR submissions are the "price" they seek in IDR. Dkt. 294 at 11. In particular, Plaintiffs rely on *Wolens* to argue that all consumer fraud and deceptive practices states fall within the class of preempted state laws. *See* Dkt. 294 at 9. However, Plaintiffs' argument misinterprets *Wolens*. The plaintiffs in that case challenged AAdvantage program modifications, limitations on seats available to passengers obtaining tickets with AAdvantage credits and restrictions on dates credits could be used. *See Wolens*, 513 U.S. at 225. In these particular circumstances, the Supreme Court held that a state consumer fraud act served "as a means to guide and police the marketing practices of the airlines" and found that it was preempted by the ADA. *Id.* at 228. However, the Court held that breach of contract claims were not preempted by the ADA. *Id.* at 234-35.

Aetna's counterclaims do not seek to regulate, challenge, or otherwise affect the prices Plaintiffs charge. Rather, Aetna's counterclaims involve Plaintiffs' misrepresentation of facts, filing of false attestations, and unfair practices in an administrative proceeding. This misconduct does not require the Court to determine what Plaintiffs' air ambulance services should cost or to police how services are marketed or delivered. Accordingly, Aetna's counterclaims are not preempted by the ADA. In *Brown v. United Air Lines, Inc.*, 656 F. Supp. 2d 244 (D. Mass. 2009), for example, the court was faced with a similar price preemption argument. The *Brown* plaintiffs filed state law claims against United for tortious interference with advantageous relations and unjust enrichment. *Id.* at 247. As explained by the court, the plaintiffs did "not challenge the airline's right to charge a fee for curbside baggage services in the first place, nor [did] they challenge the amount of the fee." *Id.* at 249. As the plaintiffs were challenging only the deceptive

manner in which the defendant charged the fee, the court concluded that the state law claims were **not** preempted under the ADA based on price.⁷ *Id.*

Likewise, Aetna’s counterclaims are not preempted because they do not implicate the underlying price. Rather, Aetna’s allegations arise from Plaintiffs’ knowing misrepresentations and omissions during the IDR process—specifically, Plaintiffs’ false attestations made “to the best of [their] knowledge” regarding eligibility, misleading and/or fraudulent position statements, and manipulative practices designed to overwhelm the IDR program. The gravamen of these claims is Plaintiffs’ deceptive conduct that undermined the integrity of the IDR process, not any challenge to the amount of Plaintiffs’ charges. The damages and equitable relief for fraud and unfair practices in the IDR process that Aetna seeks on its counterclaims would not require the Court to set, cap, or supervise rates.

Under Plaintiffs’ theory, any allegation that even tangentially touches on operations would automatically be preempted by the ADA. That is not the law. The ADA does not create blanket immunity for conduct merely because it may have some incidental effect on rates. Rather, state laws of general applicability—including those prohibiting fraud and misrepresentation—are not preempted simply because their enforcement may indirectly, at some point downstream, affect an airline’s rates or operations. *See Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Comm’n*, 634 F.3d 206 (2d Cir. 2011) (recognizing that the ADA did not preempt state and local environmental laws); *Abdu-Brisson v. Delta Airlines, Inc.*, 128 F.3d 77, 84 (2d Cir. 1997) (finding that the ADA did not preempt state and city age discrimination laws).

⁷ Ultimately, the *Brown* court held that the claims were preempted under other arguments that are not relevant to Aetna’s claims. *See* at 250–252.

Adjudicating whether Plaintiffs misrepresented facts to IDR entities or filed disputes with false eligibility attestations does not require the Court to determine what an air ambulance service should cost or whether the prices are exorbitant. It requires application of settled elements of fraud and unfair practices to statements and conduct in an administrative proceeding. Accordingly, because Aetna’s claims do not “relate to” price, they are not preempted by the ADA.

2. Aetna’s counterclaims do not seek to impose a “binding standard of conduct” governing prices or services

Because Aetna’s counterclaims do not “relate to” Plaintiffs’ prices and services, the preemption analysis should stop here. However, Aetna’s counterclaims are also not preempted because they do not seek to impose a carrier-specific pricing rule or service mandate. Aetna’s state-law counterclaims invoke generally applicable doctrines (fraudulent misrepresentation, unfair trade practices, and related equitable theories) that apply equally to insurers, hospitals, providers, and non-carriers—namely anyone who can initiate an IDR proceeding. Remedying false attestations and material misstatements in IDR is not a state-crafted pricing regime; it is the ordinary application of state law to curb fraud and unfair practices. The Supreme Court has drawn a line between state laws that impose “binding standards of conduct” on carriers’ market offerings and those that merely enforce background rules of general applicability or the parties’ own undertakings. *See Wolens*, 513 U.S. at 229. Where, as here, claims do not purport to regulate pricing or the manner of providing transportation, but instead address distinct tortious conduct, preemption does not lie.

Again, “[a]lthough the policies behind the ADA are several, the primary motivation for the reform—as the name of the statute indicates—was to deregulate the industry. The ADA was based on a Congressional assumption that ‘maximum reliance on competitive market forces would best further efficiency, innovation, and low prices as well as variety and quality of air transportation

services.” *Abdu-Brisson*, 128 F.3d at 84 (quoting *Morales*, 504 U.S. at 378) (citation modified). “Permitting full operation” of the state laws relevant to Aetna’s counterclaims “will not affect competition between airlines—the primary concern underlying the ADA. Unlike the regulation of marketing practices at issue in *Morales* or the regulation of frequent flyer programs at issue in *Wolens*, whether an airline” commits fraud or engages in deceptive conduct in the IDR process “has little or nothing to do with competition or efficiency.” *Id.* (recognizing that “generally applicable” laws “as a general matter are not preempted under the ADA”).

3. Plaintiffs’ authorities are inapposite

Plaintiffs rely on ADA cases that are inapposite. In *Ferrell v. Air Evac EMS, Inc.*, 900 F.3d 602, 604-10 (8th Cir. 2018), a patient brought a putative class action entirely focused on that statutory price disclosure obligations and the exorbitant prices that the defendant charged and balance billed the patient after transport. Similarly, the plaintiffs’ claims in *Stout v. Med-Trans Corp.*, 313 F. Supp. 3d 1289, 1293-94 (N.D. Fla. 2018), arose out of alleged charges for transportation that grossly exceeded the uniform, customary, and reasonable amount typically charged for similar services, and the defendant’s failure to disclose the rate. The *Stout* plaintiffs specifically challenged the defendant’s bill as being 300% higher than the customary rate for comparable air ambulance services. *Id.* at 1294. By contrast, in this case, Aetna does not ask this Court to require any disclosure to consumers, alter any price term, or bar any rate level. Aetna’s claims do not relate to price; Aetna’s claims focus on the fraudulent and deceptive conduct that Plaintiffs engage in during the IDR program.

Unlike the claims in *Ferrell* and *Stout*, Aetna’s allegations do **not** require any determination of whether Plaintiffs’ pricing practices are unjust. It would make no difference to Aetna’s counterclaims whether the underlying price of the air transport was \$500, \$50,000, or \$500,000. Aetna would bring the same counterclaims regarding Plaintiffs’ fraudulent and deceptive conduct

regardless of the price, because the “price” of the underlying transport does not form the basis of Aetna’s counterclaims. Nor does the fact that IDR submissions include an “offer to accept a price” transform a fraud claim into a rate-regulation claim. **Every** fraud case involving money has economic effects. The ADA does not immunize air carriers from generally applicable prohibitions on fraud merely because misrepresentations occur in a context where money is at stake.

The causal chain Plaintiffs posit—that policing fraud in IDR could alter the amounts they ultimately receive—is precisely the kind of “tenuous” and “peripheral” effect the Supreme Court has said does not trigger preemption. *Morales*, 504 U.S. at 390. Accordingly, Aetna’s claims are not preempted by the ADA and its claims should not be dismissed.

D. Plaintiffs’ Conflict of Law Argument is Meritless.

Plaintiffs’ argument that CUTPA does not apply because of a conflict of laws has no legal basis. A conflict of laws arises only when the laws of two states are actually different. *See Leahy v. New England Motor Freight, Inc.*, 2008 WL 4683908, at *2 (Conn. Super. Ct., Oct. 3, 2008) (“The threshold choice of law issue in Connecticut, as it is elsewhere, is whether there is an outcome determinative conflict between applicable laws of the states with a potential interest in the case. If not, there is no need to perform a choice of law analysis, and the law common to the jurisdiction should be applied.”).

Accordingly, a prerequisite to any conflict of laws analysis is a showing that the law of another state with an interest in the dispute conflicts with Connecticut law. *See Cohen v. Roll-A-Cover, LLC*, 27 A.3d 1, 16 (Conn. App. Ct. 2011) (“[T]he defendants have failed to indicate in their appellate brief how the application of any other law would have conflicted with the provisions of CUTPA. Consequently, we determine that a choice of law analysis is inappropriate under these circumstances.”). And “[w]hen the applicable law of a foreign state is *not shown to be otherwise*, we presume it to be the same as our own.” *Id.* (quotations omitted). Plaintiffs have not

even identified the law of another state that *might* apply to Aetna’s claims, let alone shown how that (hypothetical) state’s law would conflict with Connecticut law. Accordingly, Plaintiffs have failed at the initial step of their conflict of laws argument.

E. Aetna has Pled a Plausible Fraudulent Misrepresentation Claim.

“When evaluating motions to dismiss for failure to state a claim under Rule 12(b)(6), courts must accept as true all of the complaint’s factual allegations, and must draw all reasonable inferences in favor of the non-moving party.” *Guardian Flight LLC v. Aetna Life Ins. Co.*, No. 3:24-cv-00680-MPS, 2025 WL 1399145, at *5 (D. Conn. May 14, 2025) (quoting *Vietnam Ass’n for Victims of Agent Orange v. Dow Chem. Co.*, 517 F.3d 104, 115 (2d Cir. 2008)). However, Plaintiffs ask the Court to draw inferences against Aetna, rewrite Aetna’s allegations, and impose burdens at the pleading stage that do not exist in a misguided attempt to obtain dismissal of Aetna’s fraud counterclaim. Taking all pleaded facts as true, with all reasonable inferences drawn in Aetna’s favor, Aetna more than plausibly alleges fraudulent misrepresentation with particularity as required by Federal Rule of Civil Procedure 9(b), and Plaintiffs’ Motion should be denied.

Under Rule 9(b), a party alleging fraud or mistake “must state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). “Malice, intent, knowledge, and other conditions may be alleged generally.” *Id.* The party alleging fraud must identify the who, what, when, where, and why of the alleged fraud to the extent practicable. *United States ex rel. Chorchos for Bankruptcy Estate of Fabula v. Am. Med. Response*, 865 F.3d 71, 81–82 (2d Cir. 2017); *Conn. Gen. Life Ins. Co. v. BioHealth Labs., Inc.*, 573 F. Supp. 3d 671, 678 (D. Conn. 2021). However, details uniquely within the opposing party’s possession, or the records of third parties, can be pled on information and belief with supporting facts that support “a strong inference of fraud.” *Chorchos*, 865 F.3d at 82. Here, Aetna’s counterclaims sufficiently plead that Plaintiffs knowingly and willfully executed a fraudulent scheme with the intent to defraud Aetna.

1. The Counterclaim describes the who, what, when, where, and why of the fraud

As required by Rule 9(b), Aetna’s Counterclaim describes the who, what, when, where, and why of the fraudulent misrepresentations to the extent practicable, or has pleaded facts sufficient to support a strong inference of fraud for details that are uniquely within Plaintiffs’ or a third party’s possession:

- **Who.** The Counterclaim identifies Plaintiffs as the perpetrators of fraudulent misrepresentations. *See generally* Dkt. 291. The Counterclaim also provides numerous specific examples involving plaintiffs REACH Air Medical Services, CALSTAR Air Medical Services, LLC, Med-Trans Corporation, and Air Evac EMS. *See id.* ¶ 44.
- **What.** The Counterclaim identifies the content of the misrepresentations as eligibility attestations, fragmented claims, and specific, quantitative assertions regarding capabilities, qualifications, safety, and network participation, and it identifies the context and medium as federal IDR portal submissions and offer statements in specified dispute waves. *Id.* ¶¶ 19, 21–27, 29–31, 33–35, 39–47.
- **When.** Aetna pleads that Plaintiffs have been involved in this scheme since approximately October 2023 and made their false claims during the IDR process. *Id.* ¶¶ 23, 34. Aetna also provides numerous examples of specific misrepresentations that were made on specific dates. *Id.* ¶ 44.
- **Where.** Aetna alleges this is a nationwide scheme. *See generally id.*
- **Why.** Aetna identifies the purpose of Plaintiffs’ fraudulent misrepresentations--- they are meant to trigger IDR, inflate awards, and coerce Aetna into unfavorable in-network contracts that lock in exorbitant prices for Plaintiffs’ services. *E.g., id.* ¶¶ 20, 32, 37, 39.

The law does not require any more than this in a pleading. *See Chorchos*, 865 F.3d at 81–82.

2. Aetna sufficiently alleges that Plaintiffs knowingly made false attestations in the IDR Process, constituting actionable fraud

Plaintiffs argue that Aetna assumes Plaintiffs knew at the time of IDR initiation that certain transports were ineligible under the NSA, and it would have been “impossible” for Plaintiffs to possess such knowledge when they submitted their attestations that to the “best of [the initiating party’s] knowledge,” the claims are “within the scope of the Federal IDR process.” *See* Dkt. 294

at 20-24. Plaintiffs assert that eligibility determinations rest solely within the health plan's knowledge and are not known to providers until "months later." *Id.* Plaintiffs' assertion is plainly incorrect. There is no temporal limitation at issue.

Plaintiffs fail to acknowledge that this attestation is submitted **after** the 30-day open-negotiation period during which the parties exchange information and attempt to resolve the payment amount. *See* 45 C.F.R. § 149.510(b)(2)(iii)(A)(6).⁸ During the open-negotiation period, providers have every opportunity to identify and address eligibility issues before initiating IDR proceedings and submitting their attestations. Here, Plaintiffs proceeded to file disputes they knew or should have known were ineligible due to their pre-IDR filing negotiations. Plaintiffs' suggestion that Aetna alone possessed eligibility information is therefore demonstrably false. As Aetna alleges in its counterclaims, Plaintiffs knowingly submitted false attestations to the IDR entities affirming that the items or services at issue were within the scope of the federal IDR process.

Plaintiffs next suggest that their statements were not "false" because Aetna does not allege the services were outside the scope of the process. *See* Dkt. 294 at 20; *Flemming v. Goodwill Mortg. Servs., LLC*, 648 F. Supp. 2d 292, 296 (D. Conn. 2009) (stating that fraudulent misrepresentation requires a statement that was false and known by the defendant to be false, or made with reckless disregard for its truth). Plaintiffs' argument borders on frivolous. Plaintiffs themselves spend pages explaining why certain transports are *ineligible* for the federal IDR process. *See* Dkt. 294 at 21-22. If a transport is ineligible, then by definition it is not within the scope of the process. The falsity is inherent in the attestation.

⁸ This is separate and apart from the fact that Plaintiffs possess sufficient knowledge of each member's health plan information and of the individual claims to submit them to Aetna for payment even before initiating the IDR process.

Plaintiffs do not meaningfully address the second component of fraudulent misrepresentation—that the falsity was known or made with reckless indifference to the truth. They simply ignore that a statement made with reckless disregard for its truth is equally actionable as one made with actual knowledge of falsity. *Flemming*, 648 F. Supp. 2d at 296. Plaintiffs contend that Aetna has not sufficiently alleged that Plaintiffs **knew** the disputes were ineligible. Plaintiffs are wrong. *See, e.g.*, Dkt. 291, ¶ 5 (“Plaintiffs/Counterclaim Defendants possess all relevant information to determine claim eligibility, yet knowingly submit large volumes of claims that are ineligible while falsely attesting to the claims’ eligibility.”); *id.* at ¶ 7 (providing examples of ineligible IDR submissions and asserting that the submissions were “material misrepresentations”).

Plaintiffs’ contention also misses the point: the law does not require actual knowledge. The standard is satisfied where the false statement was made with reckless indifference to the truth. *See Fleming*, 648 F. Supp. 2d at 296. The “to the best of my knowledge” qualifier in the attestations does not inoculate Plaintiffs’ false statement of fact that the claims are “within the scope of the Federal IDR process.” The phrase must have some weight, or the entire attestation is without purpose. Aetna alleges that Plaintiffs repeatedly attested to eligibility while recklessly disregarding disqualifying facts uniquely ascertainable through readily available plan and claim-level information discussed or potentially produced in the open-negotiation and IDR selection phases. Plaintiffs cannot escape liability by willfully closing their eyes to facts that made their attestations demonstrably false. Plaintiffs either signed the attestation knowing the claims were false or were recklessly indifferent to the truth.

Plaintiffs rely on a dissent in *United States v. Bernstein*, 533 F.2d 775 (2d Cir. 1976), to argue that “an attestation made ‘to the best of my knowledge’ is insufficient to state a fraud claim.”

Dkt. 294 at 23. Plaintiffs’ reliance is misplaced. While the dissenting circuit judge in *Bernstein* asserted that “[a] statement made to the best of a person’s knowledge and belief does not purport to be made on such person’s actual personal knowledge and does not purport to ‘verify’ the truth of the statement,” he did so in the context of a criminal case. 533 F.2d at 803 (Van Graafeiland, J., dissenting). Judge Van Graafeiland explicitly cautioned that “[t]here is a substantial difference between knowledge of falsity as used in the civil sense and in the criminal sense.” *Id.* at 804. “Where knowledge is required for violation of a criminal statute, carelessness or lack of wisdom is not its equivalent.” *Id.* at 804. Therefore, even the dissent acknowledged that civil knowledge may be inferred under a far more lenient standard than the criminal one it discussed.

Moreover, the majority opinion in *Bernstein* held that a certification requiring the mortgagee to attest that information was “true and complete to the best of [the mortgagee’s] knowledge and belief” carried an affirmative duty to investigate and exercise proper judgment, and that reckless disregard for the truth **could** satisfy the “knowledge” element under 18 U.S.C. § 1010. 533 F.2d at 796–98. In other words, the act of signing such an attestation could, standing alone, plausibly establish knowledge or reckless indifference to the truth. Because *Bernstein* arose in the criminal context, its reasoning applies with even greater force here. If such an attestation can sustain criminal liability, it unquestionably meets the requirement to allege knowledge and intent at the civil pleading stage. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Even if actual knowledge were required, scienter does not need to be pled with particularity under Rule 9(b). *See* Fed. R. Civ. P. 9(b) (“Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.”); *Davis v. Angelcare USA, LLC*, 727 F. Supp. 3d 99, 124 (D. Conn. 2024) (alleging “facts showing that the defendants had both motive and opportunity

to commit fraud, or facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness” satisfies Rule 9(b)). A finding of intent may (and usually must) be based on inferences from circumstantial evidence “because direct evidence of the accused’s state of mind is rarely available.” *Valencis v. Nyberg*, 125 A.3d 1026, 1037 (Conn. App. Ct. 2015) (quotations omitted). “Furthermore, it is a permissible, albeit not a necessary or mandatory, inference that a defendant intended the natural consequences of his voluntary conduct.” *Id.* (quotations omitted).

In short, Plaintiffs cannot evade liability by rewriting the standard. Aetna’s allegations more than plausibly plead that Plaintiffs knowingly—or at minimum recklessly—submitted false attestations, which constitutes actionable fraud.

3. Aetna plausibly alleges that Plaintiffs’ misstatements in position statements were designed to misrepresent service value and constitute actionable fraud

Plaintiffs assert that Aetna has not plausibly alleged that Plaintiffs misrepresented the value of their transport services to the IDR entities. However, Aetna identified specific factual misstatements that Plaintiffs made as part of their IDR submissions in its Amended Counterclaims:

- (1) Overstating the average number of flight hours of their pilots;
- (2) Seventy percent of commercially insured transports that are in network; and
- (3) That their aircrafts are “state of the art.”

Dkt. 291, ¶ 44.

Plaintiffs’ complaints about Aetna’s fraud claim amount to nothing more than a disagreement about what inferences can be reasonably drawn from the factual allegations in Aetna’s pleadings. This disagreement is no basis to dismiss Aetna’s counterclaims. Aetna has alleged sufficient facts to support an inference that Plaintiffs knew their representations about the qualifications of their pilots, the percentage of in-network services they provided, and the quality

of their aircraft were either false or made with reckless disregard for their truth in an effort to persuade the IDR entities to rule in their favor.

Plaintiffs' misstatements were made as part of formal dispute resolution proceedings, and Plaintiffs had a duty to ensure that those statements were accurate. Accordingly, there are only two explanations for Plaintiffs' misrepresentations: (1) Plaintiffs undertook a reasonable investigation before making these assertions, in which case their misstatements were knowingly false; or (2) Plaintiffs did not undertake a reasonable investigation before making these assertions, in which case Plaintiffs acted with reckless disregard. In either case, Aetna's allegations are sufficient to support a reasonable inference that Plaintiffs had the requisite degree of scienter to support a fraud claim. *See Kramer v. Petsi*, 940 A.2d 800, 806 n.9 (Conn. 2008) ("A fraudulent representation is one that is knowingly untrue, or made without belief in its truth, or recklessly made and for the purpose of inducing action upon it.") (cleaned up). Further, Plaintiffs have made the same misrepresentations across multiple IDR proceedings, indicating that the misrepresentations were deliberate and not merely an accident or mistake.

Plaintiffs also argue that the term "state of the art" is merely a statement of opinion. But the meaning of "state of the art" in the air-ambulance industry and whether Plaintiffs' aircraft meet that standard are fact questions that should not be resolved on the pleadings. In addition, while it would be inappropriate to resolve fact issues on a Rule 12(b)(6) motion, Plaintiffs' excerpt of additional testimony from Barbara Berkowitz confirms Aetna's allegations. Ms. Berkowitz testified that the highest percentage of in-network flights would be 60%, which is indisputably less than the 70% Plaintiffs claimed in their IDR submissions. *See* Dkt. 294 at 27.

Plaintiffs' substantive statements are not mere puffery. Assertions that aircraft are "state-of-the-art," that pilots "average 5,000 hours," that safety performance is of a specified quality, and

that Plaintiffs are “in-network” at identified percentages are verifiable—or, at minimum, become actionable when half-truths omit material qualifiers. Even if “state-of-the-art” has a rhetorical aspect, it is coupled here with purported objective features proffered to IDR entities as price-relevant comparators, and so was not merely an opinion. *Trefoil Park, LLC v. Key Holdings, LLC*, No. 3:14–CV–00364 (VLB), 2015 WL 1138542, at *8, 11 (D. Conn. Mar. 13, 2015) (finding that a statement an individual was “committed to the business” when he later abandoned the business, when construed in the light most favorable to the pleading party and considering case-specific facts, constituted a statement of fact sufficient to sustain a fraudulent misrepresentation claim).

Plaintiffs’ “average pilot hours” and “in-network percentage” statements are also paradigmatic statements of present fact, and Aetna alleges they were materially overstated and presented without material qualifiers that Plaintiffs themselves acknowledge elsewhere (for example, including government and other predictable-pricing arrangements within “commercial,” or aggregating categories not eligible for IDR).

Where, as with the Counterclaim here, the pleading sets forth the content, context, and purpose of the statements and why they were false or misleading, Rule 9(b) is satisfied.

4. Aetna has sufficiently pled reliance

Aetna’s reliance on Plaintiffs’ false representations and omissions of material fact has resulted in Aetna paying amounts to Plaintiffs that were not due. Aetna relied on the accuracy and integrity of the information Plaintiffs provided during the IDR process when preparing its submissions and further relied on the assumption that the award was binding when issuing payment. If Aetna had known of Plaintiffs’ scheme to use false information to inflate their claims,

it would have raised the issue in its submissions during the IDR process.⁹ *See* Dkt. 291, ¶ 42 (“Plaintiffs/Counterclaim Defendants knew and expected Aetna and the IDREs would reasonably and foreseeably rely on the misrepresentations in the false attestations, because once an IDRE determines the dispute is eligible based on the information submitted . . . Aetna proceeds with the IDR process, submits a final offer, and allows the process to continue to a payment determination.”).

Given the limited information Aetna had about both Plaintiffs’ IDR submissions and the fact that most of Plaintiffs’ misstatements related to their own internal operations, Aetna’s reliance was reasonable under the circumstances. *See Valencis*, 125 A.3d at 1036 (“The trier of fact considers all relevant circumstances in determining whether reliance is reasonable.” (quotations omitted)).

5. In sum, the Counterclaim satisfies Rule 9(b)

In sum, Aetna’s Counterclaim pleads sufficient facts to support the elements of its fraudulent misrepresentation claim with particularity, and Plaintiffs’ arguments to the contrary fall short. As required by Rule 9(b), Aetna describes the who, what, when, where, and why of the alleged fraudulent misrepresentations to the extent practicable, or has pleaded facts sufficient to support a strong inference of fraud for details that are uniquely within Plaintiffs’ or a third party’s possession. *Chorches*, 865 F.3d at 81–82.

Aetna has alleged with particularity that the attestations Plaintiffs provided were false or misleading, that Plaintiffs falsely represented or omitted facts about the value of their services during the IDR process, and unnecessarily submitted separate dispute to increase the volume of

⁹ The ultimate payment requirements issued during the IDR process likely also were made in reliance on Plaintiffs’ attestations that its representations were true to the best of their knowledge.

claims and overwhelm the IDR process. Additionally, Aetna has alleged facts supporting a reasonable inference that Plaintiffs made false statements about their operations either knowing they were false or with reckless disregard to their truth and that Plaintiffs' scheme was intentionally designed to trigger and inflate IDR awards and coerce parties like Aetna into entering unfavorable contracts with them and that Aetna relied Aetna has also alleged facts showing that its reliance on Plaintiffs honesty in the IDR process was justified. That is more than sufficient to place Plaintiffs on notice and to permit discovery targeted to the disputed submissions and internal knowledge.

Accordingly, Aetna has pled a viable claim for fraud.

F. Aetna has Pled a Viable CUTPA Claim.

Aetna also has pled a valid claim that Plaintiffs engaged in unfair and deceptive acts or practices in violation of CUTPA. Under CUTPA, “[n]o person shall engage in unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce.” Conn. Gen. Stat. Ann. § 42.110b(a). The definitions of the terms “trade” and “commerce” clarify that it applies to trade or commerce in Connecticut. *Id.* § 42.110a(4). An express statutory exemption applies to “[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.” *Id.* § 42.110c(a). Plaintiffs contend that Aetna fails to state a claim for relief under CUTPA because: (1) Plaintiffs are not Connecticut companies, and their conduct, which did not occur solely in this state, “falls outside CUTPA’s reach”; and (2) the exemption applies because some of the unfair or deceptive acts in Aetna’s Counterclaim are permitted in the IDR process. These arguments both fail because, as further explained below, Plaintiffs engaged in their deceptive conduct in this state, and the exemption does not apply.

1. Plaintiffs engaged in trade and commerce in Connecticut.

Contrary to Plaintiffs’ assertion, Aetna has adequately alleged that Plaintiffs have engaged in trade and commerce in Connecticut under CUTPA. Aetna has alleged that Plaintiffs have:

- (1) provided air ambulance and related healthcare transportation services in the State of Connecticut;
- (2) conducted Connecticut-based transports that form the basis of some of the IDR disputes at issue;
- (3) actively participated in IDR proceedings involving services rendered in Connecticut;
- (4) engaged in negotiations with Aetna, a Connecticut-based corporation;
- (5) marketed and advertised their services to Connecticut residents and insurers;
- (6) entered into contracts affecting the delivery and pricing of services in Connecticut; and
- (7) received reimbursement for such services through transactions occurring in Connecticut’s stream of commerce.

Dkt. 291, ¶ 52. These allegations are sufficient to show that Plaintiffs have engaged in “trade” and “commerce” (*e.g.*, advertising, selling, or distributing goods, services or anything of value) in Connecticut, which is all that CUTPA requires. *See* Conn. Gen. Stat. Ann. § 42.110a(4); *see also Cohen*, 27 A.3d at 16-17 (offering goods and services for sale in Connecticut was covered by CUTPA).¹⁰ Although Plaintiffs dispute Aetna’s factual allegations and try to contradict them, the facts in Aetna’s pleadings must be accepted as true for purposes of Plaintiffs’ motion.

Moreover, there is no requirement (as Plaintiffs seem to suggest) that the defendant in a CUTPA case must be physically present in Connecticut or direct its unfair trade practices from Connecticut. Instead, under the plain language of CUTPA, it is only the “trade” or “commerce”

¹⁰ For this reason, Plaintiffs’ reliance on *Western Dermatology v. Vital Works, Inc.*, 78 A.3d 167 (Conn. App. Ct. 2013), is misplaced; as Plaintiffs’ acknowledge, in *Western Dermatology* “the services rendered to the Plaintiff were outside of Connecticut.” Dkt. 294 at 13.

that must have occurred in Connecticut. *See* Conn. Gen. Stat. Ann. § 42.110a(4). That certainly occurred here.

Plaintiffs, relying on *Victor G. Reiling Associates & Design Innovation v. Fisher-Price*, 406 F. Supp. 2d 175 (D. Conn. 2005), assert that CUTPA does not apply when the only connection to Connecticut is the plaintiff (or counter-plaintiff) being based in Connecticut. Dkt. 294 at 16. However, in *e2Value, Inc. v. Fireman's Fund Ins. Co.*, No. 3:14-cv-473-WWE, 2015 WL 300250, at *3 (D. Conn. Jan. 22, 2015), the court pointed out that while the *Reiling* court determined that Connecticut law did not apply, it noted that CUTPA “‘does not require that a violation actually occur in Connecticut if that violation is tied to a form of trade or commerce intimately associated with Connecticut.’” (quoting *Reiling*, 406 F. Supp. 2d at 200).

The *e2Value* court then distinguished *Reiling* because (1) the *Reiling* case was at the summary judgment stage, which necessarily involves different burdens than a motion to dismiss; and (2) the *e2Value* live complaint alleged misuse of data related to Connecticut properties. *See id.* The *e2Value* court ultimately held that “plaintiff’s CUTPA claim will not be dismissed for failure to allege conduct within Connecticut.” *Id.* Here, as in *e2Value*, the Court is considering a Rule 12(b)(6) motion, not a summary judgment motion, and Aetna, like the *e2Value* plaintiff, has alleged trade and commerce occurring ***in Connecticut*** that violates CUTPA.

Plaintiffs’ other case, *Security Systems v. Alder Holdings, LLC*, 421 F. Supp. 3d 1186, 1191 (D. Utah 2019), involved a CUTPA claim in which the plaintiff argued that CUTPA should apply because the plaintiff was “headquartered in Connecticut, ha[d] customers in Connecticut, and was subjected to economic injury in Connecticut.” Dkt. 294 at 15. However, the *Security Systems* plaintiff did not allege that any of the defendant’s misconduct occurred in Connecticut or that Connecticut customers were harmed. *Security Systems*, 421 F. Supp. 3d at 1191. The *Security*

Systems court specifically pointed out that the plaintiff had not alleged “that the defendant purposefully reached out to Connecticut as part of its wrongful activity.” *Id.* at 1192. In contrast, as noted above, Aetna’s Counterclaim specifically alleges significant connection to Connecticut. Thus, *Security Systems* is inapposite.

Aetna’s Counterclaim pleads facts showing that Plaintiffs have engaged in conduct such as advertising, marketing, and providing services and other things of value in Connecticut. This is sufficient to defeat Plaintiffs’ motion seeking dismissal of Aetna’s CUTPA claim.

2. CUTPA applies to Plaintiffs’ overwhelming of the IDR process

Aetna pleads three different bases for its CUTPA claim: (1) submitting knowingly false attestations of IDR eligibility; (2) falsely representing to Aetna that the disputes were eligible for IDR prior to initiating the IDR process; and (3) overwhelming the IDR process by submitting separate IDR submissions; all with the intention of extracting funds from Aetna, overwhelming the IDR system, and inhibit Aetna’s ability to properly challenge IDR claims and attempt to coerce Aetna into contracting. *See* Dkt. 291, ¶ 53. Plaintiffs only take issue with the third basis, thereby conceding the first two bases are not subject to CUTPA exemption. *See* Dkt. 294 at 29-30.

For one air ambulance flight, Plaintiffs submit at least two separate disputes, one for the base rate and one for mileage, thereby doubling the number of submissions in the NSA process. Plaintiffs argue that CUTPA does not apply to Aetna’s claim that Plaintiffs overwhelmed the IDR process through “unbundling” and submitting separate claims, because, as air ambulance providers, Plaintiffs are “allowed” to submit the base and mileage rates as two submissions for a single transport. *See* Dkt. 294 at 16.

CUTPA “shall [not] apply” to “[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. The test for whether this exemption applies

involves a two-step analysis: (1) identifying the nature of the transactions or actions at issue by considering the broader pattern of behavior, and (2) determining whether those identified actions are regulated by a regulatory board or officer. *See Garcia v. Fry*, 186 F. Supp. 3d 228, 234 (D. Conn. 2016). Neither step supports exempting Plaintiffs’ deliberate “unbundling” of claims from CUTPA’s scope.

First, the transactions and actions at issue are far more complex than Plaintiffs portray. Plaintiffs attempt to narrow the inquiry to the mere act of filing two submissions per transport. But the conduct here is not simply administrative. The broader pattern shows a deliberate and calculated strategy. As detailed in Aetna’s Counterclaim, Plaintiffs unbundled their IDR submissions, effectively doubling the number of disputes, multiplying the administrative burden, and forcing payors to incur unnecessary IDR fees and resources, all to inflate the overall recoveries available to Plaintiffs. This was not a benign technical choice; it was a manipulation of the IDR process itself. Viewed alongside Plaintiffs’ related conduct, including submitting false attestations and misrepresentations to IDR entities, the pattern reflects a coordinated effort to exploit the NSA process for financial gain, by flooding the system in an attempt to overwhelm it. This falls squarely within CUTPA’s prohibition on unfair and deceptive trade practices.

Second, there is no legitimate basis to claim this *pattern* of behavior is “regulated” so as to exempt it from CUTPA. Plaintiffs cite no statute, regulation, or oversight body that authorizes or supervises the specific pattern of conduct at issue. No regulatory body would sanction Plaintiffs’ abuse of process, let alone preempt CUTPA’s application to it.

In short, Plaintiffs’ attempt to shield their conduct from CUTPA fails on both prongs. Their pattern of unbundling, misrepresenting eligibility, and manipulating the IDR process for profit is neither regulated nor condoned. It is exactly the kind of unfair and deceptive business practice that

CUTPA was designed to prevent. Accordingly, Aetna has plausibly alleged a CUTPA claim, and the exemption asserted by Plaintiffs does not apply.

3. Aetna has pleaded the fraud-related aspect of CUTPA with particularity

Plaintiffs broadly claim that Aetna's CUTPA claim based on misrepresentations fails for lack as particularity in the same ways the fraud claim fails. *See* Dkt. 294 at 29–30. However, as explained in Section E, *supra*, Aetna's Counterclaim pleads the fraudulent misrepresentations with particularity. Accordingly, Aetna's CUTPA claims stemming from Plaintiffs' fraud should not be dismissed for this reason.

4. Aetna has stated a claim under CUTPA

Plaintiffs also contend that Aetna has failed to state a claim under CUTPA for the scheme to flood the IDR system because submitting separate submissions to IDR is not “immoral, unethical, oppressive, or unscrupulous,” and it does not cause substantial injury to Aetna. *See* Dkt. 294 at 30-32. The argument is meritless. Under Connecticut law, courts consider the following factors, also known as the “cigarette rule,” to determine if conduct is “unfair” under CUTPA:

(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....

All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three.

Am. Car Rental, Inc. v. Comm'r of Consumer Prot., 273 Conn. 296, 305–06, 869 A.2d 1198, 1205 (2005) (cleaned up) (quoting *Updike, Kelly & Spellacy, P.C. v. Beckett*, 269 Conn. 613, 655–56, 850 A.2d 145, 172-173 (2004)). Aetna's allegations more than satisfy the cigarette rule.

First, Plaintiffs’ conduct constitutes actionable “unfair or deceptive” behavior because it plainly offends public policy. Plaintiffs urge the Court to view their misconduct in isolation, as if it were limited to the mere act of filing two separate submissions for a single transport. But the broader pattern cannot be ignored. Plaintiffs deliberately bifurcated disputes to inflate already exaggerated IDR claims, after submitting hundreds of ineligible ones, for the calculated purpose of multiplying administrative fees, increasing their financial leverage, and overwhelming the IDR system to induce delay and dysfunction. This strategy was designed not to resolve disputes efficiently but to pressure Aetna into entering a national contract at exorbitant rates, a tactic confirmed by Plaintiffs’ immediate pursuit of such an agreement following their decision to unbundle claims. *See* Dkt. 291, ¶ 32.

Such conduct offends established public policy prohibiting deceptive and manipulative practices in federally regulated payment processes. *See Richards v. Direct Energy Servs., LLC*, 246 F. Supp. 3d 538, 550 (D. Conn. 2017), *aff’d*, 915 F.3d 88 (2d Cir. 2019) (“A violation of CUTPA may be established by showing either an actual deceptive practice . . . or a practice amounting to a violation of public policy.”); *see* NSA § 300gg-111(c)(5)(E)(i)(I) (expressly providing that an IDR decision “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”).

The conduct is also against public policy as it increases the expenses of payors and the plans they administer by inflating payment obligations and forcing duplicative administrative expenditures, which ultimately are trickled down to the plan members. Plaintiffs’ argument that the Departments presently permit line-item submissions says nothing about the lawfulness of using those procedures to overwhelm eligibility screening or to secure awards by deception. The

exemption does not shield deceptive or unfair conduct simply because it occurs within a regulated process; it applies only to actions otherwise permitted by law as administered by the relevant regulators.

Further, in the broader context of Plaintiffs' behavior, knowingly overwhelming a system designed to help get health claims settled, and submitting false information to obtain or increase payments as Plaintiffs have done, is immoral, unethical, and contrary to public policy. *See Conn. Gen. Life Ins. Co. v. Ogbemor*, No. 3:21-cv-954-JAM, 2022 WL 4077988, at *5 (D. Conn. Sep. 6, 2022) (allegations of insurance fraud were sufficient to support a CUTPA claim); *see also* Conn. Gen. Stat. Ann. § 53-442 (criminalizing health insurance fraud). These allegations easily satisfy the "cigarette rule" at the pleading stage and demonstrate that Aetna's CUTPA claim is properly pled.

Second, Aetna plausibly pleads ascertainable loss. Aetna alleges concrete economic injury, including nonrefundable administrative fees and IDRE fees, substantial processing costs, and payment of awards. *See* Dkt. 291, ¶¶ 31-32. These are classic, measurable injuries under CUTPA. *See Davis*, 727 F. Supp. 3d at 133 ("Under CUTPA, the private loss indeed may be so small that the common law likely would reject it as grounds for relief, yet it will support an action under the statute." (quotations omitted)); *McNichols v. GEICO Gen. Ins. Co.*, No. 3:20-CV-01497-KAD, 2021 WL 3079783, at *1-2 (D. Conn. July 21, 2021) (finding standing where the plaintiff indicated that she had suffered an injury regarding regulatory fees); *Langan v. Johnson & Johnson Consumer Co., Inc.*, 897 F.3d 88, 92 (2d Cir. 2018) (finding standing where the plaintiff indicated that she had suffered an injury flowing from a CUTPA violation). Plaintiffs' suggestion that Aetna could "avoid" injury by paying more on the front end simply underscores the harm and the unfair leverage created by the alleged scheme; it is not a basis to dismiss.

In sum, Plaintiffs’ deliberate manipulation of the IDR process through unbundled submissions, false attestations, and inflated claims is precisely the kind of deceptive, unethical, and injurious conduct that CUTPA was enacted to deter, and Aetna’s allegations more than satisfy the statute’s pleading requirements.

G. Aetna has Pled a Valid Claim for Money Had and Received.

Plaintiffs’ attempt to cabin the equitable cause of action for money had and received is inconsistent with Connecticut law and with how the doctrine at the pleading stage. As this district has recognized, “[t]he action for money had and received is an equitable action to recover back money paid by mistake, where the payor is free from any moral or legal obligation to make the payment and the payee in good conscience has no right to retain it.” *Walker v. People’s United Bank*, 305 F. Supp. 3d 365, 380 (D. Conn. 2018).

Far from being narrowly confined to a single archetype, such claims are permitted to proceed where a plaintiff alleges it paid money under a mistake of fact or law and that retention by the defendant would be inequitable—even where the underlying dispute is complex and the parties disagree about the propriety of the charges. *See id.* at 379–80 (allegations that a customer paid overdraft fees she mistakenly believed she owed, and that the bank received the fees and benefitted from their receipt, stated a claim); *Mahon v. Chicago Title Ins. Co.*, No. 3:09CV00690(AWT), 2012 WL 3544883, at *3 (D. Conn. Aug. 16, 2012) (allegations that a title insurer wrongfully charged and retained premiums in excess of applicable discounted rates sufficient to plead money had and received). Aetna’s allegations are more than sufficient to state such a claim.

1. Aetna has no obligation to pay IDR determinations that were a result of Plaintiffs’ fraud and corrupt practices

Plaintiffs’ principal argument for dismissal is that Aetna always has a “legal obligation” to pay and therefore can never meet the *Walker* standard. Plaintiffs’ argument misstates both Aetna’s pleadings and the law. The NSA obligates payment of **valid**, binding IDR awards for qualified items and services, *see* NSA § 300gg-111(c)(5)(E)(i)(I); it does not convert every dollar tendered in connection with IDR into an irrevocable obligation in perpetuity, regardless of eligibility, error, or mistake.

Aetna’s Counterclaim plausibly alleges that Plaintiffs (i) initiated disputes for items and services later determined **ineligible**, (ii) procured payments tied to attestations and submissions that, as alleged, contained **material misstatements**, and (iii) obtained and **retained** amounts paid under mistake in a process the Departments themselves acknowledge is evolving and error-prone. Those allegations comfortably fit within *Walker* and its progeny. At minimum, they give rise to a plausible inference that, as to the amounts sought, Aetna was under no legal duty to pay, or paid by mistake, and that equity will not permit Plaintiffs to retain those sums. Further, Plaintiffs have cited no law, statute, guidance, or precedent which supports its position that Aetna is required and has a legal obligation to pay an award that was determined based on fraud or corrupt practices.

Aetna alleges that it paid amounts on disputes later determined to be ineligible for the federal process, as well as amounts tethered to attestations “to the best of [Plaintiffs’] knowledge” that, as alleged, were inaccurate as to IDR eligibility or materially misleading as to key valuation factors. Those facts support the inference that Aetna paid under a mistake of fact or law, or beyond any enforceable obligation. Whether any particular dispute was eligible, any particular representation material, or any particular amount was owed “as a matter of right” is a fact-intensive question unsuited to resolution on a motion to dismiss. *See Int’l Code Council, Inc. v. UpCodes*

Inc., 43 F.4th 46, 60 (2d Cir. 2022) (“[A] fact-intensive inquiry typically should not be resolved on a motion to dismiss.”).

2. It is inequitable for Plaintiffs to retain IDR award payments rendered through their fraud and corrupt practices

Aetna alleges that Plaintiffs benefited by receiving payments they were not entitled to retain and that, in equity and good conscience, the money should be restored. Those allegations parallel the allegations that the *Walker* and *Mahon* courts found adequate at the pleading stage: the payee received money the payor mistakenly believed was owed, and equity prohibits retention. Nothing more is required to proceed. See *Walker*, 305 F. Supp. 3d at 380 (claim lies where payee “in good conscience has no right to retain” the funds); *Mahon*, 2012 WL 3544883, at *3.

Plaintiffs’ contention that a plaintiff must show both a lack of authority to authorize the payment and inequity in retention, does not compel dismissal. Aetna’s allegations satisfy both requirements: the payments were made under mistake or without obligation as to ineligible disputes or disputes procured by material misstatements, and equity disfavors allowing Plaintiffs to retain windfalls derived from those mistakes. In any event, these issues are fact-bound inquiries ill-suited to Rule 12(b)(6). In short, Aetna’s allegations fall squarely within the well-accepted contours of a claim for money had and received. Plaintiffs’ attempt to narrow the doctrine and to transform the NSA into an absolute shield against equitable restitution lacks support in Connecticut law and ignores the fact-intensive, equitable nature of the inquiry. The motion to dismiss this claim should be denied.

H. Aetna’s Claims for Declaratory and Injunctive Relief Should Not be Dismissed.

Plaintiffs’ opposition to Aetna’s declaratory and injunctive claims rests on a set of mischaracterizations about the posture of this case and the proper role of Rule 12(b)(6). Plaintiffs improperly invite the Court to resolve remedial issues at the pleadings stage and to foreclose

equitable tools that are available precisely to clarify the parties' rights and obligations and to prevent ongoing and future harm. Plaintiffs' invitations to error should be declined.

1. Remedies are not properly addressed on a Rule 12(b)(6) motion

Plaintiffs' opposition blurs the line between the sufficiency of Aetna's claims and the availability of particular forms of relief. At this stage, the Court asks only whether the complaint plausibly alleges a claim for relief. *See Twombly*, 550 U.S. at 570. The choice and scope of remedies flow from those claims and are ordinarily adjudicated on a developed factual record. For this reason, courts deny motions aimed at striking declaratory or injunctive prayers unless the underlying claim itself fails as a matter of law. *See, e.g., City of New York v. A-1 Jewer & Pawn, Inc.*, 247 F.R.D. 296, 353 (E.D.N.Y. 2007); *Martin v. Bottom Line Concepts, LLC*, 723 F. Supp. 3d 270, 284 (S.D.N.Y. 2024) (denying motion to dismiss the prayer for treble damages as premature because that is a factual issue that must be resolved at summary judgment or trial); *Denton v. McKee*, 332 F. Supp. 2d 659, 667 (S.D.N.Y. 2004) (denying motion to dismiss as premature "to the extent it seeks to preclude certain categories of damages").

Plaintiffs' approach would invert the Rule, inviting early, abstract determinations about what the Court may ultimately award. That is not the law, and it is not workable. Aetna's Counterclaim more than adequately states substantive claims; as such, Plaintiffs' attempt to strip or deprive Aetna's remedial options fails at the threshold. *See Goldman v. Reddington*, 417 F. Supp. 3d 163, 176 (E.D.N.Y. 2019) ("The Court declines to entertain Reddington's argument on remedies at this time, because a motion for failure to state a claim properly addresses the cause of action alleged, not the remedy sought." (quotations omitted)). Deciding what remedies Aetna would be entitled to at the pleadings stage would be premature and should await further factual development.

2. Aetna's request for declaratory judgment is proper

Plaintiffs contend that Aetna's request for declaratory relief is untethered to its substantive claims, would serve no purpose, and/or would improperly encroach on the IDR process. Each contention is incorrect.

First, Aetna's declaratory relief request is directly tethered to its substantive claims, including its allegations that Plaintiffs submitted false attestations and materially misleading statements in connection with payment disputes. While the Declaratory Judgment Act is procedural, it also authorizes relief clarifying the parties' rights and obligations where there is an actual controversy. *See O & G Indus., Inc. v. Litchfield Ins. Grp., Inc.*, No. 12-cv-6006448S, 2013 WL 3871341, at *5 (Conn. Super. Ct. July 1, 2013) ("The purpose of a declaratory judgment action, as authorized by General Statutes § 52-29 and Practice Book § 17-55, is to secure an adjudication of rights when there is a substantial question in dispute or a substantial uncertainty of legal relations between the parties. The declaratory judgment statute provides a valuable tool by which litigants may resolve uncertainty of legal obligations." (quotations omitted.)). The controversy here is real, concrete, and ongoing, and it is defined by the pleaded causes of action. Thus, Aetna's requested declarations are tethered to and would resolve core disputed legal questions embedded in those claims, including the legal consequences of material misrepresentations in connection with dispute submissions and attestations.

Second, Aetna's declaratory relief request serves a useful purpose by clarifying rights and obligations going forward, thereby narrowing issues, guiding conduct, and conserving judicial and party resources. Far from duplicating a merits judgment, a declaration would delineate the legal standards that govern the parties' conduct in connection with disputed items and services and would reduce the likelihood of serial disputes. Where, as here, the parties are engaged in an

ongoing course of dealing subject to recurring disputes, declaratory relief is particularly appropriate.

Third, Aetna's request for declaratory relief does not encroach on the IDR process. Plaintiffs assert that Aetna's request for declaratory relief is a de facto bid to vacate awards. *See* Dkt. 294 at 36. Not so. Aetna does not ask the Court to sit as a super-IDR entity. Rather, Aetna seeks a judicial declaration concerning the legal effect of Plaintiffs' materially false statements and attestations, and the lawfulness of specific practices as alleged. That is a question that can be resolved without supplanting agency processes or vacating any particular outcome. To the extent questions arise about the intersection of such declarations with statutory review provisions, that is a remedial calibration question for a later phase, not a basis to dismiss at the pleadings stage.

3. Aetna's request for injunctive relief should not be dismissed

Plaintiffs' "obey-the-law" objection to Aetna's request for injunctive relief caricatures the relief that Aetna seeks. Aetna's requested injunction can be tailored to enjoin precisely the conduct alleged—such as specific misrepresentations in submissions and the use of attestations that are false or misleading in materially identified respects—rather than a generalized command to comply with the law. *See S.C. Johnson & Son, Inc. v. Clorox Co.*, 241 F.3d 232, 240-41 (2d Cir. 2001) ("To comply with the specificity and clarity requirements, an injunction must be specific and definite enough to apprise those within its scope of the conduct that is being proscribed." (citations and quotations omitted)).

Courts regularly enter narrowly tailored injunctions that prohibit defined deceptive practices. *See, e.g., Waldman Pub. Corp. v. Landoll, Inc.*, 43 F.3d 775, 785 (2d Cir. 1994) ("Injunctive relief should be narrowly tailored to fit specific legal violations."); *JTH Tax, Inc. v. Sawhney*, No. 19-cv-4035-AJN, 2019 WL 3051760, at *7 (S.D.N.Y. July 11, 2019) ("The Court finds that only the following relief is necessary to ensure that irreparable harm to Plaintiffs'

goodwill and business relationships is prevented....”); *IME Watchdog, Inc. v. Gelardi*, 732 F. Supp. 3d 224, 242 (E.D.N.Y. 2024) (“In all cases, the relief should be narrowly tailored to fit specific legal violations and to avoid unnecessary burdens on lawful commercial activity. Here, the Court issues a narrowly tailored injunction ... The Court notes again that this strengthened injunction is necessitated by Defendants’ violation of the previous injunction.” (citations and quotations omitted)).

Further, it is premature to strike an injunction request at the pleading stage. As Plaintiffs themselves acknowledge in their Motion, further factual development is required before a ruling on the injunction can be made. Preemptively eliminating that tool now would risk leaving the Court without adequate means to prevent ongoing and irreparable harm that Aetna will prove.

III. CONCLUSION

WHEREFORE, Aetna respectfully requests that the Court DENY Plaintiffs’ Motion to Dismiss.

Respectfully Submitted,

By: s/ John. B. Shely

JOHN B. SHELBY

Admitted Pro Hac Vice

Texas State Bar No. 18215300

jshely@hicks-thomas.com

M. KATHERINE STRAHAN

Admitted Pro Hac Vice

Texas State Bar No. 24013584

kstrahan@hicks-thomas.com

JESSICA N. WAHL

Admitted Pro Hac Vice

Texas State Bar No. 24102618

jwahl@hicks-thomas.com

HICKS THOMAS LLP

700 Louisiana St, Suite 2300

Houston, Texas 77002

Telephone: (713) 547-9100

Telecopier: (713) 547-9150

Kevin P. Daly (ct30380)

Adam J. Petitt (ct32021)

Robinson & Cole LLP

One State Street

Harford, CT 06103

Tel. No.: (860) 2221-8200

Fax No.: (860) 2221-8299

Email: kpdaly@rc.com

Email: Apetitt@rc.com

**ATTORNEYS FOR DEFENDANTS
AETNA HEALTH INC., AETNA
LIFE INSURANCE COMPANY INC.
AND AETNA HEALTH AND LIFE
INSURANCE CO.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on October 20, 2025. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ Jessica N. Wahl
Jessica N. Wahl