

**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' SUPPLEMENTAL BRIEF ADDRESSING *ECAPS*

Pursuant to this Court's order (Doc. 406), Plaintiffs file this Supplemental Brief Addressing the United States Court of Appeals for the Second Circuit's decision in *East Coast Advanced Plastic Surgery, LLC v. Cigna Health and Life Insurance Co.*, 2026 WL 2751786 (2d Cir. Sept. 17, 2026) ("*ECAPS*") and would respectfully show the Court as follows:

THE *ECAPS* RULING AND PROCEDURAL STATUS

A three-judge panel of the Second Circuit ruled in *ECAPS* that the NSA does not provide a private right of action to enforce IDR awards. The deadline for the appellant in *ECAPS* to seek rehearing by the full Second Circuit is Thursday, October 1st. A petition for review by the U.S. Supreme Court must be filed within 90 days after entry of judgment, which is extended by a motion for rehearing. S. Ct. R. 13.

The *ECAPS* panel did not decide, and expressly declined to decide, whether a court may *confirm* an IDR award—a purely ministerial act that converts an already-binding determination into an enforceable judgment. That issue will be decided in *Agag v. Cigna Health and Life Insurance Co.*, No. 26–1241 (2d. Cir. 2026),¹ which is pending before the Second Circuit.

¹ Dr. Agag pronounces his name “uh-judge.”

Appellant's opening brief in *Agag* has already been filed, and the provider's response brief is due on Friday, November 6th.

If either the full Second Circuit or U.S. Supreme Court does not reverse the panel decision in *ECAPS*, then Plaintiffs will not be able to recover on their claim under the NSA based on the existence of a private right of action. However, as explained below, Plaintiffs' complaint and motion for summary judgment seek enforcement of their unpaid IDR awards under the NSA, a request that includes confirming those awards and converting them into a judgment in accordance with the *Agag* case. Separately, and independent of how the Court resolves the NSA claim, *ECAPS* leaves entirely undisturbed Plaintiffs' ERISA and CUTPA claims, neither of which depends on an implied right of action under the NSA.

I. The Court May Grant Plaintiffs' Summary Judgment on their NSA Claim and Confirm all Unpaid Awards.

In Count One of Plaintiffs' Second Amended Complaint, Doc. 109, Plaintiffs sought payment of their IDR awards. Doc. 109 at ¶¶ 27-30. Plaintiffs asserted that they were "entitled to enforcement of the IDR awards under the NSA" or, alternatively, "confirmation of the IDR awards at issue" pursuant to the Federal Arbitration Act, which at least one court had done at the time the complaint was filed. *Id.* at ¶ 29. Plaintiffs further broadly requested "to have the IDR determinations enforced" through issuance of "a federal judgment" in the "amounts owed." *Id.* at ¶30.

At the motion to dismiss stage, this Court ruled that enforcement of IDR awards was available in the form of a private right of action under the NSA. Doc. 264 at 18. Subsequently, Judge Underhill in *Agag* concluded that "courts may engage in *summary enforcement proceedings* regardless of whether a private right of action exists." *Agag v. Cigna Health & Life*

Ins. Co., 2026 WL 1021213, at *9 (D. Conn. Apr. 15, 2026) (emphasis added). He distinguished between the “purely ministerial” act of confirming an IDR award and adjudicating a private right of action seeking “damages, as well as attorney’s fees, interests, and costs.” *Id.* at *9, *13. He rejected Cigna’s argument that a confirmation proceeding was prohibited by the NSA’s judicial review clause, *id.* at *10, and concluded that a court “**must confirm** the [IDR] award **unless** a party moves to vacate it under paragraphs (1) through (4)” of the Federal Arbitration Act. *Id.* at *11 (emphasis added). The court directed the clerk to enter judgment for Dr. Agag in the amount owed under the IDR award and to allow post-judgment interest. *Id.* at *15.

Aware of the adverse ruling against it in *Agag*, Cigna argued to the Second Circuit panel in *ECAPS* that the NSA “bars providers from bringing lawsuits to confirm IDR awards,” pointing to the NSA’s judicial review provision. *ECAPS*, 2026 WL 2751786 at *7 n.13. The Second Circuit expressly declined to decide this issue. Instead, it “[a]ssum[ed] without deciding that the judicial-review bar [did] not preclude ECAPS’s lawsuit,” *id.*, and limited its holding to the NSA “not creat[ing] an implied private right of action to enforce payment awards.” *Id.* at *7.

The difference between a traditional private right of action and summary confirmation is not merely a difference in labeling; there are substantive differences as well. For example, a party does not seek damages (*i.e.*, compensatory relief) in a summary confirmation proceeding but rather payment of a specified sum already determined to be owed. For that reason, prejudgment interest may not be available when confirming an award. Instead, as in *Agag*, post-judgment interest would run from the date of confirmation.

Despite the meaningful substantive differences, Plaintiffs’ pleadings and motions are broad enough to be construed as requesting summary confirmation, just as in *Agag*. Plaintiffs have moved for summary judgment “for payment under the NSA of outstanding IDR determinations.”

Doc. 355 at p. 1. They asserted they are “entitled to summary judgment on their NSA claim because IDR determinations are binding on the parties and must be paid within 30 days, which has not been done for millions of dollars of awards between Plaintiffs and Defendants.” *Id.* at p. 2. Plaintiffs submitted proof of their unpaid IDR awards for Aetna and Cigna. Doc. 357-2. In their response to Aetna’s motion for summary judgment, Plaintiffs cited *Agag* and explained that “providers may sue to confirm IDR awards under the NSA” even without an implied private right of action to enforce it. Doc. 369 at 19.

Accordingly, this Court can enforce Defendants’ payment obligation in the NSA by granting Plaintiffs summary judgment on their NSA claim and confirming all of Plaintiffs’ unpaid IDR awards in accordance with *Agag*. Doc. 357-2 at 5 (\$5,071,474 for Aetna and \$5,387,849 for Cigna).

II. Plaintiffs’ ERISA and CUTPA claims are unaffected by *ECAPS*.

Plaintiffs’ ERISA and CUTPA claims are unaffected by *ECAPS*. The court in *ECAPS* did not address or even mention ERISA’s private right of action, any state law claims or issues of federal preemption or standing. It is worth noting, however, that *ECAPS* cited to 29 U.S.C. §1132(a)(5) as the basis for the Department of Labor’s ability to enforce the NSA against ERISA health plans, noting that Congress would have been aware of this civil enforcement section when enacting the NSA. *ECAPS*, 2026 WL 2751786 at *5. Congress likewise would have been aware that this same section includes the private right of action that Plaintiffs assert in this proceeding and on which they have moved for summary judgment. *See* 29 U.S.C. §1132(a)(1)(B).

Plaintiffs’ Motion for Summary Judgment provides evidence that distinguishes between IDR awards concerning ERISA and non-ERISA plans. Doc 357-2 at pp. 5–6. Plaintiffs’ ERISA

damages include the amount of unpaid ERISA IDR awards and the interest owed on both unpaid and late-paid ERISA IDR awards. *Id.* at p. 6 (\$2,297,223 for Aetna and \$2,747,436 for Cigna).²

Plaintiffs' CUTPA damages include the amount owed on all unpaid IDR awards, prejudgment interest on those awards, and interest on late-paid awards (\$6,016,693 for Aetna and \$6,845,731 for Cigna). *Id.* at p. 5. As this Court previously noted, regardless of whether an implied right of action exists under the NSA, "the same damages (if not more) are available to the plaintiffs through CUTPA that would be available under the NSA and ERISA claims." *See* Doc. 295 (denying Aetna's motion to file an interlocutory appeal on the NSA issue).

CONCLUSION

If not reversed, the *ECAPS* decision does not allow Plaintiffs to assert a private right of action under the NSA for damages, including prejudgment interest on unpaid and late-paid awards. They may still seek confirmation of unpaid IDR awards, a ministerial act which converts them into a judgment. The decision has no impact on Plaintiffs' claims under ERISA and CUTPA.

² Plaintiffs' ERISA damages include the amount of unpaid ERISA IDR awards (\$1,884,135 for Aetna and \$2,068,530 for Cigna) that are also within the total amount of unpaid IDR awards for which Plaintiffs seek confirmation. Accordingly, if Plaintiffs prevail on their confirmation and ERISA claims, the net amount owed would be calculated by taking the total amount of unpaid IDR awards (\$5,071,474 for Aetna and \$5,387,849 for Cigna) and adding the amount of interest owed on unpaid and late-paid ERISA IDR awards (\$413,088 for Aetna and \$678,906 for Cigna), which equals \$5,484,562 for Aetna and \$6,066,755 for Cigna.

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CERTIFICATE OF SERVICE

I certify that on September 28, 2026, a true and correct copy of the foregoing was served electronically on all counsel of record.

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