

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

AETNA’S REPLY TO PLAINTIFFS’ SUPPLEMENTAL BRIEF ADDRESSING
ECAPS (ECF NO. 408)

Plaintiffs readily acknowledge, as they must, that *ECAPS* precludes them from “recover[ing] on their claim under the NSA based on the existence of a private right of action.” ECF No. 408 at 2–3. The language and logic of *ECAPS* prevents any retreat to the outlier reasoning of *Agag v. Cigna Health & Life Ins. Co.*, No. 3:25-cv-00498 (SRU), 2026 WL 1021213 (D. Conn. Apr. 15, 2026).¹ Plaintiffs invite error by suggesting that, under *Agag*, a private party may still judicially “confirm an IDR award,” and so “seek enforcement of their unpaid IDR awards” in court. *Id.* at 1–2.² On the contrary, the Second Circuit repeatedly explained its decision in terms of the lack of any private judicial *remedy*, not just a private right of action:

- The NSA “makes clear that Congress did not intend to authorize private lawsuits to enforce IDR awards.” 2026 WL 2751786, at *6. Congress intended “that the NSA, including payment of IDR awards, be enforced through administrative action rather than private litigation.” *Id.* at *1. “The NSA ***does not manifest an intent to create a private remedy.***” *Id.* at *4 (emphasis added).

¹ There is no reason to indulge Plaintiffs’ preference for delay because of a rehearing in *ECAPS* or a future Second Circuit decision in *Agag*. *ECAPS* binds this Court today.

² Plaintiffs have not even pleaded or moved for confirmation of the IDR awards at issue under the NSA. Their complaint only seeks “enforcement of the IDR awards under the NSA.” ECF No. 109 at ¶ 29.

- This follows from the U.S. Supreme Court’s holding that “‘Congress determines who may sue to enforce federal law.’” *Id.* at *3 (quoting *FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd.*, 608 U.S. 608, 613 (2026)).
- “Congress designed an interlocking federal and state administrative scheme to enforce the NSA.... [T]ogether, these provisions reflect ‘Congress’s policy choice to enforce the [NSA] through administrative’ action, ‘not a private right of action.’” *Id.* at *5–6 (citation omitted). “The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.” *Id.* at *6 (citation omitted). It “‘supports the conclusion that *private parties generally cannot enforce* the’ Act.” *Id.* (emphasis added).
- Congress’s choice to incorporate a provision for vacating IDR determinations, “**but not for confirming them**,” evidences that same intent to deny private judicial enforcement. *Id.* at *4 (emphasis altered). The “binding” effect of an IDR determination does not change “**who may enforce it**,” *i.e.*, agencies. *Id.* at *6 (bolding added).
- Thus, “denying a private enforcement remedy” under the NSA does not render the IDR process “meaningless,” “superfluous,” or “absurd,” it simply opts against “throwing open the floodgates of litigation.” *Id.* at *7.

Notably, the *ECAPS* complaint sought a judgment under the Declaratory Judgment Act that (1) the health plan had “violated” the NSA; (2) the health plan “owes the amounts determined through the IDR process”; and (3) the provider was “entitled to all necessary and proper relief” including “equitable relief and monetary relief.” 2026 WL 2751786, at *3. The Second Circuit affirmed dismissal of all three declaratory relief claims—including of the mere declaration that the health plan owed the IDR amount, which is materially equivalent to *Agag*-style confirmation. *See id.* at *3, *7–8. It rejected the provider’s argument that private parties “may still seek relief against a health plan” without a private right of action, because without such a right the provider “has no other substantive claim of right to relief, so its cause of action for failing to make timely payment of IDR awards cannot proceed,” full stop. *Id.* at *7. Put simply, the Second Circuit forestalled any claimed “summary confirmation” by rejecting its necessary predicate, a private remedy.

Turning to ERISA, the same language and logic above cannot be squared with Plaintiffs’ suggestion that Congress actually did “intend to authorize private lawsuits to enforce IDR awards” after all, via ERISA. *ECAPS*, 2026 WL 2751786, at *6. Plaintiffs’ retort that Congress was “aware”

of ERISA's 502(a)(1) (B) right of action for certain scenarios long-predating the NSA, cuts away at their contention that the cause of action applies here, because ERISA participants and beneficiaries have no concrete injury or standing. ECF No. 408 at 4. Like the NSA private right of action question, the national trend here, *i.e.*, ERISA as private enforcement vehicle, is progressing against providers like Plaintiffs.³

Lastly, on CUTPA, Plaintiffs ignore the end-run doctrine, which bars state law claims to circumvent *ECAPS*' holding of no private right of action. *Compare* ECF No. 408 at 4–5, *with* ECF No. 407 at 6–8.⁴ Instead, Plaintiffs seek to rely on this Court's pre-*ECAPS* observation "the same damages (if not more) are available to the plaintiffs through CUTPA that would be available under the NSA and ERISA claims." ECF No. 408 at 5. In context, the Court made that observation when evaluating whether to grant permission to file an interlocutory appeal and the relevant factors for that analysis. More importantly, this Court has not addressed NSA's administrative enforcement mechanism under 42 U.S.C. § 300gg-22. *See* ECF No. 295. But since this Court's consideration of the viability of Plaintiffs' state-law claims, the Second Circuit has now addressed § 300gg-22 and interlocking statutes at length, elucidating the full breadth and exclusivity of the NSA's administrative enforcement scheme. *See ECAPS*, 2026 WL 2751786, at *5–6. Given that exclusivity, Plaintiffs' state-law claims fail.

For these reasons, *ECAPS* is dispositive of the claims remaining in this case.

³ *See, e.g., Guardian Flight LLC v. Health Care Serv. Corp.*, 140 F.4th 271, 276 n.5 (5th Cir. June 12, 2025) (disagreeing with this Court's ERISA analysis), *cert. denied*, 146 S. Ct. 1493 (U.S. Jan. 12, 2026); *PHI Health, LLC v. Health Care Serv. Corp.*, No. 26-cv-2954, 2026 WL 2254879, at *6–7 (N.D. Ill. Aug. 5, 2026), *appeal pending*, No. 26-2736 (7th Cir.); *SpecialtyCare Inc. v. Kaiser Found. Health Plan, Inc.*, No. 24-cv-9342-JST, 2026 WL 2043194, at *6–8 (N.D. Cal. July 15, 2026), *appeal pending*, No. 26-4722 (9th Cir.); *SpecialtyCare Inc. v. Health Care Serv. Corp.*, No. 25-cv-12935, 2026 WL 1556442, at *2–3 (N.D. Ill. June 2, 2026); *SpecialtyCare Inc. v. Cigna Healthcare, Inc.*, No. 24-cv-1378 (RGA), 2026 WL 483259, at *6–7 (D. Del. Feb. 20, 2026), *report and recommendation adopted*, 2026 WL 836387 (D. Del. Mar. 26, 2026).

⁴ Plaintiffs also ignore NSA preemption.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on October 5, 2026. 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/ M. Katherine Strahan

M. Katherine Strahan

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GUARDIAN FLIGHT LLC,
REACH AIR MEDICAL SERVICES LLC,
CALSTAR AIR MEDICAL SERVICES, LLC,
MED-TRANS CORPORATION,
AIR EVAC EMS, INC., and
AIRMED INTERNATIONAL LLC,
Plaintiffs,

v.

AETNA LIFE INSURANCE COMPANY,
AETNA HEALTH, INC.,
AETNA HEALTH AND LIFE INSURANCE
COMPANY, and
CIGNA HEALTH AND LIFE INSURANCE
COMPANY,
Defendants.

Case No. 3:24-cv-00680-MPS

October 5, 2026

**DEFENDANT CIGNA HEALTH AND LIFE INSURANCE COMPANY’S NOTICE OF
ADOPTION OF AETNA’S SUPPLEMENTAL BRIEFING (ECF NOS. 407 AND 414)**

Defendant Cigna Health and Life Insurance Company (“Cigna”) hereby adopts and incorporates by reference, as if fully set forth herein and made by Cigna, the arguments, authorities, and exhibits in Aetna’s Supplemental Brief on the Second Circuit’s *East Coast* Opinion (ECF No. 407) and Aetna’s Reply to Plaintiffs’ Supplemental Brief Addressing *ECAPS* (ECF No. 414). Plaintiffs assert the same three counts against Cigna as against Aetna, on the same theories, and those arguments apply with equal force to Cigna. To the extent leave of Court is required, Cigna respectfully requests it.

For the reasons stated in ECF Nos. 407 and 414, and in Cigna’s prior briefing (ECF Nos. 353 and 409), Cigna respectfully requests that the Court grant summary judgment in its favor on Counts I, II, and III.

Respectfully submitted,
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I hereby certify that on October 5, 2026, the foregoing was filed through the Court's ECF system, which will send notice of the filing electronically to all registered counsel of record.

/s/ Ruel W. Smith

Ruel W. Smith