

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

KIMBERLY A. NEGRON, et al.,

Plaintiffs,

vs.

CIGNA HEALTH AND LIFE INSURANCE
COMPANY,

Defendant.

No. 16-cv-1702 (JAM)
(Consolidated)

June 29, 2022

**SUR-REPLY MEMORANDUM OF LAW IN FURTHER OPPOSITION TO
CIGNA’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

In support of its Motion for Partial Summary Judgment, Cigna wrongly claimed that Plaintiffs never served Supplemental Responses to interrogatories seeking information about misrepresentations made to Plaintiffs at the point of sale when they picked up their prescriptions. After admitting that it was wrong (Cigna Reply at 8 n.5), Cigna — for the first time — attacked Plaintiffs’ Supplemental Responses, claiming Plaintiffs “lack[ed]. . . evidence regarding Plaintiffs’ interactions with pharmacists when purchasing their prescription drugs” (*id.* at 8).¹

Had Cigna made its new argument with respect to Plaintiffs’ Supplemental Responses in its initial motion, Plaintiffs would have explained that their injuries arise from the fact that Cigna, through its direction to and participation in Argus and Optum’s affairs, caused the network pharmacies to communicate false charges to Plaintiffs and that Plaintiffs paid the false charges. The records of each and every transaction, including the date of the transaction, the

¹ Cigna also stated that Plaintiffs’ summary judgment opposition “fundamentally changes their pleaded RICO theory” by arguing the point-of-sale misrepresentations. Cigna Reply at 1. Cigna is wrong on that point as well. *See, e.g.*, Second Amended Consolidated Complaint [ECF 198] at ¶ 276 (alleging that Cigna directed Argus and Optum to misrepresent the true cost-share amounts at the point-of-sale).

amount of the fraudulent charge communicated, the amount of the overcharge and the excessive amount Plaintiffs paid are set forth in Cigna's claims data. In their opposition memorandum, and to demonstrate this genuine, factual dispute, Plaintiffs provided the claims data regarding every fraudulent charge imposed on and paid by Plaintiff Negron, as an exemplar of the Plaintiffs' injuries, and as set forth in the declaration of Plaintiffs' expert, Mr. Mustoe. *See* [ECF 433] at ¶¶ 3-4. Cigna knows that it produced this same claims data for every other Plaintiff, and it cannot in good faith claim otherwise. At a minimum, there are disputed issues of material fact regarding Plaintiffs' point-of-sale injuries and the court should deny Cigna's Partial Motion for Summary Judgment.

CONCLUSION

For the reasons stated above and in their previously filed Opposition Memorandum [ECF 430], Plaintiffs respectfully request that the Court deny Cigna's Motion for Partial Summary Judgment.

Dated: June 29, 2022

Respectfully submitted,

s/ Robert A. IZARD

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