UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANICE C. AMARA, individually and on behalf of all others similarly situated, *Plaintiffs*, v. CIGNA CORP. and CIGNA PENSION PLAN, *Defendants*.	Civil No. 3:01cv2361 (JBA)

MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER AUGUST 16, 2019 RULING ON MOTION TO ENFORCE

Stephen R. Bruce Ct23534
Allison C. Pienta phv01316
1667 K Street, NW, Suite 410
Washington, DC 20006
(202) 289-1117
stephen.bruce@prodigy.net
acaalim@verizon.net

Christopher J. Wright phv07752
HARRIS WILTSHIRE GRANNIS LLP
1919 M St., NW, 8th floor
Washington, DC 20036
(202) 730-1325
cwright@hwglaw.com

Michael J. Walsh Ct09111
WALSH WOODARD LLC
527 Prospect Ave
Hartford, CT 06105
(860) 549-8440
mwalsh@walshwoodard.com

Attorneys for Plaintiffs and Plaintiff Class

Introduction

A motion for reconsideration may be granted under Local Rule 7(c) if "the movant can point to controlling decisions or data that the court overlooked in the initial decision or order." *See, e.g., 4 Pillar Dynasty LLC v. N.Y. & Co.*, __F.3d __, 2019 WL 3719971, *10 (2d Cir. 8/8/2019) (court "may reconsider a hastily-made earlier ruling if, upon revisiting the non-prevailing party's arguments, the court concludes that it erred"); *Powanda v. Inteplast Grp., Ltd., L.P.*, 2015 WL 4078117, *1 n.2 (D. Conn. 7/6/2015) (JBA) ("court can grant a motion for reconsideration for the limited purposes of considering the effect of an overlooked matter, and after doing so may affirm and/or clarify the original decision"). Reconsideration is especially appropriate when "complex" matters are involved. *See, e.g.*, *Tyco Healthcare Group LP v. Ethicon Endo-Surgery, Inc.*, 440 F.Supp.2d 120, 124 (D. Conn. 2006) (JBA). This motion satisfies the specified parameters for reconsideration, including based on what the August 16, 2019 Ruling describes as the "opacity" of these matters.

In addition to making the legal points below, we want first to express disappointment with the results that the Ruling, if it is not reconsidered, would allow Cigna to impose on the members of the class. Under the reformation that this Court ordered and the Second Circuit affirmed in 2014, the members of the class are to receive "the full value" of their Part A retirement benefits. The methodology rulings on remand were *not* to provide a means for Cigna to "jimmie" ways to take away part of that value from class members. But the August 16, 2019 Ruling nevertheless does not address how named Plaintiff Annette Glanz's or deposition witness Steven Curlee's retirement benefits are being diminished by Cigna's use of "lookback" interest rates and "outdated," and unlawful, mortality tables. Cigna would be allowed to reduce Mr. Curlee's benefits by $141 per month and Ms. Glanz's benefits by $70 per month by using interest

rates and mortality tables that neither this Court's orders nor the plan provisions ever authorized. Mem. at 18, 27. Cigna would also "cut back" on trial witness Lillian Jones' early retirement benefits, after Judge Kravitz found that Cigna failed to disclose that her "Part A annuity had the greater present value" than the Part B lump sum with the result that she "chose a lump sum that was worth $80,000 less than her annuity option." 534 F.Supp.2d at 357 n.47, 361-62.

When Plaintiffs filed the motion and reply showing how Cigna's positions were modifying the terms of the Court's orders, Plaintiffs believed the evidence would result in a ruling in favor of the members of the class like Glanz, Curlee, and Jones. Plaintiffs prepared Exhibit 2 (Dkt. #573-2) which the Court admitted on July 19, 2019, to summarize how Cigna was repeatedly modifying this Court' reformation and methodology orders. That "Exhibit identifies no less than *fourteen* misquotations or misstatements of this Court's Orders by Cigna" in its Opposition. Dkt.#574 at 1. Even Cigna recognized that these "are serious accusations against Cigna." Dkt.#575 at 3. But the Ruling does not address this at all.

For the reasons set out below, Plaintiffs respectfully request that the Court reconsider and address the standard of review and Plaintiffs' arguments more directly. Plaintiffs believe this reconsideration will lead the Court to conclude that Cigna has misapplied this Court's reformation and methodology orders.

I. The Standards for Deciding a Motion to Enforce the Court's Equitable Orders.

In *Beckford v. Portuondo*, 234 F.3d 128, 129-30 (2d Cir. 2000), the Second Circuit held that "[t]he court must inform the reviewing court as to how the standard has been applied to the facts as the court has found them. If the court fails to make findings and to give an explanation, and the reason for the court's ruling is not clear to us, we will remand for findings and an

explanation." The August 16, 2019 Ruling does not address the standards for deciding Plaintiffs' motion to enforce the Court's orders, even though the parties clearly disputed those standards.

As Plaintiffs' motion stated, an equitable decree must be "fully" enforced. Mem. at 9. And while a contempt standard applies to sanctions, the court has jurisdiction to enforce its equitable orders "apart from the contempt power." *Arrowood Indem. v. Trustmark Ins. Co.*, 2012 WL 1596980, *2 (D. Conn. 5/7/12) (citing, *inter alia*, *Dulce v. Dulce*, 233 F.3d 143, 146 (2d. Cir. 2000)); *Berger v. Heckler*, 771 F.2d 1556, 1569 (2d Cir.1985); *United States v. Visa*, 2007 WL 1741885, *3-4 (S.D.N.Y. 6/8/2007).

To enforce an equitable decree, the Supreme Court has long ruled that lower courts must enforce the order's terms "fairly read" and use other "aids to construction." *United States v. I.T.T. Continental Baking Co.*, 420 U.S. 223, 235 (1975). Any relief rulings cannot infringe on the "mandate" under which the district court operates, which must be "scrupulously and fully carried out." *Carroll v. Blinken*, 42 F.3d 122, 126 (2d Cir. 1994). The relief methodology also cannot compromise the "full value of what was promised," *Dunnigan v. Metropolitan Life Ins. Co.*, 277 F.3d 223, 229-30 (2d Cir. 2002), "unilaterally diminish those benefits," or be "inconsistent with the Plan's plain terms." *Frommert v. Conkright*, 738 F.3d 522, 530-31 (2d Cir. 2013).

If an issue cannot be resolved by "plain meaning," a fiduciary subject to the "duty of loyalty" cannot be allowed to unilaterally or opportunistically fill in "open" aspects of equitable decrees in order to serve its own interests "simply because it is legally possible." *See, e.g., Schnell v. Chris-Craft Industries, Inc.*, 285 A.2d 437, 439 (Del. 1971). Instead, a fiduciary must "diligently attempt to comply with the injunction in a reasonable manner" by seeking clarification from the court. *CBS Broadcasting v. FilmOn.com*, 814 F.3d 91, 99-100 (2d Cir.

2016). As this Court stated, Cigna has a "fiduciary duty to act solely in the benefit of the beneficiaries that maximize their benefit." 7/25/18 Tr. at 10. In this regard, Plaintiffs have presented Cigna's certified 10-Ks and 10-Q's showing that from March 2016 forward Cigna was on the hunt for "aspects" of this Court orders that were "open to interpretation" to which Cigna would apply the "Company interpretation" without asking this Court to clarify or modify the rulings. *See* Mem. at 5-12.

Cigna's Opposition maintains that there is no such thing as a "motion to enforce," and if there is, that the standard of review for its interpretation of the Court's orders is only "the contempt standard." Opp. at 4-5. Plaintiffs have carefully set out the authorities against that position. Reply at 1-4.

Without informing the parties of which of these standards it is applying, the August 16, 2019 Ruling reaches the conclusion that Cigna's "application of the Court's previous ruling" on interest and mortality is "more persuasive" and it "declines to entertain" Cigna's refusal to pay "the full value" of early retirement benefits. The caselaw shows that the failure to articulate the standard of review and the rationale for the decision, considering both parties' arguments, is grounds for reversal and remand. *See, e.g.*, *Beckford*, *supra*; *Langan v. Johnson & Johnson Consumer Cos*., 897 F.3d 88, 98 (2d Cir. 2018) (remanding for "more thorough analysis" after district court failed to undertake "the requisite considered analysis of the variations in state law" and "did not sufficiently engage with Johnson & Johnson's arguments"); *Fraiser v. Stanley Black & Decker, Inc.,* 588 Fed. Appx. 10, 11 (2d Cir. 2014) (remanding when district court "did not specifically address the issues presented by SBD's motion"); *Dobson v. Hartford Fin. Servs. Group*, 389 F.3d 386, 393 (2d Cir. 2004) (remanding when district court "misconstrued

[plaintiff's] theory and, as a result, never ruled on what may be plaintiff's strongest argument").

In addition to not addressing Plaintiffs' reasons, footnote 1 of the Court's decision appears to reject the evidence Plaintiffs offered in rebuttal to Cigna's opposition. Footnote 1 says that "to the extent that Plaintiffs raise a new issue with respect to Cigna' February 26, 2019 Plan Amendment, the Court declines to consider those arguments by Plaintiffs." However, as Plaintiffs said in their reply and in the opposition to Cigna's motion for leave to file a sur-reply, Plaintiffs were not raising a new issue but quoted from the February 26, 2019 Plan amendment to show that Cigna was continuing the strategy expressly described in its 10-Ks and 10-Q's of applying the "Company's interpretation" to "open aspects" of this Court's orders and to discredit the representations by Cigna on pages 5-6 of its Opposition that the "corporate disclosures" in the 10-Ks and 10-Q's are merely referring to "open issues" like "*pending* motions, notices, and requests for reconsideration." *See* Reply at 2; Response (Dkt. #576) at 1-2.[1]

It is a black letter principle that "reply papers may properly address new material issues raised in the opposition papers so as to avoid giving unfair advantage to the answering party." *Bayway Ref. Co. v. Oxygenated Mktg. & Trading A.G.*, 215 F.3d 219, 226-27 (2d Cir. 2000) (permitting evidence submitted with reply in response to argument "raised for the first time in OMT's opposing papers"); *accord*, *Toure v. Cent. Parking Sys.*, 2007 WL 2872455, *2 (S.D.N.Y. 9/28/2007) ("the disputed materials ... respond to issues raised in opposition or amplify points already made on the initial motion"); *Walsh v. City of Norwalk*, 2011 WL 4572063, *3 n.4 (D. Conn. 9/30/2011) (court could consider affidavit attached to reply that was

[1] Although the Plan amendment is dated February 26, 2019, Cigna did not provide it to Plaintiffs until May 8, 2019 – over a month *after* Plaintiffs' motion to enforce was filed.

submitted "in response to the plaintiff's challenge to Arway's credibility in her opposition papers"); *Residential Funding Corp. v. DeGeorge Fin. Corp*., 306 F.3d 99, 111-12 (2d Cir. 2002) (reversing when court did not "fully consider[] all of the evidence").

II. The "Plan Provisions" That the Court Has Ordered Cigna to Use to Calculate an Offset Against the Part A Benefits Plainly Require Use of the Interest Rates and Mortality Table at the Part A "Benefit Commencement Date."

In the Court's 2016 and 2017 Orders, this Court twice ruled that for the "Interest used in Converting Lump Sum into Annuity" (as opposed to the "Interest on Lump Sums Already Paid"), "*the plan provisions in place* at the time the lump sum was received should control ... and not, as Cigna argues, *the plan in place* at the later of the date the participant reaches earliest retirement age under Part A or the actual benefit commencement date." As Plaintiffs detailed in the motion, this Court recognized that the parties had disagreed not about whether to use interest rates in effect at the Part A Commencement Date, but about "whether Cigna could apply "segment interest rates of 5.24%/5.69%/5.37%" "based on a 2009 plan amendment that Cigna adopted" for all "benefit commencement dates on or after July 1, 2009." Mem. at 15-17 (quoting Dkt.#459 at 16). All of the plan provisions, before and after that July 2009 plan amendment, provide for use of the interest rates at the Part A Benefit Commencement Date. There have never been any "plan provisions," then or now, that use interest rates from when a lump sum was received to annuitize a retirement benefit at a Part A Commencement Date that is 10, 15 or 20 or more years later.

There is no reasonable basis for Cigna to be permitted to depart from the plain language of the Court's methodology orders, which provide that "the plan provisions" in effect when a participant received a lump sum control. This, in turn, means the "Applicable Interest Rate" and the "Applicable Mortality Table" are determined by reference to the year in which the class

member's Part A Commencement Date occurs. Departing from the plain meaning of "the plan provisions" and the Court's orders is especially unwarranted because it clearly deprives class members of "the full value" of the reformation, which the Second Circuit affirmed, and because it makes class members "worse off" than either party proposed on remand.

The Court's Ruling states that "The parties now dispute, in essence, the year(s) to be used to determine the interest rate and mortality table for calculating the annuity value of the lump sum distribution for purposes of determining the offset." Ruling at 3. The Court's Ruling then concludes that "the plan provisions" refer to "the mortality tables and interest rates" in effect at the time the lump sum was received" rather than "the plan provisions" that prescribe the use of the interest rates and mortality tables at the Part A Commencement Date. *Id*. at 4.

Simply put, there are no "plan provisions" in Cigna's Part A *or* Part B Plans even *remotely* like those that Cigna is now asking the Court to allow. The Ruling's conclusion simply adopts the "Company interpretation" that Cigna fabricated *after* this Court's January 2016 and January 2017 methodology rulings without asking this Court for clarification or modification. The Court never addresses the arguments Plaintiffs made about the reformation that the Second Circuit affirmed requiring Cigna to provide "the full value" of the A+B relief, the plain terms of "the plan provisions" on the Applicable Interest Rate, the regulations prohibiting use of "lookback" interest rates for present value calculations (*see* Treas. Reg. 1.417(e)-1(d)(4)), and the language in the Section 204(h) notices that this Court approved providing that annuity values for the cash balance accounts are "determined using ... interest assumptions for the year of benefit commencement as defined in the Plan. *See* Mem. at 15-25.

The Court's Ruling also nowhere addresses the requirements in "the plan provisions"

before and after the 2009 changes to the Plan that mandate use of any "successor mortality" tables in conformity with the requirement in IRC §417(e)(3)(B) that the Treasury Department revise its mortality tables "at least every 10 years." Mem. at 25-26. There has never been *any* Court order or amendment by Cigna to "the plan provisions" on the Applicable Mortality Table that requires or allows the use of "outdated" mortality tables. *See also* 82 Fed. Reg. 46393 (Oct. 5, 2017) ("outdated" mortality tables will cause a "permanent loss of retirement assets"). Cigna's proposed methodology in July 2015 contains no suggestion, moreover, that Cigna had any intention to use mortality tables that had been in effect 10, 15, or 20 years before the Part A Commencement Date in order to calculate an offset at the Part A Commencement Date. Instead, Cigna represented to this Court that the "mortality tables in effect when the participant commences benefits will apply." *Id*. at 27 (citing Dkt.#428 at 11). Cigna further represented that "[w]here the Court's opinions do not specify the assumption or methodology to use" it would follow "the Court's direction to use the actual terms of Parts A and B." Mem. at 24 (citing Dkt.#428 at 3). The Section 204(h) notice that this Court edited and approved also states that annuity values are "determined using actual life expectancy ... for the year of benefit commencement as defined in the Plan." Mem. at 27 (citing Dkt.#524 at 6, 16).

If it is not reconsidered, the Court's Ruling will reach an absurd result that cannot be justified by the reformation that the Second Circuit affirmed, the "plain terms" of the Court's orders, "the plan provisions" on the Applicable Interest Rate and Applicable Mortality Table, *or the parties' positions in arguing over these proposed methodologies*. If "Cigna's proposal [was] to tether the interest rate/mortality table year to the year of Part A eligibility," Ruling at 4, and Plaintiffs are saying, as this Court's Ruling states, that the "Applicable Interest Rate" is "the rate

in effect in the 'year which includes the Benefit Commencement Date," *id*. at 3, then where was the disagreement? The disagreement was *not* about using interest rates in effect at the time lump sums were received, which neither party suggested, but was about whether to use "the plan provisions" from before or after July 2009 for persons whose retirement dates were after 2009 but who received lump sums before 2009. The August 16, 2019 Ruling would ignore this Court's own clear articulation of the argument over whether to use "the plan provisions" prescribing "30-year Treasury securities" or "the plan provisions" prescribing "segment" interest rates. *See* Dkt.#571-1 at 19-20 (quoting Dkt.#485 at 4-6). This Court resolved that disagreement by providing for the use of the interest rate index that *the plan provisions in place* when any lump sum was received specify. This Court's current Ruling would reach different and much worse results for the members of the class than *either party* proposed. A construction of this Court's 2016 and 2017 Orders that is not mandated by the "plain terms" and that makes class members "worse off" than under both the reformation and *either party's* relief proposals is clearly "unreasonable." *Frommert*, 738 F.3d at 530-31 (defendant's relief proposal was "an unreasonable interpretation of the Plan" because it "made rehired employees worse off under the Plan in terms of actual benefits received").

As support for reading "the plan provisions" to mean something different "in context" than what "the plan provisions" say, this Court's Ruling cites only its statement in 2016 that using "the plan provisions" in effect when lump sums were received has the "added benefit of permitting Cigna to calculate the amount owed to all class members that have already received benefits as a lump sum, without waiting until those participants reach retirement age under Part A." Ruling at 4. But using "the plan provisions in place" has that "added benefit" without

rewriting the plan provisions to use interest rates and mortality tables that may be 10, 15, or 20 years out of date by the Part A Commencement Date. If the class member's retirement age was still in the future at the time of the relief calculations at the end of 2018, the interest rate that is currently applicable under the applicable "plan provisions" can always be held "constant" as Cigna, Plaintiffs, and the Court-approved Section 204(h) notices have already otherwise done. *See* Reply at 7 n.4 (citing Section 204(h) notice at Dkt.#524-6 at 6, advising participants that "the assumptions in place" in the "plan year" of the computation will be used for "commencement dates" thereafter). In their January 2018 results, Cigna calculated future benefits for the "participants who have not yet commenced benefits" and "small cashout values" by applying the current "November 2017 417(e) segment rates." Reply at 7 n.4 (citing Dkt.#571-10 at 2).

Simply put, "the plan provisions" in the Court's orders should mean "the plan provisions." The plan provisions prescribe use of the "Applicable Interest Rate" and "Applicable Mortality Table" as of the Part A Commencement Date. In accordance with this Court's orders, the "Applicable Interest Rate" at that Commencement Date will be "control[led]" by the 30-year Treasury rates or segment interest rates depending upon when the lump sum distribution, if any, was "received." The Applicable Mortality Table is the "successor" mortality table under the plan provisions in effect before and after July 2009.[2]

[2] The July 2017 ruling that the Court cites as "*cf*" support (*see* Ruling at 4) addresses the "interest rate credits" between the lump sum distribution and the Part A Commencement Date which the Court clarified/modified on Cigna's motion, distinguishing this from the annuitization interest rates the Court had already addressed in January 2017. The July 2017 interest rate credits ruling did not revisit any part of the annuitization rate ruling, and it has nothing to do with allowing the use of "outdated" mortality tables, which is unlawful.

III. The Court Should Not Have "Decline[d] to Entertain" Plaintiffs' Challenge to Cigna's Failure to Provide the "Full Value" of "Early Retirement Benefits."

Cigna did not "advise" Plaintiffs or the Court that it was going to apply a "later of" restriction to cut back on "the full value" of the Part A early retirement benefits until December 2017. Plaintiffs promptly challenged the approach, but this Court deferred action because Cigna "ha[d]n't implemented it yet" and the Court was "putting Cigna to the test of doing it right."

The August 16, 2019 Ruling now "declines to entertain" Plaintiffs' motion to enforce the Court's reformation and methodology rulings on providing "the full value" of the Part A early retirement benefits. 925 F.Supp.2d at 265; Dkt.#486 at 18. Declining to entertain this motion is error because *Cigna* had an obligation under Second Circuit precedent to seek clarification or modification of the reformation and this Court's orders, *CBS Broadcasting*, 814 F.3d at 99-100, and because this Court invited Plaintiffs to file a motion after refusing to hear Plaintiffs' arguments on these issues until Cigna "implement[ed] its interpretation." Dkt.#550 at 1-2.

By declining to entertain the motion, the August 16, 2019 Ruling never says what the Court believes it ordered, and it never addresses the arguments that Plaintiffs offered about Cigna's improper and unlawful restriction on payment of the Part A early retirement benefits, which is clearly *not* found in this Court's reformation, the Second Circuit's affirmance, or in the terms of any post-affirmance methodology orders. Cigna's restriction is also nowhere to be found in the Part A "plan provisions" on early retirement. Mem. at 29 (citing Plan Section 4.3 in Dkt.#571-5). Even in Cigna's proposed methodology in 2015, Cigna stated, without qualification, that early retirement benefits would be provided if a class member "elects to take her Part A annuity benefits before age 65." Mem. at 34 (citing Dkt.#428 at 16-18). In the same

proposal, Cigna stated that the "A+B benefits will be paid in the same manner and according to the same terms that apply to those Plan participants ... that already receive A+B benefits." Mem. at 33 (citing Dkt.#428 at 6-7). Under those terms, Part A early retirement benefits are paid "separately" from any Part B cash balance accounts with no restrictions. *Id.* (citing Section 2.4(b)(4)(c) of Cigna's Part B Plan). Cigna also represented that "[w]here the Court's opinions do not specify the assumption or methodology to use" it would follow "the actual terms of Parts A and B." Mem. at 24 (citing Dkt.#428 at 3). Although Plaintiff sought additional examples of Cigna's methodology for "early retirement class members," the Court's January 2016 Ruling concluded that "the methodology is sufficiently detailed." Dkt.#459 at 18. As Plaintiffs have said, restricting the Part A early retirement benefits in the manner that Cigna advocates now not only fails to follow the Part A plan provisions on early retirement, but it fails to provide "the full value" of the early retirement benefits as the reformation mandates, and the imposition of an additional restriction on those benefits violates the "anti-cutback" rule in ERISA §204(g), 29 U.S.C. §1054(g). *See, e.g., Central Laborers v. Heinz*, 541 U.S. 739, 740 (2004).

The only basis the Ruling gives for "declin[ing] to entertain" enforcement of the affirmed reformation is a footnote from Cigna's opposition brief which appeared midway within *seven pages* of other arguments in the text. Cigna's counsel asserted in that footnote, which the Ruling quotes in full, that:

> Every time Cigna produced remedy calculations to Class Counsel in 2016, 2017, and 2018, it advised that "Part A benefit will commence as of the earliest age allowed under Part A that is on or after the date that each participant received her original Part B benefit" and showed individual "remedy annuity commencement dates." *E.g.*, Ex. 4.

Based on this footnote, the Court's Ruling concludes that there was an "apparent failure during

the methodology litigation to fully pursue the issue of whether the Court's previous orders authorize Defendant's challenged action on retirement benefits." Ruling at 5.

Cigna's footnote overlooks facts "that might reasonably be expected to alter [the Court's] conclusion." *Young v. Cnty. of Nassau*, 511 Fed.Appx. 35, 38 (2d Cir. 2013); *accord*, *Montefiore Med. Ctr. v. Teamsters Local, 272*, 589 Fed. Appx. 32, 34-35 (2d Cir. 1/21/2015) (remanding where district court reached conclusion "based on the Fund's one-sided representation"). In fact, Plaintiffs "fully pursued" the relief calculations that Cigna produced in "2018" in their February 12, 2018 Reply. *See* Dkt. #524 at 3-4. At the July 2018 hearing, Plaintiffs specifically told the Court that "CIGNA has sent us the results that they calculate, as this Court ordered, and those results show that CIGNA is not in compliance with the Court's order on annuitization interest rates and mortality *and with early retirement benefits*." 7/25/18 Tr. at 14. This Court responded that "when you say they've given us results that are contrary to what the Court has ordered, that hasn't happened yet. I know that if they carry through with what they have provided to you without reconsideration, and so forth, you will believe that they are violating the Court's order. I can't take that up until they do it." *Id*. at 15. The Court concluded "[t]here's nothing to enforce because they haven't implemented it yet. That's the point at which I think your complaints, of which they are well on notice, come into play." *Id*. at 14.

As for the footnote's representation about "2017," Cigna actually produced no remedy calculations in that year, as the parties informed the Court in a Joint Status Report.[3] Emails accompanying the calculations that Cigna produced in eleven batches in "2016" do state that

[3] A 5/19/2017 Joint Status Report advised that, "Cigna has not produced a revised set of individual results because it is waiting for this Court's resolution of Cigna's motion pursuant to FRCP 59 and 60." Dkt.#495 at 2. The results were not produced until January 2018.

Cigna "*assumed* that the Part A benefit will commence as of the earliest age allowed under Part A that is on or after the date that each participant received her original Part B benefit." But this was an "assumption" that Cigna never presented to the Court and which Cigna subsequently modified in two respects in November 2018.[4] Cigna's 2016 emails also state other assumptions that Cigna had not proposed in its methodology, some of which Cigna subsequently dropped, including that it would assume "the remedy benefit payable as of age 65" with no early retirement benefits for "individuals who had not yet taken their Part B benefits." Def. Ex. 4 at 4.

In the footnote on which the Court relies, Cigna changes the word "assumed" to "advised," and represents to the Court that it "advised" Class counsel that benefits would commence at the later of the Part A early retirement age or the Part B distribution date, without the election or the separate "A+B" treatment that Cigna had described in its proposed methodology. However, Plaintiffs told the Court in December 2016 that there were assumptions in "Cigna's calculations [that] were done on the basis of "the Company's interpretation" without "seek[ing] "modification, clarification, or construction" of the Court's methodology orders. Dkt.#482 at 3-4. As soon as it became clear that Cigna was not just "assuming" this, but that it was adopting it as if it was in the methodology the Court had ordered, Plaintiffs promptly and fully pursued this. As mentioned, at the July 2018 status hearing, this Court nevertheless deferred action, assuring Plaintiffs that there would come a time for enforcement if Cigna persisted: "we're ... putting CIGNA to the test of doing it right" and "CIGNA implements this at its peril,

[4] In November 2018, Cigna "changed from assuming" the benefit would be taken at "the earliest retirement age" to assuming this only if there is an early retirement "subsidy" at that age. Dkt.#553-2 at 3. For Tier 2 class members with an early retirement subsidy, Cigna also "changed from assuming" "the earliest retirement age" to using age 60 as the default age. *Id*.

and we are here in the event that they have violated the terms of the plan as reformed." 7/25/18 Tr. at 12, 14; *see also* Dkt.#550 at 1-2 ("Defendant implements its interpretation of the reformed plan at its own risk"; "if going forward they breach the fiduciary duty to act solely in the benefit of the beneficiaries that maximize their benefit, then there's either another ERISA case that's brought or the Court retains continuing jurisdiction for remedy and possible contempt"). To ensure that "class members can receive, in a pretty useable form, information of what lies ahead," the Court also ruled that "class members [should] receive the Defendants' calculation of their benefit and their own counsel's calculation of their benefit," and "then whatever instructions class counsel says about what it may do" "to dispute them." 7/25/18 Tr. at 36-37, 39.

Again, nowhere in Cigna's proposed methodology on which the Court ruled in 2016 and 2017 was there any proposal by Cigna to the Court to limit the "full value" of early retirement benefits. Instead, Cigna said that it was going to pay the Part A benefits as class members elect "in the same form, and at the same time that these class members would have been paid" under Part A. Mem. at 33 (citing Dkt.#428 at 10). At no time did Cigna seek to clarify or modify that position as *CBS Broadcasting* clearly required it to do. Mem. at 6-7. Instead Cigna simply announced a different position in a December 2017 filing, to which Plaintiffs fully responded and which Plaintiffs renewed after the Court said "[t]here's nothing to enforce because they haven't implemented it yet." If this Ruling is not reconsidered, it will clearly err in declining to entertain Class counsel's motion to enforce the reformation and this Court's mandate to provide the "full value" of early retirement benefits. Class members like Lillian Jones who Judge Kravitz's ruling singled out should not be losing valuable retirement benefits based on *post hoc* "Company interpretations" that Cigna never proposed to this Court and that this Court never adopted.

Conclusion

For the foregoing reasons, Plaintiffs respectfully request that this Court reconsider its August 16, 2019 Ruling and grant the class members' motion to enforce the Court's methodology orders in full and sanction Cigna for its noncompliance.

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Respectfully submitted,

s/ Stephen R. Bruce
Stephen R. Bruce Ct23534
Allison C. Pienta phv01316
STEPHEN BRUCE LAW OFFICES
1667 K Street, NW, Suite 410
Washington, DC 20006
(202) 289-1117
stephen.bruce@prodigy.net
acaalim@verizon.net

Christopher J. Wright phv07752
HARRIS WILTSHIRE GRANNIS LLP
1919 M St., NW, 8th floor
Washington, DC 20036
(202) 730-1325
cwright@hwglaw.com

Michael J. Walsh Ct09111
WALSH WOODARD LLC
527 Prospect Ave
Hartford, CT 06105
(860) 549-8440
mwalsh@walshwoodard.com

Attorneys for Plaintiffs and
Plaintiff Class