UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GUARDIAN FLIGHT, LLC, Plaintiff, vs. AETNA HEALTH, INC., and MEDICAL EVALUATORS OF TEXAS ASO, LLC, Defendants.	Civil Action No. 4:22-cv-03805

AETNA HEALTH INC.'S RESPONSE TO
GUARDIAN FLIGHT, LLC'S OPPOSED MOTION TO CONSOLIDATE

Aetna opposes Guardian Flight's motion to consolidate the above-captioned case with *REACH Air Medical Services, LLC, et al. v. Kaiser Foundation Health Plan, Inc., et al.*, Case No. 4:22-cv-03979 ("*Kaiser*") and respectfully shows the Court as follows:

I. INTRODUCTION

Plaintiff and its affiliates have filed several cases challenging arbitration awards against different defendants in the Middle District of Florida and the Southern District of Texas.[1] Notably, all three Florida cases preceded this case. Yet, Plaintiff moves to consolidate *Kaiser* into this one. As established herein, each arbitration award is factually and legally distinct, and, as evidenced by *Kaiser*, the allegations do not just vary from case to case but from award to award, thereby

[1] *See Med-Trans Corp. v. Cap. Health Plan, Inc. and C2C Innovative Sols., Inc.*, Case No. 3:22-cv-1077, (M.D. Fla. 2022); *Med-Trans Corp. v. Blue Cross and Blue Shield of Fla., Inc. and C2C Innovative Sols., Inc.*, Case No. 3:22-cv-1139, (M.D. Fla. 2022); and *REACH Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc. and C2C Innovative Sols., Inc.* Case No. 3:22-cv-1153, (M.D. Fla. 2022). These cases are not consolidated.

defeating consolidation. Indeed, Plaintiff's motion to consolidate is nothing but an unabashed effort at forum shopping.

Taking a step back, Plaintiff's instant motion begs the question—if *Kaiser* truly is worthy of consolidation, then why not move to transfer and consolidate with the Florida actions that Plaintiff mentioned in the parties' Joint Discovery Case Management Plan?[2] The commonality of the parties is certainly greater in Florida, as Kaiser is a named defendant in one of the Florida actions, and the plaintiffs there are all affiliates of Guardian Flight. *See* Dkt. 21 at 1. While Plaintiff's motion to consolidate should be denied for the reasons described herein, it is worth noting that nearly every argument that Plaintiff makes in favor of consolidation applies with equal or greater force with respect to the actions first filed in Florida.

II. SUMMARY OF THE ARGUMENT

While *Kaiser* and the instant case share slight surface-level similarities—namely, they both involve the No Surprises Act's ("NSA") process for Independent Dispute Resolution ("IDR")—they do not share the requisite common questions of law or fact necessary for consolidation. *See Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 81 (D.N.J. 1993) ("the mere fact that two cases assert similar theories of recovery does not constitute a 'common question of law' so as to warrant consolidation" (emphasis omitted)). As explained below, consolidation of these disparate actions is likely to result in confusion and will not promote judicial economy.

Although pleaded under the same statute and with superficial allegations of similar factual circumstances, the defendants' alleged conduct differs markedly. Accordingly, the Court's decision—whether on the pending motions to dismiss or a potential motion to vacate—will be

[2] *See generally* Dkt. 21 at 1–2 (Joint Discovery/Case Management Plan) (listing Guardian Flight's contention that the three Florida actions are related cases).

highly fact specific. *See Arroyo v. Chardon*, 90 F.R.D. 603, 605 (D.P.R. 1981) (denying motion to consolidate employment-discrimination actions because "the alleged acts of the defendants in each particular case upon which the plaintiffs' claims rest[ed were] different to each one of them"); *see also Lath v. Manchester Police Dep't*, 2017 U.S. Dist. LEXIS 228148, at *5 (D.N.H. June 7, 2017) (denying motion to consolidate where, although claims were brought under the same statute, "the factual bases for those two claims [were] different").

In the same vein, consolidation will not lessen the burden of litigation on the respective parties in either case, as each IDR award must be analyzed individually to determine whether vacatur is available, much less appropriate.[3] Moreover, *Kaiser* concerns six different IDR awards (involving Kaiser and three separate plaintiffs), whereas this case concerns only one IDR award (involving Aetna and Guardian Flight). Therefore, consolidation would not eliminate repetition or confusion. If anything, consolidation would significantly risk conflating the facts and confusing the allegations in this case with those in *Kaiser*, thereby unnecessarily introducing potential prejudice to the defendants in both cases. *See Liberty Lincoln Mercury*, 149 F.R.D. at 81 ("Where the evidence in one case is not relevant to the issues in the other, consolidation would create a likelihood of prejudice by confusing the issues." (quotation omitted)); *see also Certified/LVI Env't Servs., Inc. v. PI Const. Corp.*, 2003 WL 1798542, at *3 (W.D. Tex. Mar. 3, 2003) (denying motion to consolidate because, *inter alia*, the defendants would "be unfairly prejudiced as a result of the facts and/or actions of various other co-defendants in [Lawsuit B] which are not relevant to claims or defenses of the co-defendants in the [Lawsuit A]").

[3] Given that there is no relation between Aetna and Kaiser, consolidation likewise would not increase efficiency or ease the burden of litigation on the parties by, for example, reducing the possibility of duplicative discovery.

Similarly, because each IDR award must be analyzed separately, it follows that the same level of attention and scrutiny will be required, regardless of whether the cases are consolidated. Thus, it cannot be said that proceeding separately will consume unnecessary judicial resources. But even if that were not the case, the risk of potential prejudice to Aetna (and other defendants) greatly outweighs whatever slight benefit consolidation might offer. *Cantrell v. GAF Corp.*, 999 F.2d 1007, 1011 (6th Cir. 1993) ("if the savings to the judicial system are slight, the risk of prejudice to a party must be viewed with even greater scrutiny"). Here, Aetna (or the other defendants) will incur the unnecessary expense of multi-party litigation based on facts that are completely unrelated to the allegations against Aetna.

Further, Plaintiff's contention that these cases involve novel "common questions of law" is a red herring, as answers to the "common" questions identified in Plaintiff's motion to consolidate are either well-settled or easily ascertainable. Although the NSA may be a new statute, Congress made clear that IDR awards "shall not be subject to judicial review," save for the four well-known grounds for vacatur under the Federal Arbitration Act ("FAA"). 42 U.S.C. § 300gg-111(c)(5)(E)(i). Thus, contrary to Plaintiff's protestations, resolution of either case does not require a court to determine the scope of judicial review available for IDR determinations, as Congress has already spoken on the issue. Similarly, the risk of inconsistent rulings is all but mooted by Congress's uncharacteristically clear instruction. Any lingering concern is laid to rest by nearly a century of caselaw interpreting the contours of the FAA. Armed with this vast amount of authority, it follows that adjudicating the cases separately would not risk inconsistent decisions.

Put simply, any perceived overlap between the two cases is superficial.[4] The IDR award at issue in this case is factually and legally distinct from the IDR awards at issue in *Kaiser*. Moreover, a court's decision on whether to vacate any of the IDR awards will necessarily require a fact-specific inquiry. *See, e.g., Denney v. Takaoka*, 1992 U.S. Dist. LEXIS 13372, at *4 (N.D. Cal. May 11, 1992) ("[D]espite similarities in the legal principles to be applied, the fact-finding in these actions will involve entirely distinct events. . . . . Under these circumstances, individual factual issues would predominate and consolidation would result in confusion rather than judicial economy."). These dissimilarities strongly counsel against consolidation. *See Hughes-Brown v. Campus Crest Grp., LLC*, 2011 WL 475010, at *2 (W.D.N.C. Feb. 4, 2011) ("[T]he Court finds that while these cases involve some common questions of law and fact, they are separate and distinct cases. Consolidation is therefore inappropriate." (emphasis omitted)); *see also Allfirst Bank v. Progress Rail Servs. Corp.*, 178 F. Supp. 2d 513, 520 (D. Md. 2001) (consolidation is appropriate where it would "foster clarity, efficiency and the avoidance of confusion and prejudice").

Alternatively, Aetna requests the Court defer ruling on Plaintiff's motion to consolidate until it first rules on the pending motions to dismiss. *See, e.g., In re Plains All Am. Pipeline, L.P. Sec. Litig.*, 2016 U.S. Dist. LEXIS 65601, at *4 (S.D. Tex. May 18, 2016) ("In light of the many pending, dispositive motions, consolidation under Rule 42 is premature at this time. The motion

[4] As further evidence that we are playing fast and loose with the term "related case," Plaintiff's counsel recently filed two more "related" cases in which Guardian Flight is a named plaintiff. *See REACH Air Med. Servs., LLC, et al. v. Aetna Life Ins. Co., Inc., et al.*, Case No. 4:23-cv-00805 (S.D. Tex. 2023) (Bennett, J.); *CALSTAR Air Med. Servs., LLC, et al. v. Cigna Health and Life Ins. Co.*, Case No. 4:23-cv-00826 (S.D. Tex. 2023) (Hanks, J.). Notably, those cases do not seek to vacate an IDR award but instead assert ERISA claims.

to consolidate, is denied, subject to reurging if the actions sought to be consolidated survive the motions to dismiss." (internal citations omitted)).

III. LEGAL STANDARD

Rule 42(a) provides that a court may order consolidation when "actions before the court involve a common question of fact or law." Fed. R. Civ. P. 42(a). "While it is required that a common question of law or fact be present as a prerequisite to consolidation, the mere presence of a common question does not *require* consolidation." *Cont'l Bank & Tr. Co. v. Platzer*, 304 F. Supp. 228, 229 (S.D. Tex. 1969); *see Kelly v. Kelly*, 911 F. Supp. 66, 69 (N.D.N.Y. 1996) ("Where there is a common question of fact or law, cases may be joined in the interests of efficiency, but consolidation is by no means a necessity."). Moreover, even "[w]hen cases involve some common issues but ***individual issues*** predominate, consolidation should be denied." *Hasman v. G.D. Searle & Co*., 106 F.R.D. 459, 461 (E.D. Mich. 1985).

"The party moving for consolidation bears the burden of demonstrating that consolidation is proper." *Texas v. United States*, 2021 WL 3171958, at *2 (S.D. Tex. July 26, 2021). When deciding whether consolidation is appropriate, courts consider whether: (1) the actions are pending before the same court; (2) common parties are involved in the cases; (3) there are common questions of law or fact; (4) there is a risk of prejudice or confusion if the cases are consolidated and, if so, is the risk outweighed by the risk of inconsistent adjudications of factual and legal issues if the cases are tried separately; and (5) consolidation will conserve judicial resources and reduce the time and cost of trying the cases separately. *See Newby v. Enron Corp. (In re Enron Corp. Sec., Derivative ERISA Litig.)*, 2007 WL 446051, at *1 (S.D. Tex. Feb. 7, 2007); *see also Solvent Chem. Co. ICC Indus., Inc. v. E.I. Dupont De Nemours & Co*., 242 F. Supp. 2d 196, 221 (W.D.N.Y. 2002) ("[T]he court must examine the special underlying facts with close attention before ordering a consolidation." (quotation omitted)).

IV. ARGUMENT & AUTHORITIES

A. Whatever common questions of law or fact that may exist are too attenuated to justify consolidation, as individual issues predominate over common issues.

1. That both cases seek to vacate IDR awards is not a "common question of law" sufficient to justify consolidation.

"[T]he mere fact that two cases assert similar theories of recovery does not constitute a 'common question of law' so as to warrant consolidation." *Liberty Lincoln Mercury*, 149 F.R.D at 81 (emphasis omitted)). Rather, even "[w]hen cases involve some common issues but ***individual issues*** predominate, consolidation should be denied." *Hasman*, 106 F.R.D. at 461; *see Banacki v. OneWest Bank, FSB*, 276 F.R.D. 567, 573 (E.D. Mich. 2011) ("although the various cases may share one common issue . . . this is not sufficient to justify consolidation"). Here, individual issues predominate.

Indeed, despite surface-level similarities—based purely on Plaintiff's cookie-cutter pleadings—"the individual questions of fact and law in each case outweigh the common." *Henderson v. Nat'l R. Passenger Corp.*, 118 F.R.D. 440, 441 (N.D. Ill. 1987). The IDR award in this case is factually and legally distinct from the IDR awards at issue in *Kaiser*, and the factual analyses and sources of proof in each case are different. Moreover, as it relates to Aetna, there is absolutely no overlap in the allegations or potential evidence in either case. So, although the plaintiffs in both cases base their claims upon the same general legal theory, given the myriad of dissimilarities—i.e., underlying allegations, identity of the parties, or potential sources of proof—at best, any common issues relate to collateral matters.

By way of analogy, consolidation in this instance would be no more appropriate than consolidating two unrelated ERISA actions brought against different defendants simply because the causes of action are predicated on the same federal statute. *See Liberty Lincoln Mercury*, 149 F.R.D. at 81 ("It simply is not enough that the two actions allege the same theory of recovery.").

Under Plaintiff's reasoning, any case against any defendant could be consolidated with other cases as long as a plaintiff sued under the same statute. That, of course, is not the law—or even logical.

2. Congress has already determined the availability and scope of judicial review over IDR awards.

Plaintiff insists that these cases involve the same novel legal issue because "[b]oth actions require the court to determine the availability and scope of judicial review over IDR awards under the NSA." Dkt. 27 at 5. But the NSA already supplies an answer to this question: "A determination of a certified IDR entity . . . ***shall not be subject to judicial review***, except in cases described in any of paragraphs (1) through (4) of section 10(a) of Title 9." 42 U.S.C. § 300gg-111(c)(5)(E)(i) (emphasis added). Title 9, Section 10 of the United States Code contains the four well-known statutory grounds for vacating an arbitration award under the FAA.

Courts, of course, must faithfully apply the law Congress has written.[5] In light of Congress's unambiguous directive, the fact that both cases ostensibly question or attempt to challenge the availability or scope of judicial review as it relates to IDR awards should not favor consolidation. Moreover, such a clear directive obviates any risk of inconsistent rulings if the cases were to proceed separately.

3. Black-letter law dictates that MET is entitled to arbitral immunity, as the complained-of conduct was within the scope of the arbitral process.

The only common defendant in either case—Medical Evaluators of Texas ASO, LLC ("MET")—is entitled to arbitral immunity, a determination the Court can make at the hearing on

[5] *See Kleber v. CareFusion Corp.*, 914 F.3d 480, 482 (7th Cir. 2019) ("If the statutory language is plain, we must enforce it according to its terms. This precept reinforces the constitutional principle of separation of powers, for our role is to interpret the words Congress enacts into law without altering a statute's clear limits." (cleaned up)).

April 21. Regardless, for the reasons explained below, the question of whether MET is entitled to arbitral immunity does not favor, much less necessitate consolidation.

Arbitral immunity is an absolute immunity related to judicial immunity that applies to arbitrators because their role "is functionally equivalent to a judge's role." *Olson v. Nat'l Ass'n of Sec. Dealers*, 85 F.3d 381, 382 (8th Cir. 1996). "Courts have uniformly recognized the doctrine of arbitral immunity, finding that arbitrators ***and organizations that sponsor arbitrations*** are immune from civil liability for acts performed within the scope of the arbitral process." *Bradley v. Logue*, WL 2166722, at *3 (N.D. Ga. July 27, 2006) (emphasis added) (collecting circuit court decisions); *see also Jason v. Am. Arbitration Ass'n*, 62 F. App'x 557, 558 (5th Cir. 2003) ("The organizations that sponsor arbitrations are entitled to immunity from civil liability as well with regard to the tasks that they perform that are integrally related to arbitration."). Without question, allegations that MET applied an illegal presumption in favor of Aetna's or Kaiser's QPA(s) fall squarely under acts performed within the scope of the arbitral process.

Plaintiff attempts to weave together a sinuous argument that MET is not entitled to arbitral immunity because the NSA's IDR process is not a true arbitration. While this argument is without merit, even if Plaintiff were correct, its claim against MET still must be dismissed. Per the NSA's express terms, an IDR award "shall not be subject to judicial review," except in cases described in Section 10 of the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i); *see also Smith v. Shell Chem. Co.*, 333 F. Supp. 2d 579, 583 (M.D. La. 2004) ("The [FAA] provides the exclusive remedy for challenging misconduct in the administration of an arbitration award."). Section 10, in turn, provides only that a court may "make an order vacating the award" and, "in its discretion, direct a rehearing by the

arbitrators." *See* 9 U.S.C. § 10(a)–(b). Thus, in the event Plaintiff is entitled to relief, such relief does not affect MET's entitlement to arbitral immunity.[6]

In sum, while MET's entitlement to arbitral immunity may fall under the general guise of a "common question of law," the question has been answered ad nauseam by countless courts. A common question with an obvious, well-settled answer is not grounds to consolidate. Nonetheless, the Court can decide that MET is entitled to arbitral immunity at the April 21 hearing, thereby removing it from consideration when addressing Plaintiff's motion to consolidate.

4. Plaintiff's allegations in this case differ markedly from those of the plaintiffs in *Kaiser*, thereby further distinguishing the legal issues.

Central to Aetna's motion to dismiss ("MTD") is its argument that Plaintiff's pleading provides no factual basis from which fraud can be inferred and, thus, fail to satisfy Rule 9(b)'s heightened pleading requirement. *See* Dkt. 12 at 14–18; Dkt. 19 at 1–3; *see also Lone Star Ladies Inv. Club v. Schlotzsky's Inc.*, 238 F.3d 363, 368 (5th Cir. 2001) ("Rule 9(b) applies by its plain language to all averments of fraud, whether they are part of a claim of fraud or not."). Plaintiff's generalized allegations are a blatant effort to plead an exception to the FAA's extremely limited scope of judicial review. *See Antwine v. Prudential Bache Secur., Inc.*, 899 F.2d 410, 413 (5th Cir. 1990) ("[j]udicial review of an arbitration award is extraordinarily narrow"); *see also Mantle v. Upper Deck Co.*, 956 F. Supp. 719, 726 (N.D. Tex. 1997) (Fitzwater, J.) ("The standard of review for arbitration awards has been described as 'among the narrowest known to the law.'" (citation omitted)).

[6] In its complaint, Guardian Flight asks the Court, should it vacate the IDR award, to "direct MET to assign a different reviewer to rehear its claim" and that "the new reviewer be informed not to apply the illegal presumption in favor of the QPA." Dkt. 1 at 19. Setting aside whether this relief is even available under the FAA, such court-ordered relief has no impact on MET's entitlement to arbitral immunity.

Although both Plaintiff and the *Kaiser* plaintiffs ostensibly argue that vacatur is appropriate under multiple FAA grounds, the plaintiffs' arguments principally focus on 9 U.S.C. § 10(a)(1)—where the arbitration award is procured through corruption, fraud, or undue means. And while both Aetna and Kaiser are accused of securing the arbitration award through "misrepresentations" and "undue means"—the plaintiffs' misguided effort to try to plead around the FAA's strict limits on judicial review—the factual bases for these allegations vary markedly and strongly counsel against consolidation. *See Arroyo*, 90 F.R.D. at 605 (denying motion to consolidate employment-discrimination claims because "the alleged acts of the defendants in each particular case upon which the plaintiffs' claims rest are indeed different to each one of them"); *see also Apana v. Fairmont Hotels & Resorts (U.S.), Inc.*, 2009 WL 975779, at *2 (D. Haw. Apr. 8, 2009) ("Beyond the basic fact pattern, there are several factual differences between the cases which . . . render the legal issues in each case distinguishable.").

The *Kaiser* plaintiffs challenge six separate IDR awards. According to their complaint, in three instances, the QPA that Kaiser submitted to the arbitrator (allegedly) *actually differed* from what Kaiser had represented to the plaintiffs (again, allegedly) was the appropriate out-of-network rate during the open-negotiation period. *See Kaiser*, Dkt. 1 at 15–17; *see also Kaiser*, Dkt. 28 at 14. The *Kaiser* plaintiffs claim they learned of this (alleged) misconduct via the arbitrator's written award, which disclosed Kaiser's QPA. *See Kaiser*, Dkt. 1 at 16–17. Based largely on these three alleged instances, the *Kaiser* plaintiffs allege: "Upon information and belief, none of the [six] QPAs being calculated by Kaiser [were] done so accurately or in accordance with federal law. These actions were taken in bad faith and to secure an undue advantage in the IDR process." *Kaiser*, Dkt. 1 at 21–22.

Here, in stark contrast, Plaintiff alleges upon information and belief—without providing any factual basis for its belief—that Aetna submitted a fraudulently misleading QPA because Aetna's QPA calculation was "improbably low" when compared to Aetna's historical out-of-network rate[7] and Plaintiff's own in-network rates. Dkt. 1 at 13 (emphasis omitted). Armed with nothing but its own suspicion, Plaintiff proclaims: "Upon information and belief, Aetna's QPA does not comply with the statutory requirements of the NSA." *Id*.

In a vacuum, Plaintiff's allegations demonstrate nothing but its own belief that the arbitration award should have been a few thousand dollars more, and, therefore, Aetna *must* have submitted an inaccurate and misleading QPA. Without question, such conclusory allegations fail to demonstrate *any* factual basis—much less a reasonable factual basis—for Plaintiff's belief.[8] *See Wexner v. First Manhattan Co*., 902 F.2d 169, 172 (2d Cir. 1990) ("Where pleading is permitted on information and belief, a complaint must adduce **specific facts supporting a strong inference of fraud or it will not satisfy even a relaxed pleading standard**." (emphasis added)). But when viewed in conjunction with the allegations in *Kaiser*, it's not difficult to divine where Plaintiff found inspiration for its unfounded belief.

[7] In its MTD, Aetna addresses Guardian Flight's apples-to-oranges comparison of Aetna's historical out-of-network rate *before* the NSA's enactment and the QPA in this case. *See* Dkt. 12 at 17 n.13.

[8] What's more, Aetna has submitted evidence proving that the explanation of benefits (EOB) for the medical claim at issue—which it sent to Guardian Flight months before the open-negotiation period commenced—contained the *exact same* calculation and payment breakdown ($31,965.53) as its QPA, which the arbitrator ultimately selected. *Compare* Dkt. 19-2 (EOB), *with* Dkt. 12-2 (IDR award); *see also* Dkt. 19 at 1–2 n.2. Aetna has also submitted evidence proving that it *did* provide Guardian Flight with information concerning its QPA calculation—information Guardian Flight alleges it requested but never received. *See* Dkt. 19 at 1–2 n.3.

While the conclusory allegations in *Kaiser* are speculative and still fail to satisfy federal pleading standards, Kaiser's alleged conduct has no bearing on this case.[9] Thus, consolidation will "create a likelihood of prejudice by confusing the issues." *See Liberty Lincoln Mercury*, 149 F.R.D. at 81 ("Where the evidence in one case is not relevant to the issues in the other, consolidation would create a likelihood of prejudice by confusing the issues." (quotation omitted)). These concerns far outweigh whatever slight judicial economy might be achieved through consolidation. *See Cantrell*, 999 F.2d at 1011 ("Conservation of judicial resources is a laudable goal. However, if the savings to the judicial system are slight, the risk of prejudice to a party must be viewed with even greater scrutiny.").

5. It is well settled that errors of law are not grounds for vacatur.

Plaintiff attempts to repackage its unremarkable argument concerning the arbitrator's application of a presumption in favor of Aetna's QPA into a "novel" question of law. *See* Dkt. 27 at 5. However, the Fifth Circuit has repeatedly held that even grave errors of law or fact are not bases for vacatur under the FAA. *See Kergosien v. Ocean Energy, Inc.*, 390 F.3d 346, 356 (5th Cir. 2004) ("[T]he failure of an arbitrator to correctly apply the law is not a basis for setting aside an arbitrator's award."); *Pfeifle v. Chemoil Corp.*, 73 F. App'x 720, 722 (5th Cir. 2003) ("[A]n arbitrator's erroneous interpretation of law or facts is not a basis for vacatur of an award.").

While the NSA may be new, Plaintiff's argument is not. This argument lacks any depth and is sufficiently addressed in Aetna's MTD papers. *See* Dkt. 12 at 10–11; Dkt. 19 at 4–5.

[9] *See, e.g., Denney*, 1992 U.S. Dist. LEXIS 13372, at *4 ("[D]espite similarities in the legal principles to be applied, the fact-finding in these actions will involve entirely distinct events. . . . Under these circumstances, individual factual issues would predominate and consolidation would result in confusion rather than judicial economy.").

B. Alternatively, the Court should defer ruling on Plaintiff**'s motion to consolidate until it decides the pending motions to dismiss.**

In light of the pending dispositive motions, Aetna alternatively asks the Court to defer ruling on the motion to consolidate until it first rules on the pending motions to dismiss. *See, e.g., In re Plains All Am. Pipeline, L.P. Sec. Litig.*, 2016 U.S. Dist. LEXIS 65601, at *4 ("In light of the many pending, dispositive motions, consolidation under Rule 42 is premature at this time. The motion to consolidate, is denied, subject to reurging if the actions sought to be consolidated survive the motions to dismiss." (internal citations omitted)).

CONCLUSION

Whatever common questions of law or fact that may exist are far too attenuated to justify consolidation. *See Hasman*, 106 F.R.D. at 461 ("When cases involve some common issues but ***individual issues*** predominate, consolidation should be denied."). Indeed, any perceived overlap between the two cases is superficial, and attempting to consolidate on such peripheral grounds is nothing more than a misguided attempt at forum shopping.

The IDR award involving Aetna is factually and legally distinct from the IDR awards at issue in *Kaiser*; thus, allegations or evidence relevant to the IDR awards in *Kaiser* have absolutely no bearing on the lone IDR award at issue in this case. Accordingly, consolidation would unnecessarily "create a possibility of prejudice by confusing the issues." *See Liberty Lincoln Mercury*, 149 F.R.D. at 81 ("Where the evidence in one case is not relevant to the issues in the other, consolidation would create a likelihood of prejudice by confusing the issues." (quotation omitted)); *Arroyo*, 90 F.R.D. at 605 (denying motion to consolidate employment-discrimination claims because "the alleged acts of the defendants in each particular case upon which the plaintiffs' claims rest are indeed different to each one of them"); *see also Banacki*, 276 F.R.D. at 573 ("although the various cases may share one common issue . . . this is not sufficient to justify

consolidation"); *Walter E. Heller & Co. v. Tuscarora Cotton Mill*, 18 Fed. R. Serv. 2d 861 (M.D.N.C. 1974) ("Any common issues of fact will relate to collateral matters only. This, alone, cannot justify consolidation."). Further, given that each IDR award must be analyzed individually to determine whether vacatur is even available under the FAA, much less appropriate, no measure of economy or convenience would be achieved by consolidating these actions.

Because Plaintiff has failed to demonstrate that consolidation is proper, Aetna respectfully requests the Court deny Guardian Flight's motion to consolidate. In the alternative, Aetna respectfully requests the Court defer ruling on Guardian Flight's motion to consolidate until it has decided the pending motions to dismiss. *See* Dkt. 8 and Dkt. 12.

Respectfully submitted,

By: */s/ John B. Shely*_____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on April 3, 2023. 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/ John B. Shely
John B. Shely