

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

REACH Air Medical Services, LLC, et al.,

Plaintiffs,

v.

Kaiser Foundation Health Plan Inc., et al.,

Defendants.

Case No. 4:22-cv-03979

**DEFENDANT KAISER FOUNDATION HEALTH PLAN INC.'S REPLY IN SUPPORT
OF ITS MOTION TO DISALLOW DISCOVERY IN THIS MATTER, OR
ALTERNATIVELY, FOR A STAY OF DISCOVERY PENDING RESOLUTION OF
KAISER'S MOTION TO DISMISS**

TABLE OF CONTENTS

	<u>Page</u>
I. STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING	1
II. ISSUES TO BE RULED ON BY THE COURT	1
III. SUMMARY OF ARGUMENT	1
IV. ARGUMENT	3
A. At a Minimum, This Court Should Rule on Kaiser’s Motion to Dismiss Before Permitting Discovery to Proceed.	3
B. Kaiser’s Motion Is Consistent with the Strict Discovery Limits Imposed by the FAA, Which Is Expressly Incorporated into the NSA.	5
C. Plaintiffs Ignore the Standards Governing a Motion to Vacate or Confirm an Arbitration Award Under the FAA.	8
D. Plaintiffs’ Discovery Requests Are Not “Narrowly Tailored.”	9
E. Plaintiffs Seek an Unfair Competitive Advantage through Their Discovery Requests.	10
F. Kaiser’s Motion Is Timely.	12
V. CONCLUSION.....	13

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Bell v. Koch Foods of Mississippi, LLC</i> 358 F. App'x 498 (5th Cir. 2009)	5
<i>Cheminova A/S v. Griffin LLC</i> 182 F. Supp. 2d 68 (D.D.C. 2002)	6
<i>Corwin v. Marney, Orton Invs.</i> 843 F.2d 194 (5th Cir. 1988)	3
<i>Garber v. Sir Speedy, Inc.</i> 1996 WL 734947 (N.D. Tex. Dec. 11, 1996)	8
<i>Guardian Flight, LLC v. Aetna Health Inc. et al.</i> No. 4-22-CV-3805 (S.D. Tex. Nov. 1, 2022)	9
<i>Hoelt v. MVL Group, Inc.</i> 343 F.3d 57 (2d Cir. 2003).....	7
<i>Imperial Ethiopian Gov't v. Baruch-Fister Corp.</i> 535 F.2d 334 (5th Cir. 1976)	6
<i>Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara</i> 364 F.3d 274 (5th Cir. 2004)	7
<i>Landry v. Air Line Pilots Ass'n Int'l AFL-CIO</i> 901 F.2d 404 (5th Cir.), cert. denied, 111 S. Ct. 244 (1990).....	4
<i>In re Motors Liquidation Co.</i> 2010 WL 4449425 (S.D.N.Y. Oct. 29, 2010).....	6
<i>Norman v. Travelers Ins. Co.</i> No. 3:19-CV-2351, 2019 WL 6250782 (N.D. Tex. Nov. 22, 2019)	5
<i>O.R. Sec., Inc. v. Prof'l Planning Assocs., Inc.</i> 857 F.2d 742 (11th Cir. 1988)	8
<i>Petrus v. Bowen</i> 833 F.2d 581 (5th Cir. 1987)	4
<i>Salzgitter Mannesmann International (USA) Inc. v. Sun Steel Co. LLC</i> 304 F.3d 1331 (11th Cir. 2002)	7

Samsung Elecs. Co., Ltd. v. Texas Instruments Inc.
 1996 WL 343330 (N.D. Tex. 1996).....8

Spray Drift Task Force v. Burlington Bio-Med. Corp.
 429 F. Supp. 2d 49 (D.D.C. 2006).....6

Thomas v. Union Carbide Agr. Prod. Co.
 473 U.S. 568 (1985).....6

Trans Chem. Ltd. v. China Nat’l Mach. Import & Export Corp.
 978 F. Supp. 266 (S.D. Tex. 1997), *aff’d and adopted*, 161 F.3d 314 (5th Cir. 1998)8, 9

Vantage Deepwater Co. v. Petrobras Am., Inc.
 966 F.3d 361 (5th Cir. 2020)5, 6, 9

Yeti Coolers v. LLC v. Magnum Solace, LLC
 2016 WL 10571903, at *1 (W.D. Tex. Oct. 19, 2016).....4

ZF Auto. US, Inc. v. Luxshare, Ltd.
 142 S. Ct. 2078 (2022).....5, 9

Statutes

7 U.S.C. § 136.....6

9 U.S.C. § 6.....8

42 U.S.C. § 300gg-1111, 5, 12

42 U.S.C. § 300gg-1129, 10

Other Authorities

Fed. R. Civ. P. 26.....8, 9

I. STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING

Plaintiffs REACH Air Medical Services, LLC, et al. (“Plaintiffs”) filed their complaint on November 16, 2022. (Dkt. 1.) Defendant Kaiser Foundation Health Plan, Inc. (“Kaiser”) moved to dismiss on January 31, 2023. (Dkt. 25.) Plaintiffs filed their response in opposition to Kaiser’s motion to dismiss on February 16, 2023. (Dkt. 28.) Kaiser filed its motion to disallow, or alternatively, to stay discovery pending resolution of Kaiser’s motion to dismiss (“motion to disallow”) on February 24, 2023. (Dkt. 29.) Plaintiffs filed their response to Kaiser’s motion to disallow on March 17, 2023. (Dkt. 33.)

II. ISSUES TO BE RULED ON BY THE COURT

Kaiser moves for an order disallowing discovery in this matter, or in the alternative, to stay discovery pending disposition of Kaiser’s motion to dismiss.

III. SUMMARY OF ARGUMENT

Plaintiffs’ response to Kaiser’s motion to disallow disregards key principles core to the framework of the Federal Arbitration Act (“FAA”), which is expressly incorporated into the No Surprises Act (“NSA”). 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). It also ignores the fact that Plaintiffs seek discovery well outside the scope of the NSA, including Kaiser’s *confidential agreements with Plaintiffs’ competitors*, which Kaiser is not even required to provide to an IDR entity in an underlying IDR arbitration. Through their discovery requests (and four nearly identical lawsuits filed in Texas and Florida), Plaintiffs attempt to evade the NSA and FAA’s highly limited standard for judicial review. But as Plaintiffs expressly admit, discovery is prohibited in IDR arbitrations because of the highly confidential nature of the materials disclosed in each party’s submission. Kaiser’s confidential materials include, for example, highly confidential competitor rate agreement information to which Plaintiffs do not have access. Allowing Plaintiffs to discover

this information would give Plaintiffs a significant competitive advantage that Plaintiffs would leverage against Kaiser immediately in ongoing IDR disputes. This Court should grant Kaiser's motion to disallow discovery, or at the very least, stay discovery until it rules on the pending motion to dismiss. Kaiser files this reply to address six specific points raised in Plaintiffs' response:

First, at a minimum, this Court should rule on Kaiser's motion to dismiss before allowing discovery to proceed, consistent with Fifth Circuit authority and the rulings in Plaintiffs' parallel lawsuits in the Middle District of Florida.

Second, Kaiser's motion to disallow is consistent with the strict discovery limits imposed by the FAA, which is expressly incorporated into the NSA. In addition, Courts interpret statutory arbitration schemes to fit within existing arbitration law, even where the statutory arbitration does not expressly mention the FAA.

Third, Plaintiffs ignore the standards governing a motion to vacate or confirm an arbitration award under the FAA, which limit discovery and require a plaintiff to file a motion supported by evidence rather than a complaint.

Fourth, Plaintiffs seek information that **not even the IDR entity** is permitted to consider in an underlying IDR dispute. As such, contrary to Plaintiffs' assertion, their requests are not "narrowly tailored."

Fifth, Plaintiffs refuse to acknowledge the significant unfair competitive advantage they would gain from their discovery requests, which cannot be remedied by a protective order. Kaiser's submissions include information regarding Kaiser's confidential agreements with Plaintiffs' competitors—highly commercially sensitive information that Plaintiffs can use against Kaiser both in the IDR context and when negotiating with Kaiser to reach a possible network

agreement. Plaintiffs likely do not include information regarding their own contracts in their submissions, because a provider's contracts are not part of the health plan's QPA calculation under the NSA. Because Kaiser's confidential agreements with Plaintiffs' competitors form the basis of the QPA, even a mutual exchange of confidential offer narrative submissions will disproportionately harm Kaiser. A protective order limiting such discovery to outside counsel's eyes only will not remedy this issue, because Plaintiffs' attorneys are the *very same lawyers* who prepare and submit Plaintiffs' confidential IDR submissions, and advise Plaintiffs on strategic business considerations relating to the IDR process.

Finally, because Kaiser raised these issues in the parties' joint discovery and case management plan filed on January 5, 2023, Kaiser's motion is timely.

IV. ARGUMENT

A. **At a Minimum, This Court Should Rule on Kaiser's Motion to Dismiss Before Permitting Discovery to Proceed.**

As an initial matter, Plaintiffs notably repeat numerous arguments they have raised in their response to Kaiser's pending motion to dismiss. (Dkt. 28.) This shows precisely why the Court should rule on Kaiser's motion to dismiss before allowing discovery to proceed in this matter. Granting Kaiser's motion to dismiss may entirely obviate discovery. Thus, at a minimum, a discovery stay is appropriate to prevent the parties from expending time and resources from unnecessary discovery.

Courts in the Fifth Circuit regularly stay discovery pending disposition of preliminary questions that may dispose of the case. *See Corwin v. Marney, Orton Invs.*, 843 F.2d 194, 200 (5th Cir. 1988) (citations omitted) (confirming trial court's discretion to stay discovery pending decision on a dispositive motion because "[i]t would be wasteful to allow discovery on all issues raised in a broad complaint when, for example, the case will not reach trial because of the

expiration of a limitations period”); *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987) (“A trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined”); *Landry v. Air Line Pilots Ass’n Int’l AFL-CIO*, 901 F.2d 404, 435 (5th Cir.) (finding district court did not abuse its discretion by staying discovery, and recognizing that “[d]iscovery is not justified when cost and inconvenience will be its sole result”), *cert. denied*, 111 S. Ct. 244 (1990). Consistent with this precedent, in the related Florida lawsuits, the court already *sua sponte* stayed discovery pending motions to dismiss **at least** until determining whether the complaint was properly pled. (Dkt. 29, Exh. C [Jan. 17 tr.] at 25:23–25.) This is consistent with the Fifth Circuit’s observation that “no discovery [is] needed to resolve . . . motions to dismiss.” *Landry*, 901 F.2d at 435.

In their opposition, Plaintiffs fail to address any of this authority, instead summarily arguing that a stay is unwarranted because the federal rules do not “**automatically**” stay discovery whenever discovery is filed. (Dkt. 33, at 9 (emphasis added), citing *Yeti Coolers v. LLC v. Magnum Solace, LLC*, 2016 WL 10571903, at *1 (W.D. Tex. Oct. 19, 2016)). Plaintiffs miss the mark. Kaiser is not arguing for a stay as an automatic operation of law, but on well-reasoned and substantive grounds, including Plaintiffs’ attempt to seek competitively sensitive information that is confidential in the IDR submissions.

Further, this case is readily distinguishable from *Yeti*. *Yeti* involved trademark and unfair competition claims, not issues previously decided in arbitration. Thus, unlike the facts in *Yeti*, “good cause” exists to stay discovery when a party seeks “commercially valuable” information it was not otherwise entitled to discover in the underlying arbitration. *See id.*; Dkt. 29, Exh. A [Plaintiffs’ Motion to Redact in the Florida lawsuits] at 2, 5.

B. Kaiser’s Motion Is Consistent with the Strict Discovery Limits Imposed by the FAA, Which Is Expressly Incorporated into the NSA.

Disallowing discovery is consistent with the overall purpose of both the FAA and NSA. IDR submissions are confidential, and in fact, even Plaintiffs have compared them to trade secrets. That is why discovery is only permitted in cases challenging arbitration awards in extremely limited circumstances—none of which are present here.

Plaintiffs baldly state that “*no* authority” supports disallowing discovery in a motion to confirm or vacate an IDR award *under the NSA*—a brand-new statute that is simply too recent to have significant judicial history. (Dkt. 33, at 7.) But that argument disregards the numerous cases affirming denial of discovery in disputes *under the FAA*, which is expressly incorporated into the NSA and has been scrutinized by hundreds of federal courts since its inception in 1925. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II); *ZF Auto. US, Inc. v. Luxshare, Ltd.*, 142 S. Ct. 2078, 2088 (2022) (explaining that, while different forums may allow for comprehensive discovery, the FAA *limits* discovery); *Vantage Deepwater Co. v. Petrobras Am., Inc.*, 966 F.3d 361, 372–73 (5th Cir. 2020) (recognizing the strict limits that apply when a party seeks to challenge an award subject to the FAA, holding that the party seeking discovery has the burden of “showing its necessity[,]” and disallowing a party’s discovery requests).

Indeed, in cases challenging or confirming arbitration awards, “courts have generally denied arbitration-related discovery absent a compelling showing that such discovery is required.” *Norman v. Travelers Ins. Co.*, No. 3:19-CV-2351, 2019 WL 6250782, at *2 (N.D. Tex. Nov. 22, 2019); *see also Bell v. Koch Foods of Mississippi, LLC*, 358 F. App’x 498, 501 (5th Cir. 2009) (affirming district court’s denial of discovery in case challenging arbitration award because permitting discovery in the case “would defeat the FAA’s requirement of summary and speedy disposition of motions and petitions”). As the Fifth Circuit has recognized, “[the] right to pursue

discovery [is] not an unqualified one,” and “[t]he loser in arbitration cannot freeze the confirmation proceedings in their tracks and indefinitely postpone judgment by merely requesting discovery.” *Imperial Ethiopian Gov’t v. Baruch-Fister Corp.*, 535 F.2d 334, 337 (5th Cir. 1976).

Plaintiffs fail to meaningfully address these cases whatsoever,¹ and instead argue that the FAA “only applies to agreements between parties that involve interstate commerce or maritime activities.” (Dkt. 33, at 7.) Plaintiffs are wrong. Courts interpret statutory arbitration schemes to “fit within existing arbitration law[,]” such as the FAA. *Cheminova A/S v. Griffin LLC*, 182 F. Supp. 2d 68, 74 (D.D.C. 2002). The NSA is not the only statute that mandates arbitration of disputes. Another example is FIFRA.² 7 U.S.C. § 136a(c)(1)(F)(iii). Significantly, however, FIFRA does not adopt (or even mention) the FAA. *Id.* Nonetheless, courts still apply the FAA standard when parties seek review of FIFRA arbitration awards. *Spray Drift Task Force v. Burlington Bio-Med. Corp.*, 429 F. Supp. 2d 49 (D.D.C. 2006), is illustrative. There, in rejecting a challenge to a FIFRA arbitration award, the court applied FAA’s three-month limit for challenging an arbitration award, despite the fact that FIFRA does not adopt (or even mention) the FAA. *Id.* at 50. Here, where the FAA is expressly referenced in the NSA, it is even clearer that the FAA standards apply. Plaintiffs’ attempt to limit the obvious applicability of the FAA fails.

¹ Plaintiffs summarily claim that *Vantage Deepwater Co.* supports its argument. However, Plaintiffs fail to acknowledge that the court in *Vantage Deepwater Co.* actually affirmed a district court’s denial of discovery, and held that “[t]he loser in arbitration cannot freeze the confirmation [or vacatur] proceedings in their tracks and indefinitely postpone judgment by merely requesting discovery.” *Vantage Deepwater Company v. Petrobras Am., Inc.*, 966 F.3d 361, 373 (5th Cir. 2020). Plaintiffs do not address Kaiser’s other cases whatsoever.

² *Thomas v. Union Carbide Agr. Prod. Co.*, 473 U.S. 568 (1985) (upholding a statutory scheme in the Federal Insecticide Fungicide and Rodenticide Act (“FIFRA”) that required disputes to be decided by arbitration); *In re Motors Liquidation Co.*, 2010 WL 4449425, at *5 (S.D.N.Y. Oct. 29, 2010) (explaining Congress enacted the Dealer Arbitration Act to create an expedited, mandatory arbitration process).

The other cases Plaintiffs cite are equally unavailing. Plaintiffs cite *Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274 (5th Cir. 2004), for the proposition that courts take a “flexible and practical approach” when determining what discovery to allow in the context of an arbitration award confirmation or vacatur proceeding. (Dkt. 33, at 9.) This oversimplifies the law. The court in *Karaha Bodas Co.* explained that this inquiry “**is necessarily keyed to the specific issues** raised by the party challenging the award,” and that a district court may not “simply rely on vague assertions that additional discovery will produce needed, but unspecified, facts.” *Karaha Bodas Co., L.L.C.*, 364 F.3d at 305 (emphasis added). Here, the specific issues relevant to the award—namely, the highly confidential and commercially valuable nature of the information sought by Plaintiffs—demonstrate that at a minimum, a stay of discovery is appropriate until the Court rules on Kaiser’s motion to dismiss. Further, as Plaintiffs expressly recognize when citing to *Karaha Bodas Co.*, courts must “assess the impact of granting such discovery on the arbitral process.” *Id.*; Dkt. 33, at 9. The impact of allowing Plaintiffs to access to Kaiser’s confidential arbitration submissions in a process **designed by Congress and its implementing agencies** to be confidential would subvert the intended structure of IDR disputes.

Plaintiffs’ other authorities are similarly unpersuasive. *Hoelt v. MVL Group, Inc.*, expressly recognizes that a “**district court has discretion to deny discovery in a proceeding to confirm an arbitral award.**” 343 F.3d 57, 66 (2d Cir. 2003) (emphasis added). The court in *Salzgitter Mannesmann International (USA) Inc. v. Sun Steel Co. LLC*, exercised its discretion to allow “**limited**” discovery into an arbitrator’s direct personal connection to the law firm that represented Plaintiff in the underlying arbitration dispute. 2022 WL 3041134, at *1 (S.D. Tex. Aug. 2, 2022). *University Commons-Urbana, Ltd. v. Universal Constructors Inc.*, 304 F.3d 1331, 1339 (11th Cir. 2002), similarly dealt with alleged arbitrator bias. None of those facts are present

here. Nothing in the complaint indicates any possible bias by MET towards Kaiser. Plaintiffs' requests are an improper attempt to leverage the discovery process to bolster their positions in related IDR arbitrations—a tactic disfavored by courts. *See Samsung Elecs. Co., Ltd. v. Texas Instruments Inc.*, 1996 WL 343330, at *3 (N.D. Tex. 1996).

C. Plaintiffs Ignore the Standards Governing a Motion to Vacate or Confirm an Arbitration Award Under the FAA.

Plaintiffs rely on Rule 26 to argue that Kaiser, not Plaintiffs, must demonstrate why discovery should be disallowed or stayed. But, as fully briefed in Kaiser's motion to dismiss (Dkt. 25), this argument ignores the procedural impropriety of Plaintiffs' complaint to vacate an arbitration award under the FAA.

The FAA clearly requires that a party seeking to challenge an arbitration award must file a motion to vacate rather than a complaint. 9 U.S.C. § 6 (“Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions . . .”). In a case recognized and adopted by courts within the Fifth Circuit, the Eleventh Circuit emphasized that “[t]he manner in which an action to vacate an arbitration award is made is obviously important, for the nature of the proceeding affects the burdens of the various parties [and] the rule of decision to be applied by the district court.” *O.R. Sec., Inc. v. Prof'l Planning Assocs., Inc.*, 857 F.2d 742, 745 (11th Cir. 1988); *accord Garber v. Sir Speedy, Inc.*, 1996 WL 734947, at *5 (N.D. Tex. Dec. 11, 1996). Even when erroneously brought in the form of a complaint, “the burden of dismissing the complaint [is] on the party defending the arbitration award.” *O.R. Sec.*, 857 F.2d at 745.

Here, Plaintiffs attempt to sidestep their heavy burden to establish the existence of a specific statutory ground for vacatur by improperly bringing their action in the form of a complaint. *See Trans Chem. Ltd. v. China Nat'l Mach. Import & Export Corp.*, 978 F. Supp. 266,

303 (S.D. Tex. 1997), *aff'd and adopted*, 161 F.3d 314 (5th Cir. 1998) (“A party moving to vacate an arbitration award has the burden of proof.”). By using this tactic, Plaintiffs improperly attempt to shift the burden onto Kaiser to demonstrate why discovery should be disallowed or stayed. Within the context of the FAA, it is Plaintiffs’ burden to establish why discovery is warranted, not Kaiser’s. *See Vantage Deepwater Co. v. Petrobras Am., Inc.*, 966 F.3d 361, 372 (5th Cir. 2020); *ZF Auto. US, Inc. v. Luxshare, Ltd.*, 142 S. Ct. 2078, 2088 (2022).

Plaintiffs also miscite Judge Alfred Bennett’s comments during the March 3, 2023 hearing in Plaintiffs’ affiliated Southern District of Texas case,³ recognizing that the “default” is that “discovery is allowed,” and initially allowing discovery to go forward as to Aetna. (Dkt. 33, Chang Decl., Exh. F at 13:20-24 and 19:19–22.) While broad discovery is typically permitted in standard federal lawsuits subject to Rule 26, suits to confirm or vacate arbitration awards are not afforded the same latitude. *See Vantage Deepwater Co.*, 966 F.3d at 373. Further, Judge Bennett expressly recognized that the March 3 hearing was simply an “initial conference,” and noted that he would not conduct a “deep, deep dive” at that time, but would instead set a motion hearing “sometime in the near future to do a deeper dive.” (Dkt. 33, Chang Decl., Exh. F at 7:16-20.)

D. Plaintiffs’ Discovery Requests Are Not “Narrowly Tailored.”

The discovery sought by Plaintiffs is not “narrowly tailored,” as Plaintiffs claim. Plaintiffs seek, among other things, information relating to Kaiser’s QPA calculation and methodology. (Dkt. 29, Exh. E.) Health plans are required to inform providers of the QPA for the services at issue in an IDR dispute, but the providers are *not* entitled to discover the underlying contracts and rates that form the QPA. 42 U.S.C. § 300gg-112(b)(5)(C)(i)(I). Providers are similarly not entitled to discover the methodology utilized by the health plan when calculating its QPA. *See id.* Indeed,

³ *Guardian Flight, LLC vs. Aetna Health Inc. et al.*, No. 4-22-CV-3805 (S.D. Tex. Nov. 1, 2022).

even an IDR entity is not permitted to consider whether a health plan calculated its QPA correctly *in the underlying IDR arbitration*,⁴ and any concerns regarding a health plan’s QPA must be directed to CMS, not litigated in court.⁵ Plaintiffs are simply not entitled to “attempt[] to verify whether Kaiser is following the rules”—that authority rests solely with the implementing agencies.⁶ Further, as recognized by the court in the Middle District of Florida, Plaintiffs’ requests are not “narrow[]”, but instead seek “*everything you would want*” in a typical federal lawsuit. (Dkt. 29, Exh. C [Jan. 17 hearing transcript] at 29–30:25–27.) Plaintiffs’ argument to the contrary fails. In addition, Kaiser reiterates that Plaintiffs’ arguments concerning the substance of its discovery requests are *exactly* the type of discovery disputes that Kaiser attempted to avoid by filing its motion to dismiss and subsequent motion to disallow or stay discovery. Plaintiffs’ argument is improper and premature.

E. Plaintiffs Seek an Unfair Competitive Advantage through Their Discovery Requests.

The discovery Plaintiffs seek would provide them an unfair advantage in all future IDR arbitrations involving Kaiser, particularly because Plaintiffs seek discovery well outside the scope of the NSA, including Kaiser’s *confidential agreements with Plaintiffs’ competitors*, which Kaiser is not even required to provide to an IDR entity in an underlying IDR arbitration. Plaintiffs have expressly acknowledged that parties to an IDR arbitration are not entitled to discover the materials submitted by the other party in support of its offer in IDR proceedings,⁷ and that IDR

⁴ CMS Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties, Section 7.2, (Mar. 17, 2023), <http://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf>.

⁵ *Id.* Section 6.1.2.

⁶ *Id.*

⁷ Dkt. 1, at 26.

submissions constitute competitively sensitive information—*the very same information* Plaintiffs seek in discovery. This is particularly true for a health plan’s submissions (versus a provider’s), because Kaiser voluntarily includes information in its submissions regarding Kaiser’s confidential agreements with Plaintiffs’ competitors, to which Plaintiffs do not have access. Plaintiffs likely do not include information regarding their own contracts in their submissions, because a provider’s contracts are not part of the health plan’s QPA calculation under the NSA. Thus, even a mutual exchange of confidential offer narrative submissions will disproportionately harm Kaiser. This unfair advantage cannot be remedied with a protective order because Plaintiffs’ lawyers have admitted that they are the *very same counsel* who prepares and submits Plaintiffs’ confidential IDR submissions. (Dkt. 29, Exh. A, at 2.)

Plaintiffs refuse to acknowledge the gravity of Kaiser disclosing such information to the *very same attorneys* who prepare confidential offer narratives on Plaintiffs’ behalf in hundreds of ongoing IDR disputes, and advise Plaintiffs on strategic business decisions relating to the IDR process. (Dkt. 29, Exh. A, at 2; Exh. B, at 2.) Instead, Plaintiffs argue that a protective order preventing this information from reaching *the public at large* will adequately assuage Kaiser’s concerns. (Dkt. 33 at 5.) But that is no remedy for the significant competitive disadvantage Kaiser will face as Plaintiffs’ lawyers continue to prepare Plaintiffs’ ongoing IDR offer narratives *after* viewing Kaiser’s own confidential submissions. Plaintiffs further argue that this threat will be “neutralized” once Kaiser gains access to Plaintiffs’ own confidential submission. But again, even if Plaintiffs agree to exchange their submissions with Kaiser, allowing parties to run to court and access arbitration submissions defeats the purpose of a “black-box” process specifically designed by Congress to be *efficient and final*. (Dkt. 1, at 26); 42 U.S.C. § 300gg-111(c)(3)(A); *id.* § 300gg-111(c)(4)(E). If Congress or the implementing agencies intended parties to conduct

discovery in IDR disputes, they would have stated so. Plaintiffs cannot abuse the judicial process to pull the curtain back on a health plan's confidential offer narrative submissions any time they lose in IDR.

F. Kaiser's Motion Is Timely.

Finally, there is no merit to Plaintiffs' argument that Kaiser raised its motion to disallow or stay at the "eleventh hour." As Plaintiffs are well aware, Kaiser expressly addressed these issues in the parties' *joint* discovery and case management plan filed on January 5, 2023—well before the January 17, 2023 hearing that Plaintiffs complain about. (Dkt. 13.) In that filing, Kaiser repeatedly stated that it "*it object[ed] to discovery in this case*" in light of "its position(s) in its anticipated Motion to Dismiss"; that "discovery should be stayed pending the Court's ruling on the potentially dispositive issues raised in its forthcoming Motion to Dismiss"; and that "a stay of discovery is appropriate because Plaintiff seeks confidential documents that may provide an unfair advantage to Plaintiff in future IDR arbitrations between the parties." *Id.* at 2, 5–6. Magistrate Judge Sheldon did not hear arguments on these points at the January 17, 2023 hearing—nor did he consider procedural or substantive issues relating to discovery whatsoever—which is why Kaiser did not specifically raise these points at the January 17 hearing. Plaintiffs cannot credibly argue that Kaiser's motion is untimely.

V. CONCLUSION

Plaintiffs are not entitled to relitigate a dispute they already lost in arbitration. This Court should disallow discovery and reject Plaintiffs' attempts to obtain Kaiser's confidential—and highly valuable—information that is not discoverable under the NSA and will give Plaintiffs an unfair advantage in their ongoing IDR submissions. In the alternative, the Court should stay discovery until it has ruled on Kaiser's pending dispositive motion, following Fifth Circuit authority and the rulings in Plaintiffs' parallel lawsuits in Florida.

Dated: March 27, 2023

-and-

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CERTIFICATE OF CONFERENCE

Kaiser certifies that before filing the motion, it met and conferred with Plaintiffs' counsel to determine whether Plaintiffs would agree to the relief sought in Kaiser's motion. Counsel for Kaiser (Jack Burns and Megan McKisson) spoke with Adam Schramek and Abraham Chang, counsel for Plaintiffs, on February 22, 2023.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of March 2023, a true and correct copy of the above and foregoing document has been served on all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system. All others will be served via electronic mail.

/s/ Erica C. Gibbons _____

Erica C. Gibbons