24-10135

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

REACH AIR MEDICAL SERVICES, LLC,

Plaintiff/Appellant,
v.

KAISER FOUNDATION HEALTH PLAN INC.
and C2C INNOVATIVE SOLUTIONS, INC.,

Defendants/Appellees.

Appeal from the United States District Court
for the Middle District of Florida
No. 3:22-cv-01153-TJC-JBT

ANSWER BRIEF OF APPELLEE C2C INNNOVATIVE SOLUTIONS, INC.

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure Rule 26.1 and 11th Circuit Rule 26.1-1(a), Defendant-Appellee C2C Innovative Solutions, Inc., provides this Certificate of Interested Persons and Corporate Disclosure Statement. The following trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations have an interest in the outcome of this appeal:

1. Air Medical Group Holdings, LLC (Parent Company of REACH Air Medical Services LLC)

2. Burns, John F. (Counsel for Defendant-Appellee Kaiser Foundation Health Plan Inc.)

3. C2C Innovative Solutions, Inc. (Defendant-Appellee)

4. Carlton Fields, P.A. (Counsel for Defendant-Appellee C2C Innovative Solutions, Inc.)

5. Cohen, Jeffrey A. (Counsel for Defendant-Appellee C2C Innovative Solutions, Inc.)

6. Corrigan, Timothy J. (U.S. District Judge, United States District Court for the Middle District of Florida)

7. DeGory, Amelia A. (Counsel for Plaintiff-Appellant)

8. Dodd, Christian Edward (Counsel for Defendant-Appellee Kaiser Foundation Health Plan Inc.)

9. Fackler, Michael T. (Former Counsel for Defendant-Appellee C2C Innovative Solutions, Inc.)

10. Giboney, Pierce N. (Counsel for Defendant-Appellee C2C Innovative Solutions, Inc.)

11. Global Medical Response, Inc. (Parent Company of REACH Air Medical Services LLC)

12. Halgren, Matthew G. (Counsel for Defendant-Appellee Kaiser Foundation Health Plan Inc.)

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22. Norton Rose Fulbright US LLP (Counsel for Plaintiff-Appellant)

23. REACH Air Medical Services, LLC (Plaintiff-Appellant)

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28. Spinner, Samuel B. (Counsel for Defendant-Appellee C2C Innovative Solutions, Inc.)

29. Taylor, Charlotte H. (Counsel for Plaintiff-Appellant)

30. TMF Health Quality Institute (Parent Company of Defendant-Appellee C2C Innovative Solutions, Inc.)

31. Toomey, Joel B. (U.S. Magistrate Judge, United States District Court for the Middle District of Florida).

No other persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent or subsidiary corporations, or other legal entities are financially interested in the outcome of this case or appeal.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 16.1 and 11th Circuit Rule 26.1-2, undersigned counsel hereby certifies the following:

1. C2C Innovative Solutions, Inc., is a Texas non-profit corporation wholly owned by TMF Health Quality Institute.

2. No publicly traded company owns any portion of C2C Innovative Solutions, Inc., or TMF Health Quality Institute.

STATEMENT REGARDING ORAL ARGUMENT

C2C submits that this appeal involves issues of first impression regarding the No Surprises Act, including whether a Certified Independent Dispute Resolution Entity ("CIDRE") is a proper party to an action seeking vacatur of an arbitration award and whether a CIDRE is entitled to arbitral immunity. Oral argument would assist the panel in deciding these novel issues.

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STATEMENT OF THE ISSUES

I. Whether the district court correctly determined that a CIDRE is not a proper party to an action for vacatur of a CIDRE's arbitration award.

II. Whether a CIDRE is entitled to arbitral immunity in a suit challenging its decisional acts.

STATEMENT OF THE CASE

What happens when a patient receives costly medical services from an out-of-network provider not fully covered by insurance? Until recently, the provider billed the patient for the difference between the amount charged and the amount covered by the patient's insurance, a practice called "balance billing." This practice often left patients with surprise medical bills and severe financial liability.

Congress passed the No Surprises Act ("NSA"), effective January 1, 2022, to eliminate surprise medical bills in several contexts. The NSA accomplishes this goal by prohibiting balance billing, requiring insurers to treat out-of-network providers as in-network, and standardizing the process for resolving payment disputes. More specifically to this case, Congress enacted a section addressing "surprise air ambulance bills," which were of particular concern because patients in emergency situations often have no ability to ensure that the air ambulance and destination hospital are in-network. 42 U.S.C. § 300gg-112; H.R. Rep. No. 116-615, at 51.

As one of its cornerstones, the NSA establishes a binding independent dispute resolution system ("IDR"). If a provider and insurer cannot agree on payment, the dispute is submitted to a certified independent dispute resolution entity ("CIDRE")—a private arbitrator. C2C is one of few CIDREs authorized to arbitrate NSA disputes. Through this arbitration process, the parties submit competing proposed payment amounts and accompanying documentation to the CIDRE, which

chooses one of those amounts to award the provider. The CIDRE's determination is not subject to judicial review except under the limited grounds set forth in the Federal Arbitration Act.

This appeal concerns the proper parties to an IDR award challenge. REACH provided air ambulance services to a patient insured by Kaiser, and the parties proceeded to arbitration after they could not resolve their payment dispute. C2C served as the CIDRE and selected Kaiser's proposed award. REACH filed the underlying action to vacate the award and require a rehearing. (Doc. 1). REACH filed suit not only against Kaiser but C2C as well. (Doc. 1).

The district court dismissed REACH's complaint against C2C, finding that it was not a proper party to the suit. (Doc. 64). REACH challenges that ruling and contends that CIDREs must be hauled into court to defend their decisional acts whenever a litigant seeks to vacate an NSA IDR award.

Contrary to REACH's argument, Congress did not intend for the NSA to subject CIDREs to suit and strip these neutral arbitrators of their right to common law arbitral immunity. Accepting REACH's position would upend decades of precedent and threaten the continued viability of the NSA IDR system at large. The district court properly determined that C2C is not a proper party to the dispute between REACH and Kaiser. This Court should affirm.

STATEMENT OF THE FACTS

A. Overview of the NSA.

Congress passed NSA to lower health care costs and prevent surprise billing in a variety of contexts. The NSA amends the Public Health Services Act, Employee Retirement Income Security Act, and the Internal Revenue Code. *Consolidated Appropriations Act*, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020). This appeal concerns only the amendments to the Public Health Services Act.

The NSA prohibits providers from balance billing patients for amounts not covered by the patient's insurance. 42 U.S.C. § 300gg-131(a)(1)–(2). To that end, the NSA requires that providers directly bill the insurer rather than the patient. *Id.* § 300gg-111(b)(1)(C)–(D), § 300gg–112(b)(6). If an insurer covers in-network providers, it must extend the same cost-sharing benefits to out-of-network providers as well. *Id.* § 300gg-111(a)(1), § 300gg-112(a)(1)–(2).

The NSA standardized the process for resolving medical bill disputes. After receiving a provider's bill, the insurer must issue either an initial payment or a notice of denial within thirty days. *Id.* § 300gg-111(a)(1)(C)(iv)(I), § 300gg-112(a)(3)(A). Either party—but ordinarily the provider—may then initiate an open negotiation period with the other party to resolve the claim. *Id.* § 300gg-111(c)(1)(A), § 300gg-112(b)(1)(A). This negotiation period lasts for thirty days beginning on the date of initiation. *Id.* If the parties still cannot resolve their dispute during that period, either

party can commence the NSA's arbitration process. *Id.* § 300gg-111(c)(1)(B), § 300gg-112(b)(1)(B).

B. Arbitration Under the NSA.

The NSA requires the Secretaries of the Departments of Health and Human Services, Treasury, and Labor (the "Departments") to establish an IDR procedure whereby CIDREs resolve billing disputes between providers and insurers. *Id.* § 300gg-111(c)(2)(A), § 300gg-112(b)(2)(A). The NSA's IDR system is "also referred to as arbitration" and "is mediated by a third-party arbitrator." H.R. REP. 116-615, at 56 (2020).

The NSA establishes baseball-style[1] arbitration: each party submits a proposed payment amount and supporting materials, and the arbitrator must select one of those amounts. 42 U.S.C. § 300gg-111(c)(5)(A)(i), § 300gg-112(b)(5)(A)(i). This system incentives resolution without arbitral intervention and encourages parties to submit reasonable offers if the dispute is arbitrated. *Requirements Related to Surprise Billing*: Part II, 86 Fed. Reg. 55980-01 (Oct. 7, 2021).

IDR entities apply to the Departments for five-year certifications to conduct NSA arbitrations. 42 U.S.C. § 300gg-111(c)(4)(A)–(B). Prospective IDR entities

[1] In baseball style arbitration, "each party puts forward a final offer before knowing about its counterparty's offer, and the arbitrator chooses between those two." *Illumina, Inc. v. Fed. Trade Comm'n*, 88 F.4th 1036, 1056 (5th Cir. 2023) (citation omitted).

must possess sufficient legal and medical expertise. *Id.* § 300gg-111(c)(4)(A). The Departments initially estimated that fifty IDR entities would apply for certification. *See* 86 Fed. Reg. at 56002, n.41. However, only thirteen IDR have been certified, two of which are not currently accepting new disputes. *See List of Certified Dispute Resolution Entities*, CENTERS FOR MEDICARE & MEDICAID SERVICES, https://www.cms.gov/nosurprises/help-resolve-payment-disputes/certified-idre-list (last visited August 21, 2024).

The CIDRE must consider certain factors when selecting one of the parties' proposed awards. 42 U.S.C. § 300gg-111(c)(5)(A)(i), § 300gg-112(b)(5)(C). One such factor is the qualifying payment amount ("QPA"), defined as the "median of the contracted rates recognized by the plan or issuer . . . for the same or a similar item or service that is provided by a provider in the same or similar specialty and provided in the geographic region in which the item or service is furnished[.]" *Id.* § 300gg-111(a)(3)(E). The insurer must furnish the provider with the QPA when it first denies full payment and, upon request, explain to the provider how it calculated the QPA. 45 C.F.R. § 149.140(d).

Other relevant factors for air ambulance services include the: (1) provider's quality and outcomes measurements; (2) complexity of the services furnished; (3) qualifications of the medical personnel; (4) ambulance type; (5) population density of the pickup location; and (6) good faith efforts or lack thereof by the provider and

insurer to enter into network agreements and contract rates during the prior four years. 42 U.S.C. § 300gg-112(b)(5)(C)(ii). The NSA prohibits the CIDRE from considering the usual and customary charges and reimbursement rates for services furnished by public payors, such as Medicare and Social Security. *Id.* § 300gg-111(c)(5)(D), § 300gg-112(b)(5)(C)(iii).

C. The NSA Limits Judicial Review of a CIDRE's Award.

The CIDRE's determination binds the parties "in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the [CIDRE] involved regarding such a claim." *Id.* § 300gg-111(c)(5)(E)(i)(I), § 300gg-112(b)(5)(D). That determination "shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a)" of the Federal Arbitration Act ("FAA"). *Id.* § 300gg-111(c)(5)(E)(i)(II), § 300gg-112(b)(5)(D). That section of the FAA provides for vacatur of arbitration awards only on four limited grounds:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and

> definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a).

D. REACH Sues C2C and Kaiser.

REACH filed a complaint in the district court to vacate an NSA arbitration award issued by C2C, naming both Kaiser and C2C as defendants. (Doc. 1 ¶ 1). REACH alleged that it provided emergency air transport services for a patient insured by Kaiser. (Doc. 1 ¶¶ 3, 14). Unable to resolve their billing dispute, the parties proceeded to IDR. (Doc. 1 ¶ 5). The Departments assigned C2C as the CIDRE, and C2C ultimately selected Kaiser's proposed award. (Doc. 1, ¶ 5).

REACH referred to the IDR system as an "arbitration process" and C2C as the "arbitrator." (Doc. 1 ¶¶ 2, 5). REACH also alleged that the Departments certified "arbitration entities" to preside over the "arbitration" of payment disputes between providers and insurers. (Doc. 1 ¶ 16).

REACH requested vacatur of the arbitration award on two grounds. First, it alleged Kaiser improperly secured the award by creating two different QPAs and submitting the lower one to C2C to imply that it offered to pay REACH more than the QPA. (Doc. 1 ¶ 37). Second, it alleged C2C exceeded its powers by employing an improper presumption[2] in favor of the QPA. (Doc. 1 ¶ 38). REACH requested

[2] In October 2021, the Departments issued an Interim Final Rule establishing a "rebuttable presumption that the QPA is the appropriate payment amount."

that the district court vacate the "arbitration award" and order a rehearing. (Doc. 1 ¶¶ 39, 43–44).

C2C moved to dismiss Kaiser's complaint based on common law arbitral immunity. (Doc. 19 at 5–6). This doctrine recognizes the similarities between arbitrators and judges, whose decisional acts are not subject to lawsuits by disgruntled litigants. (Doc. 19 at 6). C2C argued that REACH challenged C2C's decisional acts by alleging that C2C applied an improper presumption in Kaiser's favor, a claim to which arbitral immunity applies. (Doc. 19 at 6–7).

C2C also argued that REACH lacked Article III standing because the parties had no case or controversy between them. (Doc. 19 at 9). C2C was adverse to neither REACH nor Kaiser, and it took no position as to the merits of their dispute. (Doc. 19 at 10). C2C had no stake in the outcome of the case because either its original arbitration award would stand, or it would arbitrate the matter a second time if the district court ordered rehearing. (Doc. 19 at 10).

Requirements Related to Surprise Billing: Part II, 86 Fed. Reg. 55980-01 (Oct. 7, 2021). Several plaintiffs, including providers of air ambulance services, successfully challenged this presumption. *Tex. Med. Ass'n v. United States Dep't of Health & Hum. Servs.*, 587 F. Supp. 3d 528, 549 (E.D. Tex. 2022). In August 2022—after REACH filed suit in this case—the Departments issued a Final Rule establishing new procedures for CIDREs to follow when selecting an award. *See Requirements Related to Surprise Billing*, 87 Fed. Reg. 52,618 (Aug. 26, 2022). Those procedures were likewise challenged and vacated. *Tex. Med. Ass'n v. United States Dep't of Health & Hum. Servs.*, 654 F. Supp. 3d 575, 595 (E.D. Tex. 2023). The Fifth Circuit recently affirmed. *Tex. Med. Ass'n v. United States Dep't of Health & Hum. Servs.*, No. 23-40217, 2024 WL 3633795 (5th Cir. Aug. 2, 2024).

The United States filed a statement of interest supporting C2C's motion to dismiss, arguing that CIDREs are not proper parties to suits challenging awards issued through NSA arbitration. (Doc. 58 at 1). The United States reasoned that the NSA does not create a cause of action against CIDREs and prohibits judicial review except when permitted under the FAA. (Doc. 58 at 12). The United States also argued that C2C had arbitral immunity because it was a neutral actor with no stake in REACH's suit. (Doc. 58 at 13). Lastly, the United States cautioned that subjecting CIDREs to suit would threaten the continued viability of the NSA IDR system because the costs of defending litigation vastly outweigh the CIDRE's compensation. (Doc. 58 at 17–18).

REACH responded that arbitral immunity does not apply in NSA proceedings. (Doc. 25 at 2). Despite referring to C2C as the "arbitrator" and IDR as "arbitration" throughout its complaint, REACH contended that C2C was "not an arbitrator, and the IDR process is not arbitration." (Doc. 25 at 5). REACH argued that NSA IDR is mandatory, unlike other forms of arbitration, and the parties cannot select the individual arbitrator. (Doc. 25 at 6–9). REACH also contended that immunity applies only to claims for monetary relief, not equitable relief. (Doc. 25 at 21–23).

C2C replied that the NSA IDR system is a form of arbitration even if it does not mirror traditional arbitration procedures in all respects. (Doc. 29 at 2–3). C2C

also noted that other statutes, including the Railway Labor Act, compelled binding arbitration under certain circumstances. (Doc. 29 at 4–5).

E. The District Court Dismisses REACH's Complaint.

The district court dismissed REACH's complaint with prejudice as to C2C, stating: "The NSA creates a limited right to judicial review of IDR decisions. It does not, however, create a cause of action to sue the IDR entity itself. *See* 42 § 300gg-111(c)(5)(E)(i). Nothing suggests that IDR entities are proper parties to suit under the NSA, so here the inquiry ends." (Doc. 64 at 20). The district court also dismissed REACH's complaint as to Kaiser. (Doc. 64).

The district court separately entered final judgment for C2C and Kaiser. (Doc. 70). This appeal followed. (Doc. 71).

SUMMARY OF THE ARGUMENT

The district court correctly dismissed REACH's complaint against C2C for two reasons. First, the district court properly interpreted the NSA as not authorizing suit against a CIDRE when seeking vacatur of the CIDRE's award on the grounds set forth in the FAA. Cases addressing vacatur claims under the FAA routinely hold that arbitrators are not proper parties to such actions. Contrary to REACH's contention, the district court can provide appropriate relief to the provider and/or insurer without requiring the CIDRE's participation as a defendant.

This Court should reject REACH's attempt to circumvent this law by alleging for the first time on appeal that C2C's award is a final agency action subject to review under the Administrative Procedure Act ("APA"). REACH neither sought relief under the APA nor raised this argument in opposition to C2C's motion to dismiss. In any event, the NSA forecloses judicial review of a CIDRE's award except under the FAA, thus precluding alternative review under the APA. Even were judicial review available under the APA, C2C is not an "agency" subject to suit because it is a private entity that lacks substantial independent government authority.

Second, the district court's dismissal of C2C is further supported by arbitral immunity. Every circuit court to consider this longstanding common law doctrine has adopted it and shielded arbitrators from suits challenging their decisional acts. While REACH highlights differences between the NSA's IDR system and other

forms of arbitration, this system is nonetheless a type of arbitration. REACH sued C2C in a vacatur action challenging the arbitration award, and the caselaw is legion that arbitral immunity applies under these circumstances.

Under either approach, C2C is not an indispensable, necessary, or proper party to REACH and Kaiser's dispute. For these reasons, this Court should affirm the district court's dismissal of C2C in all respects.

ARGUMENT

I. The NSA Does Not Authorize Suit Against a CIDRE.

The district court correctly interpreted the NSA in ruling that C2C is not a proper party to REACH's vacatur action. The NSA authorizes judicial review of a CIDRE's determination but does not contemplate, much less mandate, suit against the CIDRE itself. The district court could have provided necessary relief to the only interested parties to the dispute—REACH and Kaiser—without C2C's presence.

A. C2C is Not a Proper Defendant.

No provision of the NSA requires suit against a CIDRE when challenging an IDR award. The NSA confirms that a CIDRE is not a proper party by providing that its determination "shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of [the FAA]." § 300gg-111(c)(5)(E)(i)(II), § 300gg-112(b)(5)(D).

Under this incorporated FAA provision, "[n]either an arbitral association nor its employees are a proper party to a petition to vacate an arbitration award." *Fernandez v. Wells Fargo Sec., LLC*, 2014 WL 11776952, at *2 (S.D. Fla. Dec. 29, 2014); *see also London v. Fin. Indus. Regul. Auth., Inc.*, 2023 WL 6388206, at *5 (N.D. Ill. Sept. 29, 2023) (dismissing complaint against arbitrator who "was not a party to the underlying arbitration, nor is it a proper party to [plaintiff]'s equitable claims."). Arbitrators simply are "not indispensable, necessary, or proper parties to

the litigation." *Conner v. Am. Arb. Ass'n*, 310 F. App'x 611, 612 (4th Cir. 2009).[3]

REACH fails to demonstrate that Congress intended to alter this landscape when it incorporated section 10(a) of the FAA into the NSA. Congress presumably knew of these decisions finding that arbitrators and sponsoring organizations are not proper parties to and are otherwise immune from suit when it enacted the law. *See generally Gilmer v. Interstate/Johnson Lane Corp.*, 895 F.2d 195, 199 (4th Cir. 1990) ("In enacting the FAA and the ADEA, Congress must have been aware of the respective spheres of judicial and arbitral authority and it expressed no intention that the latter be displaced"). Congress also limited judicial review to the CIDRE's "determination," which indicates no intent to require suit against the CIDRE itself. Congress could have, but did not, expressly provide that a party seeking judicial review of a CIDRE's determination must name the CIDRE as a defendant in the action, which FAA jurisprudence does not require.

REACH nonetheless argues that the CIDRE "must be present so the court can order remedies such as vacatur and remand." (Init.Br. 49). But section 10 authorizes the district court to vacate an arbitration award and direct a rehearing. 9 U.S.C. § 10. As set forth above, numerous decisions recognize that the arbitrator need not be a

[3] As discussed in Section II, *supra*, myriad courts dismissed similar complaints based on arbitral immunity either separately or in addition to a "proper party" analysis. *See Pfannenstiel v. Merrill Lynch, Pierce, Fenner & Smith*, 477 F.3d 1155, 1158–59 (10th Cir. 2007) (collecting cases).

party to the action for the district court to afford the same relief REACH requested below. Courts in the District of New Jersey, for example, have considered NSA IDR award challenges without the CIDRE's presence. *See GPS of N.J. M.D., P.C. v. Horizon Blue Cross & Blue Shield*, 2023 WL 5815821, at *1 (D.N.J. Sept. 8, 2023) (denying provider's motion to vacate CIDRE's arbitration award); *GPS of N.J. MD, P.C. v. Aetna, Inc.*, 2024 WL 414042, at *1 (D.N.J. Feb. 5, 2024) (same).

REACH identifies no legitimate basis to conclude that the NSA impliedly requires parties to name the CIDRE as a defendant when challenging an NSA IDR award. C2C has neither an interest in defending the lawsuit nor a stake in its outcome. The law prohibits C2C from vacating its award after issuance. *See, e.g.*, *Int'l Bhd. of Elec. Workers, Local Union 824 v. Verizon Fla., LLC*, 803 F.3d 1241, 1245 (11th Cir. 2015) (common law doctrine *functus officio* bars arbitrators from revisiting awards). Consequently, C2C cannot settle the suit by unilaterally deciding to revise or rehear the award. The district court has the sole power to issue relief.

Further, C2C must comply with the district court's decision vacating an arbitration award just like the district court must comply with this Court's mandate. C2C need not be a party to the vacatur action for the same reason the district court need not be a party to this appeal. *See Int'l Med. Grp., Inc. v. Am. Arb. Ass'n, Inc.*, 312 F.3d 833, 843 (7th Cir. 2002) (analogizing suing an arbitrator to suing a jury, which is not necessary to challenge the jury's verdict). Had the district court vacated

the award and directed rehearing, C2C would simply arbitrate the matter a second time. C2C has never contended that it could refuse to abide by such an order. In the unlikely event a CIDRE refused to rehear a dispute, the parties could request that the Departments assign a different CIDRE or take other appropriate action.

Allowing disgruntled litigants to sue a CIDRE when challenging an arbitration award does nothing more than force the CIDRE to incur legal defense costs in a case it has no independent ability to resolve. REACH acknowledged that C2C charged only $349 for the arbitration. (Doc. 1, ¶ 15). Requiring C2C and other CIDREs to participate in these suits would be cost prohibitive and threaten the continued viability of the NSA IDR system at large. Only eleven CIDREs currently accept NSA disputes—significantly fewer than the fifty entities the Departments envisioned—and none of them would participate were they sued every time a litigant challenged one of the hundreds of thousands of NSA IDR awards issued each year. *See Tamari v. Conrad*, 552 F.2d 778, 781 (7th Cir. 1977) (reasoning that arbitrators should not be "caught up in the struggle between the litigants and saddled with the burdens of defending a lawsuit").

REACH also did not shy from its intent to intimidate C2C through this litigation, lamenting that it has "lost every dispute the departments have submitted to C2C." (Doc. 1, ¶ 20). It accuses C2C of "partiality" and "prejudicial misbehavior." (Doc. 1, ¶ 38). Suing C2C in a vacatur action is not the proper vehicle for airing

these grievances. If REACH truly has these concerns, the NSA authorizes it to file a petition seeking to revoke a CIDRE's certification based on a "pattern or practice of noncompliance with the requirements" set forth therein. *See* 42 U.S.C. § 300gg-111(c)(4)(C). The NSA does not, as the district court correctly ruled, permit REACH to sue C2C when challenging the arbitration award. This Court should affirm.

B. C2C's Arbitration Award is Not a Final Agency Action.

REACH raises a novel argument that C2C is a proper defendant because its IDR determination constituted a final agency action under the Administrative Procedure Act ("APA"). This Court should not address this new issue because REACH did not seek review under the APA. On the merits, REACH's argument fails because the NSA does not permit judicial review of a CIDRE's determination except under the FAA. Even were judicial review permitted, C2C is not a proper party to that action because it is not an "agency" as defined by the APA.

1. REACH Failed to Rase this Issue Below.

This Court should decline to consider this new issue because REACH did not raise it in the district court. *See Chabad Chayil, Inc. v. Sch. Bd. of Miami-Dade Cnty.*, 48 F.4th 1222, 1233 (11th Cir. 2022) ("We do not consider arguments raised for the first time on appeal" (quoting *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004))). A party can cite new authorities in support of an argument asserted below, but it cannot "raise a new legal ground as the reason it should win

(a new issue)." *ECB USA, Inc. v. Chubb Ins. Co. of N.J.*, No. 22-10811, 2024 WL 3611583, at *5 (11th Cir. Aug. 1, 2024). REACH does the latter here.

REACH filed suit under the NSA and the FAA. (Doc. 1, ¶ 10). It alleged that the district court had subject matter jurisdiction pursuant to the NSA and the Declaratory Judgment Act. (Doc. 1, ¶ 11). REACH brought no claim under the APA alleging that C2C was an agency whose arbitration award was a final agency action subject to judicial review. Nor did REACH raise this argument in response to C2C's motion to dismiss. This Court should not permit REACH to challenge the district court's dismissal based on the assertion that it could have brought a different claim under a different statute with a different standard for relief.

Furthermore, determining whether a party qualifies as an "agency" under the APA is a fact-intensive analysis. *See In re Gideon, Inc.*, 158 B.R. 528, 531 (Bankr. S.D. Fla. 1993). This Court should decline to undergo that analysis for the first time on appeal when REACH did not seek relief under the APA, much less litigate the threshold agency question in the district court.

2. The NSA Prohibits Judicial Review of a CIDRE's Determination Under the APA.

In any event, REACH's argument is incorrect on the merits. According to REACH, no provision of the NSA "indicates a Congressional intent to preclude either judicial review or equitable relief" under the APA or otherwise. (Init. Br. 52). REACH contends, therefore, that it can challenge the arbitration award under the

APA's procedure, in which suit is brought against the agency at issue.

This argument contradicts the NSA's plain language providing that a CIDRE's determination "shall not be subject to judicial review" except under the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II), § 300gg-112(b)(5)(D). The APA itself authorizes judicial review *unless* a statute "expressly or impliedly forbids the relief which is sought." 5 U.S.C. § 702. The NSA expressly forbids relief from a CIDRE's award outside the confines of the FAA provisions it incorporates, which limitation must encompass APA review as well. *See Guardian Flight LLC v. Health Care Serv. Corp.*, 2024 WL 2786913, at *4 (N.D. Tex. May 30, 2024) (interpreting the NSA as "almost entirely forbidding judicial review of IDR decisions"); *FHMC LLC v. Blue Cross & Blue Shield of Az. Inc.*, 2024 WL 1461989, at *3 (D. Ariz. Apr. 4, 2024) (rejecting argument that NSA authorizes private right of action not subject to section 10(a) as "incongruous with such a detailed statutory scheme, in which judicial review is limited to specific instances").

Allowing REACH to sidestep the NSA's limited grounds for vacatur would violate the NSA's letter and spirit. Judicial review under the FAA is "among the narrowest known to the law." *Gherardi v. Citigroup Glob. Mkts. Inc.*, 975 F.3d 1232, 1237 (11th Cir. 2020) (quoting *Bamberger Rosenheim, Ltd. v. OA Dev., Inc.*, 862 F.3d 1284, 1286 (11th Cir. 2017)). The court's limited review "focuses on misconduct rather than mistake." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333,

350–51 (2011); *see also Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671 (2010) ("It is not enough for petitioners to show that the [arbitrators] committed an error—or even a serious error.").

The APA, on the other hand, authorizes relief for agency actions that are merely an "abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. § 706(2)(A). This is a materially different standard than the NSA mandates and, therefore, cannot serve as an alternative vehicle to challenge an IDR award. *See*, *e.g.*, *Tex. Brine Co., L.L.C. v. Am. Arb. Ass'n, Inc.*, 955 F.3d 482, 487 (5th Cir. 2020) (FAA provided sole remedy because "purportedly independent claims are not a basis for a challenge if they are disguised collateral attacks on the arbitration award").

Accordingly, this Court should reject REACH's argument that judicial review is available under the APA. Congress foreclosed all other avenues to review a CIDRE's arbitration award. Since the APA's procedure does not apply, C2C is not a proper defendant to REACH's vacatur action.

3. C2C is Not an Agency Under the APA.

Even if the APA authorized judicial review of CIDRE's determination, REACH still has not shown that the CIDRE is a proper defendant because it is not an "agency" to which the APA applies. The CIDRE's sole responsibility under the NSA is to arbitrate provider-insurer billing disputes. That limited duty, subject to significant overview by the Departments, does not rise to the level of substantial

independent governmental authority necessary to constitute an agency.

The APA defines an "agency" as the "authority of the Government of the United States." 5 U.S.C. § 701(b)(1). When a person suffers a legal wrong due to an agency action, they are entitled to seek judicial review. *Id.* § 702. The proceeding for judicial review may be brought against the United States, the agency, or an appropriate officer. *Id.* § 703. The APA permits review of a "final agency action," but not a "preliminary, procedural, or intermediate agency action." *Id.* § 704.

A private entity can qualify as an agency for APA purposes, but only if it "exercises 'substantial independent [government] authority.'" *Callahan v. United States Dep't of Health & Hum. Servs.*, 939 F.3d 1251, 1265 (11th Cir. 2019) (alteration in original) (quoting *Dong v. Smithsonian Inst.*, 125 F.3d 877, 881 (D.C. Cir. 1997)). The caselaw does not, however, "support the proposition that the exercise of *any* independent authority, however confined, converts an entity into an 'authority of the Government of the United States.'" *Dong*, 125 F.3d at 882.

For example, in *Walkwell International Laboratories, Inc. v. Nordian Administrative Services, LLC*, 2014 WL 174948 (D. Idaho Jan. 13, 2014), the district court dismissed an APA claim against Noridian—a Medicare administrative contractor that received federal funds. *Id.* at *5. The court reasoned that "the fact that CMS created the role of PDAC contractor does not mean Noridian is a federal agency because even where the government has established a government position

or federal entity, such government action does not transform the government position or federal entity into an APA agency." *Id.* The court also emphasized that Noridian was subordinate to CMS notwithstanding its authority to render coding determinations. *Id.*

Several other courts determined that private entities were not agencies under the APA. *See Elec. Privacy Info. Ctr. v. Nat'l Sec. Comm'n on Artificial Intel.*, 466 F. Supp. 3d 100, 110 (D.D.C. 2020) (National Security Commission on Artificial Intelligence is not an agency); *Flaherty v. Ross*, 373 F. Supp. 3d 97, 106 (D.D.C. 2019) (fishery management council is not an agency); *Byers v. Intuit, Inc.*, 564 F. Supp. 2d 385, 413–14 (E.D. Pa. 2008) (private companies charging taxpayers fees for electronic tax preparation and filing services are not agencies).

REACH shies away from directly arguing that CIDREs are agencies, suggesting they "arguably qualify." (Init. Br. 49). But CIDREs are not governmental entities; they are private companies that, at least in C2C's case, offer other services in addition to NSA arbitrations. CIDREs do not regulate or enforce the NSA or independently enact rules. The Departments retain the power to certify and decertify IDR entities, audit QPAs, investigate complaints, and otherwise supervise the NSA IDR system. 42 U.S.C. § 300gg-111(a)(2)(A)–(B); 45 C.F.R. § 149.510(e).

The CIDREs' sole responsibility under the NSA is to arbitrate billing disputes. That alone does not constitute substantial independent government authority, and

REACH identifies no authority holding otherwise. So even if the APA allowed judicial review of an NSA IDR award, C2C is not an agency and, therefore, not a proper party to that challenge.

4. C2C is Not a Proper Party to a Constitutional Challenge.

REACH alternatively argues that if the CIDRE is not an "agency" under the APA, then the Departments are agencies because they ratify the CIDRE's arbitration award. But if neither the CIDRE nor the Departments are agencies in this context, REACH contends that the NSA IDR system is "likely unconstitutional" due to improper delegation of authority to a private entity. (Init. Br. 50).

The district court correctly determined that a vacatur action "is not the proper vehicle to challenge the NSA, its regulations, or how it is being administered by the implementing agencies." (Doc. 64 at 16 n.7). Insofar as REACH preserved this argument below, any such challenge should be brought against the Departments, not against one of countless insurers and one of thirteen CIDREs. *See, e.g.*, *Tex. Med. Ass'n*, 587 F. Supp. 3d at 533 (considering challenge to NSA's regulations in action against the Departments). C2C is not the proper party to defend the NSA's constitutionality.

II. C2C is Entitled to Arbitral Immunity.

The district court correctly dismissed REACH's complaint because C2C is not a proper party to the action, but the dismissal is correct for an additional reason: arbitral immunity. Courts nationwide uniformly recognize arbitral immunity as a necessary shield against challenges to the arbitrator's decision-making process. This doctrine applies to the NSA IDR system, which is a form of arbitration. Because REACH sued C2C to challenge its decisional acts in connection with the arbitration, C2C is entitled to arbitral immunity as a matter of law.

A. Federal Law Recognizes Arbitral Immunity.

Arbitral immunity derives from judicial immunity. The Supreme Court "has pronounced and followed the common law judicial immunity doctrine for more than a century," which provides that a judge bears no civil liability "for a judicial act taken within his court's jurisdiction." *Cleavinger v. Saxner*, 474 U.S. 193, 199 (1985). This immunity extends to those with roles "functionally comparable" to a judge. *Butz v. Economou*, 438 U.S. 478, 513 (1978). Arbitrators and jurors had immunity at common law because they are tasked with "resolving disputes between parties, or of authoritatively adjudicating private rights." *Burns v. Reed,* 500 U.S. 478, 500 (1991) (Scalia, J., concurring in judgment in part and dissenting in part).

Because an arbitrator's role "is functionally equivalent to a judge's role, courts of appeals have uniformly extended judicial and quasi-judicial immunity to

arbitrators." *Olson v. Nat'l Ass'n of Sec. Dealers*, 85 F.3d 381, 382 (8th Cir. 1996) (collecting cases). "The policies underlying arbitral immunity parallel those underlying judicial immunity-to protect decision makers from undue influence and to protect the integrity of the decision-making process." *Galuska v. N.Y. Stock Exch.*, 210 F.3d 374, 374 (7th Cir. 2000); *see also New England Cleaning Servs., Inc. v. Am. Arb. Ass'n,* 199 F.3d 542, 545 (1st Cir. 1999) (arbitral immunity is essential to protect arbitrators "from reprisals by dissatisfied litigants").

Arbitral immunity is deeply entrenched in federal law. Every circuit to consider the doctrine has adopted it. *See Hutchins v. Am. Arb. Ass'n,* 108 F. App'x 647, 648 (1st Cir. 2004); *Austern v. Chicago Bd. of Options Exch., Inc.,* 898 F.2d 882, 886–87 (2d Cir. 1990); *Great W. Min. & Mineral Co. v. ADR Options, Inc.*, 434 F. App'x 83, 87 (3d Cir. 2011); *Cecala v. NationsBank Corp.*, 40 F. App'x 795, 798 (4th Cir. 2002); *Smith v. Am. Arb. Ass'n, Inc.*, 166 F. App'x 109, 110 (5th Cir. 2006); *Corey v. N.Y. Stock Exch., Inc.,* 691 F.2d 1205, 1209–10 (6th Cir. 1982); *Int'l Med. Grp., Inc.,* 312 F.3d at 844; *Honn v. Nat'l Ass'n of Sec. Dealers, Inc.*, 182 F.3d 1014, 1017 (8th Cir. 1999); *Narula v. Orange Cnty. Super. Ct.*, 2022 WL 17500721, at *1 n.5 (9th Cir. Dec. 8, 2022); *Pfannenstiel*, 477 F.3d at 1158–59.

Arbitral immunity applies to arbitrators, arbitration forums, sponsoring organizations, and their employees. *Fernandez*, 2014 WL 11776952, at *2. Failing to extend immunity to these entities would render the doctrine "almost meaningless

because liability would simply be shifted from individual arbitrators to the sponsoring organization." *Olson*, 85 F.3d at 383; *see also Corey*, 691 F.2d at 1211 ("Extension of arbitral immunity to encompass boards which sponsor arbitration is a natural and necessary product of the policies underlying arbitral immunity.").

This Court and the D.C. Circuit are the only circuit courts to neither adopt nor disavow arbitral immunity. This Court's sole reference to the doctrine appears in *Brandon, Jones, Sandall, Zeide, Kohn, Chalal & Musso, P.A. v. MedPartners, Inc.*, 312 F.3d 1349 (11th Cir. 2002) (*Brandon, Jones II*), in which this Court decided the case on other grounds, and therefore, declined to address whether arbitral immunity applied to a claim for injunctive relief. *Id.* at 1359; *see also Tucker v. Citigroup Glob. Mkts. Inc.*, 2007 WL 2071502, at *3 (M.D. Fla. July 17, 2007) (interpreting *Brandon, Jones II* as neither recognizing nor foreclosing arbitral immunity).

District courts within this circuit, however, uniformly apply the doctrine: "It is well-settled under both Florida and federal law that arbitrators have such immunity." *Montford v. Pryor*, 2024 WL 3157628, at *9 (S.D. Fla. June 25, 2024), *report and recommendation adopted*, 2024 WL 3354698 (S.D. Fla. July 10, 2024); *Precision Mech., Inc. v. Karr*, 2005 WL 3277966, at *8 (M.D. Fla. Dec. 2, 2005) (dismissing complaint based on arbitral immunity); *Bradley v. Logue*, 2006 WL 2166722, at *3 (N.D. Ga. July 27, 2006) (same); *Fernandez*, 2014 WL 11776952, at *2 (same); *accord Cherdak v. Am. Arb. Ass'n Inc.*, 443 F. Supp. 3d 134, 155 (D.D.C.

2020) (collecting cases within the D.C. Circuit applying arbitral immunity).

This Court should take the occasion to align itself with every other circuit court addressing this issue, as well as district courts within this circuit, by expressly recognizing arbitral immunity. The unanimous nationwide weight of authority agrees that immunity is essential to protect arbitrators from both undue influence and harassment by litigants for the same reasons judicial immunity so protects judges. And as set forth in Section I.A., *infra*, subjecting CIDREs to suit is cost prohibitive and threatens the viability of the NSR IDR system at large.

B. The NSA IDR System is Arbitration.

REACH does not contend that this Court should completely reject the concept of arbitral immunity. Instead, it argues that arbitral immunity does not apply because the NSA IDR system is not arbitration. (Init. Br. 53). REACH highlights differences between the NSA's procedures and other forms of arbitration, primarily the lack of a contractual agreement to arbitrate, as well as the absence of traditional discovery and hearings. But despite these differences, the NSA IDR system is nonetheless a type of arbitration to which arbitral immunity principles apply.

REACH emphasizes that the terms "arbitration" and "arbitrator" do not appear in the NSA (Init. Br. 53). That is misleading because the NSA incorporates section 10(a) of the Federal *Arbitration* Act, a provision that refers to "arbitration" and "arbitrators" throughout. *See* 9 U.S.C. § 10(a). Congress would not have

incorporated the FAA into a dispute resolution system that was not arbitration at all. *See Dluhos v. Strasberg*, 321 F.3d 365, 370 (3d Cir. 2003) ("If a dispute-resolution mechanism indeed constitutes arbitration under the FAA, then a district court may vacate it only under exceedingly narrow circumstances."). Moreover, if CIDREs are not "arbitrators," vacatur would be impossible under subsections (2)–(4), all of which address improper actions by the "arbitrators." 9 U.S.C. § 10(a).

Even if the NSA's incorporation of the FAA did not clearly render the IDR system a type of arbitration, the legislative history confirms that Congress intended for arbitration of billing disputes. *See* H.R. REP. 116-615, at 56 (NSA IDR is "also referred to as arbitration" and "is mediated by a third-party arbitrator"). The Departments likewise refer to the IDR process as "Baseball-Style Arbitration" in guidance documents for CIDREs. *Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities*, U.S. DEPT. OF HEALTH & HUMAN SERVICES, https://www.hhs.gov/guidance/document/federal-independent-dispute-resolution-idr-process-certified-idr-entities-revised (last visited Aug. 21, 2024).

Courts addressing the NSA routinely refer to the NSA IDR system as "arbitration" and CIDREs as "arbitrators." In *Texas Medical Association*, the Fifth Circuit used those terms throughout its opinion and explained that the NSA IDR system is baseball-style arbitration. 2024 WL 3633795, at *2; *see also GPS of N.J. MD, P.C.*, 2024 WL 414042, at *1 (NSA IDR is "arbitration" and the CIDRE is the

"arbitrator"); *FHMC LLC*, 2024 WL 1461989, at *1 (same); *Neurological Surgery Practice of Long Island, PLLC v. United States Dep't of Health & Hum. Servs.*, 682 F. Supp. 3d 249, 255 (E.D.N.Y. 2023) (same).

While NSA IDR is streamlined arbitration, it is arbitration nonetheless as Congress, the Departments, and the courts have recognized. REACH itself referred to the IDR system as "arbitration" and C2C as the "arbitrator" throughout its complaint. It was not until C2C filed its motion to dismiss that REACH contradicted its own allegations and asserted that C2C was "not an arbitrator, and the IDR process is not arbitration." (Doc. 25 at 5). Magic words aside, REACH also does not suggest what the NSA IDR system is if not a form of arbitration.

Furthermore, the differences between arbitration under the NSA and other forms of arbitration do not warrant an exception to arbitral immunity. Congress has the authority to structure the IDR system as it sees fit, and it chose baseball-style arbitration. Whether other forms of arbitration provide for additional discovery or other procedures does not render the NSA IDR system so unlike arbitration that CIDREs are not "arbitrators" and do not enjoy common law immunity in suits challenging their awards. REACH fails to articulate why the underlying rationales for immunity—protecting arbitrators from improper influence and harassment—apply to all other arbitrators except CIDREs. Nor does REACH explain why the fact that NSA IDR is mandatory, not voluntary, justifies subjecting CIDREs to suit.

It bears emphasis that Congress did not provide for traditional discovery procedures and hearings under the NSA IDR system for good reason. Congress enacted the NSA to facilitate efficient claim resolution and reduce costs to patients, providers, and insurers. The CIDRE has only thirty days to render its determination after receiving the parties' competing offers, whereas other forms of arbitration drag on for months, if not years. *Measuring the Costs of Delays in Dispute Resolution*, AMERICAN ARBITRATION ASSOCIATION, https://go.adr.org/impactsofdelay.html (last visited Aug. 21, 2024) (AAA arbitration lasts over 11 months on average).

Rather than requiring protracted discovery and litigation in every medical bill dispute, the NSA dictates the factors that the CIDRE must and must not consider and authorizes the parties to submit any additional relevant information. *Id.* § 300gg-111(c)(5)(C), § 300gg-112(b)(5)(C). The CIDRE chooses one of the parties' proposals rather than fashioning its own remedy, facilitating efficient resolution. *Tex. Med. Ass'n*, 2024 WL 3633795, at *2 n.8 (citing Jeff Monhait, *Baseball Arbitration: An ADR Success*, 4. HARV. J. SPORTS & ENTM'T L. 105, 133 (2013)).

At bottom, the NSA IDR system requires a quasi-judicial entity with requisite medical and legal expertise to resolve a dispute between private parties by reviewing their submissions, applying specified factors, and rendering a binding award. That is arbitration. *See BMC Indus., Inc. v. Barth Indus., Inc.*, 160 F.3d 1322, 1337 (11th Cir. 1998) ("[W]e adhere to the time-tested adage: if it walks like a duck, quacks

like a duck, and looks like a duck, then it's a duck."). Because the NSA IDR system is a form of arbitration, CIDREs are entitled to arbitral immunity.

C. This Court Should Reject the *Guardian Flight* Decision.

C2C acknowledges that a court in the Southern District of Texas disagreed with the district court's order in this case and ruled that a CIDRE was not entitled to arbitral immunity. *Guardian Flight, LLC v. Aetna Health, Inc.*, 2024 WL 484561 (S.D. Tex. Jan. 5, 2024). Curiously, although REACH was a party in *Guardian Flight*, it does not cite the decision in its Initial Brief.

In *Guardian Flight*, the court consolidated two actions between providers and insurers—including REACH and Kaiser—in which the providers sought vacatur of the CIDRE's awards. *Id.* at *1. The providers also sued the CIDRE, which moved to dismiss based on arbitral immunity. *Id.* at *7. The court denied the motion and found that arbitral immunity did not apply because the NSA does not expressly refer to CIDREs as "arbitrators." *Id.* The court also reasoned that the CIDRE is a proper defendant because paragraphs (2)–(4) of FAA section 10(a) authorize vacatur based on arbitrator misconduct. *Id.* n.4.

Guardian Flight was erroneously decided for several reasons. First, it is of no moment that the NSA does not use the terms "arbitrator" or "arbitration" because it incorporates an FAA provision using those terms. The Fifth Circuit implicitly rejected *Guardian Flight's* reasoning in *Texas Medical Association* by referring to

NSA IDR as "arbitration" and CIDREs as "arbitrators" throughout its opinion. *See* 2024 WL 3633795, at *1–12. Congress, the Departments, and other courts recognize that NSA IDR is baseball-style arbitration.

Second, Congress need not expressly incorporate arbitral immunity into the NSA, which it also has not done under the FAA. Just the opposite is true: Congress should have expressly *abrogated* common law immunity if it did not want to extend that protection to CIDREs. *See United States v. Texas*, 507 U.S. 529, 534 (1993) ("In order to abrogate a common-law principle, the statute must speak directly to the question addressed by the common law" (citation omitted)).

Lastly, CIDREs are not proper parties to vacatur actions under the FAA even though awards can be vacated based on improper arbitrator conduct. *See, e.g.*, *Capeheart v. Astrue*, 2009 WL 902429, at *5 (D. Mont. Mar. 27, 2009). For these reasons, and as more fully set forth in Section II.B, *infra*, this Court should follow the district court and reject the *Guardian Flight* decision.

D. Arbitral Immunity Applies in Vacatur Actions.

The final question is whether arbitral immunity applies to REACH's vacatur action. REACH argued in the district court that arbitral immunity extends only to claims for money damages, not injunctive or equitable relief. This Court considered a similar argument in *Brandon, Jones II*, in which the plaintiff claimed that immunity did not apply to a claim injunctive relief against an arbitrator. 312 F.3d at 1351–52.

This Court did not reach the merits of that issue but noted a Seventh Circuit opinion applying immunity to injunctive relief. *Id.* at 1359 (citing *Tamari*, 552 F.2d at 778).

This Court should align with other courts applying arbitral immunity in vacatur actions. Unlike the plaintiff in *Brandon, Jones II*, REACH did not seek an injunction preventing C2C from conducting the arbitration; it sought vacatur of the award after arbitration concluded. FAA caselaw applies arbitral immunity to vacatur actions under section 10(a), which is not "injunctive" relief unrelated to the merits of the arbitration award itself. *See, e.g.*, *Fernandez*, 2014 WL 11776952, at *2. Immunity applies with equal force in actions alleging arbitral misconduct under paragraphs (2)–(4) as well. *See Capeheart*, 2009 WL 902429, at *5.

This Court also should focus on the substance of the claim, not its label. The Tenth Circuit applies that approach, considering whether "the claim, regardless of its nominal title, effectively seek[s] to challenge the decisional act of an arbitrator or arbitration panel? If so, then the doctrine of arbitral immunity should apply." *Pfannenstiel*, 477 F.3d at 1159; *see also Honn*, 182 F.3d at 1018 (immunity applies when an arbitrator is carrying out its administrative functions).

In this case, REACH did not seek equitable or injunctive relief outside the confines of the NSA. It does not contend that C2C had no authority to arbitrate the dispute, for example. REACH instead filed an action to vacate C2C's award under the grounds provided for in the FAA and incorporated into the NSA. REACH's

cause of action challenges C2C's decisional acts in rendering the award like every other vacatur action under the FAA. Accordingly, this Court should find that the district court properly dismissed REACH's complaint because, in addition to not being a proper party to the action, C2C is entitled to common law arbitral immunity.

CONCLUSION

For the reasons stated herein, this Court should affirm the final judgment in favor of C2C in all respects.

CERTIFICATE OF COMPLIANCE

The undersigned attorney hereby certifies that this Answer Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this response contains 7,885 words, excluding the parts exempted by Fed. R. App. P. 32(f). The undersigned attorney also certifies that this Answer Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word with Times New Roman 14-point font.

/s/ *Samuel B. Spinner*
Samuel B. Spinner

CERTIFICATE OF SERVICE

I certify that on August 21, 2024, I caused the foregoing to be e-filed with the Clerk of Court using the CM/ECF system and served on counsel of record:

/s/ Samuel B. Spinner
Samuel B. Spinner