UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

AETNA HEALTH INC., *et al.*, *Plaintiffs*, vs. RADIOLOGY PARTNERS, INC., et al., *Defendants*.	Case No. 3:24-cv-01343-BJD-LLL

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL ARBITRATION AND TO STAY

In 2001, Plaintiff Aetna Health Inc. ("Aetna") signed a contract with Defendant Mori, Bean and Brooks, Inc. ("MBB"), a small radiology practice in Jacksonville, Florida. For nearly two decades, MBB billed Aetna for services MBB provided to its patients under the contract (the "Aetna-MBB Contract"). In 2018, however, Defendant Radiology Partners, Inc. ("Radiology Partners")—a private-equity backed aggregator of radiology practices—acquired MBB for $132 million. Thereafter, Radiology Partners identified the Aetna-MBB Contract as the most lucrative of its Florida radiology practices' contracts with Aetna and began billing for services provided by *all* its affiliated Florida practices through the Aetna-MBB Contract (rather than using those practices' own contracts with Aetna). This caused Aetna and its plan sponsors to pay millions more than they should have for the *same* services by the *same* physicians at the *same* hospitals. Aetna terminated its contract with MBB in 2022. This ended the "Contract Period" scheme.

Defendants were not done. They pivoted to using MBB to fraudulently bill for services provided by Radiology Partners' other Florida practices on an out-of-network basis even though those practices were in-network with Aetna. For a subset of these claims, Defendants also wrongfully initiated *thousands* of arbitrations under the No Surprises Act's ("NSA") Independent Dispute Resolution ("IDR") process. Because the NSA IDR process is only available to non-contracted providers, Defendants' certifications that the claims were eligible for the NSA IDR process were fraudulent. This caused Aetna to pay tens of millions more in fraudulent claims, NSA IDR awards, fees, and unnecessary overhead. This is Defendants' "Post-Contract Period" scheme—which continues to this day.

Aetna asserted claims (1) against Radiology Partners for the Contract Period;[1] and (2) against MBB and Radiology Partners for the Post-Contract Period. Defendants ask the Court to compel arbitration of Aetna's claims against MBB and Radiology Partners "arising out of or related to the Contracted Period[.]" D.E. 28 at 13. Since Aetna only asserts claims against Radiology Partners for the Contract Period, there are no claims against MBB to compel to arbitration. Because Aetna and Radiology Partners never had a contract, Radiology Partners asks the Court to compel arbitration of Aetna's claims *under the Aetna-MBB Contract*. But Radiology Partners is not a signatory or party to the Aetna-MBB Contract and is entitled to that relief.

[1] Aetna has not asserted any claims against MBB for claims billed during the Contract Period, as Aetna has reiterated. *See*, *e.g.*, D.E. 39 at 2 & n.1.

First, Radiology Partners asks the Court to rule that equitable estoppel requires Aetna to arbitrate its claims against Radiology Partners. But Florida law limits equitable estoppel to circumstances where the dispute falls within the scope of an arbitration clause. Here, the arbitration clause in the Aetna-MBB Contract does not extend to disputes with non-parties such as Radiology Partners.

Second, Radiology Partners claims it can compel arbitration as an "agent" of MBB. But Radiology Partners is the principal of MBB, not its agent. As Radiology Partners touted to investors, Radiology Partners acquired MBB; "has control over the operations of [MBB];" and "takes all residual benefits and bears all residual losses from [MBB's] operations." Radiology Partners' only competing evidence—a self-serving declaration executed by an executive in advocacy role—does not even describe the relationship between Radiology Partners and MBB, much less provide the relevant contracts that form the alleged *indirect* relationship between them.

Third, Radiology Partners contends that arbitration should be compelled because of judicial estoppel. But Defendants' argument is based on positions supposedly taken by Aetna in a Texas arbitration, applying Texas law, on a different legal issue, with respect to a different scheme and claims billed under a different contract. These differences render judicial estoppel inapplicable.

Fourth, and finally, since none of the claims asserted by Aetna are arbitrable, the Court need not reach Defendants' request for a stay. However, even if the Court does compel arbitration of Aetna's claims against Radiology Partners for the Contract Period, Aetna's claims for the Post-Contract Period should proceed

because there is no arbitration provision governing such claims and "it is feasible to proceed with the litigation." *Klay v. All Defendants*, 389 F.3d 1191, 1204 (11th Cir. 2004). Here, proceeding with Aetna's non-arbitrable claims is not only feasible, but also critical: Defendants' scheme is ongoing. Aetna needs a forum where its requests for prospective relief may be addressed promptly to halt it, and this Court is the only option for that.

For these reasons, and as set forth below, the Court should deny Defendants' motion to compel arbitration and to stay Aetna's non-arbitrable claims.

BACKGROUND

I. MBB prior to its acquisition by Radiology Partners.

MBB is a medical group formed in 1968 that, at least prior to its acquisition by Radiology Partners, was comprised of a few dozen radiologists practicing in the Jacksonville, Florida area. D.E. 1 ("Compl.") ¶¶ 46–47.

In 2001, Aetna and MBB entered into the Aetna-MBB Contract. *Id*. ¶¶ 49, 54, 212–213; *see also* D.E. 38-1. The Aetna-MBB Contract reimbursed MBB for services provided to Aetna's members at a relatively high rate but applied only to those "employed" or "a partner or shareholder of" MBB. *Id*. ¶ 49.

II. Radiology Partners acquires radiology groups across Florida, including MBB, and then implements billing schemes.

Radiology Partners is a private equity-backed aggregator of radiology practices founded in 2012 that carries out its operations through local groups that it acquires and controls. Compl. ¶¶ 2, 3, 45. In 2018, Radiology Partners acquired MBB for over $130 million. *Id*. ¶¶ 48–49.

The Contract Period Scheme. After acquiring MBB, Radiology Partners decided to bill services rendered by its *other* Florida-based radiology groups through MBB, making it appear as though MBB rendered the services, in order to have those services reimbursed at the higher rates in the Aetna-MBB Contract. *Id.* ¶¶ 59, 65. This caused Aetna, its plan sponsors, and members to pay more for the same services rendered by the same physicians. *Id.* ¶¶ 67–111.

The Post-Contract Period Scheme. Aetna terminated the Aetna-MBB Contract in July of 2022. *Id.* ¶¶ 118, 130. Defendants then pivoted to causing MBB to bill claims on an *out-of-network* basis for medical groups that had (and still have) *in-network* agreements with Aetna. *Id.* ¶¶ 131–133. This was done so that Defendants could get paid more for the very same services, but also so that Defendants could wrongfully subject some such claims to the NSA IDR process, which is only available to non-contracted providers. *Id.* ¶¶ 10, 134. Each NSA IDR award was procured by Defendants' wrongful attestations to Aetna, the NSA IDR entity, and the U.S. Department of Health & Human Services that the claims were eligible for the NSA IDR process. *Id.* ¶¶ 10, 11. After obtaining thousands of fraudulent NSA IDR awards, Defendants tried to use the aggregate cost of the NSA IDR award, fees, and overhead to coerce Aetna into a new network agreement with extremely lucrative reimbursement rates. *Id.* ¶¶ 184–186.

III. Aetna files suit and Radiology Partners moves the court to dismiss the Post-Contract Period claims and compel arbitration of the Contract Period claims.

Aetna filed this action in December 2024. *See* D.E. 1. In response, Defendants filed a motion to dismiss Aetna's claims during the Post-Contract Period, *see* D.E. 27, and filed this motion to compel arbitration as to Aetna's claims during the Contract Period. *See* D.E. 28.

LEGAL STANDARDS

"[A]rbitration is a matter of contract," A*T&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011), meaning "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *AT&T Techs., Inc. v. Comms. Workers of Am.*, 475 U.S. 643, 648 (1986). "[A] court should not override the clear intent of the parties, or reach a result inconsistent with the plain text of a contract, simply because the policy favoring arbitration is implicated." *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) (quotation omitted).

"[C]ourts must place arbitration agreements on an equal footing with other contracts, and enforce them according to their terms." *Concepcion*, 563 U.S. at 339. To do so, courts look to "relevant state contract law" to assess if it "allows [a] non-party to enforce the agreement." *It Works Mktg., Inc. v. Melaleuca, Inc.*, No. 8:20-CV-1743-T-KKM-TGW, 2021 WL 1650266, at *3 (M.D. Fla. Apr. 27, 2021). "Under Florida law, one may not ordinarily compel arbitration under an arbitration agreement to which [he] was not a party." *Calvert v. Surrency*, 395 So. 3d 705, 707 (Fla. Dist. Ct. App. 2024).

ARGUMENT

I. The Complaint does not assert claims against MBB for the Contract Period, so there are no such claims to compel to arbitration.

Aetna does not dispute that the Aetna-MBB Contract requires it to arbitrate claims against MBB "arising out of or relating to" the Aetna-MBB Contract. *See* D.E. 30-1 at 4. But Aetna has not asserted claims against MBB during the Contract Period, which is why, for example, there is no claim for breach of the Aetna-MBB Contract asserted in the Complaint. *See* Compl.; s*ee also* D.E. 39 at 2 (confirming scope of Aetna's claims against MBB); D.E. 42 at 1–2 (same).[2] Because there are no claims against MBB during the Contract Period to compel to arbitration, *see* D.E. 28 at 14–16, that portion of Defendants' motion should be denied as moot.

II. Aetna's claims against Radiology Partners, a non-signatory to the Aetna-MBB Contract, are not required to be arbitrated.

A. Equitable estoppel is not applicable because Aetna did not agree to arbitrate claims against Radiology Partners.

Radiology Partners—a non-signatory to the Aetna-MBB Contract—argues that Aetna's claims against it for the Contract Period must be arbitrated because of equitable estoppel. *See* D.E. 28 at 17–20. But equitable estoppel is only available where "the scope of the arbitration provision covers the dispute." *It Works*, 2021 WL 1650266 at *3 (citing *Kroma Makeup EU, LLC v. Boldfact Licensing + Branding, Inc.*, 845 F.3d 1351, 1354 (11th Cir. 2017)); *Beck Auto Sales, Inc. v. Asbury Jax Ford, LLC*, 249 So. 3d 765, 768 (Fla. Dist. Ct. App. 2018) ("[E]ven

[2] That some of Aetna's claims against MBB contain factual allegations about what happened during the Contracted Period does not render them arbitrable.

when a non-signatory can rely on equitable estoppel to access the arbitration clause, the non-signatory can compel arbitration only if the dispute at issue falls within the scope of the arbitration clause."). Here, equitable estoppel is not appropriate because Aetna "never consented to arbitrate any disputes between it and [Radiology Partners] or any other non-signatory." *Kroma*, 845 F.3d at 1356.

The preamble of the Aetna-MBB Contract makes clear that it is only between "Aetna U.S. Healthcare, Inc., on behalf of itself and its Affiliates . . . and Mori, Bean & Brooks, PA." D.E. 38-1 at 1 & 2. In Section 11.7 of the contract, MBB was also prohibited from "assign[ing], subcontract[ing], delegat[ing] or transfer[ring]" rights under the agreement "in any manner." *Id.* at § 11.7.

Section 10.2 of the Aetna-MBB Contract is entitled "Dispute Resolution/Arbitration," and includes two subparagraphs. *See id.* at § 10.2. The first subparagraph, entitled "Dispute Resolution," only covers certain disputes between Aetna, MBB, and MBB's group providers. *Id.* at § 10.2.1. This provision requires use of Aetna's "internal mechanism where [MBB] . . . may raise issues, concerns, controversies or claims regarding the obligations of the parties under this Agreement." *Id.* MBB was required to use this "internal mechanism" prior to "instituting any arbitration or other permitted legal proceeding." *Id.*

The second subparagraph of Section 10.2 of the Aetna-MBB Contract is entitled "Arbitration." *See id.* § 10.2.2. This provision discusses disputes between the "parties." *Id.* at § 10.2.2. For instance, it prohibits "a party []or the arbitrator" from "disclos[ing]" the "results of an arbitration." *Id.* Likewise, the Agreement

mandates that "fourteen (14) days before the hearing, the parties will exchange and provide to the arbitrator" a witness list and premarked copies of exhibits." *Id.* Other provisions of the Aetna-MBB Contract make clear that "parties" and "party" are terms used to describe Aetna and MBB. *See, e.g.*, *id.* at § 11.2 ("This Agreement constitutes the complete and sole contract between the parties . . . ."); § 7.1 ("unless written notice of non-renewal is given to the other party. . . ."); § 7.2 ("This Agreement may be terminated by either party at any time for business reasons . . . ."); § 8.1 ("No changes, amendments, or alterations to this Agreement shall be effective unless signed by duly authorized representatives of both parties. . . .").

Reading all of these provisions together, as the Court must, *see Talbott v. First Bank Florida,* 59 So. 3d 243, 245 (Fla. Dist. Ct. App. 2011) ("A contract should be read as a whole"), it becomes clear that Aetna never consented or agreed to arbitrate disputes with Radiology Partners or any other non-signatory. *See Davken, Inc. v. City of Daytona Beach Shores,* No. 6:04-CV-207-ORL-19, 2006 WL 2085454, at *2 (M.D. Fla. July 25, 2006) *("*When construing a contract, the Court must place itself as closely as possible in the exact situation of the parties to the instrument when executed to determine the intention of the parties . . . .").

This result accords with governing law. For instance, *Kroma* involved claims brought by a cosmetic product manufacturer against the Kardashian sisters and a distributor. 845 F.3d at 1351. Pointing to an arbitration clause in an agreement between the distributor and manufacturer, the Kardashian Sisters moved to compel arbitration under a theory of equitable estoppel. *Id.* at 1353–54. Applying

Florida law, the Eleventh Circuit noted that "[e]quitable estoppel does not allow a nonsignatory to an agreement to alter and expand an arbitration clause that would not otherwise cover the claims asserted." *Id.* at 1354. Because the manufacturer "never consented to arbitrate any disputes between it and the Kardashians or any other non-signatory," the motion to compel arbitration was properly denied. *Id.* at 1356. "To hold otherwise would require more than giving the outsider access to the arbitration provision; it would also require rewriting that provision." *Id.*

Similarly, in *It Works*, a beauty product manufacturer allegedly encouraged distributors to hand over a competitor's "trade secrets and confidential information." 2021 WL 1650266 at *2-3. The defendant argued the plaintiff must "must arbitrate its claims against [it] under the arbitration provision in the Distributor Agreement." *Id.* at *3. But when interpreting the contract "harmoniously to give effect to each provision," the plaintiff "did not agree to arbitrate claims between itself and non-signatory third parties." *Id.* at *3-4.

A final example is *Beck Auto Sales, Inc. v. Asbury Jax Ford, LLC*, 249 So. 3d 765, 766 (Fla. Dist. Ct. App. 2018), where a car dealership sued a rival dealership that hired one of its former employees away. Relying upon an arbitration agreement between the plaintiff dealership and the former employee, the defendant dealership argued that the claims against it should be arbitrated "under principles of equitable estoppel[.]" *Id.* But since "no party may be forced to submit a dispute to arbitration that the party did not intend and agree to arbitrate," the court had to examine "the scope of the arbitration clause" as "a pure matter of

contractual interpretation." *Id.* at 768. In doing so, the court found that because the agreement was limited to "disputes between the parties . . . it would not reach disputes that involve the [rival dealership] (a nonparty)." *Id.* Accordingly, the "trial court correctly denied the motion to compel [arbitration]." *Id.* at 769.

B. Radiology Partners is the principal of MBB, not its agent.

Radiology Partners next argues it can compel arbitration of Aetna's claims against it during the Contracted Period because it is an "agent" of MBB. D.E. 28 at 20-22. This theory fails, too.

First, Radiology Partners tries to construe Aetna's complaint as "sufficient to establish" that Radiology Partners is an agent of MBB. *Id.* at 21. But the Complaint makes clear that Radiology Partners is the *principal* of MBB, not its agent. *See*, *e.g.*, Compl. ¶ 2 ("Radiology Partners controls all material aspects of these radiology practices' businesses . . . ."); ¶ 45 ("Radiology Partners carries out its operations through local radiology groups that it acquires and then controls. MBB is one example."); ¶ 51 ("Radiology Partners touts itself as simply a "billing" or "management" company for its affiliated medical groups. In reality, it had and continues to have complete control over the operations of those medical groups, provides full financial and management support, and takes all residual benefits and bears all residual losses from the medical groups' operations.").

Second, competent evidence confirms that Radiology Partners is MBB's principal:

- Radiology Partners acquired MBB, not vice versa. In disclosures to investors, Radiology Partners has stated it acquired MBB for more than $132 million in 2018. D.E. 38-2. *See Johnson v. Unique Vacations, Inc.*, 498 F. App'x 892, 896 (11th Cir. 2012) (party can establish the right of control as a matter of law by showing one entity "owned, operated, or controlled" the other).

- Radiology Partners admitted it has complete control over MBB. Radiology Partners says: (1) "it has control over the operations of [MBB]"; (2) it "provides full financial and management support to [MBB]"; and (3) it "takes all residual benefits and bears all residual losses from [MBB's] operations." D.E. 38-2. Radiology Partners also states it "has exclusive authority over all nonmedical decision-making related to the ongoing business operations of [MBB]" as well. *Id; see also Hickman v. Barclay's Int'l Realty, Inc.*, 5 So. 3d 804, 806 (Fla. Dist. Ct. App. 2009) (The "key element" of agency is the "control by the principal over the actions of the agent.").

- Radiology Partners has installed its own executives as the directors and officers of MBB. *See* **Exhibit A** attached hereto. *See Flight Equip. & Eng'g Corp. v. Shelton*, 103 So. 2d 615, 623 (Fla. 1958) ("[O]fficers exercise the power of management").

Third, and finally, Radiology Partners has not presented the Court with competent evidence to carry its burden in proving that Radiology Partners is MBB's agent. *See WB's Septic & Sitework, Inc. v. Tucker*, 365 So. 3d 1242, 1246 (Fla. Dist. Ct. App. 2023) ("[T]he party alleging the agency relationship has the burden to prove it."). Radiology Partners' only evidence of the relationship between MBB and Radiology Partners is a declaration from a "Strategic Communications" executive at Radiology Partners. D.E. 30 at ¶ 1. That executive claims Radiology Partners is the "sole member" of another entity, Radiology Partners Management, LLC, which MBB purportedly contracted with and appointed as its "sole and exclusive agent for the management of the day-to-day

business affairs" of MBB. *See* D.E. 30 ¶¶ 1, 3, 6–7. Defendants did not provide the Court or Aetna with the documents that actually define and formalize these alleged relationships. *See* D.E. 30. But the fact that Radiology Partners is the sole member of another, separate company that is *supposedly* MBB's agent does not make Radiology Partners the agent of MBB. The "strategic communications" declarant also does not describe how she knows this to be true or the basis or personal knowledge she has of these relationships. Thus, the Court should not afford her declaration any weight. *See Rosen v. Serv. Corp. Int'l*, No. 11-62547-CIV, 2012 WL 370298, at *4 (S.D. Fla. Feb. 3, 2012). This is particularly true here, where Defendants have refused to answer Aetna's discovery requests seeking information about Radiology Partners' relationships with MBB and the other Florida medical groups while seeking relief on their theory that Radiology Partners was MBB's agent. *See* D.E. 36 (motion to stay discovery); D.E. 36-1 at 8 (interrogatories asking about Radiology Partners' relationships with its affiliated medical groups in Florida); D.E. 36-2 at 8 (requests for production seeking documents on the same topic).

Because Radiology Partners cannot carry its burden of establishing that it was MBB's agent, the motion should be denied.

C. Aetna is not judicially estopped from seeking to litigate its Contract Period claims against Radiology Partners.

Radiology Partners' final argument is that Aetna is judicially estopped from refusing to arbitrate its claims during the Contract Period against Radiology Partners. D.E. 28 at 22–23. But Radiology Partners cites no authority in support

of its argument. In any event, even *if* judicial estoppel could be a basis for compelling arbitration in certain circumstances, the theory is inapplicable here.

Radiology Partners' judicial estoppel argument is based on allegedly inconsistent positions taken by Aetna in a prior arbitration involving a Radiology Partners affiliated in Texas, Singleton Associates, PA ("Singleton"). There, Aetna sought to file third-party claims against Radiology Partners—a non-signatory to the contract containing the relevant arbitration provision—in arbitration. *See* D.E. 28 at 22–23. But, under Florida law, judicial estoppel requires "the same issues" to be involved. *Olmsted v. Emmanuel*, 783 So. 2d 1122, 1126 (Fla. Dist. Ct. App. 2001). The arbitration with Singleton involved: a different contract (between Singleton and Aetna); governed by a different state's law (Texas); and a different legal issue (whether a signatory could assert claims against a third-party, non-signatory in arbitration, whereas here a non-signatory seeks to compel a signatory to arbitrate). *See* D.E. 29-3 & 29-4. These differences render judicial estoppel inapplicable.[3]

III. Defendants admit that Aetna has asserted claims that are not arbitrable; a stay of such claims would deprive Aetna of its opportunity to address Defendants' ongoing scheme.

Defendants admit that Aetna's claims relating to the Post-Contract Period are not arbitrable. *See* D.E. 27 (moving to dismiss such claims rather than seeking

[3] Judicial estoppel is also inapplicable under federal law. That would require a showing that the allegedly inconsistent statement was "made under oath in a prior proceeding" and "calculated to make a mockery of the judicial system." *Cont'l Ins. Co. v. Roberts*, No. 8:05-CV-1658-T-17MSS, 2008 WL 1776552, at *7 (M.D. Fla. Apr. 18, 2008).

to compel them to arbitration). Yet Defendants ask the Court to stay those claims if the Court compels any others to arbitration. *See* D.E. 28 at 24. This request should be denied because a stay (1) is inconsistent with the Eleventh Circuit's guidance and (2) would deprive Aetna of judicial avenues that are necessary to halt Defendants' *ongoing scheme*.

"[T]he heavy presumption should be that the arbitration and the lawsuit will each proceed in its normal course[.]" *McKinnon v. Palm Chevrolet of Gainesville, LLC*, No. 1:09-cv-174-SPM-AK, 2009 WL 10674171, at *4 (N.D. Fla. Nov. 6, 2009); *see also Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 215 (White, J., concurring) (stating that the "heavy presumption should be that the arbitration and the lawsuit will each proceed in its normal course"). Accordingly, "courts generally refuse to stay proceedings of nonarbitrable claims when it is feasible to proceed with the litigation." *Klay*, 389 F.3d at 1204.

Klay is particularly instructive. *See* 389 F.3d 1191. There, health maintenance organizations sought to compel arbitration of claims filed against them by physician groups based on arbitration clauses in network contracts and to "stay litigation of [any] nonarbitrable claims." *Id.* at 1195. Akin to the Post-Contract Period claims here, the Eleventh Circuit found "that claims arising from disputes which arose outside of the effective dates" of the contracts were not arbitrable. *Id.* at 1203. It affirmed the district court's denial of the "motion to stay litigation of nonarbitrable claims," reasoning that it was "feasible to compel arbitration of arbitrable claims while allowing litigation of nonarbitrable claims" and "refusal to

grant the stay would not result in duplicative proceedings and would not permit a decision in either proceeding to have preclusive effect in the other." *Id.*

Blue Cross & Blue Shield of Georgia, Inc. v. DL Inv. Holdings, LLC is also squarely on point. There, health care plans brought suit against providers for a fraudulent billing scheme. *See* No. 1:18-CV-01304, 2018 WL 6583882, at *1-2 (N.D. Ga. Dec. 14, 2018). Although there were three contracts at issue and only one had an arbitration provision, the court refused to stay the non-arbitrable claims because (1) "it is feasible to arbitrate the claims identified above while allowing litigation of non-arbitrable claims to continue," (2) "there is no reason to believe the dual track will prejudice any party or necessarily lead to the duplication of efforts," (3) it would be "fundamentally unfair to the [plaintiffs] to stay their claims because of the presence of an arbitration provision in a separate contract," (4) "the parties can work together to prevent the duplication of efforts and expense," and (5) "a dual track is exactly what the parties bargained for[.]" *Id.* at 9–11. This logic is equally applicable to the issues presently before the Court and supports denial of Defendants' motion to stay Aetna's non-arbitrable claims.

It is "feasible to proceed with [Aetna's] nonarbitrable claims." *See Klay*, 389 F.3d at 1204. The arbitration provision in the Aetna-MBB Contract, *see* D.E. 38-1 at § 10.2.2, "does not require findings of fact by the arbitrator or any other type of reasoned award." *DL Inv. Holdings,* 2018 WL 6583882, at *10. Accordingly, "[a]ny decision by the arbitrator will not necessarily have any bearing or legally preclusive effect on issues in this litigation." *Id.* In addition, there is "virtual certainty that

critical legal and factual issues will remain outstanding for resolution in this litigation regardless of the arbitrators' decisions." *Caytrans BBC, LLC v. Equip. Rental & Contractors Corp.*, No. CIV.A.08-0691-WS-B, 2010 WL 2293001, at *3 (S.D. Ala. June 4, 2010). Defendants do not even *argue* that it would be infeasible to proceed with Aetna's non-arbitrable claims if the Court compels some of Aetna's Contract Period claims to arbitration. Instead, there simply hypothesize that there "could" be findings that arise issues of preclusion between an arbitration and litigation. *See* D.E. 28 at 24. This is pure speculation. There are no claims currently in arbitration, and it will be up to Aetna to elect which claims to assert if an arbitration is ever filed. Defendants have not articulated any reason why it would be "infeasible" for Aetna's non-arbitrable claims to proceed.

Aetna also needs to proceed with any non-arbitrable claims because Defendants' scheme is *ongoing*. A stay would deprive Aetna of judicial avenues that are necessary to prevent further harm.[4] *See* Compl. ¶¶ 317 (seeking declaratory and injunctive relief under FDUTPA); *id.* ¶¶ 335-347 (seeking declaratory and injunctive relief under ERISA); *id.* ¶¶ 351 & 354(a) (seeking declaratory relief under 28 U.S.C. § 2201). The ongoing scheme includes millions of dollars in NSA IDR awards obtained fraudulently and that exceed the IDR entities' powers, *see id.* ¶¶ 320-333, and where Aetna's avenues for relief are limited by the NSA. *See* 42

[4] The Aetna-MBB Contract "except[s]" any "temporary, preliminary, or permanent injunctive relief or any other form of equitable relief" from the province of arbitration. D.E. 38-1 at § 10.2.2.

U.S.C. § 300gg-111(c)(5)(E)(i). There is no reason to delay resolution of these pressing issues indefinitely, as Defendants request. *See Neely v. Bechtel Corp.,* No. 1:07-CV-0907, 2008 WL 2120085, at *5 (M.D. Ala. May 20, 2008) ("[T]he interest of resolving the dispute in a timely manner outweighs any concern about parallel proceedings[.]"); *Attentive, LLC v. Linked.Exchange, LLC*, No. 4:24-CV-323, 2025 WL 57717, at *4 (N.D. Ala. Jan. 9, 2025) ("the court sees no reason to make [plaintiff] wait to litigate those claims. So the court denies [defendant's] motion to stay."); *Campbell v. Verizon Wireless, LLC*, No. CIV.A. 14-0517-WS-N, 2015 WL 416484, at *9 (S.D. Ala. Jan. 29, 2015) ("[S]taying the nonarbitrable claims pending arbitration . . . would needlessly delay resolution of [the] nonarbitrable claims, with no countervailing benefits in terms of efficiency or conservation of litigant or judicial resources.").

To the extent discovery may overlap "the parties can work together to prevent the duplication of efforts and expense. They can coordinate written discovery, depositions, and similar maters between the two proceedings." *DL Inv. Holdings,* 2018 WL 6583882, at *10. Likewise, the Court and the arbitral tribunal can "also manage the litigation (including discovery and motions practice) to prevent duplication of efforts and maximize efficiency." *Id*; *see also Branch v. Ottinger*, No. 2:10-CV-128-RWS, 2011 WL 4500094, at *3 (N.D. Ga. Sept. 27, 2011), *aff'd* 477 Fed. Appx. 718 (11th Cir. 2012) (denying motion to stay and discussing "coordination between litigation and arbitration discovery").

Radiology Partners also does not demonstrate how a lack of stay would cause any undue prejudice. *See DL Inv. Holdings,* 2018 WL 6583882, at *10 (denying stay where "there is no reason to believe the dual track will prejudice any party"). Its own motion states that "MBB and RP will present much of the same evidence for both time periods . . . ." D.E. 28 at 24. Thus, it's not a matter of *if* and *how* Radiology Partners will defend itself, but *when*. Accordingly, there is no burden to be potentially alleviated through a stay. In contrast, a stay would be "fundamentally unfair" to Aetna—especially "[c]onsidering the allegations at issue." *DL Inv. Holdings,* 2018 WL 6583882, at *8-10. Aetna did not ever agree to arbitrate its claims during the Post-Contract Period. *See id.* at *9 ("Staying the non-arbitrable claims is completely inconsistent with the purpose of arbitration or the idea that arbitration should be enforced because it is what parties agreed to do.").

Finally, the Contracted Period does not "predominate" over the Post-Contract Period. *Klay*, 389 F.3d at 1204. To the contrary, the Post-Contract Period is more recent in time; the conduct is continuing to this day (which Aetna seeks to enjoin as part of these proceedings); and upon information and belief, it gives rise the biggest source of damages to Aetna (which continue to grow).

CONCLUSION

Because Aetna's claims are not arbitrable, the Court should deny Defendants' motion to compel arbitration. However, even if the Court compels arbitration of Aetna's claims against Radiology Partners during the Contracted Period, it should deny Defendants' motion to stay Aetna's non-arbitrable claims.

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KNelson@robinskaplan.com
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402
P: 612.349.8500

Attorneys for Plaintiffs

EXHIBIT A

COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: Mori, Bean and Brooks, Inc.

DOCUMENT NUMBER: 600545

The enclosed *Articles of Amendment* and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Joseph Schohl
Name of Contact Person

Firm/ Company

201 E. El Segundo Blvd.
Address

El Segundo, CA 90245
City/ State and Zip Code

joseph.schohl@radpatners.com
E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Name of Contact Person at (Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount made payable to the Florida Department of State:

☐ $35 Filing Fee ☐ $43.75 Filing Fee & Certificate of Status ☐ $43.75 Filing Fee & Certified Copy (Additional copy is enclosed) ☐ $52.50 Filing Fee Certificate of Status Certified Copy (Additional Copy is enclosed)

Mailing Address
Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street Address
Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

Articles of Amendment
to
Articles of Incorporation
of

Mori, Bean and Brooks, Inc.

(Name of Corporation as currently filed with the Florida Dept. of State)

600545

(Document Number of Corporation (if known)

Pursuant to the provisions of section 607.1006, Florida Statutes, this ***Florida Profit Corporation*** adopts the following amendment(s) to its Articles of Incorporation:

A. **If amending name, enter the new name of the corporation:**

_____ *The new name must be distinguishable and contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or Co.," or the designation "Corp," "Inc," or "Co". A professional corporation name must contain the word "chartered," "professional association," or the abbreviation "P.A."*

B. **Enter new principal office address, if applicable:**
(Principal office address MUST BE A STREET ADDRESS)

_____

_____

_____

C. **Enter new mailing address, if applicable:**
(Mailing address MAY BE A POST OFFICE BOX)

_____

_____

_____

D. **If amending the registered agent and/or registered office address in Florida, enter the name of the new registered agent and/or the new registered office address:**

Name of New Registered Agent Corporation Service Company

1201 Hays Street
(Florida street address)

New Registered Office Address: Tallahassee, *(City)*, Florida 32301 *(Zip Code)*

New Registered Agent's Signature, if changing Registered Agent:
I hereby accept the appointment as registered agent. I am familiar with and accept the obligations of the position.

Emily Croft
Asst. Vice President
Signature of New Registered Agent, if changing

FILED
2024 OCT 16 P 5:56

If amending the Officers and/or Directors, enter the title and name of each officer/director being removed and title, name, and address of each Officer and/or Director being added:
(Attach additional sheets, if necessary)
Please note the officer/director title by the first letter of the office title:
P = President, V= Vice President; T= Treasurer; S= Secretary; D= Director; TR= Trustee; C = Chairman or Clerk; CEO = Chief Executive Officer; CFO = Chief Financial Officer. If an officer/director holds more than one title, list the first letter of each office held. President, Treasurer, Director would be PTD.
Changes should be noted in the following manner. Currently John Doe is listed as the PST and Mike Jones is listed as the V. There is a change, Mike Jones leaves the corporation, Sally Smith is named the V and S. These should be noted as John Doe, PT as a Change, Mike Jones, V as Remove, and Sally Smith, SV as an Add.
Example:

X Change	PT	John Doe
X Remove	V	Mike Jones
X Add	SV	Sally Smith

Type of Action (Check One)	Title	Name	Address
1) ____ Change	ST	McBride, Andrew	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
2) ____ Change	P	Mori, Kurt	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
3) ____ Change	VP	McGraw, Peter	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
4) ____ Change	D	Alderman, Mary	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
5) ____ Change	D	Beardsley, Shannon	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
6) ____ Change	D	Borbely, Michael	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216

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Example:

X Change	PT	John Doe
X Remove	V	Mike Jones
X Add	SV	Sally Smith

Type of Action (Check One)	Title	Name	Address
1) ____ Change	D	Buxton, Richard	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
2) ____ Change	D	Davila, Jesse	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
3) ____ Change	D	Fields, Marcus	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
4) ____ Change	D	Gamba, Jorge L.	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
5) ____ Change	D	Gesner, Douglas	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
6) ____ Change	D	Gordon, Patrick	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216

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(Attach additional sheets, if necessary)

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Example:

X Change	PT	John Doe
X Remove	V	Mike Jones
X Add	SV	Sally Smith

Type of Action (Check One)	Title	Name	Address
1) ____ Change	D	Gratz, Brett	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
2) ____ Change	D	Howze, Bryan	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
3) ____ Change	D	Irizarry, Rafael	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
4) ____ Change	D	Johnson, Dianne	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
5) ____ Change	D	Jones, Jay	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
6) ____ Change	D	Kaltman, Scott	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216

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Example:

X Change	PT	John Doe
X Remove	V	Mike Jones
X Add	SV	Sally Smith

Type of Action (Check One)	Title	Name	Address
1) ____ Change	D	Kobrin, Craig	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
2) ____ Change	D	McGraw, Peter	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
3) ____ Change	D	Mori, Kurt W	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
4) ____ Change	D	Panaccione, John	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
5) ____ Change	D	Patel, Trishna	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
6) ____ Change	D	Rodriguez, Francisco	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216

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(Attach additional sheets, if necessary)

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Example:

X Change	PT	John Doe
X Remove	V	Mike Jones
X Add	SV	Sally Smith

Type of Action (Check One)	Title	Name	Address
1) ____ Change	D	Schallen, Eric	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
2) ____ Change	D	Shirley, Steve A	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
3) ____ Change	D	Stringfellow, Gregory	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
4) ____ Change	D	Talley, Brad	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
5) ____ Change	D	Thirumala, Krishna	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
6) ____ Change	D	West, Jeffrey	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216

If amending the Officers and/or Directors, enter the title and name of each officer/director being removed and title, name, and address of each Officer and/or Director being added:
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Example:

X Change	PT	John Doe
X Remove	V	Mike Jones
X Add	SV	Sally Smith

Type of Action (Check One)	Title	Name	Address
1) ____ Change	D	Wulfeck, Dennis	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
2) ____ Change	D	Ludwig, Benjamin	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
3) ____ Change	D	McBride, Andrew	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
4) ____ Change	D	Moon, Brian	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
5) ____ Change	D	Eduardo, Oyola	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
6) ____ Change	D	Schemmel, Derek	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216

If amending the Officers and/or Directors, enter the title and name of each officer/director being removed and title, name, and address of each Officer and/or Director being added:

(Attach additional sheets, if necessary)

Please note the officer/director title by the first letter of the office title:

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Example:

X Change	PT	John Doe
X Remove	V	Mike Jones
X Add	SV	Sally Smith

Type of Action (Check One)	Title	Name	Address
1) ____ Change	D	Makar, Ryan	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
2) ____ Change	D	Parikh, Pankit	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
3) ____ Change	D	Ratliff, David	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
4) ____ Change	D	Tsao, Benjamin	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
5) ____ Change	D	Matthew, Harris	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216
6) ____ Change	D	Kent, Amanda	3599 University Blvd. S
____ Add			Bldg 300
X ____ Remove			Jacksonville, FL 32216

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Example:

X Change	PT	John Doe
X Remove	V	Mike Jones
X Add	SV	Sally Smith

Type of Action (Check One)	Title	Name	Address
1) ____ Change	PCEO	Tumbarello, Steve	2101 E. El Segundo Blvd.
X ____ Add			Suite 401
____ Remove			El Segundo, CA 90245
2) ____ Change	T	Gutierrez, David	2101 E. El Segundo Blvd.
X ____ Add			Suite 401
____ Remove			El Segundo, CA 90245
3) ____ Change	S	Bronner, Jay	2101 E. El Segundo Blvd.
X ____ Add			Suite 401
____ Remove			El Segundo, CA 90245
4) ____ Change	CRO	Basak, Ertan	2101 E. El Segundo Blvd.
X ____ Add			Suite 401
____ Remove			El Segundo, CA 90245
5) ____ Change			
____ Add			
____ Remove			
6) ____ Change			
____ Add			
____ Remove			

E. **If amending or adding additional Articles, enter change(s) here:**
(Attach *additional sheets, if necessary).* *(Be specific)*

F. **If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself:**
(if not applicable, indicate N/A)

The date of each amendment(s) adoption: _____, if other than the date this document was signed.

Effective date if applicable: _____
(no more than 90 days after amendment file date)

Note: If the date inserted in this block does not meet the applicable statutory filing requirements, this date will not be listed as the document's effective date on the Department of State's records.

Adoption of Amendment(s) (CHECK ONE)

☒ The amendment(s) was/were adopted by the shareholders. The number of votes cast for the amendment(s) by the shareholders was/were sufficient for approval.

☐ The amendment(s) was/were approved by the shareholders through voting groups. *The following statement must be separately provided for each voting group entitled to vote separately on the amendment(s):*

"The number of votes cast for the amendment(s) was/were sufficient for approval

by _____."
(voting group)

☐ The amendment(s) was/were adopted by the board of directors without shareholder action and shareholder action was not required.

☐ The amendment(s) was/were adopted by the incorporators without shareholder action and shareholder action was not required.

Dated October 12, 2018

Signature _____
(By a director, president or other officer – if directors or officers have not been selected, by an incorporator – if in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

David Gutierrez
(Typed or printed name of person signing)

Treasurer
(Title of person signing)